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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–018–2]

Citrus Canker; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the citrus canker regulations by removing a portion of Hillsborough County, FL, from the list of quarantined areas. The regulations require that an area be free from citrus canker for a period of at least 2 years before it may be removed from the list of quarantined areas. Surveys have shown that the quarantined area in Hillsborough County, FL, has been free of citrus canker since December 1999. The interim rule removed restrictions on the interstate movement of regulated articles from that portion of Hillsborough County, FL.

EFFECTIVE DATE: The interim rule became effective on March 21, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–8899.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on March 21, 2002 (67 FR 13083–13084, Docket No. 02–018–1), we amended the citrus canker regulations in 7 CFR part 301 by removing a portion of Hillsborough County, FL, from the list of quarantined areas in § 301.75–4(a). The regulations require that an area be free from citrus canker for a period of at least 2 years before it may be removed from the list of quarantined areas, and surveys have shown that the quarantined area in Hillsborough County, FL, has been free of citrus canker since December 1999. Therefore, the interim rule removed restrictions on the interstate movement of regulated articles from that area.

Comments on the interim rule were required to be received on or before May 20, 2002. We did not receive any comments. Therefore, for the reason given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, and Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR 301 and that was published at 67 FR 13083–13084 on March 21, 2002.

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 2nd day of August 2002 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–20069 Filed 8–7–02; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–75–AD; Amendment 39–12686; AD 2002–06–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300; A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600); and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to all Airbus Model A300; A300–600; and A310 series airplanes. That AD currently requires certain inspections of the airplane (including the vertical stabilizer, horizontal stabilizer, pylons, wing, and fuselage areas) following an in-flight incident resulting in extreme lateral loading. This document clarifies and corrects the information contact in the reporting requirement specified in paragraphs (b)(2) and (c)(2) of that AD. This correction is necessary to ensure that future reports are submitted to a specific point of contact.

DATES: Effective April 8, 2002.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, ANM–116, International Branch, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On March 15, 2002, the Federal Aviation Administration (FAA) issued AD 2002–06–09, amendment 39–12686 (67 FR 13259, March 22, 2002), which applies to all Airbus Model A300; A300–600; and A310 series airplanes. That AD requires certain inspections of the airplane (including the vertical stabilizer, horizontal stabilizer, pylons, wing, and fuselage areas) following an in-flight incident resulting in extreme lateral loading. The actions required by that AD are intended to detect and correct reduced structural integrity of the airplane following any future event.

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Need for the Correction

Information obtained recently from Airbus Industrie indicates that a specific point of contact should be included for the reporting requirement submissions in that AD.

The FAA has determined that a correction to AD 2002–06–09 is necessary. The correction will replace the reference to AI/SE–D32 Technical Data and Documentation Services and the fax number for that office, as specified in paragraphs (b)(2) and (c)(2) of that AD, with the point of contact Jacques Leborgne and the fax number for that contact.

Correction of Publication

This document corrects the error and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains April 8, 2002.

Since this action only adds a point of contact, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

2002–06–09 Airbus Industrie: Amendment 39–12686. Docket 2002–NM–75–AD.

Applicability: All Model A300; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and A310 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct reduced structural integrity of the airplane following an extreme lateral loading event, accomplish the following:

Lateral Load Factor Determination

(a) As of the effective date of this AD, before further flight following an in-flight incident that results in extreme lateral loading, determine whether the lateral load factor (Ny) equaled or exceeded 0.3g. Extreme lateral loading can occur as a consequence of severe turbulence, loss of control of the aircraft involving yaw and/or roll maneuvers, hazardous systems failures, or other rare flight conditions. Then do the inspections specified in paragraph (b) or (c) of this AD, as applicable, at the time specified.

Note 2: Acceptable methods for determining if the lateral load factor equaled or exceeded 0.3g include but are not limited to: Aircraft Communication Addressing and Reporting System (ACARS), Digital Flight Data Recorder (DFDR) readout, or Quick Access Recorder (QAR). A pilot report of extreme lateral acceleration in-flight can be used to assess whether one of the previous methods should be used to determine the lateral load factor.

Note 3: The inspections specified in paragraphs (b) and (c) of this AD are not necessary if lateral load factors exceed 0.3g when the airplane is on the ground (landing, taxiing).

Inspections for Certain Lateral Load Factors

(b) For airplanes on which the lateral load factor (Ny) is greater than or equal to 0.3g, but less than 0.35g, accomplish the following actions:

(1) Before further flight, do the detailed inspections specified in paragraph (d) of this AD.

Reporting Requirement

(2) Within 5 days after accomplishing the inspections required by paragraph (b)(1) of this AD: Submit a report to Airbus, including the DFDR recording (or equivalent) of the portion of the flight when the extreme lateral loading event occurred, and other relevant information necessary to fully describe the event and develop the actual loads, including but not limited to, airplane weight, weather, and flight crew report. Submit a report of the inspection results (both positive and negative findings) to Jacques Leborgne, Airbus Industrie Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France; fax (+33) 5 61 93 36 14. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note 4: Following accomplishment of the requirements of paragraphs (b)(1), (b)(2) and, if necessary, (e) of this AD, the airplane may be returned to service before accomplishing the inspections required by paragraph (b)(3) of this AD.

Supplementary Inspections

(3) The manufacturer will develop an airplane loads assessment and recommend, if necessary, supplementary inspections of the applicable areas of the airplane (including the vertical stabilizer, horizontal stabilizer pylons, wing, and fuselage areas). Within 30 days after the extreme lateral loading event, do the supplementary inspections of the airplane according to a method approved by the Manager, International Branch, ANM–116; FAA, Transport Airplane Directorate.

Note 5: The loads assessment, and if necessary, supplementary inspections required by paragraph (b)(3) of this AD, will be developed and proposed by the manufacturer based on the manufacturer's analysis of the report required by paragraph (b)(2) of this AD.

Inspections for Certain Other Lateral Load Factors

(c) For airplanes on which the lateral load factor (Ny) is greater than or equal to 0.35g, accomplish the following:

(1) Before further flight, do the detailed inspections specified in paragraph (d) of this AD.

Reporting Requirement

(2) Before further flight after accomplishing the inspections required by paragraph (c)(1) of this AD: Submit a report to Airbus, including the DFDR recording (or equivalent) of the portion of the flight when the extreme lateral loading event occurred, and other relevant information necessary to fully describe the event and develop the actual loads, including but not limited to, airplane weight, weather, and flight crew report. Submit a report of the inspection results (both positive and negative findings) to Jacques Leborgne, Airbus Industrie Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France; fax (+33) 5 61 93 36 14. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Supplementary Inspections

(3) The manufacturer will develop an airplane loads assessment and recommend, if necessary, supplementary inspections of the applicable areas of the airplane (including the vertical stabilizer, horizontal stabilizer pylons, wing, and fuselage areas). Before further flight, do the supplementary inspections of the airplane according to a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Note 6: The loads assessment, and if necessary, supplementary inspections required by paragraph (c)(3) of this AD, will be developed and proposed by the manufacturer based on the manufacturer's analysis of the report required by paragraph (c)(2) of this AD.

Detailed Inspections

(d) Do the following detailed inspections at the time specified in paragraph (b)(1) or (c)(1) of this AD, as applicable.

(1) Do the inspections as specified in and per Chapter 05–51–17 (Inspections After Flight in Excessive Turbulence or In Excess of VMO/MMO) of Airbus A300, A300–600 or A310 Airplane Maintenance Manual (AMM), as applicable. Extend the areas for these inspections as specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(i) Extend the wing inspection area to include rib 22 through rib 29.

(ii) Extend the fuselage inspection area from the inside to include frame 84 through 87 above stringer 23, and all areas of frame 91.

(2) Do detailed inspections to find damage of the areas specified in paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this AD, according to a method approved by the Manager, International Branch, ANM–116.

(i) Inspect the fuselage external surface under the vertical stabilizer to fuselage fairing, including side load fittings and lower surface of rib 1 of the vertical stabilizer.

(ii) Inspect the rudder hinge arms and support fittings 1 through 7, and the actuator support fittings of the vertical stabilizer.

(iii) Inspect the rudder hinge fittings 1 through 7, and the actuator support fittings of the vertical stabilizer.

Note 7: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, *etc.*, may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Actions

(e) If any damage is found during any inspection required by this AD: Before further flight, repair according to the method specified in the Airbus structural repair manual or according to a method approved by the Manager, International Branch, ANM–116, or by the Direction Générale de l'Aviation Civile or its delegated agent.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, which may add comments and then send it to the Manager, International Branch, ANM–116.

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(h) The effective date of this amendment remains April 8, 2002.

Issued in Renton, Washington, on July 29, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20019 Filed 8–7–02; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–96; 97–200231(a); FRL–7254–2]

Approval and Promulgation of Implementation Plans: North Carolina: Permitting Rules and Other Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of North Carolina, through the North Carolina Department of Environmental and Natural Resources (NCDENR), on April 16, 2001. These revisions include the adoption of rules 15A NCAC 2D .0611 through .0615, the amending of .0501, .0903 and multiple rules within Chapter .0600 Monitoring: Recordkeeping: Reporting, the adoption of rules 15A NCAC 2Q .0316 and .0317 and the amending of rules .0109, .0803 and .0805 through .0808. The purpose of these revisions is to make the revised regulations consistent with the requirements of the Clean Air Act as amended in 1990 (CAA).

DATES: This direct final rule is effective October 7, 2002, without further notice, unless EPA receives adverse comment by September 9, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Randy Terry, 404/562–9032.

North Carolina Department of Environment and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

Forsyth County Environmental Affairs Department, 537 North Spruce Street, Winston-Salem, North Carolina 27101.

FOR FURTHER INFORMATION CONTACT: Randy B. Terry at 404/562–9032, or by electronic mail at *terry.randy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 16, the State of North Carolina, through the North Carolina Department of Environmental and Natural Resources (NCDENR), submitted revisions to the North Carolina SIP. These revisions include the adoption of rules 15A NCAC 2D .0611 through .0615, the amending of .0501, .0903 and multiple rules within Chapter .0600 Monitoring: Recordkeeping: Reporting, the adoption of rules 15A NCAC 2Q .0316 and .0317 and the amending of rules .0109, .0803 and .0805 through .0808. A detailed analysis of each of the major revisions submitted is listed below.

II. Analysis of North Carolina's Submittal

Subchapter 2D

2D .0501 Compliance With Emission Control Standards

This rule was amended to add detailed language to the cited ASTM methods and to eliminate the duplicative processing for the facilities with mixed control required to be permitted according to the requirements of title V of the CAA. Previously these facilities with mixed control were subject to the SIP process and the title V permitting process. Both processes involve the same amount of public participation. Both involve EPA review and approval. Under their previous process, there were two public comment periods and two EPA reviews for title V

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facilities with mixed control that decided to choose emission trading to meet the NO_X SIP call requirements. These amendments simplify and streamline the emission trading process for title V facilities by requiring only one public hearing for both title V and SIP processes.

2D .0600 Monitoring: Recordkeeping: Reporting

This subchapter was amended for the following purposes:

(1) To resolve deficiencies that EPA has identified in the SIP.

(2) To write the requirements of 40 CFR part 51, appendix P in a more concise, precise, and readable form.

(3) To require that data collected for the purposes of showing compliance be quality assured data.

(4) To add rule to implement EPA's compliance assurance monitoring (CAM) requirements.

(5) To clearly delegate to the Director the authority to place monitoring, recordkeeping, and reporting requirements in permits of non-title V facilities.

2D .0903 Recordkeeping: Reporting: Monitoring

This rule was amended to delete specific recordkeeping and reporting requirements and add a reference to monitoring requirements in section 15A NCAC 2D .0600.

Subchapter 2Q

2Q .0109 Compliance Schedule for Previously Exempted Activities

This rule was amended to delete obsolete schedules for submitting permit applications for activities that have lost their permit exemptions.

2Q .0316 Administrative Permit Amendments

This rule was adopted to describe the administrative amendment process and define the types of changes that are administrative amendments.

2Q .0317 Avoidance Conditions

This rule was adopted to clarify that conditions can be placed in permits to avoid applicability of more restrictive rules. It gives the permittee a chance to choose a less expensive cost of operations by avoiding the applicability of certain rules.

2Q .0800 Exclusionary rules

This Subchapter was amended to require annual reports to be submitted by March 1, 2000, and to the regional supervisors of the appropriate Division regional office instead of the Director. These changes make tracking the report submittals easier.

III. Final Action

EPA is approving the aforementioned changes to the SIP because the revisions are consistent with Clean Air Act and EPA regulatory requirements. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective October 7, 2002, without further notice unless the Agency receives adverse comments by September 9, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 7, 2002, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 7, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 10, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II—North Carolina

2. In the table in § 52.1770(c), the table is designated as Table 1 and amended as follows:

b. Under subchapter 2D by revising entries: .0501, .0601, .0602, .0604, .0605, .0607, .0610, and .0903;

c. Under subchapter 2D by adding in numerical order a new entry for .0611, .0612, .0613, .0614, and .0615.

d. Under subchapter 2Q by revising entries .0109, .0803, .0805, .0806, and .0807.

d. Under subchapter 2Q by adding in numerical order a new entry for .0316, .0317 and .0808.

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

TABLE 1.—EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Comments
	Subchapter 2D Air Pollution Control Requirements			
	Section .0500 Emission Control Standards			
Sect. .0501	Compliance With Emission Control Standards	04/01/01	August 8, 2002.	
	Section .0600 Air Contaminants; Monitoring, Reporting			
Sect. .0601	Monitoring: Recordkeeping: Reporting	04/01/99	August 8, 2002.	
Sect. .0602	Definitions	04/01/99	August 8, 2002.	
Sect. .0604	Exceptions to Monitoring and Reporting Requirements	04/01/99	August 8, 2002.	
Sect. .0605	General Recordkeeping and Reporting Requirements	04/01/99	August 8, 2002.	
Sect. .0607	Large Wood and Wood-Fossil Fuel Combination Units	04/01/99	August 8, 2002.	
Sect. .0610	Federal Monitoring Requirements	04/01/99	August 8, 2002.	
Sect. .0611	Monitoring Emissions From Other Sources	04/01/99	August 8, 2002.	
Sect. .0612	Alternative Monitoring and Reporting Procedures	04/01/99	August 8, 2002.	
Sect. .0613	Quality Assurance Program	04/01/99	August 8, 2002.	
Sect. .0614	Compliance Assurance Monitoring	04/01/99	August 8, 2002.	
Sect. .0615	Delegation	04/01/99	August 8, 2002.	
	Section .0900 Volatile Organic Compounds			
Sect. .0903	Recordkeeping: Reporting: Monitoring	04/01/99	August 8, 2002.	
	Subchapter 2Q Air Quality Permits Section .0100 General Provisions			
Sect. .0109	Compliance Schedule for Previously Exempted Activities	04/01/01	August 8, 2002.	
	Section .0300 Construction and Operating Permits			
Sect. .0316	Administrative Permit Amendments	04/01/01	August 8, 2002.	
Sect. .0317	Avoidance Conditions	04/01/01	August 8, 2002.	

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TABLE 1.—EPA APPROVED NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Comments
* * * * *		*	*	*
	Section .0800 Exclusionary Rules			
Sect. .0803	Coating, Solvent Cleaning, Graphic Arts Design	04/01/01	August 8, 2002.	
* * * * *		*	*	*
Sect. .0805	Grain Elevators	04/01/01	August 8, 2002.	
Sect. .0806	Cotton Gins	04/01/01	August 8, 2002.	
Sect. .0807	Emergency Generators	04/01/01	August 8, 2002.	
Sect. .0808	Peak Shaving Generators	04/01/01	August 8, 2002.	

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[FR Doc. 02–19435 Filed 8–7–02; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–7256–5]

RIN 2060–AJ73

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Non-Conformance Penalties for 2004 and later Model Year Emission Standards for Heavy-Duty Diesel Engines and Heavy-Duty Diesel Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing nonconformance penalties (NCPs) for the 2004 and later model year non-methane hydrocarbons and nitrogen oxides ($NMHC+NO_X$) standard for heavy-duty diesel engines and vehicles. In general, the availability of NCPs allows a manufacturer of heavy-duty engines (HDEs) whose engines fail to conform with the applicable 2004 model year emission standards, but do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty. This final rule establishes the upper limit associated with the 2004 emission standard for $NMHC+NO_X$ as 4.5 grams per brake-horsepower-hour for light and medium heavy-duty engines and urban buses, and 6.0 grams per brake-horsepower-hour for heavy heavy-duty engines. Based on these upper limits, this rule also establishes the cost inputs used in the general NCP formula currently in the regulations.

DATES: This rule is effective on August 8, 2002.

ADDRESSES: Comments: All comments and materials relevant to today's action have been placed in Public Docket No. A–2001–25 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500, 401 M Street, SW., Washington, DC 20460 (on the ground floor in Waterside Mall) from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–7548 and by facsimile at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4334; Fax: (734) 214–4816; E-mail: *borushko.margaret@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities

This action may affect you if you produce or import new heavy-duty diesel engines which are intended for use in highway vehicles such as trucks and buses or other types of heavy-duty highway vehicles. The table below gives some examples of entities that may have to follow the regulations. But because these are only examples, you should carefully examine the regulations in 40 CFR part 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS[a] Codes	SIC Codes[b]	Examples of potentially regulated entities
Industry	336112 336120	3711	Engine and truck manufacturers.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

Access to Rulemaking Documents Through the Internet

This final rule is available electronically on the day of publication from the Environmental Protection Agency Internet Web site listed below. Electronic copies of the preamble, regulatory language, Technical Support Document, and other documents associated with today's final rule are available from the EPA Office of Transportation and Air Quality (formerly the Office of Mobile Sources) Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you incur for connecting to the Internet.

Environmental Protection Agency Web Site: *http://www.epa.gov/fedrgstr/* (Either select a desired date or use the Search feature.)

Office of Transportation and Air Quality (OTAQ) Web Site: *http://www.epa.gov/otaq/* (Look in "Recent Additions" or under the "Heavy Trucks/Buses" topic.)

Please note that due to differences between the software used to develop the document and the software into which document may be downloaded, changes in format, page length, etc. may occur.

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I. Background and Statutory Authority

A. Background to Nonconformance Penalty Rules

Since the promulgation of the first NCP rule in 1985, NCP rules have generally been described as continuing "phases" of the NCP program. The first NCP rule (Phase I), sometimes referred to as the "generic" NCP rule, established three basic criteria for determining the eligibility of emission standards for nonconformance penalties in any given model year (50 FR 35374, August 30, 1985). For regulatory language, see 40 CFR 86.1103–87. First, the emission standard in question must become more difficult to meet. This can occur in two ways, either by the emission standard itself becoming more stringent, or due to its interaction with another emission standard that has become more stringent. Second, substantial work must be required in order to meet the emission standard. EPA considers "substantial work" to mean the application of technology not previously used in that vehicle or engine class/subclass, or a significant modification of existing technology, in order to bring that vehicle/engine into compliance. EPA does not consider minor modifications or calibration changes to be classified as substantial work. Third, a technological laggard must be likely to develop. Prior NCP rules have considered a technological laggard to be a manufacturer who cannot meet a particular emission standard due to technological (not economic) difficulties and who, in the absence of NCPs, might be forced from the marketplace, including the elimination of one or more engine families/configurations from production. EPA will make the determination that a technological laggard is likely to develop, based in large part on the first two criteria. However, these criteria are not always sufficient to determine the likelihood of the development of a technological laggard. An emission standard may become more difficult to meet and substantial work may be required for compliance, but if that work merely involves transfer of well-developed technology from another vehicle class, it is unlikely that a technological laggard would develop.

The criteria and methodologies established in the 1985 rule have since been used to determine eligibility and to establish NCPs for a number of heavy-duty emission standards. Phases II, III, IV, and V, published in the period from 1985 to 1996, established NCPs that, in combination, cover the full range of heavy-duty—from heavy light-duty trucks (6,000–8,500 pounds gross vehicle weight) to the largest diesel truck and urban bus engines. NCPs have been established for engine emission standards for hydrocarbons (HC), carbon monoxide (CO), nitrogen oxides (NO_X), and particulate matter (PM). The most recent NCP rule (61 FR 6949, February 23, 1996) established NCPs for the 1998 and later model year NO_X standard for heavy-duty diesel engines (HDDEs), the 1996 and later model year for Light-Duty Truck 3 (LDT3) NO_X standard, and the 1996 and later urban bus PM standard. A concurrent but separate final rule (61 FR 6944, February 23, 1996) established NCPs for the 1996 LDT3 PM standard. The NCP rulemaking phases are summarized in greater detail in the Final Technical Support Document for this rule.

B. Statutory Authority

Section 206(g) of the Clean Air Act (the Act), 42 U.S.C. 7525(g), requires EPA to issue a certificate of conformity for HDEs or HDVs which exceed a federal emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays an NCP established by rulemaking. Congress adopted section 206(g) in the Clean Air Act Amendments of 1977 as a response to perceived problems with technology-forcing heavy-duty emissions standards. Following *International Harvester* v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards might cause for motor vehicle manufacturers. If strict standards were maintained, then some manufacturers, "technological laggards," might be unable to comply initially and would be forced out of the marketplace. NCPs were intended to remedy this potential problem. The NCP would provide a temporary alternative that would permit manufacturers to sell their engines or vehicles by payment of a penalty. At the same time, conforming manufacturers would not suffer an economic disadvantage compared to nonconforming manufacturers, because the NCP would be based, in part, on money saved by the technological laggard and its customer from the nonconforming engine or vehicle.

Under section 206(g)(1), NCPs may be offered for HDVs or HDEs. The penalty may vary by pollutant and by class or category of vehicle or engine. HDVs are defined in section 202(b)(3)(C) of the CAA as vehicles in excess of 6,000 pounds gross vehicle weight rating (GVWR). The light-duty truck (LDT) classification includes trucks that have a GVWR of 8500 lbs or less. Therefore, certain LDTs may be classified as HDVs. Historically, LDTs up through 6000 lbs GVWR have been considered "light light-duty trucks" (LLDTs) and LDTs between 6,001 and 8,500 pounds GVWR have been considered "heavy light-duty trucks" (HLDTs). Based on various new requirements established by the Clean Air Act Amendments of 1990, each of these two light truck categories has been further subdivided into groups by weight. The LLDTs are classified by weight based on "loaded vehicle weight," or LVW, which maintains its current definition: curb weight plus 300 lbs. The trucks up through 3750 lbs LVW make up a subclass called light-duty-trucks-1, or LDT1. Those greater than 3750 lbs LVW but less than or equal to 6000 lbs GVWR are the subclass light-duty-trucks-2, or LDT2. The HLDTs are divided at 5750 lbs "adjusted loaded vehicle weight," or ALVW. Adjusted loaded vehicle weight is the average of the curb weight and the GVWR. The HLDTs that are up through 5750 lbs ALVW are called light-duty trucks-3, or LDT3. Those above 5750 lbs ALVW but less than or equal to 8500 lbs GVWR are light-duty-trucks-4, or LDT4. The LDT3 and LDT4 subclasses make up the HLDT vehicle class. Since NCPs can only be established for heavy duty vehicles or engines, emission standards for light-duty trucks of the LDT3 and LDT4 categories are the only light-duty truck categories eligible for NCPs.

Section 206(g)(3) requires that NCPs:

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- Account for the degree of emission nonconformity;
- Increase periodically to provide incentive for nonconforming manufacturers to achieve the emission standards; and
- Remove the competitive disadvantage to conforming manufacturers.

Section 206(g) authorizes EPA to require testing of production vehicles or engines in order to determine the emission level on which the penalty is based. If the emission level of a vehicle or engine exceeds an upper limit of nonconformity established by EPA through regulation, the vehicle or engine would not qualify for an NCP under section 206(g) and no certificate of conformity could be issued to the manufacturer. If the emission level is below the upper limit but above the standard, that emission level becomes the "compliance level," the level to which the engine must conform. This is also the benchmark for warranty and recall liability. The manufacturer who elects to pay the NCP is liable for vehicles or engines that exceed the compliance level in-use, unless, for the case of HLDTs, the compliance level is below the in-use standard. The manufacturer does not have in-use warranty or recall liability for emissions levels above the standard but below the compliance level.

Section 307(d) of the CAA applies to today's rule as provided by Section 307(d)(1)(v), 42 U.S.C. 7607(d)(1)(v).

C. Heavy-Duty Diesel Consent Decrees

On October 22, 1998, the Department of Justice and the Environmental Protection Agency announced settlements with seven major manufacturers whose diesel engines comprise a majority of the diesel engine market. The settlements resolved claims that the manufacturers installed computer software on heavy duty diesel engines that turned off the engine emission control system during highway driving in violation of the CAA's prohibition on defeat devices (42 USC 7522(a)(3)). The settlements were entered by the U.S. District Court for the District of Columbia on July 1, 1999. These consent decrees with the U.S. Government contained a number of provisions applying to heavy-duty on-road, and in some cases, nonroad, engines. Specific to the on-road engines, the decrees permit the continued use of non-complying engines for a period of time (although emissions are capped by limits associated with new supplemental test procedures). Other elements of these consent decrees include a program under which the consent decree manufacturers are required to invest considerable resources to evaluate instrumentation and methodologies for on-road testing. Because the Consent Decrees refer to NCPs for the 2004 model year, if established, promulgation of this rule would have an impact on the penalties determined under the Consent Decrees.

II. Nonconformance Penalties for 2004 and Later Heavy-Duty Engines and Heavy-Duty Vehicles

A. Finding of Eligibility for NCPs

In the Notice of Proposed Rulemaking (NPRM) (67 FR 2159, January 16, 2002), we identified the heavy-duty diesel NMHC+NO_X standard becoming effective in model year 2004, the heavy-duty gasoline standards generally taking effect in the 2005 model year, and the Tier 2 standards for Medium-duty Passenger Vehicles & Heavy Light-duty Trucks taking effect in 2004 as new standards for which we have statutory authority for considering NCPs. We then applied the three generic NCP criteria (discussed in section I.A) to each of those emission standards, and identified the 2004 heavy-duty diesel NMHC+NO_X standard of 2.4 g/bhp-hr as satisfying the required NCP criteria and, therefore, proposed to make NCPs available for heavy-duty engines subject to that standard. We also proposed upper limits for that standard and numerical values to be used in the calculation of the NCP for the associated vehicles.

We did not propose NCPs for the other new standards because they did not meet all three of the generic NCP criteria. No comments were received during the public comment period indicating that NCPs should be proposed for these other new standards. See the NPRM for additional detail on the consideration of these standards for NCPs. For the reasons stated in the NPRM, EPA therefore is not adopting NCPs at this time for the other new standards.

As discussed in section I.A., EPA must determine that three criteria are met in order to determine that an NCP should be established in any given model year. For the model year 2004 heavy-duty diesel NMHC+NO_X standard, we believe these criteria have been met and it is therefore appropriate to establish NCPs for the 2004 model year NMHC+NO_X standard.

The first criteria requires that the emission standard in question must become more difficult to meet. This is the case with the 2004 NMHC+NO_X standard. The previous emission standards to which manufacturers must certify for this category are 4.0 g/bhp-hr NO_X and 1.3 g/bhp-hr HC. The 2004 standard is a combined NMHC+NO_X standard of 2.4 g/bhp-hr, or optionally a 2.5 g/bhp-hr NMHC+NO_X with a limit of 0.5 g/bhp-hr NMHC.[1] When promulgated, the Agency concluded that the 2004 standard was a technology forcing standard, and therefore it is reasonable to conclude that the increased level of stringency made the standard more difficult to meet.

The second criteria which must be met in order for EPA to determine that an NCP should be established is the determination that substantial work must be required to meet the emission standard. This criteria has also been met. As discussed in both the 1997 final rule (see 62 FR 54694, October 21, 1997) which established the 2004 standards, as well as the 2000 final rule (see 65 FR 59896, October 6, 2000) which reaffirmed those standards, EPA projected that new emission control technologies would be needed to achieve the 2004 standards. In these previous rulemakings EPA identified technologies such as cooled exhaust gas recirculation (EGR) and variable geometry turbochargers (VGT) as some of the technologies manufacturers could use to meet the 2004 standards. Such technologies have not previously been used in the on-highway heavy-duty diesel market, and EPA estimated substantial research and development efforts by the engine manufacturers would be undertaken to meet the 2004 standards. We continue to believe such new technologies will be used by a number of engine manufacturers, and in fact several manufacturers have indicated in recent statements that they will use new emission control technologies in order to achieve the 2004 standards.[2]

The final criteria for EPA to determine that an NCP should be established is that a technological laggard is likely to develop. There are several reasons to believe a technological laggard is likely, as discussed below.

First, during our recent discussions with a number of engine manufacturers, several manufacturers have indicated that they are not yet sure that they will be able to make the necessary technological changes to meet the 2004 emission standards for a limited number of their high horsepower rated engines

[1] NMHC stands for non-methane hydrocarbons, which is a measure of total hydrocarbons with the methane emissions subtracted out. For typical on-highway diesel fueled heavy-duty engines, methane emissions are on the order of 10 percent of the total hydrocarbon emissions.

[2] *See* press releases from Caterpillar Inc., Cummins, Detroit Diesel Corp. and Mack, available in EPA Air Docket A–2001–25.

by model year 2004, and may need to use NCPs for a limited time period to certify these configurations in 2004. Nevertheless, manufacturers are exploring a number of technologies to address these limitations.

Second, during recent discussions with engine manufacturers, one manufacturer has indicated that a few low volume engine families currently available may not be ready by 2004. A low volume engine family may require specific and targeted research and development efforts in order to comply with the 2004 standards, and it is reasonable to expect that manufacturers may focus their efforts on these low volume products later in the development process, and time may be too short to bring the product into compliance for the 2004 model year.

Finally, in the final rule completed in 2000 which reaffirmed the 2004 NMHC+NO_X standard, three engine manufactures as well as the Engine Manufacturers Association (EMA), commented that EPA should establish NCPs for the 2004 standards.[3] EMA commented the standards "will be technology-forcing and likely will result in the inability of some engine manufacturers and/or engine families to comply with the standards." Detroit Diesel Corp. commented "Meeting the 2004 standards will require the use of sophisticated new emission control technology and will require emission durability evaluation over a greatly extended useful life period.* * * Any development setbacks or misjudgement regarding the capability or durability of the new emission control technology could, at the last minute, put an engine manufacturer into a laggard position and prevent certification of an engine family. The likelihood of a technological laggard for 2004 is at least as great and probably much greater than for other standards for which NCPs have been provided." When we reaffirmed the 2004 NO_X+NMHC standard in 2000 we agreed that the standards were technology-forcing and that sophisticated technologies would be required, and thus, that the first two eligibility criteria were likely met. However, we concluded at the time that it was too early to determine the likelihood of a technological laggard, and further, that it was not necessary to attempt to make such a judgement at that time. Now we are a year closer to implementation of the 2004 standards, and manufacturers have not withdrawn their claims that the likelihood of a technological laggard is high. The fact that several engine manufacturers as well as a major trade organization have indicated they believe a technological laggard is likely to develop is a relevant indicator for the Agency regarding the technological laggard criteria.

It is clear that most companies and most engine configurations will be able to comply with the standards in 2004. However, based on the discussion above, the Agency believes it is reasonable to conclude that a technological laggard is likely to develop for the 2004 NMHC+NO_X heavy-duty diesel standard.

B. Penalty Rates

This final rule is the most recent in a series of NCP rulemakings. The discussion of penalty rates in the Phase IV rulemaking (58 FR 68532, December 28, 1993), Phase III rulemaking (55 FR 46622, November 5, 1990), the Phase II rulemaking (50 FR 53454, December 31, 1985) as well as the Phase I rulemaking (50 FR 35374, August 30, 1985) are incorporated by reference. This section briefly reviews the penalty rate formula and discusses how EPA arrived at the penalty rates in this final rule.

As in the previous NCP rules, the NCP formula for the 2004 model year standard uses the following parameters: COC_{50}, COC_{90}, MC_{50}, F, and UL. This rule specifies the value for these parameters. The NCP formula for the 2004 model year standard is the same as that promulgated in the Phase I rule. As was done in previous NCP rules, costs include additional manufacturer costs and additional owner costs, but do not include certification costs because both complying and noncomplying manufacturers must incur certification costs. COC_{50} is an estimate of the industry-wide average incremental cost per engine (references to engines are intended to include vehicles as well) associated with meeting the standard for which an NCP is offered, compared with meeting the upper limit. More precisely, the values of COC_{50} presented here are estimates of the sales weighted mean incremental cost.

COC_{90} is EPA's best estimate of the 90th percentile incremental cost per-engine associated with meeting the standard for which an NCP is offered, compared with meeting the associated upper limit. MC_{50} is an estimate of the industry-wide average marginal cost of compliance per unit of reduced pollutant associated with the least cost effective emission control technology installed to meet the new standard. MC_{50} is measured in dollars per g/bhp-hr for HDEs. F is a factor used to derive MC_{90}, the 90th percentile marginal cost of compliance with the NCP standard for engines in the NCP category. MC_{90} defines the slope of the penalty rate curve near the standard and is equal to MC_{50} multiplied by F. UL is the upper limit above which no engine may be certified. UL is specified for each of the four service classes for which NCPs are promulgated.

Table 1 displays the parameter values to be used in the NCP formula for the 2004 and later model year NMHC+NO_X standard of 2.5 g/bhp-hr for diesel heavy-duty engines and diesel urban bus engines at full useful life. The derivation of the NCP cost parameters is described in a support document entitled "Technical Support Document: Nonconformance Penalties for 2004 Highway Heavy-Duty Diesel Engines," (TSD) which is available in the public docket for this rulemaking. All costs are presented in 2001 dollars. Because we are trying to account for cost differences over time, all costs were converted to net present value (NPV) for calendar year 2004 using a discount rate of seven percent.

TABLE 1.—NCP CALCULATION PARAMETERS

Parameter	Light heavy-duty diesel Engines (LHDDE)	Medium Heavy-duty diesel Engines (MHDDE)	Heavy heavy-duty diesel Engines* (HHDDE)	Urban bus engines
COC_{50}	$1,240	$2,740	$6,810	$3,930
COC_{90}	$2,710	$4,930	$12,210	$6,660
MC_{50}	$2,000 per g/bhp-hr	$1,400 per g/bhp-hr	$5,600 per g/bhp-hr	$3,800 per g/bhp-hr
F	1.3	1.3	1.3	1.3
UL (NO_X+NMHC)	4.5 g/bhp-hr	4.5 g/bhp-hr	6.0 g/bhp-hr	4.5 g/bhp-hr

[3] See EPA Air Docket A–98–32, comments from Navistar (item IV–D–29), Mack Truck (IV–D–06), Detroit Diesel Corp. (IV–D–28), and EMA (IV–D–05).

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The calculation parameters listed in Table 1 are used to calculate the actual penalty rates for each heavy-duty service class. These parameters are used in the penalty rate formulas which are defined in the existing NCP regulations (See 40 CFR 86.1113(a)(1) and (2)). Figures 1–4 below show the approximate first-year penalties for different compliance levels for each service class. This curves were determined using the parameters in Table 1, and the general equations in the regulations. To determine actual penalties you would also need to include the annual adjustment factors specified in the regulations and the inflation adjustment. Thus, these figures, which are shown here for illustrative purposes only, cannot be used to determine the actual penalty amount to be paid by a manufacturer.

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Figure 1 - Approximate Light-Heavy Penalty Rates

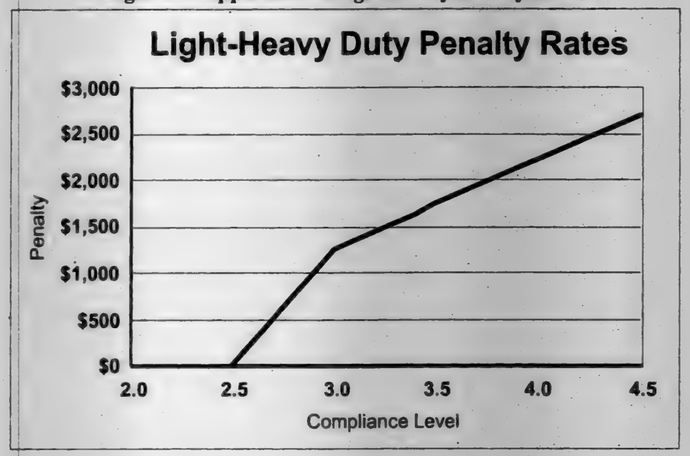


Figure 2 - Approximate Medium-Heavy Penalty Rates

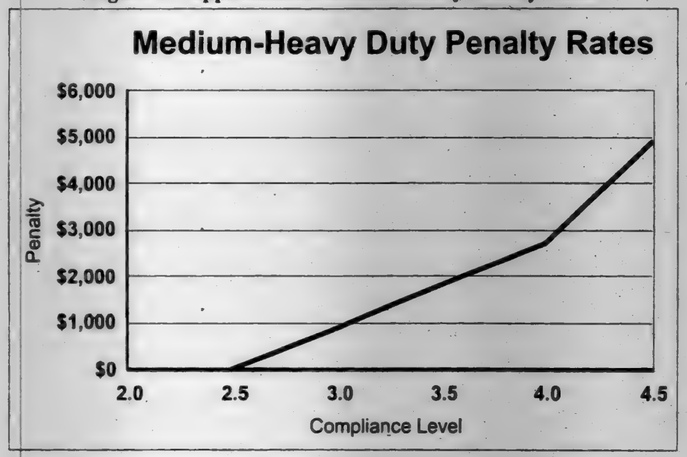


Figure 3 - Approximate Heavy-Heavy Penalty Rates

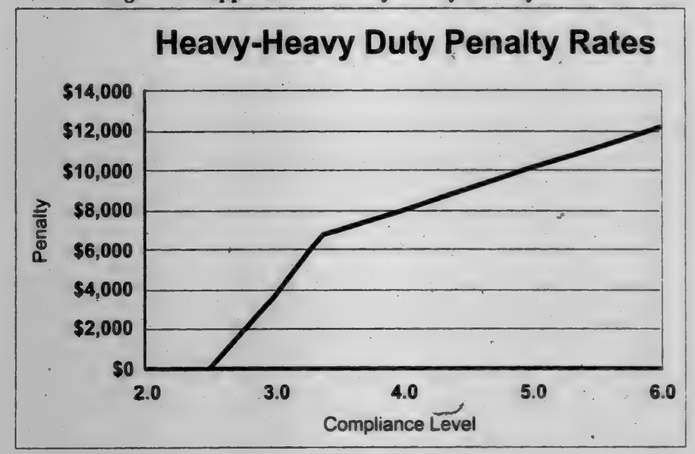
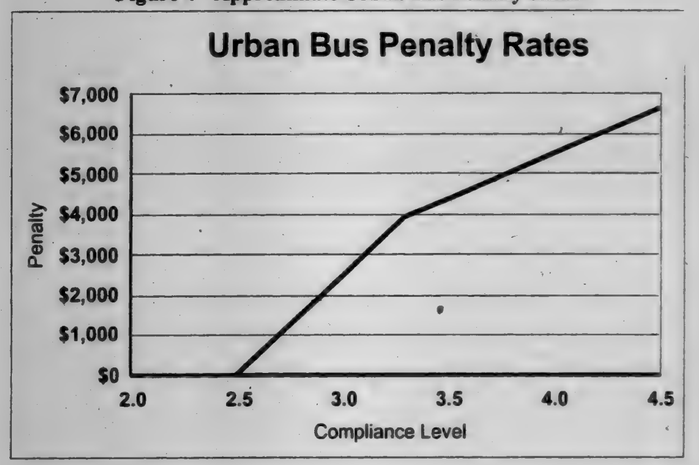


Figure 4 - Approximate Urban Bus Penalty Rates



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During the rulemaking we asked for comment on all aspects of our analysis including the cost information used and the manner in which we analyzed it. We received only a small amount of additional information after the proposal and we incorporated this information into the overall analysis. Beyond that, we held in-depth discussions with several manufacturers to determine whether the information they provided for the NPRM was still current and the best available in the context of ongoing business decisions, projected technological progress, and cost reduction efforts. Based on the comments and other new information, we have updated our analysis from that used in the NPRM. These changes are described in the Technical Support Document. While most of the changes were relatively minor, we made four adjustments to the methodology that are more significant:

- For heavy heavy-duty engines, we estimated that by the 2004, the average fuel consumption would be about one-half percent better than current manufacturer estimates. Manufacturers

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made it clear that fuel economy improvement was a top priority and are making public projections about further improvements by 2004.

• In the NPRM we based our diesel fuel price on the 2000 average of about $1.50 per gallon and asked for comment on using a 3–5 year average as opposed to a one year value. As is discussed below, we are using a fuel price of $1.29 per gallon, which is the average diesel fuel price for 1997 through 2001.

• A review with the manufacturers revealed that in providing their cost estimates for 2004 they did not incorporate manufacturing learning from the consent decree pull ahead engines. We included a learning curve benefit of 10 percent for heavy-heavy duty engines.

• Manufacturer warranty cost estimates varied by more than a factor of ten. In the NPRM we used a sales-weighted average. Through discussions with manufacturers, we learned that the broad range in estimates was a result of different approaches used by companies to address warranty costs, such that a straight average of the estimates is not the appropriate way to project actual costs. Thus for the final rule we based warranty on a flat percentage of the average rather than the average itself for most service classes.

The table below compares the COC_{50} and COC_{90} values for the NPRM and FRM.

TABLE 2.—NCP PARAMETER COMPARISONS

Service class	COC_{50} NPRM	COC_{50} FRM	COC_{90} NPRM	COC_{90} FRM
LHDDE	$1,080	$1,240	$2,610	$2,710
MHDDE	3,360	2,740	6,870	4,930
HHDDE	8,940	6,810	14,790	12,210
Urban Bus	4,400	3,930	7,120	6,660

III. Significant Issues Raised in This Rulemaking

This section discusses several significant issues raised in this rulemaking, including comments on the proposal. Additional issues are also discussed in the Technical Support Document and Response to Comments documents.

A. Relation of NCP Costs to Rulemaking Costs

Traditionally, NCP costs are different than those presented in the rulemaking analysis which implemented the standards. This occurs for several reasons:

• NCP costs represent first year costs and thus generally do not include the effects of manufacturing learning that occurs in reality and is included in the rulemaking cost analysis, but do include the full amortized annual fixed costs which are eliminated after the first few years of production

• Cost information gathered from manufacturers and vendors during the NCP rulemaking process reflects a more complete understanding of the optimum technology path for compliance and the operating costs and savings which occur over the life of the vehicle/engine as compared to the information that existed during the standard-setting rulemaking

• The NCP is by statute intended to protect the complying manufacturer and thus it is important to avoid underestimating reasonably projected actual costs.

However, this specific case is unique. The analysis presented in the NCP TSD results in costs that differ from the estimated costs presented in the rulemaking that initially established the 2004 standards (62 FR 54694, October 21, 1997), as well as the rulemaking that affirmed the 2004 standards and updated the cost analysis (65 FR 59896 October 6, 2000). There are several key reasons that account for these differences. The most important reason is the difference in the emission characteristics of the baseline engine used in the analysis. When the rulemaking costs were determined in 1997, the agency assumed a 1998 model year engine in full compliance with the 4.0 g/bhp-hr NO_X level as the baseline for the 2004 standard. As discussed above, after that rule was promulgated, it became evident that all manufacturers were not fully complying with the 4.0 g/bhp-hr NO_X level and in fact in some cases were emitting at levels far in excess of the standard during significant periods of operation. We proposed an upper limit of 6.0 g/bhp-hr $NMHC+NO_X$ for the 2004 NCP for heavy heavy-duty diesel engines because that baseline value reasonably represents the current emissions characteristics of nearly all 2001 heavy heavy-duty engines. This distinction between baselines is critical to the cost analysis and creates a fundamental difference between the estimated costs presented in this NCP final rule and the estimated costs presented in the standard-setting rulemaking.

The compliance costs estimated in the standards setting rulemaking for the heavy heavy-duty engine service class were intended to reflect the cost associated with bringing an engine in full compliance with the current standard of 4.0 g/bhp-hr NO_X into full compliance with the 2004 $NMHC+NO_X$ standard of 2.5 g/bhp-hr. In this NCP rulemaking, however, the penalty rate factors for heavy heavy-duty were based on the costs required to bring an engine at the 6.0 g/bhp-hr Upper Limit (e.g., a 2001 model year engine) into compliance with the 2004 model year standard. The fundamental properties of the existing engines in 2001, however, are not what was envisioned by or incorporated into the analyses performed for the rulemakings that established and confirmed the 2004 standards. This important distinction between the baselines engines impacts every cost category considered in the NCP rule. Much of the cost associated with the heavy heavy-duty service class NCPs are attributable to those costs required to remedy the non-compliance with the current 4.0 g/bhp-hr NO_X standard while reducing emission to meet the 2004 standards, and are not attributable solely to the 2004 standards. Consider the following:

• A heavy heavy-duty diesel engine in full compliance with the current 4.0 g/bhp-hr NO_X standard would likely have sustained little or no increased fuel costs relative to an engine meeting the 2004 standard of 2.5 g/bhp-hr $NMHC+NO_X$. The fuel economy "penalty" associated with bringing an Upper Limit engine into compliance with the 2004 standards is probably equivalent to the penalty that would have resulted from bringing a current non-complying engine into compliance with the defeat device prohibition. Thus, the cost of reduced fuel economy is incorporated into the NCP costs, but not into the estimated long-term rulemaking costs.

• A heavy heavy-duty diesel engine in full compliance with the current 4.0 g/bhp-hr NO_X standard would have incorporated different, more advanced emission control techniques and hardware to comply with the 4.0 g/bhp-hr standard than have been incorporated on current 6.0 g/bhp-hr engines that do not fully comply with the current regulations. Thus, additional costs associated with implementing additional control technologies for 6.0 g/bhp-hr engines, which are incorporated into the NCP costs, include some hardware and development costs that would not have been applicable for the rulemaking analysis where the baseline was a compliant 4.0 g/bhp-hr engine.

• A heavy heavy-duty diesel engine in full compliance with the current 4.0 g/bhp-hr NO_X standard would possibly have had more frequent oil change intervals, resulting in higher baseline maintenance costs than the current 6.0 g/bhp-hr non-complying engines. The NCP costs presented in this rule incorporate the lower operating costs of today's engines in the baseline, with an associated increase in operating costs to comply with the 2.5 g/bhp-hr standard. However, the operating costs estimated in the rulemakings that established the 2004 standards were based on engines in full compliance with the 4.0 g/bhp-hr NO_X standard.

Thus, the use of fundamentally different baselines accounts for a substantial amount of the difference between the resulting cost estimates for heavy heavy-duty diesel engines. In addition, as is described in the Technical Support Document, even for the other service classes that have Upper Limits based directly on the 4.0 g/bhp-hr NO_X standard, the impact on engine designs of the alleged defeat device strategies used by a number of engine manufacturers over the past decade makes comparison between the standard-setting rule cost analysis and this analysis difficult.

While the baseline issue described above is the most important reason for the differences between the NCP costs and the rulemaking costs, there is a second major reason for the difference. Unlike the case with a rulemaking analysis, it is the objective of this NCP analysis to focus solely on the compliance costs associated with the first year of production. This has been the historical approach to incorporating cost parameters into the determination of the NCP. Regulatory actions that establish emission standards require analyses with a longer term view, projecting costs out into future years and decades and not focusing solely on the costs in the first year. As one would expect, the immediate costs associated with the first year of production are higher than the long-term costs and are not representative of long-term costs because manufacturers often make significant progress in reducing certain costs over time. This is especially true for costs associated with hardware, reliability, and fuel consumption.

Finally, in the process of conducting our cost analysis for this NCP rule, some new information was provided that was not brought to our attention during the prior rulemaking processes. For example, the NCP analysis includes costs attributable to the truck manufacturer (as opposed to the engine manufacturer) that result from having to accommodate new engine configurations with increased size and/or weight in their trucks. We have also included the negative impact on revenue due to the increased weight of the engine and the resulting loss in freight capacity, as well as the impact of post-warranty repair costs. We believe that incorporation of this information is appropriate to include in the NCP cost estimation analysis as it represents industries' most current perspective on compliance costs.

B. Discount Rate

In the NPRM, we derived the factors for the NCP formula using the net present value (NPV) of manufacturer and user costs. Consistent with other EPA rulemaking analyses, a compounding/discount rate of seven percent was used in these calculations. We also presented the values using a rate of three percent and asked for comment on the issue including input on which of two values was more appropriate or if another value or set of values was more representative of industry practice. As is discussed in the Response to Comments document, the response was mixed. Some commenters supported seven percent, some three percent, and one commenter supported using different rates for compounding pre-production costs and discounting user costs but did not suggest values for these industry sectors. Given this mixed response, EPA has decided to continue to use the seven percent value as it is clear from the comments that this rate is adequately representative of industry practice and thus will protect the complying manufacturers. Nonetheless, EPA will continue to seek more information on this issue for consideration in future rule analyses.

C. Upper Limit

The upper limit is the emission level established by regulation above which NCPs are not available and a heavy duty engine cannot be certified or introduced into commerce. CAA section 206(g)(2) refers to the upper limit as a percentage above the emission standard, set by regulation, that corresponds to an emission level EPA determines to be "practicable." The upper limit is an important aspect of the NCP regulations not only because it establishes an emission level above which no engine can be certified, but it is also a critical component of the cost analysis used to develop the NCP factors. The regulations specify that the relevant NCP costs for determining the COC_{50} factors are the difference between an average engine at the upper limit and one that meets the new standards (*see* 40 CFR 86.1113–87).

The regulatory approach adopted under the first NCP rule sets the Upper Limit (UL) at the prior emission standard when a prior emission standard exists and that standard is changed and becomes more stringent. EPA concluded that the UL should be reasonably achievable by all manufacturers with vehicles in the relevant class. It should be within reach of all manufacturers of HDEs or HDVs that are currently allowed so that they can, if they choose, pay NCPs and continue to sell their engines and vehicles while finishing their development of complying engines. A manufacturer of a previously certified engine or vehicle should not be forced to immediately remove an HDE or HDV from the market when an emission standard becomes more stringent. In past NCP rules, the prior emissions standard meet these goals, because manufacturers had already certified their vehicles to that standard. In the first NCP rule, EPA rejected a suggestion that the upper limit should be more stringent than the prior emission standard, because it would be very difficult to identify a limit that would be within reach of, and could be met by, all manufacturers.

In this final action, we have established an Upper Limit for light-heavy, medium-heavy and urban bus engines of 4.5g/bhp-hr $NMHC+NO_X$, and for the heavy-heavy service class we have established an Upper Limit of 6.0 g/bhp-hr $NMHC+NO_X$. These final rule Upper Limit values are identical to the proposed values.

In this case, the new standard is a limit on the combination of NO_X+NMHC, while the prior regulatory standards are separate limits, one for NO_X and one for total HC. In addition, in establishing the Upper Limit we took into consideration that for a large portion of the industry, there are also

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emissions limits set under judicial Consent Decrees (CD), many of which vary from the regulatory standards, in particular for the heavy-heavy service class as discussed latter in this section. The Consent Decrees establish legally binding requirements on the manufacturers that directly affect the way engine manufacturers design their engines. In many cases it is the CD limits, and not the regulatory standards, that are the controlling factor and dictate the level of emissions control required on engines produced during the term of the Decrees. Since the purpose of an NCP is to address the real world problems associated with a transition from a prior emissions requirement to a new more stringent requirement, it is appropriate to take the CD requirements into account where the levels required under the CDs are in fact the controlling factor in establishing the prior level of control.

For light heavy-duty, medium heavy-duty, and urban bus engines, the CD requirements are consistent with the regulatory requirements for the current FTP-based standards and the defeat device prohibition. Manufacturers are currently certifying to the emissions levels provided under the CD. An examination of model year 2001 certification data shows that for both CD and non-CD engine manufacturers, engines are generally being certified with HC emissions below 0.3 g/bhp-hr, and no engines in these service classes certified to the 4.0 g/bhp-hr NO_X standard have a combined NO_X plus HC emission level greater than 4.5 g/bhp-hr.[4] Therefore, an UL of 4.5 g/bhp-hr NO_X+NMHC on the FTP is most consistent with the policy approach embodied in 40 CFR 86.1104–91, allowing continued production of current engines, but not allowing backsliding. We received only supportive comments on the proposal to establish an Upper Limit of 4.5 g/bhp-hr NMHC+NO_X for the light heavy-duty, medium heavy-duty, and urban bus engines.

For heavy heavy-duty engines, however, the CDs provides a significantly different approach. For these engines, limits are set for Euro III and not-to-exceed (NTE) levels that allow for significantly higher emissions off the FTP than EPA would expect to allow under the defeat device prohibition. While the CDs, like the regulations, require the use of the FTP to measure emissions, it is the level of off-cycle control (e.g., control of emissions during operation not fully represented during the FTP, but which are captured by the supplemental tests contained in the CDs, the Euro III and NTE tests) that drives the design requirements for the engine manufacturers. They are the legal requirements that drive the level of control embodied in the engine design. Model year 2001 certification data shows that combined HC and NO_X emissions for these engines are at or below 6.0 g/bhp-hr when measured using the Euro III test.[5]

This NCP rulemaking focuses on technological laggards, which would be those heavy-duty engines that need more lead time to comply with the 2004 NO_X+NMHC standard. For heavy heavy-duty engines, the prior actual level of control that many manufacturers are now achieving and certifying to is established by the CDs and not by the 1998 regulatory emission standards. As such, an UL at the level of control required under the CD would set a level that is within the reach of all manufacturers, including the technological laggards. It would be reasonably achievable by all manufacturers in this class, and would avoid forcing the technical laggards to remove an engine from the market when the 2004 emissions standards go into effect. It would allow continued production of current engines but would not allow backsliding. A 6.0 g/bhp-hr Upper Limit, therefore, is consistent with the policy embodied in the NCP regulations.

EPA recognizes that under the CD this group of heavy-duty engines is also required to achieve the 2004 emissions levels by October 2002. However, as discussed before, EPA has determined that there is likely to be a technological laggard for purposes of meeting the 2004 standards. The prior deadline in the CD does not change this determination, and means only that some manufacturers would also be subject to the requirements in the CD, including its compliance and enforcement provisions. The CDs allow manufacturers to pay penalties to produce engines which emit above the October 2002 emission limits defined in the CDs, thus the CDs also provide a mechanism for technological laggards to continue to produce today's engines.

EPA also recognizes that the CD calls for compliance with a 4.0 NO_X standard on the FTP and with a 6.0 NO_X limit for the Euro III test procedure for today's engines, and the 6.0 g/bhp-hr UL we are proposing is for the FTP. 2004 MY engines eligible for certification under this NCP rule will need to meet the applicable FTP standard and will also need to comply with the defeat device prohibition. However, a 2004 MY engine with EURO III levels significantly higher than its FTP levels would raise significant concerns about compliance with the defeat device prohibition. While the Euro III is not a regulatory emissions standard in 2004, it is representative of typical highway cruise operation and EPA uses EURO III emissions levels as a screening tool in evaluating compliance with the defeat device prohibition. See Advisory Circular 24–3. If EPA sets the UL at 6.0 g/bhp-hr NO_X+NMHC for the FTP, continued production of engines with EURO III levels comparable to 2001 MY levels of 6.0 g/bhp-hr would not be expected to raise significant defeat device concerns. However, if EPA were to set the UL at 4.5 g/bhp-hr NO_X+NMHC for the FTP, an engine with EURO III emissions levels of approximately 6.0 g/bhp-hr, like current CD engines, would raise very significant concerns about defeat device compliance, based on the disparity between FTP and EURO III levels, EPA would not expect that such an engine could be certified. Setting an UL at 6.0 g/bhp-hr is therefore appropriate as it should allow for the continued production of engines with EURO III levels comparable to those allowed under the CD for MY 2001.

We received comments both supporting and opposing an Upper Limit of 6.0 g/bhp-hr for the heavy-heavy service class. One commenter who opposed the 6.0 value suggested that an UL of 4.5 was appropriate for the heavy-heavy engines. However, an UL of 4.5 NO_X +NMHC would require that CD engine manufacturers significantly reduce the level of off-cycle emissions for these engines. Such an emission reduction would require significant design changes for existing engines at the same time design work is underway to meet the 2.5 standard. This approach is inconsistent with the policy EPA has used in past NCP rulemakings, where the Upper Limit has been established at a level which would allow engine manufacturers to continue to focus on developing the technology necessary to comply with the new emission standards rather than diverting resources to comply with an intermediate emission level more stringent than existing products but not at the level of the new standard. A more detailed discussion of the comments we received and our response to those comments is contained in the Response to Comments document for this final rule.

[4] EPA Memorandum "Summary of Model Year 2001 Heavy-duty Diesel Engine HC and NO_X Certification Data", copy available in the docket for this rulemaking.

[5] EPA Memorandum "Summary of Model Year 2001 Heavy-duty Diesel Engine HC and NO_X Certification Data", copy available in the docket for this rulemaking.

D. Use of Penalty Funds

Some of the comments on the proposed rule suggested that the revenues generated by the NCPs should be used for clean air projects, such as regional PM and toxics reduction projects and diesel retrofit projects. It is not within EPA's authority or ability to direct the use of the penalty monies. Section 206(g) of the Clean Air Act, 42 U.S.C. § 7525(g), authorizes EPA to establish nonconformance penalties, but it does not authorize EPA to retain and use any penalty monies paid by a manufacturer. Absent such authority to retain and use penalty monies received, the Miscellaneous Receipts Act, 31 U.S.C. § 3302(b), requires that such monies be deposited in the General Revenue Fund of the U.S. Treasury. Funds deposited in the General Revenue Fund may then be appropriated by Congress.

E. Incorporating Factors Not Provided for in the NCP Regulations

In the NPRM EPA invited comment on whether an adjustment to the NCP level should be added to account for the potential competitive benefits gained by producing an engine that has better performance characteristics compared to a complying engine. EPA invited comment on whether the current cost factors used to develop the NCP levels, such as warranty and related costs, fully reflected the competitive benefits gained in the marketplace by such a non-complying engine. EPA indicated there was significant uncertainty in this regard, and that in any case it would be hard to quantify this competitive benefit with adequate certainty.

EPA asked for comment on this issue and for input on how to accommodate it in protecting the complying manufacturer. Two companies supported this concern and one suggested an approach based on including the lost profit margin in the NCP. EPA sees no practical way to implement this comment. It would require proprietary profit margin, cost, price, and perhaps other economic analysis information for this industry (e.g., price elasticity) not available to EPA even to evaluate it, and even at that it is difficult to judge the degree to which the purchaser perception will affect purchase decisions (i.e., how many engine purchases will switch to NCP engines based solely on this concern). The comments did not provide adequate information to evaluate the incorporation of an additional adjustment. Given the uncertainty and difficulty in quantifying the purchaser perception element EPA cannot incorporate an additional element in the NCP formula at this time. Nonetheless, we will continue to consider this issue in the future, including evaluating whether there is usable data available to quantify this factor for future NCP rules.

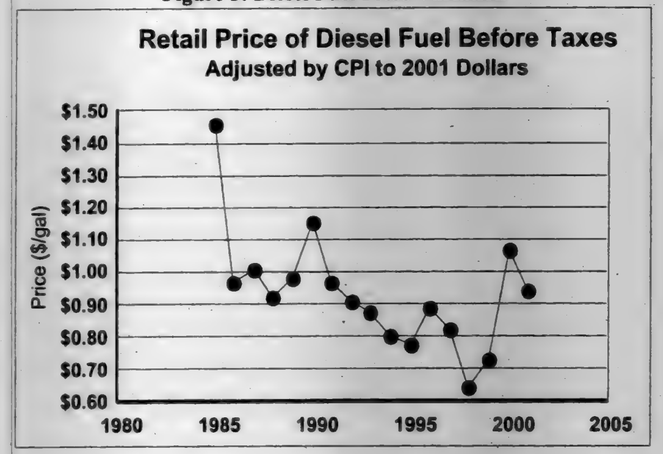
F. Fuel Cost

One of the most significant categories of cost is the cost related to the impact of the standards on fuel consumption rates. However, this cost element is difficult to estimate because actual fuel costs will vary based on the price of the fuel and on the vehicle operation. We proposed to use the current fuel price, but we also requested comment on the use of an average fuel price. As described below, we now believe that a five-year average best approximates future actual fuel costs considering the economic significance of changes in fuel consumption rates.

Fuel price varies with time and with location. According to the Energy Information Administration (EIA), the national average highway diesel fuel price in February of 1999 was 95 cents per gallon (with taxes), but in October of 2000 it was $1.67 per gallon (with taxes). That represents a 76 percent increase in the fuel price within a two year period. Figure 5 shows the variation in diesel fuel prices adjusted for inflation. In terms of constant dollars, the price of diesel fuel in the late 1990s was unusually low. We believe that a five-year average most appropriately addresses the longer term trends of fuel prices. Thus, we calculated the fuel consumption impacts using a fuel price of $1.29 per gallon for calendar years 2004 and 2005, which represents the five-year average retail price of on-highway diesel fuel for 1997 through 2001 (EIA estimate) adjusted using the Consumer Price Index (CPI) to be equivalent to 2001 dollars, plus 44 cents for federal and state tax. We use a fuel price of $1.34 per gallon for later calendar years to account for the introduction of lower sulfur fuel.

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Figure 5: Diesel Fuel Price Variation



Another important factor in estimating fuel cost is how much fuel a model year 2004 vehicle will use over its lifetime. This is most important for heavy-heavy duty engines. Some vehicles may be scrapped after their regulatory useful life (435,000 miles) while others may be rebuilt more than once and not be scrapped until after 2 million miles. Thus, the fuel cost could vary by a factor of four from one vehicle to another. We addressed this by using estimated average lifetime mileages of each service class for our COC_{50} analysis, and high mileage estimates for the COC_{90} analysis. The mileage estimates that we used in our analysis are shown in the table below. The Technical Support Document provides more information about how we used these mileage estimates (*see* Chapter III).

ESTIMATES OF LIFETIME VEHICLE MILES TRAVELED (VMT) USED IN COST ANALYSIS

	VMT for average vehicle	VMT used for COC_{90} analysis
Light Heavy	209,000	280,000
Medium Heavy ..	262,000	343,000
Heavy Heavy	767,000	1,000,000

IV. Economic Impact

Because the use of NCPs is optional, manufacturers have the flexibility and will likely choose whether or not to use NCPs based on their ability to comply with emissions standards. If no HDE manufacturer elects to use NCPs, these manufacturers and the users of their products will not incur any additional costs related to NCPs. NCPs remedy the potential problem of having a manufacturer's engines forced out of the marketplace due to that manufacturer's inability to conform to new, strict emission standards in a timely manner. Without NCPs, a manufacturer which has difficulty certifying HDEs in conformance with emission standards or whose engines fail a Selective Enforcement Audit has only two alternatives: fix the nonconforming engines, perhaps at a prohibitive cost, or do not introduce them into commerce. The availability of NCPs provides manufacturers with a third alternative: upon payment of a penalty, continue production and introduce into commerce an engine that exceeds the standard until an emission conformance technique is developed. Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers to have increased flexibility. A decision to use NCPs may be a manufacturer's only way to continue to introduce HDEs into commerce. The NCP rates promulgated in this rule will also be used to set the per engine penalty under the October 1998 consent decrees between several heavy-duty diesel engine manufacturers and the EPA. EPA recognizes that if we did not set this rule the per engine penalty under fallback provisions in the consent decrees would be less. We expect the net difference in effect between the rule and the fallback provisions (assuming the rule becomes final before October 1, 2002) would be less than $100 million in total for any year in which the consent decree penalties are an option for the manufacturers.

V. Environmental Impact

When evaluating the environmental impact of this rule, one must keep in mind that, under the Act, NCPs are a consequence of enacting new, more stringent emissions requirements for heavy duty engines. Emission standards are set at a level that most, but not necessarily all, manufacturers can achieve by the model year in which the standard becomes effective. Following International Harvester v. Ruckelshaus, 478 F. 2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards might cause for motor vehicle manufacturers, and allowed manufacturers of heavy-duty engines to certify nonconforming vehicles/engines upon the payment of an NCP, under certain conditions. This mechanism would allow manufacturer(s) who cannot meet technology-forcing standards immediately to continue to manufacture these nonconforming engines while they tackle the technological problems associated with meeting new emission standard(s). Thus, as part of the statutory structure to force technological improvements while avoiding driving manufacturers out of the market, NCPs provide flexibility that fosters long-term emissions improvement through the setting of lower emission standards at an earlier date than might otherwise be possible. By design, NCPs encourage the technological laggard that is using NCPs to reduce emission levels to the more stringent standard as quickly as possible.

However, we believe that the potential exists for there to be more widespread use of the NCPs in this rule in comparison to prior NCPs, thus indicating the possibility for an environmental impact somewhat greater in magnitude than we have suggested in prior NCP rules. Nevertheless, we believe that any such impacts would be short-term in nature. By including an annual adjustment factor that increases the levels of the penalties, the NCP program is structured such that the incentives to produce engines that meet the standards increase year-by-year. The practical impact of this adjustment factor is that the NCPs will rapidly become an unattractive option for non-complying manufacturers. However, we are not able to predict at this time how many manufacturers will make use of the NCPs, how many engine families would be subject to the NCP program, or what level of emissions the engines will exhibit. Because of these uncertainties we are unable to accurately quantify the potential impact the NCPs might have on emission inventories, although, as stated above, any impacts are expected to be short-term in nature.

VII. Administrative Requirements

A. Regulatory Planning and Review: Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency is required to determine whether this regulatory action would be "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the Office of Management and Budget (OMB) has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. This action was submitted to OMB for review as required by Executive Order 12866. For this reason, written comments from OMB on today's action and documents submitted to OMB are in the public docket for this rulemaking.

B. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business that has no more than 1,000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. The NCPs that are established by this final rule are for emission standards that pertain to heavy-duty diesel engines. When these emission standards were established, the final rulemaking (65 FR 59895, October 6, 2000) noted that only two small entities were known to be affected. Those entities were small businesses that certify alternative fuel engines or vehicles, either newly manufactured or modified from previously certified gasoline engines. The emission standards for heavy-duty diesel engines, for which NCPs are promulgated in this final rule, do not pertain to the engines manufactured by these businesses.

C. Compliance with the Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1285.05) and a copy may be obtained from Susan Auby by mail at U.S. Environmental Protection Agency (2822), Office of Environmental Information, Collection Strategies Division, 1200 Pennsylvania Avenue., NW., Washington, DC 20460, by email at *auby.susan@epamail.epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. The following ICR document has been prepared by EPA:

EPA ICR #	Title
1285.05	Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, including Light-Duty Trucks; Reporting and Recordkeeping Requirements.

The Agency will collect information related to nonconformance penalties. This information will be used to ensure compliance with and enforce the provisions in this rule. Responses will be mandatory in order to complete the certification process. Section 206(g) of the Clean Air Act (Act) contains the nonconformance penalty provisions. Section 208(a) of the Clean Air Act requires that manufacturers provide information the Administrator may reasonably require to determine compliance with the regulations; submission of the information is therefore mandatory. EPA will consider confidential all information meeting the requirements of section 208(c) of the Clean Air Act.

This collection of information affects an estimated 2 respondents with a total of 52 responses per year and an total hour burden of 1,178 hours, for an estimated 23 hours per response, with estimated total annualized costs of $18,200.00 per year. The hours and annual cost of information collection activities by a given manufacturer depends on manufacturer-specific variables, such as the number of engine families, production changes, and so forth. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and

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maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division, Office of Environmental Information, U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number 1285.05 in any correspondence.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The final rule will impose no enforceable duty on any State, local or tribal governments or the private sector.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Because the use of NCPs is optional, manufacturers have the flexibility and will likely choose whether or not to use NCPs based on their ability to comply with emissions standards. Without NCPs, manufacturers must either modify the engine to be in compliance with the standards or withdraw the engine from the marketplace. The availability of NCPs provides manufacturers with a third alternative: continue production and introduce into commerce upon payment of a penalty an engine that exceeds the standard until an emission conformance technique is developed. Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers to have increased flexibility. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The requirements of this rule apply only to the manufacturers of heavy-duty diesel engines.

E. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

This final rule does not have tribal implications as specified in Executive Order 13175. The non-conformance penalties and associated requirements in this final rule apply only to heavy-duty diesel engine manufacturers.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Public Law 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Executive Order 13045: Children's Health Protection

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62FR19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks and because it is not economically significant as defined in Executive Order 12866.

H. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule adopts NCPs for national emission standards for certain categories of motor vehicles. Thus, Executive Order 13132 does not apply to this rule.

I. Executive Order 13211: Energy Effects

This final rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. As described in the 2000 final rule in which we affirmed the 2004 standard (65 FR 59896, Oct. 6, 2000), we have concluded that there would be no net long-term change in the fuel consumption performance of heavy-duty diesel engines as a result of the 2004 model year emission standards. However, there may be the potential for higher fuel consumption rates in the short term as diesel engine manufacturers work to balance the inherent tradeoff between control of NO_X emissions and fuel consumption. The availability of NCPs for the 2004 and later model years provides manufacturers with another option for balancing this tradeoff and working towards optimizing fuel consumption and emissions—they would be able to use NCPs to emit somewhat higher NO_X levels than they would otherwise be allowed, while at the same time avoiding undesirable fuel consumption impacts. Thus, we have concluded that this final rule is not likely to have any significant adverse energy effects.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(a).

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: August 1, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401—7521(l) and 7521(m)—7671q.

2. Section 86.1105–87 is amended by revising paragraph (e) and by adding paragraph (i), to read as follows:

§ 86.1105–87 Emission standards for which nonconformance penalties are available.

* * * * *

(e) The values of COC_{50}, COC_{90}, and MC_{50} in paragraphs (a) and (b) of this section are expressed in December 1984 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraphs (c) and (d) of this section are expressed in December 1989 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraph (f) of this section are expressed in December 1991 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraphs (g) and (h) of this section are expressed in December 1994 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraph (i) of this section are expressed in December 2001 dollars. These values shall be adjusted for inflation to dollars as of January of the calendar year preceding the model year in which the NCP is first available by using the change in the overall Consumer Price Index, and rounded to the nearest whole dollar in accordance with ASTM E29–67 (reapproved 1980), Standard Recommended Practice for Indicating Which Places of Figures are to be Considered Significant in Specified Limiting Values. The method was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document is available from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, and is also available for inspection as part of Docket A–91–06, located at the Central Docket Section, EPA, 401 M Street, SW., Washington, DC or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register on January 13, 1992. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**.

* * * * *

(i) Effective in the 2004 model year, NCPs will be available for the following emission standard:

(1) Diesel heavy-duty engine non-methane hydrocarbon plus oxides of nitrogen standard of 2.4 grams per brake horsepower-hour (or alternatively, 2.5 grams per brake horsepower-hour with a limit on non-methane hydrocarbon emissions of 0.5 grams per brake horsepower-hour), in § 86.004–11(a)(1)(i).

(i) For light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $1,240.

(*2*) COC_{90}: $2,710.

(*3*) MC_{50}: $2,000 per gram per brake horsepower-hour.

(*4*) F: 1.3.

(*5*) UL: 4.5 grams per brake horsepower-hour; notwithstanding § 86.1104–91.

(B) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.004–11(a)(1)(i) in accordance with § 86.1113–87(h): 0.403.

(ii) For medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

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(*1*) COC_{50}: $2,740.
(*2*) COC_{90}: $4,930.
(*3*) MC_{50}: $1,400 per gram per brake horsepower-hour.
(*4*) F: 1.3.
(*5*) UL: 4.5 grams per brake horsepower-hour; notwithstanding § 86.1104–91.

(B) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.004–11(a)(1)(i) in accordance with § 86.1113–87(h): 0.197.

(iii) For heavy heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):
(*1*) COC_{50}: $6,810.
(*2*) COC_{90}: $12,210.
(*3*) MC_{50}: $5,600 per gram per brake horsepower-hour.
(*4*) F: 1.3.
(*5*) UL: 6.0 grams per brake horsepower-hour; notwithstanding § 86.1104–91.

(B) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.004–11(a)(1)(i) in accordance with § 86.1113–87(h): 0.090.

(iv) For diesel urban bus engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):
(*1*) COC_{50}: $3,930.
(*2*) COC_{90}: $6,660.
(*3*) MC_{50}: $3,800 per gram per brake horsepower-hour.
(*4*) F: 1.3.
(*5*) UL: 4.5 grams per brake horsepower-hour; notwithstanding § 86.1104–91.

(B) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.004–11(a)(1)(i) in accordance with § 86.1113–87(h): 0.155.

(2) [Reserved]

[FR Doc. 02–19981 Filed 8–7–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7256–8]

Delaware: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Delaware applied to EPA for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reached a final determination that these changes to the Delaware hazardous waste program satisfy all requirements necessary for final authorization. Thus, with respect to these revisions, EPA is granting final authorization to the State to operate its program subject to the limitations on its authority retained by EPA in accordance with RCRA, including the Hazardous and Solid Waste Amendments of 1984.

EFFECTIVE DATE: Final authorization for the revisions to Delaware's hazardous waste management program shall be effective on August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone number: (215) 814–5454.

SUPPLEMENTARY INFORMATION:

A. Why are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must revise their programs accordingly and ask EPA to authorize the revisions. Revisions to State programs may be necessary when Federal or State statutory or regulatory authority is changed. For example, most commonly, States must revise their programs when EPA promulgates changes to its regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

Delaware received final authorization on June 8, 1984, effective June 22, 1984 (53 FR 23837), to implement a hazardous waste management program in lieu of the Federal Program. EPA subsequently granted authorization for revisions to Delaware's program on August 8, 1996, effective October 7, 1996 (61 FR 41345); August 18, 1998, effective October 19, 1998 (63 FR 44152); and July 12, 2000, effective September 11, 2000 (65 FR 42871).

Please note that in the aforementioned authorization action effective September 11, 2000, Checklist 152 was listed in the program revision summary table. This checklist includes certain import/export provisions for which States cannot receive authorization. While Delaware adopted the provisions listed in Checklist 152, the revisions listed in 40 CFR 262, Subparts E and H, will continue to be administered by EPA.

On January 11, 2002, Delaware submitted to EPA a complete program revision application, in accordance with 40 CFR 271.21, seeking authorization of additional changes to its program. On February 27, 2002, EPA published both an immediate final rule (67 FR 8900–8902) granting Delaware final authorization for these revisions to its federally-authorized hazardous waste program, along with a companion proposed rule announcing EPA's proposal to grant such final authorization (67 FR 8925–8926). EPA announced in both notices that the immediate final rule and the proposed rule were subject to a thirty-day public comment period. The public comment period ended on March 29, 2002. Further, EPA stated in both notices that if it received adverse comments on its intent to authorize Delaware's program revisions that it would (1) withdraw the immediate final rule; (2) proceed with the proposed rule as the basis for the receipt and evaluation of such comments, and (3) subsequently publish a final determination responding to such comments and announce its final decision whether or not to authorize Delaware's program revisions. EPA did receive written comments from two commenters during the public comment period and on April 25, 2002, published a notice withdrawing the immediate final rule (67 FR 20446). Today's action responds to the comments EPA received and publishes EPA's final determination granting Delaware final authorization of its program revisions. Further background on EPA's immediate final rule and its tentative determination to grant authorization to Delaware for its program revisions appears in the aforementioned **Federal Register** notices. The issues raised by the commenters are summarized and responded to as follows.

B. What Were the Comments and Responses to EPA's Proposal?

Both commenters challenged Region III's process for authorizing revisions to Delaware's program in not providing for a public hearing, which, they state, is required by 40 CFR 271.20. EPA disagrees. The regulations relied upon by the commenters apply to initial program authorization, and not, as in the instant matter, to program revisions. Rather, EPA has proceeded in accordance with 40 CFR 271.21 pursuant to which public hearings are not required. On March 4, 1986, at 51 FR 7540–7542, EPA promulgated amendments to 40 CFR 271.21 that eliminated public hearing requirements for program revisions. In this March 4, 1986 **Federal Register** EPA stated: "As discussed in the proposal, the new procedures do not require public hearings to be held in conjunction with EPA's authorization decisions. Since there is no legal requirement to provide for hearings on revision decisions and little public interest has been shown to date in attending hearings on initial authorization of State programs, we think the opportunity to provide written comments is adequate. Only one comment was received on the elimination of routine public hearings, and that comment favored the rule change. However, while the regulatory requirement is deleted, a Regional Administrator, in his discretion, could decide to hold a hearing." (51 FR 7541).

Consequently, EPA Region III believes it adhered to the governing regulations regarding opportunities for public hearings during the EPA approval process for State program revisions. EPA Region III also believes that due to the nature and limited number of comments received, the opportunity to provide for written comments, in lieu of a public hearing, was an adequate process to obtain public comment.

Both commenters shared a concern about the "use constituting disposal" provisions of subpart C of 40 CFR part 266. They appear to have concerns about the provisions of Delaware regulations (which are identical to EPA's) that allow, under certain conditions, "hazardous wastes," like lime-based slag, to be used as a "fertilizer." They argue that Delaware's statute (like RCRA) does not allow the land application of hazardous wastes (beneficial or not) unless it occurs at a permitted disposal facility. For the reasons set forth below, EPA disagrees.

EPA's regulations accommodate the proper reuse, recycling and reclamation of as many resources destined for disposal as possible, while regulating hazardous wastes and hazardous waste residuals that must be discarded.

EPA's regulations at 40 CFR part 266, subpart C, place controls on the management of hazardous wastes before such wastes are made into a fertilizer. Producing fertilizer from an otherwise hazardous waste is a type of recycling which, in EPA's regulations, is referred to as "use constituting disposal." Rather than prohibiting the use of waste-derived fertilizers, EPA promulgated regulations to require that hazardous wastes that are going to be made into fertilizers be managed in accordance with all applicable hazardous waste management requirements until the wastes are actually made into a fertilizer.

With regard to the "use constituting disposal" provisions of 40 CFR part 266—subpart C, in the context of fertilizer applications, these provisions in Delaware's program were authorized by EPA as part of Delaware's first program revision, which took effect on October 7, 1996—over five years ago. As is Delaware's practice, Delaware adopted EPA's rules verbatim. Therefore, in the State's revision authorization application, Delaware claimed its rules were equivalent to EPA's.

Delaware's current revision application, for which EPA recently published its tentative approval, with an opportunity for public comment, does not include any regulatory revisions to 40 CFR part 266—subpart C. Since the comment EPA has received on "use constituting disposal" is not part of Delaware's most recent program revision application, EPA believes the public comments on "use constituting disposal" are not within the scope of this Agency action.

One commenter raised a third issue and claimed that Delaware's EPA-delegated National Pollutant Discharge Elimination System (NPDES) program is not being effectively carried out. The commenter questioned why EPA would grant additional hazardous waste management authority to a State agency that is allegedly not performing well in another program area. EPA has determined that there is no basis in 40 CFR part 271 that requires EPA to evaluate the effectiveness of any other environmental program's management in Delaware before authorizing revisions to Delaware's hazardous waste program. Based on EPA's oversight of Delaware's hazardous waste program over the years, EPA has determined that DNREC implements an effective hazardous waste program, and EPA sees no reason not to proceed with authorizing Delaware's hazardous waste program revisions.

C. What Decisions Have We Made in This Rule?

Based on EPA's response to public comments, the Agency has determined that approval of Delaware's RCRA program revisions should proceed. EPA has made a final determination that Delaware's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Delaware final authorization to operate its hazardous waste program with the changes described in its application for program revisions. Delaware has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement any such HSWA requirements and prohibitions in Delaware, including issuing HSWA permits, until the State is granted authorization to do so.

For further background on the scope and effect of today's action to approve Delaware's RCRA program revisions, please refer to the preambles of EPA's February 27, 2002 proposed and immediate final rules to grant authorization to Delaware for its program revisions, at 67 FR 8925–8926 and 67 FR 8900–8902, respectively.

D. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993); therefore, this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action does not have tribal implications within meaning of Executive Order 13175 (65 FR 68249, November 6, 2000). This action does not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

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levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant and does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the Attorney General's "Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective on August 8, 2002.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 1, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02–20096 Filed 8–7–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR 1503

[Docket No. TSA–2002–12777]

RIN 2110–AA09

Investigative and Enforcement Procedures

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Interim final rule.

SUMMARY: This rulemaking establishes the interim investigative and enforcement procedural rules that the TSA will use to address statutory and regulatory violations. It adopts, in large part, the Federal Aviation Administration's (FAA) investigative and enforcement procedures. In addition, this rulemaking adopts the FAA's adjustment of civil penalties for inflation.

DATES: This rule is effective August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Quang Nguyen, Civil Enforcement Division, Office of the Chief Counsel (TSA–2), Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 493–1233; or e-mail: *quang.nguyen@tsa.dot.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last digits of the docket number shown at the beginning of this notice. Click on "search."

(3) On the next page that contains the docket summary information for the docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140html*.

In addition, copies are available by writing the Transportation Security Administration, Attention: Enforcement Docket, Office of the Chief Counsel (TSA–2); 400 Seventh Street, SW., Washington, DC 20590. Such requests should identify the docket number of this rulemaking.

Abbreviations and Terms Used in This Document

ATSA—Aviation and Transportation Security Act
FSD—Federal Security Director
SSI—Sensitive Security Information
TSA—Transportation Security Administration
Under Secretary—The Under Secretary of Transportation for Security

Background

On November 19, 2001, the Aviation and Transportation Security Act (ATSA) (Public Law 107–71) became law. ATSA created the TSA, and transferred most aviation security functions from the FAA to the TSA. With some modifications, the civil aviation security rules have been transferred from the FAA (in title 14, Code of Federal Regulations) to the TSA (in title 49, Code of Federal Regulations) in a separate rulemaking (see docket number TSA–2002–11602). 67 FR 8340 (February 22, 2002). Under ATSA, the Under Secretary of Transportation for Security may impose a civil penalty for certain statutory violations of 49 U.S.C. chapter 449 or a regulation prescribed or order issued thereunder.

ATSA section 141 provides that all rules issued by the FAA continue in effect until modified or terminated by the TSA. However, part 13 of the FAA regulations includes references to FAA agency attorneys and the FAA decision maker that do not apply to the TSA's operations at this time. This action permits TSA personnel to serve as agency attorneys and the Under Secretary to serve as the TSA decision maker under these rules.

Because the TSA currently does not have its own investigatory or enforcement procedures in place, the TSA is adopting, in large part, the current FAA investigative and enforcement rules in part 13 of title 14 of the Code of Federal Regulations. These rules will be used in the interim as the TSA prepares revised investigative and enforcement procedures. Those procedures will be noticed in the **Federal Register** for public comment.

Under ATSA, the TSA is not required to provide administrative hearings on the record. Accordingly, the TSA's enforcement proceedings are not required to comply with the Administrative Procedure Act (APA). Although these interim final rules conform to the APA requirements, the TSA intends to propose new procedures in accordance with its statutory authority. The TSA's decision not to adopt such new procedures in this rulemaking does not limit the TSA's ability to do so in the future.

Current Rulemaking

This rulemaking establishes the interim investigative and enforcement procedural rules that the TSA will use to address violations of 49 U.S.C. chapter 449 and regulations and orders issued thereunder. This rule is being issued as an interim final rule. As a rule of agency practice and procedure, this rule is exempt from the prior notice and comment requirement under 4(b)(3)(A) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(A). The rule will be codified in 49 CFR part 1503. The rules are largely unchanged from the FAA investigative and enforcement rules found in part 13, Title 14 of the Code of Federal Regulations, except for the following:

1. Omission of FAA procedures or processes where they are inapplicable to or inappropriate or unnecessary for the TSA at this time;
2. Revision of references from FAA to the TSA and a revision of occurrences of "shall" to "must" or "will" where appropriate;
3. Revision of the time period relating to motions to dismiss a request for hearing, decision on motion for disqualification, motion to dismiss for insufficiency, motion to dismiss a complaint, and motions requesting a more definite statement of the allegations;
4. Revision of the effect of filing a petition to reconsider;
5. Revision of the term "Record;"
6. Revision of the numbering system to reflect the TSA's adoption in part 1503;
7. Revision of "aviation safety" to "transportation safety;"
8. Revision of public access to the enforcement docket;
9. Addition of section addressing requests for portions of the enforcement investigative report (EIR);
10. Revision with regard to filing certain documents with the administrative law judge.

Administrative Changes

Applicable references to FAA were changed to the TSA. Also, because of its potential legal ambiguity, the occurrences of "shall" have been revised to "must" or "will" as appropriate. Additionally, other administrative changes have been made to clarify, without substantively changing, the language of the rule.

Time Periods

In the interests of equity and practicality, the time periods provided in 49 CFR 1503.218(f)(2)(i) and 49 CFR 1503.218(f)(6)(iii) are both revised from their FAA counterparts. In 49 CFR 1503.218(f)(2)(i), the time for filing a complaint after service of an order denying a motion to dismiss is extended from "10 days" to "20 days." Likewise, if required by the decision on appeal, the time period for filing a complaint and service on a party is also extended from "10 days" to "20 days." Further, in 49 CFR 1503.218(f)(6)(iii), the requirement for an administrative law judge to render a decision on the motion for disqualification is extended from "15 days" to "20 days." In addition, the time period provided for respondents to file an answer upon a denial of a motion to dismiss for insufficiency (1503.218(f)(1)), a denial of a motion to dismiss a complaint (1503.218(f)(2)(ii)), and denial of a motion requesting a more definite statement of the allegations is revised from "10 days" to "20 days" (1503.218(f)(3)(i)).

Effect of Filing Petition to Reconsider

Under 14 CFR 13.234(f), filing a petition to reconsider does not stay the effective date of a final decision and order and does not toll the time for filing a petition for review in a United States court of appeals. Under TSA rules, the filing of a petition for reconsideration or modification will stay the effective date of the order and a person may seek judicial review of a final order of the Under Secretary, which is embodied in a final decision and order, and if applicable, an order on a petition for modification or reconsideration. Corresponding changes are made to section 1503.235 to reflect the changes.

Expansion of the Term "Record"

Due to an apparent oversight, the FAA rules did not include the request for hearing and the pleadings as part of the official record. Section 1503.230(a) includes the request for hearing, the complaint, and the answer in the list of documents making up the exclusive record.

Numbering System

Although the FAA part numbers of this rule are replaced with a corresponding TSA part number, we have retained each section number of the previous FAA rule where applicable. For instance, if an FAA section was previously numbered "13.201," it is now numbered "1503.201."

"Aviation Safety" to "Transportation Safety"

Where applicable, in those instances that 49 CFR part 13 refers to aviation safety, the current rulemaking replaces "aviation safety" with "transportation safety" (for instance, §§ 1503.226(b) and 1503.233(j)(4)). This change reflects the TSA's broader mission relating to the various modes of transportation.

Public Access to the Enforcement Docket

Sensitive Security Information (SSI) is a category of protected material that is defined under 49 CFR part 1520. SSI material is exempted from disclosure under FOIA. Because of the nature of SSI material and the high concentration of such material in the enforcement actions that the TSA will handle, this rulemaking procedurally limits public access to the TSA enforcement docket. Under revised 49 CFR 1503.230(b), interested members of the public may examine and copy parts of the docket by filing a request under FOIA, 5 U.S.C. 552. This rulemaking is not intended to preclude members of the public from access to the enforcement docket, but is designed to prevent the improper disclosure of SSI.

Addition of section addressing requests for portions of the EIR

Under the new section 49 CFR 1503.12, any alleged violator or designated representative may request portions of the enforcement investigative report (EIR). Any requests by an alleged violator or designated

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representative for non-privileged portions of the EIR need not be made under FOIA, but may be made pursuant to this section. Any other individual interested in obtaining a copy of the EIR must still submit a FOIA request.

Filing with the Enforcement Docket Clerk

The rules of practice under 14 CFR part 13 provided that certain documents be filed with the administrative law judge, and this may have caused some confusion in the past. Under this rulemaking, all documents required to be filed must be filed in one place, i.e., with the Enforcement Docket Clerk. The parties must serve a copy on the administrative law judge, or on the chief administrative law judge if no judge has been assigned to the case. This will enable the Enforcement Docket Clerk to maintain a complete set of records for each case and keep the administrative law judge apprised of various requests, amendments, motions and notices.

Good Cause for Immediate Adoption

This action adopts agency rules of procedure, and therefore a notice of proposed rulemaking is not required under 5 U.S.C. 553. Further, this action in essence adopts an existing FAA rule used up to now for these same types of cases, and therefore imposes few new or different procedures on respondents. This rule is needed so that TSA can enforce its security rules and promote compliance with security requirements. Accordingly, the agency finds that prior notice and public comment is impracticable, unnecessary, and contrary to the public interest.

This action adopts a procedural rule; therefore, it is not subject to the requirement that it be effective not less than 30 days from the date of publication in the **Federal Register**, as provided in 5 U.S.C. 553. Further, respondents receiving notices initiating civil penalties under this rule will receive abundant notice of the procedures to be used.

Paperwork Reduction Act

This rule does not contain any collection of information requirements, as defined by the Paperwork Reduction Act of 1995, as amended.

Regulatory Evaluation

Changes to Federal regulations are required to undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the TSA has determined that this rule is not a "significant regulatory action" as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. This rule will not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade. A full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise analysis of this rule that is presented in the following paragraphs.

This rulemaking provides guidance for the parties as to how civil penalties are imposed. The rules state the procedures for investigations, enforcement actions, for TSA civil penalty actions, and other details of imposing and adjudicating civil penalties.

Costs

There are no costs associated with this rulemaking. The rules do not impose any new economic requirements on the affected parties. The rules provide a framework for investigative and enforcement procedures and options for the respondent to respond to a proposed civil penalty. They also provide procedures used if an administrative law judge hears a matter. These are essentially the same procedures and options as were provided under the FAA rules that formerly applied to security enforcement cases. Respondents are not required to take any additional action based on these rules. Rather, these rules set out in detail for their options, which respondents may choose to take advantage of or not.

Benefits

This rulemaking will result in some unquantified cost savings to the agency and the respondents by making clear what procedures apply in civil penalty cases.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As discussed above, there are no costs imposed by this rulemaking. There are unquantified benefits associated with this rulemaking. For this reason, the TSA certifies that there is not a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including those barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the TSA has assessed the potential effect of this final rule and has determined that it will not impose any costs on domestic and international entities and thus has a neutral trade impact.

Executive Order 13132, Federalism

The TSA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

The requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply when rulemaking actions are taken without the issuance of a notice of proposed rulemaking. Therefore, the TSA has not prepared a statement under the Act.

Environmental Analysis

The TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (43 U.S.C. 6362). It has been determined that this rule is not a major regulatory action under the provisions of the EPCA.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within the TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in "For Further Information Contact" for information. Persons can obtain further information regarding SBREFA on the Small Business Administration's web page at *http://www.sba.gov/advo/laws/law_lib.html*.

List of Subjects in 49 CFR Part 1503

Administrative practice and procedure, Investigations, Law enforcement, Penalties, Transportation.

The Amendments

For the reasons set forth in the preamble, the Transportation Security Administration adds a new part 1503 in Title 49, chapter XII, subchapter A, of the Code of Federal Regulations to read as follows:

PART 1503—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

Subpart A—Investigative Procedures

Sec.
1503.1 Reports of violations.
1503.3 Investigations (general).
1503.5 Formal complaints.
1503.7 Records, documents and reports.

Subpart B—Administrative Actions

1503.11 Administrative disposition of certain violations.

Subpart C—Legal Enforcement Actions

1503.12 Request for portions of the enforcement investigative report (EIR).
1503.13 Consent orders.
1503.15 Civil penalties: Civil penalties involving an amount in controversy in excess of $50,000, an in rem action, or injunctive relief.
1503.16. Civil penalties: Civil penalties involving an amount in controversy not exceeding $50,000.
1503.17 [Reserved]
1503.19 [Reserved]
1503.20 [Reserved]
1503.21 Military personnel.
1503.23 [Reserved]
1503.25 Injunctions.
1503.27 [Reserved]
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Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 114, 40113–40114, 40119, 44901–44907, 46101–46107, 46109–46110, 46301, 46305, 46311, 46313–46314.

Subpart A—Investigative Procedures

§ 1503.1 Reports of violations.

(a) Any person who knows of a violation of 49 U.S.C. chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or a regulation prescribed or order issued under any of those provisions, should report it to appropriate personnel of any TSA office.

(b) Each report made under this section, together with any other information the TSA may have that is relevant to the matter reported, will be reviewed by TSA personnel to determine the nature and type of any additional investigation or enforcement action the TSA will take.

§ 1503.3 Investigations (general).

(a) The Under Secretary may conduct investigations, hold hearings, issue subpoenas, require the production of relevant documents, records, and property, and take evidence and depositions.

(b) For the purpose of investigating alleged violations of 49 U.S.C. chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f),

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44908, and 44909), or a regulation prescribed or order issued under any of those provisions, the Under Secretary's authority may be exercised by the various offices for matters within their respective areas for all routine investigations. When the compulsory processes of section 49 U.S.C. 46104 are invoked, the Under Secretary's authority has been delegated to the Chief Counsel, each Deputy Chief Counsel, and in consultation with the Office of the Chief Counsel, the Associate Under Secretary for Aviation Operations, the Associate Under Secretary for Maritime and Land Security, the Associate Under Secretary for Inspections, and each Federal Security Director.

§ 1503.5 Formal complaints.

(a) Any person may file a complaint with the Under Secretary with respect to any act or omission by any person in contravention of any provision of 49 U.S.C. chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or a regulation prescribed or order issued under any of those provisions. This section does not apply to complaints against the Under Secretary or employees of the TSA acting within the scope of their employment.

(b) Complaints filed under this section must—

(1) Be submitted in writing and identified as a complaint filed for the purpose of seeking an appropriate order or other enforcement action;

(2) Be submitted to the U.S. Department of Transportation, Transportation Security Administration, Office of the Chief Counsel, TSA–2, Attention: Enforcement Docket, 400 Seventh Street, SW., Washington, DC 20590;

(3) Set forth the name and address, if known, of each person who is the subject of the complaint and, with respect to each person, the specific provisions of the statute or regulation or order that the complainant believes were violated;

(4) Contain a concise but complete statement of the facts relied upon to substantiate each allegation;

(5) State the name, address, and telephone number of the person filing the complaint; and

(6) Be signed by the person filing the complaint or a duly authorized representative.

(c) Complaints that do not meet the requirements of paragraph (b) of this section will be considered reports under § 1503.1.

(d) Complaints that meet the requirements of paragraph (b) of this section will be docketed and a copy mailed to each person named in the complaint.

(e) Any complaint filed against a member of the Armed Forces of the United States acting in the performance of official duties will be referred to the Secretary of the Department concerned for action in accordance with the procedures set forth in § 1503.21.

(f) The person named in the complaint must file an answer within 20 days after service of a copy of the complaint.

(g) After the complaint has been answered or after the allotted time in which to file an answer has expired, the Under Secretary will determine if there are reasonable grounds for investigating the complaint.

(h) If the Under Secretary determines that a complaint does not state facts that warrant an investigation or action, the complaint may be dismissed without a hearing and the reason for the dismissal will be given, in writing, to the person who filed the complaint and the person named in the complaint.

(i) If the Under Secretary determines that reasonable grounds exist, an informal investigation may be initiated. Each person named in the complaint will be advised which official has been delegated the responsibility under § 1503.3(b) for conducting the investigation.

(j) If the investigation substantiates the allegations set forth in the complaint, a notice of proposed order may be issued or other enforcement action taken in accordance with this part.

(k) The complaint and other pleadings and official TSA records relating to the disposition of the complaint are maintained in current docket form in the TSA Enforcement Docket, GSA Building, Room 5008, 301 Seventh Street SW., Washington, DC 20407.

(1) *Generally.* Any person interested in reviewing or obtaining a copy of a record may do so only by submitting a FOIA request under 5 U.S.C. 552 and 49 CFR part 7. Portions of the record may be exempt from disclosure pursuant to FOIA.

(2) *Docket Files or Documents Not for Public Disclosure.* (i) Only the following persons may review docket files or particular documents that are not for public disclosure:

(A) Parties to the proceedings;

(B) Their designated representatives; and

(C) Persons who have a need to know as determined by the Under Secretary.

(ii) Those persons with permission to review these documents or docket files may view the materials at the TSA Enforcement Docket, GSA Building, Room 5008, 301 Seventh Street SW., Washington, DC 20407. Persons with access to these records may have a copy of the records after payment of reasonable costs.

§ 1503.7 Records, documents and reports.

Each record, document, and report that the Transportation Security Regulations require to be maintained, exhibited, or submitted to the Under Secretary may be used in any investigation conducted by the Under Secretary; and, except to the extent the use may be specifically limited or prohibited by the section that imposes the requirement, the records, documents, and reports may be used in any civil penalty action or other legal proceeding.

Subpart B—Administrative Actions

§ 1503.11 Administrative disposition of certain violations.

(a) If it is determined that a violation or an alleged violation of 49 U.S.C. chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or a regulation prescribed or order issued under any of those provisions, does not require legal enforcement action, an appropriate official of the TSA may take administrative action in disposition of the case.

(b) An administrative action under this section does not constitute a formal adjudication of the matter, and may be taken by issuing the alleged violator—

(1) A "Warning Notice" that recites available facts and information about the incident or condition and indicates that it may have been a violation; or

(2) A "Letter of Correction" that confirms the TSA decision in the matter and states the necessary corrective action the alleged violator has taken or agrees to take. If the agreed corrective action is not fully completed, legal enforcement action may be taken.

Subpart C—Legal Enforcement Actions

§ 1503.12 Request for portions of the enforcement investigative report (EIR).

(a) Discovery and pre-litigation disclosure. Pursuant to this section, any alleged violator or designated representative may request, from the Chief Counsel or designee, portions of the EIR that are not privileged (e.g., under the deliberative process, attorney work-product, or attorney-client privileges). This information will be provided for the sole purpose of providing the information necessary to prepare a response to the allegations contained in the legal enforcement action document. SSI contained in the EIR is released pursuant to 49 CFR part 1520. Information released under this section is not produced under the Freedom of Information Act (FOIA).

(b) Any person not listed in paragraph (a) of this section that is interested in obtaining a copy of the EIR must submit a FOIA request pursuant to 49 U.S.C. 552 and 49 CFR part 7. Portions of the EIR may be exempt from disclosure pursuant to FOIA.

§ 1503.13 Consent orders.

(a) At any time before the issuance of an order under this subpart, the official who issued the notice and the person subject to the notice may agree to dispose of the case by the issuance of a consent order by the official.

(b) A proposal for a consent order, submitted to the official who issued the notice, under this section must include—

(1) A proposed order;

(2) An admission of all jurisdictional facts;

(3) An express waiver of the right to further procedural steps and of all rights to judicial review; and

(4) An incorporation of the notice by reference and an acknowledgment that the notice may be used to construe the terms of the order.

§ 1503.15 Civil penalties: Civil penalties involving an amount in controversy in excess of $ 50,000, an in rem action, or injunctive relief.

(a) Any person who violates any provision of 49 U.S.C. chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or a regulation prescribed or order issued under any of those provisions, is subject to a civil penalty of not more than the amount specified for each violation in accordance with 49 U.S.C. 46301, in conformity with the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 (note), as amended.

(b) The authority of the Under Secretary, under 49 U.S.C. 46301 to propose a civil penalty for a violation of that chapter, or a rule, regulation, or order issued thereunder, and the ability to refer cases to the United States Attorney General, or the delegate of the Attorney General, for prosecution of civil penalty actions proposed by the Under Secretary, involving an amount in controversy in excess of $ 50,000, an in rem action, or suit for injunctive relief, or for collection of an assessed civil penalty, is delegated to the Chief Counsel and the Deputy Chief Counsel for Enforcement.

(c) The Under Secretary may compromise any civil penalty, proposed in accordance with 49 U.S.C. 46301, involving an amount in controversy in excess of $ 50,000, an in rem action, or suit for injunctive relief, prior to referral of the civil penalty action to the United States Attorney General, or the delegate of the Attorney General, for prosecution.

(1) The Under Secretary, through the Chief Counsel or the Deputy Chief Counsel for Enforcement, will send a civil penalty letter to the person charged with a violation of 49 U.S.C. chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or a regulation prescribed or order issued under any of those provisions. The civil penalty letter contains a statement of the charges; the applicable law, rule, regulation, or order; the amount of civil penalty that the Under Secretary will accept in full settlement of the action or an offer to compromise the civil penalty.

(2) Not later than 30 days after receipt of the civil penalty letter, the person charged with a violation may present any material or information in answer to the charges to the agency attorney, either orally or in writing, that may explain, mitigate, or deny the violation or that may show extenuating circumstances. The Under Secretary will consider any material or information submitted in accordance with this paragraph (c) to determine whether the person is subject to a civil penalty or to determine the amount for which the Under Secretary will compromise the action.

(3) If the person charged with the violation offers to compromise for a specific amount, that person must send a certified check or money order for that amount to the agency, made payable to the Transportation Security Administration. The Chief Counsel or the Deputy Chief Counsel for Enforcement may accept the certified check or money order or may refuse and return the certified check or money order.

(4) If the offer to compromise is accepted by the Under Secretary, the agency will send a letter to the person charged with the violation stating that the certified check or money order is accepted in full settlement of the civil penalty action.

(5) If the parties cannot agree to compromise the civil penalty action or the offer to compromise is rejected and the certified check or money order submitted in compromise is returned, the Under Secretary may refer the civil penalty action to the United States Attorney General, or the delegate of the Attorney General, to begin proceedings in a United States district court, pursuant to the authority in 49 U.S.C. 46305 to prosecute and collect the civil penalty.

§ 1503.16 Civil penalties: Civil penalties involving an amount in controversy not exceeding $50,000.

(a) *General.* The following penalties apply to persons who violate chapter 449, as specified in subsection (1), of Title 49 of the United States Code:

(1) Any person who violates any provision of 49 U.S.C. chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or a regulation prescribed or order issued under any of those provisions is subject to a civil penalty of not more than the amount specified in the chapter or section for each violation in accordance with 49 U.S.C. 46301, in conformity with the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 (note), as amended.

(2) [Reserved]

(3) [Reserved]

(b) *Orders assessing civil penalty.* An order assessing civil penalty may be issued for a violation described in paragraph (a) of this section, or as otherwise provided by statute, after notice and opportunity for a hearing. A person charged with a violation may be subject to an order assessing civil penalty in the following circumstances:

(1) An order assessing civil penalty may be issued if a person charged with a violation submits or agrees to submit a civil penalty for a violation.

(2) An order assessing civil penalty may be issued if a person charged with a violation does not request a hearing under paragraph (e)(2)(ii) of this section within 15 days after receipt of a final notice of proposed civil penalty.

(3) Unless an appeal is filed in a timely manner, an initial decision or order of an administrative law judge will be considered an order assessing civil penalty if an administrative law judge finds that an alleged violation occurred and determines that a civil penalty, in an amount found appropriate by the administrative law judge, is warranted.

(4) For penalties issued under § 1503.16(a)(1), unless a petition for review is filed with a U.S. court of appeals in a timely manner, a final decision and order of the Under Secretary will be considered an order assessing civil penalty if the TSA decision maker finds that an alleged violation occurred and a civil penalty is warranted.

(c) *Delegation of authority.* The authority of the Under Secretary, under

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49 U.S.C. 46301 to initiate and assess civil penalties for a violation under chapter 449, or a rule, regulation, or order issued thereunder, is delegated to the Deputy Chief Counsel for Enforcement. The authority of the Under Secretary to refer cases to the Attorney General of the United States, or the delegate of the Attorney General, for the collection of civil penalties, is delegated to the Chief Counsel and the Deputy Chief Counsel for Enforcement.

(d) *Notice of proposed civil penalty.* A civil penalty action is initiated by sending a notice of proposed civil penalty to the person charged with a violation of 49 U.S.C. chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or a regulation prescribed or order issued under any of those provisions. A notice of proposed civil penalty will be sent to the individual charged with a violation or to the president of the corporation or company charged with a violation. In response to a notice of proposed civil penalty, a corporation or company may designate in writing another person to receive documents in that civil penalty action. The notice of proposed civil penalty contains a statement of the charges and the amount of the proposed civil penalty. Not later than 30 days after receipt of the notice of proposed civil penalty, the person charged with a violation must—

(1) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order assessing civil penalty or compromise order must be issued in that amount;

(2) Submit to the agency attorney one of the following:

(i) Written information, including documents and witness statements, demonstrating that a violation of the regulations did not occur or that a penalty or the amount of the penalty is not warranted by the circumstances;

(ii) A written request to reduce the proposed civil penalty, the amount of reduction, and the reasons and any documents supporting a reduction of the proposed civil penalty, including records indicating a financial inability to pay or records showing that payment of the proposed civil penalty would prevent the person from continuing in business;

(iii) A written request for an informal conference to discuss the matter with the agency attorney and to submit relevant information or documents; or

(3) Request a hearing in which case a complaint will be filed with the Enforcement Docket Clerk.

(e) *Final notice of proposed civil penalty.* A final notice of proposed civil penalty may be issued after participation in informal procedures provided in paragraph (d)(2) of this section or failure to respond in a timely manner to a notice of proposed civil penalty. A final notice of proposed civil penalty will be sent to the individual charged with a violation, to the president of the corporation or company charged with a violation, or a person previously designated in writing by the individual, corporation, or company to receive documents in that civil penalty action. If not previously done in response to a notice of proposed civil penalty, a corporation or company may designate in writing another person to receive documents in that civil penalty action. The final notice of proposed civil penalty contains a statement of the charges and the amount of the proposed civil penalty and, as a result of information submitted to the agency attorney during informal procedures, may modify an allegation or a proposed civil penalty contained in a notice of proposed civil penalty.

(1) A final notice of proposed civil penalty may be issued—

(i) If the person charged with a violation fails to respond to the notice of proposed civil penalty within 30 days after receipt of that notice; or

(ii) If the parties participated in any informal procedures under paragraph (d)(2) of this section and the parties have not agreed to compromise the action or the agency attorney has not agreed to withdraw the notice of proposed civil penalty.

(2) Not later than 15 days after receipt of the final notice of proposed civil penalty, the person charged with a violation must do one of the following—

(i) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order assessing civil penalty or a compromise order will be issued in that amount; or

(ii) Request a hearing in which case a complaint will be filed with the Enforcement Docket Clerk.

(f) *Request for a hearing.* Any person charged with a violation may request a hearing, pursuant to paragraph (d)(3) or paragraph (e)(2)(ii) of this section, to be conducted in accordance with the procedures in subpart G of this part. A person requesting a hearing must file a written request for a hearing with the Enforcement Docket Clerk (U.S. Department of Transportation, Transportation Security Administration, Office of the Chief Counsel, TSA–2, Attention: Enforcement Docket Clerk, 400 Seventh Street, SW., Washington, DC 20590) and must mail a copy of the request to the agency attorney. The person requesting the hearing must date and sign the request, and must include his or her current address. The request for hearing must be typewritten or legibly written.

(g) Hearing. If the person charged with a violation requests a hearing pursuant to paragraph (d)(3) or paragraph (e)(2)(ii) of this section, the original complaint will be filed with the Enforcement Docket Clerk and a copy will be sent to the person requesting the hearing. The procedural rules in subpart G of this part apply to the hearing and any appeal. At the close of the hearing, the administrative law judge will issue, either orally on the record or in writing, an initial decision, including the reasons for the decision, that contains findings or conclusions on the allegations contained, and the civil penalty sought, in the complaint.

(h) *Appeal.* Either party may appeal the administrative law judge's initial decision to the TSA decision maker pursuant to the procedures in subpart G of this part. If a party files a notice of appeal pursuant to § 1503.233, the effectiveness of the initial decision is stayed until a final decision and order of the Under Secretary have been entered on the record. The TSA decision maker will review the record and issue a final decision and order of the Under Secretary that affirms, modifies, or reverses the initial decision. The TSA decision maker may assess a civil penalty but will not assess a civil penalty in an amount greater than that sought in the complaint.

(i) *Payment.* A person must pay a civil penalty by sending, to the agency, a certified check or money order made payable to the Transportation Security Administration.

(j) *Collection of civil penalties.* If a person does not pay a civil penalty imposed by an order assessing civil penalty or a compromise order within 60 days after service of the order, the Under Secretary may refer the order to the United States Attorney General, or the delegate of the Attorney General, to begin proceedings to collect the civil penalty. The action will be brought in a United States district court, pursuant to the authority in 49 U.S.C. 46305.

(k) *Exhaustion of administrative remedies.* For violations of 49 U.S.C. chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or a regulation prescribed or order issued under any of those provisions, a party may only petition for review of a final decision and order of the Under Secretary to the courts of appeals of the United States or the United States Court

of Appeals for the District of Columbia pursuant to section 49 U.S.C. 46110. Neither an initial decision or order issued by an administrative law judge that has not been appealed to the TSA decision maker, nor an order compromising a civil penalty action constitutes a final order of the Under Secretary for the purposes of judicial appellate review under 49 U.S.C. 46110.

(l) *Compromise.* The TSA may compromise any civil penalty action initiated in accordance with 49 U.S.C. 46301, involving an amount in controversy not exceeding $ 50,000, or any civil penalty action initiated in accordance with 49 U.S.C. 46301 at any time before referring the action to the United States Attorney for collection.

(1) An agency attorney may compromise any civil penalty action where a person charged with a violation agrees to pay a civil penalty and the TSA agrees to make no finding of violation. Pursuant to such agreement, a compromise order will be issued, stating:

(i) The person agrees to pay a civil penalty;

(ii) The TSA makes no finding of a violation; and

(iii) The compromise order will not be used as evidence of a prior violation in any subsequent civil penalty proceeding.

(2) An agency attorney may compromise the amount of any civil penalty proposed in a notice, assessed in an order, or imposed in a compromise order.

§ 1503.17 [Reserved]

§ 1503.19 [Reserved]

§ 1503.20 [Reserved]

§ 1503.21 Military personnel.

If a report made under this part indicates that, while performing official duties, a member of the Armed Forces, or a civilian employee of the Department of Defense who is subject to the Uniform Code of Military Justice (10 U.S.C. Ch. 47), has violated 49 U.S.C. chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or a regulation prescribed or order issued under any of those provisions, the Chief Counsel or the Deputy Chief Counsel for Enforcement will send a copy of the report to the appropriate military authority for such disciplinary action as that authority considers appropriate and a report to the Under Secretary thereon.

§ 1503.23 [Reserved]

§ 1503.25 Injunctions.

Whenever it is determined that a person has engaged, or is about to engage, in any act or practice constituting a violation of 49 U.S.C. chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or a regulation prescribed or order issued under any of those provisions for which the TSA exercises enforcement responsibility, the Chief Counsel or the Deputy Chief Counsel for Enforcement may request the United States Attorney General, or the delegate of the Attorney General, to bring an action in the appropriate United States district court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages, as provided by 49 U.S.C. 46107.

§ 1503.27 [Reserved]

§ 1503.29 Civil penalties: Streamlined enforcement procedures for certain security violations.

This section may be used, at the agency's discretion, in enforcement actions involving individuals presenting dangerous or deadly weapons for screening at airports or in checked baggage where the amount of the proposed civil penalty is less than $5,000. In these cases, §§ 1503.16(a), 1503.16(c), and 1503.16 (f) through (l) are used, as well as paragraphs (a) through (d) of this section:

(a) *Delegation of authority.* The authority of the Under Secretary, under 49 U.S.C. 46301, to initiate civil penalty actions in accordance with TSA policies and procedures promulgated pursuant to 49 U.S.C. 46301 et seq. and 49 CFR part 1540, is delegated to each Federal Security Director for the purpose of issuing notices of violation in cases involving violations of 49 U.S.C. chapter 449, or a regulation prescribed or order issued under any of those provisions.

(b) *Notice of violation.* A civil penalty action is initiated by sending a notice of violation to the person charged with the violation. The notice of violation contains a statement of the charges and the amount of the proposed civil penalty. Not later than 30 days after receipt of the notice of violation, the person charged with a violation must:

(1) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order assessing a civil penalty or a compromise order will be issued in that amount; or

(2) Submit to the agency attorney identified in the material accompanying the notice any of the following:

(i) Written information, including documents and witness statements, demonstrating that a violation of the regulations did not occur or that a penalty or the penalty amount is not warranted by the circumstances; or

(ii) A written request to reduce the proposed civil penalty, the amount of reduction, and the reasons and any documents supporting a reduction of the proposed civil penalty, including records indicating a financial inability to pay or records showing that payment of the proposed civil penalty would prevent the person from continuing in business; or

(iii) A written request for an informal conference to discuss the matter with an agency attorney and submit relevant information or documents; or

(3) Request a hearing in which case a complaint will be filed with the Enforcement Docket Clerk.

(c) *Final notice of violation and civil penalty assessment order.* A final notice of violation and civil penalty assessment order ("final notice and order") may be issued after participation in any informal proceedings as provided in paragraph (b)(2) of this section, or after failure of the respondent to respond in a timely manner to a notice of violation. A final notice and order will be sent to the individual charged with a violation. The final notice and order will contain a statement of the charges and the amount of the proposed civil penalty and, as a result of information submitted to the agency attorney during any informal procedures, may reflect a modified allegation or proposed civil penalty. A final notice and order may be issued—

(1) If the person charged with a violation fails to respond to the notice of violation within 30 days after receipt of that notice; or

(2) If the parties participated in any informal procedures under paragraph (b)(2) of this section and the parties have not agreed to compromise the action or the agency attorney has not agreed to withdraw the notice of violation.

(d) *Order assessing civil penalty.* An order assessing civil penalty may be issued after notice and opportunity for a hearing. A person charged with a violation may be subject to an order assessing civil penalty in the following circumstances:

(1) An order assessing civil penalty may be issued if a person charged with a violation submits, or agrees to submit, the amount of civil penalty proposed in the notice of violation.

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(2) An order assessing civil penalty may be issued if a person charged with a violation submits, or agrees to submit, an agreed-upon amount of civil penalty that is not reflected in either the notice of violation or the final notice and order.

(3) The final notice and order becomes (and contains a statement so indicating) an order assessing a civil penalty when the person charged with a violation submits the amount of the proposed civil penalty that is reflected in the final notice and order.

(4) The final notice and order becomes (and contains a statement so indicating) an order assessing a civil penalty 16 days after receipt of the final notice and order, unless not later than 15 days after receipt of the final notice and order, the person charged with a violation does one of the following—

(i) Submits an agreed-upon amount of civil penalty that is not reflected in the final notice and order, in which case an order assessing civil penalty or a compromise order will be issued in that amount; or

(ii) Requests a hearing in which case a complaint will be filed with the Enforcement Docket Clerk.

(5) Unless there is an appeal to the TSA decision maker, filed in a timely manner, an initial decision or order of an administrative law judge will be considered an order assessing civil penalty if an administrative law judge finds that an alleged violation occurred and determines that a civil penalty, in an amount found to be appropriate by the administrative law judge, is warranted.

(6) Unless a petition for review is filed with a U.S. court of appeals in a timely manner, a final decision and order of the Under Secretary will be considered an order assessing civil penalty if the TSA decision maker finds that an alleged violation occurred and a civil penalty is warranted.

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—[Reserved]

Subpart G—Rules of Practice in Transportation Security Administration (TSA) Civil Penalty Actions

§ 1503.201 Applicability.

(a) This subpart applies to the following actions:

(1) A civil penalty action in which a request for hearing has been filed and the amount sought does not exceed $50,000 for a violation arising under 49 U.S.C. chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or a regulation prescribed or order issued under any of those provisions.

(b) [Reserved]

(c) Notwithstanding the provisions of paragraph (a) of this section, the United States district courts will have exclusive jurisdiction of any civil penalty action initiated by the Under Secretary:

(1) Which involves an amount in controversy in excess of $50,000;

(2) Which is an in rem action or in which an in rem action based on the same violation has been brought;

(3) Regarding which an aircraft subject to lien has been seized by the United States; and

(4) In which a suit for injunctive relief based on the violation giving rise to the civil penalty has also been brought.

§ 1503.202 Definitions.

The following definitions apply to this subpart:

Administrative law judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105.

Agency attorney means the Deputy Chief Counsel for Enforcement or an attorney that he or she designates. An *agency attorney* will not include:

(1) Any attorney in the Office of the Chief Counsel who advises the TSA decision maker regarding an initial decision or any appeal to the TSA decision maker; or

(2) Any attorney who is supervised in a civil penalty action by a person who provides such advice to the TSA decision maker in that action or a factually related action.

Attorney means a person licensed by a state, the District of Columbia, or a territory of the United States to practice law or appear before the courts of that state or territory.

Complainant means those persons within the TSA responsible for investigating and bringing possible violations of statute and regulation.

Complaint means a document issued by an agency attorney alleging a violation of 49 U.S.C. chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or a regulation prescribed or order issued under any of those provisions that has been filed with the enforcement docket after a hearing has been requested pursuant to § 1503.16(d)(3) or § 1503.16(e)(2)(ii).

Mail includes U.S. certified mail, U.S. registered mail, or use of an overnight express courier service.

Order assessing civil penalty means a document that contains a finding of violation of 49 U.S.C. chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or a regulation prescribed or order issued under any of those provisions and may direct payment of a civil penalty. Unless there is an appeal to the TSA decision maker, filed in a timely manner, an initial decision or order of an administrative law judge will be considered an *order assessing civil penalty* if an administrative law judge finds that an alleged violation occurred and determines that a civil penalty, in an amount found appropriate by the administrative law judge, is warranted. Unless a petition for review is filed with a U.S. court of appeals in a timely manner, a final decision and order of the Under Secretary will be considered an *order assessing civil penalty* if the TSA decision maker finds that an alleged violation occurred and a civil penalty is warranted.

Party means the respondent or the complainant.

Personal delivery includes hand-delivery or use of a contract or express messenger service. *Personal delivery* does not include the use of Government interoffice mail service.

Pleading means a complaint, an answer, and any amendment of these documents permitted under this subpart.

Properly addressed means a document that shows an address contained in agency records, a residential, business, or other address submitted by a person on any document provided under this subpart, or any other address shown by other reasonable and available means.

Respondent means a person, corporation, or company named in a complaint.

TSA decision maker means the Under Secretary of Transportation for Security, acting in the capacity of the decision maker on appeal, or any person to whom the Under Secretary has delegated the Under Secretary's decision-making authority in a civil penalty action. As used in this subpart, the *TSA decision maker* is the official authorized to issue a final decision and order of the Under Secretary in a civil penalty action.

§ 1503.203 Separation of functions.

(a) Civil penalty proceedings, including hearings, will be prosecuted by an agency attorney.

(b) An agency employee engaged in the performance of investigative or prosecutorial functions in a civil penalty action must not, in that case or a factually related case, participate or give advice in a decision by the administrative law judge or by the TSA decision maker on appeal, except as counsel or a witness in the public proceedings.

(c) The Chief Counsel or an attorney not covered by paragraph (b) of this section will advise the TSA decision maker regarding an initial decision or any appeal of a civil penalty action to the TSA decision maker.

§ 1503.204 Appearances and rights of parties.

(a) Any party may appear and be heard in person.

(b) Any party may be accompanied, represented, or advised by an attorney or representative designated by the party and may be examined by that attorney or representative in any proceeding governed by this subpart. An attorney or representative who represents a party may file a notice of appearance in the action, in the manner provided in § 1503.210, and must serve a copy of the notice of appearance on each party, in the manner provided in § 1503.211, before participating in any proceeding governed by this subpart. The attorney or representative must include the name, address, and telephone number of the attorney or representative in the notice of appearance.

(c) Any person may request a copy of a document upon payment of reasonable costs. A person may keep an original document, data, or evidence, with the consent of the administrative law judge, by substituting a legible copy of the document for the record.

§ 1503.205 Administrative law judges.

(a) *Powers of an administrative law judge.* In accordance with the rules of this subpart, an administrative law judge may:

(1) Give notice of, and hold, pre-hearing conferences and hearings;

(2) Administer oaths and affirmations;

(3) Issue subpoenas authorized by law and issue notices of deposition requested by the parties;

(4) Rule on offers of proof;

(5) Receive relevant and material evidence;

(6) Regulate the course of the hearing in accordance with the rules of this subpart;

(7) Hold conferences to settle or to simplify the issues by consent of the parties;

(8) Dispose of procedural motions and requests; and

(9) Make findings of fact and conclusions of law, and issue an initial decision.

(b) *Limitations on the power of the administrative law judge.* The administrative law judge must not issue an order of contempt, award costs to any party, or impose any sanction not specified in this subpart. If the administrative law judge imposes any sanction not specified in this subpart, a party may file an interlocutory appeal of right pursuant to § 1503.219(c)(4). This section does not preclude an administrative law judge from issuing an order that bars a person from a specific proceeding based on a finding of obstreperous or disruptive behavior in that specific proceeding.

(c) *Disqualification.* The administrative law judge may disqualify himself or herself at any time. A party may file a motion, pursuant to § 1503.218(f)(6), requesting that an administrative law judge be disqualified from the proceedings.

§ 1503.206 Intervention.

(a) A person may submit a motion for leave to intervene as a party in a civil penalty action. Except for good cause shown, a motion for leave to intervene must be submitted not later than 10 days before the hearing.

(b) If the administrative law judge finds that intervention will not unduly broaden the issues or delay the proceedings, the administrative law judge may grant a motion for leave to intervene if the person will be bound by any order or decision entered in the action or the person has a property, financial, or other legitimate interest that may not be addressed adequately by the parties. The administrative law judge may determine the extent to which an intervenor may participate in the proceedings.

§ 1503.207 Certification of documents.

(a) *Signature required.* The attorney of record, the party, or the party's representative must sign each document tendered for filing with the Enforcement Docket Clerk, or served on the administrative law judge, the TSA decision maker on appeal, or each party.

(b) *Effect of signing a document.* By signing a document, the attorney of record, the party, or the party's representative certifies that the attorney, the party, or the party's representative has read the document and, based on reasonable inquiry and to the best of that person's knowledge, information, and belief, the document is—

(1) Consistent with the rules in this part;

(2) Warranted by existing law or that a good faith argument exists for extension, modification, or reversal of existing law; and

(3) Not unreasonable or unduly burdensome or expensive, not made to harass any person, not made to cause unnecessary delay, not made to cause needless increase in the cost of the proceedings, or for any other improper purpose.

(c) *Sanctions.* If the attorney of record, the party, or the party's representative signs a document in violation of this section, the administrative law judge or the TSA decision maker, as appropriate, will:

(1) Strike the pleading signed in violation of this section;

(2) Strike the request for discovery or the discovery response signed in violation of this section and preclude further discovery by the party;

(3) Deny the motion or request signed in violation of this section;

(4) Exclude the document signed in violation of this section from the record;

(5) Dismiss the interlocutory appeal and preclude further appeal on that issue by the party who filed the appeal until an initial decision has been entered on the record; or

(6) Dismiss the appeal of the administrative law judge's initial decision to the TSA decision maker.

§ 1503.208 Complaint.

(a) *Filing.* The agency attorney must file the original and one copy of the complaint with the Enforcement Docket Clerk, or may file a written motion pursuant to § 1503.218(f)(2)(i) instead of filing a complaint, not later than 20 days after receipt by the agency attorney of a request for hearing. The agency attorney should suggest a location for the hearing when filing the complaint.

(b) *Service.* An agency attorney must personally deliver or mail a copy of the complaint to the respondent, the president of the corporation or company named as a respondent, or a person designated by the respondent to accept service of documents in the civil penalty action.

(c) *Contents.* A complaint must set forth the facts alleged, any regulation allegedly violated by the respondent, and the proposed civil penalty in sufficient detail to provide notice of any factual or legal allegation and proposed civil penalty.

(d) [Reserved]

§ 1503.209 Answer.

(a) *Writing required.* A respondent must file a written answer to the complaint, or may file a written motion pursuant to § 1503.218(f)(1)-(4) instead of filing an answer, not later than 30 days after service of the complaint. The answer may be in the form of a letter but must be dated and signed by the person responding to the complaint. An answer may be typewritten or may be legibly handwritten.

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(b) *Filing and address.* A person filing an answer must personally deliver or mail the original and one copy of the answer for filing with the Enforcement Docket Clerk, not later than 30 days after service of the complaint. Filing must be made by mail to the ?U.S. Department of Transportation, Transportation Security Administration, Office of the Chief Counsel, TSA–2, Attention: Enforcement Docket Clerk, 400 Seventh Street, SW., Washington, DC 20590 or by personal delivery to TSA Enforcement Docket, GSA Building Room 5008, 301 D Street SW., Washington, DC 20407. The person filing an answer should suggest a location for the hearing when filing the answer.

(c) *Service.* A person filing an answer must serve a copy of the answer on the agency attorney who filed the complaint.

(d) *Contents.* An answer must specifically state any affirmative defense that the respondent intends to assert at the hearing. A person filing an answer may include a brief statement of any relief requested in the answer.

(e) *Specific denial of allegations required.* A person filing an answer must admit, deny, or state that the person is without sufficient knowledge or information to admit or deny, each numbered paragraph of the complaint. Any statement or allegation contained in the complaint that is not specifically denied in the answer may be deemed an admission of the truth of that allegation. A general denial of the complaint is deemed a failure to file an answer.

(f) *Failure to file answer.* A person's failure to file an answer without good cause will be deemed an admission of the truth of each allegation contained in the complaint.

§ 1503.210 Filing of documents.

(a) Address and method of filing. A person tendering a document for filing must personally deliver or mail the signed original and one copy of each document. Filing must be made either by mail to the U.S. Department of Transportation, Transportation Security Administration, Office of the Chief Counsel, TSA–2, Attention: Enforcement Docket Clerk, 400 Seventh Street, SW., Washington, DC 20590 or by personal delivery to TSA Enforcement Docket, GSA Building, Room 5008, 301 D Street SW., Washington, DC 20407. A person must serve a copy of each document on each party in accordance with § 1503.211.

(b) *Date of filing.* A document will be considered to be filed on the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

(c) *Form.* Each document must be typewritten or legibly handwritten.

(d) *Contents.* Unless otherwise specified in this subpart, each document must contain a short, plain statement of the facts supporting the person's position and a brief statement of the action requested in the document.

§ 1503.211 Service of documents.

(a) *General.* A person must serve a copy of any document filed with the Enforcement Docket on each party and the administrative law judge or the chief administrative law judge if no judge has been assigned to the proceeding at the time of filing. Service on a party's attorney of record or a party's designated representative is service on the party.

(b) *Type of service.* A person may serve documents by personal delivery or by mail.

(c) *Certificate of service.* A person may attach a certificate of service to a document tendered for filing with the Enforcement Docket Clerk. A certificate of service must consist of a statement, dated and signed by the person filing the document, that the document was personally delivered or mailed to each party on a specific date.

(d) *Date of service.* The date of service will be the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

(e) *Additional time after service by mail.* Whenever a party has a right or a duty to act or to make any response within a prescribed period after service by mail, or on a date certain after service by mail, 5 days will be added to the prescribed period.

(f) *Service by the administrative law judge.* The administrative law judge must serve a copy of each document he or she issues including, but not limited to, notices of pre-hearing conferences and hearings, rulings on motions, decisions, and orders, upon each party to the proceedings by personal delivery or by mail.

(g) *Valid service.* A document that was properly addressed, was sent in accordance with this subpart, and that was returned, that was not claimed, or that was refused, is deemed to have been served in accordance with this subpart. The service will be considered valid as of the date and the time that the document was deposited with a contract or express messenger, the document was mailed, or personal delivery of the document was refused.

(h) *Presumption of service.* There will be a presumption of service where a party or a person, who customarily receives mail, or receives it in the ordinary course of business, at either the person's residence or the person's principal place of business, acknowledges receipt of the document.

§ 1503.212 Computation of time.

(a) This section applies to any period of time prescribed or allowed by this subpart, or by notice or order of the administrative law judge.

(b) The date of an act, event, or default, after which a designated time period begins to run, is not included in a computation of time under this subpart.

(c) The last day of a time period is included in a computation of time unless it is a Saturday, Sunday, a legal holiday, or a day on which the enforcement docket is officially closed. If the last day of the time period is a Saturday, Sunday, legal holiday, or a day on which the enforcement docket is officially closed, the time period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or a day on which the enforcement docket is officially closed.

§ 1503.213 Extension of time.

(a) *Oral requests.* The parties may agree to extend for a reasonable period the time for filing a document under this subpart. If the parties agree, the administrative law judge must grant one extension of time to each party. The party seeking the extension of time must submit a draft order to the administrative law judge to be signed by the administrative law judge and filed with the Enforcement Docket Clerk. The administrative law judge may grant additional oral requests for an extension of time where the parties agree to the extension.

(b) *Written motion.* A party must file a written motion for an extension of time not later than 7 days before the document is due unless good cause for the late filing is shown. The administrative law judge may grant the extension of time if good cause for the extension is shown.

(c) *Failure to rule.* If the administrative law judge fails to rule on a written motion for an extension of time by the date the document was due, the motion for an extension of time is deemed granted for no more than 20 days after the original date the document was to be filed.

§ 1503.214 Amendment of pleadings.

(a) *Filing and service.* A party must file the amendment with the Enforcement Docket Clerk and must serve a copy of the amendment on the administrative law judge and all parties to the proceeding.

(b) *Time.* A party must file an amendment to a complaint or an answer within the following:

(1) Not later than 15 days before the scheduled date of a hearing, a party may amend a complaint or an answer without the consent of the administrative law judge.

(2) Less than 15 days before the scheduled date of a hearing, the administrative law judge may allow amendment of a complaint or an answer only for good cause shown in a motion to amend.

(c) *Responses.* The administrative law judge must allow a reasonable time, but not more than 20 days from the date of filing, for other parties to respond if an amendment to a complaint, answer, or other pleading has been filed with the administrative law judge.

§ 1503.215 Withdrawal of complaint or request for hearing.

At any time before or during a hearing, an agency attorney may withdraw a complaint or a respondent may withdraw a request for a hearing without the consent of the administrative law judge. If an agency attorney withdraws the complaint or a party withdraws the request for a hearing and the answer, the administrative law judge must dismiss the proceedings under this subpart with prejudice.

§ 1503.216 Waivers.

Waivers of any rights provided by statute or regulation must be in writing or by stipulation made at a hearing and entered into the record. The parties must set forth the precise terms of the waiver and any conditions.

§ 1503.217 Joint procedural or discovery schedule.

(a) *General.* The parties may agree to submit a schedule for filing all prehearing motions, a schedule for conducting discovery in the proceedings, or a schedule that will govern all pre-hearing motions and discovery in the proceedings.

(b) *Form and content of schedule.* If the parties agree to a joint procedural or discovery schedule, one of the parties must file the joint schedule with the administrative law judge, setting forth the dates to which the parties have agreed, and must serve a copy of the joint schedule on each party.

(1) The joint schedule may include, but need not be limited to, requests for discovery, any objections to discovery requests, responses to discovery requests to which there are no objections, submission of pre-hearing motions, responses to pre-hearing motions, exchange of exhibits to be introduced at the hearing, and a list of witnesses that may be called at the hearing.

(2) Each party must sign the original joint schedule to be filed with the Enforcement Docket Clerk.

(c) *Time.* The parties may agree to submit all pre-hearing motions and responses and may agree to close discovery in the proceedings under the joint schedule within a reasonable time before the date of the hearing, but not later than 15 days before the hearing.

(d) *Order establishing joint schedule.* The administrative law judge must approve the joint schedule filed by the parties. One party must submit a draft order establishing a joint schedule to the administrative law judge to be signed by the administrative law judge and filed with the Enforcement Docket Clerk.

(e) *Disputes.* The administrative law judge must resolve disputes regarding discovery or disputes regarding compliance with the joint schedule as soon as possible so that the parties may continue to comply with the joint schedule.

(f) *Sanctions for failure to comply with joint schedule.* If a party fails to comply with the administrative law judge's order establishing a joint schedule, the administrative law judge may direct that party to comply with a motion or discovery request or, limited to the extent of the party's failure to comply with a motion or discovery request, the administrative law judge may:

(1) Strike that portion of a party's pleadings;

(2) Preclude pre-hearing or discovery motions by that party;

(3) Preclude admission of that portion of a party's evidence at the hearing; or

(4) Preclude that portion of the testimony of that party's witnesses at the hearing.

§ 1503.218 Motions.

(a) *General.* A party applying for an order or ruling not specifically provided in this subpart must do so by motion. A party must comply with the requirements of this section when filing a motion. A party must serve a copy of each motion on each party.

(b) *Form and contents.* A party must state the relief sought by the motion and the particular grounds supporting that relief. If a party has evidence in support of a motion, the party must attach any supporting evidence, including affidavits, to the motion.

(c) *Filing of motions.* A motion made prior to the hearing must be in writing or orally on the record. Unless otherwise agreed by the parties or for good cause shown, a party must file any prehearing motion, and must serve a copy on each party, not later than 30 days before the hearing. Motions introduced during a hearing may be made orally on the record unless the administrative law judge directs otherwise.

(d) *Answers to motions.* Any party may file an answer, with affidavits or other evidence in support of the answer, not later than 10 days after service of a written motion on that party. When a motion is made during a hearing, the answer may be made at the hearing on the record, orally or in writing, within a reasonable time determined by the administrative law judge.

(e) *Rulings on motions.* The administrative law judge must rule on all motions as follows:

(1) *Discovery motions.* The administrative law judge must resolve all pending discovery motions not later than 10 days before the hearing.

(2) *Pre-hearing motions.* The administrative law judge must resolve all pending pre-hearing motions not later than 7 days before the hearing. If the administrative law judge issues a ruling or order orally, the administrative law judge must serve a written copy of the ruling or order, within 3 days, on each party. In all other cases, the administrative law judge must issue rulings and orders in writing and must serve a copy of the ruling or order on each party.

(3) *Motions made during the hearing.* The administrative law judge may issue rulings and orders on motions made during the hearing orally. Oral rulings or orders on motions must be made on the record.

(f) *Specific motions.* A party may file the following motions with the Enforcement Docket Clerk:

(1) *Motion to dismiss for insufficiency.* A respondent may file a motion to dismiss the complaint for insufficiency instead of filing an answer. If the administrative law judge denies the motion to dismiss the complaint for insufficiency, the respondent must file an answer not later than 20 days after service of the administrative law judge's denial of the motion. A motion to dismiss the complaint for insufficiency must show that the complaint fails to state a violation of 49 U.S.C. chapter 449 (except sections 44902, 44903(d), 44907(a)-(d)(1)(A), 44907(d)(1)(C)-(f),

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44908, and 44909), or a regulation prescribed or order issued under any of those provisions.

(2) *Motion to dismiss.* A party may file a motion to dismiss, specifying the grounds for dismissal. If an administrative law judge grants a motion to dismiss in part, a party may appeal the administrative law judge's ruling on the motion to dismiss under § 1503.219(b).

(i) *Motion to dismiss a request for a hearing.* An agency attorney may file a motion to dismiss a request for a hearing instead of filing a complaint. If the motion to dismiss is not granted, the agency attorney must file the complaint and must serve a copy of the complaint on each party not later than 20 days after service of the administrative law judge's ruling or order on the motion to dismiss. If the motion to dismiss is granted and the proceedings are terminated without a hearing, the respondent may file an appeal pursuant to § 1503.233. If required by the decision on appeal, the agency attorney must file a complaint and must serve a copy of the complaint on each party not later than 20 days after service of the decision on appeal.

(ii) *Motion to dismiss a complaint.* A respondent may file a motion to dismiss a complaint instead of filing an answer. If the motion to dismiss is not granted, the respondent must file an answer and must serve a copy of the answer on each party not later than 20 days after service of the administrative law judge's ruling or order on the motion to dismiss. If the motion to dismiss is granted and the proceedings are terminated without a hearing, the agency attorney may file an appeal pursuant to § 1503.233. If required by the decision on appeal, the respondent must file an answer and must serve a copy of the answer on each party not later than 10 days after service of the decision on appeal.

(3) *Motion for more definite statement.* A party may file a motion for more definite statement of any pleading that requires a response under this subpart. A party must set forth, in detail, the indefinite or uncertain allegations contained in a complaint or response to any pleading and must submit the details that the party believes would make the allegation or response definite and certain.

(i) *Complaint.* A respondent may file a motion requesting a more definite statement of the allegations contained in the complaint instead of filing an answer. If the administrative law judge grants the motion, the agency attorney must supply a more definite statement not later than 15 days after service of the ruling granting the motion. If the agency attorney fails to supply a more definite statement, the administrative law judge must strike the allegations in the complaint to which the motion is directed. If the administrative law judge denies the motion, the respondent must file an answer and must serve a copy of the answer on each party not later than 20 days after service of the order of denial.

(ii) *Answer.* An agency attorney may file a motion requesting a more definite statement if an answer fails to respond clearly to the allegations in the complaint. If the administrative law judge grants the motion, the respondent must supply a more definite statement not later than 15 days after service of the ruling on the motion. If the respondent fails to supply a more definite statement, the administrative law judge must strike those statements in the answer to which the motion is directed. The respondent's failure to supply a more definite statement may be deemed an admission of unanswered allegations in the complaint.

(4) *Motion to strike.* Any party may make a motion to strike any insufficient allegation or defense, or any redundant, immaterial, or irrelevant matter in a pleading. A party must file a motion to strike before a response is required under this subpart or, if a response is not required, not later than 10 days after service of the pleading.

(5) *Motion for decision.* A party may make a motion for decision, regarding all or any part of the proceedings, at any time before the administrative law judge has issued an initial decision in the proceedings. The administrative law judge must grant a party's motion for decision if the pleadings, depositions, answers to interrogatories, admissions, matters that the administrative law judge has officially noticed, or evidence introduced during the hearing show that there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law. The party making the motion for decision has the burden of showing that there is no genuine issue of material fact.

(6) *Motion for disqualification.* A party may file the motion at any time after the administrative law judge has been assigned to the proceedings but must make the motion before the administrative law judge files an initial decision in the proceedings.

(i) *Motion and supporting affidavit.* A party must state the grounds for disqualification, including, but not limited to, personal bias, pecuniary interest, or other factors showing disqualification, in the motion for disqualification. A party must submit an affidavit with the motion for disqualification that sets forth, in detail, the matters alleged to constitute grounds for disqualification.

(ii) *Answer.* A party must respond to the motion for disqualification not later than 5 days after service of the motion for disqualification.

(iii) *Decision on motion for disqualification.* The administrative law judge must render a decision on the motion for disqualification not later than 20 days after the motion has been filed. If the administrative law judge finds that the motion for disqualification and supporting affidavit show a basis for disqualification, the administrative law judge must withdraw from the proceedings immediately. If the administrative law judge finds that disqualification is not warranted, the administrative law judge must deny the motion and state the grounds for the denial on the record. If the administrative law judge fails to rule on a party's motion for disqualification within 20 days after the motion has been filed, the motion is deemed granted.

(iv) *Appeal.* A party may appeal the administrative law judge's denial of the motion for disqualification in accordance with § 1503.219(b).

§ 1503.219 Interlocutory appeals.

(a) *General.* Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the administrative law judge to the TSA decision maker until the initial decision has been entered on the record. A decision or order of the TSA decision maker on the interlocutory appeal does not constitute a final order of the Under Secretary for the purposes of judicial appellate review under 49 U.S.C. 46110.

(b) *Interlocutory appeal for cause.* If a party files a written request for an interlocutory appeal for cause with the administrative law judge, or orally requests an interlocutory appeal for cause, the proceedings are stayed until the administrative law judge issues a decision on the request. If the administrative law judge grants the request, the proceedings are stayed until the TSA decision maker issues a decision on the interlocutory appeal. The administrative law judge must grant an interlocutory appeal for cause if a party shows that delay of the appeal would be detrimental to the public interest or would result in undue prejudice to any party.

(c) *Interlocutory appeals of right.* If a party notifies the administrative law judge of an interlocutory appeal of right, the proceedings are stayed until the TSA decision maker issues a decision on the interlocutory appeal. A party may file an interlocutory appeal, without the consent of the administrative law judge, before an initial decision has been entered in the case of:

(1) A ruling or order by the administrative law judge barring a person from the proceedings.

(2) Failure of the administrative law judge to dismiss the proceedings in accordance with § 1503.215.

(3) A ruling or order by the administrative law judge in violation of § 1503.205(b).

(4) A ruling or order by the administrative law judge regarding public access to a particular docket or documents.

(d) *Procedure.* Not later than 10 days after the administrative law judge's decision forming the basis of an interlocutory appeal of right or not later than 10 days after the administrative law judge's decision granting an interlocutory appeal for cause, a party must file a notice of interlocutory appeal, with supporting documents, and the party must serve a copy of the notice and supporting documents on each party. Not later than 10 days after service of the appeal brief, a party must file a reply brief, if any, and the party must serve a copy of the reply brief on each party. The TSA decision maker must render a decision on the interlocutory appeal, on the record and as a part of the decision in the proceedings, within a reasonable time after receipt of the interlocutory appeal.

(e) *Frivolous appeals.* The TSA decision maker may reject frivolous, repetitive, or dilatory appeals, and may issue an order precluding one or more parties from making further interlocutory appeals in a proceeding in which there have been frivolous, repetitive, or dilatory interlocutory appeals.

§ 1503.220 Discovery.

(a) *Initiation of discovery.* Any party may initiate discovery described in this section, without the consent or approval of the administrative law judge, at any time after a complaint has been filed in the proceedings.

(b) *Methods of discovery.* The following methods of discovery are permitted under this section: depositions on oral examination or written questions of any person; written interrogatories directed to a party; requests for production of documents or tangible items to any person; and requests for admission by a party. A party is not required to file written discovery requests and responses with the administrative law judge or the Enforcement Docket Clerk. In the event of a discovery dispute, a party must attach a copy of these documents in support of a motion made under this section.

(c) *Service on the agency.* A party must serve each discovery request directed to the agency or any agency employee on the agency attorney of record.

(d) *Time for response to discovery requests.* Unless otherwise directed by this subpart or agreed by the parties, a party must respond to a request for discovery, including filing objections to a request for discovery, not later than 30 days after service of the request.

(e) *Scope of discovery.* Subject to the limits on discovery set forth in paragraph (f) of this section, a party may discover any matter that is not privileged and that is relevant to the subject matter of the proceeding. A party may discover information that relates to the claim or defense of any party including the existence, description, nature, custody, condition, and location of any document or other tangible item and the identity and location of any person having knowledge of discoverable matter. A party may discover facts known, or opinions held, by an expert who any other party expects to call to testify at the hearing. A party may not object to a discovery request on the basis that the information sought would not be admissible at the hearing if the information sought during discovery is reasonably calculated to lead to the discovery of admissible evidence.

(f) *Limiting discovery.* The administrative law judge must limit the frequency and extent of discovery permitted by this section if a party shows that—

(1) The information requested is cumulative or repetitious;

(2) The information requested can be obtained from another less burdensome and more convenient source;

(3) The party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section; or

(4) The method or scope of discovery requested by the party is unduly burdensome or expensive.

(g) *Confidential orders.* A party or person who has received a discovery request for information that is related to a trade secret, confidential or sensitive material, competitive or commercial information, proprietary data, or information on research and development, may file a motion for a confidential order with the administrative law judge and must serve a copy of the motion for a confidential order on each party.

(1) The party or person making the motion must show that the confidential order is necessary to protect the information from disclosure to the public.

(2) If the administrative law judge determines that the requested material is not necessary to decide the case, the administrative law judge must preclude any inquiry into the matter by any party.

(3) If the administrative law judge determines that the requested material may be disclosed during discovery, the administrative law judge may order that the material may be discovered and disclosed under limited conditions or may be used only under certain terms and conditions.

(4) If the administrative law judge determines that the requested material is necessary to decide the case and that a confidential order is warranted, the administrative law judge must provide:

(i) An opportunity for review of the document by the parties off the record;

(ii) Procedures for excluding the information from the record; and

(iii) Order that the parties must not disclose the information in any manner and the parties must not use the information in any other proceeding.

(h) *Protective orders.* A party or a person who has received a request for discovery may file a motion for protective order and must serve a copy of the motion for protective order on each party. The party or person making the motion must show that the protective order is necessary to protect the party or the person from annoyance, embarrassment, oppression, or undue burden or expense. As part of the protective order, the administrative law judge may:

(1) Deny the discovery request;

(2) Order that discovery be conducted only on specified terms and conditions, including a designation of the time or place for discovery or a determination of the method of discovery; or

(3) Limit the scope of discovery or preclude any inquiry into certain matters during discovery.

(i) *Duty to supplement or amend responses.* A party who has responded to a discovery request has a duty to supplement or amend the response, as soon as the information is known, as follows:

(1) A party must supplement or amend any response to a question requesting the identity and location of any person having knowledge of discoverable matters.

(2) A party must supplement or amend any response to a question requesting the identity of each person

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who will be called to testify at the hearing as an expert witness and the subject matter and substance of that witness' testimony.

(3) A party must supplement or amend any response that was incorrect when made or any response that was correct when made but is no longer correct, accurate, or complete.

(j) *Depositions.* The following rules apply to depositions taken pursuant to this section:

(1) *Form.* A deposition must be taken on the record and reduced to writing. The person being deposed must sign the deposition unless the parties agree to waive the requirement of a signature.

(2) *Administration of oaths.* Within the United States, or a territory or possession subject to the jurisdiction of the United States, a party must take a deposition before a person authorized to administer oaths by the laws of the United States or authorized by the law of the place where the examination is held. In foreign countries, a party will take a deposition in any manner allowed by the Federal Rules of Civil Procedure (28 U.S.C. App.).

(3) *Notice of deposition.* A party must serve a notice of deposition, stating the time and place of the deposition and the name and address of each person to be examined, on the person to be deposed, on the administrative law judge, on the Enforcement Docket Clerk, and on each party not later than 7 days before the deposition. A party may serve a notice of deposition less than 7 days before the deposition only with consent of the administrative law judge. If a subpoena duces tecum is to be served on the person to be examined, the party must attach a copy of the subpoena duces tecum that describes the materials to be produced at the deposition to the notice of deposition.

(4) *Use of depositions.* A party may use any part or all of a deposition at a hearing authorized under this subpart only upon a showing of good cause. The deposition may be used against any party who was present or represented at the deposition or who had reasonable notice of the deposition.

(k) *Interrogatories.* A party, the party's attorney, or the party's representative may sign the party's responses to interrogatories. A party must answer each interrogatory separately and completely in writing. If a party objects to an interrogatory, the party must state the objection and the reasons for the objection. An opposing party may use any part or all of a party's responses to interrogatories at a hearing authorized under this subpart to the extent that the response is relevant, material, and not repetitious.

(1) A party must not serve more than 30 interrogatories to each other party. Each subpart of an interrogatory will be counted as a separate interrogatory.

(2) Before serving additional interrogatories on a party, a party must file a motion for leave to serve additional interrogatories on a party with the administrative law judge and must serve a copy on each party before serving additional interrogatories on a party. The administrative law judge may grant the motion only if the party shows good cause for the party's failure to inquire about the information previously and that the information cannot reasonably be obtained using less burdensome discovery methods or be obtained from other sources.

(l) *Requests for admission.* A party may serve a written request for admission of the truth of any matter within the scope of discovery under this section or the authenticity of any document described in the request. A party must set forth each request for admission separately. A party must serve copies of documents referenced in the request for admission unless the documents have been provided or are reasonably available for inspection and copying.

(1) *Time.* A party's failure to respond to a request for admission, in writing and signed by the attorney or the party, not later than 30 days after service of the request, is deemed an admission of the truth of the statement or statements contained in the request for admission. The administrative law judge may determine that a failure to respond to a request for admission is not deemed an admission of the truth if a party shows that the failure was due to circumstances beyond the control of the party or the party's attorney.

(2) *Response.* A party may object to a request for admission and must state the reasons for objection. A party may specifically deny the truth of the matter or describe the reasons why the party is unable to truthfully deny or admit the matter. If a party is unable to deny or admit the truth of the matter, the party must show that the party has made reasonable inquiry into the matter or that the information known to, or readily obtainable by, the party is insufficient to enable the party to admit or deny the matter. A party may admit or deny any part of the request for admission. If the administrative law judge determines that a response does not comply with the requirements of this rule or that the response is insufficient, the matter is deemed admitted.

(3) *Effect of admission.* Any matter admitted or deemed admitted under this section is conclusively established for the purpose of the hearing and appeal.

(m) *Motion to compel discovery.* A party may make a motion to compel discovery if a person refuses to answer a question during a deposition, a party fails or refuses to answer an interrogatory, if a person gives an evasive or incomplete answer during a deposition or when responding to an interrogatory, or a party fails or refuses to produce documents or tangible items. During a deposition, the proponent of a question may complete the deposition or may adjourn the examination before making a motion to compel if a person refuses to answer.

(n) *Failure to comply with a discovery order or order to compel.* If a party fails to comply with a discovery order or an order to compel, the administrative law judge, limited to the extent of the party's failure to comply with the discovery order or motion to compel, may:

(1) Strike that portion of a party's pleadings;

(2) Preclude prehearing or discovery motions by that party;

(3) Preclude admission of that portion of a party's evidence at the hearing; or

(4) Preclude that portion of the testimony of that party's witnesses at the hearing.

§ 1503.221 Notice of hearing.

(a) *Notice.* The administrative law judge must give each party at least 60 days notice of the date, time, and location of the hearing. With the consent of the administrative law judge, the parties may agree to hold the hearing on an earlier date than the date specified in the notice of hearing.

(b) *Date, time, and location of the hearing.* The administrative law judge to whom the proceedings have been assigned must set a reasonable date, time, and location for the hearing. The administrative law judge must consider the need for discovery and any joint procedural or discovery schedule submitted by the parties when determining the hearing date. The administrative law judge must give due regard to the convenience of the parties, the location where the majority of the witnesses reside or work, and whether the location is served by a scheduled air carrier.

§ 1503.222 Evidence.

(a) *General.* A party is entitled to present the party's case or defense by oral, documentary, or demonstrative evidence, to submit rebuttal evidence, and to conduct any cross-examination that may be required for a full and true disclosure of the facts.

(b) *Admissibility.* A party may introduce any oral, documentary, or demonstrative evidence in support of the party's case or defense. The administrative law judge must admit any oral, documentary, or demonstrative evidence introduced by a party but must exclude irrelevant, immaterial, or unduly repetitious evidence.

(c) *Hearsay evidence.* Hearsay evidence is admissible in proceedings governed by this subpart. The fact that evidence submitted by a party is hearsay goes only to the weight of the evidence and does not affect its admissibility.

§ 1503.223 Standard of proof.

The administrative law judge may issue an initial decision or may rule in a party's favor only if the decision or ruling is supported by, and in accordance with, the reliable, probative, and substantial evidence contained in the record. In order to prevail, the party with the burden of proof must prove the party's case or defense by a preponderance of reliable, probative, and substantial evidence.

§ 1503.224 Burden of proof.

(a) Except in the case of an affirmative defense, the burden of proof is on the agency.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

(c) A party who has asserted an affirmative defense has the burden of proving the affirmative defense.

§ 1503.225 Offer of proof.

A party whose evidence has been excluded by a ruling of the administrative law judge may offer the evidence for the record on appeal.

§ 1503.226 Public disclosure of evidence.

This section applies to information other than Sensitive Security Information (SSI). All release of SSI is governed by § 1503.230.

(a) The administrative law judge may order that any other information contained in the record be withheld from public disclosure. Any person may object to disclosure of information in the record by filing a written motion to withhold specific information with the administrative law judge and serving a copy of the motion on each party. The party must state the specific grounds for nondisclosure in the motion.

(b) The administrative law judge must grant the motion to withhold information in the record if, based on the motion and any response to the motion, the administrative law judge determines that disclosure would be detrimental to transportation safety, disclosure would not be in the public interest, or that the information is not otherwise required to be made available to the public.

§ 1503.227 Expert or opinion witnesses.

An employee of the agency may not be called as an expert or opinion witness, for any party other than the TSA, in any proceeding governed by this subpart. An employee of a respondent may not be called by an agency attorney as an expert or opinion witness for the TSA in any proceeding governed by this subpart to which the respondent is a party.

§ 1503.228 Subpoenas.

(a) *Request for subpoena.* A party may obtain a subpoena to compel the attendance of a witness at a deposition or hearing or to require the production of documents or tangible items from the administrative law judge who is assigned to the case, or, if no administrative law judge is assigned or the assigned law judge is unavailable, from the chief administrative law judge. The party must complete the subpoena, stating the title of the action and the date and time for the witness' attendance or production of documents or items. The party who obtained the subpoena must serve the subpoena on the witness.

(b) *Motion to quash or modify the subpoena.* A party, or any person upon whom a subpoena has been served, may file a motion to quash or modify the subpoena at or before the time specified in the subpoena for compliance. The applicant must describe, in detail, the basis for the application to quash or modify the subpoena including, but not limited to, a statement that the testimony, document, or tangible evidence is not relevant to the proceeding, that the subpoena is not reasonably tailored to the scope of the proceeding, or that the subpoena is unreasonable and oppressive. A motion to quash or modify the subpoena will stay the effect of the subpoena pending a decision by the administrative law judge on the motion.

(c) *Enforcement of subpoena.* Upon a showing that a person has failed or refused to comply with a subpoena, a party may apply to the local Federal district court to seek judicial enforcement of the subpoena in accordance with 49 U.S.C. 46104.

§ 1503.229 Witness fees.

(a) *General.* Unless otherwise authorized by the administrative law judge, the party who applies for a subpoena to compel the attendance of a witness at a deposition or hearing, or the party at whose request a witness appears at a deposition or hearing, must pay the witness fees described in this section.

(b) *Amount.* Except for an employee of the agency who appears at the direction of the agency, a witness who appears at a deposition or hearing is entitled to the same fees and mileage expenses as are paid to a witness in a court of the United States in comparable circumstances.

§ 1503.230 Record.

(a) *Exclusive record.* The request for hearing, complaint, answer, transcript of all testimony in the hearing, all exhibits received into evidence, and all motions, applications, requests, and rulings will constitute the exclusive record for decision of the proceedings and the basis for the issuance of any orders in the proceeding.

(b) *Examination and copying of record—(1) Generally.* Any person interested in reviewing or obtaining a copy of a record may do so only by submitting a FOIA request under 5 U.S.C. 552 and 49 CFR part 7. Portions of the record may be exempt from disclosure pursuant to FOIA.

(2) *Docket Files or Documents Not for Public Disclosure.* (i) Only the following persons may review docket files or particular documents that are not for public disclosure:

(A) parties to the proceedings;

(B) their designated representatives; and

(C) persons who have a need to know as determined by the Under Secretary.

(ii) Those persons with permission to review these documents or docket files may view the materials at the TSA Enforcement Docket, GSA Building, Room 5008, 301 Seventh Street SW., Washington, DC 20407. Persons with access to these records may have a copy of the records after payment of reasonable costs.

§ 1503.231 Argument before the administrative law judge.

(a) *Arguments during the hearing.* During the hearing, the administrative law judge must give the parties a reasonable opportunity to present arguments on the record supporting or opposing motions, objections, and rulings if the parties request an opportunity for argument. The administrative law judge may request written arguments during the hearing if the administrative law judge finds that submission of written arguments would be reasonable.

(b) *Final oral argument.* At the conclusion of the hearing and before the

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administrative law judge issues an initial decision in the proceedings, the parties are entitled to submit oral proposed findings of fact and conclusions of law, exceptions to rulings of the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. At the conclusion of the hearing, a party may waive final oral argument.

(c) *Posthearing briefs.* The administrative law judge may request written posthearing briefs before the administrative law judge issues an initial decision in the proceedings. If a party files a written posthearing brief, the party must include proposed findings of fact and conclusions of law, exceptions to rulings of the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. The administrative law judge must give the parties a reasonable opportunity, not more than 30 days after receipt of the transcript, to prepare and submit the briefs.

§ 1503.232 Initial decision.

(a) *Contents.* The administrative law judge must issue an initial decision at the conclusion of the hearing. In each oral or written decision, the administrative law judge must include findings of fact and conclusions of law, and the grounds supporting those findings and conclusions, upon all material issues of fact, the credibility of witnesses, the applicable law, any exercise of the administrative law judge's discretion, the amount of any civil penalty found appropriate by the administrative law judge, and a discussion of the basis for any order issued in the proceedings. The administrative law judge is not required to provide a written explanation for rulings on objections, procedural motions, and other matters not directly relevant to the substance of the initial decision. If the administrative law judge refers to any previous unreported or unpublished initial decision, the administrative law judge must make copies of that initial decision available to all parties and the TSA decision maker.

(b) *Oral decision.* Except as provided in paragraph (c) of this section, at the conclusion of the hearing, the administrative law judge must issue the initial decision and order orally on the record.

(c) *Written decision.* The administrative law judge may issue a written initial decision not later than 30 days after the conclusion of the hearing or submission of the last post-hearing brief if the administrative law judge finds that issuing a written initial decision is reasonable. The administrative law judge must serve a copy of any written initial decision on each party.

(d) *Order assessing civil penalty.* Unless appealed pursuant to § 1503.233, the initial decision issued by the administrative law judge will be considered an order assessing civil penalty if the administrative law judge finds that an alleged violation occurred and determines that a civil penalty, in an amount found appropriate by the administrative law judge, is warranted.

§ 1503.233 Appeal from initial decision.

(a) *Notice of appeal.* A party may appeal the initial decision, and any decision not previously appealed pursuant to § 1503.219, by filing a notice of appeal with the Enforcement Docket Clerk. A party must file the notice of appeal with the U.S. ?Department of Transportation, Transportation Security Administration, Office of the Chief Counsel, TSA–2, Attention: Enforcement Docket Clerk, 400 Seventh Street, SW., Washington, DC 20590. A party must file the notice of appeal not later than 10 days after entry of the oral initial decision on the record or service of the written initial decision on the parties and must serve a copy of the notice of appeal on each party.

(b) *Issues on appeal.* A party may appeal only the following issues:

(1) Whether each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;

(2) Whether each conclusion of law is made in accordance with applicable law, precedent, and public policy; and

(3) Whether the administrative law judge committed any prejudicial errors during the hearing that support the appeal.

(c) *Perfecting an appeal.* Unless otherwise agreed by the parties, a party must perfect an appeal, not later than 50 days after entry of the oral initial decision on the record or service of the written initial decision on the party, by filing an appeal brief with the Enforcement Docket Clerk.

(1) *Extension of time by agreement of the parties.* The parties may agree to extend the time for perfecting the appeal with the consent of the TSA decision maker. If the TSA decision maker grants an extension of time to perfect the appeal, the Enforcement Docket Clerk will serve a letter confirming the extension of time on each party.

(2) *Written motion for extension.* If the parties do not agree to an extension of time for perfecting an appeal, a party desiring an extension of time may file a written motion for an extension with the Enforcement Docket Clerk and must serve a copy of the motion on each party. The TSA decision maker may grant an extension if good cause for the extension is shown in the motion.

(d) *Appeal briefs.* A party must file the appeal brief with the TSA Enforcement Docket Clerk and must serve a copy of the appeal brief on each party.

(1) A party must set forth, in detail, the party's specific objections to the initial decision or rulings in the appeal brief. A party also must set forth, in detail, the basis for the appeal, the reasons supporting the appeal, and the relief requested in the appeal. If the party relies on evidence contained in the record for the appeal, the party must specifically refer to the pertinent evidence contained in the transcript in the appeal brief.

(2) The TSA decision maker may dismiss an appeal, on the TSA decision maker's own initiative or upon motion of any other party, where a party has filed a notice of appeal but fails to perfect the appeal by timely filing an appeal brief.

(e) *Reply brief.* Unless otherwise agreed by the parties, any party may file a reply brief not later than 35 days after the appeal brief has been served on that party. The party filing the reply brief must serve a copy of the reply brief on each party. If the party relies on evidence contained in the record for the reply, the party must specifically refer to the pertinent evidence contained in the transcript in the reply brief.

(1) *Extension of time by agreement of the parties.* The parties may agree to extend the time for filing a reply brief with the consent of the TSA decision maker. If the TSA decision maker grants an extension of time to file the reply brief, the Enforcement Docket Clerk will serve a letter confirming the extension of time on each party.

(2) *Written motion for extension.* If the parties do not agree to an extension of time for filing a reply brief, a party desiring an extension of time may file a written motion for an extension and will serve a copy of the motion on each party. The TSA decision maker may grant an extension if good cause for the extension is shown in the motion.

(f) *Other briefs.* The TSA decision maker may allow any person to submit an amicus curiae brief in an appeal of an initial decision. A party may not file more than one appeal brief or reply brief. A party may petition the TSA decision maker, in writing, for leave to file an additional brief and must serve a copy of the petition on each party. The party may not file the additional brief with the petition. The TSA decision maker may grant leave to file an additional brief if the party demonstrates good cause for allowing additional argument on the appeal. The TSA decision maker will allow a reasonable time for the party to file the additional brief.

(g) *Number of copies.* A party must file the original appeal brief or the original reply brief, and two copies of the brief, with the Enforcement Docket Clerk.

(h) *Oral argument.* The TSA decision maker has sole discretion to permit oral argument on the appeal. On the TSA decision maker's own initiative or upon written motion by any party, the TSA decision maker may find that oral argument will contribute substantially to the development of the issues on appeal and may grant the parties an opportunity for oral argument.

(i) *Waiver of objections on appeal.* If a party fails to object to any alleged error regarding the proceedings in an appeal or a reply brief, the party waives any objection to the alleged error. The TSA decision maker is not required to consider any objection in an appeal brief or any argument in the reply brief if a party's objection is based on evidence contained on the record and the party does not specifically refer to the pertinent evidence from the record in the brief.

(j) *The TSA decision maker's decision on appeal.* The TSA decision maker will review the briefs on appeal and the oral argument, if any, to determine if the administrative law judge committed prejudicial error in the proceedings or that the initial decision should be affirmed, modified, or reversed. The TSA decision maker may affirm, modify, or reverse the initial decision, make any necessary findings, or may remand the case for any proceedings that the TSA decision maker determines may be necessary.

(1) The TSA decision maker may raise any issue, on the TSA decision maker's own initiative, that is required for proper disposition of the proceedings. The TSA decision maker will give the parties a reasonable opportunity to submit arguments on the new issues before making a decision on appeal. If an issue raised by the TSA decision maker requires the consideration of additional testimony or evidence, the TSA decision maker will remand the case to the administrative law judge for further proceedings and an initial decision related to that issue. If an issue raised by the TSA decision maker is solely an issue of law or the issue was addressed at the hearing but was not raised by a party in the briefs on appeal, a remand of the case to the administrative law judge for further proceedings is not required but may be provided in the discretion of the TSA decision maker.

(2) The TSA decision maker will issue the final decision and order of the Under Secretary on appeal in writing and will serve a copy of the decision and order on each party. Unless a petition for review is filed pursuant to § 1503.235, a final decision and order of the Under Secretary will be considered an order assessing civil penalty if the TSA decision maker finds that an alleged violation occurred and a civil penalty is warranted.

(3) A final decision and order of the Under Secretary after appeal is precedent in any other civil penalty action. Any issue, finding or conclusion, order, ruling, or initial decision of an administrative law judge that has not been appealed to the TSA decision maker is not precedent in any other civil penalty action.

(4) The TSA decision maker will determine whether the decision and order of the TSA decision maker, with the administrative law judge's initial decision or order attached, may be released to the public, either in whole or in redacted form. In making this determination, the TSA decision maker will consider whether disclosure of any of the information in the decision and order would be detrimental to transportation safety, would not be in the public interest, or should not otherwise be required to be made available to the public.

§ 1503.234 Petition to reconsider or modify a final decision and order of the TSA decision maker on appeal.

(a) *General.* Any party may petition the TSA decision maker to reconsider or modify a final decision and order issued by the TSA decision maker on appeal from an initial decision. A party must file a petition to reconsider or modify not later than 30 days after service of the TSA decision maker's final decision and order on appeal and must serve a copy of the petition on each party. The TSA decision maker will not reconsider or modify an initial decision and order issued by an administrative law judge that has not been appealed by any party to the TSA decision maker and filed with the Enforcement Docket Clerk.

(b) *Form and number of copies.* A party must file a petition to reconsider or modify, in writing. The party must file the original petition with the Enforcement Docket Clerk and must serve a copy of the petition on each party.

(c) *Contents.* A party must state briefly and specifically the alleged errors in the final decision and order on appeal, the relief sought by the party, and the grounds that support, the petition to reconsider or modify.

(1) If the petition is based, in whole or in part, on allegations regarding the consequences of the TSA decision maker's decision, the party must describe these allegations and must describe, and support, the basis for the allegations.

(2) If the petition is based, in whole or in part, on new material not previously raised in the proceedings, the party must set forth the new material and include affidavits of prospective witnesses and authenticated documents that would be introduced in support of the new material. The party must explain, in detail, why the new material was not discovered through due diligence prior to the hearing.

(d) *Repetitious and frivolous petitions.* The TSA decision maker will not consider repetitious or frivolous petitions. The TSA decision maker may summarily dismiss repetitious or frivolous petitions to reconsider or modify.

(e) *Reply petitions.* Any other party may reply to a petition to reconsider or modify, not later than 10 days after service of the petition on that party, by filing a reply with the Enforcement Docket Clerk. A party must serve a copy of the reply on each party.

(f) *Effect of filing petition.* Unless otherwise ordered by the TSA decision maker, filing of a petition pursuant to this section will stay the effective date of the TSA decision maker's final decision and order on appeal.

(g) *The TSA decision maker's decision on petition.* The TSA decision maker has sole discretion to grant or deny a petition to reconsider or modify. The TSA decision maker will grant or deny a petition to reconsider or modify within a reasonable time after receipt of the petition or receipt of the reply petition, if any. The TSA decision maker may affirm, modify, or reverse the final decision and order on appeal, or may remand the case for any proceedings that the TSA decision maker determines may be necessary.

§ 1503.235 Judicial review of a final order.

A person may seek judicial review of a final order of the Under Secretary as provided in 49 U.S.C. 46110. A party seeking judicial review of a final order must file a petition for review not later than 60 days after the final order has been served on the party.

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Subpart H—Civil Monetary Penalty Inflation Adjustment

§ 1503.301 Scope and purpose.

(a) This subpart provides a mechanism for the regular adjustment for inflation of civil monetary penalties in conformity with the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 (note), as amended, in order to maintain the deterrent effect of civil monetary penalties and to promote compliance with the law. This subpart also sets out the current adjusted maximum civil monetary penalties or range of minimum and maximum civil monetary penalties for each statutory civil penalty subject to the TSA's jurisdiction.

(b) Each adjustment to the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, made in accordance with this subpart applies prospectively from the date it becomes effective to actions initiated under this part, notwithstanding references to a specific maximum civil monetary penalty or range of minimum and maximum civil monetary penalties contained elsewhere in this part.

§ 1503.303 Definitions.

The following definitions apply to this subpart:

Civil monetary penalty means any penalty, fine, or other sanction that:

(1) Is for a specific monetary amount as provided by Federal law or has a maximum amount provided by Federal law;

(2) Is assessed or enforced by the TSA pursuant to Federal law; and

(3) Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

Consumer Price Index means the *Consumer Price Index* for all urban consumers published by the Department of Labor.

§ 1503.305 Cost of living adjustments of civil monetary penalties.

(a) *Adjustment determination.* Except for the limitation to the initial adjustment to statutory maximum civil monetary penalties or range of minimum and maximum civil monetary penalties set forth in paragraph (c) of this section, the inflation adjustment under this subpart is determined by increasing the maximum civil monetary penalty or range of minimum and maximum civil monetary penalty for each civil monetary penalty by the cost-of-living adjustment. Any increase determined under this paragraph (a) is rounded to the nearest:

(1) Multiple of $10 in the case of penalties less than or equal to $100;

(2) Multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) Multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) Multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) Multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) Multiple of $25,000 in the case of penalties greater than $200,000.

(b) *Definition.* For purposes of paragraph (a) of this section, the term *cost-of-living adjustment* means the percentage (if any) for each civil monetary penalty by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

(c) *Limitation on initial adjustment.* The initial adjustment of maximum civil penalty or range of minimum and maximum civil monetary penalties made pursuant to this subpart does not exceed 10 percent of the statutory maximum civil penalty before an adjustment under this subpart is made. This limitation applies only to the initial adjustment, effective on January 21, 1997.

(d) *Inflation adjustment.* Minimum and maximum civil monetary penalties within the jurisdiction of the TSA are adjusted for inflation as follows:

MINIMUM AND MAXIMUM CIVIL PENALTIES—ADJUSTED FOR INFLATION, EFFECTIVE MARCH 13, 2002

United States Code citation	Civil monetary penalty description	Minimum penalty	New adjusted minimum penalty amount	Maximum penalty amount when last set or adjusted pursuant to law	New or adjusted maximum penalty amount
49 U.S.C. 46301(a)(1) ...	Violations of statutory provisions listed in 49 U.S.C. 46301(a)(1), regulations prescribed, or orders issued under those provisions.	N/A	N/A	$1,100 per violation, adjusted 1/21/97.	$1,100 per violation, adjusted 1/21/97.
49 U.S.C. 46301(a)(2) ...	Violations of statutory provisions listed in 49 U.S.C. 46301(a)(2), regulations prescribed, or orders issued under those provisions by a person operating an aircraft for the transportation of passengers or property for compensation.	N/A	N/A	$11,000 per violation, adjusted 1/21/97.	$11,000 per violation, adjusted 1/21/97.

Issued in Washington, DC, on July 26, 2002.

J.M. Loy,

Acting Under Secretary of Transportation for Security.

[FR Doc. 02–19843 Filed 8–7–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 080502A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of Pacific ocean perch in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of the Pacific ocean perch 2002 total allowable catch (TAC) in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 5, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC allocation of Pacific ocean perch for the Central Regulatory Area was established as 8,220 metric tons by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002, and 67 FR 34860, May 6, 2002).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the allocation of the Pacific ocean perch TAC in the Central Regulatory Area of the GOA has been achieved. Therefore, NMFS is requiring that further catches of Pacific ocean perch in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to overharvesting the allocation of the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30 day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 5, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20081 Filed 8–5–02; 3:37 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D.060202F]

Fisheries of the Exclusive Economic Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the third seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 5, 2002, until 1200 hrs, A.l.t., September 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch allowance for the GOA trawl shallow-water species fishery, which is defined at § 679.21(d)(3)(iii)(A), was established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002) for the third season, the period June 30, 2002, through September 1, 2002, as 200 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the third seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are: pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species.≥

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

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This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that, because the third seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA has been reached, the need to immediately implement this action constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B). These procedures are unnecessary and contrary to the public interest because of the need to implement these measures in a timely fashion. The third seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA has been reached. This constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 5, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20082 Filed 8–5–02; 3:37 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 153
Thursday, August 8, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 7

RIN 3150–AH02

Federal Advisory Committee Act Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations on the Federal Advisory Committee Act (FACA) to conform with newly issued General Services Administration regulations.

DATES: Submit comments by October 7, 2002. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn.: Rulemakings and Adjudications Staff. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852–2738, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Comments also may be submitted, viewed, and downloaded via the NRC's interactive rulemaking Web site (*http://ruleforum.llnl.gov*). This site provides the ability to upload comments as files (any format) if your Web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher, 301–415–5905 (e-mail *CAG@nrc.gov*).

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. Except for restricted information, documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *PDR@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: John Szabo, Senior Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1610, e-mail *JLS@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background
II. Plain Language
III. Voluntary Consensus Standards
IV. Environmental Impact: Categorical Exclusion
V. Paperwork Reduction Act Statement
VI. Regulatory Analysis
VII. Regulatory Flexibility Certification
VIII. Backfit Analysis

I. Background

In 1972, the Congress enacted the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.) to regulate the formation and operation of advisory committees by Federal agencies. Section 7(c) of the Act requires the Administrator of the General Services Administration (GSA) to establish administrative guidelines and management controls applicable to advisory committees. Section 8(a) of the Act directs the head of each Federal agency to establish uniform administrative guidelines and management controls for advisory committees established by that agency. Agency guidelines and management controls must be consistent with GSA's directives.

In 1975, the NRC promulgated its Advisory Committee regulations as 10 CFR part 7 (40 FR 8774; March 3, 1975). A revision of part 7 was published on June 27, 1989 (54 FR 26947), in order to maintain consistency between NRC and GSA FACA regulations, which had been issued on December 2, 1987 (52 FR 45929). The GSA issued a revision of its regulations, effective August 20, 2001 (66 FR 37728; July 19, 2001), providing administrative and interpretive guidelines and management controls for Federal agencies concerning the implementation of the Act. GSA's new regulations reflect recent legislative changes, shifts in Federal policy, and Federal court decisions issued since the GSA regulations were issued in 1987.

The Commission has determined that NRC's advisory committee regulations should be revised to make them more consistent with the new GSA FACA regulations. This proposed rule would revise the NRC's FACA regulations to meet that goal.

The following are the most significant changes that would be made to current NRC regulations by this proposed rule:

1. The meetings of NRC advisory committee subcommittees would be exempted from FACA requirements unless the subcommittee reports directly to an NRC employee or its recommendations are adopted by its parent advisory committee without full deliberations by the parent committee.

2. There would be an exemption from FACA requirements for meetings composed only of Federal employees and officials or employees of State, local, and tribal governments to exchange views, information, or advice on the management or implementation of Federal programs in which they share responsibilities, as provided in section 204(b) of the Unfunded Mandates Act of 1995.

3. There would be an exemption from FACA requirements for meetings between NRC employees and committees or groups not actually managed or controlled by the Government which were created by a non-Federal entity and meetings with NRC contractors, applicants, or licensees to discuss specific matters involving the contract or the Commission's efforts to ensure compliance with regulations.

4. The definition of a "utilized" committee would be amended to mean a group or committee not established by the Federal Government and whose operations are not managed or controlled by a Federal agency.

5. There would be a de-emphasis of the goal of achieving "consensus" as an important factor in determining whether an advisory group is subject to FACA. Instead, the proposed rule provides that whether there is a group deliberative process is a more important consideration than whether the group seeks to achieve consensus.

6. The definition of an "operational committee" would be amended to mean a group performing operational

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functions specifically authorized by statute or Presidential directive, such as making or implementing Governmental decisions or policy, as long as the group does not become primarily advisory in nature.

7. New definitions of "discretionary" and "non-discretionary" committees would be created. "Non-discretionary" committees would be defined as advisory committees required by statute or Presidential directive, while "discretionary" committees would be defined as those established under the authority of an agency head or authorized by statute, but not required by Congress.

8. The definition of advisory committee meeting would be amended to include a gathering of advisory committee members through electronic means, such as by teleconference, video conference, or the Internet.

9. A provision would be added to the effect that the Commission may periodically invite feedback from the public regarding the effectiveness of NRC advisory committees. Currently, NRC's Advisory Committees on Reactor Safeguards, Nuclear Waste, and the Medical Uses of Isotopes conduct periodic self-assessments of their performance. They solicit and receive the views of various stakeholders and the general public on their activities.

10. The NRC would be required to consult with the GSA Committee Management Secretariat prior to the establishment, renewal, or reestablishment of an advisory committee, in addition to current requirements on seeking the Secretariat's review.

11. There would be a requirement for reasonable access for persons with disabilities to attend advisory committee meetings.

II. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal government's writing be in plain language (63 FR 31883; June 10, 1998). Comments on the clarity and effectiveness of the language used in this proposed rule should be sent to the NRC as indicated under the **ADDRESSES** heading.

III. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the Commission is clarifying its practices regarding Federal advisory committees. This action does not constitute the establishment of a technical standard that requires the use of a voluntary consensus standard developed by such a body.

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for the proposed regulation.

V. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Analysis

In 2001, the General Services Administration (GSA) published amended Federal Advisory Committee Act (FACA) regulations providing administrative and interpretive guidelines and management controls for Federal agencies concerning the implementation of the Act (66 FR 37728; July 19, 2001). This proposed rule will conform NRC regulations with the amended GSA regulations issued in 2001. The proposed rule will not have a significant impact on state and local governments, particular geographical regions, or health, safety and the environment; nor will it impose substantial costs on licensees, the NRC or other Federal agencies. This constitutes the regulatory analysis for this proposed rule.

VII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rule does not impose any obligation or have any financial impact on entities, including any regulated entities that may be "small entities," as defined by the Regulatory Flexibility Act (5 U.S.C. 601(3)), or under the size standards established by the NRC in 10 CFR 2.810.

VIII. Backfit Analysis

The NRC has determined that a backfit analysis is not required for this proposed rule because these amendments do not include any provisions that would impose backfits as defined in 10 CFR Chapter 1.

List of Subjects in 10 CFR Part 7

Advisory committees, Government in the Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 7.

PART 7—ADVISORY COMMITTEES

1. The authority citation for part 7 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 92–463, 86 Stat. 770 (5 U.S.C. App.).

2. In § 7.1, paragraph (d) is revised and paragraphs (e)(1), (e)(2) and (i) are added to read as follows:

§ 7.1 Policy.

* * * * *

(d)(1) An NRC advisory committee shall be established only:

(i) When establishment of the committee is required by law;

(ii) When the Commission determines that the committee is essential to the conduct of NRC business; or

(iii) When the information to be obtained is not available through an existing advisory committee or a source within the Federal Government.

(2) Before establishing an advisory committee, the Commission shall consider whether:

(i) Committee deliberations will result in a significant contribution to the creation, amendment, or elimination of regulations, guidelines, or rules affecting NRC business;

(ii) The information to be obtained is available through another source within the Federal Government;

(iii) The committee will make recommendations resulting in significant improvements in service or reductions in cost; or

(iv) The committee's recommendations will provide an important additional perspective or viewpoint relating to NRC's mission. The advice or recommendations of an advisory committee should be the result of the advisory committee's independent judgment.

(e) * * *

(1) An advisory committee not required to be established by statute terminates no later than two years after its establishment or last renewal, unless renewed.

(2) An advisory committee required to be established by statute terminates upon the expiration of the time explicitly specified in the statute or implied by operation of the statute.

* * * * *

(i) The Commission may periodically invite feedback from the public regarding the effectiveness of NRC advisory committees.

3. Section 7.2 is revised to read as follows:

§ 7.2 Definitions.

Act means the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Administrator means the Administrator of General Services.

Advisory committee means any committee, board, commission, council, conference, panel, task force, or similar group, or any subcommittee or other subgroup thereof, that is established by statute for the purpose of providing advice or recommendations on issues of policy to an official, branch, or agency of the Federal Government, or that is established or utilized by the President or any agency official to obtain advice or recommendations on issues or policies that fall within the scope of his or her responsibilities, except that the term "advisory committee" does not include the following advisory meetings or groups:

(1) Any group composed wholly of full-time officers or employees of the Federal Government;

(2) Any group specifically exempted from the Act or these regulations by an Act of Congress;

(3) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to any State or local government unit or an official thereof;

(4) Any group that performs primarily operational functions specifically provided by law. Operational functions are those specifically authorized by statute or Presidential directive, such as making or implementing Government decisions or policy, as long as the group does not become primarily advisory in nature;

(5) Any meeting initiated by the President or one or more Federal employees for the purpose of obtaining advice or recommendations from one individual;

(6) Any meeting between an NRC employee with a non-governmental individual or group where advice or recommendations are provided by the attendees on an individual basis and are not sought from the group as a whole;

(7) Any meeting with a committee or group created by a non-Federal entity that is not managed or controlled by the President or a Federal employee;

(8) Any meeting of two or more advisory committee members convened solely to:

(i) Discuss administrative matters relating to the operation of their advisory committee;

(ii) Receive administrative information from a Federal employee;

(iii) Gather information or conduct research for a chartered advisory committee to analyze relevant issues and facts for their advisory committee; or

(iv) Draft proposed position papers for deliberation by their advisory committee;

(9) Any meeting with a group initiated by the President or by one or more Federal employees for the purpose of exchanging facts or information;

(10) Any meeting attended only by full-time or permanent part-time officers or employees of the Federal Government and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their own behalf), acting in their official capacities. However, the purpose of the meeting must be solely to exchange views, information, or advice relating to the management or implementation of Federal programs established pursuant to statute, that explicitly or inherently share intergovernmental responsibilities or administration;

(11) Any meeting of an NRC contractor, applicant, or licensee with an NRC employee to discuss specific matters involving the solicitation, issuance, or implementation of a contract or the Commission's effort to ensure compliance with its regulations; and

(12) Any meeting of a subcommittee or other subgroup of an advisory committee where the subgroup's recommendations will be reviewed by its parent advisory committee.

Agency means an agency of the Government of the United States as defined in 5 U.S.C. 551(1).

Commission means the Nuclear Regulatory Commission of five members, or a quorum thereof, sitting as a body, as provided by section 201 of the Energy Reorganization Act of 1974, 42 U.S.C. 5841, (88 Stat. 1242).

Committee Management Secretariat means the organization established within the General Services Administration, pursuant to section 7(a) of the Act, which is responsible for all matters relating to advisory committees, and carries out the responsibilities of the Administrator of the General Services Administration under the Act and Executive Order 12024 (42 FR 61445; December 1, 1997).

Committee member means an individual who is appointed to serve on an advisory committee and has the full right and obligation to participate in the activities of the committee, including voting on committee recommendations.

Committee meeting means any gathering of advisory committee members (whether in person, by telephone, or through electronic means) held with the approval of an agency for the purpose of deliberating on the substantive matters upon which the advisory committee provides advice or recommendations.

Designated Federal Officer means a government employee appointed, pursuant to § 7.11(a), to chair or attend each meeting of an NRC advisory committee to which he or she is assigned.

Discretionary advisory committee means any advisory committee that is established, but not required to be established, under the authority of an agency head, and its establishment or termination is within the legal discretion of an agency head.

GSA means the General Services Administration.

Non-discretionary advisory committee means any advisory committee either required by statute or Presidential directive. A non-discretionary committee required by statute generally is identified specifically in a statute by name, purpose, or functions and its establishment is mandated.

NRC means the agency established by title II of the Energy Reorganization Act of 1974, 42 U.S.C. 5801 (88 Stat. 1233), and known as the Nuclear Regulatory Commission.

NRC Advisory Committee Management Officer means the individual appointed, pursuant to § 7.10(a), to supervise and control the establishment and management of NRC advisory committees.

NRC Public Document Room means the Public Document Room maintained by the NRC at 11555 Rockville Pike, Rockville, Maryland 20852–2738.

Presidential advisory committee means an advisory committee established by statute or directed by the President to advise the President.

Staff member means any individual who serves in a support capacity to an advisory committee.

Subcommittee means a subgroup of an advisory committee, whether or not its members are drawn in whole or in

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part from the parent advisory committee.

Utilized committee means a committee or group not established by the Federal Government, but whose operations are managed or controlled by a Federal agency.

4. Section 7.5 is revised to read as follows:

§ 7.5 Consultation with Committee Management Secretariat on establishment of advisory committees; advisory committee charters.

(a) Before establishing a discretionary advisory committee, the NRC shall consult with the Committee Management Secretariat. With a full understanding of the background and purpose behind the proposed advisory committee, the Committee Management Secretariat may share its knowledge and experience with the NRC on how best to make use of the proposed committee, alternate methods of attaining the agency's purpose, or whether a pre-existing advisory committee performs similar functions. Such consultation should include the transmittal of the proposed committee charter and the following information:

(1) A request for a review of the proposed charter;

(2) An explanation stating why the committee is essential to the conduct of NRC business and is in the public interest;

(3) An explanation stating why the committee's functions cannot be performed by the NRC, an existing NRC advisory committee, or other means (such as a public hearing); and

(4) A description of NRC's plan to attain balanced membership on the committee. The plan must ensure that, in the selection of members for the advisory committee, the NRC will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the committee. For purposes of attaining balance in an NRC advisory committee's membership, the Commission shall consider for membership interested persons and groups with professional, technical, or personal qualifications or experience that will contribute to the functions and tasks to be performed.

(b) Each proposed committee charter submitted for review pursuant to paragraph (a) of this section shall contain the following information:

(1) The committee's official designation;

(2) The committee's objectives and the scope of its activity;

(3) The period of time necessary for the committee to carry out its purposes;

(4) The NRC official to whom the committee will report;

(5) The NRC office responsible for providing support for the committee;

(6) A description of the duties that the committee will perform, and if such duties are not solely advisory, a specification of the authority for the functions that are not advisory;

(7) The estimated annual operating costs, in dollars and person years, for the committee;

(8) The estimated number and frequency of committee meetings; and

(9) The committee's termination date, if less than two years from the date of the committee's establishment.

(c) The requirements of this part, including the requirements of paragraphs (a) and (b) of this section, shall apply to any subcommittee that functions independently of the parent advisory committee (such as by making recommendations directly to the agency rather than to the parent advisory committee), regardless of whether the subcommittee's members are drawn in whole or in part from the parent advisory committee.

(d) After the Committee Management Secretariat has notified the Commission of the results of its review of a proposal to establish or utilize an NRC discretionary advisory committee, submitted pursuant to paragraph (a) of this section, the Commission shall notify the Committee Management Secretariat whether the advisory committee is actually being established. Filing of the advisory committee charter pursuant to § 7.8 shall be deemed to fulfill this notification requirement. If the advisory committee is not being established, the Commission shall so advise the Committee Management Secretariat, stating whether NRC intends to take any further action with respect to the proposed advisory committee.

(e) The date of filing of an advisory committee charter pursuant to § 7.8 shall be added to the charter when such filing takes place, shall appear on the face of the charter, and shall constitute the date of establishment, renewal, or reestablishment of the committee.

5. Section 7.6 is revised to read as follows:

§ 7.6 Amendments to advisory committee charters.

(a) Final authority for amending the charter of an NRC advisory committee established or utilized by the NRC is vested in the Commission.

(b) Any proposed changes made to a current charter for an NRC advisory committee shall be coordinated with the General Counsel to ensure that they are consistent with applicable legal requirements. When a statute or Executive Order that directed or authorized the establishment of an advisory committee is amended, those sections of the advisory committee's charter affected by the amendments shall also be amended.

(c)(1) The charter of an NRC advisory committee established under general agency authority may be amended when the Commission determines that the existing charter no longer reflects the objectives or functions of the committee. Such changes may be minor (such as revising the name of the advisory committee or modifying the estimated number or frequency of meetings), or they may be major (such as revising the objectives or composition of the committee).

(2) The procedures in paragraph (b) of this section shall be used in the case of charter amendments involving minor changes. A proposed major amendment to the charter of an advisory committee established under general agency authority shall be submitted to the Committee Management Secretariat for review with an explanation of the purpose of the changes and why they are necessary.

(3) A committee charter that has been amended pursuant to this paragraph is subject to the filing requirements set forth in § 7.8.

(4) Amendment of an existing advisory committee charter pursuant to this paragraph does not constitute renewal of the committee for purposes of § 7.7.

6. In § 7.7, paragraphs (a)(3) and (b)(2) are revised to read as follows:

§ 7.7 Termination, renewal, and rechartering of advisory committees.

(a) * * *

(3) Its duration has been otherwise designated by law. The NRC Committee Management Officer shall notify the Committee Management Secretariat of the effective date of termination of any advisory committee that has been terminated by the NRC.

(b) * * *

(2) Any other NRC advisory committee may be renewed, provided that such renewal is carried out in compliance with the procedures set forth in § 7.5, except that an advisory committee established by the President may be renewed by appropriate action of the President and the filing of a new charter. Renewal of an NRC advisory committee shall not be deemed to terminate the appointment of any committee member who was previously appointed to serve on the committee.

7. Section 7.8 is revised to read as follows:

§ 7.8 Charter filing requirements.

No advisory committee may meet or take any action until a charter has been filed by the Committee Management Officer designated in accordance with § 7.10.

(a) To establish, renew, or reestablish a discretionary advisory committee, a charter must be filed with:

(1) The Commission;

(2) The Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives;

(3) The Library of Congress, Anglo-American Acquisitions Division, Government Documents Section, Federal Advisory Committee Desk, 101 Independence Avenue, SE., Washington, DC 20540–4172; and

(4) The Committee Management Secretariat, indicating the date the charter was filed with the congressional committees.

(b) Charter filing requirements for non-discretionary advisory committees are the same as those in paragraph (a) of this section, except the date of establishment for a Presidential advisory committee is the date the charter is filed with the Secretariat.

(c) Subcommittees that report directly to a Federal employee or agency must comply with this subpart.

8. Section 7.9 is revised to read as follows:

§ 7.9 Public notice of advisory committee establishment, reestablishment, or renewal.

(a) After the Commission has received notice from the Committee Management Secretariat that its review of a proposal to establish, reestablish, renew, or utilize an NRC discretionary advisory committee has been completed, the Commission shall publish a notice in the **Federal Register** that the committee is being established, reestablished, renewed, or utilized. In the case of a new committee, the notice shall also describe the nature and purpose of the committee and shall include a statement that the committee is necessary and in the public interest.

(b) Notices required to be published pursuant to paragraph (a) of this section shall be published at least 15 calendar days before the committee charter is filed pursuant to § 7.8, except that the Committee Management Secretariat may approve publication for less than 15 days for good cause shown. The 15-day advance notice requirement does not apply to advisory committee renewals, notices of which may be published concurrently with the filing of the charter.

9. In § 7.10, paragraphs (a), (b)(5), (b)(6), (b)(7) and (c)(2) are revised to read as follows:

§ 7.10 The NRC Advisory Committee Management Officer.

(a) The Chairman of the Commission or designee shall appoint an NRC Advisory Committee Management Officer to carry out the functions specified in paragraph (b) of this section.

(b) * * *

(5) Carry out, on behalf of the NRC, the provisions of the Freedom of Information Act (5 U.S.C. 552) and implementing NRC regulations (10 CFR part 9, subpart A) with respect to such reports, records, and other papers;

(6) Ensure that, subject to the Freedom of Information Act and implementing NRC regulations at 10 CFR part 9, subpart A, copies of the records, reports, transcript minutes, appendices, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by each NRC advisory committee are available for public inspection and copying at the NRC Web site, *http://www.nrc.gov*, the NRC Public Document, or both, until the advisory committee ceases to exist;

(7) Ensure that, subject to the Freedom of Information Act and implementing NRC regulations, at least eight copies of each report made by each NRC advisory committee and, where appropriate, background papers prepared by consultants, shall be filed with the Library of Congress;

* * * * *

(c) * * *

(2) Copies of NRC's portion of the Committee Management Secretariat Annual Comprehensive Review of Federal advisory committees required by section 7(b) of the Act;

* * * * *

10. Section 7.11 is revised to read as follows:

§ 7.11 The Designated Federal Officer.

(a) The Chairman of the Commission or designee shall appoint a Designated Federal Officer or alternate Designated Federal Officer for each NRC advisory committee. The individual holding either position must be employed by the Federal Government on either a full-time or a permanent part-time basis.

(b) All meetings of an NRC advisory committee must be convened or approved by the committee's Designated Federal Officer or alternate, and the agenda for each committee meeting (except a meeting of a Presidential advisory committee) must be approved by that individual.

(c) An NRC advisory committee may not hold a meeting in the absence of its Designated Federal Officer or alternate.

(d) It shall also be the responsibility of the Designated Federal Officer or alternate to—

(1) Attend all meetings of the committee for which he or she has been appointed;

(2) Adjourn the meetings of the committee when such adjournment is in the public interest;

(3) Chair the meetings of the committee when so directed by the Commission;

(4) Ensure compliance with the requirements of § 7.13 regarding minutes of meetings of the committee; and

(5) Make copies of committee documents required to be maintained for public inspection and copying pursuant to § 7.14(b) and ensure their availability at the NRC Web site, *http://www.nrc.gov*, at the NRC Public Document Room, or both.

11. In § 7.12, paragraphs (a), (c), and (e) are revised, and paragraph (f) is added to read as follows:

§ 7.12 Public participation in and public notice of advisory committee meetings.

(a) Each meeting of an NRC advisory committee shall be held at a reasonable time and in a place reasonably accessible to the public, including persons with disabilities. Any advisory committee meeting conducted in whole or part by teleconference, video conference, the Internet, or other electronic medium must comply with this section. The size of the meeting room must be sufficient to accommodate advisory committee members, committee or agency staff, and interested members of the public, except that the provisions of this paragraph relating to the room size shall not apply to any part of an NRC advisory committee meeting that has been closed pursuant to § 7.15.

* * * * *

(c)(1) Except when the President or designee determines in writing that no notice should be published for reasons of national security, at least 15 days prior to an NRC advisory committee meeting, a notice that includes the following information shall be published in the **Federal Register:**

(i) The exact name of the advisory committee as chartered;

(ii) The time, date, place, and purpose of the meeting;

(iii) A summary of the agenda of the meeting;

(iv) Whether all or part of the meeting is open to the public; and

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(v) The name and telephone number of the Designated Federal Officer, alternate, or other responsible agency employee who may be contacted for additional information concerning the meeting.

(2) If any part of the meeting is closed, the notice shall provide the reasons for the closure, citing the specific matter that has been determined to justify the closure under § 7.15. The Commission may publish a single notice announcing multiple meetings; however, a meeting may not be announced so far in advance as to prevent the public from being adequately informed of an NRC advisory committee's schedule.

* * * * *

(e) In addition to notice required by paragraph (c) of this section, the NRC may also use other forms of notice, such as press releases, posting the information on the NRC Web site, *http://www.nrc.gov*, or notice by mail, to inform the public of advisory committee meetings. To that end, the Designated Federal Officer or alternate for each NRC advisory committee will, to the extent practicable, maintain lists of people and organizations interested in that advisory committee and notify them of meetings by mail.

(f) Meetings of a subcommittee whose recommendations will not be reviewed by its parent advisory committee shall be conducted in accordance with all notice and openness requirements contained in this section and in §§ 7.13, 7.14, and 7.15.

12. In § 7.13, paragraph (c) is revised to read as follows:

§ 7.13 Minutes of advisory committee meetings.

* * * * *

(c) The chairperson of an NRC advisory committee shall certify the accuracy of the minutes of each of the committee's meetings.

* * * * *

13. Section 7.14 is revised to read as follows:

§ 7.14 Public information on advisory committees.

(a) The Nuclear Regulatory Commission shall maintain systematic information on the nature, functions, and operations of each NRC advisory committee. A complete set of the charters of NRC advisory committees and copies of the annual reports required by § 7.17(a) will be maintained for public inspection at either the NRC Web site, *http://www.nrc.gov*, the NRC Public Document Room, or both.

(b) Subject to the provisions of the Freedom of Information Act (5 U.S.C. 552) and NRC's Freedom of Information Act regulations at 10 CFR part 9, subpart A, copies of NRC advisory committees' records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, and other documents shall be maintained for public inspection and copying at the NRC Web site, *http://www.nrc.gov*, the NRC Public Document Room, or both. To provide the public a meaningful opportunity to comprehend fully the work undertaken by an NRC advisory committee, advisory committee records should be available to the public as soon as practicable. Members of the public or other interested parties may review non-exempt advisory committee records without filing a request for these records under the Freedom of Information Act.

(c) Official records generated by or for an advisory committee must be retained for the duration of the advisory committee. Upon termination of the advisory committee, the records must be processed in accordance with the Federal Records Act (44 U.S.C. Chapters 21, 29–33) and regulations issued by the National Archives and Records Administration (see 36 CFR parts 1220, 1222, 1228, and 1234), or in accordance with the Presidential Records Act (44 U.S.C. Chapter 22).

14. Section 7.15 is revised to read as follows:

§ 7.15 Procedures for closing an NRC advisory committee meeting.

(a) To close all or part of a meeting of an NRC advisory committee, the committee shall submit a written request for closure to the General Counsel, citing specific exemptions listed in the Government in the Sunshine Act (5 U.S.C. 552b), as implemented by 10 CFR 9.104, that justify the closure. The request shall provide the General Counsel sufficient time for review in order to make a determination prior to publication of the meeting notice pursuant to § 7.12.

(b) If the General Counsel finds that the request for closure is consistent with the provisions of the Government in the Sunshine Act and this part, a determination shall be issued in writing that all or part of the meeting will be closed. The determination shall include a statement of the reasons for the closing, citing the applicable exemptions in the Government in the Sunshine Act (as implemented by 10 CFR 9.104).

(c) Except when the President or designee determines in writing that no notice should be published for reasons of national security, the Secretary of the Commission shall make a copy of the determination to close all or part of an NRC advisory committee meeting available to the public upon request. If such a determination has been issued, the meeting notice published in the **Federal Register** should comply with the provisions of § 7.12 applicable to closed meetings.

§ 7.16 [Amended]

15. In § 7.16, amend paragraph (b) by removing the reference to "7.27(a)" and adding, in its place, a reference to "7.17(a)".

16. Section 7.17 is revised to read as follows:

§ 7.17 Reports required for advisory committees.

(a) The Commission shall furnish a report on the activities of NRC advisory committees annually to the Committee Management Secretariat on a fiscal year basis. The report must contain information regarding NRC advisory committees consistent with instructions provided by the Committee Management Secretariat. A copy of the report shall be made available at the NRC Web site, *http://www.nrc.gov*, at the NRC Public Document Room, or both. The information provided by the Commission regarding its advisory committees is contained in the Committee Management Secretariat's report which is available on its Web site, *http://www.gsa.gov/committeemanagement*.

(b) Any NRC advisory committee holding closed or partially closed meetings shall issue a report, at least annually, setting forth a summary of its activities consistent with the policy of the Government in the Sunshine Act (5 U.S.C. 552b), as implemented by 10 CFR 9.104. A copy of the report shall be made available at the NRC Web site, *http://www.nrc.gov*, at the NRC Public Document Room, or both.

(c) Subject to the Freedom of Information Act (5 U.S.C. 552) and implementing NRC regulations (10 CFR part 9, subpart A), eight copies of each report made by an advisory committee, including any report on closed meetings pursuant to paragraph (b) of this section, and, where appropriate, background papers prepared by consultants, shall be filed for public inspection and use with the Library of Congress, Anglo-American Acquisitions Division, Government Documents Section, Federal Advisory Committee Desk, 101 Independence Avenue, SE., Washington, DC 20540–4172.

17. Section 7.18 is revised to read as follows:

§ 7.18 Appointment, compensation, and expense reimbursement of advisory committee members, staffs, and consultants.

(a) Unless otherwise provided by law, advisory committee members serve at the pleasure of the Commission and their terms are at the sole discretion of the Commission.

(b) Except where otherwise provided by law, the Commission may accept the gratuitous services of an NRC advisory committee member, staff member, or consultant who agrees in advance to serve without compensation.

(c)(1) Subject to the provisions of paragraph (c)(2) of this section, if the Commission determines that compensation of a member of an NRC advisory committee is appropriate, the amount that will be paid shall be fixed by the Chairman of the Commission at a rate that is the daily equivalent of a rate in NRC's General Grade Salary Schedule, unless the member is appointed as a consultant and compensated at a rate applicable to NRC consultants.

(2) In determining an appropriate rate of pay for a member of an NRC advisory committee, the Chairman of the Commission shall give consideration to the significance, scope, and technical complexity of the matters with which the advisory committee is concerned and the qualifications required of the committee member; provided that the Chairman may not set the rate of pay for an NRC advisory committee member higher than the daily equivalent rate for level IV of the Executive Schedule under 5 U.S.C. 5315, unless a higher rate is expressly allowed by another statute. The Chairman may authorize a rate of basic pay in excess of the maximum rate of basic pay established for NRC's General Grade Salary Schedule. This maximum rate includes an applicable locality payment. The Commission may pay advisory committee members on either an hourly or a daily rate basis. The Commission may not provide additional compensation in any form, such as bonuses or premium pay. The Chairman may not delegate the responsibility for making a determination that a higher rate of pay than that established by NRC's General Grade Salary Schedule is necessary and justified for an NRC advisory committee member, and such a determination must be reviewed annually.

(d)(1) Each NRC advisory committee staff member may be paid at a rate that is the daily equivalent of a rate in NRC's General Grade Salary Schedule in which the staff member's position would appropriately be placed.

(2) A staff member of an NRC advisory committee may not be paid at a rate higher than the daily equivalent of the maximum rate for a GG–15 under NRC's General Grade Salary Schedule, unless the Chairman of the Commission determines that the staff member's position would appropriately be placed at a grade higher than GG–15, provided that in establishing rates of compensation, the Chairman shall comply with any applicable statutes, regulations, Executive Orders, and administrative guidelines. The Commission may provide advisory committee staff members with additional compensation, such as bonuses or premium pay, as long as the aggregate compensation does not exceed the rate of pay for Executive Schedule level IV.

(3) A Federal employee may serve as a staff member of an NRC advisory committee only with the knowledge of the advisory committee's Designated Federal Officer or alternate and the approval of the employee's direct supervisor. A staff member who is not otherwise a Federal employee shall be appointed in accordance with applicable agency procedures, following consultation with the advisory committee.

(e)(1) Subject to the limitations in paragraph (2), the following factors shall be considered in determining an appropriate rate of pay for a consultant to an NRC advisory committee:

(i) The qualifications required of the consultant, and

(ii) The significance, scope, and technical complexity of the work for which his services are required;

(2) The rate of pay for an NRC advisory committee consultant may not be higher than the maximum rate of basic pay established by NRC's General Grade Salary Schedule (that is, the GG–15, step 10 rate, excluding locality pay or any other supplement), unless a higher rate is expressly allowed by another statute. The appointment and compensation of NRC experts and consultants must be in conformance with applicable regulations issued by the United States Office of Personnel Management (see 5 CFR part 304).

(f) A member or staff member of an NRC advisory committee engaged in the performance of duties away from his or her home or regular place of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703, title 5, United States Code, for persons employed intermittently in the Government service.

(g) Nothing in this section shall—

(1) Prevent any full-time Federal employee who provides services to an NRC advisory committee from receiving compensation at a rate at which he or she would otherwise be compensated as a full-time Federal employee.

(2) Prevent any individual who provides services to an NRC advisory committee, and who immediately before providing such services was a full-time Federal employee, from receiving compensation at a rate at which he or she was compensated as a full-time Federal employee.

(3) Affect a rate of pay or a limitation on a rate of pay that is specifically established by law or a rate of pay established under the NRC's General Grade Salary Schedule and evaluation system.

17. Section 7.19 is revised to read as follows:

§ 7.19 Advisory committee members with disabilities.

An NRC advisory committee member who is disabled may be provided services by a personal assistant while performing advisory committee duties, if the member—

(a) Qualifies as disabled under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(b) Does not otherwise qualify for assistance under 5 U.S.C. 3102 by reason of being an employee of NRC.

17. Section 7.20 is revised to read as follows:

§ 7.20 Conflict of interest reviews of advisory committee members' outside interests.

The Designated Federal Officer or alternate for each NRC advisory committee and the General Counsel or designee shall review the interests and affiliations of each member of the Designated Federal Officer's advisory committee annually, and upon the commencement of the member's appointment to the committee, for the purpose of ensuring that such appointment is consistent with the laws and regulations on conflict of interest applicable to that member.

Dated at Rockville, Maryland, this 1st day of August 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–19941 Filed 8–7–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 240 and 249

[Release No. 34–46300; File No. S7–21–02]

RIN 3235–AI54

Certification of Disclosure in Companies' Quarterly and Annual Reports

AGENCY: Securities and Exchange Commission.

ACTION: Supplemental information on proposed rule.

SUMMARY: On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act of 2002. Section 302 of the Act requires us to adopt rules implementing specified statutory certification requirements for principal executive officers and principal financial officers by August 29, 2002. On June 14, 2002, we had proposed to require a specified certification by a company's principal executive officer and principal financial officer. In addition, we had proposed to require a company to maintain procedures to provide reasonable assurance that the company is able to collect, process and disclose the information required in the company's quarterly and annual reports, as well as current reports on Form 8–K, and also to require periodic review and evaluation of these procedures. This document contains supplemental information regarding those proposals in light of the enactment of the Sarbanes-Oxley Act of 2002.

DATES: You should send us any comments so that they arrive at the Commission by August 19, 2002. This is the same date by which we originally requested comment on the proposals included in Release No. 34–46079. In view of the statutory deadline by which we must adopt final rules, we encourage you to submit any comments as soon as possible since we do not expect to be able to consider comments that arrive after August 19, 2002.

ADDRESSES: Please send three copies of your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Alternatively, you may submit your comments electronically to the following electronic-mail address: *rule-comments@sec.gov*. To help us process and review your comments more efficiently, comments should be sent by one method (U.S. mail or electronic-mail) only. All comment letters should refer to File No. S7–21–02; please include this file number in the subject line if you use electronic-mail. We will make all comment letters available for public inspection and copying in our public reference room at the same address. We will post electronically submitted comment letters on the Commission's Internet Web site *(http://www.sec.gov)*.[1]

FOR FURTHER INFORMATION CONTACT: Mark A. Borges, Special Counsel, or Elizabeth M. Murphy, Chief, Office of Rulemaking, Division of Corporation Finance, at (202) 942–2910, or, with respect to investment company matters, Tara L. Royal, Attorney, Office of Disclosure Regulation, Division of Investment Management, at (202) 942–0721, at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION:

I. Background

On June 14, 2002, we proposed rules[2] that would require a company's principal executive officer and principal financial officer each to certify the contents of the company's quarterly reports on Forms 10–Q[3] and 10–QSB[4] and annual reports on Forms 10–K[5] and 10–KSB[6] filed pursuant to the Securities Exchange Act of 1934.[7] The proposed rules also would require a company filing quarterly and annual reports on these forms to maintain procedures to provide reasonable assurance that the company is able to collect, process and disclose the information required in these reports and in current reports on Form 8–K.[8] In addition, the proposed rules would require a periodic review and evaluation of these procedures. The annual evaluation would have to be presented to the company's principal executive officer and principal financial officer. They would have to certify in the company's annual report that they have reviewed the results of the evaluation.

On July 30, 2002, the Sarbanes-Oxley Act of 2002 was enacted.[9] Section 302 of the Act, entitled "Corporate Responsibility for Financial Reports," requires the Commission to adopt final rules that must be effective by August 29, 2002, 30 days after the date of enactment, under which the principal executive officer or officers and the principal financial officer or officers, or persons providing similar functions, must provide a specified certification in issuers' annual and quarterly reports. Under the statute, the certification must be provided by the officers of a broader group of issuers, particularly foreign issuers, and is different in certain respects from the certification requirements that we proposed in June. The requirements under section 302 of the Act are set forth in section II of this document, and the principal differences between the form of certification required pursuant to section 302 of the Act and the form of certification set forth in our proposed rules are discussed in section III of this document.

To satisfy the requirements of the Sarbanes-Oxley Act of 2002, we plan to issue and make effective final rules on or prior to August 29, 2002 to require the certification mandated by the Act. However, given the specificity of the requirements of section 302, we wanted to alert interested parties to the rules that we will be required to adopt pursuant to section 302 and to the differences between those rules and our proposed rules.

II. Required Certification Under Section 302 of the Sarbanes-Oxley Act of 2002

Section 302(a) of the Sarbanes-Oxley Act of 2002 provides that the Commission shall, by rules that become effective not later than August 29, 2002, require, for each company filing periodic reports under section 13(a) or 15(d) of the Exchange Act,[10] that:

The principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, certify in each annual or quarterly report filed or submitted under either such section of such Act that—

(1) The signing officer has reviewed the report;

(2) based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;

(3) based on such officer's knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the issuer as of, and for, the periods presented in the report;

(4) the signing officers—

(A) are responsible for establishing and maintaining internal controls;

(B) have designed such internal controls to ensure that material information relating to the issuer and its consolidated subsidiaries is made known to such officers by others within those entities, particularly during the period in which the periodic reports are being prepared;

(C) have evaluated the effectiveness of the issuer's internal controls as of a date within 90 days prior to the report; and

(D) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;

(5) the signing officers have disclosed to the issuer's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function)—

(A) all significant deficiencies in the design or operation of internal controls which could adversely affect the issuer's ability to record, process, summarize, and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls; and

(B) any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

(6) the signing officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

III. Certain Differences From Our Certification Proposal

There are several substantive differences between the form of certification mandated by section 302 of the Sarbanes-Oxley Act of 2002 and the version that we proposed in June.[11] As indicated above, we will adopt a form of certification that conforms to the statutory requirements. Both our proposed form of certification and that required by the Act address the material accuracy and completeness of the periodic reports that they cover. However, our proposed form of certification used a "plain English" approach to reflect the applicable disclosure standard for "material" information,[12] while the Act uses the formulation found in Exchange Act Rules 10b–5(b)[13] and 12b–20.[14] In addition, the Act requires an additional attestation regarding the financial disclosure included in these reports. Further, while our proposed certification contains an attestation regarding the completion of a review of internal procedures and controls aimed at assuring adequate disclosure, the attestations required by the Act require additional information regarding certain aspects and results of that review.

There is also a difference regarding the companies to whom the certification requirements are applicable, in respect of foreign issuers. Our proposed rules would only have applied to issuers subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act that filed annual reports on Forms 10–K and 10–KSB and quarterly reports on Forms 10–Q and 10–QSB. Thus, our proposed rules would have applied to U.S. companies and to companies domiciled in foreign jurisdictions that have a majority of U.S. security holders and U.S.-based businesses or management. Section 302 of the Act, however, also applies to foreign private issuers.[15] We, therefore, intend to adopt final rules that would apply the certification requirement to foreign private issuers filing annual reports on Form 20–F[16] and Canadian issuers filing Form 40–F[17] under the Commission's Multijurisdictional Disclosure System.[18]

While section 302 of the Act requires the principal executive officer or officers and principal financial officer or officers to make specific attestations in their certifications as to the company's internal controls, it does not directly address the maintenance of these requirements. Our proposed rules would require maintenance of sufficient procedures to provide reasonable assurance that the company is able to collect, process and disclose, within the time periods specified in our rules and forms, the information, including non-financial information, required to be disclosed in their periodic and current reports. We do not propose to modify, and continue to solicit comment on, our proposed Rules 13a–15(a) and 15d–15(a) that would impose this requirement.

We are considering the manner of application of section 302 of the Act to registered investment companies. We ask commenters to address the manner in which the certification requirement should address registered investment companies, including the appropriate location for the certification (for example, Form N–SAR;[19] reports to shareholders), the appropriate individuals to provide the certification (for example, officers of the investment company itself and/or the investment adviser, administrator or depositor of the registered investment company), how the rule should apply to different types of investment companies (for example, managed investment companies; unit investment trusts) and any other matters that are specific to registered investment companies.

IV. Request for Comment

As indicated above, we continue to solicit comment on proposed Rules 13a–15(a) and 15d–15(a), as proposed on June 14, 2002 in Release No. 34–46079.

Dated: August 2, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20029 Filed 8–2–02; 4:48 pm]

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[1] We do not edit personal identifying information, such as names or electronic-mail addresses, from electronic submissions. You should only submit information that you wish to make publicly available.

[2] See Release No. 34–46079 (June 14, 2002) [67 FR 41877].

[3] 17 CFR 249.308a.

[4] 17 CFR 249.308b.

[5] 17 CFR 249.310.

[6] 17 CFR 249.310b.

[7] 15 U.S.C. 78a *et seq.*

[8] 17 CFR 249.308.

[9] Pub. L. 107–204, 116 Stat. 745 (2002).

[10] 15 U.S.C. 78m(a) or 78o(d).

[11] Section 906 of the Sarbanes-Oxley Act of 2002 adds new section 1350 to chapter 63 of title 18 of the United States Code. Section 1350 requires a written statement to accompany all periodic reports filed with us that contain financial statements. This release does not relate to section 906 of the Act, which, by its terms, is effective on enactment of the Act, July 30, 2002.

[12] See Release No. 34–46079 at section II.2.

[13] 17 CFR 240.10b–5(b)

[14] 17 CFR 240.12b–20.

[15] For purpose of the Exchange Act, a "foreign private issuer" is any foreign issuer (other than a foreign government) except an issuer meeting the following conditions: (1) more than 50% of the issuer's outstanding voting securities are directly or indirectly held of record by residents of the U.S.; and (2) the majority of the executive officers or directors are U.S. citizens or residents; or more than 50% of the assets of the issuer are located in the U.S.; or the business of the issuer is administered principally in the U.S. See Exchange Act Rule 3b–4(c) [17 CFR 240.3b–4(c)].

[16] 17 CFR 249.220f.

[17] 14 CFR 240.240f.

[18] Section 302(b) of the Sarbanes-Oxley Act of 2002 states that nothing in the section can be interpreted or applied in any way to allow any issuer to lessen the legal force of the certification required by the Act by an issuer that has reincorporated or engaged in any other transaction resulting in the transfer of the corporate domicile or offices of the issuer from inside of the United States to outside of the United States. Our rules as adopted will, of course, assure complaicne with this requirement by applying the certification requirement to all reporting companies, including any issuer that would seek to lessen the legal force of the certification as described above.

[19] 17 CFR.330; 17 CFR 274.101.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release Nos. 33–8119; 34–46301; File No. S7–30–02]

RIN 3235–AI60

Regulation Analyst Certification

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is seeking public comment on proposed Regulation Analyst Certification. The proposed regulation would require that any research report disseminated by broker or dealer include certifications by the research analyst that the views expressed in the research report accurately reflect the analyst's personal views, and whether the analyst received compensation or other payments in connection with his or her specific recommendations or views. A research analyst would also be required to provide certifications and disclosures in connection with public appearances. Although research analysts are often viewed by investors as experts and as important sources of information about the securities and companies they cover, many factors can create pressure on their independence and objectivity. By requiring these certifications and disclosures, the proposed regulation should promote the integrity of research reports and investor confidence in the recommendations contained in those reports.

DATES: Comments must be received on or before September 23, 2002.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only.

Persons wishing to submit written comments should send three copies to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–30–02. Comments submitted by E-mail should include this file number in the subject line. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*). The Commission does not edit personal, identifying information, such as names or e-mail addresses, from electronic submissions. Submit only the information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: James Brigagliano, Thomas Eidt, or Racquel Russell in the Office of Risk Management and Control, Division of Market Regulation, at (202) 942–0772.

SUPPLEMENTARY INFORMATION: We are proposing new Regulation Analyst Certification ("Regulation AC")[1] under the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act").

I. Introduction

Research analysts study publicly-traded companies and make recommendations about the securities of those companies, often through the issuance of research reports. Analysts typically work for full-service broker-dealers[2] and, as such, are "persons associated with a broker or dealer."[3] The Commission has stated that analysts, who "ferret out and analyze information," play an important role in the securities markets.[4]

Research analysts at full-service brokerage firms, so called sell-side analysts, are often viewed by investors as experts and as important sources of information about the securities and the companies they cover.[5] At the same time, however, many factors can create pressure on an analyst's independence and objectivity. Among other things, investment banking relationships and certain compensation arrangements may adversely affect analyst objectivity and, as a result, the integrity of the views expressed in research reports and public appearances.

Proposed Regulation AC seeks to address these concerns by requiring broker-dealers issuing research reports to include clear and prominent certifications by the research analysts that the research report accurately reflects the analyst's personal views about the subject securities and issuers and whether the analyst received compensation for views or specific recommendations in the research report. The proposed regulation would also require the analyst to make quarterly certifications that the views expressed by the analyst in public appearances accurately reflected the analyst's personal views and whether or not he or she received any related compensation for his or her views or recommendations. In so doing, the proposed regulation should promote the integrity of research reports and investor confidence in the research analyst's recommendations contained in those reports.

II. Proposed Rule

A. Reasons for Proposal

During 1999, the Commission and Congress began to examine research analysts' conflicts of interest in greater depth. The Commission was particularly concerned that many investors who rely on analysts' recommendations may not know, among other things, that favorable research could be used as a component of the marketing of investment banking services provided by the analyst's firm, and that analyst compensation may be based significantly on generating investment banking business.

Beginning in the summer of 1999, Commission staff began a review of industry practices regarding disclosure of research analyst conflicts of interest. Commission staff conducted on-site examinations of full-service broker-dealers that focused on analysts' financial interests in companies they cover, reporting structures (in particular whether analysts report to investment banking personnel) and analyst compensation arrangements. In June and July 2001, the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises of the House of Representatives' Committee on Financial Services held hearings on research analyst conflict of interest issues.[6] In addition, also in July 2001, the staff of the Commission's Office of Investor Education and Assistance issued an Investor Alert highlighting the numerous biases that may affect analyst recommendations.[7] The Senate Committee on Governmental Affairs held a hearing on analysts on February 27, 2002.[8]

[1] 17 CFR 242.500 through 502.

[2] Full-service broker-dealers provide a wide range of services to clients, including investment banking, financial planning, and other financial services.

[3] *See* Exchange Act Section 3(a)(18).

[4] *Dirks* v. *SEC*, 463 U.S. 646, 658 (1983). *See also* Securities Act Release No. 7606A (November 13, 1998), 63 FR 67174 (December 4, 1998).

[5] Sell-side analysts typically work for full-service broker-dealers that sell securities to the public and make recommendations on the securities they cover. Many of the more popular sell-side analysts work for prominent brokerage firms that also provide investment banking services for corporate clients—including companies whose securities the analysts cover.

[6] *Analyzing the Analysts: Hearings Before the Subcomm. on Capital Markets Insurance and Government Sponsored Enterprises of the House Comm. on Financial Services* (June 14 and July 31, 2001).

[7] *See www.sec.gov/investor/pubs/analysts.htm.*

[8] *The Watchdogs Didn't Bark: Enron and the Wall Street Analysts: Hearing Before the Senate Comm. on Governmental Affairs* (February 27, 2002).

On April 25, 2002, the Commission announced the commencement of a formal inquiry into market practices concerning research analysts and the personal conflicts that can arise from the relationship between research and investment banking.[9] Further, on May 10, 2002, the Commission approved rule changes proposed by the National Association of Securities Dealers ("NASD") and the New York Stock Exchange ("NYSE") relating to research analyst conflicts of interest.[10] The NASD and NYSE filed these rule changes with the Commission in February 2002. New NASD Rule 2711 and amended NYSE Rule 472 established standards governing member broker-dealer communications with the public to address research analyst conflicts of interest. Specifically, the rules contain, among other things:

- A prohibition on tying analyst compensation to specific investment banking transactions;
- A prohibition on offering favorable research to induce firm business;
- Restrictions on personal trading by analysts in securities of companies followed by the analyst; and
- Requirements mandating increased disclosures of conflicts of interest in research reports and public appearances, such as business relationships with, compensation from, or ownership interests in the company that is the subject of the research report.

New NASD Rule 2711 and amended NYSE Rule 472 also require that members attest annually that the member has adopted and implemented written supervisory procedures reasonably designed to ensure that employees comply with the provisions of the rule. These SRO rules close regulatory gaps and take a significant step toward restoring investor confidence in the role of sell-side research in the capital markets. However, it is possible that the Commission's formal inquiry may indicate the need for further SRO rule changes or additional Commission action. Moreover, the Commission has requested that the NASD and NYSE report within a year of implementing these rules on their operation and effectiveness, and whether they recommend any changes or additions to the rules.

Proposed Regulation AC is part of an ongoing process by the Commission to address conflicts of interest affecting the production and dissemination of research by securities firms, and to provide increased disclosure to investors. The Commission encourages brokers, dealers, and persons associated with brokers and dealers, to consider voluntarily implementing the types of disclosures that proposed Regulation AC, if adopted, would require. The Commission will continue its efforts to determine whether any additional action may be necessary to improve the integrity of research and to restore investor confidence.[11]

B. Description of Proposal

We propose new Regulation AC to further address conflicts of interest faced by research analysts and their firms. The proposed regulation would require certification by "research analysts" that the views they express in "research reports" and "public appearances" accurately reflect their personal views about the subject securities and issuers. Analysts would also have to disclose whether they received compensation for their specific recommendations or views. The proposed regulation defines "research report" as "a written communication that includes an analysis of securities of an issuer or issuers, provides information reasonably sufficient upon which to base an investment decision and includes a recommendation."[12] Proposed Regulation AC requires certain certifications and disclosures regarding a "public appearance," which is defined as "any participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public speaking activity in which a research analyst makes a specific recommendation or offers an opinion concerning a security or an issuer." "Research analyst" is defined as "any natural person who is principally responsible for the analysis of any security or issuer included in a research report."

Proposed Regulation AC would require that broker-dealers and persons associated with broker-dealers include in their research reports:

- A statement by the research analyst certifying that the views expressed in the research report accurately reflect such research analyst's personal views about the subject securities and issuers;
- A statement by the research analyst certifying that no part of his or her compensation[12] was, is, or will be directly or indirectly related to the specific recommendation or views contained in the research report; or
- A statement by the research analyst certifying that part or all of his or her compensation was, is, or will be directly or indirectly related to the specific recommendation or views contained in the research report. If the analyst did receive such related compensation, the statement must include the source and amount of such compensation, and the purpose of the compensation, and further disclose that such compensation may influence the recommendation in the research report;
- All certifications must be clear and prominent.[13]

Additionally, under proposed Regulation AC, broker-dealers must make a record related to public appearances by research analysts.[14] Specifically, a broker-dealer who publishes, circulates, or provides, directly or indirectly, a research report by a research analyst, would be required to make a record within thirty days after each calendar quarter in which the research analyst made the public appearance, that includes:

- A written statement by the research analyst certifying that the views expressed in each public appearance accurately reflected such research analyst's personal views about the subject securities and issuers; and
- A written statement by the research analyst certifying that no part of such research analyst's compensation was, is, or will be directly or indirectly related to any specific recommendations or views expressed in any public appearance.

In cases where the analyst is unable to make the certifications in connection with public appearances as described above, the broker-dealer must make, keep, and maintain a record of a statement from the research analyst that he or she is unable to provide the written certifications specified in Rule 502 (a)(1) of proposed Regulation AC

[9] *See www.sec.gov/news/press/2002–56.htm.*

[10] *See* Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002).

[11] We note that the recently-enacted Sarbanes-Oxley Act of 2002 directs the Commission to conduct rulemaking, itself or through the SROs, to address a broad range of issues stemming from analysts conflicts. *See* Sarbanes-Oxley Act of 2002, Public Law 107–204. The Commission voted to propose Regulation AC on July 24, 2002, before the passage of the Act. The Commission will, of course, abide by the directives of the Act as it continues to address analyst conflicts of interest issues, including with respect to the possible adoption of Regulation AC.

[12] The Commission notes that the term "compensation," for the purposes of Regulation AC, would also include payments received from sources other than the research analyst's employer, including issuers, underwriters, dealers, and other related persons.

[13] The Commission would expect that the required certifications be included on the front page of the research report, or that the front page would specify the page or pages on which each certification is found.

[14] If an associated person of a broker-dealer publishes a research report, the broker-dealer would be required to make and keep the mandated records.

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and the reasons therefor. The broker-dealer must also disclose in all research reports for the next 120 days that the research analyst did not comply with the certification requirements specified in Rule 502 (a)(1) of proposed Regulation AC and the reasons therefor. It should be noted that the 120 day disclosure period prescribed in paragraph (a)(2) of proposed Rule 502, which is longer than a calendar quarter, runs from the time the analyst notifies the broker-dealer employer that he or she is unable to provide the written certifications specified in paragraph (a)(1). The broker-dealer must also promptly provide copies of statements that the analyst is unable to provide the certifications in connection with public appearances to its examining authority, designated pursuant to section 17(d) of the Exchange Act and Rule 17d–2 thereunder. Further, broker-dealers must keep and maintain these records pursuant to Rule 17a–4(b)(4).

Proposed Regulation AC is intended to complement other rules governing conflicts of interest disclosure by research analysts, including NYSE Rule 472 and NASD Rule 2711. We note that SRO rules currently address an analyst who writes a research report that does not reflect his or her personal views, even if the analyst states that the report does not reflect his or her views. Thus, we do not see a need to allow for a negative certification concerning an analyst's personal views. Should Regulation AC also provide an analyst a negative certification option that the views expressed in the research report do not accurately reflect his or her personal views? Similarly, given that SRO rules currently prohibit an analyst from receiving compensation for a specific investment banking transaction, is it necessary or desirable for Regulation AC to permit an analyst to disclose the receipt of compensation for a specific recommendation?

The scope of proposed Regulation AC is broader than the scope of the current SRO rules in that the proposed regulation covers debt as well as equity securities. We believe that some of the same concerns regarding analyst conflicts also pertain to debt securities. Thus, we propose to coverer debt securities in the regulation. In addition, we understand that the SROs are considering expanding the coverage of their rules regarding analyst research reports to cover debt securities.

Proposed Regulation AC focuses on core issues of analysts' integrity: their beliefs in their recommendations and the influence of compensation on their recommendations. It is important for an investor to know whether an analyst potentially is biased with respect to securities or issuers that are the subject of a research report. Further, in evaluating a research report, it is reasonable for an investor to want to know about an analyst's compensation. We believe that proposed Regulation AC is reasonably designed to prevent acts and practices that are fraudulent, deceptive, or manipulative. The proposed regulation does not preclude an analyst from providing services to his or her firm's investment banking department within the requirements of governing SRO rules, and it does not prohibit analysts generally from receiving compensation for covering issuers or for preparing research reports. Rather, proposed Regulation AC focuses on disclosure where the analyst is compensated for making a specific recommendation or rating. The Commission also notes that the proposed regulation is intended to address analysts' beliefs about their expressed views and recommendations, not the accuracy of the recommendations or opinions regarding securities discussed. Proposed Regulation AC also does not impose new liability. Even without proposed Regulation AC, analysts may be found to have violated the anti-fraud provisions of the federal securities laws if they make baseless recommendations or recommendations that they disbelieve.[15] Regulation AC is not intended to create duties under section 10(b) of the Exchange Act. As a result, no private liability will arise from a broker, dealer, or associated person's failure to make the required disclosure, or make, keep, and maintain required records.

III. General Request for Comment

We encourage any interested person to submit written comments on all aspects of the proposed regulation. In particular, we request comment on:

- Would the proposed certification and disclosure requirements, if adopted, promote investor confidence in the views expressed by research analysts and provide investors with useful information with which to evaluate potential biases?
- Would the required disclosures and certifications reduce public appearances by analysts and the amount of useful information available to investors?
- Should the proposed definitions of "research report," "research analyst," or "public appearance" be broader or narrower than proposed?[16]
- Should the proposed definition of "research report" be limited to cover only equity securities?
- What disclosures, if any, should be required during public appearances? We also request comment on whether the proposed requirements relating to public appearances should also apply to research analyst's recommendations in the print media.
- Broker-dealers often choose to publish research reports that cover multiple issuers, securities, or an industry segment, in a compendium report. Certain portions of the NASD and NYSE rules permit different treatment of these compendium reports. Should the regulation make allowances for compendium research reports covering six or more securities? For example, should a broker-dealer be permitted to publish the required disclosures for such a compendium in a place other than the research report?
- If a research analyst is unable to provide the certifications relating to public appearances in Rule 502(a)(1) and instead provides the certifications in Rule 502(a)(2), the broker-dealer is required to disclose that fact in all research reports for 120 days after the analyst has provided his or her certification under Rule 502(a)(2). Is 120 days the appropriate amount of time the broker-dealer should be required to make such disclosure? Should the disclosure period be longer or shorter?
- Are the recordkeeping requirements of Regulation AC appropriate?
- What additional procedures would firms need to put in place in order to ensure compliance with the proposed regulation, beyond those already established or that will be established to comply with the recently-approved SRO rules?
- The application of proposed Regulation AC broadly covers brokers or dealers and any person associated with a broker or dealer because we believe that these entities are subject to the greatest conflicts. We request comment on whether the proposed regulation should cover banks that are not associated persons and other independent entities. Are there certain classes of persons associated with a broker-dealer that should not be subject to the rule? Should the rule explicitly exclude investment advisers?
- Would the required disclosures be utilized by investors if they are not on the cover page, given the numerous other disclosures that firms must make?
- Should Rule 501 of proposed Regulation AC allow for a statement that the research analyst is "unable to provide the written certifications required," similar to Rule 502?
- Should Rule 502 require research analysts to provide their employers with a list identifying each public appearance made during the calendar quarter?

We solicit comment on our approach and the specific proposed certifications and disclosures. The Commission encourages commenters to provide information regarding the advantages and disadvantages of the proposed regulation.

IV. Paperwork Reduction Act

The proposed regulation contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[17] We will submit the proposal to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[18] The Commission is proposing to create a new information collection entitled "Regulation AC—Analyst Certification." An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

A. Summary of Collection of Information

Proposed Regulation AC, if adopted, would require that any research report published, circulated, or provided by a broker or dealer or person associated with a broker or dealer contain a statement attesting to the fact that the views expressed in each research report accurately reflect the analyst's personal views and whether or not the research analyst received or will receive any compensation in connection with the views or recommendations in the research report. The proposed regulation would also require broker-dealers to, on a quarterly basis, make, keep, and maintain records of research analyst statements regarding whether the views expressed in public appearances accurately reflected the analyst's views, and whether any part of the analyst's compensation is related to the specific recommendation or views expressed in the public appearance.

B. Reporting and Cost Burden Estimates

The proposed regulation would provide that broker-dealers, and persons associated with broker-dealers, must include in research reports they publish certain certifications and disclosures about the analyst's views expressed in the research reports and any relationship between the analyst's compensation and the specific recommendations or views expressed. The proposed regulation would also require broker-dealers to make, keep, and maintain records of research analyst certifications and disclosures in connection with public appearances.

The staff of the Commission believes that the average amount of time it would take a broker-dealer to include the required certifications and disclosures in each research report is one minute per report. The Commission staff estimates that broker-dealers publish approximately 657,000 research reports per year.[19] Therefore, the Commission estimates that the total annual burden in hours for all broker-dealers to comply with the research report certification and disclosure requirements of the proposed regulation is approximately 10,950 hours per year [(1 minute × 657,000 reports) / 60 minutes]. The Commission staff expects that research analysts will likely be the employees primarily charged with executing certifications and including them in research reports. According to industry sources, research analysts, on average, earn $189,250 per year, for an hourly pay rate of approximately $90. Including 35% overhead, Commission staff estimates that the hourly pay rate for a research analyst would be approximately $121.50. Therefore, the Commission estimates that the total annual burden in dollars of complying with the research report certification and disclosure requirements is approximately $1,330,425 per year [10,950 hours × $121.50 per hour].

The staff of the Commission believes that the average amount of time it would take a research analyst to prepare the quarterly statements regarding public appearances as required by the proposed regulation is ten minutes per analyst. The staff of the Commission believes that, on average, approximately 519 public appearances by research analysts occur per quarter,[20] or about 2,076 per year. Therefore, the Commission believes that the total annual burden in hours of complying with the public appearance certification and disclosure requirements would be approximately 346 hours per year [(10 minutes × 2076 appearances) / 60 minutes].

In cases where the analyst is unable to make the certifications in connection with public appearances as specified in Rule 502 (a)(1) of proposed Regulation AC, the firm is required to make, keep, and maintain a record of a statement from the research analyst that he or she is unable to make the specified certifications, and the reasons therefor, and to provide copies of that statement to its examining authority. The staff of the Commission believes that there will be few, if any, instances where a broker-dealer will provide copies of statements to their examining authority, as analysts and their firms will have strong incentives to avoid having to make the type of disclosures required to be provided to their examining authority. Therefore, the total annual burden, in dollars, of complying with the public appearance certification requirements would be approximately $42,039 [2,076 appearances × $20.25 pay per 10 minutes].

The proposed regulation requires that the records of statements regarding public appearances submitted by research analysts to their broker-dealers be preserved in accordance with Exchange Act Rule 17a–4(b)(4). Exchange Act Rule 17a–4(b)(4) requires that any communication relating to a broker-dealer's business, including inter-office communications, must be kept for at least three years. In light of the existing record preservation requirement for brokers and dealers under Exchange Act Rule 17a–4(b)(4),[21] the staff of the Commission believes that any additional costs to preserve the records of the certifications required by the proposed regulation would be minimal.

Proposed Regulation AC, if adopted, would require that brokers and dealers establish and follow sufficient procedures to comply with the provisions of the proposed regulation and would require that the broker or dealer is able to: collect, process, and disclose the information required to be included in research reports; ensure the submission of information required to be submitted to the firm's compliance department; and periodically review and evaluate these procedures. Brokers or dealers should already have these procedures in place to meet existing obligations under the SRO rules relating

[15] Regulation AC does not alter or effect any other existing obligation under the federal securities laws for research analysts or broker-dealers.

[16] For example, we note the term research analyst would not include an investment adviser, such as a mutual fund portfolio manager, who is not principally responsible for preparing research reports, even if the investment adviser is a registered person of a member. *See* Joint Memorandum of the NASD and the New York Stock Exchange. Discussion and Interpretation of Rules Governing Research Analysts and Research Reports (NASD Rule 2711 and NYSE Rules 351 and 472) at 3.

[17] 44 U.S.C. 3501 *et seq.*

[18] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[19] Based on data provided by First Call, the staff of the Commission estimates that approximately 657,000 research reports were published in 2001.

[20] 519 is approximately 10% of the estimated 5,186 research analysts employed in the U.S., which is based on information provided by Nelson Information.

[21] OMB Control No. 3235–0279.

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to research analysts that recently were approved by the Commission.[22] Therefore, the Commission estimates that the proposed regulation would result in a total annual time burden of approximately 11,296 hours [10,950 hours to comply with research report requirements + 346 hours to comply with public appearance requirements], and a total annual cost in dollars of approximately $1,372,464 [$1,330,425 to comply with the research report requirements + $42,039 to comply with the public appearance requirements].

C. Request for Comment

The Commission solicits comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. We also request comment on how many public appearance certifications would likely be submitted to brokerage firms per quarter, and how many of those statements would be required to be provided to the firm's examining authority.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–30–02. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–30–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Costs and Benefits of the Proposed Rule

The Commission is considering the costs and the benefits of proposed Regulation AC. The Commission encourages commenters to discuss any costs or benefits in addition to those discussed below. In particular, the Commission requests comment on any potential costs, as well as any potential benefits, resulting from the proposals for investors, issuers, broker-dealers, other securities industry professionals, SROs, or others. Commenters should provide analysis and data to support their views on the costs and benefits associated with the proposed amendments.

A. Benefits

We believe that investor confidence in the integrity of research has suffered because some investors may believe that research analyst objectivity has been compromised due to, among other things, analysts' personal compensation and firms' investment banking relationships with issuers that are the subjects of research reports. Requiring that research analysts certify that the views expressed in research reports reflect their personal views, and requiring disclosure of information regarding whether analyst compensation is related to the specific recommendations made, would help bolster investor confidence in the quality of research. This, in turn, should help bolster investor confidence in the securities markets.

Proposed Regulation AC would require that broker-dealers include certifications in research reports regarding the accuracy of the views expressed in the research report. Firms would be required to include in their research reports certifications that the views expressed in the research report accurately reflect the analyst's personal views regarding the subject securities or issuers and whether or not the analyst received compensation in connection with the reports. Many investors rely on the research reports and recommendations provided by their brokers. To the extent that the proposed regulations require disclosures that provide more transparency than provided by current regulation, these disclosures should provide investors with important information with which to determine the value of the research available to them.

Proposed Regulation AC may result in an increase in the overall quality of the research available to the public because a broker-dealer would be in violation of the securities laws when issuing research reports unless the reports include the required certifications and disclosures. The proposed requirement that the research analyst principally responsible for preparing the research report personally certify that the views expressed in the report accurately reflect his or her personal views creates an incentive for analysts to examine, even more carefully, the basis and foundations for his or her recommendations in preparing research reports.

Proposed Regulation AC may also result in an increase in the quality of research because of competitive reasons. Firms that publish research reports that do not contain certain analyst certifications will be in violation of the proposed regulation, and firms whose research analysts' compensation is related to the specific recommendations or views provided in research reports may lose some business to firms that are less conflicted. The proposed regulation is intended to enhance investor confidence in the integrity of the research available to them. We believe that by requiring research analysts to certify as to the accuracy of the views expressed in research reports, investor confidence in the securities markets should be enhanced, thereby leading to the benefit of more liquid and efficient markets. These benefits are difficult to quantify.

B. Costs

While the proposed regulation may lead to some additional costs for brokers or dealers, we believe that any costs should not be significant. The proposed certification and disclosure requirements would require research analysts to even more carefully consider the accuracy of the views expressed in research reports and public appearances, to consider their compensation arrangements, and then to make the required certifications and disclosures. In light of current requirements under SRO rules, the Commission estimates that, beyond the paperwork costs described above, any additional costs that would result from the required certifications and disclosures would be minimal.

Moreover, with respect to the compensation certifications and disclosures that would be required by proposed Regulation AC, brokers and dealers are already required to make certain disclosures regarding research analyst compensation under SRO rules.[23] Additionally, Exchange Act Rule 17a–3(a)(19) currently requires brokers or dealers to maintain a record of all agreements pertaining to the relationship between each associated person and the broker-dealer, including a summary of each associated person's compensation arrangement or plan.[24] Brokers or dealers should also already have in place procedures necessary to comply with many components of the proposed regulation due to existing obligations under SRO rules, although these procedures might require some minor modifications to conform with proposed Regulation AC. As noted previously, the Commission estimates that the annual paperwork costs in dollars of complying with the proposed regulation would be approximately $1,372,464.

C. Request for Comments

As an aid in evaluating costs associated with proposed Regulation AC, the Commission requests the public's views and any supporting information. We request comment on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed regulation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VI. Regulatory Flexibility Act Certification

The Commission certifies, pursuant to 5 U.S.C. 605(b), that the proposed regulation would not, if adopted, have a significant economic impact on a substantial number of small entities. The purpose of the proposed regulation is to increase analyst independence; further manage conflicts of interest; require increased disclosures to investors; and promote investor confidence in the integrity of research. By improving the quality of disclosure, the proposed regulation should enhance investor confidence in the fairness and integrity of the securities markets. The requirements of the proposed regulation are closely related to information, procedures, and disclosures required by existing SRO rules, which apply to both large and small broker-dealers that publish or circulate research reports.

The Division of Market Regulation estimates that the total burden in hours required to comply with proposed Regulation AC would, at most, be approximately two hours and two minutes per small firm. Accordingly, the Commission certifies that proposed regulation should not have a significant impact on a substantial number of small entities.

VII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA,"[25] we must advise OMB as to whether the proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

Where a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review. We request comment on the potential impact of the proposed regulation on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VIII. Effects on Competition, Efficiency and Capital Formation

Section 3(f) of the Exchange Act[26] requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. In addition, section 23(a)(2)[27] of the Exchange Act requires the Commission to consider the impact any rule would have on competition. Further, the law requires that the Commission not adopt any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The proposed regulation is intended to enhance investor confidence in the integrity of the research available to them. We believe that requiring broker-dealers to include analyst certifications in research reports, as well as the other disclosures required by proposed Regulation AC, should enhance investor confidence in the securities markets, thereby leading to a more efficient market. The Commission has considered the proposed regulation in light of the standards cited in section 23(a)(2) and believes preliminarily that it, if adopted, would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

We request comment on whether the proposed amendments, if adopted, would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. We also request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Specifically, research analysts are employed by different kinds of entities. Therefore, we seek comment on whether the regulation should be more expansive. For example, should the proposed regulation cover banks that are not associated persons? Commenters are requested to provide empirical data and other factual support for their views if possible.

IX. Statutory Authority

Regulation AC is being proposed pursuant to sections 3, 15, 17, and 23 of the Exchange Act and pursuant to sections 17 and 19 of the Securities Act.

Text of the Proposed Regulation

List of Subjects in 17 CFR Part 242

Securities.

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 242—REGULATIONS M, ATS and AC

1. The authority citation for part 242 is revised to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78l, 78m, 78mm, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 80a–23, 80a–29, and 80a–37.

2. The part heading for part 242 is revised as set forth above.

3. Part 242 is amended by adding Regulation AC, §§ 242.500 through 242.502 to read as follows:

Regulation AC—Analyst Certification

Sec.
242.500 Definitions.
242.501 Research reports.
242.502 Public appearances.

Regulation AC—Analyst Certification

§ 242.500 Definitions.

For purposes of Regulation AC (§§242.500 through 242.502):

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[22] *Supra* note 10.

[23] *See* NASD Rule 2711 and NYSE Rule 472.

[24] These subparagraphs of the rule may be redesignated as Rule 17a–3(a)(12)(ii) and Rule 17a–3(a)(12)(iii), should the Commission adopt amendments proposed in October 2001. *See* Securities Exchange Act Release No. 44992 (October 26, 2001).

[25] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. Section 601).

[26] 15 U.S.C. Section 78c(f).

[27] 15 U.S.C. Section 78w(a)(2).

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Public appearance means any participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public speaking activity in which a research analyst makes a specific recommendation or offers an opinion concerning a security or an issuer.

Research analyst means any natural person who is principally responsible for the analysis of any security or issuer included in a research report.

Research report means a written communication that includes an analysis of the securities of an issuer or issuers, provides information reasonably sufficient upon which to base an investment decision and includes a recommendation.

§ 242.501 Research reports.

A broker or dealer, or any person associated with a broker or dealer, that publishes, circulates, or provides, directly or indirectly, a research report prepared by a research analyst shall include in that research report a clear and prominent certification by the research analyst containing the following statements:

(a) A statement attesting that the views expressed in the research report accurately reflect the research analyst's personal views about any and all of the subject securities or issuers; and

(b)(1) A statement attesting that no part of the research analyst's compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views expressed by the research analyst in the research report; or

(2) A statement:

(i) Attesting that part or all of the research analyst's compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views expressed by the research analyst in the research report;

(ii) Identifying the source and amount of such compensation and the purpose therefor; and

(iii) Further disclosing that the compensation could influence the recommendations or views expressed in the research report.

§ 242.502 Public appearances.

(a) If a broker or dealer, or any person associated with a broker or dealer, publishes, circulates, or provides, directly or indirectly, a research report prepared by a research analyst, the broker or dealer must make a record within thirty days after each calendar quarter in which the research analyst has made a public appearance that includes a certification by the research analyst containing the following statements:

(1) A statement:

(i) Attesting that the views expressed by the research analyst in each public appearance accurately reflected the research analyst's personal views at that time about any and all of the subject securities or issuers; and

(ii) Attesting that no part of the research analyst's compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views expressed by the research analyst in any public appearance; or

(2) A statement attesting that the research analyst is unable to provide the written certifications specified in paragraph (a)(1) of this section and the reasons therefor. The broker or dealer must also disclose in all research reports prepared by the research analyst for the next 120 days that the research analyst did not provide the certifications specified in paragraph (a)(1) of this section and the reasons therefor.

(b) A broker or dealer shall promptly provide copies of all statements prepared pursuant to paragraph (a)(2) of this section to its examining authority, designated pursuant to Section 17(d) of the Securities Exchange Act of 1934 (15 USC 78q(d)) and § 240.17d–2 of this chapter.

(c) A broker or dealer shall preserve the records specified in paragraph (a) of this section in accordance with § 240.17a–4(b)(4) of this chapter.

By the Commission.

Dated: August 2, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20031 Filed 8–7–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. PL02–7–000]

Standard of Review for Proposed Changes to Market-Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities

August 1, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed policy statement.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to adopt a policy statement to announce a general policy regarding the standard of review that must be met to justify proposed changes to market-based rate contracts for wholesale sales of electric energy by public utilities. The intent of the proposed policy statement is to promote the sanctity of contracts, recognize the importance of providing certainty and stability in competitive electric energy markets, and provide adequate protection of electric energy customers. The Commission is inviting comments on the proposed policy statement.

DATES: Comments on the proposed policy statement are due September 23, 2002.

ADDRESSES: File written comments with the Office of Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Shaheda Sultan,Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 219–2685.

Jonathan First, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 208–2142.

Before Commissioners: Pat Wood III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

Proposed Policy Statement

I. Introduction

1. The Federal Energy Regulatory Commission is proposing to adopt a policy statement to announce a general policy regarding the standard of review that must be met to justify proposed changes to market-based rate contracts for wholesale sales of electric energy by public utilities. The specific prices, terms and conditions of service agreed to by willing sellers and buyers in such contracts are not required to be filed with the Commission when these contracts are entered into pursuant to generic market-based rate tariffs already approved by, and on file with, the Commission.[1] Because the generic tariffs are authorized only after the Commission has made findings that the sellers under such tariffs lack or have mitigated market power, the prices, terms and conditions of contracts pursuant to market-based tariffs are presumed to fall within a zone of reasonableness.[2] In an electric utility industry increasingly dominated by such market-based rate contracts, and in light of recent uncertainties in the industry brought about by the market dysfunctions in California and the collapse of Enron Corp., the Commission believes it is critical to promote the stability of power supply contracts to meet future energy needs. One step toward this end is to clarify the standards under which such contracts may be modified. Accordingly, the purpose of this proposed policy statement is to recognize the sanctity of contracts and allow the parties to a market-based power sales contract to have greater certainty against contractual changes, by clarifying our application of the "*Mobile-Sierra*" doctrine.[3]

2. Recently, the Commission received complaints against numerous sellers, alleging that certain market-based rate contracts for electric energy contain excessive rates and should be reformed.[4] One of the contested issues in these cases was what standard of review to apply in determining whether changes are permitted to the contract, *i.e.*, whether to apply the "just and reasonable" standard of review or the "public interest" standard of review in determining whether to permit one of the parties to seek changes to the contract over the objections of the other party. In earlier cases, another contested issue was whether the Commission is bound by the same standard of review that the parties agreed to in the contract, when the Commission acts on the complaint of a third party or on its own motion under Section 206 of the Federal Power Act (FPA).[5]

3. The Commission believes that the proposed policy statement would serve to limit, as much as possible, such disputes in the future. The Commission is proposing precise language that parties would be required to include in their electric power sales contracts if they intend that the Commission apply the "public interest" standard of review to their contract. If the parties include in their contract the proposed language laid out below, they would be able to bind themselves and, if they choose, they would also be able to bind the Commission (acting *sua sponte* or on behalf of a third party) to a public interest standard of review. Under the proposed policy, if parties to a market-based power sales contract do not include this exact language in their contract, however, we would construe the omission as demonstrating the intent of the parties to allow a just and reasonable standard of review. In other words, the omission of, or any deviation from, the language quoted below would result in the use of a just and reasonable standard of review.

4. We note that the Commission is proposing to depart from past precedent by agreeing to be bound to a public interest standard of review for market-based power sales contracts where both parties to the contract agree to bind themselves, and also seek to bind the Commission, to this standard.[6] We propose this in order to promote the contract certainty necessary to support competitive wholesale power markets. Further, we emphasize that, even under a public interest standard of review for these types of contracts, we believe we would have adequate authority to protect non-parties to the contract.

II. Background

5. The FPA requires that rates must be just and reasonable and not unduly discriminatory or preferential.[7] The selling public utility can propose the rates and the Commission can approve them if it finds they meet the just and reasonable standard.[8] The Commission can also on its own motion or on the complaint of a third party investigate existing rates, and alter them prospectively, if it finds that such rates are no longer just and reasonable.[9] The FPA also provides that contracts between individual parties can be used to set rates.[10] In such contracts, selling utilities may agree to voluntarily restrict some or all of their freedom to change the contract rates, customers may agree to restrict their right to request the Commission to change the rate, and sometimes the parties to the contract may attempt to restrict not only themselves but also the Commission from changing the contract rate under the "just and reasonable" standard. Some courts have held that where the utility and the customer have contracted for a particular rate and not reserved their rights to propose contractual changes, the contract has been filed with the Commission, and the Commission has permitted the rate to become effective, the utility cannot over the objections of the customer file a new rate (under Section 205 of the FPA), and the customer and the Commission cannot (under Section 206 of the FPA) propose changing the existing contract rate under the "just and reasonable" standard of review.[11] Certain courts have instead required the Commission to use the "public interest" standard to effect a change to the contract rate. Although not clearly defined,[12] the "public interest" standard of review has been held to be higher or stricter than the "just and reasonable" standard of review.[13]

III. Discussion

6. A great deal of time and expense is incurred and much uncertainty is engendered when the parties involved in contract disputes and the Commission attempt to resolve the issues of whether the parties intended to invoke a public interest standard of review, and whether this standard binds only one party, both parties, third parties, and/or the Commission. In some cases there is the issue of whether the parties intended to include other language in the contract that invokes the just and reasonable standard of review for particular portions of the contract rate.[14] More time and resources are

Continued

[1] *See* Order No. 2001, Revised Public Utility Filing Requirements, III FERC Stats. & Regs., Regulations Preambles ¶ 31,127 at 30,135–140 (April 25, 2002), *reh'g pending* (although contracts are not filed, detailed information about each transaction is reported to the Commission).

[2] *See, e.g.*, State of California v. British Columbia Power Exchange Corporation, *et al.*, 99 FERC ¶ 61,247 (2002), *reh'g pending* (prior review consists of "analysis to assure that the seller lacks or has mitigated market power so that its prices will fall within a zone of reasonableness").

[3] United Gas Pipe Line Co. v. Mobile Gas Serv. Corp., 350 U.S. 332 (1956); FPC v. Sierra Power Co., 350 U.S. 348 (1956) (*Mobile-Sierra*). Under the *Mobile-Sierra* doctrine, private contracts that set firm rates or establish a methodology for setting the rates for service, and deny either party the right to unilaterally change those rates, can be modified or abrogated by the Commission only if required by the public interest. Texaco Inc. v. FERC, 148 F.3d 1091, 1095 (D.C. Cir. 1998) (*Texaco*).

[4] *See, e.g.*, Pub. Utilities Comm'n of the State of California, *et al.*, v. Sellers of Long-Term Contracts to the California Dep't of Water Resources, *et al.*, 99 FERC ¶ 61,087 (2002), *reh'g pending;* Nevada Power Co. and Sierra Pacific Power Co. v. Duke Energy Trading and Mktg. L.P., *et al.*, 99 FERC ¶ 61,047 (2002), *reh'g pending.*

[5] 16 U.S.C. 824e.

[6] Northeast Utilities Service Co. v. FERC, 55 F.3d 686, 692 (1st Cir. 1995) (*Northeast Utilities*).

[7] 16 U.S.C. 824d.

[8] 16 U.S.C. 824d.

[9] 16 U.S.C. 824e.

[10] *See, e.g.*, 16 U.S.C. 824d(d) and 824e(a).

[11] *See* Boston Edison Co. v. FERC, 233 F.3d 60 (1st Cir. 2000) (*Boston Edison*), *citing Mobile-Sierra.*

[12] *Northeast Utilities*, 55 F.3d at 690, describing the *Mobile-Sierra* standard of review: "[N]owhere in the Supreme Court opinion is the term 'public interest' defined. Indeed, the Court seems to assume that the Commission decides what circumstances give rise to the public interest."

[13] Papago Tribal Utility Authority v. FERC, 723 F.2d 950, 954 (D.C. Cir. 1983).

[14] *See, e.g., Texaco;* Union Pacific Fuels, Inc. v. FERC, 129 F.3d 157 (D.C. Cir. 1997) (*Union Pacific*); *Northeast Utilities.* Section 35.1(d) of the Commission's regulations sought to reduce this uncertainty somewhat in the electric area, by specifying contractual language to be used by parties in certain circumstances, 18 CFR 35.1(d) (2002). However, this regulation applies only to contracts for the transmission or sale of firm power for resale to an all-requirements customer, and addresses the standard of review only when a *seller* proposes contractual changes. If a contract for services covered by this regulation contains the language specified in section 35.1(d)(3), we will continue to construe this language as requiring a

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expended and the uncertainty is prolonged when these cases are appealed to the courts, but as acknowledged by at least one court: "[t]he truth is that the cases, even within the D.C. Circuit itself, do not form a completely consistent pattern. Compare, *e.g., Texaco*, 148 F.3d at 1096 with *Union Pac. Fuels, Inc. v. FERC*, 327 U.S. App. D.C. 74, 129 F.3d 157, 161–162 (D.C. Circuit 1997)." [15] The *Boston Edison* court also stated that these issues would remain in a state of confusion until the Commission "squarely confronted the underlying issues," and if the Commission "wanted to eliminate much of the existing uncertainly regarding the parties" intent, it might prescribe prospectively the terms that parties would have to use to invoke Mobile-Sierra protection." [16]

7. The Commission is of the opinion that under the circumstances existing in today's electric power industry, it is necessary to eliminate as much uncertainty as possible and to prospectively prescribe the terms that parties must use to invoke a public interest standard of review to changes in their market-based power sales contracts. Accordingly, the Commission is hereby proposing to adopt a general policy to require parties to market-based power sales contracts to include specific language in their contract if they intend to invoke the public interest standard of review. (The proposed language is set forth at the end of this document.) Under the proposal, the Commission would apply the "public interest" standard of review only if this specific language is included in the contract. The parties could choose specific language that binds only the parties to the public interest standard or language that also binds the Commission when it acts on behalf of a non-party or on its own motion. Under the proposed policy, it is contemplated that if neither version of the specific language is included in the contract, the Commission would apply the "just and reasonable" standard of review to the contract regardless of whether it was to act on behalf of a party, a non-party, or on its own motion.

IV. Comment Procedure

8. The Commission invites interested persons to submit comments on this Notice of Proposed Policy Statement.

9. Comments may be filed on paper or electronically via the Internet and must be received by the Commission on or before September 23, 2002. The Commission strongly encourages electronic filings. Those filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. PL–0–7–000.

10. Comments filed via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's website at *http://www.ferc.gov* and click on "e-Filing," and then follow the instructions on each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments.

11. User assistance for electronic filing is available at 202–208–0258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by e-mail to *RimsMaster@ferc.gov*.

V. Document Availability

12. In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov/*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

13. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

14. User assistance is available for FERRIS and the FERC website during normal business hours from our Help line at (202) 208–2222 or the Public Reference Room at (202) 208–1371 Press 0, TTY (202) 208–1695. E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

List of Subjects in 18 CFR Part 2

Administrative practice and procedure; Electric power; Natural gas; Pipelines; Reporting and record keeping requirements.

By direction of the Commission. Commissioners Massey, Brownell, and Breathitt concurred with separate statements attached.

Magalie R. Salas,

Secretary.

The Commission proposes to amend part 2, Chapter I, Title 18 of the Code of Federal Regulations as follows:

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 601; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

2. In part 2, § 2.27 is added to read as follows:

§ 2.27 Commission policy on standard of review for proposed changes to market-based power sales contracts.

(a) The Commission, by this policy statement, seeks to clarify the standard of review that will apply when reviewing proposed changes to market-based power sales contracts executed after [date that is 30 days after publication of the Final Rule in the **Federal Register**].

(b)(1) Market-based power sales contracts must contain the following provision when it is the intent of the contracting parties to bind only themselves to a "public interest" standard of review for that contract:

Absent the agreement of all parties to the proposed change, the standard of review for changes to [sections __ of] this contract proposed by a party to the contract shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the *"Mobile-Sierra"* doctrine).

(2) Market-based power sales contracts must contain the following provision when it is the intent of the contracting parties to bind themselves and the Commission (acting on behalf of a non-party or on its own motion) to a "public interest" standard of review for that contract:

Absent the agreement of all parties to the proposed change, the standard of review for changes to [sections __ of] this contract proposed by a party, a non-party or the Federal Energy Regulatory Commission acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the *"Mobile-Sierra"* doctrine).

(c) Any market-based power sales contract that does not contain either of the provisions in paragraph (b) of this section will be construed by the Commission as allowing a "just and reasonable" standard of review for any proposed changes to the contract.

Note: The following concurring commissioners' statements will not appear in the Code of Federal Regulations.

MASSEY, Commissioner, *concurring:*

I support this order's objective of clarifying standards under which contracts may be modified and allowing parties to market-based power sales contracts greater certainty in the application of the *Mobile-Sierra* doctrine. Nevertheless, I write separately because I believe the Proposed Policy Statement would have been stronger if it had recognized explicitly the potential use of market power to extract an agreement to a *Mobile-Sierra* clause in a contract. As recognized by the DC Circuit Court of Appeals in *Atlantic City Electric Company*:[1]

As we have held, the purpose of the *Mobile-Sierra* doctrine is to preserve the benefits of the parties' bargain as reflected in the contract, assuming there was no reason to question what transpired at the contract formation stage. (Citing *Town of Norwood* v. *FERC*[2])

The *Mobile-Sierra* doctrine assumes that contracts are entered into voluntarily. Thus, a seller may not dictate, through the exercise of market power, the standard of review specified in a contract. I believe the Proposed Policy Statement should have explicitly addressed this concern. If a party to a contract would not have agreed to the insertion of the *Mobile-Sierra* clause absent the exercise of market power, then the Commission should allow that party to advocate the use of the just and reasonable standard.

With these thoughts in mind, I concur with today's order.

William L. Massey,

Commissioner.

BROWNELL, Commissioner, and BREATHITT, Commissioner, concurring:

1. We are voting in favor of this proposal for two reasons. First, we support providing the market with greater certainty concerning the Commission's review of market-based rate contracts. Second, we support changing the Commission's existing policy of not applying the *Mobile-Sierra* public interest standard when modifying market-based rate contracts on its own motion. However, we wonder if the proposal has gotten things backward on when the public interest standard is triggered.

2. Under the proposed policy, the Commission will not apply the *Mobile-Sierra* public interest standard when reviewing proposed changes to a market-based rate contract (regardless of whether the changes are sought by the seller, the buyer, a third party, or the Commission itself) unless explicit language dictating that standard is included in the contract. We would have preferred to propose a policy of applying the public interest standard unless there is explicit language in the contract that invites the Commission to apply a lower standard.

3. Competitive markets rely on investors to provide the capital needed to build generation. Investors will not participate in a market in which disgruntled buyers are allowed to break their contracts, at least not without charging a significant risk premium—a cost that will ultimately be borne by consumers. Therefore, as a policy matter, we think it might be preferable to hold everyone to the same high standard when seeking changes to market-based rate contracts, absent contract language indicating that the parties to the contract have agreed to a lower standard.

4. Moreover, we see nothing in the *Mobile-Sierra* case law that bars the Commission from adopting such a policy. Faced with balancing the sanctity of contracts against the Commission's statutory duty to review the justness and reasonableness of rates, the Supreme Court in *Mobile, Sierra*, and subsequent cases has ruled that, absent contractual language to the contrary, the Commission may not approve a seller's unilateral contract modification under § 205 of the Federal Power Act unless the modification is necessary for the public interest.[1] The case law on when the public interest standard applies in a § 206 proceeding, be it brought by the buyer, a third party, or by the Commission acting *sua sponte*, is much less clear. However, at least two courts have applied the public interest standard in § 206 proceedings notwithstanding the absence of contractual language specifying that standard.[2]

5. Therefore, we urge interested parties to comment on whether, as both a legal and a policy matter, the "default" in the policy statement should be reversed.

Nora Mead Brownell.

Linda Key Breathitt.

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public interest standard of review only when a *seller* proposes contractual changes.

[15] *Boston Edison*, 233 F.3d at 67.

[16] *Id.* at 68.

[1] Atlantic City Electric Company v. FERC, Docket No. 97–1097 (issued July 12, 2002), mimeo at 20.

[2] 587 F.2d 1306, 1312 (D.C. Cir. 1978).

[1] *See* United Gas Pipe Line Co. v. Mobile Gas Serv. Corp., 350 U.S. 332 (1956); FPC v. Sierra Pacific Power, 350 U.S. 348 (1956); and United Gas Pipeline Co. v. Memphis Light, Gas and Water Div., 358 U.S. 103 (1958).

[2] *See* Texaco Inc. v. FERC, 148 F.3d 1091, 1096 (D.C. Cir. 1998) (stating that prior decisions "did not suggest that the parties' failure to explicitly foreclose the Commission's authority to replace rates [under § 206] would leave it intact. The law is quite clear: absent contractual language susceptible to the construction that the rate may be altered while the contract subsists, the *Mobile-Sierra* doctrine applies."); Boston Edison Co. v. FERC, 233 F.3d 60, 67 (1st Cir. 2000) ("[T]he specification of a rate or formula by itself implicates *Mobile-Sierra* (unless the parties negate the implication).").

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR parts 4 and 113

RIN 1515–AD11

Presentation of Vessel Cargo Declaration to Customs Before Cargo Is Laden Aboard Vessel at Foreign Port for Transport to the United States

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to require the advance and accurate presentation of manifest information prior to lading at the foreign port and to encourage the electronic presentation of such information in advance. The document also proposes to allow a non-vessel operating common carrier (NVOCC) having an International Carrier Bond to electronically present this cargo manifest information to Customs. This information is required in advance and is urgently needed in order to enable Customs to evaluate the risk of smuggling before goods are loaded on vessels for importation into the United States, including the risk of smuggling of weapons of mass destruction through the use of oceangoing cargo containers, while, at the same time, enabling Customs to facilitate the prompt release of

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legitimate cargo following its arrival in the United States. Failure to provide the required information in the time period prescribed may result in the assessment of civil monetary penalties or claims for liquidated damages.

DATES: Comments must be received on or before September 9, 2002.

ADDRESSES: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW., Washington, DC, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: For legal matters: Larry L. Burton, Office of Regulations and Rulings, (202–572–8724).

For operational matters: Kimberly Nott, Office of Field Operations, (202–927–0042).

SUPPLEMENTARY INFORMATION:

Background

The Customs laws impose certain requirements upon vessels that will arrive in the United States to discharge their cargo. In particular, vessels destined for the United States must comply with 19 U.S.C. 1431, which requires that every vessel bound for the United States and required to make entry under 19 U.S.C. 1434 have a manifest that meets the requirements that are prescribed by regulation. To this end, under 19 U.S.C. 1431(d), Customs may by regulation specify the form for, and the information and data that must be contained in, the vessel manifest, as well as the manner of production for, and the delivery or electronic transmittal of, the vessel manifest.

Currently, § 4.7, Customs Regulations (19 CFR 4.7), requires: that the master of every vessel arriving in the United States and required to make entry have on board the vessel a manifest in accordance with 19 U.S.C. 1431 and § 4.7; and that an original and one copy of the manifest must be ready for production upon demand and must be delivered to the first Customs officer who demands the manifest. Sections 4.7(a) and 4.7a, Customs Regulations (19 CFR 4.7a), set forth the documentary and informational requirements that constitute the vessel manifest.

Pursuant to § 4.7(a), the cargo declaration (Customs Form 1302 or its electronic equivalent) is one of the documents that comprises a vessel manifest. The cargo declaration, or cargo manifest, must list all the inward foreign cargo on board the vessel regardless of the intended U.S. port of discharge of the cargo (§ 4.7a(c)(1)).

Furthermore, 19 U.S.C. 1448 provides, in pertinent part, that no merchandise may be unladen from a vessel which is required to make entry under section 1434 until Customs has issued a permit for the unlading. In addition, under section 1448, Customs possesses a reasonable measure of regulatory discretion as to whether, and under what circumstances and conditions, to issue a permit to unlade incoming cargo from a vessel arriving in the United States. Section 4.30, Customs Regulations (19 CFR 4.30), lists the requirements and conditions under which Customs may issue a permit to unlade foreign merchandise from a vessel arriving in the United States.

Finally, 19 U.S.C. 1436(a)(1) and (a)(4) provide that it is unlawful to fail to comply with sections 1431, 1433 or 1434 or any regulation prescribed under any of those statutory authorities. Further, 19 U.S.C. 1436(a)(2) states that it is unlawful to present or transmit, electronically or otherwise, any forged, altered or false document, paper, data or manifest to the Customs Service under 19 U.S.C. 1431, 1433(d) or 1434. Under section 1436(b), the master of a vessel who commits any such violation is liable for a civil penalty of $5,000 for the first violation and $10,000 for each subsequent violation and any conveyance used in connection with any such violation is subject to seizure and forfeiture.

Proposed Rulemaking; Advance Presentation of Vessel Cargo Manifest to Customs; Required Information

Customs proposes in this document to amend § 4.7 to provide that, pursuant to 19 U.S.C. 1431(d), for any vessel subject to entry under 19 U.S.C. 1434 upon its arrival in the United States, Customs must receive the vessel's cargo manifest (declaration) from the carrier 24 hours before the related cargo is laden aboard the vessel at the foreign port.

Necessity for Advance Presentation of Vessel Cargo Manifest to Customs

The United States Customs Service recently launched the Container Security Initiative ("CSI"), a program that will protect the United States and a significant part of the global trading system—containerized shipping—from terrorists and the implements of terrorism, including weapons of mass destruction. With CSI, the United States is entering into partnerships with other governments to target and inspect high-risk sea containers in foreign ports, before they are shipped to the United States. This will not only deter terrorists from attempting to use the global shipping system for their destructive purposes, it will also substantially reduce the risk of weapons of mass destruction from ever reaching our shores.

CSI, which provides improved security without slowing the flow of legitimate trade, is an integral part of the President's homeland security strategy. The initiative also has the full support of the G–8 and the World Customs Organization.

The Customs Service successfully piloted a version of CSI in Canada and already has agreements with the governments of the Netherlands, Belgium, and France to implement CSI at the ports of Rotterdam, Antwerp, and Le Havre. U.S. Customs Service inspectors will be stationed at those ports shortly. Agreements with other governments are imminent, and the Customs Service anticipates continued, rapid growth of CSI over the next several weeks and months.

An essential element of CSI is advance transmission of vessel cargo manifest information to Customs. Analysis of the manifest information prior to lading will enable overseas Customs personnel to identify high-risk containers effectively and efficiently, while ensuring prompt processing of lower risk containers. Because of CSI's rapid growth and critical role in homeland security, it is necessary that Customs begin receiving the advance manifest information required for CSI implementation as soon as possible.

Non-Vessel Operating Common Carriers (NVOCCs)

In the event that a non-vessel operating common carrier (NVOCC) delivers cargo to a vessel carrier for lading aboard the vessel at the foreign port, the NVOCC, if licensed by the Federal Maritime Commission and in possession of an International Carrier Bond executed pursuant to part 113 of the Customs Regulations (19 CFR part 113), containing the provisions of § 113.64 (19 CFR 113.64), may electronically transmit the corresponding required cargo manifest information directly to Customs through the Automated Manifest System (AMS) 24 or more hours before the related cargo is laden aboard the vessel at the foreign port; in the alternative, the NVOCC would need to fully disclose and present the required manifest information for the related cargo to the vessel carrier which would be required to present this information to Customs. For purposes of this rulemaking, a non-vessel operating common carrier (NVOCC) means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

This document proposes to amend the conditions of the International Carrier Bond (19 CFR 113.64) to add a new provision which would recognize the status of an NVOCC as a manifesting party and would obligate any NVOCC having such a bond and electing to provide cargo manifest information to Customs electronically under § 4.7 and 4.7a to transmit such information to Customs in an accurate and timely manner. Breach of these obligations would result in liquidated damages against the NVOCC.

Cargo Declarations; Information Required

Additionally, Customs proposes in this rulemaking to amend § 4.7a to require that the cargo declaration, on Customs Form 1302 or a Customs-approved electronic equivalent, separately list all foreign cargo not destined for the United States that remains on board the vessel ("FROB") as well as any empty containers that are on the vessel. Moreover, in addition to the cargo declaration information required for cargo destined for the United States in § 4.7a(c)(1)–(c)(3), § 4.7a would be amended in this proposed rule to add a new paragraph (c)(4) to provide that the cargo declaration, either on Customs Form 1302, or on a separate sheet or Customs-approved electronic equivalent, must state:

(1) The foreign port of departure;
(2) The carrier (SCAC) code;
(3) The voyage number;
(4) The date of scheduled arrival in the first U.S. port in Customs territory;
(5) The numbers and quantities from the carrier's ocean bills of lading, either master or house, as applicable;
(6) The first port of receipt of the cargo by the inward foreign ocean carrier;
(7) A precise description (or the Harmonized Tariff Schedule (HTS)) numbers under which the cargo is classified if that information is received from the shipper) and weight of the cargo or, for a sealed container, the shipper's declared description and weight of the cargo. Generic descriptions, specifically such as "FAK" ("freight of all kinds"), "general cargo", and "STC" ("said to contain") are not acceptable;
(8) The shipper's name and address, or an identification number, from all bills of lading;
(9) The consignee's name and address, or the owner's or owners' representative's name and address, or an identification number, from all bills of lading;
(10) Notice that actual boarded quantities are not equal to quantities as indicated on the relevant bills of lading (except that a carrier is not required to verify boarded quantities of cargo in sealed containers);
(11) The vessel name, national flag, and vessel number;
(12) The foreign port where the cargo is laden on board;
(13) Hazardous material indicator;
(14) Container number (for containerized shipments); and
(15) The seal number affixed to the container.

As explained above in the context of the CSI, these expanded information requirements are necessary to enable Customs to evaluate the risk of smuggling before goods are loaded onto vessels for importation into the United States, including the risk of smuggling of weapons of mass destruction. This information is required in advance for Customs to assess the risks presented by shipments for smuggling while providing expedited treatment of cargo upon arrival.

The failure by the master to present or transmit accurate manifest data in the time period prescribed by regulation and the presentation or transmission by the master of any false, forged or altered document, paper, manifest or data to Customs may result in the assessment of monetary penalties under the provisions of 19 U.S.C. 1436(b). If an NVOCC having an International Carrier Bond elects to transmit such data electronically to Customs and fails to do so in the time period prescribed by regulation or transmits any false, forged or altered document, paper, manifest or data to Customs, the NVOCC may be liable for the payment of liquidated damages for breach of the condition of the International Carrier Bond.

Issuance of Permit to Unlade Cargo

If the carrier does not present cargo declaration information to Customs prior to the lading of the cargo aboard the vessel at the foreign port, Customs may, in addition to assessment of civil monetary penalties, delay issuance of a permit to unlade the entire vessel until all required information is received. Customs may also decline to issue a permit to unlade the specific cargo for which a declaration is not received 24 hours before lading in a foreign port. Such a delay in the issuance of a permit to unlade or refusal of a permit to unlade would be appropriate because Customs cannot determine whether or when to permit the unlading of cargo until it has received timely, complete, and accurate declaration information and has reviewed the cargo manifest to gauge the potential risk associated with the importation of that cargo.

Preliminary Entry

It is also proposed that § 4.8 be amended to make it clear that the granting of preliminary entry by Customs will be conditioned upon the electronic submission of the Cargo Declaration (Customs Form (CF) 1302), as well as the provision to Customs either electronically or in paper form of all other forms required by § 4.7.

Comments

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to Customs. Only a 30-day comment period is being provided for in this notice because of the urgent necessity for Customs to receive advance manifest information to strengthen the CSI and to prevent the risk of smuggling of weapons of mass destruction. Customs specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), at the U.S. Customs Service, 799 9th Street, NW., Washington, DC during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

Regulatory Flexibility Act and Executive Order 12866

The advance presentation to Customs of vessel manifest information for cargo destined for the United States as prescribed under the proposed amendments is intended to expedite the release of incoming cargo while, at the same time, ensuring maritime safety and protecting national security. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments would not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor do they meet the criteria

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for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information in this document is contained in § 4.7a(c)(4). Under § 4.7a(c)(4), the information would be required and used to determine the security conditions under which cargo was maintained prior to and following its delivery for lading aboard a vessel for shipment to the United States. The likely respondents and/or recordkeepers are business or other for-profit institutions.

The collection of information encompassed within this proposed rule has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Estimated annual reporting and/or recordkeeping burden: 66,700 hours.

Estimated average annual burden per respondent/recordkeeper: 6.67 hours.

Estimated number of respondents and/or recordkeepers: 10,000.

Estimated annual frequency of responses: 100.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, would be revised to add an appropriate reference to 4.7a(c)(4), upon adoption of the proposal as a final rule.

List of Subjects

19 CFR Part 4

Administrative practice and procedure, Arrival, Cargo vessels, Customs duties and inspection, Declarations, Entry, Freight, Harbors, Hazardous substances, Imports, Inspection, Landing, Maritime carriers, Merchandise, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 113

Bonds, Customs duties and inspection, Exports, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

It is proposed to amend parts 4 and 113, Customs Regulations (19 CFR parts 4 and 113), as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the relevant specific authority citations would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;

* * * * *

Section 4.7 also issued under 19 U.S.C. 1581(a); 46 U.S.C. App. 883a, 883b;

Section 4.7a also issued under 19 U.S.C. 1498, 1584;

Section 4.8 also issued under 19 U.S.C. 1448, 1486;

* * * * *

Section 4.30 also issued under 19 U.S.C. 288, 1446, 1448, 1450–1454, 1490;

* * * * *

2. It is proposed to amend § 4.7 by revising its section heading; by redesignating the existing text of paragraph (b) as paragraph (b)(1) and revising the first sentence of newly redesignated paragraph (b)(1); and by adding new paragraphs (b)(2), (b)(3), and (e) to read as follows:

§ 4.7 Inward foreign manifest; production on demand; contents and form; advance filing of cargo declaration.

* * * * *

(b)(1) In addition to any Cargo Declaration that has been filed in advance as prescribed in paragraph (b)(2) of this section, the original and one copy of the manifest must be ready for production on demand. * * *

(2) For any vessel subject to paragraph (a) of this section, Customs must receive from the carrier the vessel's Cargo Declaration, Customs Form 1302, or a Customs-approved electronic equivalent, 24 hours before such cargo is laden aboard the vessel at the foreign port (see § 4.30(n)(1)). Participants in the Automated Manifest System (AMS) are required to provide the vessel's cargo declaration electronically.

(3)(i) Where a non-vessel operating common carrier (NVOCC), as defined in paragraph (b)(3)(ii) of this section, delivers cargo to the vessel carrier for lading aboard the vessel at the foreign port, the NVOCC, if licensed by the Federal Maritime Commission and in possession of an International Carrier Bond containing the provisions of § 113.64 of this chapter, may electronically transmit the corresponding required cargo manifest information directly to Customs through the Automated Manifest System (AMS) 24 or more hours before the related cargo is laden aboard the vessel at the foreign port (see § 113.64(c) of this chapter); in the alternative, the NVOCC must fully disclose and present the required manifest information for the related cargo to the vessel carrier which is required to present this information to Customs.

(ii) A non-vessel operating common carrier (NVOCC) means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier. The term "non-vessel operating common carrier" does not include freight forwarders as defined in part 112 of this chapter.

* * * * *

(e) *Failure to provide manifest information; penalties/liquidated damages.* Any master who fails to provide manifest information as required by this section, or who presents or transmits electronically any document required by this section that is forged, altered or false, or who fails to present or transmit the information required by this section in a timely manner, may be liable for civil penalties as provided under 19 U.S.C. 1436, in addition to penalties applicable under other provisions of law. In addition, if any non-vessel operating common carrier (NVOCC) as defined in paragraph (b)(3)(ii) of this section elects to transmit cargo manifest information to Customs electronically and fails to do so in the manner and in the time period required by paragraph (b)(3)(i) of this section, or electronically transmits any false, forged or altered document, paper, manifest or data to Customs, such NVOCC may be liable for the payment of liquidated damages as provided in § 113.64(c) of this chapter.

3. It is proposed to amend § 4.7a by revising the first sentence of paragraph (c)(1), by adding a new paragraph (c)(4), and by adding a new paragraph (f) to read as follows:

§ 4.7a Inward manifest; information required; alternative forms.

* * * * *

(c) *Cargo Declaration.* (1) The Cargo Declaration (Customs Form 1302 or a Customs-approved electronic equivalent) must list all the inward foreign cargo on board the vessel regardless of the U.S. port of discharge, and must separately list any other foreign cargo remaining on board ("FROB") as well as any empty containers that are on the vessel. * * *

* * * * *

(4) In addition to the cargo manifest information required in paragraphs (c)(1)–(c)(3) of this section, for all inward foreign cargo, the Cargo Declaration, either on Customs Form 1302, or on a separate sheet or Customs-approved electronic equivalent, must state the following:

(i) The foreign port of departure;

(ii) The carrier (SCAC) code;

(iii) The voyage number;

(iv) The date of scheduled arrival in the first U.S. port in Customs territory;

(v) The numbers and quantities from the carrier's ocean bills of lading, either master or house, as applicable;

(vi) The first port of receipt of the cargo by the inward foreign ocean carrier;

(vii) A precise description (or the Harmonized Tariff Schedule (HTS)) numbers under which the cargo is classified if that information is received from the shipper) and weight of the cargo or, for a sealed container, the shipper's declared description and weight of the cargo. Generic descriptions, specifically such as "FAK" ("freight of all kinds"), "general cargo", and "STC" ("said to contain") are not acceptable;

(viii) The shipper's name and address, or an identification number, from all bills of lading;

(ix) The consignee's name and address, or the owner's or owners' representative's name and address, or an identification number, from all bills of lading;

(x) Notice that actual boarded quantities are not equal to quantities as indicated on the relevant bills of lading (except that a carrier is not required to verify boarded quantities of cargo in sealed containers);

(xi) The vessel name, national flag, and vessel number;

(xii) The foreign port where the cargo is laden on board;

(xiii) Hazardous material indicator;

(xiv) Container number (for containerized shipments); and

(xv) The seal number affixed to the container.

* * * * *

(f) *Failure to provide manifest information; penalties/liquidated damages.* Any master who fails to provide manifest information as required by this section, or who presents or transmits electronically any document required by this section that is forged, altered or false, may be liable for civil penalties as provided under 19 U.S.C. 1436, in addition to penalties applicable under other provisions of law. In addition, if any non-vessel operating common carrier (NVOCC) as defined in § 4.7(b)(3)(ii) elects to transmit cargo manifest information to Customs electronically, and fails to do so as required by this section, or transmits electronically any document required by this section that is forged, altered or false, such NVOCC may be liable for liquidated damages as provided in § 113.64(c) of this chapter.

4. It is proposed to amend § 4.8 by revising the second and third sentences of paragraph (b) to read as follows:

§ 4.8 Preliminary entry.

* * * * *

(b) *Requirements and conditions.* * * * The granting of preliminary vessel entry by Customs at or subsequent to arrival of the vessel, is conditioned upon the presentation to and acceptance by Customs of all forms, electronically or otherwise, comprising a complete manifest as provided in § 4.7, except that the Cargo Declaration, Customs Form (CF) 1302, must be presented to Customs electronically in the manner provided in § 4.7(b)(2). Vessels seeking preliminary entry in advance of arrival must do so: by presenting to Customs the electronic equivalent of a complete Customs Form 1302 (Cargo Declaration), in the manner provided in § 4.7(b), showing all cargo on board the vessel; and by presenting Customs Form 3171 electronically no less than 48 hours prior to vessel arrival. * * *

* * * * *

5. It is proposed to amend § 4.30 by adding a new paragraph (n) to read as follows:

§ 4.30 Permits and special licenses for unlading and lading.

* * * * *

(n)(1) Customs will not issue a permit to unlade until it has received the cargo declaration information pursuant to § 4.7(b). In cases in which Customs does not receive complete cargo manifest information from the carrier or from the NVOCC, in the manner and format required by § 4.7(b), 24 hours prior to the lading of the cargo aboard the vessel at the foreign port, Customs may delay issuance of a permit to unlade the entire vessel until all required information is received. Customs may also decline to issue a permit to unlade the specific cargo for which a declaration is not received 24 hours before lading in a foreign port. Furthermore, where the carrier does not present an advance cargo manifest to Customs electronically, in the manner provided in § 4.7(b)(2), preliminary entry pursuant to § 4.8(b) will be denied.

(2) In addition, while the advance presentation of the cargo manifest for any vessel subject to § 4.7(b)(2) may be made in paper form or by electronic transmission through a Customs-approved electronic data interchange system, the submission of an electronic manifest for the cargo in this regard, as opposed to a paper manifest, will further facilitate the prompt issuance of a permit to unlade the cargo.

PART 113—B CUSTOMS BONDS

1. The general authority citation for part 113 would continue to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

2. It is proposed to amend § 113.64 by revising the first sentence of paragraph (a); and by redesignating paragraphs (c), (d), (e) and (f) as paragraphs (d), (e), (f) and (g), respectively, and adding a new paragraph (c) to read as follows:

§ 113.64 International carrier bond conditions.

(a) *Agreement to Pay Penalties, Duties, Taxes, and Other Charges.* If any vessel, vehicle, or aircraft, or any master, owner, or person in charge of a vessel, vehicle or aircraft, or any non-vessel operating common carrier as defined in § 4.7(b)(3)(ii) of this chapter incurs a penalty, duty, tax or other charge provided by law or regulation, the obligors (principal and surety, jointly and severally) agree to pay the sum upon demand by Customs. * * *

* * * * *

(c) *Non-vessel operating common carrier (NVOCC).* If a non-vessel operating common carrier (NVOCC) as defined in § 4.7(b)(3)(ii) of this chapter elects to provide vessel cargo manifest information to Customs electronically, the NVOCC, as a principal under this

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bond, in addition to compliance with the other provisions of this bond, also agrees to provide such manifest information to Customs in the manner and in the time period required by §§ 4.7(b) and 4.7a(c) of this chapter. If the NVOCC, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each regulation violated.

* * * * *

Robert C. Bonner,

Commissioner of Customs.

Approved: August 6, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–20147 Filed 8–6–02; 11:42 am]

BILLING CODE 4820–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–044]

RIN 1218–AA84

Occupational Exposure to 2-Methoxyethanol, 2-Ethoxyethanol and Their Acetates (Glycol Ethers)

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Reopening of the rulemaking record on a proposed rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is re-opening the record in the rulemaking on Occupational Exposure to 2-Methoxyethanol, 2-Ethoxyethanol, and their Acetates (Glycol Ethers) to solicit information on the extent to which the four glycol ethers (2–ME, 2–EE, 2–MEA and 2–EEA) are currently used in the workplace. The Agency is also seeking information on substitutes for these four glycol ethers that employers may be using, including information on patterns of use, levels of employee exposure to the substitutes, and their degree of toxicity.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or sent) by November 6, 2002.

Facsimile and Electronic Transmission: Your comments must be sent by November 6, 2002. (Please see the Supplementary Information provided below for additional information on submitting comments.)

ADDRESSES: *Regular Mail, Express Delivery, Hand-delivery, and Messenger Service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. H–044, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this document, Docket No. H–044, in your comments.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov.*

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact the Office of Public Affairs, N–3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–1890. For technical inquiries, contact Ms. Amanda Edens, Directorate of Health Standards Programs, OSHA, N–3718, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone 202–693–2270. For additional copies of this **Federal Register** document, contact OSHA, Office of Publications, U.S. Department of Labor, Room N–3101, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1888. Electronic copies of this **Federal Register** document, as well as news releases and other relevant documents, are available at OSHA's web page on the Internet at *www.osha.gov.*

SUPPLEMENTARY INFORMATION:

Submission of Comments on This Document and Internet Access to Comments and Submissions

You may submit comments in response to this document by (1) hard copy, or (2) FAX transmission (facsimile), or (3) electronically through the OSHA Webpage. Please note that you cannot attach materials, such as studies or journal articles, to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

All comments and submissions will be available for inspection and copying at the OSHA Docket Office at the above address. Comment and submissions posted on OSHA's Web site are available at *www.osha.gov.* OSHA cautions you about submitting personal information such as social security numbers and birth dates. Contact the OSHA Docket Office at (202) 693–2350 for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions.

Background

On March 23, 1993, OSHA proposed to reduce permissible exposure limits for four ethylene glycol ethers (2-Methoxyethanol (2–ME), 2-Ethoxyethanol (2–EE), and their acetates (2–MEA, 2–EEA)) to protect approximately 46,000 workers from significant risks of adverse reproductive and developmental health effects (58 FR 15526). The Agency held informal public hearings on the proposal, and the record was certified in March 1994.

Information submitted in response to the proposal, at the hearings, and in post-hearing comments indicates that the domestic production of the four ethylene glycol ethers was on the decline and that their use in several key industry sectors either may have been eliminated or may have been in the process of being phased out (Exs. 11–18, 19B, 28, 29A, 48, 53, 58; Ex. 302–X, pp. 596–600). By the close of the record, there was testimony that 2–MEA production had been phased out completely. There also had been a significant decline in production of the remaining glycol ethers since 1987. The vast majority of the 2–EE produced in 1991 was used as a chemical intermediate to produce 2–EEA, of which nearly 75% was exported; 2–EEA production for paints and coatings had been reduced by almost three-quarters since 1987; and most of 2–ME production was planned to be phased out by 1996 (Exs. 29A, 58). The evidence in the record indicated that less than one-half of the 11 major use categories that had been identified in OSHA's preliminary economic analysis remained (Ex. 58; Ex. 302–X, pp. 596–600).

Evidence also was submitted that the four ethylene glycol ethers were being shifted out of several critical uses. Evidence indicated that these glycol ethers were no longer being used in the auto refinishing industry (Exs. 24, 53), which accounted for about 86 percent of the affected establishments and 57 percent of all exposed workers (58 FR 15583). The targeted glycol ethers also had been discontinued in construction paints and were being replaced in surface coatings, printing inks, and in the semiconductor industry (Exs. 28, 48,11–18, 19–B). (More recent public information confirms this downward trend in the production and use of these glycol ethers. Environmental Protection Agency Toxic Release Inventory, *http://www.epa.gov/opptintr/tri.*)

OSHA has decided to re-open the rulemaking record, which is now 9½ years old, to seek up-to-date information about the extent to which 2–ME, 2–EE, 2–MEA and 2–EEA are currently used. OSHA requests comments and data from interested persons about whether the four glycol ethers are still in use, including information about the level of production, the industries and processes in which they are still used, and employee exposure levels.

OSHA also requests information on substitutes for these glycol ethers that are currently used, including information on the volume of usage, levels of employee exposure to the substitutes, and toxicity of the substitutes. As noted in the proposal, the four glycol ethers have been shown to be potent reproductive and developmental toxins. The Agency is interested in information related to the types of risks that any substitutes may pose to workers. OSHA will use the information gathered during this re-opening to make determinations about how to proceed with the Glycol Ethers rulemaking.

Authority and Signature

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1594, 29 U.S.C. 655), 29 CFR 1911.18, and Secretary's Order 3–2000.

Signed at Washington, DC, this 2nd day of August, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–20001 Filed 8–7–02; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7256–9]

Amendment to State Implementation Plan (SIP) Procedural Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to amend its procedural regulations regarding State Implementation Plans under the Clean Air Act (CAA) to clarify that such plans, when approved by EPA, are fully enforceable and binding upon all entities affected by the plans, and that any interpretations of relevant law or application of law to specific facts contained in EPA's rulemaking action on such plans shall have full force and effect of law as precedent for any future EPA rulemaking action on similar plans. Further, EPA proposes to clarify that the agency will apply the CAA and implementing regulations in like manner to like situations, and will explain any deviations from past practice based upon factual differences in different areas or developing interpretations of applicable law in future plan approval or disapproval actions, through notice-and-comment rulemaking.

DATES: Comments must be received on or before September 9, 2002.

ADDRESSES: All comments should be submitted to Docket #A–2002–10, Office of Air and Radiation Docket and Information Center, 1200 Pennsylvania Avenue, NW., Mail Code 6102, Washington, DC 20460, phone number (202) 260–7548. The normal business hours are 7:30 a.m. to 5:30 p.m. Comments can either be submitted to the address above, by fax (202) 260–4400, or by e-mail to *A-and-R-Docket@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Denise M. Gerth, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C–539–02, Research Triangle Park, NC 27711, phone number (919) 541–5550 or by e-mail at: *gerth.denise@epa.gov.*

SUPPLEMENTARY INFORMATION: States adopt SIPs under section 110 of the CAA providing for implementation of national ambient air quality standards (NAAQS) within their boundaries. Such SIPs are subsequently approved or disapproved by EPA pursuant to notice-and-comment rulemaking under the Administrative Procedure Act. *Buckeye Power, Inc.* v. *EPA*, 481 F.2d 162 (6th Cir. 1973). Under clearly established case law, once approved by EPA, these SIPs have full force and effect of law and are fully enforceable and binding upon all entities affected by the plans. *Union Electric Co.* v. *EPA*, 515 F.2d, 206 (8th Cir. 1975).

For a number of years, EPA had included certain language in the preambles to its rulemaking actions approving or disapproving submitted SIPs indicating that "[n]othing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. U.S. EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements." (58 FR 48312, September 15, 1993). By this language, EPA had intended to convey to States contemplating prospective SIP revisions that EPA's approval or disapproval of any SIP would depend on the specific facts and law applicable to the SIP revision at issue, and that States could not be guaranteed an identical result to that reached in any prior SIP action. The purpose of this language was not to leave the approved SIPs without the force and effect of law as to regulated parties, nor to deprive the rulemaking actions regarding SIP submissions of the precedential effect they necessarily have regarding subsequent EPA rulemaking actions. In fact, although EPA certainly has the ability to adjust its policies and rulings in light of experience and to announce new principles through rulemaking procedures, EPA may not depart from its prior rules of decision to reach a different result in future cases without fully explaining such discrepancies and taking comment on the appropriateness of the resulting action. *Western States Petroleum Association, et al.*, v. *EPA, et al.*, 87 F.3d 280 (9th Cir. 1996).

In a recent decision concerning a SIP revision in Nevada, the Court of Appeals for the Ninth Circuit, while acknowledging that SIPs are enforceable against regulated parties, interpreted the language EPA had included in the SIP warning States that they could not be guaranteed a given result in future SIP revision requests as limiting the binding precedential effect of EPA's action approving the SIP. *Hall* v. *EPA*, 273 F.3d 1146 (9th Circuit 2001). As noted above, EPA did not intend this result, and further the agency believes that in light of existing law concerning Agency rulemaking, EPA could not impose such a restriction on its actions in any event.

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Thus, EPA is proposing to amend its regulations to clarify that all EPA actions on SIPs do have full force and effect of law and binding precedential effect.

Under the proposed rule, all approved SIPs are fully enforceable, and all EPA actions approving or disapproving SIPs have binding precedential effect. Where EPA proposes in any future SIP action to make any deviations from past practice based upon factual differences in different areas or developing interpretations of applicable law, EPA will do so through full notice-and-comment rulemaking in future plan approval or disapproval actions.

Administrative Requirements

A. Office of Management and Budget (OMB) Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. It has been determined that this is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Federalism

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule is procedural in nature. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

C. Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

D. Consultation and Coordination with Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175; thus the Order does not apply to this rule.

E. Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act

This rule contains no Federal mandates (under the provisions of Title II of the Unfunded Mandates Reform Act) for State, local, or tribal governments or the private sector because this rule imposes no enforceable duty on any State, local or tribal governments or the private sector.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not subject to the RFA, which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment under the Administrative Procedures Act (APA) or any other statute. While this action is subject to notice-and-comment under the APA, a RFA is not necessary because this action does not impose any significant impacts on a substantial number of small entities. This rule doesn't impose any obligations on such entities; it just recognizes the precedential impact of SIP approvals.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

I. Paperwork Reduction Act

Today's action does not establish any new information collection requirements beyond those which are currently required under the Ambient Air Quality Surveillance Regulations in 40 CFR part 58 (OMB #2060–0084, EPA ICR No. 0940.15). Therefore, the requirements of the Paperwork Reduction Act do not apply to today's action.

Dated: August 1, 2002.

Elizabeth Craig,

Acting Assistant Administrator for Air and Radiation.

Part 51, subpart F, Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows: 42 U.S.C. 7401–7671q.

§ 51.105 [Amended]

2. Section 51.105 is amended by redesignating the existing paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

(b) All plans, or any portions thereof or revisions thereto, that have been approved by EPA shall be fully enforceable and binding upon all entities affected by the plans or revisions, and any interpretations of relevant law or application of law to specific facts contained in EPA's rulemaking action approving or disapproving such plans and revisions shall have full force and effect of law as precedent for any future EPA rulemaking action on similar plans and revisions under applicable provisions of the Clean Air Act and EPA's implementing regulations. The EPA shall apply the Act and implementing regulations in like manner to like situations, and will explain any deviations from past practice based upon factual differences in different areas or developing interpretations of applicable law in future SIP approval or disapproval actions through notice-and-comment rulemaking.

[FR Doc. 02–20097 Filed 8–7–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–96; 97–200231(b); FRL–7254–1]

Approval and Promulgation of Implementation Plans: North Carolina: Permitting Rules and Other Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of North Carolina, through the North Carolina Department of Environmental and Natural Resources (NCDENR), on April 16, 2001. These revisions include the adoption of rules 15A NCAC 2D .0611 through .0615, the amending of .0501, .0903 and multiple rules within Chapter .0600 Monitoring: Recordkeeping: Reporting, the adoption of rules 15A NCAC 2Q .0316 and .0317 and the amending of rules .0109, .0803 and .0805 through .0808. In the Final Rules Section of this **Federal Register**, the EPA is approving the North Carolina SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant material and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before September 9, 2002.

ADDRESSES: All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

North Carolina Department of Environment and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Randy Terry, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9032. Mr. Terry can also be reached via electronic mail at *terry.randy@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: July 10, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–19436 Filed 8–7–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 450

[FRL–7257–1]

RIN 2040–AD42

Effluent Limitation Guidelines and New Source Performance Standards for the Construction and Development Category; Public Meetings and Change of Location for Water Docket

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is announcing public information meetings and a change in the location of the Water Docket.

DATES: The public meetings will be held on Thursday, September 5, 2002 and September 18, 2002. The Water Docket will be closed during August 12 to 26, 2002 and will open at a new location on August 27, 2002. See "Supplementary Information" for detailed information.

FOR FURTHER INFORMATION CONTACT: Eric Strassler, EPA, e-mail *strassler.eric@epa.gov* or telephone 202–566–1026.

SUPPLEMENTARY INFORMATION: EPA published a proposed rule for the Construction and Development Category on June 24, 2002 (67 FR 42644) and is conducting public meetings. No registration is required for these meetings. Seating will be provided on a first-come, first-served basis.

- Thursday, September 5, 2002. 9 a.m.–noon. Sheraton Atlanta Hotel, 165 Courtland St., Atlanta, GA. Phone 404–659–6500.
- Wednesday, September 18, 2002. 9 a.m.–noon. EPA East Building, Room 1153, 1201 Constitution Avenue, NW., Washington, DC. Please note that parking is very limited in downtown Washington and use of public transit is recommended. The EPA Headquarters complex is located near the Federal Triangle Metro subway station. Upon exiting the Metro station, walk on 12th Street to Constitution Avenue, and turn right to proceed to the EPA East Building entrance.

Meeting Access: If you need special accommodations at these meetings, including wheelchair access, please contact the Eastern Research Group Conference Registration Line at 781–674–7374, at least five business days before the meeting so that appropriate arrangements can be made.

During the meetings, EPA will present information on the applicability of the proposed regulation, the technology options selected as the basis for the proposed limitations and standards, and the compliance costs and pollutant reductions. EPA will also allow time for questions and answers during these sessions. These meetings are not public hearings for the purpose of obtaining comment on the proposal. EPA will not generate a transcript of the meetings. The public may submit written comments by mail or electronically as described in the June 24, 2002 proposal. Instructions for hand delivery of written comments is provided below.

The public record for the proposed rule is available for review in EPA's Water Docket, under Docket No. W–02–06. The Water Docket will close temporarily to prepare for moving to a new location. The closure dates are August 12 to 26, 2002. The new Water Docket address is EPA West Building, Room B135, 1301 Constitution Avenue,

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NW., Washington, DC, 20004. The docket will reopen on Tuesday, August 27, 2002. Beginning on that date, please call the new docket phone number, 202–566–2426, to schedule an appointment. For hand deliveries of comments on or after that date, submit such comments to the new address.

Additional information about the proposed rule is available on EPA's Web site at *http://www.epa.gov/waterscience/guide/construction/*.

Dated: August 1, 2002.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 02–20098 Filed 8–7–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7257–2]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Del Norte County Pesticide Storage Area Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region IX is issuing a Notice of Intent to Delete the Del Norte County Pesticide Storage Area Superfund Site (Site) located in Crescent City, California, from the National Priorities List (NPL) and requests public comments on this Notice of Intent to Delete. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, is found at appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of California, through the California Department of Toxic Substances Control (DTSC), have determined that all appropriate response actions under CERCLA, other than Operation and Maintenance and Five-Year Reviews, have been completed. However, this deletion does not preclude future actions under CERCLA.

DATES: Comments concerning this Site must be received by September 9, 2002.

ADDRESSES: Written comments should be addressed to: Beatriz Bofill, Remedial Project Manager, U.S. EPA, Region IX, SFD–7–2, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 972–3260 or (800) 231–3075.

Information Repositories: Comprehensive information on this Site is available through the Region IX public docket which is available for viewing at the EPA Region IX Superfund Records Center, 95 Hawthorne Street, San Francisco, CA 94105–3901, (415) 536–2000 (Monday through Friday 8 a.m. to 5 p.m.); Crescent City Library, 190 Price Mall, Crescent City, CA 95531, (707) 464–9793 (Monday, Tuesday, Thursday and Friday 10 a.m. to 6 p.m., Wednesday 10 a.m. to 8 p.m., Saturday 10 a.m. to 2 p.m., Sunday closed).

FOR FURTHER INFORMATION CONTACT: Beatriz Bofill, Remedial Project Manager, U.S. EPA, Region IX, SFD–7–2, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 972–3260 or (800) 231–3075; or Viola Cooper, Community Involvement Coordinator, U.S. EPA, Region IX, SFD–3, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 972–3243 or (800) 231–3075.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion

I. Introduction

The U.S. EPA Region IX is publishing this Notice of Intent to Delete the Del Norte County Pesticide Storage Area Superfund Site from the NPL and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan, which EPA promulgated pursuant to section 105 of CERCLA, as amended. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment, and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial action in the unlikely event that conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this Site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is following specifically for this Site. Section IV discusses the Del Norte County Pesticide Storage Area Superfund Site and demonstrates how it meets the deletion criteria.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist EPA management.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA, in consultation with the State, shall consider whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required; or

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

CERCLA section 101(25) defines response as removal and remedial actions, and does not include operation and maintenance activities. Accordingly, a site may be deleted from the NPL where only operation and maintenance activities remain. Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the Hazard Ranking System (40 CFR 300.425(e)(3)).

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) A ROD Amendment documents the technical infeasibility of reaching the Maximum Contaminant Level (MCL) for 1,2-dichloropropane (1,2-DCP).

(2) All remedial action has been implemented as is documented in the Final Close Out Report (FCOR), dated July 19, 2002.

(3) The EPA consulted with the State of California on the deletion of the Site from the NPL prior to developing this Notice of Intent to Delete.

(4) The State of California concurred with deletion of the Site from the NPL.

(5) A notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete.

(6) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

For deletion of this Site, EPA's Regional Office will accept and evaluate public comments before making a final decision to delete. If comments are received, EPA will prepare a Responsiveness Summary to address those comments. The Responsiveness Summary will be available for review in the Deletion Docket. The Deletion Docket is a compilation of documents containing all pertinent information supporting the deletion recommendation.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Location

The Del Norte County Pesticide Storage Area Site, located approximately one mile northwest of Crescent City, California, consists of less than one acre of land which had been contaminated with a variety of herbicides, pesticides, and other compounds. The Site is located in a rural area immediately south of McNamara Field, the airport that serves Del Norte County. The property is zoned manufacturing performance.

In December 1969, the Del Norte County Sanitarian notified the North Coast Regional Water Quality Control Board (NCRWQCB) of the County's intent to operate a pesticide container storage area. During 1970, the Site was designated by the NCRWQCB as a Class II–2 disposal site to serve as a County-wide collection point for interim or emergency storage of pesticide containers generated by local agricultural and forestry-related industries.

The pesticide container storage area operated from 1970–1981. Soil and groundwater contamination was discovered in the fall of 1981, indicating that the pesticide containers had been rinsed on-site, and that the residues and rinseates were improperly disposed of in a bermed, unlined sump area. In 1982, approximately 1,150 containers were removed from the Site. Preliminary investigations from 1981–1983, by NCRWQCB and California Department of Health Services, identified soil and groundwater contamination with herbicides, pesticides and volatile and semivolatile compounds. Del Norte County's inability to fund further Site investigations initiated the process of listing the Site on the NPL in the fall of 1983.

Remedial Investigation and Feasibility Study (RI/FS)

EPA produced a Remedial Investigation/Feasibility Study (RI/FS) Final Report on September 13, 1985. The RI/FS established that operations at the storage area resulted in contamination of soil and groundwater with herbicides, pesticides, volatile and semi-volatile compounds. Because the contamination had reached the groundwater, use of the contaminated groundwater as a water supply would result in a significant health risk. One Contaminant of Concern (COC), 1,2-DCP, had migrated downgradient of the storage area to a distance of about 150 to 300 feet in the southeasterly direction from the sump area. There was no spread of soil contamination due to wind or runoff detected beyond the storage area boundaries. There was also widespread detection of chromium in soil and groundwater, both on- and off-site, which required further investigation to determine whether it was the highly toxic hexavalent form or whether it was trivalent chromium, which is much less toxic.

Response Actions

EPA's September 30, 1985 Record of Decision (ROD) selected a Site remedy of excavation and off-site disposal of contaminated soils as well as extraction and treatment of the contaminated groundwater. The selected groundwater remedy consisted of: (1) Carbon adsorption for removal of organics and pesticides and (2) coagulation and sand filtration for removal of chromium. The ROD utilized the drinking water MCL of 100 micrograms/Liter (μg/L) as the groundwater cleanup goal for 2,4-dichlorophenoxyacetic acid (2,4-D), and 50 parts per billion as the groundwater cleanup goal for Chromium. No MCL had been set for 1,2-DCP at that time, so a health-based advisory level of 10μg/L was chosen as the cleanup goal for 1,2-DCP. EPA continued to monitor the contaminants and conditions at the Site.

In August 1987, EPA used removal authorities to perform a Removal Action in which 290 cubic yards of contaminated soils were excavated and disposed of off-site at a licensed hazardous waste disposal facility. This action removed the contaminated soils in the sump area, thereby eliminating the source of additional incremental groundwater contamination.

An Explanation of Significant Differences (ESD) dated September 21, 1989 clarified that the chromium found at the Site was in fact trivalent chromium, not the significantly more toxic hexavalent form. Furthermore, data collected at the Site led to the conclusion that chromium levels were consistent with naturally occurring background levels. Therefore, it was determined that treatment of chromium in groundwater was not necessary and the ESD removed the chromium cleanup standard from the Site remedy.

Additionally, levels of 2,4-D were only detected above the MCL in two samples during the RI/FS, Remedial Design and Removal phases of the project. By 1989, 2,4-D was detected in only one well at a concentration of 20μg/L, supporting the conclusion that the cleanup criteria had been met. As a result, a 1998 ESD changed the original remedy of carbon filtration, coagulation, and sand filtration to aeration, which had not been selected in the 1989 ROD due to its ineffective removal of 2,4-D and chromium. The only COC remaining to be remediated was the presence of 1,2-DCP in the groundwater.

A pump and treatment system began extracting groundwater from one extraction well at the rate of 15 gallons per minute, and operated continuously from April 1990 to December 1994. After 1994, 1,2-DCP concentrations in the groundwater monitoring wells reached asymptotic levels ranging between 15μg/L and 40μg/L. In 1994, EPA installed an air sparging system to determine if the injection of air into the aquifer would enhance contaminant removal. No discernable changes in the levels of 1,2-DCP in groundwater were noted. The plume is stable and is not migrating vertically or laterally.

Cleanup Standards

Because treatment was no longer reducing the contaminant levels, an August 2000 ROD Amendment modified

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the remedy to containment of the groundwater plume. In 1992, a MCL of 5µg/L was established, for 1,2-DCP. This MCL is an Applicable or Relevant and Appropriate Requirement (ARAR) for the groundwater cleanup at the Site. However, given the conclusions reached about the status of the 1,2-DCP plume, EPA's 2000 ROD Amendment concluded that the 5,000 foot plume was not migrating and that it was technically impracticable to restore the 1,2-DCP plume to the 5µg/L MCL. The 2000 ROD Amendment therefore waived this ARAR on the basis of Technical Impracticability.

Operation and Maintenance

On March 6, 2002, a Consent Decree (CD) was entered among EPA, DTSC and Del Norte County, which provides that Del Norte County will continue to provide monitoring at the Site with oversight by DTSC. Semiannual groundwater monitoring will be ongoing at the Site until levels of 1,2-DCP have dropped below the MCL and EPA makes a determination that monitoring is no longer necessary. Sampling methodology and protocol can be found in the Del Norte County Pesticide Storage Area Superfund Site Groundwater Monitoring Plan, dated June 6, 2001.

Institutional controls were established in the 2000 ROD Amendment and will be implemented through the CD. Controls for the Site include: (1) Restricting access to the Site to protect existing groundwater monitoring wells and to prevent use of contaminated groundwater; (2) Prohibiting use of contaminated groundwater; (3) Prohibiting the use of the Site (which is currently zoned for industrial purposes) for residences, hospitals for humans, public or private schools for persons under 21 years of age, or for day care centers for children; (4) Restricting the use of the Site to industrial/commercial purposes that do not interfere with the containment and monitoring of the contaminated groundwater, and that do not damage, alter, destroy, or compromise the integrity of the existing groundwater monitoring wells at the Site; (5) Prohibiting the installation and/or pumping of water-producing wells, including but not limited to water supply, irrigation and private wells on the Site; and (6) Prohibiting the installation and operation of any groundwater extraction wells in the area extending one mile from the boundary of the Site that would cause the plume of contaminated groundwater under the Site to move or that would cause contaminated groundwater under the Site to be brought to the surface. For any proposed groundwater extraction wells within the one mile area described above all, necessary information must be provided to the lead agency to demonstrate that the restrictions are met.

Five-Year Review

Because contaminants remain at the Site above the MCL, Five-Year Reviews are required by statute. A Five-Year Review was completed at the Site on December 27, 2000, and found the remedy to be protective of human health and the environment. Five-Year Reviews will continue to be conducted at this Site until contaminant levels are below cleanup levels. The next Five-Year Review will be completed by December 27, 2005.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the Deletion Docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

Applicable Deletion Criteria/State Concurrence

All the completion requirements for this Site have been met as described in the FCOR dated July 19, 2002. The NPL provides that a site is eligible for deletion where "all appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate," and where "responsible parties or other parties have implemented all appropriate response actions required." The FCOR documents that Site monitoring and institutional controls have been implemented and ensure the protectiveness of the remedy. Site monitoring will continue, conducted under the supervision of DTSC, until levels of 1,2-DCP reach below the MCL.

EPA, with the concurrence of the State of California through its Department of Toxic Substances Control on July 22, 2002, finds that these criteria for deletion of the Site have been met. Consequently, EPA is proposing deletion of the Del Norte County Pesticide Storage Area Superfund Site from the NPL.

Dated: July 26, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02-20099 Filed 8–7–02; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH33

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[I.D. 052002A]

RIN 0648–AQ03

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Gulf Sturgeon

AGENCIES: Fish and Wildlife Service, Interior, and National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; notice of availability (NOA) of draft economic analysis, and correction on public hearing location.

SUMMARY: The U.S. Fish and Wildlife Service and the National Marine Fisheries Service, collectively "the Services" are announcing the availability of a draft economic analysis of the proposal to designate critical habitat for the Gulf sturgeon (*Acipenser oxyrinchus desotoi*). We are soliciting public comments on both the proposal and the draft economic analysis. We also are correcting the address of a public hearing to be held in Defuniak Springs, FL on August 20, 2002.

DATES: *Comments:* We are extending the comment period announced in the proposed rule, published at 67 FR 39106, to allow a 60–day comment period following this NOA.The revised comment period on both the proposed critical habitat designation and the draft economic analysis is now open and will close on October 7, 2002. We must receive comments from all interested parties by the closing date. Any comments that we receive after the closing date will not be considered. Comments previously submitted need not be resubmitted as they have already been incorporated into the public record and will be fully considered in the final rule.

Public Hearings: The Services have scheduled four public hearings from August 19 to 22, 2002, on the proposed critical habitat designation and the draft economic analysis. See **SUPPLEMENTARY INFORMATION** for details including locations, times and dates.

ADDRESSES: *Draft Economic Analysis:* Copies of the draft economic analysis are available on the Internet at *http://alabama.fws.gov/gs/* or by writing to or calling Patty Kelly, Panama City Field Office, U.S. Fish and Wildlife Service, 1601 Balboa Avenue, Panama City, FL 32405; telephone 850/769–0552.

Comments: If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and information to the Project Leader, c/o Patty Kelly, Panama City Field Office, U.S. Fish and Wildlife Service, 1601 Balboa Avenue, Panama City, FL 32405.

2. You may hand-deliver written comments to our Panama City Field Office, at the above address or fax your comments to 850/763–2177.

3. You may send comments by electronic mail (e-mail) to *gulfsturgeon@fws.gov*. For directions on how to submit electronic filing of comments, see "Public Comments Solicited."

4. You may provide oral and/or written comments at any of the public hearings.

Comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Patty Kelly, Fish and Wildlife Biologist, Panama City Field Office (see **ADDRESSES**) (telephone 850/769–0552, extension 228) with questions concerning units 1 to 7; or Stephania Bolden, NOAA Fisheries, at 9721 Executive Center Drive North, St. Petersburg, FL 33702–2449 (telephone 727/570–5312; facsimile 727/570–5517) with questions concerning units 8 to 14.

SUPPLEMENTARY INFORMATION:

Background

The Services listed the Gulf sturgeon as a threatened species under the Endangered Species Act of 1973, as amended (Act), on September 30, 1991 (56 FR 49653). On June 6, 2002, we published in the **Federal Register** a proposal to designate critical habitat for this species (67 FR 39106). The proposed designation includes portions of the following Gulf of Mexico rivers and tributaries as critical habitat for the Gulf sturgeon: Pearl and Bogue Chitto Rivers in Louisiana and Mississippi; Pascagoula, Leaf, Bowie (also referred to as Bouie), Big Black Creek and Chickasawhay Rivers in Mississippi; Escambia, Conecuh, and Sepulga Rivers in Alabama and Florida; Yellow, Blackwater, and Shoal Rivers in Alabama and Florida; Choctawhatchee and Pea Rivers in Florida and Alabama; Apalachicola and Brothers Rivers in Florida; and Suwannee and Withlacoochee River in Florida.

The proposal also includes portions of the following estuarine and marine areas: Lake Pontchartrain (east of the Lake Pontchartrain Causeway), Lake Catherine, Little Lake, The Rigolets, Lake Borgne, Pascagoula Bay and Mississippi Sound systems in Louisiana and Mississippi, and sections of the adjacent state waters within the Gulf of Mexico; Pensacola Bay system in Florida; Santa Rosa Sound in Florida; nearshore Gulf of Mexico in Florida; Choctawhatchee Bay system in Florida; Apalachicola Bay system in Florida; and Suwannee Sound and adjacent state waters within the Gulf of Mexico in Florida. These geographic areas encompass approximately 2,544 river kilometers (1,580 river miles) and 6,042 square kilometers (2,333 square miles) of estuarine and marine habitat.

Section 4(b)(2) of the Act requires that the Services designate or revise critical habitat based upon the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species. Consequently, we have prepared a draft economic analysis concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**).

Public Hearings

The Services have scheduled four public hearings on the proposed critical habitat designation and the draft economic analysis. We will hold public informational meetings prior to each public hearing at the hearing locations. The public information sessions will start at 5 p.m. and end at 6:30 p.m. The formal public hearings will start at 7 p.m. and end at 9 p.m. on the dates indicated.

(1) August 19, 2002, Suwannee River Water Management District, 9225 C.R. 49, Live Oak, FL 32060.

(2) August 20, 2002, Chautaugua Building, Museum Room, 96 Circle Drive, Defuniak Springs, FL 32435

(3) August 21, 2002, J. L. Scott Marine Education Center and Aquarium, 115 Beach Boulevard, Biloxi, MS 39530.

(4) August 22, 2002, Hilton New Orleans Airport, 901 Airline Drive, Kenner, LA 70062.

Public Comments Solicited

We solicit comments on the draft economic analysis, as well as any other aspect of the proposed designation of critical habitat for the Gulf sturgeon. Anyone wishing to make an oral statement for the record at the public hearings is encouraged to provide a written copy of their statement to us at the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearings or mailed to us. Our final economic analysis and final designation of critical habitat will take into consideration comments and any additional information received by the date specified above. The comment period for both the proposed rule and the draft economic analysis closes on [insert date 60 days after date of publication in the FEDERAL REGISTER]. All previous comments and information submitted during the comment period need not be resubmitted. Written comments may be submitted to the Project Leader (see **ADDRESSES**).

Please submit electronic comments as an ASCII file format and avoid the use of special characters and encryption. Please also include "Attn: RIN 1018–A123" and your name and return. address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact us directly by calling our Panama City Field Office (see **ADDRESSES**).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from

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organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Correction

In the proposed rule, published at 67 FR 39106, June 6, 2002, we inadvertently published an incorrect address for the location of the hearing to be held in Defuniak Springs, FL on August 20, 2002. The corrected address is provided in this notice under the heading "Public Hearings."

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: July 29, 2002.

Donald R. Knowles,

Director, Office of Protected Resources, National Marine Fisheries Service.

August 1, 2002.

Craig Manson

Assistant Secretary for Fish, Wildlife and Parks, Department of Interior.

[FR Doc. 02–20091 Filed 8–7–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 153
Thursday, August 8, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Fishtrap EIS, Lolo National Forest, Sanders County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) on a proposal to implement timber harvest, precommercial thinning, prescribed burning, herbicide treatment of noxious weeds, abandonment of the Fishtrap grazing allotment, temporary road construction, road reconstruction and road decommissioning; and to correct management area mapping errors in the Lolo National Forest Land and Resource Management Plan (Forest Plan) in the Fishtrap Creek drainage, Lolo National Forest, Plains/Thompson Falls Ranger District, Sanders County, Montana.

This EIS will tier to the Lolo Forest Plan Final EIS (April, 1986).

DATES: Written comments should be received within 30 days following publication of this notice.

ADDRESSES: Please submit written comments on the proposed management activities or a request to be placed on the project mailing list to: Lisa Krueger, District Ranger, Plains/Thompson Falls Ranger District, Lolo National Forest, P.O. Box 429, Plains, Montana 59859.

FOR FURTHER INFORMATION CONTACT: Pat Partyka, EIS Team Leader, (406) 826–4314.

SUPPLEMENTARY INFORMATION: The Fishtrap analysis area of approximately 36,400 acres is located approximately 20 air miles north of Thompson Falls, Montana, Sanders County, in T23N, R28W; T23N, R29W; T24N, R27W; T24N, R28W; T24N, R29W; and T25N, R28W; PMM. Within this area, the Lolo National Forest proposes (1) Approximately 2921 acres of timber harvest; (2) approximately 1037 acres of precommercial thinning; (3) approximately 887 acres of prescribed burning; (4) approximately 2½ miles of temporary road construction to access some of the harvest units; (5) approximately 177 miles of road decommissioning; (6) approximately 30–35 miles of road reconstruction; (7) approximately 30 miles of herbicide treatment of noxious weeds along roadsides; (8) abandonment of the Fishtrap grazing allotment; and (9) to correct Forest Plan mapping errors in scattered parcels throughout the analysis area by changing an approximate net 625 acres from timber-suitable to unsuitable management areas. In addition to these proposals, the Forest Service will consider alternate road access to the Fishtrap Lake campground, which may include long-term specified road construction.

The Lolo National Forest Plan, 1986, provides overall guidance for land management activities in the project area. The purposes for these actions are to: (1) Improve water quality, fish habitat and fish passage; (2) Improve grizzly bear habitat within the Cabinet-Yaak Grizzly Bear Recovery Zone; (3) Restore, maintain or enhance native "at risk" vegetative communities, as identified in the Northern Region Overview, USDA 1998; (4) Provide for ecological sustainability and community stability through the use of forest products; (5) Improve and maintain big game winter range; (6) Provide for a transportation system that better reflects current access and resource concerns and reduces economic burdens associated with maintaining unneeded roads.

Issues currently identified for analysis in the EIS include potential effects on wildlife (particularly grizzly bear), water quality, fisheries and forest access.

The Forest Service will consider a range of alternatives. A No Action alternative and other alternatives, which respond to significant issues, will be developed, analyzed and compared in the Draft EIS.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in April 2003. Comments on the Draft EIS will be considered and responded to in the Final EIS, scheduled to be completed by August 2003.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official: Deborah L.R. Austin, Forest Supervisor, Lolo National Forest, Building 24—Fort Missoula,

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Missoula, MT 59804, is the responsible official. In making the decision, the responsible official will consider comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies. The responsible official will state the rationale for the chosen alternative in the Record of Decision.

Dated: August 2, 2002.

Deborah L.R. Austin,

Forest Supervisor.

[FR Doc. 02–20036 Filed 8–7–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Gifford Pinchot National Forest Resource Advisory Committee will meet on Monday, August 19, 2002 at the Skamania County Public Works Department basement located in the Courthouse Annex, 170 N.W. Vancouver Avenue, Stevenson, Washington. The meeting will begin at 8:30 a.m. and continue until 6 p.m. The purpose of the meeting is to:

(1) Review and recommend for funding Title II projects for fiscal year 2003.

(2) Provide for a Public Open Forum.

All South Gifford Pinchot National Forest Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides an opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled as part of agenda item (2) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Tom Knappenberger, Public Affairs Officer, at (360) 891–5005, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE 51st Circle, Vancouver, WA 98682.

Dated: July 26, 2002.

Claire Lavendel,

Forest Supervisor.

[FR Doc. 02–20030 Filed 8–7–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1237]

Grant of Authority For Subzone Status, Archer Daniels Midland, Inc. (Natural Vitamin E), Decatur, IL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Decatur Park District, grantee of Foreign-Trade Zone 245, has made application to the Board for authority to establish special-purpose subzone status at the manufacturing facilities (vitamin E) of Archer Daniels Midland, Inc., located in Decatur, Illinois (FTZ Docket 29–2000, filed 6/13/2000; amended 6/6/2001);

Whereas, notices inviting public comment have been given in the **Federal Register** (65 FR 39123, 6/23/2000; 66 FR 32599, 6/15/2001); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the natural vitamin E manufacturing facilities of Archer Daniels Midland, Inc., located in Decatur, Illinois (Subzone 245A), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 29th day of July, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02–20072 Filed 8–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1241]

Approval for Expansion of Subzone 124h, Bollinger Shipyards Lockport, LLC (Shipbuilding), Lafourche, Jefferson and Orleans Parishes, LA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Port of South Louisiana, grantee of FTZ 124, has requested authority on behalf of Bollinger Shipyards Lockport, LLC (Bollinger), to expand Subzone 124H to include six additional sites in Lafourche, Jefferson and Orleans Parishes, Louisiana (FTZ Docket 3–2002, filed 1/8/2002);

Whereas, notice inviting public comment has been given in the **Federal Register** (67 FR 1960, 1/15/02);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby orders:

The application to expand Subzone 124H on behalf of Bollinger, is approved, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Any foreign steel mill products admitted to the subzone, including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to Customs duties in accordance with applicable law, unless the Executive Secretary determines that the same item is not then being produced by a domestic steel mill; and

2. In addition to the annual report, Bollinger Shipyards Lockport, LLC, shall advise the Board's Executive Secretary (§ 400.28(a)(3)) as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

Signed at Washington, DC, this 29th day of July 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02–20075 Filed 8–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1239]

Approval for Expanded Manufacturing Authority (Industrial Diesel Engines, Parts of Industrial Robots), Within Foreign-Trade Subzone 15E, Kawasaki Motors Manufacturing Corp., U.S.A., Maryville, MO

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ 15, has requested authority on behalf of Kawasaki Motors Manufacturing Corp., U.S.A. (KMM), operator of FTZ Subzone 15E, located in Maryville, Missouri, to expand the scope of FTZ authority to include the manufacture of small, industrial diesel engines and industrial robot components under FTZ procedures (FTZ Doc. 5–2000, filed 3–1–2000);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 12969, 3–10–2000);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now therefore, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 29th day of July 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02–20073 Filed 8–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1240]

Expansion of Foreign-Trade Zone 57, Charlotte, NC, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the North Carolina Department of Commerce, grantee of Foreign-Trade Zone 57, submitted an application to the Board for authority to expand FTZ status to eight additional sites (2,045 acres) in the Counties of Burke, Caldwell, Alexander and Catawba in North Carolina (Sites 4–11), adjacent to the Charlotte Customs port of entry (FTZ Docket 30–2001; filed 7/3/01; amended 4/29/02);

Whereas, notice inviting public comment was given in the **Federal Register** (66 FR 36250, 7/11/01) and the application, as amended, has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal, as amended, is in the public interest;

Now, therefore, the Board hereby orders:

The application, as amended, to expand FTZ 57 is approved, subject to the Act and the Board's regulations, including Section 400.28, and subject to the Board's standard 2,000-acre activation limit for the overall zone project, and further subject to a sunset provision that would terminate authority for the proposed sites on September 1, 2009, unless the sites are activated under FTZ procedures.

Signed at Washington, DC, this 29th day of July 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02–20074 Filed 8–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–007]

Barium Chloride From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 8, 2002.

FOR FURTHER INFORMATION CONTACT: John Conniff or Howard Smith, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1009 or (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

TIME LIMITS:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245–day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On November 21, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on barium chloride from the People's Republic of China, covering the period October 1, 2000, through September 30, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 66 FR 58432. On July 3, 2002, the Department published a notice extending the time limits for completing the preliminary results of its review until August 3, 2002. *See Barium*

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Chloride From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review 67 FR 45088 (July 3, 2002).

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the current time limit. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than October 31, 2002. *See* Decision Memorandum from Holly A. Kuga to Bernard T. Carreau, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the Department's main building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: August 2, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 02–20080 Filed 8–7–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–812]

Antidumping Duty Investigation of Carbon and Certain Alloy Steel Wire Rod From Ukraine.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice to defer a decision regarding Ukraine's non-market economy status.

SUMMARY: The Department of Commerce is deferring its decision regarding Ukraine's non-market economy status beyond the instant investigation's final determination date of August 23, 2002, as provided in section 771(18)(C)(ii) of the Tariff Act of 1930, as amended.

DATE: August 8, 2002.

FOR FURTHER INFORMATION CONTACT: George Smolik, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1843.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

All citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act.

Background

The Government of Ukraine and Krivorozhstal, the sole respondent in the instant proceeding, have requested revocation of Ukraine's non-market economy ("NME") status. In response to the request, the Department has invited and received public comments and rebuttal comments regarding Ukranian economic reforms. *See* 67 FR 19394 (April 19, 2002). In addition, the Department has compiled and analyzed information regarding Ukrainian economic reforms from independent third-party sources that we commonly cite for our decisions in this area.

Decision Deferral

The Department has developed a great deal of information regarding Ukraine's economic reforms. The information raises a broad range of issues that require additional time to evaluate before the Department makes a decision on this matter. The Department is therefore deferring its decision regarding Ukraine's non-market economy status beyond the instant investigation's final determination date of August 23, 2002. Since a country's NME status remains in effect until revoked, Ukraine will continue to be treated as a NME country for purpose of the instant final determination (*see* section 771(18)(C)(i) of the Act).

August 5, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–20238 Filed 8–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–878]

Initiation of Antidumping Duty Investigation: Saccharin from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos or Sally Gannon, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2243, (202) 482–0162, respectively.

SUPPLEMENTARY INFORMATION:

Initiation Of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 ("Act"), as amended. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("Department") regulations are to 19 CFR Part 351 (2002).

The Petition

On July 11, 2002, the Department received a petition on imports of saccharin from the People's Republic of China ("PRC") filed in proper form by PMC Specialities Group, Inc., hereinafter referred to as "the Petitioner." On July 23, 2002, the Department requested clarification of certain areas of the petition and received a response on July 26, 2002.

In accordance with section 732(b) of the Act, the Petitioner alleges that imports of saccharin from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, and threatening material injury to, an industry in the United States.

The Petitioner is a saccharin producer and accounts for over fifty percent of domestic production of saccharin, as defined in the petition. Therefore, the Department finds that the Petitioner has standing to file the petition because it is an interested party as defined under section 771(9)(C) of the Act, with respect to the merchandise subject to this investigation. The Petitioner has demonstrated sufficient industry support with respect to the antidumping duty investigation, which it is requesting the Department to initiate (*see* "Determination of Industry Support for the Petition" below).

Scope of Investigation

The product covered by this investigation is saccharin. Saccharin is a non-nutritive sweetener used in beverages and foods, personal care products such as toothpaste, table top sweeteners, and animal feeds. It is also used in metalworking fluids. There are four primary chemical compositions of saccharin: (1) sodium saccharin (American Chemical Society Chemical Abstract Service ("CAS") Registry 1128–44–9); (2) calcium saccharin (CAS Registry 16485–34–3); (3) acid (or insoluble) saccharin (CAS Registry 181–07–2); and (4) research grade saccharin. Most of the U.S.-produced and imported grades of saccharin from the PRC are sodium and calcium saccharin, which are available in granular, powder, spray-dried powder, and liquid forms.

The merchandise subject to this investigation is classifiable under subheading 2925.11.00 of the Harmonized Tariff Schedule of the United States (HTSUS) and includes all types of saccharin imported under this HTSUS subheading, including research and specialized grades.[1] Although the HTSUS subheading is provided for convenience and Customs purposes, the Department's written description of the scope of this investigation remains dispositive.

During our review of the petitions, we discussed the scope with the petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of the publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product, and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product.

Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.[2]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, the domestic like product referred to in the petition is the single domestic like product defined in the "Scope of Investigation" section, above. At this time, the Department has no basis on the record to find the petition's definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition.

Moreover, the Department has determined that the petition contains adequate evidence of industry support; therefore, polling was unnecessary. *See Import Administration AD Investigation of Saccharin from the PRC: Initiation Checklist*, (July 31, 2002) ("*Initiation Checklist*"), at Attachment II (public version on file in the Central Records Unit of the Department of Commerce, Room B–099). To the best of the Department's knowledge, the Petitioner supporting the petition represents over 50 percent of total production of the domestic like product. Additionally, no person who would qualify as an interested party pursuant to section 771(9) (C), (D), (E), (F), or (G) of the Act has expressed opposition to the petition.

Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value ("LTFV") upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to U.S. price and factors of production are also discussed in the *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may reexamine the information and revise the margin calculations, if appropriate. The anticipated period of investigation ("POI") is January 1, 2002 through June 30, 2002.

The Petitioner identified five PRC companies as producers and exporters of saccharin in the PRC. *See Initiation Checklist* at Attachment I.

The Petitioner submitted an LTFV analysis for the PRC as a non-market economy ("NME"). The Petitioner provided a dumping margin calculation using the Department's NME methodology as required by 19 C.F.R. § 351.202(b)(7)(i)(C).

Export Price

Petitioner calculated a range of export prices using average unit values (AUVs) of saccharin imports reported by the U.S. Census Bureau and the price quotes it obtained, subtracting ocean freight, insurance, brokerage and handling charges and foreign inland freight, where appropriate. *See* Petition at Exhibit 6; and Letter from Petitioner to the Department: Response to Petition Clarifications Questions (July 26, 2002) ("*Petition Clarifications*") at Exhibits 1 and 2, for a detailed calculation of these export prices. Petitioner did not calculate imputed credit expenses for PRC sales because the petition bases normal value ("NV") on a factors of production analysis pursuant to section 773(c) of the Act. *See Initiation Checklist* for further information.

Petitioner argues that, because at least one PRC producer of saccharin sells to an affiliated reseller in the United States, some sales during the period of investigation ("POI") should be considered constructed export price ("CEP") sales.[3] *See Initiation Checklist*.

[1] *See Harmonized Tariff Schedule of the United States* (2002) (Rev. 3), Chapter 29, Section VI at 29-60.

[2] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

[3] Petitioner alleges that Suzhou maintains an affiliated reseller, Suzhou-Chem USA, Inc., which is located at 17 Appleby Rd., Suite B1 Wellesley, MA 02482.

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Normal Value

For the normal value ("NV") calculation, Petitioner based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor and energy), for saccharin on information from PRC producers. *See Initiation Checklist.*

The Petitioner selected India as the surrogate country for purposes of valuing the factors of production. The Petitioner argued that, pursuant to section 773(c)(4) of the Act, India is an appropriate surrogate because it is a market-economy country that is at a comparable level of economic development to the PRC and is a significant producer of comparable merchandise. Based on the information provided by the Petitioner, we believe that the Petitioner's use of India as a surrogate country is appropriate for purposes of initiation of this investigation. *See Initiation Checklist.*

In accordance with section 773(c)(4) of the Act, the Petitioner valued factors of production, where possible, on reasonably available, public, surrogate country data. To value certain raw materials, the Petitioner used various sources including import statistics from India, the periodical *Chemical Weekly*, and U.S. Census data. *See Initiation Checklist.* Where Indian import statistics were used, the Department recalculated the data to exclude NME countries and countries determined to provide non-industry specific export subsidies. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 6482 (February 12, 2002) and accompanying *Issues and Decision Memorandum.* For inputs valued in Indian Rupees and not contemporaneous with the POI, the Petitioner used information from the wholesale price indices ("WPI") in India, as published by the International Monetary Fund, to determine the inflation adjustment.

The Petitioner explained that, as a result of the saccharin production process, certain byproducts are created that can in turn be sold by the producer to offset the cost of production. Petitioner calculated the quantity of byproducts released per pound of saccharin production, and identified Indian prices to value sales of these byproducts. The quantity of byproduct was then multiplied by the Indian price to determine the total amount of byproduct offset, and subtracted this amount from the total variable cost of producing saccharin. *See Initiation Checklist.*

To value electricity, Petitioner obtained industrial electricity costs in India from the 2000–2001 annual report of National Peroxide Limited ("National Peroxide"), a publicly traded Indian chemical producer. Petitioner maintains that this information is appropriate for use as a surrogate value because it accurately reflects the cost associated with an Indian chemical company's purchases of electricity and is the most contemporaneous pricing data available to Petitioner. *See Initiation Checklist.*

To value coal, Petitioner obtained coal costs in India based on the 1999–2000 financial statement of Hindustan Lever Limited ("Hindustan"), a publicly traded Indian chemical producer. This represents the most contemporaneous information available to Petitioner because National Peroxide's more recent annual report does not contain data regarding purchases of coal. *See Initiation Checklist.*

Pursuant to 19 C.F.R. §351.408(c)(3), the Department calculates and publishes the surrogate values for labor to be used in non-market economy cases. The Petitioner applied the regression formula published on the Department's website to derive the PRC labor rate that would be calculated using the Department's methodology. *See Initiation Checklist.*

For factory overhead ("overhead"), selling, general, and administrative expenses ("SG&A"), and profit, Petitioner states that its research indicated that several companies currently produce saccharin in India. However, to the best of Petitioner's knowledge, all of these companies are privately owned. Consequently, financial statements for an Indian producer of saccharin were not reasonably available to Petitioner. Overhead was, therefore, calculated based on the most recent financial statements of two Indian chemical producers: Calibre Chemicals Pvt. Limited ("Calibre") and National Peroxide. Petitioner states that data from the 2000 annual report of Calibre was used by the Department in its recent preliminary and final results of the annual administrative review of *Persulfates from the PRC*, and that the 2000–2001 annual report for National Peroxide has been placed on the record of the current annual review of the dumping order in the same case. The overhead, SG&A, and profit ratios for each company were averaged to obtain the respective surrogate values used. *See Initiation Checklist.*

We made adjustments to NV for packing materials. For further information, *see* the *Initiation Checklist.*

Based on comparisons of EP and CEP to NV, calculated in accordance with section 773(a) of the Act, the estimated dumping margins for saccharin from the PRC range from 116.64 percent to 355.55 percent.

Fair Value Comparisons

Based on the data provided by the Petitioner, there is reason to believe that imports of saccharin from the PRC are being, or are likely to be, sold in the United States at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. The Petitioner contends that the industry's injured condition is demonstrated by: (1) reduced shipments; (2) reduced market share; (3) reduced prices; (4) declining production and capacity utilization; (5) growing inventories; (6) significant operating losses; and, (7) lost sales.

The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklist* at Attachment IV.

Initiation of Antidumping Investigation

Based upon our examination of the petition on saccharin from the PRC, we find that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of saccharin from the PRC are being, or are likely to be, sold in the United States at LTFV. Unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the government representatives of the PRC. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate, pursuant to 19 CFR 351.203(c)(2).

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than August 25, 2002, whether there is a reasonable indication that imports of saccharin from the PRC are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination will result in this investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: July 31, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–20076 Filed 8–7–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent To Revoke Order in Part.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests by Elkem Metals Company and Globe Metallurgical (collectively petitioners), and requests by Companhia Brasileira Carbureto de Calcio (CBCC), Rima Industrial S.A. (Rima) and Companhia Ferroligas Minas Gerais - Minasligas (Minasligas) (collectively respondents), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on silicon metal from Brazil. The period of review (POR) is July 1, 2000 through June 30, 2001.

We preliminarily determine that one respondent sold subject merchandise at less than normal value (NV) during the POR. We also intend, preliminarily, to revoke the order, in part, with respect to Rima, because we find that Rima has met all of the requirements for revocation, as set forth in section 351.222(b) of the Department's regulations. If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service (Customs Service) to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP) and NV. We invite interested parties to comment on the preliminary results. Parties who submit comments in this proceeding should also submit with the argument: (1) a statement of the issue(s), and (2) a brief summary of the argument (not to exceed five pages). Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

EFFECTIVE DATE: August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor at (202) 482–5831 or Thomas Futtner at (202) 482–3814, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (2001).

Background

On July 31, 1991, the Department published in the **Federal Register** the antidumping duty order on silicon metal from Brazil. *See Antidumping Duty Order: Silicon Metal from Brazil* 56 FR 36135 (July 31, 1991). On July 2, 2001, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on silicon metal from Brazil for the period July 1, 2000, through June 30, 2001. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 66 FR 34910 (July 2, 2001). On July 13, 2001, CBCC requested that the Department conduct an administrative review of its sales. On July 13, 2001, Minasligas requested that the Department conduct an administrative review of its sales and partially revoke the order with respect to Minasligas pursuant to 19 CFR 351.222. On July 31, 2001, Rima requested that the Department conduct an administrative review of its sales and partially revoke the order with respect to Rima pursuant to 19 CFR 351.222.

On July 31, 2001, petitioners requested that the Department conduct an administrative review of sales made by CBCC, Minasligas and Rima. On August 20, 2001, in accordance with 19 CFR 351.221(c)(1)(i), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 43570 (August 20, 2001). On September 5, 2001, the Department issued questionnaires to CBCC, Minasligas and Rima.[1]

On October 19, 2001, the Department received responses to sections A through D of the questionnaire from Minasligas. On October 22, 2001, the Department received responses to sections A through C of the questionnaire from Rima. On November 5, 2001, the Department received responses to sections A through D of the questionnaire from CBCC. On February 22, 2002, the Department initiated a cost investigation with respect to Rima. On March 5, 2002, the Department informed Rima that it was required to respond to section D of the Department's questionnaire. On March 22, 2002, the Department received a response to section D of the questionnaire from Rima.

The Department issued supplemental questionnaires to Minasligas on March 29, 2002, April 12, 2002, and June 7, 2002, and received responses on April 24, 2002, and June 21, 2002. The Department issued supplemental questionnaires to CBCC on March 29, 2002, and May 24, 2002, and received responses on April 19, 2002 and June 12, 2002. The Department issued supplemental questionnaires to Rima on April 12, 2002, May 15, 2002 and May 17, 2002 and received responses on May 3, 2002, and May 31, 2002.

On March 15, 2002, in accordance with section 751(a)(3)(A) of the Act, the

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

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Department published in the **Federal Register** its notice extending the deadline for the preliminary results until July 31, 2002. *See Silicon Metal from Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 11674 (March 15, 2002). The Department is conducting this review in accordance with section 751 of the Act.

Scope of Review

The merchandise covered by this administrative review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this administrative review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. Although the HTS item numbers are provided for convenience and for Customs purposes, the written description remains dispositive.

Fair Value Comparisons

During the POR, Brazilian respondents made both EP and CEP sales to the United States. To determine whether EP sales of silicon metal by the Brazilian respondents to the United States were made at less than NV, we compared EP to the NV, as described in the *Export Price* and *Normal Value* sections of this notice. To determine whether CEP sales of silicon metal by the Brazilian respondents to the United States were made at less than NV, we compared CEP to the NV, as described in the *Constructed Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP or CEP transactions, as appropriate.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents, covered by the description in the "*Scope of Review*" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Further, as in the preceding segment of this proceeding, we have continued to treat all silicon metal meeting the description of the merchandise under the "*Scope of Review*" section, above (with the exception of slag and contaminated products) as identical products for purposes of model-matching. *See Silicon Metal From Brazil: Preliminary Results, Intent To Revoke in Part, Partial Rescission of Antidumping Duty Administrative Review, and Extension of Time Limits*, 64 FR 43161 (August 9, 1999). Therefore, where there were no contemporaneous sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the CV of the product sold in the U.S. market during the comparison period, consistent with section 351.405 of the Department's regulations.

Verification

As provided in section 782(i) of the Act, we conducted verifications of the information provided by Rima and CBCC. We used standard verification procedures including examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed and on file in the Central Records Unit, Room B099 of the Main Commerce building (CRU–Public File).

Revocation

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222 (2001). This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) a certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request; and (3) an agreement to reinstatement in the order or suspended investigation, as long as any exporter or producer is subject to the order (or suspended investigation), if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department will consider the following in determining whether to revoke the order in part: (1) whether the producer or exporter requesting revocation has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping; and (3) whether the producer or exporter requesting revocation in part has agreed in writing to the immediate reinstatement of the order, as long as any exporter or producer is subject to the order, if the Department concludes that the exporter or producer, subsequent to revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2); *see also Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order in Part: Certain Pasta From Italy*, 66 FR 34414, 34420 (June 28, 2001).

I. *Rima*

On July 31, 2001, Rima submitted a request, in accordance with 19 CFR 351.222, that the Department partially revoke the order covering silicon metal from Brazil with respect to its sales of subject merchandise. In accordance with 19 CFR 351.222(e)(1), the request was accompanied by certifications from Rima that, for a consecutive three-year period, including this review period, it sold the subject merchandise in commercial quantities at not less than NV, and would continue to do so in the future. Rima also agreed to its immediate reinstatement in this antidumping order, as long as any firm is subject to the order, if the Department concludes that, subsequent to revocation, Rima sold the subject merchandise at less than NV. We received no comments from petitioners on Rima's request for revocation.

Based on the preliminary results in this review and the final results of the two preceding reviews, Rima has preliminarily demonstrated three consecutive years of sales at not less than NV. Further, in determining whether three years of no dumping establish a sufficient basis to make a revocation determination, the Department must be able to determine that the company continued to participate meaningfully in the U.S. market during each of the three years at issue. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part*, 64 FR 2173, 2175 (January 13, 1999); *see also Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part*, 64 FR 12977, 12979 (March 16, 1999); and *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Order: Brass Sheet and Strip from the Netherlands*, 65 FR 742 (January 6, 2000). This practice has been codified in Sec. 351.222(d)(1) of the Department's regulations, which states that, "before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in commercial quantities of the subject merchandise to which a revocation or termination will apply." 19 CFR 351.222(d)(1) (emphasis added); *see also* 19 CFR 351.222(e)(1)(ii). For purposes of revocation, the Department must be able to determine that past margins are reflective of a company's normal commercial activity. Sales during the POR which, in the aggregate, are of an abnormally small quantity do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping.

With respect to the threshold matter of whether Rima made sales of subject merchandise to the United States in commercial quantities, we find that Rima's aggregate sales to the United States were made in commercial quantities during the past three consecutive years. The quantity of Rima's shipments of subject merchandise to the United States has remained at a sufficiently high level to be considered as having been made in commercial quantities. Therefore, we can reasonably conclude that the zero and *de minimis* margins calculated for Rima in each of the last three administrative reviews are reflective of the company's normal commercial experience. *See* Memorandum from Maisha Cryor to File; "Shipments of Silicon Metal to the United States by Rima," dated July 31, 2002.

Rima also agreed in writing that it will not sell subject merchandise at less than NV in the future and to the immediate reinstatement of the antidumping order, as long as any exporter or producer is subject to the order, if the Department concludes that, subsequent to the partial revocation, Rima has sold the subject merchandise at less than NV. Thus, in light of the above and pursuant to 19 CFR 351.222, we preliminarily find, for Rima, that the subject merchandise was sold at not less than NV for a period of at least three consecutive years and that dumping is not likely to resume in the future. Consequently, the continuing imposition of an antidumping duty is not necessary to offset dumping.

Therefore, if these preliminary results are affirmed in our final results, we intend to revoke the order in part with respect to merchandise produced and exported by Rima. In accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for any such merchandise entered, or withdrawn from warehouse, for consumption on or after the first day after the period under review, and will instruct the Customs Service to refund any cash deposits.

II. *Minasligas*

On July 13, 2001, Minasligas submitted a request, in accordance with 19 CFR 351.222, that the Department partially revoke the order covering silicon metal from Brazil with respect to its sales of subject merchandise. In accordance with 19 CFR 351.222(e)(1), the request was accompanied by certifications from Minasligas that for a consecutive three-year period, including this review period, it sold the subject merchandise in commercial quantities at not less than NV, and would continue to do so in the future. Minasligas also agreed to its immediate reinstatement in this antidumping order, as long as any firm is subject to the order, if the Department concludes that, subsequent to revocation, Minasligas sold the subject merchandise at less than NV.

After a review of the record, the Department preliminarily determines that because Minasligas did not have a zero or *de minimis* dumping margin during the 1999–2000 POR, the preceding review period, it has failed to make sales of subject merchandise "at not less than NV for a period of at least three consecutive years," as required by the Department's regulations. During the 1999–2000 review period, Minasligas' weighted-average dumping margin was determined to be 1.23 percent, *i.e.*, not a *de minimis* rate. *See Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review*, 67 FR 6488 (February 12, 2002) (*1999–2000 Silicon Metal*). Therefore, we do not intend to revoke the antidumping duty order with respect to Minasligas. Additionally, because one of the requirements to qualify for revocation has not been met, the Department has not addressed the issues of commercial quantities and whether the continued application of the antidumping duty order is otherwise necessary to offset dumping with respect to Minasligas.

Sales Reviewed

We have continued to employ the approach, adopted in the final results of the second review of this order, covering the 1992–1993 POR, in determining which U.S. sales to review for all companies. If a respondent sold subject merchandise, and the importer of that merchandise had at least one entry during the POR, we reviewed all sales to that importer during the POR. *See Silicon Metal from Brazil, Final Results of Antidumping Duty Administrative Review*, 61 FR 46763 (September 5, 1996).

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction, as appropriate. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP sales, the U.S. LOT is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated or affiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and the comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In determining whether separate LOTs actually existed in the home and U.S. markets for each respondent, we

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examined whether the respondent's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories, and selling functions (or services offered) to each customer or customer category, in both markets.

I. *CBCC*

CBCC reported home market sales through one channel of distribution to three unaffiliated customer categories (*i.e.*, direct sales to traders, original equipment manufacturers and silicon metal producers). CBCC reported both EP and CEP sales in the U.S. market. For EP sales, CBCC reported one customer category and one channel of distribution (i.e., direct sales to unaffiliated trading companies). For CEP sales, CBCC reported one customer category and one channel of distribution (i.e., direct sales to original equipment manufacturers). In its response, CBCC stated that it performs the same type of services for home market customers as it does for its foreign market customers. For this reason, CBCC has not requested a LOT adjustment to NV for comparison to its EP and CEP sales.

Because of the similarity of the selling functions involved in the EP and CEP sales, we found there is only one LOT in the U.S. market. Moreover, in analyzing CBCC's selling activities in both the home and U.S. markets, we determined that essentially the same services were provided for both markets. The selling functions in both markets were minimal in nature and limited to arranging for freight and delivery. Therefore, based upon this information, we have preliminarily determined that for CBCC, the LOT for all U.S. sales is the same as that in the home market. Consequently, because we find the U.S. and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7) of the Act is warranted for CBCC.

II. *Rima*

Rima reported home market sales through one channel of distribution to one unaffiliated customer category (*i.e.*, direct sales to original equipment manufacturers). In the U.S. market, Rima reported EP sales through one channel of distribution to one unaffiliated customer category (i.e., direct sales to original equipment manufacturers). In its response, Rima stated that it performs the same type of services for home market customers as it does for its foreign market customers. For this reason, Rima has not requested a LOT adjustment.

In analyzing Rima's selling activities for the home and U.S. markets, we determined that essentially the same services were provided for both markets. The selling functions in both markets were minimal in nature and limited to arranging for freight and delivery. Therefore, based upon this information, we have preliminarily determined that for Rima, the LOT for all EP sales is the same as that in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for Rima.

III. *Minasligas*

Minasligas reported home market sales through one channel of distribution to two unaffiliated customer categories (*i.e.*, direct sales to domestic retailers and original equipment manufacturers). In the U.S. market, Minasligas reported EP sales through one channel of distribution to one unaffiliated customer category (*i.e.*, direct sales to trading companies). In its response, Minasligas stated that it performs the same type of services for home market customers as it does for its foreign market customers. For this reason, Minasligas has not requested a LOT adjustment.

In analyzing Minasligas' selling activities for the home and U.S. markets, we determined that essentially the same services were provided for both markets. The selling functions in both markets were minimal in nature and limited to arranging for freight and delivery. Therefore, based upon this information, we have preliminarily determined that for Minasligas, the LOT for all EP sales is the same as that in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for Minasligas.

Export Price

For Rima, Minasligas and CBCC (where appropriate) we used the Department's EP methodology, in accordance with section 772(a) of the Act, because the respondents sold the subject merchandise to unaffiliated purchasers in the United States prior to importation and because the Department's CEP methodology was not otherwise warranted. CBCC reported sales to unaffiliated trading companies as EP sales in its November 25, 2001, response. However, in a subsequent May 2, 2002, submission, CBCC stated that all of its sales to unaffiliated trading companies were ultimately purchased by Dow Corning Corporation, an affiliate of CBCC. Nevertheless, we have determined that the record evidence in this POR does not establish that at the time of the sales by CBCC to the unaffiliated trading companies, CBCC had or should have had knowledge that this merchandise would ultimately be purchased by Dow. Therefore, for the purposes of these preliminary results, we have continued to treat CBCC's sales to unaffiliated trading companies as EP sales.

We made deductions from the starting price for movement expenses in accordance with section 772(c) of the Act. Movement expenses included, where appropriate, foreign inland freight, brokerage and handling, international freight, insurance, U.S. duties and U.S. warehousing. For Minasligas, in accordance with section 772(c)(1)(B) of the Act, we increased EP by duty drawback. We made company-specific adjustments to reported expenses as follows:

I. *Minasligas*

We recalculated Minasligas' imputed U.S. credit expense using the date of payment by the U.S. customer to the bank as the date of payment. This adjustment is consistent with our past practice concerning the calculation of imputed U.S. credit expense in this proceeding. *See 1999–2000 Silicon Metal*, 67 FR 6488 (February 12, 2002) and accompanying Decision Memorandum at Comment 2. We revised Minasligas' reported duty drawback adjustment. *See* Minasligas' Preliminary Results Calculation Memorandum, dated July 31, 2002.

II. *Rima*

We recalculated Rima's U.S. credit expense using the date of shipment from the factory to the port as the date of shipment. *See* Rima's Preliminary Results Calculation Memorandum, dated July 31, 2002.

Constructed Export Price

In its November 5, 2001, response, CBCC reported sales to its U.S. affiliate, Dow as constructed export price (CEP) sales. CBCC also reported that Dow further manufactured the purchased silicon metal into a multitude of other products, mostly chemicals, and sold these products in the United States. Therefore, CBCC requested that the Department apply section 772(e) of the Act to the further manufactured sales.

Where appropriate, in accordance with section 772(d)(2) of the Act, the Department deducts from CEP the cost of any further manufacture or assembly in the United States, except where the special rule, provided in section 772(e) of the Act, is applied. Section 772(e) of the Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, the Department has the discretion to determine the CEP using alternative methods.

The alternative methods for establishing constructed export price are: (1) the price of identical subject merchandise sold by the exporter or producer to an unaffiliated person; or (2) the price of other subject merchandise sold by the exporter or producer to an unaffiliated person. The Statement of Administrative Action (SAA) notes the following with respect to these alternatives:

There is no hierarchy between these alternative methods of establishing the export price. If there is not a sufficient quantity of sales under either of these alternatives to provide a reasonable basis for comparison, or if the Department determines that neither of these alternatives is appropriate, it may use any other reasonable method to determine CEP, provided that it supplies the interested parties with a description of the method chosen and an explanation of the basis for its selection. Such a method may be based upon the price paid to the exporter or producer by the affiliated person for the subject merchandise, if the Department determines that such price is appropriate.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for one form of the merchandise sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated person. *See* 19 C.F.R. 351.402(2). Based on this analysis, and the information on the record, we determined that the estimated value added in the United States by Dow accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. Therefore, we determined that the value added is likely to exceed substantially the value of the subject merchandise. As a consequence, the Department has relied upon an alternative methodology to calculate CBCC's margin for these sales. However, we found that there is not a sufficient quantity of sales to unaffiliated parties to use such sales as an alternative method of establishing export price. Therefore, as the alternative methodology, the Department used the price paid to CBCC by Dow. *See Memorandum on Whether to Determine the Constructed Export Price for Certain Further-Manufactured Sales Sold by Companhia Brasileira Carbureto de Calcio in the United States During the Period of Review Under Section 772(e) of the Act (Special Rule Memo)*, dated July 31, 2002.

Normal Value

1. Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1) of the Act. Since each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV for each respondent. Therefore, pursuant to section 773(a)(1)(B) of the Act, we based NV on home market sales.

2. Cost of Production Analysis

In the review segment of this proceeding that was most recently completed prior to initiating this review, we disregarded home market sales found to be below the cost of production (COP) for CBCC. *See Silicon Metal from Brazil; Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Order in Part*, 65 FR 47960, 47966 (August 4, 2000) aff'd *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 66 FR 11256 (February 23, 2001) (*1998–1999 Silicon Metal*). Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department has reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review may have been made by CBCC at prices below the COP.

On November 13, 2001, petitioners in this proceeding filed a timely sales-below-cost allegation with respect to Rima. In the case of Rima, petitioners' allegation was based on Rima's antidumping duty questionnaire responses. Upon review of the allegation, we found that petitioners' methodology provided the Department with a reasonable basis to believe or suspect that sales in the home market had been made at prices below the COP by Rima. Accordingly, pursuant to section 773(b)(1) of the Act, we initiated an investigation to determine whether Rima's sales of silicon metal were made at prices below the COP during the POR. *See* Memorandum Regarding the Analysis of Petitioners' Allegation of Sales Below the COP for Rima, dated February 22, 2002.

We did not initiate a cost investigation with respect to Minasligas because its home market sales were not disregarded during the most recently completed segment of this proceeding prior to the initiation of this review (which was the 1998–1999 POR at the time this instant review was initiated) and petitioners did not file a sales-below-cost allegation. *See 1998–1999 Silicon Metal*.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated company- and product-specific COPs based on the sum of the respondent's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A expenses, including interest expenses, and packing costs.

We relied on the COP information submitted by each respondent in its questionnaire responses, except for the following adjustments. For Rima and CBCC, we compared home market prices and COP exclusive of value added taxes (VAT); we did not allow Rima and CBCC to reduce its COP for the amount paid with VAT credits. *See Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil*, 65 FR 7497, 7499 (February 15, 2000); *see also Silicon Metal from Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part*, 65 FR 47960, 47966 (August 4, 2000). In addition, for Rima, we corrected the calculation of its COP. In its section D questionnaire response, Rima mistakenly doubled the value of its total cost of manufacturing (TOTCOM) prior to including TOTCOM in the calculation of its COP. *See* Rima's Preliminary Results Calculation Memorandum, dated July 31, 2002.

B. Test of Home Market Sales Prices for CBCC and Rima

For CBCC and Rima, we compared the per-unit adjusted weighted-average COP figures for the POR to home market sale prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these

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sales were made at prices below the COP. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, and discounts. In determining whether to disregard home market sales made at prices below the COP, we examined whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time.

C. Results of COP Test for CBCC and Rima

Pursuant to section 773(b)(2)(C), where less than 20 percent of a respondent's sales of a given product were at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product during the POR were made at prices below the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to POR-average costs, we also determined that such sales were not made at prices which would permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that no respondent made comparison-market sales at prices below the COP within an extended period of time in substantial quantities. Therefore, we did not exclude any sales from our analysis in accordance with section 773(b)(1) of the Act.

Price-to-Price Comparisons

For those comparison products for which there were sales at prices above the COP, we based the respondents' NV on the prices at which the foreign like product was first sold to unaffiliated parties for consumption in Brazil, in the usual commercial quantities, in the ordinary course of trade in accordance with section 773(a)(1)(B)(i) of the Act. We based NV on sales at

the same LOT as the U.S. transactions. For LOT analysis, please see the *Level of Trade* section above. In accordance with section 773(a)(6) of the Act, we made adjustments to home market price, where appropriate for inland freight, brokerage and handling charges, and rebates. Where home market prices were reported exclusive of VAT we made no adjustment for this item. However, where home market prices were reported inclusive of VAT, we deducted the VAT from the gross home market price, consistent with past practice. *See Silicon Metal from Brazil: Preliminary Results of Antidumping Administrative Review and Notice of Intent Not to Revoke Order in Part*, 66 FR 40980, 40986 (August 6, 2001; aff'd *1999–2000 Silicon Metal from Brazil*.

Pursuant to section 773(a)(6)(B)(iii) of the Act, we deducted taxes imposed directly on sales of the foreign like product (VAT, PIS, and COFINS taxes), but not collected on the subject merchandise. We note that, in past cases involving Brazil, we have determined that since PIS and COFINS taxes are levied on total revenues, except for export revenues, the taxes are direct taxes (akin to taxes on profits or wages) and, as such, should not be deducted from NV. *See Certain Cut-To-Length Carbon Steel Plate From Brazil: Final Results of Antidumping Duty Administrative Review*, 63 FR 12744, 12746 (March 16, 1998) (*Plate from Brazil*). In *Plate from Brazil*, the Department determined that since these taxes are not indirect taxes, there is no basis on which to deduct them in the calculation of NV, according to section 773(a)(6)(B)(iii) of the Act. Id. However, in a recent countervailing duty preliminary determination regarding *Certain Cold-Rolled Carbon Steel Flat Products from Brazil*, the Department preliminarily concluded that the PIS and COFINS taxes are indirect. *See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determinations: Certain Cold-Rolled Carbon Steel Flat Products from Brazil*, 67 FR 9652, 9659 (March 4, 2002).

In reaching this decision, we note that in the *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod From Brazil (Steel Wire Rod from Brazil)*, the Department examined the legislation underlying the PIS and COFINS in order to determine how Brazil assesses these taxes. 67 FR 18586, 18590 (April 16, 2002). In *Steel Wire Rod from Brazil* the Department found the following:

Article 2 of the COFINS legislation states that "corporate bodies" will contribute two percent, "charged against monthly billings, that is, gross revenue derived from the sale of goods and services of any nature." Likewise, Article "Second" of the PIS tax law (also found in the PIS and COFINS legislation) provides similar language stating that this tax contribution will be calculated "on the basis of the invoicing." The PIS legislation further defines invoicing under Article "Third" to be the gross revenue "originating from the sale of goods." *Id.*

Section 351.102(b) of the Department's regulations defines an indirect tax as a "sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, border tax, or any other tax other than a direct tax or an import charge." As noted above in the discussion of the PIS and COFINS legislation, these taxes are derived from the "monthly invoicing" or "invoicing" originating from the sale of goods and services. Therefore, we preliminarily find that the manner in which these taxes are assessed is characteristic of an indirect tax, which is directly imposed on sales of the foreign like product and should be subtracted from NV.

To account for differences in circumstances of sale between the home market and the United States, where appropriate, we adjusted home market prices by deducting home market direct selling expenses (including credit) and adding an amount for late payment fees earned on home market sales, where appropriate. Specifically, for Minasligas, we recalculated Minasligas' home market imputed credit expense using a surrogate interest rate and the period of time between the date of shipment and the date of payment. Regarding Minasligas' reported interest rate, Minasligas did not demonstrate that it incurred short-term borrowings during the POR at the rate it reported in its questionnaire response. Therefore, as in the most recently completed segment of this proceeding, we have denied Minasligas reported credit expense and have used the Special Clearance and Custody System (SELIC), as the surrogate interest rate to calculate the expense. *See 1999–2000 Silicon Metal from Brazil*, 67 FR 6488 (February 12, 2002) and accompanying Decision Memorandum at Comment 1. *See also* Minasligas' Preliminary Results Calculation Memorandum, dated July 31, 2002.

Specifically, for CBCC, we recalculated CBCC's home market imputed credit expense using a surrogate interest rate. We reviewed documentation at verification pertaining to CBCC's short-term borrowing activity during the POR and found the activity to be outside the "normal course of trade." In particular, at the verification of CBCC, conducted June 13, 2002, through June 14, 2002, CBCC characterized its own short-term borrowing activity during this POR as rare. *See* CBCC's Verification Report, dated July 15, 2002. We therefore determine that CBCC's short-term borrowing during this POR, was not in the "normal course of trade." Consequently, as in the most recently completed segment of this proceeding, we have denied CBCC's reported credit expense and have used the SELIC rate to calculate the expense. *See Silicon Metal 1999–2000*, 67 FR 6488 (February 12, 2002) and accompanying Decision Memorandum at Comment 18.

In order to adjust for differences in packing between the two markets, we deducted HM packing costs and added U.S. packing costs, where appropriate, in accordance with sections 773(a)(6)(A) and (B) of the Act.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margins exist for the period July 1, 2000 through June 30, 2001, and we preliminarily determine not to revoke the order covering silicon metal from Brazil with respect to sales of subject merchandise by Minasligas. However, we do preliminarily determine to revoke the order covering silicon metal from Brazil with respect to sales of subject merchandise by Rima.

Manufacturer/exporter	Weighted-average Margin Percentage
CBCC	0.00
Minasligas	4.30
Rima	0.00

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) a statement of the issue and (2) a brief summary of the argument. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments or at the hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty assessment purposes, we calculated a per-unit customer or importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each customer/importer and dividing this amount by the total quantity of those sales. Where the assessment rate is above *de minimis*, we will instruct the U.S. Customs Service to assess duties on all entries of subject merchandise by that importer.

Furthermore, the following deposit requirements will be effective for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be those established in the final results of this review except if the rate is less than 0.5 percent, and therefore, *de minimis*, the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other manufacturers and/or exporters of this merchandise, the cash deposit rate will continue to be 91.06 percent, the "all others" rate established in the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: July 31, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–20077 Filed 8–7–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Associated Universities, Inc.; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW, Washington, DC.

Docket Number: 02–016. *Applicant:* Associated Universities, Inc., National Radio Astronomy Observatory, Charlottesville, VA 22903. *Instrument:* Atacama Large Millimeter Array (ALMA) Radio Telescope. *Manufacturer:* Vertex Antennentechnik GmbH, Germany. *Intended Use: See* notice at 67 FR 35961, May 22, 2002.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: (1) Extremely high surface precision (25.0 μm) and pointing accuracy (0.6 arcseconds), (2) a structure immune to changes in temperature, (3) high speed motion and (4) operation from 30–950 GHz. The Harvard-Smithsonian Center for Astrophysics advised July 30, 2002 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or

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apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–20078 Filed 8–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Vermont; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW, Washington, DC.

Docket Number: 02–012R. *Applicant:* University of Vermont, Burlington, VT 05405. *Instrument:* Slow Scan CCD Camera System, Model TemCam–0124. *Manufacturer:* Tietz Video and Image Processing Systems GmbH, Germany. *Intended Use: See* notice at 67 FR 34903, May 16, 2002.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: (1) Superior resolution by matching the surface of the fiber optic coupling to the shape of the CCD chip surface, permitting determination of the quality of cryo samples needed to assess areas suitable for tomography and (2) accommodation for a high resolution CRT screen. The National Institutes of Health advises in its memorandum of July 16, 2002 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–20079 Filed 8–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 020724177–2177–01]

Notice of Intent To Update Infrared Spectral Library

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The National Institute of Standards and Technology announces its intent to add condensed phase infrared spectra to its current library of gas phase infrared spectra. The update will include approximately 10,000 spectra of diverse compounds digitized from the published spectra of the Coblentz Society. Interested parties are invited to submit comments to the address below.

DATES: Comments must be received by September 9, 2002.

ADDRESSES: Comments should be sent to the attention of Dr. Stephen Stein at the National Institute of Standards and Technology, Mail Stop 8380, 100 Bureau Drive, Gaithersburg, MD 20899–8380.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen Stein by writing to the above address or by e-mail at *stephen.stein@nist.gov* or by telephone at (301) 975–2444.

SUPPLEMENTARY INFORMATION: As part of its responsibilities under Title 15 U.S.C. 290 to collect, evaluate and publish high quality Standard Reference Data (SRD), NIST creates and maintains evaluated SRD databases. NIST currently distributes a gas phase infrared library containing spectra for approximately 6,000 discrete chemical substances. The database is primarily used to aid in the application of infrared spectroscopy to chemical analysis and to assist in identification of chemical compounds by providing a source for reference spectra for comparison to spectra acquired by instruments. For each spectrum, auxiliary information for chemical identification is provided, including chemical names, formulas, chemical structures and related information. The planned update will add approximately 10,000 spectra for compounds primarily in the condensed phase which have been digitized (vectorized) from existing hard copy versions of the spectra. They will also contain the auxiliary information described above. These spectra, which have been published by the Coblentz Society, have been highly evaluated and have long been widely available in reference books. The new spectra add coverage of compounds in the condensed phase to current NIST collections and also enable the use of this spectral information by digital data systems. We invite comments concerning this update.

Dated: August 1, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–20101 Filed 8–7–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of inventions available for licensing.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's interest in the inventions is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188, e-mail: *mclague@nist.gov*, or fax: 301–869–2751. Any request for information should include the NIST Docket number and title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the inventions for purposes of commercialization. The inventions available for licensing are:

[Docket No.: 97–026US]

Title: Method and apparatus for diffraction measurement using a scanning x-ray source.

Abstract: The invention is jointly owned by the U.S. Government, as represented by the Secretary of Commerce, and Digiray Corporation. This invention is available for non-exclusive licensing. The present invention relates to x-ray diffraction measurement by using moving x-ray source x-ray diffraction. The invention comprises a raster-scanned x-ray source, a specimen, a collimator, and a detector. The x-ray source is electronically scanned which allows a complete image of the x-ray diffraction characteristics of the specimen to be produced. The specimen is placed remote from the x-ray source and the detector. The collimator is located directly in front of the detector. The x-rays are diffracted by the specimen at certain angles, which cause them to travel through the collimator and to the detector. The detector may be placed in any radial location relative to the specimen in order to take the necessary measurements. The detector can detect the intensity and/or the wavelength of the diffracted x-rays. All information needed to solve the Bragg equation as well as the Laue equations is available. The x-ray source may be scanned electronically or mechanically. The present invention is used to perform texture analysis and phase identification.

[Docket No.: 99–021D]

Title: Apparatus and method for refreshable tactile display.

Abstract: The invention is owned by the U.S. government, as represented by the Secretary of Commerce. This invention is available for exclusive or non-exclusive licensing. The invention utilizes a rotating-wheel and is designed to be mechanically simpler than existing refreshable tactile display devices, while providing much of their functionality as well as additional features. It is believed that this design will allow for greatly lowered cost and improved reliability in comparison to existing systems.

Dated: August 1, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–20100 Filed 8–7–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080102D]

Environmental Impact Statement; Public Scoping; Endangered and Threatened Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to conduct public scoping and prepare an Environmental Impact Statement (EIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), NMFS intends to gather the information necessary to prepare an EIS on a determination pursuant to the Endangered Species Act (ESA) related to a resource management plan (RMP) for harvest of Puget Sound chinook populations. NMFS is furnishing this notification to: advise other agencies and the public of its intent, and to obtain suggestions and information on the scope of issues to include in the EIS, specifically to assist NMFS in identifying the range of alternatives to include in the EIS analysis. In addition, NMFS will hold a scoping meeting (see **ADDRESSES**) to provide for public input into the range of alternatives and issues that the EIS should consider. NMFS is accepting written comments on the range of alternatives and issues it should consider for this EIS.

DATES: Written comments from all interested parties must be received at the appropriate address or fax number (see **ADDRESSES**), no later than 5 p.m. Pacific Standard Time on September 9, 2002. Written comments will also be accepted at a public scoping meeting held from 6:30-8:30 p.m., August 22, 2002, in Building 9 of the National Oceanic and Atmospheric Administration facility at Sand Point, 7600 Sand Point Way NE, Seattle, Washington. Each attendee will be asked for his/her photo identification and the reason for his/her visit by NMFS security at the facility entrance.

ADDRESSES: Comments and requests to be included on a mailing list of persons interested in the EIS should be sent to Susan Bishop, Puget Sound and Washington Coastal Harvest Management Team Leader, Sustainable Fisheries Division, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, WA 98115–0070; telephone 206/526–4587; facsimile (fax) 206/526–6736. Comments will not be accepted if submitted via e-mail or the Internet.

As reference material, the RMP implemented in April 2001 under the ESA 4(d) Rule Limit 6, *Puget Sound Comprehensive Chinook Management Plan: Harvest Management Component*, is available on the Internet at *http://www.nwifc.wa.gov/recovery/*. NMFS's evaluation and determination on the 2001 RMP is available at *http://www.nwr.noaa.gov/1sustfish/limit6/rmpfinal.htm* .

FOR FURTHER INFORMATION CONTACT: Susan Bishop, NMFS, Northwest Region, 206/526–4587, or e-mail: *susan.bishop@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Puget Sound chinook Evolutionarily Significant Unit (ESU) was listed as threatened under the ESA in March 1999 (64 FR 14308). The ESU encompasses all naturally spawned spring-, summer-, and fall-runs of chinook salmon in the Puget Sound region from the North Fork Nooksack River to the Elwha River on the Olympic Peninsula. This ESU is located in portions of Clallam, Island, King, Kitsap, Jefferson, Mason, Pierce, San Juan, Skagit, Snohomish, and Whatcom Counties in Washington state. Puget Sound chinook have a complex life history, migrating from their natal streams throughout Puget Sound to the Pacific Ocean where they generally spend 1 to 3 years before returning to their natal streams, primarily as 3 and 4 year old adults. In their ocean migration, they travel north along the west coast into Canadian, and at times as far north as Alaskan, waters. In doing so, they are caught in a broad range of fisheries which are managed by an array of agencies, bodies and governments including the U.S. Department of Commerce, States of Washington, Oregon, and Alaska, over 20 Native American tribal jurisdictions, the North Pacific Fisheries Management Council, the Pacific Fisheries Management Council, and the Pacific Salmon Commission.

Since the listing, NMFS has evaluated the impact of some fisheries affecting listed Puget Sound chinook in compliance with section 7 of the ESA and also evaluated the 2001 RMP for Puget Sound chinook under the 4(d) Rule Limit 6. The Washington Department of Fish and Wildlife (WDFW) and the Puget Sound Treaty Tribes (co-managers) are jointly developing another RMP intended to take effect when the current RMP expires in April 2003. It will encompass commercial, recreational, ceremonial, and subsistence salmon fisheries

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potentially affecting the listed Puget Sound Chinook ESU within the marine and freshwater areas of Puget Sound, from the entrance of the Strait of Juan de Fuca inward, including fisheries under the jurisdiction of the U.S. Fraser Panel. However, as with the current RMP, harvest objectives specified in the RMP will account for fisheries-related mortality of Puget Sound chinook throughout its migratory range from Oregon and Washington to Southeast Alaska. The RMP will also include implementation, monitoring, and evaluation procedures designed to ensure fisheries are consistent with the RMP's objectives. Under the ESA 4(d) Rule Limit 6 NMFS must make a determination that the RMP, as proposed and implemented by the Puget Sound Treaty Tribes and State of Washington, does not appreciably reduce the likelihood of survival and recovery of Puget Sound chinook while providing for fishing opportunities and the exercise of federally protected treaty fishing rights, as implemented and enforced within the continuing jurisdiction of *U.S.* v. *Washington*.

NMFS will conduct an environmental review of the RMP and prepare an EIS. The environmental review will analyze the proposed action, the proposed RMP, as well as a full range of reasonable alternatives and the associated impacts of each. NMFS is currently developing alternatives for analysis. In addition to the No Action Alternative (no authorized take of listed Puget Sound chinook within the Strait of Juan de Fuca and Puget Sound area), the alternatives could include at least the following: (1) a harvest regime based on escapement goal management and (2) an alternative that combines escapement goal management at the individual population level with terminal fisheries.

Authority

The environmental review of this project will be conducted in accordance with requirements of the National Environmental Policy Act of 1969, National Environmental Policy Act Regulations (40 CFR 1500-1508), other appropriate Federal laws and regulations, and policies and procedures of NOAA for compliance with those regulations.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Susan Bishop (206/526–4587, or email: *susan.bishop@noaa.gov*) at least 5 days before the meeting date.

Dated: August 2, 2002.

Susan L. Pultz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–20092 Filed 8–7–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 7, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 2, 2002.

John Tressler,

Leader, Regulatory Information Management Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.
Title: Longitudinal Assessment of CSR Implementation and Outcomes (LACIO).
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 4,380.
Burden Hours: 2,567.

Abstract: This evaluation assesses the accomplishments of the Comprehensive School Reform (CSR) program in implementing school reform and thereby improving student achievement. The evaluation also makes a preliminary assessment of the conditions influencing the sustainability of reforms once Federal support ends. The evaluation uses a variety of data sources to understand the complex interplay of state policies, school district, educational support, and CSR school conditions affecting CSR implementation and outcomes. The major evaluation questions are: (1) To what extent have CSR-supported schools made gains on state assessments in comparison to gains for schools in the same state with similar characteristics; (2) How effective is CSR support for reform; and (3) How have district policies and state policies affected CSR implementation and comprehensive school reform. A mixed method approach will be used to collect appropriate data for addressing each evaluation question. The methods include mail surveys of 400 CSR-program and 400 non-CSR program schools, telephone surveys of 50 districts and 20 states, and a case study inquiry of 30 "sites" to provide data on vertical slices of the CSR program (each "site" comprises a CSR school and comparison school, as well as the district, state, and support infrastructure in which the schools operate). Evaluators will be able to link information from these various sources in order to provide policymakers and other stakeholders with coherent findings.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2091. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.Reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her e-mail address *Jackie.Montague@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–20035 Filed 8–7–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Department of Education.

ACTION: To amend the date of the meeting posted in the 67 FR 140, Monday, July 22, 2002, page 47777.

Date and Time: Monday, August 5, 2002, from 4:30 p.m. to 6 p.m.

ADDRESSES: The Commission meeting will be held in San Diego, California, at the Westgate Hotel located at 1055 Second Avenue, San Diego, CA, 92101

FOR FURTHER INFORMATION CONTACT: Leslie Sanchez, Executive Director, or Adam Chavarria, Associate Director, White House Initiative on Educational Excellence for Hispanic Americans, 400 Maryland Ave., SW., Washington, DC 20202, (202) 401–1411.

Dated: August 2, 2002.

Rod Paige,

Secretary, U.S. Department of Education.

[FR Doc. 02–20027 Filed 8–7–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket Nos. EA–212–B]

Application To Export Electric Energy; Coral Power, L.L.C.; To Amend Authorization to Transmit Electric Energy to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: Coral Power, L.L.C. (Coral) has applied to amend its authorization to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 23, 2002.

ADDRESS: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Imports/Exports (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On June 9, 1999, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized Coral to transmit electric energy from the United States to Mexico using the international electric transmission facilities of San Diego Gas and Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national utility of Mexico. That two-year authorization (Order EA–212) expired on August 13, 2001.

On June 27, 2001, Coral filed an application with FE for renewal of its authorization to transmit electric energy from the United States to Mexico. That two-year authorization (Order EA–212–A) will expire on August 13, 2003.

On July 8, 2002, Coral filed an application with FE to amend its authorization to transmit electric energy from the United States to Mexico in order to add the recently permitted Baja transmission facilities (Docket PP–234). Coral is an affiliate of Baja California Power, Inc., the owner of the transmission facilities built pursuant to PP–234. Coral also requested that its authorization be extended for a five-year period and that its application be given expedited treatment. On July 11, 2002, the applicant clarified the reason for requesting expedited treatment by stating that completion of the La Rosita plant in Mexico (the power plant that is connected to the permitted facilities, PP–234) is scheduled to be completed and ready to be energized in the first week in August 2002 for testing purposes. No other source of power is readily available for this purpose.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–212. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–212 proceeding.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Coral application to export electric energy to Mexico should be clearly marked with Docket EA–212–B. Additional copies are to be filed directly with Andrea M. Settanni, Bracewell & Patterson, L.L.P., 2000 K Street, NW., Suite 500, Washington, DC 20006–1872 AND Robert Reilley, Vice President, Regulatory Affairs, Coral Power, L.L.P., 909 Fannin, Suite 700, Houston, TX 77010.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select "Electricity Regulation", then "Pending Procedures" from the options menus.

Issued in Washington, DC, on August 2, 2002.

Ellen Russell,

Acting Deputy Director, Electric Power Regulation, Office of Coal & Power Imports/Exports, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–20061 Filed 8–7–02; 8:45 am]

BILLING CODE 6450–01–P

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DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–27; Research and Development for the Rare Isotope Accelerator

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Nuclear Physics Division (NP), Office of High Energy and Nuclear Physics (HENP), Office of Science (SC), U.S. Department of Energy (DOE), hereby announces interest in receiving applications for Research and Development (R&D) projects directed at the proposed Rare Isotope Accelerator (RIA). RIA is proposed as a new accelerator facility to address emerging research opportunities in low energy nuclear physics, and DOE is sponsoring pre-conceptual R&D activities on the facility.

DATES: The deadline for receipt of formal applications is 4:30 p.m., E.D.T., October 2, 2002, to be accepted for merit review and to permit timely consideration for award in early Fiscal Year 2003.

ADDRESSES: We encourage you to submit formal applications in response to this solicitation electronically through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the World Wide Web. Applications must be submitted through IIPS in PDF format by an authorized institutional business official. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov* or you may call the help desk at (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html*.

If you are unable to submit the application through IIPS, formal applications referencing Program Notice 02–27, should be sent to: U.S. Department of Energy Office, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–27. This above address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene A. Henry, Nuclear Physics Division, Office of High Energy and Nuclear Physics, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290; telephone: (301) 903–6093; facsimile: (301) 903–3833; e-mail: *gene.henry@science.doe.gov*. The full text of Program Notice 02–27 is available via the World Wide Web using the following web site address: *http://www.sc.doe.gov/production/grants/grants.html*.

SUPPLEMENTARY INFORMATION: The nuclear science community has proposed the Rare Isotope Accelerator as a new accelerator facility to address emerging research opportunities in nuclear structure, nuclear astrophysics, and fundamental interactions and symmetries. [See the DOE/NSF Nuclear Science Advisory Committee's 2002 Long Range Plan.]

The Department of Energy is sponsoring pre-conceptual research and development for the Rare Isotope Accelerator. Community sponsored studies and workshops have identified a number of areas where focused R&D and prototyping could enhance performance, reduce costs, and impact the engineering and construction schedule. Among these areas are:

- Gas stopper for fast fragments. A key feature of the RIA concept is the use of intense high-energy heavy-ion beams with projectile fragmentation as the production mechanism. The gas stopper will slow the projectile fragments and deliver them for subsequent re-acceleration.
- Fragment momentum compression preceding the gas stopper. To stop fragments efficiently in a finite gas stopper volume, there must be compensation of the large fragment momentum spread.
- Fragment separators that handle beam spray and allow beam sharing. Development work on the front end of the fragment separator is required to minimize radiation damage to the magnetic elements.
- Electron cyclotron resonance (ECR) ion sources producing high intensity, high-charge-state uranium, and the low energy beam transport (LEBT). The driver linear accelerator requires ECR ion source performance for uranium greater than the current state of the art by a factor of 2 to 8.
- Driver technologies, especially superconducting radio-frequency (SRF) structures. The driver linear accelerator will require a number of distinct radio-frequency (RF) structures, likely superconducting, but possibly room temperature. Among the issues to be addressed are beam loss, SRF structure cavity cleanliness, and overall cost.
- Beam stripping. The high power of the heavy ion beams requires innovative solutions to beam strippers such as liquid lithium films, or rotating carbon foil strippers that do not degrade beam emittance.
- High-power targets including liquid lithium for fragmentation and isotope separator on-line (ISOL-type) sources with good diffusion and effusion properties. The development of ISOL-type targets with long lifetimes and fast extraction times at high beam powers are essential for the success of RIA. For in-flight fragmentation and fission, development of a liquid-lithium target, or other new high power fragmentation target concepts, is imperative.
- Other RIA accelerator and experimental facility components will also require focused effort. These include post-acceleration including radio frequency quadrupoles (RFQs) and very low velocity accelerating structures, charge-multiplying ECRs, radiation hardened magnetic equipment, innovative detector instrumentation, beam diagnostics optimized for a broad range of beam intensities, beam dumps, radio-frequency equipment, and controls.

The concept, elements and R&D issues of RIA are outlined in the Nuclear Science Advisory Committee (NSAC) ISOL Taskforce Report that can be found at: *http://www.sc.doe.gov/production/henp/np/*. Select the NSAC button.

Applications requesting support for research and development in the areas outlined above should indicate a separate task for each area. Applications may include more than one task. For each task the application should address the goal of the effort; the method or approach to be taken; the cost and schedule of the effort; the deliverable result of the work; and the performance, cost, or schedule benefit for RIA. Institutional contributions to the effort should be clearly indicated.

Program Funding

It is anticipated that up to $3,500,000 will be available for multiple awards to be made in early Fiscal Year 2003, in the areas described above, contingent on the availability of appropriated funds. Applications should be for one year, with a continuation of up to two additional years for those tasks requiring a multi-year effort. For continuation of multi-year effort, out-year support is contingent on the availability of funds, progress of the research and programmatic needs. For multi-year tasks, intermediate milestones should be indicated.

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as: Universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to include cost sharing and/or consortia wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/Colab.html*.

Formal Applications

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures are contained in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the latest version of the Office of Science's Financial Assistance Guide and required forms is made available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The research project description must be five pages per task or less, exclusive of attachments and must contain an abstract or summary of the proposed research. Projects reporting results or progress on work conducted with DOE funding under the previous RIA R&D program may include two additional pages per task. All collaborators should be listed with the abstract or summary. On the grant face page, form DOE F 4650.2, in block 15, also provide the Principal Investigator's phone number, fax number, and E-mail address. Attachments include curriculum vitae, a listing of all current and pending federal support and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be limited to no more than two pages per individual.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR part 605.10(d):

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors, such as the relevance of the proposed research to the terms of the announcement and agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, on July 30, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–20064 Filed 8–7–02; 8:45 am]

BILLING CODE 6450–02–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC02–907–000, FERC–907]

Public Information Collection and Request for Comments August 2, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Request for Office of Management and Budget Emergency Processing of proposed information collection and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the requirements of Section 3507(j)(1)of the Paperwork Reduction Act of 1995 (Pub. L. No.104–13), and 5 CFR 1320.13 of OMB's regulations. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

DATES: The Commission and OMB must receive comments on or before August 15, 2002.

ADDRESSES: Send comments to: (1) Michael Miller, Office of the Chief Information Officer, CI–1, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Mr. Miller can be reached by telephone at (202) 502–6415 and by e-mail at *michael.miller@ferc.fed.us*; and

(2) Ms. Ruth Solomon, FERC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202 NEOB, 725 17th Street, NW., Washington, DC 20503. Ms. Solomon may be reached by telephone at (202) 395–7856 or by fax at (202) 395–7285. Ms. Solomon should be contacted by phone or fax.

FOR FURTHER INFORMATION CONTACT: Mark Klose, Office of the Executive Director, Division of Regulatory Accounting Policy, (202) 219–2595; Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (Commission) in Docket No. RM02–14–000, issued a proposed rule, to amend its Uniform System of Accounts for public utilities, natural gas companies and oil pipeline companies by establishing the documentation necessary to furnish readily full information concerning cash management agreements created by a Commission-regulated subsidiary and a non-regulated parent. Specifically, the Commission is requiring that all such cash management arrangements be in writing and specify the duties and responsibilities of participants in a cash management system (a system in which funds are transferred from multiple accounts to a single account in the parent company's name or a single account with interest earned or charged on the net cash balance position, or in which balances in affiliated companies' accounts are at the same bank as the parent company and transfers are made daily to the parent's account).

The Commission's staff has reviewed several cash management agreements between Commission-regulated companies and their non-regulated parent companies. With only one exception, there was no formal, written agreements at the gas pipelines, electric utilities and oil pipelines among the companies reviewed. There is potential for serious financial harm to Commission-regulated entities if non-regulated parent companies default on accounts payable owed to their regulated subsidiaries. Accordingly, the Commission is proposing to require written cash management agreements for the entities it regulates. Cash management agreements serve to define the rights and responsibilities of the

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parties to the agreements plus clarify how the funds will be advanced/transferred and whether interest will be paid and at what rate of interest to the companies providing the funds.

The Commission intends to clearly define the roles and responsibilities of all parties regarding transfers of cash, payment of bills, payment of interest, and the funds that can be taken from the regulated subsidiary. Cash management agreements should be reviewed and updated periodically to ensure that change in the corporate structure has not made the agreements obsolete. Additionally, cash management agreements must provide assurance for Commission-regulated entities and regulators that non-regulated parents aren't exposing their subsidiaries to severe financial harm for the benefit of non-regulated affiliated companies.

Under the statutes that it administers, the Commission has broad authority to act in the public interest and to ensure that adequate supplies of energy are available to the nation at a reasonable cost. Because of the Commission's concern that cash management accounts not be used improperly to impair the financial health of regulated entities, so as to cause harm to the rate paying public, it believes it is appropriate to put into place these requirements to protect the ratepayers.

The Commission has submitted this collection of information to OMB for approval. OMB's regulations describe the process that federal agencies must follow in order to obtain OMB approval for collections of information. See 5 CFR 1320. The standards for emergency processing of information collections appear at 5 CFR 1320.13. If OMB approves a reporting requirement, then it will assign an information control number to that requirement. OMB requires federal agencies seeking approval of information collections to allow the public an opportunity to comment on the proposed information collection. 5 CFR 1320.5(a)(1)(iv). Therefore, the Commission is soliciting comment on:

(1) Whether the collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) The accuracy of the Commission's estimate of the burden of the collection of this information, including the validity of methodology and assumptions used;

(3) The quality, utility, and clarity of the information to be collected; and

(4) How to minimize the burden of the collection of this information on respondents, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

OMB Control No.: (to be assigned).

Expiration Date: 01/31/2002.

Title: Regulation of Cash Management Practices.

IC No.: FERC–907.

Respondents: Businesses or other for-profit.

Estimated annual burden: 896 hours.

Estimated Annual Reporting and/or Recordkeeping cost: $50,418.

Frequency of Response: On occasion.

Obligation to Respond: Mandatory.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20043 Filed 8–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–112–000]

FirstEnergy Solutions Corp., FirstEnergy Generation Corp., Complainant, v. PJM Interconnection, LLC, Respondent; Notice of Complaint

August 2, 2002.

Take notice that on August 1, 2002, FirstEnergy Solutions Corp. and FirstEnergy Generation Corp. (FirstEnergy) filed a Complaint against PJM Interconnection, LLC ("PJM"). In the Complaint, FirstEnergy requests that the Commission issue an order directing PJM to eliminate its eFuel reporting requirement. In the alternative, FirstEnergy requests that the Commission issue an order directing PJM to address the eFuel reporting requirement under the MMU information gathering rules in effect at the time PJM initiated reporting requirement in February 2002.

Copies of this filing were served upon PJM, state regulatory agencies in Ohio, Pennsylvania and New Jersey and others FirstEnergy reasonably knows may be expected to be affected by the Complaint.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before August 21, 2002. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20042 Filed 8–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–172–000, *et al.*]

Genova Oklahoma I, LLC, et al.; Electric Rate and Corporate Regulation Filings

July 31, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Genova Oklahoma I, LLC

[Docket No. EG02–172–000]

Take notice that on July 25, 2002, Genova Oklahoma I, LLC, 5700 West Plano Parkway, Suite 1000, Plano, Texas 75093, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commissions regulations.

Genova Oklahoma I, LLC states it is a limited liability company, organized under the laws of the State of Delaware, and is engaged directly and exclusively in owning and operating the Genova Oklahoma I, LLC electric generating facility (the Project) to be located in Grady County, Oklahoma, and selling electric energy at wholesale from the Project. The Project will consist of a combined cycle combustion turbine unit with a nominal rating of approximately 580 megawatts and associated transmission interconnection components.

Comment Date: August 21, 2002.

2. San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents

[Docket Nos. EL00–95–066 and EL01–68–018]

Investigation of Practices of the California Independent System Operator and the California Power Exchange

[Docket No. EL00–98–055]

Take notice that on July 24, 2002, the California Independent System Operator Corporation (ISO) submitted a filing with the Federal Energy Regulatory Commission (Commission) in compliance with the Commission's July 11, 2002, "Order on Rehearing, Reconsideration and Clarification" 100 FERC ¶ 61,050.

The ISO states that it has served copies of this filing upon all parties listed on the official service list for this proceeding.

Comment Date: August 23, 2002.

3. Pacific Gas and Electric Company

[Docket Nos. ER02–358–003, ER01–2998–003, and EL02–64–003]

Take notice that on July 25, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing an errata to its filing dated July 15, 2002 of a Settlement Agreement pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602. The Settlement Agreement replaces Interconnection Agreements between PG&E and the Northern California Power Agency (NCPA) and between PG&E and the City of Santa Clara, Silicon Valley Power (SVP), on file with the Commission as PG&E First Revised Rate Schedules FERC Nos. 142 and 85. The errata consists of an appendix F to each of these Interconnection Agreements, which Appendices were inadvertently omitted from the July 15, 2002 filing.

Copies of this filing have been served upon all members of he Official Service Lists of the above-mentioned Dockets, the California Public Utilities Commission, and the California Independent System Operator Corporation.

Comment Date: August 15, 2002.

4. Tampa Electric Company

[Docket No. ER02–1663–002]

Take notice that on July 26, 2002, Tampa Electric Company (Tampa Electric) filed a revised unexecuted transmission service agreement between Tampa Electric and Calpine Energy Services, Inc. in compliance with the Federal Energy Regulatory Commission's "Order Conditionally Accepting for Filing Unexecuted Service Agreement, As Modified," issued in Docket No. ER02–1663–000 on June 27, 2002.

A copy of the compliance filing has been served on each person on the service list in Docket No. ER02–1663–000 and the Florida Public Service Commission.

Comment Date: August 16, 2002.

5. Blythe Energy, LLC

[Docket No. ER02–2018–001]

Take notice that on July 26, 2002, Blythe Energy, LLC (Blythe) tendered for filing with the Federal Energy Regulatory Commission a letter submitting certain additional information with respect to Blythe's Application for market-based rate authority filed on June 5, 2002.

Comment Date: August 12, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–20026 Filed 8–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–97–000, et al.]

Wisconsin Public Service Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 1, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Wisconsin Public Service Corporation; De Pere Energy L.L.C.

[Docket No. EC02–97–000]

Take notice that on July 26, 2002, Wisconsin Public Service Corporation (WPSC) and De Pere Energy L.L.C. (De Pere Energy) tendered for filing with the Federal Energy Regulatory Commission (Commission) a joint Application pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's Regulations requesting authorization for De Pere Energy to sell to WPSC the De Pere Energy Center, a 180 MW electric generating facility, including associated transformers and switchyard equipment.

Copies of the filing were served upon the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment Date: August 16, 2002.

2. American Atlas No. 1, Ltd., L.L.L.P.

[Docket No. EC02–98–000]

Take notice that on July 26, 2002, American Atlas No. 1, Ltd., L.L.L.P. (Atlas) tendered for filing an application requesting all necessary authorizations under Section 203 of the Federal Power Act for the sale by Atlas to Tri-State Generation and Transmission Association, Inc. of Atlas's interests in the jurisdictional assets associated with a nominal 75-megawatt cogeneration power plant located in Rifle, Colorado, and known as the American Atlas No. 1 Cogeneration Facility.

Comment Date: August 16, 2002.

3. La Paloma Generating Trust Ltd.; La Paloma Generating Company, LLC

[Docket No. EC02–99–000]

Take notice that on July 26, 2002, La Paloma Generating Trust Ltd. (La Paloma Trust) and La Paloma Generating Company, LLC (La Paloma Gen), tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824b (1994), and part 33 of the

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Commission's regulations, 18 CFR part 33, an application to authorize an assignment of beneficial interests in La Paloma Trust to La Paloma Gen.

Comment Date: August 16, 2002.

4. Big Cajun I Peaking Power LLC

[Docket No. EG02–120–000]

Take notice that on July 30, 2002, Big Cajun I Peaking Power LLC (Big Cajun I Peaking) filed with the Federal Energy Regulatory Commission (Commission) an amendment to its application for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935 (PUHCA) and part 365 of the Commission's regulations.

As more fully explained in the application, Big Cajun I Peaking stated that it is a limited liability company that will be engaged either directly or indirectly and exclusively in the business of owning and operating an electric generation facility located in Louisiana.

Comment Date: August 21, 2002.

5. Rocky Mountain Power, Inc.

[Docket No. EG02–173–000]

Take notice that on July 30, 2002, Rocky Mountain Power, Inc. a Montana corporation (Applicant), with its principal executive office at 918 East Divide Avenue, Bismarck, North Dakota, 58506–5650, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator (EWG) status pursuant to part 365 of the Commission's regulations and Section 32 of the Public Utility Holding Company Act of 1935, as amended.

Applicant is in the process of developing a 113 MW (gross) coal-fired, simple-cycle electrical generating facility to be located in Big Horn County, Hardin, Montana. Applicant states that it will be engaged directly and exclusively in the business of owning and operating eligible facilities and selling electric energy at wholesale.

Comment Date: August 22, 2002.

6. Atlantic City Electric Company

[Docket No. ER99–2781–001]

Take notice that on July 29, 2002, Atlantic City Electric Company (Atlantic City) tendered for filing its triennial market power analysis in support of its market-based rate authority in compliance with the Federal Energy Regulatory Commission's May 16, 1996, order accepting Atlantic City's updated market-based tariff. Atlantic City Electric Co., 75 FERC 61,167.

Comment Date: August 19, 2002.

7. Delmarva Power & Light Company

[Docket No. ER99–2781–002]

Take notice that on July 29, 2002, Delmarva Power & Light Company (Delmarva) tendered for filing its triennial market power analysis in support of its market-based rate authority in compliance with the Federal Energy Regulatory Commission's September 26, 1996, order accepting Delmarva's updated market-based tariff. Delmarva Power & Light Co., 75 FERC 61,331.

Comment Date: August 19, 2002.

8. Duke Energy St. Francis LLC

[Docket No. ER99–3118–002]

Take notice that on July 29, 2002, Duke Energy St. Francis LLC (Duke St. Francis) tendered for filing its triennial market power analysis in compliance with the Federal Energy Regulatory Commission Order granting it market-based rate authority in Docket No. ER99–3118–000 on July 28, 1999.

Copies of this filing were served upon those parties on the official service list.

Comment Date: August 19, 2002.

9. Tenaska Georgia Partners, L.P.

[Docket No. ER99–3165–001]

Take notice that on July 29, 2002, Tenaska Georgia Partners, L.P.,(Tenaska Georgia) submitted for filing with the Federal Energy Regulatory Commission its triennial updated market analysis in accordance with Appendix B of the Commission's Order in Minergy Neenah, L.L.C. 88 FERC 61,102.

Questions concerning this filing may be directed to counsel for Tenaska Georgia, Neil L. Levy, Kirkland & Ellis, 655 Fifteenth Street, NW., Suite 1200, Washington, DC 20005, Phone (202) 879–5116, Fax (202) 879–5200, e-mail *Neil_Levy@dc.kirkland.com*.

Comment Date: August 19, 2002.

10. PacifiCorp

[Docket No. ER02–2333–001]

Take notice that on July 26, 2002, PacifiCorp submitted for filing the First Amended and Restated Long-Term Power Sales Agreement (Agreement) between PacifiCorp and Southern California Edison Company (SCE). PacifiCorp inadvertently submitted and outdated version of the redline Rate Schedule No. 248. Please substitute the enclosed correct version of the Rate Schedule.

Comment Date: August 16, 2002.

11. Arizona Public Service Company

[Docket No. ER02–2369–000]

Take notice that on July 26, 2002, Arizona Public Service Company (APS) on behalf of itself, and as the Operating Agent for the Four Corners Participants, hereby submits for filing the Interconnection and Operating Agreement (IOA) under its Open Access Transmission Tariff between the Four Corner Participants and the Interconnection Participants.

The Four Corner Participants consist of the joint owners of a 345-kV Switchyard and include APS, El Paso Electric Company (EPE), Public Service Company of New Mexico (PNM), Salt River Project Agricultural Improvement and Power District (SRP), Southern California Edison Company (SCE), and Tucson Electric Power Company (TEP).

The Interconnection Participants consist of Public Service of Colorado (PSCO), Tri-State Generation and Transmission Association, Inc (Tri-State), and the acting by an through the Administrator, Western Area Power Administration, Department of Energy (Western). The Interconnection Participants have rights to a Shiprock-Four Corners Transmission Line and desire an interconnection to the 345-kV Switchyard of the Four Corner Participants.

A copy of this filing has been served on parties, the appropriate state commissions, and the United States Department of Agriculture, Rural Utilities Service (RUS).

Comment Date: August 16, 2002.

12. California Independent System Operator Corporation

[Docket No. ER02–2370–000]

Take notice that on July 26, 2002, the California Independent System Operator Corporation (ISO) tendered for filing First Revised Service Agreement No. 305 under FERC Electric Tariff, Original Volume No. 1, which is a Participating Generator Agreement (PGA) between the ISO and Gas Recovery Systems, Inc (Gas Recovery Systems). The ISO has revised the PGA to update Original Volume No. 1 of the PGA.

The ISO requests that the revised PGA be made effective as of June 12, 2000. The ISO states that this filing has been served on all entities that are on the official service list for Docket No. ER00–3007–000.

Comment Date: August 16, 2002.

13. DePere Energy L.L.C.

[Docket No. ER02–2371–000]

Take notice that on July 26, 2002, DePere Energy L.L.C. (DePere) filed a Notice of Cancellation of its Power Purchase Agreement with Wisconsin Public Service Corporation (WPSC), which has been designated as DePere's Rate Schedule FERC No. 1. DePere proposes that the cancellation be effective as of the closing date for the proposed sale of the DePere Energy Center to WPSC.

Comment Date: August 16, 2002.

14. PJM Interconnection, L.L.C.

[Docket No. ER02–2372–000]

Take notice that on July 26, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing with the Federal Energy Regulatory Commission (Commission) an executed interim interconnection service agreement between PJM and Exelon Corporation.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective date agreed to by the parties. Copies of this filing were served upon each of the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: August 16, 2002.

15. PJM Interconnection, L.L.C.

[Docket No. ER02–2373–000]

Take notice that on July 26, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing with the Federal Energy Regulatory Commission (Commission) one executed interconnection service agreement between PJM and FPL Energy Marcus Hook, L.P. and one executed interim interconnection service agreement between PJM and Delaware Municipal Electric Cooperative.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties. Copies of this filing were served upon each of the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: August 16, 2002.

16. PJM Interconnection, L.L.C.

[Docket No. ER02–2374–000]

Take notice that on July 26, 2002, PJM Interconnection, L.L.C. (PJM), submitted for filing with the Federal Energy Regulatory Commission (Commission) one executed interim interconnection service agreement between PJM and PSEG Fossil L.L.C. and two executed interconnection service agreements between PJM and Free State Electric, LLC.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties. Copies of this filing were served upon each of the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: August 16, 2002.

17. PPL Electric Utilities Corporation

[Docket No. ER02–2375–000]

Take notice that on July 26, 2002, PPL Electric Utilities Corporation (PPL Electric) filed notice of termination of the Service Agreement between it and Sempra Energy Trading Corp. designated as Service Agreement No. 157 under PPL Electric Utilities Corporation's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5.

PPL Electric requests that the termination be effective on September 24, 2002. Notice of the termination has been served upon Sempra Energy Trading Corp.

Comment Date: August 16, 2002.

18. Southwest Power Pool, Inc.

[Docket No. ER02–2376–000]

Take notice that on July 29, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing an unexecuted service agreement for Firm Point-to-Point Transmission Service with Kansas Municipal Energy Agency. (Transmission Customer).

SPP seeks an effective date of July 1, 2002 for this service agreement. The Transmission Customer was served with a copy of this filing.

Comment Date: August 19, 2002.

19. Midwest Generation, LLC

[Docket No. ER02–2377–000]

Take notice that on July 29, 2002, Midwest Generation, LLC. (Midwest) , tendered for filing a First Revised Service Agreement No. 2 under Midwest FERC Electric Tariff, Original Volume No. 1 (the Peaking Generating Station Power Purchase Agreement between Commonwealth Edison Company and Midwest).

Comment Date: August 19, 2002.

20. Southern Company Services, Inc.

[Docket No. ER02–2378–000]

Take notice that on July 29, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed a Notice of Cancellation of twenty (20) transmission service agreements under the Open Access Transmission Tariff of Southern Companies (Tariff) (FERC Electric Tariff, Fourth Revised Volume No. 5). These cancellations include non-firm point-to-point transmission service agreements under the Tariff between SCS, as agent for Southern Companies, and (I) Valero Power Service Company (Service Agreement No. 33); (ii) Heartland Energy Services (Service Agreement No. 1); (iii) Federal Energy Sales, Inc. (Service Agreement No. 38); (iv) Coastal Electric Service Company (Service Agreement No. 12); (v) KN Marketing, Inc. (Service Agreement No. 37); (vi) Catex Vitol Electric, LLC (Service Agreement No. 9); (vii) Progress Power Marketing, Inc. (Service Agreement No. 53); (viii) PECO Energy Company (Service Agreement No. 44); (ix) Calpine Power Services Company (Service Agreement No. 61); (x) Central Louisiana Electric Company (Service Agreement No. 73); (xi) City of Gainesville, Florida (Service Agreement No. 204); (xii) CMEX Energy, Inc. (Service Agreement No. 24); (xiii) Gulf Stream Energy (Service Agreement No. 40); (ivx) PanEnergy Power Services, Inc. (Service Agreement No. 49); (vx) Questar Energy Trading Company (Service Agreement No. 52); (vxi) Union Electric Company (Service Agreement No. 65); (vxii) Utilicorp United, Inc., (Service Agreement No. 57); and (vxiii) Wisconsin Power & Light (Service Agreement No. 56). Additionally, the Notice of Cancellation includes the Short Term Firm Point-to-Point Transmission Service Agreement between SCS, as agent for Southern Companies, and Catex Vitol Electric, LLC, designated Service Agreement No. 13 under the Tariff as well as the Short Term Firm Point-to-Point Transmission Service Agreement between SCS, as agent for Southern Companies, and PECO Energy Company, designated Service Agreement No. 198 under the Tariff.

Comment Date: August 19, 2002.

21. Xcel Energy Services, Inc. Public Service Company of Colorado

[Docket No. ER02–2379–000]

Take notice that on July 29, 2002, Xcel Energy Services, Inc. (XES), on behalf of Public Service Company of Colorado (PSCo) submitted for filing with the Federal Energy Regulatory Commission (Commission) the Generation Interconnection Agreement between PSCo and Thermo Cogeneration Partnership, L.P.

PSCo requests the letter agreements be accepted for filing effective July 1, 2002, and requests waiver of the Commission's notice requirements in order for the Agreements to be accepted for filing on the date requested.

Comment Date: August 19, 2002.

22. Madison Gas and Electric Company

[Docket No. ER02–2380–000]

Take notice that on July 29, 2002, Madison Gas and Electric Company

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(MGE) tendered for filing a service agreement under MGE's Market-Based Power Sales Tariff with NRG Power Marketing Inc.

MGE requests the agreement be effective on the date it was filed with the Federal Energy Regulatory Commission.

Comment Date: August 19, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20041 Filed 8–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

August 2, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No*: 12189–000.

c. *Date Filed*: June 10, 2002.

d. *Applicant*: Skiatook Hydro, LLC.

e. *Name of Project*: Skiatook Dam Hydroelectric Project.

f. *Location*: The proposed project would be located on an existing dam owned by the U.S. Army Corps of Engineers, on Hominy Creek in Osage County, Oklahoma.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

i. *FERC Contact*: Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671.

j. *Deadline for filing motions to intervene, protests and comments*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12189–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed run-of-river project using the existing Corps of Engineers' Skiatook Dam would consist of: (1) A 48-inch-diameter, 200-foot-long steel penstock, (2) a powerhouse containing one generating unit with an installed capacity of 1.04 MW, (3) a 15 kv transmission line approximately 3 miles long, and (4) appurtenant facilities. The project would have an annual generation of 5.4 GWh.

l. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above. m.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20044 Filed 8–7–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

August 2, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12233–000.

c. *Date Filed:* June 17, 2002.

d. *Applicant:* Lavon Hydro, LLC.

e. *Name of Project:* Lavon Dam Hydroelectric Project.

f. *Location:* The proposed project would be located on an existing dam owned by the U.S. Army Corps of Engineers, on the East Fork Trinity River in Collin County, Texas.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12233–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the existing Corps of Engineers' Lavon Dam would consist of: (1) A 84-inch-diameter, 200-foot-long steel penstock, (2) a powerhouse containing one generating unit with an installed capacity of 1.8 MW, (3) a 25–kv transmission line approximately 1 mile long, and (4) appurtenant facilities. The project would have an annual generation of 7.2 GWh.

l. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a

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party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20045 Filed 8–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

August 2, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12256–000.

c. *Date Filed:* June 20, 2002.

d. *Applicant:* DeGray Hydro, LLC.

e. *Name of Project:* DeGray Reregulating Dam Hydroelectric Project.

f. *Location:* The proposed project would be located on an existing dam owned by the U.S. Army Corps of Engineers, on the Caddo River in Clark County, Arkansas.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12256–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed run-of-river project using the Corps' existing Degray Reregulating Dam would consist of: (1) An 84-inch-diameter, 200-foot-long steel penstock, (2) a powerhouse containing one generating unit with an installed capacity of 1 MW, (3) a 15-kv transmission line approximately 2 miles long, and (4) appurtenant facilities. The project would have an annual generation of 4.4 GWh.

l. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20046 Filed 8–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing, Soliciting Motions to Intervene and Protests, and Establishing Procedural Milestones for Relicensing

August 2, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2984–042.

c. *Date Filed:* March 29, 2002.

d. *Applicant:* S.D. Warren Company.

e. *Name of Project:* Eel Weir Hydroelectric Project.

f. *Location:* The existing project is located on the Presumpscot River at the outlet of Sebago Lake, in Cumberland County, Maine. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r)

h. *Applicant Contact:* Thomas P. Howard, S.D. Warren Company, 89 Cumberland Street, P.O. Box 5000, Westbrook, ME 04098–1597; Telephone (207) 856–4286

i. *FERC Contact:* Allan Creamer, (202) 502–8365 or *allan.creamer@ferc.gov.*

j. *Deadline for Filing Motions to Intervene and Protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Commission strongly encourages electronic filings.

The Commission's rules of practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website (*http://www.ferc.gov*) under the "e-Filing" link. The Commission strongly encourages electronic filing.

k. *Status:* This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. *Description of Project:* The existing Eel Weir Project operates in a store-and-release mode. The project consists of the following features: (1) A 115-foot-long, 23-foot-high stone masonry spillway dam; (2) a 150-foot-long, 10-foot-high stone and earth-fill east abutment section; (3) a 90-foot-long, 5-foot-high stone and earth-fill west abutment section; (4) five 6.5-foot-high by 4.75-foot-wide discharge gates; (5) four 8.8-foot-high by 7-foot-wide canal intake gates; (6) a 12-mile-long, 28,771-acre impoundment, Sebago Lake, at elevation 266.65 msl; (7) a 6,700-mile-long bypassed reach; (8) a 90-foot-long fish screen, located upstream of the canal gates; (9) a 4,826-foot-long, 15-foot-deep earthen power canal; (10) a 90-foot-long timber-sheathed canal overflow weir; (11) a powerhouse containing three Hercules turbines and generating units, having an installed capacity of 1,800 kilowatts; (12) a 3.5-mile-long, 11-kilovolt transmission line; and (13) appurtenant facilities.

The average annual generation is estimated to be about 12,300 megawatt-hours. All power generated by the project is utilized by the applicant's paper mill in Westbrook, Maine.

m. *Location of the Application:* A copy of application is on file with the Commission and is available for public inspection. The application may be viewed on the web at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, call (202) 502–8222. A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit a motion to intervene or protest in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any motions to intervene or protests must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "MOTION TO INTERVENE" or "PROTEST;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person intervening or protesting; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any motion to intervene or protest must be served upon each representative of the applicant specified in the particular application.

o. *Procedural Schedule and Final Amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

Action	Tentative date
Request Additional Information.	August/September 2002.

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Action	Tentative date
Issue Scoping Document 1 for Comment.	October 2002.
Hold Scoping Meeting(s).	November 2002.
Request Additional Information (if necessary).	January 2003.
Issue Scoping Document 2.	January 2003.
Notice of Application Ready for Environmental Analysis.	February 2003.
Notice of availability of the draft NEPA document.	August 2003.
Initiate 10(j) process.	October 2003.
Notice of availability of the final NEPA document.	December 2004.
Ready for Commission decision on the application.	March 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20047 Filed 8–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

August 2, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12181–000.

c. *Date Filed:* June 4, 2002.

d. *Applicant:* Sequoia Hydro, LLC.

e. *Name of Project:* Sequoia Dam Hydroelectric Project.

f. *Location:* The proposed project would be located on an existing dam owned by YMCA Inc., on the Mill Flat Creek in Fresno County, California. The proposed project would not occupy federal lands or facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 USC § § 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442, Telephone: (208) 745–8630.

i. *FERC Contact:* Mr. Lynn R. Miles, Sr. (202) 219–2671.

j. Deadline for filing motions to intervene, protests and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12181–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) The existing 51-foot-high, 225-feet-long earthfill dam, (2) the existing Sequoia Lake with a surface area of 200 acres and a storage capacity of 1,370 acre-feet at a normal maximum water surface elevation of 5,337 feet msl, (3) a 72-inch-diameter, 700-foot-long steel penstock, (4) a powerhouse with an installed capacity of 1.09 MW, (5) a 15-kv transmission line approximately 2 miles in length, and (6) appurtenant facilities. The project would have an annual generation of 3.905 GWh.

l. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20050 Filed 8–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

August 2, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12203–000.

c. *Date Filed:* June 11, 2002.

d. *Applicant:* North San Gabriel Hydro, LLC.

e. *Name of Project:* North San Gabriel Dam Hydroelectric Project.

f. *Location:* The proposed project would be located on an existing dam owned by the U.S. Army Corps of Engineers, on the North Fork San Gabriel River in Williamson County, Texas.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12203–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed run-of-river project using the Corps of Engineers' existing North San Gabriel Dam would consist of: (1) A 60-inch-diameter, 100-foot-long steel penstock, (2) a powerhouse containing one generating unit with an installed capacity of 1 MW, (3) a 15–kv transmission line approximately 1 mile long, and (4) appurtenant facilities. The project would have an annual generation of 1.8 GWh.

l. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20051 Filed 8–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

August 2, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12228–000.

c. *Date Filed:* June 17, 2002.

d. *Applicant:* Hulah Hydro, LLC.

e. *Name of Project:* Hulah Dam Hydroelectric Project.

f. *Location:* The proposed project would be located on an existing dam owned by the U.S. Army Corps of Engineers, on the Caney River in Osage County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 USC § § 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12228–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed run-of-river project using the existing Corps of Engineers' Hulah Dam would consist of: (1) A 96-inch-diameter, 250-foot-long steel penstock, (2) a powerhouse containing one generating unit with an installed capacity of 1.64 MW, (3) a 15-kv transmission line approximately 1 mile long, and (4) appurtenant facilities. The project would have an annual generation of 2.5 GWh.

l. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20052 Filed 8–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

August 2, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit. b

. *Project No*: 12259–000.

c. *Date Filed*: June 21, 2002.

d. *Applicant*: Universal Electric Power Corporation.

e. *Name of Project:* Monongahela L&D No. 2 Hydroelectric Project.

f. *Location*: The proposed project would be located on an existing dam owned by the U.S. Army Corps of Engineers on the Monongahela River in Allegheny County, Pennsylvania.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. Raymond Helter, Universal Electric Power Corporation 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact*: Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671.

j. *Deadline for filing motions to intervene, protests and comments*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12259–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed run-of-river project using the Corps' existing Monongahela Lock and Dam No. 2 would consist of: (1) six steel penstocks approximately 30 feet in length, each 84 inches in diameter, (2) a powerhouse containing several turbine/generating units with a combined installed capacity of 6.14 MW, (3) a 14.7–kv transmission line approximately 1,800 feet long, and (4) appurtenant facilities. The project would have an annual generation of 24 GWh.

l. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*— Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments,

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protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–20053 Filed 8–7–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Change of Commission Meeting Dates for 2002

August 2, 2002.

The Chairman has approved a change to the public meeting schedule for September through December 2002. The change consists of an additional public meeting scheduled for September 5, 2002. Accordingly, the revised schedule for public meetings for September through December 2002 is as follows:

Thursday, September 5, 2002
Wednesday, September 18, 2002
Wednesday, October 9, 2002
Wednesday, October 30, 2002
Wednesday, November 20, 2002
Wednesday, December 18, 2002

Magalie R. Salas,
Secretary.
[FR Doc. 02–20049 Filed 8–7–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Georgia-Alabama-South Carolina Rates, Rate OrderNo. SEPA–41

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of Rate Order.

SUMMARY: The Secretary of Department of Energy, confirmed and approved, on an interim basis, Rate Schedules SOCO–1–A, SOCO–2–A, SOCO–3–A, SOCO–4–A, ALA–1–J, MISS–1–J, Duke–1–A, Duke–2–A, Duke–3–A, Duke–4–A, Santee–1–A, Santee–2–A, Santee–3–A, Santee–4, SCE&G–1–A, SCE&G–2–A, SCE&G–3–A, SCE&G–4–A, Regulation–1, Replacement–1, Pump–1–A, and Pump–2. The rates were approved on an interim basis through September 30, 2007, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

DATES: Approval of rate on an interim basis is effective through September 30, 2007.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711, (706)–213–3800.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission, by Order issued February 26, 1999, in Docket No. EF98–3011–000, confirmed and approved Wholesale Power Rate Schedules SOCO–1, SOCO–2, SOCO–3, SOCO–4, ALA–1–I, MISS–1–I, Duke–1, Duke–2, Duke–3, Duke–4, Santee–1, Santee–2, Santee–3, Santee–4, SCE&G–1, SCE&G–2, SCE&G–3, SCE&G–4, and Pump–1. On April 23, 1999, in Docket No. EF98–3011–001, the Commission issued an order granting rehearing for further consideration. On July 31, 2001, in the same docket number, the Commission issued an order denying rehearing. Rate schedules SOCO–1–A, SOCO–2–A, SOCO–3–A, SOCO–4–A, ALA–1–J, MISS–1–J, Duke–1–A, Duke–2–A, Duke–3–A, Duke–4–A, Santee–1–A, Santee–2–A, Santee–3–A, Santee–4–A, SCE&G–1–A, SCE&G–2–A, SCE&G–3–A, SCE&G–4–A, Regulation–1, Replacement–1, Pump–1–A, and Pump–2 replace these schedules.

Dated: July 25, 2002.
Spencer Abraham,
Secretary.

Order Confirming and Approving Power Rates on an Interim Basis

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Under Secretary the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. On December 6, 2001, the Secretary of Energy issued Delegation Order No. 00–001.00, granting the Deputy Secretary authority to confirm, approve, and place into effect Southeastern's rates on an interim basis. Because there is no Deputy Secretary at the present time, the Secretary of Energy has exercised his authority to confirm, approve, and place into effect on an interim basis the rate schedules in Southeastern Rate Order No. 41.

Background

Power from the Georgia-Alabama-South Carolina System is presently sold under Wholesale Power Rate Schedules SOCO–1, SOCO–2, SOCO–3, SOCO–4, ALA–1–I, MISS–1–I, Duke–1, Duke–2, Duke–3, Duke–4, Santee–1, Santee–2, Santee–3, Santee–4, SCE&G–1, SCE&G–2, SCE&G–3, SCE&G–4, and Pump–1. These rate schedules were approved by the FERC on February 26, 1999, for a period ending September 30, 2003 (93 FERC 62100).

Public Notice and Comment

Notice of proposed rate adjustment was published in the **Federal Register** March 13, 2002 (67 FR 11325). In the notice, SEPA proposed four rate alternatives for public comment. SEPA proposed two rate alternatives that would continue the current rate design that included estimated purchases of replacement energy in the capacity and energy charges from SEPA. These were designated "Scenario 1A" and "Scenario 1B." In addition, SEPA proposed two rate alternatives that included a direct pass through of replacement energy costs. These were designated "Scenario 2A" and "Scenario 2B." Under version "A" of each of the two alternatives, 70 percent of the generation costs were recovered from capacity sales and 30 percent were recovered from energy sales. Under version "B" of each of the two alternatives, 85 percent of the generation costs were recovered from capacity sales and 15 percent were recovered from energy sales.

The notice advised interested parties of a public information and comment forum to be held in Atlanta, Georgia on April 18, 2002. Written comments were accepted on or before June 11, 2002. The following is a summary of the comments:

Staff Evaluation of Public Comments

Written comments were received from nine sources pursuant to this notice. Eight of the sources specified a preference with regards to the distribution of generation costs between capacity and energy. There was no unanimity in preference for the either of the proposed versions (70/30 or 85/15). Most comments did support some movement towards recovering more costs from capacity sales. SEPA is therefore proposing a division of 75 percent to capacity and 25 percent.

The following are additional comments received on or before the June 11, 2002 deadline. SEPA's response follows each comment.

Comment 1: SEPA will establish a Apass-through@ charge for replacement energy. With this change in the rate structure, the Customers will pay for their ratable share of replacement energy in the billing month in which replacement energy is purchased by SEPA. The SeFPC supports this approach, cognizant that it follows the statutory mandate to set rate schedules to allow for the lowest possible costs consistent with sound business principles.

Response 1: SEPA will forward the proposed rate schedule for replacement energy, Replacement–1, to the Deputy Secretary with a request for interim approval.

Comment 2: The Southeastern Federal Power Customers (SeFPC) remains concerned regarding the increase in operation and maintenance (AO&M@) expenses for the U. S. Army Corps of Engineers (Corps). The repayment study assumes an increase from $32,836,000 in fiscal year 2002 to $35,177,000 for fiscal year 2005. The SeFPC believes that this number merits further investigation by SEPA. The SeFPC does not understand why there is an increase for the Corps O&M expense.

Response 2: Actual Corps O&M expenses were $31,735,000 in 1998, $29,090,000 in 1999, $36,692,000 in 2000, and $34,200,000 in 2001, which is an average compound increase of 1.9% per year. Estimated Corps O&M is $32,836,000 in 2002, $33,654,000 in 2003, $34,715,000 in 2004, and $35,177,000 in 2005 through the end of the study, which is an average compound increase of 1.7% per year for the 2002–2005 period. Should these estimates prove to be higher than the actual costs incurred, SEPA's repayment of investment will be greater than anticipated, which will reduce the impact on the next rate adjustment for the system. Should these estimates prove to be too low, SEPA may be required to adjust rates earlier than this filing anticipates. SEPA believes that the estimates provided by the Corps are reasonable. SEPA will work with the Corps and the customers in an effort to reduce O&M expenses charged to power in the Southeastern Federal Power Program.

Comment 3: The SeFPC reminds SEPA that the amount included in rates for renewals and replacements has exceeded the amount appropriated by Congress for renewals and replacements by $124 million.

Response 3: The amount listed represents all of SEPA's four repayment systems. The amount for the Georgia-Alabama-South Carolina System is $39 million. SEPA will work with the Corps to assure the accuracy of projected replacements.

Comment 4: The SeFPC supports the current decision by SEPA not to include costs for the Russell Pumped Storage Units in this rate increase.

Response 4: The Russell Pump Storage units have not been included in these proposed rates.

Comment 5: SEPA has proposed a pass-through mechanism to recover replacement energy costs. Removal of those costs from the charges that recover generation costs results in an effective shift of about two percentage points of generation costs from a capacity charge to an energy charge. Because both of these changes [pass-through recovery of replacement energy and an increase in the percentage of generation costs recovered from capacity] increase revenue stability, it would seem sufficient to implement only one change at this time to stabilize SEPA's revenue as it seeks to respond to the need to provide greater assurance that it will meet its repayment obligations on a more regular basis. Oglethorpe suggests that SEPA consider implementing only one change [in rate design] to provide an opportunity to determine whether that change is sufficient to provide the revenue stability to assure that [SEPA] will meet its repayment obligation.

Response 5: Replacement energy costs are estimated to average $3.2 million per year. Based on this estimate, the comment that this has shifted about two percentage points of generation costs from a capacity charge to an energy charge is accurate. However, there is considerable variation in the actual replacement energy costs associated with this estimate. In an average water year, SEPA will not purchase replacement energy. In a poor water year, replacement energy costs have been as high as $16 million. By recovering replacement energy costs from energy effectively shifts considerable risk of cost fluctuations to energy customers. SEPA believes that this justifies a shift of more than two percent of generation costs from energy to capacity to compensate.

Comment 6: Oglethorpe is concerned about the methodology used to calculate the generation services charge. SEPA has set rates for certain ancillary services based on Southern Company's Open Access Transmission Tariff (OATT). Because SEPA pays Southern Company a flat fee for all ancillary services, SEPA has arbitrarily assumed that reductions in the OATT charges for certain ancillary services were offset by increases in the cost of all other ancillary services purchased by the flat fee. SEPA should reconsider the cost allocation of this flat fee to recognize that its costs were not reduced as a result of reductions in the OATT rate for ancillary services.

Response 6: The Generation Services charge is to recover the cost of ancillary services charged by the Southern Company. SEPA pays Southern Company $4,428,000 annually for ancillary services as part of a negotiated contract for services. SEPA charges affected customers for Scheduling, System Control and Dispatch Services, Reactive Supply and Voltage Control from Generation Sources Services, and Regulation and Frequency Response Services at Southern Company's current OATT rate for these services. Any portion of Southern Company's annual charge for ancillary services not recovered through the above three charges is recovered through a Generation Services charge. The Generation Services charge is charged to all customers of the Georgia-Alabama-South Carolina System.

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When Southern Company updates the OATT rates for the three ancillary services listed above, SEPA updates these rates for the affected customers. However, as a result of a negotiated ancillary services charge between SEPA and Southern Company, SEPA does not pay the filed OATT rates, this requires a change in the Generation Services charge.

SEPA established this process with rates that were proposed in 1998. SEPA is proposing to continue this process with these proposed rates. In 1998, SEPA anticipated that the $4,428,000 negotiated ancillary services charge would be replaced with an "unbundled" arrangement. SEPA established the design of the generation services charge in anticipation of this unbundling. As such, SEPA does not believe it is appropriate to refer to the rate design as arbitrary.

SEPA continues to anticipate that the negotiated ancillary services charge will be replaced with an unbundled arrangement. The timing of this change is uncertain. However, SEPA believes it is appropriate to continue to pass through any changes in Southern Company's ancillary services to the affected customers when Southern Company adjusts these rates.

Comment 7: SEPA has suggested that it might be able to convert some must run energy into energy that [South Mississippi Electric Power Association (SMEPA) and Alabama Electric Cooperative (AEC)] could schedule during peak hours through a pumping conversion factor. At this time, (SMEPA and AEC are) interested in pursuing this arrangement.

Response 7: SEPA can use must run energy for pumping operations at the Carters, and, if it comes on-line, the Richard B. Russell projects. This would replace pumping energy that SEPA would otherwise purchase. This energy would then become part of the customer's minimum energy. The total energy delivered to the customer would be reduced. SEPA will propose a new rate schedule, Pump–2, to allow customers who elect to allow SEPA to use their must run energy for pumping to receive this energy on-peak at a lower rate than other energy from pumping.

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in July, 2002, for the Georgia-Alabama-South Carolina System, shows that with the proposed rates, all system power costs are paid within the 50-year repayment period required by existing law and DOE Procedure RA 6120.2. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates, including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, 1166 Athens Tech Road, Elberton, Georgia 30635–6711.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning October 1, 2002, and ending no later than September 30, 2007.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 2007, attached Wholesale Power Rate Schedules SOCO–1–A, SOCO–2–A, SOCO–3–A, SOCO–4–A, ALA–1–J, MISS–1–J, Duke–1–A, Duke–2–A, Duke–3–A, Duke–4–A, Santee–1–A, Santee–2–A, Santee–3–A, Santee–4–A, SCE&G–1–A, SCE&G–2–A, SCE&G–3–A, SCE&G–4–A, Regulation–1, Replacement–1, Pump–1–A, and Pump–2. The rate schedules shall remain in effect on an interim basis through September 30, 2007, unless such period is extended or until the FERC confirms and approves them or substitute rate schedules on a final basis.

Dated: July 25, 2002.

Spencer Abraham,

Secretary.

Wholesale Power Rate Schedule SOCO–1–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida to whom power may be transmitted and scheduled pursuant to contracts between the Government and Southern Company Services, Incorporated (hereinafter called the Company) and the Customer. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge

$3.09 Per kilowatt of total contract demand per month.

Energy Charge

6.39 Mills per kilowatt-hour.

Generation Services

$0.13 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission

$1.51 Per kilowatt of total contract demand per month as of February 2002 is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the Transmission and Distribution Charges paid by the Government. The initial monthly transmission demand charge shall be determined by multiplying the Government's Load Ratio Share time one twelfth (1/12) of Southern Companies' Annual Transmission Costs as specified in Schedule 1 of the Government-Company Contract. The transmission charges are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving Southern Companies' Open Access Transmission Tariff (OATT). The distribution charges may be modified by FERC pursuant to application by the Company under section 205 of the Federal Power Act or the Government under section 206 of the Federal Power Act.

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Scheduling, System Control and Dispatch Service: $0.0806 Per kilowatt of total contract demand per month.

Reactive Supply and Voltage Control from Generation Sources Service: $0.11 Per kilowatt of total contract demand per month.

Regulation and Frequency Response Service: $0.0483 Per kilowatt of total contract demand per month.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. Applicable energy losses are as follows:

Transmission facilities, 3.0%
Distribution Substations, 0.9%
Distribution Lines, 2.25%

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by Southern Companies under section 205 of the Federal Power Act or SEPA under section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule SOCO–2–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida to whom power may be transmitted pursuant to contracts between the Government and Southern Company Services, Incorporated (hereinafter called the Company) and the Customer. The Customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.09 Per kilowatt of total contract demand per month.

Energy Charge: 6.39 Mills per kilowatt-hour.

Generation Services: $0.13 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $1.51 Per kilowatt of total contract demand per month as of February 2002 is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the Transmission and Distribution Charges paid by the Government. The initial monthly transmission demand charge shall be determined by multiplying the Government's Load Ratio Share time one twelfth (1/12) of Southern Companies' Annual Transmission Costs as specified in Schedule 1 of the Government-Company Contract. The transmission charges are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving Southern Companies' Open Access Transmission Tariff (OATT). The distribution charges may be modified by FERC pursuant to application by the Company under section 205 of the Federal Power Act or the Government under section 206 of the Federal Power Act.

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Reactive Supply and Voltage Control from Generation Sources Service: $0.11 Per kilowatt of total contract demand per month.

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Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. Applicable energy losses are as follows:

Transmission facilities, 3.0%
Distribution Substations, 0.9%
Distribution Lines, 2.25%

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by Southern Companies under Section 205 of the Federal Power Act or EPA under Section 206 of the Federal Fower Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule SOCO–3–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida to whom power may be scheduled pursuant to contracts between the Government and Southern Company Services, Incorporated (hereinafter called the Company) and the Customer. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects (hereinafter referred to collectively as the Projects) and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge

$3.09 Per kilowatt of total contract demand per month.

Energy Charge: 6.39 Mills per kilowatt-hour.

Generation Services: $0.13 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Scheduling, System Control and Dispatch Service: $0.0806 Per Kilowatt of total contract demand per month.

Regulation and Frequency Response Service: $0.0483 Per Kilowatt of total contract demand per month.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule SOCO–4–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida served through the transmission facilities of Southern Company Service, Inc. (hereinafter called the Company) or the Georgia Integrated Transmission System. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects (hereinafter referred to collectively as the Projects) and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.09 Per kilowatt of total contract demand per month.

Energy Charge: 6.39 Mills per kilowatt-hour.

Generation Services: $0.13 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule ALA–1–J

Availability

This rate schedule shall be available to the Alabama Electric Cooperative, Incorporated (hereinafter called the Cooperative).

Applicability

This rate schedule shall be applicable to power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters, and Richard B. Russell Projects and sold under contract between the Cooperative and the Government. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz and shall be delivered at the Walter F. George, West Point, and Robert F. Henry Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.09 Per kilowatt of total contract demand per month.

Energy Charge: 6.39 Mills per kilowatt-hour.

Generation Services: $0.13 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Southern Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Energy To Be Furnished by the Government

The Government will sell to the Cooperative and the Cooperative will purchase from the Government those quantities of energy specified by contract as available to the Cooperative for scheduling on a weekly basis.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule MISS–1–J

Availability

This rate schedule shall be available to the South Mississippi Electric Power Association (hereinafter called the Customer) to whom power may be wheeled pursuant to contracts between the Government and Alabama Electric Cooperative, Inc. (hereinafter called AEC).

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be threephase alternating current at a nominal frequency of 60 Hertz delivered at the delivery points of the Customer on AEC's transmission and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.09 Per kilowatt of total contract demand per month.

Energy Charge: 6.39 Mills per kilowatt-hour.

Generation Services: $0.13 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission

$1.854 per kilowatt of total contract demand per month as of February 2002 is presented for illustrative purposes. This rate is subject to annual adjustment on January 1, and will be computed subject to the Appendix A attached to the Government-AEC contract.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

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Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Cooperative and the Cooperative will purchase from the Government those quantities of energy specified by contract as available to the Cooperative for scheduling on a weekly basis.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke–1–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted and scheduled pursuant to contracts between the Government and Duke Power Company (hereinafter called the Company) and the Customer. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.09 Per kilowatt of total contract demand per month.

Energy Charge: 6.39 Mills per kilowatt-hour.

Generation Services: $0.13 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $0.93 Per kilowatt of total contract demand per month as of February 2002 is presented for illustrative purposes.

The initial transmission charge will be the Customers' ratable share of the Transmission Distribution Charges paid by the Government. The initial monthly transmission demand charge shall reflect the Government's Load Ratio Share Responsibility. The Load Ratio Share shall be computed each month and shall be the ratio of the Network Load to the average of the Company's Transmission System load for each of the 12 preceding months. The Company's Transmission System Load shall be the load as determined in Section 34.3 of the Company's Pre Forma Open Access Transmission Tariff (the Tariff). The Government shall pay a monthly demand charge which shall be determined by multiplying its Load Ratio Share by 1/12 of the Annual Transmission Revenue Requirement set forth in Attachment H of the Company's Tariff.

Proceedings before FERC involving the Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses of three per cent (3%)). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company under section 205 of the Federal Power Act or SEPA under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke–2–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted pursuant to contracts between the Government and Duke Power Company (hereinafter called the Company) and the Customer. The Customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.09 Per kilowatt of total contract demand per month.

Energy Charge: 6.39 Mills per kilowatt-hour.

Generation Services: $0.13 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $0.93 Per kilowatt of total contract demand per month as of February 2002 is presented for illustrative purposes.

The initial transmission charge will be the Customers' ratable share of the Transmission Distribution Charges paid by the Government. The initial monthly transmission demand charge shall reflect the Government's Load Ratio Share Responsibility. The Load Ratio Share shall be computed each month and shall be the ratio of the Network Load to the average of the Company's Transmission System load for each of the 12 preceding months. The Company's Transmission System Load shall be the load as determined in Section 34.3 of the Company's Pro Forma Open Access Transmission Tariff (the Tariff). The Government shall pay a monthly demand charge which shall be determined by multiplying its Load Ratio Share by 1/12 of the Annual Transmission Revenue Requirement set forth in Attachment H of the Company's Tariff.

Proceedings before FERC involving the Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses of three per cent (3%)). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company under section 205 of the Federal Power Act or SEPA under section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke–3–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be scheduled pursuant to contracts between the Government and Duke Power Company (hereinafter called the Company) and the Customer. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Savannah River Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.09 Per kilowatt of total contract demand per month.

Energy Charge: 6.39 Mills per kilowatt-hour.

Generation Services: $0.13 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke–4–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina served through the transmission facilities of Duke Power Company (hereinafter called the Company) and the Customer. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement with the Company. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

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Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Savannah River Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.09 Per kilowatt of total contract demand per month.

Energy Charge: 6.39 Mills per kilowatt-hour.

Generation Services: $0.13 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Santee–1–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the Government and South Carolina Public Service Authority (hereinafter called the Authority). Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Authority's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.09 Per kilowatt of total contract demand per month.

Energy Charge: 6.39 Mills per kilowatt-hour.

Generation Services: $0.13 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Transmission: $1.59 Per kilowatt of total contract demand per month as of February 2002 is presented for illustrative purposes.

The initial transmission rate is subject to annual adjustment on July 1 of each year, and will be computed subject to the formula contained in Appendix A to the Government-Authority Contract.

Proceedings before the Federal Energy Regulatory Commission involving the Authority's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses of two per cent (2%)). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Authority's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Service Interruption

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

Wholesale Power Rate Schedule Santee–2–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in South Carolina to whom power may be wheeled pursuant to contracts between the Government and South Carolina Public Service Authority (hereinafter called the Authority). The customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Authority's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.09 Per kilowatt of total contract demand per month.

Energy Charge: 6.39 Mills per kilowatt-hour.

Generation Services: $0.13 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Transmission: $1.59 Per kilowatt of total contract demand per month as of February 2002 is presented for illustrative purposes.

The initial transmission rate is subject to annual adjustment on July 1 of each year, and will be computed subject to the formula contained in Appendix A to the Government-Authority Contract.

Proceedings before the Federal Energy Regulatory Commission involving the Authority's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses of two per cent (2%)). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Authority's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Service Interruption

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

Wholesale Power Rate Schedule Santee–3–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in South Carolina to whom power may be scheduled pursuant to contracts between the Government and South Carolina Public Service Authority (hereinafter called the Authority). The customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.09 Per kilowatt of total contract demand per month.

Energy Charge: 6.39 Mills per kilowatt-hour.

Generation Services: $0.13 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses).

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Service Interruption

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

Wholesale Power Rate Schedule Santee–4–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in South Carolina served through the transmission facilities of South Carolina Public Service Authority (hereinafter called the Authority). The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

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Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.09 Per kilowatt of total contract demand per month.

Energy Charge: 6.39 Mills per kilowatt-hour.

Generation Services: $0.13 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses).

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Service Interruption

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

Wholesale Power Rate Schedule SCE&G–1–A

Availability

This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company). Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.09 Per kilowatt of total contract demand per month.

Energy Charge: 6.39 Mills per kilowatt-hour.

Generation Services: $0.13 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $1.13 Per kilowatt of total contract demand per month as of February 2002 is presented for illustrative purposes.

The initial rate will be subject to monthly adjustment and will be computed subject to Section 7 of the Government-Company contract.

Proceedings before the Federal Energy Regulatory Commission involving the Company's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule SCE&G–2–A

Availability

This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina to whom

power may be wheeled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company). The customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.09 Per kilowatt of total contract demand per month.

Energy Charge: 6.39 Mills per kilowatt-hour.

Generation Services: $0.13 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $1.13 Per kilowatt of total contract demand per month as of February 2002 is presented for illustrative purposes.

The initial rate will be subject to monthly adjustment and will be computed subject to Section 7 of the Government-Company contract.

Proceedings before the Federal Energy Regulatory Commission involving the Company's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule SCE&G–3–A

Availability

This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina to whom power may be scheduled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company). The customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.09 Per kilowatt of total contract demand per month.

Energy Charge: 6.39 Mills per kilowatt-hour.

Generation Services: $0.13 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective

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equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule SCE&G–4–A

Availability

This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina served through the transmission facilities of South Carolina Electric & Gas Company (hereinafter called the Company). The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.09 Per kilowatt of total contract demand per month.

Energy Charge: 6.39 Mills per kilowatt-hour.

Generation Services: $0.13 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Rate Schedule Regulation-1

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom service is provided pursuant to contracts between the government and the customer.

Applicability

This rate schedule shall be applicable to the sale of regulation services provided from the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters, and Richard B. Russell Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service

The service supplied hereunder will be delivered at the Projects.

Monthly Rate

The rate for service supplied under this rate schedule for the period specified shall be: $0.05 per kilowatt of total contract demand per month.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract to which the Government is obligated to supply and the Customer is entitled to receive regulation service.

Billing Month

The billing month for services provided under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Replacement-1

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom power is provided pursuant to contracts between the Government and the customer.

Applicability

This rate schedule shall be applicable to the sale at wholesale energy purchased to meet contract minimum energy and sold under appropriate contracts between the Government and the Customer.

Character of Service

The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Rate

The rate for energy sold under this rate schedule for the months specified shall be: [computed to the nearest $.00001 (1/100 mill) per kwh]; (The weighted average cost of energy for replacement energy divided by one minus losses for delivery.)

Where: The weighted average cost of energy for replacement energy is equal to the cost of replacement energy purchased divided by the replacement energy purchased, net losses.

= Dollars cost of energy purchased for replacement energy during the specified month, including all direct costs to deliver energy to the project.
= Kilowatt-hours of energy purchased for replacement energy during the specified month.
= Energy loss factor for transmission on replacement energy purchased (Expected to be 0 or zero percent.)
= Weighted average energy loss factor on energy delivered by the facilitator to the customer.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Pump–1–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom power is provided pursuant to contracts between the Government and the customer.

Applicability

This rate schedule shall be applicable to the sale at wholesale energy generated from pumping operations at the Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. The energy will be segregated from energy from other pumping operations.

Character of Service

The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Rate

The rate for energy sold under this rate schedule for the months specified shall be:

[computed to the nearest $.00001 (1/100 mill) per kwh]

(The weighted average cost of energy for pumping divided by the energy conversion factor, quantity divided by one minus losses for delivery.)

Where:

(The weighted average cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer for pumping divided by the total energy for pumping.)

(Cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer plus the cost of energy in storage carried over from the month preceding the specified month.)

(Energy for pumping for this rate schedule is equal to the energy purchased or supplied for the benefit of the customer, after losses, plus the energy for pumping in storage as of the end of the month preceding the specified month.)

(Cost of energy in storage is equal to the weighted average cost of energy for pumping for the month preceding the specified month times the energy for pumping in storage at the end of the month preceding the specified month.)

= Dollars cost of energy purchased or supplied for the benefit of the customer for pumping during the specified month, including all direct costs to deliver energy to the project.
= Kilowatt-hours of energy purchased or supplied for the benefit of the customer for pumping during the specified month.
= Energy loss factor for transmission on energy purchased or supplied for the benefit of the customer for pumping (Expected to be .03 or three percent.)
= Kilowatt-hours of energy in storage as of the end of the month immediately preceding the specified month.
= Weighted average cost of energy for pumping for the month immediately preceding the specified month.

(Weighted average energy conversion factor is equal to the energy generated from pumping divided by the total energy for pumping)

= Energy generated from pumping.
= Weighted average energy loss factor on energy delivered by the facilitator to the customer.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Pump-2

Availability

This rate schedule shall be available to public bodies and cooperatives who provide their own scheduling arrangement and elect to allow Southeastern to use a portion of their allocation for pumping (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom power is provided pursuant to contracts between the Government and the customer.

Applicability

This rate schedule shall be applicable to the sale at wholesale energy generated from pumping operations at the Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This energy will be segregated from energy from other pumping operations.

Character of Service

The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Rate

The rate for energy sold under this rate schedule for the months specified shall be:

[computed to the nearest $.00001 (1/100 mill) per kwh]

(The weighted average cost of energy for pumping divided by the energy conversion factor, quantity divided by one minus losses for delivery.)

Where:

(The weighted average cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer for pumping divided by the total energy for pumping.)

(Cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer plus the cost of energy in storage carried over from the month preceding the specified month.)

(Energy for pumping for this rate schedule is equal to the energy purchased or supplied for the benefit of the customer, after losses, plus the

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energy for pumping in storage as of the end of the month preceding the specified month.)

(Cost of energy in storage is equal to the weighted average cost of energy for pumping for the month preceding the specified month times the energy for pumping in storage at the end of the month preceding the specified month.)

= Dollars cost of energy purchased or supplied for the benefit of the customer for pumping during the specified month, including all direct costs to deliver energy to the project.

= Kilowatt-hours of energy purchased or supplied for the benefit of the customer for pumping during the specified month.

= Energy loss factor for transmission on energy purchased or supplied for the benefit of the customer for pumping (Expected to be .03 or three percent.)

= Kilowatt-hours of energy in storage as of the end of the month immediately preceding the specified month.

= Weighted average cost of energy for pumping for the month immediately preceding the specified month.

(Weighted average energy conversion factor is equal to the energy generated from pumping divided by the total energy for pumping)

= Energy generated from pumping.

= Weighted average energy loss factor on energy delivered by the facilitator to the customer.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

[FR Doc. 02–20060 Filed 8–7–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Jim Woodruff Project Power Rates, Rate Order No. 42

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: The Secretary of Department of Energy, confirmed and approved, on an interim basis, Rate Schedules JW–1–G and JW–2–D. The rates were approved on an interim basis through September 19, 2005, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

DATES: Approval of rate on an interim basis is effective through September 19, 2005.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711, (706) 213–3800.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission, by Order issued November 9, 2000, in Docket No. EF00–3031–000, confirmed and approved Wholesale Power Rate Schedules JW–1–F and JW–2–C. Rate schedules JW–1–G and JW–2–D replace these schedules.

Dated: July 25, 2002.

Spencer Abraham,

Secretary.

Order Confirming and Approving Power Rates on an Interim Basis

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744 (May 30, 1986) the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Under Secretary the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. On December 6, 2001, the Secretary of Energy issued Delegation Order No. 00–001.00, granting the Deputy Secretary authority to confirm, approve, and place into effect Southeastern's rates on an interim basis. Because there is no Deputy Secretary at the present time, the Secretary of Energy has exercised his authority to confirm, approve, and place into effect on an interim basis the rate schedules in Southeastern Rate Order No. SEPA–42.

Background

Power from the Jim Woodruff Project is presently sold under Wholesale Power Rate Schedules JW–1–F and JW–2–C. These rate schedules were approved by the FERC on November 9, 2000, for a period ending September 19, 2005 (93 FERC 62100).

Public Notice and Comment

Southeastern prepared a Power Repayment Study, dated March of 2002, that showed that revenues at current rates were not adequate to meet repayment criteria. A revised study with a revenue increase of $331,000 produced rates that are adequate to meet repayment criteria. On April 11, 2002, by **Federal Register** Notice 70 FR 17686, Southeastern proposed a rate adjustment of about 5.7 percent to recover this revenue. The notice also announced a Public Information and Comment Forum to be held May 16, 2000, in Tallahassee, Florida, with a deadline for written comments of July 10, 2002. Southeastern received no comments on the proposed rates.

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in April 2002, for the Jim Woodruff Project, shows that with the proposed rates, all system power costs are paid within the 50-year repayment period required by existing law and DOE Procedure RA 6120.2. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates, including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, 1166 Athens Tech Road, Elberton, Georgia 30635–6711.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning September 20, 2002, and ending no later than September 19, 2005.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective September 20, 2002, attached Wholesale Power Rate Schedules JW–1–G and JW–2–D. The rate schedules shall remain in effect on an interim basis through September 19, 2005, unless such period is extended or until the FERC confirms and approves them or substitute rate schedules on a final basis.

Dated: July 25, 2002.

Spencer Abraham,

Secretary.

Proposed Wholesale Power Rate Schedule JW–1–G

Availability

This rate schedule shall be available to public bodies and cooperatives served by the Florida Power Corporation and having points of delivery within 150 miles of the Jim Woodruff Project (hereinafter called the Project).

Applicability

This rate schedule shall be applicable to firm power and accompanying energy made available by the Government from the Project and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 cycles per second delivered at the delivery points of the customer.

Monthly Rate

The monthly rate for capacity and energy made available or delivered under this rate schedule shall be:

Demand Charge

$5.79 per kilowatt of monthly contract demand

Energy Charge

16.25 mills per kilowatt hour

Billing Demand

The monthly billing demand for any billing month shall be the lower of (a) the Customer's contract demand or (b) the sum of the maximum 30-minute integrated demands for the month at each of the Customer's points of delivery; provided, that, if an allocation of contract demand to delivery points has become effective, the 30-minute maximum integrated demand for any point of delivery shall not be considered to be greater than the portion of the Customer's contract demand allocated to that point of delivery.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy Made Available

During any billing month in which the Government supplies all the Customer's capacity requirements, the Government will make available such when both the Government and the Florida Power Corporation are supplying capacity to a delivery point, each kilowatt of capacity supplied to such point during such month will be considered to be accompanied by an equal quantity of energy.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the 20th day of each calendar month.

Conditions of Service

The customer shall, at its own expense, provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Florida Power Corporation on its side of the delivery point.

Service Interruption

When energy delivered to the Customer's system for the account of the Government is reduced or interrupted for one hour or longer, and such reduction or interruption is not due to conditions on the Customer's system or has not been planned and agreed to in advance, the demand charge for the month shall be appropriately reduced.

Proposed Wholesale Power Rate Schedule JW–2–D

Availability

This rate schedule shall be available to the Florida Power Corporation (hereinafter called the Company).

Applicability

This rate schedule shall be applicable to electric energy generated at the Jim Woodruff Project (hereinafter called the Project) and sold to the Company in wholesale quantities.

Points of Delivery

Power sold to the Company by the Government will be delivered at the connection of the Company's transmission system with the Project bus.

Character of Service

Electric power delivered to the Company will be three-phase alternating current at a nominal frequency of 60 cycles per second.

Monthly Rate

The monthly rate for energy sold under this schedule shall be equal to 70 percent of the calculated saving in the cost of fuel per KWH to the Company determined as follows:

$$\text{Energy Rate} = 70\% \times \frac{Fm}{Sm} \text{ [Computed to the nearest \$0.0000] } (1/100 \text{ mill}) \text{ per KWH}$$

Where:

Fm = Company fuel cost in the current period as defined in Federal Power Commission Order 517 issued November 13, 1974, Docket No. R–479.

Sm = Company sales in the current period reflecting only losses associated with wholesale sales for resale. Sale shall be equated to the sum of (a) generation, (b) purchases, (c) interchange-in, less (d) inter-system sales, less estimated wholesale losses (based on average transmission loss percentage for preceding calendar year).

Method of Application: The energy rate applied during the current billing month will be based on costs and equated sales for the second month preceding the billing month.

Determination of Energy Sold

Energy will be furnished by the Company to supply any excess of Project use over Project generation. Energy so supplied by the Company will be deducted from the actual deliveries to the Company's system to determine the net deliveries for energy accounting and billing purposes. Energy for Project use shall consist of energy used for station service, lock operation, Project yard, village lighting, and similar uses.

The on-peak hours shall be the hours between 7 a.m. and 11 p.m., Monday through Sunday, inclusive. Off-peak hours shall be all other hours.

All energy made available to the Company shall, to the extent required, be classified as energy transmitted to the Government's preference customers served from the Company's system. All energy made available to the Company from the Project shall be separated on the basis of the metered deliveries to it at the Project during on-peak and off-peak hours, respectively. Deliveries to preference customers of the Government shall be divided on the basis (with allowance for losses) of 77 percent being considered as on-peak energy and 23 percent being off-peak energy. Such percentages may by mutual consent be changed from time to time as further studies show to be appropriate. In the event that in classifying energy there is more than enough on-peak energy available to supply on-peak requirements of the Government's preference customers but less than enough off-peak energy available to supply such customers off-peak requirements, such excess on-peak energy may be applied to the extent necessary to meet off-peak requirements of such customers in lieu of purchasing deficiency energy to meet such off-peak requirements.

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Billing Month

The billing month under this schedule shall end at 12 midnight on the 20th day of each calendar month.

Power Factor

The purchaser and seller under this rate schedule agree that they will both so operate their respective systems that neither party will impose an undue reactive burden on the other.

[FR Doc. 02–20063 Filed 8–7–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Parker-Davis Project—Extension of Electric Power Resource Commitments by Application of the Energy Planning and Management Program Power Marketing Initiative

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposal.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy, announces its Post-2008 re-marketing effort for the Parker-Davis Project (P–DP). Current P–DP long-term, Firm Electric Service (FES) contracts will expire on September 30, 2008. In 1995, Western adopted the Power Marketing Initiative (PMI) in Subpart C of the Energy Planning and Management Program (Program). The Record of Decision for the Program states that application of the PMI will be done on a project-specific basis. If, by means of a public process, Western applies the PMI to the P–DP, the current long-term FES customers of the project would receive an extension of a major portion of the resources available to them at the time their contracts expire. Western now proposes to apply the PMI to the long-term, firm power contracts of the P–DP.

DATES: Western will hold three public information forums on the following dates: 1. September 16, 2002, 1 p.m. to 4 p.m., Las Vegas, Nevada, 2. September 17, 2002, 1 p.m. to 4 p.m., Phoenix, Arizona, 3. September 18, 2002, 1 p.m. to 4 p.m., Ontario, California.

Following the public information forums, Western will hold three public comment forums. The dates for these forums are as follows: 1. October 8, 2002, 1 p.m. to 4 p.m., Las Vegas, Nevada, 2. October 9, 2002, 1 p.m. to 4 p.m., Phoenix, Arizona, 3. October 10, 2002, 1 p.m. to 4 p.m., Ontario, California. Western will accept written comments on or before November 6, 2002.

ADDRESSES: Comments may be submitted to: Mr. J. Tyler Carlson, Western Area Power Administration, Desert Southwest Regional Manager, P.O. Box 6457, Phoenix, AZ 85005–6457. Comments may also be faxed to (602) 352–2490 or e-mailed to *Post2008pdp@wapa.gov.*

The public information and public comment forum locations are:

1. McCarran International Airport, 5th Floor, Commissioner's Meeting Room, Las Vegas, Nevada; 2. Western Area Power Administration, Desert Southwest Regional Office, 615 S. 43rd Ave, Phoenix, Arizona; 3. DoubleTree Ontario Airport, 222 N. Vineyard, Ontario, California.

FOR FURTHER INFORMATION CONTACT: Roy Tinsley, Project Manager, Desert Southwest Region, Western Area Power Administration, 615 S. 43rd Ave., Phoenix, AZ 85005, telephone (602) 352–2788, e-mail *Post2008pdp@wapa.gov.* Program information and the current P–DP marketing plan are available for viewing at *http://www.wapa.gov/dsw/pwrmkt.*

SUPPLEMENTARY INFORMATION: In 1987, Western marketed the long-term, firm power resources of the Parker and Davis dams and entered into 20-year term FES contracts with the current P–DP customers. These FES contracts will expire on September 30, 2008. Western must determine if the PMI, as outlined in the Energy Planning and Management Program (Program), will be applied to the P–DP for FES commitments beyond that date.

Western first proposed the Program on April 19, 1991 (56 FR 16093). The goals of the Program were to encourage efficient energy use by Western's long-term, firm power customers by requiring Integrated Resource Planning and to extend Western's firm power resource commitments. In the final rule of the Program, Western stated that application of the PMI, including the amount of resources extended, would initially apply only to the Pick-Sloan Missouri Basin Program-Eastern Division (P–S) and the Loveland Area Projects (LAP). Applicability to other projects would be determined through future, project-specific public processes. Specific to the P–DP, the rule stated that Western would evaluate application of the PMI to the Parker-Davis Project no more than 10 years before existing contracts expire.

The PMI calls for extending a major portion of existing firm power sales commitments for 20 years beyond the existing termination date. With respect to P–S and LAP, a commitment of not less than 96 percent of the hydroelectric power resource determined to be available to the customers was to be extended, and a power resource pool of up to 4 percent of the power from these customers would be created. In addition, the PMI states that "at two 5-year intervals after the effective date of the extension to existing customers, Western will create a project-specific resource pool increment of up to an additional 1 percent of the long-term marketable resource under contract at the time." The resource pool would be used for allocations to new customers. The rule stated that a more precise decision on how resource pools would be used, as well as the percentage of existing commitments extended, would be determined through future, project-specific public processes.

Consistent with the application of the PMI to other recent Western marketing efforts, Western proposes to apply the PMI (10 CFR parts 905.31 through 905.37), to the P–DP. This includes a proposal to extend 94 percent of the P–DP customers' entitlement of long-term, firm P–DP resources as of September 30, 2008, for an additional 20 years. Given the direction contained within the PMI for a "reservation of a modest percentage of resources to create a resource pool," Western proposes that a resource pool of 6 percent of available P–DP resources be established for new customers. Western proposes creation of a single, one-time resource pool of a definite size, due to the costs and effort associated with incremental resource pools as experienced by the P–S and LAP projects, and given the small size of the proposed P–DP resource pool relative to those of other Western projects. During the most recent marketing effort of the Salt Lake City Area Integrated Projects, which shares many of the same P–DP customers, a single resource pool was created in response to public comments.

The existing P–DP marketing plan defines the marketing area as generally consisting of southern California, southern Nevada, most of Arizona, and a small part of New Mexico; and is more specifically defined in the Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (49 FR 50582, December 28, 1984). New customers meeting the requirements established in the P–DP Marketing Criteria and qualifying Native American tribes within the P–DP marketing area will be eligible to request an allocation of capacity and energy from the P–DP resource pool. Native American tribes need not have utility status to qualify for an allocation.

Adjustments may be made to resource allocations at any time to reflect changes in dam operations and/or water conditions upon 5 years notification.

As provided in the current P–DP Advancement of Funds contract, new customers will be required to reimburse existing customers for undepreciated replacement advances, to the extent existing customers' allocations are reduced as a result of creating the resource pool. New customers who receive an allocation will also be required to participate in advance funding of Western's and the Bureau of Reclamation's operation and maintenance expenses.

Western is seeking comments regarding the applicability of the PMI to the P–DP, the percentage of resources to be extended to existing customers, and the size of the proposed resource pool. Following the public comment period, Western will analyze the comments received and publish its policy regarding extension of resource commitments in the **Federal Register**.

I. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–621, requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

II. Small Business Regulatory Enforcement Fairness Act

Western determined this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

III. Determination 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, this notice requires no clearance by the Office of Management and Budget.

IV. Environmental Compliance

Western has completed an environmental impact statement on the Program, pursuant to the National Environmental Policy Act of 1969 (NEPA). The Record of Decision was published in 60 FR 53181, October 12, 1995. Western's NEPA review assured all environmental effects related to these actions have been analyzed.

Dated: July 26, 2002.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 02–20062 Filed 8–7–02; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

July 30, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments October 7, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: OMB Control No.: 3060–0572.

Title: Filing Manual for Annual International Circuit Status Reports.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 138.

Estimated Time Per Response: 11 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 1,540 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The information will enable the Commission to discharge its obligation to authorize the construction and use of international common carrier transmission facilities. The information will be used by the Commission and the industry as to whether an international common carrier is providing direct or indirect service to countries and to assess industry trends in the use of international transmission facilities. The information is extremely valuable because it not available from any other source.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–20028 Filed 8–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 01–92, DA 02–1740]

Routing and Rating of Traffic by Incumbent Local Exchange Carriers (ILECs)

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In a public notice in this proceeding released on July 18, 2002, the Wireline Competition Bureau sought comment on the Sprint Petition for Declaratory Ruling regarding the routing and rating of traffic by ILECs and on BellSouth's opposition to the petition, including the appropriate intercarrier compensation applicable to this traffic, both under our existing rules and prospectively.

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DATES: Comments due August 8, 2002 and reply comments due August 19, 2002.

ADDRESSES: Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Steve Morris or Victoria Schlesinger, Pricing Policy Division, Wireline Competition Bureau, (202) 418–1530, or Gregory Vadas, Policy Division, Wireless Telecommunications Bureau, (202) 418–1798.

SUPPLEMENTARY INFORMATION: On May 9, 2002, Sprint Corporation (Sprint), on behalf of its wireless division, filed a petition for declaratory ruling seeking confirmation that: (1) An incumbent local exchange carrier (ILEC) may not refuse to load telephone numbering resources of an interconnecting carrier, and (2) an ILEC may not refuse to honor the routing and rating points designated by that interconnecting carrier. Sprint's concern is its contention that, in certain circumstances, BellSouth has signaled its intention to refuse to program its LATA tandem switches with Sprint's NPA–NXXs. In particular, where Sprint wishes to associate an NPA–NXX with a rate center of an ILEC other than BellSouth, and the rating and routing points are different (*e.g.*, the routing point could be Sprint's MSC, but the rating point would be an independent ILEC's rate center), Sprint contends that BellSouth's position is to refuse to load its LATA tandem switch with Sprint's call routing and rating information. On May 22, 2002, BellSouth filed an opposition to the Sprint Petition stating that it is currently loading NPA–NXXs that Sprint acquires and that it is not currently adversely affecting the routing of any Sprint traffic. In its opposition, BellSouth states that it believes that the rating and routing arrangements described above result in inappropriate intercarrier compensation, claiming that "[v]arious forms of intercarrier compensation, including reciprocal compensation, access charges, and intercompany settlements could apply to this traffic." We seek comment on the practices and issues raised in Sprint's petition and BellSouth's opposition, including the appropriate intercarrier compensation applicable to the traffic described above, both under our existing rules and prospectively.

Sprint's Petition and BellSouth's Opposition raise interconnection and intercarrier compensation issues under consideration in CC Docket No. 01–92, *Developing a Unified Intercarrier Compensation Regime*, 66 FR 28410, May 23, 2001. Accordingly, we ask that parties file their pleadings in CC Docket No. 01–92. The petition and other pleadings will be incorporated into CC Docket No. 01–92.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before August 8, 2002, and reply comments on or before August 19, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the filing to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic copy by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message: "get form <your email address>." A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html*. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., CY–B402, Washington, DC 20554 (telephone 202–863–2893; facsimile 202–863–2898) or via e-mail at *qualexint@aol.com*. In addition, one copy of each submission must be filed with the Chief, Pricing Policy Division, Wireline Competition Bureau, and Chief, Policy Division, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554. Documents filed in this proceeding will be available for public inspection during regular business hours in the Commission's Reference Information Center, 445 12th Street, SW., Washington, DC 20554, and will be placed on the Commission's Internet site.

This proceeding will be governed by "permit-but-disclose" *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules. Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one-or two-sentence description of the views and arguments presented generally is required. Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well. In addition, interested parties are to file any written *ex parte* presentations in this proceeding with the Commission's Secretary, Marlene H. Dortch, 445 12th Street, SW., TW–B204, Washington, DC 20554, and serve with three copies each: Pricing Policy Division, Wireline Competition Bureau, Attn: Victoria Schlesinger, and Policy Division, Wireless Telecommunications Bureau, Attn: Gregory Vadas, 445 12th Street, SW., Washington, DC 20554. Parties shall also serve with one copy: Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893.

Federal Communications Commission.

Deena Shetler,

Deputy Division Chief, Pricing Policy Division.

[FR Doc. 02–20176 Filed 8–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION.

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE & TIME: *Tuesday, August 13, 2002 at 10 A.M.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: *Thursday, August 15, 2002 at 10 A.M.*

PLACE: 999 E Street, NW., Washington, DC (NINTH FLOOR).

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Notice of Proposed Rulemaking on Contribution Limitations and Prohibitions.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–20210 Filed 8–6–02; 12:13 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 23, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Jerry E. Gerber, Rice Lake, Wisconsin; Terry G. Gerber, Cameron, Wisconsin; Susan J. Gerber, Blaine, Minnesota; Ernest J. Gerber, Bruce, Wisconsin; Alan F. Gerber, Radisson, Wisconsin; Kathleen L. Gerber, Quincy, Massachusetts; and Holly A. Barnes, Hayward, Wisconsin, to acquire voting shares of Old Murry Bancorp, Inc., Cameron, Wisconsin, and thereby indirectly acquire voting shares of Owen-Curtiss Financial Corporation, Rice Lake, Wisconsin, Brill Bancshares, Inc., Rice Lake, Wisconsin, Brill State Bank, Rice Lake, Wisconsin, and Gilman Corporation, Gilman, Wisconsin, and State Bank of Gilman, Gilman, Wisconsin.

2. Marcelle McVay, Chicago, Illinois, to retain voting shares of Minnwest Corporation, Minnetonka, Minnesota, and thereby indirectly retain voting shares of Minnwest Bank Luverne, Luverne, Minnesota; Minnwest Bank Central, Montevideo, Minnesota; Minnwest Bank Ortonville, Ortonville, Minnesota; Minnwest Bank, M.V., Redwood Falls, Minnesota; Minnwest Bank South, Tracy, Minnesota; and Minnwest Bank Sioux Falls, Sioux Falls, South Dakota.

3. Kenneth D. and Suzanne M. Roeder, De Smet, South Dakota, to acquire voting shares of Kingsbury Bank Holding Company, De Smet, South Dakota, and thereby indirectly acquire voting shares of Peoples State Bank, De Smet, South Dakota.

Board of Governors of the Federal Reserve System, August 5, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–20087 Filed 8–7–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 3, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Linn Holding Company, Linn, Missouri; to acquire 100 percent of the voting shares of South Gasconade Investment Corporation, Owensville, Missouri, and thereby indirectly acquire voting shares of Charter 1 Bank, Owensville, Missouri.

2. Planters Financial Group, Inc., Hopkinsville, Kentucky; to acquire 100 percent of the voting shares of City State Bank, Martin, Tennessee.

B. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. First Sleepy Eye Bancorporation, Inc., Sioux Falls, South Dakota; to acquire 96 percent of the voting shares of Stearns Bank Canby National Association, Canby, Minnesota.

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Board of Governors of the Federal Reserve System, August 5, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–20088 Filed 8–7–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 10 a.m. (EDT) August 19, 2002.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and part closed to the public.

Matters To Be Considered

Parts Open to the Public

1. Approval of the minutes of the July 15, 2002, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director (with discussion of litigation to be closed to the public).
3. Review of investment policy.
4. Review of Ernst & Young semiannual financial review.

Part Closed to the Public

Discussion of litigation.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: August 6, 2002.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 02–20263 Filed 8–6–02; 3:33 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS become entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rates determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register.**

The Secretary of the Treasury has certified a rate of 12⅝% for the quarter ended June 30, 2002. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: July 31, 2002.

George Strader,

Deputy Assistant Secretary, Finance

[FR Doc. 02–20020 Filed 8–7–02; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meeting.

Name: National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect (NTFFASFAE).

Times and Dates:

8:30 a.m.–4:30 p.m., September 20, 2002.
8:30 a.m.–12 noon, September 21, 2002.

Place: Hyatt Regency, 265 Peachtree Street, N.E., Atlanta, Georgia 30303, telephone 404/577–1234, fax 404/588–3752.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

Purpose: The Secretary is authorized by the Public Health Service Act, section 399H, (42 U.S.C. 280f, as added by Public Law 105–392) to establish a National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect to: (1) Foster coordination among all governmental agencies, academic bodies and community groups that conduct or support Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effect (FAE) research, programs and surveillance; and (2) to otherwise meet the general needs of populations actually or potentially impacted by FAS and FAE.

Matters To Be Discussed: Discussions will focus on ways the Task Force can collaborate with CDC and other Federal agencies on issues of diagnostic criteria for FAS/Alcohol Related Neurodevelopmental Disorder (ARND) in order to enhance health care providers' recognition of these disorders, and to ensure that those affected and their families receive needed services; the special needs of birth mothers of children with FAS/ARND; a report of the Substance Abuse and Mental Health Services Administration FAS/FAE Center for Excellence on their initial "stakeholders" meetings and future plans; an update on activities from the Interagency Coordinating Committee on Fetal Alcohol Syndrome; new research and program updates from the CDC; and a discussion of the implementation of the Task Force recommendations by various governmental agencies. Additional agenda items include: Working group updates; discussion of future topics, and scheduling the next meeting.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: R. Louise Floyd, DSN, RN, Designated Federal Official, National Center on Birth Defects and Developmental Disabilities, CDC, 4700 Buford Highway, NE, (F–49), Atlanta, Georgia 30333, telephone 770/488–7372, fax 770/488–7361.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: August 2, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, , Centers for Disease Control and Prevention.

[FR Doc. 02–20037 Filed 8–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Prospective Grant of Exclusive License: Various Retrovirus Isolated From Humans

AGENCY: Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209 (e)and 37 CFR 404.7(a)(1)(i) that the Centers for Disease Control and Prevention (CDC), Technology Transfer Office, Department of Health and Human Services (DHHS), is contemplating the grant of a worldwide exclusive license to practice the inventions embodied in the patents and patent applications referred to below to Antibody Systems, Inc., located in Hurst, Texas. The patent rights in these inventions have been assigned to the government of the United States of America. The patents and patent applications to be licensed are:

Title: Retrovirus Isolated from Humans, U.S. Patent No. 5,882,912. Issue Date: 03/16/99. CDC Reference No. I–012–97/0; New Spumavirus Isolated form Humans, U.S. Patent Application PCT/US98/02598 dated 2/12/98. CDC Reference No. I–012–97/1; Spumavirus Isolated from Humans, U.S. Patent Application 09/367,213 dated 12/08/1999. CDC Reference No. I–012–97/2; New Retrovirus Isolated from Humans, U.S. Patent Application PCT/US01/51411 dated 10.19.2001. CDC Reference No. I–023–00/0 Spumavirus Isolated from Humans, U.S. Patent Application PCT/US99/25171 dated 10/27/99. CDC Reference No. I–034–97/0; Spumavirus Isolated from Humans, U.S. Patent Application Serial No. 09/830,616 filed 9/05/01. CDC Reference No. I–034–97/1;

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

These inventions cover unique spumavirus isolates and clones from infected humans, and an infectious spumavirus vector. Licensee will further development this technology to assess this vector's suitability for gene therapy applications, attenuated vaccines, and use as a stable replicating viral vector.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments, and other materials relating to the contemplated license should be directed to Andrew Watkins, Director, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, Mailstop K–79, Atlanta, GA 30341, telephone: (770) 488–8600; facsimile: (770) 488–8615. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by CDC within sixty days of this notice will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552. A signed Confidential Disclosure Agreement will be required to receive a copy of any pending patent application.

Dated: August 2, 2002.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–20039 Filed 8–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Health and Nutrition Examination Survey III (NHANES) DNA Specimens: Guidelines for Proposals to Use Samples and Proposed Cost Schedule

ACTION: Notice.

SUMMARY: The National Health and Nutrition Examination Survey (NHANES) is a program of periodic surveys conducted by the National Center for Health Statistics (NCHS) of the Centers for Disease Control and Prevention (CDC). Examination surveys conducted since 1960 by NCHS have provided national estimates of the health and nutritional status of the U.S. civilian non-institutionalized population. To add to the large amount of information collected for the purpose of describing the health of the population, blood lymphocytes were collected in NHANES III in anticipation of advances in genetic research.

The lymphocytes have been stored and maintained at the Division of Laboratory Sciences (DLS) at the National Center for Environmental Health (NCEH), CDC. The collection of lymphocytes was begun in the second phase of the survey (1991–1994) because of the significant advances in the rapidly evolving field of molecular biology that were occurring during the planning phase of this survey. CDC is making DNA samples from these specimens available to the research community for such analyses. Specimens are available from approximately 7,300 participants in the second phase of NHANES III. No cell lines will be made available.

This program has been previously announced (Tuesday, June 1, 1999 (64 FR 29321)). The purpose of this notice is to announce a third category for proposals for use of these specimens and a new cost schedule. For final proposal guidelines and request for letters of intent, please contact Ms. Oraegbu or go to *http://www.cdc.gov/nchs/about/major/nhanes/dnafnlgm2.htm.*

All interested researchers are encouraged to submit letters of intent. Approximately twenty proposals for a full set of specimens (~7,300 samples) and a limited number of proposals (less than five, depending on the number of specimens requested) for smaller sets of samples can be awarded in this solicitation. No funding is provided as part of this solicitation. Proposals will be reviewed by a technical panel. Approved projects that do not obtain funding on their own will be canceled. A more complete description of this program follows.

Dates

- Letter of Intent Receipt: September 9, 2002
- Submission of Proposals: October 7, 2002
- Application Receipt: November 18, 2002
- Scientific Review: January, 2003
- Institutional Review: February, 2003
- Notification of approval: March 2003
- Anticipated distribution of samples: July-August 2003

ADDRESSES: To send comments and for information, contact:

Ms. Kika Oraegbu, Division of Health Examination Statistics, National Center for Health Statistics, Centers for Disease Control and Prevention, 6525 Belcrest Road, Room 1000, Hyattsville, MD 20782, Phone: 301–458–4367, FAX: 301–458–4028, E-Mail: KDO1@cdc.gov, Internet: *http://www.cdc.gov/nchs/about/major/nhanes/dnafnlgm2.htm.*

SUPPLEMENTARY INFORMATION:

The goals of NHANES are (1) to estimate the number and percentage of people in the U.S. population and designated subgroups with selected diseases and risk factors for those diseases; (2) to monitor trends in the prevalence, awareness, treatment and control of selected diseases; (3) to monitor trends in risk behaviors and environmental exposures; (4) to analyze risk factors for selected diseases; (5) to study the relation among diet, nutrition and health; (6) to explore emerging public health issues and new technologies; (7) to establish and maintain a national probability sample of baseline information on health and nutrition status.

The Third National Health and Nutrition Examination Survey (NHANES III) began in the Fall of 1988 and ended in the Fall of 1994. Survey data were collected and can be analyzed from two phases: Phase I was conducted from October 1988 to October 1991, and Phase II was conducted from October 1991 to October 1994. Both phases are nationally representative samples. For details of the sampling design see the Plan and Operation of NHANES III (1). This information can be obtained by contacting the Data Dissemination Branch, NCHS, at 301–458–4636 or from the Internet at *http://www.cdc.gov/nchs/about/major/nhanes/nh3data.htm.*

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Blood specimens were collected from participants as a part of NHANES III. Lymphocytes were isolated from the blood collected from participants aged 12 years and older and stored frozen in liquid nitrogen or as cell cultures immortalized with Epstein-Barr virus and frozen at the Molecular Biology Branch of DLS, NCEH, CDC, Atlanta, GA. DNA is available from cell lines of Phase II (1991–1994) participants.

Health information collected in the NHANES III is kept in strictest confidence. During the informed consent process, survey participants are assured that data collected will be used only for stated purposes and will not be disclosed or released to others without the consent of the individual or the establishment in accordance with section 308(d) of the Public Health Service Act (42 U.S.C. 242m). Although the consent form was signed by participants in the survey, and participants consented to storing specimens of their blood for future research, specific mention of genetic research was not included. Nevertheless, given the scientific importance of this resource, the CDC/NCHS Institutional Review Board (IRB) approved making anonymized samples of DNA available to the genetic research community.

The anonymization requirements proved to be restrictive and difficult to implement, therefore, in August, 2001 the CDC/NCHS IRB approved a revised plan for using these specimens based on the guidelines in the August, 1999 National Bioethics Advisory Commission (NBAC) report on the use of stored biological materials for research. This revised plan includes a process that gives researchers the ability to obtain more information associated with specimens for protocols that are determined by the IRB to have minimal risk for harm to the participant. For those protocols that cannot be conducted under unlinked (or anonymous) conditions, but have been determined to involve minimal risk, the revised plan allows for linking the genetic laboratory results to the NHANES data through the NCHS Research Data Center. This process would ensure that confidentiality of the subjects' identity is maintained, and would reduce the possibility that linking genetic information to the NHANES III data files might identify an individual or cause group harm.

Potential Research Proposals

Category (A): Special studies using the NCHS Research Data Center: Complete set of samples in deep-well format (96 specimens/per plate) ~7,300 samples. Studies which request DNA samples linked to previously collected NHANES III public use data without the restriction of anonymization. Data analyses must be done within the NCHS Research Data Center.

Category (B): Age-race-sex studies using anonymized samples: A limited number of subsets may be distributed in 50uL cryovials. Subsets based on the selection criteria proposed by investigators. Studies of allele frequencies which require only basic demographic information (age, race/ethnicity, and sex) to be linked to the samples.

Category (C): Special anonymized studies: A limited number of subsets may be distributed in 50uL cryovials. Subsets based on the selection criteria proposed by investigators. Studies in which additional co-variates from the NHANES III public use database are required, but the re-coding maintains anonymization (minimum of 5 individuals in each statistical cell) of the samples.

These latter two research designs do not differ from the previous Plan for distributing NHANES III DNA samples to researchers.

Category (A): Special studies using the NCHS Research Data Center— Distribution of the complete set of samples in deep-well format (96 specimens/per plate) ~7,300 samples. The investigator will specify the genetic analyses to be conducted on the samples. The investigator will also include in the research protocol application a list of demographic and clinical variables that would be used for the data analyses. Data analyses that combine the genetic analyses with NHANES III data must be conducted in the NCHS Research Data Center (RDC). The researcher will conduct the genetic laboratory analyses on the samples that are labeled with a unique random ID and are, therefore, anonymous to the researcher. To perform the data analyses, the researcher will then provide the results of the genetic laboratory tests with the random identification numbers to the Division of Health Examination Statistics (DHES). The random identification numbers are also anonymous to all staff, except the one person who has the crosswalk file. These results will be matched to the NHANES III data by that person. The resulting data file will be provided to the RDC. These analyses will be subject to all the confidentiality restrictions of the RDC (http://www.cdc.gov/nchs/r&d/rdc.htm). Because all the data analyses will be completed in the NCHS RDC, which charges for computer time and for RDC support time, it is recommended that the investigator develop the project proposal in conjunction with the NHANES Staff and Research Data Center staff. The investigator should perform preliminary analyses using NHANES public use data to determine whether the proposed research is feasible. Approval of these protocols by the RDC is required after approval by the Genetics Technical Panel. The RDC uses the following criteria for approval: risk of disclosure, consistency with the mission of NCHS, availability of RDC resources, and the feasibility of the project.

Although researchers sign confidentiality agreements to use the RDC, strict confidentiality protocols require that researchers with approved projects must complete their work using the facilities located within the Research Data Centers (currently only the Hyattsville, MD, facility is in operation). Two access methods are available for researchers to accomplish their tasks: onsite and remote. The costs and restrictions are different for each method. Onsite researchers have the ability to use the full capabilities of the SAS system with the only additional requirement being a disclosure review. Individual cells are suppressed if the minimum requirements for disclosure are not met. Additional restrictions limit the analysis capabilities of the remote access system. Under these situations, the printed output is scanned and screened prior to transmittal to the investigator. Strict minimal disclosure limits are adhered to and data items are suppressed if the minimums are not met. For remote access, all statistical cells with fewer than five observations are suppressed. Under the RDC option (protocol category A), the researcher may obtain aggregate statistics from statistical calculations which effectively use smaller statistical cell sizes for intermediate steps, such as performing regression analyses on detailed data, as long as the intermediate steps are never made available separately.

Category (B) Age-race-gender Studies: A limited number of subsets may be distributed in 50uL cryovials. Subsets based on the selection criteria proposed by investigators. To facilitate the research proposal preparation of allele frequency, NCHS will make the following data available with the DNA sample: age in 10-year age groups, race-ethnicity (white, black, Mexican-American), gender, mean sample weights for each demographic group and the average design effect. Thus, investigators wishing to submit proposals under this research design type do not need to provide an analysis of NHANES III data to support the unlinked (anonymization) scheme proposed. These data have sufficient sample sizes in each category (the smallest age, race/ethnicity, gender statistical cell contains 62 persons) to preserve anonymity. To further preserve anonymity, only 80 percent of the subjects in each statistical cell will be used.

Proposals submitted for this category of review are limited to those requesting samples from within these age, gender, race/ethnicity cells for identifying the frequency of the alleles in the population. These proposals must address all criteria except for the verification that anonymization can be achieved.

Category (C): Special Anonymized Studies (Requests for Additional Variables)—A limited number of subsets may be distributed in 50uL aliquots in cryovials. Subsets are based on the selection criteria proposed by the investigator(s). The investigator will include a list of demographic and clinical variables and specify recoding schemes, if appropriate, that the principal investigator would like to have linked to the samples to meet the objectives of the study. The combined information on all variables provided to the investigator by CDC *must not* constitute a unique set of values that could link the samples with participant data on the NHANES III public use data set. Investigators should obtain the NHANES III Public Use Data and should verify that anonymity can be achieved before submitting the proposal with the requested set of variables.

A cross tabulation of all requested variables must be provided and must demonstrate that there are at least five individuals in each statistical cell of that cross tabulation. Recoding is required for continuous variables and may be required for integral variables to ensure anonymity. Because the samples are primarily available from phase II subjects, these analyses should be run using phase II subjects only (SDPPHASE=2). (Household codes are confidential data. Therefore, if only one individual per household is to be included in the protocol, the investigator can estimate the sample size per statistical cell by halving the cross tabulation results. For instance, if only one individual per household is requested, the minimum statistical cell size of the cross tabulation should be ten subjects.) From each statistical cell, either 2 or 20 percent of the subjects of the cell, whichever is larger, will be deleted from the pool of samples sent to the investigator. In all three proposal designs, the investigators will receive samples that are coded with a random identifier that is unique to that proposal.

DNA Samples

For proposals falling into category A, the laboratory will dilute the stock specimens that are currently in deep-well plates 1:2 and distribute 50 ul aliquots of diluted lysate. The amount of DNA in each aliquot will be approximately 180–1,500 nanograms (ng). Aliquots will be dispensed into deep-well plates for distribution to investigators. Each well will be bar-coded and labeled with a readable identifier. Approximately 20–22 sample sets of specimens from 7,300 participants will be available for proposals. An investigator must purchase the samples in full sets. For proposals falling into category B or C, specimens will be distributed in 50 µL aliquots in cryovials rather than deep-well plates. The amount of DNA in each aliquot will be 75 to 650 nanograms. Only a limited number of smaller specialized sets for category B or C are available. There are only 3 complete sets of cryovials, so the number of projects that can be filled with these samples depends on the types of projects proposed.

Proposed Cost Schedule for Providing NHANES III DNA Specimen Bank

A nominal processing fee of $5.00 is charged for each sample received from the NHANES III DNA Specimen Bank if the full set of specimens (category A) are requested. If the more limited set of cryovials is requested, a cost of $38.00/vial is assessed to cover the manual selection of these samples. Costs are determined both for NCEH and NCHS and include the physical materials needed to process the samples at the NCEH laboratory, as well as the materials to process the requests for samples at NCHS. These costs include salaries of the staff needed to conduct these activities at each Center. The fee is estimated to cover the costs of processing, handling, and preparing the samples in accordance with the detailed requirements of the investigators. These costs were based on an assumption that NCEH and NCHS will receive and process 20 proposals in a year, each requesting 7,300 samples as shown in the table below or 5 subsets of 1000 samples in cryovials.

The materials listed are for the recurring laboratory costs to dispense and prepare the samples for shipping. Labor costs are based on the need for microbiologists, a proposal administrator, and computer programmers for NCHS and NCEH to maintain the data bases and verify anonymity. Technical panel travel and expenses are based on the panel meeting twice a year. The space estimate is based on acquiring storage and sample aliquoting space in the laboratory.

Total costs	Per sample for 7,300 samples in 96 well plates	Per sample for individual cryovials
Materials	$ 0.25	$ 1.90
Labor	2.90	22.00
Application review and other administrative expenses	0.35	2.69
Space	0.13	0.97
Subtotal	3.63	27.56
NCHS overhead (15%)	0.54	4.12
Subtotal	4.17	31.68
CDC/FMO overhead (20%)	0.83	6.32
Total cost per sample	5.00	38.00
Total cost per proposal	36,500	NA

Shipping costs are not included in the processing fee. These costs must also be paid by the investigator.

Procedures for Letter of Intent

NCHS will post information about letters of intent on the NHANES Web site *www.cdc.gov/nchs/about/major/nhanes/nhanes.htm*, by September 9, 2002. The letter of intent is required to enable CDC to plan the review more efficiently, evaluate the number of requests, and to assess the capacity of the DNA Bank to fulfill requests. Only

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20–22 full sets of samples (7,300 specimens) are available for this round of proposals. A limited set of individual cryovials will be available for less than the full set of samples. All letters of intent will be reviewed by Division of Health Examination Statistics staff for potential major problems related to the feasibility of the project. If a problem is identified, the Division staff will inform the investigator so it can be addressed in the proposal.

All potential investigators must submit letters of intent. The letter should be no more than two pages and include (1) a descriptive title of the overall proposed research; (2) the name, address and telephone number of the Principal Investigator (PI); (3) a list of key investigators and their institution(s); (4) one paragraph on the background for the proposal and a paragraph briefly addressing each criterion for technical evaluation of letters of intent and proposals; (5) the genetic assessments proposed; (6) a list of proposed variables; and (7) an estimate of the number of samples that would be requested. The background paragraph should state concisely the importance of the research in terms of the broad, long-term objectives and public health relevance and consistency of NCHS's mission to monitor the nations's health.

Letters of intent should be submitted by September 9, 2002.

Ms. Kika Oraegbu, National Center for Health Statistics, Centers for Disease Control and Prevention, 6525 Belcrest Road, Room 1000, Hyattsville, MD 20782, Phone: 301–458–4367, FAX: 301–458–4028, E-Mail: *KDO1@cdc.gov*.

Procedures for Proposals

The investigator should follow these instructions for preparation of proposals: Prepare proposals with a maximum of five single-spaced typed pages, excluding figures and tables, using ten cpi type density. If a proposal is approved, the title, specific aims, name, and phone number of the author will be maintained by NCHS and released if requested by the public. Unapproved proposals will be returned to the investigator and will not be maintained by NCHS. The cover of the proposal should include the name, address, phone number, and E-mail address, if available, of the PI, and the name of the institution where the DNA analysis will be done, and the category of proposal (A, B, C) that would be submitted. The cover page should be signed by the responsible institution representative. Proposals will be ranked by the technical panel on a scale of 1–10 with 10 being the highest rank for each category.

As there are only 20–22 full sets of samples (7,300 specimens) and only a limited set of individual cryovials for proposals requiring less than the full set of samples available for this round of proposals, proposals will be ranked by the technical panel on a scale of 1–10 with 10 being the highest rank for each category.

The proposal should contain, and will be evaluated according to, the following elements:

(1) *Specific Aims*—List the broad objectives; describe concisely and realistically what the research is intended to accomplish, and state the specific hypotheses to be tested. Category A proposals which request using the full set of specimens will receive priority consideration. Category B and C proposals will be evaluated together since they will be competing for the limited set of cryovials.

(2) *Background and Public Health Significance:* Describe the public health significance, scientific merit, and practical utility of the assay. Scientific merit will be judged on the basis of the scientific, technical, or medical significance of the research; the appropriateness and adequacy of the experimental approach; and the methodology proposed to reach the research goals. Convey how the results will be used and the relation of the results to the data already collected in NHANES III. Analyses should be consistent with the NHANES mission to assess the health of the nation. Because NHANES is a complex, multistage probability sample of the national population, the appropriateness of using the NHANES sample to address the goals of the proposal will be an important aspect of determining scientific merit. The Panel will ensure that the proposed project does not go beyond either the general purpose for collecting the samples in the survey, i.e., to determine allele frequencies in subgroups of the population, or, the specific stated goals of the proposal

(3) *Research Design and Methods:* Describe the sampling scheme and number of samples requested if submitting a category C proposal. Include power calculations for the subsample and a list of variables requested; provide a cross-tabulation of requested variables for category C proposals. For all proposal categories, include a detailed description of the laboratory methods. If a non-standard laboratory method is to be used, discuss its advantages over using existing methods. The characteristics of the laboratory assay, such as reliability, validity, and "state-of-the-art," should be included with appropriate references. The potential difficulties and limitations of the proposed procedures should also be discussed. Address adequate methods for handling and storage of samples. NCHS will verify the anonymity for category B and C proposals.

(4) *Discussion regarding the race/ethnicity variables:* If the sample request is limited to specific race or ethnic groups or if information about the race or ethnicity of the subjects is requested, indicate the reason for analyzing race/ethnicity and how the results will be interpreted. Discuss the potential for group harm.

(5) *Clinical relevance of research findings:* The specimens under this Plan are available for genetic research, not genetic testing. Therefore, it is the intent of the program to approve only those proposals that would yield meaningful research, but not clinically relevant information for the participants. Researchers should address whether or not findings from the proposed research merit disclosure.

(6) *Qualifications:* Provide a brief description of the requestor's expertise in the proposed area, including publications in this area within the last three years.

(7) *Anonymity:* Final approval is based upon NCHS confirmation that anonymity can be maintained by the categorization of variables for category C proposals (proposals requiring anonymity).

(8) *Period of performance:* Specify the project period. The period may be up to three years. At the end of the project period, any unused samples must be returned to the NHANES DNA Specimen Bank in accordance with instructions from the Division of Environmental Laboratory Science. Extensions to the period of performance may be requested.

(9) *Funding:* Include the source and status of the funding to perform the requested laboratory analysis. Investigators will be responsible for the cost of processing and shipping the samples. Currently the cost per DNA specimen is $5.00 for proposals that use the full set of samples (~7,300) and $38.00 for subsets. Reimbursement for the samples will be collected before the samples are released.

Proposals will be evaluated by a Genetics Technical Panel and, if approved, by the CDC/NCHS IRB for human subject concerns. The IRB review will be conducted, even though investigators' proposals may have received review by their home institution. The Panel will also review an NCHS evaluation of whether anonymity can be assured for the proposed project for proposals in categories B and C. The samples that are sent to the investigator will be selected randomly from the domains by NCHS staff. The Director of NCHS will verify that projects have received appropriate reviews.

Requirements for the Inclusion of Women and Racial and Ethnic Minorities in Research

In NHANES III, race/ethnicity was defined by self-report as non-Hispanic white, non-Hispanic black, or Mexican American. Individuals who did not self-select into these categories were classified as "other." If the proposal excludes one or more race/ethnic groups or a gender, this exclusion must be justified.

CDC is also sensitive to the stigmatization of racial/ethnic specific populations through inappropriate reporting and interpretation of findings. For all proposals that request information on race/ethnicity for the samples selected, the investigator should indicate the reason for analyzing race/ethnicity and how the results will be interpreted.

Submission of Proposals

Proposals should be submitted by October 7, 2002. All investigators who submitted letters of intent may submit proposals.

Electronic submission of proposals is encouraged. Please submit proposals to: Ms. Kika Oraegbu, National Center for Health Statistics, 6525 Belcrest Rd., Rm 1000, Hyattsville MD 20782, Phone: (301) 458–4367, FAX: (301) 458–4028, E-Mail: *KDO1@cdc.gov, Attention:* NHANES III Genetic Testing Program.

Approved Proposals

NCHS/NCEH will provide a data file with the requested recoded variables (for category B and C proposals) and a randomly assigned unique identification number that is linked to the DNA specimen. No record connecting the new number with the original identification number will be kept after the samples have been sent. These samples cannot be traced to any files maintained by NCHS. For proposals in category A, the genetic results will be sent back to NCHS so they can be linked to the NHANES III public use data in the Research Data Center for analysis.

Agency Agreement

A formal signed agreement in the form of a Materials Transfer Agreement (MTA) with individuals who have projects approved will be completed before the release of the samples. This agreement will contain the conditions for use of the DNA as stated in this document and as agreed upon by the investigators and CDC. A key component of this agreement is that no attempt will be made to link the results of the proposed research to any other data, including, but not limited to, the NHANES III public use data set. Also, the investigator agrees that the samples cannot be used for commercial purposes.

Progress Reports

A progress report will be submitted annually. CDC/NCHS IRB continuation reports are also required annually.

Disposition of Results and Samples

No DNA samples provided can be used for any purpose other than those specifically requested in the proposal and approved by the Genetics Technical Panel and the NHANES IRB. No sample can be shared with others, including other investigators, unless specified in the proposal and so approved. Any unused samples must be destroyed upon completion of the approved project. Researchers requesting DNA samples for age-race-gender studies and special studies will be required to provide NCHS with the results of all DNA tests performed for each anonymized sample. These results, once returned to NCHS, will be part of the public domain. Therefore, ample time will be given to the investigator to publish results prior to reporting the results to NCHS.

Send Request for Information: Ms. Kika Oraegbu, National Center for Health Statistics, Centers for Disease Control and Prevention, 6525 Belcrest Road, Room 1000, Hyattsville, MD 20782, Phone: 301–458–4367, FAX: 301–458–4028, E-Mail: *KDO1@cdc.gov*.

References

1. Plan and Operation of the Third National Health and Nutrition Examination Survey, 1988–94. National Center for Health Statistics. Vital Health Stat (32) 1994.

2. Clayton EW, Steinberg KK, Khoury MJ, et al. Informed consent for genetic research on stored tissue samples. JAMA 1995;274:1786–1792.

Dated: August 2, 2002.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–20038 Filed 8–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Docket No. 02N–0332

Preparation for the International Conference on Harmonization Meetings in Washington, DC, Including Progress on Implementation of the Common Technical Document; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled "Preparation for ICH Meetings in Washington, DC, Including Progress on Implementation of the Common Technical Document" to solicit information and receive comments on the International Conference on Harmonisation (ICH) as well as the upcoming meetings in Washington, DC. The purpose of the meeting is to solicit public input prior to the next Steering Committee and Expert Working Group meetings in Washington, DC, September 9 to 12, 2002, at which discussion of the Common Technical Document and the future of ICH will continue.

Date and Time: The public meeting will be held on September 5, 2002, from 10:30 a.m. to 2 p.m.

Location: The public meeting will be held at 5630 Fishers Lane, rm. 1066, Rockville, MD 20852.

Contact: Kimberly Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, FAX 301–827–6801, e-mail: Topperk@cder.fda.gov.

Registration and Request for Oral Presentation: Send registration information (including name, title, firm name, address, telephone, and fax number), and written material and requests to make oral presentations to the contact person by August 29, 2002.

If you need special accommodations due to a disability, please contact Kimberly Topper at least 7 days in advance.

SUPPLEMENTARY INFORMATION: The International Conference on Harmonisation of Technical Requirements for the Registration of Pharmaceuticals for Human Use was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe,

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Japan, and the United States without compromising the regulatory obligations of safety and effectiveness.

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory agencies. The ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. The ICH is concerned with harmonization among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labor and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations. The ICH Steering Committee includes representatives from each of the ICH sponsors and Canadian Therapeutics Programme, and the European Free Trade Area. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions. The current ICH process and structure can be found on the Internet at http://www.ifpma.org/ich1.html

Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. Oral presentations from the public will be scheduled between approximately 11:30 a.m. and 1 p.m. Time allotted for oral presentations may be limited to 10 minutes. Those desiring to make oral presentations should notify the contact person by August 29, 2002, and submit a brief statement of the general nature of the evidence or arguments they which to present, the names and addresses, phone number, fax, and e-mail of proposed participants, and an indication of the approximate time requested to make their presentation.

The agenda for the public meeting will be made available on August 29, 2002, under Docket No. 02N–0332, at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: August 1, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–20009 Filed 8–7–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 2002.

The National Advisory Committee on Rural Health will convene its forty-second meeting in the time and place specified below:

Name: National Advisory Committee on Rural Health.

Date and Time: September 8, 2002, 1:30 p.m.–5 p.m.; September 9, 2002, 8:30 a.m.–4:45 p.m.; September 10, 2002, 8 a.m.–10:30 a.m.

Place: Chico Hot Springs Resort, P.O. Box 29, Pray, Montana 59047, Phone: 406–333–4933.

The meeting is open to the public.

Purpose: The National Advisory Committee on Rural Health provides advice and recommendations to the Secretary with respect to the delivery, research, development and administration of health care services in rural areas.

Agenda: Sunday, September 8, at Chico Hot Springs Resort at 1:30 p.m. the chairperson, the Honorable David Beasley, will open the meeting and welcome the Committee members. The first plenary session will consist of presentations by the Montana Quality Improvement Organization and the Montana Health Quality Network. This will be followed by reports from the Quality and Workforce Subcommittees. At 3:45 p.m. the Committee will hear a presentation from Libby Hospital and an update on the Department of Health and Human Services Rural Initiative.

Monday, September 9, at 8:30 a.m. the Committee will depart for a site visit at the Big Timber Hospital. At 11 a.m. the Committee will depart for a site visit to Livingston, Montana. Transportation to these locations will not be provided to the general public. At 3:30 p.m. the Committee will hear a presentation from a representative of the Governor's Health Workforce Study.

The final plenary session will be convened on Tuesday, September 10. Beginning at 8 a.m. there will be a review of the site visits and a report from the Quality Subcommittee. The meeting will conclude with a discussion of the Montana presentations and what issues to raise in the Committee's meeting summary that will be sent to the Secretary. The meeting will be adjourned at 10:30 a.m.

Anyone requiring information regarding the subject Committee should contact Tom Morris, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, Room 9A–55, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Michele Pray, Office of Rural Health Policy (ORHP), (301) 443–0835. The National Advisory Committee meeting agenda will be posted on ORHP's Web site, *http://www.ruralhealth.hrsa.gov*.

Dated: August 2, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–20040 Filed 8–7–02; 8:45 am]

BILLING CODE 4165–15–P 3

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM).

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: August 26, 2002.

Closed: 8:30 a.m. to 12:15 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Open: 1:15 p.m. to adjournment.

Agenda: The agenda includes Opening Remarks by Director, NCCAM, NIH Director's Remarks by Director, NIH, Report on NCCAM Research Centers Program, Concept Review: Research Centers, CAM Research Education, Clinical Evaluation of CAM Products, PC SPES Update, and other business of the Council.

Place: Neuroscience Conference Center, 6001 Executive Boulevard, Conference Rooms C and D, Rockville, MD 20852.

Contact Person: Jane F. Kinsel, Ph.D., Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892. 301/402–7269.

The public comments session is scheduled from 5:45–6 p.m. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Jane Kinsel, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–402–7269, Fax: 301–480–3519. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on August 16, 2002. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Jane Kinsel at the address listed above up to ten calendar days (September 10, 2002) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by Dr. Jane Kinsel, Executive Secretary, NACCAM, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–402–7269, Fax 301–480–3519.

Dated: August 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 02–20109 Filed 8–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date: August 8, 2002.

Time: 2 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: D.G. Patel, PHD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Rockledge Drive, MSC 7965, One Rockledge Centre, Room 6018, Bethesda, MD 20892–7965, (301) 435–0824, *dgpatel@ncrr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Research Resources Special Emphasis Panel Comparative Medicine.

Date: August 28, 2002.

Time: 7 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Sheraton Framingham Hotel, 1657 Worcester Road, Framingham, MA 01701.

Contact Person: Camille M. King, PHD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Centre, MSC 7965, 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892–7965, (301) 435–0810, *kingc@ncrr.nih.gov*.

Name of Committee: National Center for Research Resources Special Emphasis Panel Biomedical Research Technology.

Date: October 7–8, 2002.

Time: October 7, 2002, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mohan Viswanathan, PHD, Scientific Review Administrator, National Center for Research Resources, National Institutes of Health, Office of Review, 6705 Rockledge Drive, MSC 7965, One Rockledge Centre, Room 6018, Bethesda, MD 20892, (301) 435–0829, *viswanathanm@ncrr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: August 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20111 Filed 8–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, NEI U10 Applications on Cataract Anesthesia Management.

Date: August 13, 2002.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Suite 350, Rockville, MD 20892. (Telephone Conference Call).

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Contact Person: Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892. 301–451–2020.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: August 1, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20105 Filed 8–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Demonstration and Education Research Grant.

Date: September 23, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21060.

Contact Person: Patricia A. Haggerty, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892, 301/435–0310.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 31, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20010 Filed 8–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Council for Human Genome Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Huamn Genome Research.

Date: September 9–10, 2002.

Open: September 9, 2002, 8:30 a.m. to 12:30 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Closed: September 9, 2002, 1 p.m. to Adjournment on Tuesday, September 10, 2002.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Mark S. Guyer, Director for Extramural Research, Assistant Director for Scientific Coordination, National Human Genome Research Institute, 31 Center Drive, MSC 2033, Building 31, Room B2B07, Bethesda, MD 20892–2033, Bethesda MD 20892, 301–435–5536. *guyerm@mail.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a goverment I.D., will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 31, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20014 Filed 8–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Nursing Research Special Emphasis Panel, June 19, 2002, 3 p.m. to June 19, 2002, 5 p.m. Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on June 18, 2002, FR 67:41435.

The date of the meeting has been rescheduled to August 7, 2002 at 9 a.m. and will be held as a telephone conference meeting at 1 Democracy Boulevard, Bethesda, Maryland. The meeting is closed to the public.

Dated: July 31, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20011 Filed 8–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Nursing Research Special Emphasis Panel, June 19, 2002, 1 p.m. to June 19, 2002, 3 p.m., Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on June 18, 2002, FR 67: 41435.

The date of this meeting has been rescheduled to August 9, 2002 at 10 a.m. and will be held as a telephone conference meeting at 1 Democracy

Building Boulevard, Bethesda, Maryland. The meeting is closed to the public.

Dated: July 31, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20012 Filed 8–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: September 12–13, 2002.

Open: September 12, 2002, 10:30 AM to 5 PM.

Agenda: Report by the Acting Director, NINDS; Report by the Director, Division of Extramural Research; and other administrative and program developments.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: September 13, 2002, 8:30 AM to 12 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.ninds.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 1, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20102 Filed 8–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Neurological Disorders and Stroke Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Training Subcommittee.

Date: September 11, 2002.

Time: 8 P.M. to 10 P.M.

Agenda: To discuss the training programs of the institute.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Clinical Trials Subcommittee.

Date: September 12, 2002.

Open: 8 A.M. to 8:30 A.M.

Agenda: To discuss clinical trials policy.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Closed: 8:30 A.M. to 10 A.M.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Infrastructure, Neuroinformatics, and Computational Neuroscience Subcommittee.

Date: September 12, 2002.

Time: 8 A.M. to 10 A.M.

Agenda: To discuss research mechanisms and infrastructure needs.

Place: National Institutes of Health, 31 Center Drive, Building 31, Room 8A28, Bethesda, MD 20892.

Contact Person: Robert Baughman, MD, Associate Director for Technology Development, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2137, MSC 9527, Bethesda, MD 20892–9527, (301) 496–1779.

Information is also available on the Institutes/Center's home page: *www.ninds.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 1, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20103 Filed 8–7–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; AMS Conflicts.

Date: August 27, 2002.

Time: 2 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: 1 Democracy, 6701 Democracy Blvd., Suite 707 MSC 4870, Bethesda, MD 20892–4870, (Telephone Conference Call).

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, MSC 6500/Room 5AS–37B, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 1, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20104 Filed 8–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

NATIONAL INSTITUTES OF HEALTH

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The purpose of this meeting is to evaluate clinical research projects with yearly direct costs greater than $1 million dollars for their relevance to the mission and the goals of NINDS. The outcome of the evaluation will be a decision whether NINDS should accept the application for scientific review. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Clinical Trials Subcommittee of the National Advisory, Neurological Disorders and Stroke Council.

Date: August 6, 2002.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To evaluate the rationale of large proposed clinical research projects.

Place: 6001 Executive Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Dr. Constance W. Atwell, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, 6001 Executive Boulevard, Suite 3309, MSC 9531, Bethesda, MD 20892–9531. 301 496–9248.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical research Related to Neoruological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 7, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20106 Filed 8–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Re-review of R03 grant application.

Date: August 27, 2002.

Time: 1 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Suite 400C, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Stanley C. Oaks, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180. 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 2,2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20110 Filed 8–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel Review of R21 Grant Application(s).

Date: August 5, 2002.[1]

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Wilco Bilding, Suite 409, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Sean N. O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel Review of R21 Grant Application(s).

Date: August 7, 2002.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Blvd., Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Sean N. O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1 DD (22) Biomedical Research Application(s) Review.

Date: August 22, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Blvd., Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, 301–443–2926, *skandasa@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Health Services Research Review Subcommittee, Health Services Review Meeting.

Date: October 10, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Elsie Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., 20892–7003, 301–443–9787, *etaylor@niaaa.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Clinical and Treatment Subcommittee, Review of Clinical Treatment Applications.

Date: October 24–25, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Elsie Taylor, MS, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, *etaylor@niaaa.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20112 Filed 8–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Tools for Mental Health Interventions in Rural and Frontier Areas.

Date: August 28, 2002.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard E. Weise, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6140, MSC9606, Bethesda, MD 20892–9606, 301–443–1225, *rweise@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20113 Filed 8–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Internet Access.

Date: August 22, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, (Telephone Conference Call).

[1] Editorial Note: This document was received at the Office of the Federal Register on August 5, 2002.

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Contact Person: Merlyn M. Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 31, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20013 Filed 8–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 7, 2002.

Time: 1:00 PM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: John L. Bowers, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892. (301) 435–1725.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Oncology.

Date: August 12, 2002.

Time: 1:30 PM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Marcia Litwack, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892. (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20107 Filed 8–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amendment (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Center for Scientific Review Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Center for Scientific Review Advisory Committee.

Date: September 30–October 1, 2002.

Time: 8:30 AM to 5:00 PM.

Agenda: Discussion of activities to evaluate organization and function of the Center for Scientific Review Process.

Place: National Institutes of Health, Two Rockledge Center, Conference Room 9100, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PHD, Deputy Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3016, MSC 7776, Bethesda, MD 20892. (301) 435–1114.

Information is also available on the Institute's/Center's home page: *www.csr.nih.gov/drgac/drgac.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20108 Filed 8–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–38]

Notice of Proposed Information Collection: Comment Request; Prepayment of Direct loans on Section 202 and 202/8 Projects with Inclusion of FHA Mortgage Insurance Guidelines

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 7, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–3730 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance, the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Prepayment of Direct Loans on Section 202 and 202/8 Projects with Inclusion of FHA Mortgage Insurance Guidelines.

OMB Control Number, if applicable: None.

Description of the need for the information and proposed use: This information is necessary to gather documents from owners of multifamily housing projects financed under Section 202 of the National Housing Act who voluntarily request to prepay the mortgage. HUD staff must review the documents submitted by the owner to determine if approval of the prepayment request should be granted.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents is 150 generating approximately 150 annual responses; the frequency of response is on occasion; the estimated time to gather and prepare the necessary documents is about 2 hours per submission, and the estimated total annual burden hours is estimated to be 300 hours.

Status of the proposed information collection: New Collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: July 30, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02–20024 Filed 8–7–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–39]

Notice of Proposed Information Collection: Comment Request; HUD's Loss Mitigation Default Counseling Demonstration Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 7, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HUD's Loss Mitigation Default Counseling Demonstration Program.

OMB Control Number, if applicable: 2502–0549.

Description of the need for the information and proposed use: The information collection will be used to verify vouchers for reimbursement in HUD's Loss Mitigation Default Counseling Demonstration Program. Each of the Housing Counseling Agencies (HCAs) that are participating in the Demonstration will be eligible to be reimbursed each time a completed Loss Mitigation package is referred to one of the four lenders participating in the Demonstration.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 4,120, the number of respondents is 11 generating approximately 8,240 annual responses, the frequency of response is monthly and on occasion, the estimated time needed to prepare the response is 30 minutes.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: July 30, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02–20025 Filed 8–7–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ; GPO2–0315]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plat of survey of the following described lands were officially filed in the Oregon State Office, Portland, Oregon, on June 28, 2002.

Willamette Meridian

Oregon

T. 22 S., R. 30 E., accepted June 19, 2002

A copy of the plats may be obtained from the Oregon State Office, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest.

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For further information contact: Bureau of Land Management, (333 S.W. 1st Avenue) P.O. Box 2965, Portland, Oregon 97208.

Sherrie Reid,

Branch of Realty and Records Services.

[FR Doc. 02–19946 Filed 8–7–02; 8:45 am]

BILLING CODE 4310–33–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–422–425 and 731–TA–964–983 (Final)]

Certain Cold-Rolled Steel Products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, The Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: August 2, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179 / *ffischer@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: On June 3, 2002, the Commission established a schedule for the conduct of the final phase of the subject investigations (67 FR 38291, June 3, 2002). Because official import statistics of Commerce for June 2002 will not be available to the Commission and the public until August 20, 2002, the Commission is revising its schedule.

The Commission's new schedule for the investigations is as follows: The Commission will make its final release of information on August 21, 2002; and final party comments are due on August 23, 2002.

For further information concerning these investigations see the Commission's notice cited above and the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: August 2, 2002

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–20059 Filed 8–7–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services (COPS)

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: New Collection; Making Officer Redeployment Effective (MORE) Closeout Report.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for an additional 30 days for public comment until September 9, 2002. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Making Officer Redeployment Effective (MORE) Closeout Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* COPS Form Number: N/A.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: MORE award recipients. Other: None. Abstract: The information collected will be used by the COPS Office to determine that MORE award recipients have completed the grant programmatic requirements.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 1,856 responses per year. The estimated amount of time required for the average respondent to respond is: 1.0 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,712 annually.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: August 2, 2002.

Brenda Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–20056 Filed 8–7–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services (COPS)

Agency Information Collection Activities: Proposed collection; Comment Requested

ACTION: 60-Day notice of information collection under review; new collection; public safety/crime prevention proposal kit.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted for sixty days until October 7, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen De Pasquale, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Public Safety/Crime Prevention Proposal Kit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State and local law enforcement entities. *Other:* None.

Abstact: The information collected by the Public Safety/Crime Prevention Proposal Kit is requested to obtain a comprehensive understanding of project objectives in accordance with the Federally appropriated mandate and grant program policies of the COPS Office.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 160 responses. The estimated amount of time required for the average respondent to respond is: 15 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,560 hours.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: August 2, 2002.

Brenda Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–20057 Filed 8–7–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy; 28 CFR 50.7, notice is hereby given that a proposed amendment to the consent decree in *United States* v. *Quaker State Corporation*, Civil Action No. 93–0196W, was lodged with the United States Court for the Northern District of West Virginia on July 18, 2002.

After entry of the decree, Quaker State merged with Pennzoil Corporation to form Pennzoil-Quaker State, the successor to Quaker State. In implementing work required by the original decree in settlement of claims under the Resource, Conservation and Recovery Act ("RCRA"), Pennzoil-Quaker State failed to install control measures required by the Clean Air Act ("CAA") to prevent or reduce fugitive emissions. It has now agreed to implement the necessary safeguards. The proposed amendment specifies the work to be implemented and the schedule for doing do, and provides for a penalty of $23,250, to be split between the United States and the West Virginia DEP.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. Each communication should refer on its face to *United States* v. *Quaker State*, DOJ #90–5–2–1–1873A.

The proposed consent decree may be examined at the office of the United States Attorney for the Northern District of West Virginia, 1100 Main Street, Suite 200, Wheeling, WV 26003; and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103–2029. A copy of the proposed consent decree may be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax number (202) 616–6584; phone confirmation (202) 514–1547. In requesting a copy, please forward the request and a check in the amount of $2.00 (25 cents per page reproduction cost) payable to the U.S. Treasury, referencing the DOJ Consent Decree Library, *United States* v. *Quaker State*, DOJ #90–5–2–1–1873A, to the first-class mail address listed above.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–20033 Filed 8–7–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 CFR 50.7 and section 122 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, the Department of Justice gives notice that a proposed consent decree, in *United States* v. *Lockheed Martin*

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Corporation, et al., Civil No. 4:02CV–146–M (W.D. Ky.), was lodged with the United States District Court for the Western District of Kentucky on July 26, 2002, pertaining to the Green River Landfill Superfund Site located in Maceo, Daviess County, Kentucky (the "Site"). The proposed consent decree would resolve the United States' civil claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of the Solid Waste Disposal Act, as amended ("RCRA"), 42 U.S.C. 6973, including Natural Resource Damages, against the Settling Defendants: 15 generators and a current owner of a portion of the Site. The proposed consent decree also resolves claims against a Settling Federal Agency.

Under the proposed consent decree, 10 Settling Defendants ("Settling Performing Parties"), are obligated to finance and perform any remaining work at the Site for Operable Unit 1, principally operation and maintenance ("O&M")—obligations initially imposed by a Unilateral Administrative Order ("UAO") issued by U.S. Environmental Protection Agency ("U.S. EPA") in 1996—perform the remedial design/remedial action for Operable Unit 2 (estimated total present value of all response actions to be undertaken under the Decree: $3.7 million), and pay all Future Response Costs at the Site not inconsistent with the National Contingency Plan, excluding the first $307,449 of Future Oversight Costs to be incurred by the United States. Six Settling Defendants ("Settling Non-Performing Parties") are obligated to pay monies to the Settling Performing Parties for costs incurred and to be incurred for response actions at the Site. In addition, the United States, on behalf of the Settling Federal Agency, would pay $155,000 to the Settling Performing Parties in reimbursement of the Settling Performing Parties' response costs incurred and to be incurred at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Lockheed Martin Corporation, et al.*, Civil No. 4:02CV–146–M (W.D. Ky.), and DOJ Reference No. 90–11–2–1098. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Western District of Kentucky, 510 West Broadway, 10th Floor, Louisville, Kentucky 40202, (502–582–5911); and (2) the United States Environmental Protection Agency (Region 4), 61 Forsyth Street, Atlanta, Georgia 30303 (contact: Lucia Mendez (404–562–9637)). A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, U.S. Department of Justice, PO Box 7611, Washington, DC 20044–7611. In requesting a copy, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $26.75 for the consent decree only (107 pages, at 25 cents per page reproduction costs), or $126.75 for the consent decree and all appendices (507 pages), made payable to the Consent Decree Library.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–20034 Filed 8–7–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Reinstatement, without change, of a previously approved collection for which approval has expired; Victims of Crime Act, Crime Victim Assistance Grant Program, Subgrant Award Report.

The Department of Justice (DOJ), Office of Justice Programs has submitted the following information collection request to the office of Management and Budget (OMB) for review and approval in accordance with the paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 90, page 31380 on May 9, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 9, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC. 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, With change, of a Previously Approved Collection for Which Approval has Expired.

(2) *Title of the Form/Collection:* Victims of Crime Act, Crime Victim Assistance Grant Program, Subgrant Award Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* 1121–0142. Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal Government. *Other:* None. the information requested is necessary to ensure compliance with statutory criteria which allows the Director of OVC to collect performance data from recipients of the VOCA victim assistance grant funds. The affected public include up to 57 States and territories administering the crime assistance provisions of the Victims of Crime Act.

(5) *As estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are 57 respondents who will complete a three minute subgrant award report. However, a State can be responsible for entering subgrant data for as many as 9 to 417 programs.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 295 burden hours associated with this information collection.

If additional information is required contact; Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: August 2, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–20055 Filed 8–7–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Solicitation For Grant Applications (SGA 02–19); Expanding Economic Opportunity and Income Security Through Workforce Education, Skills Training, Employment Creation and Local Economic Development

AGENCY: Bureau of International Labor Affairs, Office of Foreign Relations, Labor.

ACTION: Notice of correction.

SUMMARY: The available funding level is corrected downward from $4,000,000.00 to $3,285,000.00. All technical and administrative requirements under the SGA are unchanged. This solicitation (SGA) will be published in the **Federal Register** on Tuesday, August 6, 2002.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Ave., NW., Washington, DC 20210, Telephone (202) 693–4570, e-mail: *harvey-lisa@dol.gov.*

Signed at Washington, DC, this 2nd day of August, 2002.

Lawrence J. Kuss,

Grant Officer.

[FR Doc. 02–20117 Filed 8–7–02; 8:45 am]

BILLING CODE 4510–28–M

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Institute of Museum and Library Services; Proposed Collection, Comment Request Recruiting and Educating Librarians for the 21st Century Application Form

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3508(2)(A)] This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed study of the needs of assessment of end-users in library and museum digitization projects funded through the Institute of Museum and Library Services.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before October 7, 2002.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submissions of responses.

ADDRESSES: Send comments to Stephanie Clark, Office of Library Services, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 802, Washington, DC 20506. Fax: 202–606–1077 or by email *sclark@imls.gov* Fax or e-mail preferred.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act Public Law 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs.

The President's FY2003 Budget Request submitted to Congress in early February, 2002 proposes a $10 million initiative to educate and train librarians. Anticipating the loss of as many as 68% of the current cohort of professional librarians by 2019, the initiative will be designed to "help recruit a new generation of librarians."

The President's proposed initiative recognizes the key role of libraries and librarians in maintaining the flow of information that is critical to support formal education; to guide intellectual, scientific, and commercial enterprise; to strengthen individual decisions; and to create the informed populace that lies at the core of democracy.

Draft application and guidelines are prepared contingent upon Congressional action.

Agency: Institute of Museum and Library Services.

Title: Recruiting and Educating Librarians for the 21st Century.

OMB Number: n/a.

Agency Number: 3137.

Frequency: One time.

Affected Public: Libraries and school of library information science.

Number of Respondents: 120.

Estimated Time Per Respondent: 40 hours.

Total Burden Hours: 4800.

Total Annualized capital/startup costs: 0.

Total Annual costs: 0.

CONTACT: Mamie Bittner, Director Office of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. e-mail *mbittner@imls.gov* fax (202) 606–8591. e-mail or fax preferred.

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Dated: August 2, 2002.

Mamie Bittner,

Director of Public and Legislative Affairs.

[FR Doc. 02–20070 Filed 8–7–02; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247–OLA and ASLBP No. 02–789–01–OLA]

Atomic Safety and Licensing Board; In the Matter of Entergy Nuclear Indian Point 2, LLC, and Entergy Nuclear Operations, Inc., (Indian Point Nuclear Generating Unit No. 2); Public Notice of Prehearing Conference

August 2, 2002.

Before Administrative Judges: Michael C. Farrar, Chairman, Dr. Richard F. Cole, Dr. Charles N. Kelber.

The Atomic Safety and Licensing Board presiding over this license amendment proceeding hereby gives public notice that on Tuesday, August 27, 2002, it will hold a prehearing conference at the Hilton Rye Town, 699 Westchester Avenue, Rye Brook, New York. The conference will convene at 9:00 A.M. and conclude by 1:00 P.M. (no lunch break will be taken). The purpose of this prehearing conference is to hear arguments on (1) the standing of petitioner Riverkeeper, Inc. to intervene in the proceeding; (2) the admissibility of Riverkeeper's petition under regulatory standards governing late-filed intervention requests; and (3) the admissibility of any proposed contention(s) which Riverkeeper may file. This notice sets forth the background developments that led to the conference and covers matters related to public attendance and document availability.

A. Background

The issues before the Board in this license amendment proceeding relate to the admissibility of a late-filed intervention petition. The petition submitted by Riverkeeper challenges the pending application of Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Operations, Inc. (Entergy), the new operators of Indian Point Nuclear Generation Unit No. 2, for a license change that would, in effect, give the operators a one-time five-year extension of the period within which to conduct the "containment integrated leak rate" test that is otherwise required every ten years.

After conducting a review of the application, the NRC Staff issued a **Federal Register** notice (66 FR 44,161, 44,165 (August 22, 2001)) seeking public comment on its proposal to make a "no significant hazards" determination as to the amendment request. The notice also provided the opportunity for anyone opposed to the amendment "whose interest may be affected" thereby to file within 30 days (by September 21, 2001) a petition to intervene in the proceeding and to request a hearing.

On March 18, 2002, nearly six months after the deadline for intervening, Riverkeeper filed a "Section 2.714 Petition for Leave to Intervene and Request for a Hearing." Riverkeeper justified its late filing, and its concomitant request for a hearing on the proposed license amendment, by pointing to the then-recent disclosure in the press of the discovery of rusted areas in the reactor containment building. The three participants in this proceeding—the petitioner Riverkeeper, the licensee Entergy, and the NRC Staff—have each filed several pleadings since that time, and are expected to be filing additional pleadings before the conference.

B. Public Attendance at Prehearing Conference

Members of the public are welcome to attend the conference, but are advised that this adjudicatory proceeding is open for observation only. In other words, oral presentations at the conference will be limited to the three organizations listed above, which have undertaken the task of full participation in the proceeding.

In accordance with the policies that govern NRC adjudicatory proceedings, members of the public who do attend will be subject to security screening, which may involve the use of metal detectors and the inspection of briefcases and handbags. Signs, banners, posters, and the like are not allowed because they are disruptive to the active participants in the proceeding and to other members of the audience.

C. Availability of Documents

Documents relating to the Entergy Indian Point Nuclear Generating Unit No. 2 license amendment application and the Riverkeeper petition for intervention at issue in this pretrial conference are now on file at the Commission's Public Document Room, 11545 Rockville Pike, Rockville, Maryland, 20850, and may also be obtained through ADAMS, the electronic Agencywide Documents Access and Management System, accessible through the NRC Web site, using the link *http://www.nrc.gov/reading-rm/adams.html*. Follow the instructions on the Web site to download and install the appropriate ADAMS software onto your computer. After the installation is complete, read the available online instructions on how to search for documents on ADAMS. Documents are commonly accessed by using docket numbers. All publicly available documents relating to the Indian Point proceeding can be accessed by entering 05000247 in the docket field line in the "ADAMS Find" menu.

Dated at Rockville, Maryland, on August 2, 2002.

For the Atomic Safety and Licensing Board.

Michael C. Farrar,

Chairman, Administrative Judge.

[FR Doc. 02–20083 Filed 8–7–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

In the Matter of Indiana Michigan Power Company, (Donald C. Cook Nuclear Plant, Units 1 and 2); Order Approving Application Regarding Proposed Corporate Restructuring

I

Indiana Michigan Power Company (I&M or the licensee) owns 100 percent of the Donald C. Cook Nuclear Plant (D.C. Cook), Units 1 and 2, located in Berrien County, Michigan. I&M exclusively operates the facility.

I&M is a wholly owned, direct subsidiary of American Electric Power Corporation (AEP). I&M is the sole holder of Facility Operating Licenses Nos. DPR–58 for D.C. Cook Unit 1, and DPR–71 for D.C. Cook Unit 2, issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR Part 50) on October 25, 1974, and December 23, 1977, respectively.

II

Pursuant to section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.80, I&M filed an application dated March 28, 2002, requesting the Commission's consent to the indirect transfer of the D.C. Cook Units 1 and 2 licenses. The indirect transfer would occur as a result of a proposed corporate restructuring, under which an affiliate company, Central and South West Corporation (CSW), would become the direct parent company of I&M. I&M and CSW are currently wholly owned, direct subsidiaries of AEP. AEP is a registered holding company under the Public Utility Holding Company Act of 1935, as amended. Upon the completion of the restructuring, CSW will remain a wholly owned, direct subsidiary of AEP, while I&M will be a wholly owned, direct subsidiary of CSW. Thus, I&M will become an indirect subsidiary of AEP.

No physical changes to the D.C. Cook facility or operational changes are proposed in the application. I&M, which is authorized under the licenses to operate and maintain the facility, will continue to do so following the restructuring. No direct transfer of the licenses will result from the planned restructuring. Notice of this request for approval was published in the **Federal Register** on May 8, 2002 (67 FR 30980). No hearing requests or written comments were received.

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information submitted in the application and other information before the Commission, the NRC staff has determined that the proposed restructuring of I&M's parent organization described above will not affect the qualifications of I&M as the holder of the D.C. Cook Units 1 and 2 licenses, and that the indirect transfer of the licenses, to the extent effected by the restructuring, is otherwise consistent with applicable provisions of laws, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a safety evaluation dated August 2, 2002.

III

Accordingly, pursuant to sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the application regarding the indirect license transfers referenced above is approved, subject to the following conditions:

(1) Following the completion of the subject indirect license transfers, I&M shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from I&M to its parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of I&M's consolidated net utility plant, as recorded on its book of account.

(2) Should the corporate restructuring described above not be completed by July 31, 2003, this Order shall become null and void, provided, however, upon application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

IV

For further details with respect to this Order, see the application dated March 28, 2002, and the safety evaluation dated August 2, 2002, which are available for inspection at the Commission's Public Document Room, U.S. Nuclear Regulatory Commission, One White Flint North, Room O–1 F21, 11555 Rockville Pike, Rockville, MD 20852–2738, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.NRC.gov*).

Dated at Rockville, Maryland, this 2nd day of August, 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–20085 Filed 8–7–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 AND 50–316]

Indiana Michigan Power Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Signigicant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–58 and DPR–74 issued to Indiana Michigan Power Company (the licensee) for operation of the Donald C. Cook Nuclear Power Plant, Units 1 and 2, located in Berrien County, Michigan.

The proposed amendments would amend Operating Licenses Nos. DPR–58 and DPR–74 to add a license condition allowing a one-time 140-hour allowed outage time for the essential service water (ESW) system, to allow ESW pump replacement during plant operation.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

Probability of Occurrence of an Accident Previously Evaluated

The ESW system provides cooling water to safety-related components. This is a support function, and malfunctions of the ESW system are not initiators of accidents that have been previously analyzed. The one-time extension of the allowed outage time for an ESW pump does not introduce any failure mechanisms that would initiate a previously analyzed accident.

Consequences of an Accident Previously Evaluated

The ESW pump provides cooling water to safety-related components, a support function. There are two ESW pumps per unit, and only one ESW pump per unit is required to meet the accident analysis. During the ESW pump replacement, the redundant ESW pump will be available to provide cooling water to the safety-related components. Thus, there is no increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The ESW system provides cooling water to safety-related components, a support function. The one-time extension of the allowed outage time facilitates the installation of an ESW pump, and of itself does not introduce any mechanisms that would initiate an accident not previously analyzed.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The one-time allowed outage time extension does not alter the function of the ESW pump, nor does it change the mode of plant operation. Only one ESW pump per unit is required to mitigate the consequences of an accident. The redundant ESW pump will be operable during the time that the ESW pump is being replaced. A risk assessment has been performed for an allowed outage time of 140 hours. The results of that evaluation demonstrate that the [incremental core damage probability] ICDP

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and [incremental large early release probability] ILERP associated with the increase in allowed outage time is within the NUMARC 93–01 guidelines. Therefore, the margin of safety is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 9, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief."

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to David W. Jenkins, Esquire, Indiana Michigan Power Company, Nuclear Generation Group, One Cook Place, Bridgman, Michigan 49106, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated July 26, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 2nd day of August, 2002.

For the Nuclear Regulatory Commission.

Mohammed Shuaibi,

Acting Section Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–20086 Filed 8–7–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Medical Use of Byproduct Material; Announcement of Public Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Announcement of public workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) will be conducting several workshops to inform external stakeholders of the changes made to 10 CFR part 35, Medical Use of Byproduct Material. The purpose of these workshops is to provide stakeholders with the necessary information to promote a successful transition into the revised rule. The revised Part 35 is a risk-informed, and performance-based regulation that focuses on those medical procedures that pose the highest radiological risk to workers, patients, and the public. The revised Part 35 was published in the **Federal Register** on April 24, 2002 (67 FR 20249), and will become effective on October 24, 2002.

DATES: The workshops will be held on September 10, 2002, September 24, 2002, September 28, 2002, October 9, 2002, and October 16, 2002. All workshops will be conducted between 8 a.m. and 4:30 p.m., eastern standard time.

ADDRESSES: *September 10, 2002:* Nuclear Regulatory Commission, Two White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852. Room: Auditorium. Meeting information: Linda Psyk, (301) 415–0215.

September 24, 2002: Radisson Hotel Valley Forge, 1160 First Avenue, King of Prussia, Pennsylvania, 19406. Hotel information: (610) 337–2000. Meeting information: Christine O'Rourke, (610) 337–5386.

September 28, 2002: The Embassy Suites Hotel and Casino—San Juan, 8000 Tartak Street, Carolina, PR 00979. Hotel information: (787) 791–0505. Meeting information: Hector Bermudez, (404) 562–4734.

Note: This workshop will be held mostly in Spanish.

October 9, 2002: Wyndham Lisle, 3000 Warrenville Road, Lisle, IL 60532. Hotel information: (630) 505–1000. Meeting information: Patricia Pelke, (630) 829–9868.

October 16, 2002: Holiday Inn—Arlington, 1507 N. Watson Road, Hwy 360 at Brown Blvd., Arlington, Texas 76006. Hotel information: (817) 640–7712. Meeting information: Jack Whitten, (817) 860–8197.

FOR FURTHER INFORMATION CONTACT: Linda M. Psyk, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 205555–0001, Telephone (301) 415–0215, or e-mail *lmp1@nrc.gov*.

For those attending the September 10, 2002, workshop, please contact Lucia Lopez in advance at 301–415–7852 to provide information that will facilitate entrance into the building on the day of the meeting. Individuals calling from outside of the Washington, DC metropolitan area may call 1–800–368–5642 and ask for extension 7852.

SUPPLEMENTARY INFORMATION: The workshops will be conducted by means of presentations made by the NRC staff to the attendees. NRC staff will allow time for question and answer sessions.

The workshops are open to the public but the target audience will be members of the regulated medical community who possess a license or permit issued by the NRC, Agreement State or Master Material Licensee, authorizing the use of byproduct material for medical purposes.

Those needing accommodations under the American with Disabilities Act or having special concerns should contact the person listed as point of contact for each meeting.

Dated at Rockville, Maryland, this 1st day of August, 2002.

For the Nuclear Regulatory Commission.

Thomas H. Essig,

Chief, Materials Safety and Inspection Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. 02–20084 Filed 8–7–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27558]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 2, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 26, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 26, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Insurance Corporation, Ltd. (70–9371)

Columbia Insurance Corporation, Ltd. ("CICL"), a wholly owned captive insurance subsidiary of Columbia Energy Group ("Columbia"), a registered holding company and a wholly owned subsidiary of NiSource Inc. ("NiSource"), also a registered holding company, and Columbia, all located at 801 East 86th Avenue, Merrillville, Indiana 46410–6272, have filed a post-effective amendment to their application-declaration filed previously with the Commission under sections 9(a), 10, and 12(b) of the Act and rules 45 and 54 under the Act.

By order dated October 25, 1996 (HCAR No. 26596) ("1996 Order"), the Commission authorized Columbia to form and capitalize CICL to engage in the reinsurance of predictable losses under automobile and general liability and "all-risk" coverage of Columbia. By order dated July 23, 1999 (HCAR No. 27051) ("1999 Order") the Commission authorized Columbia to expand the reinsurance activities of CICL to include all predictable risks related to the business of Columbia and to establish one or more direct subsidiaries to engage in the proposed reinsurance activities.

CICL and Columbia now propose: (1) In instances where NiSource direct or indirect subsidiaries ("NiSource companies") do not require evidence of coverage [1] from rated or admitted insurers, that CICL have the ability to underwrite risks of all NiSource companies directly; [2] (2) that CICL underwrite directly corporate deductible or self-insured reimbursement risk, such as workers' compensation coverage of NiSource companies; and (3) that CICL provide controlled unrelated third-party business risk coverage in situations where providing this coverage would directly or indirectly benefit NiSource companies.[3]

CICL and Columbia state that no additional staff would be required to operate CICL in the proposed matter and that the current managers will be retained to provide administrative services. CICL and Columbia further state that, except for the modifications proposed, all other terms, conditions and limitations under the 1996 Order and 1999 Order will continue to apply.

Xcel Energy, Inc. (70–9635)

Xcel Energy, Inc. ("Xcel"), a registered holding company, located at 800 Nicollet Mall, Minneapolis, Minnesota 55402, and its subsidiaries [4] (collectively, "Applicants") have filed a post-effective amendment to an application-declaration previously filed with the Commission under sections 6(a), 7, 32 and 33 of the Act and rules 53 and 54 under the Act.

By order dated August 16, 2000 (HCAR No. 27212), the Commission authorized the merger of New Century Energies, Inc. and Northern States Power Company ("NSP").[5] By order dated August 22, 2000 (HCAR No. 27218) ("Financing Order"), the Commission authorized, through September 30, 2003 ("Authorization Period"), the following: (1) Xcel, Cheyenne, and Black Mountain to engage in external financing; (2) Xcel and certain of its subsidiaries to engage in intrasystem financings, including guarantees; (3) Xcel and certain subsidiaries to enter into hedging transactions for existing and anticipated debt; (4) Xcel and certain subsidiaries to establish, guarantee the obligations of, and borrow the proceeds of the debt and preferred securities issued by, one or more special purpose financing entities; (5) Xcel and any subsidiary to acquire and restructure investments in one or more special purpose entities organized for the purpose of acquiring, financing, and holding the securities of one or more nonutility subsidiaries; and (6) Xcel and any Xcel's nonutility subsidiary to pay dividends out of capital and unearned surplus. In the Financing Order, the Commission reserved jurisdiction over Xcel's request to use the proceeds of the financings to invest in exempt wholesale generators ("EWGs"), as defined in section 32 of the Act, and foreign utility companies ("FUCOs"), as defined in section 33 of the Act, so long as Xcel's "aggregate investment" [6] in these entities did not exceed 100 percent of its "consolidated retained earnings." [7]

By supplemental order dated March 7, 2002 (HCAR No. 27494) ("Supplemental Financing Order," and together with Financing Order, the "Financing Orders"), the Commission released jurisdiction over the use of proceeds of certain financing transactions for

[1] CICL and Columbia state that this practice of providing evidence of coverage is known as "fronting" and is an accepted practice for underwriting risks where the insured requires evidence of coverage from rated or admitted insurers for business or statutory reasons. They further state that the practice of "fronting" creates additional cost to the insured.

[2] CICL and Columbia represent that by acting as a "front" company, CICL can eliminate as much as 40 percent of the premium charged on primary risk insurance policies and that this savings would benefit NiSource companies.

[3] CICL proposes to provide performance bonds and construction-related insurance for contractors working on projects for NiSource subsidiaries.

[4] Xcel directly owns six utility subsidiaries that serve electric and/or natural gas customers in 12 states. These six utility subsidiaries are Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation, Public Service Company of Colorado, Southwestern Public Service Co., Black Mountain Gas Company ("Black Mountain"), and Cheyenne Light, Fuel and Power Company ("Cheyenne"). Xcel's major nonutility subsidiaries are Viking Gas Transmission Company, NRG Energy, Inc. ("NRG"), Seren Innovations, Inc., e prime, inc., and Eloigne Company.

[5] Following this merger, NSP, as the surviving entity, changed its name to Xcel and registered as a public utility holding company under section 5 of the Act.

[6] "Aggregate investment" is defined in rule 53(a)(1)(i) to mean all amounts invested, or committed to be invested, in EWGs and FUCOs, for which there is recourse, directly or indirectly, to the holding company.

[7] "Consolidated retained earnings" is defined in rule 53(a)(1)(ii) to mean the average of the consolidated retained earnings of the registered holding company system as reported for the most recent quarterly periods on the holding company's Form 10–K or 10–Q filed under the Securities Exchange Act of 1934, as amended.

investments in EWGs and FUCO up to 100 percent of consolidated retained earnings. Both the Financing Order and the Supplemental Financing Order contain certain commitments, including a commitment by Xcel to maintain a level of common equity that will be at least 30 percent of consolidated total capitalization ("30 percent test").

As of March 31, 2002, Xcel's common equity was 30.8% of capitalization. Applicants state that there exist, however, circumstances that could result in the common equity of Xcel falling below 30% of capitalization and thus Xcel failing to satisfy the 30% test for a period of time. Applicants further state that Xcel is evaluating the business of NRG and its other businesses and is considering certain restructuring alternatives. Alternatives under consideration include the possible sale of selected generating assets of NRG and exiting other businesses that do not fit strategically with Xcel. Xcel states that it has announced plans to address credit and liquidity issues at NRG. Xcel states that its management and its board of directors ("Board") have been considering the possible sale of some of the existing generating assets of NRG. Xcel's management has not yet completed its review of bids received to date for many of the NRG assets considered for sale, and the Board has not yet received or committed to management's recommended plan to sell such assets. In addition, Xcel's management and Board have not yet completed their review of other businesses for their strategic fit, and thus has not committed to a plan to sell any such businesses. This commitment is required before NRG's assets or the businesses are classified as "held for sale." [8]

Under generally accepted accounting principles, Xcel evaluates assets classified as "held for use" by comparing the book value to the discounted cash flows expected, and evaluates assets classified as "held for sale" by comparing the carrying value of the asset to its fair value. Thus, if any asset being reclassified as "held for sale" has a fair value which is less than its book value, Xcel will record an impairment charge against income to reduce the carrying value of the asset to its fair value at the time it is classified as "held for sale." Although the actual asset sales may not occur until later periods, this write-down must be made at the time that the asset is determined to be "held for sale," not at the time of the completion of the sale.

Applicants state that, in light of the recent erosion in power pool prices and related asset valuations within the independent power production sector, it is possible that Xcel could recognize an impairment loss as Xcel's Board considers, and later this year potentially approves, a plan to sell certain NRG or other assets. At this time, however, Xcel cannot predict what actions its Board will take regarding any commitment it may make to sell NRG or other assets, or how much, if any, impairment losses Xcel may be required to recognize in future periods as a result of such actions.

Applicants state that there is the possibility that Xcel may be required to record a write-down as a result of future Board actions and the corresponding recognition of an impairment loss under FASB 144 with respect to NRG or other assets being reclassified as "held for sale." As a result of the accounting treatment, Xcel will be required to record an impairment charge at the time that an asset is "held for sale," and in advance of the completion of the sale and application of the net proceeds to the reduction of outstanding indebtedness. Because of the mismatch in timing between the recording of the write-downs and the application of sale proceeds to the reduction of indebtedness, the common equity of Xcel may fall below 30% of its capitalization. In such event, the conditions to the authorization granted in the Financing Orders would not be satisfied.

Applicants expect that any reduction of Xcel's common equity ratio below 30% would be temporary. Applicants state that upon consummation of the sale of generating assets of NRG and other businesses, the outstanding indebtedness of Xcel and its subsidiaries will be reduced—either by the application of net proceeds of such sale to repay outstanding indebtedness at NRG or as a result of the purchaser of a project assuming the project-related indebtedness.

Applicants request authority to engage in the financing transactions authorized in the Financing Orders at a time when the Xcel 30 percent test is not met, provided that the common equity of Xcel, as reflected on its most recent Form 10–K or Form 10–Q and as adjusted to reflect subsequent events that affect capitalization, be at least 24 percent of total capitalization of Xcel and provided that the Applicants shall not engage in any of the financing transactions authorized in the Financing Orders at any time after June 30, 2003 unless at such time the Xcel 30 percent test is met.

Applicants represent that, with the exception of this proposed revision to the Financing Orders, all the terms and conditions of the Financing Orders will remain in effect. Applicants further represent that the net proceeds of the common stock of between $500 million and $800 million during 2002 issued by Xcel pursuant to the authorizations granted in the Financing Orders will be applied to repay debt of Xcel, NRG, and/or one or more of Xcel's subsidiaries.

[8] Applicants represent that the Statement of Financial Accounting Standards No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets ("FASB 144") sets forth the criteria for classification as "held for sale"—including, among others, (a) management, having the authority to approve the action, commits to a plan to sell the asset, (b) the asset is being actively marketed for sale and (c) the sale of the asset is expected to be completed within one year.

The Southern Company, et al. (70–10073)

The Southern Company ("Southern"), 270 Peachtree Street, NW., Atlanta, Georgia 30303, a registered holding company, and Georgia Power Company ("Georgia Power"), 241 Ralph McGill Boulevard, NE., Atlanta, Georgia 30308, a wholly owned public-utility company subsidiary of Southern (collectively, "Applicants"), have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 54 under the Act.

Southern and Georgia Power propose to organize and acquire, indirectly and directly, respectively, all the common stock of one or more special purpose subsidiaries ("Subsidiaries") for the purpose of effecting various financing transactions described below through June 30, 2006. Applicants state that, by using the Subsidiaries in these transactions, they would have greater access to new sources of capital and may reap certain tax benefits.

Applicants request authority to issue and sell, through the Subsidiaries, up to an aggregate amount of $650 million in preferred securities ("Preferred Securities"). Each of the Preferred Securities would have a specified par amount, stated value amount, liquidation amount, or preference.

The Subsidiaries may be organized in the following corporate forms: (1) Limited liability companies in any state jurisdiction considered advantageous by Georgia Power; (2) a limited partnership in any state jurisdiction considered advantageous by Georgia Power; (3) a business trust in any state jurisdiction considered advantageous by Georgia Power; or (4) any other entity or structure, foreign or domestic, that is considered advantageous by Georgia Power. In the event that any Subsidiary is organized as a limited liability company, Applicants may organize a second special purpose wholly-owned

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subsidiary ("Investment Subsidiary") for the purpose of acquiring and holding Subsidiary membership interests to comply with any requirements that a limited liability company have at least two members. In the event that any Subsidiary is organized as a limited partnership, Georgia Power may organize an Investment Subsidiary to act as the general partner of the Subsidiary. Further, Georgia Power may acquire, directly or indirectly through an Investment Subsidiary, a limited partnership interest in a Subsidiary to comply with any requirements that a Subsidiary would have a limited partner.

Georgia Power and/or an Investment Subsidiary would acquire all the common stock or all of the general partnership or other common equity interests of any Subsidiary for an amount not less than the minimum required by law and not exceeding twenty-one percent of the total equity capitalization of any Subsidiary ("Equity Contribution").[9] Georgia Power may issue and sell to any Subsidiary, at any time, or from time to time, in one or more series, subordinated debentures, promissory notes or other debt instruments ("Notes") under an indenture or other document. The Subsidiary would apply both the Equity Contribution and the proceeds from the sale of Preferred Securities to purchase Notes. Alternatively, Georgia Power may enter a loan agreement with any Subsidiary, under which the Subsidiary would loan to Georgia Power ("Loans") both the Equity Contribution and the proceeds from the sale of the Preferred Securities and Georgia Power would issue Notes to the Subsidiary evidencing the borrowings.

Applicants request authority for Georgia Power to guarantee: (1) Payment of dividends or distributions on the Preferred Securities of any Subsidiary if, and to the extent, that the Subsidiary has legally available funds; (2) payments to the Preferred Securities holders of amounts due upon liquidation of a Subsidiary or redemption of the Preferred Securities; and (3) certain additional amounts that may be payable regarding the Preferred Securities (collectively, "Guaranties").

Notes would have terms of up to fifty years. Prior to maturity, Georgia Power would pay interest on the Notes at a rate equal to the dividend or distribution rate on the related series of Preferred Securities. The dividend or distribution rate may be either a fixed rate or an adjustable rate to be determined on a periodic basis by auction or remarketing procedures according to a formula based on certain reference rates, or by other predetermined method. Interest payments would constitute each Subsidiary's only income and would be used to pay dividends or distributions on the Preferred Securities and dividends or distributions on the common stock or the general partnership or other common equity interests of the Subsidiary. Dividend payments or distributions on the Preferred Securities would be made on a monthly or other periodic basis and must be made to the extent that the Subsidiary has legally available funds and cash. However, Georgia Power may have the right to defer payment of interest on Notes for up to five or more years. Each Subsidiary would have the parallel right to defer dividend payments or distributions on the related series of Preferred Securities for up to five or more years, provided that if dividends or distributions on any series of Preferred Securities are not paid for up to 18 or more consecutive months, then the Preferred Securities holders may have the right to appoint a trustee, special general partner or other special representative to enforce the Subsidiary's rights under the Note or Guarantee. The dividend or distribution rates, payment dates, redemption and other similar provisions of each series of Preferred Securities would be substantially identical to the interest rates, payment dates, redemption and other provisions of the related Notes issued by Georgia Power.

The Notes and related Guaranties would be subordinate to all other existing and future unsubordinated indebtedness for borrowed money of Georgia Power and may have no cross-default provisions with respect to other indebtedness of Georgia Power. However, Georgia Power may be prohibited from declaring and paying dividends on its outstanding capital stock and making payments related to *pari passu* debt unless all payments then due under the Notes and Guaranties, without giving effect to the deferral rights, have been made.

It is expected that Georgia Power's interest payments on the Notes would be deductible for federal income tax purposes and that each Subsidiary would be treated as either a partnership or a passive grantor trust for federal income tax purposes. Consequently, holders of the Preferred Securities, Georgia Power and any Investment Subsidiary would be deemed to have received distributions from their ownership interests in any Subsidiary and would not be entitled to any "dividends received deduction" under the Internal Revenue Code.

Any series of Preferred Securities may be redeemable at the option of the issuing Subsidiary, with the consent or at the direction of Georgia Power, at a price equal to the Preferred Securities' par amount, stated value amount, liquidation amount, or preference, plus any accrued and unpaid dividends or distributions. The Preferred Securities may be redeemable at any time after a specified date not later than approximately ten years from their date of issuance or upon the occurrence of certain events. These events may be that: (1) The Subsidiary is required to withhold or deduct certain amounts in connection with dividend, distribution or other payments or is subject to federal income tax on interest received on the Notes issued to the Subsidiary; (2) it is determined that the interest payment by Georgia Power on the related Notes are not deductible for income tax purposes; or (3) the Subsidiary becomes subject to regulation as an "investment company" under the Investment Company Act of 1940, as amended. Any series of Preferred Securities may also be subject to mandatory redemption upon the occurrence of certain events. Georgia Power also may have the right in certain cases or in its discretion to exchange the Preferred Securities of any Subsidiary for the Notes or other junior subordinated debt issued to the Subsidiary.

In the event that any Subsidiary is required to withhold or deduct certain amounts in connection with dividend, distribution or other payments, it may also be obligated to "gross up" such payments so that the Preferred Securities holders would receive the same payment after such withholding or deduction as they would have received if no withholding or deduction were required. In such event, Georgia Power's obligations under its related Note and Guaranty may also extend to the "gross up" obligation. In addition, if any Subsidiary is required to pay taxes on income derived from interest payments on Notes issued to it, Georgia Power may be required to pay additional interest on the related Notes in an amount equal to the tax obligation.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of any Subsidiary, the holders of the Preferred Securities would be entitled to receive, out of the assets of the Subsidiary available for distribution to its shareholders, partners or other owners, an amount equal to the par, stated value or liquidation amount or preference of the Preferred Securities, plus any accrued and unpaid dividends or distributions.

[9] The remaining equity would be obtained through the purchase of the Preferred Securities.

Applicants state that each Subsidiary's activities would be limited to issuing and selling Preferred Securities and lending to Georgia Power or an Investment Subsidiary the proceeds from those sales and the Equity Contributions and any related activities. Applicants further state that a Subsidiary's common stock, general partnership or other common equity interests are not transferable, except to certain permitted successors, that its business and affairs would be managed and controlled by Georgia Power and/or its Investment Subsidiary or successor, and that Georgia Power or its successor would pay all expenses of the Subsidiary.

The distribution rate to be borne by the Preferred Securities and the interest rate on the Notes would not exceed the greater of 300 basis points over U.S. Treasury securities having comparable maturities or a gross spread over U.S. Treasury securities that is consistent with similar securities having comparable maturities and credit quality issued by other companies.

Georgia Power would use the proceeds from the sale of the proposed securities to fund its ongoing construction program, pay scheduled maturities and/or refundings of its securities, repay short-term indebtedness to the extent outstanding, and for other general corporate purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46305; File No. SR–AMEX–2001–106]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 Thereto Relating to Unlisted Trading Privileges in Nasdaq National Market Securities

August 2, 2002.

I. Introduction and Description of the Proposal

On December 17, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Amex Rule 118 and to amend Amex Rules 1, 3, 7, 24, 115, 170, 175, 190, 205 and Section 950 of the Amex Company Guide to provide for the trading of Nasdaq Stock Market, Inc. ("Nasdaq") National Market ("NNM") securities pursuant to unlisted trading privileges ("UTP"). On January 14, 2002, the Amex filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended by Amendment No. 1, was published in the **Federal Register** on February 6, 2002.[4] The Commission received two comment letters and a response. On April 19, 2002, the Amex filed Amendment No. 2 to the proposed rule change[5] and on July 26, 2002 filed Amendment No. 3 to the proposed rule change.[6] This order approves the proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comment on and is simultaneously approving, on an accelerated basis, Amendment Nos. 2 and 3 to the proposal.

The Exchange is proposing rules to accommodate trading of NNM securities on the Exchange pursuant to UTP, in accordance with provisions of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Plan"). The Exchange is a participant in the Plan. Exchange trading in NNM securities will be governed primarily by Amex Rule 118, Trading in Nasdaq National Market Securities. The Exchange intends to limit Nasdaq UTP trading to NNM issues and not to include Nasdaq SmallCap issues at this time.

Proposed Rule 118:

(a) Defines NNM security and Nasdaq System.

(b) States that the Exchange Constitution and rules apply to trading NNM securities, except to the extent that Rule 118 governs or unless the context otherwise requires.

(c) Requires Amex specialists to permit Nasdaq market makers direct telephone access to the specialist post and allows Nasdaq market makers to use telephone access to transmit orders for execution on the Amex.

(d) Provides that quotations distributed by Nasdaq market makers will be displayed on the Floor, that Amex specialists may send orders from the Floor for execution via telephone to Nasdaq market makers, and that quotations in Nasdaq securities from other market centers have no standing on the Floor.

(e) Provides that the Exchange will report intermarket transactions in which the Exchange member is the seller to the Nasdaq UTP Securities Information Processor ("SIP").

(f) Provides that intermarket transactions in NNM securities must be compared and cleared through an Exchange member or member organization or the clearing firm of a member or member organization.

(g) Provides that specialists in Nasdaq securities must be registered and qualified, and includes specified testing and training requirements.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission (January 11, 2002) ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 45365 (January 30, 2002), 67 FR 5626.

[5] *See* letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Katherine England, Assistant Director, Division, Commission (April 18, 2002) ("Amendment No. 2"). In Amendment No. 2, the Exchange amended the proposed Amex Rule 118, Trading in Nasdaq National Market Securities, to provide that orders sent via telephone from other market centers to the Floor and executed by the Amex specialist must be compared and cleared through an Exchange member or member organization or the clearing firm of a member or member organization.

[6] *See* letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission (July 25, 2002) ("Amendment No. 3"). In Amendment No. 3, the Exchange deleted formerly proposed Commentary .01 to Rule 175, Specialist Prohibitions. *See* Securities Exchange Act Release No. 46213 (July 16, 2002), 67 FR 48232 (July 23, 2002). In addition, in Commentary .01 to Rule 118, Trading in Nasdaq National Market Securities, the Exchange deleted a formerly proposed reference to Commentary .01 to Rule 175 due to deletion of the referenced Commentary by Amendment No. 3. Finally, the Exchange deleted formerly proposed Commentary .05 to Rule 205, Manner of Executing Odd-Lot Orders, because of a related Exchange rule filing addressing odd-lot executions in NNM securities. *See* Securities Exchange Act Release No. 46148 (June 28, 2002), 67 FR 45773 (July 10, 2002) (File No. SR–Amex–2002–56). SR–Amex–2002–56 proposes to add a new subsection (j) to Rule 118 that deals specifically with executions of odd-lot orders in Nasdaq securities.

[7] The Commission notes that under Amex Rule 175, specialists registered as such in securities admitted to dealings pursuant to UTP may be affiliated with specialists, registered options traders, and other market makers in options on the specialty UTP securities provided that information barriers are established, approved, and maintained pursuant to Amex Rule 193 between the stock and options specialist units. However, side-by-side trading of stocks and related options is not permitted. *See* Securities Exchange Act Release No. 46213 (July 16, 2002).

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(h) Provides for a disclaimer of Exchange liability with respect to transactions on the Exchange in NNM securities, in accordance with Article IV, Section 1 (e) of the Exchange Constitution.

(i) Provides that the specialist financial requirements of Rule 171, Commentary .04 apply to specialists in Nasdaq securities. Rule 171, Commentary .04 currently provides that a specialist in a security principally traded or priced in another U.S. market must maintain a cash or net liquid asset position sufficient to assume a position of 20 trading units. For Amex-listed securities, the requirement is 60 trading units.

The following existing Amex rules also would be amended to accommodate Nasdaq UTP trading: [8]

Rule 1, Comm. .05

Provides that the hours of business for securities traded on the Exchange pursuant to UTP are the same as the hours of trading in the primary market for such securities.[9]

Rule 3

Exempts trading with non-member Nasdaq market makers from the prohibition on trading with non-members.

Rule 7

States that Rule 7, which includes the short selling "tick-test" restriction of Rule 10a–1 under the Act, does not apply to transactions in NNM securities effected under Rule 118.[10]

Rule 24

Exempts NNM securities from the rule's block transactions restrictions. Rule 24 states that, after learning about a trade executed or about to be executed on the Floor involving 10,000 shares or more, a member or employee of a member or member organization cannot initiate or transmit to the Floor an order for the account of a member or member organization for two minutes following the print of the trade on the tape. The Exchange does not believe it is appropriate to apply the restrictions in Rule 24 to NNM securities, for which Amex would not be the primary market.[11]

Rule 115

Amends Commentary .01(3) to provide for notification to the SIP for NNM securities in the event unusual market activity or an unusual condition exists that prevents the specialist from updating quotations on a timely basis.

Rule 170, Comm. .11

Exempts specialists from Rule 170, paragraph (e) and specified Commentary to the rule. Rule 170(e) restricts members or persons affiliated with a specialist or the specialist's member organization from purchasing or selling a specialty security for an account in which such person or party has an interest, except when the specialist is acting pursuant to Rule 170(c) or (d) (*e.g.*, is engaged in dealings reasonably necessary to maintain a fair and orderly market, and to maintain price continuity and reasonable depth). Amex as a primary market for listed securities imposes the requirements of Amex Rule 170. However, the proposed exemption provides regulatory parity with other markets trading Nasdaq securities.[12] The Exchange notes that the requirements of Rules 150 and 155 will apply to orders entered with a specialist in NNM securities from affiliates of the specialist.

Rule 190

Provides that paragraph (b) shall not apply to NNM securities. Paragraph (b) prohibits specialists from accepting an order to buy or sell the specialist's specialty securities directly from specified entities, including the issuer; an officer, director or 10% shareholder in the issuer; a pension fund; or a bank, insurance company or investment company. The Exchange does not view the potential abuses addressed by paragraph (b) as raised by trading in NNM securities insofar as the Exchange would not be the primary market for these securities, and restrictions such as those in Rule 190(b) are not imposed by regional exchanges or Nasdaq.

Company Guide

Section 950

Adds Commentary .01 to state that the Exchange may trade NNM securities pursuant to UTP. This provision would distinguish Nasdaq UTP trading from Amex securities that were admitted to UTP and that, for the most part, were traded on the Amex before 1934.

II. Summary of Comments and Response to Comments

The Commission received a comment letter on the proposed rule change from Knight Trading Group, Inc. ("Knight") on February 28, 2002,[13] which expressed concern that the proposal will disrupt the national market system and undermine the Firm Quote Rule.[14] Specifically, Knight argued in its comment letter that the proposal will disrupt the national market system by permitting Amex members to trade NNM securities without providing automatic execution and thereby delay executions. Knight asserts that all Nasdaq market participants currently provide automatic execution through either SuperSOES or Select Net.[15] Knight also contended that the proposal will permit Amex members to obtain an unfair informational advantage by monitoring the trading and quoting activity of NNM securities without accepting automatic executions. Knight also asserted that the proposal will unfairly require market participants to provide Amex specialists telephonic access to their quotes, while orders sent to the Amex by Nasdaq market makers will not be afforded any standing on the Amex floor. Further, Knight argued that the proposal will undermine the Firm Quote Rule [16] because UTP exchange members are not required to provide automatic execution against their quotes and can enter orders that lock and cross markets. Knight states "the Commission should not permit AMEX members to trade Nasdaq issues without being subject to automatic executions." Knight further argues that the proposal "enables AMEX members to adhere to auction market principles even though this behavior will disrupt the fair and orderly trading of Nasdaq issues within the national market system."

The Commission received a response to Knight's comment letter from the Amex on May 21, 2002,[17] which addressed various points raised in Knight's comment letter. First, Amex argued that trading by telephone will not delay executions because the Amex does not anticipate a significant proportion of orders being telephoned to or from Amex specialists. Instead, the Amex anticipates that most orders for Nasdaq securities will be sent through the Common Message Switch for routing to specialists' posts. Moreover, Amex believes that trading by telephone is permissible since it is explicitly contemplated under the Plan. Amex also noted that Knight's argument is unfounded because of the Nasdaq rule that automatically permits SuperSOES to trade through the quotes of Plan participants. Second, the Amex argued that UTP specialists will have no informational advantage by slowing the execution process, viewing quotation messages, and adjusting their quotes and positions accordingly. Amex asserted that Amex UTP specialists will not have any additional information that is not also available to other Plan participants and Nasdaq market makers. Finally, Amex averred that UTP trading will not have a detrimental impact on the Firm Quote Rule [18] and that Knight's assertion otherwise is unsupported. Amex stated that any increase in the number of inter-market locked and crossed markets subsequent to the Commission approving the Amex's UTP trading rules would likely be caused by Nasdaq's trading rules. Specifically, Amex referenced the Nasdaq trading rule that permits trading through of quotes of UTP participants that do not use Nasdaq automatic execution systems.

The Commission also received a comment letter from a Congressional panel ("Panel") on May 30, 2002.[19] In its comment letter, the Panel expressed its concern that the proposal would not be "consistent with the maintenance of fair and orderly markets and the protection of investors" as is required by section 12(f)(2) of the Act.[20] Specifically, the Panel argued that the lack of an automatic execution requirement could increase the incidence of "locked" and "crossed" markets. Moreover, the Panel stated that without automatic executions the result would be an unequal playing field favoring those market participants with the least sophisticated technology. Such unsophisticated market participants could gain an advantage by monitoring market activity without being subject to automatic executions. As discussed above, the Amex substantially addressed the Panel's comments in the Amex response to Knight's comment letter.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) [21] of the Act. Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 6(b)(5) [22] of the Act because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.[23]

Moreover, the Commission, pursuant to section 19(b)(2) [24] of the Act, finds good cause for approving Amendment Nos. 2 and 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that granting accelerated approval to Amendment No. 2 will allow the Amex to implement its intermarket trade comparison and clearing procedures and commence trading of NNM securities on a UTP basis in a timely fashion. In addition, Amex discussed the substance of Amendment No. 2 with the Plan Participants at meetings of the Operating Committee. The Commission notes that granting accelerated approval to Amendment No. 3 will harmonize the instant proposal with other Amex proposals that have been approved or will be contemporaneously approved.

The Commission has carefully considered all the issues raised by the commenters and is not persuaded by their arguments. Knight and the Panel essentially argued that accepting automatic execution is a pre-condition to trading Nasdaq securities pursuant to UTP and the only way to comply with the Firm Quote Rule.[25] In addition, the commenters argued that telephone access provides Amex specialists an advantage over other Plan participants who are required to accept automatic execution. According to Knight, an Amex specialist could "obtain an unfair informational advantage by monitoring the trading and quoting activity of Nasdaq issues in the national market system without accepting automatic executions like all other market participants trading Nasdaq issues." [26]

First, participating in Nasdaq's automatic execution facility is not a requirement for exchanges to trade Nasdaq issues. The Commission has not required competitors to participate in a Nasdaq trading facility or required Nasdaq to provide access to its trading facilities to its competitors. Each of the UTP participants has independently decided whether to participate in Nasdaq's automatic execution facility.

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[8] The Commission has separately approved allocation procedures applicable to NNM securities. *See* Securities Exchange Act Release No. 45698 (April 5, 2002), 67 FR 16051 (April 12, 2002).

[9] The Commission notes that the Plan defines Primary Market. However, in Plan Amendment No. 13, the Plan participants propose to delete the Primary Market definition and add a Listing Market definition. If the Primary Market definition is ultimately deleted and the Listing Market definition is added to the Plan, the Exchange should reflect this change in its rules where applicable. *See* Securities Exchange Act Release No. 46139 (June 28, 2002), 67 FR 44888 (July 5, 2002) (Notice of Filing and Partial Summary Effectiveness of Amendment No. 13 of the Plan).

[10] The Commission notes that the proposed amendment to Amex Rule 7, Short Sales, does not require an exemption from the Commission's short sale rule, Rule 10a–1, since Nasdaq securities currently are excluded from the Rule. *See* 17 CFR 240.10a–1(a)(1)(ii). However, Nasdaq has applied to become a national securities exchange. *See* Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001). If Nasdaq becomes a registered national securities exchange, Nasdaq securities will be exchange listed and subparagraph (ii) of Rule 10a–1 will no longer be available. Accordingly, the Exchange specialists trading Nasdaq securities would be subject to Rule 10a–1 unless the Exchange obtains an exemption from the Rule. Nasdaq has requested an exemption from Rule 10a–1.

[11] While Nasdaq UTP trading on the Amex will be exempt from Amex Rule 24, the Commission notes that, with respect to trading in all securities on the Exchange, including Nasdaq securities traded pursuant to UTP, it is a violation of just and equitable principles of trade, *see* Amex Constitution Article V, Section 4(h), for a person with material non-public information of an imminent transaction in a security to take advantage of that information by effecting trades in that security or related securities. The Exchange's frontrunning prohibition currently applies not only to trading options ahead of a block of stock, but also to trading activity in the same stock ("stock to stock frontrunning"). The Exchange has procedures in place to examine for stock to stock frontrunning activity, and these procedures will be applied to Amex trading in Nasdaq securities traded pursuant to UTP. *See* letter from Richard T. Chase, Executive Vice President, Member Firm Regulation, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated July 31, 2002.

[12] The Commission notes that Amex members remain subject to Section 11(a) under the Act, 15 U.S.C. 78k, and the rules thereunder.

[13] *See* Letter from Michael T. Dorsey, Senior Vice President, General Counsel, and Secretary, Knight, to Commission (February 28, 2002). In its comment letter, Knight incorporated by reference its comment letters previously filed with the Commission with regard to the expansion of the issues trading by means of the Plan as well as its comments regarding the admission of new entrants to the Plan. *See* Letter from Michael T. Dorsey ("Dorsey"), Senior Vice President and General Counsel ("SVP/GC"), Knight, to Jonathan Katz ("Katz"), Secretary, Commission (December 19, 2000); Letter from Dorsey, SVP/GC, Knight, to Katz, Secretary, Commission (December 13, 2000); Letter from Dorsey, SVP/GC, Knight, to Katz, Secretary, Commission (November 1, 2000); *see also* Letter from Richard B. Levin, Assistant General Counsel and Regulatory Affairs Officer, Knight, to Katz, Secretary, Commission (April 17, 2001).

[14] 17 CFR 240.11Ac1–1.

[15] The Commission notes that SelectNet is not, in fact, an automatic execution system.

[16] 17 CFR 240.11Ac1–1.

[17] *See* letter from Michael J. Ryan, Jr., Executive Vice President & General Counsel, Amex, to Katz, Secretary, Commission (May 21, 2002).

[18] 17 CFR 240.11Ac1–1.

[19] *See* letter from Congresswoman Judy Biggert, Congressmen Mike Ferguson, Walter B. Jones, Mike Rogers, Ed Royce, and Patrick Tiberi to The Honorable Harvey Pitt, Chairman, Commission (May 29, 2002).

[20] 15 U.S.C. 78l(f)(2).

[21] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78f(b)(5).

[23] The Amex has informed the Commission that its systems are not capable of reporting or clearing transactions in sub pennies. If an Amex specialist were to effect a trade in sub pennies, the Amex has represented that it will advise specialists to effect the trade with the customer at a rounded price. *See* Information Circular (7/02). The Commission expects the Amex to address this system limitation in the near future.

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 240.11Ac1–1.

[26] *See* Knight letter page 2.

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Two of the participants, in addition to the Amex, have chosen not to participate—the Philadelphia Stock Exchange, Inc. and the Cincinnati Stock Exchange, Inc. Second, providing automatic executions—rather than operating an auction market—is not a precondition to competing in Nasdaq securities. The very essence of UTP is to permit competition among markets and market structures. Requiring one market structure for trading Nasdaq securities would defeat this purpose. Third, while compliance with the Firm Quote Rule [27] is easier to monitor in an automatic execution environment, the Firm Quote Rule does not require market participants to be subject to automatic execution. Indeed, the Firm Quote Rule has always applied to exchange trading as well as over-the-counter trading.

The Commission is unconvinced by the assertion of Knight and the Panel that Amex specialists will have an informational advantage because they will be able to monitor trading and quoting activity of Nasdaq securities while not being subject to automatic execution. Amex specialists, as well as the specialists of all other Plan participants, will be able to see the market for Nasdaq securities. They will have no special advantage. As noted above, two other participants have chosen not to participate in Nasdaq's automatic execution system. Furthermore, Amex specialists must comply with the Firm Quote Rule. If an Amex specialist quotes the best bid or offer for a security and receives an order, it must fill the order in compliance with the Firm Quote Rule. To be sure, it will generally take longer to receive a fill from an Amex specialist than it will to receive a fill from a Nasdaq member that is subject to automatic execution. This does not, however, make trading pursuant to UTP under the Plan impermissible under the Act and the rules and regulations thereunder.

In November of 2001, the Commission approved the most recent amendment to the Plan.[28] Among other things, the 12th Amendment extended UTP to all Nasdaq securities, SmallCap as well as NNM. The 12th Amendment also admitted the Amex as a participant. As has been the case since the inception of the Plan, exchange participants are required to provide telephone access to Nasdaq market makers. This proposed rule change, SR–Amex–2001–106, spells out the rules that an Amex specialist must follow if it trades Nasdaq securities on the Exchange. The commenters' concerns appear to be with the extension of UTP to the regional exchanges and the choice of some of the regional exchanges not to participate in Nasdaq's automated execution system. The Commission believes that the commenters' concerns are more appropriately raised in the context of the approval and amendment process of the Plan, rather than in the context of a single Plan participant's rules related to trading under the Plan and that are consistent with the Plan.

[27] 17 CFR 240.11Ac1–1.

[28] *See* Securities Exchange Act Release No. 45081 (November 19, 2001), 66 FR 59273 (November 27, 2001).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 2 and 3, including whether the amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2001–106 and should be submitted by August 29, 2002.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–Amex–2001–106), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20068 Filed 8–7–02; 8:45 am]

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[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–2(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46297; File No. SR–CHX–2002–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

August 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b4 thereunder,[2] notice hereby is given that on July 30, 2002, the Chicago Stock Exchange, Inc. ("CHX") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which the CHX has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its membership dues and fees schedule effective through December 31, 2002, to provide for continued assessment of a marketing fee in instances where transactions in a subject issue meet certain criteria, described below. The text of the proposed rule change is available at the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed change to the CHX fee schedule would provide for continued assessment of a marketing fee, in an amount equal to $.01 per share,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

applicable to transactions occurring on or before December 31, 2002. The marketing fee would apply only to "Subject Transactions" [3] in "Subject Issues" [4] and would not be assessed if the specialist trading the Subject Issue elected to forego collection of the marketing fee.

The CHX currently assesses a marketing fee under a provision of the CHX fee schedule that, by its terms, expires on July 31, 2002.[5] Under the system currently in place, the CHX calculates, bills, and collects the marketing fee and remits the proceeds to the specialist firm trading the Subject Issue. The specialist firm then distributes the funds to order-sending firms in accordance with its payment-for-order flow arrangements relating to the Subject Issue (and possibly also to market makers who contribute to market share growth in certain instances).[6] The remaining undistributed funds in excess of $1000 are refunded, on a quarterly basis, to the paying parties pro rata, in proportion to the fees they have paid.

The CHX notes that the proposed marketing fee provision does not differ from the previous versions, except that it would extend application of the marketing fee through December 31, 2002. The CHX intends that the continued imposition of the marketing fee will allocate equitably the financial burden of seeking order flow for Subject Issues. According to the CHX, in the absence of the marketing fee the CHX specialist trading a Subject Issue is the sole bearer of the often substantial costs associated with attracting order flow to the CHX, as well as the licensing fees that the licensor of the product imposes.[7] CHX market makers participating in transactions in Subject Issues, conversely, do not currently share any of these costs. The proposed rule change would allow a specialist trading a Subject Issue to elect or decline imposition of the marketing fee depending on whether the specialist believes it is appropriate for a part of the financial burden of trading the Subject Issue to be allocated among those trading the Subject Issue. The CHX anticipates that the proposed rule change will continue to provide specialists trading Subject Issues with sufficient incentive to continue their efforts to attract additional order flow and increase market share.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with section 6(b)(4) of the Act [8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement of Burden on Competition

The CHX believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

The CHX received one written comment from a member in advance of the CHX Finance Committee meeting on July 23, 2002. This letter from John P. Finnegan of Susquehanna Investment Group, a CHX market maker in the Nasdaq 100 Index (or QQQ), noted that since imposition of the Marketing Fee the number of CHX market makers trading in exchange-traded funds ("ETFs") has dropped from fifteen market makers to three market makers. Mr. Finnegan requested that the CHX reduce the amount of the marketing fee significantly, to enable the CHX to "be competitive with other marketplaces."

The CHX believes that this analysis mistakenly attributes the decline in CHX market maker activity to the imposition of the marketing fee. The CHX believes that the decline is attributable to other factors, including significant competition for ETF order flow from other national market participants and alternative trading systems. According to the CHX, one alternative trading system has recently captured nearly a one-third market share in the QQQ product, a market share higher than that sustained by the QQQ listing market. Moreover, although the CHX acknowledges that imposition of the marketing fee does increase a market maker's cost of trading Subject Issues on the CHX, the CHX believes that the often significant costs associated with the Subject Issues, including increasingly hefty license fees, amply justify asking the CHX members who trade the Subject Issues to share the costs of attracting the order flow and trading these popular products on the CHX.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other CHX charge and therefore has become effective pursuant to section 19(B)(3)(A) of the Act [9] and Rule 19b–4(f)(2) thereunder.[10] At any time within 60 days of the filing of the rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[3] "Subject Transaction" means: (a) Any trade with a customer, whether the contra party is a specialist or a market maker, where the order is delivered to the CHX via the MAX system or where compensation is paid to induce the routing of the order to the CHX; or (b) any trade between a specialist and a market maker in which the market maker is exercising rights under the market maker entitlement rules.

[4] "Subject Issue" means any issue which constitutes an exchange-traded fund and meets the following two criteria: (a) Average daily share volume in the issue exceeds 150,000 shares each month during a consecutive two month period; and (b) market maker share participation in the same issue exceeds 5% for each month during the same two-month period.

[5] *See* Securities Exchange Act Release Nos. 44646 (August 2, 2001), 66 FR 41641 (August 8, 2001) (announcing immediate effectiveness of the new marketing fee provision to the CHX fee schedule through December 31, 2001); 45282 (January 15, 2002), 67 FR 3517 (January 24, 2002) (extending program through June 30, 2002); and 46233 (July 19, 2002), 67 FR 48960 (July 26, 2002) (extending program through July 31, 2002).

[6] *See* Securities Exchange Act Release No. 44646 (August 2, 2001), 66 FR 41641 (August 8, 2001) (SR–CHX–2001–10) (describing potential arrangements between specialists and market makers). According to the CHX, no such arrangements are currently in place. Conversation between Kathleen M. Boege, Associate General Counsel, CHX, and Patrick M. Joyce, Special Counsel, Division of Market Regulation, Commission, on July 31, 2002.

[7] The marketing fee, under the rule change proposed herein, will be assessed only against exchange-traded fund products, which virtually always have an associated licensing fee. Currently, the marketing fee is assessed only against the Nasdaq-100 Index exchange-traded fund, commonly known as "QQQ."

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 19b–4(f)(2).

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public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2002–25 and should be submitted by August 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20032 Filed 8–7–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Release No. 34–46298; File No. SR–NYSE–2002–27

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the iShares MSCI Japan Index Fund

August 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, the "1934 Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to trade, on an unlisted trading privileges ("UTP") basis, the iShares MSCI Japan Index Fund ("Fund"), which is a type of Investment Company Unit ("ICU") and is considered an Exchange Traded ("ETF").

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has adopted listing standards applicable to ICUs, which the Exchange states are consistent with the listing criteria currently used by the American Stock Exchange LLC ("Amex") and other exchanges, and trading standards pursuant to which the Exchange may trade ICUs on the Exchange on a UTP basis.[3] The Exchange now proposes to trade the Fund on a UTP basis. The Fund has been listed and actively traded on the Amex since 1996[4] and trades on other securities exchanges[5] and in the over-the-counter market. The information below is intended to provide a description of how the Fund was created and is traded.[6]

Barclays Global Fund Advisors (the "Advisor" or "BGFA") is the investment adviser to the Fund. The Advisor is registered under the Investment Advisers Act of 1940. The Adviser is a wholly owned subsidiary of Barclays Global Investors, N.A. ("BGI"). BGI is a wholly owned indirect subsidiary of Barclays Bank PLC of the United Kingdom.[7]

SEI Investments Distribution Co. (the "Distributor"), a Pennsylvania corporation and broker-dealer registered under the Exchange Act, is the principal underwriter and distributor of Creation Unit Aggregations (as defined below) of iShares. The distributor is not affiliated with the Exchange or the Advisor.[8]

The shares of the Fund are issued by iShares, Inc., and are based on the Morgan Stanley Capital International ("MSCI") Japan Index. iShares, Inc. is an open-ended management investment company operating 22 separate investment portfolios or "index funds." The MSCI Japan Index (the "Index") is intended to represent the Japanese market. The Index consists of stocks traded primarily on the Tokyo Stock Exchange. As of July 16, 2002, the three largest stocks in the Index were Toyota Motor Corp., Sony Corp., and NTT DoCoMo Inc. The investment objective of the Fund is to seek investment results similar to the performance of the stock markets in Japan, as represented by the Index. The Fund uses a "passive," or indexing, approach to attempt to produce investment results that approximate the investment performance of the Index. The Fund will normally invest at least 95% of its total assets in stock that are represented in the Index, and will, at all times, invest at least 90% of its total assets in such stocks. The Fund will not hold all of the stocks that comprise the Index, but will attempt to hold a representative sampling of the securities in the Index in a technique known as "portfolio sampling." iShares, Inc. will issue and redeem the shares of the Fund only in aggregations of 600,000 shares (each aggregation a "Creation Unit"), which had an estimated value of approximately $5 million as of January 1, 2002. On July 16, 2002, the NAV of the Fund was $8.36, and the Fund traded at a price of $8.25 per share. As of the same day, the Fund had total net assets of approximately $732,548,000 and 87,600,000 shares outstanding.

MSCI generally seeks to have 85% of the free float-adjusted market capitalization of a country's stock

[3] In 1996, the Commission approved Section 703.16 of the NYSE's *Listed Company Manual* ("*Manual*"), which sets forth the rules related to the listing of ICUs. *See* Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996). In 2000, the Commission also approved the Exchange's generic listing standards for the listing and trading, or the trading pursuant to UTP, of ICUs under Section 703.16 of the *Manual* and Exchange Rule 1100. *See* Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000).

[4] The Fund and other MSCI funds similar in nature were formerly known as World Equity Benchmark Securities ("WEBS") and were approved for listing and trading on the Amex in 1996. *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) ("Amex WEBS Approval Order").

[5] *See, e.g.*, Securities Exchange Act Release No. 39117 (September 22, 1997), 62 FR 50973 (September 29, 1997) (approving the trading of WEBS on a UTP basis on the Chicago Stock Exchange, Inc.).

[6] Much of the information in this filing was taken from the Prospectus of iShares, Inc., dated as of January 1, 2002, as supplemented, and from the Web sites of the Amex (*www.Amex.com*) and iShares (*www.iShares.com.*) Fund information relating to Net Asset Value ("NAV"), returns, dividends component stock holdings and the like is updated on a daily basis of the Web sites.

[7] Telephone conversation between Janet M. Kissane, Office of General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission on August 1, 2002.

[8] Telephone conversation between Janet M. Kissane, Office of General Counsel, NYSE, and Florence E. Harmonn, Senior Special Counsel, Division, Commission, on August 1, 2002.

market reflected in the MSCI Index for such country. Thus, MSCI seeks to balance the inclusiveness of an "all share" index against the replicability of a "blue chip" index. The Index, as with all of the MSCI indices, is market capitalization weighted. The Index is calculated daily. The calculation method weights stocks in the index by their beginning-of-period market capitalization. Shares prices area "swept clean" daily and adjusted for any rights issues, stock dividends, or splits. The Index is calculated in local currency and in U.S. dollars, without dividends and with gross dividends reinvested. Prices used to calculate the Index are the official exchange closing prices. All prices are taken from the dominant exchange in the Japanese market. To calculate the applicable foreign currency exchange rate, MSCI uses WM/Reuters Closing Spot Rates. Under exceptional circumstances, MSCI may elect to use an alternative exchange rate for any country if the WM/Reuters rate is believed not to be representative for the given currency on a particular day.

The Index is calculated by MSCI for each trading day in the Japanese foreign exchange market based on official closing prices in such exchange market. For each trading day, MSCI publicly disseminates the Index value for the previous day's close. The Index is reported periodically in major financial publications and also is available through vendors of financial information. iShares, Inc. will cause to be made available daily the names and required number of shares of each of the securities to be deposited in connection with the issuance of the Fund shares in Creation Unit size aggregations for the fund, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends for the Fund. This information will be made available to the Fund Advisor to any National Securities Clearing Corporation ("NSCC") participant requesting such information. In addition, other investors can request such information directly from the Fund distributor. The NAV for the fund will be calcualted directly by the Fund administrator, PFPC, Inc. The NAV will also be made available to the public from the Fund distributor by means of a toll-free number and to NSCC participants through data made available from the NSCC.

To provide current Fund pricing information, Amex disseminates through the facilities of the Consolidated Tape Association as "indicative optimized portfolio value" (the "Value") for the Fund, as calculated by Bloomberg, L.P. The Value will be disseminated every fifteen seconds during regular Amex trading hours of 9:30 a.m. to 4 p.m. Eastern Standard Time. The Value likely will not reflect the value of all securities included in the Index. In addition, the Value will not necessarily reflect the precise composition of the current portfolio of securities held by the Fund at a particular moment. The Value disseminated during Amex trading hours should not be viewed as a real-time update of the NAV of the Fund, which is calculated only once a day. It is expected, however, that during the trading day the Value will closely approximate the value per share of the portfolio of securities for the Fund except under unusual circumstances.

The Exchange will distribute an information circular to its members in connection with the trading of the Fund. The circular will discuss the special characteristics and risks of trading this type of security. Specifically, the circular, among other things, will discuss what the Fund is, how it is created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing shares of the Fund prior to or concurrently with the confirmation of a transaction,[9] applicable Exchange rules, dissemination information, trading information and the applicability of suitability rules. The Exchange also intends to utilize its existing surveillance procedures to monitor trading in the Fund, including surveilling specialist compliance with Exchange Rule 460.10, which contemplates specialists engaging in transactions with iShares, Inc. under certain circumstances.[10]

[9] The Commission has granted the Fund an exemption from section 24(d) of the Investment Company Act of 1940. *See* Investment Company Act Release No. 25623 (June 25, 2002). Thus, the Exchange, in an Informational Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the prospectus or Product Description delivery requirements applicable to iShares. Any product description used in reliance on the Section 24(d) exemptive order will comply with all representations made and all conditions contained in the Application for the Order. Telephone conversation between Janet M. Kissane, Office of General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on August 1, 2002.

[10] The Exchange represents that Exchange Rule 460.10 generally precludes certain business relationships between an issuer and the specialist in the issuer's securities. The Exchange further represents that exceptions in the Rule permit specialists in ETF shares, to enter into Creation Unit transactions through the Distributor to facilitate the maintenance of a fair and orderly market. A specialist Creation Unit transaction may only be effected on the same terms and conditions as any other investor, and only at the NAV of the ETF shares. A specialist may acquire a position in excess of 10% of the outstanding issue of the ETF shares, provided, however, that a specialist registered in a security issued by an investment company may purchase and redeem the investment company unit or securities that can be subdivided or converted into such unit, from the investment company as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

[11] 14 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(5).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[11] in general, and furthers the objectives of section 6(b)(5) of the Act[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[13] The Commission believes that the Exchange's proposal to trade the Fund pursuant to UTP will provide investors with a convenient way of participating in foreign securities markets and can produce added benefits to investors through the increased competition between other markets trading the produce. Specifically, the Commission believes that NYSE's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell at negotiated prices throughout the trading day securities that replicate the performance of several portfolios of

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stock,[14] and by increasing the availability of the Fund as an investment tool. Accordingly, as discussed below, the rule proposal is consistent with the requirements of Section 6(b)(5) that Exchange rules facilitate transactions in securities, remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[15]

As the Commission noted in greater detail in the order approving iShares (formally "World Equity Benchmark Securities" or "WEBS") for listing and trading on Amex,[16] the estimated cost of an individual iShares, such as the Fund, should make it attractive to individual retail investors who wish to hold a security replicating the performance of a portfolio of foreign stocks. The Commission also notes that the Fund should provide investors with several advantages over standard open-end investment companies; in particular, investors can trade the Fund continuously throughout the day in secondary markets at negotiated prices.[17] In contrast, Investment Company Act of 1940 ("Investment Company Act") Rule 22c–1 [18] limits holders and prospectus holders of open-end management investment company shares to purchasing or redeeming securities of the fund based on the net asset value of the securities held by the fund as designated by the board of directors. Thus, the Fund should allow investors to respond quickly to market changes through intra-day trading opportunities, expand the opportunity for retail investors to engage in hedging strategies, and reduce transaction costs for trading a portfolio of stocks. The Commission notes that, under the proposed rule change, the benefits of the Fund will now be available to investors trading on NYSE, and believes that the addition of their trading on NYSE pursuant to UTP could produce added benefits to investors through the increased competition.

The Commission notes that, although the value of the Fund is based on the value of the securities and cash held in the Fund, Fund shares are not leveraged instruments. Fund shares are essentially equity securities that represent an interest in a portfolio of stocks designed to reflect substantially the applicable MSCI Index. Accordingly, it is appropriate to regulate the Fund in a manner similar to other equity securities. Nonetheless, the Commission believes that the unique nature of the Fund raises certain disclosure, trading, and other issues that need to be addressed. The remainder of this section addresses these issues, although they are discussed in greater detail in the Amex WEBS Approval Order, where the Commission initially approved WEBS for trading as a new product.

A. Trading of the Fund on NYSE Pursuant to UTP

The Commission notes that, pursuant to Rule 12f–5 under the Act,[19] prior to trading a particular class or type of security pursuant to UTP, NYSE must have listing standards comparable to those of the primary market on which the security is listed. The Commission finds that adequate rules and procedures exist to govern the trading of the Fund on NYSE, pursuant to UTP. Fund shares will be deemed equity securities subject to NYSE's rules governing the trading of equity securities. Accordingly, the Exchange's existing general rules that currently apply to the trading of equity securities will also apply to the Fund. In addition, Section 703.16 of the NYSE's *Manual* and Exchange Rule 1100 [20] which contain specific listing and delisting criteria to accommodate the trading of Units, will apply to the trading of the Fund.[21] These criteria should help to ensure that a minimum level of liquidity will exist in each iShares series to allow for the maintenance of fair and orderly markets. The delisting criteria allow the Exchange to consider the suspension of trading and the delisting of a series of Units, including suspending trading in the Fund traded on the Exchange pursuant to UTP, if an event were to occur that made further dealings in such securities inadvisable. This will give the Exchange flexibility to suspend training in the Fund if circumstances warrant such action. Accordingly, the Commission believes that NYSE's equity rules in general, and Section 703.16 of the Manual and Exchange Rule 1100 in particular, provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.[22]

B. Disclosure

The Commission believes that NYSE's proposal should provide for adequate disclosure to investors relating to the terms, characteristics, and risks of trading the Fund. All investors in the Fund, including those purchasing the Fund on NYSE pursuant to UTP, will receive a prospectus or a Product Description [23] regarding the product. The prospectus or Product Description will address the special characteristics of the Fund, including a statement regarding their redeemability and method of creation, and that Fund shares are not individually redeemable.

The Commission notes that the Exchange has represented that it will also distribute an information circular to all NYSE members prior to the commencement of trading of the Fund explaining the unique characteristics and risks of the Fund. The circular will note, for example, Exchange member responsibilities, including that, before an Exchange member undertakes to recommend a transaction in the Fund, it should make a determination that it is in compliance with applicable rules of other self-regulatory organizations of which it is a member, including suitability rules.[24] The circular will also address members' responsibility to deliver a prospectus or product description to all investors purchasing the Fund, as well as highlight the characteristics of the Fund, including that Fund shares are only redeemable in Creation Unit size aggregation.[25]

C. Dissemination of the Fund Portfolio Information

The Commission believes that since Amex is disseminating the Values for the various WEBS/iShares series, investors will be provided with timely and useful information concerning the value of iShares, on a per iShares basis. The Commission notes that the information is disseminated through facilities of the CTA and reflects the currently available information concerning the value of the assets comprising the deposit securities. The information is disseminated every fifteen seconds during the hours of 9:30 a.m. to 4 p.m. Eastern Standard Time and will be available to all investors, irrespective of where the transaction is executed. In addition, because the value is expected to closely track the applicable iShares series, the Commission believes the Values will provide investors with adequate information to determine the intra-day value of a given iShares series, such as the Fund.[26] In the Amex WEBS Approval Order, the Commission noted that it expected Amex to monitor the disseminated Value, and if Amex determines that the Value does not closely track applicable WEBS/iShares series, it will arrange to disseminate an adequate alternative.

D. Surveillance

The Commission notes that NYSE has submitted surveillance procedures for the Fund and believes that those procedures are adequate to address concerns associated with the listing and trading of such securities, including any concerns associated with specialists purchasing and redeeming Creation Units. The Exchange has represented that its surveillance procedures should allow it to identify situations where specialists purchase or redeem Creation Units to ensure compliance with NYSE Rule 460.10, which requires that such purchases or redemptions facilitate the maintenance of a fair and orderly market in the subject security.[27]

E. Specialists

The Commission finds that it is consistent with the Act to allow a specialist registered in a security issued by an Investment Company to purchase or redeem the listed security from the issuer as appropriate to facilitate the maintenance of a fair and orderly market in that security. The Commission believes that such market activities should enhance liquidity in such security and facilitate a specialist's market making responsibilities. In addition, because the specialist only will be able to purchase and redeem Fund shares on the same terms and conditions as any other investor (and only at the NAV), and Creation transactions must occur through the distributor and not directly with the issuer, the Commission believes that concerns regarding potential abuse are minimized. As noted above, the Exchange's surveillance procedures also should ensure that such purchases are only for the purpose of maintaining fair and orderly markets, and not for any other improper or speculative purposes. Finally, the Commission notes that its approval of this aspect of the Exchange's rule proposal does not address any other requirements or obligations under the federal securities laws that may be applicable.[28]

F. Accelerated Approval

After careful review, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to section 19(b)(2) of the Act.[29] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Exchange. Accordingly, the Commission finds that the listing and trading of the Fund on a UTP basis is consistent with the Act, and promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest.[30] The Commission further finds that accelerated approval will enable the Exchange to begin listing and trading the Fund on the Exchange on a UTP basis immediately. The Commission therefore approves this proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number SR–NYSE–2002–27 and should be submitted by August 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20066 Filed 8–7–02; 8:45 am]

BILLING CODE 8010–01–M

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[14] The Commission notes that unlike typical open-end investment companies, where investors have the right to redeem their fund shares on a daily basis, investors in the Fund can redeem them in creation unit size aggregations only.

[15] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] *See* Amex WEBS Approval Order, *supra* note 4. The Commission hereby incorporates by reference the discussion and rational for approving WEBS provided in the Amex WEBS Approval Order.

[17] The Commission believes that the Fund will not trade at a material discount or premium in relation to their NAV, because of potential arbitrage opportunities. *See* Amex WEBS Approval Order, *supra* note 4. The mere potential for arbitrage should keep the market price of Fund shares comparable to their NAVs; therefore, arbitrage activity likely will not be significant. In addition, the Fund will redeem in-kind, thereby enabling the Fund to invest virtually all of its assets in securities comprising the MSCI Index.

[18] 17 CFR 270.22c–1. Investment Company Act Rule 22c–1 generally provides that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security may sell, redeem, or repurchase the security only at a price based on the NAV next computed after receipt of an investor's request to purchase, redeem, or resell. The NAV of an open-end management investment company generally is computed once daily Monday to Friday as designated by the investment company's board of directors. The Commission granted WEBS an exemption from this provision to allow them to trade in the secondary market at negotiated prices. *See* Amex WEBS Approval Order, *supra* note 4.

[19] 17 CFR 240.12f–5.

[20] The Commission approval generic rules for the listing and trading of ICUs on NYSE in 2000. *See* Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000).

[21] The Commission notes the listing and delisting criteria is similar to those adopted by Amex to trade WEBS/iShares.

[22] The Commission also believes that the proposed rule change should help protect investors and the public interest, and help perfect the mechanisms of a national market system, in that it will allow for the trading of the Fund on NYSE pursuant to UTP, making the Fund more broadly available to the investing public.

[23] *See* Investment Company Release No. 25623 (June 25, 2002).

[24] Telephone conversation between Janet M. Kissane, Office of General Counsel, NYSE, and Sapna C. Patel, Attorney, Division, Commission, on July 29, 2002.

[25] The Commission notes that the information circular should also discuss exemptive relief granted by the Commission from certain rules under the Act. The applicable rules are: Rule 10a–1; Rule 10b–10; Rule 14e–5; Rule 10b–17; Rule 11d1–2; Rules 15c1–5 and 15c1–6; and Rules 101 and 102 of Regulation M under the Exchange Act.

[26] In addition, the Amex WEBS Approval Order states that the statement of additional information ("SAI") to the preliminary prospectus states that each series will calculate its NAV per share at the close of the regular trading session for the Amex on each day that the Amex is open for business. NAV generally will be based on the last quoted sales price on the exchange where the security primarily is traded. *See* Amex WEBS Approval Order, *supra* note 4.

[27] The Commission notes that, in the Amex WEBS Approval Order, it discussed the concerns raised when a broker-dealer is involved in the development, maintenance, and calculation of a stock index upon which a product such as WEBS is based. Adequate procedures to prevent the misuse of material, non-public information regarding changes to component stocks in an MSCI Index have been adopted and should help to address concerns raised by Morgan Stanley's involvement in the management of the Indices. *See also* the "firewall" requirements under Section 703.16 of the NYSE's *Manual*.

[28] The Commission notes that with respect to iShares, broker-dealers and other persons are cautioned in the prospectus and/or the Fund's SAI that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provision of the Securities Act of 1933.

[29] 15 U.S.C. 78s(b)(2).

[30] 15 U.S.C. 78f(b)(5).

[31] 17 CFR 200.30–3(a)(12).

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3424, Amdt. 1]

State of Colorado

In accordance with information received from the Federal Emergency Management Agency dated July 29, 2002, the above numbered declaration is hereby amended to include Larimer, Jackson and Weld Counties in the State of Colorado as disaster areas due to damages caused by wildfires occurring on April 23, 2002 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Albany and Laramie Counties in Wyoming; and Kimball County in Nebraska. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 18, 2002, and for economic injury the deadline is March 19, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 2, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–20095 Filed 8–7–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3436]

Federated States of Micronesia

As a result of the President's major disaster declaration for Public Assistance on July 11, 2002, and Amendment 1 adding Individual Assistance on July 26, 2002, I find that the Federated States of Micronesia constitute a disaster area due to damages caused by Tropical Storm Chata'an, including flooding, mudslides and landslides occurring on July 2–4, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 24, 2002 and for economic injury until the close of business on April 28, 2003 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 4 Office, PO Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	6.750
Homeowners without Credit Available Elsewhere	3.375
Businesses with Credit Available Elsewhere	7.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	3.500
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	6.375
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	3.500

The number assigned to this disaster for physical damage is 343611 and for economic injury the number is 9Q8700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 1, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–20094 Filed 8–7–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3428, Amdt. 7]

State of Texas

In accordance with a notice received from the Federal Emergency Management Agency dated July 29, 2002, the above numbered declaration is hereby amended to include Calhoun County in the State of Texas as a disaster area due to damages caused by severe storms and flooding occurring on June 29, 2002 and continuing.

All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 2, 2002, and for economic injury the deadline is April 4, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 2, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–20093 Filed 8–7–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4043]

Overseas Buildings Operations; Industry Advisory Panel: Meeting Notice

The Industry Advisory Panel of Overseas Buildings Operations will meet on Thursday, September 12, 2002 from 9:45 until 11:45 a.m. and 1 p.m. until 3:30 p.m. Eastern Standard Time. The meeting will be held in conference room 1105 at the Department of State, 2201 C Street NW. (entrance on 23rd Street), Washington, DC. The purpose of the meeting is to discuss new technologies and successful management practices for design, construction, security, property management, emergency operations, the environment, and planning and development. An agenda will be available prior to the meeting.

The meeting will be open to the public, however, seating is limited. Prior notification and a valid photo ID are mandatory for entry into the building. Members of the public who plan to attend must notify Luigina (Gina) Pinzino at 703/875–7109 before Wednesday, September 4th, to provide date of birth, Social Security number, and telephone number.

FOR FURTHER INFORMATION CONTACT: Luigina (Gina) Pinzino 703/875–7109.

Dated: July 30, 2002.

Charles E. Williams,

Director/Chief Operating Officer, Overseas Buildings Operations, Department of State.

[FR Doc. 02–20089 Filed 8–7–02; 8:45 am]

BILLING CODE 4710–24–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

2002–2003 Allocations of the Tariff-rate Quotas for Raw Cane Sugar, Refined Sugar, and Sugar-Containing Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the country-by-country allocations of the in-quota quantity of the tariff-rate quotas for imported raw cane sugar, refined sugar, and sugar-containing products for the period that begins October 1, 2002 and ends September 30, 2003. The allocation for Mexico provided for under the North American Free Trade Agreement will be made at a later date.

EFFECTIVE DATE: October 1, 2002.

ADDRESSES: Inquiries may be mailed or delivered to Sharon Sydow, Director of Agricultural Trade Policy, Office of Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Sharon Sydow, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains tariff-rate quotas for imports of raw cane and refined sugar. Pursuant to additional U.S. Note 8 to chapter 17 of the HTS, the United States also maintains a tariff-rate quota for certain sugar-containing products.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas. The President delegated this authority to the United States Trade Representative under paragraph (3) of Presidential Proclamation No. 6763 (60 FR 1007).

The in-quota quantity of the tariff-rate quota for raw cane sugar for the period October 1, 2002–September 30, 2003, has been established by the Secretary of Agriculture at 1,117,195 metric tons, raw value (1,231,497 short tons), the minimum to which the United States is committed under the Uruguay Round Agreement. The quantity of 1,117,195 metric tons, raw value is being allocated to the following countries:

Country	FY 2003 Allocation
Argentina	45,281
Australia	87,402
Barbados	7,371
Belize	11,583
Bolivia	8,424
Brazil	152,691
Colombia	25,273
Congo	7,258
Cote d' Ivoire	7,258
Costa Rica	15,796
Dominican Republic	185,335
Ecuador	11,583
El Salvador	27,379
Fiji	9,477
Gabon	7,258
Guatemala	50,546
Guyana	12,636
Haiti	7,258
Honduras	10,530
India	8,424
Jamaica	11,583
Madagascar	7,258
Malawi	10,530
Mauritius	12,636
Mexico	7,258
Mozambique	13,690
Nicaragua	22,114
Panama	30,538
Papua New Guinea	7,258
Paraguay	7,258
Peru	43,175
Philippines	142,160
South Africa	24,220
St. Kitts & Nevis	7,258
Swaziland	16,849
Taiwan	12,636
Thailand	14,743
Trinidad-Tobago	7,371
Uruguay	7,258
Zimbabwe	12,636

These allocations are based on the countries' historical trade to the United States. The allocations of the raw cane sugar tariff-rate quota to countries that are net importers of sugar are conditioned on receipt of the appropriate verifications of origin.

This allocation includes the following minimum quota-holding countries: Congo, Cote d' Ivoire, Gabon, Haiti, Madagascar, Papua New Guinea, Paraguay, St. Kitts & Nevis, and Uruguay.

The in-quota quantity of the tariff-rate quota for refined sugar for the period October 1, 2002–September 30, 2003, has been established by the Secretary of Agriculture at 37,000 metric tons, raw value (40,786 short tons), of which the Secretary has reserved 16,656 metric tons (18,360 short tons) for specialty sugars. Of the quantity not reserved for specialty sugars, a total of 10,300 metric tons (11,354 short tons) is being allocated to Canada and 2,954 metric tons (3,256 short tons) is being allocated to Mexico. The remaining 7,090 metric tons (7,815 short tons) of the in-quota quantity not reserved for specialty sugars may be supplied by any country on a first-come, first-served basis, subject to any other provision of law. The 16,656 metric tons(18,360 short tons) reserved for specialty sugars is also not being allocated among supplying countries and is available on a first-come, first-served basis, subject to any other provision of law.

With respect to the tariff-rate quota for certain sugar-containing products maintained pursuant to additional U.S. Note 8 to chapter 17 of the HTS, 59,250 metric tons (65,312 short tons) of sugar-containing products is being allocated to Canada. The remaining in-quota quantity for this tariff-rate quota is available to other countries on a first-come, first-served basis.

Conversion factor: 1 metric ton = 1.10231125 short tons.

Allen F. Johnson,

Chief Agriculture Negotiator.

[FR Doc. 02–20008 Filed 8–7–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

[STB Finance Docket No. 34216]

South Dakota Railroad Authority—Acquisition Exemption—Rutland Line, Inc.

South Dakota Railroad Authority (SDRA), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire approximately 22.40 miles of track from Rutland Line, Inc. in Sargent County, ND. The line to be acquired is located between milepost 65.57 at the South Dakota/North Dakota border and milepost 43.17, including approximately 275 feet of track [1] at Geneseo Junction, ND. SDRA states that an operator for the line has not yet been determined. SDRA certifies that its projected annual revenues will not exceed those that would qualify it as a Class III rail carrier.

SDRA reports that an agreement for the transaction was reached and the transaction was consummated on June 4, 2002. The effective date of the exemption was July 16, 2002 (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34216, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Bruce E. Lindholm, Program Manager, 700 East Broadway Avenue, Pierre, SD 57501.

Board decisions and notices are available on our website at "*http://www.stb.dot.gov.*"

Decided: July 30, 2002.

[1] By letter filed July 22, 2002, SDRA requested modification of the notice of the exemption to include an additional 275 feet of track beyond milepost 43.17 (Geneseo Joint Section), so that a future operator of the line may be able to interchange with another carrier. SDRA indicates that an amendment to the purchase agreement will be executed to effect the change.

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By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–19793 Filed 8–7–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34228]

S&L Railroad, LLC—Acquisition and Operation Exemption—Progress Rail Services Corporation d/b/a Sidney & Lowe Railroad

S&L Railroad, LLC (S&L), a noncarrier and wholly owned subsidiary of Progress Rail Services Corporation doing business as Sidney & Lowe Railroad (PRSC), has filed a notice of exemption under 49 CFR 1150.31 to acquire from PRSC and operate approximately 11 miles of rail line and connecting track known as the Sidney & Lowe Railroad Line, extending from milepost 0 at Huntsman, NE, where it connects with a rail line of The Burlington Northern and Santa Fe Railway Company, to milepost 10 at Brownson, NE, where it connects with a rail line of Union Pacific Railroad Company.

According to S&L, an agreement has been reached between S&L and PRSC regarding the sale and operation of the rail line. S&L certifies that its projected annual revenues as a result of this transaction do not exceed those that would qualify it as a Class III rail carrier, and that such revenues will not exceed $5 million annually.

The transaction was scheduled to be consummated on or shortly after July 22, 2002, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34228 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on J. Duane Cantrell, Progress Rail Services Corporation, 1600 Progress Drive, Albertville, AL 35950.

Board decisions and notices are available on our website at "*http://WWW.STB.DOT.GOV.*"

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: July 29, 2002.

Vernon A. Williams,

Secretary.

[FR Doc. 02–19528 Filed 8–7–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8874

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8874, New Markets Credit.

DATES: Written comments should be received on or before October 7, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: New Markets Credit.

OMB Number: To be assigned later.

Form Number: Form 8874.

Abstract: Investors to claim a credit for equity investments made in Qualified Community Development Entities use Form 8874.

Current Actions: This is a new collection of information.

Type of Review: New OMB approval.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 10 hours, 5 minutes.

Estimated Total Annual Burden Hours: 100,900.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 1, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–20115 Filed 8–7–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–253578–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–253578–96, Health Insurance Portability for Group Health Plans; and temporary regulation (TD 8716) Interim Rules for Health Insurance Portability for Group Health Plans (§§ 54.9801–3T, 54.9801–4T, 54.9801–5T, and 54.9801–6T).

DATES: Written comments should be received on or before October 7, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: Title: Notice of Proposed Rulemaking, Health Insurance Portability for Group Health Plans, and temporary regulation, Interim Rules for Health Insurance Portability for Group Health Plans.

OMB Number: 1545–1537.

Regulation Project Number: REG–253578–96.

Abstract: These regulations contain rules governing access, portability, and renewability requirements for group health plans and issuers of health insurance coverage offered in connection with a group health plan. The regulations also provide guidance for group health plans and the employers maintaining them regarding requirements imposed on plans relating to preexisting condition exclusions, discrimination based on health status, and access to coverage.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and state, local, or tribal governments.

Estimated Number of Respondents: 1,300,000.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 591,561.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 2, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–20116 Filed 8–7–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Electronic Tax Preparation and Filing; Intent to Enter Agreement, Opportunity for Comment, Opportunity to Submit Proposals for Additional Consortia

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of intent to enter an agreement, opportunity for comment, opportunity to submit proposals for additional consortia.

SUMMARY: The Internal Revenue Service (IRS) proposes to enter into an agreement (the Agreement) with a consortium of companies in the electronic tax preparation and filing industry (the Consortium) who together desire to work together to offer free, online tax return preparation and filing services to taxpayers (Free Services). The Consortium will offer these Free Services to taxpayers. The IRS will provide taxpayers with links to the Free Services offered by the Consortium participants through a web page that will be hosted at irs.gov with links from firstgov.gov. These links to the Consortium will replace the current heading on IRS.gov for "Free Internet Filing Opportunities". Under the Agreement and during its term, the IRS will not compete with the Consortium in providing free, online tax return preparation and filing services to taxpayers. The IRS is soliciting comments on this proposed Agreement and complimentary or competitive offers from alternative consortia to provide Free Services to taxpayers. During this process other Federal agencies will be consulted.

DATES: Comments or proposals must be submitted by September 4, 2002.

ADDRESSES: Send letters with comments and suggestions on the proposed Agreement, or other proposals, to Paul J. Mamo, 1111 Constitution Avenue, Room 2403, Washington DC. 20224 or to the IRS Internet address: *WI.EGOVPO@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS plans to enter into an Agreement (the Agreement) with the Consortium to accomplish the following five objectives:

1. Seek to assure access to a free and secure electronic preparation and filing option for additional taxpayers, building upon free electronic tax preparation and filing provided in the commercial market today;

2. Making tax return preparation and filing easier and reducing the burden on individual taxpayers;

3. Supporting the IRS's statutory goals of increased e-filing, pursuant to the IRS Restructuring and Reform Act of 1998, which encouraged the IRS to set a goal of having 80% of Federal tax and information returns filed electronically by the year 2007;

4. Providing greater service and access to taxpayers; and

5. Implementing one of the proposals in the President's FY'03 budget, specifically to encourage further growth in electronic filing by providing taxpayers the option to file their tax return on-line without charge using cooperation with, and encouraging competition within, the private sector to increase e-filing.

The anticipated essential terms of the Agreement are established in a document described as a Term Sheet. This draft Term Sheet follows.

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Dated: July 31, 2002.

Terence H. Lutes,

Director, IRS Electronic Tax Administration.

July 30, 2002 Draft

Free On-Line Electronic Tax Filing Agreement

Term Sheet

I. Purpose

The purpose of this term sheet is to describe the essential terms of an agreement ("the Agreement"). The Agreement will provide for free, online tax return preparation and filing to individual taxpayers, thereby meeting the following five objectives:

1. Seeking to assure access to a free and secure electronic preparation and filing option for additional taxpayers, building upon free electronic tax preparation and filing provided in the commercial market today;

2. Making tax return preparation and filing easier and reducing the burden on individual taxpayers;

3. Supporting the IRS's statutory goals of increased e-filing, pursuant to the IRS Restructuring and Reform Act of 1998, which encouraged the IRS to set a goal of having 80% of Federal tax and information returns filed electronically by the year 2007;

4. Providing greater service and access to taxpayers; and

5. Implementing one of the proposals in the President's FY'03 budget, specifically to encourage further growth in electronic filing by providing taxpayers the option to file their tax return on-line without charge, using cooperation with, and encouraging competition within, the private sector to increase e-filing.

II. Summary

To accomplish the above objectives, the Internal Revenue Service (the "IRS") and a consortium of companies in the electronic tax preparation and filing industry (the "Consortium") (together, "the Parties") desire to work together to offer free, online tax return preparation and filing services to taxpayers ("Free Services"). The Consortium will offer Free Services to taxpayers at no cost. The IRS will provide taxpayers with links to the Free Services offered by the Consortium participants through a web page (described more fully in VI below; hereafter, the "Web Page"), which will be hosted at irs.gov accessible through firstgov.gov. During the term of the Agreement, the IRS will not compete with the Consortium in providing free, online tax return preparation and filing services to taxpayers.

The Agreement is the best method (business case) for meeting the above stated objectives because it will promote higher quality Services by utilizing the existing expertise of the private sector, maximize consumer choice, promote competition for such Services, and thereby meet the objectives in the least costly manner.

III. Consortium

The Consortium is intended to be part of an existing, non-profit corporation (under the provisions of 26 U.S.C. § 501(c)(3)) affiliated with The Council for Electronic Revenue Communication Advancement (CERCA). The Consortium is being formed to facilitate participation in the Agreement by commercial entities ("Consortium Participants") engaged in the business of electronic tax preparation and filing.

IV. Scope of Offerings

A. The Consortium will offer Free Services for eligible taxpayers (taxpayers meeting the qualifications for free offerings) from individual commercial sites. Such offerings, when taken in the aggregate, are intended to provide for Free Services to be available to 60% or more of taxpayers. If at any point the Consortium's aggregate offerings of Free Services are available to fewer than 60 % of taxpayers, the IRS may notify the Consortium of that fact. After receipt of such notice, the Consortium will have six months within which to raise the availability of such offerings to at least 60% of taxpayers. If the Consortium fails to achieve 60% within such six-month period, the IRS may terminate the Agreement. In making this decision, the IRS agrees to take into account the extent to which actual usage of Free Services has increased. Consortium offerings, taken together, will provide eligible taxpayers with a reasonable assurance that: (1) Free Services will be available on demand, and (2) these services will provide the ability to file the same federal tax forms which are fileable and available in the comparable paid online services offered by a selected Consortium member.

B. The Consortium shall accept offerings only from entities that:

1.Provide electronic, on-line tax preparation and filing of individual income tax returns;

1. Will offer and can provide Free Services to a number of individual taxpayers which equals or exceeds 10 percent (10%) of the number of individual income tax returns filed in the base year (CY 2001).

3. Offer online software approved by the IRS that generates returns that can be sent to the IRS via an IRS-approved channel.

4. Are Authorized IRS E-File Providers in accord with IRS Rev. Proc. 2000–31.

5. Are in compliance with applicable law, including but not limited to, Department of Treasury/IRS rules, including but not limited to 31 C.F.R. Part 10, IRS Rev. Proc. 2000–31, current versions of IRS Publications 1345 and 1345–A, and 26 U.S.C. § 7216.

6. Demonstrate the competence and capability to deliver their free offerings. This competence and capability may be demonstrated either by providing evidence of prior experience in providing on-line or electronic filing services or by self-certification. Such self-certification shall be reasonably and objectively determined by the Consortium, taking into account the above referenced need for competence and capability and the intent of the Agreement to avoid unnecessary barriers to entry. Consortium Participants must have adequate capacity to meet the expected demand for their Free Services. In addition to initial Participants, the Consortium will accept later qualified applicants as Consortium Participants.

7. Have security certification, from a third party agreed to by the IRS. It is understood that the Agreement will contain the names of acceptable third-party certifiers.

8. Comply with the privacy provisions of 26 U.S.C. § 7216. Have privacy certification from a third party agreed to by the IRS. Consortium participants are encouraged to use software that will enable their websites to state their privacy practices in a standard machine readable format that can be retrieved automatically and interpreted easily by users. Consortium Participants shall also agree that provisions of Free Services shall not be conditioned on obtaining an eligible taxpayer's consent to solicitations of additional business. It is understood that the Agreement will contain the names of acceptable third-party certifiers.

9. Will not contain or provide links to inappropriate content.

10. Clearly disclose to users their customer service support options and privacy policy.

11. Agree to have at least one link to the IRS.

C. The Consortium will take reasonable steps to publicize the criteria for Consortium participation. The Consortium will provide to the IRS, on request, the names of unsuccessful applicants for Consortium participation and the reason for their rejection.

V. Performance Standards

A. The IRS will have the Consortium web page ready by December 31, 2002. Consortium participants will have submitted their test returns produced by their software to the IRS sufficiently in advance of that date for testing . The IRS will not list on the Consortium web page a Consortium participant whose test returns have not been certified prior to the beginning of the filing season until that participant's test returns has been tested and certified.

B. The Consortium will make its best efforts to assure that Free Services by individual Consortium Participants are performed in accordance with the terms of the Agreement and in accordance with the offer made by the Consortium Participant. If the IRS determines a particular offering of Free Services is deficient or that Free Services are not being properly performed, it will notify the Consortium in writing of that fact, and provide information regarding corrective actions it believes are needed.

C. The undertaking by the Consortium under IV. A to offer Free Services at or above the 60% level shall apply only to January through April of each year (the primary tax filing season). Outside of the primary tax filing season, the Consortium shall encourage Consortium members to offer Free Services to the same extent that such services are offered by Consortium members for compensation.

D. The Consortium will be responsible for establishing its governance standards. These standards shall be in accord with applicable law and regulations. The standards shall be consistent with the Consortium performing its obligations under the Agreement and be designed to maximize participation of industry members while meeting the requirements of the Agreement.

E. IRS, in consultation with the Consortium, will develop an assessment process including usability performance measures to measure the extent to which the Agreement is accomplishing the objectives described in I., above. They will include at least:

1. Uptime and reliability through the tax season.

2. Delivery of the taxpayer to the Free Services in the minimum number of clicks consistent with usability design principles and the need to fully inform taxpayers about the free online services. From the site the taxpayer arrives at by clicking on the Consortium page's link to the Consortium Participant, until the taxpayer arrives at the Free Services, there will be no more clicks than required of such Consortium Participant's paying customers, if applicable, consistent with usability design principles

VI. Consortium Web Page Operation

A. The IRS will host and maintain the Web Page. The Consortium will submit to the IRS proposed content for the Web Page, and the IRS shall determine the final content to appear on the Web Page. The IRS will ensure that there are links from appropriate Government sites to The Web Page.

B. The design of the Web Page will conform to the following guidelines:

1. The Consortium will determine rank order placement of links to individual offerings in accordance with reasonable, objective criteria. Each listing of an offering will provide a description of the scope of, and eligibility for, free Services it offers.

1. The Web Page will provide a link to each Consortium Participant's Free Services entry using a minimum number of clicks.

2. No advertising will appear on the Web Page.

3. The Consortium will create and supply to IRS proposed content for the Web Page using existing IRS content management procedures.

4. The Web Page will be developed using usability design principles and will be updated based upon usability testing and other user feedback.

C. Taxpayers will be able to use Consortium Participants' software to prepare and electronically file their own personal income tax returns using proprietary processes and systems which such Participants host and maintain.

D. The Consortium will promptly notify the IRS of any planned or unplanned unavailability (i.e., downtime) of an offering that is anticipated to exceed five hours in duration. The IRS will annotate that offering's listing on The Web Page with a notice advising the public of the unavailability. The IRS may delist an offeror if its service remains unavailable for more than 24 hours, but shall re-list after restoration of availability; provided, however, if a Consortium Participant repeatedly has periods of such unavailability, the IRS shall be entitled to delist that Consortium Participant.

VII. Marketing

A. The Parties will coordinate with each other their respective marketing of these Free Services to provide uniformity and maximize public awareness. Final decisions on the marketing campaign will remain with the IRS for IRS marketing expenditures and with the Consortium and the Consortium Participants for their marketing expenditures.

B. The IRS will not endorse specific offerings or products, but will promote the availability of the Consortium's Free Services.

C. The Parties will work with the States to explore how the Agreement can support the states. Online tax preparation and e-filing of both federal and state returns can maximize benefits of this Agreement to taxpayers.

D. The Consortium understands that the IRS may continue to provide Consortium Participants or non-Participants Partners links from Government sites to electronic preparers and filers.

VIII. Term of Agreement; Termination

A. The Agreement will have an initial term of three years from its effective date with automatic options to renew for successive two year periods. Representatives from the Parties will meet semiannually to review operation of the Agreement. The Parties will review the terms of the Agreement on an annual basis, and, upon mutual consent, can agree in writing to modify any provision of the Agreement.

B. Either Party may terminate the Agreement for cause if the other Party fails to comply with the Agreement, and such failure is not cured within thirty days of written notice of such failure from the other Party.

C. The IRS may terminate the Agreement without cause, such termination to be effective 12 months after the date of notice of such termination.

D. Should the IRS decide to offer Free Services to taxpayers the IRS shall notify the Consortium immediately. If the IRS gives such notice during the tax season (between January 1st and April 15th), or the last day of the filing deadline if that date is changed from April 15) of any year, the Consortium may, by written notice to the IRS, terminate the Agreement, effective on April 16th of that year. If the IRS gives such notice between April 16th and October 15th of any year, then the Consortium may, by written notice to the IRS other than during a tax season, terminate the Agreement, such termination to be effective no fewer than 30 days after the date of the Consortium's notice of such termination. If the IRS gives such notice between October 15 and December 31, the Consortium may by written notice immediately terminate the Agreement at any time on or before December 31.

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IX. Status of Term Sheet

This is not the Agreement, and it is not intended to bind the parties. It is the parties' objective to reach an agreement consistent with these terms in the near future.

For IRS

For IRS For the Consortium

[FR Doc. 02–19835 Filed 8–5–02; 2:58 pm]

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Federal Register

Thursday,
August 8, 2002

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 107 et al.

Hazardous Materials: Requirements for Maintenance, Requalification, Repair and Use of DOT Specification Cylinders; Final Rule

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 177, 178, 179, and 180

[Docket No. RSPA–01–10373 (HM–220D)]

RIN 2137–AD58

Hazardous Materials: Requirements for Maintenance, Requalification, Repair and Use of DOT Specification Cylinders

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, RSPA is amending the requirements of the Hazardous Materials Regulations applicable to the maintenance, requalification, repair, and use of DOT specification cylinders. In addition, RSPA is adopting changes to revise the requirements for approval of cylinder requalifiers, independent inspection agencies, and non-domestic chemical analysis and tests. Further, RSPA is removing authorization for the manufacture of DOT specification cylinders made with aluminum alloy 6351–T6. This action is being taken to simplify the regulations, respond to petitions for rulemaking, address recommendations of the National Transportation Safety Board, and enhance the safe transportation of hazardous materials in cylinders.

DATES: *Effective Date:* October 1, 2002.

Incorporation by Reference Date: The incorporation by reference of publications listed in this final rule has been approved by the Director of the Federal Register as of October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Cheryl Freeman or Mark Toughiry, (202) 366–4545, Office of Hazardous Materials Technology, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

I. Background

On October 30, 1998, the Research and Special Programs Administration (RSPA, we) published a notice of proposed rulemaking (NPRM) under Docket HM–220 (63 FR 58460). In the NPRM, we proposed to amend the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to: (1) Establish four new DOT cylinder specifications to replace the 12 current seamless and welded cylinder specifications; (2) revise the requirements for maintenance, requalification, repair, and use of all DOT specification cylinders; and (3) discontinue the manufacture of certain specification cylinders. We took this action because many of our current cylinder specifications have not been updated since their adoption into the regulations over 50 years ago. The proposed changes were intended to enhance operational controls and transportation safety by incorporating into the HMR new manufacturing and testing technologies and clarifying existing regulatory requirements. In addition, the proposed changes addressed three National Transportation Safety Board (NTSB) recommendations for improving the safety of cylinders in transportation. Finally, the proposed changes would have eased the regulatory burden on the regulated industry by incorporating the provisions of more than 30 exemptions into the HMR.

More than 140 commenters submitted over 200 comments in response to the NPRM, including representatives of cylinder and equipment manufacturers, requalifiers, refillers and users, trade associations, gas producers, distributors, shippers, carriers, emergency responders, representatives of federal and state governmental agencies, private consultants, and the general public. In addition, we held a series of public meetings to obtain comments.

Many commenters objected to the proposed new metric-marked cylinder specifications, identified as 3M, 3ALM, 3FM, and 4M. Commenters also opposed the proposed requirement for these new metric-marked cylinders and certain cylinders manufactured to the current specifications, that is, non-metric marked cylinders, to be requalified by ultrasonic examination. These commenters suggested we allow continued manufacture of cylinders to the current DOT specifications and revise the current requirements to include certain enhancements from the metric-marked cylinder proposals. These commenters preferred we wait until after the International Organization for Standardization (ISO) cylinder standards were completed and adopted into the United Nation (UN) Recommendations on the Transport of Dangerous Goods (UN Model Regulations) before we considered incorporating new specification requirements into the HMR. Based on the merits of the comments received, we agree the proposed metric-marked cylinder standards and related proposals that were based on the draft ISO standard should not be adopted. Because of significant opposition to many of the proposals in the 1998 NPRM, we published a notice in the **Federal Register** on February 13, 2002 (67 FR 6667), terminating rulemaking action under Docket HM–220. The termination notice announced that we were withdrawing the proposals applicable to metric-marked cylinders and ultrasonic examination.

We worked closely with the UN Committee of Experts as it developed an international cylinder standard based on the above-referenced ISO requirements. The new international standard was adopted as part of the UN Model Regulations in December 2000. We will address issues related to the harmonization of the U.S. cylinder regulations with the UN Model Regulations in a future rulemaking. The proposals in the 1998 NPRM relating to maintenance, requalification, repair, and use of DOT specification cylinders and approval of cylinder requalifiers, independent inspection agencies, and non-domestic chemical analyses and tests are addressed in this final rule, which has been designated HM–220D (RSPA–01–10373).

The 1998 NPRM proposed to require all cylinders manufactured or rebuilt to the proposed new metric-marked cylinder specifications to undergo inspection and certification by an Independent Inspection Agency rather than an employee of the manufacturing company. This proposal responded to an NTSB recommendation (I–90–009) that RSPA require independent inspection of new and reconditioned low pressure cylinders consistent with current independent inspection requirements for high pressure cylinders. Because we are not adopting the metric-marked cylinder specifications in this final rule, we are not adopting the proposed independent inspection requirements. However, we will address this issue in a rulemaking to harmonize the U.S. cylinder regulations with the UN Model Regulations that we plan to initiate in the near future.

II. Overview of Changes in this Final Rule

In this final rule, we are amending the HMR to:

(1) Prohibit a filled cylinder with a specified service life from being offered for transportation in commerce after its service life has expired.

(2) Remove authorization for the manufacture of DOT specification cylinders using aluminum alloy 6351–T6. Cylinders manufactured with this aluminum alloy have a greater risk of failure than other aluminum cylinders.

(3) Incorporate by reference new and updated Compressed Gas Association (CGA) standards and updated American Society for Testing and Materials (ASTM) standards.

(4) Require each person who performs a requalification function that requires marking of an inspection or retest date on a cylinder to have approval from the Associate Administrator for Hazardous Materials Safety (Associate Administrator).

(5) Standardize requirements for repair and rebuilding of DOT–4 series cylinders, other than the DOT 4L.

(6) Allow the application of requalification markings on cylinders by using alternative methods that produce durable, legible marks.

(7) Require pressure relief devices on all DOT–3 series specification cylinders to be set at test pressure with a tolerance of −10% to +0 beginning at the first requalification due on or after the effective date of this final rule.

In addition, we are consolidating requirements for obtaining approval to be a cylinder requalifier, independent inspection agency, or to have chemical tests or analyses performed outside the United States on cylinders manufactured outside the United States in a new Subpart I in Part 107.

The safety of cylinders constructed with aluminum alloy 6351–T6 was first raised in a safety advisory and NPRM published in 1987 under Docket HM–176A. With publication of this final rule, further action under Docket HM–176A is terminated.

III. Section-by-Section Review

The following is a section-by-section review of the changes adopted in this final rule and, where applicable, a discussion of comments received.

Part 107

Section 107.1

This final rule adopts the proposal in the 1998 NPRM to remove the reference to a cylinder retester who is registered pursuant to § 173.34(a)(1) from the definition of "registration." Commenters did not address this issue.

Subpart I

The 1998 NPRM proposed to add a new subpart I to Part 107 to consolidate procedures currently in §§ 173.34(e)(2), 173.300a, and 173.300b of the HMR for obtaining approval from the Associate Administrator. The approval procedures address requirements for cylinder requalifiers and independent inspection agencies (IIAs), and to have chemical tests or analyses performed outside the United States on DOT specification cylinders manufactured outside the United States. Commenters generally supported this proposal. This final rule adopts the proposed consolidation in Part 107, with the revisions noted below.

Section 107.803

Prescribes application procedures for approval or renewal as an IIA. These procedures permit an approved IIA to perform other functions relating to the cylinder requalification requirements. The criteria permit the approval of any person or organization technically competent to perform cylinder requalification functions and free from undue influence by persons involved with the fabrication, ownership, or movement of the cylinders that the applicant, if approved, would be called upon to evaluate and certify. We are not adopting a proposal to permit persons or organizations approved by foreign governments to perform these functions. This latter proposal was contingent upon our adopting the metric-marked cylinder specifications proposed in the NPRM.

Section 107.805

Sets forth application procedures for a person seeking approval to perform periodic cylinder requalifications. The NPRM proposed to broaden the current approval requirement to apply to any person who performs a requalification function after which the cylinder is required to be marked with a date. The affected requalification functions include visual inspections, pressure tests, repairs, and rebuilding of cylinders. The new approval procedures will enhance the accountability of the cylinder requalification process. This change was supported by most commenters. However, the National Propane Gas Association (NPGA) and some of its members opposed the proposal because it would require persons who perform only visual inspections of cylinders to obtain DOT approval. NPGA stated that this new approval requirement is burdensome, unenforceable, and an excessive response to a safety problem only identifiable through individual instances of egregious cylinder wear. NPGA also said that the proposal could potentially affect tens of thousands of individuals and many small facilities. We disagree. As we stated in the NPRM, this change ensures the accountability of a person performing visual requalifications. In addition, this change provides RSPA with the authority to revoke or suspend a person's approval for demonstrated noncompliance with the requalification requirements. Also, if an applicant must certify it has the ability to perform requalifications, each applicant's awareness of the importance of compliance should be heightened. We estimate the number of affected requalifiers to be 7,200. Under the provisions in this final rule, these requalifers must submit a letter containing information on their qualifications and the location at which they work. The regulatory burden imposed by this new requirement is minimal. Moreover, this final rule includes a transition period of one year to allow sufficient time for affected individuals to obtain the requisite approvals.

As requested by commenters, we are making editorial changes to paragraph (f) to recognize that visual cylinder requalifications are often performed at the owner's or end-user's facility rather than the requalifier's facility.

Because this final rule expands the approval provisions to apply to repairers and rebuilders, we are replacing the terms "retester" and "retester identification number" in this final rule with the terms "requalifier" and "requalifier identification number," respectively.

Section 107.807

Sets forth the application procedures, currently in § 173.300b, for issuance or renewal of an approval to perform chemical analyses and tests outside the United States on DOT specification cylinders manufactured outside the United States. These procedures are unchanged from current requirements.

Part 171

Section 171.2.

In this final rule, we are adopting the NPRM proposal to revise paragraph (d)(3). The revision clarifies that no person may mark a requalifier identification number (RIN) on a cylinder that has not been requalified according to the applicable requirements.

Section 171.6.

We are revising certain section references in the table of OMB control numbers for consistency with this final rule.

Section 171.7

The NPRM proposed to revise this section to incorporate by reference the latest editions of previously approved CGA Pamphlets and ASTM standards and certain additional ASTM and CGA standards. In this final rule, we are incorporating the 1999 edition of the ASTM standards for tension testing of metallic materials; the 1999 edition of the ASTM standard specification for heat-resisting chromium and chromium-nickel stainless steel plate, sheet, and

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strip for pressure vessels; and the 1998 edition of the ASTM standards for notched bar impact testing of metallic materials instead of the 1996 editions proposed in the NPRM. We reviewed the more recent editions and identified no significant differences from the 1996 editions. In addition, we are incorporating the 1997 edition of the ASTM standard specification for liquefied petroleum gases (*see* discussion under "Section 180.203" below). We are also incorporating the 1998 edition of the ASTM standard for ultrasonic examination of metal pipe and tubing instead of the 1993 edition proposed in the NPRM. We reviewed the more recent edition and found no significant differences from the 1993 edition. The ASTM standard for ultrasonic examination replaces a 1967 standard that is no longer available and applies to the manufacture of specification DOT 3T stainless steel cylinders. We are not incorporating the ASTM standards addressing the metric-marked cylinder proposals in the NPRM. Further, we are not incorporating CGA pamphlet C–1, "Methods for Hydrostatic Testing of Compressed Gas Cylinders," 1996 edition. It is our understanding that CGA is in the process of completely revising the C–1 standard. We will consider incorporating the revised C–1 standard in a future rulemaking.

Section 171.12

As proposed in the NPRM, we are revising paragraph (b)(15) to include a reference to a provision on Canadian manufactured cylinders contained in current § 171.12a(b)(13).

Part 172

Section 172.101

In the § 172.101 Hazardous Materials Table, for the entries "Cyanogen," "Germane," and "Iron Pentacarbonyl," we are revising the references in column (8b) to specify packaging authorization sections consistent with the materials' toxic properties. Commenters did not specifically address this proposal.

Part 173

Section 173.34

We are adopting the changes proposed in the NPRM and supported by most commenters to move the provisions in this section to Subpart I of Part 107, § 173.301, and Subpart B of Part 180, as appropriate, and remove § 173.34. We are removing all references to § 173.34 in the HMR, and replacing them with the appropriate new section references.

Section 173.40

We are adopting the proposed change to paragraph (a) of this section to prohibit the use of DOT 3AL cylinders made of aluminum alloy 6351–T6 for Hazard Zone A materials. The major domestic cylinder manufacturers of DOT 3AL cylinders discontinued using aluminum alloy 6351–T6 in specification cylinders before July 1990. The prohibition on the use of cylinders made of aluminum alloy 6351–T6 for Hazard Zone A materials is effective on October 1, 2002. After that date, cylinders made of aluminum alloy 6351–T6 may not be filled and offered for transportation in toxic inhalation hazard service. In this final rule, we are adding a provision to permit cylinders filled before October 1, 2002, to be offered for transportation and transported to their ultimate destinations until April 1, 2003. When necessary, cylinders containing unused gas may be returned to the filler. Cylinders prohibited for use under this provision are seamless aluminum cylinders marked "DOT 3AL", including exemption cylinders authorized under exemption numbers DOT–E 6498, 7042, 8107, 8364, and 8422, and composite cylinders authorized under exemption numbers DOT–E 7235, 8023, and 8115.

Several commenters requested we add a table in the HMR to identify all cylinders made of aluminum alloy 6351–T6 by date of manufacture, serial number, manufacturer, etc. We agree that a need exists to identify all affected cylinders. We are making this information available from the Associate Administrator and at our web site Homepage at "*hazmat.dot.gov*". Making the information available as a separate document permits greater flexibility in de-listing cylinders removed from hazardous material service.

We are adopting paragraph (b) to include current requirements for outage and pressure in cylinders used for toxic materials. This paragraph was inadvertently omitted from the NPRM.

We are not adopting proposed paragraph (c)(1) to require cylinders containing Hazard Zone A and B materials to meet puncture resistance criteria. A number of commenters opposed the puncture-resistance requirement for Zone B materials. These commenters said that Zone B materials have an excellent safety record in transportation, and that the proposed requirements would pose a significant and unjustified financial burden for transporters of Hazard Zone B materials. Several commenters opposed the proposal to add a puncture-resistance requirement even for Hazard Zone A materials. One commenter noted the NPRM did not include statistics on the incidence of cylinder punctures. Other commenters stated that DOT specification cylinders such as the 3A and 3AA have had excellent safety records for a number of years, and there is no substantial evidence to support the need for puncture-resistance testing. Based on these comments, we are not adopting the proposed puncture-resistance requirements. However, minimum thickness requirements for cylinders used to transport Hazard Zone A or B material remain in effect. Further, this final rule includes a new performance requirement, applicable to all cylinders, for metal attachments to be constructed or protected so as to prevent the likelihood of puncturing or damaging hazardous materials packages transported in the same transport conveyance.

In the NPRM, we sought comments on whether the current Hazard Zone A closure requirements in paragraph (c) should be extended to Hazard Zone B materials. Several commenters opposed such an extension. They said that the change is excessive and unjustified, and would require changing the valving on many cylinders used to transport Hazard Zone B materials. Based on these comments, we are not adopting the Hazard Zone A closure requirements for Hazard Zone B materials in this final rule.

We are adopting new paragraph (d) to specify cylinder valve protection requirements for Hazard Zone A and B materials. None of the commenters opposed extending the valve protection requirements to Hazard Zone B materials. Indeed, one commenter stated its company is currently shipping both Hazard Zone A and B materials in cylinders conforming to the current valve protection drop test requirement for Hazard Zone A materials. In this final rule, we are revising the valve protection requirements to require that when a protective cap is used, it must be made of metal. This change responds to a commenter who pointed out that current § 173.301(h)(2)(i) provides for equipping a cylinder with a securely attached metal cap. The commenter stated that nonmetallic caps should not be permitted under § 173.40. We agree, and have included the change.

Several commenters suggested the protection device should be designed to protect against leakage in the event of valve deformation rather than to prevent deformation or breakage of the valve. We disagree. A deformed or broken valve presents a potential safety hazard that could affect the integrity of the cylinder. One commenter asked for a better definition of the term "deformation." In this context, "deformation" means a valve that is bent, distorted, mangled, misshapen, twisted, warped, or in a similar condition. We have added a definition of "deformation" in this final rule.

A commenter asked us to revise the drop height requirement from 2 meters (6.5 feet) to 1.2 meters (4 feet) for consistency with ISO Standard 11117 (Gas Cylinders—Valve Protection Caps and Valve Guards for Industrial and Medical Gas Cylinders—Design, Construction, and Tests). We disagree. Because these cylinders are used to transport Division 2.3 materials in Hazard Zone A or B, they must be able to survive severe handling and abuse without leakage of contents. Therefore, a more stringent drop test requirement is warranted. Further, the ISO Standard 11117 drop test requires the cylinder to be filled with water, while the drop test adopted in this final rule requires the cylinder to be empty. Since the tests are conducted under different conditions, the drop heights must be different to assure meaningful test results.

We are adopting paragraph (e), which restates the current prohibition against manifolding or interconnecting cylinders containing toxic materials.

Section 173.115

As proposed in the NPRM, this section permits LC50 values for mixtures to be determined using CGA pamphlet P–20 and adds a definition for "refrigerant or dispersant gas."

Section 173.163

A number of commenters opposed the proposal in the NPRM to require cylinders used for hydrogen fluoride to be requalified by ultrasonic examination only. They said that there is no safety justification for the proposal, and it will significantly increase costs for the regulated industry. Commenters noted that ultrasonic examination requires sophisticated equipment and highly trained personnel. They expressed concern that retest facilities do not have infrastructure in place to accommodate the proposed examination procedures. Because of commenter concerns, we are not adopting the ultrasonic examination proposal in this final rule. We are retaining the current requirement for an external visual inspection in place of the hydrostatic test and internal visual inspection. We will continue to permit the use of ultrasonic examination under the exemption program. Issues related to ultrasonic testing will be addressed in a subsequent rulemaking.

Section 173.192

We are revising the section title to reflect that the requirements in this section apply only to Hazard Zone A gases, as proposed. In addition, we are extending the current restriction in § 173.192(a)(3), which limits transportation of DOT 3AL cylinders in arsine and phosphine service to highway and rail, to include all Hazard Zone A gases. Thus, Hazard Zone A gases in 3AL cylinders may only be transported by highway or rail. CGA and another commenter requested that we authorize transportation of DOT 3AL cylinders by vessel and by cargo aircraft. CGA stated that prohibiting such transportation places U.S. companies at an economic disadvantage in the world market. We have some reservations about the CGA comment. Aluminum undergoes a marked reduction in tensile strength when subjected to high temperatures. This occurs at much lower temperatures than for steel cylinders. The potential consequences of a fire on board a vessel or aircraft are more serious than a fire occurring on a truck or rail car. The release of toxic vapors in the confined space of a vessel hold or cargo aircraft compartment could have significant adverse consequences. However, on August 30, 2001, we issued an exemption (DOT–E–12339) that permits the transportation by cargo vessel of DOT 3AL cylinders (6061 aluminum alloy) containing various Division 2.1 and 2.3 gases. The cylinders must be contained inside steel freight containers. We will evaluate the safety record of cylinders transported on cargo vessels under this exemption, and consider incorporating its terms into a regulation of general applicability in a future rulemaking.

Also, we are revising paragraph (c), as proposed, to permit the use of alternative leakage tests having equivalent levels of sensitivity as the current water bath leakage test, upon written approval from the Associate Administrator. Currently, paragraph (c) requires a cylinder containing any amount of phosgene gas to be subjected to a water bath leakage test before it is offered for transportation. CGA noted that the water bath test is conducted at 150° F, and the normal filling densities and liquid full conditions for phosgene cylinders are based on 130° F. For this reason, CGA suggested that we should add a precautionary statement to warn persons that a cylinder filled to 125% of capacity could experience an overfill condition when it is heated to 150° F. Alternatively, CGA suggested the water bath test should be conducted at 130° F. We disagree. The water bath requirements for phosgene cylinders are long-standing regulatory requirements. However, to accommodate CGA's concerns, we are adding a precautionary safety statement to alert requalifiers.

Section 173.198

We are making a minor editorial change to paragraph (a).

Section 173.226

Currently, Division 6.1, Hazard Zone A materials may be shipped in any DOT specification cylinder, except DOT 8, 8AL, and 39. The NPRM proposed a revision to paragraph (a) to permit materials that are poisonous by inhalation (PIH materials) in Hazard Zone A to be transported only in seamless specification cylinders conforming to the requirements of § 173.40. A commenter requested that we continue to permit the use of welded cylinders for PIH materials. We disagree. Because of the inherent risk involved in the transportation of PIH materials, they should only be permitted in cylinders providing the highest level of safety. Therefore, this final rule adopts the change as proposed in the NPRM. This change also provides consistency in packaging assignments with current § 173.192, which authorizes only seamless specification cylinders for Packing Group I materials.

Section 173.227

We are adopting the proposal in the NPRM to revise paragraph (a). The revision authorizes only seamless and welded specification cylinders conforming to the requirements in § 173.40 for transportation of PIH materials in Hazard Zone B.

Section 173.228

As proposed in the NPRM, we are revising paragraph (a) to require bromine pentafluoride and bromine trifluoride, which are Hazard Zone A materials, to be transported only in seamless specification cylinders that conform to the requirements in § 173.40.

Sections 173.300a–173.300c

We are moving the provisions contained in these sections to new Subpart I of Part 107. We are deleting §§ 173.300a, 173.300b, and 173.300c.

Sections 173.301–173.301b

We are revising § 173.301 to specify the general shipper requirements for the use of specification cylinders. These requirements include general prefill requirements, maintenance and legibility of markings, pressure relief devices (PRDs), valve protection, manifolding of cylinders, and charging

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of foreign cylinders. We are removing the cargo tank manifolding requirements currently in § 173.301(d), and placing them with other cargo tank requirements in § 173.315. A derivation table showing the relocation of the requirements appeared in Part X of the preamble in the NPRM.

Paragraph (a) includes general cylinder qualification requirements. We are revising the wording in paragraph (a)(2) in response to several commenters who stated that defective PRDs could be repaired. This was not our intent. The wording is revised to state that, in some cases, the *cylinder* may be repaired and requalified if the work is performed according to Part 180.

In the NPRM, we proposed to place in paragraph (a)(4) a current provision authorizing the use of a cylinder with a higher marked pressure limit when a cylinder of the same specification, but a lower marked pressure limit, is prescribed. We proposed no change to the wording. A commenter suggested that, when a cylinder with a higher marked pressure limit is used for Division 2.2 gases, the PRD setting should be based on the lowest acceptable test pressure of the cylinder for the particular gas service. We disagree. This is a long-standing regulatory requirement with a demonstrated safety benefit. If a higher pressure cylinder is chosen for a particular service, another user may not be aware the PRD setting has been lowered. If the cylinder were over-heated or over-pressurized, a premature release of product could result.

We are making a minor editorial change in the second sentence of paragraph (a)(5). The sentence in the NPRM stated "This requirement does not apply to a cylinder filled before the requalification due date". In response to a comment, the sentence is revised for clarification to read "This *prohibition* does not apply * * *" Another commenter suggested the first sentence should be revised to read "No person may fill a cylinder overdue for periodic requalification with a hazardous material." We disagree. HMR requirements for filling a cylinder do not apply unless the cylinder is offered for transportation.

We are revising paragraph (a)(6), as proposed, to prohibit the offering for transportation and transportation in commerce of a filled cylinder after its specified service life has expired. For example, DOT 3HT cylinders would be prohibited from transportation 24 years after the date of the original test or 4,380 pressurizations, whichever occurs first (*see* current § 173.34(e)(15)(ii)(C)). Similarly, aluminum lined, hoop wrapped, and fiber reinforced plastic composite cylinders would be prohibited from transportation after 15 years. Several commenters requested a revision to allow the transportation of affected non-leaking cylinders for reprocessing or disposing of the cylinder contents. Another commenter requested we require the cylinders to be stamped as condemned or be rendered unserviceable when the authorized service life has expired. We agree, and have adopted the suggested changes in this final rule.

We are revising the wording in proposed paragraph (a)(7) to prohibit the pressure of the hazardous material at 55° C (131° F) from exceeding 5/4 of the service pressure of the cylinder. Commenters pointed out the "5/4" was omitted from the text in the NPRM. This was an oversight. We have corrected the text in this final rule.

Paragraph (b) sets forth requirements for cylinder markings and is adopted as proposed in the NPRM.

Paragraph (c) specifies requirements for toxic gases and mixtures and is adopted as proposed in the NPRM.

Paragraph (d) addresses gases capable of combining chemically. In this final rule, we are prohibiting the use of DOT 3AL cylinders made of aluminum alloy 6351–T6 for gases having pyrophoric properties. Commenters requested we allow time for transporting the affected cylinders for reprocessing or disposal of the cylinder's contents. We agree time should be provided for transporting the cylinders. We are providing a transition period of six months after the effective date of the final rule to provide for transportation of cylinders filled before the effective date of the final rule.

As proposed in the NPRM, we are adopting paragraph (e). This paragraph restates the current requirement to prohibit a cylinder from being offered for transportation unless it was filled by the cylinder owner or with the owner's consent.

Paragraph (f) sets forth requirements for PRDs. The NPRM restated the current provision in § 173.34(d) to require a cylinder filled with gas and transported in commerce to be equipped with one or more PRDs sized and selected in accordance with CGA Pamphlets S–1.1 and S–7. Compliance with paragraph 9.1.1.1 of CGA Pamphlet S–1.1, which requires periodic replacement of a PRD, is not required. Several commenters objected to this provision, stating compliance with paragraph 9.1.1.1 should be mandatory. These commenters cited data generated by Transport Canada and industry tests that suggest a large percentage of PRDs fail to operate as designed. As we stated in the 1998 NPRM (63 FR 58465), we have previously proposed voluntary compliance with paragraph 9.1.1.1 of CGA Pamphlet S–1.1. Commenters generally opposed this proposal, citing its cost and the lack of incident data justifying the requirement. In the NPRM, we asked for data and comments on the cost, effectiveness, and need for adopting paragraph 9.1.1.1. Commenters did not provide specific information. Therefore, we are not adopting paragraph 9.1.1.1 at this time. However, we will examine this issue in a future rulemaking, as necessary.

We are revising the wording in proposed paragraph (f)(2) that would have required a PRD, when installed, to be in the vapor space of the cylinder. Several commenters objected to requiring the PRD to be in the vapor space of a cylinder containing liquefied Division 2.2 gases. They stated the proposal would require valve redesign at substantial costs and would be ineffective in tube trailers and other cylinders loaded in horizontal positions. The commenters suggested we revise the provision to require the PRD to be "in communication with the vapor space." We agree. The paragraph is revised to require the inlet port to the relief channel to be in the vapor space of the cylinder.

We also are revising the wording of proposed paragraph (f)(3) that would have required the pressure relief setting (the start-to-discharge or ruptured pressure) of a PRD for DOT–3 series cylinders to be not less than the minimum designed test pressure. In the NPRM, the proposed allowable tolerances for these PRDs were minus zero to plus 10%. Many commenters were concerned about the cost of producing PRDs with tolerances of minus zero to plus 10%. They stated that the proposed amendment would necessitate retrofitting many cylinders with new PRDs. Several commenters reiterated that CGA Pamphlet S–1.1 stipulates a maximum burst pressure for a disk as minus 10% to zero of test pressure. They stated that we provided no justification for requiring a cylinder pressure greater than the cylinder's specified test pressure. They also suggested that, in some situations, a shipper may want a cylinder to be fitted with a PRD that will function at a pressure much lower than the test pressure of the cylinder.

Considering the comments received, we believe a setting of 100% of test pressure, with an allowable tolerance of minus 10% to plus zero of its setting for a PRD, is appropriate. This will provide a reasonable balance between keeping a

gas in a cylinder and preventing the cylinder from rupturing in case of a fire or overfill. PRDs designed to release at not less than test pressure, within the allowable tolerance, will eliminate the possibility of gas release through the relief device at a temperature less than or equal to 54° C (130° F). At the same conditions and test pressure, the safety factor for cylinder rupture is 1.6. It is our understanding, based on discussions with gas distributors, that many major gas distributors using DOT–3 series cylinders are currently setting the PRDs at 90–100% of test pressure for toxic and flammable gases. Because it is common practice for many shippers of DOT–3 series cylinders to replace the PRD at the time of a cylinder's requalification, we believe this final rule will result in minimal incremental cost. Further, for most gases, the increased PRD setting will not significantly affect the performance of cylinders in bonfire tests. To allow users sufficient time to modify cylinders to meet the new PRD settings, we are providing that each cylinder must be brought into conformance at the first requalification of the cylinder after the effective date of this final rule.

We are not adopting the change in proposed paragraph (f)(4) that would have required a PRD to be visually inspected for damage before filling the cylinder. We agree with commenters who stated that a visual inspection of the PRD will not detect defects associated with internal components and their ability to function. Neither are we adopting proposed paragraph (f)(5) that would have required a cylinder filling facility to test a PRD for leaks before offering a filled cylinder for transportation. Rather, we are adding a new subparagraph to paragraph (a) to include the long-standing regulatory requirement, currently in § 173.34(d), that safety relief devices must be tested for leaks before the filled cylinder is transported. We are also adding language pertaining to repair of leaking fuse plug devices, also currently in § 173.34(d), that was inadvertently omitted in the NPRM. In addition, several commenters suggested revising the wording to prohibit a cylinder with a leaking PRD from being offered for transportation. We agree with the commenters. We have included a restriction on leaking PRDs in paragraph (a)(2) of this final rule.

We are correcting the wording that appeared in proposed paragraph (f)(6)(i)(B), adopted as paragraph (f)(5)(i)(B) in this final rule, to state that a PRD is not required on a cylinder of 305 mm (12 inches) or less in length and 114 mm (4.5 inches) or less in outside diameter. However, if the cylinder is filled with a nonliquefied gas to a pressure of 1800 psig or higher, then it must have a PRD.

Paragraph (g) specifies requirements for manifolding cylinders in transportation. We are revising the wording in proposed paragraph (g)(1) that would have required the PRD on manifolded cylinders containing any compressed gas to be arranged to discharge upward and unobstructed to the open air. Our intent for expanding the original requirement in the HMR from flammable gases to all compressed gases was to protect personnel and adjacent cylinders from gases released due to a PRD function. Upon further consideration, we agree with commenters that the need for PRDs to discharge upward is more crucial for horizontal cylinders containing flammable gases. Discharges of flammable gases could result in flame impingement on personnel or adjacent cylinders. We agree the requirement is not necessary on cylinders containing nonflammable gases or on vertical cylinders. We revised the final rule to reflect these changes.

Commenters were also concerned with the wording in proposed paragraph (g)(1)—"equivalent valve protection required in § 173.301(h)." These comments said that the wording implies that manifolded cylinders must be drop tested in the manifolded configuration. This was not our intent. Therefore, we are revising the wording to specify that valves and PRDs must be protected by framing, a cabinet, or other method.

Paragraph (h) contains cylinder valve protection requirements. The requirements adopted in this final rule prescribe a performance-oriented approach to valve assembly protection. The requirements include a drop test to verify the performance of valve protection devices. In response to commenters, we are revising paragraph (h)(1) to grant an exception from the valve assembly protection requirements for cylinders used as fire extinguishers, acetylene MC cylinders, and Medical E styles with a water capacity of 300 in^3 or less.

Several commenters also suggested that the drop test should be performed at 2 m (6.5 ft) instead of 1.8 m (6 ft) for consistency with the 2 m (6.5 ft) puncture resistance requirement in § 173.40. We disagree. We are prescribing a 6-foot drop test for consistency with performance requirements adopted for cylinders by the UN Committee of Experts on the Transport of Dangerous Goods. The final rule provides a transition period of five years, until October 1, 2007, for cylinders to be brought into conformance with this requirement. In this final rule, we are revising the language proposed in the NPRM to clarify that cylinders manufactured before October 1, 2007, must conform to current valve protection requirements.

The Chlorine Institute stated that tracking protective valve hoods to make sure they are used on the type of cylinder on which they were tested is unrealistic. The Chlorine Institute said hoods are frequently interchanged with others on cylinders in the same type of service and suggested that a valve hood that has been tested on at least one cylinder specified for a particular gas should be accepted for use with the manufacturer's other cylinders in the same or lower net weight service. We recognize that protective caps and hoods may be interchanged among cylinders. However, we are concerned that different protective hoods may not provide the same level of protection. If cylinder hoods and caps are interchanged among different cylinders, each must provide an equivalent level of safety to the performance standard specified in this final rule.

Paragraph (i) addresses cylinders mounted on motor vehicles or in frames. In the NPRM, we proposed revisions to clarify the following points: (1) Any DOT specification cylinder over 6.5 meters transported in container-on-flat-car (COFC) or trailer-on-flat-car (TOFC) service *by rail* must be transported under conditions approved by the FRA; (2) the force the valve and PRD must withstand is equal to twice the weight of the cylinder and the framework assembly; and (3) a discharge of any compressed gas from the PRD must not contact personnel or adjacent cylinders. CGA requested we revise paragraph (i) to: (1) Provide examples of protective structure, such as rear bumpers, frame rails, and bulkheads; (2) add a detailed description of the forces involved in a road accident (static compressive longitudinal force, parallel to the ground, equal to twice the weight of the loaded tube trailer); and (3) add language describing the latest technology in front safety design for tube trailers. CGA stated that an in-tube safety device has the burst disc inside the neck of the tube. Therefore, if a front end collision occurs, the safety device will not be sheared off, and product will not be discharged. The clarifications proposed in the NPRM in paragraph (i) primarily address service by rail. We agree with CGA that requirements for cylinders transported horizontally by road (DOT 3T and DOT 3AX and 3AAX cylinders configured as tube trailers) may need to be updated. However, that

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issue is beyond the scope of this rulemaking. We will address this issue in a future rulemaking.

Paragraph (j) prohibits filled non-DOT specification cylinders, except for certain foreign cylinders, from being transported in the United States. Two commenters asked us to revise paragraph (j) to specifically permit transportation of non-specification cylinders used as fire extinguishers in accordance with § 173.309. We agree, and have revised paragraph (j) accordingly.

Paragraph (k) specifies requirements for transportation of foreign cylinders within a single port area. A commenter suggested we define a single port area as a distance of 360 miles from any port. That issue is beyond the scope of this rulemaking. The U.S. Coast Guard expressed concern that this proposal would impose a greater burden on cylinders intended to be filled in the United States and shipped for export only. The Coast Guard stated that the inflatable life raft servicing industry relies on this provision to transport foreign cylinders taken from foreign flag vessels to and from servicing industries. The provision referenced by the Coast Guard is adopted as paragraph (l) in this final rule, with no change from current requirements. Further, we issued an exemption on December 31, 2001, to authorize non-specification cylinders used in self-inflating life-saving appliances to be transported between a vessel and a USCG-approved servicing facility.

Another commenter opposed the proposal in the NPRM that foreign cylinders transported within a single port area must be transported in a closed freight container. This commenter stated that such foreign cylinders must be certified by the importer to provide an equivalent level of safety as DOT specification cylinders. For this reason, there is no need to require their transportation in a closed freight container. We disagree. The requirement is intended to reduce the possibility a foreign cylinder may inadvertently be included in a load of DOT-authorized cylinders. The European Industrial Gases Association urged us to allow the use in the United States of cylinders of foreign origin that have been approved for use in Europe by the European Conference of Ministers of Transport. This issue is beyond the scope of this rulemaking. However, we may consider it in a future action.

As proposed in the NPRM, we are adopting paragraph (l), which restates the current requirements for filling foreign cylinders for export.

Paragraph (m) proposed to prohibit the use of metal cylinder attachments with sharp features that may cause damage to other packages. This proposal responds to NTSB Recommendation I–92–001, which urges RSPA to require attachments to DOT hazardous materials packagings to be designed to minimize the risk of puncturing other hazardous materials packagings. Several commenters expressed confusion as to the meaning of the term "sharp" as used in the NPRM. They stated that the term is vague and not based on any objective measure. They also said that it is impossible to guarantee that any corner, edge, or other feature cannot cause damage to other freight. Commenters were also concerned that variations on how other freight is packaged, the other freight's susceptibility to impact damage, the vehicle speed, and the vehicle acceleration and deceleration speeds make it impossible to evaluate a cylinder attachment's performance in transportation. We agree it may not be possible to prevent a corner, edge, or other feature of a cylinder attachment from damaging other freight in an accident. However, we believe attachments can be designed to minimize potential damage. In response to comments, the provision in this final rule is written as a performance standard.

Section 173.301a

We are adopting, as proposed, this new section containing the current requirements for the pressure in a cylinder at 70° F and 130° F and a grandfather provision currently in § 173.34(b).

Section 173.302

We are adopting this section containing general requirements for filling specification cylinders with a nonliquefied (permanent) compressed gas. Paragraph (a) sets forth general requirements for transporting a cylinder filled with a nonliquefied compressed gas. It is adopted as proposed in the NPRM.

Paragraph (b) specifies requirements for aluminum cylinders in oxygen service. We are revising proposed paragraph (b)(1) to require an aluminum cylinder in oxygen service to be equipped with brass or stainless steel valves only. A commenter noted the valves on many medical oxygen cylinders are chrome-plated in areas that do not come into contact with the oxygen. Our intent is to prevent oxygen from coming into contact with an aluminum valve having internal rubbing or abrading aluminum parts. Therefore, we are revising proposed paragraph (b)(1) to require any portion of the valve that contacts the oxygen in the cylinder to be made of brass or stainless steel.

Several commenters pointed out that proposed paragraph (b)(3) cites former Federal specification RR–C–901b and not the current RR–C–901C. The paragraph cites are corrected in this final rule.

Paragraph (c) addresses cylinders containing oxygen that is continuously fed to fish tanks. It is adopted as proposed in the NPRM.

Paragraph (d) permits shipment of Division 2.1 materials in aluminum cylinders only when transported by highway, rail, or cargo-only aircraft. A commenter requested we revise paragraph (d) to authorize the transportation of specification aluminum cylinders containing Division 2.1 gases by vessel. As stated above in the preamble discussion for § 173.192, we will evaluate the safety record of cylinders transported on cargo vessels under an exemption issued on August 30, 2001. We will consider incorporating the terms of this exemption into a regulation of general applicability if the safety record indicates that such incorporation is appropriate.

Another commenter suggested there is no scientific rationale for limiting the transportation of Division 2.1 materials in aluminum cylinders to cargo-only aircraft. As we have previously explained, a cylinder must be able to withstand fire without rupture for at least 90 minutes to enable an aircraft to reach the nearest airport and land safely in the event of an emergency. Heat exposure such as a pressurized aluminum cylinder would experience in a fire would cause the cylinder to burst well before 90 minutes had elapsed and possibly disable the aircraft.

Section 173.302a

In this final rule, we are adopting this new section specifying requirements for filling a cylinder with a nonliquefied compressed gas.

Paragraph (a) sets forth detailed filling requirements. A commenter requested we revise the filling requirement applicable to flammable gases in DOT 39 cylinders. Current § 173.302(a)(4) says that, for DOT 39 cylinders used to transport flammable gas, the "internal volume may not exceed 75 cubic inches." The commenter suggested that, as currently written, it is not clear whether the term "internal volume" refers to the amount of gas permitted in the cylinder or the total capacity of the cylinder. We agree. The volume limitation is intended to apply to a cylinder's internal volume. In this final rule, we revised paragraph (a)(3) to clarify that the restriction applies to a cylinder's internal volume.

Paragraph (b) specifies special filling limits for DOT 3A, 3AX, 3AA, 3AAX, and 3T cylinders. We are adopting paragraph (b)(3)(iv), as proposed, to provide for a cylinder's average wall stress calculation to be determined through computation of the rejection elastic expansion limit (REE) in accordance with CGA Pamphlet C–5, or through the use of the manufacturer's marked REE on the cylinder. A commenter requested that we also allow the use of the standard calculated values listed in CGA Pamphlet C–5 or the use of a previously determined REE marked on the cylinder. It was not our intent to prevent use of standard calculated values listed in CGA Pamphlet C–5. In this final rule, we revised the wording to authorize the use of these values. However, we are not authorizing the use of an REE marking applied to the cylinder by a person other than the manufacturer because it may be inaccurate.

Paragraph (c) prescribes requirements for carbon monoxide. In response to a CGA petition (P–1082), we are removing the 5/6 filling pressure limitation for DOT 3AL cylinders in carbon monoxide service. CGA furnished information to support its conclusion that, although evidence shows carbon monoxide can cause stress corrosion cracking in steel cylinders, there is no evidence carbon monoxide causes corrosion cracking or carbonyl formation in aluminum cylinders. We agree with CGA, and are permitting a DOT 3AL cylinder to be filled to its marked service pressure when used for carbon monoxide. We also modified the paragraph to indicate that the 5/6 pressure limitation applies to steel cylinders.

Paragraph (d) sets forth requirements for diborane and diborane mixtures. It is adopted as proposed in the NPRM.

Section 173.304

This section specifies filling requirements for cylinders used to transport liquefied compressed gas. With minor editorial revisions, it is revised as proposed in the NPRM.

Section 173.304a

This new section, proposed in the NPRM, addresses additional requirements for transporting liquefied compressed gases in specification cylinders. Paragraph (a) specifies detailed filling requirements for a number of gases, including a table of maximum filling densities. As requested by commenters, this section is revised in the final rule to add DOT 3AL cylinders to the authorized list of cylinders. We inadvertently omitted the DOT 3AL reference from the NPRM.

In paragraph (a)(3), the NPRM proposed extending the provision limiting cylinder volume to 75 cubic inches, which currently applies to liquefied petroleum gas and Division 2.1 materials listed in the § 173.304 table, to all Division 2.1 materials. One commenter suggested this proposal would have a negative impact on companies using DOT 39 cylinders larger than 75 cubic inches in aerosol applications. We plan to address issues related to requirements for all cylinders used in aerosol applications in a future rulemaking. This rulemaking will harmonize, to the extent possible, the U.S. cylinder regulations with international regulations recently adopted by the UN Committee of Experts on the Transport of Dangerous Goods. Therefore, in this final rule, we are not adopting paragraph (a)(3) as proposed. We will address filling limits for liquefied compresses gases and Division 2.1 materials in a future rulemaking.

Paragraph (b) is reserved.

Paragraph (c) establishes requirements for verifying a cylinder's contents and is adopted as proposed in the NPRM.

Paragraph (d) specifies filling requirements for liquefied petroleum gas and is adopted as proposed in the NPRM. One commenter requested a change to the filling densities. The request is beyond the scope of this rulemaking. It will be considered under a separate rulemaking.

Paragraph (e) sets forth requirements for carbon dioxide, refrigerated liquid, and nitrous oxide, refrigerated liquid. It is adopted as proposed in the NPRM.

Section 173.305

This section is revised as proposed in the NPRM to add a reference to § 173.301 to paragraph (b).

Section 173.306

This section is revised as proposed in the NPRM to change the reference for overpack requirements.

Section 173.315

Consistent with the NPRM, this final rule adds paragraph (q) to this section. Paragraph (q) specifies conditions under which cargo tanks containing anhydrous ammonia may be manifolded.

Section 173.334

This section establishes requirements for organic phosphates mixed with compressed gas. In this final rule, this section is amended as proposed, except we are not adopting the proposed metric-marked cylinder provisions.

Section 173.336

This section sets forth requirements for nitrogen dioxide, liquefied, and dinitrogen tetroxide, liquefied and is amended, as proposed, except we are not adopting the proposed metric-marked cylinder provisions. We are correcting the referenced Federal Specification RR–C–901C paragraph cites.

Section 173.337

This section prescribes requirements for nitric oxide and is amended, as proposed, except we are not adopting the proposed metric-marked cylinder provisions. We are correcting the referenced Federal Specification RR–C–901C paragraph cites and adding a reference to § 173.40 in the introductory paragraph that was inadvertently omitted in the NPRM.

Part 177

Section 177.840

We are revising current paragraph (a)(1) to allow horizontal loading of cylinders containing Class 2 materials if the cylinders are designed so the inlet to the PRD is located in the vapor space. The cylinders must be properly secured during transportation.

We had proposed to require the use of cylinder restraint systems to reduce the likelihood of cylinders being ejected from a vehicle in the case of an accident. We issued this proposal in response to NTSB Recommendation I–90–008, which urges RSPA to require hazardous materials packages to be secured with adequate cargo restraint systems to prevent their ejection from the vehicle during transportation.

Considering the wide variation in cylinder sizes, and the various types of restraints that would be required, we solicited information in the NPRM on the NTSB recommendation. We asked commenters to address anticipated safety benefits and the costs of requiring the use of restraint systems, particularly on small businesses. Numerous commenters objected to the proposed amendment. They stated it is common practice to secure carbon dioxide and other Division 2.2 gases in horizontal positions. NPGA requested that we allow Class 2 gases to be loaded in a horizontal position if the cylinder is designed so the inlet to the PRD is located in the vapor space. We agree with NPGA that the inlet port must be in the vapor space.

Several commenters also objected to our usage of the word "lash." This term appears in the current regulations, and

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we have received no previous requests for a revision. The commenters stated that lashing should be considered an appropriate means of securing cylinders, but should not be made a prescriptive requirement. One commenter asked us to remove the wording "and securely attached to motor vehicle." The commenter stated that thousands of low-pressure cylinders containing nonliquefied gases are shipped on stretch-wrapped pallets. The commenter said requiring such pallets to be securely attached to a motor vehicle would be overly burdensome, costly to the regulated industry and consumers, and would provide no added safety benefits.

We reviewed the HM–220 comments and considered the wide range of packaging configurations and sizes that may be loaded on a vehicle. We find it neither practicable nor cost-beneficial to require carriers to secure each hazardous material package on a vehicle in a manner that will withstand every conceivable accident or overturn situation. The current regulations require hazardous materials packages containing Class 2 (gases), Class 3 (flammable liquid), Division 6.1 (toxic), Class 7 (radioactive), or Class 8 (corrosive) materials to be secured against movement within the vehicle under conditions normally incident to transportation. We believe this standard provides an acceptable level of safety. However, we recognize the requirement should be broadened to include all hazardous materials packages rather than limited to hazardous materials of certain hazard classes. We will propose these changes in a future rulemaking.

Part 178

Section 178.35

This section establishes general requirements for cylinders. We are revising paragraph (c)(3)(iv) to reference a new Appendix C, which provides illustrations of recommended locations for selecting test specimens from welded cylinders. In the NPRM, we proposed the use of Appendix C for metric-marked welded cylinders. Although commenters opposed adoption of the metric-marked cylinder proposals, they requested that we include the appendix as guidance of use with non-metric-marked cylinders.

We are revising paragraph (d) of this section to set forth requirements, established elsewhere in this final rule, applicable to specification cylinders. A cylinder may not be constructed of material having seams, cracks or laminations or other defects, and metal attachments must be constructed to prevent the possibility of puncturing or damaging other hazardous materials packages.

We are revising paragraph (f), as proposed in the NPRM, to except DOT 3E cylinders from the requirement to be marked with an inspector's mark or serial number.

Section 178.45

We are revising paragraph (h) to update an old incorporation by reference.

Section 178.46

This section prescribes requirements for DOT 3AL seamless cylinders. This final rule revises the tables in paragraph (b)(4) to remove aluminum alloy 6351–T6 as an authorized material for the manufacture of DOT 3AL seamless cylinders. In addition, in Table 1, this final rule makes several changes to the chemical composition limits for 6061 alloy for consistency with limits stated in The Aluminum Association Standards and Data, 1993 edition. The currently stated silicon (Si) maximum of 0.80% is revised to read 0.8%, the currently stated iron (Fe) maximum of 0.70% is revised to read 0.7%, the currently stated magnesium (Mg) minimum of 0.80% is revised to read 0.8%, and the currently stated Mg maximum of 1.20% is revised to read 1.2%. Finally, the currently stated Table 1 limit of 0.01 for the chemical composition of lead (Pb) and bismuth (Bi) is changed to 0.005.

Appendix to Subpart C of Part 178

We are adopting an appendix containing illustrations of the recommended locations for taking test specimens for specific welded cylinder designs.

Part 180

Part 180, Subpart C

We are adopting a new subpart to specify requirements for the continuing qualification, maintenance, repair, and rebuilding of DOT specification and exemption cylinders. Most of the requirements are currently contained in §§ 173.34 and 173.301.

Section 180.201

This section lists the entities to which Subpart C applies and is adopted as proposed in the NPRM.

Section 180.203

This section contains definitions for terms used throughout Subpart C.

We are adopting the definition of "commercially free of corrosive components" as proposed in the NPRM. CGA and several other commenters requested we revise the wording to read "a hazardous material having a *moisture pressure* dew point at or below * * *" They stated the change would recognize water as the contaminant at service pressure. NPGA stated propane has a dew point of −42.2° C (−44° F). NPGA noted that ASTM D–1835 "Standard Specification for Liquefied Petroleum (LP) Gases" incorporates provisions to control moisture content and the level of corrosive sulfur compounds in propane. NPGA urged us to adopt the moisture content criteria contained in the ASTM standard. We agree an exception from hydrostatic test requirements should be granted for cylinders used exclusively for the transportation of petroleum gas that is essentially free of moisture and corroding components. We are revising the table in § 180.209(g) accordingly.

We are adopting the definitions of "condemn," "defect," and "elastic expansion," as proposed in the NPRM.

The NPRM proposed a definition for "filled." A commenter stated the words "charged" and "filled" are used interchangeably in Part 173 of the HMR and suggested we add the wording "(or charged)" following the word "filled." We agree; this final rule adopts a definition for "filled or charged."

We are adopting the definition of "non-corrosive service" as proposed in the NPRM, revised slightly for clarity.

We had proposed to define the term "over-heated" to mean a condition in which any part of a cylinder has been subjected to a temperature in excess of 176° C (350° F). Several commenters noted a temperature of 176° C (350° F) is conservatively low for steel. They requested we reference a temperature of 176° C (350° F) for aluminum and 343° C (650° F) for nickel or steel. We agree, and revised the definition accordingly in this final rule. In addition, we revised the definition to indicate that a cylinder is over-heated if the temperature of any portion of the cylinder reaches the specified temperatures. This change responds to the concerns expressed by firefighters discussed below under § 180.205.

We had proposed to define the term "over-pressurized" to mean a condition in which a cylinder has been subjected to an internal pressure in excess of 30% of its test pressure. This definition was intended to apply to the pressure to which a cylinder may be subjected during requalification testing, not to a cylinder's service pressure or to pressure during normal transportation operations. Since publication of the NPRM, we have determined that a single definition for "over-pressurized" that would apply to all cylinders is not practicable. Pressure limits may vary depending on the design specification of the cylinder, its material of construction, and the material transported. Therefore, we are not adopting the proposed definition in this final rule. Persons who use cylinders to transport hazardous materials in commerce should be aware that a cylinder subjected to pressures beyond its design capability may be rendered unfit for continued service. Any person in possession of an over-pressurized cylinder must determine the cylinder's suitability for continued use prior to offering the cylinder for transportation in commerce.

We are adopting the definitions for "permanent expansion," "proof pressure test," "rebuild," "rejected cylinder," "repair," "requalification," "requalification identification number or RIN," "test pressure," "total expansion," "visual inspection," and "volumetric expansion test" as proposed in the NPRM.

Section 180.205

This section prescribes general requirements for the continuing qualification and use of cylinders and for persons who perform cylinder requalification functions. Paragraph (a) states that a cylinder must be an authorized packaging. Paragraph (b) sets forth requirements for persons performing requalification functions. We are adopting both as proposed in the NPRM.

In response to comments, we made several editorial revisions to paragraph (c). Several commenters requested we revise the paragraph to state a cylinder may be requalified at any time *prior to the date* requalification is due. They also suggested we reiterate the restriction against filling and offering a cylinder for transportation after its authorized service life has expired. We agree, and include the suggested changes in this final rule. Also, we are revising paragraph (c)(4) to require the set pressure of PRDs on DOT–3 series cylinders to be set at test pressure with a tolerance of plus zero to minus 10% at the first requalification due on or after October 1, 2002, as discussed in the preamble discussion to 173.301(f)(4).

Two commenters suggested we revise paragraph (d), which prescribes conditions requiring test and inspection of cylinders, to require the requalification of any DOT specification cylinder used for nonhazardous material service prior to its being returned to hazardous material service. This change is beyond the scope of this rulemaking and, therefore, is not adopted in this final rule. For the same reason, we are not adopting a suggestion to require any cylinder removed from service to be marked with a notation that the cylinder has been removed from service.

We revised the proposed wording in paragraph (d)(3) that read "the cylinder has been over-heated or over-pressurized" to state, instead, that the cylinder "shows evidence of, or is known to have been" over-heated. We removed the reference to over-pressurized cylinders for the reasons noted above in the discussion concerning the definition for "over-pressurized." Any person in possession of an over-pressurized cylinder must determine the cylinder's suitability for continued use prior to offering the cylinder for transportation in commerce.

Paragraph (e) addresses cylinders containing Class 8 liquids. In this final rule, we modified the paragraph for consistency and clarity.

Paragraph (f) sets forth visual inspection requirements. A commenter suggested we revise the paragraph (f) introductory text to require an internal and an external visual inspection to be performed prior to the pressure test, and another internal inspection for contaminants and damaged threads after the pressure test. The commenter stated that performing the visual inspection prior to the pressure test will save time if the cylinder is unfit for pressure testing. The commenter stated that a cylinder that ruptures during the pressure test can damage equipment and property and may cause operational delays. We disagree. Some requalifiers have modernized their operations and perform hydrostatic tests on all cylinders, followed by visual inspections. We find no reason to limit the requalifiers' flexibility in deciding whether to perform the visual requalifications before or after the pressure test.

We are revising paragraph (f)(2) to require any coating or attachments that would inhibit inspection of the cylinder to be removed prior to performing a visual inspection. We had proposed to require any vinyl or plastic coating on a cylinder to be completely removed prior to performing a visual inspection. CGA suggested we revise the provision to apply only to cylinders with removable vinyl or plastic coatings. Other commenters suggested the removal of both internal and external vinyl or plastic coatings and, when necessary, layers of paint. A different commenter questioned whether wire wrapping should be remove prior to performing the inspection. In consideration of the comments, we are requiring the removal of any coating, attachment, or wrapping that hinders proper inspection of the cylinder surface.

We had proposed in paragraph (f)(4) to require DOT 3AL cylinders to be inspected for evidence of sustained load cracking in the neck and shoulder areas in accordance with the cylinder manufacturer's written recommendation. The manufacturer's recommendation must be approved in writing by the Associate Administrator. A commenter suggested we clarify that the procedure applies only to cylinders made of aluminum alloy 6351–T6. We agree. In this final rule, we revised the provision to require the inspection only for DOT specification or exemption cylinders made of aluminum alloy 6351–T6.

We are not adopting the provision in paragraph (g) to require the pressure test to be conducted in accordance with the procedures in paragraphs 4 and 5 of CGA Pamphlet C–1. One commenter objected to incorporation of Pamphlet C–1. In addition, it is our understanding that CGA is in the process of completely revising the C–1 standard. In this final rule, we revised paragraph (g) to incorporate the requirements for pressure testing cylinders that are currently in § 173.34(e)(4). We will consider incorporating the revised C–1 standard in a future rulemaking.

We had proposed to provide for use of an ultrasonic examination as an alternative requalification method. We had also proposed to allow other nondestructive test methods with the approval of the Associate Administrator. As discussed in the above referenced HM–220 termination notice, we are not adopting these provisions. We will continue to permit the use of ultrasonic examinations and other nondestructive methods under the exemption program.

Paragraph (h) establishes criteria for rejecting cylinders. We are adopting the provision in paragraph (h)(1) prohibiting a rejected cylinder from being marked as meeting the requirements of this section. A commenter requested we revise the paragraph to recognize that CGA Pamphlet C–6.2 establishes levels of damage for fiber reinforced exemption cylinders, some of which is repairable. This issue is more appropriately addressed in the specific exemptions authorizing use of fiber reinforced cylinders. Provided it is permitted under the exemption, repairs of such cylinders in accordance with CGA Pamphlet C–6.2 are permitted. Paragraph (h)(4)(iii) of this final rule permits a cylinder with a service pressure of less than 900 psig to be repaired in accordance with an

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exemption covering the manufacture, requalification, or use of the cylinder.

Paragraph (i) sets forth criteria for condemning cylinders. We had proposed in paragraph (i)(1)(viii) to require an aluminum or aluminum-lined cylinder to be condemned if exposed to a temperature exceeding 177° C (350° F). Numerous commenters representing fire fighters and emergency responder organizations strongly objected to the proposal. They stated it would require the removal of aluminum and composite exemption cylinders used as self-contained breathing apparatus (SCBAs) based on possible exposure to temperatures in excess of 350° F. These commenters noted that most SCBAs are exposed to temperatures exceeding 177° C (350° F) whenever they are carried into a fire. The commenters suggested that the NPRM proposal would require replacement of SCBAs after each fire exposure, resulting in substantial costs to the emergency response community.

Our intent was to require the removal from service of any aluminum cylinder or aluminum-lined composite exemption cylinder with reduced structural integrity resulting from the metal temperature of the aluminum cylinder or liner reaching a temperature above 350° F. Such cylinders may pose a safety risk. We did not intend to require the removal of undamaged cylinders from service. During typical firefighting operations, the metal temperature of an aluminum cylinder or liner does not reach temperatures above 350° F. We are revising the paragraph to require a cylinder to be condemned if over-heated. As defined in § 180.203 of this final rule, for an aluminum cylinder, "over-heated" means that the metal temperature of any part of the cylinder has reached a temperature in excess of 350° F.

Section 180.209

This section includes the requirements currently contained in § 173.34(e) for the periodic requalification of specification cylinders.

Paragraph (a) sets forth specific periodic requalification requirements for each specification cylinder. As discussed elsewhere in this preamble, we are not adopting the proposal to permit ultrasonic testing in place of a hydrostatic test. Ultrasonic testing will continue to be permitted under exemption.

Paragraph (b) establishes requalification requirements for DOT 3A and 3AA cylinders. We are revising the provision in paragraph (b)(1) to increase the requalification interval from five to 10 years for a DOT 3A and 3AA cylinder with a water capacity of 125 pounds or less that is used for certain named gases. A commenter stated numerous new refrigerants and blends are being marketed and requested we allow cylinders containing "fluorinated hydrocarbons, liquefied hydrocarbons, and mixtures thereof which are commercially free from corroding components' to be requalified every 10 years rather than every 5 years. The commenter also pointed out that we authorized these materials under DOT Exemptions 10184 and 12084. Several other commenters requested we add certain other gases to the list. We agree the listing in paragraph (b)(1)(ii) should be updated. In this final rule, we are revising this paragraph to accommodate commenters concerns.

Paragraph (c) sets forth requalification requirements for DOT 4-series cylinders, and is adopted as proposed in the NPRM.

Paragraph (d) prescribes requalification requirements for cylinders 12 pounds or less with service pressures of 300 psig or less, and is adopted a proposed in the NPRM.

Paragraph (e) includes requirements for proof pressure testing for certain DOT–4 series cylinders, and is adopted as proposed in the NPRM.

Paragraph (f) sets forth requalification requirements for cylinders used to transport poisonous materials, and is adopted as proposed in the NPRM.

We are revising paragraph (g) to clarify the interval for performance of a visual inspection, in place of a five-year periodic retest, for cylinders used exclusively for the listed non-corrosive gases.

Paragraph (h) sets forth requalification requirements for cylinders used to transport anhydrous ammonia, and is adopted as proposed in the NPRM.

Paragraph (i) sets forth requalification requirements for DOT–8 series cylinders, currently in § 173.34(e)(18). The provision requires the replacement valve to be the same weight as the valve to be replaced. If it is not, the cylinder's marked tare weight must be adjusted to compensate for the valve weight differential. The Chlorine Institute and two valve manufacturers requested we revise paragraph (i)(3) to allow a tolerance on the replacement valve weight to compensate for variations. The valve manufacturers suggested the tolerance should be a stated weight or a percentage of the weight of the valve being replaced. They recommended no specific weight or percentage. In the absence of a specific recommendation, we are adopting the provision as stated in the NPRM.

Section 180.211

This section prescribes repair, rebuild, and heat treatment requirements currently prescribed in §§ 173.34(g) thru 173.34(l), with certain revisions. We received no comments on these provisions and are adopting them as proposed with editorial revisions for clarity. We are not adopting the proposed requirements for metric-marked cylinders.

Section 180.213

This section consolidates the marking requirements currently contained in § 173.34, with certain revisions. These marking requirements identify the type of inspection, test, or work performed on a cylinder. Locating the marking requirements in a single section of the HMR will facilitate their use by shippers, carriers, and enforcement personnel.

We had proposed to allow the application of requalification markings by stamping, engraving, scribing, or any other method approved in writing by the Associate Administrator. NSWA and another commenter objected to the permissive use of electric or manual scribes as an alternative method. They stated markings made by a scribe are of poor quality, particularly over multiple coats of paint, and should not be permitted. Also, NSWA stated that, unless specifically approved for flammable atmospheres, electrical apparatuses may create a safety hazard when used to mark cylinders containing flammable gases or in plants where flammable gases may be present. The proposal was fully accepted by other commenters. Because of concerns raised about the quality of certain marking methods and to alleviate unnecessary delays incurred by obtaining an approval from the Associate Administrator, we have revised this provision in this final rule. We will permit the use of any marking method capable of producing durable, legible marks. A cylinder with illegible requalification markings will be considered out-of-test and will have to be retested before being returned to service. Also, we are allowing the use of pressure sensitive labels to display the requalification markings on fire extinguishers, as proposed.

Section 180.215

This section contains the reporting and record retention requirements currently prescribed in § 173.34(e)(8), with certain revisions.

We revised the retester authorization record requirements in current § 173.34(e)(8)(i) to include all cylinder requalifiers who inspect, test, repair, or rebuild cylinders. In addition, proposed paragraph (d)(1) requires records covering any work involving welding or brazing repairs, or the building or reheat treatment of cylinders to be retained by the cylinder requalifier for 15 years. The requalifier must retain inspection and test records until expiration of the inspection or requalification period or until the cylinder is again requalified, whichever occurs first. Records of any welding or brazing repair, rebuilding or reheat treatment must be retained for 15 years.

IV. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866. It was reviewed informally by the Office of Management and Budget. The rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation is available for review in the docket.

The compliance costs associated with this final rule are minimal. Most increased compliance costs involve the new requirement for a person who performs visual inspections of cylinders to obtain approval from the Associate Administrator and mark his RIN number on the cylinders he inspects. The aggregate cost to the industry of this new requirement is $29,520 per year. On a per facility basis, the cost is $20.50 per filing or $4.10 per year. Although they are difficult to quantity, the benefits associated with the provisions in this final rule are significant. This final rule will: (1) Enhance the accountability of the cylinder requalification process; (2) improve voluntary compliance with the cylinder requirements; (3) enhance enforcement related to cylinder requalifications; and (4) reduce the regulatory burden on the regulated industry while increasing its flexibility and providing an opportunity to use new technologies. Further, this final rule will improve cylinder transportation safety by reducing the number of unintentional releases of flammable and toxic material from DOT–3 series cylinders, prohibiting the use of an unsafe aluminum alloy for cylinder manufacture, and prohibiting the use of a cylinder after the expiration of its service life. Although we cannot assign definitive dollar amounts to these potential benefits, we believe that, taken together, the provisions of this final rule are the least costly alternatives available for ensuring an acceptable level of transportation safety. The potential benefits to society more than offset the potential costs associated with the final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines a rule is not expected to have a significant economic impact on a substantial number of small entities. This final rule imposes only minimal new costs of compliance on the regulated industry and, in fact, should reduce overall costs of compliance. Based on the assessment in the regulatory evaluation, I hereby certify that while this final rule applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. A detailed Regulatory Flexibility analysis is available for review in the docket.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule preempts state, local, and Indian tribe requirements but does not propose any regulation with substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items 2 and 5 above and preempts state, local, and Indian tribe requirements not meeting the "substantively the same" standard. This final rule is necessary to assure an acceptable level of safety for the transportation of hazardous materials in cylinders.

Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of federal preemption of this final rule is 90 days from publication of this final rule in the **Federal Register**.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector. This rule is the least burdensome alternative to achieve the objective of the rule.

F. Paperwork Reduction Act

RSPA has current information collection approvals under OMB No. 2137–0022, Testing, Inspection, and Marking Requirements for Cylinders, with 168,431 burden hours and $10,882,516 annual costs, which expires October 31, 2004; and OMB No. 2137–0557, Approvals for Hazardous Materials, with 18,381 burden hours and $413,737.40 annual costs, which expires July 31, 2004. We believe that this rule may result in a minimal increase or decrease in annual burden hours and costs. These current approvals have been revised and submitted to OMB for extension and re-

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approval. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number.

The information collection and recordkeeping requirements in current §§ 173.34, 173.302(c), and 178.35 (pertaining to records prepared by persons performing the requalification, repair, rebuild and use of cylinders) and requirements in current § 173.34 (pertaining to persons seeking approval to requalify cylinders) were approved by the Office of Management and Budget (OMB) and assigned OMB No. 2137–0022, with an expiration date of October 31, 2004. This information is used to verify that cylinders meet the required manufacturing standards prior to being authorized for initial use, and that, once manufactured, the cylinders are maintained and used in compliance with applicable requirements of the HMR. In this rule, these information collection and recordkeeping requirements for records used to verify that cylinders are being properly maintained for continuing hazardous material service are revised and redesignated in new §§ 180.205, 180.209, 180.211, 180.213, and 180.215, with no change in burden.

The information collection and recordkeeping requirements in current §§ 173.300a and 173.300b (pertaining to persons seeking approval to be an independent inspection agency and for chemical analyses and tests of DOT specification and exemption cylinders conducted outside the United States) were approved by OMB and assigned OMB No. 2137–0557, with an expiration date of July 31, 2004. The information is used to evaluate an applicants's qualification to perform the applicable requalification functions and to ensure that cylinders made outside the United States conform to the applicable HMR requirements. In this rule, the information collection and recordkeeping requirements are moved to new subpart I of part 107 and §§ 107.803, 107.805, 107.807, and 180.205(c). This final rule includes a new information collection and recordkeeping requirement for persons seeking approval to perform requalification functions that require marking a date on a cylinder. This new requirement is placed with the other hazardous materials approval requirements under OMB control number 2137–0557. This new approval is required every five years; therefore, first year and subsequent years' estimates are included in the burden estimates for OMB No. 2137–0557.

Because this final rule broadens the approval requirements for affected persons who requalify cylinders and relocates cylinder requalification requirements to other sections of the HMR, we revised the current burden hour submission and resubmitted the revised submission to OMB for extension and re-approval.

We estimate the total revised information collection and recordkeeping burden in this rule as follows:

OMB No. 2137–0022:
Number of Respondents: 139,352.
Total Annual Responses: 153,287.
Total Annual Burden Hours: 168,431.
Total Annual Burden Cost: $10,882,516.00.

OMB No. 2137–0557:
Number of Respondents: 10,718.
Total Annual Responses: 11,069.
Total Annual Burden Hours: 25,581 (1st year).
Total Annual Burden Cost: $561,337.40 (1st year).
Subsequent years 2–5 Burden Hours: 1,440 per year.
Subsequent years 2–5 Burden Cost: $29,520 per year.

Requests for a copy of the information collections should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Environmental Assessment

This final rule incorporates new cylinder technologies through new and updated incorporations by reference of consensus standards developed by CGA; increases flexibility for cylinder manufacturers, requalifiers, and users; and facilitates compliance with the HMR by clarifying and reorganizing regulatory requirements applicable to cylinders. In addition, this final rule improves the overall safety performance of DOT specification cylinders by addressing several identified safety problems. To the extent that this final rule will reduce unintentional releases of hazardous materials from cylinders during transportation, it will reduce environmental damage associated with such releases. We find that there are no significant environmental impacts associated with this final rule.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 177

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Incorporation by reference, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, title 49, Chapter I, Subchapters A and C of the Code of Federal Regulations, are amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

§ 107.1 [Amended]

2. In § 107.1, the definition of "Registration" is amended by removing the wording "registration with RSPA as a cylinder retester pursuant to 49 CFR 173.34(e)(1), or".

3. Subpart I is added to part 107 to read as follows:

Subpart I—Approval of Independent Inspection Agencies, Cylinder Requalifiers, and Non-domestic Chemical Analyses and Tests of DOT Specification Cylinders

Sec.
107.801 Purpose and scope.
107.803 Approval of independent inspection agency.
107.805 Approval of cylinder requalifiers.
107.807 Approval of non-domestic chemical analyses and tests.

Subpart I—Approval of Independent Inspection Agencies, Cylinder Requalifiers, and Non-domestic Chemical Analyses and Tests of DOT Specification Cylinders

§ 107.801 Purpose and scope.

(a) This subpart prescribes procedures for—

(1) A person who seeks approval to be an independent inspection agency to perform cylinder inspections and verifications required by parts 178 and 180 of this chapter;

(2) A person who seeks approval to engage in the requalification (*e.g.*, inspection, testing, or certification), rebuilding, or repair of a cylinder manufactured in accordance with a DOT specification under subchapter C of this chapter or under the terms of an exemption issued under this part;

(3) A person who seeks approval to perform the manufacturing chemical analyses and tests of DOT specification or exemption cylinders outside the United States.

(b) No person may engage in a function identified in paragraph (a) of this section unless approved by the Associate Administrator in accordance with the provisions of this subpart. Each person must comply with the applicable requirements in this subpart. In addition, the procedural requirements in subpart H of this part apply to the filing, processing, and termination of an approval issued under this subpart.

§ 107.803 Approval of independent inspection agency.

(a) *General.* Prior to performing cylinder inspections and verifications required by parts 178 and 180 of this chapter, a person must apply to the Associate Administrator for an approval as an independent inspection agency. A person approved as an independent inspection agency is not an RSPA agent or representative.

(b) *Criteria.* No applicant for approval as an independent inspection agency may be engaged in the manufacture of cylinders for use in the transportation of hazardous materials, or be directly or indirectly controlled by, or have a financial involvement with, any entity that manufactures cylinders for use in the transportation of hazardous materials, except for providing services as an independent inspector.

(c) *Application information.* Each applicant must submit an application in conformance with § 107.705 containing the information prescribed in § 107.705(a). In addition, the application must contain the following information:

(1) Name and address of each facility where tests and inspections are to be performed.

(2) Detailed description of the inspection and testing facilities to be used by the applicant.

(3) Detailed description of the applicant's qualifications and ability to perform the inspections and to verify the inspections required by part 178 of this chapter or under the terms of an exemption issued under this part.

(4) Name, address, and principal business activity of each person having any direct or indirect ownership interest in the applicant greater than three percent and any direct or indirect ownership interest in each subsidiary or division of the applicant.

(5) Name of each individual whom the applicant proposes to employ as an inspector and who will be responsible for certifying inspection and test results, and a statement of that person's qualifications.

(6) An identification or qualification number assigned to each inspector who is supervised by a certifying inspector identified in paragraph (c)(3) of this section.

(7) A statement that the applicant will perform its functions independent of the manufacturers and owners of the cylinders.

(8) The signature of the person certifying the approval application and the date on which it was signed.

(d) *Facility inspection.* Upon the request of the Associate Administrator, the applicant must allow the Associate Administrator or the Associate Administrator's designee to inspect the applicant's facilities and records. The person seeking approval must bear the cost of the inspection.

§ 107.805 Approval of cylinder requalifiers.

(a) *General.* A person must meet the requirements of this section to be approved to inspect, test, certify, repair, or rebuild a cylinder in accordance with a DOT specification under subpart C of part 178 or subpart C of part 180 of this chapter or under the terms of an exemption issued under this part.

(b) *Independent Inspection Agency Review.* Each applicant must arrange for an independent inspection agency, approved by the Associate Administrator pursuant to this subpart, to perform a review of its inspection or requalification operation. The person seeking approval must bear the cost of the inspection. A list of approved independent inspection agencies is available from the Associate Administrator at the address listed in § 107.705. Assistance in obtaining an approval is available from the same address.

(c) *Application for approval.* If the inspection performed by an independent inspection agency is completed with satisfactory results, the applicant must submit a letter of recommendation from the independent inspection agency, an inspection report, and an application containing the information prescribed in § 107.705(a). In addition, the application must contain—

(1) The name of the facility manager;

(2) The DOT specification/exemption cylinders that will be inspected, tested, repaired, or rebuilt at the facility;

(3) A certification that the facility will operate in compliance with the applicable requirements of subchapter C of this chapter; and

(4) The signature of the person making the certification and the date on which it was signed.

(d) *Issuance of requalifier identification number (RIN).* The Associate Administrator issues a RIN as evidence of approval to requalify DOT specification/exemption cylinders if it is determined, based on the applicant's submission and other available information, that the applicant's qualifications and, when applicable, facility are adequate to perform the requested functions in accordance with the criteria prescribed in subpart C of Part 180 of this chapter.

(e) *Expiration of RIN.* Unless otherwise provided in the issuance letter, an approval expires five years from the date of issuance, provided the applicant's facility and qualifications are maintained at or above the level observed at the time of inspection by the independent inspection agency, or at the date of the certification in the application for approval for requalifiers only performing inspections made under § 180.209(g) of this chapter.

(f) *Exceptions.* Notwithstanding the requirements in paragraphs (b) and (c) of this section, a person who only performs inspections in accordance

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with § 180.209(g) of this chapter may submit an application that, in addition to the information prescribed in § 107.705(a), identifies the DOT specification/exemption cylinders to be inspected; certifies the requalifier will operate in compliance with the applicable requirements of subchapter C of this chapter; certifies the persons performing inspections have been trained and have the information contained in each applicable CGA pamphlet incorporated by reference in § 171.7 of this chapter applicable to the requalifiers' activities; and includes the signature of the person making the certification and the date on which it was signed. Each person must comply with the applicable requirements in this subpart. In addition, the procedural requirements in subpart H of this part apply to the filing, processing and termination of an approval issued under this subpart. After September 30, 2003, no person may requalify a DOT specification/exemption cylinder in accordance with § 180.209(g) of this chapter unless that person has been issued a RIN as provided in paragraph (d) of this section.

§ 107.807 Approval of non-domestic chemical analyses and tests.

(a) *General.* A person who seeks to manufacture DOT specification or exemption cylinders outside the United States must seek an approval from the Associate Administrator to perform the chemical analyses and tests of those cylinders outside the United States.

(b) *Application for approval.* Each applicant must submit an application containing the information prescribed in § 107.705(a). In addition, the application must contain—

(1) The name, address, and a description of each facility at which cylinders are to be manufactured and chemical analyses and tests are to be performed;

(2) Complete details concerning the dimensions, materials of construction, wall thickness, water capacity, shape, type of joints, location and size of openings and other pertinent physical characteristics of each specification or exemption cylinder for which approval is being requested, including calculations for cylinder wall stress and wall thickness, which may be shown on a drawing or on separate sheets attached to a descriptive drawing;

(3) The name of the independent inspection agency to be used; and

(4) The signature of the person making the certification and the date on which it was signed.

(c) *Facility inspections.* Upon the request of the Associate Administrator, the applicant must allow the Associate Administrator or the Associate Administrator's designee to inspect the applicant's cylinder manufacturing and testing facilities and records, and must provide such materials and cylinders for analyses and tests as the Associate Administrator may specify. The applicant or holder must bear the cost of the initial and subsequent inspections, analyses, and tests.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

4. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

5. In § 171.2, paragraph (d)(3) is revised to read as follows:

§ 171.2 General requirements.

* * * * *

(d) * * *

(3) Test dates associated with specification, registration, approval, retest, exemption, or requalification identification number (RIN) markings indicating compliance with a test or retest requirement of this subchapter, or an exemption, an approval, or a registration issued under this subchapter or subchapter A of this chapter.

* * * * *

6. In § 171.6, the table in paragraph (b)(2) is amended by revising the entries for 2137–0022 and 2137–0057, to read as follows:

§ 171.6 Control numbers under the Paperwork Reduction Act.

* * * * *

(b) * * *

(2) Table.

Current OMB Control No.	Title	Title 49 CFR part or section where identified or described
. . .	. . .	. . .
2137–0022	Testing, Inspection, and Marking Requirements for Cylinders.	Secs. 173.302a, 173.303, 173.304, 173.309, 178.2, 178.3, 178.35, 178.44, 178.45, 178.46, 178.57, 178.59, 178.60, 178.61, 178.68, 180.205, 180.209, 180.211, 180.213, 180.215.
. . .	. . .	. . .
2137–0557	Approvals for Hazardous Materials	Secs. 107.402; 107.403; 107.405; 107.503; 107.705; 107.713; 107.715; 107.717; 107.803; 107.805; 107.807; 110.30; 172.101; 172.102, Special Provisions 26, 19, 53, 55, 60, 105, 118, 121, 125, 129, 131, 133, 136; 172.102, Special Provisions B45, B55, B61, B69, B77, B81, N10, N72, Code: T42; 173.2a; 173.4; 173.7; 173.21; 173.22; 173.24; 173.38; 173.31; 173.51; 173.56; 173.58; 173.59; 173.124; 173.128; 173.159; 173.166; 173.171; 173.214; 173.222; 173.224; 173.225; 173.245; 173.301; 173.305; 173.306; 173.314; 173.315; 173.316; 173.318; 173.334; 173.340; 173.411; 173.433; 173.457; 173.471; 173.472; 173.473; 173.476; 174.50; 174.63; 175.10; 175.701; 176.168; 176.340; 176.704; 178.3; 178.35; 178.47; 178.53; 178.58; 178.270–3; 178.270–13; 178.273; 178.274; 178.503; 178.509; 178.605; 178.606; 178.608; 178.801; 178.813; 180.213.
. . .	. . .	. . .

7. In § 171.7, in the table in paragraph (a)(3), the following changes are made:

a. In the entry ASTM A 240/A 240M–94b, the wording "A 240M–94b" is revised to read "A 240M–99b".

b. The entry ASTM A 388–67 is removed.

c. In the entry ASTM E 8–89, the wording "E 8–89 Tension Testing of Metallic Materials" is revised to read "E 8–99 Standard Test Methods for Tension Testing of Metallic Materials".

d. In the entry ASTM E 23–60, in column 1, the wording "E 23–60 Notched Bar Impact Testing of Metallic Materials" is revised to read "E 23–98 Standard Test Methods for Notched Bar Impact Testing of Metallic Materials" and in column 2, the reference "; 179.400" is removed.

e. In the entry CGA Pamphlet C–3, in column 1, the wording "Standards for Welding and Brazing on Thinned Walled Containers, 1975" is revised to read "Standards for Welding on Thin-Walled Steel Cylinders, 1994" and in column 2, the reference "; 180.211" is added, in numerical order.

f. In the entry CGA Pamphlet C–5, in column 2, the reference "173.302" is removed and the reference "173.302a" is added in its place.

g. In the entry CGA Pamphlet C–6, in column 2, the reference "173.34;" is removed and the references "173.198; 180.205; 180.209; 180.211;" are added, in numerical order.

h. In the entry CGA Pamphlet C–6.1, in column 2, the reference "173.34" is removed and the references "180.205; 180.209" are added, in its place.

i. In the entry CGA Pamphlet C–6.2, in column 2, the reference "173.34" is removed and the reference "180.205" is added, in its place.

j. In the entry CGA Pamphlet C–6.3, in column 2, the reference "173.34" is removed and the references "180.205; 180.209" are added, in its place.

k. In the entry CGA Pamphlet C–8, in column 2, the reference "173.34" is removed and the reference "180.205" is added, in its place.

l. In the entry CGA Pamphlet C–12, in column 2, the reference "173.34;" is removed and the reference "173.301;" is added, in numerical order.

m. In the entry CGA Pamphlet C–13, in column 2, the reference "173.34;" is removed and the references "; 180.205; 180.209." are added, in numerical order.

n. In the entry CGA Pamphlet C–14, in column 2, the reference "173.34" is removed and the reference "173.301" is added, in its place.

o. In the entry CGA Pamphlet S–1.1, in column 2, the reference "173.34" is removed and the reference "173.301; 173.304a." is added, in its place.

p. Under General Services Administration, in the entry Federal Specification RR–C–901C, in column 2, the reference "173.304;" is removed and the reference "; 173.337" is added, in numerical order.

q. Two new entries are added in alphanumeric sequence under American Society for Testing and Materials, the address for Compressed Gas Association, Inc., is revised, and two new entries are added in alphanumeric sequence under Compressed Gas Association, to read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
. . .	. . .
American Society for Testing and Materials * * *	
. . .	. . .
ASTM D 1835–97, Standard Specification for Liquefied Petroleum (LP) Gases	180.209
. . .	. . .
ASTM E 213–98, Standard Practice for Ultrasonic Examination of Metal Pipe and Tubing	178.45
. . .	. . .
Compressed Gas Association, Inc., 4221 Walney Road, 5th Floor, Chantilly, Virginia 20151	
. . .	. . .
CGA Pamphlet P–20, Standard for the Classification of Toxic Gas Mixtures, 1995	173.115
. . .	. . .
CGA Pamphlet S–7, Method for Selecting Pressure Relief Devices for Compressed Gas Mixtures in Cylinders, 1996	173.301
. . .	. . .

* * * * *

§ 171.8 [Amended]

8. In § 171.8, in the definition of "Filling density", paragraph (1) is amended by revising the reference "§ 173.304(a)(2) table note 1" to read "§ 173.304a(a)(2) table note 1".

9. In § 171.12, paragraph (b)(15) is revised to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(15) Cylinders not manufactured to a DOT specification must conform to the requirements of § 173.301(j) through (l) of this subchapter or, for Canadian manufactured cylinders, to the requirements of § 171.12a(b)(13).

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

10. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

11. In § 172.101, the Hazardous Materials Table is amended by revising the entries Cyanogen, Germane, and Iron pentacarbonyl, to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

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§ 172.101.—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Nonbulk	Bulk	(9) Quanity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Cyanogen	2.3	UN1026		2.3, 2.1	2	None	304	245	Forbidden	Forbidden	D	40
	Germane	2.3	UN2192		2.3, 2.1	2	None	302	245	Forbidden	Forbidden	D	40
	Iron penta carbonyl.	6.1	UN1994	I	6.1, 3	1,B9, B14, B30, B72, B77, T22, TP2, TP13, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

12. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

§ 173.34 [Removed]

13. Section 173.34 is removed.

14. Section 173.40 is revised to read as follows:

§ 173.40 General packaging requirements for toxic materials packaged in cylinders.

When this section is referenced for a Hazard Zone A or B hazardous material elsewhere in this subchapter, the requirements in this section are applicable to cylinders used for that material.

(a) *Authorized cylinders.* (1) A cylinder must conform to one of the specifications for cylinders in subpart C of part 178 of this subchapter, except that specification 8, 8AL, and 39 cylinders are not authorized.

(2) After September 30, 2002, DOT 3AL cylinders made of aluminum alloy 6351–T6 may not be filled and offered for transportation or transported with a Division 2.3 Hazard Zone A material, a Division 6.1 Hazard Zone A material, or any liquid meeting the definition of Division 6.1 and the criteria for Packing Group I Hazard Zone A, as specified in § 173.133. If it is otherwise serviceable and conforms to the regulations in effect on September 30, 2002, a DOT 3AL cylinder made of aluminum alloy 6351–T6 and filled before October 1, 2002, may be transported for reprocessing or disposal of the cylinder's contents until April 1, 2003.

(b) *Outage and pressure requirements.* The pressure of the hazardous material at 55° C(131° F) may not exceed the service pressure of the cylinder. Sufficient outage must be provided so that the cylinder will not be liquid full at 55° C(131° F).

(c) *Closures.* Each cylinder containing a Hazard Zone A material must be closed with a plug or valve conforming to the following:

(1) Each plug or valve must have a taper-threaded connection directly to the cylinder and be capable of withstanding the test pressure of the cylinder without damage or leakage.

(2) Each valve must be of the packless type with non-perforated diaphragm, except that, for corrosive materials, a valve may be of the packed type with an assembly made gas-tight by means of a seal cap with gasketed joint attached to the valve body or the cylinder to prevent loss of material through or past the packing.

(3) Each valve outlet must be sealed by a threaded cap or threaded solid plug and inert gasketing material.

(4) The materials of construction for the cylinder, valves, plugs, outlet caps, luting, and gaskets must be compatible with each other and with the lading.

(d) *Additional handling protection.* Each cylinder or cylinder overpack combination offered for transportation containing a Division 2.3 or 6.1 Hazard Zone A or B material must conform to the valve damage protection performance requirements of this section. In addition to the requirements of this section, overpacks must conform to the overpack provisions of § 173.25.

(1) Each cylinder with a wall thickness at any point of less than 2.03 mm (0.08 inch) and each cylinder that does not have fitted valve protection must be overpacked in a box. The box must conform to overpack provisions in § 173.25. Box and valve protection must be of sufficient strength to protect all parts of the cylinder and valve, if any, from deformation and breakage resulting from a drop of 2.0 m (7 ft) or more onto a non-yielding surface, such as concrete or steel, impacting at an orientation most likely to cause damage. "Deformation" means a cylinder or valve that is bent, distorted, mangled, misshapen, twisted, warped, or in a similar condition.

(2) Each cylinder with a valve must be equipped with a protective metal cap, other valve protection device, or an overpack sufficient to protect the valve from deformation, breakage or leakage resulting from a drop of 2.0 m (7 ft) onto a non-yielding surface, such as concrete or steel. Impact must be at an orientation most likely to cause damage.

(e) *Interconnection.* Cylinders may not be manifolded or interconnected.

15. In § 173.115, the last sentence in paragraph (c)(2) and paragraph (j) are revised to read as follows:

§ 173.115 Class 2, Divisions 2.1, 2.2, and 2.3—Definitions.

* * * * *

(c) * * *

(2) * * * LC50 values for mixtures may be determined using the formula in § 173.133(b)(1)(i) or CGA Pamphlet P–20 (incorporated by reference; *see* § 171.7 of this subchapter).

* * * * *

(j) *Refrigerant gas or Dispersant gas.* The terms *Refrigerant gas* and *Dispersant gas* apply to all nonpoisonous refrigerant gases; dispersant gases (fluorocarbons) listed in § 172.101 of this subchapter and §§ 173.304, 173.314(c), 173.315(a)(1), and 173.315(h) and mixtures thereof; and any other compressed gas having a vapor pressure not exceeding 260 psia at 54° C(130° F), used only as a refrigerant, dispersant, or blowing agent.

16. Section 173.163 is revised to read as follows:

§ 173.163 Hydrogen fluoride.

Hydrogen fluoride (hydrofluoric acid, anhydrous) must be packaged in a specification 3, 3A, 3AA, 3B, 3BN, 3E, or 4A cylinder; or a specification 4B, 4BA, or 4BW cylinder, if the cylinder is not brazed. Filling density may not exceed 85 percent of the cylinder's water weight capacity. In place of the periodic hydrostatic retest, cylinders used in exclusive service may be given a complete external visual inspection in conformance with part 180, subpart C, of this subchapter, at the time such retest becomes due. Cylinders removed from hydrogen fluoride service must be condemned in accordance with § 180.205 of this subchapter or, at the direction of the owner, rendered incapable of holding pressure.

17. Section 173.192 is revised to read as follows:

§ 173.192 Packaging for certain toxic gases in Hazard Zone A.

When § 172.101 of this subchapter specifies a toxic material must be packaged under this section, only specification cylinders are authorized, as follows:

(a) Specification 3A1800, 3AA1800, 3AL1800, or 3E1800 cylinders, under the following conditions:

(1) Specification 3A, 3AA, or 3AL cylinders may not exceed 57 kg (125 lb) water capacity (nominal).

(2) Specification 3AL cylinders may only be offered for transportation or transported by highway and rail.

(b) Packagings must conform to the requirements of § 173.40.

(c) For cylinders used for phosgene:

(1) The filling density may not exceed 125 percent;

(2) A cylinder may not contain more than 68 kg (150 lb) of phosgene; and

(3) Each cylinder containing phosgene must be tested for leakage before it is offered for transportation or transported and must show no leakage. The leakage test must consist of immersing the cylinder and valve, without the protective cap attached, in a bath of water at a temperature of approximately 66° C (150° F) for at least 30 minutes, during which time frequent examinations must be made to note any escape of gas. The valve of the cylinder may not be loosened after this test. Suitable safeguards must be provided to protect personnel and facilities should failure occur during the test. As an alternative, each cylinder containing phosgene may be tested for leakage by a method approved in writing by the Associate Administrator.

18. In § 173.198, the last two sentences in paragraph (a) are revised to read as follows:

§ 173.198 Nickel carbonyl.

(a) * * * A cylinder used exclusively for nickel carbonyl may be given a complete external visual inspection instead of the pressure test required by § 180.205 of this subchapter. Visual inspection must be in accordance with CGA Pamphlet C–6 (incorporated by reference; see § 171.7 of this subchapter).

* * * * *

19. In § 173.226, paragraph (a) is revised to read as follows:

§ 173.226 Materials poisonous by inhalation, Division 6.1, Packing Group I, Hazard Zone A.

* * * * *

(a) In seamless specification cylinders conforming to the requirements of § 173.40.

* * * * *

20. In § 173.227, the section heading and paragraph (a) are revised to read as follows:

§ 173.227 Materials poisonous by inhalation, Division 6.1, Packing Group I, Hazard Zone B.

* * * * *

(a) In packagings as authorized in § 173.226 and seamless and welded specification cylinders conforming to the requirements of § 173.40.

* * * * *

21. Section 173.228 is revised to read as follows:

§ 173.228 Bromine pentafluoride or bromine trifluoride.

The following packagings are authorized for bromine pentafluoride and bromine trifluoride:

(a) Specification 3A150, 3AA150, 3B240, 3BN150, 4B240, 4BA240, 4BW240 and 3E1800 cylinders. No cylinder may be equipped with a pressure relief device.

(b) A material in Hazard Zone A must be transported in a seamless specification cylinder conforming to the requirements of § 173.40. No cylinder may be equipped with a pressure relief device.

§§ 173.300a, 173.300b, 173.300c. [Removed]

22. In part 173, §§ 173.300a, 173.300b, and 173.300c are removed.

23. Section 173.301 is revised to read as follows:

§ 173.301 General requirements for shipment of compressed gases in cylinders and spherical pressure vessels.

(a) *General qualifications for use of cylinders.* As used in this subpart, *filled* or *charged* means an introduction or presence of a hazardous material in a cylinder. A Class 2 material (gas) offered for transportation in a cylinder must be prepared in accordance with this section and §§ 173.302 through 173.305, as applicable.

(1) Compressed gases must be in metal cylinders and containers built in accordance with the DOT and ICC specifications, as shown in this paragraph (a)(1), in effect at the time of manufacture, and requalified and marked as required by the specification and the regulation for requalification, if applicable:

Packagings

2P
2Q
ICC–31*COM019*
3A
3AA
3AL
3AX
3A480X
3AAX
3B
3BN
3E
3HT
3T
4AA480
4B
4B240ET
4BA
4BW
4D
4DA
4DS
4E
4L
8
8AL
39

(2) A cylinder must be filled in accordance with this part. Before each filling of a cylinder, the person filling the cylinder must visually inspect the outside of the cylinder. A cylinder that has a crack or leak, is bulged, has a defective valve or a leaking or defective pressure relief device, or bears evidence of physical abuse, fire or heat damage, or detrimental rusting or corrosion, may not be filled and offered for transportation. A cylinder may be repaired and requalified only as prescribed in subpart C of part 180 of this subchapter.

(3) Pressure relief devices must be tested for leaks before the charged cylinder is shipped from the cylinder filling plant. It is expressly forbidden to repair a leaking fuse plug device, where the leak is through the fusible metal or between the fusible metal and the opening in the plug body, except by

[1] Use of existing cylinders is authorized. New construction is not authorized.

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removal of the device and replacement of the fusible metal.

(4) A cylinder that previously contained a Class 8 material must be requalified in accordance with § 180.205(e) of this subchapter.

(5) When a cylinder with a marked pressure limit is prescribed, another cylinder made under the same specification but with a higher marked pressure limit is authorized. For example, a cylinder marked "DOT–4B500" may be used when "DOT–4B300" is specified.

(6) No person may fill a cylinder overdue for periodic requalification with a hazardous material and then offer it for transportation. The prohibition against offering a cylinder for transportation that is overdue for periodic requalification does not apply to a cylinder filled prior to the requalification due date.

(7) A cylinder with an authorized service life may not be offered for transportation in commerce after its authorized service life has expired. However, a cylinder in transportation or a cylinder filled prior to the expiration of its authorized service life may be transported for reprocessing or disposal of the cylinder's contents. After emptying, the cylinder must be condemned in accordance with § 180.205 of this subchapter.

(8) The pressure of the hazardous material at 55° C (131° F) may not exceed 5/4 of the service pressure of the cylinder. Sufficient outage must be provided so the cylinder will not be liquid full at 55° C (131° F).

(9) Specification 2P, 2Q, 3E, 3HT, spherical 4BA, 4D, 4DA, 4DS, and 39 cylinders must be shipped in strong outer packagings. The strong outer packaging must conform to paragraph (h) of this section and to § 173.25.

(b) *Cylinder markings.* Required markings on a cylinder must be legible and must meet the applicable requirements of subpart C of part 180 of this subchapter. Additional information may be marked on the cylinder provided it does not affect the required markings prescribed in the applicable cylinder specification.

(c) *Toxic gases and mixtures.* Cylinders containing toxic gases and toxic gas mixtures meeting the criteria of Division 2.3 Hazard Zone A or B must conform to the requirements of § 173.40 and CGA Pamphlets S–1.1 and S–7 (incorporated by reference; see § 171.7 of this subchapter). A DOT 39 cylinder may not be used for toxic gases or toxic gas mixtures meeting the criteria for Division 2.3, Hazard Zone A or B.

(d) *Gases capable of combining chemically.* A filled cylinder may not contain any gas or material capable of combining chemically with the cylinder's contents or with the cylinder's material of construction, so as to endanger the cylinder's serviceability. After September 30, 2002, DOT 3AL cylinders made of aluminum alloy 6351–T6 may not be filled and offered for transportation with pyrophoric gases; however, if it is otherwise serviceable and conforms to the regulations in effect on September 30, 2002, a DOT 3AL cylinder made of aluminum alloy 6351–T6 and filled before October 1, 2002, may be transported for reprocessing or disposal of the cylinder's contents until April 1, 2003.

(e) *Ownership of cylinder.* A cylinder filled with a hazardous material may not be offered for transportation unless it was filled by the owner of the cylinder or with the owner's consent.

(f) *Pressure relief device systems.* (1) Except as provided in paragraphs (f)(5) and (f)(6) of this section, a cylinder filled with a gas and offered for transportation must be equipped with one or more pressure relief devices sized and selected as to type, location, and quantity, and tested in accordance with CGA Pamphlets S–1.1 (incorporated by reference; *see* § 171.7 of this subchapter; compliance with paragraph 9.1.1.1 of CGA Pamphlet S–1.1 is not required) and S–7 (incorporated by reference; *see* § 171.7 of this subchapter). The pressure relief device must be capable of preventing rupture of the normally filled cylinder when subjected to a fire test conducted in accordance with CGA Pamphlet C–14 (incorporated by reference; see § 171.7 of this subchapter), or, in the case of an acetylene cylinder, CGA Pamphlet C–12 (incorporated by reference; *see* § 171.7 of this subchapter).

(2) When a pressure relief device is installed, the inlet port to the relief channel must be in the vapor space of the cylinder.

(3) For a DOT 3, 3A, 3AA, 3AL, 3AX, 3AXX, 3B or 3BN cylinder, from the first requalification due on and after October 1, 2002, the set pressure of the pressure relief device must be at test pressure with a tolerance of plus zero to minus 10%.

(4) A pressure relief device is required on a DOT 39 cylinder regardless of cylinder size or filled pressure. A DOT 39 cylinder used for liquefied Division 2.1 materials must be equipped with a metal pressure relief device. Fusible pressure relief devices are not authorized on a DOT 39 cylinder containing a liquefied gas.

(5) A pressure relief device is not required on—

(i) A cylinder 305 mm (12 inches) or less in length, exclusive of neck, and 114 mm (4.5 inches) or less in outside diameter, except when the cylinder is filled with a liquefied gas for which this part requires a service pressure of 1800 psig or higher or a nonliquefied gas to a pressure of 1800 psig or higher at 21° C (70° F);

(ii) A cylinder with a water capacity of less than 454 kg (1000 lbs) filled with a nonliquefied gas to a pressure of 300 psig or less at 21°C (70°F), except for a DOT 39 cylinder or a cylinder used for acetylene in solution; or

(iii) A cylinder containing a Class 3 or a Class 8 material without pressurization, unless otherwise specified for the hazardous material.

(6) A pressure relief device is prohibited on a cylinder filled with a Division 2.3 or 6.1 material in Hazard Zone A.

(g) *Manifolding cylinders in transportation.* (1) Cylinder manifolding is authorized only under conditions prescribed in this paragraph (g). Manifolded cylinders must be supported and held together as a unit by structurally adequate means. Except for Division 2.2 materials, each cylinder must be equipped with an individual shutoff valve that must be tightly closed while in transit. Manifold branch lines must be sufficiently flexible to prevent damage to the valves that otherwise might result from the use of rigid branch lines. Each cylinder must be individually equipped with a pressure relief device as required in paragraph (f) of this section. Pressure relief devices on manifolded horizontal cylinders filled with a compressed gas must be arranged to discharge unobstructed to the open air in such a manner as to prevent any escaping gas from contacting personnel or any adjacent cylinders. Pressure relief devices on manifolded horizontal cylinders filled with a flammable compressed gas must be arranged to discharge upward to prevent any escaping gas from contacting any adjacent cylinders. Valves and pressure relief devices on manifolded cylinders filled with a compressed gas must be protected from damage by framing, a cabinet, or other method. Manifolding is authorized for cylinders containing the following gases:

(i) Nonliquefied (permanent) compressed gases authorized by § 173.302.

(ii) Liquefied compressed gases authorized by § 173.304. Each manifolded cylinder containing a liquefied compressed gas must be separately filled and means must be provided to ensure no interchange of cylinder contents can occur during transportation.

(iii) Acetylene as authorized by § 173.303.

(2) For the checking of tare weights or replacing solvent, the cylinder must be removed from the manifold. This requirement is not intended to prohibit filling acetylene cylinders while manifolded.

(h) *Cylinder valve protection.* (1) A cylinder used to transport a hazardous material must meet the requirements specified in this paragraph (h). The following cylinders are not subject to the cylinder valve protection requirements in this paragraph (h):

(i) A cylinder containing only a Division 2.2 material without a Division 5.1 subsidiary hazard;

(ii) A cylinder containing a Class 8 liquid corrosive only to metal;

(iii) A cylinder with a water capacity of 4.8 liters (293 in^3) or less containing oxygen, compressed;

(iv) A cylinder containing oxygen, refrigerated liquid (cryogenic liquid);

(v) A Medical E cylinder with a water capacity of 4.9 liters (300 in^3) or less;

(vi) A fire extinguisher; or

(vii) A cylinder containing acetylene.

(2) For cylinders manufactured before October 1, 2007, a cylinder must have its valves protected by one of the following methods:

(i) By equipping the cylinder with securely attached metal caps of sufficient strength to protect valves from damage during transportation;

(ii) By boxing or crating the cylinders so as to protect valves from damage during transportation; or

(iii) By constructing the cylinder so that the valve is recessed into the cylinder or otherwise protected to the extent that it will not be subjected to a blow when the container is dropped onto a flat surface.

(3) For cylinders manufactured after October 1, 2007, each cylinder valve assembly must be of sufficient strength or protected such that no leakage occurs when a cylinder with the valve installed is dropped 1.8 m (6 ft.) or more onto a non-yielding surface, such as concrete or steel, impacting the valve assembly or protection device at an orientation most likely to cause damage. The cylinder valve assembly protection may be provided by any method meeting the performance requirement in this paragraph (h)(3). Examples include:

(i) Equipping the cylinder with a securely attached metal cap.

(ii) Packaging the cylinder in a box, crate, or other strong outside packaging conforming to the requirements of § 173.25.

(iii) Constructing the cylinder such that the valve is recessed into the cylinder or otherwise protected.

(i) *Cylinders mounted on motor vehicles or in frames.* Seamless DOT specification cylinders longer than 2 m (6.5 feet) are authorized for transportation only when horizontally mounted on a motor vehicle or in an ISO framework or other framework of equivalent structural integrity. Cylinders may not be transported by rail in container on freight car (COFC) or trailer on flat car (TOFC) service except under conditions approved by the Associate Administrator for Safety, Federal Railroad Administration. The cylinder must be configured as follows:

(1) Each cylinder must be fixed at one end of the vehicle or framework with provision for thermal expansion at the opposite end attachment;

(2) The valve and pressure relief device protective structure must be sufficiently strong to withstand a force equal to twice the weight of the cylinder and framework assembly with a safety factor of four, based on the ultimate strength of the material used; and

(3) Discharge from a pressure relief device must be arranged in such a manner as to prevent any escaping gas from contacting personnel or any adjacent cylinders.

(j) *Non-specification cylinders in domestic use.* Except as provided in paragraphs (k) and (l) of this section, a filled non-DOT specification cylinder, other than a DOT exemption cylinder or a cylinder used as a fire extinguisher in conformance with § 173.309, may not be offered for transportation or transported to, from, or within the United States.

(k) *Importation of foreign cylinders for discharge within a single port area.* A cylinder manufactured to other than a DOT specification and certified as being in conformance with the transportation regulations of another country may be authorized, upon written request to and approval by the Associate Administrator, for transportation within a single port area, provided—

(1) The cylinder is transported in a closed freight container;

(2) The cylinder is certified by the importer to provide a level of safety at least equivalent to that required by the regulations in this subchapter for a comparable DOT specification cylinder; and

(3) The cylinder is not refilled for export unless in compliance with paragraph (l) of this section.

(l) *Filling of foreign cylinders for export.* A cylinder not manufactured, inspected, tested and marked in accordance with part 178 of this subchapter, or a cylinder manufactured to other than a DOT specification or exemption, may be filled with a gas in the United States and offered for transportation and transported for export, if the following conditions are met:

(1) The cylinder has been requalified and marked with the month and year of requalification in accordance with subpart C of part 180 of this subchapter, or has been requalified as authorized by the Associate Administrator.

(2) The maximum filling density and service pressure for each cylinder conform to the requirements of this part for the gas involved.

(3) The bill of lading or other shipping paper identifies the cylinder and includes the following certification: "This cylinder has (These cylinders have) been qualified, as required, and filled in accordance with the DOT requirements for export.".

(m) *Metal attachments.* Metal attachments to cylinders must have rounded or chamfered corners, or be otherwise protected, so as to prevent the likelihood of causing puncture or damage to other hazardous materials packages. This requirement applies to anything temporarily or permanently attached to the cylinder, such as metal skids.

24. Section 173.301a is added to read as follows:

§ 173.301a Additional general requirements for shipment of specification cylinders.

(a) *General.* The requirements in this section are in addition to the requirements in § 173.301 and apply to the shipment of gases in specification cylinders.

(b) *Authorized cylinders not marked with a service pressure.* For authorized cylinders not marked with a service pressure, the service pressure is designated as follows:

Specification marking	Service Pressure psig
3	1800
3E	1800
8	250

(c) *Cylinder pressure at 21° C (70° F).* The pressure in a cylinder at 21° C (70° F) may not exceed the service pressure for which the cylinder is marked or designated, except as provided in § 173.302a(b). For certain liquefied gases, the pressure at 21° C (70° F) must be lower than the marked service pressure to avoid having a pressure at a temperature of 55° C (131° F) that is greater than permitted.

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(d) *Cylinder pressure at 55° C (131° F).* The pressure in a cylinder at 55° C (131° F) may not exceed 5/4 times the service pressure, except:

(1) For a cylinder filled with acetylene, liquefied nitrous oxide, or carbon dioxide.

(2) For a cylinder filled in accordance with § 173.302a(b), the pressure in the cylinder at 55° C (131° F) may not exceed 5/4 times the filling pressure.

(3) For toxic materials, the pressure in the cylinder at 55° C (131° F) may not exceed the service pressure of the cylinder.

(e) *Grandfather clause.* A cylinder in domestic use prior to the date on which the specification for the cylinder was first made effective may be used if the cylinder has been properly tested and otherwise conforms to the requirements applicable to the gas with which it is charged.

§ 173.301b [Reserved]

25. Section 173.301b is added and reserved.

26. Section 173.302 is revised to read as follows:

§ 173.302 Filling of cylinders with nonliquefied (permanent) compressed gases.

(a) *General requirements.* A cylinder filled with a nonliquefied compressed gas (except gas in solution) must be offered for transportation in accordance with the requirements of this section and §§ 173.301, 173.301a, 173.302a, and 173.305, as applicable. Where more than one section applies to a cylinder, the most restrictive requirements must be followed.

(b) *Aluminum cylinders in oxygen service.* Each aluminum cylinder filled with oxygen must meet all of the following conditions:

(1) Each valve or portion of a valve that may come into contact with the oxygen being transported in the cylinder must be constructed of brass or stainless steel.

(2) Each cylinder opening must be configured with straight threads only.

(3) Each cylinder must be cleaned in accordance with the requirements of Federal Specification RR–C–901C, paragraphs 3.3.1 and 3.3.2 (incorporated by reference; see § 171.7 of this subchapter). Cleaning agents equivalent to those specified in RR–C–901C may be used provided they do not react with oxygen. One cylinder selected at random from a group of 200 or fewer and cleaned at the same time must be tested for oil contamination in accordance with Specification RR–C–901C, paragraph 4.4.2.2 (incorporated by reference; *see* § 171.7 of this subchapter), and meet the specified standard of cleanliness.

(4) The pressure in each cylinder may not exceed 3000 psig at 21°C (70°F).

(c) Notwithstanding the provisions of § 173.24(b)(1), an authorized cylinder containing oxygen continuously fed to tanks containing live fish may be offered for transportation and transported.

(d) Shipment of Division 2.1 materials in aluminum cylinders is authorized for transportation only by motor vehicle, rail car, or cargo-only aircraft.

27. Section 173.302a is added to read as follows:

§ 173.302a Additional requirements for shipment of nonliquefied (permanent) compressed gases in specification cylinders.

(a) *Detailed filling requirements.* Nonliquefied compressed gases (except gas in solution) for which filling requirements are not specifically prescribed in § 173.304a must be shipped subject to the requirements in this section and §§ 173.301, 173.301a, 173.302, and 173.305 in specification cylinders, as follows:

(1) DOT 3, 3A, 3AA, 3AL, 3B, 3E, 4B, 4BA and 4BW cylinders.

(2) DOT 3HT cylinders. These cylinders are authorized for aircraft use only and only for nonflammable gases. They have a maximum service life of 24 years from the date of manufacture. The cylinders must be equipped with frangible disc type pressure relief devices that meet the requirements of § 173.301(f). Each frangible disc must have a rated bursting pressure not exceeding 90 percent of the minimum required test pressure of the cylinder. Discs with fusible metal backing are not permitted. Specification 3HT cylinders may be offered for transportation only when packed in strong outer packagings conforming to the requirements of § 173.25.

(3) For a DOT 39 cylinder filled with a Division 2.1 material, the internal volume of the cylinder may not exceed 1.23 L (75 in^3).

(4) DOT 3AX, 3AAX, and 3T cylinders are authorized for Division 2.1 and 2.2 materials and for carbon monoxide. DOT 3T cylinders are not authorized for hydrogen. When used in methane service, the methane must be a nonliquefied gas with a minimum purity of 98.0 percent methane and commercially free of corroding components.

(5) Aluminum cylinders manufactured in conformance with specifications DOT 39 and 3AL are authorized for oxygen only under the conditions specified in § 173.302(b).

(b) *Special filling limits for DOT 3A, 3AX, 3AA, 3AAX, and 3T cylinders.* A DOT 3A, 3AX, 3AA, 3AAX, and 3T cylinder may be filled with a compressed gas, other than a liquefied, dissolved, Division 2.1, or Division 2.3 gas, to a pressure 10 percent in excess of its marked service pressure, provided:

(1) The cylinder is equipped with a frangible disc pressure relief device (without fusible metal backing) having a bursting pressure not exceeding the minimum prescribed test pressure.

(2) The cylinder's elastic expansion was determined at the time of the last test or retest by the water jacket method.

(3) Either the average wall stress or the maximum wall stress does not exceed the wall stress limitation shown in the following table:

Type of steel	Average wall stress limitation	Maximum wall stress limitation
I. Plain carbon steels over 0.35 carbon and medium manganese steels	53,000	58,000
II. Steels of analysis and heat treatment specified in spec. 3AA	67,000	73,000
III. Steels of analysis and heat treatment specified in spec. DOT–3T	87,000	94,000
IV. Plain carbon steels less than 0.35 carbon made prior to 1920	45,000	48,000

(i)(A) The average wall stress must be computed from the elastic expansion data using the following formula:

$S = 1.7EE / KV - 0.4P$

Where:

S = wall stress, pounds per square inch;
EE = elastic expansion (total less permanent) in cubic centimeters;
K = factor $\times 10^{-7}$ experimentally determined for the particular type of cylinder being tested or derived in accordance with CGA Pamphlet C–5;
V = internal volume in cubic centimeter (1 cubic inch = 16.387 cubic centimeters);

P = test pressure, pounds per square inch.

(B) The formula in paragraph (b)(3)(i)(A) of this section is derived from the formula in paragraph (b)(3)(ii) of this section and the following:

$EE = (PKVD^2) / (D^2 - d^2)$

(ii) The maximum wall stress must be computed from the formula:

$S = (P(1.3D^2 + 0.4d^2)) / (D^2 - d^2)$

Where:

S = wall stress, pounds per square inch;
P = test pressure, pounds per square inch;
D = outside diameter, inches;
d = D–2t, where t=minimum wall thickness determined by a suitable method.

(iii) Compliance with average wall stress limitation may be determined by computing the elastic expansion rejection limit in accordance with CGA Pamphlet C–5 (incorporated by reference; *see* § 171.7 of this subchapter), by reference to data tabulated in CGA Pamphlet C–5, or by the manufacturer's marked elastic expansion rejection limit (REE) on the cylinder.

(4) An external and internal visual examination made at the time of test or retest shows the cylinder to be free from excessive corrosion, pitting, or dangerous defects.

(5) A plus sign (+) is added following the test date marking on the cylinder to indicate compliance with paragraphs (b)(2), (b)(3), and (b)(4) of this section.

(c) *Carbon monoxide.* Carbon monoxide must be offered in a DOT 3, 3A, 3AX, 3AA, 3AAX, 3AL, 3E, or 3T cylinder having a minimum service pressure of 1800 psig. The pressure in a steel cylinder may not exceed 1000 psig at 21° C (70° F), except that if the gas is dry and sulfur free, the cylinder may be filled to 5/6 of the cylinder's service pressure or 2000 psig, whichever is less. A DOT 3AL cylinder may be filled to its marked service pressure. A DOT 3AL cylinder is authorized only when transported by motor vehicle, rail car, or cargo-only aircraft.

(d) *Diborane and diborane mixtures.* Diborane and diborane mixed with compatible compressed gas must be offered in a DOT 3AA1800 cylinder. The maximum filling density of the diborane may not exceed 7 percent. Diborane mixed with compatible compressed gas may not have a pressure exceeding the service pressure of the cylinder if complete decomposition of the diborane occurs. Cylinder valve assemblies must be protected in accordance with § 173.301(h).

§ 173.302b [Reserved]

28. Section 173.302b is added and reserved.

29. Section 173.304 is revised to read as follows:

§ 173.304 Filling of cylinders with liquefied compressed gases.

(a) *General requirements.* Liquefied compressed gases (except gas in solution) must be shipped in accordance with the requirements in this section and in §§ 173.301, 173.301a, 173.304a, and 173.305.

(1) A DOT 3AL cylinder may not be used for any material with a primary or subsidiary hazard of Class 8.

(2) Shipments of Division 2.1 materials in aluminum cylinders are authorized only when transported by motor vehicle, rail car, or cargo-only aircraft.

(b) *Filling limits.* Except for carbon dioxide; 1,1-Difluoroethylene (R–1132A); nitrous oxide; and vinyl fluoride, inhibited, the liquid portion of a liquefied gas may not completely fill the packaging at any temperature up to and including 54° C (130° F). The liquid portion of vinyl fluoride, inhibited, may completely fill the cylinder at 54° C (130° F) provided the pressure at the critical temperature does not exceed 1.25 times the service pressure of the cylinder.

(c) *Mixture of compressed gas and other material.* A mixture of compressed gas must be shipped in accordance with § 173.305.

(d) Refrigerant and dispersant gases. Nontoxic and nonflammable refrigerant or dispersant gases must be offered for transportation in cylinders prescribed in § 173.304a, or in DOT 2P and 2Q containers (§§ 178.33, 178.33a of this subchapter). DOT 2P and 2Q containers must be packaged in a strong wooden or fiberboard box of such design as to protect valves from damage or accidental functioning under conditions incident to transportation. Pressure in the inside metal containers may not exceed 87 psia at 21° C (70° F). Each completed metal container filled for shipment must be heated until its contents reach a minimum temperature of 54° C (130° F) without evidence of leakage, distortion, or other defect. Each outside package must be plainly marked "INSIDE CONTAINERS COMPLY WITH PRESCRIBED SPECIFICATIONS".

(e) *Engine starting fluid.* Engine starting fluid containing a flammable compressed gas or gases must be shipped in a cylinder as prescribed in § 173.304a or as follows:

(1) Inside non-refillable metal containers having a capacity not greater than 500 mL (32 in^3). The containers must be packaged in strong, tight outer packagings. The pressure in the container may not exceed 145 psia at 54° C (130° F). If the pressure exceeds 145 psia at 54° C (130° F), a DOT 2P container must be used. In either case, the metal container must be capable of withstanding, without bursting, a pressure of 1.5 times the pressure of the contents at 54° C (130° F). The liquid content of the material and gas may not completely fill the container at 54° C (130° F). Each container filled for shipment must have been heated until its contents reach a minimum temperature of 54° C (130° F), without evidence of leakage, distortion, or other defect. Each outside shipping container must be plainly marked, "INSIDE CONTAINERS COMPLY WITH PRESCRIBED SPECIFICATIONS".

(2) [Reserved]

30. Section 173.304a is added to read as follows:

§ 173.304a Additional requirements for shipment of liquefied compressed gases in specification cylinders.

(a) *Detailed filling requirements.* Liquefied gases (except gas in solution) must be offered for transportation, subject to the requirements in this section and §§ 173.301 and 173.304, in specification cylinders, as follows:

(1) DOT 3, 3A, 3AA, 3AL, 3B, 3BN, 3E, 4B, 4BA, 4B240ET, 4BW, 4E, 39, except that no DOT 4E or 39 packaging may be filled and shipped with a mixture containing a pyrophoric liquid, carbon bisulfide (disulfide), ethyl chloride, ethylene oxide, nickel carbonyl, spirits of nitroglycerin, or toxic material (Division 6.1 or 2.3), unless specifically authorized in this part.

(2) For the gases named, the following requirements apply (for cryogenic liquids, see § 173.316):

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Kind of gas	Maximum permitted filling density (percent) (see Note 1)	Packagings marked as shown in this column or of the same type with higher service pressure must be used except as provided in §§ 173.301(a)(1), 173.301(a)(4) (see notes following table)
Anhydrous ammonia	54	DOT–4; DOT–3A480; DOT–3AA480; DOT–3A480X; DOT–4A480; DOT–4AA480; DOT–3; DOT–3E1800; DOT–3AL480.
Bromotrifluoromethane (R–13B1 or H–1301)	124	DOT–3A400; DOT–3AA400; DOT–3B400; DOT–4A400; DOT–4AA480; DOT–4B400; DOT–4BA400; DOT–4BW400; DOT–3E1800; DOT–39; DOT–3AL40.
Carbon dioxide (*see* Notes 4, 7, and 8)	68	DOT–3A1800; DOT–3AX1800; DOT–3AA1800; DOT–3AAX1800; DOT–3; DOT–3E1800; DOT–3T1800; DOT–3HT2000; DOT–39; DOT–3AL1800.
Carbon dioxide, refrigerated liquid (*see* paragraph (e) of this section).		DOT–4L.
Chlorine (*see* Note 2)	125	DOT–3A480; DOT–3AA480; DOT–3; DOT–3BN480; DOT–3E1800.
Chlorodifluoroethane or 1-Chloro-1, 1-difluoroethane (R–142b).	100	DOT–3A150; DOT–3AA150; DOT–3B150; DOT–4B150; DOT–4BA225; DOT–4BW225; DOT–3E1800; DOT–39; DOT–3AL150.
Chlorodifluoromethane (R–22) (*see* Note 8)	105	DOT–3A240; DOT–3AA240; DOT–3B240; DOT–4B240; DOT–4BA240; DOT–4BW240; DOT–4B240ET; DOT–4E240; DOT–39; DOT–41; DOT–3E1800; DOT–3AL240.
Chloropentafluoroethane (R–115)	110	DOT–3A225; DOT–3AA225; DOT–3B225; DOT–4A225; DOT–4BA225; DOT–4B225; DOT–4BW225; DOT–3E1800; DOT–39; DOT–3AL225.
Chlorotrifluoromethane (R–13) (*see* Note 8)	100	DOT–3A1800; DOT–3AA1800; DOT–3; DOT–3E1800; DOT–39; DOT–3AL1800.
Cyclopropane (*see* Note 8)	55	DOT–3A225; DOT–3A480X; DOT–3AA225; DOT–3B225; DOT–4A225; DOT–4AA480; DOT4B225; DOT–4BA225; DOT–4BW225; DOT–4B240ET; DOT–3; DOT–3E1800; DOT–39; DOT–3AL225.
Dichlorodifluoromethane (R–12) (*see* Note 8)	119	DOT–3A225; DOT–3AA225; DOT–3B225; DOT–4A225; DOT–4B225; DOT–4BA225; DOT–4BW225; DOT–4B240ET; DOT–4E225; DOT–9; DOT–39; DOT–41; DOT–3E1800; DOT–3AL225.
Dichlorodifluoromethane and difluoroethane mixture (constant boiling mixture) (R–500) (*see* Note 8).	Not liquid full at 130°F	DOT–3A240; DOT–3AA240; DOT–3B240; DOT–3E1800; DOT–4A240; DOT–4B240; DOT–4BA240; DOT–4BW240; DOT–4E240; DOT–9; DOT–39.
1,1-Difluoroethane (R–152a) (*see* note 8)	79	DOT–3A150; DOT–3AA150; DOT–3B150; DOT–4B150; DOT–4BA225; DOT–4BW225; DOT–3E1800; DOT–3AL150.
1,1-Difluoroethylene (R–1132A)	73	DOT–3A2200; DOT–3AA2200; DOT–3AX2200; DOT–3AAX2200; DOT–3T2200; DOT–39.
Dimethylamine, anhydrous	59	DOT–3A150; DOT–3AA150; DOT–3B150; DOT–4B150; DOT–4BA225; DOT–4BW225; ICC–3E1800.
Ethane (*see* Note 8)	35.8	DOT–3A1800; DOT–3AX1800; DOT–3AA1800; DOT–3AAX1800; DOT–3; DOT–3E1800; DOT–3T1800; DOT–39; DOT–3AL1800.
Ethane (*see* Note 8)	36.8	DOT–3A2000; DOT–3AX2000; DOT–3AA2000; DOT–3AAX2000; DOT–3T2000; DOT–39; DOT–3AL2000.
Ethylene (*see* Note 8)	31.0	DOT–3A1800; DOT–3AX1800; DOT–3AA1800; DOT–3AAX1800; DOT–3; DOT–3E1800; DOT–3T1800; DOT–39; DOT–3AL1800.
Ethylene (*see* Note 8)	32.5	DOT–3A2000; DOT–3AX2000; DOT–3AA2000; DOT–3AAX2000; DOT–3T2000; DOT–39; DOT–3AL2000.
Ethylene (*see* Note 8)	35.5	DOT–3A2400; DOT–3AX2400; DOT–3AA2400; DOT–3AAX2400; DOT–3T2400; DOT–39; DOT–3AL2400.
Hydrogen chloride, anhydrous	65	DOT–3A1800; DOT–3AA1800; DOT–3AX1800; DOT–3AAX1800; DOT–3; DOT–3T1800; DOT–3E1800.
Hydrogen sulfide (*see* Note 10)	62.5	DOT–3A480; DOT–3AA480; DOT–3B480; DOT–4A480; DOT–4B480; DOT–4BA480; DOT–4BW480.; DOT–3E1800; DOT–3AL480.
Insecticide, gases liquefied (*see* Notes 8 and 12)	Not liquid full at 130°F	DOT–3A300; DOT–3AA300; DOT–3B300; DOT–4B300; DOT–4BA300; DOT–4BW300; DOT–9; DOT–40; DOT–41; DOT–3E1800.
Liquefied nonflammable gases, other than classified flammable, corrosive, toxic & mixtures or solution thereof filled w/nitrogen, carbon dioxide, or air (*see* Notes 7 and 8)..	Not liquid full at 130°F	Specification packaging authorized in paragraph (a)(1) of this section and DOT–3HT; DOT 4D; DOT–4DA; DOT–4DS.

Kind of gas	Maximum permitted filling density (percent) (see Note 1)	Packagings marked as shown in this column or of the same type with higher service pressure must be used except as provided in §§ 173.301(a)(1), 173.301(a)(4) (see notes following table)
Methyl acetylene-propadiene, mixtures, stabilized DOT–3A240; (*see* Note 5)..	Not liquid at 130°F	DOT–4B240 without brazed seams; DOT–4BA240 without brazed seams; DOT–3A240; DOT–3AA240; DOT–3B240; DOT–3E1800; DOT–4BW240; DOT–4E240; DOT–4B240ET; DOT–4; DOT–41; DOT–3AL240.
Methyl chloride	84	DOT–3A225; DOT–3AA225; DOT–3B225; DOT–4A225; DOT–4B225; DOT–4BA225; DOT–4BW225; DOT–3; DOT–4; DOT–38; DOT–3E1800; DOT–4B240ET. Cylinders complying with DOT–3A150; DOT–3B150; DOT–4A150; and DOT–4B150 manufactured prior to Dec. 7, 1936 are also authorized.
Methyl mercaptan	80	DOT–3A240; DOT–3AA240; DOT–3B240; DOT–4B240; DOT–4B240ET; DOT–3E1800; DOT–4BA240; DOT–4BW240.
Nitrosyl chloride	110	DOT–3BN400 only.
Nitrous oxide (*see* Notes 7, 8, and 11)	68	DOT–3A1800; DOT–3AX1800; DOT–3AA1800; DOT–3AAX1800; DOT–3; DOT–3E1800; DOT–3T1800; DOT–3HT2000; DOT–39; DOT- 3AL1800.
Nitrous oxide, refrigerated liquid (*see* paragraph (e) of this section.).		DOT–4L.
Refrigerant gas, n.o.s. or Dispersant gas, n.o.s. (*see* Notes 8 and 13).	Not liquid full at 130°F	DOT–3A240; DOT–3AA240; DOT–3B240; DOT–3E1800; DOT–4A240; DOT–4B240; DOT–4BA240; DOT–4BW240; DOT–4E240; DOT–9; DOT–39; DOT–3AL240.
Sulfur dioxide (*see* note 8)	125	DOT–3A225; DOT–3AA225; DOT–3B225; DOT–4A225; DOT–4B225; DOT–4BA225; DOT–4BW225; DOT–4B240ET; DOT–3; DOT–4; DOT–38; DOT–39; DOT–3E1800; DOT–3AL225.
Sulfur hexafluoride	120	DOT–3A1000; DOT–3AA1000; DOT–AAX2400; DOT–3; DOT–3AL1000; DOT–3E1800; DOT–3T1800.
Sulfuryl fluoride	106	DOT–3A480; DOT–3AA480; DOT–3E1800; DOT–4B480; DOT–4BA480; DOT–4BW480.
Tetrafluoroethylene/inhibit	90	DOT–3A1200; DOT–3AA1200; DOT–3E1800.
Trifluorochloroethylene, inhibited	115	DOT–3A300; DOT–3AA300; DOT–3B300; DOT–4A300; DOT–4B300; DOT–4BA300; DOT–4BW300; DOT–3E1800.
Trimethylamine, anhydrous	57	DOT–3A150; DOT–3AA150; DOT–3B150; DOT–4B150; DOT–4BA225; DOT–4BW225; DOT–3E1800.
Vinyl chloride (*see* Note 5)	84	DOT–4B150 without brazed seams; DOT–4BA225 without brazed seams; DOT–4BW225; DOT–3A150; DOT–3AA150; DOT–3E1800; DOT–3AL150.
Vinyl fluoride, inhibited	62	DOT–3A1800; DOT–3AA1800; DOT–3E1800; DOT–3AL1800.
Vinyl methyl ether, inhibited (*see* Note 5)	68	DOT–4B150, without brazed seams; DOT–4BA225 without brazed seams; DOT–4BW225; DOT–3A150; DOT–3AA150; DOT–3B1800; DOT–3E1800.

Note 1: "Filling density" means the percent ratio of the weight of gas in a packaging to the weight of water that the container will hold at 16° C (60° F). (1 lb of water=27.737 in^3 at 60° F.)

Note 2: Cylinders purchased after Oct. 1, 1944, for the transportation of chlorine must contain no aperture other than that provided in the neck of the cylinder for attachment of a valve equipped with an approved pressure relief device. Cylinders purchased after Nov. 1, 1935, and filled with chlorine may not contain over 68.04 kg (150 lb) of gas.

Note 3: [Reserved]

Note 4: Special carbon dioxide mining devices containing a heating element and filled with not over 2.72 kg (6 lb) of carbon dioxide may be filled to a density of not over 85 percent, provided the cylinder is made of steel with a calculated bursting pressure in excess of 39000 psig, fitted with a frangible disc that will operate at not over 57 percent of that pressure, and is able to withstand a drop of 10 feet when striking crosswise on a steel rail while under a pressure of at least 3000 psig. Such devices must be shipped in strong boxes or must be wrapped in heavy burlap and bound by 12-gauge wire with the wire completely covered by friction tape. Wrapping must be applied so as not to interfere with the functioning of the frangible disc pressure relief device. Shipments must be described as "liquefied carbon dioxide gas (mining device)" and marked, labeled, and certified as prescribed for liquefied carbon dioxide.

Note 5: All parts of valve and pressure relief devices in contact with contents of cylinders must be of a metal or other material, suitably treated if necessary, that will not cause formation of any acetylides.

Note 6: [Reserved]

Note 7: Specification 3HT cylinders for aircraft use only, having a maximum service life of 24 years. Authorized only for nonflammable gases. Cylinders must be equipped with pressure relief devices of the frangible disc type that meet the requirements of § 173.301(f). Each frangible disc must have a rated bursting pressure that does not exceed 90 percent of the minimum required test pressure of the cylinder. Discs with fusible metal backing are not permitted. Cylinders may be shipped only when packed in strong outside packagings.

Note 8: *See* § 173.301(a)(8).

Note 9: [Reserved]

Note 10: Each valve outlet must be sealed by a threaded cap or a threaded solid plug.

Note 11: Must meet the valve and cleaning requirements in § 173.302(b).

Note 12: For an insecticide gas that is nontoxic and nonflammable, *see* § 173.305(c).

Note 13: For a refrigerant or dispersant gas that is nontoxic and nonflammable, *see* § 173.304(d).

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(b) [Reserved]

(c) *Verification of content in cylinder.* Except as noted in paragraph (d)(4) of this section, the amount of liquefied gas filled into a cylinder must be by weight or, when the gas is lower in pressure than required for liquefaction, a pressure-temperature chart for the specific gas may be used to ensure that the service pressure at 54° C (130° F) will not exceed 5/4 of the service pressure at 21° C (70° F). The weight of liquefied gas filled into the cylinder also must be checked, after disconnecting the cylinder from the filling line, by the use of an accurate scale.

(d) Requirements for liquefied petroleum gas. (1) Filling density limits are as follows:

Minimum specific gravity of liquid material at 60° F	Maximum the filling density in percent of the water-weight capacity of the cylinder
0.271 to 0.289	26
0.290 to 0.306	27
0.307 to 0.322	28
0.323 to 0.338	29
0.339 to 0.354	30
0.355 to 0.371	31
0.372 to 0.398	32
0.399 to 0.425	33
0.426 to 0.440	34
0.441 to 0.452	35
0.453 to 0.462	36
0.463 to 0.472	37
0.473 to 0.480	38
0.481 to 0.488	39
0.489 to 0.495	40
0.496 to 0.503	41
0.504 to 0.510	42
0.511 to 0.519	43
0.520 to 0.527	44
0.528 to 0.536	45
0.537 to 0.544	46
0.545 to 0.552	47
0.553 to 0.560	48
0.561 to 0.568	49
0.569 to 0.576	50
0.577 to 0.584	51
0.585 to 0.592	52
0.593 to 0.600	53
0.601 to 0.608	54
0.609 to 0.617	55
0.618 to 0.626	56
0.627 to 0.634	57

(2) Subject to § 173.301a(d), any filling density percentage prescribed in this section is authorized to be increased by a factor of 2 for liquefied petroleum gas in DOT 3 cylinders or in DOT 3A cylinders marked for 1800 psig, or higher, service pressure.

(3) Liquefied petroleum gas must be shipped in specification cylinders as follows:

(i) DOT 3, 3A, 3AA, 3B, 3E, 3AL, 4B, 4BA, 4B240ET, 4BW, 4E, or 39 cylinders. Shipments of flammable gases in DOT 3AL cylinders are authorized only when transported by motor vehicle, rail car, or cargo-only aircraft.

(ii) Additional containers may be used within the limits of quantity and pressure as follows:

Type of container	Maximum capacity (cubic inches)	Maximum filling pressure (psig)
DOT–2P or DOT–2Q (see Note 1)	31.83	45 psig at 70° F and 105 psig at 130° F (see Note 2).
DOT–2P or DOT–2Q (see Note 1)	31.83	35 psig at 70° F and 100 psig at 130° F.

Note 1: Containers must be packed in strong wooden or fiber boxes of such design as to protect valves from damage or accidental functioning under conditions normally incident to transportation. Each completed container filled for shipment must have been heated until its contents reach a temperature of 54° C (130° F), without evidence of leakage, distortion, or other defect. Each outside shipping container must be plainly marked "INSIDE CONTAINERS COMPLY WITH PRESCRIBED SPECIFICATIONS".

Note 2: A container must be equipped with a pressure relief device that will prevent rupture of the container and dangerous projection of a closing device when exposed to fire.

(4) *Verification of content.* A cylinder with a water capacity of 90.72 kg (200 lb) or more and for use with a liquefied petroleum gas with a specific gravity of 9.504 or greater at 16° C (60° F) may have the quantity of its contents determined by using a fixed length dip tube gauging device. The length of the dip tube must be such that when a liquefied petroleum gas, with a specific volume of 0.03051 cu. ft./lb. at a temperature of 40° F, is filled into the container, the liquid just reaches the bottom of the tube. The weight of this liquid may not exceed 42 percent of the water capacity of the container, which must be stamped on the cylinder. The length of the dip tube, expressed in inches carried out to one decimal place and prefixed with the letters "DT", must be stamped on the container and on the exterior of removable type dip tube. For the purpose of this requirement, the marked length must be expressed as the distance measured along the axis of a straight tube from the top of the boss through which the tube is inserted to the proper level of the liquid in the container. The length of each dip tube must be checked when installed by weighing each container after filling except when installed in groups of substantially identical containers, in which case one of each 25 containers must be weighed. The quantity of liquefied gas in each container must be checked by means of the dip tube after disconnecting from the filling line. The outlet from the dip tube may not be larger than 0.1016 centimeters (0.040 inch; No. 54 drill bit size orifice). A container representative of each day's filling at each filling plant must have its contents checked by weighing after disconnecting from the filling line.

(e) *Carbon dioxide, refrigerated liquid or nitrous oxide, refrigerated liquid.* (1) The following provisions apply to carbon dioxide, refrigerated liquid, and nitrous oxide, refrigerated liquid:

(i) DOT 4L cylinders conforming to the provisions of this paragraph are authorized.

(ii) Each cylinder must be protected with at least one pressure relief device and at least one frangible disc conforming to § 173.301(f) and paragraph (a)(2) of this section. The relieving capacity of the pressure relief device system must be equal to or greater than that calculated by the applicable formula in paragraph 5.9 of CGA Pamphlet S–1.1 (incorporated by reference; *see* § 171.7 of this subchapter).

(iii) The temperature and pressure of the gas at the time the shipment is offered for transportation may not exceed −18 ° C (0 ° F) and 290 psig for carbon dioxide and −15.6 ° C (+4 ° F) and 290 psig for nitrous oxide. Maximum time in transit may not exceed 120 hours.

(2) The following pressure relief device settings, design service temperatures and filling densities apply:

Pressure relief device setting maximum start—to discharge gauge pressure inpsig	Maximum permitted filling density (percent by weight)	
	Carbon dioxide, refrigerated liquid	Nitrous oxide, refrigerated liquid
105 psig	108	104
170 psig	105	101
230 psig	104	99
295 psig	102	97
360 psig	100	95
450 psig	98	83
540 psig	92	87
625 psig	86	80
Design service temperature ° C(° F)	−196 ° C(−320 °F)	−196 ° C(−320 °F)

§ 173.304b [Reserved]

31. Section 173.304b is added and reserved.

32. In § 173.305, the parenthetical phrase in paragraph (b) is revised to read as follows:

§ 173.305 Charging of cylinders with a mixture of compressed gas and other material.

* * * * *

(b) *Filling limits.* (See § 173.301.)

* * *

* * * * *

33. In § 173.306, paragraph (g)(5) is revised to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(g) * * *

(5) Each tank must be overpacked in a strong outside container in accordance with § 173.301(a)(8).

* * * * *

34. In § 173.315, in paragraph (a), in Note 2 following the table, the reference "§ 173.301(d)" is revised to read "paragraph (q) of this section", and paragraph (q) is added to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

* * * * *

(q) Manifolding is authorized for cargo tanks containing anhydrous ammonia provided each individual cargo tank is equipped with a pressure relief device or valves and gauging devices as required by paragraphs (h) and (i) of this section. Each valve must be tightly closed while the cargo tank is in transit. Each cargo tank must be filled separately.

35. Section 173.334 is revised to read as follows:

§ 173.334 Organic phosphates mixed with compressed gas.

Hexaethyl tetraphosphate, parathion, tetraethyl dithio pyrophosphate, tetraethyl pyrophosphate, or other Division 6.1 organic phosphates (including a compound or mixture), may be mixed with a non-flammable compressed gas. This mixture may not contain more than 20 percent by weight of organic phosphate and must be packaged in DOT 3A240, 3AA240, 3B240, 4A240, 4B240, 4BA240, or 4BW240 cylinders meeting all of the following requirements:

(a) Each cylinder may be filled with not more than 5 kg (11.0 lb) of the mixture; to a maximum filling density of not more than 80 percent of the water capacity.

(b) No cylinder may be equipped with an education tube or a fusible plug.

(c) No cylinder may be equipped with any valve unless the valve is a type approved by the Associate Administrator.

(d) Cylinders must be overpacked in a box, crate, or other strong outside packaging conforming to the requirements of § 173.25 and arranged to protect each valve or other closing device from damage. Except as provided in paragraph (e) of this section, no more than four cylinders may be packed in a strong outside packaging. Each strong outside packaging with its closing device protection must be sufficiently strong to protect all parts of each cylinder from deformation or leakage if the completed package is dropped 1.8 m (6 feet) onto a non-yielding surface, such as concrete or steel, impacting at the packaging's weakest point.

(e) Cylinders may be packed in strong wooden boxes with valves or other closing devices protected from damage, with not more than twelve cylinders in one outside wooden box. An outer fiberboard box may be used when not more than four such cylinders are to be shipped in one packaging. Valves must be adequately protected. Box and valve protection must be of sufficient strength to protect all parts of inner packagings and valves from deformation or breakage resulting from a drop of at least 1.8 m (6 feet) onto a non-yielding surface, such as concrete or steel, impacting at the weakest point.

36. Section 173.336 is revised to read as follows:

§ 173.336 Nitrogen dioxide, liquefied, or dinitrogen tetroxide, liquefied.

Nitrogen dioxide, liquefied, or dinitrogen tetroxide, liquefied, must be packaged in specification cylinders as prescribed in § 173.192. Specification cylinders prescribed in § 173.192 with valve removed are authorized. Each valve opening must be closed by means of a solid metal plug with tapered thread properly luted to prevent leakage. Transportation in DOT 3AL cylinders is authorized only by highway or rail. Each cylinder must be cleaned in compliance with the requirements of Federal Specification RR–C–901C, paragraphs 3.3.1 and 3.3.2 (incorporated by reference; see § 171.7 of this subchapter). Cleaning agents equivalent to those specified in RR–C–901C may be used; however, any cleaning agent must not be capable of reacting with oxygen. One cylinder selected at random from a group of 200 or fewer and cleaned at the same time must be tested for oil contamination in accordance with Specification RR–C–901C, paragraphs 4.4.2.2 (incorporated by reference; *see* § 171.7 of this subchapter) and meet the standard of cleanliness specified therein.

37. Section 173.337 is revised to read as follows:

§ 173.337 Nitric oxide.

Nitric oxide must be packed in DOT 3A1800, 3AA1800, 3E1800, or 3AL1800 cylinders conforming to the requirements of § 173.40. Cylinders must be equipped with a stainless steel valve and valve seat that will not deteriorate if in contact with nitric oxide or nitrogen dioxide. Cylinders or valves may not be equipped with pressure relief devices of any type. In addition—

(a) Transportation in DOT 3AL or 3ALM cylinders is authorized only by highway or rail.

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(b) Each cylinder must be cleaned in compliance with the requirements of Federal Specification RR–C–901C, paragraphs 3.3.1 and 3.3.2 (incorporated by reference; see § 171.7 of this subchapter). Cleaning agents equivalent to those specified in Federal Specification RR–C–901C may be used; however, any cleaning agent must not be capable of reacting with oxygen. One cylinder selected at random from a group of 200 or fewer and cleaned at the same time must be tested for oil contamination in accordance with Federal Specification RR–C–901C paragraph 4.4.2.2 (incorporated by reference; *see* § 171.7 of this subchapter) and meet the standard of cleanliness specified therein.

PART 177 —CARRIAGE BY PUBLIC HIGHWAY

38. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

39. In § 177.840, paragraph (a)(1) is revised to read as follows:

§ 177.840 Class 2 (gases) materials.

* * * * *

(a) * * *

(1) *Cylinders.* Cylinders containing Class 2 (gases) materials must be securely restrained in an upright position, loaded in racks, or packed in boxes or crates and securely attached to the motor vehicle to prevent the cylinders from being shifted, overturned or ejected from the vehicle under normal transportation conditions. A cylinder containing a Class 2 material may be loaded in a horizontal position when the cylinder is designed so that the inlet port to the relief channel of the pressure relief device is located in the vapor space of the cylinder.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

40. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

41. In § 178.35, paragraphs (b) introductory text, (b)(1), (c)(3)(iv), (d), (e), and (f)(3) are revised to read as follows:

§ 178.35 General requirements for specification cylinders.

* * * * *

(b) *Inspections and analyses.* Chemical analyses and tests required by this subchapter must be made within the United States, unless otherwise approved in writing by the Associate Administrator, in accordance with subpart I of part 107 of this chapter. Inspections and verification must be performed by—

(1) An independent inspection agency approved in writing by the Associate Administrator, in accordance with subpart I of part 107 of this chapter; or

* * * * *

(c) * * *

(3) * * *

(iv) Obtaining samples for all tests and check chemical analyses (**Note:** Recommended locations for test specimens taken from welded cylinders are depicted in Figures 1 through 5 in Appendix C to this subpart for the specific construction design.);

* * * * *

(d) *Defects and attachments.* Cylinders must conform to the following:

(1) A cylinder may not be constructed of material with seams, cracks or laminations, or other injurious defects.

(2) Metal attachments to cylinders must have rounded or chamfered corners or must be protected in such a manner as to prevent the likelihood of causing puncture or damage to other hazardous materials packages. This requirement applies to anything temporarily or permanently attached to the cylinder, such as metal skids.

(e) *Safety devices.* Pressure relief devices and protection for valves, safety devices, and other connections, if applied, must be as required or authorized by the appropriate specification, and as required in § 173.301 of this subchapter.

(f) * * *

(3) *Marking exceptions.* A DOT 3E cylinder is not required to be marked with an inspector's mark or a serial number.

* * * * *

§ 178.36 [Amended]

42. In § 178.36, in paragraph (k)(3)(i), the wording "ASTM Standard E8" is revised to read "ASTM E 8 (incorporated by reference; see § 171.7 of this subchapter)".

§ 178.37 [Amended]

43. In § 178.37, in paragraph (k)(3)(i), the wording "ASTM Standard E8" is revised to read "ASTM E 8 (incorporated by reference; see § 171.7 of this subchapter)".

§ 178.38 [Amended]

44. In § 178.38, in paragraph (k)(3)(i), the wording "ASTM Standard E8" is revised to read "ASTM E 8 (incorporated by reference; see § 171.7 of this subchapter)".

§ 178.39 [Amended]

45. In § 178.39, in paragraph (k)(3)(i), the wording "ASTM Standard E8" is revised to read "ASTM E 8 (incorporated by reference; see § 171.7 of this subchapter)".

§ 178.44 [Amended]

46. In § 178.44, in paragraph (m)(3)(i), the wording "ASTM Standard E8" is revised to read "ASTM E 8 (incorporated by reference; see § 171.7 of this subchapter)".

47. In § 178.45, paragraphs (h) and (j)(3)(i) are revised to read as follows:

§ 178.45 Specification 3T seamless steel cylinder.

* * * * *

(h) *Ultrasonic examination.* After the hydrostatic test, the cylindrical section of each vessel must be examined in accordance with ASTM Standard E 213 (incorporated by reference; see § 171.7 of this subchapter). The equipment used must be calibrated to detect a notch equal to five percent of the design minimum wall thickness. Any discontinuity indication greater than that produced by the five percent notch must be cause for rejection of the cylinder, unless the discontinuity is repaired within the requirements of this specification.

* * * * *

(j) *Basic conditions for acceptable physical testing.* * * *

(3) * * *

(i) This yield strength must be determined by the "offset" method or the "extension under load" method described in ASTM E 8 (incorporated by reference; see § 171.7 of this subchapter).

* * * * *

48. In § 178.46, paragraph (b)(4), in Table 2, the entry "6351–T6" is removed, and Table 1 is revised to read as follows:

§ 178.46 Specification 3AL seamless aluminum cylinders.

* * * * *

(b) * * *

(4) * * *

TABLE 1.—HEAT OR CAST ANALYSIS FOR ALUMINUM; SIMILAR TO "ALUMINUM ASSOCIATION"[1] ALLOY 6061

[CHEMICAL ANALYSIS IN WEIGHT PERCENT[2]]

Si min/max	Fe max	Cu min/max	Mn max	Mg min/max	Cr min/max	Zn max	Ti max	Pb max	Bi max	Other		Al
										each max	total max	
0.4/0.8	0.7	0.15/0.4	0.15	0.8/1.2	0.04/0.35	0.25	0.15	0.005	0.005	0.05	0.15	Bal.

[1] The "Aluminum Association" refers to "Aluminum Standards and Data 1993", published by the Aluminum Association Inc.
[2] Except for "Pb" and "Bi", the chemical composition corresponds with that of Table 1 of ASTM B221 for Aluminum Association alloy 6061.

* * * * *

§ 178.47 [Amended]

49. In § 178.47, in the fourth sentence of paragraph (d), the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

§ 178.50 [Amended]

50. In § 178.50, the following changes are made:

a. In paragraph (d) introductory text, in the fifth sentence, the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

b. In paragraph (k)(3)(i), the wording "ASTM Standard E8" is revised to read "ASTM E 8 (incorporated by reference; *see* § 171.7 of this subchapter)".

§ 178.51 [Amended]

51. In § 178.51, the following changes are made:

a. In paragraph (d)(2), the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

b. In paragraph (j)(3)(i), the wording "ASTM Standard E8" is revised to read "ASTM E 8 (incorporated by reference; *see* § 171.7 of this subchapter)".

c. In paragraph (l)(1), in the fourth sentence, the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

d. In paragraph (l)(2), in the last sentence, the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

e. In paragraph (l)(3), in the first sentence, the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

§ 178.53 [Amended]

52. In § 178.53, the following changes are made:

a. In paragraph (d), in the last sentence, the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

b. In paragraph (j)(5)(i), the wording "ASTM Standard E8" is revised to read "ASTM E 8 (incorporated by reference; *see* § 171.7 of this subchapter)".

§ 178.55 [Amended]

53. In § 178.55, in paragraph (k)(3)(i), the wording "ASTM Standard E8" is revised to read "ASTM E 8 (incorporated by reference; *see* § 171.7 of this subchapter)".

§ 178.56 [Amended]

54. In § 178.56, the following changes are made:

a. In paragraph (j)(3)(i), the wording "ASTM Standard E8" is revised to read "ASTM E 8 (incorporated by reference; *see* § 171.7 of this subchapter)".

b. In paragraph (l)(1), in the fourth sentence the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

c. In paragraph (l)(2), in the last sentence, the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

d. In paragraph (l)(3), in the first sentence, the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

55. In § 178.57, the first sentence in paragraph (d)(5), the first sentence in paragraph (e)(3), paragraph (j)(3)(i), the fourth sentence in paragraph (l)(1), the last sentence in paragraph (l)(2), the first sentence in paragraph (l)(3), the first sentence in paragraph (l)(4)(v), the second sentence in paragraph (l)(4)(vi), paragraph (m)(1), and the first sentence in paragraph (o)(1) are revised to read as follows:

§ 178.57 Specification 4L welded insulated cylinders.

* * * * *

(d) * * *

(5) Welding procedures and operations must be qualified in accordance with CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter). * * *

(e) * * *

(3) For welding the cylinder, each procedure and operator must be qualified in accordance with the sections of CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter) that apply. * * *

* * * * *

(j) * *

(3) * * *

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM E 8 (incorporated by reference; *see* § 171.7 of this subchapter).

* * * * *

(l) * * *

(1) *Tensile test.* * * * The specimen must be taken across the major seam and must be prepared in accordance with and must meet the requirements of CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter). * * *

(2) *Guided bend test.* * * * Specimens must be taken across the particular seam being tested and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter).

(3) *Alternate guided-bend test.* This test may be used and must be as specified in CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter). * * *

(4) *Impact tests.* * * *

(v) All impact test specimens must be of the charpy type, keyhole or milled U-notch, and must conform in all respects to ASTM E 23 (incorporated by reference; *see* § 171.7 of this subchapter). * * *

(vi) * * * The apparatus for testing the specimens must conform to requirements of ASTM Standard E 23 (incorporated by reference; *see* § 171.7 of this subchapter). * * *

* * * * *

(m) *Radiographic examination.* * * *

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(1) The techniques and acceptability of radiographic inspection must conform to the standards set forth in CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter).

* * * * *

(o) * * *

(1) *Inner containment vessel (cylinder).* Electric furnace steel of uniform quality must be used. Chemical analysis must conform to ASTM A 240/A 240M (incorporated by reference; *see* § 171.7 of this subchapter), Type 304 stainless steel. * * *

* * * * *

§ 178.58 [Amended]

56. In § 178.58, the following changes are made:

a. In paragraph (d)(1), in the last sentence, the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

b. In paragraph (m)(5)(i), the wording "ASTM Standard E8" is revised to read "ASTM E 8 (incorporated by reference; *see* § 171.7 of this subchapter)".

§ 178.59 [Amended]

57. In § 178.59, the following changes are made:

a. In paragraph (d), in the last sentence, the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

b. In paragraph (j)(3)(i), the wording "ASTM Standard E8" is revised to read "ASTM E 8 (incorporated by reference; *see* § 171.7 of this subchapter)".

§ 178.60 [Amended]

58. In § 178.60, the following changes are made:

a. In paragraph (d), in the last sentence, the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

b. In paragraph (l)(3)(i), the wording "ASTM Standard E8" is revised to read "ASTM E 8 (incorporated by reference; *see* § 171.7 of this subchapter)".

c. In paragraph (n)(1), in the second sentence, the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

d. In paragraph (n)(2), in the last sentence, the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

e. In paragraph (n)(3), in the first sentence, the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

§ 178.61 [Amended]

59. In § 178.61, the following changes are made:

a. In paragraph (d)(4), the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

b. In paragraph (j)(3)(i), the wording "ASTM Standard E8" is revised to read "ASTM E 8 (incorporated by reference; *see* § 171.7 of this subchapter)".

c. In paragraph (l)(1), in the last sentence, the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

d. In paragraph (l)(2), in the last sentence, the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

e. In paragraph (l)(3), in the first sentence, the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

f. In paragraph (m)(1), in the first sentence, the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

§ 178.65 [Amended]

60. In § 178.65, in paragraph (c)(4), the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

§ 178.68 [Amended]

61. In § 178.68, the following changes are made:

a. In paragraph (j)(3)(i), the wording "ASTM Standard E8" is revised to read "ASTM E 8 (incorporated by reference; *see* § 171.7 of this subchapter)".

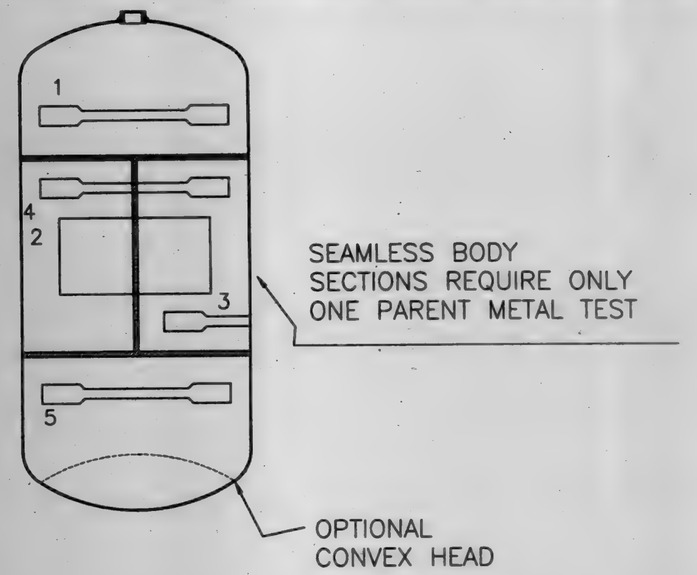
b. In paragraph (l)(2), in the third sentence, the wording "CGA Pamphlet C–3" is revised to read "CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter)".

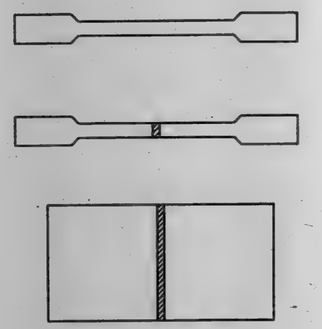
62. Appendix A is added to subpart C of part 178, to read as follows:

Appendix A to Subpart C of Part 178—Illustrations: Cylinder Tensile Sample

The following figures illustrate the recommended locations for test specimens taken from welded cylinders:

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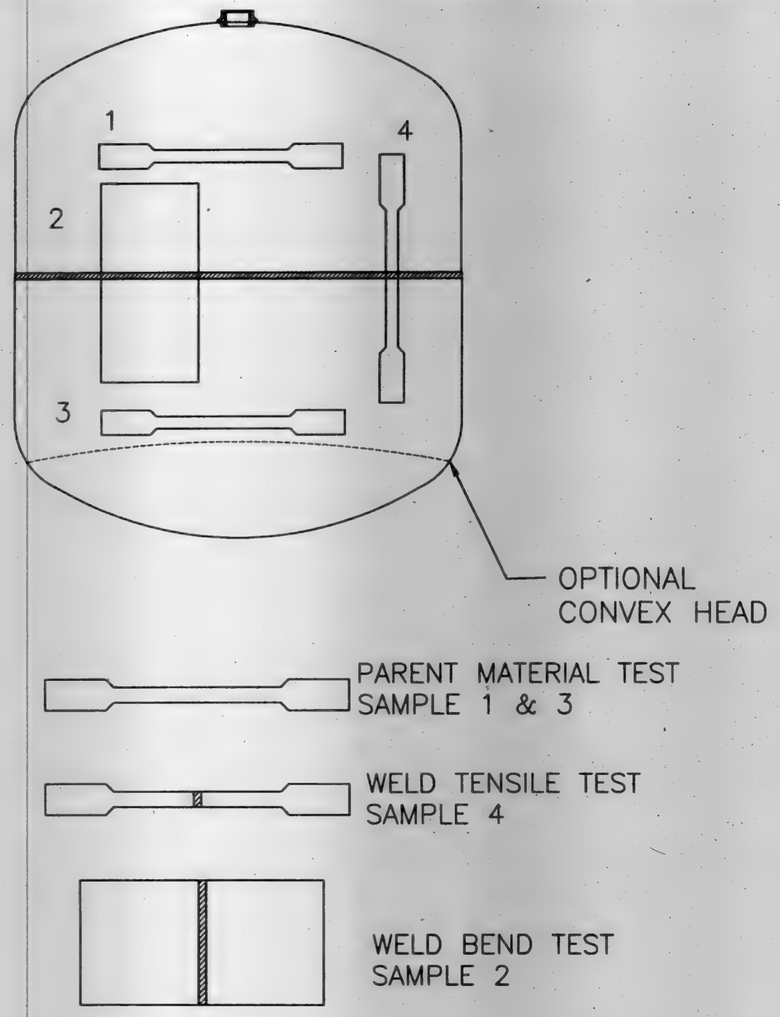




THIS FIGURE ILLUSTRATES THE PROPER TENSILE LOCATION FOR A 3 PIECE CYLINDER WITH THE HEADS HAVING STRAIGHT SIDEWALL.

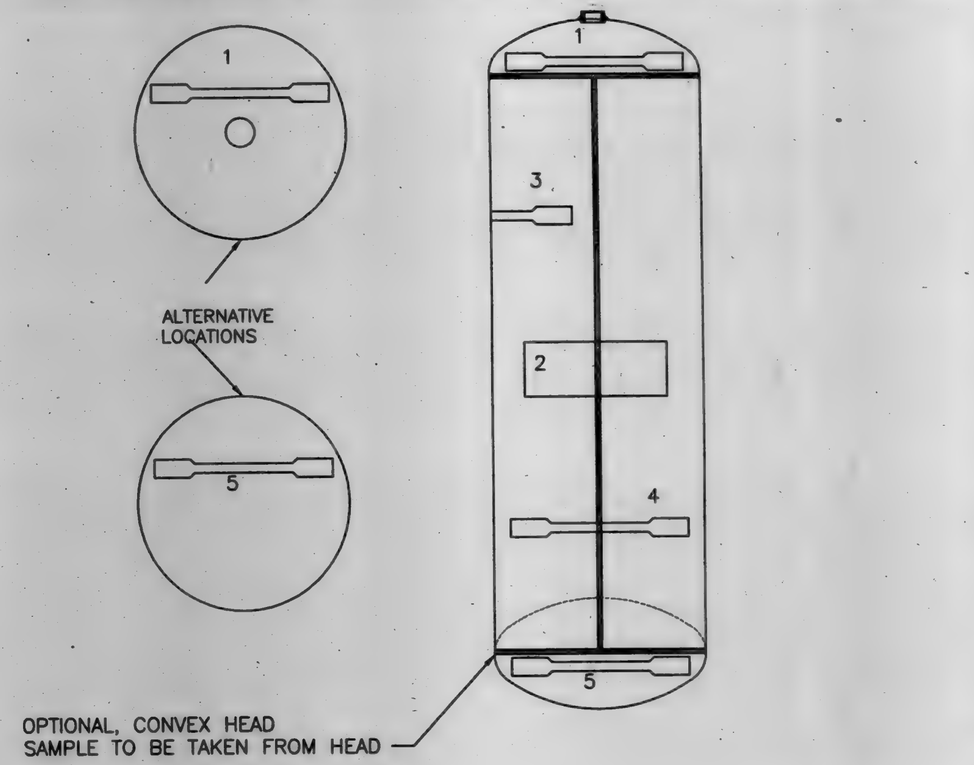
FIGURE #1

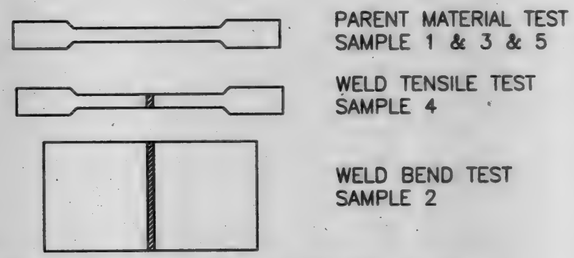
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THIS FIGURE ILLUSTRATES THE PROPER TENSILE LOCATION FOR A 2 PIECE CYLINDER WITH THE HEADS HAVING STRAIGHT SIDEWALLS.

FIGURE #2

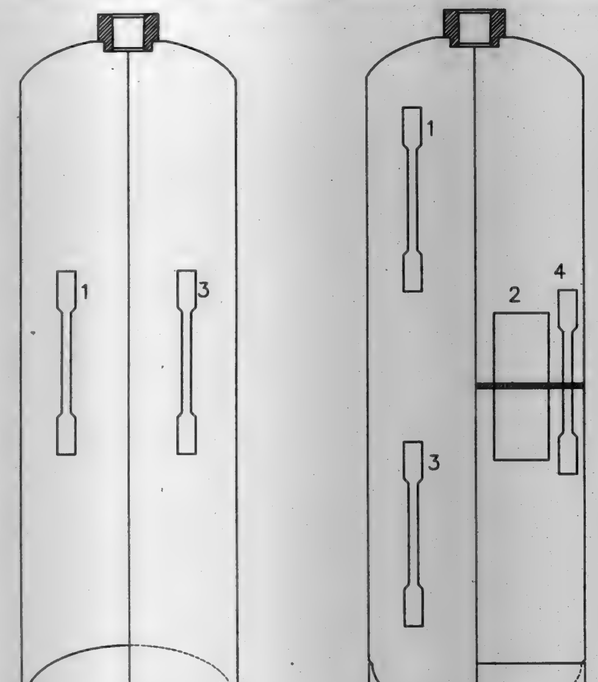




THIS FIGURE ILLUSTRATES THE PROPER TENSILE LOCATION FOR A 2 PIECE CYLINDER THAT HAVE DEEP DRAWN HEADS.

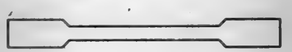
FIGURE #3

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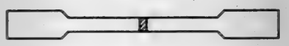


SEAMLESS SIDEWALL CONSTRUCTION

TWO PIECE CONSTRUCTION



PARENT MATERIAL TEST SAMPLE 1 & 3



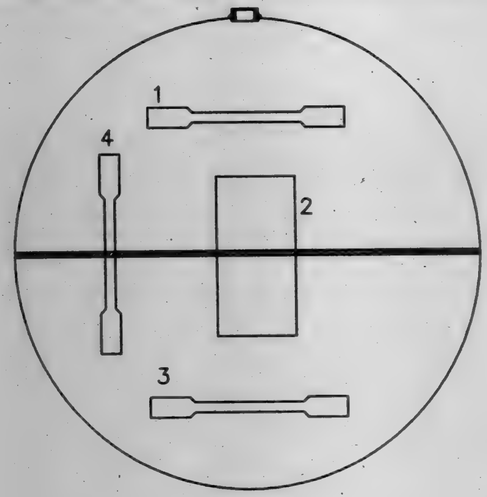
WELD TENSILE TEST SAMPLE 4

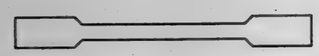


WELD BEND TEST SAMPLE 2

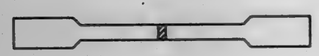
THIS FIGURE ILLUSTRATES THE PROPER TENSILE LOCATION FOR A 2 PIECE CYLINDER THAT HAVE DEEP DRAWN HEADS.

FIGURE #4

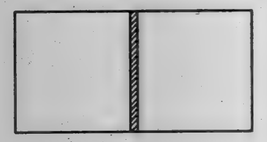




PARENT MATERIAL TEST SAMPLE 1 & 3



WELD TENSILE TEST SAMPLE 4



WELD BEND TEST SAMPLE 2

THIS FIGURE ILLUSTRATES THE PROPER TENSILE LOCATION FOR A 2 PIECE CYLINDER.

FIGURE #5

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§ 178.358–5 [Amended]

63. In § 178.358–5, in paragraph (c), the wording "ASTM A–240, Type 304L" is revised to read "ASTM A 240/A 240M (incorporated by reference; *see* § 171.1 of this subchapter), Type 304L".

PART 179—SPECIFICATIONS FOR TANK CARS

64. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 179.100–7 [Amended]

65. In § 179.100–7, in the table in paragraph (c)(1), the wording "ASTM A240," is revised to read "ASTM A 240/A 240M (incorporated by reference; *see* § 171.7 of this subchapter)," each time it appears.

§ 179.100–10 [Amended]

66. In § 179.100–10, in paragraph (c), the wording "ASTM A 240" is revised to read "ASTM A 240/A 240M (incorporated by reference; *see* § 171.7 of this subchapter)".

§ 179.102–1 [Amended]

67. In § 179.102–1, in paragraph (a)(1), in the last sentence, the wording "ASTM Specification A 240" is revised to read "ASTM A 240/A 240M (incorporated by reference; *see* § 171.7 of this subchapter)".

§ 179.102–4 [Amended]

68. In § 179.102–4, in paragraph (a)(1), the wording "ASTM Specification A240" is revised to read "ASTM A 240/A 240M (incorporated by reference; *see* § 171.7 of this subchapter)".

§ 179.102–17 [Amended]

69. In § 179.102–17, in paragraph (b)(1), the wording "ASTM Specification A240" is revised to read "ASTM A 240/A 240M (incorporated by reference; *see* § 171.7 of this subchapter)".

§ 179.200–7 [Amended]

70. In § 179.200–7, in the table in paragraph (d), the wording "ASTM A 240" is revised to read "ASTM A 240/A 240M (incorporated by reference; *see* § 171.7 of this subchapter)" each time it appears.

§ 179.201–5 [Amended]

71. In § 179.201–5, the following revisions are made:

a. In paragraph (a), the wording "ASTM Specification A 240" is revised to read "ASTM A 240/A 240M (incorporated by reference; *see* § 171.7 of this subchapter)" each time it appears.

b. In paragraph (b), the wording "ASTM Specification A 240" is revised to read "ASTM A 240/A 240M (incorporated by reference; *see* § 171.7 of this subchapter)".

§ 179.220–7 [Amended]

72. In § 179.220–7, in the table in paragraph (d), the wording "ASTM A 240," is revised to read "ASTM A 240/A 240M (incorporated by reference; *see* § 171.7 of this subchapter)," each time it appears.

§ 179.400–5 [Amended]

73. In § 179.400–5, in paragraph (a) introductory text, the wording "ASTM Specification A240," is revised to read "ASTM A 240/A 240M (incorporated by reference; *see* § 171.7 of this subchapter)".

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

74. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

75. Subpart C is added to part 180 to read as follows:

Subpart C—Qualification, Maintenance and Use of Cylinders

Sec.

180.201 Applicability.
180.203 Definitions.
180.205 General requirements for requalification of cylinders.
180.207 [Reserved]
180.209 Requirements for requalification of specification cylinders.
180.211 Repair, rebuilding and reheat treatment of DOT–4 series specification cylinders.
180.213 Requalification markings.
180.215 Reporting and record retention requirements.

Subpart C—Qualification, Maintenance and Use of Cylinders

§ 180.201 Applicability.

This subpart prescribes requirements, in addition to those contained in parts 107, 171, 172, 173, and 178 of this chapter, applicable to any person responsible for the continuing qualification, maintenance, or periodic requalification of DOT specification and exemption cylinders.

§ 180.203 Definitions.

In addition to the definitions contained in § 171.8 of this subchapter, the following definitions apply to this subpart:

Commercially free of corrosive components means a hazardous material having a dew point at or below minus 46.7° C (minus 52° F) at 101kPa (1 atmosphere) and free of components that will adversely react with the cylinder (e.g. chemical stress corrosion).

Condemn means a determination that a cylinder is unserviceable for the continued transportation of hazardous materials in commerce and that the cylinder may not be restored by repair, rebuilding, requalification, or any other procedure.

Defect means an imperfection requiring removal of a cylinder from service.

Elastic expansion means a temporary increase in a cylinder's volume, due to application of pressure, that is lost when pressure is released (elastic expansion = total expansion minus permanent expansion).

Filled or *charged* means an introduction or presence of a hazardous material in a cylinder.

Non-corrosive service means a hazardous material that, in the presence of moisture, is not corrosive to the materials of construction of a cylinder (including valve, pressure relief device, etc.).

Over-heated means a condition in which the temperature of any portion of an aluminum cylinder has reached 176° C (350° F) or higher, or in which the temperature of any portion of a steel or nickel cylinder has reached 343° C (650° F) or higher.

Permanent expansion means a permanent increase in a cylinder's volume after the test pressure is released.

Proof pressure test means a pressure test by interior pressurization without the determination of a cylinder's expansion.

Rebuild means the replacement of a pressure part (e.g. a wall, head, or pressure fitting) by welding.

Rejected cylinder means a cylinder that cannot be used for the transportation of a hazardous material in commerce without repair, rebuilding, and requalification.

Repair means a procedure for correction of a rejected cylinder that may involve welding.

Requalification means the completion of a visual inspection and/or the test(s) required to be performed on a cylinder to determine its suitability for continued service.

Requalification identification number or RIN means a code assigned by DOT to uniquely identify a cylinder requalification, repair, or rebuilding facility.

Test pressure means the pressure used for the requalification of a cylinder.

Total expansion means the total increase in a cylinder's volume due to application of the test pressure.

Visual inspection means an internal or external visual examination, or both, performed as part of the cylinder requalification process.

Volumetric expansion test means a pressure test to determine the total and permanent expansion of a cylinder at a given pressure. The *volumetric expansion test* is conducted using the water jacket or direct expansion methods:

(1) *Water jacket method* means a volumetric expansion test to determine a cylinder's total and permanent expansion by measuring the difference between the volume of water the cylinder externally displaces at test pressure and the volume of water the cylinder externally displaces at ambient pressure.

(2) *Direct expansion method* means a volumetric expansion test to calculate a cylinder's total and permanent expansion by measuring the amount of water forced into a cylinder at test pressure, adjusted for the compressibility of water, as a means of determining the expansion.

§ 180.205 General requirements for requalification of cylinders.

(a) *General.* Each cylinder used for the transportation of hazardous materials must be an authorized packaging. To qualify as an authorized packaging, each cylinder must conform to this subpart, the applicable requirements specified in part 173 of this subchapter, and the applicable requirements of subpart C of part 178 of this subchapter.

(b) *Persons performing requalification functions.* No person may represent that a repair or requalification of a cylinder has been performed in accordance with the requirements in this subchapter unless that person holds a current approval issued under the procedural requirements prescribed in subpart I of part 107 of this chapter. No person may mark a cylinder with a RIN and a requalification date or otherwise represent that a DOT specification or exemption cylinder has been requalified unless all applicable requirements of this subpart have been met. A person who requalifies cylinders must maintain the records prescribed in § 180.215 at each location at which it inspects, tests, or marks cylinders.

(c) *Periodic requalification of cylinders.* Each cylinder bearing a DOT specification marking must be requalified and marked as specified in the Requalification Table in this subpart. Each cylinder bearing a DOT exemption number must be requalified and marked in conformance with this section and the terms of the applicable exemption. No cylinder may be filled with a hazardous material and offered for transportation in commerce unless that cylinder has been successfully requalified and marked in accordance with this subpart. A cylinder may be requalified at any time during or before the month and year that the requalification is due. However, a cylinder filled before the requalification becomes due may remain in service until it is emptied. A cylinder with a specified service life may not be refilled and offered for transportation after its authorized service life has expired.

(1) Each cylinder that is requalified in accordance with the requirements specified in this section must be marked in accordance with § 180.213.

(2) Each cylinder that fails requalification must be:

(i) Rejected and may be requalified in accordance with § 180.211; or

(ii) Condemned in accordance with paragraph (i) of this section.

(3) For DOT specification cylinders, the marked service pressure may be changed upon approval of the Associate Administrator and in accordance with written procedures specified in the approval.

(4) For a DOT–3 series cylinder, at the first requalification due on and after October 1, 2002, the set pressure of a pressure relief device must be set at test pressure with a tolerance of plus zero and minus 10%.

(d) *Conditions requiring test and inspection of cylinders.* Without regard to any other periodic requalification requirements, a cylinder must be tested and inspected in accordance with this section prior to further use if—

(1) The cylinder shows evidence of dents, corrosion, cracked or abraded areas, leakage, thermal damage, or any other condition that might render it unsafe for use in transportation;

(2) The cylinder has been in an accident and has been damaged to an extent that may adversely affect its lading retention capability;

(3) The cylinder shows evidence of or is known to have been over-heated; or

(4) The Associate Administrator determines that the cylinder may be in an unsafe condition.

(e) *Cylinders containing Class 8 (corrosive) liquids.* A cylinder previously containing a Class 8 (corrosive) liquid may not be used to transport a Class 2 material in commerce unless the cylinder is—

(1) Visually inspected, internally and externally, in accordance with paragraph (f) of this section and the inspection is recorded as prescribed in § 180.215;

(2) Requalified in accordance with this section, regardless of the date of the previous requalification;

(3) Marked in accordance with § 180.213; and

(4) Decontaminated to remove all significant residue or impregnation of the Class 8 material.

(f) *Visual inspection.* Except as otherwise provided in this subpart, each time a cylinder is pressure tested, it must be given an internal and external visual inspection.

(1) The visual inspection must be performed in accordance with the following CGA Pamphlets: C–6 for steel and nickel cylinders (incorporated by reference; *see* § 171.7 of this subchapter); C–6.1 for seamless aluminum cylinders (incorporated by reference; *see* § 171.7 of this subchapter); C–6.2 for fiber reinforced composite exemption cylinders (incorporated by reference; *see* § 171.7 of this subchapter); C–6.3 for low pressure aluminum cylinders (incorporated by reference; *see* § 171.7 of this subchapter); C–8 for DOT 3HT cylinders (incorporated by reference; *see* § 171.7 of this subchapter); and C–13 for DOT 8 series cylinders (incorporated by reference; *see* § 171.7 of this subchapter).

(2) For each cylinder with a coating or attachments that would inhibit inspection of the cylinder, the coating or attachments must be removed before performing the visual inspection.

(3) Each cylinder subject to visual inspection must be approved, rejected, or condemned according to the criteria in the applicable CGA pamphlet.

(4) In addition to other requirements prescribed in this paragraph (f), a DOT specification or exemption cylinder made of aluminum alloy 6351–T6 must be inspected for evidence of sustained load cracking in the neck and shoulder area in accordance with the cylinder manufacturer's written recommendations, which must be approved in writing by the Associate Administrator.

(g) *Pressure test.* (1) Unless otherwise provided, each cylinder required to be retested under this subpart must be retested by means suitable for measuring the expansion of the cylinder under pressure. Bands and other removable attachments must be loosened or removed before testing so that the cylinder is free to expand in all directions.

(2) The pressure indicating device of the testing apparatus must permit reading of pressures to within 1% of the minimum prescribed test pressure of

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each cylinder tested, except that for an analog device, interpolation to ½ of the marked gauge divisions is acceptable. The expansion-indicating device of the testing apparatus must also permit incremental reading of the cylinder expansion to 1% of the total expansion of each cylinder tested or 0.1 cm^3, whichever is larger. Midpoint visual interpolation is permitted.

(3) Each day before retesting, the retester shall confirm, by using a calibrated cylinder or other method authorized in writing by the Associate Administrator, that:

(i) The pressure-indicating device, as part of the retest apparatus, is accurate within ±1.0% of the prescribed test pressure of any cylinder tested that day. The pressure indicating device, itself, must be certified as having an accuracy of ±0.5%, or better, of its full range, and must permit readings of pressure from 90%-110% of the minimum prescribed test pressure of the cylinder to be tested. The accuracy of the pressure indicating device within the test system can be demonstrated at any point within 500 psig of the actual test pressure for test pressures at or above 3000 psig, or 10% of the actual test pressure for test pressures below 3000 psig.

(ii) The expansion-indicating device, as part of the retest apparatus, gives a stable reading of expansion and is accurate to ±1.0% of the total expansion of any cylinder tested or 0.1 cubic centimeter, whichever is larger. The expansion-indicating device itself must have an accuracy of ±0.5%, or better, of its full scale.

(4) The test equipment must be verified to be accurate within ±1.0% of the calibrated cylinder's pressure and corresponding expansion values. This may be accomplished by bringing the pressure to a value shown on the calibration certificate for the calibrated cylinder used and verifying that the resulting total expansion is within ±1.0% of the total expansion shown on the calibration certificate. Alternatively, calibration may be demonstrated by bringing the total expansion to a known value on the calibration certificate for the calibrated cylinder used and verifying that the resulting pressure is within ±1.0% of the pressure shown on the calibration certificate. The calibrated cylinder must show no permanent expansion. The retester must demonstrate calibration in conformance with this paragraph (g) to an authorized inspector on any day that it retests cylinders. A retester must maintain calibrated cylinder certificates in conformance with § 180.215(b)(4).

(5) Minimum test pressure must be maintained for at least 30 seconds, and as long as necessary for complete expansion of the cylinder. A system check may be performed at or below 90% of test pressure prior to the retest. In the case of a malfunction of the test equipment, the test may be repeated at a pressure increased by 10% or 100 psig, whichever is less. This paragraph (g) does not authorize retest of a cylinder otherwise required to be condemned under paragraph (i) of this section.

(h) *Cylinder rejection.* A cylinder must be rejected when, after a visual inspection, it meets a condition for rejection under the visual inspection requirements of paragraph (f) of this section.

(1) Except as provided in paragraphs (h)(3) and (h)(4) of this section, a cylinder that is rejected may not be marked as meeting the requirements of this section.

(2) The requalifier must notify the cylinder owner, in writing, that the cylinder has been rejected.

(3) Unless the cylinder is requalified in conformance with requirements in § 180.211, it may not be filled with a hazardous material and offered for transportation in commerce where use of a specification packaging is required.

(4) A rejected cylinder with a service pressure of less than 900 psig may be requalified and marked if the cylinder is repaired or rebuilt and subsequently inspected and tested in conformance with—

(i) The visual inspection requirements of paragraph (f) of this section;

(ii) Part 178 of this subchapter and this part;

(iii) Any exemption covering the manufacture, requalification, and/or use of that cylinder; and

(iv) Any approval required under § 180.211.

(i) *Cylinder condemnation.* (1) A cylinder must be condemned when—

(i) The cylinder meets a condition for condemnation under the visual inspection requirements of paragraph (f) of this section.

(ii) The cylinder leaks through its wall.

(iii) Evidence of cracking exists to the extent that the cylinder is likely to be weakened appreciably.

(iv) For a DOT specification cylinder, other than a DOT 4E aluminum cylinder or an exemption cylinder, permanent expansion exceeds 10 percent of total expansion.

(v) For a DOT 3HT cylinder—

(A) The pressure test yields an elastic expansion exceeding the marked rejection elastic expansion (REE) value.

(B) The cylinder shows evidence of denting or bulging.

(C) The cylinder bears a manufacture or an original test date older than twenty-four years or after 4380 pressurizations, whichever occurs first. If a cylinder is refilled, on average, more than once every other day, an accurate record of the number of rechargings must be maintained by the cylinder owner or the owner's agent.

(vi) For a DOT 4E aluminum cylinder, permanent expansion exceeds 12 percent of total expansion.

(vii) For a DOT exemption cylinder, permanent expansion exceeds the limit in the applicable exemption, or the cylinder meets another criterion for condemnation in the applicable exemption.

(viii) For an aluminum or an aluminum-lined composite exemption cylinder, the cylinder is known to have been or shows evidence of having been over-heated.

(2) When a cylinder must be condemned, the requalifier must stamp a series of X's over the DOT specification number and the marked pressure or stamp "CONDEMNED" on the shoulder, top head, or neck using a steel stamp. Alternatively, at the direction of the owner, the requalifier may render the cylinder incapable of holding pressure. In addition, the requalifier must notify the cylinder owner, in writing, that the cylinder is condemned and may not be filled with hazardous material and offered for transportation in commerce where use of a specification packaging is required.

(3) No person may remove or obliterate the "CONDEMNED" marking.

§ 180.207 [Reserved]

§ 180.209 Requirements for requalification of specification cylinders.

(a) *Periodic qualification of cylinders.* (1) Each specification cylinder that becomes due for periodic requalification, as specified in the following table, must be requalified and marked in conformance with the requirements of this subpart. Requalification records must be maintained in accordance with § 180.215. Table 1 follows:

TABLE 1.—REQUALIFICATION OF CYLINDERS [1]

Specification under which cylinder was made	Minimum test pressure (psig) [2]	Test period (years)
DOT 3	3000 psig	5
DOT 3A, 3AA	5/3 times service pressure, except noncorrosive service (*see* § 180.209(g)).	5, 10, or 12 (*see* § 180.209(b), (f), (h), and (j)
DOT 3AL	5/3 times service pressure	5 or 12 (*see* § 180.209(j))
DOT 3AX, 3AAX	5/3 times service pressure	5
3B, 3BN	2 times service pressure (*see* § 180.209(g))	5 or 10 (*see* § 180.209(f))
3E	Test not required.	
3HT	5/3 times service pressure	3 (*see* §§ 180.209(i) and 180.213(c))
3T	5/3 times service pressure	5
4AA480	2 times service pressure (*see* § 180.209(g))	5 or 10 (*see* § 180.209(e)(14)
4B, 4BA, 4BW, 4B–240ET	2 times service pressure, except non-corrosive service (*see* § 180.209(g)).	5, 10, or 12 (*see* § 180.209(e), (f), and (j))
4D, 4DA, 4DS	2 times service	5
DOT 4E	2 times service pressure, except non-corrosive (*see* § 180.209(g)).	5
4L	Test not required.	
8, 8AL		10 or 20 (*see* § 180.209(i))
Exemption cylinder	See current exemption	*See* current exemption
Foreign cylinder (see § 173.301(j) of this subchapter for restrictions on use).	As marked on cylinder, but not less than 5/3 of any service or working pressure marking.	5 (*see* §§ 180.209(k) and 180.213(d)(iii))

[1] Any cylinder not exceeding 2 inches outside diameter and less than 2 feet in length is excepted from volumetric expansion test.
[2] For cylinders not marked with a service pressure, see § 173.301(e)(1) of this subchapter.

(b) *DOT 3A or 3AA cylinders.* (1) A cylinder conforming to specification DOT 3A or 3AA with a water capacity of 56.7 kg (125 lb) or less that is removed from any cluster, bank, group, rack, or vehicle each time it is filled, may be requalified every ten years instead of every five years, provided the cylinder conforms to all of the following conditions:

(i) The cylinder was manufactured after December 31, 1945.

(ii) The cylinder is used exclusively for air; argon; cyclopropane; ethylene; helium; hydrogen; krypton; neon; nitrogen; nitrous oxide; oxygen; sulfur hexafluoride; xenon; fluorinated hydrocarbons, liquefied hydrocarbons, and mixtures thereof that are commercially free from corroding components; permitted mixtures of these gases (*see* § 173.301(d) of this subchapter); and permitted mixtures of these gases with up to 30 percent by volume of carbon dioxide, provided the gas has a dew point at or below minus (52° F) at 1 atmosphere.

(iii) Before each refill, the cylinder is removed from any cluster, bank, group, rack or vehicle and passes the hammer test specified in CGA Pamphlet C–6 (incorporated by reference; *see* § 171.7 of this subchapter).

(iv) The cylinder is dried immediately after hydrostatic testing to remove all traces of water.

(v) The cylinder is not used for underwater breathing.

(vi) Each cylinder is stamped with a five-pointed star at least one-fourth of an inch high immediately following the test date.

(2) If, since the last required requalification, a cylinder has not been used exclusively for the gases specifically identified in paragraph (b)(1)(ii) of this section, but currently conforms with all other provisions of paragraph (b)(1) of this section, it may be requalified every 10 years instead of every five years, provided it is first requalified and examined as prescribed by § 173.302a(b) (2), (3) and (4) of this subchapter.

(3) Except as specified in paragraph (b)(2) of this section, if a cylinder, marked with a star, is filled with a compressed gas other than as specified in paragraph (b)(1)(ii) of this section, the star following the most recent test date must be obliterated. The cylinder must be requalified five years from the marked test date, or prior to the first filling with a compressed gas, if the required five-year requalification period has passed.

(c) *DOT 4-series cylinders.* A DOT 4-series cylinder, except a 4L cylinder, that at any time shows evidence of a leak or of internal or external corrosion, denting, bulging or rough usage to the extent that it is likely to be weakened appreciably, or that has lost five percent or more of its official tare weight must be requalified before being refilled and offered for transportation. (Refer to CGA Pamphlet C–6 or C–6.3, as applicable, regarding cylinder weakening.) After testing, the actual tare weight must be recorded as the new tare weight.

(d) *Cylinders 5.44 kg (12 lb) or less with service pressures of 300 psig or less.* A cylinder of 5.44 (12 lb) or less water capacity authorized for service pressure of 300 psig or less must be given a complete external visual inspection at the time periodic requalification becomes due. External visual inspection must be in accordance with CGA Pamphlet C–6 or C–6.1 (incorporated by reference; *see* § 171.7 of this subchapter). The cylinder may be proof pressure tested. The test is successful if the cylinder, when examined under test pressure, does not display a defect described in § 180.205(i)(1) (ii) or (iii). Upon successful completion of the test and inspection, the cylinder must be marked in accordance with § 180.213.

(e) *Proof pressure test.* A cylinder made in conformance with specifications DOT 4B, 4BA, 4BW, or 4E used exclusively for: liquefied petroleum gas that meets the requirements in Table I of ASTM D 1835, Standard Specification for Liquefied Petroleum (LP) Gases (incorporated by reference; *see* § 171.7 of this subchapter); anhydrous dimethylamine; anhydrous methylamine; anhydrous trimethylamine; methyl chloride; methylacetylene-propadiene stabilized; or dichlorodifluoromethane, difluoroethane, difluorochloroethane, chlorodifluoromethane, chlorotetrafluoroethane, trifluorochloroethylene, or mixture thereof, or mixtures of one or more with trichlorofluoromethane; and commercially free from corroding components and protected externally by a suitable corrosion-resistant coating (such as galvanizing or painting) may be requalified by volumetric expansion

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testing every 12 years instead of every five years. As an alternative, the cylinder may be subjected to a proof pressure test at least two times the marked service pressure, but this latter type of test must be repeated every seven years after expiration of the first 12-year period. When subjected to a proof pressure test, the cylinder must be carefully examined under test pressure and removed from service if a leak or defect is found.

(f) *Poisonous materials.* A cylinder conforming to specification DOT 3A, 3AA, 3B, 4BA, or 4BW having a service pressure of 300 psig or less and used exclusively for methyl bromide, liquid; mixtures of methyl bromide and ethylene dibromide, liquid; mixtures of methyl bromide and chlorpicrin, liquid; mixtures of methyl bromide and petroleum solvents, liquid; or methyl bromide and nonflammable, nonliquefied compressed gas mixtures, liquid; commercially free of corroding components, and protected externally by a suitable corrosion resistant coating (such as galvanizing or painting) and internally by a suitable corrosion resistant lining (such as galvanizing) may be tested every 10 years instead of every five years, provided a visual internal and external examination of the cylinder is conducted every five years in accordance with CGA Pamphlet C–6 (incorporated by reference; *see* § 171.7 of this subchapter). The cylinder must be examined at each filling, and rejected if a dent, corroded area, leak or other condition indicates possible weakness.

(g) *Visual inspections.* A cylinder conforming to a specification listed in the table in this paragraph and used exclusively in the service indicated may, instead of a periodic hydrostatic test, be given a complete external visual inspection at the time periodic requalification becomes due. External visual inspection must be in accordance with CGA Pamphlet C–6 or C–6.3, as applicable (incorporated by reference; *see* § 171.7 of this subchapter). When this inspection is used instead of hydrostatic pressure testing, subsequent inspections are required at five-year intervals after the first inspection. After September 30, 2003, inspections must be made only by persons holding a current RIN and the results recorded and maintained in accordance with § 180.215. Records must include: date of inspection (month and year); DOT specification number; cylinder identification (registered symbol and serial number, date of manufacture, and owner); type of cylinder protective coating (including statement as to need of refinishing or recoating); conditions checked (*e.g.*, leakage, corrosion, gouges, dents or digs in shell or heads, broken or damaged footring or protective ring or fire damage); disposition of cylinder (returned to service, returned to cylinder manufacturer for repairs or condemned). A cylinder passing requalification by the external visual inspection must be marked in accordance with § 180.213. Specification cylinders must be in exclusive service as shown in the following table:

Cylinders conforming to—	Used exclusively for—
DOT 3A, DOT 3AA, DOT 3A480X, DOT 4AA480	Anhydrous ammonia of at least 99.95% purity.
DOT 3A, DOT 3AA, DOT 3A480X, DOT 3B, DOT 4B, DOT 4BA, DOT 4BW.	Butadiene, inhibited, that is commercially free from corroding components.
DOT 3A, DOT 3A480X, DOT 3AA, DOT 3B, DOT 4AA480, DOT 4B, DOT 4BA, DOT 4BW.	Cyclopropane that is commercially free from corroding components.
DOT 3A, DOT 3AA, DOT 3A480X, DOT 4B, DOT 4BA, DOT 4BW, DOT 4E.	Fluorinated hydrocarbons and mixtures thereof that are commercially free from corroding components.
DOT 3A, DOT 3AA, DOT 3A480X, DOT 3B, DOT 4B, DOT 4BA, DOT 4BW, DOT 4E.	Liquefied hydrocarbon gas that is commercially free from corroding components.
DOT 3A, DOT 3AA, DOT 3A480X, DOT 3B, DOT 4B, DOT 4BA, DOT 4BW, DOT 4E.	Liquefied petroleum gas that meets the requirements in Table I of ASTM D 1835, Standard Specification for Liquefied Petroleum (LP) Gases (incorporated by reference; see § 171.7 of this subchapter).
DOT 3A, DOT 3AA, DOT 3B, DOT 4B, DOT 4BA, DOT 4BW, DOT 4E	Methylacetylene-propadiene, stabilized, that is commercially free from corroding components.
DOT 3A, DOT 3AA, DOT 3B, DOT 4B, DOT 4BA, DOT 4BW	Anhydrous mono, di,trimethylamines that are commercially free from corroding components.
DOT 4B240, DOT 4BW240	Ethyleneimine, inhibited.

(h) *Cylinders containing anhydrous ammonia.* A cylinder conforming to specification DOT 3A, 3A480X, or 4AA480 used exclusively for anhydrous ammonia, commercially free from corroding components, and protected externally by a suitable corrosion-resistant coating (such as paint) may be requalified every 10 years instead of every five years.

(i) *Requalification of DOT–8 series cylinders.* (1) Each owner of a DOT–8 series cylinder used to transport acetylene must have the cylinder shell and the porous filler requalified in accordance with CGA Pamphlet C–13 (incorporated by reference; *see* § 171.7 of this subchapter). Requalification must be performed in accordance with the following schedule:

Date of cylinder manufacture	Shell (visual inspection) requalification		Porous filler requalification	
	Initial	Subsequent	Initial	Subsequent
Before January 1, 1991	Before January 1, 2001	10 years	Before January 1, 2011	Not required.
On or after January 1, 1991.	10 years [1]	10 years	3 to 20 years [2]	Not required.

[1] Years from date of cylinder manufacture.
[2] For a cylinder manufactured on or after January 1, 1991, requalification of the porous filler must be performed no sooner than 3 years, and no later than 20 years, from the date of manufacture.

(2) Unless requalified and marked in accordance with CGA Pamphlet C–13 (incorporated by reference; *see* § 171.7 of this subchapter) before October 1, 1994, an acetylene cylinder must be requalified by a person who holds a current RIN.

(3) If a cylinder valve is replaced, a cylinder valve of the same weight must be used or the tare weight of the cylinder must be adjusted to compensate for valve weight differential.

(4) The person performing a visual inspection or requalification must record the results as specified in § 180.215.

(5) The person performing a visual inspection or requalification must mark the cylinder as specified in § 180.213.

(j) *Cylinder used as a fire extinguisher.* Only a DOT specification cylinder used as a fire extinguisher and meeting Special Provision 18 in § 172.102(c)(1) of this subchapter may be requalified in accordance with this paragraph (j).

(1) A DOT 4B, 4BA, 4B240ET or 4BW cylinder may be tested as follows:

(i) For a cylinder with a water capacity of 5.44 kg (12 lb) or less, by volumetric expansion test using the water jacket method or by proof pressure test. A requalification must be performed by the end of 12 years after the original test date and at 12-year intervals thereafter.

(ii) For a cylinder having a water capacity over 5.44 kg (12 lb)—

(A) *By proof pressure test.* A requalification must be performed by the end of 12 years after the original test date and at 7-year intervals; or

(B) *By volumetric expansion test using the water jacket method.* A requalification must be performed 12 years after the original test date and at 12-year intervals thereafter.

(2) A DOT 3A, 3AA, or 3AL cylinder must be requalified by volumetric expansion test using the water jacket method. A requalification must be performed 12 years after the original test date and at 12-year intervals thereafter.

(k) *Requalification of foreign cylinders filled for export.* A cylinder manufactured outside the United States, other than as provided in § 171.12a of this subchapter, that has not been manufactured, inspected, tested and marked in accordance with part 178 of this subchapter may be filled with compressed gas in the United States, and shipped solely for export if it meets the following requirements, in addition to other requirements of this subchapter:

(1) It has been inspected, tested and marked (with only the month and year of test) in conformance with the procedures and requirements of this subpart or the Associate Administrator has authorized the filling company to fill foreign cylinders under an alternative method of qualification; and

(2) It is offered for transportation in conformance with the requirements of § 173.301(l) of this subchapter.

§ 180.211 Repair, rebuilding and reheat treatment of DOT–4 series specification cylinders.

(a) *General requirements for repair and rebuilding.* Any repair or rebuilding of a DOT 4-series cylinder must be performed by a person holding an approval as specified in § 107.805 of this chapter. A person performing a rebuild function is considered a manufacturer subject to the requirements of § 178.2(a)(2) and subpart C of part 178 of this subchapter. The person performing a repair, rebuild, or reheat treatment must record the test results as specified in § 180.215. Each cylinder that is successfully repaired or rebuilt must be marked in accordance with § 180.213.

(b) *General repair requirements.* Each repair of a DOT 4-series cylinder must be made in accordance with the following conditions:

(1) The repair and the inspection of the work performed must be made in accordance with the requirements of the cylinder specification.

(2) The person performing the repair must use the procedure, equipment, and filler metal or brazing material as authorized by the approval issued under § 107.805 of this chapter.

(3) Welding and brazing must be performed on an area free from contaminants.

(4) A weld defect, such as porosity in a pressure retaining seam, must be completely removed before re-welding. Puddling may be used to remove a weld defect only by the tungsten inert gas shielded arc process.

(5) After removal of a non-pressure attachment and before its replacement, the cylinder must be given a visual inspection in accordance with § 180.205(f).

(6) Reheat treatment of DOT 4B, 4BA or 4BW specification cylinders after replacement of non-pressure attachments is not required when the total weld material does not exceed 20.3 cm (8 inches). Individual welds must be at least 7.6 cm (3 inches) apart.

(7) After repair of a DOT 4B, 4BA or 4BW cylinder, the weld area must be leak tested at the service pressure of the cylinder.

(8) Repair of weld defects must be free of cracks.

(9) When a non-pressure attachment with the original cylinder specification markings is replaced, all markings must be transferred to the attachment on the repaired cylinder.

(10) Walls, heads or bottoms of cylinders with defects or leaks in base metal may not be repaired, but may be replaced as provided for in paragraph (d) of this section.

(c) *Additional repair requirements for 4L cylinders.* (1) Repairs to a DOT 4L cylinder must be performed in accordance with paragraphs (a) and (b) of this section and are limited to the following:

(i) The removal of either end of the insulation jacket to permit access to the cylinder, piping system, or neck tube.

(ii) The replacement of the neck tube. At least a 13 mm (0.51 inch) piece of the original neck tube must be protruding above the cylinder's top end. The original weld attaching the neck tube to the cylinder must be sound and the replacement neck tube must be welded to this remaining piece of the original neck tube.

(iii) The replacement of material such as, but not limited to, the insulating material and the piping system within the insulation space is authorized. The replacement material must be equivalent to that used at the time of original manufacture.

(iv) Other welding procedures that are permitted by CGA Pamphlet C–3 (incorporated by reference; *see* § 171.7 of this subchapter), and not excluded by the definition of "rebuild," are authorized.

(2) After repair, the cylinder must be—

(i) Pressure tested in accordance with the specifications under which the cylinder was originally manufactured;

(ii) Leak tested before and after assembly of the insulation jacket using a mass spectrometer detection system; and

(iii) Tested for heat conductivity requirements.

(d) *General rebuilding requirements.* (1) The rebuilding of a DOT 4-series cylinder must be made in accordance with the following requirements:

(i) The person rebuilding the cylinder must use the procedures and equipment as authorized by the approval issued under § 107.805 of this chapter.

(ii) After removal of a non-pressure component and before replacement of any non-pressure component, the cylinder must be visually inspected in accordance with CGA Pamphlet C–6 (incorporated by reference; *see* § 171.7 of this subchapter).

(iii) The rebuilder may rebuild a DOT 4B, 4BA or 4BW cylinder having a water capacity of 9.07 kg (20 lb) or greater by replacing a head of the cylinder using a

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circumferential joint. When this weld joint is located at other than an original welded joint, a notation of this modification must be shown on the Manufacturer's Report of Rebuilding in § 180.215(d)(2). The weld joint must be on the cylindrical section of the cylinder.

(iv) Any welding and the inspection of the rebuilt cylinder must be in accordance with the requirements of the applicable cylinder specification and the following requirements:

(A) Rebuilding of any cylinder involving a joint subject to internal pressure may only be performed by fusion welding;

(B) Welding must be performed on an area free from contaminants; and

(C) A weld defect, such as porosity in a pressure retaining seam, must be completely removed before re-welding. Puddling may be used to remove a weld defect only by using the tungsten inert gas shielded arc process.

(2) Any rebuilt cylinder must be—

(i) Heat treated in accordance with paragraph (f) of this section;

(ii) Subjected to a volumetric expansion test on each cylinder. The results of the tests must conform to the applicable cylinder specification;

(iii) Inspected and have test data reviewed to determine conformance with the applicable cylinder specification; and

(iv) Made of material conforming to the specification. Determination of conformance shall include chemical analysis, verification, inspection and tensile testing of the replaced part. Tensile tests must be performed on the replaced part after heat treatment by lots defined in the applicable specification.

(3) For each rebuilt cylinder, an inspector's report must be prepared to include the information listed in § 180.215(d).

(4) Rebuilding a cylinder with brazed seams is prohibited.

(5) When an end with the original cylinder specification markings is replaced, all markings must be transferred to the rebuilt cylinder.

(e) *Additional rebuilding requirements for DOT 4L cylinders.* (1) The rebuilding of a DOT 4L cylinder must be performed in accordance with paragraph (d) of this section. Rebuilding of a DOT 4L cylinder is:

(i) Substituting or adding material in the insulation space not identical to that used in the original manufacture of that cylinder;

(ii) Making a weld repair not to exceed 150 mm (5.9 inches) in length on the longitudinal seam of the cylinder or 300 mm (11.8 inches) in length on a circumferential weld joint of the cylinder; or

(iii) Replacing the outer jacket.

(2) Reheat treatment of cylinders is prohibited.

(3) After rebuilding, each inner containment vessel must be proof pressure tested at 2 times its service pressure. Each completed assembly must be leak-tested using a mass spectrometer detection system.

(f) *Reheat treatment.* (1) Prior to reheat treatment, each cylinder must be given a visual inspection, internally and externally, in accordance with § 180.205(f).

(2) Cylinders must be segregated in lots for reheat treatment. The reheat treatment and visual inspection must be performed in accordance with the specification for the cylinders except as provided in paragraph (f)(4) of this section.

(3) After reheat treatment, each cylinder in the lot must be subjected to a volumetric expansion test and meet the acceptance criteria in the applicable specification or be scrapped.

(4) After all welding and heat treatment, a test of the new weld must be performed as required by the original specification. The test results must be recorded in accordance with § 180.215.

§ 180.213 Requalification markings.

(a) *General.* Each cylinder requalified in accordance with this subpart with acceptable results must be marked as specified in this section. Required specification markings may not be altered or removed.

(b) *Placement of markings.* Each cylinder must be plainly and permanently marked on the metal of the cylinder as permitted by the applicable specification. Unless authorized by the cylinder specification, marking on the cylinder sidewall is prohibited.

(1) Requalification and required specification markings must be legible so as to be readily visible at all times. Illegible specification markings may be remarked on the cylinder as provided by the original specification.

Requalification markings may be placed on any portion of the upper end of the cylinder excluding the sidewall, as provided in this section. Requalification and required specification markings that are illegible may be reproduced on a metal plate and attached as provided by the original specification.

(2) Previous requalification markings may not be obliterated, except that, when the space originally provided for requalification dates becomes filled, additional dates may be added as follows:

(i) All preceding requalification dates may be removed by peening provided that—

(A) Permission is obtained from the cylinder owner;

(B) The minimum wall thickness is maintained in accordance with manufacturing specifications for the cylinder; and

(C) The original manufacturing test date is not removed.

(ii) When the cylinder is fitted with a footring, additional dates may be marked on the external surface of the footring.

(c) *Requalification marking method.* The depth of requalification markings may not be greater than specified in the applicable specification. The markings must be made by stamping, engraving, scribing or other method that produces a legible, durable mark.

(1) A cylinder used as a fire extinguisher (§ 180.209(j)) may be marked by using a pressure sensitive label.

(2) For a DOT 3HT cylinder, the test date and RIN must be applied by low-stress steel stamps to a depth no greater than that prescribed at the time of manufacture. Stamping on the sidewall is not authorized.

(d) *Requalification markings.* Each cylinder that has successfully passed requalification must be marked with the RIN set in a square pattern, between the month and year of the requalification date. The first character of the RIN must appear in the upper left corner of the square pattern; the second in the upper right; the third in the lower right, and the fourth in the lower left. Example: A cylinder requalified in September 1998, and approved by a person who has been issued RIN "A123", would be marked plainly and permanently into the metal of the cylinder in accordance with location requirements of the cylinder specification or on a metal plate permanently secured to the cylinder in accordance with paragraph (b) of this section. An example of the markings prescribed in this paragraph (d) is as follows:

$$\begin{array}{c} \text{A1} \\ 9 \quad 98 \times \\ 32 \end{array}$$

Where:

"9" is the month of requalification,

"A123" is the RIN,

"98" is the year of requalification, and

"X" represents the symbols described in paragraphs (f)(2) through (f)(7) of this section.

(1) Upon a written request, variation from the marking requirement may be approved by the Associate Administrator.

(2) *Exception.* A cylinder subject to the requirements of § 173.301(l) of this subchapter may not be marked with a RIN.

(e) *Size of markings.* The size of the markings must be at least 6.35 mm (¼ in.) high, except RIN characters must be at least 3.18 mm (⅛ in.) high.

(f) *Marking illustrations.* Examples of required requalification markings for DOT specification and exemption cylinders are illustrated as follows:

(1) For designation of the 5-year volumetric expansion test, 10-year volumetric expansion test for cylinders conforming to § 180.209(f) and (h), or 12-year volumetric expansion test for fire extinguishers conforming to § 173.309(b) of this subchapter and cylinders conforming to § 180.209(e) and § 180.209(g), the marking is as illustrated in paragraph (d) of this section.

(2) For designation of the 10-year volumetric expansion test for cylinders conforming to § 180.209(b), the marking is as illustrated in paragraph (d) of this section, except that the "X" is replaced with a five-point star.

(3) For designation of special filling limits up to 10% in excess of the marked service pressure for cylinders conforming to § 173.302a(b) of this subchapter, the marking is as illustrated in paragraph (d) of this section, except that the "X" is replaced with a plus sign "+".

(4) For designation of the proof pressure test, the marking is as illustrated in paragraph (d) of this section, except that the "X" is replaced with the letter "S".

(5) For designation of the 5-year external visual inspection for cylinders conforming to § 180.209(g), the marking is as illustrated in paragraph (d) of this section, except that the "X" is replaced with the letter "E".

(6) For designation of DOT 8 series cylinder shell requalification only, the marking is as illustrated in paragraph (d) of this section, except that the "X" is replaced with the letter "S".

(7) For designation of DOT 8 series cylinder shell and porous filler requalification, the marking is as illustrated in paragraph (d) of this section, except that the "X" is replaced with the letters "FS".

§ 180.215 Reporting and record retention requirements.

(a) *Facility records.* A person who requalifies, repairs or rebuilds cylinders must maintain the following records where the requalification is performed:

(1) Current RIN issuance letter;

(2) If the RIN has expired and renewal is pending, a copy of the renewal request;

(3) Copies of notifications to Associate Administrator required under § 107.805 of this chapter;

(4) Current copies of those portions of this subchapter applicable to its cylinder requalification and marking activities at that location;

(5) Current copies of all exemptions governing exemption cylinders requalified or marked by the requalifier at that location; and

(6) The information contained in each applicable CGA or ASTM standard incorporated by reference in § 171.7 of this subchapter applicable to the requalifier's activities. This information must be the same as contained in the edition incorporated by reference in § 171.7 of this subchapter.

(b) *Requalification records.* Daily records of visual inspection, pressure test, and ultrasonic examination if permitted under an exemption, as applicable, must be maintained by the person who performs the requalification until either the expiration of the requalification period or until the cylinder is again requalified, whichever occurs first. A single date may be used for each test sheet, provided each test on the sheet was conducted on that date. Ditto marks or a solid vertical line may be used to indicate repetition of the preceding entry for the following entries only: date; actual dimensions; manufacturer's name or symbol, if present; owner's name or symbol, if present; and test operator. Blank spaces may not be used to indicate repetition of a prior entry. The records must include the following information:

(1) *Pressure test records.* For each test to demonstrate calibration, the date; serial number of the calibrated cylinder; calibration test pressure; total, elastic and permanent expansions; and legible identification of test operator. The test operator must be able to demonstrate that the results of the daily calibration verification correspond to the hydrostatic tests performed on that day. The daily verification of calibration(s) may be recorded on the same sheets as, and with, test records for that date.

(2) *Pressure test and visual inspection records.* The date of requalification; serial number; DOT specification or exemption number; marked pressure; actual dimensions; manufacturer's name or symbol; owner's name or symbol, if present; result of visual inspection; actual test pressure; total, elastic and permanent expansions; percent permanent expansion; disposition, with reason for any repeated test, rejection or condemnation; and legible identification of test operator. For each cylinder marked pursuant to § 173.302a(b)(5) of this subchapter, the test sheet must indicate the method by which any average or maximum wall stress was computed. Records must be kept for all completed, as well as unsuccessful tests. The entry for a second test after a failure to hold test pressure must indicate the date of the earlier test.

(3) *Wall stress.* Calculations of average and maximum wall stress pursuant to § 173.302a(b)(3) of this subchapter, if performed.

(4) *Calibration certificates.* The most recent certificate of calibration must be maintained for each calibrated cylinder.

(c) *Repair, rebuilding or reheat treatment records.* (1) Records covering welding or brazing repairs, rebuilding or reheat treating shall be retained for a minimum of fifteen years by the approved facility.

(2) A record of rebuilding, in accordance with § 180.211(d), must be completed for each cylinder rebuilt. The record must be clear, legible, and contain the following information:

(i) Name and address of test facility, date of test report, and name of original manufacturer;

(ii) Marks stamped on cylinder to include specification number, service pressure, serial number, symbol of manufacturer, inspector's mark, and other marks, if any;

(iii) Cylinder outside diameter and length in inches;

(iv) Rebuild process (welded, brazed, type seams, *etc.*);

(v) Description of assembly and any attachments replaced (*e.g.*, neckrings, footrings);

(vi) Chemical analysis of material for the cylinder, including seat and Code No., type of analysis (ladle, check), chemical components (Carbon (C), Phosphorous (P), Sulfur (S), Silicon (Si), Manganese (Mn), Nickel (Ni), Chromium (Cr), Molybdenum (Mo), Copper (Cu), Aluminum (Al), Zinc (Zn)), material manufacturer, name of person performing the analysis, results of physical tests of material for cylinder (yield strength (psi), tensile strength (psi), elongation percentage (inches), reduction in area percentage, weld bend, tensile bend, name of inspector);

(vii) Results of proof pressure test on cylinder, including test method, test pressure, total expansion, permanent expansion, elastic expansion, percent permanent expansion (permanent expansion may not exceed ten percent (10%) of total expansion), and volumetric capacity (volumetric capacity of a rebuilt cylinder must be within ± 3% of the calculated capacity);

(viii) Each report must include the following certification statement: "I certify that this rebuilt cylinder is

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accurately represented by the data above and conforms to all of the requirements in Subchapter C of Chapter I of Title 49 of the Code of Federal Regulations.". The certification must be signed by the rebuild technician and principal, officer, or partner of the rebuild facility.

Issued in Washington, DC, on June 19, 2002, under authority delegated in 49 CFR part 1.

Elaine E. Joost,

Acting Administrator, Research and Special Programs Administration.

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August 8, 2002

Part III

Department of Health and Human Services

Administration for Children and Families

Request for Applications for the Office of Community Services' Fiscal Year 2002 Community Economic Development Program-Special Initiatives; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS–2002–16]

Request for Applications for the Office of Community Services' Fiscal Year 2002 Community Economic Development Program-Special Initiatives

AGENCY: Office of Community Services, Administration for Children and Families, Department of Health and Human Services (HHS).

ACTION: Announcement of availability of funds and request for competitive applications under the Office of Community Services' Community Services Block Grant—Discretionary Awards—Special Initiatives for the Community Economic Development Program (CEDP).

SUMMARY: The Administration for Children and Families (ACF), Office of Community Services (OCS), announces that competing applications will be accepted for the award of cooperative agreements pursuant to the Secretary's Community Economic Development authority under section 680 (a)(1) and (2) of the Community Services Block Grant Act of 1981, as amended, (Pub. L. 105–285). This Program Announcement contains forms and instructions for submitting an application. The awarding of cooperative agreements under this Program Announcement are subject to the availability of funds for support of these activities.

The Office of Community Services (OCS) proposes to provide funds in Fiscal Year 2002 to provide administration and management expertise (Priority Area 1) through a Community Development Corporation (CDC) with nationwide experience to share its experience in dealing with day-to-day project related issues and challenges in promoting community economic development. The organization must have documented experience on a nationwide basis.

OCS also proposes to provide funds to a private, non-profit organization with nationwide experience for the purpose of providing training and technical assistance (Priority Area 2) to strengthen the network of CDCs.

DATES: The closing time and date for submission of applications for Fiscal Year 2002 is at 4:30 PM (Eastern Time Zone) September 9, 2002. Applications received after this date will be classified as late and will not be accepted for consideration. See Part IV of this announcement for more information on submitting applications.

FOR FURTHER INFORMATION CONTACT: Mr. Ros Relaford, Technical Assistance Manager, OCS Operations Center at 1–800–281–9519 for referral to the appropriate contact person in OCS for programmatic questions or send an e-mail to: *OCS@lcgnet.com* or contact Calvin Brockington at (202) 401–5273.

For a copy of this announcement, contact: OCS Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209, 1(800) 281–9519.

In addition, the announcement is accessible on the OCS web site for reading or downloading at: *http://www.acf.dhhs.gov/programs/ocs/kits1.htm*.

The Catalog of Federal Domestic Assistance number for this program is 93.570. The title is Community Services Block Grant—Discretionary Awards—Special Initiatives.

SUPPLEMENTARY INFORMATION: This Program Announcement consists of seven parts plus attachments:

Part I: Background Information
- A. Legislative Authority
- B. Departmental Goals
- C. Form of Award
- D. Definition of Terms
- E. Eligible Applicants

Part II: Program Objectives and Requirements
- A. Duties and Responsibilities of Applicant and Grantor Agency
- B. Program Priority Areas
- C. Project Requirements
- D. Project and Budget Periods
- E. Mobilization of Resources
- F. Program Beneficiaries
- G. Number of Projects in Application
- H. Multiple Submittal
- I. Sub-awarding or Delegating Projects
- J. Funding Considerations
- K. Prohibited Activities
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Part III: The Project Description, Program Proposal Elements and Review Criteria
- A. Purpose
- B. Project Summary/Abstract
- C. Objectives and Need for Assistance
- D. Results or Benefits Expected
- E. Approach
- F. Organizational Profiles
- G. Budget and Budget Justification
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Part IV: Application Procedures
- A. Application Development/Availability of Forms
- B. Application Submission
- C. Intergovernmental Review
- D. Initial OCS Screening
- E. Consideration of Applications

Part V: Instructions for Completing Forms SF–424
- A. SF–424—Application for Federal Assistance (Attachment B)
- B. SF–424A—Budget Information—Non-Construction Programs (Attachment C)
- C. SF–424B—Assurances—Non-Construction Programs (Attachment D)

Part VI: Contents of Application and Receipt Process
- A. Contents of Application
- B. Application Format
- C. Acknowledgment of Receipt

Part VII: Post Award Information and Reporting Requirements
- A. Notification of Grant Award or Cooperative Agreement
- B. Reporting Requirements
- C. Audit Requirements
- D. Prohibitions and Requirements with Regard to Lobbying
- E. Applicable Federal Regulations

Paperwork Reduction Act of 1995 (Public Law 104–13)

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collected information.

The project description is approved under OMB control number 0970–0139 which expires 12/31/2003.

An agency may not conduct or sponsor, and a person is not required to respond to an information request from an agency unless a currently valid OMB control number is displayed.

Part I. Background Information

A. Legislative Authority

The Community Services Block Grant (CSBG) Act of 1981, as amended, (Section 680(a) (1), (2), and (4) of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998), authorizes the Secretary to make grants or provide cooperative agreements to provide technical and financial assistance for economic development activities designed to address the economic needs of low-income individuals and families by creating employment and business ownership opportunities.

B. Departmental Goals

This announcement is particularly relevant to the departmental goal of strengthening the American family and promoting self-sufficiency. The Community Economic Development Program has objectives of increasing the access of low-income people to employment and business development opportunities, and improving the integration, coordination, and continuity of the various HHS (and other Federal Departments) funded services potentially available to families living in poverty. Faith-based organizations are eligible to apply for grants and cooperative agreements

under this program if they are private, non-profit organizations.

C. Form of Award

The Office of Community Services plans to support all Priority Areas of the Community Services Block Grant—Discretionary Awards—Special Initiatives through Cooperative Agreements. A Cooperative Agreement is an award instrument of financial assistance when substantial involvement is anticipated between the awarding federal office and the recipient during the performance of the contemplated project.

The Office of Community Services (OCS) and the successful applicant will function as partners sharing responsibility for the design, coordination, and implementation of the project. OCS Staff will be the Administration of Children and Families' (ACF) representatives primarily responsible for efforts under this cooperative agreement. In addition, ACF regional office staff may work closely with OCS and the applicant in planning and implementing the proposed work plan of the project. The purpose of the cooperative agreement is to ensure cooperation and coordination between OCS and the organization receiving funds.

The Office of Community Services will outline a plan of interaction with the funded organization for implementation under the cooperative agreement. The respective responsibilities of the Office of Community Services and the successful applicant will be identified and incorporated into the Cooperative Agreement during pre-award negotiations. The OCS responsibilities will not change the project requirements found in this Announcement.

The plan under the cooperative agreement will describe the general and specific responsibilities of the funded organization and the grantor. A schedule of tasks will be developed and agreed upon in addition to any special conditions relating to implementation of the project.

D. Definition of Terms

For purposes of this Program Announcement, the following definitions apply:

Beneficiaries: Low-income people (as defined in the most recent annual revision of the Poverty Income Guidelines published by DHHS) and low-income communities receive direct benefits.

Budget period: The interval of time into which a grant period of assistance is divided for budgetary and funding purposes.

Building deconstruction: The systematic disassembly of residential and commercial buildings.

Cash contributions: The recipient's cash outlay, including the outlay of money contributed to the recipient by the third parties.

Community Development Corporation (CDC): A private, non-profit corporation, governed by a board of directors consisting of residents of the community and business and civic leaders, that has as a principal purpose planning, developing, or managing low-income housing or community development projects.

Community Economic Development (CED): A process by which a community uses resources to attract capital and increase physical, commercial, and business development and job opportunities for its residents.

Cooperative Agreement: An award instrument of financial assistance when substantial involvement is anticipated between the awarding office and the recipient during performance of the contemplated project.

Distressed community: A geographic urban neighborhood or rural community of high unemployment and pervasive poverty.

Eligible applicant: A private, non-profit organization. (Also, see "Eligible Applicants" under Part B—Application Pre-Requisites and also Program Priority Areas under Part C.)

Empowerment Zones and Enterprise Communities (EZ/EC): Those communities designated as such by the Secretary of Agriculture or Secretary of Housing and Urban Development.

Faith-Based Non-Profit Organization: A non-profit organization that has a religious character.

Intervention: Any planned activity within a project that is intended to produce changes in the target population and/or the environment and that can be formally evaluated. For example, assistance in the preparation of a business plan and loan package are planned interventions.

Job creation: New jobs, i.e. jobs not in existence prior to the start of the project, that result from new business startups, business expansion, development of new services industries, and/or other newly-undertaken physical or commercial activities.

Job placement: Placing a person in an existing vacant job of a business, service, or commercial activity not related to new development or expansion activity.

Letter of commitment: A signed letter or agreement from a third party to the applicant that pledges financial or other support for the grant activities only subject to receiving an award of OCS grant funds.

Poverty Income Guidelines: The official poverty line defined by the Office of Management and Budget, as revised and published annually by the U.S. Department of Health and Human Services that establish the level of poverty defined as low-income for individuals and their families.

Program income: Gross income earned by the grant recipient that is directly generated by an activity supported with grant funds or earned as a result of the award.

Project period: The total time for which a project is approved for OCS support, including any approved extensions.

Self-employment: The state of an individual or individuals who engage in self-directed economic activities.

Self-sufficiency: The economic state for an individual or family where public assistance is not required to maintain a comfortable living standard.

Sub-award: An award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible sub-recipient or by a sub-recipient to a lower tier sub-recipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in 45 CFR 74.2.

(**Note:** Sub-awards do not include equity investments or loan transactions since they are promulgated under third party agreements.)

Technical assistance: A problem-solving event generally utilizing the services of a specialist. Such services may be provided on-site, by telephone, or by other communications. These services address specific problems and are intended to assist with the immediate resolution of a given problem or set of problems.

Temporary Assistance to Needy Families (TANF): Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) created the TANF program which replaced the entitlement program that guaranteed public assistance to individuals in economic distress. The TANF program requires work in exchange for time-limited assistance. The law specifically repeals the Aid to Families with Dependent Children (AFDC) program, Emergency

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Assistance(EA) and Job Opportunities and Basic Skills Training (JOBS) programs, and replaces them with a block grant entitlement to States under Title IV–A of the Social Security Act.

Third party: Any individual, organization, or business entity that is not the direct recipient of grant funds.

Third party in-kind contributions: The value of non-cash contributions provided by non-federal third parties which may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefitting and specifically identifiable to the project or program.

E. Eligible Applicants

An eligible applicant must be a private, non-profit organization. The organization must have significant and relevant experience working with community development corporations, foundations, financial institutions and other community-based organizations. The applicant must provide proof of its non-profit status. The non-profit agency can accomplish this by providing a copy of either the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations, a copy of the currently valid IRS tax exemption certificate, or a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled. Faith-based organizations meeting the requirements of section 680(a)(2) or (4) are eligible to apply.

All eligible applicants must have private, non-profit status at the time of submission of their application. In addition to non-profit status, each priority area of this program announcement has additional eligibility requirements. These requirements are identified in the narrative descriptions of each priority area found in Part C. *Applicant must submit proof of non-profit status in its application at the time of submission.* Applications that *do not* include proof of this status with their application will be disqualified.

Part II—Program Objectives and Requirements

The Office of Community Services (OCS) invites eligible applicants to submit competing grant applications for the award of two Cooperative Agreements for the Community Services Block Grant—Discretionary Awards—Special Initiatives. The Community Services Block Grant—Discretionary Awards—Special Initiatives provide funds to cover the following areas: Administrative Management and Training and Technical Assistance for Community Economic Development Program grantees.

A. Duties and Responsibilities of Applicant and Grantor Agency

The duties and responsibilities of the applicant and ACF/OCS in fulfilling the Cooperative Agreement during each phase will include the following:

The Applicant—Role and Responsibilities

The successful applicant shall be responsible for the following:

1. In collaboration with OCS, design, coordinate, and implement the project according to requirements accompanying each priority area.
2. Attend a 2–3 day meeting in Washington, D.C. to discuss and finalize the major goals and objectives of the overall project, the fiscal year work plans, and exchange and share information on strategies for achieving the goals and objectives of the project.
3. Establish subordinate objectives to guide the focus of their research based upon the needs assessed in the major objectives.
4. Participate in the annual orientation meeting for newly funded grantees of the Community Economic Development Program (CEDP).

ACF/OCS—Role and Responsibilities

The grantor agency, ACF/OCS, shall be responsible for the following:

1. Throughout the term of the Agreement, provide the time and expertise of OCS to help the applicant implement the goals and objectives of the project. Specifically, OCS will organize periodic consultations and teleconferences to review planned activities, to share information, and to promote nationwide coordination.
2. Provide to the applicant a complete listing of current CEDP grantees.
3. Organize a 2–3 day meeting in Washington, D.C. to discuss and finalize the major goals and objectives of the overall project, the fiscal year work plans, and to exchange program information, and to share information on strategies for achieving the goals and objectives of the project.
4. Throughout the term of this Agreement, review and comment on required progress reports and other relevant materials prior to their finalization.
5. Throughout the term of this Agreement, make available to the applicant program information and/or products from OCS activities that are available and relevant to the project.
6. Throughout the term of this Agreement, promote the involvement of the applicant in meetings, conferences, and other initiatives to strengthen their knowledge and resource base for providing effective assistance to OCS and CEDP grantees.
7. Host the annual orientation and training meeting for newly funded CEDP grantees.

B. Program Priority Areas

The Community Services Block Grant—Discretionary Awards—Special Initiatives has two priority areas.

Priority Area 1—Administration and Management (AM)

Is intended to provide administrative and management expertise to current Office of Community Services' CDC grantees that are experiencing problems in the implementation of urban and rural community economic development projects.

Priority Area 2—Training and Technical Assistance (UT)

Makes funds available to provide training and technical assistance to groups of community development corporations in developing or implementing projects funded under this section; its aim is to generally enhance the viability and competence of community development corporations.

This priority area also seeks to attract additional private capital into distressed communities, including empowerment zones and enterprise communities, and to build and/or expand the ability of local institutions to better serve the economic needs of local residents.

The estimated level of funding available under each area is:

1. (AM)—$ 500,000.00
2. (UT)—$ 270,000.00

C. Project Requirements

The project requirements for each priority areas are as follows:

Priority Area 1—Administration and Management

OCS believes that one of the most effective means of ensuring the successful operation of a project under the CED Program area is through the sharing among CDCs of their experiences in dealing with the day-to-day issues and challenges presented in promoting community economic development. Accordingly, OCS strongly encourages more experienced private, non-profit CDCs to share their administrative and management expertise with less experienced CDCs or with those who have encountered difficulties in implementing their work programs. In order to facilitate this, OCS will provide funds to one community development corporation to assist with its efforts to enhance the management and operational capacities of the less experienced CDCs or those having difficulties.

An applicant in this priority area must document its experience and capability to operate on a national basis in several of the following areas:

- Business/development;
- Micro-entrepreneurship development;
- Commercial development;
- Organizational and staff development;
- Board training;
- Business management, including strategic planning and fiscal management;
- Finance, including business packaging and financial/accounting services;
- Regulatory compliance including zoning and permit compliance;
- Incubator development;
- Tax credits and bond financing; and Marketing.

Eligible applicants are private, non-profit, organizations that are community development corporations. Applicants must be able to operate on a national basis and have significant and relevant experience in working with community development corporations.

The applicant must document staff competence or the accessibility of third party resources with proven competence. If the work program in the proposal requires the significant use of third party (consultant/contractor) resources, those resources should be identified and resumes of the individuals or key organizational staff provided.

Resumes of the applicant's staff, who are to be directly involved in programmatic and administrative expertise sharing, should also be included. The applicant must document successful experience in the mobilization of resources (both cash and in-kind) from private and public sources. The applicant also must clearly state how the information learned from this project may be disseminated to other interested grantees.

OCS will share with the grantee information on other grantees seeking to benefit from such assistance. Such formal requests could also be initiated by a grantee with the concurrence of OCS. These contacts may occur on-site, by telephone, or by other methods of communication. Costs incurred in connection with participation in such activities will be borne by the recipient(s) of the OCS grant under this sub-priority area.

A grantee under this priority area will be expected to disseminate results of the project via a handbook, a progress paper, evaluation reports, general manual, or seminars/workshops.

Approximately one cooperative agreement is anticipated to be made at $500,000 under this Priority Area. The award will provide a project and budget period not to exceed 17 months.

Priority Area 2—Training and Technical Assistance

Funds will be awarded for the purpose of providing training and technical assistance to strengthen the network of CDCs.

Eligible applicants are private, non-profit organizations.

Applicant must have the ability to collect and analyze data nationally that may benefit CDCs and be able to disseminate information to all OCS-funded grantees; publish a national directory of funding sources for CDCs (public, corporate, foundation, religious); publish research papers on specific aspects of job creation by CDCs; and design and provide information on successful projects and economic niches that CDCs can target. The applicant also will be responsible for the development of instructional programs, national conferences, seminars, and other activities to assist community development corporations. An applicant in this priority area must document its experience and capability in implementing projects national in scope and have significant and relevant experiences in working with community development corporations.

Approximately one cooperative agreement is anticipated to be made for $270,000 under this Priority Area with a grant period not to exceed 17 months.

D. Project and Budget Periods

Cooperative Agreements funded under this program announcement for all Priority Areas shall have both project and budget periods of 17 months.

E. Mobilization of Resources

OCS encourages and strongly support leveraging of resources through public/private partnerships that can mobilize cash and/or third-party in-kind contributions.

F. Program Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits to low-income people as defined in the most recent annual revision of the Poverty Income Guidelines published by DHHS.

Attachment A to this announcement is an excerpt from the Poverty Income Guidelines currently in effect. Annual revisions of these guidelines are normally published in the **Federal Register** in February or early March of each year. Grantees will be required to apply the most recent guidelines throughout the project period. These revised guidelines may be obtained at public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402. Also, grantees may contact the OCS Operations Center to obtain a copy of the guidelines. No other government agency or privately defined poverty guidelines are applicable for the determination of low-income eligibility for these OCS programs.

Note, however, that low-income individuals granted lawful temporary resident status under Sections 245A or 210A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (Public law 99–603), may not be eligible for direct or indirect assistance based on financial need under this program for a period of five years from the date such status was granted.

G. Number of Projects in Application

All Priority Area applications shall contain only one proposed project. Applicants that are not in compliance with this requirement will be disqualified.

H. Multiple Submittals

There is no limit to the number of applications that an applicant can submit under this announcement as long as each application contains a different project.

I. Sub-awarding or Delegating Projects

OCS does not fund projects where the role of the applicant is *primarily* to serve as a conduit for funds through the use of sub awards to other organizations. In cases where the applicant proposes to make one or more sub awards, it must retain a substantive role in the implementation and operation of the project for which funding is requested.

J. Funding Considerations

In cases where an applicant ranks high and is competitive, the following may apply:

(a) Previous performance of applicants will be considered an important determining factor in the grant decisions.

(b) Any applicant that has two or more active OCS grants may only be funded under exceptional circumstances.

(c) Pre-award site visits may be performed for the purpose of

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undertaking assessments of many of these applications prior to OCS making final determinations on grant awards.

K. Prohibited Activities

OCS will not consider applications that propose the establishment of Small Business Investment Corporations or Minority Enterprise Small Business Investment Corporations.

Projects that would result in the relocation of a business from one geographic area to another with the possible displacement of employees are discouraged.

L. Community Empowerment and Collaboration

Eligible organizations including faith-based organizations are urged to submit applications.

Part III. The Project Description, Program Proposal Elements and Review Criteria

A. Purpose

The project description provides the major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

B. Project Summary/Abstract

Provide a summary of the project description (one page or less) with reference to the funding request.

C. Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, instructional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated. Supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

D. Results or Benefits Expected

Identify the results anticipated and the benefits to be derived. For example, describe the population to be served by the Community Services Block Grant—Discretionary Awards—Special Initiatives. Explain the ways in which the project will be used to reach your client base and how it will benefit low-income participants, including whether it may aid some participants in moving towards self-sufficiency.

E. Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. Note that clearance from the U.S. Office of Management and Budget (OMB) might be needed prior to a "collection of information" that is "conducted or sponsored" by ACF. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

F. Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of either the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations, or the currently valid IRS tax exemption certificate, *or*, the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled which certifies that the organization has met the state's criteria as a nonprofit organization.

G. Budget and Budget Justification

Provide a line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel). Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances.

Equipment

Description: "Equipment" means an article of non-expendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000.

(**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in, or excluded from, acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition of equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and sub-recipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000.)

Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Description: Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (non-contractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Non-Federal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

H. Evaluation Criteria

Proposal Elements and Review Criteria for Applications

Each application which passes the initial screening described in Part IV, Section D of this Program Announcement will be assessed and scored by three independent reviewers.

Each reviewer will give a numerical score for each application. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the Announcement. Scoring will be based on a total of 100 points, and for each application will be the average of the scores of the three reviewers.

The competitive review of proposals will be based on the degree to which applicants:

(1) Adhere to the requirements in Part II and (2) incorporate each of the Elements and Sub-Elements below into their proposals, so as to describe convincingly a project that will meet the requirements set forth above.

In order to simplify the application preparation and review process, OCS seeks to keep grant proposals cogent and brief. Applications with project narratives (excluding Project Summaries, Budget Justifications and Appendices) exceeding 35 letter-sized pages of 12 c.p.i. type or equivalent on a single side will not be reviewed. Applicants should prepare and assemble their project descriptions using the following outline of required project elements. They should, furthermore, build their project concept, plans, and application description upon the guidelines set forth for each of the project elements.

Project descriptions are evaluated on the basis of substance, not length. Pages should be numbered consecutively and a table of contents should be included for easy reference. Applicants are reminded that the overall Project Narrative must not exceed 35 pages.

When writing their Project Narratives, applicants should respond to the review criteria using the same sequential order. Each Priority area shall be reviewed by separate review criteria.

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Criteria for Review and Evaluation of Applications Submitted Under This Program Announcement

(**Note:** The review criteria both reiterate and explain in greater detail the information requirements contained in Part II of this Announcement.)

Criteria for Review and Evaluation of Applications Submitted Under Priority Area *1*

a. *Criterion I: Organizational Experience in Program Area and Staff Responsibilities (Maximum: 30 points)*

(1) *Organizational experience in program area (sub-rating: 0–20 points)*

Applicant has documented experience in working with CDCs on a national basis.

Applicant has documented the capability to provide leadership in solving long-term and immediate problems locally and/or nationally in such areas as business development, commercial development, organizational and staff development, board training, and micro-entrepreneurship development. (0–8 points)

Applicant documents a capability (including access to a network of skilled individuals and/or organizations) in two or more of the following areas:

Business management, including strategic planning and fiscal management; finance, including development of financial packages and provision of financial/accounting services; and regulatory compliance, including assistance with zoning and permit compliance. (0–4 points)

The applicant has the demonstrated ability to mobilize dollars from sources such as the private sector (corporations, banks, foundations, etc.) and the public sector, including state and local governments. (0–2 points)

Applicant also demonstrates that it has a sound organizational structure and proven organizational capability as well as an ability to develop and maintain a stable program in terms of business, physical or community development activities that have provided permanent jobs, services, business development opportunities, and other benefits to poverty community residents. (0–4 points)

Applicant indicates why it feels that its successful experiences would be of assistance to existing CDC grantees that are experiencing difficulties in implementing their projects. (0–2 points)

(2) *Staff skills, resources and responsibilities (sub-rating 0–10 points)*

The application describes in brief resume form the experience and skills of the project director who is not only well qualified, but who has professional capabilities relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description that indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project. (0–5 points)

The applicant has adequate facilities and resources (i.e. space and equipment) to successfully carry out the work plan. (0–3 points)

The assigned responsibilities of the staff are appropriate to the tasks identified for the project and sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project. (0–2 points)

b. *Criterion II: Work Program (Maximum: 20 points)*

The applicant demonstrates in some specificity a thorough understanding of the problems a grantee may encounter in implementing a successful project. (0–10 points)

The application includes a strategy for assessing the specific nature of the problems, outlining a course of action and identifying the resources required to resolve the problems. (0–10 points)

c. *Criterion III: Significant and Beneficial Impact (Maximum: 30 points)*

Project funds under this sub-priority area are to be used for the purposes of transferring expertise directly, or by a contract with a third party, to other OCS funded CDC grantees. Applicant describes how the success or failure of collaboration with these grantees will be documented. (0–15 points)

Applicant demonstrates an ability to disseminate results on the kinds of programmatic and administrative expertise transfer efforts in which it participated and successful strategies that it may have developed to share expertise with grantees during the grant period. (0–10 points)

Applicant states whether the results of the project will be included in a handbook, a progress paper, an evaluation report, a general manual, or seminars/workshops, and why the particular methodology chosen would be most effective. (0–5 points)

d. *Criterion IV: Public-Private Partnerships (Maximum: 15 points)*

Applicant demonstrates how it will design a comprehensive strategy that makes use of other available resources to resolve typical and recurrent CDC grantee problems.

e. *Criterion V: Budget Appropriateness and Reasonableness (Maximum: 5 points)*

Applicant documents that the funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. The application includes a detailed budget breakdown for each of the appropriate budget categories in the SF–424A. (0–3 points)

The estimated cost to the government of the project also is reasonable in relation to the anticipated results. (0–2 points)

Criteria for Review and Evaluation of Applications Submitted Under Priority Area 2

a. *Criterion I: Need for Assistance (Maximum: 10 points)*

The application documents that the project addresses a vital, nationwide need related to the purposes of CDCs and provides data and information in support of its contention.

b. *Criterion II: Organizational Experience in Program Area and Staff Responsibilities (Maximum: 30 points)*

(1) *Organizational experience*

Applicant has documented experience in working with CDCs.

Applicant has documented the capability to provide leadership in solving long-term and immediate problems locally and/or nationally in such areas as business development, commercial development, organizational and staff development, board training, and micro-entrepreneurship development. Applicant documents a capability (including access to a network of skilled individuals and/or organizations) in two or more of the following areas: Business management, including strategic planning and fiscal management; finance, including development of financial packages and provision of financial/accounting services; and regulatory compliance, including assistance with zoning and permit compliance. (0–15 points)

(2) *Staff skills*

The applicant's proposed project director and primary staff are well qualified and their professional experiences are relevant to the successful implementation of the proposed project. (0–15 points)

c. *Criterion III: Work Plan (Maximum: 25 points)*

The applicant has submitted a detailed and specific work plan that is both sound and feasible. Specifically, the work plan:

(1) Demonstrates that all activities are comprehensive and nationwide in scope, adequately described, and

appropriately related to the goals of the program. (0–5 points)

(2) Demonstrates in some specificity a thorough understanding of the kinds of training and technical assistance that can be provided to the network of community development corporations. (0–5 points)

(3) Delineates the tasks and sub-tasks involved in the areas necessary to carry out the responsibilities, i.e. training, technical assistance, research, outreach, seminars, etc. (0–5 points)

(4) States the intermediate and end products to be developed by task and sub-task. (0–5 points)

(5) Provides realistic time frames and a chronology of key activities for the goals and objectives. (0–5 points)

d. *Criterion IV: Significant and Beneficial Impact (Maximum: 25 points)*

Project funds will be used for the purpose of providing training and technical assistance on a national basis to the network of community development corporations.

The applicant describes how:

(1) The project will assure long-term program and management improvements for community development corporations. (0–10 points)

(2) The project will impact on a significant number of community development corporations. (0–10 points)

(3) The project will leverage or mobilize significant other non-federal resources for the direct benefit of the project. (0–5 points)

e. *Criterion V: Budget Reasonableness (Maximum: 10 points)*

(1) The resources requested are reasonable and adequate to accomplish the project. (0–5 points)

(2) Total costs are reasonable and consistent with anticipated results. (0–5 points)

Part IV. Application Procedures

A. Application Development/ Availability of Forms

To be considered for a grant under this program announcement, an application must conform to the Program Requirements set out in Part II and be prepared in accordance with the guidelines set out in Part III. It must be submitted on the forms supplied in the attachments to this Announcement and in the manner prescribed below. Attachments A through K contain all standard forms necessary to apply for awards under this OCS program. These attachments and Parts V and VI of this Announcement contain all the general instructions required for submitting applications.

Additional copies may be obtained by writing or telephoning the office listed under the section entitled **FOR FURTHER INFORMATION CONTACT** at the beginning of this announcement. In addition, this Announcement is accessible on the Internet through the OCS Website for reading or downloading at: *http://www.acf.dhhs.gov/programs/ocs/kits1.htm* under "Funding Opportunities."

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace, the Certification Regarding environmental tobacco smoke, and debarment regulations set forth in Attachments E, J, and F.

PART III contains instructions for the substance and development of the project narrative. PART V contains instructions for completing application forms. PART VI, Section A, describes the contents and format of the application as a whole.

B. Application Submission

1. *Number of Copies Required.* One signed original application and two copies must be submitted at the time of initial submission. (OMB 0970–0139). Two additional optional copies would be appreciated to facilitate the processing of applications.

The first page of the SF–424 must contain in the lower right-hand corner, a designation indicating under which priority area funds are being requested (for example AM for 1 and UT for 2. (See Part II for a description of each of the priority areas.)

2. *Closing Date.* The closing date for receiving applications is cited under the heading **DATES** at the beginning of this announcement. Applications received after the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the OCS Operations Center: 1815 North Fort Myer Drive, Suite 300, Arlington Virginia 22209; Attention: Application for Community Development Program—Special Initiatives.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the application is received on or before the deadline time and date. Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. to 4:30 p.m. EST at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Operations Center: 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209 between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note "Attention: Application for "Community Services Block Grant—Discretionary Awards—Special Initiatives". Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

3. *Late Applications.* Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

4. *Extension of Deadlines.* ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc) occur, or when there are widespread disruptions of the mail service, or in other rare cases. A determination to extend or waive deadline requirements rest with the Chief Grants Management Officer.

C. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these 27 jurisdictions do not need to take action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs

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as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or indicate "not applicable" if no submittal is required) on the standard form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 4th floor West, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment G to this Announcement. You may also find this list at the following web address: *http://www/whitehouse.gov/omb/grants/spoc.html.*

D. Initial OCS Screening

Each application submitted under this program announcement will undergo a pre-review to determine that the application was received by the closing date and submitted in accordance with the instructions in this Announcement.

All applications that meet the published deadline requirements as provided in this Program Announcement will be screened for completeness and conformity with the following requirements. Only complete applications that meet the requirements listed below will be reviewed and evaluated competitively. Other applications will be returned to the applicants with a notation that they were unacceptable and will not be reviewed.

The following requirements must be met by all applicants except as noted:

(1) The application must contain a signed Standard Form 424 Application for Federal Assistance" (SF–424), Attachment B, a budget (SF–424A), Attachment C, and signed "Assurances" (SF–424B), Attachment D, completed according to instructions published in Part V and Attachments A, B, and C of this Program Announcement. The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally. Applicant must also be aware that the applicant's legal name as required on the SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6).

(2) A project narrative must also accompany the standard forms. OCS requires that the narrative portion of the application be no more than 35 letter-size pages, numbered consecutively , and typewritten on one side of the paper only with one-inch margins and type face no smaller than 12 characters per inch (c.p.i.) or equivalent. Applications with project narratives (excluding Project Summaries and appendices) of more than 35 letter-size pages of 12 c.p.i. type or equivalent on a single side will not be reviewed for funding.

The budget narrative, charts, exhibits, resumes, position descriptions, letters of support or commitment are not counted against this page limit and should be in the Appendix. It is strongly recommended that applicants adopt for their Program project narratives the sequence and content Described in Part III.

(3) Application must contain documentation of the applicant's tax exempt status as required under Part I, Section E.

E. Consideration of Applications

Applications which pass the initial OCS screening will be reviewed and rated by an independent review panel on the basis of requirements set forth in Parts II and III. These review criteria were designed to assess the quality of a proposed project and determine the likelihood of its success. The review criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the program elements and review criteria within the context of this Program Announcement.

Reviewers' scores will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding because other factors are taken into consideration. These include, but are not limited to: the timely and proper completion by applicant of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; amount and duration of the grant requested and the proposed project's consistency and harmony with OCS goals and policy; geographic distribution of applications; previous program performance of applicants; compliance with grant terms under previous HHS grants, including the actual dedication to program of mobilized resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on previous OCS or other Federal agency grants.

Applicants may omit from the application the specific salary rates or amounts for individuals identified in the application budget. Rather, only summary information is required. OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to verify the applicant's performance record and the documents submitted.

Part V. Instructions for Completing Forms SF–424

All application forms are now available on the ACF Website for downloading: *http://www.acf.dhhs.gov/programs/ofs/forms.htm.*

The standard forms attached to this announcement shall be used to apply for funds under this program announcement.

It is suggested that you reproduce single-sided copies of the SF–424 and SF–424A, and type your application on the copies. Please prepare your application in accordance with instructions provided on the forms (Attachments B, C and D) as modified by the instructions set forth in PART III, and the OCS specific instructions set forth below:

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification which describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

(**Note:** The Budget detail and Narrative Budget Justification should follow the SF 424 and 424A, and are not counted as part of the Project Narrative.)

A. SF–424—Application for Federal Assistance (Attachment B)

Where the applicant is a previous DHHS grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled Federal Identifier located at the top right hand corner of the form (third line from the top).

Item 1. For the purposes of this announcement, all projects are considered Applications; there are no Pre-Applications.

Item 7. If applicant Is an Indian Tribe enter "K" in the box. If applicant is a non-profit organization enter "N" in the box.

Item 9. Name of Federal Agency—Enter DHHS–ACF/OCS.

Item 10. The Catalog of Federal Domestic Assistance number for OCS programs covered under this announcement is 93.570. The title is "Community Services Block Grant Discretionary Awards—Special Initiatives."

Item 11. In addition to a brief descriptive title of the project, indicate the priority area for which funds are being requested. Use the following letter designations: Use AM for Priority Area 1 and UT for Priority Area 2.

Item 13. Proposed Project Dates—Show 17-month project period (See Part II). In addition, the project start date must begin on or before September 30, 2002; the ending date should be calculated on the basis of a 17-month project period.

Item 14. Congressional District of Applicant/Project—Enter the number(s) of the Congressional District where the applicant's principal office is located and the number(s) of the Congressional District(s) where the project will be located.

Item 15. Estimated Funding—Item 15a. Show the total amount requested for the entire project period; Item 15b–e. For each line item, show both cash and third party in-kind contributions for the total project period; Item 15f. Show the estimated amount of program income for the total project period; Item 15g. Enter the sum of all the line items.

B. SF–424A—Budget Information—Non-Construction Programs (Attachment C)

In completing these sections, the Federal Funds budget entries will relate to the requested Community Services Block Grant—Discretionary Awards—Special Initiatives funds only, and Non-Federal will include funds mobilized from all other sources—applicant, state, local, and other. Federal funds other than those requested from the Community Services Block Grant—Discretionary Awards—Special Initiatives should be included in *Non-Federal* entries.

Sections A and D of SF–424A must contain entries for both Federal (OCS) and non-Federal mobilized funds.

Section A—Budget Summary

Lines 1–4,

Column (a) Line 1—Enter CSBG Community Economic Development,

Column (b) Line 1—Enter 93.570,

Columns (c) and (d)—Not Applicable,

Columns (e), (f) and (g)—Line 1—Enter appropriate amounts needed to support the project for the entire project period.

Line 5,

Enter the figures from Line 1 for all columns completed, (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the budget period of 17 months will be entered in Column (1).

Allocability of costs is governed by applicable cost principles set forth in the Code of Federal Regulations (CFR), Title 45, Parts 74 and 92.

Budget estimates for administrative costs must be supported by adequate detail for the grants officer to perform a cost analysis and review. Adequately detailed calculations for each budget object class are those which reflect estimation methods, quantities, unit costs salaries, and other similar quantitative detail sufficient for the calculation to be duplicated. For any additional object class categories included under the object class other, identify the additional object class(es) and provide supporting calculations.

Supporting narratives and justifications are required for each budget category, with emphasis on unique/special initiatives; large dollar amounts; local, regional, or other travel; new positions; major equipment purchases; and training programs.

A detailed itemized budget with a separate budget justification for each major item should be included as indicated below:

Line 6a

Personnel—Enter the total costs of salaries and wages.

Justification—Identify the project director and staff. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Line 6b

Fringe Benefits—Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on Line 6j.

Justification—Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Line 6c

Travel—Enter total cost of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification—Include the name(s) of traveler(s), total number of trips, destinations, length of stay, mileage rate, transportation costs and subsistence allowances. Traveler must be a person listed under the personnel line or employee being paid under non-Federal share.

(**Note:** Local transportation and consultant travel costs are entered on Line 6h.)

Line 6d

Equipment—Enter the total costs of all equipment to be acquired by the project. Equipment means an article of non-expendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for financial statement purposes, or (b) $5,000.

(**Note:** If an applicant's current rate agreement was based on another definition for equipment, such as "tangible personal property $500 or more," the applicant shall use the definition used by the cognizant agency in determining the rate(s). However, consistent with the applicant's equipment policy, lower limits may be set.)

Justification—Equipment to be purchased with Federal funds must be required to conduct the project, and the applicant organization or its sub-grantees must not already have the equipment or a reasonable facsimile available to the project.

Line 6e

Supplies—Enter the total costs of all tangible personal property other than that included on line 6d.

Justification—Provide a general description of what is being purchased such as type of supplies (office, classroom, medical, etc.). Include equipment costing less than $5,000 per item.

Line 6f

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Contractual—Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and sub-recipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) currently set at $100,000.

Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Line 6g
Construction—Not applicable.
Line 6h
Other—Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (non-contractual); fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use training costs including tuition and stipends; training service costs including wage payments to individuals and supportive service payments; and staff development costs.
Line 6j
Indirect Charges—Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by DHHS or other Federal agencies.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should, immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates and submit it to the appropriate DHHS Regional Office. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool cannot also be budgeted or charged as direct costs to the grant. Indirect costs consistent with approved indirect cost rate agreements are allowable. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgment that the applicant is accepting a lower rate than allowed.

Line 6k
Totals—Enter the total amount of Lines 6i and 6j.
Line 7
Program Income—Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification—Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of non-Federal resources that will be used to support the project. Non-Federal resources mean other than OCS funds for which the applicant has received a commitment. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Category, (see SF–424A, Section B.6) and whether it is cash or third party in-kind. The firm commitment of these required funds must be documented and submitted with the application in order to be given credit in the criterion.

This documentation must be in the form of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8
Column (a)—Enter the project title.
Column (b)—Enter the amount of cash or donations to be made by the applicant.
Column (c)—Enter the State contribution.
Column (d)—Enter the amount of cash and third party in-kind contributions to be made from all other sources.
Column (e)—Enter the total of columns (b), (c), and (d).
Lines 9, 10 and 11
Leave Blank
Line 12
Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, Column (f).

Justification—Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs

Line 13
Federal—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the 12-month budget period.
Line 14
Non-Federal—Enter the amount of cash from all other sources needed by quarter during the first year.
Line 15
Totals—Enter the total of Lines 13 and 14.

Section F—Other Budget Information

Line 21
Direct Charges—Include narrative justification required under Section B for each object class category for the total project period.
Line 22
Indirect Charges—Enter the type of DHHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the approved rate agreement.
Line 23
Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

C. SF–424B—Assurances Non-Construction Programs (Attachment D)

All applicants must sign and return the "Assurances" with the application.

Part VI. Contents of Application and Receipt Process

A. Contents of Application

Each Community Services Block Grant—Discretionary Awards—Special Initiatives application must include all of the following, in the order listed below:

1. Table of Contents
2. An abstract of the Proposed Project—very brief, not to exceed 250 words, that would be suitable for use in an announcement that the application has been selected for a grant award and which identifies the type of project, the target population, and the major elements of the work plan.
3. A completed Standard Form 424 that has been signed by an Official of the organization applying for the grant who has authority to obligate the organization legally. (Attachment B)
4. Budget Information—Non-Construction Programs (SF–424A) (Attachment C);
5. A narrative budget justification for each object class category required under Section B, SF–424A.
6. Certification and Assurances Required:

Applicants requesting financial assistance for a non-construction projects must file the Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their applications (See Attachment D).

Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their application (See Attachment H).

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications (See Attachment H).

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications (See Attachment E).

Applicant must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for an award. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications. (See Attachment F)

Applicants must make the appropriate certification of their compliance with all Federal statues relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back a certification form.

Applicants must make the appropriate certification of their compliance with the requirements of the Pro-Children Act of 1994 as outlined in Certification Regarding Environmental Tobacco Smoke. (See Attachment J)

7. A Project Narrative of no more than 35 pages consisting of the Elements described in Part III of this announcement set forth in the order therein presented and preceded by a consecutively numbered table of contents.

The total number of pages for the narrative portion of the application package must not exceed 35 pages (See Part IV.D.2 for pages that do not count against the 35-page limit).

8. Appendices—proof of nonprofit tax-exempt status as outlined in Part II, Section C; Single Point of Contact comments, if applicable, and resumes and position descriptions.

Pages should be numbered sequentially throughout, including appendices, beginning with the Abstract as page 1.

B. Application Format

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½ x 11 inch paper only. Applicants must not include colored, oversized or folded materials. Applicants should not include organizational brochures or other promotional materials, slides, films, clips, etc. Such material will be discarded if included. Applications must be bound or enclosed in loose-leaf binder notebooks. Preferably, applications should be two-holed punched at the top center and fastened separately with a compressor slide paper fastener, or a binder clip.

C. Acknowledgment of Receipt

All applicants will receive an acknowledgment with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their Application, or a FAX number or e-mail address which can be used for acknowledgment. The assigned identification number, along with any other identifying codes, must be referenced in all subsequent communications concerning the Application. If an acknowledgment is not received within three weeks after the deadline date, please notify the OCS Operations Center at 1–800–281–9519.

Part VII. Post Award Information and Reporting Requirements

A. Notification of Grant Award

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which specifies the amount of Federal funds approved for use in the project, the project and budget period for which support is provided, the terms and conditions of the award.

B. Reporting Requirements

Grantees will be required to submit semi-annual program progress and financial reports (SF 269) as well as a final progress and financial report.

C. Audit Requirements

Grantees are subject to the audit requirements in 45 CFR part 74 (non-profit organizations) or part 92 (governmental entities) which require audits under OMB Circular A–133.

D. Prohibitions and Requirements With Regard To Lobbying

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their sub-tier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or sub-grantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of non-appropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or sub-grantees will pay with the non-appropriated funds and (3) to file quarterly up-dates about the use of lobbyists if an event occurs that materially affects the accuracy of the information submitted by way of declaration and certification.

The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment H, for certification and disclosure forms to be submitted with the applications for this program.

E. Applicable Federal Regulations

Attachment K indicates the regulations which apply to all

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applicants/grantees under the Community Services Block Grant—Discretionary Awards—Special Initiatives.

Dated: July 29, 2002.

Clarence H. Carter,

Director, Office of Community Services.

BILLING CODE 4184–01–P

List of Attachments

A. 2002 Poverty Income Guidelines For updates see: *http://aspe.os.dhhs.gov/poverty/02poverty.htm*
B. Standard Form 424, Application for Federal Assistance
C. Standard Form 424A, Budget Information—Non-Construction Programs
D. Standard Form 424B, Assurances—Non-Construction Programs
E. Certification Regarding Drug-Free Workplace Requirements
F. Certification Regarding Debarment, Suspension And Other Responsibility Matters
G. Intergovernmental Review State Single Point Of Contact (SPOC) List
H. Certification Regarding Lobbying and Disclosure Of Lobbying Activities, Standard Form LLL
I. Applicant's Checklist
J. Certification Regarding Environmental Tobacco Smoke
K. DHHS Regulations Applying To All Applicants/Grantees Under The Community Services Block Grant—Discretionary Awards—Special Initiatives

Attachment A

2002 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$8,860
2	11,940
3	15,020
4	18,100
5	21,180
6	24,260
7	27,340
8	30,420

For family units with more than 8 members, add $3,080 for each additional member.

(The same increment applies to smaller family sizes also, as can be seen in the figures above).

2001 POVERTY GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$11,080
2	14,930
3	18,780
4	22,630
5	26,480
6	30,330
7	34,180
8	38,030

For family units with more than 8 members, add $3,850 for each additional member.

(The same increment applies to smaller family sizes also, as can be seen in the figures above).

2001 POVERTY GUIDELINES FOR HAWAII

Size of family unit	Poverty guidelines
1	$10,200
2	13,740
3	17,280
4	20,820
5	24,360
6	27,900
7	31,440
8	34,180

For family units with more than 8 members, add $3,540 for each additional member.

(The same increment applies to smaller family sizes also, as can be seen in the figures above).

BILLING CODE 4184–01–M

Attachment B, page 1

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (*give city, county, State, and zip code*):	Name and telephone number of person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (*EIN*): ☐☐–☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐

A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other(*specify*):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐–☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*Cities, Counties, States, etc.*):

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. Applicant	$ .00	
c. State	$ .00	
d. Local	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Attachment B—Instructions for the SF–424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explantatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organization unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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Attachment C, page 1

OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (*sum of 6a-6h*)					
j. Indirect Charges					
k. TOTALS (*sum of 6i and 6j*)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Attachment C, page 2

SECTION C—NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D—FORECASTED CASH NEEDS	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E—BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT	FUTURE FUNDING PERIODS (Years)			
(a) Grant Program	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F—OTHER BUDGET INFORMATION
21. Direct Charges: 22. Indirect Charges:
23. Remarks:

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Attachment C—Instructions for the SF–424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503. Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4 Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Line 1–4, Columns (c) through (g).

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amounts(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a—i-Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in Column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Attachment D—Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the

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data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

Please Do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd–3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 *et seq.*); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 *et seq.*); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (Pub. L. 93–523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (Pub. L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 *et seq.*) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a–1 *et seq.*).

14. Will comply will Pub. L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544, as amended, 7 U.S.C. §§ 2131 *et seq.*) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 *et seq.*) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

Attachment E—Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart F, Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW., Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace rule apply to this certification. Grantee's attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (*e.g.*, volunteers, even if used to meet a matching requirement; consultant or independent contractors not on the grantee's payroll; or employees or subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance of rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance or work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code).

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted or a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

Attachment F—Certification Regarding Debarment, Suspension and Other Responsibility Matters

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules

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implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally processed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal Department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause.

The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Attachment G—Intergovernmental Review (SPOC List)

It is estimated that in 2001 the Federal Government will outlay $305.6 billion in grants to State and local governments. Executive Order 12372, "Intergovernmental Review of Federal Programs," was issued with the desire to foster the intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The Order allows each State to designate an entity to perform this function. Below is the official list of those entities. For those States that have a home page for their designated entity, a direct link has been provided below.

States that are not listed on this page have chosen not to participate in the intergovernmental review process, and therefore do not have a SPOC. If you are located within one of these States, you may still send application materials directly to a Federal awarding agency.

Contact information for Federal agencies that award grants can be found in Appendix IV of the Catalog of Federal Domestic Assistance.

Arkansas

Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, Fax: (501) 682–5206, tlcopeland@dfa.state.ar.us

California

Grants Coordination, State Clearinghouse, Office of Planning and Research, P.O. Box 3044, Room 222, Sacramento, California 95812–3044, Telephone; (916) 445–0613, Fax: (916) 323–3018, state.clearinghouse@opr.ca.gov

Delaware

Charles H. Hopkins, Executive Department, Office of the Budget, 540 S. Dupont Highway, 3rd Floor, Dover, Delaware 19901, Telephone: (302) 739–3323, Fax: (302) 739–5661, chopkins@state.de.us

District of Columbia

Luisa Montero-Diaz, Office of Partnerships and Grants, Development, Executive Office of the Mayor, District of Columbia Government, 441 4th Street, NW., Suite 530 South, Washington, DC 20001, Telephone: (202) 727–8900, Fax: (202) 727–1652, opgd.eom@dc.gov

Florida

Jasmin Raffington, Florida State Clearinghouse, Department of Community Affairs, 2555 Shumard Oak Blvd, Tallahassee, Florida 32399–2100, Telephone: (850) 922–5438, Fax: (850) 414–0479, clearinghouse@dca.state.fl.us

Georgia

Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Telephone: (404) 656–3855, Fax: (404) 656–7901, gach@mail.opb.state.ga.us

Illinois

Virginia Bova, Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, Fax (312) 814–8485, vbova@commerce.state.il.us

Iowa

Steven R. McCann, Division of Community and Rural Development, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, Fax: (515) 242–4809, steve.mccann@ided.state.ia.us

Kentucky

Ron Cook, Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, Telephone: (502) 573–2382, Fax: (502) 573–2512, ron.cook@mail.state.ky.us

Maine

Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287–3261, (207) 287–1461 (direct) Fax: (207) 287–6489, joyce.benson@state.me.us

Maryland

Linda Janey, Manager, Clearinghouse and Plan Review Unit, Maryland Office of Planning, 301 West Preston Street—Room 1104, Baltimore, Maryland 21201–2305, Telephone: (410) 767–4490, Fax: (410) 767–4480, linda@mail.op.statee.md.us

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 535 Griswold, Suite 300, Detroit, Michigan 48226, Telephone: (313) 961–4266, Fax: (313) 961–4869, pfaff@semcog.org

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 1301 Woolfolk Building, Suite E, 501 North West Street, Jackson, Mississippi 39201, Telephone: (601) 359–6762, Fax: (601) 359–6758

Missouri

Angela Boessen, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Truman Building, Room 840, Jefferson City, Missouri 65102, Telephone: (573) 751–4834, Fax: (573) 522–4395 igr@mail.oa.state.mo.us

Nevada

Heather Elliott, Department of Administration, State Clearinghouse, 209 E. Musser Street, Room 200, Carson City, Nevada 89701, Telephone: (775) 684–0209, Fax: (775) 684–0260, helliott@govmail.state.nv.us

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, Fax: (603) 271–1728, jtaylor@osp.state.nh.us

New Mexico

Ken Hughes, Local Government Division, Room 201 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–4370, Fax: (505) 827–4948, khughes@dfa.state.nm.us

North Carolina

Jeanette Furney, Department of Administration, 1302 Mail Service Center, Raleigh, North Carolina 27699–1302, Telephone: (919) 807–2323, Fax: (919) 733–9571, jeanette.furney@ncmail.net

North Dakota

Jim Boyd, Division of Community Services, 600 East Boulevard Ave, Dept 105, Bismarck, North Dakota 58505–0170, Telephone: (701) 328–2094, Fax: (701) 328–2308, jboyd@state.nd.us

Rhode Island

Kevin Nelson, Department of Administration, Statewide Planning Program, One Capitol Hill, Providence, Rhode Island 02908–5870, Telephone: (401) 222–2093, Fax: (401) 222–2083 knelson@doa.state.ri.us

South Carolina

Omeagia Burgess, Budget and Control Board, Office of State Budget, 1122 Ladies Street, 12th Floor, Columbia, South Carolina 29201, Telephone: (803) 734–0494, Fax: (803) 734–0645, aburgess@budget.state.sc.us

Texas

Denise S. Francis, Director, State Grants Team, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 305–9415, Fax: (512) 936–2681, dfrancis@governor.state.tx.us

Utah

Carolyn Wright, Utah State Clearinghouse, Governor's Office of Planning and Budget, State Capitol, Room 114, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, Fax: (801) 538–1547, cwright@gov.state.ut.us

West Virginia

Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, Fax: (304) 558–3248, fcutlip@wvdo.org

Wisconsin

Jeff Smith, Section Chief, Federal/State Relations, Wisconsin Department of Administration, 101 East Wilson Street–6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, Fax: (608) 267–6931, jeffrey.smith@doa.stae.wi.us

American Samoa

Pat M. Galea'i, Federal Grants/Programs Coordinator, Office of Federal Programs, Office of the Governor/Department of Commerce, American Samoa Government, Pago Pago, American Samoa 96799, Telephone: (684) 633–5155, Fax: (684) 633–4195, pmgaleai@samoatelco.com

Guam

Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 95910, Telephone: 011–671–472–2285, Fax: 011–472–2825, jer@ns.gov.gu

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Puerto Rico

Jose Caballero/Mayra Silva, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (787) 723–6190, Fax: (787) 722–6783

North Mariana Islands

Ms. Jacoba T. Seman, Federal Programs Coordinator, Office of Management and Budget, Office of the Governor, Saipan, MP 96950, Telephone: (670) 664–2289, Fax: (670) 664–2272, omb.jseman@saipan.com

Virgin Islands

Ira Mills, Director, Office of Management and Budget, #41 Norre Gade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802, Telephone: (340) 774–0750, Fax: (340) 776–0069, Irmills@usvi.org

Changes to this list can be made only after OMB is notified by a State's officially designated representative. E-mail messages can be sent to grants@omb.eop.gov. If you prefer, you may send correspondence to the following postal address: Attn: Grants Management, Office of Management and Budget, New Executive Office Building, Suite 6025, 725 17th Street, NW., Washington, DC 20503.

Please note: Inquiries about obtaining a Federal grant should not be sent to the OMB e-mail or postal address shown above. The best source for this information is the CFDA.

BILLING CODE 4184–01–C

Attachment H—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer of employee of Congress, or an employee of a Member of Congress in connection with awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contract under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

BILLING CODE 4184–01–M

Attachment H, page 2

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount,** *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

BILLING CODE 4184–01–C

Attachment H—Instructions for Completion of SF–LLL Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of a subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment.

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Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

BILLING CODE 4184–01–M

APPLICANT'S CHECKLIST

Attachment I

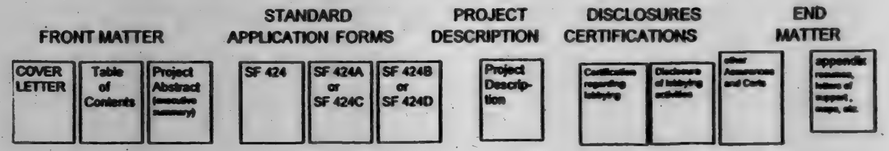
This checklist will assist you with preparing and assembling your application. Completing the checklist can help ensure that you do not omit key information. Because this checklist is used by many ACF programs, some of the information might not apply to your application. This checklist DOES NOT have to be completed and returned with your application.

	Yes	Included	N/A
Authorizing official read and understood Certification Regarding Debarment, Suspension, and Other Responsibility Matters?			
Authorizing official read and understood Certification Regarding Drug-Free Workplace Requirements–Grantees Other Than Individuals?			
Authorizing official read and understood Certification Regarding Environmental Tobacco Smoke?			
Application for Federal Assistance (SF 424) was completed? Proper Signature and Date for Line 18?			
Budget Information–Non-Construction Programs (SF 424A) or Budget Information–Construction Programs (SF 424C) was completed?			
Assurances– Non-Construction Programs (SF 424B) or Assurances–Construction Programs (SF 424D) was completed? (Proper Signature and Date?)			
Certification Regarding Lobbying was completed? (Proper Signature and Date?)			
Disclosure of Lobbying Activities was completed? (Proper Signature and Date?)			
Other special certifications, assurances, and/or disclosures required under the program were completed (e.g., maintenance of effort certification)?			
Proof of nonprofit status was provided?			
Has additional information such as biographical sketch(es) with job description(s) and other additional information been attached, when required?			
For a Supplemental application, does the detailed budget only address the additional funds requested?			
Checked all budget computations for accuracy?			

FOLLOW-UP QUESTIONS

	YES	N/A
On the Application for Federal Assistance (SF 424),		
⇒ did you enter the application number issued by the sponsoring ACF office in the "Federal Identifier" block?		
⇒ did you type the 12 digit Payee EIN or PIN previously assigned to your organization by DHHS in the "Federal Identifier" block?		
⇒ is the EIN in Item #6 assigned to the organization and organizational unit named in Item #5?		
⇒ did you include city, county, state and zip code of the applicant did organization in Item #5?		
⇒ has the appropriate box been checked in Item #16?		
⇒ has the entire proposed project period been identified in Item #13?		
On the Budget Information form (SF 424A or SF 424C),		
⇒ do the totals in Section B match the totals provided in the budget and budget narrative?		

SUGGESTED ORDERING OF APPLICATION MATERIALS



BILLING CODE 4184–01–C

Attachment J—Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro

Children Act of 1994, requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education,

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or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment K—DHHS Regulations Applying to All Applicants/Grantees Under the Community Economic Development Program—Special Initiatives

Title 45 of the Code of Federal Regulations

Part 16—Department of Grant Appeals Process
Part 74—Administration of Grants (grants and subgrants to entities)
Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension from Eligibility for Financial Assistance

Subpart F—Drug Free Workplace Requirements

Part 80—Non-Discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act Of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 83—Regulation for the Administration and Enforcement of Sections 799A and 845 of the Public Health Service Act
Part 84—Non-discrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance
Part 85—Enforcement of Non-Discrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Health and Human Services
Part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

[FR Doc. 02–19770 Filed 8–7–02; 8:45 am]
BILLING CODE 4184–01–M

Federal Register

Thursday,
August 8, 2002

Part IV

Department of Agriculture

7 CFR Part 930
Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin; Order Amending Marketing Agreement and Order No. 930; Final Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket Nos. AO–370–A7; FV00–930–1]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin; Order Amending Marketing Agreement and Order No. 930

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing agreement and order for tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. The amendments are based on those proposed by the Cherry Industry Administrative Board (Board), which is responsible for local administration of the order. The amendments include making districts producing more than 6 million pounds per year subject to volume regulations (rather than 15 million pounds); making shipments of cherry juice and juice concentrate to certain markets eligible to receive diversion credit; changing provisions related to alternate Board members serving for absent members at Board meetings; making all processed cherries subject to assessments; and eliminating the requirement that different assessment rates be established for different cherry products. Remaining amendments pertain to allocation of Board membership; clarification of order provisions relating to exemption and diversion; release of cherries in the inventory reserve; and the use of crop estimates other than the official USDA crop estimate in developing the Board's marketing policy. The amendments are intended to improve the operation and functioning of the tart cherry marketing order program.

EFFECTIVE DATE: August 9, 2002.

FOR FURTHER INFORMATION CONTACT: Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491; Fax (202) 720–8938.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on March 17, 2000, and published in the March 23, 2000, issue of the **Federal Register** (65 FR 15580); Recommended Decision and Opportunity to File Written Exceptions issued on January 15, 2002, and published in the January 24, 2002, issue of the **Federal Register** (67 FR 3540); and Secretary's Decision and Referendum Order issued May 3, 2002, and published in the **Federal Register** on May 10, 2002 (67 FR 31896).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

This final rule was formulated based on the record of a public hearing held in Rochester, New York on March 27 and 28, 2000; in Grand Rapids, Michigan on March 29, 30, and 31, 2000; in Kennewick, Washington on April 4 and 5, 2000; and in Salt Lake City, Utah on April 6, 2000. The hearing was held to consider the proposed amendment of Marketing Agreement and Order No. 930, regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900). The notice of hearing contained numerous proposals submitted by the Board, and one proposed by the Agricultural Marketing Service (AMS).

The Board's proposals included making all districts subject to volume regulations, rather than only those districts producing more than 15 million pounds per year; making shipments of cherry juice and juice concentrate to certain markets eligible to receive diversion credit; changing provisions related to alternate Board members serving for absent members at Board meetings; making all cherry shipments subject to assessments; and eliminating the requirement that different assessment rates be established for different cherry products. Other amendments proposed by the Board pertained to allocation of Board membership; clarification of order provisions relating to exemption and diversion; release of cherries in the inventory reserve; and the use of crop estimates other than the official USDA crop estimate in developing the Board's marketing policy.

The Fruit and Vegetable Programs of AMS proposed to allow such changes as may be necessary to the order, if any of the proposed amendments are adopted, so that all of the order's provisions conform with the effectuated amendments.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on January 15, 2002, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by February 13, 2002. Ninety-six exceptions were filed during the period provided.

A Secretary's Decision and Referendum Order was issued on May 3, 2002, directing that a referendum be conducted during the period May 20 through May 31, 2002, among growers of tart cherries to determine whether they favored the proposed amendments to the order. In the referendum, all amendments were favored by more than two-thirds of the growers voting in the referendum by number and volume.

The amended marketing agreement was mailed to all tart cherry handlers in the production area for their approval. The marketing agreement was approved by handlers representing more than 50 percent of the volume of tart cherries handled by all handlers during the representative period of June 1, 2000, through May 31, 2001.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that these amendments could result in additional regulatory requirements being imposed on some tart cherry handlers, while regulatory burdens on other handlers could be reduced. Overall benefits are expected to exceed costs.

The record indicates that there are about 40 handlers regulated under Marketing Order No. 930. In addition, there are about 905 producers of tart cherries in the production area.

The record indicates that of the 41 tart cherry handlers operating during the 1999–2000 season, 7 had processed tonnage of more than 10 million pounds (or 17 percent of all handlers); 8 had between 5.1 and 10 million pounds (20 percent); 12 had between 2.1 and 5 million pounds (29 percent); and the remaining 14 had less than 2 million pounds of processed tonnage (34 percent). Handlers accounting for 10 million pounds or more would be classified as large businesses. Thus, a majority of tart cherry handlers could be classified as small entities.

Twenty handlers are located in Michigan—nine in district 1 (Northern Michigan), eight in district 2 (Central Michigan) and three in district 3 (Southern Michigan). Of the remaining 21 handlers, 4 are in district 4 (New York), 3 are in district 5 (Oregon), 1 is in district 5 (Pennsylvania), 3 are in district 7 (Utah), 5 are in district 8 (Washington), and 5 are in district 9 (Wisconsin). Many handlers process cherries grown in more than one district.

Of the 904 growers who produced cherries in 1999, 368 were in Northern Michigan (41 percent), 149 were in Southern Michigan (16 percent), 129 percent in Central Michigan (14 percent), 84 in New York (9 percent), 65 in Wisconsin (7 percent), 38 in Utah (4 percent), 29 in Pennsylvania (3 percent), 27 in Oregon (3 percent), and 17 in Washington (2 percent).

During the 3-year period 1999–2001, production of tart cherries averaged 300.6 million pounds. By district, Northern Michigan accounted for 44.0 percent of the production, followed by Central Michigan with 22.4 percent, Southern Michigan with 8.7 percent, Utah and Washington each with 6.6 percent, New York with 5.3 percent, Wisconsin with 3.4 percent, Pennsylvania with 1.7 percent, and Oregon with 1.3 percent.

Dividing total production by the number of growers, the average grower produces about 332,500 pounds of cherries annually. With grower returns of about 20 cents per pound, average revenues would be $66,500. Thus, it is reasonable to conclude that most tart cherry growers are small entities.

At 20 cents per pound, a grower would have to produce 2.5 million pounds of cherries to reach the $500,000 receipt threshold to qualify as a large producing entity under the SBA's definition that was in effect at the time of the hearing. The evidence of record is that only 13 growers (or less than 2 percent of the total number of growers) produced 2.5 million pounds or more during the 1999–2000 crop year. Five of those growers (or 38 percent) were located in Northern Michigan (district 1) and three operated (23 percent) in Central Michigan (district 2). The remaining five growers in this category (38 percent) were distributed among the remaining seven districts. The distribution of large growers is thus in proportion to the overall distribution of growers among the districts.

A large majority (more than 98 percent) of the tart cherry growers falls into the previous SBA definition of a small entity (annual receipts of less than $500,000); it is reasonable to assume that an even greater majority qualify under the current SBA definition of a small grower (annual receipts of less than $750,000).

During the 3 years 1999 to 2001, the average grower accounted for about 333,000 pounds of cherries. By district, average grower size varies considerably. The average grower in Washington accounts for roughly 1,159,000 pounds of cherries. Next in size is Central Michigan with 530,000 pounds, followed by Utah (518,000 pounds), Northern Michigan (360,000 pounds), New York (191,000 pounds), Pennsylvania (179,000 pounds), Southern Michigan (177,000 pounds), Wisconsin (155,000 pounds) and Oregon (141,000 pounds).

This action amends the order: (1) To provide that all districts in the production area with annual production in excess of 6 million pounds be subject to volume regulation rather than only those with annual production in excess of 15 million pounds; (2) To allocate Board membership among districts based on levels of production and make a corresponding change in quorum requirements; (3) To authorize a Board member to designate any alternate to serve for that member at a Board meeting in the event the member and his or her alternate are unavailable; (4) To clarify the diversion and exemption provisions of the order by eliminating cross references among those provisions and adding general rulemaking authority to implement handler diversion provisions; (5) To add specific authority to the order to exempt or provide diversion credit for cherries exported to designated markets; (6) To provide diversion credit for shipments of cherry juice and juice concentrate to established diversion markets; (7) To add specific authority for the transfer of diversion credits among handlers; (8) To provide that grower diversions that take place in districts that are subsequently exempt from volume regulation qualify for diversion credit; (9) To allow cherries in the inventory reserve to be released for use in only certain designated markets; (10) To specify that the 10-percent reserve release for market expansion only applies during years when volume regulations are in effect; (11) To require assessments to be paid on all cherries handled, except for those that are diverted by destruction at a handler's facility and those covered by a grower diversion certificate; (12) To eliminate the requirement that differential assessment rates be established for various cherry products based on the relative market values of such products; and (13) To allow the Board to use an estimate other than the official USDA crop estimate in developing its marketing policy.

Industry Background

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1995–96 through 1999–00, approximately 91 percent of the U.S. tart cherry crop, or 280.5 million pounds, was processed annually. Of the 280.5 million pounds of tart cherries processed, 62 percent was frozen, 29 percent was canned, and 9 percent was utilized for juice.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987–88 through 1997–98, the tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1999–00, approximately 90 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah and Wisconsin. Michigan leads the nation in tart cherry acreage with 70 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. In 1999–00, tart cherry acreage in Michigan decreased to 28,100 acres from 28,400 acres the previous year.

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In crop years 1987–88 through 1999–00, tart cherry production ranged from a high of 396.0 million pounds in 1995–96 to a low of 189.9 million pounds in 1991–92. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production. They also testified that production costs for most growers range between 20 and 22 cents per pound, which is well above average prices received during the 1993–1995 seasons.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the "marketing margin."

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since most tart cherries are either canned or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries are rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is oversupplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the cost for storage, interest, and handling of the stored cherries.

The price that growers receive for their crop is largely determined by the total production volume and carry-in inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry results in decreased shipments to primary markets. Without volume control the primary markets (domestic) would likely be oversupplied, resulting in low grower prices.

Recent grower prices have been as high as $0.20 per pound. At current production levels, the cost of production is reported to be $0.20 to $0.22 per pound. Thus, the estimated $0.20 per pound received by growers is close to the cost of production. The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to continue to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of oversupplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products.

The free and restricted percentages established under the order release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

While the benefits resulting from operation of the marketing order program are difficult to quantify, the stabilizing effects of volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

Districts Subject to Volume Regulation

The order currently covers cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. For purposes of regulation and allocation of Board membership, the seven-State production area is divided into nine districts. Michigan, the largest producing State, is divided into three districts—Northern Michigan, Central Michigan, and Southern Michigan. Each of the other States constitutes a single district.

A principal feature of the tart cherry marketing order is supply management through the use of volume regulations. Volume regulations are implemented through the establishment of free and restricted percentages that are recommended by the Board and implemented by the Department through the public rulemaking process. These percentages are then applied to each regulated handler's acquisitions in a given season. "Free market tonnage percentage" cherries may be marketed in any outlet. "Restricted percentage" cherries must be withheld from the primary market. This can be accomplished by either placing the cherries into handlers' inventory reserves or by diverting them. Cherries may be diverted by leaving them unharvested in the orchard or by destruction at the processing plant; or by using them in secondary markets. These secondary markets include exports (except to Canada or Mexico), new products, new market development, experimental purposes, and charitable contributions. Shipments of restricted percentage cherries to these specified markets receive diversion credits which handlers use to fulfill their restricted obligation.

Section 930.52 of the order provides that volume regulations only apply to cherries grown in districts in which average annual production of cherries over the prior 3 years has exceeded 15 million pounds. Additionally, paragraph (d) of § 930.52 provides that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous 5 years would be exempt from any volume regulation in the year of the short crop.

The Board proposed eliminating the 15-million pound threshold, and subjecting all 9 districts to volume regulation. No proposal was made to change the provision of § 930.52(d).

Most witnesses at the hearing addressed this issue. Growers and processors in Michigan, Utah and Wisconsin testified in support of the Board's proposal. Opposition was primarily from growers and handlers in Pennsylvania and Oregon. Some growers and processors in New York and Washington testified in support of the Board's proposal, while others were opposed to a change in the 15-million pound threshold.

The record shows that production levels in the nine districts vary considerably, with Northern Michigan consistently producing the largest volume of tart cherries, and Oregon the least. The following table shows tart cherry production by district for the 5 years 1997 through 2001 (all figures are in million pound units). The data for the first 3 years (1997 through 1999) were introduced on the hearing record. The statistics for 2000 and 2001 became available subsequent to the hearing and may be found in reports compiled by the Board and retained by the Department.

District	1997	1998	1999	2000	2001
No. Michigan	140.7	187.8	107.7	107.5	182.0
Central Mich.	68.7	58.2	47.2	70.8	84.0
So. Michigan	14.4	17.4	28.6	20.3	30.1
New York	13.3	13.1	16.9	16.5	14.6
Oregon	2.4	2.2	5.1	4.0	2.2
Pennsylvania	5.6	4.0	6.9	5.3	3.5
Utah	17.5	32.5	14.5	32.5	12.0
Washington	11.8	13.7	16.6	17.4	25.2
Wisconsin	11.2	14.7	7.9	9.7	12.7
Total	285.4	343.6	251.4	284.0	366.3

Using the above figures, the following 3-year averages (used to determine which districts are subject to volume regulation) were computed.

District	Average		
	1997–99	1998–00	1999–01
No. Michigan	145.4	134.3	132.4
Central Mich.	58.0	58.7	67.3
So. Michigan	20.1	22.1	26.3
New York	14.4	15.5	16.0
Oregon	3.2	3.8	3.8
Pennsylvania	5.5	5.4	5.2
Utah	21.4	26.5	19.7
Washington	14.0	15.9	19.7
Wisconsin	11.3	10.8	10.1
Total	293.5	293.0	300.6

The above table shows that for each of the 3-year periods, the three Michigan districts and Utah consistently exceeded the 15-million pound threshold. Production in Oregon, Pennsylvania and Wisconsin was below the threshold in all periods, while New York and Washington each exceeded the 15-million pound threshold in two out of three of the periods.

The order became effective in 1996, based on a series of hearings that began in December 1993 and ended in January 1995. Proponents of the order supported the 15-million pound threshold as a criterion for determining which districts would be subject to volume regulation. At the time the order was implemented, the three Michigan districts, New York and Utah had average annual production in excess of 15 million pounds. These five districts accounted for 92 percent of U.S. production in 1995, and 89 percent of U.S. production in 1996.

Proponents of the order also supported a provision that a district not meeting the 15-million pound threshold would become covered by regulation when it reached a production level equal to 150 percent of its average annual production during the period

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1989 through 1992. The purpose of this provision was to catch surges in production that occasionally occur in order to more equitably distribute the burden of supply control. It was also to make sure that when smaller producing districts expand production capacity, they do not take advantage of the system and become free riders. This was intended to prevent a district from benefitting from the program without contributing to the effort to reduce surplus supplies.

After considering the record evidence in support of this provision, the Department decided not to include it in the order. The provision, as proposed, seemed to be overly complicated to administer and would possibly be inequitable to tart cherry growers and handlers. In addition, proponents indicated that it was not their intent to regulate States with small production volumes since their aggregate volume is not a critical amount when compared to the total volume of tart cherries produced.

Several witnesses at the amendatory hearing suggested that, had the 150 percent rule been incorporated into the initial order, the amendment to eliminate the 15-million pound threshold would now be unnecessary.

The following table shows production in the initially unregulated districts during the period 1989 through 1992.

	1989	1990	1991	1992	Average	150%
Pennsylvania	6.0	3.5	11.5	6.0	6.7	10.0
Wisconsin	7.6	4.8	7.8	9.1	7.3	10.9
Oregon	15.0	7.5	7.5	9.5	9.9	14.8
Washington	6.4	7.4	9.8	12.8	9.1	13.6

The record shows that neither Pennsylvania nor Oregon has reached a level of production equal to 150 percent of their production during this base period. Wisconsin first exceeded production of 10.9 million pounds (150 percent of its average annual production in the base period) in 1997, and Washington exceeded production of 13.6 million pounds (150 percent of its production during the base period) in 1998.

If the order were implemented as proposed by the proponents during the promulgation, all districts but Pennsylvania and Oregon would currently be regulated. As it is, for the 2001 season, Wisconsin is also unregulated. In the 1999 crop year, Pennsylvania and Oregon together accounted for 4.9 percent of the U.S. tart cherry crop. In 2000, they accounted for 3.3 percent of the total, and in 2001, only 1.6 percent. Adding production in Wisconsin during those years brings the percentages in the 3 years 1999 to 2001 to 8 percent, 7 percent and 5 percent respectively.

With respect to New York, witnesses concurred that with the 15-million pound threshold, that district would likely be subject to regulation only about 50 percent of the time in the future. That is because production in that State is close to the threshold, ranging from 13.1 to 16.9 million pounds over the last 5 seasons. Concern was also expressed that Utah could fall below the established threshold in upcoming years and become unregulated. Washington was expected to continue to increase its production and become subject to regulation in the near future. (Washington did exceed the threshold during the period 1998–2000, and was subject to the volume regulation implemented for the 2001 crop). Witnesses agreed that production in Oregon, Pennsylvania and Wisconsin was likely to remain below 15 million pounds.

The conclusion by proponents of the Board's proposal was that with the order as currently written, a greater proportion of U.S. production could become unregulated. This would dilute the effectiveness of the program and, more important, increase the amount of regulation imposed on the remaining regulated districts.

Since the order became operational, volume regulations have been implemented for four crop years—1997, 1998, 2000, and 2001. No regulation was deemed necessary for the 1999 crop. The following table shows the level of regulation implemented in 1997, 1998, 2000 and 2001. With the exception of the restricted percentages, all figures are in million pound units.

	1997	1998	2000	2001
U.S. Crop	285.0	344.0	284.0	366.3
Carry-in	70.0	38.8	87.0	39.0
Total Available Supply	355.0	382.8	371.0	405.3
3-Year Average Sales	269.9	288.6	277.0	217.0
Target Carry-out	0.0	0.0	0.0	0.0
Economic Adjustment	(23.0)	(31.4)	(22.0)	50.0
Optimum Supply	246.9	257.2	257.0	267.0
Surplus	108.1	125.6	116.0	138.3
Production in Regulated				
Districts	240.0	309.0	232.0	335.9
Restricted Percentage	45	41	50	41

If all districts had been subject to regulation, the surplus would have been divided by total production rather than by production in the regulated districts. Had this been done, the restricted percentage in 1997 would have been 38 percent rather than 45 percent; the restricted percentage in 1998 would have been 37 percent rather than 41 percent; the restricted percentage in 2000 would have been 41 percent rather than 50 percent; and the restricted percentage in 2001 would have been 39 percent instead of 41 percent. The difference is relatively small for the 2001 crop year because production in Utah (12 million pounds) was less than 50 percent of its prior 5-year average, so that district was unregulated in the 2001 crop year.

One of the primary arguments made by supporters of the Board's proposed amendment was that of fairness. These witnesses stated that all tart cherry growers benefit from the operation of the order, but the burden of regulation is borne only by those in the regulated districts. They testified that revenues received by growers of similar size varied considerably due solely to where a particular grower's farm was located. They concluded that no growers in the regulated districts receive gross returns equal to those received in non-regulated districts.

To illustrate, an agricultural economist from Michigan State University (who was a witness testifying in support of the Board's amendment) presented an analysis of the economic impacts of the program on growers in regulated versus non-regulated districts. This analysis compared gross farm income for growers of the same size in regulated and non-regulated districts. It assumed a grower who produces 200 tons on 40 acres, or 10,000 pounds per acre. Estimates of likely returns for the 1998 crop were used.

For purposes of this analysis, it was assumed that the grower in the non-regulated district could sell all of his or her production in primary market outlets. In the case of the grower in the regulated district, it was assumed that his or her crop utilization would be allocated in accordance with the overall industry averages in 1998. For example, about 3 percent of the tonnage would be placed in the inventory reserve, 11 percent would be exported, and 13 percent would be diverted through non-harvest.

Prices for free market cherries were USDA estimates of 14 cents per pound for the regulated districts and 13.5 cents per pound for the non-regulated districts.

Returns for market growth factor cherries were expected to be somewhat lower (12 cents per pound) because these cherries tend to be sold later in the year, or perhaps in a subsequent year. A conservative figure of 6 cents per pound was used for reserve cherries because of the many uncertainties as to what those cherries might return (for example, the timing of their release and prevailing prices that might exist). Export sales were estimated by industry leaders to average about 9 cents per pound in 1998. For new product development, an estimate of 11 cents per pound was used, taking into account the considerable variation of returns for new cherry products depending upon the processor and the circumstances surrounding the new products. For non-harvested cherries, a savings of 3 cents per pound in variable costs (e.g., harvesting and trucking) was used. Finally, no return was recorded for cherries diverted through at-plant diversions.

The income for a grower in a regulated district, based on the analysis of the witness, is shown below:

	Lbs.	Percent	Price	Income
Open Market	240,000	60	$0.14	$33,600
Market Growth	36,000	9	0.12	4,320
Inventory Reserve	12,000	3	0.06	720
Exports	44,000	11	0.09	3,960
New Products	8,000	2	0.11	880
Non-Harvest	52,000	13	0.03	1,560
At-Plant Diversion	8,000	2	0.00	0
Total Production	400,000	100		45,040

For a grower in a non-regulated district, income was estimated as follows:

	Lbs.	Percent	Price	Income
Open Market	400,000	100	$0.135	$54,000

In summary, the grower in the non-regulated district would receive revenues of $54,000, about 20 percent more than the grower in the regulated district. Both growers would benefit from any strengthening of prices through the use of volume regulations.

Opposition to the Board's proposal was expressed primarily by industry members in unregulated districts. One of the arguments made was that growers in these districts would be much more severely impacted by a volume regulation because yields in those districts are so low compared to those in regulated districts.

One witness used the analysis given above, but used different yields per acre. For the grower in a regulated district, he used 40 acres with a yield of 7,400 pounds per acre. This resulted in total production for that grower of 296,000 pounds and revenues of about $33,330. For the grower in a non-regulated district, he again used 40 acres, but used a yield of 2,400 pounds per acre. This provided total production of 96,000 pounds and revenues of only $2,960. Had the second grower been subject to volume regulation, his or her revenues would have been even lower.

The following table shows yields per acre in the States.covered by the order for the years 1997 through 2000. The annual yields are from USDA statistics, while the average yield for Washington for the 4-year period was obtained from a processor survey in that State. All figures are in pounds per acre.

State	1997	1998	1999	2000	Average
Utah	6,250	11,790	5,360	11,800	8,800
Michigan	7,920	9,260	6,580	7,020	7,695
New York	5,580	5,380	6,850	7,550	6,340
Pennsylvania	5,420	3,500	6,000	5,080	5,000
Wisconsin	4,670	6,580	4,350	4,350	4,988
Oregon	2,850	2,150	4,080	3,380	3,115
Washington	NA	NA	NA	NA	14,000

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The above table shows that average yields do vary among the cherry producing States. It also shows that yields within the States vary considerably from year to year.

A witness supporting the Board's proposal stated that the use of average yields for an entire State is misleading. Michigan, for example, has a 4-year average yield of about 7,600 pounds per acre. The average yields for the three districts that comprise Michigan are quite different. In Northern Michigan, yields averaged about 13,000 pounds per acre, while in Central Michigan they averaged 5,000 pounds per acre and in Southern Michigan only 4,000 pounds per acre.

This witness further went on to state that variations in yields within a geographic district exceed the variations among the districts. He gave a personal example. The witness is a processor in Central Michigan. His organization deals with about 20 growers. Yields for those growers in 1998 ranged from 1,000 to 15,000 pounds per acre.

Therefore, it is reasonable to assume that the State in which a grower farms is not necessarily a good indicator of an individual grower's potential yield per acre. While weather conditions affect yields (e.g., susceptibility to freezes), weather conditions can vary as much within a district as between districts. Also, there are many other variables that contribute to a grower's yield per acre. These include the density of trees planted per acre, the age of the trees, and cultural practices undertaken by individual growers to care for their orchards. However, the table showing yields per acre does indicate that there is a definite difference in yields among the various States.

Regarding the age of trees, the record indicates that tart cherry trees start losing optimum productivity at about 20 years. Growers testified that they typically replant their trees when they are between 20 and 25 years old. The following table shows the percentage of acreage in each State that contained older trees in 1998.

State	Percent acre-age 21–25 years	Percent acre-age 26+years	Total percent 21+ years
Michigan	15	6	21
Utah	8	1	9
New York	24	7	31
Wisconsin	20	15	35
Washington	18	5	23
Pennsylvania	30	6	36
Oregon	30	48	78

Oregon, consistently the lowest yielding producing district, has substantially more older trees planted than other States. Because older trees tend to produce less fruit, and Oregon has a high percentage of older trees, this is likely to explain in part why Oregon's yields are, on average, lower than in other areas. Pennsylvania had the second largest percentage of older trees.

Another argument against eliminating the 15 million-pound threshold was that unregulated districts like Oregon and Pennsylvania had already "done their part" to reduce the surplus of tart cherries by reducing their acreage. Any continued surpluses were attributable to the major producing State, Michigan. It was therefore argued that State should bear the consequences of its actions and not impose its problems on the smaller districts.

The record shows that U.S. tart cherry bearing acreage had declined from a high of 50,050 acres in 1987, to 39,880 acres in 2000. All producing States recorded acreage reductions during this period. On a percentage basis, the greatest reduction was in New York (down 52 percent), followed by Oregon (down 36 percent), Utah (down 30 percent), Pennsylvania (down 25 percent), Washington (down 24 percent), and Wisconsin (down 17 percent). Michigan had the lowest percentage decrease (down 15 percent), but the largest decline in total number of acres (a reduction of 5,140 acres).

The record evidence is that acreage in all districts have declined over the past decade. Decisions to reduce acreage were made by individual growers based on their assessments of the best use of their land. While opportunities for alternative land uses vary somewhat by State, they also vary within the States.

In determining whether a surplus of tart cherries exists, total U.S. supplies are compared to total demand in the primary market. Production in each district contributes to the total supply, and thus to any surplus that may exist. However, Michigan accounts for such a large proportion of the total, that production in that State alone can warrant a volume regulation. Additionally, the evidence is that production in the smallest producing State—Oregon—is negatively correlated to production in Michigan. That is, when production in Michigan is high, production in Oregon is generally low. Thus, it is likely that with elimination of the production threshold, Oregon would be regulated in years when its production is below normal. This could result in a heavier burden being placed on growers in Oregon as a result of volume regulation than is true in the other producing districts.

Additionally, the record shows that the benefits of the supply management provisions of the order accrue to the entire U.S. tart cherry industry. The short-run benefits arise when surplus supplies are reduced, and market prices (due to the inelastic demand for tart cherries) rise to levels that are closer to growers' typical costs of production. Longer range gains are also expected from the encouragement to expand market demand through new market and new product development.

The aggregate short-run benefits to the industry's growers from the use of volume regulation in 1997 and 1998 have been estimated to be at least $20 million per year. This has resulted because the smaller market surpluses have resulted in stronger grower prices which are estimated to be 7 to 9 cents per pound greater during those years.

The record shows that tart cherries, regardless of where grown in the U.S., are sold into markets that are essentially national markets with similar, closely interrelated prices throughout the country. Therefore, the somewhat higher prices that have resulted from the order's supply management features have accrued to all tart cherry growers in the United States.

However, the history of the order and the evidence on the record support the premise that the smallest producing districts should not be subject to volume regulation under the tart cherry marketing order. Further, there is an argument to be made for reducing the current 15-million pound threshold.

After considering all the testimony and other record evidence, the Department has concluded that a threshold of 6 million pounds would be more reasonable. This would result in all districts that have increased production over the past decade being subject to regulation, consistent with the original intent of the proponents of the order.

The record shows that the two districts that would not be regulated under a 6-million pound threshold—Oregon and Pennsylvania—produce insignificant volumes of tart cherries compared with total U.S. production. Production in these districts has not grown, nor is it anticipated that it will in the future. The evidence supports claims that these smaller producing districts would be more impacted by a volume regulation than other districts. Costs may be higher to growers in those areas than in others because they tend to have lower yields. Also, processing capacity in those districts tends to be limited, supporting the argument that production is unlikely to increase. In addition, processors in the smaller producing districts testified that they would have to shut down their facilities if those districts were subject to volume regulation because they would not be able to get sufficient supplies of cherries to run their operations efficiently. If the smaller producing districts do increase their production, they would become regulated once they reach the 6-million pound threshold.

The proponent evidence showed that while volume regulations have helped strengthen overall cherry prices, there are costs involved with complying with these regulations. Such costs include reduced returns for cherries that cannot be sold in primary markets. Imposing those costs on the smallest producing districts would not result in any higher overall price for tart cherries. Additionally, regulating the two smallest States would not reduce the volume of regulation imposed on cherries grown in the other States because of their low levels of production. In the four years that restricted percentages have been recommended by the Board, the percentage would not have changed at all in two of four years (by not including Pennsylvania and Oregon) and would have been marginally reduced in the other two years. Thus, it appears that the costs of regulating these minor districts would not be outweighed by any accrued benefits.

Allocation of Board Membership

Section 930.20 of the order provides for a Cherry Industry Administrative Board, appointed by the Secretary to locally administer the program. Among the Board's responsibilities is recommending regulations to implement marketing order authorities. The Board consists of 19 members: 18 tart cherry growers and handlers, and 1 public member.

For purposes of Board representation (among other things), the production area is divided into nine districts. Each district is allocated one to four Board members. Six of the nine current districts, including all districts subject to volume regulation, are allocated more than one member. Those five districts are Northern Michigan (four members), Central Michigan (three members), Southern Michigan (two members), New York (two members), Utah (two members), and Washington (two members). The three districts with one member each are Oregon, Pennsylvania, and Wisconsin. The nineteenth Board member is selected to represent the general public, and need not be from any specific area.

Section 930.20 further provides that if a district with a single member becomes subject to volume regulation, that district will get a second Board member position. There is no specific requirement that a district must lose a seat if it falls below the 15 million pound threshold and is no longer subject to regulation.

The Board proposed amending § 930.20 to provide that membership for each district be based on the average annual production for that district over the previous 3 years. Districts with up to and including 10 million pounds would be represented by one Board member; districts with more than 10 and up to and including 40 million pounds would have two members; districts with more than 40 and up to and including 80 million pounds would have three members; and districts with more than 80 million pounds would have four members.

The record shows that this amendment could result in a larger number of Board members. Using average annual production figures for the years 1999 through 2001, one district (Wisconsin) would have been entitled to an additional Board member position for the term of office that began July 1, 2000. Thus, the total number of Board members under this proposed amendment would have increased to 20 members (versus 19 members under the provisions currently in effect).

An increase in the number of Board members would result in a marginal increase in Board expenses. This is because the Board reimburses members for costs incurred in attending Board meetings (travel costs, etc.). Since Board expenses are funded through handler assessments, all handlers would be impacted by slightly higher assessments.

However, these slight cost increases will be offset by better industry representation on the Board: Reallocating membership on an annual basis will allow membership to more closely reflect changing production trends in the industry. This should lead to better decision making by a more representative administrative body.

Designation of a Temporary Alternate to Act for an Absent Board Member

As previously discussed, the Board is composed of 19 members, with the industry members allocated among nine districts. Each Board member has an alternate who has the same qualifications as the member. Industry Board members and alternates are nominated by their peers in the district they represent.

Section 930.28 of the order provides that if a Board member is absent from a meeting, his or her alternate will act in that member's place. There is no provision for a situation in which both the member and that member's alternate are unavailable.

The Board proposed changing § 930.28 as follows. If both a member and his or her alternate cannot attend a Board meeting, the member or the alternate (in that order) could designate another alternate member to act in their stead. If neither the member nor the alternate chooses to make such a designation, the Board's chairperson would be free to do so (with the concurrence of a majority of present members).

The record supports the concept of allowing more flexibility for alternates to fill in for absent Board members. However, the Department revised the Board's proposal. A Board member can designate an additional alternate to act in his or her place when that member and that member's alternate are unable to attend a Board meeting. However, if the member chooses not to name an additional alternate, that decision does not then revert to the Board or its chairperson.

This amendment will allow more flexibility for Board members who cannot attend a Board meeting. It should also encourage a full contingency of voting members at Board meetings, while maintaining adequate representation among the districts comprising the production area. No additional costs should be incurred as a result of this change.

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Clarification of Diversion and Exemption Provisions

As previously discussed, a primary feature of the tart cherry marketing order is supply management through the establishment of free and restricted percentages. These percentages are applied to each regulated handler's acquisitions of cherries. Free percentage cherries may be sold in any market, while restricted percentage cherries must be diverted by a grower or handler or placed in the inventory reserve.

Section 930.58 of the order provides for grower diversions. Under this section, growers may receive diversion certificates for cherries used for animal feed and cherries left unharvested in the orchard. Growers may also receive diversion certificates for "uses exempt under § 930.62." A grower's diversion certificates can then be transferred to that grower's handler and used to meet the handler's restricted obligation.

Section 930.59 provides for handler diversions. Handlers may receive diversion credits for cherries used in such forms as the Board may designate, with approval of USDA. These forms may include destruction at the handler's facility; use in Board approved food banks or other approved charitable organizations; acquisition of grower diversion certificates; and uses exempt under § 930.62. Handlers desiring to use the first three forms must notify the Board prior to diverting cherries. Use of the fourth form requires application to and approval by the Board prior to diversion.

Section 930.62 provides that certain cherries may be exempt from volume regulation upon Board recommendation and USDA approval. Such cherries would also be exempt from assessment obligations and any established quality standards. Section 930.62 currently provides that exemptions may be provided for cherries diverted in accordance with § 930.59 (Handler diversion privilege); used for new product and new market development; or used for experimental purposes or for any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries was utilized.

The record indicates that the industry supports continuation of both the authority to exempt certain cherries from regulation, and the authority to provide diversion credits for cherries used for certain purposes. The application of each provision is different, however. An example provided at the hearing illustrates the difference. Assume a restricted percentage of 20 percent has been established, a regulated handler acquires 10 million pounds of cherries, and that handler uses 2 million pounds of those cherries for new market development. This handler would have a restricted obligation of 2 million pounds of cherries (20 percent of the 10 million pounds of cherries acquired).

If cherries used for new market development were eligible for diversion credit, this handler would have met his or her restricted obligation by using 2 million pounds for that purpose. The handler could thus market the remaining 8 million pounds of his or her cherries as free percentage cherries in any outlet he or she chose. If, however, cherries used for new market development were exempt from regulation, the restricted percentage would be applied to that handler's total acquisitions (10 million pounds), less the volume of cherries exempt from regulation (2 million pounds). Thus, this handler would have a restricted obligation of 1.6 million pounds (20 percent of 8 million pounds), which would have to be diverted in forms approved by the Board as eligible for diversion credit.

Cross references between §§ 930.59 and 930.62 have proved to be confusing. Thus, these sections are amended by deleting those cross references. Also, uses listed under § 930.62 as possible exempt uses are being listed under § 930.59 as possible uses eligible for handler diversion credit. Rulemaking will be required to designate whether a particular use would be exempt from regulation or would constitute an approved diversion outlet. Such rulemaking would be based on Board recommendations, following its assessment of the impact exemptions or diversions would have on the tart cherry industry.

This amendment is a clarification of the current order and its operation. It does not introduce new or different concepts. To the extent that it makes the order easier for growers and handlers to understand, it should be of benefit to the industry.

Exemption or Diversion Credit for Export Shipments

As discussed in the previous material issue, §§ 930.59 and 930.62 provide for handler diversions and exemptions, respectively. Certain uses of cherries are listed as eligible for diversion credit or exemptions. Under the authority in these sections (specifically, that for market development), diversion credits have been made available to handlers during recent crop years for shipments to export markets, excluding Canada and Mexico. Canada and Mexico were not included because of their proximity to the United States and concern about compliance matters.

The record indicates that allowing export shipments to receive diversion credits resulted in stronger export sales. Exports in 1997–98 were unusually high (around 50 million pounds), although they declined during the next season to 34 million pounds. Witnesses stated that the tart cherry industry needs to expand demand for its product through, among other things, development of new markets.

The Board proposed adding specific authority to §§ 930.59 and 930.62 to allow diversion credits or exemptions for such export markets as recommended by the Board and approved by the Secretary. This is a clarifying change only. It imposes no new or different regulatory requirements on the tart cherry industry.

Diversion Credit for Juice and Juice Concentrate

Section 930.59 of the order relates to how handlers may receive diversion credits to offset their restricted obligations. Paragraph (b) of that section states that diversion may not be accomplished by converting cherries into juice or juice concentrate.

The Board recommended that the order be amended by deleting the prohibition in § 930.59 (b) that shipments of cherry juice and juice concentrate to approved diversion outlets be eligible for diversion credit.

The record indicates that in the promulgation proceeding, handlers from Oregon and Washington were concerned that juice concentrate could be established as a use eligible for diversion credit. Those handlers indicated that they processed all or a majority of their cherries into juice concentrate. Cherries produced in that area of the country have a high brix (sugar content) level desirable for juice concentrate. Concern was expressed that if the Board decided to allow diversion credit for juice concentrate, an increase in the volume of juice in the marketplace and an accompanying reduction in juice prices could result. This would unduly harm the industry in the Washington and Oregon. USDA therefore inserted the provision to prohibit the use of juice or juice concentrate for diversion credit.

However, the use of juice and juice concentrate for export was allowed under the exemption provisions of the order for the 1997–98 season. The 1997–98 season was the first season of operation for the cherry order, and its provisions were new to the industry and complex to administer. Handlers unfamiliar with order's diversion provisions had exported or contracted to export tart cherry juice or juice concentrate to eligible countries with the intention of applying for and receiving diversion certificates for those exports. If those handlers had been prohibited from receiving diversion certificates for those sales, the handlers would have incurred severe financial difficulties. Thus, the prohibition against exports of juice and juice concentrate was suspended for the 1997–98 season only.

The record shows that until 1997, the juice market was distressed. One reason was that there had been large volumes of concentrate produced in the preceding years in the Western United States—volumes that exceeded market demand. In 1995 particularly, there was a very large crop of tart cherries (a record 395.6 million pounds), and a large portion of that crop was processed into concentrate. An oversupply situation occurred, which led to low prices and a large carry-over of concentrate.

Witnesses claimed that the operation of the order has helped address the cherry oversupply situation, including the surplus of juice. Allowing exports of juice to receive diversion credits in 1997–98 was quite successful. The industry exported more than 4 million pounds (raw product equivalent) of juice concentrate that year, comprising about 10 percent of total exports qualifying for credit. At 9 cents per pound for the raw fruit, growers received about $382,500 in revenue from these sales. Handlers, whose value-added component is about $5.00 per gallon (or $.056 per pound), received $236,000 in revenue. In total, the industry gained at least $618,000 from export sales of juice concentrate in 1997–98.

Providing diversion credits for exports of juice concentrate by handlers in the regulated districts encouraged more exports of this product. The higher levels of exports of concentrate helped reduce heavy inventories and reduced the supplies available in the domestic market. This led to an increase in the domestic price for juice concentrate of about $4.00–$6.00 per gallon. Producers whose cherries were processed into concentrate benefitted from the strengthening of domestic juice prices.

In 1998, diversion credits were no longer authorized for exports of juice and juice concentrate. Witnesses stated that this hurt the U.S. cherry industry. Demand for juice concentrate in Europe was strong, but domestic processors could not export juice concentrate in a way that was economically feasible. Some processors exported raw juice stock to Europe so the raw stock could be juiced overseas. This meant that the added value of converting the stock to juice concentrate was lost to U.S. processors. It also meant higher freight costs for the raw product (versus concentrate). When juice stock was exported, the freight cost to Europe was about 10 cents per pound. Growers received little for cherries exported as raw juice stock, while grower returns for exported juice concentrate were positive.

Further, this restriction resulted in shorting the export juice market. Witnesses stated that if you are unable to supply a market consistently, that market looks for a more reliable source of supplies. When a market is lost to the U.S. industry for this reason, it is difficult to regain. This is particularly detrimental to the tart cherry industry as it seeks to expand markets for its heavy supplies of product.

As previously indicated, the prohibition on diversion credits for juice and juice concentrate was in response to concerns expressed by the industry in the Northwest. At the time the order was promulgated, it was represented that more than 85 percent of the crop in Washington was processed into juice. During recent years, less than half of the Washington crop was used for juice. Most of the rest of the crop was used for 5 + 1 cherries (25 pounds of cherries to 5 pounds of sugar). Additionally, the record shows that in 1993 there were 7 pitters in the State; by 2000, that number had grown to 20. This supports the conclusion that processors in Washington are able to pack a wider variety of finished products. Cherries grown in Washington have increasingly been processed into products other than juice and juice concentrate.

Also, production in the State of Washington has grown, and a number of witnesses at the hearing held in early 2000 expressed their belief that Washington would soon produce in excess of 15 million pounds annually and thus would become subject to volume regulation. In fact, production in Washington for the 3 years 1998 to 2000 averaged 15.9 million pounds, and Washington became subject to volume regulation in 2001. It was critical for handlers in Washington to be able to receive diversion credits for exports of juice and juice concentrate. This was particularly true because 5+1 cherries do not generally sell in export markets because they contain sugar and are thus subject to increased tariffs when exported. For these reasons, the Board unanimously recommended suspension of the prohibition on receiving diversion credit for exports of cherry juice and juice concentrate. This suspension became effective August 1, 2001 [66 FR 39409, July 31, 2001].

An additional benefit of allowing diversion credits for exported juice and juice concentrate is that it would ensure that the domestic market is adequately supplied in short crop years. In years when the crop is small, most available tart cherries will be used to supply higher value finished products rather than juice concentrate. If the industry does not have a supply of concentrate in reserve, the juice markets, both domestic and foreign, could go unsatisfied. In order to have supplies available in short crop years, there needs to be an incentive to have tart cherries stored as juice concentrate. Making juice and juice concentrate eligible for diversion credit would create an incentive to produce and store concentrate, which would ensure that markets for those products are adequately supplied. It could also result in fewer cherries being diverted in the orchard. This would benefit growers through enhanced revenues, because they receive more for cherries that are processed and sold than for cherries that are diverted in the orchard.

This amendment would result in additional options for handlers in meeting their restricted obligations under the order. It should also encourage expansion of markets for U.S. tart cherry products, which would benefit the industry as a whole. It will not adversely impact the sale of juice and juice concentrate in primary markets; in fact, it could tend to strengthen prices in those markets. This is because more juice will likely be exported, which would reduce the supply available in the domestic market.

Handler Transfers of Diversion Credits

Section 930.59 of the order provides for handler diversion credits. Those diversion credits are used by handlers to meet their restricted obligations. That provision of the order is silent with respect to the ability of handlers to transfer diversion credits among themselves to meet their restricted obligations.

The Board proposed adding a new paragraph (e) to § 930.59 to provide that a handler who acquires diversion certificates representing diverted cherries during any crop year may transfer such certificates to another handler or handlers.

The record shows that allowing transfers of diversion certificates

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provides additional flexibility to tart cherry growers and handlers in meeting program requirements, without changing the amount of tart cherries available to be marketed as free percentage cherries. This can also result in the processing of the highest quality cherries available in any crop year, which would benefit the industry as a whole.

One witness at the hearing explained as an example that Handler A may acquire a very high quality of tart cherries in a given year, and would want to process and sell a higher percentage of those cherries than his or her free percentage would allow. Handler B may be in a situation where he or she receives more diversion credits than needed because most of that handler's pack is for export. (We are assuming that export sales are eligible for diversion credits.) Handler B might want to transfer those excess credits to Handler A.

Additionally, there may be a situation in which Handler C's growers have low quality cherries due to adverse growing conditions. These growers may choose to use in-orchard diversions to a greater extent than they normally would. Handler C could wind up with more diversion credits than needed and may want to transfer those credits to Handler A. A simple example to illustrate this situation follows. In this example, we will assume a restricted percentage of 40 percent has been established.

Handler	Receipts (pounds)	Restricted obligation (pounds)	Exports (pounds)	Grower diversions (pounds)	Excess diversion credits (pounds)
A	100,000	40,000	0	0	(40,000)
B	100,000	40,000	70,000	0	30,000
C	100,000	40,000	0	50,000	10,000

In this case, Handler A needs diversion credits totaling 40,000 pounds to meet his or her restricted obligation, while Handlers B and C have excess credits representing 40,000 pounds of cherries. If Handler A could receive Handler B's and C's excess diversion credits, he or she could use them to fulfill Handler A's restricted obligation. Otherwise, Handler A would have to divert 40,000 pounds of cherries (by destroying them, for example) or put them in the inventory reserve. With the ability to transfer diversion credits, Handler A could acquire excess credits from Handlers B and C. Handler A would benefit by being able to process all of his or her cherries for free use. Handlers B and C (and their growers) would benefit by being compensated for their diversions, including those above the required amount.

Both the transferring handlers' and the receiving handler's growers would benefit. Also, the overall quality of the crop marketed could be improved. This would serve to increase consumer confidence and acceptance, thereby strengthening demand for tart cherries. This would benefit the U.S. tart cherry industry as a whole.

Additionally, if the transfer of diversion credits were not allowed, the market could be shorted. This would have a detrimental impact on the tart cherry industry. Again, we will use the above illustration and assume these three handlers comprise the entire industry.

Handler	Receipts	Restricted obligation	Excess diversions	"Free" sales	
				With transfers	Without transfers
A	100,000	40,000	(40,000)	100,000	60,000
B	100,000	40,000	30,000	30,000	30,000
C	100,000	40,000	10,000	50,000	50,000
Total	300,000	120,000	0	180,000	140,000

With a 60 percent free percentage, it would be expected that 180,000 pounds of cherries would be available for sale as free percentage cherries (60 percent of total receipts of 300,000 pounds). As shown above, without the ability to transfer diversion credits, the total volume of "free" cherries available to market would be only 140,000 pounds. This would be well below the 180,000 pounds deemed necessary to meet market demand. This would hamper the industry's efforts to expand markets for its products. Allowing transfers of diversion certificates therefore has a positive impact on the industry.

Grower Diversion Certificates

Section 930.58 provides that a grower may voluntarily choose to divert all or a portion of his or her cherries. Typically, this is accomplished by leaving cherries in the orchard unharvested, although other means are provided as well. Upon diversion in accordance with order provisions, the Board issues the grower a diversion certificate which the grower may then offer to handlers in lieu of delivering cherries. Handlers may then redeem those certificates to meet their restricted obligations.

Section 930.52(d) of the order provides that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous 5 years is exempt from any volume regulation in that year. This provision was included in the order to help relieve a district from the burdens of the order in a year in which its processors and growers were already suffering from a severely short crop.

The Board proposed an amendment to § 930.58(a) to provide that any grower diversions completed in a district subsequently exempt from regulation under § 930.52(d) will qualify for diversion credit.

Witnesses at the hearing testified that this is a needed change to the order to reduce the risk growers face in deciding whether or not to divert all or a portion of their crops. The reason such risk exists is primarily due to the difference between the time diversions must take place and the time a district's final production figure is known.

The Board is required to meet on or about July 1 of each crop year to develop its marketing policy and recommend preliminary free and restricted percentages (if crop conditions so warrant). The marketing policy is typically a week or two after the release of the USDA tart cherry crop estimate in late June. Final free and restricted percentages are not recommended until after the actual crop production figure is available. This is typically not until September, after harvest is complete. This is also when a final determination is made as to whether a district will be covered by regulation in accordance with § 930.52(d).

The record shows that the tart cherry crop is harvested in late June or July. Growers must, therefore, make decisions as to whether to undertake diversion activities before they are certain whether or not their district will be covered by regulation. This occurred in Southwest Michigan in 1997. Based on the USDA estimate, it was expected that this district would be covered by volume regulation during the upcoming crop year. However, the actual crop came in at less than 50 percent of the prior 5-year average production in that district, and Southwest Michigan (District 3) was exempt from regulation.

Witnesses testified that growers who divert their crops in anticipation of a volume regulation should not be penalized for that decision because the USDA crop estimate indicates their district will be regulated, but it turns out it is not. If those growers' diversion certificates become invalid, they receive nothing for the cherries they diverted. If their diversions continue to qualify for credit, however, handlers who accept those diversion certificates compensate the growers for them.

Without this amendment, the record shows that growers in some districts (where application of volume regulation is uncertain) could be forced into harvesting their crops. This would be contrary to the program objective of balancing tart cherry supplies with market demand.

This amendment should benefit tart cherry growers who choose to divert cherries in anticipation of a volume regulation. It should also contribute to the supply management objectives of the program, which would benefit the U.S. tart cherry industry as a whole.

Release of Cherries in the Inventory Reserve

Section 930.51 of the order authorizes the issuance of volume regulations for tart cherries in the form of free and restricted percentages. Section 930.50(i) provides that a handler's restricted percentage cherries must be placed in an inventory reserve or diverted through non-harvest, destruction at a handler's facilities, or shipment into approved secondary outlets.

The order specifies three possible releases of inventory reserves under §§ 930.50 (g) and (j) and 930.54 (a). The first, under § 930.50 (g), releases an additional 10 percent (above the optimum supply level) of the average of the prior 3 years sales if such inventory is available. This release is for market expansion purposes.

The second release, under § 930.50 (j) occurs in years when the expected availability from the current crop plus expected carry-in does not fulfill the optimum supply (100 percent of the average annual sales in the prior 3 years plus the desirable carry-out). This release is made to all handlers holding primary inventory reserves and is a required release to be made by the Board if the above conditions are met and reserve cherries are available. This provision is intended to assure that inventory reserves are utilized to stabilize supplies available on the market. Under this authority, cherries released from the reserve can be sold in any market.

The third release is authorized under § 930.54 (a) which allows the Board to recommend to the Secretary a release of a portion or all of the primary (and secondary) reserve. To make this release, the Boards needs to determine that the total available supplies for use in commercial outlets do not equal the amount needed to meet the demand in such outlets.

The Board recommended an amendment to § 930.54 to provide a fourth option for a reserve release. Specifically, it proposed that a portion or all of the primary and/or secondary inventory reserve may be released for sale in certain designated markets.

Witnesses at the hearing suggested that the industry (through the Board) needs more flexibility in determining how to utilize inventory reserves. One witness opined that limited releases of reserves during years of non-regulation may be necessary to maintain markets that are available for diversion credits during years of regulation. The example given dealt with sales to export markets other than Canada and Mexico. In years of volume regulation, sales of cherries to these markets are eligible for diversion credits that handlers may use to meet their restricted obligations.

In developing its marketing policy and determining whether a surplus exists, the optimum supply is compared with available supplies. The optimum supply is defined as average sales over the last 3 years, minus sales qualifying for diversion credit. Thus, the optimum supply measures the volume of cherries needed to fill demand in the primary market. If anticipated supplies exceed demand in the primary market, a volume regulation may be issued. Restricted percentage cherries are then used to fill these secondary markets.

If anticipated supplies are reasonably in balance with demand in the primary market, no volume regulation would be issued. Since all of a handler's cherries would then be "free" percentage cherries, he or she would likely attempt to sell all those cherries in the primary market because returns tend to be higher in that market. This could result in few cherries being made available for sale in secondary markets (such as exports).

The record shows that the tart cherry industry needs to continue its efforts to expand markets. A critical aspect of this effort is to ensure that supplies are available to fill needs in developing markets. If, for example, an export market is developed over the course of time, and then cherries are not available to supply that market, that market may be lost to the industry. The Board's proposal would allow a release of inventory reserves to meet the needs of these specific markets. This should contribute to the long-run health of the industry.

Another witness suggested that a limited release should also be possible for specific types of cherry products. He stated that over time, the mix of products offered by the tart cherry industry has changed considerably. New product development should continue to be encouraged to expand marketing opportunities for the industry. Releases of inventory reserves can play a part in this endeavor.

The witness gave a hypothetical situation using dried cherries as an example. He said that if demand for dried cherries was very strong, and supplies of that product from the current year's crop were insufficient to meet that demand, releases of that product from the inventory reserve should be authorized.

This amendment should contribute to the industry's efforts to balance tart cherry supplies with market demand. It will give the Board more flexibility in determining when inventory reserve cherries should be released for use. It will not impose any additional regulatory requirements on tart cherry handlers.

Ten Percent Reserve Release for Market Expansion

Section 930.51 of the order authorizes the issuance of volume regulations for tart cherries in the form of free and restricted percentages. Section 930.50(i) provides that a handler's restricted

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percentage cherries must be placed in an inventory reserve or diverted into approved secondary outlets.

Section 930.50 provides that any volume regulation make available as free percentage cherries an "optimum supply" of tart cherries. The optimum supply is defined as the average sales of the prior 3 years (minus sales of cherries qualifying for diversion credit) plus a desired carry-out. Section 930.50(g) further provides that in addition to the free market tonnage percentage cherries, the Board must make available tonnage equal to 10 percent of the average sales of the prior 3 years for market expansion.

The Board proposed amending § 930.50(g) to specify that the 10 percent reserve release only apply during years when volume regulation is in effect.

The record shows that the 10 percent reserve release provision was made a part of the order in large part due to USDA policy guidelines. The Secretary's Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders (Guidelines) state that, under volume control programs, primary markets should have available a quantity equal to 110 percent of recent years' sales in those outlets before the Secretary would approve secondary market allocation or pooling. This is to assure plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with burdensome supply situations.

Witnesses in support of the Board's proposal stated that allowing for and encouraging market growth in years of surplus supplies is sensible. In fact, several witnesses stated that an important objective of the tart cherry industry and the marketing order program is to expand markets for tart cherries. This is supported, for example, by the authorization of diversion credits for new product and new market development.

Several witnesses spoke against the 10 percent release during years of no volume regulation, however. Two concerns were expressed in this regard. First, the release of inventories in a year in which supplies and market demand are reasonably in balance results in an oversupply situation. This can be accompanied by reduced grower prices. Second, and probably more important, industry reserves can be depleted. One objective of keeping an inventory reserve is to aid in stabilizing annual supply fluctuations and safeguard against the detrimental impacts of a short crop year.

The record shows that the tart cherry industry experiences cycles in acreage and production. During the phase of the cycle with less bearing acreage and shorter supplies, a short crop year can result in significant shortages of available market supplies. This can curtail continued market demand and market growth. When supplies are short, they can be supplemented by reserve cherries. This would mitigate spikes in prices, which hinder long term market demand. Food manufacturing customers in particular demand a stable supply of product at reasonable prices. Absent a reliable supply, these customers tend to substitute other fruits in their products.

The use of the inventory release option also provides that some surplus supplies in a large crop year with low prices can be carried over to short crop, high price years. This results in improved revenues for growers and processors. The use of the inventory reserve option also provides an alternative to grower diversions (i.e., non-harvest).

Several witnesses used the 1999–2000 crop year to show the effects of a reserve release during a year of no regulation. During that year, the crop was 251.0 million pounds which, when added to a carryover from the previous crop year of 38.0 million pounds, yielded total available supplies of 289.0 million pounds. With the optimum supply at 285.0 million pounds, the Board found that supplies were reasonably in line with market demand, and recommended no volume regulation be implemented.

At the beginning of the crop year, industry reserves totaled 28.4 million pounds. Four million pounds were released early in the crop year to meet unanticipated demand, leaving 24.4 million pounds in the reserve when it came time for the release for market expansion. Ten percent of the 3-year average sales figure meant that 28.5 million pounds should have been released for market expansion; however, there were only 24.4 million pounds in the inventory reserve, so the entire reserve was released.

Witnesses claimed that the release of reserves in the current crop year may result in a surplus supply of cherries in the marketplace. This could put a downward pressure on price, and could result in a higher carryover into the next crop year. This could mean a greater surplus in 2000–2001, which could result in a higher restricted percentage and greater probability of cherries being left in the orchard unharvested.

Ultimately, these releases could result in less economic incentive to place cherries in the reserve because they could be released at the wrong time and return little to growers. With less incentive to participate in the inventory reserve, more cherries would likely be diverted by growers through non-harvest. Overall grower returns would be lower, and long term market losses may occur.

This amendment should contribute to the industry's efforts to balance tart cherry supplies with market demand. It will give the Board more flexibility in determining when inventory reserve cherries should be released for use. It will not impose any additional regulatory requirements on tart cherry handlers.

Assessments on All Cherries Handled

Section 930.40 of the order authorizes the Board to incur such expenses as the Secretary finds are reasonable and necessary for it to administer the tart cherry marketing order program. Section 930.40 further provides that the Board's expenses be covered by income from handler assessments.

Section 930.41 provides that handlers pay their pro rata share of the Board's expenses. Each handler's share is determined by applying the established assessment rate(s) to the volume of cherries each handler handles during a crop year. Section 930.41 further provides that handlers are exempt from paying assessments on cherries that are diverted in accordance with § 930.59, including cherries represented by grower diversion certificates issued under § 930.58. Cherries devoted to exempt uses under § 930.62 are also free from assessments.

The Board recommended that § 930.41 be amended to provide that all cherries processed and sold by handlers be subject to assessments. The only cherries that would be exempt from assessments would be those diverted in-orchard by growers, and those diverted by handlers through destruction at their plants.

Proponent witnesses testifying in support of this change stated that all processed cherries should be subject to assessments because handlers profit from the sale of these cherries. This is because each pound of fruit processed increases the handler's overall profitability by reducing the per unit cost of processing. This is true even if the cherries are used in an outlet approved for diversion credit.

The record shows that handlers have different ways of meeting their restricted obligations. Their decisions are based on their own marketing strategies. Some handlers take advantage of marketing their products in eligible diversion outlets, while others either cannot or do not do so. Witnesses suggested that providing an exemption from assessments to handlers who choose to divert their cherries through

sales in those designated outlets creates a competitive advantage over their competitors who do not do so. It was their opinion that if a substantial volume of cherries is diverted by certain handlers, the burden of financing the program increases on other handlers. Those in support of assessing all processed cherries concluded that subjecting all processed cherries to the assessment provisions of the order would eliminate this unintended advantage.

Additionally, the record shows that a large portion of the Board's annual expenses is incurred for oversight of compliance activities related to diversion credits. For example, for those export sales eligible for diversion credit, handlers are required to submit proof of export. The documentation typically consists of warehouse receipts, bills of lading, overseas bills of lading, and other documents proving the cherries were exported. The Board staff reviews the documentation submitted by each handler for sufficiency, requests additional documentation if necessary, and issues diversion certificates upon proof of compliance with order requirements. Similar activities are undertaken with respect to sales in other designated diversion markets (e.g., new product development). Witnesses stated that those handlers who take advantage of these order provisions should pay their share of the costs of enforcing those provisions.

One witness also stated that an advantage of this amendment would be that it would broaden the assessment base under the order. This would lower the assessment rate needed to effectively administer the program.

This amendment would increase assessment obligations on handlers who choose to divert their restricted percentage cherries in approved outlets. However, it would also tend to result in a more reasonable assessment system.

Uniform Assessment Rate

As discussed in the preceding section, §§ 930.40 and 930.41 of the order provide that the Board may incur certain expenses, and that the funds to defray those expenses be paid by handlers through assessments. Section 930.41 also provides, among other things, that the assessment rate(s) recommended by the Board and approved by the Secretary must compensate for the differences in the amounts of cherries used for various cherry products and the relative market values of those products.

The Board recommended that § 930.41 be amended to provide that a uniform assessment rate be established for cherries used in any or all products. This would be true unless the Board decided to consider the volumes of cherries used for various products and their relative values; if that were the case, the Board could recommend differential assessment rates if warranted.

The record shows that at the time the order was promulgated, proponents of the program supported different assessment rates being established for cherries used for various products. In their testimony, they suggested that high value products such as frozen, canned or dried cherries be assessed at one rate, and low value products such as juice concentrate and puree be assessed at one-half that rate.

Proponents of the Board's recommended amendment stated that the order should not require one rate for certain products and twice that rate for others. They stated that while a two-tiered assessment rate scheme may be appropriate in some years, it may not be in others. They cited the fact that the absolute and relative market values of various tart cherry products fluctuate from year to year.

One witness testified, for example, that producer returns for cherries used for juice concentrate are comparable to those for other products. He stated that cherry juice concentrate was selling for about $17 per gallon. Subtracting estimated handling charges of $5.81 per gallon, the net return to the grower would be an estimated $11.19. In Washington, where about 50 pounds are required to make a gallon of concentrate, growers would receive 22 cents per pound. In Michigan, where it takes approximately 90 pounds of cherries to make a gallon of concentrate, growers would receive 12 cents per pound. This witness stated that grower returns in this range are comparable to returns available for other products.

The conclusion of the proponent witnesses was that the Board should have discretion in determining appropriate rates of assessment. They did not believe a two-tiered approach should be mandated.

An opponent of the proposed change stated that the order should continue to require the Board to consider the volume of raw product used in producing various cherry products as well as the relative value of those products in recommending annual assessment rates. He stated that he did not necessarily support two levels of assessment rates, but believed the Board should be required to give due consideration to relevant factors in making its recommendations.

The Department concludes that while there may be justification for establishing different assessment rates for different products, it should not be required under the order. Thus, the amendment to § 930.41 provides that in its deliberations pertaining to appropriate levels of assessment rates, the Board should consider the volume of cherries used in making various products and the relative market value of those products. The assessment rate established may be uniform or may vary among products, based on the Board's analysis.

Implementation of this amendment could result in a single, uniform assessment rate applicable to all cherries. Such action would likely increase the rate established for cherries used for juice concentrate and puree, and could result in a lower rate for cherries used for other products. The impact of any such action would be analyzed by the Board and USDA prior to its effectuation.

Crop Production Estimate

Section 930.50 of the order requires the Board to develop an annual marketing policy. This policy serves as the basis for determining the level of volume regulation needed in a given crop year. First, the Board determines the "optimum supply" which is defined as the average sales of cherries in the past three years plus the desirable carry-out. Next, the Board takes the crop forecast for the upcoming year and subtracts from it the optimum supply (less the carry-in). If the remainder is positive, it represents a surplus in supplies, supporting the use of volume regulation. Section 930.50 prescribes that the Board must use the official USDA crop estimate as its crop forecast.

The Board's amendment proposal would allow the Board to use a crop estimate other than the official USDA crop estimate in its marketing policy.

The record shows that USDA bases its pre-harvest estimate on two methods. In Michigan, an objective yield survey is done by the State. Such a survey is based on the actual count of fruit on the tree, the number of trees per acre, and the acres in production. In the other producing States, subjective yield surveys are done by those States. This method entails canvassing tart cherry growers and handlers to obtain their assessment of the upcoming year's crop.

The Michigan crop survey costs a total of $60,000 per year. Of this total, the Board pays $24,000. The Board's share was expected to increase to half of the total in 2001. Concern was expressed at the hearing that if the industry decides to no longer contribute

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to the cost of the Michigan State survey, that State would likely discontinue its objective yield surveys and turn to subjective yield surveys. This could result in a less reliable crop estimate than is currently available. This is of particular concern because Michigan produces more than 70 percent of the U.S. tart cherry crop.

Witnesses in support of this proposal stated that, in some years, USDA's pre-harvest crop estimate may not be accurate enough due to quickly changing crop conditions. They stated that current order provisions prohibit the Board from using any other estimate even if the majority of Board members, with their years of experience in the industry, believe USDA's estimate in a given year is inaccurate. Using the most accurate crop estimate available in deriving preliminary free and restricted percentages is important because growers and handlers make decisions based in part on those percentages. For example, growers decide whether to divert or harvest their crops; these decisions are irrevocable. Handlers also make pack and marketing plans based in part on the expected level of regulation. If actual harvest varies significantly from the pre-harvest estimate, growers and handlers could suffer economic harm. Using the most accurate information available is therefore necessary to enhance industry decision making.

One witness pointed to the situation faced by district 3 (Southern Michigan) growers in 1997. As previously discussed under Material Issue Number 9, at the time the Board developed its marketing policy, indications were that district 3 would be regulated that year. Subsequent to harvest, however, it was determined that volume regulation would not apply to district 3 cherries that year. Growers who made decisions to divert their crops based on the Board's marketing policy estimates found themselves with diversion certificates that were of no value.

The record shows that the USDA estimate should be used by the Board unless two things happen. The first would be that the Board would have to agree that the USDA estimate was inaccurate. The second would be that the Board would have to agree on another estimate or estimates to use. Both these actions would require concurrence by at least two-thirds of the Board members. This would safeguard against the possibility of some members attempting to manipulate the crop estimate to impact the level of volume restriction.

In addition, witnesses testified that other estimates used by the Board would have to be from other reliable, independent sources, and would be averaged in with the USDA estimate. Currently available is an annual estimate made by the Michigan Food Processors Association. Other possible sources include the Michigan Agricultural Cooperative Marketing Association and individual State grower associations.

This amendment provides the Board with more flexibility in developing its marketing policy and recommending preliminary free and restricted percentages. To the extent that the Board's decision making improves, the entire U.S. tart cherry industry would benefit.

The collection of information under the marketing order would not be affected by these amendments to the marketing order. Current information collection requirements for Part 930 are approved by OMB under OMB number 0581–0177.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Board meetings regarding these amendments as well as the hearing dates were widely publicized throughout the tart cherry industry, and all interested persons were invited to attend the meetings and the hearing and participate in Board deliberations on all issues. All Board meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues.

Civil Justice Reform

The amendments contained in this rule have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. The amendments will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Order Amending the Order Regulating the Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin

Findings and determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby further amended, regulate the handling of tart cherries grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing agreement and order, as amended, and as hereby further amended, are limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended and as hereby further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of tart cherries grown in the production area; and

(5) All handling of tart cherries grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.*

It is necessary and in the public interest to make these amendments to the order effective not later than one day after publication in the **Federal Register**.

A later effective date would unnecessarily delay implementation of the amendments including the reallocation of Board membership. In addition, the informal rulemaking needed to implement order amendments requires additional time to complete. Therefore, making the effective date one day after publication in the **Federal Register** will allow the amendments, which are expected to be beneficial to the industry, to be implemented as soon as possible.

In view of the foregoing, it is hereby found and determined that good cause exists for making these amendments effective one day after publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date for 30 days after publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping tart cherries covered by the order as hereby amended) who, during the period June 1, 2000, through May 31, 2001, handled 50 percent or more of the volume of such cherries covered by said order, as hereby amended, have signed an amended marketing agreement; and

(2) The issuance of this amendatory order is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period June 1, 2000, through May 31, 2001 (which has been deemed to be a representative period), have been engaged within the production area in the production of such cherries, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing agreement and the order amending the order contained in the Secretary's Decision issued by the Administrator on May 3, 2002, and published in the **Federal Register** on May 10, 2002, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Amend § 930.20 as follows:

a. By revising paragraphs (a), (b), (d) and (e);

b. Redesignating paragraphs (f) and (g) as paragraphs (g) and (h); and

c. Adding new paragraphs (f) and (i).

The additions and revisions read as follows:

§ 930.20 Establishment and membership.

(a) There is hereby established a Cherry Industry Administrative Board, the membership of which shall be calculated in accordance with paragraph (b) of this section. The number of Board members may vary, depending upon the production levels of the districts. All but one of these members shall be qualified growers and handlers selected pursuant to this part, each of whom shall have an alternate having the same qualifications as the member for whom the person is an alternate. One member of the Board shall be a public member who, along with his or her alternate, shall be elected by the Board from the general public.

(b) District representation on the Board shall be based upon the previous three-year average production in the district and shall be established as follows:

(1) Up to and including 10 million pounds shall have 1 member;

(2) Greater than 10 and up to and including 40 million pounds shall have 2 members;

(3) Greater than 40 and up to and including 80 million pounds shall have 3 members; and

(4) Greater than 80 million pounds shall have 4 members; and

(5) Allocation of the seats in each district shall be as follows but subject to the provisions of paragraphs (d), (e) and (f) of this section:

District type	Grower members	or	Handler members
Up to and including 10 million pounds	1		1
More than 10 and up to 40 million pounds	1		1
More than 40 and up to 80 million pounds	1		2
More than 80 million pounds	2		2

* * * * *

(d) The ratio of grower to handler representation in districts with three members shall alternate each time the term of a Board member from the representative group having two seats expires. During the initial period of the order, the ratio shall be as designated in paragraph (b) of this section.

(e) Board members from districts with one seat may be either grower or handler members and will be nominated and elected as outlined in § 930.23.

(f) If the 3-year average production of a district changes so that a different number of seats should be allocated to the district, then the Board will be reestablished by the Secretary, and such seats will be filled according to the applicable provisions of this part. Each district's 3-year average production shall be recalculated annually as soon as possible after each season's final production figures are known.

* * * * *

(i) The Board, with the approval of the Secretary, may establish rules and regulation's necessary and incidental to the administration of this section.

3. Revise 930.28 to read as follow:

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§ 930.28 Alternate members.

An alternate member of the Board, during the absence of the member for whom that member serves as an alternate, shall act in the place and stead of such member and perform such other duties as assigned. However, if a member is in attendance at a meeting of the Board, an alternate member may not act in the place and stead of such member. In the event a member and his or her alternate are absent from a meeting of the Board, such member may designate, in writing and prior to the meeting, another alternate to act in his or her place: *Provided*, that such alternate represents the same group (grower or handler) as the member. In the event of the death, removal, resignation or disqualification of a member, the alternate shall act for the member until a successor is appointed and has qualified.

4. Amend 930.32 by revising paragraph (a) to read as follows:

§ 930.32 Procedure.

(a) Two-thirds of the members of the Board, including alternates acting for absent members, shall constitute a quorum. For any action of the Board to pass, at least two-thirds of the entire Board must vote in support of such action.

* * * * *

5. Amend § 930.41 by revising paragraphs (c) and (f) to read as follows:

§ 930.41 Assessments.

* * * * *

(c) As a pro rata share of the administrative, inspection, research, development, and promotion expenses which the Secretary finds reasonable and likely to be incurred by the Board during a fiscal period, each handler shall pay to the Board assessments on all cherries handled, as the handler thereof, during such period: *Provided*, a handler shall be exempt from any assessment only on the tonnage of handled cherries that either are diverted by destruction at the handler's facilities according to § 930.59 or are cherries represented by grower diversion certificates issued pursuant to § 930.58(b) and acquired by handlers as described in § 930.59.

* * * * *

(f) Assessments shall be calculated on the basis of pounds of cherries handled. The established assessment rate may be uniform, or may vary dependent on the product the cherries are used to manufacture. In recommending annual assessment rates, the Board shall consider:

(1) The differences in the number of pounds of cherries utilized for various cherry products; and

(2) The relative market values of such cherry products.

* * * * *

6. Amend § 930.50 by revising paragraphs (a), (b) and (g) to read as follows:

§ 930.50 Marketing policy.

(a) *Optimum supply.* On or about July 1 of each crop year, the Board shall hold a meeting to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years reduced by average sales that represent dispositions of exempt cherries and restricted percentage cherries qualifying for diversion credit for the same three years, unless the Board determines that it is necessary to recommend otherwise with respect to sales of exempt and restricted percentage cherries, to which shall be added a desirable carry-out inventory not to exceed 20 million pounds or such other amount as the Board, with the approval of the Secretary, may establish. This optimum supply volume shall be announced by the Board in accordance with paragraph (h) of this section.

(b) *Preliminary percentages.* On or about July 1 of each crop year, the Board shall establish a preliminary free market tonnage percentage which shall be calculated as follows: from the optimum supply computed in paragraph (a) of this section, the Board shall deduct the carry-in inventory to determine the tonnage requirements (adjusted to a raw fruit equivalent) for the current crop year which will be subtracted from the current year USDA crop forecast or by an average of such other crop estimates the Board votes to use. If the resulting number is positive, this would represent the estimated overproduction which would be the restricted tonnage. This restricted tonnage would then be divided by the sum of the crop forecast(s) for the regulated districts to obtain a preliminary restricted percentage, rounded to the nearest whole number, for the regulated districts. If subtracting the current crop year requirement, computed in the first sentence from the current crop forecast, results in a negative number, the Board shall establish a preliminary free market tonnage percentage of 100 percent with a preliminary restricted percentage of zero. The Board shall announce these preliminary percentages in accordance with paragraph (h) of this section.

* * * * *

(g) *Additional tonnage to sell as free tonnage.* In addition, the Board, in years when restricted percentages are established, shall make available tonnage equivalent to an additional 10 percent, if available, of the average sales of the prior 3 years, as defined in paragraph (a) of this section, for market expansion.

* * * * *

7. Amend § 930.51 by revising paragraph (c) to read as follows:

§ 930.51 Issuance of volume regulations.

* * * * *

(c) That portion of a handler's cherries that are restricted percentage cherries is the product of the restricted percentage imposed under paragraph (a) of this section multiplied by the tonnage of cherries, originating in a regulated district, handled, including those diverted according to § 930.59, by that handler in that fiscal year.

* * * * *

8. Amend § 930.52 by revising paragraph (a) to read as follows:

§ 930.52 Establishment of districts subject to volume regulation.

(a) The districts in which handlers shall be subject to any volume regulations implemented in accordance with this part shall be those districts in which the average annual production of cherries over the prior 3 years has exceeded 6 million pounds. Handlers shall become subject to volume regulation implemented in accordance with this part in the crop year that follows any 3-year period in which the 6-million pound average production requirement is exceeded in that district.

* * * * *

9. Revise § 930.54 to read as follows:

§ 930.54 Prohibition on the use or disposition of inventory reserve cherries.

Cherries that are placed in inventory reserve pursuant to the requirements of § 930.50, § 930.51, § 930.55, or § 930.57 shall not be used or disposed of by any handler or any other person except as provided in § 930.50 or in paragraphs (a), (b), or (c) of this section.

(a) If the Board determines that the total available supplies for use in commercial outlets are less than the amount needed to meet the demand in such outlets, the Board may recommend to the Secretary that a portion or all of the primary and/or secondary inventory reserve cherries be released for such use.

(b) The Board may recommend to the Secretary that a portion or all of the primary and/or secondary inventory reserve cherries be released for sale in certain designated markets. Such designated markets may be defined in terms of the use or form of the cherries.

(c) Cherries in the primary and/or secondary inventory reserve may be used at any time for uses exempt from regulation under § 930.62.

10. Amend § 930.58 by revising paragraph (a) to read as follows:

§ 930.58 Grower diversion privilege.

(a) *In general.* Any grower may voluntarily elect to divert, in accordance with the provisions of this section, all or a portion of the cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting grower a grower diversion certificate which such grower may deliver to a handler, as though there were actual harvested cherries. Any grower diversions completed in accordance with this section, but which are undertaken in districts subsequently exempted by the Board from volume regulation under § 930.52(d), shall qualify for diversion credit.

* * * * *

11. Revise § 930.59 to read as follows:

§ 930.59 Handler diversion privilege.

(a) *In general.* Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirement in full or in part by acquiring diversion certificates or by voluntarily diverting cherries or cherry products in a program approved by the Board, rather than placing cherries in an inventory reserve. Upon voluntary diversion and compliance with the provisions of this section, the Board shall issue to the diverting handler a handler diversion certificate which shall satisfy any restricted percentage or diversion requirement to the extent of the Board or Department inspected weight of the cherries diverted.

(b) *Eligible diversion.* Handler diversion certificates shall be issued to handlers only if the cherries are diverted in accordance with the following terms and conditions or such other terms and conditions that the Board, with the approval of the Secretary, may establish. Such diversion may take place in any form which the Board, with the approval of the Secretary, may designate. Tart cherry juice and juice concentrate may receive diversion credit but only if diverted in forms approved under the terms of this section. Such forms may include, but are not limited to:

(1) Contribution to a Board-approved food bank or other approved charitable organization;

(2) Use for new product and new market development;

(3) Export to designated destinations; or

(4) Other uses or disposition, including destruction of the cherries at the handler's facilities.

(c) *Notification.* The handler electing to divert cherries through means authorized under this section shall first notify the Board of such election. Such notification shall describe in detail the manner in which the handler proposes to divert cherries including, if the diversion is to be by means of destruction of the cherries, a detailed description of the means of destruction and ultimate disposition of the cherries. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the handler. Uniform fees for such supervision may be established by the Board, pursuant to rules and regulations approved by the Secretary.

(d) *Diversion certificate.* The Board shall conduct such supervision of the handler's diversion of cherries under paragraph (c) of this section as may be necessary to assure that the cherries are diverted as authorized. After the diversion has been completed, the Board shall issue to the diverting handler a handler diversion certificate indicating the weight of cherries which may be used to offset any restricted percentage requirement.

(e) *Transfer of certificates.* Within such restrictions as may be prescribed in rules and regulations, including but not limited to procedures for transfer of diversion credit and limitations on the type of certification eligible for transfer, a handler who acquires diversion certificates representing diverted cherries during any crop year may transfer such certificates to another handler or handlers. The Board must be notified in writing whenever such transfers take place during a crop year.

(f) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

12. Revise § 930.62 to read as follows:

§ 930.62 Exempt uses.

(a) The Board, with the approval of the Secretary, may exempt from the provisions of § 930.41, § 930.44, § 940.51, § 930.53, or § 930.55 through § 930.57 cherries for designated uses. Such uses may include, but are not limited to:

(1) New product and new market development;

(2) Export to designated destinations;

(3) Experimental purposes; or

(4) For any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries were utilized.

(b) The Board, with the approval of the Secretary, shall prescribe such rules, regulations, and safeguards as it may deem necessary to ensure that cherries handled under the provisions of this section are handled only as authorized.

(c) Diversion certificates shall not be issued for cherries which are used for exempt purposes; *Provided*, that growers engaging in such activities under the authority of § 930.58 shall be issued diversion certificates for such activities.

Dated: July 31, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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34 CFR Part 600 et al.
Postsecondary Education; Federal Perkins Loan Program, et al.; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Parts 600, 668, 673, 675, 682, 685, 690, and 694

RIN 1845–AA24

Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions; General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program; Federal Work-Study Programs; Federal Family Education Loan Program; William D. Ford Federal Direct Loan Program; Federal Pell Grant Program; and Gaining Early Awareness and Readiness for Undergraduate Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions; General Provisions for the Federal Perkins Loan (Perkins Loan) Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant (FSEOG) Program; Federal Work-Study (FWS) Programs; Federal Family Education Loan (FFEL) Program; William D. Ford Federal Direct Loan (Direct Loan) Program; Federal Pell Grant (Pell Grant) Program; and Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) regulations. The Secretary is amending these regulations to reduce administrative burden for program participants, to provide benefits to students and borrowers, and to protect taxpayers' interests.

DATES: We must receive your comments on or before October 7, 2002.

ADDRESSES: Address all comments about these proposed regulations to Wendy Macias, U.S. Department of Education, P.O. Box 33076, Washington, DC 20033–3076. We encourage commenters to use e-mail because paper mail to the Washington area may be subject to delay, but please use one method only to provide your comments. If you comment via e-mail, we will send a return e-mail acknowledging our receipt of your comments. If you choose to send your comments through the Internet, use the following address: *ProgramNPRM@ed.gov*.

You must include the term "Team II Program Issues" in the subject line of your electronic message.

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Macias Telephone: (202) 502–7526 or via the Internet: *Wendy.Macias@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as they are discussed in the Significant Proposed Regulations section of this document.

Section 482(c)(1) of the Higher Education Act of 1965, as amended (HEA) provides that in order for a regulatory change to be effective for the start of an award year on July 1, it must have been published in final form in the **Federal Register** no later than the preceding November 1. The Secretary's intent is to publish final rules resulting from this Notice of Proposed Rulemaking (NPRM) by November 1, 2002, making the new rules effective on July 1, 2003. However, section 482(c)(2) of the HEA allows the Secretary to designate regulatory provisions that an entity subject to the provision may, at its option, choose to implement earlier. Therefore, we are seeking suggestions on which of the proposed regulatory provisions in this NPRM, if finalized, should be so designated.

Section 482 of the HEA does not apply to regulations governing programs other than the Federal student aid programs. Therefore, if the proposed regulations on GEAR UP included in this NPRM are finalized, they would be effective upon the date that the final regulations are published in the **Federal Register**.

We also invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations at 1990 K Street, NW., (8th Floor) Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays. If you want to schedule an appointment to inspect the public comments, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Negotiated Rulemaking

Section 492 of the HEA requires the Secretary, before publishing any proposed regulations for programs authorized by Title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from individuals and representatives of groups involved in the Federal student financial assistance programs, the Secretary must subject all proposed regulations to a negotiated rulemaking process. All proposed regulations that the Department publishes must conform to agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants in that process stating why the Secretary has decided to depart from the agreements.

We developed a list of proposed regulatory changes from advice and recommendations submitted by individuals and organizations in response to a May 24, 2001, request for recommendations on improving the Title IV student assistance programs from Representative Howard P. "Buck" McKeon and Representative Patsy Mink, the Chairman and Ranking Member, respectively, of the Subcommittee on 21st Century Competitiveness of the Education and the Workforce Committee of the U.S. House of Representatives.

On December 5, 2001, we published a notice in the **Federal Register** (66 FR 63203) announcing our intent to establish two negotiated rulemaking committees to develop proposed regulations. One committee (Committee I) would address issues related to the Title IV student loan programs. The other committee (Committee II) would address all other Title IV student aid issues. The notice requested nominations of individuals for membership on the committees who represented key stakeholder constituencies that are involved in the student financial assistance programs, with preference given to individuals who are actively involved in administering the Federal student financial assistance programs or whose interests are significantly affected by the regulations. In the notice, we identified the constituencies with interests that are significantly affected by the subject matter of the negotiated rulemaking and announced that we expected that representatives of each of those constituencies would likely be selected as members of one, or both, committees. This NPRM is the result of the deliberations of Committee II.

The members of Committee II were:

- Jo'ie Taylor and Ellynne Bannon (alternate) representing students; including the United States Student Association and State PIRGs (Public Interest Research Groups) Higher Education Project;
- Alan White and Elena Ackel (alternate), representing legal assistance organizations that represent students; including Community Legal Services and the National Consumer Law Center;
- Rachael Lohman and Marty Guthrie (alternate), representing financial aid administrators at institutions of higher education; including the National Association of Student Financial Aid Administrators
- Laurie Quarles and Alisa Abadinsky (alternate), representing business officers and bursars at institutions of higher education, and institutional servicers; including the Coalition of Higher Education Assistance Organizations and the National Association of College and University Business Officers;
- Reginald T. Cureton and William "Buddy" Blakey (alternate), representing the American Indian Higher Education Consortium, the United Negro College Fund and the National Association for Equal Opportunity in Higher Education;
- Claire M. Roemer and Patricia Hurley (alternate), representing two-year public colleges and universities; including the American Association of Community Colleges;
- Dawn Mosisa and Jo Ann Yoshida (alternate), representing four-year public colleges and universities; including the National Association of System Heads, the American Association of State Colleges and Universities, and the University Continuing Education Association;
- Lydia MacMillan, Ryan Craig Williams (alternate), and Maureen Budetti (2nd alternate), representing private, not-for-profit colleges and universities; including the National Association of Independent Colleges and Universities, and the Association of Jesuit Colleges and Universities;
- Robert Collins and Nancy Broff (alternate), representing for-profit postsecondary institutions; including the American Association of Cosmetology Schools and the Career College Association;
- Charles Cook and Diane Rogers (alternate), representing accrediting agencies; including the Council for Higher Education Accreditation (12-hour rule only);
- Neal Combs and Carl Buck (alternate), representing guaranty agencies and loan servicers; including the National Council of Higher Education Loan Programs (NCHELP), the CEO caucus of NCHELP, and the National Association of Student Loan Administrators;
- Francine Andrea and Wanda Hall (alternate), representing lenders, secondary markets, and loan servicers; including the Consumer Bankers Association, the Education Finance Council, the Student Loan Servicing Alliance, and the National Council of Higher Education Loan Programs;
- Carney McCullough, representing the U.S. Department of Education.

At its first meeting, Committee II reached agreement on its protocols and agenda. During later meetings, the Committee reviewed and discussed drafts of proposed regulations. The Committee met over the course of several months, beginning in January 2002.

In addition to the proposed regulations discussed under the section of this document called SIGNIFICANT PROPOSED REGULATIONS, Committee II discussed other issues related to the administration of the Title IV student assistance programs. Those issues, which are more comprehensively discussed on the 2002 Negotiated Rulemaking Web site for Team Two at: *http://www.ed.gov/offices/OPE/rulemaking/index2002.html*, include the following—

- Use of electronics in the administration of the Title IV programs,
- Use of electronic signatures on timesheets in the FWS Program,
- The fifty percent grant overpayment protection in the Return of Title IV aid regulations,
- "90–10" computations,
- Equity in Athletics Disclosure Act (EADA) reporting requirements,
- FWS community service waiver requirements,
- Inclusion of a computer in a student's cost of attendance,
- Regaining student eligibility,
- Overaward tolerances for the Title IV programs,
- Effect of enrollment of certain home-schooled students on institutional eligibility, and
- The fifty percent requirements for telecommunications and correspondence courses in institutional eligibility.

No regulatory proposals are included in this NPRM for these issues either because the committee concluded that the proposed changes could not be made without statutory amendments or because the committee ultimately agreed to remove the item from the agenda and not to pursue a regulatory change at this time. Instead, we decided to address a number of these issues in a non-regulatory way, such as providing clarifying policy language in the Federal Student Financial Aid Handbook.

Tentative agreement was reached by the committee on all but three of the agenda items. The entire committee did not reach consensus on the proposed changes to §§ 668.2, 668.3, 668.4, 668.8, and 690.75, all of which are related to the proposal to replace the 12-hour rule with the one-day rule, because three of the 13 negotiators objected to the change. The committee also did not reach consensus on the proposed changes to § 668.14, which would have modified the section of the program participation agreement that relates to incentive payment restrictions, because two of the 13 negotiators opposed the proposed changes. Finally, the committee reached conceptual agreement on the issue of timely refunds (§ 668.173), but did not review or agree to the actual text of the regulatory language. Detailed discussions of these issues are provided in the body of this document.

The negotiated rulemaking protocols provide that, unless agreed to otherwise, consensus on all of the amendments in

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the proposed regulations must be achieved in order for consensus to be reached on the entire NPRM.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Branch Campuses (Section 600.8)

Current Regulations: Section 600.8 implements the statutory requirement that a branch campus may request certification as a main campus or as a free-standing institution only after it has been certified by the Secretary for at least two years. However, the regulation does not reflect the statutory distinction that the two-year certification requirement applies only to a branch of a proprietary institution of higher education or of a postsecondary vocational institution.

Suggested Change: We recommended that the regulation clarify that the "two-year rule" in § 600.8 applies only to an eligible branch campus of either a proprietary institution of higher education or a postsecondary vocational institution.

Proposed Regulations: The proposed regulation would specifically refer to a branch campus of either an eligible proprietary institution of higher education or an eligible postsecondary vocational institution as the only types of institutions whose branches are covered by the two-year certification requirement.

Reason: Under sections 102(b) and (c) of the HEA, the "two-year rule" is applicable only to an eligible branch campus of either a proprietary institution of higher education or a postsecondary vocational institution and is not applicable to an institution of higher education as defined in § 600.4 of the regulations.

However, it should be noted that a single public or non-profit institution can be both an institution of higher education and a postsecondary vocational institution depending upon the programs it offers. In such a case, the "two year rule" would apply if the institution wanted a branch campus that offered vocational programs of less than one year to become a free-standing institution.

Change of Ownership (Sections 600.21, 600.31 and 668.174)

Current Regulations: Sections 600.21(f) and 668.174(c)(4) define who is considered a family member for purposes of transfer of institutional ownership and control under the institutional eligibility and financial responsibility regulations.

Section 600.31 provides for the treatment of changes of ownership and establishes that an institution that undergoes a change in ownership resulting in a change of control ceases to qualify as an eligible institution until it establishes that it meets eligibility and certification requirements. Section 600.31(e) provides that a transfer of ownership and control due to the retirement or death of the institution's owner to a member of the owner's family or to an individual with an ownership interest in the institution who has been involved in the management of the institution for two years prior to the transfer is not considered a change of ownership and control for purposes of institutional eligibility.

Suggested Change: A group of institutions suggested that the definition of "family member" in the regulations be expanded to include other persons in the owner's family including people who become part of the owner's family as a result of remarriage. They also suggested broadening the list of transactions that are not considered changes in ownership to include situations where an owner who was retiring from operating an institution and transferring ownership to another family member would still perform some duties at the institution.

Proposed Regulations: The proposed changes to §§ 600.21(f) and 668.174(c)(4) would expand the definition of a member of the family to include grandchildren, a spouse's children and grandchildren, and family members as a result of remarriage.

The proposed change to § 600.31(e) would expand the conditions under which transfers of ownership and control to family members are not considered a change of ownership for institutional eligibility purposes. We are proposing to expand the current exception in the regulations to allow an owner to transfer his or her interest in an institution to a member of his or her family, provided that the ownership transfer is reported to the Department under § 600.21(a)(6). The proposed regulations would clarify that the excluded transfer would be only to persons that have held an ownership interest and a management role at the institution for at least two years.

Finally, the proposed regulations would also clarify that the entity covered by the change of ownership requirements and that signs the Program Participation Agreement (PPA) may be the institution signing as a corporation or as a sole proprietorship, the institution's parent corporation, or other entity such as a partnership. The excluded transfer would apply to the owner's equity interest or partnership interest in that entity.

Reason: We agree that the scope of family members in the current exemption for transfers within a family is too narrowly defined, and also agree that the current restriction that transfers of ownership and control of an institution within a family may only be excluded from the change of ownership regulations when made in connection with the death or retirement of the owner is overly restrictive. The proposed regulations would require that the transfer to an owner's family member be reported under § 600.21. The reporting of that transfer is required to keep our records up-to-date.

Definition of Academic Year—"12-Hour Rule" (Sections 668.2, 668.3, and 668.8)

Current Regulations: The definition of an academic year appears in § 668.2. Section 481(a)(2) of the HEA provides that an academic year, for Title IV, HEA student financial assistance purposes, must contain at least 30 weeks of instructional time. For undergraduate programs, the law requires that over the 30 weeks of instructional time a full-time undergraduate student must be expected to complete at least 24 semester or trimester hours, 36 quarter hours, or 900 clock hours. Section 481(b) of the HEA sets forth minimum lengths of time for certain eligible programs in terms of weeks of instructional time.

Section 668.2 currently defines a week of instructional time for educational programs that measure academic progress using credit hours and standard terms (semesters, trimesters, or quarters) or clock hours, as any week in which one day of regularly scheduled instruction, examination, or preparation for examination is offered—the one-day rule. For educational programs that measure academic progress using credit hours and are either nonterm or nonstandard term programs, the regulations define a week of instructional time as any week in which at least 12 hours of instruction, examination, or preparation for examination is offered. This regulatory requirement for programs using credit hours in non-standard terms or without terms is commonly referred to as "the 12-hour rule".

Eligible program requirements are codified in § 668.8 and include the same definitions of a week of instructional time as used in the academic year definition discussed above.

Suggested Change: A large number of institutions and groups, including the bipartisan Web-based Education Commission chartered by the Higher Education Amendments of 1998, suggested that the 12-hour rule be eliminated. Many suggested that the one-day rule be adopted as the definition of a week of instructional time for all types of educational programs, not just those measuring academic progress using standard terms or clock hours.

Proposed Regulation: These proposed regulations would eliminate the 12-hour rule for nonstandard and nonterm educational programs that measure progress in credit hours, and adopt a single regulatory standard for all types of educational programs.

Under the proposed regulation, the current definition that has applied for several years to credit hour, standard term programs would also apply to credit hour nonstandard term and credit hour nonterm programs. Under this longstanding definition, a week of instructional time is a week in which there is at least one day of regularly scheduled instruction or examinations, or after the last day of classes, at least one day of study in preparation for final examinations. Similar changes would be made to § 668.8—Eligible program.

Finally, the proposed regulation would move the definition of academic year from § 668.2, and place the revised definition in a new § 668.3.

Reason: Many institutions are now offering programs in shorter time periods which may also have overlapping terms and rolling starting dates. For many of the new nonstandard or nonterm educational programs, compliance with the 12-hour rule has become increasingly difficult and at odds with the educational advantages such flexible program formats provide for students, especially non-traditional students. The 12-hour rule also results in significant disparities in the amount of Title IV, HEA funding that students receive for the same amount of academic credit, based solely on whether the program that they are enrolled in uses standard academic terms or not.

We, and most of the negotiators, are concerned that a number of the statutory and regulatory provisions that govern the Title IV student assistance programs, including the 12-hour rule, are stifling innovation and creating inequities in the amount of Federal student financial assistance that students receive. During negotiated rulemaking, the proposal to eliminate the 12-hour rule was discussed at length. Nearly all of the negotiators were supportive of the elimination of the 12-hour rule and the adoption of the one-day rule as the definition of a week of instructional time for all types of educational programs.

One negotiator, while recognizing the need for change in this area, felt that we should wait until the reauthorization of the HEA and then address, in a more comprehensive manner, all issues related to providing student financial assistance to students enrolled in nontraditional educational programs. Every negotiator, including those who voiced opposition to the elimination of the 12-hour rule, agreed that the current rule was problematic, limited educational opportunities, and needed to be changed. However, those negotiators who voiced opposition did not propose any alternatives to the one-day rule.

While nearly all of the negotiators agreed with the proposal to replace the 12-hour rule with the one-day rule, the committee was unable to reach complete consensus on the proposal. However, we agree with the vast majority of the negotiators and the constituents whose interests they represent that the 12-hour rule is an unnecessary barrier to flexible and innovative educational programs, and that a week of instructional time should be defined in the same way for all educational programs. We have not experienced any problem with the one-day rule as it has been applied to standard term-based and clock hour programs and believe that it is the appropriate measure to adopt for all programs. In addition, we believe that the clock hour/credit hour conversion regulations (34 CFR 668.8(k) and (l)), provide adequate safeguards. Moreover, the proposed changes to the definition of payment periods provide additional assurance that Title IV program funds will be properly disbursed.

Finally, we note that accrediting agencies are aware of these new educational program formats, and have taken steps to ensure the quality of education offered in these new formats.

Payment Periods (Sections 668.4, 682.603, 685.301, and 690.75)

Current Regulations: Current regulations provide a definition of a payment period for the Title IV student financial assistance programs. In general, the amount of a student's Title IV award and the frequency and timing of its disbursement are determined on a payment period basis (with special rules for disbursements of FFEL and Direct Loans). The regulations provide a separate payment period definition for each of the three types of academic programs: (a) Programs that measure progress in credit hours and have academic terms, (b) programs that measure progress in credit hours and do not have academic terms, and (c) programs that measure progress in clock hours.

In all three types of programs, the main point of having payment periods is to ensure that a student's award is paid in approximately equal increments over the course of the student's program of study, with those payments usually being made at least twice during an academic year. The current regulations do not specifically address how to determine the beginning and end of a payment period when a student who was paid for a payment period withdraws before completing that payment period and returns to the same institution or transfers to another institution. The ambiguity on how the regulations are to be applied in such instances may have resulted in an uneven application of the regulations for these students.

Suggested Change: With the proposed replacement of the 12-hour rule with the one-day rule for determining when an institution is considered to have provided a week of instructional time, we suggested that there should be additional disbursement safeguards for credit hour programs without terms.

Specifically, we suggested that the definition of a payment period for credit hour programs without terms require that, in addition to completing one-half of the academic coursework of the period (e.g., academic year, program, or remainder of the program), the student complete one-half of the required weeks of instruction in that period.

Additionally, for the past several years institutions that offer programs in clock hours and credit hours without terms requested that we clarify how to determine the beginning and end of a payment period when a student who was paid for a payment period withdraws before completing that payment period and returns to the same institution or transfers to another institution.

Proposed Regulations: The proposed regulations would amend the definition of a payment period in § 668.4(b) to require a student to complete the requisite number (usually half) of weeks in that academic year or program, in addition to the clock hours or credit hours.

The proposed regulations would also clarify the definition of a payment period to specifically address the situation when a student withdraws

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from a clock hour program or a credit hour nonterm program during a payment period, but then returns to school. The proposed regulations provide that, if the student returns to the same program at the same institution within 180 days of the original withdrawal, the student is considered to be in the same payment period he or she was in at the time of the withdrawal. Such a student would retain his or her original eligibility for that payment period. Once the student completes the payment period for which he or she had been paid, he or she becomes eligible for a subsequent Title IV student aid payment.

Additionally, under the proposed regulations, a student who withdraws from a program during a payment period and then returns to that program after 180 days, or transfers, within any time frame, into another program either at the same institution or at another institution would start new payment periods. The institution would calculate these new payment periods using the regular rules in the appropriate part of the definition of a payment period, except that it would consider the length of the program to be equal to the remainder of the program that the student has to complete upon return to the original program or transfer to another one. However, if the remainder of a student's program is one-half of an academic year or less, that remaining period would constitute one payment period.

Reason: We believe that an additional safeguard is needed to prevent institutions from structuring educational programs in such a way as to allow the second payment of Title IV aid for an academic year to be made before half of the academic year (as measured in weeks) actually occurs. This could happen, for example, if a 24 credit hour, nonterm program was offered over a 30 week period, but was structured so that the first 12 credits were earned in the first 10 weeks, with the remaining 12 credits being earned in the last 20 weeks. Under the current payment period definition, an institution would be able to pay a student the second half of a Pell Grant long before the half-way point of the academic year, which under the HEA must be a minimum of 30 weeks long.

Because of this concern, we are proposing to modify the payment period definition for credit hour programs without terms to require that a payment period cover half of the number of weeks of an academic year (or of a program), in addition to covering half the number of credits earned in that period. For example, in the situation discussed above if a student completes the first 12 credits in 10 weeks, the first payment period would not be considered to be completed and the second disbursement could not be made until 15 weeks of instructional time had elapsed in addition to the completion of 12 credit hours.

This addition of "half of the number of weeks" in the academic year (or in the program) to the payment period definition is not necessary for term-based, credit hour programs or for clock hour programs. Standard academic terms currently result in payment periods of relatively equal length. Likewise, in clock hour programs, the student's payment periods are based on the completion of actual hours of instruction completed by the student, and not on the scheduled hours offered in the program.

We have proposed two other changes to the definition of a payment period for clock hour programs and for credit hour programs without terms to address situations in which a student withdraws from a program before the completion of the payment period for which he or she was paid and then either returns to the same institution or transfers to another institution.

When a student withdraws from a program during a payment period and returns to the same program at the same institution within 180 days, the student is considered to be in the same payment period he or she was in at the time of the withdrawal. This proposed change is similar to a leave of absence, and the proposed regulation is consistent with the current regulations for students who are granted leaves of absence. The 180-day measure is consistent with the maximum 180 days allowed for an approved leave of absence in the Return of Title IV Aid regulations. The difference, of course, is that with an unauthorized leave of absence the institution would not know that the student would be returning and would have treated the student as a withdrawal. Based upon that withdrawal, the institution would have completed the Return of Title IV Aid calculation, which may have required it and the student to return funds to the Title IV programs. If the student returns within 180 days to his or her original program, the student would have to complete the remaining clock or credit hours before starting a new payment period and receiving Title IV aid for that new payment period. However, the institution would re-disburse any funds that it had previously returned to the Title IV, HEA programs, including any overpayment it had collected from the student as a result of the earlier withdrawal.

If a student withdraws during a payment period and either returns to the same program at the same institution after 180 days, or transfers into another program, we believe that treating the student as if he or she was still in the same payment period would be cumbersome for institutions to administer and for students to understand. Therefore, we have proposed that for such a student the institution start a new series of payment periods.

We believe that it is reasonable to differentiate between situations in which, on the one hand, the student returns to the same program at the same institution within a short period of time (180 days), and, on the other hand, the student either returns to the same program after a longer period of time or transfers into another program (either at the same institution or at another). Because of the continuity in the student's attendance and similarity to a leave of absence in the first situation, we believe it appropriate, and administratively convenient to keep such a student in the same payment period upon his or her return to school. Conversely, because continuity is not present in situations in which a considerable time period (more that 180 days) has passed, or in which the student transfers into a new program, we believe it appropriate to start that student over in terms of the calculation of his or her payment periods.

Program Participation Agreement (Section 668.14)

Current Regulations: Section 668.14(b)(22) of the current regulations implements the statutory restrictions on incentive payments for success in securing enrollment or financial aid. Section 487(a)(20) of the HEA provides that, as part of its program participation agreement, an institution will not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid. The only significant addition to the statutory requirements in the current regulations is a provision that exempts from the incentive payment restrictions token gifts of less than $25.

Suggested Change: Many higher education institutions have made a number of recommendations regarding activities that should be specifically exempt from the current restrictions on incentive payments. These restrictions and our interpretation of the statutory requirements were identified by the Web-based Education Commission as a barrier to students enrolling in distance education and on-line courses.

Institutions and many others requested that the regulations be amended to explicitly identify certain types of payments and compensation plans that do not violate the current statutory restrictions. Another more specific suggestion from institutions and the Web-Based Education Commission was that the regulations should clearly permit an institution to contract with an outside entity that offers enrollment and information services through the World Wide Web and allow the institution to pay for those services based on the number of prospective students visiting the site who ultimately apply to, or enroll at, the institution. Such services are currently not considered to be a violation if they are done through an institution's own Web site.

Another suggestion was that the regulations clarify that the incentive payment restrictions do not extend to revenue-sharing agreements between institutions and third-party service providers as long as the third-party servicers have no decision-making authority for admissions decisions or financial aid awards.

Proposed Regulations: The proposed regulations begin, in § 668.14(b)(22)(i), by re-stating the statutory prohibition against incentive payments.

Paragraph (b)(22)(ii) of the proposed regulations lists 12 types of activities and payment arrangements that an institution may carry out without violating the incentive payment restrictions provision. We believe that these "safe harbors" will allow institutions to maintain payment and compensation plans that are in compliance with the HEA and the regulations.

The list of "safe harbor" activities is derived from compensation and payment plans that the majority of the negotiators agreed should be included. They provide institutions with specific, concrete examples of payments they can make that do not violate the statutory provision. We have not, however, included in the regulations a complementary listing of payment or compensation plans that are impermissible.

The specific types of payments or compensation plans included in the listing in paragraph (b)(22)(ii) cover the following subjects, which are further discussed below:

- Adjustments to employee compensation
- Enrollments in programs that are not eligible for Title IV, HEA assistance
- Contracts with employers
- Profit-sharing or bonus payments
- Compensation based upon completion of program
- Pre-enrollment activities
- Managerial and supervisory employees
- Token gifts
- Profit distributions
- Internet-based activities
- Payments to third parties for non-recruitment activities
- Payments to third parties for recruitment activities

Reason: As indicated above, section 487(a)(20) of the HEA prohibits an institution that participates in programs authorized under Title IV of the HEA from providing any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid. This provision was enacted as part of the Higher Education Amendments of 1992. While the statutory language noting "directly or indirectly" is broad, the conference committee report on the legislation included the following statement to clarify the legislative intent and limits of these restrictions:

"The conferees wish to clarify, however, that the use of the term 'indirectly' does not imply that institutions cannot base employee salaries on merit. It does imply that such compensation cannot solely be a function of the number of students recruited, admitted, enrolled, or awarded financial aid."

Consistent with this clarification of legislative intent, the proposed regulations are based on a purposive reading of section 487(a)(20) of the HEA.

The list of specifically permitted activities provides a reasonable and workable framework that institutions can use to determine if a payment is a violation of the incentive payment restrictions. Most non-Federal negotiators were supportive of this type of regulatory structure.

What follows is a brief discussion of each of the payment types included in the proposed regulations.

A. Adjustments to Employee Compensation

The inclusion of compensation adjustments under this provision of the proposed regulations recognizes the balance between the need of an institution to base its employees' salaries or wages on merit, and concern that such adjustments do not make the statutory prohibition against the payment of commissions, bonuses and other incentive payments meaningless.

During the deliberations some of the non-Federal negotiators stated that institutions commonly adjust a new employee's salary after a probationary period and then again after the employee completes the first year. In light of this common business practice and using the conference report language as a guide, we believe, as did a majority of the negotiators, that two salary adjustments within a twelve month period is the appropriate balance. As a result, the proposed regulations provide that an institution that makes up to two adjustments (upward or downward) to a covered employee's (one who is involved in recruitment, admissions, enrollment, or financial aid activities) annual salary or fixed hourly wage rate within any twelve month period is not in violation of the restrictions on incentive payments. However, consistent with the conference language the basis for any adjustment may not be solely the number of students recruited, admitted, enrolled, or awarded financial aid.

The proposed regulations also provide that one upward adjustment resulting from a cost of living increase within a twelve month period that is paid to all or substantially all of the institution's employees will not be considered an "adjustment" for the purpose of this regulation.

We believe the proposed regulations for compensation adjustments address the concern that such adjustments are not formulated in a way that circumvents the statutory prohibition against incentive payments.

B. Enrollments in Programs That Are Not Eligible for Title IV, HEA Assistance

The program participation agreement established under section 487 of the HEA applies only to programs eligible for Title IV HEA program assistance. Therefore, the proposed regulations do not consider payments to recruiters and others based upon the enrollment of students in programs that are not eligible for Title IV funding to be a violation of the incentive payment restrictions.

C. Contracts With Employers

Many institutions suggested that the development of contractual agreements for training or instruction between an institution and an employer is another area where the incentive payment restrictions should not be applied. They argued that the restrictions on incentive payments should not apply in situations where an individual is paid for successfully obtaining a contract for the institution to provide education and training to a business's employees. We agree that as long as there is no direct contact by the institution's representative with students and because the employer is paying a

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significant portion (at least 50 percent) of the training costs, such activities are not considered to be "recruitment" or the "securing of enrollments" under the provisions of section 487(a)(20) of the HEA. Therefore, the proposed regulations provide that incentive payments may be paid to individuals for arranging contracts under which the institution provides education and training to employees provided that the employer pays 50 percent or more of the tuition and fees charged for the training and the payments provided to the individual are not based upon either the number of employees who enroll or on the amount of revenue generated by those employees. The employer may pay the tuition and fees either directly to the institution or by reimbursement to the employee. The institution's representative may not have any contact with the employees.

During the discussion on this issue in the negotiated rulemaking committee much attention was given to how much, if any, of the institutional charges should be paid by the employer for the institution not be in violation of the incentive payment restrictions. Some negotiators suggested that the amount or percentage paid by the employer was irrelevant. Others thought that the payment by the employer of a significant portion of the costs of the training was critical in determining whether the program was a contract training program with the employer rather than simply enrollment of individual employees. They also argued that to the extent the employer pays a significant share of the tuition and fees of the employees' education and training, there would be less likelihood that unqualified students would be enrolled.

D. Profit-Sharing or Bonus Payments

Generally, profit-sharing and bonus payments are not payments based on success in securing enrollments or awarding financial aid unless they are made only to employees who are involved in recruitment, admissions, enrollment, or financial aid. Therefore, the proposed regulations provide that such payments made by an institution are not prohibited as long as those payments are made to all or substantially all of the institution's full-time professional and administrative employees and are substantially the same amount or are based upon the same percentage of salary. During the discussion on this issue several negotiators asked that such payments also be in compliance even if they were not made to all of an institution's employees but to only those at the same organizational level. We agreed with this proposal after restating that such an organizational level could not consist predominantly of recruiters, admissions staff, or financial aid staff.

E. Compensation Based Upon Completion of Program

Completion of an academic program is not "enrollment" under the provisions of section 487(a)(20) of the HEA. We believe that one of the reasons for the prohibition against incentive payments for success in recruitment, admissions, enrollment, or securing financial aid, is to prevent institutions from enrolling students into a program without regard to their qualifications or likelihood of completing the program. Most of the negotiators believed that the completion of the program or, in the case of students enrolled in a program longer than one academic year, the completion of the first academic year is a reliable indicator that the student was qualified for the program. Therefore, the proposed regulations allow payments made to an institution's employees based upon students' successful completion of their educational program, or one academic year for a longer program, not to be a violation of the incentive payment restrictions.

F. Pre-Enrollment Activities

Generally, pre-enrollment activities are not considered recruitment. The proposed regulations recognize the ancillary nature of various supportive activities that, while part of the overall recruitment or financial aid process, are somewhat removed from the actual recruitment and admissions of students or the awarding of financial aid. Therefore, individuals whose responsibilities are limited to "pre-enrollment" activities that are clerical in nature are outside the scope of the incentive payment restrictions. It is not a violation of the incentive payment restrictions for employees engaged in pre-enrollment activities to be compensated based upon such pre-enrollment activities as long as the number of people who actually enroll is not a factor in determining the compensation. However, soliciting students for interviews is recruitment and not a pre-enrollment activity.

G. Managerial and Supervisory Employees

We believe the incentive payment restrictions apply only to those individuals who perform activities related to recruitment, admissions, enrollment, or the financial aid awarding process and their immediate supervisors. We believe that direct supervisors should be covered because their actions generally have a direct, immediate, and dramatic impact on the individuals who carry out these covered activities. The incentive payment restrictions do not extend to supervisors who do not directly manage or supervise employees who are directly involved in those activities. They also do not apply when an employee, manager or otherwise, occasionally has direct contact with a prospective student. For example, there would be no problem if the president of an institution, who was compensated at least partially on the profitability of the institution, happened, on a very occasional basis, to offer a tour of the institution to a prospective student.

H. Token Gifts

The negotiators indicated support for an increase of the current $25 limit that is allowable for a single gift to a student or an alumnus of the institution. We realize that the cost of a token gift has risen since the inception of the current regulation and therefore propose to increase the maximum cost of a token, non-cash gift that may be provided to an alumnus or student to not more than $100. Moreover, the proposed regulations would also expand the limitation of a single gift provided to a student or alumnus by the institution, to not more than one gift annually.

The cost basis of a token non-cash gift is what the institution paid for it. The value is the fair market value of the item. Some of the negotiators wanted to use "value" rather than "cost" because they were concerned that an outside source would donate something of great value to an institution, and the institution would give it to a student or alumnus as an incentive to recruit students. One negotiator argued that if a car were donated to the institution, the cost to the institution would be zero, and therefore permitted to be a token gift under the proposed regulations. In addition to pointing out the unlikelihood of that scenario, we noted that the proposed (and current) regulations specifically use the term "token gift" and anything of great value, such as a car, would certainly not be considered "token" as that term is reasonably understood to mean.

I. Profit Distributions

Profit distributions to owners are not payments based on success in securing enrollments or awarding financial aid. Therefore, the proposed regulations specifically acknowledge that any owner, whether an employee or not, is entitled to a share of the organization's profits. However, any profit distributions under this paragraph are permitted only to the extent they represent a proportionate distribution based upon the employee's ownership interest.

J. Internet-Based Activities

Institutions have indicated their need to utilize and expand the most accessible and cost-effective means possible for recruitment and admission activities. The report of the Web-based Education Commission found that, "Although not the original intent, the language [of the incentive payment restriction] effectively bars higher education institutions that participate in Title IV from using third-party Web portals to provide prospective students with access to information about many institutions or provide the same services as institutions offer on their own Web sites * * *". The Commission suggested that the regulations permit an institution to contract, without violating the incentive payment restrictions, with an outside entity that offers services through the World Wide Web.

Moreover, we believe that for purposes of these regulations, the Internet is simply a communications medium, much like the U.S. mail, and direct mail solicitations and advertisements have generally not been considered within the scope of the incentive payment restrictions. Therefore, the proposed regulations do not preclude an institution from compensating a service provider for Internet-based recruitment and admission services.

K. Payments to Third Parties for Non-Recruitment Activities

Section 487(a)(20) applies only to recruiting, admissions, enrollment, or financial aid. Therefore, these proposed regulations would not consider payments to third parties for services to the institution other than recruiting, admissions, enrollment, or financial aid services, to be in violation of the incentive payment restrictions. Under such arrangements, the third party might provide services such as instruction, curricula, and course materials. This provision would clearly establish that payments to third parties, including tuition sharing arrangements, that are not for recruitment, admissions, enrollment, or financial aid services, would not be in violation of the incentive payment restrictions.

L. Payments to Third Parties for Recruitment Activities

Section 487(a)(20) applies both to individuals who work for the institution and to entities outside the institution. We believe that Congress included these outside entities because it did not want an institution to avoid the limitations in that section merely by using an outside entity. On the other hand, we believe that Congress did not intend to limit an institution's ability to contract with outside entities for recruitment, admissions, enrollment, or financial aid services if the outside entity adheres to the same limitations that apply to institutions. Payments made by an institution to a third party would not violate the incentive payment restrictions as long as the individuals performing any activities related to recruitment, admissions, enrollment, or financial aid were compensated in a way that would otherwise be permissible under the standards in this section for covered employees of the institution.

At the conclusion of the discussion on the issue of incentive payment restrictions, all the negotiators agreed that clarification was needed in the area of the incentive payment restrictions and that the issuance of specific guidance in the regulations was preferable to our earlier use of private letter guidance in response to individual inquiries. However, because universal agreement could not be reached on some of the specific proposals presented, the committee was not able to reach consensus on the proposed regulatory language related to the incentive payment restrictions.

Institutions Required to Take Attendance (Section 668.22)

Current Regulations: Section 668.22(b)(3) defines, for purposes of the Return of Title IV Aid calculations, an institution that is "required to take attendance" as one that is required to take attendance by an entity outside of the institution, such as the institution's accrediting agency or a State agency.

Suggested Change: Some institutions and the non-Federal negotiators suggested that we provide greater specificity in the definition of when an institution is considered to be one that is required to take attendance. In particular, they wanted the regulations to clearly state that an institution is one that is "required to take attendance" only if the outside entity has determined that it requires the institution to take attendance.

Proposed Regulations: Under the proposed regulations in § 668.22(b)(3)(i), for the purposes of determining the withdrawal date of a student, an institution would be considered to be one that is "required to take attendance" only when an outside entity determines that it requires that the institution take attendance for some or all of its students. Absent a determination by an outside entity that the institution is required to take attendance, the institution would be considered to be one that is not required to take attendance.

Reason: Several of the negotiators expressed concern with our current interpretation of the definition of an institution that is required to take attendance. We have previously stated that if we determine that the only way that an institution can comply with a requirement of an outside entity is to take attendance, the institution is considered to be "required to take attendance" even if the outside entity states that it does not require the institution to take attendance (Dear Colleague Letter GEN–00–24).

Several of the negotiators felt that we should defer to the outside entity to determine when requirements of that entity mean that an institution is required to take attendance. The negotiators believed that the outside entity was in the better position to make that determination, not the Department.

The committee agreed to modify the regulations to make clear that an institution is considered to be "required to take attendance" only when an outside entity has determined that the institution must, even for a limited period of time, take attendance for some or all of its students.

Institutions should note that we have not changed the existing regulatory requirement in § 668.22(b)(3)(ii), which provides that if an outside entity specifically requires an institution to take attendance for only a portion of its students, the institution is required to use the attendance records for those students only. The institution would not be required to take attendance for any of its other students unless it is required to take attendance for those students by another entity.

If an outside entity has a requirement, as determined by that entity, for the institution to consistently take attendance for a limited period of time (e.g., up to a census date), the institution meets the definition of an institution required to take attendance for that limited period of time only. If a student ceased enrollment during that limited period, the institution must use its attendance records to determine the student's withdrawal date. However, if an outside entity has a requirement, as determined by the entity, to take attendance for a single day such as attendance for census purposes, that single event would not cause the institution to meet the definition of an

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institution that is required to take attendance.

Also, as we have previously indicated, when an institution administratively withdraws a student from all of his or her classes the student is considered to have officially withdrawn as of the date of that administrative withdrawal. This guidance applies regardless of whether or not the institution is required to take attendance.

Consistent with that guidance, when, through a census on a certain date or similar process, all of a student's instructors indicate that the student is no longer in attendance, the student is considered to have officially withdrawn as of the census date.

Leaves of Absence (Section 668.22)

Current Regulations: Section 668.22(d)(1)(vi) of the Return of Title IV Aid regulations provides that generally, only one leave of absence that meets certain requirements and does not exceed 180 days in a 12-month period may be granted to a student. However, additional leaves of absence may be granted under exceptions provided in § 668.22(d)(2). One of those exceptions allows an institution to grant an additional leave of absence if the subsequent leave of absence does not exceed 30 days and it is due to unforeseen circumstances. Additionally, other leaves of absence may be granted if the institution documents that the leaves are for jury duty, military reasons, or circumstances covered under the Family and Medical Leave Act of 1993.

Current regulations also provide that a leave of absence for Return of Title IV Aid purposes must have been granted by the institution under its formal leave of absence policy. An institution's leave of absence policy is a formal policy if it is in writing and publicized to students, and it requires students to provide a written request for a leave of absence.

Suggested Change: Some institutions and the non-Federal negotiators recommended that the protection provided by the 180-day maximum timeframe within a 12-month period for an approved leave of absence is sufficient to prevent abuse and that tracking the reasons for requests for subsequent leaves and evaluating them against certain limited exceptions is administratively burdensome. They stated that institutions should have broad flexibility to make the best determination for each student based upon his or her unique needs and situation rather than being limited by the number and type of leaves of absence that they can approve.

Proposed Regulations: The proposed regulations would simplify the approved leave of absence definition by allowing multiple leaves of absence at the discretion of the institution, as long as the total number of days for all leaves does not exceed 180 days within a 12-month period. As a result, we propose to remove the current language that describes the exceptions to the single leave of absence rule.

The requirement that an institution's leave of absence policy require a student to submit a written request would be modified to require that the request must include a reason.

Reason: Some of the non-Federal negotiators indicated that the range of reasons that cause students to need multiple leaves of absence can be outside the scope of the current regulations, but nonetheless important for the students and their families. Also, the restriction in the current regulations that the first subsequent leave of absence, although it may be granted for any unforeseen circumstance, be limited to no more than 30 days, is arbitrary in practice and results in unfair treatment, while not providing any additional protection for either the student or the programs. For example, if a student had taken a leave of absence for 61 days and subsequently needed an additional leave of absence of 31 days for unforeseen circumstances, under the current regulations the second leave could not be an approved leave of absence. The total of 92 days for leaves of absence is significantly less than the maximum of 180 days allowable, but because the second leave of absence for unforeseen circumstances is for more than 30 days, it cannot meet the current definition in § 668.22(d)(2)(i).

We agree that if there is a reasonable expectation that a student will return from a leave of absence, it is better to keep the student enrolled than to have the student withdraw.

The current regulations already provide that an institution must determine, before it grants a leave of absence, that there is a reasonable expectation that the student will return from the leave. In order for the institution to make such a determination, it must know the student's reason for requesting the leave. For this reason, the proposed language would require the institution's formal leave of absence policy to include the requirement that the student provide the reason for the requested leave of absence.

We have been asked to clarify the requirements that an institution must comply with when students return from a leave of absence but, instead of resuming their academic program at the point they began the leave of absence, they repeat prior coursework in preparation for continuing in the original program of study.

One element of an approved leave of absence is that the institution may not impose additional charges when the approved leave of absence ends and the student resumes his or her program of study. The same requirement holds when a student returns for the purpose of repeating prior coursework to enhance his or her skills and knowledge in order to resume the program. That is, a student may return and repeat prior coursework as long as the student does not incur additional institutional charges. As a result, the student would also not be eligible for any additional Title IV program assistance for this preparatory phase, even if the student were to start again at the beginning of the module or course from which he or she took the leave of absence.

Until a student described above has resumed the academic program at the point he or she began the leave of absence, the student is considered to still be on the approved leave of absence, including during the time the prior coursework is being repeated. Since such a student is considered to be on a leave of absence while repeating prior coursework, if the student fails to begin attendance at the point in the academic program where he or she left off at the beginning of the leave of absence, the regulatory requirement that a student who fails to return from an approved leave of absence must be treated as a withdrawal back to the start of the leave of absence applies. The date of the student's withdrawal that must be used in the Return of Title IV Aid calculation is the date that he or she began the leave of absence and not the date the student ceased participation in the repeated courses.

Overpayments (Sections 668.35, 673.5, and 690.79)

Current Regulations: Section 668.35(c) provides that a student who receives a Federal Perkins loan or Title IV grant overpayment of any amount is eligible to receive further Title IV aid only if the student repays the overpayment in full or makes arrangements, satisfactory to the holder of the debt, to repay the overpayment.

Sections 673.5(f) and 690.79 establish student and institutional liability for Perkins loan, FSEOG, and Federal Pell Grant overpayments and specify the repayment and collection of such, as well as the conditions for the referral of

FSEOG and Pell Grant overpayments to the Secretary.

For all three programs, the regulations provide that the student is liable for any overpayment made to the student regardless of the amount. They also provide that the institution is liable for any overpayment that was the result of its failure to comply with the appropriate regulatory requirements. In addition, the regulations provide that, for any overpayment for which it is not liable, the institution must assist the Secretary in recovering that overpayment.

For Perkins and FSEOG overpayments only, the regulations also provide that the institution must promptly send the student a written notice requesting repayment of the overpayment. In contrast, however, the regulations for the Pell Grant program require the institution to make a reasonable effort to contact the student and recover the overpayment.

Also, the Perkins and FSEOG regulations require the institution to consider any objection made by the student that the overpayment determination is erroneous and to determine whether the objection is warranted. The Pell Grant regulations do not specify this step.

For the Perkins program, the institution is responsible for attempting to collect any overpayment and cannot refer the overpayment to the Secretary. Any amount collected must be returned to the institution's Federal Perkins Loan fund. If an FSEOG overpayment is not resolved, the institution must refer it to the Secretary if it is $25 or more. An unresolved Pell Grant overpayment must also be referred to the Secretary, but the regulations are silent on a minimum amount.

Suggested Change: At various conferences and meetings, institutions have suggested that the regulations on the treatment of overpayments be applied consistently to all of the Title IV programs. Further, they suggested that the treatment of overpayments incorporate the de minimis amount concept that currently applies to a grant overpayment under the Return of Title IV Aid requirements. That is, they suggested that a student not lose eligibility for Title IV funds nor be required to repay an overpayment if the original overpayment amount is less than $25. This request was repeated by some of the non-Federal negotiators.

Proposed Regulations: The proposed regulations would revise § 668.35(c) to allow a student to remain eligible to receive additional Title IV aid if the amount of the Perkins Loan or Title IV grant overpayment is less than $25 and is neither a remaining balance nor a result of applying the overaward threshold for the campus-based programs allowed under § 673.5(d).

The proposed regulations would revise §§ 673.5(f) and 690.79 to specify that a student is not liable for a Perkins loan, FSEOG, or Pell Grant overpayment that is less than $25 and is not a remaining balance and, for a Perkins loan or FSEOG overpayment, is not the result of applying the $300 campus-based overaward threshold. The proposed regulations also would specify, for all three programs, that a student is not liable for an overpayment if the institution is liable for it.

The proposed regulations would provide that for purposes of FSEOG overpayments, the provisions apply only to the Federal share of FSEOG awards if the institution meets its matching share by the individual recipient method or the aggregate method. When an FSEOG award is matched under the fund specific method, the entire amount of the award would be subject to the provisions of § 673.5(f).

The proposed regulations would make the collection and referral requirements for a Pell Grant overpayment consistent with current requirements for FSEOG overpayments. They would specify that when attempting to collect a Federal Pell Grant overpayment, the institution must provide written notice of the overpayment to the student, and if a student objects to an overpayment determination on the grounds that it is erroneous, the institution must determine whether the objection is warranted.

For student overpayments that meet the conditions of the proposed de minimis standard, an institution would not be required to attempt recovery of the overpayment, report it to NSLDS, or refer it to the Secretary.

Reason: Institutions have questioned the complexity created by making students ineligible for further Title IV funding due to small overpayments and the cost effectiveness of collecting such small amounts. They thought that the current grant overpayment policies under the Return of Title IV Aid requirements allowed more flexibility and should be adopted for other types of overpayments. They further noted an inconsistency in the treatment of different types of overpayments. The negotiators agreed with the reasons provided by the institutions. The regulatory changes of applying a $25 de minimis standard to other overpayments are proposed for consistency, simplicity, and cost effectiveness.

It is important to note that for all programs the de minimis $25 amount must not be the result of a remaining balance. A remaining balance less than $25 occurs when the overpayment amount for which the student was responsible was originally $25 or more, but is now less than $25 because of payments made. In such cases, even though the balance of the overpayment now owed is less than $25, the de minimis standard would not apply, and the student would still be responsible for fully repaying that remaining balance. The student would also not be eligible for additional Title IV aid until the overpayment is fully paid or satisfactory arrangements to repay are made.

Federal Perkins Loan and FSEOG overpayments that result from the application of the $300 campus-based overaward threshold also would not be subject to the de minimis standard. For example, if an institution discovers that a student with campus-based funds subsequently received additional sources of aid such that the student is now overawarded by $314, the student would have a campus-based overpayment of $14 after the $300 overaward threshold is applied. In this instance, the student would still be responsible for the $14 overpayment and would not be eligible for additional Title IV student aid until the overpayment is resolved.

In order to provide consistent treatment among the programs, the proposed change to the Pell Grant regulations would provide that an institution must promptly send a written notice to the student requesting repayment of an overpayment. (Note that unless specifically indicated otherwise, any written notice requirement can be delivered by electronic means, as well as via paper methods.)

To provide students with the opportunity to object to any overpayment determination that they believe is in error, we are proposing the same requirement for the Pell Grant program that currently exists for the Perkins and FSEOG programs. That is, institutions would be required to allow students to object to a Pell Grant overpayment determination on the grounds that it is erroneous. The institution would be required to consider any information provided by the student and determine whether the objection is warranted.

The proposed regulations would not modify the responsibilities of an institution when it is liable for an overpayment. If the institution is liable for an overpayment of any amount, it

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must immediately return the amount of the overpayment to the appropriate Title IV student aid account or otherwise return the funds to the Secretary as appropriate. These regulations would not prevent an institution from billing or otherwise holding the student responsible for the amount of the overpayment that the institution returned. However, such a debt is, by definition, not a Title IV debt and cannot be considered as such.

Further, these proposed regulations would not change the current rule that an institution is not required to refer to the Secretary a Federal Perkins loan overpayment, because all payments must be returned to the institution's revolving loan fund.

Finally, the proposed regulations would not change the fact that under the Return of Title IV Aid calculations in § 668.22, Federal Perkins loans are not treated as an overpayment. Rather, unearned Federal Perkins funds for which the student is responsible are repaid according to the terms of the loan.

Expiration of Ability to Benefit Tests (Sections 668.32 and 668.151)

Current Regulations: As provided in § 668.32(e), an otherwise eligible student who does not have a high school diploma or its recognized equivalent and who does not meet the home-schooled standards of the regulation is eligible to receive Title IV, HEA program assistance only if the student has obtained a passing score, as specified by the Secretary, on an approved ability-to-benefit (ATB) test within 12 months before the date the student initially receives Title IV program assistance.

Section 668.151(a)(2) requires an institution to use the results of an approved test to determine a student's eligibility for Title IV assistance if the approved test was independently and properly administered.

Suggested Change: Institutions suggested that the 12-month limitation on the acceptability of an ATB test passing score was not necessary and should be removed from the regulations. They pointed out that one of the alternatives to a passing score on an approved ATB test is either a high school diploma or its equivalent, but neither the diploma nor its equivalent expires after a certain period of time.

During the negotiated rulemaking discussion on ATB testing, we suggested that the regulations should be modified to make it clear that an institution must obtain the results of an approved ATB test directly from either the test publisher or from the assessment center that administered the test.

Proposed Regulations: The proposed regulations would revise § 668.32(e) by eliminating the provision that limits the duration of a passing score on an approved ATB test to 12 months before a student initially receives Title IV, HEA program assistance.

The proposed regulations would make it clear that an institution must obtain the results of an approved ATB test directly from either the test publisher or the assessment center that administered the test.

Reason: We agreed with the non-Federal negotiators that an ATB test score should be valid for as long as the test publisher or the assessment center that administered the test is able to provide the institution with an official report of the original passing score. In other words, an institution may not accept as a valid passing test score a report it received from the student or from another institution (unless it came from a test assessment center at another institution in accordance with the regulations).

Late Disbursements (Section 668.164)

Current Regulations: Section 668.164(g) sets forth the conditions that must be satisfied before an institution may make a late disbursement to an otherwise eligible student (or the student's parent in the case of a PLUS loan) who has become ineligible either because the student is no longer enrolled at the institution or, for FFEL and Direct Loan purposes, is no longer enrolled on at least a half-time basis. One of the conditions is that the institution must have received a SAR or ISIR for the student before the student became ineligible. If all of the conditions are met, an institution has 90 days from the date the student became ineligible to make the late disbursement.

Suggested Change: Institutions suggested that the regulations be modified to reflect our private letter guidance that allows, under limited circumstances, a late disbursement to be made after the 90-day regulatory deadline. Under this guidance, a guaranty agency, or the Department for a Direct Loan, may permit an institution to make a late disbursement of the loan if the reason the disbursement was not made within 90 days was not the fault of the student.

They also suggested that we clarify the circumstances in which an institution must make a late disbursement and those in which it has the option to do so. In particular, the institutions pointed to the Return of Title IV Aid regulations under which an institution must make a late disbursement (referred to as a "post-withdrawal disbursement") and a provision of the late disbursement regulations under which an institution appears to have the choice of whether to make the late disbursement.

The third and fourth suggestions deal with the requirement that, as a condition for making a late disbursement an institution must have received a SAR or ISIR with an official EFC before the date a student became ineligible. The non-Federal negotiators suggested that this requirement should not apply to a late disbursement of a PLUS loan because the EFC is not needed by an institution to certify or originate the loan. Moreover, they believed that it was unfair that some students do not qualify for a late disbursement solely because institutions may not be aware (or cannot document) that they received an ISIR before the date the student became ineligible. To make it fair for all students, the non-Federal negotiators suggested that the date the SAR or ISIR was received by the institution be replaced by the date the Secretary processed a SAR or ISIR with an official EFC for the student.

Proposed Regulations: The proposed regulations would increase the timeframe within which an institution may make a late disbursement from 90 to 120 days. In addition, the proposed regulations would provide that, for those cases in which the student is not at fault, we may approve an institution's request to make a late disbursement after 120 days.

With respect to when an institution must make a late disbursement in cases in which a student withdraws and is eligible for a post-withdrawal disbursement, the proposed regulations incorporate directly, rather than by cross reference, the requirement that an institution must make or offer the disbursement, as appropriate. The proposed regulations would also require an institution to offer or make the late disbursement to the student (or the student's parent for a PLUS loan) for a student who completed the payment period or period of enrollment.

These proposed regulations would adopt the suggestions made by the non-Federal negotiators to eliminate the SAR/ISIR requirement for a late disbursement of a PLUS loan.

The proposed regulations would change the requirement that the institution must have received a SAR or ISIR before the student became ineligible to a requirement that a SAR or ISIR, with an official EFC, must have been processed by the Secretary before the student became ineligible.

Finally, the proposed regulations would eliminate the requirement, that in order for an institution to make a late disbursement of a Federal Pell Grant, it must have received a "valid" SAR or ISIR before the student became ineligible. Instead, a student's eligibility for a late Pell Grant disbursement would be based upon the rule that the Secretary must have processed a SAR/ISIR with an official EFC while the student was still eligible. Of course, the institution must receive the SAR or ISIR before the actual disbursement can be made.

Reason: We agree with the non-Federal negotiators that the Department's informal guidance allowing institutions to make late disbursements after the established timeframe in limited cases should be made part of the regulations. Doing so would inform all institutions and guaranty agencies (as opposed to only those that received private-letter guidance) that this procedure is available. However, the proposed regulations differ from the current regulations and guidance in two ways. First, we believe that increasing the timeframe from 90 to 120 days would benefit students and institutions by providing sufficient time, in most cases, for a late disbursement to be made without our approval and without regard to the reason for the late disbursement.

Second, for the limited cases in which it is not the fault of the student that a late disbursement was not made within the 120-day period, an institution would seek our approval (not that of the guaranty agency, as provided under current guidance) to make that disbursement. During the discussion on this point, the negotiators representing guaranty agencies, supported by others, suggested that, for FFEL loans, guaranty agencies continue to be allowed to approve a late disbursement based upon receiving information that the reason for the delay was not the fault of the student. For program integrity reasons, we believe it is more appropriate that we determine whether to approve a late disbursement after the established deadline. We offered assurances that, if this proposed rule is made final, we will implement an expedited process for approving late disbursement requests. While details have not been finalized, we expect that we will establish a single point of contact for requests for late disbursements beyond the proposed 120-day limit. An institution would make its request and provide sufficient information showing that the reason for the delay was not the fault of the student or parent.

It was noted during the discussion that there may be situations where, because of administrative constraints, a late disbursement may not be possible even if the request is made within the applicable timeframes. Examples of these constraints include the closing of an award year's disbursement processing for the Pell Grant and campus-based programs or the termination of an FFEL lender's processing for a year. During the negotiations, we were asked to consider what interventions we could take in our processing to minimize the instances in which a student who was otherwise eligible for a late disbursement could not receive the funds because of these administrative limitations. We will provide additional guidance on this issue at a later time.

In the discussions pertaining to late disbursements for students that withdraw from an institution, the non-Federal negotiators pointed to what they viewed as an apparent conflict in the regulations. Under the provisions of § 668.22, an institution may be required to make a late disbursement (post-withdrawal disbursement) to a student who withdraws during a payment period or period of enrollment. However, under the cash management provisions in § 668.164(g)(3)(i), an institution has the option of making a late disbursement to pay for educational costs that a student incurred for the period in which the student was enrolled and eligible. However, it would be contrary to the primary tenet in § 668.22—that a withdrawn student has earned Title IV loan or grant assistance equal to the percent of the payment period or period of enrollment the student completed—for an institution to deny that student a late disbursement. The current late disbursement regulations at § 668.164(g)(1)(ii) specifically require institutions to follow the provisions in § 668.22 for a student who withdraws from the institution. Although, we are not proposing any change to this requirement, we are proposing to redraft the requirement in order to eliminate any confusion regarding this issue.

Along the same lines, the proposed rule would require an institution to pay or offer a late disbursement to a student who completes the payment period or period of enrollment. Under the requirements of § 668.22, a student who completes more than 60 percent of the payment period or period of enrollment has earned 100 percent of his or her Title IV aid and the institution must make or offer, as appropriate, a post-withdrawal disbursement of any of those funds that were not received. A student who completes 100 percent of the payment period or period of enrollment has the same entitlement to all of his or her Title IV funds for the period. Under the proposed regulations, the institution would be permitted to credit the student's account to pay for current and allowable charges in accordance with the current cash management regulations. For example, an institution would have to provide notice to a student, or parent in the case of a PLUS loan, when the institution credits the student's account with Direct Loan, FFEL, or Federal Perkins Loan Program funds in order to give the student or parent an opportunity to cancel all or a portion of the loan disbursement.

The proposed change that allows a student to be considered for a late disbursement when the Secretary has processed a SAR/ISIR with an official EFC rather than when the institution receives the SAR or ISIR, provides the institution with an easy way to document the student's eligibility since each ISIR record includes the date that the Secretary processed the application and created the SAR/ISIR. More importantly, this proposed change would provide equity to students in the consideration of a late disbursement, since eligibility would be based upon the student's action in submitting an application (FAFSA) or correction to the Secretary and not on when an institution happens to draw its ISIRs from its electronic mailbox.

We agree with the reasons noted by the non-Federal negotiators for proposing changes to the regulations regarding the relevance of the institution receiving a SAR/ISIR for a PLUS loan, and the proposed regulations would not require the institution to rely upon a SAR/ISIR for determining if a parent is eligible for a late disbursement of a PLUS loan. However, we wish to make clear that in cases in which an institution does not have a SAR/ISIR, it may not certify or originate a PLUS loan until it documents that the student for whom the loan is intended meets all the applicable eligibility requirements described in § 668.32 (the student is not in default, does not owe an overpayment, is a citizen or eligible non-citizen, etc.).

Finally, while these proposed regulations would eliminate the requirement that for purposes of a Pell Grant an institution must have received a valid SAR or ISIR before the student withdrew, a valid SAR or ISIR would still be required before an institution could actually make the late disbursement of a Pell Grant.

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Notices and Authorizations (Section 668.165)

Current Regulations: Whenever an institution credits a student's account with Title IV, HEA loan funds, it must notify the student (or the student's parent in case of a PLUS loan) of his or her right to cancel all or part of the loan. The notice may be provided in writing or sent electronically. If it is sent electronically, the institution must confirm that the notice was received by the student or parent.

Suggested Change: Institutions suggested that the requirement that an institution confirm the receipt of a notice sent electronically be eliminated.

Proposed Regulations: The proposed regulations would adopt the suggested change.

Reason: We no longer believe this requirement is necessary in view of continuing advances in, and more widespread use of, technologies for conducting electronic transactions. Nevertheless, we expect institutions to take seriously the student's right to reconsider his or her loan obligation (the notice may be the student's last chance to cancel the loan) by taking steps that reasonably ensure that the student receives the notice.

Also, the proposed rule would eliminate the apparent distinction between providing the notice in writing or electronically. In keeping with prior guidance on this matter, we wish to emphasize there is generally no difference in the regulations between the terms "in writing" and "electronically." Unless a particular regulation requires otherwise, an institution may comply with a requirement that an activity be conducted "in writing" by conducting that activity electronically.

Timely Return of Funds (Sections 668.171 and 668.173)

Current Regulations: Under the provisions of Subpart L of the General Provisions regulations, one of the standards that an institution must satisfy to be financially responsible, as provided in Section 498(c)(6)(A) of the HEA, is that it must have sufficient cash reserves to make required refunds. An institution is considered to have sufficient cash reserves if it is a public institution or it is covered by a State's tuition recovery fund. Otherwise, we consider that an institution has sufficient cash reserves if, for its two most recently completed fiscal years, it makes required refunds in a timely manner, as required in § 668.22(j). On the other hand, an institution is not considered to have sufficient cash reserves if an audit or review finding shows that the institution did not make required refunds in a timely manner for 5 percent or more of the students sampled during the audit or review. In this case, an institution must demonstrate that it has sufficient cash reserves by submitting a letter of credit payable to the Secretary. [Note to readers: The financial responsibility regulations in Subpart L were not fully revised when the Department published the regulations under § 668.22 for returning Title IV, HEA program funds. The regulations for returning funds replaced the previous "refund" requirements. To avoid confusion over the terms used in the current regulations, from this point forward we will use the phrase "returning funds."]

Suggested Change: The non-Federal negotiators suggested that we clarify the timeframe that an institution has to return unearned Title IV funds that it is responsible for returning. The non-Federal negotiators pointed to § 668.22(j), which provides that an institution must return unearned Title IV, HEA program funds no later than 30 days after the date of the institution's determination that a student withdrew. However, the Department's audit guide is more specific, stating that if the funds are returned by check, the check used must clear the institution's bank within the 30-day period. The non-Federal negotiators believed it was unfair to hold an institution responsible for a check clearance process that is beyond its control. They suggested that we clarify that an institution has 30 days to issue a check. They felt this was important since, in the context of the financial responsibility regulations, any ambiguity in the rules could inadvertently result in an institution having to submit a letter of credit.

During the negotiated rulemaking sessions the non-Federal negotiators made several suggestions regarding the letter of credit requirement. They suggested that the regulations provide that an institution that would otherwise be required to submit a letter of credit not have to do so if the reason that funds were not returned in a timely manner was not the institution's fault or was beyond the institution's control.

They also noted that there may be cases where the initial determination that an institution exceeded the 5 percent threshold was in error. Therefore, they wanted the letter of credit to be required only after a preliminary finding, made during a Department or guaranty agency review, is verified or resolved, as noted in the final review report, rather than at an earlier point in the process such as when the draft report was issued. They pointed out that, as a practical matter, it is not worthwhile to require a letter of credit for a small amount of money. The non-Federal negotiators also suggested changes to the 5 percent threshold and the timeframes for submitting the letter of credit.

Finally, they asserted that an audit or review finding citing an institution for not returning funds in a timely manner may prompt an administrative or compliance arm of the institution to require a comprehensive review of, and changes to, its practices and procedures. The non-Federal negotiators believed that the comprehensive review should not be prompted unnecessarily in cases where the finding is for a de minimis number of untimely returns.

Proposed Regulations: Under the proposal, unearned funds must be returned no later than 30 days after the date of the institution's determination that the student withdrew. The proposed regulations would define specifically when we consider the institution to have returned funds depending upon the method it uses to return the funds. Specifically, the regulations would provide that an institution returns funds when it: (1) Deposits or transfers the funds into the bank account it maintains for Federal funds, (2) initiates an EFT to transfer the funds, (3) initiates an electronic transaction that instructs an FFEL lender to adjust a borrower's loan for the amount of the "returned funds", or (4) issues a check. However, if a check is used to return unearned funds, the proposed regulations would also require that the check must be received by an FFEL Program lender or the Secretary no later than 45 days after the institution determined the student withdrew.

In response to suggestions made during the negotiating sessions, these proposed regulations would make several other changes. First, in cases in which there are exceptional circumstances beyond an institution's control or when the institution believes that an auditor or reviewer made an error, the regulations would provide that the institution may request the Secretary to reconsider a finding that it failed to return unearned funds in a timely manner. In its request, the institution would need to submit documents showing that it would not have exceeded the 5 percent threshold had it not been for the exceptional circumstance or error. An institution that submits the request would not be required to submit a letter of credit unless the Secretary notifies the institution that its request is denied.

Second, the proposed regulations would establish timeframes for submitting a letter of credit depending on whether the finding triggering the letter of credit was made in a compliance audit, in a program review conducted by the Department or guaranty agency, or an audit conducted by the Department's Office of the Inspector General (OIG).

Third, the proposed regulations would provide that an institution would not be required to submit a letter of credit of less than $5,000. However, to meet the statutory reserve requirement, such an institution would need to demonstrate that it has available at all times cash reserves of at least $5,000 to make required returns.

Finally, in response to general concerns over the threshold requirement and the consequences of a finding that an institution did not return funds in a timely manner, we propose that the Secretary will consider an institution that makes one or two untimely returns to be in compliance with the reserve standard.

Reason: We agree that the regulations should clearly establish the date by which an institution is required to return unearned funds for which it is responsible. We also would like to stress that one of the reasons for the requirement that funds be returned promptly is so that the student's Title IV loan debt can be promptly and properly reduced.

The proposed provision that an institution initiates an electronic transaction for returning unearned funds (as opposed to initiating an electronic transfer of funds) is intended to accommodate the "hold and release" process used by some FFEL Program participants. Under this process, an institution and a lender agree that adjustments to FFEL Program loans, including the return of unearned funds, are made when the institution initiates an electronic transaction notifying the lender of the adjustment or return. The lender then makes the adjustment by crediting or otherwise adjusting the borrower's loan account for the amount returned.

Although we adopted most of the approach suggested by the non-Federal negotiators for returning unearned funds by check, we could not incorporate in the regulations their suggestion to separate the requirement that the check must be issued within 30 days from the requirement that it must be received by an FFEL Program lender or the Secretary within 45 days. Doing so would create a conflict in the regulations. For example, under one section of the regulations an institution would comply with the reserve standard by issuing the check within 30 days. However, in another section of the regulations the institution would not comply with the same reserve standard if the check was not received within 45 days. Consequently, the two-part criteria for determining whether an institution satisfies the reserve standard when it uses a check to return unearned funds are contained in one section of the regulations.

We also agreed that changes should be made to the current regulations to account for errors, or unusual circumstances beyond an institution's control, and to otherwise make more certain that an institution has exceeded the 5 percent threshold before it would be required to submit a letter of credit. In this regard, an institution would be required to submit a letter of credit no later than 30 days after the Department, OIG, or guaranty agency issues a preliminary report that the institution did not return unearned funds in a timely manner for 10 percent or more of the sampled students.

If the finding in the preliminary report is less than 10 percent, an institution would not generally be required to submit the letter of credit unless the final report shows that the institution did not return unearned funds in a timely manner for 5 percent or more of its students. If the letter of credit is required, the institution would have to submit it no later than 30 days after the final report is issued

Finally, if the Secretary believes it is necessary, the Secretary could at any time send a notice to the institution requesting the letter of credit.

Federal Work Study at For-Profit Institutions (Sections 675.2 and 675.21)

Current Regulations: The current FWS Program regulations reflect the limitations placed by the HEA on proprietary institutions with regard to the types of non-community service jobs that FWS students may hold when they are employed by the institution itself. The specific statutory restrictions are provided in section 443(b)(8)(A) of the HEA.

The HEA requires, among other things, that FWS jobs for students who are employed in non-community service jobs by a proprietary institution itself must furnish student services that are directly related to the FWS student's education. The HEA specifies that the definition of "student services" is to be determined by the Secretary according to regulations. "Student services" are defined in § 675.2(b) of the FWS Program regulations as "Services that are offered to students that are directly related to the work-study student's training or education and that may include, but are not limited to, financial aid, library, peer guidance counseling, and social, health, and tutorial services."

The statutory requirements for FWS jobs at a proprietary institution are reflected in § 675.21(b) of the regulations. Specifically § 675.21(b)(2) states that if the FWS jobs are not community service jobs they must be on campus, provide student services, complement the student's educational program or vocational goals to the maximum extent possible, and not involve soliciting potential students to enroll at the institution. Section 675.21(b)(2) provides a reference to the definition of "student services" in § 675.2 for the previously discussed requirement that the services must be directly related to the FWS student's education.

Suggested Change: Proprietary institutions have suggested at conferences, meetings, and in letters that the current FWS Program regulations in § 675.2(b) that define "student services" and our guidance on employment at these institutions be changed to expand employment opportunities for FWS students employed in non-community service jobs by the proprietary institution itself. The proprietary institutions especially urged us to allow FWS students to assist instructors in curriculum-related activities that are prohibited under current policies.

These institutions also suggested that we modify past guidance and state in the regulations that, in furnishing student services, FWS students are not required to provide direct or personal services. The proprietary institutions further suggested that we provide in the regulations examples of FWS jobs that would never be considered student services. In addition, these institutions suggested that the statutory requirement that the non-community service FWS jobs must furnish student services that are directly related to the student's training or education be removed from the definition of "student services" and be placed in the same section of the FWS Program regulations (§ 675.21(b)) in which the other requirements for employment at a proprietary institution are located.

Proposed Regulations: The proposed regulations would amend the definition of "student services" in § 675.2(b) first by, adding more examples of jobs in which a proprietary institution may employ students on campus to work for the institution itself. The examples that would be added to the definition of

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student services are job placement, assisting instructors in curriculum-related activities, and security. Second, the proposed changes to the definition of "student services" would modify past guidance and indicate that there is no expectation that the FWS job involve direct or personal services. Third, the proposed changes to the definition of "student services" would specify that some jobs, such as facility maintenance, cleaning, purchasing, and public relations, are never considered student services. Finally, the statutory requirement that the non-community service job must provide student services that are directly related to the FWS student's training or education would be removed from the definition of "student services" in § 675.2 and placed in § 675.21(b)(2) of the FWS regulations.

Reason: Many proprietary institutions informed us that the current definition of "student services" in the FWS Program regulations and our current guidance on that definition do not support or address the needs of the student population at most proprietary institutions that offer short-term training in a specific skill. A number of proprietary institutions have also expressed the concern that our current definition and guidance result in students being denied valuable on-the-job experience in their chosen fields of study. The proprietary institutions have asked for more flexibility in establishing FWS jobs on campus to enable students to find FWS work that fits into their academic schedules and to earn money to pay their educational costs. These institutions further stated that some of the types of jobs currently excluded actually do provide a service to students at proprietary institutions, although some jobs provide this more directly than others. The negotiators agreed with the reasons provided by the proprietary institutions.

We agree that many proprietary institutions can offer FWS jobs that provide essential services to students and that the regulations can provide greater flexibility in this area. Therefore, these proposed regulations would expand the definition of "student services" in § 675.2(b) of the FWS regulations to broaden the scope of FWS job opportunities for students who attend proprietary institutions. The negotiators welcomed the proposed expansion of the definition of student services and the proposed increase of FWS job opportunities for students attending proprietary institutions.

The proposed change would expand the definition of "student services" by adding further examples of acceptable work areas. The new examples are job placement, assisting instructors in curriculum-related activities, and security. For example, an FWS student would be able to work in a proprietary institution's placement office helping students find jobs. Under the proposed regulations, an FWS student would be able to assist an instructor in the lab or in other work related to the instructor's official academic duties at the institution and have such work considered a student service. Also, an FWS student would be able to perform security functions such as being a night watchman or being an institution security officer. These security roles have taken on increased importance and are now considered an essential student service for the protection of students and their property. The list of areas in which FWS employment is authorized is not meant to be exhaustive. However, we believe that they are excellent examples of employment that provide student services.

The proposed regulations would modify guidance issued in the past that stated that the FWS student had to provide direct and personal services to other students. A service would be considered a "student service" if the service provides a benefit either directly or indirectly to students. Proprietary institutions would be given more flexibility in establishing what types of jobs performed by FWS students at their institutions provide a direct or indirect benefit to other students. Further, the fact that a job has some operational functions does not preclude it from being an acceptable FWS job as long as it furnishes student services.

Work that does not serve students will still not be permissible. Thus, because facility maintenance, cleaning, purchasing, and public relations jobs primarily benefit the institution, the proposed changes would specify that such jobs are not considered student services under the FWS Program. There are, of course, other jobs that also would not be considered student services.

The proposed regulations would remove from the definition of "student services" in § 675.2(b) the requirement that the non-community service job provide student services that are directly related to the FWS student's training or education. This requirement would be made clearer by being moved to § 675.21(b), where the other requirements for employment at a proprietary institution are located. The negotiators agreed with this proposed regulation change for clarity of this requirement.

Even with the expanded opportunities for student services, proprietary institutions should note that the statute and the proposed regulations in § 675.21(b)(2) still require that student services must be directly related to the FWS student's education when the FWS student is employed in a non-community service job by the institution itself. For example, a job that involves working in job placement would be considered directly related to an FWS student's education or training for a student enrolled in the area of human resources, management, or business. In a second example, a job that involves assisting an instructor in academic-related activities of the program in which the student was enrolled would be considered as being directly related to an FWS student's education or training. In a final example, work in security, for an FWS student enrolled in the field of law enforcement or a related field, would also be considered directly related to the student's education.

Institutions are also reminded that the proposed regulations would not change other requirements of the regulations. Students who are employed by the proprietary institution itself may be employed in FWS non-community service jobs only when those jobs are on campus and when they complement and reinforce the education programs and vocational goals of the FWS student to the maximum extent practicable. Finally, work in the admissions or recruitment area of an institution would continue to be prohibited, as this employment is considered to involve soliciting potential students to enroll at the institution.

GEAR UP Program (Section 694.10)

Current Regulations: Section 694.10(e) of the regulations interprets sections 404E(c) and 404C(b)(1)(C) of the HEA to require that GEAR UP scholarship funds not supplant other gift aid that the student would otherwise have been eligible to receive. Specifically, § 694.10(e) requires that a student eligible for a GEAR UP scholarship be awarded financial aid in the following order: Federal Pell Grant; any other public or private grants, scholarships, or tuition discounts; the GEAR UP scholarship; and other financial assistance, such as loans or work-study. An exception to this required awarding order is allowed if the institution documents that there are exceptional circumstances related to the GEAR UP student's aid package that are unique to that GEAR UP student.

Suggested Change: Members of the institutional community suggested that the requirement that an institution award student financial assistance in an established order for GEAR UP scholarship recipients be eliminated.

Proposed Regulations: These proposed regulations would remove the requirement that an institution award student financial assistance in an established order for students who are eligible for a GEAR UP scholarship. The proposed regulations would only specify the statutory requirement in section 404E(c) of the HEA that GEAR UP scholarships not be considered in awarding Title IV grant assistance. As a result, under this proposal, an institution would treat GEAR UP scholarships as they relate to other gift aid (e.g., grants and scholarships) as the institution sees fit, except in the case of Title IV grant assistance, which must be awarded without regard to a student's eligibility for a GEAR UP scholarship.

The requirement of section 404(b)(1)(C) of the HEA, although no longer applicable to individual student aid packages, would continue to apply to States and Partnerships at the program level, meaning that States and Partnerships must include as a part of their participation plan an assurance that GEAR UP funds will supplement and not supplant other funds expended by the States and Partnerships for existing programs.

Section 694.10(c) of the regulations, which implements the portion of section 404E(c) of the HEA that provides that a GEAR UP scholarship, in combination with any Title IV assistance or other grant or scholarship assistance, may not exceed the student's cost of attendance, would remain unchanged.

Reason: Several negotiators expressed concern with the current requirement that an institution award aid to a student eligible for a GEAR UP scholarship in a particular order. These negotiators felt that it was highly inappropriate for the regulations to dictate a packaging policy for institutions. They maintained that institutions are in the best position to determine the financial aid package that will best meet the student's needs.

One negotiator expressed support for the current packaging requirement, noting that the intent in implementing it was to insure that a student who is eligible to receive a GEAR UP scholarship would benefit from as significant a reduction in his or her postsecondary expenses as intended by the statute. The negotiator was concerned that in the absence of the institutional packaging requirement, GEAR UP students might not get the full benefit of their GEAR UP grant. Several of the negotiators opposed to the current requirement argued that the opposite is true. They contended that because institutions are not in a position of ensuring a reduction in gift aid provided by outside entities, GEAR UP scholarship students would have to forego benefiting from additional sources of aid that are required to be used as "last dollar" assistance. In addition, those opposed to the current provision believed that because of the concerns that they cited, some institutions would choose not to participate in the GEAR UP scholarship program.

The committee reached tentative agreement to remove the institutional packaging requirements from the regulations. The committee believed that the goal of assuring a significant level of assistance to GEAR UP scholarship recipients could be achieved without mandating a Federal financial aid packaging order. The negotiator who had expressed concern with the removal of the packaging requirements stated a hope that if this change to the regulation is made, institutions would be eager to participate in the GEAR UP program.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The Secretary is amending these regulations to reduce administrative burden for program participants, provide benefits to students and borrowers, and to protect the taxpayers' interests. The proposed regulations are fully described elsewhere in this preamble. The Department of Education has estimated that the proposed regulations would have no effect on Federal costs over FY 2002–2006.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential Memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? A "section" is preceded by the symbol "§" and a numbered heading; for example, § 668.35 Student Debts under the HEA and to the U.S.
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect institutions of higher education, lenders, and guaranty agencies that participate in Title IV, HEA programs, and individual students and loan borrowers. The U.S. Small Business Administration (SBA) Size Standards define for-profit or nonprofit institutions with total annual revenue below $5,000,000 or institutions controlled by governmental entities with populations below 50,000, and lenders with total assets under $100 million, as "small entities." Guaranty agencies are State and private nonprofit entities that act as agents of the Federal government, and as such are not considered "small entities" under the Regulatory Flexibility Act. Individuals

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are also not defined as "small entities" under the Regulatory Flexibility Act.

A significant percentage of the over 4,000 lenders participating in the FFEL Program meets the definition of "small entities." While these lenders and a number of institutions fall within the SBA size guidelines, the proposed regulations do not impose significant new costs on these entities.

The Secretary invites comments from small institutions and lenders as to whether they believe the proposed changes would have a significant economic impact on them and if so, requests evidence to support that belief.

Paperwork Reduction Act of 1995

Proposed §§ 600.31, 668.22, 668.165, 668.173, and 673.5 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Institutional Eligibility under the Higher Education Act of 1965, as amended—

Section 600.31—Change in Ownership Resulting in a Change in Control for Private Nonprofit, Private For-Profit and Public Institutions

The proposed regulations expand the conditions under which a change in the ownership of an institution is not considered a change of ownership for institutional eligibility purposes when the transfer is to a family member. The proposed regulations also exclude a transfer of ownership upon the death or retirement of an owner to a member of management who has had an ownership interest during the preceding two years. We expect the decrease in burden to be insignificant because of the small number of institutions who annually report under this regulation and of that number the few instances where a change in ownership would meet the expanded exemption and therefore would not be required to file.

Student Assistance General Provisions—Section 668.22—Treatment of Title IV Funds When a Student Withdraws

The proposed regulations would clarify the definition of "an institution that is required to attendance". Also, under the proposed regulations, an institution would only be required to insure that the sum of all leaves of absence that a Title IV aid recipient takes does not exceed 180 days within a 12-month period (as opposed to the current rule where an institution must determine whether subsequent leaves of absence meet certain special terms). There would be no significant impact upon burden associated with this requirement.

Section 668.165—Notices and Authorizations

The proposed regulation would reduce burden under this section by eliminating the "confirm receipt" requirement for a notice sent electronically to a student or parent (the notice informs the student or parent of his or her right to cancel a loan or loan disbursement). The proposed changes do not change the burden hours associated with this section of the regulations because there is no burden currently associated with this provision.

Section 668.173—Refund Reserve Standard

The proposed regulations would provide greater flexibility to an institution that is cited in an audit or review report for failing to return unearned Title IV program funds in a timely manner. Under the current regulations, an institution that is cited for this reason must automatically submit a letter of credit to the Secretary. Under this proposal, the institution would be able to demonstrate that circumstances beyond its control inappropriately triggered the audit or review finding or that the finding was erroneously made. If the Secretary determines that the finding was inappropriately or erroneously made, the institution would not have to submit a letter of credit. The proposed regulations would also provide that the Secretary or guaranty agency may delay requiring a letter of credit from the institution until the final audit or review report is issued. In addition, the proposed regulations would not require the institution to submit the letter of credit if the amount of the letter of credit is less than $5,000.

The proposed regulations could marginally increase the burden on some institutions because while institutions that are cited may submit documentation showing that the finding was inappropriately or erroneously made, they would not be required to submit a letter of credit.

General Provisions for the Federal Perkins Loan, FWS, and FSEOG Programs—Section 673.5—Overaward

The proposed regulations would modify the process for referring overpayments by specifying that a student is not liable for certain overpayments less than $25. The proposed regulations would clarify and simplify the current process by providing that an institution only has to refer the Federal portion of certain FSEOG overpayments, and by making consistent the process for reporting overpayments for all the relevant programs. There are no new information collection requirements as a result of changing this section.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC, 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

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OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects

34 CFR Parts 600 and 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Parts 673 and 675

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Employment, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Parts 682 and 685

Administrative practice and procedure, College and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 690

Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 694

Colleges and universities, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: August 5, 2002.

Rod Paige,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 600, 668, 673, 675, 682, 685, 690, and 694 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 is revised to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

§ 600.8 [Amended]

2. Section 600.8 is amended by adding "proprietary institution of higher education or a postsecondary vocational" after "eligible".

3. Section 600.21 is amended by revising paragraph (f) to read as follows:

§ 600.21 Updating application information.

* * * * *

(f) *Definition.* A family member includes a person's—

(1) Parent or stepparent, sibling or step-sibling, spouse, child or stepchild, or grandchild or step-grandchild;

(2) Spouse's parent or stepparent, sibling or step-sibling, child or stepchild, or grandchild or step-grandchild;

(3) Child's spouse; and

(4) Sibling's spouse.

4. Section 600.31 is amended by revising paragraph (e) to read as follows:

§ 600.31 Change in ownership resulting in a change in control for private nonprofit, private for-profit and public institutions.

* * * * *

(e) *Excluded transactions.* A change in ownership and control reported under § 600.21 and otherwise subject to this section does not include a transfer of ownership and control of all or part of an owner's equity or partnership interest in an institution, the institution's parent corporation, or other legal entity that has signed the institution's Program Participation Agreement—

(1) From an owner to a "family member" of that owner as defined in § 600.21(f); or

(2) Upon the retirement or death of the owner, to a person with an ownership interest in the institution who has been involved in management of the institution for at least two years preceding the transfer and who established and retained the ownership interest for at least two years prior to the transfer.

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

5. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1091, 1091b, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

§ 668.2 [Amended]

6. Section 668.2(b) is amended by removing the definition of "Academic year".

7. Section 668.3 is revised to read as follows:

§ 668.3 Academic year.

(a) *General.* Except as provided in paragraph (c) of this section, an academic year is a period that begins on the first day of classes and ends on the last day of classes or examinations during which—

(1) An institution provides a minimum of 30 weeks of instructional time; and

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(2) For an undergraduate educational program, a full-time student is expected to complete at least—

(i) Twenty-four semester or trimester credit hours or 36 quarter credit hours for a program measured in credit hours; or

(ii) 900 clock hours for a program measured in clock hours.

(b) *Definitions.* For purposes of paragraph (a) of this section—

(1) A week is a consecutive seven-day period;

(2) A week of instructional time is any week in which at least one day of regularly scheduled instruction or examinations occurs or, after the last scheduled day of classes for a term or payment period, at least one day of study for final examinations occurs; and

(3) Instructional time does not include any vacation periods, homework, or periods of orientation or counseling.

(c) Reduction in the length of an academic year.

(1) Upon the written request of an institution, the Secretary may approve, for good cause, an academic year of between 26 and 29 weeks of instructional time for educational programs offered by the institution if the institution offers a two-year program leading to an associate degree or a four-year program leading to a baccalaureate degree.

(2) An institution's written request must—

(i) Identify each educational program for which the institution requests a reduction, and the requested number of weeks of instructional time for that program;

(ii) Demonstrate good cause for the requested reductions; and

(iii) Include any other information that the Secretary may require to determine whether to grant the request.

(3)(i) The Secretary approves the request of an eligible institution for a reduction in the length of its academic year if the institution has demonstrated good cause for granting the request and the institution's accrediting agency and State licensing agency have approved the request.

(ii) If the Secretary approves the request, the approval terminates when the institution's program participation agreement expires. The institution may request an extension of that approval as part of the recertification process.

(Approved by the Office of Management and Budget under control number 1840–0537)

(Authority: 20 U.S.C. 1088)

8. Section 668.4 is revised to read as follows:

§ 668.4 Payment period.

(a) *Payment periods for an eligible program that measures progress in credit hours and has academic terms.* For a student enrolled in an eligible program that is offered in terms and measures progress in credit hours, the payment period is the academic term.

(b) *Payment periods for an eligible program that measures progress in credit hours and does not have academic terms*—(1) For a student enrolled in an eligible program that is one academic year or less in length—

(i) The first payment period is the period of time in which the student completes half the number of credit hours in the program and half the number of weeks in the program; and

(ii) The second payment period is the period of time in which the student completes the program.

(2) For a student enrolled in an eligible program that is more than one academic year in length—

(i) For the first academic year and any subsequent full academic year—

(A) The first payment period is the period of time in which the student completes half the number of credit hours in the academic year and half the number of weeks in the academic year; and

(B) The second payment period is the period of time in which the student completes the academic year.

(ii) For any remaining portion of an eligible program that is more than one-half an academic year but less than a full academic year in length—

(A) The first payment period is the period of time in which the student completes half the number of credit hours in the remaining portion of the program and half the number of weeks remaining in the program; and

(B) The second payment period is the period of time in which the student completes the remainder of the program.

(iii) For any remaining portion of an eligible program that is not more than half an academic year, the payment period is the remainder of the program.

(3) For purposes of paragraphs (b)(1) and (b)(2) of this section, if an institution is unable to determine when a student has completed half of the credit hours in a program, academic year, or the remainder of a program; the student is considered to begin the second payment period of the program, academic year, or remainder of a program at the later of—

(i) When, as determined by the institution, the student has completed half of the academic coursework in the program, academic year, or the remainder of the program; or

(ii) The calendar midpoint between the first and last scheduled days of class of the program, academic year, or the remainder of the program.

(c) *Payment periods for an eligible program that measures progress in clock hours.* (1) For a student enrolled in an eligible program that is one academic year or less in length—

(i) The first payment period is the period of time in which the student completes half the number of clock hours in the program; and

(ii) The second payment period is the period of time in which the student completes the program.

(2) For a student enrolled in an eligible program that is more than one academic year in length—

(i) For the first academic year and any subsequent full academic year—

(A) The first payment period is the period of time in which the student completes half the number of clock hours in the academic year; and

(B) The second payment period is the period of time in which the student completes the remaining number of clock hours in the academic year.

(ii) For any remaining portion of an eligible program that is more than one-half an academic year but less than a full academic year in length—

(A) The first payment period is the period of time in which the student completes half the number of clock hours in the remaining portion of the program; and

(B) The second payment period is the period of time in which the student completes the remainder of the program.

(iii) For any remaining portion of an eligible program that is not more than one half of an academic year, the payment period is the remainder of the program.

(d) *Number of payment periods.* Notwithstanding paragraphs (b) and (c) of this section, an institution may choose to have more than two payment periods. If an institution so chooses, the regulations in paragraphs (b) and (c) of this section are modified to reflect the increased number of payment periods. For example, if an institution chooses to have three payment periods in an academic year in a program that measures progress in credit hours but does not have academic terms, each payment period must correspond to one-third of the academic year measured in both credit hours and weeks of instruction.

(e) *Re-entry within 180 days.* If a student withdraws from a program described in paragraph (b) or (c) of this section during a payment period and then reenters that program within 180 days, the student remains in that same payment period when he or she returns and, subject to conditions established by the Secretary or by the FFEL lender or guaranty agency, is eligible to receive any title IV student assistance funds for which he or she was eligible prior to withdrawal, including funds that were returned by the institution or student under the provisions of § 668.22.

(f) *Re-entry after 180 days or transfer.* (1) Subject to the conditions of paragraph (f)(2) of this section, an institution calculates new payment periods for the remainder of the student's program based on paragraphs (b) through (d) of this section, for a student who withdraws from a program described in paragraphs (b) or (c) of this section, and—

(i) Reenters that program after 180 days,

(ii) Transfers into another program at the same institution within any time period, or

(iii) Transfers into a program at another institution within any time period.

(2) For a student described in paragraph (f)(1) of this section—

(i) For the purpose of calculating payment periods only, the length of the program is the number of credit hours and the number of weeks, or the number of clock hours, that the student has remaining in the program he or she enters or reenters, and

(ii) If the remaining hours, and weeks, if applicable constitute one-half of an academic year or less, the remaining hours constitute one payment period.

(Authority: 20 U.S.C. *et seq.*)

9. Section 668.8 is amended by:

A. Revising paragraph (b)(3).

B. Removing paragraph (b)(4).

The revision reads as follows:

§ 668.8 Eligible program.

* * * * *

(b) * * *

(3)(i) The Secretary considers that an institution provides one week of instructional time in an academic program during any week the institution provides at least one day of regularly scheduled instruction or examinations, or, after the last scheduled day of classes for a term or a payment period, at least one day of study for final examinations.

(ii) Instructional time does not include any vacation periods, homework, or periods of orientation or counseling.

* * * * *

10. Section 668.14(b)(22) is revised to read as follows:

§ 668.14 Program participation agreement.

* * * * *

(b) * * *

(22)(i) It will not provide any commission, bonus, or other incentive payment based directly or indirectly upon success in securing enrollments or financial aid to any person or entity engaged in any student recruiting or admission activities or in making decisions regarding the awarding of title IV, HEA program funds, except that this limitation does not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive title IV, HEA program funds.

(ii) Activities and arrangements that an institution may carry out without violating the provisions of paragraph (b)(22)(i) of this section include, but are not limited to:

(A) The payment of fixed compensation, such as a fixed annual salary or a fixed hourly wage, as long as that compensation is not adjusted up or down more than twice during any twelve month period, and any adjustment is not based solely on the number of students recruited, admitted, enrolled, or awarded financial aid. For this purpose, an increase in fixed compensation resulting from a cost of living increase that is paid to all or substantially all employees is not considered an adjustment.

(B) Compensation to recruiters based upon their recruitment of students who enroll only in programs that are not eligible title IV, HEA programs.

(C) Compensation to recruiters who arrange contracts between the institution and an employer under which the employer's employees enroll in the institution, and the employer pays, directly or by reimbursement, 50 percent or more of the tuition and fees charged to its employees; provided that the compensation is not based upon the number of employees who enroll in the institution, or the revenue they generate, and the recruiters have no contact with the employees.

(D) Compensation paid as part of a profit-sharing or bonus plan, as long as those payments are made to all or substantially all of the institution's full-time professional and administrative staff. Such payments can be limited to all, or substantially all of the full-time employees at one or more organizational level at the institution, except that an organizational level may not consist predominantly of recruiters, admissions staff, or financial aid staff.

(E) Compensation that is based upon students successfully completing their educational programs, or one academic year of their educational programs, whichever is shorter. For this purpose, successful completion of an academic year means that the student has earned at least 24 semester or trimester credit hours or 36 quarter credit hours, or has successfully completed at least 900 clock hours of instruction.

(F) Compensation paid to employees who perform "pre-enrollment" activities, such as answering telephone calls, referring inquiries, or distributing institutional materials, as long as the compensation is not based on the number of people actually enrolled.

(G) Compensation to managerial or supervisory employees who do not directly manage or supervise employees who are directly involved in recruiting or admissions activities, or the awarding of title IV, HEA program funds.

(H) The awarding of token gifts to the institution's students or alumni, provided that the gifts are not in the form of money, no more than one gift is provided annually to an individual, and the cost of the gift is not more than $100.

(I) Profit distributions proportionately based upon an individual's ownership interest in the institution.

(J) Compensation paid for Internet-based recruitment and admission activities that provide information about the institution to prospective students, or permit them to apply for admission on-line.

(K) Payments to third parties, including tuition sharing arrangements, that deliver various services to the institution provided that none of the services involve recruiting or admission activities, or the awarding of title IV, HEA program funds.

(L) Payments to third parties, including tuition sharing arrangements, that deliver various services to the institution, even if one of the services involve recruiting or admission activities or the awarding of title IV, HEA program funds, provided that the individuals performing the recruitment or admission activities, or the awarding of title IV, HEA program funds, are not compensated in a manner that would be impermissible under paragraph (b)(22) of this section.

* * * * *

11. Section 668.22 is amended by:

A. Revising paragraph (b)(3)(i).

B. Revising paragraph (d)(1)(vi).

C. Removing paragraph (d)(1)(vii).

D. Redesignating paragraphs (d)(1)(viii) and (d)(1)(ix) as (d)(1)(vii) and (d)(1)(viii), respectively.

E. Removing paragraph (d)(2).

F. Redesignating paragraphs (d)(3) and (d)(4) as (d)(2) and (d)(3), respectively.

G. Removing "on" and adding in its place "at" in newly redesignated paragraph (d)(2).

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H. Removing "are" and adding in its place "is" in newly redesignated paragraph (d)(3)(i).

I. Adding ", that includes the reason for the request," after "request" in newly redesignated paragraph (d)(3)(iii)(B).

J. Adding "The timeframe for returning funds is further described in § 668.173(b) and (c)(3)." at the end of paragraph (j)(1).

The revisions read as follows:

§ 668.22 Treatment of title IV funds when a student withdraws.

* * * * *

(b) * * *

(3)(i) An institution is required to take attendance if an outside entity (such as the institution's accrediting agency or a State agency) has a requirement, as determined by the entity, that the institution take attendance.

* * * * *

(d) * * *

(1) * * *

(vi) The number of days in the approved leave of absence, when added to the number of days in all other approved leaves of absence, does not exceed 180 days in any 12-month period;

* * * * *

§ 668.32 [Amended]

12. Section 668.32(e)(2) is amended by removing "within 12 months before the date the student initially receives title IV, HEA program assistance,".

13. Section 668.35(c) is revised to read as follows:

§ 668.35 Student debts under the HEA and to the U.S.

* * * * *

(c) A student who receives an overpayment under the Federal Perkins Loan Program, or under a title IV, HEA grant program may nevertheless be eligible to receive title IV, HEA program assistance if—

(1) The student pays the overpayment in full;

(2) The student makes arrangements satisfactory to the holder of the overpayment debt to pay the overpayment; or

(3) The overpayment amount is less than $25 and is neither a remaining balance nor a result of the application of the overaward threshold in 34 CFR 673.5(d).

* * * * *

§ 668.151 [Amended]

14. Section 668.151(a)(2) is amended by adding the words "it received from an approved test publisher or assessment center" after "an approved test'.

15. Section 668.164(g) is revised to read as follows:

§ 668.164 Disbursing funds.

* * * * *

(g) *Late disbursements*— (1) *Ineligible student.* For purposes of this paragraph, an otherwise eligible student becomes ineligible to receive title IV, HEA program funds on the date that—

(i) For a loan under the FFEL and Direct Loan programs, the student is no longer enrolled at the institution as at least a half-time student for the loan period; or

(ii) For an award under the Federal Pell Grant, FSEOG, and Federal Perkins Loan programs, the student is no longer enrolled at the institution for the award year.

(2) *Conditions for a late disbursement.* Except as limited under paragraph (g)(4) of this section, a student who becomes ineligible (or the student's parent in the case of a PLUS loan) qualifies for a late disbursement if, before the date the student became ineligible—

(i) Except in the case of a PLUS loan, the Secretary processed a SAR or ISIR with an official expected family contribution; and

(ii)(A) For a loan under the FFEL or Direct Loan programs, the institution certified or originated the loan; or

(B) For an award under the Federal Perkins Loan or FSEOG programs, the institution made that award to the student.

(3) *Making a late disbursement.* Provided that the conditions described in paragraph (g)(2) of this section are satisfied—

(i) If the student withdrew from the institution during a payment period or period of enrollment, the institution must make any post-withdrawal disbursement required under § 668.22(a)(3) in accordance with the provisions of § 668.22(a)(4);

(ii) If the student successfully completed the payment period or period of enrollment, the institution must provide the student (or parent) the opportunity to receive the amount of title IV, HEA program funds that the student (or parent) was eligible to receive while the student was enrolled at the institution. For a late disbursement in this circumstance, the institution may credit the student's account to pay for current and allowable charges as described in paragraph (d) of this section, but must pay or offer any remaining amount to the student or parent; or

(iii) If the student did not withdraw but ceased to be enrolled as at least a half-time student, the institution may make the late disbursement of a loan under the FFEL or Direct Loan programs to pay for educational costs that the institution determines the student incurred for the period in which the student was eligible.

(4) *Limitations.* (i) Generally, an institution may not make a late disbursement later than 120 days after the date of the institution's determination that the student withdrew, as provided under § 668.22, or, for a student who did not withdraw, 120 days after the date the student otherwise became ineligible. On an exception basis, and with the approval of the Secretary, an institution may make a late disbursement after the applicable 120-day period, if the reason the late disbursement was not made was not the fault of the student.

(ii) An institution may not make a second or subsequent late disbursement of a loan under the FFEL or Direct Loan programs unless the student successfully completed the period of enrollment for which the loan was intended.

(iii) An institution may not make a late disbursement of a loan under the FFEL or Direct Loan programs if the student was a first-year, first-time borrower unless the student completed the first 30 days of his or her program of study. This limitation does not apply if the institution is exempt from the 30-day delayed disbursement requirements under § 682.604(c)(5)(i), (ii), or (iii) or § 685.303(b)(4)(i)(A), (B), or (C).

16. Section 668.165(a)(3) is revised to read as follows:

§ 668.165 Notices and authorizations.

(a) * * *

(3) The institution must send the notice described in paragraph (a)(2) of this section in writing no earlier than 30 days before, and no later than 30 days after, crediting the student's account at the institution.

* * * * *

§ 668.171 [Amended]

17. Section 668.171(b) is amended by:

A. Removing "refunds" and adding, in its place "returns of unearned title IV HEA program funds" in paragraph (b)(2).

B. Removing "and the payment of post-withdrawal disbursements under § 668.22" in paragraph (b)(4)(i).

18. Section 668.173 is amended by:

A. Revising paragraphs (a) through (c).

B. Redesignating paragraph (d) as (f).

C. Adding new paragraphs (d) and (e).

The revisions and additions read as follows:

§ 668.173 Refund reserve standards.

(a) *General.* The Secretary considers that an institution has sufficient cash reserves, as required under § 668.171(b)(2), if the institution—

(1) Satisfies the requirements for a public institution under § 668.171(c)(1);

(2) Is located in a State that has a tuition recovery fund approved by the Secretary and the institution contributes to that fund; or

(3) Returns, in a timely manner as described in paragraph (b) of this section, unearned title IV, HEA program funds that it is responsible for returning under the provisions of § 668.22 for a student that withdrew from the institution.

(b) *Timely return of title IV, HEA program funds.* In accordance with procedures established by the Secretary or FFEL Program lender, an institution returns unearned title IV, HEA funds timely if—

(1) The institution deposits or transfers the funds into the bank account it maintains under § 668.163 no later than 30 days after the date it determines that the student withdrew;

(2) The institution initiates an electronic funds transfer (EFT) no later than 30 days after the date it determines that the student withdrew;

(3) The institution initiates an electronic transaction, no later than 30 days after the date it determines that the student withdrew, that informs an FFEL lender to adjust the borrower's loan account for the amount returned; or

(4) The institution issues a check no later than 30 days after the date it determines that the student withdrew. However, the Secretary considers that the institution did not satisfy this requirement if—

(i) The institution's records show that the check was issued more than 30 days after the date the institution determined that the student withdrew; or

(ii) The date on the cancelled check shows that the Secretary or FFEL Program lender received that check more than 45 days after the date the institution determined that the student withdrew.

(c) *Compliance thresholds.* (1) An institution does not comply with the reserve standard under § 668.173(a)(3) if, in a compliance audit conducted under § 668.23, an audit conducted by the Office of the Inspector General, or a program review conducted by the Department or guaranty agency, the auditor or reviewer finds—

(i) In the sample of student records audited or reviewed that the institution did not return unearned title IV, HEA program funds within the timeframes described in paragraph (b) of this section for 5% or more of the students in the sample (For purposes of determining this percentage, the sample includes only students for whom the institution was required to return unearned funds during its most recently completed fiscal year.); or

(ii) A material weakness or reportable condition in the institution's report on internal controls relating to the return of unearned title IV, HEA program funds.

(2) The Secretary does not consider an institution to be out of compliance with the reserve standard under § 668.173(a)(3) if the institution is cited in any audit or review report because it did not return unearned funds in timely manner for one or two students, or for less the 5% of the students in the sample referred to in paragraph (c)(1)(i) of this section.

(d) *Letter of credit.* (1) Except as provided under paragraph (e)(1) of this section, an institution that can satisfy the reserve standard only under paragraph (a)(3) of this section, must submit an irrevocable letter of credit acceptable and payable to the Secretary if a finding in an audit or review shows that the institution exceeded the compliance thresholds in paragraph (c) of this section (i.e., the institution did not return unearned funds for 5% or more of its students) for either of its two most recently completed fiscal years.

(2) The amount of the letter of credit required under paragraph (d)(1) of this section is 25 percent of the total amount of unearned title IV, HEA program funds that the institution was required to return under § 668.22 during the institution's most recently completed fiscal year.

(3) An institution that is subject to paragraph (d)(1) of this section must submit to the Secretary a letter of credit no later than 30 days after the earlier of the date that—

(i) The institution is required to submit its compliance audit;

(ii) The Office of the Inspector General, issues a final audit report;

(iii) The designated department official issues a final program review determination;

(iv) The Department, through a program review report or draft audit report, or a guaranty agency issues a preliminary report showing that the institution did not return unearned funds for 10% or more of the sampled students; or

(v) The Secretary sends a written notice to the institution requesting the letter of credit that explains why the institution has failed to return unearned funds in a timely manner.

(e) *Exceptions.* With regard to the letter of credit described in paragraph (d) of this section—

(1) An institution does not have to submit the letter of credit if the amount calculated under paragraph (d)(2) of this section is less than $5,000 and the institution can demonstrate that it has cash reserves of at least $5,000 available at all times.

(2) An institution may delay submitting the letter of credit and request the Secretary to reconsider a finding made in its most recent audit or review report that it failed to return unearned title IV, HEA program funds in a timely manner if—

(i)(A) The institution submits documents showing that the unearned title IV, HEA program funds were not returned in a timely manner solely because of exceptional circumstances beyond the institution's control and that the institution would not have exceeded the compliance thresholds under paragraph (c)(1) of this section had it not been for these exceptional circumstances; or

(B) The institution submits documents showing that it did not fail to make timely refunds as provided under paragraphs (b) and (c) of this section;

(ii) The institution's request, along with the documents described in paragraph (e)(2)(i) of this section, are submitted to the Secretary no later than the date it would otherwise be required to submit a letter of credit under paragraph (d)(3).

(3) If the Secretary denies the institution's request under paragraph (e)(2) of this section, the Secretary notifies the institution of the date it must submit the letter of credit.

* * * * *

19. Section 668.174(c)(4) is revised to read as follows:

§ 668.174 Past performance.

* * * * *

(c) * * *

(4) "Family member" is defined in § 600.21(f).

PART 673—GENERAL PROVISIONS FOR THE FEDERAL PERKINS LOAN PROGRAM, FEDERAL WORK-STUDY PROGRAM, AND FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

20. The authority citation for part 673 continues to read as follows:

Authority: 20 U.S.C. 421–429, 1070b–1070b–3, and 1087aa–1087ii; 42 U.S.C. 2751–2756b, unless otherwise noted.

21. Section 673.5(f) is revised to read as follows:

§ 673.5 Overaward.

* * * * *

(f) *Liability for and recovery of Federal Perkins loans and FSEOG*

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overpayments. (1) Except as provided in paragraphs (f)(2) and (f)(3) of this section, a student is liable for any Federal Perkins loan or FSEOG overpayment made to him or her. An FSEOG overpayment for purposes of this paragraph (f) does not include the non-Federal share of an FSEOG award if an institution meets its FSEOG matching share by the individual recipient method or the aggregate method.

(2) The institution is liable for a Federal Perkins loan or FSEOG overpayment if the overpayment occurred because the institution failed to follow the procedures in this part or 34 CFR parts 668, 674, or 676. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its loan fund for a Federal Perkins loan overpayment or to its FSEOG account for an FSEOG overpayment.

(3) A student is not liable for, and the institution is not required to attempt recovery of, a Federal Perkins loan or FSEOG overpayment, nor is the institution required to refer an FSEOG overpayment to the Secretary, if the overpayment—

(i) Is less than $25, and

(ii) Is neither a remaining balance nor a result of the application of the overaward threshold in paragraph (d) of this section.

(4)(i) Except as provided in paragraph (f)(3) of this section, if an institution makes a Federal Perkins loan or FSEOG overpayment for which it is not liable, it shall promptly send a written notice to the student requesting repayment of the overpayment amount. The notice must state that failure to make that repayment, or to make arrangements satisfactory to the holder of the overpayment debt to pay the overpayment, makes the student ineligible for further title IV aid until final resolution of the overpayment.

(ii) If a student objects to the institution's Federal Perkins loan or FSEOG overpayment determination on the grounds that it is erroneous, the institution shall consider any information provided by the student and determine whether the objection is warranted.

(5) Except as provided in paragraph (f)(3) of this section, if a student fails to repay an FSEOG overpayment, or make arrangements satisfactory to the holder of the overpayment debt to repay the FSEOG overpayment, after the institution has taken the action required by paragraph (f)(4) of this section, the institution must refer the FSEOG overpayment to the Secretary for collection purposes, in accordance with procedures required by the Secretary. After referring the FSEOG overpayment to the Secretary under this section, the institution need make no further effort to recover the overpayment.

PART 675—FEDERAL WORK-STUDY PROGRAMS

22. The authority citation for part 675 continues to read as follows:

Authority: 42 U.S.C. 2751–2756b, unless otherwise noted.

23. Section 675.2(b) is amended by revising the definition of "Student services" to read as follows:

§ 675.2 Definitions.

* * * * *

(b) * * *

Student services: Services that are offered to students that may include, but are not limited to, financial aid, library, peer guidance counseling, job placement, assisting an instructor with curriculum-related activities, security, and social, health, and tutorial services. Student services do not have to be direct or involve personal interaction with students. For purposes of this definition, facility maintenance, cleaning, purchasing, and public relations are never considered student services.

* * * * *

24. Section 675.21(b)(2)(i) is revised to read as follows:

§ 675.21 Institutional employment.

* * * * *

(b) * * *

(2) * * *

(i) Involve the provision of student services as defined in § 675.2(b) that are directly related to the work-study student's training or education;

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

25. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.204 [Amended]

26. Section 682.204(l) is revised by changing "34 CFR 668.2" to "34 CFR 668.3".

§ 682.603 [Amended]

27. Sections 682.603(f)(1)(ii)(B) and (f)(2)(i) are amended by removing "34 CFR 668.2" and adding, in its place "34 CFR 668.3".

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

28. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

§ 685.203 [Amended]

29. Section 685.203(h) is amended by adding ", as defined in 34 CFR 668.3" after "year".

§ 685.301 [Amended]

30. Sections 685.301(a)(9)(i)(B)(*2*) and (a)(9)(ii)(A) are amended by removing "34 CFR 668.2" and adding, in its place "34 CFR 668.3".

PART 690—FEDERAL PELL GRANT PROGRAM

31. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

32. Section 690.75(a) is revised to read as follows:

§ 690.75 Determination of eligibility for payment.

(a) For each payment period, an institution may pay a Federal Pell Grant to an eligible student only after it determines that the student—

(1) Qualifies as an eligible student under 34 CFR part 668, subpart C;

(2) Is enrolled in an eligible program as an undergraduate student; and

(3) If enrolled in a credit hour program without terms or a clock hour program, has completed the payment period as defined in § 668.4 for which he or she has been paid a Federal Pell Grant.

* * * * *

33. Section 690.79 is revised to read as follows:

§ 690.79 Liability for and recovery of Federal Pell Grant overpayments.

(a)(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, a student is liable for any Federal Pell Grant overpayment made to him or her.

(2) The institution is liable for a Federal Pell Grant overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part or 34 CFR Part 668. The institution must restore an amount equal to the overpayment to its Federal Pell Grant account.

(3) A student is not liable for, and the institution is not required to attempt recovery of or refer to the Secretary, a Federal Pell Grant overpayment if the amount of the overpayment is less than $25 and is not a remaining balance.

(b)(1) Except as provided in paragraph (a)(3) of this section, if an institution makes a Federal Pell Grant overpayment for which it is not liable, it must promptly send a written notice to the student requesting repayment of the overpayment amount. The notice must state that failure to make that repayment, or to make arrangements satisfactory to the holder of the overpayment debt to repay the overpayment, makes the student ineligible for further title IV aid until final resolution of the Federal Pell Grant overpayment.

(2) If a student objects to the institution's Federal Pell Grant overpayment determination on the grounds that it is erroneous, the institution must consider any information provided by the student and determine whether the objection is warranted.

(c) Except as provided in paragraph (a)(3) of this section, if the student fails to repay a Federal Pell Grant overpayment, or make arrangements satisfactory to the holder of the overpayment debt to repay the Federal Pell Grant overpayment, after the institution has taken the action required by paragraph (b) of this section, the institution must refer the overpayment to the Secretary for collection purposes, in accordance with procedures required by the Secretary. After referring the Federal Pell Grant overpayment to the Secretary under this section, the institution need make no further efforts to recover the overpayment.

(Authority: 20 U.S.C. 1070a)

PART 694—GAINING EARLY AWARENESS AND READINESS FOR UNDERGRADUATE PROGRAMS (GEAR UP)

34. The authority citation for part 694 continues to read as follows:

Authority: 20 U.S.C. 1070a–21 to 1070a–28.

35. Section 694.10(e) is revised to read as follows:

§ 694.10 What are the requirements for awards under the program's scholarship component under section 404E of the HEA?

* * * * *

(e) *Other grant assistance.* A GEAR UP scholarship may not be considered in the determination of a student's eligibility for other grant assistance provided under title IV of the HEA.

[FR Doc. 02–20058 Filed 8–7–02; 8:45 am]

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Thursday,
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Part VI

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

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DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for Alternative Financing Program Technical Assistance (AFPTA) under title III of the Assistive Technology Act of 1998 (AT Act), which is administered by the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2002 and later years. We take this action to focus attention on an identified national need. We intend this priority to provide information and technical assistance to States and outlying areas participating or interested in participating in the AFP.

DATES: We must receive your comments on or before September 9, 2002.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov*.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880 or via the Internet: *donna.nangle@ed.gov*. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this priority in room 3412, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Alternative Financing Program Technical Assistance Program (AFPTA)

Title III of the AT Act established an Alternative Financing Program (AFP), which pays part of the cost for the States and outlying areas to establish or maintain alternative financing projects to increase access to assistive technology (AT) for individuals with disabilities. The purpose of the AFPTA is to provide information and technical assistance to States and outlying areas participating in the AFP. Public or private agencies and organizations, including institutions of higher education, are the entities eligible for an AFPTA grant award.

This priority reflects issues discussed in the New Freedom Initiative (NFI) and NIDRR's Long-Range Plan (the Plan). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominiative.html*. The Plan can be accessed on the Internet at: *http://www.ed.gov/offices/OSERS/NIDRR/Products*.

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice in the **Federal Register**. When inviting applications, we designate the priority as absolute, competitive preference, or invitational. The effect of each priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

Background

We are particularly interested in applications that propose ways to collect, analyze, compile and report data provided by the AFP projects.

You may obtain additional information about the background of this priority by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Statutory Priority

As required by section 306(a) of the AT Act, the AFPTA project must:

(a) Provide assistance to States preparing applications for the AFP;

(b) Assist States to develop and implement the AFP; and

(c) Provide any other information and TA the Assistant Secretary determines to be appropriate to assist States to achieve the objectives of AFP.

Proposed Priority

In addition to the statutory priority, NIDRR is particularly interested in having the AFPTA collect, analyze, compile, and report data provided by the AFP projects. AFP projects currently report data using an instrument that was developed and implemented to assist the State grantees with their data collection obligations. NIDRR will provide this instrument to the grantee upon receipt of award. The AFPTA must:

(1) Collect data from the AFP projects and assist the projects in this effort;

(2) Propose strategies for reviewing the AFP data collection instrument to determine what modifications should be made to improve its usability, reliability and validity and suggest strategies to facilitate and expedite the collection of uniform annual data from the AFP projects;

(3) Provide technical assistance to the State grantees on the data collection instrument that will support and improve the data collection efforts of the States;

(4) Provide technical assistance and training to State grantees on data collection strategies that will improve the quality of the data collected; and

(5) Through the technical assistance activities conducted under this priority, the project shall prepare a report on the activities funded under this Title. The report shall include the following: (a) the type of alternative financing mechanisms used by each State and the community-based organization with which each State entered into a contract, under the program; and (b) the amount of assistance given to consumers through the program who shall be classified by age, type of disability, type of assistive technology device or assistive technology service financed through the program, geographic distribution within the State, gender, and whether the consumers are part of an underrepresented population or rural population and, includes an executive summary, description of data collection procedures utilized and an analysis of the aggregated States' data including a discussion of trends.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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(Catalog of Federal Domestic Assistance Number 84.224C, Alternative Financing Program.)

Program Authority: 29 U.S.C. 3056.

Dated: August 5, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and, Rehabilitative Services.

[FR Doc. 02–20065 Filed 8–7–02; 8:45 am]

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Part VII

Department of Education

Office of Special Education and Rehabilitative Services, Office of Special Education Programs; Final Priority Under the State Improvement Grant Program; Notice Inviting Applications for New Awards for Fiscal Year 2002; Notices

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DEPARTMENT OF EDUCATION

Office of Special Education Programs; Final Priority Under the State Improvement Grant Program

AGENCY: Office of Special Education And Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority under the State Program Improvement Grant Program administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Individuals with Disabilities Education Act (IDEA), as amended. The Assistant Secretary may use this priority for competitions in fiscal year 2002 and in later years. We take this action to focus Federal financial assistance on identified needs to improve results for children with disabilities. The priority is intended to ensure wide and effective use of program funds.

EFFECTIVE DATE: This priority is effective September 9, 2002.

FOR FURTHER INFORMATION CONTACT: Larry Wexler, U.S. Department of Education, 400 Maryland Avenue, SW., room 3630, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–5390. FAX: (202) 205–9179 or via Internet: *Larry.Wexler@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: We published a notice of proposed priority for this program in the **Federal Register** on June 18, 2002 (67 FR 41586).

Except for minor editorial and technical revisions, there are no differences between the notice of proposed priority and this notice of final priority.

Public Comment

In the notice of proposed priority, we invited comments on the proposed priority. We did not receive any substantive comments. However, we have made a change in the second paragraph under (d) on page 41587, to clarify that the awards are not new projects but are supplements to existing projects.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75. 105(c)(1)).

Priority

Competitive Supplement to State Program Improvement Grants

Background

There are currently 36 State educational agencies that are funded under the State Program Improvement Grant program. These grants are meant to improve results for children with disabilities by addressing personnel training needs of States, as identified by the States, and have been an example of the Department's continuing effort to improve educational opportunities for all children. Congress established the State Program Improvement Grant program when it reauthorized IDEA in 1997. The money helps State educational agencies reform their systems for providing educational, early intervention and transitional services for children with disabilities. It also supports technical assistance for local schools and dissemination of knowledge about best practices. Seventy-five percent of each grant must be used for professional development.

As part of the competition, each State, in conjunction with required partners, including local education agencies and other State agencies that provide special education services (at its option the State may also include other partners such as the Governor, parents of children with disabilities, organizations representing individuals with disabilities and their parents, the lead State agency for part C IDEA, institutions of higher education within the State, etc.), submitted improvement plans focused on such areas as: (1) Training and personnel; (2) recruitment and retention of special education, related services and early intervention staff; (3) performance of children with disabilities; and (4) improving overall program effectiveness. The States receiving the grants have used the funds to implement the improvement strategies that they proposed in their plans. The Secretary anticipates that there will be additional fiscal year 2001 funds available subsequent to making awards under this year's competition. To utilize additional funds that may become available, the Secretary is conducting a separate competition under which only grantees from the FY 1999, 2000 and 2001 competitions would be eligible.

Priority

The Secretary has established a priority to award competitive supplements to State Improvement Grants awarded in 1999, 2000, or 2001 for the purpose of enhancing current grant activities. Applicants must describe additional activities that augment or complement those goals and activities that are already being implemented as part of their State Improvement Grant. Enhancement activities may be simply an expansion of activities already described in the narrative or they may be new activities that will improve the quality of the previously approved State improvement grant tasks. The Secretary is particularly interested in activities that focus on: (1) Retention and recruitment of highly qualified personnel; (2) the use of research-based reading intervention strategies; and (3) the use of research-based positive behavior supports.

Projects must—

(a) Enhance only those State Improvement Grant activities that can be shown, based on the project's data-based evaluation, to have impacted positively on the goal(s) of the project;

(b) Incorporate the expanded or new activities into the project's ongoing evaluation activities;

(c) Incorporate the expanded or new activities into the project's existing partnership agreements; and

(d) Ensure that the State uses not less than 75 percent of the funds (existing budget plus any supplemental funds) it receives under the grant for any fiscal year on professional development and training of regular education, special education, or related services personnel. Only 50 percent of the funds must be used on professional development if the State can demonstrate to the Department that it has sufficient personnel.

Under this priority, the Secretary will make, based on available funds, up to 36 supplements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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(Catalog of Federal Domestic Assistance Number: State Program Improvement Grants Program, 84.323A)

Program Authority: 20 U.S.C. 1405, 1461, 1472, 1474, and 1487.

Dated: August 5, 2002

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–20119 Filed 8–7–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.323]

Office of Special Education and Rehabilitative Services, Office of Special Education Programs—State Program Improvement Grant Program; Notice Inviting Applications for New Awards for Fiscal Year 2002

Purpose of Program: The purpose of the State Program Improvement Grant program is to assist State educational agencies and their partners referred to in section 652(b) of IDEA with reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

Eligible Applicants: State educational agencies with currently funded State Improvement Grants.

Applications Available: August 8, 2002.

Deadline for Transmittal of Applications: September 9, 2002.

Deadline for Intergovernmental Review: September 19, 2002.

Estimated Available Funds: $8,000,000.

Estimated Number of Awards: Under this priority, the Secretary will make, based on available funds, up to 36 supplements.

Estimated Size of Awards: State educational agencies with currently funded State Improvement grants may apply for up to 10 percent of the five-year total of their existing awards.

Page Limit

Part III of each application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than 25 pages, using the following standards:

- A "page" is 8.5" × 11" (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject any application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The regulations for this program in 34 CFR part 304; and (c) The selection criteria chosen from the general selection criteria in 34 CFR 75.210. The specific selection criteria for this priority are included in the application package for this competition.

Priority

For FY 2002 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet the priority.

This competition focuses on projects designed to meet a priority in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

FOR APPLICATION INFORMATION CONTACT: For this priority under the Special Education—State Program Improvement Grant Program, contact Larry Wexler, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3630, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–5390. FAX: (202) 205–9179 or via Internet: *Larry.Wexler@ed.gov.*

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Dated: August 5, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–20120 Filed 8–7–02; 8:45 am]

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Friday, August 9, 2002

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 102

[T.D. 02–47]

Technical Corrections: Rules of Origin for Textile and Apparel Products

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim rule; corrections.

SUMMARY: This document makes technical corrections to the Customs Regulations to reflect the terms of the 2002 Harmonized Tariff Schedule of the United States within the country of origin rules for certain textile and apparel products. The document also corrects an error in the rules regarding the scope of the definition of the term "textile or apparel product."

DATES: These corrections are effective August 9, 2002.

FURTHER INFORMATION CONTACT: Shari Suzuki, Textile Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC, 20229, Tel. (202) 572–8818.

SUPPLEMENTARY INFORMATION:

Background

Section 334 of the Uruguay Round Agreements Act (URAA), Public Law 103–465, 108 Stat. 4809 (19 U.S.C. 3592), directs the Secretary of the Treasury to prescribe rules implementing certain principles for determining the origin of textiles and apparel products. Section 102.21 of the Customs Regulations (19 CFR 102.21) implements section 334 of the URAA.

On May 1, 2001, Customs published in the **Federal Register** (66 FR 21660), as T.D. 01–36, an interim rule amending § 102.21 of the Customs Regulations (19 CFR 102.21) to align the existing country of origin rules for certain textile and apparel products with the statutory amendments to section 334 of the URAA, effected by section 405 of Title IV of the Trade and Development Act of 2000. A technical correction to T.D. 01–36 was published in the **Federal Register** (66 FR 23981) on May 10, 2001.

Need for Correction

Recent changes to the 2002 Harmonized Tariff Schedule of the United States (HTSUS) have resulted in the transfer of certain goods, for classification purposes, to newly created tariff provisions. Because of these classification changes, there are certain textile products which were intended under the scope of 19 U.S.C. 3592 to be covered by the rules of origin set forth in § 102.21 but, as a result of the changes to the 2002 HTSUS, are currently excluded from the scope of that regulatory provision or are not provided for within the tariff shift rules referenced in § 102.21(c)(2).

For example, it is noted that goods previously classifiable under heading 6002, HTSUS, which provides for "other knitted or crocheted fabrics," are now classifiable under HTSUS headings 6002 through 6006 (as a result of the creation of new headings 6003 through 6006). As new HTSUS headings 6003 through 6006 are not included in the tariff shift rules set forth in § 102.21(e), the goods classifiable under these provisions are currently precluded from having their origin determined pursuant to § 102.21(c)(2). The technical corrections in this document amend the tariff shift rules in § 102.21(e) to add these new tariff provisions.

Similarly, a new subheading has been created at 4202.92.05, HTSUS, which provides for "insulated food and beverage bags with an outer surface of textile materials." This document amends § 102.21 to include reference to this new tariff provision.

A technical correction to § 102.21 is also necessary to reflect that the listing in § 102.21(b)(5) of the HTSUS headings and subheadings that describe the textile and apparel products covered by these rules of origin inadvertently excluded a subheading which, pursuant to 19 U.S.C. 3592, should have been included. Section 102.21(b)(5) does not include subheading 9404.90.20, HTSUS, which provides for pillows, cushions, and similar furnishings of materials other than cotton. Section 3592, the statutory provision authorizing the rules of origin for textile and apparel products, explicitly includes subheading 9404.90, HTSUS, within the scope of the provision. *See* 19 U.S.C. 3592(b)(2)(A). Because § 102.21(b)(5) lists 9404, HTSUS, tariff provisions at a greater level of specificity (*i.e.*, to the 8-digit level) than is statutorily required (*i.e.*, to the 6-digit level), the regulation is inadvertently more restrictive in scope than the authorizing statute.

This document corrects § 102.21(b)(5) to reflect the terms of the authorizing statute to include HTSUS subheading 9404.90 as a tariff provision that is within the definition of a textile and apparel product covered by these rules of origin (and deletes the more specific tariff references to subheadings 9404.90.10 and 9404.90.80–95). By this correction, it is clear that pillows, cushions, and similar furnishings of materials other than cotton are textile and apparel products covered by the regulation. These changes will also serve to align § 102.21(b)(5) to § 102.21(e)(1) which lists a tariff shift rule for HTSUS 9404.90.

Lastly, this document corrects a typographical error in § 102.21(e)(1) whereby the number "17" inadvertently appears in the tariff shift rule for HTSUS 6301–6303.

For the reasons set forth above, this document makes technical corrections to § 102.21 to reflect the terms of the 2002 HTSUS, to conform § 102.21 to the scope of the authorizing statute, and to correct a typographical error.

Executive Order 12866, Regulatory Flexibility Act, Inapplicability of Prior Public Notice and Comment Procedures and Delayed Effective Date Requirements

This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866. Because these amendments merely update the Customs Regulations by reflecting the terms of the 2002 HTSUS within the country of origin rules for certain textile and apparel products, and otherwise correct errors in those rules, Customs has determined, pursuant to the provisions of 5 U.S.C. 553(b)(B), that prior public notice and comment procedures on this regulation are unnecessary and contrary to the public interest and that pursuant to the provisions of 5 U.S.C. 553(d)(3), there is good cause for dispensing with a

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delayed effective date. Because the document is not subject to the requirements of 5 U.S.C. 553, as noted, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Drafting Information

The principal author of this document was Ms. Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 102

Customs duties and inspection, Imports, Rules of Origin, Trade agreements.

Amendments to the Regulations

For the reasons stated above, part 102 of the Customs Regulations (19 CFR part 102) is amended as set forth below.

PART 102—RULES OF ORIGIN

1. The authority citation for part 102 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

2. In § 102.21:

(a) Paragraph (b)(5) is amended by removing the listings "9404.90.10" and "9404.90.80–95" and adding, in numerical order, the listings "4202.92.05" and "9404.90";

(b) The table in paragraph (e)(1) is amended by:

(i) Adding an entry, in numerical order, for "4202.92.05";

(ii) Removing the number "6002" from the entries in the "Tariff shift and/or other requirements" column adjacent to the "HTSUS" entries for 3005.90, 5810.91–5810.99, 5908, 5909, 5910, 5911.10–5911.20, 5911.31–5911.32, 5911.40, 5911.90, 6101–6117, 6210–6212, 6406.10.77, 6406.10.90, 6406.99.15, 6502, 6504, 6505.90, 8804, and 9113.90.40 and adding in its place the number "6006";

(iii) Removing the number "6002" from the entries in the "Tariff shift and/or other requirements" column adjacent to the "HTSUS" entries for 5608, 5801–5803, 5901–5903, 5905, 5906–5907 and 9612.10.9010 and adding in its place the phrase "6002 through 6006";

(iv) Removing the entry for "6001–6002" and adding in its place the entry "6001–6006"; and

(v) Removing the number "17" from the entry in the "Tariff shift and/or other requirements" column adjacent to the "HTSUS" entry for 6301–6306.

The new entries read as follows:

§ 102.21 Textile and apparel products.

* * * * *

(e) * * *—(1) * * *

HTSUS	Tariff shift and/or other requirements
. . . . .	
4202.92.05	A change to subheading 4202.92.05 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory or insular possession."
. . . . .	
6001–6006	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 6001 through 6006 to finished fabric of heading 6001 through 6006 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (2) If the country of origin cannot be determined under paragraph (1) of this entry, a change to heading 6001 through 6006 from any heading outside that group, provided that the change is the result of a fabric-making process.

* * * * *

Approved: August 6, 2002.

Robert C. Bonner,

Commissioner of Customs.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–20166 Filed 8–8–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 4093]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended—Diversity Visas

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule makes certain amendments to the regulations implementing the Diversity Visa (DV) Program. The amendments are necessary to further clarify statutory requirements and to enhance the Department's ability to combat fraudulent practices in the DV Program. The Department is also amending the regulations to further clarify the definition of "high school education or its equivalent," to eliminate the use of the Dictionary of Occupational Titles as a means to determine the applicant's work experience, and to define further acceptable photographs.

DATES: *Effective Date:* This rule takes effect on September 9, 2002.

Comment Date: Please submit written comments no later than September 9, 2002.

ADDRESSES: Interested persons are invited to submit comments in duplicate to: Chief, Office of Legislation and Regulations, Visa Office, Department of State, Washington, DC 20520–0106, by fax at (202) 663–3898, or by e-mail to *VisaRegs@state.gov.*

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Office of Legislation and Regulations, Visa Office, phone (202) 663–1206, or e-mail *chavezpr@state.gov.*

SUPPLEMENTARY INFORMATION: The DV Program is provided for in sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(G) of the Immigration and Nationality Act (INA), as amended. The Department's regulations are found at 22 CFR 42.33.

How Is the Department Amending Its Regulations?

*O*Net OnLine replaces "Dictionary of Occupational Titles"*

The Department of Labor no longer maintains or publishes the Dictionary of Occupational Titles which has been used as a means for determining an applicant's work experience. Therefore, beginning with cases processed for the DV 2003 Program, the Department of Labor's O*Net OnLine will be the only source of information used to determine qualifying work experience. The O*Net OnLine can be accessed at *http://online.onetcenter.org.*

Photographs for Applicant and Dependents

The Department is also modifying its regulations regarding the photograph to be submitted. Photographs submitted for the 2004 DV Program must be between

1½ by 1½ and 2 by 2 inches or (37 to 50 mm) square. Photos showing the alien with hats or head coverings are acceptable but only if they do not obscure any portion of the applicant's face.

Why Are the Regulations Being Modified?

During the processing of the immigrant visa applications of aliens selected to compete for immigrant visas in earlier years, several consular offices encountered cases in which the visa applicant was proven, or strongly suspected, to be an impostor—that is, not the individual who had submitted the petition which had been selected. Thus, in order to provide additional deterrents to such abuses, the Department is amending its regulations. Also, the Department is amending its regulation regarding the work experience requirement. Since the Department of Labor no longer maintains or publishes the Dictionary of Occupational Titles, the Department of Labor's O*Net On-Line will now be the only source of information used to determine whether an applicant meets the work experience requirement.

Interim Rule

Administrative Procedure Act

The Department's implementation of this regulation as an interim rule is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The publication of this rule as an interim rule will allow sufficient time for interested persons to comment on the regulatory changes and allows for timely registration for the DV–2004 Program scheduled for early October 2002.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Therefore, in accordance with the letter to the Department of State of February 4, 1994 from the Director of the Office of Management and Budget, it does not require review by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements.

List of Subjects in 22 CFR Part 42

Aliens, Documentation, Immigrants, Passports and visas.

Accordingly, 22 CFR part 42 is amended as follows:

PART 42—[AMENDED]

1. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104; 2651a.

2. Amend § 42.33 as follows:

a. By revising paragraphs (a)(2) and (a)(3); and

b. By revising paragraphs (b)(1)(iii), (b)(2), (b)(3), and (b)(4)(ii) to read as follows:

§ 42.33 Diversity immigrants.

* * * * *

(a) * * *

(2) *Definition of high school education or its equivalent.* For the purposes of this section, the phrase *high school education or its equivalent* shall mean successful completion of a twelve-year course of elementary and secondary education in the United States or successful completion in another country of a formal course of elementary and secondary education comparable to completion of twelve years' elementary and secondary education in the United States. In order to be considered comparable to a U.S. high school education, a foreign course of study must provide the alien with the minimum academic records required for admission to study in U.S. universities or colleges as determined in the most recent edition of the publication entitled "Foreign Credentials Required for Consideration of Admission to Universities and Colleges in the United States.

(3) *Determinations of work experience.* For all cases registered for the 2003 Diversity Visa Program, consular officers shall use the Department of Labor's O*Net OnLine to determine qualifying work experience.

* * * * *

(b) * * *

(1) * * *

(iii) Name(s), and date(s) and place(s) of birth of spouse and all child(ren), if any, (including legally-adopted and stepchildren, regardless of whether or not they are living with the petitioner or intend to accompany or follow to join the petitioner), but excluding those children who are already U.S. citizens or LPRs); and

* * * * *

(2) *Signatures.* The petitioner shall personally sign his or her signature on the sheet of paper, in his or her native alphabet. (Neither an initialed signature nor block printing of the petitioner's name will be accepted. The use of either will result in the disqualification of the entry).

(3) *Photographs.* The alien shall also affix to the entry a photograph of himself or herself and photographs of his or her spouse and all unmarried children under the age of 21 years. The photographs shall meet the following specifications:

(i) The photograph must be between 1½ by 1½ and 2 by 2 inches (37 to 50 mm) square;

(ii) The alien shall print his or her name and date of birth on the back of the photograph;

(iii) The alien must be directly facing the camera; the head of the person being photographed shall not be tilted up,

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down, or to the side, and must cover about 50% of the photo area;

(iv) The photograph must be taken with the person in front of a neutral, light-colored background;

(v) The alien's face must be in focus;

(vi) The person in the photograph shall not wear sunglasses or other paraphernalia which detracts from the face;

(vii) Photos with the alien wearing head coverings or hats are only acceptable due to religious beliefs, and even then, may not obscure any portion of the face of the applicant. Photos of applicants wearing tribal, military, airline or other headwear not specifically religious in nature will not be accepted;

(viii) Photographs may be either color or black and white.

(4) * * *

(ii) *Form of mailing.* Petitions for consideration under this section shall be submitted by normal surface or air mail only. Petitions submitted by hand, telegram, FAX, or by any means requiring any form of special handling or acknowledgement of receipt such as express or priority mail, second day airmail, fax, hand or messenger delivery) will not be processed. The petitioner shall type or print legibly, using the Roman alphabet, on the upper left-hand corner of the envelope in which the petition is mailed his or her full name and mailing address, and the name of the country of which the petitioner is a native, as shown on the petition itself. Envelopes shall be between 6" and 10" (15 cm to 25 cm) in length and between 3½" and 4½" (9 cm to 11 cm) in width. Envelopes not bearing this information and/or not conforming to the restrictions as to size shall not be processed for consideration.

* * * * *

Dated: July 31, 2002.

George Lannon,

Acting Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 02–20211 Filed 8–8–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 279–2002]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, Bureau of Prisons ("Bureau"), is exempting a Privacy Act system of records from the following subsections of the Privacy Act: (e)(1) and (e)(5), pursuant to 5 U.S.C. 552a(j). The system of records to be exempted is the "Inmate Central Records System, Justice/BOP–005". This system continues to be exempted from the subsections of the Privacy Act as previously promulgated.

The additional exemptions are necessary to preclude the compromise of institution security; to better ensure the safety of inmates, Bureau personnel and the public; to better protect third party privacy; to protect law enforcement and investigatory information; and/or to otherwise ensure the effective performance of the Bureau's law enforcement functions.

EFFECTIVE DATE: This final rule is effective August 9, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: On May 9, 2002 (67 FR 31166) a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedure, Freedom of Information, Sunshine Act, Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR part 16 is amended as follows.

PART 16—[AMENDED]

1. The authority citation for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g) and 553; 18 U.S.C. 4203 (a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717 and 9701.

2. Paragraphs (j) and (k) are added to § 16.97 to read as follows:

§ 16.97 Exemption of Federal Bureau of Prisons Systems—limited access.

* * * * *

(j) The following system of records is exempted pursuant to 5 U.S.C. 552a(j) from subsections (e)(1) and (e)(5): Bureau of Prisons Inmate Central Records System, (Justice/BOP–005).

(k) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, *e.g.* public source materials, or those supplied by third parties, the applicable exemption may be waived, either partially or totally, by the Bureau. Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (e)(1) to the extent that the Bureau may collect information that may be relevant to the law enforcement operations of other agencies. In the interests of overall, effective law enforcement, such information should be retained and made available to those agencies with relevant responsibilities.

(2) From subsection (e)(5) because in the collection and maintenance of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely and complete. Data which may seem unrelated, irrelevant or incomplete when collected may take on added meaning or significance during the course of an investigation or with the passage of time, and could be relevant to future law enforcement decisions. In addition, because many of these records come from the courts and other state and local criminal justice agencies, it is administratively impossible for them and the Bureau to ensure compliance with this provision. The restrictions of subsection (e)(5) would restrict and delay trained correctional managers from timely exercising their judgment in managing the inmate population and providing for the safety and security of the prisons and the public.

* * * * *

Dated: July 31, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02–20208 Filed 8–8–02; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 280–2002]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, Bureau of Prisons ("Bureau"), is exempting a Privacy Act system of records from the following subsections of the Privacy Act: (e)(1) and (e)(5), pursuant to 5 U.S.C. 552a(j). The system of records to be exempted is the "Inmate Trust Fund Accounts and Commissary Record System, Justice/BOP–006". This system continues to be exempted from the subsections of the Privacy Act as previously promulgated.

The additional exemptions are necessary to preclude the compromise of institution security; to ensure the safety of inmates, Bureau personnel and the public; to protect third party privacy; to protect law enforcement and investigatory information; and/or to otherwise ensure the effective performance of the Bureau's law enforcement functions.

EFFECTIVE DATE: This final rule is effective August 9, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: On March 15, 2002 (67 FR 11631) a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedure, Freedom of Information, Sunshine Act, Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR part 16 is amended as follows.

PART 16—[AMENDED]

1. The authority citation for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g) and 553; 18 U.S.C. 4203 (a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717 and 9701.

2. Paragraphs (l) and (m) are added to § 16.97 to read as follows:

§ 16.97 Exemption of Federal Bureau of Prisons Systems—limited access.

* * * * *

(l) The following system of records is exempted pursuant to 5 U.S.C. 552a(j) from subsections (e)(1) and (e)(5): Bureau of Prisons Inmate Trust Fund Accounts and Commissary Record System, (Justice/BOP–006).

(m) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, *e.g.* public source materials, or those supplied by third parties, the applicable exemption may be waived, either partially or totally, by the Bureau. Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (e)(1) to the extent that the Bureau may collect information that may be relevant to the law enforcement operations of other agencies. In the interests of overall, effective law enforcement, such information should be retained and made available to those agencies with relevant responsibilities.

(2) From subsection (e)(5) because in the collection and maintenance of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely and complete. Data which may seem unrelated, irrelevant or incomplete when collected may take on added meaning or significance as an investigation progresses or with the passage of time, and could be relevant to future law enforcement decisions. In addition, amendment of the records may interfere with law enforcement operations and would impose an impossible administrative burden by requiring that law enforcement information be continuously reexamined, even where the information may have been collected from the record subject or other criminal justice agencies. The restrictions of subsection (e)(5) would restrict and delay trained correctional managers from timely exercising their judgment in managing the inmate population and providing for the safety and security of the prisons and the public.

* * * * *

Dated: July 31, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02–20207 Filed 8–8–02; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 281–2002]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, Bureau of Prisons ("Bureau"), is exempting a Privacy Act system of records from the following subsections of the Privacy Act: (e)(1) and (e)(5), pursuant to 5 U.S.C. 552a(j). The system of records to be exempted is the "Inmate Physical and Mental Health Records System, Justice/BOP–007". This system continues to be exempted from the subsections of the Privacy Act as previously promulgated.

The additional exemptions are necessary to preclude the compromise of institution security; to better ensure the safety of inmates, Bureau personnel and the public; to better protect third party privacy; to protect law enforcement and investigatory information; and/or to otherwise ensure the effective performance of the Bureau's law enforcement functions.

EFFECTIVE DATE: This final rule is effective August 9, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: On March 15, 2002 (67 FR 11631) a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedure, Freedom of Information, Sunshine Act, Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR part 16 is amended as follows.

PART 16—[AMENDED]

1. The authority citation for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g) and 553; 18 U.S.C. 4203 (a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717 and 9701.

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2. Paragraphs (n) and (o) are added to § 16.97 to read as follows:

§ 16.97 Exemption of Federal Bureau of Prisons Systems—limited access.

* * * * *

(n) The following system of records is exempted pursuant to 5 U.S.C. 552a(j) from subsections (e)(1) and (e)(5): Bureau of Prisons Inmate Physical and Mental Health Records System, (Justice/BOP–007).

(o) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, *e.g.* public source materials, or those supplied by third parties, the applicable exemption may be waived, either partially or totally, by the Bureau. Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (e)(1) to the extent that the Bureau may collect information that may be relevant to the law enforcement operations of other agencies. In the interests of overall, effective law enforcement, such information should be retained and made available to those agencies with relevant responsibilities.

(2) From subsection (e)(5) because in the collection and maintenance of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely and complete. Data which may seem unrelated, irrelevant or incomplete when collected may take on added meaning or significance during the course of an investigation or with the passage of time, and could be relevant to future law enforcement decisions. In addition, because many of these records come from sources outside the Bureau of Prisons, it is administratively impossible for them and the Bureau to ensure compliance with this provision. The restrictions of subsection (e)(5) would restrict and delay trained correctional managers from timely exercising their judgment in managing the inmate population and providing for the health care of the inmates and the safety and security of the prisons and the public.

* * * * *

Dated: July 31, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02–20209 Filed 8–8–02; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 278–2002]

Privacy Act of 1974; Implementation

AGENCY: Foreign Terrorist Tracking Task Force (FTTTF), Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is exempting a Privacy Act system of records from subsections (c)(3), (d)(1), (2), (3) and (4), and (e)(1) and (4)(I) of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(1). The system of records to be exempted is the "Flight Training Candidates File System, JUSTICE/FTTTF–001."

The Flight Training Candidates File System is a system of records established pursuant to section 113 of the Aviation and Transportation Security Act (ATSA), Public Law 107–71, 49 U.S.C. 44939 to support the administration of the required risk assessment of candidates for flight instruction who are aliens or persons designated by the Under Secretary of Transportation for Security, U.S. Department of Transportation. Subsequent to the terrorist hijacking and crashing of aircraft on September 11, 2001, Congress determined that aliens seeking training in the operation of aircraft with a takeoff weight of 12,500 pounds or more should be subject to closer scrutiny. Pursuant to Section 113 of ATSA, persons who wish to provide such training to aliens or others designated by the Under Secretary of Transportation for Security must first notify the Attorney General, and provide identifying information with regard to the prospective trainee, so that the Attorney General may determine whether the prospective trainee poses a risk to aviation or national security.

The exemption is necessary as explained in the accompanying final rule.

DATES: This final rule is effective August 9, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: On June 10, 2002 (67 FR 39838), a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

This order relates to individuals as well as small business entities. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–602, the Attorney General, by approving this regulation, certifies that this rule will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information, Sunshine Act, Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR part 16 is amended as follows:

PART 16—[AMENDED]

1. The authority citation for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 524; 31 U.S.C. 3717, 9701.

2. Section 16.105 is added to subpart E to read as follows:

Subpart E—Exemption of Records Systems Under the Privacy Act

§ 16.105 Exemption of Foreign Terrorist Tracking Task Force System.

(a) The following system of records is exempt from 5 U.S.C. 552a, subsections (c)(3), (d)(1), (2), (3) and (4), and (e)(1) and (4)(I): Flight Training Candidates File System (JUSTICE/FTTTF–001). This exemption applies only to the extent that information is subject to exemption pursuant to 5 U.S.C. 552a(k)(1).

(b) Exemption from the particular subsections is justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures could reveal information that is classified in the interest of national security.

(2) From subsection (d)(1), (2), (3) and (4) because access to and amendment of certain portions of records within the system would tend to reveal or compromise information classified in the interest of national security.

(3) From subsection (e)(1) because it is often impossible to determine in advance if information obtained will be relevant for the purposes of conducting the risk analysis for flight training candidates.

(4) From subsection (e)(4)(I) to the extent that this subsection is interpreted to require more detail regarding the record sources in this system than have been published in the **Federal Register**.

Should the subsection be so interpreted, exemption from this provision is necessary because greater specificity concerning the sources of these records could compromise national security.

Dated: July 31, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02–20206 Filed 8–8–02; 8:45 am]

BILLING CODE 4410–FB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC93

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Document Incorporated by Reference—API RP 14C

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: MMS is updating one document incorporated by reference in regulations governing oil, gas, and sulphur operations in the Outer Continental Shelf (OCS). This final rule revises the American Petroleum Institute (API) Recommended Practice (RP) 14C (API RP 14C), Sixth Edition, March 1998, currently incorporated by reference into our regulations. We are updating the API RP 14C document to the Seventh Edition, March 2001. The new edition will allow lessees to use updated industry standard technologies while operating in the OCS.

EFFECTIVE DATE: This rule is effective September 9, 2002. The incorporation by reference of publications listed in the regulations is approved by the Director of the Federal Register as of September 9, 2002.

FOR FURTHER INFORMATION CONTACT: Wilbon A. Rhome at (703) 787–1587.

SUPPLEMENTARY INFORMATION: We use standards, specifications, and recommended practices developed by standard-setting organizations and the oil and gas industry as a means of establishing requirements for activities on the OCS. This practice, known as incorporation by reference, allows us to incorporate the provisions of technical standards into the regulations. The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly issued regulation, then has the force and effect of law. We hold operators/lessees accountable for complying with the documents incorporated by reference in our regulations. We currently incorporate by reference 85 private sector consensus standards into the offshore operating regulations.

The regulations at 1 CFR part 51 govern how we and other Federal agencies incorporate various documents by reference. Agencies may only incorporate by reference through publication in the **Federal Register**. Agencies must also gain approval from the Director of the Federal Register for each publication incorporated by reference. Incorporation by reference of a document or publication is limited to the specific edition, supplement, or addendum cited in the regulations.

The regulations at 30 CFR 250.198(a)(2) allow MMS to update documents without opportunity to comment when we determine that the revisions to a document result in safety improvements or represent new industry standard technology and do not impose undue costs on the affected parties. MMS has made that determination in this instance. Consequently, under 5 U.S.C 553(b)(B), MMS finds that notice and comment procedures are unnecessary. Accordingly, this final rule revises the currently incorporated by reference API document RP 14C, for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms, to incorporate the Seventh Edition, dated March 2001. The following is a summary of the background for this decision.

Background

Current MMS testing requirements specify that the above-mentioned safety devices be tested "at least once each calendar month, but at no time shall more than 6 weeks elapse between tests." In mid-1997, a number of lessees operating on the OCS requested a departure from MMS safety system testing requirements as outlined in 30 CFR 250.804 (formerly 250.124(a)(3)(i)) for producing operations. *See* former 30 CFR 250.3 (1997). (Current provisions for alternative procedures and departures are found at 30 CFR 250.141 and 250.142 (2001).) Specifically, companies requested approval to test electronic pressure transmitters and level sensors (e.g., Pressure Safety High (PSH), Pressure Safety Low (PSL), Level Safety High (LSH), and Level Safety Low (LSL)) at a frequency less than required in the regulations.

This raised two concerns for MMS with regard to its regulatory program. First, we did not have guidelines in place to support our decisionmaking process for approving or denying alternative compliance requests, waivers, or departures related to the testing of electronic safety systems. Second, MMS could not be sure that testing at a lesser frequency would not compromise the safety of OCS workers. MMS believes that the burden of proof lies with industry to demonstrate that the requested testing frequency for these devices affords a degree of protection, safety, or performance equal to or better than what can be achieved by following the current regulatory requirements.

Consequently, in May 1999, MMS contacted API to discuss our concerns with the testing and maintenance of electronic pressure transmitters and level sensors. We requested API not wait until the next regularly scheduled revision of API RP 14C, Sixth Edition, to review and update the document. Specifically, MMS asked API to define what guidelines industry should follow to request approval of a departure from the electronic pressure transmitter and level sensor testing requirements in 30 CFR 250.804(a)(3)(i)(ii).

In June 1999, a workgroup comprised of representatives from the oil and gas industry, API, and MMS was assembled to develop guidelines to address concerns with the testing and maintenance of electronic pressure transmitters and level sensors. The workgroup reviewed 20 years of past maintenance and testing data, but because of technological improvements, only focused on the latest 5 to 10 years of data. These data supported industry's assumption that testing at a lesser frequency would not compromise the safety of OCS workers and would still afford a degree of protection at least equal to what could be achieved by following current MMS requirements. Thus, the workgroup recommended revisions to API RP 14C, Sixth Edition, specifically, Appendix C—Support Systems, and Appendix D—Reporting Procedures. API incorporated the revisions and issued the Seventh Edition of API RP 14C in March 2001. API made no changes to RP 14C other than the reduced testing frequency for electronic pressure transmitters and level sensors.

Conclusions

MMS reviewed the new Seventh Edition of API RP 14C and determined that:

- Incorporating into regulations the Seventh Edition that specifies a reduced testing frequency will not jeopardize the use of the best and safest technologies.
- The changes between the old and new editions represent new industry standard technology and will not

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impose undue cost on the offshore oil and gas industry.

• The changes to our regulations will eliminate the need for industry to request certain departures from the regulations.

Based on our determinations, we are incorporating the new Seventh Edition of API RP 14C and making the corresponding revisions to 30 CFR 250.804(a)(3)(i)(ii) and 250.1630(a)(2)(i)(ii).

Procedural Matters

The purpose of this rule is to update one document that is currently incorporated by reference in the regulations. The differences between the newer document and the older document are very minor. The minor differences between the newer and older documents will not cause a significant economic effect on any entity (small or large). Therefore, this regulation's impact on the entire industry is minor.

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule does not have new requirements and does not prevent any lessee or operator from performing operations on the OCS. The updated standard (Seventh Edition of API RP 14C) allows companies operating on the OCS to test electronic pressure transmitters and level sensors at a frequency less than required in the regulations. It does not impose additional costs. A positive benefit to less testing is that costs should decrease for the oil and gas industry.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule does not affect how lessees or operators interact with other agencies, nor does it affect how MMS will interact with other agencies.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The rule only affects businesses operating on the OCS with respect to a standard that provides new (reduced) testing criteria for electronic pressure transmitters and level sensors.

(4) This rule does not raise novel legal or policy issues. The requirements are based on the legal authority of the OCS Lands Act (43 U.S.C. 1331 *et seq.*).

Regulatory Flexibility (RF) Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the RF Act (5 U.S.C. 601 *et seq.*). An RF Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

The provisions of this rule will not have a significant economic effect on lessees and operators, including those that are classified as small businesses. The Small Business Administration (SBA) defines a small business as having:

• Annual revenues of $5 million or less for exploration service and field service companies.

• Fewer than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

Offshore lessees/operators are classified under SBA's North American Industry Classification System (NAICS) code 211111 (Crude Petroleum and Natural Gas Extraction) and NAICS 213111 code (Drilling Oil and Gas Wells). We estimate approximately 130 companies will be affected by this rulemaking. According to SBA criteria, 39 companies are large firms, leaving up to 91 companies (70 percent) that may qualify as small firms with fewer than 500 employees.

This rule imposes no new operational requirements, reporting burdens, or other measures that would increase costs to lessees/operators, large or small. Therefore, this rule has no significant economic impact on small entities.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small businesses. If you wish to comment on the enforcement actions of MMS, call toll-free 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

Small Business Regulatory Enforcement Fairness ACT (SBREFA)

This rule is not a major rule under (5 U.S.C. 804(2)) the SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The main purpose of this rule is to update an industry standard that will allow lessees to test electronic pressure transmitters and level sensors at a reduced frequency, thereby eliminating the need to request departures. The rule does not have new requirements.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The cost to comply with the rule by the affected parties should be less than current requirements.

(c) Does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or ability of United States-based enterprises to compete with foreign-based enterprises. The rule does not contain new requirements.

Paperwork Reduction Act (PRA) of 1995

The Department of the Interior (DOI) has determined that this regulation does not contain information collection requirements pursuant to PRA (44 U.S.C. 3501 *et seq.*). A form OMB 83–I information collection request to OMB is not required.

Federalism (Executive Order 13132)

According to Executive Order 13132, the rule does not have Federalism implications because it does not affect the relationship between the Federal and State governments, and will not impose costs on States or localities. The rule simply updates a standard incorporated by reference in MMS regulations to allow companies to test electronic pressure transmitters and level sensors at a reduced frequency.

Takings Implications Assessment (Executive Order 12630)

According to Executive Order 12630, the final rule does not represent a governmental action capable of interference with constitutionally protected property rights. The updated standard addresses reduced testing frequency for electronic pressure transmitters and level sensors. Thus, MMS did not prepare a Takings Implication Assessment according to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule is not a significant rule and is not subject to review by OMB under Executive Order 12866. The rule does not have a significant effect on energy supply, distribution, or use. The primary purpose of this rule is to update an incorporated standard to allow for reduced testing frequency of electronic pressure transmitters and level sensors.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Unfunded Mandate Reform Act (UMRA) of 1995 (Executive Order 12866)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. It does not contain new requirements, and it will not have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA of 1969 is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: August 2, 2002.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, MMS amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

§ 250.198 [Amended]

2. In § 250.198, in the table in paragraph (d), the addresses for the entry for "ANSI/ASME Codes" are revised; and in the table in paragraph (e), the entry for "API RP 14C" is revised to read as follows:

§ 250.198 Documents incorporated by reference.

* * * * *

(d) * * *

For	Write to
ANSI/ASME Codes	American National Standards Institute, Attention Sales Department, 25 West 43rd Street, 4th Floor, New York, NY 10036; and/or American Society of Mechanical Engineers, 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007.

(e) * * *

Title of documents	Incorporated by reference at
API RP 14C, Recommended Practice for Analysis, Design, Installation, and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Seventh Edition, March 2001, API Stock No. C14C07.	§ 250.802(b), (e)(2); § 250.803(a), (b)(2)(i), (b)(4), (b)(5)(i), (b)(7), (b)(9)(v), (c)(2); § 250.804(a), (a)(5); § 250.1002(d); § 250.1004(b)(9); § 250.1628(c), (d)(2); § 250.1629(b)(2), (b)(4)(v); and § 250.1630(a).

3. In § 250.802, paragraphs (b) and (e)(2) are revised to read as follows.

§ 250.802 Design, installation, and operation of surface production safety systems.

* * * * *

(b) *Platforms.* You must protect all platform production facilities with a basic and ancillary surface safety system designed, analyzed, installed, tested, and maintained in operating condition in accordance with API RP 14C (incorporated by reference as specified in § 250.198). If you use processing components other than those for which Safety Analysis Checklists are included in API RP 14C you must utilize the analysis technique and documentation specified therein to determine the effects and requirements of these components on the safety system. Safety device requirements for pipelines are under § 250.1004.

* * * * *

(e) * * *

(2) A schematic piping flow diagram (API RP 14C, Figure E, incorporated by reference as specified in § 250.198) and the related Safety analysis Function Evaluation chart (API RP 14C, subsection 4.3c, incorporated by reference as specified in § 250.198).

* * * * *

4. In § 250.803, the following changes are made:

A. Revise paragraph (a), the first sentence in paragraph (b)(2)(i), and paragraphs (b)(4) introductory text, (b)(5)(i), (b)(7), and (b)(9)(v) to read as set forth below.

B. In paragraph (b)(10), the citation "§ 250.403" is revised to read "§ 250.114".

C. Revise Paragraph (c)(2) introductory text to read as set forth below.

D. In paragraph (d), the citation "§ 250.402" is revised to read "§§ 250.109 through 250.113".

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§ 250.803 Additional production system requirements.

(a) *General.* Lessees must comply with the following production safety system requirements (some of which are in addition to those contained in API RP 14C, incorporated by reference as specified in § 250.198).

(b) * * *

(2) *Flowlines.* (i) You must equip flowlines from wells with high- and low-pressure shut-in sensors located in accordance with section A.1 and Figure A1 of API RP 14C (incorporated by reference as specified in § 250.198).

* * *

* * * * *

(4) *ESD.* The ESD must conform to the requirements of Appendix C, section C1, of API RP 14C (incorporated by reference as specified in § 250.198), and the following:

* * * * *

(5) *Engines.* (i) *Engine exhaust.* You must equip engine exhausts to comply with the insulation and personnel protection requirements of API RP 14C, section 4.2c(4) (incorporated by reference as specified in § 250.198). Exhaust piping from diesel engines must be equipped with spark arresters.

* * * * *

(7) *Gas compressors.* You must equip compressor installations with the following protective equipment as required in API RP 14C, sections A4 and A8 (incorporated by reference as specified in § 250.198).

* * * * *

(9) * * *

(v) Fire- and gas-detection systems must be an approved type, designed and installed in accordance with API RP 14C (incorporated by reference as specified in § 250.198), API RP 14G (incorporated by reference as specified in § 250.198), and API RP 14F, Design and Installation of Electrical System for Offshore Production Platforms (incorporated by reference as specified in § 250.198).

* * * * *

(c) * * *

(2) When wells are disconnected from producing facilities and blind flanged, equipped with a tubing plug, or the master valves have been locked closed, you are not required to comply with the provisions of API RP 14C (incorporated by reference as specified in § 250.198) or this regulation concerning the following:

* * * * *

5. In § 250.804, the following changes are made:

A. In paragraph (a) introductory text, revise the last sentence to read as set forth below.

B. In paragraph (a)(3), the introductory text is revised to read as set forth below.

C. Paragraphs (a)(4) through (a)(11) are redesignated (a)(5) through (a)(12).

D. A new paragraph (a)(4) is added to read as set forth below.

E. In newly redesignated paragraph (a)(5), the second sentence is revised to read as set forth below.

F. In newly redesignated paragraph (a)(10), the citation "(a)(6)" is revised to read "(a)(7)".

§ 250.804 Production safety-system testing and records.

(a) * * * Testing must be in accordance with API RP 14C, Appendix D (incorporated by reference as specified in § 250.198), and the following:

* * * * *

(3) The following safety devices (excluding electronic pressure transmitters and level sensors) must be tested at least once each calendar month, but at no time will more than 6 weeks elapse between tests:

* * * * *

(4) The following electronic pressure transmitters and level sensors must be tested at least once every 3 months, but at no time may more than 120 days elapse between tests:

(i) All PSH and PSL, and

(ii) All LSH and LSL controls.

(5) * * * The FSV's must be tested for leakage in accordance with the test procedure specified in API RP 14C, Appendix D, section D4, table D2, subsection D (incorporated by reference as specified in § 250.198). * * *

* * * * *

6. In § 250.1002, the first sentence in paragraph (d) is revised to read as follows:

§ 250.1002 Design requirements for DOI pipelines.

* * * * *

(d) If the maximum source pressure (MSP) exceeds the pipeline's MAOP, you must install and maintain redundant safety devices meeting the requirements of section A9 of API RP 14C (incorporated by reference as specified in § 250.198). * * *

* * * * *

7. In § 250.1004, the first sentence in paragraph (b)(9) is revised to read as follows:

§ 250.1004 Safety equipment requirements for DOI pipelines.

* * * * *

(b) * * *

(9) Pipeline pumps must comply with section A7 of API RP 14C (incorporated by reference as specified in § 250.198).

* * * * *

8. In § 250.1604 the following changes are made:

A. In paragraph (c), the citation "§ 250.402" is revised to read "§ 250.109 through § 250.113".

B. In paragraph (d), the citation "§ 250.403" is revised to read "§ 250.114".

9. In § 250.1628, paragraphs (c) and (d)(2) are revised to read as follows:

§ 250.1628 Design, installation and operation of production system.

* * * * *

(c) *Hydrocarbon handling vessels associated with fuel gas system.* You must protect hydrocarbon handling vessels associated with the fuel gas system with a basic and ancillary surface safety system. This system must be designed, analyzed, installed, tested, and maintained in operating condition in accordance with API RP 14C, Analysis, Design, Installation, and Testing of Basic Surface Safety Systems for Offshore Production Platforms (incorporated by reference as specified in § 250.198). If processing components are to be utilized, other than those for which Safety Analysis Checklists are included in API RP 14C, you must use the analysis technique and documentation specified therein to determine the effect and requirements of these components upon the safety system.

(d) * * *

(2) A schematic flow diagram (API RP 14C, Figure E1, incorporated by reference as specified in § 250.198) and the related Safety Analysis Function Evaluation chart (API RP 14C, subsection 4.3c, incorporated by reference as specified in § 250.198).

* * * * *

10. In § 250.1629, revise paragraphs (b)(2) and (b)(4)(v) to read as follows:

§ 250.1629 Additional production and fuel gas system requirements.

* * * * *

(b) * * *

(2) *Engine exhaust.* You must equip engine exhausts to comply with the insulation and personnel protection requirements of API RP 14C, section 4.2c(4) (incorporated by reference as specified in § 250.198). Exhaust piping from diesel engines must be equipped with spark arresters.

* * * * *

(4) * * *

(v) Fire- and gas-detection systems must be an approved type, designed and installed in accordance with API RP 14C (incorporated by reference as specified in § 250.198), API RP 14G (incorporated by reference as specified in § 250.198), and API RP 14F, Design and Installation of Electrical System for Offshore Production Platforms (incorporated by reference as specified in § 250.198).

* * * * *

11. In § 250.1630 the following changes are made:

A. Paragraphs (a) introductory text and (a)(2) introductory text are revised to read as set forth below.

B. Paragraphs (a)(3) through (a)(5) are redesignated (a)(4) through (a)(6).

C. New paragraph (a)(3) is added to read as set forth below.

§ 250.1630 Safety-system testing and records.

(a) *Inspection and testing.* You must inspect and successfully test safety system devices at the interval specified below or more frequently if operating conditions warant. Testing must be in accordance with API RP 14C, Appendix D (incorporated by reference as specified in § 250.198). For safety system devices other than those listed in API RP 14C, Appendix D, you must utilize the analysis technique and documentation specified therein for inspection and testing of these components, and the following:

* * * * *

(2) The following safety devices (excluding electronic pressure transmitters and level sensors) must be inspected and tested at least once each calendar month, but at no time may more than 6 weeks elapse between tests:

* * * * *

(3) The following electronic pressure transmitters and level sensors must be inspected and tested at least once every 3 months, but at no time may more than 120 days elapse between tests:

(i) All PSH or PSL, and

(ii) All LSH and LSL controls.

* * * * *

[FR Doc. 02–18143 Filed 8–8–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–098]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, mile 1055.0 at Pompano Beach, Broward County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the NE. 14th Street (SR 844) bridge, mile 1055.0 at Pompano Beach, Florida, from August 2 to August 14, 2002. This deviation allows this bridge to only open a single-leaf of the bridge. Double-leaf openings will be available with a one-hour advance notice to the bridge tender. This temporary deviation is required to allow the bridge owner to safely complete repairs to the bridge.

DATES: This deviation is effective from 12:01 a.m. on August 2, 2002 to 8 p.m. on August 14, 2002.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Officer, Seventh Coast Guard District, Bridge Section at (305) 415–6744.

SUPPLEMENTARY INFORMATION: The SR 844 (NE. 14th Street) bridge, mile 1055.0 at Pompano Beach, Broward County, Florida, has a vertical clearance of 15 feet at mean high water and a horizontal clearance of 45 feet between the down span and the fender system. The existing operating regulations in 33 CFR 117.261(cc) require the bridge to open on signal, except that, from 7 a.m. to 6 p.m., the draw need open only on the quarter-hour and three-quarter-hour.

The Florida Department of Transportation notified the Coast Guard on July 24, 2002, that due to an equipment malfunction, they temporarily can only operate a single-leaf of the drawbridge. A double-leaf opening will be available if a one-hour's notice is provided to the bridge tender, allowing enough time to bring in a work crew to open the other leaf.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.261(cc) to complete repairs to the drawbridge. Under this deviation, the SR 844 (NE. 14th Street) bridge, mile 1055.0 at Pompano Beach, need only open a single-leaf on signal; except that, from 7 a.m. to 6 p.m., the draw need open a single-leaf on the quarter-hour and three-quarter-hour from 12:01 a.m. on August 2, 2002, to 6 p.m. on August 14, 2002. A double-leaf opening will be available if one-hour's advance notice is provided to the bridge tender from 12:01 a.m. on August 2, 2002, to 8 p.m. on August 14, 2002.

Dated: August 1, 2002.

Greg Shapley,

Chief, Bridge Administration Branch, Seventh Coast Guard District.

[FR Doc. 02–20247 Filed 8–8–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–063]

RIN 2115–AA97

Safety and Security Zones; USCGC EAGLE Port Visit—Salem Harbor, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety and security zones for the United States Coast Guard Cutter (CGC) EAGLE's port visit to the PG&E Power Plant in Salem, MA, from August 9, 2002, to August 12, 2002. The safety and security zones close all waters within a 100-yard radius of the USCGC EAGLE while underway off the coast of Massachusetts in United States territorial seas, and while moored at the PG&E Pier in Salem Harbor, Salem, MA. The safety and security zones prohibit entry into or movement within this portion of Salem Harbor during the effective periods.

DATES: This rule is effective from 6 a.m. August 9 until 11:59 p.m., August, 12, 2002.

ADDRESSES: Documents indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT David M. Sherry, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 11, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Safety and Security Zones: USCGC EAGLE Port Visit—Salem Harbor, Massachusetts" in the **Federal Register** (67 FR 45945). We received no

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comments on the proposed rule. No public hearing was requested, and none was held. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this rule's effective date would be contrary to public interest since immediate action is needed to safeguard the CGC EAGLE (a training vessel for the U.S. Coast Guard Academy], persons on the vessel, the public, and surrounding communities from sabotage or other subversive acts, accidents, or other events of a similar nature. The CGC EAGLE presents a possible target of terrorist attack, because it is a prominent and highly visible public vessel. These temporary safety and security zones are being established to safeguard the CGC EAGLE (a training vessel for the U.S. Coast Guard Academy), persons on the vessel, the public, and surrounding communities from sabotage or other subversive acts, accidents, or other events of a similar nature. These safety and security zones, having identical boundaries, prohibit entry into or movement within the specified areas. Public notifications will be made prior to the effective period via safety marine information broadcasts.

Background and Purpose

This rule establishes safety and security zones within a 100-yard radius of the USCGC EAGLE while it is moored at the PG&E Pier in Salem Harbor, Salem, MA and while the vessel is transiting within navigable waters of the United States in the Captain of the Port (COTP) Boston zone, as defined in 33 CFR 3.05–10. Under the Ports and Waterways Safety Act, (33 U.S.C.S. 1221 *et seq.*) navigable waters of the United States include all waters of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988 (103 Stat. 2981; 54 FR 777, January 9, 1989). This Presidential Proclamation declared that the territorial sea of the United States extends to 12 nautical miles from the baseline of the United States determined in accordance with international law. The safety and security zones are in effect from August 9, 2002, to August 12, 2002. Public notifications will be made prior to the effective period via local notice to mariners and marine information broadcasts.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The Captain of The Port anticipates minimal impact to vessel traffic due to the safety and security zones. Some impact on recreational vessel and small passenger vessel traffic is expected in the vicinity of Salem Harbor, however it is expected to be minimal due to the ability of these vessels to transit safely outside of the safety and security zones. Thus, although this rule would prevent traffic from transiting a portion of Salem Harbor during the effective periods, the effects will not be significant for the reasons outlined above. Advance notifications will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have significant economic impact on a substantial number of small entities. This rule would have a minimal impact on small entities because vessel traffic can safely pass outside of the safety and security zones during the effective period, the safety and security zones are limited in duration, and advance notifications will be made to the local maritime community by safety marine information broadcasts.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–063 to read as follows:

§ 165.T01–063 Safety and Security Zones: USCGC EAGLE Port visit-Salem Harbor, Massachusetts.

(a) *Location.* The following areas are safety and security zones: (1) All waters of Salem Harbor within a 100 yard radius of the United States Coast Guard Cutter (USCGC) EAGLE while moored at the PG & E Pier;

(2) All navigable waters of the United States within the Captain of the Port (COTP) Boston zone, as defined in 33 CFR 3.05–10, within a 100-yard radius of the USCG EAGLE while underway.

(b) *Effective date.* This rule is effective from 6 a.m. August 9, 2002 through 11:59 p.m. August 12, 2002.

(c) *Definitions.* For purposes of this section, *navigable waters of the United States* includes all waters of the territorial sea as described in Presidential Proclamation No. 5928 of December 27, 1988. Presidential Proclamation No. 5928 of December 27, 1988 declared that the territorial sea of the United States extends to 12 nautical miles from the baseline of the United States.

(d) *Regulations.*

(1) In accordance with the general regulations in § 165.23 and § 165.33 of this part, entry into or movement within these zones will be prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: July 31, 2002.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–20245 Filed 8–6–02; 4:08 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC 93–200122b; FRL–7206–9]

Approval and Promulgation of Implementation Plans North Carolina: Approval of Revisions to Open Burning Regulations Within the Forsyth County Local Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On December 30, 1999, the Forsyth County Environmental Affairs Department through, the North Carolina Department of Environment and Natural Resources, submitted revisions to the Forsyth County Local Implementation Plan (LIP). These revisions include the amending of open burning, transportation conformity, and general provision regulations. The purpose of these revisions is to make the revised regulations consistent with the requirements of the Clean Air Act as amended in 1990. The EPA is approving these revisions.

DATES: This direct final rule is effective October 8, 2002 without further notice, unless EPA receives adverse comment by September 9, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Randy Terry, 404/562–9032.

North Carolina Department of Environment and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

Forsyth County Environmental Affairs Department, 537 North Spruce Street, Winston-Salem, North Carolina 27101.

FOR FURTHER INFORMATION CONTACT: Randy B. Terry at 404/562–9032, or by electronic mail at *terry.randy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1999, the Forsyth County Environmental Affairs Department, through the North Carolina Department of Environment and Natural Resources, submitted revisions to the Forsyth county LIP. These revisions include the revision of open burning, transportation conformity, and general provisions regulations. A detailed analysis of each of the major revisions submitted is listed below.

II. Analysis of Forsyth County's Submittal

Subchapter 3D

3D .1903 Permissible Open Burning and 2D .1904 Air Curtain Burners

These rules were revised to include language that states that any material to be burned must originate from the land being cleared or the area being maintained.

.2003 Transportation Conformity Determination

This rule was amended to change an incorrect reference to 40 CFR 93.106 to the correct cite of 40 CFR 93.108.

Subchapter 3Q

3Q .0102 Activities Exempted From Permit Requirements

This rule has been amended to clarify that it only applies to those facilities with permits issued under Section .300 of this Subchapter.

3Q .0103 Definitions

This rule has been amended to modify the definitions for both "insignificant activities" and "potential emissions." Insignificant activities is now defined as

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"activities defined as insignificant activities because of category or as insignificant activities because of size or production rate under rule .0503 of this Subchapter." "Potential emissions" has been revised to allow that potential emissions do not include emissions from insignificant activities because of category as defined under rule .0503.

III. Final Action

EPA is approving the aforementioned changes to the SIP because the revisions are consistent with Clean Air Act and EPA regulatory requirements. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective October 8, 2002 without further notice unless the Agency receives adverse comments by September 9, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 8, 2002 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 8, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: April 1, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II—North Carolina

2. Section 52.1770(c) is amended by adding a new table 2 to read as follows:

§ 52.1770 Identification of Plan.

* * * * *

(c). * * *

TABLE 2.—EPA APPROVED FORSYTH COUNTY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 3D Air Pollution Control Requirements Section .1900 Open Burning				
Sect .1903	Permissible Open Burning	10/25/99	8/8/02	
Sect. .1904	Air Curtain Burners	10/25/99	8/8/02	
Section .2000 Transportation Conformity				
Sect. .2003	Transportation Conformity Determination	10/25/99	8/8/02	
Subchapter 3Q—Air Quality Permits Section .0100 General Provisions				
Sect. .0102	Activities Exempt From Permit Requirements	10/25/99	8/8/02	
Sect. .0103	Definitions	10/25/99	8/8/02	

[FR Doc. 02–20225 Filed 8–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7256–7]

Rhode Island: Authorization of State Hazardous West Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Rhode Island has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Rhode Island's changes to their hazardous waste program will take effect. if we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This final authorization will become effective on October 8, 2002 unless EPA receives adverse written comment by September 9, 2002. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take immediate effect.

ADDRESSES: Send any written comments to Robin Biscaia, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023; telephone: (617) 918–1642. Copies of the State of Rhode Island's revision application and the materials which EPA used in evaluating the revision (the "Administrative Record") are available for inspection and copying during normal business hours at the following locations: Rhode Island Department of Environmental Management, Office of Technical and Customer Assistance, 235 Promenade Street, Providence, RI 02908–5767, business hours: 8:30 a.m. to 4 p.m., telephone: (401) 222–6822; or EPA New England Library, One Congress Street—11th Floor, Boston, MA 02114–2023, business hours: 10 a.m. to 3 p.m., Monday through Thursday, telephone: (617) 918–1990.

FOR FURTHER INFORMATION CONTACT: Robin Biscaia, Hazardous Waste Unit, Office of Ecosystems Protection, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023, telephone: (617) 918–1642.

SUPPLEMENTARY INFORMATION:

A. Why are Revisions to State Programs Necessary?

States which have been authorized to administer the Federal hazardous waste program under RCRA section 3006(b), 42 U.S.C. 6926(b), have a continuing obligation to update their programs to meet revised Federal requirements. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revised their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279. The EPA may grant final authorization to a State version if it is equivalent to, consistent with, and no less stringent than Federal RCRA requirements.

B. What Decisions Have We Made in This Rule?

We conclude that the State of Rhode Island's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant the State of Rhode Island Final authorization to operate its hazardous waste program with the changes described in the authorization application. Rhode Island has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will

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implement those requirements and prohibitions in the State of Rhode Island, including issuing permits, until the State is granted authorization to do so.

C. What is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Rhode Island subject to RCRA will have to comply with the newly authorized State requirements instead of the Federal requirements in order to comply with RCRA. The State of Rhode Island has enforcement responsibilities under its State hazardous waste program for violations of such programs, but EPA also retains its full authority under RCRA sections 3007, 3008, 3013, and 7003.

This action does not impose additional requirements on the regulated community because the state regulations for which authorization to the State of Rhode Island is being granted by today's action are already in effect under state law, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What has Rhode Island Previously Been Authorized for?

Rhode Island initially received Final Authorization on January 30, 1986, effective January 31, 1986 (51 FR 3780) to implement its base hazardous waste management program. We granted authorization for changes to their program on March 12, 1990, effective March 26, 1990 (55 FR 9128), March 6, 1992 effective May 5, 1992 (57 FR 8089) and October 2, 1992 effective December 1, 1992 (57 FR 45574).

G. What Changes are We Authorizing in Today's Action

On December 12, 2001 Rhode Island submitted a program revision application seeking authorization of their changes in accordance with 40 CFR 271.24. This application was supplemented by an Attorney General's Statement dated April 3, 2002 and by a letter dated May 15, 2002 relating to the Rhode Island Environmental Compliance Incentive Act. Thus, the application was complete as of May 15, 2002. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Rhode Island's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization.

The specific RCRA program revisions for which the EPA grants final authorization to Rhode Island are listed in the table below. The Federal requirements in the table are identified by their checklist numbers and rule descriptions. The following abbreviations are used in defining equivalent state authority: RIGL means Rhode Island General Laws; Rules means "Rules and Regulations for Hazardous Waste Management."

Description of Federal Requirement and Checklist Reference Number	Analogous State Authority [1]
Non-HSWA Cluster IV:	
(40) List (Phase 1) of Hazardous Constituents for Ground Water Monitoring: 52 FR 25942; 7/9/87.	Rule 9.03, 8.04(G), 8.01(G).
(41) Identification and Listing of Hazardous Waste: 52 FR 26012; 7/10/87.	Rule 3.32.
(43) Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee; 52 FR 44314; 11/18/87.	Rule 9.17, 8.04(T) 7.01(E).
(45) Hazardous Waste Miscellaneous Units; 52 FR 46946; 12/10/87.	Rule 3.48, 3.100, 12.00, 8.05, 9.20, 8.04(K), 9.05, 9.12, 9.03, 8.04(G), 9.16, 8.04(R), 9.17, 8.04(T), 12.02, 12.01.
Non-HSWA Cluster V:	
(59) Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators: 54 FR 615; 1/9/89.	Rule 8.04(K), 8.04(R), 12.01.
HSWA Cluster I:	
(17A) Small Quantity Generators: 50 FR 28702; 7/15/85	See Checklist 23 entry.
(23) Generators of 100 to 1000 kg Hazardous Waste: 51 FR 10146; 3/24/86.	Rule 2.02(B), 3.100, 5.02(D), 5.05, 3.32, 5.0, 13.06(B)(1)(c), 2.02(E), 5.02(A), 6.04(K), 8.01(J).
(32) Standards for Generators; Waste Minimization Certifications; 51 FR 35190, 10/1/86.	Rule 2.02(B), 5.03(G), Rhode Island Uniform Hazardous Waste Manifest.
HSWA Cluster II:	
(42) Exception Reporting for Small Quantity Generators of Hazardous Waste: 52 FR 35894; 9/23/87.	Rule 2.02(B), 5.0, 5.03(I).
(47) Identification and Listing of Hazardous Waste; Technical Correction: 53 FR 27162; 7/19/88.	Rule 3.32, 5.0.
(74) Toxicity Characteristic Revisions: 55 FR 11798, 3/29/90 as amended on 6/29/90 55 FR 26989.	Rule 3.32, 3.67(M)(7), 3.67(L), 5.08, 3.79, 10.01(E), 10.01(B), 10.01(D), 2.02(B), 3.98.
RCRA Cluster I:	
(80) Toxicity Characteristic; Hydrocarbon Recovery Operations: 55 FR 40834, 10/5/90 as amended on 2/1/91, 56 FR 3978 as amended on 4/2/91, 56 FR 13406, optional rule.	Rule 3.32.

Description of Federal Requirement and Checklist Reference Number	Analogous State Authority [1]
(84) Toxicity Characteristic; Chlorofluoro Refrigerants: 56 FR 5910, 2/13/91, optional rule.	Rule 3.32.
RCRA Cluster III:	
(108) Toxicity Characteristic Revision; Technical Correction: 57 FR 30657, 7/10/92.	Rule 3.32, 10.01(E).
(117B) Toxicity Characteristic Amendment: 57 FR 23062, 6/1/92 ...	Rule 3.32.
(119) Toxicity Characteristic Revision, TCLP Correction: 57 FR 55114, 11/24/92, as amended on February 2, 1993 at 58 FR 6854, optional rule.	Rule 3.79.
RCRA Cluster V:	
142(A) Universal Waste Rule: General Provisions; 60 FR 25492 5/11/95, optional rule.	Rule 2.02(B), 3.98, 3.19, 3.86, 3.87, 3.89, 3.32, 5.00, 13.01, 2.02(E), 13.05(A)–(D), 13.06, 13.06(A)–(D), 13.06(F)–(J), 13.06(L)–(S), 3.31, 3.50, 3.58, 3.71, 3.88.
142(B) Universal Waste Rule: Specific Provisions for Batteries; 60 FR 25492, 5/11/95, optional rule.	3.06, 3.86, 2.02(B), 3.98, 13.01(A), 13.05, 13.05(A)–(D), 13.06, 13.06(A), (E), (F), (K), and (L).
(142C) Universal Waste Rule: Specific Provisions for Pesticides; 60 FR 25492, 5/11/95, optional rule.	Rule 3.63, 3.86, 13.01(B), 13.05, 13.05(A)–(D), 13.06, 13.06(A), (E), (F), (J), (K), and (L), 3.29.
(142D) Universal Waste Rule: Specific Provisions for Thermostats; 60 FR 25492, 5/11/92, optional rule.	Rule 3.78, 3.86, 13.01(C), 13.05, 13.05(A)–(D), 13.06, 13.06(A), (E), (F), (K), and (L).
(142E) Universal Waste Rule: Petition Provisions to Add a New Universal Waste; 60 FR 25492, 5/11/95, optional rule.	Rule 2.02(B), 3.98, 13.06, 13.06(T).
RCRA Cluster VII:	
(153) Conditionally Exempt Small Quantity Generator Disposal Options under Subtitle D, 61, FR 34252, 7/1/96.	Rule 3.32, 5.0, 13.06(B)(1)(c).
RCRA Cluster X:	
(181) Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps; 64 FR 36466, 7/6/99, optional rule.	Rule 3.57, 3.86, 3.86(f), 13.04, 13.04(A)–(C), 13.01(F), 13.05, 13.05(A)–(D), 13.04(A)–(C), 3.50, 3.71, 13.06(E)(3), 13.06(F)(3), 13.06(J)(1), 13.06(K)(3), 13.06(L)(3).
(184) Accumulation Time for Waste Water Treatment Sludges: 65 FR 12378, 3/8/00, optional rule.	Rule 5.02(A), 5.02(D), 5.02(D)(1)–(4).

[1] The State of Rhode Island's provisions are from Rhode Island General Law 23–19:1–6 (1996 Re-enactment) and "Rules and Regulations for Hazardous Waste Management," Rules 1.00–14.00, as amended through September 17, 2001.

H. Where are the Revised State Rules Different from the Federal Rules?

The major difference in Rhode Island's regulatory program as compared to the federal program is that it is more stringent with regard to the regulation of small quantity generators (SQGs), *i.e.*, generators of less than 1,000 kg/month and conditionally exempt generators (CESQGs), *i.e.*, generators of less than 100 kg/month. The State rules for hazardous waste generators apply to all generators regardless of size with some exceptions as identified below:

Rule 5.0 [Generators] specifies that certain federal provisions which allow reduced requirements for SQGs and CESQGs (40 CFR 261.5, 40 CFR 262.20(e), 40 CFR 262.42(b) and 40 CFR 262.44) do not apply in Rhode Island except as provided in Rule 5.02(B) and (C) and Rules 5.05, 5.06 and 13.06B (described below):

- Rule 5.02(B) and (C) provides some reduced requirements for SQG/CESQGs accumulating waste on site. The generator may only accumulate up to 3,000 kg of waste on site at any time (v. the federal limit of 6,000 kg) with 90 days maximum storage (v. the federal storage limit of 180 days) and must comply with the acute waste limits set out in 40 CFR 261.5(e)(1) and (2). Rule 5.02(B) provides that when such generators accumulate waste in tanks, they shall not be subject to 40 CFR part 265, subpart J [Tank Systems] except for 40 CFR 265.201 [Special requirements for generators of between 100 and 1,000 kg/month that accumulate hazardous waste in tanks]. Rule 5.02(C) provides that when such generators accumulate waste on site, they shall not be subject to 40 CFR part 265, subpart CC [Air Emission Standards for Tanks, Surface Impoundments and Containers].
- Rule 5.05 [Biennial Reports] specifies that SQGs are not required to prepare and submit a biennial report.
- Rule 5.06 [Record Keeping] specifies that SQGs are not required to maintain copies of biennial reports unless specifically requested by the Director to prepare and submit one.
- Rule 13.06B [replacing 40 CFR 273.5—Applicability—household and conditionally exempt small quantity generator waste] requires persons who are federal CESQGs and who generate universal waste to manage those wastes either in compliance with 40 CFR 261.5 or the universal waste management requirements of this part. Facilities which accept household hazardous waste only, for subsequent off-site management in accordance with these regulations, will be considered to be generators subject to the requirements of section 5.0 of Rhode Island's rules.

Rhode Island's hazardous waste program revisions also include the State's Universal Wastes Rule [13.0 Universal Waste]. In addition to adopting regulations covering the federal universal wastes of pesticides, batteries, thermostats and mercury-containing lamps, Rhode Island has added two new wastes to its rule: cathode ray tubes and mercury-containing devices. A state may include such additional universal wastes, pursuant to the authority of 40 CFR part 273, subpart G (petition process for inclusion of additional universal wastes).

The requirements referenced above are part of Rhode Island's authorized program and are federally enforceable.

The following State requirement goes beyond the scope of the Federal program:

- Rhode Island does not provide an exemption for PCB waste that is regulated under the Toxic Substances Control Act (TSCA) as does the federal program at 40 CFR 261.8. (See Rule 3.67(L)(7)). Instead, Rhode Island regulates PCB wastes which contains polychlorinated biphenyls at a concentration of 50 parts per million or greater or shows ten micrograms per one hundred square centimeters as measured by standard wipe tests as

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extremely hazardous waste under its hazardous waste program.

Broader-in-scope requirements are not part of the authorized RCRA program and EPA can not enforce them. Although you must comply with these requirements in accordance with state law, they are not federal RCRA requirements.

I. Who Handles Permits After This Authorization Takes Effect?

Rhode Island will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Rhode Island is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Rhode Island?

Rhode Island is not authorized to carry out its hazardous waste program in Indian country within the State which includes the land of the Narragansett Indian Tribe. Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

K. What is Codification and is EPA Codifying Rhode Island's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We are today authorizing, but not codifying, the enumerated revisions to the Rhode Island program. We reserve the amendment of 40 CFR part 272, subpart OO for the codification of Rhode Island's program until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and, therefore, this action is not subject to review by OMB. This action authorizes state requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by state law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes state requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action, nevertheless, will be effective 60 (sixty) days after publication pursuant to the procedures governing immediate final rules.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 6, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 02–19979 Filed 8–8–02; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067–AD30

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: We (the Federal Insurance and Mitigation Administration of FEMA) are changing the effective date of the Financial Assistance/Subsidy Arrangement ("the Arrangement") to October 1, 2002. The Arrangement defines the duties and responsibilities of insurers that sell and service flood insurance under the Write Your Own program. It also identifies the responsibilities of the Government to provide financial and technical assistance to these insurers.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Edward L. Connor, Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, (202) 646–3429, (facsimile) (202) 646–3445, or (email) *edward.connor@fema.gov.*

SUPPLEMENTARY INFORMATION: On August 6, 2001, we published in the **Federal Register** (Vol. 66, No. 151, page 40916) a final rule that adjusted the expense allowance under the Arrangement to reflect more accurately the costs of the private insurers that sell and service flood insurance under the Arrangement. That rule also revised the effective date of the Arrangement.

This final rule revises the effective date of the Arrangement to agree with the new Arrangement year that begins October 1. 2002. We are not making any other changes to the Arrangement for fiscal year 2003.

National Environmental Policy Act

The requirements of 44 CFR part 10, Environmental Consideration, categorically exclude this final rule. We have not prepared an environmental impact assessment.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The Office of Management and Budget has not reviewed this final rule under E.O. 12866.

Paperwork Reduction Act

This final rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

Executive Order 13132, Federalism

This final rule involves no policies that have federalism implications under E.O. 13132, Federalism.

Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of § 2(b)(2) of E.O. 12778.

List of Subjects in 44 CFR Part 62

Flood insurance.

Accordingly, we amend 44 CFR Part 62 as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. In appendix A to part 62, revise the *Effective Date* to read as follows:

Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement

* * * * *

Effective Date: October 1, 2002.

* * * * *

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance"; No. 83.516, "Disaster Assistance")

Dated: July 30, 2002.

Howard Leikin,

Deputy Administrator for Insurance, Federal Emergency Management Agency.

[FR Doc. 02–20152 Filed 8–8–02; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1687, MB Docket No. 02–94, RM–10423]

Digital Television Broadcast Service; Athens, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Georgia Public Telecommunications Commission, licensee of noncommercial station WGTV–TV, substitutes DTV channel *12 for DTV channel *22 at Athens, Georgia. *See* 17 FCC Rcd 755 (2002). DTV channel *12 can be allotted to Athens in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 33–48–18 N. and 84–08–40 W. with a power of 16, HAAT of 305 meters and with a DTV service population of 3211 thousand. With is action, this proceeding is terminated.

DATES: Effective September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–94, adopted July 15, 2002, and released July 19, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Georgia, is amended by removing DTV channel *22 and adding DTV channel *12 at Athens.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–20186 Filed 8–8–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1668, MB Docket No. 02–84, RM–10339]

Digital Television Broadcast Service; San Mateo, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of San Mateo County Community College District, licensee of noncommercial educational station KCSM–TV, San Mateo, California, substitutes DTV channel *43 for DTV channel *59 at San Mateo. *See* 67 FR 20942, April 29, 2002. DTV channel *43 can be allotted to San Mateo in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 37–45–19 N. and 122–27–06

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W. with a power of 1000, HAAT of 444 meters and with a DTV service population of 5476 thousand. With this action, this proceeding is terminated.

DATES: Effective September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–84, adopted July 11, 2002, and released July 18, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under California, is amended by removing DTV channel *59 and adding DTV channel *43 at San Mateo.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–20187 Filed 8–8–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–99–6266]

RIN 2126–AA46

Brake Performance Requirements for Commercial Motor Vehicles Inspected by Performance-Based Brake Testers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) to establish pass/fail criteria for use with performance-based brake testers (PBBT), which measure the braking performance of commercial motor vehicles. A PBBT is a device that can assess vehicle braking capability through quantitative measure of individual wheel brake forces or overall vehicle brake performance in a controlled test. The specific types of PBBTs addressed in this rule are the roller dynamometer, breakaway torque tester, and flat-plate tester. Only those PBBTs that meet certain functional specifications, developed by FMCSA, can be used to enforce the FMCSRs. The final rule allows motor carriers and State and local enforcement officials to use PBBTs to determine compliance with existing brake performance requirements.

DATES: This final rule is effective on February 5, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Gary R. Woodford, (202) 366–2978, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration (MC–PSV), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

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Background

On August 9, 2000, the FMCSA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (65 FR 48660), addressing brake performance requirements for commercial motor vehicles (CMVs) inspected by performance-based brake testers (PBBTs). The notice proposed to amend the FMCSRs by establishing pass/fail criteria for PBBTs, when used to measure CMV braking performance. A PBBT is a device that can assess vehicle braking capability through quantitative measure of individual wheel brake forces, or overall vehicle brake performance, in a controlled test. The specific types of PBBTs addressed in the notice were the roller dynamometer, breakaway torque tester, and flat-plate tester. Only those PBBTs which meet certain functional specifications developed by FMCSA and discussed below could be used to enforce the FMCSRs. The proposal would allow motor carriers and State and local enforcement officials to use PBBTs to determine compliance with § 393.52.

The proposal represented the culmination of agency research that began in the early 1990s. Further information on the research, and on PBBT basic principles of operation, are available in the NPRM of August 9, 2000. The research included: (1) field evaluation tests, "Development, Evaluation, and Application of Performance-Based Brake Testing Technologies," February 1999, Report No. FHWA–MC–98–046, and (2) round-robin tests, "PBBT Round-Robin Testing," February 2000. (The term "round-robin" describes a series of tests in which a single "standard" is used to evaluate the consistency of various test apparatus. In the round-robin presented in this report, the "standard", a specific configuration of brake forces and wheel loads on a heavy-duty vehicle, was used to evaluate the candidate PBBTs and their operating protocols.)

PBBT Functional Specifications and MCSAP Funding Eligibility

On August 9, 2000, the FMCSA also published in the **Federal Register** a notice of final determination (65 FR 48799) establishing functional specifications for PBBTs, "Guidelines for Development of Functional Specifications for Performance-Based Brake Testers Used to Inspect Commercial Motor Vehicles." Data gathered during the PBBT field evaluation research served as background for developing the specifications. The specifications are generic, and therefore applicable to a range of PBBT technologies. They include requirements for: (1) Functional performance, such as measurement accuracy with tolerances, calibration, and operator interface, (2) physical characteristics including portability, (3) environmental resistance, (4) operator safety, (5) documentation, including operator and maintenance manuals; and (5) skill level and number of operator personnel required. The specifications also include quality assurance provisions or methodologies for verifying PBBT compliance with each of the functional specifications. The methodologies include analysis, test, demonstration, inspection, and certified vendor data. The intent of the specifications is to ensure a minimum level of PBBT accuracy and performance.

Under the PBBT functional specifications, a PBBT manufacturer self-certifies its PBBT to meet the functional specifications at the time of manufacture, and also states which specifications, if any, its PBBT does not meet. PBBTs that are certified to meet the functional specifications are eligible for funding under the Motor Carrier Safety Assistance Program (MCSAP). The MCSAP is a Federal program, administered by FMCSA, providing funds to States and U.S. territories in support of commercial motor vehicle safety. This means that States or territories may use MCSAP funding to purchase one of the certified PBBTs for use in commercial motor vehicle brake inspections. As part of the self-certification process, the PBBT manufacturer must sign a declaration, under penalty of perjury, that its PBBT meets the functional specifications at the time of manufacture. States are allowed to spend MCSAP funds for a PBBT only if the manufacturer has signed such a declaration and presented it to the State. Further information on self-certification and the functional specifications are available in the August 9, 2000 notice of final determination.

Current Brake Performance Requirements

Currently, the requirements for CMV braking performance are specified in § 393.52, Brake Performance. Sections 393.52(a)(1), (a)(2), and (a)(3) specify service brake system requirements for minimum braking force (BF_{Total}) as a percentage of actual gross vehicle weight (GVW), minimum deceleration, and maximum stopping distance, respectively, all from a vehicle speed of 32.2 km/hr (20 mph). For service brake systems all three requirements must be met to achieve compliance with the regulation. The requirements apply to all CMVs or CMV combinations subject to the FMCSRs, under any loading condition.

However, there are practical difficulties in performing such tests at roadside inspection facilities, because of space limitations and CMVs with deceleration-sensitive cargo. Thus, Federal and State officials rarely enforce the current performance requirements. Instead, current inspections involve visual, "hands-on" examination of brake system components to identify unsafe vehicles, based on guidelines developed by the Commercial Vehicle Safety Alliance (CVSA). While successful and productive, this method does have limitations, such as the number of vehicles that can be inspected on a given day. PBBTs, on the other hand, have the advantage of being able to measure actual vehicle braking performance as well as the potential for increased CMV volume during roadside inspections.

Proposed PBBT Pass/Fail Criteria

In the NPRM of August 9, 2000, the FMCSA proposed brake performance criteria for use with PBBTs in determining CMV service brake system compliance with § 393.52(a)(1) and (a)(2). These are the requirements for minimum braking force as a percentage of gross vehicle weight (BF_{Total}/GVW) and minimum deceleration. The proposed PBBT criteria would not replace existing requirements, but would serve as an alternative whenever PBBTs were used for determining compliance with § 393.52(a)(1) and (a)(2).

The specific PBBT performance criteria proposed by the agency were the same requirements for minimum BF_{Total}/GVW and minimum deceleration, that are already specified in the current regulation, § 393.52(a)(1) and (a)(2). The regulation requires CMVs to meet all three of the performance measures shown. This would not change under the proposal. However, enforcement officials and motor carriers could use PBBTs to determine compliance with the requirements for minimum braking force as a percentage of gross vehicle weight, BF_{Total}/GVW, specified in § 393.52(a)(1). Compliance with this requirement would also satisfy the minimum deceleration requirement specified in § 393.52(a)(2), because of the simple mathematical relationship that exists between the two parameters (BF_{Total}/GVW = deceleration/acceleration of gravity).

Therefore, those CMVs which achieve a maximum PBBT-measured BF_{Total}/GVW that is equal to or greater than the required braking force levels, would be considered in compliance with both the braking force and deceleration requirements specified in § 393.52(a)(1) and (a)(2), respectively. Those CMVs that do not meet the braking force levels would be considered in non-compliance with both the braking force and deceleration requirements. The PBBT pass/fail criteria would apply to all CMVs or CMV combinations, and the agency proposed that it become effective 30 days after issuance of a final rule.

The agency also requested comments on: (1) The appropriateness of using criteria taken from the current regulation, since the latest amendments to those requirements were published 28 years earlier, (2) whether PBBT-measured BF_{Total}/GVW should be used to satisfy stopping distance requirements in addition to minimum deceleration, (3) whether the FMCSA should require a post-inspection PBBT measurement to certify correction of an earlier PBBT-measured braking deficiency, (4) PBBT standardized test procedures, and (5) PBBT operator training.

Comments

FMCSA received comments to the proposal from the following 15 different organizations: American Trucking Associations, Inc. (ATA), ArvinMeritor, Inc. (ArvinMeritor), Beissbarth Automotive Service Equipment (Beissbarth), Bendix Commercial Vehicle Systems (Bendix), Commercial Vehicle Safety Alliance (CVSA), Electraulic, Inc. (Electraulic), Heavy Duty Brake Manufacturers Council (HDBMC), Hunter Engineering Company (Hunter), Iowa Department of Transportation (Iowa DOT), Motor Coach Industries, Inc. (MCI), National Automobile Dealers Association (NADA), Radlinski & Associates, Inc. (Radlinski), Truck Manufacturers Association (TMA), TSD Holdings, Inc. (TSD), and Vipac Engineers and Scientists, Limited (Vipac). The commenters include: (1) Industry associations that represent truck dealers, truck and brake component manufacturers, and motor carriers, (2) State and local enforcement agencies; (3) brake tester manufacturers; (4) vehicle research and testing organizations; and (5) a motor coach manufacturer.

General Support

The following 10 commenters expressed support for the proposal: ATA, ArvinMeritor, Bendix, CVSA, HDBMC, Iowa DOT, MCI, NADA, Radlinski, and TSD.

ATA stated that it supports the use of PBBTs for enforcement and endorses the proposal. CVSA also fully supports the voluntary use of PBBTs for enforcement, and stated that PBBTs are a good complement to roadside inspection methods and out-of-service criteria in use today. CVSA also commended the FMCSA for its extensive research and testing, and leadership in this rulemaking. Both ATA and Radlinski pointed out the potential for PBBTs to

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decrease the time involved in roadside brake inspections and make them less subjective. NADA commented on the advantages that PBBTs offer to State and local enforcement personnel over visual brake inspection methods. In supporting the proposal, ArvinMeritor stated that it believes FMCSA had approached the evaluation and implementation of PBBTs in a thorough and thoughtful manner.

Although Bendix and HDBMC commended FMCSA for its efforts, they also pointed out that agency research with PBBTs did not include vehicles with gross axle weight ratings (GAWRs) greater than 9,072 kg (20,000 pounds), such as special permit vehicles and heavy haulers. Both commenters expressed their interest in having FMCSA gather and report data on such vehicles.

In response, the FMCSA sees no need at this time to initiate research specifically for this purpose. The agency acknowledges that its PBBT research has focused on vehicles with GAWRs less than 9,072 kg (20,000 pounds). This is because they represent the majority of CMVs on the road today. The heavier vehicles, referred to by Bendix and HDBMC, comprise a very small portion of the CMV population. Moreover, the PBBT functional specifications, published in the August 9, 2000 notice of final determination, specify that brake testers be capable of operating with axles weighing up to 40,000 pounds. Therefore, the heavier vehicles will not be prohibited from being used on PBBTs. The FMCSA anticipates that as PBBT usage increases, data on such vehicles will become available.

Three other commenters, TMA, Hunter, and Vipac, although supportive of the use of PBBTs, did not support implementation of the proposal at the present time.

TMA requested the FMCSA to conduct further research and testing before proceeding with the proposed amendment. It stated that the FMCSA analysis is based on only two vehicles, used in the round-robin research, and that this limited sample may not accurately represent how well PBBT brake force measurements correlate to actual stopping distance, given the wide variety of CMV configurations. TMA included test data on 16 different CMV configurations, showing that the vehicles met federal motor vehicle safety standard stopping distance requirements from 60 mph for new vehicles. TMA stated, however, that four of the vehicles did not pass the proposed brake force measurement of 0.435 (BF_{Total}/GVW), when tested with a PBBT believed to meet the FMCSA functional specifications. Thus, TMA believes it would be detrimental to rush implementation of PBBT pass/fail criteria that may conflict with new vehicle brake performance requirements, or without understanding how this relates to in-service braking requirements.

In response to TMA, the FMCSA does not believe that further research is needed at the present time. Although the round-robin research did involve only two vehicles, the vehicles were considered representative of a majority of the CMV axle configurations on the road: (1) A two-axle flatbed straight truck and a (2) three-axle tractor, two-axle flatbed semi-trailer combination. In addition, a lack of correlation between vehicle stopping distance and maximum braking force, among the four vehicles that TMA refers to in its comment, does not necessarily mean there is a conflict between new vehicle and in-service requirements. As the agency pointed out in its proposal, these two parameters may not correlate, because maximum braking force is not sustained over an entire stop. In addition, there are other factors that can influence the relationship between stopping distance and braking force. A more direct comparison is that of maximum PBBT-measured braking force and maximum-measured braking force during an actual vehicle stop, which is what the FMCSA did in its round-robin research. Moreover, the agency has never claimed or intended that PBBT test results be used as a surrogate for determining compliance with 60 mph stopping distance requirements for new vehicles. The FMCSA is not aware of any data to correlate the results of low-speed brake performance tests and high-speed tests, such as those conducted by TMA. The agency finds that its research supports the use of PBBTs to assess the brake performance of CMVs, and that TMA's arguments do not warrant a delay in the issuance of this final rule.

Hunter, which manufactures flat-plate testers, asked that the FMCSA consider a different approach than the one proposed. It desires an approach that is not deceleration-based, and that takes better advantage of the individual capabilities of each brake tester type. Hunter stated that since the proposed pass/fail criteria are based on total vehicle brake force (BF_{Total}/GVW), it does not account for braking capability at individual wheels. In other words, a strong brake on one wheel could make up for a weak brake on another wheel, when summing total brake forces. According to Hunter, this would overlook brake force imbalances that can cause vehicle instability while braking. Hunter asserts that side-to-side brake balance measurements are the most reliable method of determining brake performance. Using brake balance as the criterion, would allow vehicles to stop on Hunter's flat-plate tester at a lower deceleration, such as 0.3g, rather than 0.435g, for example, contained in the FMCSA proposal. According to Hunter, this higher deceleration stop proposed in the NPRM is difficult to achieve in some cases, and leads to cargo shifting.

The FMCSA does not concur with Hunter's rationale. While brake balance is an important consideration in assessing overall brake performance, it does not necessarily indicate stopping distance capability. For example, stopping a vehicle with weak, well-balanced brakes at a deceleration of 0.3g does not necessarily mean that it will stop at the higher 0.435g deceleration proposed in the NPRM and required in the current regulation. The FMCSA believes that maximum braking force is a better surrogate than brake balance for assessing stopping distance capability of heavy vehicles during roadside inspection. Moreover, the agency's proposal required measurement of maximum brake force at each wheel, which in turn provides information on brake force imbalance for a given axle. Finally, as discussed in more detail later in the preamble, no other commenter indicated that the proposed brake force of 0.435, BF_{Total}/GVW, is too high for motor carriers to achieve.

Vipac only addressed the FMCSA round robin research referenced in the August 9, 2000 NPRM. Vipac commended the agency for its depth of research but recommended further work before implementing PBBT regulations. For the most part, the work that Vipac referred to involves roller dynamometer issues, including: (1) Over-predicting of brake force, (2) the need for improved algorithms by PBBT manufacturers (*i.e.*, the PBBT internal data processing methodology by which measured brake force is determined), (3) the effects of low roller speed on accuracy, and (4) vehicle-to-PBBT geometry during testing.

However, the FMCSA has already identified these four areas in its analysis of the round-robin research, and through additional research the agency has been working with PBBT manufacturers to resolve those issues. This work should be completed in 2002, and based on preliminary results, the FMCSA does not believe that a delay in moving forward with this rulemaking is warranted.

In its comments, Vipac also advocated as an alternative, a new technology, the on-board decelerometer, which measures deceleration rate during a vehicle stop. Vipac stated that this technology is less costly and more accurate than the PBBTs addressed in this rulemaking. As the FMCSA pointed out in its NPRM, a space convenient and large enough to perform a panic stop with a CMV can be difficult to find at roadside inspection facilities. Moreover, the technology referred to by Vipac is outside the scope of this rulemaking.

The two remaining commenters, Beissbarth and Electraulic, did not specifically address the proposal. Beissbarth stated that based on its experience, flat-plate and breakaway torque testers do not provide accurate results over time. However, Beissbarth provided no information to support this claim. Electraulic expressed interest in the PBBT program, but provided no other comments in response to the proposal.

Therefore, based on the strong support from a majority of commenters, the FMCSA is today establishing pass/fail criteria for use with PBBTs in determining CMV service brake system compliance with § 393.52(a)(1) and (a)(2).

Appropriateness of Criteria

In the NPRM of August 9, 2000, the FMCSA asked for comments on whether the proposed PBBT pass/fail criteria are still appropriate in light of more recent brake system and brake testing technologies. The agency pointed out that the proposed criteria for BF_{Total}/GVW are the same as those in the current regulation, which has not been amended since 1972.

Five commenters addressed this issue. They are ATA, CVSA, HDBMC, Hunter, and Radlinski. All of the commenters expressed support for the proposed level of PBBT pass/fail criteria, with the exception of Hunter as already discussed. Both ATA and CVSA stated that using the same pass/fail criteria that are currently in § 393.52 is appropriate, since those requirements were used in developing the current CVSA North American Uniform Out-of-Service Criteria. State and local enforcement personnel use these criteria today to determine whether a vehicle should be placed out-of-service for inadequate service brakes. ATA and CVSA also pointed out, however, that the agency should make it clear that the PBBT pass/fail criteria are minimums. The FMCSA agrees. CMVs which *meet or exceed* the PBBT pass/fail criteria would be considered in compliance with the brake force and deceleration requirements of § 393.52(a)(1) and (a)(2).

Radlinski stated that the PBBT pass/fail criteria are appropriate for vehicles with good brakes. In support of its claim Radlinski provided data on 81 different vehicles that it had tested using a Radlinski PBBT. All of the vehicles were proving ground-tested for stopping capability, inspected, and found to have defect-free brakes. The PBBT test data show that all of the vehicles passed the criterion (BF_{Total}/GVW = 0.435) by a significant margin. However, Radlinski also pointed out that a vehicle with adequate brakes might fail the test, if the coefficient of friction (COF) between the test surface and tire falls substantially below 0.6. This could occur when the tire is wet and may not have enough friction to develop the required brake force. The COF of 0.6 between the PBBT test surface and tire is the minimum under dry conditions specified in the FMCSA final PBBT functional specifications of August 9, 2000. Radlinski stated that the FMCSA should consider establishing an absolute lower COF in order for a test to be considered valid, and suggested 0.55. Although COF is outside the scope of this rulemaking, the FMCSA appreciates Radlinski's comments, and will consider this issue for further action.

As discussed earlier, Hunter advocates a BF_{Total}/GVW that is lower than 0.435, such as 0.3. However, for the reasons already given above, the FMCSA believes Hunter has not provided sufficient rationale to assure adequate safety using lower PBBT pass/fail criteria.

Based on these comments, the FMCSA has adopted the PBBT pass/fail criteria in today's final rule.

Stopping Distance Requirements

In its proposal of August 9, 2000, the FMCSA proposed retaining the stopping distance requirement from 32.2 km/hr (20 mph) specified in § 393.52(a)(3), because it believed that a satisfactory PBBT-measured braking force would not necessarily ensure compliance with the stopping distance requirement. The agency pointed out that PBBT-measured maximum braking force can not be used to compute corresponding stopping distance because maximum braking force is typically not sustained over the entire stop. In addition, the distance traveled during brake application and brake force buildup varies with vehicle type, being negligible for many light vehicles and greatest for combinations of commercial vehicles. However, the FMCSA asked for comments on whether the correlation between PBBT-measured braking forces and stopping distance requirements is close enough to use PBBTs to safely satisfy all three requirements, which are in § 393.52(a)(1), (a)(2), and (a)(3)—minimum BF_{Total}/GVW, minimum deceleration, and maximum stopping distance, respectively.

The following four commenters responded to this issue: Radlinski, ATA, ArvinMeritor, and Hunter. Radlinski stated that it is impossible to precisely relate maximum braking force to stopping distance without knowing brake application time. Similarly, ATA cited the impossibility of accurately relating stopping distance and braking force, because of brake application time and other variables. ArvinMeritor stated that PBBTs should only be implemented to evaluate braking force, and not stopping distance, until the trucking industry and enforcement authorities have gained more experience with their use. ArvinMeritor did not address any of the technical issues governing the relationship between stopping distance and maximum braking force. Hunter stated that stopping distance can be calculated as accurately as deceleration when brake force, friction, and weight are known, assuming balanced brakes and constant brake force. However, as referenced above, brake force may not be constant during a CMV stop. Moreover, it cannot be assumed that the vehicle brakes are balanced, due to variations in the condition of the brakes and road friction. Therefore, Hunter's assertion is not correct. In light of these comments, the FMCSA has decided to adopt the stopping distance requirements as set out in the NPRM.

Post-Inspection PBBT Measurement

Under the August 9, 2000 proposal, those CMVs which do not meet the specified PBBT-measured braking forces would be considered out of compliance with both the braking force and deceleration requirements of § 393.52(a)(1) and (a)(2). After fixing the problem, the motor carrier would certify the correction on the roadside inspection report and return it to the issuing agency, as outlined in § 396.9, Inspection of Motor Vehicles in Operation. This would be the same way that violations found under current inspection methods are handled. Under this approach, the FMCSA would not require a post-inspection PBBT measurement, as long as the involved motor carrier certifies correction of the deficiency consistent with § 396.9. However, the agency requested comments on whether a post-inspection PBBT measurement should be required and under what conditions.

The five commenters that addressed this issue, NADA, ATA, ArvinMeritor, Radlinski, and CVSA, did not believe

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the agency should require a post-inspection PBBT measurement. NADA suggested that it should be optional, while ArvinMeritor stated that such a requirement would not be an effective use of PBBT resources. Both ATA and ArvinMeritor supported the FMCSA proposal, stating that this approach is consistent with current roadside inspection follow up requirements in § 396.9. Radlinski, however, stated that provision should be made to allow other methods for checking a repaired vehicle, such as inspection by a certified brake inspector. However, Radlinski provided no rationale to justify such a requirement. The agency notes that motor carriers are free to use whatever means they choose to verify post-inspection repairs on their vehicles. CVSA stated that generally, its member jurisdictions do not require post-inspections to determine whether defects have been corrected. It has established an international goal of verifying the repairs on 15 percent of out-of-service violations, and referred the FMCSA to its Operations Manual for guidance on this subject. However, the FMCSA proposal for not requiring a post-inspection PBBT measurement is in the context of an out-of-compliance violation, not an out-of-service violation. In light of these comments, the agency continues to believe that there should be no requirement for a post-inspection PBBT measurement, and today's final rule contains no such requirement.

In the NPRM of August 9, 2000, the FMCSA also indicated that if the proposal were adopted, it intends to work with its partners and customers to develop a list of likely brake system components or causes responsible for low PBBT measurements. The agency believes that such guidance would be helpful to motor carriers and enforcement officials in identifying and correcting inadequate braking conditions.

ATA, CVSA, and NADA expressed support for this initiative. ATA indicated that such a diagnostic tool is necessary to facilitate timely repairs, and offered to serve on a developmental task force. It also indicated that brake manufacturers should be involved because of new braking technologies. CVSA recommended that FMCSA consider providing federal funds to jurisdictions interested in purchasing PBBTs for developing guidance in identifying the inadequate braking conditions. NADA stated that PBBT manufacturers should be required to develop and make available diagnostic and repair strategies for CMVs that fail PBBT tests.

The FMCSA notes that it has no authority to require PBBT manufacturers or others to provide the diagnostic information necessary to assist commercial motor vehicle operators in identifying and correcting braking deficiencies that result in low PBBT measurements. However, the FMCSA plans to seek the voluntary involvement of a cross-section of its partners and customers to help in developing this information. Through ongoing research, the agency has identified issues that will need to be addressed. The agency anticipates that this preliminary work can serve as the basis for the remaining effort.

Vehicle Applicability

In its August 2000 notice, the FMCSA proposed that PBBT pass/fail criteria be applicable to all CMVs and CMV combinations, consistent with current brake performance requirements in § 393.52. The agency believed that because PBBTs have the capability to measure brake force on both light and heavy vehicles, their benefits should be made available to a wide range of CMVs. However, the agency requested comments on whether it is appropriate to provide such criteria for light CMVs (GVWR or GVW of 4,536 kg (10,000 pounds) or less), since they represent a relatively small portion of all CMVs, and are therefore, less likely to undergo roadside brake inspections than are heavy CMVs (GVWR or GVW greater than 4,536 kg (10,000 pounds)).

However, in a separate rulemaking published on January 11, 2001, the agency proposed making the safety regulations applicable to CMVs designed or used to transport between 9 and 15 passengers. These CMVs would typically be less than 10,000 pounds. Therefore, if the agency were to adopt PBBT rules applicable to vehicles less than 10,000 pounds, those requirements would cover small passenger-carrying vehicles, and light vehicles used to transport hazardous materials in a quantity requiring placards. As an alternative, the FMCSA stated that PBBT pass/fail criteria could be limited to heavy CMVs. Persons submitting comments were requested to provide supporting data.

The following six commenters provided limited information: Hunter, ATA, CVSA, ArvinMeritor, Radlinski, and HDBMC. Hunter, ATA, and CVSA support the proposal to provide PBBT pass/fail criteria for all CMVs. Hunter stated that there is no reason not to include the light vehicles in providing PBBT pass/fail criteria. ATA stated that PBBTs provide a better opportunity to inspect the brakes on light vehicles, since they are more enclosed and less accessible for visual inspection than the brakes on heavy CMVs. However, both ATA and CVSA believe that the States should have the option of using PBBTs on light vehicles, but not be required to do so. This is consistent with the agency's proposal, since the use of PBBTs would be an alternative method of determining compliance with the brake performance requirements of § 393.52. ArvinMeritor also supports the use of PBBTs on light vehicles, but recommended that FMCSA research the appropriateness of the pass/fail criteria. Likewise, Radlinski stated that further data is needed on the appropriateness of the criteria for light vehicles, and for that reason it does not support PBBT use on light vehicles at this time. HDBMC simply stated that it has no data on light vehicles. None of the six commenters provided any supporting data.

After further consideration, the FMCSA has decided not to include PBBT pass/fail criteria for light vehicles at the present time. In making this decision, the agency notes that ArvinMeritor and Radlinski provided no rationale for questioning the appropriateness of the pass/fail criteria for light vehicles. Nevertheless, the FMCSA recognizes that the CMV industry has minimal experience with the use of PBBTs on light vehicles. In addition, the agency's PBBT research did not include light vehicles. By providing pass/fail criteria for heavy vehicles only, today's final rule makes PBBT use possible on the vast majority of CMVs that undergo roadside inspection. Applying this final rule only to heavy vehicles will also provide the agency with an opportunity to further investigate the use of PBBTs on light vehicles. Therefore, today's final rule is applicable to those CMVs and CMV combinations that have a GVWR or GVW greater than 4,536 kg (10,000 pounds).

Test Procedures and Training

In its proposal of August 9, 2000, the FMCSA indicated that if the proposal were adopted, it anticipated working with partners and customers to develop PBBT standard test procedures and operator training. The agency believes these are necessary to minimize or eliminate any influence that a particular PBBT operator, vehicle configuration, or PBBT type might otherwise have on test results. State and local officials would use the test procedures and operator training to help ensure uniform PBBT test results across the enforcement community. For both the test procedures and training the FMCSA requested comments on what specific issues need to be addressed, and with which partners and customers the agency should work. The FMCSA also requested comments on whether each State should take responsibility for training its enforcement officials on proper PBBT operation, after the training material is developed.

Eight commenters responded. They are ArvinMeritor, ATA, Bendix, CVSA, HDBMC, MCI, NADA, and Radlinski, all of which concurred with the need for standard PBBT test procedures, operator training, or both. Test procedure and training issues that commenters cited include brake lining temperature, wet weather limitations, vehicle weighing procedures, marginal brakes, interpretation of test results, bad test and allowance for retest, driver rights, test duration, test report format, and PBBT calibration and maintenance. ATA and Radlinski commented that a vehicle found to have an out-of-compliance PBBT measurement should be allowed the opportunity for a retest at the time of the inspection. ATA pointed out that this is similar to current procedures where a motor carrier can also inspect its vehicle at the time a violation is found. ArvinMeritor cited the need for precautionary warnings and procedures (1) to assure the safety of test personnel and vehicle operators, and (2) to minimize risk of damage to inter-axle differential (IAD) components on the test vehicle. The IAD, which may be locked or unlocked by the driver, serves to compensate for small differences in tire rolling radii between the fore and aft driving axles of a tandem axle. ArvinMeritor also stated that automatic traction control devices (ATC), which are incorporated as a feature of antilock brake systems, must be disabled when a single axle of a tandem axle vehicle is tested on a roller dynamometer PBBT. The function of the ATC is to provide traction when it senses that one wheel is slipping or spinning. If the ATC is not disabled, the vehicle will tend to drive off the rollers and thereby pose a safety hazard during the test. Likewise, the IAD on a tandem axle must be unlocked before testing to avoid (1) having the vehicle drive off the PBBT rollers, or (2) damage to IAD components. Other factors that may contribute to IAD damage are test duration, PBBT roller speed, and whether tandem axles are tested simultaneously or individually. Collectively, the commenters recommended that the FMCSA work with CVSA, ATA and its Technology Maintenance Council, HDBMC, PBBT manufacturers, brake manufacturers, and motor carriers to address these issues. Only one commenter, MCI, addressed the issue of which entity should take responsibility for PBBT operator training. MCI stated that the FMCSA should ensure through rulemaking that each state takes responsibility for training its enforcement officials on proper PBBT operation for the various vehicle configurations.

The FMCSA appreciates these comments. As with the vehicle repair information, the agency plans to engage a cross-section of its partners and customers to help develop PBBT standard test procedures and operator training. Through ongoing research the FMCSA has identified issues that will need to be addressed. The agency anticipates that this preliminary work can serve as a starting point for the remaining effort. With regard to the MCI comment on training, the FMCSA has no authority to require states to take responsibility for PBBT operator training. However, the agency anticipates that as the training materials are developed, an appropriate level of federal and state responsibility will be reached.

Effective Date

In the NPRM of August 9, 2000, the FMCSA proposed that use of PBBTs for enforcement become effective 30 days after issuance of a final rule. The agency stated that a longer time period would not be necessary, since PBBT use would be optional. Having the pass/fail criteria become effective soon after issuance of a final rule would permit States that have PBBTs to begin using them to inspect CMVs, and provide incentive for other States and localities to acquire the new technology and realize its benefits. However, the agency requested comments on whether a longer time period is warranted, and if so, what it should be.

The following six commenters provided information on the proposed effective date: ATA, ArvinMeritor, CVSA, MCI, NADA, and Radlinski. Radlinski supports the 30-day requirement, since the use of PBBTs for enforcement is not mandatory. ATA also supports the 30-day time period, but with the caveat that those jurisdictions first using PBBTs have time to establish standard test procedures and operator training. ArvinMeritor recommended a 90-day time period to provide industry time to respond to the issues raised by commenters. However, ArvinMeritor added that the effective date should also reflect adequate time for the FMCSA to finalize or resolve PBBT standard test procedures, operator training, and other issues necessary for successful implementation. CVSA, MCI, and NADA did not recommend a specific time period, but did stress the importance of adequately addressing such issues prior to PBBT implementation. CVSA stated that, in light of the new PBBT pass/fail criteria, time is also needed to modify the CVSA North American Uniform Out-of-Service Criteria, and software used by field inspection personnel.

After considering this information, the FMCSA has decided to make the PBBT pass/fail criteria effective 180 days after publication of this final rule. Although use of PBBTs for enforcement is optional, the agency notes that five of the six commenters emphasized the need for having in place standard test procedures, operator training, and vehicle repair guidelines prior to PBBT implementation. The FMCSA agrees that these issues must be adequately addressed to ensure confidence in PBBT test results among those States and localities using them. Lack of confidence would detrimentally affect PBBT implementation. Only two commenters cited specific timeframes, 30 and 90 days. The agency believes that neither of these would be adequate in light of the full range of issues raised by commenters, including those by ArvinMeritor on ATC and IAD. The FMCSA plans to engage a cross-section of its partners and customers to help develop the necessary PBBT test procedures, operator training, and vehicle repair guidelines. The agency believes that partner and customer participation, coupled with the agency's preliminary research, will allow the issues to be adequately addressed within 180 days of issuance of the final rule.

Braking Stability, Emergency Brake, and Parking Brake

In the NPRM of August 9, 2000, the FMCSA did not propose PBBT pass/fail criteria for determining CMV braking stability, emergency brake, or parking brake performance. However, the agency did request comments in each of these areas.

Braking stability performance, specified in § 393.52(c), requires the vehicle to remain within a 3.7 meter (12 foot) wide lane during a 32.2 km/hr (20 mph) stop. The FMCSA stated in the NPRM that PBBTs could be used to determine braking stability by comparing PBBT-measured braking forces from one side of the vehicle to the other for a given axle. When the difference between those braking forces exceeds a certain value, vehicles would be deemed out of compliance. The

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agency stated that it might propose such PBBT pass/fail criteria in the future, but requested comments on the feasibility of such an approach. It also asked whether the criteria should be confined to steering axles only, since steering capability is critical to controlling the yaw motion of a vehicle. Yaw motion is vehicle rotation about its vertical axis.

The six commenters that responded do not support PBBT pass/fail criteria for determining CMV braking stability. They are ATA, ArvinMeritor, CVSA, HDBMC, Radlinski, and TMA. ATA stated that based on a 1986 National Highway Traffic Safety Administration (NHTSA) study, ("A Demonstration of the Safety Benefits of Front Brakes on Heavy Trucks," December 1986, DOT HS 807 061) brake force imbalance across a heavy truck steer axle must be relatively high to impede steering capability. Further, all new trucks have power steering, according to ATA, and this helps drivers manage any steering pull due to side-to-side brake imbalance. For other axles, ATA, ArvinMeritor, and HDBMC cited the requirement for antilock brake systems (ABS) on CMVs, which mitigate any control loss due to brake imbalance. ArvinMeritor added that the number of non-ABS equipped vehicles would diminish over time through attrition. In addition, ArvinMeritor and HDBMC stated that side-to-side brake forces measured at the inherently slow PBBT test speeds may not indicate true performance at higher vehicle speeds, although neither commenter provided supporting data. ATA, CVSA, Radlinski, and TMA support further research. CVSA cited the lack of information on how much side-to-side brake imbalance should be allowed. Radlinski stated that further research is needed to support the safety need for such a requirement.

The FMCSA agrees with commenters on the need for further research on how much side-to-side brake force imbalance should be allowed, as well as PBBT capabilities. Safety need must also be assessed in light of the requirement for ABS on new vehicles. The agency is currently conducting research in this area, and will assess whether to move forward with such a proposal once this work is completed.

In the case of emergency brake system performance, requirements are specified in § 393.52(b). If there is leakage of the medium that actuates the brakes, i.e., air, fluid, or vacuum, the emergency brake system must still be able to stop the vehicle within a specified distance. In not proposing PBBT pass/fail criteria for the emergency brake system, the FMCSA stated that it would not be practical for enforcement at roadside inspection facilities. This is because an air, fluid, or vacuum leak would have to be created to simulate a single failure in the service brake system. The agency believed that this approach would not be appropriate or practical in light of the time involved and necessary modifications to an otherwise normally functioning brake system. However, the FMCSA requested comments on whether it should explore ways to test the emergency brake system in conjunction with PBBTs.

The seven commenters that responded, ATA, ArvinMeritor, CVSA, HDBMC, Bendix, Radlinski, and TMA, all concurred with the agency's rationale and decision to not propose PBBT pass/fail criteria for the emergency brake system.

In the case of parking brakes, the requirements are specified in § 393.41 of the FMCSRs. It specifies that most CMVs, manufactured on or after March 7, 1990, must be equipped with a parking brake system that can hold the vehicle or vehicle combination under any loading condition, as required by Federal Motor Vehicle Safety Standard (FMVSS) No. 121, Air Brake Systems. FMVSS No. 121 requires each new vehicle to meet a static drawbar pull test, or grade-holding test, at the option of the vehicle manufacturer. In the case of the grade holding test, the vehicle must remain stationary on a 20 percent grade with all parking brakes applied. Although the FMCSA did not propose PBBT criteria for parking brakes, it stated that it was considering one approach that it may propose in the future. That approach would require a PBBT measured braking force for the parking brake system to be at least equal to that which is necessary for the vehicle to remain stationary on a 20 percent grade. The agency asked whether it should propose such criteria for the parking brake system, and whether it would be appropriate to require a parking brake force equivalent to that required of a new vehicle.

The seven commenters that responded, ATA, ArvinMeritor, CVSA, HDBMC, Bendix, Radlinski, and TMA, do not support PBBT requirements for the parking brake system. ATA indicated that using PBBTs to test CMV parking brakes would not be an efficient use of time at roadside inspection facilities. It stated that unlike the service brake system, the parking brake does not present an imminent hazard. ATA and CVSA both indicated that focusing PBBT resources on service brakes would be a better use of time. HDBMC, Bendix, and Radlinski questioned the stringency of such a requirement. HDBMC stated that the grade-holding requirement of 20 percent for new vehicles was not intended as an in-use requirement. It commented that most vehicles are parked on grades of six percent or less. Radlinski recommended a 12 percent grade-holding requirement rather than 20 percent. It stated that used vehicles should be allowed some drop in performance. ArvinMeritor, Bendix, and TMA indicated that the agency should collect more research data on this issue before proceeding.

FMCSA agrees that research would be needed before it proceeds with any proposal for parking brake PBBT pass/fail criteria. If the agency were to look further at tying any required parking brake force to grade-holding capability, it would first have to decide whether the 20 percent requirement for new vehicles is appropriate, given the wear that CMV components and linkages experience through normal usage. The safety need for such a requirement would also have to be explored. The FMCSA has concluded that for the near future it is more appropriate to focus PBBT resources on CMV service brakes. After increased deployment of this new technology, the agency can further explore other potential applications.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, or significant within the meaning of Department of Transportation regulatory policies and procedures. This rule establishes PBBT pass/fail criteria for use in determining the braking performance of CMVs. The rule does not require motor carriers to purchase PBBTs, or to use the technology. The rule allows the use of the technology to improve the ability of motor carriers and enforcement personnel to assess the braking capability of CMVs. State and local enforcement officials can now issue vehicle citations based on PBBT test results. Without these enforcement criteria, PBBTs would continue to be used only for screening of CMVs at roadside inspection facilities. States and localities that choose to use PBBTs for enforcement purposes will have to purchase the devices. This action does not mandate such expenditures, however, since this final rule is an optional method for determining compliance with the braking regulations. Further, the FMCSA anticipates that MCSAP funding will continue to be available to States for purchasing PBBTs. Since this final rule does not require the purchase or use of PBBTs, or establish new brake performance standards that would necessitate changes in CMV design or maintenance, FMCSA has determined that it is not necessary to prepare a cost-benefit analysis.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), we have evaluated the effects of this rule on small entities. The final rule establishes PBBT pass/fail criteria for use in determining the braking performance of CMVs. However, it does not impose any new requirements beyond those of the existing rule, 49 CFR 393.52. It simply allows States and motor carriers to use PBBTs to determine compliance with certain provisions of 49 CFR 393.52. Actual performance criteria remain the same. Motor carriers are not required to purchase or use PBBTs. Accordingly, the FMCSA certifies that this action does not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this final rule does not have a substantial direct effect on, or sufficient federalism implications for, States. The rule does not limit the policymaking discretion of States, nor does it preempt any State law or regulation. States that choose to use PBBTs will have to buy them, but such equipment would be an eligible expense under MCSAP.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), which will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Paperwork Reduction Act

The FMCSA has determined that this final rule is exempt from the requirements of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*]. There is a certification requirement that is imposed on six PBBT manufacturers, as discussed in the final functional specifications notice published in the **Federal Register** on August 9, 2000 (65 FR 48799). However, OMB clearance is not required because there are less than 10 public entities affected by this certification requirement. *See* 5 CFR 1320.3 (c). In addition, there is no new paperwork requirement on the part of the States, because they are only required to complete the same paperwork they currently prepare, when requesting funds for the purchase of PBBTs from the FMCSA. Accordingly, the agency has determined that the certification requirement does not constitute a collection of information covered by the Paperwork Reduction Act.

National Environmental Policy Act

The Federal Motor Carrier Safety Administration (FMCSA) is a new administration within the Department of Transportation (DOT). We are striving to meet all of the statutory and executive branch requirements on rulemaking. The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). We expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order is consistent with and reflects the procedures for considering environmental impacts under DOT Order 5610.1C. The FMCSA analyzed this proposal under the NEPA and DOT Order 5610.1C. Since the proposal is intended to put into place a means of measuring brake performance at roadside, but has no effect on brake standards, we believe it would be among the type of regulations that would be categorically excluded from any environmental assessment.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, or Use. We have determined that it is not a "significant energy action" under that order because it is not economically significant and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 393

Motor carriers, Motor vehicle equipment.

In consideration of the foregoing, the FMCSA amends title 49, Code of Federal Regulations, chapter III, as follows:

PART 393—[AMENDED]

1. Revise the authority citation for part 393 to read as follows:

Authority: 49 U.S.C. 322, 31136, and 31502; Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.73.

2. Amend § 393.52 by revising paragraph (a)(3), by adding paragraph (a)(4), and by revising paragraph (d) to read as follows:

§ 393.52 Brake performance.

(a) * * *

(3) Stopping from 20 miles per hour in a distance, measured from the point at which movement of the service brake pedal or control begins, that is not greater than the distance specified in the table in paragraph (d) of this section; or, for motor vehicles or motor vehicle combinations that have a GVWR or GVW greater than 4,536 kg (10,000 pounds),

(4) Developing only the braking force specified in paragraph (a)(1) of this section and the stopping distance specified in paragraph (a)(3) of this section, if braking force is measured by a performance-based brake tester which meets the requirements of functional specifications for performance-based brake testers for commercial motor vehicles, where braking force is the sum of the braking force at each wheel of the

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vehicle or vehicle combination as a percentage of gross vehicle or combination weight.

* * * * *

(d) Vehicle brake performance table:

Type of motor vehicle	Service brake systems			Emergency brake systems
	Braking force as a percentage of gross vehicle or combination weight	Deceleration in feet per second per second	Application and braking distance in feet from initial speed at 20 mph	Application and braking distance in feet from initial speed of 20 mph
A. Passenger-carrying vehicles:				
(1) Vehicles with a seating capacity of 10 persons or less, including driver, and built on a passenger car chassis	65.2	21	20	54
(2) Vehicles with a seating capacity of more than 10 persons, including driver, and built on a passenger car chassis; vehicles built on a truck or bus chassis and having a manufacturer's GVWR of 10,000 pounds or less	52.8	17	25	66
(3) All other passenger-carrying vehicles	43.5	14	35	85
B. Property-carrying vehicles:				
(1) Single unit vehicles having a manufacturer's GVWR of 10,000 pounds or less	52.8	17	25	66
(2) Single unit vehicles having a manufacturer's GVWR of more than 10,000 pounds, except truck tractors. Combinations of a 2-axle towing vehicle and trailer having a GVWR of 3,000 pounds or less. All combinations of 2 or less vehicles in drive-away or tow-away operation	53.5	14	35	85
(3) All other property-carrying vehicles and combinations of property-carrying vehicles	43.5	14	40	90

Notes: (a) There is a definite mathematical relationship between the figures in columns 2 and 3. If the decelerations set forth in column 3 are divided by 32.2 feet per-second per-second, the figures in column 2 will be obtained. (For example, 21 divided by 32.2 equals 65.2 percent.) Column 2 is included in the tabulation because certain brake testing devices utilize this factor.

(b) The decelerations specified in column 3 are an indication of the effectiveness of the basic brakes, and as measured in practical brake testing are the maximum decelerations attained at some time during the stop. These decelerations as measured in brake tests cannot be used to compute the values in column 4 because the deceleration is not sustained at the same rate over the entire period of the stop. The deceleration increases from zero to a maximum during a period of brake system application and brake-force buildup. Also, other factors may cause the deceleration to decrease after reaching a maximum. The added distance that results because maximum deceleration is not sustained is included in the figures in column 4 but is not indicated by the usual brake-testing devices for checking deceleration.

(c) The distances in column 4 and the decelerations in column 3 are not directly related. "Brake-system application and braking distance in feet" (column 4) is a definite measure of the overall effectiveness of the braking system, being the distance traveled between the point at which the driver starts to move the braking controls and the point at which the vehicle comes to rest. It includes distance traveled while the brakes are being applied and distance traveled while the brakes are retarding the vehicle.

(d) The distance traveled during the period of brake-system application and brake-force buildup varies with vehicle type, being negligible for many passenger cars and greatest for combinations of commercial vehicles. This fact accounts for the variation from 20 to 40 feet in the values in column 4 for the various classes of vehicles.

(e) The terms "GVWR" and "GVW" refer to the manufacturer's gross vehicle weight rating and the actual gross vehicle weight, respectively.

Issued on: August 2, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–20248 Filed 8–8–02; 8:45 am]

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Proposed Rules

Federal Register

Vol. 67, No. 154

Friday, August 9, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 245

RIN:0584—AD20

Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools—Verification Reporting and Recordkeeping Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the reporting and recordkeeping requirements under the National School Lunch Program (NSLP), School Breakfast Program (SBP), and Special Milk Program (SMP) relating to the verification of free and reduced price meal applications. Schools would report verification activities and results to State agencies, who would consolidate and report it to the Food and Nutrition Service (FNS) and take action as they deem appropriate. Over the years, administering State agencies have conducted comprehensive on-site evaluations of school food authorities participating in the NSLP.

The findings indicate that school food authorities generally have been determining free and reduced price eligibility in accordance with the regulatory requirements. However, in spite of their efforts, data indicate that the number of children certified as eligible to receive free meals exceeds the number of children who should be eligible to receive those meals, given other poverty indicators. This rule would require school food authorities to report verification activity and results to their respective State agencies and require State agencies to analyze and act on these data and to report school food authority level data to the FNS. Recordkeeping requirements would be revised consistent with the reporting requirements. Submission of these data on a school food authority basis will enable State agencies and FNS to improve and target oversight activities.

DATES: To be assured of consideration, comments must be postmarked on or before October 8, 2002.

ADDRESSES: Address all comments concerning this proposed rule to Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302. You also may submit comments electronically at *cndproposal@fns.usda.gov*. All written submissions received will be available for public inspection in Room 640 at the address listed above, during regular business hours (8:30 am to 5:00 pm) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie at the above address or by telephone at 703–305–2590.

SUPPLEMENTARY INFORMATION:

Background

I. The Application Process

Under the NSLP, each school year school food authorities distribute applications for free and reduced price meal benefits to households of enrolled children. Households who want to receive free and reduced price meal benefits for their children complete the information required on the application and return the application to the school food authority.

School food authorities must approve or deny applications based on the information presented on the application. If an application contains the required information and the information establishes the child's eligibility for free or reduced price meal benefits, the school food authority must approve the application. However, if the determining official believes or suspects the information is questionable, the determining official has an obligation to ask the household to submit additional information and revise the determination based on their findings.

Since 1991, school food authorities have also had the option to certify children for free meal benefits without the use of applications if these children are members of food stamp, Temporary Assistance for Needy Families (TANF), or Food Distribution Program on Indian Reservations (FDPIR) households. This procedure is known as "direct certification." A school food authority may communicate with a State or local agency to obtain documentation that establishes which of its enrolled students are members of food stamp/TANF/FDPIR households, and may certify the identified children for free meal benefits on the basis of this documentation.

Note that the free and reduced price eligibility criteria for the SBP are the same as for the NSLP. In fact, the same application is used when a school participates in both the NSLP and SBP. The free eligibility criteria and determination process used in the SMP parallels that of the NSLP and the SBP.

II. The Verification Process

School food authorities must verify the eligibility information on a sample of the free and reduced price meal applications approved in any given school year as specified in 7 CFR 245.6a. The eligibility of students that were directly certified for free meal benefits and applications for free milk under the SMP is not subject to the verification requirements. Generally, school food authorities verify a randomly selected sample (minimum of 3%) of the applications that have been approved for free and reduced price meal benefits.

Alternatively, a school food authority may verify a focused sample of 1% of the total number of all approved applications in the school food authority, selected from those with income within $100 of the monthly income eligibility guidelines ($1200 annually), as well as selecting ½% of the total number of applications approved based on categorical eligibility through participation in the Food Stamp Program, TANF or FDPIR.

III. Current Verification Recordkeeping Requirements

As mentioned above, each school food authority must select and verify a sample of applications approved for free and reduced price benefits each school year, unless the State agency assumes responsibility for verification or the school food authority is otherwise exempt from the verification requirement. School food authorities may do either random or focused sampling, or they may choose to verify all of the applications received. While school food authorities are not currently required to report information related to the verification process to the State

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agency or to the FNS, school food authorities are required to maintain a description of their verification efforts. The description must include: (1) A summary of the verification efforts including the selection process (*i.e.* random, focused, or all); (2) the total number of applications on file on October 31; and (3) the percentage or number of applications that are or will be verified by December 15. In addition, verified applications must be readily retrievable by school. For each application verified, the school food authority must keep records of the source of information used to verify the application such as the food stamp office, wage stubs, or collateral contacts. Existing verification recordkeeping requirements are found at 7 CFR 245.6a(c).

IV. Need To Report the Verification Information

Over the years, the administering State agencies have conducted comprehensive on-site evaluations of school food authorities participating in the NSLP. The findings indicate that school food authorities generally have been determining free and reduced price eligibility in accordance with the regulatory requirements and completing verification. In spite of their efforts, the number of children approved for free meal benefits appears to exceed the number of children who are eligible to receive those meals.

Several data sources, including the eligibility verifications performed by school districts, indicate that a significant and increasing number of ineligible children are being certified for free and reduced price meal benefits. Recent comparisons of NSLP data with data from the U.S. Bureau of the Census, Current Population Survey (CPS) indicate that the number of children determined eligible for free meal benefits in the NSLP exceeds the number of children that the CPS indicates are potentially eligible. In 1999, the percentage of children determined eligible for free school meals was estimated to be 127 percent of the CPS estimate of school-aged children at or below 130 percent of the poverty guidelines, the income level required for free participation by section 9(b) of the Richard B. Russell National School Lunch Act, 42 USC 1758(b).

This data comparison is further supported by audit survey work by the U.S. Department of Agriculture's (USDA) Office of Inspector General (OIG). The OIG determined that in one State nearly 20% of the approved free or reduced price meal applications selected for verification resulted in a loss of those benefits because the households did not respond or the households' responses disclosed that the original classifications were in error (Food and Nutrition Service National School Lunch Program Verification of Applications in Illinois: Audit Report No. 27010–0011–Ch).

The Department is concerned that if large numbers of ineligible children are receiving benefits to which they are not entitled, Federal meal reimbursement payments are improperly paid. Certification error also has a significant impact on the targeting of Federal and State education-related benefits. The amount of school lunch program funds allocated nationwide on the basis of the free and reduced price certifications was just under $5 billion for school year 2001–2002; more than triple this amount in education-related benefits was allocated using the data.

FNS has taken several actions to address the issues associated with certification. On January 21, 2000, FNS published a notice in the **Federal Register** (65 FR 3409) soliciting pilot projects to test alternate application, approval and verification procedures for free and reduced price eligibility determinations. Twenty-one school food authorities and one State are currently operating pilot projects. These pilot sites are conducting alternative certification or verification processes for 3 consecutive school years, beginning in school year 2000–2001. Preliminary data has shown the alternative methods have, to varying degrees, deterred and detected misreporting of eligibility information. FNS is conducting an in-depth analysis of the administrative data presented by pilot school food authorities. While the information derived from the pilots is not nationally representative, pilot activities have provided FNS with insight on the efficacy of the existing application and verification process and on alternatives to that process. This rule is intended to complement pilot activities by collecting information on verification activity nationwide and will enable FNS to evaluate the pilot results in the context of State and nationwide data.

Secondly, FNS is taking steps to increase the emphasis by FNS regional offices and State agencies on certification and verification procedures at the local level. Reporting of verification results is integral to this effort. FNS, State agencies, and school food authorities need to have a clear understanding of the magnitude and characteristics of the certification problem in order to provide effective oversight and target corrective action. FNS intends that this data collection will result in improvement of our understanding of the operations of the eligibility determination and verification process in the targeting of monitoring and technical assistance efforts and resources on areas or households with the likelihood of problems.

V. What Are the Provisions of This Proposal?

FNS is proposing to amend 7 CFR 245.6a(c) to require school food authorities to report verification activity and results to their respective State agency in support of State agency and FNS oversight activities. Specifically, proposed § 245.6a(c) would require that, by March 1 of each year, school food authorities must report verification information to the State agency on a form designated by FNS. The information to be reported will address, but not be limited to, the characteristics of the verification sample and the results of verification activity. Examples of information to be collected would include: the number of children approved for free and reduced price meal benefits based on direct certification, income applications, and categorically eligible applications; the method of verification sample selection; the number of applications selected for verification; the number of students on selected applications; the number of students approved for free meal benefits and reduced price meal benefits whose eligibility for benefits were reduced or terminated as the result of verification; the number of non-respondents; and the number of students reinstated for free or reduced price meal benefits, as of February 15 of each year.

In addition, proposed § 245.6a(c) would require school food authorities to retain copies of the information reported and all supporting documents. The proposed rule also restates the existing requirements that verified applications must be readily retrievable by school and that school food authorities must retain all documents submitted by the household to confirm eligibility, reproductions of those documents, or annotations made by the determining official which indicate which documents were submitted by the household and the date of submission. The existing requirement that relevant correspondences between the households selected for verification and the school food authority/school must be retained is also restated.

FNS is also proposing to add § 245.11(i) to require each State agency to collect the annual verification data from each school food authority, in accordance with guidance provided by FNS. To facilitate the reporting of these data, FNS will provide a data collection instrument in electronic format. In addition, each State agency must analyze these data, determine if there are potential problems, and formulate corrective actions and technical assistance activities that will support the objective of certifying only those children eligible for free or reduced price meals. The availability of this information at the State level will permit State agencies to target more rigorous oversight activities on school food authorities whose verification activities result in a high termination rate.

The proposal would require the State agency to report to FNS, not later than April 15 of each year, each school food authority's verification information, submitted in accordance with § 245.6a(c), and any ameliorative actions the State agency has taken or intends to take in school food authorities with high levels of applications changed due to verification. FNS intends to provide for the electronic submission of these data.

Additionally, this proposed rule would include in 7 CFR part 245 the term FNS which means "the Food and Nutrition Service of the Department of Agriculture". This definition was inadvertently not included in this Part in earlier editions and FNS is proposing at this time to add the definition at 7 CFR 245.2(b–2) for the sake of clarity and completeness.

VI. Procedural Matters

Executive Order 12866

This proposed rule has been determined to be non-significant and is not subject to review by the Office of Management and Budget under Executive Order 12866.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes a requirement for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally prepares a written statement, including a cost-benefit analysis. This is done for proposed and final rules that have "Federal mandates" which may result in expenditures of $100 million or more in any one year by State, local, or tribal governments, in the aggregate, or by the private sector. When this statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives. It must then adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates of $100 million or more in any one year (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Eric M. Bost, Under Secretary for Food, Nutrition and Consumer Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities. By requiring the reporting of verification information, this rule would result in critical information being gathered and enable State agencies and FNS to take measures that would increase the level of accountability of those programs. FNS does not anticipate any adverse fiscal impact resulting from implementation of this rulemaking. Although there may be some burdens associated with this rule, the burdens would not be significant and would be outweighed by the benefits to programs reporting the information to the State agency and FNS.

Executive Order 12372

The National School Lunch Program and School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under No. 10.555 and 10.556. These programs are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule related notice at 48 FR 29115, June 24, 1983).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would impede its full implementation. This rule is not intended to have retroactive effect unless that is specified in the Effective Date section of the preamble of the final rule. Before any judicial challenge to the provisions of this rule or the application of its provisions, all administrative procedures that apply must be followed. The only administrative appeal procedures relevant to this proposed rule are the hearings that FNS must provide for decisions relating to eligibility for free and reduced price meals and free milk (7 CFR 245.7 for the NSLP, SBP, and SMP in schools).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, this notice invites the general public and other public agencies to comment on the proposed information collection.

Written comments must be received on or before October 8, 2002.

Comments concerning the information collection aspects of this proposed rule should be sent to Lauren Whittenberg, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC. 20503. A copy of these comments may also be sent to Mr. Eadie at the address listed in the **ADDRESSES** section of this preamble. Commenters are asked to separate their information collection requirements comments from their comments on the remainder of this proposed rule.

OMB is required to make a decision concerning the collection of information contained in this proposed regulation between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulation.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The title, description, and respondent description of the information collections are shown below with an estimate of the annual recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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Title: 7 CFR part 245 Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools.
OMB Number: 0584–0026.
Expiration Date: August 31, 2004.

Type of Request: Revision of currently approved collection of data related to the free and reduced price meal application in the NSLP, SBP and SMP.

Abstract: Under this proposal, school food authorities would report verification data to the State agency and State agencies would evaluate and submit this information to FNS.

ESTIMATED ANNUAL REPORTING BURDEN

	Section	Annual number of respondents	Annual frequency	Average burden per response hours	Annual burden hours
School food authorities report verification information to State agency					
Existing		0	0	0	0
Proposed	245.6a(c)	16,342	1	1	16,342
Total Reporting Burden:					
Total Existing	0				
Total Proposed	16,342				
Change	+16,342				
State agencies report district level data to FNS					
Existing		0	0	0	
Proposed	245.11(i)	54	1	8	432
Total Reporting Burden:					
Total Existing	0				
Total Proposed	432				
Change	+432				

ESTIMATED ANNUAL RECORDKEEPING BURDEN

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
School food authorities maintain summary of verification efforts					
Existing	245.6a(c)	16,342	1	.75	12,256
Proposed	245.6a(c)	16,342	1	.85	13,891
Total Recordkeeping Burden:					
Total Existing	12,256				
Total Proposed	13,891				
Change	+1,635				
State agencies retain district level data					
Existing	--	0	0	0	0
Proposed	245.11(i)	54	1	1	54
Total Recordkeeping Burden:					
Total Existing	0				
Total Proposed	54				
Change	+54				

List of Subjects in 7 CFR Part 245

Civil rights, Food assistance programs, Grant programs-education, Grant programs-health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

Accordingly, 7 CFR part 245 is proposed to be amended as follows:

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation for part 245 continues to read as follows:

Authority: 42 U.S.C. 1752, 1758, 1759a, 1772, 1773, and 1779.

2. In § 245.2:

a. Redesignate paragraph (c) as paragraph (b–3);

b. Redesignate paragraph (b–2) as paragraph (c) and

c. Add a new paragraph (b–2) to read as follows:

§ 245.2 Definitions.

* * * * *

(b–2) *FNS* means the Food and Nutrition Service, United States Department of Agriculture.

* * * * *

3. In § 245.6a, revise paragraph (c) to read as follows:

§ 245.6a Verification requirements.

* * * * *

(c) *Verification reporting and recordkeeping requirements.* Each year by March 1, each school food authority must report to the State agency information related to its verification activity on a form designated by FNS. School food authorities shall retain copies of the information reported under this section and all supporting documents. All verified applications must be readily retrievable by school and include all documents submitted by the household for the purpose of confirming eligibility, reproductions of those documents, or annotations made by the determining official which indicate which documents were submitted by the household and the date of submission. All relevant correspondences between the households selected for verification and the school food authority/school must be retained.

* * * * *

4. In § 245.11, add a new paragraph (i) to read as follows:

§ 245.11 Action by State agencies and FNSROs.

* * * * *

(i) No later than March 1 of each year, each State agency must collect annual verification data from each school food authority as described in § 245.6a(c) and in accordance with guidelines provided by FNS. Each State agency must analyze these data, determine if there are potential problems, and formulate corrective actions and technical assistance activities that will support the objective of certifying only those children eligible for free or reduced price meals. No later than April 15 of each year, each State agency must report to FNS the verification information which has been reported to it as required under § 245.6a(c), by school food authority, and any ameliorative actions the State agency has taken or intends to take in school food authorities with high levels of applications changed due to verification.

Dated: August 5, 2002.

Roberto S. Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 02–20163 Filed 8–8–02; 8:45 am]
BILLING CODE 3410–30–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–76]

Robert H. Leyse; Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Commission is publishing for comment a petition for rulemaking filed by Robert H. Leyse on May 1, 2002. The NRC assigned the petition Docket No. PRM–50–76 on May 8, 2002. The petition requests amendment to NRC's regulations concerning evaluation models for Emergency Core Cooling Systems (ECCS) and associated guidance documents. The petitioner believes the amendments are necessary to correct technical deficiencies that do not consider the complex thermal hydraulic conditions during a Loss-of-Coolant-Accident (LOCA), including the potential for very high fluid temperatures.

DATES: Submit comments by October 23, 2002. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–00001, Attention: Rulemaking and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

For a copy of the petition, write to Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001.

You may also provide comments via the NRC's interactive Rulemaking website at *http://ruleforum.llnl.gov*. This site allows you to upload comments as files in any format, if your web browser supports the function. For information about the interactive Rulemaking website, contact Ms Carol Gallagher, (301) 415–5905 (*email:cag@nrc.gov*).

Documents related to this petition, including comments received, may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site (the Electronic Reading Room), *http://www.nrc.gov*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4029, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or e-mail: *MTL@nrc.gov*.

SUPPLEMENTARY INFORMATION: Mr. Leyse's petition covers three distinct issues: (1) Amendment of Appendix K to Part 50 of the Commission's regulations, (2) amendment of an NRC guidance document entitled Regulatory Guide 1.157, Best-Estimate Calculations of Emergency Core Cooling System (ECCS) Performance, and (3) the need for further analysis of Part 50 backup data.

Issue (1)—Amendment of Appendix K to Part 50

The petitioner details at length technical deficiencies in Appendix K to Part 50, in Section I.A.5. The petitioner claims that Section I.A.5 does not accurately describe the extent of zirconium-water reactions that may occur during a loss-of-coolant accident (LOCA). The petitioner specifically describes how the Baker-Just equation used (Baker, L., Just, L.C., "Studies of Metal Water Reactions at High Temperatures, III. Experimental and Theoretical Studies of the Zirconium-Water Reaction," an Argonne National Labs document (ANL–6548) page 7, May 1962) does not include any allowance for the complex thermal-hydraulic conditions during a LOCA, including the potential for very high bulk fluid temperatures within the cooling channels of the zirconium-clad fuel elements.

The petitioner cites the abstract of ANL–6548, and disputes the use of the conclusions drawn using test apparatus that do not accurately reflect the conditions present during a LOCA, specifically:

—The bulk water temperature was no greater that 315 C (599F),
—The volume of water within the test apparatus was substantially greater than the volume of zirconium specimens, creating a vastly greater capacity to cool the heated zirconium particles of the Baker and Just experiment than would exist under LOCA conditions, and
—Zirconium specimens were exposed to water only, while LOCA conditions include steam and non-equilibrium water-steam mixtures that reached higher bulk fluid temperatures. The petitioner further questions the appropriateness of the dimensions of the apparatus used in the investigations, detailing volume ratio of water to zirconium for several specimens.

The petitioner concludes that a footnote to the Baker and Just analysis stating "This discussion is of a preliminary nature: work in this area is continuing," obviates the application prescribed in Appendix K to Part 50 in Section I.A.5. of the Baker-Just equation

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to calculate the rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction.

Issue (2)—Amendment of Regulatory Guide 1.157

The petitioner states Regulatory Guide 1.157, Best-Estimate Calculations of Emergency Core Cooling System (ECCS) Performance, uses data from NUREG–17 (the particular reference is ORNL/NUREG–17, Zirconium Metal-Water Oxidation Kinetics IV, Reaction Rate Studies, by Cathcart, et. al., August 1977) for calculating the rates of energy release, hydrogen generation, and cladding oxidation for cladding temperatures greater than 1900 degrees F. The petitioner claims this data is based on very limited test conditions and consequently, the results obviate the use of NUREG–17 in LOCA conditions.

The petitioner describes the following test conditions:

—Zircaloy-4 specimens exposed only to steam, rather than fluid conditions as present in a LOCA;
—No documented heat transfer from the zircaloy surface to the slow-flowing steam;
—Small scale laboratory testing without conditions typical of the complex thermal-hydraulic conditions that prevail during a LOCA; and
—An unexplained shift from the MaxiZWOK (testing apparatus for investigations in the temperature range from 1652 to 1832 degrees F) to the MiniZWOK (different testing apparatus for investigations in the temperature range 1832 to 2734 degrees F).

The petitioner believes that the investigators have drawn misleading conclusions that "overlook very substantially greater mass transfer coefficients that accompany the so-called appropriate heat transfer coefficients." The petitioner concludes that "it is those very substantially greater mass transfer coefficients that led to the temperature overshoot of the MaxiZWOK test at 1832 F, and that would have led to very substantially greater temperature overshoots and likely destruction of the Zircaloy tubing if MaxiZWOK had been operated over the temperature range of the MiniZWOK runs."

The petitioner cites NUREG–17 and the following warning on its introductory page: *This report was prepared as an account of work sponsored by the United States Government. Neither the United States nor the Energy Research and Development Administration/United States Nuclear Regulatory Commission, nor any of their employees, nor any of their contractors, subcontractors, or their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness or usefulness of any information, apparatus, product or process disclosed, or represents that its use would not infringe privately owned rights.* The petitioner believes that inasmuch as the investigators do not warrant their work, and specifically assume no responsibility for the accuracy of their work, that the NUREG–17 is inapplicable to the regulation of nuclear power reactors in the U.S.A.

Issue (3)—Need for further Analysis of Appendix K Backup Data

The petitioner challenges certain technical statements and conclusions in the data report referenced in Appendix K.I.D.3. and D.5; the petitioner notes that the full title of the report is "PWR FLECHT (Full Length Emergency Cooling Heat Transfer) Final Report," Westinghouse Report WCAP–7665, April 1971. The petitioner explains that the data in WCAP–7665, which includes the certified Run 9573, includes the complex thermal-hydraulic conditions and zircaloy-water reactions that characterize reflood. The petitioner states that these conditions are not found in the narrow test procedures of ANL–6548 or NUREG–17.

The petitioner explains that a pertinent description of the complexities of thermal-hydraulic conditions during reflood, including negative heat transfer coefficients, is included in Part 3.2.3 of WCAP–7665, and further states that this description applies to data collected with FLECHT bundles with stainless steel cladding. The petitioner feels that another FLECHT zircaloy bundle test, Run 8874 is also pertinent to issues raised in this petition.

The petitioner cites WCAP–7665, Part 5.6, and finds statements regarding zircaloy-Stainless Steel Comparison to be misleading, because they imply that stainless steel heat transfer coefficients may be used as a conservative representation of zircaloy behavior. The petitioner believes that the differences in behavior for various test runs are explained by the differences in the thermal hydraulic conditions that led to a different combination of heat transfer and mass transfer factors, and are not due to inconsistency of the data, as implied by the report.

The petitioner also finds Part 5.11 Materials Evaluation section of the report to be misleading in view of the total experience with FLECHT Run 9573. Finally, the petitioner notes that the same warning language as in NUREG–17 is on the cover page to WCAP–7665.

The petitioner further identifies a number of aspects of the data supporting the document entitled "Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Cooled Nuclear Reactors-Opinion of the Commission," Docket No. RM50–1, December 28, 1973, and notes the Commission concluded, "It is apparent, however, that more experiments with zircaloy cladding are needed to overcome the impression left from run 9573." The petitioner finds that there has been a lack of appropriate response to the Commission's expressed need for more experiments, and believes that at the very least, Run 9573 should have been repeated. The petitioner emphasizes that although at least one billion dollars had been expended on other analytical efforts, there has been no reported analysis of FLECHT Run 9573.

The petitioner states that the test programs of the subject petition were funded by government agencies, and believes that most of those programs were firmly controlled by those "who were indoctrinated in the methods of the tightly regimented Naval Reactors Program." The petitioner finds that the "biased reporting of WCAP–7665 may be traced to these controls," and believes that "the lack of application of the MaxiZWOK apparatus beyond 1832 F in NUREG–17 may likely be traced to rigid restrictions by management at the NRC." The petitioner further contends that while the Argonne work of ANL–6548 was likely less impacted by these controls, the controls likely did inhibit further analysis or reporting of FLECHT Run 9573.

The petitioner notes that he has made several requests to the Knolls Atomic Power Laboratory for Report KAPL–1534 which have been ignored.

Request For Comments

The Commission requests public comment on the issues raised by the petitioner. In particular, the Commission requests public comment on the following questions:

(1) Are the petitioner's three concerns with respect to ECCS cooling valid? If so, do these concerns constitute a significant safety concern?

(2) Are there actions available to the Commission other than rulemaking that would effectively address the concerns raised by the petitioner?

Dated at Rockville, Maryland, this 5th day of August, 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–20172 Filed 8–8–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–291–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes Equipped With Honeywell Start Converter Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, -700, -700C, -800, and -900 series airplanes equipped with certain Honeywell start converter units (SCU). This proposal would require replacement of the SCU of the auxiliary power unit (APU) located in the electrical and electronics (E/E) compartment with a new, improved SCU. This action is necessary to prevent overheating of the electrical connector of the SCU, which could create an ignition source and possible fire in the E/E compartment and cause damage to certain electrical wire bundles on the E2–2 shelf. Such damage could result in loss of power from the APU generator, failure of electrically powered airplane systems, and consequent reduction in the ability of the flight crew to control the airplane in certain adverse operating conditions. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 23, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–291–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–291–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronics files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received. Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–291–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–291–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports of failure of the auxiliary power unit (APU) to start or to generate electrical power after start-up or during APU operation on certain Boeing Model 737–700 and –800 series airplanes. During these APU failures, there was an odor of smoke detected by personnel on the flight deck. Investigation revealed signs of heat damage to the Aeronautical Radio, Incorporated (ARINC), connector of the APU start converter unit (SCU). (The ARINC connector is located on the back panel of the SCU housing and provides for electrical connection between the SCU and the APU generator.) The heat damage spread to the mating connector and adjacent wire bundles located on the E2–2 shelf of the electrical and electronics (E/E) compartment. Further investigation revealed that the damage was caused by a short circuit of certain capacitors that are part of the electromagnetic interference filter inside the ARINC connector. Such conditions, if not corrected, could result in overheating of the electrical connector of the SCU, which could create an ignition source and possible fire in the E/E compartment and cause damage to certain electrical wire bundles on the E2–2 shelf. Such damage could result in loss of power from the APU generator, failure of electrically powered airplane systems, and consequent reduction in the ability of the flight crew to control the airplane in certain adverse operating conditions.

The SCU of the APU is the same on certain Model 737–600 and –900 series airplanes as it is on certain Model 737–700, –700C, and –800 series airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition described above.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD is being issued to prevent overheating of the electrical connector of the SCU, which could create an ignition source and possible fire in the E/E compartment and cause damage to certain electrical wire bundles on the E2–2 shelf. Such

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damage could result in loss of power from the APU generator, failure of electrically powered airplane systems, and consequent reduction in the ability of the flight crew to control the airplane in certain adverse operating conditions. The proposed AD would require replacement of certain SCUs with new, improved SCUs. The SCUs would be required to be replaced according to Boeing 737–600/700/800/900 Airplane Maintenance Manual (AMM)(the AMM includes procedures for Model 737–700C series airplanes).

Cost Impact

There are approximately 901 airplanes of the affected design in the worldwide fleet. The FAA estimates that 441 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the parts manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $105,840, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–291–AD.

Applicability: Model 737–600, -700, -700C, -800, and -900 series airplanes; certificated in any category; equipped with start converter units (SCUs) having Honeywell part number (P/N) 1151858–241, Series 1 through 9 inclusive, or P/N 1152426–245, Series 1 through 6 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the electrical connector of the SCU, which could create an ignition source and possible fire in the electrical and electronics (E/E) compartment and cause damage to certain electrical wire bundles on the E2–2 shelf, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD: Replace the SCU of the auxiliary power unit located in the E/E compartment, according to Boeing 737–600/700/800/900 Airplane Maintenance Manual, Chapter 49–41–61, dated June 5, 1998. Replace the applicable SCU listed in the "Existing Honeywell P/N" column below, with the corresponding SCU listed in the "Replacement Honeywell P/N" column below, as follows:

SCU Part Numbers

Existing Honeywell P/N	Replacement Honeywell P/N
1151858–241, Series 1	1151858–241, Series 10.
1151858–241, Series 2	1151858–241, Series 11.
1151858–241, Series 3	1151858–241, Series 12.
1151858–241, Series 4	1151858–241, Series 10.
1151858–241, Series 5	1151858–241, Series 11.
1151858–241, Series 6	1151858–241, Series 12.
1151858–241, Series 7	1151858–241, Series 10.
1151858–241, Series 8	1151858–241, Series 11.

Existing Honeywell P/N	Replacement Honeywell P/N
1151858–241, Series 9	1151858–241, Series 12.
1152426–245, Series 1	1152426–245, Series 7.
1152426–245, Series 2	1152426–245, Series 8.
1152426–245, Series 3	1152426–245, Series 7.
1152426–245, Series 4	1152426–245, Series 8.
1152426–245, Series 5	1152426–245, Series 7.
1152426–245, Series 6	1152426–245, Series 8

Spares

(b) As of the effective date of this AD, no person shall install on any airplane an SCU having P/N 1151858–241, Series 1 through 9 inclusive, or P/N 1152426–245, Series 1 through 6 inclusive.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 29, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20132 Filed 8–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–303–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes; and Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to provide the flight crew with procedures to maintain controllability of the airplane in the event of an in-flight deployment of the thrust reverser. The action specified in this AD is intended to ensure that the flight crew is advised of the potential hazard associated with an in-flight deployment of the thrust reverser, and the procedures necessary to address it. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 9, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–303–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–303–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–303–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

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FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–303–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A310 series airplanes, and Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes. The DGAC advises that using the existing thrust reverser "ENG REV UNLK" procedures in the Procedures Following Failures section of the Airplane Flight Manual (AFM) could result in reduced controllability of the airplane in the event of an in-flight deployment of the thrust reverser.

Explanation of Relevant French Airworthiness Information

The DGAC issued French airworthiness directive 2001–186(B) dated May 16, 2001, in order to assure the continued airworthiness of these airplanes in France. The French airworthiness directive requires incorporating certain AFM revision pages into the AFM of the subject airplane models.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type designs registered in the United States, the proposed AD would require revising the Limitations and Procedures sections of the AFM. The procedure defines actions to be taken by the flight crew in case of an uncommanded in-flight deployment of the thrust reverser.

Differences Between the French Airworthiness Directive and Proposed Rule

The French airworthiness directive requires revising the AFM in accord with certain AFM revisions. This proposed AD would require that the procedures described in those certain AFM revisions be incorporated into the AFM in accord with this proposed AD.

Cost Impact

The FAA estimates that 128 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $7,680, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2001–NM–303–AD.

Applicability: All Model A310 series airplanes, and all Model A300 B4–600, A300 B4–600R, and F4–600R (collectively called A300–600) series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane in the event of an in-flight deployment of the thrust reverser, accomplish the following:

Revisions to the Airplane Flight Manual

(a) Within 60 days after the effective date of this AD, revise the Procedures Following Failures section of the Airplane Flight Manual (AFM) to include the "ENG REV UNLK" procedure contained in this paragraph of this AD. This may be accomplished by inserting a copy of this AD into the AFM.

"For airplanes fitted with ECAM SGU standard W23 or above:

ENG REV UNLK (MOD 10264 or MOD 10908 or 11318)	
—THROTTLE	IDLE.
—MAX SPEED	300 KT.
IF BUFFET OR BANK:	
—FUEL LEVER	OFF.
—MAX SPEED	240 KT.
—Approach Speed: 1.3 Vs of selected landing configuration plus 10 kt.	

For airplanes fitted with ECAM SGU standard earlier than W23:

ENG REV UNLK	
—THROTTLE	IDLE (memory item).
—MAX SPEED	300 KT (memory item).
IF BUFFET OR BANK:	
—FUEL LEVER	OFF.
—MAX SPEED	240 KT.
—Approach Speed: 1.3 Vs of selected landing configuration plus 10 kt.".	

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 2: The subject of this AD is addressed in French airworthiness directive 2001–186(B), dated May 16, 2001.

Issued in Renton, Washington, on July 29, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20133 Filed 8–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–396–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A330 and A340 series airplanes. This proposal would require a one-time inspection to determine the manufacturer's name, part number, and date code of certain circuit breakers; and replacement of any suspect circuit breaker with a new improved circuit breaker. This action is necessary to ensure that proper circuit breakers are installed for the fire extinguishing system or part of the supplemental oxygen supply. A defective circuit breaker, if not corrected, could trip without the cockpit indication light illuminating. If the flightcrew is unaware of this situation while operating the airplane, this latent failure in combination with other failures could present an immediate hazard to the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 9, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–396–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–396–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–396–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–396–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A330 and A340 series airplanes. The DGAC advises it has received reports of electrical discontinuity of the auxiliary contacts of certain Texas Instrument circuit breakers (located in the 722VU and 742VU panels), with date codes 96/01 through 98/52 inclusive. The cause of these failures has been attributed to a manufacturing process error during the production of certain Texas Instruments circuit breakers. A defective circuit breaker for the fire extinguishing system or part of the supplemental oxygen supply, if not corrected, could trip without the cockpit indication light illuminating. If the flightcrew is unaware of this situation while operating the airplane, this latent failure in combination with other failures could present an immediate hazard to the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A330–92–3034, Revision 03 (for Model A330 series airplanes); and Airbus Service Bulletin A340–92–4042, Revision 03 (for Model A340 series airplanes); both dated November 13, 2001. The service bulletins describe procedures for a one-time inspection to determine the manufacturer's name, part number, and date code of circuit breakers 1WX, 2WX, and 5WR through 12WR inclusive, located in the 722VU and 742VU panels. The service bulletins also describe procedures for replacing any suspect circuit breaker with a new improved circuit breaker, either having the proper date code or from another manufacturer. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 2001–468(B) and 2001–469(B), both dated October 3, 2001, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 8 Model A330 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators of Model A330 series airplanes is estimated to be $960, or $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Currently, there are no Model A340 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 2 work hours to accomplish the proposed action, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD for Model A340 series airplanes would be $120 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2001–NM–396–AD.

Applicability: All Model A330 and A340 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that proper circuit breakers are installed for the fire extinguishing system or part of the supplemental oxygen supply, accomplish the following:

Inspection

(a) Within 6 months after the effective date of this AD, inspect to determine the manufacturer's name, part number, and date code of circuit breakers 1WX, 2WX, and 5WR through 12WR inclusive, located in the 722VU and 742VU panels; per Airbus Service Bulletin A330–92–3034, Revision 03 (for Model A330 series airplanes); or Airbus Service Bulletin A340–92–4042, Revision 03 (for Model A340 series airplanes); both dated November 13, 2001; as applicable.

Corrective Action

(b) If any Texas Instruments circuit breaker having part number (P/N) E0730–005A7A5A, E0730–005A05AA, E0730–005A7A5B, or E0730–005A05AB, with any date code 96/01 through 98/52 inclusive, is found during the inspection required by paragraph (a) of this AD, before further flight, replace the circuit breaker with a new improved circuit breaker, either having the proper date code or from another manufacturer, per Airbus Service Bulletin A330–92–3034, Revision 03 (for Model A330 series airplanes); or Airbus Service Bulletin A340–92–4042, Revision 03 (for Model A340 series airplanes); both dated November 13, 2001; as applicable.

Note 2: Inspections and corrective actions accomplished before the effective date of this AD per Airbus Service Bulletin A330–92–3034, dated February 9, 2001; Revision 01, dated April 11, 2001; or Revision 02, dated August 14, 2001 (for Model A330 series airplanes); and Airbus Service Bulletin A340–92–4042, dated February 9, 2001; Revision 01, dated April 11, 2001; or Revision 02, dated August 14, 2001 (for Model A340 series airplanes); are considered acceptable for compliance with the applicable inspections and corrective actions required by this AD.

Spares

(c) As of the effective date of this AD, no person shall install any Texas Instruments circuit breaker having P/N E0730–005A7A5A, E0730–005A05AA, E0730–005A7A5B, or E0730–005A05AB with any date code 96/01 through 98/52 inclusive, on any airplane.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directives 2001–468(B) and 2001–469(B), both dated October 3, 2001.

Issued in Renton, Washington, on July 29, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20134 Filed 8–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–80–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 65, 90, 99, 100, 200, and 300 Series, and Model 2000 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Company (Raytheon) 65, 90, 99, 100, 200, and 300 series, and Model 2000 airplanes. The proposed AD would require you to install new exterior operating instruction placards for the airstair door and emergency exits. The proposed AD is the result of Raytheon improving the visibility and understandability of the door operating instruction placards. This was done as a result of difficulty opening the emergency exits of a similar type design airplane. The actions specified by the proposed AD are intended to assure that clear and complete operating instructions are visible for opening the airstair door and emergency exits. If not visible or understandable, this could result in the inability to open the airstair door or emergency exits during an emergency situation.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before October 15, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–80–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2000–CE–80–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule.

You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

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How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–80–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

FAA believes that the instructions for opening the airstair door and emergency exits are either not visible or not easy to understand on Raytheon 65, 90, 99, 100, 200, and 300 series, and Model 2000 airplanes. This is based on an accident that resulted in the issuance of AD 97–04–02. AD 97–04–02 was later superseded by AD 98–21–20 to incorporate more visible and understandable instructions.

What Are the Consequences If the Condition is Not Corrected?

If the exterior door operating instruction placards are not visible or understandable, this could result in the inability to open the airstair door or emergency exits during an emergency situation.

Is There Service Information That Applies to This Subject?

Raytheon has issued Mandatory Service Bulletin SB 52–3096, Rev. 1, Revised: June, 2002.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for installing new exterior placards with improved operating instructions for the airstair door and emergency exits on the affected airplanes.

The FAA's Determination and an Explanation of the Provisions of this Proposed AD

What Has FAA decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Raytheon 65, 90, 99, 100, 200, and 300 series, and Model 2000 airplanes of the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to install new exterior operating instruction placards for the airstair door and emergency exits.

Cost Impact

How Many Airplanes Would the Proposed AD Impact?

We estimate that the proposed AD would affect 3,587 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 per hour = $120	Approximately $190 per airplane	$120 + $190 = $310	$310 × 3,587 = $1,111,970

The manufacturer will provide warranty credit for labor and parts to the extent noted under **MANPOWER** and **MATERIAL** in Raytheon Mandatory Service Bulletin SB 52–3096, Rev. 1, Revised: June, 2002.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is "within the next 200 hours time-in-service (TIS) after the effective date of this AD or within the next 12 calendar months after the effective date of this AD, whichever occurs first."

Why Is the Compliance Time of This Proposed AD Presented in Both Hours TIS and Calendar Time?

The unsafe condition on these airplanes is not a result of the number of times the airplane is operated. Airplane operation varies among operators. For example, one operator may operate the airplane 50 hours TIS in 3 months while it may take another operator 12 months or more to accumulate 50 hours TIS. For this reason, the FAA has determined that the compliance time of the proposed AD should be specified in both hours time-in-service (TIS) and calendar time in order to assure this condition is not allowed to go uncorrected over time.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Raytheon Aircraft Company: Docket No. 2000–CE–80–AD

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
(1) 65–90, 65–A90, B90, C90, and C90A	LJ–1 through LJ–1530.
(2) 65–A90–1 (U–21A)	LM–1 through LM–125.
(3) 65–A90–1 (U–21G)	LM–126 through LM–141.
(4) 65–A90–2 (RU–21B)	LS–1 through LS–3.
(5) 65–A90–3 (RU–21C)	LT–1 and LT–2.
(6) 65–A90–4 (RU–21E)	LU–1 through LU–16.
(7) E90	LW–1 through LW–347.
(8) F90	LA–2 through LA–236.
(9) H90 (T–44A)	LL–1 through LL–61.
(10) 99, 99A, A99A, B99, and C99	U–1 through U–239.
(11) 100 and A100	B–1 through B–94 and B–100 through B–247.
(12) A100 (U–21F)	B95 through B–99.
(13) A100–1 (U–21J)	BB–3 through BB–5.
(14) A200 (C–12A) and (C–12C)	BC–1 through BC–75 and BD–1 through BD–30.
(15) A200C (UC–12B)	BJ–1 through BJ–66.
(16) A200CT (C–12D)	BP–1, BP–22, and BP–24 through BP–51.
(17) A200CT (C–12F)	BP–52 through BP–63.
(18) A200CT (FWC–12D)	BP–7 through BP–11.
(19) A200CT (RC–12D)	GR–1 through GR–12.
(20) A200CT (RC–12G)	FC–1 through FC–3.
(21) A200CT (RC–12H)	GR–14 through GR–19.
(22) A200CT (RC–12K)	FE–1 through FE–9.
(23) A200CT (RC–12P)	FE–25 through FE–31, FE–33, and FE–35.
(24) A200CT (RC–12Q)	FE–32, FE–34, and FE–36.
(25) B100	BE–1 through BE–137.
(26) B200 and 200	BB–2, BB–6 through BB–1313, BB–1315 through BB–1384, and BB–1389 through BB–1662.
(27) B200C and 200C	BL–1 through BL–72, and BL–124 through BL–140.
(28) B200C (C–12F)	BL–73 through BL–112, BL–118 through BL–123, and BP–64 through BP–71.
(29) B200C (C–12R)	BW–1 through BW–29.
(30) B200C (UC–12F)	BU–1 through BU–10.
(31) B200C (UC–12M)	BV–1 through BV–10.
(32) B200CT and 200CT	BN–1 through BN–4.
(33) B200T and 200T	BT–1 through BT–38, and BB–1314.
(34) 300	FA–1 through FA–230, and FF–1 through FF–19.
(35) B300	FL–1 through FL–252.
(36) B300C	FM–1 through FM–9, and FN–1.
(37) 2000	NC–4 through NC–53.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to assure that clear and complete operating instructions are visible for opening the airstair door and emergency exits. If not visible or understandable, this could result in the inability to open the airstair door or emergency exits during an emergency situation.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
Modify the exterior door operating procedures by incorporating the kit as specified in the service bulletin.	Within the next 200 hours time-in-service (TIS) after the effective date of this AD or within the next 12 calendar months after the effective date of this AD, whichever occurs first.	In accordance with the applicable kit instructions as specified in the Accomplishment Instructions section in Raytheon Mandatory Service Bulletin SB 52–3096, Rev. 1, Revised: June, 2002. Use Paragraph (7) of the Accomplishment Instructions section in Raytheon Mandatory Service Bulletin SB 52–3096, Rev. 1, Revised: June, 2002, to accomplish this action on the Model 2000 airplanes.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD,

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regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 2, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20135 Filed 8–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–28–AD]

RIN 2120–AA64

Airworthiness Directives; PILATUS Aircraft Ltd. Model PC–7 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain PILATUS Aircraft Ltd. (Pilatus) Model PC–7 airplanes. This proposed AD would require you to repetitively inspect the main landing gear front attachment brackets for cracks, and, if cracks are found, install improved-design brackets. Installing the improved-design brackets terminates the required inspections. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this proposed AD are intended to detect and correct cracks in the main landing gear front attachment brackets, which could result in failure of the brackets. Such failure could lead to the main landing gear leg detaching from the wing main spar.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 20, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–28–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–28–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule.

You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–28–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Model PC–7 airplanes. The FOCA reports that an operator of a similar aircraft type design, which uses identical main landing gear support brackets, reported a single crack in one bracket. A fleet inspection of the operator's aircraft revealed stress corrosion cracking in more than 20 aircraft.

What Are the Consequences if the Condition Is Not Corrected?

Cracks in the main landing gear front attachment brackets could result in failure of the brackets. Such failure could lead to the main landing gear leg detaching from the wing main spar.

Is There Service Information That Applies to This Subject?

Pilatus has issued:

—Pilatus PC–7 Service Bulletin No. 57–004, Revision No. 1, dated June 17, 2002;

—Pilatus PC–7 Service Bulletin No. 57–005, dated September 10, 2001; and

—Pilatus PC–7 Maintenance Manual, Temporary Revision No. 05–10, dated September 10, 2001.

What Are The Provisions of This Service Information?

The service information includes procedures for:

—inspection of the main landing gear front attachment brackets; and

—replacement of the main landing gear front attachment bracket.

What Action Did the FOCA Take?

The FOCA classified this service information as mandatory and issued Swiss AD Number HB 2002–270, dated June 24, 2002, in order to ensure the continued airworthiness of these airplanes in Switzerland.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in Switzerland and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the FOCA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that:

—the unsafe condition referenced in this document exists or could develop on other Pilatus Model PC–7 airplanes of the same type design that are on the U.S. registry;

—the actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 14 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish each proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 workhours × $60 = $240	No parts required	$240	$240 × 14 = $3,360.

The FAA has no method of determining the number of repetitive inspections each owner/operator would incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
80 workhours × $60 = $4,800 per side	$2,500 per side	$4,800 + $2,500 = $7,300 per side.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is whichever occurs later: (1) upon the accumulation of 3,000 hours time-in-service (TIS) on the attachment brackets or 10 years after installation of the brackets, whichever occurs first; or (2) within 90 days after the effective date of the proposed AD.

Why Is the Compliance Time of This Proposed AD Presented in Both Hours TIS and Calendar Time?

Cracking of the main landing gear attachment brackets on the affected airplanes is caused by stress corrosion, which starts as a result of high local stress incurred through operation. Corrosion can then develop regardless of whether the airplane is in flight or on the ground. The cracks may not be noticed initially as a result of the stress loads, but could then progress as a result of corrosion. The stress incurred during flight operations or temperature changes could then cause rapid crack growth. In order to ensure that these stress corrosion cracks do not go undetected, a compliance time of specific hours TIS and calendar time is utilized.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule

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would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft Ltd.: Docket No. 2002–CE–28–AD

(a) *What airplanes are affected by this AD?* This AD affects Model PC–7 airplanes, serial numbers 101 through 618, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the main landing gear front attachment brackets, which could result in failure of the brackets. Such failure could lead to the main landing gear leg detaching from the wing main spar.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Compliance	Actions	Procedures
(1) *Initial Inspection:* At whichever of the following occurs later, unless already accomplished: (i) upon the accumulation of 3,000 hours time-in-service (TIS) on the attachment brackets or 10 years after installation of the brackets, whichever occurs first; or (ii) within 90 days after the effective date of this AD.	Inspect, using the Impedance-Plane Eddy-Current Inspection, both main landing gear front attachment brackets, part number (P/N) 111.34.07.105 and P/N 111.34.07.106 for cracks.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus PC–7 Service Bulletin No. 57–004, Revision No. 1, dated June 17, 2002; the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus PC–7 Service Bulletin No. 57–005, dated September 10, 2001; and Pilatus PC–7 Maintenance Manual, Temporary Revision No. 05–10, dated September 10, 2001.
(2) *Repetitive Inspections:* Within 12 calendar months after the initial inspection required in paragraph (d)(1) of this AD and thereafter at intervals not to exceed 12 calendar months.	Inspect, using the Impedance-Plane Eddy-Current Inspection, both main landing gear front attachment brackets, P/N 111.34.07.105 and P/N 111.34.07.106 for cracks.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus PC–7 Service Bulletin No. 57–004, Revision No. 1, dated June 17, 2002; the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus PC–7 Service Bulletin No. 57–005, dated September 10, 2001; and Pilatus PC–7 Maintenance Manual, Temporary Revision No. 05–10, dated September 10, 2001.
(3) Prior to further flight after the inspection which the damage was found.	If a crack is found in any main landing gear front attachment bracket during any inspection required in this AD, replace with an improved bracket, P/N 557.10.09.045, P/N 557.10.09.046, or FAA-approved equivalent P/N. Repetitive inspections are still required on any P/N 111.34.07.105 and P/N 111.34.07.106 for cracks.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus PC–7 Service Bulletin No. 57–005, dated September 10, 2001.
(4) At any time terminating action for the repetitive inspections. However, you must replace prior to further flight if you find cracks during any inspections required by this AD.	You may terminate the inspections required in paragraphs(d)(1) and (d)(2) of this AD when improved design main landing gear front attachment brackets, P/N 557.10.09.045, P/N 557.10.09.046, or FAA-approved equivalent P/Ns, are installed on both sides of the airplane.	In accordance with ACCOMPLISHMENT INSTRUCTIONS Pilatus PC–7 Service Bulletin No. 57–005, dated September 10, 2001.
(5) As of the effective date of this AD	Only install main landing gear brackets that are P/N 557.10.09.045, P/N 557.10.09.046, or FAA-approved equivalent P/Ns.	Not Applicable.

Note 1: If you find cracks on one side only, you are only required to replace the damaged side with the new improved-design bracket and continue the repetitive inspections required by paragraph (d)(2) of this AD. Repetitive inspections are still required on any installed bracket with either P/N 111.34.07.105 or P/N 111.34.07.106.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Swiss AD HB 2002–270, dated June 24, 2002.

Issued in Kansas City, Missouri, on August 2, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20136 Filed 8–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–25–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Jetstream Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 2000–09–13, which currently requires you to inspect the fuel quantity indication system for damage to the insulation of the wiring within the fuel tanks on British Aerospace Jetstream Model 3201 airplanes and requires you to repair or replace damaged wiring. This proposed AD would retain the actions of AD 2000–09–13 and require you to replace the fuel quantity indication system wiring harness with improved design parts, inspect the fuel boost pump area for damage, and replace any damaged component. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this proposed AD are intended to detect, correct, and prevent damage to the insulation of the wiring within the fuel tanks of the fuel quantity indication system. If not detected, corrected, and prevented, such damaged wiring could result in damage to the fuel boost pump and a malfunction in the cockpit indicators and/or electrical sparking inside the fuel tank with consequent fire or explosion.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 17, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–25–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–25–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–25–AD." We will date stamp and mail the postcard back to you.

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Discussion

Has FAA Taken Any Action to This Point?

Reports of damage to the insulation of the wiring within the wing fuel tanks of the fuel quantity indication system on two British Aerospace Jetstream Model 3201 airplanes caused us to issue AD 2000–09–13, Amendment 39–11722 (65 FR 30863, May 15, 2000). This AD requires you to accomplish the following on all British Aerospace Jetstream Model 3201 airplanes:

—inspect the fuel quantity indication system for damage to the insulation of the wiring within the fuel tanks; and

—repair or replace damaged wiring.

These actions must be accomplished in accordance with British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999; or British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999; Revision No. 1: November 12, 1999.

What Events Have Caused This Proposed AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may continue to exist in the fuel quantity insulation wiring area on all British Aerospace Jetstream Model 3201 airplanes. The CAA reports that the existing fuel quantity indication system wiring harness is composed of "equipment grade" wiring instead of "aircraft grade" wiring. This "equipment grade" wiring has a thinner insulation wall and will eventually deteriorate regardless of whether repaired as required by AD 2000–09–13.

In addition, the current wiring configuration can rub on the components in the fuel boost pump area and cause consequent damage.

What Are The Consequences if the Condition Is Not Corrected?

If not detected, corrected, and prevented, damage to the insulation of the wiring within the fuel tanks of the fuel quantity indication system could result in the following:

—damage to the fuel boost pump;

—a malfunction in the cockpit indicators and/or electrical sparking inside the fuel tank; and

—a consequent fire or explosion.

Is There Service Information That Applies to This Subject?

British Aerospace has issued Jetstream Service Bulletin 28–JM8226, Original Issue: March 11, 2002.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for:

—inspecting the fuel boost pump area for damage and replacing any damaged component;

—replacing the fuel quantity indication system wiring harness with improved design parts; and

—rerouting the wiring harness installation.

What Action Did the CAA Take?

The CAA classified this service bulletin as mandatory and issued CAA AD 001–03–2002 in order to ensure the continued airworthiness of these airplanes in the United Kingdom.

Was This in Accordance With the Bilateral Airworthiness Agreement?

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the CAA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that:

—the unsafe condition referenced in this document exists or could develop on other British Aerospace Jetstream Model 3201 airplanes of the same type design that are on the U.S. registry;

—the actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would supersede AD 2000–09–13 and would:

—retain the actions of AD 2000–09–13;

—require you to inspect the fuel boost pump area for damage and replace any damaged component; and

—require you to replace the fuel quantity indication system wiring harness with improved design parts and reroute the wiring harness installation.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 200 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD On Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection and replacement:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
130 workhours × $60–$7,800	$1,200 per airplane	$9,000	$9,000 × 200 = $1,800,000.

The FAA has no method of determining the number of repairs each owner/operator would incur based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage would vary on each airplane.

Compliance Time of this Proposed AD

Why Are Certain Compliance Times Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

Certain compliance times in this proposed AD are presented in calendar time instead of hours TIS because the unsafe condition specified by this proposed AD is caused by wire insulation deterioration and wear. While this is a direct result of airplane operation, it is not necessarily due to the number of times or hours the airplane is used. The current fuel quantity wiring configuration allows for the potential for rubbing. This rubbing on the "equipment grade" wiring could lead to damaged wiring more quickly than "aircraft grade" wiring, and frays and nicks could lead to wiring deterioration regardless of whether the airplane is operated.

Therefore, to ensure that the unsafe condition specified in this proposed AD does not go undetected for a long period of time, the compliance is presented in calendar time instead of hours TIS. This will also allow the owners/operators to work the proposed actions into regularly scheduled maintenance.

The proposed AD, if followed with a final rule, would require both the installation of "aircraft grade" wiring and a rerouting of the wiring to prevent future rubbing.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2000–09–13, Amendment 39–11722 (65 FR 30863, May 15, 2000) and adding a new AD to read as follows:

BRITISH AEROSPACE: Docket No. 2002–CE–25–AD. Supersedes AD 2000–09–13, Amendment 39–11722.

(a) *What airplanes are affected by this AD?* This AD affects Jetstream Model 3201 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect, correct, and prevent damage to the insulation of the wiring within the fuel tanks of the fuel quantity indication system. If not detected, corrected, and prevented, such damaged wiring could result in damage to the fuel boost pump and a malfunction in the cockpit indicators and/or electrical sparking inside the fuel tank with consequent fire or explosion.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the fuel quantity indication system for damage to the insulation of the wiring within the fuel tanks. Damage is defined as corrosion (indicated by a dark stain), cuts, or nicks.	At whichever of the following occurs first, unless already accomplished: within the next 200 hours time-in-service (TIS) after June 23, 2000 (the effective date AD 2000–09–13); or on or before August 21, 2000 (60 days after the effective date of AD 2000–09–13).	In accordance with either British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999; or British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999, Revision No. 1: November 12, 1999.
(2) Replace or repair any damaged wiring	Prior to further flight after the inspection required by paragraph (d)(1) of this AD.	In accordance with either British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999; or British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999, Revision No. 1: November 12, 1999.
(3) Inspect the fuel boost pump area for damage and replace any damaged component.	Inspect within the next 12 months after the effective date of this AD, unless already accomplished Replace any damaged component prior to further flight after the inspection.	In accordance with British Aerospace Jetstream Service Bulletin 28–JM8226, Original Issue: March 11, 2002.
(4) Replace the fuel quantity indication system wiring harness with improved design parts and reroute the wiring harness installation This replacement incorporates Jetstream Modification JM8226.	Within the next 12 months after the effective date of this AD, unless already accomplished.	In accordance with British Aerospace Jetstream Service Bulletin 28–JM8226, Original Issue: March 11, 2002.
(5) Only install a fuel quantity indication system wiring harness that incorporates Jetstream Modification JM8226 (or FAA-approved equivalent parts).	As of the effective date of this AD	Not applicable.

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(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2000–09–13, Amendment 39–11722.

Note 2: The subject of this AD is addressed in CAA AD 001–03–2002, as specified in British Aerospace Jetstream Service Bulletin 28–JM8226, Original Issue: March 11, 2002.

Issued in Kansas City, Missouri, on August 2, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20137 Filed 8–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 930

[Docket No. 020422093–2093]

RIN 0648–AP98

Procedural Changes to the Federal Consistency Process

AGENCY: Office of Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Extension of public comment period.

SUMMARY: On July 2, 2002, the National Oceanic and Atmospheric Administration (NOAA) published an Advanced Notice of Proposed Rulemaking (ANPR) to evaluate whether limited and specific procedural changes or guidance to the existing Coastal Zone Management Act (CZMA) Federal consistency regulations are needed. The public comment period was to expire on September 3, 2002. This document extends the public comment period on the ANPR until October 3, 2002.

DATES: Comments on the ANPR will be considered if mailed on or before October 3, 2002.

ADDRESSES: All comments concerning these proposed regulations should be mailed to David W. Kaiser, Federal Consistency Coordinator, Office of Ocean and Coastal Resource Management (N/ORM3), 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: David M. Kaiser, Federal Consistency Coordinator, Office of Ocean and Coastal Resource Management (N/ORM3), 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910. Telephone: 301–713–3155, extension 144.

SUPPLEMENTARY INFORMATION: On July 2, 2002, (67 FR 44407), NOAA published an ANPR to evaluate whether limited and specific procedural changes or guidance to the existing CZMA Federal consistency regulations are needed to improve efficiencies in the Federal consistency procedures and Secretarial appeals process, particularly for energy development on the Outer Continental Shelf. The ANPR requested public comment on the need for limited and specific changes or guidance on what such changes or guidance should be. The public comment period was set to expire on September 3, 2002. During the comment period, NOAA received a request from several entities to extend the time for public comment on the ANPR. NOAA has decided to extend the original 60-day comment period to 90 days. The time for the public to submit comments on the ANPR now ends on October 3, 2002.

Dated: August 1, 2002.

Margaret A. Davidson,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–19900 Filed 8–8–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

RIN 1515–AD15

Entry of Certain Steel Products

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to set forth special requirements for the entry of certain steel products. The steel products in question are those listed by the President in Proclamation 7529 of March 5, 2002, pursuant to the safeguard provisions of section 203 of the Trade Act of 1974, including those products subject to country exceptions and product exclusions. The proposed amendment would require the inclusion of an import license number on the entry summary documentation filed with Customs for any steel product for which the U.S. Department of Commerce requires an import license under its steel licensing and import monitoring program.

DATES: Comments must be submitted on or before September 9, 2002.

ADDRESSES: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patty Fitzpatrick, Office of Field Operations (202–927–1106).

SUPPLEMENTARY INFORMATION:

Background

On March 5, 2002, President Bush signed Proclamation 7529 "To Facilitate Positive Adjustment to Competition From Imports of Certain Steel Products," which was published in the **Federal Register** (67 FR 10553) on March 7, 2002. The Proclamation was issued under section 203 of the Trade Act of 1974, as amended (19 U.S.C. 2253), and was in response to determinations by the U.S. International Trade Commission (ITC) under section 202 of the Trade Act of 1974, as amended (19 U.S.C. 2252), that certain steel products were being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat of serious injury, to the domestic industries producing like or directly competitive articles. The action taken by the President in the Proclamation consisted of the implementation of certain "safeguard measures," specifically, the imposition of a tariff-rate quota on imports of specified steel slabs and an increase in duties on other specified steel products. The Proclamation included an Annex setting forth appropriate modifications to the Harmonized Tariff Schedule of the United States (HTSUS) to effectuate the President's action. The modifications to the HTSUS, which involved Subchapter III of Chapter 99 and included the addition of a new U.S. Note 11 and the addition of numerous new subheadings to cover the affected steel products, were made effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 20, 2002.

On March 5, 2002, the President issued a Memorandum to the Secretary of the Treasury, the Secretary of Commerce, and the United States Trade Representative entitled "Action Under Section 203 of the Trade Act of 1974 Concerning Certain Steel Products," which also was published in the **Federal Register** (67 FR 10593) on March 7, 2002. The Memorandum included an instruction to the Secretary of the Treasury and the Secretary of Commerce to establish a system of import licensing to facilitate the monitoring of imports of certain steel products. In addition, the Memorandum instructed the Secretary of Commerce, within 120 days of the effective date of the safeguard measures established by Proclamation 7529, to publish regulations in the **Federal Register** establishing the system of import licensing.

On July 18, 2002, the International Trade Administration of the Department of Commerce published in the **Federal Register** (67 FR 47338) a proposed rule to establish a steel licensing and surge monitoring system as instructed by the President in the March 5, 2002, Memorandum. Under the Commerce proposal, all importers of steel products covered by the President's section 203 action, including those products subject to country exemptions or product exclusions, would be required to obtain a steel import license and to provide the license information (that is, the license number) to Customs except in the case of merchandise which is eligible for informal entry under § 143.21 of the Customs Regulations (19 CFR 143.21). Commerce proposes to institute a registration system for steel importers, and steel import licenses would be issued to registered importers, customs brokers or their agents through an automatic steel import licensing system. Once registered, an importer or broker would submit the required license application information electronically to Commerce, and the system would then automatically issue a steel import license number for inclusion on the entry summary documentation filed with Customs.

Primary responsibility for the steel product import licensing and monitoring rests with the Secretary of Commerce. The Secretary of the Treasury, through the U.S. Customs Service, is responsible for the promulgation and administration of regulations regarding making entry of the subject merchandise into the United States. Accordingly, this document proposes to amend the Customs Regulations to provide an appropriate regulatory basis for the collection of the steel import license number on the entry summary documentation in accordance with the proposed regulatory standards promulgated by the Department of Commerce. The proposed amendment set forth in this document consists of the addition of a new § 12.145 (19 CFR 12.145) which requires the inclusion of a steel import license number on the entry summary in any case in which a steel import license number is required to be obtained under regulations promulgated by the Department of Commerce.

It should be noted that failure to provide the required steel import license number to Customs on a timely basis would constitute a breach of the terms of the importer's bond under § 113.62 of the Customs Regulations (19 CFR 113.62) and therefore could give rise to a claim for liquidated damages under the bond equal to the value of the merchandise involved in the default. However, a claim for liquidated damages under a Customs bond may be reduced or cancelled in accordance with mitigation guidelines published pursuant to section 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1623). After new § 12.145 has been adopted as a final rule, Customs will publish appropriate guidelines under section 623. It is presently contemplated that those guidelines will include circumstances in which liquidated damage claims in these cases may be reduced to $50 for a late filing of the required information or to $100 in the case of a complete failure to file the information.

Comments

Before adopting this proposed regulation as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, NW., Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendment will not have a significant economic impact on a substantial number of small entities. Customs believes that the proposed amendment, which involves the addition of only one data element to an existing required Customs form, will have a negligible impact on importer operations. Accordingly, the proposed amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information in the current regulations have already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB control number 1515–0065 (Entry summary and continuation sheet). This rule does not involve any material

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change to the existing approved information collection.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Bonds, Customs duties and inspection, Entry of merchandise, Imports, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise.

Proposed Amendment to the Regulations

For the reasons stated above, it is proposed to amend Part 12 of the Customs Regulations (19 CFR Part 12) as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

2. A new center heading and new § 12.145 are added to read as follows:

Steel Products

§ 12.145 Entry of certain steel products.

Except in the case of merchandise that is eligible for informal entry under § 143.21 of this chapter, in any case in which a steel import license number is required to be obtained under regulations promulgated by the U.S. Department of Commerce, that license number must be included on the entry summary, Customs Form 7501, or on an electronic equivalent.

Robert C. Bonner,

Commissioner of Customs.

Approved: August 6, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–20165 Filed 8–8–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. FHWA–2001–11130]

RIN 2125–AE29

Work Zone Safety

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meetings.

SUMMARY: The FHWA published an Advance Notice of Proposed Rulemaking (ANPRM) on February 6, 2002 (67 FR 5532), to obtain comments on the current work zone safety regulation. The purpose of the ANPRM was to seek comments regarding improvements that can be made to its regulation on Traffic Safety in Highway and Street Work Zones to better address work zone mobility and safety concerns. On June 6, 2002, the comment period closed, and the FHWA began to analyze the comments provided. This meeting is being held to highlight the reasons for the ANPRM, present a summary of the comments received, and discuss, based on the comments received, the possible impacts that a rulemaking might have on the current regulation.

DATES: The meetings will be held Thursday, August 29, Thursday, September 19, and Wednesday, September 25, 2002 from 10:00 to 2:00 p.m.

ADDRESSES: Cambridge Systematics, 4445 Willard Avenue, Suite 300, Chevy Chase, MD 20815. Telephone: (301) 347–0100 and Fax: (301) 347–0101.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the office of Cambridge Systematics, 4445 Willard Avenue, Suite 300, Chevy Chase, MD 20815. Persons needing further information or who request to speak at this meeting should contact Mike Harris at PB Farradyne, Inc. by telephone at (703) 742–5759 or by Fax at (703) 742–5989. The U.S. DOT contact is Scott Battles, FHWA, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 366–4372. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for legal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http:// www.nara.gov/fedreg* and the Government Printing Office's web site at *http://www.access.gpo.gov.*

Authority: 23 U.S.C. 106, 109, 115, 315, 320, and 402(a); 23 CFR 1.32; 49 CFR 1.48; sec. 1051, Pub. L. 102–240, 105 Stat. 2001; sec. 358(b), Pub. L. 104–59, 109 Stat. 625.

Issued on: August 6, 2002.

Gary E. Maring,

Director, Office of Freight Management and Operations.

[FR Doc. 02–20249 Filed 8–8–02; 8:45 am]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[Docket #: A–2000–25; FRL–7254–3]

RIN 2012–AA01

Federal Implementation Plans Under the Clean Air Act for Indian Reservations in Idaho, Oregon and Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice to re-open the public comment period and to hold a public hearing.

SUMMARY: Today, EPA is re-opening the public comment period on EPA's notice of proposed rulemaking "Federal Implementation Plans (FIPs) under the Clean Air Act (CAA) for Indian Reservations in Idaho, Oregon, and Washington," published March 15, 2002 at 67 FR 11748. The original 90-day public comment period closed on June 13, 2002 but several commenters requested additional time to provide comments on the proposal and one commenter requested a public hearing. In response to these requests, EPA will re-open the comment period and provide an additional 60 days for interested and affected parties to submit comments. The new comment period will close on October 10, 2002. In addition, EPA will hold a public hearing to receive comments on the proposed rule on September 10, 2002, beginning at 7 p.m. Pacific Daylight Time (PDT) at the Liberty Theater in Toppenish, WA. All comments received by EPA during the public comment period will be considered in the final rulemaking.

DATES: *Comments.* Comments must be received or postmarked no later than October 10, 2002. *Public Hearing.* A public hearing will be held on September 10, 2002, beginning at 7 p.m. PDT at the Liberty Theater in Toppenish, WA. Additional requests for a public hearing must be received by EPA no later than August 23, 2002.

ADDRESSES: *Comments.* Written comments should be addressed to: David Bray, Office of Air Quality (OAQ–107), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101–1128. Comments may also be submitted by e-mail to "*bray.dave@epa.gov.*" Please cite the administrative docket, #A–2000–25, upon which you are providing comment.

Public Hearing. The hearing on September 20, 2002 will take place at 7 p.m. PDT at the Liberty Theater, 211 S. Toppenish Avenue, Toppenish, WA.

Docket. Docket A–2000–25, containing all information supporting this action is available for public inspection and copying between 8:30 a.m. and 5:30 p.m. Eastern Daylight Time at EPA's Central Docket Section, Office of Air and Radiation, Room 1500 (M–6102), 401 M Street, SW., Washington, DC 20460. EPA's Central Docket Section is scheduled to move between August 12 and August 27, and material will not be available for viewing in Washington, DC, during this time. After August 27, 2002, the docket will be available for public inspection and copying between 8:30 a.m. and 5:30 p.m. Eastern Daylight Time at EPA's Air and Radiation Docket and Information Center, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington DC 20460. The docket is also available between 8:30 a.m. and 3:30 p.m. PDT at EPA Region 10, Office of Air Quality, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. A reasonable fee may be charged for copies. A copy of the March 15, 2002 proposed rule and all comments submitted as of June 13, 2002, are available at the Toppenish Library, 1 South Elm, Toppenish, WA 98948 during regular library hours.

Web site. Information on this proposed rulemaking is also available on EPA Region 10's Web site at: *www.epa.gov/r10earth/tribalairrules.htm.*

FOR FURTHER INFORMATION CONTACT: David Bray, Office of Air Quality (OAQ–107), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101–1128, (206) 553–4253.

SUPPLEMENTARY INFORMATION: On March 15, 2002 (67 FR 11748), EPA solicited public comment on its proposal to promulgate Federal Implementation Plans (FIPs) under the Clean Air Act (CAA) for 39 Indian reservations in Idaho, Oregon, and Washington. The FIPs would include basic air quality regulations for the protection of communities on those Indian reservations. These rules would be implemented and enforced by EPA. EPA received requests to extend the public comment period to allow more time to review the proposal and to prepare comments. EPA also received a request on behalf of the residents of the Yakama Indian Reservation to hold a public hearing.

As a result of the requests to extend the public comment period, EPA is re-opening the comment period for 60 days. All comments received or postmarked by October 10, 2002 will be considered in the development of a final rule. A copy of all comments, including the requests to extend the public comment period, have been placed into the docket and may be reviewed during normal business hours at the locations listed above. Interested parties are invited to comment on all aspects of EPA's March 15, 2002 proposal. Comments should be addressed to David Bray at the address listed above. EPA also invites interested parties to provide comments at a public hearing to be held on September 10, 2002 at 7 p.m. PDT at the Liberty Theater in Toppenish, WA.

Dated: July 24, 2002.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 02–19440 Filed 8–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC93–200122a; FRL–7206–8]

Approval and Promulgation of Implementation Plans North Carolina: Approval of Revisions to The Open Burning Regulations Within the Forsyth County Local Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the Local Implementation Plan (LIP) revision submitted by the Forsyth County Environmental Affairs Department, through the State of North Carolina, for the purpose of amending regulations relating to open burning, transportation conformity, and the general provisions section of the Air Quality Permits subchapter. In the Final Rules section of this **Federal Register**, the EPA is approving the Forsyth county LIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before September 9, 2002.

ADDRESSES: All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Randy Terry, 404/562–9032.

Forsyth County Environmental Affairs Department, 537 North Spruce Street, Winston-Salem, North Carolina 27101.

North Carolina Department of Environment and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Randy B. Terry at 404/562–9032, or by electronic mail at *terry.randy@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: April 1, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–20226 Filed 8–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7256–6]

Rhode Island: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

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ACTION: Proposed rule.

SUMMARY: The State of Rhode Island has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Rhode Island. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by September 9, 2002.

ADDRESSES: Send any written comments to Robin Biscaia, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023; telephone: (617) 918–1642. Copies of the State of Rhode Island's revision application and the materials which EPA used in evaluating the revision (the "Administrative Record") are available for inspection and copying during normal business hours at the following locations: Rhode Island Department of Environmental Management, Office of Technical and Customer Assistance, 235 Promenade Street, Providence, RI 02908–5767, business hours: 8:30 a.m. to 4 p.m., telephone: (401) 222–6822; or EPA New England Library, One Congress Street, 11th Floor, Boston, MA 02114–2023, business hours: 10 a.m. to 3 p.m., Monday through Thursday, telephone: (617) 918–1990.

FOR FURTHER INFORMATION CONTACT: Robin Biscaia, Hazardous Waste Unit, Office of Ecosystems Protection, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023, telephone: (617) 918–1642.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: July 6, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 02–19980 Filed 8–8–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[USCG 2001–8825]

RIN 2115–AG08

Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its regulations on the documentation of vessels engaged in the coastwise trade. These proposals address statutory amendments eliminating certain barriers to seeking foreign financing by lease for U.S.-flag vessels. These proposals would clarify the information needed to determine the eligibility of a vessel financed in this manner for a coastwise endorsement.

DATES: Comments and related material must reach the Docket Management Facility on or before October 8, 2002.

Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before October 8, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–8825), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Patricia Williams, Deputy Director, National Vessel Documentation Center, Coast Guard, telephone 304–271–2506. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2001–8825), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

On May 2, 2001, we published a notice of proposed rulemaking (NPRM) entitled "Vessel Documentation: Lease-Financing for Vessels Engaged in the Coastwise Trade" in the **Federal Register** (66 FR 21902). This supplemental notice of proposed rulemaking (SNPRM) provides further opportunity for public comment. This SNPRM is necessary to better align the proposed rule with the applicable statute, its legislative history, and the existing vessel documentation regulations and to provide for vessels that have already received coastwise endorsements under the lease-financing statute. The specific proposed changes to the NPRM are discussed later in this preamble.

What Happens to the Comments Already Submitted?

The proposed changes to the NPRM are technical in nature and are intended primarily for alignment and clarification purposes. They are not made in response to any of the many comments received to the NPRM. All comments on the NPRM and SNPRM that are submitted to the docket will be carefully considered before a final rule is published. If the changes in this SNPRM do not affect the comments that you have already submitted to the docket, there is no need to re-submit them. This will help members of the public who read the comments to avoid having to review duplicate sets.

Background and Purpose

In 1996, Congress amended the vessel documentation laws to promote lease financing of vessels engaged in the coastwise trade (section 1113(d) of Public Law 104–324, the Coast Guard Authorization Act of 1996; 46 U.S.C. 12106(e)) ("the 1996 Act"). Lease financing has become a very common way to finance capital assets in the maritime industry. Under lease financing, ownership of the vessel is in the name of the lessor, with a demise charter to the charterer of the vessel. (A "demise charter" or "bareboat charter" is an agreement in which the charterer assumes the responsibility for operating, crewing, and maintaining the vessel as if the charterer owned it.) Many vessel operators choose to acquire or build vessels through lease financing, instead of the traditional mortgage financing, because of possible cost benefits. But, until the 1996 Act, operators were prevented from obtaining this financing from U.S. companies that are less than 75 percent U.S. owned because the leasing company had to be a U.S. citizen under section 2 of the Shipping Act, 1916, (46 U.S.C. app. 802), which requires at least 75 percent U.S. ownership. This situation severely restricted the source of available capital.

Under section 1113(d) of the 1996 Act, Congress eliminated this technical impediment to vessel financing by adding a new paragraph (e) to 46 U.S.C. 12106. Under 46 U.S.C. 12106(e), Congress authorized the Secretary of Transportation (since delegated to the Commandant of the Coast Guard) to issue coastwise endorsements if (1) the vessel is eligible for documentation; (2) the vessel's owner, the parent of the owner, or subsidiary of the parent of the owner is primarily engaged in leasing or other financing transactions; (3) the vessel is under a demise charter to a person certifying that the person is a U.S. citizen eligible to engage in coastwise trade under section 2 of the Shipping Act, 1916; and (4) the demise charter is for at least 3 years (or less under proposed § 67.20(a)(11)).

According to the legislative history for the 1996 Act (see House Conference Report No. 104–854; Public Law 104–324; 1996 U.S. Code Congressional and Administrative News, p. 4323)(Conference Report), Congress intended to broaden the sources of capital for owners of U.S. vessels engaged in the coastwise trade by creating new lease-financing options. At the same time, Congress did not intend to undermine the basic principle of U.S. maritime law that vessels operated in domestic trades must be built in shipyards in the U.S. and be operated and controlled by U.S. citizens, which is vital to U.S. military and economic security. In that report, Congress directed the Coast Guard to establish the necessary regulations to administer 46 U.S.C. 12106(e), including the filing of demise charters for vessels issued a coastwise endorsement under that provision.

Purpose for this Supplemental Notice of Proposed Rulemaking

This supplemental notice of proposed rulemaking (SNPRM) is necessary for the following reasons:

1. To more closely align the proposed rule with the 1996 Act, the Conference Report, and existing vessel documentation regulations.

2. To address endorsements issued under the lease-financing section of the 1996 Act before the effective date of the final rule.

3. To align, for clarity, similar provisions within this proposed rule.

The SNPRM is not intended as a response to the comments received on the preceding NPRM. All comments on the NPRM and SNPRM that are submitted to the docket will be carefully considered before a final rule is published.

Discussion of the Proposed Changes to the NPRM

In this section, we discuss only the changes we have made to the notice of proposed rulemaking (NPRM). For a discussion of the unchanged provisions, see the "Discussion of the Proposed Regulations" section in the preamble to the NPRM (66 FR 21903).

Section 67.3—Definitions. 1. In the definitions for the terms "parent" and "subsidiary", the words "more than 50 per cent", concerning ownership and control, have been changed to read "at least 50 percent". This aligns these definitions with similar definitions elsewhere in the Coast Guard's vessel documentation regulations (*e.g.*, 46 CFR 68.01–1).

2. The NPRM had separate definitions for the words "entity" and "person". "Person" was defined as an individual or entity. In the SNPRM, the definition of "entity" is combined with that for "person", as is currently done in existing 46 CFR 67.3. This avoids unintentionally excluding, for example, individuals as possible owners.

3. In the definition for "primarily engaged in leasing or other financing transactions", the NPRM used "banking or similar financing transactions". This is narrower than the wording in the Conference Report and the policy being applied by the National Vessel Documentation Center (as described on page 21903 of the preamble to the NPRM). The SNPRM replaces these words with "banking, investing, leasing, or other financing transactions".

Section 67.20—Coastwise endorsement for a vessel under a demise charter. 1. The section heading is changed to delete "and that is owned by a lease-financing company and is" because the element of ownership is addressed in paragraph (a)(3) of this section.

2. In paragraph (a), the "(e)" following "46 U.S.C. 12106" is deleted because there are other criteria for eligibility for a coastwise endorsement, such as "U.S.-built" in section 12106(a), that are not found in section 12106(e).

3. In paragraph (a)(2), the words "The vessel is considered built in the United States under § 67.97" are replaced with the words "The vessel is eligible for a coastwise endorsement under § 67.19(c)". This change is needed to include the non-U.S.-built vessels listed

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in § 67.19(c) that are also eligible for coastwise endorsement.

4. In paragraph (a)(3), the words "and not in vessel operations or management" are deleted from the SNPRM. These words are confusing because they make it seem as if the parent or subsidiaries of the parent may not be engaged primarily in the direct operation or management of vessels. Page 4326 of the Conference Report states that it is only the owner that may not primarily engage in the direct operation or management of vessels. Therefore, a new paragraph (a)(5) is added to require that only the owner must not be primarily engaged in the direct operation or management of vessels.

5. A new paragraph (a)(4) is added to align this section with the requirement for applications in § 67.147 (a)(1)(i) of the NPRM that the entity that owns the vessel be organized under the laws of the United States or of a State.

6. Paragraph (a)(4) in the NPRM required that the majority of the aggregate revenues of an owner, the parent, or a subsidiary of the parent not be derived from the operation or management of vessels. However, the Conference Report states that it is the majority of the aggregate revenues of the whole group (*i.e.*, the owner, the parent, and all subsidiaries of the parent), not that of individual members of the group, that must not be derived from the operation or management of vessels. New paragraph (a)(7) has been aligned with the Conference Report.

7. Under paragraph (a)(5) of the NPRM, on the subject of the operation or management of commercial, foreign-flag vessels, the owner, parent, or subsidiary of the parent must not be primarily engaged in the operation or management of the vessels. However, under the Conference Report, it is the group that includes the person, the parent, and all subsidiaries of the parent that must not be primarily engaged in the operation or management of the vessels. New paragraph (a)(8) has been aligned with the Conference Report.

8. Paragraph (b) is new. It is a "grandfather" provision that addresses the coastwise endorsements issued under the lease-financing provision since the passage of the 1996 Act. It would allow these endorsements to continue to be eligible for renewal as long as the certificate of documentation is not subject to exchange under § 67.167(b)(1) through (b)(3) or to deletion under § 67.171(a)(1) through (a)(6) or § 67.173. These provisions deal with substantial changes, such as changes in the ownership or flag nation of the vessel. If the vessel became subject to these provisions and the owner chose to again seek a coastwise endorsement under the lease-financing provisions, the owner would no longer be eligible under this grandfather provision, but would have to apply under the regulations applicable to non-grandfathered endorsements.

Section 67.147—Application procedure: Coastwise endorsement for a vessel under a demise charter. 1. The heading of this section is changed for the reasons discussed under § 67.20 in this preamble.

2. Section 67.147 is reorganized to better align it with § 67.20.

3. Paragraph (a)(1)(i) in the NPRM limited the person that must be primarily engaged in leasing or other financing transactions to the owner. However, the 1996 Act allows the owner, the parent, or a subsidiary of the parent to be so engaged. Paragraph (a)(1)(i) of the SNPRM is changed accordingly.

4. For a complete explanation of the changes to this section, see the preceding discussion of the corresponding changes to § 67.20.

Section 67.167—Requirement for exchange of Certificate of Documentation. 1. Paragraph (c) lists situations in which the Certificate of Documentation and all endorsements to it become invalid. Therefore, these provisions are similar to those discussed above but are set out in the negative.

2. For a discussion of the changes to paragraph (c)(10)(iii), see the discussion under § 67.20(a)(3) in this preamble.

3. For a discussion of the changes to paragraph (c)(10)(iv), see the discussion under § 67.20(a)(4) (new (a)(7)) in this preamble.

4. For a discussion of the changes to paragraph (c)(10)(v), see the discussion under § 67.20(a)(5) (new (a)(8)) in this preamble.

5. Paragraph (c)(11) is a new grandfather provision. For a discussion of these provisions, see the discussion under § 67.20(b) in this preamble.

Section 67.179—Application procedure: Coastwise operation of a barge under a demise charter. 1. The changes to paragraphs (a)(1)(i) through (a)(1)(v) in this section correspond to the changes to similar provisions in §§ 67.20 and 67.147.

2. This section is reorganized to better align it with §§ 67.20 and 67.147.

Assessment

Due to substantial public interest since the NPRM was published, this proposed rule has been reclassified as a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). A draft Assessment is available in the docket as indicated under **ADDRESSES**. A summary of the Assessment follows:

The changes to the NPRM more closely align the SNPRM with the 1996 Act, the legislative history, and the existing vessel documentation regulations. The lease-finance provisions are intended to broaden the sources of capital for owners of vessels engaged in coastwise trade.

Several changes resulting from alignment with the 1996 Act and the Conference Report would increase the universe of owners eligible for the lease-financing option due to the increased the number of sources for financing. (See § 67.20 (a)(3) through (a)(5) in the NPRM and § 67.20 (a)(3) and (a)(5) through (a)(8) in the SNPRM.) For example, § 67.20(a)(3) in the NPRM excluded owners with a parent or subsidiary of the parent that is primarily engaged in vessel operations or management. However, under the Conference Report, the parent or subsidiary of the parent may be so engaged (as long as the group also meets the restrictions in the Report on aggregate revenues and foreign vessel ownership).

The new Coast Guard estimate for the number of entities opting to apply for coastwise endorsements under the amended lease-finance provisions is approximately 35 annually.

There are no mandatory costs associated with this rulemaking. The costs imposed on those who choose to take advantage of lease financing would include the costs of preparing and submitting the documents required in § 67.147 for vessels and § 67.179 for barges. Those costs would vary from applicant to applicant and would probably be the same for vessels and barges. For further information on those costs, see the section on "Collection of Information" in this preamble.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this supplemental notice of proposed rulemaking (SNPRM) would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The SNPRM would affect vessel owners and charterers who choose to take advantage of the lease-financing option. This option reduces the burden on owners by enabling them to obtain the cheapest financing available anywhere in the world. Under the SNPRM, to take advantage of the lease-financing option, the vessel owner and charterer must submit affidavits and a copy of their demise charter to the NVDC. The estimated cost of preparing and submitting this material would be minimal and is discussed further under "Collection of Information" in this preamble. Companies would tend to choose lease financing only if they expect its costs to be offset by increased profits.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Patricia Williams, Deputy Director, National Vessel Documentation Center (NVDC), Coast Guard, telephone 304–271–2506.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This supplemental notice of proposed rulemaking (SNPRM) would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection. This estimate applies to the documents to be submitted under §§ 67.147 and 67.179. This collection would change the previously approved burden under Control Number OMB 2115–0110.

Title: Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade.

Summary of the Collection of Information: This supplemental notice of proposed rulemaking (SNPRM) in §§ 67.147 and 67.179, would amend the collection-of-information requirements for vessel owners and charterers applying to engage in the coastwise trade under the lease-financing provisions of 46 U.S.C. 12106(e). These provisions would require modifying the burden in the previously approved OMB Collection 2115–0110.

Need for Information: The Coast Guard needs this information to determine whether an entity meets the statutory requirements.

Proposed Use of Information: The Coast Guard would use this information to determine whether an entity meets the statutory requirements.

Number of Respondents: Approximately 35 entities a year, including charter amendments and sub-charters.

Frequency of Response: Whenever an entity seeks to qualify to engage in the coastwise trade under 46 U.S.C. 12106(e), a qualified entity amends the charter, or the demise charterer sub-charters the vessel by demise charter.

Burden of Response: The burden resulting from this proposed rule would arise from the requirements in §§ 67.147 and 67.179 that affidavits be prepared and submitted, along with a copy of the demise charter, to the NVDC. We estimate that it would take a total of 12 hours to prepare the affidavits and make the submissions. As for the per-hour cost to accomplish this administrative task, we estimate that it could be as low as $67 per hour. We expect most, if not all, of the applicants to use law firms to accomplish these tasks, even though the proposed rule would not require their use. Hourly cost for legal assistance could be substantially higher. To align our estimates more closely with industry practice, we used $167 per hour for a total of $2,004 per application.

Estimate of Total Annual Burden: The annual hour burden for industry is 12 hours per application x 35 applications per year for a total of 420 hours per year. The annual cost burden for industry is $420 hours per year x $167 per hour (the higher of the two figures discussed above) for a total of $70,140 per year.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of

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their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order, although it is considered a "significant regulatory action" under Executive Order 12866. We expect that this rulemaking will not have any significant adverse effect on the supply, distribution, or use of energy, including a shortfall in supply, price increases, and increased use of foreign supplies. Furthermore, it has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

We request your comments to assist us in identifying any likely significant adverse effects this proposed rule may have on the supply, distribution, or use of energy. Submit your comments to the Docket Management Facility at the address under **ADDRESSES**.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(d), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This proposed rulemaking is administrative in nature and identifies the information necessary to apply for a coastwise endorsement under 46 U.S.C. 12106(e). A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 67

Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 67 as follows:

PART 67—DOCUMENTATION OF VESSELS

1. The authority citation for part 67 is revised to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110, 12106, 12120, 12122; 46 U.S.C. app. 841a, 876; 49 CFR 1.45, 1.46.

2. In § 67.3, revise the definition for the term "person"; and add, in alphabetical order, definitions for the terms "parent", "primarily engaged in leasing or other financing transactions", and "subsidiary" to read as follows:

§ 67.3 Definitions.

* * * * *

Parent means any person that directly or indirectly owns or controls at least 50 percent of another person.

Person means an individual; corporation; partnership; limited liability partnership; limited liability company; association; joint venture; trust arrangement; and the government of the United States, a State, or a political subdivision of the United States or a State; and includes a trustee, beneficiary, receiver, or similar representative of any of them.

Primarily engaged in leasing or other financing transactions means that more than 50 percent of the aggregate revenue of a person is derived from banking, investing, leasing, or other financing transactions.

* * * * *

Subsidiary means a person at least 50 percent of which is directly or indirectly owned or controlled by another person.

* * * * *

3. Add § 67.20 to read as follows:

§ 67.20 Coastwise endorsement for a vessel under a demise charter.

(a) Except as under paragraph (b) of this section, to be eligible for a coastwise endorsement under 46 U.S.C. 12106, a vessel under a demise charter must meet the following:

(1) The vessel is eligible for documentation under 46 U.S.C. 12102.

(2) The vessel is eligible for a coastwise endorsement under § 67.19(c) and has not lost coastwise eligibility under § 67.19(d).

(3) The person that owns the vessel, a parent of that person, or a subsidiary of a parent of that person is primarily engaged in leasing or other financing transactions.

(4) The person that owns the vessel is organized under the laws of the United States or of a State.

(5) The person that owns the vessel is not primarily engaged in the direct operation or management of vessels.

(6) The ownership of the vessel is primarily a financial investment without the ability and intent to control the vessel's operations by a person not primarily engaged in the direct operation or management of vessels.

(7) The majority of the combined aggregate revenues of the person that owns the vessel, the parent of that person, and all subsidiaries of the parent of that person is not derived from the operation or management of one or more vessels.

(8) The group that includes the person that owns the vessel, the parent of that person, and all subsidiaries of the parent of that person is not primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the vessel's owner or charterer.

(9) The person that owns the vessel has transferred to a qualified United States citizen under 46 U.S.C. app. 802 full possession, control, and command of a U.S.-built vessel through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter.

(10) The charterer must certify to the Director, National Vessel Documentation Center, that the charterer is a citizen of the United States for engaging in the coastwise trade under 46 U.S.C. app. 802.

(11) The demise charter is for a period of at least 3 years, unless a shorter period is authorized by the Director, National Vessel Documentation Center, under circumstances such as—

(i) When the vessel's remaining life would not support a charter of 3 years; or

(ii) To preserve the use or possession of the vessel.

(b) A vessel under a demise charter that was eligible for, and received, a document with a coastwise endorsement under § 67.19 and 46 U.S.C. 12106(e) before [The effective date of the final rule.] may continue to operate under that endorsement on and after that date and may renew the document and endorsement if the certificate of documentation is not subject to—

(1) Exchange under § 67.167(b)(1) through (b)(3); or

(2) Deletion under §§ 67.171(a)(1) through (a)(6) or 67.173.

(c) To apply for a coastwise endorsement for a vessel under a demise charter, see § 67.147.

§ 67.35 [Amended]

4. In § 67.35, at the end of paragraph (c), add the words "or the vessel qualifies under § 67.20".

5. In § 67.36, revise paragraphs (c)(1) and (c)(2) to read as follows:

§ 67.36 Trust.

* * * * *

(c) * * *

(1) It meets the requirements of paragraph (a) of this section and at least 75 percent of the equity interest in the trust is owned by citizens; or

(2) It meets the requirements of § 67.20.

6. In § 67.39, revise paragraphs (c)(1) and (c)(2) to read as follows:

§ 67.39 Corporation.

* * * * *

(c) * * *

(1) It meets the requirements of paragraph (a) of this section and at least 75 percent of the stock interest in the corporation is owned by citizens; or

(2) It meets the requirements of § 67.20.

* * * * *

7. Add § 67.147 to read as follows:

§ 67.147 Application procedure: Coastwise endorsement for a vessel under a demise charter.

(a) In addition to the items under § 67.141, the person that owns the vessel (other than a barge under § 67.179) and that seeks a coastwise endorsement under § 67.20 must submit the following to the National Vessel Documentation Center:

(1) A certification, in the form of an affidavit and supported with documentation, from an officer of the person that owns the vessel certifying the following:

(i) That the person that owns the vessel, the parent of that person, or a subsidiary of a parent of that person is primarily engaged in leasing or other financing transactions.

(ii) That the person that owns the vessel is organized under the laws of the United States or a State.

(iii) That the person that owns the vessel is not primarily engaged in the direct operation or management of vessels.

(iv) That ownership of the vessel is primarily a financial investment without the ability and intent to control the vessel's operations by a person not primarily engaged in the direct operation or management of vessels.

(v) That the majority of the combined aggregate revenues of the person that owns the vessel, the parent of that person, and all subsidiaries of the parent of that person is not derived from the operation or management of one or more vessels.

(vi) That the group that includes the person that owns the vessel, the parent of that person, and all subsidiaries of the parent of that person is not primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the vessel's owner or charterer.

(vii) That the person that owns the vessel has transferred to a qualified United States citizen under 46 U.S.C. app. 802 full possession, control, and command of the U.S.-built vessel through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter.

(2) A copy of the charter.

(b) The charterer must submit the following to the National Vessel Documentation Center:

(1) A certificate certifying that the charterer is a citizen of the United States for the purpose of engaging in the coastwise trade under 46 U.S.C. app. 802.

(2) Detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship. The citizenship information may be attached to the form CG–1258 that is submitted under § 67.141 and must be signed by, or on behalf of, the charterer.

(c) Whenever a charter under paragraph (a) of this section is amended, the vessel owner must file a copy of the amendment with the Director, National Vessel Documentation Center, within 10 days after the effective date of the amendment.

(d) Whenever the charterer of a vessel under paragraph (a) of this section demise charters the vessel to a sub-charterer—

(1) The charterer must file a copy of the sub-charter with the Director, National Vessel Documentation Center, within 10 days after the effective date of the sub-charter; and

(2) The sub-charterer must provide detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship.

(e) A person that submits a false certification under this section is subject to penalty under 46 U.S.C. 12122.

8. In § 67.167, in paragraph (c)(8), remove the last "or"; in paragraph (c)(9), remove the period and add, in its place, a semicolon; and add paragraphs (c)(10) and (c)(11) to read as follows:

§ 67.167 Requirement for exchange of Certificate of Documentation.

* * * * *

(c) * * *

(10) Except for a vessel with a coastwise endorsement under 46 U.S.C. 12106(e) that was in effect before [the effective date of the final rule.]—

(i) The demise charter expires or is transferred to another charterer;

(ii) The citizenship of the charterer or sub-charterer changes to the extent that they are no longer qualified for a coastwise endorsement;

(iii) Neither the person that owns the vessel, nor the parent of that person, nor any subsidiary of the parent of that person is primarily engaged in leasing or other financing transactions;

(iv) The majority of the combined aggregate revenues of the person that owns the vessel, the parent of that person, and all subsidiaries of the parent of that person is derived from the operation or management of one or more vessels; or

(v) The group that includes the person that owns the vessel, the parent of that person, and all subsidiaries of the

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parent of that person becomes primarily engaged in the operation or management of foreign-flag vessels used for the carriage of cargo unrelated to the vessel's owner or charterer; or

(11) For a vessel with a coastwise endorsement under 46 U.S.C. 12106(e) that was in effect before [the effective date of the final rule.]—

(i) The demise charter expires or is transferred to another charterer;

(ii) The citizenship of the charterer or sub-charterer changes to the extent that they are no longer qualified for a coastwise endorsement;

(iii) Neither the person that owns the vessel, nor the parent of that person, nor a subsidiary of the parent of that person is primarily engaged in leasing or other financing transactions;

* * * * *

9. Add § 67.179 to subpart M to read as follows:

§ 67.179 Application procedure: Coastwise operation of a barge under a demise charter.

(a) The person that owns a barge qualified to engage in coastwise trade under the lease-financing provisions of 46 U.S.C. 12106(e) must submit the following to the National Vessel Documentation Center:

(1) A certification, in the form of an affidavit and supported with documentation, from an officer of the person that owns the barge certifying the following:

(i) That the person that owns the barge, the parent of that person, or a subsidiary of the parent of that person is primarily engaged in leasing or other financing transactions.

(ii) That the person that owns the barge is organized under the laws of the United States or a State.

(iii) That the person that owns the barge is not primarily engaged in the direct operation or management of vessels.

(iv) That ownership of the barge is primarily a financial investment without the ability and intent to control the barge's operations by a person not primarily engaged in the direct operation or management of the barge.

(v) That the majority of the combined aggregate revenues of the person that owns the barge, the parent of that person, and all subsidiaries of the parent of that person is not derived from the operation or management of one or more vessels.

(vi) That the group that includes the person that owns the barge, the parent of that person, and all subsidiaries of the parent of that person is not primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the barge's owner or charterer.

(vii) That the person that owns the barge has transferred to a qualified United States citizen under 46 U.S.C. app. 802 full possession, control, and command of the U.S.-built barge through a demise charter in which the demise charterer is considered the owner *pro hac vice* for the term of the charter.

(viii) That the barge is qualified to engage in the coastwise trade and that it is owned by a person eligible to own vessels documented under 46 U.S.C. 12106(e).

(2) A copy of the charter.

(b) The charterer must submit the following to the National Vessel Documentation Center:

(1) A certificate certifying that the charterer is a citizen of the United States for engaging in the coastwise trade under 46 U.S.C. app. 802.

(2) Detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship. The citizenship information must be signed by, or on behalf of, the charterer.

(c) Whenever a charter under paragraph (a) of this section is amended, the barge owner must file a copy of the amendment with the Director, National Vessel Documentation Center, within 10 days after the effective date of the amendment.

(d) Whenever the charterer of a barge under paragraph (a) of this section demise charters the barge to a sub-charterer—

(1) The charterer must file a copy of the sub-charter with the Director, National Vessel Documentation Center, within 10 days after the effective date of the sub-charter; and

(2) The sub-charterer must provide detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship.

(e) A person that submits a false certification under this section is subject to penalty under 46 U.S.C. 12122.

Dated: March 28, 2002.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–20244 Filed 8–8–02; 8:45 am]

BILLING CODE 4910–15–P

Notices

Federal Register
Vol. 67, No. 154
Friday, August 9, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Center for Nutrition Policy and Promotion; Agency Information Collection Activities; Proposed Collection; Comment Request-Interactive Healthy Eating Index Questionnaire

AGENCY: Center for Nutrition Policy and Promotion, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed information collection. This notice announces the Center for Nutrition Policy and Promotion's intention to request the Office of Management and Budget approval of the information collection instrument to be used to survey users of the Interactive Healthy Eating Index, an on-line dietary self-assessment tool. The information collected will be used to improve the quality and usability of the Interactive Healthy Eating Index.

DATES: Written comments on this notice must be submitted on or before October 8, 2002.

ADDRESSES: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to P. Peter Basiotis, Director, Nutrition Policy and Analysis, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1034, Alexandria, Virginia, 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION: Requests for additional information should be directed to Shirley Gerrior, (703) 305–2563.

SUPPLEMENTARY INFORMATION:

Title: Interactive Healthy Eating Index Questionnaire.

OMB Number: Not yet assigned.

Expiration Date: Not applicable.

Type of Request: New collection of information.

Abstract: The Interactive Healthy Eating Index (IHEI) is an Internet based diet self-assessment tool. The IHEI translates scientifically based guidance into practical information and promotes nutrition education by increasing awareness of the quality of a person's diet. It allows users to input their daily food intakes and provides a quick summary measure of their overall diet quality in terms of current dietary guidance. Immediate feedback includes an overall Index score, 10 component scores, and nutrient intake information. Motivational nutrition messages tailored to user needs and a personalized graphical representation of the Food Guide Pyramid are generated based on user scores. The proposed questionnaire will collect information on the usability, clarity and quality of the IHEI Web site. The questionnaire will also obtain feedback on user interest and need for the addition of a personalized meal plan or suggested list of foods designed to improve a person's diet quality. Optional demographic, geographic location, income, and ethnicity information will also be obtained from survey respondents. The questionnaire will be available to IHEI users for a period of 30 days. The information collected will only be used by CNPP, USDA to enhance the usability of the IHEI, to make available pertinent and user-friendly information and personalized messages, and to ensure the continued quality service of the IHEI Web site.

Affected Public: The American Consumers.

Estimated Number of Respondents: 30,000 respondents (for a 30 day period based on average daily use by 2,000 individuals at a projected 50% response rate).

Estimated Time Per Response: 10 minutes.

Estimated Number of Responses Per Respondent: One.

Estimated Total Annual Burden on Respondents: 5,000 hours.

Dated: July 26, 2002.

Steven N. Christensen,

Acting Executive Director, Center for Nutrition Policy and Promotion.

[FR Doc. 02–20191 Filed 8–8–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–054–2]

Environmental Impact Statement Regarding Importation of Unmanufactured Wood Articles From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: On July 14, 2000, a notice of availability and request for comments was published in the **Federal Register** (65 FR 43748) for a draft environmental impact statement titled "Proposed Rule for the Importation of Unmanufactured Wood Articles From Mexico, With Consideration for Cumulative Impact of Methyl Bromide Use." The draft environmental impact statement considered, among other things, the potential cumulative impact on the environment of methyl bromide use. In the time since the draft environmental impact statement was prepared, the U.S. Environmental Protection Agency has made available data on methyl bromide use through 1999. After review of the data and the draft environmental impact statement, we have determined that it is not necessary to supplement the draft environmental impact statement before a final environmental impact statement is issued. We expect the final environmental impact statement to incorporate APHIS' review of the data on methyl bromide consumption since the publication of the draft.

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DATES: We will consider all comments that we receive on or before September 9, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 98–054–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–054–2. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 98–054–2" on the subject line.

You may read any comments that we receive on the environmental impact statement in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. David Bergsten, Biological Scientist, Environmental Services, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737–1238; (301) 734–8565.

SUPPLEMENTARY INFORMATION:

Background

Methyl bromide is a broad spectrum pesticide used as a fumigant to control insect pests, nematodes, weeds, and pathogens. The production, consumption, and trade of methyl bromide are regulated under the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (the Montreal Protocol) and the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

The Montreal Protocol is an international treaty designed to reduce and eventually eliminate the emissions of man-made, ozone-depleting substances such as methyl bromide. The Montreal Protocol provides for a phaseout of methyl bromide production and consumption in developed countries, including the United States, by the year 2005 and in developing countries by the year 2015. However, the Montreal Protocol exempts quarantine and pre-shipment (QPS) uses of methyl bromide from these phaseout requirements. The Clean Air Act provides the basic framework to regulate air quality through air pollution control, and it has been amended to reflect changes in U.S. obligations under the Montreal Protocol.

On July 14, 2000, a notice of availability and request for comments was published in the **Federal Register** (65 FR 43748) for a draft environmental impact statement (EIS) titled "Proposed Rule for the Importation of Unmanufactured Wood Articles From Mexico, With Consideration for Cumulative Impact of Methyl Bromide Use." The draft EIS considered the potential cumulative impact on the environment of methyl bromide use that could result if the proposed rule was adopted and discussed alternatives to the proposed rule, the environmental consequences of methyl bromide on the environment, and the potential cumulative impact of methyl bromide use associated with the proposed rule.

It has been nearly 2 years since the draft EIS was completed and made available for public comment. Since then, the U.S. Environmental Protection Agency (EPA) has posted on its website data on methyl bromide use through 1999.

The Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA) provide, in part, that agencies shall prepare a supplement to a draft or final EIS if the agency makes substantial changes in the proposed action that are relevant to environmental concerns or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (see 40 CFR 1502.9(c)). We have reviewed the EPA's data on methyl bromide use and found no significant new circumstances or information relevant to environmental concerns about methyl bromide. Therefore, we have determined that it is not necessary to supplement the draft EIS before a final EIS is issued. Indeed, our review indicates that the draft EIS's assessment of methyl bromide use patterns, now more fully documented, was realistic. A discussion of developments follows.

The draft EIS relied upon reviews completed in 1998 by the United Nations Environment Programme (UNEP) of methyl bromide use data through 1996. The EPA provides information on methyl bromide use as it becomes available. The most recent data available from the EPA present methyl bromide use through 1999. However, the data provided by the EPA are more limited than the 1996 data presented in the UNEP report. The information presented in the EPA tables is derived from multiple sources and is not consistent in numerical presentation among all tables. The EPA tables, however, do provide a good snapshot of annual changes in methyl bromide use patterns through 1999. Furthermore, the EPA data basically confirm estimates contained in the draft EIS, which assumed that current figures for use (in 1999) are slightly higher than those reported for 1996. These data support the draft EIS's assessment of methyl bromide use patterns.

The United States, among other countries (see Article 5 of the Montreal Protocol), is subject to phaseout of methyl bromide by 2005, except for QPS uses and critical exemption uses. The United States and other Article 5 countries were required to reduce their non-QPS production of methyl bromide in 1999 by at least 25 percent from production levels in 1991, the base year for all calculations. Although the United States met its obligations, some other Article 5 countries exceeded their production allowances. The actual reduction in methyl bromide use since 1991 was about 23 percent overall for the Article 5 countries (39,918 metric tons in 1991 to 30,741 metric tons in 1999). This reduction appears to be substantially in keeping with the phaseout goals, but the 1991 data may be misleading. The most recent figures for non-QPS uses by Article 5 countries shows a 2 percent increase over 3 years (30,032 metric tons in 1996 to 30,741 metric tons in 1999).

It is anticipated that the methyl bromide production phaseout requirements will ultimately reduce methyl bromide use, but the current patterns suggest a lag between intent to reduce and full compliance with the provisions of the Montreal Protocol. By 2015, most non-QPS use will cease and QPS use should be reduced substantially as cost-effective alternatives are developed. It is less clear how the critical-use exemptions allowed under the Montreal Protocol will affect the overall use of methyl bromide in the future. While modest changes in cumulative methyl bromide use are likely to come in time, the draft EIS's predictions, confirmed in recent data, suggest that the overall trend toward reductions in use will continue.

There is no new or additional scientific information or data that require reassessment of cumulative methyl bromide use or the effects of such use on the quality of the human environment. Therefore, preparation of a supplemental draft EIS is not necessary at this time. We expect to issue a final EIS soon.

We welcome comments on our determination that it is not necessary to supplement the draft environmental impact statement before a final environmental impact statement is issued.

Done in Washington, DC, this 7th day of August 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–20295 Filed 8–8–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Announcement of the Quality Samples Program for Fiscal Year 2002

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: Commodity Credit Corporation is extending the time for submission of proposals for the FY 2002 Quality Samples Program. Proposals will be reviewed, and funding decisions will be made, as proposals are received.

DATES: Proposals will be accepted until 5 p.m. Eastern Daylight Time, September 16, 2002.

FOR FURTHER INFORMATION CONTACT: Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4932–S, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042, (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Introduction

On January 8, 2002, the Commodity Credit Corporation (CCC) announced in the **Federal Register** (67 FR 859) that proposals were being accepted for participation in the Fiscal Year (FY) 2002 Quality Samples Program (QSP). Based on its review of the proposals, CCC allocated approximately $1.34 million in funding in June 2002. Because approximately $1.16 million of the funds CCC made available in FY 2002 remain unallocated, CCC announces that it is extending the time period for submission of proposals to participate in the Fiscal Year 2002 Quality Samples Program (QSP).

The QSP is designed to encourage the development and expansion of export markets for U.S. agricultural commodities by assisting U.S. entities in providing commodity samples to potential foreign importers to promote a better understanding and appreciation for the high quality of U.S. agricultural commodities. CCC will review all proposals it receives against the evaluation criteria contained herein and award unallocated FY 2002 QSP funds on a rolling basis. Financial assistance will be made available through grants on a reimbursement basis.

Under the QSP, CCC enters into agreements with those entities whose proposals have been accepted. The QSP agreement between CCC and the participant will include the maximum amount of CCC funds that are available to reimburse specific activity costs that have been approved by CCC. QSP participants will be responsible for procuring (or arranging for the procurement of) commodity samples, exporting the samples, and providing the technical assistance necessary to facilitate successful use of the samples by importers. A QSP participant will be reimbursed after CCC reviews its reimbursement claim and determines that the claim is complete. CCC will not reimburse the costs of providing technical assistance. QSP agreements are subject to review and verification by the Foreign Agricultural Service's (FAS) Compliance Review Staff. Upon request, a QSP participant shall provide to CCC the original documents which support the participant's reimbursement claims. CCC may deny a claim for reimbursement if the claim is not supported by adequate documentation. Cash advances will not be made available to any QSP participant.

The QSP is administered by FAS personnel. This notice supersedes any prior notices concerning the QSP.

Authority

The QSP is authorized under Section 5(f) of the CCC Charter Act, 15 U.S.C. 714c(f).

Available Funds

$1.16 million of cost-share assistance may be obligated under this announcement.

General Scope of QSP Projects

QSP projects are the activities undertaken by a QSP participant to provide an appropriate sample of a U.S. agricultural commodity to a foreign importers, in a given market. The purpose of the project is to provide information to an appropriate target audience regarding the attributes, characteristics, and proper use of the U.S. commodity. A QSP project addresses a single market/commodity combination. As a general matter, QSP projects should conform to the following guidelines:

- Projects should benefit the represented U.S. industry and not a specific company or brand;
- Projects should develop a new market for a U.S. product, promote a new U.S. product, or promote a new use for a U.S. product, rather than promote the substitution of one established U.S. product for another;
- Sample commodities provided under a QSP project must be in sufficient supply and available on a commercial basis;
- The QSP project must either subject the commodity sample to further processing or substantial transformation in the importing country, or the sample must be used in technical seminars designed to demonstrate to an appropriate target audience the proper preparation or use of the sample in the creation of an end product;
- Samples provided in a QSP project shall not be directly used as part of a retail promotion or supplied directly to consumers; and
- Samples shall be in quantities less than a typical commercial sale and limited to the amount sufficient to achieve the project goal (*e.g.*, not more than a full commercial mill run in the destination country).

QSP projects shall target foreign importers and target audiences who:

- Have not previously purchased the U.S. commodity which will be shipped under the QSP;
- Are unfamiliar with the variety, quality attribute, or end-use characteristic of the U.S. commodity which will be shipped under the QSP;
- Have been unsuccessful in previous attempts to import, process, and market the U.S. commodity which will be shipped under the QSP (*e.g.*, because of improper specification, blending, or formulation; or sanitary or phytosanitary (SPS) issues);
- Are interested in testing or demonstrating the benefits of the U.S. commodity which will be shipped under the QSP; or
- Need technical assistance in processing or using the U.S. commodity which will be shipped under the QSP.

Features of the FY 2002 Program

Under this announcement, the number of projects per participant will not be limited; however, each specific project will be limited to $60,000 of QSP reimbursement. Projects comprised of technical preparation seminars; that is, projects that do not include further processing or substantial transformation; will remain limited to

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$10,000 of QSP reimbursement, as these projects require smaller samples. Under the QSP, participants may be reimbursed for certain costs of purchasing and transporting commodity samples. Although providing technical assistance is required for all projects, costs of providing the actual technical assistance will not be reimbursed under the QSP.

Proposal Process

In order to be considered for participation in the QSP, interested parties should submit proposals to FAS as described in this notice. QSP proposals must contain complete information about the proposed projects. Applicants should follow the application procedures contained in this notice.

Entities interested in participating in the QSP are not required to submit proposals in any specific format; however, FAS recommends that proposals contain, at a minimum, the following: (a) Organizational information, including:

- Organization's name, address, Chief Executive Officer (or designee), and Federal Tax Identification Number (TIN);
- Type of organization;
- Name, telephone number, fax number, and e-mail address of the primary contact person;
- A description of the organization and its membership;
- A description of the organization's prior export promotion experience; and
- A description of the organization's experience in implementing an appropriate trade/technical assistance component;

(b) Market information, including:

- An assessment of the market;
- A long-term strategy in the market; and
- U.S. export value/volume and market share (historic and goals) for 1998–2004;

(c) Project information, including:

- A brief project title;
- Amount of funding requested;
- A brief description of the specific market development trade constraint or opportunity to be addressed by the project, performance measures for the years 2002–2004 which will be used to measure the effectiveness of the project, a benchmark performance measure for 2001, the viability of long term sales to this market, the goals of the project, and the expected benefits to the represented industry;
- A description of the activities planned to address the constraint or opportunity, including how the sample will be used in the end-use performance trial, the attributes of the sample to be demonstrated and their end-use benefit, and details of the trade/technical servicing component (including who will provide and who will fund this component);
- A sample description (*i.e.*, commodity, quantity, quality, type, and grade), including a justification for selecting a sample with such characteristics (this justification should explain in detail why the project could not be effective with a smaller sample);
- An itemized list of all estimated costs associated with the project for which reimbursement will be sought; and
- The importer's role in the project regarding handling and processing the commodity sample;

(d) Information indicating all funding sources and amounts to be contributed by each entity that will supplement implementation of the proposed project. This may include the organization that submitted the proposal, private industry entities, host governments, foreign third parties, CCC, FAS, or other Federal agencies. Contributed resources may include cash, goods, and services.

Review Process

Proposals will be evaluated by the applicable FAS commodity division. The divisions will review each proposal against the factors described below. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal based upon these factors, and submit the proposals and funding recommendations to the Deputy Administrator, Commodity and Marketing Programs.

FAS will use the following criteria in evaluating proposals:

- The ability of the organization to provide an experienced staff with the requisite technical and trade experience to execute the proposal;
- The extent to which the proposal is targeted to a market in which the United States is generally competitive;
- The potential for expanding commercial sales in the proposed market;
- The nature of the specific market constraint or opportunity involved and how well it is addressed by the proposal;
- The extent to which the importer's contribution in terms of handling and processing enhances the potential outcome of the project;
- The amount of reimbursement requested and the organization's willingness to contribute resources, including cash and goods and services of the U.S. industry and foreign third parties; and
- How well the proposed technical assistance component assures that performance trials will effectively demonstrate the intended end-use benefit.

Highest priority for funding under this announcement will be given to meritorious proposals which target countries which meet either of the following criteria:

- Per capita income less than $9,265 (the ceiling on upper middle income economies as determined by the World Bank [World Development Indicators 2001]); and population greater than 1 million. Proposals may address suitable regional groupings, for example, the islands of the Caribbean Basin; or
- U.S. market share of imports of the commodity identified in the proposal of 10 percent or less.

Agreements

Following approval of a proposal, CCC will enter into an agreement with the organization that submitted the proposal. Agreements will incorporate the details of each project as approved by FAS. Each agreement will identify terms and conditions pursuant to which CCC will reimburse certain costs of each project. Agreements will also outline the responsibilities of the participant, including, but not limited to, procurement (or arranging for procurement) of the commodity sample at a fair market price, arranging for shipment of the commodity sample within the time limit specified in the agreement (organizations should endeavor to ship commodities within 6 months of effective date of agreement), compliance with cargo preference requirements (shipment on United States flag vessels, as required), compliance with the Fly American Act requirements (shipment on United States air carriers, as required), timely and effective implementation of technical assistance, and submission of a written evaluation report within 90 days of expiration of the agreement. Evaluation reports should address all performance measures that were presented in the proposal.

Closing Date for Proposals

To be considered for participation in the QSP, interested parties should submit, via a commercial delivery service (including FedEx, DHL, etc.), proposals to: Director, Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4932–S, Stop 1042, 14th and Independence Avenue, SW., Washington, DC 20250–1042. All proposals must be received by 5 p.m. Eastern Daylight Time, September 16, 2002.

Dated: July 23, 2002.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 02–20190 Filed 8–8–02; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Information Collection for the Special Milk Program for Children

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service announces its intention to request the Office of Management and Budget's (OMB) to extend approval of the information collection for the Special Milk Program for Children.

DATES: Comments on this notice must be received or postmarked by October 8, 2002.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments and requests for copies of this information collection may be sent to Mr. Terry Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302.

All responses to this Notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Hallberg at (703) 305–2600.

SUPPLEMENTARY INFORMATION:

Title: Special Milk Program.

OMB Numbers: 0584–0005.

Expiration Date: 8/31/02.

Type of Request: Extension of a currently approved collection.

Abstract: Section 3 of the Child Nutrition Act (CNA) of 1966 (Pub. L. 89–642, as amended; 42 U.S.C. 1772) authorizes the Special Milk Program (SMP). It provides for the appropriation of such sums as may be necessary to enable the Secretary of Agriculture, under such rules and regulations as she may deem in the public interest, to encourage the consumption of fluid milk by children in the United States in (1) nonprofit schools of high school grade and under, and (2) nonprofit nursery schools, child care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children, which do not participate in a food service program authorized under the CNA or the National School Lunch Act.

Section 10 of the CNA requires the Secretary of Agriculture to "prescribe such regulations as she may deem necessary to carry out this Act and the National School Lunch Act. Pursuant to that provision, the Secretary has issued 7 CFR Part 215, which sets forth policies and procedures for the administration and operation of the SMP. State and local operators of the SMP are required to meet Federal reporting and accountability requirements. The vast majority of reporting relates to information regarding eligibility determinations of the children, the number of milk servings, and revenues received from milk sales. State and local operators are also required to maintain records regarding eligibility to operate the program, review results, and accounts of revenues and expenditures.

Authority: 42 U.S.C. 1772.

Respondents: The respondents are State agencies, school food authorities, schools, childcare institutions, and camps.

Number of Respondents: 58 State agencies, 6,762 School food authorities/ Sponsors, 1,269 camps, and 6,695 Schools.

Total Respondents: 14,784.

Number of Responses per Respondent: The number of responses is estimated to be 4 responses per year.

Estimated Annual Responses: (4 × 14,784) = 59,136.

Estimated Hours per Response: 3.327 Hours.

Estimated Total Annual Reporting Burden: (59,136 × 3.327) = 196,745 Hours.

Number of Recordkeepers: 14,784.

Estimated Number of Recordkeeping: 59,136.

Estimated Time per Recordkeeping: 8.995 Hours.

Estimated Total Annual Recordkeeping Burden: (59,136 × 8.995) = 531,928 Hours.

Total Request Annual Reporting and Recordkeeping Burden: 728,673 Hours.

Dated: August 5, 2002.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 02–20171 Filed 8–8–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; National Forest Recreation Use

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to extend a previously approved information collection. The information collection is composed of two forms. The Forest Service uses these forms to estimate the amount and type of recreational use that occurs on National Forest System lands, to assess customer satisfaction and agency performance in meeting customer needs, and to evaluate the economic impact and value of recreation use of National Forest System lands. The collection also will help the Forest Service meet the requirements of the Government Performance and Results Act of 1993 and the National Forest Management Act of 1976. Information will be collected from people who visit National Forest System lands for recreational activities.

DATES: Comments must be received in writing on or before October 8, 2002.

ADDRESSES: All comments should be addressed to Donald B.K. English, Research Social Scientist, Forestry Sciences Laboratory, Forest Service, USDA, 320 Green St., Athens, GA 30602, or e-mail *denglish@fs.fed.us.*

The public may inspect comments at the offices of Donald English, Research Work Unit SRS–4901, Forest Service, USDA, 320 Green St., Athens, GA. Visitors are encouraged to call ahead, (706) 559–4268, to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Donald B.K. English, Forest Service

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Southern Research Station, at (706) 559–4268.

SUPPLEMENTARY INFORMATION:

Background

The Government Performance and Results Act of 1993 requires that Federal agencies establish measurable goals and monitor their success at meeting those goals. Two items the Forest Service will measure are: (1) the views and satisfaction level of recreational visitors to National Forest System lands about the types and quality of recreation services the agency provides; and (2) the number of visitors who come to National Forest System lands for recreation. The agency is often asked for this kind of information from a variety of organizations that include Congressional staffs, newspapers, magazines, and recreational trade organizations.

The currently approved information collection is composed of two different survey forms that are designed to evaluate agency performance in meeting the needs of visitors to individual recreation sites. One form is used to describe the visitors, their level of satisfaction, and their evaluation of the agency's performance. The other form is required to estimate the number of visitors who use National Forests for recreation. The second collection form differs in both the sampling framework and the set of questions asked of visitors.

National Forest System land managers use the collected information to better understand their recreational visitors, to improve recreational opportunities and services, and to identify barriers that prevent the agency from meeting the recreational needs of its customers. Data from this information collection also will be considered in revisions of land and resource management plans for National Forest System lands, as required by the National Forest Management Act of 1976. The collected information will be shared with all National Forest System land managers and, upon request, with others. Results from this collection will be published in agency reports and various research journals.

Description of Information Collection

Title: Customer and Use Survey Techniques for Operations, Management, Evaluation, and Research.

OMB Number: 0596–0110.

Expiration Date of Approval: February 28, 2002.

Type of Request: Extension of a previously approved collection.

Abstract: The data from this information collection will provide the agency with information about the characteristics, needs, and opinions of recreation visitors to selected recreation sites on Forest Service and other public agency lands.

Agency personnel, contract personnel, and volunteers, trained in conducting face-to-face interviews, will contact people who are visiting public lands for recreational purposes. Survey questions will focus on how well the agency meets visitors' expectations for recreational opportunities, their satisfaction with the recreational site of their choice, and if they have concerns regarding the agency's management of the site.

Agency land managers will use the collected information to better understand their recreational customers, to improve recreational opportunities and services, and to identify barriers that prevent the agency from meeting the recreational needs of its customers.

The collected information will be shared with agency land managers and upon request, with others.

Data gathered in this collection is not available from other sources.

Estimate of Burden: 10 minutes.

Type of Respondents: People who visit National Forest System land for recreational purposes.

Estimated Number of Respondents: 6,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,000 hours.

Description of Information Collection

Title: National Forest Visitor Use Monitoring.

OMB Number: 0596–0110.

Expiration Date of Approval: February 28, 2002.

Type of Request: Extension of a previously approved collection.

Abstract: Data from this information collection is used to estimate the numbers of recreational visitors to National Forests and Grasslands, and associated Wilderness, as well as the types of activities in which these visitors participate. The data are used to identify recreational markets, defined customers served, evaluate visitor satisfaction, and estimate the economic values and impacts of recreational visits.

Respondents are asked questions about the activities in which they participate while visiting National Forest System lands, the duration of their visit, how often they visit, what types of items they have purchased during their visit, and their satisfaction with various aspects of their visit.

Forest Service personnel will interview visitors as they exit National Forest System recreational sites. Surveys will be conducted on about one-fourth of the National Forests each year, so that complete coverage of agency lands will occur over a four-year cycle. Each National Forest will retain a copy of data collected on its visitors. Results of this study will be published in agency reports and various research journals.

Data gathered in this collection is not available from other sources.

Estimate of Burden: 8 minutes.

Type of Respondents: People who visit the National Forest System lands for recreational purposes.

Estimated Number of Respondents: 60,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 8,000 hours.

Comment Is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comment

All comments, including name and address when provided, will become a matter of public record. Comments received in response to this notice will be summarized and included in the request for Office of Management and Budget approval.

Dated: August 5, 2002.

Robert Lewis, Jr.,

Deputy Chief, Research & Development.

[FR Doc. 02–20219 Filed 8–8–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas National Forest; California; Stream Fire Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA, Forest Service, Plumas National Forest will prepare an Environmental Impact Statement (EIS) on a proposal to treat fuels on approximately 2,300 acres in the Stream Fire burned area. The Stream Fire burned 3,483 acres in July and August 2001, on the Plumas National Forest. The proposed action would implement long-term restoration of ecosystem function and reduce future fire severity. Reducing the risk of another stand replacing fire involves a combination of recurring fuel treatments to modify fire behavior and effective suppression. The proposed action would treat dead trees on approximately 2265 acres using the following methods: whole tree removal utilizing ground based, skyline, or helicopter logging methods, handpiling and burning of the piles, contour felling, and/or lopping/scattering of slash. Live and dead conifer trees less than 6 inches in diameter would be felled, handpiled and the piles burned on approximately 35 acres. Approximately 7 acres of helicopter landings would be constructed. Approximately 4 miles of temporary road would be constructed. Following completion of the project, the temporary roads would be closed and reforested. Approximately 1 mile of roads that were opened for fire suppression activities would be closed. Approximately 2300 acres would be reforested. The land allocations for the fire areas are Old Forest Emphasis, General Forest, and Threat Zone of the Urban Wildland Intermix.

The proposed action is designed to meet the standards and guidelines for land management activities depicted in the Plumas National Forest Land and Resource Management Plan (1988) as amended by the Record of Decision for the Herger-Feinstein Quincy Library Group Forest Recovery Act (1999), and as amended by the Record of Decision for the Sierra Nevada Forest Plan Amendment (2001).

The proposed project is located in Plumas County, California, within the Mt. Hough Ranger District of the Plumas National Forest in all or portions of Sections 15, 16, 20, 21, 22, 25, 26, 27, 28, and 29 of T27N, R12E., MDM.

ADDRESSES: Send written comments to Terri Simon-Jackson, Mt. Hough District Ranger, 29696 Highway 70, Quincy CA 95971.

FOR FURTHER INFORMATION CONTACT: Rich Bednarski, Interdisciplinary Team Leader, telephone: (530) 283–7641.

SUPPLEMENTARY INFORMATION:

Decision To Be Made

The decision to be made is whether to: (1) Implement the proposed action; (2) meet the purpose and need for action through some other combination of activities; or (3) take no action at this time.

Responsible Official and Lead Agency

The USDA Forest Service is the lead agency for this proposal. Mt. Hough District Ranger Terri Simon-Jackson is the responsible official.

Tentative or Preliminary Issues and Possible Alternatives

In October 2001, the Mt. Hough District Ranger solicited public comment for the Stream Fire Salvage and Reforestation proposed action. Comments that were received from that process will be considered in this analysis. Controversy and uncertainty regarding post fire treatments have prompted the preparation of an Environmental Impact Statement (EIS). Other alternatives may be developed based on significant issues identified during the scoping process for this EIS. All alternatives will need to respond to the specific condition of providing benefits equal to or better than the current condition. Alternatives being considered at this time include: (1) The Proposed Action and (2) No Action.

Public participation is especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations that may be interested in or affected by the proposed action. To facilitate public participation, information about the proposed action is listed in the Plumas National Forest Quarterly Schedule of Proposed Actions; will be mailed to all who have expressed interest in the proposed action; and notification of the public scoping period will be published in the Feather River Bulletin, Quincy, CA.

Comments received during the scoping process should be in writing and should be specific to the proposed action. The comments should describe as clearly and completely as possible any issues the commenter has with the proposal. The scoping process includes:

(a) Identifying potential issues;

(b) Identifying issues to be analyzed in depth;

(c) Eliminating non-significant issues or those previously covered by a relevant environmental analysis;

(d) Exploring additional alternatives;

(e) Identifying potential environmental effects of the proposed action and alternatives.

Dates

Comments concerning the scope of the analysis should be received in writing on or before September 6, 2002.

Identification of Permits or Licenses Required

An Air Pollution Permit and a Smoke Management Plan are required by local agencies.

Estimated Dates for Filing

The draft EIS is expected to be filed with the Environmental Protection Agency and available for public review in November 2002. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability of the draft EIS in the **Federal Register**. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for review and comment. It is very important that those interested in the management of the Plumas National Forest participate at that time.

The Reviewer's Obligation To Comment

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the

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adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulation of implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: August 5, 2002.

Robert G. MacWhorter,

Acting Forest Supervisor.

[FR Doc. 02–20155 Filed 8–8–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on Thursday, September 5, 2002, at the Okanogan and Wenatchee National Forests headquarters main conference room, 215 Melody Lane, Wenatchee, Washington. The meeting will begin at 9 a.m. and continue until 3 p.m. The location of the meeting is subject to change, please contact the headquarters office at (509) 6624335 for meeting location information. During this meeting we will discuss noxious weed management and prevention, and recreation management issues. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 5096624335.

Dated: August 2, 2002.

Paul Hart,

Designated Federal Official, Okanogan and Wenatchee National Forests,

[FR Doc. 02–20158 Filed 8–8–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

John Day/Snake Resource Advisory Council, Hells Canyon Subgroup

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hells Canyon Subgroup of the John Day/Snake Resource Advisory Council will meet on September 14 and 15, 2002 at the Forest Service Administrative Site, Pittsburgh Landing. The meeting will begin at 9 a.m. and continue until 5 p.m. the first day and will begin at 8 a.m. on the second day and adjourn by 2 p.m. the final day. Agenda items to be covered include: (1) Fee Demo, (2) Adopt-A-Beach, (3) Open public forum. All meetings are open to the public. Public comments will be received September 14, 2001 at 10 a.m. at the Pittsburgh Administrative Site.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kendall Clark, Area Ranger, USDA, Hells Canyon National Recreation Area, 88401 Highway 82, Enterprise, OR 97828, 541–426–5501.

Dated: August 2, 2002.

Karyn L. Wood,

Forest Supervisor.

[FR Doc. 02–20129 Filed 8–8–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Grays Harbor Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Grays Harbor Resource Advisory Committee (RAC) will hold its next meeting on August 28, 2002. The meeting will be held at the Pacific Ranger District's Quinault Office, Quinault, Washington. The meeting will begin at 7 p.m. and end at approximately 9 p.m. Agenda topics are: (1) Approval of minutes of previous meeting; (2) Presentation of FY 2003 Title II project proposals; (3) Selection of recommended projects and priorities; (4) Public comments; and (5) Identify next meeting date and location.

All Grays Harbor Resource Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Ken Eldredge, RAC Liaison, USDA, Olympic National Forest Headquarters, 1835 Black Lake Blvd. Olympia, WA 98512–5623, (360) 956–2323 or Dale Hom, Forest Supervisor and Designated Federal Official, at (360) 956–2301.

Dated: August 1, 2002.

Dale Hom,

Forest Supervisor, Olympic National Forest.

[FR Doc. 02–20128 Filed 8–8–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Okanogan and Wenatchee National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Okanogan and Wenatchee National Forests Resource Advisory Committee will meet on Wednesday, August 21, 2002, at the Okanogan and Wenatchee National Forests headquarters main conference room, 215 Melody Lane, Wenatchee, Washington. The meeting will begin at 9 a.m. and continue until 3 p.m. The location of the meeting is subject to change, please contact the headquarters office at (509) 662–4335 for meeting location information. Committee members will review Chelan County and Kittitas County projects proposed for 2003 under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000. All Okanogan and Wenatchee National Forests Resource Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: August 2, 2002.

Sonny J. O'Neal,

Forest Supervisor, Okanogan and Wenatchee National Forests.

[FR Doc. 02–20156 Filed 8–8–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Okanogana nd Wenatchee National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Okanogan and Wenatchee National Forests Resource Advisory Committee will meet on Wednesday, September 4, 2002, at the Okanogan and Wenatchee National Forests headquarters main conference room, 215 Melody Lane, Wenachee, Washington. This meeting will begin at 9 a.m. and continue until 3 p.m. The location of the meeting is subject to change, please contact the headquarters office at (509) 662–4335 for meeting location information. Committee members will review Chelan County and Yakima County projects proposed for 2003 under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000. All Okanogan and Wentachee National Forests Resource Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: August 2, 2002.

Sonny J. O'Neal,

Forest Supervisor, Okanogan and Wenatchee National Forests.

[FR Doc. 02–20157 Filed 8–08–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on August 26, 2002, and will begin at 1:30 p.m. until approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Approve the Minutes from Last Meeting, (2) Proposed By-Laws—Action, (3) Draft Selection Criteria/Operating Guidelines—Action, (4) Willows Scramblers Presentation/Possible Action, (5) Update on RAC Projects, (6) Title III Projects for Review for Colusa, (7) Status of Absent Members & Replacement Members, (8) Public Comment, (9) Next Agenda. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: August 5, 2002.

James Fenwood,

Designated Federal Officer.

[FR Doc. 02–20160 Filed 8–8–02; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: September 8, 2002.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Carwash Service, Border Patrol South, San Diego, California. Brown Field Border Patrol Station, Britannia Commerce Court, San Diego, California. Campo Border Patrol Station, Campo, California. El Cajon Border Patrol Station, El Cajon, California. Imperial Beach Border Patrol Station, San Diego, California. Temecula Border Patrol Station, Temecula, California.
NPA: Association for Retarded Citizens—San Diego, San Diego, California.
Contract Activity: Immigration and Naturalization Service, DOJ.

Service Type/Location: Janitorial & Related Services, Social Security Administration, Southeastern Program Service Center, Birmingham, Alabama.
NPA: Alabama Goodwill Industries, Inc., Birmingham, Alabama.
Contract Activity: Social Security Administration, Baltimore, Maryland.

Service Type/Location: Miscellaneous Support Services, Central Arkansas Veterans Healthcare System, Little Rock, Arkansas.
NPA: Pathfinder Schools, Inc., Jacksonville, Arkansas.
Contract Activity: Veterans Affairs Medical Center, North Little Rock, Arkansas.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–20212 Filed 8–8–02; 8:45 am]

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COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: September 8, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On June 15, 2001, June 7, June 14, and June 21, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (66 FR 32598, 67 FR39337, 40909 and 42235) of proposed additions to and deletions from the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.
2. The action will result in authorizing small entities to furnish the products and service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

Accordingly, the following products and service are added to the Procurement List:

Products

Product/NSN: Marker, Permanent Ink (Colossal).
7520–01–424–4849 (Black)
7520–01–424–4855 (Red)
7520–01–424–4870 (Green)
7520–01–424–4880 (Blue)
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, Texas.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Pillow, Bed, 7210–00–NIB–0021.
NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina.
Contract Activity: Department of Veterans Affairs Acquisition Center, Hines, Illinois.
Product/NSN: PRC Deck Recoating System, 8010–00–NIB–0012.
NPA: Alphapointe Association for the Blind, Kansas City, Missouri.
Contract Activity: Fleet Industrial Supply Center, Bremerton, Washington.

Service

Service Type/Location: Base Supply Center, Naval Support Activity, Mechanicsburg, Pennsylvania. Naval Support Activity, Philadelphia, Pennsylvania.
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Contract Activity: Naval Support Activity, Philadelphia, Philadelphia, Pennsylvania.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.
2. The action will result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

After consideration of the relevant matter presented, the committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following products are hereby deleted from the Procurement List:

Products

Product/NSN: Case, Spectacle.
6540–01–188–6023
6540–01–454–6926
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, Texas.
NPA: The Travis Association for the Blind, Austin, Texas.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.
Product/NSN: Floorboard, Vehicular, 2510–01–063–3892.
NPA: None currently authorized.
Contract Activity: Defense Supply Center—Columbus, Columbus, Ohio.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–20213 Filed 8–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 30–2002]

Foreign-Trade Zone 61—San Juan, PR; Expansion of Facilities and Manufacturing Authority—Subzone 61F; IPR Pharmaceuticals, Inc. Plant (Pharmaceuticals), Guayama, PR

An application has been submitted to the Foreign-Trade Zones Board (the Board) by IPR Pharmaceuticals, Inc., requesting to add capacity and to expand the scope of manufacturing authority under zone procedures within Subzone 61F, at the IPR plant in Guayama, Puerto Rico. It was formally filed on August 1, 2002.

Subzone 61F was approved by the Board in 1995 at a single site located at State Road No. PR 53, km. 84, Guayama, Puerto Rico, with authority granted for the manufacture of intermediate and bulk pharmaceuticals (Board Order 787, 60 FR 63499, 12/11/95).

Subzone 61F (800 employees) currently consists of 7 buildings totaling 95,748 square feet on 49 acres. IPR is now proposing to add 8 buildings of 88,126 sq. ft. and 101 acres. The proposed Subzone 61F would then consist of 15 buildings of 183,874 sq. ft. on 150 acres.

The application also requests to expand the scope of authority for manufacturing activity conducted under FTZ procedures to include additional general categories of inputs that have recently been approved by the Board for other pharmaceutical plants. They include chemically pure sugars, empty capsules for pharmaceutical use, protein concentrates, natural magnesium phosphates and carbonates, gypsum, anhydrite and plasters, petroleum jelly, paraffin and waxes, sulfuric acid, other inorganic acids or compounds of nonmetals, ammonia, zinc oxide, titanium oxides, fluorides, chlorates, sulfates, salts of oxometallic acids, radioactive chemical elements, colloidal precious metals, compounds of rare earth metals, acyclic hydrocarbons, derivatives of phenols or peroxides, acetals and hemiacetals, phosphoric esters and their salts, diazo-compounds, glands for therapeutic uses, wadding, gauze and bandages, pharmaceutical glaze, hair preparations, lubricating preparations, albumins, prepared glues and adhesives, catalytic preparations, diagnostic or laboratory reagents, prepared binders, acrylic and ethylene polymers, self-adhesive plates and sheets, other articles of vulcanized rubber, plastic cases, cartons, boxes, printed books, brochures and similar printed matter, carboys, bottles, and flasks, stoppers, caps, and lids, aluminum foil, tin plates and sheets, taps, cocks and valves, and medical instruments and appliances. Materials sourced from abroad represent some 50%-65% of finished product value.

Zone procedures would exempt IPR from Customs duty payments on foreign materials used in production for export. Some 30–40 percent of the plant's shipments are exported. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials, and to choose the duty rate that applies to finished products (duty free-9.2%) instead of the rates otherwise applicable to the foreign input materials (duty free-20%)(noted above). The application indicates that the savings from zone procedures would help improve IPR's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions Via Express/Package Delivery Services:* Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or
2. *Submissions Via the U.S. Postal Service:* Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is September 9, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 23, 2002.)

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 525 F.D. Roosevelt Ave., Suite 905, San Juan, PR 00918.

Dated: August 2, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–20236 Filed 8–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–836]

Certain Cut-To-Length Carbon-Quality Steel Plate from the Republic of Korea: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

EFFECTIVE DATE: August 9, 2002.

FOR FURTHER INFORMATION CONTACT: Timothy Finn or Howard Smith at (202) 482–0065 or (202) 482–5193, respectively; AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (2002).

Background

On February 1, 2002, the Department of Commerce (the Department) published a notice of opportunity to request administrative reviews of the antidumping duty orders on certain cut-to-length carbon-quality steel plate (CTL plate) from France, Italy, Indonesia, India, Japan, and the Republic of Korea covering the period February 1, 2001, through January 31, 2002 (67 FR 4945, 4946).

On March 20, 2002, pursuant to separate requests made by Bethlehem Steel Corporation and United States Steel Corporation (collectively "the petitioners") and Nucor Corporation (Nucor), a domestic interested party, the Department initiated administrative reviews of the antidumping duty orders on CTL plate from the above-named countries (67 FR 14696, 14697)(March 27, 2002). On April 26, 2002, the petitioners withdrew their request for the administrative reviews of CTL plate from France, Italy, Indonesia, India, Japan, and Korea. However, Nucor did not withdraw its request for an administrative review of CTL plate from Korea. Therefore, in accordance with 19 CFR 351.213(d)(1), on May 20, 2002, the Department rescinded the administrative reviews initiated with respect to France, Italy, Indonesia, India and Japan. *See Certain Cut-To-Length Carbon-Quality Steel Plate from France, Italy, Indonesia, India, and Japan: Rescission of Antidumping Duty Admipistrative Review*, 67 FR 36855 (May, 28, 2002). Subsequently, on June 18, 2002, Nucor withdrew its request for the administrative review of CTL plate from Korea.

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that a party that requests an administrative review may withdraw the request within 90 days after the date of publication of the notice of initiation of the requested administrative review. The Department is rescinding the administrative review of the order on CTL plate from Korea for the period February 1, 2001 through January 31, 2002 because the requesting parties have withdrawn their requests for this administrative review within the 90–day time limit and no other interested parties have requested a review of CTL plate from Korea for this time period.

This notice is in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: August 2, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–20234 Filed 8–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review, and Intent to Rescind Administrative Review in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review, and Intent to Rescind Administrative Review in Part.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. The period of review is November 1, 2000, through October 31, 2001. Five companies named in the initiation of this review had no exports or sales of the subject merchandise during the period of review and, consequently, we are rescinding the review of these companies. In addition, we are rescinding our review of two companies which are not located within the People's Republic of China and which we have not been able to contact for information, because available evidence indicates no sales or exports subject to this review. Therefore, this review covers fourteen exporters of the subject merchandise. We intend to rescind the review of one company because we have determined that the company is not the appropriate respondent for the sales of which the review was requested. We preliminarily determine that eight of the companies are not entitled to a separate rate and will be assigned the PRC-entity rate. We preliminarily determine that three respondent companies, not located within a non-market economy, have failed to cooperate by not acting to the best of their ability to comply with our requests for information and, as a result, should be assigned a rate based on adverse facts available. Finally, we have preliminarily determined that one respondent did not make sales to the United States at prices below normal value.

We invite interested parties to comment on these preliminary results. Parties that submit comments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: August 9, 2002.

FOR FURTHER INFORMATION CONTACT: Edythe Artman or Catherine Cartsos, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone: (202) 482–3931 and (202) 482–1757, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 2001).

Background

On October 30, 2001, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 66 FR 54750 (October 30, 2001). We received three requests for administrative review on November 30, 2001. Clipper Manufacturing Ltd. (Clipper) and Taian Fook Huat Tong Kee Foods Co. (FHTK) each requested a review of its own sales of subject merchandise to the United States during the period of review (POR). The petitioner, the Fresh Garlic Producers Association and its individual members, requested reviews of the sales of sixteen companies with addresses in the PRC or Hong Kong, including Clipper and FHTK. In addition, it requested reviews of sales of subject merchandise of two companies with addresses in Thailand and two companies with addresses in the Philippines.

We published a notice of initiation of antidumping administrative reviews on December 19, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 66 FR 65470 (December 19, 2001).

On January 8, 2002, we issued a letter requesting quantity and value information to all of the companies listed in our notice of initiation. In the case of Rizhao Hanxi Fisheries& Comprehensive Development Co., Ltd. (Rizhao), we issued the letter to the Embassy of the PRC and the China Chamber of Commerce for Import and Export of Foodstuffs, Native Produce, and Animal By-Products (China Chamber of Commerce) and requested that they forward the letter to the appropriate address. Details of our mailings and the responses that we received are set forth in a "Memorandum to Richard W. Moreland" regarding responses to quantity-and-value letters (May 16, 2002) (Q&V Response Memorandum). (All cited memoranda and decision memoranda are on file in the Central Records Unit (CRU), Main Commerce Building, Room B–099.) As a result of the responses to our letter, we issued complete questionnaires to Clipper and FHTK on February 28, 2002.

During the period April through July 2002, the Department received responses to sections A, C, and D of the original and supplemental questionnaires from FHTK and Clipper. On May 17, 2002, we requested that these companies and the petitioner provide comments on the surrogate-country selection and publicly available information for valuing the factors of production. We received comments and information from FHTK on June 13, 2002, and from the petitioner on June 14, 2002. Clipper did not provide comments or information. With respect to FHTK, we intend to verify its factors-of-production and sales information prior to issuing the final results of review.

Scope of the Order

The products covered by this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *Harmonized Tariff Schedule of the United States* (HTSUS).

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Customs Service to that effect.

Separate Rates

The Department has treated the PRC as a non-market-economy (NME) country in all past antidumping investigations (see, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104 (December 20, 1999), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998)) and in prior segments of this proceeding. A designation as an NME remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.

It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate, unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994).

Several companies located within the PRC did not respond to our letter requesting quantity and value information. These companies are Foshan Foodstuffs Import & Export Company, Jinan Import & Export Corporation, Jinxiang Foreign Trade Corporation, Jinxiang Hong Chong Fruits & Vegetable Products Company, Ltd., Quingdao Rui Sheng Food Company, Ltd., Rizhao, Shandong Commercial Group Corporation, and Zhejiang Materials Industry International Co., Ltd. We have confirmed that all of these companies received our letter except for Rizhao, which, as noted above, we attempted to contact through the Embassy of the PRC and the China Chamber of Commerce. Because none of the eight companies responded to our request for information regarding separate rates, we preliminarily determine that these respondent-companies do not merit separate rates. See, *e.g.*, *Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 57389 (November 6, 1996). Consequently, consistent with the statement in our notice of initiation, we find that, because these companies do not qualify for separate rates, they are deemed to be covered by the PRC-entity rate.

Hong Kong companies are treated as market-economy companies (see *Application of U.S. Antidumping and Countervailing Duty Laws to Hong Kong*, 62 FR 42965 (August 11, 1997)). Wo Hing (H.K.) Trading Co. (Wo Hing) has an address in Hong Kong and did not respond to our January 8, 2002, request for information. Without any information concerning its corporate ownership, we presume that it is a Hong Kong entity. Thus, we determine that it qualifies for a company-specific rate.

Similarly, two other non-responding companies have addresses outside the PRC. Golden Light Trading Company, Ltd. (Golden Light), has an address in Thailand and Phil-Sino International Trading Inc. (Phil-Sino) has an address located in the Philippines. We presume that these are market-economy companies. Thus, we determine that they both qualify for a company-specific rate.

FHTK's submissions establish that Taian Fook Huat Tong Kee Foods Co., Ltd., is a PRC-company that is wholly owned by Fook Huat Tong Kee Pte., Ltd., a Singaporean company. Fook Huat Tong Kee Pte., Ltd., is wholly owned by a Singaporean holding company that is publicly traded. Because there is no PRC ownership of Taian Fook Huat Tong Kee Foods Co., Ltd., we determine that a separate-rate analysis is not required for this company because its parent company is beyond the jurisdiction of the PRC government. See *Certain Cut-to-Length Carbon Steel Plate from Romania: Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 48581, 48582 (September 7, 1999) (unchanged in final). Consequently, FHTK qualifies for a company-specific rate.

Partial Rescission of Administrative Review

In response to our January 8, 2002, letter requesting quantity and value information, five companies responded that they were neither producers nor exporters of the subject merchandise. These companies were Zen Continental Co., Inc., Rich Shipping Co., Ltd., United Shipping Agency Co., Ltd., Asia Pacific Express Company, Ltd., and C.I.F. Transportation (HK) Co., Ltd. Their individual responses are discussed in and attached to the Q&V Response Memorandum. Each of the companies responded that they are involved in the shipping or freight industry and that they are not producers or exporters of the subject merchandise. We confirmed with the Customs Service that none of them were listed as manufacturers or exporters of the subject merchandise during the POR. In addition, there is no information on the record to indicate that the companies had sales or exports of subject merchandise.

Thus, we find that Zen Continental Co., Inc., Rich Shipping Co., Ltd., United Shipping Agency Co., Ltd., Asia Pacific Express Company, Ltd., and C.I.F. Transportation (HK) Co., Ltd., made no entries, exports, or sales of the subject merchandise during the POR that are subject to the administrative review. Consequently, we are rescinding the review with respect to each of them pursuant to 19 CFR 351.213(d)(3).

We were unable to contact two companies, Top Pearl Ltd. and Good Fate International that had addresses in Hong Kong and the Philippines, respectively. Despite our repeated attempts to contact these companies, the letters we sent to these companies were returned to us as not deliverable. For details of our attempts to contact the companies, see Q&V Response Memorandum. We confirmed through data from the Customs Service that neither Top Pearl nor Good Fate were listed as manufacturers or exporters of the subject merchandise during the POR. Thus, because we have been unable to locate these companies and because there is no evidence on the record that these companies had exports or sales of the subject merchandise subject to this review, we are rescinding the review with respect to each of them pursuant to 19 CFR 351.213(d). In the event there are any entries during the POR of subject merchandise exported by these companies during the POR, we will instruct the Customs Service to

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assess antidumping duties at the rate equal to the cash deposit of estimated duties required on that merchandise at the time of entry, or withdrawal from warehouse, for consumption. See 19 CFR 351.212(c). For future entries of subject merchandise from these companies, the cash deposit rate will be the rate applicable to the PRC supplier of the merchandise.

Intent to Rescind in Part

Pursuant to section 772(a) of the Act, the Department reviews the sales of the subject merchandise by the seller who first had knowledge that the merchandise was destined for export to the United States. Clipper, a trading company located in Hong Kong, requested a review of its sales of fresh garlic to a reported U.S. customer. Clipper identified Chengwu Hechang Vegetable Co., Ltd. (Chengwu), and Anhui Weifu Foods Co., Ltd. (Anhui), as its suppliers in its questionnaire responses. Both companies are PRC-based processors of fresh garlic. Because Chengwu and Anhui did not have export licenses and were unable to maintain U.S.-dollar bank accounts, they used the services of PRC-based export agents to sell subject merchandise during the POR. The export agents shipped the subject merchandise directly from the PRC to the United States. Clipper paid the export agents in U.S. dollars. The export agents paid Chengwu and Anhui in Chinese renminbi.

Clipper acknowledges in its April 6, 2002, questionnaire response and June 13, 2002, supplemental questionnaire response that Chengwu and Anhui had knowledge of the U.S. destination of the subject merchandise at the time of sale. See the response to section A of the questionnaire, dated April 6, 2002, p. 16, and response to the supplemental questionnaire, dated June 13, 2002, p. 9. Furthermore, all of the shipping and export documentation that Clipper submitted to the Department established the U.S. destination of the merchandise. Thus, the export agents had knowledge of the U.S. destination of the subject merchandise. See response to section A of the questionnaire, dated April 6, 2002, exhibit A–11, and response to the supplemental questionnaire, dated June 13, 2002, exhibit SA–8.

Clipper asserts that the export agents never took title to the subject merchandise. The invoices and wire transfers between Clipper and the export agents establish, however, that sales transactions did occur between the two parties. By contrast, Clipper provided no documentation of a transaction between Clipper and Anhui or between Clipper and Chengwu despite repeated requests for such documentation. See response to section A of the questionnaire, dated April 6, 2002, exhibit A–11, and response to the supplemental questionnaire, dated June 13, 2002, exhibit SA–9.

Section 772(a) of the Act states in part:

> The term "export price" means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States...

Accordingly, we have interpreted section 772(a) of the Act to mean that we are to use the price at which the first party in the chain of distribution who has knowledge of the U.S. destination of the merchandise sells the subject merchandise, either directly to a U.S. purchaser or to an intermediary such as a trading company. The party making such a sale, with knowledge of destination, is the appropriate party to be reviewed. Our focus is on the first party in the chain of distribution with knowledge of the U.S. destination rather than on the first chronological sale of the merchandise. One restriction to this rule is that, in NME cases, we do not base export price on internal transactions between two companies located in the NME. *See Fresh Garlic from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 62 FR 23758, 23759 (May 1, 1997).

Applying these principles, we do not intend to review Clipper's sales to its U.S. customer because the PRC export agents had knowledge of the U.S. destination when they made the sales to Clipper. Further, we know Chengwu and Anhui had knowledge of the ultimate destination of this merchandise. We also believe that the PRC export agents had knowledge, accordingly, of the destination of the goods as well. Because of their knowledge and the fact that the sales from the agents to Clipper were the first non-intra-NME sales in the chain of distribution, these sales are the appropriate basis for determining the export price. We therefore intend to rescind this review as it applies to Clipper.

The Department did not receive a request for review of the PRC export agents during the anniversary month of the publication of the antidumping duty order. See 19 CFR 351.213(b). Therefore, it is not appropriate to conduct a review of the sales at issue. Furthermore, because Clipper is not an appropriate respondent for review of the sales, it is our intent to rescind the administrative review with respect to this company.

Non-Responding Companies

A. Use of the PRC-Wide Rate

For the eight companies located within the PRC which received our request for information but did not respond to that request, we find that they do not qualify for a separate rate for reasons discussed in the "Separate Rates" section above. Therefore, we preliminarily determine that they will be assigned the PRC-wide rate as part of the PRC-entity for the results of this review.

B. Use of Adverse Facts Available

Section 776(a)(2) of the Act provides that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, and is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information.

Where all of these conditions are met, the statute requires the Department to use the information, if it can do so without undue difficulty.

According to section 776(b) of the Act, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action (SAA) accompanying the URAA, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. See section 776(b) of the Act. However, section 776(c) provides that, when the Department relies on secondary information rather than on information obtained in the course of a review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. See SAA at 870. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (*TRBs*), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, because there are no independent sources from which the Department can derive calculated dumping margins, unlike other types of information such as input costs or selling expenses, the only source for margins is previous administrative determinations.

Three companies that are not located within an NME country, Golden Light, Phil-Sino, and Wo Hing, did not respond to our request for information. We have confirmed that they received our letter but opted not to respond. For details of our mailing, see the Q&V Response Memorandum. Moreover, as discussed in the "Separate Rates" section above, we have determined that each of the companies qualify for a company-specific rate. Because the companies did not respond to our request for information, we find it necessary, under section 776(a)(2) of the Act, to use facts otherwise available as the basis for the preliminary results of review for these three companies.

In addition, we find that Golden Light, Phil-Sino, and Wo Hing each failed to cooperate by not acting to the best of its ability to comply with a request for information. Thus, we find it appropriate to use an inference that is adverse to the interests of each of these companies in selecting from among the facts otherwise available. By doing so, we ensure that the companies will not obtain a more favorable result by failing to cooperate than had they cooperated fully in the review.

Further, we find it necessary to use facts otherwise available as the basis for the rate for the PRC-entity, including the eight PRC companies who opted not to respond to our request for information, and that it is appropriate to use an inference that is adverse in the selection of these facts. In this way, we ensure that these exporters will not obtain a more favorable result by failing to cooperate than had they cooperated fully in the review.

The only rate that has ever been assigned in this proceeding is 376.67 percent, a rate that is currently the PRC-wide rate and that was calculated based on information contained in the petition. The rate was corroborated for the preliminary results of the first administrative review. See *Fresh Garlic from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 61 FR 68229, 68230 (December 27, 1996). We corroborated the information in subsequent reviews to the extent that we noted the history of corroboration and found that we had not received any information that warranted revisiting the issue. See *Fresh Garlic from the People's Republic of China; Preliminary Results of Antidumping Duty New Shipper Review, Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review*, 66 FR 44596 (August 24, 2001). Similarly, no information has been presented in the current review that calls into question the reliability of this rate. Thus, we find that the information is reliable.

With respect to the relevance aspect of corroboration, the Department stated in *TRBs* that it will "consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin." See *TRBs* at 61 FR 57392. See also *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin). There is no information on the record that the application of this rate would be inappropriate in the administrative review or that the margin is not relevant; therefore, we have applied, as adverse facts available, the 376.67 percent margin from a prior administrative review of this order and have satisfied the corroboration requirements under section 776(c) of the Act. See *Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 18439, 18441 (April 9, 2001) (employing a petition rate used as adverse facts available in a previous segment as the adverse facts available in the current review).

Therefore, we preliminarily determine that the rate of 376.67 percent should be used as the adverse facts available for the preliminary results of review for Golden Light, Phil-Sino, and Wo Hing. We also preliminarily determine that the rate of 376.67 percent should be used as the adverse facts available for the preliminary results of review for the PRC-entity and, accordingly, applies to Foshan Foodstuffs Import & Export Company, Jinan Import & Export Corporation, Jinxiang Foreign Trade Corporation, Jinxiang Hong Chong Fruits & Vegetable Products Company, Ltd., Quingdao Rui Sheng Food Company, Ltd., Rizhao, Shandong Commercial Group Corporation, and Zhejiang Materials Industry International Co., Ltd.

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Fair Value Comparisons

To determine whether sales of fresh garlic to the United States by FHTK were made at less than fair value, we compared the export price of the subject merchandise to normal value, as described in the "Export Price" and "Normal Value" sections below.

Export Price

In accordance with section 772(a) of the Act, we used export-price methodology because the first sale to an unaffiliated purchaser was made outside the United States before importation of the merchandise into the United States. We calculated the export price based on prices from FHTK to the unaffiliated U.S. customers. We made deductions, where appropriate, from the gross unit price to account for foreign inland freight, international freight, customs duties, and brokerage and handling. Because certain domestic charges, such as those for foreign inland freight, were provided by NME companies, we valued those charges based on surrogate rates from India. See "Memorandum to the File" regarding the factors valuation for the preliminary results of the administrative review (August 2, 2002) (FOP Memorandum).

Normal Value

1. Surrogate Country

When investigating imports from a NME country, section 773(c)(1) of the Act directs the Department to base normal value, in most circumstances, on the NME producer's factors of production valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall use, to the extent practicable, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Factor Valuations" section below.

The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of economic development. See "Memorandum to Laurie Parkhill" regarding 2000–2001 administrative review and new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China (February 28, 2002). In addition to being among the countries comparable to the PRC in economic development, India is a significant producer of the subject merchandise. We used India as the surrogate country and, accordingly, we have calculated normal value using Indian prices to value the PRC producer's factors of production, when available and appropriate. We have obtained and relied upon publicly available information wherever possible. See "Memorandum to the File" regarding the selection of a surrogate country (August 2, 2002).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of an administrative review, interested parties may submit publicly available information to value the factors of production until 20 days following the date of publication of these preliminary results.

2. Factors of Production

Section 773(c)(1) of the Act provides that the Department shall determine the normal value using a factors-of-production methodology if (1) the merchandise is exported from an NME country and (2) the information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Factors of production include the following elements: (1) hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs. We used factors of production reported by FHTK for materials, energy, labor, and packing. We valued all the input factors using publicly available, published information, as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice. In accordance with 19 CFR 351.408(c)(1), where a producer sources an input from a market economy and pays for it in market-economy currency, the Department employs the actual price paid for the input to calculate the factors-based normal value. See also *Lasko Metal Products v. United States*, 437 F.3d 1442, 1445–1446 (CAFC 1994). Therefore, where FHTK had market-economy inputs and paid for these inputs in a market-economy currency, we used the actual prices paid for those inputs in our calculations.

3. Factor Valuations

In accordance with section 773(c) of the Act, we calculated normal value based on factors of production reported by FHTK for the POR. To calculate normal value, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. For a detailed description of all the surrogate values used, see the FOP Memorandum.

We added a surrogate freight cost, using the shortest reported distance from the domestic supplier to the factory, to Indian import surrogate values. This adjustment is in accordance with the decision in *Sigma Corporation v. United States*, 117 F. 3d 1401, 1407–08 (CAFC 1997).

For those Indian rupee values not contemporaneous with the POR, we adjusted for inflation using wholesale price indices for India published in the International Monetary Fund's *International Financial Statistics*. For those U.S. dollar-denominated values not contemporaneous with the POR, we adjusted for inflation using producer price indices published on the Federal Reserve Bank website (www.dallasfed.org/htm/data/data/wsop03sa.tab.htm).

Except as noted below, we valued raw material inputs using the weighted-average unit import values derived from the *Monthly Trade Statistics of Foreign Trade of India Volume II Imports*(Indian Import Statistics) for the time period April 2001 through September 2001. Where POR-specific Indian import statistics were not available, we used Indian import statistics from an earlier period (*i.e.*, April 2001 through June 2001). Surrogate-value data or sources to obtain such data were obtained from FHTK, the petitioner, and Department research.

We valued water based on data from the Asian Development Bank's *Second Water Utilities Data Book: Asian and Pacific Region* (October 1997). We valued electricity based on data from the International Energy Agency's *Energy Prices& Taxes: Quarterly Statistics*(First Quarter, 2000). We relied on the same source for data used to value gasoline.

FHTK reported packing inputs consisting of mesh bags, cartons, packing belts, wood and nails. The wood and nails were used to construct pallets on which to transport the packed cartons of garlic. We used Indian Import Statistics data for the period April 2001 through September 2001 to value all of these inputs.

We valued the truck rate based on average truck rates that were published in the Indian daily, *The Financial Express*(February 14, 2000). We valued brokerage and handling charges based on a value calculated for the less-than-fair-value investigation of stainless steel wire rod from India.

As we explained in our FOP memorandum, we have not been able to locate financial information of a publicly-traded Indian fresh garlic producer or an Indian producer of other fresh vegetables. Of the publicly available financial information currently on the record, the financial information of three Indian producers of preserved mushrooms constitutes the information from the industry most comparable to the fresh garlic industry. Thus, to value factory overhead, selling, general and administrative expenses, and profit, we used rates based on data taken from the financial information of the mushroom producers. Specifically, we calculated the rates based on the 1999/2000 financial statements of Himalaya International Ltd., Flex Foods Ltd., and Agro Dutch Foods Ltd.

For labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate that appears on the website for Import Administration (http://ia.ita.doc.gov/wages) under the listing of wage rates for NME countries revised in May 2000. The source of the wage-rate data for the Import Administration's website is the International Labor Organization's *1999 Year Book of Labour Statistics* (Geneva, 1999), ch.5B.

Preliminary Results of the Review

We preliminarily determine that the following dumping margins exist for the period November 1, 2000, through October 31, 2001:

Exporter	Weighted-average percentage margin
Golden Light Trading Company, Ltd.	376.67
Phil-Sino International Trading Inc.	376.67
Wo Hing (H.K.) Trading Co.	376.67
Taian Fook Huat Tong Kee Foods Co.[1]	0.00
PRC-wide rate	376.67

[1] For duty assessment purposes, the results of this review apply only to subject merchandise that was produced and exported to the United States by this company.

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Case briefs must be submitted within 30 days of the date of publication of this notice; case briefs regarding FHTK must be submitted no later than seven days after the issuance of the Department's verification report. Rebuttal briefs, limited to issues raised in the case briefs, must be filed within five days after the deadline for submission of case briefs. Parties who submit argument in these proceedings are requested to submit with the argument a statement of the issue, a brief summary of the argument with an electronic version included, and a table of authorities.

Pursuant to 19 CFR 351.310, any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held three days after the deadline for submission of the rebuttal briefs or the first workday thereafter. In accordance with 19 CFR 351.309(c)(ii), issues raised in hearings will be limited to those raised in the case and rebuttal briefs.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, not later than 120 days after the date of publication of this notice.

Assessment Rates

Upon completion of this administrative review, the Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment value for merchandise subject to this review. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. If these preliminary results are adopted in our final results of review, we will direct the Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's/customer's entries during the review period.

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for merchandise exported by FHTK, the cash-deposit rate will be that established in the final results of this review, except if the rate is less than .50 percent and therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash-deposit rate will be zero; (2) for all other PRC exporters, the rate will continue to be the PRC-wide rate of 376.67 percent; (3) for Golden Light, Phil-Sino, and Wo Hing, the cash-deposit rate will be that established in the final results of this review; and (4) for all other non-PRC exporters of subject merchandise from the PRC, including Clipper, Top Pearl Ltd., and Good Fate International, the cash-deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

DATED: August 2, 2002.

Faryar Shirzad,

Assistant Secretary forImport Administration.

[FR Doc. 02–20235 Filed 8–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent Not To Revoke In Part: Certain Pasta From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent Not to Revoke in Part.

SUMMARY: In response to requests by interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain pasta ("pasta") from Italy for the period of review ("POR") July 1, 2000 through June 30, 2001.

We preliminarily determine that during the POR, (1) Pastificio Garofalo S.p.A. ("Garofalo") and (2) Italian

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American Pasta Company ("IAPC"), sold subject merchandise at less than normal value ("NV"). If these preliminary results are adopted in the final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between the export price ("EP") or constructed export price ("CEP") and NV.

We preliminarily determine that during the POR, (1) Pastificio Guido Ferrara S.r.l. ("Ferrara") and (2) Pastificio Fratelli Pagani S.p.A. ("Pagani") did not make sales of the subject merchandise at less than NV (*i.e.*, made sales at "zero" or *de minimis* dumping margins). If these preliminary results are adopted in the final results of this administrative review, we will instruct the U.S. Customs Service to liquidate appropriate entries without regard to antidumping duties. Furthermore, we preliminarily intend not to revoke the antidumping duty order with respect to subject merchandise produced and also exported by Pagani because its sales were not made in commercial quantities (*see* 19 CFR 351.222 (e)); *see* Intent Not to Revoke section of this notice.

Interested parties are invited to comment on these preliminary results. Parties who submit comments in this proceeding should also submit with them: (1) a statement of the issues; (2) a brief summary of the comments; and (3) a table of authorities. Further, parties submitting written comments are requested to provide the Department with an additional copy of the public version of any such comments on diskette.

EFFECTIVE DATE: August 9, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Ledgerwood or Mark Young, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3836 or (202) 482–6397, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations:

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (2001).

Case History

On July 24, 1996, the Department published in the **Federal Register** the antidumping duty order on pasta from Italy (61 FR 38547). On July 2, 2001, we published in the **Federal Register** the notice of "Opportunity to Request Administrative Review" of this order, for the POR July 1, 2000 through June 30, 2001 (66 FR 34910).

On July 30 and July 31, 2001, we received requests for review from: (1) COREX S.p.A. ("Corex"), (2) Ferrara, (3) Pagani, (4) Garofalo, (5) IAPC, (6) La Molisana Industrie Alimentari S.p.A. ("La Molisana"), and (7) N. Puglisi & F. Industria Paste Alimentari S.p.A. ("Puglisi") in accordance with 19 CFR 351.213(b)(2). In addition, on July 31, 2001, Pagani requested that the Department revoke the antidumping duty order with respect to it. *See "Intent Not to Revoke"* section of this notice.

On August 20, 2001, we published the notice of initiation of this antidumping duty administrative review covering the period July 1, 2000, through June 30, 2001, listing these seven companies as respondents. *Notice of Initiation*, 66 FR 43570 (August 20, 2001).

On August 28, 2001, we sent questionnaires to all seven companies.

On September 19, and November 2, 2001, La Molisana and Puglisi, respectively, withdrew their requests for administrative review of the antidumping duty order.

On January 3, 2002, the Department revoked the antidumping order with respect to Corex and Puglisi, based on three years of sales in commercial quantities at not less than NV. *See Notice of Final Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order in Part: Certain Pasta From Italy*, 67 FR 300 (January 3, 2002).

During the most recently completed segment in which Pagani [1] participated, the Department disregarded sales that failed the cost test. Pursuant to section 773(b)(2)(A)(ii) of the Act, we have reasonable grounds to believe or suspect that sales by Pagani of the foreign like product under consideration for the determination of NV were made at prices below the cost of production ("COP"). Therefore, we initiated a cost investigation of Pagani in the instant review.

After several extensions, the remaining respondents submitted their responses to sections A through C of the questionnaire by October 25, 2001, and to section D by November 1, 2001. IAPC, Ferrara, and Garofalo were not required to respond to section D.

As stated in its questionnaire response, IAPC filed a Section D response because some of its U.S. sales had no contemporaneous home market matches during the appropriate window period. *See* IAPC's response to the Section D questionnaire (November 1, 2002). Although IAPC had a viable home market, for those sales which did not have a home market match we used constructed value ("CV").

On March 12, 2002, the Department published an extension of preliminary results of this review until July 30, 2002.[2] *See Certain Pasta from Italy and Turkey: Extension of Preliminary Results of Antidumping Duty Administrative Reviews*, 67 FR 11095 (March 12, 2002).

During March, April, May, June, and July of 2002, the Department issued supplemental and second supplemental questionnaires.

In their March 8, and April 11, 2002, submissions, the petitioners argued that the Department should collapse Pastificio Antonio Amato & C. S.p.A. ("Amato") and Garofalo because of alleged affiliation between the two companies. In its rebuttal submission on March, 26, 2002, Garofalo rejected the petitioners' claims, citing a previous court decision as precedence. The Department has determined not to collapse Amato and Garofalo. For a more detailed discussion, *see* Memorandum on "Whether To Collapse Garofalo and Amato in the Preliminary Results", dated July 31, 2002, in the case file in the Central Records Unit, main Commerce building, room B–099 ("the CRU").

On April 17, 2002, the Department extended the deadline for the submission of factual information regarding revocation of the antidumping duty order, in part. Submissions were received from the petitioners [3] and Pagani on May 1, 2002, and rebuttal comments were received from the parties on May 8, 2002.

[1] The fourth administrative review covering the period July 1, 1999, through June 30, 2000, was the most recently completed review for Pagani. *See Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review*, 67 FR 300 (January 3, 2002).

[2] There was a typographical error in the notice of "Extension of Preliminary Results of Antidumping Duty Administrative Reviews"; the preliminary results of this review are actually due on July 31, 2002.

[3] New World Pasta Company; Dakota Growers Pasta Company; Borden Foods Corporation; and American Italian Pasta Company.

We verified the sales information submitted by: (1) Garofalo from June 3 through June 7, 2002; (2) IAPC from June 10 through June14, 2002; (3) and Pagani from June 7 through June 12, 2002. We verified the cost information submitted by IAPC from June 11 through June 14, 2002, and Pagani from June 3 through June 6, 2002. We also verified revocation information submitted by Pagani on June 13, 2002.

Partial Rescission

We initiated a review of seven companies, *see Notice of Initiation, supra*. On September 19, 2001 and November 2, 2001, respectively, La Molisana and Puglisi withdrew their requests for a review. These requests were submitted within 90 days of the publication of the *Notice of Initiation*. Because there were no other requests for review of La Molisana and Puglisi, and because the letters withdrawing the requests were timely filed, we are rescinding the review with respect to La Molisana and Puglisi in accordance with 19 CFR 351.213(d)(1). Although Corex did not submit a letter withdrawing its request for review, because Corex is no longer covered by the antidumping order, effective July 1, 2000, we are also rescinding the review with respect to it.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, or by Associazione Italiana per l'Agricoltura Biologica.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* ("*HTSUS*"). Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, in the CRU.

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* Letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti-circumvention investigation of Barilla, an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997 (62 FR 65673). On October 5, 1998, the Department issued its final determination that Barilla's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping duty order on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998).

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, which is available in the CRU.

The following scope ruling is pending:

(1) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pagani's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti-circumvention Inquiry of the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000).

Verification

As provided in section 782(i) of the Act, we verified sales and cost information provided by IAPC and Pagani, and the sales information provided by Garofalo. We used standard verification procedures, including on-site inspection of the manufacturers' facilities and examination of relevant sales and financial records. Our verification results are outlined in the company-specific verification reports placed in the case file in the CRU. We revised certain sales and cost data based on verification findings. *See* the company-specific verification reports and calculation memoranda.

Product Comparisons

In accordance with section 771(16) of the Act, we first attempted to match contemporaneous sales of products sold in the United States and comparison markets that were identical with respect to the following characteristics: (1) pasta shape; (2) type of wheat; (3) additives; and (4) enrichment. When there were no sales of identical merchandise in the home market to compare with U.S. sales, we compared U.S. sales with the most similar product based on the characteristics listed above, in descending order of priority. When there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to CV, in accordance with section 773(a)(4) of the Act.

For purposes of the preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing ("VCOM") between each

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U.S. model and the most similar home market model selected for comparison.

Comparisons to Normal Value

To determine whether sales of certain pasta from Italy were made in the United States at less than NV, we compared the EP or CEP to the NV, as described in the "*Export Price and Constructed Export Price*" and "*Normal Value*" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions. *See* the company-specific verification reports and calculation memoranda.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP when the merchandise was sold by the producer or exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. We based EP and CEP on the packed CIF, ex-factory, FOB, or delivered prices to the first unaffiliated customer in, or for exportation to, the United States. When appropriate, we reduced these prices to reflect discounts and rebates.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, foreign brokerage, handling and loading charges, export duties, international freight, marine insurance, U.S. duties, and U.S. inland freight expenses (freight from port to the customer). In addition, when appropriate, we increased EP or CEP as applicable, by an amount equal to the countervailing duty rate attributed to export subsidies in the most recently completed administrative review, in accordance with section 772(c)(1)(C).

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (advertising, cost of credit, warranties, and commissions paid to unaffiliated sales agents). In addition, we deducted indirect selling expenses that related to economic activity in the United States. These expenses include certain indirect selling expenses incurred by affiliated U.S. distributors. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act.

Certain respondents reported the resale of subject merchandise purchased in Italy from unaffiliated producers. In those situations in which an unaffiliated producer of the subject pasta knew at the time of the sale that the merchandise was destined for the United States, the relevant basis for the EP would be the price between that producer and the respondent. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order*, 63 FR 50867, 50876 (September 23, 1998). In this review, we determined that it was reasonable to assume that the unaffiliated producers knew or had reason to know at the time of sale that the ultimate destination of the merchandise was the United States because virtually all enriched pasta is sold to the United States. *See Notice of Preliminary Results and Partial Recission of Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order in Part: Certain Pasta from Italy*, 65 FR 4867, 4869 (August 8, 2000). Accordingly, consistent with our methodology in prior reviews (*see id.*), when a respondent purchased pasta from other producers and we were able to identify resales of this merchandise to the United States, we excluded these sales of the purchased pasta from the margin calculation for that respondent. Where the purchased pasta was commingled with the respondent's production and the respondent could not identify the resales, we examined both sales of produced pasta and resales of purchased pasta. Inasmuch as the percentage of pasta purchased by any single respondent was an insignificant part of its U.S. sales database, we included the sales of commingled purchased pasta in our margin calculations.

Normal Value

A. Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and 773(a)(1)(C) of the Act, because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for all producers.

B. Arm's-Length Test

Sales to affiliated customers for consumption in the home market which were determined not to be at arm's-length were excluded from our analysis. To test whether these sales were made at arm's-length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's-length. *See e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan*, 62 FR 60472, 60478 (November 10, 1997), and *Antidumping Duties; Countervailing Duties: Final Rule* ("*Antidumping Duties*"), 62 FR 27295, 27355–56 (May 19, 1997). We included in our NV calculations those sales to affiliated customers that passed the arm's-length test in our analysis. *See* 19 CFR 351.403; *Antidumping Duties*, 62 FR at 27355–56.

C. Cost of Production Analysis

1. Calculation of COP

Before making any comparisons to NV, we conducted a COP analysis of Pagani, pursuant to section 773(b) of the Act, to determine whether the respondent's comparison market sales were made below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses ("SG&A") and packing, in accordance with section 773(b)(3) of the Act. We relied on the respondent's information as submitted, except in instances where we used revised data based on verification findings. *See* the company-specific calculation memoranda on file in the CRU, for a description of any changes that we made.

2. Test of Comparison Market Prices

As required under section 773(b) of the Act, we compared the weighted-average COP to the per-unit price of the comparison market sales of the foreign like product, to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses (also subtracted from the COP), and packing expenses.

3. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) and (C) of the Act. In such cases, because we compared prices to POR-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. Specifically, we are preliminarily disregarding below-cost sales made by Pagani in this administrative review.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex-works, FOB or delivered prices to comparison market customers. We made deductions from the starting price, when appropriate, for handling, loading, inland freight, warehousing, inland insurance, discounts, and rebates. We added interest revenue. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing, respectively. In addition, we made circumstance of sale ("COS") adjustments for direct expenses, including imputed credit expenses, advertising, warranty expenses, commissions, bank charges, and billing adjustments, in accordance with section 773(a)(6)(C)(iii) of the Act.

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the "commission offset"). Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of the other selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and section 19 CFR 351.411 of the Department's regulations. We based this adjustment on the difference in the VCOM for the foreign like product and subject merchandise, using POR-average costs.

Sales of pasta purchased by the respondents from unaffiliated producers and resold in the comparison market were treated in the same manner described above in the "*Export Price and Constructed Export Price*" section of this notice.

E. Calculation of Normal Value Based on Constructed Value

For IAPC, when we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product, we compared the EP to CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the cost of manufacturing ("COM") of the product sold in the United States, plus amounts for SG&A expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred by IAPC in connection with the production and sale of the foreign like product in the comparison market.

For price-to-CV comparisons, we made adjustments to CV for COS differences, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses.

F. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same level of trade ("LOT") as the EP and CEP sales, to the extent practicable. When there were no sales at the same LOT, we compared U.S. sales to comparison market sales at a different LOT. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit.

Pursuant to section 351.412 of the Department's regulations, to determine whether comparison market sales were at a different LOT, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's-length) customers. If the comparison-market sales are at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

Finally, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the differences in LOT between NV and CEP affected price comparability, we grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997). Specifically in this review, we did not make an LOT adjustment for any respondent. However, we granted a CEP offset for IAPC.

For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, *see* the company-specific verification reports, calculation memoranda, and LOT memoranda, all on file in the CRU.

G. Company-Specific Issues

We relied on the respondents' information as submitted, except in instances where, based on verification findings, we made modifications to the calculation of NV and EP or CEP. *See* the company-specific calculation memoranda on file in the CRU.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve.

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Intent Not To Revoke

On July 31, 2001, Pagani, submitted a letter to the Department requesting, pursuant to 19 CFR 351.222(e), revocation of the antidumping duty order with respect to its sales of the subject merchandise. Pagani submitted along with its revocation request a certification stating that: (1) the company sold subject merchandise at not less than NV during the POR, and that in the future it would not sell such merchandise at less than NV (*see* 19 CFR 351.222(e)(1)(i)); (2) the company sold the subject merchandise to the United States in commercial quantities during each of the past three years (*see* 19 CFR 351.222(e)(1)(ii)); and (3) the company agrees to immediate reinstatement of the order, if the Department concludes that the company, subsequent to revocation, has sold the subject merchandise at less than NV (*see* 19 CFR 351.222(b)(1)(iii)).

On April 4, 2002, the petitioners opposed the request for revocation, arguing that Pagani's sales to the United States during the past three periods (including the current period) were not made in commercial quantities, and if the order were revoked, Pagani would sell subject merchandise at less than NV in the United States in the future. At the request of the Department, the petitioners and Pagani submitted comments on Pagani's request for revocation (*see* May 1, and May 8, 2002, revocation submissions submitted by the parties).

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Act. *See* section 751(d) of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. The regulation requires that exporters or producers covered by the order and desiring revocation submit the following: (1) a certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise for at least three consecutive years in commercial quantities; and (3) an agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, has sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1).

Upon receipt of such a request, the Department will consider the following in determining whether to revoke the order in part: (1) whether the producer or exporter requesting revocation has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping; and (3) whether the producer or exporter requesting revocation in part has agreed in writing to the immediate reinstatement of the order, as long as any exporter or producer is subject to the order, if the Department concludes that the exporter or producer, subsequent to revocation, sold the subject merchandise at less than NV. *See* 19 CFR. 351.222(b)(2).

Pagani submitted the required certifications and agreements. However, after applying the criteria outlined in section 351.222(b) of the Department's regulations, and after considering the comments of the parties and of the evidence on the record, we have preliminarily determined that one of the Department's requirements for revocation has not been met. Specifically, although we preliminarily find that Pagani has demonstrated three consecutive years of sales at not less than NV, we also preliminarily find that, based on Pagani's U.S. shipment data, its sales to the United States have not been made in commercial quantities during each of the three review periods at issue, in accordance with 19 CFR 351.222(d) and 351.222(e)(1)(ii).

In particular, data on the record indicate that the amount of subject merchandise sold in the U.S. market by Pagani during the third, fourth, and fifth (*i.e.*, the current) POR is small in quantity relative to Pagani's total U.S. sales volume during the period of investigation ("POI"). We conclude that Pagani's sales during these PORs do not provide any meaningful information concerning Pagani's normal commercial practice. Consequently, we find that Pagani's shipments during these PORs are not a reasonable basis for finding commercial quantities.[4]

Therefore, we have determined that the requirements for revocation have not been met because Pagani has not made sales to the United States in commercial quantities during the third, fourth, or fifth segment of this proceeding.[5] Based on our examination of these facts at verification and our review of Pagani's sales practices, we find that, consistent with Department practice, we do not have a sufficient basis to conclude that the *de minimis* dumping margin calculated for Pagani for the third, fourth, or fifth administrative review is reflective of the company's normal commercial experience. *See, e.g., Silicon Metal from Brazil*, 65 FR at 7498 (finding that because sales and volume figures were so small the Department could not conclude that the reviews reflected what the company's normal commercial experience would be absent an antidumping duty order). Because Pagani has not met the commercial quantities requirement, we have not examined the issue as to whether the antidumping duty order is necessary to offset future dumping (*see Silicon Metal from Brazil*, 65 FR at 7505).

Pagani attempts to explain that the significant decrease in its sales volume during the third, fourth, and fifth administrative review periods was due to the alleged effect of the antidumping duty cash deposit rate required on its U.S. shipments of pasta as a result of the final results of the first administrative review of the order on Pasta from Italy (64 FR 6615, February 10, 1999). Pagani states that the cash deposit rate was a major factor affecting its substantial reduction in U.S. sales during the subsequent PORs. Whether this is the case or not does not detract from the record evidence which unequivocally demonstrates that the volume of such sales was far below the volume of Pagani's sales prior to the imposition of the antidumping duty order.[6] Moreover, it is the volume of these sales (not Pagani's alleged reasons for their size in this case) that is the focus of the Department's analysis with respect to whether they can be considered to be in commercial quantities.

Based on the foregoing analysis, we have preliminarily determined that Pagani has not met one of the threshold requirements for revocation (*i.e.*, sales in commercial quantities during the three consecutive PORs). We therefore preliminarily intend not to revoke the order, with respect to pasta produced and also exported by Pagani, if these preliminary findings are affirmed in our final results.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted-average margins exist for the period July 1, 1999, through June 30, 2000:

Manufacturer/exporter	Margin (percent)
IAPC	7.04
Ferrara	0.38
Garofalo	0.77
Pagani	0.00

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs limited to issues raised in such briefs, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, parties submitting written comments are requested to provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to the U.S. Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, in order to calculate the entered value, we subtracted international movement expenses (*e.g.*, international freight) from the gross sales value.

Cash Deposit Requirements

To calculate the cash deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 11.26 percent, the "All Others" rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–20237 Filed 8–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Amended Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 9, 2002.

FOR FURTHER INFORMATION CONTACT: Sophie Castro or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0588 or (202) 482–1766, respectively.

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[4] Pagani's history of subject merchandise pasta sales is as follows: Pagani's 3rd POR sales of subject pasta were 2.98% of its POI sales of subject pasta. Pagani's 4th POR sales of subject pasta were 0.94% of its POI sales of subject pasta. Pagani's 5th POR sales of subject pasta were 1.06% of its POI sales of subject pasta.

[5] As we noted in *Pure Magnesium from Canada; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order In Part*, 64 FR 12977, 12979 (March 16, 1999) (*Pure Magnesium from Canada*), sales in commercial quantities is a threshold requirement that must be met by parties seeking revocation. We also note that while the regulation requiring sales in commercial quantities may have developed from the unreviewed intervening year regulation, its application in all revocation cases based on the absence of dumping is reasonable and mandated by the regulations. The application of this requirement to all such cases is reflected not only in the provision for unreviewed intervening years (*see* 19 C.F.R. 351.222 (d)(1)), but also in the new general requirement that parties seeking revocation certify to sales in commercial quantities in each of the years on which revocation is to be based. *See* 19 C.F.R. 351.222(e)(1)(ii). This requirement ensures that the Department's revocation determination is based upon a sufficient breadth of information regarding a company's normal commercial practice. *See Pure Magnesium from Canada*, 64 FR at 12979.

[6] While we note that Pagani argues that the U.S. market is a vibrant and changing market, dominated by large integrated domestic producers (*see* Pagani's May 8, 2002 revocation rebuttal submission), it has not submitted any information on the record which would indicate the U.S. consumer market has diminished since the imposition of the order, or that Pagani has made any permanent changes in its own business practices in the U.S. market. *See Professional Electric Cutting Tools From Japan: Final Results of the Fifth Antidumping Duty Administrative Review and Revocation of the Antidumping Order in Part*, 64 FR 71411 (December 21, 1999). *See* also, *Polyvinyl Alcohol From Taiwan: Final Results of Third Antidumping Duty Administrative Review and Determination Not To Revoke Order in Part*, 65 FR 60615 (October 12, 2000) and accompanying Decision Memorandum at Comment 1.a.: Application of the Commercial Quantities Regulation to Chang Chun's U.S. Sales of Subject Merchandise.

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SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2001).

Amendment to Final Results

In accordance with section 751(a) of the Act, on July 12, 2002, the Department published the final results of the 2000–2001 administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC), in which we determined that certain U.S. sales of the subject merchandise were made at less than normal value (67 FR 46173). On July 15, 2002, we received an allegation, timely filed pursuant to 19 CFR 351.224(c)(2), from Gerber Food (Yunnan) Co., Ltd. (Gerber) that the Department made a ministerial error in its final results. The petitioners[1] did not comment on the alleged ministerial error.

After analyzing Gerber's submission, we have determined, in accordance with 19 CFR 351.224, that a ministerial error was made in our final margin calculation for Gerber. Specifically, we incorrectly applied the surrogate value for cans and lids in the calculation of Gerber's factors of production-based normal value. For a detailed discussion of the ministerial error, as well as the Department's analysis, see the memorandum to Louis Apple from the Team, dated July 29, 2002.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final results of the 2000–2001 antidumping duty administrative review of the order on certain preserved mushrooms from the PRC. The revised dumping margins are as follows:

Exporter/Manufacturer	Original Final Margin Percentage	Revised Final Margin Percentage
Gerber Food (Yunnan) Co., Ltd.	14.79	0.00
Raoping Xingyu Foods, Co., Ltd.	161.57	161.57 (no change)
Shantou Hongda Industrial General Corporation	0.00	0.00 (no change)
Shenxian Dongxing Foods Co., Ltd.	0.00	0.00 (no change)

We will notify the Customs Service of the revised cash deposit rate for Gerber.

Scope of the Order

The products covered by the order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under the order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of the order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of the order are the following: (1) all other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[2]

The merchandise subject to the order is currently classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

These amended final results of administrative review and notice are in accordance with section 751(h) of the Act and 19 CFR 351.224(e).

Dated: August 2, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration

[FR Doc. 02–20233 Filed 8–8–02; 8:45 am]

BILLING CODE 3510–DS–S

[1] The Coalition for Fair Preserved Mushroom Trade includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Nottingham, PA; Modern Mushroom Farms, Inc., Toughkenamon, PA; Monterey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushrooms Canning Company, Kennett Square, PA; Southwood Farms, Hockessin, DE; Sunny Dell Foods, Inc., Oxford, PA; United Canning Corp., North Lima, OH.

[2] On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. See "Recommendation Memorandum–Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China," dated June 19, 2000.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–817]

Notice of Postponement of Preliminary Determination of Antidumping Duty Investigation: Silicon Metal From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of preliminary determination in the antidumping duty investigation of silicon metal from the Russian Federation.

SUMMARY: The Department of Commerce ("Department") is postponing the preliminary determination in the antidumping duty investigation of silicon metal from the Russian Federation from August 14, 2002, until no later than September 13, 2002. This postponement is made pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: August 9, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy or Cheryl Werner, at the Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0165, (202) 482–2667 respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2002).

Postponement of Preliminary Determination

On March 27, 2002, the Department initiated an antidumping duty investigation of imports of silicon metal from the Russian Federation. The notice of initiation stated that we would issue our preliminary determination no later than 140 days after the date of initiation. *See* 67 FR 15791 (April 3, 2002).

Under section 733(c)(1)(B) of the Act, the Department can extend the period for reaching a preliminary determination until not later than the 190th day after the date on which the administering authority initiates an investigation if:

(B) The administering authority concludes that the parties concerned are cooperating and determines that:

(i) The case is extraordinarily complicated by reason of:

(I) The number and complexity of the transactions to be investigated or adjustments to be considered,

(II) The novelty of the issues presented, or

(III) The number of firms whose activities must be investigated; and

(ii) Additional time is necessary to make the preliminary determination.

Regarding the first requirement, we find that all concerned parties are cooperating. Regarding the second requirement, we find that this case is extraordinarily complicated for the following reasons:

The investigation of Bratsk Aluminum Smelter ("BAS") and Rual Trade Limited ("RTL") is extraordinarily complicated because of several parties, involvement in the sale of silicon metal to the United States and the complex issues associated with it. The Department is considering the relationship between RTL, the exporter, and BAS, the producer, as well as Russian Aluminum Management ("RAM") and Russian Aluminum ("RA"), for the sale or exportation of silicon metal to the United States. The investigation of ZAO Kremny, SUAL-Kremny-Ural ("SKU"), and Pultwen Ltd. is extraordinarily complicated because of several parties' involvement in the production and sale of silicon metal to the United States. Both ZAO Kremny and SKU are producers of the subject merchandise. Moreover, we are examining whether a principal/agent relationship exists between Pultwen Ltd. and a certain U.S. customer of silicon metal. We have issued several extensive supplemental questionnaires to ZAO Kremny, SKU, and Pultwen Ltd. regarding their production, sales and distribution process. For these reasons, pursuant to 733(c)(1)(B) of the Act, we are postponing the preliminary determination in this investigation until September 13, 2002.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f).

Dated: August 2, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–20239 Filed 8–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990810211–2169–03]

RIN 0648–ZA69

National Marine Fisheries Service—Sea Grant Joint Graduate Fellowship Program in Population Dynamics and Marine Resource Economics: Request for Applications for FY 2003

AGENCY: National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of request for applications.

SUMMARY: The purpose of this notice is to advise the public that the National Sea Grant College Program (Sea Grant) is seeking applications for one of its fellowship programs to fulfill its broad educational responsibilities and to strengthen the collaboration between Sea Grant and the National Marine Fisheries Service (NMFS). The NMFS—Sea Grant Joint Graduate Fellowship Program in Population Dynamics and Marine Resource Economics (Program), which is available to US citizens who are graduate students enrolled in PhD degree programs in academic institutions in the United States and its territories, with required institutional matching funds, expects to support four or five new Fellows in FY 2003. Fellows will work on thesis problems of public interest and relevance to NMFS and have summer internships at participating NMFS Science Centers or Laboratories under the guidance of NMFS mentors.

DATES: Applications must be received by 5 p.m. (local time) on December 3, 2002 by a state Sea Grant Program (or by the National Sea Grant Office (NSGO) in the case of an academic institution in a non-Sea Grant state). Note that applications arriving after these deadlines will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery (*see* **ADDRESSES** below) prior to the specified closing date and time; in any event, applications received by the NSGO or the state Sea Grant Programs later than two business days following the closing date will not be accepted. Facsimile transmissions and electronic mail submission of applications will not be accepted.

ADDRESSES: Applications originating from academic institutions in Sea Grant states must be submitted to the state Sea Grant Program. Applications originating elsewhere may be submitted either to the nearest state Sea Grant Program or directly to the NSGO. Sea Grant's Web site lists the addresses of the state Sea Grant College Program directors (*http://www.nsgo.seagrant.org/SGDirectors.html*) and the participating NMFS Facilities (*http://www.nsgo.seagrant.org/research/rfp/NMFS_Labs.html*), or those addresses may also be obtained by contacting the NSGO. Applications submitted to the NSGO should be addressed to: National Sea Grant Office, R/SG, Attn: Mrs. Geraldine Taylor, Proposal Processing, Room 11732, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (telephone number for express mail applications is 301–713–2445).

FOR FURTHER INFORMATION CONTACT: Information may be obtained from Dr. Emory D. Anderson, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 713–2435 ext. 144; e-mail: *emory.anderson@noaa.gov*; from any state Sea Grant Program (see **ADDRESSES**); or from any participating NMFS facility (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION: National Marine Fisheries Service—Sea Grant Joint Graduate Fellowship Program in Population Dynamics and Marine Resource Economics.

I. Program Authority

Authority: 33 U.S.C. 1127(a).

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(Catalog of Federal Domestic Assistance Number: 11.417, Sea Grant Support)

II. Description of Program

The National Sea Grant Office (NSGO) and the National Marine Fisheries Service (NMFS) established a new Graduate Fellowship Program in Population Dynamics and Marine Resource Economic (Program) in 1999. The intent of the Program is to award fellowships to about four new students each year who are interested in careers related to (1) the population dynamics of living marine resources and the development and implementation of quantitative methods for assessing their status, and (2) the economics of the conservation and management of living marine resources. At least two new fellowships are to be awarded each year in each of the Program's two disciplines resulting in about six students per discipline to be supported annually when the Program is at its maximum level.

For the FY 2003 competition now being announced, it is anticipated that funds will be available to award five new fellowships in the two disciplines combined.

The goals of the Program are to (1) encourage qualified applicants to pursue careers in (a) population dynamics and stock assessment methodology or (b) marine resource economics; (2) increase available expertise related to (a) the population dynamics and assessment of the status of the stocks of living marine resources or (b) economic analysis of living marine resource conservation and management decisions; (3) foster closer relationships between academic scientists and NMFS; and (4) provide real-world experience to graduate students and accelerate their career development.

The fellowships will provide support for up to three years for highly qualified graduate students working towards a PhD in population dynamics or related fields of study and for up to two years for highly qualified graduate students working towards a PhD in marine resource economics, natural resource economics, or environmental economics. Continued support after the first year will be contingent upon the availability of Federal funds and satisfactorily performance by the Fellow. In addition to his/her faculty adviser, each Fellow will be required to work closely with an expert (mentor) from NMFS who will provide data for the Fellow's thesis, serve on the Fellow's committee, and host an annual summer internship at the participating NMFS facility.

Mentors will be from participating NMFS Science Centers or Laboratories. Each Fellow will be required to work as a summer intern at the participating NMFS facility either on his/her thesis or on appropriate related problems. Remuneration for the summer internship will be part of the annual, award along with the support the Fellow receives during the academic year. Population Dynamics Fellows will also be expected to spend 10–20 days at sea per year learning, about sampling techniques and problems, commercial fishing, fishery biology, and local and regional issues of importance to fisheries management. Fellows may also work, as necessary, at the participating NMFS facility during some or all of the academic year at the mutual discretion of mentor, faculty adviser, and Fellow.

Newly-selected Fellows must submit a one-page description of their thesis research or assignment based on discussions involving mentor, faculty adviser, and Fellow to the Fellowship Program Manager by April 30, 2003. The thesis research or assignment description must reflect a clear mutual understanding of the substantive dimensions of the project and its expected results.

Fellows must, for each year of their fellowship, provide a written summary of their accomplishments and activities during the preceding year to the Fellowship Program Manager. This summary must accompany the request for each additional year's funding. Fellows will be expected to present a review of their research during the Annual Graduate Fellows Seminar held each spring at the NOAA facilities in Silver Spring, MD.

The award for each Fellowship, contingent upon the availability of Federal funds, will be in the form of a grant or cooperative agreement of $38,000 per year, 50 percent ($19,000) of which will be contributed by NMFS, 33⅓ percent ($12,667) by the NSGO, and 16⅔ percent ($6,333) by the academic institution as the required 50 percent match of NSGO funds; the involvement of NMFS in cooperative agreements is described above. The portion of the award provided to each Fellow for salary (stipend), living expenses (per diem), tuition (unless waived), health insurance and other institution fees, and travel necessary to carry out the proposed thesis research and to attend the Annual Graduate Fellows Seminar each spring in Silver Spring, MD will be determined and distributed by the institution in accordance with its guidelines.

III. Eligibility

Any student may apply who is a United States citizen. At the time of application, prospective Population Dynamics Fellows must be admitted to a PhD degree program in population dynamics or a related field such as applied mathematics, statistics, or quantitative ecology at an academic institution in the United States or its territories, or submit a signed letter from the institution indicating provisional acceptance to a PhD degree program conditional on obtaining financial support such as this fellowship. At the time of application, prospective Marine Resource Economics Fellows must be in the process of completing at least two years of course work in a PhD degree program in natural resource economics or a related field at an academic institution in the United States or its territories.

IV. Evaluation Criteria

Evaluation criteria will include (1) relevant academic ability and achievement, particularly quantitative skills (35 percent); (2) demonstrated research ability in the discipline and appropriateness/importance of proposed thesis topic (30 percent); (3) expertise of major professor (20 percent); and (4) additional relevant experience (15 percent).

V. Selection Procedures

Applications will be ranked in accordance with the above criteria and their assigned weights by a single, independent, national review panel consisting of government and academic experts for each of the two disciplines. The panel members will provide individual evaluations of each applicant, but there will be no consensus advice. Their recommendations and evaluations will be considered by the NSGO in the final selection. Only those applications receiving a minimum score of 50 percent by the panel will be eligible for funding. For those applications, the NSGO will (1) ascertain which best meet the objectives of the Program; (2) give priority to NMFS Fisheries Science Centers which do not currently have Fellows; and (3) select the applications to be funded. Accordingly, awards may not necessarily be made to the highest-scoring applications in each discipline. Applicants may be asked to modify objectives, work plans, or budgets prior to final approval of the award. Subsequent grant administration procedures will be in accordance with current NOAA grants procedures. A summary statement of the review of the application by the review panel will be provided to each applicant.

VI. Timetable

December 3, 2002, 5 p.m. (local time)—Applications must be received by state Sea Grant Program or by NSGO (only if application is from an academic institution in a non-Sea Grant state).

December 10, 2002, 5 p.m. EST—Applications due at NSGO from state Sea Grant Programs.

June 1, 2003 (approximate)—Funds awarded.

Note that applications arriving after the above deadlines will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery (*see* **ADDRESSES** above) prior to the specified closing date and time; in any event, applications received by the NSGO or the state Sea Grant Programs later than two business days following the closing date will not be accepted. Facsimile transmissions and electronic mail submission of applications will not be accepted.

VII. Application Instructions

A. General Guidelines

All printed pages in the application must be on either metric A4 (210 mm × 297 mm) or 8.5″ × 11″ paper with at least a 10-point font. Applications must include the items listed below.

1. *Signed Title Page:* The title page must identify the prospective Fellow, be signed by the Faculty Advisor and the institutional representative, and provide complete contact information. The program area being addressed should be clearly identified by starting the project title with "NMFS—Sea Grant Graduate Fellowship". The total amount of Federal and matching funds being requested for each project year must be listed.

2. *Project Summary:* The project summary should concisely describe the activity being proposed and the impact that would result from its successful completion, in a form suitable for publication. Applicants are encouraged to use the Sea Grant Project Summary Form 90–2, but may use their own form as long as it provides the same information as the Sea Grant form. The project summary should include: a. *Title:* Use the exact title as it appears in the rest of the application. b. *Investigators:* List the names and affiliations of each investigator who will significantly contribute to the project, starting with the faculty advisor. c. Funding request for each year of the Fellowship, including matching funds. d. *Project Period:* Start and completion dates. Applications should request a start date of June 1, 2003, e. *Project Abstract:* This should include the rationale for the proposed activity, the scientific or technical objectives and/or hypotheses to be tested, and a brief summary of the work to be completed.

3. *Budget and Budget Justification:* There should be a separate budget for each year as well as a cumulative annual budget for the entire period of the proposed fellowship. The Sea Grant Budget Form 90–4 should preferably be used, but the institution may use its own form as long as it provides the same information as the Sea Grant form. Subrecipients or contractors, if any, should have a separate budget page. Indirect costs are not allowable for either the fellowship or for any costs associated with the fellowship (15 CFR 917.11(e), "Guidelines for Sea Grant Fellowships").

Matching funds equivalent to 50 percent of the NSGO funds must be provided by the Fellow's institution. Allocation of matching funds must be specified in the budget and may consist of up to one/half month's salary for the faculty adviser, waived tuition, equipment and supplies, and any other costs typically used as matching funds. In addition to stipend and tuition for the applicant, the budget should include funds for equipment, supplies, and travel (*see "Description of Program"* above).

4. Curriculum vitae of the student, the faculty advisor, and the NMFS research mentor (2-page maximum per investigator).

5. Signed letter of commitment from the prospective NMFS mentor.

6. Official copies of all undergraduate and graduate student transcripts.

7. Education and career goal statement (not to exceed two pages) from the student indicating the number of years for which fellowship support is being sought and the student's interest in (a) marine population dynamics or the development and implementation of quantitative methods for assessing stock status of living marine resources, or (b) in marine resource economics (a summary of the proposed thesis or the general intended area of study should be included, if available).

8. Three signed letters of recommendation, including one from the student's faculty adviser.

9. Proof of application, acceptance, provisional acceptance, and enrollment (only for Population Dynamics applicants) in the case of students entering graduate school (*i.e.*, who have not yet completed one semester of graduate work) if they are selected for a fellowship.

VIII. How To Submit

Ten (10) copies of applications must be submitted to the state Sea Grant Programs or to the NSGO according to the schedule outlined above (*See* **ADDRESSES** and *"Timetable"*). The addresses of the state Sea Grant College Programs may be found at the following Internet Web site: (*http://www.nsgo.seagrant.org/SGDirectorws.html*). Applications sent to the NSGO should be addressed to: National Sea Grant Office, R/SG, Attn: Mrs. Geraldine Taylor, Applications Processing, Room 11732, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (telephone number for express mail applications is 301–713–2445). Facsimile transmissions and electronic mail submission of applications will not be accepted.

IX. Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917) are applicable to this solicitation. However, please note that the Department will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget in light of a court opinion which found that the Executive Order was not legally authorized. *See Building and Construction Trades Department* v. *Allbaugh*, 172 F. Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202. The **Federal Register** notice also lists the forms required to complete the standard Department of Commerce grant application package, but those forms will be required only for those applicants who have been recommended for funding. For projects selected in Sea Grant states, the Sea Grant Program will prepare and submit these forms on behalf of all projects selected from that state.

Unsuccessful applications will be held in the National Sea Grant Office for a period of five (5) years and then destroyed. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of

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Historically Black Colleges and Universities (HBCU), Hispanic Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Servicing Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed at the following Internet Web site: *http://www.ed.gov/offices/OCR/minorityinst.html.*

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of NOAA Forms 90–2 and 90–4, or equivalents, has been approved by OMB under the control number 0648–0362. Public reporting burden for these collections of information is estimated to average 20 minutes for a NOAA Form 90–2 and 15 minutes for a NOAA Form 90–4. These response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to the National Sea Office (*see* the **FOR FURTHER INFORMATION CONTACT** section).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

X. Classification

It has been determined that this notice is not significant for purposes of Executive Order 12866. It has been determined that this notice does not contain policies with Federalism implications as that term is defined in EO 13132.

Dated: August 5, 2002.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

Dated: August 2, 2002.

John E. Herring,

Acting Director, Office of Science and Technology, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 02–20220 Filed 8–8–02; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990125030–2149–03]

RIN 0648–ZA56

Sea Grant National Strategic Investments in Aquatic Nuisance Species, Oyster Disease, and Gulf of Mexico Oyster Industry: Request for Proposals for FY 2003

AGENCY: National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the National Sea Grant College Program (Sea Grant) is entertaining preliminary proposals and subsequently full proposals for National Strategic Investments in the following three programs:

(1) The Aquatic Nuisance Species Program, which seeks to fund research and outreach projects for the prevention and control of introduction and spread of aquatic nuisance species.

(2) The Oyster Disease Program, which seeks to fund innovative research that provides technology and management strategies to combat oyster disease and bring about the restoration of oysters and the oyster industry in U.S. Coastal areas.

(3) The Gulf of Mexico Oyster Industry Program, which is a long term, research-based program aimed at assisting the oyster industry in states adjoining the Gulf of Mexico to achieve full economic recovery and sustainable oyster production.

To support projects in the above three programs, Sea Grant expects to provide a total of about $5,600,000, $4,000,000, and $2,000,000 respectively, over a two-year period (FY 2003 and FY 2004). Matching funds equal to a minimum of 50% of the Federal request must be provided. Successful projects, which will have a maximum duration of two years, will be selected through national competitions.

DATES: Preliminary proposals must be received by 5 p.m. (local time) on September 17, 2002. After evaluation at the National Sea Grant Office (NSGO), some proposers will be encouraged to prepare full proposals, which must be received by 5 p.m. (local time) on December 3, 2002. (*See* **ADDRESSES** for where to submit preliminary and full proposals.) Note that applications arriving after these deadlines will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery to the address listed below (*See* **ADDRESSES**) prior to the specified closing date and time; in any event, applications received later than two business days following the closing date will not be accepted. Facsimile transmissions and electronic mail submission of proposals will not be accepted. It is anticipated that funding decisions will be made by March 2003, and that successful applicants will be able to initiate projects approximately June 1, 2003.

ADDRESSES: Preliminary proposals and full proposals originating in Sea Grant states must be submitted to the state Sea Grant Program. The following are Sea Grant states: Alabama; Alaska; California; Connecticut; Delaware; Florida; Georgia; Hawaii; Illinois, Indiana, Louisiana; Maine; Maryland; Massachusetts; Michigan; Minnesota; Mississippi; New York; New Hampshire; New Jersey; North Carolina; Ohio; Oregon; Pennsylvania; Puerto Rico; Rhode Island; South Carolina; Texas; Vermont; Virginia; Washington; Wisconsin. Preliminary proposals and full proposals originating elsewhere may be submitted either to the nearest Sea Grant Program or directly to the NSGO. The addresses of the Sea Grant College Program directors may be found on Sea Grant's home page (*http://www.nsgo.seagrant.org/SGDirectors.html*) or may also be obtained by contacting the NSGO. Preliminary proposals and full proposals submitted to the NSGO should be addressed to: National Sea Grant Office, R/SG, Attn: Mrs. Geraldine Taylor, Proposal Processing, Room 11732, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (telephone number for express mail applications is 301–713–2445).

FOR FURTHER INFORMATION CONTACT: Dorn Carlson (Program Director for Aquatic Nuisance Species), or Dr. James McVey (Program Director for Oyster Programs) at the National Sea Grant Office, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Tel. (301) 713–2435; e-mail: *Dorn.Carlson@noaa.gov; Jim.McVey@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Program Authority

Authority: 33 U.S.C. 1121–1131.

(Catalog of Federal Domestic Assistance Number: 11.417, Sea Grant Support).

II. Description of Programs

A. Aquatic Nuisance Species Research and Outreach Program

Background

Invasions of nonindigenous species are increasing in frequency and causing substantial damage to the Nation's environment and economy. Although the most prominent of these has been the zebra mussel, many other nonindigenous species have been introduced and have truly become a nationwide problem that threatens many aquatic ecosystems. While some intentional introductions may have had beneficial effects, there are many other nonindigenous species already present in U.S. waters, or with the potential to invade, that may cause significant damage to coastal resources and the economies that depend upon them. In response, the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 *et seq.*) established a framework for the Nation to address the problems of aquatic nuisance species (ANS) invasions of coastal and Great Lakes ecosystems.

Although problems such as the zebra mussel and the sea lamprey within the Great Lakes have received the most attention, invasions of nonindigenous species in coastal marine environments are an increasing and serious threat. The National Invasive Species Act of 1996 (16 U.S.C. 4711–4714) recognized this by calling for Federal funding to support aquatic nuisance species prevention and control along the Nation's marine coast.

Funding Priorities and Availability

The National Sea Grant College Program encourages proposals for research and outreach to prevent and control ANS invasions that address one or more of the following program areas:

(1) Biology and Life History: Basic biological research into population dynamics, genetics, physiology, behavior, and parasites and diseases of nonindigenous species with the potential to lead to the development of ecologically safe, effective, and inexpensive control. Research on the ecological and environmental tolerances of nonindigenous species with the potential for prediction of eventual geographic and ecological impacts.

(2) Effects on Ecosystems: Research on the impacts of nonindigenous species at each stage of their life history with the potential for helping natural resource managers determine how to minimize the impacts on established biota and their habitats.

(3) Socioeconomic Analysis: Costs and Benefits: Research on the potential impacts of nonindigenous species on human health in terms of spread of disease, concentration of pollutants, and contamination or purification of drinking water sources. Economic impact on sport, commercial and tribal fisheries, the recreation and tourism industry, the shipping and navigation industry, and municipal and industrial water users. Use of research results to provide a scientific basis for developing sound policy and environmental law, and for public education and technology transfer.

(4) Control and Mitigation: Research into various types of control—engineering (redesigning water intakes, *etc.*), physical (scraping, filtering, *etc.*), chemical (biocides, antifoulants, *etc.*), biological (parasites, predators, *etc.*), and physicochemical (heat, salinity, pH, *etc.*)—to develop selective, effective controls that minimize adverse ecological/environmental impacts. Outreach activities that will transfer these technologies to the appropriate users.

(5) Preventing New Introductions: Research and outreach into identifying vectors of ANS introduction, developing cost-effective, realistic methods of prevention, and transferring the information to appropriate users. In particular, research to develop, or support the development of, workable and effective methods to reduce or eliminate nonindigenous species introductions by shipborne pathways such as ballast water or hull fouling, without imposing undue hardships on the shipping industry.

(6) Reducing the Spread of Established Populations: Research and outreach to identify mechanisms for further dispersal of individual established species that will lead to the development of safeguards and protocols to prevent and/or slow the spread of nonindigenous species to uninfested areas, and transfer of that information to appropriate users.

Potential investigators are encouraged to review the list of recent and currently funded Sea Grant projects related to Aquatic Nuisance Species that is available on Sea Grant's Aquatic Nuisance Species Web page (*www.nsgo.seagrant.org/research/nonindigenous*). In addition, regional priorities have been developed by some Regional Panels of the Aquatic Nuisance Species Task Force and in some State ANS Management Plans. Not all regions of the country have regional panels, however, and not all panels have published research and outreach priorities; and not all states have State ANS Management Plans, and not all State ANS Management Plans contain research and outreach priorities. Further information on Aquatic Nuisance Species Task Force Committees, Regional Panel sand State ANS Management Plans can be found at the Internet Web site, *http://www.ANSTaskForce.gov/.*

About $5,600,000 will be available from the National Sea Grant College Program to support these projects in FY 2003 and FY 2004, depending on the overall funding appropriation for the National Sea Grant College Program. Of this amount, about 70% of the funds will go to support reach projects and about 30% for outreach activities. Projects can be for a maximum of two years' duration.

Sea Grant funding will be limited to $150,000 per year. Each proposal must include additional non-Federal matching funds equivalent to at least 50% of the Federal funds requested; for example, a proposal requesting a total of $200,000 in Federal support for two years would have to include at least an additional $100,000 in matching funds.

B. The Oyster Disease Program

Background

The Oyster Disease Research Program has been in operation for nearly 10 years and has made significant accomplishments in the areas of disease diagnosis, immune system function of oysters, range and virulence of existing diseases, modeling and prediction of oyster diseases in the natural environment, oyster disease resistance through genetic selection and a variety of other technologies. Even though significant scientific information has been obtained through this work and we now have an oyster that has improved performance and survivability under field conditions; disease episodes can still be severe enough to prevent the culture and natural recovery of oysters. More research is clearly needed to improve the survivability of oysters in US coastal waters and to improve technology for disease management and control.

Primary consideration for funding will be given to proposals which address the specific priorities listed

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below. These priorities, originally determined at a national workshop in January, 1995 and further refined at the Oyster Disease Research Program session during the International Shellfish Restoration Conferences in 1996 and 2000, and at other programmatic and scientific reviews in 2001 and 2002, are not listed in any implied order of importance:

(1) Design, apply and evaluate disease management strategies and their effectiveness for enhanced natural and aquaculture production. There are many issues related to establishment of oyster sanctuaries, configuration of commercial oyster beds, oyster aquaculture, use of non-native oyster species, remote setting, use of natural seed, bottom cleaning before setting, cultch type, etc., which should be addressed as related to the impacts and management of disease. Activities that involve private sector, state restoration programs and extension/outreach in the implementation of research results and field trials using diagnostic methods, and other disease related technology and information for improved oyster disease management or oyster culture are appropriate under this priority.

(2) *Parasite life cycles and the dynamics and mechanisms of transmission:* investigations of selected aspects of the life cycles of oyster pathogens, especially MSX and *Perkinsus*, and the dynamics/mechanisms of disease transmission among hose organisms.

(3) *Host-parasite interactions:* investigations which determine how pathogens avoid host defense mechanisms, biochemically characterize *Perkinsus* strains, determine factors which confer virulence to *Perkinsus* strains, determine mechanisms of infection/entry into the host, or compare disease processes in oyster species are being sought.

(4) *Mechanisms of disease resistance:* continued emphasis is placed on studies concerning cellular/molecular mechanisms of disease infection and resistance in Crassostrea spp. and studies which determine the mechanisms of immune response in oysters. In addition, analysis of host defense factors, the development of molecular markers of disease and stress resistance, the development of immunostimulants, the application of chemotherapeutics, and the identification of pathogen virulence and resistance mechanisms are needed; as are studies comparing resistance among diploid and polyploid oysters.

(5) *Development and application of diagnostic methods for all oyster diseases:* this program has already developed many diagnostic techniques for several disease organisms and new proposals will be expected to show a significant improvement over the techniques already developed.

(6) *Environmental influences on disease and oyster mortality:* proposals which address the influence of biotic and abiotic factors upon host-parasite interactions are high priority. Also, included are studies of the effects of eutrophication and other stresses upon disease dynamics, basic physiological and adaptation processes in both hosts and parasites, the mechanisms of the summer kill phenomenon, relationships between disease progression and climate, and the eco-physiology of *Perkinsus*.

(7) *Taxonomy, phylogeny and population studies of both hosts and parasites:* emphasis continues on studies of variations in populations susceptibility, host resistance and pathogen virulence. Also needed are investigations of the genetic structure of both hosts and parasites.

(8) *Development and application of selective breeding strategies:* we are seeking studies which develop molecular/biochemical markers for breeding resistance into oysters, as well as genome analysis and gene transfer techniques related to disease resistance. Evaluation of non-native oyster species genomes with regard to disease resistance under aquaculture conditions will also be considered.

(9) *Development and testing of geographic and mathematical models to improve understanding of disease dynamics:* a basic model now exists and new work in this area must clearly state how additional investment will take us to an even better level of prediction or disease management.

About $4,000,000 is available from the National Sea Grant College Program to support research projects in FY 2003 and FY 2004, depending on the overall funding appropriation for the National Sea Grant College Program.

Sea Grant funding will be limited to $200,000 per year. Each proposal must include additional non-Federal matching funds equivalent to at least 50% of the Federal funds requested; for example, a proposal requesting a total of $200,000 in Federal support for two years would have to include at least an additional $100,000 in matching funds.

C. The Gulf of Mexico Oyster Industry Program

Background

The Gulf Oyster Industry Program was created as a result of information provided by Gulf oyster industry leaders, state resource managers, and academic researchers spanning the five-state Gulf region. Specific needs identified by these individuals were subsumed into 12 concise issue statements as a result of a workshop held in New Orleans, Louisiana in 1997 and reaffirmed in 2000. This list of research and extension needs and proposed responses was presented to a select Industry Advisory Panel at the Gulf Oyster Industry Program Workshop conducted in New Orleans, La., on February 28, 1998, and again in 2000 the group was asked to establish research priorities based on that framework. Through an ensuing discussion, the high-priorities were delineated as shown below:

(1) *At-Risk Consumer Education and Evaluation:* proposals that will develop, implement and/or evaluate a *Vibrio vulnificus* Education Program, including, but not limited to: at-risk consumer foundations and associations, pharmacies, alcohol treatment centers, wound infection issues, media relations, and public perceptions.

(2) *Human Pathogenic Organisms:* raw oysters have the potential to cause human illness due to the presence of naturally occurring opportunistic pathogens (*e.g., Vibrio vulnificus*), naturally occurring pathogens that become a concern only when present at elevated levels (*e.g., Vibrio cholera* or *Vibrio parahaemolyticus*), and pathogens which are related to contaminated growing areas (*e.g.,* Norwalk and Norwalk-like viruses, *Salmonella* sp. and *Shiqella*). This potential has created a perception the consumption of raw oysters places a large number of people at risk of contracting illnesses from opportunistic bacteria, toxins, and viruses. This RFP also seeks proposals that will develop new means of treating shell stock to eliminate human pathogens, and, develop or investigate new technology, such as ionized water, for depurating oysters of human pathogens.

(3) *Post-Harvest Treatment (PHT) Process Evaluation and Education:* proposals that will develop and evaluate PHT demonstration projects, including, but not limited to, providing PHT product in demonstration projects to wholesalers & retailers, and, conducting economic analyses regarding the changes to current handling and processing practices.

(4) *Consumer Attitudes and Preferences:* the oyster industry and regulators lack knowledge concerning the attitudes, preferences, and other characteristics of potential oyster consumers. Learning about consumers' attitudes and preferences will help increase demand for new PHT and traditional oyster products. This RFP seeks proposals that will determine oyster consumer demographics, consumption patterns, attitudes and preferences, develop media-relations protocol for the oyster industry, conduct media-relations workshops for the Gulf oyster industry to improve communication skills, develop media-relations protocol or decision tree for researchers and state regulatory personnel, and, determine the characteristics of the market for Gulf oysters, including sales (region, size of establishment, average sales, *etc.*), distribution, and product forms. Investigators should be aware that any surveys must be approved under the Paperwork Reduction Act before they are carried out, a process that may delay the start of those projects by up to six months.

(5) *Harmful Algal Blooms (HAB)Red Tide:* HAB cause lengthy public health closures of shellfish growing waters, halting production for weeks and causing severe economic hardship in the impacted area. This RFP seeks proposals to develop rapid detection methods for toxic marine algae, especially *G. breve*, conduct HAB research advisory and outreach activities in the Gulf states, and conduct a workshops for state and Federal shellfish managers. sanitation personnel and researchers to include new monitoring, diagnostic, and management protocols for use in the reopening of shellfish growing waters closed by HAB.

(6) *Economic and Legal Impacts of Regulatory Action:* the regulation of molluscan shellfish is unique from all other foods. Regulatory action either by state of Federal public health agencies, and subsequent news media responses can have severe economic and legal impacts on the harvesting, processing and marketing of shellfish, such as Gulf oysters. This RFP seeks proposals that analyze the effects of inaccurate media reports on sales, the delisting of a processor or state from the Interstate Certified Shellfish Shippers List, the ramifications from product disparagement, and/or, the impact of the oyster and support industries on demand for labor and the coastal economies of the Gulf region.

(7) *Coastal Restoration/Freshwater Diversion:* coastal land loss, deterioration of estuarine habitat, and coastal restoration programs, *e.g.,* freshwater diversions and sedimentation projects, and causing widespread dislocations and conflicts with established oyster-producing operations. This RFP seeks proposals that educate oyster men, public officials, and citizens regarding the economic and environmental role of the oyster industry and the economic costs of displacing and relocation oyster bedding operations, and/or, conduct demonstration projects for oyster farmers to show them the best strategy to relocate their oyster farms that are damaged by coastal restoration projects.

(8) *Labor and Mechanization:* the traditional labor base that supports oyster growing, harvesting, and processing is shrinking rapidly, with consequently declining production and increased costs. This RFP seeks proposals that investigate and develop cost-effective mechanized approaches to oyster harvesting and processing, including, but not limited to, developing new means to package and handle oyster shell stock and shucked oysters, including large re-usable, low-cost containerization of shell stock for vessels to trucks, handling equipment to move large containers of shell stock; and, cheaper containers for shucked oysters.

(9) *Oyster Diseases:* oyster diseases are having a major impact on Gulf Coast oyster stocks and for the most part this topic will be covered under the Oyster Disease topic in this solicitation. However, oyster disease research specific to the Gulf Coast will be considered in this solicitation.

(10) *Genetics and Oyster Hatchery technology:* these technologies are needed to develop cost-effective hatchery/nursery operations to augment wild oyster production with specialized strains or help create oyster aquaculture operations. This RFP seeks proposals that develop polyploid broodstock for the Gulf Coast, disease resistant transgenic oysters, and/or, address practical problems which may be common to oyster production in general, but especially acute in a farming situation, *e.g.,* biofouling, predation, disease, *etc.*

About $2,000,000 is available from the National Sea Grant College Program to support research projects in FY 2003 and FY 2004, depending on the overall funding appropriation for the National Sea Grant College Program.

Sea Grant funding will be limited to $200,000 per year. Each proposal must include additional non-Federal matching funds equivalent to at least 50% of the Federal funds requested; for example, a proposal requesting a total of $200,000 in Federal support for two years would have to include at least an additional $10,000 in matching funds.

III. Eligibility

Eligible applicants are individuals, institutions of higher education, other nonprofits, commercial organizations, international organizations, state, local and Indian tribal governments. Directors of the State Sea Grant Programs are not eligible to compete for funds under this announcement.

IV. Evaluation Criteria

The evaluation criteria for proposals submitted for support under these three programs are:

A. Impact of Proposed Project (50%)

Significance of the problem addressed; impacts/benefits expected to the nation as a consequence of the project; degree to which the activity will advance the state of the science or discipline; potential for technology transfer to user groups such as industry and/or for enhanced economic, scientific, educational, or management value.

B. Project Design (50%)

Appropriateness of methodologies to be used; advanced synthesis of existing information; use or extension of state-of-the-art methods; qualifications of the investigators (education, training, and/or experience and record of achievement with previous funding); the degree to which multiple investigators, other Federal agencies, and potential users of the results of the proposed activity have been involved in planning the activity and/or will be involved in the execution of the activity, as appropriate; proposed project schedule (timeline).

V. Selection Procedures

Preliminary proposals will be reviewed at the NSGO by panels composed of government, industry, and academic experts. The panels will be asked to assess each preliminary proposal according to the evaluation criteria. The panels will make individual recommendations to the NSGO regarding which preliminary proposals may be suitable for further consideration. On the basis of the panels' recommendations, the Director of the NSGO will advise proposers whether or not the submission of full proposals is encouraged. Invitation to submit a full proposal does not constitute an indication that the proposal will be funded. Interested parties who submitted preliminary proposals in accordance with the procedure described in this notice may, if they wish, submit full proposals even if the Director of the NSGO does not encourage full proposal submission.

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Individual state Sea Grant Programs receiving full proposals will conduct the mail peer review of the proposed projects in accordance with the Evaluation Criteria listed above. Complete proposals (12 copies) and copies of the mail reviews will then be sent by the state Sea Grant programs to the National Sea Grant Office. The NSGO will conduct mail reviews for proposals submitted directly to it by applicants not in Sea Grant states.

Each proposal will be scored in accordance with the assigned weights of the above evaluation criteria by an independent peer review panel consisting of government, academic, and industry experts. These panel members will provide individual evaluations on each proposal; thus there will be no consensus advice. Their recommendations and evaluations will be considered by the NSGO in the final selection. Only those proposals awarded an average score of 50% or greater by the panel will be eligible for funding. For those proposals, the NSGO will: (a) Ascertain which proposals best meet the program priorities (stated in Section II), and do not substantially duplicate other projects that are currently funded or are approved for funding by NOAA and other Federal agencies, hence, awards may not necessarily be made to the highest-scored proposals; (b) select the proposals to be funded; (c) determine which components of the selected projects will be funded; (d) determine the total duration of funding for each proposal; and (e) determine the amount of funds available for each proposal. Investigators may be asked to modify objectives, work plans, or budgets prior to final approval of the award. Subsequent grant administration procedures will be in accordance with current NOAA grants procedures. Note that only one award will normally be made for each project; if multiple institutions are involved, they should be handled through subawards and contracts. A summary statement of the scientific review by the peer panel will be provided to each applicant.

VI. Instructions for Application

A. General Requirements

The ideal project attacks a well-defined problem that will be or is a significant societal, research, or technology development and transfer issue. The organization or people whose task it will be to make related decisions or who will be able to make specific use of project results will have been identified and contacted by the Principal Investigator(s). The proposal demonstrates an understanding of what constitutes necessary and sufficient information for responsible decision-making or for applied use, and shows how that information will be provided by the proposed activity or in concert with other planned activities.

Proposals are expected to have: a rigorous, hypothesis-based scientific work plan, or a well-defined, logical approach to address an engineering problem or outreach opportunity; a strong rationale for the proposed work; and a clear relationship with the ultimate users of the information. Projects undertaken jointly with industry, business, multiple investigators, or other agencies with interest in the problem are encouraged. Their contribution to the project may be in the form of collaboration, in-kind services, or dollar support. Projects that are solely monitoring efforts are not appropriate for funding. Proposals that incorporate educational, outreach, socioeconomic, and management components and applications will be viewed favorably.

To prevent the expenditure of effort that may not be successful, proposers must first submit preliminary proposals; following review by the NSGO, these proposers may subsequently submit full proposals. Full proposals submitted by applicants who do not first submit a preliminary proposal will be returned without review. Applications may be made for Federal funds to support up to two-thirds of the total budget. Allocation of matching funds, equal to at least one-third of the total budget (in other words, at least 50% of the Federal request), must be specified. No more than $150,000 of Federal Sea Grant funds per year will be awarded to an Aquatic Nuisance Species project. No more than $200,000 of Federal Sea Grant funds per year will be awarded to an Oyster Disease or Gulf of Mexico Oyster Industry project. The maximum duration for funded projects will be two years. Awards may be made either as grants or, if there is substantial involvement by one or more Federal agencies, as cooperative agreements. Examples of substantial involvement may include collaboration in research, participation in selection of key personnel, or approval of key stages in the project before subsequent steps are undertaken. Investigators are encouraged to review the budgeting and grant-making policies of their state's Sea Grant Program, if any, before finalizing their proposal submissions.

B. How To Submit

Interested parties must submit applications (preliminary and full proposals) as follows. Applications originating in one of the Sea Grant states must be submitted to the state's Sea Grant College Program, which will submit the final grant application to the NSGO. Applications originating in a state with no Sea Grant College Program may be submitted to the nearest state Sea Grant College Program which will then submit the final grant application to the NSGO, or the application may be submitted directly to the NSGO. Twenty (20) copies of preliminary proposals and proposals must be submitted to the state Sea Grant Programs or to the NSGO according to the schedule outlined below (See "Timetable"). The addresses of the Sea Grant College Program directors may be found on Sea Grant's World Wide Web home page (*http://www.nsgo.seagrant.org/SGDirectors.html*) or may also be obtained by contacting Mr. Joseph Brown at the NSGO (phone: 301–713–2438 x135 or e-mail: *joe.brown@noaa.gov*). Preproposals and proposals sent to the NSGO should be addressed to: National Sea Grant Office, R/SG, Attn: Ms. Geri Taylor, Proposal Processing, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (phone 301–713–2435 for express mail applications). Facsimile transmissions and electronic mail submission of applications will not be accepted.

C. Timetable

September 17, 2002, 5 p.m. (local time)—Preliminary proposals (20 copies) must be received by state Sea Grant Program, or by NSGO if application is being submitted by an institution in a non-Sea Grant state.

September 24, 2002, 5 p.m. EDT—Preliminary proposals (18 copies) due at NSGO from state Sea Grant Programs.

December 3, 2002, 5 p.m. (local time)—Full proposals (20 copies) must be received by state Sea Grant Program, or by NSGO if application is being submitted by an institution in a non-Sea Grant state.

December 10, 2002, 5 p.m. EST—Full proposals (12 copies) due at NSGO from state Sea Grant Programs.

February 15, 2003, 5 p.m. EST—State Sea Grant Programs forward reviews received to NSGO.

June 1, 2003 (approximate)—Funds awarded to selected recipients; projects begin.

Note that applications arriving after the closing dates given above will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery to the appropriate address (*see* **ADDRESSES**) prior to the specified closing date and time; in any event, applications received by the NSGO or the state Sea Grant programs later than two business days following the closing date will not be accepted.

D. What To Submit

Preliminary Proposal Requirements

Preliminary proposals must be printed on metric A4 (210 mm x 297 mm) or 8.5″ x 11″ paper with at least a 10-point font. The following information should be included:

1. Signed Title Page: The title page must be signed by the Principal Investigator and should clearly identify the program to which the proposal is submitted by starting the project title with "Sea Grant Aquatic Nuisance Species Research Program," "Sea Grant Aquatic Nuisance Species Outreach Program," "Sea Grant Oyster Disease Program" or "Sea Grant Gulf of Mexico Oyster Industry Program" (as appropriate). Principal Investigators and collaborators should be identified by affiliation and contact information. The total project costs (Federal funds being requested and matching funds) should be listed as well as the source of the matching funds. Preliminary proposals must include matching funds equivalent to at least 50% of the Federal funds requested.

2. A concise (2-page limit) description of the project, its experimental design, its expected output or products, the anticipated users of the products, and its anticipated impact. Proposers should consult the Evaluation Criteria for additional guidance in preparing the preliminary proposals.

3. Resumes (1-page limit) of the Principal Investigators.

4. Proposers are encouraged (but not required) to include a separate page suggesting reviewers that the proposers believe are especially well-qualified to review the proposal. Proposers may also designate persons they would prefer not review the proposal, indicating why. These suggestions will be considered during the review process.

No institutional signatures or Federal government forms are needed while submitting preliminary proposals.

Full Proposal Requirements

All pages must be printed on metric A4 (210 mm x 297 mm) or 8.5″ x 11″ paper with at least a 10-point font. Each full proposal should include the items listed below. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 15 pages. Tables and visual materials, including charts, graphs; maps, photographs and other pictorial presentations are included in the 15-page limitation; literature citations and letters of support are not included in the 15-page limitation. No appendices are permitted. Applicants may obtain all required application forms through the World Wide Web at *http://www.nsgo.seagrant.org/research/index.html* and *http://www.ofa.noaa.gov/-grants/pdf/*, from the state Sea Grant Programs, or from Mr. Joseph Brown at the National Sea Grant Office (phone: 301–713–2438 x135 or e-mail: *joe.brown@noaa.gov*).

1. *Signed Title Page:* The title page must be signed by the Principal Investigator and should clearly identify the program to which the proposal is submitted by starting the project title with "Sea Grant Aquatic Nuisance Species Research Program," "Sea Grant Aquatic Nuisance Species Outreach Program," "Sea Grant Oyster Disease Program" or "Sea Grant Gulf of Mexico Oyster Industry Program" (as appropriate). The total amount of Federal and matching funds being requested for each project year must be listed.

2. *Project Summary:* The project summary should concisely describe the activity being proposed and the impact that would result from its successful completion, in a form suitable for publication. Applicants are encouraged to use the Sea Grant Project Summary Form 90–2, but may use their own form as long as it provides the same information as the Sea Grant form. The project summary should include: A. *Title:* Use the exact title as it appears in the rest of the application. B. *Investigators:* List the names and affiliations of each investigator who will significantly contribute to the project, starting with the Principal Investigator. For graduate fellowships, the faculty advisor or the state Sea Grant Director may be used. C. Funding request for each year of the project, including matching funds if appropriate. D. *Project Period:* Start and completion dates. Proposals should request a start date of June 1, 2003. E. *Project Abstract:* This should include the rationale for the proposed activity, the scientific or technical objectives and/or hypotheses to be tested, and a brief summary of the work to be completed.

3. Project Description (15-page limit):

a. *Introduction/Background/Justification:* Subjects that the investigator(s) may wish to include in this section are: (1) Previous fundamental research, including relevant work funded by Sea Grant, and a description of what additional work is needed to enhance the value of that work; and (ii) impacts of the study to the particular discipline or subject area.

b. *Research or Technical Plan:* (i) Objectives to be achieved, hypotheses to be tested; (ii) Experimental design and statistical analysis to be used; (iii) Plan of work, detailed methodology, collaboration with industry or other user groups (if appropriate), and a timetable for project activities; and (iv) Role of project personnel.

c. *Output/Anticipated Economic Benefits:* These may be measured in many ways. To the extent possible, proposers are urged to devise appropriate metrics to quantify the benefits. Examples of metrics may include patents or licenses; commercializable new products (*e.g.* products or equipment used to remove aquatic nuisance species from ballast water or to harvest and process oyster products), oyster disease diagnostics and control technologies, improved oyster survivals, creation of successful oyster restoration programs, process improvements, corporate investments in oyster technologies or academic research efforts; private sector job opportunities; number of end users or persons affected by the projects long-term goals, etc.

d. *Coordination with other Program Elements:* Describe any coordination with other agency programs or ongoing research efforts. Describe any other proposals that are essential to the success of this proposal.

e. *References and Literature Citations:* Should be included but will not be counted in the 15-page project description limit.

4. *Budget and Budget Justification:* There should be a separate budget for each year and one cumulative budget for the entire project. Applicants are encouraged to use the Sea Grant Budget Form 90–4, but may also use their own form as long as it provides the same information as the Sea Grant form. Subawards and contracts should have a separate budget page. Matching funds must be indicated. The budget should include a separate budget justification page that itemizes all budget items in sufficient detail to enable reviewers to evaluate the appropriateness of the funding requested, and indicates the source for all matching funds. Please pay special attention to any travel, supply or equipment budgets and provide details. Note that only one award will normally be made for each project; if multiple institutions are involved, they should be handled through subawards and contracts with all necessary indirects costs included in the original budget submission.

Investigators are strongly advised to consult with and follow any budgeting guidelines available through their state's

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Sea Grant Program. Local institutional policies may affect how a project budget should be submitted, and what may be included (*i.e.*, application of indirect costs, availability of fellowships, and other restrictions or cost-saving opportunities). Proposals generated from Sea Grant states must follow local guidelines, if any. In no case will proposals be funded at a level which exceeds the funding limitations as set in this announcement.

5. *Current and Pending Support:* Applicants must provide information on all current and pending Federal support for ongoing projects and proposals, including subsequent funding in the case of continuing grants. The relationship between the proposed project and these other projects should be described, and the number of person-months per year to be devoted to the projects must be stated.

6. Vitae (2 pages maximum per investigator).

7. *Research Protocol (if appropriate):* Research activities funded under this program must not accelerate the spread of nonindigenous species to non-infested watersheds. Therefore, investigators studying any nonindigenous species whose laboratories or research study sites are in currently uninfested areas must develop protocols for handling the particular nonindigenous species that will prevent its release into the environment. As part of the plan of action, the investigator must detail these protocols and explain how the proposed work will be accomplished while safeguarding the environment. The research protocol will be reviewed by an interagency committee created under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 *et seq.*). Guidelines for developing suitable protocols are available through the internet Web site *http://www.ANST askForce.gov/resprot.htm#*, or from Dorn Carlson (listed in **FOR FURTHER INFORMATION CONTACT**, above). Proposals lacking a suitable protocol will not be eligible for funding.

8. Letters of commitment and letter of support from any industry or other partner, if appropriate.

VII. Other Requirements for Successful Applicants

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the Federal Register Notice of October 1, 2001 (66 FR 49917) are applicable to this solicitation. However, please note that the Department will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget in light of a court opinion which found that the Executive Order was not legally authorized. *See Building and Construction Trades Department* v. *Allbauth*, 172 F. Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202. The Federal Register notice also lists the forms required to complete the standard Department of Commerce grant application package, but those forms will be required only for those applicants who have been recommended for funding. For projects selected in Sea Grant states, the Sea Grant Program will prepare and submit these forms on behalf of all projects selected from that state.

Unsuccessful applications will be held in the National Sea Grant Office for a period of five (5) years and then destroyed. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed at the following Internet Web site: *http://www.ed.gov/offices/OCR/minorityinst.html*.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of NOAA Forms 90–2 and 90–4, or equivalents, has been approved by OMB under the control number 0648–0362. Public reporting burden for these collections of information is estimated to average 20 minutes for a NOAA Form 90–2 and 15 minutes for a NOAA Form 90–4. These response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to the National Sea Grant Office (*see* the **FOR FURTHER INFORMATION CONTACT** section).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

VIII. Classification

It has been determined that this notice is not significant for purposes of Executive Order 12866.

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: July 5, 2002.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 02–20221 Filed 8–8–02; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 073102A]

Western Pacific Fishery Management Council; Public Meeting; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of change of dates of a public meeting.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Community Demonstration Project Program Advisory Panel will convene a public meeting.

DATES: The meetings will be held on Wednesday, August 21, 2002, through Friday, August 23, 2002.

ADDRESSES: The meetings will be held at the Council Office, 1164 Bishop Street, Suite 1400, Honolulu, HI; telephone: 808–522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The initial notification of this meeting was published in the **Federal Register** on August 5, 2002, (67 FR 50632). In the **SUPPLEMENTARY INFORMATION** of the original notice, it stated that the meeting dates were August 22 through August 24, 2002. This notice corrects those dates to read August 21 through August 23, 2002.

All other information previously published remains the same.

Dated: August 6, 2002.

Theophilus W. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20217 Filed 8–8–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Malaysia

August 5, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://www.otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Issuing a directive to the Commissioner of Customs adjusting the limit for Categories 347/348 for carryover and the cancellation of carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63030, published on December 4, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 5, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on August 12, 2002, you are directed to adjust the current limit for Categories 347/348 to 1,003,811 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–20161 Filed 8–8–02; 8:45 a.m.]

BILLING CODE 3510–DR–S

[1] The limit has not been adjusted to account for any imports exported after December 31, 2001.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") has submitted a public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Kimberly Mansaray, at (202) 606–5000, extension 249. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (800) 833–3722 between the hours of 9 a.m. and 5 p.m. Eastern Standard Time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Ms. Brenda Aguilar, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC, 20503, (202) 395–7316, within 30 days from the date of publication in this **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the Corporation's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Description

The AmeriCorps member application will gather data from applicants, including background information, educational history, skills and experience, and a motivational statement that AmeriCorps may use in evaluating their suitability for becoming a member and to place them in the most appropriate program(s) that match their skills and interests. The new application has very few changes from the previously approved application, and if approved, this application will continue to enable applicants to complete one application and be considered for multiple programs within AmeriCorps. This new application will continue to be cost-effective for the government by providing a centralized information source and streamlined process for receiving applications and placing them

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into the proper programs. Therefore, the Corporation seeks approval of its new AmeriCorps Application for Membership.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Application for Membership.

OMB Number: 3045–0054.

Agency Number: None.

Affected Public: Those individuals interested in applying to become a member of any of the AmeriCorps programs, including AmeriCorps*NCCC and AmeriCorps*VISTA, and hundreds of state and local programs located throughout the country which recruit AmeriCorps members.

Total Respondents: Approximately 75,000. (Approximately 50,000 individuals serve each year in AmeriCorps programs; (collection totals are inexact, as almost all completed applications are submitted to local programs and are not sent to the Corporation for National Service).

Frequency: One time. Applicants may make copies of their completed form, and submit copies (each, however, with an original signature) to several different AmeriCorps programs for consideration. In addition, applicants may fill out the same application on line at the Corporation's Web site. Applicants may then send multiple applications to programs electronically.

Average Time Per Response: 45 minutes.

Estimated Total Burden Hours: 56,250 hours. (if 75,000 individuals complete the form per year).

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 5, 2002.

Kimberly Mansaray,

Acting Director, AmeriCorps Recruitment, Selection and Placement.

[FR Doc. 02–20189 Filed 8–8–02; 8:45 am]

BILLING CODE 5050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Establishment of the Pentagon Memorial Design Competition Jury

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice of establishment.

SUMMARY: The Pentagon Memorial Design Competition Jury is being established in consonance with the public interest and in accordance with the provisions of Pub. L. 92463, the "Federal Advisory Committee Act," title 5 U.S.C., App II. The Pentagon Memorial Design Competition Jury will review and evaluate all designs submitted in response to the Baltimore District, Corps of Engineers announcement of the design competition for a Pentagon Memorial to the victims of the September 11, 2001 terrorist attack on the Pentagon. The Jury will make a final recommendation on the Memorial Design to the Secretary of Defense through the Director, Administration and Management, once the evaluation process has been completed.

The Jury will consist approximately 11 members; six preeminent in various design fields, one member of the families of the victims, and four members that have had continuing and long-standing relationships with the Department of Defense and/or other Federal Agencies.

FOR FURTHER INFORMATION: Contact Jerry Shiplett, Special Assistant to the Director, Real Estate and facilities, Washington Headquarters Service on 703–614–9203.

Dated: August 5, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–20125 Filed 8–08–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 9, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection; violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: August 5, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of English Language Acquisitions

Type of Review: Revision.

Title: Application for Grants Under English Language Acquisition and Language Enhancement: Native American and Alaska Native Children in School.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 8,200.

Abstract: The Department of Education needs and uses this information to make grants. The respondents are eligible entities required to provide this information in applying for grants.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2109. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–20167 Filed 8–8–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

August 2, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No: 12207–000.

c. Date Filed: June 6, 2002.

d. Applicant: High Drop Canal Hydro, LLC.

e. Name of Project: High Drop Canal Hydroelectric Project.

f. Location: The proposed project would be located on the V Canal in Churchill County, Nevada. The proposed project would not occupy federal lands or facilities.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442, (208) 745–8630.

i. FERC Contact: Mr. Lynn R. Miles, Sr. (202) 219–2671.

j. Deadline for filing motions to intervene, protests and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12207–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project would consist of: (1) a 108-inch-diameter, 100-foot-long steel penstock, (2) a powerhouse with an installed capacity of 1.6 megawatts, (3) a 15-kv transmission line approximately 2 miles in length, and (4) appurtenant facilities. The project would have an annual generation of 6 GWh.

l. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original

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and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20048 Filed 8–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Withdrawal of the Proposal To Select a Financial Sponsor and Intent To Formulate Power Marketing Policy

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of withdrawal.

SUMMARY: Southeastern Power Administration (Southeastern) is withdrawing the proposal to select a financial sponsor for the upgrade of the Wolf Creek Hydropower Project, Russell County, Kentucky, and withdrawing the Intent to Formulate Power Marketing Policy to market additional capacity from the Wolf Creek Project upgrade, due to its inability to identify a group of sponsors willing to undertake the financial responsibility of rehabilitating and upgrading the Wolf Creek Project.

DATES: Southeastern will accept any comments regarding this withdrawal no later than August 19, 2002.

ADDRESSES: Comments on the withdrawal of the proposal should be sent to: Charles A. Borchardt, Administrator, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711. Telephone: (706) 213–3800.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance and Marketing, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711. Telephone: (706) 213–3800.

SUPPLEMENTARY INFORMATION: Wolf Creek Dam and Lake Cumberland constitute a significant portion of the Cumberland River Reservoir System. The Project, authorized by the Flood Control Acts of 1938 and 1946, is operated to serve flood control, hydropower, recreation, fish and wildlife, and water quality needs. Located at river mile 460.9, the power plant contains six units brought online between 1951 and 1952, and has a total nameplate capacity of 270 megawatts (310 maximum peaking capacity). Average annual generation is 906 gigawatt hours, produced at a plant factor of 38 percent. Federal policy, set forth in the Water Resources Development Act of 1986 (Pub. L. 99–662) with regard to water resource projects, is to encourage each agency to negotiate reasonable private financing for the development of approved project purposes. A Notice of Intent to solicit non-Federal sponsors was published in the **Federal Register** on September 30, 1992, 57 FR 45052.

Southeastern has been unable to identify a group of sponsors willing to undertake the financial responsibility of rehabilitating and upgrading the Wolf Creek Project and has subsequently issued this Notice of Withdrawal.

Dated: August 1, 2002.

Charles A. Borchardt,

Administrator.

[FR Doc. 02–20169 Filed 8–8–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6631–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–BLM–J65240–WY Rating EC2, Pittsburg and Midway (P&M) Coal Mining Proposal (WYW148816), Exchange of Private Owned Land P&M for Federally-Owned Coal, Lincoln, Carbon and Sheridan Counties, WY.

Summary: EPA expressed environmental concerns with impacts to air quality and the potential release of nitrous oxides from open pit blasting operations. The final EIS should address potential impacts to migratory birds, fire risk from coal seam fires on the exchanged lands and impacts from reasonably foreseeable energy development such as the possibility of an adjacent open pit coal mine.

ERP No. D–FHW–J40156–WY Rating EC2, Wyoming Forest Highway 4 U.S. 212 (KP 39.5 to KP 69.4) the Beartooth Highway, A Portion Proposed for Reconstruction begins 7.1 miles east of the Junction of WY–296 (Chief Joseph Highway) and Proceeds East for 18.6 miles to the Wyoming/Montana State Line, Park County, WY.

Summary: EPA expressed environmental concerns and recommended developing additional alternatives to reduce impacts to wetlands and other valuable ecosystems bisected by the Beartooth Highway.

Final EISs

ERP No. F–COE–E39056–FL, Lake Tohopekaliga Extreme Drawdown and Habitat Enhancement Project, Fish and Wildlife Habitat Improvements, Construction, Operation and Maintenance, Osceola County, FL.

Summary: EPA continues to have some significant environmental concerns about the impacts of converting littoral wetland habitat into muck disposal islands.

ERP No. F–DOE–E06019–SC, Savannah River Site, High-Level Waste Tank Closure (DOE/EIS–0303D), Implementation, Industrial Wastewater Closure Plan for the F and H-Area High-Level Waste Tank Systems, Aiken County, SC.

Summary: EPA continues to have environmental concerns about the project. In particular environmental restoration engineered capping, and tank closure issues warrant further discussion as the project progresses.

Dated: August 5, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–20231 Filed 8–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6631–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa.*

Weekly receipt of Environmental Impact Statements

Filed July 29, 2002 Through August 2, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020326, Final EIS, FHW, RI, Sakonnet River Bridge Rehabilitation or Replacement Project, Portsmouth & Tiverton, Newport County, RI , Wait Period Ends: September 9, 2002, Contact: Daniel J. Berman (401) 528–4541.

EIS No. 020327, Draft EIS, AFS, AK, Shoreline Outfitter/Guide Plan, Commercial Permits Issuance for Shoreline-Based Activities on National Forest System Lands, Admiralty Island National Monument, Hoonah, Sitka and Juneau Ranger Districts, Tongass National Forest, AK, *Comment Period Ends:* November 6, 2002, Contact: Bob Dalrymple (907) 747–6671.

EIS No. 020328, Draft EIS, BPA, WA, Grand Coulee-Bell 500-kV Transmission Line Project, Construction and Operation, U.S. Army Corps Section 10 Permit, Douglas, Lincoln, Grant, Spokane Counties, WA, *Comment Period Ends:* September 23, 2002, Contact: Inez Graetzer (503) 230–3786. This document is available on the Internet at: *http://www.bpa.gov.*

EIS No. 020329, Final EIS, NPS, TX, Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument Oil and Gas Management Plan, Hutchinson, Moore and Potter Counties, TX, Wait Period Ends: September 9, 2002, Contact: Karren Brown (806) 857–3151.

EIS No. 020330, Draft EIS, FHW, AR, MS, I–69 Mississippi River Crossing, Construction, from a western terminus at US 65 near McGehee, AR to an eastern terminus at State Highway 1 near Benoit, MS, US Coast Guard Bridge Permit, US Army Corps Section 10 and 404 Permits, NPDES Permit, Desha County, AR and Bolivar County, MS, *Comment Period Ends:* September 27, 2002, Contact: Randal Looney (501) 324–6430.

EIS No. 020331, Draft EIS, FHW, IN, I–69 Evansville to Indianapolis Corridor Study, I–69 Completion in Southwestern Indiana and Corridor Selection, IN, *Comment Period Ends:* November 7, 2002, Contact: Janice Osadczuk (317) 232–5468. This document is available on the Internet at: *http://www.I69indyevn.org.*

EIS No. 020332, Final EIS, FHW, NJ, NJ–52(1) Causeway (known as MacArthur Boulevard) Construction Project, between NJ–9 in Somers Point, Atlantic County to Bay Avenue in Ocean City City, Cape May County, Funding, COE Section 404 and 10 Permits, US CGD Permit, Atlantic and Cape May Counties, NJ, *Wait Period Ends:* September 9, 2002, Contact: Lourdes Castaneda (609) 637–4237.

EIS No. 020333, Draft EIS, AFS, KY, Daniel Boone National Forest Land Exchange Project, Exchanging two Federal Tracts for 98.17 Acres of Privately Owned Land located in Owsley County, Federal Lands to be considered are Tract 107AB(52.15 acres) located on Langdon Branch in Leslie County and Tract 745 (39.96 acres) located on Spicer Fork in Perry County, KY, *Comment Period Ends:* September 30, 2002, Contact: William M. Rock (859) 745–3100. This document is available on the Internet at: *http://www.southenregion.fs.fed.us/boone/ppd.htm.*

EIS No. 020334, Draft EIS, NPS, VA, Jamestown Project, Improvements at the Jamestown unit of Colonial National Park and the Jamestown National Historic Site, Implementation, James City County, VA, *Comment Period Ends:* October 1, 2002, Contact: Alec Gould (757) 898–2401.

EIS No. 020335, Final EIS, AFS, ID, MT, Lookout Pass Ski and Recreation Area (LPSRA) Expansion Project, Implementation, Amendment to the Existing Special Use Permit, NPDES Permit and COE Section 404 Permit, Idaho Panhandles National Forests, Coeur d 'Alene River Range District, ID and MT, *Wait Period Ends:* September 9, 2002, Contact: Glenn Truscott (208) 664–2318.

EIS No. 020336, Final EIS, COE, ID, WA, McNary Reservoir and Lower Snake River Reservoirs, Maintenance of the Authorized Navigation Channel, Dredged Material Management Plan (DMMP), Walla Walla District, Lower Snake River and Columbia River, ID and WA, *Wait Period Ends:* September 9, 2002, Contact: Jack Sands (509) 527–7287.

EIS No. 020337, Final EIS, AFS, OR, Shore 'Nuf Timber Sale, Timber Harvest on the Detroit Ranger District, Willamette National Forest, Linn and Marion Counties, or, *Wait Period Ends:* September 9, 2002, Contact: Jim Romero (503) 854–4212. This document is available on the Internet at: *http://www.fs.fed.us/r6/williamette/manage/nepa/current_detroit.html.*

EIS No. 020338, Final EIS, NAS, CA, Programmatic EIS—NASA Ames Development Plan (NADP) for Ames Research Center, New Research and Development Uses, Implementation, San Francisco Bay, Santa Clara County, CA, *Wait Period Ends:* September 9, 2002, Contact: Sandy Olliges (650) 604–3355. This document is available on the Internet at: *http://www.researchpark.arc.nasa.gov.*

Amended Notices

EIS No. 020249, Draft EIS, NPS, MO, Wilson's Creek National Battlefield General Management Plan, Implementation, Battle of Wilson's Creek Commemoration and Associated Battlefield Preservation, Greene and Christian Counties, MO, *Comment Period Ends:* August 20, 2002, Contact: Dick Lusardi (417) 732–2662. Revision of FR Notice Published on 6/21/2002: CEQ Comment Period Ending 8/5/2002 has been Corrected to 8/20/2002.

Dated: August 5, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–20232 Filed 8–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0045; FRL–7193–2]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on September 10–12, 2002, in Washington, DC. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: Benzene; carbon disulfide; 1,4-dioxane; hydrogen bromide; methylene chloride; vinyl chloride; continued review

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chlorine trifluoride and toluene. The NAC/AEGL Committee will also review comments from the National Academy of Sciences Subcommittee for AEGLs for the chemicals: Allyl amine; boron trifluoride; chlorine; chlorine dioxide; chlorotrimethyl silane; dimethyldichloro silane; G-Agents; HFE-7100; hydrogen sulfide; methyl mercaptan; methyl trichlorosilane; perchloromethyl mercaptan; 2,4- and 2,6- toluene diisocyanate; and VX.

DATES: The meeting of the NAC/AEGL Committee will be held from 10 a.m. to 5 p.m. on September 10, 2002; from 8:30 a.m. to 5 p.m. on September 11, 2002; and from 8:30 a.m. to noon on September 12, 2002.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, 1201 Constitution Ave., NW. (Corner of 12th St. and Constitution Ave., NW., Old Interstate Commerce Commission Bldg.), Room 1117, Washington, DC (Federal Triangle Metro stop). Visitors must bring a photo ID for entry into the building and must contact the Designated Federal Officer (DFO) to have their names added to a security entry list.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul S. Tobin, DFO, Office of Prevention, Pesticides and Toxic Substances (7406), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564 –8557; e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPPT–2002–0045. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Non confidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

II. Meeting Procedures

For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

The meeting of the NAC/AEGL Committee is open to the public. Oral presentations or statements by interested parties are limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations or submission of written statements or chemical-specific information should be directed to the DFO.

III. Future Meetings

Another meeting of the NAC/AEGL Committee is tentatively scheduled for December 2002.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: August 5, 2002.

William H. Sanders, III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 02–20228 Filed 8–8–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7257–3]

EPA Science Advisory Board Notification of Public Advisory Committee Teleconference Meeting of the Clean Air Scientific Advisory Committee

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) Particulate Matter (PM) Review Panel will meet via public teleconference on Wednesday, August 28, 2002. For those in the Washington DC metro area, the meeting will be hosted out of the SAB Conference Room (Room 6013, USEPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20004). The meeting will begin at 11 a.m. and adjourn no later than 2 p.m. Eastern Time. This meeting is open to the public; however, seating and teleconference lines are limited and available on a first come basis. Information on how to access the meeting via conference call is available from Ms. Zisa Lubarov-Walton (see contact information below). *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

Purpose of the Meeting

The CASAC PM Review Panel will be briefed by Agency staff on plans to address issues raised at the July 18–19, 2002 Panel meeting (see 67 FR 41722, June 19, 2002 for details of that meeting). At that meeting, the Panel conducted a *peer review* of the EPA Air Quality Criteria for Particulate Matter (Third External Review Draft) prepared by EPA's National Center for Environmental Assessment (NCEA).

The focus of this meeting is for the EPA to (a) inform the Panel of its plans to coordinate the process of updating recent research identified at the July 18–19, 2002 meeting; (b) make necessary changes to the draft document (EPA Air Quality Criteria for Particulate Matter—Third External Review Draft); and (c) estimate the future review schedule for the revised draft document.

Availability of Review Materials

The draft review document (reviewed on July 18–19, 2002), EPA Air Quality Criteria for Particulate Matter (Third External Review Draft) assesses the latest available scientific information on the effects of airborne particulate matter (PM) on human health and welfare. To obtain a copy of the draft document, or to obtain further information concerning this document, please refer to 67 FR 31303, May 9, 2002. This review document is *not* available from the EPA Science Advisory Board.

The transcript of the July 18–19, 2002 will be available on the EPA Science Advisory Board website (*http://www.epa.gov/sab/casacpmpanel.html*) on or about the time this notice is published in the **Federal Register**.

A draft meeting agenda for the teleconference meeting will be available on the SAB website (*http://www.epa.gov/sab/casacpmpanel.html*) approximately one week prior to the meeting.

For Further Information

Any member of the public wishing further information concerning this meeting should contact Mr. A. Robert Flaak, Acting Deputy Director, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4546; FAX (202) 501–0852; or via e-mail at *flaak.robert@epa.gov*. For information on connecting to the teleconference, please contact Ms. Zisa Lubarov-Walton, EPA Science Advisory Board, Mail Code 1400A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460 telephone (202) 564–4537, FAX (202) 501–0582; or via e-mail at *lubarov-walton.zisa@epa.gov*.

Public Comments

Since this meeting is a briefing on process and schedule, no public comments will be taken (oral or written). A public comment period will be part of the next formal peer review meeting of the Panel. This next meeting will be announced in the **Federal Register** and on the SAB website (*http://www.epa.gov/sab*).

Meeting Access

Individuals attending in person, and who will require special accommodation, including wheelchair access to the conference room, should contact Mr. Flaak at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: August 5, 2002.

A. Robert Flaak,

Acting Director, EPA Science Advisory Board.

[FR Doc. 02–20227 Filed 8–8–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on an extension of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 (c) (2) (A), this notice seeks comments on the Exemption of State-Owned Properties Under Self-Insurance Plan.

SUPPLEMENTARY INFORMATION: 44 CFR part 75 establishes standards with respect to the Federal Insurance Administrator's (FIA) determinations, that a State's plan of self-insurance is adequate and satisfactory for the purposes of the Act, from the requirement of purchasing flood insurance coverage for State-owned structures and their contents in areas identified by the Administrator as A, AO, AH, A1–A30, AE, A99, M, V, VO, V1–V30 and E zones, in which the sale of insurance has been made available. It also establishes the procedures by which a State may request exemption under section 102 C of the Act.

Collection of Information:

Title: Exemption of State-Owned Properties Under Self-Insurance Plan.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0127.

Abstract: The application for exemption is made to the Federal Insurance Administration by the Governor or other duly authorized official of the State accompanied by sufficient supporting documentation which certifies that the plan of self-insurance upon which the application for exemption is based meets or exceed the standards set forth in 44 CFR section 75.11. Upon determining that the State's plan of self-insurance equals or exceeds the standards, the Administrator then certifies that the State is exempt from the requirements for the purchase of flood insurance for State-owned structures and their contents.

Affected Public: State, Local, or Tribal Government.

Number of Respondents: 20.

Hours Per Response: 5.

Estimated Total Annual Burden Hours: 100 hours.

Estimated Cost: $3,000.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: You may contact Ms. Mary Ann Chang, Federal Insurance Administration, (202) 646–2790. For copies of the proposed

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collection information please contact Ms. Anderson at telephone number (202) 646–2625, facsimile number or e-mail *muriel.anderson@fema.gov.*

Dated: July 31, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–20149 Filed 8–8–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning a company's eligibility for participation in the WYO. Program requirements require a one-time submission demonstrating their qualification for participation in the program.

SUPPLEMENTARY INFORMATION: The WYO was established in response to the increase in losses and escalating costs of natural disasters to American taxpayers. The Federal Insurance and Mitigation Administration (FIMA) has obtained the participation of private insurance companies in a joint venture to market and service flood insurance under their own names. FIMA may enter into an agreement with private insurance companies, whereby these companies may offer flood insurance coverage to eligible property owners. FIMA requires a one-time submission of information to determine a company's qualification, as set forth in 44 CFR part 62, subpart 62.24. FIMA requires the information to determine whether an applicant for entry or reentry has the ability to process flood insurance and meet the reporting requirements of the WYO Financial Control Plan.

Collection of Information:

Title: Write Your Own Program (WYO) Company Participation Criteria; New Applicants.

Type of Information Collection: New Collection.

Form Numbers: 3067–0259.

Abstract: Under the Write Your Own Program, private sector insurance companies may offer flood insurance to eligible property owners. The Federal Government is a guarantor of flood insurance coverage for WYO Companies, issued under the WYO arrangement. To determine eligibility for participation in the WYO, the NFIP is requiring a one-time submission demonstrating their qualification for participation from each new company seeking entry into the Program.

Affected Public: Business or other for profit.

Estimated Total Annual Burden Hours: 25.

FEMA forms	No. of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A x B x C)
	5	1	5	25
Total	5	1	5	25

Estimated Cost: None

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Edward L. Connor, Director, Program Finance and Industry Relations Division, 202–646–3429 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646–3347 or e-mail *muriel.Anderson@fema.gov.*

Dated: July 29, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate.

[FR Doc. 02–20150 Filed 8–8–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Standard Flood Hazard Determination Form.

Type of Information Collection: Revision of a currently approved collection.

Affected Public: Business or other for-profit; individuals or households, and Federal Government. This form is completed by federally regulated lending institutions when making, increasing, extending, renewing or purchasing each loan for the purpose of documenting the factors considered as to whether flood insurance is required and available. FEMA does not collect this information from the lenders.

OMB Number: 3067–0264.

Abstract: On September 23, 1994, President Clinton signed the Riegle Community Development and Regulatory Improvement Act of 1994. Title V of this Act is the National Flood Insurance Reform Act (NFIRA). Section 528 of the NFIRA required the development of a standard form for determining whether a structure is located within an identified Special Flood Hazard Area and whether flood insurance is available. Section 528 of the NFIRA also required the use of this form by regulated lending institutions, federal agency lenders, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association, for any loan made, increased, extended, renewed, or purchased by these entities. FEMA, in consultation with the Federal entities for lending regulation, developed this form in 1995. On July 6, 1995, FEMA published a final rule in the **Federal Register**, establishing the form. The Federal entities for lending regulation published their final rule requiring the use of the form on July 6, 1995. Use of the form became mandatory on January 2, 1996.

Affected Public: This form is completed by federally regulated lending institutions when making, increasing, extending, renewing or purchasing each loan for the purpose of documenting the factors considered as to whether flood insurance is required and available.

Number of Respondents: An estimated 20,000,000 affected loan applications are processed each year.

Estimated Time per Respondent: The estimated burden time for completing the form is 20 minutes per respondent.

Estimated Total Annual Burden Hours: An estimated 20,000,000 loan transactions multiplied by 0.33 hour per form, results in an estimated annual burden of approximately 6,600,000 hours.

Frequency of Response: The form is required of federally regulated lending institutions when making, increasing, extending, renewing or purchasing any loan secured by improved real estate.

Comments

Interested persons are invited to submit written comments on the information collection to David Rostker, Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: For additional information about the Standard Flood Hazard Determination Form contact Ms. Anne Flowers at (202) 646–2748. To request copies of the proposed information collection contact Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524, email address: *muriel.anderson@fema.gov.*

Dated: July 31, 2002.

Reginald Trujillo,

Director, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–20148 Filed 8–8–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Request for Site Inspection; Landowner's Authorization/Ingress/Egress Agreement.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0222.

Abstract: FEMA's Temporary Housing Assistance is used to provide mobile homes, travel trailers, or other forms of readily prefabricated forms of housing for the purpose of providing temporary housing to eligible applicants or victims of federally declared disasters. This information is required to determine the feasibility of the site for installation of the housing unit and ensures written permission of the property owner is obtained to allow the housing unit on to the property to include ingress and egress permission.

Affected Public: Individuals or households.

Number of Respondents: 1000.

Estimated Time per Respondent:

FEMA Forms	No. of respondents (A)	No. of responses (B)	Hours per response (C)	Annual burden hours (A x B x C)
90–1	1000	1000	10 minutes	167
90–31	1000	1200	10 minutes	200
Total	1000	2200		367

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or e-mail *muriel.anderson@fema.gov.*

Dated: July 23, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–20151 Filed 8–8–02; 8:45 am]

BILLING CODE 6718–01–P

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FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1421–DR]

Colorado; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Colorado, (FEMA–1421-DR), dated June 19, 2002, and related determinations.

EFFECTIVE DATE: July 29, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 0646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Colorado is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 19, 2002: Larimer, Jackson, and Weld Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–20153 Filed 8–8–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1425–DR), dated July 4, 2002, and related determinations.

EFFECTIVE DATE: July 29, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 4, 2002: Calhoun County for Individual Assistance and direct Federal Assistance under section 408 of the Stafford Act, 42 USC 5174.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–20154 Filed 8–8–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL HOUSING FINANCE BOARD

Announcing an Open Meeting of the Board; Sunshine Act Notice

TIME AND DATE: 10 a.m., Wednesday, August 14, 2002.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The entire meeting will be open to the public.

MATTER TO BE DISCUSSED: Standards of Conduct.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Arnold Intrater,

Acting General Counsel.

[FR Doc. 02–20363 Filed 8–7–02; 2:15 pm]

BILLING CODE 6725–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice

SUMMARY: *Background:* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I'N and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposal(s): The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before October 8, 2002.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Mary M. West, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call 202–263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. *Report title:* Recordkeeping and Disclosure Requirements in Connection with Regulation B (Equal Credit Opportunity)
Agency form number: Reg B.
OMB control number: 7100–0201.
Frequency: Event–generated.
Reporters: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.
Annual reporting hours: 169,603 hours.
Estimated average hours per response: Notice of action, 2.50 minutes; credit history reporting, 2 minutes; monitoring data, 0.50 minutes; appraisal report upon request 5.00 minutes; notice of right to appraisal, 0.25 minutes; recordkeeping of self–test, 2 hours; and recordkeeping of corrective action for self–test, 8 hours
Number of respondents: 1,350
Small businesses are affected.
General description of report: This information collection is mandatory (15 U.S.C. 1691(a)(1)). The adverse action disclosure is confidential between the institution and the consumer involved. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)).
Abstract: The Equal Credit Opportunity Act and Regulation B prohibit discrimination in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age, or other specified bases. To aid in implementation of this prohibition, the statute and regulation also subject creditors to various mandatory disclosure requirements, notification provisions, credit history reporting, monitoring rules, and recordkeeping requirements. These requirements are triggered by specific events and disclosures must be provided within the time periods established by the Act and regulation.

2. **Report title: Recordkeeping and Disclosure Requirements in Connection with Regulation E (Electronic Funds Transfer)**
Agency form number: Reg E.
OMB control number: 7100–0200.
Frequency: Event–generated.
Reporters: State member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act
Annual reporting hours: 48,868 hours
Estimated average hours per response: Initial terms disclosure, 1.5 minutes; change in terms disclosure, 1 minute; periodic disclosure, 7 hours; and error resolution rules, 30 minutes
Number of respondents: 1,289
Small businesses are affected.
General description of report: This information collection is mandatory (15 U.S.C. 1693 *et seq.*). Since the Federal Reserve does not collect any information, no issue of confidentiality arises. However, the information, if made available to the Federal Reserve, may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. § 552 (b)(4), (6), and (8)). The disclosures required by the rule and information about error allegations and their resolution are confidential between the institution and the consumer.
Abstract: The Electronic Funds Transfer Act and Regulation E are designed to ensure adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services provided to consumers. Institutions offering EFT services must disclose to consumers certain information, including: initial and updated EFT terms, transaction information, periodic statements of activity, the consumer's potential liability for unauthorized transfers, and error resolution rights and procedures. EFT services include automated teller machines, telephone bill payment, point–of–sale transfers in retail stores, fund transfers initiated through the internet, and preauthorized transfers to or from a consumer's account.

Board of Governors of the Federal Reserve System, August 5, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–20166 Filed 8–8–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also

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includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 6, 2002.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Today's Bancorp, Inc., Vancouver, Washington; to become a bank holding company by acquiring 100 percent of Today's Bank, Vancouver, Washington.

Board of Governors of the Federal Reserve System, August 6, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–20243 Filed 8–8–02; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Federal Supply Service; Household Goods Tender of Service (HTOS); Conversion of Centralized Household Goods Traffic Management Program (CHAMP) Flat Industrial Funding Fee (IFF) to a Percentage IFF

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of final implementation of new CHAMP percentage IFF.

SUMMARY: This notice announces GSA's conversion of the CHAMP IFF from a $145 flat fee to a comparable percentage IFF computed on a shipment's total net transportation charge (excluding storage in transit (SIT) fees) as follows: 2.5 percent (.025) for shipments that move between points wholly within the continental United States, and 1.5 percent (.015) for all other shipments. The change merely is procedural in nature and not intended to result in additional cost to customer agencies. It's purpose is to align the CHAMP IFF with the percentage IFF calculation method the Federal Supply Service uses to fund most of its other programs, and to automatically keep pace with inflation.

DATES: This change is effective November 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Ju, Transportation Programs Branch, by phone at 703–305–7060 or by e-mail at *lynnette.ju@gsa.gov*.

SUPPLEMENTARY INFORMATION: GSA published a notice in the **Federal Register** on June 21, 2002 (67 FR 42259) soliciting comments on our proposal to convert the CHAMP IFF from a $145 flat fee to a comparable fee of 2.75 percent of a shipment's total net transportation charge (excluding storage in transit (SIT) fees). We received comments, categorized as follows, from 3 federal agencies, 4 transportation service providers, and 2 industry associations:

Shipments Moving Wholly Within the Continental United States

- Moyer & Sons Moving and Storage, Inc., Department of Interior, and Bureau of Prisons recommended an IFF of less than 2.75 percent.
- American Moving and Storage Association (AMSA) recommended a 3.0 percent IFF.

Shipments Other Than Shipments Moving Wholly Within the Continental United States

- Atlas Van Lines International, RBI Global Relocation Services, Department of State, and Department of Interior recommended an IFF of less than 2.75 percent.
- Bureau of Prisons recommended an IFF of no more than 2 percent.
- AMSA recommended a 1.75 percent IFF.
- Arpin International Group and the Household Goods Forwarders Association of America, Inc. recommended a 1.5 percent IFF.

Following publication of the request for comments, GSA met with the household goods carrier and forwarder associations and with GSA customer agencies. We analyzed agencies' shipment data (volume, net shipment charges, and IFF's submitted), and carefully considered all comments received. Based on the comments, our data analysis, and careful deliberation, we have established the new percentage IFF at 2.5 percent for shipments that move between points wholly within the continental United States, and 1.5 percent for all other shipments. These percentage levels, reflecting the concerns of our customers expressed in their comments, will generate an IFF charge per shipment generally equivalent to the current $145 flat fee. The percentage will be applied as reflected in the Request for Offers; *i.e.* on a multiple component shipment (household goods, privately owned vehicle (POV), and/or unaccompanied baggage) it will be applied to the highest weighted component shipped within a 6-month period; it will be separately applied to any component shipped more than 6 months after shipment of the initial component.

This change aligns the CHAMP IFF with the Federal Supply Service's funding mechanism for most of its other programs and automatically will adjust to the level of inflation. The method of collection will remain the same. That is, transportation service providers will continue to incorporate the IFF in the discounted rates they file with GSA and will pay the IFF to GSA, albeit based on the applicable percentage of a shipment's net transportation charge (absent SIT) instead of a flat fee.

GSA will monitor agencies' shipment volumes, net transportation charges, and IFF's calculated under the new percentages to determine the need for any future adjustments. We value our customers and want to ensure CHAMP funding is commensurate with providing quality service while covering our costs and no higher.

The conversion to a percentage IFF requires certain revisions to the HTOS which are reflected in the attachment to this notice. The currently effective percentage IFF will be specified in each GSA Request for Offers.

Dated: August 2, 2002.

Jeffrey J. Thurston,

Acting Assistant Commissioner, Officer of Transportation and Property Management.

Attachment—Changes to Household Goods Tender of Service, Section 9—Reporting Requirements

9–3.1.4 Industrial Funding Fee

The Industrial Funding Fee (IFF) amount must equal the sum of all shipment net charges reported in HTOS Section 9–3.1.2, multiplied by the applicable IFF percentage identified in the Request for Offers. Any deficiencies identified will be handled as specified in HTOS Sections 9–3.1.4.1. and 9–3.1.4.2.

9–3.2.2.2. Shipment Report Spreadsheet Format

Entry format is text entry (*i.e.*, left aligned). Fields marked with an asterisk (*) are numeric and must, if necessary, be zero filled from the left (*i.e.*, 00250 for 250) depending on the field size. Save the file as a comma-separated file (.CSV) then rename as necessary (.SHP or .ERS).

Field	Required positions	Record position(s)	Contents
Record ID	1	1	Must be S.
Field Delimiter	1	2	Comma.
SCAC	4	3–6	Four (4) digit Standard Carrier Alpha Code (SCAC) identifying the carrier the GBL/CBL was issued to.
Field Delimiter	1	7	Comma.
Type of Transportation	2	8–9	Enter GD for General Domestic, GI for General International, DD for Direct Domestic Move Management (MMS), DI for Direct International MMS, BD for Broker Domestic MMS, or BI for Broker International MMS.
Field Delimiter	1	10	Comma.
Type of Move	3	11–13	If the GBL/CBL was used for household goods, put in HHG; for Automobile, put in POV; for Unaccompanied Air Baggage, put in UAB. **If multiple elements were moved using one GBL/CBL, each element must have an individual shipment record.
Field Delimiter	1	14	Comma.
Federal Agency Identification Code	9	15–23	Agency's 9 digit User ID code used to access ITMS. This User ID can be obtained directly from the user agency or from the ITMS system itself. If unable to obtain the proper User ID, please contact the PMO. Records with this field blank. X or zero-filled will not be accepted.
Field Delimiter	1	24	Comma.
Carrier Reference Number	15	25–39	Carrier reference number used when the shipment was booked by the carrier. Start the reference number with position 25. If reference number does not consist of 15 numbers, place X's after number to fill out the 15 positions. Example: Reference number 135895 would appear as 135895XXXXXXXXX. Records with this field blank, X or zero filled will not be accepted.
Field Delimiter	1	40	Comma.
Billing Date	8	41–48	Date of Agency Billing (YYYYMMDD) (Example: 20020215 = February 15, 2002).
Field Delimiter	1	49	Comma.
BL Number	8	50–57	Bill of Lading Number. Use GBL/CBL number associated with the shipment. If CBL number is less then 8 characters, place X's after the number to fill in field. Records with this field blank or zero filled will not be accepted.
Field Delimiter	1	58	Comma.
Type of GBL/CBL	1	59	Input V if Virtual GBL/CBL was used. Input G if Standard GBL/CBL was used.
Field Delimiter	1	60	Comma.
Pickup Date	8	61–68	YYYYMMDD (see Billing Date).
Field Delimiter	1	69	Comma.
Delivery Date	8	70–77	YYYYMMDD (see Billing Date).
Field Delimiter	1	78	Comma.
*Transit Time	3	79–81	Actual Transit Time in days. Example: 007 = 7 days/.
Field Delimiter	1	82	Comma.
Origin State or Country Code	4	83–86	Four digit state or country identifier. State is the two digit state identifier, all CAPS, plus two (2) zeros (0). Example: FL00. Country code is the four-digit country code as listed in the most current Request For Offers. Example: Germany = 3940. Records with this field blank, X or zero filled will not be accepted.
Field Delimiter	1	87	Comma.
Origin Zip Code	5	88–92	5-digit zip (X Fill for Canada or International Shipments).
Field Delimiter	1	93	Comma.
Destination State or Country Code	4	94–97	See Origin State above. Records with this field blank, X or zero filled will not be accepted.
Field Delimiter	1	98	Comma.
Destination Zip Code	5	99–103	5-digit zip (X Fill for Canada or International Shipments).
Field Delimiter	1	104	Comma.
*Actual Weight Shipped	5	105–109	In pounds for HHG or UAB. Example: 09800 = 9800 pounds. If the record is for POV, place five (5) zeros, 00000. **If field is zero filled for POV, positions 11–13 must state POV.
Field Delimiter	1	110	Comma.
*Mileage	4	111–114	Whole miles only. Example: 0750 = 750 miles. This field should be zero filled for International moves.
Field Delimiter	1	115	Comma.
*Discount Offered	3	116–118	Domestic: Discount off the current 415 tariff; International: Percentage of the base line rate tables contained in the Request for Offers.
Field Delimiter	1	119	Comma.
*Gross Charges	5	120–124	Exclusive of SIT charges, in whole dollars only.
Field Delimiter	1	125	Comma.
*Net Charges	5	126–130	Exclusive of SIT charges, in whole dollars only. Example: 07600 = $7,600.00.
Field Delimiter	1	131	Comma.

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Field	Required positions	Record position(s)	Contents
Employee's Last Name	15	132–146	Last name of the employee listed on the GBL/CBL in all CAPS. If the employee's name does not consist of 15 letters, place X's after the name to fill out the 15 positions. Example: The name of Jones would appear as JONESXXXXXXXXX. Records with this field blank, X or zero filled will not be accepted.
Field Delimiter	1	147	Comma.
Participant's Tax ID Number	9	148–156	Participant TIN.

A	B	C	D	E	F	G	H	I	J	K	L
S	GSAA	GD	HHG	RXPG8TY43	Q794912349XXXXX	19990612	S12345XX	V	19990105	19990312	007

M	N	O	P	Q	R	S	T	U	V	W
MO00	64131	OK00	71222	10030	0400	056	12500	05500	SMITH-BATTSONXX	103777444

A	B	C	D	E	F	G	H	I	J	K	L
S	GSAA	GI	POV	RXPG8TY43	Q794–P912666XXX	19991012	PP123456	G	19990601	19990724	053

M	N	O	P	Q	R	S	T	U	V	W
MO00	64131	490J	XXXXX	00000	0000	165	15500	15500	SMITH-BATTSONXX	103777444

[FR Doc. 02–20127 Filed 8–8–02; 8:45 am]
BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality, Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not meet regularly and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for Partnerships for Quality Cooperative Agreement (U18) Grant Awards are to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with these applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Partnership for Quality Cooperative Agreement Grant Projects.

Date: September 9–10, 2002 (Open on September 9, from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Officer of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: August 2, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–20123 Filed 8–8–02; 8:45 am]
BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to review contract proposals and provide recommendations to the Acting Director, AHRQ, with respect to the technical merit of proposals submitted in response to a Request for Proposals (RFP) regarding a "Patient Safety Database." The RFP was published in the FedBizOpps on June 18, 2002.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2 and procurement regulations, 41 CFR 101–6.1023 and 48 CFR 315:604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free exchange of candid views, and under the procurement rules that prevent undue interference with Committee and Department operations.

Name of TRC: The Agency for Healthcare Research and Quality—"Patient Safety Database".

Date: August 22 and 23, 2002.

Place: Agency for Healthcare Research & Quality, 6010 Executive Blvd, 4th Floor Conference Center, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact James Battles, Center for Quality Improvement and Patient Safety, Agency for Healthcare Research and Quality, 6011 Executive Blvd, Suite 200, Rockville, Maryland, 20852, 301–594–9892.

Dated: August 2, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–20218 Filed 8–8–02; 8:45 am]
BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Revision of Information Collection

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by September 9, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Allison Herron Eydt, Desk Officer for AoA.

FOR FURTHER INFORMATION CONTACT: Administration on Aging ATTN: Sue Wheaton Cohen Building, 330 Independence Ave, SW., Washington, DC 20201.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

The collection consists of complaint, case, major long-term care issue and program operations information for the Long-Term Care Ombudsman Report (NORS), which State Offices of the Long-Term Care Ombudsman are required to submit annually to the Assistant Secretary for Aging. The collection includes the format and instructions for the report and a form for certifying state compliance with Older Americans Act ombudsman program funding requirements.

AoA estimates the burden of this collection of information as follows: 7620 hours.

In the **Federal Register** of February 28, 2002 (Vol 67; page 9279), the agency requested comments on the proposed collection of information. No comments were received.

Dated: July 17, 2002.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 02–20256 Filed 8–8–02; 8:45 am]
BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–41–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Evaluation of Customer Satisfaction of the Centers for Disease Control and Prevention (CDC) and Agency for Toxic Substances and Disease Registry (ATSDR) Internet Home Page and Links (OMB. No. 0920–0449)—Extension—CDC and ATSDR proposes to continue to conduct consumer satisfaction research around its Internet site in order to determine whether the information, services, and materials on this web site are presented in an appropriate technological format and whether it meets the needs, wants, and preferences of visitors or "customers" to the Internet site. The re-authorized survey will be conducted over the next three years, and survey results will be analyzed and interpreted semiannually. Customers on the web site will only be asked to respond once.

Information on the site focuses on disease prevention, health promotion, and epidemiology. The site is designed to serve the general public, persons at risk for disease, injury, and illness, and health professionals. This research will ensure that these audiences have the opportunity to provide "customer feedback" regarding the value and effectiveness of the information, services, and products of the CDC and ATSDR web site and whether these materials are easy to access, clear and informative. The annualized estimated burden is 2,166 hours.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)
Visitors to CDC Internet Site	13,000	1	10/60

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Dated: August 1, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–20130 Filed 8–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00100]

Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel: Community Based Strategies To Increase HIV Testing of Persons at High Risk in Communities of Color

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Community Based Strategies to Increase HIV Testing of Persons At High Risk in Communities of Color, PA# 00100.

Times and Dates: 9 a.m.–9:30 a.m., August 26, 2002 (Open), 9:30 a.m.–4:30 p.m., August 26, 2002 (Closed), 9 a.m.–4:30 p.m., August 27–28, 2002 (Closed).

Place: Atlanta Marriott Century Center, 2000 Century Boulevard, NE., Atlanta, GA 30345.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 00100.

Contact Person for More Information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, 1600 Clifton Road, NE., MS E–07, Atlanta, GA 30333, 404–639–8025.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–20296 Filed 8–7–02; 10:52 am]

BILLING CODE 4163–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,307 and TA–W–38,307A]

Progress Lighting, Cowpens, SC; Progress Lighting, Philadelphia, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on November 28, 2000, applicable to workers of Progress Lighting, Cowpens, South Carolina. The notice was published in the **Federal Register** on December 21, 2000 (65 FR 80457).

At the request of the International Brotherhood of Electrical Workers, Local 2005, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations occurred at the Philadelphia, Pennsylvania location of Progress Lighting. The Philadelphia, Pennsylvania location is a distribution center for the lighting fixtures produced in Cowpens, South Carolina.

Based on these findings, the Department is amending the certification to include workers of the Philadelphia, Pennsylvania location of Progress Lighting.

The intent of the Department's certification is to include all workers of Progress Lighting who were adversely affected by increased imports.

The amended notice applicable to TA–W–38,307 is hereby issued as follows:

All workers of Progress Lighting, Cowpens, South Carolina (TA–W–38,307) and Progress Lighting, Philadelphia, Pennsylvania (TA–W–38,307A) who became totally or partially separated from employment on or after October 28, 1999 through November 28, 2002, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–20192 Filed 8–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0206]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; State Enforcement Notifications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by September 9, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

State Enforcement Notifications—21 CFR 100.2(d) (OMB Control Number 0910–0275)—Extension

Section 310(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 337(b)) authorizes States to enforce certain sections of the act in their own names, but provides that States must notify FDA before doing so. Section 100.2(d) (21 CFR 100.2 (d)) sets forth the information that a State must provide to FDA in a letter of notification when it intends to take enforcement action under the act against a particular food located in the State. The information required under § 100.2(d) will enable FDA to identify the food against which the State intends to take action and advise the State whether Federal action has been taken against it. With certain narrow exceptions, Federal enforcement action precludes State action under the act.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1002(d)	1	1	1	10	10

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for § 100.2(d) is insignificant because enforcement notifications are seldom used by States. During the last 3 years, FDA has not received any enforcement notifications. Since the enactment of section 403A(b) of the act (21 U.S.C. 343–1(b)) as part of the Nutrition Labeling and Education Act of 1990, FDA has received only a few enforcement notifications. Although FDA believes that the burden will be insignificant, it believes these information collection provisions should be extended to provide for the potential future need of a State government to submit enforcement notifications informing FDA when it intends to take enforcement action under the act against a particular food located in the State.

Dated: August 2, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–20121 Filed 8–8–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0104]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Consumer Handling of Ready-to-Eat Foods

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by September 9, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Consumer Handling of Ready-to-Eat Foods

Section 402 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342) authorizes FDA to regulate foods so that they are not adulterated. FDA's research in food safety seeks to reduce the incidence of foodborne illness by improving the ability to find new ways to detect, enumerate, and control pathogens in the food supply. FDA's Center for Food Safety and Applied Nutrition awarded two grants of research funds in September 2001 to support research into consumer refrigeration practices and shelf life for ready-to-eat (RTE) foods entitled "Consumer Storage Length Practices for Ready-to-Eat Foods" and "Consumer Handling of Ready-to-Eat Foods After Purchase."

The information that will be collected concerns consumer handling of RTE food products. The research will provide data on the storage of RTE foods in unopened and opened packages in home refrigerators; consumer understanding of expiration dates; and consumer use of this information in making decisions regarding purchases, consumption, and home storage conditions. The data from these surveys will be used to refine the Department of Health and Human Services and U.S. Department of Agriculture *Listeria monocytogenes* (LM) risk assessment, issued in draft for public comment on January 19, 2001 (66 FR 5515). The values used for home storage of foods in the draft LM risk assessment were largely based on expert opinion, not statistically supportable data. Thus, the consumer storage data from these two grants will improve FDA's confidence in the predicted risks by reducing the uncertainty in consumer practices.

For the "Consumer Storage Length Practices for Ready-to-Eat Foods," approximately 2,400 respondents will be selected from an already existing nationally representative Web-enabled panel. For "Consumer Handling of Ready-to-Eat Foods After Purchase," a more traditional survey approach will be used and will be conducted in three parts. In part 1, approximately 400 in-person interviews will be conducted in Tennessee, Illinois, Kansas, Missouri, Florida, and New York. Participants will be selected to represent both sexes, different income groups, and education levels, and a wide range of adults from different ethnic groups. In part 2, 100 respondents from part 1 will complete food diaries of specific foods from the day the food dairy is initiated until those foods are consumed or discarded. In part 3, two mass mailings of questionnaires will be conducted one in fall-winter and the second in spring-summer for a total of 2,000 respondents.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Web-enabled panel survey	2,400	1	2,400	0.25	600
Interview survey	400	1	400	0.5	200
Food diary	100	1	100	0.5	50
Mail survey	2,000	1	2,000	0.3	600

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TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Total					1,450

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The number of respondents given in table 1 of this document is based on the study design in the two grant applications. The hours per response was estimated based on experience of the grantees for similar surveys and also on the number of questions to be included in each survey instrument.

Dated: August 2, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–20122 Filed 8–8–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Nonclinical Studies Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Nonclinical Studies Subcommittee of the Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 9, 2002, from 1 p.m. to 4:30 p.m. and September 10, 2002, from 8 a.m. to 12 noon.

Location: Center for Drug Evaluation and Research, Advisory Committee conference room 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Kathleen Reedy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: *reedyk@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 9, 2002, the Chair of the expert working group on cardiotoxicity will report on the progress and activities of the group and the subcommittee will be allotted time to discuss the report. The subcommittee will then discuss a plan to transfer oversight of the subcommittee from the Advisory Committee for Pharmaceutical Science to the Science Advisory Board of the National Center for Toxicological Research. On September 10, 2002, the Chair of the expert working group on vascular damage will report on the progress and activities of the group and the subcommittee members will be allotted time to discuss the report.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by August 23, 2002. Oral presentations from the public will be scheduled between approximately 10 a.m. and 11 a.m. on September 10, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before August 23, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Carolyn Jones, 301–827–7001, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 2, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–20162 Filed 8–8–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4737–N–06]

Notice of Proposed Information Collection for Public Comment: Infrastructure Study

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement concerning a project to obtain information on the infrastructure needs of tribally designated housing entities and tribal housing agencies will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 8, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SE, 8228, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ndeye Jackson, telephone number (202) 708–5537 X5737; *Ndeye J. Jackson@HUD.gov*. Copies of the proposed forms and other available documents may be obtained from Ndeye Jackson.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information (3) enhance the quality, utility, and clarity of information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Survey of Infrastructure Needs of tribes and tribally designated housing entities, or equivalent Indian housing program.

Description of the need for the information and proposed use: The primary purpose of the proposed data collection is to develop a questionnaire for HUD that can be used with a national sample of tribes and tribally designated housing entities, or an equivalent Indian housing agency, to determine the current status, trends and barriers to infrastructure development in tribal areas. The questionnaire will be circulated via mail, e-mail or attached to the National American Indian Housing Council's Web site address: *"http://NAIHC.Indian.com"*

Members of affected public: Tribes and tribally designated housing entities, or equivalent Indian housing agencies.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Task	Number of respondents	Frequency of respondents	Hours per response	Burden hours
Questionnaire	1,000	once	1.00	1,000

Total Estimated Annual Burden Hours: 1,000.

Status of the proposed information collection: Pending OMB approval.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 2, 2002.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 02–20241 Filed 8–8–02; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–31]

Notice of Submission of Proposed Information Collection to OMB: Community Development Work Study Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2528–0175) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice Also Lists the Following Information

Title of Proposal: Community Development Work Study Program.

OMB Approval Number: 2528–0175.

Form Numbers: HUD–424, HUD–424–B, HUD–2880, HUD–2993, HUD–2994, HUD–3007, HUD–30013, HUD–30014, HUD–30015.

Description of the Need for the Information and its Proposed Use: Community Development Work Study Program application for grantee selection and reports monitoring the administration of funds granted to colleges and universities. The grants help economically disadvantaged and minority students earn masters degrees in community building fields.

Respondents: Individuals or households, Not-for-profit institutions.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	60	3		17.5		3,.150

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Total Estimated Burden Hours: 3,150.
Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 2, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–20124 Filed 8–8–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–32]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnson at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Ms. Julie Jones-Conte, Headquarters, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–MD, Room 1E677, 600 Army Pentagon, Washington, DC 20310–0600; (703) 692–9223; DOT: Mr. Rugene Spruill, Principal, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW., Room 2310, Washington, DC 20590; (202) 366–4246; ENERGY: Mr. Tom Knox, Department of Energy, Office of Engineering & Construction Management, CR–80, Washington, DC 20585; (202) 586–8715; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; INTERIOR: Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 219–0728; NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: August 2, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 8/9/02

Suitable/Available Properties

Buildings (by State)

California

Dwelling/Garage
213 Danhauser St.
Alturas Co: CA 96101–
Landholding Agency: GSA
Property Number: 54200230003
Status: Excess
Comment: garage = 480 sq. ft., residence gutted by fire
GSA Number: 9–A–CA–1574

Bldgs. 203–206
Pinnacles Natl Monument
5000 Hwy 146
Paicines Co: San Benito CA 95043–
Landholding Agency: Interior
Property Number: 61200230018
Status: Excess

Comment: four mobile homes, poor condition, singlewide and doublewide, off-site use only

Playgrounds
Marine Corps Logistics Base
Desert View
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200230018
Status: Underutilized
Comment: 2 playgrounds with personnel shelter, off-site use only.

Garages
Marine Corps Logistics Base
Desert View
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200230019
Status: Underutilized
Comment: sq. ft. varies, needs rehab, possible asbestos/lead paint, off-site use only

76 Structures
Marine Corps Logistics Base
Desert View
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200230020
Status: Underutilized
Comment: sq. ft. varies, needs rehab, possible asbestos/lead paint, most recent use—housing, off-site use only

Colorado

Bldg. 16
Colorado Natl Monument
2252 Monument Road
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Interior
Property Number: 61200230019
Status: Underutilized
Comment: 1390 sq. ft. residence, some contamination, off-site use only

Bldg. 17
Colorado Natl Monument
2250 Monument Road
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Interior
Property Number: 61200230020
Status: Underutilized
Comment: 1390 sq. ft. residence, some contamination, off-site use only

Florida

Tract 104–13
Canaveral Natl Seashore
New Smyrna Beach Co: Volusia FL 32169–
Landholding Agency: Interior
Property Number: 61200230005
Status: Excess
Comment: 1422 sq. ft., most recent use—residential, off-site use only

Tract 104–17
Canaveral Natl Seashore
New Smyrna Beach Co: Volusia FL 32169–
Landholding Agency: Interior
Property Number: 61200230006
Status: Excess
Comment: 1322 sq. ft., most recent use—residential, off-site use only

Tract 104–18
Canaveral Natl Seashore
New Smyrna Beach Co: Volusia FL 32169–
Landholding Agency: Interior
Property Number: 61200230007
Status: Excess
Comment: 1260 sq. ft., most recent use—residential, off-site use only

Tract 104–23
Canaveral Natl Seashore
New Smyrna Beach Co: Volusia FL 32169–
Landholding Agency: Interior
Property Number: 61200230008
Status: Excess
Comment: 2316 sq. ft., most recent use—residential, off-site use only

Tract 105–34
Canaveral Natl Seashore
New Smyrna Beach Co: Volusia FL 32169–
Landholding Agency: Interior
Property Number: 61200230009
Status: Excess
Comment: 1260 sq. ft., needs major rehab, most recent use—residential, off-site use only

Maryland

Former Smith Property
Appalachian Natl Scenic Trail
Boonsboro Co: Washington MD 21712–
Landholding Agency: Interior
Property Number: 61200230011
Status: Unutilized
Comment: 1822 sq. ft., most recent use—residential, off-site use only

Massachusetts

Former Health Property
Appalachian Natl Scenic Trail
Tyringhm Co: Berkshire MA 01238–
Landholding Agency: Interior
Property Number: 61200230010
Status: Unutilized
Comment: 1092 sq. ft., most recent use—residential, off-site use only

New Jersey

Former Thompson Property
Appalachian Natl Scenic Trail
Unionville Co: Sussex NJ 07461–
Landholding Agency: Interior
Property Number: 61200230012
Status: Unutilized
Comment: 1144 sq. ft., most recent use—residential, off-site use only

Pennsylvania

Former SSA Bldg.
521 8th Street
Ambridge Co: Beaver PA
Landholding Agency: GSA
Property Number: 54200230004
Status: Excess
Comment: 3935 sq. ft., most recent use—social security office GSA Number: 4–G–PA–0794

Former Zeigler Property
Appalachian Natl Scenic Trail
S. Middleton Co: Cumberland PA 17324–
Landholding Agency: Interior
Property Number: 61200230013
Status: Unutilized
Comment: 1036 sq. ft., most recent use—residential, off-site use only

Texas

Tract 104–43
San Antonio Missions NHP
San Antonio Co: Bexar TX 78223–
Landholding Agency: Interior
Property Number: 61200230014
Status: Unutilized
Comment: 1260 sq. ft., most recent use—residential, off-site use only

Tract 104–45
San Antonio Missions NHP
San Antonio Co: Bexar TX 78233–
Landholding Agency: Interior
Property Number: 61200230015
Status: Unutilized
Comment: 999 sq. ft., most recent use—residential, off-site use only

Virginia

Former Funk Property
Appalachian Natl Scenic Trail
Rural Retreat Co: Smyth VA 24368–
Landholding Agency: Interior
Property Number: 61200230016
Status: Unutilized
Comment: 980 sq. ft., mobile home, off-site use only

Former Klene Property
Appalachian Natl Scenic Trail
Paris Co: Clarke VA 20130–
Landholding Agency: Interior
Property Number: 61200230017
Status: Unutilized
Comment: 313 sq. ft., cabin, off-site use only

Suitable/Unavailable Properties

Missouri

Bldg. 3
St. Louis AAP
St. Louis Co: MO
Landholding Agency: Army
Property Number: 21200230070
Status: Unutilized
Comment: 2 floors w/basement, contamination, most recent use—storage

Arizona

Patrol Station
S. of US Hwy 85
Gila Bend Co: AZ
Landholding Agency: GSA
Property Number: 54200230006
Status: Excess
Reason: Within airport runway clear zone
GSA Number: 9–J–AZ–821

California

Bldg. 660
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200230021
Status: Excess
Reason: Extensive deterioration

Bldg. 661
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200230022
Status: Excess
Reason: Extensive deterioration

Bldg. 1291
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200230023
Status: Excess
Reason: Extensive deterioration

Bldg. 16026
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Comment: 799 sq. ft., most recent use—residential, off-site use only

Tract 104–45
San Antonio Missions NHP
San Antonio Co: Bexar TX 78233–
Landholding Agency: Interior
Property Number: 61200230015
Status: Unutilized
Comment: 999 sq. ft., most recent use—residential, off-site use only

Virginia

Former Funk Property
Appalachian Natl Scenic Trail
Rural Retreat Co: Smyth VA 24368–
Landholding Agency: Interior
Property Number: 61200230016
Status: Unutilized
Comment: 980 sq. ft., mobile home, off-site use only

Former Klene Property
Appalachian Natl Scenic Trail
Paris Co: Clarke VA 20130–
Landholding Agency: Interior
Property Number: 61200230017
Status: Unutilized
Comment: 313 sq. ft., cabin, off-site use only

Suitable/Unavailable Properties

Missouri

Bldg. 3
St. Louis AAP
St. Louis Co: MO
Landholding Agency: Army
Property Number: 21200230070
Status: Unutilized
Comment: 2 floors w/basement, contamination, most recent use—storage

Arizona

Patrol Station
S. of US Hwy 85
Gila Bend Co: AZ
Landholding Agency: GSA
Property Number: 54200230006
Status: Excess
Reason: Within airport runway clear zone
GSA Number: 9–J–AZ–821

California

Bldg. 660
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200230021
Status: Excess
Reason: Extensive deterioration

Bldg. 661
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200230022
Status: Excess
Reason: Extensive deterioration

Bldg. 1291
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200230023
Status: Excess
Reason: Extensive deterioration

Bldg. 16026
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy

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Property Number: 77200230031
Status: Excess
Reason: Secured Area

Florida

Bldg. 13
NAS Jacksonville
Pinecastle Bombing Range
Salt Springs Co: Volusia FL
Landholding Agency: Navy
Property Number: 77200230024
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 45
NAS Jacksonville
Pinecastle Bombing Range
Salt Springs Co: Volusia FL
Landholding Agency: Navy
Property Number: 77200230025
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 67
NAS Jacksonville
Pinecastle Bombing Range
Salt Springs Co: Volusia FL
Landholding Agency: Navy
Property Number: 77200230026
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 73
NAS Jacksonville
Pinecastle Bombing Range
Salt Springs Co: FL
Landholding Agency: Navy
Property Number: 77200230027
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 75
NAS Jacksonville
Pinecastle Bombing Range
Salt Springs Co: Volusia FL
Landholding Agency: Navy
Property Number: 77200230028
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 76
NAS Jacksonville
Pinecastle Bombing Range
Salt Springs Co: Volusia FL
Landholding Agency: Navy
Property Number: 77200230029
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Illinois

Bldg. 625
Fermi Natl Accelerator Lab
Batavia Co: DuPage IL 60510–
Landholding Agency: Energy
Property Number: 41200230004
Status: Excess
Reasons: Extensive deterioration

Kentucky

Dwelling
USCG Shoreside Detachment
Owenshoro Co: Daviess KY
Landholding Agency: DOT
Property Number: 97200230010
Status: Unutilized
Reason: Extensive deterioration

New Jersey

Former Auerbach Property
Appalachian Natl Scenic Trail
Glenwood Co: Sussex NJ 07701–
Landholding Agency: Interior
Property Number: 61200230001
Status: Unutilized
Reason: Extensive deterioration

New York

Bldgs. 0089, 0090
Brookhaven Natl Lab
Upton Co: Suffolk NY 11973–
Landholding Agency: Energy
Property Number: 41200230005
Status: Excess
Reason: Extensive deterioration

Former Guardia Property
Appalachian Natl Scenic Trail
E. Fishkill Co: Dutchess NY 11370–
Landholding Agency: Interior
Property Number: 61200230002
Status: Unutilized
Reason: Extensive deterioration

Pennsylvania

Former Sunday Property
Appalachian Natl Scenic Trail
Boiling Springs Co: Cumberland PA 17007–
Landholding Agency: Interior
Property Number: 61200230003
Status: Unutilized
Reason: Extensive deterioration

Tennessee

Tract 01–186
Stones River Natl Battlefield
Murfreesboro Co: Rutherford TN 37129–
Landholding Agency: Interior
Property Number: 61200230004
Status: Excess
Reason: Extensive deterioration

Virginia

6 Bldgs.
Marine Corps Base
Quantico Co: VA
Location: #2902, 2906, 2923, 2928, 2930, 2950
Landholding Agency: Navy
Property Number: 77200230030
Status: Excess
Reason: Extensive deterioration

Washington

Goat Island Quarry
Skagit Co: WA
Landholding Agency: GSA
Property Number: 54200230005
Status: Excess
Reason: not accessible
GSA number: 9–D–WA–1201

Bldg. 899
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77200230032
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

[FR Doc. 02–20023 Filed 8–8–02; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Comprehensive Conservation Plans (CCP) and Environmental Assessments for the Minnesota Wetland Management Districts (WMD) in Western Minnesota, Including: Big Stone WMD (Odessa, MN); Detroit Lakes WMD (Detroit Lakes, MN), Fergus Falls WMD (Fergus Falls, MN); Litchfield WMD (Litchfield, MN); Morris WMD (Morris, MN); and Windom WMD (Windom, MN)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the Refuge Improvement Act of 1997, the U.S. Fish and Wildlife Service (Service) has published a draft Comprehensive Conservation Plan and Environmental Assessment for six wetland management districts in western Minnesota. These Plans describe how the Service intends to manage the Districts for the next 15 years.

DATES: Submit written comments by September 13, 2002. Comments should be addressed to the relevant Wetland Management District: Big Stone WMD: U.S. Fish and Wildlife Service, Big Stone National Wildlife Refuge, Attn: CCP Comment, Rural Route 1, Box 25, Odessa, MN, 62959. Detroit Lakes WMD: U.S. Fish and Wildlife Service, Detroit Lakes WMD, Attn: CCP Comment, Route 3, Box 47D, Tower Road, Detroit Lakes, MN 56501. Fergus Falls WMD: U.S. Fish and Wildlife Service, Fergus Falls WMD, Attn: CCP Comment, Route 1, Box 76, Fergus Falls, MN 56537. Litchfield WMD: U.S. Fish and Wildlife Service, Litchfield WMD, Attn: CCP Comment, 22274—615 Avenue, Litchfield, MN 55355. Morris WMD: U.S. Fish and Wildlife Service, Morris WMD, Attn: CCP Comment, 43875—230th Street, Morris, MN 56237. Windom, WMD: U.S. Fish and Wildlife Service, Windom WMD, Attn: CCP Comment, 49663 County Road 17, Windom, MN 56101.

Comments may also be submitted through the Service's regional Web site at *http://midwest.fws.gov/planning.*

ADDRESSES: A draft Plan or summary may be obtained by writing to the Refuge or WMD at the previously listed addresses or submitting a request electronically. These documents will also be made available in portable document format (pdf) on the U.S. Fish and Wildlife Service website at *http://midwest.fws.gov/planning/minnwetlanddistrictstop.htm.*

FOR FURTHER INFORMATION CONTACT: For additional information on the Draft Comprehensive Conservation Plans and Environmental Assessments, contact the District Managers; Big Stone WMD, Rich Papasso, 320/273–2191; Detroit Lakes WMD, Mark Chase, 218/847–4431; Fergus Falls WMD, Kevin Brennan, 218/729–2291; Litchfield WMD, Christenson, 320/693–2849; Morris WMD, Steven Delehanty, 320/589–1001; Windom WMD, Steven Kallin, 507/831–2220.

SUPPLEMENTARY INFORMATION: In 1997, Congress mandated that the Service prepare a comprehensive conservation plan for each refuge within the National Wildlife Refuge System. This mandate includes Wetland Management Districts, which are federal administrative units charged with acquiring, overseeing and managing Waterfowl Production Areas and easements within a specific group of counties. Comprehensive conservation plans guide management decisions over the course of 15 years. The Draft Comprehensive Conservation Plans for each of the six Minnesota Wetland Management Districts identify goals and objectives for habitat management, land protection and wildlife-dependent recreation, as well as strategies for achieving those goals and objectives.

Dated: June 18, 2002.

Marvin Moriarty,

Acting Regional Director.

[FR Doc. 02–20131 Filed 8–8–02; 8:45 am]
BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Nottawaseppi Huron Band of Potawatomi Indians of Michigan

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination to take land into trust under 25 CFR part 151.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 78.26 acres, more or less, of land into trust for the Nottawaseppi Huron Band of Potawatomi Indians of Michigan on July 31, 2002. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pierskalla, Office of Indian Gaming Management, Bureau of Indian Affairs, MS–2070 MIB, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On July 31, 2002, the Assistant Secretary—Indian Affairs decided to accept approximately 78.26 acres, more or less, of land known as the Sackrider property into trust for the Nottawaseppi Huron Band of Potawatomi Indians of Michigan under the authority of Section 5 of the Indian Reorganization Act of 1934, 25 U.S.C. 465. The United States acknowledged the Nottawaseppi Huron Band through the federal acknowledgment process (25 CFR 83), and the notice of final determination acknowledging the Band was published in the **Federal Register** on December 21, 1995 (60 FR 66315). The Final Determination for Federal Acknowledgment for the Band was effective on March 21, 1996. The Band had no trust land at the time of acknowledgment. By memorandum dated December 13, 2000, the Associate Solicitor—Indian Affairs concluded that the land is within the geographical region anticipated as part of the Band's land base and may be included as part of the Band's initial reservation. Further, if the Sackrider property were included in the initial proclamation of reservation, it would meet the requirements of the "initial reservation" exception of IGRA, 25 U.S.C. 2719(b)(1)(B)(ii), excepting it from the general prohibition on gaming on trust land acquired after October 17, 1988, contained in 25 U.S.C. 2719(a).

The Sackrider Property's legal description is as follows:

Commencing at the West ¼ Post of Section 13, Town 2 South, Range 7 West, Emmett Township, Calhoun County, Michigan; thence North 00 Degrees 03′ 28″ East along the West line of said section, 46.99 feet to the Southerly Line of the exit ramp for I–94, as recorded in Liber 898, page 004 in the Office of the Register of Deeds for Calhoun County, Michigan; thence North 89 Degrees 06′ 09″ East along said Southerly Line, 214.69 feet; thence 362.37 feet along the arc of a curve to the left whose radius measures 362.0 feet and whose chord bears North 60 Degrees 25′ 31″ East, 347.43 feet; thence North 31 Degrees 44′ 56″ East, 263.62 feet; thence North 59 Degrees 52′ 54″ East, 81.39 feet to the place of beginning; thence continuing North 59 Degrees 52′ 54″ East, 181.87 feet; thence South 78 Degrees 01′ 12″ East, 472.30 feet; thence South 76 Degrees 27′ 00″ East, 1357.31 feet; thence South 00 Degrees 04′ 24″ West, 205.69 feet; to the Northwest corner of Lot 21 of the supervisor's plat of Wagner Acres, as recorded in Liber 11 of plats on page 21 in the Office of the Register of Deeds for Calhoun County, Michigan; thence South 00 Degrees 04′ 24″ West along the West line of said plat, 1992.58 feet to the centerline of Michigan Ave.; thence North 55 Degrees 29′ 21″ West along said centerline, 2350.98 feet; thence North 00 Degrees 03′ 28″ East, 1191.07 feet to the place of beginning.

It consists of 78.26 acres of land, located in Emmett Township, Calhoun County, Michigan.

The Secretary will take the land into trust subject to completion and certification of an updated contaminant survey, and satisfaction of all title requirements.

Dated: August 6, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–20303 Filed 8–8–02; 8:45 am]
BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Extension agreement to the Class III gaming compact between the Assiniboine and Sioux Tribes of the Fort Peck Reservation and the State of Montana.

DATES: This action is effective August 9, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of

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Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: July 30, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–20143 Filed 8–8–02; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendment to the Tribal-State Compact for Class III Gaming between the Tulalip Tribes of Washington and the State of Washington, which was executed on June 7, 2002.

DATES: This action is effective August 9, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: July 30, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–20142 Filed 8–8–02; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–160–1220–PG]

Notice of Public Meeting, Central California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Resource Advisory Council (RAC) for Central California will meet as indicated below.

DATES: The meeting will be held Friday and Saturday, September 13–14, 2002 at the Patio Room, Tri-County Fairgrounds, Sierra Street and Fair Drive, Bishop, California beginning at 8:00 a.m. both days. The public comment period will begin at 1:00 p.m. each day and last one hour.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 661–391–6010.

SUPPLEMENTARY INFORMATION: The 12 member Central California Resource Advisory Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues associated with public land management in Central California. At this meeting, topics to be discussed include: Committee assignments for members; national recreation fee guideline policy; Sage Grouse in the eastern Sierra; and a field trip to the Bishop Field Office and interaction with the staff.

All meetings are open to the public. The public may present written comments to the Council, and a time will be allocated for hearing public comments. Depending on the number of persons wishing to comment and the time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance such as sign language interpretation, tour transportation or other reasonable accommodations should contact the BLM as indicated above.

Dated: August 1, 2002.

Larry Mercer,

Public Affairs Officer.

[FR Doc. 02–20159 Filed 8–8–02; 8:45 am]

BILLING CODE 4310–40–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–475]

In the Matter of Certain Electronic Educational Devices and Components Thereof; Notice of Investigation.

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 8, 2002, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Franklin Electronic Publishers, Inc. of Burlington, New Jersey. An amended complaint was filed on July 26, 2002. The complaint, as amended, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic educational devices and components thereof by reason of infringement of claims 1–4 of U.S. Letters Patent 5,203,705. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and amended complaint, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's ADD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

FOR FURTHER INFORMATION CONTACT: David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2576.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2002).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on August 1, 2002, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electronic educational devices and components thereof by reason of infringement of claims 1, 2, 3 or 4 of U.S. Letters Patent 5,203,705 and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Franklin Electronic Publishers, Inc., One Franklin Plaza, Burlington, NJ 08016–4907.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

LeapFrog Enterprises, Inc., 6401 Hollis Street, Emeryville, CA 94608–1071.

Jetta Company, Ltd., Jetta House, 19 On Kui Street, On Lok Tsuen, Fanling, N.T., Hong Kong.

(c) David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

Issued: August 6, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–20214 Filed 8–8–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Core Protocol International Partnership Association, Inc.

Notice is hereby given that, on July 8, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), OCP International Partnership Association, Inc. ("OCP–IP") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 3rdeye Technology, Washington, DC; e-ASIC, San Jose, CA; Semiconductor Technology Academic Research Center ("STARC"), Yokohama, JAPAN; Qualis, Inc., Lake Oswego, OR; GeoLogic Design, LLP, Redwood City, CA; and Mentor Graphics, San Jose, CA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OCP–IP intends to file additional written notification disclosing all changes in membership.

On May 10, 2002, OCP–IP filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 18, 2002 (67 FR 41483).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20140 Filed 8–8–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: Diesel Aftertreatment Sensitivity to Lubricants (DASL) and Non-Thermal Catalyst Deactivation (N–TCD)

Notice is hereby given that, on July 2, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4310 *et seq.* ("the Act"), Southwest Research Institute: Diesel Aftertreatment Sensitivity to Lubricants (DASL) and Non-Thermal Catalyst Deactivation (N–TCD) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the current identities of the parties are Caterpillar, Inc., Mossville, IL; Chevron Oronite Company LLC, Richmond, CA; Corning Incorporated, Corning, NY; Exxon Mobile Research and Engineering, Clinton, NJ; Infineum International Limited, Abingdon, Oxfordshire, UNITED KINGDOM; Lubrizol Corporation, Wickliffe, OH; and NGK-Locke, Inc., Southfield, MI. The nature and objectives of the venture are to investigate the potential for lubricating oils to degrade or poison emissions control systems for diesel and gasoline engines. The DASL portion of the investigation is a parametric study which is designed to expose various diesel emissions controls systems to oil combustion byproducts. The effects of the lubricating oil components, such as sulfur, phosphorus, zinc, calcium, and boron will be determined by measuring the deactivation of the emissions control systems as a consequence of oil exposure. The N–TCD portion of the investigation is a research/mechanistic study intended to explore the mechanisms of emissions control system deactivation as a result of oil exposure; for example, phosphorus poisoning of three-way catalysts.

Membership in this research group remains open, and the participants intend to file additional written

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notification disclosing all changes in membership and planned activities.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 02–20141 Filed 8–8–02; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of July, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

None

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–41,525; Stanley Furniture Co., Inc., Stanleytown, VA

TA–W–41,018; Lucent Technologies, Inc., Lucent Worldwide Service, Installation Div., Eugene, OR

TA–W–40,802; Geotemps, Hurley, NM

TA–W–41,595; Greyhound Lines, Inc., Dallas, TX

TA–W–41,453; Fun-Tees, Inc., Distribution Center, Concord, NC

TA–W–41,562; Florsheim Distribution Center, Florsheim Group, Inc., Jefferson City, MO

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,554; International Utility Structures, Inc., Batesville, AR

TA–W–41,582; Garment Corp. of America, Miami Beach, FL

TA–W–41,494; Mantua Industries, Inc., Woodbury Heights, NJ

TA–W–41,557; Battery Pack of America, Toshiba Battery Co Ltd, Durham, NC

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–41,587; Saes Getters Corporation of America, Independence, OH: May 5, 2001.

TA–W–41,392; White Mountain Stitching Co., Littleton, NH: March 21, 2001.

TA–W–41,338; Cooper Wiring Devices, Division of Cooper Industries, Long Island City, NY: March 20, 2001.

TA–W–41,533; The Stanley Works, Stanley Tools Plant, New Britain, CT: January 19, 2002.

TA–W–39,104; Alexander Doll Company, Inc., New York, NY: April 9, 2000.

TA–W–41,344 & A; Vision-Ease Lens Azusa, Inc., Azusa, CA and Vision-Ease Lens, Inc., Azusa, CA: March 22, 2001.

TA–W–41,242; Chevron U.S.A. Production Co (CPDN), A Div. of Chevron U.S.A., Inc., Houston, TX and Operating in the Following Locations: A; CA, B; CO, C; LA, D; NM, E; OK, F; TX, G; WY: July 8, 2001.

TA–W–40,951; Albany International Corp., Geschmay Plant; Greenville, SC: January 28, 2001.

TA–W–41,085; BBI Enterprises, LP, Alpena, MI: February 14, 2001.

TA–W–41,298; Komar Manufacturing Co., Claysburg, PA: March 8, 2001.

TA–W–41,345; Fuchs Systems, Inc., Salisbury, NC: January 20, 2002.

TA–W–41,374; Curtis PMC, Division of Curtis Instruments, Inc., Livermore, CA: March 28, 2001

TA–W–41,526; Wabash Technologies, Automotive Business Unit, Huntington, IN: May 2, 2001

TA–W–41,565; Washington Garment Co., Inc., Washington, NC: April 29, 2001

TA–W–41,592; Logan Manufacturing Company, Inc., Chapmanville, WV: May 2, 2001

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchaper D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of July, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–06270; Sovereign Adhesives, Inc., Ewing, NJ

NAFTA–TAA–06184; Mantua Industries, Woodbury Heights, NJ

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–06149; Intermetro Industries Corp., Carol Stream, IL

NAFTA–TAA–05994; Lucent Technologies, Inc., Lucent Worldwide Services, Installation Division, Eugene, OR

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–06246; J.D. Holding Company & Subsidiaries, Inc., DC Products, Inc., Springport, MI: May 29, 2001

I hereby certify that the aforementioned determinations were issued during the months of July, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 2, 2002.
Edward A. Tomchick
Director, Division of Trade Adjustment Assistance.
[FR Doc. 02–20200 Filed 8–8–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter or the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 19, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 19, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 29th day of July, 2002.

Edward A. Tomchick,
Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 07/29/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,880	Affiliated Bldg. Services (Co.)	Biscoe, NC	07/09/2002	Contract Maintenance Services.
41,881	Holloway Sportswear, Inc. (Wkrs)	Sidney, OH	07/17/2002	Sportswear.
41,882	Aermotor Pumps Inc. (Co.)	Conway, AR	07/09/2002	Sump Pumps.
41,883	The Akron Equipment Co. (Co.)	Akron, OH	07/14/2002	Steel and Aluminum Cast.
41,884	Dura Automotive Systems (Co.)	Pikeville, TN	07/08/2002	Power Window Regulators.
41,885	Custom Sewing, Inc. (Co.)	Rib Lake, WI	07/12/2002	Leather Shoes and Boots.
41,886	Kelly Springfield (Wkrs)	Fayetteville, NC	06/20/2002	Truck Tires.
41,887	Storage Technology Corp. (Wkrs)	Louisville, CO	07/03/2002	Printed Wire Assemblies.
41,888	Jasper Cabinet Company (USWA)	Jasper, IN	07/13/2002	Wood Furniture.
41,889	United Container Machiner (Wkrs)	Glen Arm, MD	07/17/2002	Box Machinery.
41,890	Kaman Aerospace (Wkrs)	Middletown, CT	06/13/2002	Microwave Cables.
41,891	American Uniform Co. (Co.)	Blue Ridge, GA	07/11/2002	Flat Goods.
41,892	NF and M International (USWA)	Monaca, PA	07/18/2002	Wrought Titanium.
41,893	J and J Forging (USWA)	Monaca, PA	05/01/2002	Titanium and Steel Alloy Products.
41,894	Coilcraft (Wkrs)	Hawarden, IA	07/10/2002	Wire Wrapped Ceremic.
41,895	Xerox Corporation (Wkrs)	Webster, NY	06/07/2002	Digital Copiers, Printers, Facsimiles
41,896	McManus Wyatt Produce Co. (Wkrs)	Weslaco, TX	07/01/2002	Packer/Shipper of Fresh Produce.
41,897	National Electrical Carbo (Wkrs)	Birmingham, AL	07/08/2002	Carbon Brushes.
41,898	Multicraft Technology (Wkrs)	Tylertown, MS	06/24/2002	Automotive Electronic Parts.
41,899	McMahon Group LLC (Wkrs)	Liverpool, NY	07/08/2002	Circuit Boards.
41,900	Tecumseh Products (IAM)	Grafton, WI	07/08/2002	Compressors.
41,901	Johnson and Johnson Appar (UNITE)	Bailey, NC	07/11/2002	Children's Dresses.
41,902	O.S. Walker Co. (USWA)	Worcester, MA	07/11/2002	Electro Magnetic Chucks.
41,903	Penske Truck Leasing (Wkrs)	Chesterfield, MO	07/10/2002	Truck Rental and Leasing.
41,904	Americal Corporation (Co.)	Carrollton, GA	07/08/2002	Internationally Sourced Goods.
41,905	Penn Compression Moulding (Wkrs)	Irwin, PA	07/05/2002	Power Tools.
41,906	Cooper Tool (Wkrs)	Cheraw, SC	07/09/2002	Air Tools.
41,907	Klaussner Furniture (Wkrs)	Ashboro, NC	07/12/2002	Furniture Cloth and Leather.
41,908	P.S.M. Fastners (IAM)	Ferguson, MO	07/15/2002	Screw Machines, Valve, Fastners.
41,909	Defender Services, Inc. (Co.)	Greensboro, NC	06/28/2002	Cleaning Services.
41,910	Buffalo Color Corporation (Co.)	Buffalo, NY	07/18/2002	Indigo Dyes.

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[FR Doc. 02–20202 Filed 8–8–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,827]

Argus International, Inc., Including Leased Workers of ADP Total Source, Medley, FL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 2, 2002, applicable to workers of Argus International, Inc., Medley, Florida. The notice was published in the **Federal Register** on May 17, 2002 (67 FR 35143).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State shows that leased workers of ADP Total Source were employed at Argus International, Inc. to produce ladies', men's and children's apparel at the Medley, Florida location of the subject firm.

Based on these findings, the Department is amending the certification to include leased workers of ADP Total Source producing ladies', men's and children's apparel at the Medley, Florida location of the subject firm.

The intent of the Department's certification is to include all workers of Argus International, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,827 is hereby issued as follows:

All workers of Argus International, Inc., Medley, Florida, including leased workers of ADP Total Source engaged in employment related to the production of ladies', men's and children's apparel at Argus International, Inc., Medley, Florida, who became totally or partially separated from employment on or after January 7, 2001, through May 2, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC this 25th day of July, 2002.

Edward A. Tomchick,
Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–20195 Filed 8–8–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,274]

Azon Corporation, Johnson City, NY; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked July 2, 2002, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Azon Corporation, Johnson City, New York was issued on May 31, 2002, and was published in the **Federal Register** on June 21, 2002 (67 FR 42285).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The investigation revealed that criterion (3) of the group eligibility requirements of Section 222 of the Trade Act of 1974 was not met. The "contributed importantly" test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents imported coated and converted paper and film during the relevant period. The investigation further revealed that the company did not import products like or directly competitive with coated and converted paper and film during the relevant period.

The request for reconsideration claims a major customer switched from buying from the subject firm in favor of purchasing products like or directly competitive with what the subject plant produced from a competitor that was headquartered in the Netherlands.

A review of data supplied during the initial investigation shows that the specified competitor was in fact headquartered in the Netherlands. However, the products sold by the competitor were produced in the United States. Therefore, the fact that the company was headquartered in the Netherlands is not relevant, since the competitor did not import the products back to the United States during the relevant period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 26th day of July 2002.

Edward A. Tomchick,
Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–20198 Filed 8–8–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 19, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 19, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 22nd day of July, 2002.

Edward A. Tomchick,
Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 07/22/2002]

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
41,838	Feralloy North American (Wkrs)	Melvindale, MI	06/24/2002	Customer Service.
41,839	Ergo Systems, Inc. (Wkrs)	Green Lane, PA	07/01/2002	Computer Keyboard Supports.
41,840	Corbin Ltd (Wkrs)	Huntington, WV	06/21/2002	Mens and Ladies Trousers and Shorts.
41,841	E and A Technologies (Wkrs)	El Paso, TX	07/01/2002	Computer Parts.
41,842	Bee Paper Co., Inc. (Wkrs)	Wayne, NJ	06/14/2002	Office Supplies.
41,843	Guardsmark (Wkrs)	Morgantown, KY	07/01/2002	Customer Service.
41,844	Unit Rig/Terex (IAM)	Tulsa, OK	07/01/2002	Dump Trucks and Parts.
41,845	Norma Tech (Wkrs)	Watertown, CT	07/01/2002	Automotive Hose Clamps.
41,846	Northwest Swissmatic (Wkrs)	Minneapolis, MN	06/30/2002	Cylindrical Machine Parts.
41,847	Cooper Tools (UAW)	Cortland, NY	06/25/2002	Wire Rope and Chain Fittings.
41,848	Jam'ng Five Inc. (Wkrs)	Medley, FL	06/25/2002	Cut Fabric for Children's Apparel.
41,849	Neoplan USA Corp. (Wkrs)	Brownsville, TX	06/27/2002	Buses.
41,850	Global Apparel LLC (Wkrs)	New York, NY	03/11/2002	Garments.
41,851	Burlington Resources (Wkrs)	Houston, TX	06/30/2002	Oil and Natural Gas.
41,852	Cookeville Stamping (Wkrs)	Cookeville, TN	06/28/2002	Appliance Parts.
41,853	Glamorise (Wkrs)	Williamsport, PA	06/12/2002	Ladies' Underwear.
41,854	ZF Industries, Inc. (Wkrs)	Tuscaloosa, AL	06/17/2002	Axles Sysem Units.
41,855	Fibermark DSI (Wkrs)	Springfield, MA	06/28/2002	Specialty Paper.
41,856	Corning Cable Systems (Co.)	Marshfield, MO	06/28/2002	Communications Shelters, Thermo Safes.
41,857	DMI Furniture, Inc. (Co.)	Huntingburg, IN	06/24/2002	Office Furniture.
41,858	G and G Sewing Machine Co (Co.)	Dunmore, PA	06/18/2002	Custom Sewing Units.
41,859	King Press (Wkrs)	Joplin, MO	06/27/2002	Printing Presses.
41,860	Oki Data Americas, Inc. (Co.)	Mount Laurel, NJ	07/15/2002	Ribbon and Toner Cartridges.
41,861	U.S. Precision Glass (Co.)	Lewisburg, OH	06/28/2002	Flat Glass for Refrigerator Shelves.
41,862	Gino and Jack Mfg. (UNITE)	Bath, PA	06/28/2002	Ladies Sportswear.
41,863	Kalkstein Mills, Inc. (UNITE)	Paterson, NJ	06/27/2002	Textile and Weaving.
41,864	Rock-Tenn Company (Co.)	Vineland, NJ	06/27/2002	Hard Back Book Covers.
41,865	Amcor Speciality Packagin (Wkrs)	Newport News, VA	06/06/2002	Plastic Food Containers.
41,866	Ingersoll-Rand Company (Co.)	Roanoke, VA	06/27/2002	Crawler Rock Drills, Downhole Drill Bits.
41,867	Tee Jays Manufacturing (Co.)	Florence, AL	07/02/2002	Men's and Boys' Shirts.
41,868	VF Imagewear Inc. (Co.)	Mt. Pleasant, TN	07/12/2002	Men's and Boys' Work Clothes.
41,869	Skyworks Solutions, Inc. (Co.)	Woburn, MA	07/11/2002	Semiconductor Components.
41,870	Cummins Inc. (Co.)	Montello, WI	07/02/2002	Gas Turbine Inlet/Exhaust Systems.
41,871	Harvard Industries (UAW)	Albion, MI	06/27/2002	Drive Train Components.
41,872	Breed Technologies, Inc. (UNITE)	Knoxville, TN	07/03/2002	Automotive Airbag and Seatbelt Component.
41,873	The Boeing Company (UAW)	Melbourne, AR	07/02/2002	Aircrafts.
41,874	Sebago, Inc. (Co.)	Gorham, ME	07/12/2002	Men's Women's and Kids' Footwear.
41,875	Agrium Conda Phosphate (Co.)	Soda Springs, ID	06/12/2002	Phosphate Fertilizers.
41,876	Meggitt Avionics (UNITE)	Manchester, NH	03/26/2002	Avionics.
41,877	Willamette Industries (Co.)	Albany, OR	07/13/2002	Lumber.
41,878	Doncasters Turbo (Wkrs)	Ivoryton, CT	06/07/2002	Turbine Glades.
41,879	Scotty Fashions (UNITE)	Lehighton, PA	07/15/2002	Ladies Sportswear.

[FR Doc. 02–20203 Filed 8–8–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,388]

Fujitsu Network Communications, Inc., Raleigh, NC; Notice of Negative Determination Regarding Application for Reconsideration

By application received on July 8, 2002, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Fujitsu Network Communications (FNC), Inc., Raleigh, North Carolina, was signed on June 7, 2002, and published in the **Federal Register** on June 21, 2002 (67 FR 42285).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the

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determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Fujitsu Network Communications (FNC), Inc., Raleigh, North Carolina were engaged in activities related to software programming and computer support. The petition was denied because the petitioning workers did not produce an article within the meaning of Section 222(3) of the Act.

The petitioner attempts to demonstrate that the subject plant workers produced a specific article. The petitioner indicates that the product is called "NETSMART" which is an operating system with a graphical user interface. The petitioner further indicates that most of the workers were software developers and some were assigned computer tasks that involved leasing of the developers computers, upgrading the developer's computers with the latest versions of third party software, and regularly developing code into a single functioning unit to be burned on to a compact disk for distribution.

The functions of programming, technical support and the other administrative functions depicted by the petitioner are not considered production activities. A review of the initial investigation shows no production of an article was ever performed at the subject facility during the relevant period.

The workers at the subject firm do not produce an article within the meaning of Section 222(3) of the Trade Act 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 1st day of August, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–20199 Filed 8–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,004]

Glen Raven, Inc., Burnsville, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 11, 2002, in response to a worker petition which was filed on behalf of workers at Glen Raven, Inc., Burnsville, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 2nd day of August 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–20196 Filed 8–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,548 and TA–W–40,458A]

Handler Textile, a Division of Duro Industries, Inc., Stone Mountain, GA; and Duro Industries Sales Corporation, A Division of Duro Industries, Inc., Rochester, NY; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Handler Textile, a Division of Duro Industries, Inc., Stone Mountain, Georgia and Duro Industries Sales Corporation, a Division of Duro Industries, Inc., Rochester, New York. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–40,458; Handler Textile, a Division of Duro Industries, Inc., Stone Mountain, Georgia and

TA–W–40,458A; Duro Industries Sales Corporation, a Division of Duro Industries, Inc., Rochester, New York (July 30, 2002)

Signed at Washington, DC this 5th day of August, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–20194 Filed 8–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,173]

Progress Lighting, Philadelphia, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 25, 2002, in response to a worker petition which was filed on behalf of workers at Progress Lighting, Philadelphia, Pennsylvania.

An active certification covering the petitioning group of workers is already in effect (TA–W–38,307A, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 25th day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–20197 Filed 8–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,099]

Shasta Paper Company, Shasta Acquisition, Plainwell Paper, Anderson, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 17, 2002, applicable to workers of Shasta Paper Company, Anderson, California. The notice was published in the **Federal Register** on January 31, 2002 (67 FR 4750).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of coated and uncoated printing paper.

New information shows that Shasta Acquisition is the parent firm of Shasta Paper Company and Plainwell Paper.

Information also shows that some workers separated from employment at the subject firm had their wages reported under two separate unemployment insurance (UI) tax accounts; Shasta Acquisition and Plainwell Paper.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Shasta Paper, Anderson, California who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,099 is hereby issued as follows:

All workers of Shasta Paper Company, Shasta Acquisition and Plainwell Paper, Anderson, California, engaged in the production of coated and uncoated printing paper, who became totally or partially separated from employment on or after September 4, 2000, through January 17, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 25th day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–20193 Filed 8–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04208 and NAFTA–04208A]

Progress Lighting, Cowpens, SC, and Progress Lighting, Philadelphia PA; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on October 31, 2000, applicable to workers of Progress Lighting, Cowpens, South Carolina. The notice was published in the **Federal Register** on November 16, 2000 (65 FR 69343).

At the request of the International Brotherhood of Electrical Workers, Local 2005, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations occurred at the Philadelphia, Pennsylvania location of Progress Lighting. The Philadelphia, Pennsylvania location is a distribution center for the lighting fixtures produced in Cowpens, South Carolina.

Based on these findings, the Department is amending the certification to include workers of the Philadelphia, Pennsylvania location of Progress Lighting.

The intent of the Department's certification is to include all workers of Progress Lighting Wesley Industries, Inc. affected by a shift in production of lighting fixtures to Mexico.

Accordingly, the Department is amending the certification to include workers of Progress Lighting, Philadelphia, Pennsylvania.

The amended notice applicable to NAFTA–04208 is hereby issued as follows:

All workers of Progress Lighting, Cowpens, South Carolina (NAFTA–04208) and Progress Lighting, Philadelphia, Pennsylvania (NAFTA–04208A) who became totally or partially separated from employment on or after October 6, 1999, through October 31, 2002, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC, this 25th day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–20201 Filed 8–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

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Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 1 day of August 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–19961 Filed 8–8–02; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10989, et al.]

Proposed Exemptions; Investors Savings Bank Pension Plan (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *"moffittb@pwba.dol.gov"*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Investors Savings Bank Pension Plan (the Plan) Located in Milburn, New Jersey

[Application No. D–10989]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sales by the Plan of certain securities (the Securities) to Investors Savings Bank (the Employer), a party in interest with respect to the Plan, provided that the following conditions were satisfied: (1) Each sale was a one-time transaction for cash; (2) the Plan paid no commissions nor other expenses relating to the sales; (3) for each Security that was publicly traded, the Plan received an amount equal to the highest, as of the date of the sale, of (a) the Plan's cost, (b) the book value, or (c) the fair market value of the Security, as determined by an independent, third-party market source; and (4) for each Security that was not publicly traded, the Plan received an amount equal to its cost for the Security, which was in excess of the fair market value of the Security on the date of the sale.

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EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of January 4, 1999.

Summary of Facts and Representations

1. The Plan was a defined benefit plan sponsored by the Employer. As of January 4, 1999, the Plan had approximately 280 participants and 340 beneficiaries. As of that date, the Plan had total assets of approximately $21,500,000. The trustees of the Plan were Patrick J. Grant, Stephen J. Szabatin, Doreen R. Byrnes, and Joseph H. Shepard III, who had responsibility for investment of the Plan's assets. The Plan was terminated in 1999 and its assets transferred to the multiple employer plan administered by the Pentegra Group (Pentegra).

2. Among the assets of the Plan were the Securities. The trustees had purchased the Securities on the open market in the belief that the purchases were consistent with the Plan's investment objectives at the time.[1]

In 1999, the Employer terminated the Plan in the belief that Pentegra can provide more efficient administration at less cost than would be available with a single employer plan. According to the Employer, it purchased the Securities from the Plan in order to facilitate the transfer of the Plan's assets to Pentegra, which wanted the Plan's assets in cash. The Employer represents that the terms of each sale were at least as favorable to the Plan as terms the Plan could have obtained in an arm's length transaction with an unrelated party.

3. The Securities purchased by the Employer from the Plan for cash during the period between January 4, 1999 and February 10, 1999, are listed in the chart below. The Plan's cost for the Securities, and the Employer's purchase price for the Securities, appear in the columns with the headings "Cost" and "Purchase Price," respectively.

Security	Cost	Purchase price	Yield
Federal Nat'l Mortgage Ass'n Bonds	$3,125,135.04	$4,500,426.98	6.91
Federal Home Loan Mortgage Corp. Bonds	364,879.80	629,063.83	8.25
Gen'l Nat'l Mortgage Ass'n Certificates	828,861.30	882,198.64	8.963
Money Store (2d Mortgages)	97,099.22	97,099.22	9.65
U.S. Government Obligations	300,000.00	400,000.00	12.21

For the Securities that were publicly traded, the Employer paid an amount equal to the closing price for each Security on the previous day, as quoted by Paine Webber's Million Plus trading desk as fair market value for a "whole lot" (generally more than one million dollars remaining value). The fair market value was greater than the Plan's cost for these Securities, as demonstrated by the chart above.

With respect to the Money Store Second Mortgages (the Second Mortgages), there was no established market for these Securities (due to the small dollar amount). Thus, the Employer paid an amount equal to the Plan's cost for the Second Mortgages. The Employer represents that KPMG, the Plan's independent auditor, had always carried the Second Mortgages on the Plan's balance sheet at cost, due to their lack of marketability. Further, the Employer represents that the Plan's cost for the Second Mortgages, i.e, $97,099, was the best possible price for the Plan, since the Second Mortgages had been repaid by approximately 80 percent and had an outstanding balance that was significantly less than their face value.

The Plan paid no commissions nor other expenses relating to the sales of the Securities, which represented a significant savings to the Plan in transaction costs. In addition, the Employer represents that the sales of the Securities were in the best interests of the Plan and of its participants and beneficiaries because they facilitated the transfer of Plan assets to the Pentegra multiple employer plan.

4. In summary, the applicant represents that the subject transactions satisfied the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (1) Each sale of the Securities by the Plan to the Employer was a one-time transaction for cash; (2) the Plan paid no commissions nor other expenses relating to the sales; (3) for each Security that was publicly traded, the Plan received an amount equal to the highest, as of the date of the sale, of (a) the Plan's cost, (b) the book value, or (c) the fair market value of the Security, as determined by an independent, third-party market source; and (4) for each Security that was not publicly traded, the Plan received an amount equal to its cost for the Security, which was in excess of the fair market value of the Security on the date of the sale.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Twin City Iron Workers Apprenticeship and Training Fund (the Trust Fund) Located in St. Paul, Minnesota

[Application No. L–10929]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply effective May 22, 2000 to the past purchase of a certain parcel of unimproved real property (the Property) by the Trust Fund from the Twin City Union No. 512 of Bridge, Structural and Ornamental Workers, Inc. (the Building Corporation), a party in interest with respect to the Trust Fund, provided that the following conditions are met:

(a) The purchase of the Property by the Trust Fund was a one-time transaction for cash;

(b) The Trust Fund paid no more than the lesser of: (i) $48,000; or (ii) the fair market value of the Property as determined at the time of the transaction;

(c) The fair market value of the Property was established by an independent, qualified, real estate appraiser that was unrelated to the Building Corporation or any other party in interest with respect to the Trust Fund;

(d) The Trust Fund did not pay any commissions or other expenses with respect to the transaction;

(e) Standard Valuations, Inc. (SVI), acting as an independent, qualified fiduciary for the Trust Fund, determined that the transaction was in the best interest of the Trust Fund and its participants and beneficiaries;

(f) SVI monitored various aspects of the purchase of the Property until closing, including the environmental reports concerning the Property, and took whatever action was necessary to protect the interests of the Trust Fund; and

(g) The purchase price paid by the Trust Fund for the Property represented no more than 25 percent of the Trust Fund's total assets at the time of the transaction.

Summary of Facts and Representations

1. The Trust Fund is an apprenticeship training plan, the assets of which are subject to the fiduciary responsibility provisions of Part 4 of Title I of the Act. The Trust Fund is also established and administered pursuant to the provisions of section 302 of the Labor Management Relations Act of 1947. Currently, there are approximately 972 participants and beneficiaries covered by the Trust Fund. As of December 31, 1999, the Trust Fund had total assets of $715,108.76. The Building Corporation is a Minnesota non-profit corporation under the control and supervision of the Twin City Iron Workers Local Union No. 512.

2. The Property is a parcel of unimproved real property located at Lots 10 & 21, Block 5, Winter's Addition to St. Paul, Ramsey County, Minnesota. The Property is approximately 10,720 square feet. The dimensions of the site are 40 feet by 268 feet. The Property is rectangularly shaped and the topography of the property is generally level and at street grade.

3. The Trust Fund decided to construct a training facility for use by Trust Fund members on a site consisting of several contiguous parcels of real estate owned by the Trust Fund. Certain adjoining lots, however, were owned by the Building Corporation. Construction of a training facility large enough to accommodate current needs of Trust Fund membership required a facility that is larger than that which could be constructed on the parcels of real estate currently owned by the Trust Fund. Economic conditions in the geographic area in which the Trust Fund operates indicated that the need for skilled workers would continue to multiply, thus, making it necessary for the Trust Fund to have a facility which would be able to accommodate current as well as future needs. For example, it was necessary that the Trust Fund secure a storage facility for purpose of housing supplies and equipment necessary for the Trust Fund's programs. To facilitate construction and ultimate management and use of the facility, the Trust Fund determined that all parcels should be owned by a single entity. Ownership by a single entity would encourage administrative efficiency in the construction process, as well as in the ultimate use and operation of the facility. Because the facility would be managed and operated by the Trust Fund, it was desirable that the Trust Fund holds title to the Property. Ownership of the parcels by the Trust Fund would give the Trust Fund full control of the buildings and grounds and would enable the Trust Fund to make improvements to the Property as needed.[2]

4. The Property was appraised by Lisa I. Lang and R. David Lang, Minnesota licensed Certified General Real Property Appraisers of Lang & Associates (the Appraisers), a real estate appraisal firm located in Minnetonka, Minnesota. The Appraisers determined that the fair market value of the Property was approximately $48,000, as of January 10, 2000.

The Appraisers utilized a sales comparison methodology in valuing the Property. The Appraisers compared the Property with recent sales of three other industrial zoned properties, all within immediate and/or competitive market areas of the Property. In order to equate these three transactions with the Property, the Appraisers made adjustments for various comparative factors including appreciation/depreciation over time, location, zoning, frontage/access, off-site improvements, current easements and restrictions, physical characteristics, and size. After making the necessary adjustments, the Appraisers concluded that the unencumbered fee simple interest in the Property would have a fair market value of approximately $48,000. The Appraisers also concluded that an industrial complex, such as the Trust Fund's proposed training facility, would represent the highest and best use of the Property.

5. The Building Corporation, on May 22, 2000, sold the Property to the Trust Fund for $48,000 in cash, subject to the review and approval of an independent fiduciary (see Paragraph 6 below). The parties obtained an updated appraisal of the Property from the Appraisers at the time of the proposed transaction to ensure that the appraised amount (i.e., $48,000) still reflected the fair market value of the Property at that time. The parties have agreed that the $48,000 paid by the Trust Fund represented the fair market value of the Property at the time of the transaction. In addition, the applicant states that the Trust Fund did not pay any commissions, transaction costs, or other expenses associated with the sale of the Property by the Building Corporation, other than the fees necessary for the services of the Trust Fund's independent fiduciary, SVI. Thus, the Building Corporation paid, among other things, the costs of the title search and title insurance premiums, the cost of recording the deeds conveying title to the Property to the Trust Fund, all sales and transfer taxes (including the conveyance tax), the escrow fees, and the cost of the appraisal.

6. SVI was appointed by the Trust Fund Trustees to act as an independent fiduciary for the Trust Fund for the transaction. SVI represents that it is a company organized under the laws of Minnesota and that it exercises fiduciary powers similar to those of national banks. SVI stated that it is an experienced fiduciary in matters concerning Taft-Hartley funds subject to the Act and is also experienced with real estate transactions and investments. SVI acknowledged its duties, responsibilities and liabilities in acting as a fiduciary for the Trust Fund for purposes of the proposed transaction. SVI represents that it is an independent fiduciary and not an affiliate of, or related to, the entities involved in the subject transaction. In this regard, SVI certifies that: (i) Less than one (1) percent of its total deposits, or outstanding loans, are attributable to the deposits of, or loans to, the Building Corporation and its affiliates; and (ii) less than one (1) percent of its annual income (measured on the basis of the prior year's income) comes from business derived from The Building Corporation and its affiliates.

7. SVI has reviewed all of the terms and conditions of the proposed purchase of the Property by the Trust Fund. SVI states that the Appraisers have considered all of the factors necessary to accurately determine the fair market value of the Property, including the applicable zoning restrictions for industrial usage, and the offsite improvements surrounding the Property. Based on this review and

[1] The Department expresses no opinion herein as to whether the acquisition and holding of the Securities by the Plan violated any of the provisions of Part 4 of Title I of the Act. However, the Department notes that section 404(a) of the Act requires, among other things, that a plan fiduciary act prudently and solely in the interest of the plan and its participants and beneficiaries when making investment decisions on behalf of the plan.

[2] The Department expresses no opinion herein concerning the application of section 404 of the Act to the amount of expenditures and/or the need for construction of a training facility. In this regard, the Department notes that the fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest from the general fiduciary responsibility provisions of section 404 of the Act. Section 404(a)(1)(A) and (B) of the Act requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, it is the responsibility of the Trust Fund's fiduciaries to determine the appropriateness of the construction of the facility.

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analysis, SVI concluded that the transaction was in the best interests of the Trust Fund and its participants and beneficiaries. In this regard, SVI stated that the purchase of the Property was a prudent transaction taking into consideration that the Trust Fund will be using this site as a training facility. SVI stated that the agreed upon purchase price of $48,000, based on the Appraisers determination of value accurately reflected the fair market value of the Property at the time of the purchase.

SVI stated further that it would monitor the Property and will take whatever actions are necessary to protect the interests of the Trust Fund's participants and beneficiaries with regard to the transaction. To this end, SVI represented that the current appraisal of the Property was updated at the time of the transaction and that the Trust Fund paid no more than the fair market value of the Property. SVI also ensured that the purchase price paid by the Trust Fund represents no more than 25 percent of the Trust Fund's total assets at the time of the transaction.

SVI represents that the Trust Fund will be able to meet all of its current expenses after the transaction and that the transaction has not adversely affected the Trust Fund's liquidity needs. By letter dated May 6, 2000, SVI states it reviewed the essential documents associated with the transaction and determined that the transaction was in the best interest of the Trust Fund and its participants and beneficiaries.

8. In summary, the applicant states that the transaction has satisfied the statutory criteria of section 408(a) of the Act because: (a) The purchase of the Property by the Trust Fund was a one-time transaction for cash; (b) the Trust Fund did not pay more than the fair market value of the Property as determined at the time of the transaction; (c) the fair market value of the Property was established by an independent, qualified real estate appraiser; (d) the Trust Fund did not pay any commissions or other expenses with respect to the transaction, other than the services of an independent fiduciary (as described herein); (e) SVI, acting as the Trust Fund's independent fiduciary, determined that the proposed transaction was in the best interest of the Trust Fund and its participants and beneficiaries; and (f) the purchase price paid by the Trust Fund for the Property represented no more than 25 percent of the Trust Fund's total assets at the time of the transaction.

EFFECTIVE DATE: This exemption, if granted, is effective as of May 22, 2000.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Khalif I. Ford of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Child Health Corporation America (CHCA) Located in Shawnee Mission, KS

[Application No. L–10939]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act shall not apply to the (1) purchase, by a welfare plan (the Plan), whose hospital sponsor (the Hospital) is a member of CHCA, of third party insurance, through CHCA, the broker of record and a party in interest with respect to such Plan; and (2) the receipt of an insurance sales commission by CHCA from the third party insurance company, in connection with the purchase of an insurance policy with the assets of the Plan attributed to participant (*i.e.*, employee) contributions.

This proposed exemption is subject to the following conditions:

(a) The transactions are effected by CHCA in the ordinary course of its business.

(b) Each Plan pays no more than adequate consideration for an insurance policy that is brokered by CHCA.

(c) Prior to the execution of the transactions, CHCA provides each Hospital, which serves as the independent fiduciary of a Plan it sponsors, with the following written documentation:

(1) A statement setting forth the insurance sales commissions, expressed as a percentage of the gross annual premium payments that will be paid by the insurance company to CHCA with respect to the purchase of the insurance policy;

(2) A description of the charges, fees, discounts, penalties or adjustments which may be imposed under the insurance policy in connection with the purchase, holding, exchange, termination or sale of such policy; and

(3) A full description of CHCA's procedure for offsetting a Plan's allocable portion of insurance sales commissions that are received by CHCA and which are attributable to Plan assets against the amounts otherwise payable by such Plan for future premium contributions (the Premium Adjustment; the Premium Adjustment Procedure).

(d) Following the receipt of such information, the Hospital independent fiduciary acknowledges receipt of such information to CHCA, in writing, and approves the transactions on behalf of the respective Plan.

(e) On an annual basis, CHCA discloses all direct expenses it has incurred to independent Plan fiduciaries of its member Hospitals, including any Premium Adjustments that have been made.

(f) The transactions are on terms that are at least as favorable to a Plan as those available in arm's length transactions with an unrelated party.

(g) The combined total of all fees, insurance sales commissions and other consideration received by CHCA in connection with the purchase of insurance policies issued by a third party insurer or the provision of services to a Plan is not in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and 408(c)(2) of the Act.

(h) There is no increased cost to a Plan nor any diminution in any benefit received by a Plan participant or beneficiary as a result of CHCA's receipt of insurance sales commissions.

(i) The Plan receives a Premium Adjustment based upon the excess of insurance sales commissions over direct costs, if any, incurred by CHCA, in accordance with the Premium Adjustment Procedure, the steps of which are as follows:

(1) At the end of each calendar year, CHCA separates the total premiums paid between each Hospital and its respective Plan.

(2) CHCA calculates the commissions that are paid based on the premiums.

(3) CHCA calculates the amount available for the patronage dividend by subtracting aggregate direct expenses incurred under its insurance program from the total commissions.

(4) CHCA calculates a breakdown of the commissions on a percentage basis.

(5) CHCA allocates the amounts available for the patronage dividend based upon the percentages determined above in paragraph (i)(4).

(6) CHCA sends a check to the insurer with instructions to allocate such amount on a per Hospital basis to be applied against a Plan participant's insurance rate schedule.

(7) CHCA requests written confirmation from the insurer that the Premium Adjustment has been made.

(j) CHCA establishes and maintains a system of internal and external accounting controls for the Premium Adjustment Procedure.

(k) CHCA retains an independent auditor to audit, on an annual basis, the Premium Adjustments made to the affected Plans.

(l) Within 90 days following the publication, in the **Federal Register**, of the notice granting the final exemption, CHCA makes full restitution to the participants of each affected Plan whose assets are attributed to CHCA's past fee arrangement with an independent broker (the Independent Broker) and its subsequent compensation arrangement with the UNUM Life Insurance Company (UNUM).

(m) CHCA maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons described in paragraph (n) to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of CHCA, such records are lost or destroyed prior to the end of such six year period; and

(2) No party in interest, other than CHCA, shall be subject to the civil penalty that may be assessed under section 502(i), or the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (m).

(n)(1) Except as provided in paragraph (n)(2) and notwithstanding anything to the contrary in sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (m) are unconditionally available for examination during normal business hours by—

(A) Any duly authorized employees or representatives of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan which has the authority to purchase an insurance policy by or on behalf of a Plan or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of a Plan or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described above in paragraph (n)(1)(B) or (C) shall be authorized to examine the trade secrets of CHCA or commercial or financial information which is privileged or confidential.

Summary of Facts and Representations

1. CHCA, a taxable cooperative organization located at 803 West 64th Street, Shawnee Mission, Kansas, is owned by 38 different not-for-profit hospitals. The Hospitals are located in various cities around the United States and they specialize in the medical treatment of children. Each member Hospital owns 2.63 percent of CHCA and no member Hospital is in a position to influence or control the actions of CHCA or the entire Hospital group.[3] (A table showing the Hospitals participating under CHCA's insurance program, the Plans they sponsor and the respective participant totals is presented in the Appendix.)

2. As a cooperative organization, CHCA acts as a purchasing agent and makes products and services, including insurance, available to its member Hospitals at discounted rates. Each Hospital is, however, free to purchase any product or service elsewhere, if it desires. At the end of each year, if CHCA receives a "profit," as confirmed by an independent auditor, it typically pays a patronage dividend to each Hospital.[4] Under such circumstances, CHCA's eleven member Board of Directors, consisting of CHCA's Chief Executive Officer and the Chief Executive Officers of ten member Hospitals, will determine whether such dividend will be paid, the amount, the components (*i.e.*, cash, retained surplus in CHCA, or equity interests in other entities that are associated with CHCA), and the percentage distribution of the dividend amount among the various components.[5]

3. Among the goods and services provided by CHCA are insurance policies, including property and casualty insurance, workers compensation, disability insurance and group life insurance. Many of CHCA's member Hospitals maintain disability plans provided through group disability insurance obtained through CHCA. These Hospitals also maintain group life insurance plans provided through life insurance obtained through CHCA.

The insurance is obtained on a group basis. To allow the Hospitals the benefit of a group rate, CHCA is the master policy holder. Each Hospital is a participating employer in the policy. Thus, CHCA will make a recommendation to the Hospitals on who the ultimate insurance carrier will be and it will establish a relationship the Hospitals may access. The individual Hospitals will then have the sole discretion on whether or not to participate in CHCA's insurance program. CHCA will also exercise discretionary authority regarding the type of insurance to be purchased and made available to its membership.

CHCA notes that the amount of insurance premiums paid by individual member Hospital may be different from that paid by other member Hospitals. In this regard, CHCA explains that some Hospitals may choose to pay all or most of the insurance costs for its employees while others may pass all or a significant portion of the insurance costs on to their employees. Still other Hospitals may choose not to provide any disability and/or life insurance coverage at all.

4. Prior to May 1, 2000, member Hospitals participating in CHCA's insurance program placed insurance through an independent insurance broker with UNUM, a third party insurer.[6] UNUM set the premiums for the insurance and negotiated the commissions to be paid to the Independent Broker. Under this arrangement with the Independent Broker, CHCA acted primarily as a liaison between the Hospitals, the Independent Broker and UNUM. In this regard, between 1998 and May 2000, CHCA received fees from the Independent Broker totaling $1,137,000 for the administrative and marketing services it performed while the Independent Broker received a 7 percent commission.

5. CHCA has obtained a brokerage license to sell insurance and after May 2000, it became the broker of record. Rather than having the commissions paid by UNUM to the Independent Broker, CHCA has been retaining the commissions within the cooperative group in order to increase the cooperative's net profits as well as the amount of the patronage dividend. As a

[3] CHCA is subject to the provisions of Subchapter T of the Code, specifically to Code sections 1381–1388 and section 521 which provides special exemptions for cooperative organizations from taxes.

[4] The profitability or net income of CHCA is defined as revenues less expenses. CHCA represents that its financial records are presented in conformity with Generally-Accepted Accounting Principles.

[5] The Board of Directors also approves the third party insurer, the contract with such insurer and authorizes other business functions. Members of the Board of Directors are not compensated for their services.

[6] UNUM's current financial strength ratings, as denoted by Moody's Standard and Poor's, A.M. Best, and Fitch/Duff & Phelps are ad follows: "A2" or "Good Financial Security" (Moody's); "AA" or "Very Strong" (Standard & Poor's); "A" or "Excellent" (A.M. Best); and "AA/" or "Very Strong" (Fitch/Duff & Phelps).

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consequence, the commissions previously paid to the Independent Broker are currently being paid to CHCA. The amount of the commissions payable to CHCA by UNUM represents 10 percent of the total premiums for disability insurance and 5 percent of the total premiums for life insurance. CHCA states that the commissions are negotiated on an arm's length basis with UNUM and are market-based. CHCA also does not expect that a Plan's costs will be increased by the present arrangement.

6. To provide a direct benefit to Plan participants with respect to the distribution of patronage dividends, CHCA proposes to amend its policy of allocating net income to each of the member Hospitals. Under the contemplated arrangement, CHCA intends to take a portion of the net income attributable to the commissions paid by Plan participants and then transfer such commissions to each Plan in accordance with the Premium Adjustment Procedure described herein. In general, CHCA will make a payment to UNUM, or a successor third party insurance carrier, on behalf of Plan participants to ensure that the participants will benefit from its action. The amount of the Premium Adjustment will represent a *pro rata* portion of the commissions paid by the Plan participants to the commissions paid on the aggregate premium contribution.

More specifically, during its normal year-end patronage dividend calculation, CHCA will make a special allocation for the commission dollars it has received from its current long-term disability and life insurance program (and possibly commission dollars derived from other health and welfare plans in the future). The calculation will then determine the net patronage dividend dollar that pertains to the commissions derived from Plan participant contributions to the overall commission dollars earned by CHCA. The dollar amount will then be paid directly to UNUM and applied as a direct reduction in the rate paid by the Plan participant for future insurance premium contributions.

In effect, CHCA will implement its Premium Adjustment Procedure as follows:

- At the end of each calendar year, CHCA will separate the total premiums paid between each Hospital and its respective Plan.
- CHCA will calculate the commissions that are paid based upon the premiums.
- CHCA will calculate the amount available for the patronage dividend by subtracting the aggregate direct expenses incurred under its insurance program[7] from the total commissions.
- CHCA will calculate a breakdown of the commissions on a percentage basis.
- CHCA will allocate the amounts available for the patronage dividend based upon the percentages determined in the previous step.
- CHCA will send a check to UNUM (or a successor third party insurer) with instructions to allocate such amount on a per Hospital basis that will be applied against a Plan participant's insurance rate schedule.
- CHCA will request written confirmation from UNUM (or the successor third party insurer) that the Premium Adjustment has been made.

(For a further explanation of CHCA's Premium Adjustment Procedure, refer to the example in the Appendix.)

7. CHCA states that the payment of insurance commissions that are attributable to plan assets, the payment of patronage dividends and the Premium Adjustment Procedure may violate certain provisions of sections 406(a) and 406(b) of the Act. In this regard, since a member Hospital will receive a patronage dividend which is derived, in part, from plan assets attributable to insurance commissions paid to CHCA, CHCA is of the view that the purchase of insurance for a Hospital-sponsored, disability or life insurance Plan may be construed as fiduciary self-dealing both on the part of CHCA and a member Hospital in violation of section 406(b)(1) of the Act. In addition, CHCA observes that its actions may further result in the involvement of a member Hospital and thereby be construed as the Hospital's receiving consideration from a party (*i.e.*, CHCA) which has been dealing with a participating Plan in connection with a transaction involving the assets of such Plan, in violation of section 406(b)(3) of the Act.

Accordingly, CHCA requests an administrative exemption from the Department to permit (a) the purchase of third party insurance by a Plan through CHCA, as the broker of record; and (b) the receipt of insurance sales commissions by CHCA from UNUM in connection with such purchase. Further, CHCA represents that within 90 days of publication, in the **Federal Register**, of the notice granting the final exemption, it will make full restitution to the participants of each affected Plan whose assets are attributed to CHCA's past fee arrangement with the Independent Broker and its current insurance brokerage arrangement with UNUM.

CHCA anticipates that the foregoing purchase and insurance brokerage transactions will recur on an annual basis. Although the basic parameters of the transactions will not change from year to year, the amount of the annual premium, the amount of the brokerage commissions and the amount of the patronage dividend are expected to differ.

8. The proposed exemption is subject to a number of safeguards. In pertinent part,

- The transactions will be effected by CHCA in the ordinary course of its business.
- No Plan will pay more than adequate consideration for an insurance policy that is brokered by CHCA.
- Prior to the execution of the transactions covered by the exemption, CHCA will provide each Hospital, which serves as the independent fiduciary of a Plan it sponsors, with written disclosures describing the insurance sales commissions and fees, discounts, penalties or adjustments which may be imposed under the recommended insurance policy in connection with the purchase, holding, exchange, termination or sale of the insurance policy, as well as the Premium Adjustment Procedure.
- Following the receipt of such information, the Hospital fiduciary will acknowledge receipt of such information to CHCA in writing and approve the transactions on behalf of the Plan.
- On an annual basis, CHCA will disclose, in writing, the direct expenses it has incurred to independent Plan fiduciaries of its member Hospitals, including any Premium Adjustments that have been made.
- The transactions will be on terms that are at least as favorable to a Plan as those available in arm's length transactions with an unrelated party.
- The combined total of all fees, commissions and other consideration received by CHCA in connection with the purchase of insurance policies issued by a third party insurer or the provision of services to a Plan has not been and will not be in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and 408(c)(2) of the Act.

[7] CHCA represents that the "direct expenses" associated with its insurance program are those expenses which are unique to CHCA that would not be incurred if the program were not in place. Regulation section 29 CFR 2550.408c–2(b)(3) provides that an expense is not a direct expense to the extent it would have been sustained had the service not been provided or if it represents an allocable portion of overhead costs. Although CHCA represents that it intends to comply with the foregoing regulation, the Department is expressing no opinion herein on whether the expenses identified by CHCA in the operation of its insurance program are "direct expenses" as contemplated by the regulation.

9. CHCA will establish a system of internal and external accounting controls with respect to the Premium Adjustment Procedure. In this regard, internal audit employees of CHCA will review appropriate records. In addition, CHCA will retain the services of Baird, Kurtz & Dobson, CPA, P.C., an independent accounting firm, to audit, on an annual basis, the Premium Adjustment Procedure. The audits will provide independent verification of the proper crediting of the insurance sales commissions attributed to the assets of the participating Plans. Specifically, the independent auditors will be instructed to (a) review and test compliance with the operational controls established by CHCA for purposes of implementing the Premium Adjustment Procedure; (b) verify, on a test basis, the Premium Adjustments that are made; and (c) recompute, on a test basis, the amounts adjusted at the discretion of the auditors. In the event any shortfalls are uncovered during the course of an audit as a result of errors it has made, CHCA will provide a cash payment to the Plan equal to the amount of the error plus market rate interest for the period of time of the error until the correction is made. Any excess Premium Adjustments will be corrected by corresponding future adjustments in the amount of the excess and will not require that the Plan pay any interest.

10. In summary, it is represented that the transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The transactions will be effected by CHCA in the ordinary course of its business.

(b) A Plan will pay no more than adequate consideration for an insurance policy that is brokered by CHCA.

(c) Prior to the execution of the transactions, CHCA will provide each Hospital, serving as the independent fiduciary of the Plan it sponsors, with written disclosures describing the insurance sales commissions and fees, discounts, penalties or adjustments which may be imposed under the insurance policy, including a written description its Premium Adjustment Procedure. Such disclosures will also be approved by the independent Plan fiduciary.

(d) On an annual basis, CHCA will provide independent Plan fiduciaries of its member Hospitals with written disclosures of the direct expenses CHCA has incurred, including any Premium Adjustments that have been made.

(e) The transactions will be on terms that are at least as favorable to a Plan as those available in arm's length transactions with an unrelated party.

(f) The combined total of all fees, commissions and other consideration received by CHCA in connection with the purchase of insurance policies issued by UNUM (or another third party insurer) or the provision of services to a Plan will not be in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and 408(c)(2) of the Act.

(g) There will be no increased cost to a Plan nor any diminution in any benefit received by a Plan participant or beneficiary since Plan participants and beneficiaries will receive the same insurance benefits regardless of whether the insurance sales commissions stay within the cooperative group and are used for the payment of patronage dividends to the member Hospitals.

(h) The Plan will receive a Premium Adjustment based upon the excess of insurance commissions over direct costs, if any, incurred by CHCA, in accordance with CHCA's Premium Adjustment Procedure.

(i) CHCA will maintain a system of internal accounting controls with respect to the Premium Adjustment Procedure, and will retain an independent auditor outside of the control of CHCA to audit, on an annual basis, the Premium Adjustments that are made on behalf of the affected Plans.

(k) Within 90 days following the publication, in the **Federal Register**, of the notice granting the final exemption, CHCA will make full restitution to the participants of each affected Plan whose assets are attributed to CHCA's past and continuing compensation arrangements with the Independent Broker and UNUM.

(l) CHCA will maintain, for a period of six years and in a manner that is accessible for audit and examination, written records of the transactions covered by this exemption to enable certain authorized persons to determine whether the conditions of the exemption have been met.

Notice to Interested Persons

Notice of the proposed exemption will be provided to participants and beneficiaries in each Plan sponsored by a member Hospital within 30 days after publication of the notice of proposed exemption in the **Federal Register**. The notice will include a copy of the proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Each member Hospital will give notice (a) to active participants in their respective Plans, by posting copies of the proposed exemption and supplemental statement on bulletin boards normally used for employee notices; and (b) to retirees, by forwarding copies of the proposed exemption and supplemental statement, by first-class mail. Comments regarding the proposed exemption will be due within 60 days of the publication of the notice of pendency in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

Appendix

A. Table Showing CHCA Hospitals, Plans and Participants Enrolled in CHCA's Insurance Program

Hospital	Name of plan	Total participants
Children's Hospital Medical Center of Akron	Children's Hospital Medical Center of Akron/Flexible Benefits Program.	6,315
Children's Healthcare of Atlanta	Children's Healthcare of Atlanta Welfare Benefit Plan	11,831
The Children's Hospital of Alabama	The Children's Hospital of Alabama Group Life Insurance Plan	7,704
Children's Hospital (Boston)	Group Life, Optional Life, Dependent Life & Weekly Indemnity Plan.	10,145
	Children's Hospital Long Term Disability Plan	3,866
The Children's Memorial Hospital (Chicago)	Children's Memorial Hospital Life & LTD Plan	5,584
Children's Hospital Medical Center (Cincinnati)	Children's Hospital Medical Center Long Term Disability Plan	3,556
Children's Hospital (Columbus)	Group Life Plan for Employees of Children's Hospital	7,231
	Group Long Term Disability Plan for Employees of Children's Hospital.	1,834

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Hospital	Name of plan	Total participants
Driscoll Children's Hospital (Corpus Christi)	R. Driscoll & J. Driscoll & R. Driscoll, Jr. Foundation Plan	6,658
Children's Medical Center of Dallas	Children's Group Life & Health Insurance Plan	6,642
The Children's Medical Center (Dayton)	Children's Medical Center Life & Add. Plan	3,717
The Children's Hospital (Denver)	The Children's Hospital Long Term Disability Plan	1,473
	The Children's Hospital Life Insurance Plan	6,919
Cook Children's Medical Center (Ft. worth)	Cook Children's Health Care System Group LTD Plan	7,968
Texas Children's Hospital (Houston)	Texas Children's Hospital Match Plan	11,953
Children's Hospital Los Angeles	Children's Hospital Los Angeles Long Term Disability and Group Life Insurance Plans.	
St. Jude Children's Research Hospital (Memphis)	St. Jude Children's Research Hospital—Employees' Group Long Term Disability Insurance Plan.	1,739
Miami Children's Hospital	Miami Children's Hospital Optional Life Plan	7,106
Children's Hospital of Wisconsin (Milwaukee)	Children's Health System of Wisconsin, Inc. Benefits Plan	3,795
Children's Hospital (New Orleans)	Children's Hospital Long Term Disability Insurance Plan	981
Children's Healthcare Services (Omaha)	Children's Hospital Employee Life Insurance Plan	2,354
	Children's Hospital Group Long Term Disability Plan	687
	Children's Hospital Employee Life Plan	2,036
	Children's Healthcare Services Short Term Disability Plan	124
Phoenix Children's Hospital	Phoenix Children's Hospital Benefits Plan	1,489
All Children's Hospital (St. Petersburg)	All Children's Health System Life, Accidental Death and Dismemberment Plan.	
Children's Hospital and Health Center (San Diego)	All Children's Health System Long Term Disability Plan	
Children's National Medical Center (DC)	Children's Life & LTD Plan	7,244

B. Example Showing CHCA's Rebate Procedure Where the Plan Sponsors and the Participants Pay Their Proportionate Share of the Insurance Premiums

• *Step 1*—Separate total premiums paid by each employer Hospital and its respective Plan participants.

Hospital	Hospital-paid premiums		Participant-paid premiums	
	Life	LTD	Life	LTD
A	$130,000	$0	$110,000	$0
B	350,000	280,000	60,000	0
C	250,000	450,000	490,000	0
D	250,000	300,000	250,000	0
E	400,000	800,000	0	0
	1,380,000	1,830,000	910,000	0

• *Step 2*—Calculate the commissions paid to CHCA based on the premiums shown in Step 1. The commission rates are 5% for Life and 10% for LTD insurance.

Hospital	Commissions based on hospital-paid premiums		Commissions based on participant-paid premiums	
	Life	LTD	Life	LTD
A	$6,500	$0	$5,500	$0
B	17,500	28,000	3,000	0
C	12,500	45,000	24,500	0
D	12,500	30,000	12,500	0
E	20,000	80,000	0	0
	69,000	183,000	45,500	0

• *Step 3*—Calculate the net contribution of the CHCA's Insurance Program.

Total Commissions ($69,000 + $183,000 + $45,500) = $297,500 Direct Expenses Unique to CHCA's Insurance Program = $75,000 ($297,500—$75,000) = $222,500. This is the amount available for the Patronage Dividend. (For purposes of this example, assume that the Patronage Dividend will be in cash and that the adjustment will be in cash.)

• *Step 4*—Calculate the breakdown of the commissions paid by each Hospital and Plan Participants on a percentage basis.

Hospital	Commission percentages based on hospital-paid premiums %		Commission percentages based on participant-paid paid premiums %	
	Life	LTD	Life	LTD
A	2.18	0.00	1.85	0.00
B	5.88	9.41	1.01	0.00
C	4.20	15.13	8.24	0.00
D	4.20	10.08	4.20	0.00
E	6.72	26.89	0.00	0.00

Hospital	Commission percentages based on hospital-paid premiums %		Commission percentages based on participant-paid paid premiums %	
	Life	LTD	Life	LTD
	23.18	61.51	15.30	0.00

• Step 5—Allocate the amount available for the Patronage Dividend based upon the Step 4 percentages.

Hospital	Allocation of patronage dividends to hospital-paid premiums		Allocation of patronage dividends to participant-paid premiums	
	Life	LTD	Life	LTD
A	$4,851	$0	$4,116	$0
B	13,083	20,937	2,247	0
C	9,345	33,664	18,334	0
D	9,345	22,428	9,345	0
E	14,952	59,830	0	0
	51,576	136,042	34,042	0

(To compute the Patronage Dividend amount that is attributable to Participant-Paid Premiums for Life Insurance, under Hospital A, the $5,500 commission attributable to Participant-Paid Premiums for Life Insurance is divided by the $297,500 Total Commission payable to CHCA. The quotient, 1.85%, is then multiplied by the $222,500 amount available for the Patronage Dividend to arrive at the product, $4,116. The amounts for Hospitals B–E are also similarly calculated.)

• *Step 6*—CHCA will send a check to the insurance carrier for $34,042 with instructions to allocate the amount on a per Hospital basis that will be applied against the employee Participants' premium rate schedule. CHCA will also request written confirmation from the insurer that the Premium Adjustment has been made.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 6th day of August, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–20205 Filed 8–8–02; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–35; Exemption Application No. D–10987]

Grant of Individual Exemptions; Metropolitan Life Insurance Company (MetLife)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon

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the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Metropolitan Life Insurance Company (MetLife) Located in New York, NY

[Prohibited Transaction Exemption 2002–35; Exemption Application No. D–10987]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and section 407(a) of the Act (or ERISA) and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective January 20, 2000 until May 18, 2000, to (1) the holding, by MetLife Separate Account R.I. (the Separate Account), an index fund managed by MetLife which holds plan assets, of 523 shares of common stock (the Common Shares), issued by the Conning Corporation (Conning), an affiliate of MetLife; (2) the acquisition, by MetLife, of certain certificates, representing 523 shares of cancelled Conning Common Shares (the Cancelled Conning Shares), from the Separate Account, pursuant to the terms of a tender offer (the Tender Offer) and merger agreement; and (3) the delivery of the certificates representing the 523 Cancelled Conning Shares to ChaseMellon Shareholder Services, LLC (the Disbursing Agent), in exchange for certain cash consideration.

This exemption is subject to the following conditions:

(a) The decision by a Plan to invest in the Separate Account was made by a Plan fiduciary which was independent of MetLife and its affiliates.

(b) At all times, the Conning Common Shares represented less than one percent of the assets of the Separate Account and less than one percent of the value of the assets of the ERISA-covered Plans investing therein.

(c) The exchange of the Cancelled Conning Shares by the Separate Account was a one-time transaction for cash.

(d) The Separate Account and the Plans received the fair market value for each Cancelled Conning Share on the date of the exchange.

(e) The consideration received by the Separate Account for its Cancelled Conning Shares was the same consideration that was received by (i) all shareholders who validly tendered their Conning Common Shares pursuant to a Tender Offer and (ii) all holders of Cancelled Conning Shares.

(f) The Separate Account paid no commissions, fees or other expenses with respect to the exchange of the Cancelled Conning Shares for cash.

(g) After the expiration of the Tender Offer and the consummation of the Merger, the Separate Account delivered certificates representing the Cancelled Conning Shares to the Disbursing Agent to exchange with MetLife and its affiliates for cash.

(h) The terms of the exchange were no less favorable to the Separate Account and the Plans than those obtainable in an arm's length transaction engaged in by other similarly-situated holders of the Cancelled Conning Shares.

EFFECTIVE DATE: This exemption is effective from January 20, 2000 until May 18, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 22, 2002 at 67 FR 36034.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

The Banc Funds Company, LLC (TBFC) Located in Chicago, IL

[Prohibited Transaction Exemption 2002–36; Exemption Application No. D–11083]

Exemption

Section I. Covered Transactions

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code,[1] shall not apply, effective June 19, 2002, to (1) the purchase or redemption of interests in the Banc Fund VI L.P. (the Partnership) by employee benefit plans (the Plans) investing in the Partnership, where TBFC, a party in interest with respect to the Plans, is the general partner of MidBanc VI, L.P., which is, in turn, the general partner (the General Partner) of the Partnership; (2) the sale, for cash or other consideration, by the Partnership of certain securities that are held as Partnership assets to a party in interest with respect to a Plan participating in the Partnership, where the party in interest proposes to acquire or merge with the portfolio company (the Portfolio Company) that issued such securities; and (3) the payment to the General Partner, by Plans participating in the Partnership, of an incentive fee (the Performance Fee) which is intended to reward the General Partner for the superior performance of investments in the Partnership.

This exemption is subject to the following conditions as set forth below in Section II.

Section II. General Conditions

(a) Prior to a Plan's investment in the Partnership, a Plan fiduciary which is independent of TBFC and its affiliates (the Independent Fiduciary) approves such investments on behalf of the Plan.

(b) Each Plan investing in the Partnership has total assets that are in excess of $50 million.

(c) No Plan may invest more than 10 percent of its assets in the Partnership, and the interests held by the Plan may not exceed 25 percent of the assets of the Partnership.

(d) No Plan may invest more than 25 percent of its assets in investment vehicles (*i.e.*, collective investment funds or separate accounts) managed or sponsored by TBFC and/or its affiliates.

(e) Prior to investing in the Partnership, each Independent Fiduciary contemplating investing therein receives a Private Placement Memorandum and its supplement containing descriptions of all material facts concerning the purpose, structure and the operation of the Partnership.

(f) An Independent Fiduciary which expresses further interest in the Partnership receives a copy of the Partnership Agreement describing the organizational principles, investment objective and administration of the Partnership, the manner in which the Partnership interests may be redeemed, the manner in which Partnership assets are to be valued, the duties and responsibilities of the General Partner, the rate of remuneration of the General Partner, and the conditions under which the General Partner may be removed.

(g) If accepted as an investor in the Partnership, the Independent Fiduciary is—

(1) Furnished with the names and addresses of all other participating Plan and non-Plan investors in the Partnership;

(2) Required to acknowledge, in writing, prior to purchasing an interest in the Partnership as a limited partner (the Limited Partner) that such Independent Fiduciary has received copies of such documents; and

(3) Required to acknowledge, in writing, to the General Partner that such fiduciary is independent of TBFC and its affiliates, capable of making an independent decision regarding the investment of Plan assets, knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the Partnership.

(h) Each Plan receives the following written disclosures from the General Partner with respect to its ongoing participation in the Partnership:

(1) Within 90 days after the end of each fiscal year of the Partnership as well as at the time of termination, an annual financial report containing a balance sheet for the Partnership as of the end of such fiscal year and a statement of changes in the financial position for the fiscal year, as audited and reported upon by independent, certified public accountants. The annual reports will also disclose the remuneration that has accrued or is paid to the General Partner.

(2) Within 60 days after the end of each quarter (except in the last quarter) of each fiscal year of the Partnership, an unaudited quarterly financial report consisting of at least a balance sheet for the Partnership as of the end of such quarter and a profit and loss statement for such quarter. The quarterly report will also specify the remuneration that is actually paid or accrued to the General Partner.

(3) Such other written information as may be needed by the Plans (including copies of the proposed exemption and grant notice describing the exemptive relief provided herein).

(i) At least annually, the General Partner will hold a meeting of the Partnership, at which time, the Independent Fiduciaries of the participating Plans will have the opportunity to decide on whether the Partnership and/or the General Partner should be terminated as well as discuss any aspect of the Partnership and the agreements promulgated thereunder with the General Partner.

(j) During each year of the Partnership, representatives of the General Partner will be available to confer by telephone or in person with Independent Fiduciaries of participating Plans to discuss matters concerning the Partnership.

(k) The terms of all transactions that are entered into on behalf of the Partnership remain at least as favorable to a Plan investing in the Partnership as those obtainable in arm's length transactions with unrelated parties. In this regard, the valuation of assets in the Partnership that is done in connection with the distribution of any part of the General Partner's Performance Fee will be based upon independent market quotations or (where the same are unavailable) determinations made by an independent appraiser.

(l) In the case of the sale by the Partnership of Portfolio Company securities to a party in interest with respect to a participating Plan that occurs in connection with the acquisition of a Portfolio Company represented in the Partnership's portfolio, the party in interest may not be the General Partner, TBFC, any employer of a participating Plan, or any affiliate thereof, and the Partnership receives the same terms as is offered to other shareholders of a Portfolio Company.

(m) As to each Plan, the total fees paid to the General Partner and its affiliates constitute no more than "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(n) Any increase in the General Partner's Performance Fee is based upon a predetermined percentage of net realized gains minus net unrealized losses determined annually between the date the first contribution is made to the Partnership until the time the Partnership disposes of its last investment. In this regard,

(1) Except as provided below in Section II(o), no part of the General Partner's Performance Fee may be withdrawn before December 31, 2007, which represents the end of the Acquisition Phase for the Partnership, and not until Plans have received distributions equal to 100 percent of their capital contributions made to the Partnership.

(2) Prior to the termination of the Partnership, no more than 75 percent of the Performance Fee credited to the General Partner may be withdrawn by the Partnership.

(3) The debit account established for the General Partner to calculate the Performance Fee (the Performance Fee Account) is credited annually with a predetermined percentage of net realized gains minus net unrealized losses, minus Performance Fee distributions.

(4) No portion of the Performance Fee may be withdrawn if the Performance Fee Account is in a deficit position.

(5) The General Partner repays all deficits in its Performance Fee Account and it maintains a 25 percent cushion in such account prior to receiving any further distribution.

(o) During the Acquisition Phase of the Partnership only,

(1) The General Partner is entitled to take distributions with respect to the Performance Fee in the amount of any income tax liability it or its affiliates become subject to with respect to net capital gains of the Partnership, provided such gains are based upon the sale of Portfolio Company securities that is initiated by a third party in connection with a merger, tender offer or acquisition, and does not involve the exercise of discretion by the General Partner.

(2) The tax distributions are deducted from the Performance Fee.

(3) The General Partner repays to the Partnership any tax refund received to the extent a distribution has been made to such General Partner.

(4) The General Partner provides the Plans with an annual report and accounting of all distributions and repayments attributable to income taxation of the General Partner and its affiliates, including written evidence that the distributions have been utilized exclusively to pay the income tax liability.

(p) The General Partner maintains, for a period of six years, the records necessary to enable the persons described in paragraph (q) of this Section II to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the General Partner, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the General Partner shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (q) below.

(q)(1) Except as provided in section (q)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (p) of this Section II shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any Independent Fiduciary of a participating Plan or any duly authorized representative of such Independent Fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

[1] For purposes of this exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

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(q)(2) None of the persons described above in subparagraphs (B)–(D) of this paragraph shall be authorized to examine the trade secrets of the General Partner or TBFC or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption,

(a) The term "TBFC" means The Banc Funds Company, LLC and any affiliate of TBFC as defined in paragraph (b) of Section III.

(b) An "affiliate" of TBFC includes —

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with TBFC.

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) An "Independent Fiduciary" is a Plan fiduciary which is independent of TBFC and its affiliates and is either a Plan administrator, trustee, named fiduciary, as the recordholder of the Limited Partner's interest in the Partnership or an investment manager.

(e) The term "Portfolio Companies" include commercial banks and other depository institutions such as savings banks, savings and loan associations, holding companies controlling those entities, and companies providing financial services in the United States, which include, but are not limited to, consumer finance companies and demutualizing life insurance companies.

(f) The term "net realized gains" refers to the excess of realized gains over realized losses.

(g) The term "net realized losses" refers to the excess of realized losses over realized gains.

(h) The term "net unrealized losses" refer to the excess of unrealized losses over unrealized gains.

(i) The term "net unrealized gains" refers to the excess of unrealized gains over unrealized losses. For a gain or loss to be "realized," an asset of the Partnership must be sold for more than or less than its acquisition price. For a gain or loss to be "unrealized," the Partnership asset must increase or decrease in value but not be sold.

EFFECTIVE DATE: This exemption is effective as of June 19, 2002.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 6, 2002 at 67 FR 39053.

Written Comments

The Department received one written comment with respect to the proposed exemption and no requests for a public hearing. The comment, which was submitted by TBFC, requests that the exemption be made effective as of June 19, 2002 since a preliminary closing occurred on that date. In response to the TBFC's comment, the Department has made the final exemption effective as of the June 19, 2002 closing date.

Accordingly, after giving full consideration to the entire record, including the comment, the Department has determined to grant the exemption as modified above. For further information regarding the comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11083) the Department is maintaining in this case. The complete application file, as well as the comment and all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 6th day of August, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–20204 Filed 8–8–02; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–093)]

NASA Advisory Council, Pioneer Revolutionary Technology Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aerospace Technology Advisory Committee (ATAC), Pioneer Revolutionary Technology Subcommittee (PRTS).

DATES: Wednesday, September 4, 2002, 8:30 a.m. to 5:30 p.m.; and Thursday, September 5, 2002, 8:30 a.m. to 12:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 6H46, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aerospace Technology, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4729.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Quality Review Process
—General Description of Program
—Actions from ATAC and NASA's Response

—Technology Investment Design Tool
—University Research Enterprise Technology Initiatives

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: August 1, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–20215 Filed 8–8–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–094)]

NASA Advisory Council, Advanced Space Transportation Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aerospace Technology Advisory Committee (ATAC), Advanced Space Transportation Subcommittee (ASTS).

DATES: Tuesday, September 10, 2002, 12:30 p.m. to 5 p.m.; and Wednesday, September 11, 2002, 9 a.m. to 12:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 9H40, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aerospace Technology, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4729.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Overview of Space Launch Initiative (SLI)
—Integrated Space Transportation Plan (ISTP) Update
—SLI Lesson Learned
—Review of SLI Partnerships
—SLI Technology Development
—Composite vs. Metallic Fuel Tanks

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: August 1, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–20216 Filed 8–8–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 23, 2002. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Larry Baume, Acting Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1505. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal

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memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Office of the Chief of Engineers (N1–77–00–1, 1 item, 1 temporary item). Records relating to military construction projects, 1951–1973. Included are correspondence, directives authorization forms, drawings, transmittals, and related records created and maintained by branches and branch sections of the Construction Division and the Engineering Division of the Directorate of Military Construction.

2. Department of the Army, Office of the Chief of Engineers (N1–77–02–1, 5 items, 5 temporary items). Records of the Miami Engineer District relating to the Airport Development Program, ca. 1942–1948, including military construction and contract files, engineering and operation files, and project data files; hydraulic and hydrologic data, 1967–1969, and unannotated aerial photographs, 1946–1959.

3. Department of the Army, Agency-wide (N1–AU–02–24, 7 items, 7 temporary items). Records relating to attorney standards of conduct and legal office mismanagement. Included are complaints, requests for inquiries, reports, opinions, correspondence, memoranda, and records of actions taken. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of Defense, Office of the Secretary of Defense (N1–330–02–1, 4 items, 2 temporary items). Source records and reports relating to the Gulf War Comprehensive Clinical Evaluation Program Automated Information System. Records document medical evaluations of Department of Defense personnel, beneficiaries, and others who report having a medical problem as a result of possible exposure to hazardous substances during the 1991 Persian Gulf War. Included are downloaded patient referral records and demographic data about participants, along with outputs consisting of aggregated participant data and other reports. The electronic master file and system documentation are proposed for permanent retention.

5. Department of Defense, Defense Commissary Agency (N1–506–02–4, 90 items, 90 temporary items). Records relating to quality assurance, security, and safety activities. Included are records relating to such matters as food safety guidance and inspection standards, designation of security officials, alarm systems testing, security briefings, security awareness and training, safety hazards studies, accident analyses, hazardous chemical inventories, industrial hygiene and occupational health surveillance, and hazard abatement. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

6. Department of Justice, Federal Bureau of Investigation (N1–65–02–2, 2 items, 2 temporary items). Headquarters and field office records documenting the administration of the FBI alias and false identification program. Also included are electronic copies of documents created using electronic mail and word processing.

7. Department of Justice, Federal Bureau of Investigation (N1–65–02–3, 2 items, 2 temporary items). Field office copies of Treasury Department Suspicious Activity Reports which do not result in any FBI action. Also included are electronic copies of documents created using electronic mail and word processing.

8. Department of Justice, Bureau of Prisons (N1–129–02–1, 11 items, 10 temporary items). Records relating to education and vocational training. Included are chronological files, congressional correspondence, institutional files, operations and administration files, policy waiver files, program review reports, program statement working files, subject reference files, training files, and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of education annual reports are proposed for permanent retention.

9. Department of Justice, Bureau of Prisons (N1–129–02–2, 12 items, 9 temporary items). Records of the Industrial, Education, and Vocational Training Corporate Business Group consisting of assistant director's office subject files, deputy assistant directors' office subject files, inmate accident compensation files, subject reference files, customer relations files, ombudsman's reports, waiver appeals case files, and waiver logs. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of files relating to public works and community service, minutes of meetings of the Board of Directors, and hearing transcripts of the Board of Directors are proposed as permanent.

10. Administrative Office of the U.S. Courts, Office of the General Counsel (N1–116–02–2, 5 items, 5 temporary items). Legal precedent reference files, tort claims files, and citizen and prisoner correspondence. Also included are electronic copies of documents created using electronic mail and word processing. Notice of this schedule was previously published in the **Federal Register**. However, changes made during the appraisal process have necessitated publication of a revised notice.

11. Environmental Protection Agency, Office of Air and Radiation (N1–412–02–8, 4 items, 2 temporary items). Textual and electronic inputs into the Certification and Fuel Economy Information System, an electronic system used to store information submitted by automobile manufacturers, testing labs, and agency analysts. Proposed for permanent retention are the electronic data and the related system documentation.

12. Export-Import Bank of the United States, Agency-wide (N1–275–02–1, 20 items, 9 temporary items). Records relating to operational activities of the Export-Import Bank. Included are such records as transaction files, working papers of board members, administrative law group reference files, and copies of speeches made by officials other than board members. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such files as minutes of meetings of the full board, board member speeches and correspondence, advisory committees records, credit and risk committee records, general counsel legal opinions, records relating to financial institutions, press releases, and country risk analyses.

13. Federal Emergency Management Agency, Office of Financial Management (N1–311–01–8, 3 items, 3 temporary items). Files relating to non-disaster related grants documenting their establishment, administration, and evaluation, including electronic copies of documents created using electronic mail and word processing.

14. General Services Administration, Federal Bridge Contract Authority (N1–352–02–1, 26 items, 26 temporary items). Records pertaining to the Federal Bridge Certification Authority, an information system designed to unify individual agency certification authorities into a systematic overall Federal Public Key Infrastructure. Included are records relating to such matters as certificate policy, system configuration, revocation requests, system backups, compliance attestations, and audits. Also included are electronic copies of documents created using electronic mail and word processing.

15. Office of Government Ethics, Program Review Division (N1–522–02–1, 5 items, 4 temporary items). Records documenting the government-wide single-issue review process. Records include questionnaires and surveys, electronic data, work papers, and electronic copies of records created using electronic mail and word processing. Recordkeeping copies of final reports are proposed for permanent retention.

16. Office of Personnel Management, Agency-wide (N9–478–02–2, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to administrative services. Included are electronic copies of records pertaining to such subjects as procurement, space management, building maintenance, property management, transportation, and mail distribution. Recordkeeping copies of these files are included in the Administrative Services Section of the OPM Administrative Manual Supplement. This schedule does not include descriptions of records at the file series level, but, instead, provides citations to the agency's Administrative Manual Supplement. To facilitate review of this schedule, NARA will provide the Administrative Services Section of the manual to requestors.

17. Office of Personnel Management, Agency-wide (N9–478–02–7, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to employee development and utilization. Included are electronic copies of records pertaining to such subjects as inter-agency training agreements and training programs. Recordkeeping copies of these files are included in the Employee Development and Utilization Section of the OPM Administrative Manual Supplement. This schedule does not include descriptions of records at the file series level, but, instead, provides citations to the agency's Administrative Manual Supplement. To facilitate review of this schedule, NARA will provide the Employee Development and Utilization Section of the manual to requestors.

18. Office of Personnel Management, Agency-wide (N9–478–02–12, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to the Government-wide examination and recruiting program. Included are electronic copies of records pertaining to such subjects as test material, examination announcements, and applicant data sheets. Recordkeeping copies of these files are included in the Executive Personnel Section of the OPM Administrative Manual Supplement. This schedule does not include descriptions of records at the file series level, but, instead, provides citations to the agency's Administrative Manual Supplement. To facilitate review of this schedule, NARA will provide the Executive Personnel Section of the manual to requestors.

19. Office of Personnel Management, Agency-wide (N9–478–02–14, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to insurance benefits. Included are electronic copies of records pertaining to the Federal employee group life and health insurance program and related accounting activities and claims. Recordkeeping copies of these files are included in the Insurance Section of the OPM Administrative Manual Supplement. This schedule does not include descriptions of records at the file series level, but, instead, provides citations to the agency's Administrative Manual Supplement. To facilitate review of this schedule, NARA will provide the Insurance Section of the manual to requestors.

20. Office of Personnel Management, Agency-wide (N9–478–02–16, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to implementation of the Intergovernmental Personnel Act. Included are electronic copies of records pertaining to such subjects as grant-in-aid cases, state programs, surveys on quantitative and qualitative reviews, and assignment agreements. Recordkeeping copies of these files are included in the Intergovernmental Personnel Program Section of the OPM Administrative Manual Supplement. This schedule does not include descriptions of records at the file series level, but, instead, provides citations to the agency's Administrative Manual Supplement. To facilitate review of this schedule, NARA will provide the Intergovernmental Personnel Program Section of the manual to requestors.

21. Office of Personnel Management, Agency-wide (N9–478–02–18, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to internal personnel administration. Included are electronic copies of records associated with such files as official personnel folders, offers of appointment, eligibility records, statistical reports, and performance evaluations. Recordkeeping copies of these files are included in the Personnel Section of the OPM Administrative Manual Supplement. This schedule does not include descriptions of records at the file series level, but, instead, provides citations to the agency's Administrative Manual Supplement. To facilitate review of this schedule, NARA will provide the Personnel Section of the manual to requestors.

Dated: August 5, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 02–20164 Filed 8–8–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities; Solicitation of Public Comments on Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the National Endowment for the Humanities

AGENCY: National Endowment for the Humanities.

ACTION: Notice and Request for public comment.

SUMMARY: The National Endowment for the Humanities (NEH) announces that its draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the National Endowment for the Humanities have been posted on its Web site, *www.neh.gov*. NEH invites public comments on its draft Guidelines and will consider the comments received in developing its final Guidelines.

DATES: Comments are due on or before September 9, 2002. Final Guidelines are to be published by October 1, 2002.

ADDRESSES: Submit comments to the Office of General Counsel, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, *gencounsel@neh.gov*.

FOR FURTHER INFORMATION CONTACT: Daniel Schneider, General Counsel, telephone 202–606–8322, *gencounsel@neh.gov*. Hearing-impaired individuals may contact NEH by TDD/TTY at 202–606–8338.

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury and General Government Appropriations Act for FY

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2001 (Pub. L. 106–554) requires each Federal agency to publish guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of the information it disseminates. Agency guidelines must be based on government-wide guidelines issued by the Office of Management and Budget (OMB). In compliance with this statutory requirement and OMB instructions, NEH has posted its draft Information Quality Guidelines on its Web site (*www.neh.gov*).

The Guidelines describe the agency's procedures for ensuring the quality of information that it disseminates and the procedures by which an affected person may obtain correction of information disseminated by NEH that does not comply with the Guidelines. NEH invites public comments on its draft Guidelines and will consider the comments received in developing its proposed final Guidelines, which must be submitted to OMB for review. The agency's final Guidelines are to be published by October 1, 2002. Persons who cannot access the draft Guidelines through the Internet may request a paper or electronic copy by contacting the Office of the General Counsel.

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the National Endowment for the Humanities

These *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the National Endowment for the Humanities* are prepared under the Treasury and General Government Appropriations Act for Fiscal Year 2001, Section 515(b), and are designed to ensure and maximize the quality, objectivity, utility and integrity of information disseminated by NEH.

1. Scope

These guidelines apply to information whose dissemination is initiated or sponsored by the National Endowment for the Humanities on or after October 1, 2002, regardless of when the information was first disseminated. The types of information dissemination that *are covered* by these guidelines include the following:

- Statistics and data about national conditions in the humanities produced by this agency or its contractors.
- Analytical studies about national conditions in the humanities produced by this agency or its contractors.
- Information such as annual NEH Performance Reports presented to Congress and intended to be released simultaneously to the public.

The types of information dissemination that *are not covered* by these guidelines include the following:

- Distribution intended to be limited to government employees, agency contractors, or grantees.
- Intra- or inter-agency use or sharing of government information.
- Responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law.
- Correspondence with individuals or persons.
- Press releases, fact sheets, press conferences or similar communications in any medium that announce, support the announcement or give public notice of information NEH has disseminated elsewhere.
- Archival records.
- Congressional submissions not intended to be released simultaneously to the public.
- Public filings, subpoenas or adjudicative processes.
- Public information about basic agency operations and grant programs.
- Opinions when the presenter makes it clear what is being offered are neither objective facts nor views that the agency endorses as its own.
- Scholarship, education materials and curricula, or humanities programs for the public distributed by agency grantees, contractors, or employees that are clearly identified as not representing an official position of the National Endowment for the Humanities. It is the policy of this agency that information disseminated by grantees, contractors, or employees not specifically authorized to represent an official NEH position will be accompanied by the following disclaimer statement: "All opinions, findings, conclusions, or recommendations expressed in this (publication) (program) (exhibition) do not necessarily represent those of the National Endowment for the Humanities."

2. Ensuring and Maximizing Information Quality

The National Endowment for the Humanities awards grants in support of teaching, scholarship, and programs for the general public in history, literature, language, philosophy, and other disciplines of the humanities. The results of humanities activities supported by the Endowment are disseminated, with or without NEH support, to students and teachers, the scholarly community, and the general public in a multitude of formats and contexts, including school and college curricula; study opportunities for teachers; scholarly journal articles and monographs; data bases, websites, and other digital formats; museum exhibitions; and programs for television and radio. Project proposals submitted to the Endowment are subjected to an exacting and highly selective process of peer review before any funding is awarded. Although the Endowment takes great care to select only the most meritorious project proposals for funding, NEH grantees and contractors are wholly responsible for conducting their project activities and preparing the results for public distribution unless specifically authorized to represent information on behalf of the agency.

3. Objectivity

It is the policy of the National Endowment for the Humanities to ensure the objectivity of all information that this agency disseminates to the public. So that disseminated information is reliably accurate, clear, complete, and unbiased, the Endowment is implementing a multidimensional information quality strategy that includes the following: identifying the sources of information, grounding every information product in reliable data and sound analytical techniques, providing an appropriately full context for information, and carefully reviewing each information product before releasing it to the public.

The Endowment is tasked by its authorizing legislation to "develop a practical system of national information and data collection on the humanities, scholars, educational and cultural groups, and their audiences." In fulfillment of this Congressional mandate, NEH designs, supports, and directs a variety of data collection and research projects, including periodic surveys. NEH-sponsored data collection projects are contracted and conducted using methodologies that are consistent with generally accepted professional standards, including the statistical standards and practices developed by the Federal Committee on Statistical Methodology, the guidelines and policies set forth in the Paperwork Reduction Act, and other regulations related to the conduct of surveys.

NEH does not normally disseminate "influential scientific, financial, or statistical information" of the kind defined in OMB's quality guidelines as likely to "have a clear and substantial impact on important public policies or important private sector decisions." Nor are data-gathering projects or analytical studies conducted by the Endowment likely to become the basis of federal rulings that have the force and effect of law. Consequently, the most stringent OMB quality standards for transparency of documentation and reproducibility of results are unlikely to apply to the dissemination of information by the National Endowment for the Humanities. Nevertheless, NEH is committed to ensuring that data-gathering projects and analytical studies conducted by the Endowment or on its behalf comply with generally accepted disciplinary and professional standards with respect to the transparency of documentary sources and research methods. It is the Endowment's policy to document the data sources, quantitative methods and assumptions, and checks that support any analytical results produced and disseminated by this agency so that appropriately qualified members of the public will be adequately informed to make an independent judgment of their validity.

As part of its data gathering function, the Endowment also prepares information products using data produced or maintained by other federal agencies, non-profit organizations, foreign governments, and international organizations. All external data are reviewed for relevance and are properly sourced and cited. Known limitations of the external data are clearly stated.

4. Utility

The Endowment is committed to ensuring the usefulness for its intended audience of the information that this agency disseminates. Data gathering projects such as surveys are designed and developed in conformity with the requirements of the Paperwork Reduction Act and after consultation with a variety of data consumers and stakeholders, including other federal agencies, professional societies, and nonprofit organizations. As appropriate, analytical studies are reviewed prior to publication by experts outside the agency.

5. Integrity

NEH has been a leader in the national effort to develop standards and best practices for the creation, dissemination, and maintenance of access to humanities materials in digital formats. Moreover, the Endowment is committed to ensuring that its own computer data systems are secure against unauthorized access or revision, compromise of confidentiality, and inadvertent corruption. The Endowment's system of information security controls include sound practices that have been recognized as responsive to the requirements of the Government Information Security Reform Act (GISRA).

NEH is subject to a variety of statutory requirements to protect information that the agency gathers and maintains. These requirements are set forth in the following:

- Privacy Act of 1974;
- Computer Security Act of 1987;
- OMB Circulars A–123, A–127, and A–130;
- Government Information Security Reform Act; and
- Federal Managers' Financial Integrity Act of 1982.

6. Information Correction Mechanism

Persons affected by the public dissemination of information initiated or sponsored by the National Endowment for the Humanities may request correction of any such information that they believe does not comply with the above Information Quality Guidelines, or with the broader guidelines issued by OMB. Affected persons are those who may benefit or be harmed by NEH-disseminated information.

To facilitate citizen review, affected persons may seek and obtain, where appropriate, timely correction of information maintained and disseminated by NEH that does not comply with OMB or NEH guidelines.

a. Requests for correction should be sent in writing, by mail, fax, or email to: Information Quality, National Endowment for the Humanities, Room 403, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. 202–606–8428. *osp@neh.gov*.

b. The request should clearly identify the information asserted to be incorrect, including the name of the publication or other source of information, the date of issuance, and a detailed description of the information to be corrected. The request should state specifically why the information should be corrected and suggest specific changes.

c. The request should include the requester's name, mailing address, fax number, email address, and telephone number. NEH needs this information to respond to the request and to contact the requester as necessary.

d. If a request does not reasonably describe the information asserted to be incorrect, NEH may request additional information.

The Endowment's Assistant Chairman for Planning and Operations has been designated NEH Information Quality Official. The Information Quality Official will coordinate an objective review of all valid complaints. Valid complaints are defined as neither frivolous nor made in bad faith. An objective review is understood as one conducted independently of the NEH programmatic office that originated the information at issue.

NEH will generally notify the requester of the agency decision on whether and how any corrections will be made within 30 business days of receipt of the request. If the requester does not agree with the agency's decision regarding corrective action, the requester may file for reconsideration by the Chairman within 30 days of NEH's decision. Such reconsideration requests will generally be resolved within 45 business days.

On an annual fiscal-year basis, NEH will submit a report to the Director of OMB providing information (both quantitative and qualitative, where appropriate) on the number and nature of complaints received by NEH regarding agency compliance with these guidelines and how such complaints were resolved. NEH will submit these reports no later than January 1 of each following year, with the first report due January 1, 2004.

Dated: August 6, 2002.

For the National Endowment for the Humanities.

Daniel Schneider,

General Counsel.

[FR Doc. 02–20188 Filed 8–8–02; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

Amergen Energy Company, LLC; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of AmerGen Energy Company, LLC (the licensee), to withdraw part of its May 21, 2001, application for proposed amendment to Facility Operating License No. NPF–62 for the Clinton Power Station, Unit No. 1, located in DeWitt County, Illinois.

The amendment application proposed revising the Technical Specifications to allow alternate actions if the refueling equipment interlocks become inoperable and to increase the frequency of the refueling equipment interlock inputs channel functional test from 7 to 31 days. In partial response to the licensee's request, the NRC staff issued an amendment dated April 4, 2002, approving the alternate actions if the refueling equipment interlocks become inoperable. The request to revise the

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frequency of the refueling equipment interlock inputs channel functional test was not addressed in that license amendment.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 26, 2001 (66 FR 66463). However, by letter dated July 16, 2002, the licensee withdrew the portion of the proposed change pertaining to the channel functional test frequency.

For further details with respect to this action, see the application for amendment dated May 21, 2001, the license amendment dated April 4, 2002, and the licensee's letter dated July 16, 2002, which withdrew part of the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 5th day of August 2002.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Senior Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–20174 Filed 8–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247]

Entergy Nuclear Operations, Inc.; Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 232 to Facility Operating License No. DPR–26 issued to Entergy Nuclear Operations, Inc. (the licensee), which revised the Technical Specifications for operation of the Indian Point Nuclear Generating Unit No.2 (IP2; the facility) located in Westchester County, New York. The amendment was effective as of the date of its issuance.

The amendment made a one-time only change to Technical Specification Surveillance Requirement 4.4.A.3 to revise the frequency for the containment integrated leak rate test (ILRT, Type A test) from at least once per 10 years to at least once per 15 years. This change applies only to the interval following the last Type A test that was performed satisfactorily in June 1991 at IP2.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 22, 2001 (66 FR 44165). A request for a hearing was filed on March 18, 2002, by Riverkeeper, Inc.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, the amendment has been issued and made immediately effective and any hearing will be held after issuance.

The Commission has determined that this amendment satisfies the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

For further details with respect to this action, see (1) the application for amendment dated July 13, 2001, as supplemented November 30, 2001, March 13, April 3, May 30, and June 13, 2002, (2) Amendment No. 232 to License No. DPR–26, and (3) the Commission's related Safety Evaluation, which are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 5th day of August 2002.

For the Nuclear Regulatory Commission.

Daniel S. Collins,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–20175 Filed 8–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–1201]

Framatome ANP, Inc.; Notice of Intent To Prepare an Environmental Assessment, and Notice of Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of request from Framatome ANP, Inc. to renew Special Nuclear Material License SNM–1168, Notice of intent to prepare an Environmental Assessment, and Notice of opportunity for hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission has received, by letter dated March 28, 2002, a request from Framatome ANP, Inc. to renew its NRC Special Nuclear Material License SNM–1168. This facility, located in Lynchburg, Virginia, fabricates low enriched Light Water Reactor fuel assemblies under a 10 CFR part 70 license. The NRC staff intends to prepare an Environmental Assessment for this action.

This application will be reviewed by the staff using NRC formal guidance, NUREG–1520, "Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility."

The amendment application and environmental report are available for public inspection and copying at the NRC Public Document Room, U.S. Nuclear Regulatory Commission Headquarters, Room O–1F21, 11555 Rockville Pike, Rockville, MD 20852. To obtain the application and environmental report electronically using the NRC's document system (ADAMS), the accession numbers are ML020940468 and ML020930031, respectively.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Olivier, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–8A33, Washington, DC 20555. Telephone (301) 415–8098.

Notice of Opportunity for Hearing

The NRC hereby provides notice of an opportunity for a hearing on the license renewal application under the provisions of 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Framatome Advanced Nuclear Power, P.O. Box 11646, Lynchburg, Virginia, 24506–1646; Attention: Robert Freeman; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to Michael Lesar, Chief, Rules Review and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Dated at Rockville, Maryland, this 2nd day of August 2002.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–20173 Filed 8–8–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25692; File No. 812–12821]

The Equitable Life Assurance Society of the United States, et al.

August 2, 2002.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order of approval pursuant to Section 26(c) of the Investment Company Act of 1940 (the "1940 Act") and an order of exemption pursuant to Section 17(b) of the 1940 Act from Section 17(a) of the 1940 Act.

APPLICANTS: For purposes of the order requested pursuant to Section 26(c), The Equitable Life Assurance Society of the United States ("Equitable"), Separate Account A of Equitable ("Separate Account A"), Separate Account FP of Equitable ("Separate Account FP"), Separate Account No. 45 of Equitable ("Separate Account 45") and Separate Account No. 49 of Equitable ("Separate Account 49") (collectively, the "Section 26 Applicants"). For purposes of the order pursuant to Section 17(b), Equitable, Separate Account A, Separate Account FP, Separate Account 45, Separate Account 49, Separate Account No. 66 of Equitable ("Separate Account 66") (the separate accounts are collectively referred to herein as the "Separate Accounts" and individually as a "Separate Account") and EQ Advisors Trust (the "Trust") (collectively with Equitable and the Separate Accounts, the "Section 17 Applicants;" together with the Section 26 Applicants, "Applicants").

SUMMARY OF APPLICATION: Applicants request an order (a) approving the proposed substitution by certain insurance company separate accounts of Class IB shares of the EQ/Capital Guardian Research Portfolio for Class IB shares of the EQ/MFS Research Portfolio (the "Substitution"), and (b) to permit certain in-kind transactions in connection with the proposed Substitution. (The EQ/Capital Guardian Research Portfolio is referred to herein as the "Replacement Portfolio." The EQ/MFS Research Portfolio is referred to herein as the "Removed Portfolio.")

FILING DATE: The application was filed on May 2, 2002 and amended and restated on August 1, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 26, 2002 and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants: c/o Peter D. Noris, Executive Vice President and Chief Investment Officer, The Equitable Life Assurance Society of the United States, 1290 Avenue of the Americas, New York, New York 10104, and Mark C. Amorosi, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

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SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Equitable is a New York stock life insurance company that has been in business since 1859. Equitable is a wholly owned subsidiary of AXA Financial, Inc., which is a wholly owned subsidiary of the AXA Group, the holding company for an international group of insurance and related financial services companies.

2. Equitable serves as sponsor and depositor for each of the Separate Accounts. Separate Account A, Separate Account 45 and Separate Account 49 fund certain variable annuity contracts. Separate Account FP funds certain variable life insurance policies. Separate Account 66 funds group pension and profit-sharing plans under group annuity contracts issued by Equitable. (The variable annuity contracts and variable life insurance policies funded by the Separate Accounts are collectively referred to herein as the "Contracts.")

3. Each Separate Account is a segregated asset account of Equitable and, with the exception of Separate Account 66, is registered with the Commission as a unit investment trust under the 1940 Act. Separate Account 66 is excluded from registration under the 1940 Act pursuant to Section 3(c)(11) of the 1940 Act. Separate Account 66 is not a Section 26 Applicant.

4. The Trust is organized as a Delaware business trust and registered as an open-end management investment company under the 1940 Act. The Trust is a series investment company and currently has 39 separate series (each a "Portfolio" and collectively, the "Portfolios"). Equitable currently serves as investment manager ("Manager") of each of the Portfolios. Both the Removed and Replacement Portfolios are series of the Trust. The Trust currently offers two classes of shares, Class IA and Class IB shares, which differ only in that Class IB shares are subject to a distribution plan adopted and administered pursuant to Rule 12b-1 under the 1940 Act. Under that distribution plan, up to 0.50% of the average daily net assets attributable to the Class IB shares of each Portfolio may be used to pay for distribution and shareholder services. The distributors for the Class IA and Class IB shares of each Portfolio are AXA Advisors, LLC ("AXA Advisors") and AXA Distributors, LLC ("AXA Distributors"). Under the Distribution Agreements with respect to the promotion, sale and servicing of shares of each Portfolio, payments to AXA Advisors and AXA Distributors, with respect to activities under the distribution plan, are currently limited to payments at an annual rate equal to 0.25% of the average daily net assets of each Portfolio (including the Removed and Replacement Portfolios) attributable to its Class IB shares.

5. The Manager has retained investment sub-advisers ("Advisers") to provide day-to-day investment advisory services for each of the 39 current Portfolios. The Trust has received an exemptive order from the Commission that permits the Manager, or any entity controlling, controlled by, or under common control (within the meaning of Section 2(a)(9) of the 1940 Act) with the Manager, subject to certain conditions, including approval of the Board of Trustees of the Trust, and without the approval of shareholders to: (a) select new or additional Advisers for each Portfolio; (b) enter into new Investment Advisory Agreements with Advisers ("Advisory Agreements") and/or materially modify the terms of any existing Advisory Agreement; (c) terminate any existing Adviser and replace the Adviser; and (d) continue the employment of an existing Adviser on the same contract terms where the Advisory Agreement has been assigned because of a change of control of the Adviser.

6. Equitable, on its own behalf and on behalf of the Separate Accounts, proposes to exercise its contractual right to substitute a different eligible investment fund for any of the current Portfolios offered as funding options under the Contracts. In particular, the Section 26 Applicants propose to substitute Class IB shares of the Replacement Portfolio for Class IB shares of the Removed Portfolio. Although each Portfolio of the Trust is authorized to issue Class IA shares, neither of the Portfolios involved in the proposed Substitution has issued any Class IA shares to date. Accordingly, no Class IA shares are involved in the proposed Substitution.

7. The Section 26 Applicants propose the Substitution as part of a continued and overall business plan by Equitable to make its Contracts more competitive and thus more attractive to existing Contract owners, and to prospective purchasers. The Substitution is also intended to simplify the prospectuses and related materials with respect to the Contracts and the investment options available through the Separate Accounts. Additionally, the Substitution will substitute shares of the Replacement Portfolio for shares of the Removed Portfolio, which has an identical investment objective and substantially similar investment policies and risks as the Replacement Portfolio. Furthermore, Equitable believes that the Substitution ultimately may enable it to reduce certain of the costs that it incurs in administering the Contracts by consolidating overlapping and duplicative Portfolios. Finally, the Substitution is designed to provide Contract owners with an opportunity to continue their investment in a similar Portfolio without interruption and without any cost to them. In this regard, Equitable will bear all expenses incurred in connection with the Substitution and related filings and notices, including legal, accounting, brokerage and other fees and expenses. On the effective date of the Substitution ("Substitution Date"), the amount of any Contract owner's or participant's Contract value or the dollar value of a Contract owner's or participant's investment in the relevant Contract will not change as a result of the Substitution.

8. The investment objective of the Replacement and Removed Portfolios is to seek long-term growth of capital. To achieve this objective, the Replacement Portfolio invests primarily in equity securities of United States issuers and securities whose principal markets are in the United States, including American Depository Receipts and other United States registered foreign securities. The Portfolio invests primarily in common stocks of companies with a market capitalization greater than $1 billion at the time of purchase. To achieve its objective, the Removed Portfolio also invests primarily (at least 80% of its total assets) in equity securities, including common stocks, preferred stocks and depository receipts. The Portfolio may invest in securities of companies of any size but, like the Replacement Portfolio, invests primarily in large cap companies. The Replacement and Removed Portfolios each may invest a portion of their assets in foreign securities (up to 15% of total assets for the Replacement Portfolio and up to 20% of net assets for the Removed Portfolio). The primary risks associated with an investment in the Replacement Portfolio are: (a) General equity investment risk; and (b) foreign securities risk. The primary risks associated with an investment in the Removed Portfolio are: (a) general equity investment risk; (b) foreign securities risk; and (c) small-cap and mid-cap company risk. Thus, Applicants believe that, after the proposed Substitution, a Contract owner or participant who allocated value to the Removed Portfolio would continue to have value allocated to a Replacement Portfolio that seeks capital appreciation through investment in domestic company stocks, and would have assumed a substantially similar level of risk.

9. The chart below compares the advisory fees, total expenses and asset sizes of the Replacement Portfolio and the Removed Portfolio for the one year periods ended December 31, 2000 and 2001. The chart also shows the *pro forma* expenses of the Replacement Portfolio assuming that the Substitution had been in effect for the year ended December 31, 2001. The management fee rate for the Replacement Portfolio is identical to that of the Removed Portfolio. The net total expense ratio of the Replacement Portfolio was also identical to that of the Removed Portfolio for the one year period ended December 31, 2001 due to a management fee waiver and expense reimbursement agreement in effect for each of these Portfolios until April 30, 2003 ("Expense Limitation Agreement"). Absent this agreement, the total expense ratio of the Replacement Portfolio would have been higher than that of the Removed Portfolio. The net total expense ratio of the Replacement Portfolio for the one year period ended December 30, 2000 was slightly higher than that of the Removed Portfolio due to the Replacement Portfolio's slightly higher management fee rate at the time. However, as noted above, the current management fee rates for the Removed Portfolio and the Replacement Portfolio are identical under the current management agreement with the Manager.

10. Applicants note that, as further set forth in the chart below, the Replacement Portfolio has been attracting assets over the last two years, while the Removed Portfolio has been losing assets over that same time period. Applicants state that the proposed Substitution would replace the Removed Portfolio with the Replacement Portfolio, which will have a larger asset size after the Substitution. Generally speaking, larger funds tend to have lower expenses than comparable funds that are smaller. This is because, with a larger asset size, fixed fund expenses are spread over a larger base, lowering the expense ratios. Also, larger funds may have lower trading expenses, potentially resulting in higher returns. It is anticipated that the net total expense ratio of the Replacement Portfolio will be no higher than that of the Removed Portfolio as a result of the proposed Substitution due to the Expense Limitation Agreement. In addition, it is anticipated that the total expense ratio of the Replacement Portfolio will be lower than that of the Removed Portfolio as a result of the Substitution, absent any fee waivers or expense reimbursements, as set forth in the following chart.

	Replacement portfolio EQ/Capital Guardian Research Portfolio (Class IB)		Removed portfolio EQ/MFS Research Portfolio (Class IB)		Combined portfolio (pro forma)
	One year period ended 12/31/2000	One year period ended 12/31/2001	One year period ended 12/31/2000	One year period ended 12/31/2001	One year period ended 12/31/2001
Net Assets	$78.0 million	$111.9 million	$878.1 million	$683.4 million	$846.1 million [2]
Management Fee [1]	0.65%	0.65%	0.62%	0.65%	0.65%
Rule 12b–1 Fee	0.25%	0.25%	0.25%	0.25%	0.25%
Other Expenses	0.16%	0.15%	0.07%	0.07%	0.06%
Total Expenses	1.06%	1.05%	0.94%	0.97%	0.96%
Fee Waiver and/or Expense Reimbursement	0.11%	0.10%	0.02%	0.02%	0.01%
Net Expenses	0.95%	0.95%	0.92%	0.95%	0.95%

[1] The management fee for the EQ/Capital Guardian Research Portfolio on an annual basis is equal to 0.650% of the first $1 billion; 0.600% of the next $1 billion; 0.575% of the next $3 billion; 0.550% of the next $5 billion; and 0.525% thereafter. The management fee for the EQ/MFS Research Portfolio on an annual basis is equal to 0.650% of the first $1 billion; 0.600% of the next $1 billion; 0.575% of the next $3 billion; 0.550% of the next $5 billion; and 0.525% thereafter.

[2] Average daily net assets.

11. In connection with the Substitution, the Section 26 Applicants will file with the Commission prospectuses and prospectus supplements that notify Contract owners and participants of Equitable's intention to substitute the Replacement Portfolio for the Removed Portfolio. The prospectuses and prospectus supplements, as appropriate, also will describe the Substitution, the Replacement and Removed Portfolio and the impact of the Substitution on fees and expenses at the underlying fund level. The Section 26 Applicants will send the appropriate prospectus or prospectus supplement containing this disclosure to all existing and new Contract owners and participants.

12. At or after the time the Commission approves the Application, the Section 26 Applicants will send to existing Contract owners and participants a supplement to the relevant Contract prospectus that discloses to such Contract owners and participants that the Application has been approved. Together with this disclosure, the Section 26 Applicants will send to any of those existing Contract owners and participants who have not previously received a prospectus for the Replacement Portfolio a prospectus and/or prospectus supplement for the Replacement Portfolio. New purchasers of Contracts will be provided with a Contract prospectus and/or supplement containing disclosure that the Commission has issued an order approving the Substitution, as well as a prospectus for the Replacement Portfolio. The Contract prospectus and/or supplement and the prospectus and/or prospectus supplement for the Trust, including the Replacement Portfolio, will be delivered to purchasers of new Contracts in accordance with all applicable legal requirements.

13. Contract owners and participants will be sent a notice of the Substitution before the Substitution Date. The notice will inform Contract owners and participants that the Substitution will be effected on the Substitution Date and that they may transfer assets from the Removed Portfolio (or from the Replacement Portfolio following the Substitution Date) to another investment

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option available under their Contract without the imposition of any applicable transfer charges, limitations, fees, or other penalties that might otherwise be imposed for a period beginning thirty (30) days before the Substitution Date and ending no earlier than thirty (30) days following the Substitution Date and such transfers will not count against the limit, if any, on the number of free transfers permitted under the Contracts. Within five days after the Substitution Date, Equitable will mail (a) a written notice to all Contract owners and participants affected by the Substitution informing them that the Substitution was completed and restating that they may transfer assets from the Replacement Portfolio to another investment option available under their Contract free of any applicable transfer charges, limitations, fees, or other penalties that might otherwise be imposed through a date at least thirty (30) days following the Substitution Date and such transfers will not count against the limit, if any, on the number of free transfers permitted under the Contracts and (b) a confirmation of the transactions.

14. The Substitution will be effected by redeeming shares of the Removed Portfolio in-kind on the Substitution Date at their net asset value and using the proceeds of those in-kind redemptions to purchase shares of the Replacement Portfolio at their net asset value on the same date ("In-Kind Transactions"). The In-Kind Transactions will be done in a manner consistent with the investment objectives, policies and diversification requirements of the Replacement Portfolio and the Removed Portfolio. Equitable, in consultation with the Replacement Portfolio's Adviser, will review the In-Kind Transactions to ensure that the assets are suitable for the Replacement Portfolio. All assets and liabilities will be valued based on the normal valuation procedures of the Removed Portfolio and the Replacement Portfolio, as set forth in the Trust's registration statement.

15. No transfer or similar charges will be imposed by the Section 26 Applicants and, on the Substitution Date, all Contract values will remain unchanged and fully invested. Contract owners and participants will not incur any fees or charges as a result of the proposed Substitution, nor will their rights or Equitable's obligations under the Contracts be altered in any way. All expenses in connection with the proposed Substitution, including any brokerage, legal, accounting, and other fees and expenses will be paid by Equitable. The proposed Substitution will not impose any tax liability on Contract owners or participants or cause the Contract charges currently being paid by Contract owners and participants to be greater after the proposed Substitution than before the proposed Substitution. All Contract-level fees will remain the same after the proposed Substitution. The proposed Substitution will not alter in any way the benefits, including tax benefits to Contract owners and participants, or Equitable's obligations under the Contracts. In addition, the proposed Substitution will not be treated as a transfer for purposes of assessing transfer charges or computing the number of permissible transfers under the Contracts.

16. The Section 26 Applicants request that the Commission issue an order pursuant to Section 26(c) of the 1940 Act approving the substitution of Class IB shares of the EQ/Capital Guardian Research Portfolio for Class IB shares of the EQ/MFS Research Portfolio. The Section 17 Applicants request that the Commission issue an order pursuant to Section 17(b) of the 1940 Act granting an exemption from Section 17(b) to the extent necessary to permit the In-Kind Transactions.

Applicable Law

Section 26(c) of the 1940 Act:

1. Section 26(c) of the 1940 Act prohibits the depositor of a registered unit investment trust that invests in the securities of a single issuer from substituting the securities of another issuer without Commission approval. Section 26(c) provides that "[t]he Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title."

2. Applicants represent that the proposed Substitution involves a substitution of securities within the meaning of Section 26(c) of the 1940 Act. The Applicants, therefore, request an order from the Commission pursuant to Section 26(c) approving the proposed Substitution.

3. Applicants state that Equitable has reserved the right under the Contracts to substitute shares of another eligible investment fund for any of the current Portfolios offered as funding options under the Contracts. Applicants represent that the prospectuses for the Contracts and the Separate Accounts contain appropriate disclosure of this right. The Section 26 Applicants have reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed or disadvantaged by events affecting the issuer of the securities held by a Separate Account and to preserve the opportunity to replace such shares in situations where a substitution could benefit Equitable and its Contract owners.

4. Applicants state that the Replacement Portfolio and Removed Portfolio have an identical investment objective and substantially similar investment policies and risks. In addition, Applicants maintain that the proposed Substitution retains for Contract owners the investment flexibility that is a central feature of the Contracts, and any impact on the investment programs of affected Contract owners, including the appropriateness of the available investment options, should be negligible.

5. Applicants also maintain that the ultimate effect of the Substitution would be to consolidate overlapping and duplicative investment options into a single Portfolio. This consolidation will permit Equitable to present information to its Contract owners and participants in a simpler and more concise manner. The anticipated streamlining of the disclosure documents should provide Contract owners and participants with a simpler presentation of the available investment options under their Contracts and related financial information.

6. Thus, Applicants state that the Substitution protects the Contract owners and participants who have allocated Contract value to the Removed Portfolio by: (a) providing an underlying investment option for sub-accounts invested in the Removed Portfolio that is substantially similar to the Removed Portfolio; (b) providing such Contract owners and participants with simpler and more focused disclosure documents; and (c) providing such Contract owners and participants with an investment option with an identical management fee and total expense ratio as the current investment option.

7. Applicants assert that the proposed Substitution is not of the type that Section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute investment securities in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner and participant with the right to exercise his or her own judgment, and transfer Contract values and cash values into and among other investment options available to Contract owners and participants under their Contracts. Additionally, the Substitution will not, in any manner, reduce the nature or quality of the available investment options. Moreover, the Section 26 Applicants will offer Contract owners and participants the opportunity to transfer amounts out of the affected sub-accounts without any cost or other penalty that may otherwise have been imposed for a period beginning thirty (30) days before the Substitution Date and ending no earlier than thirty (30) days after the Substitution Date. Applicants conclude that the Substitution will not result in the type of costly forced redemption that Section 26(c) was designed to prevent.

8. Applicants assert that the proposed Substitution is also unlike the type of substitution which Section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners and participants select much more than a particular underlying fund in which to invest their Contract values. They also select the specific type of insurance coverage offered by the Section 26 Applicants under the applicable Contract, as well as numerous other rights and privileges set forth in the Contract. Contract owners also may have considered Equitable's size, financial condition, and its reputation for service in selecting their Contract. These factors will not change as a result of the proposed Substitution.

9. Applicants state that the significant terms of the proposed substitution are as follows:

a. The Replacement Portfolio has an identical investment objective and substantially similar investment policies and risks as the Removed Portfolio, providing Contract owners and participants with a means to continue their investment goals and risk expectations;

b. The total expense ratio of the Class IB shares of the Replacement Portfolio will be equal to or less than that of the Class IB shares of the Removed Portfolio, assuming that the assets of the Replacement Portfolio do not decrease significantly from the present asset level. In this regard, for those Contract owners or participants who are Contract owners or participants on the date of the Substitution, Equitable will waive its management fee with respect to the Replacement Portfolio and/or reimburse expenses incurred by the Replacement Portfolio during the twenty-four months following the Substitution to the extent necessary to ensure that the total expense ratio for any period (not to exceed a fiscal quarter) for the Class IB shares of the Replacement Portfolio does not exceed 0.95% of the Replacement Portfolio's average daily net assets (on an annualized basis);

c. Investments in the Replacement Portfolio may be temporary investments for Contract owners and participants as each Contract owner and participant may exercise his or her own judgment as to the most appropriate investment alternative available. In this regard, the proposed Substitution retains for Contract owners and participants the investment flexibility which is a central feature of the Contracts. Additionally, for a period beginning thirty (30) days before the Substitution Date, and ending no earlier than thirty (30) days after the Substitution, Contract owners and participants directly affected by the Substitution will be permitted to transfer value from the Replacement Portfolio or the Removed Portfolio to another investment option available under their Contract free of any otherwise applicable transfer charges, limitations, fees, or other penalties that might otherwise be imposed and such transfers will not count against the limit, if any, on the number of free transfers permitted under the Contracts;

d. The Substitution will be effected at the relative net asset values of the shares of the Removed Portfolio and the Replacement Portfolio, without the imposition of any transfer or similar charge by the Section 26 Applicants, and with no change in the amount of any Contract owner's or participant's Contract value or in the dollar value of his or her investment in such Contract;

e. Contract owners and participants will not incur directly or indirectly related fees or charges as a result of the Substitution. Equitable will bear all expenses incurred in connection with the Substitution and related filings and notices, including legal, accounting, brokerage and other fees and expenses. The Substitution will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the Substitution than before the Substitution;

f. The Substitution will not be counted as a new investment selection in determining the limit, if any, on the total number of Portfolios that Contract owners and participants can select during the life of a Contract;

g. The Substitution will not alter or affect the insurance benefits or rights of Contract owners or participants or the terms and obligations of the Contracts;

h. Contract owners and participants would not incur any adverse tax consequences as a result of the Substitution;

i. Contract owners and participants affected by the Substitution will be sent written confirmation of the Substitution that identifies the Substitution made on behalf of the Contract owner or participant within five days following the Substitution;

j. For those Contract owners or participants who were Contract owners or participants on the date of the Substitution, Equitable will not increase sub-account or Contract expenses for a period of twenty-four months following the Substitution Date; and

k. Contract owners and participants may withdraw amounts under the Contract or terminate their interest in a Contract, under the conditions that currently exist, including payment of any applicable withdrawal or surrender charge.

Section 17(a) of the 1940 Act:

1. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the same persons, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

2. Section 17(b) of the 1940 Act provides that the Commission may, upon application, issue an order exempting any proposed transaction from Section 17(a) if: (a) the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transactions are consistent with the policy of each registered investment company concerned; and (c) the proposed transactions are consistent with the general purposes of the 1940 Act.

3. The Section 17 Applicants request an order pursuant to Section 17(b) of the 1940 Act exempting them from the provisions of Section 17(a) to the extent necessary to permit them to carry out the In-Kind Transactions.

4. The Section 17 Applicants submit that the terms of the proposed In-Kind Transactions, including the consideration to be paid and received are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants state that the In-Kind Transactions will be effected at the respective net asset values of the Removed Portfolio and the Replacement Portfolio, as determined in accordance with the procedures disclosed in the registration statement for the Trust and as required by Rule 22c–1 under the 1940 Act. Applicants further state that the In-Kind Transactions will not change the dollar value of any Contract owner's or participant's investment in any of the Separate Accounts, the value of any

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Contract, the accumulation value or other value credited to any Contract, or the death benefit payable under any Contract. After the proposed In-Kind Transactions, the value of a Separate Account's investment in the Replacement Portfolio will equal the value of its investments in the Removed Portfolio (together with the value of any pre-existing investments in the Replacement Portfolio) before the In-Kind Transactions.

5. Applicants state that the Section 17 Applicants will assure themselves that the In-Kind Transactions will be in substantial compliance with the conditions of Rule 17a–7. To the extent that the In-Kind Transactions do not comply fully with the provisions of paragraphs (a) and (b) of Rule 17a–7, the Section 17 Applicants assert that the terms of the In-Kind Transactions provide the same degree of protection to the participating companies and their shareholders as if the In-Kind Transactions satisfied all of the conditions enumerated in Rule 17a–7. The Section 17 Applicants also assert that the proposed In-Kind Transactions by the Section 17 Applicants do not involve overreaching on the part of any person concerned. Furthermore, the Section 17 Applicants represent that the proposed Substitution will be consistent with the policies of the Removed Portfolio and the Replacement Portfolio, as recited in the Trust's current registration statement.

6. Applicants also assert that the proposed In-Kind Transactions are consistent with the general purposes of the 1940 Act and that the proposed In-Kind Transactions do not present any conditions or abuses that the 1940 Act was designed to prevent.

Conclusion

For the reasons set forth in the Application, the Section 26 Applicants and the Section 17 Applicants each respectively state that the proposed Substitution and the related In-Kind Transactions meet the standards of Section 26(c) of the 1940 Act and Section 17(b) of the 1940 Act, respectively, and respectfully request that the Commission issue an order of approval pursuant to Section 26(c) of the 1940 Act and Section 17(b) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20145 Filed 8–8–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 12, 2002:

A Closed Meeting will be held on Tuesday, August 13, 2002 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, August 13, 2002, will be:

Formal orders of investigation;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature;
Adjudicatory matter; and
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: August 6, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20276 Filed 8–6–02; 4:13 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46313; File No. S7–31–02]

Ownership Reports and Trading by Officers, Directors and Principal Security Holders

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Supplemental Information on Section 16(a) and Related Rules.

SUMMARY: The Commission today is issuing supplemental information regarding the filing of ownership reports by officers, directors and principal security holders under Section 16 of the Securities Exchange Act of 1934. The release addresses the amendments to Section 16(a) enacted by the Sarbanes-Oxley Act of 2002 and related final rules that the Commission will consider adopting no later than the August 29, 2002 effective date of those amendments.

DATES: We welcome any comments on the implementation of the legislative provisions relating to Section 16(a). In light of the August 29, 2002 effective date of the amendments to Section 16(a), comments should arrive at the Commission by August 15, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following electronic mail address: *rule-comments@sec.gov*. To help us process and review your comments more efficiently, comments should be sent by one method only. All comment letters should refer to File No. S7–31–02; this file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web Site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Anne M. Krauskopf, Special Counsel, David Lee, Special Counsel, or Carol McGee, Special Counsel at (202) 942–2900, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0402.

SUPPLEMENTARY INFORMATION:

I. Background

Section 16[2] applies to every person who is the beneficial owner of more than 10% of any class of equity security registered under Section 12 of the Exchange Act,[3] and each officer and director (collectively, "insiders") of the issuer of such security. Upon becoming an insider, or upon the Section 12 registration of that security, Section 16(a)[4] requires an insider to file an initial report with the Commission disclosing his or her beneficial ownership of all equity securities of the issuer. To keep this information current, Section 16(a) also requires insiders to report changes in such ownership, or the purchase or sale of a security-based swap agreement[5] involving such equity security. As currently in effect, Section 16(a) provides for such transactions to be reported on a monthly basis within 10 days after the close of each calendar month in which such a change in ownership or purchase or sale of a security-based swap agreement occurs.

On July 30, 2002, the Sarbanes-Oxley Act of 2002 (the "Act")[6] was enacted. Section 403(a) of the Act amends Section 16(a) to require insiders to report such a change in ownership or purchase or sale of a security-based swap agreement "before the end of the second business day following the day on which the subject transaction has been executed, or at such other time as the Commission shall establish, by rule, in any case in which the Commission determines that such 2-day period is not feasible."[7]

Section 403(b) of the Act provides that this amendment becomes effective 30 days after the date of enactment. That effective date is August 29, 2002. Thus, all transactions subject to Section 16(a) executed on or after August 29, 2002 will be reportable by insiders on Form 4[8] in accordance with the amended two-business day deadline, except where the rules under Section 16(a) provide otherwise.

The Act also amends Section 16(a) to require, not later than one year following enactment, electronic filing of change of beneficial ownership reports, and website posting of such reports by both the Commission and issuers.[9] We have announced our intention to begin rulemaking to make the filing of Section 16(a) reports on EDGAR mandatory,[10] and will proceed expeditiously with that rulemaking and related system programming to assure adoption within the one-year period mandated by the Act. Meanwhile, we encourage insiders and companies filing Section 16(a) reports on their behalf to make these filings electronically. To facilitate EDGAR conversion under the current filing system, we will accept electronically-filed Section 16(a) reports that are not presented in the standard box format and omit the horizontal and vertical lines separating information items, so long as all required information is presented in the proper order.

II. Rulemaking To Implement Amended Section 16(a)

To implement the new accelerated reporting deadline, we anticipate adopting final rules that will become effective no later than the August 29, 2002 effective date of the Section 16(a) amendments. We anticipate that these final rules will accomplish the following:

1. Adopt amendments to Form 4 to conform all references to the applicable filing deadline to the amended statutory filing deadline and to reflect that Form 4 is no longer a monthly form.

2. Adopt amendments to Rule 16a–3(f)[11] so that transactions between officers or directors and the issuer exempted from Section 16(b)[12] short-swing profit recovery by Rule 16b–3[13] that currently may be reported within 45 days after the issuer's fiscal year end on Form 5[14] will be required to be reported within two business days on Form 4.

3. Adopt one or more new rules under Section 16(a) that will provide different Form 4 due dates for narrowly defined specified transactions, if any, as to which we determine that the two-business day reporting period is not feasible.

Accelerated reporting of officers' and directors' reportable transactions with an issuer exempted by Rule 16b–3 is necessary to satisfy the Act's purpose to require immediate disclosure of insider transactions. We previously solicited comment on this regulatory action.[15] In light of the Section 16(a) amendments enacted by Section 403 of the Act, we do not intend to consider further our proposed amendments discussed in that release to require companies to report directors' and executive officers' transactions in company equity securities. We continue to consider the other amendments proposed in that Release that would require companies to disclose information about (1) directors' and executive officers' arrangements intended to satisfy the affirmative defense conditions of Exchange Act Rule 10b5–1(c)[16] and (2) company loans and loan guarantees to directors and executive officers that are not prohibited by Section 402 of the Act.

Rule 16a–3(f) as amended would subject to two-business day reporting on Form 4 all reportable transactions with the issuer exempted by Rule 16b–3, including transactions in issuer equity securities and derivative securities. Derivative securities transactions so reportable under the amended rule would include, without limitation, issuances, exercises,[17] and cancellations and regrants of stock options, including repricings.

We currently do not intend to consider rules providing exemptions from the two-business day reporting deadline for Form 4 based on non-feasibility for transactions categorized by type of issuer, type of insider, or size of transaction. We are reviewing the deadlines only for narrowly specified types of transactions where objective criteria prevent the insider from controlling (and in many cases from knowing) the timing of transaction execution and where we have concluded that satisfying the two-business day period would not be feasible. The deadlines we will consider for these transactions will reflect the Act's purpose to require immediate disclosure of insider transactions. The types of transactions for which we are considering calculating the deadlines differently may include:

- A transaction pursuant to a single market order that is executed over more than one day, but not to exceed a specified number of days;
- A transaction involving a pre-existing arrangement the timing of

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[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

[2] 15 U.S.C. 78p.

[3] 15 U.S.C. 78l.

[4] 15 U.S.C. 78p(a).

[5] As defined in Section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c).

[6] Pub. L. 107–204, 116 Stat. 745.

[7] Section 16(a)(2)(C) (15 U.S.C. 78p(a)(2)(C)), as amended by the Act. Section 30(h) of the Investment Company Act of 1940 (15 U.S.C. 80a–29(h)) provides that "Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of outstanding securities (other than short-term paper) of which a registered closed-end company is the issuer or who is an officer, director, member of an advisory board, investment adviser, or affiliated person of an investment adviser of such a company shall in respect of his transactions in any securities of such company (other than short-term paper) be subject to the same duties and liabilities as those imposed by section 16 of the Securities Exchange Act of 1934 upon certain beneficial owners, directors, and officers in respect of their transactions in certain equity securities." Accordingly, the Act's amendments also accelerate the deadline for change of beneficial ownership reports required pursuant to Section 30(h).

[8] 17 CFR 249.104.

[9] Section 16(a)(4), as amended by the Act.

[10] Securities Act Release No. 7803 (Feb. 25, 2000) [65 FR 11507].

[11] 17 CFR 240.16a–3(f).

[12] 15 U.S.C. 78p(b).

[13] 17 CFR 240.16b–3.

[14] 17 CFR 249.105.

[15] "Form 8–K Disclosure of Certain Management Transactions," Securities Act Release No. 8090, Exchange Act Release No. 45742 (Apr. 12, 2002) [67 FR 19914, at 19920].

[16] 17 CFR 240.10b5–1(c).

[17] The current requirements of Rule 16a–3(f)(1)(i)(A) to report on Form 4 exercises and conversions of derivative securities that are exempt from Section 16(b) short-swing profit recovery under either Rule 16b–3 or Rule 16b–6(b) [17 CFR 240.16b–6(b)] will continue.

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which is outside the knowledge of the insider before a confirmation or other notice of the transaction is sent to the insider, with a delay not to exceed a specified number of days; and

• A discretionary transaction involving an employee benefit plan,[18] whether or not exempted by Rule 16b–3, where the delay would again be tied to notice of the transaction.

By the Commission.

Dated: August 6, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20177 Filed 8–8–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46309; File No. SR–Amex–2002–58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to a Pilot Program Involving Crossing Transactions in Nasdaq Securities

August 5, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 18, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to add Commentary .06 to Amex Rule 126(g) relating to crossing procedures on the Amex in Nasdaq National Market securities. The text of the proposed rule change is below. Proposed new language is in italics.

Precedence of Bids and Offers

Rule 126

(a)–(f) No change.

(g) No change.

Commentary

.01 through .03 No change.

.04 Reserved

.05 Reserved

.6 If prior to presenting a cross transaction in a Nasdaq National Market security involving 5,000 shares or more, a broker requests that the specialist and market makers at the post quote their current market for the subject security, the broker may execute a cross transaction at a price between the quoted market without interference by a specialist or market maker.

In no event shall an agency order in the book, having time priority, remain unexecuted after any other order at its price has been effected pursuant to this rule or otherwise.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex filed SR–Amex–2001–106[6] to accommodate trading in Nasdaq National Market ("NNM") securities. The Exchange now proposes to adopt crossing procedures under Amex Rule 126(g) to provide additional flexibility to permit brokers to effect crosses of orders of 5,000 shares or more in NNM securities. Under Amex Rule 126(g), Commentary .01, orders to cross 5,000 shares or more (where one or both sides is for the account of a member or member organization) can establish size precedence if the orders are represented at the specialist's post when a sale removing all bids and offers from the Floor takes place. Commentary .01 has been approved on a pilot basis until September 27, 2002.[7]

Amex Rule 126(g), Commentary .02 provides that orders of 5,000 shares or more for the accounts of non-members or member organizations can be crossed at a price at or within the prevailing quotation. The member's bid or offer is entitled to priority at the cross price, irrespective of pre-existing bids or offers at that price. Under either Commentaries .01 or .02, a cross can be "broken-up" by the specialist or another Floor member that is willing to provide price improvement to all or a portion of one side of the proposed cross. With the advent of decimal pricing, such price improvement could be as small as $.01. This may result in frequent interference with crosses being effected, and with minimal price betterment, notwithstanding the choice of a broker's customers that a cross be effected and the broker's assessment that such cross is in the customer's best interest. In connection with trading in Nasdaq securities, this can place the Amex and its members at a competitive disadvantage to other markets that may have crossing procedures that are less restrictive than those of the Amex. The Amex, therefore, proposes to provide additional flexibility to brokers proposing to effect crosses in Nasdaq securities.

Proposed Amex Rule 126(g), Commentary .06 provides that a floor broker would be permitted to effect cross transactions in NNM securities involving 5,000 shares or more without interference by the specialist or market makers if, prior to presenting the cross transaction, the floor broker requests a quote for the subject security. These requests will place the specialist and market makers on notice that the floor broker intends to cross within the bid-offer spread. The Amex believes this arrangement will ensure that a specialist or market maker retains the opportunity to better the cross price by updating their quote, but will preclude the specialist or market maker from breaking up a cross transaction after the cross transaction is presented. The floor broker will retain the ability to present both sides of the order at the post if the customers so desire.

The proposed rule change will be implemented on a pilot basis through September 30, 2002. The Exchange notes that it has filed a separate proposed rule change relating to cross transactions in Nasdaq securities.[8] In the event SR–Amex–2002–26 is approved by the Commission prior to September 30, 2002, the pilot program for Commentary .06 would terminate.

2. Statutory Basis

The Amex believes the proposed rule change is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5)[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the prptection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will (i) permit the Amex to have these revised crossing procedures in place by the time the Amex begins trading Nasdaq securities on the Amex; and (2) provide the Amex with sufficient time to notify its members of the new crossing procedures before trading Nasdaq securities begins on the Amex. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2002–58 and should be submitted by August 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20180 Filed 8–8–02; 8:45 am]

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[18] Such a "discretionary transaction" is defined in Rule 16b–3(b)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange provided the Commission with notice of its intention to file the proposed rule change on June 25, 2002. The Amex has asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] Securities Exchange Act Release No. 45365 (January 30, 2002), 67 FR 5626 (February 6, 2002).

[7] *See* Securities Exchange Act Release No. 45658 (March 27, 2002), 67 FR 15842 (April 3, 2002) (SR–Amex–2002–22).

[8] *See* SR–Amex–2002–26.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46304; File No. SR–Amex–2002–56]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change by American Stock Exchange LLC Relating to Odd-Lots in Nasdaq Securities

August 2, 2002.

I. Introduction

On June 17, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934[1] and Rule 19b–4 thereunder,[2] a proposed rule change to describe odd-lot execution procedures applicable to trading Nasdaq National Market ("NNM") securities. The proposed rule change was published for comment in the **Federal Register** on July 10, 2002.[3] On July 26, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change and Amendment No. 1 thereto on an accelerated basis.

II. Description

A. Background

The Exchange filed a proposed rule change to permit trading of NNM securities pursuant to unlisted trading privileges.[5] The Exchange currently is modifying its existing system in order to provide automatic execution of market and executable limit orders in NNM securities of less than 100 shares in a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46148 (June 28, 2002), 67 FR 45773 (July 10, 2002).

[4] *See* Letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 25, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange: (1) Amended proposed Amex Rule 118(j)(i) to change the word "adjusted" to "qualified" in the first paragraph; (2) deleted paragraph (j)(i)(A) for proposed Amex Rule 118, which stated that the bid or offer in another market center will be considered in determining the qualified national best bid or offer only if it is no more than 25 cents above the bid or below the offer disseminated by the Amex; (3) re-numbered the provisions contained in the third paragraph of proposed Amex Rule 118(j)(i); and (4) changed the date of approval of the proposed rule change by the Exchange's Board of Governors to September 19, 2001.

[5] *See* Securities Exchange Act Release No. 45365 (January 30, 2001), 67 FR 5626 (February 6, 2002)(SR-Amex-2001–106).

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manner generally consistent with procedures set forth in Amex Rule 205. Round lot orders (*e.g.*, 100 shares) and Part of Round Lot ("PRL") orders (*e.g.*, 175 shares) will not be subject to automatic execution. In this filing, the Exchange proposes to add paragraph (j) to proposed Rule 118 to describe procedures applicable to the execution of odd-lot orders. The Exchange proposes to implement these procedures on a six-month pilot basis.

B. Execution of Odd-Lots

Market and executable odd-lot limit orders to buy (sell) will be executed at the price of the qualified national best offer (bid) at the time the order is received at the trading post or through the Amex Order File (AOF). Market and executable limit orders entered before the opening of trading in NNM securities on the Exchange will receive an execution at the price of the first reported round-lot or PRL on the Amex.

For purposes of this provision, the qualified national best bid or offer is the highest bid and lowest offer disseminated by the Amex or by another market center that is a participant in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Plan"). The bid or offer of such other market center will be considered in determining the qualified national best bid or offer only if it meets the conditions specified in proposed Rule 118(j)(i). These conditions are that: (1) The quotation conforms to Amex Rule 127 ("Minimum Price Variations"), that is, the bid or offer must be in a one cent increment; (2) the quotation does not result in a locked or crossed market; (3) the market center is not experiencing operational or system problems affecting quotation dissemination; and (4) members of the other market center disseminating the quotations are not relieved of their obligations with respect to their quotations pursuant to the "unusual market" exception of Rule 11Ac1–1 under the Act.

Procedures for the execution of non-executable limit orders, stop orders, stop limit orders, other order types, orders filled after the close and non-regular way trades will be similar to existing odd-lot execution procedures under Amex Rule 205 A(2)–A(4), B and C. Such orders will be processed manually.

C. Locked and Crossed Market Conditions

The Exchange also proposed procedures for automatically executing market and executable limit odd-lot orders entered after the opening of Amex trading in NNM securities when the national best bid and offer is locked or crossed. Specifically, if a locked market exists, market orders and executable buy and sell limit orders will be executed at the same price as the locked price. If a crossed market exists, and the bid is higher than the offer by $.05 or less, market and executable limit orders will be executed at the mean of the crossed bid and offer. If the mean does not fall on a one-cent increment, the execution will be rounded up to the nearest $.01. If a crossed market exists and the bid is higher than the offer by more than $.05, then an odd-lot order will not be automatically executed, but will be executed manually in accordance with proposed Rule 118(j)(i) (*i.e.*, filled at the price of the next unlocked and uncrossed qualified national bid or offer).

The Exchange also proposes to add new Commentary .05 to Rule 205 to reference Rule 118(j) odd-lot procedures.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(5).[7] The Commission believes that the proposal is designed to remove impediments to and to perfect the mechanism of a free and open market, to facilitate transactions in odd-lot orders, to help ensure the economically efficient execution of these transactions, and in general to protect investors and the public interest.[8]

The Commission believes that the Exchange's proposed pricing procedure for odd-lot orders in NNM securities will facilitate the execution of such orders. Because the orders will be priced off a current market quote, investors should receive a timely execution of their orders. Moreover, the Commission believes that pricing standard odd-lot market orders at the qualified national best bid or offer will result in orders receiving execution prices that accurately reflect market conditions, and will ensure that customers receive the best execution, both in terms of price and time.

The Commission also believes that it is reasonable for the Exchange to establish certain requirements to trigger use of the qualified national best bid or offer in the odd-lot pricing system. The limited prerequisites for use of quotes disseminated by other participants in the Plan are appropriate to protect the automatic execution feature of the odd-lot pricing system against the inclusion of aberrant quotations. The Commission believes that, in the instances enumerated by the Exchange, it is appropriate to use the Amex best bid or offer in lieu of quotes disseminated by other participants in the Plan that do not satisfy the conditions of proposed Amex Rule 118(j)(1).

Moreover, the proposed rule will ensure that a differential is not charged for standard odd-lot market orders in NNM securities. This prohibition furthers the Commission's objective of ensuring that customers receive the best execution of such orders, and that the price charged for the execution of standard odd-lot market orders will reflect the market price without additional transaction costs.

Finally, the Commission believes that the manner in which the Exchange proposes to handle locked and crossed markets is consistent with the Act because it is designed to reduce the frequency of locked and crossed markets, which should help to provide reliable quotation information, facilitate price discovery, and contribute to the maintenance of a fair and orderly market. The proposal seeks to eliminate locked markets by matching marketable orders against one another, and to eliminate crossed markets by executing the orders at the mean of the crossed bid and offer, if the bid is higher than the offer by $.05 or less.[9] The Commission believes this approach is reasonable. As the Commission has concluded previously, continued locking and crossing of the market can negatively affect market quality.[10] By helping to reduce the negative impact of locked and crossed markets by dealing with them in a timely manner, the Commission believes that the proposal should improve market quality and enhance the production of fair and orderly quotations.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that granting accelerated approval to the proposal will allow the Amex to commence trading of NNM securities on a UTP basis in a timely fashion. Therefore, the Commission finds that granting accelerated approval to the proposed rule change is appropriate and consistent with section 19(b)(2) of the Act.[11]

IV. Amendment No. 1

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 1, in addition to making technical, non-substantive changes to the rule text to correct minor errors contained therein, the Exchange deleted paragraph (j)(i)(A) for proposed Amex Rule 118. This provision stated that the bid or offer in another market center will be considered in determining the qualified national best bid or offer only if it is no more than 25 cents above the bid or below the offer disseminated by the Amex.

The Commission believes that this change to the proposal was necessary so that bids and offers from other market centers in NNM securities that better the quote disseminated by the Amex would be considered in determining the qualified NBBO for odd-lots. The Commission believes that it would be inconsistent with the Act to allow broker-dealers to ignore quotes from other markets simply because they are better than the Amex quote by a designated amount.

In sum, the Commission finds that this change is consistent with section 6(b)(5) of the Act[12] in that it will facilitate transactions in odd-lot orders, help ensure the economically efficient execution of these transactions, and in general protect investors and the public interest. The Commission also finds that the Amex's proposed changes in Amendment No. 1 further strengthen and clarify the proposed rule change and eliminate a potential regulatory issue. Therefore, the Commission finds that granting accelerated approval to Amendment No. 1 is appropriate and consistent with section 19(b)(2) of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether the proposed amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–56 and should be submitted by August 30, 2002.

VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder. Moreover, the Commission finds that there is good cause to grant accelerated approval to the proposed rule change and Amendment No. 1 on a pilot basis, to expire six months from the date of this order.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change and Amendment No. 1 thereto (SR–Amex–2002–56) are approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20184 Filed 8–8–02; 8:45 am]

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[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(6).

[8] In approving this rule, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

[9] If the bid is higher than the offer by more than $.05, an odd-lot order will be executed manually.

[10] *See* Securities Exchange Act Release No. 40455 (September 22, 1998), 63 FR 51978 (September 29, 1998) (order approving File No. SR–NASD–98–01).

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46308; File No. SR–CBOE–2001–66]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Registration Filing Requirements of Associated Persons of Member Organizations

August 2, 2002.

I. Introduction

On December 17, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the CBOE Fee Schedule and CBOE Rules 2.22 (Other Fees or Charges), 3.6A (Qualification and Registration of Certain Associated Persons), 9.2 (Registration of Options Principals), and 9.3 (Registration and Termination of Representatives) relating to the registration filing requirements of associated persons of member organizations. The Exchange filed an amendment to its proposal on April 22, 2002.[3] The Exchange filed a second amendment to its proposal on May 29, 2002.[4] The proposed rule change and Amendments Nos. 1 and 2 were published for comment in the **Federal Register** on June 18, 2002.[5] The Commission did not receive any comment letters regarding the proposal. This order approves the proposed rule change, as amended, and sets an effective date for the proposed rule change of September 20, 2002.

II. Description of the Proposed Rule Change

The purpose of the proposed rule change is to allow for associated persons of CBOE member firms that are not members of NASD to register their qualification status electronically via NASD's Web CRD System ("Web CRD"). Currently, the Exchange requires those associated persons of member

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Nancy L. Nielsen, Director of Arbitration and Assistant Secretary, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission (April 19, 2002) ("Amendment No. 1").

[4] *See* letter from Christopher R. Hill, Attorney II, Legal Department, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission (May 29, 2002) ("Amendment No. 2").

[5] *See* Securities Exchange Act Release No. 46062 (June 11, 2002), 67 FR 41552.

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organizations that are members of the CBOE, but are not NASD members, to manually register for a qualification status by filing a hard copy Form U–4. In addition, a hard copy Form U–5 must be filed with the Exchange within 30 days of the registered person's termination or within 30 days after the member organization learns of any facts or circumstances that would give rise to an amendment.

The CBOE has established an arrangement with NASD to allow CBOE members that are not NASD members to register associated persons electronically with the CBOE through Web CRD. The CBOE believes that this revision to the current registration process will benefit those persons seeking and/or maintaining registrations with the CBOE in that hard copy filings will no longer need to be sent to the Exchange. In addition, all registration and disclosure data will be consolidated into one database, Web CRD, thus allowing members and member organizations access to the member's associated persons' records. Processing associated persons of these non-NASD member firms in Web CRD should make information about them more readily available to regulators and allow for closer monitoring of these firms and their associated persons. In addition, this arrangement will establish a method to allow registered persons to be notified and satisfy the Continuing Education Regulatory Requirement pursuant to CBOE Rule 9.3A.

The proposed rule change also implements fees to be imposed upon non-NASD Exchange members and member organizations, which members will be instructed to pay directly to NASD through the Web CRD system at the time the Exchange member/member organization effects a registration transaction through Web CRD. These fees include: (a) A Non-Member Processing Fee of $85.00; (b) a Disclosure Processing Fee of $95.00; (c) an Annual System Processing Fee of $30.00; and (d) Fingerprint Processing Fees.

Once the transition to the Web CRD is completed, all Exchange members and member organizations that are not members of the NASD will be subject to these Web CRD fees, which will be set forth on the Exchange Fee Schedule. In addition, all registered persons will continue to be assessed CBOE registration fees as outlined in CBOE Rule 2.22(b)—*Other Fees or Charges, (Registration Fees)*.

The proposed rule change amends Rule 9.3(a) to eliminate obsolete language, and to clarify the requirements for registration by associated persons of members of other national securities exchanges, by deleting language that will no longer be applicable when such associated persons effect their registration via Web CRD. In addition, the proposed rule change eliminates Interpretations .01 and .02 to Rule 9.3, as the appropriate portions have been incorporated into Rule 9.3 itself.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with section 6 of the Act.[7] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(4) of the Act,[8] which requires that the rules of an Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members. In addition, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[9] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons regulating transactions in securities, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change should enhance the ability of regulators to monitor broker-dealers and their associated persons.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposal is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–2001–66) is approved and shall become effective on September 20, 2002.

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20183 Filed 8–8–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46311; File No. SR–EMCC–2002–01]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of a Proposed Rule Change To Expand the Types of Instruments Eligible for Processing

August 5, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 10, 2002, Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed change to EMCC's Rules would expand the types of instruments eligible for processing by EMCC to include emerging market debt that meets certain criteria. These additional eligible instruments would be defined in a new definition section of Rule 1 titled "eligible corporate debt."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[2]

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to expand the types of instruments eligible for processing by EMCC to include emerging market corporate debt that meets certain criteria. EMCC will accomplish this by adding a new definition, "eligible corporate debt," to Rule 1. "Eligible corporate debt" will be defined as those instruments which: 1. are issued by or on behalf of an issuer domiciled in an emerging markets jurisdiction;

2. The minimum amount of the debt issue outstanding or to be issued at the time of determination is $200,000,000, and the issuer has cumulatively issued at least $750,000,000 (or equivalent currency) of debt securities; and

3. EMCC does or would include the sovereign debt of the jurisidiction where the issuer is domiciled in the list of EMCC eligible instruments.

As with all instruments that are EMCC eligible, such instruments will also have to meet the existing criteria set forth in Rule 3 in that they will have to be eligible for settlement at a qualified securities depository and be U.S. dollar denominated. Accordingly, Section 1 of Rule 3 will be amended to include a reference to "eligible corporate debt."

EMCC believes that the inclusion of dollar denominated emerging market corporate debt meeting the foregoing criteria will be beneficial to its members because it will help eliminate counterparty risk in these instruments when EMCC becomes the central counterparty. EMCC also believes that its current clearing fund formula will allow it to collect appropriate amounts of collateral to cover the risks posed by this class of securities.

EMCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transaction.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact on or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which EMCC consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR–EMCC–2002–01 and should be submitted by August 30, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20182 Filed 8–8–02; 8:45 am]

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[3] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46299; File No. SR–NYSE–2002–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Fixed Income ETFs (Section 703.16)

August 1, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to grant accelerated approval.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend Section 703.16 (Investment Company Units) of the Listed Company Manual ("Manual") to accommodate the listing and trading of fixed income Exchange Traded Funds ("ETFs"), which are based on indexes of fixed income securities, including the trading thereof on an unlisted trading privilege ("UTP") basis. The proposed rule change will permit the listing and trading on the Exchange of the following series of the iShares Trust, a registered open-end management investment company ("Trust"): iShares 1–3 Year Treasury Index Fund, iShares 7–10 Year Treasury Index Fund, iShares 20+ Year Treasury Index Fund, iShares Treasury Index Fund, iShares Government/Credit Index Fund, iShares Lehman Corporate Bond Fund, and iShares Goldman Sachs Corporate Bond Fund.

The text of the proposed rule change is as follows; new text is italicized.

* * * * *

703.16 Investment Company Units

The Exchange will consider for listing, whether pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 (the "Exchange Act") or otherwise, units of trading ("Units") that meet the criteria of this paragraph. A Unit is a security that represents an interest in a registered investment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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company ("Investment Company") that could be organized as a unit investment trust, an open-end management investment company, or a similar entity. (See also NYSE Rule 1100.)

(A) Original Unit Listing Standards

(1) The Investment Company must:

(a) hold securities *(including fixed income securities)* comprising, or otherwise based on or representing an investment in, an index or portfolio of securities; or

(b) hold securities in another registered investment company that holds securities as described in (a) above.

An index or portfolio may be revised as necessary or appropriate to maintain the quality and character of the index or portfolio.

(2) The Investment Company must issue Units in a specified aggregate number in return for a deposit (the "Deposit") consisting of either:

(a) a specified number of shares of securities *(or if applicable, a specified portfolio of fixed income securities)* that comprise the index or portfolio, or are otherwise based on or represent an investment in securities comprising such index or portfolio, and/or a cash amount; or

(b) shares of a registered investment company, as described in clause (A)(1)(b) above, and/or a cash amount.

(3) Units must be redeemable, directly or indirectly, from the Investment Company for securities *(including fixed income securities)* and/or cash then comprising the Deposit. Units must pay holders periodic cash payments corresponding to the regular cash dividends or distributions declared with respect to the securities held by the Investment Company, less applicable expenses and charges.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 703.16 of the Manual provides standards for listing Investment Company Units, which are defined as "securities representing an interest in a registered investment company that could be organized as a unit investment trust, open-end management investment company or similar entity." In addition to being registered under the Investment Company Act of 1940 ("1940 Act"), these securities are registered under the Exchange Act. The Exchange is proposing to amend this definition to facilitate the listing and trading (including on a UTP basis) of index-based fixed income investment products that are not based in any way on a stock index, but instead are based on an index of fixed income securities. Examples of such products include U.S. government securities and corporate and non-corporate (other than U.S. government) debt securities. As amended, Section 703.16 of the Manual, together with Exchange Rule 1100, would accommodate the listing of Units based on an index of U.S. government debt securities (e.g., securities issued or guaranteed by the U.S. Treasury, an agency or instrumentality of the U.S. government, or by a government-sponsored entity). Other 1940 Act investment products that could be listed and traded under Section 703.16, as amended, would include Units based on an index of corporate and/or non-corporate debt securities, or an index consisting of U.S. government, corporate and non-corporate debt securities.[3] The Commission has recently approved the request of the American Stock Exchange LLC ("Amex") to list and trade fixed income ETFs.[4] The Exchange believes that its proposed rule changes are substantially similar to those of the Amex.

Accordingly, the Exchange proposes to amend Section 703.16 to specify that Investment Company Units may be: (1) based on a portfolio of fixed income securities; (2) issued by an investment company in return for a specified portfolio of fixed income securities and/or cash; and (3) redeemed at a holder's request by the investment company, which will pay the redeeming holder fixed income securities and/or cash.

Upon approval of the proposed amendments to Section 703.16, the Exchange proposes to list and trade on a UTP basis the following seven series of the Trust: iShares 1–3 Year Treasury Index Fund; iShares 7–10 Year Treasury Index Fund; iShares 20+ Year Treasury Index Fund; iShares Treasury Index Fund; iShares Government/Credit Index Fund; iShares Lehman Corporate Bond Fund; and iShares Goldman Sachs Corporate Bond Fund (each, a "Fund," and collectively, the "Funds").

Each Fund will hold certain fixed income securities selected to correspond generally to the price and yield performance of a specified U.S. Treasury, Government/Credit, or Corporate Bond (each, an "Underlying Index") maintained either by Lehman Brothers, or, for the Goldman Sachs Corporate Bond Fund, by Goldman Sachs and Co.[5]

Barclays Global Fund Advisors ("Advisor" or "BGFA") is the investment advisor for each Fund. The Advisor is registered under the Investment Advisers Act of 1940. The Advisor is a wholly owned subsidiary of Barclays Global Investors, N.A. ("BGI"). BGI is a wholly owned indirect subsidiary of Barclays Bank PLC of the United Kingdom.

SEI Investments Distribution Co. ("Distributor"), a Pennsylvania corporation and broker-dealer registered under the Exchange Act, is the principal underwriter and distributor of Creation Unit Aggregations (as defined below) of iShares. The Distributor is not affiliated with the Exchange or the Advisor.

A. Operation of the Funds

The investment objective of each Fund will be to provide investment results that correspond generally to the price and yield performance of its Underlying Index. In seeking to achieve its respective investment objective, each Fund will utilize "passive" indexing investment strategies. Each Fund may fully replicate its Underlying Index, but currently intends to use a

[3] Investment Company Units based on a fixed income securities index are not eligible for listing under the Exchange's generic listing criteria (Section 703.16). Therefore, the Exchange will file separate proposed rule changes pursuant to Rule 19b–4 under the Exchange Act prior to listing and trading (including trading on a UTP basis) any additional series of such Investment Company Units.

[4] *See* Securities Exchange Act Release No. 46252 (July 24, 2002) (SR–Amex–2001–35).

[5] On June 18, 2002, Goldman, Sachs & Co. announced changes to the Goldman Sachs Index, which underlies the iShares Goldman Sachs Corporate Bond Fund. As of July 1, 2002, the composition of the index expanded from 30 to 100 investment grade bonds and the index will be permitted to include more than one bond per issuer. *See* Business Wire, June 18, 2002, "Goldman Sachs Expands Corporate Bond Index to Enhance Market Representation." A description of the revised index is publicly available in the Commission's Public Reference Room.

"representative sampling" strategy to track its Underlying Index. A Fund utilizing a representative sampling strategy generally will hold a basket of the component securities ("Component Securities") of its Underlying Index, but it may not hold all of the Component Securities of its Underlying Index (as compared to a Fund that uses a replication strategy which invests in substantially all of the Component Securities in its Underlying Index in the same approximate proportions as in the Underlying Index).[6]

When using a representative sampling strategy, the Advisor attempts to match the risk and return characteristics of a Fund's portfolio to the risk and return characteristics of the Underlying Index. As part of this process, the Advisor subdivides each Underlying Index into smaller, more homogeneous pieces. These subdivisions are sometimes referred to as "cells." A cell will contain securities with similar characteristics. For fixed income indices, the Advisor generally divides the index according to the five parameters that determine a bond's risk and expected return: (1) duration, (2) sector, (3) credit rating, (4) coupon, and (5) the presence of embedded options. When completed, all bonds in the index will have been assigned a cell. The Advisor then begins to construct the portfolio by selecting representative bonds from these cells. The representative sample of bonds chosen from each cell is designed to closely correlate to the duration, sector, credit rating, coupon, and embedded option characteristics of each cell. The characteristics of each cell when combined are, in turn, designed to closely correlate to the duration, sector, credit rating, coupon, and embedded option characteristics of the Underlying Index as a whole. The Advisor may exclude less liquid bonds in order to create a more tradable portfolio and improve arbitrage opportunities.[7]

According to the Application, the representative sampling techniques used by the Advisor to manage fixed income funds do not materially differ from the representative sampling techniques it uses to manage equity funds. Due to the differences between bonds and equities, the Advisor analyzes different information, *e.g.*, coupon rates instead of dividend payments.

According to the Application, the Funds' use of the representative sampling strategy is beneficial for a number of reasons. First, the Advisor can avoid bonds that are "expensive names" (*i.e.*, bonds that trade at perceived higher prices or lower yields because they are in short supply) but have the same essential risk, value, duration and other characteristics as less expensive names. Second, the use of representative sampling techniques permits the Advisor to exclude bonds that it believes will soon be deleted from the Underlying Index. Third, the Advisor can avoid holding bonds it deems less liquid than other bonds with similar characteristics. Fourth, the Advisor can develop a basket that is easier to construct and cheaper to trade, thereby potentially improving arbitrage opportunities.

From time to time, adjustments may be made in the portfolio of each Fund in accordance with changes in the composition of the Underlying Index or to maintain compliance with requirements applicable to a regulated investment company ("RIC") under the Internal Revenue Code. For example, if at the end of a calendar quarter a Fund would not comply with the RIC diversification tests, the Advisor would make adjustments to the portfolio to ensure continued RIC status. The Exchange notes, however, that Advisor does not anticipate that the Funds would need to make such adjustments, particularly since these Funds (other than the iShares Lehman Corporate Bond Fund and the iShares Goldman Sachs Corporate Bond Fund) invest a very large percentage of their assets in U.S. Treasury securities.

The Exchange represents that the Advisor expects that each Fund will have a tracking error relative to the performance of its respective Underlying Index of no more than five percent (5%). Each Fund's investment objectives, policies and investment strategies will be fully disclosed in its prospectus ("Prospectus") and statement of additional information ("SAI"). At least 90% of each of the iShares 1–3 Year Treasury Index Fund, iShares 7–10 Year Treasury Index Fund, iShares 20+ Year Treasury Index Fund, iShares Treasury Index Fund, and iShares Government/Credit Index Fund's assets will be invested in Component Securities of its respective Underlying Index. Each of these Funds may also invest up to 10% of its assets in bonds not included in its Underlying Index, but which the Advisor believes will help the Fund track its Underlying Index, as well as in certain futures, options and swap contracts, cash and cash equivalents. For example, these Funds may invest in securities not included in the relevant Underlying Index in order to reflect prospective changes in the relevant Underlying Index (such as future corporate actions and index reconstitutions, additions and deletions). Each of the iShares Lehman Corporate Bond Fund and the iShares Goldman Sachs Corporate Bond Fund generally will invest at least 90% of its assets in Component Securities of its respective Underlying Index. However, each of the iShares Lehman Corporate Bond Fund and the iShares Goldman Sachs Corporate Bond Fund may at times invest up to 20% of its assets in certain futures, options and swap contracts, cash and cash equivalents as well as in bonds not included in its Underlying Index, but which the Advisor believes will help the Fund track its Underlying Index and which are either (i) included in the broader index upon which such Underlying Index is based (*i.e.*, the Lehman Credit Index for the Lehman Credit VLI Index or the Goldman Sachs Investment Grade Index for the Goldman Sachs InvesTop Index); or (ii) new issues entering or about to enter the Underlying Index or the broader index upon which such Underlying Index is based.

B. Issuance of Creation Unit Aggregations

1. In General. Shares of each Fund (the "iShares") will be issued on a continuous offering basis in groups of 50,000 or more. These "groups" of shares are called "Creation Unit Aggregations." The Funds will issue and redeem iShares only in Creation Unit Aggregations.[8] As with other open-

[6] The Commission approved an "Application" by the Trust, the Advisor and the Distributor ("Applicants") for an Order under Sections 6(c) and 17(b) of the 1940 Act for the purpose of exempting the Funds from various provisions of the 1940 Act. *See* Investment Company Act Release No. 25622 (June 25, 2002) (approving File No. 812–12390). The information provided in this Rule 19b-4 filing relating to the Funds is based on information included in the Application and Order which include additional information regarding the Trust and the Funds.

[7] As stated in the Application, the Goldman Sachs Index excludes bonds with embedded options. Although the Lehman Indices may include bonds with embedded options, according to the Application the bonds in each Lehman Index (and the respective Deposit Securities and Fund Securities, as defined below) should be liquid and easily tradable because each Lehman Index consists of U.S. Treasury and agency securities and/or liquid corporate and non-corporate bonds. To the extent a particular bond is less liquid than another bond with similar characteristics, the Advisor's representative sampling techniques should permit the Advisor to replace the less liquid bond with a more liquid one. For these reasons, the Advisor does not believe the presence of bonds with embedded options in an Underlying Index, the Deposit Securities, or Fund Securities would have any material impact on the creation/redemption process and the efficiency of the arbitrage mechanism for each Fund.

[8] Each Creation Unit Aggregation will consist of 50,000 or more iShares and the estimated initial

Continued

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end investment companies, iShares will be issued at the net asset value ("NAV") per share next determined after an order in proper form is received. The anticipated price at which the iShares will initially trade is approximately $100.

The NAV per share of each Fund is determined as of the close of the regular trading session on the Exchange on each day that the Exchange is open. The Trust sells Creation Unit Aggregations of each Fund only on business days at the next determined NAV of each Fund.

Creation Unit Aggregations will be issued by each Fund in exchange for the in-kind deposit of portfolio securities designated by the Advisor to correspond generally to the price and yield performance of the Fund's Underlying Index (the "Deposit Securities"). Purchasers will generally be required to deposit a specified cash payment in the manner more fully described in the Application. Creation Unit Aggregations will be redeemed by each Fund in exchange for portfolio securities of the Fund ("Fund Securities") and a specified cash payment in the manner more fully described herein. Fund Securities received on redemption may not be identical to Deposit Securities deposited in connection with creations of Creation Unit Aggregations for the same day. The Distributor will act on an agency basis and will be the Trust's principal underwriter for the iShares in Creation Unit Aggregations of each Fund. All orders to purchase iShares in Creation Unit Aggregations must be placed with the Distributor by or through an authorized participant ("Authorized Participant"). Authorized Participants, which are required to be Depository Trust Company ("DTC") participants, must enter into a participant agreement with the Distributor. The Distributor will transmit such orders to the applicable Fund and furnish to those placing orders confirmation that the orders have been accepted. The Distributor may reject any order that is not submitted in proper form. The Distributor will be responsible for delivering the prospectus to those persons creating iShares in Creation Unit Aggregations and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the Trust to implement the delivery of iShares.

2. *In-Kind Deposit of Portfolio Securities.* Payment for Creation Unit Aggregations placed through the Distributor will be made by the purchasers generally by an in-kind deposit with the Fund of the Deposit Securities together with an amount of cash (the "Balancing Amount") specified by the Advisor in the manner described below. The Balancing Amount is an amount equal to the difference between (1) the NAV (per Creation Unit Aggregation) of the Fund and (2) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities (such value referred to herein as the "Deposit Amount"). The Balancing Amount serves the function of compensating for differences, if any, between the NAV per Creation Unit Aggregation and that of the Deposit Amount. The deposit of the requisite Deposit Securities and the Balancing Amount are collectively referred to herein as a "Portfolio Deposit."

The Advisor will make available to the market through the National Securities Clearing Corporation (the "NSCC") on each Business Day, prior to the opening of trading on the Exchange (currently 9:30 a.m. Eastern Time), the list of the names and the required number of shares of each Deposit Security included in the current Portfolio Deposit (based on information at the end of the previous Business Day) for the relevant Fund. The Portfolio Deposit will be applicable to a Fund (subject to any adjustments to the Balancing Amount, as described below) in order to effect purchases of Creation Unit Aggregations of the Fund until such time as the next-announced Portfolio Deposit composition is made available.

The identity and number of shares of the Deposit Securities required for the Portfolio Deposit for each Fund will change from time to time. The composition of the Deposit Securities may change in response to adjustments to the weighting or composition of the Component Securities in the relevant Underlying Index. These adjustments will reflect changes, known to the Advisor to be in effect by the time of determination of the Deposit Securities, in the composition of the Underlying Index being tracked by the relevant Fund, or resulting from rebalance or additions or deletions to the relevant Underlying Index. In addition, the Trust reserves the right with respect to each Fund to permit or require the substitution of an amount of cash (*i.e.*, a "cash in lieu" amount) to be added to the Balancing Amount to replace any Deposit Security: (1) that may be unavailable or not available in sufficient quantity for delivery to the Trust upon the purchase of iShares in Creation Unit Aggregations, or (2) that may not be eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting.

C. Availability of Information Regarding iShares and Underlying Indices

1. *In General.* On each Business Day the list of names and amount of each treasury security, government security or corporate bond constituting the current Deposit Securities of the Portfolio Deposit and the Balancing Amount effective as of the previous Business Day will be made available. An amount per iShare representing the sum of the estimated Balancing Amount effective through and including the previous Business Day, plus the current value of the Deposit Securities, on a per iShare basis (the "Intra-day Optimized Portfolio Value" or "IOPV") will be calculated by Bloomberg L.P. ("Bloomberg") every 15 seconds during the Exchange's regular trading hours and disseminated every 15 seconds on the Consolidated Tape. Bloomberg will use Bloomberg Generic Prices ("BGN Prices") to reflect changing bond prices and update the IOPV throughout the day. BGN Prices are current prices on individual bonds as determined by Bloomberg using an automated pricing program that analyzes multiple bond prices contributed to Bloomberg by third-party price contributors (such as broker-dealers). BGN Prices are updated throughout the day based on an ongoing analysis of the bid/ask prices submitted by the third-party price contributors. When Bloomberg receives bid/ask prices from a price contributor, the prices are filtered and screened according to pre-determined criteria and set parameters in order to maximize the accuracy of the pricing data. The net result of this process is an individual bond "price" based on an analysis of multiple pricing sources. BGN Prices are available on Bloomberg systems, and Applicants expect that the pricing of the Deposit Securities will be transparent to anyone with access to Bloomberg systems.

The Lehman Indices and the Goldman Sachs Index will not be calculated or disseminated intra-day. The value and return of each Lehman Index is updated on a daily basis by Lehman Brothers. The value and return of the Goldman Sachs Index is updated on a daily basis by Goldman Sachs.

Each Fund will make available through NSCC on a daily basis the names and required number of shares of each of the Deposit Securities in a Creation Unit Aggregation, as well as information regarding the Balancing Amount. The NAV for each Fund will be calculated and disseminated daily. There will also be disseminated a variety of data with respect to each Fund on a daily basis by means of CTA and CQ High Speed Lines; information with respect to recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit Aggregation will be made available prior to the opening of the Exchange. The closing prices of the Funds' Deposit Securities are readily available from published or other public sources, or on-line information services provided by Merrill Lynch, IDC, Bridge, Bloomberg, Lehman Brothers and other pricing services commonly used by bond mutual funds. In addition, the website for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per iShare basis, for each Fund: (a) the prior Business Day's NAV and the mid-point of the bid-ask price at the time of calculation of such NAV ("Bid/Ask Price"), [9] and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

2. *Information Regarding the Underlying Debt Securities.* The secondary market for Treasury securities is a highly organized over-the-counter market. Many dealers, and particularly the primary dealers, make markets in Treasury securities. Trading activity takes place between primary dealers, non-primary dealers, and customers of these dealers, including financial institutions, non-financial institutions and individuals. Increasingly, trading in Treasury securities occurs through automated trading systems.[10]

The primary dealers are among the most active participants in the secondary market for Treasury securities. The primary dealers and other large market participants frequently trade with each other, and most of these transactions occur through an interdealer broker.[11] The interdealer brokers provide primary dealers and other large participants in the Treasury market with electronic screens that display the bid and offer prices among dealers and allow trades to be consummated.

Quote and trade information regarding Treasury securities is widely available to market participants from a variety of sources. The electronic trade and quote systems of the dealers and interdealer brokers are one such source. Groups of dealers and interdealer brokers also furnish trade and quote information to vendors such as Bloomberg, Reuters, Bridge, Moneyline Telerate, and CQG. GovPX,[12] for example, is a consortium of leading government securities dealers and subscribers that provides market data from leading government securities dealers and interdealer brokers to market data vendors and subscribers. TradeWeb, another example, is a consortium of 18 primary dealers that, in addition to providing a trading platform, also provides market data direct to subscribers or to other market data vendors.[13]

Real-time price quotes for corporate and non-corporate debt securities are available to institutional investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Additional analytical data and pricing information may also be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

Retail investors do have access to free intra-day bellwether quotes.[14] The Bond Market Association provides links to price and other bond information sources on its investor web site at *www.investinginbonds.com*. In addition, transaction prices and volume data for the most actively-traded bonds on the exchanges are published daily in newspapers and on a variety of financial websites.

Closing corporate and non-corporate bond prices are also available through subscription services (*e.g.*, IDC, Bridge) that provide aggregate pricing information based on prices from several dealers, as well as subscription services from broker-dealers with a large bond trading operation, such as Lehman Brothers and Goldman, Sachs & Co.

D. Redemption of iShares

Creation Unit Aggregations of each Fund will be redeemable at the NAV next determined after receipt of a request for redemption. Creation Unit Aggregations of each Fund will be redeemed principally in-kind, together with a balancing cash payment (although, as described below, Creation Unit Aggregations may sometimes be redeemed for cash). The value of each Fund's redemption payments on a Creation Unit Aggregation basis will equal the NAV per the appropriate number of iShares of such Fund. Owners of iShares may sell their iShares in the secondary market, but must accumulate enough iShares to constitute a Creation Unit Aggregation in order to redeem through the Fund. Redemption orders must be placed by or through an Authorized Participant.

Creation Unit Aggregations of any Fund generally will be redeemable on any Business Day in exchange for Fund Securities and the Cash Redemption Payment (defined below) in effect on the date a request for redemption is made. The Advisor will publish daily through NSCC the list of securities which a creator of Creation Unit Aggregations must deliver to the Fund (the "Creation List") and which a redeemer will receive from the Fund (the "Redemption List"). The Creation List is identical to the list of the names and the required numbers of shares of each Deposit Security included in the current Portfolio Deposit.

In addition, just as the Balancing Amount is delivered by the purchaser of Creation Unit Aggregations to the Fund, the Trust will also deliver to the redeeming Beneficial Owner in cash the "Cash Redemption Payment." The Cash Redemption Payment on any given Business Day will be an amount calculated in the same manner as that for the Balancing Amount, although the actual amounts may differ if the Fund Securities received upon redemption are not identical to the Deposit Securities applicable for creations on the same day. To the extent that the Fund Securities have a value greater than the NAV of iShares being redeemed, a cash payment equal to the differential is required to be paid by the redeeming Beneficial Owner to the Fund. The Trust may also make redemptions in cash in lieu of transferring one or more Fund Securities to a redeemer if the Trust determines, in its discretion, that such method is warranted due to unusual circumstances. An unusual circumstance could arise, for example, when a redeeming entity is restrained by regulation or policy from transacting in certain Fund Securities, such as the presence of such Fund Securities, on a redeeming investment banking firm's restricted list.

value per Creation Unit Aggregation will be approximately $5 million.

[9] The Bid-Ask Price of a Fund is determined using the highest bid and lowest offer on the Exchange as of the time of calculation of each Fund's NAV.

[10] See "eCommerce in the Fixed-Income Markets: The 2001 Review of Electronic Transaction Systems," December 2001. This survey of electronic trading systems in the bond market was prepared by the staff of The Bond Market Association and is available through the Association's web site: *www.bondmarkets.com*.

[11] *E.g.*, BrokerTec Global, Cantor Fitzgerald, Garban-Intercapital, and Liberty Brokerage.

[12] *See www.govpx.com.*

[13] *See www.tradeweb.com.*

[14] Corporate prices are available at 20 minute intervals from Capital Management Services at *www.bondvu.com/quotmenu.htm*.

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E. Clearance and Settlement

The Deposit Securities and Fund Securities of each Fund will settle via free delivery through the Federal Reserve System for U.S. government securities and the DTC for corporate securities and non-corporate (other than U.S. government securities). The iShares will settle through the DTC. The Custodian will monitor the movement of the Deposit Securities and will instruct the movement of the iShares only upon validation that the Deposit Securities have settled correctly or that required collateral is in place.

As with the settlement of domestic ETF transactions outside of the NSCC Continuous Net Settlement System (the "CNS System"), (i) iShares of the Funds and corporate and non-corporate securities (other than U.S. government securities) will clear and settle through DTC, and (ii) U.S. government securities and cash will clear and settle through the Federal Reserve system. More specifically, creation transactions will settle as follows. On settlement date (T + 3) an Authorized Participant will transfer Deposit Securities that are corporate and non-corporate bonds (other than U.S. government securities) through DTC to a DTC account maintained by the Funds' Custodian, and Deposit Securities that are U.S. government securities, together with any Balancing Amount, to the Custodian through the Federal Reserve system. Once the Custodian has verified the receipt of all of the Deposit Securities (or in the case of failed delivery of one or more bonds, collateral in the amount of 105% or more of the missing Deposit Securities) and the receipt of any Balancing Amount, the Custodian will notify the Distributor and the Advisor. The Fund will issue Creation Unit Aggregations of iShares and the Custodian will deliver the iShares to the Authorized Participant through DTC. DTC will then credit the Authorized Participant's DTC account. The clearance and settlement of redemption transactions essentially reverses the process described above. After the Trust has received a redemption request in proper form and the Authorized Participant transfers Creation Unit Aggregations of iShares to the Funds' Custodian through DTC, the Trust will cause the Custodian to initiate procedures to transfer the requisite Fund Securities and any Cash Redemption Payment. On T + 3, assuming the Custodian has verified receipt of the Creation Unit Aggregations, the Custodian will transfer Fund Securities that are corporate and non-corporate bonds to the Authorized Participant through DTC and Fund Securities that are U.S. government securities, together with any Cash Redemption Payment, through the Federal Reserve system.

iShares of the Funds will be debited or credited by the Custodian directly to the DTC accounts of the Authorized Participants. With respect to domestic equity-based ETFs using the CNS System, Creation Unit Aggregations of iShares are deposited or charged to the Authorized Participants' DTC accounts through the CNS System. Since creation/redemption transactions for iShares of the Funds will not clear and settle through the CNS System, the failed delivery of one or more Deposit Securities (on a create) or one or more Fund Securities (on a redemption) will not be facilitated by the CNS System. Therefore, Authorized Participants will be required to provide collateral to cover the failed delivery of Deposit Securities in connection with an "in-kind" creation of iShares. In case of a failed delivery of one or more Deposit Securities, the Funds will hold the collateral until the delivery of such Deposit Security. The Funds will be protected from failure to receive the Deposit Securities because the Custodian will not effect the Fund's side of the transaction (the issuance of iShares) until the Custodian has received confirmation of receipt of the Authorized Participant's incoming Deposit Securities (or collateral for failed Deposit Securities) and Balancing Amount. In the case of redemption transactions, the Funds will be protected from failure to receive Creation Unit Aggregations of iShares because the Custodian will not effect the Fund's side of the transaction (the delivery of Fund Securities and the Cash Redemption Payment) until the Transfer Agent has received confirmation of receipt of the Authorized Participant's incoming Creation Unit Aggregations. In order to simplify the transfer agency process and align the settlement of iShares of the Funds with the settlement of the Deposit Securities and Fund Securities, Applicants plan to settle transactions in U.S. government securities, corporate bonds, non-corporate bonds (other than U.S. government securities) and iShares on the same T + 3 settlement cycle. The issuer does not believe that the clearing and settlement process will affect the arbitrage of iShares of the Funds.

F. Dividends and Distributions

Dividends from net investment income will be declared and paid to Beneficial Owners of record at least annually by each Fund. Certain of the Funds may pay dividends, if any, on a quarterly or more frequent basis. Distributions of realized securities gains, if any, generally will be declared and paid once a year, but each Fund may make distributions on a more frequent basis to comply with the distribution requirements of the Internal Revenue Code and consistent with the 1940 Act.

Dividends and other distributions on iShares of each Fund will be distributed on a pro rata basis to Beneficial Owners of such iShares. Dividend payments will be made through the Depository and the DTC Participants to Beneficial Owners then of record with amounts received from each Fund.

The Trust will not make the DTC book-entry Dividend Reinvestment Service (the "Service") available for use by Beneficial Owners for reinvestment of their cash proceeds, but certain individual brokers may make the Service available to their clients. The SAI will inform investors of this fact and direct interested investors to contact such investor's broker to ascertain the availability and a description of the Service through such broker. The SAI will also caution interested Beneficial Owners that they should note that each broker may require investors to adhere to specific procedures and timetables in order to participate in the Service and such investors should ascertain from their broker such necessary details. iShares acquired pursuant to the Service will be held by the Beneficial Owners in the same manner, and subject to the same terms and conditions, as for original ownership of iShares.

G. Other Issues

1. *Criteria for Initial and Continued Listing.* iShares are subject to the criteria for initial and continued listing of Investment Company Units in Section 703.16 of the Manual. It is anticipated that a minimum of two Creation Units (100,000 iShares) will be required to be outstanding at the start of trading. This minimum number of iShares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously traded series of Investment Company Units.

The Exchange believes that the proposed minimum number of iShares outstanding at the start of trading is sufficient to provide market liquidity and to further the Trust's objective to seek to provide investment results that correspond generally to the price and yield performance of the Index.

2. *Original and Annual Listing Fees.* The original listing fees that would be applicable to the Funds if listed on the Exchange is $5,000 for each Fund. In addition, the annual listing fees applicable to the Funds is $2,000 for each Fund.

3. *Stop and Stop Limit Orders.* Commentary .30 to Exchange Rule 13 provides that stop and stop limit orders in an Investment Company Unit shall be elected by a quotation, but specifies that if the electing bid on an offer is more than 0.10 points away from the last sale and is for the specialist's dealer account, prior Floor Official approval is required for the election to be effective. This rule applies to Investment Company Units generally, including fixed income ETFs.

4. *Rule 460.10.* Rule 460.10 generally precludes certain business relationships between an issuer and the specialist in the issuer's securities. Exceptions in the Rule permit specialists in ETF shares, including fixed income ETFs, to enter into Creation Unit transactions through the Distributor to facilitate the maintenance of a fair and orderly market. A specialist Creation Unit transaction may only be effected on the same terms and conditions as any other investor, and only at the net asset value of the ETF shares. A specialist may acquire a position in excess of 10% of the outstanding issue of the ETF shares, provided, however, that a specialist registered in a security issued by an investment company may purchase and redeem the investment company unit or securities that can be subdivided or converted into such unit, from the investment company as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

5. *Prospectus Delivery.* Pursuant to Exchange Rule 1100, the Exchange, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the prospectus or Product Description delivery requirements applicable to iShares. The Applicants have filed with the Commission's Division of Investment Management a separate request for an exemptive order granting relief from certain prospectus delivery requirements under Section 24(d) of the 1940 Act.[15] Any product description used in reliance on a Section 24(d) exemptive order will comply with all representations made therein and all conditions thereto.

6. *Trading Halts.* In order to halt the trading of a fixed income ETF, the Exchange may consider, among other things, factors such as the extent to which trading is not occurring in underlying security(s); whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current portfolio value; and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

7. *Suitability.* Pursuant to Exchange Rule 405, before a member, member organization, allied member or employee of such member organization undertakes to recommend a transaction in ETF shares, including fixed income ETFs, such member or member organization should make a determination that such shares are suitable for such customer. If any recommendation is made with respect to such shares, the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks and any special characteristics of the recommended transaction, and is financially able to bear the risks of the recommended transaction.

8. *Purchases and Redemptions in Creation Unit Size.* In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of iShares in Creation Unit Size are described in the Fund prospectus and Statement of Additional Information, and that iShares are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof.

9. *Surveillance.* Exchange surveillance procedures applicable to trading in the proposed iShares are comparable to those applicable to other Investment Company Units currently trading on the Exchange. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Funds.[16]

10. *Hours of Trading/Minimum Price Variation.* The Funds will trade on the Exchange until 4:15 p.m. (Eastern time). The minimum price variation for quoting will be $0.01.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[17] in general and furthers the objectives of Section 6(b),[18] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2002–26 and should be submitted by August 30, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that implementation of the

[15] *See* Investment Company Act Release No. 25595 (May 29, 2002), 67 FR 38684 (June 5, 2002) (Notice of Application for iShares, Inc., the Advisor, the Distributor, and the Trust). The Commission has granted such prospectus relief. *See* Investment Company Act Release No. 25623 (June 25, 2002).

[16] Telephone call between Janet Kissane, Attorney, NYSE, and Jennifer Lewis, Attorney, Division of Market Regulation, Commission, on July 30, 2002.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

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proposed rule change is consistent with the requirements of Section 6 of the Exchange Act [19] and the rules and regulations thereunder applicable to a national securities exchange.[20] Specifically, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Exchange Act.[21] The Commission believes that the Exchange's proposal to list and trade fixed income ETFs (including the trading thereof on a UTP basis) [22] will provide investors with a convenient way of participating in the U.S. government, corporate and non-corporate (other than U.S. government) fixed income markets. The Exchange's proposal should help to provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell securities at negotiated prices throughout the business day that replicate the performance of several portfolios of stocks. The Commission believes that the availability of the Funds will provide an instrument for investors to achieve desired investment results that correspond generally to the price and yield performance of the underlying U.S. Treasury, Government/Credit, or Corporate Bond Index. The investment objective of each Fund will be to provide investment results that correspond generally to the price and yield performance of the underlying index based on fixed income securities. Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[23]

[19] 15 U.S.C. 78f.

[20] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

[22] The Commission notes that, pursuant to Rule 12f–5 under the Act, prior to trading a particular class or type of security pursuant to UTP, NYSE must have listing standards comparable to those of the primary market on which the security is listed. 17 CFR 240.12f–5. The Commission finds that adequate rules and procedures exist to govern the trading of the Fund on NYSE, pursuant to UTP.

[23] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[24] Investment Company Act Release No. 25622 (June 25, 2002).

iShares Trust and iShares, Inc. are each registered in the 1940 Act as an open-ended management investment company with multiple series. iShares Trust has created (or identified for creation) 66 separate series, while iShares, Inc. has created (or identified for creation) 35 separate series. All of these series operate (or will operate) as ETFs pursuant to six prior exemptive orders from the 1940 Act, and each of the ETFs seeks to match the return of an equity securities index. Additionally, the Commission has granted the Funds appropriate relief under various sections of the 1940 Act, including sections 6(c) and 17(b), so that each Fund may register under the 1940 Act as an open-end fund and issue shares that are redeemable in Creation Units, shares of Funds may trade in the secondary market at negotiated prices, and certain persons affiliated with a Fund by reason of owning 5% or more, and in some cases more than 25%, of its outstanding securities may do in-kind purchases and redemptions of Creation Units.[24]

Barclays is registered as an investment adviser under the 1940 Act and serves as the investment adviser to the series of iShares Trust and iShares, Inc. Distributor acts as the principal underwriter and distributor for iShares Trust and iShares, Inc.

iShares Trust will create seven new series each of which operates as an ETF seeking to match the performance of a fixed income securities index. The seven indices are the following:

- Lehman Brothers 1–3 Year U.S. Treasury Index (containing U.S. Treasury securities with remaining maturities of between 1 and 3 years);
- Lehman Brothers 7–10 Year U.S. Treasury Index (containing U.S. Treasury securities with remaining maturities of between 7 and 10 years);
- Lehman 20+ Year U.S. Treasury Index (containing U.S. Treasury securities with remaining maturities of more than 20 years);
- Lehman U.S. Treasury Index (containing U.S. Treasury securities with remaining maturities of more than 1 year);
- Lehman Government/Credit Index (containing certain investment grade government and credit securities with maturities of more than 1 year);
- Lehman Credit VLI Index (containing the largest issues of investment grade credit securities with remaining maturities of more than 1 year); and
- Goldman Sachs InvesTop Index (containing the 100 most liquid and representative bonds in the U.S. investment grade corporate market with remaining maturities of at least 3 years).[25]

The Commission notes that this is the first ETF based on an underlying index of fixed income securities ("Fixed Income ETFs"). The Funds will operate in substantially the same manner as Equity ETFs. Like many other ETFs, each Fund will use a representative sampling strategy to track its index. With a sampling strategy, a Fund will seek to match the return of its index by holding some, but not all, of the fixed income securities contained in its underlying index. In constructing the portfolio for a Fund, Barclays will select a sample of bonds that will correlate to the duration, sector, credit rating, coupon, and embedded option characteristics of the underlying index as a whole. Barclays may also exclude less liquid bonds in order to create a more tradable portfolio to enhance arbitrage efficiency. As with its Equity ETFs, Barclays represents that the Funds will have a tracking error relative to the performance of their respective underlying indices of no more than 5%.

Shares of the Funds will be issued and redeemed in Creation Units priced at NAV in exchange for Portfolio Deposits and Redemption Baskets consisting of Bonds selected and announced by Barclays at the beginning of each business day.

The Commission finds that the Funds will provide benefits to investors in allowing investors to trade baskets of bonds in a single transaction at a cost comparable to that of trading existing equity securities and will allow investors to trade baskets of bonds throughout the day and thereby permit them to take advantage of (or protect themselves against) intra-day market movements. The Funds may make it easier for individual investors to diversify their portfolios across a broader range of assets and will provide institutional and other large investors with an alternative to futures for various hedging and other investment strategies that involve fixed income securities. Finally, the Funds will provide investors with a fund product that discloses its portfolio on a daily basis rather than semi-annually.

While the Funds will be operated in a manner that closely parallels the

[25] As of July 1, 2002, the composition of the Goldman Sachs Index, which underlies the iShares Goldman Sachs Corporate Bond Fund, was expanded from 30 to 100 investment grade bonds, and the index is permitted to include more than one bond per issuer.

manner in which Equity ETFs are operated, one key potential difference may be the efficiency of the arbitrage process. The arbitrage mechanism for Equity ETFs generally has caused the market price of ETF shares to track closely the NAV of the ETF shares. With respect to liquidity of the debt securities likely to be in the ETF portfolios, to the extent these debt securities could not be readily purchased and sold, the arbitrage process would be less efficient. However, the Commission notes that the Funds will invest in some of the most liquid debt securities, including U.S. Government securities and investment grade corporate and non-corporate bonds.[26] In addition, Barclays will employ a sampling method of portfolio management that would allow the Funds to exclude any bonds contained in an underlying index that may not have sufficient liquidity for easy trading. As a result, the Commission believes that the Funds have addressed the liquidity issues that might hamper arbitrage.

In addition, differences in the degree of price transparency in the debt and equity markets could lead to larger discounts and premiums for the Funds than have been experienced by Equity ETFs. Specifically, because the pricing of debt securities can be less transparent than the pricing of equity securities, arbitrageurs might account for pricing uncertainty by waiting for greater premiums or discounts to develop in the market price of the ETF shares before engaging in arbitrage transactions.

The Commission finds that because of the nature of the particular debt securities to be included in the portfolios of the Funds (*i.e.*, U.S. Government securities and investment grade corporate and non-corporate bonds), the pricing information should be available. The Exchange has indicated that real-time price quotes for corporate and non-corporate debt securities are available to institutional investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Additional analytical data and pricing information may also be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

The Exchange has also represented that retail investors would have access to free intra-day bellwether quotes.[27] For instance, the Bond Market Association provides links to price and other bond information sources on its investor web site at *www.investinginbonds.com*. In addition, transaction prices and volume data for the most actively-traded bonds on the exchanges are published daily in newspapers and on a variety of financial websites. Closing corporate and non-corporate bond prices are also available through subscription services (*e.g.*, IDC, Bridge) that provide aggregate pricing information based on prices from several dealers, as well as subscription services from broker-dealers with a large bond trading operation, such as Lehman Brothers and Goldman Sachs & Co.

The Commission also believes that pricing information for the Treasury securities should also be available. Quote and trade information regarding Treasury securities is widely available to market participants from a variety of sources. The electronic trade and quote systems of the dealers and interdealer brokers are one such source. Groups of dealers and interdealer brokers also furnish trade and quote information to vendors such as Bloomberg, Reuters, Bridge, Moneyline Telerate, and CQG.

NYSE represents that every 15 seconds a price calculated by Bloomberg reflecting the current value of the Portfolio Deposit on a per ETF share basis for the Funds will be disseminated. To calculate this intra-day value, Bloomberg intends to use Bloomberg Generic Prices, which are current prices for individual bonds as determined by Bloomberg using an automated pricing program that analyzed multiple bond prices contributed by third-party price contributors such as broker-dealers.[28] Accordingly, NYSE believes that the pricing of the bonds included in the Portfolio Deposit (and in the Redemption Basket) will be transparent to anyone with access to Bloomberg systems. Because the arbitrageurs of ETF shares are generally large institutional investors, including broker-dealers, the Commission believes that these investors likely will have access to Bloomberg systems, as well as other bond pricing information sources that should permit efficient arbitrage to occur. While the Commission believes that differences in the liquidity and pricing transparency of the underlying fixed income markets, as compared to the equity markets, may result in the Funds trading at slightly higher discounts and premiums, the Commission does not believe that this effect is likely to be so substantial as to undermine the benefits that Funds will provide to the markets and to investors. The Commission expects the Exchange to review the discounts or premiums for these products and to respond appropriately if there is in fact a significant pricing disparity.

The Commission has also granted the issuer, Barclays, exemptive relief from Section 24(d) of the 1940 Act so that dealers may effect secondary market transaction in Barclays ETF shares without delivery a prospectus to the purchaser. Instead, under the exemption and under NYSE's listing standards, sales in the secondary market must be accompanied by a "product description," describing the ETF and its shares.[29] The Commission believes a product description, which not only highlights the basic characteristics of the product and the manner in which the ETF shares trade in the secondary market, but also highlights the differences of the Funds from existing equity ETFs and notes the unique characteristics and risks of this product, should provide market participants with adequate notice of the salient features of the product.

The Commission also notes that upon the initial listing of any ETF under Exchange Rule 1100 the Exchange issues a circular to its members explaining the unique characteristics and risks of the security; in this instance, Fixed Income ETFs. In particular, the circular should include, among other things, a discussion of the risks that may be associated with the Funds, in addition to details on the composition of the fixed income indices

[26] The Lehman Government/Credit Index, Lehman Credit VLI Index, and Goldman Sachs InvesTop Index may include investment grade corporate and non-corporate bonds issued by non-U.S. issuers (sovereign, supra-national, foreign agency, and foreign local government). In Barclays' 1940 Act Application, it stated that these bonds will be dollar denominated, registered for sale in the U.S., and traded on U.S. markets at negotiated and readily available prices. Barclays does not believe that these bonds present any unique pricing or liquidity issues and does not expect the bonds to negatively affect arbitrage efficiency. The Commission notes that if any of these major characteristics of these fixed income indices (*e.g.*, investment grade, face amount issued, maturity classification) were to materially change, the Commission would expect NYSE to amend these listing standards accordingly.

[27] Corporate prices are available at 20 minute intervals from Capital Management Services at *www.bondvu.com/quotmenu.htm*.

[28] The Lehman Indices and the Goldman Sachs Index will not be calculated or disseminated intra-day. The value and return of each Lehman Index is updated on a daily basis by Lehman Brothers. The value and return of the Goldman Sachs Index is updated on a daily basis by Goldman Sachs.

[29] Recently approved Nasdaq listing standards for ETFs clarify that NASD members trading equity ETFs through electronic communication networks ("ECNs") would be subject to NASD Rules 4420(i)(2) and 4420(j)(2) requiring the delivery of product descriptions in connection with sales of ETF shares. *See* Securities Exchange Act Release No. 45920 (May 13, 2002), 67 FR 35605 (May 20, 2002). The Commission expects NASD members to observe the same standards for the secondary market trading of Funds.

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upon which they are based and how each Fund would use a representative sampling strategy to track its index. The circular also should note Exchange members' responsibilities under Exchange Rule 405 ("know your customer rule") regarding transactions in such Fixed Income ETFs. Exchange Rule 405 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.[30] The circular also will address members' prospectus delivery requirements as well as highlight the characteristics of purchases in Funds, including that they only are redeemable in Creation Unit size aggregations. Based on these factors, the Commission finds that the proposal to trade the Funds is consistent with Section 6(b)(5) of the Exchange Act.[31]

The Commission also notes that the Exchange's rules and procedures should address the special concerns attendant to the trading of new derivative products. In particular, by imposing the Investment Company Unit listing standards in Exchange Rule 703.16, and addressing the suitability, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has addressed adequately the potential problems that could arise from the derivative nature of the Funds.

In particular, the Commission finds that adequate rules and procedures exist to govern the trading of Investment Company Units, including Funds. Funds will be deemed equity securities subject to NYSE rules governing the trading of equity securities. These rules include: Dealings and Settlements Rules, such as priority, parity, and precedence of orders, market volatility related trading halt provisions pursuant to Exchange Rule 80B, members dealing for their own accounts, specialists, odd-lot brokers, and registered traders, handling of orders and reports; duty to report transactions, comparisons of transactions, marking to the market, delivery of securities, dividends and interest, closing of contracts, and money and security loans;[32] and Operation of Member Organization Rules and Communications with the Public Rules, such as conduct of accounts, margin rules, and advertising. [33] NYSE also will consider halting trading in any series of Investment Company Units under certain other circumstances including those set forth in Exchange Rule 717(b)(iv) regarding the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market. The Commission believes that the application of these rules should strengthen the integrity of the Funds.

The Commission also notes that certain concerns are raised when a broker-dealer, such as Lehman or Goldman, is involved in the development and maintenance of a stock index upon which an ETF is based. Previously, the Commission noted the importance of an exchange adopting adequate procedures to prevent the misuse of material, non-public information regarding changes to component stocks in a fixed income securities index.[34] Goldman and Lehman each have procedures in place to prevent the misuse of material, non-public information regarding changes to component stocks to the Funds. [35] The Commission believes that these provisions should help to address concerns raised by Goldman and Lehman's involvement in the management of the indices.

The Commission also believes that NYSE has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the Funds, the Commission believes that the potential for manipulation should be minimized, while protecting investors and the public interest.

NYSE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. NYSE has requested accelerated approval because the 1940 Act Application relating to the Funds has been reviewed by the Division of Investment Management and notice of the Application has been published in the **Federal Register**.[36] The Application disclosed the characteristics and risks associated with the Funds. No comments were submitted and the Commission granted the relief requested in the Application.[37] The Funds will trade on the Exchange in the same manner as Investment Company Units previously approved by the Commission. Furthermore, the Commission notes that it recently granted accelerated approval to the request of the Amex to list and trade fixed income ETFs.[38] Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[39] that the proposed rule change, (File No. SR–NYSE 2002–26) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[40]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20178 Filed 8–8–02; 8:45 am]

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[30] Exchange Rule 405.

[31] 15 U.S.C. 78f(b)(f).

[32] Exchange Rules 45–227.

[33] Exchange Rules 325–472.

[34] *See supra,* note 4.

[35] The Commission expects that the procedures implemented by Goldman and Lehman will monitor and prevent the misuse of material, non-public information as it relates to the development, maintenance and calculation of the indices.

[36] Investment Company Act Release No. 25594 (May 29, 2002), 67 FR 38681 (June 5, 2002).

[37] Investment Company Act Release No. 25622 (June 25, 2002).

[38] *See supra,* note 4.

[39] 15 U.S.C. 78s(b)(2).

[40] 17 CFR 200.3–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46306; File No. SR–NYSE–2002–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Certain Exchange Traded Funds ("ETFs")

August 2, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to trade on an unlisted trading privileges ("UTP"): (a) Vanguard Total Stock Market VIPERs, (b) iShares Russell 2000 Index Funds, (c) iShares Russell 2000 Value Index Funds and (d) iShares Russell 2000 Growth Index Funds (each an "ETF" and collectively "ETFs"), each of which is a type of Investment Company Unit ("ICU").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has adopted listing standards applicable to ICUs which the Exchange states are consistent with the listing criteria currently used by the American Stock Exchange LLC ("Amex") and other exchanges, and trading standards pursuant to which the Exchange may trade ICUs on the Exchange on an UTP basis.[3] The Exchange now proposes to trade the ETFs on a UTP basis. The ETFs have been listed and actively traded on the Amex[4] and trade on other securities exchanges and in the over-the-counter market. Each of the ETFs meets the "generic" listing criteria for ETFs set forth in Section 703.16 of the Manual and Exchange Rule 1100 ("generic listing criteria"), except that certain component stocks of each of the ETFs do not meet the volume requirement, as more fully described in Exhibit A of the Form 19b–4.[5] The information below is intended to provide a brief description of each ETF.[6]

The Vanguard Total Stock Market VIPERs. The shares of the Vanguard Total Stock Market VIPERs ("Vanguard Fund") are based on the Wilshire 5000 Total Market Index ("Wilshire Index"), a domestic securities index. The Wilshire Index is market capitalization weighted. The Vanguard Index Funds, the issuer, is an open-ended management investment company operating nine separate investment portfolios or "index funds." The Wilshire Index consists of stocks traded on the NYSE and AMEX and quoted on NASDAQ. The Vanguard Fund uses a "passive," or indexing, approach to attempt to produce investment results that approximate the investment performance of the Wilshire Index. The Vanguard Fund will not hold all of the stocks that comprise the Wilshire Index, but will attempt to hold a representative sampling of the securities in the Wilshire Index that resembles the entire Wilshire Index. As of July 1, 2002, of those component stocks representing at least 90% of the weight of the Wilshire Index, four of the 1,774 component stocks of the Vanguard Fund did not meet the volume requirement of the generic listing criteria.[7]

iShares Russell Funds. The shares of the iShares Russell 2000 Index Fund are based on the Russell 2000 Index. The shares of the iShares Russell 2000 Value Index Fund are based on the Russell 2000 Value Index, and the shares of the iShares Russell 2000 Growth Index Fund are based on the Russell 2000 Growth Index (the iShares Russell 2000 Index Fund, iShares Russell 2000 Value Index Fund and the iShares Russell 2000 Growth Index Fund are collectively referred to as the "iShares Russell Funds"). The Russell Indices are domestic securities indices. Each of the Russell Indices is market capitalization weighted. The iShares Trust, the issuer, is an open-ended management investment company operating 50 separate investment portfolios or "index funds." The Russell Indices consist of stocks traded on the NYSE and AMEX and quoted on NASDAQ. Each of the iShares Russell Funds uses a "passive," or indexing, approach to attempt to produce investment results that approximate the investment performance of the relevant Russell Index. The iShares Russell 2000 and Russell 2000 Value Index Funds will not hold all of the stocks that comprise the relevant Russell Index, but will attempt to hold a representative sampling of the securities in the relevant Russell Index that resembles the entire relevant Russell Index. The iShares Russell 2000 Growth Index Fund will invest in substantially all of the securities in the Russell 2000 Growth Index in approximately the same proportions as in the underlying Russell 2000 Growth Index. As of June 28, 2002, of those component stocks representing at least 90% of the weight of the index: (a) 51 of 1,243 component stocks of the iShares Russell 2000 Value Index Fund, (b) 32 of 1,218 component stocks of the iShares Russell 2000 Growth Index Fund, and (c) 75 of 1,878 component stocks of the iShares Russell 2000 Index Fund did not meet the volume requirement of the generic listing criteria.[8]

As with all ETFs, the Exchange will distribute an information circular to its members in connection with the trading of the ETFs. The circular will discuss the special characteristics and risks of trading this type of security. Specifically, the circular, among other things, will discuss what the ETFs are, how they are created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing shares of the ETFs prior to or concurrently with the confirmation of a transaction,[9] applicable Exchange rules, dissemination information, trading information and the applicability of suitability rules. The

[3] In 1996, the Commission approved Section 703.16 of the *Exchange's Listed Company Manual* ("Manual"), which sets forth the rules related to the listing of ICUs. *See* Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996). In 2000, the Commission also approved the Exchange's generic listing standards for the listing and trading, or the trading pursuant to UTP, of ICUs under Section 703.16 of the Manual and Exchange Rule 1100. *See* Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000).

[4] Amex began trading the iShares Russell Funds in 2000 and the Vanguard Total Stock Market VIPERs in 2001. *See www.iShares.com; www.vanguard.com.*

[5] Section 703.16(b)(2)(b) of the Manual requires that "the component stocks representing at least 90 percent of the weight of the index or portfolio must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares."

[6] The Exchange represents that much of the information in this filing was taken from the Prospectus of iShares Trust dated as of August 1, 2002, as supplemented, the Prospectus of The Vanguard Group dated as of April 26, 2002, as supplemented, and from the websites of the Amex (*www.Amex.com*), iShares (*www.iShares.com*) and Vanguard (*www.vanguard.com*). In addition, some information relating to the Vanguard Fund was taken from the Application for an Order under Section 6(c) of the Investment Company Act of 1940 for Certain Exemptions, Release No. IC–24680 (October 6, 2000). Fund information relating to Net Value Asset ("NAV"), returns, dividends, component stock holdings and the like are updated on a daily basis on the websites.

[7] *See www.Amextrader.com.* Telephone conversation between Janet M. Kissane, Office of General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, on August 2, 2002.

[8] Telephone conversation between Janet M. Kissane, Office of General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on August 2, 2002.

[9] The Commission has granted the iShares Russell Funds an exemption from Section 24(d) of the Investment Company Act of 1940. *See* Investment Company Act Release No. 25623 (June 25, 2002). The Commission granted the Vanguard Fund an exemption from Section 24(d) of the Investment Company Act of 1940. *See* Investment Company Act Release No. 24789 (December 12, 2000). Thus, the Exchange, in an Informational Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the prospectus or Product Description delivery requirements applicable to iShares Russell Funds or the Vanguard Fund. Any product description used in reliance on the Section 24(d) exemptive order will comply with all representations made and all conditions contained in the Application for the Order. Telephone conversation between Janet M. Kissane, Office of General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on August 2, 2002.

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Exchange also intends to utilize its existing surveillance procedures to monitor trading in the ETFs, including surveilling specialist compliance with Exchange Rule 460.10, which contemplates specialists engaging in transactions with the ETF issuers under certain circumstances.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is existent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[13] The Commission believes that the Exchange's proposal to trade (a) Vanguard Fund, (b) iShares Russell 2000 Index Funds, (c) iShares Russell 2000 Value Index Funds and (d) iShares Russell 2000 Growth Index Funds pursuant to the UTP will provide investors with a convenient way of participating in the securities markets and could produce added benefits to investors through the increased competition between other market centers trading the product. Specifically, the Commission believes that NYSE's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell at negotiated prices throughout the trading day securities that replicate the performance of several portfolios of stock,[14] and by increasing the availability of ETFs as an investment tool. Accordingly, as discussed below, the rule proposal is consistent with the requirements of Section 6(b)(5) that Exchange rules facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[15]

A. Trading of the ETFs on NYSE Pursuant to UTP

The Commission notes that, pursuant to Rule 12f–5 under the Act,[16] prior to trading a particular class or type of security pursuant to UTP, NYSE must have listing standards comparable to those of the primary market on which the security is listed. The Commission finds that adequate rules and procedures exist to govern the trading of the ETFs on NYSE, pursuant to UTP. ETF shares will be deemed equity securities subject to NYSE's rules governing the trading of equity securities. Accordingly, the Exchange's existing general rules that currently apply to the trading of equity securities will also apply to the ETFs. In addition, Section 703.16 of the NYSE's *Manual* and Exchange Rule 1100 [17] which contain specific listing and delisting criteria to accommodate the trading of Units, will apply to the trading of the ETFs.[18] These criteria should help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets. The delisting criteria allow the Exchange to consider the suspension of trading and the delisting of a series of Units, including suspending trading in the ETFs traded on the Exchange pursuant to UTP, if an event were to occur that made further dealings in such securities inadvisable. This will give the Exchange flexibility to suspend trading in the ETFs if circumstances warrant such action. Accordingly, the Commission believes that NYSE's equity rules in general, and Section 703.16 of the Manual and Exchange Rule 1100 in particular, provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.[19]

B. Disclosure

The Commission believes that NYSE's proposal should provide for adequate disclosure to investors relating to the terms, characteristics, and risks of trading the ETFs. All investors in the ETFs, including those purchasing the ETFs on NYSE pursuant to UTP, will receive a prospectus or a Product Description [20] regarding the product. The prospectus or Product Description will address the special characteristics of the ETFs, including a statement regarding their redeemability and method of creation, and that ETF shares are not individually redeemable.

The Commission notes that the Exchange has represented that it will also distribute an information circular to all NYSE members prior to the commencement of trading of the ETFs explaining the unique characteristics and risks of the Funds. The circular will note, for example, Exchange member responsibilities, including that, before an Exchange member undertakes to recommend a transaction in the ETFs, it should make a determination that it is in compliance with applicable rules of other self-regulatory organizations of which it is a member, including suitability rules.[21] The circular will also address members' responsibility to deliver a prospectus to all investors purchasing the ETF, as well as highlight the characteristics of the ETF, including that ETF shares are only redeemable in Creation Unit size aggregation.[22]

C. Dissemination of the Fund Portfolio Information

The Commission believes that since Amex is disseminating an estimate of the Value ("Values") of a share for the various ETFs, investors will be provided with timely and useful information concerning the value of the ETFs, on a per Fund basis. The Commission notes that the information is disseminated through facilities of the CTA and reflects the currently available information concerning the value of the assets comprising the deposit securities. The information is disseminated every fifteen seconds during the hours of 9:30 a.m. to 4 p.m. Eastern Standard Time and will be available to all investors, irrespective of where the transaction is executed.[23] In addition, because the value is expected to closely track the applicable ETF, the Commission believes the Values will provide investors with adequate information to determine the intra-day value of a given ETF.

D. Surveillance

The Commission notes that NYSE has submitted surveillance procedures for the ETFs and believes that those procedures are adequate to address concerns associated with the listing and trading of such securities, including any concerns associated with specialists purchasing and redeeming Creation Units. The Exchange has represented that its surveillance procedures should allow it to identify situations where specialists purchase or redeem Creation Units to ensure compliance with NYSE Rule 460.10, which requires that such purchases or redemptions facilitate the maintenance of a fair and orderly market in the subject security.

E. Specialists

The Commission finds that it is consistent with the Act to allow a specialist registered in a security issued by an Investment Company to purchase or redeem the listed security from the issuer as appropriate to facilitate the maintenance of a fair and orderly market in that security. The Commission believes that such market activities should enhance liquidity in such security and facilitate a specialist's market making responsibilities. In addition, because the specialist only will be able to purchase and redeem ETF shares on the same terms and conditions as any other investor (and only at the NAV), and Creation transactions must occur through the distributor and not directly with the issuer, the Commission believes that concerns regarding potential abuse are minimized. As noted above, the Exchange's surveillance procedures also should ensure that such purchases are only for the purpose of maintaining fair and orderly markets, and not for any other improper or speculative purposes. Finally, the Commission notes that its approval of this aspect of the Exchange's rule proposal does not address any other requirements or obligations under the Federal securities laws that may be applicable.[24]

After careful review, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[25] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Exchange. Accordingly, the Commission finds that the listing of the ETFs on a UTP basis is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act,[26] to approve the proposal on the accelerated basis. The Commission further finds that accelerated approval will enable the Exchange to accommodate the timetable for trading ETFs on the Exchange.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number SR–NYSE–2002–28 and should be submitted by August 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20179 Filed 8–8–02; 8:45 am]

BILLING CODE 8010–01–P

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[10] The Exchange represents that Exchange Rule 460.10 generally precludes certain business relationships between an issuer and the specialist in the issuer's securities. The Exchange further represents that Exceptions in the Rule permit specialists in ETF shares to enter into Creation Unit transactions through the Distributor to facilitate the maintenance of a fair and orderly market. A specialist Creation Unit transaction may only be affected on the same terms and conditions as any other investor, and only at the net asset value of the ETF shares. A specialist may acquire a position in excess of 10% of the outstanding issue of the ETF shares, provided, however, that a specialist registered in a security issued by an investment company may purchase and redeem the investment company unit or securities that can be subdivided or converted into such unit, from the investment company as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(5).

[14] The Commission notes that unlike typical open-end investment companies, where investors have the right to redeem their fund shares on a daily basis, investors in ETFs can redeem them in creation unit size aggregations only.

[15] In approving this rule, the commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 240.12f–5.

[17] The Commission approved generic rules for the listing and trading of ICUs on NYSE in 2000. *See* Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000).

[18] The Commission notes the listing and delisting criteria is similar to those adopted by Amex.

[19] The Commission also believes that the proposed rule change should help protect investors and the public interest, and help perfect the mechanisms of a national market system, in that it will allow for the trading of the ETFs on NYSE pursuant to UTP, making the ETFs more broadly available to the investing public.

[20] *See* Investment Company Release No. 25623 (June 25, 2002); Investment Company Release No. 24789 (December 12, 2000).

[21] Telephone conversation between Janet M. Kissane, Office of General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on August 2, 2002.

[22] The Commission notes that the information circular should also discuss exemptive relief granted by the Commission from certain rules under the Act. The applicable rules are: Rule 10a–1, Rule 10b–10; Rule 14e–5; Rule 10b–17; Rule 11d1–2; Rules 15c1–5 and 15c1–6; and Rules 101 and 102 of Regulation M under the Exchange Act.

[23] Telephone conversation between Janet M. Kissane, Office of General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on August 2, 2002.

[24] The Commission notes that with respect to the ETFs, broker-dealers and other persons are cautioned in the prospectus and/or the ETF's Statement of Additional Information that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act of 1933.

[25] 15 U.S.C. 78s(b)(2).

[26] 15 U.S.C. 78f(b)(5).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46312; File No. SR–OCC–2002–06]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Adjustment Procedures for Security Futures

August 5, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 12, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The

[1] 15 U.S.C. 78s(b)(1).

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Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC's adjustment procedures for stock futures to provide for adjusting stock futures contracts to compensate for special cash dividends and for rights distributions that expire in the money during the life of the futures contract.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change would amend OCC's adjustment procedures for stock futures to provide for adjusting stock futures contracts to compensate for special cash dividends and for rights distributions that expire in the money during the life of the futures contract. Security futures markets and certain firms interested in trading stock futures have expressed to OCC their belief that in order for stock futures to be successful they must replicate a position in the underlying stock as closely as possible. This means that, among other things, if an unanticipated corporate event (*i.e.*, an event that cannot be discounted in futures prices) materially affects the value of an underlying stock, the terms of futures contracts on that stock should be adjusted to compensate for the event. There are two types of corporate events that cause particular concern from this perspective: (1) special (*i.e.*, non-recurrent) cash dividends and (2) rights distributions. OCC does not, as a general rule, adjust options for cash dividends unless the amount of the dividend exceeds 10 per cent of the value of the underlying stock. If the holder of a call option wants to capture a dividend below that threshold, he can do so by exercising although at the cost of losing the remaining time value of his option. The holder of a long stock future would not have that ability. Recurrent cash dividends are not regarded as a problem because they can be anticipated and discounted in futures settlement prices. But there is no economical way for holders of long stock futures positions to ensure themselves the benefit of unscheduled dividends.

Similarly, if the issuer of an underlying stock declares a rights distribution and the rights will expire before the options do, the holder of a call option can capture the value of the rights by exercising the option before the rights expire. In contrast, the holder of a long stock future would have no way of obtaining the benefit of a rights distribution if the rights expire before the future does.

OCC's rules currently specify adjustment procedures for stock futures that generally parallel the adjustment rules for options. These procedures do not take into account the economic differences between options and futures discussed above. The security futures markets and firms interested in trading stock futures believe strongly that OCC's adjustment provisions should accommodate these differences.[4]

The proposed rule change is intended to address that concern. OCC's by-laws presently provide that, as a general rule, outstanding stock futures contracts will not be adjusted to compensate for ordinary cash dividends. A cash dividend is deemed "ordinary" if the amount does not exceed 10 percent of the value of the underlying stock on the declaration date. The proposed rule change would amend the by-laws to provide that in the case of stock futures, a cash dividend would be deemed "ordinary" if OCC determined that it was declared pursuant to a policy or practice of paying such dividends on a quarterly or other regular basis regardless of the size of the cash dividend.[5] This change recognizes that market pricing mechanisms can compensate for anticipated cash dividends. Because the market cannot anticipate and price for special dividends, the proposed rule change would provide for adjustments to outstanding stock futures when a company pays a special (*i.e.*, non-recurring) cash dividend without regard to size. This would be done through a one-time adjustment in the futures settlement price that has the effect of causing the short to pass the value of the dividend to the long.

OCC's by-laws currently provide that outstanding stock futures will not be adjusted to compensate for rights distributions where the rights expire before the maturity date of the future. Under the proposed rule change, if rights would expire before they were to be delivered under a stock futures contract, then the futures would be adjusted through a one-time adjustment in the futures settlement price in an amount equal to the value of the rights as determined by OCC. OCC's good-faith determination of value would be conclusive and binding on investors.

Interpretation .11, which applies only to certain types of adjustments, is being deleted because OCC has concluded that it is likely to be more confusing than useful.

The proposed rule change is consistent with the requirements of section 17A of the Act[6] and the rules and regulations thereunder applicable to OCC because it promotes the prompt and accurate clearance and settlement of securities transactions, fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. OCC will notify the Commission of any written comments received by OCC.

[2] Article I of OCC's By-Laws defines "stock future" as "a security future for which the underlying security is an equity security."

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] Although this would cause the adjustment procedures for stock futures to diverge from those applicable to equity options, the consensus among prospective markets and market participants appears to be that it is more important to avoid discontinuity between stock futures and the underlying stocks than between futures and options.

[5] Quarterly stock dividends would also be deemed "ordinary" regardless of size. Stock futures contracts would ordinarily be adjusted for other stock distributions, even if recurrent (*e.g.*, annual), to avoid creating an unnecessary discontinuity with equity options.

[6] 15 U.S.C. 78q–1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–2002–06 and should be submitted by August 30, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20181 Filed 8–8–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4094]

Office of the Coordinator for Counterterrorism; Designation of Foreign Terrorist Organizations

AGENCY: Department of State.

ACTION: Designation of foreign terrorist organizations.

Pursuant to section 219 of the Immigration and Nationality Act ("INA"), as added by the Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104–132, § 302, 110 Stat. 1214, 1248 (1996), and amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, 110 Stat. 3009 (1996), the Secretary of State hereby designates, effective August 9, 2002, the following organization as foreign terrorist organizations:

The Communist Party of the Philippines, also known as the CPP, also known as the New People's Army, also known as the NPA.

Dated: August 2, 2002.

Timothy Egert,

Federal Register Liaison, Department of State.

[FR Doc. 02–20242 Filed 8–8–02; 5:00 pm]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending July 26, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–12909.
Date Filed: July 22, 2002.
Parties: Members of the International Air Transport Association.
Subject: CAC/30/Meet/008/02 dated July 5, 2002 r–1 to r–8; Minutes—CAC/30/Meet/006/02 dated May 28, 2002; Intended effective date: October 1, 2002.

Docket Number: OST–2002–12920.
Date Filed: July 23, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC12 USA–EUR 0138 dated 25 June 2002, North Atlantic–USA–Europe (except between Austria,Czech Republic, France, Germany, Italy, Netherlands,Scandinavia) r1–r20; PTC12 USA–EUR 0140 dated 28 June 2002,Technical Correction; PTC12 USA–EUR 0143 dated 16 June 2002,Technical Correction; PTC12 USA–EUR 0139 dated 25 June 2002,North Atlantic–USA–Austria, Czech Republic, France,Germany, Italy, Netherlands, Scandinavia r21–r41,Minutes—PTC12 USA–EUR 0142 dated 16 July 2002,Tables—PTC12 USA–EUR FARES 0070 dated 28 June 2002,Intended effective date: 1 November 2002.

Docket Number: OST–2002–12921.
Date Filed: July 23, 2002.
Parties: Members of the International Air Transport Association.
Subject: CSC/24/Meet/006/2002 dated June 21, 2002, Finally Adopted Resolutions r1–r2,Minutes—CSC/24/Meet/007/2002 dated June 21, 2002,Intended effective date: 1 October 2002.

Docket Number: OST–2002–12934.
Date Filed: July 25, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC12 USA–EUR Fares 0071 dated 19 July 2002, Resolution 015h–USA Add-on Amounts between USA and UK,Intended effective date: 1 October 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–20250 Filed 8–8–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending July 19, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–12830.
Date Filed: July 15, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC12 USA–EUR 0141 dated 16 July 2002, Mail Vote 225—Resolution 010x r1–r4, TC12 USA-Europe (except Austria, Czech Republic, France, Germany, Iceland, Italy, Netherlands, Scandinavia), Special Passenger Amending Resolution from Spain to USA, Intended effective date: 1 November 2002/1 March 2003.

Docket Number: OST–2002–12861.
Date Filed: July 17, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR–ME 0141 dated 12 July 2002, TC2 Europe-Middle East

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Expedited Resolution 002pp r1, PTC2 EUR–ME 0142 dated 12 July 2002, TC2 Europe-Middle East Expedited Resolution 002qq r2, PTC2 EUR–ME 0143 dated 12 July 2002, TC2 Europe-Middle East Expedited Resolutions 002y, 015v r3–r4, Intended effective date: 1 September 2002/1 October 2002/1 November 2002.

Docket Number: OST–2002–12874.
Date Filed: July 18, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC12 CAN–EUR 0083 dated 28 June 2002, TC12 Canada-Europe, Resolutions r1–r21, Minutes—PTC12 CAN–EUR 0084 dated 16 July 2002, Tables—PTC12 CAN–EUR Fares 0028 dated 5 July 2002, PTC12 CAN–EUR Fares 0029 dated 9 July 2002, Intended effective date: 1 November 2002.

Dorothy Y. Beard,
Federal Register Liaison.
[FR Doc. 02–20251 Filed 8–8–02; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 19, 2002

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's procedural regulations (See 14 CFR 301.201 *et seq.*). The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period dot may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2002–12683.
Date Filed: July 19, 2002.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 9, 2002.
Description: Application of Evergreen International Airlines, Inc., pursuant to Order 2002–6–20, 49 U.S.C. Section 41102 and Subpart B, requesting a certificate of public convenience and necessity to engage in scheduled foreign air transportation of property and mail between a point or points in the United States, via intermediate points, and the co-terminal points Manaus and Sao Paulo, Brazil. Evergreen further requests, authority to integrate this authority with its existing certificate and exemption authority and to commingle traffic consistent with applicable aviation agreements. In addition, Evergreen requests designation as the fourth U.S.-Brazil all-cargo airline and an allocation of four weekly round trip frequencies.

Docket Number: OST–2002–12683.
Date Filed: July 19, 2002.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 9, 2002.
Description: Application of Amerijet International, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart B, and the provisions of Order 2002–6–20, requesting a certificate of public convenience and necessity and allocation of frequencies, authorizing it to provide scheduled foreign air transportation of property and mail between the United States and Brazil.

Docket Number: OST–2002–12683.
Date Filed: July 19, 2002.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 9, 2002.
Description: Application of Gemini Air Cargo, Inc., pursuant to Order 2002–6–20, requesting certificate of public convenience and necessity to operate scheduled foreign air transportation of property and mail from a point or points in the United States; via intermediate points; to Manaus, Brasilia, Rio de Janeiro, Sao Paulo, Recife, Porto Alegre, Belem, Belo Horizonte, and Salvador de Bahia, Brazil; and beyond Brazil to Argentina, Uruguay, Paraguay, and Chile. Gemini seeks designation as a U.S. scheduled all-cargo carrier to Brazil, and asks the Department to allocate to Gemini the four all-cargo frequencies that are presently available.

Dorothy Y. Beard,
Federal Register Liaison.
[FR Doc. 02–20252 Filed 8–8–02; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–12146]

Information Collection Under Review by the Office of Management and Budget (OMB): 2115–0050 (Bridge Permit Application Guide)

AGENCY: Coast Guard, DOT.
ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded one Information Collection Report (ICR) abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICR describes the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before September 9, 2002.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2002–12146] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Docket Management Facility at 202–493–2251 and (b) OIRA at 202–395–5806, or e-mail to OIRA at *oira_docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*. (b) OIRA does not have a website on which you can post your comments.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 (Plaza level), 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICR are available for inspection and copying in public dockets. They are available in docket USCG 2002–12146 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov*; and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published [67 FR 22158 (May 2, 2002)] the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the Department's estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collection; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2002–12146. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Request

1. *Title:* Bridge Permit Application Guide.
OMB Control Number: 2115–0050.
Type of Request: Extension of a currently approved collection.
Affected Public: Public and private owners of bridges over navigable waters of the United States.
Form: This collection of information does not require the public to fill out forms, but does require the respondent to submit a letter of application, along with letter-size drawings (plans) and a map showing the proposed bridge project and its location.
Abstract: The collection of information is the application and documentation required to support approval by the Coast Guard of the location and plans of any proposed bridge project across navigable waters of the United States. An applicant must submit to the Coast Guard a letter of application for a bridge permit, including letter-size drawings (plans) and a map showing the proposed bridge project and its location with respect to the navigable waterway. Full details of the Coast Guard Bridge Permit Application process and required information in support of it, appear at (*http://www.uscg.mil/hq/g-o/g-opt/g-opt.htm*) and 33 CFR part 115.
Annual Estimated Burden Hours: The estimated burden is 4000 hours a year.

Dated: August 5, 2002.

N.S. Heiner,
Acting Director of Information and Technology.
[FR Doc. 02–20246 Filed 8–8–02; 8:45 am]
BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Brazoria and Galveston Counties, TX

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project in Brazoria and Galveston Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. John Mack, P.E., Federal Highway Administration, Texas Division, 826 Federal Bldg., 300 East 8th Street, Austin, Texas 78701, Telephone 512–536–5960.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation (TxDOT) and The Grand Parkway Association, will prepare an environmental impact statement (EIS) for a proposal to upgrade the existing road network in Brazoria and Galveston Counties. The proposed improvement being considered, as shown in the Region's Long-Range Transportation Plan, is a multilane controlled access facility in northern Brazoria and Galveston counties which would be part of a third circumferential loop (State Highway 99) around Houston. The project length will be approximately 25 miles, depending on the alignment selected. Improvements in this area would alleviate congestion, improve traffic flow in the south and southeast Houston metropolitan area, and serve as an emergency (hurricane) evacuation route. The EIS will evaluate various transportation alternatives between State Highway 288 and Interstate Highway 45 (South). The majority of this corridor crosses relatively undeveloped properties in Brazoria and Galveston Counties. Alternatives to be studied include "No action" (the no-build alternative), Transportation System Management (TSM) alternative, mass transit alternative, and roadway build alternatives. Cities and towns in this region include Alvin, Manvel, Dickinson, Texas City, Friendswood, Iowa Colony, Santa Fe, League City, Liverpool, Pearland, and Houston. This study is authorized pursuant to the Texas Transportation Commission Minute Order No. 108543 issued June 28, 2001.

A public scoping meeting will be held on Thursday, September 12, 2002, at Alvin Community College, Nolan Ryan Center Community Room (R109), 2925 South Bypass 35, Alvin, Texas 77511, from 4 p.m. to 7 p.m. Large-scale maps of the project area will be displayed at the meeting. This will be the first in a series of meetings to solicit public comments on the proposed action.

The EIS will evaluate potential impacts from construction and operation of the proposed roadway including, but not limited to, the following: transportation impacts (construction detours, construction traffic, mobility improvement and evacuation route improvement), air and noise impacts from construction equipment and operation of the facility, water quality impacts from construction area and roadway storm water runoff, impacts to waters of the United States including wetlands from right of way encroachment, impacts to historic and archaeological resources, impacts to floodplains, and impacts to residents and businesses.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all

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interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205 Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding governmental consultation on Federal programs and activities apply to this program.)

Issued: August 1, 2002.

John R. Mack,

District Engineer.

[FR Doc. 02–20138 Filed 8–8–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Middlesex County, CT

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for proposed transportation improvements in Middlesex County, Connecticut.

FOR FURTHER INFORMATION CONTACT: Bradley D. Keazer, Division Administrator, Federal Highway Administration, 628–2 Hebron Avenue, Suite 303, Glastonbury, Connecticut 06033, telephone (860) 659–6703; or Edgar T. Hurle, Director of Environmental Planning, Connecticut Department of Transportation, 2800 Berlin Turnpike, Newington, CT 06111, telephone: (860) 594–2920.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Connecticut Department of Transportation (ConnDOT), will prepare an environmental impact statement (EIS) on a proposal for transportation improvements in the Route 9 corridor, in the city of Middletown, located between the Washington Street intersection and the bridge over the Mattabesset River for a distance of approximately 6000 feet (1800 meters).

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Alternatives under consideration include: (1) Taking no action; (2) using alternate travel modes; and (3) construction of a new interchange to provide improved access to the Arrigoni Bridge and Main Street (Route 66) and elimination of the existing traffic signals on Route 9 at the Hartford Avenue and Washington Street intersections.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, the Middletown Route 9 Corridor Advisory Committee, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. Public scoping meetings and a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 CFR Part 771.

Issued on: July 29, 2002.

Bradley D. Keazer,

Division Administrator, Hartford, Connecticut.

[FR Doc. 02–20170 Filed 8–8–8; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–02–13020]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before October 8, 2002.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC. 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB Control Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Marcia Tarbet, NHTSA, 400 Seventh Street, SW., Room 5208, NPP–22, Washington, DC 20590. Mrs. Tarbet's telephone number is (202) 366–2570. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Heavy Vehicle Antilock Brake System (ABS) and Underride Guard Fleet Maintenance Study.

OMB Control Number: New.

Affected Public: Private trucking fleets nationwide.

Form Number: NA.

Abstract: As required by the Government Performance and Results Act of 1993 and Executive Order 12866 (58 FR 51735), NHTSA reviews existing regulations to determine if they are achieving policy goals. Safety Standard 105 (49 CFR 571.105) requires Antilock Brake Systems (ABS) on hydraulic-braked vehicles with a Gross Vehicle Weight Rating (GVWR) greater than 10,000 pounds built on or after March 1, 1999. Safety Standard 121 (49 CFR 571.121) requires ABS on air-braked truck-tractors built on or after March 1, 1997 and on air-braked trailers and single-unit trucks manufactured on or after March 1, 1998. Safety Standard 223 (49 CFR 571.223) requires all trailers and semi-trailers built on or after January 24, 1998 with a Gross Vehicle Weight Rating of 10,000 pounds to have an underride guard. NHTSA's Office of Plans and Policy is planning a data collection effort that will provide adequate information to perform an evaluation on the effect of ABS and underride guards on the maintenance of heavy vehicles in trucking fleets. This study will determine fleet maintenance policies and procedures related to ABS and underride guards, examine factors that motivate fleets to maintain antilock brakes and underride guards, and document fleet experience in maintaining ABS and underride guards since the implementation of the new safety standards.

Estimated Annual Burden: The annual burden is estimated to be 126 hours.

Number of Respondents: Information will be reported on a total of 252 trucking fleets.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: August 5, 2002.

Rose A. McMurray,

Acting Associate Administrator for Plans and Policy.

[FR Doc. 02–20139 Filed 8–8–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–10773; Notice 2]

Reporting of Information About Foreign Safety Recalls and Campaigns Related to Potential Defects

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: This document describes a proposed collection of information under the foreign safety recall and safety campaign reporting requirements of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, for which NHTSA intends to seek approval from the Office of Management and Budget (OMB).

DATES: Comments must be received on or before October 8, 2002.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and must be submitted to Docket Management, Room PL–401, 400 Seventh Street SW., Washington, DC 20590. The Docket is open on weekdays from 9:30 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. George Person, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Room 5326, Washington, DC 20590. Mr. Person's telephone number is (202) 366–5210.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA), before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Reporting of Information About Foreign Safety Recalls and Campaigns Related to Potential Defects

Type of Request—New Collection.

OMB Clearance Number—None.

Requested Expiration Date of Approval—Three years from effective date of final rule.

Summary of Collection of Information—On October 11, 2001, NHTSA published a Notice of Proposed Rulemaking (NPRM) (66 FR 51907) in which it proposed to implement section 3(a) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Public Law 106–414, which requires a manufacturer of motor vehicles or motor vehicle equipment to report to NHTSA whenever it decides to conduct a safety recall or other safety campaign in a foreign country, or has been directed to do so by a foreign government, covering vehicles or equipment that are identical or substantially similar to vehicles or equipment sold or offered for sale in the United States. NHTSA is currently reviewing and analyzing the comments submitted in response to the NPRM and is developing its final rule, which may include revised requirements. The obligation to report this information was effective on the day that the TREAD Act was signed into law, November 1, 2000. Since that date, NHTSA has, in fact, received some notifications of foreign safety campaigns being conducted.

Description of the Need for the Information and Proposed Use of the Information—The intent of the TREAD Act is to provide early warning of potential safety-related defects in motor vehicles and motor vehicle equipment in use in the United States. Whenever a manufacturer of motor vehicles or equipment decides to conduct a safety recall or other safety campaign in a foreign country, or has been directed to do so by a foreign government, covering vehicles or equipment that are identical or substantially similar to vehicles or equipment sold or offered for sale in the

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United States, that information could indicate that a safety defect or noncompliance exists that requires remedial action. NHTSA will rely on the information provided under this rule in deciding whether to open a formal defect investigation or to pursue appropriate remedial action in the United States.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Responses to the Collection of Information)—The TREAD Act requires all manufacturers of motor vehicles and motor vehicle equipment who sell vehicles or equipment in the United States, and who also sell or plan to sell vehicles outside the United States, to comply with these reporting requirements. We estimate that there are a total of 23,500 manufacturers who sell vehicles or equipment in the United States. Of these, we estimate that fewer than 70 vehicle manufacturers will need to comply with the reporting requirements. Furthermore, we estimate that fewer than 500 reports annually will be submitted. In the one full year since the manufacturers began submitting reports (2001), there were only 234 reports submitted to the agency. However the final rule will specify the contents of the submission and may adopt the proposed requirement that manufacturers must submit reports for the period from November 1, 2000, to the effective date of the final rule. This would increase that number.

Estimate of the Total Annual Reporting and Recordkeeping Burden of the Collection of Information in the NPRM—In order to provide the information required by this rule, manufacturers must (1) determine whether vehicles or equipment that are covered by a foreign safety recall or other safety campaign are identical or substantially similar to vehicles or equipment sold in the United States, (2) prepare and submit reports of these recalls or campaigns to the agency, and (3) where a determination or notice has been made in a language other than English, translate the determination or notice into English before transmitting it to the agency. Additionally, it was proposed that manufacturers report foreign determinations made between November 1, 2000 and the effective date of the final rule.

With respect to the burden of determining identical or substantially similar vehicles or equipment to those sold in the United States, the Alliance of Automobile Manufacturers (the Alliance) in its comments on the NPRM, suggested that "the agency should work with the vehicle manufacturers to establish each year a list of substantially similar vehicles' and that, for inclusion on the list, a vehicle must have "* * * the same vehicle platform or body shell." Based on those criteria, we estimate that the annual list could be developed with 8 hours of professional staff time. It was proposed that only vehicle manufacturers would be required to develop this list. (70 vehicle manufacturers × 8 hours = 560 hours.)

We estimate that preparing and submitting each foreign defect report will require 1 hour of clerical staff, or 500 hours annually. (500 defect reports × 1 hour = 500 hours.) We estimate that translation of determinations into English will require 2 hours of technical staff, or 1,000 hours annually. Note: This assumes that all foreign defect reports would require translation. Therefore, this is a maximum number of hours because some foreign defect reports will already be in English. (500 defect reports × 2 hours = 1,000 hours.) Accordingly we estimate the total annual burden on manufacturers to be 2,060 hours (560 hours professional time + 500 hours clerical time + 1,000 hours technical time).

Estimate of the Total Annual Costs of the Collection of Information in the NPRM—Hourly rates for various categories of staff were provided to the agency recently by the Alliance in connection with another rulemaking. We have used those rates to estimate the total annual cost of this collection. We estimate that preparing the annual list would be done by professional staff at an average rate of $101.92 per hour. (560 hours × $101.92 = $57,075.20) We estimate that clerical staff at an average rate of $23.99 per hour would prepare each report. (500 hours × $23.99 = $11,995.00.) Finally, we estimate that technical staff at a rate of $73.55 per hour would perform the translation into English. (1,000 hours × $73.55 = $73,550.00.) This results in a total estimated annual burden of $142,570.20 ($57,075.20 + $11,995.00 + $73,550.00). We believe that, since manufacturers actually began providing the information on or about November 1, 2000, there will be minimal, if any, additional cost associated with reporting of campaigns from that date to the effective date of the final rule.

NHTSA notes that the final rule, *Reporting of Information and Documents About Foreign Safety Recalls and Campaigns Related to Potential Defects*, might be issued before the end of the 60-day comment period for this collection of information. If this should occur, it would be helpful for public comments in response to this notice to reflect the requirements adopted in the final rule. All comments will be taken into account in NHTSA's Supporting Statement to OMB (that accompanies OMB Form 83–I) to request clearance for this collection of information.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Kathleen DeMeter,

Acting Associate Administrator for Safety Assurance.

[FR Doc. 02–20144 Filed 8–8–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34230]

Squaw Creek Southern Railroad, Inc.—Operation Exemption—Line of Norfolk Southern Railway Company

Squaw Creek Southern Railroad, Inc. (SCS),[1] a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire nonexclusive trackage rights and to operate approximately 21.3 miles of railroad owned by Norfolk Southern Railway Company (NS), in Warrick County, IN, between milepost 0.6, at or near Yankeetown Dock, and milepost 21.9, at or near Lynnville Mine. SCS certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and that such revenues would not exceed $5 million.

The transaction was scheduled to be consummated no earlier than July 19, 2002. The earliest the transaction could have been consummated was July 18, 2002, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34230, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Andrew P. Goldstein, McCarthy, Sweeney & Harkaway, P.C., 2175 K Street, NW., Suite 600, NW., Washington, DC 20037.

[1] SCS states that it has entered into a trackage and interchange agreement with NS permitting SCS to operate the rail line. SCS will be able to interchange with NS at Boonville, IN.

Board decisions and notices are available on our website at *www.stb.dot.gov*.

Decided: August 1, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–19942 Filed 8–8–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Reporting Required for International Civil Aviation Organization (ICAO)

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need and usefulness of BTS collecting supplemental data for the International Civil Aviation Organization (ICAO). Comments are requested concerning whether the supplemental reports are needed by BTS to fulfill the United States treaty obligation of furnishing financial and traffic reports to ICAO; BTS accurately estimated the reporting burden; there are other ways to enhance the quality, utility and clarity of the information collected; and there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by October 8, 2002.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–25, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, FAX NO. 366–3383 or EMAIL *bernard.stankus@bts.gov*.

Comments: Comments should identify the OMB # 2138–0039. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0004. The postcard will be date/time stamped and returned.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus Office of Airline Information, K–25, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2138–0039.

Title: Reporting Required for International Civil Aviation Organization (ICAO).

Form No.: BTS Form EF.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 40.

Number of Responses: 40.

Total Annual Burden: 26 hours.

Needs and Uses: As a party to the Convention on International Civil Aviation (Treaty), the United States is obligated to provide ICAO with financial and statistical data on operations of U.S. carriers. Over 99% of the data filled with ICAO is extracted from the air carriers' Form 41 submissions to BTS. BTS Form EF is the means by which BTS supplies the remaining 1% of the air carrier data to ICAO.

Donald W. Bright,

Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. 02–20253 Filed 8–8–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Activity Under OMB Review; Submission of Audit Reports—Part 248

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS requiring U.S. large certificated air carriers to submit a true and complete of its annual audit that is made by an independent public accountant. If a carrier does not have such an annual audit, the carrier must file a statement that no audit has been performed. Comments are requested concerning whether the audit reports are needed by BTS and DOT; BTS accurately estimated the reporting burden; there are other ways to enhance the quality, utility and clarity of the information collected; and there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by October 8, 2002.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–25, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2138–0004.

Title: Submission of Audit Reports—Part 248.

Form No.: None.

Type Of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 75.

Number of Responses: 75.

Total Annual Burden: 20 hours.

Needs and Uses: BTS collects independent audited financial reports from U.S. certificated air carriers. Carriers not having an annual audit must file a statement that no such audit has been performed. In lieu of the audit report, BTS will accept the annual report submitted to the stockholders. The audited reports are needed by the Department of Transportation as (1) a means to monitor an air carrier's continuing fitness to operate, (2) reference material used by analysts in examining foreign route cases (3) reference material used by analyst in examining proposed mergers, acquisitions and consolidations, (4) a means whereby BTS sends a copy of the report to the International Civil Aviation Organization (ICAO) in fulfillment of a United States treaty obligation, and (5) corroboration of a carrier's Form 41 filings.

Donald W. Bright,

Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. 02–20254 Filed 8–8–02; 8:45 am]

BILLING CODE 4910–62–P

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Corrections

Federal Register
Vol. 67, No. 154
Friday, August 9, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7241–6]

RIN 2060–AH41

National Emission Standards for Hazardous Air Pollutants: Site Remediation

Correction

In proposed rule document 02–17360 beginning on page 49398 in the issue of July 30, 2002 make the following correction:

On page 49398, the first column, in the **DATES** section, in the fifth line, "September 19, 2002" should read "August 19, 2002".

[FR Doc. C2–17360 Filed 8–8–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Measures of Patients' Hospital Care Experiences

Correction

In notice document 02–18710 beginning on page 48477 in the issue of Wednesday, July 24, 2002 make the following corrections:

1. On page 48478, in the first column, in the 9th line "a standard that would be used nation" should read "a standard for measuring and publicly reporting patients' hospital care experiences".

2. On the same page, in the same column, under **DATES**, in the first line "subject" should read "submit".

3. On page 48479, in the first column, in the third paragraph, in the first line "effect" should read "effort".

[FR Doc. C2–18710 Filed 8–8–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[DOT Docket No. NHTSA–02–12845]

RIN: 2127–AH71

Federal Motor Vehicle Safety Standards; Accelerator Control Systems

Correction

In proposed rule document 02–18477 beginning on page 48117 in the issue of Tuesday, July 23, 2002, make the following corrections:

§ 571.124 [Corrected]

1. On page 48128, in § 571.124, in the second column, in paragraph S5.3.2, in the fourth line, " "18 degrees Celsius to "40 degrees" should read, "-18 degrees Celsius to -40 degrees".

2. On the same page, in the same section, in the third column, in paragraph S6.1.9, in the third line, " "40 degrees Celsius" should read, "-40 degrees Celsius".

[FR Doc. C2–18477 Filed 8–8–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

[T.D. 02–40]

RIN 1515–AD04

Access to Customs Security Areas at Airports

Correction

In rule document 02–19055 beginning on page 48977 in the issue of Monday, July 29, 2002 make the following corrections:

1. On page 48980, in the third column, in paragraph 5., in the seventh line, "during the 14" should read "during the".

§122.182 [Corrected]

2. On page 48985, in the first column, in §122.182, in paragraph (c), in the sixth line from the bottom, "bond 29" should read "bond does not".

§122.184 [Corrected]

3. On page 48986, in the second column, in §122.184, in paragraph (b), in the fifth line, "arrest or 36" should read "arrest or".

§122.187 [Corrected]

4. On page 48987, in the second column, in §122.187, in paragraph (b), in the seventh line, "the 40 employee" should read "the employee".

5. On the same page, in the third column, in the same section, in paragraph (b)(2)(ii), in the 14th line, "he may 24 choose" should read "may choose".

6. On page 48988, in the first column, in §122.187, in paragraph (c)(2)(i), in the ninth line, "genuine 43" should read "genuine".

7. On the same page, in the same column, in the same section, in paragraph (d), in the fifth line, "if the 44 affected" should read "if the affected".

[FR Doc. C2–19055 Filed 8–8–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
August 9, 2002

Part II

Environmental Protection Agency

40 CFR Part 194

Criteria for the Certification and Recertification of the Waster Isolation Pilot Plant's Compliance With the Disposal Regulations; Alternative Provisions; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–7255–4]

RIN 2060–AJ07

Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance with the Disposal Regulations; Alternative Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency ("EPA," or "the Agency" or "we") is proposing to revise the "Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance with the Disposal Regulations," which are used to determine whether the Department of Energy's Waste Isolation Pilot Plant ("WIPP") will comply with EPA's "Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes." The following proposed revisions are included in today's action: addition of a mechanism to address minor changes to the provisions of the Compliance Criteria; changes to the approval process for waste characterization programs at Department of Energy transuranic sites; changes to allow for the submission of copies of compliance applications and reference materials in alternative format; and replacement of the term "process knowledge" with "acceptable knowledge." The proposed changes do not lessen the requirements for complying with the Compliance Criteria. Moreover, these changes will have no effect on the technical approach that EPA employs when conducting independent inspections of the waste characterization capabilities at DOE waste generator sites. EPA is conducting this proposed action in accordance with the procedures for substituting alternative provisions of the Compliance Criteria. Today's notice marks the beginning of a 120-day public comment period on this proposed action.

DATES: EPA requests comments on all aspects of these proposed revisions. If you wish to submit comments on this proposal, you must do so by December 9, 2002.

ADDRESSES: Send your comments to: Air Docket, Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW., Mail Code 6102, Washington, DC 20460, Attention Docket ID No. OAR–2002–0005. Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in Section B of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Agnes Ortiz; telephone number: (202) 564–9310; postal address: Radiation Protection Division, Mail Code 6608J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460.

SUPPLEMENTARY INFORMATION:

General Information

A. How Can I Get Copies of This Document and Other Related Information?

EPA has established an official public docket for this action under Docket ID No. OAR–2002–0005. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at: Air Docket, Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW., Mail Code 6102, Washington, DC 20460. This Docket Facility is open from 8:30am–5 pm, Monday through Friday, excluding legal holidays. The Air Docket telephone number is 202–260–7548.

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section B under General Information. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. However, late comments may be considered if time permits. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Section C under General Information. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. Electronically

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet home page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OAR–2002–0005. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov* Attention Docket ID No. OAR–2002–0005. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section A under General Information. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail

Send your comments to: Air Docket, Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW., Mail Code 6102, Washington, DC 20460, Attention Docket ID No. OAR–2002–0005.

3. By Hand Delivery or Courier

Deliver your comments to: Air Docket, Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW., Mail Code 6102, Washington, DC 20460, Attention Docket ID No. OAR–2002–0005. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section A under General Information.

4. By Facsimile

Fax your comments to: (202) 260–4400, Attention Docket ID. No. OAR–2002–0005.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Abbreviations Used in This Document

AK—Acceptable knowledge
Am—Americium
APA—Administrative Procedure Act
ASME—American Society of Mechanical Engineers
BID—Background information document
CAR—Corrective Action Required
CARD—Compliance Application Review Document
CBFO—Carlsbad Field Office
CCA—Compliance Certification Application
CFR—Code of Federal Regulations
CH—Contact handled
Cs—Cesium
DOE—Department of Energy
EEG—Environmental Evaluation Group
EPA—Environmental Protection Agency
INEEL—Idaho National Energy and Engineering Laboratory
LANL—Los Alamos National Laboratory
NDA—Nondestructive Assay
NPRM—Notice of Proposed Rulemaking
NTS—Nevada Test Site
NQA—Nuclear Quality Assurance
ORNL—Oak Ridge National Laboratory
PK—Process knowledge
Pu—Plutonium
QA—Quality assurance
QAPP—Quality Assurance Project Plan
QAPjP—Quality Assurance Project Plan
RC—Radiochemistry
RCRA—Resource Conservation Recovery Act
RFETS—Rocky Flats Environmental Technology Site
RTR—Real-time radiography
SRS—Savannah River Site

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Sr—Strontium
TRU—Transuranic
U—Uranium
VE—Visual inspection
WAC—Waste Acceptance Criteria
WAP—Waste Acceptance plan
WC—Waste characterization
WIPP—Waste Isolation Pilot Plant
WIPP LWA—WIPP Land Withdrawal Act
WWIS—WIPP Waste Information System

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I. What Is WIPP?

The Waste Isolation Pilot Plant ("WIPP") is a disposal system for transuranic radioactive waste. Developed by the Department of Energy ("DOE" or "the Department"), the WIPP is located near Carlsbad in southeastern New Mexico. Transuranic (TRU) radioactive wastes are emplaced 2,150 feet underground in an ancient layer of salt that will eventually "creep" and encapsulate the waste containers. The WIPP has a total capacity of 6.2 million cubic feet of TRU waste.

Development and construction of the WIPP was authorized under Section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Public Law No. 96–164, 93 U.S. Stat. 1259, 1265). WIPP was authorized as a defense activity of the Department of Energy to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States. Pursuant to Section 7 of the WIPP Land Withdrawal Act (Public Law No. 102–579, as amended by Public Law No. 104–201) (WIPP LWA), disposal operations at WIPP are limited to a total volume of 6.2 million cubic feet of transuranic radioactive waste. Section 2(18) of the WIPP LWA defines TRU waste as waste containing more than 100 nanocuries of alpha-emitting transuranic isotopes per gram of waste, with half-lives greater than 20 years. This definition excludes high-level radioactive waste, waste determined by DOE with the concurrence of EPA to not need such isolation, or waste that the Nuclear Regulatory Commission has approved for disposal on a case-by-case basis, consistent with NRC regulations.

Most TRU waste proposed for disposal at WIPP consists of items that have become contaminated as a result of activities associated with the production of nuclear weapons (or with the cleanup of nuclear weapons production facilities), such as, rags, equipment, tools, protective gear, and sludges. Some TRU waste is contaminated with hazardous wastes regulated under the Resource Conservation and Recovery Act (42 U.S.C. 6901–6992k)(RCRA). The waste proposed for disposal at WIPP is currently stored at Federal facilities across the United States, including locations in Colorado, Idaho, New Mexico, Nevada, Ohio, South Carolina, Tennessee, and Washington.

Section 8(c) of the WIPP LWA required EPA to promulgate criteria, pursuant to Section 4 of the Administrative Procedure Act (APA), for EPA's certification of the WIPP's compliance with the radioactive waste disposal regulations at 40 CFR Part 191. On February 9, 1996, EPA published the final "Criteria for the Certification and Re-Certification of the Waste Isolation Pilot Plant's Compliance With the 40 CFR Part 191 Disposal Regulations' (61 FR 5224) (Compliance Criteria). Section 8(d) of the WIPP LWA set forth specific procedures governing the certification of the WIPP. Section 8(d)(1) required DOE to submit a complete compliance application by October 31, 1996. Section 8(d)(1) also provided that EPA had the authority to request any additional information necessary for the Agency's determination of compliance. Section 8(d)(2) required that EPA complete its certification decision within one year of receipt of the DOE's application. (EPA clarified at § 194.11 of the Compliance Criteria that, consistent with legislative intent, EPA's certification decision would be due within one year of receipt of a complete compliance application.) EPA determined DOE's compliance application to be complete on May 22, 1997 (62 FR 27996).

EPA determined on May 18, 1998, that DOE had demonstrated that the WIPP will comply with EPA's radioactive waste disposal regulations at Subparts B and C of 40 CFR part 191. EPA's certification determination permitted the WIPP to begin accepting transuranic waste for disposal, provided that other applicable environmental regulations were met and once a 30-day statutory waiting period had elapsed. EPA based its decision on a thorough review of all the information submitted by DOE, independent technical analyses, and all significant public comments submitted during a nominal 120-day comment period. EPA's certification, however, was subject to four specific conditions. Thus, EPA amended the WIPP compliance criteria at 40 CFR part 194 to include an appendix setting forth the four conditions on the certification of compliance. These conditions related to (1) design of the panel closure system (which is intended over the long term to block brine flow between waste panels in the WIPP); (2) and (3) activities conducted at waste generator sites that produce the transuranic waste proposed for disposal in the WIPP (specifically with respect to quality assurance and waste characterization); and (4) passive institutional controls.

Subsequent to the initial certification, EPA continues to have an oversight role at the WIPP. First, Section 9 of the WIPP LWA requires that DOE submit biennial documentation of continued compliance with specified laws, regulations, and permit requirements. Second, § 194.4 of the Compliance Criteria requires that DOE submit periodic reports on any activities or conditions at the WIPP that differ significantly from the information contained in the most recent compliance application. EPA may also, at any time, request additional information from DOE regarding the WIPP to determine if regulatory action is required concerning the certification. Third, Section 8(f) of the WIPP LWA requires at least five years after the initial certification and every five years thereafter, that DOE submit to EPA and the State of New Mexico documentation of continued compliance with the Part 191 radioactive waste disposal regulations. In accordance with § 194.64 of the Compliance Criteria, documentation of continued compliance will be made available in EPA's dockets, and the public will be provided at least a 30-day period during which to submit comments. EPA's decision on recertification will be announced in the **Federal Register**.

II. What Is the Purpose of Today's Proposed Action?

EPA proposes to revise certain provisions of the Compliance Criteria at 40 CFR part 194. Specifically, EPA is proposing to (1) revise the process for establishing "alternative provisions" in § 194.6; (2) revise the approval process in § 194.8 for waste characterization processes at TRU waste generator sites for disposal at WIPP; (3) revise the requirements in §§ 194.12 and 194.13 for submission of compliance applications and reference materials; and (4) change the term "process knowledge" to "acceptable knowledge" in § 194.24(c)(3). The proposed revisions are intended to ensure that 40 CFR Part 194 remains comprehensive, appropriate, and based upon current knowledge and information. The Agency solicits comments on this proposal.

Section 194.6 of the Compliance Criteria imposes specific requirements for substitution of "alternative provisions" of the Criteria. Such alternative provisions must be promulgated pursuant to Section 4 of the APA. Also, in proposing the alternative provisions EPA must describe how the proposed changes comport with the radioactive waste disposal regulations at 40 CFR part 191, the reasons why the existing provisions appear inappropriate, and the costs, risks, and benefits of compliance with the new provisions. Finally, EPA must provide for a public comment period of 120 days and hearings in New Mexico, and fully consider the public comments that are received. Today's Notice of Proposed Rulemaking (NPRM) is organized so that, for each of the proposed revisions, the preamble addresses the following topics: A. What are the current requirements?; B. What are the proposed changes?; and C. How has EPA addressed the Alternative Provision Analysis required by § 194.6?

III. How Is EPA Revising the Process for Establishing Alternative Provisions in § 194.6?

A. What Are the Current Requirements in § 194.6?

Section 194.6 establishes procedures applicable to substitution of alternative provisions of the Compliance Criteria. As discussed above, such substitutions require notice and comment rulemaking, pursuant to Section 4 of the APA. In addition, § 194.6 stipulates that EPA's NPRM address specific aspects of the proposed substitution, include a public comment period of at least 120 days, and public hearings in New Mexico.

B. What Changes Are Proposed for § 194.6?

EPA is proposing to revise § 194.6 to add a rulemaking process for substituting "minor alternative provisions" of the Compliance Criteria. The process for substituting "minor alternative provisions" would include: (1) Rulemaking pursuant to Section 4 of the APA; (2) publication of the proposed changes in the **Federal Register**, together with information describing how the changes conform with the disposal regulations, the reasons why the changes are needed, and the benefits of compliance with the minor changes; (3) a public comment period of at least 30 days; and (4) publication in the **Federal Register** of the final notice after public comments received have been fully considered. EPA is also proposing to add the following definition of "minor alternative provision" to § 194.2: "minor alternative provision means an alternative provision to the Compliance Criteria that clarifies a regulatory provision, or does not substantively alter the existing regulatory requirement."

C. How Has EPA Addressed the Alternative Provision Analysis Required by § 194.6?

The Agency wants to have the ability to make insignificant changes to the Compliance Criteria in an expedited time frame to facilitate WIPP's continued compliance with our regulations. The provisions for substituting minor alternative provisions could, for example, be used to modify the Compliance Criteria to change regulatory terminology to more clearly express the Agency's intended meaning or to clarify expectations. Substitution of "minor alternative provisions" would not in any way substantively modify the Compliance Criteria requirements.

1. Why Do the Existing Provisions in § 194.6 Appear Inappropriate?

In certain specific contexts, discussed below, EPA considers the existing provisions to be inappropriate because they are unnecessarily stringent. When § 194.6 was promulgated, EPA was beginning the process of formal regulation of the WIPP. EPA had not yet even received the DOE's compliance certification application. EPA now has engaged in close regulatory oversight of the WIPP for over six years. EPA has engaged in post-certification oversight of the WIPP for almost four years. During that time, EPA has gained substantial experience and insight into this regulatory process. While § 194.6, as originally drafted, was intended to address all changes to the Compliance Criteria, EPA now realizes that there may be modifications to the Compliance Criteria that, while useful, are not sufficiently significant to require the stringent procedures currently set forth in § 194.6. EPA's oversight experience indicates that minor revisions to the Compliance Criteria requirements may improve implementation and consistency in regulatory compliance.

EPA believes that today's proposal includes several examples of minor revisions that would be appropriately addressed by a less stringent process than currently available under § 194.6. For example, EPA is proposing to replace the term "process knowledge" in § 194.24(c)(3) with the term "acceptable knowledge" (*see* section VI of the preamble). This minor revision is intended to acknowledge that "acceptable knowledge" is the term EPA has used consistently since the WIPP was certified. EPA is also proposing to permit DOE to submit fewer printed recertification compliance applications than currently required in the Compliance Criteria. These proposed revisions do not substantively alter the intent or the approach to verifying compliance with the waste characterization requirements in any way, but improve the clarity of and more clearly reflect the intent of the Compliance Criteria. Such minor revisions should not require a 120-day public comment period, nor necessitate a public hearing.

We propose that a 30-day comment period is sufficient for the public to provide the Agency with relevant input on such minor revisions of the Compliance Criteria. In addition to the publication of the NPRM in the **Federal Register**, EPA intends to announce the proposal on the Agency's website and place all relevant supporting materials in the Agency's public docket. For all

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substitutions of alternative provisions that are not minor alternative provisions, as defined in this document (for example, the addition, deletion, or significant revision of a requirement), EPA will continue to comply with the current requirements of § 194.6.

EPA defines a "minor alternative provision" as an alternative provision that "clarifies a regulatory provision, or does not substantively alter the existing regulatory requirement." Thus, revisions that do not alter the intent or the approach to verifying compliance of an existing regulatory requirement are considered to constitute minor alternative provisions. For example, today's proposed revisions to §§ 194.2, 194.12, 194.13, and 194.24(c)(3) are examples of minor changes. The proposed revisions to §§ 194.6 and 194.8(b), however, are examples of non-minor alternative provisions.

2. How Do the Proposed Changes in § 194.6 Comport with 40 CFR part 191?

The proposed changes for § 194.6 comport fully with the radioactive waste disposal regulations at 40 CFR part 191. The WIPP must comply with EPA's radioactive waste disposal regulations located at Subparts B and C of 40 CFR part 191. These regulations limit the amount of radioactive materials that may escape from a disposal facility, and are intended to protect individuals and ground water resources from dangerous levels of radioactive contamination. The Compliance Criteria implement and interpret the general disposal regulations specifically for the WIPP, and constitute the basis on which EPA's certification decision was made. Section 194.6 was included in the Compliance Criteria to ensure that any amendments to the Criteria would be effected through the same rigorous rulemaking procedure under which the original Criteria were promulgated. The proposed amendment to § 194.6 would not substantively alter the scope of those requirements. The Compliance Criteria would continue to include the current process established in § 194.6 to revise 40 CFR part 194. The principle difference between the existing and proposed new provisions is the addition of a revision process for minor changes. This new revision process would not substantively affect the Compliance Criteria's implementation of 40 CFR part 191.

3. What Are the Costs, Risks, and Benefits of Compliance with the New Provisions in § 194.6 ?

As part of our implementation efforts for the 1998 certification decision, we will continue to develop revisions to the Compliance Criteria, as we deem necessary, based on lessons learned from our oversight experience. This is our first revision to the Compliance Criteria since the initial certification decision in 1998.

There will be no increased costs for EPA as a result of the proposed revision. Rather, EPA believes that it is reasonable to expect significant savings over the period of active regulation of the WIPP. The proposed revision will shorten rulemakings where appropriate and eliminate a requirement for public hearings in instances where the impact of changes would be small and public interest may reasonably be expected to be low. Moreover, EPA does not expect DOE to incur additional costs, since the implementation of § 194.6 is solely EPA's responsibility.

EPA does not anticipate any increased risks related to the implementation of the proposed revision. Rather, we anticipate that EPA's regulatory activities will become more efficient, and that EPA will be able to implement necessary minor revisions to the Compliance Criteria that are designed to improve implementation and consistency in regulatory compliance.

The benefits of the proposed revision to § 194.6 are several. First, the Agency, would be able to make minor revisions to the Compliance Criteria in a timely fashion. Making these types of revisions in a shorter timeframe will enhance compliance with 40 CFR part 194. Second, the public will continue to have an opportunity to review and comment on proposed minor revisions. Third, the Agency will continue to hold public hearings in New Mexico for major revisions to the Compliance Criteria. Fourth, DOE will be able to implement minor revisions faster, therefore, this proposed revision will contribute to safer and more cost effective disposal of radioactive wastes.

IV. How Is EPA Revising the Approval Process for Waste Shipment From Waste Generator Sites for Disposal at WIPP in § 194.8(b)?

A. What Are the Current Requirements in § 194.8(b)?

Section 194.8(b) describes the process by which EPA reviews and approves WIPP-related waste characterization activities [1] at DOE transuranic waste sites. At present, for each waste stream or group of waste streams [2] other than those approved in our final certification decision, DOE must provide information on how a waste site uses process knowledge [3] to characterize those streams (§ 194.8(b)(1)(i)). The DOE also must implement a system of controls [4] that confirms that the total quantity of important waste components [5] in the WIPP does not exceed limits established by the final Certification Decision (§ 194.8(b)(1)(ii)). In order to show EPA that the system of controls is effective, DOE must demonstrate each TRU waste site's measurement techniques and control methods, and must demonstrate that data about waste components are properly transferred from the waste sites to the WIPP Waste Information System (WWIS).[6]

To evaluate compliance with the above-mentioned requirements, we must inspect and approve each DOE transuranic waste site that wishes to ship waste to the WIPP for disposal. We must inspect the site's use of process knowledge and witness a demonstration of waste characterization processes for each waste stream, or group of waste streams, that the site intends to ship. If a site receives our approval to ship a single waste stream, that site cannot ship a different waste stream until we perform an additional inspection under authority of § 194.8(b). EPA imposed these requirements as a condition of the certification to ensure full compliance with the waste characterization regulations at § 194.24(c).

Once DOE has submitted waste characterization program plans for a given site, we place the plans in our docket and publish one or more notices in the **Federal Register** that announce the availability of the plans and our intent to inspect the site on a specific date (§ 194.8(b)(2)). We also open a comment period of at least 30 days for others to comment on the waste site's plans. After the inspection, we notify DOE of our compliance determination by letter, and place the letter and the report of the inspection in our docket (§ 194.8(b)(3)). Finally, we perform follow-up inspections at a site to verify the continuing compliance of approved waste characterization programs (§ 194.8(b)(4)).

The following two subsections explain the purpose of the requirements described above and the basic elements of a waste characterization inspection.

1. What Is the Purpose of EPA's Waste Characterization Inspections?

The purpose of EPA inspections at DOE sites is to verify that TRU waste sites are characterizing and tracking the waste such that EPA is confident that the volume and characteristics of the wastes conform with the requirements of the WIPP LWA and the specific conditions of the Certification Decision. The requirements set forth at § 194.8(b) establish a process by which EPA determines whether DOE is in compliance with Condition 3 of the Certification Decision. Condition 3 states, "[t]he Secretary [of Energy] shall not allow shipment of any waste from any additional LANL [Los Alamos National Laboratory] waste stream(s) or from any waste generator site other than LANL for disposal at the WIPP until the Agency has approved the processes for characterizing those waste streams for shipment using the process set forth in § 194.8." (40 CFR part 194, Appendix A.) Accordingly, § 194.8(b) sets forth procedural requirements for EPA's approval of DOE TRU waste sites to ship specific waste streams or groups of waste streams to WIPP.

The basis for applying Condition 3 to the WIPP project is rooted in our rationale for the waste characterization criteria in § 194.24. We developed these criteria because, "in order to make meaningful predictions about the performance of the WIPP over long periods of time, it is necessary to have a good understanding of the characteristics of the waste proposed to be emplaced in the disposal system." (Compliance Criteria proposed rule, 60 FR 5771). We required DOE to show, in its compliance application for the WIPP, that a "system of controls" was in place to ensure that "the actual characteristics of waste will be identified before the waste is emplaced in the WIPP." (60 FR 5772).

The DOE developed an extensive set of technical and quality assurance requirements with which all transuranic waste sites must comply before shipping waste to the WIPP for disposal. At the time of application, DOE had incorporated these requirements into such documents as the Quality Assurance Program Plan (QAPP), Waste Acceptance Criteria (WAC), and Quality Assurance Project Plan (QAPjP). However, DOE did not submit the necessary information about all transuranic waste site programs in the application. At the time that DOE submitted the CCA, most sites had not begun the complex process of complying with the WIPP waste characterization requirements and the information therefore was not available to EPA during the certification process. (Certification Decision proposed rule 62 FR 58813–58814).

Consequently, we were not able to determine during the certification rulemaking that the technical and quality assurance requirements for waste characterization activities had been established and properly executed at all transuranic waste sites. LANL was the only transuranic waste site to demonstrate during the certification rulemaking that it could meet the waste characterization requirements for certain wastes. Therefore, as stated in Condition 3 of the certification, EPA only authorized DOE to ship legacy debris waste from LANL to the WIPP. DOE was not authorized to ship other than legacy debris waste from LANL, or any waste streams from other TRU waste sites, until DOE had demonstrated the ability to properly characterize these wastes.

DOE's Carlsbad Field Office (CBFO), which operates the WIPP, is responsible for maintaining compliance with EPA's waste characterization requirements. DOE transuranic waste sites vary considerably with regard to the types of waste they characterize and the manner in which they implement the program requirements of CBFO. Therefore, confirmation that waste characterization is adequate must take place where waste characterization occurs, that is, at the transuranic waste sites themselves. (Certification Decision final rule, 63 FR 27392). Inspections of waste characterization programs at individual sites are the best way for us to verify that the sites have identified the actual characteristics of the waste.

During inspections, we have access to the site personnel who perform the work, to the facilities and equipment used at the site, and to the operators' extensive documentation. Direct observation of the site's activities greatly increases our confidence in their effectiveness. Confidence in the results of waste characterization is particularly important at this early stage of disposal, when DOE is characterizing waste that TRU waste sites packaged years before the establishment of the WIPP Compliance Criteria.[7]

2. What Are the Elements of an EPA Waste Characterization Inspection?

After EPA determines that an inspection is necessary, we define the scope of the inspection based on information provided by DOE. We then prepare, and share with DOE, a checklist for each of the activities that we will inspect. During the inspection, our evaluation of a site's waste characterization activities typically involves the activities listed below. EPA inspectors may or may not perform these and other activities depending on the scope of the inspection.

- Review procedures, records of the maintenance and calibration of equipment and instruments, and personnel training files.
- Interview responsible personnel (such as equipment operators) and site managers overseeing program implementation.
- Observe analytical testing of waste drums selected by EPA inspectors to ensure that approved procedures are followed and an instrument is capable of analyzing a given waste stream.
- Observe equipment operation to determine whether the operator has deviated from the procedures and why and how the deviation may haven affected the waste characterization.
- Review waste stream data reports.
- Track waste characterization data through various phases of its generation and confirmation and eventual inclusion in the WWIS.

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[1] The term "waste characterization," as we use it with regard to the WIPP repository and the numerous waste generator sites, encompasses a wide array of activities, all of which serve to determine what is inside any given container of transuranic waste and to control that container until DOE places it in the WIPP for disposal. Stated generally, the Compliance Criteria for waste characterization in § 194.24 require DOE to: Determine which waste components (such as ferrous metals) and characteristics (e.g., acidity) are relevant to the WIPP's performance; show how they affect performance; and identify and track significant waste components as they are placed in the WIPP. The last of these activities is the subject of § 194.8(b). The waste characterization requirements are discussed in great detail in the preamble to the May 18, 1998, Certification Decision final rule. (63 FR 27389–27393)

[2] The term "waste stream" means wastes derived from a single process or activity that are similar in material, physical form, isotopic makeup, and hazardous constituents. (Certification Decision proposed rule 62 FR 58813.)

[3] Process knowledge ("PK") refers to knowledge of waste characteristics derived from information generated contemporaneously with the waste on the materials or processes used to generate the waste. This information may include administrative, procurement, and quality control documentation associated with the generating process, or past sampling or analytical data. Usually, the major elements of process knowledge include information about the process used to generate the waste, material inputs to the process, and the time period during which the waste was generated. (Certification Decision final rule 63 FR 27390.)

[4] The system of controls for waste characterization includes, but is not limited to: Measurement, sampling, chain of custody records, record keeping systems, waste loading schemes used, and other documentation. 40 CFR 194.24(c)(4).

[5] The term "waste component" means "an ingredient of the total inventory of the waste that influences a waste characteristic". 40 CFR 194.2. The term "waste characteristic" means "a property of the waste that has an impact on the containment of waste in the disposal system". 40 CFR 194.2. The important waste components with regard to the WIPP's compliance are radionuclides, ferrous and nonferrous metals, organic materials such as paper and rubber, and free water.

[6] The WWIS is described in Chapter 4 (page 4–35) of the WIPP Compliance Certification Application as "a computerized data management system used * * * to gather, store, and process information pertaining to transuranic (TRU) waste destined for or disposed at the WIPP." [Air Docket A–93–02, Item II–G–1.]

[7] EPA specifically addressed public comments concerning the importance of Condition 3 in EPA's Response to Comments Document for the Certification Decision. See EPA Air Docket A–93–02, Item V–C–1, pages 2–5 to 2–9.

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The inspectors' determinations are recorded in the checklist for each activity that we inspect. At the end of each inspection, we prepare an inspection report. The completed checklists are included in the inspection report. The inspection report also describes any findings or concerns that the inspectors identified, and states whether EPA requires a response showing how any unresolved finding or concern was resolved.[8] It is sometimes necessary to return to a site to confirm the adequate resolution of a finding. After a site is approved, EPA may review the site's progress on issues that we identified previously during a subsequent compliance inspection.

B. What Are the Proposed Changes to § 194.8(b)?

Section 194.8 will continue to describe the process by which EPA will inspect and approve waste characterization activities at TRU waste sites. However, we are proposing to alter the process so that the individual waste generator sites will only need one § 194.8 approval from EPA to conduct waste characterization activities related to all on-site waste streams. This single § 194.8 approval will, however, specify any limitations on the approval that will necessitate additional inspections by EPA. Any such additional inspections will be conducted under authority of § 194.24(h), not under § 194.8. The second key change is that the opportunity for public comment will come after EPA has completed its inspection, but before EPA has approved the site. Therefore, EPA will request public comment on the Agency's inspection report and proposed compliance decision for a site under § 194.8. The revised process by which the Agency will verify compliance with Condition 3 of the certification is described below, followed by an explanation of the two principal procedural changes that result from the revisions.

Under today's proposal, first, we require DOE to implement waste characterization programs and processes in accordance with § 194.24(c)(4) to confirm that the total amount of each waste component that will be emplaced in the WIPP will not exceed the upper limiting value or fall below the lower limiting value described in the introductory text of paragraph (c) of § 194.24. Waste characterization processes include the collection and use of acceptable knowledge; destructive and/or nondestructive techniques for identifying and measuring waste components; and the validation, control, and transmittal to the WIPP Waste Information System database of waste characterization data in accordance with § 194.24(c)(4).

Second, DOE must notify EPA in writing that a waste characterization program at a transuranic waste site is prepared to characterize waste destined for disposal at the WIPP. The Department will also send documents that explain the site's system of controls for waste characterization, including the use of acceptable knowledge, as described in § 194.24(c)(4).

Third, EPA will conduct a baseline inspection of the waste characterization program at the site to verify that an adequate system of controls has been established in plans and technical procedures, and that those plans and procedures are adequately implemented. The inspection will include a demonstration by DOE of the following: collection and appropriate use of acceptable knowledge data; destructive and nondestructive techniques for measuring waste components identified in accordance with § 194.24(b)(2), performed on the wastes proposed for disposal; verification of the qualifications of the personnel responsible for performing waste characterization activities; and the validation, control, and transmittal to the WIPP Waste Information System database of waste characterization data, in accordance with § 194.24(c)(4). It may be necessary to conduct follow-up inspection activities or continuation of the baseline inspection in order to obtain additional information and/or confirm the implementation of corrective actions.

Fourth, EPA will announce in the **Federal Register** our proposed Baseline Compliance Decision to accept the site's compliance with § 194.24(c)(4). In the notice, we will solicit public comment on the relevant inspection report(s) and all supporting materials that we rely upon in making our proposed Baseline Compliance Decision. These materials will be placed in the public docket described in § 194.67. The notice will describe any limitations on approved waste streams or waste characterization processes and identify (through tier designations) what changes to the approved waste characterization process must be reported to and approved by EPA before they can be implemented. EPA will designate significant changes as Tier 1; minor changes will be designated as Tier 2. The notice will open a 30-day public comment period on the proposed compliance decision.

Fifth, after the end of the public comment period our written final Baseline Compliance Decision will be conveyed in a letter from the Administrator's authorized representative to DOE. DOE will comply with any reporting requirements identified in the Baseline Compliance Decision and the accompanying inspection report. A section summarizing significant comments and issues arising from comments received on the compliance decision, as well as the Administrator's response to those comments and issues, will be included in our final inspection report and will be made available to the public through our public docket. A copy of our compliance decision letter will also be placed in the docket.

Last, after a site receives our Baseline Compliance Decision, EPA will conduct inspections under § 194.24(h) to confirm the continued compliance of the programs approved and/or to verify the adequacy of any tier-assigned changes to the waste characterization processes not authorized by our Baseline Compliance Decision. DOE must report to EPA any changes as identified in the inspection report of our Baseline Compliance Decision. The reporting will inform EPA's decision whether to perform follow-up inspections. The results of EPA's inspections will be made available to the public through the public docket. If we determine that the system of controls used by the site is not adequate to characterize certain waste streams, then the site may not dispose of materials from those waste streams at the WIPP until the Agency's findings have been adequately resolved.

1. Changes to the Scope of EPA Approvals of Waste Characterization Programs

Under the proposed new provisions, EPA will issue a proposed Baseline Compliance Decision that describes what we inspected and found to be technically adequate and also identifies DOE's subsequent reporting requirements for the waste characterization program in question. The various elements of the waste characterization program will be tiered, and the basis for the tiering will be described in the inspection report that accompanies the proposed Baseline Compliance Decision.

The proposed tiering approach is a mechanism by which EPA can specify which changes to an approved waste characterization program require EPA approval before waste characterized by that program is disposed of in the WIPP. TRU waste sites would have a clear understanding of which changes must be approved by EPA prior to shipment and disposal. The tiering of elements of the system of controls for waste characterization will vary depending on the type of analytical systems that a site has demonstrated, the types of retrievably-stored waste at a site, and the type and quality of information the site has compiled to describe waste contents. The proposed tiered approach applies only to waste characterization activities subject to § 194.8(b) requirements.

We propose to institute two tiering levels. Tier 1 designation will be given to activities for which changes have a potentially significant impact on compliance with EPA regulations, such as changes that directly affect measurements and/or estimates of isotopes and other limited waste components. Tier 1 activities are those for which EPA approval would be necessary prior to shipment and disposal of waste. For example, EPA approval would be necessary if a site introduced a new radioassay technique, because radioassay is a critical element of the system of waste characterization controls. Technical areas that are likely to be subject to Tier 1 designation are acceptable knowledge and radioassay. DOE will be required to submit documentation to EPA in advance that describes planned changes to Tier 1 activities. This documentation will inform EPA's decision regarding which actions, such as performance of an inspection, are necessary in order to approve the changes.

Tier 2 activities are those for which EPA approval would not be necessary prior to shipment and disposal of waste. An approved site could implement changes to elements of the waste characterization program with Tier 2 designation without first being inspected or approved by EPA. However, DOE must report changes in the manner prescribed by EPA in the Baseline Compliance Decision. DOE's reporting of changes to Tier 2 activities will assist EPA with the planning of follow-up inspections at sites.

Tier 2 designation will be given to activities that have a minor impact on compliance with the WIPP Compliance Criteria or are sufficiently standardized that they would not be expected to change significantly. For example, the actual operation of radiographic equipment does not vary greatly from machine to machine or from site to site. Also, minor revisions to procedures are a regular part of operations and usually serve to clarify or improve work processes. Technical areas that are likely to be subject to Tier 2 designation are radiography and visual examination. The required reporting by DOE of Tier 2 changes will enable EPA to monitor the overall waste characterization program at a site and develop targeted inspection plans for continuing compliance inspections.

When we approve a waste characterization program, we will assign tiering designations based chiefly on the following topics: the extent to which a process was demonstrated at the time of our § 194.8(b) inspection(s); quality of documentation; the range of possible waste streams at a site; the demonstrated proficiency of waste characterization personnel; and the site's compliance with DOE's waste acceptance criteria for the WIPP, as reviewed and approved by EPA. Our inspection report will describe EPA's requirements for reporting of changes to waste characterization activities, including the scope and frequency of reporting.

Sites that have not been authorized by EPA to ship waste to the WIPP under the current provisions of § 194.8(b) will be subject to the new process immediately after we issue the final version of this rule. For sites that already have received EPA's approval to ship certain waste streams, we are proposing to reinspect those sites using the revised process. In other words, we will perform a full-scope inspection at approved sites (Hanford Site, Idaho National Energy and Environment Laboratory, Los Alamos National Laboratory, Rocky Flats Environmental Technology Site, and the Savannah River Site) in order to reset the Baseline Compliance Decision based on current activities at the sites. We will place our proposed compliance decision for each approved site in our docket and open comment on it. TRU waste sites with an approved waste characterization program may continue to ship waste within the scope of the existing approval while the baseline inspection process is taking place, provided that they continue to operate in accordance with the WIPP Compliance Criteria.

DOE has initiated an effort called the Central Characterization Project (CCP) to assist small quantity TRU waste sites with the completion of the waste characterization activities required by EPA and State agencies. Under the CCP, a single DOE contractor assumes responsibility for the characterization of a site's transuranic waste. The CCP sends a mobile waste characterization laboratory to the site to complete certain activities, such as radioassay. EPA has approved the CCP's operation at the Savannah River Site, where it was first tested [Air Docket A–98–49, Item II–A4–19]. Under the existing provisions for § 194.8, EPA must first inspect and approve the CCP at each site, for each waste stream or group of waste streams. Under the proposed new provisions, EPA approval under § 194.8(b) will still be required for CCP operations at each site. However, once we have approved the CCP at a site, the CCP will be approved to characterize all waste streams at that site. Moreover, any subsequent inspections by EPA will be performed under § 194.24(h). The same processes described above for TRU waste sites will apply to our compliance decisions for the CCP.

2. Changes to Public Notice of Waste Characterization Inspections

Under the existing provisions of § 194.8(b), EPA opens comment on DOE waste characterization plans each time that we plan to inspect a waste characterization program at a site, if that program involves new waste streams or changes to the system of waste characterization controls. We announce comment periods and dates of inspections in the **Federal Register**. Because each site has multiple waste streams and evolving waste characterization programs, we have opened multiple comment periods on different documents for each site that we have approved to ship waste. We respond to the relevant comments that we receive in our inspection reports, and docket the inspection reports and compliance decisions.

Under the new provisions of § 194.8(b), EPA will request comment on our proposed Baseline Compliance Decision for each site, which includes the results of our inspection(s) in the form of an inspection report, and any appropriate supporting documentation, such as objective evidence in support of Agency findings. We will open comment periods only in relation to baseline inspections under § 194.8(b). We will continue to respond to the relevant comments that we receive in our inspection reports, and to docket the inspection reports and compliance decisions. The results of subsequent inspections of waste characterization programs that we perform, including for the purpose of approving Tier 1 changes, will be placed in our docket.

In addition to these steps, we plan to continue to announce our inspections and other WIPP-related activities on our WIPP home page at *www.epa.gov/radiation/wipp* and our WIPP Information Line (1–800–331–9477). We

[8] In the context of its 194.8 inspections, EPA has defined a finding as "a determination that a specific item or activity is not in compliance with 40 CFR part 194." Similarly, EPA has defined a concern as "an opinion that a specific item or activity may lead to noncompliance with 40 CFR part 194 at a future time".

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encourage the public to visit our Website and to contact us with questions or information regardless of whether we have opened a public comment period. (Comments in response to an announcement in the **Federal Register** should be sent directly to the EPA docket specified in the announcement.)

C. How Has EPA Addressed the Alternative Provision Analysis Required by § 194.6?

The proposed changes to § 194.8(b) are needed to increase the options available to EPA in implementing our regulatory oversight of DOE's waste characterization program, and to simplify the public notice process.

1. How Do the Proposed Changes Comport With 40 CFR part 191?

Considered individually and as a group, the proposed changes comport fully with the radioactive waste disposal regulations at 40 CFR part 191. The inclusion of requirements for waste characterization in order to implement the disposal regulations was established by the rulemaking that resulted in the WIPP Compliance Criteria at 40 CFR part 194. Today's proposed changes do not alter the scope of the part 191 requirements. The Compliance Criteria will continue to apply waste characterization requirements to the WIPP project. The principal difference between the existing and proposed provisions is the process by which EPA verifies compliance with the provisions and notifies the public of that process. This new process will not substantively affect the Compliance Criteria's implementation of EPA's radioactive waste disposal regulations at 40 CFR part 191. Moreover, EPA believes that the proposed changes to the 194.8 approval process will allow for more meaningful public participation.

2. Why Do the Existing Provisions Appear Inappropriate?

EPA considers the existing provisions inappropriate for the reasons explicated below. EPA explained the basis for the existing provisions in the May 18, 1998, Certification Decision final rule (63 FR 27354).[9] The importance of independently verifying the adequacy of waste characterization activities conducted by DOE has not grown any less relevant. However, our experience with site inspections since the 1998 certification decision has raised two key issues that we believe must be addressed through alternative provisions.

First, for a variety of reasons, the focus of the existing provisions on waste streams as the determining factor for initiation of an inspection is overly restrictive for EPA. The requirement at § 194.8(b)(1) that DOE must demonstrate the system of controls for each waste stream or group of waste streams reflects the fact that some waste streams are better documented than others. Consequently, there may be variations in how a given site uses information in the acceptable knowledge (AK) record in relation to the AK confirmatory program that DOE employs under the terms of the Certification Decision. DOE sites must report to WIPP as part of the TRU waste tracking requirement on a container basis, quantities of 10 WIPP-tracked radionuclides (americium-241, cesium-137, plutonium-238, plutonium-239, plutonium-240, plutonium-242, strontium-90, uranium-233, uranium-234, and uranium-238) disposed of at the WIPP. Reporting on a container basis may require sites to perform additional waste analysis if using the site-compiled AK is not adequate to estimate these radionuclides. Similarly, sites are responsible for reporting the quantities of cellulosics, paper, and rubber (CPR) present in each waste container. During the certification rulemaking, we were concerned about the need to monitor the effect of these variances on the quality of waste characterization data. Section 194.8(b) was therefore constructed such that changes to the system of controls, in addition to the introduction of new waste streams, would be sufficient cause to require separate approval. As explained in the 194.8 BID document, EPA's regulatory experience over the past four years suggests that this narrow focus on specific waste streams is no longer necessary.

Second, the public notice process described in § 194.8(b) has not yielded the level of comment that we anticipated. As demonstrated by the quantity and type of comments we have received following publication of inspection announcements in the **Federal Register**, the process may actually be a source of confusion for the public. Each of these issues is discussed below.

a. *Why are the existing provisions overly restrictive for EPA?* EPA now has several years of experience with inspections at DOE sites where waste characterization takes place. Since certifying the WIPP in May 1998, we have completed over twenty inspections under authority of § 194.8. We also have completed numerous other inspections of waste characterization activities under authority of §§ 194.21 and 194.24(h). We conducted the § 194.8 inspections at Los Alamos National Laboratory, Rocky Flats Environmental Technology Site, Idaho National Engineering and Environmental Laboratory, the Nevada Test Site, the Savannah River Site, and the Hanford Site. In addition, we inspected the operation of the DOE Central Characterization Program (CCP) at the Savannah River Site. We approved all of the programs we inspected except for the Nevada Test Site. We also have observed DOE audits at Lawrence Livermore Laboratory and Battelle Columbus Laboratory for the purpose of learning about the system of waste characterization controls those sites are developing.[10]

Based on this experience, we have determined that the existing provisions constrain EPA's ability to apply limited resources to a burgeoning waste characterization program for maximum regulatory benefit. Under the existing provisions, we must conduct a § 194.8 inspection at a site if any of the following conditions is true: the site has not previously been approved by EPA to ship waste; the site seeks approval for one or more new waste streams that will be characterized using approved processes; the site seeks approval for one or more new waste streams that will be characterized using at least one new or revised process; or the site seeks approval to introduce a new or revised process to characterize one or more previously approved waste streams.

DOE is currently engaged in waste characterization at five major sites, and plans to begin operations at four or more additional sites in the near future. The number of DOE sites that ultimately will ship waste to the WIPP could grow to approximately two dozen. There are or will be hundreds of waste streams at these sites, and the methods used to characterize them will change as sites acquire new instruments and techniques. Consequently, the expansion of DOE's national transuranic waste shipment program could lead to an indefinite expansion of EPA's inspection program. If EPA must complete a § 194.8 inspection for each new waste stream, group of waste streams, or waste characterization process, the demands of this inspection regime will overwhelm our resources.

We believe that it is appropriate to amend the Compliance Criteria to increase the flexibility of our waste characterization inspection program. At present, the most restrictive factor in the existing provisions is that § 194.8(b) requires EPA to issue approvals that are specific to individual waste streams or groups of waste streams. Our experience with DOE's waste characterization activities since 1998 has shown that there are multiple factors that must be considered when verifying technical adequacy, including but not limited to waste groupings. Moreover, for purposes of waste characterization as required under the Compliance Criteria, the applicable waste groupings at the site are often of limited relevance. Typically, DOE TRU waste sites define and delineate waste streams on the basis of factors related to hazardous components of the waste, not radiological waste components. Thus, while the waste stream groupings may have significant relevance for RCRA purposes, they are often of less relevance for purposes of waste characterization requirements conducted under authority of the WIPP LWA.

In order to approve a site's waste characterization program, we must be confident that the site is capable of identifying and reporting waste components (particularly certain radioisotopes) identified in the 1998 Certification Decision as important to compliance (*see* Compliance Application Review Document (CARD) 31, Air Docket A–93–02, Item V–B–2). As DOE stated in Chapter 4 of the Compliance Certification Application (Air Docket A–93–02, Item II–G–1), a combination of qualitative and quantitative methods would be used to identify and report waste components. *These methods are:* acceptable knowledge, which provides information about waste stream contents and the processes that generated the waste; nondestructive examination of waste containers using radiographic techniques, which provides qualitative estimates of physical waste components; destructive and nondestructive examination of waste containers using radioassay techniques, which was the only quantitative means proposed by DOE to quantify radioisotopic components; destructive (visual) examination of sampled containers to confirm the results of radiography through direct observation and measurement; and data reporting via the WIPP Waste Information System (WWIS). Confirmation of data validity at various points is an integral part of these processes.[11] All of these technical processes constitute the "system of controls" specified in § 194.24(c)(4).

The demonstrated effectiveness of a given element of the system of controls may or may not be constrained by the specific features of a waste stream. A TRU waste site's implementation of certain elements of the system of controls, such as the WWIS, may not change at all from one waste stream to the next. In contrast, which nondestructive assay techniques may be effective for a given waste stream depends in part on the physical form of the waste and the quality of the acceptable knowledge for that waste.

The result most often has been that we have defined limitations on approved waste streams based on the element of the system of controls whose effectiveness is tied most closely to the characteristics of individual waste streams, that is, nondestructive assay (NDA). We have limited (or narrowed) our approvals to certain NDA equipment because factors such as the calibration and physical location of an individual instrument are important to the technical adequacy of the method, and because instrument performance varies based on the radioisotopes in a waste container. DOE may only ship waste streams characterized with certain equipment; otherwise, EPA must conduct another § 194.8 inspection to approve new equipment.

Our new approach to waste characterization inspections, with the new tiering approach, will require DOE to report changes such as the introduction of new nondestructive assay equipment, but will allow EPA to determine whether an inspection is needed for the new equipment. Under Tier 2, it is possible that a "desktop" review of procedures and data packages will be sufficient to demonstrate the similarity of a new process to an approved process. Alternatively, under Tier 1, EPA will have flexibility to schedule an inspection whose scope covers multiple processes and waste streams, *etc.*[12]

Ultimately, the critical factor in our decision making on the initial approval is how effectively TRU waste sites set and enforce appropriate limitations on the usage of certain techniques, and how carefully they confirm and control the results of those techniques. Issuance of our approval under § 194.8(b) means that we have found that the site developed appropriate procedures for waste characterization processes; the site properly implemented those procedures; and we are confident, based on our independent evaluation, that the data reported to the WWIS are properly controlled.

We will continue to make this assessment during the initial § 194.8 inspection(s) at a site. Under the existing provisions, introduction of any waste streams or processes outside the scope of the initial approval necessitates potentially many more § 194.8(b) inspections. The changes that we are proposing today will not alter our authority to limit the scope of any site approval. Rather, the changes will enable EPA to determine independently whether a subsequent inspection is appropriate, and when it should occur. We reserve the authority to specify any appropriate limitations on the waste streams that may be shipped and the processes that may be used to characterize waste.

b. *How can the public notice process for § 194.8 inspections be improved?* Under the existing provisions, EPA must publish a notice in the **Federal Register** announcing a scheduled inspection under authority of § 194.8(b)(2). In the same notice or a separate notice, we must solicit public comment for at least thirty days on waste characterization program plans and other documents relevant to the inspection. DOE sends these plans and other documents to EPA and we place copies in our public docket and supplemental dockets. After the comment period has ended, we notify DOE by letter of our compliance determination and place the resulting inspection reports in our dockets (§ 194.8(b)(3)).

In our 1998 Certification Decision, we explained the rationale for the process described in § 194.8(b). In particular, we explained that our compliance decision must be based on our independent inspections of waste characterization processes. Inspections involve review of many different documents, interviews with staff, and on-site demonstrations, which are then summarized and made

[9] The existing provisions were designed to address the fact that at the time of certification, DOE was able to demonstrate the effectiveness of the proposed system of controls for waste characterization only for certain waste streams at Los Alamos National Laboratory [see 63 FR 27390].

[10] EPA has prepared a document entitled "Background Information Document for § 194.8(b) Modification" (Air Docket OAR–2002–0005–0001), which explains in more detail the technical elements examined during waste characterization inspections, summarizes EPA's inspection experiences to date, and presents lessons learned. This document expands and complements this preamble discussion for the proposed revisions to § 194.8(b).

[11] For quality assurance purposes, we verify that data validation occurs in accordance with site procedures, and that properly qualified and independent QA personnel review the data. This step takes place during a QA audit or inspection. For technical purposes, we independently verify the quality of a sample of data. This step takes place during a waste characterization inspection.

[12] Currently, EPA is able to conduct such a broad scope inspection. However, new processes and/or waste streams must be inspected under § 194.8(b), and previously approved processes and/or waste streams must be inspected under §§ 194.21 and 194.24(h). Today's proposal would allow EPA to review new processes and waste streams under § 194.24(h) after a site has been initially approved under § 194.8(b).

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public in our inspection reports [see, for example, EPA Air Docket A–93–02, Item V–C–1, pp. 2–8 to 2–11 and 6–26]. We are not able to provide all potentially relevant information in our dockets when we open a public comment period. Under the existing provisions, we open comment on the top-tier program plans that describe the fundamental requirements for and organization of waste characterization activities at a site, plus additional procedures if appropriate to the scope of the inspection.

Such documents inform our preparation for an inspection and are sufficient to allow the public to raise compliance concerns or questions, or provide additional information to EPA, so that we are aware of that information prior to reaching a compliance decision. We refrain from reaching a final compliance decision until we have reviewed and responded to public comment. Our inspection reports reference the specific materials that we reviewed at the site and contain objective evidence in support of our findings.

As mentioned above, we have completed a significant number of inspections under authority of § 194.8(b) since May 1998. We have published a total of twenty-one **Federal Register** notices related to those inspections. In response, we received only nine sets of comments, which we believe to be low. Also, several comments consisted of requests to extend a public comment period, which suggests there may be a misunderstanding of the purpose of the comment period under current procedures (that is, to comment on the waste characterization documents in the docket and/or raise concerns to EPA). Specifically, at least one of the requests argued that an extension was appropriate so that information other than the waste characterization plans and procedures could be docketed and reviewed by the public. Both of these factors indicate that the existing provisions for public notice are not optimal for either EPA or the public.

There is also evidence to suggest that the conditions that necessitate additional § 194.8 inspections at an approved site may not be widely understood, even within the DOE transuranic waste complex. The most serious example occurred in July 2001, when EPA learned that waste was shipped from DOE's Idaho site (INEEL) and disposed of in the WIPP despite having been assayed by equipment that had not approved by EPA following inspection. INEEL had received our approval to use certain waste characterization processes on certain waste streams in 1999, but the equipment in question was not included in the previous approval. During an inspection to investigate the nonconformance, we learned that its cause was an isolated failure to follow document control procedures. Nevertheless, our interviews with site personnel and Carlsbad Field Office personnel revealed confusion over whether a § 194.8(b) inspection (including public notice) was required for the new equipment (see Air Docket A–98–49, Item II–A1–28).

In response to these issues, the new public notice process that we are proposing would change three key aspects. First, each site would be inspected only once under § 194.8(b), therefore only one comment period would be opened for each site under § 194.8. Second, EPA would solicit comment not only on DOE documentation, but also on our baseline inspection report(s) and proposed compliance decision for each site. The comment period would begin after we have completed all necessary inspections and assembled the inspection report(s). Third, the inspection report resulting from a site's § 194.8(b) baseline inspection(s) would identify and explain EPA's tier assignments for DOE reporting of changes to the approved waste characterization processes, based on the conditions and maturity of the waste characterization program particular to that site. This reporting would inform EPA that a site has implemented or is considering changes to the approved waste characterization processes. For those changes requiring EPA approval, we would perform follow-up inspections prior to allowing changes in the site's system of controls, or in the waste streams shipped from the site. We believe that this approach is more straightforward than the existing provisions and should serve to reduce any confusion about the public notice process that may exist.

3. What Are the Costs, Risks, and Benefits of Compliance With the Alternative Provisions?

Since 1998, we have conducted over twenty inspections under § 194.8(b), at an average cost of approximately $22,350 each (this estimate includes contractor travel and technical support plus labor and travel costs of EPA personnel). These inspections were conducted to approve both new waste streams and new waste characterization processes proposed by DOE. DOE has identified 569 different waste streams as potentially eligible for disposal at the WIPP facility [Air Docket A–93–02, Item II–G–1, Vol.s III-IV, Appendix BIR-Transuranic Baseline Inventory Report]. If we were to continue to approve site waste characterization activity on a waste stream basis, the costs and logistics of our inspection schedule would rapidly become unmanageable.

DOE incurs costs as a result of being inspected by EPA. Operations may be interrupted to some extent while key personnel respond to the inquiries of inspectors and operators respond to EPA's requirements for testing of equipment. The additional reporting requirements introduced by the proposed new provisions also represent costs to DOE. However, we do not anticipate that the long-term costs to DOE due to the proposed new provisions will be greater than at present.

The risk associated with the proposed new provisions is the same as that which exists for the existing provisions. There is always a possibility that a compliance issue may continue undetected by EPA for a period of time, leading to the improper placement of waste in the repository. With regard to this possibility, we note several important considerations. First, EPA will maintain a rigorous inspection program for WIPP waste characterization activities. Second, DOE is required to maintain an active quality assurance program that audits waste characterization programs on an annual basis for compliance with applicable regulatory requirements. Last, as the operator of the WIPP, DOE is responsible for maintaining the quality of waste characterization programs. As a regulator of the WIPP, EPA's role is to verify independently that DOE is adequately maintaining quality. The combination of DOE's internal quality assurance audits and EPA's independent regulatory inspections has proven able to identify compliance issues and correct them. Therefore, we conclude that the proposed new provisions do not carry greater risks for compliance with the disposal regulations than the existing provisions.

The benefits of the new provisions were described in the preceding section. We expect site shipment activity to increase as approved waste generator sites incorporate new waste streams to their current characterization activities and new waste generator sites seek EPA approval for their shipments for the first time. Under the proposed new provisions, EPA will have more control over our inspection schedule, which will enable us to manage limited resources for maximum regulatory benefit. The proposed changes will not alter EPA's technical approach to inspections of the waste characterization capabilities at DOE waste generator sites. Inspections will continue to involve in-depth interviews of personnel, careful reviews of analytical procedures, and demonstrations of waste characterization techniques and equipment. We will approve only sites that can effectively characterize wastes destined for disposal at the WIPP. Once those sites are approved, we will continue to oversee their programs through ongoing inspections.

Additionally, we expect that the changes to the public notice process that we are proposing will make the comment period for inspections more relevant. The public will now have an opportunity to review and comment on EPA's proposed decisions and inspection reports prior to site approvals.

Finally, the new provisions will be beneficial to DOE because reporting requirements for DOE will be established on a site-by-site basis. It will be clearer to the sites when a particular change in their activities will trigger review, inspection, or approval on EPA's part. Also, DOE will be able to implement changes in the Tier 2 elements of their waste characterization activities without prior approval. Sites with more effective waste characterization programs, including sites that successfully demonstrate the applicability of waste characterization controls to the broadest possible spectrum of waste at the time of EPA's inspection, are likely to have more activities listed in Tier 2 than sites with less effective programs.

V. How Is EPA Revising the Submission of Compliance Applications and Reference Materials Requirements in §§ 194.12 and 194.13?

A. What Are the Current Requirements in §§ 194.12 and 194.13?

Section 194.12 of the Compliance Criteria requires DOE to submit 30 copies of the compliance applications and any accompanying materials to the Administrator in printed form. This provision also applies to the compliance applications periodically submitted by DOE for re-certification of compliance.

Section 194.13 requires that 10 printed copies of referenced materials be submitted to the Administrator, unless such materials are generally available.

B. What Are the Proposed Changes to §§ 194.12 and 194.13?

EPA proposes to revise § 194.12 by changing the number of copies of compliance applications in printed form from 30 to 5 (one original and four printed copies). In addition, the Agency is revising § 194.12 to require that DOE submit 10 complete compliance applications in alternative format (*e.g.*, compact disk) or other approved format.

Also, the Agency is proposing to revise § 194.13 by changing the number of copies in printed form of the reference materials from 10 to 5 and to require DOE to submit 10 copies of reference materials in alternative format (*e.g.*, compact disk) or other approved format.

C. How Has EPA Addressed the Alternative Provision Analysis Required by § 194.6?

The proposed changes to §§ 194.12 and 194.13 are intended to minimize the number of copies in printed form that need to be submitted and to allow for the submission of compliance applications and reference materials in alternative format (*e.g.*, compact disk). The use of alternative format will facilitate compliance with 40 CFR part 194 requirements because it will expedite EPA's evaluation of the compliance application and reduce costs associated with the review of compliance applications and reference materials. Receipt of application materials in alternative format will also improve information sharing with the public by enabling the Agency to more easily make these materials available via the Internet.

1. Why Do the Existing Provisions in §§ 194.12 and 194.13 Appear Inappropriate?

The existing provisions in §§ 194.12 and 194.13 are inappropriate because EPA does not need DOE to deliver 30 printed copies of the complete compliance application, nor 10 printed copies of all reference materials. In 1996, when the Compliance Criteria were finalized, the Agency required that 30 copies of the compliance application and 10 copies of the referenced material be submitted for use in our review and evaluation activities. Printed form copies were necessary because the Agency had a limited time period for review and the complexity of the application material required many reviewers. Also, EPA placed copies of these documents in various public dockets.

EPA's requirements for the submission of compliance applications and reference materials have changed since the promulgation of the Compliance Criteria in 1996. If material is submitted in alternative format (*e.g.*, compact disk) or other approved format instead of printed matter, it is only necessary to have 5 printed copies of the compliance application and 5 printed copies of the reference materials not included in previous compliance applications (provided that the information has remained true and accurate) for our four public dockets (including an official copy for EPA).

New advances in information management require the use of new submission methods, such as the use of alternative format (*e.g.*, compact disk). Information and data in alternative format are easier to view, share, navigate, and analyze. However, current regulatory language in §§ 194.12 and 194.13 does not allow for the submission of compliance applications and reference materials in alternative format. Therefore, today's action proposes to revise the regulatory language in these sections to require alternative format (or other approved format) submission of both compliance application (also re-certification applications) and reference materials.

2. How Do the Proposed Changes in §§ 194.12 and 194.13 Comport With 40 CFR Part 191?

The proposed changes to §§ 194.12 and 193.13 comport fully with the radioactive waste disposal regulations at 40 CFR part 191. The inclusion of submission requirements for compliance applications and reference materials in order to implement the disposal regulations was established by the rulemaking that resulted in the WIPP Compliance Criteria at 40 CFR part 194. Today's proposed changes do not alter the scope of those requirements. The Compliance Criteria would continue to apply submission requirements to the WIPP project. The principle differences between the existing and proposed new provisions are that the number of printed copies to be submitted to EPA has been reduced considerably and alternative format (or other approved format) submission of compliance applications and reference materials is now required. The proposed revisions to this part do not impact the Compliance Criteria's implementation of 40 CFR part 191.

3. What Are the Costs, Risks, and Benefits of Compliance With the New Provisions in §§ 194.12 and 194.13?

Sections 194.12 and 194.13 require DOE to submit a specified number of copies in printed form of the compliance application and reference materials. This provision also applies to the compliance applications periodically submitted by DOE for recertification of compliance. The

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proposed revisions reduce the number of copies required and requires submission of compliance applications and references in alternative format (or other approved format). We do not anticipate any cost increase related to our implementation of the changes to §§ 194.12 and 194.13. These changes will improve our ability to view, share, navigate, print, and analyze submitted materials. We expect to be able to conduct our review of compliance applications in a more efficient and cost effective manner. Also, the implementation of these changes will facilitate our ability to share information with the public in a more timely fashion. As we received information and data in alternative format, it would be easier to post this information in our webpage. Similarly, we do not anticipate that DOE will experience any cost increase as a result of their compliance activities with this part because the technology to produce alternative-format submittals exists and is currently in use.

We do not anticipate any significant risks related to the implementation of the proposed revisions to this part. Submission of information and data in other than paper form is a widely accepted process that will ease the transfer of information between DOE and EPA and therefore, improve compliance with 40 CFR part 194.

In summary, the benefits of the proposed revisions for §§ 194.12 and 194.13 are several. First the Agency will benefit from an improved evaluation process and reduced costs associated with the review of compliance applications and reference materials. Second, the public will be able to have better and faster access to information used in support of WIPP compliance activities. This change will improve the public's ability to participate more actively in the public comment process. Third, the proposed changes to §§ 194.12 and 194.13 are intended to reduce the number of copies in printed form that must be submitted, thereby reducing paper usage.

VI. How Is EPA Revising the Waste Characterization Requirements in § 194.24(c)(3)?

A. What Are the Current Waste Characterization Requirements in § 194.24(c)(3)?

Section 194.24, waste characterization, generally requires DOE to identify, quantify, and track the chemical, physical, and radiological components of the waste destined for disposal at WIPP that may influence disposal system performance. Section 194.24(c)(3) requires DOE to demonstrate that the use of process knowledge to quantify waste components conforms with the quality assurance (QA) requirements outlined in § 194.22. To demonstrate compliance DOE must have information and documentation to substantiate that process knowledge data acquired and used during waste characterization activities are in compliance with the QA requirements. EPA verifies compliance with this requirement through inspections, where EPA conducts proper review of such information to determine whether use of process knowledge data is appropriate and reliable.

B. What Are the Proposed Changes to § 194.24(c)(3)?

The Agency is proposing to revise § 194.24(c)(3) by replacing the term "process knowledge" with the term "acceptable knowledge." The term "acceptable knowledge" has been the term used by EPA and DOE since DOE submitted the Compliance Certification Application, during both the certification rulemaking and subsequent site inspections. Use of the term "acceptable knowledge" in § 194.24(c)(3) in lieu of "process knowledge" will not alter our technical approach to verifying compliance during an inspection; rather, it will reflect our actual practice more accurately.

For consistency with the change being proposed today for § 194.24(c)(3), the Agency is also proposing to add the following definition of "acceptable knowledge" to § 194.2: "*Acceptable knowledge* means any information about the process used to generate waste, material inputs to the process, and the time period during which the waste was generated, as well as data resulting from the analysis of waste conducted prior to or separate from the waste certification process authorized by EPA's Certification Decision, to show compliance with Condition 3 of the certification decision (40 CFR part 194, Appendix A)." [13]

Section 194.2 is contained in Subpart A (General Provisions) of the rule, which describes the purpose and scope of the regulation, clarifies terms, specifies dates, and imparts a range of administrative information. Section 194.2 focuses on providing an explanation of all terms and abbreviations contained in 40 CFR part 194 for clarification purposes.

C. How Has EPA Addressed the Alternative Provision Analysis Required by § 194.6?

The proposed changes for both §§ 194.2 and 194.24(c)(3) are intended to clarify exactly what information EPA requires from DOE. EPA expects that with these changes, acceptable knowledge (AK) will be more clearly identified as an integral part of the system of controls for waste characterization and will require DOE to provide information about the entire system of controls (including AK) and implement the systems at each site. Again, these proposed changes in terminology do not alter our technical approach to verifying compliance during an inspection, but will reflect our actual practice more accurately.

1. Why Do the Existing Provisions in § 194.24(c)(3) Appear Inappropriate?

We do not consider the existing provisions in § 194.24(c)(3) to be fully inappropriate because process knowledge remains a crucial component of the waste characterization system of controls. However, the Agency seeks to improve communication with DOE and the public and the use of consistent and clear language is an important factor towards meeting that goal. Section 194.24(c)(3) is used to verify compliance in the collection and appropriate use of process knowledge during waste characterization, and that the procedures adhere to the quality assurance requirements identified in § 194.22. During the EPA inspection of a TRU waste site, we review the establishment and implementation of procedures for collection and use of process knowledge, demonstration of waste characterization processes, and the qualifications and practices of technical personnel.

The term "process knowledge," as currently used by EPA in the Compliance Criteria, incorporates information about the process or operation that led to the creation of the transuranic waste.[14] The term "acceptable knowledge" includes process knowledge, any data resulting from analysis of waste prior to WIPP waste characterization, and any other information about the physical form of the waste and its base components. The two terms are related; process knowledge is a subset of acceptable knowledge.

In Chapter 4 of the Compliance Certification Application, DOE used the term "acceptable knowledge" and explained that this term incorporates "information regarding the physical form of the waste, the base materials composing the waste, and the process that generates the waste." DOE derived this usage from an EPA document entitled, "Waste Analysis at Facilities that Generate, Treat, Store, and Dispose of Hazardous Waste: A Guidance Manual (EPA530–R–94–024, April 1994." This guidance defines AK broadly as including process knowledge, waste analysis data from waste generators, and records of analysis performed. A hazardous waste treatment, storage, and disposal facility when accepting hazardous waste for management may test waste to confirm that the hazardous waste determination done by a generator is accurate and the facility indeed can handle that particular waste type. The referenced guidance document applies specifically to compliance with the Resource Conservation and Recovery Act; however, its definition of AK is consistent with the definition that we are proposing for use in the WIPP Compliance Criteria.

It is important that both EPA and DOE have the same understanding on the terminology applicable to the requirements in § 194.24(c)(3). The use of the term "process knowledge" in the Compliance Criteria to date has not interfered with DOE's compliance with the terms and conditions of the certification. However, EPA seeks to avoid the possibility for miscommunication now or in the future.

2. How Do the Proposed Changes in § 194.24(c)(3) Comport With 40 CFR part 191?

The proposed changes to § 194.24(c)(3) comport fully with the radioactive waste disposal regulations at 40 CFR part 191. The inclusion of requirements for waste characterization requirements in order to implement the disposal regulations was established by the rulemaking that resulted in the WIPP Compliance Criteria at 40 CFR part 194. Today's proposed changes do not alter the scope of those requirements. The Compliance Criteria would continue to apply waste characterization requirements to the WIPP project. The principle difference between the existing and proposed new provisions is the replacement of the term process knowledge with acceptable knowledge. The use of the new term would not substantively affect the Compliance Criteria's implementation of 40 CFR part 191.

3. What Are the Costs, Risks, and Benefits of Compliance with the New Provisions in § 194.24(c)(3)?

We do not anticipate any cost increase related to our implementation of the changes to § 194.24(c)(3). EPA will continue to conduct waste characterization oversight in the same manner as before. Similarly, we do not anticipate that DOE will experience any cost increase as a result of their compliance activities with this part. Essentially, DOE will continue to comply with the requirement of this part as they previously have.

We do not anticipate any risks related to the implementation of the proposed revisions to this part. The Agency anticipates that the use of the term acceptable knowledge will serve to enhance communication with the regulated party and therefore, compliance with 40 CFR part 194.

The benefits of the proposed revisions for § 194.24(c)(3) are two-fold. First, the proposed changes will not affect the actual technical approach to verifying compliance during our independent audits and inspections of the relevant WIPP activities. Therefore, EPA will continue to enforce the waste characterization requirements in the Compliance Criteria and ensure that DOE's waste characterization programs are properly implemented. Second, the clarification of the applicable terminology will ensure that no confusion arises regarding the specific waste characterization information required for compliance.

VII. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action."

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because it sets forth requirements which apply only to Federal agencies. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paper Reduction Act, 44 U.S.C. 3501 *et seq.* The Compliance Criteria in 40 CFR part 194 requirements are applicable only to both DOE and EPA and do not establish any form of collection of information from the public.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Pursuant to Title II of the UMRA, we have determined that this regulatory action is not subject to the requirements of sections 202 and 205, because this action does not contain any "federal mandates" for State, local, or tribal governments or for the private sector. This rule applies only to Federal agencies.

E. Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," the Agency has considered environmental justice

[13] This definition is consistent with EPA's and DOE's use of the term "acceptable knowledge" during the WIPP certification rulemaking. See, for example: Air Docket A–93–02, Item II–G–1, page 4–45; Item V–B–2, Compliance Application Review Document (CARD) 24, page 24–1; and 63 FR 27390, footnote 32.

[14] Examples of processes or operations that create transuranic waste are molding of plutonium with crucibles, laboratory analysis of radioactive samples, and chemical separation of plutonium from other materials. The number and types of processes in use at a DOE site depends on the nature and complexity of the site's mission.

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related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income, minority, and native American communities. We have complied with this mandate. However, the requirements specifically set forth by the Congress in the Waste Isolation Pilot Plant Land Withdrawal Act (Pub. L. 102–579), which prescribes EPA's role at the WIPP, did not provide authority for EPA to examine impacts in the communities in which wastes are produced, stored, and transported, and Congress did not delegate to EPA the authority to consider the issue of alternative locations for the WIPP.

During the development of the existing provisions in 40 CFR part 194, the EPA involved minority and low-income populations early in the rulemaking process. In 1993, EPA representatives met with New Mexico residents and government officials to identify the key issues that concern them, the types of information they wanted from EPA, and the best ways to communicate with different sectors of the New Mexico public. The feedback provided by this group of citizens formed the basis for EPA's WIPP communications and consultation plan. To help citizens (including a significant Hispanic population in Carlsbad and the nearby Mescalero Indian Reservation) stay abreast of EPA's WIPP-related activities, the Agency developed many informational products and services. The EPA translated into Spanish several documents regarding WIPP, including educational materials and fact sheets describing EPA's WIPP oversight role and the radioactive waste disposal standards. The EPA also established a toll-free WIPP Information Line, recorded in both English and Spanish, providing the latest information on upcoming public meetings, publications, and other WIPP-related activities. The EPA also developed a mailing list, which includes many low-income, minority, and native American groups, to systematically provide interested parties with copies of EPA's public information documents and other materials. Even after the final rule, in 1998, EPA has continued to implement outreach services to all WIPP communities based on the needs determined during the certification.

This proposed action does not add or delete any certification criteria. The proposal would revise the public notice process for the approval of waste characterization activities at DOE waste generator sites, which produce and store wastes destined for disposal at WIPP. Affected communities and the public in general would have the opportunity to comment on EPA's proposed waste generator site approval decision. The existing provision does not offer such opportunity. The proposed revision makes the public comment period more meaningful to all communities. The Agency also intends to continue its outreach activities to make information on waste characterization activities more accessible by using the Internet, EPA information line, and fact sheets.

F. National Technology Transfer & Advancement Act of 1995

Section 12 of the National Technology Transfer & Advancement Act of 1995 is intended to avoid "re-inventing the wheel." It aims to reduce costs to the private and public sectors by requiring federal agencies to draw upon any existing, suitable technical standards used in commerce or industry. To comply with the Act, EPA must consider and use "voluntary consensus standards," if available and applicable, when implementing policies and programs, unless doing so would be "inconsistent with applicable law or otherwise impractical." We have determined that this regulatory action is not subject to the requirements of National Technology Transfer & Advancement Act of 1995 as this rulemaking is not setting any technical standards.

G. Executive Order 13045: Children's Health Protection

This rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

H. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed action revises specific portions of the Compliance Criteria in 40 CFR part 194. These criteria are applicable only to both DOE (operator) and EPA (regulator) of the WIPP disposal facility. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

I. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. This proposed action revises specific portions of the Compliance Criteria in 40 CFR part 194. The Compliance Criteria are applicable only to Federal agencies. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote consultation and coordination with Indian Tribal Governments, EPA specifically solicits comment on this proposed rule from Tribal officials.

J. Executive Order 13211: Energy Effects

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 194

Environmental protection, Administrative practice and procedure, Nuclear materials, Radionuclides, Plutonium, Radiation Protection, Uranium, Transuranics, Waste Treatment and Disposal.

Dated: July 30, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 194 is proposed to be amended as follows.

PART 194—CRITERIA FOR THE CERTIFICATION AND RE-CERTIFICATION OF THE WASTE ISOLATION PILOT PLANT'S COMPLIANCE WITH THE 40 CFR PART 191 DISPOSAL REGULATIONS

1. The authority citation for Part 194 continues to read as follows:

Authority: Pub. L. 102–579, 106 Stat. 4777, as amended by Public Law 104–201, 110 Stat. 2422; Reorganization Plan No.3 of 1970, 35 FR 15623, Oct. 6, 1970, 5 U.S.C. app. 1; Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011–2296 and 10101–10270.

2. Section 194.2, is amended by adding definitions in alphabetical order for "acceptable knowledge" and "minor alternative provision" to read as follows:

§ 194.2 Definitions.

* * * * *

Acceptable knowledge means any information about the process used to generate waste, material inputs to the process, and the time period during which the waste was generated, as well as data resulting from the analysis of waste, conducted prior to or separate from the waste certification process authorized by EPA's Certification Decision, to show compliance with Condition 3 of the certification decision (Appendix A of this part).

* * * * *

Minor alternative provision means an alternative provision to the Compliance Criteria that clarifies a regulatory provision, or does not substantively alter the existing regulatory requirements.

* * * * *

3. Section 194.6 is revised to read as follows:

§ 194.6 Alternative provisions.

The Administrator may, by rule pursuant to 5 U.S.C. 553, substitute for any of the provisions of this part alternative provisions, or minor alternative provisions, in accordance with the following procedures:

(a) Alternative provisions may be substituted after:

(1) Alternative provisions have been proposed for public comment in the **Federal Register** together with information describing how the alternative provisions comport with the disposal regulations, the reasons why the existing provisions of this part appear inappropriate, and the costs, risks and benefits of compliance in accordance with the alternative provisions;

(2) A public comment period of at least 120 days has been completed and public hearings have been held in New Mexico;

(3) The public comments received have been fully considered; and

(4) A notice of final rulemaking is published in the **Federal Register**.

(b) Minor alternative provisions may be substituted after:

(1) The minor alternative provisions have been proposed for public comment in the **Federal Register** together with information describing how they comport with the disposal regulations, the reasons why the existing provisions of this part appear inappropriate, and the benefit of compliance in accordance with the minor alternative provision;

(2) A public comment period of at least 30 days has been completed for the minor alternative provisions and the public comments received have been fully considered;

(3) A notice of final rulemaking is published in the **Federal Register** for the minor alternative provisions.

4. Section 194.8 is amended by revising paragraph (b) to read as follows:

§ 194.8 Approval process for waste shipment from waste generator sites for disposal at the WIPP.

* * * * *

(b) *Waste Characterization Programs at Transuranic Waste Sites.* The Agency will establish compliance with Condition 3 of the certification using the following process.

(1) DOE will implement waste characterization programs and processes in accordance with § 194.24(c)(4) to confirm that the total amount of each waste component that will be emplaced in the disposal system will not exceed the upper limiting value or fall below the lower limiting value described in the introductory text of paragraph (c) of § 194.24. Waste characterization processes will include the collection and use of acceptable knowledge; destructive and/or nondestructive techniques for identifying and measuring waste components; and the validation, control, and transmittal to the WIPP Waste Information System database of waste characterization data, in accordance with § 194.24(c)(4).

(2) The Agency will verify the compliance of waste characterization programs and processes identified in paragraph (b)(1) of this section using the following process.

(i) DOE will notify EPA by letter that a transuranic waste site is prepared to ship waste to the WIPP and has established adequate waste characterization processes and programs. DOE also will provide the relevant waste characterization program plans and documentation. EPA may request additional information from DOE.

(ii) EPA will conduct a baseline inspection at the site to verify that adequate waste characterization program plans and technical procedures have been established, and that those plans and procedures are effectively implemented. The inspection will include a demonstration or test by the site of the waste characterization processes identified in paragraph (b)(1) of this section. If an inspection does not lead to approval, we will a send an inspection report to DOE identifying deficiencies and place the report in the public docket described in § 194.67. More than one inspection may be necessary to resolve compliance issues.

(iii) The Agency will announce in the **Federal Register** a proposed Baseline Compliance Decision to accept the site's compliance with § 194.24(c)(4). In the notice, we will solicit public comment on the relevant inspection report(s) and any supporting materials, which will be placed in the public docket described in § 194.67. The proposal will describe any limitations on approved waste streams or waste characterization processes and identify (through tier designations) what changes to the approved waste characterization processes must be reported to and approved by EPA before they can be implemented.

(iv) Our written decision regarding compliance with the requirements for waste characterization programs and processes described in paragraph (b)(1) of this section will be conveyed in a letter from the Administrator's authorized representative to DOE. EPA will not issue a compliance decision until after the end of the public comment period described in paragraph (b)(2)(iii) of this section. EPA's compliance decision will respond to significant and timely received comments. A copy of our compliance decision will be placed in the public docket described in § 194.67. DOE will comply with any requirements identified in the compliance decision and the accompanying inspection report.

(3) Subsequent to any positive determination of compliance as described in paragraph (b)(2)(iv) of this section, the Agency intends to conduct inspections, in accordance with § 194.24(h), to confirm the continued compliance of approved waste characterization programs and processes

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at transuranic waste sites. EPA will make the results of these inspections available to the public in the dockets described in § 194.67.

(i) If the Agency determines, at a subsequent inspection of an approved transuranic waste site, that waste characterization programs or processes are not adequately established or implemented, then we may suspend shipments and disposal of affected and potentially affected waste streams, or take other action in accordance with § 194.4(b)(1) and (2), until we determine that the deficiencies have been adequately resolved.

(ii) [Reserved]

5. Section 194.12 is revised to read as follows:

§ 194.12 Submission of compliance applications.

Unless otherwise specified by the Administrator or the Administrator's authorized representative, 5 copies of any compliance application(s), any accompanying materials, and any amendments thereto shall be submitted in a printed form to the Administrator's authorized representative. In addition, DOE shall submit 10 copies of the complete application in alternative format (*e.g.*, compact disk) or other approved format, as specified by the Administrator's authorized representative.

6. Section 194.13 is revised to read as follows:

§ 194.13 Submission of reference materials.

Information may be included by reference into compliance applications(s), provided that the references are clear specific and that unless, otherwise specified by the Administrator or the Administrator's authorized representative, 5 copies of reference information are submitted to the Administrator's authorized representative. Reference materials that are widely available in standard text books or reference books need not to be submitted. Whenever possible, DOE shall submit 10 copies of reference materials in alternative format (e.g., compact disk) or other approved format, as specified by the Administrator's authorized representative.

7. Section 194.24 is amended by revising paragraph (c)(3) to read as follows:

§ 194.24 Waste characterization.

* * * * *

(c) * * * (3) Provide information that demonstrates that the use of acceptable knowledge to quantify components in waste for disposal conforms with the quality assurance requirements of § 194.22.

* * * * *

[FR Doc. 02–19796 Filed 8–8–02; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Friday,
August 9, 2002

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Listing the Gila Chub as Endangered With Critical Habitat; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG16

Endangered and Threatened Wildlife and Plants; Listing the Gila Chub as Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service propose endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for a fish, Gila chub (*Gila intermedia*) historically found throughout the Gila River basin in southern Arizona, southwestern New Mexico, and northeastern Sonora, Mexico. Gila chub have been extirpated or reduced in numbers and distribution in the majority of its historical range (Minckley 1973, Weedman *et al.* 1996). Where it is still present, populations are often small, scattered, and at risk from known and potential threats and from random events. Threats include predation by and competition with nonnative organisms, including fish in the family Centrarchidae (*Micropterus* spp., *Lepomis* spp.), other fish species, bullfrogs (*Rana catesbeiana*), and crayfish (*Orconectes virilis*); disease; and habitat alteration, destruction, and fragmentation resulting from water diversions, dredging, recreation, roads, livestock grazing, changes in the natural flow pattern, mining, degraded water quality (including contaminants from mining activities and excessive sedimentation), and groundwater pumping. This proposed rule, if made final and in accordance with the Act, would implement Federal protection for this species, and provide funding for development and implementation of recovery actions. We seek data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by October 8, 2002. Public hearing requests must be received by September 23, 2002.

ADDRESSES: Comments and materials should be sent to the Field Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021–4951. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ann Watson, Fisheries Biologist, Arizona Ecological Services Field Office (see **ADDRESSES**); telephone (520) 670–4618, facsimile (520) 670–4638.

SUPPLEMENTARY INFORMATION:

Background

The Gila chub is a member of the minnow family Cyprinidae. The Gila chub is small-finned, deep-bodied, chubby (chunky), and darkly colored (sometimes lighter on belly; diffuse lateral band(s) are rarely present). Adult males average about 150 millimeters (mm) (6 inches (in)) in total length; females can exceed 200 mm (8 in). Scales are coarse, large, thick, and broadly overlapped, and radiate out from the base. Lateral-line scales usually number greater than 61 and less than 80. There are usually eight (rarely seven or nine) dorsal and anal fin-rays; pelvic fin-rays typically number eight, but sometimes nine.

Gila chub commonly inhabit pools in smaller streams, springs, and cienegas (a desert wetland), and can survive in small artificial impoundments (Miller 1946; Minckley 1973; Rinne 1975). Gila chub are highly secretive, preferring quiet, deeper waters, especially pools, or remaining near cover including terrestrial vegetation, boulders, and fallen logs (Rinne and Minckley 1991).

Baird and Girard (1854:28) published a description of the Gila chub, as *Gila gibbosa*, based on the type specimen collected in 1851 from the Santa Cruz River. For nomenclature reasons, the name was changed by Girard to *Tigoma intermedia* in 1856, working with specimens from the San Pedro River. Despite that and other name changes, the Gila chub has been recognized as a distinct species since the 1850's, with the exception of a short period in the mid-1900's when it was placed as a subspecies of *Gila robusta* (Miller 1945). For the past 30 years, *Gila intermedia* has been recognized as a full monotypic species, separate from the polytypic species *Gila robusta*, both currently accepted as valid (Robins 1991, Mayden et al. 1992). Problematic populations nonetheless exist, variously assigned to one or the other taxon and leading to continued confusion. Minckley (2000) describes a new subspecies within the Gila River Basin, *Gila nigra*. It is a hybrid of *Gila robusta* and *Gila intermedia*. Its range is similar to that of *Gila intermedia* and is another headwater type chub, whereas *Gila robusta* is found in the mainstem of the major rivers within the Gila River Basin. *Gila intermedia* is the only species being addressed in this proposed rule.

Historically, Gila chub have been recorded in approximately 30 rivers, streams, and spring-fed tributaries throughout the Gila River basin in southwestern New Mexico, central and southeastern Arizona, and northern Sonora, Mexico (Miller and Lowe 1967; Rinne and Minckley 1970; Minckley 1973; Rinne 1976; DeMarais 1986; Bestgen and Propst 1989). Several populations may have originally had basin-wide distributions (*e.g.*, Babocomari River and Santa Cruz River).

Riparian and aquatic communities across the southwest have been degraded or destroyed by human activities (Hastings 1959; Hastings and Turner 1965; Henderickson and Minckley 1984). Humans have affected southwestern riparian systems over a period of several thousand years. Before the 1800's, indigenous people and missionaries used southern Arizona cienegas and riparian areas mostly for subsistence enterprises, including woodcutting, agriculture (including livestock grazing), and food and fiber harvesting.

Historically, beaver also used riparian areas almost anywhere perennial water and appropriate vegetation could be found. The activities of beaver help to promote Gila chub habitat by inhibiting erosion and downcutting of stream channels (Parker *et al.* 1985) and increasing ponded water behind the dams. Beaver were extirpated from a majority of their range by the late 1800's and are still not abundant or are extirpated from other areas where they were common (Hoffmeister 1986). For example, beaver were extirpated from the Santa Cruz and San Pedro Rivers in Arizona. Loss of this large mammal and the dams they constructed may have resulted in reaches of some streams and rivers being rendered unsuitable as habitat for the Gila chub (Hoffmeister 1986). Recently, the Bureau of Land Management (BLM) reestablishd beaver into the San Pedro River to help restore the riparian community for future native fish and wildlife habitat.

There was a significant human population increase in southern Arizona and northern Sonora, Mexico, in the early to middle 1800's (Tellman *et al.* 1997). New immigrants substantially increased subsistence and commercial livestock production and agriculture. By the late 1800's, many southern Arizona watersheds were in poor condition primarily due to uncontrolled livestock grazing, mining, hay harvesting, timber harvesting, and other management practices, such as fire suppression (Bahre 1991; Humphrey 1985; Martin 1975). The watershed degradation

caused by these management practices led to widespread erosion and channel entrenchment when above-average rainfall and flooding occurred in the late 1800's (Bahre 1991; Bryan 1925; Dobyns 1981; Hastings and Turner 1980; Hendrickson and Minckley 1984; Martin 1975; Sheridan 1986; Webb and Betancourt 1992). These events led to long-term stream, cienega, and riparian habitat degradation throughout southern Arizona and northern Mexico. Physical evidence of cienega and other riparian area changes can be found in the black organic soils of the drainage cut banks in the San Rafael Valley (Hendrickson and Minckley 1984), San Pedro River (Hereford 1992), Black Draw, San Simon Valley, and elsewhere. Although these changes took place nearly a century ago, the ecosystem has not fully recovered, and in some areas may never recover.

Approximately 85 to 90 percent of the Gila chub's habitat has been degraded or destroyed, and much of it is unrecoverable. Weedman (1996) determined that 23 populations of Gila chub remain in the United States; with all but one considered small, isolated, and threatened. Not included in the 23 populations are the two populations in Larry Creek and Lousy Canyon, which were stocked with Gila chub in 1995 in an effort to reestablish them into suitable habitat. Also, the newly found population (in April 2000) occurring in Mineral Creek was not known when Weedman's survey report was prepared. For the 23 populations Weedman (1996) categorized the status of the Gila chub populations into one of four categories: (1) Stable-secure—Gila chubs are common, data over the last 5 to 10 years show a stable reproducing population, no impacts from nonnatives (predatory or competitive species), no current or future land use threats were identified; (2) Stable-threatened—Gila chub are common to uncommon, potential threats by nonnatives exist, some habitat-altering land and water uses were identified, or lack of recruitment was detected within the population; (3) Unstable-threatened—Gila chub are rare, have limited distribution, predatory or competitive nonnatives are present, or the habitat is modified or threatened; (4) Extirpated—Gila chub are no longer found within their range. These four categories are reflected in the following discussion of the current status of the Gila chub populations.

In New Mexico, Gila chub formerly inhabited the Gila River basin in Apache Creek, Catron County; Buck Creek, Grant County; and San Simon Cienega, Hidalgo County (Rinne 1969, 1976, Hubbard *et al.* 1979, Bestgen and Propst 1989, and Sublette *et al.* 1990). All of these populations have been extirpated (Bestgen and Propst 1989). Gila chub historically inhabited cienegas of the upper San Simon River (Mckinkley 1969; Rinne 1969), but are now extirpated. The San Simon River is a Gila River tributary that originates in Hidalgo County, New Mexico, and flows 145 km (90 mi) through Cochise and Graham Counties, Arizona, to the Gila River. Gila chub were collected in the San Francisco River in 1872, but the exact location remains unknown (Sublette *et al.* 1990). An observation of a Gila chub in Turkey Creek in the upper Gila River Basin in New Mexico was made in 2001 (per. comm. Telles 2001).

In Arizona, Gila chub are known to have occupied portions of the Salt, Verde, Santa Cruz, San Pedro, San Carlos, San Simon, San Francisco, and Agua Fria drainages and smaller tributaries of the mainstem Gila River. Small remnant populations remain in most of these drainages with the exception of the Salt and San Simon Rivers, where all known populations have been extirpated.

In the Verde River basin, Walker Creek, Williamson Valley Wash, and Spring Creek populations (Yavapai County) are considered as stable-threatened populations. The Santa Cruz River has three tributaries with extant populations of Gila chub: Sabino Canyon (Pima County) and Sheehy Spring (Santa Cruz County) have unstable-threatened populations, and Cienega Creek (Pima and Santa Cruz Counties) has the only known stable-secure population of Gila chub in existence. The San Pedro River Basin has three extant, stable-threatened populations in Redfield Canyon (Graham and Pima Counties), O'Donnell Canyon (Santa Cruz County), and Bass Canyon (Graham and Cochise Counties). The status of the Gila chub in the Babocomari River (Santa Cruz and Cochise Counties) is unknown. The San Carlos River and the Blue River (Gila and Graham Counties) are on the San Carlos Apache Indian Reservation and are tributaries to the Gila River. We are aware that Gila chub are extant on the Reservation but we do not have information to document the status of Gila chub in those drainages.

The San Francisco River has two tributaries with extant populations, Harden Cienega Creek and Dix Creek in Greenlee County. The status of these two populations is unknown, but both are thought to be small. The Agua Fria River has two tributaries with stable-threatened populations, Silver and Sycamore creeks (Yavapai County), as well as two unstable-threatened populations in Little Sycamore Creek and Indian Creek (Yavapai County). In addition, there are two populations in the Agua Fria River, Larry Creek, and Lousy Canyon (Yavapai County), for which the population status is unknown. Two tributaries of the Gila River in Arizona have extant populations of Gila chub. Eagle Creek (Graham and Greenlee Counties) has an unstable-threatened population and Bonita Creek (Graham County) has a stable-threatened population.

In Mexico, Gila chub historically occupied significant portions of the Santa Cruz and San Pedro river basins. The current known distribution of Gila chub in Mexico has been reduced to two small spring areas, Cienega los Fresnos and Cienega la Cienegita, adjacent to the Arroyo los Fresnos (tributary of the San Pedro River), within 2 km (1.2 mi) of the Arizona-Mexico border (Varela-Romero *et al.* 1992). No Gila chub remain in the Mexican portion of the Santa Cruz River basin (Weedman *et al.* 1996).

Reestablishment of Gila chub has been attempted in three Arizona sites; two sites remain extant and recruitment is good (per. comm. BLM 2002). Lousy Canyon and Larry Creek (Yavapai County) are tributaries to the Agua Fria River and were stocked with 200 Gila chub from Silver Creek on July 6, 1995. The third site, Gardner Canyon (Cochise County), was stocked with 150 Gila chub from Turkey Creek (Santa Cruz County) in July, 1988. In May, 1995 no Gila chub nor any other fish were captured during sampling surveys in Gardner Canyon.

Previous Federal Actions

On December 30, 1982, a Notice of Review of vertebrate candidate species was published in the **Federal Register** which included the Gila chub in category 1 (47 FR 58454). Category 1 at that time comprised taxa for which we had substantial information to support a proposal to list the species as endangered or threatened. In response to our letter to interested parties seeking information preparatory to a proposed listing of the Gila chub, we received a letter on March 31, 1983, from the Arizona Game and Fish Department, informing us that there was a substantial amount of information still needed on the Gila chub and recommending that the Gila chub be moved to a category 2 species. Category 2 comprised taxa for which information in our possession indicated that proposing to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threat was not available to support a proposed rule. On September 18, 1985,

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we published a Notice of Review in the **Federal Register** (50 FR 37960) which placed the Gila chub as a category 2 species. It remained as a category 2 candidate in the Notices of Review published on January 6, 1989 (50 FR 556), and November 21, 1991, (50 FR 58815).

Beginning with our February 28, 1996, candidate Notice of Review (61 FR 7596), we discontinued the designation of multiple categories of candidates, and only those taxa meeting the definition for former category 1 candidates are now considered candidates for listing purposes. The Gila chub was approved as a candidate on August 17, 1997, and was included in the candidate Notice of Review published on September 19, 1997 (62 FR 49402). The Gila chub was also included in the following candidate Notices of Review published on October 25, 1999 (64 FR 57534), October 30, 2001 (66 FR 54808), and June 13, 2002 (67 FR 40658).

We received a petition dated June 4, 1998, to list the Gila chub as endangered and to designate critical habitat for the species from the Southwest Center for Biodiversity, on June 10, 1998. In a letter dated July 17, 1998, we responded to the petitioner that, pursuant to our July, 1996, Petition Management Guidance, candidate species are considered to be under petition and covered by a "warranted but precluded" finding under section 4(b)(3)(B)(iii) of the Act. Because listing of candidates is, by definition, already warranted, petitions on candidates are redundant. As a result, 90-day findings are not prepared for petitioned candidate species.

On August 25, 1999, the Center for Biological Diversity and Southwest Center for Biological Diversity filed a complaint against the Department of the Interior with regard to the Service not making petition findings for the Gila chub and the Chiricahua leopard frog. On June 20, 2001, the United States Court of Appeals for the Ninth Circuit held that the 1999 Candidate Notice of Review (CNOR) (64 FR 57534 (Oct. 25, 1999)) did not constitute valid warranted but precluded 12-month petition findings for the Gila chub and Chiricahua leopard frog. *Center for Biological Diversity* v. *Norton*, 2001 U.S. App. LEXIS 13736 (9th Cir. 2001). In response to the Ninth Circuit decision we have revised the October 30, 2001 (66 FR 54808), and June 13, 2002 (67 FR 40658), Candidate Notices of Review to address the Court's concerns.

On August 29, 2001, we announced a settlement in subsequent litigation by the Center for Biological Diversity and others which further addresses the Ninth Circuit Court of Appeals rulings as applied to the Gila chub, as well as a number of other pending issues. Terms of the agreement require that we submit to the **Federal Register**, on or by July 31, 2002, a 12-month finding and accompanying proposed listing rule and proposed critical habitat designation for the Gila chub. This agreement was entered by the court on October 2, 2001, (*Center for Biological Diversity, et al.* v. *Norton*, Civ. No. 01–2063 (JR) (D.D.C.)). This proposed rule constitutes our 12-month finding for the petition to list the Gila chub.

Peer Review

In accordance with the policy promulgated July 1, 1994 (FR 34270), the expert opinions of three appropriate and independent specialists regarding this proposed rule will be solicited. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. Peer reviewers will be mailed copies of the proposed rule to list the Gila chub as an endangered species and to designate critical habitat following publication of this rule in the **Federal Register**. Peer reviewers will be invited to comment during the public comment period upon the specific assumptions and conclusions regarding the proposed listing. These comments will be considered in the preparation of the final listing decision.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Gila chub (*Gila intermedia*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Within the historical range of the Gila chub, much of the wetland habitat has been degraded, and loss of this habitat continues today. Human activities such as groundwater pumping, surface water diversions, impoundments, channelization (straightening of the natural watercourse, typically for flood control purposes), improper livestock grazing, prescribed burning, agriculture, mining, road building, nonnative species introductions, urbanization, and recreation all contribute to riparian and cienega habitat loss and degradation in southern Arizona and in New Mexico. The local and regional effects of these activities are expected to increase with increasing human population. The current population numbers for Tucson, Arizona, located in Pima County are 466,000 for the City and 814,600 for the County and are expected to double by the year 2054 (Tucson Chamber of Commerce 1999).

Growing water demands threaten the existence of southern Arizona perennial surface water in the Gila Basin, as well as the species that depend on it. Groundwater pumping has been a major factor in loss of surface water in springs, streams, and cienegas of Arizona, most notably in the Santa Cruz River Basin (Tellman *et al.* 1997). Groundwater levels in the Tucson area have dropped by as much as 61 meters (200 feet) (Arizona Water Research Center 1999). The Santa Cruz River and its major tributaries in the Tucson area now flow only in response to flood events (Webb and Betancourt 1992). In addition to historical losses, groundwater pumping poses a threat to surface flows in extant Gila chub habitats in Cienega Creek, Williamson Wash, and Eagle Creek. Groundwater pumping in the upper Cienega Creek drainage supports burgeoning ranchette development near the town of Sonoita. Williamson Wash is located in one of the fastest growing urban/suburban areas in Arizona. The nearby towns of Prescott and Chino Valley are growing at a rate of 3 percent per year (Prescott Chamber of Commerce 1999), and this growth is mostly based on groundwater pumping. Groundwater withdrawals in Eagle Creek are primarily for water supply for a large Phelps-Dodge open-pit copper mine at Morenci.

The increased population growth in Sierra Vista will likely stimulate borderland development, with a concurrent water demand increase that could accelerate riparian area destruction and modification and increase threats to plants and animals dependent on surface water, including the Gila chub. The San Pedro River in southern Arizona historically supported at least 13 native fish species (Jackson *et al.* 1987) but now supports only 2 (Stefferud and Stefferud 1998). Gila chub historically occupied the San Pedro River. One of the known factors that have contributed to the loss of Gila chub in the San Pedro River basin is the pumping of groundwater for agriculture and municipal uses, and sewage effluent from the community of Sierra Vista and Fort Huachucha Military Reservation. Groundwater pumping is expected to

increase with human population growth. In anticipation of population growth, Fort Huachuca Military Reservation has filed a claim for 10,522 acre-feet (A–F) per year of tributary surface water from the Gila River adjudication, more than three times the estimated 3,000 A–F currently used (Arizona Department of Water Resources 1991).

In the 1930's the city of Safford, Arizona, was granted rights-of-way to construct, operate, and maintain a water collection and distribution system for municipal use that allows them to divert a water quantity of 4000 cubic feet per second from Bonita Creek located within the Gila Box National Riparian Conservation Area. This is a large portion of the streamflow which has resulted in adverse impacts to the riparian and aquatic areas important to Gila chub.

Sections of many Gila Basin rivers and streams have been and continue to be channelized for flood control, which disrupts natural channel dynamics and promotes the loss of riparian plant communities. Channelization changes the gradient of the stream above and below the channel. It increases streamflow in the channelized section which results in increased rates of erosion of the stream and its tributaries, accompanied by gradual deposits of sediment in downstream reaches that may increase the risk of flooding (Emerson 1971; Simpson *et al.* 1982). Channelization will continue to contribute to riparian and aquatic habitat decline. Irrigation directly from stream and cienega waters diverts water away from any existing fish habitat. Fish can be carried into irrigation ditches, where they die following dessication (drying). Irrigation dams prevent movement of fish between populations, resulting in genetic isolation within species. Larger dams may also prevent movement of fish between populations and dramatically alter the flow regime of streams through the impoundment of water behind the dam and by regulating flows below the dam (Ligon *et al.* 1995).

Livestock grazing can have adverse impacts on Gila chub habitat. Poor livestock-grazing management is widely believed to have been one of the most significant factors contributing to regional stream channel downcutting in the late 1800's. Livestock grazing can destabilize stream channels and disturb riparian ecosystem functions (Tellman *et al.* 1997). Effects to Gila chub from poor livestock grazing come from increased erosion/sedimentation in stream channels, elimination of undercut banks that provide cover, alteration of channel structure and composition of the stream bottom, loss of wetland and riparian vegetation, reduced backwater pools, decreased water quality, lowered base flows (i.e. minimum stream flow) and higher peak flows (Ohmart 1996; Hendrickson and Minckley 1984). As the water table lowers, a resultant loss of riparian vegetation may occur which allows for upland shrub species, which require less water, to invade. Upland shrub species do not have the characteristics to provide for cover or the root system to stabilize the soil and catch sediment in order to stabilize the stream bank. Cienega Creek in the Santa Cruz River basin has the only stable-secure population of Gila chub. The BLM's Empire-Cienega Resource Conservation Area (RCA) encompasses most of the portion of Cienega Creek in which Gila chub occur. Although the RCA is managed to preserve aquatic, riparian, and associated wildlife values, livestock grazing still occurs year-round on a rotational grazing system, and thus this area is still subject to a certain degree of threat caused by livestock grazing.

Mining activities were more widespread historically and may have constituted a greater threat in the past; however, the continued mining of sand and gravel, iron, gold, copper, or other materials remains a potential threat to the habitat of Gila chub. The recently proposed Gentry Iron Mine may be located within 1.6 km (1.0 mi) of two Gila chub populations on the Tonto National Forest. The resulting effects of proposed mining activities, like the Gentry Iron Mine, on these populations are uncertain at this time, but may include changes in water quality and flow rates due to dewatering of nearby streams needed for mining operations. Sand and gravel mining removes riparian vegetation and destablizes streambanks which results in habitat loss for the Gila chub (Brown 1998). Sand and gravel mining along the Santa Cruz, San Pedro, and Babocomari Rivers has had serious impacts in the past and continues, although at a reduced scale.

Roads and recreation have adversely affected Gila chub habitat. Increased sediment is the primary problem related to roads. One source of sediment entering stream systems may result from off-road vehicles when they directly disturb and crush vegetation to the point that bare soil is exposed. Roads in forest and rangeland areas may also contribute substantially to watershed problems through direct soil disturbance during road construction. Established roads may also result in an increase of sediments entering stream systems through storm run-off.

Roads in Bonita Creek traverse this perennial streambed more than 30 times over its length (BLM 1998). Use of the existing road system creates local disturbance of normal stream function through displacement and injury of fish and macroinvertebrates, increased turbidity, and seasonal destruction of fish eggs and larvae at road crossings. Roads within the floodplain of Bonita Creek have not been engineered for long-term stability. These roads have caused erosion of stream banks and terraces in some areas. This erosion has negatively affected the condition of aquatic and associated riparian communities that support Gila chub (BLM 1998).

Another example of problems caused by roads is found in the BLM's Gila Box Riparian Natural Conservation Area (RNCA) located 12.8 km (8 mi) northeast of Safford, Arizona. The RNCA supports aquatic habitats of the Gila River, San Francisco River, Eagle Creek, Bonita Creek, and several small springs (BLM 1998). This habitat is critical to the six remaining native fish; longfin dace (*Agosia chrysogaster*), Sonora sucker (*Catastomus insignis*), Gila chub (*Gila intermedia*), desert sucker (*Catastomus Pantosteus clarki*), speckled dace (*Rhinichthys osculus*), and the reestablished razorback sucker (*Xyrauchen texanus*). The Gila River is traversed by light-weight sandrails (a type of off-road vehicle) which tend to remain above the waterline, except to cross. This activity is highest during the dry years and may be curtailed by high waters during wet years. Fish can be injured or displaced, and eggs from spawning areas can be crushed by this activity (BLM 1998).

Concentrated recreational activity in the areas along Bonita Creek, such as wading, swimming, and walking up and down the creek, displace fishes such as the Gila chub and the razorback sucker, a federally endangered fish, and alter channel morphology. Recreational use often results in crushing and trampling of vegetation on banks and terraces, resulting in adverse impacts to the Gila chub and its habitat (BLM 1998). Recreation is heavy along Sabino Canyon and affects streambanks and channel morphology; however, the rocky nature of the area may help to minimize adverse effects. Cienega Creek's recreational use is increasing and the present localized impacts, such as off-road-vehicle use, are expanding.

Human activities in the watershed have had substantial adverse impacts to Gila chub habitat. Watershed alteration is a cumulative result of many human uses, including timber harvest, livestock grazing, roads, recreation,

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channelization, and residential construction. In Eagle Creek, the cumulative effects of watershed and stream-channel alteration have resulted in reduction of base flows, and some areas of the stream no longer flow during portions of the year (Minckley *et al.* 1979). In Williamson Valley Wash, human uses (e.g., recreational use of off-road vehicles) on the highly erodible upper watershed have resulted in increased erosion and high loads of sediment. In 1993, flooding in Williamson Valley Wash carried enough sediment that the isolated pool where Gila chub were previously collected became completely filled with sand and gravel (Weedman *et al.* 1996).

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Collection of, or fishing for, Gila chub in Arizona is prohibited by Arizona Game and Fish Commission Order 41, except where such collection is authorized by special permit. Collection of Gila chub is also prohibited in Mexico except by special permit. The collection of Gila chub is prohibited in the State of New Mexico except by special scientific permit (Propst 1999). A few individual fish may be caught incidentally by recreational anglers. However, most chub populations do not occur in popular fishing areas. No commercial uses exist for Gila chub. A limited amount of scientific collecting occurs, but does not pose a threat to Gila chub since it is regulated by the States.

C. Disease and Predation

The introduction and spread of nonnative species has been identified as one of the major factors in the continuing decline of native fishes throughout North America and particularly in the southwest (Miller 1961; Lachner *et al.* 1970; Ono *et al.* 1983; Carlson and Muth 1989; Cohen and Carlton 1995; Fuller *et al.* 1999). Miller (1989) concluded that introduced nonnatives were a causal factor in 68 percent of the fish extinctions in North America in the last 100 years. For 70 percent of those fish still extant, but considered to be endangered or threatened, introduced nonnative species are a primary cause of the decline (Aquatic Nuisance Species Task Force 1994; Lassuy 1995). In Arizona, release or dispersal of new nonnative aquatic organisms is a continuing phenomenon (Rosen *et al.* 1995).

Gila chub evolved in a fish community with low species diversity and where few predators existed, and as a result developed few or no mechanisms to deal with predation (Carlson and Muth 1989). In its habitats, the Gila chub was probably the most predatory fish and experienced little or no competition. The introduction of more aggressive and competitive nonnative fish led to significant losses of Gila chub.

In the Gila River basin, introduction of nonnatives is considered a major factor in the decline of all native fish species (Minckley 1985, Williams *et al.* 1985; Minckley and Deacon 1991). Aquatic and semi-aquatic mammals, reptiles, amphibians, crustaceans, molluscs (snails and clams), insects, zoo- and phytoplankton, parasites, disease organisms, algae, and aquatic and riparian vascular plants outside of their historical range have all been documented to adversely affect aquatic ecosystems (McKnight 1993; Cohen and Carlton 1995; USGS 1998). As described below, the nonnative fishes have been demonstrated to pose a significant threat to Gila River basin native fishes, including Gila chub (Minckley 1985, Williams *et al.* 1985; Minckley and Deacon 1991).

The aquatic ecosystem of the central Gila River basin has relatively small streams with warm water and low gradients, and many of the native aquatic species are small. Therefore, much of the threat to native fishes comes from small nonnative fish species, as has also been noted for southern Nevada aquatic ecosystems (Deacon *et al.* 1964). Examples of this are the impacts of mosquitofish and red shiner which may compete with or predate upon native fish in the Gila River basin (Meffe 1985; Douglas *et al.* 1994). In Aravaipa Creek the red shiner has moved upstream and is competing with the native fish.

Nonnative fishes known from within historical range of Gila chub in the Gila River basin include channel catfish (*Ictalurus punctatus*), flathead catfish (*Pylodictis olivaris*), red shiner (*Cyprinella lutrensis*), fathead minnow (*Pimephales promelas*), green sunfish (*Lepomis cyanellus*), largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieui*), rainbow trout (*Oncorynchus mykiss*), western mosquitofish (*Gambusia affinis*), carp (*Cyprinus carpo*) (USFWS 1983, Young and Bettaso 1994), warmouth (*Lepomis gulosus*), bluegill (*Lepomis macrochiris*), yellow bullhead (*Ameiurus natalis*), black bullhead (*Ameiurus melas*), and goldfish (*Carassius auratus*) (Arizona Game and Fish Department [AGFD] Native Fish Database [NFDB]). Additionally, as discussed below, parasites introduced incidentally with nonnative species may jeopardize Gila chub populations (USFWS 1983).

Dudley (1995) correlated green sunfish presence with Gila chub declines in Sabino Creek, Arizona. This included predation by small green sunfish on young-of-the-year Gila chub. Minckley *et al.* (1977) suggested that predation by green sunfish may explain the absence of Gila chub from the upper Santa Cruz River.

Western mosquitofish were introduced outside of their native ranges to help control mosquitos. Because of their aggressive and predatory behavior, mosquitofish may negatively affect populations of small fish through predation and competition (Myers 1967; Courtenay and Meffe 1989). Introduced mosquitofish have been particularly destructive in the American west where they have contributed to the elimination or decline of populations of federally threatened and endangered species such as the Gila topminnow (*Poeciliopsis occidentalis occidentalis*) (Courtenay and Meffe 1989). They often attack, shred fins, and sometimes kill other fish species. Mosquitofish are known to prey on eggs, larvae, and juveniles of various fishes, including the Gila chub.

Largemouth bass are another nonnative species intentionally introduced for the purpose of sportfishing. Introduced bass usually affect populations of small native fishes through predation, sometimes resulting in the decline or extinction of such species (Minckley 1973). Species that have suffered such effects include populations of Gila chub and Monkey spring pupfish (*Cyprinodon* sp.) (Minckley 1973).

Asian tapeworm (*Bothriocephalus acheilognathi*) was introduced into the United States via imported grass carp in the early 1970's. It has since become well established in the southeast and mid-south and has been recently found in the southwest. The definitive host in the life cycle of *Bothriocephalus acheilognathi* is cyprinid fishes and therefore, is a potential threat to the Gila chub as well as to the other native fishes in Arizona. The Asian tapeworm affects fish health in several ways. Two direct impacts are by impeding the digestion of food as it passes through the intestinal track and when large enough numbers of worms feed off of the fish causing emaciation and starvation. An indirect effect is that weakened fish are more susceptible to infection by other pathogens. The Asian tapeworm is present in the Colorado River basin in the Virgin River (Heckman *et al.* 1986) and the Little Colorado River (Clarkson *et al.* 1997). It has recently invaded the Gila River basin and was found during the Central Arizona Project (CAP) fall, 1998 monitoring in the Gila River and Ashurst-Hayden Dam. This parasite can infest many species of fish and is carried into new areas along with nonnative fishes or native fishes from contaminated areas.

The parasite (*Ichthyophthirius multifiliis*) ("Ich") is a potential threat to Gila chub. "Ich" disease has occurred in some Arizona streams, probably favored by high temperatures and crowding as a result of drought (Mpoame 1981). The deep, quiet waters in which this host usually occurs (Minckley 1973) seem stable enough that "Ich" cysts do not wash away. This parasite was observed being transmitted on the Sonoran sucker, although it doesn't appear to be host specific and could be transmitted by other species. This protozoan becomes embedded under the skin and within the gill tissues of infected fish. When the "Ich" matures it leaves the fish, causing fluid loss, physiological stress, and sites that are susceptible to infection by other pathogens. If the "Ich" are present in large enough numbers they can also impact respiration because of damaged gill tissue.

Anchor worm (*Lernaea cyprinacea*) (Copepoda), an external parasite, is unusual in that it has little host specificity, infecting a wide range of fishes and amphibians. Additionally, infection has been known to kill large numbers of fish due to tissue damage and secondary infection of the attachment site (Hoffnagle and Cole 1997). Presence of this parasite in the Gila River basin is a threat to the Gila chub and other native fish. In July 1992, the BLM found Gila chub that were heavily parasitized by *Lernaea cyprinacea* in Bonita Creek. These fish were likely more susceptible to parasites due to physiological stress as a result of degraded habitat and decreased water flows due to water withdrawals.

Aquatic nonnative species are introduced and spread into new areas through a variety of mechanisms, both intentional and accidental, and authorized and unauthorized. Mechanisms for nonnative dispersal in the southwestern United States include interbasin water transfer, sport stocking, aquaculture, aquarium releases, bait-bucket release (release of fish used as bait by anglers), and biological control.

Gila chub collected in 1995 in the streams on or adjacent to the San Carlos Reservation have been recorded with spinal deformities and various skin lesions, probably due to the presence of contaminants in the water (USFWS 1998).

When the health of fish is compromised beyond their immune systems ability to cope with the stressors impacting it, they become vulnerable to other opportunistic pathogens that are ubiquitous in aquatic systems. These pathogens can include viruses, bacteria, fungi, and internal and external parasites.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms allow the continuing decline of Gila chub. Gila chub are threatened by introductions of nonnative fish. Fish introductions are illegal unless approved by the respective States. However, enforcement is difficult. Many nonnative fish populations are established through illegal introductions. The use of live bait is permitted in Arizona for nine species of fish, crayfish, and waterdogs (tiger salamanders (*Ambystoma pigrimum*)), all of which are nonnative to the State of Arizona and several of which are known to have serious adverse effects on native species. The portion of the state in which use of live bait is permitted is limited and changes have restricted use of live bait in most of the Gila River system in Arizona (AZ Game and Fish Commission Order 40, effective January 1, 1998). The use of live bait is allowed in the Gila Basin in New Mexico (David Propst pers. comm. 1999).

The increasing restriction of live bait use will reduce the input of nonnative species into the Gila chub's habitat. However, it will do little to reduce unauthorized bait use or other forms of "bait-bucket" transfer (*e.g.*, dumping of unwanted aquarium fish which may be invasive) not directly related to bait use. In fact, those other "bait-bucket" transfers are expected to increase as the human population of southern Arizona increases and as nonnative species become more available to the public through increased aquaculture, increased aquarium trade, and increased distribution through mechanisms such as the CAP aqueduct. The general public have been known to dump unwanted pet fish and other aquatic species into irrigation ditches such as the CAP aqueduct. The CAP aqueduct runs through the Phoenix metropolitan area.

A variety of existing international conventions and law, and Federal and State regulations provide limited protection to the Gila chub and its habitat. The Gila chub is included in *Wildlife of Special Concern* in Arizona, and State regulations prohibit collection of or fishing for Gila chub in Arizona except under special permit (AGFD 1988). In New Mexico, Gila chub is listed as endangered, and collecting is prohibited except by special permit (Propst pers. comm. 1999). In Mexico the Gila chub is endangered and the collection of threatened and endangered species is prohibited (DOF 1994). The habitat of the Gila chub and other threatened and endangered species is protected from some activities in Mexico.

The Lacey Act (16 U.S.C. 3371 *et seq.*), as amended in 1982, provides some protection for the Gila chub. This legislation prohibits the import, export, sale, receipt, acquisition, purchase, and engagement in interstate or foreign commerce of any species taken, possessed, or sold in violation of any law, treaty, or regulation of the United States, any Tribal law, or any law or regulation of any State.

The Federal Land Policy Management Act of 1976 (43 U.S.C. 1701 *et seq.*) and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) direct Federal agencies to prepare programmatic-level management plans to guide long-term resource management decisions. In addition, the FS is required to manage habitat to maintain viable populations of existing native and desired nonnative vertebrate species in planning areas (36 CFR 219.19). These regulations have resulted in the preparation of a variety of land management plans by the FS and the BLM that address management and resource protection of areas that support, or in the past supported, populations of Gila chub.

Many activities that affect the Gila chub and its habitat may occur outside of the States in which it occurs. For instance, activities such as atmospheric pollution from copper smelters or other actions that may be responsible for global amphibian declines, may also affect Gila chub. State and Federal air quality regulations strictly regulate emissions from copper smelters, historically a major source of acidic rainfall and atmospheric cadmium and arsenic in southeastern Arizona, pollutants that may affect the Gila chub (Hale and Jarchow 1988). However, a major source of these pollutants has been copper smelters in Sonora, Mexico which are not subject to the same regulations as in the United States (Hale *et al.* 1995; Blanchard and Stromberg 1987).

The FS has only limited ability to regulate introductions or stockings of nonnative species that prey on the Gila chub. Despite extensive planning efforts by the FS and implementation of management actions to maintain viable populations of native species on FS

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lands, loss of Gila chub populations and metapopulations has continued.

Wetland values and water quality of aquatic sites inhabitated by the Gila chub are afforded varying protection under the Federal Water Pollution Control Act of 1948 (33 U.S.C. 1251–1376), as amended; and Federal Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands), and section 404 of the Clean Water Act which regulates dredging and filling activities in waterways.

The New Mexico Department of Game and Fish has adopted a wetland protection policy whereby the Department does not endorse any project that would result in net decrease in either wetland acreage or wetland habitat values. This policy affords only limited protection to Gila chub habitat because it is advisory only; destruction or alteration of wetlands is not regulated by State law.

The State of Arizona Executive Order Number 89–16 (Streams and Riparian Resources), signed on June 10, 1989, directs State agencies to evaluate their actions and implement changes, as appropriate, to allow for restoration of riparian resources. Implementation of this regulation may reduce adverse effects of some State actions on the habitat of the Gila chub.

As discussed above, the protection afforded by these and other Federal laws and regulations discussed herein is inadequate to halt population extirpation and the degradation of the habitat of this species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Gila chub populations remain fragmented and isolated to essentially small stream segments and are vulnerable to those natural or manmade factors that might further reduce their population size. Most of the existing populations of Gila chub occur on Federal land away from any incorporated communities and the current land uses such as livestock grazing and agriculture are the major factors in these remote areas that have contributed and will continue to contribute to the Gila chub's imperiled status. Additionally, wildfires pose a threat to the remaining extant populations. The frequency and intensity of wildfires in the Southwest has increased over the past ten years due to drought conditions, wildfire suppression activities, and increased recreational activities (*i.e.*, camping). An effort is underway to restore natural fire regimes to forest lands, but at present it is focused on areas of urban interface, and many decades will likely pass before natural fire cycles are restored on a landscape scale across the Southwest.

The fragmentation of habitat and isolation of Gila chub populations has decreased the opportunity for additional gene flow to occur within these populations. Currently, the Gila chub has limited representation in each of the subunits within its historical range. To achieve recovery, isolated populations may need to be augmented or Gila chub may need to be reintroduced into areas where they are extirpated.

In general, Arizona is an arid state; about one-half of Arizona receives less than ten inches of rain a year. Among the most important climatic factors affecting Arizona's rivers and streams is the variable pattern of rainfall which includes winter precipitation and summer thunderstorms that can be accompanied by flash floods.

Flooding is a natural part of the hydrological cycle and is an important part of a river regime. Life cycles of plant and aquatic life are tied to annual floods. Stream biota is adapted to the seasonal cycles of flooding and low flows; which helps determine the biomass of fishes. Many native stream fishes of the southwest are morphologically and behaviorally adapted to survive periodic flooding (Harrel, 1978; Meffe 1984; Minckley and Deacon 1991). Sabino Canyon in the Santa Catalina mountains in southeastern Arizona experiences these erratic flows which have an adverse effect on both the small population of Gila chub and the existing nonnatives. Seasonal timing as well as magnitude of flooding may, therefore, differentially affect nonnative species (Dudley and Matter, 1999).

Streamflow regime refers to the permanence and seasonal patterns of streamflow. Some streams have stable flow due to ground water sources, whereas others, such as many in the Gila River basin, fluctuate significantly or are intermittent because they are fed primarily by overland runoff. Stable flows can be advantageous to some fish but are not always necessary or desirable for native species such as the Gila River Basin native fish which evolved in a system with high flow fluctuations. High flows can act as a cleansing mechanism for the streambed materials. High flows also act as a cue for timing of migration and spawning. Low flows serve as a time for recruitment and growth of young fish; however, extremely low flows can limit production of young fish. Alteration of a stream's natural flow regime may be undesirable if it adversely modifies normal seasonal high and low flows to which the stream biota is adapted (Kohler and Hubert, 1993). Flow regimes in the Gila River Basin have been altered by watershed modification, dam construction, channelization and other human actions (Olmstead 1919; DeBano and Schmidt 1989; Tellman *et al.* 1997).

These extremes of natural floods have been modified through channelizing and diverting water predominantly for agricultural use in irrigation systems. Examples of this are the San Pedro River and Safford Valleys in which mainstream waterflows are adversely affected by groundwater and surface water withdrawls from the aquifers or streams. In the past, water was diverted from Cienega Creek for irrigation purposes within the BLM's Empire-Cienega Resource Conservation Area (RCA) (Weedman 1996). These withdrawals are made by direct surface water diversions from diversion dams or instream pumps and by pumping groundwater from the floodplain aquifer. The major consequences of channelization affecting aquatic systems include loss of specific substrate such as removal of snags, root masses, and other debris, loss of instream vegetation, loss of streamside vegetation, increased gradient and velocity, dewatering of adjacent lands, change in basic physicochemical regime, and decreased allocthonous input (energy source produced outside of the aquatic system) (U.S. Fish and Wildlife 1982). The consequences of channelization are greatest at the level of the individual organism, including effects on niches (habitat having the properties necessary for survival), food, reproduction, and behavior. At the population level, density and distribution of aquatic populations are affected.

Land use changes are the most significant secondary cause of channelization. The most simplistic impact is that of dewatering or more effectively draining an area, resulting in an immediate change from wetland associated uses to dryland associated uses (Darnell 1976), resulting in loss of wetland, marshes, and riparian areas.

Seasonal fluctuations due to droughts, floods, dams, and high human demand for water has had adverse impacts on the available surface flow, which restricted the distribution of Gila chub into small isolated populations. This fragmentation of habitat makes the Gila chub very vulnerable to threats from further habitat loss and competition from nonnative fish.

There are several conservation efforts being initiated to help the Upper San Pedro River subwatershed. The Upper San Pedro Partnership has identified a number of strategies to be pursued,

including requesting that ADWR move to establish an irrigation non-expansion area (areas in which limitations are placed on how much irrigation is allowed) in the subwatershed, acquisition of ephemeral arroyos to maximize aquifer recharge, elimination of groundwater pumping within one mile of the river through exchange of State lands and/or acquisition of private lands or water rights near the river, assistance to communities in securing funding for feasibility studies to determine the best use of their effluent, increasing recharge of storm water runoff, investigation of moving wells in Bisbee, Arizona, to areas outside of the San Pedro watershed, and other measures. The Partnership also proposes longer-term water resources planning to develop other strategies.

The San Pedro Alliance, a non-governmental entity, was recently created with the objective of providing information and plans for reducing water usage and sustaining the river in the long term. The Nature Conservancy has been active in local forums, and in public education and acquisitions of land and easements. The Udall Center for Studies in Public Policy has also been working in the subwatershed to inspire and enable community members to contribute to water-wise planning and management activities in the upper San Pedro River basin.

AGFD has several conservation projects in progress for helping to improve the status of the Gila chub. In cooperation with the Coronado National Forest, they recently completed a renovation project on Sabino Canyon to remove green sunfish and help improve the suitability of the existing Gila chub population. Two other projects that are in the planning stages and moving toward implementation are Bog Hole Wildlife Area and O'Donnell Canyon. Bog Hole Wildlife Area is a stock tank (pond) that was illegally stocked with nonnative green sunfish. Removal of these nonnatives is planned in addition to stocking tanks upstream that have potential Gila chub habitat. The second project is O'Donnell Canyon, where Gila chub are relatively abundant although nonnative green sunfish pose a threat. Removal of nonnative green sunfish is also required for this site. This project site is located in the Canelo Hills Preserve which is partially owned by TNC. This stream renovation project is a coordinated effort between TNC, the Service, the FS, and Region V of the Arizona Game and Fish Department. Both Larry Creek and Lousy Canyon have been stocked with Gila chub in an effort to reestablish them into suitable habitat.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Gila chub in determining to propose this rule. Based on this evaluation, we are proposing to list the Gila chub as endangered. The Act defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. The Act defines a threatened species as any species likely to become endangered within the foreseeable future. Without protections, the Gila chub will become extinct in the foreseeable future based on the following: (1) 85 to 90 percent of its habitat has been degraded or destroyed, and further degradation and destruction is ongoing; (2) extant populations of Gila chub are small and occupy habitat that has become severely fragmented, reducing chances for recolonization; and (3) competition with, and predation from, nonnatives is a major and increasing threat. These circumstances have reduced this species to an imperiled status. Therefore, the Gila chub meets the definition of an endangered species under the Act.

Critical Habitat

Definition of Critical Habitat

Critical habitat is defined in section 3 paragraph (5)(A) of the Act as (i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species.

"Conservation" as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified or help to avoid accidental damage to such areas.

To be included in a critical habitat designation, the habitat must be "essential to the conservation of the species." Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (such as areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Designation of critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for critical habitat are most appropriately addressed in recovery plans and management plans, and through section 7 consultations.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by us represent the best scientific and commercial data available. It requires that we, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original

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sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (*i.e.*, gray literature).

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do *not* signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas could still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Application of the Section 3(5)(A) Criteria Regarding Special Management Considerations or Protection

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Special management and protection are not required if adequate management and protection are already in place. Adequate special management or protection is provided by a legally operative plan or agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. If any areas containing the primary constituent elements currently were being managed to address the conservation needs of the Gila chub and did not require special management or protection, these areas would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act and would not be included in the designation.

To determine if a plan provides adequate management or protection we consider three criteria: (1) Whether the plan is current and specifies the management actions and whether such actions provide sufficient conservation benefit to the species; (2) whether the plan provides assurances that the conservation management strategies will be implemented, and in determining this we consider whether: (a) A management plan or agreement exists that specifies the management actions being implemented or to be implemented; (b) the schedule for implementation is timely; (c) there is a high probability that the funding source(s) or other resources necessary to implement the actions will be available; and (d) the party(ies) have the authority and long-term commitment to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands, and (3) whether the plan provides assurances that the conservation management strategies will be effective. In determining whether an action is likely to be effective, we consider whether: (a) The plan specifically addresses the management needs, including reduction of threats to the species; (b) such actions have been successful in the past; (c) there are provisions for monitoring and assessment of the effectiveness of the management actions; and (d) adaptive management principles have been incorporated into the plan.

Several areas of Gila chub habitat are covered under current management plans. The following paragraphs describe entities that have either a draft or final management plan that will likely address or that do address the conservation needs of the Gila chub within certain areas. As described below, we have not excluded areas on the basis of draft management plans. However, plans that are finalized prior to our final determination will be evaluated by us to determine if they provide special management.

The only tribal lands affected by this proposed designation are those of the San Carlos Apache Indian Reservation. Currently, the San Carlos Indian Apache Tribe has a draft fisheries management plan which we anticipate being finalized prior to our final determination on this proposed rule. Once completed we will consider whether this plan provides adequate special management considerations or protection for the Gila chub and we may not include these lands as a result of the management plan, or we will weigh the benefits of excluding these areas under section 4(b)(2).

The BLM and TNC have a cooperative agreement to manage the Muleshoe Preserve, which is in the lower San Pedro River Area under the Muleshoe Ecosystem Management Plan. This plan addresses the necessary maintenance and improvement of the watershed that provides for the primary constituent elements important to the Gila chub, and it provides conservation goals for the Gila chub. The Muleshoe Preserve has four drainages that support Gila chub. However, only two, Double R Canyon and Wildcat Creek, are within a closed watershed basin and are currently protected from outside adverse actions in the watershed and outside sources for nonnative species invasion. These two drainages were not included in the proposed critical habitat designation because adequate special management is being provided under Muleshoe Ecosystem Management Plan.

The Nature Conservancy holds a conservation easement on private and State Park lands in the San Rafael Valley which is located in the headwaters of the Santa Cruz River. This conservation agreement prohibits activities that would be detrimental to the watershed and Gila chub habitat. This conservation easement assures that the property will be preserved forever in its predominantly open, scenic, undeveloped, and natural condition. It will prevent any use of the property that will significantly impair or interfere with the conservation values of the property and the property's natural resources and ecosystem. This easement will conserve habitat for wildlife and fisheries, protect rare and unique native plants and animals currently known or later identified. Sheehy Spring lies within this conservation easement and it supports Gila chub. We have not included Sheehy Spring in the proposed critical habitat designation because we believe that special management is being provided by the conservation easement.

Methods

In proposing critical habitat for the Gila chub, we solicited information from knowledgeable biologists and reviewed recommendations contained in State wildlife resource reports (Weedman 1996). We also reviewed the available literature pertaining to habitat requirements, historical localities, and current localities of the Gila chub. The proposed critical habitat designation described below constitutes our best assessment of areas essential for the conservation of the Gila chub and is based on the best scientific and commercial information available. The areas proposed are within the geographical range currently occupied by the species and contain one or more of the primary constituent elements identified in the "Primary Constituent Elements" section below. All of the areas proposed as critical habitat are within the area historically occupied by the species and require special management consideration and protection to ensure their contribution to the species' recovery.

Important considerations in selection of areas included in the critical habitat designation include factors specific to each river system, such as size, connectivity, and habitat diversity, as well as rangewide recovery considerations, such as genetic diversity and representation of major portions of the species' historical range. Each area contains stream reaches that are in close proximity to nearby stream reaches with interconnected waters so that Gila chub can move between areas, at least during certain flows or seasons. The ability of the fish to repopulate areas where they have been depleted or extirpated is vital to recovery. Additionally, these reaches play a vital role in the overall health of the aquatic ecosystem and, therefore, the integrity of upstream and downstream Gila chub habitats.

Stabilization of the Gila chub at its present population level and distribution will not achieve conservation. The overall trend in the status of the Gila chub has been characterized by dramatic declines in numbers and range despite the fact that this species evolved in rapidly fluctuating, harsh environments. Known Gila chub populations remain fragmented and isolated to essentially very small stream segments and are vulnerable to those natural or manmade factors that might further reduce population size. If recovery actions fail to reverse the decline of Gila chub in its historical range, the species' vulnerability to catastrophic events, such as the introduction of the green sunfish, or a prolonged period of low or no flow, would increase. Recovery through protection and enhancement of the existing populations, plus reestablishment of populations in suitable areas of historical range, are necessary for the species' survival and recovery. As previously stated, repatriation of Gila chub from extant populations will be evaluated as a means to recover the Gila chub in unoccupied portions of its historical habitat. Future restoration efforts will occur, pending completion of an approved recovery plan and genetic work to determine the suitability of using Gila chub from the extant populations in repatriation efforts.

In proposing critical habitat for the Gila chub, we identified all the currently known occupied sites and determined whether they contained the primary constituent elements for the future conservation of this species. Due to the lack of extensive and intensive fish surveys within the overall historical range of the Gila chub and because of the loss of Gila chub from approximately 85 to 90 percent of its range, we are only aware of small isolated populations. The Gila chub is a headwater chub, meaning that it commonly inhabits pools in smaller streams, springs, and cienegas and prefers small tributaries. Historically, it is likely that Gila chub within each of these tributaries were geographically connected by the major river systems which would have been used as migration corridors. Most of these major rivers no longer contain suitable habitat for such movement. We divided the overall historical range into seven river subunits, and each proposed critical habitat stream segment was derived from within these main river subunits. We have used these main river units for points of reference in defining our critical habitat boundaries, but we are proposing to designate critical habitat only in tributaries of these main rivers, and not the main rivers themselves.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. These general categories of biological needs include, but are not limited to, the following: space for individual and population growth, and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter sites for breeding, reproduction, or rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species.

The specific primary constituent elements required of Gila chub habitat are derived from the biological needs of the Gila chub as described below.

Space for Individual and Population Growth and Normal Behavior

Gila chub are highly secretive, preferring quiet deeper waters, especially pools, or remaining near cover including terrestrial vegetation, boulders, and fallen logs (Rinne and Minckley 1991). Undercut banks created by overhanging terrestrial vegetation with dense roots growing into pool edges provide ideal cover (Nelson 1993). Gila chub can survive in larger stream habitat such as the San Carlos River, and artificial habitats, like the Buckeye Canal (Stout *et al.* 1970; Rinne 1976). Gila chub interact with spring and small stream fishes regularly (Meffe 1985), but prefer deeper waters (Minckley 1973). Adults often are found in deep pools and eddies below areas with swift current, as in the Gila chub habitats found in Bass Canyon and Hot Springs in the Muleshoe Preserve area. Young-of-the-year inhabit shallow water among plants or eddies, while older juveniles use higher-velocity stream areas (Minckley 1973, 1991).

Young Gila chub from Monkey Spring, Santa Cruz River watershed (now extirpated), inhabited swifter areas than adults, which used undercut banks and heavily vegetated margins of the spring run (Minckley 1969). Griffith and Tiersch (1989) collected Gila chubs from both riffles and pools in Redfield Canyon. Dudley (1995) found that Gila chubs in Sabino Creek were highly reclusive in winter, occupying dark interstitial space. Adults were found in deep water with small substrates, but often away from cover. Sub-adults were more active and visible in the summer and were observed farther from cover. Sub-adults were observed more frequently in shallow areas with measurable current as water temperatures increased.

Habitats Protected from Disturbance

As discussed in factor C above, Gila chub evolved in a fish community with low species diversity and where few predators existed, and as a result developed few or no mechanisms to deal with predation (Carlson and Muth 1989). In its habitats, the Gila chub was probably the most predatory fish and

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experienced little or no competition. The introduction of more aggressive and competitive nonnative fish has led to significant losses of Gila chub.

Food

Griffith and Tiersch (1989) observed that Gila chub are omnivorous (feed on both plant and animal substances). Adults appear to be principally carnivorous, feeding on large and small aquatic and terrestrial invertebrates and sometimes other small fishes (Rinne and Minckley 1991). Smaller individuals often feed on organic debris and aquatic plants (especially filamentous (threadlike) algae, and less intensely on diatoms (unicellular or colonial algae).

Griffith and Tiersch (1989) dissected 27 Gila chub stomachs from Refield Canyon, finding aquatic material that included speckled dace and dobsonfly nymphs (order Megaloptera). Terrestrial insects included primarily ants, with some caterpillars and beetles. Diatoms (algae) were most common by volume. Bottom feeding may also occur, as suggested by presence of small gravel particles. Minckley (1969) observed Gila chub chasing Gila topminnows in Monkey Spring, but not necessarily as prey.

Water Quality

Water quality is also an issue for the Gila chub. Excessive sedimentation is the primary threat to water quality for the Gila chub (as discussed in factor A above). In addition, mining activity can also introduce contaminants. For example, Gila chub that are found in Mineral Creek are limited to waters that are above the ASARCO mine. Water from the mine is drained back into Mineral Creek and no Gila chub have been found in this area.

Reproduction and Rearing of Offspring

Spawning probably occurs over beds of submerged aquatic vegetation or root wads. Nelson (1993) attempted to identify cover and substrate types, duration of spawning, breeding color changes, and water temperature during spawning in Cienega Creek, Arizona. He concluded that warmer water temperatures 20 to 24 degrees Celsius (C) (68 to 75.2 degrees Farenheit (F)) appear to increase breeding color intensities. Thus, warmer water temperatures may contribute to a successful spawn. For the roundtail chub, a close relative of the Gila chub, spawning occurs when water temperatures are approximately 20°C (68°F) (Bestgen *et al.* 1985). Bestgen (1985) concluded that temperature was the most significant environmental factor triggering spawning. In the 2002 Status Survey for the roundtail chub, spawning temperatures ranged from 20°C to 26.5°C (68 to 79.7°F).

We are required to list the known primary constituent elements together with a description of any critical habitat that is designated. The primary constituent elements determined necessary for survival and recovery of the Gila chub include, but are not limited to:

1. Perennial pools, areas of higher velocity between pool areas, and areas of shallow water among plants or eddies all found in small segments of headwaters, springs, or cienegas of smaller tributaries.

2. Water temperatures for spawning ranging from 20 to 26.5°C (68 to 79.7°F) with sufficient dissolved oxygen, nutrients, and any other water related characteristics needed.

3. Water quality with reduced levels of contaminants or any other water quality characteristics, including excessive levels of sediments, adverse to Gila chub health.

4. Food base consisting of invertebrates, filamentous (threadlike) algae, and insects.

5. Sufficient cover consisting of downed logs in the water channel, submerged aquatic vegetation, submerged large tree root wads, undercut banks with sufficient overhanging vegetation, large rocks and boulders with overhangs.

6. Habitat devoid of nonnative aquatic species detrimental to Gila chub or habitat in which detrimental nonnatives are kept at a level which allows Gila chub to continue to survive and reproduce. For example, the Muleshoe Preserve and Sabino Canyon Gila chub populations are devoid of nonnative aquatic species. The O'Donnell Canyon Gila chub population has continued to survive and reproduce despite the current level of nonnative aquatic species present.

7. Streams that maintain a natural unregulated flow pattern including periodic natural flooding. An example is Sabino Canyon which has experienced major floods. If flows are modified, then the stream should retain a natural flow pattern that demonstrates an ability to support Gila chub.

Proposed Critical Habitat Designation

The proposed designation includes areas within the geographical range occupied by the Gila chub that contain one or more of the primary constituent elements and that may require special management or protection. We propose to designate approximately 333.6 km (207.8 mi) of stream reaches as critical habitat.

Critical habitat vital for the conservation of Gila chub includes: cienegas, headwaters, spring-fed streams, perennial streams (Vives 1990), and spring-fed ponds (Minckley 1969). Historically, the range of the Gila chub covered over one-quarter of southeastern Arizona. The Gila chub now occupies about 10 to 15 percent of its historical range. Current populations of Gila chub are now scattered in small disjunct habitats throughout the following Counties; Yavapai, Maricopa, Gila, Coconino, Pinal, Graham, Pima, Santa Cruz, Cochise, and Greenlee.

The proposed critical habitat described below constitutes our best assessment of areas needed for the conservation of Gila chub and is based on the best scientific and commercial information available. The proposed areas are essential to the conservation of the species because they currently support populations of Gila chub and because they currently have the necessary requirements for survival, growth, and reproduction of the Gila chub (see "Primary Constituent Elements" section above). All of the proposed areas are essential to help preserve genetic diversity and adaptation capabilities of the Gila chub.

For each stream reach the up- and downstream boundaries are described below. Additionally, the proposed critical habitat includes the stream channels within the identified stream reaches and areas within these reaches potentially inundated during high flow events. Critical habitat includes the area of bankfull width plus 300 feet on either side of the banks. The bankfull width is the width of the stream or river at bankfull discharge, *i.e.*, the flow at which water begins to leave the channel and move into the floodplain (Rosgen 1996). Bankfull discharge, while a function of the size of the stream, is a fairly consistent feature related to the formation, maintenance, and dimensions of the stream channel (Rosgen 1996). This 300-foot width defines the lateral extent of those areas we believe are essential to the species' conservation.

We determined the 300-foot lateral extent for several reasons. First, the implementing regulations of the Act require that critical habitat be defined by reference points and lines as found on standard topographic maps of the area (50 CFR 424.12). Although we considered using the 100-year floodplain, as defined by the Federal Emergency Management Agency (FEMA), we found that it was not included on standard topographic maps, and the information was not readily available from FEMA or from the Army Corps of Engineers for the areas we are proposing to designate. We suspect this is related to the remoteness of various stream reaches. Therefore, we selected the 300-foot lateral extent, rather than some other delineation, for three biological reasons: (1) The biological integrity and natural dynamics of the river system are maintained within this area (*i.e.*, the floodplain and its riparian vegetation provide space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain appropriate channel morphology and geometry, store water for slow release to maintain base flows, provide protected side channels and other protected areas, and allow the river to meander within its main channel in response to large flow events); (2) conservation of the adjacent riparian area also helps provide essential nutrient recharge and protection from sediment and pollutants; and (3) vegetated lateral zones are widely recognized as providing a variety of aquatic habitat functions and values (*e.g.*, aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality (65 FR 12897; Middle Rio Grande Biological Interagency Team 1993). We invite comments or information relating to the 300-foot lateral width of this proposed designation of critical habitat.

This proposal takes into account the naturally dynamic nature of riverine systems and recognizes that floodplains (including riparian areas) are an integral part of the stream ecosystem. For example, riparian areas are seasonally flooded habitats (*e.g.*, wetlands) that are major contributors to a variety of vital functions within the associated stream channel (Federal Interagency Stream Restoration Working Group 1998, Brinson *et al.* 1981). They are responsible for energy and nutrient cycling, filtering runoff, absorbing and gradually releasing floodwaters, recharging groundwater, maintaining streamflows, protecting stream banks from erosion, and providing shade and cover for fish and other aquatic species. Healthy riparian areas help ensure water courses maintain the habitat components essential to aquatic species (*e.g.*, *see* U.S.D.A. Forest Service 1979; Briggs 1996), including the Gila chub. Habitat quality within the mainstem river channels in the historical range of the Gila chub is intrinsically related to the character of the floodplain and the associated tributaries, side channels, and backwater habitats that contribute to the key habitat features (*e.g.*, substrate, water quality, and water quantity) in these reaches.

Among other things, the floodplain provides space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain channel morphology and geometry. We believe a relatively intact riparian area, along with periodic flooding in a relatively natural pattern, are important in maintaining the stream conditions necessary for long-term survival and recovery of the Gila chub.

Conservation of the river channel alone is not sufficient to ensure the survival and recovery of the Gila chub. For the reasons discussed above, we believe the riparian corridors adjacent to the river channel provide an important function for the protection and maintenance of critical habitat and are essential to the conservation of the species.

Critical Habitat Designations

We propose the following areas as critical habitat for Gila chub (*see* the "*Regulation Promulgation*" section of this rule for exact legal descriptions of the critical habitat boundaries). The proposed designation includes seven river units with a total of 333.6 km (207.8 mi) of stream reaches (see Table 1 below). These river units represent those areas that currently are within the geographical range occupied by the Gila chub, including small tributaries, springs, and cienegas. We are not proposing to designate the mainstem river channels that may have been historically used by Gila chub as migration corridors and are currently considered outside of the occupied range of the Gila chub. In addition, most of these major rivers no longer contain suitable habitat to serve as migration corridors for movement of Gila chub. The distances and conversions below are approximate.

TABLE 1.—APPROXIMATE CRITICAL HABITAT IN STREAM KILOMETERS AND MILES (7 RIVER UNITS).

	New Mexico	Arizona	Total
Federal land (USFS and BLM)	11.6 km (7.27 mi)	185 km (115 mi)	196.6 km (122.3 mi)
State	0	11.2 km (7.0 mi)	11.2 km (7.0 mi)
County	0	17.2 km (10.7 mi)	17.2 km (10.7 mi)
Private	0	28.6 km (17.8 mi)	28.6 km (17.8 mi)
Tribal	0	80.0 km (50.0 mi)	80.0 km (50.0 mi)
Total	11.6 km (7.27 mi)	322 km (200.5 mi)	333.6 (207.8)

Area 1

Upper Gila River Unit, Grant County, New Mexico; Greenlee and Graham counties, Arizona. Tributary streams proposed for critical habitat include Turkey Creek, Dix Creek, Harden Cienega Creek, Eagle Creek, and East Eagle Creek. All of these tributaries are within the geographical range occupied by the Gila chub. These tributaries represent the few remaining tributaries of a low desert river that currently provide the necessary habitat for the Gila chub, in a largely natural state.

a. *Turkey Creek (New Mexico)*—11.8 km (7.3 mi) of creek extending from the edge of the Gila Wilderness boundary in the Gila National Forest and continuing upstream into the Gila Wilderness. Turkey Creek contains one or more of the primary constituent elements, including perennial pools and the necessary vegetation that provides cover. Turkey Creek supports a population of Gila chub (David Propst pers. comm. 1999). Gila chub were collected in Turkey Creek in 2001.

b. *Eagle Creek and East Eagle Creek*—35.2 km (21.8 mi) of creek. The proposed designation extends from Eagle Creek, T. 1 S., R. 28 E., Section 31 SWSW continuing upstream to the

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confluence with Dry Prong and East Eagle Creeks. The proposed designation also includes from East Eagle Creek extending from its confluence with Eagle Creek continuing upstream to its headwaters. Nine other native fishes known to occupy Eagle Creek include loach minnow, spikedace, longfin dace, speckled dace, Sonora sucker, desert sucker, razorback sucker (repatriated), roundtail chub, and an undetermined trout. This upper portion of Eagle Creek contains one or more of the primary constituent elements, including a series of permanent pools with riffle (shallow area in a streambed causing ripples) and run areas in between these pools and the necessary vegetation that provides cover. Eagle Creek has low turbidity and low salinity which significantly reduces the concentration of dissolved salts that get delivered into the Gila River, thereby providing suitable habitat for the Gila chub. Gila chub were first collected on Eagle Creek in 1987 by Clarkson near the Honeymoon Campground. There is a diversion dam just below the end of the proposed critical habitat reach that acts as a barrier to prevent nonnatives from invading from the Gila River. Periodic flooding appears to decrease the presence of nonnatives, subsequently decreasing the impacts to native fishes by nonnatives in Eagle Creek above this diversion dam (Marsh *et al.* 1990). East Eagle Creek contains one or more of the primary constituent elements, including a series of permanent pools with riffle and run areas in between these pools and the necessary vegetation that provides cover. East Eagle Creek is also hydrologically connected to Eagle Creek. The FS is currently involved in restoration work on East Eagle Creek by changing grazing management to benefit the Gila chub and other native fish.

c. *Harden Cienega Creek*—22.1 km (13.7 mi) of creek extending from the confluence with the San Francisco River upstream to its headwaters. The lower portion just above the mouth with the San Francisco River is where Gila chub were observed by Arizona State University personnel in 1995 (Weedman 1996). Harden Cienega Creek contains one or more of the primary constituent elements, including perennial pools and the necessary vegetation that provides cover.

d. *Dix Creek*—7.6 km (4.7 mi) of creek beginning one mile upstream from the confluence with the San Francisco River and continuing upstream to both the Right Prong Fork and Left Prong Fork of Dix Creek. Dix Creek is dry at the confluence with the San Francisco River, and a natural rockfall fish barrier is present at the one mile mark. This barrier is effective in isolating the upper drainages from nonnative fish. Perennial flow and Gila chub were found in 1995, in the portion below the two forks of Dix Creek (Paul Marsh pers. com. ASU 1999). Dix Creek contains one or more of the primary constituent elements, including perennial pools, and is devoid of nonnatives.

Area 2

Middle Gila River Area—Gila and Maricopa Counties, Arizona. There are three tributaries proposed for critical habitat, Mineral Creek, Blue River, and Bonita Creek. Gila chub were first confirmed in Mineral Creek in April 2000, by AGFD and ASU Zoology Department personnel. This newly found population of Gila chub fills a gap of what was previously determined unoccupied habitat within the Middle Gila River Unit. This may help to expand future populations of Gila chub in the Middle Gila River Unit. The two populations of Gila chub on the San Carlos Apache Reservation are located in the Blue River and the upper portion of Bonita Creek.

a. *Mineral Creek*—14.4 km (8.9 mi) of creek extending from the confluence with Devil's Canyon upstream to its headwaters. Gila chub currently occupy Mineral Creek and this area contains one or more of the primary constituent elements, including perennial pools, the necessary vegetation that provides cover, and adequate water quality. Below this area, Mineral Creek flows through the ASARCO mine, where it has been contaminated and does not provide suitable habitat. The area below the mine is not being proposed as critical habitat.

b. *Blue River*—40 km (25 mi) of creek extending from the confluence with the San Carlos River and continuing upstream to its headwaters at Blue River Spring. Blue River contains one or more of the primary constituent elements, including perennial pools, the necessary vegetation that provides cover, and adequate water quality. There are two waterfalls in the Blue River that help to restrict nonnatives to areas below the falls. Below the lower waterfall nonnatives do occur.

c. *Bonita Creek*—63.5 km (39.6 mi) of creek extending from the City of Safford's withdrawal pipeline and continuing upstream to its headwaters at Bonita tank area. That portion of Bonita Creek, above this withdrawal pipeline, currently is within the geographical range occupied by Gila chub. Bonita Creek has all the necessary primary constituent elements essential for the Gila chub. Bonita Creek is maintained by a seasonal combination of high winter and summer flows and low spring and fall flows. This combination of flows produces a diversity of habitat which permits native fish to exist. Flooding generally reduces nonnative populations and leaves the native fish community intact (Minckley and Meffe 1987). Gila chub have evolved in these dynamic flood patterns and can persist within high flood events. Gila chub were documented in Bonita Creek in 2001.

Area 3

The Babocomari River Area—Cochise County, Arizona. Historically the Babocomari River was a perennial stream which flowed through cienegas and marshlands all the way to the San Pedro River. However, livestock overgrazing destroyed much of the river. In 1995, AGFD found that the only water use was a large impoundment in the river, on the Babocomari Ranch. Perennial flows begin upstream from this impoundment near T–4 Spring. Gila chub were first collected from the Babocomari River in 1892 near Fort Huachuca Military Reservation and again in 1950, approximately 3.5 mi below the Babocomari Ranch (Weedman, *et al.* 1996). There have been no Gila chub collected in the Babocomari River and it is not being proposed for critical habitat. Tributaries to this area include O'Donnell Canyon, Turkey Creek, and Post Canyon.

a. *O'Donnell Canyon*—3.9 km (2.4 mi) of creek extending from the southern edge of the Audubon Research Ranch property upstream to the confluences of Western, Middle, and Pauline Canyons. Gila chub occupy O'Donnell Canyon and were last documented in 2001, although nonnative green sunfish pose a threat to their existence; plans for removal of sunfish are planned for the 2002 field season by the AGFD and the Coronado National Forest. O'Donnell Canyon provides the full range of primary constituent elements necessary for the conservation of the Gila chub.

b. *Turkey Creek and Post Canyon Creek*—9.1 km (5.7 mi) of creek. The proposed designation extends from Turkey Creek to the confluence with O'Donnell Creek upstream to the Arizona Highway 83 crossing. The proposed designation also includes Post Canyon from the confluence with O'Donnell Canyon continuing upstream to the existing concrete impoundment on BLM land. Habitat upstream from the Arizona Highway 83 crossing is on private land, and its condition is unknown; thus, it is not being proposed for critical habitat. Gila chub were documented in Turkey Creek in 1991 (Weedman *et al.* 1996). Turkey Creek contains one or more of the primary constituent elements, including perennial pools, the necessary vegetation that provides cover, and adequate water quality. Post Canyon contains one or more of the primary constituent elements, including perennial pools, and is hydrologically connected to O'Donnell and Turkey Creeks. Post Canyon has only one reach that has perennial water except during extreme periods of drought. Even during periods of drought the stream maintains habitat for the Gila chub through perennial pools. The perennial portion of Post Canyon is the only portion that we are proposing to designate as critical habitat. Gila chub were collected in 1989 (Weedman 1996) in Post Canyon.

Area 4

Lower San Pedro River Area—Cochise, Graham, and Pima Counties, Arizona. Gila chub currently exist in several tributaries of this segment of the San Pedro River. Historically, Gila chub most likely occurred on both sides of the lower San Pedro River, however, documentation of Gila chub presence only exists for the east-side drainages. We are only proposing critical habitat for the east-side drainage areas.

a. *Bass Canyon*—5.4 km (3.4 mi) of creek extending from the confluence with Hot Springs Canyon upstream to the confluence with Pine Canyon. Perennial water was documented by Gori (1993) for this stream from the confluence with Hot Springs Canyon upstream 4.8 km (3.0 mi). The remainder of the stream was dry for 8 km (5.0 mi). All the State land in the Muleshoe Preserve was traded to the BLM and is managed by TNC. Beginning in 1991, biologists with TNC established eight fixed sample stations in Bass Canyon, five in Hot Springs, and three in Double R Canyon. Beginning in 1992, random pools are also sampled in the streams each year. Gila chub were collected from 1992 to 2001 in Bass Canyon. Bass Canyon contains one or more of the primary constituent elements, including perennial pools, the necessary vegetation that provides cover, and adequate water quality.

b. *Hot Springs Canyon*—1.1 km (0.69 mi) of creek extending from just below the Bass Canyon confluence downstream to the end of perennial flow, which is 0.4 km (0.25 mi) below the Muleshoe Ranch Preserve boundary. The occurrence of Gila chub within this reach of Hot Springs Canyon is sporadic due to the limited number of pools, however, Gila chub are commonly found where good pool habitat exists in Hot Springs Canyon (per. comm. TNC, 2000). Hot Springs Canyon contains one or more of the primary constituent elements, including perennial pools, the necessary vegetation that provides cover, and adequate water quality.

c. *Redfield Canyon*—3.6 km (2.2 mi) of creek extending from T. 11 S., R. 20 S, Section 31 SE continuing upstream to the confluence with Sycamore Canyon. The first documented collection of Gila chub in Redfield Canyon was in 1961. A number of collections of Gila chub occurred from 1976 to 1983. Redfield Canyon contains one of the few populations of Gila chub for which population studies have been conducted (Griffith and Tiersch 1989). Fall Fish Count (FFC) sites were established and surveyed by volunteers from 1988–1990. TNC established monitoring stations from 1991 to 1994. Gila chub were collected each year and they were the most abundant species caught in 1991 (72%) (Weedman 1996). TNC surveyed Redfield Canyon in November 2001 and Gila chub were documented. This segment of Redfield Canyon is very remote and has not had a lot of impact from humans. Additionally, no livestock grazing is permitted which contributes to the existence of the primary constituent elements for the Gila chub. Redfield Canyon has an abundant and healthy Gila chub population. Redfield Canyon contains one or more of the primary constituent elements, including perennial pools, the necessary vegetation that provides cover, and adequate water quality.

Area 5

Lower Santa Cruz River Area—Pima County, Arizona. Tributaries included in this proposed critical habitat designation are Cienega Creek, Mattie Canyon, Empire Gulch, and Sabino Canyon.

a. *Cienega Creek*—30.6 km (19.0 mi) of creek extending from the confluence with Pantano Wash and continuing upstream to T. 19 S., R. 17 E., Section 23 NWNW. The majority of Cienega Creek is federally owned and managed by the BLM with a small portion under the management of the Pima County Flood Control District. Perennial water exists within the Cienega Creek Natural Preserve managed by the Pima County Flood Control District. In March 2002, Gila chub were documented in this segment of Cienega Creek. Cienega Creek is the only stream segment that currently has a stable-secure population of Gila chub. Cienega Creek is considered to be one of the finest natural habitats for the Gila chub, and it has very few nonnative fish species. However, recent expansion of bullfrogs within the Santa Rita watershed and within Cienega Creek are raising concerns about their impacts on native fish and leopard frogs (BLM 2001). Fish inventories of Cienega Creek and its tributaries, Mattie Canyon and Empire Gulch, have been conducted since 1989 by seining, electrofishing, and visual observation. Composition of native fish in Cienega Creek varies from its upper to lower reaches as well as from year to year. Fish sampling is difficult in Cienega Creek because of the large volume of vegetation cover, great pool depths, and undercut banks. Visual observation and electrofishing data show that a large population of adult Gila chub occupy all perennial segments of Cienega Creek. Visual observations of adult Gila chub made for the aquatic habitat inventory in 1989–1990 found 368 chub along the perennial length of Cienega Creek. This estimate is undoubtedly low due to water turbidity in some reaches, vegetation cover, and the secretive nature of Gila chub. Cienega Creek contains one or more of the primary constituent elements, including perennial pools, the necessary vegetation that provides cover, and adequate water quality.

b. *Mattie Canyon*—3.9 km (2.4 mi) of creek extending from the confluence with Cienega Creek and continuing to the BLM boundary. Gila chub have been observed in Mattie Canyon and were last collected in 1995 by the AGFD. Mattie Canyon contains one or more of the primary constituent elements, including perennial pools, the necessary vegetation that provides cover, and adequate water quality.

c. *Empire Gulch*—5.2 km (3.2 mi) of creek extending from the confluence with Cienega Creek upstream through BLM lands. The majority of this reach is on BLM land and contains one or more of the primary constituent elements, including perennial pools, the necessary vegetation that provides cover, and adequate water quality. Gila chub were documented in Empire Gulch in 1995 and in 2001 (per. comm. BLM, 2001).

d. *Sabino Canyon*—11.3 km (7.0 mi) of creek extending from the southern boundary of the Coronado National Forest upstream to the confluence with the West Fork of Sabino Canyon in the Coronado National Forest. Sabino Canyon is managed by the Coronado National Forest. Sabino Canyon has recently undergone an extensive habitat restoration project for the Gila chub involving removal of nonnatives. Gila chub were last documented in Sabino Canyon in 2002 by AGFD. Sabino contains one or more of the primary constituent elements, including perennial pools and adequate water quality.

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Area 6

Upper Verde River Area—Yavapai County, Arizona. The Upper Verde River Area has two main tributaries; one extends from the confluence of Beaver Creek upstream to the confluence with Oak Creek and the second tributary is at the confluence of Williamson Valley Wash upstream of the Sullivan Lake area. A total of 30.3 km (18.8 mi) of stream are proposed as critical habitat. Silver Creek, Walker Creek, Red Tank Draw, and Williamson Valley Wash, are all tributaries to Oak and Beaver Creeks in the upper Verde River Unit. The Upper Verde River is the very northwestern part of the Gila chub's historic range. Conserving these Gila chub populations will help maintain representation of the species throughout its historic range. As recently as July 2001, Gila chub still existed in Williamson Valley Wash, Spring Creek, and Walker Creek. Surveys conducted in the Upper Verde River in 1998 have shown that all the primary constituent elements are present which help to maintain this existing population.

a. *Walker Creek*—6.8 km (4.2 mi) of creek extending from Forest road 618 crossing at T. 15 N., R. 6 E., Section 33 SE1/4 continuing upstream to T. 141/2 N., R. 6 E., Section 1 SESE. The earliest known collection of Gila chub was in 1978 by Rinne (Weedman 1996). Walker Creek was surveyed in 1994 by AGFD at five different locations; Gila chub were collected at three of those locations. The ephemeral nature of the lower end of Walker Creek appears to be limiting invasion of nonnatives from Wet Beaver Creek (Weedman 1996), thus we believe that Gila chub are still present. Walker Creek contains one or more of the primary constituent elements, including perennial pools and the necessary vegetation that provides cover.

b. *Red Tank Draw*—10.9 km (6.7 mi) of creek extending from the eastern edge of the Montezuma Castle National Monument continuing upstream to the confluence with Rarick Canyon. Red Tank Draw is an intermittent stream which offers abundant Gila chub habitat in the form of perennial pools. Gila chub were documented in Red Tank Draw in 1995 by AGFD. Red Tank Draw contains one or more of the primary constituent elements, including perennial pools and the necessary vegetation that provides cover.

c. *Spring Creek*—5.8 km (3.6 mi) of creek extending from T. 16 N., R. 4 E., Section 27 SE1/4 continuing upstream to the crossing of Arizona Highway 89A. Gila chub were documented in 1995 in Spring Creek by ADFG. Spring Creek contains one or more of the primary constituent elements, including perennial pools and the necessary vegetation that provides cover.

d. *Williamson Valley Wash*—6.8 km (4.2 mi) of creek extending from the gaging station upstream to the crossing of the Williamson Valley Road. In 1990 Williamson Valley Wash was surveyed for Gila chub and on the Matli Ranch a large stretch of stream had perennial water (Gori 1990). Gila chub were collected during this trip on the Matli Ranch. In July 2001, Williamson Valley Wash was resurveyed and Gila chub were abundant (Bryan Bagley pers. comm.). Williamson Valley Wash contains the full range of primary constituent elements necessary for the conservation of the Gila chub.

Area 7

Agua Fria River Area—Yavapai County, Arizona. There are six tributaries in the Agua Fria River in which Gila chub exist; Little Sycamore Creek, Sycamore Creek, Indian Creek, Silver Creek, Larry Creek, and Lousy Canyon. The Agua Fria River Area represents part of the upper northwest area of the historical range of the Gila chub, and current Gila chub populations in the six drainages of this river area are healthy. There have been no reports of any diseases associated with the Gila chub in this unit. Survey results indicate a good representation of all age classes. Gila chub were translocated to Larry Creek and Lousy Canyon as a conservation action in July 1995 (Weedman 1996) by the BLM. The BLM continues to monitor these populations in Lousy Canyon and Larry Creek and has changed their grazing management to help reduce adverse effects to these healthy Gila chub populations. Conserving these Gila chub populations will help maintain representation of the species throughout its historic range. In addition, these populations can be used in future repatriation activities in other areas of the Gila chub historic range.

a. *Little Sycamore Creek*—1.2 km (0.75 mi) of creek extending from the confluence with Sycamore Creek upstream to the Horner Mountain Ranch. Little Sycamore Creek is intermittent most of its reach, and the only perennial pools are 0.8 km (0.5 mi) above the confluence with Sycamore Creek and another 0.4 km (0.25 mi) at a spring above Horner Mountain Ranch. We are proposing to designate the areas where perennial pools exist. Little Sycamore Creek has similar characteristics to Sycamore Creek. Gila chub currently occupy Little Sycamore Creek (pers. obs. Ann Watson, 2002). Gila chub have evolved in very dynamic flow regimes in many southwestern streams and depending on climatic conditions, many streams can dry up in portions leaving small isolated pools. This leads to an intermittent stream however, the Gila chub continues to persist in these small isolated pools until the next flood or monsoon season. Little Sycamore Creek contains one or more of the primary constituent elements, including perennial pools, the necessary vegetation that provides cover, and adequate water quality.

b. *Sycamore Creek*—18.5 km (11.5 mi) of creek extending from the Rock Bottom Box continuing upstream to the Nelson Place Spring. Sycamore Creek is perennial throughout most of its length, with the last 3 km (2 mi) being temporally intermittent. Gila chub were last documented in Sycamore Creek during surveys conducted in 1995 (AGFD 1995) and again in May 2002 (USFS 2002). In the 2002 surveys, there were no nonnatives collected and all age classes were represented. Gila chub distribution was limited to the area between the Double T Waterfall and the Rock Bottom Box totaling a length of 5 km (3.0 mi) of habitat. Both of these sites are effective fish barriers and seem to have served to prevent nonnatives from invading this upper section of Sycamore Creek. Due to the remoteness of this area, it is unlikely that additional threats to the existing Gila chub population will be of concern. Livestock grazing is very limited in the upper portion of this reach due to the canyons and inaccessibility to the stream. However, below the fish barriers, livestock have access to these areas. Sycamore Creek contains one or more of the primary constituent elements, including perennial pools, the necessary vegetation that provides cover, and adequate water quality.

c. *Indian Creek*—5.3 km (3.3 mi) of Indian Creek, extending 3.2 km (2 mi) southwest of the Prescott National Forest boundary upstream 1.6 km (1 mi) inside Prescott National Forest. Gila chub were first collected in Indian Creek in May 1995. Since then, surveys have been conducted and Gila chub were observed using this stream (BLM 1999). Indian Creek contains one or more of the primary constituent elements, including perennial pools and the necessary vegetation that provides cover (per. comm. BLM 2002).

d. *Silver Creek*—6.7 km (4.2 mi) of creek, all of which is located above a natural waterfall/barrier located 4 km (2.5 mi) above the confluence with the Agua Fria River. The earliest record of Gila chub collected in Silver Creek was in 1980. Due to high recruitment of young-of-the-year, Silver Creek was the source of Gila chub that were translocated to Larry Creek and Lousy Canyon in July 1995. Silver Creek contains one or more of the primary constituent elements, including perennial pools and the necessary vegetation that provides cover (per. comm. BLM 2002).

e. *Larry Creek*—0.80 km (0.5 mi) of creek from the confluence with an unnamed tributary then continuing upstream approximately 0.80 km (0.5 mi) to the confluence of two unnamed tributaries. In 1995 BLM translocated a population of Gila chub from Silver Creek into Larry Creek and recruitment is good (per. comm. BLM 2002). Larry Creek contains one or more of the primary constituent elements, including perennial pools and the necessary vegetation that provides cover (per. comm. BLM 2002). In addition, this area is within a canyon and it is inaccessible to cattle due to the geological nature of the canyon which acts as a barrier.

f. *Lousy Canyon*—0.28 km (.18 mi) of creek extending from a waterfall then continuing upstream approximately 0.28 km (0.18 mi) to the fork of an unnamed tributary. In 1995 BLM translocated the second population of Gila chub from Silver Creek into Lousy Canyon. This population of Gila chub is maintaining itself and recruitment is good (per. comm. BLM 2002). In October 2001 AGFD resurveyed this stream and observed an abundant population of Gila chub. Lousy Creek contains one or more of the primary constituent elements, including perennial pools and the necessary vegetation that provides cover (per. comm. BLM 2002). In addition, this area is within a canyon and it is inaccessible to cattle due to the geological nature of the canyon which acts as a barrier.

Land Ownership

Area 1

Upper Gila River Area—the ownership is predominantly FS and BLM. Turkey Creek is within the Gila Wilderness Area in the Gila National Forest. Both Eagle and East Eagle Creeks are on the Apache Sitgreaves National Forest. Both Harden Cienega and Dix Creeks are on FS land.

Area 2

Middle Gila River Area—Mineral Creek is on State of Arizona, FS, BLM, and Tribal land.

Area 3

Babocomari River Area—O'Donnell Canyon is owned by TNC and FS. The small portion of Turkey Creek is owned by private landowners and FS. Post Canyon is predominantly private with a small section of BLM.

Area 4

Lower San Pedro River Area—Bass Canyon and Hot Springs Canyon are owned by TNC. The lower end of Hot Springs Canyon is owned by the BLM. Redfield Canyon is owned predominantly by BLM and the State of Arizona with a small parcel of private land near the confluence with Sycamore Canyon.

Area 5

Lower Santa Cruz River Area—Cienega Creek's headwaters are located on 2.5 miles of Forest land and the remaining drainage is comprised predominantly of BLM and Arizona State lands. The lower end of Cienega Creek is owned by Pima County. There is a small segment of this drainage in private ownership. Both the Mattie Canyon and Empire Gulch stream segments are on BLM lands. Sabino Canyon is predominantly FS land.

Area 6

Upper Verde River Area—is comprised of four stream segments. Walker Creek and Red Tank Draw are both are on FS land. Spring Creek is predominantly on private land, with some portions on FS and Arizona State lands. Williamson Valley Wash is all on private land.

Area 7

Agua Fria River Area—is comprised of six stream segments. Little Sycamore and Sycamore Creeks are on FS land. Larry Creek and Lousy Canyon stream segments are both on BLM land. Indian and Silver Creeks landownership is comprised predominantly of BLM and FS land with a small percentage of private land.

Effect of Critical Habitat Designation

The designation of critical habitat directly affects only Federal actions. The Act requires Federal Agencies to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local and Tribal governments, and other non-Federal entities are only affected by the designation of critical habitat if their actions occur on Federal land, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or to result in destruction or adverse modification of proposed critical habitat.

If a species is subsequently listed or critical habitat is designated, then section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. To that end, if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Regulations at 50 CFR 402.16 also require Federal agencies to reinitiate consultation in instances where we have already reviewed an action for its effects on a listed species if critical habitat is subsequently designated.

Conference on proposed critical habitat results in a report that may provide conservation recommendations to assist the action agency in eliminating or minimizing adverse effects to the proposed critical habitat that may be caused by the proposed agency action. Our conservation recommendations in a conference report are advisory. If we subsequently finalize the proposed critical habitat, consultation on agency actions that may affect the critical habitat will result in a biological opinion as to whether the proposed action is likely to destroy or adversely modify critical habitat. If we find that proposed agency action is likely to destroy or adversely modify the critical habitat, our biological opinion may also include reasonable and prudent alternatives to the action that are designed to avoid destruction or adverse modification of critical habitat.

As a result of conferencing on proposed critical habitat, we may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated as final. We may adopt the formal conference report as the biological opinion when the critical habitat designation is made final, if no significant new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10 (d)).

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Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat, a description and evaluation of those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements (defined above) to an extent that the value of critical habitat for both the survival and recovery of the Gila chub is appreciably reduced.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, and the current occurrences of the species limited to 10–15% of its historic range, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned.

Federal actions that might occur on private, State, or Tribal lands and which may require consultation might include, but are not limited to, irrigation diversion construction and maintenance; flood repair and control; game fish stocking; timber harvest; water diversion and development; reservoir construction; water quality standards; and riparian habitat restoration. Federal agencies involved with these activities are likely to include the Natural Resources Conservation Service, Bureau of Reclamation, Environmental Protection Agency (EPA), Bureau of Indian Affairs, Indian Health Services, Federal Emergency Management Agency, Federal Communications Commission, BLM, FS, and the Service.

Federal actions involving issuance of permits to private parties which may require consultation might include, but are not limited to, issuance of National Pollution Discharge Elimination System permits by the EPA and issuance of permits under section 404 of the Clean Water Act for dredging and filling in waterways by the Corps. Examples of private actions for which 404 permits may be sought include road and bridge construction, repair and maintenance; gravel mining; flood control and repair; and water diversion construction and repair.

For Federal lands, as well as for Federal activities on private, State, or Tribal lands, the following types of activities may require Section 7 consultation.

Any activity that would alter the minimum flow or the natural flow regime of any of the proposed designated stream segments. Such activities may include, but are not limited to, groundwater pumping, impoundment, water diversion, and hydropower generation.

Any activity that might alter watershed characteristics of any of the proposed designated segments. Such activities may include, but are not limited to, vegetation manipulation (*e.g.*, prescribed burns, timber harvest, road construction and maintenance, and naturally ignited fire (*e.g.*, lighting), livestock grazing, and mining).

Any activity that would significantly alter the channel morphology of any of the proposed designated stream segments. Such activities may include, but are not limited to, channelization; impoundment; road and bridge construction; removal of substrate source; destruction and alteration of riparian vegetation; reduction of available floodplain; removal of gravel or floodplain terrace materials; and sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed and floodplain disturbance.

Any activity that would alter the water chemistry in any of the proposed designated stream segments. Such activities may include, but are not limited to, release of chemical or biological pollutants into the surface waters or connected groundwater at a point source or by dispersed release (non-point).

Any activity that would introduce, spread or augment nonnative aquatic species into any of the proposed designated stream segments. Such activities may include, but are not limited to, stocking for sport, aesthetics, biological control, or other purposes; use of live bait fish, aquaculture, or dumping of aquarium fish or other species; construction and operation of canals; and interbasin water transfers (*i.e.* CAP aqueduct).

In some cases designation of critical habitat may assist in focusing conservation activities by identifying areas that contain essential habitat features (primary constituent elements), regardless of whether they are currently occupied by the listed species. This identification alerts the public and land management agencies to the importance of an area in the conservation of that species. Critical habitat also identifies areas that may require management considerations or protection.

If you have any questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Arizona Ecological Services Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about permits may be addressed to the U.S. Fish and Wildlife Service, Division of Endangered Species, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone 505–248–6920; facsmile 505–248–6788).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in public awareness and conservation actions by Federal, State, and local agencies private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Gila chub occurs primarily on Federal lands managed by Coronado, Apache-Sitgreaves, Tonto, Prescott, Coconino, and Gila National Forests; and by the BLM. Examples of Federal actions that may affect the Gila chub include, but are not limited to, dredge-and-fill activities, livestock grazing programs, construction and maintenance of stock tanks (pond), logging and other vegetation manipulation activities, flood protection and repair measures, channelization, water development, construction and management of recreation sites, road and bridge construction and maintenance, fish stocking, issuance of rights-of-way, prescribed fire, and discretionary actions authorizing mining. These and other Federal actions would require section 7 consultation if the action agency determines that the proposed action may affect listed species.

Also subject to section 7 consultation are development activities on private and State lands when such activity is conducted by, funded by, or permitted by a Federal agency. Examples include permits issued under section 404 or 402 of the Clean Water Act from the Corps or the EPA respectively. Federal actions not affecting the species, as well as actions on private lands that are not federally funded or permitted, would not require section 7 consultation.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits for endangered species are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Requests for copies of the regulations regarding listed wildlife and inquires about permits may be addressed to U.S. Fish and Wildlife Service Branch of Endangered Species, P.O. Box 1306, Albuquerque, NM 87103 (505) 248–6657 fax (505) 248–6922.

Its our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable those activities that would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness as to the effects of this proposed listing on future and ongoing activities within the species' range. We believe, based on the best available information, that the following actions will not result in a violation of section 9:

(1) Actions that may affect the Gila chub that are authorized, funded, or carried out by a Federal agency when the action is conducted in accordance with an incidental take statement issued by us pursuant to section 7 of the Act, or for which such action will not result in take;

(2) Actions that may result in take of Gila chub when the action is conducted in accordance with a permit under section 10 of the Act;

(3) Recreational activities such as hiking, off-road vehicles use, camping and hunting in the vicinity of occupied Gila chub habitat that do not destroy or significantly degrade Gila chub habitat, and do not result in take of Gila chub;

(4) Releasq, diversion, or withdrawal of water from or near Gila chub habitat in a manner that does not displace or result in dessication or death of eggs, larvae, or adults, does not disrupt spawning activities, or does not favor introduction of nonnative predators; and does not alter vegetation.

Potential activities involving this species that we believe will likely be considered a violation of section 9 include, but are not limited to, the following:

(1) Unauthorized collection, capture, or handling of the species;

(2) Intentional introduction of nonnative predators such as nonnative fish and crayfish, into occupied Gila chub habitat;

(3) Water diversion, groundwater pumping, water releases or other water management activities that result in displacement of eggs, larvae, or adults, disruption of spawning activities, introduction of nonnative predators, or significant alteration of vegetation within occupied Gila chub habitat;

(4) Discharge or dumping of hazardous materials, silt, or other pollutants into waters supporting Gila chub;

(5) Possession, sale, delivery, transport, or shipment of illegally taken Gila chub;

(6) Actions that take Gila chub that are not authorized by either a permit under section 10 of the Act or an incidental take statement under section 7 of the Act, or are not exempted from the section 9 take prohibitions; and

(7) Recreational activities such as hiking, off-road vehicles use, camping and hunting in the vicinity of occupied Gila chub habitat that destroy or significantly degrade Gila chub habitat, and result in take of Gila chub.

Not all the activities mentioned above will result in a violation of section 9 of the Act; only those activities which result in "take" of Gila chub would be considered violations of section 9. We will review other activities not identified above on a case by case basis to determine whether they may be likely to result in violation of section 9 of the Act.

If you have questions regarding whether specific activities will likely violate section 9, contact the Arizona Ecological Services Field Office (*see* **ADDRESSES** section).

Economic Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available and consider the economic and other relevant impacts of designating a particular area as critical habitat. We based this proposal on the best available scientific information. We will use the economic analysis, and take into consideration all comments and information submitted during the comment period, to make a final critical habitat designation. We may exclude areas from critical habitat upon a determination that the benefits of exclusion outweigh the benefits of specifying an area as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in extinction of the species. We will conduct a robust economic analysis on the effects of the proposed critical habitat designation prior to a final determination. Our economic analysis will comply with the ruling by the Tenth Circuit Court of Appeals in *New Mexico Cattle Growers Association, et al.* v. *U.S. Fish and Wildlife Service*. When the draft economic analysis is completed, we will announce its

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availability with a notice in the **Federal Register**, and we will reopen the comment period at that time to accept comments on the economic analysis and further comments on the proposed rule.

Secretarial Order 3206: American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

The purpose of Secretarial Order 3206 (Secretarial Order) is to, "clarif(y) the responsibilities of the component agencies, bureaus, and offices of the Department of the Interior and the Department of Commerce, when actions taken under authority of the Act and associated implementing regulations affect, or may affect, Indian lands, tribal trust resources, or the exercise of American Indian tribal rights." If there is potential that a tribal activity could cause either direct or incidental take of a species proposed for listing under the Act, then meaningful government-to-government consultation will occur to try to harmonize the Federal trust responsibility to tribes and tribal sovereignty with our statutory responsibilities under the Act. The Secretarial Order also requires us to consult with tribes if the designation of an area as critical habitat might impact tribal trust resources, tribally owned fee lands, or the exercise of tribal rights. We met with representatives of the San Carlos Apache Indian Tribe, and a draft fisheries management plan has been prepared (*see "Application of the Section 3(5)(A) Criteria Regarding Special Management Considerations or Protection"* section above).

Public Comment Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Gila chub;

(2) The location of any additional populations of the Gila chub and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of the Gila chub;

(4) Current or planned activities in the subject area and their possible effects on the Gila chub; and

(5) Information relating to the status of all non-native fish in the historic range of the Gila chub.

Prior to making a final determination on this proposed rule, we will take into consideration the comments and any additional information received, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (*see* **ADDRESSES** section).

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to read and understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) does the proposed rule contain technical language or jargon that interferes with the clarity? (3) does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the proposed designation of critical habitat in this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB). Under section 4(b)(1)(A) of the Act, the Secretary is to make listing proposals solely on the basis of the best scientific and commercial data available, after conducting a review of the status of the species and taking into account any efforts being made to protect the species. Therefore, our analyses under E.O. 12866 and the Regulatory Flexibility Act pertain only to the proposed critical habitat portion of this rule, and not to the proposed listing. Under section 4(b)(2) of the Act, the Secretary is to designate critical habitat based on the best scientific data available and after taking into consideration the economic impact and any other relevant impact of specifying any particular area as critical habitat.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today's proposed rule, we are certifying that the proposed designation of critical habitat will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

The Small Business Administration (*http://www.sba.gov/size*) defines small entities to include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical

small business firm's business operations.

To determine if a rule designating critical habitat would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, *etc.*). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; private or State activities are not affected by the designation unless they have a Federal nexus. If the listing of the Gila chub is finalized, Federal agencies will be required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect the Gila chub. If this proposed critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, we do not believe this will result in any significant additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of this species proposed for listing which presently occurs in most of the stream reaches proposed for critical habitat, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Because this species has not been listed, there is no history of consultations. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the listing and critical habitat designation. The areas where critical habitat designations are being proposed are largely being managed for the benefit of wildlife. Projected land uses for the majority of the proposed critical habitat consists of habitat improvement projects (*i.e.*, riparian restoration, watershed improvement, and prescribed burning), wildlife management, livestock grazing permits, and recreational use (*i.e.*, hunting, bird watching, and hiking).

On non-Federal lands, activities that lack Federal involvement would not be affected by the critical habitat designation. Activities of an economic nature that are most likely to occur on non-Federal lands in the area encompassed by this proposed designation are recreation-related activities (*i.e.*, hiking, trail construction, hunting, bird watching, and fishing) and residential development, particularly in the Williamson Valley Wash area near Prescott, Arizona.

We also considered the likelihood that this proposed designation of critical habitat would result in significant economic impacts to small entities. In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for small entities who are usually applicants for Federal permits. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have no consultation history for the Gila chub, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces. The kinds of actions that may be included in future reasonable and prudent alternatives include monitoring livestock grazing in riparian areas with such stipulations as restricting livestock grazing during critical periods (*i.e.*, breeding, migration), control of exotic weeds in spring areas, water conservation measures (*e.g.*, planting native vegetation) and maintenance of minimum flows, minimize the adverse affects to the watershed by proper placement of new roads, and suspended or restricted use of pesticides or herbicides in areas occupied by and necessary for the survival and recovery of this species. Because recommended reasonable and prudent alternative measures must be economically feasible, these measures are not likely to result in a significant economic impact to a substantial number of small entities.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing this designation. However, a court deadline require us to publish this proposed rule before the economic analysis can be completed. We will also revisit our determination above in light of any new information provided to us through the economic analysis or through the public comment period.

In summary, we have considered whether this proposed designation of critical habitat would result in a significant economic effect on a substantial number of small entities. It would not affect a substantial number of small entities. Many of the parcels

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within this designation are located in areas where likely future land uses would not be affected by designation of critical habitat. The majority of areas designated as critical habitat are on Federal land and a very small percentage (3%) is on privately owned land. In the remaining areas, Federal involvement—and thus section 7 consultations, the only trigger for economic impact due to the proposed designation of critical habitat—would be limited to a subset of the area proposed. The most likely future section 7 consultations resulting from this rule would be for habitat improvement projects (*i.e.*, riparian restoration, prescribed burning, and watershed improvements), permitting of livestock grazing, residential development, and recreational use. The proposed designation of critical habitat would result in project modifications only when proposed Federal activities, or non-Federal activities with a Federal nexus, would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. Therefore, we are certifying that the proposed designation of critical habitat for the Gila chub will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposal with appropriate resource agencies in New Mexico and Arizona. We will continue to coordinate any future listing decisions or designation of critical habitat for the Gila chub with the appropriate Federal, State, and local agencies. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation if they lack Federal involvement. In areas occupied by the Gila chub, Federal agencies funding, permitting, or implementing activities will be required, if this species is listed, through consultation with us under section 7 of the Act, to avoid jeopardizing their continued existence. If this critical habitat designation is finalized, Federal agencies also must ensure, also through consultation with us, that their activities do not destroy or adversely modify designated critical habitat.

In unoccupied areas, or areas of uncertain occupancy, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, and may result in additional requirements on Federal activities to avoid destroying or adversely modifying critical habitat. Any development that lacked Federal involvement would not be affected by the critical habitat designation. Should a federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the vast majority of such projects can be successfully implemented with at most minor changes that avoid significant economic impacts to project proponents.

The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of these species are specifically identified. While our definition and identification does not alter where and what federally sponsored activities may occur, these determinations may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of the proposed listing and designation of critical habitat for the Gila chub. The takings implications assessment concludes that this proposed rule does not pose significant takings implications. A copy of this assessment is available by contacting the Arizona Ecological Services Field Office (*see* **ADDRESSES** section).

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Service will use the economic analysis to further evaluate this situation.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and would meet the requirements of sections 3(a) and 3(b)(2) of the Order. We propose to list the Gila chub and designate critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Gila chub.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use since the majority of the lands being proposed as critical habitat occur on lands that are primarily used for recreational, agricultural, and timber harvesting uses, and not energy production or distribution. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget Control Number 1018–0094, which expires on July 31, 2004. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Control Number. For additional information concerning permit and associated requirements for endangered species, *see* 50 CFR 17.22.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996). However, when the range of the species includes States within the Tenth Circuit, such as that of the Gila chub, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for this proposal when it is finished.

Government-to-Government Relationship With Tribes

In accordance with the Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997), the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's requirement at 512 DM 2, we understand that recognized Federal Indian Pueblos and Tribes must be related to on a Government-to-Government basis. As mentioned above, we have proposed critical habitat on the Blue River and Upper Bonita Creek of the San Carlos Apache Reservation. However, the San Carlos Indian Apache Tribe has a draft fisheries management plan which we anticipate being finalized prior to our final determination on this proposed rule. We will continue to work with the San Carlos Tribe in an effort to finalize the fisheries management plan that addresses the conservation needs of the Gila chub. Once completed we will consider whether this plan provides adequate special management considerations or protection for the Gila chub and we may not include these lands as a result of the management plan, or we will weigh the benefits of excluding these areas under section 4(b)(2).

References Cited

A complete list of all references cited herein is available upon request from the Arizona Ecological Services Field Office (*see* **ADDRESSES** section).

Author

The primary author of this notice is Ann Watson (*see* **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend Part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17— [AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend Section 17.11(h) by adding the following in alphabetical order, under "FISHES", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Chub, Gila	*Gila intermedia*	U.S.A. (AZ, NM), Mexico.	Entire	E	NA	17.95(e)	NA

3. Amend Section 17.95 (e) by adding critical habitat for the Gila chub in the same alphabetical order as this species occurs in 17.11 (h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

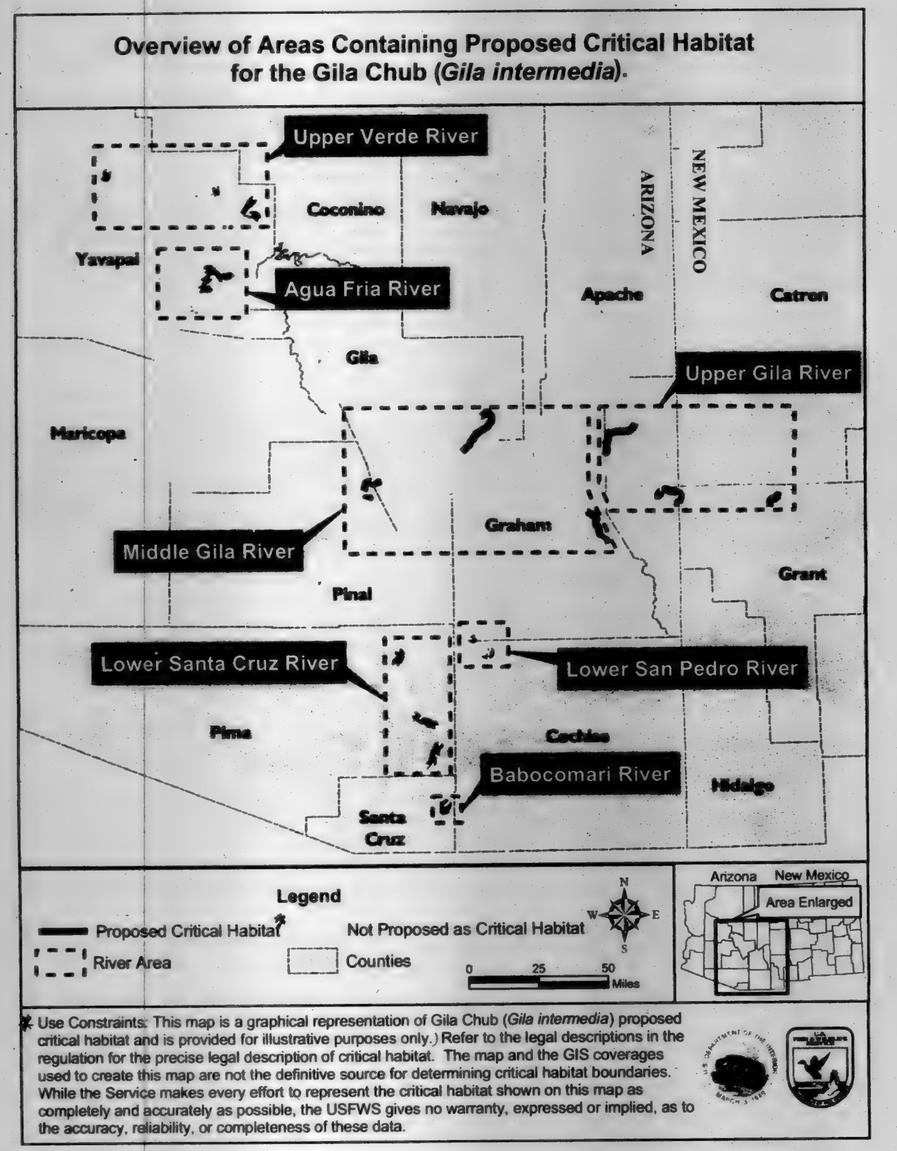
(e) *Fishes.*

* * * * *

Gila chub (*Gila intermedia*)

1. Critical habitat for the Gila chub in New Mexico and Arizona is depicted on the following overview map and as described in detail following the map.

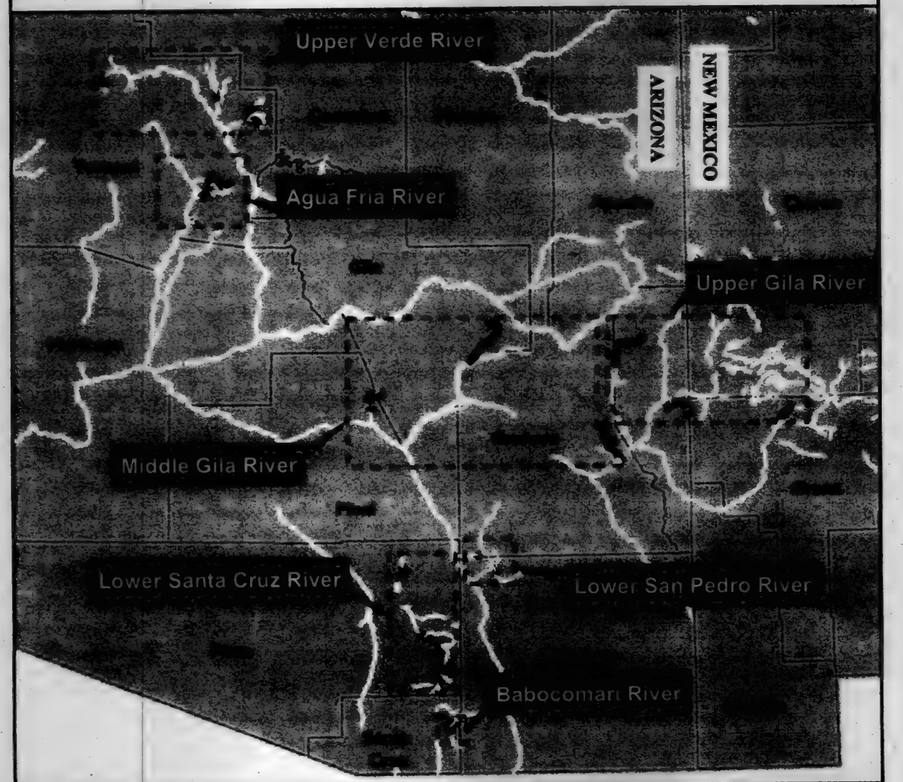
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Overview of Areas Containing Proposed Critical Habitat for the Gila Chub (*Gila intermedia*).



Use Constraints: This map is a graphical representation of Gila Chub (*Gila intermedia*) proposed critical habitat and is provided for illustrative purposes only.) Refer to the legal descriptions in the regulation for the precise legal description of critical habitat. The map and the GIS coverages used to create this map are not the definitive source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible, the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.

Upper Gila River Area 1

a. Turkey Creek (NM)—11.8 km (7.3 mi) of creek extending from the edge of the Gila Wilderness boundary in NMPM T.4 S., R. 16 W. Section 15 NW ¼, continuing upstream to the eastern boundary of Section 25 in T.3 S., R.15 W Section 19 SE ¼.

Land ownership: Gila National Forest

b. Eagle Creek and East Eagle Creek—35.2 km (21.8 mi) of creek extending from T. 1 S., R. 28 E., Section 31 SW ¼ corner of section continuing upstream to its headwaters just south of highway 191 in T. 3 ½ N., R. 29 E., Section 34 NW ¼.

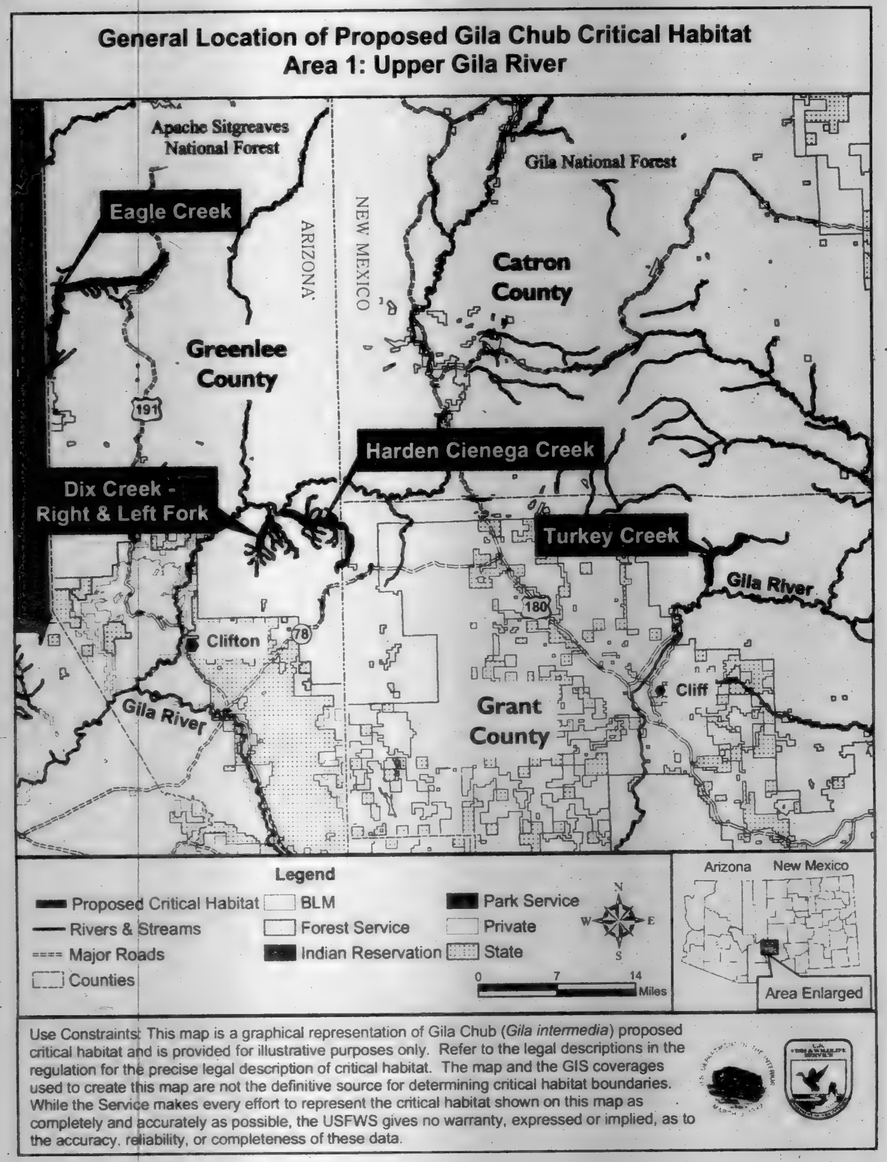
Land ownership: Apache Sitgreaves National Forest and private

c. Harden Cienega Creek—22.1 km (13.7 mile) upstream from the confluence with the San Francisco River in GSRM, T. 3 S., R.31 E. Section 3 SE ¼, continuing upstream to the headwaters in T.3 S., R.32 E. Section 33 NW ¼ approximately 14.4 km (9.0 mi).

Land ownership: Apache Sitgreaves and Gila National Forest

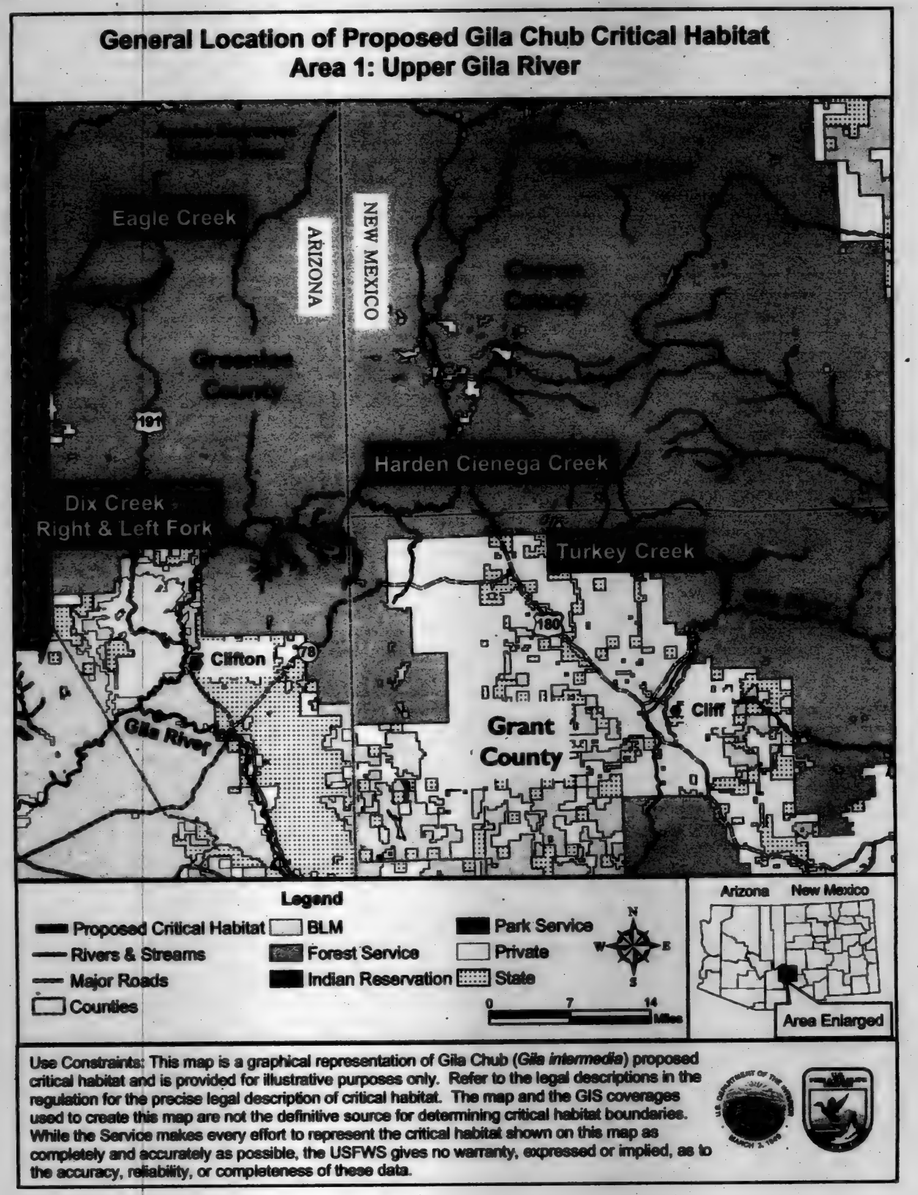
d. Dix Creek—beginning 1 mile upstream from the confluence of Dix Creek and the San Francisco River at a natural rock barrier in T. 3 S. R., 31 E., Section 9 NE¼ continuing upstream for 0.8 km (0.5 mi) to the confluence of the right and left forks of Dix Creek in T. 3 S., R. 31 E., Section 9 SE ¼. Then continuing upstream 3.2 km (2 mi) in the right fork to T. 3 S., R. 31 E. Section 17 SE ¼ and continuing upstream 4.0 km (2.5) mi in the left fork to T. 3 S., R. 32 E. Section 25 SE ¼.

Land ownership: Apache Sitgreaves National Forest



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Middle Gila River Area 2

a. Mineral Creek—14.4 km (9.0 mi) of creek extending from the confluence with Devil's Canyon in T.3 S., R. 13 E., Section 35 NW ¼ continuing upstream to its headwaters in T.2 S., R.14 E., Section 15 NE ¼.

Land ownership: Tonto National Forest, Arizona State land, and private

b. Blue River—40.2 km (25.0 mi) of Creek extending from the confluence with the San Carlos River in T.1 N. , R.19 E., Section 29 on the border of NW and NE quarters continuing upstream to its headwaters in T.2 N., R.20 E., Section 16 Center.

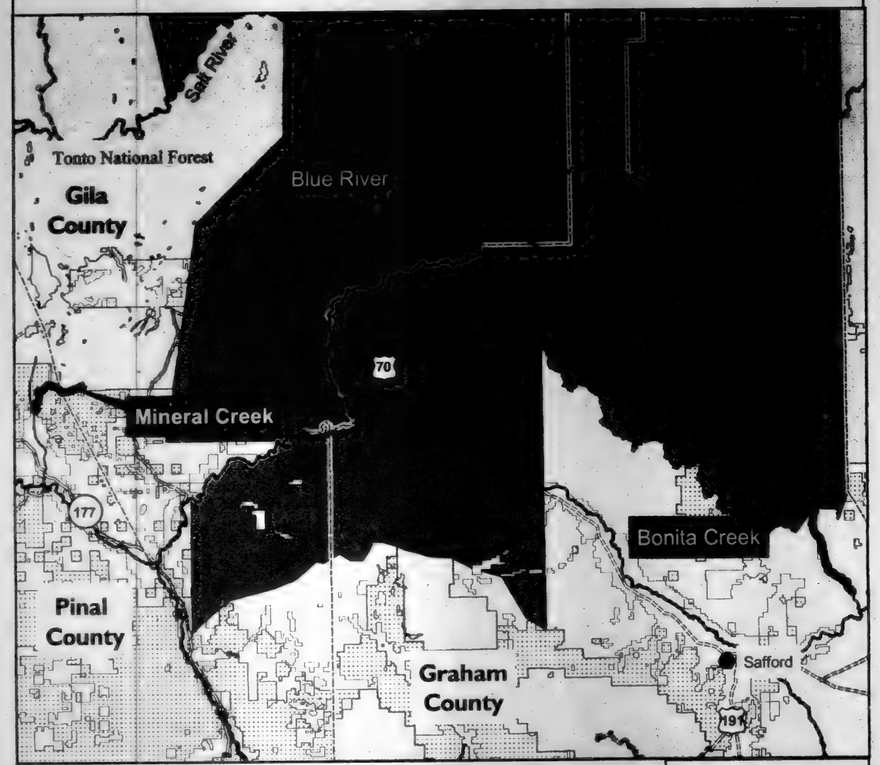
Land ownership: San Carlos Apache Reservation

c. Bonita Creek—63.5 km (39.6 mi) of Creek extending from the City of Safford's diversion pipeline in GSRM T.6 S., R.28 E., Section 21 SE ¼ continuing up to its headwaters at T.3 S., R.25 E., Section 14 SW ¼.

Land ownership: Bureau of Land Management, Tribal, and private

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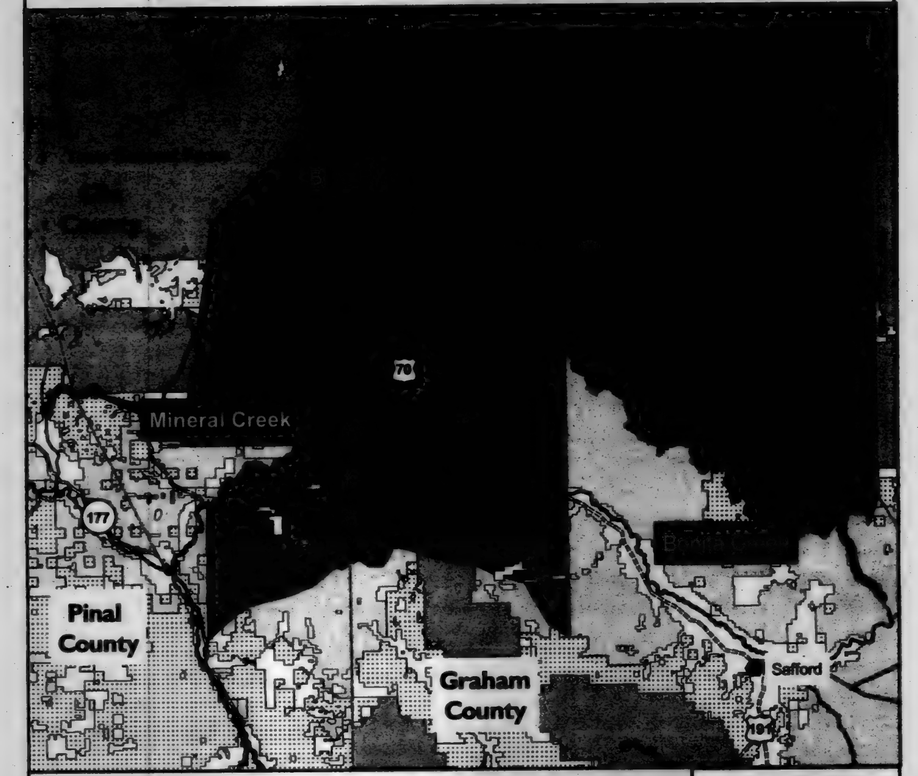
General Location of Proposed Gila Chub Critical Habitat
Area 2: Middle Gila River



Use Constraints: This map is a graphical representation of Gila Chub (*Gila intermedia*) proposed critical habitat and is provided for illustrative purposes only. Refer to the legal descriptions in the regulation for the precise legal description of critical habitat. The map and the GIS coverages used to create this map are not the definitive source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible, the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.

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General Location of Proposed Gila Chub Critical Habitat
Area 2: Middle Gila River



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Babocomari River Area 3

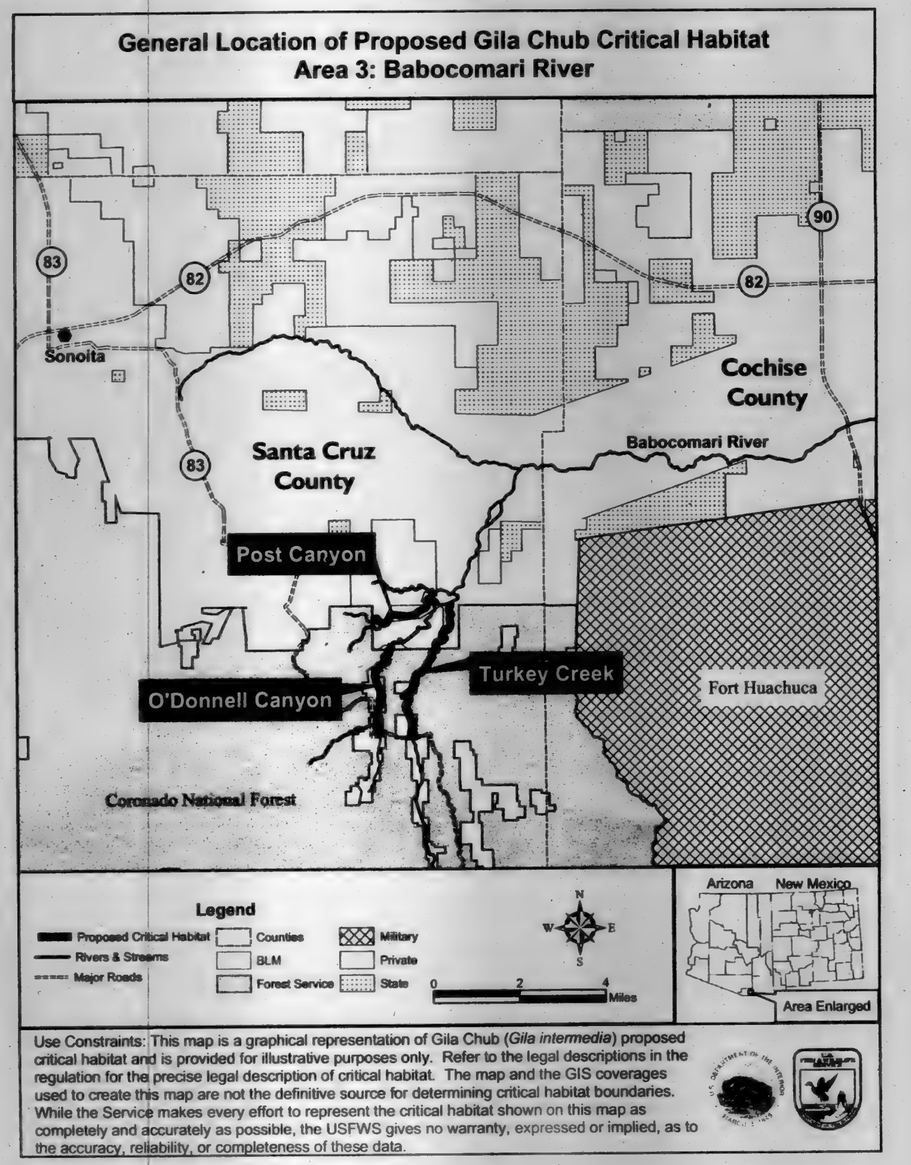
a. O'Donnell Canyon—3.9 km (2.4 mi) of creek extending from T.21 S., R.18 E., Section 33 NW ¼ on the northern boundary of Section 33, upstream to the confluences of Western, Middle, and Pauline Canyons in T.22 S., R.18 E., Section 17 NE ¼.

Land ownership: Private, Bureau of Land Management, and the Coronado National Forest

b. Turkey Creek—6.1 km (3.8 mi) of Creek extending from the confluence with O'Donnell Canyon in T.21 S., R.18 E., Section 22 SE ¼ upstream to where Turkey Creek crosses AZ highway 83 in T.22 S., R.18 E., Section 9 NE ¼.

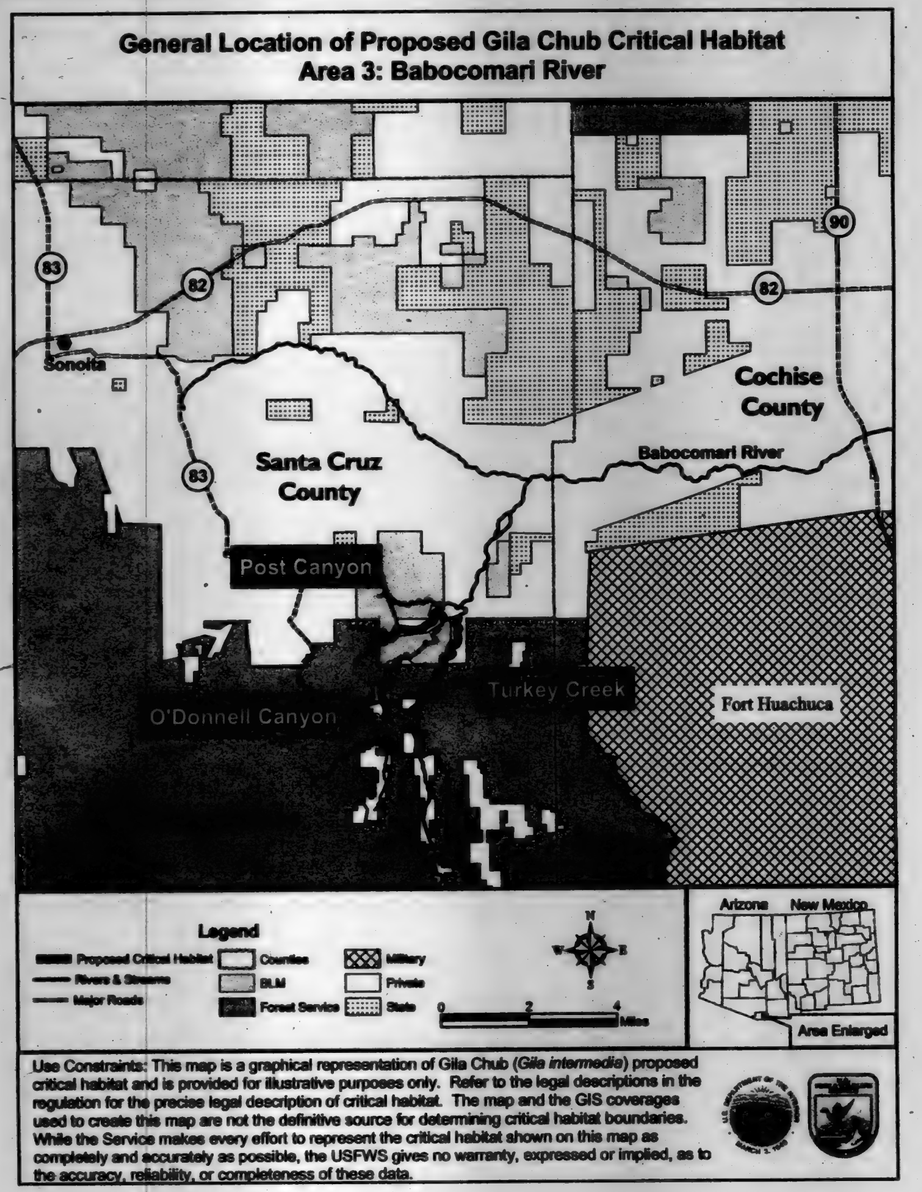
Post Canyon—3.0 km (1.9 mi) of Creek extending from the confluence with O'Donnell Canyon in T.21 S., R.18 E., Section 22 SE ¼ upstream to and including the impoundment on Bureau of Land Management land in T.21 S., R.18 E., Section 28 SW ¼.

Land ownership: private and Coronado National Forest.



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Lower San Pedro River Area 4

a. Bass Canyon—5.4 km (3.4 mi) of Creek extending from the confluence with Hot Springs Canyon in GSRM T.12 S., R.20 E., Section 4 NE ¼ upstream to the confluence with Pine Canyon in T.12 S., R.21 E., Section 20 center (in the center of Section).

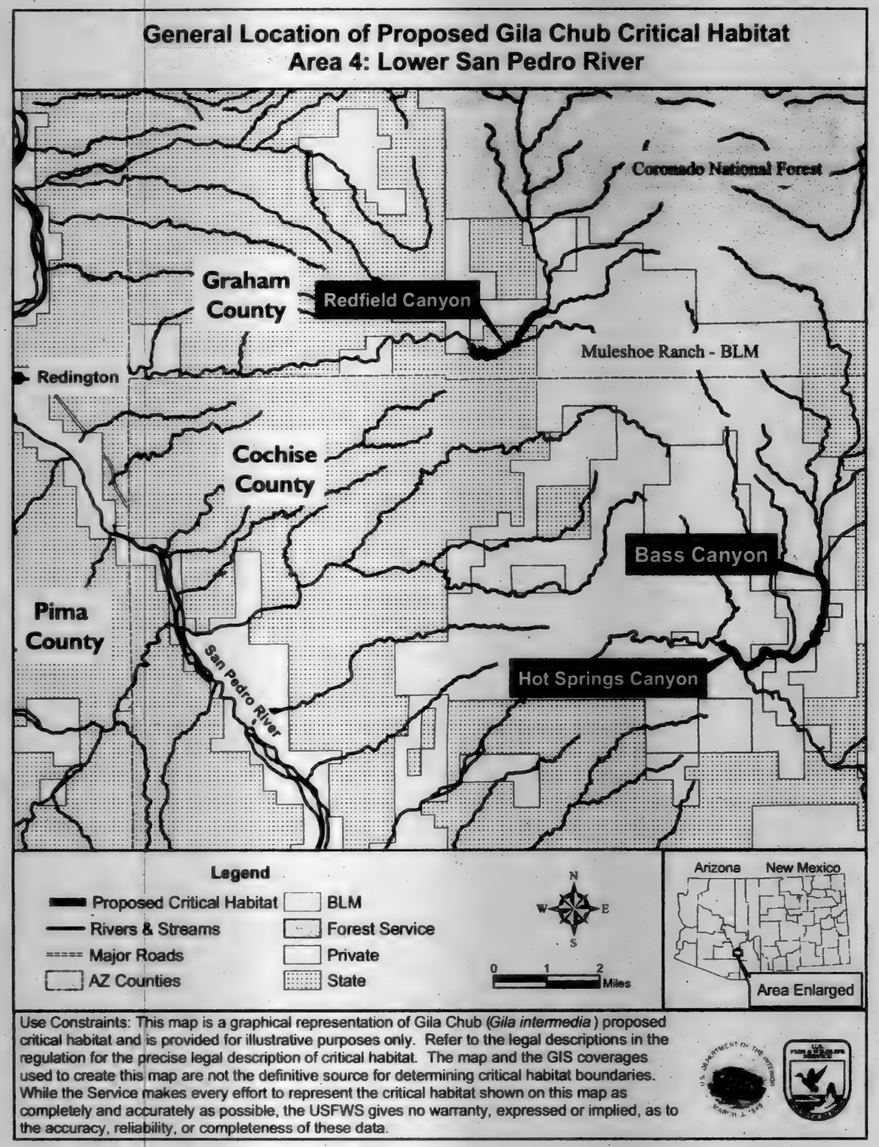
Land ownership: Private (The Nature Conservancy)

b. Hot Springs Canyon—for approximately 1.1 km (0.69 mi) extending from the Bureau of Land Management boundary in T12 S., R.20 E., Section 32 SW ¼ continuing upstream to the confluence with Bass Canyon in T.12 S., R.20 E., Section 36 NE ¼.

Land ownership: Private (The Nature Conservancy) and Bureau of Land Management

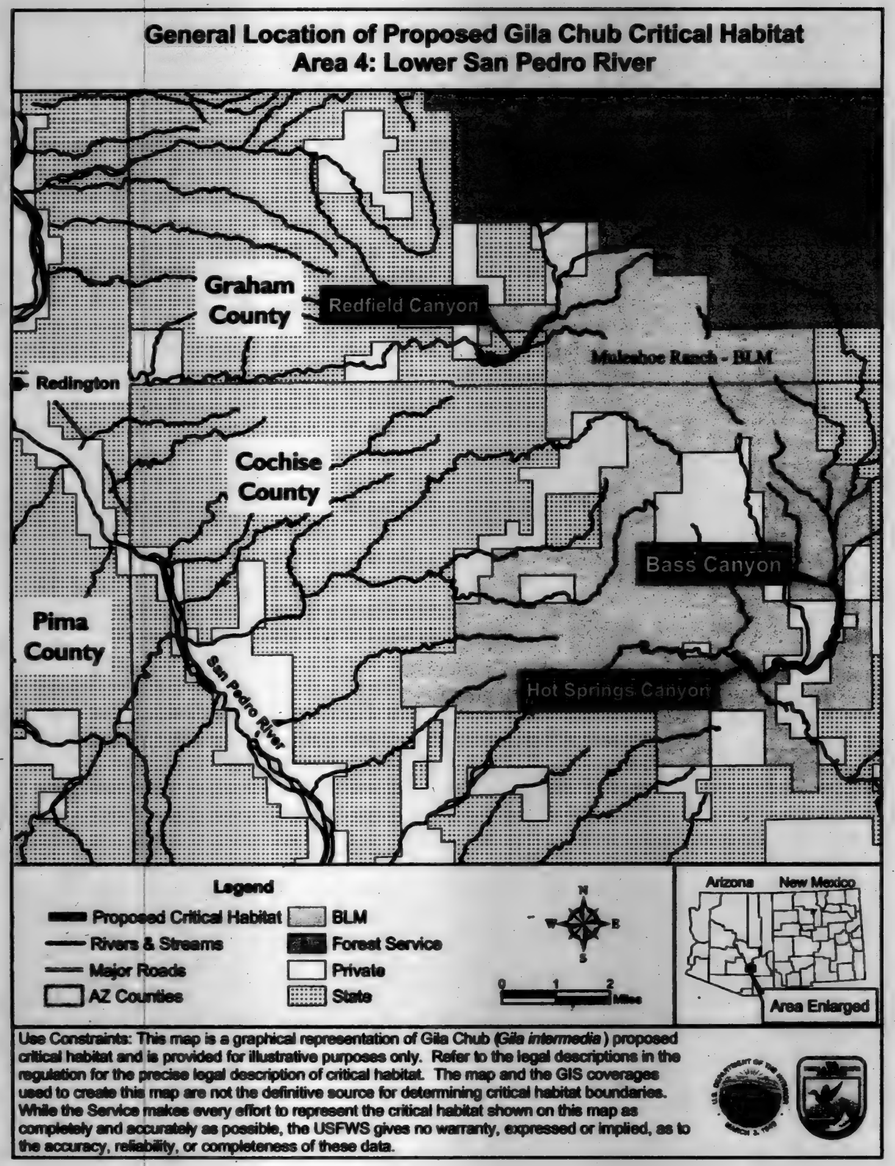
c. Redfield Canyon—3.6 km (2.2 mi) of Creek extending from the confluence with the San Pedro River in GSRM T.11 S., R.18 E., Section 34 SW ¼ upstream to the confluence with Sycamore Canyon in T.11 S., R.20 E., Section 28 NW ¼.

Land ownership: Private and Bureau of Land Management



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Lower Santa Cruz River Area 5

a. Cienega Creek—30.0 km (19.0 mi) of creek extending from the confluence with Pantano Wash in T.17 S., R.17 E., Section 1 NW ¼ continuing upstream to T.19 S., R.17 E., Section 23 NW ¼.

Land ownership: Bureau of Land Management, Arizona State land, and private

b. Mattie Canyon—3.9 km (2.4 mi) of creek extending from the confluence with Cienega Creek in T.18 S., R. 17 E., Section 23 NE ¼ upstream to the Bureau of Land Management boundary in T.18 S., R.17 E., Section 26 SE ¼.

Land ownership: Bureau of Land Management

c. Empire Gulch—5.2 km (3.2 mi) of creek extending from its confluence with Cienega Creek in T.19 S., R.17 E., Section 3 NE ¼ continuing upstream to T.19 S., R.17 E., Section 16 NW ¼ on the western boundary of Section 16.

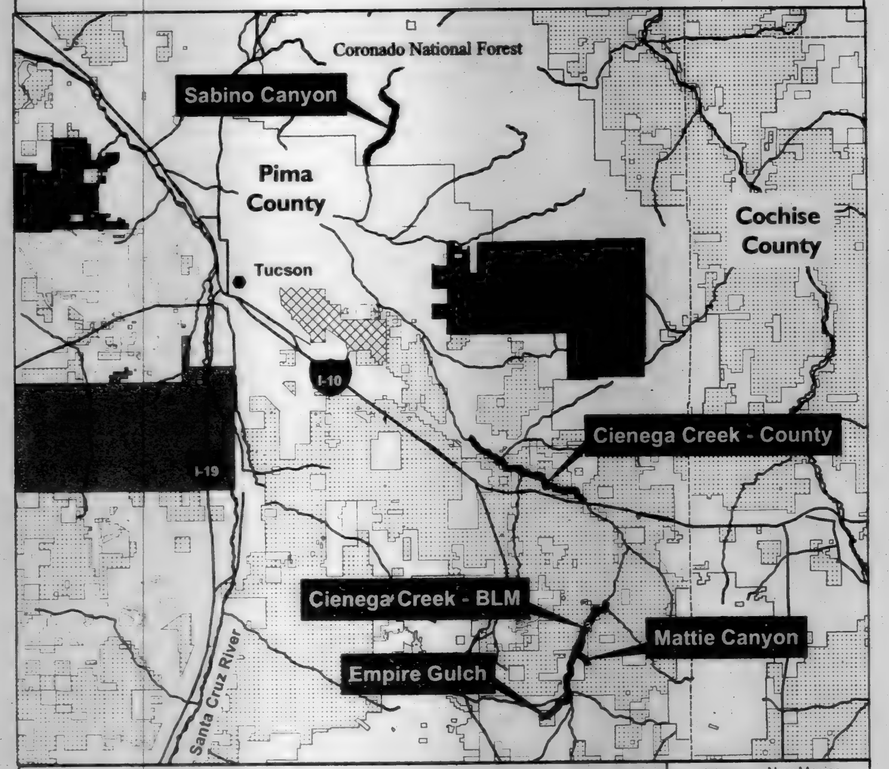
Land ownership: Bureau of Land Management

d. Sabino Canyon—from the southern boundary of the Coronado National Forest in T.13 S., R.15 E., Section 9 SE ¼ upstream to the confluence with the West Fork of Sabino Canyon in T.12 S., R.15 E., Section 22 SE ¼ approximately 17.7 kilometers (11.0 miles).

Land ownership: Coronado National Forest

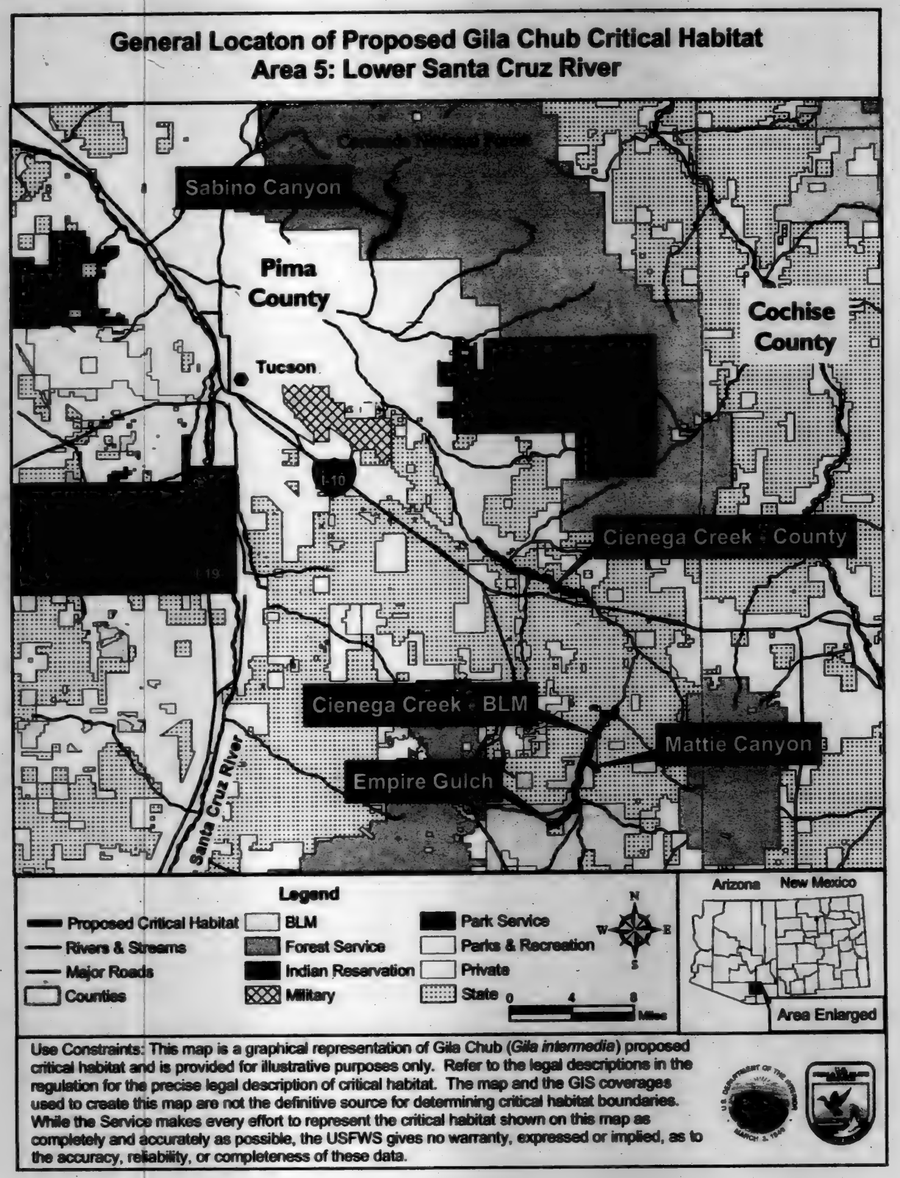
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General Locaton of Proposed Gila Chub Critical Habitat
Area 5: Lower Santa Cruz River



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Verde River Area 6

a. Walker Creek—6.8 km (4.2 mi) of Creek extending from the Prescott National Forest Road 618 in GSRM T.14 ½ N., R 6 E., Section 33 SE 1/4 continuing upstream to the confluence with Spring Creek in T 14 ½ N., R. 6 E., Section 1 SE 1/4.

Land ownership: Coconino National Forest

b. Red Tank Draw—10.9 km (6.7 mi) of Creek extending from the confluence with Wet Beaver Creek in GSRM T. 14 ½ N., R. 6 E., Section 31 NE ¼ continuing upstream to the confluence with Mullican and Rarick Canyons (the point at which Red Tank Draw separates into two separate drainages) in T. 15 N., R. 6 E., Section 2 SW ¼.

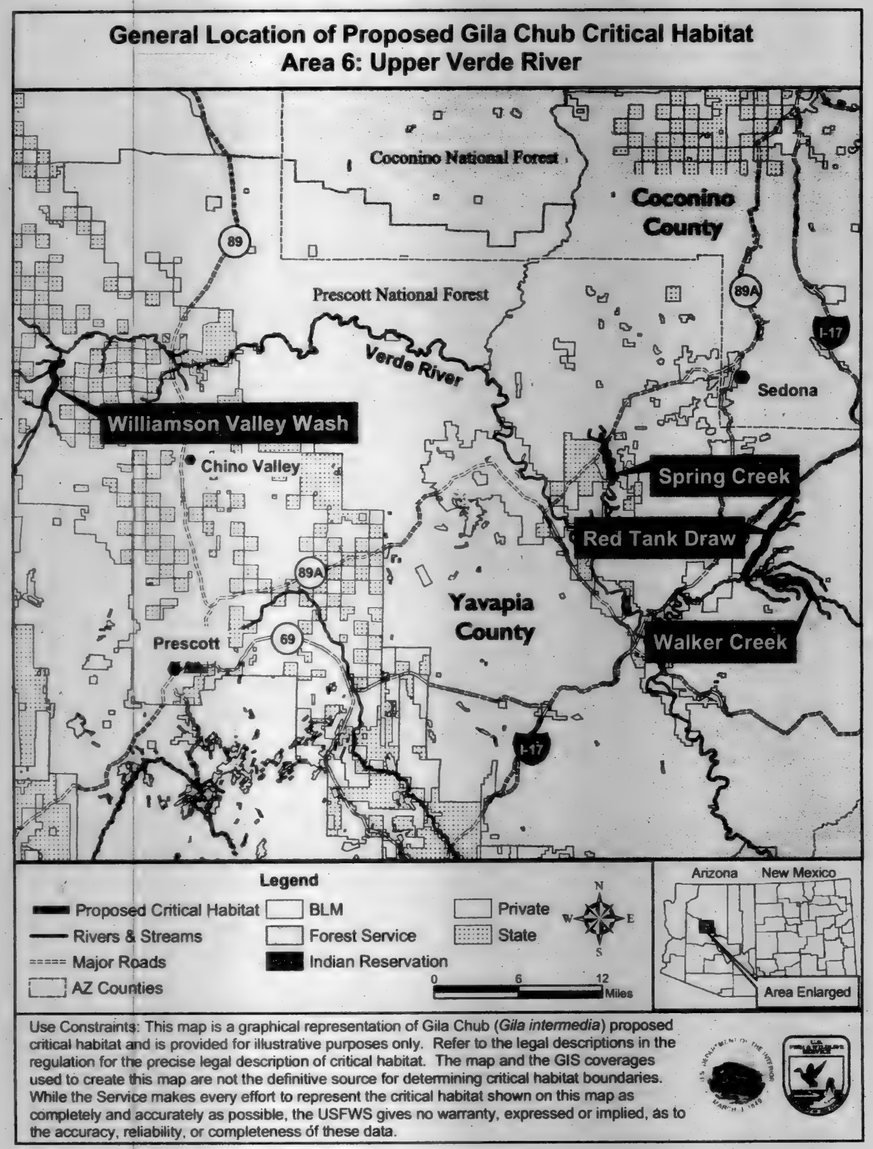
Land ownership: Coconino National Forest

c. Spring Creek—5.8 km (3.6 mi) of creek extending from T.16 N., R. 4 E., Section 27 SE ¼ at the boundary of Forest Service land continuing upstream to the AZ. Highway 89A crossing in T. 16 N., R. 4 E., Section 16 SE ¼.

Land ownership: Coconino National Forest, Arizona State land, and private

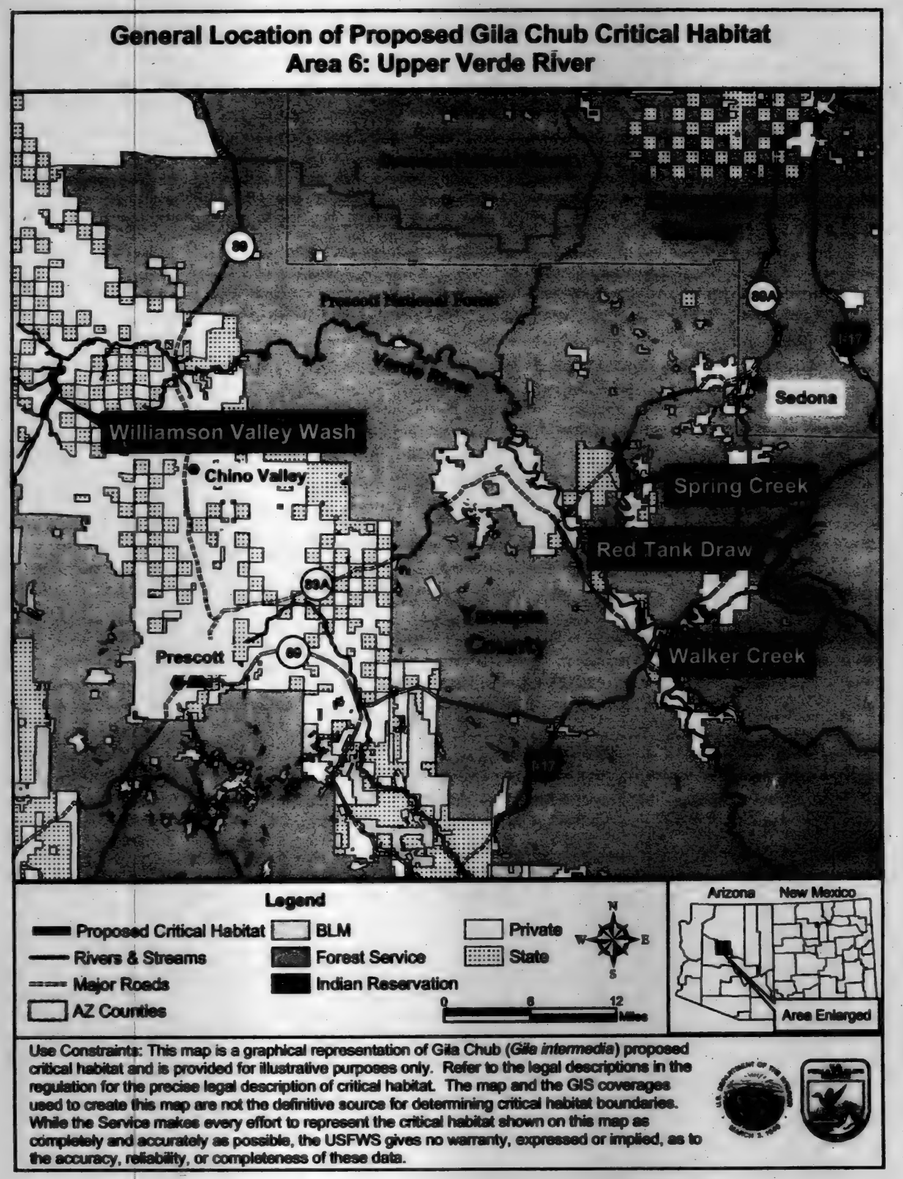
d. Williamson Valley Wash—6.8 km (4.2 mi) of creek extending from the gaging station in T. 17 N., R. 3 W., Section 7 SE ¼ upstream to the crossing of the Williamson Valley Road in T. 17 N., R. 3 W., Section 36 NE ¼.

Land ownership: Private



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Agua Fria River Area 7

a. Little Sycamore Creek—1.2 km (0.75 mi) of creek extending from the confluence with Sycamore Creek in GSRM T. 11 N., R. 4 E., Section 6 NE ¼ upstream to the Horner Mountain Ranch in T. 11 N., R. 4 E., Section 5 NW ¼.

Land ownership: Prescott National Forest and private

b. Sycamore Creek—18.5 km (11.5 mi) of creek extending from Rock Bottom Box and the confluence of an unnamed tributary in GSRM T. 11 N., R. 4 E., Section 23 SE ¼ upstream to Nelson Place Spring in T. 11 N., R. 5 E., Section 21 NE ¼.

Land ownership: Prescott National Forest and private

c. Indian Creek—5.3 km (3.3 mi) of creek extending from T. 11 N., R. 3 E., Section 26 SW ¼ on the section boundary of the SE ⅓ of Section 26 next to the SW ¼ of Section 35 continuing upstream to the western boundary of Section 30 in T. 1 N., R. 4 E., Section 30 NE ¼.

Land ownership: Prescott National Forest and Bureau of Land Management

d. Silver Creek—6.7 km (4.2 mi) of Creek extending from T. 10 N., R. 3 E., Section 11 SW ¼ corner continuing upstream to the spring in T. 10 N., R. 4 E., Section 4 SW ¼.

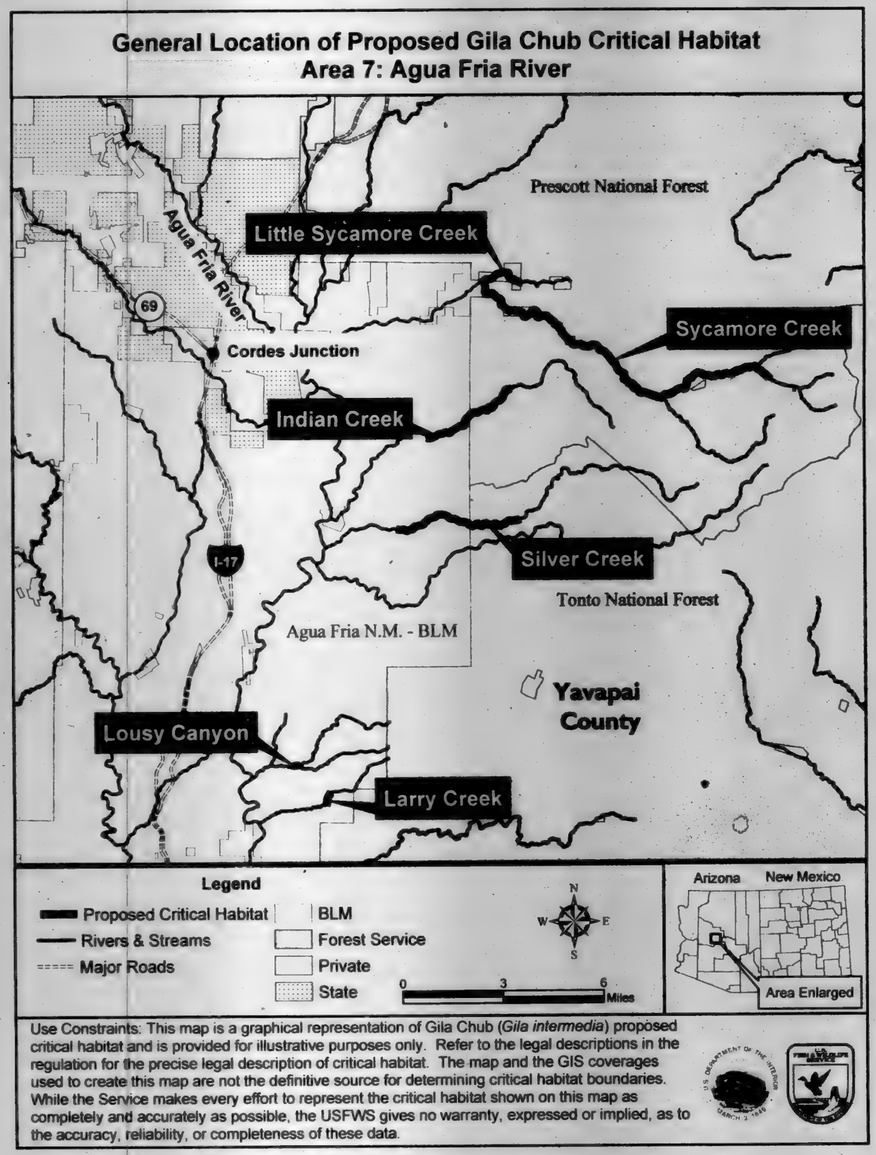
Land ownership: Tonto National Forest and Bureau of Land Management

e. Larry Creek—approximately 0.67 km (0.42 mi) upstream from the confluence with the Agua Fria River at the confluence of an unnamed tributary in T. 9 N., R. 3 E., Section 9 NW 1/4, continuing upstream .80 km (0.5 mi) to the confluence of two adjoining unnamed tributaries in T. 9 N., R. 3 E., Section 9 NW ¼.

Land ownership: Bureau of Land Management

f. Lousy Canyon—beginning 0.28 km (0.18 mi) upstream from the confluence with the Agua Fria River at the waterfall in T. 9 N., R. 3 E., Section 5 NW ¼ then continuing upstream to the fork with an unnamed tributary approximately 1.2 km (.75 mi) of total stream.

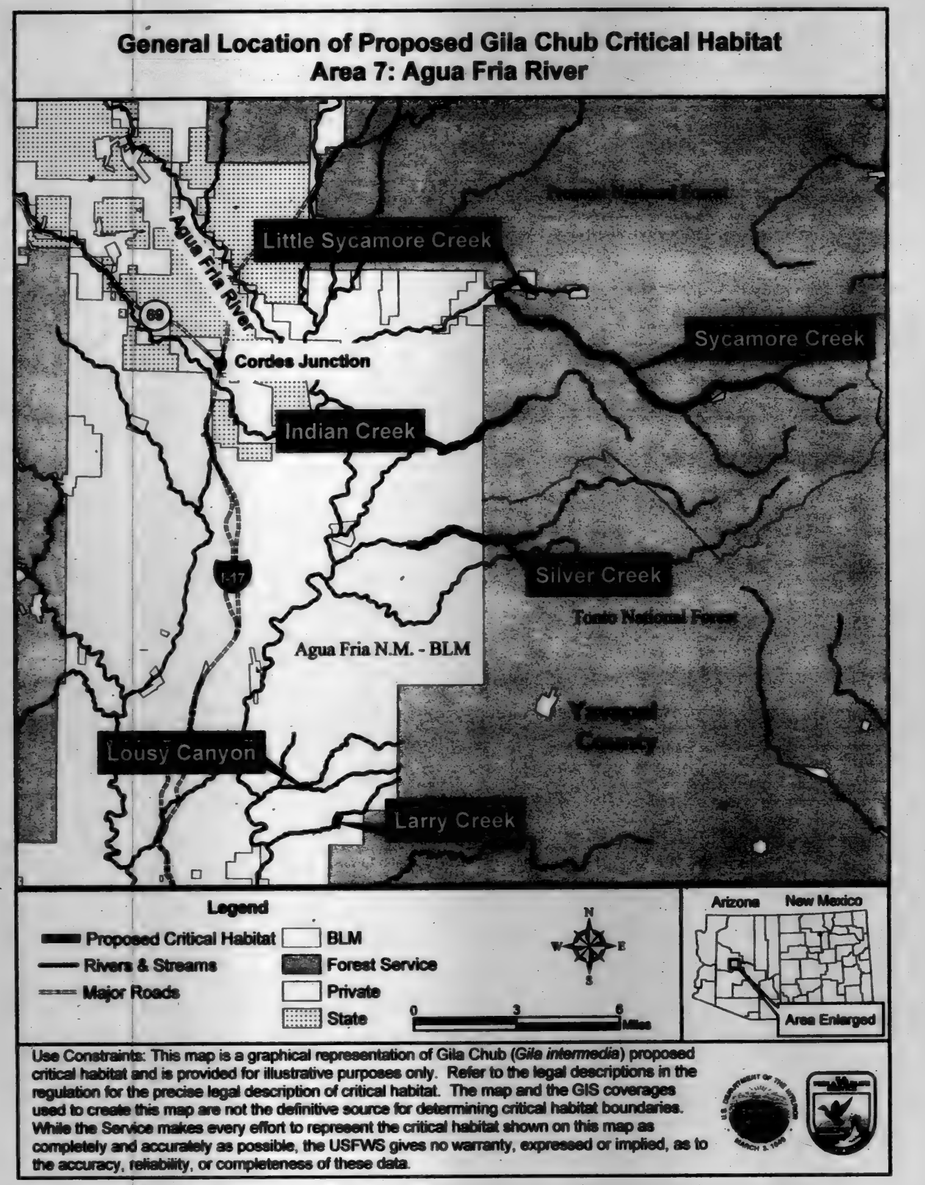
Land ownership: Bureau of Land Management



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2. Within these areas, the primary constituent elements are the following:

a. Perennial pools, areas of higher velocity between pool areas, and areas of shallow water among plants or eddies all found in small segments of headwaters, springs, or cienegas of smaller tributaries.

b. Water temperatures for spawning ranging from 20 to 26.5 degrees Celsius (68 to 79.7 degrees Fahrenheit) with sufficient dissolved oxygen, nutrients, and any other water-related characteristics needed.

c. Water quality with reduced levels of contaminants or any other water quality characteristics, including excessive levels of sediments, adverse to Gila chub health.

d. Food base consisting of invertebrates, filamentous (threadlike) algae, and insects.

e. Sufficient cover consisting of downed logs in the water channel, submerged aquatic vegetation, submerged large tree root wads, undercut banks with sufficient overhanging vegetation, large rocks and boulders with overhangs.

f. Habitat devoid of nonnative aquatic species detrimental to Gila chub or habitat in which detrimental nonnatives are kept at a level that allows Gila chub to continue to survive and reproduce. For example, the Muleshoe Preserve and Sabino Canyon Gila chub populations are devoid of nonnative aquatic species. The O'Donnell Canyon Gila chub population has continued to survive and reproduce despite the current level of nonnative aquatic species present.

g. Streams that maintain a natural unregulated flow pattern including periodic natural flooding. An example is Sabino Canyon, which has experienced major floods. If flows are modified, then the stream should retain a natural flow pattern that demonstrates an ability to support Gila chub.

3. Lands located within the exterior boundaries of the proposed critical habitat designation, but not considered critical habitat and are excluded by definition include: existing paved roads; bridges; parking lots; dikes; levees; diversion structures; railroad tracks; railroad trestles; water diversion canals outside of natural stream channels; active gravel pits; cultivated agricultural land; and residential, commercial, and industrial developments. These developed areas do not contain any of the primary constituent elements and do not provide habitat or biological features essential to the conservation of the Gila chub, and generally will not contribute to the species' recovery.

Dated: July 31, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–19872 Filed 8–8–02; 8:45 am]

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Federal Register

Friday,
August 9, 2002

Part IV

Department of Justice

Drug Enforcement Administration

21 CFR Part 1301
Registration and Reregistration Application Fees; Final Rule

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1301

[DEA–140F]

RIN 1117–AA34

Registration and Reregistration Application Fees

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Confirmation of final rule, remanded for further notice and comment, and response to comments.

SUMMARY: DEA is publishing a final rule regarding the registration and reregistration fees charged to controlled substances registrants. DEA is required to charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances. To address this mandate, on March 22, 1993 DEA published a final rule in the **Federal Register**, establishing registration fees for controlled substances registrants (58 FR 15272). Following publication of the final rule, the American Medical Association (AMA) and others filed a complaint in the United States District Court for the District of Columbia objecting to the new fees. The district court issued its final order granting the government's motion for summary judgment and disposing of all claims. The AMA appealed. The United States Court of Appeals for the District of Columbia Circuit found DEA's rulemaking to be inadequate. The appeals court remanded, without vacating, the rule to DEA, requiring the agency to provide an opportunity for meaningful notice and comment on the fee-funded components of the Diversion Control Program. DEA responded to the remand requirement through a document published in the **Federal Register** on December 30, 1996 (61 FR 68624). This Final Rule supplements the December 30, 1996 **Federal Register** document and with that document, constitutes the final rule on the Drug Diversion Control Fee Account.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC, 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

I. Introduction

Congress passed the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102–395, 106 Stat. 1828 (1992), on October 6, 1992. Congress directed in Section 111(b) of the act, codified at 21 U.S.C. 886a(3), that "[f]ees charged by the Drug Enforcement Administration under its diversion control program shall be set at a level that ensures the recovery of the full costs of operating the various aspects of that program." The Drug Enforcement Administration (DEA) published its proposal to adjust the existing registration fee schedule in accordance with this mandate on December 18, 1992. 57 FR 60148. After notice and comment, DEA published a final rule adjusting registration fees on March 22, 1993. 58 FR 15272.

Following publication of the final rule, the American Medical Association (AMA) and others filed a complaint in the United States District Court for the District of Columbia objecting to the new fees. The district court issued its final order granting the government's motion for summary judgment and disposing of all claims on July 5, 1994. *AMA* v. *Reno*, 857 F. Supp. 80 (D.D.C. 1994). The AMA appealed. The United States Court of Appeals for the District of Columbia Circuit found DEA's rulemaking to be inadequate on July 27, 1995. The appeals court remanded, without vacating, the rule to DEA, requiring the agency to provide an opportunity for meaningful notice and comment on the fee-funded components of the Diversion Control Program (DCP). Specifically, the court held that DEA "was required to identify the components of the fee-funded diversion control program and provide a brief explanation of why it deemed each component to be a part of that program." *AMA* v. *Reno*, 57 F.3d 1129, 1135 (D.C. Cir. 1995). The appeals court remanded this action to the district court with instructions on August 29, 1995. The district court remanded the matter to DEA for proceedings consistent with the appeals court opinion on November 22, 1995.

DEA responded to the remand requirement through a notice in the **Federal Register** on December 30, 1996, describing the fee-funded components and activities of the DCP with an explanation of how each satisfies the statutory requirements for fee-funding. 61 FR 68624–32. This document supplements the December 30, 1996 **Federal Register** notice and with that notice, constitutes the final rule on the Drug Diversion Control Fee Account (DDCFA).

II. Statutory Basis of Diversion Control Fee Account

The Controlled Substances Act (CSA) has authorized the Attorney General since 1970 "to promulgate rules and regulations and to charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances' and "to charge reasonable fees relating to the registration of importers and exporters of controlled substances." 21 U.S.C. 821 and 958(f). The Attorney General delegated that authority to the Administrator of the Drug Enforcement Administration (DEA), who in turn redelegated it to DEA's Deputy Administrator. *See* 28 CFR 0.100(b) and 0.104. Congress, through the 1993 Appropriations Act, established the Diversion Control Fee Account (DDCFA), changing the source of Diversion Control Program (DCP) funding from being part of DEA's congressional appropriation to full funding by registration and reregistration fees. The 1993 Appropriations Act made no changes in the DCP's duties or authorities, directing that "[f]ees charged by the Drug Enforcement Administration under its diversion control program shall be set at a level that ensures the recovery of the full costs of operating the various aspects of that program" and that funds from the DDCFA will be provided to DEA from the U.S. Treasury in accordance with "the budget request of the Attorney General." 21 U.S.C. 886a(3) and (4).

III. Comments Received

DEA received five comments in response to the December 30, 1996 **Federal Register** notice. One comment was filed on behalf of five professional and trade associations, several of whom were plaintiffs in the legal action: the American Medical Association (AMA), the American Dental Association, the American Veterinary Medical Association (AVMA), the National Community Pharmacists Association and the National Wholesale Druggists' Association (NWDA). A separate comment submitted on behalf of the American Osteopathic Association, also a plaintiff, fully concurred with the multi-party comment. The remaining three comments were filed separately by the AVMA, the NWDA and an individual practitioner. Most of the comments relate to three broad areas of concern: whether particular diversion control activities are properly fee-funded; justification for the current fee schedule; and the accumulation and disposition of the surplus that had accumulated in the fee account.

The commentors expressed general concern regarding the funding of activities by the DDCFA. They singled out international and enforcement activities as examples of what they considered to be inappropriate funding. Specifically, the commentors asserted that DEA cannot lawfully fee-fund certain international activities, non-registrant drug trafficking investigations, and activities involving controlled substances not lawfully marketed in the United States, such as marijuana and flunitrazepam, because they lack connection or have such attenuated connection to the registration and control of the manufacture, distribution and dispensing of controlled substances. One commentor asked that the Office of Management and Budget (OMB) review various activities to determine whether they are fee-fundable.

Another point raised by commentors regarding DCP funding was that the explanation provided in the December 30, 1996 **Federal Register** notice failed to provide an adequate description of some of the DCP components. One commentor expressed concern regarding fee-funding the National Forensic Laboratory Information System (NFLIS) and Tactical Diversion Squads (TDSs), stating that the final rule described these programs "too generally." Commentors demanded more detailed justification for fee-funding specific DCP activities.

Most of the commentors stated that the current fee schedule is unjustified, asserting that DEA failed to properly determine the costs of appropriate fee-funded activities and overestimated the costs. They asserted that the existence of a surplus is relevant to the issue of whether the registration fees are "reasonable" as required by 21 U.S.C. 821, stating that its existence indicates a failure to set appropriate fees. The commentors requested detailed justification for maintaining the fee schedule at current levels. Several also requested that DEA refund the surplus to the fee-paying registrants and/or adjust future fees to prevent surplus funds from accumulating.

In addition, one commentor stated that the rule fails to provide sufficient information on which to meaningfully comment. The same commentor characterized the registration fee as a user fee and claimed that it has been improperly assessed to fund international and other activities from which registrants receive no greater benefit than that received by the general public. Several commentors requested information on the costs of each component of the DCP. Finally, one commentor called for a registration fee structure for practitioners based on their individual controlled substance prescribing or dispensing patterns.

We address each of the points raised by the commentors below.

IV. Requirements for Fee-Funding Diversion Control Activities

DEA's mission with respect to illicit controlled substances like heroin and crack cocaine is to eliminate them outright, but the agency's role is far more complex when it involves licit controlled pharmaceuticals. On one hand, DEA prevents, detects and eliminates the diversion of controlled pharmaceuticals from legitimate channels to illegal use, while at the same time ensuring their availability for legitimate medical and scientific purposes. To facilitate these goals, Congress through the CSA established a closed system of controlled substance distribution encompassing manufacturers, distributors, pharmacies and practitioners. Components of this closed system include scheduling of all controlled substances, registration of all controlled substance handlers, recordkeeping for accountability, security, and manufacturing quotas, all under DEA DCP oversight. The DCP also possesses chemical control responsibilities pursuant to the Chemical Diversion and Trafficking Act (CDTA) and subsequent legislation.

DEA's authority to collect registration fees derives from three statutory provisions. DEA is authorized by 21 U.S.C. 821 to collect reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances. Secondly, 21 U.S.C. 958(f) permits DEA to collect reasonable fees relating to the registration of importers and exporters of controlled substances. Lastly, the 1993 Appropriations Act added a provision requiring DEA to make the DCP self-supporting by setting fees at a level that ensures the recovery of the full costs of operating its "various aspects". 21 U.S.C. 886a(3). The United States Court of Appeals for the District of Columbia Circuit noted that in establishing the DDCFA, Congress left intact the fee collection requirements of 21 U.S.C. 821, confirming boundaries of the DCP that DEA can fund by registration fees. *AMA* v. *Reno*, 57 F.3d 1129, 1135 (D.C. Cir. 1995). Although the court made no specific mention of 21 U.S.C. 958(f), those same boundaries remain intact as well. The current statutory scheme thus requires DEA to set registration fees to recover the full costs of the DCP, while limiting DEA to charge "reasonable" fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances. DEA, therefore, must examine DCP activities in conjunction with the nexus requirements of 21 U.S.C. 821 and 958(f) to determine whether it can properly fee-fund them while setting fees that recover total program costs.

Much debate regarding which diversion control activities DEA can properly fee-fund has accompanied the establishment of the DDCFA.

The 1993 Appropriations Act specifically mandates that fees "shall be set at a level that ensures the recovery of the full costs of operating the various aspects of that program." 21 U.S.C. 886a(3). Congress, in using the mandatory term "shall" as opposed to the discretionary "may," unambiguously required DEA to increase its then-existing registration fees resulting in registrants fully funding DCP expenses. DEA, therefore, lacks discretion in this matter and must fund its DCP totally from registration fees. Assuming for the sake of argument that there is some doubt as to whether Congress intended DEA to entirely fund the DCP from registration fees due to its use of the phrase "various aspects" of the DCP as opposed to something like "all aspects," the House Conference Report notes that the act's language "requires the Drug Enforcement Administration to set fees to recover the full cost of their Diversion Control Program." H.R. Conf. Rep. No. 918, 102nd Cong., 2d Sess. 44 (1992).

The 1993 Appropriations Act directing DEA to set its fees to recover the full costs of its DCP may appear to conflict with the 21 U.S.C. 821 and 958(f) requirements that DEA's fees be reasonable and relate to the control and registration of the manufacture, distribution, dispensing, import or export of controlled substances. Perhaps Congress assumed that all DCP costs are reasonable. Possibly in anticipation of potential conflicts, as a preamble to the provisions establishing the DDCFA, Congress mandated fulfillment of the requirements of the act "[n]otwithstanding [a]ny [o]ther [p]rovision of [l]aw," thus making its provisions supersede all other provisions of law that would otherwise prevent or impede DEA's recovery of the full costs of the DCP through registration fees. H.R. 5678, 102nd Cong., 2d Sess. 111 (1992).

DEA, upon establishment of the DDCFA, wrestled with the determination of which DCP activities it could legally fee-fund. The plain language of the 1993 Appropriations Act

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requires DEA to set and collect registration fees to cover the full costs of operating its Diversion Control Program. A broad interpretation of the 1993 Appropriations Act would have resulted in fee-funding all DCP activities, while a narrow interpretation would have restricted the DCP activities that could be fee-funded.

A. Final Rule (March 22, 1993)

DEA examined all activities that relate to the registration and control of the manufacture, distribution and dispensing of controlled substances and to the registration (and control) of importers and exporters. DEA determined that "activities contained in the [diversion] program which give rise to the fees consist of Diversion Investigators, analysts, technicians, and clerical personnel salaries and expenses; and travel, rent, utilities, supplies, equipment and services associated with these positions for the registration and control of the manufacture, distribution and dispensing of controlled substances." 58 FR 15273. DEA determined that it would not fee-fund costs associated with chemical control efforts, clandestine lab efforts, overseas efforts (specifically diversion investigators assigned to foreign posts), DEA's Office of Chief Counsel and executive direction. 58 FR 15273. DEA concluded that these activities were excluded from the Attorney General's budget delineation for the category of "Diversion Control" and thus not included in the determination of the fees. *Id.*

B. Federal Register Notice (December 30, 1996)

DEA further excluded from fee-funding in its December 1996 **Federal Register** notice activities that, while supporting the DCP, are funded elsewhere in the DEA Salaries Budget and thus not fee-funded. The notice, mirroring the 1993 final rule, provided the following examples of such activities: Chief Counsel attorney support; laboratory services support; DEA automated data processing systems support; training, management and administrative support; activities conducted by the DEA Office of Congressional and Public Affairs; intelligence support; and diversion investigators assigned overseas. 61 FR 68631.

C. Litigation Statements

The AMA and others brought a complaint in U.S. District Court for the District of Columbia in June 1993 objecting to the fees, and the court granted the government's motion for summary judgment in July 1994. The plaintiffs appealed, and the U.S. Court of Appeals for the District of Columbia Circuit found DEA's rulemaking to be inadequate in July 1995. During the course of these legal proceedings DEA made statements regarding which activities could be fee-funded and which could not. The government statements on fee-fundable activities essentially mirror the criteria set out in the March 1993 Final Rule; *i.e.*, that activities involving chemical control, clandestine laboratories, overseas operations, Chief Counsel and "executive direction" were excluded from fee-funding and were paid for by congressionally appropriated funds. DEA subsequently discovered its statements regarding the exclusion of chemical control activities were in part, at least, erroneous.

D. DEA Response to the Senate Appropriations Committee (1998)

In response to questions from the Senate Appropriations Committee regarding fee-fundable activities, DEA stated that in the absence of specific guidance in the Appropriations Act as to which activities were encompassed within the DCP and thus fee-fundable, DEA followed the plain language of the act and used the budget category that had historically been included in the DCP budget request of the Attorney General.

E. DEA Fee Spending Elements

As a matter of note, DCP activities are undertaken by DEA elements other than those within the Office of Diversion Control. While the Office of Diversion Control conducts anti-diversion registration and control activities, other DEA elements undertake activities in support of the DCP in addition to supporting nonfee-fundable activities. As such, these other elements expend fee-funds to support fee-fundable DCP activities. For example, the Office of Administration provides office space, makes appropriate office renovations and supplies the security guard force to the diversion groups. The Office of Administration pays rent and other expenses with fee funds. The Office of Resource Management expends fee funds for payroll and employment benefits for the DCP workforce. The Office of Training trains the DCP workforce and spends fee funds on training in support of fee-fundable activities.

F. Current Fee-Funding

Commentors to the December 1996 **Federal Register** notice focused on several specific activities that DEA has always conducted and has fee-funded under the new fee program since its inception in 1993. In light of the comments, DEA reexamined each questioned activity to determine and explain the extent of its relationship to the registration and control of the lawful manufacture, distribution and dispensing of controlled substances, and the registration for importing and exporting controlled substances.

DEA has reevaluated its fee-funded DCP activities several times since publication of the December 1996 **Federal Register** notice and has concluded that it is proper to fee-fund all activities with the exception of those specifically excluded in the March 1993 and December 1996 **Federal Register** notices. DEA has reached this conclusion because all DCP activities except for those involving chemical control relate to controlled substances lawfully manufactured, distributed, dispensed, imported or exported as required by 21 U.S.C. 821 and 958(f). DEA decided not to fee-fund the remaining excluded activities even though they relate in varying degrees to the criteria enumerated in 21 U.S.C. 821 and 958(f).

Fee-funded activities thus include those relating to controlled substances handled by any DEA registrant (including researchers, analytical laboratories, teaching institutions and narcotic treatment programs) for legitimate medical, scientific or industrial purposes. DEA's ability to fee-fund such activities is derived from the authorizing language of 21 U.S.C. 821. Scheduling activities are also fee-fundable because they, too, relate to the control requirement of 21 U.S.C. 821. Although 21 U.S.C. 958(f) authorizes DEA to collect fees related to the registration, with no explicit mention of "control" of importers and exporters of controlled substances, activities related to their control are implicit in the 21 U.S.C. 821 criteria. All controlled substances imported into the United States by DEA-registered importers pursuant to import declarations or permits are distributed to other DEA registrants engaged in the manufacture or distribution of the original substances or of products made from them that are lawfully marketed here. Conversely, DEA-registered exporters are the final point of sale for products manufactured and distributed within the United States by domestic registrants who transfer the products to them for the purpose of export to foreign customers. Activities related to these transactions are, therefore, fee-fundable.

Fee-fundable DCP activities include: scheduling, registration, investigation,

inspection, data collection and analysis, training, establishing production quotas, cooperative efforts with state, local and other federal agencies, cooperative efforts with the regulated industry, international activities, as well as the attendant management, personnel, administrative and clerical oversight for the DCP because they too relate to the fee-funding criteria of 21 U.S.C. 821 and 958(f). For the reasons explained below, DEA has determined that even activities relating to foreign substances unlawfully imported into the United States are fee-fundable as are those relating to counterfeit versions of legitimate controlled substances.

The final rule published in March 1993 stated that DEA would not fee-fund five particular DCP activities. DEA excluded efforts involving chemical control, clandestine laboratories, overseas activities, Office of Chief Counsel support and executive direction. DEA did not consider their costs in determining the new fees. Although DEA stated that it would fund these activities by other appropriated funds, DEA has subsequently found that agency elements have erred in inappropriately fee-funding some of these at different times since establishment of the DDCFA. DEA is in the process of minimizing the risk of fee-funding these "excluded" activities in the future. For a more detailed discussion of the inappropriately fee-funded activities, see Sections X and XIII.

The following sections discuss in greater detail the specific comments questioning various DCP activities, DEA's response to the comments, and how DEA funds them.

V. International Activities

DEA received four comments objecting to fee-funding specific international activities on the ground that they are unrelated or only remotely related to the registration and control of the manufacture, distribution and dispensing of controlled substances or to "controlling the manufacture, distribution or use of controlled substances by the health care professionals and other registrants on whom the costs of the program have been placed." One commentor objected to fee-funding DEA participation in international policy activities such as the development and formulation of United Nations (UN) resolutions, position papers, background documents and briefing materials. Two commentors objected to fee-funding DEA participation in and/or co-sponsorship of international conferences on drug control. These commentors criticized the use of DDCFA funds for meetings with European government officials because they included discussions of, among other topics, the medical use of marijuana, and meetings with Colombian and Mexican officials about flunitrazepam, noting that neither substance is legitimately produced in the United States.

Several commentors objected to use of DDCFA funds to assist foreign authorities with their national systems of control, specifically citing DEA involvement in a conference to improve controlled substance and chemical controls in the Commonwealth of Independent States (CIS) (formerly the Soviet Republics) and for sending a DEA representative to participate in a training seminar to assist African authorities in developing effective national controls. We address these specific concerns later in this section.

A. International Activities Generally

DEA fee-funded certain international diversion control activities when the 1993 Appropriations Act became effective because they relate to the registration and control of the lawful manufacture, distribution and dispensing of controlled substances. As explained above, controlled substances lawfully imported or exported relate to Section 821 requirements because imported substances are subsequently distributed to other DEA registrants, and exported substances are initially manufactured and/or distributed domestically prior to export. As explained in the December 30, 1996 **Federal Register** notice, the CSA's closed system of controls over manufacturing, distribution and dispensing was not established and is not administered within the isolation of our domestic borders. Rather, the controls are part of a global system of national and international laws designed to establish an interrelated, worldwide structure of control over the manufacture, distribution, dispensing, import and export of controlled substances, so that controls or lack of controls in one country do not undermine controls in another. Congress found and declared that illegal importation, along with illegal manufacture, distribution, possession and improper use of controlled substances, has a detrimental effect on the health and welfare of the American people, recognizing that "[a] major portion of the traffic in controlled substances flows through interstate and foreign commerce." 21 U.S.C. 801(2) and (3).

The international drug control treaties to which the United States is a signatory require that each party establish a program of controls relating to the registration and control of the manufacture, distribution, dispensing, import and export of controlled substances. The specific language of the CSA and its implementing regulations recognize the obligations of the United States under the international conventions. *See* 21 U.S.C. 801, 801a, 811(d)(1), 823(a) and 958(a), and 21 CFR 1307.02.

The CSA expressly recognized that the United States is a party to the Single Convention on Narcotic Drugs of 1961 and other conventions "designed to establish effective control over international and domestic traffic in controlled substances." 21 U.S.C. 801(7). Likewise, Congress recognized that the abuse of psychotropic substances has become "a phenomenon common to many countries" that "is not confined to national borders," making it "essential that the United States cooperate with other nations in establishing effective controls over international traffic in such substances." 21 U.S.C. 801a(1). Congress further recognized that the United States joined with other countries in executing the Convention on Psychotropic Substances, "which is designed to establish suitable controls over the manufacture, distribution, transfer, and use of certain psychotropic substances." 21 U.S.C. 801a(2). Congress acknowledged that before the Senate could ratify the convention, the CSA required amending to bring it into compliance with the requirements of the convention. Congress thus recognized that the conventions are an integral part of the United States' programs regarding the registration and control of the manufacture, distribution, and dispensing of controlled substances. By implementing and ratifying the international treaties, Congress recognized that a strong domestic program relating to the registration and control of the manufacture, distribution, dispensing, import or export of controlled substances depends on establishing and maintaining strong controls within other individual nations.

As described above, DEA is obligated to conduct, as part of its diversion control program, certain international activities relating to the lawful manufacture, distribution, dispensing, import and export of controlled substances. DEA fee-funds most international diversion control activities that it had historically conducted since 1971, considering each related to 21 U.S.C. 821 and 958(f) criteria. DEA, although not always successful, has

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attempted to exclude from fee-funding international chemical control activities, as well as those specified in the March 1993 and December 1996 **Federal Register** notices. Comments responding to the December 30, 1996 **Federal Register** notice raised issues about fee-funding certain international activities, and DEA reexamined the fee-funding criteria in light of the comments. DEA has determined that international programs and activities are an integral part of the DCP, and fee-funding them is appropriate because they relate to the registration or control of the lawful manufacture, distribution or dispensing of controlled substances.

Following is a discussion of the international activities for which comments were received, and justification why DEA fee-funds them.

B. DEA Participation in UN International Policy Activities

The international community, through the UN's International Narcotics Control Board (INCB) and the Commission on Narcotic Drugs (CND), continuously monitors the workings of the treaties and each country's compliance with their diversion control provisions. The UN treaties have mechanisms by which the scope of control may be changed. Such changes are binding upon the United States as a party to the conventions and have a significant impact on those lawfully manufacturing, distributing or dispensing controlled substances here. When new controls are adopted or existing ones amended, DEA must implement the new requirements, and they are binding upon the U.S. registrant community, *i.e.*, all manufacturers, distributors and dispensers. DEA participation in the development and formulation of UN resolutions, position papers and other briefing materials, and its attendance at formal meetings of international experts on drug control ensures that the interests of the United States, including those of its registrants, are represented during the consideration of additional or amended controls.

DEA fee-funds diversion control personnel participation in international policy matters when the activity relates to the lawful manufacture, distribution, dispensing, import or export of controlled substances. For example, DEA has fee-funded international activities relating to the following actual examples: benzodiazepine scheduling; emergency international distribution of controlled substances from the U.S. to countries that have experienced a natural disaster; the manufacture, use, diversion, abuse and scheduling of stimulant drugs, such as methylphenidate, used in the treatment of obesity or Attention Deficit Disorder; preparation of information regarding trade names of U.S.-manufactured products containing Schedule I or II substances; preparation of UN reports, questionnaires and estimates of legitimately produced controlled substances; and the domestic manufacture, distribution or dispensing of controlled substances for pain treatment.

DCP activities involving gamma hydroxybutyrate (GHB) and flunitrazepam on the surface seem to pose a dilemma as to whether DEA may fee-fund them. GHB was originally marketed in health food stores. The U.S. Food and Drug Administration (FDA) issued advisory warnings in 1990 and 1997 declaring GHB unsafe and illicit except under FDA-approved physician-supervised protocols. GHB is currently a Schedule I controlled substance, not approved by FDA for marketing. GHB is under investigation for use in treating narcolepsy under FDA's Orphan Drug program and Schedule III security requirements apply to those conducting these investigations. If FDA approves GHB for medical use in the United States, Congress has directed that DEA place the dosage form, though not the bulk form, into Schedule III. The CSA sets forth the following criteria for drugs or substances placed into Schedule III: the drug or substance has a potential for abuse less than that of the drugs or substances in Schedules I and II; the drug or substance has a currently accepted medical use in the United States; and the abuse of the drug or substance may lead to moderate or low physical dependence or high psychological dependence. 21 U.S.C. 812(b)(3). DEA, therefore, fee-funds GHB activities. DEA must have control and play an active role in the scheduling process prior to FDA approval and scheduling, and to do otherwise would seriously curtail DEA fulfilling its mandated mission. DEA activities prior to scheduling ultimately impact post-scheduling commercial decisions of registrants.

Flunitrazepam, like GHB, is not currently approved for medical use in the United States. However, twenty countries, including Mexico and a number in South America, have approved the drug in tablet form. Roche Pharmaceuticals, a foreign subsidiary of the United States DEA-registered manufacturer, markets the drug under the trade name of Rohypnol®. Smuggling and introducing Rohypnol® into the United States for medical and illicit reasons impacts Roche Pharmaceuticals domestically. DEA has placed flunitrazepam into Schedule IV, while some states have also placed it under control, some in Schedule I, and others in Schedules II to IV. DEA fee-funds flunitrazepam activities because, while more tenuous than those involving GHB, in the case of Rohypnol® they relate to the registration and control of the manufacture, distribution, dispensing and import of at least one U.S. DEA-registered manufacturer. Admittedly, the nexus of non-tableted flunitrazepam to Sections 821 and 958 is less clear and less direct than other Schedule IV controlled substances. DEA determined not to fee-fund activities involving non-tableted flunitrazepam because they are undertaken by non-DCP personnel and are closer to chemical control activities than to traditional DCP activities.

In the event that an international activity or conference meets the fee-funding criteria but also involves excluded activities or substances, DEA attempts to fee-fund the activity on a *pro rata* basis, with the remainder funded by other appropriated funds. The costs of salary, support, travel and other items pertaining to such dual-purpose activities are split-funded and assigned to the appropriate funding source. For example, if an international conference involves fee-funded activities for 90% of the time, and chemical activities for the remaining 10%, then DEA would fee-fund 90% of the conference.

C. Participation In and/or Co-Sponsorship of International Conferences or Bilateral Discussions on Drug Control

DEA participates in and co-sponsors international conferences and meetings with foreign counterparts to gain critical information on drug abuse trends and patterns. DEA considers this information in determining whether these, or pharmacologically similar substances should be controlled in the United States. These activities allow DEA to exchange information regarding diversion and effective (or ineffective) prevention measures and to identify specific problems that the agency must address. Information derived from such activities is essential in protecting the U.S. public health and safety and relates to a broad spectrum of DEA efforts, ranging from information collection and policy formulation to investigative and operational activities.

Several commentors objected to fee-funding meetings with European, Turkish, Colombian and Mexican officials regarding specific control issues, such as the medical use of marijuana and flunitrazepam. Other international conferences and discussions relate in whole or in part to controlled substances lawfully manufactured, distributed or dispensed. For example, the December 30, 1996 **Federal Register** notice described meetings with European officials to discuss control and policy issues "relating to pain management, the distribution and use of methylphenidate, narcotic treatment programs, and the medical use of marihuana." 61 FR 68628. While the commentor singled out the topic of medical marijuana raised at these meetings, the other subjects clearly relate to serious domestic control issues involving controlled substances lawfully manufactured, distributed or dispensed. DEA carries out the mandates of the CSA related to lawfully manufactured drugs so that controlled substances are available for pain management and other legitimate purposes, while preventing, detecting and investigating their diversion. Methylphenidate is a Schedule II controlled substance, lawfully marketed for Attention Deficit Disorder and narcolepsy, that is in great demand by illicit users and traffickers. Narcotic treatment programs primarily dispense and administer methadone, a highly abusable and sought-after Schedule II controlled substance, to narcotic addicts.

Additionally, and perhaps most importantly, such activities potentially impact U.S. manufacturers, distributors, dispensers, exporters and importers which, if they handle controlled substances legally, are DEA registrants.

The medical uses of marijuana and flunitrazepam have been the subject of much press, policy and medical professional association debate in the United States as to the appropriateness of current CSA controls. Marijuana is a Schedule I controlled substance available and used for research purposes, and those handling it within the closed distribution system including conducting research must be registered with DEA. 21 CFR 1308.11(d)(19) and 21 U.S.C. 823(f). In reviewing and considering U.S. control policy and practices for these substances and activities, it is appropriate and necessary for DEA to research and examine the experience of other nations' control efforts with them. Factors determining whether any substance, including marijuana and flunitrazepam, should be scheduled, re-scheduled or de-scheduled under 21 U.S.C. 811(c), are not limited to the domestic experience of the United States. *See* 21 U.S.C. 811(c). In fact, U.S. firms and practitioners frequently cite the experiences of other nations as a foundation for suggesting modifications to domestic controls. For additional discussion of flunitrazepam, please see Section B directly above.

D. Assisting Foreign Authorities With Their Diversion Control Systems

One commentor expressed concern about a conference held in Austria to "improve the design and administration of, and cooperation regarding, controlled substance and chemical controls in the Commonwealth of Independent States' and training African authorities about effective national controls for the manufacture and distribution of controlled substances. The commentor asserted that these activities have "nothing to do with the legitimate manufacture, distribution and dispensing of controlled substances that are handled by DEA registrants." The commentor contended that DEA must explain how these activities legitimately relate to the regulation of DEA registrants.

In addition to the above discussion explaining the interrelationship of effective international controls and treaty requirements with domestic controls, DEA activities to assist other nations in establishing adequate national control mechanisms are crucial in establishing and maintaining the machinery and working procedures that allow the legitimate exportation of controlled substances by U.S. registrants to foreign countries and the legitimate importation of foreign pharmaceuticals by U.S. registrants for distribution and dispensing in the United States. The CSA authorizes registration of importers and exporters of Schedule I or II substances only if consistent with the public interest and with U.S. obligations under the treaties, conventions and protocols. 21 U.S.C. 958(a). The CSA, recognizing the interrelationship between U.S. and foreign controls, makes it unlawful to export Schedule I–IV narcotics and Schedule I and II non-narcotic substances unless the importing country has adequate controls in place and that country has a legitimate medical, scientific or research need for the drug. For example, the foreign-based consignee must hold an appropriate permit or license from the government authority in the importing country that also indicates that a legitimate need for the drug exists in that country. 21 U.S.C. 953(a) and (c). The CSA also restricts the export of the other controlled substances. 21 U.S.C. 953(e).

DEA, jointly with the European Union, organized, sponsored and funded, the Commonwealth of Independent States Policy Conference, held October 1994, in Salzburg, Austria. The purpose of the conference was "to establish dialogue with policy-level officials of the CIS governments on the problems of illicit drug transit, manufacture, and uncontrolled trade in pharmaceuticals and chemicals used in the clandestine production of drugs." DEA, Conference Report, Commonwealth of Independent States Policy Conference on Drug and Enforcement Control 1 (1995). Participants discussed the need for adequate national legislation to enable government authorities to deal with the drug threat, international treaty compliance, establishing or strengthening national frameworks for administering drug and chemical regulatory and enforcement programs, drug trafficking methods and aspects of drug law enforcement. *Id.* As the December 30, 1996 **Federal Register** notice pointed out, DEA's share of the costs of this multi-topic conference was split between the DDCFA and other appropriated funds "in approximation to the subject matter covered." 61 FR 68628.

DEA sent one DCP representative to an INCB training seminar for north and west African drug control administrators held March 1995 in Tunis, Tunisia. Most African countries import controlled substances from American exporters and others to meet their legitimate medical needs. Lack of organization, conflicting authorities and other factors contribute to potential and actual controlled substance diversion in Africa, and the DEA representative provided insight into the business practices and attitudes of importers and exporters of controlled substances and chemicals. Working groups discussed, among other topics, the effectiveness of national and international control measures. Adequate national control measures, as discussed above, are prerequisite for exporting controlled substances from the United States to any foreign country. Training African drug control administrators involved control activities relating to controlled substances lawfully manufactured in, and subsequently exported from, the United States. The total fee account funds expended for this activity totaled $3,775.16.

The adequacy of foreign controls relate to the control of the lawful manufacture, distribution and dispensing of controlled substances for the reasons just cited, and DEA has determined that it will fee-fund these activities based on its extensive reevaluation of the fee-funding criteria.

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DEA will continue to fee-fund foreign bilateral and multilateral training, and the development of effective foreign national control systems, unless they do not relate to controlled substances lawfully manufactured, distributed, dispensed, imported or exported in the United States. DEA has attempted to exclude expenses incurred when international activities relate to chemical control but as previously mentioned, has not always been successful.

As a further note, the international activities carried out by personnel assigned to DEA domestic offices are limited in scope. The expenses of DCP personnel assigned to overseas positions are totally funded by other appropriated funds, not by the DDCFA, even though they may conduct activities that fall within the 21 U.S.C. 821 and 958(f) criteria.

VI. Enforcement Activities-Drug Trafficking Investigations

Two comments submitted on behalf of six professional and trade associations stated that the December 30, 1996 **Federal Register** notice indicated that "much of the [diversion control] program has nothing to do with controlling the manufacture, distribution or use of controlled substances by the health care professionals and other registrants on whom the costs of the program have been placed" and provided, as an example, "many of the costs of the agency's efforts to control drug trafficking by non-registrants."

Narcotic, depressant, and stimulant drugs manufactured, distributed and dispensed for legitimate medical need are sought by abusers and subject to diversion into the illicit traffic. Pharmaceutical drugs are in demand by abusers as a substitute when "street" drugs are in short supply (Oxycontin®, Dilaudid®, or morphine in place of heroin, for example); as a supplement to "street" drugs to enhance or diminish their effect (*e.g.*, tranquilizers to "smooth out" a cocaine binge); or even as many abusers" primary drugs of choice. These legitimate abusable drugs, listed individually in the CSA and its implementing regulations, are "controlled substances." Their street value can be up to a hundred times their original cost, and they are available through theft, fraud or illegal sale from over a million physicians, pharmacies and other registrants.

Abuse resulting from diverted controlled substances is within the DCP's authority to control and prevent since the drugs are lawfully manufactured, distributed and/or dispensed, and the "sources of supply" to abusers hold DEA registrations and state licenses. The DCP is responsible for investigations related to lawfully manufactured, distributed and dispensed controlled substances for which registration is required or excepted, and where controls imposed by the CSA and its implementing regulations are circumvented or disregarded. The DCP attempts to ensure that the required controls to prevent diversion are maintained and verifies the *bona fides* of applicants for registration. DCP investigations fall into three general categories: pre-registrant investigations, scheduled regulatory investigations, and complaint investigations. The DCP conducts investigations of individuals and institutions suspected of violating the CSA or which undermine public confidence in the safety and authenticity of controlled substances found within pharmaceutical and health care channels.

The DCP investigates the diversion of legitimate controlled substances to determine where the closed system of controls has been compromised so that corrective action can be taken. When such products are trafficked or sold in the illicit market, it is not always clear how they were diverted, but the illicit source of supply must by virtue of the closed distribution system requirement be a person subject to the CSA's registration and control requirements. The person responsible for the diversion could be a doctor, pharmacist, employee of a DEA registrant or other source. The controlled substances could be smuggled or stolen.

The closed system created by the CSA was designed to ensure that registrants maintain controls over their activities with controlled substances to prevent and detect their diversion. When drug abusers and traffickers obtain controlled substances from registrants, the DCP investigates the registrants to determine whether their controlled substance registration is consistent with the public interest. The DCP also investigates non-registrants such as prescription forgers and "doctor shoppers." All of these activities relate "to the * * * control * * * of the dispensing of controlled substances" since the originating source of the drugs is a DEA registrant or an individual whose activities is subject to DEA's registration requirements.

DEA identified six categories of DCP complaint investigations in the December 30, 1996 **Federal Register** notice and described how each relates to 21 U.S.C. 821. Following review of the comments received, DEA reevaluated these investigations and how they relate to 21 U.S.C. 821 and 958(f). DEA fee-funds these investigative activities because they relate to the registration and control of lawfully manufactured, distributed or dispensed controlled substances. Some have asserted that DEA should not fee-fund investigative activities involving other than lawfully manufactured, distributed or dispensed controlled substances, such as counterfeit or illegally imported versions of legitimate controlled substances. While the nexus of some investigative activities with controlled substances under the 21 U.S.C. 821 and 958(f) criteria may not appear as evident or as clear as others, DEA believes that it is sufficient to justify fee-funding investigative activities except when they involve chemicals. (The activities within the areas specifically excluded by the March 1993 and December 1996 **Federal Register** notices, while currently excluded from fee-funding, may have sufficient nexus for fee-funding under 21 U.S.C. 821 and 958(f) criteria.) The language of 21 U.S.C. 821 requires only that the activities listed therein "relate to" the registration and control of the manufacture, distribution, and dispensing of controlled substances. The primary targets and types of complaint investigations conducted by the DCP (which is a major emphasis of the DCP program) are identified below, with an explanation of how each relates to the fee-funding requirements:

1. Registrants and their employees or agents who are suspected of diverting controlled substances from legitimate channels. Investigations of registrants relate to the "registration and control" criteria of 21 U.S.C. 821 and/or the "registration" criteria of 958(f). Although employees of registrants are exempt from individual registration as agents of a registrant, their access to lawfully manufactured, distributed or dispensed controlled substances remains subject to the controls of the CSA and is the responsibility of the registrant. Registrants are required under 21 CFR 1301.71(a) to provide effective controls and procedures to guard against theft and diversion of controlled substances, including that by their employees and agents.

2. Persons who engage in pharmaceutical controlled substance smuggling, theft, robbery or trafficking. Such investigations can include, where appropriate, identifying and immobilizing the sources of supply, whether domestic or foreign, through enforcement of controls relating to the lawful manufacture, distribution or dispensing of controlled substances. These activities relate to the registration and control responsibilities of 21 U.S.C. 821 and 958(f). For example, theft or robbery may be the result of a registrant's failure to maintain required security controls or even collusion with a thief or robber, and the investigation will ensure that the deficiencies are corrected and determine whether the registrant's continued registration is in the public interest. In another example, if controlled substances lawfully manufactured or distributed in the United States are exported to avoid stringent U.S. control and then smuggled back into the United States, DEA will investigate to determine if the U.S. exporter should be prosecuted, its registration revoked or future export authorizations denied.

DEA fee-funds these investigative activities because they relate to lawful controlled substance manufacture, distribution or dispensing. Among smuggling, theft, robbery or trafficking pharmaceutical controlled substances, smuggling is perhaps the activity area with the most unclear nexus with 21 U.S.C. 821 and 958(f) criteria. Smuggling a controlled substance into, or introducing it into, the United States is importation, albeit illegal, and constitutes an activity for which DEA registration and controls are required under the CSA and its implementing regulations. Smuggling investigations relate to the registration for importing controlled substances under 21 U.S.C. 958(f) and their subsequent control once in the United States under 21 U.S.C. 821. Some smuggled pharmaceutical controlled substances are manufactured, distributed or dispensed by foreign subsidiaries of DEA registrants. Smuggled substances potentially threaten the integrity of the closed system by introducing foreign-source or even counterfeit substances into the domestic market. It is to the benefit of manufacturers and distributors that these products are eliminated from competition with their products to pharmacies, and prescribers for the assurance that they are handling only legitimate products and to the public health. The presence of these smuggled substances potentially impacts the domestic market for controlled substances manufactured, distributed and dispensed by DEA registrants.

3. Persons, both registered and non-registered, who conduct controlled substance activities without the required DEA registration or state authorization. DEA registration and state licensure are prerequisites for lawfully manufacturing, distributing, dispensing, importing and exporting controlled substances, including handling Schedule I substances in industrial, analytical or research applications. Proper registration is the keystone of the CSA's closed distribution system. Investigations to maintain the integrity of the CSA registration system directly relate to the registration and control of the manufacture, distribution and dispensing of controlled substances under 21 U.S.C. 821 and to the registration for importing and exporting controlled substances under 21 U.S.C. 958(f). DCP authority to investigate extends to registered persons who lack required state or other authorization which is a prerequisite for DEA registration, non-registered persons who are conducting controlled substance activities for which registration is required, including those who have had a registration revoked yet continue to misrepresent that they are registered, and registrants conducting activities with controlled substances not authorized by their registration. DEA fee-funds investigations of DEA registrants authorized to handle, or persons seeking registration to handle, a controlled substance that is not commercially available in the United States, but for which registration is required for its use in industrial, analytical or research applications. Investigations of these activities relate to the registration and control requirements under 21 U.S.C. 821.

4. Persons who obtain controlled substances from registrants through fraud, deceit or circumvention of the manufacturing, distribution, dispensing, importing or exporting controls, such as by fraudulent use of another person's DEA registration number, "doctor shopping" or prescription forgery. The CSA system of registration and control was created to prevent diversion from registrants and ideally permits detection when diversion occurs. Investigations of this type of diversion focus on the activities of non-registrants in order to determine the source of the diversion, the degree of registrant culpability (if any) and appropriate corrective action. Investigative activities involving non-registrants who obtain legitimate controlled substances are fee-funded to the extent they involve lawfully manufactured, distributed or dispensed controlled substances.

5. Drug trafficking by non-registrants of controlled substances that are fraudulently promoted as legitimate (such as herbal remedies that actually contain a controlled substance). Investigations involving products that are not lawfully marketed in the United States, but which contain a controlled substance that is lawfully marketed here, on the surface appear to be too tenuous to relate to 21 U.S.C. 821 and 958(f) criteria. "Black Pearls" is an example of one herbal remedy sold in health food stores that contains a controlled substance (diazepam). An example of a product trafficked as having been lawfully produced is smuggled or counterfeit anabolic steroids. Trafficking of these products sometimes occurs within the otherwise legitimate medical/pharmaceutical environment.

For investigations involving products such as smuggled anabolic steroids, the nexus to 21 U.S.C. 821 and 958(f) is discussed and described under Number 2 directly above. DEA concedes that the nexus of counterfeit substances promoted as legitimate to 21 U.S.C. 821 and 958(f) criteria seems more tenuous in comparison with other DCP activities. Counterfeit versions of controlled substances manufactured, distributed or dispensed compete with legitimate versions of that substance, thus impacting registrants lawfully handling them under the CSA. Additionally, Congress explicitly recognized the problem created by the distribution and dispensing of counterfeit controlled substances. *See* 21 U.S.C. 841(a)(2). While "distribution" may entail any controlled substance, "dispensing" by definition involves controlled substances lawfully marketed in the United States and subject to the CSA's closed system of distribution. 21 U.S.C. 802(10). Dispensing is an activity that requires DEA registration.

6. Persons who use their DEA registrations to assist in the diversion or misuse of legitimate controlled substances. The CSA provides that controlled substances may only be administered or dispensed by a practitioner in the normal course of professional practice. Unlawful registrant practices such as selling or trading controlled substances for non-medical purposes, health care fraud or self-abuse are outside the scope of activity authorized by their DEA registration. Investigative activities of such practices meet the fee-funding criteria because DEA registration enables the registrants to divert controlled substances from the CSA's closed distribution system.

To summarize, DEA fee-funds investigative activities of registrants and non-registrants when they relate to the registration and/or control of the lawful manufacture, distribution or dispensing of controlled substances.

VII. National Forensic Laboratory Information System

One commentor objected to fee-funding the National Forensic Laboratory Information System (NFLIS),

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concerned that DEA did not provide adequate information demonstrating whether the analyzed drug evidence involves licit or illicit controlled substances, resulting in registrants not knowing whether DEA is inappropriately fee-funding a system for illicit drugs.

The NFLIS is a computerized database of analyzed diverted and trafficked drug information from non-federal state and local forensic crime laboratories in the United States. The information obtained through the NFLIS, when combined with data from other sources, will present a more accurate and complete indicator of the extent of the abuse, diversion and trafficking of specific substances on a regional and national basis, providing early warning of new and changing trends. Prior to establishment of the NFLIS, DEA had to laboriously collect this data manually through separate contacts with individual laboratories nationwide.

DEA will use the NFLIS primarily for classifying and scheduling substances, setting production quotas, determining enforcement priorities and establishing drug control priorities for controlled substances lawfully manufactured, distributed or dispensed under the CSA. The CSA authorizes DEA to schedule, reschedule or deschedule substances according to specific scheduling criteria. 21 U.S.C. 811(a). The CSA requires DEA to conduct a comprehensive study of a substance, including collecting data on abuse and abuse potential before initiating any scheduling actions. 21 U.S.C. 811(b). The DCP is the DEA element responsible for conducting drug evaluations and gathering the necessary data for scheduling purposes regardless of the type of substance under consideration. The NFLIS will provide DEA with accurate, chemically verified data that will be used to support these DCP activities. *See* Section IX below for a discussion of how scheduling and production quotas relate to 21 U.S.C. 821 and 958(f).

Scheduling actions establish which substances are subject to the registration and control provisions of the CSA. There are no "legal" or "illegal" substances, only activities with controlled substances that are either legal or illegal under the CSA, depending upon their actual use. For example, there are numerous researchers registered to handle Schedule I substances (LSD, heroin, etc.,). There is obviously extensive illicit trafficking in Schedule I substances. Scientifically acceptable and meaningful use of the NFLIS for any and all scheduling actions requires the collection of data on all types of abused, diverted and trafficked substances. Data collected by the NFLIS is necessary to conduct a complete and thorough scheduling review of a substance. The analyzed drug evidence reported to NFLIS will include controlled substances that are lawfully manufactured, distributed or dispensed, as well as non-controlled but lawfully marketed substances subject to pending scheduling actions, illicit controlled substances and non-controlled substances that are purported to be controlled substances. DEA concedes that that only first type of evidence falls within the 21 U.S.C. 821 and 958(f) criteria.

As most new drugs of abuse begin as local problems, it is almost impossible to quickly detect new drugs of abuse or changes in national drug abuse trends based on DEA's STRIDE system, the database of drug analysis information of drugs purchased and seized in DEA cases. Systematic collection and analysis of non-federal forensic data are critical for the DCP to discharge its scheduling responsibilities efficiently.

Licit and illicit controlled substance data are not as separate from one another as one might believe. Existing indicators, such as the Drug Abuse Warning Network (DAWN) and the Drug Use Forecasting System (DUF), demonstrate that the majority of licit controlled substance abuse is in combination with illicit substances. In addition, lawfully marketed controlled substances have been trafficked as illicit drugs, and non-controlled substances have been sold as controlled substances. For example, traffickers have distributed diverted Dilaudid® as heroin, and substances sold as anabolic steroids have been determined to be non-controlled counterfeits. Information related to these activities that is analyzed and compiled as a result of the NFLIS will enhance overall DCP efficiency in determining which substances pose threats to the public health and safety.

While the primary purpose of the NFLIS will be for control activities related to the lawful manufacture, distribution or dispensing of controlled substances, there will be instances in which data will be used for activities unrelated to the fee-funding criteria. Most of the funding for the NFLIS thus far has occurred in establishing the system's infrastructure. As later costs to collect data or to generate a report for non-fee-fundable activities are minimal, there will be occasions when DEA provides NFLIS data for non-related regulatory and law enforcement activities. DEA will monitor NFLIS activities, and if after a reasonable period it appears that non-fee-fundable activities occur on more than a minimal basis, DEA will reevaluate its fee-funding of the NFLIS.

In summary, DEA fee-funds the NFLIS because the system will be used primarily for drug scheduling actions, setting production quotas and other diversion control activities related to 21 U.S.C. 821 and 958(f) fee-funding criteria.

VIII. Tactical Diversion Squads (TDSs)

One commentor objected to fee-funding DEA's Tactical Diversion Squads (TDSs), concerned that DEA described them too generally in the final rule and did not adequately explain their connection to the activities of DEA registrants.

Authority for the TDSs derives from the statutory directive to the Attorney General to cooperate with local, state and federal agencies to combat controlled substance trafficking and abuse. 21 U.S.C. 873(a). The CSA authorizes the Attorney General to assist state and local governments "in suppressing the diversion of controlled substances from legitimate medical, scientific, and commercial channels" by establishing cooperative investigative efforts and to enter into contractual agreements with state and local law enforcement agencies providing for cooperative enforcement and regulatory activities. 21 U.S.C. 873(a)(6) and (7). TDSs are cooperative teams of DEA diversion personnel and other federal, state and local authorities established to identify and investigate the diversion of licit controlled substances from registrants. DEA has established multi-agency TDSs in eight cities.

TDSs combine efforts by DEA and other federal, state and local law enforcement and regulatory agencies to combat the diversion of lawfully marketed controlled substances from registrants primarily at the retail level within a given geographic area. The mission of the TDSs is to concentrate a dedicated workforce to detect, investigate, disrupt and refer for prosecution, violators of federal and state controlled substance statutes pertaining to drug diversion. The TDSs develop investigative leads from information and intelligence from participating agencies, through undercover operations and the use of informants. The multi-agency efforts help coordinate the various jurisdictional responsibilities of the agencies that otherwise may hinder investigations and prosecutions, and combine program and personnel expertise to maximize resources and enhance efforts at all levels of diversion control investigations.

Information gleaned from work of the TDSs also contribute to classification and scheduling activities, as well as to the establishment of production quotas, by generating data essential to these functions. Classification, scheduling and production quota activities relate to the control of the manufacture, distribution and dispensing of controlled substances as required by 21 U.S.C. 821. For additional justification regarding classification, scheduling and production quota activities, *see* Section IX below. Data gathered about the number of persons diverting licit controlled substances and the specific substances involved help identify drug abuse trends and patterns.

DEA fee-funds the salaries of DEA personnel, office space, travel, investigative equipment and costs, and training and overtime for state and local officers. The member agencies provide representative personnel and fund their salaries. Fee-funding TDSs is appropriate because the investigative and prosecutorial activities are directed solely against registrants and others mishandling controlled substances otherwise lawfully manufactured, distributed or dispensed.

IX. Classification and Identification of Controlled Substances and Establishment of Production Quotas

One commentor questioned activities "that appear to exceed the bounds of a program for which DEA registered practitioners should be expected to pay." The comment noted that the classification and identification of controlled substances and the establishment of production quotas appear to be "indirect or collateral" activities having more to do with controlled substance manufacturing and marketing than with diversion control. The commentor requested that the Office of Management and Budget (OMB) review these activities.

The DDCFA budget request and the DEA appropriated funds budget request are submitted each year to OMB through the Attorney General, the White House and Congress, which approves the requests and authorized the funding of the programs at the requested levels. Prior to publication, the December 18, 1992 **Federal Register** notice proposing to adjust the registration fee schedule and the March 22, 1993 **Federal Register** notice of the final rule establishing the fee schedule were submitted to OMB for review. 57 FR 60148 and 58 FR 15274. Therefore, the diversion control budget provisions and **Federal Register** notices relevant to the DDCFA have been submitted for review consistent with OMB's authority and jurisdiction. DEA did not submit the December 30, 1996 **Federal Register** notice describing DCP components and fee-funded activities to OMB because it was merely the publication of additional information for public comment and was not a new rule. Moreover, this notice has been reviewed by OMB.

Classification and scheduling substances relate to more than just controlled substance manufacturing and marketing. The authority to classify and schedule substances of abuse is central to the effective application of the CSA and DEA Diversion Control Program relating to the registration and control of the lawful manufacture, distribution, dispensing, import and export of controlled substances. The term "classification" as used in the CSA equates to the term "scheduling." Classification, with its related activities, is the initial step constituting the threshold that must be met for any change of status of a substance within the five schedules, which in turn dictates the CSA controls to which it is subsequently subjected. Classification or scheduling affects all registered manufacturers, distributors and dispensers who lawfully handle the controlled substance within the closed distribution system. The DCP collects, monitors and analyzes data for recommendations to add substances to, delete substances from, or transfer substances between schedules and maintains a highly educated staff of pharmacologists and scientists to perform this work. They are experts in controlled substance pharmacology, and their opinions are sought by state, national and international officials involved in drug abuse studies. This DCP staff is responsible for ensuring that objective and comprehensive studies are undertaken on the actual and potential abuse of substances to find the balance between protecting the public health and safety, yet allowing necessary medication to be readily available for legitimate medical and scientific purposes. Each study requires an examination of the scientific literature regarding the properties of the drugs, the current controls over the drugs, data regarding annual production and consumption, and information from law enforcement, regulatory and medical sources regarding drug diversion, trafficking and abuse.

The CSA provides for the classification of substances of abuse into one of five schedules when appropriate. Such classification determines the level of controls that all registrants must then comply with when handling the controlled substance. Classification of a substance thus impacts not only how it will be handled by registered manufacturers, distributors and importers and exporters, but also how it will be administered, prescribed and dispensed by registered practitioners such as pharmacies, hospitals, physicians, dentists and veterinarians.

The language of 21 U.S.C. 821 refers to "the registration and control * * * of controlled substances," and classification and scheduling of substances of abuse are the initial steps in the "control * * * of controlled substances" criteria of 21 U.S.C. 821. Thus, these activities meet one of the legal requirements for fee funding. DEA believes that it is reasonable to fee-fund classification/scheduling activities, and to fund the same classification/scheduling activities from different sources depending upon whether the substance of abuse is controlled or non-controlled at the start would be unworkable and not feasible. DEA has determined, therefore, that it is appropriate to fee-fund classification and scheduling activities of controlled substances and substances of abuse that are not yet controlled.

In conjunction with the classification of substances, the CSA and international treaties require that controlled substance containers include certain identifying symbols, warnings and seals. These symbols, warnings and seals identify for all legitimate handlers a controlled substance's level of control under the CSA and alert them as to how they must handle it. In clarifying how to handle the substance, the identifying symbols, warnings and seals help maintain the integrity of the closed system of controls, minimizing the risk of diversion when the substances are properly handled and securely stored. The CSA makes it unlawful to remove, alter or obliterate a required symbol or label, illustrating the importance of controlled substance identification. 21 U.S.C. 842(4).

The CSA and international treaties require DEA to determine the total quantity of certain controlled substances necessary for medical, scientific, research and industrial use in the United States and limit the manufacture of such substances to the quantity necessary for legitimate use through a system of production quotas. In recent years, DEA has issued approximately 850 quotas annually to over 200 manufacturer registrants. DEA's scientific staff works closely with the regulated industry to identify medical trends, new drugs entering the market, and manufacturing issues in order to allow U.S. manufacturers to meet

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legitimate patient and distribution needs. The DCP scientific staff collects and analyzes information regarding the legitimate use, trafficking and abuse of Schedule I and II controlled substances in the United States from such sources as manufacturing and distribution reports, treatment and prescription utilization data, case data, drug abuse indicators and Department of Health and Human Services (HHS) estimates of medical use. In response to requests from controlled substance manufacturers, DCP staff conducts training sessions throughout the United States to assist these registrants in understanding the operation and goals of the quota system.

Although manufacturers are the registrants who, by virtue of their role in the closed manufacturing and distribution system, directly apply the provisions of the production quotas issued, it is inaccurate to characterize the establishment of quotas as an indirect or collateral activity primarily related to manufacturing and marketing. The establishment of production quotas is a key component in the closed system of controls. Establishing production quotas for controlled substances impacts not only the quantity manufactured and distributed by registered non-practitioners but also the availability of those substances for administering and prescribing by physicians and veterinarians, and dispensing by pharmacies. Production quotas help to ensure adequate availability of controlled substances for legitimate use by handlers at each level of the closed system. Additionally, quotas limit overproduction, minimizing diversion and abuse and ultimately reducing the need for enforcement activities against registrants and others.

The classification and identification of controlled substances and the establishment of quotas relate to the control of the lawful manufacture, distribution, dispensing, import and export of controlled substances by practitioners and other registrants. Therefore, funding these activities through fees collected from registrants is consistent with the requirement that they relate to the registration and control requirements of 21 U.S.C. 821 and 958(f).

X. History of the Current Fee

In response to the 1993 Appropriation, DEA published a rulemaking in the **Federal Register** on March 22, 1993 to announce a new fee schedule for the Diversion Control Program (DCP) (58 FR 15272). This announcement outlined the general categories of cost to be borne by the resulting Drug Diversion Control Fee Account (DDCFA) and excluded from such outline certain DCP costs, including the cost of the Chemical Control Program. This program is responsible for the regulation and monitoring of activity involving chemicals used in illicit manufacture of controlled substances and for the investigation of the diversion of these chemicals. Following the March 22, 1993 announcement, several registrant groups filed a complaint in the United States District Court for the District of Columbia. On July 5, 1994, the district court disposed of all claims, but one of the plaintiffs, the American Medical Association (AMA), appealed to the United States Court of Appeals for the District of Columbia Circuit. In this case, *AMA* v. *Reno*, 57 F. 3d 1129 (D.C. Cir. 1995), the District of Columbia Circuit held that DEA "was required to identify the components of the fee-funded Diversion Control Program and provide a brief explanation of why it deemed each component to be a part of that program." Id. At 1135. DEA has attempted to fulfill the court's mandate through a second announcement, which appeared in the **Federal Register** on December 30, 1996 (61 FR 68624).

The second announcement provided a more detailed discussion of the DCP costs to be included in, and excluded from, DEA's DDCFA charges. A table summarizing these costs follows.

Included	Excluded
• All direct support of drug diversion control efforts, including: Diversion investigators, analysts, technicians, and clerical personnel; equipment and services associated with these positions for the registration and control of the manufacture, distribution and dispensing of controlled substances. • Salaries and expenses, benefits. • Travel, rent, utilities, supplies. • Training. Specific Activities: • Development and refinement of regulations and rules re: registration and control of the manufacture, distribution and dispensing of controlled substances.. • Preparation for and conduct of meetings and national conferences with registrants, registrants' representatives (*e.g.*, associations, etc.), law enforcement representatives, and other interested parties.. • Responding to inquiries from industry, law enforcement, regulatory personnel, Congress, and federal agencies.. • Classification and scheduling of substances, including the collection and analysis of necessary data, providing information to international, national and state entities re: scheduling of substances, responding to scheduling petitions, providing testimony and expert guidance and assistance, and working with law enforcement agencies, the scientific community, industry, the public and other interested parties.. • Identification of controlled substances for the control of the lawful manufacture, distribution, dispensing, and export of controlled substances by practitioners and other registrants.. • Establishment of quotas for certain controlled and substances for medical, scientific, research and industrial use and monitoring of the manufacture, utilization, trafficking an abuse of controlled substances against the quotas.. • Conduct of training seminars for industry on controlled substances, including quotas, etc..	• All direct support of chemical diversion control efforts, including payroll, benefits, travel, training, supplies and equipment. Specific Activities: • Chemical control. • Clandestine laboratories. • Overseas positions. • Chief Counsel support. • Executive Direction. • DEA automated data processing systems and support (except ARCOS and CSA). • Office of Training staff. • DEA management and administrative support, • Office of Congressional and Public Affairs support. • Intelligence support. • Development of non-drug related materials such as the Chemical Handlers Manual. • Chemical Laboratory Services Support.

Included	Excluded
• Registration of persons authorized to manufacture, distribute, dispense, import, or export controlled substances, including registration of persons conducting research with Schedule I controlled substances in conjunction with FDA and distribution of registrant information to other DEA elements , Federal, state and local regulatory personnel, and registrants as necessary.. • Conduct of other investigations including pre-registrant investigations and cyclic investigations of registrants' records/inventories.. • Participation in any civil or criminal action resulting from above-referenced investigations.. • Operation of system of declarations and permits for importers and exporters of controlled substances to comply with CSA and international treaties. This includes examining request for permission to import or export controlled substances and maintenance of records, monitoring of imports of controlled substances to ensure they are consistent with domestic need, and preparation of reports.. • Participation in international policy activities re: the manufacture, distribution, dispensing, import and export of controlled substances and the strengthening of controls in these areas to comply with CSA and international treaties/conventions, including participating in United Nations policy activities and international meetings/conferences; developing and formulating policy; and developing substantive materials and research papers. Note, fee-funded activities in this area are limited to domestic personnel (personnel assigned to overseas positions are supported through appropriated funds).. • Providing assistance to foreign authorities and governments with their diversion control systems to improve the design and administration of, and cooperation regarding, controlled substances and chemical controls.. • Participation in cooperative efforts with other officials involved in diversion control activities (*e.g.*, Federal, state, local, and national and local pharmaceutical and health care organizations) and maintenance of an active liaison program.. • Development of information manuals and materials for industry such as Pharmacist's Manual, Practitioner's Manual, Mid-Level Practitioner's Manual, and the Security Outline to the Controlled Substances Act.. • Enforcement of the Anabolic Steroid Control Act.. • Operation of ARCOS and CSA data systems.. • Establishment and operation of National Forensic Laboratory Information System.. • Establishment and operation of Tactical Diversion Squads..	

The increased detail of the December 30, 1996 announcement did not address all concerns, however. Several of the commentors asserted that DEA failed in the first DDCFA rulemaking and in the December 1996 **Federal Register** notice to articulate how it had arrived at the amount for the registration fee increase in 1993 and failed to provide adequate justification for the increase. One commentor concluded that "[t]he thing that bothers many of us is that it appears the amount of increase was "picked out of the air" and there was no justification for that much of an increase."

The 1993 Appropriations Act mandates: (a) That DEA deposit each fiscal year's fee revenue in excess of $15 million into an account for "offsetting receipts" (*i.e.*, the first $15 million collected must remain in the General Fund of the Treasury); (b) that revenue deposited into such account "remain available until expended"; (c) that the fees funding this account "be set at a level that ensures the recovery of the full costs of the various aspects" of the DCP; (d) that DEA "be refunded in accordance with estimates made in the budget request of the Attorney General"; and (e) that the Attorney General "prepare and submit annually to the Congress, statements of financial conditions of the account". 21 U.S.C. 886a.

The 1993 Appropriations Act augments DEA's previously established authority, pursuant to 21 U.S.C. 821, to collect offsetting fees by requiring that DEA fund the entire DCP with registration fees. Because previously established fees were insufficient to recover the full cost of operating the DCP, the 1993 legislation made a fee increase unavoidable. Because the law required recovery of the "full costs" of the program and because the law required all fee revenue to "remain available until expended," DEA knew that any excess or surplus collected would remain in the fee account until it could be used for an appropriate DCP purpose.

DEA's method for estimating the full cost of the DCP has been a traditional approach: modular costing. This approach is required under the Department of Justice (DOJ) Instructions for the Preparation of Budget Estimates and is consistent with Office of Management and Budget (OMB) Circular A–11, Section 30.5; and both DOJ and OMB review the cost modules presented with each of DEA's three annual budget drafts. A modular cost is the total organizational burden of each incremental employment position in an organization. Such burden extends beyond the salary and benefits of a new position and includes all other resource requirements (including supplies, utilities, rent, training, etc.) resulting from the position's existence. Cost estimation may also accommodate fixed program increases: such fixed costs are incorporated into each budget request under the separate heading "Non-Personnel Costs". The modular costing method is useful because it enables budget formulators to project the cost of additional resources without recalculating the base cost of the underlying program. If the underlying program is modified or broken into components, however, the base cost of the resulting program(s) must be calculated afresh. The DCP's division into one appropriation-funded component and one fee-funded component made just such a base cost recalculation necessary.

In 1992, prior to passage of the 1993 Appropriation Act, DEA's FY94 budget

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request for the DCP was represented partially under the Drug and Chemical Diversion Control Decision Unit and partially under other decision units. These decision units were not developed to enable DEA to track such individual programs as the DCP, and even the Drug and Chemical Diversion Control Decision Unit was not identical with the DCP. Many of the costs of the DCP were managed under other decision units. The cost of DCP budgeting and accounting, for example, was borne under DEA's Management and Administration decision unit. DEA was therefore unprepared to collect a fee recovering the full costs of a program which (a) could not be disaggregated in the DEA Accounting System (DEAAS, the automated accounting system in use at the time) and (b) was managed by several offices within the agency. Yet, with the passage of the 1993 Appropriation DEA was obliged to develop a new estimate of total DCP cost, including costs of the program not previously budgeted under the Drug and Chemical Diversion Control Decision Unit.

To achieve such a first-time, full cost estimation of the DDCFA-funded portion of the DCP, DEA assigned each object group (or general cost element, such as salaries, benefits, training *etc.*) a budgeted cost based on the ratio of projected DDCFA workyears (one workyear equals 2,080 hours worked by an individual) to projected Salary and Expense Appropriation (S&E) workyears. The budgeted cost of items intended for both DCP and non-DCP use (*e.g.*, utilities, postal expenses, office services, and furniture) was prorated between DDCFA and the S&E account in proportion to the ratio of projected DDCFA workyears to projected S&E workyears. The budgeted cost of such dedicated DCP activities as the Administrative Law Judges' office, on the other hand, was assigned entirely to the DDCFA because 100 percent of that office's activities were related to drug diversion control at that time. When DEA prepared the initial estimate of FY94 DDCFA cost, budgeted DDCFA workyears totaled 555, in comparison with 6,602 total budgeted DEA workyears. The ratio of DDCFA workyears to total DEA workyears, accordingly, was 8.31 percent (555 divided by 6,602). DEA also prorated payroll costs and non-foreign space rent and alterations in proportion to the projected workyears billable to the DDCFA as a percentage of DEA's total projected workyears.

The amount DEA originally projected as the total operating cost of the DCP for FY94 was $62,917,000. Yet this estimate included the cost of "chemical" diversion control: the regulation and monitoring of activity involving chemicals used in the illicit manufacture of controlled substances and the investigation of the diversion of these chemicals. Because DEA had independently determined not to fee-fund the cost of "chemical" diversion control, it reduced its request for DDCFA obligating authority (and thereby its minimum fee revenue target) to $57,123,000. The remaining $5,794,000 of the DCP's projected FY94 cost fell under the modified (and still S&E-funded) Chemical Diversion Control Decision Unit.

DEA's original estimation of the DDCFA-billable portion of the DCP was, if anything, too conservative, especially inasmuch as it did not capture a significant non-programmatic item. In addition to the direct program elements discussed in the December 30, 1996 **Federal Register** announcement and outlined above, DEA must transfer the first $15 million of fee revenue to the General Fund of the Treasury each year. 21 U.S.C. 886a(1). DEA's failure to include this surcharge (which is not driven by the number of DCP employees and is therefore not captured in DEA's DCP cost modules) in its calculation of the DDCFA fee did not impede cash flow until FY99, however, because Congress had appropriated an offsetting $15 million supplement to the DDCFA for every year from FY93 (the year of the DDCFA's inception) through FY98. Indeed, because of the offsetting appropriation of $15 million from FY93 through FY98 (a total infusion to the DDCFA of $90 million), the DDCFA had spent $21 million more than its cumulative revenue but was still showing a $69 million surplus ($90 million minus $21 million) in FY99. The DDCFA surplus, even at its peak of $69 million in FY99, in other words, was artificial and predicated on a supplemental appropriation not provided for in 21 U.S.C. 886a.

The DDCFA's actual cash flow has turned negative with (a) the discontinuation of the $15 million supplemental appropriation in FY99 and (b) the growth of DCP responsibilities. Some DCP growth has been reflected in DEA budget submissions, as when DEA requested and received authority (in FY97) to create Tactical Diversion Squads (TDSs) in various field locations. Other DCP expansions have not been reflected in DEA budget submissions, as when DEA implemented its initial response to internet-based drug diversion, or when DEA increased the number of drug diversion cases leading to arrest. (The number of diversion arrests more than doubled in just five years, from 444 arrests in FY95 to 935 diversion arrests relating to drug cases alone in FY00.) Yet, notwithstanding such growth due to both budgeted and unbudgeted DCP expansions, DEA has not increased the fee supporting the DDCFA since FY93.

In the meantime, DEA has also faced a management challenge extending beyond the DDCFA. Before Fiscal Year 1998 (FY98), DEA relied upon DEAAS. DEAAS was adequate for the purposes of a law enforcement organization with a single funding source and streamlined agenda, but as both enforcement and diversion control mandates began to expand in the 1990s (and in order to comply with laws requiring auditable financial statements) DEA replaced DEAAS with a better-suited accounting system.

The replacement, DEA's current Federal Financial System (FFS), is more flexible and has enabled DEA to track all obligations and expenditures (not merely those incurred under the DDCFA) through a greater variety of cost centers and programs. But this improved accounting capability was not available until FY98. Prior to FY98, a deficiency of accounting controls throughout DEA's management structure resulted in the inadequate tracking of all DEA funds—not just the DDCFA. For FY97 and before, accordingly, DEA's annual independent financial audit resulted in an unsatisfactory opinion of DEA's accounts and financial statements. Yet even in FY93 DEA attempted to comply with the law establishing the DDCFA.

XI. Accumulation and Distribution of Surplus

Each of the five commentors addressed the surplus, with all but one asserting that DEA must either issue a refund to the fee-paying registrants or reduce future fees. As noted in the December 1996 **Federal Register** notice, this surplus (or positive cash balance) began to accrue shortly after the establishment of the DDCFA. The surplus totaled $45 million as of September 1996 and had risen to $69 million by February 1999. Note in the table below that the bottom line "Carryover" figure represents the DDCFA surplus at the end of a given fiscal year. This surplus grew through FY98 (the last fiscal year during which DEA received a supplemental $15 million appropriation for the DDCFA) and has declined through the present. Because the surplus is expected to become a deficit shortly after the end of FY02, there are no funds to support a refund to registrants, as all remaining DDCFA funds will be expended.

DRUG ENFORCEMENT ADMINISTRATION DIVERSION CONTROL FEE ACCOUNT (DDCFA)

[Cash flow summary (dollars in thousands)]

	FY93	FY94	FY95	FY96	FY97	FY98	FY99	FY00	FY01	FY02 (Est.)	FY03 (Est.)
DDCFA Authority[1]	12,000	42,123	57,178	62,188	67,824	73,268	76,710	80,330	83,543	86,021	[2] 116,462
Carry over from Prior Year		7,201	28,939	37,230	45,284	61,724	69,313	53,168	44,699	36,072	10,018
Rescinded Authority							(7,000)	(35,000)	(8,000)		
Net Carryover[3]		7,201	28,939	37,230	45,284	61,724	62,313	18,168	36,699	36,072	10,018
Revenue:											
Collections[4]	19,201	69,609	61,258	65,160	75,003	69,668	69,301	75,232	75,099	74,967	74,967
Supplemental Appropriation	15,000	15,000	15,000	15,000	15,000	15,000					
Less: General Treasury Surcharge	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)
Net Revenue	19,201	69,609	61,258	65,160	75,003	69,668	54,301	60,232	60,099	59,967	59,967
Obligations:											
Gross Obligations[4]	12,000	47,871	53,294	57,108	61,951	62,961	71,772	74,121	77,272	86,021	116,462
Adjustments & Deobligations			(327)		(3,388)	(882)	(1,326)	(5,420)	(8,546)		
Net Obligations	12,000	47,871	52,967	57,108	58,563	62,079	70,446	68,701	68,726	86,021	116,462
Fiscal Year End Balance	7,201	28,939	37,230	45,284	61,724	69,313	46,168	9,699	28,072	10,018	(44,795)
Restosed Authority							7,000	35,000	8,000		
Carryover	7,201	28,939	37,230	45,284	61,724	69,313	53,168	44,699	36,072	10,018	(44,795)

[1] Estimate of DDCFA-funded program is provided to Congress two years before execution and is subsequently authorized (but not appropriated).
[2] The collection of $116,462 in FY03 will require prior implementation of a revised fee structure.
[3] Carryover equals the Unobligated Balance shown on the final FMS Form 2108, after release of which Adjustments & Deobligations are shown in the subsequent year.
[4] Gross Obligations and Collections are based on DEA's most recent Financial Management System (FMS) Form 133, prior to availability of which an estimate is provided.

A second series of tables on subsequent pages, entitled "Validated vs. Actual DCP Program Charges to the DDCFA", shows the accumulation and subsequent depletion of the DDCFA surplus.

The commentors stated that in (ostensibly) failing to project the costs of the DCP accurately, DEA overestimated initial program costs and calculated an excessive fee, which resulted in a significant surplus. Yet, rather than overestimating DCP costs, DEA appears, as discussed above, to have underestimated such costs drastically. DEA has followed the OMB-approved DOJ Instructions for the Preparation of Budget Estimates to project future DCP costs from the inception of the DDCFA through the present. Indeed, for all fiscal years since FY93, DEA's programmatic requirements of the DDCFA are defended in this section, below. Unfortunately, DEA has not charged the DDCFA for all fee-fundable costs, including the mandated annual $15 million transfer to the General Treasury. Thus the surplus accumulated between FY93 and FY98 was attributable not to *overestimations* of future DDCFA need but to subsequent *underbilling* of actual DDCFA-fundable activity and costs.

Perhaps confusingly, DEA's general underbilling of the DDCFA has accompanied occasional instances of DDCFA overcharge within a particular cost category. In FY96, for example, rent charges to the DDCFA appear to have exceeded a reasonable amount by at least $2.1 million. Yet for the same year DEA's estimate of valid DDCFA information technology charges (*e.g.* for Diversion Investigators' desktop computers, as distinct from network infrastructure charges provided for under DEA's Salaries and Expenses appropriation) is greater than actual DDCFA information technology charges by $3.3 million. DEA appears to have overcharged the DDCFA for rent in FY96, in other words, but other allowance centers were undercharging the DDCFA to an even greater degree during the same period.

A particular area of confusion between legitimate and illegitimate uses of the DDCFA has been the boundary separating "chemical" from "non-chemical" DCP activities. This boundary crosses through a range of cost categories, from payroll to training. In its 1993 **Federal Register** notice, and during the course of the *AMA* v. *Reno* litigation, DEA stated it was not charging the costs of enforcing the Chemical Diversion and Trafficking Act to the DDCFA. DEA has since discovered these statements to have been in error. DEA has identified numerous examples of chemical costs erroneously charged to the DDCFA and of DDCFA-fundable items erroneously charged to the Chemical Decision Unit. Such errors resulted from a failure in some DEA offices to understand (and therefore implement) internal directives to use multiple fund sources for obligations with both a chemical and a non-chemical purpose. Because the errors resulted from a failure of understanding, however, they resulted, in turn, in mischarges to both the DDCFA and to the appropriation for the Chemical Decision Unit. The analysis presented below was performed in order to quantify the full extent of such funding errors and to determine whether there was any net overcharge to the DDCFA.

Before FY00, a common cause of chemical mischarges was erroneous "split-funding." Items purchased in support of the entire DCP—for both chemical and non-chemical activities—were not consistently prorated by purpose (*i.e.*, "split-funded") until FY00. Such items (including photocopiers and automobile repairs) should have been charged to the DDCFA in proportion to the ratio of non-chemical to chemical activity, but such "split funding" was not effectively instituted (despite earlier guidance) until FY00. The analysis below takes these and other DDCFA mischarges into account by imputing a legitimate DDCFA burden based on workyear consumption. The results of this calculation suggest that DDCFA overcharges are *more than offset* by DDCFA undercharges.

DEA has acted in good faith to address and resolve accounting and managerial deficiencies connected with both the DDCFA and other programs. The replacement of DEAAS with FFS arose not just from DDCFA challenges but also from the need to isolate the cost of such major appropriation-funded DEA programs as Source Country Interdiction and Mobile Enforcement Teams. To validate DDCFA charges

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under the abandoned DEAAS system, DEA has performed two independent retrospective analyses of actual DDCFA billings since FY93. Both of these analyses have confirmed (a) that DEA's original projections of DDCFA need (as presented to Congress and subsequently used as the basis for fee collections) were overly conservative and (b) that the DEA also should have charged the DDCFA more in the aggregate for every year through FY00.

DEA began its first analysis with a calculation of the ratio of DDCFA to non-DDCFA work years consumed. Only domestic, non-chemical DCP work years (as broken out in DEA's budget submissions to Congress) were included in this calculation. These work years correspond to DCP positions assigned to drug diversion control efforts. DEA multiplied the resulting ratio by non-DDCFA actual expenditures (a figure also provided in DEA's Congressional budget submissions and consistently greater than 90 percent of DEA's total expenditures). The resulting total for FY93 through FY00, $672,745,000, was then multiplied by 67 percent to reflect the relatively lower cost of a DEA Diversion Investigator (the core position supporting DEA's DDCFA-funded activities) in comparison with a DEA Special Agent (the core position supporting DEA's appropriation-funded activities). The result of this last calculation was $449,227,000: $8,129,000 more than the $441,098,000 actually charged to the DDCFA for FY93 through FY00. This calculation is not a traditional budget estimation technique, yet it corroborates the actual charges originally provided for in the official budget process. It answers the commonsense question, "What if DEA had never developed a DCP budget: was the money spent from the DDCFA proportional to the number of Diversion Investigators assigned to drug diversion control efforts?" The resulting estimate of total drug diversion control cost is approximately $8 million greater than the actual charges to the DDCFA (as recorded in DEA's accounting system) during the same period, even before adding the $15 million annual surcharge (required transfer to the U.S. Treasury).

This first analysis addresses the possibility of DDCFA overcharges at the bottom line. The analysis assigns all DEA costs to one of two categories (DDCFA or non-DDCFA) based on the number of work years reported for each category. This analysis leaves untested the cost elements adding into the bottom line. To validate these components, DEA designed a second test of the DDCFA charges in FFS for FY99. In this second diagnostic, DEA met with each headquarters office holding DDCFA obligation authority and verified actual procedures and obligations. DDCFA obligations found not to comport with DEA's announcements in the **Federal Register** were removed from the obligating office's validated total, while DDCFA charges provided for (but not made because of accounting and managerial errors) in the same announcements were added. For field offices, whose authority to obligate DDCFA funds is limited, the principle problem identified was a failure to split-fund (*i.e.*, draw a proportional amount from more than one fund source for a single item) non-travel items.

DEA next sought to extend this analysis of FY99 FFS data back to the beginning of the DDCFA (in FY93). To develop this extrapolation, DEA identified actual drug diversion control work hours stored in the Workhour Reporting System (WRS, a system tracking both the drug diversion control and chemical diversion control work hours reported by Diversion Investigators on DEA Form 351) and the wage and non-wage cost inflators reported to Congress in each fiscal year's budget request. DEA then projected valid DDCFA charges in reverse for FY93 through FY98 by carrying the directly validated FY99 data backward and adjusting for inflation and WRS data in each year. Finally, DEA compared this retrospective projection with the certified actual accounting data stored for the same fiscal years and offices.

The result was striking. In every year of this analysis, the actual DDCFA charges recorded in DEA's accounting system are significantly lower than what an inflation-adjusted, workhour-proportional projection generates. In the earlier years (FY93 through FY95), the difference is greater than $40 million per year. Later, as DEA began to make further legitimate use (even after invalidation of selected misuses) of the DDCFA, this annual difference recedes to just over $16 million. But in every year, DEA undercharged the DDCFA to a greater degree, and in more allowance centers, than the total of particular overcharges ultimately identified. The tables showing the results of this analysis follow.

Validated vs. actual DCP program charges to the DDCFA—Item	Validated	Obligated/incurred	Undercharge (overcharge)
Fiscal year 1993			
Diversion Control Work Hours		274,960	
Drug Diversion Control Work Hours		253,946	
Split-Funding Drug Portion		92%	
Wage Inflation Factor Used for DEA Budget		2.0%	
Non-wage Inflation Factor Used for DEA Budget		2.6%	
Payroll/Benefits	20,736,431	12,000,000	8,736,431
Rent/Utilities	6,982,552		6,982,552
DCP Management	3,787,819		3,787,819
Information Systems	3,214,756		3,214,756
Staff Relocation	2,197,040		2,197,040
Field Operations	1,187,364		1,187,364
Staff Training	912,791		912,791
Investigative Tech	791,779		791,779
Facility Security	531,529		531,529
Health Services	161,259		161,259
Forensic Sciences	140,117		140,117
Interest Penalties	71,552		71,552
Administrative Law	40,297		40,297
Total	40,755,287	12,000,000	28,755,287

Validated vs. actual DCP program charges to the DDCFA—Item	Validated	Obligated/incurred	Undercharge (overcharge)
Field Split-Funding Mischarges (NonTravel)			
Net Undercharge (Overcharge)			28,755,287
Cumulative Net DDCFA Undercharge from FY93			28,755,287
Fiscal year 1994			
Diversion Control Work Hours		493,982	
Drug Diversion Control Work Hours		466,200	
Split-Funding Drug Portion		94%	
Wage Inflation Factor Used for DEA Budget		2.0%	
Non-wage Inflation Factor Used for DEA Budget		2.6%	
Payroll/Benefits	38,829,816	30,681,201	8,148,615
Rent/Utilities	13,152,027	12,662,303	489,724
DCP Management	7,134,570	752,964	6,381,605
Information Systems	6,055,172	546,115	5,509,057
Staff Relocation	4,138,249	483,060	3,655,188
Field Operations	2,236,466	1,298,223	938,242
Staff Training	1,719,293	449,291	1,270,002
Investigative Tech	1,491,360	1,068,591	422,769
Facility Security	1,001,165	451,073	550,092
Health Services	303,740	67,957	235,783
Forensic Sciences	263,919		263,919
Interest Penalties	134,773		134,773
Administrative Law	75,901	56,760	19,141
Total	76,536,451	48,517,539	28,018,912
Field Split-Funding Mischarges (NonTravel)			46,723
Net Undercharge (Overcharge)			27,972,188
Cumulative Net DDCFA Undercharge from FY93			56,727,475
Fiscal year 1995			
Diversion Control Work Hours		485,937	
Drug Diversion Control Work Hours		461,089	
Split-Funding Drug Portion		95%	
Wage Inflation Factor Used for DEA Budget		2.0%	
Non-wage Inflation Factor Used for DEA Budget		2.6%	
Payroll/Benefits	39,172,203	29,874,828	9,297,375
Rent/Utilities	13,346,044	13,616,909	(270,865)
DCP Management	7,239,818	1,003,812	6,236,006
Information Systems	6,144,497	1,943,983	4,200,514
Staff Relocation	4,199,295	1,833,917	2,365,379
Field Operations	2,269,458	1,665,859	603,598
Staff Training	1,744,656	534,204	1,210,452
Investigative Tech	1,513,361	1,070,050	443,311
Facility Security	1,015,934	480,750	535,184
Health Services	308,221	109,170	199,051
Forensic Sciences	267,812		267,812
Interest Penalties	136,761		136,761
Administrative Law	77,021	69,721	7,300
Total	77,435,081	52,203,202	25,231,878
Field Split-Funding Mischarges (NonTravel)			57,293
Net Undercharge (Overcharge)			25,174,585
Cumulative Net DDCFA Undercharge from FY93			81,902,060
Fiscal year 1996			
Diversion Control Work Hours		468,677	
Drug Diversion Control Work Hours		430,032	
Split-Funding Drug Portion		92%	
Wage Inflation Factor Used for DEA Budget		2.2%	
Non-wage Inflation Factor Used for DEA Budget		3.0%	
Payroll/Benefits	37,337,472	31,120,120	6,217,352
Rent/Utilities	12,820,525	14,921,408	(2,100,883)
DCP Management	6,954,740	1,083,346	5,871,394
Information Systems	5,902,548	2,602,958	3,299,591
Staff Relocation	4,033,942	1,759,553	2,274,389
Field Operations	2,180,095	1,822,990	357,104
Staff Training	1,675,958	1,026,738	649,220
Investigative Tech	1,453,770	1,287,820	165,950

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Validated vs. actual DCP program charges to the DDCFA—Item	Validated	Obligated/incurred	Undercharge (overcharge)
Facility Security	975,930	442,216	533,714
Health Services	296,084	141,197	154,887
Forensic Sciences	257,267		257,267
Interest Penalties	131,376	32,374	99,002
Administrative Law	73,988	43,659	30,329
Total	74,093,694	56,284,378	17,809,316
Field Split-Funding Mischarges (NonTravel)			107,017
Net Undercharge (Overcharge)			17,702,299
Cumulative Net DDCFA Undercharge from FY93			99,604,360
Fiscal Year 1997			
Diversion Control Work Hours		443,458	
Drug Diversion Control Work Hours		397,002	
Split-Funding Drug Portion		90%	
Wage Inflation Factor Used for DEA Budget		3.0%	
Non-wage Inflation Factor Used for DEA Budget		3.1%	
Payroll/Benefits	35,503,736	31,009,637	4,494,099
Rent/Utilities	12,202,713	14,358,276	(2,155,563)
DCP Management	6,619,596	4,649,140	1,970,455
Information Systems	5,618,109	4,655,344	962,765
Staff Relocation	3,839,549	2,180,000	1,659,549
Field Operations	2,075,037	1,987,268	87,770
Staff Training	1,595,195	1,534,400	60,794
Investigative Tech	1,383,714	628,795	754,919
Facility Security	928,901	560,178	368,723
Health Services	281,816	146,499	135,317
Forensic Sciences	244,869		244,869
Interest Penalties	125,045		125,045
Administrative Law	70,422	242,833	(172,410)
Total	70,488,701	61,952,370	8,536,332
Field Split-Funding Mischarges (NonTravel)			133,277
Net Undercharge (Overcharge)			8,403,054
Cumulative Net DDCFA Undercharge from FY93			108,007,414
Fiscal year 1998			
Diversion Control Work Hours		501,861	
Drug Diversion Control Work Hours		386,771	
Split-Funding Drug Portion		77%	
Wage Inflation Factor Used for DEA Budget		3.1%	
Non-wage Inflation Factor Used for DEA Budget		2.8%	
Payroll/Benefits	35,661,034	36,426,300	(765,266)
Rent/Utilities	12,221,111	13,926,300	(1,705,189)
DCP Management	6,629,576	3,209,600	3,419,976
Information Systems	5,626,580	3,092,800	2,533,780
Staff Relocation	3,845,338	1,949,900	1,895,438
Field Operations	2,078,166	2,316,600	(238,434)
Staff Training	1,597,600	921,700	675,900
Investigative Tech	1,385,800	200,300	1,185,500
Facility Security	930,301	1,060,900	(130,599)
Health Services	282,241	118,600	163,641
Forensic Sciences	245,238		245,238
Interest Penalties	125,233		125,233
Administrative Law	70,529	95,800	(25,271)
Total	70,698,748	63,318,800	7,379,948
Field Split-Funding (Non Travel)			324,747
Net Undercharge (Overcharge)			7,055,201
Cumulative Net DDCFA Undercharge from FY93			115,062,615
Fiscal year 1999			
Diversion Control Work Hours		484,083	
Drug Diversion Control Work		386,171	
Split-Funding Drug Portion		80%	
Wage Inflation Factor Used for DEA Budget		3.0%	
Non-wage Inflation Factor Used for DEA Budget		2:1%	
Payroll/Benefits	36,673,884	38,484,803	(1,810,919)

Validated vs. actual DCP program charges to the DDCFA—Item	Validated	Obligated/incurred	Undercharge (overcharge)
Rent/Utilities	12,458,398	16,111,600	(3,653,202)
DCP Management	6,758,297	6,402,810	355,487
Information Systems	5,735,826	3,831,504	1,904,322
Staff Relocation	3,920,000	1,397,306	2,522,694
Field Operations	2,118,516	2,895,754	(777,238)
Staff Training	1,628,619	1,139,564	489,055
Investigative Tech	1,412,707	11,549	1,401,158
Facility Security	948,364		948,364
Health Services	287,721	121,800	165,921
Forensic Sciences	250,000	249,861	139
Interest Penalties	127,665	149,517	(21,852)
Administrative Law	71,898	71,898	(0)
Total	72,391,895	70,867,965	1,523,930
Field Split-Funding Mischarges (NonTravel)			438,812
Net Undercharge (Overcharge)			1,085,118
Cumulative Net DDCFA Undercharge from FY93			116,147,733

The preceding tables of "Validated vs. Actual Charges" show three quantitative columns for each fiscal year from FY93 through FY99. The first quantitative column shows the "Validated" amount, or the dollars that should have been charged (in accordance with the aforementioned itemized review of all FY99 DDCFA charges) to the DDCFA. The second quantitative column shows the "Obligated/Incurred" amount, or the dollars which actually were charged to the DDCFA. (Note that, given the deficiencies of DEAAS, this column does not necessarily reflect the accurate subtotal of each item listed; but the column does show exactly what was spent bottom line level for the years in question.) The third column (the first column minus the second column) shows the "Undercharge (Overcharge)" amount or dollars that should have been charged over and above what was charged to the DDCFA. The rows of the preceding tables represent the DCP's major items, from Payroll/Benefits to Regulatory Law. Two item names which may not be immediately self-evident are "Interest Penalties" (which are required by law to accompany late vendor payments) and "Administrative Law" (which, as distinct from the DEA executive administration chief counsel's office, is the independent function required under 21 CFR 1316.41 *et seq.* whereby DEA hears and resolves disputes regarding potential registrant violations).

For each fiscal year, the "Validated" charges shown above are adjusted to reflect (a) the wage and non-wage inflation factors for that year (shown at the top of each table) and (b) the ratio of Drug Diversion Control Work Hours to Diversion Control Work Hours, or Split-Funding Drug Portion (also shown at the top of each table). Note that adjustment (b) is based on work hours stored in WRS (DEA's system for tracking the purpose (drug or chemical) of Diversion Investigator hours worked). Thus, in FY93, DEA charged the DDCFA $12 million for salaries and benefits but did not bill the DDCFA for DCP administrative law functions, even though the cost of such functions is provided for in DEA's 1996 **Federal Register** announcement. When all such undercharges (together with consideration that FY93 payroll should have been over $20 million) are tallied, the result is a DDCFA undercharge exceeding $28 million in FY93 alone, even before adding the non-programmatic $15 million surcharge for that year.

While DEA is confident that the DDCFA was not overcharged in total between FY93 and the present, the agency is still moving toward a more precise accounting standard. In FY01 DEA created a task force to review each obligation of DDCFA funds for which the total cost to be incurred is $500 or greater. This task force also works closely with each DDCFA-funded office to establish a clear understanding of proper procedure and documentation, and its efforts will enable DEA to publish a more accurate accounting of total DCP costs than has heretofore been possible.

In the meantime, the $15 million annual offsetting transfer by Congress into the DDCFA was discontinued as of FY98, and the remaining revenue (from fee payments) is proving inadequate to address legitimate programmatic needs. Even during the period when Congress was providing an offsetting $15 million transfer (FY93 through FY98), the DCP received a cumulative funding supplement of $90 million but amassed a surplus which never exceeded $70 million. With the discontinuation of this supplement in FY99, the DDCFA surplus has declined rapidly and will turn deficit before the end of FY03.

XII. Status of the Current Fee

This notice does not change the current fee schedule, and the fee schedule currently supporting the DCP remains the same as the schedule announced at the inception of the DDCFA in 1993:

Registrant class	Annual cost
Manufacturers	$875
Distributors, Importers/Exporters	438
Dispensers/Practitioners	70
Research, Narcotic Treatment Programs	70

XIII. Miscellaneous Issues

A. Registration Fee as User Fee

One commentor stated that registration fees imposed on domestic registrants should not fund "international and other activities from which the registrant receives no greater benefit than the public at large." Yet DEA does not fund the costs of Diversion personnel stationed overseas through the DDCFA although certain overseas activities such as those relating to the import and export of controlled substances satisfy the requirements of 886a and 821 and are properly funded through the DDCFA. In addition, certain other activities from which "the registrant receives no greater benefit than the public at large" (*e.g.*, the review for potential scheduling of new substances) are allowable DDCFA burdens. The commentor referred to the standard applicable to user fees. User fees, or charges imposed pursuant to the Independent Offices Appropriations Act (IOAA), may be assessed only when a fee-funded service provides special benefits to an identifiable recipient

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beyond those that accrue to the general public. OMB Circular A–25, July 15, 1993. The IOAA applies "only when there is no independent statutory source for the charging of a fee or where a fee statute fails to define fee-setting criteria." *AMA* v. *Reno*, 857 F. Supp. at 84 (D.D.C. 1994). Congress established the DDCFA by passing the 1993 Appropriations Act with its collection and spending criteria established by prior law (21 U.S.C. 821 and 958(f)). This statute specified that "[f]ees charged by the Drug Enforcement Administration under its diversion control program shall be set at a level that ensures the recovery of the full costs of operating the various aspects of that program" and funds from the DDCFA will be raised "in accordance with estimates made in the budget request of the Attorney General." 21 U.S.C. 886a(3) and (4). Therefore, registration fees charged by DEA pursuant to the 1993 Appropriations Act are not user fees subject to the IOAA because the act constitutes an independent statutory source for charging the fee and it defines fee-setting criteria, i.e., to cover the full costs of the DCP. *AMA* v. *Reno*, 857 F. Supp. 80 (D.D.C. 1994).

Thus, the appropriate test for fee-funding DCP activities is not whether they convey a special benefit to registrants, but whether the fees are "reasonable" and "relat[e] to the registration and control of the manufacture, distribution, and dispensing of controlled substances" or relate to the registration of importers and exporters, and are set "at a level that ensures the recovery of the full costs of operating the various aspects of [the diversion control] program." 21 U.S.C. 821, 958(f) and 886a(3).

B. Costs of the Components of the DCP

Two commentors contended that DEA should have provided an explanation of the costs of the DCP components. One commentor argued that registrants are entitled to an accurate accounting of the expenses for each of the program's components and demanded that DEA publish an explanation of its expenditures. Another commentor asked that DEA document the comparative costs of activities included within the DCP and subject the proposed rule to review by OMB.

DEA acknowledges both commentors' concerns and has referred all parties of such a mind to DEA's annual budget request to Congress. This document breaks down the components of each DEA program, including the DCP, and shows both prior-year actual data and future-year projections. For budget submissions relating to FY98 and earlier, DEA retains little, and sometimes no, supporting documentation and is therefore unable to provide some of the cost detail. Yet each DEA budget is based on itemized cost modules which were developed using the most recent (*i.e.*, best) accounting data available at the time. And the review of each DEA budget submission by both the Department of Justice and OMB includes a thorough examination and approval of the underlying cost modules and all other supporting documentation.

C. Fee Schedules Based on Prescribing Practices

One commentor expressed disappointment "at DEA's refusal to establish a fair and equitable fee schedule based on actual prescribing or use records." DEA addressed this issue in the December 30, 1996 **Federal Register** notice, noting the various alternative fee structures that it had considered and the problems associated with each. 61 FR 68632. As DEA stated in that notice, establishing a fee based on the volume of drugs handled by individual practitioners would be impractical since there is no way of determining such drug volumes. In addition, the volume of drugs handled can change due to considerations of market, health care, and competition, thus requiring frequent changes in the fees and making program budgeting impractical. Whatever benefit such a plan may offer would be offset by significantly increased costs, which must be borne by registrants, to monitor the prescribing and dispensing practices of practitioners and determine the appropriate fee, based on the volume of drugs prescribed or dispensed.

XIV. Conclusion

Since FY93, DEA has attempted to manage the DCP in compliance with the following statutes: 21 U.S.C. 821 (which authorizes reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances); 21 U.S.C. 958(f) (which authorizes reasonable fees relating to the registration of importers and exporters of controlled substances); and 21 U.S.C. 886a(3) (which requires a fee structure sufficient to recover the full costs of operating the DCP). Such management has included: (a) the submission to Congress of a DCP budget based on historic actual costs, in accordance with both DOJ and OMB guidelines and (b) the internal promulgation of guidelines governing the uses of the DDCFA.

DEA has endeavored to avoid charging the DDCFA for three categories of DCP cost: (1) Costs associated with the regulation and monitoring of activity involving chemicals used in the illicit manufacture of controlled substance and the investigation of the diversion of these chemicals; (2) costs associated with the stationing of Diversion personnel overseas; and (3) portions of the DCP's indirect cost. Of these three cost categories, the first two (chemical and foreign diversion control activities) may be included in future Congressional requests for DDCFA funding authority. The third category includes DCP items which should have been (and, as of FY01, have indeed been) obligated against the DDCFA. Specifically, these items consist of health services and physical security requirements connected with DCP operation. Although DEA did not begin charging the DDCFA for such items until FY01, their funding out of the DDCFA is consistent with the provisions of 21 U.S.C. 821, 21 U.S.C. 886a, and all applicable public representations of DEA.

Yet DEA has also mischarged the DDCFA on numerous occasions. Some mischarges have been simple overcharges, as when DEA charged an excessive portion of its rent to the DDCFA. In such cases, DEA was correct to charge a portion of the total cost to the DDCFA; but the amount charged appears in retrospect to have been unreasonably high. Other mischarges fall into the "inappropriate" category. Such charges were explicitly proscribed either in 21 U.S.C. 886a or in DEA's subsequent public announcements.

DEA regrets being unable to itemize each instance of excessive and inappropriate charge to the DDCFA. DEA retains a full, certified public accounting record of all DDCFA charges, but the underlying documentation is largely unavailable and/or insufficient for the period in question. DEA's best effort to analyze this period in retrospect has nevertheless revealed two important insights: (1) DEA's FY93–FY98 accounting shortfall regarding the DDCFA resulted from a lack of familiarity with the funding mechanism and its managerial/accounting implications, and (2) the sum of all retrospectively identifiable potential mischarges *is exceeded* by the sum of all corresponding undercharges. DEA therefore acknowledges a failure in fully accounting for its early use of the DDCFA but concludes that such failure had no adverse impact on the registrants. With every year since the DDCFA's inception, DEA has improved its management of this vital source of funds. DEA has made accounting errors, especially early on, when the very idea of a fee fund was new and unfamiliar to the law enforcement organization. But such errors have proven, upon subsequent inspection, both unintentional and financially offset by other errors. The accumulation of a DDCFA surplus, moreover, resulted not because DEA's cost projection and fee setting method was overly generous but because DEA's subsequent charges to the DDCFA did not include all actual DDCFA-billable costs of the DCP and because of an unexpected supplemental annual appropriation of $15 million by Congress. In light of such errors, DEA has intensified its efforts to transform the DDCFA from a management problem into the platform for a higher standard of managerial excellence. Beginning with FY99, DEA has retrospectively reviewed each office's use of the DDCFA to verify propriety. In FY01, DEA proceeded to validate (or reverse) each obligation of DDCFA funds totaling $500 or more. And in FY02, DEA will be validating both obligations and subsequent expenditures according to the highest standard of traceability. For these latest years, any auditor will be able to find a stand-alone document supporting every DDCFA-funded item costing $500 or more.

XV. Regulatory Analysis

Regulatory Flexibility Act

The Deputy Administrator of the Drug Enforcement Administration hereby certifies that this rule will not have a significant economic impact upon entities whose interests must be considered under the regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The majority of DEA registrants are practitioners, pharmacies and hospital/clinics, for whom the annual impact of the fee increase initially finalized on March 22, 1993 (58 FR 15272) was $50.00 per registrant. Further, the total annual impact of the fee increase for the entire registrant population was less than $50 million.

Since 1971, the Controlled Substances Act has permitted the Attorney General to collect fees relating to the registration and control of the manufacture, distribution, import, export and dispensing of controlled substances (21 U.S.C. 821 and 958(f)). DEA and its predecessor agency have collected such fees pursuant to a schedule based upon the five basic activities cited in the law. That fee schedule was proposed for public comment as part of regulations to implement the Controlled Substances Act which were finalized in 1971. The ratio of fees was: a distributor's fee is 50% of the manufacturer's fee and a dispenser's 16–20% of a distributor's fee.

In its December 30, 1996 **Federal Register** notice (61 FR 68624), DEA considered a number of alternate approaches to the fee schedule. Among these alternative were: establish a fee based on volume of drugs handled by individual registrants; establish a fee based upon DEA work hours expended per class of registrant; establish a different fee for various types of practitioner activities (*i.e.*, hospital, medical doctor, dentist, veterinarian, narcotic treatment program, teaching institution); and, charge for order forms (DEA 222) used to order Schedule I and II controlled substances. Each of these alternative approaches was rejected for a variety of reasons, including, but not limited to, the impracticability of the alternative, an inability on the part of DEA to determine controlled substance utilization by individual registrants, and an inability to adequately budget due to fluctuating registration fees which would be created under certain alternatives. Therefore, although various fee approaches have been considered in the past, none offered a feasible alternative to the present approach.

Executive Order 12866

The Deputy Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). DEA has determined that this is a significant rulemaking action. Therefore, this action has been reviewed by the Office of Management and Budget. This document responds to the remand requirement of the United States Court of Appeals for the District of Columbia Circuit, and the notice and comments received subsequent to that remand requirement.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Paperwork Reduction Act

This rulemaking imposes no recordkeeping or reporting requirements on registrants. No information collection request is necessary.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: July 30, 2002.

John B. Brown III,

Deputy Administrator.

[FR Doc. 02–19667 Filed 8–8–02; 8:45 am]

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Part V

Department of the Treasury

Office of Thrift Supervision

12 CFR Parts 563b, 574, and 575
Mutual Savings Associations, Mutual Holding Company Reorganizations, and Conversions From Mutual to Stock Form; Final Rule

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563b, 574, and 575

[No. 2002–34]

RIN 1550–AB24

Mutual Savings Associations, Mutual Holding Company Reorganizations, and Conversions From Mutual to Stock Form

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations on the mutual-to-stock conversion process and portions of its regulations on mutual holding company reorganizations. This rule is based on the Notice of Proposed Rulemaking (First Proposal) and the Interim Final Rule, published July 12, 2000, and a re-proposed regulation (Re-proposal), published April 9, 2002.

This final rule includes modifications to the provisions addressing business plans. In addition, it addresses certain matters involving conversions from the mutual to the stock form, by, among other things, adding demand account holders to the definition of savings account holders, allowing accelerated vesting in management benefit plans for changes of control, adding rules to establish charitable organizations, and clarifying the policy on the amount of proceeds allowed to be retained at the holding company level.

DATES: Effective on October 1, 2002.

FOR FURTHER INFORMATION CONTACT: David A. Permut, Senior Attorney, (202) 906–7505; Gary Jeffers, Senior Attorney, (202) 906–6457, Business Transactions Division, Chief Counsel's Office; or Mary Jo Johnson, Project Manager, (202) 906–5739, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. The final rule and the related forms will also be posted on the OTS Internet Site at *http://www.ots.treas.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to its broad authority to regulate mutual savings associations, authorize mutual holding company (MHC) reorganizations, and regulate mutual-to-stock conversions of savings associations under the Home Owners' Loan Act (HOLA),[1] on July 12, 2000, OTS published an Interim Final Rule (Interim Rule), revising OTS repurchase restrictions applicable to recently converted institutions, changing OTS policy on waivers of dividends by MHCs, and making certain technical changes to the regulations as a result of the passage of the Gramm-Leach-Bliley Act of 1999 (GLB Act).[2] On the same day, OTS published the First Proposal, proposing changes to OTS rules governing stock conversions and MHCs.[3] On April 9, 2002, OTS published the Re-proposal, refining the First Proposal in response to public comments and requesting additional public comment.[4]

OTS undertook these actions based on numerous discussions with the management of mutual institutions, its experience with the conversion process, and developments in the marketplace regarding MHC reorganizations and mutual-to-stock conversions. OTS also reviewed its policies, practices, and regulations to assess whether additions or revisions were necessary.

To respond completely to all the suggestions for change, OTS developed a comprehensive regulatory strategy governing mutual institutions, MHC reorganizations, and the mutual-to-stock conversion process. This comprehensive strategy includes: (1) New policy and examination guidance; (2) these final regulations for the mutual-to-stock conversion process and MHC minority stock offerings; and (3) revisions to the application forms used for the mutual-to-stock conversion process.

II. Policy Guidance

In the First Proposal, OTS indicated it would issue policy guidance in certain areas regarding mutual associations in connection with the changes to the MHC and conversion regulations. OTS has developed new examination guidance to address many of the concerns mutual associations raised, within the context of safe and sound operations. OTS has also enhanced its off-site monitoring systems to provide examiners with comparative peer groups of similarly situated mutual associations. See the Re-proposal for specific references to issued guidance.

III. Summary of Comments

OTS received 13 comment letters on the Re-proposal. Two individuals, three law firms, two thrifts, a regulator, and five trade groups submitted comments. OTS also participated in a meeting on the Re-proposal sponsored by America's Community Bankers on April 26 (attended by 23 participants), a conference telephone call on April 16 sponsored by the Mutual Advisory Council of the American Bankers Association (with representatives from 4 mutual institutions, two outside counsel, and representatives of the ABA), and a meeting with representatives of the FDIC on April 17. Issues raised by commenters are discussed in the item-by-item summary below.

IV. Item-by-Item Summary

A. General

The greatest number of comments on the First Proposal and the Re-proposal involved the business plan, Regional Office non-objection to the business plan, and the pre-filing meeting requirements. While most commenters expressed appreciation for OTS revisions to the business plan provisions, there were still specific objections to portions of the Re-proposal. For example, commenters generally approved the removal of prior Regional Office non-objection to the business plan, but certain commenters objected to one or more of the factors OTS proposed to use in evaluating the business plan.

B. Pre-filing Meeting

Under the Re-proposal, OTS would have required each association contemplating a conversion to meet with the appropriate Regional Office, in a pre-filing meeting at least ten days prior to publishing a plan of conversion, to discuss the proposed business plan. The proposed regulations contemplated that the association's board of directors, or a committee of the board including outside directors, would attend the meeting. One commenter commended OTS for the changes to the pre-filing meeting requirement, and stated it had no objection to the requirement. Two commenters opposed the pre-filing meeting in its entirety, and two other commenters supported such meetings, provided they were not used to "second guess" management. One commenter questioned whether the proposed strategic plan to be discussed at the pre-filing meeting was just an early draft of the business plan. A number of commenters asked for clarification of whether OTS was requiring the whole board to attend the pre-filing meeting and where it had to be held.

It has been OTS' normal practice to discuss a savings association's conversion plans with the board of directors. Therefore, a pre-filing meeting does not result in any additional burden. In response to the request for clarification as to where and who must attend the meeting, OTS has added language to the final regulation indicating that, if the board desires, OTS will send a representative from the Regional Office to the association to meet with the board of directors or a committee of the board. To respond to a comment questioning why the pre-filing meeting must occur at least ten days prior to passage of the plan of conversion, OTS has revised the final regulation to require a meeting prior to passage of the plan, but without requiring the meeting to occur a specified number of days before passage. The short, written strategic plan OTS has requested to review and discuss at the meeting is not intended to take the place of the business plan. OTS reiterates that the purpose of this meeting is not to substitute the agency's judgment for that of the directors, but to require the board to articulate its plans for the association and the implications of those plans before the conversion process actually begins.

C. General Comments on the Business Plan

The commenters considered the business plan provisions in the Re-proposal to be an improvement over those in the First Proposal. Several commenters commended OTS for eliminating the requirement for prior Regional Office non-objection to the business plan. Several of the commenters supported a business plan requirement generally. Certain others opposed the business plan as unnecessary, claiming, in one case, that OTS did not require such plans for other capital raising efforts and so should not for conversions. Another commenter suggested that any mutual association that did not convert should produce a business plan to justify that decision. One commenter stated that the implication still remained that if the business plan is unacceptable, the application will be denied.

OTS requires business plans for significant capital raising applications, such as applications for new savings associations and continues to believe such plans are necessary in stock conversions, because of the generally large amount of capital that will be raised and the change in form of ownership inherent in the transaction. Under the final regulation, business plans must be filed at the time a conversion application is submitted, or the application will be rejected as materially deficient. As a practical matter, however, OTS strongly encourages submission of business plans before the application filing to help ensure timely approval of the conversion application.

D. Business Plan Standards

The Re-proposal provided that a converting association's business plan should, among other things: (i) Clearly and completely describe projected operations, including the deployment of conversion proceeds; (ii) demonstrate that the plan of conversion will substantially serve to meet credit and lending needs in the proposed market area; (iii) demonstrate how the new capital will support projected operations and activities; (iv) describe the risks associated with the plan; (v) demonstrate adequate expertise and staffing to manage growth prudently; and (vi) demonstrate that the association will achieve a reasonable return on equity. The Re-proposal also provided that the association could not project stock repurchases or returns of capital in the first year of the business plan, or extraordinary dividends at any time during the three-year plan. OTS also clarified that OTS would weigh all of the factors together, and no single factor would determine whether a business plan was acceptable.

One commenter asked for clarification whether the business plan components were "standards" or "requirements" and whether all of them had to be met. The same commenter asked for a waiver provision for when a component was inapplicable. One commenter thought the regulations should specifically state that a business plan for a state-chartered savings association would require state approval by the appropriate state regulator. Several commenters asked for clarification whether there was a business plan requirement for MHC reorganizations that do not involve a stock offering. Several commenters who discussed the business plan opposed the reasonable return on equity (ROE) factor.

In addition, certain commenters asserted that OTS was "over[ly] paternalistic" and concerned about the "need for capital;" that the business plan standards were "onerous" or meant to protect OTS interests; that OTS was biased in favor of management; or that the business plan was a way to "second guess" management. One commenter asserted that OTS appeared to believe that "need" for capital is a threshold requirement for conversion, and that OTS is ignoring the fact that there are many other reasons to justify a conversion.

To address the concerns of the commenters, the final regulation combines several of the business plan components, indicates that no single factor will be determinative for any business plan, and that OTS will look at every plan on a case-by-case basis. OTS reiterates that the business plan does not create a "needs" test for conversions, and recognizes that many other factors go into the decision whether to convert.

OTS, as the safety and soundness regulator of savings associations, believes the specific requirements are appropriate to ensure that an association contemplating such a significant transaction, with considerable ramifications regarding capital, management, and business operations, has considered the consequences of the transaction in its business plan. Accordingly, the final regulation continues to include a business plan requirement, and sets forth the factors OTS will consider in evaluating business plans.[5]

Several of the comments demonstrate that commenters believed the various factors in the Re-proposal were separate "requirements" that had to be satisfied for approval of a conversion. The final regulation clarifies that OTS will weigh all of the factors together, and no single factor will determine whether a business plan is acceptable. For example, lack of management experience with past growth will not be as significant if the business plan demonstrates realistic deployment of the conversion proceeds for new growth.

All of the commenters addressing the proposed ROE factor objected to OTS's use of ROE as a factor in evaluating the business plan, pointing out that such a standard was generally unrealistic for a newly converted company, and particularly difficult to achieve for an already well-capitalized company. OTS has reviewed the factors it will consider when evaluating a business plan and decided to combine several factors that address similar issues concerning deployment of proceeds. OTS continues to believe that investor reaction to return on their investment should be a valid concern for a converting institution. The final rule will emphasize that the business plan must describe how it will safely and soundly deploy the proceeds received from the perspectives of opportunities to deploy proceeds, the projected operations and

[1] 12 U.S.C. 1464(a), (i) and (p) and 1467a(o).

[2] 65 FR 43088.

[3] 65 FR 43092.

[4] 67 FR 17228.

[5] OTS notes that failure to submit a business plan for an MHC reorganization gives rise to a rebuttable presumptive disqualifier under § 575.4(c)(2). In addition, establishing a Mid-tier, with or without a stock issuance, requires OTS approval under the Acquisition of Control Regulations, which also establish a rebuttable presumptive disqualifier for failure to submit a business plan. See 12 CFR 574.7(g)(2)(ii). An applicant may provide information to rebut the presumptive disqualifier.

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activities, and what the return will be to investors who buy stock in the association, in particular, near the end of the three-year business plan period, when the association has had time to deploy most, if not all of the conversion proceeds.

One commenter believed that the requirement that the converting association submit a certificate signed by two-thirds of the board of directors, stating that the business plan adequately reflects their plans should be deleted, claiming it is redundant, because the board of directors certifies elsewhere that it has read and approved the plan when it submits the application for conversion. OTS believes it is important that directors certify specifically that the business plan reflects their actual plans. The same commenter also asserted that the required legal opinion at the completion of the conversion was too broad and would cause counsel to opine on matters of which it had no knowledge. OTS has considered this comment and believes that an opinion that the association has complied with all laws applicable to the conversion is appropriate. For years OTS has required similar opinions with respect to compliance with state laws (for converting state-chartered institutions), and has not encountered difficulties regarding the submission of such opinions.

Another commenter objected to the requirement that each applicant demonstrate that the deployment of proceeds in the business plan will help meet the credit and lending needs of the communities served by the applicant. The commenter, apparently believing this requirement to be newly proposed, asserted that the requirement would reduce "flexibility" in the conversion process. OTS points out that this standard has been in the conversion regulations since 1994.[6] In evaluating applications under this standard, OTS has taken into account the differing positions of converting savings associations, and has found many different types of plans to be acceptable under the standard.

E. MHCs and Mutuality

In the preamble to the First Proposal, OTS asked a series of questions about what OTS could do to enhance the attractiveness of the MHC charter. OTS also specifically stated that it encouraged savings associations that were considering conversion to stock form first to carefully consider the choice of an MHC charter as an interim step. In addition, OTS specifically proposed certain changes to the MHC regulations to permit the issuance of additional stock benefit plans, and a number of other innovations that OTS believes will enhance the attractiveness of the MHC option. Taken together, these steps appeared to some commenters as expressing an agency bias for the MHC form.

OTS suggestions on enhancing the MHC charter were intended to expand the options available to a mutual association, not to give preference to one form of charter over another.

The MHC is an alternative for mutual associations that are contemplating conversion to stock form. The MHC structure retains the benefits and essential nature of the mutual charter, while providing greater access to capital markets. In addition, in sec. 401(b) of the GLB Act,[7] Congress expanded the investment and activities authority of MHCs to include the activities of financial holding companies. OTS amended the MHC regulations to reflect those changes.[8] The final regulation retains the proposed enhancements to the MHC form to make it a long-term alternative to full conversion.

OTS continues to encourage mutual associations seeking new capital to consider the MHC form of reorganization with a limited stock issuance, rather than a full conversion. This is a particularly useful alternative for mutual associations that have no immediate plans for deployment of substantial amounts of new capital.

F. Mutual Capital Questions

OTS asked a number of questions in the preambles to the First Proposal and the Re-proposal regarding capital for mutual associations. OTS observed that mutual associations could currently raise additional capital in a number of ways that did not involve conversion to stock form. These methods included mutual capital certificates, subordinated debt, trust preferred securities, or the formation of real estate investment trusts (REITs). OTS asked if there were other methods of raising capital and why the methods mentioned were not widely used. One commenter suggested that MHCs should be allowed to issue non-voting stock that would have a claim on the economic interest of the MHC without controlling management. OTS is concerned that issuing non-voting stock with a claim on the economic interest of the MHC might complicate the ability of an MHC to complete a second step stock conversion. Another commenter recommended amending the MHC regulations to allow stock to be issued for acquisitions without offering shares to existing stockholders. OTS has already authorized such an acquisition under existing MHC regulations, and is willing to consider such acquisitions in the future.

Both the preamble to the First Proposal and to the Re-proposal discussed whether OTS should issue guidance regarding capital distributions by mutual associations. A number of commenters addressed this issue, all suggesting OTS not issue guidance in this area because they felt this should be a business decision of the association. OTS does not propose to issue regulatory guidance on capital distributions by mutual associations as part of this proposal.[9]

However, in response to a request from an association, the Chief Counsel issued a legal opinion addressing this issue on June 21, 2002.[10]

G. Stock Repurchases

In the Interim Rule, OTS revised its regulations to eliminate restrictions on stock repurchases by converted savings associations after the first year following conversion. The rule change was made in part to bring OTS policy closer to that of the FDIC on this subject. Several commenters expressed appreciation that the rules of the two agencies would now be similar. Almost all the other commenters on this issue supported OTS changes, although one commenter suggested repurchase limitations should be eliminated completely. Two commenters suggested that there should be no restrictions on repurchases for associations completing second step stock conversions, because those companies had been public for some period of time prior to full conversion to stock form.

The final regulation is consistent with the Interim Rule and the Re-proposal. *See* §§ 563b.510 and 563b.515. OTS is also making corresponding amendments to the MHC regulations at § 575.11(c). In response to the comment that associations that engage in second step stock conversions should receive different treatment, OTS believes that fully converted companies should receive the same treatment whether they reach that status in one step or two. In addition, OTS believes it is in the best interest of applicants to have similar treatment of stock repurchases among the agencies regulating the conversion process.

As a matter of policy, OTS has taken the position that stock repurchases for management benefit plans that have been ratified by shareholders in the first year following conversion do not count toward the repurchase limitations in § 563b.3(g). The final regulation, at § 563b.510, clarifies this point. However, OTS will still require prior notification of any repurchases in the first year following conversion, even if they are not subject to OTS approval under the repurchase limitations. One commenter inquired whether a stock repurchase more than one year after conversion would require Regional Director approval as a material deviation from the business plan. OTS believes that it may constitute a material deviation, depending on what the business plan disclosed. Current MHC regulations permit purchases of stock in the open market for tax-qualified or non-tax-qualified employee stock benefit plans to be excluded from the repurchase limitations.[11] The final regulation will extend this exclusion from the repurchase limitations to fully converted companies. OTS notes that the FDIC permits purchases for employee stock ownership plans (ESOPs) to be excluded from the repurchase limitations for fully converted companies.

H. Dividend Waivers

The Interim Rule revised OTS policy on dividend waivers for MHCs. Prior OTS policy had adjusted exchange ratios for certain dividends waived in conversions of MHCs to stock form. No adjustment is now required, and § 575.11(d)(3) was amended to reflect this change in OTS policy. Most commenters supported this change in OTS policy although two opposed the change, stating their belief that OTS had changed its policy from protecting depositors to protecting management and minority interests. The final regulation is unchanged from the Interim Rule and the Re-proposal. OTS notes that the waiver of dividends results in more capital at the savings association, enhancing the safety and soundness of the savings association. OTS retains the authority to take enforcement action if it discovers abuses.

I. Charitable Organizations

The First Proposal and the Re-proposal included provisions regarding the establishment of a charitable organization in connection with a mutual-to-stock conversion. The provisions included discussing the purpose of the charitable organization, voting foundation shares in the same ratio as all other shares voted on proposals considered by shareholders, reserving board seats for an independent director and a director from the association, and dealing with conflicts of interest. The final regulation also specifies the conditions for approval, including examination by OTS at foundation expense, submission of annual reports, and compliance with all laws necessary to maintain the foundation's tax-exempt status.

Most commenters on this subject were in favor of the proposed regulations, although one commenter stated that OTS should not allow for the establishment of a foundation in second step conversions. OTS believes that establishing a foundation in a second step conversion is acceptable with a separate minority shareholder vote in such transactions and has included that requirement in the final regulation. One commenter suggested that the requirement that certain language be included in all of the foundation's governing documents was excessive. In addition, this commenter suggested several regulatory revisions that OTS believes are improvements to the proposal, such as not requiring the submission of the operating plan until six months following the conversion. The final regulation and Exhibit 9 to the Form AC provide that applicants will not be required to submit the operating plan until six months after the conversion, and delete a previously requested legal opinion regarding the legality of the chartering documents under state law. Similarly, OTS will delete the requirement to include certain language in the foundation's bylaws and operating plan, and will make several other minor revisions at the suggestion of this commenter. OTS will also delete the provision that foundation compensation arrangements may need to be reviewed by the agency, because OTS already has that option. Upon effectiveness of the final regulation, waivers from certain provisions in the current conversion regulations now routinely requested in a conversion with a charitable foundation will no longer be necessary.

J. Acquisitions of Converted Associations

OTS regulations at § 563b.3(i)(3) provide that no person or company may acquire more than 10 percent of any class of equity security of a recently converted association for three years following conversion without OTS approval. OTS enacted this rule principally to provide a reasonable period of time for a recently converted association to deploy its new capital prudently according to the plan described in the offering documents, to acclimate to operating as a public company, and to do both without the distraction of considering takeover proposals.

In the First Proposal, OTS noted that it intended to closely review applications under the existing standards to make sure all criteria are fully met before approving acquisitions within the first three years following conversion. In the Re-proposal, OTS requested comment on whether these provisions should apply to MHCs and whether Mid-tiers should be permitted to enact anti-takeover protections in their charters.

Several commenters expressed support for the OTS position that a three-year restriction on acquisitions was appropriate and should apply to MHCs, and that anti-takeover protections for Mid-tiers were appropriate. One commenter thought OTS should implement a five-year restriction on acquisitions. One commenter suggested post-conversion restrictions for state-chartered savings associations should follow state law restrictions, rather than OTS restrictions. One commenter expressed confusion regarding what OTS is willing to allow. Another commenter suggested that OTS needed to show some flexibility in applying the rule, such as allowing acquisitions in less than three years in certain circumstances. Another commenter suggested OTS should allow no exceptions to the three-year "prohibition" on acquisitions. OTS reiterates that it always considers the merits of every case, and will continue to do so. OTS believes that all savings associations that convert under part 563b be subject to the post-conversion restrictions. After considering the comments, for the reasons stated above, OTS is finalizing the regulation as originally proposed.

K. Demand Account Holders

In both the First Proposal and the Re-proposal, OTS proposed to allow demand account holders to be considered eligible account holders for purposes of determining subscription rights in a conversion. Many applicants incorrectly believe that demand account holders are already eligible account holders. Others have requested OTS waivers to allow demand account holders to be included in the subscription. OTS routinely granted the waivers. In order to end the confusion

[6] See 12 CFR 563b.11, as added by 59 FR 61262, Nov. 30, 1994.

[7] Pub. L. 106–102, 113 Stat. 1338 (1999).

[8] 65 FR 43088, Jul. 12, 2000.

[9] Any capital distribution by mutual associations remains capital distribution regulations at 12 CFR part 563, subpart E.

[10] The legal opinion is avaialble on the OTS website.

[11] See 12 CFR 575.11(c)(1)(iv).

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regarding this issue, OTS proposed revising the regulations to include demand account holders in the subscription priorities. None of the commenters objected to this provision and one specifically supported it. OTS will enact the final regulation as proposed.

L. Management Stock Benefit Plans

In the First Proposal and the Re-proposal, OTS proposed changing the regulations to allow for accelerated vesting for management stock benefit plans in the event of a change of control. Currently, the regulations only allow acceleration for death or disability. Most commenters in this area agreed with this change, although two suggested OTS add retirement within one year of conversion as another reason for allowing acceleration.

OTS believes that it is appropriate that the bases for acceleration, such as death, disability, or change of control of the savings association, not be within the individual's control. Therefore, the final regulation does not provide for accelerated vesting based on retirement.

The First Proposal revised the section on management benefit plans to clarify that an association must present to shareholders for ratification any material amendments to previously approved management recognition plans, stock option plans, or other benefit plans that occur more than one year after conversion and that are inconsistent with the regulation. One commenter pointed out that the proposed language in the revision did not accomplish the purpose of the revision. OTS concurs and has revised the language in the final regulation to be consistent with the proposal.

In response to the First Proposal, most commenters supported expansion of option plan opportunities for MHCs. However, two commenters were opposed to any options for management based on conflicts of interest or a view that benefit plans were a way for management to enrich itself. After considering the potential for small offerings in MHC structures, OTS proposed an additional limitation in the Re-proposal that OTS will not approve management benefit plans that in the aggregate award more than 25% of the number of shares ultimately issued in the public offering to minority shareholders.

One commenter on the Re-proposal specifically supported establishment of the 25% limitation. Several commenters were unclear on how the 25% limit would be applied, and one commenter asserted that notwithstanding the 25% limit, the Re-proposal increased rewards to management without justification. One commenter asked OTS to clarify whether the 25% limit would apply to stock benefit plans enacted after the initial stock issuance.

OTS believes management benefit plans that are reasonable, present no safety or soundness concerns, and are ratified by the shareholders, are not objectionable. Most companies use such plans to attract qualified executives and to reward management for performing well. With respect to the comments requesting clarification, the regulation has been revised to indicate that all stock benefit plans for officers and directors are included in the 25% limitation, except for ESOPs (whether allocated or unallocated). Also, the 25% limit would apply to subsequent stock benefit plans, but would be based on 25% of the stock outstanding on the date subsequent stock plans were ratified by the shareholders.

One commenter suggested two technical revisions to §§ 563b.380(c) and 563b.500(c). Those revisions correct language that was inadvertently deleted from the proposal regarding ESOP purchases in the offering and amendments of previously approved benefit plans. OTS appreciates the technical corrections and is including them in the final rule.

OTS also proposed to add a provision that clarifies a supervisory policy requiring exercise or forfeiture of stock benefits in certain circumstances, such as if an association becomes critically undercapitalized. This provision is included in the final regulation. *See* § 563b.500.

M. Holding Company Proceeds

The First Proposal stated that at least 50% of the gross proceeds in a mutual-to-stock conversion must be infused into the converting savings association, and more must be infused if OTS concludes, for supervisory reasons, that a larger capital infusion is necessary. The Re-proposal clarified that 50% of the net proceeds must be infused into the savings association. One commenter concurred with the clarification. OTS is enacting this provision as re-proposed.

N. Mutual Holding Company Revisions

1. General

In the First Proposal and the Re-proposal, OTS proposed allowing the adoption of additional stock option plans without the need to issue stock to all categories of subscribers. The final regulation retains this provision. OTS notes that adoption of additional plans still requires filing an application with OTS, registering additional stock where appropriate, and shareholder ratification of additional plans. Among the factors OTS will consider when reviewing additional plans are the purpose for creating the additional plans, management ratings, and supervisory considerations at the converted savings association.

OTS received a number of comments after the First Proposal that holding companies inserted in between MHCs and their savings association subsidiaries (Mid-tiers) should be allowed to be state-chartered entities. In the Re-proposal, OTS noted that Mid-tiers are MHCs, and MHCs, by statute, must be federally chartered.[12] One commenter claimed OTS chartering and regulation of Mid-tiers had worked very well. Two commenters claimed that OTS was attempting to "eviscerate" state law in this area. OTS continues to believe that the statute requires that all Mid-tier holding companies be federally chartered. OTS believes the two commenters may be assuming that OTS's position applies to MHC structures that involve neither a savings association nor an institution that has elected to be treated as a savings association under sec. 10(l) of HOLA (that is, to MHCs that draw membership from banks but not savings associations). OTS notes that if the MHC structure does not include a savings association within the meaning of sec. 10 of HOLA, the MHC structure is not subject to part 575, and in such case, neither the MHC nor the Mid-tier may be chartered by OTS.

Two commenters recommended that OTS allow Mid-tiers to adopt certain provisions of state law with regard to indemnification or limitation of liability currently available to state chartered corporations. As OTS noted in response to a comment from the First Proposal, OTS has allowed the adoption of limited liability bylaws on a case by case basis for other federal associations and, therefore, would consider this for Mid-tiers.

2. Acquisitions of Mutual Holding Company Structures

In the Re-proposal, OTS asked for comment on the recent series of proposals to acquire MHC structures. In the context of these transactions, MHCs and their subsidiary entities have asked: (i) Whether Mid-tier holding companies (or, if there is no Mid-tier holding company, the subsidiary savings association) may adopt the pre-approved charter provisions set forth at 12 CFR 552.4(b)(8), such as the charter provision prohibiting acquisitions of,

[12] *See* 12 U.S.C. 1467a(o)(7).

and offers to acquire, more than ten percent of any class of equity security of the entity for five years; and (ii) whether OTS applies 12 CFR 563b.3(i)(3) to savings association subsidiaries or Mid-tier holding companies that have issued stock within the previous three years.

Recently completed or proposed transactions have demonstrated that takeover pressures now exist in the context of MHC structures. Minority stockholders have sought to pressure MHC structures to be acquired by mutual institutions or other MHC structures. In light of recent takeover attempts, and particularly in light of the hostile situations that have developed, OTS has determined to allow the post-conversion anti-takeover restrictions in the charter of a Mid-tier stock holding company. These restrictions would be consistent with the purposes of those provisions generally and give a newly converted MHC time to deploy its new capital and adjust to managing its institution in the MHC environment.[13] One commenter discussed this issue and agreed with OTS that such provisions should be included in Mid-tier charters.

Accordingly, OTS is allowing Mid-tier holding companies to include the provisions set forth at 12 CFR 552.4(b)(8) in their charters.[14] In addition, OTS intends to apply § 563b.3(i)(3) to Mid-tier holding companies and subsidiary stock institutions that complete stock offerings under § 575.7. One commenter agreed with OTS that it should apply § 563b.3(i)(3) in the context of Mid-tiers and MHC savings association subsidiaries.

3. "Second Step Conversions" of MHCs

Section 575.12 of the MHC regulations generally governs the conversion of MHCs to stock form (frequently called "second step conversions"). In all such transactions to date, OTS staff has required that the majority of the minority shares of the Mid-tier or savings association subsidiary, as the case may be, vote in favor of the second step conversion, in addition to votes otherwise required. OTS staff has imposed this requirement because the minority shareholders received different treatment in the second step conversion than the majority interest. The minority shareholders received stock in an amount to be determined under an "exchange ratio", while the majority interest (the mutual depositors) received rights to subscribe to the remaining shares to be issued in the transaction, at the offering price. OTS staff concluded that the requirement was appropriate in order to help ensure the fairness of the transaction. OTS proposed to include this requirement, which has been applicable to every second step conversion to date, in the MHC regulations, at 12 CFR 575.12(a)(3). One commenter disagreed with OTS on this issue but offered no reasons for the disagreement. OTS has included the requirement in the final regulation.

O. Supervisory Conversions

To conform the language in OTS regulations more closely to sec. 5(o) of the HOLA, the statute governing supervisory conversions, OTS proposed certain changes to the regulatory language regarding Voluntary Supervisory Conversions. There were no comments on this language. The revised language can be found at §§ 563b.625 and 563b.630 of the final regulation.

P. Merger Conversions

One commenter suggested that OTS should change its policy to allow merger conversions for institutions with greater than $25 million in assets. Another commenter suggested the federal regulators should take a consistent approach to merger conversions to discourage "forum shopping." That same commenter suggested OTS should use the CAMELS rating categories as factors to be considered in merger conversions. In response to these comments, OTS reiterates that there is no set asset size for an institution undertaking a merger conversion. OTS merely suggested in its 1994 statement about merger conversions that institutions smaller than $25 million in assets may encounter difficulties in completing standard conversions and, therefore, were more likely candidates for merger conversions. OTS policy on merger conversions was articulated in the preamble to the OTS conversion regulation of 1994, 59 FR 61247, 61254, Nov. 30, 1994. In that regulation, OTS stated that it would limit merger conversions to cases involving financially weak institutions. In addition, OTS indicated it would consider allowing merger conversions where a converting institution could demonstrate by clear and convincing evidence that a standard conversion would not be economically feasible, based on the ratio of expenses to gross proceeds, because of the asset size of the institution.[15]

In the last eight years OTS has approved only one merger conversion. That approval was based on the criteria articulated in the 1994 regulation. OTS reiterates the guidelines it established in the 1994 regulation and wishes to clarify that institutions proposing merger conversions should not propose plans where management of the disappearing institution would receive anything more than they could if they had undertaken a standard conversion. In addition, institutions contemplating a merger conversion must demonstrate that a merger conversion is the only viable alternative and document what other proposed solutions the company pursued, that the proposed distribution of assets is fair to all parties, and that the institution used independent counsel to represent the interests of the institution. OTS notes that these are the same criteria the FDIC uses when it evaluates proposals for merger conversions.

Q. Forms

The First Proposal contained revisions to all of the forms currently in the conversion regulations, and drafted a new form that facilitates the conversion process (Form OF for the Order Form). In drafting these forms, OTS moved a number of requirements currently in the regulations to the related forms. OTS received one comment on the forms with some suggestions for revisions to the section on foundations. As discussed earlier, OTS concurs with some of the proposed revisions and has revised the form accordingly. The forms will continue to be available through OTS Washington and Regional Offices and will be accessible on OTS's website.

V. Disposition of Existing Rules

Original provision	Re-proposed provision	Comment
12 CFR 563b.1	12 CFR 563b.5	Nonsubstantive revision, moved.

[13] The MHC regulations provide that the procedural and substantive requirements of 12 CFR 563b.3 through 563b.8 apply to all MHC stock issuances under § 575.7 unless clearly inapplicable. In the past, OTS staff has informally advised certain acquirors that it has not considered § 563b.3(i)(3) to be clearly applicable in the MHC context.

[14] If an existing Mid-tier wishes to amend its charter to include such provisions, it may do so following the provisions at 12 CFR 575.14(c)(2).

[15] See 59 FR 61247, 61255. OTS gave an example of institutions with assets of less than $25 million as more likely to be able to establish a justification for doing a merger conversion.

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Original provision	Re-proposed provision	Comment
12 CFR 563b.2(a)	12 CFR 563b.25	Substantive revisions, deletions, and moved.
12 CFR 563b.2(b)		Deleted.
12 CFR 563b.3(a)	12 CFR 563b.5(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(b)	12 CFR 563b.200(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(1)	12 CFR 563b.330(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(2)	12 CFR 563b.355(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(2)(i)–(ii)	12 CFR 563b.375(a), (d)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(3)	12 CFR 563b.360	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(4)	12 CFR 563b.335(b), (c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(4)(i)	12 CFR 563b.320(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(4)(ii)	12 CFR 563b.375(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(4)(iii)	12 CFR 563b.375(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(4)(iv)	12 CFR 563b.375(d)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(5)	12 CFR 563b.320(d), 365	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(6)	12 CFR 563b.320(e), 335(b), (d)	Nonsubstantive revision, deletions, and moved.
12 CFR 563b.3(c)(6)(i)	12 CFR 563b.385(a), (c), 380(a)	Substantive revision, deletions, and moved.
12 CFR 563b.3(c)(6)(ii)–(iii)	12 CFR 563b.395	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(6)(iv)	12 CFR 563b.390(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(7)	12 CFR 563b.385(a), (c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(8)	12 CFR 563b.370	Nonsubstantive revision, deletions, and moved.
12 CFR 563b.3(c)(9)	12 CFR 563b.505(d)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(10)	12 CFR 563b.330(a), 335(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(11)	12 CFR 563b.420(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(12)	12 CFR 563b.445(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(13)	12 CFR 563b.430(d), 445(b), 465, 485	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(14)	12 CFR 563b.25	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(15)	12 CFR 563b.440, 445(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(16)	12 CFR 563b.140, 425	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(17)	12 CFR 563b.505(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(18)	12 CFR 563b.505(b)–(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(19)	12 CFR 563b.530(a)–(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(20)	12 CFR 563b.150(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(21)	12 CFR 563b.130	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(22)	12 CFR 563b.345(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(23)	12 CFR 563b.320(a)–(d), 380(a)–(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(24)	12 CFR 563b.520(a)–(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(d)(1)–(7)		Deleted.
12 CFR 563b.3(d)(8)	12 CFR 563b.385(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(d)(9)	12 CFR 563b.385(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(d)(10)–(11)		Deleted.
12 CFR 563b.3(d)(12)	12 CFR 563b.390(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(d)(13)		Deleted.
12 CFR 563b.3(e)(1)	12 CFR 563b.25	Nonsubstantive revision, moved.
12 CFR 563b.3(e)(2)		Deleted.
12 CFR 563b.3(f)(1)	12 CFR 563b.445(b), 450, 455, 480	Nonsubstantive revision, moved.
12 CFR 563b.3(f)(2)	12 CFR 563b.445(b), 450	Nonsubstantive revision, moved.
D12 CFR 563b.3(f)(3)	12 CFR 563b.470(e), 475	Revision with partial deletion, moved.
12 CFR 563b.3(f)(4)	12 CFR 563b.460	Nonsubstantive revision, moved.
12 CFR 563b.3(f)(5)	12 CFR 563b.470(a)–(d)	Nonsubstantive revision, moved.
12 CFR 563b.3(g)(1)	12 CFR 563b.510	Revision with deletion, moved.
12 CFR 563b.3(g)(2)	12 CFR 563b.510, 520(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(g)(3)	12 CFR 563b.510, 515	Substantive revision with deletion, moved.
12 CFR 563b.3(g)(4)	12 CFR 563b.500	Substantive revision, moved.
12 CFR 563b.3(h)	12 CFR 563b.340(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(1)–(2)	12 CFR 563b.340(b)(1)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(3)(i)	12 CFR 563b.525	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(3)(ii)	12 CFR 563b.420(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(3)(iii)	12 CFR 563b.525(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(4)(i)		Deleted.
12 CFR 563b.3(i)(4)(ii)–(iv)	12 CFR 563b.525(c)(1)–(3)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(4)(v)	12 CFR 563b.525(c)(4)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(4)(vi)–(5)	12 CFR 563b.525(d)(1)–(2)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(6)	12 CFR 563b.430(a), (b)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(7)(i)–(ii)	12 CFR 563b.25, 525(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(7)(iii)–(iv)		Deleted.
12 CFR 563b.3(j)	12 CFR 563b.5(a)	Nonsubstantive revision, moved.
12 CFR 563b.4(a)(1)	12 CFR 563b.120	Nonsubstantive revision, moved.
12 CFR 563b.4(a)(2)		Deleted.
12 CFR 563b.4(a)(3)	12 CFR 563b.125	Nonsubstantive revision, moved.
12 CFR 563b.4(a)(3)(i)–(ii), (4)(i)–(xviii)	12 CFR 563b.135(a), (b)	Nonsubstantive revision, moved.
12 CFR 563b.4(a)(4)(xix)		Deleted.
12 CFR 563b.4(a)(5)	12 CFR 563b.135(c)	Nonsubstantive revision, moved.

Original provision	Re-proposed provision	Comment
12 CFR 563b.4(b)(1)(i)	12 CFR 563b.180	Nonsubstantive revision, moved.
12 CFR 563b.4(b)(1)(ii)	12 CFR 563b.185	Nonsubstantive revision, moved.
12 CFR 563b.4(b)(2)		Deleted.
12 CFR 563b.4(b)(3)	12 CFR 563b.180(b)	Nonsubstantive revision, moved.
12 CFR 563b.4(c)	12 CFR 563b.160	Nonsubstantive revision, moved.
12 CFR 563b.5(a)	12 CFR 563b.250	Nonsubstantive revision, moved.
12 CFR 563b.5(b)–(c)	12 CFR 563b.270(b)	Nonsubstantive revision, moved.
12 CFR 563b.5(d)(1)	12 CFR 563b.255	Nonsubstantive revision, moved.
12 CFR 563b.5(d)(2)	12 CFR 563b.260, 265	Nonsubstantive revision, moved.
12 CFR 563b.5(d)(3)	12 CFR 563b.255(h)	Nonsubstantive revision, moved.
12 CFR 563b.5(d)(4)	12 CFR 563b.260	Nonsubstantive revision, moved.
12 CFR 563b.5(e)(1)–(2)	12 CFR 563b.150, 155	Nonsubstantive revision, deletions, and moved.
12 CFR 563b.5(e)(3)	12 CFR 563b.275(d)	Nonsubstantive revision, moved.
12 CFR 563b.5(e)(4)		Deleted.
12 CFR 563b.5(e)(5)	12 CFR 563b.150, 160(a)–(b)	Nonsubstantive revision, moved.
12 CFR 563b.5(e)(6)	12 CFR 563b.275(e)	Nonsubstantive revision, moved.
12 CFR 563b.5(e)(7)	12 CFR 563b.275(c)	Nonsubstantive revision, moved.
12 CFR 563b.5(f)	12 CFR 563b.280	Nonsubstantive revision, moved.
12 CFR 563b.5(g)(1)–(2)	12 CFR 563b.285(a)	Nonsubstantive revision, moved.
12 CFR 563b.5(g)(3)	12 CFR 563b.290	Substantive revision, moved.
12 CFR 563b.5(h)	12 CFR 563b.285(b)	Nonsubstantive revision, moved.
12 CFR 563b.6(a)	12 CFR 563b.225(a)	Nonsubstantive revision, moved.
12 CFR 563b.6(b)	12 CFR 563b.230	Nonsubstantive revision, moved.
12 CFR 563b.6(c)(1)	12 CFR 563b.235	Nonsubstantive revision, moved.
12 CFR 563b.6(c)(2)		Deleted.
12 CFR 563b.6(d)	12 CFR 563b.225(d)	Nonsubstantive revision, moved.
12 CFR 563b.6(e)	12 CFR 563b.225(b)–(c)	Nonsubstantive revision, moved.
12 CFR 563b.7(a)(1)	12 CFR 563b.325(a)	Nonsubstantive revision, moved.
12 CFR 563b.7(a)(2)	12 CFR 563b.300(a)	Nonsubstantive revision, moved.
12 CFR 563b.7(a)(3)	12 CFR 563b.325(a)	Nonsubstantive revision, moved.
12 CFR 563b.7(a)(4)		Deleted.
12 CFR 563b.7(b)	12 CFR 563b.300(e), 305	Nonsubstantive revision, moved.
12 CFR 563b.7(c)	12 CFR 563b.330	Nonsubstantive revision, moved.
12 CFR 563b.7(d)	12 CFR 563b.200(b)(8), 300(c)–(d), Form OC, Item 3.	Nonsubstantive revision, moved.
12 CFR 563b.7(e)	12 CFR 563b.335(c)	Nonsubstantive revision, moved.
12 CFR 563b.7(f)(1)–(2)	12 CFR 563b.200(b)	Nonsubstantive revision, deletion, and moved.
12 CFR 563b.7(f)(3)		Deleted.
12 CFR 563b.7(g)(1)–(2)	12 CFR 563b.335(a), Form OF, Items (1), (2)	Nonsubstantial revisions, deletions, and moved.
12 CFR 563b.7(g)(3), (4), (5)	Form OF, Items (3), (4), (5)	Nonsubstantive revision, moved.
12 CFR 563b.7(h)	12 CFR 563b.345(a), 350(c)	Nonsubstantive revision, moved.
12 CFR 563b.7(i)	12 CFR 563b.400	Nonsubstantive revision, moved.
12 CFR 563b.7(j)	12 CFR 563b.350(a)	Nonsubstantive revision, moved.
12 CFR 563b.7(k)(1)–(2)	12 CFR 563b.405	Nonsubstantive revision, moved.
12 CFR 563b.7(k)(2)(i)–(ii)	12 CFR 563b.310(d)	Nonsubstantive revision, moved.
12 CFR 563b.7(k)(3)		Deleted.
12 CFR 563b.7(k)(4)	12 CFR 563b.310(a)	Nonsubstantive revision, moved.
12 CFR 563b.7(k)(5)	12 CFR 563b.310(b)–(d)	Substantive revision, moved.
12 CFR 563b.8(a)	12 CFR 563b.155	Substantive revision, moved.
12 CFR 563b.8(b)(1)–(2)	12 CFR 563b.150	Nonsubstantive revision, moved.
12 CFR 563b.8(b)(3)		Deleted.
12 CFR 563b.8(c)(1)–(2)(i)–(ii)	12 CFR 563b.240	Nonsubstantive revision, moved.
12 CFR 563b.8(c)(2)(iii)	12 CFR 563b.260	Substantive revision, moved.
12 CFR 563b.8(c)(3)	12 CFR 563b.300(a), (c)	Substantial revisions, deletions, and moved.
12 CFR 563b.8(d)(1)–(2)	12 CFR 563b.430	Nonsubstantive revision, moved.
12 CFR 563b.8(d)(3)	12 CFR 563b.435	Nonsubstantive revision, moved.
12 CFR 563b.8(e)	12 CFR 563b.115(a), 155, 180(b), Form AC, General Instruction B.	Nonsubstantial revisions, deletions, and moved.
12 CFR 563b.8(f)		Deleted.
12 CFR 563b.8(g)	Form AC, General Instruction B	Nonsubstantive revision, moved.
12 CFR 563b.8(h)		Deleted.
12 CFR 563b.8(i)–(l)	Form AC, General Instruction B	Nonsubstantive revision, moved.
12 CFR 563b.8(m)		Deleted.
12 CFR 563b.8(n)	Form AC, General Instruction B	Nonsubstantive revision, moved.
12 CFR 563b.8(o)		Deleted.
12 CFR 563b.8(p)	12 CFR 563b.150(a)(6), Form AC, General Instruction B.	Nonsubstantive revision, moved.
12 CFR 563b.8(q)	Form AC, General Instruction B	Nonsubstantive revision, moved.
12 CFR 563b.8(r)	Form AC, General Instruction B	Substantive revision, moved.
12 CFR 563b.8(s)	Form AC, General Instruction B	Nonsubstantive revision, moved.
12 CFR 563b.8(t)(1)	12 CFR 563b.100	Nonsubstantive revision, moved.
12 CFR 563b.8(t)(2)		Deleted.

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Original provision	Re-proposed provision	Comment
12 CFR 563b.8(u)	12 CFR 563b.205	Nonsubstantial revisions, deletions, and moved.
12 CFR 563b.8(v)	12 CFR 563b.530(d)	Nonsubstantive revision, moved.
12 CFR 563b.9	12 CFR 563b.10	Nonsubstantive revision, moved.
12 CFR 563b.10	12 CFR 563b.605(b)–(c)	Nonsubstantive revision, moved.
12 CFR 563b.11	12 CFR 563b.200(c)	Nonsubstantive revision, moved.
12 CFR 563b.20	12 CFR 563b.600	Nonsubstantive revision, moved.
12 CFR 563b.21(a)	12 CFR 563b.605	Nonsubstantive revision, moved.
12 CFR 563b.21(b)	12 CFR 563b.650, 610	Nonsubstantive revision, moved.
12 CFR 563b.22		Deleted.
12 CFR 563b.23(a)–(c)	12 CFR 563b.670, 675	Nonsubstantive revision, additions, and moved.
12 CFR 563b.23(d)	12 CFR 563b.690	Nonsubstantive revision, moved.
12 CFR 563b.24(a)–(b)(1), (3)	12 CFR 563b.625(a)(1)	Nonsubstantive revision, moved.
12 CFR 563b.24(b)(2)		Deleted.
12 CFR 563b.24(c)	12 CFR 563b.625(b)	Substantive addition, moved.
12 CFR 563b.25	12 CFR 563b.630	Nonsubstantive revision, moved.
12 CFR 563b.26	12 CFR 563b.625(a)(2)	Nonsubstantive revision, moved.
12 CFR 563b.27(a)	12 CFR 563b.650	Nonsubstantive revision, moved.
12 CFR 563b.27(b)	12 CFR 563b.660(f)(1)	Nonsubstantive revision, moved.
12 CFR 563b.27(c)	12 CFR 563b.660(a)(2)	Nonsubstantive revision, moved.
12 CFR 563b.27(d)	12 CFR 563b.660(c)	Nonsubstantive revision, moved.
12 CFR 563b.27(e)	12 CFR 563b.660(g)(2)	Nonsubstantive revision, moved.
12 CFR 563b.27(f)–(g)	12 CFR 563b.660(e)	Nonsubstantive revision, moved.
12 CFR 563b.27(h)	12 CFR 563b.660(f)(2)	Nonsubstantive revision, moved.
12 CFR 563b.27(i)	12 CFR 563b.660(g)(1)	Nonsubstantive revision, moved.
12 CFR 563b.27(j)	12 CFR 563b.660(g)(3)	Nonsubstantive revision, moved.
12 CFR 563b.27(k)	12 CFR 563b.660(g)(4)	Nonsubstantive revision, moved.
12 CFR 563b.27(l)	12 CFR 563b.660(d)(3)	Nonsubstantive revision, moved.
12 CFR 563b.27(m)	12 CFR 563b.660(d)(2)	Nonsubstantive revision, moved.
12 CFR 563b.27(n)	12 CFR 563b.660(d)(1)	Nonsubstantive revision, moved.
12 CFR 563b.27(o)	12 CFR 563b.660(d)(4)	Nonsubstantive revision, moved.
12 CFR 563b.27(p)	12 CFR 563b.660(a)(3)	Nonsubstantive revision, moved.
12 CFR 563b.27(q)–(r)	12 CFR 563b.660(h)	Nonsubstantive revision, moved.
12 CFR 563b.27(s)	12 CFR 563b.660(g)(5)	Nonsubstantive revision, moved.
12 CFR 563b.28	12 CFR 563b.610	Nonsubstantive revision, moved.
12 CFR 563b.29(a)	12 CFR 563b.660	Nonsubstantive revision, moved.
12 CFR 563b.29(b)		Deleted.
12 CFR 563b.29(d)(1)–(2)	12 CFR 563b.430	Nonsubstantive revision, moved.
12 CFR 563b.29(d)(3)	12 CFR 563b.435	Nonsubstantive revision, moved.
12 CFR 563b.30	12 CFR 563b.675	Nonsubstantive revision, moved.
12 CFR 563b.31	12 CFR 563b.680	Nonsubstantive revision, moved.
12 CFR 563b.32	12 CFR 563b.670(c)	Nonsubstantive revision, moved.
12 CFR 563b.33	12 CFR 563b.670(d)	Nonsubstantive revision, moved.
12 CFR 563b.100	Form AC—1680	Nonsubstantive revision, moved.
12 CFR 563b.101	Form PS—1681	Nonsubstantive revision, moved.
12 CFR 563b.102	Form OC—1682	Nonsubstantive revision, moved.
	12 CFR 563b.15, 20, 105, 110, 115, 165	New provisions.
	12 CFR 563b.295	New provision.
	12 CFR 563b.550–575	New provisions.
	Form OF—1683	New form.

VI. Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the use of "plain language" in all proposed and final rules published after January 1, 2001. OTS invited comment on whether the proposed rule was written in "plain language" and how to make the proposed rule easier to understand. No commenter indicated that the First Proposal or the Re-proposal needed to be revised to be understood. The final rule is substantially similar to the First Proposal and the Re-proposal and OTS believes the final rule is written plainly and clearly.

VII. Executive Order 12866

The Director of OTS determined that this final rule is not a "significant regulatory action" for the purposes of Executive Order 12866.

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 (RFA) requires federal agencies to either prepare a final regulatory flexibility analysis with this final rule or certify that the rule would not have a significant impact on a substantial number of small entities.[16] In its proposed rules, OTS requested comments on whether the rule would have a significant impact on a substantial number of small entities. No commenters addressed this issue. Therefore, OTS has prepared the following analysis.[17]

A description of the reasons why OTS is taking this action, and a statement of the objectives of, and legal basis for, the final rule are in the supplementary material above.

1. Small Entities to Which the Final Rule Would Apply

The final rule applies to mutual savings associations that propose to convert to the stock form of ownership. Under OTS jurisdiction, there are currently approximately 390 mutual savings associations, 34 publicly traded MHCs, 2 non-publicly traded MHCs, and 27 MHCs with no stock issued. Of these institutions, approximately 230 have less than $100 million in assets. Small depository institutions are generally defined, for RFA purposes, as those with assets under $100 million.[18] In the past two years, OTS has processed 12 and 10 applications, respectively, to convert from mutual to stock or mutual holding company form. Based on this experience, OTS believes that the final rule affects fewer than 15 savings associations annually.

2. Requirements of the Final Rule

The final rule requires mutual savings associations wishing to convert to stock form to prepare a plan of conversion and other supporting forms and documents (such as a business plan and an independent appraisal) and submit the documents for OTS approval. The current mutual-to-stock conversion regulations require all of these documents or information.

The final rule includes a new requirement that a savings association that intends to establish a charitable organization as part of its conversion must supply certain documents and information regarding the charitable organization. Under the current application processing policies, OTS often requires a savings association that intends to establish a charitable organization as part of its conversion to submit the same type of information that the final rule would require. As a result, this new requirement should not have any additional impact on small savings associations.

The final rule also adds demand account holders to the definition of savings account holders, allows accelerated vesting in management benefit plans for changes of control, and clarifies OTS policy regarding the amount of proceeds allowed at the holding company level. None of these provisions, however, should add to the reporting, recordkeeping, or compliance requirements for small entities.

Although it is not clear that the RFA requires a quantitative analysis of the impact of the final regulatory changes, OTS provides the following estimate. The final rule's primary economic impact on small savings associations relates to the expense of preparing the application to convert. Savings associations wishing to convert must prepare the necessary documents and forms, including a plan of conversion, a business plan, and an appraisal. Preparation of these documents may require legal or professional help. OTS's experience in the conversion process indicates that savings associations generally hire legal counsel, accountants, marketing agents, and professional appraisers to assist in completion of the necessary documents and forms. Savings associations converting under the current regulations spend approximately $250,000 to one million dollars each to go through the process. We note that the new requirements will add only 10 hours of additional paperwork in preparation, and may save institutions that decide after preliminary business plan preparation and discussion not to convert significant time and expense. *See* discussion infra at Section IX. The new requirement for information supporting a proposed charitable contribution should not increase these costs appreciably.

3. Significant Alternatives

Section 604(a) of the RFA requires OTS to describe how the agency attempted to minimize the rule's impact on small entities and why it chose the alternative adopted in the final rule over other alternatives. Section 603(c) lists several examples of potential alternatives, including (1) establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying compliance and reporting requirements for small entities; (3) using performance standards rather than design standards; and (4) exempting small entities from coverage of the rule or a part of the rule.

After consideration, OTS does not believe that any of these alternatives are feasible. As noted, more than half of the savings associations to which the final rule could apply meet the RFA standard for "small depository institutions." In fact, the conversion process is aimed largely at small institutions that want to raise capital in the open market by converting to the stock form of ownership. Given that the conversion process is designed with small institutions in mind, modifying the requirements for such small institutions is not necessary. Moreover, given that a conversion cannot be measured for performance until it takes place, the use of performance standards rather than design standards is impractical.

To reduce regulatory burden consistent with the goals of this regulation, the final rule specifically permits OTS to waive any requirement under the part where the waiver is equitable and not detrimental to the savings association, the account holders, or the public interest. This process will provide substantial flexibility to OTS and the savings association to minimize any significant economic impact of a provision on a specific institution.

IX. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, sec. 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more in any one year. Accordingly, this rulemaking is not subject to sec. 202 of the Unfunded Mandates Act.

X. Paperwork Reduction Act

The information collection requirements contained in the final rule, 12 CFR part 563b, are virtually identical to those included in the July 2000 Proposed Rule on this subject. OTS has modified the forms in only minor ways, but the burden on respondents remains unchanged from those in the earlier rule, which the Office of Management and Budget (OMB) approved on August 31, 2000 under control number 1550–0014. Respondents/recordkeepers are not required to respond to any collection of information unless it displays a currently valid OMB control number.

List of Subjects

12 CFR Part 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 574

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

[16] 5 U.S.C. 605(b).

[17] 5 U.S.C. 604(a).

[18] 13 CFR 121.201 Section 52, Subsection 522 (2002).

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12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision amends 12 CFR, chapter V, as set forth below:

1. Part 563b is revised to read as follows:

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

Sec.

563b.5 What does this part do?
563b.10 May I form a holding company as part of my conversion?
563b.15 May I form a charitable organization as part of my conversion?
563b.20 May I acquire another insured stock depository institution as part of my conversion?
563b.25 What definitions apply to this part?

Subpart A—Standard Conversions

Prior to Conversion

563b.100 What must I do before a conversion?
563b.105 What information must I include in my business plan?
563b.110 Who must review my business plan?
563b.115 How will OTS review my business plan?
563b.120 May I discuss my plans to convert with others?

Plan of Conversion

563b.125 Must my board of directors adopt a plan of conversion?
563b.130 What must I include in my plan of conversion?
563b.135 How do I notify my members that my board of directors approved a plan of conversion?
563b.140 May I amend my plan of conversion?

Filing Requirements

563b.150 What must I include in my application for conversion?
563b.155 How do I file my application for conversion?
563b.160 May I keep portions of my application for conversion confidential?
563b.165 How do I amend my application for conversion?

Notice of Filing of Application and Comment Process

563b.180 How do I notify the public that I filed an application for conversion?
563b.185 How may a person comment on my application for conversion?

OTS Review of the Application for Conversion

563b.200 What actions may OTS take on my application?
563b.205 May a court review OTS's final action on my conversion?

Vote by Members

563b.225 Must I submit the plan of conversion to my members for approval?
563b.230 Who is eligible to vote?
563b.235 How must I notify my members of the meeting?
563b.240 What must I submit to OTS after the members' meeting?

Proxy Solicitation

563b.250 Who must comply with these proxy solicitation provisions?
563b.255 What must the form of proxy include?
563b.260 May I use previously executed proxies?
563b.265 How may I use proxies executed under this part?
563b.270 What must I include in my proxy statement?
563b.275 How do I file revised proxy materials?
563b.280 Must I mail a member's proxy solicitation material?
563b.285 What solicitations are prohibited?
563b.290 What will OTS do if a solicitation violates these prohibitions?
563b.295 Will OTS require me to re-solicit proxies?

Offering Circular

563b.300 What must happen before OTS declares my offering circular effective?
563b.305 When may I distribute the offering circular?
563b.310 When must I file a post-effective amendment to the offering circular?

Offers and Sales of Stock

563b.320 Who has priority to purchase my conversion shares?
563b.325 When may I offer to sell my conversion shares?
563b.330 How do I price my conversion shares?
563b.335 How do I sell my conversion shares?
563b.340 What sales practices are prohibited?
563b.345 How may a subscriber pay for my conversion shares?
563b.350 Must I pay interest on payments for conversion shares?
563b.355 What subscription rights must I give to each eligible account holder and each supplemental eligible account holder?
563b.360 Are my officers, directors, and their associates eligible account holders?
563b.365 May other voting members purchase conversion shares in the conversion?
563b.370 Does OTS limit the aggregate purchases by officers, directors, and their associates?
563b.375 How do I allocate my conversion shares if my shares are oversubscribed?
563b.380 May my employee stock ownership plan purchase conversion shares?
563b.385 May I impose any purchase limitations?
563b.390 Must I provide a purchase preference to persons in my local community?
563b.395 What other conditions apply when I offer conversion shares in a community offering, a public offering, or both?

Completion of the Offering

563b.400 When must I complete the sale of my stock?
563b.405 How do I extend the offering period?

Completion of the Conversion

563b.420 When must I complete my conversion?
563b.425 Who may terminate the conversion?
563b.430 What happens to my old charter?
563b.435 What happens to my corporate existence after conversion?
563b.440 What voting rights must I provide to stockholders after the conversion?
563b.445 What must I provide my savings account holders?

Liquidation Account

563b.450 What is a liquidation account?
563b.455 What is the initial balance of the liquidation account?
563b.460 How do I determine the initial balances of liquidation sub-accounts?
563b.465 Do account holders retain any voting rights based on their liquidation sub-accounts?
563b.470 Must I adjust liquidation sub-accounts?
563b.475 What is a liquidation?
563b.480 Does the liquidation account affect my net worth?
563b.485 What provision must I include in my new federal charter?

Post-Conversion

563b.500 May I implement a stock option plan or management or employee stock benefit plan?
563b.505 May my directors, officers, and their associates freely trade shares?
563b.510 May I repurchase shares after conversion?
563b.515 What information must I provide to OTS before I repurchase my shares?
563b.520 May I declare or pay dividends after I convert?
563b.525 Who may acquire my shares after I convert?
563b.530 What other requirements apply after I convert?

Contributions to Charitable Organizations

563b.550 May I donate conversion shares or conversion proceeds to a charitable organization?
563b.555 How do my members approve a charitable contribution?
563b.560 How much may I contribute to a charitable organization?
563b.565 What must the charitable organization include in its organizational documents?
563b.570 How do I address conflicts of interest involving my directors?
563b.575 What other requirements apply to charitable organizations?

Subpart B—Voluntary Supervisory Conversions

563b.600 What does this subpart do?
563b.605 How may I conduct a voluntary supervisory conversion?
563b.610 Do my members have rights in a voluntary supervisory conversion?

Eligibility

563b.625 When is a savings association eligible for a voluntary supervisory conversion?
563b.630 When is a BIF-insured state-chartered savings bank eligible for a voluntary supervisory conversion?

Plan of Supervisory Conversion

563b.650 What must I include in my plan of voluntary supervisory conversion?

Voluntary Supervisory Conversion Application

563b.660 What must I include in my voluntary supervisory conversion application?

OTS Review of the Voluntary Supervisory Conversion Application

563b.670 Will OTS approve my voluntary supervisory conversion application?
563b.675 What conditions will OTS impose on an approval?

Offers and Sales of Stock

563b.680 How do I sell my shares?

Post-Conversion

563b.690 Who may not acquire additional shares after the voluntary supervisory conversion?

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901; 15 U.S.C. 78c, 78l, 78m, 78n, 78w.

§ 563b.5 What does this part do?

(a) *General.* This part governs how a savings association ("you") may convert from the mutual to the stock form of ownership. Subpart A of this part governs standard mutual-to-stock conversions. Subpart B of this part governs voluntary supervisory mutual-to-stock conversions. This part supersedes all inconsistent charter and bylaw provisions of federal savings associations converting to stock form.

(b) *Prescribed forms.* You must use the forms prescribed under this part and provide such information as OTS may require under the forms by regulation or otherwise. The forms required under this part include: Form AC (Application for Conversion); Form PS (Proxy Statement); Form OC (Offering Circular); and Form OF (Order Form).

(c) *Waivers.* OTS may waive any requirement of this part or a provision in any prescribed form. To obtain a waiver, you must file a written request with OTS that:

(1) Specifies the requirement(s) or provision(s) you want OTS to waive;

(2) Demonstrates that the waiver is equitable; is not detrimental to you, your account holders, or other savings associations; and is not contrary to the public interest; and

(3) Includes an opinion of counsel demonstrating that applicable law does not conflict with the requirement or provision.

§ 563b.10 May I form a holding company as part of my conversion?

You may convert to the stock form of ownership as part of a transaction where you organize a holding company to acquire all of your shares upon their issuance. In such a transaction, your holding company will offer rights to purchase its shares instead of your shares. All of the requirements of subpart A generally apply to the holding company as they apply to the savings association. Section 574.6 of this chapter contains OTS's holding company application requirements.

§ 563b.15 May I form a charitable organization as part of my conversion?

When you convert to the stock form, you may form a charitable organization. Your contributions to the charitable organization are governed by the requirements of §§ 563b.550 through 563b.575.

§ 563b.20 May I acquire another insured stock depository institution as part of my conversion?

When you convert to stock form, you may acquire for cash or stock another insured depository institution that is already in the stock form of ownership.

§ 563b.25 What definitions apply to this part?

The following definitions apply to this part and the forms prescribed under this part:

Acting in concert has the same meaning as in § 574.2(c) of this chapter. The rebuttable presumptions of § 574.4(d) of this chapter, other than §§ 574.4(d)(1) and (d)(2) of this chapter, apply to the share purchase limitations at §§ 563b.355 through 563b.395.

Affiliate of, or a person *affiliated with*, a specified person is a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified person.

Associate of a person is:

(1) A corporation or organization (other than you or your majority-owned subsidiaries), if the person is a senior officer or partner, or beneficially owns, directly or indirectly, 10 percent or more of any class of equity securities of the corporation or organization.

(2) A trust or other estate, if the person has a substantial beneficial interest in the trust or estate or is a trustee or fiduciary of the trust or estate. For purposes of §§ 563b.370, 563b.380, 563b.385, 563b.390, 563b.395 and 563b.505, a person who has a substantial beneficial interest in your tax-qualified or non-tax-qualified employee stock benefit plan, or who is a trustee or a fiduciary of the plan, is not an associate of the plan. For the purposes of § 563b.370, your tax-qualified employee stock benefit plan is not an associate of a person.

(3) Any person who is related by blood or marriage to such person and:

(i) Who lives in the same home as the person; or

(ii) Who is your director or senior officer, or a director or senior officer of your holding company or your subsidiary.

Association members or *members* are persons who, under applicable law, are eligible to vote at the meeting on conversion.

Control (including *controlling, controlled by*, and *under common control with*) means the direct or indirect power to direct or exercise a controlling influence over the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise as described in part 574 of this chapter.

Eligibility record date is the date for determining eligible account holders. The eligibility record date must be at least one year before the date your board of directors adopts the plan of conversion.

Eligible account holders are any persons holding qualifying deposits on the eligibility record date.

IRS is the Internal Revenue Service.

Local community includes:

(1) Every county, parish, or similar governmental subdivision in which you have a home or branch office;

(2) Each county's, parish's, or subdivision's metropolitan statistical area;

(3) All zip code areas in your Community Reinvestment Act assessment area; and

(4) Any other area or category you set out in your plan of conversion, as approved by OTS.

Offer, offer to sell, or *offer for sale* is an attempt or offer to dispose of, or a solicitation of an offer to buy, a security or interest in a security for value. Preliminary negotiations or agreements with an underwriter, or among underwriters who are or will be in privity of contract with you, are not offers, offers to sell, or offers for sale.

Person is an individual, a corporation, a partnership, an association, a joint-stock company, a limited liability company, a trust, an unincorporated organization, or a government or political subdivision of a government.

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Proxy soliciting material includes a proxy statement, form of proxy, or other written or oral communication regarding the conversion.

Purchase or *buy* includes every contract to acquire a security or interest in a security for value.

Qualifying deposit is the total balance in an account holder's savings accounts at the close of business on the eligibility or supplemental eligibility record date. Your plan of conversion may provide that only savings accounts with total deposit balances of $50 or more will qualify.

Sale or *sell* includes every contract to dispose of a security or interest in a security for value. An exchange of securities in a merger or acquisition approved by OTS is not a sale.

Savings account is any withdrawable account as defined in § 561.42 of this chapter, including a demand account as defined in § 561.16 of this chapter.

Solicitation and *solicit* is a request for a proxy, whether or not accompanied by or included in a form of proxy; a request to execute, not execute, or revoke a proxy; or the furnishing of a form of proxy or other communication reasonably calculated to cause your members to procure, withhold, or revoke a proxy. Solicitation or solicit does not include providing a form of proxy at the unsolicited request of a member, the acts required to mail communications for members, or ministerial acts performed on behalf of a person soliciting a proxy.

Subscription offering is the offering of shares through nontransferable subscription rights to:

(1) Eligible account holders under § 563b.355;

(2) Tax-qualified employee stock ownership plans under § 563b.380;

(3) Supplemental eligible account holders under § 563b.355; and

(4) Other voting members under § 563b.365.

Supplemental eligibility record date is the date for determining supplemental eligible account holders. The supplemental eligibility record date is the last day of the calendar quarter before OTS approves your conversion and will only occur if OTS has not approved your conversion within 15 months after the eligibility record date.

Supplemental eligible account holders are any persons, except your officers, directors, and their associates, holding qualifying deposits on the supplemental eligibility record date.

Tax-qualified employee stock benefit plan is any defined benefit plan or defined contribution plan, such as an employee stock ownership plan, stock bonus plan, profit-sharing plan, or other plan, and a related trust, that is qualified under sec. 401 of the Internal Revenue Code (26 U.S.C. 401).

Underwriter is any person who purchases any securities from you with a view to distributing the securities, offers or sells securities for you in connection with the securities' distribution, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking. Underwriter does not include a person whose interest is limited to a usual and customary distributor's or seller's commission from an underwriter or dealer.

Subpart A—Standard Conversions

Prior to Conversion

§ 563b.100 What must I do before a conversion?

(a) Your board, or a subcommittee of your board, must meet with OTS before you pass your plan of conversion. The meeting may occur at OTS or your offices at your option. At that meeting you must provide OTS with a written strategic plan that outlines the objectives of the proposed conversion and the intended use of the conversion proceeds.

(b) You should also consult with OTS before you file your application for conversion. OTS will discuss the information that you must include in the application for conversion, general issues that you may confront in the conversion process, and any other pertinent issues.

§ 563b.105 What information must I include in my business plan?

(a) Prior to filing an application for conversion, you must adopt a business plan reflecting your intended plans for deployment of the proposed conversion proceeds. Your business plan is required, under § 563b.150, to be included in your conversion application. At a minimum, your business plan must address:

(1) Your projected operations and activities for three years following the conversion. You must describe how you will deploy the conversion proceeds at the converted savings association (and holding company, if applicable), what opportunities are available to reasonably achieve your planned deployment of conversion proceeds in your proposed market areas, and how your deployment will provide a reasonable return on investment commensurate with investment risk, investor expectations, and industry norms, by the final year of the business plan. You must include three years of projected financial statements. The business plan must provide that the converted savings association must retain at least 50 percent of the net conversion proceeds. OTS may require that a larger percentage of proceeds remain in the institution.

(2) Your plan for deploying conversion proceeds to meet credit and lending needs in your proposed market areas. OTS strongly discourages business plans that provide for a substantial investment in mortgage securities or other securities, except as an interim measure to facilitate orderly, prudent deployment of proceeds during the three years following the conversion, or as part of a properly managed leverage strategy.

(3) The risks associated with your plan for deployment of conversion proceeds, and the effect of this plan on management resources, staffing, and facilities.

(4) The expertise of your management and board of directors, or that you have planned for adequate staffing and controls to prudently manage the growth, expansion, new investment, and other operations and activities proposed in your business plan.

(b) You may not project returns of capital or special dividends in any part of the business plan. A newly converted company may not plan on stock repurchases in the first year of the business plan.

§ 563b.110 Who must review my business plan?

(a) Your chief executive officer and members of the board of directors must review, and at least two-thirds of your board of directors must approve, the business plan.

(b) Your chief executive officer and at least two-thirds of the board of directors must certify that the business plan accurately reflects the intended plans for deployment of conversion proceeds, and that any new initiatives reflected in the business plan are reasonably achievable. You must submit these certifications with your business plan, as part of your conversion application under § 563b.150.

§ 563b.115 How will OTS review my business plan?

(a) OTS will review your business plan to determine that it demonstrates a safe and sound deployment of conversion proceeds, as part of its review of your conversion application. In making its determination, OTS will consider how you have addressed the applicable factors of § 563b.105. No single factor will be determinative. OTS will review every case on its merits.

(b) You must file your business plan with the Regional Office. OTS may request additional information, if necessary, to support its determination under paragraph (a) of this section. You must file your business plan as a confidential exhibit to the Form AC.

(c) If OTS approves your application for conversion and you complete your conversion, you must operate within the parameters of your business plan. You must obtain the prior written approval of the Regional Director for any material deviations from your business plan.

§ 563b.120 May I discuss my plans to convert with others?

(a) You may discuss information about your conversion with individuals that you authorize to prepare documents for your conversion.

(b) Except as permitted under paragraph (a) of this section, you must keep all information about your conversion confidential until your board of directors adopts your plan of conversion.

(c) If you violate this section, OTS may require you to take remedial action. For example, OTS may require you to take any or all of the following actions:

(1) Publicly announce that you are considering a conversion;

(2) Set an eligibility record date acceptable to OTS;

(3) Limit the subscription rights of any person who violates or aids a violation of this section; or

(4) Take any other action to assure that your conversion is fair and equitable.

Plan of Conversion

§ 563b.125 Must my board of directors adopt a plan of conversion?

Prior to filing an application for conversion, your board of directors must adopt a plan of conversion that conforms to §§ 563b.320 through 563b.485 and 563b.505. Your board of directors must adopt the plan by at least a two-thirds vote. Your plan of conversion is required, under § 563b.150, to be included in your conversion application.

§ 563b.130 What must I include in my plan of conversion?

You must include the information included in §§ 563b.320 through 563b.485 and 563b.505 in your plan of conversion. OTS may require you to delete or revise any provision in your plan of conversion if OTS determines the provision is inequitable; is detrimental to you, your account holders, or other savings associations; or is contrary to public interest.

§ 563b.135 How do I notify my members that my board of directors approved a plan of conversion?

(a) *Notice.* You must promptly notify your members that your board of directors adopted a plan of conversion and that a copy of the plan is available for the members' inspection in your home office and in your branch offices. You must mail a letter to each member or publish a notice in the local newspaper in every local community where you have an office. You may also issue a press release. OTS may require broader publication, if necessary, to ensure adequate notice to your members.

(b) *Contents of notice.* You may include any of the following statements and descriptions in your letter, notice, or press release.

(1) Your board of directors adopted a proposed plan to convert from a mutual to a stock savings institution.

(2) You will send your members a proxy statement with detailed information on the proposed conversion before you convene a members' meeting to vote on the conversion.

(3) Your members will have an opportunity to approve or disapprove the proposed conversion at a meeting. At least a majority of the eligible votes must approve the conversion.

(4) You will not vote existing proxies to approve or disapprove the conversion. You will solicit new proxies for voting on the proposed conversion.

(5) OTS, and in the case of a state-chartered savings association, the appropriate state regulator, must approve the conversion before the conversion will be effective. Your members will have an opportunity to file written comments, including objections and materials supporting the objections, with OTS.

(6) The IRS must issue a favorable tax ruling, or a tax expert must issue an appropriate tax opinion, on the tax consequences of your conversion before OTS will approve the conversion. The ruling or opinion must indicate the conversion will be a tax-free reorganization.

(7) OTS, and in the case of a state-chartered savings association, the appropriate state regulator, might not approve the conversion, and the IRS or a tax expert might not issue a favorable tax ruling or tax opinion.

(8) Savings account holders will continue to hold accounts in the converted savings association with the same dollar amounts, rates of return, and general terms as existing deposits. FDIC will continue to insure the accounts.

(9) Your conversion will not affect borrowers' loans, including the amount, rate, maturity, security, and other contractual terms.

(10) Your business of accepting deposits and making loans will continue without interruption.

(11) Your current management and staff will continue to conduct current services for depositors and borrowers under current policies and in existing offices.

(12) You may continue to be a member of the Federal Home Loan Bank System.

(13) You may substantively amend your proposed plan of conversion before the members' meeting.

(14) You may terminate the proposed conversion.

(15) After OTS, and in the case of a state-chartered savings association, the appropriate state regulator, approves the proposed conversion, you will send proxy materials providing additional information. After you send proxy materials, members may telephone or write to you with additional questions.

(16) The proposed record date for determining the eligible account holders who are entitled to receive subscription rights to purchase your shares.

(17) A brief description of the circumstances under which supplemental eligible account holders will receive subscription rights to purchase your shares.

(18) A brief description of how voting members may participate in the conversion.

(19) A brief description of how directors, officers, and employees will participate in the conversion.

(20) A brief description of the proposed plan of conversion.

(21) The par value (if any) and approximate number of shares you will issue and sell in the conversion.

(c) *Other requirements.* (1) You may not solicit proxies, provide financial statements, describe the benefits of conversion, or estimate the value of your shares upon conversion in the letter, notice, or press release.

(2) If you respond to inquiries about the conversion, you may address only the matters listed in paragraph (b) of this section.

§ 563b.140 May I amend my plan of conversion?

You may amend your plan of conversion before you solicit proxies. After you solicit proxies, you may amend your plan of conversion only if OTS concurs.

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Filing Requirements

§ 563b.150 What must I include in my application for conversion?

(a) Your application for conversion must include all of the following information.

(1) Your plan of conversion.

(2) Pricing materials meeting the requirements of § 563b.200(b).

(3) Proxy soliciting materials under § 563b.270, including:

(i) A preliminary proxy statement with signed financial statements;

(ii) A form of proxy meeting the requirements of § 563b.255; and

(iii) Any additional proxy soliciting materials, including press releases, personal solicitation instructions, radio or television scripts that you plan to use or furnish to your members, and a legal opinion indicating that any marketing materials comply with all applicable securities laws.

(4) An offering circular described in § 563b.300.

(5) The documents and information required by Form AC. You may obtain Form AC from OTS Washington and Regional Offices (see § 516.40 of this chapter) and OTS's website (*www.ots.treas.gov*).

(6) Where indicated, written consents, signed and dated, of any accountant, attorney, investment banker, appraiser, or other professional who prepared, reviewed, passed upon, or certified any statement, report, or valuation for use. *See* Form AC, instruction B(7).

(7) Your business plan, submitted as a separately bound, confidential exhibit. *See* § 563b.160.

(8) Any additional information OTS requests.

(b) OTS will not accept for filing, and will return, any application for conversion that is improperly executed, materially deficient, substantially incomplete, or that provides for unreasonable conversion expenses.

§ 563b.155 How do I file my application for conversion?

You must file seven copies of your application for conversion on Form AC. You must file the original and three conformed copies with the Applications Filing Room in Washington, and three conformed copies with the appropriate Regional Office at the addresses in § 516.40 of this chapter.

§ 563b.160 May I keep portions of my application for conversion confidential?

(a) OTS makes all filings under this part available to the public, but may keep portions of your application for conversion confidential under paragraph (b) of this section.

(b) You may request OTS to keep portions of your application confidential. To do so, you must separately bind and clearly designate as "confidential" any portion of your application for conversion that you deem confidential. You must provide a written statement specifying the grounds supporting your request for confidentiality. OTS will not treat as confidential the portion of your application describing how you plan to meet your Community Reinvestment Act (CRA) objectives. The CRA portion of your application may not incorporate by reference information contained in the confidential portion of your application.

(c) OTS will determine whether confidential information must be made available to the public under 5 U.S.C. 552 and part 505 of this chapter. OTS will advise you before it makes information you designated as "confidential" available to the public.

§ 563b.165 How do I amend my application for conversion?

To amend your application for conversion, you must:

(a) File an amendment with an appropriate facing sheet;

(b) Number each amendment consecutively;

(c) Respond to all issues raised by OTS; and

(d) Demonstrate that the amendment conforms to all applicable regulations.

Notice of Filing of Application and Comment Process

§ 563b.180 How do I notify the public that I filed an application for conversion?

(a) You must publish a public notice of the application under the procedures in § 516.55 of this chapter, except that you must publish your notice within three days before or after you file your application for conversion. You must simultaneously prominently post the notice in your home office and all branch offices. Your notice must include the following information:

(1) You filed an application for conversion with OTS;

(2) You delivered copies of the application to OTS and to the Regional Office, including the addresses of the applicable OTS offices; and

(3) A statement that anyone may file written comments, including objections to the plan of conversion and materials supporting the objections, within 20 days. You must include instructions regarding how a person may file a comment.

(b) Promptly after publication, you must file four copies of any public notice and an affidavit of publication from each publisher. You must file the original and one copy with the Applications Filing Room in Washington, and two copies with the appropriate Regional Office at the addresses in § 516.40 of this chapter.

(c) If OTS does not accept your application for conversion under § 563b.200 and requires you to file a new application, you must publish and post a new notice and allow an additional 20 days for comment.

§ 563b.185 How may a person comment on my application for conversion?

Anyone may submit a written comment supporting or opposing your application for conversion with OTS. To do so, commenters must file within 20 days after you notify the public under § 563b.180. A commenter must file the original and one copy of any comments with the Applications Filing Room in Washington, and two copies with the appropriate Regional Office at the addresses in § 516.40 of this chapter.

OTS Review of the Application for Conversion

§ 563b.200 What actions may OTS take on my application?

(a) OTS may approve your application for conversion only if:

(1) Your conversion complies with this part;

(2) You will meet your regulatory capital requirements under part 567 of this chapter after the conversion; and

(3) Your conversion will not result in a taxable reorganization under the Internal Revenue Code of 1986, as amended.

(b) OTS will review the appraisal required by § 563b.150(a)(2) in determining whether to approve your application. OTS will review the appraisal under the following requirements.

(1) Independent persons experienced and expert in corporate appraisal, and acceptable to OTS, must prepare the appraisal report.

(2) An affiliate of the appraiser may serve as an underwriter or selling agent, if you ensure that the appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or affect the appraisal.

(3) The appraiser may not receive any fee in connection with the conversion other than for appraisal services.

(4) The appraisal report must include a complete and detailed description of the elements of the appraisal, a justification for the appraisal methodology, and sufficient support for the conclusions.

(5) If the appraisal is based on a capitalization of your pro forma income, it must indicate the basis for determining the income to be derived from the sale of shares, and demonstrate that the earnings multiple used is appropriate, including future earnings growth assumptions.

(6) If the appraisal is based on a comparison of your shares with outstanding shares of existing stock associations, the existing stock associations must be reasonably comparable in size, market area, competitive conditions, risk profile, profit history, and expected future earnings.

(7) OTS may decline to process the application for conversion and deem it materially deficient or substantially incomplete if the initial appraisal report is materially deficient or substantially incomplete.

(8) You may not represent or imply that OTS approved the appraisal.

(c) OTS will review your compliance record under part 563e of this chapter and your business plan to determine how you will serve the convenience and needs of your communities after the conversion.

(1) Based on this review, OTS may approve your application, deny your application, or approve your application on the condition that you will improve your CRA performance or that you will address the particular credit or lending needs of the communities that you will serve.

(2) OTS may deny your application if your business plan does not demonstrate that your proposed use of conversion proceeds will help you to meet the credit and lending needs of the communities that you will serve.

(d) OTS may request that you amend your application if further explanation is necessary, material is missing, or material must be corrected.

(e) OTS will deny your application if the application does not meet the requirements of this subpart, unless OTS waives the requirement under § 563b.5(c).

§ 563b.205 May a court review OTS's final action on my conversion?

(a) Any person aggrieved by OTS's final action on your application for conversion may ask the court of appeals of the United States for the circuit in which the principal office or residence of such person is located, or the U.S. Court of Appeals for the District of Columbia Circuit, to review the action under 12 U.S.C. 1464(i)(2)(B).

(b) To obtain court review of the action, this statute requires the aggrieved person to file a written petition requesting that the court modify, terminate, or set aside the final OTS action. The aggrieved person must file the petition with the court within the later of 30 days after OTS publishes notice of OTS's final action in the **Federal Register** or 30 days after you mail the proxy statement to your members under § 563b.235.

Vote by Members

§ 563b.225 Must I submit the plan of conversion to my members for approval?

(a) After OTS approves your plan of conversion, you must submit your plan of conversion to your members for approval. You must obtain this approval at a meeting of your members, which may be a special or annual meeting, unless you are a state-chartered savings association and state law requires you to obtain approval at an annual meeting.

(b) Your members must approve your plan of conversion by a majority of the total outstanding votes, unless you are a state-chartered savings association and state law prescribes a higher percentage.

(c) Your members may vote in person or by proxy.

(d) You may notify eligible account holders or supplemental eligible account holders who are not voting members of your proposed conversion. You may include only the information in § 563b.135 in your notice.

§ 563b.230 Who is eligible to vote?

You determine members' eligibility to vote by setting a voting record date. You must set a voting record date that is not more than 60 days nor less than 20 days before your meeting, unless you are a state-chartered savings association and state law requires a different voting record date.

§ 563b.235 How must I notify my members of the meeting?

(a) You must notify your members of the meeting to consider your conversion by sending the members a proxy statement authorized by OTS.

(b) You must notify your members 20 to 45 days before your meeting, unless you are a state-chartered savings association and state law requires a different notice period.

(c) You must also notify each beneficial holder of an account held in a fiduciary capacity:

(1) If you are a federal association and the name of the beneficial holder is disclosed on your records; or

(2) If you are a state-chartered association and the beneficial holder possesses voting rights under state law.

§ 563b.240 What must I submit to OTS after the members' meeting?

(a) Promptly after the members' meeting, you must file all of the following information with OTS:

(1) A certified copy of each adopted resolution on the conversion.

(2) The total votes eligible to be cast.

(3) The total votes represented in person or by proxy.

(4) The total votes cast in favor of and against each matter.

(5) The percentage of votes necessary to approve each matter.

(6) An opinion of counsel that you conducted the members' meeting in compliance with all applicable state or federal laws and regulations.

(b) Promptly after completion of the conversion, you must submit an opinion of counsel that you complied with all laws applicable to the conversion.

Proxy Solicitation

§ 563b.250 Who must comply with these proxy solicitation provisions?

(a) You must comply with these proxy solicitation provisions when you provide proxy solicitation material to members for the meeting to vote on your plan of conversion.

(b) Your members must comply with these proxy solicitation provisions when they provide proxy solicitation materials to members for the meeting to vote on your conversion, pursuant to § 563b.280, except where:

(1) The member solicits 50 people or fewer and does not solicit proxies on your behalf; or

(2) The member solicits proxies through newspaper advertisements after your board of directors adopts the plan of conversion. Any newspaper advertisements may include only the following information:

(i) Your name;

(ii) The reason for the advertisement;

(iii) The proposal or proposals to be voted upon;

(iv) Where a member may obtain a copy of the proxy solicitation material; and

(v) A request for your members to vote at the meeting.

§ 563b.255 What must the form of proxy include?

The form of proxy must include all of the following:

(a) A statement in bold face type stating that management is soliciting the proxy.

(b) Blank spaces where the member must date and sign the proxy.

(c) Clear and impartial identification of each matter or group of related matters that members will vote upon. You must include any proposed

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charitable contribution as an item to be voted on separately.

(d) The phrase "Revocable Proxy" in bold face type (at least 18 point).

(e) A description of any charter or state law requirement that restricts or conditions votes by proxy.

(f) An acknowledgment that the member received a proxy statement before he or she signed the form of proxy.

(g) The date, time, and the place of the meeting, when available.

(h) A way for the member to specify by ballot whether he or she approves or disapproves of each matter that members will vote upon.

(i) A statement that management will vote the proxy in accordance with the member's specifications.

(j) A statement in bold face type indicating how management will vote the proxy if the member does not specify a choice for a matter.

§ 563b.260 May I use previously executed proxies?

You may not use previously executed proxies for the plan of conversion vote. If members consider your plan of conversion at an annual meeting, you may vote proxies obtained through other proxy solicitations only on matters not related to your plan of conversion.

§ 563b.265 How may I use proxies executed under this part?

You may vote a proxy obtained under this part on matters that are incidental to the conduct of the meeting. You may not vote a proxy obtained under this subpart at any meeting other than the meeting (or any adjournment of the meeting) to vote on your plan of conversion.

§ 563b.270 What must I include in my proxy statement?

(a) *Content requirements.* You must prepare your proxy statement in compliance with this part and Form PS. You may obtain Form PS from OTS Washington and Regional Offices (see § 516.40 of this chapter) and OTS's website (*http://www.ots.treas.gov*).

(b) *Other requirements.* (1) OTS will review your proxy solicitation material when it reviews the application for conversion and will authorize the use of proxy solicitation material.

(2) You must provide an authorized written proxy statement to your members before or at the same time you provide any other soliciting material. You must mail authorized proxy solicitation material to your members within ten days after OTS authorizes the solicitation.

§ 563b.275 How do I file revised proxy materials?

(a) You must file revised proxy materials as an amendment to your application for conversion. *See* § 563b.155 for where to file.

(b) To revise your proxy solicitation materials, you must file:

(1) Seven copies of your revised proxy materials as required by Form PS;

(2) Seven copies of your revised form of proxy, if applicable; and

(3) Seven copies of any additional proxy solicitation material subject to § 563b.270.

(c) You must mark four of the seven required copies to clearly indicate changes from the prior filing.

(d) You must file seven definitive copies of all proxy solicitation material, in the form in which you furnish the material to your members. You must file no later than the date that you send or give the proxy solicitation material to your members. You must indicate the date that you will release the materials.

(e) Unless OTS requests you to do so, you do not have to file copies of replies to inquiries from your members or copies of communications that merely request members to sign and return proxy forms.

§ 563b.280 Must I mail a member's proxy solicitation material?

(a) You must mail the member's authorized proxy solicitation material if:

(1) Your board of directors adopted a plan of conversion;

(2) A member requests in writing that you mail the proxy solicitation material;

(3) OTS has authorized the member's proxy solicitation; and

(4) The member agrees to defray your reasonable expenses.

(b) As soon as practicable after you receive a request under paragraph (a) of this section, you must mail or otherwise furnish the following information to the member:

(1) The approximate number of members that you solicited or will solicit, or the approximate number of members of any group of account holders that the member designates; and

(2) The estimated cost of mailing the proxy solicitation material for the member.

(c) You must mail authorized proxy solicitation material to the designated members promptly after the member furnishes the materials, envelopes (or other containers), and postage (or payment for postage) to you.

(d) You are not responsible for the content of a member's proxy solicitation material.

(e) A member may furnish other members its own proxy solicitation material, authorized by OTS, subject to the rules in this section.

§ 563b.285 What solicitations are prohibited?

(a) *False or misleading statements.* (1) No one may use proxy solicitation material for the members' meeting if the material contains any statement which, considering the time and the circumstances of the statement:

(i) Is false or misleading with respect to any material fact;

(ii) Omits any material fact that is necessary to make the statements not false or misleading; or

(iii) Omits any material fact that is necessary to correct a statement in an earlier communication that has become false or misleading.

(2) No one may represent or imply that OTS determined that the proxy solicitation material is accurate, complete, not false or not misleading, or passed upon the merits of or approved any proposal.

(b) *Other prohibited solicitations.* No person may solicit:

(1) An undated or post-dated proxy;

(2) A proxy that states it will be dated after the date it is signed by a member;

(3) A proxy that is not revocable at will by the member; or

(4) A proxy that is part of another document or instrument.

§ 563b.290 What will OTS do if a solicitation violates these prohibitions?

(a) If a solicitation violates § 563b.285, OTS may require remedial measures, including:

(1) Correction of the violation by a retraction and a new solicitation;

(2) Rescheduling the members' meeting; or

(3) Any other actions necessary to ensure a fair vote.

(b) OTS may also bring an enforcement action against the violator.

§ 563b.295 Will OTS require me to re-solicit proxies?

If you amend your application for conversion, OTS may require you to re-solicit proxies for your members' meeting as a condition of approval of the amendment.

Offering Circular

§ 563b.300 What must happen before OTS declares my offering circular effective?

(a) You must prepare and file your offering circular with OTS in compliance with this part and Form OC and, where applicable, part 563g of this chapter. Section 563b.155 governs where to file your offering circular. You may obtain Form OC from OTS Washington and Regional Offices (see

§ 516.40 of this chapter) and OTS's website (*http://www.ots.treas.gov*).

(b) You must condition your stock offering upon member approval of your plan of conversion.

(c) OTS will review the Form OC and may comment on the included disclosures and financial statements.

(d) You must file seven copies of each revised offering circular, final offering circular, and any post-effective amendment to the final offering circular.

(e) OTS will not approve the adequacy or accuracy of the offering circular or the disclosures.

(f) After you satisfactorily address OTS's concerns, you must request OTS to declare your Form OC effective for a time period. The time period may not exceed the maximum time period for the completion of the sale of all of your shares under § 563b.400.

§ 563b.305 When may I distribute the offering circular?

(a) You may distribute a preliminary offering circular at the same time as or after you mail the proxy statement to your members.

(b) You may not distribute an offering circular until OTS declares it effective. You must distribute the offering circular in accordance with this part.

(c) You must distribute your offering circular to persons listed in your plan of conversion within 10 days after OTS declares it effective.

§ 563b.310 When must I file a post-effective amendment to the offering circular?

(a) You must file a post-effective amendment to the offering circular with OTS when a material event or change of circumstance occurs.

(b) After OTS declares the post-effective amendment effective, you must immediately deliver the amendment to each person who subscribed for or ordered shares in the offering.

(c) Your post-effective amendment must indicate that each person may increase, decrease, or rescind their subscription or order.

(d) The post-effective offering period must remain open no less than 10 days nor more than 20 days, unless OTS approves a longer rescission period.

Offers and Sales of Stock

§ 563b.320 Who has priority to purchase my conversion shares?

You must offer to sell your shares in the following order:

(a) Eligible account holders.

(b) Tax-qualified employee stock ownership plans.

(c) Supplemental eligible account holders.

(d) Other voting members who have subscription rights.

(e) Your community, your community and the general public, or the general public.

§ 563b.325 When may I offer to sell my conversion shares?

(a) You may offer to sell your conversion shares after OTS approves your conversion, authorizes your proxy statement, and declares your offering circular effective.

(b) The offer may commence at the same time you start the proxy solicitation of your members.

§ 563b.330 How do I price my conversion shares?

(a) You must sell your conversion shares at a uniform price per share and at a total price that is equal to the estimated pro forma market value of your shares after you convert.

(b) The maximum price must be no more than 15 percent above the midpoint of the estimated price range in your offering circular.

(c) The minimum price must be no more than 15 percent below the midpoint of the estimated price range in your offering circular.

(d) If OTS permits, you may increase the maximum price of conversion shares sold. The maximum price, as adjusted, must be no more than 15 percent above the maximum price computed under paragraph (b) of this section.

(e) The maximum price must be between $5 and $50 per share.

(f) You must include the estimated price in any preliminary offering circular.

§ 563b.335 How do I sell my conversion shares?

(a) You must distribute order forms to all eligible account holders, supplemental eligible account holders, and other voting members to enable them to subscribe for the conversion shares they are permitted under the plan of conversion. You may either send the order forms with your offering circular or after you distribute your offering circular.

(b) You may sell your conversion shares in a community offering, a public offering, or both. You may begin the community offering, the public offering, or both at any time during the subscription offering or upon conclusion of the subscription offering.

(c) You may pay underwriting commissions (including underwriting discounts). OTS may object to the payment of unreasonable commissions. You may reimburse an underwriter for accountable expenses in a subscription offering if the public offering is limited. If no public offering occurs, you may pay an underwriter a consulting fee. OTS may object to the payment of unreasonable consulting fees.

(d) If you conduct the community offering, the public offering, or both at the same time as the subscription offering, you must fill all subscription orders first.

(e) You must prepare your order form in compliance with this part and Form OF. You may obtain Form OF from OTS Washington and Regional Offices (see § 516.40 of this chapter) and OTS's website (*http://www.ots.treas.gov*).

§ 563b.340 What sales practices are prohibited?

(a) In connection with offers, sales, or purchases of conversion shares under this part, you and your directors, officers, agents, or employees may not:

(1) Employ any device, scheme, or artifice to defraud;

(2) Obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary to make the statements, in light of the circumstances under which they were made, not misleading; or

(3) Engage in any act, transaction, practice, or course of business that operates or would operate as a fraud or deceit upon a purchaser or seller.

(b) During your conversion, no person may:

(1) Transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of subscription rights for your conversion shares or the underlying securities to the account of another;

(2) Make any offer, or any announcement of an offer, to purchase any of your conversion shares from anyone but you; or

(3) Knowingly acquire more than the maximum purchase allowable under your plan of conversion.

(c) The restrictions in paragraphs (b)(1) and (b)(2) of this section do not apply to offers for more than 10 percent of any class of conversion shares by:

(1) An underwriter or a selling group, acting on your behalf, that makes the offer with a view toward public resale; or

(2) One or more of your tax-qualified employee stock ownership plans so long as the plan or plans do not beneficially own more than 25 percent of any class of your equity securities in the aggregate.

(d) If any person is found to have violated the restrictions in paragraphs (b)(1) and (b)(2) of this section, they may face prosecution or other legal action.

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§ 563b.345 How may a subscriber pay for my conversion shares?

(a) A subscriber may purchase conversion shares with cash, by a withdrawal from a savings account, or a withdrawal from a certificate of deposit. If a subscriber purchases shares by a withdrawal from a certificate of deposit, you may not assess a penalty for the withdrawal.

(b) You may not extend credit to any person to purchase your conversion shares.

§ 563b.350 Must I pay interest on payments for conversion shares?

(a) You must pay interest from the date you receive a payment for conversion shares until the date you complete or terminate the conversion. You must pay interest at no less than your passbook rate for amounts paid in cash, check, or money order.

(b) If a subscriber withdraws money from a savings account to purchase conversion shares, you must pay interest on the payment until you complete or terminate the conversion as if the withdrawn amount remained in the account.

(c) If a depositor fails to maintain the applicable minimum balance requirement because he or she withdraws money from a certificate of deposit to purchase conversion shares, you may cancel the certificate and pay interest at no less than your passbook rate on any remaining balance.

§ 563b.355 What subscription rights must I give to each eligible account holder and each supplemental eligible account holder?

(a) You must give each eligible account holder subscription rights to purchase conversion shares in an amount equal to the greater of:

(1) The maximum purchase limitation established for the community offering or the public offering under § 563b.395;

(2) One-tenth of one percent of the total stock offering; or

(3) Fifteen times the following number: The total number of conversion shares that you will issue, multiplied by the following fraction. The numerator is the total qualifying deposit of the eligible account holder. The denominator is the total qualifying deposits of all eligible account holders. You must round down the product of this multiplied fraction to the next whole number.

(b) You must give subscription rights to purchase shares to each supplemental eligible account holder in the same amount as described in paragraph (a) of this section, except that you must compute the fraction described in paragraph (a)(3) of this section as follows: The numerator is the total qualifying deposit of the supplemental eligible account holder. The denominator is the total qualifying deposits of all supplemental eligible account holders.

§ 563b.360 Are my officers, directors, and their associates eligible account holders?

Your officers, directors, and their associates may be eligible account holders. However, if an officer, director, or his or her associate receives subscription rights based on increased deposits in the year before the eligibility record date, you must subordinate subscription rights for these deposits to subscription rights exercised by other eligible account holders.

§ 563b.365 May other voting members purchase conversion shares in the conversion?

(a) You must give rights to purchase your conversion shares in the conversion to voting members who are neither eligible account holders nor supplemental eligible account holders. You must allocate rights to each voting member that are equal to the greater of:

(1) The maximum purchase limitation established for the community offering and the public offering under § 563b.395; or

(2) One-tenth of one percent of the total stock offering.

(b) You must subordinate the voting members' rights to the rights of eligible account holders, tax-qualified employee stock ownership plans, and supplemental eligible account holders.

§ 563b.370 Does OTS limit the aggregate purchases by officers, directors, and their associates?

(a) When you convert, your officers, directors, and their associates may not purchase, in the aggregate, more than the following percentage of your total stock offering:

Institution size	Officer and director purchases (percent)
$50,000,000 or less	35
$50,000,001–100,000,000	34
$100,000,001–150,000,000	33
$150,000,001–200,000,000	32
$200,000,001–250,000,000	31
$250,000,001–300,000,000	30
$300,000,001–350,000,000	29
$350,000,001–400,000,000	28
$400,000,001–450,000,000	27
$450,000,001–500,000,000	26
Over $500,000,000	25

(b) The purchase limitations in this section do not apply to shares held in tax-qualified employee stock benefit plans that are attributable to your officers, directors, and their associates.

§ 563b.375 How do I allocate my conversion shares if my shares are oversubscribed?

(a) If your conversion shares are oversubscribed by your eligible account holders, you must allocate shares among the eligible account holders so that each, to the extent possible, may purchase 100 shares.

(b) If your conversion shares are oversubscribed by your supplemental eligible account holders, you must allocate shares among the supplemental eligible account holders so that each, to the extent possible, may purchase 100 shares.

(c) If a person is an eligible account holder and a supplemental eligible account holder, you must include the eligible account holder's allocation in determining the number of conversion shares that you may allocate to the person as a supplemental eligible account holder.

(d) For conversion shares that you do not allocate under paragraphs (a) and (b) of this section, you must allocate the shares among the eligible or supplemental eligible account holders equitably, based on the amounts of qualifying deposits. You must describe this method of allocation in your plan of conversion.

(e) If shares remain after you have allocated shares as provided in paragraphs (a) and (b) of this section, and if your voting members oversubscribe, you must allocate your conversion shares among those members equitably. You must describe the method of allocation in your plan of conversion.

§ 563b.380 May my employee stock ownership plan purchase conversion shares?

(a) Your tax-qualified employee stock ownership plan may purchase up to 10 percent of the total offering of your conversion shares.

(b) If OTS approves a revised stock valuation range as described in § 563b.330(e), and the final conversion stock valuation range exceeds the former maximum stock offering range, you may allocate conversion shares to your tax-qualified employee stock ownership plan, up to the 10 percent limit in paragraph (a) of this section.

(c) If your tax-qualified employee stock ownership plan is not able to or chooses not to purchase stock in the offering, it may, with prior OTS approval and appropriate disclosure in your offering circular, purchase stock in the open market, or purchase authorized but unissued conversion shares.

(d) You may include stock contributed to a charitable organization in the conversion in the calculation of the total offering of conversion shares under paragraphs (a) and (b) of this section, unless OTS objects on supervisory grounds.

§ 563b.385 May I impose any purchase limitations?

(a) You may limit the number of shares that any person, group of associated persons, or persons otherwise acting in concert, may subscribe to between one percent and five percent of the total stock sold.

(b) If you set a limit of five percent under paragraph (a) of this section, you may modify that limit with OTS approval to provide that any person, group of associated persons, or persons otherwise acting in concert subscribing for five percent, may purchase between five and ten percent as long as the aggregate amount that the subscribers purchase does not exceed 10 percent of the total stock offering.

(c) You may require persons exercising subscription rights to purchase a minimum number of conversion shares. The minimum number of shares must equal the lesser of the number of shares obtained by a $500 subscription or 25 shares.

(d) In setting purchase limitations under this section, you may not aggregate conversion shares attributed to a person in your tax-qualified employee stock ownership plan with shares purchased directly by, or otherwise attributable to, that person.

§ 563b.390 Must I provide a purchase preference to persons in my local community?

(a) In your subscription offering, you may give a purchase preference to eligible account holders, supplemental eligible account holders, and voting members residing in your local community.

(b) In your community offering, you must give a purchase preference to natural persons residing in your local community.

§ 563b.395 What other conditions apply when I offer conversion shares in a community offering, a public offering, or both?

(a) You must offer and sell your stock to achieve a widespread distribution of the stock.

(b) If you offer shares in a community offering, a public offering, or both, you must first fill orders for your stock up to a maximum of two percent of the conversion stock on a basis that will promote a widespread distribution of stock. You must allocate any remaining shares on an equal number of shares per order basis until you fill all orders.

Completion of the Offering

§ 563b.400 When must I complete the sale of my stock?

You must complete all sales of your stock within 45 calendar days after the last day of the subscription period, unless the offering is extended under § 563b.405.

§ 563b.405 How do I extend the offering period?

(a) You must request, in writing, an extension of any offering period.

(b) OTS may grant extensions of time to sell your shares. OTS will not grant any single extension of more than 90 days.

(c) If OTS grants your request for an extension of time, you must provide a post-effective amendment to the offering circular under § 563b.310 to each person who subscribed for or ordered stock. Your amendment must indicate that OTS extended the offering period and that each person who subscribed for or ordered stock may increase, decrease, or rescind their subscription or order within the time remaining in the extension period.

Completion of the Conversion

§ 563b.420 When must I complete my conversion?

(a) In your plan of conversion, you must set a date by which the conversion must be completed. This date must not be more than 24 months from the date that your members approve the plan of conversion. The date, once set, may not be extended by you or by OTS. You must terminate the conversion if it is not completed by that date.

(b) Your conversion is complete on the date that you accept the offers for your stock.

§ 563b.425 Who may terminate the conversion?

(a) Your members may terminate the conversion by failing to approve the conversion at your members' meeting.

(b) You may terminate the conversion before your members' meeting.

(c) You may terminate the conversion after the members' meeting only if OTS concurs.

§ 563b.430 What happens to my old charter?

(a) If you are a federally chartered mutual savings association or savings bank, and you convert to a federally chartered stock savings association or savings bank, you must apply to OTS to amend your charter and bylaws consistent with part 552 of this chapter, as part of your application for conversion. You may only include OTS pre-approved anti-takeover provisions in your amended charter and bylaws. *See* 12 CFR 552.4(b)(8).

(b) If you are a federally chartered mutual savings association or savings bank and you convert to a state-chartered stock savings association under this part, you must surrender your federal charter to OTS for cancellation promptly after the state issues your charter. You must promptly file a copy of your new state stock charter with OTS.

(c) If you are a state-chartered mutual savings association or savings bank, and you convert to a federally chartered stock savings association or savings bank, you must apply to OTS for a new charter and bylaws consistent with part 552 of this chapter. You may only include OTS pre-approved anti-takeover provisions in your charter and bylaws. See 12 CFR 552.4(b)(8).

(d) Your new or amended charter must require you to establish and maintain a liquidation account for eligible and supplemental eligible account holders under § 563b.450.

§ 563b.435 What happens to my corporate existence after conversion?

Your corporate existence will continue following your conversion, unless you convert to a state-chartered stock savings association and state law prescribes otherwise.

§ 563b.440 What voting rights must I provide to stockholders after the conversion?

You must provide your stockholders with exclusive voting rights, except as provided in § 563b.445(c).

§ 563b.445 What must I provide my savings account holders?

(a) You must provide each savings account holder, without payment, a withdrawable savings account or accounts in the same amount and under the same terms and conditions as their accounts before your conversion.

(b) You must provide a liquidation account for each eligible and supplemental eligible account holder under § 563b.450.

(c) If you are a state-chartered savings association and state law requires you to provide voting rights to savings account holders or borrowers, your charter must:

(1) Limit these voting rights to the minimum required by state law; and

(2) Require you to solicit proxies from the savings account holders and borrowers in the same manner that you solicit proxies from your stockholders.

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Liquidation Account

§ 563b.450 What is a liquidation account?

(a) A liquidation account represents the potential interest of eligible account holders and supplemental eligible account holders in your net worth at the time of conversion. You must maintain a sub-account to reflect the interest of each account holder.

(b) Before you may provide a liquidation distribution to common stockholders, you must give a liquidation distribution to those eligible account holders and supplemental eligible account holders who hold savings accounts from the time of conversion until liquidation.

(c) You may not record the liquidation account in your financial statements. You must disclose the liquidation account in the footnotes to your financial statements.

§ 563b.455 What is the initial balance of the liquidation account?

The initial balance of the liquidation account is your net worth in the statement of financial condition included in the final offering circular.

§ 563b.460 How do I determine the initial balances of liquidation sub-accounts?

(a)(1) You determine the initial sub-account balance for a savings account held by an eligible account holder by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account expressed in dollars on the eligibility record date. The denominator is total qualifying deposits of all eligible account holders on that date.

(2) You determine the initial sub-account balance for a savings account held by a supplemental eligible account holder by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account expressed in dollars on the supplemental eligibility record date. The denominator is total qualifying deposits of all supplemental eligible account holders on that date.

(3) If an account holder holds a savings account on the eligibility record date and a separate savings account on the supplemental eligibility record date, you must compute separate sub-accounts for the qualifying deposits in the savings account on each record date.

(b) You may not increase the initial sub-account balances. You must decrease the initial balance under § 563b.470 as depositors reduce or close their accounts.

§ 563b.465 Do account holders retain any voting rights based on their liquidation sub-accounts?

Eligible account holders or supplemental eligible account holders do not retain any voting rights based on their liquidation sub-accounts.

§ 563b.470 Must I adjust liquidation sub-accounts?

(a)(1) You must reduce the balance of an eligible account holder's or supplemental eligible account holder's sub-account if the deposit balance in the account holder's savings account at the close of business on any annual closing date, which for purposes of this section is your fiscal year end, after the relevant eligibility record dates is less than:

(i) The deposit balance in the account holder's savings account at the close of business on any other annual closing date after the relevant eligibility record date; or

(ii) The qualifying deposits in the account holder's savings account on the relevant eligibility record date.

(2) The reduction must be proportionate to the reduction in the deposit balance.

(b) If you reduce the balance of a liquidation sub-account, you may not subsequently increase it if the deposit balance increases.

(c) You are not required to adjust the liquidation account and sub-account balances at each annual closing date if you maintain sufficient records to make the computations if a liquidation subsequently occurs.

(d) You must maintain the liquidation sub-account for each account holder as long as the account holder maintains an account with the same social security number.

(e) If there is a complete liquidation, you must provide each account holder with a liquidation distribution in the amount of the sub-account balance.

§ 563b.475 What is a liquidation?

(a) A liquidation is a sale of your assets and settlement of your liabilities with the intent to cease operations and close. Upon liquidation, you must return your charter to the governmental agency that issued it. The government agency must cancel your charter.

(b) A merger, consolidation, or similar combination or transaction with another depository institution, is not a liquidation. If you are involved in such a transaction, the surviving institution must assume the liquidation account.

§ 563b.480 Does the liquidation account affect my net worth?

The liquidation account does not affect your net worth.

§ 563b.485 What provision must I include in my new federal charter?

If you convert to federal stock form, you must include the following provision in your new charter: "Liquidation Account. Under OTS regulations, the association must establish and maintain a liquidation account for the benefit of its savings account holders as of _____. If the association undergoes a complete liquidation, it must comply with OTS regulations with respect to the amount and priorities on liquidation of each of the savings account holder's interests in the liquidation account. A savings account holder's interest in the liquidation account does not entitle the savings account holder to any voting rights."

Post-Conversion

§ 563b.500 May I implement a stock option plan or management or employee stock benefit plan?

(a) You may implement a stock option plan or management or employee stock benefit plan within 12 months after your conversion, if you meet all of the following requirements.

(1) You disclose the plans in your proxy statement and offering circular and indicate in the offering circular that there will be a separate vote on the plans at least six months after the conversion.

(2) You do not grant stock options under your stock option plan in excess of 10 percent of shares that you issued in the conversion.

(3) You do not permit your management stock benefit plans, in the aggregate, to hold more than three percent of the shares that you issued in the conversion. However, if you have tangible capital of 10 percent or more following the conversion, OTS may permit you to establish a management stock benefit plan that holds up to four percent of the shares that you issued in the conversion.

(4) You do not permit your tax-qualified employee stock benefit plan(s) and your management stock benefit plans, in the aggregate, to hold more than 10 percent of the shares that you issued in the conversion. However, if you have tangible capital of 10 percent or more following the conversion, OTS may permit your tax-qualified employee stock benefit plan(s) and your management stock benefit plans, in the aggregate, to hold up to 12 percent of the shares that you issued in the conversion.

(5) No individual receives more than 25 percent of the shares under any plan.

(6) Your directors who are not your employees do not receive more than five percent of the shares of any plan individually, or 30 percent of the shares of any plan in the aggregate.

(7) Your shareholders approve each plan by a majority of the total votes eligible to be cast at a duly called meeting before you establish or implement the plan. You may not hold this meeting until six months after your conversion. If you are a subsidiary of a mutual holding company, a majority of the total votes eligible to be cast (other than your parent mutual holding company) must approve each plan before you may establish or implement the plan.

(8) When you distribute proxies or related material to shareholders in connection with the vote on a plan, you state that the plan complies with OTS regulations and that OTS does not endorse or approve the plan in any way. You may not make any written or oral representation to the contrary.

(9) You do not grant stock options at less than the market price at the time of grant.

(10) You do not use stock issued at the time of conversion to fund management or employee stock benefit plans.

(11) Your plan does not begin to vest earlier than one year after your shareholders approve the plan, and does not vest at a rate exceeding 20 percent a year.

(12) Your plan permits accelerated vesting only for disability or death, or if you undergo a change of control.

(13) Your plan provides that your executive officers or directors must exercise or forfeit their options in the event the institution becomes critically undercapitalized (as defined in § 565.4 of this chapter), is subject to OTS enforcement action, or receives a capital directive under § 565.7 of this chapter.

(14) You file a copy of the approved stock option plan or management or employee stock benefit plan with OTS and certify to OTS in writing that the plan approved by the shareholders is the same plan that you filed with, and disclosed in, the proxy materials distributed to shareholders in connection with the vote on the plan.

(15) You file the plan and the certification with OTS within five calendar days after your shareholders approve the plan.

(b) You may provide dividend equivalent rights or dividend adjustment rights to allow for stock splits or other adjustments to your stock in stock option plans or management or employee stock benefit plans under this section.

(c) If the plan is amended more than one year following your conversion, any material deviations to the requirements in paragraph (a) of this section must be ratified by your shareholders.

§ 563b.505 May my directors, officers, and their associates freely trade shares?

(a) Directors and officers who purchase conversion shares may not sell the shares for one year after the date of purchase, except that in the event of the death of the officer or director, the successor in interest may sell the shares.

(b) You must include notice of the restriction described in paragraph (a) of this section on each certificate of stock that a director or officer purchases during the conversion or receives in connection with a stock dividend, stock split, or otherwise with respect to such restricted shares.

(c) You must instruct your stock transfer agent about the transfer restrictions in this section.

(d) For three years after you convert, your officers, directors, and their associates may purchase your stock only from a broker or dealer registered with the Securities and Exchange Commission. However, your officers, directors, and their associates may engage in a negotiated transaction involving more than one percent of your outstanding stock, and may purchase stock through any of your management or employee stock benefit plans.

§ 563b.510 May I repurchase shares after conversion?

(a) You may not repurchase your shares in the first year after the conversion except:

(1) In extraordinary circumstances, you may make open market repurchases of up to five percent of your outstanding stock in the first year after the conversion if you file a notice under § 563b.515(a) and OTS does not disapprove your repurchase. OTS will not approve such repurchases unless the repurchase meets the standards in § 563b.515(c), and the repurchase is consistent with paragraph (c) of this section.

(2) You may repurchase qualifying shares of a director or conduct an OTS approved repurchase pursuant to an offer made to all shareholders of your association.

(3) Repurchases to fund management recognition plans that have been ratified by shareholders do not count toward the repurchase limitations in this section. Repurchases in the first year to fund such plans require prior written notification to OTS.

(4) Purchases to fund tax qualified employee stock benefit plans do not count toward the repurchase limitations in this section.

(b) After the first year, you may repurchase your shares, subject to all other applicable regulatory and supervisory restrictions and paragraph (c) of this section.

(c) All stock repurchases are subject to the following restrictions.

(1) You may not repurchase your shares if the repurchase will reduce your regulatory capital below the amount required for your liquidation account under § 563b.450. You must comply with the capital distribution requirements at part 563, subpart E of this chapter.

(2) The restrictions on share repurchases apply to a charitable organization under § 563b.550. You must aggregate purchases of shares by the charitable organization with your repurchases.

563b.515 What information must I provide to OTS before I repurchase my shares?

(a) To repurchase stock in the first year following conversion, other than repurchases under § 563b.510(a)(3) or (a)(4), you must file a written notice with the OTS. You must provide the following information:

(1) Your proposed repurchase program;

(2) The effect of the repurchases on your regulatory capital; and

(3) The purpose of the repurchases and, if applicable, an explanation of the extraordinary circumstances necessitating the repurchases.

(b) You must file your notice with your Regional Director, with a copy to the Applications Filing Room, at least ten days before you begin your repurchase program.

(c) You may not repurchase your shares if OTS objects to your repurchase program. OTS will not object to your repurchase program if:

(1) Your repurchase program will not adversely affect your financial condition;

(2) You submit sufficient information to evaluate your proposed repurchases;

(3) You demonstrate extraordinary circumstances and a compelling and valid business purpose for the share repurchases; and

(4) Your repurchase program would not be contrary to other applicable regulations.

§ 563b.520 May I declare or pay dividends after I convert?

You may declare or pay a dividend on your shares after you convert if:

(a) The dividend will not reduce your regulatory capital below the amount required for your liquidation account under § 563b.450;

(b) You comply with all capital requirements under part 567 of this

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chapter after you declare or pay dividends;

(c) You comply with the capital distribution requirements under part 563, subpart E, of this chapter; and

(d) You do not return any capital, other than ordinary dividends, to purchasers during the term of the business plan submitted with the conversion.

§ 563b.525 Who may acquire my shares after I convert?

(a) For three years after you convert, no person may, directly or indirectly, acquire or offer to acquire the beneficial ownership of more than ten percent of any class of your equity securities without OTS's prior written approval. If a person violates this prohibition, you may not permit the person to vote shares in excess of ten percent, and may not count the shares in excess of ten percent in any shareholder vote.

(b) A person acquires beneficial ownership of more than ten percent of a class of shares when he or she holds any combination of your stock or revocable or irrevocable proxies under circumstances that give rise to a conclusive control determination or rebuttable control determination under §§ 574.4(a) and (b) of this chapter. OTS will presume that a person has acquired shares if the acquiror entered into a binding written agreement for the transfer of shares. For purposes of this section, an offer is made when it is communicated. An offer does not include non-binding expressions of understanding or letters of intent regarding the terms of a potential acquisition.

(c) Notwithstanding the restrictions in this section:

(1) Paragraphs (a) and (b) of this section do not apply to any offer with a view toward public resale made exclusively to you, to the underwriters, or to a selling group acting on your behalf.

(2) Unless OTS objects in writing, any person may offer or announce an offer to acquire up to one percent of any class of shares. In computing the one percent limit, the person must include all of his or her acquisitions of the same class of shares during the prior 12 months.

(3) A corporation whose ownership is, or will be, substantially the same as your ownership may acquire or offer to acquire more than ten percent of your common stock, if it makes the offer or acquisition more than one year after you convert.

(4) One or more of your tax-qualified employee stock benefit plans may acquire your shares, if the plan or plans do not beneficially own more than 25 percent of any class of your shares in the aggregate.

(5) An acquiror does not have to file a separate application to obtain OTS approval under paragraph (a) of this section, if the acquiror files an application under part 574 of this chapter that specifically addresses the criteria listed under paragraph (d) of this section and you do not oppose the proposed acquisition.

(d) OTS may deny an application under paragraph (a) of this section if the proposed acquisition:

(1) Is contrary to the purposes of this part;

(2) Is manipulative or deceptive;

(3) Subverts the fairness of the conversion;

(4) Is likely to injure you;

(5) Is inconsistent with your plan to meet the credit and lending needs of your proposed market area;

(6) Otherwise violates laws or regulations; or

(7) Does not prudently deploy your conversion proceeds.

§ 563b.530 What other requirements apply after I convert?

After you convert, you must:

(a) Promptly register your shares under the Securities Exchange Act of 1934 (15 U.S.C. 78a–78jj, as amended). You may not deregister the shares for three years.

(b) Encourage and assist a market maker to establish and to maintain a market for your shares. A market maker for a security is a dealer who:

(1) Regularly publishes bona fide competitive bid and offer quotations for the security in a recognized inter-dealer quotation system;

(2) Furnishes bona fide competitive bid and offer quotations for the security on request; or

(3) May effect transactions for the security in reasonable quantities at quoted prices with other brokers or dealers.

(c) Use your best efforts to list your shares on a national or regional securities exchange or on the National Association of Securities Dealers Automated Quotation system.

(d) File all post-conversion reports that OTS requires.

Contributions to Charitable Organizations

§ 563b.550 May I donate conversion shares or conversion proceeds to a charitable organization?

You may contribute some of your conversion shares or proceeds to a charitable organization if:

(a) Your plan of conversion provides for the proposed contribution;

(b) Your members approve the proposed contribution; and

(c) The IRS either has approved, or approves within two years after formation, the charitable organization as a tax-exempt charitable organization under the Internal Revenue Code.

§ 563b.555 How do my members approve a charitable contribution?

At the meeting to consider your conversion, your members must separately approve by at least a majority of the total eligible votes, a contribution of conversion shares or proceeds. If you are in mutual holding company form and adding a charitable contribution as part of a second step stock conversion, you must also have your minority shareholders separately approve the charitable contribution by a majority of their total eligible votes.

§ 563b.560 How much may I contribute to a charitable organization?

You may contribute a reasonable amount of conversion shares or proceeds to a charitable organization, if your contribution will not exceed limits for charitable deductions under the Internal Revenue Code and OTS does not object on supervisory grounds. If you are a well-capitalized savings association, OTS generally will not object if you contribute an aggregate amount of eight percent or less of the conversion shares or proceeds.

§ 563b.565 What must the charitable organization include in its organizational documents?

The charitable organization's charter (or trust agreement) and gift instrument must provide that:

(a) The charitable organization's primary purpose is to serve and make grants in your local community;

(b) As long as the charitable organization controls shares, it must vote those shares in the same ratio as all other shares voted on each proposal considered by your shareholders;

(c) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for an independent director (or trustee) from your local community. This director may not be your officer, director, or employee, or your affiliate's officer, director, or employee, and should have experience with local community charitable organizations and grant making; and

(d) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for a director from your board of directors or the board of directors of an acquiror or resulting institution in the event of a merger or acquisition of your organization.

§ 563b.570 How do I address conflicts of interest involving my directors?

(a) A person who is your director, officer, or employee, or a person who has the power to direct your management or policies, or otherwise owes a fiduciary duty to you (for example, holding company directors) and who will serve as an officer, director, or employee of the charitable organization, is subject to § 563.200 of this chapter. *See* Form AC (Exhibit 9) for further information on operating plans and conflict of interest plans.

(b) Before your board of directors may adopt a plan of conversion that includes a charitable organization, you must identify your directors that will serve on the charitable organization's board. These directors may not participate in your board's discussions concerning contributions to the charitable organization, and may not vote on the matter.

§ 563b.575 What other requirements apply to charitable organizations?

(a) The charitable organization's charter (or trust agreement) and the gift instrument for the contribution must provide that:

(1) OTS may examine the charitable organization at the charitable organization's expense;

(2) The charitable organization must comply with all supervisory directives that OTS imposes;

(3) The charitable organization must annually provide OTS with a copy of the annual report that the charitable organization submitted to the IRS;

(4) The charitable organization must operate according to written policies adopted by its board of directors (or board of trustees), including a conflict of interest policy; and

(5) The charitable organization may not engage in self-dealing, and must comply with all laws necessary to maintain its tax-exempt status under the Internal Revenue Code.

(b) You must include the following legend in the stock certificates of shares that you contribute to the charitable organization or that the charitable organization otherwise acquires: "The board of directors must consider the shares that this stock certificate represents as voted in the same ratio as all other shares voted on each proposal considered by the shareholders, as long as the shares are controlled by the charitable organization."

(c) As long as the charitable organization controls shares, you must consider those shares as voted in the same ratio as all of the shares voted on each proposal considered by your shareholders.

(d) After you complete your stock offering, you must submit four executed copies of the following documents to the OTS Applications Filing Room in Washington, and three executed copies to the OTS Regional Office: the charitable organization's charter and bylaws (or trust agreement), operating plan (within six months after your stock offering), conflict of interest policy, and the gift instrument for your contributions of either stock or cash to the charitable organization.

Subpart B—Voluntary Supervisory Conversions

§ 563b.600 What does this subpart do?

(a) You must comply with this subpart to engage in a voluntary supervisory conversion. This subpart applies to all voluntary supervisory conversions under secs. 5(i)(1), (i)(2), and (p) of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1464(i)(1), (i)(2), and (p).

(b) Subpart A of this part also applies to a voluntary supervisory conversion, unless a requirement is clearly inapplicable.

§ 563b.605 How may I conduct a voluntary supervisory conversion?

(a) You may sell your shares or the shares of a holding company to the public under the requirements of subpart A of this part.

(b) You may convert to stock form by merging into an interim federal-or state-chartered stock association.

(c) You may sell your shares directly to an acquiror, who may be a person, company, depository institution, or depository institution holding company.

(d) You may merge or consolidate with an existing or newly created depository institution. The merger or consolidation must be authorized by, and is subject to, other applicable laws and regulations.

§ 563b.610 Do my members have rights in a voluntary supervisory conversion?

Your members do not have the right to approve or participate in a voluntary supervisory conversion, and will not have any legal or beneficial ownership interests in the converted association, unless OTS provides otherwise. Your members may have interests in a liquidation account, if one is established.

Eligibility

§ 563b.625 When is a savings association eligible for a voluntary supervisory conversion?

(a) If you are an insured savings association, you may be eligible to convert under this subpart if:

(1) You are significantly undercapitalized (or you are undercapitalized and a standard conversion that would make you adequately capitalized is not feasible) and you will be a viable entity following the conversion;

(2) Severe financial conditions threaten your stability and a conversion is likely to improve your financial condition;

(3) FDIC will assist you under section 13 of the Federal Deposit Insurance Act, 12 U.S.C. 1823; or

(4) You are in receivership and a conversion will assist you.

(b) You will be a viable entity following the conversion if you satisfy all of the following:

(1) You will be adequately capitalized as a result of the conversion;

(2) You, your proposed conversion, and your acquiror(s) comply with applicable supervisory policies;

(3) The transaction is in your best interest, and the best interest of the federal deposit insurance funds and the public; and

(4) The transaction will not injure or be detrimental to you, the federal deposit insurance funds, or the public interest.

§ 563b.630 When is a BIF-insured state-chartered savings bank eligible for a voluntary supervisory conversion?

If you are a BIF-insured state-chartered savings bank you may be eligible to convert to a federal stock savings bank under this subpart if:

(a) FDIC certifies under section 5(o)(2)(C) of the HOLA that severe financial conditions threaten your stability and that the voluntary supervisory conversion is likely to improve your financial condition, and OTS concurs with this certification; or

(b) You meet the following conditions:

(1) Your liabilities exceed your assets, as calculated under generally accepted accounting principles, assuming you are a going concern; and

(2) You will issue a sufficient amount of permanent capital stock to meet your applicable FDIC capital requirement immediately upon completion of the conversion, or FDIC determines that you will achieve an acceptable capital level within an acceptable time period.

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Plan of Supervisory Conversion

§ 563b.650 What must I include in my plan of voluntary supervisory conversion?

A majority of your board of directors must adopt a plan of voluntary supervisory conversion. You must include all of the following information in your plan of voluntary supervisory conversion.

(a) Your name and address.

(b) The name, address, date and place of birth, and social security number of each proposed purchaser of conversion shares and a description of that purchaser's relationship to you.

(c) The title, per-unit par value, number, and per-unit and aggregate offering price of shares that you will issue.

(d) The number and percentage of shares that each investor will purchase.

(e) The aggregate number and percentage of shares that each director, officer, and any affiliates or associates of the director or officer will purchase.

(f) A description of any liquidation account.

(g) Certified copies of all resolutions of your board of directors relating to the conversion.

Voluntary Supervisory Conversion Application

§ 563b.660 What must I include in my voluntary supervisory conversion application?

You must include all of the following information and documents in a voluntary supervisory conversion application to OTS under this subpart:

(a) *Eligibility.* (1) Evidence establishing that you meet the eligibility requirements under §§ 563b.625 or 563b.630.

(2) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences of the conversion, or an IRS ruling indicating that the transaction qualifies as a tax-free reorganization.

(3) An opinion of independent counsel indicating that applicable state law authorizes the voluntary supervisory conversion, if you are a state-chartered savings association converting to state stock form.

(b) *Plan of conversion.* A plan of voluntary supervisory conversion that complies with § 563b.650.

(c) *Business plan.* A business plan that complies with § 563b.105, when required by OTS.

(d) *Financial data.* (1) Your most recent audited financial statements and Thrift Financial Report. You must explain how your current capital levels make you eligible to engage in a voluntary supervisory conversion under §§ 563b.625 or 563b.630.

(2) A description of your estimated conversion expenses.

(3) Evidence supporting the value of any non-cash asset contributions. Appraisals must be acceptable to OTS and the non-cash asset must meet all other OTS policy guidelines. *See* Thrift Activities Handbook Section 110 for guidelines at OTS's website (www.ots.treas.gov).

(4) Pro forma financial statements that reflect the effects of the transaction. You must identify your tangible, core, and risk-based capital levels and show the adjustments necessary to compute the capital levels. You must prepare your pro forma statements in conformance with OTS regulations and policy.

(e) *Proposed documents.* (1) Your proposed charter and bylaws.

(2) Your proposed stock certificate form.

(f) *Agreements.* (1) A copy of any agreements between you and proposed purchasers.

(2) A copy and description of all existing and proposed employment contracts. You must describe the term, salary, and severance provisions of the contract, the identity and background of the officer or employee to be employed, and the amount of any conversion shares to be purchased by the officer or employee or his or her affiliates or associates.

(g) *Related applications.* (1) All filings required under the securities offering rules of parts 563b and 563g of this chapter.

(2) Any required Holding Company Act application, Control Act notice, or rebuttal submission under part 574 of this chapter, including prior-conduct certifications under Regulatory Bulletin 20.

(3) A subordinated debt application, if applicable.

(4) Applications for permission to organize a stock association and for approval of a merger, if applicable, and a copy of any application for Federal Home Loan Bank membership or FDIC insurance of accounts, if applicable.

(5) A statement describing any other applications required under federal or state banking laws for all transactions related to your conversion, copies of all dispositive documents issued by regulatory authorities relating to the applications, and, if requested by OTS, copies of the applications and related documents.

(h) *Waiver request.* A description of any of the features of your application that do not conform to the requirements of this subpart, including any request for waiver of these requirements.

OTS Review of the Voluntary Supervisory Conversion Application

§ 563b.670 Will OTS approve my voluntary supervisory conversion application?

OTS will generally approve your application to engage in a voluntary supervisory conversion unless it determines:

(a) You do not meet the eligibility requirements for a voluntary supervisory conversion under §§ 563b.625 or 563b.630 or because the proceeds from the sale of your conversion stock, less the expenses of the conversion, would be insufficient to satisfy any applicable viability requirement;

(b) The transaction is detrimental to or would cause potential injury to you or the federal deposit insurance funds or is contrary to the public interest;

(c) You or your acquiror, or the controlling parties or directors and officers of you or your acquiror, have engaged in unsafe or unsound practices in connection with the voluntary supervisory conversion; or

(d) You fail to justify an employment contract incidental to the conversion, or the employment contract will be an unsafe or unsound practice or represent a sale of control. In a voluntary supervisory conversion, OTS generally will not approve employment contracts of more than one year for your existing management.

§ 563b.675 What conditions will OTS impose on an approval?

(a) OTS will condition approval of a voluntary supervisory conversion application on all of the following.

(1) You must complete the conversion stock sale within three months after OTS approves your application. OTS may grant an extension for good cause.

(2) You must comply with all filing requirements of parts 563b and 563g of this chapter.

(3) You must submit an opinion of independent legal counsel indicating that the sale of your shares complies with all applicable state securities law requirements.

(4) You must comply with all applicable laws, rules, and regulations.

(5) You must satisfy any other requirements or conditions OTS may impose.

(b) OTS may condition approval of a voluntary supervisory conversion application on either of the following:

(1) You must satisfy any conditions and restrictions OTS imposes to prevent unsafe or unsound practices, to protect the federal deposit insurance funds and the public interest, and to prevent potential injury or detriment to you before and after the conversion. OTS may impose these conditions and restrictions on you (before and after the conversion), your acquiror, controlling parties, or directors and officers of you or your acquiror; or

(2) You must infuse a larger amount of capital, if necessary, for safety and soundness reasons.

Offers and Sales of Stock

§ 563b.680 How do I sell my shares?

If you convert under this subpart, you must offer and sell your shares under part 563g of this chapter.

Post-Conversion

§ 563b.690 Who may not acquire additional shares after the voluntary supervisory conversion?

For three years after the completion of a voluntary supervisory conversion, neither you nor your controlling shareholder(s) may acquire shares from minority shareholders without OTS's prior approval.

PART 574—ACQUISITION OF CONTROL OF SAVINGS ASSOCIATIONS

2. The authority citation for part 574 is revised to read as follows:

Authority: 12 U.S.C. 1467a, 1817, 1831i.

§ 574.3 [Amended]

3. Section 574.3(c)(1)(vii) is amended by removing the phrase "563b.2(a)(39)" and adding in lieu thereof the phrase "563b.25".

PART 575—MUTUAL HOLDING COMPANIES

4. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

§ 575.2 [Amended]

5. Section 575.2(a) is amended by removing the phrase "12 CFR 563b.2", and by adding in lieu thereof the phrase "§ 563b.25 of this chapter".

§ 575.4 [Amended]

6. Section 575.4(c)(2) is amended by removing the phrase "economical home financing", and by adding in lieu thereof the phrase "the credit and lending needs of your proposed market area".

7. Section 575.7 is amended by:

a. Revising the paragraph heading and adding a new first sentence to paragraph (a) introductory text;

b. Removing, in paragraph (a)(7), the phrase "§ 563b.11 of this chapter", and by adding in lieu thereof the phrase "§ 563b.200(c) of this chapter";

c. Removing, in paragraph (b)(1), the phrase "§ 563b.7" where it appears in the first and second sentences, and by adding in lieu of both phrases the phrase "part 563b";

d. Removing, in paragraph (b)(2), the phrase "§ 563b.7(c)", and by adding in lieu thereof the phrase "§ 563b.330".

e. Removing, in paragraph (d)(6)(i), the phrase "12 CFR 563b.102", and by adding in lieu thereof the phrase "Form OC";

f. Adding new paragraphs (d)(7) and (d)(8);

g. Removing, in paragraph (e), the phrase "§§ 563b.3 through 563b.8 of this chapter", and adding in lieu thereof the phrase "12 CFR part 563b".

The additions read as follows:

§ 575.7 Issuances of stock by savings association subsidiaries of mutual holding companies.

(a) *Requirements.* Before any stock issuance, a savings association subsidiary of a mutual holding company must submit a business plan in accordance with the provisions of §§ 563b.105 through 563b.115 of this chapter. * * *

* * * * *

(d) * * *

(7) Notwithstanding the restrictions in paragraph (d)(6)(ii) of this section, a savings association subsidiary of a mutual holding company may issue stock as part of a stock benefit plan to any insider, associate of an insider, or tax qualified or non-tax qualified employee stock benefit plan of the mutual holding company or subsidiary of the mutual holding company without including the purchase priorities of part 563b of this chapter.

(8) As part of a reorganization, a reasonable amount of shares or proceeds may be contributed to a charitable organization that complies with §§ 563b.550 to 563b.575 of this chapter, provided such contribution does not result in any taxes on excess business holdings under section 4943 of the Internal Revenue Code (26 U.S.C. 4943).

* * * * *

8. Section 575.8 is amended by:

a. Removing, in paragraph (a) introductory text, the phrase "§ 563b.27(a)", and by adding in lieu thereof the phrase "§ 563b.650";

b. Amending paragraphs (a)(3), (a)(4), (a)(5), and (a)(6) to remove the phrase "ten", and by adding in lieu thereof the phrase "4.9", and by removing the phrase "held by persons other than the association's mutual holding company parent";

c. Revising paragraph (a)(7);

d. Revising paragraph (a)(8);

e. Redesignating paragraphs (a)(9) through (a)(21) as paragraphs (a)(10) through (a)(22), respectively;

f. Adding a new paragraph (a)(9);

g. Amending newly designated paragraph (a)(10) by removing the phrase "12 CFR 563b.102", and by adding in lieu thereof the phrase "Form OC".

The additions and revisions read as follows:

§ 575.8 Contents of Stock Issuance Plans.

(a) * * *

(7)(i) Provide that the aggregate amount of common stock acquired in the proposed issuance, plus all prior issuances of the association, by all non-tax-qualified employee stock benefit plans of the association, insiders of the association, and associates of insiders of the association, exclusive of any stock acquired by such plans, insiders, and associates in the secondary market, shall not exceed the following percentages of the outstanding common stock of the association, held by persons other than the association's mutual holding company parent at the close of the proposed issuance:

Institution size	Officer and director purchases (percent)
$50,000,000 or less	35
$50,000,001–100,000,000	34
$100,000,001–150,000,000	33
$150,000,001–200,000,000	32
$200,000,001–250,000,000	31
$250,000,001–300,000,000	30
$300,000,001–350,000,000	29
$350,000,001–400,000,000	28
$400,000,001–450,000,000	27
$450,000,001–500,000,000	26
Over $500,000,000	25

(ii) In calculating the number of shares held by insiders and their associates under this provision or the provision in paragraph (a)(8) of this section, shares held by any tax-qualified or non-tax-qualified employee stock benefit plan of the association that are attributable to such persons shall not be counted.

(8) Provide that the aggregate amount of stock, whether common or preferred, acquired in the proposed issuance, plus all prior issuances of the association, by all non-tax-qualified employee stock benefit plans of the association, insiders of the association, and associates of insiders of the association, exclusive of any stock acquired by said plans, insiders, and associates in the secondary market, shall not exceed the following percentages of the stockholders' equity of the association, held by persons other

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than the association's mutual holding company parent at the close of the proposed issuance:

Institution size	Officer and director purchases (percent)
$50,000,000 or less	35
$50,000,001–100,000,000	34
$100,000,001–150,000,000	33
$150,000,001–200,000,000	32
$200,000,001–250,000,000	31
$250,000,001–300,000,000	30
$300,000,001–350,000,000	29
$350,000,001–400,000,000	28
$400,000,001–450,000,000	27
$450,000,001–500,000,000	26
Over $500,000,000	25

(9) Provide that the aggregate amount of common stock acquired in the proposed issuance, plus all prior issuances of the association, by all stock benefit plans, other than employee stock ownership plans, shall not exceed more than 25 of the outstanding common stock of the association held by persons other than the association's mutual holding company parent.

* * * * *

9. Section 575.11 is amended by:

a. Removing, in paragraphs (c)(1) and (c)(2) the phrases "§ 563b.3(g)(1)" or "§ 563b.3(g)(3)" wherever they appear, and by adding in lieu thereof the phrase "§ 563b.510";

b. Adding, in paragraph (e), after the phrase "stock issuance" the phrase ", and OTS does not object to the subsequent stock issuance"; and

c. Adding new paragraph (i).

The addition reads as follows:

§ 575.11 Operating restrictions.

* * * * *

(i) *Separate vote for charitable organization contribution.* In a mutual holding company stock issuance, a separate vote of a majority of the outstanding shares of common stock held by stockholders other than the mutual holding company or subsidiary holding company must approve any charitable organization contribution.

10. Section 575.12 is amended by adding new paragraph (a)(3) to read as follows:

§ 575.12 Conversion or liquidation of mutual holding companies.

(a) * * *

(3) If a subsidiary holding company or subsidiary savings association has issued shares to an entity other than the mutual holding company, the conversion of the mutual holding company to stock form may not be consummated unless a majority of the shares issued to entities other than the mutual holding company vote in favor of the conversion. This requirement applies in addition to any otherwise required account holder or shareholder votes.

* * * * *

11. Section 575.13 is amended by removing, in paragraph (c)(2), the phrase "§ 563b.8 of this chapter", and by adding in lieu thereof the phrase "§ 563b.150 of this chapter", and by revising paragraph (a)(1) to read as follows:

§ 575.13 Procedural requirements.

(a) *Proxies and proxy statements*—(1) *Solicitation of proxies.* The provisions of §§ 563b.225 to 563b.295 of this chapter shall apply to all solicitations of proxies by any person in connection with any membership vote required by this part. OTS must authorize all proxy materials used in connection with such solicitations. Proxy materials must be in the form and contain the information specified in §§ 563b.255 and 563b.270 of this chapter and Form PS, to the extent such information is relevant to the action that members are being asked to approve, with such additions, deletions, and other modifications as are necessary or appropriate under the disclosure standard set forth in § 563b.280 of this chapter. File proxies and proxy statements in accordance with § 563b.155 of this chapter and address them to the Business Transactions Division, Chief Counsel's Office, Office of Thrift Supervision, at the address set forth in § 516.40 of this chapter. For purposes of this paragraph (a)(1), the term *conversion*, as it appears in the provisions of part 563b of this chapter cited above in this paragraph (a)(1), refers to *the reorganization* or *the stock issuance*, as appropriate.

* * * * *

Dated: July 26, 2002.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

Note: The following appendixes will not appear in the Code of Federal Regulations.

Appendix A

Office of Thrift Supervision

Form AC—Application for Conversion

Paperwork Reduction Act Statement

The Office of Thrift Supervision will use this information to provide OTS with all necessary information to evaluate the application for conversion to meet all agency safety and soundness requirements. *See* 12 CFR part 563b.

Public reporting burden for this collection of information is estimated to average 299 hours if not creating a foundation and 309 hours if creating a foundation, per response, including the time for reviewing instructions and completing and reviewing the collection of information. If a valid OMB Control Number does not appear on this form, you are not required to complete this form. Send comments on these information collections to Information Collection Comments, Attention: 1550–0014, by e-mail to *infocollection.comments@ots.treas.gov;* by facsimile transmission to (202) 906–6518; or by mail to Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Send a copy of comments to Joseph F. Lackey, Jr., Attention: 1550–0014, by e-mail to *Joseph_F._Lackey_Jr@omb.eop.gov* or by mail to him at Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

OMB No. 1550–0014
Expiration Date: 08/31/2003

Form AC—Application for Conversion

[Not to be codified in the Code of Federal Regulations]

Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552

Application for Conversion

(Name of Applicant as specified in charter) (Docket No.)

(Street Address of Applicant)

(City, State, and Zip Code)

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Item 1. Form of Application
Item 2. Plan of Conversion
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Item 10. Federally Chartered Stock Savings Associations
Exhibits

General Instructions

A. Use of Form AC

You must use Form AC to seek OTS approval of a conversion from the mutual to the stock form of organization under 12 CFR part 563b. You must indicate on the cover if you are filing using Regulation S–B.

B. Application of Rules and Regulations

You should follow the general requirements in this section when you prepare and file this Form AC and all other forms required under 12 CFR part 563b.

(1) *Method of preparation.* In your applications, you must furnish information in item-and-answer form, and must include the captions on the form. You may omit the text of items and instructions. In a proxy statement or offering circular, you may present the required information in any order and omit the captions and text of all items and instruction. You must not present the information in a way that obscures any of the required information or other information necessary to keep the required information from being incomplete or misleading. Where an item requires you to provide information in tabular form, you must provide the information substantially in the tabular form specified in the item.

You must set out all information in the plan of conversion, proxy statement, or offering circular under appropriate headings that reasonably indicate the principal subject matter. Except for financial statements and other tabular data, you must present all information in reasonably short paragraphs or sections. You must set out financial statements, including interim financial statements, in comparative form, and must include all notes and the accountants' certificate or certificates. You must follow 12 CFR 563c.1, which governs the certification, form, and content of financial statements, including the basis of consolidation.

In a proxy statement or offering circular, you must present all information in a clearly understandable format. The reader should not have to refer to the OTS form or 12 CFR part 563b to understand the document. You must include a reasonably detailed table of contents in each proxy statement and offering circular.

In every application, you must include a cross-reference sheet showing where the responses to each item of the appropriate form are located in the proxy statement and offering circular. In the cross-reference sheet, you must state where any item is inapplicable, or where you omitted an answer because it was no.

(2) *Additional information.* In addition to the information required under 12 CFR part 563b, you must include any material information necessary to make the required statements, in the light of the circumstances under which you have made them, not misleading.

(3) *Information unknown or not reasonably available.* You must provide information to the extent you know the information or it is reasonably available to you. You may omit any required information that you do not know or is not reasonably available to you. You must explain why such information is not known or reasonably available to you. Information is not reasonably available if obtaining it would involve an unreasonable effort or expense, or if it rests peculiarly within the knowledge of another person who is not your affiliate. You must provide all information on the subject that you possess or can acquire without unreasonable effort or expense, together with the sources of the information.

(4) *Incorporation by reference.* If an item in an application calls for certain information and the proxy statement or offering circular does not require you to include it, you may incorporate the information by reference from any part of the application, including exhibits, in the answer, or partial answer, to the item. In a proxy statement or offering circular, you may not incorporate information by reference unless you attach, summarize, or outline the document containing the information. To summarize or outline a document, you must make a brief statement of the most important provisions of the document. In addition, you may incorporate by reference particular items, sections, or paragraphs of any exhibit, and your summary or outline may be qualified in its entirety by the reference. In an offering circular, you may incorporate by reference information from a proxy statement that you have delivered. You do not need to summarize or outline the information. If you incorporate material by reference you must clearly identify the material in the reference. You must expressly state that the specified matter is incorporated by reference at the particular place in the application where the information is required. You may not incorporate information by reference if the incorporation would render the statement incomplete, unclear, or confusing.

(5) *Signatures Required.* The following individuals must manually sign at least two copies of every application and every amendment to an application that you file with OTS:

(a) Your duly authorized representative.
(b) Your principal executive officer.
(c) Your principal financial officer.
(d) Your principal accounting officer.
(e) At least two-thirds of your directors.

(6) *Consents of persons about to become directors.* If you indicate in a proxy statement or offering circular that a person is about to become a director, and that person has not signed your application, you must file that person's written consent to the application with the appropriate form.

(7) *Consents of experts.* If you indicate that an accountant, attorney, investment banker, appraiser, or other professional prepared, reviewed, passed upon, or certified any part of an application, or any report or valuation used in connection with the application, you must file the written consent of that person to use their name in connection with the stated action with the application. If you quote or summarize any portion of a report of an expert in any filing under 12 CFR part 563b, you must file a written consent of the expert that expressly states that the expert consents to the quotation or summarization. All written consents must be dated and signed manually by the expert. You must file a list of consents with the application. If the expert's report contains his or her consent, you must refer to the report containing the consent in your list. You must file a new consent for any accounting amendment.

(8) *Date of filing.* Your documents are filed as of the date the last OTS office where they are filed receives them, and you paid any applicable fee.

(9) *Amendments.* You must file all amendments to any application with an appropriate facing sheet. You must number your amendments consecutively in the order in which you file them. You must comply with all regulations applicable to the original application.

Item 1. Form of Application

You must include the following form in your application for approval of the plan of conversion. You must set out the names and titles of the officers and directors below their signatures:

The undersigned applies for approval to convert into a stock association. We have attached a statement of the proposed plan of conversion and other information and exhibits as required by 12 CFR part 563b.

In submitting this application, we understand and agree that, if OTS requires further examinations or appraisals, OTS will conduct or approve the examination or appraisal at our expense. We will pay the costs as computed by OTS.

At least two-thirds of the board of directors approved the application. By filing this application, the undersigned officers and directors severally represent that: (1) Each person read this application; and (2) Each person adequately examined and investigated this application and concluded that this application complies with 12 CFR part 563b.

Attest:

(Duly Authorized Representative) (Principal Executive Officer)

(Principal Financial Officer) (Principal Accounting Officer)

(Director) (Director)

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(Director) (Director)
(Signatures of at least two-thirds of the Board of Directors)

Item 2. Plan of Conversion

You must furnish the complete written plan that your board of directors adopted for the conversion to the stock form. You must prepare the plan of conversion in accordance with 12 CFR 563b.320 through 563b.485 and 563b.505. OTS will base its approval on the terms of this plan. You must distribute the approved plan as an attachment to the proxy statement.

Item 3. Proxy Statement and Offering Circular

You must furnish preliminary copies of the proxy statement and offering circular. You must prepare the proxy statement and offering circular in accordance with Forms PS and OC, respectively.

Item 4. Form of Proxy

You must furnish preliminary copies of the form of proxy that your management will distribute to your members.

Item 5. Additional Information Required for Conversion With a Charitable Contribution

If your conversion application includes a charitable contribution, you must include the following information in your application:

(a) Your reasons for concluding that the proposed contribution is reasonable.

(b) The impact of the proposed contribution on the appraised valuation.

(c) A description of the charitable organization.

(d) The exhibits required under Exhibit 9.

Item 6. Sequence and Timing of the Plan

You must describe the expected chronological order of the events for your conversion. Begin with the filing of this application and end with the sale of all the stock under the plan. Estimate the timing of any requisite approvals by state or other regulators other than OTS. Indicate the proposed timing of all aspects of the subscription offering. If a selling agent will assist in the community offering, or if an underwriter will offer shares in the public offering, indicate the proposed timing of all aspects of the community offering and public offering.

Item 7. Record Dates

If the eligibility record date in your plan of conversion is more than one year before your board of directors adopted the plan of conversion, you must state why you selected the earlier date.

You must indicate what circumstances may require you to use a supplemental eligibility record date.

Item 8. Expenses Incident to the Conversion

You must estimate the expense of your conversion in the tabular form indicated below:

Legal	$_____
Postage and Mailing	_____
Printing	_____
Escrow or Agent Fees	_____
Underwriting Fees	_____
Appraisal Fees	_____
Transfer Agent Fees	_____
Auditing and Accounting	_____
Proxy Solicitation Fees	_____
Advertising	_____
Other Expenses	_____
Total	_____

Instructions:

1. Expenses that you incur in the conversion must be reasonable.

2. You may exclude salaries and wages of regular employees and officers, if you state that you excluded these items. You must state solicitation costs by specially engaged employees or paid solicitors under paragraph (b) of item 3 of Form PS under "Proxy Solicitation Fees" in this item.

3. You may not include any category of expense exceeding $10,000 in "Other Expenses." If an expense exceeds $10,000 and is not specified above, you must itemize the expense under an appropriate category.

4. If your management does not conduct the solicitation, you must provide the information under "Proxy Solicitation Fees" for the cost of the solicitation.

Item 9. Indemnification

If you will insure or indemnify any underwriter, appraiser, lawyer, accountant or expert, or director or officer against any liability which he or she may incur in his or her capacity under any charter provisions, bylaw, contract, arrangement, statute, or regulation, you must state the general effect of the charter provision, bylaw, contract, arrangement, or regulation.

Item 10. Federally Chartered Stock Savings Associations

You must state whether you are applying to amend your charter and bylaws to comply with 12 CFR part 552.

Exhibits

You must attach the following exhibits to this Form.

Exhibit 1. Resolution of Board of Directors

You must include a certified copy or copies of your board of directors' resolution or resolutions: (1) Adopting the plan of conversion; and (2) authorizing this application. Two-thirds of your board of directors must approve the plan of conversion and authorize this application.

Exhibit 2. Copies of Documents, Contracts, and Agreements

You must furnish the following documents, contracts, and agreements.

(a) Proposed certificates for shares.

(b) Proposed order forms with respect to the subscription rights.

(c) Proposed charter (including a liquidation account provision) and bylaws.

(d) Any proposed stock option plan, form of stock option agreement, and management or employee stock benefit plan.

(e) Any proposed management employment contracts.

(f) Any contract described in response to item 6 of Form PS.

(g) Contracts or agreements with paid solicitors described in response to item 3(b) of Form PS.

(h) Any material loan agreements relating to your borrowing other than from a Federal Home Loan Bank and other than subordinated debt securities approved by OTS.

(i) Any appraisal agreement or proposed agreement, underwriting contract, agreement among underwriters, or selling agent agreement.

(j) Any required undertaking or affidavits by officers or directors purchasing shares in the conversion stating that they are acting independently.

(k) Any documents referred to in the answer to item 9 of Form AC.

(l) Any trustee agreements or indentures.

(m) Any agreements for the making of markets or the listing on exchanges of your conversion stock.

(n) Proposed marketing materials.

If you furnish any document, contract, or agreement in draft form under this exhibit, you must furnish the final form immediately after the meeting of your members to consider the plan of conversion. You may provide documents required by subsection (i) above, that by their nature cannot be practically expected until a later time, in substantially final form.

Exhibit 3. Opinion of Counsel

You must furnish an opinion of counsel discussing each of the following matters:

(a) The legal sufficiency of your proposed certificates and order forms for any shares.

(b) State law requirements that apply to the plan of conversion. The opinion must cite to applicable state law and address whether the plan will fulfill the requirements.

(c) The legal sufficiency of your bylaws.

(d) The type and extent of each class of voting rights after conversion. The opinion must discuss any state law that requires you to provide savings account holders or borrowers with voting rights.

(e) A certification or statement that the proposed charter and bylaws conform to 12 CFR part 552 of this chapter.

(d) The legal sufficiency of your marketing materials.

You must discuss the matters listed in subdivisions (b), (c) and (d) of this Exhibit only if you are converting to a state-chartered stock association.

Exhibit 4. Federal and State Tax Opinions or Ruling

(a) You must furnish an opinion of your tax advisor or an Internal Revenue Service ruling on the federal income tax consequences of the plan of conversion. The opinion or ruling must address the tax consequences to you and to the various account holders who receive nontransferable subscription rights to purchase shares.

Instruction. OTS may require you to obtain a ruling from the Internal Revenue Service if the IRS has not issued a favorable ruling on plans of conversion that are substantially similar to your plan. OTS also may require you to obtain a ruling if your plan of conversion contains novel provisions or raises questions with federal income tax consequences.

(b) You must furnish an opinion of your tax advisor or, if applicable, a ruling from the appropriate state taxing authority on any tax consequences of the plan of conversion under the laws of the state where you will be located. The opinion must address the tax consequences to you and to your eligible account holders.

Exhibit 5. Valuation Materials

You must furnish the materials required under 12 CFR 563b.200(b) regarding the valuation of your shares. You are not required to file the materials if you will not begin to offer shares before your members' meeting to vote on the plan of conversion.

Exhibit 6. Notice to Members

You must furnish evidence that you have notified your members as required by 12 CFR 563b.135 and 563b.180.

Exhibit 7. Other Materials

(a) If you do not provide information required by an appropriate form because you do not know the information or the information is not reasonably available, you must:

(1) Show that you will incur unreasonable effort or expense to obtain the information; or

(2) Indicate that you have no affiliation with the person who has the information, state that you have requested the person to provide the information, and indicate the result of that request.

(b) You must furnish all required consents.

(c) If anyone has signed an application or any amendment to an application using a power of attorney, you must furnish four copies of the power of attorney. Two copies must be manually signed.

(d) You must furnish the cross-reference sheet.

(e) If you request a waiver under 12 CFR 563b.5(c), you must furnish the materials required by that section.

Exhibit 8. Business Plans

(a) You must furnish a consolidated business plan as required by 12 CFR 563b.105. You must detail how you will use the capital that you acquire in the conversion. You should not project stock returns of capital or payment of extraordinary dividends in your business plan. OTS views a return of capital to shareholders as a material deviation from the business plan that requires the prior written approval of the Regional Director.

(b) You must follow 12 CFR 563b.160 if you wish OTS to deem any portion of your business plan confidential.

Exhibit 9. Conversion Application That Includes a Charitable Organization

If your conversion includes a contribution to a charitable organization, you must provide:

(a) The current and proposed charter and bylaws (or trust agreement) for the charitable organization.

(b) The proposed gift instrument.

(c) Within six months of completing your conversion, a three-year operating plan for the charitable organization, including the following:

(1) Pro-forma financial statements, including a balance sheet and income statement.

(2) Plans and expenses for any office space, employees, office equipment, supplies, and other items.

(3) A description and the estimated annual value of any contributed office space, personnel, furniture, equipment, and supplies and the name of the organization that will make the contribution.

(4) Any director, officer, and employee requirements and job descriptions.

(5) The terms of employment and any expected compensation for the directors (or trustees), officers, and employees.

(6) The charitable causes that the charitable organization will support, including their location and a description of how the activities will aid the local community.

(7) Plans, policies, and procedures for soliciting and accepting grant applications.

(8) Decision standards for grant approval.

(9) The anticipated number and dollar amount of grants the charitable organization will make each year for the three years after it is established.

(10) Projected sources of revenues, including whether the operations and grant activities will be funded by dividends, stock sales, or additional contributions.

(11) An explanation of how the charitable organization will select directors (or trustees) and how much experience the directors (or trustees) will have with local community charitable organizations and grant making.

(d) A conflicts of interest policy for the charitable organization that prohibits grants to your officers, directors, and employees, your affiliates' officers, directors, and employees, and members of their immediate families.

(e) A tax opinion from an independent accountant or independent tax counsel discussing whether the proposed contribution and any other contributions during the same year are deductible under federal and state law. The tax opinion must address deductibility for the year that you will make the contribution and for a five-year carry forward period.

OTS Form 1680
August 2002

Appendix B

Office of Thrift Supervision

Form PS—Proxy Statement

Paperwork Reduction Act Statement

The Office of Thrift Supervision will use this information to provide mutual members with information necessary for voting on the transaction. *See* 12 CFR part 563b.

Public reporting burden for this collection of information is estimated to average 50 hours, per response, including the time for reviewing instructions and completing and reviewing the collection of information. If a valid OMB Control Number does not appear on this form, you are not required to complete this form. Send comments on these information collections to Information Collection Comments, Attention: 1550–0014, by e-mail to *infocollection.comments@ots.treas.gov*; by facsimile transmission to (202) 906–6518; or by mail to Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Send a copy of comments to Joseph F. Lackey, Jr., Attention: 1550–0014, by e-mail to *Joseph_F._Lackey_Jr@omb.eop.gov* or by mail to him at Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

OMB No. 1550–0014
Expiration Date: 08/31/2003

Form PS—Proxy Statement

[Not to be codified in the Code of Federal Regulations]
Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552

Proxy Statement

(Name of Applicant as specified in charter) (Docket No.)

(Street Address of Applicant)

(City, State, and Zip Code)

Index to Items

Item 1. Notice of meeting
Item 2. Revocability of proxy
Item 3. Persons making the solicitation
Item 4. Voting rights and vote required for approval

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Item 5. Directors and executive officers
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Item 9. Description of stock
Item 10. Capitalization
Item 11. Use of new capital
Item 12. New charter, bylaws, or other documents
Item 13. Other matters
Item 14. Financial statements
Item 15. Consents of experts and reports
Item 16. Attachments

General Information

If OTS requests information on your directors, officers, or other persons holding specified positions or relationships during a specified period, you must give the information for every person who held the positions or relationships any time during the period. You do not have to include information for any portion of the period when a person did not hold any position or relationship. You must state, however, that you did not include this information.

Item 1. Notice of Meeting

You must include the following information on the cover page of your proxy statement:

(a) Notice of the members' meeting to vote on the conversion;

(b) The meeting date, time, and place;

(c) A brief description of each matter that will be voted at the meeting;

(d) The date of record for determining which members are entitled to vote at the meeting;

(e) The date of the proxy statement; and

(f) Your mailing address, zip code, and telephone number.

Item 2. Revocability of Proxy

(a) You must state that a member may revoke his or her proxy before it is exercised.

(b) You must briefly describe the procedures a member must follow to revoke his or her proxy.

(c) You must describe any charter provision, bylaw, or federal or state law that limits voting by proxy.

(d) You must state that the proxy is solicited for the meeting and any adjournment of the meeting, and that you will not vote the proxy at any other meeting.

Item 3. Persons Making the Solicitation

(a) You must state whether your management is soliciting the proxy. If any director informs you in writing that he or she intends to oppose any action, you must name the director and indicate the action he or she intends to oppose.

(b) You must describe the method that you will use to solicit proxies, unless you solicit by mail. If specially engaged employees or paid solicitors will solicit proxies, you must state the material features of any contract or arrangement and must identify the parties.

(c) If your management is not soliciting the proxies, you must name the persons on whose behalf the solicitation is made. You do not have to respond to items 5 through 16 for such solicitations, but must comply with 12 CFR 563b.285 on false and misleading statements and other prohibited matters.

Item 4. Voting Rights and Vote Required for Approval

(a) You must describe briefly:

(1) The voting rights of each class of your members;

(2) The approximate total number of votes entitled to be cast at the meeting;

(3) The approximate number of votes to which each class is entitled; and

(4) The voting rights of beneficiaries of accounts held in a fiduciary capacity, such as IRA accounts.

(b) You must give the record date for members entitled to vote at the meeting.

(c) You must state the vote required for approval of each matter that you will submit to a vote of members.

(d) You may not use previously executed proxies to vote on the conversion.

Item 5. Directors and Executive Officers

(a) You must furnish the information on directors and executive officers and certain relationships and related transactions required in items 401 and 404 of Regulation S–K, 17 CFR 229.401 and 229.404, and item 6 of Regulation 14A, 17 CFR 240.14a–101. Unless the context otherwise requires, the words "registrant" and "issuer" in those regulations refer to you and the word "Commission" refers to OTS.

(b) If your conversion application includes a charitable contribution, you must disclose:

(1) The proposed number of directors (or trustees) and officers of the charitable organization.

(2) The name and background of each person proposed as a director (or trustee) or officer of the charitable organization.

(3) The position, if any, that each proposed director (or trustee) and officer holds with you.

(c) You must state whether anyone will exercise control through the use of proxies and describe the nature of the control.

Item 6. Management Compensation

You must furnish the information on executive compensation required in item 402 of Regulation S–K, 17 CFR 229.402, and item 7 of Regulation 14A, 17 CFR 240.14a–101. Unless the context otherwise requires, the words "registrant" and "issuer" in those regulations refer to you and the word "Commission" refers to OTS.

Item 7. Business

(a) *Narrative description of business.* (1) You must discuss briefly your organizational history, including the year of organization, the identity of the chartering authority, and any material charter conversions.

(2) You must describe the business that you and your subsidiaries conduct and intend to conduct. You must describe how your business and any predecessor(s) business developed over the past five years. If you have been engaged in business less than five years, you must provide information from when you began operations. You must disclose this information for earlier periods if the information is material to understand how your business developed. You must discuss material changes in the way you conduct business.

Instruction. If you are filing under Regulation S–B, you must include audited comparative balance sheets for the two most recent fiscal years.

(3) You must describe your historical lending practices, including the average remaining term to maturity of your portfolio of mortgage loans. You must state your plans for lending. You must address whether you will offer real estate or other types of loans, the nature of security you will receive, the terms of loans you will offer, whether the loans will carry fixed or variable interest rates, and whether you will retain the loans or resell them in secondary mortgage markets. You must identify the magnitude of various activities.

(4) You must explain whether any material acquisitions have had or will have significant impact on you, and the nature of the impact.

(b) *Selected financial data.* You must furnish a summary of your selected financial data. You must provide this information in columns that permit the comparison of data in each of the last five fiscal years. You must provide data for any additional fiscal years, if the data is necessary to keep the summary from being misleading.

Instructions:

1. The purpose of this summary is to supply selected data highlighting significant trends in your financial condition and results of operations in a convenient and readable format.

2. You must include the following items in the summary total interest income; total interest expense; income (loss) from continuing operations; net income; total loans; total investments; total assets; total deposits; total borrowings; total retained earnings; total shareholders' equity; total regulatory capital; and total number of customer service facilities, indicating the number which provide full service. You may vary this data if the variance is appropriate to conform to the nature of your business. You may include additional items if you believe the items would enhance understanding and highlight trends in your financial condition and results of operations. You must briefly describe factors that materially affect the comparability of the financial data, such as accounting changes, business combinations, or dispositions of business operations. You may describe such factors by a cross reference to other discussions in the proxy statement. You must also discuss any material uncertainties that may cause the data not to be indicative of your future financial condition or results of operations.

3. If you elect to provide five-year summary information in accordance with the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 89 ("SFAS 89") "Financial Reporting and Changing Prices," you may combine this information with the selected financial data required in this item.

4. If you include interim-period financial statements, or you are required to include interim-period financial statements under item 14, you must update the selected financial data for the interim period to reflect any material change in the trends indicated. If updating information is necessary, you must provide the information on a comparative basis, unless the comparison is not necessary to understand the updating information. You must provide a management statement of presentation for the required interim-period financial data reported.

5. "You" in the summary and in these instructions refers to you and your consolidated subsidiaries.

(c) *Management's discussion and analysis of financial condition and results of operations.* (1) You must discuss your financial condition, changes in financial condition, and results of operations. You must discuss the information in paragraphs (i), (ii), and (iii) of this paragraph (c) with respect to liquidity, capital resources, and results of operations. You must also provide all other information necessary to understand your financial condition, changes in your financial condition, and results of your operations. You must discuss significant business combinations. You may combine the discussion of liquidity and capital resources, if the two topics are interrelated. If a discussion of the subdivisions of your business is appropriate to understand your business, you must focus your discussion on each relevant, reportable segment or other subdivision of the business, and on your business as a whole.

(i) *Liquidity.* You must identify any known trends or any known demands, commitments, events, or uncertainties that are reasonably likely to cause your liquidity to materially increase or decrease. If you identify a material deficiency, indicate what you have done or will do to remedy the deficiency. You must identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets. You must comment on maturity imbalances between assets and liabilities, and planned activities in the secondary mortgage market.

(ii) *Committed resources.* You must describe your material commitments for funding loans or other expenditures as of the end of the latest fiscal period. You must indicate the general purpose of the commitments and the anticipated source of funds to fulfill the commitments. You must describe known material trends, favorable or unfavorable, in your committed resources. You must indicate any expected material changes in the mix and the relative cost of the resources. You must discuss changes between deposits, equity, debt, and any off-balance-sheet financing arrangements.

(iii) *Results of operations.* (A) You must describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations. In each case, you must indicate the extent to which these events, transactions, or changes affected income. In addition, you must describe any other significant components of revenues or expenses necessary to understand your results of operations.

(B) You must describe any known trends or uncertainties that have had, or will have, a materially favorable or unfavorable impact on net sales or revenues or income from your continuing operations. If you know of events which will cause a material change in the relationship between costs and revenues, you must disclose the change in the relationship.

(C) If your financial statements disclose material increases in interest expense, you must discuss the extent to which the increases are attributable to increases in rates or to increases in volume.

(D) For your three most recent fiscal years, or for those fiscal years in which you have been engaged in business, whichever period is shorter, you must discuss the impact of inflation and changing prices on your revenues and on income from continuing operations.

(E) For the most recent financial statement, you must discuss any unusual risk characteristics in your assets, including real estate development, significant amounts of commercial real estate held as loan collateral, and significant increases in amounts of nonaccrual, past due, restructured, and potential problem loans (see Securities and Exchange Commission's Securities Act Industry Guide 3, section III C).

(iv) You must provide a qualitative and quantitative discussion of your market risk analysis.

Instructions:

1. Your discussion and analysis must address your financial statements and other statistical data that will enhance a reader's understanding of your financial condition, changes in your financial condition, and results of your operations. Generally, you must discuss the three-year period covered by the financial statements and use year-to-year comparisons or other formats to enhance a reader's understanding. However, where trend information is relevant, you should refer to the five-year selected financial data appearing in item 7(b) above.

2. Your discussion and analysis should provide investors and other users with relevant information to assess your financial condition and results of operations, based on the user's evaluation of the amounts and certainty of cash flows from operations and from outside sources. You must only provide information that you may obtain without undue effort or expense, and that does not clearly appear in your financial statements.

3. Your discussion and analysis must specifically focus on material events and uncertainties known to you which would cause reported financial information not to be indicative of future operating results or of future financial condition. You should describe (a) matters that would affect future operations, but have not affected reported operations, and (b) matters that have affected reported operations, but would not affect future operations.

4. If the consolidated financial statements reveal material changes from year to year in one or more line items, you must state the causes for the changes if the causes are necessary to understand your business as a whole. If the causes for a change in one line item also relate to other line items, you do not have to repeat the explanation. You do not have to provide a line-by-line analysis of the financial statements as a whole. You do not have to recite the amounts of changes from year to year, if the reader may readily compute these changes from the financial statements. You must not merely repeat numerical data contained in the consolidated financial statements.

5. "Liquidity," as used in paragraph (c)(1)(i) of this item 7, refers to your ability to generate adequate amounts of cash to meet your cash needs. You must identify the balance sheet conditions or income or cash flow items that indicate your liquidity condition. You must discuss liquidity in the context of your own business or businesses. Liquidity means more than "liquid assets," as defined in OTS liquidity regulations at 12 CFR part 566.

6. OTS encourages you, but does not require you, to supply forward-looking information. You must disclose known data that will have an impact upon future operating results, such as known future increases in rates or other costs. If you provide any forward-looking information, you may have a safe-harbor from liability for the projections under 12 CFR 563d.3b–6.

7. If you disclose narrative explanations of supplementary information in accordance with SFAS 89, you may combine these explanations with your discussion and analysis required under this provision or you may supply the information separately. If you combine the information, you must place it reasonably near the discussion and analysis. If you do not combine the information, you may omit the required discussion of the impact of inflation and cross reference the explanations provided under SFAS 89.

8. If you do not disclose explanations of supplementary information in accordance with SFAS 89, you may discuss the effects of inflation and changes in prices in an appropriate manner. OTS encourages you to voluntarily comply with SFAS 89. However, you must include a brief textual presentation of management's views. You do not have to present specific numerical financial data.

9. "You" in the discussion and in these instructions means you and your consolidated subsidiaries.

(2) If you include interim-period financial statements, you must provide management's discussion and analysis of the financial condition and results of operations. This discussion and analysis must enable the reader to assess material changes in your financial condition and results of operations between the periods specified in subdivisions (i) and (ii) of this paragraph (2). Your discussion and analysis must address material changes in the items specifically listed in paragraph (c)(1) of this item 7. However, you do not have to address the impact of inflation and changing prices on operations for interim periods.

(i) *Material changes in financial condition.* You must discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet that you provide. If you provide an interim balance sheet as of the corresponding interim date of the preceding fiscal year, you must discuss any material change in financial condition from that date to the date of the most recent interim balance sheet that you provide. You may combine any discussion of changes from the end, and the corresponding interim date, of the preceding fiscal year.

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(ii) *Material changes in results of operations.* You must discuss any material changes in your results of operations from the most recent fiscal year-to-date period for which you provide an income statement to the corresponding year-to-date period of the preceding fiscal year. If you provide an income statement for the most recent fiscal year quarter, you must discuss material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if you provide an income statement for the 12-month period ended as of the date of the most recent interim balance sheet you provide, you must discuss material changes with respect to that 12-month period and the 12-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

Instructions:

1. If you present interim financial statements and financial statements for full fiscal years, you must discuss the interim financial information under paragraph (c)(2) and the full fiscal year information under paragraph (c)(1) of this item 7. You may combine the discussions.

2. In your discussion and analysis required by paragraph (c)(2), you must focus on material changes. If your interim financial statements reveal material change from period to period in one or more significant line items, you must describe the causes for the changes, unless you have already disclosed these causes. You do not have to repeat the description if the causes for a change in one line item relate to other line items. You do not have to recite the amounts of changes from period to period, if a reader may readily compute the amounts from the financial statements. You must not merely repeat numerical data from the financial statements. You must only provide information that you may obtain without undue effort or expense, and that does not clearly appear in your interim financial statements.

3. In your discussion of material changes in results of operations, you must identify significant elements of your income or loss from continuing operations that do not arise from or are not necessarily representative of your ongoing business.

4. You are encouraged, but not required, to supply forward-looking information. You must disclose known data that will have an impact upon future operating results, such as known future increases in rates or other costs. If you provide any forward-looking information, you may have a safe-harbor from liability for the projections under 12 CFR 563d.3b–6.

(d) *Lending activities.* (1) You must briefly describe federal and state restrictions on your lending activities and laws affecting mortgage lending or other lending. You must also briefly describe your general policy on loan-to-value ratios; your customary methods of obtaining loan originations (*e.g.*, the use of loan consultants or brokers); your general policy on approval of properties as security for loans; your use of a loan committee, if any; and your title, fire, and casualty insurance requirements on security properties. You must indicate your future plans for secondary mortgage market activities, such as transactions with Freddie Mac or other secondary mortgage agency. You must identify significant loan service fee income as a percentage of net interest income for the years required by item 14(b).

(2) You must describe briefly (i) the areas where you normally lend; and (ii) any areas where you have a material concentration of loans. You may include maps illustrating these areas. You must estimate the housing vacancy rates in areas where you have a concentration of loans, if practicable.

(3) You must describe briefly your long-term investments in mortgage loans, and the effect of these investments on your earnings spread. You must provide the normal maturity of loans that you made on the security of single-family dwellings and estimate the average length of time these loans are outstanding.

(4) For each of the periods required by item 14(b), you must provide the following information in tabular form. You may exclude fees that are not adjustments of yield.

(i) Average yield during the period on: (A) Your loan portfolio, (B) your investment portfolio, (C) other interest-earning assets, and (D) all interest-earning assets. You must compute average yield at least monthly.

(ii) Average rate paid during the period on: (A) Deposits, (B) borrowings and Federal Home Loan Bank advances, (C) other interest-bearing liabilities, and (D) all interest-bearing liabilities ((A), (B), and (C)). You must compute average rate paid at least monthly.

(iii) Weighted-average yield at the end of the latest required period, for items (i) and (ii) of paragraph (4).

(iv) The net yield on average interest-earning assets (*i.e.*, net interest earnings divided by average interest-earning assets. Net interest earnings is the difference between the amount of interest earned and interest paid). You must determine average interest-earning assets no more frequently than monthly.

(v) For each of the periods required by item 14(b), you must provide in tabular form: (A) The amount of change in interest income, and (B) the amount of change in interest expense. For each major category of interest-earning asset and interest-bearing liability (as stated in items (i) and (ii) of paragraph (4)), you must attribute the amount of change to: (1) Changes in volume (change in volume multiplied by old rate), (2) changes in rates (change in rate multiplied by old volume), and (3) changes in rate-volume (change in rate multiplied by the change in volume). You must allocate the rate/volume variances consistently between rate and volume variance and disclose the basis of allocation in a note to the table.

(5) For each of the periods required by item 14(b), you must present the following:

(i) Return on assets (net income divided by average total assets).

(ii) Return on equity (net income divided by average equity).

(iii) Equity-to-assets ratio (average equity divided by average total assets).

Instruction. You must supply any additional ratios if the ratios are necessary to explain your operations.

(6) As of the end of the latest reported fiscal year, you must present separately the amounts of loans in each category required by balance sheet item 7(b), 12 CFR 563c.102, which are due:

(i) In each of the three years following the balance sheet,

(ii) After three through five years,

(iii) After five through ten years,

(iv) After ten through fifteen years, and

(v) After fifteen years.

In addition, you must present separately the total amount of all loans due after one year which have predetermined interest rates, and floating or adjustable interest rates.

Instructions.

1. You must report scheduled principal repayments in the maturity category in which the payment is due.

2. You must report demand loans, loans having no stated schedule of repayments and no stated maturity, and overdrafts as due in one year or less.

3. You must base your maturities on contract terms. If terms vary due to your "rollover policy," you must revise the maturity and briefly discuss the rollover policy.

(7) You must describe briefly the risk elements in your loan and investment portfolios, and your procedures for delinquent loans. As of the end of each of the periods covered by the statements of operation required by item 14(b)(1) and as of the date of the latest statement of financial condition required by item 14(a), you must set forth in tables the amounts and categories of nonaccrual, past due, restructured, and potential problem loans (*see* Securities and Exchange Commission's Securities Act Industry Guide 3, section III. C.) and the ratio of such loans to total assets. If the amount of real estate that has been in substance foreclosed, or acquired by foreclosure or by deed in lieu of foreclosure is significant, you must briefly describe the major properties. You must also estimate your probable losses, if any, on disposition of the properties.

(e) *Savings activities.* (1) You must state that, if you liquidate after conversion, you will fully pay savings account holders before you pay shareholders. You also must indicate the percentage of total savings accounts that are from out-of-state sources, if the total is significant.

(2) You must set forth in a table the amounts of time deposit accounts categorized by interest rates on the dates of each balance sheet that you filed. You must use interest-rate categories that are not more than 200 basis points wide. As of the date of the latest balance sheet, you must set forth, in a table for each interest-rate category, the amounts of savings that will mature during each of the three years following the balance sheet date, and the total amount that will mature after three years.

Instruction. This information is not required for S–B filers.

(3) You must disclose the weighted-average rate and general terms (as well as formal provisions for the extension of the maturity) of each category of short-term borrowings required by Balance Sheet Caption 14, 12 CFR 563c.102. You must also disclose the maximum amount of borrowings in each

category that are outstanding at any month-end during each period for which an end-of-period balance sheet is required. You must disclose the approximate average short-term borrowings outstanding during the period and the approximate weighted-average interest rate for such aggregate short-term borrowings. You must briefly describe how you computed these averages. You do not have to disclose borrowings in each category if the aggregate amount of the borrowings at the balance sheet date does not exceed one percent of assets at that date. However, if the weighted average of your borrowings outstanding during the year exceeds one percent of assets at year-end and significantly exceeds the amount of your borrowings at year-end, you must furnish this disclosure. You are not required to provide this information for any category of short-term borrowings if the average balance outstanding during the period was less than 30 percent of shareholders equity at the end of the period.

(f) *Federal regulation.* You must describe briefly, to the extent not otherwise covered by other items, how federal agencies regulate you and your operations. In particular, you must describe briefly how the Federal Deposit Insurance Corporation (FDIC) insures your accounts and how FDIC and OTS regulate your operations. You must describe federal regulatory capital requirements, what will happen to you if you fail to meet those capital requirements, and whether your regulatory capital position complies with those requirements. You must also describe how the FDIC and OTS charge assessments on your operations. In addition, you must describe briefly the liquidity requirements under section 6 of the Home Owners' Loan Act and OTS liquidity regulations, and state law. You must state whether you meet those liquidity requirements.

(g) *Federal Home Loan Bank System.* You must describe briefly the Federal Home Loan Bank (FHLB) System and state whether you are a member. If you are a member, you must describe the following:

(1) Limitations on your borrowings,

(2) Recent loan policies of your FHLB and the current interest rates your FHLB charges, and

(3) FHLB share purchase requirements and the amount of FHLB stock you own.

(h) *State savings association law.* If you are converting to a state-chartered stock association, you must describe state law provisions that materially affect your business.

(i) *Federal and state taxation.* (1) You must describe briefly applicable federal income tax laws, including:

(i) Permissible bad debt reserves;

(ii) Your position with respect to the maximum bad debt reserve limitations as of the date of the latest statement of financial condition required under item 14(a);

(iii) Future increases in your effective income tax rate;

(iv) The date through which the Internal Revenue Service audited your federal income tax returns; and

(v) How the payment of cash dividends on your capital stock after conversion will effect your federal income taxes.

(2) You must briefly describe applicable state tax laws.

(j) *Competition.* You must describe the material sources of competition for savings associations generally. You must indicate, to the extent practicable, your position in your principal lending and savings markets.

(k) *Office and other material properties.* (1) You must furnish the location of your home office, branch offices, and other office facilities (such as mobile or satellite offices). You must state the total net book value of all offices as of the date of the latest statement of financial condition required by item 14(a). You must state the expiration date of the lease on every leased office.

(2) You must describe briefly any undeveloped land that you own, including its location, net book value, prospective use, and holding period.

(l) *Employees.* You must state the number of full-time employees, including executive officers listed under item 5. You must state whether employees are represented by a collective bargaining group, and whether you have satisfactory relations with your employees. You must summarize briefly any loan, profit sharing, retirement, medical, hospitalization, or other compensation plans that you provide to your employees, unless you have already included this information under item 6.

(m) *Subsidiaries.* You must describe briefly your investment in each subsidiary, and the major lines of the subsidiary's business (including any joint ventures) that are material to your operations.

(n) *Legal proceedings.* You must furnish the information on legal proceedings required by item 103 of Regulation S–K, 17 CFR 229.103. Unless the context otherwise requires, "registrant" in that regulation means you.

(o) *Additional information.* You may request permission to omit any information required by this item, or to substitute appropriate information of comparable character. OTS may permit you to omit or substitute information where it is consistent with the protection of account holders. OTS may also require you to furnish other additional or substitute information if the information is necessary or appropriate to adequately describe past and future business.

Item 8. Description of the Plan of Conversion

(a) You must include the following statement in the proxy statement. You must place this statement before the information required by this item 8. "OTS has approved the plan of conversion, subject to member approval of the plan and certain other conditions. OTS approval does not mean that OTS recommends or endorses the plan."

(b) You must describe your plan of conversion. You must describe the information required by paragraphs (c) through (j) of this item. You must include any additional information necessary to accurately describe the material provisions of the plan.

(c) You must briefly describe the effects of conversion from a mutual to a stock association, including all of the following:

(1) That your savings account holders will continue to hold FDIC-insured accounts in the converted savings association, with the same dollar amount, rates of return, and general terms as existing accounts;

(2) That your savings and borrowing members will not have voting rights after conversion. In the mutual holding company context, however, you must describe what voting rights, if any, your savings and borrowing members will have after reorganization;

(3) That the account holders have liquidation rights. You must describe the liquidation account you will establish and maintain, including when you will pay the account, the interest of eligible account holders and supplemental eligible account holders in the account, and the formula that you will use to adjust the account;

(4) That the conversion will not effect borrowers' loans, including the amount, rate, maturity, security, or other contractual terms;

(5) That the FDIC will not insure your stock;

(6) That you will not distribute any assets other than to pay conversion expenses or to make a charitable contribution; and

(7) The reasons management recommends the conversion, including any advantages to the community that you serve.

(d) You must furnish the following information regarding the subscription rights of members:

(1) The formula that you will use to determine the subscription rights of account holders to purchase shares under 12 CFR 563b.320 through 563b.395;

(2) The purchase priorities, total purchase limitations, total number of shares that members may purchase, and the allocation formula in the plan of conversion;

(3) The allocation formulas that you will use if shares are oversubscribed during the sale under the plan of conversion; and

(4) The use and timing of the order forms for the exercise of subscription rights.

(e)(1) You must estimate the price range per share of the shares you will sell in the public offering under your plan of conversion. You do not have to estimate the price range if you will not begin the offering until after your members' meeting;

(2) You must indicate that the offering price will be the pro forma market value of the shares, as determined by your management and the underwriter; and

(3) You must state that you must sell all of the shares.

(f) Unless you will not begin the offering until after your members' meeting, you must discuss the following for stock you will sell:

(1) the earnings per share on a pro forma basis as of the most recent year-end and interim period required by item 14(b); and

(2) the book value per share on a pro forma basis as of the most recent year-end and interim period required by item 14(a).

Instructions:

1. You must provide earnings and book value per share data (a) without giving effect to the estimated net proceeds from the sale of the stock and (b) after giving effect to such proceeds. You must clearly state all of your assumptions.

2. In computing pro forma earnings, you must use the average of (i) the average yield on all interest-earning assets (item

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7(d)(4)(i)(D)) and (ii) the average rate paid on deposits (item 7(d)(4)(ii)(A)).

3. If interest rates have significantly changed during the applicable periods, OTS may permit you to use properly supported alternative computations.

4. You must explain that pro forma data may not be indicative of your actual financial position or the results of continuing operations after the conversion.

(g) You must state when the proposed subscription period will begin and end, and must describe whether the plan of conversion permits you to change or extend these dates. You must also state the following:

(1) You will set a maximum subscription price in the offering circular that you will use for the offering of subscription rights;

(2) The actual subscription price will be the public offering price;

(3) The actual subscription price will not exceed the maximum subscription price on the order form; and

(4) You will refund any difference between the maximum and actual subscription prices, unless the subscriber affirmatively elects to apply the difference to the purchase of additional shares.

(h) You must also:

(1) Describe, to the extent practicable, whether you intend to list your shares on an exchange, or how you will otherwise provide a market for the purchase and sale of shares in the future;

(2) Describe briefly the tax effect of the conversion on you and on the various classes of account holders receiving nontransferable subscription rights in the conversion;

(3) State that the plan of conversion is attached as an exhibit to the proxy statement and that the reader may consult the plan for further information.

(i) You must state whether the plan of conversion permits you to offer unsubscribed shares to the public directly or through underwriters. If so, you must provide the information, to the extent known, required by item 6 of Form OC, and indicate the estimated timing of the proposed offering.

(j) You must furnish the following information on proposed purchases of shares by your directors and officers in a table:

(1) The total proposed number of shares that all officers, directors, and their associates as a group may purchase.

(2) The name and position of each officer and director in item 5(a) and the number of shares each will purchase.

(3) If any officer, director, or his or her associate proposes to purchase one percent or more of the total number of shares that will be outstanding, the name, position, and the number of shares that the officer, director, or associate will purchase.

(4) Indicate separately the number of shares that will be purchased in each offering category with respect to the information required by items (1), (2), and (3) of paragraph (j).

(5) If your conversion application includes a charitable contribution, you must disclose the following additional information:

(i) The amount and percentage of shares that each proposed director (or trustee) and officer of the charitable organization will purchase in the conversion.

(ii) The aggregate number and percentage of shares that the charitable organization and its proposed officers and directors (or trustees) will hold.

(iii) The number of shares and value of the contribution at the minimum, midpoint, maximum, and maximum as adjusted, of the valuation range.

(iv) The decrease in shares that you will sell in the conversion, in number of shares and dollar amounts, at the minimum, midpoint, maximum, and maximum as adjusted, of the valuation range.

(v) The dilution in ownership and book value per share from the proposed contribution.

(vi) Your plans for additional charitable contributions over the next three years.

Instruction. You are only required to furnish information on associates of officers and directors to the extent that you know this information. If you are unable to confirm the number of shares an associate will purchase, you must disclose the number of shares the associate is given subscription rights to purchase.

Item 9. Description of Stock

(a) You must furnish the information required in item 202 of Regulation S–K, 17 CFR 229.202. Unless the context otherwise requires, "registrant" refers to you.

(b) You must undertake to use your best efforts to encourage and assist a professional market maker to establish and maintain a market for your shares.

(c) You must discuss the trading market that you expect will exist for your shares. You must estimate the number of market makers and shareholders, and describe your plans for listing the stock.

Instruction. You must describe the basic requirements you must meet to list your stock.

(d) If the rights of your stockholders will be materially limited or qualified by the rights of savings account holders or borrowers, you must describe these limitations or qualifications so that investors can understand their stock rights.

Item 10. Capitalization

You must set forth the amounts of your capitalization in substantially the tabular form indicated below. You may modify the captions as appropriate.

You must set forth the amounts of your capitalization in substantially the tabular form indicated below. You may modify the captions as appropriate.

	(A) Capitalization on most recent balance sheet date	(B) Pro forma adjustments as a result of conversion	(C) Pro forma capitalization, after giving effect to the conversion
Deposits			
FHLB advances			
Other			
Borrowings			
Capital stock			
Preferred stock			
Paid-in capital			
Retained earnings			
Restricted			
Unrestricted			
Total			

Instructions:

1. You must indicate in the table, or in a footnote to the table, the total number of shares you will authorize, the par or stated value of the shares, and the number of shares you will sell in the conversion.

2. You must estimate in the table the total amount of funds you will receive when you sell your stock. In a footnote, you must state the price per share that you used for the estimate. You must clearly indicate that the total amount and price per share are estimates.

3. In Column A, you must use the most recent balance sheet date required by item 14.

Item 11. Use of New Capital

You must explain how you will use the new proceeds of the conversion, including the approximate amount that you will use for each purpose.

Instruction. You do not have to detail proposed investments. You must, for example, only briefly describe any investment or other activity that will be affected materially by availability of the proceeds. Examples of such activities include: expanded secondary market activities, larger scale lending projects, loan portfolio diversification, increased liquidity investments, repayment of debt, additional branch offices and other facilities, service corporation investments, and acquisitions.

Item 12. New Charter, Bylaws, or Other Documents

You must describe the material changes to your existing charter, bylaws, and other similar documents that will take effect after conversion.

Instruction. You only have to briefly summarize provisions that are pertinent from an investment and a voting standpoint. You do not have to provide a complete legal description of each provision.

Item 13. Other Matters

You must state that you will register your stock under section 12(g) of the Securities Exchange Act of 1934, and that you will not deregister the stock for three years after the date of conversion. You are subject to the proxy rules, insider trading reporting and restrictions, annual and periodic reporting, and other requirements of that Act when you register your stock.

Item 14. Financial Statements

Subpart A of 12 CFR part 563c governs the certification, form, and content of the financial statements, including the basis of consolidation.

(a) *Consolidated balance sheets.* (1) You and your subsidiaries must furnish consolidated, audited balance sheets as of the end of each of the two most recent fiscal years, even if the applicant is filing using the provisions of Regulation S–B.

(2) If the latest balance sheets you furnish under paragraph (1) of this paragraph (a) are dated 135 days or more before the date OTS approves the conversion, you must furnish an interim balance sheet dated within 135 days of OTS approval. This interim balance sheet may be unaudited.

(3) If the latest balance sheets you furnish under paragraph (1) of this paragraph (a) are dated 105 days or more before the date OTS approves the conversion, you must furnish a Recent Development section of selected financial data and a Management's Discussion and Analysis section of significant variances.

(b) *Consolidated statements of income and cash flows.* (1) You, your subsidiaries, and your predecessors must furnish consolidated, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent balance sheet furnished.

(2) In addition, you must furnish statements of income and cash flows (i) for any interim period between the latest audited balance sheet and the date of the most recent interim balance sheet that you file, and (ii) for the corresponding period of the preceding fiscal year. The interim financial statements may be unaudited.

(c) *Changes in stockholders' equity.* You must analyze the changes in each caption of stockholders' equity in the balance sheets. You must present this analysis in a note or separate statement that reconciles the beginning balance with the ending balance for each period for which you are required to furnish an income statement. You must describe all significant reconciling items with appropriate captions. You must reconcile total generally accepted accounting principles (GAAP) capital with actual tangible, core, and risk-based capital in the notes to the financial statements.

(d) *Financial statements of business acquired or to be acquired.* You must furnish the information required by 17 CFR 210.3–05 and 210.11–01 to –03 for any business that you have acquired or will acquire.

(e) *Separate financial statements of subsidiaries not consolidated and 50-percent- or less-owned persons.* You must furnish the information required by 17 CFR 210.3–09 on separate financial statements of subsidiaries not consolidated and 50-percent- or less- owned persons.

(f) *Filing of other statements in certain cases.* You may request permission to omit any of the statements required by this item, or to substitute appropriate statements of comparable character. OTS may permit you to omit or substitute statements where it is consistent with the protection of account holders. OTS may also require you to include other additional or substitute statements, if the statements are necessary or appropriate to adequately present the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of account holders and others.

Instructions:

1. If you previously used an audit period for your certified financial statements and this audit period does not coincide with your fiscal year, you may use the audit period instead of any required fiscal year. You may use this audit period, however, only if it covers a full twelve months' operations and you have used this period consistently.

2. Interim financial statements must be comparative and reported in the same format as the audited financial statements.

Item 15. Consents of Experts and Reports

(a) You must briefly describe all consents of experts filed under the instructions in the Form AC.

(b) You must provide a report of the independent public accountants who certified your financial statements and other matters in the proxy statement.

Instruction. You must summarize only the provisions of the consents that are pertinent from an investment and a voting standpoint. You do not have to provide a complete legal description of each consent.

Item 16. Attachments

You must attach a copy of your plan of conversion as approved by OTS to the proxy statement distributed to members and others. Alternatively, in a transaction that does not utilize a state-chartered holding company, you may disclose in the proxy statement that you will provide the plan of conversion, if a recipient requests it within a specified period by means of a postage-paid postcard or other written communication.

OTS Form 1681
August 2002

Appendix C

Office of Thrift Supervision

Form OC—Offering Circular

Paperwork Reduction Act Statement

The Office of Thrift Supervision will use this information to ensure that the public receives adequate information about the Applicant and the securities being offered. *See* 12 CFR parts 563b and 563g.

Public reporting burden for this collection of information is estimated to average 150 hours, per response, including the time for reviewing instructions and completing and reviewing the collection of information. If a valid OMB Control Number does not appear on this form, you are not required to complete this form. Send comments on these information collections to Information Collection Comments, Attention: 1550–0014, by e-mail to *infocollection.comments@ots.treas.gov;* by facsimile transmission to (202) 906–6518; or by mail to Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Send a copy of comments to Joseph F. Lackey, Jr., Attention: 1550–0014, by e-mail to *Joseph_F._Lackey_Jr@omb.eop.gov* or by mail to him at Office of Information and Regulatory Affairs, Office of Management and Budget New Executive Office Building, Washington, DC 20503.

OMB No. 1550–0014
Expiration Date: 08/31/2003

Form OC—Offering Circular

[Not to be codified in the Code of Federal Regulations]

Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552

Offering Circular

(Name of Applicant as specified in charter) (Docket No.)

(Street Address of Applicant)

(City, State, and Zip Code)

Index to Items

Item 1. Information Required by and Use of Form OC
Item 2. Additional Current Information Required
Item 3. Statement Required in Offering Circulars
Item 4. Preliminary Offering Circular
Item 5. Information with Respect to Exercise of Subscription Rights
Item 6. Stock Selling Arrangements

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Item 1. Information Required by and Use of Form OC

You must date the offering circular as of the effective date. You must include in your offering circular substantially the same information that you must include in the proxy statement that you distribute to your members to vote on the conversion. You may omit information from the offering circular that you included in the proxy statement only to the extent the information is clearly inapplicable and only if the offering circular is delivered with the proxy statement.

Instructions:

1. The "offering circular" is the offering circular for the subscription offering and the offering circular for any community offering or public offering, or both. It may also be called a "prospectus."

2. If you previously furnished a copy of the proxy statement to your members, you do not need to include the proxy statement with your offering circular in the subscription offering. However, you must state in the offering circular that you previously furnished a copy of the proxy statement to the members, and that you will furnish an additional copy promptly upon request. You also must state your telephone number and mailing address.

Item 2. Additional Current Information Required

You must include the following additional current information in your offering circular, if the information is available and you did not already include the information in the proxy statement:

(a) If your members' meeting took place before you mailed the Form OC, the result of the vote of your members on the conversion and any other proposals considered at the meeting.

(b) Any recent material developments in your business or affairs.

(c) The trading market that you expect for your conversion shares.

(d) A summary of the results of any separate subscription offering. You must include the number of shares that you sold to eligible account holders, supplemental eligible account holders, and other voting members; the price at which you sold the shares; and the number of unsubscribed shares. You must include this summary on the outside front cover page.

(e) The information required by Items 8(e)(1) and 8(f) of Form PS.

(f) Any other information necessary to make the offering circular current, including full financial statements dated within six months before the date you mail the offering circular. You must also include, in your subscription offering circular, any more recent financial statements if, at the time you commence your subscription offering, you determine that you must include the financial statement in an offering circular in the community offering or public offering, or both.

Item 3. Statement Required in Offering Circulars

If you are not forming a holding company as part of your reorganization, you must set out the following statement on the outside front cover page of every offering circular. You must set out the statement printed in bold-face Roman type at least as large as ten-point modern type:

"The Office of Thrift Supervision has not approved or disapproved these shares. The office has not passed on the accuracy or adequacy of this offering circular. Any representation to the contrary is unlawful."

Item 4. Preliminary Offering Circular

You must include the caption "Preliminary Offering Circular," the date you issue the preliminary offering circular, and the following statement on the outside front cover page of any preliminary offering circular. You must set out the statement in red ink, printed in type as large as you use generally in the body of the offering circular.

"We have filed this offering circular with the Office of Thrift Supervision, but it has not been authorized for use in final form. We may complete or amend the information in this offering circular. We may not sell or accept offers to buy the shares covered by this offering circular before the Office of Thrift Supervision declares the offering circular effective. The offering circular is not an offer to sell or the solicitation of an offer to buy. We will not sell these shares in a state that prohibits offers, solicitations, or sales before registration or qualification under the securities laws of that state."

Item 5. Information With Respect to Exercise of Subscription Rights

In any offering circular that you will deliver to subscribers, you must describe all material terms of the offering relating to the exercise of subscription rights. You may exclude this information if you have already included this information in the proxy statement. Material terms include the expiration date, any subscription agent, method of exercising subscription rights, payment for shares, delivery of stock certificates for shares purchased, maximum subscription price, possible reduction of subscription price, relationship of subscription price to public offering price, requirement that all unsubscribed shares be sold, and any other material conditions relating to the exercise of subscription rights.

Item 6. Stock Selling Arrangements

In each offering circular you must describe the material terms of the plan or plans of distribution for all shares.

(a) You must include the following information in substantially the tabular form set forth below. You must set out this information on the outside front cover page of the offering circular.

	Price to public	Selling discounts and commissions	Proceeds to applicant
Per share	$	$	$
Total			

(b) If there is a community offering or public offering, or both, you must provide an offering circular. You may omit the description relating to the exercise of subscription rights required by item 5, unless you commence your community offering or public offering, or both, simultaneously with your subscription offering.

(c) If you sell any shares through a community offering, you must indicate: (1) The timing for the offering, (2) the geographic area where you will make the offering, (3) the method you will employ to market the shares (including the frequency and nature of communications or contracts with potential purchasers), (4) any preferences that you will give to any geographic area or to any class of potential purchasers, and (5) the limitations on purchases by potential purchasers.

(d) If a selling agent assists in offering shares, you must identify the selling agent, disclose how the selling agent will offer the shares, and disclose the commissions and fees you will pay to the selling agent.

(e) If you will offer any shares through underwriters, you must include in the offering circular for the public offering the names of the principal underwriters and the amounts that each will underwrite. You may omit this information for principal underwriters, other than the managing underwriters, from the offering circular for the subscription offering if you include the following conditions: (1) that all subscription rights will be exercisable by delivery of order forms to the underwriters or selling group for the public offering; and (2) that orders of persons exercising subscription rights will be filled prior to orders for stock in the direct community or public offerings, or both. You must identify each principal underwriter that has a material relationship with you and describe the relationship. In each offering circular, you must state briefly the underwriter's obligation to take unsubscribed shares.

(f) You must briefly disclose in the offering circular the discounts and commissions that you may allow or may pay dealers in connection with the sale of unsubscribed shares for the community or public offering, or both. You may omit this information from the offering circular for any subscription offering, unless you use the subscription offering circular for the community offering or public offering, or both.

Instructions:

1. Commissions include all cash, securities, contracts, or anything else of value, paid, to be set aside, or disposed of. Commissions also include understandings made with or for the benefit of any persons in which any underwriter or dealer is interested, in connection with the sale of the shares.

2. You must include any cash commissions in the table. You must describe other consideration you will make to the underwriters following the table with a reference in the second column of the table. You also must appropriately disclose any finder's fees or similar payments.

3. You must state whether the selling agents or underwriters are or will be committed to take and to pay for all of the shares if any are taken, or whether it is merely an agency or "best efforts" arrangement under which the selling agents or underwriters are required to take and pay for only the shares that they sell to the public.

OTS Form 1682
August 2002

Appendix D

Office of Thrift Supervision

Form OF—Order Form

Paperwork Reduction Act Statement

The Office of Thrift Supervision will use this information to ensure subscribers to Applicant's stock receive adequate disclosures regarding the purchase of Applicant's stock. *See* 12 CFR part 563b and § 563.76.

Public reporting burden for this collection of information is estimated to average one hour, per response, including the time for reviewing instructions and completing and reviewing the collection of information. If a valid OMB Control Number does not appear on this form, you are not required to complete this form. Send comments on these information collections to Information Collection Comments, Attention: 1550–0014, by e-mail to *infocollection.comments@ots.treas.gov*; by facsimile transmission to (202) 906–6518; or by mail to Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Send a copy of comments to Joseph F. Lackey, Jr., Attention: 1550–0014, by e-mail to *Joseph_F._Lackey_Jr@omb.eop.gov* or by mail to him at Office of Information and Regulatory Affairs, Office of Management and Budget New Executive Office Building, Washington, DC 20503.

OMB No. 1550–0014
Expiration Date: 08/31/2003

Form OF—Order Form

[Not to be codified in the Code of Federal Regulations]

Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552

Order Form for Purchase of Conversion Shares

(Name of Applicant as specified in charter) (Docket No.)

(Street Address of Applicant)

(City, State, and Zip Code)

(1) After OTS declares your offering circular for the subscription offering effective, you must promptly distribute order forms for the purchase of shares of stock to: (a) All eligible account holders, (b) supplemental eligible account holders, and (c) other voting members who may subscribe for shares under the plan of conversion.

(2) You must provide a final offering circular for the subscription offering or any community or public offerings with the order form (unless you previously provided a final offering circular). You must include detailed instructions explaining how to complete the order forms.

(3) You must state the maximum subscription price on each order form. This amount is the amount that is payable to you when the subscriber returns the order form. You must establish a maximum subscription price and an actual subscription price that is within the subscription price range stated in OTS's approval and in the offering circular. If the maximum subscription price or the actual subscription price is not within the subscription price range, you must receive OTS approval to amend the range. If appropriate, OTS may require you to resolicit proxies and order forms as a condition to its approval. If the public offering price is less than the maximum subscription price on the order form, you must reduce the actual subscription price to correspond to the public offering price. You must refund the difference to those subscribers who paid the maximum subscription price, unless the subscriber affirmatively elects to apply the difference to the purchase of additional shares.

(4) You must describe in a simple, clear, and intelligible manner the actions that are required or available to the persons who will receive the order form. Specifically, you must provide all of the following information:

(i) Indicate the maximum number of shares that the person may purchase under the subscription rights;

(ii) Indicate the time period during which the person must exercise the subscription rights. This period must be at least 20 days and not more than 45 days after you mail the subscription offering order form;

(iii) State the maximum subscription price per share;

(iv) Indicate any minimum share purchase requirements;

(v) Specifically designate blank space or spaces for the person to indicate the number of shares he or she wishes to purchase;

(vi) Indicate how the person must pay. If the person withdraws funds from a certificate of deposit, you must indicate that the person may withdraw the funds without penalty. If the person pays by withdrawing from a savings account or certificate of deposit, you must provide for the person to check a box on the order form. If a person pays by withdrawing from a savings account or certificate of deposit, you may, but need not, withdraw funds from the account when you receive the order form. If the person withdraws funds before the closing date of the public offering, you must pay interest to the account holder as if the amount remained in the account until the closing date;

(vii) Specifically designate blank spaces for the person to date and sign the order form;

(viii) Include an acknowledgment that the person who signed the order form received a final offering circular before he or she signed the form; and

(ix) Indicate what will happen if the person does not properly complete and return the order form. You must state that the person may not transfer the subscription rights to another and state that the subscription rights are void at the end of the subscription period. You must include in the instructions to the form the address where the person must send the order form and the date that you will deem the order form received (for instance, by date and time of actual receipt at the indicated address, or by date and time of postmark).

(5) You may state that no one may modify the order form without your consent.

(6) You must include the following statements in bold print in your order form:

(a) **"Federal Regulations prohibit any person from transferring or entering into any agreement directly or indirectly to transfer the legal or beneficial ownership of conversion subscription rights, or the underlying securities to the account of another."**

(b) **"Under penalty of perjury, I certify that I, _____, am purchasing shares solely for my account and that there is no agreement or understanding regarding the sale or transfer of such shares, or my right to subscribe for shares."**

(7) You must also include the following certification on your order form.

"I ACKNOWLEDGE THAT THIS SECURITY IS NOT A DEPOSIT OR ACCOUNT AND IS NOT FEDERALLY INSURED, AND IS NOT GUARANTEED BY [insert name of savings association] OR BY THE FEDERAL GOVERNMENT."

If anyone asserts that this security is federally insured or guaranteed, or is as safe as an insured deposit, I should call the Office of Thrift Supervision Regional Director [insert Regional Director's name and telephone number with area code].

I further certify that, before purchasing the [description of security being offered] of [name of issuer, name of savings association,

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and affiliation to issuer (if different)], I received an offering circular.

The offering circular that I received contains disclosure concerning the nature of the security being offered and describes the risks involved in the investment, including: [list briefly the principle risks involved and cross reference certain specified pages of the offering circular where a more complete description of the risks is made].

Signature: _____

Date: _____

OTS Form 1683
August 2002

[FR Doc. 02–19730 Filed 8–8–02; 8:45 am]
BILLING CODE 6720–01–P



Federal Register

Friday,
August 9, 2002

Part VI

Department of Health and Human Services

Health Resources and Services Administration

Availability of Funds Announced in the HRSA Preview; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds Announced in the HRSA Preview

AGENCY: Health Resources and Services Administration, HHS.

ACTION: General Notice.

SUMMARY: Health Resources and Services Administration (HRSA) announces the availability of funds in the HRSA Preview for Summer 2002. This edition of the HRSA Preview is a comprehensive review of HRSA's Fiscal Year 2003 competitive grant programs.

The purpose of the HRSA Preview is to provide the general public with a single source of program and application information related to the Agency's competitive grant offerings. The HRSA Preview is designed to replace the multiple **Federal Register** notices that traditionally advertised the availability of HRSA's discretionary funds for its various programs. It should be noted that additional program initiatives responsive to new or emerging issues in the health care area and unanticipated at the time of publication of the HRSA Preview may be announced through the **Federal Register** and the HRSA Web site, *http://www.hrsa.gov/grants.htm* This notice does not change requirements appearing elsewhere in the **Federal Register**.

This notice contains nearly all of the content of the HRSA Preview. The HRSA Preview contains a description of competitive and other grant programs scheduled for awards in Fiscal Year 2003, and includes instructions on how to contact the Agency for information and receive application kits for all programs. Specifically, the following information is included in the HRSA Preview: (1) Program announcement number; (2) program announcement title; (3) program announcement code; (4) legislative authority; (5) Catalog of Federal Domestic Assistance (CFDA) identification number; (6) purpose; (7) eligibility; (8) funding priorities and/or preferences; (9) estimated dollar amount of competition; (10) estimated number of awards; (11) estimated project period; (12) application availability date; (13) letter of intent deadline (if any); (14) application deadline; (15) projected award date; and (16) programmatic contact, with telephone and e-mail addresses. Certain other information, including how to obtain and use the HRSA Preview and grant terminology, can also be found in the HRSA Preview.

In Fiscal Year 2003, HRSA will begin accepting grant applications online. Please refer to the HRSA Grant Schedule at *http://www.hrsa.gov/grants/* for more information.

Dated: August 2, 2002.

Elizabeth M. Duke,

Administrator.

This notice describes funding for the following HRSA discretionary authorities and programs (receipt deadlines are also provided):

Bureau of Health Professions:	
Field Experiences In Public Health Nursing In State And Local Health Departments For Baccalaureate Nursing Students (BHNBN)	11/04/2002
Training In Primary Care Medicine And Dentistry (DRPC)	[1]
Dental Public Health Residency Training Grants (DPHT)	09/30/2002
Podiatric Residency Training In Primary Care (PODPC)	09/30/2002
Basic Nurse Education And Practice Grants (BNEP)	12/16/2002
Nurse Anesthetist Traineeships (NATR)	11/15/2002
Advanced Education Nursing Traineeships (AENT)	11/15/2002
Nursing Workforce Diversity Grants (NWD)	12/06/2002
Advanced Education Nursing Grants (AENP)	12/13/2002
Geriatric Nursing Knowledge And Experiences in Long Term Care Facilities For Nursing Students (BNEP)	11/04/2002
Health Careers Opportunity Program (HCOP)	02/24/2003
Centers Of Excellence (COES)	01/17/2003
Basic/Core Area Health Education Centers (BAHEC)	11/25/2002
Model State-Supported Area Health Education Centers (MAHEC)	11/25/2002
Health Administration Traineeships And Special Projects (HATR)	12/11/2002
Public Health Traineeships (PHTR)	12/09/2002
Geriatric Education Centers (GECS)	01/27/2003
Geriatric Training For Physicians, Dentists, And Behavioral And Mental Health Professionals (GTPD)	12/16/2002
Geriatric Academic Career Awards (GACA)	02/03/2003
Quentin N. Burdick Program For Rural Interdisciplinary Training (QBRH)	01/10/2003
Allied Health Projects (AHPG)	01/13/2003
Chiropractic Demonstration Project Grants (CHIRO)	03/31/2003
Grants To States For Loan Repayment Programs (SLRP)	05/15/2003
Cooperative Agreement For A Regional Center For Health Workforce Studies (RCHWS)	01/21/2003
Special Programs for Individuals:	
NHSC Scholarship Program (NHSCS)	03/28/2003
National Health Service Corps Loan Repayment Program (NHSCL)	03/28/2003
Faculty Loan Repayment Program (FLRP)	05/30/2003
Scholarships For Disadvantaged Students (SDS)	12/17/2002
Nursing Education Loan Repayment Program (NELRP)	01/31/2003
Bureau of Primary Health Care:	
Community And Migrant Health Centers (CMHS)	[1]
Health Care For The Homeless (HCH)	[1]
Public Housing Primary Care (PHPC)	[1]
Healthy Schools, Healthy Communities (HSHC)	[1]
New Delivery Sites And New Starts In Programs Funded Under The Health Centers Consolidation Act (NDSCS)	[1]
Increase In Medical Capacity In Programs Funded Under The Health Care Consolidation Act Of 1996 (IMCHC)	02/01/2003
National Health Center Technical Assistance Cooperative Agreement (NAT)	[1]
Increase In Mental Health And Substance Abuse, Oral Health, Care Management, And Pharmacy Services In Programs Funded Under The Health Centers Consolidation Act Of 1996 (IMHSA)	02/01/2003
Radiation Exposure Screening And Education Program (RESEP)	05/01/2003
Community Access Program (CAP)	06/01/2003
Integrated Services Development Initiative/Shared Integrated Management Information Systems (IS)	[1]

State Primary Care Associations Supplemental Funding For Managing Health Center Growth And Quality (PCO)	12/01/2002
HIV/AIDS Bureau:	
AIDS Education And Training Centers' National Clinicians' Consultation Center (AETCC)	06/01/2003
Grants For Coordinated Services And Access To Research For Children, Youth, Women And Their Families (CSCYW)	02/14/2003
Funding For Early Intervention Services Grants: Existing Geographic Service Areas (EIEGS)	10/01/2002
	04/01/2003
HIV Services Planning Grants (SPG)	04/04/2003
Ryan White Care Act Capacity Building Grants (RWCBG)	04/04/2003
Special Projects Of National Significance—Models Of Comprehensive Care For Caribbeans Living In The United States (SPCCL)	03/18/2003
Special Projects Of National Significance—HIV Prevention Initiatives In Primary Care Settings (SPPCS)	06/30/2003
Telehealth Grant Program (THGP)	03/17/2003
Maternal and Child Health Bureau:	
Genetic Services—Grants To Support Comprehensive Medical Care For Cooley's Anemia/Thalassemia (GSCAT)	03/18/2003
Promoting Integration Of State Health Information Systems And Newborn Screening Service Systems For Monitoring And Ensuring Quality Services To Newborns And Children With Or At Risk For Heritable Disorders-Cooperative Agreement (ISNSS)	12/03/2002
National Oral Health Policy Center (OHSD)	12/16/2002
Integrated Health And Behavioral Health Care For Children, Adolescents And Their Families—Implementation Grants (IHBHC)	02/10/2003
State Maternal And Child Health Early Childhood Comprehensive Systems Grants (SECCS)	01/03/2003
Transitioning Healthy Child Care America Programs (THCCA)	11/01/2002
Leadership Development For Implementation Of Systems Of Care For Children And Youth With Special Health Care Needs (CICS)	02/14/2003
Screening For Multiple Behavioral Risk Factors During The Preconception Through Postpartum Period (SMBRF)	01/06/2003
SPRANS Community-Based Abstinence Education Project Grants (CBAE)	01/21/2003
New Investigators In Maternal And Child Health Research: Dissertation Awards (RDA)	02/28/2003
Maternal And Child Health Research Program (MCHR)	08/15/2002
	03/03/2003
	08/15/2003
Maternal And Child Health Leadership Education In Developmental-Behavioral Pediatrics (BPT)	12/20/2002
Maternal And Child Health Centers For Leadership In Communication Disorders Education (CDT)	02/10/2003
Leadership Education Excellence In Maternal And Child Health Nursing (NURT)	01/17/2003
Leadership Education Excellence In Maternal And Child Health Nutrition (NUTT)	01/17/2003
Maternal And Child Health (MCH) Centers For Leadership In Public Health Social Work Education (SWT)	01/17/2003
Continuing Education And Development Collaborative Office Rounds (CECOR)	12/09/2002
HRSA/MCHB Doctoral Support Training Program: Awards For Enhancement Of Epidemiology Applied To MCH (EPI)	11/15/2002
Healthy Tomorrows Partnership For Children Program (HTPC)	11/01/2002
State Systems Development Initiative, Maternal And Child Health Services Federal Set-Aside Program (SSDI)	03/18/2003
Emergency Medical Services For Children (EMSC) Partnership Demonstration Grants (EMSCP)	11/12/2002
Emergency Medical Services For Children (EMSC) Regional Symposium Supplemental Grants (EMSCS)	11/12/2002
Traumatic Brain Injury (TBI) State Implementation Grants (TBII)	12/02/2002
Traumatic Brain Injury (TBI) State Planning Grants (TBIP)	12/02/2002
Traumatic Brain Injury (TBI) Post-Demonstration (TBIPD)	12/02/2002
Poison Control Centers Stabilization And Enhancement Grant Program (PCCSE)	05/08/2003
Poison Control Centers Stabilization And Enhancement Grant Program, Financial Stabilization Supplemental Grants (PCCFS)	05/08/2003
Office Of Rural Health Policy:	
Rural Health Outreach Grant (RHO)	09/13/2002
	09/12/2003
Rural Health Network Development (RHN)	09/20/2002
	09/19/2003
Office Of Special Programs:	
Social And Behavioral Interventions To Increase Organ And Tissue Donation (SBITD)	03/04/2003
Clinical Interventions To Increase Organ Procurement (CIOP)	03/18/2003

[1] Varies.

How To Use and Obtain Copies of the HRSA Preview

It is recommended that you read the introductory materials, terminology section, and individual program category descriptions before contacting the toll-free number: 1–877–HRSA–123 (1–877–477–2123), M–F 8:30 a.m. to 5 p.m. EST. Likewise, we urge applicants to fully assess their eligibility for grants before requesting kits. As a general rule, no more than one kit per category will be mailed to applicants.

To Obtain a Copy of the HRSA Preview

This HRSA Preview will be available in booklet form in the near future. To have your name and address added to or deleted from the HRSA Preview mailing list, call the toll free number above or send a message by e-mail to *hrsagac@hrsa.gov*.

To Obtain an Application Kit

Applications kits differ depending on the grant program. Determine which kit(s) you wish to receive and call 1–877–477–2123 to be placed on the mailing list. Be sure to provide the information specialist with the Program Announcement Number, Program Announcement Code and the title of the grant program. You may also request application kits using the e-mail address above. Application kits are generally available 60 days prior to application deadline. If kits are available earlier, they will be mailed immediately. The guidance contained in the various kits contains detailed instructions, background on the grant program, and other essential information, such as the applicability of Executive Order 12372 and 45 CFR part 100, and additional information pertinent to the

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intergovernmental review process, as appropriate.

World Wide Web Access

The HRSA Preview is available on the HRSA home page via the World Wide Web at: *www.hrsa.gov/grants.htm*. You can download this issue in Adobe Acrobat format.

Application materials are also available for downloading for some HRSA programs. HRSA's goal is to post application forms and materials for all programs in future cycles.

You can register online to be sent grant application materials by following the instructions on the Web page. Your mailing information will be added to our database and materials will be sent to you as they become available.

Grant Terminology

Application Deadlines

Applications will be considered on time if they are received on or before the established deadline, or postmarked on or before the deadline given in the program announcement or in the application kit materials. Applications sent to any address other than that specified in the application guidance are subject to being returned.

Authorization

The citation of the law authorizing the various grant programs is provided immediately following the title of the programs.

CFDA Number

The Catalog of Federal Domestic Assistance (CFDA) is a Government-wide compendium of Federal programs, projects, services, and activities that provide assistance. Programs listed therein are given a CFDA Number.

Cooperative Agreement

A financial assistance mechanism (grant) used when substantial Federal programmatic involvement with the recipient is anticipated by the funding agency during performance of the project. The nature of that involvement will always be specified in the offering or application guidance materials.

Eligibility

The status an entity must possess to be considered for a grant. Authorizing legislation and programmatic regulations specify eligibility for individual grant programs, and eligibility may be further restricted for programmatic reasons. In general, assistance is provided to nonprofit organizations and institutions, including faith-based and community-based entities, State and local governments, their agencies, including an Indian Tribe or tribal organization, and occasionally to individuals. For-profit organizations are eligible to receive awards under financial assistance programs unless specifically excluded by legislation.

Estimated Amount of Competition

The funding level listed is provided only as an estimate, and is subject to the availability of funds, Congressional action, and changing program priorities.

Funding Priorities and/or Preferences

Funding preferences, priorities, and special considerations may come from legislation, regulations, or HRSA program leadership decisions. They are not the same as review criteria. Funding preferences are any objective factors that would be used to place a grant application ahead of others without the preference on a list of applicants recommended for funding by a review committee. Some programs give preference to organizations that have specific capabilities such as telemedicine networking, or have established relationships with managed care organizations. Funding priorities are factors that cause a grant application to receive a fixed amount of extra rating points—which may similarly affect the order of applicants on a funding list. Special considerations are other factors considered in making funding decisions that are neither review criteria, preferences, or priorities, *e.g.*, ensuring that there is an equitable geographic distribution of grant recipients, or meeting requirements for urban and rural proportions.

Letter of Intent

To help in planning the application review process, many HRSA programs request a letter of intent from the applicant in advance of the application deadline. Letters of intent are neither binding nor mandatory. Details on where to send letters can be found in the guidance materials contained in the application kit.

Matching Requirements

Several HRSA programs require a matching amount, or percentage of the total project support, to come from sources other than Federal funds. Matching requirements are generally mandated in the authorizing legislation for specific categories. Also, matching or other cost-sharing requirements may be administratively required by the awarding office. Such requirements are set forth in the application kit.

Program Announcement Code

The program announcement code is a unique identifier for each program funded by HRSA. The three-five character acronyms are located in parentheses immediately at the end of each program title and must be used to request application materials either from the HRSA Grants Application Center or online at *hrsagac@hrsa.gov*.

Be sure to use the program announcement number, program announcement code and the title of the grant program when requesting an application kit.

Program Announcement Number

A unique program announcement (HRSA) number is located at the beginning of each program announcement in the HRSA Preview and **Federal Register** notices and includes the Fiscal Year and sequence number for announcement; for example, HRSA 03–001. This number is used with the program title and program announcement code to order application materials.

Project Period

The total time for which support of a discretionary project has been programmatically approved. The project period usually consists of a series of budget periods of one-year duration. Once approved through initial review, continuation of each successive budget period is subject to satisfactory performance, availability of funds, and program priorities.

Review Criteria

The following are generic review criteria applicable to HRSA programs:

- That the estimated costs to the Government of the project are reasonable considering the level and complexity of activity and the anticipated results.
- That project personnel or prospective fellows are well qualified by training and/or experience for the support sought, and the applicant organization or the organization to provide training to a fellow have adequate facilities and manpower.
- That, insofar as practical, the proposed activities (scientific or other), if well executed, are capable of attaining project objectives.
- That the project objectives are capable of achieving the specific program objectives defined in the program announcement and the proposed results are measurable.
- That the method for evaluating proposed results includes criteria for determining the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program.
- That, in so far as practical, the proposed activities, when accomplished, are replicable, national in scope and include plans for broad dissemination.

The specific review criteria used to review and rank applications are included in the individual guidance material provided with the application kits. Applicants should pay strict attention to addressing these criteria, as they are the basis upon which the reviewers will judge their applications.

Technical Assistance

A contact person is listed for each program and his/her e-mail address and telephone number provided. Some programs have scheduled workshops and conference calls. If you have questions concerning individual programs or the availability of technical assistance, please contact the person listed. Also check your application materials and the HRSA Web site at *http://www.hrsa.gov/* for the latest technical assistance information.

Frequently Asked Questions

1. Where Do I Submit Grant Applications?

The address for submitting your grant application will be shown in the guidance document included in the application kit.

2. How Do I Learn More About a Particular Grant Program?

If you want to know more about a program before you request an application kit, an e-mail/telephone contact is listed. This contact person can provide information concerning the specific program's purpose, scope and goals, and eligibility criteria. Usually, you will be encouraged to request the application kit so that you will have clear, comprehensive, and accurate information available to you. When requesting application materials, you must state the program announcement number, the program code and title of the program. The application kit lists telephone numbers for a program expert and a grants management specialist who will provide information about your program of interest if you are unable to find the information within the written materials provided.

In general, the program contact person provides information about the specific grant offering and its purpose, and the grants management specialist provides information about the grant mechanism and business matters, though their responsibilities often overlap.

Information specialists at the toll-free number provide only basic information and administer mailings.

3. The Dates Listed in the HRSA Preview and the Dates in the Application Kit Do Not Agree. How Do I Know Which Is Correct?

HRSA Preview dates for application kit availability and application receipt deadlines are based upon the best known information at the time of publication, often nine months in advance of the competitive cycle. Occasionally, the grant cycle does not begin as projected and dates must be adjusted. The deadline date stated in your application kit is generally correct. If the application kit has been made available and subsequently the date changes, notification of the change will be mailed to known recipients of the application kit, and also posted on the HRSA home page.

4. Are Programs Announced in the HRSA Preview Ever Cancelled?

Infrequently, announced programs may be withdrawn from competition. If this occurs, a cancellation notice will be provided through the HRSA Preview at the HRSA home page at *http://www.hrsa.dhhs.gov*. If practicable, an attempt will be made to notify those who have requested a kit for the cancelled program by mail.

If you have unanswered questions, please contact Jeanne Conley of the Grants Policy Branch at (301) 443–4972 or *jconley@hrsa.gov*.

HRSA Program Competitions

Bureau of Health Professions

Note: Programs listed with an asterisk (*) are not included in the President's budget for FY 2003. They are included for planning purposes only. Potential applicants should consider these announcements provisional until final Congressional action on appropriations is taken.

HRSA 03–001 Field Experiences in Public Health Nursing in State and Local Health Departments for Baccalaureate Nursing Students (BHNBN)

Legislative Authority: Public Health Service Act, Title VIII, Section 831, 42 U.S.C. 296p.

CFDA: 93.359.

Purpose: The purpose of this request for applications is to provide small grants for one year to assist eligible entities to strengthen the public health nursing practice field experience component of the baccalaureate nursing program. Funds may be used to assist the applicant to plan, implement, and evaluate a public health nursing practice experience including preparation of faculty and key health department staff, that will expose students to (1) selected core functions of public health (assessment, policy development, and assurance) and essential services; (2) the mission of the State and/or local health departments, and (3) how a variety of public health practitioners function as a team in promoting, protecting, and maintaining the public's health. This plan may be implemented with a small number of baccalaureate nursing students. The plan is to include development of academic and practice linkages with a State or one or more local health departments.

Eligibility: Eligible applicants are schools of nursing and State or local governments. Applications from schools of nursing that have been previously funded for this purpose are not eligible.

Funding Priorities or Preferences: As provided in section 805 of the Public Health Service Act, preference will be given to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

Estimated amount of This Competition: $250,000.

Estimated Number of Awards to be Made: 10.

Estimated or Average Size of Each Award: $25,000.

Estimated Project Period: 1 year.

HRSA 03–001 Field Experiences in Public Health Nursing in State and Local Health Departments for Baccalaureate Nursing Students (BHNBN)

Application Availability Date: August 9, 2002.

Application Deadline: November 4, 2002.

Projected Award Date: June 30, 2003.

Program Contact Person: Irene Sandvold.

Phone Number: (301) 443–6333.

E-mail: isandvold@hrsa.gov.

HRSA 03–002 Training in Primary Care Medicine and Dentistry* (DRPC)

Legislative Authority: Public Health Service Act, Title VII, Section 747, 42 U.S.C. 293k.

CFDA Number: 93.884.

Purpose: Grants are awarded for the following purposes: (1) *Residency Training in Primary Care*— to plan, develop, and operate or participate (including provision of financial assistance) in approved residency or internship programs in family medicine, general internal medicine and/or

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general pediatrics; (2) *Faculty Development in Primary Care*— to plan, develop, and operate (including provision of financial assistance) programs for the training of physicians who plan to teach in family medicine (including geriatrics), general internal medicine and/or general pediatrics training programs; (3) *Predoctoral Training in Primary Care*— to plan, develop, and operate or participate (including provision of financial assistance) in approved predoctoral programs in family medicine, general internal medicine and/or general pediatrics; (4) *Academic Administrative Units in Primary Care*— to meet the costs of projects to establish, maintain or improve academic administrative units to improve clinical instruction in family medicine, general internal medicine and/or general pediatrics; (5) *Physician Assistant Training in Primary Care*— to meet the costs of projects to plan, develop and operate or maintain approved programs for the training of physician assistants, and for the training of individuals who will teach in programs to provide such training; (6) *General and Pediatric Dentistry*— to meet the costs of planning, developing, or operating (including provision of financial assistance) approved residency programs of general or pediatric dentistry.

This program is not included in the President's budget for FY 2003. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: For program purposes (1), (2), and (5) public or nonprofit private hospitals, accredited schools of medicine or osteopathic medicine, or public or private nonprofit entities, including faith-based and community-based organizations, are eligible to apply.

For program purposes (3) and (4) public or nonprofit private accredited schools of allopathic or osteopathic medicine are eligible to apply.

For program purpose (6) entities that have programs in accredited dental schools, approved residency programs in the pediatric or general practice of dentistry, approved advanced education programs in the pediatric or general practice of dentistry, or approved residency programs in pediatric dentistry are eligible to apply.

Funding Priorities or Preferences: Statutory funding preference will be offered for all training in primary care medicine and dentistry grant purposes (1) through (6). As provided in Section 791(a) of the Public Health Service Act (as amended), preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. Preference will be given to those new programs that meet at least four of the criteria described in section 791(c)(3) of the Public Health Service Act so that new applicants may compete equitable. This statutory preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by peer review groups.

For program purpose (4) a second preference is offered to qualified applicants for the establishment or the substantial expansion of an academic administrative unit.

Statutory Funding Priority: For program purposes (1) and (6) priority will be offered to qualified applicants that have a record of training the greatest percentage of providers or that have demonstrated significant improvements in the percentage of providers who enter and remain in primary care practice or general or pediatric dentistry.

For program purposes (1), (5) and (6) priority will be offered to qualified applicants that have a record of training individuals who are from disadvantaged backgrounds (including racial and ethnic minorities underrepresented among primary care practice or general or pediatric dentistry).

For program purpose (4) priority will be offered to qualified applicants that propose a collaborative project between departments of primary care.

For program purposes (2) and (3) there are no priorities.

Administrative Funding Priority: For program purpose (6) priority will be offered to new programs that have enrollees and no graduates at the time of application, and newly initiated programs that have neither enrollees nor graduates at the time of application.

Statutory Special Consideration: For all grant program purposes (1) through (6) special consideration will be offered to qualified applicants proposing projects to prepare practitioners to care for underserved populations and other high risk groups such as the elderly, individuals with HIV–AIDS, substance abusers, homeless and victims of domestic violence.

Administrative Special Consideration: For all grant program purposes (1) through (6), special consideration will be given to applicants that propose approaches for enhancing current and/or developing new educational opportunities using distance learning methodologies, with the goal of improving access to primary health care for medically and/or dentally underserved communities and/or underserved populations or other high risk groups.

Estimated Amount of This Competition: $33,000,000.

Estimated Number of Awards To Be Made: 220.

Estimated or Average Size of Each Award: $150,000.

Estimated Project Period: 3 years.

HRSA 03–002 Training in Primary Care Medicine and Dentistry* (DRPC)

Application Availability Date: For all grant program purposes August 19, 2002.

Application Deadlines:

Program purpose (1) October 21, 2002, Residency Training in Primary Care;

Program purpose (2) November 18, 2002, Faculty Development in Primary Care;

Program purpose (3) October 28, 2002, Predoctoral Training in Primary Care;

Program purpose (4) January 6, 2003, Academic Administrative Units in Primary Care;

Program purpose (5) November 12, 2002, Physician Assistant Training in Primary Care;

Program purpose (6) October 30, 2002, General and Pediatric Dentistry.

Projected Award Dates: Program purposes (1) through (5) June 30, 2003. Program purpose (6) April 30, 2003.

Program Contact Persons: For program purposes (1) through (5), staff assignments are based upon the State in which an applicant is located:

Shane Rogers—CT, ME, MA, NH, RI, VT
Brenda Williamson—NY, NJ, PR, VI
Rebecca Bunnell—DE, MD, PA, VA, WV, DC
Marcia Britt—AL, FL, GA, KY, MS, NC, SC, TN
Lafayette Gilchrist—IL, IN, MI, MN, OH, WI
Ellie Grant—AR, NM, OK, TX, LA
Shelby Biedenkapp—IA, KS, MO, NE
Martha Evans—CO, MT, UT, SD, WY, AK, ID, OR, WA, ND
Elsie Quinones–AZ, CA, HI, NV, Pacific Basin

For program purpose (6), the program contact person is Susan Goodman.

Phone Numbers: Program purposes (1) through (6)—(301) 443–1467.

E-mail: Program purposes (1) through (5):

Shane Rogers—*srogers@hrsa.gov*
Brenda Williamson—*bwilliamson@hrsa.gov*
Rebecca Bunnell—*rbunnell@hrsa.gov*
Marcia Britt—*mbritt@hrsa.gov*
Lafayette Gilchrist—*lgilchrist@hrsa.gov*
Ellie Grant—egrant@hrsa.gov
Shelby Biedenkapp—*sbiedenkapp@hrsa.gov*
Martha Evans—*mevans@hrsa.gov*
Elsie Quinones—*equinones@hrsa.gov*

Program purpose (6): Susan Goodman—*sgoodman@hrsa.gov*.

HRSA 03–003 Dental Public Health Residency Training Grants* (DPHT)

Legislative Authority: Public Health Service Act, Title VII, section 768, 42 U.S.C. 295c.

CFDA Number: 93.236.

Purpose: The purpose of this program is: (1) To plan and develop new residency training programs and to maintain or improve existing residency training programs in dental public health; and (2) to provide financial assistance to residency trainees enrolled in such programs.

This program is not included in the President's budget for FY 2003. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA web site.

Eligibility: A school of public health or dentistry that offers a dental public health residency training program accredited by the American Dental Association Commission on Dental Accreditation is eligible to apply. Each applicant must demonstrate that the institution has or will have available full-time faculty members with training and experience in the field of dental public health and support from other faculty members trained in public health and other relevant specialties and disciplines.

Administrative Special Consideration: Special consideration will be given to applicants that propose approaches for enhancing current and/or developing new educational opportunities using distance learning methodologies, with the goal of improving access to primary health care for medically and/or dentally underserved communities and/or underserved populations or other high risk groups.

Estimated Amount of This Competition: $600,000.

Estimated Number of Awards To Be Made: 7.

Estimated or Average Size of Each Award: $90,000.

Estimated Project Period: 3 Years.

HRSA 03–003 Dental Public Health Residency Training Grants* (DPHT)

Application Availability Date: August 12, 2002.

Application Deadline: September 30, 2002.

Projected Award Date: June 30, 2003.

Program Contact Person: Jerald Katzoff.

Phone Number: (301) 443–6326.

E-mail: jkatzoff@hrsa.gov.

HRSA 03–004 Podiatric Residency Training in Primary Care* (PODPC)

Legislative Authority: Part D, Title VII, Public Health Service Act, Section 755(b)(2), 42 U.S.C. 294.

CFDA Number: 93.181.

Purpose: Grants are awarded to plan and implement projects in preventive and primary care training for podiatric physicians in approved or provisionally approved residency programs that shall provide financial assistance in the form of traineeships to residents who participate in such projects and who plan to specialize in primary care.

The applicant must propose a project that is collaborative among two or more disciplines.

This program is not included in the President's budget for FY 2003. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: Eligible entities are health professions schools, academic health centers, State or local governments or other appropriate public or private nonprofit entities, including faith-based organizations and community-based organizations.

Statutory Funding Preference: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (1) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (2) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. Preference will be given to those new programs that meet at least four of the criteria described in section 791(c)(3) of the Public Health Service Act so that new applicants may compete equitably. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Administrative Special Consideration: Special consideration will be given to applicants that propose approaches for enhancing current and/or developing new educational opportunities using distance learning methodologies, with the goal of improving access to primary health care for medically and/or dentally underserved communities and/or underserved populations or other high risk groups.

Estimated Amount of This Competition: $160,000.

Estimated Number of Awards To Be Made: 1.

Estimated Project Period: 2 years.

HRSA 03–004 Podiatric Residency Training in Primary Care* (PODPC)

Application Availability Date: August 12, 2002.

Application Deadline: September 30, 2002.

Projected Award Date: June 30, 2003.

Program Contact Person: Shelby Biedenkapp.

Phone Number: (301) 443–1467.

E-mail address: sbiedenkapp@hrsa.gov.

HRSA 03–005 Basic Nurse Education and Practice Grants (BNEP)

Legislative Authority: Public Health Service Act, Title VIII, Section 831, 42 U.S.C. 296p.

CFDA Number: 93.359.

Purpose: Grants are awarded to enhance the educational mix and utilization of the basic nursing workforce by strengthening programs that provide basic nurse education, such as through: (1) Establishing or expanding nursing practice arrangements in non-institutional settings to demonstrate methods to improve access to primary health care in medically underserved communities; (2) providing care for underserved populations and other high-risk groups such as the elderly, individuals with HIV/AIDS, substance abusers, the homeless, and victims of domestic violence; (3) providing managed care, quality improvement, and other skills needed to practice in existing and emerging organized health care systems; (4) developing cultural competencies among nurses; (5) expanding enrollment in baccalaureate nursing programs; (6) promoting career mobility for nursing personnel in a variety of training settings and cross-training or specialty training among diverse population groups; or (7) providing education for informatics, including distance learning methodologies.

Eligibility: Eligible applicants for purpose (1) are schools of nursing. Eligible applicants for purpose (5) are

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collegiate schools of nursing. Eligible applicants for purposes (2), (3), (4), (6) and (7) are schools of nursing; nursing centers; academic health centers; state or local governments, and other appropriate public or private nonprofit entities, including faith-based organizations and community-based organizations.

Funding Priorities or Preferences: As provided in section 805 of the Public Health Service Act, as amended, preference will be given to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in state or local health departments.

Administrative Funding Priority: In making awards under purpose 1 (establishing or expanding nursing practice arrangements in non-institutional settings to demonstrate methods to improve access to primary health care in medically underserved communities) a funding priority will be given to those schools of nursing who have not received support for Nurse Practice Arrangements under 1992 legislation or the 1998 legislation.

In making awards under purpose 5 (expanding enrollment in baccalaureate nursing programs), a funding priority will be given to those programs expanding enrollment in generic baccalaureate nursing programs.

Administrative Special Consideration: Special consideration will be given to applicants that propose collaborative approaches for increasing the number of students in rural and underserved areas who can access educational opportunities through the use of electronic distance learning methodologies.

Estimated Amount of This Competition: $3,721,340.

Estimated Number of Awards To Be Made: 15.

Estimated or Average Size of Each Award: $250,000.

Estimated Project Period: 3 years.

HRSA 03–005 Basic Nurse Education and Practice Grants (BNEP)

Application Availability Date: September 06, 2002.

Application Deadline: December 16, 2002.

Projected Award Date: June 30, 2003.

Program Contact Person: Madeline Turkeltaub.

Phone Number: (301) 443–6193.

E-mail: mturkeltaub@hrsa.gov.

HRSA 03–006 Nurse Anesthetist Traineeships (NATR)

Legislative Authority: Public Health Service Act, Title VIII, Section 811, 42 U.S.C. 296j.

CFDA Number: 93.124.

Purpose: Grants are awarded to eligible institutions for projects that support traineeships for licensed registered nurses enrolled as full-time students beyond the twelfth month of study in a Master's nurse anesthesia program.

Eligibility: Eligible applicants are schools of nursing, academic health centers, and other public and private nonprofit entities, including faith-based organizations and community-based organizations, which provide registered nurses with full-time nurse anesthetist education and have evidence of earned pre-accreditation or accreditation status from the American Association of Nurse Anesthetists (AANA) Council on Accreditation of Nurse Anesthesia Educational Programs.

Funding Priorities or Preferences: As provided in section 805 of the Public Health Service Act, as amended, preference shall be given to applicants with projects that will substantially benefit rural or underserved populations or help meet public health nursing needs in State or local health departments.

Special Considerations: Traineeships for individuals in advanced education programs are provided under section 811(a)(2) of the Public Health Service Act, as amended. A statutory special consideration, as provided for in section 811(f)(3) of the Public Health Service Act, as amended, will be given to eligible entities that agree to expend the award to train advanced education nurses who will practice in health professional shortage areas designated under section 332 of the Public Health Service Act, as amended.

Estimated Amount of This Competition: $1,000,000.

Estimated Number of Awards To Be Made: 71.

Estimated or Average Size of Each Award: $14,000.

Estimated Project Period: 1 year.

HRSA 03–006 Nurse Anesthetist Traineeships (NATR)

Application Availability Date: September 6, 2002.

Application Deadline: November 15, 2002.

Projected Award Date: March 28, 2003.

Program Contact Person: Karen D. Breeden.

Phone Number: (301) 443–5787.

E-mail: KBreeden@hrsa.gov.

HRSA 03–007 Advanced Education Nursing Traineeships (AENT)

Legislative Authority: Public Health Service Act, Title VIII, Section 811, 42 U.S.C. 296j.

CFDA Number: 93.358.

Purpose: Grants are awarded to eligible institutions to meet the cost of traineeships for individuals in advanced nursing education programs. Traineeships are awarded to individuals by participating educational institutions offering Masters and doctoral degree programs, combined RN to Masters degree programs, post-nursing Masters certificate programs, or in the case of nurse midwives, certificate programs in existence on November 12, 1998 to serve as nurse practitioners, clinical nurse specialists, nurse midwives, nurse anesthetists, nurse educators, nurse administrators or public health nurses.

Eligibility: Eligible applicants are schools of nursing, academic health centers, and other appropriate public or private nonprofit entities, including faith-based organizations and community-based organizations.

Funding Priorities or Preferences: As provided in section 805 of the Public Health Service Act, as amended, preference shall be given to applicants with projects that will substantially benefit rural or underserved populations or help meet public health nursing needs in State or local health departments.

Special Considerations: Traineeships for individuals in advanced education programs are provided under section 811(a)(2) of the Public Health Service Act, as amended. A statutory special consideration, as provided for in section 811(f)(3) of the Public Health Service Act, as amended, will be given to eligible entities that agree to expend the award to train advanced education nurses who will practice in health professional shortage areas designated under section 332 of the Public Health Service Act, as amended.

Estimated Amount of This Competition: $18,600,000.

Estimated Number of Awards To Be Made: 325.

Estimated or Average Size of Each Award: Up to $300,000.

Estimated Project Period: 1 year.

HRSA 03–007 Advanced Education Nursing Traineeships (AENT)

Application Availability Date: September 6, 2002.

Application Deadline: November 15, 2002.

Projected Award Date: March 28, 2003.

Program Contact Person: Karen D. Breeden.

Phone Number: (301) 443–5787.

E-mail: Kbreeden@hrsa.gov.

HRSA 03–008 Nursing Workforce Diversity Grants (NWD)

Legislative Authority: Public Health Service Act, Title VIII, Section 821, 42 U.S.C. 296m.

CFDA Number: 93.178.

Purpose: Grants are awarded to increase nursing education opportunities for individuals from disadvantaged backgrounds (including racial and ethnic minorities underrepresented among registered nurses) by providing student scholarships or stipends, pre-entry preparation, and retention activities.

Eligibility: Eligible applicants are schools of nursing, nursing centers, academic health centers, State or local governments, and other public or private nonprofit entities, including faith-based organizations and community-based organizations.

Funding Priorities or Preferences: As provided in section 805 of the Public Health Service Act, as amended, preference will be given to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

Administrative Special Consideration: Special consideration will be given to applicants that propose collaborative approaches for increasing the number of students in rural and underserved areas who can access educational opportunities through the use of electronic distance learning methodologies.

Estimated Amount of This Competition: $1,579,000.

Estimated Number of Awards to be Made: 7.

Estimated or Average Size of Each Award: $225,000.

Estimated Project Period: 3 years.

HRSA 03–008 Nursing Workforce Diversity Grants (NWD)

Application Availability Date: September 6, 2002.

Application Deadline: December 6, 2002.

Projected Award Date: June 30, 2003.

Program Contact Person: Ernell Spratley.

Phone Number: (301) 443–5763.

E-mail: espratley@hrsa.gov.

HRSA 03–009 Advanced Education Nursing Grants (AENP)

Legislative Authority: Public Health Service Act, Title VIII, Section 811, 42 U.S.C. 296j.

CFDA Number: 93.247.

Purpose: Grants are awarded to eligible institutions for projects that support the enhancement of advanced nursing education and practice. For the purpose of this section, advanced education nurses means individuals trained in advanced degree programs including individuals in combined RN to Master's degree programs, post-nursing Master's certificate programs, or in the case of nurse-midwives, in certificate programs in existence on November 12, 1998, to serve as nurse practitioners, clinical nurse specialists, nurse midwives, nurse anesthetists, nurse educators, nurse administrators or public health nurses.

Eligibility: Eligible applicants are schools of nursing, academic health centers, and other appropriate public or private nonprofit entities, including faith-based organizations and community-based organizations.

Funding Priorities or Preferences: As provided in section 805 of the Public Health Service Act, as amended, preference shall be given to applicants with projects that will substantially benefit rural or underserved populations or help meet public health nursing needs in State or local health departments.

Administrative Special Consideration: Special consideration will be given to applicants that propose collaborative approaches for increasing the number of students in rural and underserved areas who can access educational opportunities through the use of electronic distance learning methodologies.

Estimated Amount of This Competition: $20,059,000.

Estimated Number of Awards To Be Made: 80.

Estimated or Average Size of Each Award: $250,000.

Estimated Project Period: 3 years.

HRSA 03–009 Advanced Education Nursing Grants (AENP)

Application Availability Date: September 6, 2002.

Application Deadline: December 13, 2002.

Projected Award Date: June 30, 2003.

Program Contact Person: Irene Sandvold.

Phone Number: (301) 443–6333.

E-mail: isandvold@hrsa.gov.

HRSA 03–010 Geriatric Nursing Knowledge and Experiences in Long Term Care Facilities for Nursing Students (BNEP)

Legislative Authority: Public Health Service Act, Title VIII, Section 831,42 U.S.C. 296p.

CFDA Number: 93.359.

Purpose: The purpose of this initiative is to assist eligible entities to strengthen the geriatric nursing didactic content and clinical components of their baccalaureate nursing programs. Funds will be awarded to plan, implement and evaluate geriatric nursing experiences that, through planned partnerships with geriatric long-term care or assisted living facilities, expose senior nursing students to: (1) Increased course content in geriatric nursing and concepts of age-sensitive caring; (2) application of this content to geriatric patients with chronic illness residing in long term care, including assisted living facilities; and (3) use of assessment skills in the setting selected in order to accurately complete appropriate assessments using standardized tools such as the Minimum Data Set (MDS) required by Medicare regulations.

Eligibility: Schools of nursing are eligible. Applications from schools of nursing with currently funded projects in this category will not be accepted for review.

Funding Priorities or Preferences: As provided in section 805 of the Public Health Service Act, as amended, preference will be given to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

Administrative Special Consideration: Special consideration will be given to applicants that propose collaborative approaches for increasing the number of students in rural and underserved areas who can access educational opportunities through the use of electronic distance learning methodologies.

Estimated Amount of This Competition: $250,000.

Estimated Number of Awards To Be Made: 10.

Estimated or Average Size of Each Award: $25,000.

Estimated Project Period: 1 year.

HRSA 03–010 Geriatric Nursing Knowledge and Experiences in Long Term Care Facilities for Nursing Students (BNEP)

Application Availability Date: August 9, 2002.

Application Deadline: November 4, 2002.

Projected Award Date: June 30, 2003.

Program Contact Person: Madeline Turkeltaub.

Phone Number: (301) 443–6193.

E-mail: mturkeltaub@hrsa.gov.

HRSA 03–011 Health Careers Opportunity Program* (HCOP)

Legislative Authority: Section 739 of The Public Health Service Act, 42 U.S.C. 293c.

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CFDA Number: 93.822.

Purpose: The goal of the Health Careers Opportunity Program (HCOP) is to assist individuals from disadvantaged backgrounds to undertake education to enter a health profession. The HCOP program works to build diversity in the health fields by providing students from disadvantaged backgrounds an opportunity to develop the skills needed to successfully compete, enter, and graduate from health professions schools. The legislative purposes from which HCOP funds may be awarded are: (1) Identifying, recruiting, and selecting individuals from disadvantaged backgrounds for education and training in a health profession; (2) facilitating the entry of such individuals into such a school; (3) providing counseling, mentoring, or other services designed to assist such individuals to complete successfully their education at such a school; (4) providing, for a period prior to the entry of such individuals into the regular course of education of such a school, preliminary education and health research training designed to assist them to complete successfully such regular course of education at such a school, or referring such individuals to institutions providing such preliminary education; (5) publicizing existing sources of financial aid available to students in the education program of such a school or who are undertaking training necessary to qualify them to enroll in such a program; (6) paying scholarships, as the Secretary may determine, for such individuals for any period of health professions education at a health professions school; (7) paying such stipends for such individuals for any period of education in student-enhancement programs (other than regular courses), except that such a stipend may not be provided to an individual for more than 12 months; (8) carrying out programs under which such individuals gain experience regarding a career in a field of primary health care through working at facilities of public or private nonprofit community-based providers of primary health services; (9) conducting activities to develop a larger and more competitive applicant pool through partnerships with institutions of higher education, school districts, and other community-based entities.

This program is not included in the President's budget for FY 2003. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: Eligible applicants include schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic, podiatric medicine, public or non-profit private schools that offer graduate programs in behavioral and mental health, programs for the training of physician assistants, and other public or private nonprofit health or educational entities, including faith-based organizations and community-based organizations.

Funding Priorities or Preferences: A funding preference will be given to approved applications for programs that involve a comprehensive approach by several public or non-profit private health or educational entities to establish, enhance and expand educational programs that will result in the development of a competitive applicant pool of individuals from disadvantaged backgrounds who desire to pursue health professions careers.

Estimated Amount of This Competition: $1,580,000.

Estimated Number of Awards To Be Made: 5.

Estimated or Average Size of Each Award: $316,000.

Estimated Project Period: 3 years.

HRSA 03–011 Health Careers Opportunity Program* (HCOP)

Application Availability Date: September 6, 2002.

Application Deadline: February 24, 2003.

Projected Award Date: August 1, 2003.

Program Contact Person: Tobey Manns.

Phone Number: (301) 443–0909.

E-mail: tmanns@hrsa.gov.

HRSA 03–012 Centers of Excellence* (COES)

Legislative Authority: Section 736 of The Public Health Service Act, 42 U.S.C. 293.

CFDA Number: 93.157.

Purpose: The goal of this program is to assist eligible schools in supporting programs of excellence in health professions education for underrepresented minority individuals. The grantee is required to use the funds awarded: (1) To develop a large competitive applicant pool through linkages with institutions of higher education, local school districts; and other community-based entities and establish an education pipeline for health professions careers; (2) to establish, strengthen, or expand programs to enhance the academic performance of underrepresented minority students attending the school; (3) to improve the capacity of such schools to train, recruit, and retain underrepresented minority faculty including the payment of stipends and fellowships; (4) to carry out activities to improve the information resources, clinical education, curricula and cultural competence of the graduates of the schools as it relates to minority health issues; (5) to facilitate faculty and student research on health issues particularly affecting underrepresented minority groups, including research on issues relating to the delivery of health care; (6) to carry out a program to train students of the school in providing health services to a significant number of underrepresented minority individuals through training provided to such students at community-based health facilities that provide such health services and are located at a site remote from the main site of the teaching facilities of the school; and (7) to provide stipends as appropriate.

This program is not included in the President's budget for FY 2003. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: Eligible applicants are accredited schools of allopathic medicine, osteopathic medicine, dentistry, pharmacy, graduate programs in behavioral or mental health, or other public and nonprofit health or educational entities, including faith-based organizations and community-based organizations, that meet the requirements of section 736(c) of the Public Health Service Act, as amended. Historically Black Colleges and Universities, as described in section 736(c)(2)(A) of the Public Health Service Act, as amended, and which received a contract under former section 788B of The Public Health Service Act (Advanced Financial Distress Assistance) for fiscal year 1987 may apply for Centers of Excellence (COE) grants under section 736 of the Public Health Service Act, as amended.

Administrative Special Consideration: Special consideration will be given to applicants that propose to develop educational approaches to increasing the knowledge base of trainees regarding minority health issues and/or cultural competence through the use of distance learning methodologies.

Estimated Amount of This Competition: $15,670,000.

Estimated Number of Awards To Be Made: 10.

Estimated or Average Size of Each Award: $640,000 (this does not include the legislatively mandated awards).

Estimated Project Period: 3 years.

HRSA 03–012 Centers of Excellence* (COES)

Application Availability Date: September 6, 2002.

Application Deadline: January 17, 2003.

Projected Award Date: June 30, 2003.

Program Contact Person: Daniel Reed.

Phone Number: (301) 443–2982.

E-mail: dreed1@hrsa.gov.

HRSA 03–013 Basic/Core Area Health Education Centers* (BAHEC)

Legislative Authority: Public Health Service Act, Title VII, Section 751, 42 U.S.C. 294a, Section 750(a), 42 U.S.C. 294.

CFDA Number: 93.824.

Purpose: Cooperative agreements are awarded to assist schools to improve the distribution, diversity, supply, and quality of health personnel in the health services delivery system by encouraging the regionalization of health professions schools. Emphasis is placed on community-based training of primary care oriented students, residents, and providers. The Area Health Education Centers (AHEC) program assists schools in the planning, development, and operation of AHECs to initiate education system incentives to attract and retain health care personnel in scarcity areas. By linking the academic resources of the university health sciences center with local planning, educational, and clinical resources, the AHEC program establishes a network of community-based training sites to provide educational services to students, faculty, and practitioners in underserved areas, and ultimately to improve the delivery of health care in the service area. The program embraces the goal of increasing the number of health professions graduates who ultimately will practice in underserved areas. In addition, the program provides health careers recruitment enhancement activities to attract high school students from underserved areas into health careers.

This program is not included in the President's budget for FY 2003. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Federal Involvement: Substantial Federal involvement will be detailed in the application materials.

Eligibility: The types of entities eligible to apply for this program are public or private nonprofit accredited schools of medicine and osteopathic medicine and incorporated consortia made up of such schools, or the parent institutions of such schools. Also, in States where no AHEC program is in operation (the states of Delaware, Iowa, Kansas, Michigan, North Dakota, South Dakota, Rhode Island, and Puerto Rico), an accredited school of nursing is an eligible applicant.

Statutory Funding Preference: As provided in section 791 (a) of the Public Health Service Act, as amended, preference will be given to any qualified applicant that: (1) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (2) during the 2-year period preceding the fiscal year for which an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group. Funds will be awarded to approved applicants in the following order: (1) Competing continuations, (2) new starts in States with no AHEC program, (3) other new starts, and (4) competing supplements.

Administrative Special Considerations: Special consideration will be given to qualified applicants who support the Bureau of Health Professions Bureau of Health Professions' Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle, or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. More information can be found at: *http://www.hrsa.gov/bhpr.*

Special consideration will also be given to applicants who (a) develop new and innovative approaches to education and training using distance learning methodologies/telehealth, or (b) enhance or expand existing distance learning educational programs with the purpose of preparing health professionals and health professional students to deliver quality health care in medically underserved communities.

Review Criteria: Final review criteria are included in the application kit.

Matching Requirements: Awardees shall make available (directly through contributions from State, county or municipal government, or the private sector) non-Federal contributions in cash in an amount not less than 50 percent of the operating costs of the AHEC Program. However, the Secretary may grant a waiver for up to 75 percent of the amount required in the first 3 years in which an awardee receives funds for this program. These funds must be for the express use of the AHEC Programs and Centers to address AHEC project goals and objectives.

Estimated Amount of This Competition: $8 million.

Estimated Number of Awards: 9.

Estimated or Average Size of Each Award: $900,000.

Estimated Project Period: 3 years.

HRSA 03–013 Basic/Core Area Health Education Centers* (BAHEC)

Application Availability Date: August 26, 2002.

Application Deadline: November 25, 2002.

Projected Award Date: August 29, 2003.

Program Contact Person: Louis D. Coccodrilli.

Phone Number: (301) 443–6950.

E-mail: lcoccodrilli@hrsa.gov.

HRSA 03–014 Model State-Supported Area Health Education Centers* (MAHEC)

Legislative Authority: Public Health Service Act, Title VII, Section 751, 42 U.S.C. 294a.

CFDA Number: 93.107.

Purpose: This program awards funds to schools to improve the distribution, diversity, supply, and quality of health personnel in the health services delivery system by encouraging the regionalization of health professions schools. Emphasis is placed on community-based training of primary care oriented students, residents, and providers. The Area Health Education Centers (AHEC) program assists schools in the development and operation of AHECs to implement educational system incentives to attract and retain health care personnel in scarcity areas. By linking the academic resources of the university health science center with local planning, educational, and clinical resources, the AHEC program establishes a network of health-related institutions to provide educational services to students, faculty, and practitioners, and ultimately to improve the delivery of health care in the service area. The program embraces the goal of increasing the number of health professions graduates who ultimately

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will practice in underserved areas. In addition, the program provides health careers recruitment enhancement activities to attract high school students from underserved areas into health careers. The AHEC programs are collaborative partnerships, which address current health workforce needs within a region of a State or in an entire State.

This program is not included in the President's budget for FY 2003. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Matching or Cost Sharing Requirements: Awardees shall make available (directly or through contributions from State, county or municipal governments, or the private sector) recurring non-Federal contributions in cash in an amount not less than 50 percent of the operating costs of the Model State-Supported AHEC program.

Eligibility: The entities eligible to apply for this program are public or private nonprofit accredited schools of medicine and osteopathic medicine and incorporated consortia made up of such schools or the parent institutions of such schools. Applicants must have previously received funds, but are no longer receiving funds under section 751 (a)(1) of the Public Health Service Act, as amended, and be operating an AHEC program.

Statutory Funding Preference: As provided in section 791 (a) of the Public Health Service Act, as amended, preference will be given to any qualified applicant that: (1) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (2) during the 2-year period preceding the fiscal year for which an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Administrative Special Considerations: Special consideration will be given to qualified applicants who support the Bureau of Health Professions' Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle, or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. More information can be found at http://www.hrsa.gov/bhpr.

Special consideration will also be given to applicants who (a) develop new and innovative approaches to education and training using distance learning methodologies/telehealth, or (b) enhance or expand existing distance learning educational programs with the purpose of preparing health professionals and health professional students to deliver quality health care in medically underserved communities.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: $5.7 million.

Estimated Number of Awards: 9.

Estimated or Average Size of Each Award: $650,000.

Estimated Project Period: 3 years.

HRSA 03–014 Model State-Supported Area Health Education Centers* (MAHEC)

Application Availability Date: August 26, 2002.

Application Deadline: November 25, 2002.

Projected Award Date: August 29, 2003.

Program Contact Person: Louis D. Coccodrilli.

Phone Number: (301) 443–6950.

E-mail: lcoccodrilli@hrsa.gov.

HRSA 03–015 Health Administration Traineeships and Special Projects* (HATR)

Legislative Authority: Public Health Service Act, Title VII, Section 769, 42 U.S.C. 295d.

CFDA Number: 93.962.

Purpose: Health Administration Traineeship Grants are awarded to eligible entities to provide traineeships for students enrolled in an accredited program in health administration, hospital administration, or health policy analysis and planning. Traineeship funds may be used to support tuition, fees, stipends and allowances including travel, subsistence expenses and dependency allowances. One of the goals of the Health Administration Traineeship Grant program is to encourage students to train and practice in medically underserved areas. It is anticipated that all approved applicants will receive awards.

This program is not included in the President's budget for FY 2003. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: Eligible applicants are public or non-profit private educational entities, including faith-based entities, graduate schools of social work but excluding accredited schools and programs of public health, offering programs in health administration, hospital administration or health policy analysis and planning accredited by the Accrediting Commission on Education in Health Services Administration.

Funding Preferences: In awarding grants under this authority, the Secretary shall give preference to qualified applicants meeting the following conditions:

(1) Not less than 25 percent of the graduates of applicant are engaged in full-time practice settings in medically underserved communities.

(2) The applicant recruits and admits students from medically underserved communities.

(3) For the purpose of training students, the applicant has established relationships with public and nonprofit providers of health care in the community involved; and

(4) In training students, the applicant emphasizes employment with public or nonprofit private entities.

Applicants must assure that, in awarding traineeships, priority will be given to students who demonstrate a commitment to employment with public or nonprofit private entities in health administration, hospital administration, or health policy analysis and planning.

Special Consideration: A special consideration will be given to applicants that during the two-year period preceding the fiscal year for which such an award is sought, have a high rate for placing graduates in medically underserved areas.

Estimated Amount of This Competition: $1,100,000.

Estimated Number of Awards To Be Made: 43.

Estimated or Average Size of Each Award: Traineeships awards range from $2,000 up to $65,000.

Estimated Project Period: 1 year.

HRSA 03–015 Health Administration Traineeships and Special Projects* (HATR)

Application Availability Date: October 1, 2002.

Application Deadline: December 11, 2002.

Projected Award Date: March 30, 2003.

Program Contact Person: Douglas S. Lloyd.

Phone Number: (301) 443–6853.

E-mail: dlloyd@hrsa.gov.

HRSA 03–016 Public Health Traineeships* (PHTR)

Legislative Authority: Public Health Service Act, Title VII, Section 767, 42 U.S.C. 295b.

CFDA Number: 93.964.

Purpose: Grants are awarded to accredited schools and programs of public health to support traineeships for individuals in fields where there is a severe shortage. Shortage fields are identified by statute and include epidemiology, environmental health, biostatistics, toxicology, nutrition, and maternal and child health.

This program is not included in the President's budget for FY 2003. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: An eligible entity is an accredited school of public health, and/or other public or nonprofit private entities, including faith-based organizations and community-based organizations, accredited for the provision of graduate or specialized training in public health.

Funding Priorities or Preferences: Funding priority will be given to applicants with students enrolled in graduate degrees in educational fields having a severe shortage of health professionals including epidemiology, emergency preparedness, environmental health, biostatistics, toxicology, nutrition, and maternal and child health. Other public health professional areas may be eligible if a severe local/State/regional shortage is documented by the applicant.

Estimated Amount of This Competition: $1, 700,000.

Estimated Number of Awards To Be Made: 37.

Estimated or Average Size of Each Award: Awards range from $10,000 to $165,000.

Estimated Project Period: 1 year.

HRSA 03–016 Public Health Traineeships* (PHTR)

Application Availability Date: October 1, 2002.

Application Deadline: December 9, 2002.

Projected Award Date: March 31, 2003.

Program Contact Person: Douglas S. Lloyd.

Phone Number: (301) 443–6853.

E-mail: dlloyd@hrsa.gov.

HRSA 03–017 Geriatric Education Centers* (GECS)

Legislative Authority: Public Health Service Act, Title VII, section 753(a), 42 U.S.C. 294c.

CFDA Number: 93.969.

Purpose: Grants are given to support the development of collaborative arrangements involving several health professions schools and health care facilities. These arrangements, called Geriatric Education Centers (GECs), facilitate training of health professional faculty, students, and practitioners in the diagnosis, treatment, prevention of disease, disability, and other health problems of the aged. Projects supported under these grants must offer training involving four or more health professions, one of which must be allopathic or osteopathic medicine. Health professions include allopathic physicians, osteopathic physicians, dentists, optometrists, podiatrists, pharmacists, nurses, nurse practitioners, physician assistants, chiropractors, clinical psychologists, health administrators, and allied health professionals including professional counselors and social workers. These projects must address all of the following statutory purposes: (1) Improve the training of health professionals in geriatrics, including geriatric residencies, traineeships or fellowships; (2) develop and disseminate curricula relating to the treatment of the health problems of elderly individuals; (3) support the training and retraining of faculty to provide instruction in geriatrics; (4) support continuing education of health professionals who provide geriatric care; and (5) provide students with clinical training in geriatrics in nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers.

This program is not included in the President's budget for FY 2003. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: Grants may be made to accredited health professions schools as defined by section 799B(1), (3) or (4) and section 801(2) of The Public Health Service Act. These include, among others: schools of medicine; schools of dentistry; schools of osteopathic medicine; schools of pharmacy; schools of optometry; schools of podiatric medicine; schools of veterinary medicine; schools of public health; schools of chiropractic; graduate programs in clinical psychology, clinical social work, health administration, and behavioral health and mental health practice; programs for the training of physician assistants; schools of allied health; and schools of nursing.

Applicants must be located in the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, or the Federated States of Micronesia.

Funding Priorities and/or Preferences: As provided in section 791(a) of the Public Health Service Act, as amended, preference will be given to any qualified applicant that: (1) Has a high rate for placing graduates in practice settings having the focus of serving residents of medically underserved communities or (2) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

So that new applicants may compete equitably, a preference will be given to those new programs that meet at least four of the criteria described in section 791(c)(3) of The Public Health Service Act, as amended, concerning medically underserved communities and populations.

A funding priority will be given to qualified applicants who devote significant resources to support the training and retraining of faculty to provide instruction in geriatrics.

Administrative Special Consideration: Special consideration will be given to applicants who (a) develop new and innovative approaches to education and training using distance learning methodologies/telehealth, or (b) enhance or expand existing distance learning educational programs with the purpose of preparing health professionals and health professional students to deliver quality health care in medically underserved communities.

Review Criteria: Review criteria are included in the application kit.

Estimated Amount of This Competition: $3,000,000.

Estimated Number of Awards: 9.

Estimated or Average Size of Each Award: $200,000 for single applications and $400,000 for consortium applications.

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Estimated Project Period: 5 years.

HRSA 03–017 Geriatric Education Centers* (GECS)

Application Availability Date: October 21, 2002.
Application Deadline: January 27, 2003.
Projected Award Date: June 30, 2003.
Program Contact Person: Barbara Broome.
Phone Number: (301) 443–6866.
E-mail: bbroome@hrsa.gov.

HRSA 03–018 Geriatric Training for Physicians, Dentists, and Behavioral and Mental Health Professionals* (GTPD)

Legislative Authority: Public Health Service Act, Title VII, Section 753(b), 42 USC 294c.
CFDA Number: 93.156.
Purpose: The purpose of this program is to increase the number of physicians, dentists, and behavioral and mental health professionals who plan to teach geriatric medicine, geriatric dentistry, or geriatric behavioral and mental health. Supported programs provide training in geriatrics and exposure to the physical and mental disabilities of elderly individuals through a variety of service rotations such as geriatric consultation services, acute care services, dental services, geriatric behavioral and/or mental health units, day and home care programs, rehabilitation services, extended care facilities, geriatric ambulatory care and comprehensive evaluation units, and community care programs for elderly mentally retarded individuals. Programs emphasize the principles of primary care as demonstrated through continuity, ambulatory, preventive, and psychosocial aspects of the practice of geriatric medicine, geriatric dentistry, and geriatric behavioral and mental health. Projects provide training in geriatrics through two-year fellowship programs and/or one-year retraining programs. Learning components for two-year fellows include clinical, research, administration, and teaching. A minimum of three fellows—one from each discipline—is required each year of the award.

This program is not included in the President's budget for FY 2003. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: Schools of medicine, schools of osteopathic medicine, teaching hospitals, and graduate medical education programs.

Funding Priorities and/or Preferences:

Statutory Funding Preferences: As provided in section 791(a) of the Public Health Service Act, as amended, preference will be given to any qualified applicant that: (A) has a high rate for placing graduates in practice settings having the focus of serving residents of medically underserved communities or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will be applied to only those applications that rank above the 20th percentile of the applications recommended for approval by the peer review group.

So that new applicants may compete equitably, a preference will be given to those new programs that meet at least four of the criteria described in section 791(c)(3) of the Public Health Service Act, as amended, concerning medically underserved communities and populations.

Administrative Special Consideration: Special consideration will be given to applicants who (a) develop new and innovative approaches to education and training using distance learning methodologies/telehealth, or (b) enhance or expand existing distance learning educational programs with the purpose of preparing health professionals and health professional students to deliver quality health care in medically underserved communities.

Estimated Amount of This Competition: $2,000,000.
Estimated Number of Awards: 5.
Estimated or Average Size of Each Award: $400,000.
Estimated Project Period: 5 years.

HRSA 03–018 Geriatric Training for Physicians, Dentists, and Behavioral and Mental Health Professionals* (GTPD)

Application Availability Date: August 12, 2002.
Application Deadline: December 16, 2002.
Project Award Date: June 30, 2003.
Program Contact Person: Kathleen Bond.
Phone Number: (301) 443–8681.
E-mail: kbond@hrsa.gov.

HRSA 03–019 Geriatric Academic Career Awards* (GACA)

Legislative Authority: Public Health Service Act, Title VII, Section 753(c), 42 U.S.C. 294c.
CFDA Number: 93.250.
Purpose: The purpose of this program is to increase the number of junior faculty in geriatrics at accredited schools of medicine and osteopathic medicine and to promote their careers as academic geriatricians. Award recipients must serve as members of the faculties of accredited schools of allopathic or osteopathic medicine providing teaching services, according to the service requirements under this award, for up to 5 years. Prior to submitting an application for the Geriatric Academic Career Award, individuals must have an agreement with an eligible school setting forth the terms and conditions of the award. The agreement with the school must permit the individual to serve as a full-time (as determined by the school) member of the faculty, for not less than the period of the award. As provided in section 753 (c)(5) of the Public Health Service Act, as amended, an individual who receives an award shall provide training in clinical geriatrics, including the training of interdisciplinary teams of health care professionals. The provision of such training shall constitute at least 75 percent of the obligations of the individual under this award. Geriatric Academic Career Awards are made directly to individuals, not institutions.

This program is not included in the President's budget for FY 2003. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: Geriatric Academic Career Awards are provided for individuals who meet the following criteria: (1) Are board certified or board eligible in internal medicine, family practice, or psychiatry; (2) have completed an approved fellowship program in geriatrics; and (3) have a junior faculty appointment at an accredited school of medicine (allopathic or osteopathic).

Review Criteria: Review criteria are included in the application kit.

Estimated Amount of This Competition: $1,000,000.
Estimated Number of Awards: 20.
Estimated or Average Size of Each Award: $50,000.
Estimated Project Period: 5 years.

HRSA 03–019 Geriatric Academic Career Awards* (GACA)

Application Availability Date: November 4, 2002.
Application Deadline: February 3, 2003.
Projected Award Date: June 30, 2003.
Program Contact Person: Kathleen Bond.
Phone Number: (301) 443–8681.
E-mail: kbond@hrsa.gov.

HRSA 03–020 Quentin N. Burdick Program for Rural Interdisciplinary Training* (QBRH)

Legislative Authority: Public Health Service Act, Title VII, Section 754, 42 U.S.C. 294d, Section 750(a), 42 U.S.C. 294.
CFDA Number: 93.192.
Purpose: The goal of this program is to support the education and training of health professions students in rural underserved communities and to improve access to health care in rural areas. In an effort to address the rural health professions workforce needs, this program provides funding for student stipends and for interdisciplinary training projects designed to: (1) Use new and innovative methods to train health care practitioners to provide services in rural areas; (2) demonstrate and evaluate innovative interdisciplinary methods and models designed to provide access to cost-effective comprehensive health care; (3) deliver health care services to individuals residing in rural areas; (4) enhance the amount of relevant research conducted concerning health care issues in rural areas; and (5) increase the recruitment and retention of health care practitioners in rural areas and make rural practice a more attractive career choice for health care practitioners.

This program is not included in the President's budget for FY 2003. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: Applications will be accepted from health professions schools, academic health centers, State or local governments, or other appropriate public or private nonprofit entities, including faith-based organizations and community-based organizations, for funding and participation in health professions and nursing training activities. Applications must be jointly submitted by at least two eligible applicants with the express purpose of assisting individuals in academic institutions in establishing long-term collaborative relationships with health care providers in rural areas. Applicants must designate a rural health care agency or agencies for clinical treatment or training including hospitals, community health centers, migrant health centers, rural health clinics, community behavioral and mental health centers, long-term care facilities, Native Hawaiian health centers or facilities operated by the Indian Health Service or an Indian tribe or tribal organization or Indian organization under a contract with the Indian Health Service under the Indian Self-Determination Act.

Statutory Funding Preference: As provided in section 791(a) of the Public Health Service Act, as amended, preference will be given to any qualified applicant that: (1) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (2) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

So that new applicants may compete equitably, a preference will be given to those new programs that meet at least four of the criteria described in section 791(c)(3) of The Public Health Service Act, as amended, concerning medically underserved communities and populations.

A funding priority will be given to qualified applicants who devote significant resources to educate and train health professionals in rural areas experiencing shortages in geriatrics, oral health, and/or mental health.

Administrative Special Consideration: Special consideration will be given to applicants who (a) develop new and innovative approaches to education and training using distance learning methodologies/telehealth, or (b) enhance or expand existing distance learning educational programs with the purpose of preparing health professionals and health professional students to deliver quality health care in medically underserved communities.

Review Criteria: Review criteria are included in the application kit.

Estimated Amount of This Competition: $3,000,000.
Estimated Number of Awards: 13.
Estimated or Average Size of Each Award: $225,000.
Estimated Project Period: 3 years.

HRSA 03–020 Quentin N. Burdick Program for Rural Interdisciplinary Training* (QBRH)

Application Availability Date: October 11, 2002.
Application Deadline: January 10, 2003.
Projected Award Date: June 30, 2003.
Program Contact Person: Marcia Starbecker.
Phone Number: (301) 443–6867.
E-mail: mstarbecker@hrsa.gov.

HRSA 03–021 Allied Health Projects* (AHPG)

Legislative Authority: Public Health Service Act, Title VII, section 755, 42 U.S.C. 294e.
CFDA Number: 93.191.
Purpose: Grants are awarded to assist eligible entities in meeting the costs associated with expanding or establishing programs that will: (1) Expand enrollments in allied health disciplines that are in short supply or whose services are most needed by the elderly; (2) provide rapid transition training programs in allied health fields to individuals who have baccalaureate degrees in health-related sciences; (3) establish community-based training programs that link academic centers to rural clinical settings; (4) provide career advancement training for practicing allied health professionals; (5) expand or establish clinical training sites for allied health professionals in medically underserved or rural communities in order to increase the number of individuals trained; (6) develop curriculum that will emphasize knowledge and practice in the areas of prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics; (7) expand or establish interdisciplinary training programs that promote the effectiveness of allied health practitioners in geriatric assessment and the rehabilitation of the elderly; (8) expand or establish demonstration centers to emphasize innovative models to link allied health, clinical practice, education, and research; and (9) meet the costs of projects to plan, develop, and operate or maintain graduate programs in behavioral and mental health practice.

This program is not included in the President's budget for FY 2003. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: Eligible entities are health professions schools, academic health centers, State or local governments, or other public or private nonprofit entities, including faith-based organizations and community-based organizations. Eligible academic institutions are also required to use funds in collaboration with two or more disciplines.

Funding Priorities and/or Preferences: As provided in section 791(a) of the Public Health Service Act, as amended,

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preference will be given to any qualified applicant that: (1) has a high rate for placing graduates in practice settings having the focus of serving residents of medically underserved communities; or (2) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

A preference will be given to those new programs that meet at least four of the criteria described in section 791(c)(3) of the Public Health Service Act, as amended, concerning medically underserved communities and populations so that new applicants may also compete equitably.

A funding priority will be given to qualified applicants who devote significant resources to provide community-based training experiences designed to improve access to health care services in underserved areas; these applicants include Asian-American and Pacific Islander Serving Institutions, Hispanic Serving Institutions, Historically Black Colleges and Universities, Tribal Colleges, and Universities serving American Indians and Alaska Natives, or an institution that collaborates with one or more of the above listed institutions (President's Executive Orders 12876, 12900, 13021, and 13125); or who educate and train allied health professionals experiencing shortage in the areas of medical technology, cytotechnology, genetic counseling and/or emergency preparedness.

Administrative Special Consideration: Special consideration will be given to applicants who (a) develop new and innovative approaches to education and training using distance learning methodologies/telehealth, or (b) enhance or expand existing distance learning educational programs with the purpose of preparing health professionals and health professional students to deliver quality health care in medically underserved communities.

Review Criteria: Review criteria are included in the application kit.

Estimated Amount of This Competition: $1,500,000.

Estimated Number of Awards: 13.

Estimated or Average Size of Each Award: $115,000.

Estimated Project Period: 3 years.

HRSA 03–021 Allied Health Projects* (AHPG)

Application Availability Date: October 11, 2002.

Application Deadline: January 13, 2003.

Projected Award Date: June 30, 2003.

Program Contact Person: Young Song.

Phone Number: (301) 443–3353.

E-mail: ysong@hrsa.gov.

HRSA 03–022 Chiropractic Demonstration Project Grants* (CHIRO)

Legislative Authority: Public Health Service Act, Title VII, section 755(b)(3), 42 U.S.C. 294e, Section 750(a), 42 U.S.C. 294.

CFDA Number: 93.212.

Purpose: Grants are awarded to carry out demonstration projects in which chiropractors and physicians collaborate to identify and provide effective treatment for spinal and lower-back conditions. Among other requirements, the project must: (1) Address the identification and treatment of spinal and/or lower-back conditions; (2) be founded on collaborative efforts between chiropractors and allopathic or osteopathic physicians; (3) include a strong research protocol which will result in a significant expansion of documented research in the area addressed and which is suitable for publication in referred health professions journals, including research oriented publications; (4) include an explicit strategy for case-finding and a strategy for making direct comparisons to other forms of treatment. The results must be generalizable to patients cared for in clinical practices addressing spinal and/or lower-back conditions; and (5) include, whenever feasible, minorities and women in study populations so that research findings can be of benefit to all persons at risk of the disease, disorder, or condition under study.

This program is not included in the President's budget for FY 2003. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: Eligible entities are accredited health professions schools, academic health centers, State or local governments, other appropriate public or private nonprofit entities, including faith-based organizations and community-based organizations, or public or private nonprofit accredited schools of chiropractic.

Funding Preferences and/or Priorities: A funding priority will be given to qualified applicants who devote significant project resources to research in geriatrics.

Review Criteria: Review criteria are included in the application kit.

Estimated Amount of This Competition: $1,050,000.

Estimated Number of Awards: 3 awards.

Estimated or Average Size of Each Award: $325,000.

Estimated Project Period: 3 years.

HRSA 03–022 Chiropractic Demonstration Project Grants* (CHIRO)

Application Availability Date: November 18, 2002.

Application Deadline: March 31, 2003.

Projected Award Date: August 29, 2003.

Program Contact Person: Jennifer Hannah.

Phone Number: (301) 443–0908.

E-mail: jhannah@hrsa.gov.

HRSA 03–023 Grants to States for Loan Repayment Programs (SLRP)

Legislative Authority: Public Health Service Act, Title III, Section 338I, 42 U.S.C., 254q–1.

CFDA Number: 93.165.

Purpose: The purpose of these grant funds is to assist States in operating programs for the repayment of educational loans of health professionals in return for their practice in Federally-designated health professional shortage areas to increase the availability of primary health services in such areas.

Matching or Cost Sharing Requirement: States seeking support must provide assurance that, with respect to costs of making loan repayments under contracts with health professionals, the State will make available (directly or through donations from public or private entities) non-Federal contributions in cash in an amount equal to no less than $1 for $1 of Federal funds provided in grants. In determining the amount of non-Federal contributions in cash that a State has to provide, no Federal funds may be used in the State's match.

Eligibility: All 50 States are eligible to apply for funding. The program administered by the grant must be administered by a State agency.

Estimated Amount of This Competition: $4,100,000.

Estimated Number of Awards To Be Made: 21.

Estimated or Average Size of Each Award: $200,000.

Estimated Project Period: 3 years.

HRSA 03–023 Grants to States for Loan Repayment Programs (SLRP)

Application Availability Date: April 1, 2003.

Application Deadline: May 15, 2003.

Projected Award Date: August 29, 2003.

Program Contact Person: Mildred Brooks-McDow.

Phone Number: (301) 443–6889.

E-mail: mbrooks-mcdow@hrsa.gov.

HRSA 03–024 Cooperative Agreement for a Regional Center for Health Workforce Studies* (RCHWS)

Legislative Authority: Public Health Service Act, Title VII, Section 761.

CFDA Number: 93.300.

Purpose: The purpose of this Cooperative Agreement is to support health workforce research, analysis and technical assistance with a State, regional and national focus. In addition to covering specific health workforce disciplines, the Regional Center will conduct research on the crosscutting, topical areas of distribution, diversity, genetics, and geriatrics. The Regional Center may also conduct research on health workforce issues related to border, mental and oral health, cultural competence, and the impact of health workforce development on the access to, or financing of, a State's or region's health care system.

This program is not included in the President's budget for FY 2003. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Federal Involvement: Federal involvement will be detailed in the application materials.

Matching or Cost Sharing Requirement: The award recipient institution must share in the cost of the program as follows: For each year funds are awarded under this program, the matching contribution shall be at least one-third of the amount of the Federal award for that year. Up to 50 percent of the recipient's matching contribution may be in the form of in-kind donations such as faculty time, staff time, use of computers and other shared resources.

Eligibility: Eligible applicants are State or local governments, health professions schools, schools of nursing, academic health centers, community-based health facilities, and other appropriate public or private nonprofit entities, including faith-based organizations and community-based organizations.

Funding Priorities or Preferences: Because the Regional Center will have a strong regional component, the Bureau of Health Professions will consider the regional location and focus of the Center selected to ensure that the geographic distribution of all of the Centers will achieve maximum geographic coverage of the nation. Currently, there are five Regional Centers covering all regional areas of the country except the Southeast region. Therefore, applications are being accepted for a Regional Center only in the Southeast.

For purposes of this competition, the geographic area covered by the Southeast is HRSA Region 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee). For a map and description of the HRSA Regions, *see* HRSA's Web site at: *http://bhpr.hrsa/gov/healthworkforce/fieldoffices.htm.*

Estimated Amount of this Competition: $250,000.

Estimated Number of Awards To Be Made: 1.

Estimated or Average Size of Each Award: $250,000.

Estimated Project Period: Up to 3 years.

HRSA 03–024 Cooperative Agreement for a Regional Center for Health Workforce Studies* (RCHWS)

Application Availability Date: November 1, 2002.

Application Deadline: January 21, 2003.

Projected Award Date: March 31, 2003.

Program Contact Person: Louis A. Kuta and Sarah Richards.

Phone Number: (301) 443–6634 and (301) 443–5452, respectively.

E-mail: LKuta@HRSA.gov and SRichards@HRSA.gov.

Special Programs for Individuals

HRSA 03–025 NHSC Scholarship Program (NHSCS)

Legislative Authority: Public Health Service Act, Title III, Sections 338A and 338C–E, 42 USC 254l and 254m–o.

CFDA Number: 93.288.

Purpose: The purpose of the National Health Service Corps (NHSC) Scholarship Program is to ensure an adequate supply of physicians, dentists, certified nurse midwives, certified family nurse practitioners, and physician assistants, and, if needed by the NHSC, an adequate supply of other health professionals, to provide primary health services to the populations located in Health Professional Shortage Areas (HPSAs) identified by the Secretary of the Department of Health and Human Services. HPSAs can be found in rural and urban communities across the Nation. The NHSC provides scholarships to health professions students. In return, scholarship recipients agree to provide primary health services in NHSC community sites across the Nation. The NHSC is seeking health professions students who demonstrate interest in serving the Nation's medically underserved populations and remaining in HPSAs beyond their service commitment.

Eligibility: At the time of award, the applicant must be a U.S. citizen or national and must (1) be enrolled or accepted for enrollment as a full-time student in an accredited school in a State and in a course of study or program, offered by such school and approved by the Secretary, leading to a degree in medicine, osteopathic medicine, dentistry or other health profession; (2) be eligible for, or hold, an appointment as a Commissioned Officer in the Regular or Reserve Corps of the Public Health Service or be eligible for selection for civilian service in the NHSC; (3) submit an application to participate in the Scholarship Program; and (4) sign and submit to the Secretary at the time of such application, a written contract to accept payment of a scholarship and to serve for the applicable period of obligated service in a HPSA.

Funding Priorities or Preferences: Priority will be given (A) first, to applicants who are former recipients of NHSC scholarship support and to former recipients of the Federal Scholarship Program for Students of Exceptional Financial Need, (B) second, to applicants who have characteristics that increase the probability of their continuing to practice in a HPSA after they have completed their service commitment, and (C) third, subject to subparagraph (B), to applicants certified by their school as being from a disadvantaged background.

Estimated Amount of This Competition: $55,000,000.

Estimated Number of Awards To Be made: 522.

Estimated or Average Size of Each Award: FNP/PA/CNM $67,000; Dentists $75,000; MD/DO $135,000.

HRSA 03–025 NHSC Scholarship Program (NHSCS)

Application Availability Date: January 7, 2003.

Application Deadline: March 28, 2003.

Projected Award Date: September 30, 2003.

Program Contact Person: Sonya Shorter.

Phone Number: (301) 594–4410.

E-mail: NHSC@HRSA.GOV.

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HRSA 03–026 National Health Service Corps Loan Repayment Program (NHSCL)

Legislative Authority: Public Health Service Act, Title III, Sections 338B–E, 42 U.S.C. 254l–1–o.

CFDA Number: 93.162.

Purpose: The purpose of the National Health Service Corps (NHSC) Loan Repayment Program (LRP) is to ensure an adequate supply of health professionals to provide primary health services (through a culturally competent, interdisciplinary team of clinicians) to populations located in health professional shortage areas (HPSAs) identified by the Secretary of the Department of Health and Human Services. HPSAs can be found in rural and urban communities across the Nation. The NHSC LRP recruits health professionals who agree to provide primary health services in NHSC community sites. In return, the NHSC LRP assists clinicians in their repayment of qualifying educational loans. The NHSC is seeking clinicians who demonstrate interest in serving the Nation's medically underserved populations and remaining in HPSAs beyond their service commitment.

Eligibility: An applicant for the NHSC LRP must be a citizen or national of the United States and must (1) (A) have a degree in medicine, osteopathic medicine, dentistry, or other health profession, or be certified as a nurse midwife, nurse practitioner, or physician assistant, (B) be enrolled in an approved graduate training program in medicine, osteopathic medicine, dentistry, behavioral and mental health, or other health profession, or (C) be enrolled as a full-time student in an accredited educational institution in a State, and in the final year of a course of a study or program, offered by such institution and approved by the Secretary, leading to a degree in medicine, osteopathic medicine, dentistry, or other health profession; (2) be eligible for, or hold, an appointment as a commissioned officer in the Regular or Reserve Corps of the Public Health Service or be eligible for selection for civilian service in the NHSC; and (3) submit to the Secretary an application for a contract relating to the payment by the Secretary of the educational loans of the individual in consideration of the individual serving for an obligated period of time. Applicants should be negotiating or have secured employment at an eligible community site, and must not have any other service obligations.

Funding Priorities or Preferences: Priority will be given to (A) applicants whose health profession training is needed by the NHSC (needed disciplines will be identified in the applicant bulletin), (B) applicants who have characteristics that increase the probability of their continuing to practice in HPSAs after they have completed service, and (C) subject to paragraph (B), applicants from disadvantaged backgrounds. A funding preference will also be given to applicants serving HPSAs of greatest need.

Estimated Amount of This Competition: $62,600,000.

Estimated Number of Awards To Be Made: 970.

Estimated or Average Size of Each Award: $63,850.

Estimated Project Period: 2 years.

HRSA 03–026 National Health Service Corps Loan Repayment Program (NHSCL)

Application Availability Date: October 1, 2002.

Application Deadline: March 28, 2003.

Projected Award Date: August 29, 2003.

Program Contact Persons: Kay Cook, Gail Allen.

Phone Numbers: (301) 594–4403 (Cook), (301) 594–4394 (Allen).

E-mail: kcook@hrsa.gov, gallen@hrsa.gov.

HRSA 03–027 Faculty Loan Repayment Program* (FLRP)

Legislative Authority: Public Health Service Act, Title VII, section 738(a), 42 U.S.C. 293b.

CFDA Number: 93.923.

Purpose: The Faculty Loan Repayment Program (FLRP) provides a financial incentive for degree-trained health professions personnel from disadvantaged backgrounds to pursue an academic career. The individuals agree to serve as members of the faculties of accredited health professions schools providing teaching services for a minimum of 2 years. The Federal Government in turn agrees to pay up to $20,000, for each year of service, of the outstanding principal and interest on the individual's education loans.

This program is not included in the President's budget for FY 2003. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Matching or Cost Sharing Requirement: The school that has entered into a contractual agreement with a recipient is required, for each year in which the recipient serves as a faculty member under contract with HHS, to make payments of principal and interest in an amount equal to the amount of such quarterly payments made by the HHS Secretary. The payments must be in addition to the faculty salary the recipient would ordinarily receive or the school must request a waiver of its share of cost. The Secretary may waive the school's matching requirement if the Secretary determines it will impose an undue financial hardship on the school.

Eligibility: An individual is eligible to apply for loan repayment under FLRP if the individual is from a disadvantaged background, holds a health professions degree, is enrolled in an approved health professions graduate program, or will be enrolled as a full-time student in the final year of health professions training that leads to a degree in one of the following health professions: allopathic medicine, osteopathic medicine, podiatric medicine, veterinary medicine, dentistry, pharmacy, optometry, nursing, public health, dental hygiene, medical laboratory technology, occupational therapy, physical therapy, radiologic technology, speech pathology, audiology, medical nutrition therapy and graduate programs in behavioral health and mental health practice, clinical psychology, clinical social work, and marriage and family therapy.

Funding Priorities and/or Preferences: Preference will be given to applicants who have received a commitment from the employing institution to match FLRP funds; not previously held a faculty position; been out of school less than 5 years; not previously participated in FLRP; and who contribute to geographic distribution across the country and represent diverse health professions disciplines.

Review Criteria: Review criteria are included in the application kit.

Estimated Amount of This Competition: $1,000,000.

Estimated Number of Awards: 30.

Estimated or Average Size of Each Award: $16,800 per year.

Estimated Project Period: Minimum of 2 years.

HRSA 03–027 Faculty Loan Repayment Program* (FLRP)

Application Availability Date: March 3, 2003.

Application Deadline: May 30, 2003.

Projected Award Date: August 29, 2003.

Program Contact Person: Lorraine Evans.

Phone Number: (301) 443–0785.

E-mail: flrpinfo@hrsa.gov.
Internet Address: http://bhpr.hrsa.gov/dsa/flrp.

HRSA 03–028 Scholarships for Disadvantaged Students (SDS)

Legislative Authority: Public Health Service Act, Title VII, Section 737, 42 U.S.C. 293a.

CFDA Number: 93.925.

Purpose: The Scholarships for Disadvantaged Students (SDS) program contributes to the diversity of the health professions students and practitioners. The program provides funding to eligible health professions and nursing schools to be used for scholarships to students from disadvantaged backgrounds who have financial need for scholarships and are enrolled, or accepted for enrollment, as full-time students at the eligible schools. SDS program Web site is *http://bhpr.hrsa.gov/dsa/weblinks/.*

Eligibility: The following entities are eligible to apply for this program: (1) schools of allopathic medicine, osteopathic medicine, dentistry, optometry, pharmacy, podiatric medicine, veterinary medicine, public health, nursing, chiropractic, or allied health, graduate programs in behavioral and mental health practice, or an entity providing programs for the training of physician assistants; and (2) schools with a program for recruiting and retaining students from disadvantaged backgrounds.

Students from disadvantaged backgrounds must comprise the following: (1) At least 10 percent of the total enrollment (full-time students) of the school's (*e.g.*, dentistry, baccalaureate nursing) during Academic Year (AY) 2000–2001 (07/01/2000–06/30/2001), and (2) At least 10 percent of the total graduates (who were full-time students) of the school's program during AY 2000–2001 (707/01/2000–06/30/2001), and (3) A school must have economically disadvantaged students enrolled and graduated during AY 2000–2001.

Funding Priorities and/or Preferences: A priority will be given to eligible entities that are health professions and nursing schools based on the proportion of graduating students going into primary care, the proportion of underrepresented minority students, and the proportion of graduates working in medically underserved communities.

Review Criteria: Review criteria are included in the application kit.

Estimated Amount of This Competition: Up to $10,000,000 is available under the President's FY 2003 budget.

Estimated Number of Awards: 105.

Estimated or Average Size of Each Award: $95,000.

Estimated Project Period: 1 year.

HRSA 03–028 Scholarships for Disadvantaged Students (SDS)

Application Availability Date: November 1, 2002.

Application Deadline: December 17, 2002.

Projected Award Date: March 31, 2003.

Program Contact Person: Andrea Castle, Pam Wellens.

Phone Number: (301) 443–1701, (301) 443–5168.

E-mail: dpolicy@hrsa.gov.

HRSA 03–029 Nursing Education Loan Repayment Program (NELRP)

Legislative Authority: Authorization Public Health Service Act, Title VIII, Section 846, 42 U.S.C. 297n.

CFDA Number: 93.908.

Purpose: Under the Nursing Education Loan Repayment Program (NELRP), registered nurses are offered the opportunity to enter into a contractual agreement with the Secretary to receive loan repayment for up to 85 percent of their qualifying loan balance as follows—30 percent each year for the first 2 years and 25 percent for the third year. In exchange, nurses agree to serve for 2 or 3 years in an eligible health facility (EHF).

Eligibility: An individual is eligible to apply for NELRP if the individual: (1) Has received a baccalaureate or associate degree in nursing, a diploma in nursing, or a graduate degree in nursing; (2) has obtained one or more nursing student loans authorized under section 835(a) of the Public Health Service Act, as amended, or any other educational loan for nurse training costs; (3) enters into an agreement to serve as a full-time registered nurse for a period of not less than two years in an EHF; and (4) is a U.S. citizen, U.S. national, or a permanent legal resident of the United States.

An "EHF" is defined as: (1) An Indian Health Service health center; (2) a Native Hawaiian health center; (3) a public hospital (operated by a State, county, or local government); (4) a health center funded under section 330 of the Public Health Service Act (including community, migrant, homeless, and public housing centers); (5) a rural health clinic under section 1861(aa)(2) of the Social Security Act; or (6) a public or nonprofit private health facility determined by the Secretary to have a critical shortage of nurses.

Funding Priorities or Preferences: As provided in section 846(e) of the Public Health Service Act, as amended, first preference will be given to qualified applicants with the greatest financial need who agree to serve in EHFs located in a county with a shortage of nurses.

Remaining funds will be awarded in the following order:

- First, to qualified applicants employed at an EHF located in a county with a shortage of nurses regardless of the applicants' financial need.
- Second, to qualified applicants employed at an EHF not located in a county with a shortage of nurses who demonstrate greatest financial need.
- Third, to other qualified applicants who are serving in States with few or no new NELRP participants.

Estimated Amount of This Competition: $13,840,000.

Estimated Number of Contracts to be Awarded: 675 new contracts.

Estimated or Average Size of Each Contract: $20,500.

HRSA 03–029 Nursing Education Loan Repayment Program (NELRP)

Application Availability Date: October 1, 2002.

Application Deadline: January 31, 2003.

Projected Award Date: May 30, 2003.

Program Contact Person: Jacqueline Brown.

Phone Number: (301) 443–3232.

E-mail: jbrown1@hrsa.gov.

Bureau of Primary Health Care

P. A. 03–030 Community and Migrant Health Centers (CMHS)

Legislative Authority: Public Health Service Act, Title III, Section 330 (g), 42 U.S.C. 254b and 254b(g).

CFDA Number: 93.224 and 93.246.

Purpose: The Community Health Center and Migrant Health Center (C/MHC) programs are designed to promote the development and operation of community-based primary health care service systems in medically underserved areas for medically underserved populations. It is the intent of HRSA to continue to support health services in these areas, given the unmet need inherent in their provision of services to medically underserved populations. It is expected that each application submitted to serve one of these areas will present a clear focus on maintaining access to care and reducing health disparities identified in the target population. In FY 2003, HRSA will be implementing the second year of the President's Health Center Growth Initiative to expand access to the Nation's poor and underserved. HRSA will open competition for awards under Section 330 of the Public Health Service Act to support health services in the

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areas served by these grants. One hundred forty-four C/MHC grantees will reach the end of their project period during FY 2003. Applications are due 120 days before the expiration date.

Eligibility: Applicants are limited to currently funded programs whose project periods expire during FY 2003 and new organizations proposing to serve the same areas or populations being served by these existing programs. New organizations eligible to compete to serve one of these areas are public and nonprofit private entities, including faith-based organizations and community-based organizations.

Special Considerations: Communication with Field Office staff is essential for interested parties in deciding whether to pursue Federal funding as a C/MHC. Technical assistance and detailed information about each service area, such as census tracts, can be obtained by contacting the HRSA Field Office.

Estimated Amount of This Competition: $191,100,000.

Estimated Number of Awards To Be Made: 147.

Estimated or Average Size of Each Award: $1,300,000.

Estimated Project Period: 1–5 years.

HRSA 03–030 Communtiy and Migrant Health Centers (CMHS)

Application Availability Date: Continuous.

Application Deadline: Varies.

Projected Award Date: Varies.

Program Contact Person: Cephas Goldman (CDFA 93.224), George Ersek (CFDA93.246)

Phone Number: Goldman (301) 594–4300; Ersek (301) 594–4301.

E-mail: CGoldman@hrsa.gov; gersek@hrsa.gov.

Community/Migrant Health Centers

City	State	Expiration date
HRSA Boston Field Office 617–565–1482		
Boston	MA	11/30/2002
Bridgeport	CT	01/31/2003
Roxbury	MA (2)	01/31/2003
Truro	MA	01/31/2003
Allston	MA	01/31/2003
Turner Falls	MA	01/31/2003
Eastport	ME	03/31/2003
Princeton	ME	03/31/2003
Leeds	ME	03/31/2003
Springfield	MA	06/30/2003
Middletown	CT	06/30/2003
Berlin	NH	06/30/2003
HRSA New York Field Office 212–264–2664		
White Plains	NY	11/30/2002
Newark	NJ	11/30/2002
Cortland	NY	11/30/2002
Rushville	NY	12/31/2002
Bronx	NY (3)	01/31/2003
Hatillo	PR	01/31/2003
Morovis	PR	01/31/2003
Middletown	NY	02/28/2003
New York	NY	02/28/2003
Naranjito	PR	05/31/2003
Rio Grande	PR	06/30/2003
Bronx	NY	06/30/2003
New York	NY	06/30/2003
Brooklyn	NY	06/30/2003
HRSA Philadelphia Field Office 215–861–4422		
Baltimore	MD	11/30/2002
Rainelle	WV	11/30/2002
Philadelphia	PA	11/30/2002
Chambersburg	PA	11/30/2002
Victoria	VA	12/31/2002
Axton	VA	01/31/2003
Bastian	VA	01/31/2003
Scott Depot	WV	02/28/2003
Mill Creek	WV	02/28/2003
Horizon	VA	03/31/2003
Chase Brexton	MD	06/30/2003
Kuumba	VA	06/30/2003
HRSA Atlanta Field Office 404–562–2996		
Kinston	NC	11/30/2002
Parrish	FL	11/30/2002
Savannah	GA	11/30/2002
Orangeburg	SC	11/30/2002
Louisville	KY	11/30/2002
Palatka	FL	11/30/2002
Faison	NC	12/31/2002
Fellsmere	FL	12/31/2002
Savannah	TN	12/31/2002
Oakhurst	GA	12/31/2002
Coconut Grove	FL	12/31/2002
Avon Park	FL	01/31/2003
Prestonburg	KY	01/31/2003
Rock Hill	SC	01/31/2003
Olanta	SC	01/31/2003
Pompano Beach	FL	01/31/2003
Columbia	SC	01/31/2003
Smithville	MS	01/31/2003
Mobile	AL	02/28/2003
Greensboro	GA	02/28/2003
Bowling Green	KY	02/28/2003
Ridgeland	SC	02/28/2003
Columbia	SC	03/31/2003
Nashville	TN	03/31/2003
Charleston	SC	03/31/2003
Clearwater	SC	05/31/2003
Clarksdale	MS	05/31/2003
Hollister	NC	05/31/2003
Palmetto	GA	05/31/2003
Fayette	MS	05/31/2003
Huntsville	TN	05/31/2003
Columbus	GA	06/30/2003
Russellville	AL	06/30/2003
Jacksonville	FL	06/30/2003
HRSA Chicago Field Office 312–353–1715		
Indianapolis	IN	11/30/2002
Toledo	OH	11/30/2002
Columbus	OH	11/30/2002
St. Paul	MN	11/30/2002
Chicago	IL	11/30/2002
East Chicago	IN	11/30/2002
Lisbon	OH	12/31/2002
Youngstown	OH	12/31/2002
Houghton Lake	MI	12/31/2002
Chicago	IL	01/31/2003
Detroit	MI	01/31/2003
Milwaukee	WI (2)	01/31/2003
Joliet	IL	02/28/2003
Chicago	IL (2)	02/28/2003
Mansfield	OH	02/28/2003
Cleveland	OH	02/28/2003
Muncie	IN	02/28/2003
Chicago	IL	06/30/2003
Beloit	WI	06/30/2003
Detroit	MI	06/30/2003
HRSA Dallas Field Office 214–767–3872		
De Leon	TX	11/30/2002
Dallas	TX	11/30/2002
West Memphis	AR	11/30/2002
Pecos	NM	12/31/2002
Santa Fe	NM	12/31/2002
Natchitoches	LA	01/31/2003
Tierra Amarilla	NM	01/31/2003
New Roads	LA	02/28/2003
River Ridge	LA	02/28/2003
Austin	TX	02/28/2003
Baton Rouge	LA	05/31/2003
Clarendon	AR	05/31/2003
Corning	AR	06/30/2003
Greenburg	LA	06/30/2003
Wichita Falls	TX	06/30/2003
Opelousas	LA	06/30/2003
Marshall	AR	06/30/2003
HRSA Kansas City Field Office 816–426–5296		
Omaha	NE	01/31/2003
Great Bend	KS	02/28/2003
Ava	MO	02/28/2003
Omaha	NE	02/28/2003
Ottumwa	IA	02/28/2003
HRSA Denver Field Office 303–844–3203		
Colorado Springs.	CO	12/31/2002
Libby	MT	02/28/2003
Montezuma Creek.	UT	02/28/2003
Enterprise	UT	03/31/2003
East Carbon	UT	06/30/2003
Great Falls	MT	06/30/2003
Fargo	ND	06/30/2003
HRSA San Francisco Field Office 415–437–8090		
Los Angeles	CA	11/30/2002
Fresno	CA	11/30/2002
San Mateo	CA	11/30/2002
Arcata	CA	12/31/2002
Salinas	CA	12/31/2002
Koror	PW	12/31/2002
Los Angeles	CA	01/31/2003
Petaluma	CA	02/28/2003
Honokaa	HI	02/28/2003
Lihue	HI	02/28/2003
Ajo	AZ	02/28/2003
Greenbrae	CA	02/28/2003
Point Reyes	CA	02/28/2003
Hagatna	GU	03/31/2003
Page	AZ	05/31/2003
Ukiah	CA	06/30/2003
Kahului	HI	06/30/2003
HRSA Seattle Field Office 206–615–2491		
Bethel	AK	02/28/2003
Galena	AK	02/28/2003
Bremerton	WA	06/30/2003
Soldotna	AK	08/31/2003

HRSA 03–031 Health Care for the Homeless (HCH)

Legislative Authority: Public Health Service Act, Title III, Section 330(h), 42 U.S.C. 254B(h).

CFDA Number: 93.151.

Purpose: The Health Care for the Homeless (HCH) program is designed to increase the access of homeless populations to cost-effective, case managed, and integrated primary care and substance abuse services provided by existing community-based programs/providers. It is expected that each application submitted to serve an identified homeless population will present a clear focus on maintaining access to care and reducing health disparities identified in the target population by proposing a comprehensive health care and social services program. It is the intent of HRSA to continue to support health services to the homeless people in these areas/locations given the continued need for cost-effective, community-based primary care services. Twenty-one HCH grantees will reach the end of their project period during FY 2003. Applications are due 120 days before the expiration date.

Eligibility: Applicants are limited to currently funded programs whose project periods expire during FY 2003 and new organizations proposing to serve the same areas or populations being served by these existing programs. New organizations eligible to compete to serve one of these areas are public and nonprofit private entities, including faith-based organizations and community-based organizations.

Special Considerations: Communication with Field Office staff is essential for interested parties in deciding whether to pursue Federal funding as a HCH program. Technical assistance and detailed information about each service area, such as census tracts, can be obtained by contacting the HRSA Field Office.

Estimated Amount of This Competition: $10,500,000.

Estimated Number of Awards To Be Made: 21.

Estimated or Average Size of Each Award: $500,000.

Estimated Project Period: 1–5 years.

HRSA 03–031 Health Care for the Homeless (HCH)

Application Availability Date: Continuous.

Application Deadline: Varies.

Projected Award Date: Varies.

Program Contact Person: Monica Toomer.

Phone Number: (301) 594–4434.

E-mail: mtoomerz@hrsa.gov.

Health Care for the Homeless

City	State	Expiration date
HRSA Boston Field Office 617–565–1482		
Bridgeport	CT	01/31/2003
HRSA New York Field Office 212–264–2664		
Camden	NJ	10/31/2002
Rochester	NY	10/31/2002
Newark	NJ	10/31/2002
White Plains	NY	11/30/2002
HRSA Atlanta Field Office 404–562–2996		
Miami	FL	10/31/2002
Nashville	TN	10/31/2002
Clearwater	FL	10/31/2002
Memphis	TN	05/31/2003
HRSA Chicago Field Office 312–353–1715		
Grand Rapids	MI	10/31/2002
Battle Creek	MI	10/31/2002
Columbus	OH	11/30/2002
Toledo	OH	11/30/2002
Indianapolis	IN	11/30/2002
HRSA Kansas City Field Office 816–426–5296		
Omaha	NE	01/31/2003
HRSA Denver Field Office 303–844–3203		
Salt Lake City	UT	10/31/2002
Fargo	ND	06/30/2003
HRSA San Francisco Field Office 415–437–8090		
Phoenix	AZ	10/31/2002
Sacramento	CA	10/31/2002
Santa Barbara	CA	10/31/2002
Martinez	CA	10/31/2002

HRSA 03–032 Public Housing Primary Care (PHPC)

Legislative Authority: Section 330(i) of the Public Health Service Act, 42 U.S.C. 254b(i).

CFDA Number: 93.927.

Purpose: The mission of the Public Housing Primary Care (PHPC) program is to increase access to comprehensive primary and preventive health care and to improve the physical, mental and economic well-being of public housing residents. The three priorities for promoting access to primary care and improving the well being of residents of public housing are: resident involvement and participation in program development and implementation; innovative service delivery systems that address the special health needs of public housing residents; and collaboration with other health, education and community-based organizations. It is expected that each application to serve an identified population of residents of public housing will present a clear focus on maintaining access to care and reducing health disparities identified in the target population. It is the intent of HRSA to continue to support health services to public housing residents in these areas/locations given the continued need for cost-effective, community-based primary care services. Six PHPC grantees will reach the end of their project period during FY 2003. Applications are due 120 days before the expiration date.

Eligibility: Applicants are limited to currently funded programs whose project periods expire during FY 2003 and new organizations proposing to serve the same areas or populations being served by these existing programs. New organizations eligible to compete to serve one of these areas are public and nonprofit private entities, including faith-based organizations and community-based organizations.

Special Considerations: Communication with Field Office staff is essential for interested parties in deciding whether to pursue Federal funding as a PHPC grantee. Technical assistance and detailed information about each service area, such as census tracts, can be obtained by contacting the HRSA Field Office.

Estimated Amount of This Competition: $2,400,000.

Estimated Number of Awards To Be Made: 6.

Estimated or Average Size of Each Award: $400,000.

Estimated Project Period: 1–5 years.

HRSA 03–032 Public Housing Primary Care (PHPC)

Application Availability Date: Continuous.

Application Deadline: Varies.

Projected Award Date: Varies.

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Program Contact Person: Evan R. Arrindell.
Phone Number: (301) 594–4334.
E-mail: rarrindell@hrsa.gov.

Public Housing

City	State	Expiration date
HRSA Boston Field Office 617–565–1482		
Roxbury	MA	01/31/2003
HRSA Philadelphia Field Office 215–861–4422		
Philadelphia	PA	08/31/2003
HRSA Atlanta Field Office 404–562–2996		
Savannah	GA	11/30/2002
Marietta	GA	08/31/2003
HRSA Chicago Field Office 312–353–1715		
Columbus	OH	11/30/2002
Chicago	IL	11/30/2002

HRSA 03–033 Healthy Schools, Healthy Communities (HSHC)

Legislative Authority: Section 330 of the Public Health Service Act, 42 U.S.C. 254b.

CFDA Number: 93.151.

Purpose: The purpose of the Healthy Schools, Healthy Communities (HSHC) program is to increase access to comprehensive primary and preventive health care to underserved children, adolescents and families. The HSHC programs and other Bureau of Primary Health Care (BPHC)-supported School Based Health Centers (SBHC) programs provide comprehensive primary and preventive health care services including mental health, oral health, ancillary, and enabling services in the school or on school grounds on a full-time basis. These services are culturally sensitive, family oriented, and tailored to meet the health care needs of youth, adolescents and the community. The array of services provided on-site is locally determined by school principals, school boards, parents and providers, and referral arrangements are provided for services not available on-site. No SBHC services are provided without fully informed parental consent. Each SBHC supports educational efforts by making sure that children are ready to learn through an integrated system providing continuity of care, and assuring after hours and year round coverage. It is expected that each application submitted to serve a school-based population presents a clear focus on maintaining access to care and reducing health disparities identified in the target population. It is the intent of HRSA to continue to support health services for these populations in the areas served by these grantees. Fourteen HSHC grantees will reach the end of their project period during FY 2003. Applications are due 120 days before the expiration date.

Eligibility: Applicants are limited to currently funded programs whose project periods expire during FY 2003 and new organizations proposing to serve the same areas or populations being served by these existing programs. New organizations eligible to compete to serve one of these areas are public and nonprofit private entities, including faith-based organizations and community-based organizations.

Special Considerations: Communication with Field Office staff is essential for interested parties in deciding whether to pursue Federal funding as a HSHC program. Technical assistance and detailed information about each service area, such as census tracts, can be obtained by contacting the HRSA Field Office.

Estimated Amount of This Competition: $4,200,000.

Estimated Number of Awards to be Made: 14.

Estimated or Average Size of Each Award: $300,000.

Estimated Project Period: 1–5 years.

HRSA 03–033 Healthy Schools, Healthy Communities (HSHC)

Application Availability Date: Continuous.

Application Deadline: Varies.

Projected Award Date: Varies.

Program Contact Person: Darryl Burnett.

Phone Number: (301) 594–4449.

E-mail: dburnett@hrsa.gov.

Healthy Schools, Healthy Communities

City	State	Expiration date
HRSA Boston Field Office 617–565–1482		
Taunton	MA	06/30/2003
Middletown	CT	06/30/2003
HRSA New York Field Office 212–264–2664		
New York	NY	06/30/2003
Bronx	NY	06/30/2003
Yonkers	NY	06/30/2003
HRSA Philadelphia Field Office 215–861–4422		
Victoria	VA	12/31/2002
Baltimore	MD	5/31/2003
HRSA Atlanta Field Office 404–562–2996		
Miami Beach	FL	12/31/2002
Fayette	MS	05/31/2003
HRSA Chicago Field Office 312–353–1715		
Chicago	IL	11/30/2002
Chicago	IL	06/30/2003
Indianapolis	IN	06/30/2003
HRSA Dallas Field Office 214–767–3872		
Santa Fe	NM	12/31/2002
Greensburg	LA	06/30/2003

HRSA 03–034 New Delivery Sites and New Starts in Programs Funded Under the Health Centers Consolidation Act (NDSCS)

Legislative Authority: Section 330 of the Public Health Service Act, 42 U.S.C. 254b.

CFDA Number: 93.224, 93.246, 93.151, 93.927, 93.151.

Purpose: The purpose of this activity is to support the establishment of new service delivery sites in each of the Health Center programs funded under section 330 of the Public Health Service Act. Each application for support to establish a new site must identify a population in need of primary health care services, and propose a specific plan to increase access to care and reduce disparities identified in the population or community to be served. This activity is the lead in fulfilling the President's multi-year Initiative to Expand Health Centers to bring much needed primary health care services to the Nation's neediest communities. In FY 2003, the establishment of new delivery sites under this program will be in the second year of a five-year initiative. The purpose of the Health Center program is to extend comprehensive primary and preventive health services (including mental health, substance abuse and oral health services) and supplemental services to populations currently without access to such services, and to improve their health status. The programs under this activity include: (1) Community Health Centers, section 330(e); (2) Migrant Health Centers, section 330(g); (3) Health Care for the Homeless program, section 330(h); (4) Public Housing Primary Care, section 330(i); and (5) Healthy School, Healthy Communities program, section 330(e). The populations served by these programs are: (1) Medically underserved populations in urban and rural areas; (2) migratory and seasonal agricultural workers and their families; (3) homeless people, including children and families; (4) residents of publicly subsidized housing; and (5) medically underserved school-students (K–12), their families, and medically underserved populations surrounding the school.

Matching or Cost Sharing Requirement: Communities seeking support are strongly encouraged to promote and seek outside funding and are required to maximize third party revenue to establish and maintain new service delivery areas.

Eligibility: Public and nonprofit private entities, including faith-based organizations and community-based organizations, are eligible to apply.

Funding Priorities and/or Preferences: In selecting applications for funding, special consideration will be given to approvable applications submitted from sparsely populated areas. A priority will be placed on applications that present clear plans to reduce or eliminate disparities identified in the population or community to be served. In addition, because significant efficiencies in the delivery of health care services can be realized through the appropriate use of technological improvements, a priority will be placed on applications that incorporate such improvements to enhance the quality of care, increase the efficiency and effectiveness of operations, and reduce costs. Other priorities will be included in the application guidance.

Estimated Amount of This Competition: $53,000,000.

Estimated Number of Awards to be Made: 90.

Estimated or Average Size of Each Award: $350,000–$650,000.

Estimated Project Period: 2 years or consistent with existing project period for currently funded organizations.

HRSA 03–034 New Delivery Sites and New Starts in Programs Funded Under the Health Centers Consolidation Act (NDSCS)

Application Availability Date: July 2002.

Letter of Intent Deadline: The letter of intent may be sent at anytime. Letters of intent are encouraged for organizations seeking funding for a new delivery site. Letters of intent will be accepted beginning July 31, 2002. The submission of a letter of intent is recommended but not required in order to submit an application to compete for funds in FY 2003. Information requirements to be included in the letter of intent submissions will be available in the application guidance.

Application Deadline: Applications will be accepted beginning October 1, 2002. Applications received by November 15, 2002 will be reviewed with funding decisions announced by February 28, 2003. Applications received by January 15, 2003 will be reviewed with funding decisions announced by April 30, 2003. Applications received by April 15, 2003 will be reviewed with funding decisions announced by July 31, 2003.

Projected Award Date: See above.

Program Contact Person: Tonya Bowers 93.224, George Ersek 93.246, Jean Hochron 93.151, Evan R. Arrindell 93.927, Sheri Downing-Futrell 93.151A.

Phone Numbers: Bowers (301) 594–4329, Ersek (301) 594–4301, Hochron (301) 594–4437, Arrindell (301) 594–4334, Downing-Futrell (301) 594–4468.

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HRSA 03–035 Increase in Medical Capacity in Programs Funded Under the Health Care Consolidation Act of 1996 (IMCHC)

Legislative Authority: Section 330 of the Public Health Service Act, 42 U.S.C. 254b.

CFDA Number: 93.224, 93.246, 93.151, 93.927.

Purpose: FY 2003 marks the second year of the President's multi-year plan to serve more of the Nation's neediest communities through significantly expanded health center access points. The HRSA is committed to improving and expanding access to health care for the underserved and to pledging new funding to strengthen the health care safety net through each of the Health Center programs funded under section 330 of the Public Health Service Act. Health centers extend preventive and primary health care services to populations currently without such services and improve the health status of medically underserved individuals. One way of achieving these goals and reaching new users of health centers is to approve funding increases for existing health center grantees that provide a plan for achieving increased medical capacity within their current service area. The programs included under this activity include: (1) Community Health Centers, section 330(e); (2) Migrant Health Centers, section 330(g); (3) Health Care for the Homeless, section 330(h); (4) Public Housing Primary Care, section 330(i); and (5) Healthy Schools, Healthy Communities program, section 330(e). The populations served by these programs are: (1) Medically underserved populations in urban and rural areas; (2) migratory and seasonal agricultural workers and their families; (3) homeless people, including children and families; (4) residents of publicly subsidized housing; and (5) medically underserved students in grades K through 12, their families, and medically underserved populations surrounding the school.

Eligibility: Applications are limited to currently funded health center programs (*i.e.*, those organizations funded under section 330 (e), 330(g), 330(h), and 330(i)).

Funding Priorities and/or Preferences: In selecting applications for funding, special consideration will be given to approvable applications submitted from sparsely populated areas. A priority will be placed on applications that present clear plans to reduce or eliminate disparities identified in the population or community to be served. In addition, because significant efficiencies in the delivery of health care services can be realized through the appropriate use of technological improvements, a priority will be placed on applications that incorporate such improvements to enhance the quality of care, increase the efficiency and effectiveness of operations, and reduce costs. Other priorities will be included in the application guidance.

Estimated Amount of this Competition: $39,000,000.

Estimated Number of Awards To Be Made: 80.

Estimated or Average Size of Each Award: $350,000–$650,000.

Estimated Project Period: Consistent with organization's current project period.

HRSA 03–035 Increase in Medical Capacity in Programs Funded Under the Health Care Consolidation Act of 1996 (IMCHC)

Application Availability Date: November 1, 2002.

Application Deadline: February 1, 2003.

Projected Award Date: May 2003.

Program Contact Person: Janet Wetmore 93.224; George Ersek 93.246; Jean Hochron 93.151; Evan R. Arrindell 93.927; Laverne Green 93.151A.

Phone Numbers: Wetmore (301) 594–4340; Ersek (301) 594–4301; Hochron (301) 594–4437; Arrindell (301) 594–4334; Green (301) 594–4451.

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HRSA 03–036 National Health Center Technical Assistance Cooperative Agreement (NAT)

Legislative Authority: Public Health Service Act, Title III, Section 330(k), 42 U.S.C. 254b(k).

CFDA Number: 92.129, 93.130A, 93.224.

Purpose: The Health Center programs deliver cost effective, high quality primary health care to underserved, vulnerable, low income, and minority populations. HRSA supports technical and non-financial assistance to Federally-funded health centers. It is the intent of HRSA to continue to support technical assistance for health center site development and operations in areas of increasing access to preventive and primary care, and the reduction of disparities of health outcomes.

Funding Priorities and/or Preferences: Applications from sparsely populated areas will be given special consideration. In selecting applications for funding, priority will be given to organizations that can demonstrate the potential to: (1) Design service delivery programs appropriate to the population being (or to be) served; (2) establish effective linkages with appropriate state and community-based organizations; (3) recruit and retain providers; (4) incorporate technological improvements in operating systems; and (5) enhance other programmatic areas related to the President's Initiative to expand Health Centers.

Eligibility: Public and private nonprofit entities, including faith-based organizations and community-based organizations, are eligible to apply.

Estimated Amount of This Competition: Up to $2,000,000.

Estimated Number of Awards to be Made: Up to 4.

Estimated or Average Size of Each Award: $100,000–$500,000.

Estimated Project Period: 1 to 5 years.

HRSA 03–036 National Health Center Technical Assistance Cooperative Agreement (NAT)

Application Availability Date: Continuous.

Application Deadline: Varies.

Projected Award Date: Varies.

Program Contact Person: Jean Hochron.

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HRSA 03–037 Increase in Mental Health and Substance Abuse, Oral Health, Care Management, and Pharmacy Services in Programs Funded Under the Health Centers Consolidation Act of 1996 (IMHSA)

Legislative Authority: Section 330 of the Public Health Service Act, 42 U.S.C. 254b.

CFDA Number: 93.224, 93.246, 93.151, 93.927.

Purpose: Access to mental health and substance abuse (MH/SA), oral health, and pharmacy services is critical to ensuring the overall health and well-being of the populations served by health centers and reducing disparities in health center populations being served. In addition, sustaining and spreading the care and improvement models implemented through the Health Disparities Collaboratives is enhanced by expanded care management capacity. As part of the President's multi-year plan to impact 1,200 of the Nation's neediest communities, the HRSA will continue to expand access to essential health care services and to support practice improvement through a targeted approach to care management. The availability of MH/SA, oral health, pharmacy and care management services will enhance the ability of health centers to provide basic primary care, result in an increase in users at existing grantee sites, and continue to improve the health status of persons served. Applicants for this funding opportunity are expected to: (1) Describe the target population and its need for MH/SA, oral health, pharmacy or care management services; (2) present a service delivery plan that demonstrates responsiveness to the identified needs of the target population; and (3) present a sound business plan that links the goals and objectives from the service delivery plan to the budget. The programs included under this activity include: (1) Community Health Centers, section 330(e); (2) Migrant Health Centers, section 330(g); (3) Health Care for the Homeless, section 330(h); (4) Public Housing Primary Care, section 330(i); and (5) Healthy Schools, Healthy Communities program, section 330(e). The populations served by these programs are: (1) Medically underserved populations in urban and rural areas; (2) migratory and seasonal agricultural workers and their families; (3) homeless people, including children and families; (4) residents of publicly subsidized housing; and (5) medically underserved students in grades K through 12, their families, and medically underserved populations surrounding the school.

Eligibility: Applicants are limited to currently funded health center programs (i.e., those organizations funded under sections 330(e), 330(g), 330(h); and 330(i)).

Estimated Amount of This Competition: $10,000,000.

Estimated Number of Awards To Be Made: 120–125.

Estimated or Average Size of Each Award: $40,000–$200,000.

Estimated Project Period: Consistent with organization's current project period.

HRSA 03–037 Increase in Mental Health and Substance Abuse, Oral Health, Care Management, and Pharmacy Services in Programs Funded Under the Health Centers Consolidation Act of 1996 (IMHSA)

Application Availability Date: November 1, 2002.

Application Deadline: February 1, 2003.

Projected Award Date: May 2003.

Program Contact Persons: Nora Lynn Buluran, Carolyn Aoyama-Mental Health/Substance Abuse; Jay Anderson-Oral Health; and Craig Hostetler, Pharmacy.

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HRSA 03–038 Radiation Exposure Screening and Education Program (RESEP)

Legislative Authority: Section 417C of the Public Health Service Act, 42 U.S.C. 285a–9.

CFDA Number: 93.257.

Purpose: The mission of the Radiation Exposure Screening and Education Program (RESEP) is to aid the thousands of individuals adversely affected by the mining, transport and processing of uranium and the testing of nuclear weapons for the Nation's weapons arsenal. This will be accomplished by carrying out programs designed for public education and information; screening eligible individuals for cancer and other related diseases; providing appropriate referrals for medical treatment; and facilitating documentation of claims under the Radiation Exposure Compensation Act.

Eligibility: The following entities are eligible to apply for funding: National Cancer Institute-designated cancer centers; Department of Veterans Affairs hospitals or medical centers; Federally Qualified Health Centers (FQHC), FQHC lookalikes, Community Health Centers, hospitals, agencies of any State or local government that currently provide direct health care services; Indian Health Service (IHS) health care facilities, including programs provided through tribal contracts, compacts, grants, or cooperative agreements with the IHS which are determined appropriate to raising the health status of Indians; and nonprofit organizations. Among the nonprofit organizations eligible to apply are faith-based organizations and community-based organizations.

Estimated Amount of This Competition: $4,000,000.

Estimated Number of Awards To Be Made: 12.

Estimated or Average Size of Each Award: $300,000.

Estimated Project Period: 1 year.

HRSA 03–038 Radiation Exposure Screening and Education Program (RESEP)

Application Availability Date: February 1, 2003.

Application Deadline: May 1, 2003.

Projected Award Date: September 1, 2003.

Program Contact Person: Vanessa Hooker.

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HRSA 03–039 Community Access Program* (CAP)

Legislative Authority: Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act (subject to FY 2003 funding).

CFDA Number: 93.252.

Purpose: To assist communities and consortia of health care providers to develop the infrastructure necessary to fully develop or strengthen integrated health systems of care that coordinate health services for the uninsured.

This program is not included in the President's budget for FY 2003. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: Public and nonprofit private entities, including faith-based and community-based organizations, that demonstrate a commitment to and experience with providing a continuum of care to uninsured individuals are eligible to apply. Each applicant must represent a community-wide coalition that includes local health care providers who have traditionally provided care to the community's uninsured and underinsured regardless of ability to pay. The consortium may include private sector health care providers and organizations.

Funding Priorities and/or Preferences: In selecting applications for funding, special consideration will be given to approvable applications submitted from sparsely populated areas. A priority will be placed on applications that present clear plans to coordinate their efforts with other safety-net providers and to develop integrated community-based systems of care. In addition, because significant efficiencies in the delivery of health care services can be realized through the appropriate use of technological improvements, a priority will be placed on applications that incorporate such improvements to enhance the quality of care, increase the efficiency and effectiveness of operations, and reduce costs. Other priorities will be included in the application guidance.

Estimated Amount of This Competition: $20,000,000.

Estimated Number of Awards To Be Made: 20–23.

Estimated or Average Size of Each Award: $900,000.

Estimated Project Period: 1 year.

HRSA 03–039 Community Access Program* (CAP)

Application Availability Date: April 1, 2003.

Application Deadline: June 1, 2003.

Projected Award Date: September 1, 2003.

Program Contact Person: Patricia Sampson.

Phone Number: (301) 443–0536.

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HRSA 03–040 Integrated Services Development Initiative/Shared Integrated Management Information Systems (ISIS)

Legislative Authority: Section 330 of the Public Health Service Act, 42 U.S.C. 254b.

CFDA Number: 93.224.

Purpose: Consistent with HRSA's goal of increasing access to primary health care and reducing health status disparities among racial/ethnic groups, the Integrated Services Development Initiative (ISDI) supports the development of networks of safety net providers to ensure access to health care for the medically underserved, including the uninsured and underinsured. Awards made through this initiative are intended to serve as catalysts for the development, implementation and operation of reengineered health care delivery systems. Successful applicants are those that demonstrate the ability to work toward the goal of a truly integrated and efficient system that maximizes the quality of services and enhances access to primary, hospital and specialty services. Project support is available for planning grantees as well as developmental networks.

As part of a broader information management strategy, the Division of Community and Migrant Health supports the development of a limited number of statewide or marketplace Shared Integrated Management Information Systems (SIMIS). The goal of the SIMIS project is to strategically align health center information systems with business objectives in an effort to meet demands driven by competition in the marketplace.

Eligibility: Applications for ISDI funds are limited to currently funded health centers (section 330(e)). Applications for SIMIS funds are limited to section 330(e) health centers and section 330(k) primary care associations.

Funding Priorities and/or Preferences: In selecting applications for funding, special consideration will be given to approvable applications submitted from sparsely populated areas. Because significant efficiencies in the delivery of health care services can be realized through the appropriate use of technological improvements, a priority will be placed on applications that incorporate such improvements to enhance the quality of care, increase the efficiency and effectiveness of operations, and reduce costs. Other priorities will be included in the application guidance.

Estimated Amount of This Competition: $4,000,000.

Estimated Number of Awards To Be Made: ISDI–15, SIMIS–6.

Estimated or Average Size of Each Award: ISDI planning $200,000; developmental $400,000; SIMIS—varies depending on need of the project.

Estimated Project Period: 1 to 4 years for ISDI; 1 to 3 years for SIMIS.

HRSA 03–040 Integrated Services Development Initiative/Shared Integrated Management Information Systems (ISIS)

Application Availability Date: December 2002 for ISDI; continuous for SIMIS.

Application Deadline: Continuous for ISDI; April 2003 for SIMIS.

Projected Award Date: August 2003 for ISDI; varies for SIMIS.

Program Contact Persons: ISDI Barbara Bailey; SIMIS Jayne Bertovich.

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HRSA 03–041 State Primary Care Associations Supplemental Funding for Managing Health Center Growth and Quality (PCO)

Legislative Authority: Public Health Service Act, Title III, Section 330, 42 U.S.C. 254b.

CFDA Number: 93.129.

Purpose: The HRSA's Bureau of Primary Health Care announces an opportunity for existing Primary Care Associations (PCAs) to apply for supplemental funding to advance the goals of the President's initiative to expand health centers. The purpose of the funding is to support and expand the PCA's capacity to advance the goals of the President's initiative through the following three strategies: (1) Strengthening and expanding existing health center grantees; (2) creating new access points; and (3) improving health status outcomes and reducing disparities through evidence-based quality care and quality improvement in all BPHC-supported programs. The intent is to support activities in the areas of: (1) Needs identification and verification; (2) community development; (3) board development; (4) workforce development; (5) operating systems; (6) capital financing; (7) outreach to special populations; (8) leveraging resources; (9) adaptation of services for special populations; and (10) enhancing the continuum of care. Each proposed activity must be clearly linked to strengthening health centers' ability to contribute to the President's Growth Initiative.

Eligibility: Applicants are limited to currently funded PCAs.

Estimated Amount of This Competition: $3,000,000.

Estimated Number of Awards To Be Made: 25–40.

Estimated or Average Size of Each Award: $75,000.

Estimated Project Period: 1 year.

HRSA 03–041 State Primary Care Associations Supplemental Funding for Managing Health Center Growth and Quality (PCO)

Application Availability Date: October 15, 2002.

Application Deadline: December 1, 2002.

Projected Award Date: April 1, 2003.

Program Contact Persons: Colleen Meiman.

Phone Number: (301) 594–4486.

E-mail: cmeiman@hrsa.gov.

HIV/AIDS Bureau

HRSA 03–042 AIDS Education and Training Centers' National Clinicians' Consultation Center (AETCC)

Legislative Authority: Section 2692 of the Public Health Service Act; 42 U.S.C 300ff–111.

CFDA Number: 93.145.

Purpose: The purpose of the AIDS Education and Training Centers' (AETCs) National Clinicians' Consultation Center (NCCC) grant program is to provide clinicians with educational consultations on the clinical management of HIV infection and on possible health care worker exposure to HIV and related blood-borne pathogens using telecommunication technology. The program is to complement and support the AETCs program whose purpose is to improve the quality of HIV/AIDS clinical care through the training of health professionals. Applicants for the AETCs' NCCC must demonstrate the ability to provide timely responses to clinical questions related to the treatment of persons with HIV infection and/or possible health care worker exposure to HIV and related blood-borne pathogens. The NEC will work closely with the regional and national AETCs, providing training, resource development, and technical assistance.

Eligibility: Grants may be awarded to public and nonprofit private entities and schools and academic health sciences centers that can provide nationally educational consultation on the clinical management of HIV infection and possible health care worker exposure to HIV and other blood-borne pathogens. Faith-based and community based organizations are eligible to apply.

Funding Priorities or Preferences: Applicants with the ability to provide timely responses to clinical questions related to the treatment of persons with HIV infection and twenty-four hour coverage for responses to possible health care worker exposure to HIV and related blood-borne pathogens are given special priority.

Estimated Amount of This Competition: $1,500,000.

Estimated Number of Awards: 1.

Estimated or Average Size of Each Award: $1,500,000.

Estimated Project Period: 3 years.

HRSA 03–042 AIDS Education and Training Centers' National Clinicians' Consultation Center (AETCC)

Projected Application Availability Date: April 1, 2003.

Letter of Intent Deadline: May 1, 2003.

Application Deadline: June 1, 2003.

Projected Award Date: September 1, 2003.

Program Contact Person: Gail Cherry-Peppers.

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HRSA 03–043 Grants for Coordinated Services and Access to Research for Children, Youth, Women and Their Families (CSCYW)

Legislative Authority: Section 2671 of the Public Health Service Act, 42 U.S.C. 300ff–51–300ff–67.

CFDA Number: 93.153.

Purpose: The purpose of the Title IV funding is to improve access to primary medical care, research, and support services for HIV-infected women, infants, children and youth, and to provide support services for their affected family members. Funded projects will link clinical research and other research with comprehensive care systems, and improve and expand the coordination of a system of comprehensive care for women, infants, children and youth who are HIV-infected. Funds will be used to support programs that: (1) Link established systems of care to coordinate service delivery, HIV prevention efforts, and clinical research and other research activities; and (2) address the intensity of service needs, high costs, and other complex barriers to comprehensive care and research experienced by medically underserved and hard-to-reach populations. Activities under these grants should address the goals of enrolling and maintaining clients in HIV primary care; increasing client access to research by linking development and support of comprehensive, community-based and family-centered care infrastructures; and emphasizing prevention within the care system, particularly the prevention of perinatal HIV transmission.

Eligibility: Eligible organizations are public or private nonprofit entities that provide or arrange for primary care. Faith-based and community-based organizations are eligible to apply. Current grantees or organizations proposing to serve the same service areas are eligible to apply. Services will be maintained in these areas:

State	Areas
CA	Oakland.
DE	Wilmington.
FL	Ft Lauderdale, Broward County and Miami.
IL	North Side of Chicago.
LA	New Orleans.
MA	Boston and Roxbury area.
MN	Minneapolis/St. Paul.
MO	Kansas City.

State	Areas
MS	Hattiesburg, Jackson and surrounding counties.
NC	Newton Grove.
NJ	Statewide.
NY	Northern Manhattan.
OH	Columbus and Toledo.
PR	Island-wide.
RI	Statewide.
TN	Nashville.
TX	Houston and San Antonio.
VA	Northern Virginia.
WA	Seattle and King County.

Funding Priorities or Preferences: Preference for funding will be given to projects that support a comprehensive, coordinated system of HIV care serving HIV-infected women, infants, children and youth, and their families, and are linked with or have initiated activities to link with clinical trials or other research.

Estimated Amount of This Competition: $20,375,000.

Estimated Number of Awards To Be Made: 23.

Estimated or Average Size of Each Award: $885,000.

Estimated Project Period: 3 years.

HRSA 03–043 Grants for Coordinated Services and Access to Research for Children, Youth, Women and Their Families (CSCYW)

Application Availability Date: November 18, 2002.

Application Deadline: February 14, 2003.

Projected Award Date: August 1, 2003.

Program Contact Person: José Rafael Morales.

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HRSA 03–044 Funding for Early Intervention Services Grants: Existing Geographic Service Areas (EIEGS)

Legislative Authority: Section 2651 of the Public Health Service Act, 42 USC 300ff–51.

CFDA Number: 93.918.

Purpose: The purpose of this funding is to provide, on an ongoing outpatient basis, high quality early intervention services/primary care to individuals with HIV infection. This is accomplished by increasing the present capacity and capability of eligible ambulatory health service entities. These expanded services become a part of a continuum of HIV prevention and care for individuals who are at risk for HIV infections or are HIV infected. All early intervention services (EIS) programs must provide: HIV counseling and testing; counseling and education on living with HIV; appropriate medical evaluation and clinical care; and other essential services such as oral health care, outpatient mental health services, outpatient substance abuse services and nutritional services, and appropriate referrals for specialty services.

EIS grant funds are available to support telehealth activities, particularly in rural areas. Funded activities include purchase of MIS equipment and medical equipment. In addition, rural EIS programs use their funding to access telehealth services, such as consultations.

Health Disparities. For the EIS Grants, a major focus is on increasing access to HIV primary care and support services for communities of color. Funding available through the Minority AIDS Initiative has improved our ability to fund indigenous organizations and those serving communities of color to deliver and implement culturally/linguistically proficient primary care HIV services. Funding preferences have been established for organizations serving communities of color that are highly affected by HIV/AIDS in an effort to improve care, and reduce disparities in health outcomes.

Eligibility: Eligible applicants are public or private nonprofit entities that are Consolidated Health Center Programs receiving support under section 330 of the Public Health Service Act; family planning agencies under section 1001 of the Public Health Service Act, other than States; Comprehensive Hemophilia Diagnostic and Treatment Centers; Federally Qualified Health Centers supported under section 1905(1)(2)(8) of the Social Security Act; nonprofit private entities that currently provide comprehensive primary care services to populations at risk of HIV disease; local health departments; and University/Medical Center affiliated clinics. Faith-based and community-based organizations are eligible to apply.

Limited Competition: Applicants are limited to public or private nonprofit entities that are currently funded Title III programs whose project periods expire in FY 2003 and new organizations proposing to serve the same populations currently being serviced by these existing projects. These areas are:

State and Service Area of Project Periods Ending 12/31/02 and 3/31/03

AL JEFFERSON; BIBB; HALE; GREENE; PICKENS; LAMAR; FAYETTE; SUMTER; PERRY; WALKER

CA SAN DIEGO; MENDOCINO; SONOMA; SANTA BARBARA

CO DENVER; MOFFAT; RIO GRANDE; JACKSON; GRAND; GILPIN; CLEAR CREEK; SUMMIT; EAGLE; GARFIELD; RIO BLANCO; MESA; DELTA; PITKIN; LAKE; CHAFFEE; GUNNISON; MONTROSE; OURAY; HINSDALE; SAN JUAN; SAN MIGUEL; DOLORES; MONTEZUMA; LA PLATA; ARCHULETA

FL HENDRY; GLADES

GA BEN HILL; BERRIEN; BROOKS; COOK; ECHOLS; IRWIN; LANIER; LOWNDES; TIFT; TURNER

IL MCHENRY; COOK; KANE; DUPAGE; WILL; LAKE; PEORIA; TAZEWELL; MCLEAN; FULTON; KNOX; BUREAU; HENRY; MARSHALL; PUTNAM; WOODFORD; SCHUYLER; MCDONOUGH; LA SALLE; LIVINGSTON; MASON; WARREN; STARK

LA EAST BATON ROUGE; WEST BATON ROUGE; WEST FELICIANA; EAST FELICIANA; PLAQUEMINES; IBERVILLE; ASCENSION

ME CUMBERLAND

MD HARFORD; CARROLL; DORCHESTER; CAROLINE; TALBOT; CECIL; BALTIMORE; ANNE ARUNDEL; FREDERICK; HOWARD; MONTGOMERY; BALTIMORE CITY

MA MIDDLESEX; SUFFOLK; WESSEX; NORFOLK; WORCESTER

MI WASHTENAW; MONROE; LIVINGSTON; JACKSON; WAYNE; LENAWEE

MO ST. LOUIS CITY; ST. CHARLES; ST. LOUIS

MS GREENE; HANCOCK, HARRISON; JACKSON

NE BANNER; BOX BUTTE; CHEYENNE; DAWES; DEUEL; SHERIDAN; SCOTTS BLUFF; MORRILL; KIMBALL; GARDEN

NJ HUDSON; MERCER, PASSAIC, ESSEX; EAST ORANGE; NEWARK; IRVINGTON; ORANGE

NY ULSTER; ORANGE; DUTCHESS; SULLIVAN; BRONX; QUEENS; KINGS; WESTCHESTER; SUFFOLK

NC ANSON; CABARRUS; CLEVELAND; GASTON; IREDELL; LINCOLN; UNION; STANLY; ROWAN; MECKLENBURG; DUPLIN; CUMBERLAND; JOHNSTON; HARNETT; SAMPSON

OH FRANKLIN; ATHENS; BELMONT; GALLIA; GUERNSEY; HARRISON; HOCKING; JACKSON; LAWRENCE; MEIGS; MONROE; MORGAN; MUSKINGUM; PERRY; PIKE; ROSS; SCIOTO; VINTON; WASHINGTON; DELAWARE; FAIRFIELD; LICKING; MADISON; PICKAWAY; UNION; ROSS

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OK CIMARRON; BEAVER; HARPER; ALFALFA; WOODS; GRANT; KAY; ELLIS; WOODWARD; MAJOR; GARFIELD; DEWEY; NOBLE; BLAINE; KINGFISHER; LOGAN; PAYNE; ROGER MILLS; CUSTER; CANADIAN; OKLAHOMA; LINCOLN; BECKHAM; WASHITA; CADDO; GRADY; MCCLAIN; CLEVELAND; POTTAWATOMIE; SEMINOLE; HUGHES; HARMON; GREER; KIOWA; JACKSON; TILLMAN; COMANCHE; COTTON; STEPHENS; JEFFERSON; GARVIN; MURRAY; CARTER; LOVE; PONTOTOC; COAL; JOHNSTON; MARSHALL; ATOKA; BRYAN; PUSHMATAHA; CHOCTAW; MCCURTAIN
OR MULTNOMAH
PA LANCASTER; YORK
PR PONCE; JUANA DIAZ; PENUELAS; BAYAMON; TOA BAJA; DORADO; VEGA ALTA; TOA ALTA; NARANJITO; COMERIO; OROCOVIS; COROZAL; ARROYO
TN FAYETTE
TX EL PASO; CAMERON; WILLACY; HIDALGO
WA KING

State and Service Area of Project Periods Ending 6/30/03 or 9/29/03

AL COLBERT; CULLMAN; FRANKLIN; JACKSON; LAUDERDALE; LAWRENCE; LIMESTONE; MADISON; MARION; MARSHALL; MORGAN; WINSTON; MACON; BULLOCK; TALLAPOOSA; RUSSELL; LEE; CHAMBERS; MOBILE
AZ PIMA
CA LOS ANGELES; LONG BEACH; CONTRA COSTA; SAN FERNANDO VALLEY; SAN DIEGO, SHASTA, SONOMA
CT HARTFORD; NEW HAVEN
DE SUSSEX; NEW CASTLE; KENT
DC DISTRICT OF COLUMBIA
FL LEE; FT. MEYERS; DADE; MIAMI; LIBERTY; HIALEAH; LITTLE HAITI; OPPALAKA; ST. LUCIE; MARTIN; FT. PIERCE; INDIANTOWN; DUVAL; CITY OF JACKSONVILLE; ORLANDO; ORANGE; ST. JOHNS; ST. AUGUSTINE; BREVARD
GA BAKER; CALHOUN; DOUGHERTY; LEE; MITCHELL; WORTH; TERRELL; COLQUITT; THOMAS; GRADY; SEMINOLE; MILLER; EARLY; DECATUR; CLAY; CHATTAHOOCHEE; TALBOT; WEBSTER; CRISP; DOOLY; HARRIS; MACON; MARION; MUSCOGEE; QUITMAN; RANDOLPH; SCHLEY; SUMTER; TAYLOR; GLYNN; CAMDEN; MCINTOSH; LONG; LIBERTY; BRYAN; BALDWIN; BIBB; CRAWFORD; HANCOCK; HOUSTON; JASPER; JONES; MONROE; DEKALB; PUTNAM; TWIGGS; WASHINGTON; WILKINSON
IL COOK; ST. CLAIR; MADISON; JERSEY; MONROE; CLINTON
IA WOODBURY
KY JEFFERSON
LA CALCASIEU; ALLEN; BEAUREGARD; CAMERON; JEFFERSON DAVIS; ORLEANS; BOSSIER; SABINE; BIENVILLE; CLAIBORNE; DE SOTO; SHREVEPORT; NATCHITOCHES; RED RIVER; WEBSTER
MD CHARLES; PRINCE GEORGE'S; BALTIMORE CITY
MA ESSEX; MIDDLESEX; PLYMOUTH; BARNSTABLE
MN HENNEPIN; RAMSEY; WASHINGTON; ANOKA; CARVER; SCOTT; DAKOTA
MS BOLIVAR; COAHOMA; DESOTO; LEFLORE; MARSHALL; PANOLA; QUITMAN; TALLAHATCHIE; TATE; TUNICA; ATTALA; BOLIVAR; CARROLL; HOLMES; HUMPHREYS; LEFLORE; MONTGOMERY; SUNFLOWER; WASHINGTON; PIKE; LAWRENCE; LINCOLN; MARION; WALTHALL; TANGIGOAHOO;
NJ UNION; NEWARK
NM SANTA FE; LOS ALAMOS; SAN MIGUEL; MORA; HARDING; UNION; COLFAX; TAOS; RIO ARRIBA
NY BROOKLYN; MANHATTAN; KINGS; QUEENS; SULLIVAN; MANHATTEN; CHELSEA; BRONX
NC FRANKLIN; VANCE; WARREN; GRANVILLE; PERSON; BEAUFORT; BERTIE; CHOWAN; GATES; HYDE; MARTIN; PAMLICO; PITT; TYRRELL; WASHINGTON; PASQUOTANK; PERQUIMANS; NEW HANOVER; BLADEN; BRUNSWICK; WILMINGTON; ALAMANCE; CASWELL; CHATHAM; DAVIDSON; DAVIE; FORSYTH; GUILFORD; LEE; ORANGE; RANDOLPH; ROCKINGHAM; STOKES; SURRY; YADKIN; COLUMBUS; DUPLIN; ONSLOW; PENDER; WILSON; NASH; EDGECOMBE
OH CUYAHOGA; LORAIN; ASHTABULA; LAKE
PA ADAMS; BERKS; CHESTER; ERIE; FRANKLIN; FULTON; PHILADELPHIA; SCHUYLKILL; BEDFORD; BLAIR; CUMBERLAND; DAUPHIN; FULTON; HUNTINGDON; JUNIATA; LEBANON; MIFFLIN; PERRY
PR LARES; BARRANQUITAS; CAMUY; CIALES; CIDRA; COMERIO; COROZAL; FLORIDA; NARANJITO; HATILLO; PATILLAS; OROCOVIS
PR LOIZA; CANOVANAS; CAROLINA; RIO GRANDE; TRUJILLO ALTO
SC BERKELEY; CHARLESTON; DORCHESTER; HORRY; GEORGETOWN; WILLIAMSBURG; COLLETON; FLORENCE; AIKEN; ALLENDALE; BAMBERG; BARNWELL; CALHOUN; ORANGEBURG; GREENVILLE; ANDERSON; PICKENS; OCONEE; GREENWOOD; LAURENS; ABBEVILLE; SALUDA; MCCORMICK; EDGEFIELD; FAIRFIELD; RICHLAND; SUMTER
TN DAVIDSON; SHELBY
TX SHELBY; NACOGDOCHES; SAN AUGUSTINE; SABINE; NEWTON; JASPER; TYLER; ANGELINA; HOUSTON; TRINITY; POLK; HARDIN; JEFFERSON; SAN JACINTO; ORANGE; WALKER; MONTGOMERY; LIBERTY; CHAMBERS; GALVESTON; BRAZORIA; FORT BEND; AUSTIN; COLORADO; WALLER; WHARTON; MATAGORDA; BEXAR
VI US V.I. TERRITORY
VA ARLINGTON; FAIRFAX; LOUDOUN; PRINCE WILLIAM; CAROLINE; FREDERICKSBURG CITY; SPOTSYLVANIA; STAFFORD; WEST MORELNAD CITY
VA SOUTH RICHMOND; PETERSBURG CITY
WA BENTON; COLUMBIA; WALLA WALLA; YAKIMA; CLACKAMAS; MARION; MORROW; YAMHILL; UMATILLA; POLK; KING
WI KENOSHA; OZAUKEE; RACINE; WALWORTH; WASHINGTON; WAUKESHA; ASHLAND; BARRON; BAYFIELD; BROWN; BURNETT; CHIPPEWA; CLARK; DOOR; DOUGLAS; DUNN; EAU CLAIRE; FLORENCE; FOREST; KEWAUNEE; LANGLADE; LINCOLN; MANITOWOC; MARATHON; MARINETTE; MENOMINEE; OCONTO; ONEIDA; OUTAGAMIE; PIERCE; POLK; PORTAGE; PRICE; RUSK; SAWYER; ST. CROIX; TAYLOR; VILAS; WASHBURN; WOOD; MILWAUKEE; ROCK

Funding Priorities and/or Preferences: Preference for funding will be given to applicants servicing communities of color that are highly impacted by HIV/AIDS, and are supported by the communities of color proposed to be served. Preference will also be given to Consolidated Heath Care Programs supported under section 330 of the Public Health Service Act.

Estimated Amount of This Competition: $62,672,000.
Estimated Number of Awards To Be Made: 106.
Estimated Project Period: 3 years.

HRSA 03–044 Funding for Early Intervention Services Grants: Existing Geographic Service Areas (EIEGS)

Application Availability Date: June 17, 2002 for project periods ending 12/31/02 and 3/31/03 and December 16, 2002 for project periods ending 6/30/03 and 9/29/03.
Application Deadline: October 1, 2002 for project periods ending 12/31/02 and 03/31/03 April 1, 2003 for project periods ending 06/30/03 and 09/29/03.
Projected Award Date: January 1, April 1 and July 1, and September 30, 2003.
Program Contact Person: Lois Eldred.
Phone Number: (301) 443–3327.
E-mail: leldred@hrsa.gov.

HRSA 03–045 HIV Services Planning Grants (SPG)

Legislative Authority: Public Health Service Act, section 2654(c); 42 USC 300ff-54(c).
CFDA Number: 93.918.
Purpose: The purpose of this grant program is to support eligible entities in their efforts to plan for the provision of high quality comprehensive HIV primary health care services in rural or urban underserved areas and communities of color. Planning grants support the planning process and do not fund any service delivery or patient care.
Eligibility: Eligible applicants must be health centers under Section 330(e), (g), or (h), grantees under Section 1001 (regarding family planning) other than States, comprehensive hemophilia diagnostic and treatment centers, Federally-qualified centers under section 1905(1)(2)(B) of the Social Security Act, or non profit private entities that provide comprehensive primary care services to populations at risk of HIV disease.
Funding Priorities and/or Preferences: In awarding these grants, preference will be given to applicants located in rural or urban underserved areas and specifically targeted to racial and ethnic minority populations impacted by HIV/AIDS where emerging or ongoing HIV primary health care services have not been adequately met.
Review Criteria: Final review criteria are included in the Planning Program Application Guidance.

Estimated Amount of This Competition: $2,000,000.
Estimated Number of Awards: 40.
Estimated or Average Size of Each Award: $50,000.
Estimated Project Period: 1 year.

HRSA 03–045 HIV Services Planning Grants (SPG)

Application Availability Date: December 2, 2002.
Application Deadline: April 4, 2003.
Projected Award Date: July 25, 2003.
Program Contact Person: Sylvia Trent-Adams.
Phone Number: (301) 443–2177.
E-mail: strent-adams@hrsa.gov.

HRSA 03–046 Ryan White Care Act Capacity Building Grants (RWCBG)

Legislative Authority: Public Health Service Act, Section 2654(c), 42 USC 300ff-54(c).
CFDA Number: 93.918.
Purpose: The purpose of this grant program is to support eligible entities in their planning efforts to strengthen their organizational infrastructure and enhance their capacity to develop, enhance or expand high quality HIV primary health care services in (1) rural or (2) urban underserved areas and (3) communities of color. The applicant must propose capacity building activities that develop, enhance, or expand a comprehensive continuum of outpatient HIV primary care services in their community through the applicant agency. Capacity building grant funds are intended for a fixed period of time (one to three years) and not for long-term activities.
Eligibility: Eligible applicants must be health centers under Section 330(e), (g), or (h), grantees under Section 1001 (regarding family planning) other than States, comprehensive hemophilia diagnostic and treatment centers, Federally-qualified centers under section 1905(1)(2)(B) of the Social Security Act, or non profit private entities that provide comprehensive primary care services to populations at risk of HIV disease.
Funding Priorities and/or Preferences: In awarding these grants, preference will be given to applicants that are seeking funds under (3) that are located in or near to the community(ies) of color they are intending to serve with these funds, and that have a documented history of service to the targeted community(ies) of color to be served with these funds.
Review Criteria: Final review criteria are included in the Capacity Building Program Application Guidance.
Estimated Amount of This Competition: $4,000,000.
Estimated Number of Awards: 26.
Estimated or Average Size of Each Award: Up to $150,000.
Estimated Project Period: 1 to 3 years.

HRSA 03–046 Ryan White Care Act Capacity Building Grants (RWCBG)

Application Availability Date: December 2, 2002.
Application Deadline: April 4, 2003.
Projected Award Date: July 25, 2003.
Program Contact Person: Sylvia Trent-Adams.
Phone Number: (301) 443–2177.
E-Mail: strent-adams@hrsa.gov.

HRSA 03–047 Special Projects of National Significance " Models of Comprehensive Care for Caribbeans Living in the United States (SPCCL)

Legislative Authority: Public Health Service Act, section 2691; 42 USC 300ff–101.
CFDA Number: 93.928.
Purpose: Significant barriers to HIV/AIDS care have been identified among Caribbeans living in the United States. Among these are the lack of integration between HIV testing, clinical care services, community health centers, and the U.S.-resident Caribbean population; cultural and religious beliefs; lack of social support and emotional support information and services; the need for patient and provider training; systemic barriers which treat all Caribbeans alike; and severe stigma and discrimination within the migrant community.

This funding initiative will support 3–4 demonstration projects that provide improved models of comprehensive care for Caribbeans living in the United States. Potential model interventions could include: culturally relevant outreach, patient education and stigma reduction programs, building networks and technical assistance with Caribbean PWA communities, development and support for Community Advisory Boards, provider training programs, improved integration and collaboration between community-based organizations and clinical care facilities, the use of peer educators, and forming partnerships with faith-based organizations, technological innovations *i.e.* telehealth, telecommunications are encouraged.

The objective of this project is to provide financial support and technical assistance for improved models of care to Caribbean immigrants and migrants in U.S. areas where they are represented. Improvements in the number of Caribbeans accessing primary care services and retention in primary care services are outcomes that will be tracked through this initiative.

With regard to this initiative, all applicants must have significant

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experience with issues of HIV prevention, HIV care and treatment, and the integration of these. It is important to distinguish that Caribbean peoples in the United States are not uniform, and therefore must not be considered through one lens. Appropriate language proficiency, cultural fluency, and acculturation are necessary factors to be considered for successful associations with Caribbean peoples.

Eligibility: Eligible applicants are public and private nonprofit entities, including faith-based and community-based organizations.

Estimated Amount of This Competition: $1,000,000.

Estimated Number of Awards To Be Made: 3–4.

Estimated or Average Size of Each Award: $250,000–$330,000.

Estimated Project Period: 4 years.

HRSA 03–047 Special Projects of National Significance " Models of Comprehensive Care for Caribbeans Living in the United States (SPCCL)

Application Availability Date: January 17, 2003.

Letter of Intent Deadline: February 4, 2003.

Application Deadline: March 18, 2003.

Projected Award Date: August 1, 2003.

Program Contact Person: Barbara Aranda-Naranjo.

Phone Number: (301) 443–4149.

E-mail: baranda-naranjo@hrsa.gov.

HRSA 03–048 Special Projects of National Significance " HIV Prevention Initiatives in Primary Care Settings (SPPCS)

Legislative Authority: Public Health Service Acts, section 2691; 42 USC 300ff–101.

CFDA Number: 93.928.

Purpose: This funding initiative will support 4–6 new demonstration projects focused on "HIV Prevention Initiatives with HIV-infected Individuals in Primary Care Settings." Demonstration projects will work for four years with the SPNS (Special Projects of National Significance) program of the HIV/AIDS Bureau (HAB) and its Evaluation Center (funded in FY 2002). Both the Center and the demonstration project sites will focus on implementing and evaluating interventions for HIV-positive individuals in primary care settings. Interventions targeting HIV-infected men and women are needed to prevent transmission to uninfected individuals and to prevent re-infection among people already infected with the virus. The HIV primary care setting may provide an opportunity to reduce new transmissions through clinician-delivered risk assessment and prevention counseling and behavioral interventions. Clinicians can play an instrumental role in assessing risk, determining the level of need for prevention education and other services, and assessing where that need will best be addressed. Patients needing more intensive or ongoing behavioral interventions can be identified by clinicians and referred for services such as case management, medical services, mental health services, and social services. By making referrals to community resources, clinicians can help their patients find personally relevant support for changing their behavior, and maximize limited time during clinic visits for addressing other health concerns. To determine the efficacy of a clinician-delivered approach, the feasibility of potential intervention models needs to be assessed in terms of cost, time, and clinician skill. The models should also describe the role of service providers and practitioners in clinical settings and their role in providing prevention and making referrals for behavioral counseling. Technological innovations, *i.e.* telehealth, telecommunication, etc. are encouraged.

Eligibility: Eligible applicants are public and private nonprofit entities, including faith-based and community-based organizations. Applicants must be providers currently funded under Titles I–IV of the Ryan White CARE Act. With regard to this initiative, all applicants must have significant experience with issues of HIV prevention, HIV care and treatment, and the integration of these.

Estimated Amount of This Competition: $2,600,000.

Estimated Number of Awards To Be Made: 4–6.

Estimated or Average Size of Each Award: $400,000.

Estimated Project Period: 4 years.

HRSA 03–048 Special Projects of National Significance " HIV Prevention Initiatives in Primary Care Settings (SPPCS)

Application Availability Date: April 5, 2003.

Letter of Intent Deadline: April 30, 2003.

Application Deadline: June 30, 2003.

Projected Award Date: September 30, 2003.

Program Contact Person: Faye E. Malitz.

Phone Number: (301) 443–3259.

E-mail: fmalitz@hrsa.gov.

HRSA 03–049 Telehealth Grant Program (THGP)

Legislative Authority: Public Health Service Act, Section 330(A).

CFDA Number: 93.211.

Purpose: Funds will be used to support rural telehealth grant projects, including the funding of some smaller, more narrowly defined, rural community-based projects. The grants awarded will support health providers to improve access to health services, develop community-based clinical telemedicine, and set up distance-learning education projects for health professionals, patients, and their families in rural communities. Emphasis will be placed on management of chronic conditions, such as diabetes, asthma and other chronic lung disease, osteoporosis, and congestive heart failure in a variety of health care settings, from patient homes to schools and other community settings.

Eligibility: Applicants should be nonprofit entities, including faith-based or community-based organizations that provide health care services to rural communities through a telehealth network. Network members may be nonprofit or for-profit rural entities, but the network grantee must be a nonprofit entity. The telehealth network shall be composed of:

(a) Multispecialty entity that is located in an urban or rural area, which can provide 24-hour a day access to a range of specialty care; and

(b) At least two rural health care facilities of which at least one shall be a community-based health care provider such as a rural hospital; rural physician office; rural health clinic; rural community health clinic; rural nursing home; migrant health center or federally qualified health center; health care provider, including a pharmacist in private practice; rural health clinic; local health department; long-term care provider; home health care provider; outpatient mental health service provider; local or regional emergency health care provider; or oral health care provider.

Funding Priorities or Preferences: To receive a preference, the applicant must meet at least one of the following requirements:

(a) A majority of health care providers serving in the area or region to be served by the network;

(b) Any federally qualified health centers, rural health clinics, and local public health departments serving in the area or region;

(c) Outpatient mental health providers serving in the area or region; or

(d) Appropriate social service providers, such as agencies on aging, school systems, and providers under the woman, infants and children program, to improve access to and coordination of health care services.

In addition, the applicant will receive a preference, if it meets either of the following requirements:

(a) promotes local connectivity with areas, communities, or populations to be served through the project; and

(b) demonstrates that health care information has been integrated into the project.

Expenditures: Not less than 50 percent of the grant award is expended in a rural area or to provide services to residents of rural areas; no more than 40 percent of the total grant award may be used to purchase, lease or install equipment; and no more than 20 percent of the amount provided can be used to pay for the indirect costs associated with carrying out the purpose of this grant.

Matching or Cost Sharing Requirement: Match is not required, however, cost participation is encouraged.

Estimated Amount of This Competition: $5,000,000.

Estimated Number of Awards To Be Made: 25–30.

Estimated or Average Size of Each Award: $200,000 per year for up to three years.

Estimated Project Period: 3 years.

HRSA 03–049 Telehealth Grant Program (THGP)

Application Availability Date: December 17, 2002.

Letter of Intent Deadline: February 5, 2003.

Application Deadline: March 17, 2003.

Projected Award Date: September 1, 2003.

Program Contact Person: Amy Barkin.

Phone Number: 301–443–0447.

E-mail: abarkin@hrsa.gov.

Maternal and Child Health Bureau

HRSA 03–050 Genetic Services—Grants To Support Comprehensive Medical Care for Cooley's Anemia/Thalassemia (GSCAT)

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

CFDA Number: 93.110.

Purpose: The purpose of this grant activity is to fund up to three projects that will support the implementation of a model system of comprehensive care and medical management for individuals and families at risk or affected by Cooley's Anemia/Thalassemia. Such model should involve a complex network of services ranging from screening, diagnosis, counseling, and psychosocial services to specialized medical care including regular red blood cell transfusions and the monitoring, prevention, and treatment of iron overload resulting from repeated transfusions.

Eligibility: As cited in 42 CFR 51a.3 (a), any public or private entity, including an Indian Tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b) is eligible to apply for Federal funding. Community-based organizations, including faith-based organizations, are eligible to apply.

Funding Priorities or Preferences: Preference will be given to previously funded grantees who have developed and maintained a system of comprehensive care and medical management for individuals and families at risk for or affected by Cooley's Anemia/Thalassemia. Special consideration may be given to programs that include a distance education component.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $525,000.

Estimated Number of Awards To Be Made: 3.

Estimated or Average Size of Each Award: Up to $175,000.

Estimated Project Period: 3 Years.

HRSA 03–050 Genetic Services—Grants To Support Comprehensive Medical Care for Cooley's Anemia/Thalassemia (GSCAT)

Application Availability Date: December 13, 2002.

Letter of Intent Deadline: January 17, 2003.

Application Deadline: March 18, 2003.

Projected Award Date: September 1, 2003.

Program Contact Person: Marie Y. Mann.

Phone Number: (301) 443–1080.

E-mail Address: Cdiener@hrsa.gov.

HRSA 03–051 Promoting Integration of State Health Information Systems and Newborn Screening Service Systems for Monitoring and Ensuring Quality Services to Newborns and Children With or at Risk for Heritable Disorders-Cooperative Agreement (ISNSS)

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

CFDA Number: 93.110.

Purpose: The purpose is two-fold: to enhance and expand integrated State health information systems to monitor access to care and outcomes related to maternal and child health; and to enhance, expand and improve State Genetic Newborn Screening Programs (screening, counseling, testing, follow-up and sub-specialty services) and better integrate these programs with the State Title V Community-based System of Services for Children with Special Health Care Needs (CSHCN).

As part of the development of health information systems, the State must link newborn genetic screening program data with other related health data (e.g., vital statistics, immunization registries, hearing screening program data, birth defects registries, WIC data, and Medicaid data). Projects must monitor health outcomes of newborns identified with genetic disorders within the Genetic Newborn Screening Program and demonstrate that programs with integrated data systems result in improved access and integration of services for children who have or are at risk of having heritable disorders in the State Title V Community-based System of Services.

Under the terms of this cooperative agreement, in addition to the required monitoring and technical assistance, Federal responsibilities will include: (1) Participation, as appropriate, in meetings conducted during the period of the cooperative agreement; (2) ongoing review of activities and procedures to be established and implemented for accomplishing the proposed project; (3) review of project information prior to dissemination; (4) review of information on project activities; (5) assistance with the establishment of contacts with Federal and State agencies, Maternal and Child Health Bureau (MCHB) grant projects, and other contacts that may be relevant to the project's mission and referrals to these agencies; and (6) assistance in the establishment of State and Federal interagency partnerships, collaboration, and cooperation that may be necessary for carrying out the project.

Eligibility: As cited in 42 CFR 51a.3.

Funding Priorities or Preferences: Preference will be given to those States, Jurisdictions, or Territories that have received a previous Genetic Services Grant under the initiative, "State Development Grants for Newborn Screening Efforts and Infrastructure Development," as well as those States, Jurisdictions or Territories with previous grants under the initiative "Data Utilization and Enhancement." States, Jurisdictions or Territories that have received a Genetic Services Implementation Grant *will not* be considered.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of this Competition: $1,500,000.

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Estimated Number of Awards To Be Made: 5.
Estimated or Average Size of Each Award: $300,000.
Estimated Project Period: 4 years.

HRSA 03–051 Promoting Integration of State Health Information Systems and Newborn Screening Service Systems for Monitoring and Ensuring Quality Services to Newborns and Children With or at Risk for Heritable Disorders—Cooperative Agreement (ISNSS)

Application Availability Date: August 30, 2002.
Letter of Intent Deadline: September 30, 2002.
Application Deadline: December 3, 2002.
Projected Award Date: April 1, 2003.
Program Contacts: Michele A. Lloyd-Puryear, or Michael Kogan.
Phone Numbers: (301) 443–1080 (Lloyd-Puryear), (301) 443–8041 (Kogan).
E-mails: mpuryear@hrsa.gov, mkogan@hrsa.gov.

HRSA 03–052 National Oral Health Policy Center (OHSD)

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.
CFDA Number: 93.110.
Purpose: The purpose of this policy center is to identify and explore critical oral health policy issues. The center will serve as a forum to convene experts to examine oral health access issues, and facilitate the development of programs and materials that increase access to preventive, early intervention and restorative dental services for children and their families. Further, States will be assisted in assessing and evaluating implementation strategies that teach State Medicaid, State Children's Insurance Program (SCHIP), and public and private entities interventions for increasing access to oral health services for the underserved in keeping with the Surgeon General's Report on Oral Health and other Federal reports calling for increasing oral health access and working towards the elimination of health status disparities.
Eligibility: As cited in 42 CFR 51a.3 (a), any public or private entity, including an Indian Tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b) is eligible to apply for Federal funding under this Part. Community-based organizations, including faith-based organizations, are eligible to apply.
Review Criteria: Final criteria are included in the application kit.
Estimated Amount of this Competition: $225,000.
Estimated Number of Awards: 1.
Estimated Project Period: 5 years.

HRSA 03–052 National Oral Health Policy Center (OHSD)

Application Available: September 17, 2002.
Letter of Intent Deadline: November 15, 2002.
Application Deadline: December 16, 2002.
Projected Award date: June 1, 2003.
Contact Persons: John P. Rossetti, or Mark Nehring.
Phone Numbers: (301) 443–3177 (Rossetti), (301) 443–3449 (Nehring).
E-mails: jrossetti@hrsa.gov, mnehring@hrsa.gov.

HRSA 03–053 Integrated Health and Behavioral Health Care for Children, Adolescents and their Families—Implementation Grants (IHBHC)

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.
CFDA Number: 93.110.
Purpose: These three-year implementation grants are designed to operationalize the models of service integration established during a 2-year planning process by current grantees of this program. This implementation grant activity will allow initializing of the established formalized working relationships among community resources, specifically the physical and psychosocial primary health care, comprehensive mental health services and substance abuse prevention and treatment services as required under the previous planning grant announcement. The implementation activities are to include the necessary efforts to initiate and establish the model of integration developed over the two-year planning time, including but not limited to: (1) Integration of clinical/social services; (2) organizational structure; (3) staffing; (4) facilities; (5) information systems, including protection of confidentiality; and (6) fiscal arrangements.
Eligibility: Eligibility is limited to grantees that have previously received awards under Integrated Health and Behavioral Health Care for Children, Adolescents and Their Families—Planning Program.
Review Criteria: Final criteria are included in the application kit.
Estimated Amount of This Competition: $400,000.
Estimated Number of Awards To Be Made: 2.
Estimated Project Period: 3 years.
HRSA 03–053 Integrated Health and Behavioral Health Care for Children, Adolescents and Their Families—Implementation Grants (IHBHC)
Application Availability: December 9, 2002.
Letter of Intent Deadline: January 10, 2003.
Application Deadline: February 10, 2003.
Projected Award Date: May 1, 2003.
Program Contact Person: Sharon Adamo.
Phone Number: (301) 443–3972.
E-mail: Sadamo@hrsa.gov.

HRSA 03–054 State Maternal and Child Health Early Childhood Comprehensive Systems Grants (SECCS)

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.
CFDA Number: 93.110.
Purpose: The purpose of this program is to support States to plan, develop, and ultimately implement collaborations and partnerships to support families and communities in their development of children that are healthy and ready to learn at school entry. This grant initiative combines Maternal and Child Health Bureau's (MCHB) Early Childhood Health Strategic Plan with the State and local systems building initiatives supported through MCHB's Community Integrated Services Systems (CISS) grants program since 1992. While funding will be in two stages, Planning and Implementation, planning grants only are offered at this time. Plans would anticipate the implementation of systems which would include, but not be limited to, the following initiatives:
1. Access to medical homes providing comprehensive physical and child development services for all children in early childhood including children with special health care needs and assessment, intervention, and referral of children with developmental, behavioral and psycho-social problems.
2. Availability of services to address the needs of children at risk for the development of mental health problems and service delivery pathways to facilitate entrance of at risk children into appropriate child development and mental health delivery systems.
3. Early care and education services for children from birth through five years of age that support children's early learning, health, and development of social competence.
4. Parent education services that provide support to parents in their role as prime educators of their children.
5. Family support services that address the stressors impairing the ability of families to nurture and support the healthy development of their children.
Through planning grants, States would be expected to provide leadership in the development of cross systems service integration. They would work closely with other State public and private agencies to coordinate their efforts into a common focus on assuring the availability of a broad range of early childhood intervention services. Examples of such agencies would be the State administrations for Mental Health, Public Welfare, Education, Child Welfare, local and county health departments, March of Dimes, Easter Seal Society, *etc.* This grant should facilitate: (1) A completed needs assessment with respect to early childhood intervention: (2) a completed plan for action based on the needs assessment; and (3) documented evidence of the contribution and commitment of their partners to carry out this plan. The achievement of these essential goals is requisite for States to apply for an implementation grant.
Eligibility: As cited in 42 CFR 51a.3.
Limited Competition: This competition is limited to the 59 State, jurisdiction, or Territory Title V agencies.
Estimated amount of This Competition: $5,900,000.
Estimated Number of Awards To Be Made: 59.
Estimated or Average Size of Each Award: $100,000.
Estimated Project Period: 2 Years.
Review Criteria: Final criteria are included in the application kit.

HRSA 03–054 State Maternal and Child Health Early Childhood Comprehensive Systems Grants (SECCS)

Application Availability Date: October 1, 2002.
Letter of Intent Deadline: November 1, 2002.
Application Deadline: January 3, 2003.
Project Award Date: March 31, 2003.
Program Contact Person: Joseph A. Zogby.
Phone Number: (301) 443–4393.
E-mail: jzogby@hrsa.gov.

HRSA 03–055 Transitioning Healthy Child Care America Programs (THCCA)

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.
CFDA Number: 93.110.
Purpose: The purpose of this program is to plan for the sustainability of the programs developed in each participating State under the Healthy Child Care America 2000 (HCCA) Grants, and the effective integration of their activities into each State's system of services for children in early childhood. Those activities contain three component areas: quality assurance, these grants promoted the implementation of health and safety standards for child care, which were developed under the leadership of the Maternal and Child Health Bureau (MCHB); infrastructure building, these grants supported the building of State-based child care health consultant systems; and access to health services, these grants promoted the assurance that child health insurance programs, such as Medicaid and State Children's Insurance Program (SCHIP), provide access to a medical home for children in child care programs.
Each HCCA grantee along with their State health and child care administration partners must develop a two-year plan to support sustainability of the HCCA objectives as these programs are integrated into the State's system of services for early childhood health. HCCA transition planning must be well coordinated with the State Early Childhood Systems Planning Grants, integrating the HCCA program objectives into the child care/early care and education component of each State's Early Childhood Systems Planning Grant.
The transition supported under this grant program is the culmination of a seven-year joint effort with the States on the part of the MCHB and the Administration for Children and Families, inclusive of the four-year Health Systems Development in Child Care Grants and the three-year Healthy Child Care 2000 Grants currently entering their last year of funding.
Eligibility: As cited in 42 CFR 51a.3.
Special Considerations: State and/or private non-profit health or child care entities which can carry out programmatic expectations in relation to planning for the sustainability of quality assurance, infrastructure development, and statewide health care enrollment outreach activities begun under the Healthy Child Care America 2000 Grants.
Review Criteria: Final criteria are included in the application kit.
Estimated Amount This Competition: $2,650,000.
Estimated Number of Awards To Be Made: 53.
Estimated or Average Size of Each Award: $50,000.
Estimated Project Period: 2 Years.

HRSA 03–055 Transitioning Healthy Child Care America Programs (THCCA)

Application Availability Date: September 3, 2002.
Letter of Intent Deadline: October 1, 2002.
Application Deadline: November 1, 2002.
Projected Award Date: February 1, 2003.
Program Contact Person: Phyllis Stubbs.
Phone Number: (301) 443–4489.
E-mail: Pstubbs@hrsa.gov.

HRSA 03–056 Leadership Development for Implementation of Systems of Care for Children and Youth with Special Health Care Needs (CICS)

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.
CFDA Number: 93.110.
Purpose: This Cooperative Agreement will provide support to State Title V Children with Special Health Care Needs (CSHCN) Programs in the implementation of the Healthy People (HP) 2010 Objective designed to "increase the proportion of States and territories with service systems for children with special health care needs." The activity is based upon the six elements of the National Agenda for Children with Special Health Care Needs through national leadership activities. These activities should include, but not be limited to: ongoing information sharing between State programs, ongoing sharing of State plans pertaining to HP 2010 and onging collaborative planning, mentorship and training for State Title V CSHCN leadership.
Federal Involvement: Federal involvement will be listed in the application materials.
Eligibility: As cited in 42 CFR 51a.3(a), any public or private entity, including an Indian Tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b) is eligible to apply. Community-based organizations, including faith-based organizations, are eligible to apply.
Funding Priorities or Preferences: Special consideration may be given to programs that include a distance education component.
Estimated Amount of this Competition: $500,000.
Estimated Number of Awards To Be Made: 1.
Estimated Project Period: 3 years.

HRSA 03–056 Leadership Development for Implementation of Systems of Care for Children and Youth with Special Health Care Needs (CICS)

Application Availability Date: September 13, 2002.
Letter of Intent Deadline: January 3, 2003.
Application Deadline: February 14, 2003.
Projected Award Date: June 1, 2003.
Program Contact Person: Diana Denboba.
Phone Number: (301) 443–9332.
E-Mail: ddenboba@hrsa.gov.

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HRSA 03–057 Screening for Multiple Behavioral Risk Factors During the Preconception Through Postpartum Period (SMBRF)

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

CFDA Number: 93.110.

Purpose: In recent years there has been emphasis on encouraging family planning and prenatal providers to integrate risk assessment for behavioral problems into the clinic setting. However, frequently providers only screen for a select number of behavioral risk factors, such as smoking, substance use, depression, and domestic violence. The purpose of this demonstration initiative is to develop and implement a short, easy-to-use instrument to identify multiple behavioral risk factors and incorporate the use of the tool into the health care setting. Applicants can implement their program in either a family planning, prenatal, or postpartum clinic setting. In addition, the applicant must ensure that comprehensive assessment services are available for those with a positive screen, as well as a well-coordinated referral system.

Eligibility: As cited in 42 CFR 51a.3(a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b) is eligible to apply for Federal funding. Community-based organizations, including faith-based organizations, are eligible to apply.

Estimated Amount of This Competition: $450,000.

Estimated Number of Awards To Be Made: 3.

Estimated or Average Size of Each Award: $150,000.

Estimated Project Period: 3 years.

HRSA 03–057 Screening for Multiple Behavioral Risk Factors During the Perconception Through Postpartum Period (SMBRF)

Application Availability Date: October 22, 2002.

Letter of Intent Deadline: November 22, 2002.

Application Deadline: January 6, 2003.

Projected Award Date: June 1, 2003.

Program Contact Person: Karen Hench.

Phone Number: (301) 443–5720.

E-mail: khench@hrsa.gov.

HRSA 03–058 Sprans Community-Based Abstinence Education Project Grants (CBAE)

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

CFDA Number: 93.110.

Purpose: The purpose of the SPRANS Community-Based Abstinence Education Project Grants is to provide support to public and private entities for the development and implementation of abstinence education programs for adolescents, ages 12 through 18, in communities across the country. Projects funded through the SPRANS Community-Based Abstinence Education grant program must promote abstinence-only education as defined by section 510 of Title V of the Social Security Act and agree not to provide a participating adolescent any other education regarding sexual conduct in the same setting.

Eligibility: As cited in 42 CFR 51a.3 (a), any public or private entity, including an Indian Tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b) is eligible to apply for Federal funding. For example, State agencies responsible for the administration of the Section 510 Abstinence Education Grant, non-profit organizations and other community-based organizations, including faith-based organizations, are eligible to apply.

Funding Priorities or Preferences: Priority for funding will be given to entities in local communities which demonstrate a strong record of support for abstinence education among adolescents.

Special Considerations: To ensure that there is a national distribution of grantees, special consideration may be given to highly ranked applications in States that do not have a currently funded SPRANS Community-Based Abstinence Education Project Grant.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $30 million.

Estimated Number of Awards to be Made: Up to 90.

Estimated or Average Size of Each Award: $250,000 to $800,000.

Estimated Project Period: 3 years.

HRSA 03–058 Sprans Community-Based Abstinence Education Project Grants (CBAE)

Application Availability Date: November 15, 2002.

Letter of Intent Deadline: December 6, 2002.

Application Deadline: January 21, 2003.

Projected Award Date: June 1, 2003.

Program Contact Person: Michele Lawler.

Phone Number: (301) 443–5839.

E-mail: mlawler@hrsa.gov.

HRSA 03–059 New Investigators in Maternal and Child Heatlh (MCH) Research: Dissertation Awards (RDA)

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

CFDA Number: 93.110.

Purpose: The Maternal and Child Health Bureau supports the education and training of maternal and child health professionals who show promise to become leaders in the MCH field through teaching, research, clinical practice, and/or administration and policymaking. The purpose of this program is to increase opportunities for MCH trainees to conduct applied research, to strengthen the research training and experience of the next generation of MCH leaders, and to launch new investigators in the field by supporting research conducted by doctoral candidates in maternal and child health.

Eligibility: As cited in 42 CFR 51a.3(b), only public or nonprofit private institutions of higher learning may apply for training funds.

Funding Priorities or Preferences: Preference will be given to current recipients of MCHB-supported long-term leadership training grants.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $150,000.

Estimated Number of Awards To Be Made: 5.

Estimated or Average Size of Each Award: Up to $30,000.

Estimated Project Period: 1 Year.

HRSA 03–059 New Investigators in Maternal and Child Health (MCH) Research: Dissertation Awards (RDA)

Application Availability Date: December 2, 2002.

Letter of Intent Deadline: January 15, 2003.

Application Deadline: February 28, 2003.

Projected Award Date: July 1, 2003.

Program Contact Person: Hae Young Park.

Phone Number: (301) 443–2127.

E-mail: hpark@hrsa.gov.

HRSA 03–060 Maternal and Child Health (MCH) Research Program (MCHR)

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

CFDA Number: 93.110.

Purpose: The purpose of this program is to support applied research relating to maternal and child health services, which shows promise of substantial contribution to the advancement of current knowledge pool, and when used

in States and communities should result in health and health services improvements.

Eligibility: As cited in 42 CFR 51a.3 (b), only public or nonprofit institutions of higher learning and public or private nonprofit agencies engaged in research or in programs relating to maternal and child health and/or services for children with special health care needs may apply.

Funding Priorities or Preferences: Fifteen priority issues/questions selected from 11 broadly demarcated areas of program concern, and keyed to goals and objectives of the Maternal and Child Health Bureau and HRSA strategic plans, will be given priority for funding. The priority consists of a 10 percent adjustment to the score assigned to an application when recommended for support by the MCH Research Review Committee. The 15 issues/questions selected from the 11 broadly demarcated areas of program concern are detailed in the guidance material contained in the application kit.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $2,000,000.

Estimated Number of Awards To Be Made: 9.

Estimated or Average Size of Each Award: $220,000.

Estimated Project Period: 1 to 4 years.

HRSA 03–060 Maternal and Child Health (MCH) Research Program (MCHR)

Application Availability Date: Continuously.

Application Deadline: August 15, 2002, March 3, 2003, August 15, 2003.

Projected Award Date: January 1, 2003, September 1, 2003, January 1, 2004.

Program Contact Person: Kishena C. Wadhwani.

Phone Number: (301) 443–2207.

E-mail: kwadhwan@hrsa.gov.

HRSA 03–061 Maternal and Child Heatlh (MCH) Leadership Education in Developmental-Behavioral Pediatrics (BPT)

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

CFDA Number: 93.110.

Purpose: The purpose of this grant is to enhance behavioral, psychosocial, and developmental aspects of pediatric care. This is to be accomplished through: (1) support for fellows in developmental-behavioral pediatrics preparing for leadership roles as teachers, investigators, and clinicians advancing the field of developmental/behavioral pediatrics; and (2) providing pediatric practitioners, residents, and medical students with essential biopsychosocial knowledge and clinical expertise.

Eligibility: As cited in 42 CFR 51a.3 (b), only public or nonprofit private institutions of higher learning may apply for training grants.

Funding Priorities or Preferences: Preference will be given to Departments of Pediatrics with an identifiable developmental/behavioral pediatrics unit/program within accredited medical schools in the United States. Special consideration may be given to programs that include a distance education component.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $1,300,000.

Estimated Number of Awards To Be Made: 8–10.

Estimated or Average Size of Each Award: $145,000.

Estimated Project Period: 5 years.

HRSA 03–061 Maternal and Child Health (MCH) Leadership Education in Developmental-Behavioral Pediatrics (BPT)

Application Availability Date: September 30, 2002.

Letter of Intent Deadline: October 28, 2002.

Application Deadline: December 20, 2002.

Projected Award Date: July 1, 2003.

Program Contact Person: Laura Kavanagh.

Phone Number: (301) 443–2254.

E-mail: lkavanagh@hrsa.gov.

HRSA 03–062 Maternal and Child Health (MCH) Centers for Leadership in Communication Disorders Education (CDT)

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

CFDA Number: 93.110.

Purpose: This training program focuses on leadership education in communication disorders through: (1) Graduate training of speech/language pathologists and audiologists for maternal and child health leadership roles in education, service, research, administration, and advocacy in programs providing health and related services for populations of infants, children, and adolescents, particularly children with special health care needs; (2) development and dissemination of curricula, distance learning teaching modules, and other educational resources to enhance MCH content in communication disorders training programs; and (3) continuing education, consultation, and technical assistance targeted to the needs of the MCH community.

Eligibility: As cited in 42 CFR 51a.3 (b), only public or nonprofit private institutions of higher learning may apply for training grants.

Funding Priorities or Preferences: Preference will be given to graduate programs in communication disorders focusing on the health of women, infants, children and adolescents. Special consideration may be given to programs that include a distance education component.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $408,000.

Estimated Number of Awards To Be Made: 3.

Estimated or Average Size of Each Award: $136,000.

Estimated Project Period: 5 years.

HRSA 03–062 Maternal and Child Health (MCH) Centers for Leadership in Communication Disorders Education (CDT)

Application Availability Date: November 15, 2002.

Letter of Intent Deadline: January 3, 2003.

Application Deadline: February 10, 2003.

Projected Award Date: July 1, 2003.

Program Contact Person: Aaron Favors.

Phone Number: (301) 443–0392.

E-mail: afavors@hrsa.gov.

HRSA 03–063 Leadership Education Excellence in Meternal and Child Health Nursing (NURT)

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

CFDA Number: 93.110.

Purpose: The purpose of this program is to provide graduate training of nurses for leadership roles in maternal and child health, including women's health and the care of pregnant women, infants, children, and adolescents in community/public health programs. This is to be accomplished by advancing the knowledge and skills of nursing health professionals and enhancing their effectiveness in: (a) Community/public health programs providing maternal and child health services; (b) academia; and/or (c) clinical settings.

Eligibility: As cited in 42 CFR 51a.3 (b), only public or nonprofit private institutions of higher learning may apply for training grants.

Funding Priorities or Preferences: Preference will be given to graduate programs in maternal and pediatric nursing in an accredited school of nursing. Special consideration may be

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given to programs that include a distance education component.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $1,100,000.

Estimated Number of Awards To Be Made: 5 to 7.

Estimated or Average Size of Each Award: $180,000.

Estimated Project Period: 5 Years.

HRSA 03–063 Leadership Education Excellence in Maternal and Child Health Nursing (NURT)

Application Availability Date: October 25, 2002.

Letter of Intent Deadline: November 22, 2002.

Application Deadline: January 17, 2003.

Projected Award Date: July 1, 2003.

Program Contact Person: Nanette H. Pepper.

Phone Number: (301) 443–6445.

E-mail: npepper@hrsa.gov.

HRSA 03–064 Leadership Education Excellence in Maternal and Child Health Nutrition (NUTT)

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

CFDA Number: 93.110.

Purpose: This program provides graduate training for nutritionists to assume leadership roles in improving the nutritional status of women, infants, children, and adolescents. The training will prepare program participants to become leaders in public health programs, clinical settings, and/or academic settings.

Eligibility: As cited in 42 CFR 51a.3 (b), only public or nonprofit private institutions of higher learning may apply for training grants.

Funding Priorities or Preferences: Accredited institutions with an established public health nutrition graduate program will be given preference. Special consideration may be given to programs that include a distance education component.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $1,100,000.

Estimated Number of Awards To Be Made: 6 to 7.

Estimated or Average Size of Each Award: $180,000.

Estimated Project Period: 5 Years.

HRSA 03–064 Leadership Education Excellence in Maternal and Child Health Nutrition (NUTT)

Application Availability Date: October 25, 2002.

Letter of Intent Deadline: November 22, 2002.

Application Deadline: January 17, 2003.

Projected Award Date: July 1, 2003.

Program Contact Person: Denise Sofka.

Phone Number: (301) 443–0344.

E-mail: dsofka@hrsa.gov.

HRSA 03–065 Maternal and Child Health (MCH) Centers for Leadership in Public Health Social Work Education (SWT)

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

CFDA Number: 93.110.

Purpose: To provide a national focus on leadership in public health social work education through: (1) Graduate training of public health social workers for leadership roles in education, service, research, administration, and advocacy related to programs providing health and related services for populations of mothers and children (infants through adolescents), including those with special health care needs; (2) development and dissemination of curricula, teaching models and other educational resources to enhance MCH content in social work training programs; and (3) continuing education, consultation, and technical assistance in public health social work targeted to the needs of the MCH community.

Eligibility: As cited in 42 CFR 51a.3 (b), only public or nonprofit private institutions of higher learning may apply for training grants.

Funding Priorities or Preferences: Preference will be given to graduate programs whose curricula focus on both social work and public health. Programs may be in Schools of Social Work accredited by the Council on Social Work Education (CSWE), or in Schools of Public Health with a social work emphasis accredited by the Council on Education in Public Health (CEPH). Joint degree programs must have a documented affiliation agreement. Special consideration may be given to programs that include a distance education component.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $420,000.

Estimated Number of Awards To Be Made: 3.

Estimated or Average Size of Each Award: $140,000.

Estimated Project Period: 5 years.

HRSA 03–065 Maternal and Child Health (MCH) Centers for Leadership in Public Health Social Work Education (SWT)

Application Availability Date: October 25, 2002.

Letter of Intent Deadline: November 22, 2002.

Application Deadline: January 17, 2003.

Projected Award Date: July 1, 2003.

Program Contact Person: Diana L. Rule.

Phone Number: (301) 443–2190.

E-mail: drule@hrsa.gov.

HRSA 03–066 Continuing Education and Development Collaborative Office Rounds (CECOR)

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

CFDA Number: 93.110.

Purpose: To foster joint pediatrics-child psychiatry continuing education in the psychosocial developmental aspects of child health, utilizing a study group approach that emphasizes the practical challenges confronted by community based practitioners. Specific objectives must: (1) Enhance understanding of psychosocial aspects of child development, disorders, and disability and increase practitioners' ability to help children and families deal with these issues; (2) expand power to discriminate between transient disturbances and more serious psychiatric disorders which require referral as needed; (3) promote collaboration between pediatricians and child psychiatrists; and (4) facilitate a more comprehensive approach to health supervision, such as outlined in *Bright Futures: Guidelines for Health Supervision of Infants, Children and Adolescents.*

Eligibility: As cited in 42 CFR 51a.3 (b), only public or nonprofit private institutions of higher learning may apply for training grants.

Funding Priorities or Preferences: Departments of Pediatrics and Divisions/Departments of Child Psychiatry in accredited U.S. Medical Schools. Either program may submit the application, but they must have a documented agreement to develop and implement the training jointly. Medical schools that have multiple pediatrics and/or child psychiatry programs are limited to one application. Special consideration may be given to programs that include a distance education component.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $180,000.

Estimated Number of Awards To Be Made: 12.

Estimated or Average Size of Each Award: $15,000.

Estimated Project Period: 5 years.

HRSA 03–066 Continuing Education and Development Collaborative Office Rounds (CECOR)

Application Availability Date: September 30, 2002.

Letter of Intent Deadline: October 28, 2002.

Application Deadline: December 9, 2002.

Projected Award Date: July 1, 2003.

Program Contact Person: Diana L. Rule.

Phone Number: (301) 443–2190.

E-mail: drule@hrsa.gov.

HRSA 03–067 HRSA/MCHB Doctoral Support Training Program: Awards for Enhancement of Epidemiology Applied to MCH (EPI)

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

CFDA Number: 93.110.

Purpose: The Maternal and Child Health Bureau is committed to developing and enhancing MCH epidemiologic capacity at the State and local level. The purpose of this program is to increase the number of doctoral candidates who elect a relevant MCH epidemiologic analytic issue, applied to the maternal and child population, as the basis for their research and dissertation, utilizing program information and data from a state, county, or city department of health. Candidates are to produce creative, well thought out, dissertation topics of interest that reflect the current trend of MCH and health services at the State and local level. Collaboration with a State or local department of health for the doctoral research is strongly recommended.

Eligibility: As cited in 42 CFR 51a.3 (b), only public or nonprofit private institutions of higher learning may apply for training grants.

Special Considerations: Special considerations will be given to those schools previously funded under this grant program.

Estimated Amount of This Competition: $234,000.

Estimated Number of Awards To Be Made: 9.

Estimated or Average Size of Each Award: $26,000.

Estimated Project Period: 3 years.

HRSA 03–067 HRSA/MCHB Doctoral Support Training Program: Awards for Enhancement of Epidemiology Applied to MCH (EPI)

Application Availability Date: August 16, 2002.

Letter of Intent Deadline: September 16, 2003.

Application Deadline: November 15, 2002.

Projected Award Date: March 31, 2003.

Program Contact Person: Christina Park.

Phone Number: (301) 443–0755.

E-mail: Cpark1@hrsa.gov.

HRSA 03–068 Healthy Tomorrows Partnership for Children Program (HTPC)

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

CFDA Number: 93.110.

Purpose: The purpose of this program is to stimulate innovative community-based programs that employ prevention strategies to promote access to health care for mothers and children nationwide. The intent of this program is: (1) To support the development of family-centered, community-based initiatives that plan and implement innovative and cost-effective approaches for focusing resources to promote community defined preventive child health and developmental objectives for vulnerable children and their families, especially those with limited access to quality health services; (2) foster/promote collaboration among community organizations, individuals, agencies, businesses, and families; (3) involve pediatricians and other pediatric health professionals in community-based service programs; and (4) build community and statewide partnerships among professionals in health, education, social services, government, and business to achieve self-sustaining programs to assure healthy children and families.

Matching or Cost Sharing Requirement: The applicant must demonstrate the capability to meet cost participation goals. In their second and subsequent years, Healthy Tomorrows Partnership For Children Program (HTPCP) projects are expected to have non-Federal matching funds equal to two times the Federal HTPCP grant award. Non-Federal funds must come from alternate non-Federal sources including, but not limited to, individuals, corporations, foundations, State and local agencies, in-kind services/resources, and/or others.

Eligibility: As cited in 42 CFR 51a.3 (a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b) is eligible to apply for Federal funding. Community-based organizations, including faith-based organizations, are eligible to apply.

Special Considerations: In the interest of equitable geographic distribution, special consideration for funding may be given to projects from States without a currently funded project in this category. These States are: Alabama, Delaware, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, West Virginia, Wisconsin, Wyoming, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, and the Virgin Islands.

Estimated Amount of This Competition: $400,000.

Estimated Number of Awards To Be Made: 8.

Estimated or Average Size of Each Award: $50,000.

Estimated Project Period: 5 years.

HRSA 03–068 Healthy Tomorrows Partnership for Children Program (HTPC)

Application Availability Date: August 20, 2002.

Letter of Intent Deadline: October 1, 2002.

Application Deadline: November 1, 2002.

Award Date: March 1, 2003.

Program Contact Person: Jose Belardo.

Phone Number: (301) 443–0757.

E-mail: jbelardo@hrsa.gov.

HRSA 03–069 State Systems Development Initiative (SSDI), Maternal and Child Health (MCH) Services Federal Set-Aside Program (SSDI)

Legislative Authority: Social Security Act, Title V, 42 USC 701.

CFDA Number: 93.110.

Purpose: The purpose of the State Systems Development Initiative is to assist State Agency MCH and Children with Special Health Care Needs (CSHCN) programs in the building of State and community service and information systems that improve the health of women and children.

During this time of government performance results accountability and demand for more accurate program data, the SSDI Program will be focused on improving data capacity in States. As part of ongoing needs assessment activities, States will be expected to make vigorous and determined efforts to identify and eliminate health disparities. States will also be expected to give special attention to responding to the core Health Status Indicator #8 regarding Data Capacity; i.e., establishing or improving the data linkages between birth records and (1) infant death certificates, (2) Medicaid eligibility or paid claims files, (3) Women Infant and Children (WIC) eligibility files, and (4) newborn

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screening files; and establishing or improving access to (1) hospital discharge surveys, (2) a birth defects surveillance system, (3) survey of recent mothers at least every two years, and (4) survey of adolescent health and behaviors at least every two years.

Eligibility: 42 CFR 51a.3.

Limited Competition: This competition is to the 59 State jurisdiction, or Territory Title V agencies.

Estimated Amount of This Competition: $5,300,000.

Estimated Number of Awards To Be Made: Up to 59.

Estimated Average Size of Each Award: $90,000.

Estimated Project Period: 3 years.

HRSA 03–069 State Systems Development Initiative (SSDI), Maternal and Child Health (MCH) Services Federal Set-Aside Program (SSDI)

Application Availability Date: December 18, 2002.

Application Deadline: March 18, 2003.

Projected Award Date: September 28, 2003.

Program Contact Person: C.J. Wellington.

Phone Number: (301) 443–2204.

E-mail address: *cjwellington@hrsa.gov.*

HRSA 03–070 Emergency Medical Services for Children (EMSC) Partnership Demonstration Grants (EMSCP)

Legislative Authority: Public Health Service Act, Section 1910, 42 USC 300w-9.

CFDA Number: 93.127.

Purpose: State partnership demonstration grants will fund activities that represent the steps to take in order to institutionalize EMSC within Emergency Medical Services (EMS) and to continue to improve and refine EMSC. Proposed activities should be consistent with documented needs in the State and should reflect a logical progression in enhancing pediatric capabilities. For example, funding might be used to: (1) Address problems identified in the course of a previous EMSC grant; (2) to increase the involvement of families in EMSC; (3) to improve linkages between local, regional, or State agencies; (4) to promulgate standards developed for one region of the State under previous funding to include the entire State; or (5) to assure effective triage of the child in physical or emotional crisis to appropriate facilities and/or other resources.

Eligibility: States and accredited schools of medicine are eligible applicants.

Funding Priorities or Preferences: Special consideration may be given to programs that include a distance education component.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $4,400,000.

Estimated Number of Awards To Be Made: 44.

Estimated or Average Size of Each Award: $100,000.

Estimated Project Period: 3 years.

HRSA 03–070 Emergency Medical Services for Children (EMSC) Partnership Demonstration Grants (EMSCP)

Application Availability Date: August 12, 2002.

Letter of Intent Deadline: September 12, 2002.

Application Deadline: November 12, 2002.

Projected Award Date: March 1, 2003.

Program Contact Person: Cindy R Doyle.

Phone Number: (301) 443–3888.

E-mail: *cdoyle@hrsa.gov.*

HRSA 03–071 Emergency Medical Services for Children (EMSC) Regional Symposium Supplemental Grants (EMSCS)

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

CFDA Number: 93.127.

Purpose: To provide supplemental funds to existing State Partnership Demonstration grantees for regional roundtable meetings that are convened for the purpose of knowledge sharing. The primary goal of the Emergency Medical Services for Children (EMSC) program is to improve the quality of care to children. In collaboration with schools of medicine, regional consortia of State EMS programs will meet annually to develop and evaluate improved procedures and protocols for treating children. Meetings will involve coordinating, exchanging, and demonstrating innovative activities of common interest to participating States, while facilitating a forum for knowledge transfer on EMSC related issues between individual care providers and care providing organizations.

Eligibility: Eligibility is limited to existing EMSC State Partnership Demonstration grantees.

Funding Priorities or Preferences: Special consideration may be given to programs that include a distance education component.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $350,000.

Estimated Number of Awards To Be Made: 8.

Estimated or Average Size of Each Award: $30,000—$50,000.

Estimated Project Period: 1 Year.

HRSA 03–071 Emergency Medical Services for Children (EMSC) Regional Symposium Supplemental Grants (EMSCS)

Application Availability Date: August 12, 2002.

Letter of Intent Deadline: September 12, 2002.

Application Deadline: November 12, 2002.

Projected Award Date: March 1, 2003.

Program Contact Person: Cindy R. Doyle.

Phone Number: (301) 443–3888.

E-mail: *cdoyle@hrsa.gov.*

HRSA 03–072 Traumatic Brain Injury (TBI) State Implementation Grants (TBII)

Legislative Authority: Public Health Service Act, Title XII, Section 1252, 42 U.S.C. 300d–52.

CFDA Number: 93.234.

Purpose: The purpose of this grant program is to improve health and other services for people who have sustained a traumatic brain injury (TBI). Implementation grants provide funding to assist States in moving toward statewide systems that assure access to comprehensive and coordinated TBI services.

Eligibility: State governments are eligible to apply. The application for Implementation funds may only come from the State agency designated as the lead for TBI services.

Matching Requirements: The State agrees to make available non-Federal contributions in an amount that is not less than $1 for each $2 of Federal funds provided under the grant. Non-Federal funds may be in cash or in kind.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $1,200,000.

Estimated Number of Awards To Be Made: 6.

Estimated or Average Size of Each Award: $200,000.

Estimated Project Period: 3 years.

HRSA 03–072 Traumatic Brain Injury (TBI) State Implementation Grants (TBII)

Application Availability Date: September 3, 2002.

Letter of Intent Deadline: November 4, 2002.

Application Deadline: December 2, 2002.

Projected Award Date: April 1, 2003.

Program Contact Person: Betty Hastings.

Phone Number: (301) 443–5599.

E-mail: *bhastings@hrsa.gov.*

HRSA 03–073 Traumatic Brain Injury (TBI) State Planning Grants (TBIP)

Legislative Authority: Public Health Service Act, Title XII, Section 1252, 42 U.S.C. 300d–52.

CFDA Number: 93.234.

Purpose: The purpose of this grant program is to improve health and other services for people who have sustained a traumatic brain injury (TBI). Planning grants provide funding to assist States in developing infrastructure as a prerequisite to receiving an implementation grant.

Eligibility: State governments are the only eligible applicants for funding. The application for Planning funds may only come from the State agency designated as the lead for TBI services.

Matching Requirements: The State agrees to make available non-Federal contributions in an amount that is not less than $1 for each $2 of Federal funds provided under the grant. Non-Federal funds may be in-cash or in-kind.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $225,000.

Estimated Number of Awards To Be Made: 3.

Estimated or Average Size of Each Award: $75,000.

Estimated Project Period: 2 years.

HRSA 03–073 Traumatic Brain Injury (TBI) State Planning Grants (TBIP)

Application Availability Date: September 3, 2002.

Letter of Intent Deadline: November 4, 2002.

Application Deadline: December 2, 2002.

Projected Award Date: April 1, 2003.

Program Contact Person: Betty Hastings.

Phone Number: (301) 443–5599.

E-mail: *bhastings@hrsa.gov.*

HRSA 03–074 Traumatic Brain Injury (TBI) Post-Demonstration (TBIPD)

Legislative Authority: Public Health Service Act, Title XII, Section 1252, 42 U.S.C. 300d–52.

CFDA Number: 93.234.

Purpose: Continuation of previously awarded demonstration projects. A State that received a grant under this section prior to the date of enactment of the Children's Health Act of 2000 may compete for new project grants under this section.

Eligibility: State governments are eligible to apply. The application for a TBI Post Demonstration Grant may only come from the State agency designated as the lead for TBI services.

Funding Priorities or Preferences: Preference for TBI Post Demonstration Grants will be given to States who have successfully completed a three-year TBI State Implementation Grant and have never received TBI Post Demonstration Grant funding.

Matching Requirements: The State agrees to make available non-Federal contributions in an amount that is not less than $1 for each $2 of Federal funds provided under the grant. Non-Federal funds may be in-cash or in-kind.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $600,000.

Estimated Number of Awards To Be Made: 6.

Estimated or Average Size of Each Award: $100,000.

Estimated Project Period: 1 year.

HRSA 03–074 Traumatic Brain Injury (TBI) Post-Demonstration (TBIPD)

Application Availability Date: September 4, 2002.

Letter of Intent Deadline: November 4, 2002.

Application Deadline: December 2, 2002.

Projected Award Date: April 1, 2003.

Program Contact Person: Betty Hastings.

Phone Number: (301) 443–5599.

E-mail: *bhastings@hrsa.gov.*

HRSA 03–075 Poison Control Centers Stabilization and Enhancement Grant Program, Incentive Grants (PCCSE)

Legislative Authority: The Poison Control Center Enhancement and Awareness Act, Section 6(a) of Public Law (P.L.) 106–174.

CFDA Number: 93.253.

Purpose: The goal of the Maternal and Child Health (MCH) Bureau Poison Control Centers Program is to promote a comprehensive system for the delivery of high quality poison control services nationwide. Funds disbursed under this grant program category must support projects which are designed to accomplish the following goal: to implement, improve or enhance systems development, efficiency and collaborative activity between centers.

Eligibility: Certified Poison Control Centers (PCCs) are eligible to apply.

Limited Competition: This competition is limited to the existing Poison Control Stabilization Grantees.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $1,800,000.

Estimated Number of Awards to be Made: 12.

Estimated or Average Size of Each Award: $150,000.

Estimated Project Period: 2 years.

HRSA 03–075 Poison Control Centers Stabilization and Enhancement Grant Program, Incentive Grants (PCCSE)

Application Availability Date: March 3, 2003.

Application Deadline: May 8, 2003.

Projected Award Date: September 1, 2003.

Program Contact Person: Carol Delany.

Phone Number: (301) 443–5848.

E-mail: *cdelany@hrsa.gov.*

HRSA 03–076 Poison Control Centers Stabilization and Enhancement Grant Program, Financial Stabilization Supplemental Grants (PCCFS)

Legislative Authority: The Poison Control Enhancement and Awareness Act, Section 6(a) of P.L. 106–174.

CFDA Number: 93.253.

Purpose: To provide access to poison control services to areas outside the continental U.S. This funding category will provide grant supplements to existing financial stabilization grantees who will provide support for poison control services to the U.S. Virgin Islands and will initiate access to the National toll-free Poison Control number to American Samoa in the Pacific Basin. Based upon this one-year experience, the program will determine measures that will be used to develop more permanent arrangements to assure these services to all U.S. territories. It is expected that expansion of services to the remainder of the Pacific Basin will follow in 2004.

Eligibility: Funding is limited to existing Financial Stabilization Grantees.

Review Criteria: Final criteria are included in the application kit.

Estimated Amount of This Competition: $60,000.

Estimated Number of Awards to be Made: 2.

Estimated or Average Size of Each Award: $30,000.

Estimated Project Period: 1 year.

HRSA 03–076 Poison Control Centers Stabilization and Enhancement Grant Program, Financial Stabilization Supplemental Grants (PCCFS)

Application Availability Date: March 3, 2003.

Application Deadline: May 8, 2003.

Projected Award Date: September 1, 2003.

Program Contact Person: Carol A. Delany.

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Phone Number: (301) 443–5848.
E-mail: cdelany@hrsa.gov.

Office of Rural Health Policy

HRSA 03–077 Rural Health Outreach Grant (RHO)

Legislative Authority: Section 330A of the Public Health Service Act, 42 U.S.C. 254c.

CFDA Number: 93.912.

Purpose: The purpose of this demonstration grant program is to expand access to, coordinate, restrain the cost of, and improve the quality of essential health care services, including preventive and emergency services, through the development of health care networks in rural areas and regions. Funds are available for projects to support the initial direct delivery of health care and related services, and to expand existing services or to enhance health service delivery through education, promotion, and prevention programs. Networks which must be composed of at least three separately owned health care or social services organizations may comprise the same providers (*e.g.*, all hospitals) or more diversified networks.

Eligibility: Rural public or nonprofit private organizations that are part of a network of at least three entities that support or provide the delivery of health care services and will work together to complete the proposed project are eligible. Geographic eligibility requirements are (1) the lead applicant organization must be located in a rural area or in a rural zip code of an urban county (list included in the application materials) and all services must be provided in a rural county. If the applicant is owned by or affiliated with an urban entity or health system the rural component may still apply as long as the rural entity can directly receive and administer the grant funds in the rural area; be in complete control in the planning, program management and financial management of the project; and, the urban parent organization assures the Office of Rural Health Policy in writing, that for this project, they will exert no control over or demand collaboration with the rural entity; or (2) the organization must be constituted exclusively to provide services to migrant and seasonal farm workers in rural areas and supported under Section 330(g) of the Public Health Service Act (these organizations are eligible regardless of the urban or rural location of the administrative headquarters); or (3) the project services will be delivered on Federally-designated tribal lands. Entities meeting eligibility requirements, that are non-profit, faith-based or community-based organizations are eligible to apply. We encourage applicants to consider how their proposals might use telehealth and/or new and emerging technologies to achieve their project goals. The advent of advanced communication tools such as distance learning, remote patient monitoring, personal data assistants (PDAs), interactive video, satellite broadcasting and store-and-forward technology are just some of the many health-care focused technological applications that can help improve access to care either directly or indirectly by improving the efficiency of local health care providers.

Funding Priorities or Preferences: Funding preference may be given to applicant networks that include (1) a majority of the health care providers serving in the area or region to be served by the network; (2) Federally-qualified health centers, rural health clinics, and local public health departments serving in the area or region; (3) outpatient mental health providers serving in the area or region; or (4) appropriate social service providers, such as agencies on aging, school systems, and providers under the women, infants and children program (WIC), to improve access to and coordination of health care services.

Funding priority will be given to applicants that utilize telehealth/technology in their projects.

Special Considerations: Applicant organization must be located in a rural area. The proposed project must be directed to and services must remain in the rural area. (A list of eligible rural areas is included in the application packet.)

Estimated Amount of This Competition: $8,928,000.

Estimated Number of Awards To Be Made: 50 for FY 2003 and 25 for 2004.

Estimated or Average Size of Each Award: $185,000.

Estimated Project Period: 3 years.

HRSA 03–077 Rural Health Outreach Grant (RHO)

Application Availability Date: June 17, 2002 for FY 2003 and June 16, 2003 for FY 2004.

Application Deadline: September 13, 2002 for FY 2003 and September 12, 2003 for FY 2004.

Projected Award Date: May 1, 2003 for FY 2003 and May 1, 2004 for FY 2004.

Program Contact Person: Lilly Smetana.

Phone Number: (301) 443–0835.
E-mail: lsmetana@hrsa.gov.

Technical Assistance Conference Call: Instant replay of July 31st technical assistance call available until August 30, 2002. Please call 800/925–4170, access code not necessary.

HRSA 03–078 Rural Health Network Development (RHN)

Legislative Authority: Section 330A of the Public Health Service Act, 42 U.S.C. 254c.

CFDA Number: 93.912.

Purpose: The purpose of this program is to support the development of health care networks in rural areas. Project funds are given to develop the organizational capabilities of these networks. The networks, which are tools for overcoming the fragmentation and vulnerability of the health care delivery system in rural areas, must be composed of at least three separately owned health care organizations. As such, the network supports rural health care organizations in a variety of ways, thereby strengthening the local delivery system to meet the health care needs of rural communities.

Eligibility: Rural public or nonprofit private organizations that are part of a network of at least three entities that support the delivery of health care services and will work together to complete the proposed project are eligible. Geographic eligibility requirements are (1) the lead applicant organization must be located in a rural area or in a rural zip code of an urban county (list included in the application materials) and all services must be provided in a rural county. If the applicant is owned by or affiliated with an urban entity or health system the rural component may still apply as long as the rural entity can directly receive and administer the grant funds in the rural area; be in complete control in the planning, program management and financial management of the project; and, the urban parent organization assures the Office of Rural Health Policy in writing, that for this project, they will exert no control over or demand collaboration with the rural entity; or (2) the organization must be constituted exclusively to provide services to migrant and seasonal farm workers in rural areas and supported under section 330(g) of the Public Health Service Act (these organizations are eligible regardless of the urban or rural location of the administrative headquarters); or (3) the project services will be delivered on Federally-designated tribal lands. Entities meeting eligibility requirements, that are non-profit, faith-based or community-based organizations are eligible to apply.

We encourage applicants to consider how their proposals might use telehealth, and/or new and emerging technologies to achieve their project goals. The advent of advanced communication tools such as distance learning, remote patient monitoring, personal data assistants (PDAs), interactive video, satellite broadcasting and store-and-forward technology are just some of the many health-care focused technological applications that can help improve access to care either directly or indirectly by improving the efficiency of local health care providers.

Funding Priorities or Preferences: Funding preference may be given to applicant networks that include (1) a majority of the health care providers serving in the area or region to be served by the network; (2) Federally-qualified health centers, rural health clinics, and local public health departments serving in the area or region; (3) outpatient mental health providers serving in the area or region; or (4) appropriate social service providers, such as agencies on aging, school systems, and providers under the women, infants and children program (WIC), to improve access to and coordination of health care services.

Funding priority will be given to applicants that utilize telehealth/technology in their projects.

Special Considerations: Applicant organization must be located in a rural area. The proposed project must remain in the rural area. (A list of eligible rural areas is included in the application packet.)

Estimated Amount of This Competition: $8,900,000.

Estimated Number of Awards To Be Made: 50 for FY 2003 and 25 for FY 2004.

Estimated or Average Size of Each Award: $182,000.

Estimated Project Period: 3 years.

HRSA 03–078 Rural Health Network Development (RHN)

Application Availability Date: June 17, 2002 for FY 2003 and June 16, 2003 for FY 2004.

Application Deadline: September 20, 2002 for FY 2003 and September 19, 2003 for FY 2004.

Projected Award Date: May 1, 2003 for FY 2003 and May 1, 2004 for FY 2004.

Program Contact Person: Lilly Smetana.

Phone Number: (301) 443–0835.
E-mail: lsmetana@hrsa.gov.

Technical Assistance Conference Call: Instant replay of July 31st technical assistance call available until August 30, 2002. Please call 800/925–4170, access code not necessary.

Office of Special Programs

HRSA 03–079 Social and Behavioral Interventions To Increase Organ and Tissue Donation (SBITD)

Legislative Authority: Public Health Service Act Section 371(a)(3), 42 U.S.C. 273(a)(3).

CFDA Number: 93.134.

Purpose: The goal of this grant program is to assist eligible entities in the evaluation of, or the implementation and evaluation of, highly promising strategies and approaches that can serve as model interventions for increasing organ and tissue donation. All projects must have rigorous methodology and evaluation components capable of ascertaining the effectiveness of the intervention(s). Applications may focus on pilot projects or replications of interventions already shown to be effective in a pilot study. Projects that propose creative interventions, including those that integrate telehealth and distance learning, are also of interest.

Eligibility: Federally-designated organ procurement organizations or other private non-profit community or faith-based organizations which are part of a consortium of organizations consisting of at least one transplant related organization and one research related organization are eligible to apply.

Estimated Amount of This Competition: $5,000,000.

Estimated Number of Awards To Be Made: 20.

Estimated or Average Size of Each Award: $250,000 per year.

Estimated Project Period: 1–3 years.

HRSA 03–079 Social and Behavioral Interventions To Increase Organ and Tissue Donation (SBIDT)

Application Availability Date: October 18, 2002.

Letter of Intent Deadline: January 10, 2003.

Application Deadline: March 4, 2003.

Projected Award Date: July 15, 2003.

Program Contact Person: Mary L. Ganikos.

Phone Number: (301) 443–8665.
E-mail: mganikos@hrsa.gov.

HRSA 03–080 Clinical Interventions To Increase Organ Procurement (CIOP)

Legislative Authority: Public Health Service Act Section 371(a)(3), 42 U.S.C. 273(a)(3).

CFDA Number: 93.134.

Purpose: The goal of this grant program is to assist eligible entities in the implementation, evaluation, and dissemination of model interventions with the greatest potential for increasing the number of heart-beating and non-heart-beating deceased donors and/or the number of organs that are recovered from such donors. All projects must have rigorous methodology and evaluation components capable of ascertaining the effectiveness of the intervention(s). Projects can employ qualitative studies, quantitative research, or empiric work. Eligible interventions could focus on new and/or improved methods to optimize hemodynamic stability after brain death; improve donor organ evaluation practices; investigate time-efficient technologies to match donor organs with compatible recipients; and identify appropriate non-heart-beating donation candidates. Interventions focusing on the use of information and communication technology to disseminate donor-related information or to increase the efficiency of organ placements are encouraged.

Eligibility: An applicant organization must be a Federally-designated organ procurement organization (OPO) or a consortium of relevant entities or organizations. One organizational member (the applicant organization) carries overall responsibility for project leadership. The applicant organization must be a Federally-designated OPO or other private, non-profit organization actively involved in transplantation, or a Federal institution in accordance with section 235 of the Public Health Service Act.

Estimated Amount of This Competition: $3,000,000.

Estimated Number of Awards To Be Made: 13.

Estimated or Average Size of Each Award: $230,000.

Estimated Project Period: 1–3 years.

HRSA 03–080 Clinical Interventions To Increase Organ Procurement (CIOP)

Application Availability Date: November 1, 2002.

Letter of Intent Deadline: January 24, 2003.

Application Deadline: March 18, 2003.

Projected Award Date: July 31, 2003.

Program Contact Person: Virginia McBride; Laura St. Martin.

Phone Number: (301) 443–7577.
E-mail: vmcbride@hrsa.gov; lstmartin@hrsa.gov.

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August 9, 2002

Part VII

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 405 et al.
Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates; and Changes to Payment Suspension for Unfiled Cost Reports; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 410 and 419

[CMS–1206–P]

RIN 0938–AL19

Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates; and Changes to Payment Suspension for Unfiled Cost Reports

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Medicare hospital outpatient prospective payment system to implement applicable statutory requirements and changes arising from our continuing experience with this system. In addition, it would describe proposed changes to the amounts and factors used to determine the payment rates for Medicare hospital outpatient services paid under the prospective payment system. These changes would be applicable to services furnished on or after January 1, 2003. In addition, this rule proposes to allow the Secretary to suspend Medicare payments "in whole or in part" if a provider fails to file a timely and acceptable cost report.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 8, 2002.

ADDRESSES: In commenting, please refer to file code CMS–1206–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1206–P, P.O. Box 8018, Baltimore, MD 21244–8018.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses:

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Anita Heygster, (410) 786–0378—outpatient prospective payment issues; Lana Price, (410) 786–4533—partial hospitalization and ESRD; Gerald Walters, (410) 786–2070—payment suspension issues.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call (410) 786–7197.

Availability of Copies and Electronic Access

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Alphabetical List of Acronyms Appearing in the Proposed Rule

ACEP American College of Emergency Physicians
AMA American Medical Association
APC Ambulatory payment classification
AWP Average wholesale price
BBA Balanced Budget Act of 1997
BIPA Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000
BBRA Balanced Budget Refinement Act of 1999
CCR Cost center specific cost-to-charge ratio
CMHC Community mental health center
CMS Centers for Medicare & Medicaid Services (Formerly known as the Health Care Financing Administration)
CPT (Physician's) Current Procedural Terminology, Fourth Edition, 2002, copyrighted by the American Medical Association
CSW Clinical social worker
CY Calendar year
DRG Diagnosis-related group
DSH Disproportionate Share Hospital
EACH Essential Access Community Hospital
E/M Evaluation and management
ERCP Endoscopic retrograde cholangiopancreatography
ESRD End-stage renal disease
FACA Federal Advisory Committee Act
FY Federal fiscal year
HCPCS Healthcare Common Procedure Coding System
HIPAA Health Insurance Portability and Accountability Act of 1996
ICU Intensive care unit
ICD–9–CM International Classification of Diseases, Ninth Edition, Clinical Modification
IME Indirect Medical Education
IPPS (Hospital) inpatient prospective payment system
LTC Long Term Care
MedPAC Medicare Payment Advisory Commission
MDH Medicare Dependent Hospital
MSA Metropolitan statistical area
NECMA New England County Metropolitan Area
OCE Outpatient code editor
OMB Office of Management and Budget
OPD (Hospital) outpatient department
OPPS (Hospital) outpatient prospective payment system
OT Occupational therapist
PHP Partial hospitalization program
PPS Prospective payment system
PPV Pneumococcal pneumonia (virus)
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
RRC Rural Referral Center
RVUs Relative value units
SCH Sole Community Hospital
TEFRA Tax Equity and Fiscal Responsibility Act
USPDI United States Pharmacopoeia Drug Information

Comparison of Proposed 2003 Payment Rates to 2002 Payment Rates

The outpatient pass-through provisions of the BBRA and BIPA have been exceptionally difficult to implement, arguably the most complex and difficult in the history of the Medicare program. In CY 2002, the pass-through payments, and the APC rates were calculated on the best information available. This was often manufacturer list prices, which may not reflect not actual prices paid by hospitals. For CY 2003, far more data is available on the actual charges for hospital OPDs, and these are reflected in the rates in this proposed rule. In many cases these new rates are significantly different from CY 2003 rates, but they are based on actual hospital charges, and on far more complete data than were the CY 2002 rates. Nevertheless, CMS is actively seeking comment on all aspects of these rates, given the significant changes in the proposed rule, and the agency is open to making changes, perhaps significant, in the final rule based on comments.

The 2003 payment rates proposed in this proposed rule are, for many items and services, significantly higher or lower than the payment rates for the same items and services for 2002, particularly for APCs which use medical devices, and for APCs for drugs that will no longer be eligible for pass-through status in 2003 and paid under separate APCs. Some proposed payments for 2003 are far lower than the 2002 payment amounts (and some are higher).

For example, as can be seen in Addenda A, the proposed rate for APC 0108 (Insertion/Replacement/Repair of Cardioverter-Defibrilator Leads) shows a dramatic decrease in payment compared to the 2002 rate. This reduction for a number of APCs is of concern to us because of the potential impact on access to care. We invite public comment and suggestions on how to address the potential for adverse impact of these proposed changes.

The proposed 2003 payment rates reflect the use of updated data, as required by the statute, in calculating payment rates in accordance with the methodologies set forth in the statute and regulations. The proposed payment rates reflect mathematical calculations based on the latest available program data.

Our goal in this proposed rule is to explain the methodology and to solicit comments on our rate-setting methods and the effect on beneficiary access, provider participation and the fiscal integrity of the Medicare Trust Fund.

Devices

We believe that there are several factors that may explain the differences between the proposed payment amounts for 2003 and the payment amounts for 2002 (some, but not all of which, are significant).

First, we believe that the payment rates for the device related procedures for 2002 may in some cases have been higher than they would have been had actual hospital acquisition cost data been available for us to use. Specifically, because we lacked hospitals' cost data for devices, we used the best data available to us at the time which was manufacturer data regarding the hospitals' acquisition costs in providing the devices. We assumed that a device would be provided with a related procedure and packaged 75 percent of these manufacturer estimated

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costs for the devices into the APCs for the procedures.

The costs that we packaged in for some devices may have been higher than actual hospital acquisition costs. The differences between the 2002 payment rate and the lower 2003 proposed payments are based on our data sources. While the 2003 rates are based on 2001 hospital claims and the latest available cost report data, the 2002 rates are based on manufacturer data for devices. We use charges on the hospital claims data to estimate hospital costs. We apply hospital-specific, department-specific cost-to-charge ratios (CCRs) from each provider's most recently submitted cost report to the charges to develop the estimate of costs. In most cases, the provider's most recently submitted cost report is from fiscal year 1999. An adjustment factor is applied in developing CCRs for cost reports that have not yet been settled, so that the CCRs will more closely reflect CCRs from a settled cost report.

Second, there may be problems in the data, particularly for coding of devices in 2001. As discussed later in this preamble, devices were to be coded using device specific C codes from the start of the OPPS on August 1, 2000 until the law changes required that we establish category codes by April 1, 2001. We then granted a grace period until July 1, 2001, during which we accepted both device specific codes and category codes. During a Town Hall meeting with the public on April 5, 2001, and in other contacts with hospitals (such as the open forum calls and visits to hospitals) we have been told that hospitals had difficulty in submitting proper HCPCS coding for services and for devices once OPPS began and that, in many cases, they did not bill for devices for which they should have claimed payment.

In some cases, hospitals were confused by the change from device specific codes to category codes; in other cases, the use of HCPCS codes was new and they had a long learning curve to learn how to use HCPCS codes. Our initial data analysis suggested that hospitals may not have billed for the devices using the device or category codes in all cases. If the charges were not on the claim, they would not have been picked up for calculation of the median cost for the service and the associated device, possibly resulting in a proposed payment rate for the APC that is inappropriately low and other rates that are inappropriately too high. However, based on our analysis which is described later, we believe that hospitals often showed the charges for the devices in the applicable revenue centers (such as, supplies) and that the charges for the devices often were on the claim, even if the HCPCS code was not.

We welcome public comments regarding these issues for these payment changes and proposals regarding how problems with claims data could be rectified for development of the final rule.

Drugs

As discussed later in this preamble, we propose to package the costs for lower cost drugs into the payment for the APC in which they are used and to pay specialty drugs and high cost drugs under separate APCs. Some of the APCs for separately paid drugs also show significant reductions in payments compared to the pass-through payments made in 2002. Several factors may help place these decreases in perspective.

These changes result largely because the payment method for items in transitional pass-through payment status differs significantly from other services paid under the OPPS, and as items lose transitional pass-through payment status they are subject to a different payment method. In particular, a drug in transitional pass-through payment status is paid based on 95 percent of the average wholesale price for the drug, possibly subject to a uniform reduction.[1]

In contrast, a drug not in transitional pass-through status is paid as are other services under the OPPS. The statute provides that services (other than transitional pass-through items) be paid on the basis of a service-specific relative weight multiplied by a conversion factor. The relative weight is determined based on the median hospital cost, where the cost on each claim is derived by multiplying the submitting hospital's charge by a cost-to-charge ratio (determined from the hospital's latest submitted cost report, usually from fiscal year 1999). We anticipate that a hospital's charges on particular services reflect, at least in relative terms, the hospital's resource use in providing that service.

Per the statute, the conversion factor was set at the initiation of the system to achieve budget neutrality relative to the prior system; it is updated each year by the rate of increase in the hospital market basket. This mechanism does reflect changes in input costs from the initial base, but the system is not rebased to reflect the absolute level of such costs.

This payment method was not intended to assure that hospitals, even on average, are reimbursed costs of particular services. In fact, because the conversion factor was calibrated to reflect prior reductions in hospital operating and capital costs that were built into the baseline for overall program expenditures, the OPPS is not set to pay full costs to hospitals.[2]

Further, nothing in the payment method prescribed by the statute requires or anticipates that hospitals would be reimbursed full costs of purchased inputs such as drugs, just as it does not anticipate that hospitals would be reimbursed for the full cost of any other services they deliver.

The payment methods are set out in section 1833(t) of the Act. This section does not permit continuation of a pass-through payment (at 95 percent of AWP or some other level) for drugs losing their transitional pass-through status. This section permits the Secretary to specify APC groupings, and we are proposing in 2003 to continue to pay separately for certain drugs that had transitional pass-through status in 2002 and that are no longer eligible for pass-through status in 2003. These drugs would be in separate APCs, rather than being packaged into other, procedure-related APCs; the payment method would be the same relative-weight payment method used for other APCs.

The resulting payment rates incorporate the best evidence we have regarding what hospitals charged in 2001. They may diverge, however, from payment rates based on the AWP, including those in use for 2002. As is discussed above, movement from pass-through payment rates to relative-weight based payment rates would be expected to lead to decreases in payments, even if AWP represented a reliable measure of hospital acquisition costs (As discussed above, we use hospital charges and hospital-specific, department-specific cost-to-charge ratios to estimate hospital costs. In most cases, cost-to-charge ratios are derived from 1999 cost reports).

However, we believe this outcome is also be due to deficiencies in AWP as a measure of hospital acquisition costs. AWP is not an accurate estimate of what

[1] In 2002, we apply a uniform reduction to the transitional pass-through portion of payments for drugs with transitional pass-through status. As a result, the OPPS now pays hospitals about 72 percent of AWP for drugs in this status. The uniform reduction, as discussed in the March 1, 2002 final rule, is to comply with section 1833(t)(6)(E) of the Act, which limits the total projected amount of transitional pass-through payments for 2002 to 2.5 percent of projected total payments under the OPPS in 2002.

[2] In fact, because of the effect of prior statutory reductions in payments, the OPPS system was calibrated at its initiation to pay only about 82 percent of hospital costs in the aggregate.

providers actually pay for drugs. Studies undertaken over the past decade by the Office of the Inspector General, the Department of Justice, and the General Accounting Office that compare AWP with actual drug acquisition costs have consistently shown that published AWPs considerably exceed these costs (See "MEDICARE Payments for Covered Outpatient Drugs Exceed Providers' Costs", GAO–01–1118). Therefore, it is to be expected that the proposed 2003 APC payment rates based on median hospital costs for these drugs will be lower than the 2002 payment rates for the same drugs that are based on AWP. The Administration has repeatedly stated its view that AWP inaccurately represents actual market pricing. The pass-through system pays based on AWP, creating further incentives for artificially high AWP listings. We believe the steep reductions in some drug prices reflect these incentives, and that the new rates more accurately reflect the actual acquisition costs for hospitals pay. Still, we are interested in soliciting comments on these costs, and the mechanisms to identify them.

I. Background

A. Authority for the Outpatient Prospective Payment System

When the Medicare statute was originally enacted, Medicare payment for hospital outpatient services was based on hospital-specific costs. In an effort to ensure that Medicare and its beneficiaries pay appropriately for services and to encourage more efficient delivery of care, the Congress mandated replacement of the cost-based payment methodology with a prospective payment system (PPS). The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), enacted on August 5, 1997, added section 1833(t) to the Social Security Act (the Act) authorizing implementation of a PPS for hospital outpatient services. The Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113), enacted on November 29, 1999, made major changes that affected the hospital outpatient PPS (OPPS). The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554), enacted on December 21, 2000, made further changes in the OPPS. The OPPS was first implemented for services furnished on or after August 1, 2000.

B. Summary of Rulemaking for the Outpatient Prospective System

- On September 8, 1998, we published a proposed rule (63 FR 47552) to establish in regulations a PPS for hospital outpatient services, to eliminate the formula-driven overpayment for certain hospital outpatient services, and to extend reductions in payment for costs of hospital outpatient services. On June 30, 1999, we published a correction notice (64 FR 35258) to correct a number of technical and typographic errors in the September 1998 proposed rule including the proposed amounts and factors used to determine the payment rates.
- On April 7, 2000, we published a final rule with comment period (65 FR 18434) that addressed the provisions of the PPS for hospital outpatient services scheduled to be effective for services furnished on or after July 1, 2000. Under this system, Medicare payment for hospital outpatient services included in the PPS is made at a predetermined, specific rate. These outpatient services are classified according to a list of ambulatory payment classifications (APCs). The April 7, 2000 final rule with comment period also established requirements for provider departments and provider-based entities and prohibited Medicare payment for nonphysician services furnished to a hospital outpatient by a provider or supplier other than a hospital unless the services are furnished under arrangement. In addition, this rule extended reductions in payment for costs of hospital outpatient services as required by the BBA and amended by the BBRA. Medicare regulations governing the hospital OPPS are set forth at 42 CFR part 419.
- On June 30, 2000, we published a notice (65 FR 40535) announcing a delay in implementation of the OPPS from July 1, 2000 to August 1, 2000. We implemented the OPPS on August 1, 2000.
- On August 3, 2000, we published an interim final rule with comment period (65 FR 47670) that modified criteria that we use to determine which medical devices are eligible for transitional pass-through payments. The August 3, 2000 rule also corrected and clarified certain provider-based provisions included in the April 7, 2000 rule.
- On November 13, 2000, we published an interim final rule with comment period (65 FR 67798). This rule provided for the annual update to the amounts and factors for OPPS payment rates effective for services furnished on or after January 1, 2001. We implemented the 2001 OPPS on January 1, 2001. We also responded to public comments on those portions of the April 7, 2000 final rule that implemented related provisions of the BBRA and public comments on the August 3, 2000 rule.
- On November 2, 2001, we published a final rule (66 FR 55857) that announced the Medicare OPPS conversion factor for calendar year 2002. In addition, it described the Secretary's estimate of the total amount of the transitional pass-through payments for CY 2002 and the implementation of a uniform reduction in each of the pass-through payments for that year.
- On November 2, 2001, we also published an interim final rule with comment period (66 FR 55850) that set forth the criteria the Secretary will use to establish new categories of medical devices eligible for transitional pass-through payments under Medicare's OPPS.
- On November 30, 2001, we published a final rule (66 FR 59856) that revised the Medicare OPPS to implement applicable statutory requirements, including relevant provisions of BIPA, and changes resulting from continuing experience with this system. It addition, it described the CY 2002 payment rates for Medicare hospital outpatient services paid under the PPS. This final rule also announced a uniform reduction of 68.9 percent to be applied to each of the transitional pass-through payments for certain categories of medical devices and drugs and biologicals.
- On December 31, 2001, we published a final rule (66 FR 67494) that delayed, until no later than April 1, 2002, the effective date of CY 2002 payment rates and the uniform reduction of transitional pass-through payments that were announced in the November 30, 2001 final rule. In addition, this final rule indefinitely delayed certain related regulatory provisions.
- On March 1, 2002, we published a final rule (67 FR 9556) that corrected technical errors that affected the amounts and factors used to determine the payment rates for services paid under the Medicare OPPS and corrected the uniform reduction to be applied to transitional pass-through payments for CY 2002 as published in the November 30, 2001 final rule. These corrections and the regulatory provisions that had been delayed became effective on April 1, 2002.

C. Authority for Payment Suspensions for Unfiled Cost Reports

Authority for the provision regarding payment suspensions for unfiled cost reports is contained within the authority for subpart C of 42 CFR Part 405, that is, sections 1102, 1815, 1833, 1842,

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1866, 1870, 1871, 1879, and 1892 of the Social Security Act (42 U.S.C. 1302, 1395g, 13951, 1395u, 1395cc, 1395gg, 1395hh, 1395pp, and 1395ccc) and 31 U.S.C. 3711.

D. Summary of Payment Suspensions for Unfiled Cost Reports

This provision is set forth in our existing regulations at 42 CFR 405.371 as follows:

Section 405.371 (a) provides that Medicare payments may be suspended, in whole or in part, following overpayments determined by the Medicare contractor when overpayment exists or when the payments to be made may not be correct.

Section 405.371(b) provides, in relevant part, that a payment suspension may proceed only after certain procedural requirements contained at § 405.372 are met.

Existing § 405.371(c) provides for suspension of payment if a provider has failed to timely file an acceptable cost report. Payment to the provider is immediately suspended until a cost report is filed and determined by the intermediary to be acceptable.

With the increased transition to the prospective payment systems, the cost report settlement process has become less determinative of an institutional provider's Medicare reimbursement. For instance, in the case of an inpatient acute care hospital, the base DRG payment (as opposed to any teaching or disproportionate share payments, or pass-through payments) is determined when a claim is initially adjudicated, and does not generally change at the time of cost report settlement. Similarly, the APC payment for an outpatient service is also based on the claim adjudication. For home health agencies, minimal changes to payment are made at the time of cost report settlement, and for skilled nursing facilities, the main cost report issues revolve around bad debt determinations. In all of these cases, a significant proportion of the institution's payments are determined based on the adjudication of claims, and do not change at the point of settling the cost report. However, the filing of cost reports remains important for settling some payments, such as medical education payments, even for providers that are fully transitioned to prospective payment systems. Also, cost reports for PPS providers are used for determining prospective payment rates for future years. For these reasons, tailored payment suspensions can still be an effective measure for ensuring that providers comply with their obligation to file timely and acceptable cost reports.

II. Proposed Changes to the Ambulatory Payment Classification (APC) Groups and Relative Weights

Under the OPPS, we pay for hospital outpatient services on a rate-per-service basis that varies according to the APC group to which the service is assigned. Each APC weight represents the median hospital cost of the services included in that APC relative to the median hospital cost of the services included in APC 601, Mid-Level Clinic Visits. The APC weights are scaled to APC 601 because a mid-level clinic visit is one of the most frequently performed services in the outpatient setting.

Section 1833(t)(9)(A) of the Act requires the Secretary to review the components of the OPPS not less often than annually and to revise the groups and related payment adjustment factors to take into account changes in medical practice, changes in technology, and the addition of new services, new cost data, and other relevant information. Section 1833(t)(9)(A) of the Act requires the Secretary, beginning in 2001, to consult with an outside panel of experts when annually reviewing and updating the APC groups and the relative payment weights.

Finally, section 1833(t)(2) of the Act provides that, subject to certain exceptions, the items and services within an APC group cannot be considered comparable with respect to the use of resources if the highest median or mean cost item or service in the group is more than 2 times greater than the lowest median or mean cost item or service within the same group (referred to as the "2 times rule").

We use the median cost of the item or service in implementing this provision. The statute authorizes the Secretary to make exceptions to the 2 times rule "in unusual cases, such as low volume items and services."

The APC groups that we are proposing in this rule as the basis for payment in 2003 under the OPPS have been analyzed within this statutory framework.

A. Recommendations of the Advisory Panel on APC Groups

1. Establishment of the Advisory Panel

Section 1833(t)(9)(A) of the Act, requires that we consult with an outside panel of experts when annually reviewing and updating the APC groups and the relative weights. The Act specifies that the panel will act in an advisory capacity. The expert panel, which is to be composed of representatives of providers, is to review and advise us about the clinical integrity of the APC groups and their weights. The panel is not restricted to using our data and may use data collected or developed by organizations outside the Department in conducting its review.

On November 21, 2000, the Secretary signed the charter establishing an "Advisory Panel on APC Groups" (the Panel). The Panel is technical in nature and is governed by the provisions of the Federal Advisory Committee Act (FACA) as amended (Pub. L. 92–463). To establish the Panel, we solicited members in a notice published in the **Federal Register** on December 5, 2000 (65 FR 75943). We received applications from more than 115 individuals nominating either themselves or a colleague. After carefully reviewing the applications, we chose 15 highly qualified individuals to serve on the Panel. The first APC Panel meeting was held on February 27, February 28, and March 1, 2001 to discuss the 2001 APCs in anticipation of the 2002 OPPS.

We published a notice in the **Federal Register** on December 14, 2001 to announce the location and time of the second Panel meeting, a list of agenda items, and that the meeting was open to the public. We also provided additional information through a press release and on our website. We convened the second meeting of the Panel on January 22 through January 24, 2002.

2. General Issues Considered by the Advisory Panel

In this section, we summarize the Panel's discussion of a recommendation by the Panel's Research Subcommittee concerning the format of written submissions and oral presentations to the Panel and of several general OPPS payment issues.

Content for Future Presentations to the Panel

During the 2001 meeting, the Panel heard many different types of oral presentations. The Panel members felt that requiring consistency for all presentations with regard to format, data submission, and general information would assist them in analyzing the submissions and presentations and making recommendations. Therefore, during the 2001 meeting, the Panel recommended the creation of a Research Subcommittee. The Research Subcommittee was established during the 2001 meeting and had regular conference calls to discuss the development and implementation of standards for written submissions and oral presentations to the Panel during its meetings. The Research Subcommittee also analyzed complex issues (such as the use of multiple procedure claims

data to set APC relative weights) that could not be addressed in the time allotted for the annual meeting.

The Panel began its 2002 meeting by considering the Research Subcommittee's recommendation to the Panel on requirements for written submissions and oral presentations. The Research Subcommittee recommended that all future oral presentations and written submissions contain the following:

- Name, address, and telephone number of the proposed presenter.
- Financial relationship(s), if any, with any company whose products, services, or procedures are under consideration.
- CPT codes involved.
- APC(s) affected.
- Description of the issue.
- Clinical description of the service under discussion, with comparison to other services within the APC.
- Description of the resource inputs associated with the service under discussion, with a comparison to resource inputs for other services within the APC.
- Recommendations and rationale for change.
- Expected outcome of change and potential consequences of no change.

The Panel adopted the Subcommittee s recommendation. Presentations for the 2003 meeting must contain, at a minimum, this information.

Inpatient Only List

At its February 2001 meeting, the Panel discussed the existence of the inpatient list. The Panel favored its elimination. At the January 2002 meeting, Panel members noted that hospitals receive no payment for a service performed in an outpatient department that appears on the inpatient list, even though the physician performing that service will receive payment for his or her services. The Panel believes the physician should determine what procedure to perform and that both the hospital and the physician should receive payment for the procedure. We continue to disagree with the position taken by the Panel regarding the inpatient list for reasons that we discuss in detail in the April 7, 2000 final rule (65 FR 18456).

Prior to the 2002 Panel meeting, we received requests from hospital and surgical associations and societies to remove certain procedures from the inpatient list. We reviewed those requests and presented to the Panel the requests for which we were unable to make a determination based on the information submitted with the request.

The Panel considered removing the following procedures from the inpatient list:

CPT	Description
21390	Treat eye socket fracture.
27216	Treat pelvic ring fracture.
27235	Treat thigh fracture.
32201	Drain, percut, lung lesion.
33967	Insert ia percut device.
47490	Incision of gallbladder.
62351	Implant spinal canal cath.
64820	Remove sympathetic nerves.
92986	Revision of aortic valve.
92987	Revision of mitral valve.
92990	Revision of pulmonary valve.
92997	Pul art balloon repr, precut.
92998	Pul art balloon repr, precut.

The Panel recommended that we solicit comments and additional information from hospitals and medical specialty societies that have an interest in these procedures. The Panel also recommended that we present to them at their 2003 meeting any such comments that we receive to assist in their evaluation of whether to recommend removing the codes from the inpatient list.

The Panel did recommend that we remove from the inpatient list CPT code 47001, Biopsy of liver, needle; when done for indicated purpose at time of other major procedure. Panel members stated that this add-on code is being billed with surgical procedures that are payable under the OPPS. The Panel noted that coding edits prevent payment for the other payable OPPS services if CPT code 47001 is on the claim. We agree with the Panel's recommendation and we propose to remove 47001 from the inpatient list. We further propose to assign it status indicator "N" so that costs associated with CPT code 47001 would be packaged into the APC payment for the primary procedure performed during the same operative session.

One presenter at the Panel meeting suggested removing CPT codes 53448, 54411, and 54417 from the inpatient list because he believed they were being performed in the outpatient setting. After discussing this suggestion, the Panel recommended that these codes remain on the inpatient list because they involve removing a prosthesis through an infected operative field and cannot be safely and effectively performed in the outpatient setting. We agree with the Panel's recommendation, and we are not proposing to remove these codes from the inpatient list.

In section II.B.5 of this preamble, below, we discuss additional procedures, which were not considered by the Panel, that we propose to remove from the inpatient list. We discuss in detail our reasons for proposing these additional changes, and we propose two new criteria that we would adopt in the future when evaluating whether to make a procedure on the inpatient list payable under the OPPS. Table 6 in section II.B.5 lists all the procedures we propose to remove from the inpatient list, including those discussed by the Panel. We are considering the removal of CPT code 33967, Insertion of intra-aortic balloon assist device, percutaneous from the inpatient list, but did not include it in Table 6. The Panel considered this code for removal from the inpatient list and had concerns about whether performing this procedure in an outpatient setting is appropriate. Further, we have not been able to confirm that this procedure is being performed on Medicare beneficiaries in an outpatient setting. We solicit comments, including clinical data and specific case reports, that would support payment for CPT 33967 under the OPPS.

Multiple Bills

During its February 2001 meeting, the Panel received oral testimony identifying CMS exclusive use of single procedure claims to set relative weights for APCs as a potential problem in setting appropriate payment rates for APCs. Therefore, the panel asked its Research Subcommittee to work with CMS staff, using the Endoscopic Retrograde Cholangiopancreatography (ERCP) code family as a case study, to explore the use of multiple procedure claims data for setting relative weights. This code family was selected because presenters had suggested that when procedures in this family are performed, it is typical to perform more than one procedure during a session.

The Subcommittee reviewed pre-OPPS claims data for these codes, paying particular attention to common code combinations and costs per procedure and per code combination. After lengthy review, the Panel concluded that (1) it could not determine whether findings based on review of pre-OPPS data could be extrapolated to post-OPPS claims data; (2) the variability in allocation of costs across ERCP line items and the existence of claims where the same ERCP code was billed more than once indicate that problems exist with the accuracy of facility coding for these procedures; and (3) analysis of multiple claims data for ERCP may not be applicable to other sets of services.

The Subcommittee made the following recommendations to the Panel, which the Panel approved:

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- We should continue to explore the use of multiple procedure claims data for setting payment rates but should continue to use only single procedure claims data to determine relative payment weights for CY 2003.
- We should work with the APC Panel to explore the use of multiple claims data drawn from OPPS claims for services such as radiation oncology in time for the next APC Panel meeting.
- We should educate hospitals on appropriate coding and billing practices to ensure that claims with multiple procedures are properly coded and that costs are properly allocated to each procedure.

One presenter to the panel suggested a method to increase the number of claims that could be considered as single claims. Currently, we consider any claim submitted with two or more primary codes (that is, a code assigned to an APC for separate payment) to be a multiple procedure claim. When these claims contain line items for revenue centers without an accompanying Healthcare Common Procedure Coding System (HCPCS) code there is no way to determine the appropriate primary code with which to package the revenue center. The presenter suggested that we consider all claims where every line contains a separately payable HCPCS code as a single procedure claim, reasoning that on such claims we do not have to determine how and where to "package" line items not identified by a separately payable HCPCS code. Where every line item contains a separately payable HCPCS code, every cost can easily be allocated to a separately payable HCPCS code on the line item and all costs for each HCPCS code can then be accurately and completely determined.

We agree. We describe in section II.B.4 how we determined the number of single claims used to set the APC relative weights proposed for 2003 using this methodology. We ask for comments on our methodology.

Packaging

We sought the Panel's guidance on whether we should package the costs of HCPCS codes for radiologic guidance and radiologic supervision and interpretation services whose descriptors require that they only be performed in conjunction with a surgical procedure.

There are a number of reasons why we package the costs of certain procedures. For example, "add-on" procedures and radiologic guidance procedures should never be billed on a claim without the code for an associated procedure. A facility should not submit a claim for ultrasound guidance for a biopsy unless the claim also includes the biopsy procedure, because the guidance is necessary only when a biopsy is performed. A claim for a packaged guidance procedure (or a supervision and interpretation procedure whose descriptor requires it be performed in association with a surgical procedure) would be returned to the provider for correction and resubmission.

Also, we use packaging because billing conventions allow hospitals to report costs for certain services using only revenue center codes (that is, hospitals are not required to specify HCPCS codes for certain services). Packaging allows these costs to be captured in the data used to calculate median costs for services with an APC.

Several presenters to the panel requested that we not package any radiologic guidance or supervision and interpretation codes. They believe that hospitals will not use codes for which they do not receive a separate payment. If that were the case, it would be difficult to track utilization for these procedures and make it difficult for radiology departments to receive an appropriate payment for their services. A few presenters also pointed out that various forms of guidance with widely varying costs can be used for a single surgical procedure. Therefore, we might unintentionally create an incentive for inappropriate care by packaging several guidance procedures with varying costs into a single surgical code. Additionally, a manufacturer of ultrasound guidance equipment used for placement of radiation fields commented that, because guidance is rarely used for this purpose, its costs could not be adequately captured by packaging it into a common procedure where the vast majority of claims did not use guidance.

The Panel concluded that, even though we could be setting relative weights based on error claims, we should not package additional radiologic guidance and supervision and interpretation procedures and should continue to explore methodologies that would allow these procedures to be recognized for separate payment. The Panel also recommended that radiology guidance codes that were in APC 268 for CY 2001 but that were designated with status indicator "N" as packaged services in 2002, be restored as separately payable services for CY 2003. The Panel requested that this topic be placed on the agenda for the next Panel meeting.

Add-On Codes

We presented for the Panel's consideration several options for payment of add-on codes, including assignment of status indicator "N" to package them into the payment for the base procedure. Add-on codes described additional procedures performed by the same physician that are associated with the primary procedure, and which cannot be billed without the primary procedure. Such a methodology would create a single, weight averaged payment for the parent procedure and the add-on procedure while addressing the problem that any "single" claim for an add-on procedure is, by definition, an error claim. After thorough review, the Panel concluded that we should continue to pay for add-on codes separately, setting relative weights with the use of single procedure claims in spite of the fact that these were error claims. The Panel asked us to continue exploring ways to most appropriately pay for these services. They requested that this item also be placed on the agenda for the next Panel meeting.

We propose to accept the recommendations of the APC Panel both for packaging radiology guidance and supervision and interpretation codes and for payment of add-on codes. We are proposing to pay separately in 2003 for radiology guidance codes that were paid in APC 268 in CY 2001 but that were packaged in 2002.

3. Recommendations of the Advisory Panel and Our Responses

In this section, we consider the Panel's recommendations affecting specific APCs. The most recent data available for the Panel to review in considering specific APC groupings were the 1999–2000 pre-OPPS claims data that were the basis of the CY 2002 relative payment weights. The APC titles are shown in this discussion of the APC Panel recommendations as they existed when the APC Panel met in January 2002. In a few cases the APC titles were changed for the proposed 2003 OPPS and therefore some APCs do not have the same title in Addenda A as they have in this section.

As discussed below, the Panel sometimes declined to recommend a change in an APC even though the APC violated the 2 times rule. In section II.B.1 of this preamble, we discuss our proposals regarding the 2 times rule based on the CY 2001 data we are using to recalibrate the 2003 APC relative weights. Section II.B.1 also details the criteria we use in deciding to make an exception to the 2 times rule. We asked the Panel to review many of the exceptions we implemented in 2001 and 2002. We refer to the exceptions as "violations of the 2 times" rule in the following discussion.

APC 215: Level I Nerve and Muscle Tests
APC 216: Level III Nerve and Muscle Tests
APC 218: Level II Nerve and Muscle Tests

We presented this agenda item because APC 215 appeared to violate the 2 times rule. In order to remedy this violation, we asked the Panel to consider the following changes:

- Move CPT codes 95858, 95921, and 95922 from APC 215 to APC 218.
- Move CPT code 95930 from APC 216 to APC 218.
- Move CPT code 92275 from APC 216 to APC 231.
- Move CPT code 95920 from APC 218 to APC 216.

A presenter to the Panel who represented a device manufacturer noted that the resources used to provide 95921, Autonomic nerve function test, are not similar to the resources required for performing the procedures in APC 218, where we had suggested moving the device. He requested that the code be reassigned to APC 216 where it resided in calendar year 2000. Because there were very few claims for the code in the 1999 and 2000 data, the Panel voiced concern about making the change without sufficient data to support such a move.

The Panel recommended that the changes we asked them to consider be made, that is, to move CPT codes 95921 and 95922 to APC 218. However, if the calendar year 2001 data support a move of 95921 to APC 216, the Panel recommended that we consider that move.

APC 600: Low Level Clinic Visits
APC 601: Mid Level Clinic Visits
APC 602: High Level Clinic Visits
APC 610: Low Level Emergency Visits
APC 611: Mid Level Emergency Visits
APC 612: High Level Emergency Visits

The Panel's recommendations related to facility coding for clinic and emergency department visits are discussed below, in section VIII.A.

APC 296: Level I Therapeutic Radiologic Procedures
APC 297: Level II Therapeutic Radiologic Procedures
APC 263: Level I Miscellaneous Radiology Procedures
APC 264: Level II Miscellaneous Radiology Procedures

APCs 296, 263, and 264 appear to violate the 2 times rule. We asked the Panel to consider three options for reconfiguring these APCs so that they would conform with the 2 times rule.

Option 1: Create a new APC, Level III Therapeutic Radiology Procedures, by moving CPT code 75984 from APC 296 and 74475 from APC 297. Also, move CPT codes 76101, 70390, and 71060 from APC 263 to APC 264 and move CPT code 75980 from APC 297 to APC 296.

Option 2: Move CPT codes 76101, 703690, and 71060 from APC 263 to APC 264 and move CPT code 75984 from APC 296 to APC 264. Move CPT code 75980 from APC 297 to APC 296.

Option 3: Create a new APC, Level III Miscellaneous Radiology Procedures, by moving CPT codes 76080, 7036736, 76101, 70390, 74190, and 71060 from APC 263. Move CPT code 74327 from APC 296 to APC 263 and move CPT code 75980 from APC 297 to APC 296. APC 264 remains unchanged.

One presenter to the panel objected to the use of miscellaneous APCs in the OPPS. The presenter argued that we are charged with creating clinically coherent APCs and that miscellaneous APCs contradict the principle of clinical coherence. We noted that in spite of considerable effort to do so, we have not been able to incorporate the procedures assigned to miscellaneous APCs into other, more clinically homogeneous APCs. We asked the presenter to propose a configuration for consideration.

The Panel noted that none of the options that we presented resolve all of the 2 times violations. However, the Panel agreed that Option 2 would create more clinically coherent APCs without creating a new APC based on anticipated device costs that would be billed in 2002. In addition, the Panel invited the American College of Radiology and other interested parties to propose further changes for the Panel's consideration next year.

We propose to accept the Panel's recommendations that option 2 be implemented.

APC 230: Level I Eye Tests and Treatments
APC 231: Level III Eye Tests and Treatments
APC 232: Level I Anterior Segment Eye Procedures
APC 233: Level II Anterior Segment Eye Procedures
APC 234: Level III Anterior Segment Eye Procedures
APC 235: Level I Posterior Segment Eye Procedures
APC 236: Level II Posterior Segment Eye Procedures
APC 237: Level III Posterior Segment Eye Procedures
APC 238: Level I Repair and Plastic Eye Procedures
APC 239: Level II Repair and Plastic Eye Procedures
APC 240: Level III Repair and Plastic Eye Procedures
APC 241: Level IV Repair and Plastic Eye Procedures
APC 242: Level V Repair and Plastic Eye Procedures
APC 247: Laser Eye Procedures Except Retinal
APC 248: Laser Retinal Procedures
APC 698: Level II Eye Tests and Treatments
APC 699: Level IV Eye Tests and Treatments

We asked the Panel to review these APCs to address clinical inconsistencies and violations of the 2 times rule. We suggested creating a new level for posterior segment eye procedures and other changes in order to make the groups more clinically coherent, as follows:

- Move CPT codes 65260 and 67218 from APC 237 to 236.
- Create a new APC (Level IV Posterior Segment Eye Procedures) by moving CPT codes 67107, 67112, 67040, and 67108 from APC 237.
- Move CPT codes 67145, 67105, and 67210 from APC 247 to APC 248.
- Move CPT code 66999 from APC 247 to APC 232.
- Move CPT code 67299 from APC 248 to APC 235.
- Move CPT codes 65855, 66761, and 66821 from APC 248 to APC 247.
- Move CPT code 67820 from APC 698 to APC 230.
- Move CPT code 67208 from APC 231 to APC 235.
- Move CPT codes 92226, 92284, 65205, 92140 from APC 231 to APC 698.
- Move CPT code 92235 from APC 231 to APC 699.
- Move CPT code 68100 from APC 233 to APC 232.
- Move CPT code 65180 from APC 233 to APC 234.
- Create a new APC (Level IV Anterior Segment Eye Procedures) by moving CPT codes 66172, 66185, 66180, 66225 from APC 234.
- Move CPT code 92275 from APC 216 to APC 231.

No presenters commented on these APCs, and, after brief discussion, the Panel recommended concurrence with our suggested changes. We propose to accept the Panel's recommendations. We note that when we were able to use 2001 claims data to re-evaluate the changes recommended by the Panel for these APCs, we found violations of the 2 times rule in the reconfigured APCs. Nonetheless, we propose to accept the

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Panel's recommendations because they result in more clinically coherent APCs. We solicit comments on further changes that would address the violations of the 2 times rule. We plan to place these APCs on the panel's agenda for 2003.

APC 110: Transfusion

APC 111: Blood Product Exchange

APC 112: Apheresis, Photopheresis, and Plasmapheresis

We presented these APCs to the Panel in 2001 because of their low payment rates and concern that our cost data was inaccurate. These APCs were on the agenda this year in order to obtain further comment on our cost data. We suggested no changes in the structure of these APCs.

Representatives of two associations made presentations regarding these APCs. One recommended that all the plasma derivatives and recombinant analogs that currently receive transitional pass-through payments be assigned to permanent APCs in 2003, similar to the designations of other blood products. The representative of the second association supported this recommendation.

The second presenter also pointed out that, consistent with our billing instructions, every claim that a hospital submits for a blood transfusion should include codes for both the blood product and the transfusion. Therefore, payment for blood and blood products is another area affected by the use of single bills in setting payment weights. The Panel agreed to look specifically at blood in its work on the multiple claims issues.

The Panel recommended that plasma derivatives be placed in their own APCs and classified in the same manner as whole blood products. In addition, the Panel observed that hospitals incur additional costs with each unit of blood product transfused and, therefore, recommended that APC 110 be revised to allow for the costs of additional units of blood product and clinical services.

In section III.C, we discuss our payment proposals for drugs and biologicals for which pass-through payments are scheduled to expire in 2003. Those proposals would affect payment for blood and blood products. We propose not to accept the Panel's recommendation to change current OPPS payment policy for transfusions. The current payment reflects weight averaging over the number of units transfused. Therefore, unless a hospital specializes in transfusing multiple units of blood, payments for this procedure should be, on average, appropriate.

Panel Recommendations to Defer Changes Pending Availability of 2001 Claims Data

Regarding the remaining APC groups that are addressed below, the Panel recommended that we make no changes until data from claims billed in 2001 under the OPPS become available for analysis. The Panel further requested that we place the APC groups in this section on the agenda for consideration at its meeting in 2003. The changes that we propose for the APCs in this section are based upon our review of the 2001 claims data, which did not become available until March 2002.

APC 203: Level V Nerve Injections
APC 204: Level VI Nerve Injections
APC 206: Level III Nerve Injections
APC 207: Level IV Nerve Injections

Several presenters to the Panel suggested changes in the configuration of these APCs because of concerns that the current classifications result in payment rates that are too low relative to the resource costs associated with certain procedures in the APCs. Several of these APCs include procedures associated with drugs or with device categories for which pass-through payments are scheduled to expire in 2003. The Panel recommended that we not change the structure of these APCs at this time. Because the structure of these APCs was substantially changed for 2002, and 2002 cost data was not yet available, the Panel felt it would be appropriate to review 2002 cost data prior to making further structural changes to these APCs. We propose to accept the Panel's recommendation. We will place these APCs on the Panel's agenda when 2002 cost data becomes available.

APC 43: Closed Treatment Fracture Finger/Toe/Trunk
APC 44: Closed Treatment Fracture/Dislocation, Except Finger/Toe/Trunk

On the basis of 1999–2000 claims data, these APCs violate the 2 times rule. The Panel reviewed these APCs and recommended no changes.

Our subsequent review of 2001 OPPS cost data shows continuing violations of the 2 times rule and that costs within these APCs are virtually identical. Therefore, we propose to combine APCs 43 and 44 into APC 43. The procedures in the consolidated APC are clinically homogeneous.

APC 58: Level I Strapping and Cast Application
APC 59: Level II Strapping and Cast Application

The Panel reviewed these APCs and recommended that no changes be made pending analysis of 2001 claims data. The panel did recommend that billing instructions be developed on the appropriate use of the codes in these APCs. We agree with the Panel's recommendation regarding the need for billing instructions, and we expect to develop such instructions for hospitals to use in 2003.

Our subsequent review of 2001 claims data reveals that, in some cases, costs for short casts and splints are greater than costs for long casts and splints. Moreover, the proposed payments for these two APCs, based on 2001 OPPS data, would not differ significantly from each other. Therefore, we propose to combine the codes in APC 58 and APC 59 into a single APC, APC 58. Combining these APCs does not compromise clinical homogeneity. The relative weight of the proposed single APC is virtually identical to the relative weight of each of the two current APCs. We propose to continue to work with hospitals to develop appropriate coding for these services and will review the appropriate APC structure for these services next year.

APC 279: Level I Angiography and Venography Except Extremity
APC 280: Level II Angiography and Venography Except Extremity

Without the benefit of 2001 OPPS claims data, it was difficult for the Panel to determine whether the apparent violation of the 2 times rule in APCs 279 and 280 was attributable to underreporting of procedures or inaccurate coding. Therefore, the Panel recommended no changes pending the availability of the more recent claims data. After subsequently reviewing the 2001 claims data, we propose to move CPT codes 75978, Transluminal balloon angioplasty, venous, radiological supervision and interpretation, and 75774, Angiography, selective, each additional vessel studied after basic examination, radiological supervision and interpretation, to new APC 0668. This would resolve violations of the 2 times rule and result in clinically coherent APCs.

APC 115: Cannula/Access Device Procedures

We propose to move CPT code 36860, External Cannula Declotting; without balloon catheter, to APC 103, Miscellaneous Vascular Procedures. We believe this makes both APC 115 and APC 103 more clinically homogeneous and it resolves a violation of the 2 times rule in APC 115 that was caused by the presence of CPT code 36860.

APC 93: Vascular Repair/Fistula Construction

APC 140: Esophageal Dilation without Endoscopy
APC 141: Upper GI Procedures
APC 142: Small Intestine Endoscopy
APC 143: Lower GI Endoscopy
APC 144: Diagnostic Anoscopy
APC 145: Therapeutic Anoscopy
APC 146: Level I Sigmoidoscopy
APC 147: Level II Sigmoidoscopy
APC 148: Level I Anal/Rectal Procedure
APC 149: Level II Anal/Rectal Procedure

Our subsequent review of 2001 claims data suggests that the cost data for APCs 144 and 145 are aberrant. The cost data for these APCs yield relative weights and payments that are significantly higher than the relative weights for APCs 146 and 147, which consist of similar procedures performed through a sigmoidoscope rather than an anoscope. As currently arranged, the APC configuration for these services could provide a financial incentive for hospitals to perform unnecessary anoscopic procedures, either alone or with a sigmoidoscopy. To rectify this problem, we propose to move the procedures in APCs 144 and 145 to APC 147 with the exception of CPT code 46600, Anoscopy; diagnostic, which we propose to assign to APC 340, Minor Ancillary procedures. We believe these changes would result in clinically coherent APCs with appropriate relative weights and payment rates.

APC 363: Otorhinolaryngologic Function Tests

Based on 2001 claims data, we propose to move CPT codes 92543, 92588, 92520, 92546, 92516, 92548, and 92584 to new APC 0660 (Level III Otorhinolaryngolgic Function Tests). This change would resolve a 2 times rule violation and create clinically coherent APCs.

APC 96: Non-Invasive Vascular Studies
APC 265: Level I Diagnostic Ultrasound Except Vascular
APC 266: Level II Diagnostic Ultrasound Except Vascular
APC 267: Vascular Ultrasound
APC 269: Level I Echocardiogram Except Transesophageal
APC 270: Transesophageal Echocardiogram

The APC Panel recommended making no changes in the configuration of these APCs. Several groups made a joint proposal to reconfigure these APCs arguing that their proposal resulted in more clinically coherent APCs. However, several other presenters commented that the joint proposal did not include several physician groups who commonly perform these procedures.

Based on 2001 claims data, we propose to make several changes in order to resolve 2 times rule violations and to make these APCs more clinically coherent. Specifically, we propose to move CPT code 43499 from APC 0140 to APC 141; CPT code 93721 from APC 0096 to APC 368; CPT code 93740 from APC 0096 to APC 367; CPT code 93888 from APC 0267 to APC 266; and CPT code 93931 from APC 0267 to APC 266. We also propose to move CPT codes 78627, 76825, and 93320 from APC 0269 to new APC 0671 to achieve more clinical coherence. We also propose to create new APC 0670 for intravascular ultrasound and intracardiac echocardiography consisting of CPT codes 37250, 37251, 92978, 92979, and 93662.

APC 291: Level I Diagnostic Nuclear Medicine Excluding Myocardial Scans
APC 292: Level II Diagnostic Nuclear Medicine Excluding Myocardial Scans

Subsequent to the APC Panel meeting, we received comments on these APCs from the Nuclear Medicine Task Force. After a thorough review of that proposal within the context of the 2001 claims data, we propose to accept the recommendations of the Nuclear Medicine Task Force, which would result in a complete reconfiguration of APCs 290, 291, and 292. Although the reconfiguration would create violations of the 2 times rule, we agree with the Task Force that the reconfigured APCs are more clinically coherent. We note that APCs 290, 291, and 292 as currently configured would also violate the 2 times rule. Therefore, we solicit comments on the proposed reconfiguration of APCs 290, 291, and 292 and on alternative groupings that would achieve clinical coherence without violating the 2 times rule.

APC 274: Myelography
APC 179: Urinary Incontinence Procedures
APC 182: Insertion of Penile Prosthesis
APC 19: Level I Excision/Biopsy
APC 20: Level II Excision/Biopsy
APC 21: Level IV Excision/Biopsy
APC 22: Level V Excision/Biopsy
APC 694: Level III Excision/Biopsy

Based on 2001 claims data, we propose to move several codes from APC 19 to APC 20 and several codes from ACP 20 to APC 21. Additionally, we propose to move CPT codes 11770, 54105, and 60512 to APC 22. We also propose to move CPT code 58999 to APC 191 and CPT code 37799 to APC 35. These changes would result in clinically coherent APCs that do not violate the 2 times rule.

APC 24: Level I Skin Repair
APC 25: Level II Skin Repair
APC 26: Level III Skin Repair
APC 27: Level IV Skin Repair
APC 686: Level V Skin Repair

Based on 2001 claims data, we propose to move CPT code 43870 from APC 0025 to APC 141; and CPT codes with high costs from APC 26 to APC 27. We also propose to move the codes remaining in APC 26 to APC 25. APC 26 would then be deleted. These changes would result in a more compact APC structure without compromising the clinical homogeneity of the reconfigured APCs and without violating the 2 times rule. See Table 1 for codes moving from APC 26 to APC 25 or APC 27.

TABLE 1.—HCPCS CODES PROPOSED TO BE MOVED FROM APC 26 INTO APC 25 OR APC 27

2002 APC 26	2003 APC 25	2003 APC 27
11960		11960
11970		11970
12037	12037	
12047	12047	
12057	12057	
13150	13150	
13160		13160
14000		14000
14001		14001
14020		14020
14021		14021
14040		14040
14041		14041
14060		14060
14061		14061
14300		14300
14350		14350
15000	15000	
15001	15001	
15050	15050	
15101		15101
15120		15120
15121		15121
15200		15200
15201	15201	
15220		15220
15221	15221	
15240		15240
15241	15241	
15260		15260
15261	15261	
15351		15351
15400	15400	
15401	15401	
15570		15570
15572		15572
15574		15574
15576		15576
15600		15600
15610		15610
15620		15620
15630		15630
15650		15650
15775	15775	
15776	15776	
15819	15819	
15820		15820
15821		15821
15822		15822
15823		15823

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TABLE 1.—HCPCS CODES PROPOSED TO BE MOVED FROM APC 26 INTO APC 25 OR APC 27—Continued

2002 APC 26	2003 APC 25	2003 APC 27
15825		15825
15826		15826
15829		15829
15835	15835	
20101		20101
20102		20102
20910		20910
20912		20912
20920		20920
20922		20922
20926		20926
23921	23921	
25929		25929
33222		33222
33223		33223
44312		44312
44340		44340
15580—Code Deleted.		
15625—Code Deleted.		

APC 77: Level I Pulmonary Treatment
APC 78: Level II Pulmonary Treatment
APC 251: Level I ENT Procedures
APC 252: Level II ENT Procedures
APC 253: Level III ENT Procedures
APC 254: Level IV ENT Procedures
APC 256: Level V ENT Procedures

Based on 2001 claims data, we propose to address violations of the 2 times rule by moving CPT codes 40812, 42330, and 21015 from APC 0252 to APC 253 and by moving CPT codes 41120 and 30520 to APC 254.

B. Other Changes Affecting the APCs

1. Limit on Variation of Costs of Services Classified Within a Group

Section 1833(t)(2) of the Act provides that the items and services within an APC group cannot be considered comparable with respect to the use of resources if the highest cost item or service within a group is more than 2 times greater than the lowest cost item or service within the same group. However, the statute authorizes the Secretary to make exceptions to this limit on the variation of costs within each group in unusual cases such as low volume items and services. No exception may be made, however, in the case of a drug or biological that has been designated as an orphan drug under section 526 of the Federal Food, Drug, and Cosmetic Act.

Taking into account the proposed APC changes discussed in relation to the APC panel recommendations in this section of this preamble and the use of 2001 claims data to calculate the median cost of procedures classified to APCs, we reviewed all the APCs to determine which of them would not meet the 2 times limit. We use the following criteria when deciding whether to make exceptions to the 2 times rule for affected APCs:

- Resource homogeneity.
- Clinical homogeneity.
- Hospital concentration.
- Frequency of service (volume).
- Opportunity for upcoding and code fragmentation.

For a detailed discussion of these criteria, refer to the April 7, 2000 final rule (65 FR 18457).

The following table contains APCs that we propose to exempt from the 2 times rule based on the criteria cited above. In cases in which compliance with the 2 times rule appeared to conflict with a recommendation of the APC Advisory Panel, we generally accepted the Panel recommendation. This was because Panel recommendations were based on explicit consideration of resource use, clinical homogeneity, hospital specialization, and the quality of the data used to determine payment rates.

The median cost for hospital outpatient services for these and all other APCs can be found at website: *http://www.cms.hhs.gov*.

TABLE 2.—TABLE OF EXEMPTED CODES

NPRM APC	Description
0012	Level I Debridement & Destruction
0019	Level I Excision/ Biopsy
0020	Level II Excision/ Biopsy
0025	Level II Skin Repair
0032	Insertion of Central Venous/Arterial Catheter
0043	Closed Treatment Fracture Finger/Toe/Trunk
0046	Open/Percutaneous Treatment Fracture or Dislocation
0058	Level I Strapping and Cast Application
0074	Level IV Endoscopy Upper Airway
0080	Diagnostic Cardiac Catheterization
0081	Non-Coronary Angioplasty or Atherectomy
0093	Vascular Repair/Fistula Construction
0097	Cardiac and Ambulatory Blood Pressure Monitoring
0099	Electrocardiograms
0103	Miscellaneous Vascular Procedures
0105	Revision/Removal of Pacemakers, AICD, or Vascular
0121	Level I Tube changes and Repositioning
0140	Esophageal Dilation without Endoscopy
0147	Level II Sigmoidoscopy
0148	Level I Anal/Rectal Procedure
0155	Level II Anal/Rectal Procedure
0165	Level III Urinary and Anal Procedures
0170	Dialysis
0179	Urinary Incontinence Procedures
0191	Level I Female Reproductive Proc
0192	Level IV Female Reproductive Proc
0203	Level VI Nerve Injections
0204	Level I Nerve Injections
0207	Level III Nerve Injection
0218	Level II Nerve and Muscle Tests
0225	Implantation of Neurostimulator Electrodes
0230	Level I Eye Tests & Treatments
0231	Level III Eye Tests & Treatments

TABLE 2.—TABLE OF EXEMPTED CODES—Continued

NPRM APC	Description
0233	Level II Anterior Segment Eye Procedures
0235	Level I Posterior Segment Eye Procedures
0238	Level I Repair and Plastic Eye Procedures
0239	Level II Repair and Plastic Eye Procedures
0252	Level II ENT Procedures
0260	Level I Plain Film Except Teeth
0274	Myelography
0286	Myocardial Scans
0290	Level I Diagnostic Nuclear Medicine Excluding Myocardial Scans
0291	Level II Diagnostic Nuclear Medicine Excluding Myocardial Scans
0294	Level I Therapeutic Nuclear Medicine
0297	Level II Therapeutic Radiologic Procedures
0303	Treatment Device Construction
0304	Level I Therapeutic Radiation Treatment Preparation
0330	Dental Procedures
0345	Level I Transfusion Laboratory Procedures
0354	Administration of Influenza/Pneumonia Vaccine
0356	Level II Immunizations
0367	Level I Pulmonary Test
0368	Level II Pulmonary Tests
0370	Allergy Tests
0373	Neuropsychological Testing
0600	Low Level Clinic Visits
0602	High Level Clinic Visits
0660	Level III Otorhinolaryngologic Function Tests
0692	Electronic Analysis of Neurostimulator Pulse Generators
0694	Mohs Surgery
0698	Level II Eye Tests & Treatments

2. Procedures Moved From New Technology APCs to Clinically Appropriate APCs

In the November 30, 2001 final rule, we made final our proposal to change the period of time during which a service may be paid under a new technology APC (66 FR 59903), initially established in the April 7, 2000 final rule. That is, beginning in 2002, we will retain a service within a new technology APC group until we have acquired adequate data that allow us to assign the service to a clinically appropriate APC. This policy allows us to move a service from a new technology APC in less than 2 years if sufficient data are available, and it also allows us to retain a service in a new technology APC for more than 3 years if sufficient data upon which to base a decision for reassignment have not been collected.

Effective in 2003, we propose to move several procedures from new technology APCs to clinical APCs. Those procedures and the clinical APCs to which we propose to assign the procedures for payment in 2003 are identified in Table 3. Based upon our review of the 2001 OPPS claims data, we believe we have sufficient information upon which to base assignment of these procedures to clinical APCs. In making this determination, we reviewed both single and multiple procedure claims. We compared median cost data for the new technology procedures with median cost data for procedures that are clinically similar and for which we would expect costs to be similar. We also compared median cost data for the new technology procedures with median cost data for clinically related procedures, such as different methods of treating prostatic hypertrophy, where expected median costs were lower or higher than those of the new technology procedure. In some cases we propose classification of a new technology procedure in an APC with procedures that are similar both clinically and in terms of resource consumption. In other cases, we propose to create a new APC for a new technology procedure because we do not believe any of the existing APCs contain procedures that are clinically similar and similar in terms of resource consumption. We solicit comments on our proposed reassignment of the new technology procedures listed in Table 3.

TABLE 3.—PROPOSED CHANGES IN HCPCS ASSIGNMENTS FROM NEW TECHNOLOGY APCS TO PROCEDURE APCS FOR 2003

HCPCS	Description	2002 SI	2003 SI	2002 APC	2003 APC
19103	Bx breast percut w/device	S	T	0710	0658
33282	Implant pat-active ht record	S	S	0710	0680
36550	Declot vascular device	T	T	0972	0677
53850	Prostatic microwave thermotx	T	T	0982	0675
53852	Prostatic rf thermotx	T	T	0982	0675
55873	Cryoablate prostate	T	T	0982	0674
76075	Dual energy x-ray study	S	S	0707	0288
76076	Dual energy x-ray study	S	S	0707	0665
77520	Proton trmt, simple w/o comp	S	S	0710	0664
77522	Proton trmt, simple w/comp	S	S	0710	0664
77523	Proton trmt, intermediate	S	S	0712	0664

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TABLE 3.—PROPOSED CHANGES IN HCPCS ASSIGNMENTS FROM NEW TECHNOLOGY APCS TO PROCEDURE APCS FOR 2003—Continued

HCPCS	Description	2002 SI	2003 SI	2002 APC	2003 APC
77525	Proton treatment, complex	S	S	0712	0664
92586	Auditor evoke potent, limit	S	S	0707	0218
95965	Meg, spontaneous	T	S	0972	0717
95966	Meg, evoked, single	T	S	0972	0714
95967	Meg, evoked, each addl	T	S	0972	0712
C1300	Hyperbaric oxygen	S	S	0707	0659
C9708	Preview Tx Planning Software	T	T	0975	0973
G0125	PET img WhBD sgl pulm ring	T	S	0976	0667
G0166	Extrnl counterpulse, per tx	T	T	0972	0678
G0168	Wound closure by adhesive	T	X	0970	0340
G0173	Stereo radoisurgery, complete	S	S	0721	0663
G0204	Diagnostic mammography digital	S	S	0707	0669
G0206	Diagnostic mammography digital	S	S	0707	0669
G0210	PET img whbd ring dxlung ca	S	S	0714	0667
G0211	PET img whbd ring init lung	S	S	0714	0667
G0212	PET img whbd ring restag lun	S	S	0714	0667
G0213	PET img whbd ring dx colorec	S	S	0714	0667
G0214	PET img whbd ring init colre	S	S	0714	0667
G0215	PET img whbd restag col	S	S	0714	0667
G0216	PET img whbd ring dx melanom	S	S	0714	0667
G0217	PET img whbd ring init melan	S	S	0714	0667
G0218	PET img whbd ring restag mel	S	S	0714	0667
G0220	PET img whbd ring dx lymphom	S	S	0714	0667
G0221	PET img whbd ring init lymph	S	S	0714	0667
G0222	PET img whbd ring resta lymp	S	S	0714	0667
G0223	PET img whbd reg ring dx hea	S	S	0714	0667
G0224	PET img whbd reg ring ini hea	S	S	0714	0667
G0225	PET img whbd ring restag hea	S	S	0714	0667
G0226	PET img whbd dx esophag	S	S	0714	0667
G0227	PET img whbd ring ini esopha	S	S	0714	0667
G0228	PET img whbd ring restg esop	S	S	0714	0667
G0229	PET img metabolic brain ring	S	S	0714	0667
G0230	PET myocard viability ring	S	S	0714	0667
G0231	PET WhBD colorec; gamma cam	S	S	0714	0667
G0232	PET WhBD lymphoma; gamma cam	S	S	0714	0667
G0233	PET WhBD melanoma; gamma cam	S	S	0714	0667
G0234	PET WhBD pulm nod, gamma cam	S	S	0714	0667

3. APC Assignment for New Codes Created During 2002

During CY 2002 we created several HCPCS codes to describe services newly covered by Medicare and payable under the hospital OPPS. While we have assigned these services to APCs for CY 2002, the assignments are open to public comment in this proposed rule. In this proposed rule, we solicit comment on the APC assignment of these services. In addition, in this proposed rule, we are proposing the creation of several new HCPCS codes and APC assignments with an effective date of January 1, 2003. Table 4 below includes new procedural HCPCS codes either created for implementation in July 2002, which we intend to implement in October 2002, or which we propose to implement January 2003.

Table 4 does not include new codes for drugs and devices for which we established or intend to establish pass-through payment eligibility in July or October 2002. Furthermore, neither the new procedural HCPCS nor the new pass-through codes intended as of this publication for implementation beginning October 2002 or later are included in Addendum B of this proposed rule.

TABLE 4.—NEW G CODES FOR 2002 AND PROPOSED G CODES FOR 2003

Code	Long descriptor	APC	SI	Proposed effective date
G0245	Initial physician evaluation of a diabetic patient with diabetic sensory neuropathy resulting in a loss of protective sensation (LOPS) which must include the procedure used to diagnose LOPS; a patient history; and a physician examination that consists of at least the following elements—* * *.	0600	V	7/01/02
G0246	Follow-up physician evaluation of a diabetic patient with diabetic sensory neuropathy resulting in a loss of protective sensation (LOPS) which must include the procedure used to diagnose LOPS; a patient history; and a physician examination that includes—* * *.	0600	V	7/01/02
G0247	Routine foot care by a physician of a diabetic patient with diabetic sensory neuropathy resulting in a loss of protective sensation (LOPS) to include if present at least the following—* * *.	0009	T	7/01/02

TABLE 4.—NEW G CODES FOR 2002 AND PROPOSED G CODES FOR 2003—Continued

Code	Long descriptor	APC	SI	Proposed effective date
G0248	Demonstration, at initial use, of home INR monitoring for a patient with mechanical heart valve(s) who meets Medicare coverage criteria, under the direction of a physician; includes: demonstration use and care of the INR monitor, obtaining at least one blood sample provision of instructions for reporting home INR test results and documentation of a patient's ability to perform testing.	0708	S	7/01/02
G0249	Provision of test material and equipment for home INR monitoring to patient wih mechanical heart valve(s) who meets Medicare coverage criteria. Includes provision of materials for use in the home and reporting of test results to physician; per 4 tests.	0708	S	7/01/02
G0250	Physician review/interpretation and patient management of home INR test for patient with mechanical heart valve(s) who meets other coverage criteria; per 4 tests (does not require face-to-face service).	N/A	E	7/01/02
G0AAA	PET imaging for initial diagnosis of breast cancer and/or surgical planning for breast cancer (for example, initial staging of axillary lymph nodes), not covered by Medicare..	N/A	E	10/01/02
G0BBB	PET imaging for breast cancer, full and partial-ring PET scanners only, staging/restaging after or prior to course of treatment.	0285	S	10/01/02
G0CCC	PET imaging for breast cancer, full and partial-ring PET scanners only, evaluation of response to treatment, performed during course of treatment.	0285	S	10/01/02
G0DDD	Current Perception Threshold/Sensory Nerve Conduction Test, (SNCT) per limb, any nerve..	N/A	E	10/01/02
G0EEE	Intravenous infusion(s) during separately payable observation stay, Per observation stay (must be reported with G0244).	0340	X	10/01/02
G0FFF	Bone marrow aspiration and biopsy performed through a single incision during a single session.	0003	T	1/01/03
G0GGG	Unscheduled or emergency treatment for dialysis for ESRD patient in the outpatient department of a hospital that does not have a certified ESRD facility.	0170	S	1/01/03
G0HHH	Injection procedure for sacroiliac joint; arthrography	N/A	N	1/01/03
G0JJJ	Injection procedure for sacroiliac joint; provision of anesthetic, steroid, and/or other therapeutic agent.	0204	T	1/01/03
G0KKK	Prostate brachytherapy, including transperineal placement of needles or catheters into the prostate, cystoscopy, and interstitial radiation source application..	0684	T	1/01/03
G0LLL	Initial nursing assessment of patient directly admitted to observation with diagnosis of congestive heart failure, chest pain or asthma..	N	N	1/01/03
G0MMM	Initial nursing assessment of patient directly admitted to observation with diagnosis other than congestive heart failure, chest pain or asthma..	0706	S	1/01/03
G0NNN	Transcatheter placement of a drug eluting intracoronary stent(s), percutaneous, with or without other therapeutic intervention, any method; single vessel..	0656	T	01/01/03
G0OOO	Transcatheter placement of a drug eluting intracoronary stent(s), percutaneous, with or without other therapeutic intervention, any method; each additional vessel..	0656	T	01/01/03

HCPCS Codes Created During CY 2002

The G codes G0245 through G0250 were created to implement payment for newly covered Medicare services due to national coverage determinations. The G codes G0AAA–G0DDD will be established October 1, 2002 as a result of national coverage policies that will be effective October 1, 2002. These codes were created to accurately describe the services covered, to ensure they were reported correctly, to track their utilization, and to establish payment. We solicit comments on the APC assignment of these services. The codes describing evaluation and management services were assigned to clinic visit APCs containing similar services, and the codes describing procedural services were assigned to new technology APCs or to APCs containing procedures requiring similar resource consumption.

Because G0250 is a professional service furnished by a physician, it is not payable under OPPS.

We expect to implement HCPCS code G0EEE (Intravenous Infusion(s) During Separately Payable Observation Stay) effective October 1, 2002 to describe infusion therapy given during a separately payable observation stay. This code is discussed in detail in section VIII.B of this proposed rule. We have assigned it to APC 0340. We believe APC 0340 appropriately accounts for the resources used for infusion during observation. This is because we believe that Q0081, which represents the same service as G0EEE, is typically billed with an APC that has a higher relative weight, therefore making APC 0120 payable at 50 percent of its payment rate.

HCPCS Codes Proposed in This Rule for January 1, 2003

We are proposing the creation of several new HCPCS codes for 2003 in order to address issues that have come to our attention, to describe new technology procedures, to implement policy proposals discussed in this rule, and to allow more appropriate reporting of procedures currently described by CPT (HCPCS Level I) codes.

(1) G0FFF—Bone Marrow Aspiration and Biopsy Services—we are proposing to create this code to describe bone marrow aspiration and biopsy performed through the same incision. We propose to place this code in APC 0003. This code also appears in the proposed rule for the physician fee schedule, published in the June 28, 2002 issue of the **Federal Register** (67

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FR 43846). This code would facilitate proper reporting of this procedure.

(2) G0GGG—Unscheduled and Emergency Treatment for ESRD Patients—we are proposing this code in order to facilitate payment for dialysis provided to ESRD patients in the outpatient department of a hospital that does not have a certified ESRD facility. This code is described in detail in section VIII.G of this proposed rule.

(3) G0HHH and G0JJJ—Sacroiliac Joint Injections—we are proposing to create these two codes to replace CPT code 27096, Injection procedure for sacroiliac joint, arthrography and/or anesthetic steroid. CPT code 27096 describes two distinct procedures requiring different resource consumption. Moreover, our policy of packaging injection procedures required packaging of this procedure even when it was used to report injection of a steroid or anesthetic. In these cases, it was appropriately billed without another procedure and should have been payable. Therefore, in order to facilitate appropriate reporting and payment for the procedures described by CPT code 27096, we propose to create G0HHH, Injection procedure for sacroiliac joint, arthrography, and G0JJJ, Injection procedure for sacroiliac joint, provision of anesthetic and/or steroid. G0HHH would be given status indicator N, and G0JJJ would be assigned to APC 0204.

(4) G0KKK—Prostate Brachytherapy—we are proposing this code to implement our policy decision discussed in section III.C.3 of this proposed rule.

(5) G0LLL and G0MMM—Observation Care—we are proposing to create these codes to describe observation care provided to a patient who is directly admitted from a physician's office to a hospital for observation care. These codes are discussed in detail in section VIII.B of this rule.

(6) G0NNN, G0OOO; Drug Eluting Stents—

Drug-Eluting Stents

Drug-eluting coronary artery stents (referred to as "drug-eluting stents" in the discussion that follows) have been developed to combat the problem of restenosis of blood vessels previously treated for stenosis. The drug is coated on a stent with a special polymer, and after the stent is placed in the vessel, the drug is slowly released into the vessel wall tissue over a period of 30 to 45 days. The drug coating on the stent is intended to prevent the build-up of scar tissue that can narrow the reopened artery. The FDA has not yet approved this technology for general use. We understand the earliest date that a decision from the FDA is anticipated is late 2002.

We received an application to establish a new medical device category eligible for transitional pass-through payment under the OPPS for drug-eluting stents from a manufacturer of these stents. In the application for the new device category, the manufacturer asserts that drug-eluting stents meet the criteria for establishing a new device category that were set forth in the November 2, 2001 **Federal Register**. Specifically, the manufacturer believes a new device category is appropriate because drug-eluting stents meet the cost significance thresholds for a new device category, and they provide substantial therapeutic benefit to Medicare beneficiaries compared to other available therapies for coronary atherosclerosis.

Based on our review of the application as well as other information pertaining to drug-eluting stents, we determined that drug-eluting stents are described by an existing pass-through device category. As we discuss in section III.D of this preamble, section 1833(t)(6)(B)(ii)(IV) of the Act requires that a new category must include medical devices for which no existing category, or one previously in effect, is appropriate. In the program memorandum that we issued to our contractors on March 22, 2001 (Transmittal A–01–41) with instructions for the implementation of category codes for use in making transitional pass-through payments for devices, we established two categories that describe and could be used to bill for drug-eluting stents: HCPCS code C1874, Stent, coated/covered, with delivery system, and HCPCS code C1875, Stent, coated/covered, without delivery system. These two categories were based on devices that previously qualified for transitional pass-through payment on an item-specific basis. Although these two device categories are among those that will sunset after December 31, 2002, as we discuss in section III.C of this preamble, the fact that they exist precludes the establishment of a new device category for drug-eluting stents.

Payment for drug-eluting stents is not allowed under the OPPS until they receive FDA approval for general use. If the drug-eluting stents are approved for general use by the FDA, payment would be packaged into the APC payment for the procedures with which the stents are used. The cost of drug-eluting stents would be incorporated within the APC relative payment weights when we recalibrate the payment weights in CY 2005 using CY 2003 claims data.

In considering how we would pay for drug eluting stents under OPPS we thought carefully about how the payment should relate to payment for these stents under IPPS. Section 533 of BIPA added sections 1886(d)(5)(K) and (d)(5)(L) to the Act (as implemented by § 42 CFR 412.87 and 412.88) to reduce the time needed under the hospital inpatient PPS for the DRG system to recognize the higher costs of new technologies that meet certain criteria. Drug-eluting stents did not meet the inpatient PPS new technology cost threshold criterion in the May 9, 2002 proposed rule to update the hospital inpatient PPS for FY 2003. Therefore, in that proposed rule, we listed a new ICD–9 procedure code 36.07 (Insertion of drug-eluting coronary artery stent(s)) that would be effective for use October 1, 2002. We also proposed to add ICD–9 code 00.55 (Insertion of drug-eluting noncoronary artery stent) (67 FR 31630). To be consistent with our prior practice of assigning new technology to the same DRGs to which its predecessor technologies were assigned, we proposed in the May 9 inpatient PPS proposed rule to assign inpatient cases involving ICD–9 code 36.07 to DRG 517 (Percutaneous Cardiovascular Procedure with Coronary Artery Stent without AMI).

However, comments to the May 9, 2002 proposed IPPS rule and our own further consideration of this issue persuaded us that a different approach was needed for the IPPS given the preliminary evidence that drug-eluting stents could prove potentially to be transformational technology in the treatment of coronary artery disease. While this technology is not yet approved for general use by FDA, commenters to the May 9 hospital inpatient PPS proposed rule reported that drug-eluting stents have shown promise to significantly advance the treatment of coronary artery disease, and they encouraged CMS to consider the available data to determine the most appropriate DRG payment. Commenters supported reassignment of the new procedure codes for drug-eluting stent insertions to higher paying DRGs or, if necessary, the modification of all affected DRGs, once verifiable data on the costs associated with drug-eluting stents become available.

Many of the commenters who supported higher payment under the inpatient PPS for this technology were clinical practitioners and hospitals, who expressed great anticipation for the potential benefits of this technology. In addition, commenters referred to the likelihood that, once approved, patients would demand to have these new drug-eluting stents, putting tremendous financial strain on hospitals.

Commenters to the proposed rule for the inpatient PPS for FY 2003 also argued there should be long-term cost savings to the Medicare program and the health system generally from this technology after approval by the FDA. Specifically, if dramatically fewer patients require restenting, savings will result from fewer repeat angioplasty procedures. And, to the extent bypass surgeries are reduced, savings would result from that outcome as well.

In responding to these commenters in the inpatient final rule published in the **Federal Register** on August 1, 2002 (67 FR 50003), we noted that, although the FDA has not yet approved this technology for general use, public presentation of the results from recent clinical trials have found virtually no in-stent restenosis in patients treated with the drug-eluting stent. Therefore, we recognize the potentially significant impact this technology may conceivably have on the treatment of coronary artery blockages.

We are concerned that, if the FDA does approve this technology and the predictions of its rapid, widespread use are accurate, significant strain on hospital financial resources would result. In particular, we are concerned that the higher costs of this technology would create undue financial hardships for hospitals due to the high volume of stent cases and the fact that a large proportion of these cases could involve the new technology soon after FDA approval. Therefore, in the final rule for the FY 2003 inpatient PPS, we implemented an unprecedented approach in response to the unique circumstances surrounding the potential breakthrough nature of this technology and we created two new DRGs to reflect cases involving the insertion of a drug-eluting coronary artery stent. We discuss in detail in the final inpatient PPS rule our rationale for establishing these DRGs (67 FR 50003–50005).

Although the clinical trials for drug-eluting stents are being conducted on hospital inpatients, our 2001 hospital outpatient claims data included nearly 18,000 claims for procedures utilizing other types of coronary stents in the hospital outpatient setting. Every indication points to a steady increase in the future volume of coronary stent procedures performed on an outpatient basis. The same concerns that we express above about the impact of the advent of drug-eluting stents on hospital resources apply to procedures performed in the outpatient setting as well as the inpatient setting. We created these new DRGs for drug-eluting stents to ensure and promote beneficiary access to the best care possible by ensuring that our payment system keeps pace with what we believe will be a growing volume of coronary stent procedures if FDA approves drug-eluting coronary artery stents. We want to ensure that the costs of drug-eluting stents will be recognized sufficiently quickly to ensure beneficiary access in the outpatient setting over the 2 years that it will take for the costs of these devices to appear in the Medicare data on which we will base Medicare payments for them.

Drug-eluting stents may have been commercially marketed for 2 years by the time cost data for stent insertion procedures performed in CY 2003 are incorporated into the APC relative weights under the OPPS for CY 2005. Therefore, as we have done under the inpatient PPS for FY 2003 under these exceptional circumstances, we propose to deviate from our standard OPPS payment methodology to ensure consistent payment for drug-eluting stents in both the inpatient and outpatient settings; to ensure that hospital resources are not negatively affected by a sudden surge in demand for this new technology if FDA approval is received; and, to ensure that Medicare payment does not impede beneficiary access to what appears to be a potentially landmark advance in the treatment of coronary disease. Consistent with the special approach we implemented in the inpatient PPS final rule, we propose to create two new HCPCS codes and a new APC that may be used to pay for the insertion of coronary artery drug-eluting stents under the OPPS, to be effective if these stents receive FDA approval for general use. Of course, as with other new procedures, FDA approval does not mean that Medicare will always cover the approved item. Medicare coverage depends upon whether an item or service is medically necessary to treat illness or injury as determined by Medicare contractors based on the specifics of individual cases.

The new HCPCS codes that we propose are as follows: G0NNN—Transcatheter placement of a drug eluting intracoronary stent(s), percutaneous, with or without other therapeutic intervention, any method; single vessel G0OOO—Transcatheter placement of a drug eluting intracoronary stent(s), percutaneous, with or without other therapeutic intervention, any method; each additional vessel.

We propose to assign G0NNN and G0OOO to new APC 0656, Transcatheter Placement of Drug-Eluting Coronary Stents, with a status indicator of T.

To establish a payment amount for the proposed new APC, we propose to apply the same assumptions that we used in establishing the weights for DRG 526 (Percutaneous Cardiovascular Procedure with Drug-Eluting Stent with AMI) and DRG 527 (Percutaneous Cardiovascular Procedure With Drug-Eluting Stent Without AMI) as described in the final rule implementing the FY 2003 inpatient PPS. That is, based on prices in countries where drug-eluting stents are currently being used, manufacturer information and information furnished in response to the May 9, 2002 IPPS proposed rule, and the average price of currently available stents, we assume a price differential of approximately $1,200. Using an average of 1.5 stents per procedure, we propose to add $1,200 to the median costs established for APC 0104 based on 2001 claims data. We would then calculate a relative payment weight and payment rate for APC 0656 in accordance with the methodology that we discuss in section II.B. of this preamble. By taking this approach, we believe that payment for drug-eluting stents would be balanced between the OPPS and the inpatient PPS, minimizing the incentive to use payment as the basis for determining where to furnish this new technology.

We are taking the extraordinary temporary measure of establishing this APC and pricing it as we propose only because we have been advised by experts that these stents can be expected to revolutionize the provision of coronary care and can be expected to supplant use of existing stents. While the statute contemplates the difficulties of setting OPPS payments for new devices by providing the transitional pass-through mechanism, that mechanism does not work in this circumstance since these devices fall into a previously existing device category and do not meet the test for inclusion in new technology APCs. However, the law permits us to take into account changes in technology and the addition of new factors (See section 1833(t)(9)(A)) of the Act. In this case, we think the impact of this new technology will be so great compared to other new technologies that, to ensure beneficiary access to state-of-the-art medical care, we believe that we need to create new codes and a separate APC, paid based on the best information currently available, to ensure adequate payment to providers and access to care during the first 2 years of the device's existence. To undertake this methodology in other cases, we would

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have to be similarly convinced that the technology would not qualify for pass-through payment nor new technology APC payment, that it will revolutionize the provision of care and that it will replace an existing technology. As indicated previously, this payment mechanism would be a temporary one that would exist only until 2005, at which point we would have sufficient data to determine how to pay for these devices under the standard OPPS methodology for setting payment amounts.

We propose to implement payment under APC 0656 effective April 1, 2003, consistent with the effective date for implementation of the drug-eluting DRGs under the OPPS and contingent upon FDA approval by that date. If the FDA grants approval prior to April 1, 2003, hospitals would be paid for insertion of coronary artery drug-eluting stents under APC 104.

We are proposing to establish the new HCPCS codes and APC group for coronary artery drug-eluting stents to allow close tracking of the utilization and costs associated with these services. Once we obtain adequate cost data for coronary artery drug-eluting stents, we propose to incorporate these data into the current CPT codes for coronary stent placement. We invite comments on this proposed methodology for recognizing the additional costs of drug-eluting stents under the OPPS.

It is important to emphasize that we anticipate that the vast majority of new technologies in the future will continue to be routinely incorporated into the existing DRGs or through the new technology add-on payments under the inpatient PPS. Similarly, we expect in the future to continue to make payment under the OPPS for the vast majority of new technologies through the existing provisions for transitional pass-through payments for new devices, drugs, and biologicals and through new technology APCs.

4. Recalibration of APC Weights for 2003

Section 1833(t)(9)(A) of the Act requires that the Secretary review and revise the relative payment weights for APCs at least annually, beginning in 2001 for application in 2002. In the April 7, 2000 final rule (65 FR 18482), we explained in detail how we calculated the relative payment weights that were implemented on August 1, 2000 for each APC group. Except for some reweighting due to APC changes, these relative weights continued to be in effect for 2001. (See the November 13, 2000 interim final rule (65 FR 67824 to 67827).)

To recalibrate the relative APC weights for services furnished on or after January 1, 2003 and before January 1, 2004, we are proposing to use the same basic methodology that we described in the April 7, 2000 final rule. That is, we would recalibrate the weights based on claims and cost report data for outpatient services. We propose to use the most recent available data to construct the database for calculating APC group weights. For the purpose of recalibrating APC relative weights for 2003, the most recent available claims data are the approximately 110 million final action claims for hospital outpatient department services furnished on or after January 1, 2001 and before January 1, 2002 and processed through March 2002. Many of these 110 million claims were for services that are not paid under OPPS (such as, clinical laboratory tests). We matched the claims that are paid under OPPS to the most recent cost report filed by the individual hospitals represented in our claims data. The APC relative weights would continue to be based on the median hospital costs for services in the APC groups.

a. Data Issues

(1) Treatment of "Multiple Procedure" Claims

We have received many requests (through an April Town Hall meeting and other sources of contact with the public) asking that we ensure that the data from claims that contain charges for multiple procedures are included in the data from which we calculate the 2003 relative payment weights. They believe that relying solely on single procedure claims to recalibrate APC weights fails to take into account data for many frequently performed procedures, particularly those commonly performed in combination with other procedures.

We agree that optimally, it is desirable to use the data from as many claims as possible to recalibrate the relative payment weights, including those with multiple procedures. We identified certain multiple procedure claims that could be treated as single procedure claims, enabling us to greatly increase the number of services used to develop the APC payment weights for 2003. However, several inherent features of multiple bill claims prevented us from using all of them to recalibrate the payment weights. We discuss these obstacles below.

There are four scenarios that occur when multiple procedures are billed on a claim that result in our being unable to use all of those claims to recalibrate the APC weights. In each case, the underlying problem is that there are charges on the claim that we are unable to correctly associate with the HCPCS codes for the procedures on the claim (that is, payable HCPCS codes). In general, we are unable to determine with confidence what portion of those charges should be packaged into the charges for each of the procedures on the claim. The different scenarios that we describe below may occur singly or in combination on the same claim.

In the first scenario, costs associated with outpatient hospital services are reported in revenue centers that cannot be associated with individual HCPCS codes because they are ancillary and supportive of some or all services furnished to the beneficiary. We do not require that hospitals assign a HCPCS code to each revenue center and charge or that they split the charges within revenue centers by HCPCS code because they advise us that they are unable to account for costs in this manner. In addition, to collect and report this information would be burdensome and costly.

Where there is only one HCPCS code for a procedure on the claim, we can assign supporting charges in revenue centers to the single HCPCS code. However, when there are two or more HCPCS codes for procedures on the claim, we have no basis for allocating appropriately the ancillary charges reported under revenue centers to the HCPCS codes for separately payable procedures. For example, a claim containing HCPCS codes for a visit and a surgical procedure may show charges under the revenue center for family clinic (517) for the visit and under operating room (360) for the surgery. But in addition, the claim could show charges under the following revenue centers without assigning a HCPCS code to the revenue center: recovery room (710), charge A for sterile supplies (272), charge B for sterile supplies (272), anesthesia (370), and pharmacy (250). If only a single HCPCS code was billed, we could sum the charges shown under the ancillary revenue centers and attribute those charges to the HCPCS code for the single HCPCS code that was billed. However, because there is more than one separately payable code on the claim (clinic visit and surgery), we do not know which charge for sterile supplies should be mapped to the visit and which should be assigned to the surgery. Similarly, there is nothing on the claim to indicate whether the total pharmacy charge is associated with the surgery or with the clinic visit, or split between them. For this type of multiple procedure claim, we have chosen to exclude the claim from the pool of charges used to calculate median APC costs rather than risk assigning the ancillary revenue center charges incorrectly. This type of multiple procedure claim, often much more complex than this example, accounts for a significant portion of the multiple procedure claims that we are unable to use to recalibrate payment weights.

In the second scenario, we are unable to correctly assign to procedures the charges for HCPCS codes that we package into other procedures. HCPCS codes with status indicator "N" are not paid separately. Rather, the payment for these packaged items or services is recognized in the payment for a service or services billed on the same claim for which there is an APC payment rate. In calculating the median costs, we have to know where to incorporate the charges shown for the HCPCS code with status indicator "N." When a packaged HCPCS codes is on a claim that also bills for more than one primary procedure (that is, procedures for which we make separate payment), we do not know with which of the procedures the charges for the packaged HCPCS code should be associated, or whether the charges for the packaged HCPCS code should be apportioned on some basis among the multiple primary procedures.

In the third scenario, in the case of multiple surgical procedures, our billing instructions permit hospitals to show charges for only one surgical procedure code although they report more than one surgical HCPCS code. Specifically, this billing convention has long been permitted in Medicare Intermediary Manual section 3626.4B3 and was reconfirmed by Medicare Transmittal A–01–50, which was issued on April 12, 2001 (*http://www.hcfa.gov/pubforms/transmit/A0150.pdf*) in response to hospital requests that we clarify whether they were required to create and report charges for each HCPCS code for each surgical service billed on a claim. We believe that to report charges for each HCPCS code for surgical services would have imposed an additional accounting and billing burden on hospitals that had not previously existed. This would have been in addition to the changes to the claims format and instructions that hospitals had recently made to accommodate OPPS and our other initiatives. As in the case of the ancillary services billed under revenue centers, the charges for each HCPCS code for the surgery were not needed to ensure that correct payment was made on the claim (since payment was made based on the code's APC assignment and not on reported charges).

However, because hospitals are permitted to report operating room charges for only one of the multiple surgical procedures on a claim, we are unable to identify a valid means of apportioning the operating room charges to the other procedures that were performed. We are not aware of any research on comparative hospital outpatient department (OPD) resource consumption by HCPCS codes that would indicate how to apportion a total charge among the individual codes on the claim. Moreover, these multiple surgical procedure claims frequently have problems similar to those discussed above in scenario one. Therefore, we are unable to use data from multiple surgery claims that are submitted in this form to calculate APC median costs.

In the fourth scenario are claims with multiple units of the same HCPCS code billed with charges in revenue centers or packaged HCPCS codes. In this case, we cannot determine the appropriate distribution of charges on the claim between the first and subsequent units of the HCPCS code. To approximate the charges that would occur if single rather than multiple units of the HCPCS code were billed, we would have to inflate the charges for the second and subsequent units of the service, which would eliminate the impact of the efficiencies that we believe occur when second and subsequent units of a procedure are performed. There are no data to suggest an appropriate factor to apportion charges for the second and subsequent units.

We considered several methods of apportioning charges from revenue centers and packaged HCPCS codes to enable us to use charge data from multiple procedure claims in the calculation of APC weights, but none of these methods was sufficient to yield cost data that we could be assured were valid. Specifically, we considered dividing the total charges in a revenue center or for a packaged HCPCS code by the number of payable HCPCS codes for multiple procedures on the claim. In the example of a claim for a visit code and a surgical code with the revenue center for sterile supplies billed twice on the same claim, we would sum the charges for sterile supplies, divide the sum by 2, and add the resulting divided charges for sterile supplies to the charges for each HCPCS code. The single pharmacy charge would be divided by 2, and half of the pharmacy charge would be added to each HCPCS code. We rejected this approach because of concern about whether it is likely to be sufficiently accurate to serve as a reasonable means of apportioning charges.

We also considered apportioning the charges among the codes based on physician work relative value units (RVUs) because time is a major factor in the establishment of physician work RVUs under the Medicare fee schedule for physician services. Time may be reflective of the comparative amount of resources used by the hospital for different surgical procedures, particularly charges for operating rooms, recovery rooms, and observation rooms. However, physician work RVUs also depend in part on the intensity and difficulty of the work of a physician in providing a service and would therefore not necessarily reflect accurately the relative resources a hospital would expend for the same procedure. Moreover, we do not believe that time appropriately reflects the use of resources such as pharmacy and supplies.

We then considered apportioning the charges among the codes based on physician nonfacility practice expense RVUs because practice expense RVUs reflect relative resource utilization for these services. However, we have no evidence that the relative practice expenses of physicians correlate with the resources that a hospital would use for the same service. Moreover, physician practice expenses are minimal for the many services typically furnished in a facility rather than the physician's office. For these services, the practice expense RVU reflects only minimal expenses for services, such as the physician's billing costs. They are, therefore, an inadequate proxy for the facility costs, such as supplies, drugs, equipment, nursing services, and overhead costs incurred by hospitals.

In summary, we concluded that the inherent drawbacks of these methodologies would outweigh any potential advantages accrued from the resulting increase in data used to calculate APC median costs. Without evidence to the contrary, we believe that applying these arbitrary methods of apportioning costs to multiple procedure claims would yield results that are less reliable and valid than continuing to rely on single procedure claims in calculating APC median costs.

We solicit public comment on the methods we considered for apportioning the total charges to individual HCPCS codes as described above. We also invite suggestions of other alternative means of apportioning the total costs on multiple procedure claims to the HCPCS codes for the procedures so that we can use more data from multiple procedure claims in the 2004 update of the OPPS.

We also solicit information on existing studies that would provide

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comparative hospital outpatient resource inputs by HCPCS code. In addition, we welcome suggestions for studies that we might undertake either to determine the relative value of OPD resources by HCPCS code or to provide a valid means of apportioning the charges among HCPCS codes when multiple surgical procedures are billed on the same claim with a single total charge for all services.

Further, we ask for comments on the feasibility of requiring hospitals to apportion all charges currently shown in revenue centers to the HCPCS codes billed so that we could use all multiple services claims in the calculation of the relative weights. For example, where the patient received multiple surgeries on the same day or received a visit and a procedure on the same day, the hospital would have to create a charge for each billable HCPCS code and that charge would have to encompass all charges for OR, recovery room, pharmacy, supplies, etc. that were relevant to that code. No charges would be billed under revenue centers alone or with packaged HCPCS codes (that is, HCPCS codes having a status indicator of N) since all charges would be reported under associated payable HCPCS codes. There would have to be corollary changes in completion of the cost report. Also, because hospitals must have a uniform charge structure, providers would need to charge all other payers and private pay patients in the same manner as they would be required to charge Medicare.

We are particularly interested in the views of hospitals and billing experts weighing the burden that could be created by these changes in billing rules relative to the potential benefit of calculating more precise OPPS payment rates that incorporate data from multiple procedure claims.

Finally, we solicit information regarding the extent to which efficiencies are realized when multiple services are furnished during the same visit or operative session. We currently discount the APC payment for the second and subsequent procedures performed during a single encounter by 50 percent in the expectation that the same efficiencies of service that are demonstrated to exist in the provision of physician services also exist in the provision of outpatient hospital services. In general, when a second or subsequent service is performed at the same time as an initial service, we believe that the combined resource costs associated with operating room time, recovery room time, anesthesia, supplies, and other services are less than if the procedures were performed separately. However, we are interested in empirical data regarding the extent to which these efficiencies of resource consumption actually occur.

(2) Calendar Year 2002 Charge Data for Pass-Through Device Categories

HCPCS coding for medical devices that qualified for transitional pass-through payment for services furnished in 2001 occurred in two different ways. (A detailed discussion of the provisions authorizing transitional pass-through payments for certain medical devices and drugs and biologicals can be found in section III of this preamble.) From August 1, 2000 until April 1, 2001, claims for medical devices that were paid on a pass-through basis were coded using device specific codes that were often manufacturer specific. BBRA required that, effective April 1, 2001, claims for medical devices eligible for transitional pass-through payment were to be billed using codes that applied to categories of devices. We issued the applicable category codes in Program Memoranda, Transmittals A–01–40 and A–01–41. We posted them on our web site at *http://www.hcfa.gov/pubforms/transmit/A0140.pdf* and *http://www.hcfa.gov/pubforms/transmit/A0141.pdf*, respectively. The change to the use of category codes, rather than device specific codes, simplified coding and also expanded the number of devices that were eligible for transitional pass-through payment. The expansion occurred because devices that fit the categories but that had previously not met the criteria for transitional pass-through payments could now be billed for a transitional pass-through payment.

Moreover, in recognition of the impact of the change on hospital billing and in recognition of the short time between the passage of legislation (December 14, 2000) and the effective date for the new codes (April 1, 2001), we gave hospitals a 90-day grace period during which they could bill using either the device specific codes they had previously been using or the new category codes. For this reason, only services furnished on or after July 1, 2001 were required to be billed using the new device category codes.

We have been advised that during the period in which the 2001 OPPS was in effect, hospitals may not have billed properly for devices eligible for transitional pass-through payments. We understand that the changes in billing format and systems for implementation of the OPPS compounded the problems of billing using the device specific codes during the first 9 months of the OPPS. We have been informed that these problems were further compounded by the creation and requirement to use category codes on and after April 1, 2001. In general, we have been advised that hospitals may have been underpaid for transitional pass-through devices (because they did not bill separately for them and therefore did not get the pass-through payment) and that our data will not correctly show the charges associated with the devices (because the devices were not coded with device category codes on the claim).

We agree that where hospitals failed to show the code for the transitional pass-through device (whether the device specific code or the category code as applicable), they will not have received payment for the device as a transitional pass-through device. For many years, there have been processes in place for hospitals to submit adjustment bills so they can receive payment for all applicable services they furnished if they subsequently determine that their original bills were deficient. Notwithstanding, there is no method by which we can infer a charge on a claim for a service that is not billed by the hospital.

Regarding the impact of the absence of coding for devices on the data from claims submitted for July 2001 and later, we looked at the claims data for a sample of services for which we thought there should have been a device category billed because of the nature of the procedure (for example, insertion of a pacemaker). We found that there were many instances when a device category code was not billed when we would have expected it. However, we found that when we summed the charges for revenue centers with the charges for the procedure on claims where no category code was reported and compared those totals with the sum of charges from claims where both a device category code and the associated procedure code were billed, the results were very similar. From this analysis, we conclude that in many cases, particularly during the first half of the calendar year, hospitals included charges for transitional pass-through devices in the revenue center for supplies. Therefore, we believe cost data for transitional pass-through devices are contained in the charges of most claims, even where they are not separately identified by the code for the device category, which should have been reported.

We believe that this absence of category codes in the claims data and our data analysis, and the issues surrounding multiple procedure claims argue strongly for packaging the cost of these devices into the payment for the procedures with which they were used and to then create weights for

procedures for the 2003 OPPS. Incorrect device coding could lead to skewed weights for the retired transitional pass-through devices, if we were to establish individual APCs for the expired device categories.

We believe that packaging the charges billed under the revenue centers into the charges for the procedures before setting the weights for the APCs will allow us to capture all of the cost data for services in which devices were used which will result in the most valid payment for the APC. This approach assures that the payment rate for the procedure includes accurate payment for the devices used in the procedure. Further discussion of our proposal to package payment for sunsetting transitional pass-through devices is contained in section III.C of this preamble.

b. Description of How Weights Were Calculated for 2003

The methodology we followed to calculate the APC relative payment weights proposed for CY 2003 is as follows:

- We excluded from the data approximately 15 million claims for those bill and claim types that would not be paid under the OPPS (for example, bill type 72X for dialysis services for patients with end-stage renal disease (ESRD)).
- Using the most recent available cost report from each hospital, we converted billed charges to costs and aggregated them to the procedure or visit level first by identifying the cost-to-charge ratio specific to each hospital's cost centers ("cost center specific cost-to-charge ratios" or CCRs) and then by matching the CCRs to revenue centers used on the hospital's 2001 outpatient bills. The CCRs include operating and capital costs but exclude items paid on a reasonable cost basis.
- We eliminated from the hospital CCR data 301 hospitals that we identified as having reported charges on their cost reports that were not actual charges (for example, a uniform charge applied to all services).
- We calculated the geometric mean of the total operating CCRs of hospitals remaining in the CCR data. We removed from the CCR data 67 hospitals whose total operating CCR exceeded the geometric mean by more than 3 standard deviations.
- We excluded from our data approximately 3 million claims submitted by the hospitals that we removed or trimmed from the hospital CCR data.
- We eliminated 1.2 million claims from hospitals located in Maryland, Guam, and the U.S. Virgin Islands.
- We matched revenue centers from the remaining universe of approximately 92.2 million claims to CCRs hospitals.
- We separated the 92.2 million claims that we had matched with a cost report into the following three distinct groups: (1) single-procedure claims, (2) multiple-procedure claims, and (3) claims on which we could not identify at least one OPPS covered service. Single-procedure claims are those that include only one HCPCS code (other than laboratory and incidentals such as packaged drugs and venipuncture) that could be grouped to an APC. Multiple-procedure claims include more than one HCPCS code that could be mapped to an APC. Dividing the claims in this manner yielded approximately 30.4 million single-procedure claims and 20.1 million multiple-procedure claims. Approximately 41.5 million claims without at least one covered OPPS service were set aside.

We converted 10.7 million multiple-procedure claims to single-procedure claims using the following criteria: (1) If a multiple-procedure claim contained lines with a HCPCS code in the pathology series (that is, CPT 80000 series of codes), we treated each of those lines as a single claim. (2) For multiple procedure claims with a packaged HCPCS code (status indicator "N") on the claim, we ignored line items for chest X-rays (HCPCS codes 71010 and/or 71020) and/or EKGs (HCPCS code 93005) on these claims. If only one procedure (other than HCPCS codes 71010, 71020, and 93005) existed on the claim, we treated it as a single-procedure claim. (3) If the claim had no packaged HCPCS codes and if there were no packaged revenue centers on the claim, we treated each line with a procedure as a single claim if the line item was billed as a single unit. (4) If the claim had no packaged HCPCS codes on the claim but had packaged revenue centers for the procedure, we ignored the line item for chest X-rays and/or EKG codes (as identified above) and if only one HCPCS code remained, we treated the claim as a single procedure claim. We created an additional 31.3 million single-procedure bills through this process, which enabled us to use these data from multiple-procedure claims in calculation of the APC relative payment weights.

- To calculate median costs for services within an APC, we used only single-procedure bills and those multiple procedure bills that we converted into single claims. If a claim had a single code with a zero charge (that would have been considered a single-procedure claim), we did not use it. As we discussed in section II.B.4.a.(1) of this preamble, we did not use multiple-procedure claims that billed more than one separately payable HCPCS code with charges for packaged items and services such as anesthesia, recovery room, or supplies that could not be reliably allocated or apportioned among the primary HCPCS codes on the claim. We have not yet developed what we regard as an acceptable method of using multiple-procedure bills to recalibrate APC weights that minimizes the risk of improperly assigning charges to the wrong procedure or visit.
- For each single-procedure claim, we calculated a cost for every billed line item charge by multiplying each revenue center charge by the appropriate hospital-specific CCR. If an appropriate cost center did not exist for a given hospital, we crosswalked the revenue center to a secondary cost center when possible, or used the hospital's overall cost-to-charge ratio for outpatient department services. We excluded from this calculation all charges associated with HCPCS codes previously defined as not paid under the OPPS (for example, laboratory, ambulance, and therapy services). We included all charges associated with HCPCS codes that are designated as packaged services (that is, HCPCS codes with the status indicator of "N").
- To calculate per-service costs, we used the charges shown in revenue centers that contained items integral to performing the service. We observed the packaging provisions set forth in the April 7, 2000 final rule with comment period that were in effect during 2001 (65 FR 18484). For instance, in calculating the cost of a surgical procedure, we included charges for the operating room, treatment rooms, recovery, observation, medical and surgical supplies, pharmacy, anesthesia, casts and splints, and donor tissue, bone, and organs. To determine medical visit costs, we included charges for items such as medical and surgical supplies, drugs, and observation in those instances where they are still packaged. Table 5 lists packaged services by revenue center that we are proposing to use to calculate per-service costs for outpatient services furnished in 2003.

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TABLE 5.—PACKAGED SERVICES BY REVENUE CODE

Revenue code	Description
Surgery	
250	PHARMACY
251	GENERIC
252	NONGENERIC
257	NONPRESCRIPTION DRUGS
258	IV SOLUTIONS
259	OTHER PHARMACY
260	IV THERAPY, GENERAL CLASS
262	IV THERAPY/PHARMACY SERVICES
263	IV THERAPY/DRUG SUPPLY/DELIVERY
264	IV THERAPY/SUPPLIES
269	OTHER IV THERAPY
270	M&S SUPPLIES
271	NONSTERILE SUPPLIES
272	STERILE SUPPLIES
274	PROSTHETIC/ORTHOTIC DEVICES
275	PACEMAKER DRUG
276	INTRAOCULAR LENS SOURCE DRUG
278	OTHER IMPLANTS
279	OTHER M&S SUPPLIES
280	ONCOLOGY
289	OTHER ONCOLOGY
290	DURABLE MEDICAL EQUIPMENT
370	ANESTHESIA
379	OTHER ANESTHESIA
390	BLOOD STORAGE AND PROCESSING
399	OTHER BLOOD STORAGE AND PROCESSING
560	MEDICAL SOCIAL SERVICES
569	OTHER MEDICAL SOCIAL SERVICES
624	INVESTIGATIONAL DEVICE (IDE)
630	DRUGS REQUIRING SPECIFIC IDENTIFICATION, GENERAL CLASS
631	SINGLE SOURCE
632	MULTIPLE
633	RESTRICTIVE PRESCRIPTION
700	CAST ROOM
709	OTHER CAST ROOM
710	RECOVERY ROOM
719	OTHER RECOVERY ROOM
720	LABOR ROOM
721	LABOR
762	OBSERVATION ROOM
810	ORGAN ACQUISITION
819	OTHER ORGAN ACQUISITION
Medical Visit	
250	PHARMACY
251	GENERIC
252	NONGENERIC
257	NONPRESCRIPTION DRUGS
258	IV SOLUTIONS
259	OTHER PHARMACY
270	M&S SUPPLIES
271	NONSTERILE SUPPLIES
272	STERILE SUPPLIES
279	OTHER M&S SUPPLIES
560	MEDICAL SOCIAL SERVICES
569	OTHER MEDICAL SOCIAL SERVICES
630	DRUGS REQUIRING SPECIFIC IDENTIFICATION, GENERAL CLASS
631	SINGLE SOURCE DRUG
632	MULTIPLE SOURCE DRUG
633	RESTRICTIVE PRESCRIPTION
637	SELF-ADMINISTERED DRUG (INSULIN ADMIN. IN EMERGENCY DIABETIC COMA
700	CAST ROOM
709	OTHER CAST ROOM
762	OBSERVATION ROOM
942	EDUCATION/TRAINING
Other Diagnostic	
254	PHARMACY INCIDENT TO OTHER DIAGNOSTIC
280	ONCOLOGY
289	OTHER ONCOLOGY

TABLE 5.—PACKAGED SERVICES BY REVENUE CODE—Continued

Revenue code	Description
372	ANESTHESIA INCIDENT TO OTHER DIAGNOSTIC
560	MEDICAL SOCIAL SERVICES
569	OTHER MEDICAL SOCIAL SERVICES
622	SUPPLIES INCIDENT TO OTHER DIAGNOSTIC
624	INVESTIGATIONAL DEVICE (IDE)
710	RECOVERY ROOM
719	OTHER RECOVERY ROOM
762	OBSERVATION ROOM
Radiology	
255	PHARMACY INCIDENT TO RADIOLOGY
280	ONCOLOGY
289	OTHER ONCOLOGY
371	ANESTHESIA INCIDENT TO RADIOLOGY
560	MEDICAL SOCIAL SERVICES
569	OTHER MEDICAL SOCIAL SERVICES
621	SUPPLIES INCIDENT TO RADIOLOGY
624	INVESTIGATIONAL DEVICE (IDE)
710	RECOVERY ROOM
719	OTHER RECOVERY ROOM
762	OBSERVATION ROOM
All Other APC Groups	
250	PHARMACY
251	GENERIC
252	NONGENERIC
257	NONPRESCRIPTION DRUGS
258	IV SOLUTIONS
259	OTHER PHARMACY
260	IV THERAPY, GENERAL CLASS
262	IV THERAPY PHARMACY SERVICES
263	IV THERAPY DRUG/SUPPLY/DELIVERY
264	IV THERAPY SUPPLIES
269	OTHER IV THERAPY
270	M&S SUPPLIES
271	NONSTERILE SUPPLIES
272	STERILE SUPPLIES
279	OTHER M&S SUPPLIES
560	MEDICAL SOCIAL SERVICES
569	OTHER MEDICAL SOCIAL SERVICES
630	DRUGS REQUIRING SPECIFIC IDENTIFICATION, GENERAL CLASS
631	SINGLE SOURCE DRUG
632	MULTIPLE SOURCE DRUG
633	RESTRICTIVE PRESCRIPTION
762	OBSERVATION ROOM
942	EDUCATION/TRAINING

• We standardized costs for geographic wage variation by dividing the labor-related portion of the operating and capital costs for each billed item by the proposed FY 2003 hospital inpatient prospective payment system (IPPS) wage index published in the **Federal Register** on May 9, 2002 (67 FR 31602). We used 60 percent to represent our estimate of that portion of costs attributable, on average, to labor. We have used this estimate since the inception of the OPPS and continue to believe that it is appropriate. See 65 FR 18496, the April 7, 2000 final rule for a complete description of how we derived this percentage.

• We summed the standardized labor-related cost and the nonlabor-related cost component for each billed item to derive the total standardized cost for each procedure or medical visit.

• We removed extremely unusual costs that appeared to be errors in the data using a trimming methodology analogous to what we use in calculating the diagnosis-related group (DRG) weights for the hospital IPPS. That is, we eliminated any bills with costs outside of 3 standard deviations from the geometric mean.

• After trimming the procedure and visit level costs, we mapped each procedure or visit cost to its assigned APC, including, to the extent possible, the proposed APC changes described in section II.A of this preamble.

• We calculated the median cost for each APC.

• Using the median APC costs, we calculated the relative payment weights for each APC. As in prior years, we scaled all the relative payment weights to APC 0601, Mid-level clinic visit, because it is one of the most frequently performed services in the hospital outpatient setting. This approach is consistent with that used in developing relative value units for the Medicare physician fee schedule. We assigned APC 0601 a relative payment weight of 1.00 and divided the median cost for each APC by the median cost for APC 0601 to derive the relative payment weight for each APC. Using 2001 data, the median cost for APC 0601 is $56.77.

Section 1833(t)(9)(B) of the Act requires that APC reclassification and recalibration changes and wage index changes be made in a manner that assures that aggregate payments under the OPPS for 2003 are neither greater

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than nor less than the aggregate payments that would have been made without the changes. To comply with this requirement concerning the APC changes, we compared aggregate payments using the CY 2002 relative weights to aggregate payments using the CY 2003 proposed weights. Based on this comparison, we are proposing to make an adjustment of 1.04227 to the weights. The weights that we are proposing for 2003, which incorporate the recalibration adjustments explained in this section, are listed in Addendum A and Addendum B.

5. Procedures That Will Be Paid Only As Inpatient Procedures

Before implementation of the OPPS, Medicare paid reasonable costs for services provided in the outpatient department. The claims submitted were subject to medical review by the fiscal intermediaries to determine the appropriateness of providing certain services in the outpatient setting. We did not specify in regulations those services that were appropriate to provide only in the inpatient setting and that, therefore, should be payable only when provided in that setting.

Section 1833(t)(1)(B)(i) of the Act gives the Secretary broad authority to determine the services to be covered and paid for under the OPPS. In the April 7, 2000 final rule, we identified procedures that are typically provided only in an inpatient setting and, therefore, would not be paid by Medicare under the OPPS (65 FR 18455). These procedures comprise what is referred to as the "inpatient list." The inpatient list specifies those services that are only paid when provided in an inpatient setting. These are services that require inpatient care because of the nature of the procedure, the need for at least 24 hours of postoperative recovery time or monitoring before the patient can be safely discharged, or the underlying physical condition of the patient. As we discussed in the April 7, 2000 and the November 30, 2001 final rules, we use the following criteria when reviewing procedures to determine whether or not they should be moved from the inpatient list and assigned to an APC group for payment under the OPPS:

- Most outpatient departments are equipped to provide the services to the Medicare population.
- The simplest procedure described by the code may be performed in most outpatient departments.
- The procedure is related to codes we have already moved off the inpatient list.

We update the inpatient list as often as quarterly through program memoranda to reflect current advances in medical practice. We last updated the inpatient list in the November 30, 2001 final rule. As we discuss in section II.A.2, above, the APC Panel at its January 2002 meeting reviewed certain procedures on the inpatient list for which we had received requests that they be made payable under the OPPS. The Panel recommended that we solicit comments and further information about all these procedures except for CPT code 47001, which they recommended be removed from the inpatient list (see section II.A.2 above for a discussion of this and the other codes that the Panel considered for removal from the inpatient list). These, procedures are included in Table 6, with the exception of CPT code 33967, which we are not proposing to pay for under the OPPS for reasons that we explain in section II.A.2.

In preparing this proposed rule to update the OPPS for CY 2003, we compared procedures with status indicator "C" (status indicator "C" is assigned to inpatient procedures that are not payable under the OPPS) to the list of procedures that are currently on the ambulatory surgical center (ASC) list of approved procedures, to procedures that we proposed to add to the ASC list in a proposed rule published in the **Federal Register** on June 12, 1998 (63 FR 32291), and to procedures recommended for addition to the ASC list by commenters in response to the June 12, 1998 proposed rule. We found that there are procedures on the current ASC list, or procedures proposed for addition to the ASC list, or procedures recommended by commenters for addition to the ASC list that are assigned status indicator "C" under the OPPS. A review of 2001 physician claims data also revealed that physicians are performing some of these "C" status indicator procedures on Medicare beneficiaries on an outpatient basis. We concluded that it was appropriate to propose removal of procedures from the OPPS inpatient list that are being performed on an outpatient basis and/or that we had determined could be safely and appropriately performed on a Medicare beneficiary in an ASC under the applicable ASC rules that are set forth in 42 CFR 416.22. We believe that our payment policies for surgical procedures provided in an outpatient hospital setting and in the ASC setting should be consistent to the extent possible within the limitations imposed by statutory or regulatory requirements. So, we propose to add the following criteria for use in reviewing procedures to determine whether they should be removed from the inpatient list and assigned to an APC group for payment under the OPPS:

- We have determined that the procedure is being performed in numerous hospitals on an outpatient basis; or
- We have determined that the procedure can be appropriately and safely performed in an ASC and is on the list of approved ASC procedures or proposed by us for addition to the ASC list.

In addition to the procedures considered by the APC Panel for removal from the inpatient list, Table 6 includes the procedures that we are proposing to be removed from the inpatient list for payment under the OPPS. We applied the criteria discussed above in order to be consistent with the ASC list of approved procedures, and with utilization data that indicate the procedures are being performed on an outpatient basis. We solicit comments on whether the procedures in Table 6 should be paid under the OPPS. We also solicit comments on the APC assignment that we propose for these procedures in the event we determine in the final rule, based on comments, that these procedures would be payable under the OPPS in 2003. We ask that commenters recommending reclassification of a procedure to an APC include evidence (preferably from peer-reviewed medical literature) that the procedure is being performed on an outpatient basis in a safe and effective manner.

Following our review of the comments that we receive about the procedures in Table 6, we propose either to assign a CPT code to an APC for payment under the OPPS or, if the comments do not provide sufficient information and data to enable us to make a decision, to present the comments to the APC Panel at its 2003 meeting.

TABLE 6.—PROCEDURES ON THE INPATIENT LIST PROPOSED FOR PAYMENT UNDER THE OPPS IN CY 2003.

CPT code	Proposed status indicator	Proposed APC	Description
21390	T	0256	OPEN TREATMENT OF ORBITAL FLOOR BLOWOUT FRACTURE; PERIORBITAL APPROACH, WITH ALLOPLASTIC OR OTHER IMPLANT.
22100	T	0208	PARTIAL EXCISION OF POSTERIOR VERTEBRAL COMPONENT (EG, SPINOUS PROCESS, LAMINA OR FACET) FOR INTRINSIC BONY LESION, SINGLE VERTEBRAL SEGMENT; CERVICAL.
22101	T	0208	PARTIAL EXCISION OF POSTERIOR VERTEBRAL COMPONENT (EG, SPINOUS PROCESS, LAMINA OR FACET) FOR INTRINSIC BONY LESION, SINGLE VERTEBRAL SEGMENT; THORACIC.
22102	T	0208	PARTIAL EXCISION OF POSTERIOR VERTEBRAL COMPONENT (EG, SPINOUS PROCESS, LAMINA OR FACET) FOR INTRINSIC BONY LESION, SINGLE VERTEBRAL SEGMENT; LUMBAR.
22103	T	0208	PARTIAL EXCISION OF POSTERIOR VERTEBRAL COMPONENT (EG, SPINOUS PROCESS, LAMINA OR FACET) FOR INTRINSIC BONY LESION, SINGLE VERTEBRAL SEGMENT; EACH ADDITIONAL SEGMENT (LIST SEPARATELY IN ADDITION TO CODE FOR PRIMARY PROCEDURE).
23035	T	0049	INCISION, BONE CORTEX (EG, OSTEOMYELITIS OR BONE ABSCESS), SHOULDER AREA.
23125	T	0051	CLAVICULECTOMY; TOTAL.
23195	T	0050	RESECTION, HUMERAL HEAD.
23395	T	0051	MUSCLE TRANSFER, ANY TYPE, SHOULDER OR UPPER ARM; SINGLE.
23397	T	0052	MUSCLE TRANSFER, ANY TYPE, SHOULDER OR UPPER ARM; MULTIPLE.
23400	T	0050	SCAPULOPEXY (EG, SPRENGELS DEFORMITY OR FOR PARALYSIS).
24150	T	0052	RADICAL RESECTION FOR TUMOR, SHAFT OR DISTAL HUMERUS;.
24151	T	0052	RADICAL RESECTION FOR TUMOR, SHAFT OR DISTAL HUMERUS; WITH AUTOGRAFT (INCLUDES OBTAINING GRAFT).
24152	T	0052	RADICAL RESECTION FOR TUMOR, RADIAL HEAD OR NECK;.
24153	T	0052	RADICAL RESECTION FOR TUMOR, RADIAL HEAD OR NECK; WITH AUTOGRAFT (INCLUDES OBTAINING GRAFT).
25170	T	0052	RADICAL RESECTION FOR TUMOR, RADIUS OR ULNA.
25390	T	0050	OSTEOPLASTY, RADIUS OR ULNA; SHORTENING.
25391	T	0051	OSTEOPLASTY, RADIUS OR ULNA; LENGTHENING WITH AUTOGRAFT.
25392	T	0050	OSTEOPLASTY, RADIUS AND ULNA; SHORTENING (EXCLUDING 64876).
25393	T	0051	OSTEOPLASTY, RADIUS AND ULNA; LENGTHENING WITH AUTOGRAFT.
25420	T	0051	REPAIR OF NONUNION OR MALUNION, RADIUS AND ULNA; WITH AUTOGRAFT (INCLUDES OBTAINING GRAFT).
27035	T	0052	DENERVATION, HIP JOINT, INTRAPELVIC OR EXTRAPELVIC INTRA-ARTICULAR BRANCHES OF SCIATIC, FEMORAL, OR OBTURATOR NERVES.
27216	T	0050	PERCUTANEOUS SKELETAL FIXATION OF POSTERIOR PELVIC RING FRACTURE AND/OR DISLOCATION (INCLUDES ILIUM, SACROILIAC JOINT AND/OR SACRUM).
27235	T	0050	PERCUTANEOUS SKELETAL FIXATION OF FEMORAL FRACTURE, PROXIMAL END, NECK, UNDISPLACED, MILDLY DISPLACED, OR IMPACTED FRACTURE.
31582	T	0256	LARYNGOPLASTY; FOR LARYNGEAL STENOSIS, WITH GRAFT OR CORE MOLD, INCLUDING TRACHEOTOMY.
31785	T	0254	EXCISION OF TRACHEAL TUMOR OR CARCINOMA; CERVICAL.
32201	T	0070	PNEUMONOSTOMY; WITH PERCUTANEOUS DRAINAGE OF ABSCESS OR CYST.
38700	T	0113	SUPRAHYOID LYMPHADENECTOMY.
42842	T	0254	RADICAL RESECTION OF TONSIL, TONSILLAR PILLARS, AND/OR RETROMOLAR TRIGONE; WITHOUT CLOSURE.
43030	T	0253	CRICOPHARYNGEAL MYOTOMY.
47490	T	0152	PERCUTANEOUS CHOLECYSTOSTOMY.
47001	N		BIOPSY OF LIVER, NEEDLE; WHEN DONE FOR INDICATED PURPOSE AT TIME OF OTHER MAJOR PROCEDURE.
62351	T	0208	IMPLANTATION, REVISION OR REPOSITIONING OF TUNNELED INTRATHECAL OR EPIDURAL CATHETER, FOR LONG-TERM MEDICATION ADMINISTRATION VIA AN EXTERNAL PUMP OR IMPLANTABLE RESERVOIR/INFUSION PUMP; WITH LAMINECTOMY.
64820	T	0220	SYMPATHECTOMY; DIGITAL ARTERIES, EACH DIGIT.
69150	T	0252	RADICAL EXCISIONS EXTERNAL AUDITORY CANAL LESION; WITHOUT NECK DISSECTION.
69502	T	0254	MASTOIDECTOMY; COMPLETE.
92986	T	0083	PERCUTANEOUS BALLOON VALVULOPLASTY; AORTIC VALVE.
92987	T	0083	PERCUTANEOUS BALLOON VALVULOPLASTY; MITRAL VALVE.
92990	T	0083	PERCUTANEOUS BALLOON VALVULOPLASTY; PULMONARY VALVE.
92997	T	0081	PERCUTANEOUS TRANSLUMINAL PULMONARY ARTERY BALLOON ANGIOPLASTY; SINGLE VESSEL.
92998	T	0081	PERCUTANEOUS TRANSLUMINAL PULMONARY ARTERY BALLOON ANGIOPLASTY; EACH ADDITIONAL VESSEL (LIST SEPARATELY IN ADDITION TO CODE FOR PRIMARY PROCEDURE)

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C. Partial Hospitalization

Payment Methodology

As we discussed in the April 7, 2000 OPPS final rule (65 FR 18452), partial hospitalization is an intensive outpatient program of psychiatric services provided to patients in the place of inpatient care. A partial hospitalization program (PHP) may be provided by a hospital to its outpatients or by a Medicare-certified community mental health center (CMHC). Payment to providers under the OPPS for PHPs represents the provider's overhead costs associated with the program. Because a day of care is the unit that defines the structure and scheduling of partial hospitalization services, effective for services furnished on or after August 1, 2000, we established a per diem payment methodology for the PHP APC. We analyzed the service components billed by hospitals over the course of a billing period and determined the median hospital cost of furnishing a day of partial hospitalization. We were unable to use CMHC data in computing the per diem because up until April 1, 2000, CMHCs were not required to report HCPCS codes. In addition, section 1833(t)(2)(C) of the Act requires that we establish relative payment weights based on median (or mean, at the election of the Secretary) hospital costs determined by 1996 claims and the most recent available cost report data. This analysis resulted in a per diem payment of $202.19 effective August 1, 2000. This amount was updated effective January 1, 2001 and April 1, 2002 to $206.82 and $212.27.

Although we did not use CMHC data in establishing the initial APC for partial hospitalization (or in the updates made since then), in the April 7, 2000 final rule we made a commitment to analyze future data from hospitals and CMHCs to determine if refinements to the per diem are warranted. Based on our review of 2001 claims data submitted under the OPPS, we have developed a payment rate for partial hospitalization following the same methodology used to establish all the APC payment amounts. However, because a day of care is the unit for PHP services, we computed the median cost of furnishing a day of partial hospitalization. Other than the unit of service being a day of care, the method we used to determine median costs for PHP is no different than that used for all other APCs as described in other sections of this proposed rule. The CY 2003 proposed payment rate for the partial hospitalization APC is $256.96 per day, of which $51.39 is the beneficiary's coinsurance.

We used calendar year 2001 bills from both hospitals and CMHCs. We used data from all the hospital bills reporting condition code 41, which identifies the claim as partial hospitalization. Since section 1866(e)(2) of the Act specifies that a CMHC is a provider of service "* * * only with respect to the furnishing of partial hospitalization services * * *," we used all bills from CMHCs. We used cost-to-charge ratios from the most recently available hospital and CMHC cost reports to develop costs from line item charges reported on bills. Since hospitals and CMHCs are now required to report line item dates of service on claims, we used that data to refine our estimates of line item costs.

We then computed per diem costs by summing the line item costs on each bill and dividing by the number of days on each bill. Using this method of determining costs, preliminary per diem cost estimates for CMHCs were much higher than expected, in many cases more than twice the average per diem for inpatient psychiatric care and more than three times the hospital median PHP per diem cost. The data strongly suggests that the costs were reported incorrectly. We believe that the data are unusable without adjustment.

Closer examination of the CMHC cost report data showed that costs from CMHC finalized cost reports were considerably lower than costs from "as submitted" CMHC cost reports. To account for the difference between settled and as-filed cost report data, we computed the ratio of total final costs to total as-filed costs over a 3-year period (FYs 1998–2000) and calculated an average adjustment factor which we applied to the costs on each claim. The adjusted costs were summed, then divided by the number of days on that bill.

Treatment of Professional Services Under PHP

Section 410.43 describes the conditions and exclusions of partial hospitalization services. That section lists the services that are separately covered and not paid as partial hospitalization services. The list includes—

- Physician services that meet the requirements of 42 CFR 415.102(a) for payment on a fee schedule basis;
- Physician assistant services, as defined in section 1861(s)(2)(K)(i) of the Act;
- Nurse practitioner and clinical nurse specialist services, as defined in section 1861(s)(2)(K)(ii) of the Act;
- Qualified psychologist services, as defined in section 1861(ii) of the Act; and
- Services furnished to SNF residents as defined in 42 CFR 411.15(p).

Based on this section, in the April 7, 2000 OPPS rule, we stated that the APC for partial hospitalization represents the provider's overhead costs, support staff, and the services of clinical social workers (CSWs) and occupational therapists (OTs), whose professional services are considered to be partial hospitalization services for which Medicare payment is made to the provider. Before implementation of the OPPS, the services of CSWs and OTs in a PHP were billed by the hospitals to the fiscal intermediaries and paid on a reasonable cost basis.

We have looked carefully at the differences between the cost experiences of CMHCs and of hospitals with respect to PHP services, as well as how payment is made for other hospital outpatient psychiatric services, to identify areas where improvements can be made in OPPS. One of the areas in which we identified discrepancies was in the coverage of CSW services. The way in which CSW services are currently billed and paid depends upon the circumstances under which CSW services are provided. In some settings, payment for CSW services is part of a bundled payment. In other settings, separate payment for CSW services is made.

Generally, CSW services furnished to hospital outpatients are bundled, which means that only the hospital may bill for such services. However, payment for CSW professional services furnished to hospital outpatients is made under the physician fee schedule. Therefore, the hospital outpatient department bills separately the Part B carrier for CSW services furnished to outpatients who are not in a PHP. CSW professional services are paid at 75 percent of the clinical psychologist fee schedule.

However, when CSWs furnish services to hospital outpatients or a CMHC under a partial hospitalization program, hospitals may not bill separately for the services of a CSW. Instead, for coverage and payment purposes, the services are recognized as partial hospitalization services. Partial hospitalization services are billed by hospitals and CMHCs to the fiscal intermediaries and paid the OPPS PHP APC per diem amount.

The different methodologies for payment of CSW services has proven both confusing and burdensome for hospitals because they must implement separate billing schemes for CSW services depending upon whether an individual outpatient is admitted to a PHP program or to any other hospital outpatient psychiatric program. We believe that these challenges have resulted in incorrect reporting by hospitals which has led to an under-representation of CSW services in the OPPS PHP APC per diem amount.

To facilitate proper billing and to ensure comparable reporting of costs by hospitals and CMHCs, we are proposing to allow separate payment for CSW services furnished in CMHCs. This means that both hospitals and CMHCs will bill the carrier for CSW services furnished to PHP patients. Therefore, we are proposing to amend § 410.43(b) to add clinical social worker services that meet the requirements of section 1861(hh)(2) of the Act to the list of professional services not considered to be PHP services. We believe this change will allow CSW services to be more appropriately reflected in both settings as part of PHPs.

III. Transitional Pass-Through and Related Payment Issues

A. Background

Section 1833(t)(6) of the Act provides for temporary additional payments or "transitional pass-through payments" for certain medical devices, drugs, and biologicals. As originally enacted by the BBRA, this provision required the Secretary to make additional payments to hospitals for current orphan drugs, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act, Pub. L. 107–186; current drugs, biologic agents, and brachytherapy devices used for the treatment of cancer; and current radiopharmaceutical drugs and biological products.

For those drugs, biologicals, and devices referred to as "current," the transitional pass-through payment began on the first date the hospital OPPS was implemented (before enactment of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA), Pub. L. 106–554, enacted December 21, 2000).

Transitional pass-through payments are also required for certain "new" medical devices, drugs, and biological agents that were not being paid for as a hospital outpatient service as of December 31, 1996 and whose cost is "not insignificant" in relation to the OPPS payment for the procedures or services associated with the new device, drug, or biological. Under the statute, transitional pass-through payments are to be made for at least 2 years but not more than 3 years.

Section 1833(t)(6)(B)(i) of the Act required that we establish by April 1, 2001, initial categories to be used for purposes of determining which medical devices are eligible for transitional pass-through payments. Section 1833(t)(6)(B)(i)(II) of the Act explicitly authorized us to establish initial categories by program memorandum. On March 22, 2001, we issued two Program Memoranda, Transmittals A–01–40 and A–01–41 that established the initial categories. We posted them on our web site at *http://www.hcfa.gov/pubforms/transmit/A0140.pdf* and *http://www.hcfa.gov/pubforms/transmit/A0141.pdf*, respectively.

Transmittal A–01–41 includes a list of the initial device categories and a crosswalk of all the item-specific codes for individual devices that were approved for transitional pass-through payments as of January 21, 2001 to the initial category code by which the device is to be billed beginning April 1, 2001. Items eligible for transitional pass-through payments are generally coded using a Level II HCPCS code with an alpha prefix of "C." Pass-through device categories are identified by status indicator "H" and pass-through drugs and biologicals are identified by status indicator "G." Subsequently, we added two additional categories and made clarifications to some of the categories' long descriptors found in transmittal A–01–73. A current list of device category codes in effect as of July 1, 2002 can be found in Transmittal A–02–050, which was issued on June 17, 2002. This Program Memorandum can be accessed on our web site at *http://www.hcfa.gov*. The list is also included in this preamble in Table 7.

Section 1833(t)(6)(B)(ii) of the Act also requires us to establish, through rulemaking, criteria that will be used to create additional device categories. The criteria for new categories are the subject of a separate interim final rule with comment period that we published in the **Federal Register** on November 2, 2001 (66 FR 55850). We will respond to public comments on that interim final rule in the final rule that implements the 2003 OPPS update.

Transitional pass-through categories are for devices only; they do not apply to drugs or biologicals. The regulations at § 419.64 governing transitional pass-through payments for eligible drugs and biologicals are unaffected by the creation of categories.

The process to apply for transitional pass-through payment for eligible drugs and biological agents or for additional device categories can be found on respective pages on our web site at *http://www.hcfa.gov*. If we revise the application instructions in any way, we will post the revisions on our web site and submit the changes for approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). Notification of new drug, biological, or device category application processes are generally posted on the OPPS web site at *http://www.hcfa.gov/Medicare/hopsmain.html*.

B. Discussion of Pro Rata Reduction

Section 1833(t)(6)(E) of the Act limits the total projected amount of transitional pass-through payments for a given year to an "applicable percentage" of projected total payments under the hospital OPPS. For a year before 2004, the applicable percentage is 2.5 percent; for 2004 and subsequent years, we specify the applicable percentage up to 2.0 percent. If we estimate before the beginning of the calendar year that the total amount of pass-through payments in that year would exceed the applicable percentage, section 1833(t)(6)(E)(iii) of the Act requires a (prospective) uniform reduction in the amount of each of the transitional pass-through payments made in that year to ensure that the limit is not exceeded. We make an estimate of pass-through spending to determine not only whether payment exceeds the applicable percentage but also to determine the appropriate reduction to the conversion factor.

We will make an estimate of pass-through spending in 2003 using the methodology described below. Making an estimate of pass-though spending in 2003 entails estimating spending for two groups of items. The first group consists of those items for which we have claims data (that is, items that were eligible in 2001 and that will continue to be eligible in 2003). The second group consists of those items for which we have no direct claims data (that is, items that became or will become eligible in 2002 and will retain pass-through status and items that will be newly eligible beginning in 2003).

To estimate 2003 pass-through spending for device categories in the first group, we will use volume and hospital cost (derived from charges on claims using cost-to-charge ratios) information from 2001 claims data. This information will be projected forward to 2003 levels using appropriate inflation and utilization factors. For existing categories with no claims data in 2001 that are or will be active in 2002, we will follow the method described in the November 2, 2001 final rule (66 FR 55857). We will use price information from manufacturers and volume estimates from claims related to procedures that use the devices in question. This information will be

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projected forward to 2003 using appropriate inflation and utilization factors to estimate 2003 pass-through spending for this group of categories. For categories that become eligible in 2003, we will use the same method as described for categories that are newly active in 2002. Any new categories for 2003 will be announced after the publication of this proposed rule but prior to the publication of the final rule. Therefore the estimate of pass-through spending will incorporate pass-through spending for categories made effective January 1, 2003.

To estimate 2003 pass-through spending for drugs, biologicals, and radiopharmaceuticals, in the first group, we will use volume data from 2001 claims and the average wholesale price (AWP) as published in the July 2002 Red Book. This information will be projected forward to 2003 using the appropriate utilization factor. (Because 2003 payment rates for pass-through drugs will be based on the July 2002 AWPs, we do not apply an inflation factor.) The pass-through amount for drugs, biologicals, and radiopharmaceuticals is the difference between the payment rate (that is, 95 percent of the AWP) and the amount that would have been included in the payment rate of its associated APC had the drug, biological, or radiopharmaceutical been packaged. Section V.E. describes this methodology. To estimate pass-through spending for drugs in this group, for each drug we will multiply the drug's estimated utilization times the pass-through amount (for example, the difference between 95 percent of AWP for the drug and the amount included in the payment rate for its associated APC). For most drugs, the pass-through amount will be based on the weighted average ratios described in Section IV.E. However some drugs may fall into two other classes. The first class includes a drug that is new and for which there are no previously existing costs in an associated APC. For such a drug, we propose that the pass-through amount would be 95 percent of the AWP (because there are no previously existing costs included in an APC) and there would be no copayment (because there are no previously existing costs in an APC on which to base a copayment). The second class includes a drug that is new and is a substitute for only one drug whose cost is recognized in the OPPS through an unpackaged APC. For drugs in this second class, we propose that the pass-through amount would be the difference between 95 percent of the AWP for the pass-through drug and the payment rate for the comparable dose of the associated drug's APC. The copayment would be based on the payment rate of its associated APC.

For existing drugs, biologicals, and radiopharmaceuticals for which we have no claims data in 2001 and which are active or will be active in 2002 as well as for drugs, biologicals, and radiopharmaceuticals, we will derive volume estimates from information submitted by manufacturers as well as other sources (such as, peer-reviewed clinical studies) and the AWP as published in the July 2002 Red Book. This information will be projected forward to 2003 using the appropriate utilization factor. Again, because 2003 payment rates for pass-through drugs will be based on the July 2002 AWP, we do not apply an inflation factor. To estimate pass-through spending for drugs in this group, for each drug we will multiply the drug's estimated utilization times the pass-through amount. For most drugs, these amounts will be based on the weighted average ratios described in Section IV.E. However some drugs may fall into two other classes. The first class includes a drug that is new and has no previously existing costs included in an associated APC. For such a drug, we propose that the pass-through amount would be 95 percent of the AWP (because there are no previously existing costs included in an APC) and there would be no copayment (because there are no previously existing costs in an APC on which to base a copayment). The table below shows two such drugs, Y–90 Zevalin and IN–111 Zevalin. The second class includes a drug that is new and is a substitute for only one drug that is recognized in the OPPS, through an unpackaged APC. The table below shows one such drug, Darbepoetin alfa, which is a new substitute of epoetin. For drugs in this second class, the pass-through amount will be the difference between 95 percent of the AWP for the pass-through drug and the payment rate for the comparable dose of the associated drug's APC. The copayment will be based on the payment rate of its associated APC. For drugs, biologicals, and radiopharmaceuticals that may receive pass-through status effective January 1, 2003, we will use the same methodology as described for drugs, biologicals, and radiopharmaceuticals that received pass-through status in 2002. Any new pass-through drugs, biologicals, and radiopharmaceuticals effective beginning in 2003 will be announced after the publication of this proposed rule but prior to the publication of the final rule. Therefore the estimate of pass-through spending will incorporate pass-through spending for these drugs, biologicals, and radiopharmaceuticals made effective January 1, 2003.

Finally, we will incorporate an estimate of pass-through spending for items that become eligible later in 2003 (that is, April 1, 2003; July 1, 2003; and October 1, 2003) based on estimates for items that will become eligible for pass-through status January 1, 2003. Specifically, we will assume a proportionate amount of spending for items that become eligible later in the year while making an adjustment to account for the fact that items made eligible later in the year will not have received pass-through payments for the entire year.

After using the methodologies described above to determine projected 2003 pass-through spending for the groups of devices, drugs, biologicals, and radiopharmaceuticals described above, we would calculate total projected 2003 pass-through spending as a percentage of the total (that is, Medicare and beneficiary payments) projected payments under OPPS to determine if the pro rata reduction would be required.

Below is a table showing our current estimate of 2003 pass-through spending based on information available at the time this table was developed. We are uncertain whether pass-through spending in 2003 will exceed $457 million or 2.5 percent of total OPPS spending. We have not yet completed the estimate of pass-through spending for a number of drugs. In particular, we are in the process of obtaining additional information about the utilization volume for several pass-through drugs. We invite comments on the methodology described above as well as the assumptions shown in the table below including anticipated utilization and utilization not yet determined. More information regarding the assumptions used to create these estimates is available at *http://cms.hhs.gov/regulations/regnotices.asp*.

TABLE X.

HCPC	APC	DRUG, biological	2002 payment rate	2001 utilization	2003 Pass-through payment portion	2003 estimated utilization	2003 anticipated pass-through payment
Existing Pass-through Drugs/Biologicals							
A9700	9016	Echocardiography Contrast*	$118.75	300,000	$34.44	368,686	$12,696,607.35
C1774	734	Darbepoetin alfa, 1 mcg	4.74	6136252	1.37	7,541,157	10,366,074.10
C1058	1058	TC 99M oxidronate, per vial	36.74	4,000	10.65	4,916	52,375.96
C1064	1064	I–131 cap, each add mCi	5.86	4,575	1.88	5,622	485,208.00
C1065	1065	I–131 sol, each add mCi	15.81	4,575	5.06	5,622	1,309,068.00
C1775	1775	FDG, per dose (4–40 mCi/ml)	475.00	30,000	137.75	36,869	5,078,642.94
J9219	7051	Leuprolide acetate implant	5,399.80	66	1,565.94	81	127,014.83
J9017	9012	Arsenic Trioxide	23.75		6.89	TBD	To be determined
J7517	9015	Mycophenolate mofetil	2.40		0.70	TBD	To be determined
J0587	9018	Botulinum toxin type B	8.79		2.55	TBD	To be determined
C9019	9019	Caspofugen acetate, 5 mg	34.20		9.92	TBD	To be determined
C9110	9110	Alemtuzumab, per 10mg/ml	486.88		141.20	517	72,997.92
C9111	9111	Inj. Bivalrudin, 250 mg vial	397.81		115.36	TBD	To be determined
C9112	9112	Perflutren lipid micro, 2ml	148.20	300,000	42.98	368,686	15,845,365.98
C9113	9113	Inj Pantoprazole sodium, vial	22.80		6.61	TBD	To be determined
C9114	9114	Nesiritide, per 1.5 mg vial	433.20		125.63	TBD	To be determined
C9115	9115	Zoledronic acid, 2 mg	406.78		117.97	TBD	To be determined
C9200	9200	Orcel, per 36 cm2	1,135.25		329.22	TBD	To be determined
C9201	9201	Dermagraft, per 37.5 sq cm	577.60		167.50	TBD	To be determined
Pass-through Drugs/Biologicals Effective October 2002							
C9116	9116	Ertapenem sodium	36.24		10.51	TBD	To be determined
C9117	9117	Y–90 Zevalin	19,181.44		19,181.44	9,000	172,632,960.00
C9118	9118	IN–111 Zevalin	2,769.65		2,769.65	9,000	24,926,850.00
C9119	9119	Pegfilgrastim	2,802.50		2,367.13	85,258	201,815,396.40
Pass-through Devices							
C1765	1754	Adhesion barrier		256		261	20,011.00
C1783	1783	Ocular implant, aqueous drainage		2000		2042	1,327,300.00
C1888	1888	Endovascular, non-cardiac		184		188	136,300.00
C1900	1900	Lead, left ventricular		1000		1021	2,042,000.00
C2618	2618	Probe, cryoablation		1120		1144	531,106.00

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C. Expiration of Transitional Pass-Through Payments in Calendar Year 2003

1. Devices

Section 1833(t)(6)(B)(iii) of the Act requires that a category of devices be eligible for transitional pass-through payments for at least 2, but not more than 3, years. This period begins with the first date on which a transitional pass-through payment is made for any medical device that is described by the category. We propose that 95 device categories currently in effect will expire effective January 1, 2003. Our proposed payment methodology for devices that have been paid by means of pass-through categories, but for which pass-through status will expire effective January 1, 2003, is discussed in the section below.

Although the device category codes became effective on April 1, 2001, many of the item-specific C-codes for pass-through devices that were crosswalked to the new category codes were approved for pass-through payment in CY 2000, or as of January 1, 2001. (The crosswalk for item-specific C-codes to category codes was issued in Transmittals A–01–41 and A–01–97, cited in section III.A.) To establish the expiration date for the category codes listed in Table 7, we determined when item-specific devices that are described by the categories were first made effective for pass-through payment before the implementation of device categories. These dates are listed in Table 7 in the column entitled "Date First Populated." We propose to base the expiration date for a device category on the earliest effective date of pass-through status for any device that populates that category. Thus, the 95 categories for devices that will have been eligible for pass-through payments for at least 2 years as of December 31, 2002 would not be eligible for pass-through payments effective January 1, 2003.

Below is Table 7, which includes a comprehensive list of all pass-through device categories effective on or before July 1, 2002 with the date that devices described by the category first became effective for payment under the pass-through provisions and their respective proposed expiration dates.

TABLE 7.—LIST OF PASS-THROUGH DEVICE CATEGORIES WITH PROPOSED EXPIRATION DATES

	HCPCS codes	Category long descriptor	Date first populated	Expiration date
1	C1883	Adaptor/extension, pacing lead or neurostimulator lead (implantable)	8/1/00	12/31/02
2	C1765	Adhesion barrier	10/01/00–3/31/01; 7/1/01.	12/31/03
3	C1713	Anchor/screw for opposing bone-to-bone or soft tissue-to-bone (implantable)	8/1/00	12/31/02
4	C1715	Brachytherapy needle	8/1/00	12/31/02
5	C1716	Brachytherapy seed, Gold 198	10/1/00	12/31/02
6	C1717	Brachytherapy seed, High Dose Rate Iridium 192	1/1/01	12/31/02
7	C1718	Brachytherapy seed, Iodine 125	8/1/00	12/31/02
8	C1719	Brachytherapy seed, Non-High Dose Rate Iridium 192	10/1/00	12/31/02
9	C1720	Brachytherapy seed, Palladium 103	8/1/00	12/31/02
10	C2616	Brachytherapy seed, Yttrium-90	1/1/01	12/31/02
11	C1721	Cardioverter-defibrillator, dual chamber (implantable)	8/1/00	12/31/02
12	C1882	Cardioverter-defibrillator, other than single or dual chamber (implantable)	8/1/00	12/31/02
13	C1722	Cardioverter-defibrillator, single chamber (implantable)	8/1/00	12/31/02
14	C1888	Catheter, ablation, non-cardiac, endovascular (implantable)	7/1/02	12/31/04
15	C1726	Catheter, balloon dilatation, non-vascular	8/1/00	12/31/02
16	C1727	Catheter, balloon tissue dissector, non-vascular (insertable)	8/1/00	12/31/02
17	C1728	Catheter, brachytherapy seed administration	1/1/01	12/31/02
18	C1729	Catheter, drainage	10/1/00	12/31/02
19	C1730	Catheter, electrophysiology, diagnostic, other than 3D mapping (19 or fewer electrodes)	8/1/00	12/31/02
20	C1731	Catheter, electrophysiology, diagnostic, other than 3D mapping (20 or more electrodes)	8/1/00	12/31/02
21	C1732	Catheter, electrophysiology, diagnostic/ablation, 3D or vector mapping	8/1/00	12/31/02
22	C1733	Catheter, electrophysiology, diagnostic/ablation, other than 3D or vector mapping, other than cool-tip.	8/1/00	12/31/02
23	C2630	Catheter, electrophysiology, diagnostic/ablation, other than 3D or vector mapping, cool-tip.	10/1/00	12/31/02
24	C1887	Catheter, guiding (may include infusion/perfusion capability)	8/1/00	12/31/02
25	C1750	Catheter, hemodialysis/peritoneal, long-term	8/1/00	12/31/02
26	C1752	Catheter, hemodialysis/peritoneal, short-term	8/1/00	12/31/02
27	C1751	Catheter, infusion, inserted peripherally, centrally or midline (other than hemodialysis)	8/1/00	12/31/02
28	C1759	Catheter, intracardiac echocardiography	8/1/00	12/31/02
29	C1754	Catheter, intradiscal	10/1/00	12/31/02
30	C1755	Catheter, intraspinal	8/1/00	12/31/02
31	C1753	Catheter, intravascular ultrasound	8/1/00	12/31/02
32	C2628	Catheter, occlusion	10/1/00	12/31/02
33	C1756	Catheter, pacing, transesophageal	10/1/00	12/31/02
34	C2627	Catheter, suprapubic/cystoscopic	10/1/00	12/31/02
35	C1757	Catheter, thrombectomy/embolectomy	8/1/00	12/31/02
36	C1885	Catheter, transluminal angioplasty, laser	10/1/00	12/31/02
37	C1725	Catheter, transluminal angioplasty, non-laser (may include guidance, infusion/perfusion capability).	8/1/00	12/31/02
38	C1714	Catheter, transluminal atherectomy, directional	8/1/00	12/31/02
39	C1724	Catheter, transluminal atherectomy, rotational	8/1/00	12/31/02
40	C1758	Catheter, ureteral	10/1/00	12/31/02
41	C1760	Closure device, vascular (implantable/insertable)	8/1/00	12/31/02
42	L8614	Cochlear implant system	8/1/00	12/31/02
43	C1762	Connective tissue, human (includes fascia lata)	8/1/00	12/31/02

TABLE 7.—LIST OF PASS-THROUGH DEVICE CATEGORIES WITH PROPOSED EXPIRATION DATES—Continued

	HCPCS codes	Category long descriptor	Date first populated	Expiration date
44	C1763	Connective tissue, non-human (includes synthetic)	10/1/00	12/31/02
45	C1881	Dialysis access system (implantable)	8/1/00	12/31/02
46	C1764	Event recorder, cardiac (implantable)	8/1/00	12/31/02
47	C1767	Generator, neurostimulator (implantable)	8/1/00	12/31/02
48	C1768	Graft, vascular	1/1/01	12/31/02
49	C1769	Guide wire	8/1/00	12/31/02
50	C1770	Imaging coil, magnetic resonance (insertable)	1/1/01	12/31/02
51	C1891	Infusion pump, non-programmable, permanent (implantable)	8/1/00	12/31/02
52	C2626	Infusion pump, non-programmable, temporary (implantable)	1/1/01	12/31/02
53	C1772	Infusion pump, programmable (implantable)	10/1/00	12/31/02
54	C1893	Introducer/sheath, guiding, intracardiac electrophysiological, fixed-curve, other than peel-away.	10/1/00	12/31/02
55	C1766	Introducer/sheath, guiding, intracardiac electrophysiological, steerable, other than peel-away.	1/1/01	12/31/02
56	C1892	Introducer/sheath, guiding, intracardiac electrophysiological, fixed-curve, peel-away	1/1/01	12/31/02
57	C1894	Introducer/sheath, other than guiding, other than intracardiac electrophysiological, non-laser.	8/1/00	12/31/02
58	C2629	Introducer/sheath, other than guiding, other than intracardiac electrophysiological, laser	1/1/01	12/31/02
59	C1776	Joint device (implantable)	10/1/00	12/31/02
60	C1895	Lead, cardioverter-defibrillator, endocardial dual coil (implantable)	8/1/00	12/31/02
61	C1777	Lead, cardioverter-defibrillator, endocardial single coil (implantable)	8/1/00	12/31/02
62	C1896	Lead, cardioverter-defibrillator, other than endocardial single or dual coil (implantable)	8/1/00	12/31/02
63	C1900	Lead, left ventricular coronary venous system	7/1/02	12/31/04
64	C1778	Lead, neurostimulator (implantable)	8/1/00	12/31/02
65	C1897	Lead, neurostimulator test kit (implantable)	8/1/00	12/31/02
66	C1898	Lead, pacemaker, other than transvenous VDD single pass	8/1/00	12/31/02
67	C1779	Lead, pacemaker, transvenous VDD single pass	8/1/00	12/31/02
68	C1899	Lead, pacemaker/cardioverter-defibrillator combination (implantable)	1/1/01	12/31/02
69	C1780	Lens, intraocular (new technology)	8/1/00	12/31/02
70	C1878	Material for vocal cord medialization, synthetic (implantable)	10/1/00	12/31/02
71	C1781	Mesh (implantable)	8/1/00	12/31/02
72	C1782	Morcellator	8/1/00	12/31/02
73	C1784	Ocular device, intraoperative, detached retina	1/1/01	12/31/02
74	C1783	Ocular implant, aqueous drainage assist device	7/1/02	12/31/04
75	C2619	Pacemaker, dual chamber, non rate-responsive (implantable)	8/1/00	12/31/02
76	C1785	Pacemaker, dual chamber, rate-responsive (implantable)	8/1/00	12/31/02
77	C2621	Pacemaker, other than single or dual chamber (implantable)	1/1/01	12/31/02
78	C2620	Pacemaker, single chamber, non rate-responsive (implantable)	8/1/00	12/31/02
79	C1786	Pacemaker, single chamber, rate-responsive (implantable)	8/1/00	12/31/02
80	C1787	Patient programmer, neurostimulator	8/1/00	12/31/02
81	C1788	Port, indwelling (implantable)	8/1/00	12/31/02
82	C2618	Probe, cryoablation	4/1/01	12/31/03
83	C1789	Prosthesis, breast (implantable)	10/1/00	12/31/02
84	C1813	Prosthesis, penile, inflatable	8/1/00	12/31/02
85	C2622	Prosthesis, penile, non-inflatable	10/1/01	12/31/02
86	C1815	Prosthesis, urinary sphincter (implantable)	10/1/00	12/31/02
87	C1816	Receiver and/or transmitter, neurostimulator (implantable)	8/1/00	12/31/02
88	C1771	Repair device, urinary, incontinence, with sling graft	10/1/00	12/31/02
89	C2631	Repair device, urinary, incontinence, without sling graft	8/1/00	12/31/02
90	C1773	Retrieval device, insertable	1/1/01	12/31/02
91	C2615	Sealant, pulmonary, liquid (implantable)	1/1/01	12/31/02
92	C1817	Septal defect implant system, intracardiac	8/1/00	12/31/02
93	C1874	Stent, coated/covered, with delivery system	8/1/00	12/31/02
94	C1875	Stent, coated/covered, without delivery system	8/1/00	12/31/02
95	C2625	Stent, non-coronary, temporary, with delivery system	10/1/00	12/31/02
96	C2617	Stent, non-coronary, temporary, without delivery system	10/1/00	12/31/02
97	C1876	Stent, non-coated/non-covered, with delivery system	8/1/00	12/31/02
98	C1877	Stent, non-coated/non-covered, without delivery system	8/1/00	12/31/02
99	C1879	Tissue marker (implantable)	8/1/00	12/31/02
100	C1880	Vena cava filter	1/1/01	12/31/02

We considered a number of options on how to pay for devices after their pass-through payment status expires effective January 1, 2003. We held a Town Hall Meeting on April 5, 2002, to solicit recommendations on how to pay for drugs, biologicals, and devices once their eligibility for transitional pass-through payments expires in accordance with the time limits set by the statute. Interested parties representing hospitals, physician specialty groups, device and drug manufacturers and trade associations, and other organizations presented their views on these issues.

We have carefully considered all the comments, concerns, and recommendations submitted to us regarding payment for devices and drugs and biologicals that would no

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longer be eligible for pass-through payments in 2003. One consideration under the OPPS is the need to enable beneficiary access to new, and often costly, medical technology. We have also had to assess the extent to which the most recently available data that are the basis for prospectively setting payment rates for services within the APC system adequately reflect the costs incurred by hospitals to furnish this new technology. Having considered these factors, we propose to package the costs of medical devices no longer eligible for pass-through payment in 2003 into the costs of the procedures with which the devices were billed in 2001. (Our proposal to pay for pass-through drugs and biologicals whose pass-through status expires in 2003 is discussed below, in section III.C.2.)

The methodology that we propose to use to package pass-through device costs is consistent with the methodology for packaging that we describe in section II.B.4.b. That is, to calculate the total cost for a service on a per-service basis, we included all charges billed with the service in a revenue center in addition to packaged HCPCS codes with status indicator "N." We also packaged the 2001 charges for devices that will cease to be eligible for pass-through payment in 2003 into the changes for the HCPCS codes with which the devices were billed. We relied on the hospitals to correctly code their bills for all costs, including pass-through devices, using HCPCS codes and revenue centers as appropriate to describe the services that they furnished.

We discuss in section II.B.4.a.(2), issues related to coding and billing for pass-through devices in 2001 and how our analysis of the claims data suggests that in some instances charges for devices were billed in revenue centers and in other instances with a device-specific or device category "C" code. We did not want to lose the device costs billed by hospitals through revenue centers in developing our relative weights for APCs, yet we were unable to separate the device costs from other costs included in the revenue centers. This problem is resolved by our proposal to package the costs of both the device "C" codes and the billed revenue centers, whichever appears on the claim. We are confident that this method will allow us to capture all device related costs billed by hospitals.

We customarily allow a grace period for HCPCS codes that are scheduled for deletion. When we allow a grace period for deleted codes, we permit deleted codes to continue to be billed and paid for 90 days after the effective date of the changes that require their deletion. However, we propose to not allow a grace period for expiring pass-through codes because permitting a grace period would result in pass-through payment for the items for which we propose to cease pass-through payment effective with services furnished on or after January 1, 2003. Effective for services furnished on or after January 1, 2003, hospitals would submit charges for all surgically inserted devices in the supply, implant, or device revenue center that most appropriately describes the implant. Device costs will thus be packaged into and reflected in the costs for the procedure with which they are associated. Therefore, effective for services furnished on or after January 1, 2003, we propose to reject line items containing a "C" code for a device category scheduled to expire effective January 1, 2003.

2. Drugs and Biologicals (Including Radiopharmaceuticals, Blood, and Blood Products)

Under the OPPS, we currently pay for drugs and biologicals, including radiopharmaceuticals, blood, and blood products, in one of three ways: packaged payment, separate APCs and transitional pass-through payment.

Packaged Payment

As we explained in the April 7, 2000 final rule, we generally package the cost of drugs and biologicals into the APC payment rate for the primary procedure or treatment with which the drugs are usually furnished (65 FR 18450). Hospitals do not receive separate payment from Medicare for packaged items and supplies, and hospitals may not bill beneficiaries separately for any such packaged items and supplies whose costs are recognized and paid for within the national OPPS payment rate for the associated procedure or service. (Transmittal A–01–133, a Program Memorandum issued to Intermediaries on November 20, 2001, explains in greater detail the rules regarding separate payment for packaged services). Hospitals bill for costs directly related and integral to performing a procedure or furnishing a service using a revenue center or packaged HCPCS code (status indicator "N"). As discussed earlier in section II.B.4.a(2), we list the packaged services, by revenue center, that we use to calculate per-service costs.

As specified in the regulations at § 419.2(b), costs directly related and integral to performing a procedure or furnishing a service on an outpatient basis are included in the determination of OPPS payment rates for the procedure or service. For example, sedatives administered to patients while they are in the preoperative area being prepared for a procedure are supplies that are integral to being able to perform the procedure. Similarly, mydriatic drops instilled into the eye to dilate the pupils, anti-inflammatory drops, antibiotic ointments, and ocular hypotensives that are administered to the patient immediately before, during, or following an ophthalmic procedure are considered an integral part of the procedure without which the procedure could not be performed. The costs of these items are packaged into and reflected within the OPPS payment rate for the procedure. Likewise, barium or low osmolar contrast media are supplies that are integral to a diagnostic imaging procedure as is the topical solution used with photodynamic therapy furnished at the hospital to treat non-hyperkeratotic actinic keratosis lesions of the face or scalp. Local anesthetics such as marcaine, lidocaine (with or without epinephrine) and antibiotic ointments such as bacitracin, placed on a wound or surgical incision at the completion of a procedure, are other examples. The hospital furnishes these items while the patient is in the hospital and registered as an outpatient for the purpose of receiving a therapy, treatment, procedure, or service. These and other such supplies may be furnished pre-operatively, while the patient is being prepared for a procedure; intra-operatively, while the procedure is being performed; or post-operatively, while the patient is in the recovery area prior to discharge. Or, these items may be part of an E/M service furnished during a clinic visit or in the emergency department. All of these supplies are directly related and integral to the performance of a separately payable therapy, treatment, procedure, or service with which they are furnished. Therefore, we do not generally recognize them as separately payable services. We package their cost into the cost of the primary procedure, and we pay for them as part of the APC payment.

Separate APCs for Drugs Not Eligible for Transitional Pass-Through Payment

There are certain new technology drugs and biologicals that are not eligible for transitional pass-through payments but for which we have made separate payment. Beginning with the April 7, 2000 rule (65 FR 18476), we created separate new technology APCs for these drugs and biologicals as well as devices. For example, we did not package into the emergency room visit APCs the various drugs classified as tissue plasminogen activators (TPAs) and other thrombolytic agents that are used to treat patients with myocardial infarctions. We also did not package the costs of certain vaccines into the payment for visits or procedures. Rather, we created temporary individual APC groups for these drugs to allow separate payment so as not to discourage their use where appropriate. In the case of blood and blood products, wide variations in patient requirements convinced us that we should pay for these items separately rather than packaging their costs into the procedural APCs. Moreover, the Secretary's Advisory Council on Blood Safety and Access recommended that blood and blood products be paid separately to ensure that there were no incentives that would be inconsistent with the promotion of blood safety and access.

In the case of the other drugs and vaccines that we did not package into payment for visits or procedures, we paid separately for them because we wanted to avoid creating an incentive to cease providing these drugs when they were medically indicated.

We based the payment rate for the APCs for these drugs and biologicals on median hospital acquisition costs. To determine the hospital acquisition cost for the drugs, we imputed a cost using the same ratios of drug acquisition cost to AWP that we discuss below in connection with calculating acquisition costs for transitional pass-through drug payments. That is, we multiplied the AWP for the drug by the applicable ratio (sole or multisource drug) based on data collected in an external survey of hospital drug acquisition costs.

We set beneficiary copayment amounts for these drug and biological APCs at 20 percent of the imputed acquisition cost. In 2003 we will use status indicator "K" to denote the APCs for drugs and biologicals (including blood and blood products) and certain brachytherapy seeds that are paid separately from and in addition to the procedure or treatment with which they are associated but that are not eligible for transitional pass-through payment.

Transitional Pass-Through Payments for Eligible Drugs and Biologicals

BBRA provided for special transitional pass-through payments for a period of 2 to 3 years for the following drugs and biologicals (pass-through payments for devices are addressed in section III.C.1 of this proposed rule):

- Current orphan drugs, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act.
- Current drugs and biologic agents used for treatment of cancer.
- Current radiopharmaceutical drugs and biological products.
- New drugs and biological agents.

In this context, "current" refers to those items for which hospital outpatient payment was being made on August 1, 2000, the date on which the OPPS was implemented. A "new" drug or biological is a product that is not paid under the OPPS as a "current" drug or biological, was not paid as a hospital outpatient service before January 1, 1997, and for which the cost is not insignificant in relation to the payment for the APC with which it is associated.

Section 1833(t)(6)(D)(i) of the Act sets the payment rate for pass-through eligible drugs as the amount by which the amount determined under section 1842(o) of the Act, that is, 95 percent of the applicable average wholesale price (AWP), exceeds the difference between 95 percent of the applicable AWP and the portion of the otherwise applicable fee schedule amount (that is, the APC payment rate) that the Secretary determines is associated with the drug or biological. Therefore, in order to determine the pass-through payment amount, we first had to determine the cost that was packaged for the drug or biological within its related APC. In order to determine this amount, we used data on hospital acquisition costs for drugs from a survey that is described more fully in the April 7, 2000 and the November 30, 2001 final rules. The ratio of hospital acquisition cost, on average, to AWP that we used is as follows:

- For sole-source drugs, the ratio of acquisition cost to AWP equals 0.68.
- For multisource drugs, the ratio of acquisition cost to AWP equals 0.61.
- For multisource drugs with generic competitors, the ratio of acquisition cost to AWP equals 0.43.

Section 1833(t)(6)(C)(i) of the Act specifies that the duration of transitional pass-through payments for current drugs and biologicals must be no less than 2 years nor any longer than 3 years beginning on the date that the OPPS is implemented. Therefore, the latest date for which current drugs that have been in transitional pass-through status since August 1, 2000 will be eligible for transitional pass-through payments is July 31, 2003. We propose to remove these drugs from transitional pass-through status effective January 1, 2003 because the law gives us the discretion to do so and because we generally implement annual OPPS updates on January 1 of each year. We would be in violation of the law if we were to not remove these drugs and biologicals from transitional pass through status before August 2, 2003. The next new OPPS that will go into place will not be effective until January 1, 2004, at which time, the statute's 3-year limit on pass-through payments for these drugs would have been exceeded. We further propose to remove from transitional pass-through status, beginning January 1, 2003, those drugs for which transitional pass-through payments were made effective on or prior to January 1, 2001 because the law gives us the discretion to do so and we believe that, to the extent possible, payments should be made under the OPPS, without pass-through payment, when the law permits, as it does in this case.

As explained above, our policy has been to package payment for drugs and biologicals into the payment for the procedure or service to which the drug is integral and directly related. In general, packaging the costs of items and services into the payment for the primary procedure or service with which it is associated encourages hospital efficiencies and also enables hospitals to manage their resources with maximum flexibility. Packaging costs into a single aggregate payment for a service procedure or episode of care is a fundamental principle that distinguishes a prospective payment system from a fee schedule. Our proposal to package the costs of devices that we discuss in section III.C.1 of this preamble is based on this principle. As we refine the OPPS in the future, we intend to continue to package, to the maximum possible extent, the costs of any items and services that are furnished with an outpatient procedure or service into the APC payment for services with which it is billed.

Notwithstanding our commitment to package as many costs as possible, we are aware of concerns that were presented at the April 5, 2002 Town Hall meeting and that have been brought to our attention by various interested parties, that packaging payments for certain drugs, especially those that are particularly expensive or rarely used, might result in insufficient payments to hospitals, which could adversely affect beneficiary access to medically necessary services.

The options that we considered included packaging the costs of all drugs and biologicals, both those with status indicator "K" in 2002 and those that would no longer receive pass-through payments in 2003, or continuing to make separate payment for both categories of drugs and biologicals through separate APCs. After careful consideration of the various options for 2003, we propose to package the cost of many drugs for which separate payment is made currently. But

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we also propose to continue making separate payment for orphan drugs (as defined below), blood and blood products, vaccines that are paid under a benefit separate from the outpatient hospital benefit (that is, influenza, pneumococcal pneumonia, and hepatitis B), and certain higher cost drugs as explained below. The payment rates for those drugs for which we would make separate payment in 2003 would be an APC payment rate based on a relative weight calculated in the same way that relative weights for procedural APCs are calculated.

Orphan Drugs

We recognize that orphan drugs that are used solely for an orphan condition or conditions are generally expensive and, by definition, are rarely used. We believe that if the cost of these drugs were packaged into the payment for an associated procedure or visit, the payment for the procedure might be insufficient to compensate a hospital for the typically high cost of this special type of drug. Therefore, we propose to establish separate APCs to pay for those orphan drugs that are used solely for orphan conditions.

To identify the orphan drugs for which we would continue to make separate payment, we applied the following criteria:

- The drug must be designated as an orphan drug by FDA and approved by FDA for the orphan condition.
- The current United States Pharmacopoeia Drug Information (USPDI) shows that the drug had neither an approved use for other than an orphan condition nor an off label use for conditions other than the orphan condition. There are three orphan drugs that are used solely for orphan conditions for which we propose to make separate payment: J0205 Alglucerase injection (APC 0900); J0256 Alpha 1 proteinase inhibitor (APC 0901); and J09300 Gemtuzumab ozogamicin (APC 9004).

Blood and Blood Products

From the onset of the OPPS, we have made separate payment for blood and blood products either in APCs with status indicator "K" or as pass-through drugs and biologicals with status indicator "G" rather than packaging them into payment for the procedures with which they were administered. As we explained in the April 7, 2000 final rule (65 FR 18449), the high degree of variability in blood use among patients could result in payment inequities if the costs of blood and blood products were packaged with their administration. We also want to ensure that costs associated with blood safety testing are fully recognized. The safety of the nation's blood supply continues to be among the highest priorities of the Secretary's council on Blood Safety and Access. Therefore, we propose to continue to pay separately for blood and blood products.

Vaccines Covered Under a Benefit Other Than OPPS

Outpatient hospital departments administer large numbers of the vaccines for influenza (flu), pneumococcal pneumonia (PPV), and hepatitis B, typically by participating in immunization programs encouraged by the Secretary because these vaccinations greatly reduce death and illness in vulnerable populations. In recent years, the availability and cost of the vaccines (particularly the flu vaccine) have varied considerably. We want to avoid creating any disincentives to provide these important preventative services that might result from packaging their costs into those of primary procedures, visits, or administration codes. Therefore, we propose to pay for these vaccines under OPPS through the establishment of separate APCs.

Higher Cost Drugs

While our preferred policy is to package the cost of drugs and other items into the cost of the procedures with which they are associated, we are concerned that beneficiary access to care may be affected by packaging certain higher cost drugs. For this reason, we propose to allow payment under separate APCs for high cost drugs for an additional year while we further study various payment options. Specifically, we propose to pay separately for drugs for which the median cost per line (cost per unit multiplied by the number of units billed on the claim) exceeded $150, as determined below.

To establish a reasonable threshold for determining which drugs we would pay under separate APCs rather than through packaging, we calculated the median cost per unit using 2001 claims data for each of the drugs for which transitional pass-through payment ceases January 1, 2003 and for those additional drugs that we have paid separately (status indicator "K") since the outset of OPPS. We excluded from these calculations the orphan drugs, vaccines, and blood and blood products discussed above. The unit median represents the cost per single unit dose of the drug as described by its HCPCS code. Because many drugs are used and billed in multiple unit doses, we then multiplied the median cost per unit for the drug by the average number of units that were billed per line. The average number of units per drug equals the total units divided by the total number of times the drug was billed. This calculation gave us an approximate median cost per line for the drug. We viewed this as being the approximate cost per administration because we believed that a single administration of a drug was billed as a single line item on a claim and that the correct number of units was placed in the "units" field of the claim form. We then arrayed the median cost per line in ascending order and examined the distribution. A natural break occurs at $150 per line, the midpoint of a $10 span between the drug immediately above and below the $150 point. Within the array, approximately 61 percent of the drugs fall below the $150 point and 39 percent of the array are above the point. Among the drugs that we propose to package are some radiopharmaceuticals, vaccines, anesthetics, and anticancer agents. After including the costs of packaged drugs in the services with which they were provided, we noted that the median costs of those services increased. For example, based on 2001 data, APC 117, Chemotherapy Administration by Infusion Only, showed a median cost before packaging of $129.53 and showed a median cost after packaging of $210.36. Similarly, APC 118, Chemotherapy administration by both infusion and another technique, showed a median cost before packaging of $136.00 and a median cost after packaging of $309.65. We believe that this appropriately represents the cost of packaged drugs on a per administration basis. However, in particular, we solicit comments that address specific alternative protocols we might use when several packaged drugs whose total cost significantly exceeds the applicable APC payment amount may be administered to a patient on the same day (for example, multiple agent cancer chemotherapy).

We request comments on the factors we considered in determining which drugs to package in 2003. We are particularly interested in comments with respect to the exclusion of high cost drugs from packaging. We are continuing to analyze the effect of our drug packaging proposal to assess whether the $150 threshold should be adjusted to avoid significant overpayments or underpayments for the base APCs relative to the median costs of the individual drugs packaged into the APCs. Depending on this analysis, we may revise our threshold or criteria for packaging in the final rule for 2003.

We expect to further consider each of these exclusions for packaging when we develop our proposals for the 2004 OPPS.

Although we expect to expand packaging of drugs to package payment for more drugs into the APC for the services with which they are billed, we are, nonetheless, requesting comments on alternatives to packaging. One example of an alternative approach is to use different criteria from those we propose in this proposed rule to identify the drugs to package into procedure APCs and the drugs to pay separately. We could package all drugs for which the median cost was less than $500 or alternatively package drugs for which the median cost was less than $100. Another alternative approach would be to create APCs for groups of drugs based on their costs. Under such an approach we could group drugs with costs between $0 and $100 and pay at the mid-point—$50. The next group could consist of drugs with a median cost between $100 and $250 and pay at the mid-point—$175. This approach would be similar to that employed for new technology services. Another approach would be to create separate APCs for each drug. Under this approach we would create a separate APC for each drug (regardless of its median cost) and use its relative weight to calculate a payment rate for the drug. We welcome a full discussion of the alternatives as we determine the best way to ensure that hospitals are paid appropriately for the drugs they administer to the Medicare beneficiaries whom they treat in their outpatient departments.

Table 8 lists drugs and biologicals for which separate payment is currently being made in 2002 with either status indicator "K" or "G" and whose costs we propose to package in 2003. Drugs that we propose to pay for separately in 2003 are designated in Addendum B by status indicator "K" or "G.".

TABLE 8.—DRUGS AND BIOLOGICALS SEPARATELY PAYABLE IN CY 2002

HCPCS	Short description
90296	Diphtheria antitoxin
90375	Rabies ig, im/sc
90376	Rabies ig, heat treated
90378	Rsv ig, im, 50mg
90379	Rsv ig, iv
90385	Rh ig, minidose, im
90389	Tetanus ig, im
90393	Vaccina ig, im
90396	Varicella-zoster ig, im
90471	Immunization admin
90476	Adenovirus vaccine, type 4
90477	Adenovirus vaccine, type 7
90585	Bcg vaccine, percut
90586	Bcg vaccine, intravesical
90632	Hep a vaccine, adult im
90633	Hep a vacc, ped/adol, 2 dose
90634	Hep a vacc, ped/adol, 3 dose
90645	Hib vaccine, hboc, im
90646	Hib vaccine, prp-d, im
90647	Hib vaccine, prp-omp, im
90648	Hib vaccine, prp-t, im
90665	Lyme disease vaccine, im
90675	Rabies vaccine, im
90676	Rabies vaccine, id
90680	Rotovirus vaccine, oral
90690	Typhoid vaccine, oral
90691	Typhoid vaccine, im
90692	Typhoid vaccine, h-p, sc/id
90700	Dtap vaccine, im
90701	Dtp vaccine, im
90702	Dt vaccine < 7, im
90703	Tetanus vaccine, im
90704	Mumps vaccine, sc
90705	Measles vaccine, sc
90706	Rubella vaccine, sc
90707	Mmr vaccine, sc
90708	Measles-rubella vaccine, sc
90710	Mmrv vaccine, sc
90712	Oral poliovirus vaccine
90713	Poliovirus, ipv, sc
90716	Chicken pox vaccine, sc
90717	Yellow fever vaccine, sc
90718	Td vaccine > 7, im
90719	Diphtheria vaccine, im
90720	Dtp/hib vaccine, im
90721	Dtap/hib vaccine, im
90725	Cholera vaccine, injectable
90727	Plague vaccine, im
90733	Meningococcal vaccine, sc
90735	Encephalitis vaccine, sc
90749	Vaccine toxoid
A4642	Saturnomab pendetide per dose

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TABLE 8.—DRUGS AND BIOLOGICALS SEPARATELY PAYABLE IN CY 2002—Continued

HCPCS	Short description
A9500	Technetium TC 99m sestamibi
A9502	Technetium TC99M tetrofosmin
A9503	Technetium TC 99m medronate
A9504	Technetium tc 99m apcitide
A9505	Thallous chloride TL 201/mci
A9508	Iobenguane sulfate I–131
A9510	Technetium TC99m Disofenin
A9700	Echocardiography Contrast
C1066	IN 111 satumomab pendetide
C1079	CO 57/58 per 0.5 uCi
C1087	I–123 per 100 uCi
C1094	TC99Malbumin aggr, per 1.0 mCi
C1097	TC 99M MEBROFENIN, PER Vial
C1098	TC 99M PENTETATE, PER Vial
C1099	TC 99M PYROPHOSPHATE, PER Via
C1166	CYTARABINE LIPOSOMAL, 10 mg
C1188	I–131 cap, per 1–5 mCi
C1200	TC 99M Sodium Glucoheptonat
C1201	TC 99M SUCCIMER, PER Vial
C1202	TC 99M SULFUR COLLOID, Vial
J2020	Linezolid inj, 200mg
J7525	Tacrolimus inj, per 5 mg
C9007	Baclofen Intrathecal kit-1am
C9008	Baclofen Refill Kit-500mcg
J0706	Caffeine Citrate, inj, 1ml
C9100	Iodinated I–131 Albumin
C9102	51 Na Chromate, 50 mCi
C9103	Na Iothalamate I–125, 10 uCi
J0150	Injection adenosine 6 MG
J0350	injection anistreplase 30 u
J0640	Leucovorin calcium injection
J0706	Caffeine Citrate, inj, per 5 mg
J1245	Dipyridamole injection
J1260	Dolasetron mesylate
J1325	Epoprostenol injection
J1327	Eptifibatide injection
J1436	Etidronate disodium inj
J1438	Etanercept injection
J1565	RSV-ivig
J1570	Ganciclovir sodium injection
J1620	Gonadorelin hydroch/ 100 mcg
J1626	Granisetron HCl injection
J1670	Tetanus immune globulin inj
J1830	Interferon beta-1b / .25 MG
J2260	Inj milrinone lactate / 5 ML
J2275	Morphine sulfate injection
J2405	Ondansetron hcl injection
J2765	Metoclopramide hcl injection
J2770	Quinupristin/dalfopristin
J2820	Sargramostim injection
J2995	Inj streptokinase /250000 IU
J2997	Alteplase recombinant
J3010	Fentanyl citrate injeciton
J3280	Thiethylperazine maleate inj
J3365	Urokinase 250,000 IU inj
J7310	Ganciclovir long act implant
J7316	Sodium hyaluronate injection, per 5 mg
J7500	Azathioprine oral 50 mg
J7501	Azathioprine parenteral
J7506	Prednisone oral
J7516	Cyclosporin parenteral 250 mg
J8510	Oral busulfan
J8530	Cyclophosphamide oral 25 MG
J8600	Melphalan oral 2 MG
J8610	Methotrexate oral 2.5 MG
J9000	Doxorubic hcl 10 MG vl chemo
J9020	Asparaginase injection
J9031	Bcg live intravesical vac
J9050	Carmus bischl nitro inj
J9070	Cyclophosphamide 100 MG inj
J9093	Cyclophosphamide lyophilized
J9100	Cytarabine hcl 100 MG inj

TABLE 8.—DRUGS AND BIOLOGICALS SEPARATELY PAYABLE IN CY 2002—Continued

HCPCS	Short description
J9120	Dactinomycin actinomycin d
J9130	Dacarbazine 10 MG inj
J9181	Etoposide 10 MG inj
J9190	Fluorouracil injection
J9212	Interferon alfacon-1
J9213	Interferon alfa-2a inj
J9214	Interferon alfa-2b inj
J9215	Interferon alfa-n3 inj
J9230	Mechlorethamine hcl inj
J9250	Methotrexate sodium inj
J9270	Plicamycin (mithramycin) inj
J9320	Streptozocin injection
J9340	Thiotepa injection
J9360	Vinblastine sulfate inj
J9370	Vincristine sulfate 1 MG inj
Q0163	Diphenhydramine HCl 50 mg
Q0164	Prochlorperazine maleate 5 mg
Q0166	Granisetron HCl 1 mg oral
Q0167	Dronabinol 2.5 mg oral
Q0169	Promethazine HCl 12.5 mg oral
Q0171	Chlorpromazine HCl 10 mg oral
Q0173	Trimethobenzamide HCl 250 mg
Q0174	Thiethylperazine maleate 10 mg
Q0175	Perphenazine 4 mg oral
Q0177	Hydroxyzine pamoate 25 mg
Q0179	Ondansetron HCl 8 mg oral
Q0180	Dolasetron mesylate oral
Q2002	Elliotts b solution per ml
Q2003	Aprotinin, 10,000 kiu
Q2004	Bladder calculi irrig sol
Q2007	Ethanolamine oleate 100 mg
Q2008	Fomepizole, 15 mg
Q2009	Fosphenytoin, 50 mg
Q2010	Glatiramer acetate, per dose
Q2013	Pentastarch 10% solution
Q2014	Sermorelin acetate, 0.5 mg
J2940	Somatrem injection
Q2018	Urofollitropin, 75 iu
Q2021	Lepirudin
Q3002	Gallium ga 67
Q3004	Xenon xe 133
Q3005	Technetium tc99m mertiatide
Q3006	Technetium tc99m glucepatate
Q3007	Sodium phosphate p32
Q3009	Technetium tc99m oxidronate
Q3010	Technetium tc99m labeledrbcs

3. Brachytherapy

Section 1833(t)(6) of the Act requires us to establish transitional pass-through payments for devices of brachytherapy. As of August 1, 2000, we established item-specific device codes including codes for brachytherapy seeds, needles, and catheters. Effective April 1, 2001, we established category codes for brachytherapy seeds on a per seed basis (one for each isotope), brachytherapy needles on a per needle basis, and brachytherapy catheters on a per catheter basis. Because initial payment was made for a device in each of these categories in August 2000, we propose that these categories (and the transitional pass-through payments) will be discontinued as of January 1, 2003. Furthermore, as discussed above, we propose that there will be no grace period for billing these category codes.

We received comments, both in writing and at the April 2002 Town Hall meeting, recommending that we continue to make separate payment for brachytherapy seeds. The basis for this recommendation is that the number of brachytherapy seeds implanted per procedure is variable. These commenters stated that the number and type of seeds implanted in a given patient depends on the type of tumor, its size, extent, and biology, and the amount of radioactivity contained in each seed. For example, a given type of cancer may be treated by implanting seeds of different isotopes (for example, iodine or palladium) depending on its biological characteristics. Further, depending on the size of the tumor, the number of implanted seeds that may be required to effectively treat the cancer is quite variable (for example, from 25 to 100 seeds). In addition, implantable seeds may be manufactured with different amounts of radioactivity, and it may be preferable to implant fewer seeds with higher activity in some cases while in other cases it may be preferable to implant a larger number of seeds with lower activity. To further complicate the matter, the HCPCS codes used to report implantation of brachytherapy seeds are not tumor-specific. Instead, they are defined based on the number of sources, that is, the number of seeds or ribbons used in the procedure. This means that the treatment of many different tumors requiring implantation of widely

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varying numbers of seeds is described by a single HCPCS code. Therefore, it has been argued that given the costs of seeds and the variety of treatments described by a single HCPCS code, the cost of brachytherapy billed under a single HCPCS code could vary by as much as $3,000.

In determining whether to package seeds into their associated procedures, we considered all these factors as well as our claims data. Consistent with our proposed policy for other device costs and the cost of many drugs, as well as with the principles of a prospective payment system, our preferred policy is to package the cost of brachytherapy devices into their associated procedures. For 2003, in the case of remote afterloading high intensity brachytherapy and prostate brachytherapy, which we discuss below, we propose to package the costs into payment for the procedures with which they are billed.

For other uses of brachytherapy, we propose to defer packaging of brachytherapy seeds for at least 1 year. In those cases, when paying separately in 2003 for brachytherapy seeds, we propose to continue payment on a per seed basis. The payment amount would be based on the median cost of brachytherapy seeds, per seed, as determined from our claims data.

We solicit comments on methodologies we might use to package all brachytherapy seeds beginning in CY 2004. For example, creation of tumor-specific brachytherapy HCPCS codes would reduce the variability in seed implantation costs associated with the current HCPCS codes used for seed implantation.

As stated above, beginning January 1, 2003, we propose to package payment for brachytherapy seeds into the payment for the following two types of brachytherapy services:

Remote Afterloading High Intensity Brachytherapy.

Participants in the April 5, 2002 Town Hall meeting expressed concern about packaging single use brachytherapy seeds into payment for procedures.

Remote afterloading high intensity brachytherapy treatment does not involve implantation of seeds. Instead, it utilizes a single radioactive "source" of high dose iridium with a 90-day life span. This single source is purchased and used multiple times in multiple patients over its life. One or more temporary catheters are inserted into the area requiring treatment, and the radioactive source is briefly inserted into each catheter and then removed. Because the source never comes in direct contact with the patient, it may be used for multiple patients. We note that the cost of the radioactive source, per procedure, is the same irrespective of how many catheters are inserted into the patient. Further, because the number of treatments administered with a single source over a 90-day period may vary and because the cost of the source is fixed, it is difficult if not impossible to determine a per "treatment" cost for the source. Moreover, we believe that the costs of this type of source should be amortized over the life of the source. Therefore, each hospital administering this type of therapy should include a charge (which is hospital-specific) for the radiation source in the charge for the procedure. Therefore, we propose to package the costs associated with high dose iridium into the HCPCS codes used to describe this procedure. Those codes are: 77781, 77782, 77783, and 77784.

Prostate Brachytherapy

The preponderance of brachytherapy claims under OPPS to date is for prostate brachytherapy. Brachytherapy is administered in several other organ systems, but the claims volume for non-prostate brachytherapy is very small, and hence our base of information on which to make payment decisions is slim. Furthermore, prostate brachytherapy uses only two isotopes, which are similar in cost, while brachytherapy on other organs involves a variety of isotopes with greater variation in cost. Consequently, we believe it would be prudent to wait for further experience to develop before proceeding to package non-prostate brachytherapy seeds.

A number of commenters at the April 5, 2002, Town Hall Meeting and elsewhere have stressed to us their views that brachytherapy seeds should remain unpackaged. The principle argument put forth in favor of this approach is that the number of seeds used is highly variable across patients. We do not find this argument compelling. Payments in the OPPS, as in other prospective payment systems, are based on averages. We expect hospitals, in general, to be able to accommodate variation across patients in resource costs of services paid in a particular payment cell. The degree of variation should be immaterial as long as the payment is appropriate for a typical case, the hospital treats a caseload the resource use of which approximates a typical distribution, and the number of cases treated by a hospital is sufficiently large to overcome peculiarities in resource use that might be observed with a very small number of cases. We believe the service volume at hospitals providing prostate brachytherapy is likely to be large enough for a payment reflecting average use of seeds to be appropriate.

Additionally, appropriate payment for prostate brachytherapy has been of concern to many commenters since implementation of the OPPS because facilities must use multiple HCPCS codes on a single claim to accurately describe the entire procedure. Because we determine APC relative weights using single procedure claims, commenters have argued that payments for prostate brachytherapy are, in part, based on error claims, resulting in underpayment for this important service. We agree that basing the relative weights for APCs reported for prostate brachytherapy services on only the small number of claims related to this service that are single procedure claims may be problematic. To increase the number of claims we could use to develop the proposed 2003 relative payment weights for prostate brachytherapy, we began by identifying all claims billed in 2001 for prostate brachytherapy. That is, we identified all claims that contained a line item for HCPCS code 77778, Interstitial radiation source application; complex, and HCPCS code 55859, Transperineal placement of needles or catheters into prostate for interstitial radioelement application, with or without cystoscopy. We discovered more than 12,000 claims that met these specifications, suggesting that most of the procedures coded under HCPCS code 77778 were for prostate brachytherapy. Unfortunately, closer analysis of these claims revealed that hospitals do not report prostate brachytherapy using a uniform combination of codes. Of the more than 12,000 claims for prostate brachytherapy that we identified in the 2001 claims data, no single combination of HCPCS codes occurred more than 25 times.

Therefore, in order to facilitate tracking of this service, we propose to establish a G code for hospital use only that will specifically identify prostate brachytherapy. We propose as the descriptor for this G code the following: "Prostate brachytherapy, including transperineal placement of needles or catheters into the prostate, cystoscopy, and interstitial radiation source application." This G code would be used by hospitals instead of HCPCS codes 55859 and 77778 to bill for prostate brachytherapy. Hospitals would continue to use HCPCS codes 55859 and 77778 when reporting services other than prostate brachytherapy. We would also instruct hospitals to continue to report separately other services provided in conjunction with prostate brachytherapy, such as dosimetry and ultrasound guidance. These additional services would be paid according to the APC payment rate established by our usual methodology.

This G code will allow us to package brachytherapy seeds into the procedures for administering prostate brachytherapy while permitting us to pay separately for brachytherapy seeds which are administered for other procedures. Therefore, we propose to package the costs of the brachytherapy seeds, catheters, and needles into the payment for the prostate brachytherapy G code. In order to develop a payment amount for this G code, we used all claims where both HCPCS codes 55859 and 77778 appeared. We packaged all revenue centers and appropriate HCPCS codes, that is, HCPCS with status indicator "N." We then determined median costs of the line items for HCPCS codes 55859 and 77778 and added the two. Next, we packaged the costs of all C codes, whether an item-specific or a device category code, into the payment amount. We propose to assign APC 0684 with status indicator "T." We believe the payment rate proposed for this G code appropriately reflects the costs of the procedures, the brachytherapy seeds, and any other devices associated with these procedures. We solicit comments on this proposal.

Packaging of Other Device Costs Associated with Brachytherapy

We propose to package the costs of brachytherapy needles and catheters with whichever procedures they are reported, similar to our proposal for packaging the costs of other devices that will no longer be eligible for a transitional pass-through payment in 2003. Because the HCPCS code descriptors for brachytherapy are based on the number of catheters or needles used, we believe the costs of these devices would be appropriately reflected within the costs of the associated procedure.

D. Criteria for New Device Categories

Section 1833(t)(6)(B)(ii) of the Act, as amended by BIPA, required us to establish criteria by July 1, 2001 that will be used to create additional device categories to be used in determining eligibility of a device for pass-through payments. This provision requires that no medical device be described by more than one category. In addition, the criteria must include a test of whether the average cost of devices that would be included in a category is "not insignificant" in relation to the APC payment amount for the associated service.

On November 2, 2001, we published in the **Federal Register** an interim final rule (66 FR 55850) that set forth the criteria for establishing new (that is, additional) categories of medical devices eligible for transitional pass-through payments under the hospital outpatient PPS as required by section 1833(t)(6)(B)(ii) of the Act. The provisions relating to transitional pass-through payments for eligible drugs and biologicals remained unchanged and were not addressed in the November 2001 interim final rule (except for a change relating to contrast agents as provided in section 430 of BIPA). We received several public comments regarding our criteria published in the November 2001 interim final rule. We will respond to these public comments in the final rule for the OPPS for 2003.

In the November 2, 2001 interim final rule, we implemented new § 419.66(c), which establishes the criteria for establishing a new device category. We propose to make a technical correction to § 419.66(c)(1), which establishes one of those criteria. Specifically, we discuss in the November 2, 2001 interim final rule the criterion that a new category must describe devices that demonstrate substantial improvement in medical benefits for Medicare beneficiaries compared to the benefits obtained by devices in previously established (that is, previously existing) categories or other available treatments, as described in regulations at new § 419.66(c)(1) (66 FR 55852). Section 1833(t)(6)(B)(ii)(IV) of the Act requires that a new category must include medical devices for which no existing category, or one previously in effect, is appropriate. In the November 2, 2001 IFC, we addressed in the preamble the requirement that no category previously in effect could describe a new category (66 FR 55852), but we did not conform the regulations text to this requirement. Therefore, we propose to correct § 419.66(c)(1) to read as follows:

(1) CMS determines that a device to be included in the category is not described by any of the existing categories or by any category previously in effect, and was not being paid for as an outpatient service as of December 31, 1996.

E. Payment for Transitional Pass-Through Drugs and Biologicals for Calendar Year 2003

As discussed in the November 13, 2000 interim final rule (65 FR 67809) and the November 30, 2001 final rule (66 FR 59895), we update the payment rates for pass-through drugs on an annual basis. Therefore, as we have done for prior updates, we propose to update the APC rates for drugs that are eligible for pass-through payments in 2003 using the most recent version of the Red Book, the July 2002 version in this case. The updated rates effective January 1, 2003 would remain in effect until we implement the next annual update in 2004, when we would again update the AWPs for any pass-through drugs based on the latest quarterly version of the Red Book. This retains the update of pass-through drug prices on the same calendar year schedule as the other annual OPPS updates.

As described in our final rule of November 30, 2001 (66 FR 59894), in order to establish the applicable beneficiary copayment amount and the pass-through payment amount, we must determine the cost of the pass-through eligible drug or biological that would have been included in the payment rate for its associated APC had the drug or biological been packaged. We used hospital acquisition costs as a proxy for the amount that would have been packaged, based on data from an external survey of hospital drug costs (see the April 7, 2000 final rule (65 FR 18481)). That survey concluded that—

- For drugs available through only one source drugs, the ratio of acquisition cost to AWP equals 0.68;
- For multisource drugs, the ratio of acquisition cost to AWP equals 0.6l;
- For drugs with generic competitors, the ratio is 0.43.

As we stated in our final rule of November 30, 2001 (66 FR 59896), we considered the use of the study-derived ratios of drug costs to AWP to be an interim measure until we could obtain data on hospital costs from claims. We stated that we anticipated having this data to use in setting payment rates for 2003.

As described elsewhere in this preamble, we used 2001 claims data to calculate a median cost per unit of drug for each drug for which we are currently paying separately. We compared the median per unit cost of each drug to the AWP to determine a ratio of acquisition cost to AWP. Using the total units billed for each drug, we then calculated a weighted average for each of the above three categories of drugs. These calculations resulted in the following weighted average ratios:

- For sole-source drugs, the ratio of cost to AWP equals 71.0 percent.
- For multisource drugs, the ratio of cost to AWP equals 68.0 percent.
- For drugs with generic competitors, the ratio of cost to AWP equals 46.0 percent.

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We propose to use these percentages for determining the applicable beneficiary copayment amount and the pass-through payment amount for drugs eligible for pass-through payment in 2003.

We propose to use these percentages for determining the applicable beneficiary copayment amount and the pass-through payment amount for most drugs eligible for pass-through payment in 2003. However some drugs may fall into two other classes. The first class includes a drug that is new and for which no cost is yet included in an associated APC. For such a drug, because there is no cost for the drug yet included in an associated APC, the pass-through amount will be 95 percent of the AWP and there would be no copayment. The second class includes a drug that is new and is a substitute for only one drug that is recognized in the OPPS through an unpackaged APC. For drugs in this second class, the pass-through amount would be the difference between 95 percent of the AWP for the pass-through drug and the payment rate for the comparable dose of the associated drug's APC. The copayment would be based on the payment rate of its associated APC. We believe that using this methodology will yield a more accurate payment rate.

We have received questions with respect to our definition of multisource drugs. In determining whether a drug is available from multiple sources, we consider repackagers to be among the sources. This is consistent with the findings of the survey cited above which indicated a lower ratio of acquisition cost to AWP from multiple sources including repackagers.

We note that determining that a drug is eligible for a pass-through payment or assigning a status indicator "K" to a drug or biological (indicating that the drugs or biologicals is paid based on a separate APC rate) indicates only the method by which the drug or biological is paid if it is covered by the Medicare program. It does not represent a determination that the drug is covered by the Medicare program. For example, Medicare contractors must determine whether the drug or biological is: (1) reasonable and necessary to treat the beneficiary's conditions; and (2) excluded from payment because it is usually self-administered by the patient.

IV. Wage Index Changes for Calendar Year 2003

Section 1833(t)(2)(D) of the Act requires that we determine a wage adjustment factor to adjust for geographic wage differences, in a budget neutral manner, that portion of the OPPS payment rate and copayment amount that is attributable to labor and labor-related costs.

We used the proposed Federal fiscal year (FY) 2003 hospital inpatient PPS wage index to make wage adjustments in determining the proposed payment rates set forth in this proposed rule. The proposed FY 2003 hospital inpatient wage index published in the May 9, 2002 **Federal Register** (67 FR 31431) is reprinted in this proposed rule as Addendum H—Wage Index for Urban Areas; Addendum I—Wage Index for Rural Areas; and Addendum J—Wage Index for Hospitals That Are Reclassified. We propose to use the final FY 2003 hospital inpatient wage index to calculate the payment rates and coinsurance amounts that we will publish in the final rule implementing the OPPS for CY 2003.

V. Copayment for Calendar Year 2003

Section 1833(t)(8)(C)(ii) of the Act accelerates the reduction of beneficiary copayment amounts, providing that, for services furnished on or after April 1, 2001 and before January 1, 2002, the national unadjusted coinsurance for an APC cannot exceed 57 percent of the APC payment rate. The statute provides that the national unadjusted coinsurance for an APC cannot exceed 55 percent in 2002 and 2003. The statute provides for further reductions in future years so that the national unadjusted coinsurance for an APC cannot exceed 55 percent of the APC payment rate in 2002 and 2003, 50 percent in 2004, 45 percent in 2005, and 40 percent in 2006 and thereafter.

For 2003, we determined copayment amounts for new and revised APCs using the same methodology that we implemented for 2002 (see the November 30, 2001 final at 66 FR 59888). See Addendum B for proposed national unadjusted copayments for 2003. Our regulations at § 419.41 conform to this provision of the Act.

VI. Conversion Factor Update for Calendar Year 2003

Section 1833(t)(3)(C)(ii) of the Act requires us to update the conversion factor used to determine payment rates under the OPPS on an annual basis. Section 1833(t)(3)(C)(iv) of the Act provides that for 2003, the update is equal to the hospital inpatient market basket percentage increase applicable to hospital discharges under section 1886(b)(3)(B)(iii) of the Act.

The most recent forecast of the hospital market basket increase for FY 2003 is 3.5 percent. To set the proposed OPPS conversion factor for 2003, we increased the 2002 conversion factor of $50.904 (the figure from the March 1, 2002 final rule (67 FR 9556)) by 3.5 percent.

In accordance with section 1833(t)(9)(B) of the Act, we further adjusted the proposed conversion factor for 2003 to ensure that the revisions we are proposing to update by means of the wage index are made on a budget-neutral basis. We calculated a budget neutrality factor of .98715 for wage index changes by comparing total payments from our simulation model using the proposed FY 2003 hospital inpatient PPS wage index values to those payments using the current (FY 2002) wage index values.

The increase factor of 3.5 percent for 2003 and the required wage index budget neutrality adjustment of .98715 result in a proposed conversion factor for 2003 of 52.009.

VII. Outlier Policy for Calendar Year 2003

For OPPS services furnished between August 1, 2000 and April 1, 2002, we calculated outlier payments in the aggregate for all OPPS services that appear on a bill in accordance with section 1833(t)(5)(D) of the Act. In the November 30, 2001 final rule (66 FR 59856, 59888), we specified that beginning with 2002, we will calculate outlier payments based on each individual OPPS service. We revised the aggregate method that we had used to calculate outlier payments and began to determine outliers on a service-by-service basis.

As explained in the April 7, 2000 final rule (65 FR 18498), we set a target for outlier payments at 2.0 percent of total payments. For purposes of simulating payments to calculate outlier thresholds, we propose to continue to set the target for outlier payments at 2.0 percent, as we did for CYs 2001 and 2002. For 2002, the outlier threshold is met when costs of furnishing a service or procedure exceed 3.5 times the APC payment amount, and the current outlier payment percentage is 50 percent of the amount of costs in excess of the threshold. Based on our simulations for 2003, we propose to set the threshold for 2003 at 2.75 times the APC payment amounts, and the proposed 2003 payment percentage applicable to costs over the threshold at 50 percent.

VIII. Other Policy Decisions and Proposed Changes

A. Hospital Coding for Evaluation and Management (E/M) Services

Background

Currently, facilities code clinic and emergency department visits using the same current procedural terminology (CPT) codes as physicians. For both clinic and emergency department visits, there are five levels of care. While there is only one set of codes for emergency visits, clinic visits are differentiated by new patient, established patient, and consultation visits. CPT codes 99201 through 99205 are used for new patients, CPT codes 99211 through 99215 are used for established patients, and CPT codes 99281 through 99285 for emergency patients.

Physicians determine the proper code for reporting their services by referring to CPT descriptors and our documentation guidelines. The descriptors and guidelines are helpful to physicians because they reference taking a history, performing an examination, and making medical decisions. The lower levels of service (for example, CPT codes 99201, 99211, and 99281) are used for shorter visits and for patients with uncomplicated problems, and the higher levels of service (for example, CPT codes 99205, 99215, and 99285) are used for longer visits and patients with complex problems.

These codes were defined to reflect the activities of physicians. It is generally agreed, however, that they do not describe well the range and mix of services provided by facilities to clinic and emergency patients (for example, ongoing nursing care, preparation for diagnostic tests, and patient education).

Before the implementation of the OPPS, facilities were paid on the basis of charges reduced to costs. In that system, because use of a correct HCPCS code did not influence payment, there was little incentive to correctly report the level of service. In fact, many facilities reported all clinic and emergency visits with the lowest level of service (for example, CPT codes 99211, 99201, and 99281) simply to minimize administrative burden (for example, charge-masters might include only one level of service).

This situation changed with the implementation of the OPPS. The OPPS requires correct reporting of services using HCPCS codes as a prerequisite to payment. For emergency and clinic visits, the OPPS distinguishes three levels of service for payment purposes. These are referred to as "low-level," "mid-level," and "high-level" emergency or clinic visits. Low-level clinic and emergency visits include CPT codes for level one and two services (for example, CPT codes 99201, 99211, and 99281), mid-level visits include level three services (for example, CPT codes 99203, 99213, and 99283), and high-level visits include level four and five services (for example, CPT codes 99205, 99215, and 99285). Payment rates for low-level visits are less than for mid-level visits, which are less than rates for high-level visits.

In the April 7, 2000 final rule (65 FR 18434), we stated that to pay hospitals properly, it was important that emergency and clinic visits be coded properly. To facilitate proper coding, we required each hospital to create an internal set of guidelines to determine what level of visit to report for each patient. We stated in the rule, that if hospitals set up these guidelines and follow them, they would be in compliance with OPPS coding requirements for the visits. Furthermore, we announced that we would be reviewing this issue and planned to set national guidelines for coding clinic and emergency visits in the future. In the August 24, 2001 proposed rule (66 FR 44672), we asked for public comments regarding national guidelines for hospital coding of emergency and clinic visits. We also announced that we would compile these comments and present them to our APC Panel at the January 2002 meeting. We also announced that we planned to propose uniform national facility coding guidelines in the proposed rule for the 2003 OPPS.

During its January 2002 meeting, the APC Panel reviewed written comments, heard oral testimony, discussed the issue, and made recommendations concerning establishment of facility coding guidelines for emergency and clinic visits. Among those who submitted oral and written comments to us and to the Panel were national hospital organizations, national physician organizations, hospital systems, individual hospitals, coding organizations, and consultants.

Discussion

We set forth below, by issue, a summary of the comments we received:

• The need for national coding guidelines.

Except for the American Medical Association (AMA) and one other physician organization, commenters unanimously agreed that national guidelines for facility coding of emergency and clinic visits were required. Furthermore, most commenters requested that we establish these guidelines as soon as possible, but, in any event, not later than January 2003. Among the reasons cited were the following:

+ The need for facilities to comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA), no later than October 16, 2003 (October 16, 2002 for those entities that do not obtain a one-year extension). Commenters expressed concern that use of CPT E/M codes with different reporting rules when used by facilities (as opposed to use by physicians) would violate HIPAA requirements.

+ The need for facilities to set up effective audit and compliance programs.

+ The need to minimize confusion on the part of coders.

+ The need to minimize inaccurate payments.

+ The need to prevent gaming of the system by facilities.

The AMA recommended that we wait for the CPT Editorial Panel to develop coding guidelines for hospitals to assure that coding guidelines will be minimally burdensome to hospitals.

• The need to establish principles against which facility E/M coding guidelines would be measured.

Commenters unanimously agreed that any set of coding guidelines for facilities would have to satisfy a uniform set of basic principles to be acceptable to, and accepted by, hospitals. These include the following:

+ Coding guidelines for emergency and clinic visits should be based on emergency department or clinic facility resource use, not physician resource use.

+ Coding guidelines should be clear, facilitate accurate payment, be usable for compliance purposes and audits, and meet HIPAA requirements.

+ Coding guidelines should only require documentation that is clinically necessary for patient care. Preferably, coding guidelines should be based on current hospital documentation requirements.

+ Coding guidelines should not facilitate upcoding or gaming.

We would add one other requirement to these principles: The distribution of codes should result in a normal curve. Documentation guidelines should facilitate this result.

• Current use of hospital coding guidelines is inconsistent and much more prevalent in the emergency department.

Several commenters noted that many hospitals have developed their own coding guidelines but that no specific

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set of guidelines is in widespread use at the present time. These commenters noted that guidelines have been used much more in the emergency department setting than in the clinic setting. They also noted that only one set of guidelines has undergone any sort of testing. These are the facility coding guidelines for emergency departments, developed and copyrighted by the American College of Emergency Physicians (ACEP). Unfortunately, the testing was not done by protocol, no quantitative data were collected, and only a small number of facilities participated.

• Development of two sets of guidelines: one for emergency department visits and one for clinic visits.

Several commenters noted that the types and intensity of hospital resources used for emergency department visits were significantly different from the types and intensity of resources used for clinic visits. These commenters recommended that we adopt different guidelines for emergency department and clinic visits.

• The need to develop new descriptors and codes for facility emergency and clinic visits.

Commenters unanimously agreed that the current CPT descriptors for E/M services were not only inappropriate for facility coding of emergency and clinic visits but also were confusing and misleading to both facility coders and our reviewers. Commenters stated that patients whose complexity level was low in terms of physician work could frequently require highly intensive and complex facility services (for example, patients with gastroenteritis who require intravenous fluids, patients in motor vehicle accidents who require multiple X-rays, or patients with congestive heart failure or diabetes who require extensive education). In these cases, lack of agreement between physician and hospital coding would be clinically appropriate but could be the source of an investigation given the current code descriptors and hospital reporting guidelines. Commenters were also concerned that internal hospital-specific coding guidelines could vary greatly because the current CPT descriptors exclude any reference to facility services and, therefore, are highly susceptible to individual interpretation. A third concern was HIPAA compliance. Commenters believe that development by individual hospitals of a second set of descriptors that the hospital uses when reporting E/M codes could violate HIPAA requirements. These commenters believe that when HIPAA is first implemented on October 16, 2002 (October 16, 2003 for those entities that obtain a one-year extension), Healthcare Common Procedure Coding System (HCPCS) codes must be used uniformly by all providers. Two sets of descriptors for a single set of codes would require that different providers (that is, physicians and hospitals) use the codes differently. Based on these concerns, all commenters recommended that we develop, on an interim basis, HCPCS codes for emergency and clinic visits with descriptors specific for hospital coding.

• Maintenance of five levels of service.

Although a few commenters were not certain that facilities needed to differentiate among five levels of service, they believe that reducing the number of levels of service, even if clinically appropriate, would cause significant confusion among coders and reviewers. Therefore, they recommended maintaining five levels of service on an interim basis until more data on this issue can be obtained.

• Recommendations concerning adoption of specific guidelines.

Commenters recommended four basic types of guidelines for adoption.

1. Guidelines based on the number or type of staff interventions. Under this model, the level of service reported would be based on the number and/or type of interventions performed by nursing or ancillary staff. In the intervention model, baseline care (including registration, triage, initial nursing assessment, periodic vital signs as appropriate, simple discharge instructions, and exam room set up/clean up) and possibly a single minor intervention (for example, suture removal, rapid strep test, visual acuity) would be reported by the lowest level of service. Higher levels of service would be reported as the number and/or complexity of staff interventions increased.

The most commonly recommended intervention-based guidelines were the facility-coding guidelines developed by ACEP. The ACEP model uses examples of interventions to illustrate appropriate coding. Coders extrapolate from these examples to determine the correct level of service to report. The ACEP model uses the type of intervention rather than the number of interventions to determine the appropriate level of service. This means that the single most complex intervention determines the level of service whether it was the only service provided (in addition to baseline care), whether other similarly complex interventions were also provided, or whether other interventions of less complexity were also provided. The intervention model is based on emergency/clinic resource use, is simple, reflects the care given to the patient, and does not require additional facility documentation. However, we are concerned that the intervention model may provide an incentive to provide unnecessary services and that it is susceptible to upcoding. Furthermore, the ACEP model requires extrapolation from a set of examples that could make it prone to variability across hospitals.

2. Guidelines based on the time staff spent with the patient. Under this model, the level of service would be determined based on the amount of time hospital staff spent with the patient. The underlying assumption is that staff time spent with the patient is an appropriate proxy for total facility resource consumption. In this model, if only baseline care (as described above) were provided a Level 1 service would be reported. Higher levels of service would be reported based on increments of staff time beyond baseline care (for example, Level 2 would be reported for 11 to 20 minutes beyond baseline care, and Level 3 would be reported for 21 to 30 minutes beyond baseline care). This model is simple, it correlates with total facility resource use, and it would provide an objective standard for all hospitals to follow. However, extra, potentially burdensome, documentation (that is, documentation of staff time that is not normally required for clinical care) would be necessary, there would be an incentive to work slowly or use less efficient personnel, and there would be significant potential for upcoding and gaming.

3. Guidelines based on a point system where a certain number of points is assigned to each staff intervention based on the time, intensity, and staff type required for the intervention. In this model, points or weights are assigned to each facility service and/or intervention provided to a patient in the clinic or emergency department. The level of service is determined by the sum of the points for all services/interventions provided. Commenters recommended various approaches to a point system including point systems that assigned points based on the amount of staff time spent with the patient, the number of activities performed during the emergency department or clinic visit, and a combination of patient condition and activities performed. A point system would correlate with facility resource consumption and provide an objective standard. However, a point system could present significant burdens for hospitals in terms of requiring extra, clinically unnecessary, documentation. Point systems are extremely complex, would probably require dedicated staff to monitor and maintain, and would be susceptible to upcoding and gaming.

4. Guidelines based on patient complexity. Several variations were recommended including assignment of level of service based on ICD–9–CM (International Classification of Diseases, Ninth Edition, Clinical Modification) diagnosis codes, assignment of level of service based on complexity of medical decision making, or assignment of level of service based on presenting complaint or medical problem. The premise for these systems is that many emergency departments follow established protocols based on patients presenting complaints and diagnoses. Therefore, assigning a level of service based on patient diagnosis should correlate with facility resource consumption. These systems require the use of a coding "grid," which lists more than 100 examples of patient conditions and diagnosis and assigns a level of service to each example. When a patient has a condition that does not appear on the grid, the coder must extrapolate from the grid to the individual patient. These systems are extremely complex, demand significant interpretive work on the part of a coder (who may not have clinical experience), and are subject to variability across hospitals. No clinically unnecessary documentation would be required but, because the system is based on diagnosis, there is a significant potential for upcoding and gaming.

APC Panel Recommendations

The APC Panel reviewed the comments that we received, reviewed background material we prepared, and heard oral testimony. Most commenters recommended that we adopt the ACEP guidelines. However, one organization representing cancer centers stated that the most appropriate proxy for facility resource consumption in cancer care is staff time and asked that we consider basing our guidelines on staff time. Commenters agreed that we needed to address this problem in the proposed rule for CY 2003. They also agreed that to address potential HIPAA compliance issues, we should develop new HCPCS codes for facility visits; and that we should maintain five levels of service for emergency and clinic visits until data are available to show that only three levels of service are required to ensure accurate payments. Commenters also agreed that, for the same level of service, clinic resource consumption should be similar for new, established, and consultation patients. Therefore, we need only create a single set of five codes for clinic visits.

After a thorough discussion, the APC technical panel made the following recommendations:

1. Propose and make final facility coding guidelines for E/M services for calendar year 2003.

2. Create a series of G codes with appropriate descriptors for facility E/M services.

3. Maintain a single set of codes, with five levels of service, for emergency department visits.

4. Develop a single set of codes, with five levels of service, for clinic visits. The Panel specifically recommended that we not differentiate among visit types (for example, new, established, and consultation visits) for the purposes of facility coding of clinic visits.

5. Adopt the ACEP facility coding guidelines as the national guidelines for facility coding of emergency department visits.

6. Develop guidelines for clinic visits that are modeled on the ACEP guidelines but are appropriate for clinic visits.

7. Implement these guidelines as interim and continue to work with appropriate organizations and stakeholders to develop final guidelines.

Proposal

We have reviewed the written comments, the oral testimony before the APC Panel, and the Panel's recommendations. We agree that facility coding guidelines should be implemented as soon as possible. We are particularly concerned that facilities be able to comply with HIPAA requirements. We have worked, and will continue to work, on this issue, with hospitals, organizations representing hospitals, physicians, and organizations representing physicians. We note that the AMA CPT Editorial Panel is not currently considering the issue of facility coding guidelines for clinic visits and that the earliest any CPT guidelines could be implemented would be in January 2004. Additionally, consistent with the intent of the outpatient prospective payment system, we want to ensure that reporting of hospital emergency and clinic visits is resource based.

After careful review and consideration of written comments, oral testimony and the APC Panel's recommendations, we propose the following (for implementation no earlier than January 2004):

1. To develop five G codes to describe emergency department services: GXXX1—Level 1 Facility Emergency Services, GXXX2—Level 2 Facility Emergency Services, GXXX3—Level 3 Facility Emergency Services, GXXX4—Level 4 Facility Emergency Services, and GXXX5—Level 5 Facility Emergency Services.

2. To develop five G codes to describe clinic visits: GXXX6—Level 1 Facility Clinic Services, GXXX7—Level 2 Facility Clinic Services, GXXX8—Level 3 Facility Clinic Services, GXXX9—Level 4 Facility Clinic Services, and GXXX10—Level 5 Facility Clinic Services.

3. To replace CPT Visit Codes with the 10 new G codes for OPPS payment purposes.

4. To establish separate documentation guidelines for emergency visits and clinic visits.

With regard to the documentation guidelines, our primary concerns are to make appropriate payment for medically necessary care, to minimize the information collection and reporting burden on facilities, and to minimize any incentive to provide unnecessary or low quality care. We realize that many facilities use complaint or diagnosis driven care protocols and that current documentation standards do not include documentation of staff time or the complexity of diagnostic and therapeutic services provided. Therefore, in the interest of facilitating the delivery of medically necessary care in a clinically appropriate way, we believe that the potential drawbacks of each of the recommended sets of guidelines outweigh the potential benefits of creating uniformity and reproducibility. For example, any documentation system requiring counting or quantification of resource use has the potential to be burdensome, require clinically unnecessary documentation, and be susceptible to upcoding and gaming. Documentation systems using coding grids or a series of clinical examples for each level of service are subject to interpretation, may induce variability, may be overly complex and burdensome, and may result in disagreements with medical reviewers. We are also concerned that all the proposed guidelines allow counting of separately paid services (for example, intravenous infusion, x-ray, EKG, lab tests, etc.) as "interventions" or "staff time" in determining a level of service. We believe that, within the constraints of clinical care and management protocols, the level of service for emergency and clinic visits should be determined by resource consumption that is not otherwise separately payable.

To address these concerns, in addition to reviewing written comments, oral comments, and the APC

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Panel recommendations, we have also reviewed the current distribution of paid emergency and clinic visit codes in the OPPS. With regard to emergency visits, we have observed that well over 50 percent of the visits are considered "multiple procedure claims" because the claim includes services such as diagnostic tests (for example, EKGs, x-rays) or therapeutic interventions (for example, intravenous infusions). The distribution of all emergency services is in a bell-shaped curve with a slight left shift because there are more claims for CPT codes 99281 and 99282 than for CPT codes 99284 and 99285. This pattern of coding is significantly different from physician billing for emergency services, which is skewed and peaks at CPT code 99284. We also note that the median costs for successive levels of emergency visits show an expected increase across APCs.

With regard to clinic visits, we have observed that more than 50 percent of the services are considered "single claims" meaning that they are billed without any other significant procedures such as diagnostic tests or therapeutic interventions. We also note that the distribution of clinic visits is skewed with the majority being low-level clinic visits. This distribution is consistent with pre-OPPS billing patterns where many facilities billed all clinic visits as low level visits. However, the median costs for different levels of clinic services, while similar within an APC, do not show the expected increase across the clinic visit APCs.

Based on our review, on the current distribution of coding for emergency and clinic visits, and on our understanding that hospitals set charges for services based on the resources used to provide those services, we believe that an incremental approach to developing and implementing documentation guidelines for emergency and clinic visits is appropriate. As hospitals become more familiar with the OPPS and with the need to differentiate emergency and clinic visits based on resource consumption, we will continue to review the advantages and disadvantages of detailed, uniform documentation guidelines. We plan to begin the development of uniform guidelines over the next year. If we are ready, we would propose the guidelines for comments in our **Federal Register** document for the calendar year 2004 update. For calendar year 2003, we propose the following new codes:

Emergency Visits

Our data indicate that, in general, hospitals under the OPPS are reporting emergency visits appropriately. We believe that insofar as hospitals have existing guidelines for determining the level of emergency service, those guidelines reflect facility resource consumption. Therefore, we propose that GXXX1—Level 1 Facility Emergency Services be reported when facilities deliver, and document, basic emergency department services. These services include registration, triage, initial nursing assessment, minimal monitoring in the emergency department (for example, one additional set of vital signs), minimal diagnostic and therapeutic services (for example, rapid strep test, urine dipstick), nursing discharge (including brief home instructions), and exam room set up/clean up. We would expect that these services would be delivered to patients who present with minor problems of low acuity.

With regard to GXXX2 through GXXX5, we propose to require that facilities develop internal documentation guidelines based on hospital resource consumption (for example, staff time). These guidelines must be appropriate for the type of services provided in the hospital and must also clearly differentiate the relative resource consumption for each level of service so that a medical reviewer can easily infer the type, complexity, and medical necessity of the services provided and validate the level of service reported. Because there is great variability in available facility resources, staff, and clinical protocols among facilities, we do not believe that it is advisable to require a single set of guidelines for all facilities. Instead, we believe it is appropriate for each facility to develop its own documentation guidelines that take into account the facility's clinical protocols, available facility resources, and staff types. As stated above, we are not proposing any specific requirements with regard to the basis of these guidelines. However, the guidelines must be tied to actual resource consumption in the emergency department such as number and type of staff interventions, staff time, clinical examples, or patient acuity. We also propose to require that facilities have documentation guidelines available for review upon request. The guidelines must emphasize relative resource consumption and must not, to the extent possible, set minimal requirements as a basis for determining the level of service (for example, require 30 minutes of staff time or five staff interventions to bill a Level 3 emergency visit).

If made final, these requirements would be interim. We will work with interested parties to revise these requirements and would propose any revision to these requirements in a future proposed rule.

Clinic Visits

The current distribution of codes for clinic visits may be due to a facility's continued use of pre-OPPS coding policies for clinic visits. We believe that over time facilities will become as experienced differentiating levels of clinic visits as they are at differentiating levels of emergency visits. Therefore, we propose a set of guidelines for clinic visits that parallels the requirements for emergency visits. We propose that GXXX6—Level 1 Facility Clinic Services, be reported when facilities deliver, and document, basic clinic services. These services include registration, triage, initial nursing assessment, minimal monitoring in the clinic (for example, one additional set of vital signs), minimal diagnostic and therapeutic services (for example, rapid strep test, urine dipstick), nursing discharge (including brief home instructions), and exam room set up/clean up. Our proposal for GXXX7 through GXXX10 is the same as for GXXX2 through GXXX5 except that the facility-specific guidelines must be tied to actual resource consumption in the clinic such as number and type of staff intervention, staff time, clinical examples, or patient acuity. The guidelines must also differentiate the relative resource consumption in the clinic for each level of service sufficiently so that a medical reviewer could easily infer the type, complexity, and medical necessity of the services provided to validate the level of service provided.

This proposal, if made final, would also be interim while we work with interested parties to revise the requirements. Any revision would be proposed in a future proposed rule.

We propose to make final, in the 2003 OPPS final rule, changes in coding for clinic and emergency department visits and requirements related to the development of documentation guidelines for the new codes. However, we propose to implement the new codes and documentation guidelines no earlier than January 1, 2004. This will give hospitals time to develop documentation guidelines for the new codes and prepare their internal billing systems to accommodate the changes. We will continue to work with hospitals throughout CY 2003 as they develop the documentation guidelines. We solicit comments on this proposal overall as well as the specific components of the proposal.

B. Observation Services

Coding and Billing Instructions

On November 30, 2001, we published a final rule updating changes to the OPPS for 2002. We implemented provisions that allow separate payment for observation services under certain conditions. That is, a hospital may bill for a separate APC payment (APC 0339) for observation services for patients with diagnoses of chest pain, asthma, or congestive heart failure when certain criteria are met. The criteria discussed in the November 30, 2001 final rule and as corrected in the March 1, 2002 final rule are also explained in detail in section XI of a Program Memorandum to intermediaries issued on March 28, 2002 (Transmittal A–02–026). Payment for HCPCS code G0244, observation care provided by a facility to a patient with congestive heart failure, chest pain or asthma, minimum eight hours, maximum 48 hours, was effective for services furnished on or after April 1, 2002.

Section XI of Transmittal A–02–026 that was issued on March 28, 2002 provides additional billing and coding instructions and requirements that flow from the basic criteria that we implemented in the November 30, 2001 and the March 1, 2002 final rules. Although we do not address them explicitly in the final rules, the additional instructions and requirements in Transmittal A–02–026 were developed to implement the basic observation criteria within the programming logic of the outpatient code editor (OCE), which is used to process claims submitted by hospitals for payment under the OPPS. For example, in the November 30, 2001 final rule, we state that an emergency department visit (APC 0610, 0611, or 0612) or a clinic visit (APC 0600, 0601, or 0602) must be billed in conjunction with each bill for observation services (66 FR 59879). In section XI of Transmittal A–02–026, we state that an Evaluation and Management (E/M) code (referred to, incorrectly, in Transmittal A–02–026 as an "Emergency Management" code), for the emergency room, clinic visit, or critical care is required to be billed on the day before or the day that the patient is admitted to observation. That is, unless one of the CPT codes assigned to APCs 0600, 0601, 0602, 0610, 0611, 0612, or 0620 is billed on the day before or the day that the patient is admitted to observation, separate payment for G0244 is not allowed. The codes assigned to these APCs are categorized by CPT as E/M codes. Although we did not include APC 0620, Critical Care, among the APCs that must be billed in order to receive separate payment for observation services, we added it in the program memorandum because critical care is an E/M service which can be furnished in a clinic or an emergency department. Critical care may appropriately precede admission to observation for chest pain, asthma, or congestive heart failure. We clarify in Transmittal A–02–026 that both the associated E/M code and G0244 are paid separately if the observation criteria are met. We also specify that the E/M code associated with observation must be billed on the same claim as the observation service.

Similarly, in the November 30, 2001 and the March 1, 2002 final rules, we require that certain diagnostic tests be performed in order to bill for separate payment for observation services. In Transmittal A–02–026, in section XI.B.2, we list the diagnostic tests that the OCE looks for on a bill for G0244. This list, which amplifies what we published in the November 30, 2001 and March 1, 2002 final rules, is incomplete and should read as follows to reflect the current OCE logic that is applied to claims for G0244:

- For chest pain, at least two sets of cardiac enzymes [either two CPK (82550, 82552, or 82553), or two troponin (84484 or 84512)], *and* two sequential electrocardiograms (93005);
- For asthma, a peak expiratory flow rate (94010) or pulse oximetry (94760, 94761, or 94762);
- For congestive heart failure, a chest x-ray (71010, 71020, or 71030) *and* an electrocardiogram (93005) *and* pulse oximetry (94760, 94761, or 94762).
- Note: Pulse oximetry codes 94760, 94761, and 94762 are treated as packaged services under the OPPS. Although as packaged codes no separate payment is made for these codes, hospitals must separately report the HCPCS code and a charge for pulse oximetry in order to establish that observation services for congestive heart failure and asthma diagnoses meet the criteria for separate payment.

Transmittal A–02–026 also provides specific coding instructions that hospitals must use when billing for observation services that do not meet the criteria for separate payment under APC 0339. In addition, Transmittal A–02–026 addresses the use of modifier "25 with the E/M code billed with G0244.

Direct Admissions to Observation

Since implementation of the provision for separate payment for observation services under APC 0339, a number of hospitals, hospital associations, and other interested parties have asked if separate payment for observation services would be allowed for a patient with chest pain, asthma, or congestive heart failure who is admitted directly into observation by order of the patient's physician but without having received critical care or E/M services in a hospital clinic or the emergency department on the day before or the day of admission to observation. We have responded during monthly CMS hospital open forum calls that, consistent with the criteria in the November 30, 2001 final rule, effective for services furnished on or after April 1, 2002, separate payment for observation services requires that an admission to observation be made by order of a physician in a hospital clinic or in a hospital emergency department. If a patient is directly admitted to observation but without an associated E/M service (including critical care) shown on the same bill, the hospital should bill observation services using revenue code 762 alone or revenue code 762 with one of the HCPCS codes for packaged observation services (CPT codes 99218, 99219, 99220, 99234, 99235, or 99236).

A related question has arisen in connection with a policy interpretation that was posted as a response to a "Frequently Asked Question" (FAQ) on our web site on September 12, 2000. The FAQ follows:

"Q.97: If a patient is admitted from the physician's office to the observation room, will there be no reimbursement?"

"A.97: Since observation is a packaged service, payment cannot be made if it is the only OPPS service on a claim. However, we believe that the "admission" of a patient to observation involves a low-level visit billed by the hospital, as well as whatever office visit the physician who arranged for the admission billed. Thus, when a patient arrives for observation arranged for by a physician in the community (that is, "direct admit to observation"), and is not seen or assessed by a hospital-based physician, the hospital may bill a low-level visit code. This low-level visit code will capture the baseline nursing assessment, the creation of a medical record, the recording and initiation of telephone orders, etc. This visit may be coded only once during the period of observation. The observation charges should be shown in revenue code 762. The number of hours the patient was in

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observation status should be shown in the units field. Payment for those services is packaged into the APC for the visit. Other services performed in connection with observation, such as lab, radiology, etc., should be billed for as well * * *"

We have been asked to clarify whether or not the low-level visit code suggested in the FAQ for patients directly admitted for observation services would satisfy the requirement that a line item for a hospital emergency visit, hospital clinic visit, or critical care appear on the same bill as HCPCS code G0244. Our response is that when we established the final criteria effective for services furnished on or after April 1, 2002, we did not contemplate that the low-level visit described in the FAQ would satisfy the requirement for the E/M code that a hospital must bill to show a hospital clinic visit or hospital emergency department visit was performed before observation services for asthma, congestive heart failure, or chest pain to bill and receive payment for G0244 under APC 0339.

In light of these questions, we have reviewed the criteria for separate payment for observation services under APC 0339, and we propose to modify the criteria and coding for observation services furnished on or after January 1, 2003. Specifically, we propose to create two new codes. These additional codes would allow us to collect data on the extent to which patients are directly admitted to hospital observation services without an associated hospital clinic visit or emergency department visit. The proposed codes are as follows:

G0LLL—Initial nursing assessment of patient directly admitted to observation with diagnosis of congestive heart failure, chest pain, or asthma.

G0MMM—Initial nursing assessment of patient directly admitted to observation with diagnosis other than congestive heart failure, chest pain, or asthma.

If a hospital directly admits to observation from a physician's office a patient with a diagnosis of congestive heart failure, asthma, or chest pain, we propose to require that G0LLL be billed with G0244. The current requirement that the hospital bill an emergency department visit (APC 0600, 0601, or 0602) or a clinic visit (APC 0610, 0611, or 0612) or a critical care service (APC 0620) in order to receive separate payment for observation services for patients not admitted directly from a physician's office would remain in effect. However, because the initial nursing assessment is part of any observation service, we propose not to make separate payment for G0LLL. Rather, we propose to assign status indicator "N" to G0LLL, to designate that charges submitted with G0LLL would be packaged into the costs associated with APC 0339. If G0LLL is billed, we would require that the medical record show that the patient was admitted directly from a physician's office for purposes of evaluating and treating chest pain, asthma, or congestive heart failure.

G0MMM describes the initial nursing assessment of a patient directly admitted to observation with a diagnosis other than chest pain, asthma, or congestive heart failure. We propose to assign G0MMM for payment under APC 0706, New Technology—Level I. We propose to require hospitals to bill G0MMM instead of the low level clinic visit referred to in the FAQ above to describe the initial nursing assessment of a patient directly admitted to observation with a diagnosis other than chest pain, asthma, or congestive heart failure. Separate payment would not be made for observation services billed with G0MMM. Rather, when billing G0MMM, hospitals would be required to use revenue code 762 alone or revenue code 762 with one of the HCPCS codes for packaged observation services (99218, 99219, 99220, 99234, 992335, or 99236). We propose to create G0MMM to establish a separately payable code into which costs for observation care for patients directly admitted for diagnoses other than asthma, chest pain, or congestive heart failure can be packaged and recognized.

We would use billing data for G0LLL and G0MMM in reviewing the provisions for payment of observation services in future updates of the OPPS. We invite comment on the extent to which these codes address the concerns that have been raised in connection with patients who are directly admitted to observation services.

Billing Intravenous Infusions With Observation

Based on questions and concerns raised by hospitals since implementation of payment for APC 0339 effective April 1, 2002, we have also reviewed the current status of billing intravenous infusions with observation. Several hospitals have noted that claims for G0244 when billed with intravenous infusion services reported with HCPCS code Q0084 are denied because of the "T" status indicator assigned to HCPCS code Q0084. Our current payment rules for G0244 require that G0244 be denied if a service with status indicator "T" is performed the day before, the day of, or the day after observation care. Because patients in observation may require intravenous infusions of fluid, we propose to create code G0EEE, Intravenous infusion during separately payable observation stay, per observation, payable under APC 0340 with status indicator "X." When observation services that otherwise meet the billing requirements for separate payment under APC 0339 include an intravenous infusion administered as part of the observation care, G0EEE would be used to report the infusion service. We include instructions on the use of G0EEE in the program memorandum issued to implement OPPS coding changes for the October 1, 2002 OCE. We solicit comment on the use of this code.

We discuss this and other new Level II HCPCS codes proposed for payment under the OPPS in section II.B.3 of this preamble. We instruct hospitals to use G0EEE only when billing for payment under APC 0339. G0EEE includes placement of the IV access and should not be billed with CPT code 36000.

Annual Update of ICD–9 Diagnosis Codes

To receive payment for G0244, we require hospitals to bill specified ICD–9–CM diagnosis code(s). Because ICD–9–CM codes are updated effective October 1 of each year, we propose to issue by Program Memorandum any changes in the diagnosis codes required for payment of G0244 resulting from the ICD–9–CM annual update.

In the March 1, 2002 final rule (67 FR 9559) and in Transmittal A–02–026 issued on March 28, 2002, we listed the diagnosis codes required in order for separate payment of observation services under APC 0339 to be made for patients with congestive heart failure. We added by program memorandum the following new ICD–9–CM codes to the list of allowed diagnosis codes for separate payment for observation of patients with congestive heart failure, effective for services furnished on or after October 1, 2002:

428.20 unspecified systolic heart failure
428.21 acute systolic heart failure
428.22 chronic systolic heart failure
428.23 acute on chronic systolic heart failure
428.30 unspecified diastolic heart failure
428.31 acute diastolic heart failure
428.32 chronic diastolic heart failure
428.33 acute on chronic diastolic heart failure
428.40 unspecified combined systolic and diastolic heart failure
428.41 acute combined systolic and diastolic heart failure
428.42 chronic combined systolic and diastolic heart failure
428.43 acute on chronic combined systolic and diastolic heart failure

We invite comment on the addition of these diagnosis codes to the criteria for separate payment for observation services under APC 0339.

C. Payment Policy When a Surgical Procedure on the Inpatient List Is Performed on an Emergency Basis

As we state in section II.B.5 of this preamble, the inpatient list specifies those services that are only paid when provided in an inpatient setting. The inpatient list proposed for 2003 is printed as Addendum E. In Addendum B, status indicator C designates a HCPCS code that is on the inpatient list.

Over the past year, some hospitals and hospital associations have asked how a hospital could receive Medicare payment for a procedure on the inpatient list that had to be performed to resuscitate or stabilize a patient with an emergent, life-threatening condition who was transferred or died before being admitted as an inpatient. We reviewed within the context of our current policy the cases brought to our attention for which payment under the OPPS was denied because a procedure with status indicator C was on the bill. Based on that review, we propose to clarify our policy regarding Medicare payment when a procedure with status indicator C is performed under certain life-threatening, emergent conditions. We solicit comments on the extent to which the payment policy described below addresses hospitals' concerns. These comments would be most helpful if they are supported by specific examples of cases when hospitals have, in these instances, submitted bills for a procedure with OPPS status indicator C that were not paid.

1. Current Policy

In the April 7, 2000 final rule (65 FR 18451), in response to comments about the appropriate level of payment for patients who die in the emergency department, we set forth the following guidelines for fiscal intermediaries to use in determining how to make payment when a patient dies in the emergency department or is sent directly to surgery and dies there.

- If the patient dies in the emergency department, make payment under the outpatient PPS for services furnished.
- If the emergency department or other physician orders the patient to the operating room for a surgical procedure, and the patient dies in surgery, payment will be made based on the status of the patient. If the patient had been admitted as an inpatient, pay under the hospital inpatient PPS (a DRG-based payment).
- If the patient was not admitted as an inpatient, pay under the outpatient PPS (an APC-based payment).
- If the patient was not admitted as an inpatient and the procedure is designated as an inpatient-only procedure (payment status indicator C), no Medicare payment will be made for the procedure, but payment will be made for emergency department services.

The OPPS outpatient code editor (OCE) currently has an edit in place that generates a "line item denial" for a line on a claim that has a status indicator C. A line item denial means that the claim can be processed for payment but with some line items denied for payment. A line item denial can be appealed under the provisions of section 1869 of the Act. The OCE includes another edit that denies all other line items furnished on the same day as a line item with a status indicator C. The rationale for this edit is that all line items for services furnished on the same date as the procedure with status indicator C would be considered inpatient services and paid under the appropriate DRG.

As part of the definition of line item denial in the program memorandum that we issue quarterly to update the OCE specifications (for example, see Program Memorandum/Intermediaries, Transmittal A–02–052, June 18, 2002, which is available on our website at *http://www.hcfa.gov/pubforms/transmit/A02052.pdf*), we state that a line item denial cannot be resubmitted except for an emergency room visit in which a patient dies during a procedure that is categorized as an inpatient procedure: "Under such circumstances, the claim can be resubmitted as an inpatient claim."

In Addendum D of the March 1, 2002 final rule, we designate payment status indicator "C" as follows: "Admit patient; bill as inpatient."

2. Hospital Concerns

Hospitals have requested clarification regarding billing and payment in certain situations that our current policy does not seem to explicitly address. The following scenarios synthesize cases described by hospitals for which they have encountered problems when billing for a procedure with status indicator C.

Scenario A: A procedure assigned status indicator C under the OPPS is performed to resuscitate or stabilize a beneficiary who appears with or suddenly develops a life-threatening condition. The patient dies during surgery or postoperatively before being admitted.

Scenario B: An elective or emergent surgical procedure payable under the OPPS is being performed. Because of sudden, unexpected intra-operative complications, the physician must alter the surgical procedure and perform a procedure with OPPS status indicator C. The patient dies during the operation before he or she is admitted as an inpatient.

Scenario C: A procedure with status indicator C is performed to resuscitate or stabilize a beneficiary who appears with or suddenly develops a life-threatening condition. After the procedure, the patient is transferred to another facility for postoperative care.

3. Clarification of Payment Policy

We propose the following policy for fiscal intermediaries and providers to use in determining the appropriate Medicare payment in cases such as those described in the section above.

A procedure assigned status indicator C under the OPPS is never payable under the OPPS. Therefore, for a hospital to receive payment when a procedure with OPPS status indicator C is performed and: (1) the patient dies during or after the procedure, before being admitted, or (2) the patient survives the procedure and is transferred following the procedure, the patient's medical record must contain all of the following information:

- Either orders to admit written by the physician responsible for the patient's care at the hospital to which the patient was to be admitted, the hospital following the procedure for the purpose of receiving inpatient hospital services and occupying an inpatient bed, or written orders to admit and transfer the patient to another hospital following the procedure.
- Documentation that the reported HCPCS code for the surgical procedure with OPPS payment status indicator C (such as CPT code 61345) was actually performed.
- Documentation that the reported surgical procedure with status indicator C was medically necessary.
- If the patient is admitted and subsequently transferred to another facility, documentation that the transfer was medically necessary, such as the patient requiring postoperative treatment unavailable at the transferring facility.

Because these services would be paid according to the appropriate DRG or per diem (see below), all services that were furnished before admission that would otherwise be payable under the OPPS would be paid in accordance with the

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provisions of section 3610.3 of the Medicare Intermediary Manual ("3-day rule") and section 415.6 of the Medicare Hospital Manual.

In the case of a patient who dies during performance of a procedure with OPPS status indicator C before being admitted, the hospital would submit a claim for all services provided, including a line item for the status indicator C procedure. The claim would be rejected for payment under the OPPS and returned to the hospital. The hospital would resubmit the claim for payment as an inpatient stay under the appropriate DRG.

In the case of a patient who is admitted and transferred, the transferring hospital would be paid a per diem DRG rate if all the above conditions are met. (We propose to revise section 3610.5 of the Medicare Intermediary Manual accordingly.)

Note that a physician's order to admit a patient to an observation bed following a procedure designated with OPPS status indicator C would not constitute an inpatient admission and, therefore, would not qualify the procedure with status indicator C for payment. In this instance, the only allowable Medicare payment would be for a code payable under APC 0610, 0611, or 0612 if those services were provided. Payment would not be allowed for either the procedure with status indicator C or for any ancillary services furnished on the same date.

4. Orders To Admit

Some hospitals have raised questions about the timing of a physician's order to admit a patient. The requirements for the authenticating physician orders and the standards for medical record keeping fall outside the scope of this proposed rule and OPPS payment policy. The payment guidelines proposed above are to assist hospitals and contractors in determining how to bill and pay for services appropriately under Medicare. The patient's admission status, as documented by the medical records, determines what Medicare payment is appropriate. Medical record keeping and documentation requirements are addressed in the Medicare hospital conditions of participation at § 482.24, and are governed by applicable State law and State licensing rules and hospital accreditation standards.

D. Status Indicators

The status indicators we assign to HCPCS codes and APCs under the OPPS have an important role in payment for services under the OPPS because they indicate if a service represented by a HCPCS code is payable under the OPPS or another payment system and also if particular OPPS policies apply to the code. We are providing our proposed status indicator assignments for APCs in Addendum A, HCPCS codes in Addendum B, and definitions of the status indicators in Addendum D.

The OPPS is based on HCPCS codes for medical and other health services. These codes are used for a wide variety of payment systems under Medicare, including, but not limited to, the Medicare fee schedule for physician services, the Medicare fee schedule for durable medical equipment and prosthetic devices, and the Medicare clinical laboratory fee schedule. For purposes of making payment under the OPPS, we need a way to signal the claims processing system which HCPCS codes are paid under the OPPS and those codes to which particular OPPS payment policies apply. We accomplish this identification in the OPPS through the establishment of a system of status indicators with specific meanings. Addendum D defines the meaning of each status indicator for purposes of the OPPS.

We assign one and only one status indicator to each APC and to each HCPCS code. Each HCPCS code that is assigned to an APC has the same status indicator as the APC to which it is assigned.

Specifically, in 2003, we propose to use the status indicators in the following manner:

- We use A to indicate services that are paid under some payment method other than OPPS, such as the Durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) fee schedule or the physician fee schedule. Some but not all of these other payment systems are identified in Addendum D.
- We use "C" to indicate inpatient services that are not payable under the OPPS.
- We use "D" to indicate a code that was deleted effective with the beginning of the calendar year.
- We use "E" to indicate services for which payment is not allowed under the OPPS or that are not covered by Medicare.
- We use "F" to indicate acquisition of corneal tissue, which is paid at reasonable cost.
- We use "G" to indicate drugs and biologicals that are paid under OPPS transitional pass-through rules.
- We use "H" to indicate devices that are paid under OPPS transitional pass-through rules.
- We use "K" to indicate drugs and biologicals (including blood and blood products) and certain brachytherapy seeds that are paid in separate APCs under the OPPS, but that are not paid under OPPS transitional pass-through rules.
- We use "N" to indicate services that are paid under the OPPS for which payment is packaged into another service or APC group.
- We use "P" to indicate services that are paid under the OPPS but only in partial hospitalization programs.
- We use "S" to indicate significant procedures that are paid under OPPS but to which the multiple procedure reduction does not apply.
- We use "T" to indicate significant services that are paid under the OPPS and to which the multiple procedure payment discount under OPPS applies.
- We use "V" to indicate medical visits (including clinic or emergency department visits) that are paid under the OPPS.
- We use "X" to indicate ancillary services that are paid under the OPPS.

The software that controls Medicare payment looks to the status indicators attached to the HCPCS codes and APCs for direction in the processing of the claim. Therefore, the assignment of the status indicators has significance for the payment of services. We sometimes change these indicators in the course of a year through Program Memoranda. Moreover, indicators are established for new codes that we establish in the middle of the year, either as a result of a national coverage decision or otherwise. A status indicator, as well as an APC, must be assigned so that payment can be made for the service identified by the new code.

We are proposing the status indicators identified for each HCPCS code and each APC in Addenda A and B and are requesting comments on the appropriateness of the indicators we have assigned.

E. Other Policy Issues Relating To Pass-Through Device Categories

1. Reducing Transitional Pass-Through Payments To Offset Costs Packaged Into APC Groups

In the November 30, 2001 final rule, we explain the methodology we used to estimate the portion of each APC rate that could reasonably be attributed to the cost of associated devices that are eligible for pass-through payments (66 FR 59904). Effective with implementation of the 2002 OPPS update on April 1, 2002, we deduct from the pass-through payments for those devices an amount that offsets the portion of the otherwise applicable APC payment amount that we determined is associated with the device, as required by section 1833(t)(6)(D)(ii) of the Act. In the March 1, 2002 final rule, we published the applicable offset amounts for 2002, which we had recalculated to reflect certain device cost assignments that were corrected in the same final rule (67 FR 9557).

For the 2003 OPPS update, we propose to estimate the portion of each APC rate that could reasonably be attributed to the cost of an associated pass-through device that is eligible for pass-through payment using claims data for services furnished between July 1, 2001 through December 31, 2001. We propose to use only the last 6 months of 2001 claims data because bills for pass-through devices submitted during this time period would use only device category codes, allowing a more consistent analysis than would result were we to include pre-July 1 claims that might still show item-specific codes for pass-through devices. Using these claims, we would calculate a median cost for every APC without packaging the costs of associated C-codes for device categories that were billed with the APC. We would then calculate a median cost for every APC with the costs of associated C-codes for device categories that were billed with the APC packaged into the median. Comparing the median APC cost minus device packaging by the median APC cost including device packaging would allow us to determine the percentage of the median APC cost that is attributable to associated pass-through devices. By applying these percentages to the median APC cost, we would determine the applicable offset amount. Table 9 shows the offsets that we propose be applied in 2003 to each APC that contains device costs. APCs were included for offsets if their device costs comprised at least 1 percent of the APC's costs. (However, if any APC's calculated offset had been less than 1 dollar, that APC and offset would not have been included.)

TABLE 9.—PROPOSED OFFSETS TO BE APPLIED FOR EACH APC THAT CONTAINS DEVICE COSTS

APC	Description	APC percent attributed to devices	Device related cost to be subtracted from pass-through payment
0032	Insertion of Central Venous/Arterial Catheter	6.12	$22.73
0046	Open/Percutaneous Treatment Fracture or Dislocation	1.06	16.00
0048	Arthroplasty with Prosthesis	5.78	111.02
0051	Level III Musculoskeletal Procedures Except Hand and Foot	1.24	21.95
0052	Level IV Musculoskeletal Procedures Except Hand and Foot	3.05	67.21
0080	Diagnostic Cardiac Catheterization	4.36	80.82
0081	Non-Coronary Angioplasty or Atherectomy	7.29	86.03
0082	Coronary Atherectomy	47.58	1,866.34
0083	Coronary Angioplasty and Percutaneous Valvuloplasty	20.06	499.51
0085	Level II Electrophysiologic Evaluation	10.22	168.87
0086	Ablate Heart Dysrhythm Focus	20.36	462.74
0087	Cardiac Electrophysiologic Recording/Mapping	15.19	45.90
0088	Thrombectomy	4.08	72.06
0089	Insertion/Replacement of Permanent Pacemaker and Electrodes	68.56	3,883.80
0090	Insertion/Replacement of Pacemaker Pulse Generator	64.17	2,574.81
0091	Level II Vascular Ligation	1.75	24.60
0093	Vascular Repair/Fistula Construction	1.63	22.29
0104	Transcatheter Placement of Intracoronary Stents	40.26	1,522.67
0105	Revision/Removal of Pacemakers, AICD, or Vascular	5.79	57.64
0106	Insertion/Replacement/Repair of Pacemaker and/or Electrodes	18.05	274.40
0107	Insertion of Cardioverter-Defibrillator	83.18	7,852.32
0108	Insertion/Replacement/Repair of Cardioverter-Defibrillator Leads	82.11	9,936.93
0109	Removal of Implanted Devices	1.70	6.79
0115	Cannula/Access Device Procedures	7.22	88.17
0119	Implantation of Devices	13.61	183.19
0122	Level II Tube changes and Repositioning	2.21	4.47
0124	Revision of Implanted Infusion Pump	9.82	119.87
0142	Small Intestine Endoscopy	1.03	4.40
0151	Endoscopic Retrograde Cholangio-Pancreatography (ERCP)	2.71	25.69
0152	Percutaneous Abdominal and Biliary Procedures	9.96	32.01
0153	Peritoneal and Abdominal Procedures	1.69	22.84
0154	Hernia/Hydrocele Procedures	2.66	37.33
0167	Level III Urethral Procedures	11.54	162.95
0168	Level II Urethral Procedures	5.20	65.18
0179	Urinary Incontinence Procedures	34.30	1,449.96
0182	Insertion of Penile Prosthesis	42.39	1,847.50
0202	Level VIII Female Reproductive Proc	10.67	216.92
0222	Implantation of Neurological Device	65.75	4,806.58
0223	Implantation of Pain Management Device	11.54	121.84
0225	Implantation of Neurostimulator Electrodes	33.33	770.67
0226	Implantation of Drug Infusion Reservoir	70.33	1,616.75
0227	Implantation of Drug Infusion Device	75.38	5,019.34
0229	Transcatherter Placement of Intravascular Shunts	46.89	1,194.96
0245	Level I Cataract Procedures without IOL Insert	3.24	24.25
0246	Cataract Procedures with IOL Insert	1.20	14.72
0259	Level III ENT Procedures	75.29	11,396.81
0279	Level II Angiography and Venography except Extremity	1.56	6.82
0280	Level III Angiography and Venography except Extremity	5.02	40.49
0281	Venography of Extremity	1.39	3.78

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TABLE 9.—PROPOSED OFFSETS TO BE APPLIED FOR EACH APC THAT CONTAINS DEVICE COSTS—Continued

APC	Description	APC percent attributed to devices	Device related cost to be subtracted from pass-through payment
0297	Level II Therapeutic Radiologic Procedures	1.91	7.75
0656	Transcatheter placement of drug eluting stents	54.15	2668.28
0670	Intravenous and Intracardiac Ultrasound	51.03	392.26
0680	Insertion of Patient Activated Event Recorders	68.48	1,850.24
0681	Knee Arthroplasty	64.57	5,310.69
0684	Prostate Brachytherapy	67.49	3631.89
0686	Level III Skin Repair	4.00	23.51
0687	Revision/Removal of Neurostimulator Electrodes	1.50	15.21
0688	Revision/Removal of Neurostimulator Pulse Generator Receiver	22.15	352.28
0693	Level II Breast Reconstruction	1.00	20.44
0981	New Technology—Level XII ($2000—$2500)	13.32	299.70

2. Devices Paid With Multiple Procedures

As explained above, under section 1833(t)(6)(D)(ii) of the Act, the amount of additional payment for a device eligible for pass-through payment is the amount by which the hospital's cost exceeds the portion of the otherwise applicable APC payment amount that the Secretary determines is associated with the device. Thus, for devices eligible for pass-through payment, we reduce the pass-through payment amount by the cost attributable to the device that is already packaged into the APC payment for an associated procedure. For 2002, we developed offset amounts, for 59 APCs (March 1, 2002 final rule, 67 FR 9556 through 9557, Table 1).

In our November 30, 2001 final rule (66 FR 59856), we articulated a policy regarding the calculation of the offsets for device costs already reflected in APCs in cases where the payment for the associated APC is reduced due to the multiple procedure discount. The policy was in response to several commenting parties that recommended that we apply the multiple procedure discount only to the non-device-related portion of the APC payment amount (66 FR 59906).

We agreed with the commenters that the full pass-through offset should not be applied when the APC payment is subject to the multiple procedure discount of 50 percent.

The purpose of the offset is to ensure that the OPPS is not making double payments for any portion of the cost associated with the use of the pass-through item. We stated in the November 30, 2001 rule that the offset should reflect that portion of the cost for the pass-through device actually reflected in the payment that is received for the associated APC. We consequently ruled that the most straightforward methodology for applying this principle is to reduce the amount of the offset amount by 50 percent whenever the multiple procedure discount applies to the associated APC. This discounting of the offset is applied in 2002 to bills subject to multiple procedure discounting that also include devices eligible for pass-through payment.

The significant number of device categories that are expiring in 2003 combined with our proposal to package 100 percent of device costs into their associated APCs has prompted us to revisit the current policy of reducing offsets for pass-through devices in instances when multiple procedure discounts are applied to procedures associated with pass-through device categories. In order to determine the impact of multiple procedure discounting on APCs with full packaging of device costs, we reviewed the median costs of all APCs after incorporation of device costs and arrayed them in order of descending median cost. We also determined the contribution (in absolute dollars and as a percentage) of device costs to the median costs of each APC. We did this by examining claims submitted during the last 6 months of 2001 during which only device category codes were used to bill for pass-through devices because those were the only claims where we could specifically identify the contribution of device costs to the cost of each APC.

We then determined which APCs containing devices would be billed together. For example, the APC for insertion of a pacemaker would not be billed with the APC for insertion of neurostimulator electrodes, whereas the APC for coronary stent placement might be billed with the APC for coronary angioplasty. We next determined, based on median cost data, which device containing APCs would be subject to the 50 percent multiple procedure reduction. After identifying these APCs, we applied a 50 percent reduction to arrive at a discounted payment amount. We then reviewed the contribution of device costs to the discounted APC both as a percentage and in absolute dollars to determine if applying the 50 percent reduction would result in underpayment for the service. We determined that the reduced payment was adequate to pay both for the devices incorporated into the APC and for the procedure cost in the context of performing multiple procedures. We obtained the same results even when we overstated device costs in our model by 5 or 10 percent to offset concerns expressed by some manufacturers and physicians that hospital charges for transitional pass-through devices may be understated.

To illustrate this analysis, assume APCs 0104 and 0083 are billed together. The median cost of APC 0104 is $3,960 with 40 percent of the cost attributable to devices. The median cost of APC 0083 is $2,605 with 20 percent of its cost attributable to devices. Under our existing multiple procedure discount payment rules, APC 0104 would be paid at 100 percent, and APC 0083 would be paid at 50 percent. This means that payment for APC 0083 would be $1,302 of which $520 (20 percent of $2,605) is attributable to devices. We believe this total payment accounts for the costs of the devices and the costs of the procedure when it is performed in conjunction with APC 0104.

We note that almost all APCs with high device costs (such as insertion of pacemakers, insertion of cardioverter-defibrillators, insertion of infusion pumps and neurostimulator electrodes) would never be subject to a multiple procedure discount. They have the highest relative weights in the OPPS, and we would not expect these procedures to be performed during the same operative session with a higher paying procedure with status indicator "T." Therefore, we propose to continue our current policy of multiple procedure discounting. That is, when two or more APCS with status indicator "T" are billed together we propose to pay 100 percent for the highest cost APC and 50 percent for all other APCs with status indicator "T." We propose not to adjust these payments to account for device costs in the APCs.

F. Outpatient Billing For Dialysis

Currently, hospitals are unable to bill for dialysis treatments furnished to End-Stage Renal Disease (ESRD) patients on an outpatient basis, unless the hospital also has a certified hospital-based ESRD facility. As a result of this policy, there has been an increase in denials by the PROs for inappropriate hospital admissions.

When ESRD patients come to the hospital for a medical emergency or for problems with their access sites, they typically miss their regularly scheduled dialysis appointments. If the ESRD patient's usual facility is unable to reschedule the dialysis treatment, the beneficiary has to wait until the next scheduled dialysis appointment. CMS is concerned that by maintaining this policy, beneficiaries may be receiving interrupted care because there will be unnecessary lapses in treatment. The ESRD patient should not be prevented from receiving her or his normal dialysis because he or she experienced another unrelated medical situation. Therefore, we propose to allow payment for dialysis treatments for ESRD patients in the outpatient department of a hospital in specific situations. Payment would be limited to unscheduled dialysis for ESRD patients in exceptional circumstances. Outpatient dialysis for acute patients would not be included in this payment mechanism.

We propose to limit this payment to medical situations in which the ESRD patient cannot obtain her or his regularly scheduled dialysis treatment at a certified ESRD facility. Situations that we propose to allow are limited to: (1) dialysis performed following or in connection with a vascular access procedure; (2) dialysis performed following treatment for an unrelated medical emergency. For example, if a patient goes to the emergency room for chest pains and misses a regularly scheduled dialysis treatment that cannot be rescheduled, we would allow the hospital to provide and bill Medicare for the dialysis treatment; and (3) emergency dialysis—Currently, the only mechanism available for payment in this situation is through an inpatient admission. We will maintain our policy that routine treatments in non-ESRD certified hospitals would not be payable under OPPS.

We believe it is important to make this change in policy for two reasons: (1) to ensure that hospital outpatient departments are paid for providing this much needed service; and (2) to prevent dialysis patients from receiving interrupted care. Non-ESRD certified hospital outpatient facilities would bill Medicare using a new G code, G0GGG, "Unscheduled or emergency treatment for dialysis for ESRD patient in the outpatient department of a hospital that does not have a certified ESRD facility." We propose that this new code will have status indicator "S" and be assigned to APC 0170. Payment would be roughly equivalent to the reimbursement rate for acute dialysis. We propose to implement this change effective January 1, 2003. Effective January 1, 2003, this would be the only way for non-ESRD certified hospital outpatient facilities to bill Medicare and be paid for providing outpatient dialysis to ESRD beneficiaries.

CMS will be monitoring the use of this new code to ensure that (1) certified dialysis facilities are not incorrectly using this code; and (2) the same dialysis patient is not repeatedly using this code, which would indicate routine dialysis treatment.

When ESRD patients receive outpatient dialysis in non-ESRD certified hospital outpatient facilities, the patient's home facility would be responsible for obtaining and reviewing the patient's medical records to ensure that appropriate care was provided in the hospital and that modifications are made, if necessary, to the patient's plan of care upon her or his return to the facility. This ensures continuity of care for the patient.

IX. Summary of and Responses to MedPAC Recommendations

The Medicare Payment Advisory Commission (MedPAC) in its March 2002 Report to the Congress: "Medicare Payment Policy," makes a number of recommendations relating to the OPPS. This section provides responses to those recommendations.

Recommendation: For calendar year 2003, the Secretary should increase the payment rates for services covered by the OPPS by the rate of increase in the hospital market basket.

Response: Section 1833(t)(3)(C)(ii) of the Act requires the Secretary to update the conversion factor annually. Under section 1833(t)(3)(C)(iv) of the Act, the update is equal to the hospital market basket percentage increase applicable under the hospital inpatient PPS, minus one percentage point for the years 2000 and 2002. The Secretary has the authority under section 1833(t)(3)(C)(iv) of the Act to substitute a market basket that is specific to hospital outpatient services. In the September 8, 1998 proposed rule on the OPPS, we indicated that we were considering the option of developing an outpatient-specific market basket and invited comments on possible sources of data suitable for constructing one (63 FR 47579). We received no comments in response to this invitation, and we therefore announced in the April 7, 2000 final rule that we would update the conversion factor by the hospital inpatient market basket increase, minus one percentage point, for the years 2000, 2001, and 2002 (65 FR 18502). (As required by section 401(c) of the BIPA, we made payment adjustments effective April 1, 2001 under a special payment rule that had the effect of providing a full market basket update in 2001.) For 2003, we propose to increase payment rates by the rate of increase in the hospital market basket.

Recommendation: The Congress should—

- Replace hospital-specific payments for pass-through devices with national rates.
- Give the Secretary authority to consider alternatives to average wholesale price (AWP) when determining payments for pass-through drugs and biologicals.

Response: Regarding the pricing of transitional pass-through devices, we share the Commission's concern that the current methodology provides incentives for hospitals to inflate charges for transitional pass-through devices to increase payments. However, we believe that alternative approaches are not necessarily superior. Further, the salience of this problem should be much less in the future.

At present, the payment for a transitional pass-through device is set, on a claim-by-claim basis, relative to the hospital's charge for that device. The charge is reduced to a measure of cost by application of a hospital-specific cost-to-charge ratio, and a subtraction is made to reflect the portion of device costs already recognized in the payment for the associated procedure APC. This procedure means that a higher charge by a hospital will result in a higher payment from Medicare. The Commission notes that this method embodies an incentive for hospitals, perhaps prompted by manufacturers, to increase charges as a means of

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increasing payments. The Commission is concerned that this situation may lead to excessive payments and may bias the charges used to revise, from year to year, relative weights in the OPPS.

In fact, the extent to which hospitals raising their charges on devices is problematic depends on the outcomes. In general, we anticipate that hospital charge structures, on average, reflect their costs; this assumption helps support the use of charge data to revise relative weights in hospital prospective payment systems. Accordingly, whether payments to hospitals for transitional pass-through devices might be considered excessive depends on whether hospitals inflate charges beyond the levels appropriate to recover their costs. Whether their behavior leads to biases in charge data depends on whether they set charges on transitional pass-through devices significantly differently than on other services.

Moving to a fee schedule for transitional pass-through devices would remove the particular incentive problem that the Commission noted, which we agree would be desirable. However, the establishment of appropriate national rates would then become the focus. In the absence of field data on actual costs, we will be inevitably reliant on information that manufacturers provide. At present, manufacturers are asked for information about prices on applications for pass-through status. Anecdotal information suggests this information is not fully reliable as a measure of what hospitals actually pay.

The Commission's report discusses the possibility of CMS setting the rate for a device based on analysis of the manufacturer's costs, including an appropriate rate of return on equity. This approach would confront a number of accounting, legal, and operational difficulties.

- First, it would take some time to complete the analysis for a new product, which could significantly delay establishment of a rate. The rate that would be used in the meantime, or whether billing would be permitted at all, would be open to question.
- Second, it appears that large firms with multiple product lines supply most devices, which would make determining the costs of a particular device difficult. This problem would be compounded when multiple enterprises are involved in bringing a product to market, which is not uncommon in the device industry, where invention and initial development may occur in one firm and final development, manufacturing, and marketing in another.
- Third, the government generally does not have access to manufacturers cost information. While legal authority could be enhanced, manufacturers would face incentives that raise questions about the reliability of information provided, and the need for government accounting and auditing resources would be high.
- Fourth, as the Commission's report notes, an appropriate rate of return on equity would have to be established.
- Fifth, devices are now paid, under BIPA, on the basis of categories. As a result, if a manufacturer brings to market a product that fits the description of a category, hospitals can bill for that manufacturer's product without any change in coding or notification of CMS. Consequently, we do not know what specific devices are actually being billed in these categories, or who manufactures them. Whatever rate might be established on the basis of an initial application for a category would presumably be based on the applicant's costs. Later entrants might have significantly different cost structures, but this information would not come into account unless a more elaborate process was implemented to include it.

Finally, whether a rate set in this fashion would pay less or more than the current method is unclear. The current method is based on actual experience in the field, and it will reflect, though perhaps somewhat tenuously, whatever competitive market pressures exist. Any method that we use aimed at ensuring a more reliable price could yield a price that is too high, since it will not reflect market activity. Whether a rate set by *ex ante* analysis of this sort would produce superior results does not appear obvious.

The Commission's report also mentions the possibility of using competitive bidding to set rates for transitional pass-through devices. While competitive bidding appears attractive as a means of setting a market-related price, it has not proven an easy process for Medicare to implement. Competitive bidding seems best suited for established products with multiple suppliers. However, transitional pass-through devices are by definition new to the market and will frequently have only one manufacturer, at least at the start of the 2 to 3 year transitional pass-through period. Even in those instances in which this technique would be possible, it involves a fair amount of administrative resources and time, and using it to establish a rate that will be used at the most for 3 years does not appear to be an effective use of resources.

Both of the suggestions discussed above reflect procedures that involve relatively high overhead on the part of CMS and of other actors. It is not obvious whether either would produce results that are superior to those derived from the present method. While they would change incentives on hospitals, incentives of manufacturers would still be a source of concern. We agree with the Commission that further investigation would be necessary to determine a feasible alternative to cost-based pass-through payments.

In considering the advantages of various approaches, it is important to keep the size of the problem in mind, especially when contemplating procedures for setting rates that would involve substantial administrative resources. As of July 1, 2002, the OPPS pays for 100 categories of devices. As is explained in section III.C of this preamble, we are proposing that 95 categories will lose pass-through status and be retired as of January 1, 2003.[3] Since the initial categories were established in April 2001, we have added only three categories. While several applications are pending, given the extensiveness of the existing categories, it appears likely that the number of new categories to be established in future years will be small.[4] The likely volume of claims represented by these new categories is of course speculative, but it also does not seem likely to be large relative to the size of the OPPS system. As discussed below, we developed criteria for the establishment of new categories that were specifically intended to limit future pass-through payments to devices that provide a substantial clinical improvement.

Considering that the identified alternatives do not appear to be manifestly superior to the current system but do involve significantly more administrative resources, and given the anticipated small volume of transitional pass-through devices in the future, we think on balance it would be best to let more experience develop with the current system before making significant changes to the current method.

However, we agree that it would be desirable to give the Secretary authority

[3] In accord with the BBRA amendment that established the pass-through payment methodology, items are only eligible for pass-through payments for 2 to 3 years. After expiration of pass-through status, payments for devices described by these categories will be packaged into APC payments for the procedures with which they are used.

[4] If a new device arrives on the market that would have fit in a category formerly in use but subsequently retired, it will not be eligible for pass-through payment.

to use alternatives to AWP when determining payments for pass-through drugs and biologicals. At present, total payment for these items is governed by the general rule (section 1842(o) of the Act) for Medicare pricing of drugs, which requires they be paid at 95 percent of AWP. This rule also covers most drugs delivered "incident to" physicians' services in physicians' offices and elsewhere. The Congress is at present considering various changes to the AWP as the basis for Medicare payment for drugs, and if a change is adopted to this standard, it may be an appropriate standard for transitional pass-through drugs and biologicals as well.

Recommendation: The Secretary should do the following:

- Ensure additional payments are made only for new or substantially improved technologies that are expensive in relation to the applicable ambulatory payment classification rate.
- Avoid basing national rates only on reported costs.
- Ensure that the same broad principles guide payments for new technologies in the inpatient and outpatient payment systems.

Response: We agree that additional payments should be limited to items that have the greatest merit and that have high costs not well captured in the existing payment structure. The Commission notes that limiting the number of transitional pass-through items limits the burdens on hospitals and us; reduces the likelihood of exceeding the statutory cap on aggregate pass-through payment, necessitating a uniform reduction in transitional pass-through payments; and limits the redistribution of funds across hospitals that are low versus high users of transitional pass-through items. We agree with these points. On November 2, 2001, we published an interim final rule with comment period in the **Federal Register** (66 FR 55850 to 55857) that set forth criteria we will use to evaluate whether to establish new categories of devices in the future. These criteria include tests of whether a device is new, whether it represents a substantial medical improvement for Medicare beneficiaries, and whether its costs are high relative to the payments that would otherwise be made.

Section 1833(t)(6)(D) of the Act prescribes the method for setting payment for transitional pass-through drugs and devices. The issue of possible alternatives is discussed above.

We agree that the same principles should govern payments for new technologies in the inpatient and outpatient prospective payment systems. Criteria governing extra new technology payments in the IPPS were established in a final rule published in the **Federal Register** (66 FR 46902 to 46925) on September 7, 2001. The criteria have the same general form as those for the OPPS. They differ in some particulars, largely traceable to the difference of the two payment systems. In particular, the IPPS system pays on the basis of an episode of care. As a result, the bundle of payment is generally larger and hospitals are better able to absorb minor cost differences. Considering the impact of new technology on all costs of the episode is also pertinent. Consequently, the criteria for special payment for inpatient new technologies require examination of the net effect on costs of the entire episode (not just the added costs of a new technology), and the relative cost standard we established is somewhat more stringent than for the OPPS. We believe it is premature to judge whether it will make sense to make these criteria even closer in the future, as the Commission's discussion suggests.

X. Summary of Proposed Changes for 2003

A. Changes Required by Statute

We are proposing the following changes to implement statutory requirements:

- Add APCs, delete APCs, and modify the composition of some existing APCs.
- Recalibrate the relative payment weights of the APCs.
- Update the conversion factor and the wage index.
- Revise the APC payment amounts to reflect the APC reclassifications, the recalibration of payment weights, and the other required updates and adjustments.
- Cease transitional pass-through payments for drugs and biologicals (including blood and blood products) and devices (including brachytherapy), that will, on January 1, 2003, have been paid under transitional pass-through methodology for at least 2 years.

B. Additional Changes to OPPS and Payment Suspension Provisions

We are proposing the following additional changes to the OPPS and Payment Suspension Provisions:

- Creation of new evaluation and management service codes for outpatient clinic and emergency department encounters for implementation no earlier than January 1, 2004.
- Changes to the list of services that we do not pay in outpatient departments because we define them as "inpatient only" procedures.
- Changes to our policy of nonpayment for procedures on the "inpatient only" list in special cases involving death or transfer before inpatient admission.
- Changes to our policy governing observation in cases of direct admission to observation.
- Changes to status indicators for HCPCS codes.
- Changes to our policies governing dialysis for ESRD patients and regarding partial hospitalization.

In addition, we are making changes to payment suspension policies.

C. Changes to the Regulations Text

A. We propose to make the following changes to our regulations:

- Amend § 410.43(b) to add clinical social worker services (for the diagnosis and treatment of mental illnesses) that meet the requirements of section 1861(hh)(2) of the Act to the specified professional services that are separately covered and not paid as partial hospitalization services.
- Amend § 419.66(c)(1) to specify that we must establish a new category for a medical device if it is not described by any category previously in effect as well as an existing category.

XI. Summary of Proposed Payment Suspension Provisions

In this rule, we propose to revise § 405.371 (c) to specify that we may suspend Medicare payments "in whole or in part" if a provider has failed to timely file an acceptable cost report. This provision is consistent with the existing provisions in § 405.371(a) governing the suspension of Medicare payments "in whole or in part" under certain conditions. We believe the Medicare program would benefit because immediate complete payment suspension can be disruptive to providers and may negatively affect the care of Medicare patients.

XII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

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- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

This rule does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

XIII. Response to Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments concerning the provisions of this proposed rule that we receive by the date and time specified in the **DATES** section of this preamble and respond to those comments in the preamble to that rule.

XIV. Regulatory Impact Analysis

The regulatory impact analysis for this proposed rule consists of an impact analysis for the OPPS provisions and a regulatory impact statement for the provision for payment suspension for unfiled cost reports.

A. OPPS

1. General

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 16, 1980 Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

We estimate the effects of the provisions that would be implemented by this proposed rule would result in expenditures exceeding $100 million in any 1 year. We estimate the total increase (from changes in the proposed rule as well as enrollment, utilization, and case mix changes) in expenditures under the OPPS for CY 2003 compared to CY 2002 to be approximately $1.372 billion. Therefore, this proposed rule is an economically significant rule under Executive Order 12866, and a major rule under 5 U.S.C. 804(2).

The RFA requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 to $29 million or less in any 1 year (see 65 FR 69432).

For purposes of the RFA we have determined that approximately 37 percent of hospitals and 98 percent of mental health practitioners would be considered small entities according to the Small Business Administration (SBA) size standards. We do not have data available to calculate the percentages of entities in the pharmaceutical preparation manufacturing, biological products, or medical instrument industries. For the pharmaceutical preparation manufacturing industry (NAICS 325412), the size standard is 750 or fewer employees and $67.6 billion in annual sales (1997 business census). For biological products (except diagnostic) (NAICS 325414) $5.7 billion and medical instruments (NAICS 339112), with $18.5 billion in annual sales, the standard is 50 or fewer employees (see the standards web site at *http://www.sba.gov/regulations/siccodes/*). Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (MSA) and has fewer than 100 beds (or New England County Metropolitan Area (NECMA)). Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the OPPS, we classify these hospitals as urban hospitals. We believe that the changes in this proposed rule would affect both a substantial number of rural hospitals as well as other classes of hospitals and that the effects on some may be significant. Therefore, we conclude that this proposed rule has a significant impact on a substantial number of small entities. However, the statute provides for small rural hospitals (of less than 100 beds) to be held harmless by the law and to continue to be paid at cost; therefore this proposed rule has no impact on them.

Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This proposed rule would not mandate any requirements for State, local, or tribal governments. This proposed rule imposes no unfunded mandates on the private sector.

Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct costs on State and local governments, preempts State law, or otherwise has Federalism implications.

We have examined this proposed rule in accordance with Executive Order 13132, Federalism, and have determined that it will not have an impact on the rights, roles, and responsibilities of State, local or tribal governments. The impact analysis (see table 10) shows that payments to governmental hospitals (including State, local and tribal governmental hospitals) would increase by 5 percent under the proposed rule.

2. Changes in this Proposed Rule

We are proposing several changes to the OPPS that are required by the statute. We are required under section 1833(t)(3)(C)(ii) of the Act to update annually the conversion factor used to determine the APC payment rates. We are also required under section 1833(t)(9)(A) of the Act to revise, not less often than annually, the wage index and other adjustments. In addition, we must review the clinical integrity of payment groups and weights at least annually. Accordingly, in this proposed rule, we are updating the conversion factor and the wage index adjustment for hospital outpatient services furnished beginning January 1, 2003 as we discuss in sections VI and IV, respectively, of this preamble. We are also proposing revisions to the relative APC payment weights based on claims data from January 1, 2001 through December 31, 2001. Finally, we are proposing to remove 95 devices and more than 200 drugs and biologicals from pass-through payment status.

Under this proposed rule, the change to the conversion factor as provided by statute would increase total OPPS payments by 3.5 percent in 2003. The changes to the wage index and to the APC weights (which incorporates the cessation of pass-through payments for many drugs and devices) do not increase OPPS payments because the OPPS is budget neutral. However, the wage index and APC weight changes do change the distribution of payments within the budget neutral system as shown in Table 10 and described in more detail in this section.

Alternatives Considered

Alternatives to the changes we propose and the reason that we did not choose to propose them are discussed throughout this proposed rule. Below we discuss options we considered when analyzing methodologies to appropriately recognize the costs of former pass-through items. For a more detailed discussion, see section III.C.1 regarding the expiration of pass-through payment for devices and section III.C.2 regarding the expiration of pass-through payment for drugs and biologicals.

Payment for Categories of Devices

We considered establishing separate APCs for categories of devices and paying for them separately. We did not propose this option because we believe that to the extent possible, hospital payment for procedures and visits should include all of the costs required to provide the procedures and visits.

A second option we considered involved (1) packaging some categories of devices into the procedures with which they were billed in 2001 and (2) paying the rest through separate APCs (as discussed in section III.C.). We did not propose this option because we believe that devices are routinely used in the services for which they are needed and therefore are consistently paid at the cost of providing the service. Furthermore, criteria that would provide a basis for some devices to be packaged and for others to be paid separately would have to be developed and approved, thereby further complicating an already complex payment system.

Payment for Drugs and Biologicals

We considered continuing to make separate payment for all drugs and biologicals through separate APCs. We did not propose to pay separately for all drugs through separate APCs because we believe that, to the extent possible, hospital payment for services should include all of the costs of the services. We believe that drugs should be packaged with the services in which they are furnished except when we determine that there is a valid reason to do otherwise. However, we recognize that (unlike the stability that exists with device usage with the applicable procedures) the use of drugs may vary widely depending upon patient and disease characteristics. Therefore, packaging payment for all drugs may, in some cases, provide inadequate payment for the services furnished. Where a hospital has a disproportionate share of patients who need greater amounts of expensive drugs, underpayment for the drugs needed by these patients could result in cessation of needed services. For the first year that we are ceasing transitional pass-through payment for drugs, we decided to proceed cautiously by proposing to pay separately for drugs when the cost per encounter was more than $150 or when special characteristics existed (for example, orphan drugs, blood products).

We also considered packaging the costs of all drugs into the cost of the associated procedures with which they were billed in 2001. We did not package all payment for drugs into the payment for the procedures because, while this packaging is ultimately our goal, we believe, for the reasons indicated above, that we need to proceed cautiously to ensure that we do not inadvertently threaten access to needed care.

Conclusion

It is clear that the changes in this proposed rule would affect both a substantial number of rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this proposed rule, constitutes a regulatory impact analysis.

The OPPS rates proposed for CY 2003 would have, overall, a positive effect for every category of hospital with the exception of children's hospitals, which are held harmless under the OPPS. The changes in the OPPS proposed for 2003 would result in an overall 3.5 percent increase in Medicare payments to hospitals, exclusive of outlier and transitional pass-through payments and transitional corridor payments. As described in the preamble, budget neutrality adjustments are made to the conversion factor and the weights to assure that the revisions in the wage index, APC groups, and relative weights do not affect aggregate payments. The impact of the wage and recalibration changes does vary somewhat by hospital group. Estimates of these impacts are displayed on Table 10.

The overall projected increase in payments for urban hospitals is slightly lower (2.5 percent) than the average increase for all hospitals (3.5 percent) while the increase for rural hospitals is significantly greater (7.6 percent) than the average increase. Rural hospitals gain 2.3 percent from the wage index change, and also gain 1.6 percent from APC changes. A discussion of the distribution of outlier payments that we project under this proposed rule can be found under section D below. Table 11 presents the outlier distribution that we expect to see under this proposed rule.

3. Limitations of Our Analysis

The distributional impacts represent the projected effects of the proposed policy changes, as well as statutory changes effective for 2003, on various hospital groups. We estimate the effects of individual policy changes by estimating payments per service while holding all other payment policies constant. We use the best data available but do not attempt to predict behavioral responses to our policy changes. In addition, we do not make adjustments for future changes in variables such as service volume, service mix, or number of encounters.

4. Estimated Impacts of This Proposed Rule on Hospitals

The OPPS is a budget neutral payment system under which the increase to the total payments made under OPPS is limited by the increase to the conversion factor set under the methodology in the statute. The impact tables show the redistributive effects of the wage index and APC changes. In some cases, under this proposed rule, hospitals would receive more total payment than in 2002 while in other cases they would receive less total payment than they received in 2002. The impact of this proposed rule would depend on a number of factors, most significant of which are the mix of services furnished by a hospital (for example, how the APCs for the hospital's most frequently furnished services would change) and the impact of the wage index changes on the hospital.

Column 4 in Table 10 represents the full impact on each hospital group of all

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the changes for 2003. Columns 2 and 3 in the table reflect the independent effects of the proposed change in the wage index and the APC reclassification and recalibration changes, respectively. We excluded critical access hospitals (CAHs) from the analysis of the impact of the proposed 2003 OPPS rates that is summarized in Table 10. For that reason, the total number of hospitals included in Table 10 (4,551) is lower than in previous years. CAHs are excluded from the OPPS.

In general, the wage index changes favor rural hospitals, particularly the largest in bed size and volume. The only rural hospitals that would experience a negative impact due to wage index changes are those in Puerto Rico, a decrease of 2.8 percent. Conversely, the urban hospitals are generally negatively affected by wage index changes, with the largest decreases occurring in those with 300–499 beds (−0.7 percent) and those in the Middle Atlantic (−1.3 percent), Pacific (−.09 percent) and Puerto Rico Regions (−1.8 percent). However, this effect is somewhat lessened by the distribution of outlier payments as discussed in more detail below.

The APC reclassification and recalibration changes also favor rural hospitals and have a negative effect on urban hospitals in excess of 200 beds. Specifically, urban hospitals with 200–299 beds (−0.5 percent decrease), urban hospitals with 300–499 beds (−2.0 percent decrease) and urban hospitals in excess of 500 beds (a −1.9 percent decrease) all show a decrease attributed to APC recalibration. We believe this occurs as a result of our folding 75 percent of estimated pass-through device costs into APC payments in the 2002 OPPS. Specifically, a comparison of the relative payment weights proposed for 2003, as listed in Addendum A, with the final 2002 relative payment weights in the March 1, 2002 final rule shows a decrease in the weights for certain APCs in 2002 that included a fold-in of 75 percent of estimated pass-through device costs. We relied on cost information supplied by device manufacturers in estimating the device costs to be folded in when calculating the median APC costs for the 2002 OPPS, whereas the proposed 2003 relative payment weights are based on actual hospital charges and utilization under the OPPS as reported by hospitals. We believe this downward tendency in the payment weights for APCs that include device costs, based on actual hospital experience, accounts in part for the lower positive effect of the proposed 2003 rates on urban hospitals and on teaching hospitals, which tend to perform a higher number of procedures involving costly new technology devices, in contrast with an increased positive effect in 2003 on rural and non-teaching hospitals, which tend to furnish a higher volume of clinic and preventive services than procedures associated with expensive new technology devices.

In both urban and rural areas, hospitals that provide a lower volume of outpatient services are projected to receive a larger increase in payments than higher volume hospitals. In rural areas, hospitals with volumes of fewer than 5000 services are projected to experience a significant increase in payments (8.1 percent). The less favorable impact for the high volume urban hospitals is attributable to both wage index and APC changes. For example, urban hospitals providing more than 42,999 services are projected to gain a combined 1.6 percent due to these changes.

Major teaching hospitals are projected to experience a smaller increase in payments (1.7 percent) than the aggregate for all hospitals (3.5 percent) due to negative impacts of the wage index (−0.5 percent) and recalibration (−1.2 percent). Hospitals with less intensive teaching programs are projected to experience an overall increase (2.0 percent) that is smaller than the average for all hospitals. There is little difference in impact among hospitals with that serve low-income patients.

TABLE 10.—IMPACT OF CHANGES FOR CY 2003 HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM

[Percent change in total payment to hospitals (program and beneficiary); does not include the effects of outlier and transitional pass-through payments or of transitional corridor payments.]

	Number of hospitals [1] (1)	New wage index [2] (2)	APC changes) [3] (3)	All CY 2003 changes [4] (4)
ALL HOSPITALS	4,551	0.0	0.0	3.5
NON-TEFRA HOSPITALS	4,002	0.0	−0.1	3.4
URBAN HOSPS	2,429	−0.6	−0.5	2.5
LARGE URBAN (GT 1 MILL.)	1,398	−0.7	−0.1	2.6
OTHER URBAN (LE 1 MILL.)	1,031	−0.4	−0.9	2.2
RURAL HOSPS	1,573	2.3	1.6	7.6
BEDS (URBAN):				
0–99 BEDS	554	−0.3	3.1	6.4
100–199 BEDS	882	−0.6	1.4	4.3
200–299 BEDS	488	−0.6	−0.5	2.3
300–499 BEDS	364	−0.7	−2.0	0.7
500+ BEDS	141	−0.3	−1.9	1.3
BEDS (RURAL):				
0–49 BEDS	754	0.4	2.9	7.0
50–99 BEDS	479	1.5	2.3	7.6
100–149 BEDS	201	2.4	1.5	7.6
150–199 BEDS	73	5.5	0.1	9.5
200+ BEDS	66	3.3	0.0	7.0
VOLUME (URBAN):				
LT 5,000	188	0.9	6.5	10.9
5,000–10,999	305	−0.8	5.1	7.9
11,000–20,999	472	−0.7	2.6	5.5
21,000–42,999	657	−0.8	0.3	3.0
GT 42,999	807	−0.5	−1.4	1.6
VOLUME (RURAL):				
LT 5,000	326	0.2	4.2	8.1
5,000–10,999	446	0.6	4.4	8.7

TABLE 10.—IMPACT OF CHANGES FOR CY 2003 HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent change in total payment to hospitals (program and beneficiary); does not include the effects of outlier and transitional pass-through payments or of transitional corridor payments.]

	Number of hospitals [1] (1)	New wage index [2] (2)	APC changes) [3] (3)	All CY 2003 changes [4] (4)
11,000–20,999	373	1.3	2.7	7.7
21,000–42,999	290	1.9	1.4	6.9
GT 42,999	138	4.3	−0.2	7.8
REGION (URBAN):				
NEW ENGLAND	127	−0.6	0.6	3.4
MIDDLE ATLANTIC	372	−1.3	0.2	2.3
SOUTH ATLANTIC	370	−0.2	−0.1	3.2
EAST NORTH CENT.	413	−0.7	−1.4	1.4
EAST SOUTH CENT.	153	−0.6	−1.0	1.9
WEST NORTH CENT.	172	−0.3	−1.6	1.6
WEST SOUTH CENT.	293	0.5	−0.7	3.3
MOUNTAIN	122	−0.4	−1.1	1.9
PACIFIC	368	−0.9	0.6	3.1
PUERTO RICO	39	−1.8	4.7	6.4
REGION (RURAL):				
NEW ENGLAND	40	1.6	1.3	6.5
MIDDLE ATLANTIC	63	2.2	1.3	7.2
SOUTH ATLANTIC	226	2.6	2.1	8.4
EAST NORTH CENT.	213	1.2	−0.2	4.6
EAST SOUTH CENT.	232	2.3	2.6	8.7
WEST NORTH CENT.	271	2.0	0.9	6.6
WEST SOUTH CENT.	278	1.8	3.2	8.8
MOUNTAIN	141	4.1	1.3	9.2
PACIFIC	104	5.6	2.7	12.1
PUERTO RICO	5	−2.8	10.4	11.1
TEACHING STATUS:				
NON-TEACHING	2,935	0.4	1.1	5.0
MINOR	782	−0.4	−1.1	2.0
MAJOR	284	−0.5	−1.2	1.7
DSH PATIENT PERCENT:				
0	11	4.9	10.1	19.4
GT 0–0.10	982	−0.2	−0.4	3.0
0.10–0.16	873	0.7	−0.8	3.4
0.16–0.23	767	−0.6	−0.3	2.6
0.23–0.35	756	−0.2	0.1	3.4
GE 0.35	613	−0.1	2.2	5.8
URBAN IME/DSH:				
IME & DSH	982	−0.7	−1.2	1.6
IME/NO DSH	0	0.0	0.0	0.0
NO IME/DSH	1,441	−0.4	0.7	3.8
NO IME/NO DSH	6	5.4	9.8	19.7
RURAL HOSP. TYPES:				
NO SPECIAL STATUS	610	0.7	2.7	7.1
RRC	167	4.2	0.2	8.2
SCH/EACH	507	1.5	2.7	7.8
MDH	199	0.8	2.1	6.6
SCH AND RRC	75	4.0	0.5	8.2
TYPE OF OWNERSHIP:				
VOLUNTARY	2,440	−0.1	−0.4	3.1
PROPRIETARY	707	−0.6	0.9	3.8
GOVERNMENT	855	0.7	0.7	5.0
SPECIALTY HOSPITALS:				
EYE AND EAR	13	−1.4	11.5	13.7
TRAUMA	153	−0.3	−1.5	1.6
CANCER	10	0.5	−3.9	0.2
TEFRA HOSPITALS (NOT INCLUDED ON OTHER LINES):				
REHAB	166	10.3	2.8	16.9
PSYCH	198	0.1	15.9	20.1
LTC	143	1.3	15.9	20.4
CHILDREN	42	−1.4	−2.8	−0.9

Note: For CY 2003, under the OPPS transitional corridor policy, the following categories of hospitals are held harmless compared to their 1996 payment margin for these services: cancer and children's hospitals and rural hospitals with 100 or fewer beds.

[1] Some data necessary to classify hospitals by category were missing; thus, the total number of hospitals in each category may not equal the national total.

[2] This column shows the impact of updating the wage index used to calculate payment by applying the proposed FY 2003 hospital inpatient wage index after geographic reclassification by the Medicare Geographic Classification Review Board. The hospital inpatient proposed rule for FY 2003 was published in the FEDERAL REGISTER on May 9, 2002.

[3] This column shows the impact of changes resulting from the reclassification of HCPCS codes among APC groups and the recalibration of APC weights based on 2001 hospital claims data.

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[4] This column shows changes in total payment from CY 2002 to CY 2003, excluding outlier and pass-through payments. It incorporates all of the changes reflected in columns 2 and 3. In addition, it shows the impact of the proposed CY 2003 payment update. The sum of the columns may be different from the percentage changes shown here due to rounding.

As stated elsewhere in this preamble, we propose to allocate 2 percent of the estimated 2003 expenditures to outlier payments. In Table 11 below, we provide a distribution by percentage of the total projected outlier payments for the categories of hospitals that we show in the impact table (Table 10).

We project, based on the mix of services for the hospitals that will be paid under the OPPS in 2003, that most hospitals will receive outlier payments. It appears that, with the exception of some smaller bed hospitals, all Tax Equity & Fiscal Responsibility Act of 1982 (TEFRA) hospitals can be expected to receive outlier payments. This is because TEFRA hospitals provide an atypical mix of specialty services (which account for less than 1 percent of total OPPS payment before consideration of outliers). A greater percentage of non-TEFRA hospitals are not projected to receive outlier payments.

The anticipated outlier payments for urban hospitals can be expected to ameliorate the impact of the wage index and APC changes on payments to urban hospitals.

TABLE 11.—DISTRIBUTION OF OUTLIER PAYMENTS FOR CY 2003 HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM

	Number of hosps	Percent of total hosps	Number of hosps with outliers	Percent of total outlier payments
ALL HOSPITALS	4,551	100.00	4,306	100.00
NON-TEFRA HOSPITALS	4,002	88.00	3,987	99.40
URBAN HOSPS	2,429	53.40	2,420	83.20
LARGE URBAN (GT 1 MILL.)	1,398	30.80	1,396	55.20
OTHER URBAN (LE 1 MILL.)	1,031	22.60	1,024	28.00
RURAL HOSPS	1,573	34.60	1,567	16.00
BEDS (URBAN):				
0–99 BEDS	554	12.20	550	6.80
100–199 BEDS	882	19.40	877	18.20
200–299 BEDS	488	10.80	488	16.20
300–499 BEDS	364	8.00	364	21.00
500+ BEDS	141	3.00	141	21.00
BEDS (RURAL):				
0–49 BEDS	754	16.60	751	4.20
50–99 BEDS	479	10.60	477	5.00
100–149 BEDS	201	4.40	200	2.60
150–199 BEDS	73	1.60	73	2.00
200+ BEDS	66	1.40	66	2.40
VOLUME (URBAN):				
LT 5,000	188	4.20	180	1.00
5,000–10,999	310	6.80	309	2.80
11,000–20,999	467	10.20	467	7.00
21,000–42,999	659	14.40	659	15.80
GT 42,999	805	17.60	805	56.60
VOLUME (RURAL):				
LT 5,000	326	7.20	321	1.00
5,000–10,999	447	9.80	446	2.60
11,000–20,999	372	8.20	372	3.80
21,000–42,999	290	6.40	290	4.20
GT 42,999	138	3.00	138	4.40
REGION (URBAN):				
NEW ENGLAND	127	2.80	126	6.20
MIDDLE ATLANTIC	372	8.20	371	22.80
SOUTH ATLANTIC	370	8.20	369	11.00
EAST NORTH CENT.	413	9.00	409	15.60
EAST SOUTH CENT.	153	3.40	152	3.40
WEST NORTH CENT.	172	3.80	172	4.40
WEST SOUTH CENT.	293	6.40	292	8.20
MOUNTAIN	122	2.60	122	3.00
PACIFIC	368	8.00	368	8.60
PUERTO RICO	39	0.80	39	0.20
REGION (RURAL):				
NEW ENGLAND	40	0.80	40	1.00
MIDDLE ATLANTIC	63	1.40	63	1.00
SOUTH ATLANTIC	226	5.00	223	3.00
EAST NORTH CENT.	213	4.60	212	3.00
EAST SOUTH CENT.	232	5.00	232	1.60
WEST NORTH CENT.	271	6.00	270	2.40
WEST SOUTH CENT.	278	6.20	278	1.60
MOUNTAIN	141	3.00	141	1.40
PACIFIC	104	2.20	103	1.20
PUERTO RICO	5	0.20	5	0.00
TEACHING STATUS:				
NON-TEACHING	2,935	64.40	2,920	39.80

TABLE 11.—DISTRIBUTION OF OUTLIER PAYMENTS FOR CY 2003 HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM—Continued

	Number of hosps	Percent of total hosps	Number of hosps with outliers	Percent of total outlier payments
MINOR	782	17.20	782	27.20
MAJOR	284	6.20	284	32.20
DSH PATIENT PERCENT:				
0	11	0.20	10	0.00
GT 0—0.10	982	21.60	978	24.80
0.10—0.16	873	19.20	873	19.40
0.16—0.23	767	16.80	765	17.60
0.23—0.35	756	16.60	753	20.00
GE 0.35	613	13.40	608	17.40
URBAN IME/DSH:				
IME & DSH	982	21.60	982	57.20
IME/NO DSH	0	0.00	0	0.00
NO IME/DSH	1,441	31.60	1,433	26.00
NO IME/NO DSH	6	0.20	5	0.00
RURAL HOSP. TYPES:				
NO SPECIAL STATUS	621	13.60	617	5.20
RRC	167	3.60	166	4.00
SCH/EACH	511	11.20	511	4.40
MDH	199	4.40	198	1.00
SCH AND RRC	75	1.60	75	1.40
TYPE OF OWNERSHIP:				
VOLUNTARY	2,440	53.60	2,435	73.60
PROPRIETARY	707	15.60	702	10.40
GOVERNMENT	855	18.80	850	15.20
SPECIALTY HOSPITALS:				
EYE AND EAR	13	0.20	13	0.20
TRAUMA	153	3.40	153	15.00
CANCER	10	0.20	10	3.80
TEFRA HOSPITALS (NOT INCLUDED ON OTHER LINES):				
REHAB	166	3.60	113	0.20
PSYCH	198	4.40	65	0.20
LTC	143	3.20	100	0.20
CHILDREN	42	1.00	41	0.20

5. Estimated Impacts of This Proposed Rule on Beneficiaries

For services for which the beneficiary pays a coinsurance of 20 percent of the payment rate, the beneficiary share of payment would increase for services for which OPPS payments would rise and would decrease for services for which OPPS payments would fall. For example for a mid level office visit (APC 0601), the minimum unadjusted copayment in 2002 was $9.67; under this proposed rule, the minimum unadjusted copayment would be $10.82 because the OPPS payment for the service would increase under this proposed rule. For some services (those services for which a national unadjusted copayment amount is shown in Addendum B), however, the beneficiary copayment is frozen based on historic data and would not change, therefore not presenting any potential impact on beneficiaries.

However, in all cases, the statute limits beneficiary liability for copayment for a service to the inpatient hospital deductible for the applicable year. This amount was $812 for 2002, but is not yet determined for 2003. In general, the impact of this proposed rule on beneficiaries would vary based on the service the beneficiary receives and whether the copayment for the service is one that is frozen under the OPPS.

B. Payment Suspension for Unfiled Cost Reports

Overall Impact

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. (A description of each of these requirements is stated above in section XIV.A.1.) We have determined that the proposed payment suspension provision does not have an economic impact on Medicare payments or other payments to providers. We are proposing to allow the Secretary flexibility in payment suspensions, but we are not altering the final payment determination in any way. With the implementation of the various prospective payment systems, the majority of the payment to providers is based on the PPS methodology and not on the cost report. Suspending all payments because the cost report is not timely filed negatively affects providers. Providing the Secretary with flexibility in payment suspension can lessen the financial impact on providers. For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals. Under the requirement for Unfunded Mandates, this proposed rule will not have an economic effect on State, local, or tribal governments, in the aggregate, or on the private sector.

Anticipated Effects

1. Effects on providers that file cost reports. The majority of providers that file cost reports comply with the timeliness provisions and will be unaffected by this proposed regulation.

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In FY 2000, collectively 16 percent of hospitals, skilled nursing facilities, and home health agencies filed late cost reports. Of this 16 percent, 65 percent of those were only 1 day late. Currently, when a provider fails to file an acceptable cost report, the provider is placed on a complete payment suspension. Under this provision, for those providers who do not file timely, an immediate payment suspension less than the total suspension currently required might be imposed if the Secretary deemed it appropriate, which would allow the provider to more easily continue operations while completing and submitting the acceptable cost report.

2. Effects on other providers. The payment suspension provision does not affect other providers.

3. Effects on the Medicare Program. The provision would allow the Secretary to more effectively manage the Medicare program by imposing other than complete payment suspension when it is appropriate to do so. The Medicare program benefits because immediate complete payment suspension can be disruptive to providers and may negatively affect the care of Medicare patients. There are no costs to the Medicare program to doing so, because when the cost report is submitted, the suspended payments are returned to the provider.

4. Effects on Beneficiaries. We have determined that this provision has a potentially positive impact on beneficiaries. Under this proposed provision the Secretary will have the discretion to impose less than 100 percent payment suspension when a provider fails to timely file an acceptable cost report. Doing so will lessen the financial burden on the provider and thereby allow it to provide adequate services to its patient population as it works to complete and file an acceptable cost report.

Alternatives Considered

We considered not revising existing § 405.371(c) to provide that payment suspension could be "in whole or in part". However, we did not choose this option because we believe the Secretary should have the discretion to impose partial payment suspensions when circumstances warrant in order to more effectively manage the Medicare program.

Conclusion

In conclusion, we have determined that the proposed payment suspension provision does not have an economic impact on Medicare payments.

Federalism

Since this regulation does not impose any costs on State or local governments, it will not have an effect on State or local governments. State or local governments will have no roles or responsibilities associated with this provision.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 419

Hospitals, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart C—Suspension of Payment, Recovery of Overpayments, and Repayment of Scholarships and Loans

1. The authority citation for subpart C continues to read as follows:

Authority: Secs. 1102, 1815, 1833, 1842, 1866, 1870, 1871, 1879, and 1892 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395cc, 1395gg, 1395hh, 1395pp, and 1395ccc) and 31 U.S.C. 3711.

2. Section 405.371(c) is revised to read as follows:

§ 405.371 Suspension, offset and recoupment of Medicare payments to providers and suppliers of services.

* * * * *

(c) Suspension of payment in the case of unfiled cost reports. If a provider has failed to timely file an acceptable cost report, payment to the provider is immediately suspended in whole or in part until a cost report is filed and determined by the intermediary to be acceptable. In the case of an unfiled cost report, the provisions of § 405.372 do not apply. (See § 405.372(a)(2) concerning failure to furnish other information.)

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In 410.43 republish the introductory text of paragraph (b), and add a new paragraph (b)(6) to read as follows:

§ 410.43 Partial hospitalization services: Conditions and exclusions.

* * * * *

(b) The following services are separately covered and not paid as partial hospitalization services:

* * * * *

(6) Clinical social worker services that meet the requirements of section 1861(hh)(2) of the Act.

PART 419—PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1833(t), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395l(t), and 1395hh).

§ 419.66 [Amended]

2. In § 419.66, paragraph (c)(1) is amended by adding the phrase "or by any category previously in effect" after "categories" and before "and'.

Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 31, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 5, 2002.

Tommy G. Thompson,

Secretary.

BILLING CODE 4120–01–P

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2003

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0620	Critical Care	S	10.25	$533.09	$150.55	$106.62
0656	Transcatheter Placement of Drug-Eluting Coronary Stents	T	90.90	$4,927.70		$985.54
0657	Placement of Tissue Clips	S	1.38	$71.77		$14.35
0658	Percutaneous Breast Biopsies	T	5.57	$289.69		$57.94

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2003

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0001	Level I Photochemotherapy	S	0.43	$22.36	$7.88	$4.47
0002	Fine needle Biopsy/Aspiration	T	0.63	$32.77	$8.52	$6.55
0003	Bone Marrow Biopsy/Aspiration	T	1.24	$64.49	$27.08	$12.90
0004	Level I Needle Biopsy/Aspiration Except Bone Marrow.	T	1.63	$84.77	$22.04	$16.95
0005	Level II Needle Biopsy /Aspiration Except Bone Marrow.	T	3.02	$157.07	$69.11	$31.41
0006	Level I Incision & Drainage	T	1.89	$98.30	$25.56	$19.66
0007	Level II Incision & Drainage	T	9.44	$490.96	$103.10	$98.19
0008	Level III Incision and Drainage	T	16.32	$848.79		$169.76
0009	Nail Procedures	T	0.68	$35.37	$8.34	$7.07
0010	Level I Destruction of Lesion	T	0.70	$36.41	$10.56	$7.28
0011	Level II Destruction of Lesion	T	1.93	$100.38	$27.88	$20.08
0012	Level I Debridement & Destruction	T	0.76	$39.53	$10.67	$7.91
0013	Level II Debridement & Destruction	T	1.10	$57.21	$14.30	$11.44
0015	Level III Debridement & Destruction	T	1.43	$74.37	$18.59	$14.87
0016	Level IV Debridement & Destruction	T	2.57	$133.66	$56.14	$26.73
0017	Level VI Debridement & Destruction	T	16.46	$856.07	$227.84	$171.21
0018	Biopsy of Skin/Puncture of Lesion	T	0.92	$47.85	$15.79	$9.57
0019	Level I Excision/ Biopsy	T	3.94	$204.92	$75.82	$40.98
0020	Level II Excision/ Biopsy	T	7.36	$382.79	$114.84	$76.56
0021	Level III Excision/ Biopsy	T	14.58	$758.29	$227.49	$151.66
0022	Level IV Excision/ Biopsy	T	18.10	$941.36	$367.13	$188.27
0023	Exploration Penetrating Wound	T	2.38	$123.78	$40.37	$24.76
0024	Level I Skin Repair	T	2.00	$104.02	$37.45	$20.80
0025	Level II Skin Repair	T	5.89	$306.33	$116.41	$61.27
0027	Level IV Skin Repair	T	15.73	$818.10	$343.60	$163.62
0028	Level I Breast Surgery	T	17.44	$907.04	$303.74	$181.41
0029	Level II Breast Surgery	T	29.89	$1,554.55	$632.64	$310.91
0030	Level III Breast Surgery	T	40.23	$2,092.32	$763.55	$418.46
0032	Insertion of Central Venous/Arterial Catheter	T	7.14	$371.34		$74.27
0033	Partial Hospitalization	P	4.96	$257.96		$51.59
0035	Placement of Arterial or Central Venous Catheter	T	0.24	$12.48	$3.74	$2.50
0041	Level I Arthroscopy	T	27.58	$1,434.41	$580.06	$286.88
0042	Level II Arthroscopy	T	43.24	$2,248.87	$804.74	$449.77
0043	Closed Treatment Fracture Finger/Toe/Trunk	T	1.68	$87.38		$17.48
0045	Bone/Joint Manipulation Under Anesthesia	T	13.47	$700.56	$280.22	$140.11
0046	Open/Percutaneous Treatment Fracture or Dislocation.	T	29.03	$1,509.82	$535.76	$301.96
0047	Arthroplasty without Prosthesis	T	29.59	$1,538.95	$537.03	$307.79
0048	Arthroplasty with Prosthesis	T	36.93	$1,920.69	$633.83	$384.14
0049	Level I Musculoskeletal Procedures Except Hand and Foot.	T	19.45	$1,011.58		$202.32
0050	Level II Musculoskeletal Procedures Except Hand and Foot.	T	23.60	$1,227.41		$245.48
0051	Level III Musculoskeletal Procedures Except Hand and Foot.	T	34.03	$1,769.87		$353.97
0052	Level IV Musculoskeletal Procedures Except Hand and Foot.	T	42.37	$2,203.62		$440.72
0053	Level I Hand Musculoskeletal Procedures	T	14.76	$767.65	$253.49	$153.53
0054	Level II Hand Musculoskeletal Procedures	T	23.50	$1,222.21	$472.33	$244.44
0055	Level I Foot Musculoskeletal Procedures	T	18.28	$950.72	$355.34	$190.14
0056	Level II Foot Musculoskeletal Procedures	T	22.94	$1,193.09	$405.81	$238.62
0057	Bunion Procedures	T	23.87	$1,241.45	$496.58	$248.29
0058	Level I Strapping and Cast Application	S	1.09	$56.69	$14.74	$11.34
0060	Manipulation Therapy	S	0.36	$18.72		$3.74

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ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCs) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2003—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0068	CPAP Initiation	S	1.59	$82.69	$45.48	$16.54
0069	Thoracoscopy	T	29.51	$1,534.79	$591.64	$306.96
0070	Thoracentesis/Lavage Procedures	T	3.30	$171.63	.....	$34.33
0071	Level I Endoscopy Upper Airway	T	1.01	$52.53	$14.18	$10.51
0072	Level II Endoscopy Upper Airway	T	1.66	$86.33	$37.99	$17.27
0073	Level III Endoscopy Upper Airway	T	3.63	$188.79	$74.14	$37.76
0074	Level IV Endoscopy Upper Airway	T	12.84	$667.80	$295.70	$133.56
0075	Level V Endoscopy Upper Airway	T	20.41	$1,061.50	$445.92	$212.30
0076	Endoscopy Lower Airway	T	9.30	$483.68	$189.92	$96.74
0077	Level I Pulmonary Treatment	S	0.26	$13.52	$7.44	$2.70
0078	Level II Pulmonary Treatment	S	0.68	$35.37	$15.21	$7.07
0079	Ventilation Initiation and Management	S	1.63	$84.77	$16.80	$16.95
0080	Diagnostic Cardiac Catheterization	T	35.64	$1,853.60	$838.92	$370.72
0081	Non-Coronary Angioplasty or Atherectomy	T	22.69	$1,180.08	.....	$236.02
0082	Coronary Atherectomy	T	75.42	$3,922.52	$1,137.53	$784.50
0083	Coronary Angioplasty and Percutaneous Valvuloplasty.	T	47.83	$2,487.59	.....	$497.52
0084	Level I Electrophysiologic Evaluation	S	9.60	$499.29	.....	$99.86
0085	Level II Electrophysiologic Evaluation	T	31.77	$1,652.33	$363.51	$330.47
0086	Ablate Heart Dysrhythm Focus	T	43.70	$2,272.79	$772.75	$454.56
0087	Cardiac Electrophysiologic Recording/Mapping	T	5.81	$302.17	.....	$60.43
0088	Thrombectomy	T	33.96	$1,766.23	$678.68	$353.25
0089	Insertion/Replacement of Permanent Pacemaker and Electrodes.	T	108.92	$5,664.82	$1,642.80	$1,132.96
0090	Insertion/Replacement of Pacemaker Pulse Generator.	T	77.15	$4,012.49	$1,444.50	$802.50
0091	Level II Vascular Ligation	T	27.03	$1,405.80	$348.23	$281.16
0092	Level I Vascular Ligation	T	24.97	$1,298.66	$505.37	$259.73
0093	Vascular Repair/Fistula Construction	T	26.29	$1,367.32	$277.34	$273.46
0094	Level I Resuscitation and Cardioversion	S	2.68	$139.38	$47.39	$27.88
0095	Cardiac Rehabilitation	S	0.66	$34.33	$16.73	$6.87
0096	Non-Invasive Vascular Studies	S	1.82	$94.66	$48.15	$18.93
0097	Cardiac and Ambulatory Blood Pressure Monitoring	X	0.84	$43.69	$23.80	$8.74
0098	Injection of Sclerosing Solution	T	1.90	$98.82	$20.88	$19.76
0099	Electrocardiograms	S	0.38	$19.76	.....	$3.95
0100	Stress Tests and Continuous ECG	X	1.34	$69.69	$38.33	$13.94
0101	Tilt Table Evaluation	S	4.40	$228.84	$105.27	$45.77
0103	Miscellaneous Vascular Procedures	T	11.26	$585.62	$210.82	$117.12
0104	Transcatheter Placement of Intracoronary Stents	T	72.72	$3,782.09	.....	$756.42
0105	Revision/Removal of Pacemakers, AICD, or Vascular	T	19.14	$995.45	$370.40	$199.09
0106	Insertion/Replacement/Repair of Pacemaker and/or Electrodes.	T	29.23	$1,520.22	$410.46	$304.04
0107	Insertion of Cardioverter-Defibrillator	T	181.51	$9,440.15	$2,076.83	$1,888.03
0108	Insertion/Replacement/Repair of Cardioverter-Defibrillator Leads.	T	232.69	$12,101.97	.....	$2,420.39
0109	Removal of Implanted Devices	T	7.68	$399.43	$131.49	$79.89
0110	Transfusion	S	4.04	$210.12	.....	$42.02
0111	Blood Product Exchange	S	13.60	$707.32	$198.05	$141.46
0112	Apheresis, Photopheresis, and Plasmapheresis	S	39.40	$2,049.15	$612.47	$409.83
0113	Excision Lymphatic System	T	19.75	$1,027.18	.....	$205.44
0114	Thyroid/Lymphadenectomy Procedures	T	37.55	$1,952.94	$507.76	$390.59
0115	Cannula/Access Device Procedures	T	23.48	$1,221.17	$439.62	$244.23
0116	Chemotherapy Administration by Other Technique Except Infusion.	S	0.85	$44.21	.....	$8.84
0117	Chemotherapy Administration by Infusion Only	S	3.87	$201.27	$52.33	$40.25
0118	Chemotherapy Administration by Both Infusion and Other Technique.	S	5.68	$295.41	$72.03	$59.08
0119	Implantation of Devices	T	25.88	$1,345.99	.....	$269.20
0120	Infusion Therapy Except Chemotherapy	T	1.81	$94.14	$25.42	$18.83
0121	Level I Tube changes and Repositioning	T	2.17	$112.86	$45.14	$22.57
0122	Level II Tube changes and Repositioning	T	3.89	$202.32	$46.53	$40.46
0123	Bone Marrow Harvesting and Bone Marrow/Stem Cell Transplant.	S	4.86	$252.76	.....	$50.55
0124	Revision of Implanted Infusion Pump	T	23.47	$1,220.65	.....	$244.13
0125	Refilling of Infusion Pump	T	1.73	$89.98	.....	$18.00
0130	Level I Laparoscopy	T	31.99	$1,663.77	$659.53	$332.75
0131	Level II Laparoscopy	T	42.44	$2,207.26	$1,001.89	$441.45
0132	Level III Laparoscopy	T	57.95	$3,013.92	$1,239.22	$602.78
0140	Esophageal Dilation without Endoscopy	T	5.84	$303.73	$107.24	$60.75

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCs) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2003—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0141	Upper GI Procedures	T	7.82	$406.71	$150.48	$81.34
0142	Small Intestine Endoscopy	T	8.21	$426.99	$152.78	$85.40
0143	Lower GI Endoscopy	T	8.37	$435.32	$186.06	$87.06
0146	Level I Sigmoidoscopy	T	3.47	$180.47	$64.40	$36.09
0147	Level II Sigmoidoscopy	T	7.30	$379.67	$83.53	$75.93
0148	Level I Anal/Rectal Procedure	T	3.61	$187.75	$67.59	$37.55
0149	Level III Anal/Rectal Procedure	T	16.91	$879.47	$293.06	$175.89
0150	Level IV Anal/Rectal Procedure	T	22.02	$1,145.24	$437.12	$229.05
0151	Endoscopic Retrograde Cholangio-Pancreatography (ERCP).	T	18.23	$948.12	$245.46	$189.62
0152	Percutaneous Abdominal and Biliary Procedures	T	6.18	$321.42	$80.36	$64.28
0153	Peritoneal and Abdominal Procedures	T	25.99	$1,351.71	$540.68	$270.34
0154	Hernia/Hydrocele Procedures	T	26.98	$1,403.20	$491.12	$280.64
0155	Level II Anal/Rectal Procedure	T	10.05	$522.69	$188.17	$104.54
0156	Level II Urinary and Anal Procedures	T	3.10	$161.23	$48.37	$32.25
0157	Colorectal Cancer Screening: Barium Enema	S	2.73	$141.98	$22.19	$28.40
0158	Colorectal Cancer Screening: Colonoscopy	T	7.56	$393.19	.....	$98.30
0159	Colorectal Cancer Screening: Flexible Sigmoidoscopy	S	2.48	$128.98	.....	$32.25
0160	Level I Cystourethroscopy and other Genitourinary Procedures.	T	6.44	$334.94	$105.06	$66.99
0161	Level II Cystourethroscopy and other Genitourinary Procedures.	T	16.03	$833.70	$249.36	$166.74
0162	Level III Cystourethroscopy and other Genitourinary Procedures.	T	21.50	$1,118.19	.....	$223.64
0163	Level IV Cystourethroscopy and other Genitourinary Procedures.	T	24.77	$1,288.26	.....	$257.65
0164	Level I Urinary and Anal Procedures	T	1.18	$61.37	$18.41	$12.27
0165	Level III Urinary and Anal Procedures	T	12.62	$656.35	.....	$131.27
0166	Level I Urethral Procedures	T	15.63	$812.90	$218.73	$162.58
0167	Level III Urethral Procedures	T	27.15	$1,412.04	$555.84	$282.41
0168	Level II Urethral Procedures	T	24.10	$1,253.42	$405.60	$250.68
0169	Lithotripsy	T	46.44	$2,415.30	$1,115.69	$483.06
0170	Dialysis	S	4.79	$249.12	.....	$49.82
0179	Urinary Incontinence Procedures	T	81.28	$4,227.29	$1,817.73	$845.46
0180	Circumcision	T	18.95	$985.57	$304.87	$197.11
0181	Penile Procedures	T	29.88	$1,554.03	$621.82	$310.81
0182	Insertion of Penile Prosthesis	T	83.80	$4,358.35	$1,438.26	$871.67
0183	Testes/Epididymis Procedures	T	22.19	$1,154.08	$448.94	$230.82
0184	Prostate Biopsy	T	3.66	$190.35	$95.18	$38.07
0187	Miscellaneous Placement/Repositioning	X	4.19	$217.92	$94.96	$43.58
0188	Level II Female Reproductive Proc	T	1.12	$58.25	$11.95	$11.65
0189	Level III Female Reproductive Proc	T	1.63	$84.77	$18.60	$16.95
0190	Surgical Hysteroscopy	T	20.06	$1,043.30	$424.28	$208.66
0191	Level I Female Reproductive Proc	T	0.22	$11.44	$3.32	$2.29
0192	Level IV Female Reproductive Proc	T	2.94	$152.91	$42.81	$30.58
0193	Level V Female Reproductive Proc	T	14.57	$757.77	$171.13	$151.55
0194	Level VI Female Reproductive Proc	T	18.88	$981.93	$397.84	$196.39
0195	Level VII Female Reproductive Proc	T	24.37	$1,267.46	$483.80	$253.49
0196	Dilation and Curettage	T	16.32	$848.79	$338.23	$169.76
0197	Infertility Procedures	T	1.19	$61.89	$24.76	$12.38
0198	Pregnancy and Neonatal Care Procedures	T	1.33	$69.17	$32.92	$13.83
0199	Vaginal Delivery	T	5.69	$295.93	$72.98	$59.19
0200	Therapeutic Abortion	T	14.49	$753.61	$307.83	$150.72
0201	Spontaneous Abortion	T	15.84	$823.82	$329.65	$164.76
0202	Level VIII Female Reproductive Proc	T	39.09	$2,033.03	$996.18	$406.61
0203	Level IV Nerve Injections	T	10.96	$570.02	$256.51	$114.00
0204	Level I Nerve Injections	T	2.13	$110.78	$42.10	$22.16
0206	Level II Nerve Injections	T	4.89	$254.32	$75.55	$50.86
0207	Level III Nerve Injections	T	5.97	$310.49	$123.69	$62.10
0208	Laminotomies and Laminectomies	T	39.95	$2,077.76	.....	$415.55
0209	Extended EEG Studies and Sleep Studies, Level II	S	12.09	$628.79	$280.58	$125.76
0212	Nervous System Injections	T	3.53	$183.59	$84.45	$36.72
0213	Extended EEG Studies and Sleep Studies, Level I	S	3.38	$175.79	$70.41	$35.16
0214	Electroencephalogram	S	2.37	$123.26	$61.63	$24.65
0215	Level I Nerve and Muscle Tests	S	0.60	$31.21	.....	$6.24
0216	Level III Nerve and Muscle Tests	S	3.06	$159.15	$71.62	$31.83
0218	Level II Nerve and Muscle Tests	S	1.06	$55.13	.....	$11.03
0220	Level I Nerve Procedures	T	16.66	$866.47	.....	$173.29
0221	Level II Nerve Procedures	T	25.35	$1,318.43	$463.62	$263.69

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ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCs) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2003—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0222	Implantation of Neurological Device	T	140.56	$7,310.39		$1,462.08
0223	Implantation of Pain Management Device	T	20.30	$1,055.78		$211.16
0224	Implantation of Reservoir/Pump/Shunt	T	39.14	$2,035.63	$453.41	$407.13
0225	Implantation of Neurostimulator Electrodes	T	44.47	$2,312.84		$462.57
0226	Implantation of Drug Infusion Reservoir	T	44.20	$2,298.80		$459.76
0227	Implantation of Drug Infusion Device	T	128.03	$6,658.71		$1,331.74
0228	Creation of Lumbar Subarachnoid Shunt	T	55.05	$2,863.10	$696.46	$572.62
0229	Transcatherter Placement of Intravascular Shunts	T	49.00	$2,548.44	$662.59	$509.69
0230	Level I Eye Tests & Treatments	S	0.78	$40.57	$15.82	$8.11
0231	Level III Eye Tests & Treatments	S	2.24	$116.50	$52.43	$23.30
0232	Level I Anterior Segment Eye Procedures	T	4.91	$255.36	$112.36	$51.07
0233	Level II Anterior Segment Eye Procedures	T	13.43	$698.48	$266.33	$139.70
0234	Level III Anterior Segment Eye Procedures	T	21.45	$1,115.59	$535.48	$223.12
0235	Level I Posterior Segment Eye Procedures	T	5.62	$292.29	$81.84	$58.46
0236	Level II Posterior Segment Eye Procedures	T	20.62	$1,072.43		$214.49
0237	Level III Posterior Segment Eye Procedures	T	35.09	$1,825.00	$818.54	$365.00
0238	Level I Repair and Plastic Eye Procedures	T	3.04	$158.11	$58.96	$31.62
0239	Level II Repair and Plastic Eye Procedures	T	6.91	$359.38	$115.94	$71.88
0240	Level III Repair and Plastic Eye Procedures	T	16.99	$883.63	$315.31	$176.73
0241	Level IV Repair and Plastic Eye Procedures	T	21.89	$1,138.48	$384.47	$227.70
0242	Level V Repair and Plastic Eye Procedures	T	28.87	$1,501.50	$597.36	$300.30
0243	Strabismus/Muscle Procedures	T	20.94	$1,089.07	$431.39	$217.81
0244	Corneal Transplant	T	38.14	$1,983.62	$851.42	$396.72
0245	Level I Cataract Procedures without IOL Insert	T	14.39	$748.41	$251.21	$149.68
0246	Cataract Procedures with IOL Insert	T	23.59	$1,226.89	$495.96	$245.38
0247	Laser Eye Procedures Except Retinal	T	4.97	$258.48	$108.56	$51.70
0248	Laser Retinal Procedures	T	4.44	$230.92	$96.99	$46.18
0249	Level II Cataract Procedures without IOL Insert	T	27.75	$1,443.25	$524.67	$288.65
0250	Nasal Cauterization/Packing	T	1.68	$87.38	$30.58	$17.48
0251	Level I ENT Procedures	T	1.92	$99.86		$19.97
0252	Level II ENT Procedures	T	6.27	$326.10	$114.24	$65.22
0253	Level III ENT Procedures	T	14.79	$769.21	$284.61	$153.84
0254	Level IV ENT Procedures	T	21.89	$1,138.48	$352.93	$227.70
0256	Level V ENT Procedures	T	35.51	$1,846.84		$369.37
0258	Tonsil and Adenoid Procedures	T	21.15	$1,099.99	$437.25	$220.00
0259	Level VI ENT Procedures	T	291.05	$15,137.22	$7,417.24	$3,027.44
0260	Level I Plain Film Except Teeth	X	0.81	$42.13	$23.17	$8.43
0261	Level II Plain Film Except Teeth Including Bone Density Measurement.	X	1.37	$71.25	$34.15	$14.25
0262	Plain Film of Teeth	X	0.60	$31.21	$10.30	$6.24
0263	Level I Miscellaneous Radiology Procedures	X	1.99	$103.50	$45.54	$20.70
0264	Level II Miscellaneous Radiology Procedures	X	2.75	$143.02	$77.23	$28.60
0265	Level I Diagnostic Ultrasound Except Vascular	S	1.04	$54.09	$29.75	$10.82
0266	Level II Diagnostic Ultrasound Except Vascular	S	1.70	$88.42	$48.63	$17.68
0267	Level III Diagnostic Ultrasound Except Vascular	S	2.58	$134.18	$65.52	$26.84
0268	Ultrasound Guidance Procedures	S	1.48	$76.97		$15.39
0269	Level III Echocardiogram Except Transesophageal	S	3.42	$177.87	$92.49	$35.57
0270	Transesophageal Echocardiogram	S	5.65	$293.85	$146.79	$58.77
0271	Mammography	S	0.69	$35.89	$16.80	$7.18
0272	Level I Fluoroscopy	X	1.38	$71.77	$38.64	$14.35
0274	Myelography	S	3.21	$166.95	$80.14	$33.39
0275	Arthrography	S	3.09	$160.71	$69.09	$32.14
0276	Level I Digestive Radiology	S	1.69	$87.90	$41.72	$17.58
0277	Level II Digestive Radiology	S	2.50	$130.02	$60.47	$26.00
0278	Diagnostic Urography	S	2.65	$137.82	$66.07	$27.56
0279	Level II Angiography and Venography except Extremity.	S	8.41	$437.40	$174.57	$87.48
0280	Level III Angiography and Venography except Extremity.	S	15.51	$806.66	$353.85	$161.33
0281	Venography of Extremity	S	5.23	$272.01	$115.16	$54.40
0282	Miscellaneous Computerized Axial Tomography	S	1.76	$91.54	$44.51	$18.31
0283	Computerized Axial Tomography with Contrast Material.	S	4.75	$247.04		$49.41
0284	Magnetic Resonance Imaging and Magnetic Resonance Angiography with Contrast Material.	S	7.74	$402.55	$201.02	$80.51
0285	Myocardial Positron Emission Tomography (PET)	S	16.73	$870.11	$374.15	$174.02
0286	Myocardial Scans	S	6.94	$360.94	$198.52	$72.19
0287	Complex Venography	S	7.13	$370.82	$114.51	$74.16
0288	Bone Density:Axial Skeleton	S	1.38	$71.77		$14.35

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCs) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2003—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0289	Needle Localization for Breast Biopsy	X	1.84	$95.70	$44.80	$19.14
0290	Level I Diagnostic Nuclear Medicine Excluding Myocardial Scans.	S	2.16	$112.34	$56.17	$22.47
0291	Level II Diagnostic Nuclear Medicine Excluding Myocardial Scans.	S	4.19	$217.92	$108.96	$43.58
0292	Level III Diagnostic Nuclear Medicine Excluding Myocardial Scans.	S	4.53	$235.60	$117.80	$47.12
0294	Level II Therapeutic Nuclear Medicine	S	4.45	$231.44	$127.29	$46.29
0295	Level I Therapeutic Nuclear Medicine	S	3.86	$200.75	$110.41	$40.15
0296	Level I Therapeutic Radiologic Procedures	S	2.12	$110.26	$52.92	$22.05
0297	Level II Therapeutic Radiologic Procedures	S	7.80	$405.67	$172.51	$81.13
0299	Miscellaneous Radiation Treatment	S	6.20	$322.46		$64.49
0300	Level I Radiation Therapy	S	1.53	$79.57		$15.91
0301	Level II Radiation Therapy	S	2.22	$115.46		$23.09
0302	Level III Radiation Therapy	S	10.17	$528.93	$200.99	$105.79
0303	Treatment Device Construction	X	2.93	$152.39	$68.58	$30.48
0304	Level I Therapeutic Radiation Treatment Preparation	X	1.69	$87.90	$41.52	$17.58
0305	Level II Therapeutic Radiation Treatment Preparation	X	3.87	$201.27	$91.38	$40.25
0310	Level III Therapeutic Radiation Treatment Preparation.	X	14.38	$747.89	$339.05	$149.58
0312	Radioelement Applications	S	4.23	$220.00		$44.00
0313	Brachytherapy	S	13.80	$717.72		$143.54
0314	Hyperthermic Therapies	S	4.24	$220.52	$101.77	$44.10
0320	Electroconvulsive Therapy	S	4.46	$231.96	$80.06	$46.39
0321	Biofeedback and Other Training	S	1.27	$66.05	$21.78	$13.21
0322	Brief Individual Psychotherapy	S	1.44	$74.89	$12.40	$14.98
0323	Extended Individual Psychotherapy	S	1.95	$101.42	$21.26	$20.28
0324	Family Psychotherapy	S	2.71	$140.94		$28.19
0325	Group Psychotherapy	S	1.55	$80.61	$18.27	$16.12
0330	Dental Procedures	S	0.64	$33.29		$6.66
0332	Computerized Axial Tomography and Computerized Angiography without Contrast Material.	S	3.62	$188.27	$91.27	$37.65
0333	Computerized Axial Tomography and Computerized Angio w/o Contrast Material followed by Contrast.	S	5.69	$295.93	$146.98	$59.19
0335	Magnetic Resonance Imaging, Miscellaneous	S	6.46	$335.98	$151.46	$67.20
0336	Magnetic Resonance Imaging and Magnetic Resonance Angiography without Contrast.	S	7.01	$364.58	$176.94	$72.92
0337	MRI and Magnetic Resonance Angiography without Contrast Material followed by Contrast Material.	S	9.86	$512.81	$240.77	$102.56
0339	Observation	S	7.60	$395.27		$79.05
0340	Minor Ancillary Procedures	X	0.66	$34.33		$6.87
0341	Skin Tests and Miscellaneous Red Blood Cell Tests	X	0.16	$8.32	$3.08	$1.66
0342	Level I Pathology	X	0.23	$11.96	$5.88	$2.39
0343	Level II Pathology	X	0.47	$24.44	$13.20	$4.89
0344	Level III Pathology	X	0.66	$34.33	$18.54	$6.87
0345	Level I Transfusion Laboratory Procedures	X	0.19	$9.88	$3.06	$1.98
0346	Level II Transfusion Laboratory Procedures	X	0.42	$21.84	$5.46	$4.37
0347	Level III Transfusion Laboratory Procedures	X	0.98	$50.97	$12.74	$10.19
0348	Fertility Laboratory Procedures	X	0.83	$43.17		$8.63
0352	Level I Injections	X	0.14	$7.28		$1.46
0353	Level II Allergy Injections	X	0.43	$22.36		$4.47
0354	Administration of Influenza/Pneumonia Vaccine	K	0.09	$4.68		
0355	Level I Immunizations	K	0.24	$12.48		$2.50
0356	Level II Immunizations	K	0.69	$35.89		$7.18
0359	Level II Injections	X	0.83	$43.17		$8.63
0360	Level I Alimentary Tests	X	1.65	$85.81	$42.91	$17.16
0361	Level II Alimentary Tests	X	3.55	$184.63	$83.23	$36.93
0362	Level III Otorhinolaryngologic Function Tests	X	2.83	$147.19		$29.44
0363	Level I Otorhinolaryngologic Function Tests	X	0.76	$39.53	$14.63	$7.91
0364	Level I Audiometry	X	0.45	$23.40	$9.13	$4.68
0365	Level II Audiometry	X	1.31	$68.13	$20.16	$13.63
0367	Level I Pulmonary Test	X	0.60	$31.21	$15.61	$6.24
0368	Level II Pulmonary Tests	X	0.96	$49.93	$24.97	$9.99
0369	Level III Pulmonary Tests	X	2.39	$124.30	$41.02	$24.86
0370	Allergy Tests	X	0.74	$38.49	$11.16	$7.70
0371	Level I Allergy Injections	X	0.50	$26.00		$5.20
0372	Therapeutic Phlebotomy	X	0.56	$29.13	$10.09	$5.83
0373	Neuropsychological Testing	X	2.37	$123.26		$24.65
0374	Monitoring Psychiatric Drugs	X	1.20	$62.41		$12.48

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ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCs) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2003—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0600	Low Level Clinic Visits	V	0.91	$47.33		$9.47
0601	Mid Level Clinic Visits	V	1.04	$54.09		$10.82
0602	High Level Clinic Visits	V	1.57	$81.65		$16.33
0610	Low Level Emergency Visits	V	1.49	$77.49	$19.57	$15.50
0611	Mid Level Emergency Visits	V	2.66	$138.34	$36.47	$27.67
0612	High Level Emergency Visits	V	4.53	$235.60	$54.14	$47.12
0620	Critical Care	S	10.25	$533.09	$150.55	$106.62
0656	Transcatheter Placement of Drug-Eluting Coronary Stents.	T	90.90	$4,927.70		$985.54
0657	Placement of Tissue Clips	S	1.38	$71.77		$14.35
0658	Percutaneous Breast Biopsies	T	5.57	$289.69		$57.94
0659	Hyperbaric Oxygen	S	3.12	$162.27		$32.45
0660	Level II Otorhinolaryngologic Function Tests	X	1.65	$85.81	$31.75	$17.16
0661	Level IV Pathology	X	3.46	$179.95	$98.97	$35.99
0662	CT Angiography	S	5.96	$309.97	$170.48	$61.99
0663	Stereoteactic Radiosurgery	S	63.69	$3,312.45		$662.49
0664	Proton Beam Radiation Therapy	S	11.03	$573.66		$114.73
0665	Bone Density:AppendicularSkeleton	S	0.73	$37.97		$7.59
0666	Myocardial Add-on Scans	S	1.59	$82.69	$45.48	$16.54
0667	Nonmyocardial Positron Emission Tomography (PET)	S	18.68	$971.53		$194.31
0668	Level I Angiography and Venography except Extremity.	S	5.36	$278.77	$122.66	$55.75
0669	Digital Mammography	S	0.95	$49.41		$9.88
0670	Intravenous and Intracardiac Ultrasound	S	14.78	$768.69	$276.73	$153.74
0671	Level II Echocardiogram Except Transesophageal	S	1.68	$87.38	$45.44	$17.48
0672	Level IV Posterior Segment Procedures	T	39.95	$2,077.76	$1,038.88	$415.55
0673	Level IV Anterior Segment Eye Procedures	T	27.47	$1,428.69	$685.77	$285.74
0674	Prostate Cryoablation	T	69.25	$3,601.62		$720.32
0675	Prostatic Thermotherapy	T	51.57	$2,682.10		$536.42
0676	Level II Transcatheter Thrombolysis	T	4.62	$240.28	$64.88	$48.06
0677	Level I Transcatheter Thrombolysis	T	2.80	$145.63		$29.13
0678	External Counterpulsation	T	2.55	$132.62		$26.52
0679	Level II Resuscitation and Cardioversion	S	5.70	$296.45	$100.79	$59.29
0680	Insertion of Patient Activated Event Recorders	S	51.95	$2,701.87		$540.37
0681	Knee Arthroplasty	T	158.14	$8,224.70	$3,289.88	$1,644.94
0682	Level V Debridement & Destruction	T	6.74	$350.54	$161.25	$70.11
0683	Level II Photochemotherapy	S	2.11	$109.74	$39.51	$21.95
0684	Prostate Brachytherapy	T	103.47	$5,381.37		$1,076.27
0685	Level III Needle Biopsy/Aspiration Except Bone Marrow.	T	4.47	$232.48	$102.29	$46.50
0686	Level III Skin Repair	T	11.30	$587.70	$270.34	$117.54
0687	Revision/Removal of Neurostimulator Electrodes	T	19.50	$1,014.18	$466.52	$202.84
0688	Revision/Removal of Neurostimulator Pulse Generator Receiver.	T	30.58	$1,590.44	$779.32	$318.09
0689	Electronic Analysis of Cardioverter-defibrillators	S	0.60	$31.21	$12.03	$6.24
0690	Electronic Analysis of Pacemakers and other Cardiac Devices.	S	0.45	$23.40	$10.63	$4.68
0691	Electronic Analysis of Programmable Shunts/Pumps	S	3.14	$163.31	$89.02	$32.66
0692	Electronic Analysis of Neurostimulator Pulse Generators.	S	0.85	$44.21	$24.32	$8.84
0693	Level II Breast Reconstruction	T	39.30	$2,043.95	$798.17	$408.79
0694	Mohs Surgery	T	3.90	$202.84	$81.14	$40.57
0695	Level VII Debridement & Destruction	T	19.65	$1,021.98	$266.59	$204.40
0697	Level I Echocardiogram Except Transesophageal	S	1.51	$78.53	$40.84	$15.71
0698	Level II Eye Tests & Treatments	S	1.01	$52.53	$20.49	$10.51
0699	Level IV Eye Tests & Treatment	T	2.37	$123.26	$55.47	$24.65
0701	SR 89 chloride, per mCi	K	6.43	$334.42		$66.88
0702	SM 153 lexidronam, 50 mCi	K	15.02	$781.18		$156.24
0706	New Technology - Level I ($0 - $50)	S		$25.00		$5.00
0707	New Technology - Level II ($50 - $100)	S		$75.00		$15.00
0708	New Technology - Level III ($100 - $200)	S		$150.00		$30.00
0709	New Technology - Level IV ($200 - $300)	S		$250.00		$50.00
0710	New Technology - Level V ($300 - $500)	S		$400.00		$80.00
0711	New Technology - Level VI ($500 - $750)	S		$625.00		$125.00
0712	New Technology - Level VII ($750 - $1000)	S		$875.00		$175.00
0713	New Technology - Level VIII ($1000 - $1250)	S		$1,125.00		$225.00
0714	New Technology - Level IX ($1250 - $1500)	S		$1,375.00		$275.00
0715	New Technology - Level X ($1500 - $1750)	S		$1,625.00		$325.00
0716	New Technology - Level XI ($1750 - $2000)	S		$1,875.00		$375.00

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCs) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2003—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0717	New Technology - Level XII ($2000 - $2500)	S		$2,250.00		$450.00
0718	New Technology - Level XIII ($2500 - $3000)	S		$2,750.00		$550.00
0719	New Technology-Level XIV ($3000- $3500)	S		$3,250.00		$650.00
0720	New Technology - Level XV ($3500 - $5000)	S		$4,250.00		$850.00
0721	New Technology - Level XVI ($5000 - $6000)	S		$5,500.00		$1,100.00
0726	Dexrazoxane hcl injection, 250 mg	K	2.40	$124.82		$24.96
0728	Filgrastim 300 mcg injection	K	2.24	$116.50		$23.30
0730	Pamidronate disodium , 30 mg	K	3.46	$179.95		$35.99
0732	Mesna injection 200 mg	K	0.55	$28.60		$5.72
0733	Non esrd epoetin alpha inj, 1000 u	K	0.19	$9.88		$1.98
0734	Darbepoetin alfa, 1 mcg	G		$4.74		$.68
0800	Leuprolide acetate, 3.75 mg	K	4.15	$215.84		$43.17
0802	Etoposide oral 50 mg	K	0.54	$28.08		$5.62
0807	Aldesleukin/single use vial	K	6.09	$316.73		$63.35
0810	Goserelin acetate implant 3.6 mg	K	5.94	$308.93		$61.79
0811	Carboplatin injection 50 mg	K	1.58	$82.17		$16.43
0813	Cisplatin 10 mg injection	K	0.47	$24.44		$4.89
0820	Daunorubicin 10 mg	K	2.27	$118.06		$23.61
0821	Daunorubicin citrate liposom 10 mg	K	3.17	$164.87		$32.97
0822	Diethylstilbestrol injection 250 mg	K	2.21	$114.94		$22.99
0823	Docetaxel, 20 mg	K	4.01	$208.56		$41.71
0827	Floxuridine injection 500 mg	K	2.42	$125.86		$25.17
0828	Gemcitabine HCL 200 mg	K	1.49	$77.49		$15.50
0830	Irinotecan injection 20 mg	K	1.86	$96.74		$19.35
0831	Ifosfomide injection 1 gm	K	2.06	$107.14		$21.43
0832	Idarubicin hcl injection 5 mg	K	4.57	$237.68		$47.54
0838	Interferon gamma 1-b inj, 3 million u	K	2.49	$129.50		$25.90
0840	Melphalan hydrochl 50 mg	K	4.09	$212.72		$42.54
0842	Fludarabine phosphate inj 50 mg	K	3.30	$171.63		$34.33
0843	Pegaspargase, singl dose vial	K	2.38	$123.78		$24.76
0844	Pentostatin injection, 10 mg	K	21.32	$1,108.83		$221.77
0849	Rituximab, 100 mg	K	5.71	$296.97		$59.39
0852	Topotecan, 4 mg	K	7.61	$395.79		$79.16
0855	Vinorelbine tartrate, 10 mg	K	1.10	$57.21		$11.44
0856	Porfimer sodium, 75 mg	K	26.35	$1,370.44		$274.09
0857	Bleomycin sulfate injection 15 u	K	3.10	$161.23		$32.25
0858	Cladribine, 1mg	K	0.84	$43.69		$8.74
0861	Leuprolide acetate injection 1 mg	K	0.84	$43.69		$8.74
0862	Mitomycin 5 mg inj	K	1.18	$61.37		$12.27
0863	Paclitaxel injection, 30 mg	K	2.50	$130.02		$26.00
0864	Mitoxantrone hcl, 5 mg	K	3.02	$157.07		$31.41
0884	Rho d immune globulin inj, 1 dose pkg	K	0.70	$36.41		$7.28
0888	Cyclosporine oral 100 mg	K	0.04	$2.08		$.42
0890	Lymphocyte immune globulin 250 mg	K	3.64	$189.31		$37.86
0891	Tacrolimus oral per 1 mg	K	0.02	$1.04		$.21
0900	Alglucerase injection, per 10 u	K	0.53	$27.56		$5.51
0901	Alpha 1 proteinase inhibitor, 10 mg	K	0.02	$1.04		$.21
0902	Botulinum toxin a, per unit	K	0.05	$2.60		$.52
0903	Cytomegalovirus imm IV/vial	K	0.34	$17.68		$3.54
0905	Immune globulin 500 mg	K	0.45	$23.40		$4.68
0909	Interferon beta-1a, 33 mcg	K	2.77	$144.06		$28.81
0916	Injection imiglucerase /unit	K	0.05	$2.60		$.52
0925	Factor viii per iu	K	0.01	$.52		$.10
0926	Factor VIII (porcine) per iu	K	0.02	$1.04		$.21
0927	Factor viii recombinant per iu	K	0.01	$.52		$.10
0928	Factor ix complex per iu	K	0.01	$.52		$.10
0929	Anti-inhibitor per iu	K	0.01	$.52		$.10
0930	Antithrombin iii injection per iu	K	0.01	$.52		$.10
0931	Factor IX non-recombinant, per iu	K	0.01	$.52		$.10
0932	Factor IX recombinant, per iu	K	0.03	$1.56		$.31
0949	Plasma, Pooled Multiple Donor, Solvent/Detergent T	K	1.26	$65.53		$13.11
0950	Blood (Whole) For Transfusion	K	1.25	$65.01		$13.00
0952	Cryoprecipitate	K	0.53	$27.56		$5.51
0954	RBC leukocytes reduced	K	1.59	$82.69		$16.54
0955	Plasma, Fresh Frozen	K	0.71	$36.93		$7.39
0956	Plasma Protein Fraction	K	1.94	$100.90		$20.18
0957	Platelet Concentrate	K	0.67	$34.85		$6.97
0958	Platelet Rich Plasma	K	1.12	$58.25		$11.65
0959	Red Blood Cells	K	1.12	$58.25		$11.65

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ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2003—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0960	Washed Red Blood Cells	K	1.42	$73.85		$14.77
0961	Infusion, Albumin (Human) 5%, 50 ml	K	0.47	$24.44		$4.89
0963	Albumin (human), 5%, 250 ml	K	2.37	$123.26		$24.65
0964	Albumin (human), 25%, 20 ml	K	0.50	$26.00		$5.20
0965	Albumin (human), 25%, 50ml	K	1.25	$65.01		$13.00
0966	Plasmaprotein fract,5%,250ml	K	9.71	$505.01		$101.00
0970	New Technology - Level I ($0 - $50)	T		$25.00		$5.00
0971	New Technology - Level II ($50 - $100)	T		$75.00		$15.00
0972	New Technology - Level III ($100 - $200)	T		$150.00		$30.00
0973	New Technology - Level IV ($200 - $300)	T		$250.00		$50.00
0974	New Technology - Level V ($300 - $500)	T		$400.00		$80.00
0975	New Technology - Level VI ($500 - $750)	T		$625.00		$125.00
0976	New Technology - Level VII ($750 - $1000)	T		$875.00		$175.00
0977	New Technology - Level VIII ($1000 - $1250)	T		$1,125.00		$225.00
0978	New Technology - Level IX ($1250 - $1500)	T		$1,375.00		$275.00
0979	New Technology - Level X ($1500 - $1750)	T		$1,625.00		$325.00
0980	New Technology - Level XI ($1750 - $2000)	T		$1,875.00		$375.00
0981	New Technology - Level XII ($2000 - $2500)	T		$2,250.00		$450.00
0982	New Technology - Level XIII ($2500 - $3000)	T		$2,750.00		$550.00
0983	New Technology-Level XIV ($3000- $3500)	T		$3,250.00		$650.00
0984	New Technology - Level XV ($3500 - $5000)	T		$4,250.00		$850.00
0985	New Technology - Level XVI ($5000 - $6000)	T		$5,500.00		$1,100.00
1009	Cryoprecip reduced plasma	K	0.66	$34.33		$6.87
1010	Blood, L/R, CMV-neg	K	1.67	$86.86		$17.37
1011	Platelets, HLA-m, L/R, unit	K	6.03	$313.61		$62.72
1013	Platelet concentrate, L/R, unit	K	0.91	$47.33		$9.47
1016	Blood, L/R, froz/deglycerol/washed	K	1.09	$56.69		$11.34
1017	Platelets, aph/pher, L/R, CMV-neg, unit	K	4.78	$248.60		$49.72
1018	Blood, L/R, irradiated	K	1.90	$98.82		$19.76
1019	Platelets, aph/pher, L/R, irradiated, unit	K	6.93	$360.42		$72.08
1058	TC 99M oxidronate, per vial	G		$36.74		$5.26
1059	Cultured chondrocytes implnt	K	43.64	$2,269.67		$453.93
1064	I-131 cap, each add mCi	G		$5.86		$.75
1065	I-131 sol, each add mCi	G		$15.81		$2.03
1084	Denileukin diftitox, 300 MCG	K	13.94	$725.01		$145.00
1086	Temozolomide,oral 5 mg	K	0.05	$2.60		$.52
1091	IN 111 Oxyquinoline, per .5 mCi	K	4.36	$226.76		$45.35
1092	IN 111 Pentetate, per 0.5 mCi	K	4.78	$248.60		$49.72
1095	Technetium TC 99M Depreotide	K	0.25	$13.00		$2.60
1096	TC 99M Exametazime, per dose	K	3.35	$174.23		$34.85
1122	TC 99M arcitumomab, per vial	K	8.33	$433.23		$86.65
1167	Epirubicin hcl, 2 mg	K	0.32	$16.64		$3.33
1178	Busulfan IV, 6 mg	K	0.53	$27.56		$5.51
1203	Verteporfin for injection	K	16.26	$845.67		$169.13
1207	Octreotide acetate depot 1mg	K	1.22	$63.45		$12.69
1305	Apligraf	K	12.47	$648.55		$129.71
1348	I-131 sol, per 1-6 mCi	K	0.19	$9.88		$1.98
1409	Factor viia recombinant, per 1.2 mg	K	13.53	$703.68		$140.74
1604	IN 111 capromab pendetide, per dose	K	5.91	$307.37		$61.47
1605	Abciximab injection, 10 mg	K	5.82	$302.69		$60.54
1609	Rho(D) immune globulin h, sd, 100 iu	K	0.22	$11.44		$2.29
1611	Hylan G-F 20 injection, 16 mg	K	2.43	$126.38		$25.28
1612	Daclizumab, parenteral, 25 mg	K	3.77	$196.07		$39.21
1613	Trastuzumab, 10 mg	K	0.66	$34.33		$6.87
1614	Valrubicin, 200 mg	K	2.04	$106.10		$21.22
1615	Basiliximab, 20 mg	K	9.64	$501.37		$100.27
1618	Vonwillebrandfactrcmplx, per iu	K	0.01	$.52		$.10
1620	Technetium tc99m bicisate	K	2.80	$145.63		$29.13
1625	Indium 111-in pentetreotide	K	4.57	$237.68		$47.54
1628	Chromic phosphate p32	K	1.35	$70.21		$14.04
1716	Brachytx seed, Gold 198	K	0.35	$18.20		$3.64
1718	Brachytx seed, Iodine 125	K	0.64	$33.29		$6.66
1719	Brachytxseed, Non-HDR Ir-192	K	0.57	$29.65		$5.93
1720	Brachytx seed, Palladium 103	K	0.89	$46.29		$9.26
1765	Adhesion barrier	H				
1775	FDG, per dose (4-40 mCi/ml)	G		$475.00		$68.00
1783	Ocular implant, aqueous drainage assist device	H				
1888	Catheter, ablation, non-cardiac, endovascular (implantable.	H				

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2003—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
1900	Lead, left ventricular coronary venous system	H				
2618	Probe, cryoablation	H				
7000	Amifostine, 500 mg	K	4.46	$231.96		$46.39
7001	Amphotericin B lipid complex, 50 mg	K	2.05	$106.62		$21.32
7011	Oprelvekin injection, 5 mg	K	2.52	$131.06		$26.21
7024	Corticorelin ovine triflutat	K	4.62	$240.28		$48.06
7025	Digoxin immune FAB (ovine)	K	2.77	$144.06		$28.81
7030	Hemin, per 1 mg	K	0.01	$.52		$.10
7031	Octreotide acetate injection	K	0.90	$46.81		$9.36
7034	Somatropin injection	K	0.78	$40.57		$8.11
7035	Teniposide, 50 mg	K	1.24	$64.49		$12.90
7038	Muromonab-CD3, 5 mg	K	4.43	$230.40		$46.08
7041	Tirofiban hydrochloride 12.5 mg	K	4.82	$250.68		$50.14
7042	Capecitabine, oral, 150 mg	K	0.03	$1.56		$.31
7043	Infliximab injection 10 mg	K	0.74	$38.49		$7.70
7045	Trimetrexate glucoronate	K	1.23	$63.97		$12.79
7046	Doxorubicin hcl liposome inj 10 mg	K	4.54	$236.12		$47.22
7049	Filgrastim 480 mcg injection	K	3.37	$175.27		$35.05
7051	Leuprolide acetate implant, 65 mg	G		$5,399.80		$773.02
9002	Tenecteplase, 50mg/vial	K	25.46	$1,324.15		$264.83
9003	Palivizumab, per 50mg	K	9.34	$485.76		$97.15
9004	Gemtuzumab ozogamicin inj,5mg	K	1.05	$54.61		$10.92
9005	Reteplase injection	K	10.84	$563.78		$112.76
9009	Baclofen refill kit - per 2000 mcg	K	0.79	$41.09		$8.22
9010	Baclofen refill kit - per 4000 mcg	K	0.95	$49.41		$9.88
9012	Arsenic Trioxide	G		$23.75		$3.40
9015	Mycophenolate mofetil oral 250 mg	G		$2.40		$.34
9016	Echocardiography contrast	G		$118.75		$17.00
9018	Botulinum tox B, per 100 u	G		$8.79		$1.26
9019	Caspofungin acetate, 5 mg	G		$34.20		$4.90
9020	Sirolimus tablet, 1 mg	K	0.05	$2.60		$.52
9104	Anti-thymocyte globulin rabbit	K	1.97	$102.46		$20.49
9105	Hep B imm glob, per 1 ml	K	1.58	$82.17		$16.43
9106	Sirolimus, 1 mg	K	0.05	$2.60		$.52
9108	Thyrotropin alfa, per 1.1 mg	K	8.79	$457.16		$91.43
9109	Tirofiban hcl, per 6.25 mg	K	2.32	$120.66		$24.13
9110	Alemtuzumab, per ml	G		$486.88		$69.70
9111	Inj, bivalirudin, per 250mg vial	G		$397.81		$56.95
9112	Perflutren lipid micro, per 2ml	G		$148.20		$21.22
9113	Inj pantoprazole sodium, vial	G		$22.80		$3.26
9114	Nesiritide, per 1.5 mg vial	G		$433.20		$62.02
9115	Inj, zoledronic acid, per 2 mg	G		$406.78		$58.23
9200	Orcel, per 36 cm2	G		$1,135.25		$162.52
9201	Dermagraft, per 37.5 sq cm	G		$577.60		$82.69
9217	Leuprolide acetate suspnsion, 7.5 mg	K	6.30	$327.66		$65.53
9500	Platelets, irradiated	K	0.92	$47.85		$9.57
9501	Platelets, pheresis	K	5.10	$265.25		$53.05
9502	Platelet pheresis irradiated	K	1.99	$103.50		$20.70
9503	Fresh frozen plasma, ea unit	K	0.77	$40.05		$8.01
9504	RBC deglycerolized	K	1.91	$99.34		$19.87
9505	RBC irradiated	K	1.82	$94.66		$18.93
9506	Granulocytes, pheresis	K	0.45	$23.40		$4.68

ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0002T	C	Endovas repr abdo ao aneurys					
0003T	S	Cervicography	0706		$25.00		$5.00
0005T	C	Perc cath stent/brain cv art					
0006T	C	Perc cath stent/brain cv art					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0007T	C	Perc cath stent/brain cv art					
0008T	E	Upper gi endoscopy w/suture					
0009T	T	Endometrial cryoablation	0980		$1,875.00		$375.00
00100	N	Anesth, salivary gland					
00102	N	Anesth, repair of cleft lip					
00103	N	Anesth, blepharoplasty					
00104	N	Anesth, electroshock					
0010T	A	Tb test, gamma interferon					
00120	N	Anesth, ear surgery					
00124	N	Anesth, ear exam					
00126	N	Anesth, tympanotomy					
0012T	T	Osteochondral knee autograft	0041	27.58	$1,434.41	$580.06	$286.88
0013T	T	Osteochondral knee allograft	0041	27.58	$1,434.41	$580.06	$286.88
00140	N	Anesth, procedures on eye					
00142	N	Anesth, lens surgery					
00144	N	Anesth, corneal transplant					
00145	N	Anesth, vitreoretinal surg					
00147	N	Anesth, iridectomy					
00148	N	Anesth, eye exam					
0014T	T	Meniscal transplant, knee	0041	27.58	$1,434.41	$580.06	$286.88
00160	N	Anesth, nose/sinus surgery					
00162	N	Anesth, nose/sinus surgery					
00164	N	Anesth, biopsy of nose					
0016T	E	Thermotx choroid vasc lesion					
00170	N	Anesth, procedure on mouth					
00172	N	Anesth, cleft palate repair					
00174	C	Anesth, pharyngeal surgery					
00176	C	Anesth, pharyngeal surgery					
0017T	E	Photocoagulat macular drusen					
0018T	S	Transcranial magnetic stimul	0215	0.60	$31.21		$6.24
00190	N	Anesth, face/skull bone surg					
00192	C	Anesth, facial bone surgery					
0019T	A	Extracorp shock wave tx, ms					
0020T	A	Extracorp shock wave tx, ft					
00210	N	Anesth, open head surgery					
00212	N	Anesth, skull drainage					
00214	C	Anesth, skull drainage					
00215	C	Anesth, skull repair/fract					
00216	N	Anesth, head vessel surgery					
00218	N	Anesth, special head surgery					
0021T	C	Fetal oximetry, trnsvag/cerv					
00220	N	Anesth, intrcrn nerve					
00222	N	Anesth, head nerve surgery					
0023T	A	Phenotype drug test, hiv 1					
0024T	C	Transcath cardiac reduction					
0025T	S	Ultrasonic pachymetry	0230	0.78	$40.57	$15.82	$8.11
0026T	A	Measure remnant lipoproteins					
00300	N	Anesth, head/neck/ptrunk					
00320	N	Anesth, neck organ surgery					
00322	N	Anesth, biopsy of thyroid					
00350	N	Anesth, neck vessel surgery					
00352	N	Anesth, neck vessel surgery					
00400	N	Anesth, skin, ext/per/atrunk					
00402	N	Anesth, surgery of breast					
00404	C	Anesth, surgery of breast					
00406	C	Anesth, surgery of breast					
00410	N	Anesth, correct heart rhythm					
00450	N	Anesth, surgery of shoulder					
00452	C	Anesth, surgery of shoulder					
00454	N	Anesth, collar bone biopsy					
00470	N	Anesth, removal of rib					
00472	N	Anesth, chest wall repair					
00474	C	Anesth, surgery of rib(s)					
00500	N	Anesth, esophageal surgery					
00520	N	Anesth, chest procedure					
00522	N	Anesth, chest lining biopsy					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
00524	C	Anesth, chest drainage					
00528	N	Anesth, chest partition view					
00530	N	Anesth, pacemaker insertion					
00532	N	Anesth, vascular access					
00534	N	Anesth, cardioverter/defib					
00537	N	Anesth, cardiac electrophys					
00540	C	Anesth, chest surgery					
00542	C	Anesth, release of lung					
00544	C	Anesth, chest lining removal					
00546	C	Anesth, lung,chest wall surg					
00548	N	Anesth, trachea,bronchi surg					
00550	N	Anesth, sternal debridement					
00560	C	Anesth, open heart surgery					
00562	C	Anesth, open heart surgery					
00563	N	Anesth, heart proc w/pump					
00566	N	Anesth, cabg w/o pump					
00580	C	Anesth heart/lung transplant					
00600	N	Anesth, spine, cord surgery					
00604	C	Anesth, sitting procedure					
00620	N	Anesth, spine, cord surgery					
00622	C	Anesth, removal of nerves					
00630	N	Anesth, spine, cord surgery					
00632	C	Anesth, removal of nerves					
00634	C	Anesth for chemonucleolysis					
00635	N	Anesth, lumbar puncture					
00670	C	Anesth, spine, cord surgery					
00700	N	Anesth, abdominal wall surg					
00702	N	Anesth, for liver biopsy					
00730	N	Anesth, abdominal wall surg					
00740	N	Anesth, upper gi visualize					
00750	N	Anesth, repair of hernia					
00752	N	Anesth, repair of hernia					
00754	N	Anesth, repair of hernia					
00756	N	Anesth, repair of hernia					
00770	N	Anesth, blood vessel repair					
00790	N	Anesth, surg upper abdomen					
00792	C	Anesth, hemorr/excise liver					
00794	C	Anesth, pancreas removal					
00796	C	Anesth, for liver transplant					
00797	N	Anesth, surgery for obesity					
00800	N	Anesth, abdominal wall surg					
00802	C	Anesth, fat layer removal					
00810	N	Anesth, low intestine scope					
00820	N	Anesth, abdominal wall surg					
00830	N	Anesth, repair of hernia					
00832	N	Anesth, repair of hernia					
00840	N	Anesth, surg lower abdomen					
00842	N	Anesth, amniocentesis					
00844	C	Anesth, pelvis surgery					
00846	C	Anesth, hysterectomy					
00848	C	Anesth, pelvic organ surg					
00851	N	Anesth, tubal ligation					
00860	N	Anesth, surgery of abdomen					
00862	N	Anesth, kidney/ureter surg					
00864	C	Anesth, removal of bladder					
00865	C	Anesth, removal of prostate					
00866	C	Anesth, removal of adrenal					
00868	C	Anesth, kidney transplant					
00869	N	Anesth, vasectomy					
00870	N	Anesth, bladder stone surg					
00872	N	Anesth kidney stone destruct					
00873	N	Anesth kidney stone destruct					
00880	N	Anesth, abdomen vessel surg					
00882	C	Anesth, major vein ligation					
00902	N	Anesth, anorectal surgery					
00904	C	Anesth, perineal surgery					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
00906	N	Anesth, removal of vulva					
00908	C	Anesth, removal of prostate					
00910	N	Anesth, bladder surgery					
00912	N	Anesth, bladder tumor surg					
00914	N	Anesth, removal of prostate					
00916	N	Anesth, bleeding control					
00918	N	Anesth, stone removal					
00920	N	Anesth, genitalia surgery					
00922	N	Anesth, sperm duct surgery					
00924	N	Anesth, testis exploration					
00926	N	Anesth, removal of testis					
00928	C	Anesth, removal of testis					
00930	N	Anesth, testis suspension					
00932	C	Anesth, amputation of penis					
00934	C	Anesth, penis, nodes removal					
00936	C	Anesth, penis, nodes removal					
00938	N	Anesth, insert penis device					
00940	N	Anesth, vaginal procedures					
00942	N	Anesth, surg on vag/urethal					
00944	C	Anesth, vaginal hysterectomy					
00948	N	Anesth, repair of cervix					
00950	N	Anesth, vaginal endoscopy					
00952	N	Anesth, hysteroscope/graph					
01112	N	Anesth, bone aspirate/bx					
01120	N	Anesth, pelvis surgery					
01130	N	Anesth, body cast procedure					
01140	C	Anesth, amputation at pelvis					
01150	C	Anesth, pelvic tumor surgery					
01160	N	Anesth, pelvis procedure					
01170	N	Anesth, pelvis surgery					
01180	N	Anesth, pelvis nerve removal					
01190	C	Anesth, pelvis nerve removal					
01200	N	Anesth, hip joint procedure					
01202	N	Anesth, arthroscopy of hip					
01210	N	Anesth, hip joint surgery					
01212	C	Anesth, hip disarticulation					
01214	C	Anesth, hip arthroplasty					
01215	N	Anesth, revise hip repair					
01220	N	Anesth, procedure on femur					
01230	N	Anesth, surgery of femur					
01232	C	Anesth, amputation of femur					
01234	C	Anesth, radical femur surg					
01250	N	Anesth, upper leg surgery					
01260	N	Anesth, upper leg veins surg					
01270	N	Anesth, thigh arteries surg					
01272	C	Anesth, femoral artery surg					
01274	C	Anesth, femoral embolectomy					
01320	N	Anesth, knee area surgery					
01340	N	Anesth, knee area procedure					
01360	N	Anesth, knee area surgery					
01380	N	Anesth, knee joint procedure					
01382	N	Anesth, knee arthroscopy					
01390	N	Anesth, knee area procedure					
01392	N	Anesth, knee area surgery					
01400	N	Anesth, knee joint surgery					
01402	C	Anesth, knee arthroplasty					
01404	C	Anesth, amputation at knee					
01420	N	Anesth, knee joint casting					
01430	N	Anesth, knee veins surgery					
01432	N	Anesth, knee vessel surg					
01440	N	Anesth, knee arteries surg					
01442	C	Anesth, knee artery surg					
01444	C	Anesth, knee artery repair					
01462	N	Anesth, lower leg procedure					
01464	N	Anesth, ankle arthroscopy					
01470	N	Anesth, lower leg surgery					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
01472	N	Anesth, achilles tendon surg					
01474	N	Anesth, lower leg surgery					
01480	N	Anesth, lower leg bone surg					
01482	N	Anesth, radical leg surgery					
01484	N	Anesth, lower leg revision					
01486	C	Anesth, ankle replacement					
01490	N	Anesth, lower leg casting					
01500	N	Anesth, leg arteries surg					
01502	C	Anesth, lwr leg embolectomy					
01520	N	Anesth, lower leg vein surg					
01522	N	Anesth, lower leg vein surg					
01610	N	Anesth, surgery of shoulder					
01620	N	Anesth, shoulder procedure					
01622	N	Anesth, shoulder arthroscopy					
01630	N	Anesth, surgery of shoulder					
01632	C	Anesth, surgery of shoulder					
01634	C	Anesth, shoulder joint amput					
01636	C	Anesth, forequarter amput					
01638	C	Anesth, shoulder replacement					
01650	N	Anesth, shoulder artery surg					
01652	C	Anesth, shoulder vessel surg					
01654	C	Anesth, shoulder vessel surg					
01656	C	Anesth, arm-leg vessel surg					
01670	N	Anesth, shoulder vein surg					
01680	N	Anesth, shoulder casting					
01682	N	Anesth, airplane cast					
01710	N	Anesth, elbow area surgery					
01712	N	Anesth, uppr arm tendon surg					
01714	N	Anesth, uppr arm tendon surg					
01716	N	Anesth, biceps tendon repair					
01730	N	Anesth, uppr arm procedure					
01732	N	Anesth, elbow arthroscopy					
01740	N	Anesth, upper arm surgery					
01742	N	Anesth, humerus surgery					
01744	N	Anesth, humerus repair					
01756	C	Anesth, radical humerus surg					
01758	N	Anesth, humeral lesion surg					
01760	N	Anesth, elbow replacement					
01770	N	Anesth, uppr arm artery surg					
01772	N	Anesth, uppr arm embolectomy					
01780	N	Anesth, upper arm vein surg					
01782	N	Anesth, uppr arm vein repair					
01810	N	Anesth, lower arm surgery					
01820	N	Anesth, lower arm procedure					
01830	N	Anesth, lower arm surgery					
01832	N	Anesth, wrist replacement					
01840	N	Anesth, lwr arm artery surg					
01842	N	Anesth, lwr arm embolectomy					
01844	N	Anesth, vascular shunt surg					
01850	N	Anesth, lower arm vein surg					
01852	N	Anesth, lwr arm vein repair					
01860	N	Anesth, lower arm casting					
01905	N	Anes, spine inject, x-ray/re					
01916	N	Anesth, dx arteriography					
01920	N	Anesth, catheterize heart					
01922	N	Anesth, cat or MRI scan					
01924	N	Anes, ther interven rad, art					
01925	N	Anes, ther interven rad, car					
01926	N	Anes, tx interv rad hrt/cran					
01930	N	Anes, ther interven rad, vei					
01931	N	Anes, ther interven rad, tip					
01932	N	Anes, tx interv rad, th vein					
01933	N	Anes, tx interv rad, cran v					
01951	N	Anesth, burn, less 4 percent					
01952	N	Anesth, burn, 4-9 percent					
01953	N	Anesth, burn, each 9 percent					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
01960	N	Anesth, vaginal delivery					
01961	N	Anesth, cs delivery					
01962	N	Anesth, emer hysterectomy					
01963	N	Anesth, cs hysterectomy					
01964	N	Anesth, abortion procedures					
01967	N	Anesth/analg, vag delivery					
01968	N	Anes/analg cs deliver add-on					
01969	N	Anesth/analg cs hyst add-on					
01990	C	Support for organ donor					
01995	N	Regional anesthesia limb					
01996	N	Manage daily drug therapy					
01999	N	Unlisted anesth procedure					
10021	T	Fna w/o image	0002	0.63	$32.77	$8.52	$6.55
10022	T	Fna w/image	0002	0.63	$32.77	$8.52	$6.55
10040	T	Acne surgery	0010	0.70	$36.41	$10.56	$7.28
10060	T	Drainage of skin abscess	0006	1.89	$98.30	$25.56	$19.66
10061	T	Drainage of skin abscess	0006	1.89	$98.30	$25.56	$19.66
10080	T	Drainage of pilonidal cyst	0006	1.89	$98.30	$25.56	$19.66
10081	T	Drainage of pilonidal cyst	0007	9.44	$490.96	$103.10	$98.19
10120	T	Remove foreign body	0006	1.89	$98.30	$25.56	$19.66
10121	T	Remove foreign body	0021	14.58	$758.29	$227.49	$151.66
10140	T	Drainage of hematoma/fluid	0007	9.44	$490.96	$103.10	$98.19
10160	T	Puncture drainage of lesion	0018	0.92	$47.85	$15.79	$9.57
10180	T	Complex drainage, wound	0007	9.44	$490.96	$103.10	$98.19
11000	T	Debride infected skin	0015	1.43	$74.37	$18.59	$14.87
11001	T	Debride infected skin add-on	0013	1.10	$57.21	$14.30	$11.44
11010	T	Debride skin, fx	0022	18.10	$941.36	$367.13	$188.27
11011	T	Debride skin/muscle, fx	0022	18.10	$941.36	$367.13	$188.27
11012	T	Debride skin/muscle/bone, fx	0022	18.10	$941.36	$367.13	$188.27
11040	T	Debride skin, partial	0015	1.43	$74.37	$18.59	$14.87
11041	T	Debride skin, full	0015	1.43	$74.37	$18.59	$14.87
11042	T	Debride skin/tissue	0016	2.57	$133.66	$56.14	$26.73
11043	T	Debride tissue/muscle	0016	2.57	$133.66	$56.14	$26.73
11044	T	Debride tissue/muscle/bone	0682	6.74	$350.54	$161.25	$70.11
11055	T	Trim skin lesion	0012	0.76	$39.53	$10.67	$7.91
11056	T	Trim skin lesions, 2 to 4	0012	0.76	$39.53	$10.67	$7.91
11057	T	Trim skin lesions, over 4	0012	0.76	$39.53	$10.67	$7.91
11100	T	Biopsy of skin lesion	0018	0.92	$47.85	$15.79	$9.57
11101	T	Biopsy, skin add-on	0018	0.92	$47.85	$15.79	$9.57
11200	T	Removal of skin tags	0013	1.10	$57.21	$14.30	$11.44
11201	T	Remove skin tags add-on	0015	1.43	$74.37	$18.59	$14.87
11300	T	Shave skin lesion	0012	0.76	$39.53	$10.67	$7.91
11301	T	Shave skin lesion	0012	0.76	$39.53	$10.67	$7.91
11302	T	Shave skin lesion	0013	1.10	$57.21	$14.30	$11.44
11303	T	Shave skin lesion	0015	1.43	$74.37	$18.59	$14.87
11305	T	Shave skin lesion	0013	1.10	$57.21	$14.30	$11.44
11306	T	Shave skin lesion	0013	1.10	$57.21	$14.30	$11.44
11307	T	Shave skin lesion	0013	1.10	$57.21	$14.30	$11.44
11308	T	Shave skin lesion	0013	1.10	$57.21	$14.30	$11.44
11310	T	Shave skin lesion	0013	1.10	$57.21	$14.30	$11.44
11311	T	Shave skin lesion	0013	1.10	$57.21	$14.30	$11.44
11312	T	Shave skin lesion	0013	1.10	$57.21	$14.30	$11.44
11313	T	Shave skin lesion	0016	2.57	$133.66	$56.14	$26.73
11400	T	Removal of skin lesion	0019	3.94	$204.92	$75.82	$40.98
11401	T	Removal of skin lesion	0019	3.94	$204.92	$75.82	$40.98
11402	T	Removal of skin lesion	0019	3.94	$204.92	$75.82	$40.98
11403	T	Removal of skin lesion	0020	7.36	$382.79	$114.84	$76.56
11404	T	Removal of skin lesion	0020	7.36	$382.79	$114.84	$76.56
11406	T	Removal of skin lesion	0021	14.58	$758.29	$227.49	$151.66
11420	T	Removal of skin lesion	0020	7.36	$382.79	$114.84	$76.56
11421	T	Removal of skin lesion	0020	7.36	$382.79	$114.84	$76.56
11422	T	Removal of skin lesion	0020	7.36	$382.79	$114.84	$76.56
11423	T	Removal of skin lesion	0020	7.36	$382.79	$114.84	$76.56
11424	T	Removal of skin lesion	0021	14.58	$758.29	$227.49	$151.66
11426	T	Removal of skin lesion	0022	18.10	$941.36	$367.13	$188.27
11440	T	Removal of skin lesion	0019	3.94	$204.92	$75.82	$40.98

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
11441	T	Removal of skin lesion	0019	3.94	$204.92	$75.82	$40.98
11442	T	Removal of skin lesion	0020	7.36	$382.79	$114.84	$76.56
11443	T	Removal of skin lesion	0020	7.36	$382.79	$114.84	$76.56
11444	T	Removal of skin lesion	0020	7.36	$382.79	$114.84	$76.56
11446	T	Removal of skin lesion	0022	18.10	$941.36	$367.13	$188.27
11450	T	Removal, sweat gland lesion	0022	18.10	$941.36	$367.13	$188.27
11451	T	Removal, sweat gland lesion	0022	18.10	$941.36	$367.13	$188.27
11462	T	Removal, sweat gland lesion	0022	18.10	$941.36	$367.13	$188.27
11463	T	Removal, sweat gland lesion	0022	18.10	$941.36	$367.13	$188.27
11470	T	Removal, sweat gland lesion	0022	18.10	$941.36	$367.13	$188.27
11471	T	Removal, sweat gland lesion	0022	18.10	$941.36	$367.13	$188.27
11600	T	Removal of skin lesion	0019	3.94	$204.92	$75.82	$40.98
11601	T	Removal of skin lesion	0019	3.94	$204.92	$75.82	$40.98
11602	T	Removal of skin lesion	0019	3.94	$204.92	$75.82	$40.98
11603	T	Removal of skin lesion	0020	7.36	$382.79	$114.84	$76.56
11604	T	Removal of skin lesion	0020	7.36	$382.79	$114.84	$76.56
11606	T	Removal of skin lesion	0021	14.58	$758.29	$227.49	$151.66
11620	T	Removal of skin lesion	0020	7.36	$382.79	$114.84	$76.56
11621	T	Removal of skin lesion	0019	3.94	$204.92	$75.82	$40.98
11622	T	Removal of skin lesion	0020	7.36	$382.79	$114.84	$76.56
11623	T	Removal of skin lesion	0020	7.36	$382.79	$114.84	$76.56
11624	T	Removal of skin lesion	0021	14.58	$758.29	$227.49	$151.66
11626	T	Removal of skin lesion	0022	18.10	$941.36	$367.13	$188.27
11640	T	Removal of skin lesion	0020	7.36	$382.79	$114.84	$76.56
11641	T	Removal of skin lesion	0020	7.36	$382.79	$114.84	$76.56
11642	T	Removal of skin lesion	0020	7.36	$382.79	$114.84	$76.56
11643	T	Removal of skin lesion	0020	7.36	$382.79	$114.84	$76.56
11644	T	Removal of skin lesion	0021	14.58	$758.29	$227.49	$151.66
11646	T	Removal of skin lesion	0022	18.10	$941.36	$367.13	$188.27
11719	T	Trim nail(s)	0009	0.68	$35.37	$8.34	$7.07
11720	T	Debride nail, 1-5	0009	0.68	$35.37	$8.34	$7.07
11721	T	Debride nail, 6 or more	0009	0.68	$35.37	$8.34	$7.07
11730	T	Removal of nail plate	0013	1.10	$57.21	$14.30	$11.44
11732	T	Remove nail plate, add-on	0012	0.76	$39.53	$10.67	$7.91
11740	T	Drain blood from under nail	0009	0.68	$35.37	$8.34	$7.07
11750	T	Removal of nail bed	0019	3.94	$204.92	$75.82	$40.98
11752	T	Remove nail bed/finger tip	0022	18.10	$941.36	$367.13	$188.27
11755	T	Biopsy, nail unit	0019	3.94	$204.92	$75.82	$40.98
11760	T	Repair of nail bed	0024	2.00	$104.02	$37.45	$20.80
11762	T	Reconstruction of nail bed	0024	2.00	$104.02	$37.45	$20.80
11765	T	Excision of nail fold, toe	0015	1.43	$74.37	$18.59	$14.87
11770	T	Removal of pilonidal lesion	0022	18.10	$941.36	$367.13	$188.27
11771	T	Removal of pilonidal lesion	0022	18.10	$941.36	$367.13	$188.27
11772	T	Removal of pilonidal lesion	0022	18.10	$941.36	$367.13	$188.27
11900	T	Injection into skin lesions	0012	0.76	$39.53	$10.67	$7.91
11901	T	Added skin lesions injection	0012	0.76	$39.53	$10.67	$7.91
11920	T	Correct skin color defects	0024	2.00	$104.02	$37.45	$20.80
11921	T	Correct skin color defects	0024	2.00	$104.02	$37.45	$20.80
11922	T	Correct skin color defects	0024	2.00	$104.02	$37.45	$20.80
11950	T	Therapy for contour defects	0024	2.00	$104.02	$37.45	$20.80
11951	T	Therapy for contour defects	0024	2.00	$104.02	$37.45	$20.80
11952	T	Therapy for contour defects	0024	2.00	$104.02	$37.45	$20.80
11954	T	Therapy for contour defects	0024	2.00	$104.02	$37.45	$20.80
11960	T	Insert tissue expander(s)	0027	15.73	$818.10	$343.60	$163.62
11970	T	Replace tissue expander	0027	15.73	$818.10	$343.60	$163.62
11971	T	Remove tissue expander(s)	0022	18.10	$941.36	$367.13	$188.27
11975	E	Insert contraceptive cap					
11976	T	Removal of contraceptive cap	0019	3.94	$204.92	$75.82	$40.98
11977	E	Removal/reinsert contra cap					
11980	X	Implant hormone pellet(s)	0340	0.66	$34.33		$6.87
11981	X	Insert drug implant device	0340	0.66	$34.33		$6.87
11982	X	Remove drug implant device	0340	0.66	$34.33		$6.87
11983	X	Remove/insert drug implant	0340	0.66	$34.33		$6.87
12001	T	Repair superficial wound(s)	0024	2.00	$104.02	$37.45	$20.80
12002	T	Repair superficial wound(s)	0024	2.00	$104.02	$37.45	$20.80
12004	T	Repair superficial wound(s)	0024	2.00	$104.02	$37.45	$20.80

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
12005	T	Repair superficial wound(s)	0024	2.00	$104.02	$37.45	$20.80
12006	T	Repair superficial wound(s)	0024	2.00	$104.02	$37.45	$20.80
12007	T	Repair superficial wound(s)	0024	2.00	$104.02	$37.45	$20.80
12011	T	Repair superficial wound(s)	0024	2.00	$104.02	$37.45	$20.80
12013	T	Repair superficial wound(s)	0024	2.00	$104.02	$37.45	$20.80
12014	T	Repair superficial wound(s)	0024	2.00	$104.02	$37.45	$20.80
12015	T	Repair superficial wound(s)	0024	2.00	$104.02	$37.45	$20.80
12016	T	Repair superficial wound(s)	0024	2.00	$104.02	$37.45	$20.80
12017	T	Repair superficial wound(s)	0024	2.00	$104.02	$37.45	$20.80
12018	T	Repair superficial wound(s)	0024	2.00	$104.02	$37.45	$20.80
12020	T	Closure of split wound	0024	2.00	$104.02	$37.45	$20.80
12021	T	Closure of split wound	0024	2.00	$104.02	$37.45	$20.80
12031	T	Layer closure of wound(s)	0024	2.00	$104.02	$37.45	$20.80
12032	T	Layer closure of wound(s)	0024	2.00	$104.02	$37.45	$20.80
12034	T	Layer closure of wound(s)	0024	2.00	$104.02	$37.45	$20.80
12035	T	Layer closure of wound(s)	0024	2.00	$104.02	$37.45	$20.80
12036	T	Layer closure of wound(s)	0024	2.00	$104.02	$37.45	$20.80
12037	T	Layer closure of wound(s)	0025	5.89	$306.33	$116.41	$61.27
12041	T	Layer closure of wound(s)	0024	2.00	$104.02	$37.45	$20.80
12042	T	Layer closure of wound(s)	0024	2.00	$104.02	$37.45	$20.80
12044	T	Layer closure of wound(s)	0024	2.00	$104.02	$37.45	$20.80
12045	T	Layer closure of wound(s)	0024	2.00	$104.02	$37.45	$20.80
12046	T	Layer closure of wound(s)	0024	2.00	$104.02	$37.45	$20.80
12047	T	Layer closure of wound(s)	0025	5.89	$306.33	$116.41	$61.27
12051	T	Layer closure of wound(s)	0024	2.00	$104.02	$37.45	$20.80
12052	T	Layer closure of wound(s)	0024	2.00	$104.02	$37.45	$20.80
12053	T	Layer closure of wound(s)	0024	2.00	$104.02	$37.45	$20.80
12054	T	Layer closure of wound(s)	0024	2.00	$104.02	$37.45	$20.80
12055	T	Layer closure of wound(s)	0024	2.00	$104.02	$37.45	$20.80
12056	T	Layer closure of wound(s)	0024	2.00	$104.02	$37.45	$20.80
12057	T	Layer closure of wound(s)	0025	5.89	$306.33	$116.41	$61.27
13100	T	Repair of wound or lesion	0025	5.89	$306.33	$116.41	$61.27
13101	T	Repair of wound or lesion	0025	5.89	$306.33	$116.41	$61.27
13102	T	Repair wound/lesion add-on	0024	2.00	$104.02	$37.45	$20.80
13120	T	Repair of wound or lesion	0024	2.00	$104.02	$37.45	$20.80
13121	T	Repair of wound or lesion	0024	2.00	$104.02	$37.45	$20.80
13122	T	Repair wound/lesion add-on	0024	2.00	$104.02	$37.45	$20.80
13131	T	Repair of wound or lesion	0024	2.00	$104.02	$37.45	$20.80
13132	T	Repair of wound or lesion	0024	2.00	$104.02	$37.45	$20.80
13133	T	Repair wound/lesion add-on	0024	2.00	$104.02	$37.45	$20.80
13150	T	Repair of wound or lesion	0025	5.89	$306.33	$116.41	$61.27
13151	T	Repair of wound or lesion	0024	2.00	$104.02	$37.45	$20.80
13152	T	Repair of wound or lesion	0025	5.89	$306.33	$116.41	$61.27
13153	T	Repair wound/lesion add-on	0024	2.00	$104.02	$37.45	$20.80
13160	T	Late closure of wound	0027	15.73	$818.10	$343.60	$163.62
14000	T	Skin tissue rearrangement	0027	15.73	$818.10	$343.60	$163.62
14001	T	Skin tissue rearrangement	0027	15.73	$818.10	$343.60	$163.62
14020	T	Skin tissue rearrangement	0027	15.73	$818.10	$343.60	$163.62
14021	T	Skin tissue rearrangement	0027	15.73	$818.10	$343.60	$163.62
14040	T	Skin tissue rearrangement	0027	15.73	$818.10	$343.60	$163.62
14041	T	Skin tissue rearrangement	0027	15.73	$818.10	$343.60	$163.62
14060	T	Skin tissue rearrangement	0027	15.73	$818.10	$343.60	$163.62
14061	T	Skin tissue rearrangement	0027	15.73	$818.10	$343.60	$163.62
14300	T	Skin tissue rearrangement	0027	15.73	$818.10	$343.60	$163.62
14350	T	Skin tissue rearrangement	0027	15.73	$818.10	$343.60	$163.62
15000	T	Skin graft	0025	5.89	$306.33	$116.41	$61.27
15001	T	Skin graft add-on	0025	5.89	$306.33	$116.41	$61.27
15050	T	Skin pinch graft	0025	5.89	$306.33	$116.41	$61.27
15100	T	Skin split graft	0027	15.73	$818.10	$343.60	$163.62
15101	T	Skin split graft add-on	0027	15.73	$818.10	$343.60	$163.62
15120	T	Skin split graft	0027	15.73	$818.10	$343.60	$163.62
15121	T	Skin split graft add-on	0027	15.73	$818.10	$343.60	$163.62
15200	T	Skin full graft	0027	15.73	$818.10	$343.60	$163.62
15201	T	Skin full graft add-on	0025	5.89	$306.33	$116.41	$61.27
15220	T	Skin full graft	0027	15.73	$818.10	$343.60	$163.62
15221	T	Skin full graft add-on	0025	5.89	$306.33	$116.41	$61.27

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
15240	T	Skin full graft	0027	15.73	$818.10	$343.60	$163.62
15241	T	Skin full graft add-on	0025	5.89	$306.33	$116.41	$61.27
15260	T	Skin full graft	0027	15.73	$818.10	$343.60	$163.62
15261	T	Skin full graft add-on	0025	5.89	$306.33	$116.41	$61.27
15342	T	Cultured skin graft, 25 cm	0025	5.89	$306.33	$116.41	$61.27
15343	T	Culture skn graft addl 25 cm	0024	2.00	$104.02	$37.45	$20.80
15350	T	Skin homograft	0686	11.30	$587.70	$270.34	$117.54
15351	T	Skin homograft add-on	0027	15.73	$818.10	$343.60	$163.62
15400	T	Skin heterograft	0025	5.89	$306.33	$116.41	$61.27
15401	T	Skin heterograft add-on	0025	5.89	$306.33	$116.41	$61.27
15570	T	Form skin pedicle flap	0027	15.73	$818.10	$343.60	$163.62
15572	T	Form skin pedicle flap	0027	15.73	$818.10	$343.60	$163.62
15574	T	Form skin pedicle flap	0027	15.73	$818.10	$343.60	$163.62
15576	T	Form skin pedicle flap	0027	15.73	$818.10	$343.60	$163.62
15600	T	Skin graft	0027	15.73	$818.10	$343.60	$163.62
15610	T	Skin graft	0027	15.73	$818.10	$343.60	$163.62
15620	T	Skin graft	0027	15.73	$818.10	$343.60	$163.62
15630	T	Skin graft	0027	15.73	$818.10	$343.60	$163.62
15650	T	Transfer skin pedicle flap	0027	15.73	$818.10	$343.60	$163.62
15732	T	Muscle-skin graft, head/neck	0027	15.73	$818.10	$343.60	$163.62
15734	T	Muscle-skin graft, trunk	0027	15.73	$818.10	$343.60	$163.62
15736	T	Muscle-skin graft, arm	0027	15.73	$818.10	$343.60	$163.62
15738	T	Muscle-skin graft, leg	0027	15.73	$818.10	$343.60	$163.62
15740	T	Island pedicle flap graft	0027	15.73	$818.10	$343.60	$163.62
15750	T	Neurovascular pedicle graft	0027	15.73	$818.10	$343.60	$163.62
15756	C	Free muscle flap, microvasc					
15757	C	Free skin flap, microvasc					
15758	C	Free fascial flap, microvasc					
15760	T	Composite skin graft	0027	15.73	$818.10	$343.60	$163.62
15770	T	Derma-fat-fascia graft	0027	15.73	$818.10	$343.60	$163.62
15775	T	Hair transplant punch grafts	0025	5.89	$306.33	$116.41	$61.27
15776	T	Hair transplant punch grafts	0025	5.89	$306.33	$116.41	$61.27
15780	T	Abrasion treatment of skin	0022	18.10	$941.36	$367.13	$188.27
15781	T	Abrasion treatment of skin	0022	18.10	$941.36	$367.13	$188.27
15782	T	Abrasion treatment of skin	0022	18.10	$941.36	$367.13	$188.27
15783	T	Abrasion treatment of skin	0016	2.57	$133.66	$56.14	$26.73
15786	T	Abrasion, lesion, single	0013	1.10	$57.21	$14.30	$11.44
15787	T	Abrasion, lesions, add-on	0013	1.10	$57.21	$14.30	$11.44
15788	T	Chemical peel, face, epiderm	0012	0.76	$39.53	$10.67	$7.91
15789	T	Chemical peel, face, dermal	0015	1.43	$74.37	$18.59	$14.87
15792	T	Chemical peel, nonfacial	0012	0.76	$39.53	$10.67	$7.91
15793	T	Chemical peel, nonfacial	0013	1.10	$57.21	$14.30	$11.44
15810	T	Salabrasion	0016	2.57	$133.66	$56.14	$26.73
15811	T	Salabrasion	0016	2.57	$133.66	$56.14	$26.73
15819	T	Plastic surgery, neck	0025	5.89	$306.33	$116.41	$61.27
15820	T	Revision of lower eyelid	0027	15.73	$818.10	$343.60	$163.62
15821	T	Revision of lower eyelid	0027	15.73	$818.10	$343.60	$163.62
15822	T	Revision of upper eyelid	0027	15.73	$818.10	$343.60	$163.62
15823	T	Revision of upper eyelid	0027	15.73	$818.10	$343.60	$163.62
15824	T	Removal of forehead wrinkles	0027	15.73	$818.10	$343.60	$163.62
15825	T	Removal of neck wrinkles	0027	15.73	$818.10	$343.60	$163.62
15826	T	Removal of brow wrinkles	0027	15.73	$818.10	$343.60	$163.62
15828	T	Removal of face wrinkles	0027	15.73	$818.10	$343.60	$163.62
15829	T	Removal of skin wrinkles	0027	15.73	$818.10	$343.60	$163.62
15831	T	Excise excessive skin tissue	0022	18.10	$941.36	$367.13	$188.27
15832	T	Excise excessive skin tissue	0022	18.10	$941.36	$367.13	$188.27
15833	T	Excise excessive skin tissue	0022	18.10	$941.36	$367.13	$188.27
15834	T	Excise excessive skin tissue	0022	18.10	$941.36	$367.13	$188.27
15835	T	Excise excessive skin tissue	0025	5.89	$306.33	$116.41	$61.27
15836	T	Excise excessive skin tissue	0020	7.36	$382.79	$114.84	$76.56
15837	T	Excise excessive skin tissue	0020	7.36	$382.79	$114.84	$76.56
15838	T	Excise excessive skin tissue	0020	7.36	$382.79	$114.84	$76.56
15839	T	Excise excessive skin tissue	0020	7.36	$382.79	$114.84	$76.56
15840	T	Graft for face nerve palsy	0027	15.73	$818.10	$343.60	$163.62
15841	T	Graft for face nerve palsy	0027	15.73	$818.10	$343.60	$163.62
15842	T	Flap for face nerve palsy	0027	15.73	$818.10	$343.60	$163.62

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
15845	T	Skin and muscle repair, face	0027	15.73	$818.10	$343.60	$163.62
15850	T	Removal of sutures	0016	2.57	$133.66	$56.14	$26.73
15851	T	Removal of sutures	0013	1.10	$57.21	$14.30	$11.44
15852	X	Dressing change,not for burn	0340	0.66	$34.33		$6.87
15860	S	Test for blood flow in graft	0706		$25.00		$5.00
15876	T	Suction assisted lipectomy	0027	15.73	$818.10	$343.60	$163.62
15877	T	Suction assisted lipectomy	0027	15.73	$818.10	$343.60	$163.62
15878	T	Suction assisted lipectomy	0027	15.73	$818.10	$343.60	$163.62
15879	T	Suction assisted lipectomy	0027	15.73	$818.10	$343.60	$163.62
15920	T	Removal of tail bone ulcer	0022	18.10	$941.36	$367.13	$188.27
15922	T	Removal of tail bone ulcer	0027	15.73	$818.10	$343.60	$163.62
15931	T	Remove sacrum pressure sore	0022	18.10	$941.36	$367.13	$188.27
15933	T	Remove sacrum pressure sore	0022	18.10	$941.36	$367.13	$188.27
15934	T	Remove sacrum pressure sore	0027	15.73	$818.10	$343.60	$163.62
15935	T	Remove sacrum pressure sore	0027	15.73	$818.10	$343.60	$163.62
15936	T	Remove sacrum pressure sore	0027	15.73	$818.10	$343.60	$163.62
15937	T	Remove sacrum pressure sore	0027	15.73	$818.10	$343.60	$163.62
15940	T	Remove hip pressure sore	0022	18.10	$941.36	$367.13	$188.27
15941	T	Remove hip pressure sore	0022	18.10	$941.36	$367.13	$188.27
15944	T	Remove hip pressure sore	0027	15.73	$818.10	$343.60	$163.62
15945	T	Remove hip pressure sore	0027	15.73	$818.10	$343.60	$163.62
15946	T	Remove hip pressure sore	0027	15.73	$818.10	$343.60	$163.62
15950	T	Remove thigh pressure sore	0022	18.10	$941.36	$367.13	$188.27
15951	T	Remove thigh pressure sore	0022	18.10	$941.36	$367.13	$188.27
15952	T	Remove thigh pressure sore	0027	15.73	$818.10	$343.60	$163.62
15953	T	Remove thigh pressure sore	0027	15.73	$818.10	$343.60	$163.62
15956	T	Remove thigh pressure sore	0027	15.73	$818.10	$343.60	$163.62
15958	T	Remove thigh pressure sore	0027	15.73	$818.10	$343.60	$163.62
15999	T	Removal of pressure sore	0022	18.10	$941.36	$367.13	$188.27
16000	T	Initial treatment of burn(s)	0013	1.10	$57.21	$14.30	$11.44
16010	T	Treatment of burn(s)	0016	2.57	$133.66	$56.14	$26.73
16015	T	Treatment of burn(s)	0017	16.46	$856.07	$227.84	$171.21
16020	T	Treatment of burn(s)	0013	1.10	$57.21	$14.30	$11.44
16025	T	Treatment of burn(s)	0013	1.10	$57.21	$14.30	$11.44
16030	T	Treatment of burn(s)	0015	1.43	$74.37	$18.59	$14.87
16035	C	Incision of burn scab, initi					
16036	C	Incise burn scab, addl incis					
17000	T	Detroy benign/premal lesion	0010	0.70	$36.41	$10.56	$7.28
17003	T	Destroy lesions, 2-14	0010	0.70	$36.41	$10.56	$7.28
17004	T	Destroy lesions, 15 or more	0011	1.93	$100.38	$27.88	$20.08
17106	T	Destruction of skin lesions	0011	1.93	$100.38	$27.88	$20.08
17107	T	Destruction of skin lesions	0011	1.93	$100.38	$27.88	$20.08
17108	T	Destruction of skin lesions	0011	1.93	$100.38	$27.88	$20.08
17110	T	Destruct lesion, 1-14	0010	0.70	$36.41	$10.56	$7.28
17111	T	Destruct lesion, 15 or more	0011	1.93	$100.38	$27.88	$20.08
17250	T	Chemical cautery, tissue	0013	1.10	$57.21	$14.30	$11.44
17260	T	Destruction of skin lesions	0015	1.43	$74.37	$18.59	$14.87
17261	T	Destruction of skin lesions	0015	1.43	$74.37	$18.59	$14.87
17262	T	Destruction of skin lesions	0015	1.43	$74.37	$18.59	$14.87
17263	T	Destruction of skin lesions	0015	1.43	$74.37	$18.59	$14.87
17264	T	Destruction of skin lesions	0015	1.43	$74.37	$18.59	$14.87
17266	T	Destruction of skin lesions	0016	2.57	$133.66	$56.14	$26.73
17270	T	Destruction of skin lesions	0015	1.43	$74.37	$18.59	$14.87
17271	T	Destruction of skin lesions	0012	0.76	$39.53	$10.67	$7.91
17272	T	Destruction of skin lesions	0015	1.43	$74.37	$18.59	$14.87
17273	T	Destruction of skin lesions	0015	1.43	$74.37	$18.59	$14.87
17274	T	Destruction of skin lesions	0016	2.57	$133.66	$56.14	$26.73
17276	T	Destruction of skin lesions	0016	2.57	$133.66	$56.14	$26.73
17280	T	Destruction of skin lesions	0015	1.43	$74.37	$18.59	$14.87
17281	T	Destruction of skin lesions	0015	1.43	$74.37	$18.59	$14.87
17282	T	Destruction of skin lesions	0015	1.43	$74.37	$18.59	$14.87
17283	T	Destruction of skin lesions	0015	1.43	$74.37	$18.59	$14.87
17284	T	Destruction of skin lesions	0016	2.57	$133.66	$56.14	$26.73
17286	T	Destruction of skin lesions	0015	1.43	$74.37	$18.59	$14.87
17304	T	Chemosurgery of skin lesion	0694	3.90	$202.84	$81.14	$40.57
17305	T	2nd stage chemosurgery	0694	3.90	$202.84	$81.14	$40.57

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
17306	T	3rd stage chemosurgery	0694	3.90	$202.84	$81.14	$40.57
17307	T	Followup skin lesion therapy	0694	3.90	$202.84	$81.14	$40.57
17310	T	Extensive skin chemosurgery	0694	3.90	$202.84	$81.14	$40.57
17340	T	Cryotherapy of skin	0012	0.76	$39.53	$10.67	$7.91
17360	T	Skin peel therapy	0012	0.76	$39.53	$10.67	$7.91
17380	T	Hair removal by electrolysis	0012	0.76	$39.53	$10.67	$7.91
17999	T	Skin tissue procedure	0006	1.89	$98.30	$25.56	$19.66
19000	T	Drainage of breast lesion	0004	1.63	$84.77	$22.04	$16.95
19001	T	Drain breast lesion add-on	0004	1.63	$84.77	$22.04	$16.95
19020	T	Incision of breast lesion	0008	16.32	$848.79		$169.76
19030	N	Injection for breast x-ray					
19100	T	Bx breast percut w/o image	0005	3.02	$157.07	$69.11	$31.41
19101	T	Biopsy of breast, open	0028	17.44	$907.04	$303.74	$181.41
19102	T	Bx breast percut w/image	0005	3.02	$157.07	$69.11	$31.41
19103	T	Bx breast percut w/device	0658	5.57	$289.69		$57.94
19110	T	Nipple exploration	0028	17.44	$907.04	$303.74	$181.41
19112	T	Excise breast duct fistula	0028	17.44	$907.04	$303.74	$181.41
19120	T	Removal of breast lesion	0028	17.44	$907.04	$303.74	$181.41
19125	T	Excision, breast lesion	0028	17.44	$907.04	$303.74	$181.41
19126	T	Excision, addl breast lesion	0028	17.44	$907.04	$303.74	$181.41
19140	T	Removal of breast tissue	0028	17.44	$907.04	$303.74	$181.41
19160	T	Removal of breast tissue	0028	17.44	$907.04	$303.74	$181.41
19162	T	Remove breast tissue, nodes	0693	39.30	$2,043.95	$798.17	$408.79
19180	T	Removal of breast	0029	29.89	$1,554.55	$632.64	$310.91
19182	T	Removal of breast	0029	29.89	$1,554.55	$632.64	$310.91
19200	C	Removal of breast					
19220	C	Removal of breast					
19240	T	Removal of breast	0030	40.23	$2,092.32	$763.55	$418.46
19260	T	Removal of chest wall lesion	0021	14.58	$758.29	$227.49	$151.66
19271	C	Revision of chest wall					
19272	C	Extensive chest wall surgery					
19290	N	Place needle wire, breast					
19291	N	Place needle wire, breast					
19295	S	Place breast clip, percut	0657	1.38	$71.77		$14.35
19316	T	Suspension of breast	0029	29.89	$1,554.55	$632.64	$310.91
19318	T	Reduction of large breast	0693	39.30	$2,043.95	$798.17	$408.79
19324	T	Enlarge breast	0693	39.30	$2,043.95	$798.17	$408.79
19325	T	Enlarge breast with implant	0693	39.30	$2,043.95	$798.17	$408.79
19328	T	Removal of breast implant	0029	29.89	$1,554.55	$632.64	$310.91
19330	T	Removal of implant material	0029	29.89	$1,554.55	$632.64	$310.91
19340	T	Immediate breast prosthesis	0030	40.23	$2,092.32	$763.55	$418.46
19342	T	Delayed breast prosthesis	0693	39.30	$2,043.95	$798.17	$408.79
19350	T	Breast reconstruction	0029	29.89	$1,554.55	$632.64	$310.91
19355	T	Correct inverted nipple(s)	0029	29.89	$1,554.55	$632.64	$310.91
19357	T	Breast reconstruction	0693	39.30	$2,043.95	$798.17	$408.79
19361	C	Breast reconstruction					
19364	C	Breast reconstruction					
19366	T	Breast reconstruction	0029	29.89	$1,554.55	$632.64	$310.91
19367	C	Breast reconstruction					
19368	C	Breast reconstruction					
19369	C	Breast reconstruction					
19370	T	Surgery of breast capsule	0029	29.89	$1,554.55	$632.64	$310.91
19371	T	Removal of breast capsule	0029	29.89	$1,554.55	$632.64	$310.91
19380	T	Revise breast reconstruction	0030	40.23	$2,092.32	$763.55	$418.46
19396	T	Design custom breast implant	0029	29.89	$1,554.55	$632.64	$310.91
19499	T	Breast surgery procedure	0028	17.44	$907.04	$303.74	$181.41
20000	T	Incision of abscess	0006	1.89	$98.30	$25.56	$19.66
20005	T	Incision of deep abscess	0049	19.45	$1,011.58		$202.32
20100	T	Explore wound, neck	0023	2.38	$123.78	$40.37	$24.76
20101	T	Explore wound, chest	0027	15.73	$818.10	$343.60	$163.62
20102	T	Explore wound, abdomen	0027	15.73	$818.10	$343.60	$163.62
20103	T	Explore wound, extremity	0023	2.38	$123.78	$40.37	$24.76
20150	T	Excise epiphyseal bar	0051	34.03	$1,769.87		$353.97
20200	T	Muscle biopsy	0021	14.58	$758.29	$227.49	$151.66
20205	T	Deep muscle biopsy	0021	14.58	$758.29	$227.49	$151.66
20206	T	Needle biopsy, muscle	0005	3.02	$157.07	$69.11	$31.41

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
20220	T	Bone biopsy, trocar/needle	0019	3.94	$204.92	$75.82	$40.98
20225	T	Bone biopsy, trocar/needle	0019	3.94	$204.92	$75.82	$40.98
20240	T	Bone biopsy, excisional	0022	18.10	$941.36	$367.13	$188.27
20245	T	Bone biopsy, excisional	0022	18.10	$941.36	$367.13	$188.27
20250	T	Open bone biopsy	0049	19.45	$1,011.58		$202.32
20251	T	Open bone biopsy	0049	19.45	$1,011.58		$202.32
20500	T	Injection of sinus tract	0251	1.92	$99.86		$19.97
20501	N	Inject sinus tract for x-ray					
20520	T	Removal of foreign body	0019	3.94	$204.92	$75.82	$40.98
20525	T	Removal of foreign body	0022	18.10	$941.36	$367.13	$188.27
20526	T	Ther injection carpal tunnel	0204	2.13	$110.78	$42.10	$22.16
20550	T	Inject tendon/ligament/cyst	0204	2.13	$110.78	$42.10	$22.16
20551	T	Inject tendon origin/insert	0204	2.13	$110.78	$42.10	$22.16
20552	T	Inject trigger point, 1 or 2	0204	2.13	$110.78	$42.10	$22.16
20553	T	Inject trigger points, > 3	0204	2.13	$110.78	$42.10	$22.16
20600	T	Drain/inject, joint/bursa	0204	2.13	$110.78	$42.10	$22.16
20605	T	Drain/inject, joint/bursa	0204	2.13	$110.78	$42.10	$22.16
20610	T	Drain/inject, joint/bursa	0204	2.13	$110.78	$42.10	$22.16
20615	T	Treatment of bone cyst	0004	1.63	$84.77	$22.04	$16.95
20650	T	Insert and remove bone pin	0049	19.45	$1,011.58		$202.32
20660	C	Apply,remove fixation device					
20661	C	Application of head brace					
20662	C	Application of pelvis brace					
20663	C	Application of thigh brace					
20664	C	Halo brace application					
20665	X	Removal of fixation device	0340	0.66	$34.33		$6.87
20670	T	Removal of support implant	0021	14.58	$758.29	$227.49	$151.66
20680	T	Removal of support implant	0022	18.10	$941.36	$367.13	$188.27
20690	T	Apply bone fixation device	0050	23.60	$1,227.41		$245.48
20692	T	Apply bone fixation device	0050	23.60	$1,227.41		$245.48
20693	T	Adjust bone fixation device	0049	19.45	$1,011.58		$202.32
20694	T	Remove bone fixation device	0049	19.45	$1,011.58		$202.32
20802	C	Replantation, arm, complete					
20805	C	Replant, forearm, complete					
20808	C	Replantation hand, complete					
20816	C	Replantation digit, complete					
20822	C	Replantation digit, complete					
20824	C	Replantation thumb, complete					
20827	C	Replantation thumb, complete					
20838	C	Replantation foot, complete					
20900	T	Removal of bone for graft	0050	23.60	$1,227.41		$245.48
20902	T	Removal of bone for graft	0050	23.60	$1,227.41		$245.48
20910	T	Remove cartilage for graft	0027	15.73	$818.10	$343.60	$163.62
20912	T	Remove cartilage for graft	0027	15.73	$818.10	$343.60	$163.62
20920	T	Removal of fascia for graft	0027	15.73	$818.10	$343.60	$163.62
20922	T	Removal of fascia for graft	0027	15.73	$818.10	$343.60	$163.62
20924	T	Removal of tendon for graft	0050	23.60	$1,227.41		$245.48
20926	T	Removal of tissue for graft	0027	15.73	$818.10	$343.60	$163.62
20930	C	Spinal bone allograft					
20931	C	Spinal bone allograft					
20936	C	Spinal bone autograft					
20937	C	Spinal bone autograft					
20938	C	Spinal bone autograft					
20950	T	Fluid pressure, muscle	0006	1.89	$98.30	$25.56	$19.66
20955	C	Fibula bone graft, microvasc					
20956	C	Iliac bone graft, microvasc					
20957	C	Mt bone graft, microvasc					
20962	C	Other bone graft, microvasc					
20969	C	Bone/skin graft, microvasc					
20970	C	Bone/skin graft, iliac crest					
20972	C	Bone/skin graft, metatarsal					
20973	C	Bone/skin graft, great toe					
20974	A	Electrical bone stimulation					
20975	T	Electrical bone stimulation	0049	19.45	$1,011.58		$202.32
20979	A	Us bone stimulation					
20999	T	Musculoskeletal surgery	0049	19.45	$1,011.58		$202.32

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
21010	T	Incision of jaw joint	0254	21.89	$1,138.48	$352.93	$227.70
21015	T	Resection of facial tumor	0253	14.79	$769.21	$284.61	$153.84
21025	T	Excision of bone, lower jaw	0256	35.51	$1,846.84		$369.37
21026	T	Excision of facial bone(s)	0256	35.51	$1,846.84		$369.37
21029	T	Contour of face bone lesion	0256	35.51	$1,846.84		$369.37
21030	T	Removal of face bone lesion	0254	21.89	$1,138.48	$352.93	$227.70
21031	T	Remove exostosis, mandible	0254	21.89	$1,138.48	$352.93	$227.70
21032	T	Remove exostosis, maxilla	0254	21.89	$1,138.48	$352.93	$227.70
21034	T	Removal of face bone lesion	0256	35.51	$1,846.84		$369.37
21040	T	Removal of jaw bone lesion	0254	21.89	$1,138.48	$352.93	$227.70
21041	T	Removal of jaw bone lesion	0256	35.51	$1,846.84		$369.37
21044	T	Removal of jaw bone lesion	0256	35.51	$1,846.84		$369.37
21045	C	Extensive jaw surgery					
21050	T	Removal of jaw joint	0256	35.51	$1,846.84		$369.37
21060	T	Remove jaw joint cartilage	0256	35.51	$1,846.84		$369.37
21070	T	Remove coronoid process	0256	35.51	$1,846.84		$369.37
21076	T	Prepare face/oral prosthesis	0254	21.89	$1,138.48	$352.93	$227.70
21077	T	Prepare face/oral prosthesis	0256	35.51	$1,846.84		$369.37
21079	T	Prepare face/oral prosthesis	0256	35.51	$1,846.84		$369.37
21080	T	Prepare face/oral prosthesis	0256	35.51	$1,846.84		$369.37
21081	T	Prepare face/oral prosthesis	0256	35.51	$1,846.84		$369.37
21082	T	Prepare face/oral prosthesis	0256	35.51	$1,846.84		$369.37
21083	T	Prepare face/oral prosthesis	0256	35.51	$1,846.84		$369.37
21084	T	Prepare face/oral prosthesis	0256	35.51	$1,846.84		$369.37
21085	T	Prepare face/oral prosthesis	0253	14.79	$769.21	$284.61	$153.84
21086	T	Prepare face/oral prosthesis	0256	35.51	$1,846.84		$369.37
21087	T	Prepare face/oral prosthesis	0256	35.51	$1,846.84		$369.37
21088	T	Prepare face/oral prosthesis	0256	35.51	$1,846.84		$369.37
21089	T	Prepare face/oral prosthesis	0253	14.79	$769.21	$284.61	$153.84
21100	T	Maxillofacial fixation	0256	35.51	$1,846.84		$369.37
21110	T	Interdental fixation	0252	6.27	$326.10	$114.24	$65.22
21116	N	Injection, jaw joint x-ray					
21120	T	Reconstruction of chin	0254	21.89	$1,138.48	$352.93	$227.70
21121	T	Reconstruction of chin	0254	21.89	$1,138.48	$352.93	$227.70
21122	T	Reconstruction of chin	0254	21.89	$1,138.48	$352.93	$227.70
21123	T	Reconstruction of chin	0254	21.89	$1,138.48	$352.93	$227.70
21125	T	Augmentation, lower jaw bone	0254	21.89	$1,138.48	$352.93	$227.70
21127	T	Augmentation, lower jaw bone	0256	35.51	$1,846.84		$369.37
21137	T	Reduction of forehead	0254	21.89	$1,138.48	$352.93	$227.70
21138	T	Reduction of forehead	0256	35.51	$1,846.84		$369.37
21139	T	Reduction of forehead	0256	35.51	$1,846.84		$369.37
21141	C	Reconstruct midface, lefort					
21142	C	Reconstruct midface, lefort					
21143	C	Reconstruct midface, lefort					
21145	C	Reconstruct midface, lefort					
21146	C	Reconstruct midface, lefort					
21147	C	Reconstruct midface, lefort					
21150	C	Reconstruct midface, lefort					
21151	C	Reconstruct midface, lefort					
21154	C	Reconstruct midface, lefort					
21155	C	Reconstruct midface, lefort					
21159	C	Reconstruct midface, lefort					
21160	C	Reconstruct midface, lefort					
21172	C	Reconstruct orbit/forehead					
21175	C	Reconstruct orbit/forehead					
21179	C	Reconstruct entire forehead					
21180	C	Reconstruct entire forehead					
21181	T	Contour cranial bone lesion	0254	21.89	$1,138.48	$352.93	$227.70
21182	C	Reconstruct cranial bone					
21183	C	Reconstruct cranial bone					
21184	C	Reconstruct cranial bone					
21188	C	Reconstruction of midface					
21193	C	Reconst lwr jaw w/o graft					
21194	C	Reconst lwr jaw w/graft					
21195	C	Reconst lwr jaw w/o fixation					
21196	C	Reconst lwr jaw w/fixation					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
21198	T	Reconstr lwr jaw segment	0256	35.51	$1,846.84		$369.37
21199	T	Reconstr lwr jaw w/advance	0256	35.51	$1,846.84		$369.37
21206	T	Reconstruct upper jaw bone	0256	35.51	$1,846.84		$369.37
21208	T	Augmentation of facial bones	0256	35.51	$1,846.84		$369.37
21209	T	Reduction of facial bones	0256	35.51	$1,846.84		$369.37
21210	T	Face bone graft	0256	35.51	$1,846.84		$369.37
21215	T	Lower jaw bone graft	0256	35.51	$1,846.84		$369.37
21230	T	Rib cartilage graft	0256	35.51	$1,846.84		$369.37
21235	T	Ear cartilage graft	0254	21.89	$1,138.48	$352.93	$227.70
21240	T	Reconstruction of jaw joint	0256	35.51	$1,846.84		$369.37
21242	T	Reconstruction of jaw joint	0256	35.51	$1,846.84		$369.37
21243	T	Reconstruction of jaw joint	0256	35.51	$1,846.84		$369.37
21244	T	Reconstruction of lower jaw	0256	35.51	$1,846.84		$369.37
21245	T	Reconstruction of jaw	0256	35.51	$1,846.84		$369.37
21246	T	Reconstruction of jaw	0256	35.51	$1,846.84		$369.37
21247	C	Reconstruct lower jaw bone					
21248	T	Reconstruction of jaw	0256	35.51	$1,846.84		$369.37
21249	T	Reconstruction of jaw	0256	35.51	$1,846.84		$369.37
21255	C	Reconstruct lower jaw bone					
21256	C	Reconstruction of orbit					
21260	T	Revise eye sockets	0256	35.51	$1,846.84		$369.37
21261	T	Revise eye sockets	0256	35.51	$1,846.84		$369.37
21263	T	Revise eye sockets	0256	35.51	$1,846.84		$369.37
21267	T	Revise eye sockets	0256	35.51	$1,846.84		$369.37
21268	C	Revise eye sockets					
21270	T	Augmentation, cheek bone	0256	35.51	$1,846.84		$369.37
21275	T	Revision, orbitofacial bones	0256	35.51	$1,846.84		$369.37
21280	T	Revision of eyelid	0256	35.51	$1,846.84		$369.37
21282	T	Revision of eyelid	0253	14.79	$769.21	$284.61	$153.84
21295	T	Revision of jaw muscle/bone	0252	6.27	$326.10	$114.24	$65.22
21296	T	Revision of jaw muscle/bone	0254	21.89	$1,138.48	$352.93	$227.70
21299	T	Cranio/maxillofacial surgery	0253	14.79	$769.21	$284.61	$153.84
21300	T	Treatment of skull fracture	0253	14.79	$769.21	$284.61	$153.84
21310	X	Treatment of nose fracture	0340	0.66	$34.33		$6.87
21315	X	Treatment of nose fracture	0340	0.66	$34.33		$6.87
21320	X	Treatment of nose fracture	0340	0.66	$34.33		$6.87
21325	T	Treatment of nose fracture	0254	21.89	$1,138.48	$352.93	$227.70
21330	T	Treatment of nose fracture	0254	21.89	$1,138.48	$352.93	$227.70
21335	T	Treatment of nose fracture	0254	21.89	$1,138.48	$352.93	$227.70
21336	T	Treat nasal septal fracture	0046	29.03	$1,509.82	$535.76	$301.96
21337	T	Treat nasal septal fracture	0253	14.79	$769.21	$284.61	$153.84
21338	T	Treat nasoethmoid fracture	0254	21.89	$1,138.48	$352.93	$227.70
21339	T	Treat nasoethmoid fracture	0254	21.89	$1,138.48	$352.93	$227.70
21340	T	Treatment of nose fracture	0256	35.51	$1,846.84		$369.37
21343	C	Treatment of sinus fracture					
21344	C	Treatment of sinus fracture					
21345	T	Treat nose/jaw fracture	0254	21.89	$1,138.48	$352.93	$227.70
21346	C	Treat nose/jaw fracture					
21347	C	Treat nose/jaw fracture					
21348	C	Treat nose/jaw fracture					
21355	T	Treat cheek bone fracture	0256	35.51	$1,846.84		$369.37
21356	C	Treat cheek bone fracture					
21360	C	Treat cheek bone fracture					
21365	C	Treat cheek bone fracture					
21366	C	Treat cheek bone fracture					
21385	C	Treat eye socket fracture					
21386	C	Treat eye socket fracture					
21387	C	Treat eye socket fracture					
21390	T	Treat eye socket fracture	0256	35.51	$1,846.84		$369.37
21395	C	Treat eye socket fracture					
21400	T	Treat eye socket fracture	0252	6.27	$326.10	$114.24	$65.22
21401	T	Treat eye socket fracture	0253	14.79	$769.21	$284.61	$153.84
21406	T	Treat eye socket fracture	0256	35.51	$1,846.84		$369.37
21407	T	Treat eye socket fracture	0256	35.51	$1,846.84		$369.37
21408	C	Treat eye socket fracture					
21421	T	Treat mouth roof fracture	0254	21.89	$1,138.48	$352.93	$227.70

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
21422	C	Treat mouth roof fracture					
21423	C	Treat mouth roof fracture					
21431	C	Treat craniofacial fracture					
21432	C	Treat craniofacial fracture					
21433	C	Treat craniofacial fracture					
21435	C	Treat craniofacial fracture					
21436	C	Treat craniofacial fracture					
21440	T	Treat dental ridge fracture	0254	21.89	$1,138.48	$352.93	$227.70
21445	T	Treat dental ridge fracture	0254	21.89	$1,138.48	$352.93	$227.70
21450	T	Treat lower jaw fracture	0251	1.92	$99.86		$19.97
21451	T	Treat lower jaw fracture	0252	6.27	$326.10	$114.24	$65.22
21452	T	Treat lower jaw fracture	0253	14.79	$769.21	$284.61	$153.84
21453	T	Treat lower jaw fracture	0256	35.51	$1,846.84		$369.37
21454	T	Treat lower jaw fracture	0254	21.89	$1,138.48	$352.93	$227.70
21461	T	Treat lower jaw fracture	0256	35.51	$1,846.84		$369.37
21462	T	Treat lower jaw fracture	0256	35.51	$1,846.84		$369.37
21465	T	Treat lower jaw fracture	0256	35.51	$1,846.84		$369.37
21470	T	Treat lower jaw fracture	0256	35.51	$1,846.84		$369.37
21480	T	Reset dislocated jaw	0251	1.92	$99.86		$19.97
21485	T	Reset dislocated jaw	0253	14.79	$769.21	$284.61	$153.84
21490	T	Repair dislocated jaw	0256	35.51	$1,846.84		$369.37
21493	T	Treat hyoid bone fracture	0252	6.27	$326.10	$114.24	$65.22
21494	T	Treat hyoid bone fracture	0252	6.27	$326.10	$114.24	$65.22
21495	C	Treat hyoid bone fracture					
21497	T	Interdental wiring	0253	14.79	$769.21	$284.61	$153.84
21499	T	Head surgery procedure	0253	14.79	$769.21	$284.61	$153.84
21501	T	Drain neck/chest lesion	0008	16.32	$848.79		$169.76
21502	T	Drain chest lesion	0049	19.45	$1,011.58		$202.32
21510	C	Drainage of bone lesion					
21550	T	Biopsy of neck/chest	0021	14.58	$758.29	$227.49	$151.66
21555	T	Remove lesion, neck/chest	0022	18.10	$941.36	$367.13	$188.27
21556	T	Remove lesion, neck/chest	0022	18.10	$941.36	$367.13	$188.27
21557	C	Remove tumor, neck/chest					
21600	T	Partial removal of rib	0050	23.60	$1,227.41		$245.48
21610	T	Partial removal of rib	0050	23.60	$1,227.41		$245.48
21615	C	Removal of rib					
21616	C	Removal of rib and nerves					
21620	C	Partial removal of sternum					
21627	C	Sternal debridement					
21630	C	Extensive sternum surgery					
21632	C	Extensive sternum surgery					
21700	T	Revision of neck muscle	0049	19.45	$1,011.58		$202.32
21705	C	Revision of neck muscle/rib					
21720	T	Revision of neck muscle	0049	19.45	$1,011.58		$202.32
21725	T	Revision of neck muscle	0008	1.89	$98.30	$25.56	$19.66
21740	C	Reconstruction of sternum					
21750	C	Repair of sternum separation					
21800	T	Treatment of rib fracture	0043	1.68	$87.38		$17.48
21805	T	Treatment of rib fracture	0046	29.03	$1,509.82	$535.76	$301.96
21810	C	Treatment of rib fracture(s)					
21820	T	Treat sternum fracture	0043	1.68	$87.38		$17.48
21825	C	Treat sternum fracture					
21899	T	Neck/chest surgery procedure	0252	6.27	$326.10	$114.24	$65.22
21920	T	Biopsy soft tissue of back	0020	7.36	$382.79	$114.84	$76.56
21925	T	Biopsy soft tissue of back	0022	18.10	$941.36	$367.13	$188.27
21930	T	Remove lesion, back or flank	0022	18.10	$941.36	$367.13	$188.27
21935	T	Remove tumor, back	0022	18.10	$941.36	$367.13	$188.27
22100	T	Remove part of neck vertebra	0208	39.95	$2,077.76		$415.55
22101	T	Remove part, thorax vertebra	0208	39.95	$2,077.76		$415.55
22102	T	Remove part, lumbar vertebra	0208	39.95	$2,077.76		$415.55
22103	T	Remove extra spine segment	0208	39.95	$2,077.76		$415.55
22110	C	Remove part of neck vertebra					
22112	C	Remove part, thorax vertebra					
22114	C	Remove part, lumbar vertebra					
22116	C	Remove extra spine segment					
22210	C	Revision of neck spine					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
22212	C	Revision of thorax spine					
22214	C	Revision of lumbar spine					
22216	C	Revise, extra spine segment					
22220	C	Revision of neck spine					
22222	C	Revision of thorax spine					
22224	C	Revision of lumbar spine					
22226	C	Revise, extra spine segment					
22305	T	Treat spine process fracture	0043	1.68	$87.38		$17.48
22310	T	Treat spine fracture	0043	1.68	$87.38		$17.48
22315	T	Treat spine fracture	0043	1.68	$87.38		$17.48
22318	C	Treat odontoid fx w/o graft					
22319	C	Treat odontoid fx w/graft					
22325	C	Treat spine fracture					
22326	C	Treat neck spine fracture					
22327	C	Treat thorax spine fracture					
22328	C	Treat each add spine fx					
22505	T	Manipulation of spine	0045	13.47	$700.56	$280.22	$140.11
22520	T	Percut vertebroplasty thor	0050	23.60	$1,227.41		$245.48
22521	T	Percut vertebroplasty lumb	0050	23.60	$1,227.41		$245.48
22522	T	Percut vertebroplasty addl	0050	23.60	$1,227.41		$245.48
22548	C	Neck spine fusion					
22554	C	Neck spine fusion					
22556	C	Thorax spine fusion					
22558	C	Lumbar spine fusion					
22585	C	Additional spinal fusion					
22590	C	Spine & skull spinal fusion					
22595	C	Neck spinal fusion					
22600	C	Neck spine fusion					
22610	C	Thorax spine fusion					
22612	C	Lumbar spine fusion					
22614	C	Spine fusion, extra segment					
22630	C	Lumbar spine fusion					
22632	C	Spine fusion, extra segment					
22800	C	Fusion of spine					
22802	C	Fusion of spine					
22804	C	Fusion of spine					
22808	C	Fusion of spine					
22810	C	Fusion of spine					
22812	C	Fusion of spine					
22818	C	Kyphectomy, 1-2 segments					
22819	C	Kyphectomy, 3 or more					
22830	C	Exploration of spinal fusion					
22840	C	Insert spine fixation device					
22841	C	Insert spine fixation device					
22842	C	Insert spine fixation device					
22843	C	Insert spine fixation device					
22844	C	Insert spine fixation device					
22845	C	Insert spine fixation device					
22846	C	Insert spine fixation device					
22847	C	Insert spine fixation device					
22848	C	Insert pelv fixation device					
22849	C	Reinsert spinal fixation					
22850	C	Remove spine fixation device					
22851	C	Apply spine prosth device					
22852	C	Remove spine fixation device					
22855	C	Remove spine fixation device					
22899	T	Spine surgery procedure	0043	1.68	$87.38		$17.48
22900	T	Remove abdominal wall lesion	0022	18.10	$941.36	$367.13	$188.27
22999	T	Abdomen surgery procedure	0022	18.10	$941.36	$367.13	$188.27
23000	T	Removal of calcium deposits	0021	14.58	$758.29	$227.49	$151.66
23020	T	Release shoulder joint	0051	34.03	$1,769.87		$353.97
23030	T	Drain shoulder lesion	0008	16.32	$848.79		$169.76
23031	T	Drain shoulder bursa	0008	16.32	$848.79		$169.76
23035	T	Drain shoulder bone lesion	0049	19.45	$1,011.58		$202.32
23040	T	Exploratory shoulder surgery	0050	23.60	$1,227.41		$245.48
23044	T	Exploratory shoulder surgery	0050	23.60	$1,227.41		$245.48

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
23065	T	Biopsy shoulder tissues	0021	14.58	$758.29	$227.49	$151.66
23066	T	Biopsy shoulder tissues	0022	18.10	$941.36	$367.13	$188.27
23075	T	Removal of shoulder lesion	0021	14.58	$758.29	$227.49	$151.66
23076	T	Removal of shoulder lesion	0022	18.10	$941.36	$367.13	$188.27
23077	T	Remove tumor of shoulder	0022	18.10	$941.36	$367.13	$188.27
23100	T	Biopsy of shoulder joint	0049	19.45	$1,011.58		$202.32
23101	T	Shoulder joint surgery	0050	23.60	$1,227.41		$245.48
23105	T	Remove shoulder joint lining	0050	23.60	$1,227.41		$245.48
23106	T	Incision of collarbone joint	0050	23.60	$1,227.41		$245.48
23107	T	Explore treat shoulder joint	0050	23.60	$1,227.41		$245.48
23120	T	Partial removal, collar bone	0051	34.03	$1,769.87		$353.97
23125	T	Removal of collar bone	0051	34.03	$1,769.87		$353.97
23130	T	Remove shoulder bone, part	0051	34.03	$1,769.87		$353.97
23140	T	Removal of bone lesion	0049	19.45	$1,011.58		$202.32
23145	T	Removal of bone lesion	0050	23.60	$1,227.41		$245.48
23146	T	Removal of bone lesion	0050	23.60	$1,227.41		$245.48
23150	T	Removal of humerus lesion	0050	23.60	$1,227.41		$245.48
23155	T	Removal of humerus lesion	0050	23.60	$1,227.41		$245.48
23156	T	Removal of humerus lesion	0050	23.60	$1,227.41		$245.48
23170	T	Remove collar bone lesion	0050	23.60	$1,227.41		$245.48
23172	T	Remove shoulder blade lesion	0050	23.60	$1,227.41		$245.48
23174	T	Remove humerus lesion	0050	23.60	$1,227.41		$245.48
23180	T	Remove collar bone lesion	0050	23.60	$1,227.41		$245.48
23182	T	Remove shoulder blade lesion	0050	23.60	$1,227.41		$245.48
23184	T	Remove humerus lesion	0050	23.60	$1,227.41		$245.48
23190	T	Partial removal of scapula	0050	23.60	$1,227.41		$245.48
23195	T	Removal of head of humerus	0050	23.60	$1,227.41		$245.48
23200	C	Removal of collar bone					
23210	C	Removal of shoulder blade					
23220	C	Partial removal of humerus					
23221	C	Partial removal of humerus					
23222	C	Partial removal of humerus					
23330	T	Remove shoulder foreign body	0020	7.36	$382.79	$114.84	$76.56
23331	T	Remove shoulder foreign body	0022	18.10	$941.36	$367.13	$188.27
23332	C	Remove shoulder foreign body					
23350	N	Injection for shoulder x-ray					
23395	T	Muscle transfer,shoulder/arm	0051	34.03	$1,769.87		$353.97
23397	T	Muscle transfers	0052	42.37	$2,203.62		$440.72
23400	T	Fixation of shoulder blade	0050	23.60	$1,227.41		$245.48
23405	T	Incision of tendon & muscle	0050	23.60	$1,227.41		$245.48
23406	T	Incise tendon(s) & muscle(s)	0050	23.60	$1,227.41		$245.48
23410	T	Repair of tendon(s)	0052	42.37	$2,203.62		$440.72
23412	T	Repair of tendon(s)	0052	42.37	$2,203.62		$440.72
23415	T	Release of shoulder ligament	0051	34.03	$1,769.87		$353.97
23420	T	Repair of shoulder	0052	42.37	$2,203.62		$440.72
23430	T	Repair biceps tendon	0052	42.37	$2,203.62		$440.72
23440	T	Remove/transplant tendon	0052	42.37	$2,203.62		$440.72
23450	T	Repair shoulder capsule	0052	42.37	$2,203.62		$440.72
23455	T	Repair shoulder capsule	0052	42.37	$2,203.62		$440.72
23460	T	Repair shoulder capsule	0052	42.37	$2,203.62		$440.72
23462	T	Repair shoulder capsule	0052	42.37	$2,203.62		$440.72
23465	T	Repair shoulder capsule	0052	42.37	$2,203.62		$440.72
23466	T	Repair shoulder capsule	0052	42.37	$2,203.62		$440.72
23470	T	Reconstruct shoulder joint	0048	36.93	$1,920.69	$633.83	$384.14
23472	C	Reconstruct shoulder joint					
23480	T	Revision of collar bone	0051	34.03	$1,769.87		$353.97
23485	T	Revision of collar bone	0051	34.03	$1,769.87		$353.97
23490	T	Reinforce clavicle	0051	34.03	$1,769.87		$353.97
23491	T	Reinforce shoulder bones	0051	34.03	$1,769.87		$353.97
23500	T	Treat clavicle fracture	0043	1.68	$87.38		$17.48
23505	T	Treat clavicle fracture	0043	1.68	$87.38		$17.48
23515	T	Treat clavicle fracture	0046	29.03	$1,509.82	$535.76	$301.96
23520	T	Treat clavicle dislocation	0043	1.68	$87.38		$17.48
23525	T	Treat clavicle dislocation	0043	1.68	$87.38		$17.48
23530	T	Treat clavicle dislocation	0046	29.03	$1,509.82	$535.76	$301.96
23532	T	Treat clavicle dislocation	0046	29.03	$1,509.82	$535.76	$301.96

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
23540	T	Treat clavicle dislocation	0043	1.68	$87.38		$17.48
23545	T	Treat clavicle dislocation	0043	1.68	$87.38		$17.48
23550	T	Treat clavicle dislocation	0046	29.03	$1,509.82	$535.76	$301.96
23552	T	Treat clavicle dislocation	0046	29.03	$1,509.82	$535.76	$301.96
23570	T	Treat shoulder blade fx	0043	1.68	$87.38		$17.48
23575	T	Treat shoulder blade fx	0043	1.68	$87.38		$17.48
23585	T	Treat scapula fracture	0046	29.03	$1,509.82	$535.76	$301.96
23600	T	Treat humerus fracture	0043	1.68	$87.38		$17.48
23605	T	Treat humerus fracture	0043	1.68	$87.38		$17.48
23615	T	Treat humerus fracture	0046	29.03	$1,509.82	$535.76	$301.96
23616	T	Treat humerus fracture	0046	29.03	$1,509.82	$535.76	$301.96
23620	T	Treat humerus fracture	0043	1.68	$87.38		$17.48
23625	T	Treat humerus fracture	0043	1.68	$87.38		$17.48
23630	T	Treat humerus fracture	0046	29.03	$1,509.82	$535.76	$301.96
23650	T	Treat shoulder dislocation	0043	1.68	$87.38		$17.48
23655	T	Treat shoulder dislocation	0045	13.47	$700.56	$280.22	$140.11
23660	T	Treat shoulder dislocation	0046	29.03	$1,509.82	$535.76	$301.96
23665	T	Treat dislocation/fracture	0043	1.68	$87.38		$17.48
23670	T	Treat dislocation/fracture	0046	29.03	$1,509.82	$535.76	$301.96
23675	T	Treat dislocation/fracture	0043	1.68	$87.38		$17.48
23680	T	Treat dislocation/fracture	0046	29.03	$1,509.82	$535.76	$301.96
23700	T	Fixation of shoulder	0045	13.47	$700.56	$280.22	$140.11
23800	T	Fusion of shoulder joint	0051	34.03	$1,769.87		$353.97
23802	T	Fusion of shoulder joint	0051	34.03	$1,769.87		$353.97
23900	C	Amputation of arm & girdle					
23920	C	Amputation at shoulder joint					
23921	T	Amputation follow-up surgery	0025	5.89	$306.33	$116.41	$61.27
23929	T	Shoulder surgery procedure	0043	1.68	$87.38		$17.48
23930	T	Drainage of arm lesion	0008	16.32	$848.79		$169.76
23931	T	Drainage of arm bursa	0006	1.89	$98.30	$25.56	$19.66
23935	T	Drain arm/elbow bone lesion	0049	19.45	$1,011.58		$202.32
24000	T	Exploratory elbow surgery	0050	23.60	$1,227.41		$245.48
24006	T	Release elbow joint	0050	23.60	$1,227.41		$245.48
24065	T	Biopsy arm/elbow soft tissue	0021	14.58	$758.29	$227.49	$151.66
24066	T	Biopsy arm/elbow soft tissue	0021	14.58	$758.29	$227.49	$151.66
24075	T	Remove arm/elbow lesion	0021	14.58	$758.29	$227.49	$151.66
24076	T	Remove arm/elbow lesion	0022	18.10	$941.36	$367.13	$188.27
24077	T	Remove tumor of arm/elbow	0022	18.10	$941.36	$367.13	$188.27
24100	T	Biopsy elbow joint lining	0049	19.45	$1,011.58		$202.32
24101	T	Explore/treat elbow joint	0050	23.60	$1,227.41		$245.48
24102	T	Remove elbow joint lining	0050	23.60	$1,227.41		$245.48
24105	T	Removal of elbow bursa	0049	19.45	$1,011.58		$202.32
24110	T	Remove humerus lesion	0049	19.45	$1,011.58		$202.32
24115	T	Remove/graft bone lesion	0050	23.60	$1,227.41		$245.48
24116	T	Remove/graft bone lesion	0050	23.60	$1,227.41		$245.48
24120	T	Remove elbow lesion	0049	19.45	$1,011.58		$202.32
24125	T	Remove/graft bone lesion	0050	23.60	$1,227.41		$245.48
24126	T	Remove/graft bone lesion	0050	23.60	$1,227.41		$245.48
24130	T	Removal of head of radius	0050	23.60	$1,227.41		$245.48
24134	T	Removal of arm bone lesion	0050	23.60	$1,227.41		$245.48
24136	T	Remove radius bone lesion	0050	23.60	$1,227.41		$245.48
24138	T	Remove elbow bone lesion	0050	23.60	$1,227.41		$245.48
24140	T	Partial removal of arm bone	0050	23.60	$1,227.41		$245.48
24145	T	Partial removal of radius	0050	23.60	$1,227.41		$245.48
24147	T	Partial removal of elbow	0050	23.60	$1,227.41		$245.48
24149	C	Radical resection of elbow					
24150	T	Extensive humerus surgery	0052	42.37	$2,203.62		$440.72
24151	T	Extensive humerus surgery	0052	42.37	$2,203.62		$440.72
24152	T	Extensive radius surgery	0052	42.37	$2,203.62		$440.72
24153	T	Extensive radius surgery	0052	42.37	$2,203.62		$440.72
24155	T	Removal of elbow joint	0051	34.03	$1,769.87		$353.97
24160	T	Remove elbow joint implant	0050	23.60	$1,227.41		$245.48
24164	T	Remove radius head implant	0050	23.60	$1,227.41		$245.48
24200	T	Removal of arm foreign body	0019	3.94	$204.92	$75.82	$40.98
24201	T	Removal of arm foreign body	0021	14.58	$758.29	$227.49	$151.66
24220	N	Injection for elbow x-ray					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
24300	T	Manipulate elbow w/anesth	0045	13.47	$700.56	$280.22	$140.11
24301	T	Muscle/tendon transfer	0050	23.60	$1,227.41		$245.48
24305	T	Arm tendon lengthening	0050	23.60	$1,227.41		$245.48
24310	T	Revision of arm tendon	0049	19.45	$1,011.58		$202.32
24320	T	Repair of arm tendon	0051	34.03	$1,769.87		$353.97
24330	T	Revision of arm muscles	0051	34.03	$1,769.87		$353.97
24331	T	Revision of arm muscles	0051	34.03	$1,769.87		$353.97
24332	T	Tenolysis, triceps	0049	19.45	$1,011.58		$202.32
24340	T	Repair of biceps tendon	0051	34.03	$1,769.87		$353.97
24341	T	Repair arm tendon/muscle	0051	34.03	$1,769.87		$353.97
24342	T	Repair of ruptured tendon	0051	34.03	$1,769.87		$353.97
24343	T	Repr elbow lat ligmnt w/tiss	0050	23.60	$1,227.41		$245.48
24344	T	Reconstruct elbow lat ligmnt	0051	34.03	$1,769.87		$353.97
24345	T	Repr elbw med ligamnt w/tiss	0050	23.60	$1,227.41		$245.48
24346	T	Reconstruct elbow med ligmnt	0051	34.03	$1,769.87		$353.97
24350	T	Repair of tennis elbow	0050	23.60	$1,227.41		$245.48
24351	T	Repair of tennis elbow	0050	23.60	$1,227.41		$245.48
24352	T	Repair of tennis elbow	0050	23.60	$1,227.41		$245.48
24354	T	Repair of tennis elbow	0050	23.60	$1,227.41		$245.48
24356	T	Revision of tennis elbow	0050	23.60	$1,227.41		$245.48
24360	T	Reconstruct elbow joint	0047	29.59	$1,538.95	$537.03	$307.79
24361	T	Reconstruct elbow joint	0048	36.93	$1,920.69	$633.83	$384.14
24362	T	Reconstruct elbow joint	0048	36.93	$1,920.69	$633.83	$384.14
24363	T	Replace elbow joint	0048	36.93	$1,920.69	$633.83	$384.14
24365	T	Reconstruct head of radius	0047	29.59	$1,538.95	$537.03	$307.79
24366	T	Reconstruct head of radius	0048	36.93	$1,920.69	$633.83	$384.14
24400	T	Revision of humerus	0050	23.60	$1,227.41		$245.48
24410	T	Revision of humerus	0050	23.60	$1,227.41		$245.48
24420	T	Revision of humerus	0051	34.03	$1,769.87		$353.97
24430	T	Repair of humerus	0051	34.03	$1,769.87		$353.97
24435	T	Repair humerus with graft	0051	34.03	$1,769.87		$353.97
24470	T	Revision of elbow joint	0051	34.03	$1,769.87		$353.97
24495	T	Decompression of forearm	0050	23.60	$1,227.41		$245.48
24498	T	Reinforce humerus	0051	34.03	$1,769.87		$353.97
24500	T	Treat humerus fracture	0043	1.68	$87.38		$17.48
24505	T	Treat humerus fracture	0043	1.68	$87.38		$17.48
24515	T	Treat humerus fracture	0046	29.03	$1,509.82	$535.76	$301.96
24516	T	Treat humerus fracture	0046	29.03	$1,509.82	$535.76	$301.96
24530	T	Treat humerus fracture	0043	1.68	$87.38		$17.48
24535	T	Treat humerus fracture	0043	1.68	$87.38		$17.48
24538	T	Treat humerus fracture	0046	29.03	$1,509.82	$535.76	$301.96
24545	T	Treat humerus fracture	0046	29.03	$1,509.82	$535.76	$301.96
24546	T	Treat humerus fracture	0046	29.03	$1,509.82	$535.76	$301.96
24560	T	Treat humerus fracture	0043	1.68	$87.38		$17.48
24565	T	Treat humerus fracture	0043	1.68	$87.38		$17.48
24566	T	Treat humerus fracture	0046	29.03	$1,509.82	$535.76	$301.96
24575	T	Treat humerus fracture	0046	29.03	$1,509.82	$535.76	$301.96
24576	T	Treat humerus fracture	0043	1.68	$87.38		$17.48
24577	T	Treat humerus fracture	0043	1.68	$87.38		$17.48
24579	T	Treat humerus fracture	0046	29.03	$1,509.82	$535.76	$301.96
24582	T	Treat humerus fracture	0046	29.03	$1,509.82	$535.76	$301.96
24586	T	Treat elbow fracture	0046	29.03	$1,509.82	$535.76	$301.96
24587	T	Treat elbow fracture	0046	29.03	$1,509.82	$535.76	$301.96
24600	T	Treat elbow dislocation	0043	1.68	$87.38		$17.48
24605	T	Treat elbow dislocation	0045	13.47	$700.56	$280.22	$140.11
24615	T	Treat elbow dislocation	0046	29.03	$1,509.82	$535.76	$301.96
24620	T	Treat elbow fracture	0043	1.68	$87.38		$17.48
24635	T	Treat elbow fracture	0046	29.03	$1,509.82	$535.76	$301.96
24640	T	Treat elbow dislocation	0043	1.68	$87.38		$17.48
24650	T	Treat radius fracture	0043	1.68	$87.38		$17.48
24655	T	Treat radius fracture	0043	1.68	$87.38		$17.48
24665	T	Treat radius fracture	0046	29.03	$1,509.82	$535.76	$301.96
24666	T	Treat radius fracture	0046	29.03	$1,509.82	$535.76	$301.96
24670	T	Treat ulnar fracture	0043	1.68	$87.38		$17.48
24675	T	Treat ulnar fracture	0043	1.68	$87.38		$17.48
24685	T	Treat ulnar fracture	0046	29.03	$1,509.82	$535.76	$301.96

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
24800	T	Fusion of elbow joint	0051	34.03	$1,769.87		$353.97
24802	T	Fusion/graft of elbow joint	0051	34.03	$1,769.87		$353.97
24900	C	Amputation of upper arm					
24920	C	Amputation of upper arm					
24925	T	Amputation follow-up surgery	0049	19.45	$1,011.58		$202.32
24930	C	Amputation follow-up surgery					
24931	C	Amputate upper arm & implant					
24935	T	Revision of amputation	0052	42.37	$2,203.62		$440.72
24940	C	Revision of upper arm					
24999	T	Upper arm/elbow surgery	0043	1.68	$87.38		$17.48
25000	T	Incision of tendon sheath	0049	19.45	$1,011.58		$202.32
25001	T	Incise flexor carpi radialis	0049	19.45	$1,011.58		$202.32
25020	T	Decompress forearm 1 space	0049	19.45	$1,011.58		$202.32
25023	T	Decompress forearm 1 space	0050	23.60	$1,227.41		$245.48
25024	T	Decompress forearm 2 spaces	0050	23.60	$1,227.41		$245.48
25025	T	Decompress forarm 2 spaces	0050	23.60	$1,227.41		$245.48
25028	T	Drainage of forearm lesion	0049	19.45	$1,011.58		$202.32
25031	T	Drainage of forearm bursa	0049	19.45	$1,011.58		$202.32
25035	T	Treat forearm bone lesion	0049	19.45	$1,011.58		$202.32
25040	T	Explore/treat wrist joint	0050	23.60	$1,227.41		$245.48
25065	T	Biopsy forearm soft tissues	0021	14.58	$758.29	$227.49	$151.66
25066	T	Biopsy forearm soft tissues	0022	18.10	$941.36	$367.13	$188.27
25075	T	Remove forearm lesion subcut	0021	14.58	$758.29	$227.49	$151.66
25076	T	Remove forearm lesion deep	0022	18.10	$941.36	$367.13	$188.27
25077	T	Remove tumor, forearm/wrist	0022	18.10	$941.36	$367.13	$188.27
25085	T	Incision of wrist capsule	0049	19.45	$1,011.58		$202.32
25100	T	Biopsy of wrist joint	0049	19.45	$1,011.58		$202.32
25101	T	Explore/treat wrist joint	0050	23.60	$1,227.41		$245.48
25105	T	Remove wrist joint lining	0050	23.60	$1,227.41		$245.48
25107	T	Remove wrist joint cartilage	0050	23.60	$1,227.41		$245.48
25110	T	Remove wrist tendon lesion	0049	19.45	$1,011.58		$202.32
25111	T	Remove wrist tendon lesion	0053	14.76	$767.65	$253.49	$153.53
25112	T	Reremove wrist tendon lesion	0053	14.76	$767.65	$253.49	$153.53
25115	T	Remove wrist/forearm lesion	0049	19.45	$1,011.58		$202.32
25116	T	Remove wrist/forearm lesion	0049	19.45	$1,011.58		$202.32
25118	T	Excise wrist tendon sheath	0050	23.60	$1,227.41		$245.48
25119	T	Partial removal of ulna	0050	23.60	$1,227.41		$245.48
25120	T	Removal of forearm lesion	0050	23.60	$1,227.41		$245.48
25125	T	Remove/graft forearm lesion	0050	23.60	$1,227.41		$245.48
25126	T	Remove/graft forearm lesion	0050	23.60	$1,227.41		$245.48
25130	T	Removal of wrist lesion	0050	23.60	$1,227.41		$245.48
25135	T	Remove & graft wrist lesion	0050	23.60	$1,227.41		$245.48
25136	T	Remove & graft wrist lesion	0050	23.60	$1,227.41		$245.48
25145	T	Remove forearm bone lesion	0050	23.60	$1,227.41		$245.48
25150	T	Partial removal of ulna	0050	23.60	$1,227.41		$245.48
25151	T	Partial removal of radius	0050	23.60	$1,227.41		$245.48
25170	T	Extensive forearm surgery	0052	42.37	$2,203.62		$440.72
25210	T	Removal of wrist bone	0054	23.50	$1,222.21	$472.33	$244.44
25215	T	Removal of wrist bones	0054	23.50	$1,222.21	$472.33	$244.44
25230	T	Partial removal of radius	0050	23.60	$1,227.41		$245.48
25240	T	Partial removal of ulna	0050	23.60	$1,227.41		$245.48
25246	N	Injection for wrist x-ray					
25248	T	Remove forearm foreign body	0049	19.45	$1,011.58		$202.32
25250	T	Removal of wrist prosthesis	0050	23.60	$1,227.41		$245.48
25251	T	Removal of wrist prosthesis	0050	23.60	$1,227.41		$245.48
25259	T	Manipulate wrist w/anesthes	0043	1.68	$87.38		$17.48
25260	T	Repair forearm tendon/muscle	0050	23.60	$1,227.41		$245.48
25263	T	Repair forearm tendon/muscle	0050	23.60	$1,227.41		$245.48
25265	T	Repair forearm tendon/muscle	0050	23.60	$1,227.41		$245.48
25270	T	Repair forearm tendon/muscle	0050	23.60	$1,227.41		$245.48
25272	T	Repair forearm tendon/muscle	0050	23.60	$1,227.41		$245.48
25274	T	Repair forearm tendon/muscle	0050	23.60	$1,227.41		$245.48
25275	T	Repair forearm tendon sheath	0050	23.60	$1,227.41		$245.48
25280	T	Revise wrist/forearm tendon	0050	23.60	$1,227.41		$245.48
25290	T	Incise wrist/forearm tendon	0050	23.60	$1,227.41		$245.48
25295	T	Release wrist/forearm tendon	0049	19.45	$1,011.58		$202.32

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
25300	T	Fusion of tendons at wrist	0050	23.60	$1,227.41		$245.48
25301	T	Fusion of tendons at wrist	0050	23.60	$1,227.41		$245.48
25310	T	Transplant forearm tendon	0051	34.03	$1,769.87		$353.97
25312	T	Transplant forearm tendon	0051	34.03	$1,769.87		$353.97
25315	T	Revise palsy hand tendon(s)	0051	34.03	$1,769.87		$353.97
25316	T	Revise palsy hand tendon(s)	0051	34.03	$1,769.87		$353.97
25320	T	Repair/revise wrist joint	0051	34.03	$1,769.87		$353.97
25332	T	Revise wrist joint	0047	29.59	$1,538.95	$537.03	$307.79
25335	T	Realignment of hand	0051	34.03	$1,769.87		$353.97
25337	T	Reconstruct ulna/radioulnar	0051	34.03	$1,769.87		$353.97
25350	T	Revision of radius	0051	34.03	$1,769.87		$353.97
25355	T	Revision of radius	0051	34.03	$1,769.87		$353.97
25360	T	Revision of ulna	0050	23.60	$1,227.41		$245.48
25365	T	Revise radius & ulna	0050	23.60	$1,227.41		$245.48
25370	T	Revise radius or ulna	0051	34.03	$1,769.87		$353.97
25375	T	Revise radius & ulna	0051	34.03	$1,769.87		$353.97
25390	T	Shorten radius or ulna	0050	23.60	$1,227.41		$245.48
25391	T	Lengthen radius or ulna	0051	34.03	$1,769.87		$353.97
25392	T	Shorten radius & ulna	0050	23.60	$1,227.41		$245.48
25393	T	Lengthen radius & ulna	0051	34.03	$1,769.87		$353.97
25394	T	Repair carpal bone, shorten	0053	14.76	$767.65	$253.49	$153.53
25400	T	Repair radius or ulna	0050	23.60	$1,227.41		$245.48
25405	T	Repair/graft radius or ulna	0050	23.60	$1,227.41		$245.48
25415	T	Repair radius & ulna	0050	23.60	$1,227.41		$245.48
25420	T	Repair/graft radius & ulna	0051	34.03	$1,769.87		$353.97
25425	T	Repair/graft radius or ulna	0051	34.03	$1,769.87		$353.97
25426	T	Repair/graft radius & ulna	0051	34.03	$1,769.87		$353.97
25430	T	Vasc graft into carpal bone	0054	23.50	$1,222.21	$472.33	$244.44
25431	T	Repair nonunion carpal bone	0054	23.50	$1,222.21	$472.33	$244.44
25440	T	Repair/graft wrist bone	0051	34.03	$1,769.87		$353.97
25441	T	Reconstruct wrist joint	0048	36.93	$1,920.69	$633.83	$384.14
25442	T	Reconstruct wrist joint	0048	36.93	$1,920.69	$633.83	$384.14
25443	T	Reconstruct wrist joint	0048	36.93	$1,920.69	$633.83	$384.14
25444	T	Reconstruct wrist joint	0048	36.93	$1,920.69	$633.83	$384.14
25445	T	Reconstruct wrist joint	0048	36.93	$1,920.69	$633.83	$384.14
25446	T	Wrist replacement	0048	36.93	$1,920.69	$633.83	$384.14
25447	T	Repair wrist joint(s)	0047	29.59	$1,538.95	$537.03	$307.79
25449	T	Remove wrist joint implant	0047	29.59	$1,538.95	$537.03	$307.79
25450	T	Revision of wrist joint	0051	34.03	$1,769.87		$353.97
25455	T	Revision of wrist joint	0051	34.03	$1,769.87		$353.97
25490	T	Reinforce radius	0051	34.03	$1,769.87		$353.97
25491	T	Reinforce ulna	0051	34.03	$1,769.87		$353.97
25492	T	Reinforce radius and ulna	0051	34.03	$1,769.87		$353.97
25500	T	Treat fracture of radius	0043	1.68	$87.38		$17.48
25505	T	Treat fracture of radius	0043	1.68	$87.38		$17.48
25515	T	Treat fracture of radius	0046	29.03	$1,509.82	$535.76	$301.96
25520	T	Treat fracture of radius	0043	1.68	$87.38		$17.48
25525	T	Treat fracture of radius	0046	29.03	$1,509.82	$535.76	$301.96
25526	T	Treat fracture of radius	0046	29.03	$1,509.82	$535.76	$301.96
25530	T	Treat fracture of ulna	0043	1.68	$87.38		$17.48
25535	T	Treat fracture of ulna	0043	1.68	$87.38		$17.48
25545	T	Treat fracture of ulna	0046	29.03	$1,509.82	$535.76	$301.96
25560	T	Treat fracture radius & ulna	0043	1.68	$87.38		$17.48
25565	T	Treat fracture radius & ulna	0043	1.68	$87.38		$17.48
25574	T	Treat fracture radius & ulna	0046	29.03	$1,509.82	$535.76	$301.96
25575	T	Treat fracture radius/ulna	0046	29.03	$1,509.82	$535.76	$301.96
25600	T	Treat fracture radius/ulna	0043	1.68	$87.38		$17.48
25605	T	Treat fracture radius/ulna	0043	1.68	$87.38		$17.48
25611	T	Treat fracture radius/ulna	0046	29.03	$1,509.82	$535.76	$301.96
25620	T	Treat fracture radius/ulna	0046	29.03	$1,509.82	$535.76	$301.96
25622	T	Treat wrist bone fracture	0043	1.68	$87.38		$17.48
25624	T	Treat wrist bone fracture	0043	1.68	$87.38		$17.48
25628	T	Treat wrist bone fracture	0046	29.03	$1,509.82	$535.76	$301.96
25630	T	Treat wrist bone fracture	0043	1.68	$87.38		$17.48
25635	T	Treat wrist bone fracture	0043	1.68	$87.38		$17.48
25645	T	Treat wrist bone fracture	0046	29.03	$1,509.82	$535.76	$301.96

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
25650	T	Treat wrist bone fracture	0043	1.68	$87.38		$17.48
25651	T	Pin ulnar styloid fracture	0046	29.03	$1,509.82	$535.76	$301.96
25652	T	Treat fracture ulnar styloid	0046	29.03	$1,509.82	$535.76	$301.96
25660	T	Treat wrist dislocation	0043	1.68	$87.38		$17.48
25670	T	Treat wrist dislocation	0046	29.03	$1,509.82	$535.76	$301.96
25671	T	Pin radioulnar dislocation	0046	29.03	$1,509.82	$535.76	$301.96
25675	T	Treat wrist dislocation	0043	1.68	$87.38		$17.48
25676	T	Treat wrist dislocation	0046	29.03	$1,509.82	$535.76	$301.96
25680	T	Treat wrist fracture	0043	1.68	$87.38		$17.48
25685	T	Treat wrist fracture	0046	29.03	$1,509.82	$535.76	$301.96
25690	T	Treat wrist dislocation	0043	1.68	$87.38		$17.48
25695	T	Treat wrist dislocation	0046	29.03	$1,509.82	$535.76	$301.96
25800	T	Fusion of wrist joint	0051	34.03	$1,769.87		$353.97
25805	T	Fusion/graft of wrist joint	0051	34.03	$1,769.87		$353.97
25810	T	Fusion/graft of wrist joint	0051	34.03	$1,769.87		$353.97
25820	T	Fusion of hand bones	0053	14.76	$767.65	$253.49	$153.53
25825	T	Fuse hand bones with graft	0054	23.50	$1,222.21	$472.33	$244.44
25830	T	Fusion, radioulnar jnt/ulna	0051	34.03	$1,769.87		$353.97
25900	C	Amputation of forearm					
25905	C	Amputation of forearm					
25907	T	Amputation follow-up surgery	0049	19.45	$1,011.58		$202.32
25909	C	Amputation follow-up surgery					
25915	C	Amputation of forearm					
25920	C	Amputate hand at wrist					
25922	T	Amputate hand at wrist	0049	19.45	$1,011.58		$202.32
25924	C	Amputation follow-up surgery					
25927	C	Amputation of hand					
25929	T	Amputation follow-up surgery	0027	15.73	$818.10	$343.60	$163.62
25931	C	Amputation follow-up surgery					
25999	T	Forearm or wrist surgery	0043	1.68	$87.38		$17.48
26010	T	Drainage of finger abscess	0006	1.89	$98.30	$25.56	$19.66
26011	T	Drainage of finger abscess	0007	9.44	$490.96	$103.10	$98.19
26020	T	Drain hand tendon sheath	0053	14.76	$767.65	$253.49	$153.53
26025	T	Drainage of palm bursa	0053	14.76	$767.65	$253.49	$153.53
26030	T	Drainage of palm bursa(s)	0053	14.76	$767.65	$253.49	$153.53
26034	T	Treat hand bone lesion	0053	14.76	$767.65	$253.49	$153.53
26035	T	Decompress fingers/hand	0053	14.76	$767.65	$253.49	$153.53
26037	T	Decompress fingers/hand	0053	14.76	$767.65	$253.49	$153.53
26040	T	Release palm contracture	0054	23.50	$1,222.21	$472.33	$244.44
26045	T	Release palm contracture	0054	23.50	$1,222.21	$472.33	$244.44
26055	T	Incise finger tendon sheath	0053	14.76	$767.65	$253.49	$153.53
26060	T	Incision of finger tendon	0053	14.76	$767.65	$253.49	$153.53
26070	T	Explore/treat hand joint	0053	14.76	$767.65	$253.49	$153.53
26075	T	Explore/treat finger joint	0053	14.76	$767.65	$253.49	$153.53
26080	T	Explore/treat finger joint	0053	14.76	$767.65	$253.49	$153.53
26100	T	Biopsy hand joint lining	0053	14.76	$767.65	$253.49	$153.53
26105	T	Biopsy finger joint lining	0053	14.76	$767.65	$253.49	$153.53
26110	T	Biopsy finger joint lining	0053	14.76	$767.65	$253.49	$153.53
26115	T	Remove hand lesion subcut	0022	18.10	$941.36	$367.13	$188.27
26116	T	Remove hand lesion, deep	0022	18.10	$941.36	$367.13	$188.27
26117	T	Remove tumor, hand/finger	0022	18.10	$941.36	$367.13	$188.27
26121	T	Release palm contracture	0054	23.50	$1,222.21	$472.33	$244.44
26123	T	Release palm contracture	0054	23.50	$1,222.21	$472.33	$244.44
26125	T	Release palm contracture	0054	23.50	$1,222.21	$472.33	$244.44
26130	T	Remove wrist joint lining	0053	14.76	$767.65	$253.49	$153.53
26135	T	Revise finger joint, each	0054	23.50	$1,222.21	$472.33	$244.44
26140	T	Revise finger joint, each	0053	14.76	$767.65	$253.49	$153.53
26145	T	Tendon excision, palm/finger	0053	14.76	$767.65	$253.49	$153.53
26160	T	Remove tendon sheath lesion	0053	14.76	$767.65	$253.49	$153.53
26170	T	Removal of palm tendon, each	0053	14.76	$767.65	$253.49	$153.53
26180	T	Removal of finger tendon	0053	14.76	$767.65	$253.49	$153.53
26185	T	Remove finger bone	0053	14.76	$767.65	$253.49	$153.53
26200	T	Remove hand bone lesion	0053	14.76	$767.65	$253.49	$153.53
26205	T	Remove/graft bone lesion	0054	23.50	$1,222.21	$472.33	$244.44
26210	T	Removal of finger lesion	0053	14.76	$767.65	$253.49	$153.53
26215	T	Remove/graft finger lesion	0053	14.76	$767.65	$253.49	$153.53

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
26230	T	Partial removal of hand bone	0053	14.76	$767.65	$253.49	$153.53
26235	T	Partial removal, finger bone	0053	14.76	$767.65	$253.49	$153.53
26236	T	Partial removal, finger bone	0053	14.76	$767.65	$253.49	$153.53
26250	T	Extensive hand surgery	0053	14.76	$767.65	$253.49	$153.53
26255	T	Extensive hand surgery	0054	23.50	$1,222.21	$472.33	$244.44
26260	T	Extensive finger surgery	0053	14.76	$767.65	$253.49	$153.53
26261	T	Extensive finger surgery	0053	14.76	$767.65	$253.49	$153.53
26262	T	Partial removal of finger	0053	14.76	$767.65	$253.49	$153.53
26320	T	Removal of implant from hand	0021	14.58	$758.29	$227.49	$151.66
26340	T	Manipulate finger w/anesth	0043	1.68	$87.38		$17.48
26350	T	Repair finger/hand tendon	0054	23.50	$1,222.21	$472.33	$244.44
26352	T	Repair/graft hand tendon	0054	23.50	$1,222.21	$472.33	$244.44
26356	T	Repair finger/hand tendon	0054	23.50	$1,222.21	$472.33	$244.44
26357	T	Repair finger/hand tendon	0054	23.50	$1,222.21	$472.33	$244.44
26358	T	Repair/graft hand tendon	0054	23.50	$1,222.21	$472.33	$244.44
26370	T	Repair finger/hand tendon	0054	23.50	$1,222.21	$472.33	$244.44
26372	T	Repair/graft hand tendon	0054	23.50	$1,222.21	$472.33	$244.44
26373	T	Repair finger/hand tendon	0054	23.50	$1,222.21	$472.33	$244.44
26390	T	Revise hand/finger tendon	0054	23.50	$1,222.21	$472.33	$244.44
26392	T	Repair/graft hand tendon	0054	23.50	$1,222.21	$472.33	$244.44
26410	T	Repair hand tendon	0053	14.76	$767.65	$253.49	$153.53
26412	T	Repair/graft hand tendon	0054	23.50	$1,222.21	$472.33	$244.44
26415	T	Excision, hand/finger tendon	0054	23.50	$1,222.21	$472.33	$244.44
26416	T	Graft hand or finger tendon	0054	23.50	$1,222.21	$472.33	$244.44
26418	T	Repair finger tendon	0053	14.76	$767.65	$253.49	$153.53
26420	T	Repair/graft finger tendon	0054	23.50	$1,222.21	$472.33	$244.44
26426	T	Repair finger/hand tendon	0054	23.50	$1,222.21	$472.33	$244.44
26428	T	Repair/graft finger tendon	0054	23.50	$1,222.21	$472.33	$244.44
26432	T	Repair finger tendon	0053	14.76	$767.65	$253.49	$153.53
26433	T	Repair finger tendon	0053	14.76	$767.65	$253.49	$153.53
26434	T	Repair/graft fingdr tendon	0054	23.50	$1,222.21	$472.33	$244.44
26437	T	Realignment of tendons	0053	14.76	$767.65	$253.49	$153.53
26440	T	Release palm/finger tendon	0053	14.76	$767.65	$253.49	$153.53
26442	T	Release palm & finger tendon	0054	23.50	$1,222.21	$472.33	$244.44
26445	T	Release hand/finger tendon	0053	14.76	$767.65	$253.49	$153.53
26449	T	Release forearm/hand tendon	0054	23.50	$1,222.21	$472.33	$244.44
26450	T	Incision of palm tendon	0053	14.76	$767.65	$253.49	$153.53
26455	T	Incision of finger tendon	0053	14.76	$767.65	$253.49	$153.53
26460	T	Incise hand/finger tendon	0053	14.76	$767.65	$253.49	$153.53
26471	T	Fusion of finger tendons	0053	14.76	$767.65	$253.49	$153.53
26474	T	Fusion of finger tendons	0053	14.76	$767.65	$253.49	$153.53
26476	T	Tendon lengthening	0053	14.76	$767.65	$253.49	$153.53
26477	T	Tendon shortening	0053	14.76	$767.65	$253.49	$153.53
26478	T	Lengthening of hand tendon	0053	14.76	$767.65	$253.49	$153.53
26479	T	Shortening of hand tendon	0053	14.76	$767.65	$253.49	$153.53
26480	T	Transplant hand tendon	0054	23.50	$1,222.21	$472.33	$244.44
26483	T	Transplant/graft hand tendon	0054	23.50	$1,222.21	$472.33	$244.44
26485	T	Transplant palm tendon	0054	23.50	$1,222.21	$472.33	$244.44
26489	T	Transplant/graft palm tendon	0054	23.50	$1,222.21	$472.33	$244.44
26490	T	Revise thumb tendon	0054	23.50	$1,222.21	$472.33	$244.44
26492	T	Tendon transfer with graft	0054	23.50	$1,222.21	$472.33	$244.44
26494	T	Hand tendon/muscle transfer	0054	23.50	$1,222.21	$472.33	$244.44
26496	T	Revise thumb tendon	0054	23.50	$1,222.21	$472.33	$244.44
26497	T	Finger tendon transfer	0054	23.50	$1,222.21	$472.33	$244.44
26498	T	Finger tendon transfer	0054	23.50	$1,222.21	$472.33	$244.44
26499	T	Revision of finger	0054	23.50	$1,222.21	$472.33	$244.44
26500	T	Hand tendon reconstruction	0053	14.76	$767.65	$253.49	$153.53
26502	T	Hand tendon reconstruction	0054	23.50	$1,222.21	$472.33	$244.44
26504	T	Hand tendon reconstruction	0054	23.50	$1,222.21	$472.33	$244.44
26508	T	Release thumb contracture	0053	14.76	$767.65	$253.49	$153.53
26510	T	Thumb tendon transfer	0054	23.50	$1,222.21	$472.33	$244.44
26516	T	Fusion of knuckle joint	0054	23.50	$1,222.21	$472.33	$244.44
26517	T	Fusion of knuckle joints	0054	23.50	$1,222.21	$472.33	$244.44
26518	T	Fusion of knuckle joints	0054	23.50	$1,222.21	$472.33	$244.44
26520	T	Release knuckle contracture	0053	14.76	$767.65	$253.49	$153.53
26525	T	Release finger contracture	0053	14.76	$767.65	$253.49	$153.53

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
26530	T	Revise knuckle joint	0047	29.59	$1,538.95	$537.03	$307.79
26531	T	Revise knuckle with implant	0048	36.93	$1,920.69	$633.83	$384.14
26535	T	Revise finger joint	0047	29.59	$1,538.95	$537.03	$307.79
26536	T	Revise/implant finger joint	0048	36.93	$1,920.69	$633.83	$384.14
26540	T	Repair hand joint	0053	14.76	$767.65	$253.49	$153.53
26541	T	Repair hand joint with graft	0054	23.50	$1,222.21	$472.33	$244.44
26542	T	Repair hand joint with graft	0053	14.76	$767.65	$253.49	$153.53
26545	T	Reconstruct finger joint	0054	23.50	$1,222.21	$472.33	$244.44
26546	T	Repair nonunion hand	0054	23.50	$1,222.21	$472.33	$244.44
26548	T	Reconstruct finger joint	0054	23.50	$1,222.21	$472.33	$244.44
26550	T	Construct thumb replacement	0054	23.50	$1,222.21	$472.33	$244.44
26551	C	Great toe-hand transfer					
26553	C	Single transfer, toe-hand					
26554	C	Double transfer, toe-hand					
26555	T	Positional change of finger	0054	23.50	$1,222.21	$472.33	$244.44
26556	C	Toe joint transfer					
26560	T	Repair of web finger	0053	14.76	$767.65	$253.49	$153.53
26561	T	Repair of web finger	0054	23.50	$1,222.21	$472.33	$244.44
26562	T	Repair of web finger	0054	23.50	$1,222.21	$472.33	$244.44
26565	T	Correct metacarpal flaw	0054	23.50	$1,222.21	$472.33	$244.44
26567	T	Correct finger deformity	0054	23.50	$1,222.21	$472.33	$244.44
26568	T	Lengthen metacarpal/finger	0054	23.50	$1,222.21	$472.33	$244.44
26580	T	Repair hand deformity	0054	23.50	$1,222.21	$472.33	$244.44
26587	T	Reconstruct extra finger	0053	14.76	$767.65	$253.49	$153.53
26590	T	Repair finger deformity	0054	23.50	$1,222.21	$472.33	$244.44
26591	T	Repair muscles of hand	0054	23.50	$1,222.21	$472.33	$244.44
26593	T	Release muscles of hand	0053	14.76	$767.65	$253.49	$153.53
26596	T	Excision constricting tissue	0054	23.50	$1,222.21	$472.33	$244.44
26600	T	Treat metacarpal fracture	0043	1.68	$87.38		$17.48
26605	T	Treat metacarpal fracture	0043	1.68	$87.38		$17.48
26607	T	Treat metacarpal fracture	0043	1.68	$87.38		$17.48
26608	T	Treat metacarpal fracture	0046	29.03	$1,509.82	$535.76	$301.96
26615	T	Treat metacarpal fracture	0046	29.03	$1,509.82	$535.76	$301.96
26641	T	Treat thumb dislocation	0043	1.68	$87.38		$17.48
26645	T	Treat thumb fracture	0043	1.68	$87.38		$17.48
26650	T	Treat thumb fracture	0046	29.03	$1,509.82	$535.76	$301.96
26665	T	Treat thumb fracture	0046	29.03	$1,509.82	$535.76	$301.96
26670	T	Treat hand dislocation	0043	1.68	$87.38		$17.48
26675	T	Treat hand dislocation	0043	1.68	$87.38		$17.48
26676	T	Pin hand dislocation	0046	29.03	$1,509.82	$535.76	$301.96
26685	T	Treat hand dislocation	0046	29.03	$1,509.82	$535.76	$301.96
26686	T	Treat hand dislocation	0046	29.03	$1,509.82	$535.76	$301.96
26700	T	Treat knuckle dislocation	0043	1.68	$87.38		$17.48
26705	T	Treat knuckle dislocation	0043	1.68	$87.38		$17.48
26706	T	Pin knuckle dislocation	0043	1.68	$87.38		$17.48
26715	T	Treat knuckle dislocation	0046	29.03	$1,509.82	$535.76	$301.96
26720	T	Treat finger fracture, each	0043	1.68	$87.38		$17.48
26725	T	Treat finger fracture, each	0043	1.68	$87.38		$17.48
26727	T	Treat finger fracture, each	0046	29.03	$1,509.82	$535.76	$301.96
26735	T	Treat finger fracture, each	0046	29.03	$1,509.82	$535.76	$301.96
26740	T	Treat finger fracture, each	0043	1.68	$87.38		$17.48
26742	T	Treat finger fracture, each	0043	1.68	$87.38		$17.48
26746	T	Treat finger fracture, each	0046	29.03	$1,509.82	$535.76	$301.96
26750	T	Treat finger fracture, each	0043	1.68	$87.38		$17.48
26755	T	Treat finger fracture, each	0043	1.68	$87.38		$17.48
26756	T	Pin finger fracture, each	0046	29.03	$1,509.82	$535.76	$301.96
26765	T	Treat finger fracture, each	0046	29.03	$1,509.82	$535.76	$301.96
26770	T	Treat finger dislocation	0043	1.68	$87.38		$17.48
26775	T	Treat finger dislocation	0045	13.47	$700.56	$280.22	$140.11
26776	T	Pin finger dislocation	0046	29.03	$1,509.82	$535.76	$301.96
26785	T	Treat finger dislocation	0046	29.03	$1,509.82	$535.76	$301.96
26820	T	Thumb fusion with graft	0054	23.50	$1,222.21	$472.33	$244.44
26841	T	Fusion of thumb	0054	23.50	$1,222.21	$472.33	$244.44
26842	T	Thumb fusion with graft	0054	23.50	$1,222.21	$472.33	$244.44
26843	T	Fusion of hand joint	0054	23.50	$1,222.21	$472.33	$244.44
26844	T	Fusion/graft of hand joint	0054	23.50	$1,222.21	$472.33	$244.44

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
26850	T	Fusion of knuckle	0054	23.50	$1,222.21	$472.33	$244.44
26852	T	Fusion of knuckle with graft	0054	23.50	$1,222.21	$472.33	$244.44
26860	T	Fusion of finger joint	0054	23.50	$1,222.21	$472.33	$244.44
26861	T	Fusion of finger jnt, add-on	0054	23.50	$1,222.21	$472.33	$244.44
26862	T	Fusion/graft of finger joint	0054	23.50	$1,222.21	$472.33	$244.44
26863	T	Fuse/graft added joint	0054	23.50	$1,222.21	$472.33	$244.44
26910	T	Amputate metacarpal bone	0054	23.50	$1,222.21	$472.33	$244.44
26951	T	Amputation of finger/thumb	0053	14.76	$767.65	$253.49	$153.53
26952	T	Amputation of finger/thumb	0053	14.76	$767.65	$253.49	$153.53
26989	T	Hand/finger surgery	0043	1.68	$87.38		$17.48
26990	T	Drainage of pelvis lesion	0049	19.45	$1,011.58		$202.32
26991	T	Drainage of pelvis bursa	0049	19.45	$1,011.58		$202.32
26992	C	Drainage of bone lesion					
27000	T	Incision of hip tendon	0049	19.45	$1,011.58		$202.32
27001	T	Incision of hip tendon	0050	23.60	$1,227.41		$245.48
27003	T	Incision of hip tendon	0050	23.60	$1,227.41		$245.48
27005	C	Incision of hip tendon					
27006	C	Incision of hip tendons					
27025	C	Incision of hip/thigh fascia					
27030	C	Drainage of hip joint					
27033	T	Exploration of hip joint	0051	34.03	$1,769.87		$353.97
27035	T	Denervation of hip joint	0052	42.37	$2,203.62		$440.72
27036	C	Excision of hip joint/muscle					
27040	T	Biopsy of soft tissues	0021	14.58	$758.29	$227.49	$151.66
27041	T	Biopsy of soft tissues	0022	18.10	$941.36	$367.13	$188.27
27047	T	Remove hip/pelvis lesion	0022	18.10	$941.36	$367.13	$188.27
27048	T	Remove hip/pelvis lesion	0022	18.10	$941.36	$367.13	$188.27
27049	T	Remove tumor, hip/pelvis	0022	18.10	$941.36	$367.13	$188.27
27050	T	Biopsy of sacroiliac joint	0049	19.45	$1,011.58		$202.32
27052	T	Biopsy of hip joint	0049	19.45	$1,011.58		$202.32
27054	C	Removal of hip joint lining					
27060	T	Removal of ischial bursa	0049	19.45	$1,011.58		$202.32
27062	T	Remove femur lesion/bursa	0049	19.45	$1,011.58		$202.32
27065	T	Removal of hip bone lesion	0049	19.45	$1,011.58		$202.32
27066	T	Removal of hip bone lesion	0050	23.60	$1,227.41		$245.48
27067	T	Remove/graft hip bone lesion	0050	23.60	$1,227.41		$245.48
27070	C	Partial removal of hip bone					
27071	C	Partial removal of hip bone					
27075	C	Extensive hip surgery					
27076	C	Extensive hip surgery					
27077	C	Extensive hip surgery					
27078	C	Extensive hip surgery					
27079	C	Extensive hip surgery					
27080	T	Removal of tail bone	0050	23.60	$1,227.41		$245.48
27086	T	Remove hip foreign body	0020	7.36	$382.79	$114.84	$76.56
27087	T	Remove hip foreign body	0049	19.45	$1,011.58		$202.32
27090	C	Removal of hip prosthesis					
27091	C	Removal of hip prosthesis					
27093	N	Injection for hip x-ray					
27095	N	Injection for hip x-ray					
27096	N	Inject sacroiliac joint					
27097	T	Revision of hip tendon	0050	23.60	$1,227.41		$245.48
27098	T	Transfer tendon to pelvis	0050	23.60	$1,227.41		$245.48
27100	T	Transfer of abdominal muscle	0051	34.03	$1,769.87		$353.97
27105	T	Transfer of spinal muscle	0051	34.03	$1,769.87		$353.97
27110	T	Transfer of iliopsoas muscle	0051	34.03	$1,769.87		$353.97
27111	T	Transfer of iliopsoas muscle	0051	34.03	$1,769.87		$353.97
27120	C	Reconstruction of hip socket					
27122	C	Reconstruction of hip socket					
27125	C	Partial hip replacement					
27130	C	Total hip arthroplasty					
27132	C	Total hip arthroplasty					
27134	C	Revise hip joint replacement					
27137	C	Revise hip joint replacement					
27138	C	Revise hip joint replacement					
27140	C	Transplant femur ridge					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
27146	C	Incision of hip bone					
27147	C	Revision of hip bone					
27151	C	Incision of hip bones					
27158	C	Revision of hip bones					
27158	C	Revision of pelvis					
27161	C	Incision of neck of femur					
27165	C	Incision/fixation of femur					
27170	C	Repair/graft femur head/neck					
27175	C	Treat slipped epiphysis					
27176	C	Treat slipped epiphysis					
27177	C	Treat slipped epiphysis					
27178	C	Treat slipped epiphysis					
27179	C	Revise head/neck of femur					
27181	C	Treat slipped epiphysis					
27185	C	Revision of femur epiphysis					
27187	C	Reinforce hip bones					
27193	T	Treat pelvic ring fracture	0043	1.68	$87.38		$17.48
27194	T	Treat pelvic ring fracture	0045	13.47	$700.56	$280.22	$140.11
27200	T	Treat tail bone fracture	0043	1.68	$87.38		$17.48
27202	T	Treat tail bone fracture	0046	29.03	$1,509.82	$535.76	$301.96
27215	C	Treat pelvic fracture(s)					
27216	T	Treat pelvic ring fracture	0050	23.60	$1,227.41		$245.48
27217	C	Treat pelvic ring fracture					
27218	C	Treat pelvic ring fracture					
27220	T	Treat hip socket fracture	0043	1.68	$87.38		$17.48
27222	C	Treat hip socket fracture					
27226	C	Treat hip wall fracture					
27227	C	Treat hip fracture(s)					
27228	C	Treat hip fracture(s)					
27230	T	Treat thigh fracture	0043	1.68	$87.38		$17.48
27232	C	Treat thigh fracture					
27235	T	Treat thigh fracture	0050	23.60	$1,227.41		$245.48
27236	C	Treat thigh fracture					
27238	T	Treat thigh fracture	0043	1.68	$87.38		$17.48
27240	C	Treat thigh fracture					
27244	C	Treat thigh fracture					
27245	C	Treat thigh fracture					
27246	T	Treat thigh fracture	0043	1.68	$87.38		$17.48
27248	C	Treat thigh fracture					
27250	T	Treat hip dislocation	0043	1.68	$87.38		$17.48
27252	T	Treat hip dislocation	0045	13.47	$700.56	$280.22	$140.11
27253	C	Treat hip dislocation					
27254	C	Treat hip dislocation					
27256	T	Treat hip dislocation	0043	1.68	$87.38		$17.48
27257	T	Treat hip dislocation	0045	13.47	$700.56	$280.22	$140.11
27258	C	Treat hip dislocation					
27259	C	Treat hip dislocation					
27265	T	Treat hip dislocation	0043	1.68	$87.38		$17.48
27266	T	Treat hip dislocation	0045	13.47	$700.56	$280.22	$140.11
27275	T	Manipulation of hip joint	0045	13.47	$700.56	$280.22	$140.11
27280	C	Fusion of sacroiliac joint					
27282	C	Fusion of pubic bones					
27284	C	Fusion of hip joint					
27286	C	Fusion of hip joint					
27290	C	Amputation of leg at hip					
27295	C	Amputation of leg at hip					
27299	T	Pelvis/hip joint surgery	0043	1.68	$87.38		$17.48
27301	T	Drain thigh/knee lesion	0008	16.32	$848.79		$169.76
27303	C	Drainage of bone lesion					
27305	T	Incise thigh tendon & fascia	0049	19.45	$1,011.58		$202.32
27306	T	Incision of thigh tendon	0049	19.45	$1,011.58		$202.32
27307	T	Incision of thigh tendons	0049	19.45	$1,011.58		$202.32
27310	T	Exploration of knee joint	0050	23.60	$1,227.41		$245.48
27315	T	Partial removal, thigh nerve	0220	16.66	$866.47		$173.29
27320	T	Partial removal, thigh nerve	0220	16.66	$866.47		$173.29
27323	T	Biopsy, thigh soft tissues	0021	14.58	$758.29	$227.49	$151.66

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
27324	T	Biopsy, thigh soft tissues	0022	18.10	$941.36	$367.13	$188.27
27327	T	Removal of thigh lesion	0022	18.10	$941.36	$367.13	$188.27
27328	T	Removal of thigh lesion	0022	18.10	$941.36	$367.13	$188.27
27329	T	Remove tumor, thigh/knee	0022	18.10	$941.36	$367.13	$188.27
27330	T	Biopsy, knee joint lining	0050	23.60	$1,227.41		$245.48
27331	T	Explore/treat knee joint	0050	23.60	$1,227.41		$245.48
27332	T	Removal of knee cartilage	0050	23.60	$1,227.41		$245.48
27333	T	Removal of knee cartilage	0050	23.60	$1,227.41		$245.48
27334	T	Remove knee joint lining	0050	23.60	$1,227.41		$245.48
27335	T	Remove knee joint lining	0050	23.60	$1,227.41		$245.48
27340	T	Removal of kneecap bursa	0049	19.45	$1,011.58		$202.32
27345	T	Removal of knee cyst	0049	19.45	$1,011.58		$202.32
27347	T	Remove knee cyst	0049	19.45	$1,011.58		$202.32
27350	T	Removal of kneecap	0050	23.60	$1,227.41		$245.48
27355	T	Remove femur lesion	0050	23.60	$1,227.41		$245.48
27356	T	Remove femur lesion/graft	0050	23.60	$1,227.41		$245.48
27357	T	Remove femur lesion/graft	0050	23.60	$1,227.41		$245.48
27358	T	Remove femur lesion/fixation	0050	23.60	$1,227.41		$245.48
27360	T	Partial removal, leg bone(s)	0050	23.60	$1,227.41		$245.48
27365	C	Extensive leg surgery					
27370	N	Injection for knee x-ray					
27372	T	Removal of foreign body	0022	18.10	$941.36	$367.13	$188.27
27380	T	Repair of kneecap tendon	0049	19.45	$1,011.58		$202.32
27381	T	Repair/graft kneecap tendon	0049	19.45	$1,011.58		$202.32
27385	T	Repair of thigh muscle	0049	19.45	$1,011.58		$202.32
27386	T	Repair/graft of thigh muscle	0049	19.45	$1,011.58		$202.32
27390	T	Incision of thigh tendon	0049	19.45	$1,011.58		$202.32
27391	T	Incision of thigh tendons	0049	19.45	$1,011.58		$202.32
27392	T	Incision of thigh tendons	0049	19.45	$1,011.58		$202.32
27393	T	Lengthening of thigh tendon	0050	23.60	$1,227.41		$245.48
27394	T	Lengthening of thigh tendons	0050	23.60	$1,227.41		$245.48
27395	T	Lengthening of thigh tendons	0051	34.03	$1,769.87		$353.97
27396	T	Transplant of thigh tendon	0050	23.60	$1,227.41		$245.48
27397	T	Transplants of thigh tendons	0051	34.03	$1,769.87		$353.97
27400	T	Revise thigh muscles/tendons	0051	34.03	$1,769.87		$353.97
27403	T	Repair of knee cartilage	0050	23.60	$1,227.41		$245.48
27405	T	Repair of knee ligament	0051	34.03	$1,769.87		$353.97
27407	T	Repair of knee ligament	0051	34.03	$1,769.87		$353.97
27409	T	Repair of knee ligaments	0051	34.03	$1,769.87		$353.97
27418	T	Repair degenerated kneecap	0051	34.03	$1,769.87		$353.97
27420	T	Revision of unstable kneecap	0051	34.03	$1,769.87		$353.97
27422	T	Revision of unstable kneecap	0051	34.03	$1,769.87		$353.97
27424	T	Revision/removal of kneecap	0051	34.03	$1,769.87		$353.97
27425	T	Lateral retinacular release	0050	23.60	$1,227.41		$245.48
27427	T	Reconstruction, knee	0052	42.37	$2,203.62		$440.72
27428	T	Reconstruction, knee	0052	42.37	$2,203.62		$440.72
27429	T	Reconstruction, knee	0052	42.37	$2,203.62		$440.72
27430	T	Revision of thigh muscles	0051	34.03	$1,769.87		$353.97
27435	T	Incision of knee joint	0051	34.03	$1,769.87		$353.97
27437	T	Revise kneecap	0047	29.59	$1,538.95	$537.03	$307.79
27438	T	Revise kneecap with implant	0048	36.93	$1,920.69	$633.83	$384.14
27440	T	Revision of knee joint	0047	29.59	$1,538.95	$537.03	$307.79
27441	T	Revision of knee joint	0047	29.59	$1,538.95	$537.03	$307.79
27442	T	Revision of knee joint	0047	29.59	$1,538.95	$537.03	$307.79
27443	T	Revision of knee joint	0047	29.59	$1,538.95	$537.03	$307.79
27445	C	Revision of knee joint					
27446	T	Revision of knee joint	0681	158.14	$8,224.70	$3,289.88	$1,644.94
27447	C	Total knee arthroplasty					
27448	C	Incision of thigh					
27450	C	Incision of thigh					
27454	C	Realignment of thigh bone					
27455	C	Realignment of knee					
27457	C	Realignment of knee					
27465	C	Shortening of thigh bone					
27466	C	Lengthening of thigh bone					
27468	C	Shorten/lengthen thighs					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
27470	C	Repair of thigh					
27472	C	Repair/graft of thigh					
27475	C	Surgery to stop leg growth					
27477	C	Surgery to stop leg growth					
27479	C	Surgery to stop leg growth					
27485	C	Surgery to stop leg growth					
27486	C	Revise/replace knee joint					
27487	C	Revise/replace knee joint					
27488	C	Removal of knee prosthesis					
27495	C	Reinforce thigh					
27496	T	Decompression of thigh/knee	0049	19.45	$1,011.58		$202.32
27497	T	Decompression of thigh/knee	0049	19.45	$1,011.58		$202.32
27498	T	Decompression of thigh/knee	0049	19.45	$1,011.58		$202.32
27499	T	Decompression of thigh/knee	0049	19.45	$1,011.58		$202.32
27500	T	Treatment of thigh fracture	0043	1.68	$87.38		$17.48
27501	T	Treatment of thigh fracture	0043	1.68	$87.38		$17.48
27502	T	Treatment of thigh fracture	0043	1.68	$87.38		$17.48
27503	T	Treatment of thigh fracture	0043	1.68	$87.38		$17.48
27506	C	Treatment of thigh fracture					
27507	C	Treatment of thigh fracture					
27508	T	Treatment of thigh fracture	0043	1.68	$87.38		$17.48
27509	T	Treatment of thigh fracture	0046	29.03	$1,509.82	$535.76	$301.96
27510	T	Treatment of thigh fracture	0043	1.68	$87.38		$17.48
27511	C	Treatment of thigh fracture					
27513	C	Treatment of thigh fracture					
27514	C	Treatment of thigh fracture					
27516	T	Treat thigh fx growth plate	0043	1.68	$87.38		$17.48
27517	T	Treat thigh fx growth plate	0043	1.68	$87.38		$17.48
27519	C	Treat thigh fx growth plate					
27520	T	Treat kneecap fracture	0043	1.68	$87.38		$17.48
27524	T	Treat kneecap fracture	0046	29.03	$1,509.82	$535.76	$301.96
27530	T	Treat knee fracture	0043	1.68	$87.38		$17.48
27532	T	Treat knee fracture	0043	1.68	$87.38		$17.48
27535	C	Treat knee fracture					
27536	C	Treat knee fracture					
27538	T	Treat knee fracture(s)	0043	1.68	$87.38		$17.48
27540	C	Treat knee fracture					
27550	T	Treat knee dislocation	0043	1.68	$87.38		$17.48
27552	T	Treat knee dislocation	0045	13.47	$700.56	$280.22	$140.11
27556	C	Treat knee dislocation					
27557	C	Treat knee dislocation					
27558	C	Treat knee dislocation					
27560	T	Treat kneecap dislocation	0043	1.68	$87.38		$17.48
27562	T	Treat kneecap dislocation	0045	13.47	$700.56	$280.22	$140.11
27566	T	Treat kneecap dislocation	0046	29.03	$1,509.82	$535.76	$301.96
27570	T	Fixation of knee joint	0045	13.47	$700.56	$280.22	$140.11
27580	C	Fusion of knee					
27590	C	Amputate leg at thigh					
27591	C	Amputate leg at thigh					
27592	C	Amputate leg at thigh					
27594	T	Amputation follow-up surgery	0049	19.45	$1,011.58		$202.32
27596	C	Amputation follow-up surgery					
27598	C	Amputate lower leg at knee					
27599	T	Leg surgery procedure	0043	1.68	$87.38		$17.48
27600	T	Decompression of lower leg	0049	19.45	$1,011.58		$202.32
27601	T	Decompression of lower leg	0049	19.45	$1,011.58		$202.32
27602	T	Decompression of lower leg	0049	19.45	$1,011.58		$202.32
27603	T	Drain lower leg lesion	0008	16.32	$848.79		$169.76
27604	T	Drain lower leg bursa	0049	19.45	$1,011.58		$202.32
27605	T	Incision of achilles tendon	0055	18.28	$950.72	$355.34	$190.14
27606	T	Incision of achilles tendon	0049	19.45	$1,011.58		$202.32
27607	T	Treat lower leg bone lesion	0049	19.45	$1,011.58		$202.32
27610	T	Explore/treat ankle joint	0050	23.60	$1,227.41		$245.48
27612	T	Exploration of ankle joint	0050	23.60	$1,227.41		$245.48
27613	T	Biopsy lower leg soft tissue	0020	7.36	$382.79	$114.84	$76.56
27614	T	Biopsy lower leg soft tissue	0022	18.10	$941.36	$367.13	$188.27

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
27615	T	Remove tumor, lower leg	0046	29.03	$1,509.82	$535.76	$301.96
27618	T	Remove lower leg lesion	0021	14.58	$758.29	$227.49	$151.66
27619	T	Remove lower leg lesion	0022	18.10	$941.36	$367.13	$188.27
27620	T	Explore/treat ankle joint	0050	23.60	$1,227.41		$245.48
27625	T	Remove ankle joint lining	0050	23.60	$1,227.41		$245.48
27626	T	Remove ankle joint lining	0050	23.60	$1,227.41		$245.48
27630	T	Removal of tendon lesion	0049	19.45	$1,011.58		$202.32
27635	T	Remove lower leg bone lesion	0050	23.60	$1,227.41		$245.48
27637	T	Remove/graft leg bone lesion	0050	23.60	$1,227.41		$245.48
27638	T	Remove/graft leg bone lesion	0050	23.60	$1,227.41		$245.48
27640	T	Partial removal of tibia	0051	34.03	$1,769.87		$353.97
27641	T	Partial removal of fibula	0050	23.60	$1,227.41		$245.48
27645	C	Extensive lower leg surgery					
27646	C	Extensive lower leg surgery					
27647	T	Extensive ankle/heel surgery	0051	34.03	$1,769.87		$353.97
27648	N	Injection for ankle x-ray					
27650	T	Repair achilles tendon	0051	34.03	$1,769.87		$353.97
27652	T	Repair/graft achilles tendon	0051	34.03	$1,769.87		$353.97
27654	T	Repair of achilles tendon	0051	34.03	$1,769.87		$353.97
27656	T	Repair leg fascia defect	0049	19.45	$1,011.58		$202.32
27658	T	Repair of leg tendon, each	0049	19.45	$1,011.58		$202.32
27659	T	Repair of leg tendon, each	0049	19.45	$1,011.58		$202.32
27664	T	Repair of leg tendon, each	0049	19.45	$1,011.58		$202.32
27665	T	Repair of leg tendon, each	0050	23.60	$1,227.41		$245.48
27675	T	Repair lower leg tendons	0049	19.45	$1,011.58		$202.32
27676	T	Repair lower leg tendons	0050	23.60	$1,227.41		$245.48
27680	T	Release of lower leg tendon	0050	23.60	$1,227.41		$245.48
27681	T	Release of lower leg tendons	0050	23.60	$1,227.41		$245.48
27685	T	Revision of lower leg tendon	0050	23.60	$1,227.41		$245.48
27686	T	Revise lower leg tendons	0050	23.60	$1,227.41		$245.48
27687	T	Revision of calf tendon	0050	23.60	$1,227.41		$245.48
27690	T	Revise lower leg tendon	0051	34.03	$1,769.87		$353.97
27691	T	Revise lower leg tendon	0051	34.03	$1,769.87		$353.97
27692	T	Revise additional leg tendon	0051	34.03	$1,769.87		$353.97
27695	T	Repair of ankle ligament	0050	23.60	$1,227.41		$245.48
27696	T	Repair of ankle ligaments	0050	23.60	$1,227.41		$245.48
27698	T	Repair of ankle ligament	0050	23.60	$1,227.41		$245.48
27700	T	Revision of ankle joint	0047	29.59	$1,538.95	$537.03	$307.79
27702	C	Reconstruct ankle joint					
27703	C	Reconstruction, ankle joint					
27704	T	Removal of ankle implant	0049	19.45	$1,011.58		$202.32
27705	T	Incision of tibia	0051	34.03	$1,769.87		$353.97
27707	T	Incision of fibula	0049	19.45	$1,011.58		$202.32
27709	T	Incision of tibia & fibula	0050	23.60	$1,227.41		$245.48
27712	C	Realignment of lower leg					
27715	C	Revision of lower leg					
27720	C	Repair of tibia					
27722	C	Repair/graft of tibia					
27724	C	Repair/graft of tibia					
27725	C	Repair of lower leg					
27727	C	Repair of lower leg					
27730	T	Repair of tibia epiphysis	0050	23.60	$1,227.41		$245.48
27732	T	Repair of fibula epiphysis	0050	23.60	$1,227.41		$245.48
27734	T	Repair lower leg epiphyses	0050	23.60	$1,227.41		$245.48
27740	T	Repair of leg epiphyses	0050	23.60	$1,227.41		$245.48
27742	T	Repair of leg epiphyses	0051	34.03	$1,769.87		$353.97
27745	T	Reinforce tibia	0051	34.03	$1,769.87		$353.97
27750	T	Treatment of tibia fracture	0043	1.68	$87.38		$17.48
27752	T	Treatment of tibia fracture	0043	1.68	$87.38		$17.48
27756	T	Treatment of tibia fracture	0046	29.03	$1,509.82	$535.76	$301.96
27758	T	Treatment of tibia fracture	0046	29.03	$1,509.82	$535.76	$301.96
27759	T	Treatment of tibia fracture	0046	29.03	$1,509.82	$535.76	$301.96
27760	T	Treatment of ankle fracture	0043	1.68	$87.38		$17.48
27762	T	Treatment of ankle fracture	0043	1.68	$87.38		$17.48
27766	T	Treatment of ankle fracture	0046	29.03	$1,509.82	$535.76	$301.96
27780	T	Treatment of fibula fracture	0043	1.68	$87.38		$17.48

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
27781	T	Treatment of fibula fracture	0043	1.68	$87.38		$17.48
27784	T	Treatment of fibula fracture	0046	29.03	$1,509.82	$535.76	$301.96
27786	T	Treatment of ankle fracture	0043	1.68	$87.38		$17.48
27788	T	Treatment of ankle fracture	0043	1.68	$87.38		$17.48
27792	T	Treatment of ankle fracture	0046	29.03	$1,509.82	$535.76	$301.96
27808	T	Treatment of ankle fracture	0043	1.68	$87.38		$17.48
27810	T	Treatment of ankle fracture	0043	1.68	$87.38		$17.48
27814	T	Treatment of ankle fracture	0046	29.03	$1,509.82	$535.76	$301.96
27816	T	Treatment of ankle fracture	0043	1.68	$87.38		$17.48
27818	T	Treatment of ankle fracture	0043	1.68	$87.38		$17.48
27822	T	Treatment of ankle fracture	0046	29.03	$1,509.82	$535.76	$301.96
27823	T	Treatment of ankle fracture	0046	29.03	$1,509.82	$535.76	$301.96
27824	T	Treat lower leg fracture	0043	1.68	$87.38		$17.48
27825	T	Treat lower leg fracture	0043	1.68	$87.38		$17.48
27826	T	Treat lower leg fracture	0046	29.03	$1,509.82	$535.76	$301.96
27827	T	Treat lower leg fracture	0046	29.03	$1,509.82	$535.76	$301.96
27828	T	Treat lower leg fracture	0046	29.03	$1,509.82	$535.76	$301.96
27829	T	Treat lower leg joint	0046	29.03	$1,509.82	$535.76	$301.96
27830	T	Treat lower leg dislocation	0043	1.68	$87.38		$17.48
27831	T	Treat lower leg dislocation	0043	1.68	$87.38		$17.48
27832	T	Treat lower leg dislocation	0046	29.03	$1,509.82	$535.76	$301.96
27840	T	Treat ankle dislocation	0043	1.68	$87.38		$17.48
27842	T	Treat ankle dislocation	0045	13.47	$700.56	$280.22	$140.11
27846	T	Treat ankle dislocation	0046	29.03	$1,509.82	$535.76	$301.96
27848	T	Treat ankle dislocation	0046	29.03	$1,509.82	$535.76	$301.96
27860	T	Fixation of ankle joint	0045	13.47	$700.56	$280.22	$140.11
27870	T	Fusion of ankle joint	0051	34.03	$1,769.87		$353.97
27871	T	Fusion of tibiofibular joint	0051	34.03	$1,769.87		$353.97
27880	C	Amputation of lower leg					
27881	C	Amputation of lower leg					
27882	C	Amputation of lower leg					
27884	T	Amputation follow-up surgery	0049	19.45	$1,011.58		$202.32
27886	C	Amputation follow-up surgery					
27888	C	Amputation of foot at ankle					
27889	T	Amputation of foot at ankle	0050	23.60	$1,227.41		$245.48
27892	T	Decompression of leg	0049	19.45	$1,011.58		$202.32
27893	T	Decompression of leg	0049	19.45	$1,011.58		$202.32
27894	T	Decompression of leg	0049	19.45	$1,011.58		$202.32
27899	T	Leg/ankle surgery procedure	0043	1.68	$87.38		$17.48
28001	T	Drainage of bursa of foot	0008	16.32	$848.79		$169.76
28002	T	Treatment of foot infection	0049	19.45	$1,011.58		$202.32
28003	T	Treatment of foot infection	0049	19.45	$1,011.58		$202.32
28005	T	Treat foot bone lesion	0055	18.28	$950.72	$355.34	$190.14
28008	T	Incision of foot fascia	0055	18.28	$950.72	$355.34	$190.14
28010	T	Incision of toe tendon	0055	18.28	$950.72	$355.34	$190.14
28011	T	Incision of toe tendons	0055	18.28	$950.72	$355.34	$190.14
28020	T	Exploration of foot joint	0055	18.28	$950.72	$355.34	$190.14
28022	T	Exploration of foot joint	0055	18.28	$950.72	$355.34	$190.14
28024	T	Exploration of toe joint	0055	18.28	$950.72	$355.34	$190.14
28030	T	Removal of foot nerve	0220	16.66	$866.47		$173.29
28035	T	Decompression of tibia nerve	0220	16.66	$866.47		$173.29
28043	T	Excision of foot lesion	0021	14.58	$758.29	$227.49	$151.66
28045	T	Excision of foot lesion	0055	18.28	$950.72	$355.34	$190.14
28046	T	Resection of tumor, foot	0055	18.28	$950.72	$355.34	$190.14
28050	T	Biopsy of foot joint lining	0055	18.28	$950.72	$355.34	$190.14
28052	T	Biopsy of foot joint lining	0055	18.28	$950.72	$355.34	$190.14
28054	T	Biopsy of toe joint lining	0055	18.28	$950.72	$355.34	$190.14
28060	T	Partial removal, foot fascia	0056	22.94	$1,193.09	$405.81	$238.62
28062	T	Removal of foot fascia	0056	22.94	$1,193.09	$405.81	$238.62
28070	T	Removal of foot joint lining	0056	22.94	$1,193.09	$405.81	$238.62
28072	T	Removal of foot joint lining	0056	22.94	$1,193.09	$405.81	$238.62
28080	T	Removal of foot lesion	0055	18.28	$950.72	$355.34	$190.14
28086	T	Excise foot tendon sheath	0055	18.28	$950.72	$355.34	$190.14
28088	T	Excise foot tendon sheath	0055	18.28	$950.72	$355.34	$190.14
28090	T	Removal of foot lesion	0055	18.28	$950.72	$355.34	$190.14
28092	T	Removal of toe lesions	0055	18.28	$950.72	$355.34	$190.14

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
28100	T	Removal of ankle/heel lesion	0055	18.28	$950.72	$355.34	$190.14
28102	T	Remove/graft foot lesion	0056	22.94	$1,193.09	$405.81	$238.62
28103	T	Remove/graft foot lesion	0056	22.94	$1,193.09	$405.81	$238.62
28104	T	Removal of foot lesion	0055	18.28	$950.72	$355.34	$190.14
28106	T	Remove/graft foot lesion	0056	22.94	$1,193.09	$405.81	$238.62
28107	T	Remove/graft foot lesion	0056	22.94	$1,193.09	$405.81	$238.62
28108	T	Removal of toe lesions	0055	18.28	$950.72	$355.34	$190.14
28110	T	Part removal of metatarsal	0056	22.94	$1,193.09	$405.81	$238.62
28111	T	Part removal of metatarsal	0055	18.28	$950.72	$355.34	$190.14
28112	T	Part removal of metatarsal	0055	18.28	$950.72	$355.34	$190.14
28113	T	Part removal of metatarsal	0055	18.28	$950.72	$355.34	$190.14
28114	T	Removal of metatarsal heads	0055	18.28	$950.72	$355.34	$190.14
28116	T	Revision of foot	0055	18.28	$950.72	$355.34	$190.14
28118	T	Removal of heel bone	0055	18.28	$950.72	$355.34	$190.14
28119	T	Removal of heel spur	0055	18.28	$950.72	$355.34	$190.14
28120	T	Part removal of ankle/heel	0055	18.28	$950.72	$355.34	$190.14
28122	T	Partial removal of foot bone	0055	18.28	$950.72	$355.34	$190.14
28124	T	Partial removal of toe	0055	18.28	$950.72	$355.34	$190.14
28126	T	Partial removal of toe	0055	18.28	$950.72	$355.34	$190.14
28130	T	Removal of ankle bone	0055	18.28	$950.72	$355.34	$190.14
28140	T	Removal of metatarsal	0055	18.28	$950.72	$355.34	$190.14
28150	T	Removal of toe	0055	18.28	$950.72	$355.34	$190.14
28153	T	Partial removal of toe	0055	18.28	$950.72	$355.34	$190.14
28160	T	Partial removal of toe	0055	18.28	$950.72	$355.34	$190.14
28171	T	Extensive foot surgery	0055	18.28	$950.72	$355.34	$190.14
28173	T	Extensive foot surgery	0055	18.28	$950.72	$355.34	$190.14
28175	T	Extensive foot surgery	0055	18.28	$950.72	$355.34	$190.14
28190	T	Removal of foot foreign body	0019	3.94	$204.92	$75.82	$40.98
28192	T	Removal of foot foreign body	0021	14.58	$758.29	$227.49	$151.66
28193	T	Removal of foot foreign body	0021	14.58	$758.29	$227.49	$151.66
28200	T	Repair of foot tendon	0055	18.28	$950.72	$355.34	$190.14
28202	T	Repair/graft of foot tendon	0056	22.94	$1,193.09	$405.81	$238.62
28208	T	Repair of foot tendon	0055	18.28	$950.72	$355.34	$190.14
28210	T	Repair/graft of foot tendon	0055	18.28	$950.72	$355.34	$190.14
28220	T	Release of foot tendon	0055	18.28	$950.72	$355.34	$190.14
28222	T	Release of foot tendons	0055	18.28	$950.72	$355.34	$190.14
28225	T	Release of foot tendon	0055	18.28	$950.72	$355.34	$190.14
28226	T	Release of foot tendons	0055	18.28	$950.72	$355.34	$190.14
28230	T	Incision of foot tendon(s)	0055	18.28	$950.72	$355.34	$190.14
28232	T	Incision of toe tendon	0055	18.28	$950.72	$355.34	$190.14
28234	T	Incision of foot tendon	0055	18.28	$950.72	$355.34	$190.14
28238	T	Revision of foot tendon	0056	22.94	$1,193.09	$405.81	$238.62
28240	T	Release of big toe	0055	18.28	$950.72	$355.34	$190.14
28250	T	Revision of foot fascia	0056	22.94	$1,193.09	$405.81	$238.62
28260	T	Release of midfoot joint	0056	22.94	$1,193.09	$405.81	$238.62
28261	T	Revision of foot tendon	0056	22.94	$1,193.09	$405.81	$238.62
28262	T	Revision of foot and ankle	0056	22.94	$1,193.09	$405.81	$238.62
28264	T	Release of midfoot joint	0056	22.94	$1,193.09	$405.81	$238.62
28270	T	Release of foot contracture	0055	18.28	$950.72	$355.34	$190.14
28272	T	Release of toe joint, each	0055	18.28	$950.72	$355.34	$190.14
28280	T	Fusion of toes	0055	18.28	$950.72	$355.34	$190.14
28285	T	Repair of hammertoe	0055	18.28	$950.72	$355.34	$190.14
28286	T	Repair of hammertoe	0055	18.28	$950.72	$355.34	$190.14
28288	T	Partial removal of foot bone	0056	22.94	$1,193.09	$405.81	$238.62
28289	T	Repair hallux rigidus	0056	22.94	$1,193.09	$405.81	$238.62
28290	T	Correction of bunion	0056	22.94	$1,193.09	$405.81	$238.62
28292	T	Correction of bunion	0057	23.87	$1,241.45	$496.58	$248.29
28293	T	Correction of bunion	0057	23.87	$1,241.45	$496.58	$248.29
28294	T	Correction of bunion	0056	22.94	$1,193.09	$405.81	$238.62
28296	T	Correction of bunion	0056	22.94	$1,193.09	$405.81	$238.62
28297	T	Correction of bunion	0057	23.87	$1,241.45	$496.58	$248.29
28298	T	Correction of bunion	0056	22.94	$1,193.09	$405.81	$238.62
28299	T	Correction of bunion	0057	23.87	$1,241.45	$496.58	$248.29
28300	T	Incision of heel bone	0056	22.94	$1,193.09	$405.81	$238.62
28302	T	Incision of ankle bone	0056	22.94	$1,193.09	$405.81	$238.62
28304	T	Incision of midfoot bones	0056	22.94	$1,193.09	$405.81	$238.62

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
28305	T	Incise/graft midfoot bones	0056	22.94	$1,193.09	$405.81	$238.62
28306	T	Incision of metatarsal	0056	22.94	$1,193.09	$405.81	$238.62
28307	T	Incision of metatarsal	0056	22.94	$1,193.09	$405.81	$238.62
28308	T	Incision of metatarsal	0056	22.94	$1,193.09	$405.81	$238.62
28309	T	Incision of metatarsals	0056	22.94	$1,193.09	$405.81	$238.62
28310	T	Revision of big toe	0055	18.28	$950.72	$355.34	$190.14
28312	T	Revision of toe	0055	18.28	$950.72	$355.34	$190.14
28313	T	Repair deformity of toe	0055	18.28	$950.72	$355.34	$190.14
28315	T	Removal of sesamoid bone	0055	18.28	$950.72	$355.34	$190.14
28320	T	Repair of foot bones	0056	22.94	$1,193.09	$405.81	$238.62
28322	T	Repair of metatarsals	0056	22.94	$1,193.09	$405.81	$238.62
28340	T	Resect enlarged toe tissue	0055	18.28	$950.72	$355.34	$190.14
28341	T	Resect enlarged toe	0055	18.28	$950.72	$355.34	$190.14
28344	T	Repair extra toe(s)	0056	22.94	$1,193.09	$405.81	$238.62
28345	T	Repair webbed toe(s)	0056	22.94	$1,193.09	$405.81	$238.62
28360	T	Reconstruct cleft foot	0056	22.94	$1,193.09	$405.81	$238.62
28400	T	Treatment of heel fracture	0043	1.68	$87.38		$17.48
28405	T	Treatment of heel fracture	0043	1.68	$87.38		$17.48
28406	T	Treatment of heel fracture	0046	29.03	$1,509.82	$535.76	$301.96
28415	T	Treat heel fracture	0046	29.03	$1,509.82	$535.76	$301.96
28420	T	Treat/graft heel fracture	0046	29.03	$1,509.82	$535.76	$301.96
28430	T	Treatment of ankle fracture	0043	1.68	$87.38		$17.48
28435	T	Treatment of ankle fracture	0043	1.68	$87.38		$17.48
28436	T	Treatment of ankle fracture	0046	29.03	$1,509.82	$535.76	$301.96
28445	T	Treat ankle fracture	0046	29.03	$1,509.82	$535.76	$301.96
28450	T	Treat midfoot fracture, each	0043	1.68	$87.38		$17.48
28455	T	Treat midfoot fracture, each	0043	1.68	$87.38		$17.48
28456	T	Treat midfoot fracture	0046	29.03	$1,509.82	$535.76	$301.96
28465	T	Treat midfoot fracture, each	0046	29.03	$1,509.82	$535.76	$301.96
28470	T	Treat metatarsal fracture	0043	1.68	$87.38		$17.48
28475	T	Treat metatarsal fracture	0043	1.68	$87.38		$17.48
28476	T	Treat metatarsal fracture	0046	29.03	$1,509.82	$535.76	$301.96
28485	T	Treat metatarsal fracture	0046	29.03	$1,509.82	$535.76	$301.96
28490	T	Treat big toe fracture	0043	1.68	$87.38		$17.48
28495	T	Treat big toe fracture	0043	1.68	$87.38		$17.48
28496	T	Treat big toe fracture	0046	29.03	$1,509.82	$535.76	$301.96
28505	T	Treat big toe fracture	0046	29.03	$1,509.82	$535.76	$301.96
28510	T	Treatment of toe fracture	0043	1.68	$87.38		$17.48
28515	T	Treatment of toe fracture	0043	1.68	$87.38		$17.48
28525	T	Treat toe fracture	0046	29.03	$1,509.82	$535.76	$301.96
28530	T	Treat sesamoid bone fracture	0043	1.68	$87.38		$17.48
28531	T	Treat sesamoid bone fracture	0046	29.03	$1,509.82	$535.76	$301.96
28540	T	Treat foot dislocation	0043	1.68	$87.38		$17.48
28545	T	Treat foot dislocation	0045	13.47	$700.56	$280.22	$140.11
28546	T	Treat foot dislocation	0046	29.03	$1,509.82	$535.76	$301.96
28555	T	Repair foot dislocation	0046	29.03	$1,509.82	$535.76	$301.96
28570	T	Treat foot dislocation	0043	1.68	$87.38		$17.48
28575	T	Treat foot dislocation	0043	1.68	$87.38		$17.48
28576	T	Treat foot dislocation	0046	29.03	$1,509.82	$535.76	$301.96
28585	T	Repair foot dislocation	0046	29.03	$1,509.82	$535.76	$301.96
28600	T	Treat foot dislocation	0043	1.68	$87.38		$17.48
28605	T	Treat foot dislocation	0043	1.68	$87.38		$17.48
28606	T	Treat foot dislocation	0046	29.03	$1,509.82	$535.76	$301.96
28615	T	Repair foot dislocation	0046	29.03	$1,509.82	$535.76	$301.96
28630	T	Treat toe dislocation	0043	1.68	$87.38		$17.48
28635	T	Treat toe dislocation	0045	13.47	$700.56	$280.22	$140.11
28636	T	Treat toe dislocation	0046	29.03	$1,509.82	$535.76	$301.96
28645	T	Repair toe dislocation	0046	29.03	$1,509.82	$535.76	$301.96
28660	T	Treat toe dislocation	0043	1.68	$87.38		$17.48
28665	T	Treat toe dislocation	0045	13.47	$700.56	$280.22	$140.11
28666	T	Treat toe dislocation	0046	29.03	$1,509.82	$535.76	$301.96
28675	T	Repair of toe dislocation	0046	29.03	$1,509.82	$535.76	$301.96
28705	T	Fusion of foot bones	0056	22.94	$1,193.09	$405.81	$238.62
28715	T	Fusion of foot bones	0056	22.94	$1,193.09	$405.81	$238.62
28725	T	Fusion of foot bones	0056	22.94	$1,193.09	$405.81	$238.62
28730	T	Fusion of foot bones	0056	22.94	$1,193.09	$405.81	$238.62

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
28735	T	Fusion of foot bones	0056	22.94	$1,193.09	$405.81	$238.62
28737	T	Revision of foot bones	0055	18.28	$950.72	$355.34	$190.14
28740	T	Fusion of foot bones	0056	22.94	$1,193.09	$405.81	$238.62
28750	T	Fusion of big toe joint	0055	18.28	$950.72	$355.34	$190.14
28755	T	Fusion of big toe joint	0055	18.28	$950.72	$355.34	$190.14
28760	T	Fusion of big toe joint	0056	22.94	$1,193.09	$405.81	$238.62
28800	C	Amputation of midfoot					
28805	C	Amputation thru metatarsal					
28810	T	Amputation toe & metatarsal	0055	18.28	$950.72	$355.34	$190.14
28820	T	Amputation of toe	0055	18.28	$950.72	$355.34	$190.14
28825	T	Partial amputation of toe	0055	18.28	$950.72	$355.34	$190.14
28899	T	Foot/toes surgery procedure	0043	1.68	$87.38		$17.48
29000	S	Application of body cast	0058	1.09	$56.69	$14.74	$11.34
29010	S	Application of body cast	0058	1.09	$56.69	$14.74	$11.34
29015	S	Application of body cast	0058	1.09	$56.69	$14.74	$11.34
29020	S	Application of body cast	0058	1.09	$56.69	$14.74	$11.34
29025	S	Application of body cast	0058	1.09	$56.69	$14.74	$11.34
29035	S	Application of body cast	0058	1.09	$56.69	$14.74	$11.34
29040	S	Application of body cast	0058	1.09	$56.69	$14.74	$11.34
29044	S	Application of body cast	0058	1.09	$56.69	$14.74	$11.34
29046	S	Application of body cast	0058	1.09	$56.69	$14.74	$11.34
29049	S	Application of figure eight	0058	1.09	$56.69	$14.74	$11.34
29055	S	Application of shoulder cast	0058	1.09	$56.69	$14.74	$11.34
29058	S	Application of shoulder cast	0058	1.09	$56.69	$14.74	$11.34
29065	S	Application of long arm cast	0058	1.09	$56.69	$14.74	$11.34
29075	S	Application of forearm cast	0058	1.09	$56.69	$14.74	$11.34
29085	S	Apply hand/wrist cast	0058	1.09	$56.69	$14.74	$11.34
29086	S	Apply finger cast	0058	1.09	$56.69	$14.74	$11.34
29105	S	Apply long arm splint	0058	1.09	$56.69	$14.74	$11.34
29125	S	Apply forearm splint	0058	1.09	$56.69	$14.74	$11.34
29126	S	Apply forearm splint	0058	1.09	$56.69	$14.74	$11.34
29130	S	Application of finger splint	0058	1.09	$56.69	$14.74	$11.34
29131	S	Application of finger splint	0058	1.09	$56.69	$14.74	$11.34
29200	S	Strapping of chest	0058	1.09	$56.69	$14.74	$11.34
29220	S	Strapping of low back	0058	1.09	$56.69	$14.74	$11.34
29240	S	Strapping of shoulder	0058	1.09	$56.69	$14.74	$11.34
29260	S	Strapping of elbow or wrist	0058	1.09	$56.69	$14.74	$11.34
29280	S	Strapping of hand or finger	0058	1.09	$56.69	$14.74	$11.34
29305	S	Application of hip cast	0058	1.09	$56.69	$14.74	$11.34
29325	S	Application of hip casts	0058	1.09	$56.69	$14.74	$11.34
29345	S	Application of long leg cast	0058	1.09	$56.69	$14.74	$11.34
29355	S	Application of long leg cast	0058	1.09	$56.69	$14.74	$11.34
29358	S	Apply long leg cast brace	0058	1.09	$56.69	$14.74	$11.34
29365	S	Application of long leg cast	0058	1.09	$56.69	$14.74	$11.34
29405	S	Apply short leg cast	0058	1.09	$56.69	$14.74	$11.34
29425	S	Apply short leg cast	0058	1.09	$56.69	$14.74	$11.34
29435	S	Apply short leg cast	0058	1.09	$56.69	$14.74	$11.34
29440	S	Addition of walker to cast	0058	1.09	$56.69	$14.74	$11.34
29445	S	Apply rigid leg cast	0058	1.09	$56.69	$14.74	$11.34
29450	S	Application of leg cast	0058	1.09	$56.69	$14.74	$11.34
29505	S	Application, long leg splint	0058	1.09	$56.69	$14.74	$11.34
29515	S	Application lower leg splint	0058	1.09	$56.69	$14.74	$11.34
29520	S	Strapping of hip	0058	1.09	$56.69	$14.74	$11.34
29530	S	Strapping of knee	0058	1.09	$56.69	$14.74	$11.34
29540	S	Strapping of ankle	0058	1.09	$56.69	$14.74	$11.34
29550	S	Strapping of toes	0058	1.09	$56.69	$14.74	$11.34
29580	S	Application of paste boot	0058	1.09	$56.69	$14.74	$11.34
29590	S	Application of foot splint	0058	1.09	$56.69	$14.74	$11.34
29700	S	Removal/revision of cast	0058	1.09	$56.69	$14.74	$11.34
29705	S	Removal/revision of cast	0058	1.09	$56.69	$14.74	$11.34
29710	S	Removal/revision of cast	0058	1.09	$56.69	$14.74	$11.34
29715	S	Removal/revision of cast	0058	1.09	$56.69	$14.74	$11.34
29720	S	Repair of body cast	0058	1.09	$56.69	$14.74	$11.34
29730	S	Windowing of cast	0058	1.09	$56.69	$14.74	$11.34
29740	S	Wedging of cast	0058	1.09	$56.69	$14.74	$11.34
29750	S	Wedging of clubfoot cast	0058	1.09	$56.69	$14.74	$11.34

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
29799	S	Casting/strapping procedure	0058	1.09	$56.69	$14.74	$11.34
29800	T	Jaw arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29804	T	Jaw arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29805	T	Shoulder arthroscopy, dx	0041	27.58	$1,434.41	$580.06	$286.88
29806	T	Shoulder arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29807	T	Shoulder arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29819	T	Shoulder arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29820	T	Shoulder arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29821	T	Shoulder arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29822	T	Shoulder arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29823	T	Shoulder arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29824	T	Shoulder arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29825	T	Shoulder arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29826	T	Shoulder arthroscopy/surgery	0042	43.24	$2,248.87	$804.74	$449.77
29830	T	Elbow arthroscopy	0041	27.58	$1,434.41	$580.06	$286.88
29834	T	Elbow arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29835	T	Elbow arthroscopy/surgery	0042	43.24	$2,248.87	$804.74	$449.77
29836	T	Elbow arthroscopy/surgery	0042	43.24	$2,248.87	$804.74	$449.77
29837	T	Elbow arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29838	T	Elbow arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29840	T	Wrist arthroscopy	0041	27.58	$1,434.41	$580.06	$286.88
29843	T	Wrist arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29844	T	Wrist arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29845	T	Wrist arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29846	T	Wrist arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29847	T	Wrist arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29848	T	Wrist endoscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29850	T	Knee arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29851	T	Knee arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29855	T	Tibial arthroscopy/surgery	0042	43.24	$2,248.87	$804.74	$449.77
29856	T	Tibial arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29860	T	Hip arthroscopy, dx	0041	27.58	$1,434.41	$580.06	$286.88
29861	T	Hip arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29862	T	Hip arthroscopy/surgery	0042	43.24	$2,248.87	$804.74	$449.77
29863	T	Hip arthroscopy/surgery	0042	43.24	$2,248.87	$804.74	$449.77
29870	T	Knee arthroscopy, dx	0041	27.58	$1,434.41	$580.06	$286.88
29871	T	Knee arthroscopy/drainage	0041	27.58	$1,434.41	$580.06	$286.88
29874	T	Knee arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29875	T	Knee arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29876	T	Knee arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29877	T	Knee arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29879	T	Knee arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29880	T	Knee arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29881	T	Knee arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29882	T	Knee arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29883	T	Knee arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29884	T	Knee arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29885	T	Knee arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29886	T	Knee arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29887	T	Knee arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29888	T	Knee arthroscopy/surgery	0042	43.24	$2,248.87	$804.74	$449.77
29889	T	Knee arthroscopy/surgery	0042	43.24	$2,248.87	$804.74	$449.77
29891	T	Ankle arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29892	T	Ankle arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29893	T	Scope, plantar fasciotomy	0055	18.28	$950.72	$355.34	$190.14
29894	T	Ankle arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29895	T	Ankle arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29897	T	Ankle arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29898	T	Ankle arthroscopy/surgery	0041	27.58	$1,434.41	$580.06	$286.88
29900	T	Mcp joint arthroscopy, dx	0053	14.76	$767.65	$253.49	$153.53
29901	T	Mcp joint arthroscopy, surg	0053	14.76	$767.65	$253.49	$153.53
29902	T	Mcp joint arthroscopy, surg	0053	14.76	$767.65	$253.49	$153.53
29999	T	Arthroscopy of joint	0041	27.58	$1,434.41	$580.06	$286.88
30000	T	Drainage of nose lesion	0251	1.92	$99.86		$19.97
30020	T	Drainage of nose lesion	0251	1.92	$99.86		$19.97
30100	T	Intranasal biopsy	0252	6.27	$326.10	$114.24	$65.22

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
30110	T	Removal of nose polyp(s)	0253	14.79	$769.21	$284.61	$153.84
30115	T	Removal of nose polyp(s)	0253	14.79	$769.21	$284.61	$153.84
30117	T	Removal of intranasal lesion	0253	14.79	$769.21	$284.61	$153.84
30118	T	Removal of intranasal lesion	0254	21.89	$1,138.48	$352.93	$227.70
30120	T	Revision of nose	0253	14.79	$769.21	$284.61	$153.84
30124	T	Removal of nose lesion	0252	6.27	$326.10	$114.24	$65.22
30125	T	Removal of nose lesion	0256	35.51	$1,846.84		$369.37
30130	T	Removal of turbinate bones	0253	14.79	$769.21	$284.61	$153.84
30140	T	Removal of turbinate bones	0254	21.89	$1,138.48	$352.93	$227.70
30150	T	Partial removal of nose	0256	35.51	$1,846.84		$369.37
30160	T	Removal of nose	0256	35.51	$1,846.84		$369.37
30200	T	Injection treatment of nose	0253	14.79	$769.21	$284.61	$153.84
30210	T	Nasal sinus therapy	0252	6.27	$326.10	$114.24	$65.22
30220	T	Insert nasal septal button	0252	6.27	$326.10	$114.24	$65.22
30300	X	Remove nasal foreign body	0340	0.66	$34.33		$6.87
30310	T	Remove nasal foreign body	0253	14.79	$769.21	$284.61	$153.84
30320	T	Remove nasal foreign body	0253	14.79	$769.21	$284.61	$153.84
30400	T	Reconstruction of nose	0256	35.51	$1,846.84		$369.37
30410	T	Reconstruction of nose	0256	35.51	$1,846.84		$369.37
30420	T	Reconstruction of nose	0256	35.51	$1,846.84		$369.37
30430	T	Revision of nose	0254	21.89	$1,138.48	$352.93	$227.70
30435	T	Revision of nose	0256	35.51	$1,846.84		$369.37
30450	T	Revision of nose	0256	35.51	$1,846.84		$369.37
30460	T	Revision of nose	0256	35.51	$1,846.84		$369.37
30462	T	Revision of nose	0256	35.51	$1,846.84		$369.37
30465	T	Repair nasal stenosis	0256	35.51	$1,846.84		$369.37
30520	T	Repair of nasal septum	0254	21.89	$1,138.48	$352.93	$227.70
30540	T	Repair nasal defect	0256	35.51	$1,846.84		$369.37
30545	T	Repair nasal defect	0256	35.51	$1,846.84		$369.37
30560	T	Release of nasal adhesions	0251	1.92	$99.86		$19.97
30580	T	Repair upper jaw fistula	0256	35.51	$1,846.84		$369.37
30600	T	Repair mouth/nose fistula	0256	35.51	$1,846.84		$369.37
30620	T	Intranasal reconstruction	0256	35.51	$1,846.84		$369.37
30630	T	Repair nasal septum defect	0254	21.89	$1,138.48	$352.93	$227.70
30801	T	Cauterization, inner nose	0252	6.27	$326.10	$114.24	$65.22
30802	T	Cauterization, inner nose	0253	14.79	$769.21	$284.61	$153.84
30901	T	Control of nosebleed	0250	1.68	$87.38	$30.58	$17.48
30903	T	Control of nosebleed	0250	1.68	$87.38	$30.58	$17.48
30905	T	Control of nosebleed	0250	1.68	$87.38	$30.58	$17.48
30906	T	Repeat control of nosebleed	0250	1.68	$87.38	$30.58	$17.48
30915	T	Ligation, nasal sinus artery	0091	27.03	$1,405.80	$348.23	$281.16
30920	T	Ligation, upper jaw artery	0092	24.97	$1,298.66	$505.37	$259.73
30930	T	Therapy, fracture of nose	0253	14.79	$769.21	$284.61	$153.84
30999	T	Nasal surgery procedure	0251	1.92	$99.86		$19.97
31000	T	Irrigation, maxillary sinus	0251	1.92	$99.86		$19.97
31002	T	Irrigation, sphenoid sinus	0252	6.27	$326.10	$114.24	$65.22
31020	T	Exploration, maxillary sinus	0254	21.89	$1,138.48	$352.93	$227.70
31030	T	Exploration, maxillary sinus	0256	35.51	$1,846.84		$369.37
31032	T	Explore sinus,remove polyps	0256	35.51	$1,846.84		$369.37
31040	T	Exploration behind upper jaw	0254	21.89	$1,138.48	$352.93	$227.70
31050	T	Exploration, sphenoid sinus	0256	35.51	$1,846.84		$369.37
31051	T	Sphenoid sinus surgery	0256	35.51	$1,846.84		$369.37
31070	T	Exploration of frontal sinus	0254	21.89	$1,138.48	$352.93	$227.70
31075	T	Exploration of frontal sinus	0256	35.51	$1,846.84		$369.37
31080	T	Removal of frontal sinus	0256	35.51	$1,846.84		$369.37
31081	T	Removal of frontal sinus	0256	35.51	$1,846.84		$369.37
31084	T	Removal of frontal sinus	0256	35.51	$1,846.84		$369.37
31085	T	Removal of frontal sinus	0256	35.51	$1,846.84		$369.37
31086	T	Removal of frontal sinus	0256	35.51	$1,846.84		$369.37
31087	T	Removal of frontal sinus	0256	35.51	$1,846.84		$369.37
31090	T	Exploration of sinuses	0256	35.51	$1,846.84		$369.37
31200	T	Removal of ethmoid sinus	0256	35.51	$1,846.84		$369.37
31201	T	Removal of ethmoid sinus	0256	35.51	$1,846.84		$369.37
31205	T	Removal of ethmoid sinus	0256	35.51	$1,846.84		$369.37
31225	C	Removal of upper jaw					
31230	C	Removal of upper jaw					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
31231	T	Nasal endoscopy, dx	0071	1.01	$52.53	$14.18	$10.51
31233	T	Nasal/sinus endoscopy, dx	0072	1.66	$86.33	$37.99	$17.27
31235	T	Nasal/sinus endoscopy, dx	0074	12.84	$667.80	$295.70	$133.56
31237	T	Nasal/sinus endoscopy, surg	0075	20.41	$1,061.50	$445.92	$212.30
31238	T	Nasal/sinus endoscopy, surg	0074	12.84	$667.80	$295.70	$133.56
31239	T	Nasal/sinus endoscopy, surg	0075	20.41	$1,061.50	$445.92	$212.30
31240	T	Nasal/sinus endoscopy, surg	0074	12.84	$667.80	$295.70	$133.56
31254	T	Revision of ethmoid sinus	0075	20.41	$1,061.50	$445.92	$212.30
31255	T	Removal of ethmoid sinus	0075	20.41	$1,061.50	$445.92	$212.30
31256	T	Exploration maxillary sinus	0075	20.41	$1,061.50	$445.92	$212.30
31267	T	Endoscopy, maxillary sinus	0075	20.41	$1,061.50	$445.92	$212.30
31276	T	Sinus endoscopy, surgical	0075	20.41	$1,061.50	$445.92	$212.30
31287	T	Nasal/sinus endoscopy, surg	0075	20.41	$1,061.50	$445.92	$212.30
31288	T	Nasal/sinus endoscopy, surg	0075	20.41	$1,061.50	$445.92	$212.30
31290	C	Nasal/sinus endoscopy, surg					
31291	C	Nasal/sinus endoscopy, surg					
31292	C	Nasal/sinus endoscopy, surg					
31293	C	Nasal/sinus endoscopy, surg					
31294	C	Nasal/sinus endoscopy, surg					
31299	T	Sinus surgery procedure	0252	6.27	$326.10	$114.24	$65.22
31300	T	Removal of larynx lesion	0256	35.51	$1,846.84		$369.37
31320	T	Diagnostic incision, larynx	0256	35.51	$1,846.84		$369.37
31360	C	Removal of larynx					
31365	C	Removal of larynx					
31367	C	Partial removal of larynx					
31368	C	Partial removal of larynx					
31370	C	Partial removal of larynx					
31375	C	Partial removal of larynx					
31380	C	Partial removal of larynx					
31382	C	Partial removal of larynx					
31390	C	Removal of larynx & pharynx					
31395	C	Reconstruct larynx & pharynx					
31400	T	Revision of larynx	0256	35.51	$1,846.84		$369.37
31420	T	Removal of epiglottis	0256	35.51	$1,846.84		$369.37
31500	S	Insert emergency airway	0094	2.68	$139.38	$47.39	$27.88
31502	T	Change of windpipe airway	0121	2.17	$112.86	$45.14	$22.57
31505	T	Diagnostic laryngoscopy	0072	1.66	$86.33	$37.99	$17.27
31510	T	Laryngoscopy with biopsy	0074	12.84	$667.80	$295.70	$133.56
31511	T	Remove foreign body, larynx	0072	1.66	$86.33	$37.99	$17.27
31512	T	Removal of larynx lesion	0074	12.84	$667.80	$295.70	$133.56
31513	T	Injection into vocal cord	0072	1.66	$86.33	$37.99	$17.27
31515	T	Laryngoscopy for aspiration	0074	12.84	$667.80	$295.70	$133.56
31520	T	Diagnostic laryngoscopy	0072	1.66	$86.33	$37.99	$17.27
31525	T	Diagnostic laryngoscopy	0074	12.84	$667.80	$295.70	$133.56
31526	T	Diagnostic laryngoscopy	0075	20.41	$1,061.50	$445.92	$212.30
31527	T	Laryngoscopy for treatment	0075	20.41	$1,061.50	$445.92	$212.30
31528	T	Laryngoscopy and dilation	0074	12.84	$667.80	$295.70	$133.56
31529	T	Laryngoscopy and dilation	0074	12.84	$667.80	$295.70	$133.56
31530	T	Operative laryngoscopy	0075	20.41	$1,061.50	$445.92	$212.30
31531	T	Operative laryngoscopy	0075	20.41	$1,061.50	$445.92	$212.30
31535	T	Operative laryngoscopy	0075	20.41	$1,061.50	$445.92	$212.30
31536	T	Operative laryngoscopy	0075	20.41	$1,061.50	$445.92	$212.30
31540	T	Operative laryngoscopy	0075	20.41	$1,061.50	$445.92	$212.30
31541	T	Operative laryngoscopy	0075	20.41	$1,061.50	$445.92	$212.30
31560	T	Operative laryngoscopy	0075	20.41	$1,061.50	$445.92	$212.30
31561	T	Operative laryngoscopy	0075	20.41	$1,061.50	$445.92	$212.30
31570	T	Laryngoscopy with injection	0074	12.84	$667.80	$295.70	$133.56
31571	T	Laryngoscopy with injection	0075	20.41	$1,061.50	$445.92	$212.30
31575	T	Diagnostic laryngoscopy	0071	1.01	$52.53	$14.18	$10.51
31576	T	Laryngoscopy with biopsy	0075	20.41	$1,061.50	$445.92	$212.30
31577	T	Remove foreign body, larynx	0073	3.63	$188.79	$74.14	$37.76
31578	T	Removal of larynx lesion	0075	20.41	$1,061.50	$445.92	$212.30
31579	T	Diagnostic laryngoscopy	0073	3.63	$188.79	$74.14	$37.76
31580	T	Revision of larynx	0256	35.51	$1,846.84		$369.37
31582	T	Revision of larynx	0256	35.51	$1,846.84		$369.37
31584	C	Treat larynx fracture					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
31585	T	Treat larynx fracture	0253	14.79	$769.21	$284.61	$153.84
31586	T	Treat larynx fracture	0256	35.51	$1,846.84		$369.37
31587	C	Revision of larynx					
31588	T	Revision of larynx	0256	35.51	$1,846.84		$369.37
31590	T	Reinnervate larynx	0256	35.51	$1,846.84		$369.37
31595	T	Larynx nerve surgery	0256	35.51	$1,846.84		$369.37
31599	T	Larynx surgery procedure	0254	21.89	$1,138.48	$352.93	$227.70
31600	T	Incision of windpipe	0254	21.89	$1,138.48	$352.93	$227.70
31601	T	Incision of windpipe	0254	21.89	$1,138.48	$352.93	$227.70
31603	T	Incision of windpipe	0252	6.27	$326.10	$114.24	$65.22
31605	T	Incision of windpipe	0253	14.79	$769.21	$284.61	$153.84
31610	T	Incision of windpipe	0254	21.89	$1,138.48	$352.93	$227.70
31611	T	Surgery/speech prosthesis	0254	21.89	$1,138.48	$352.93	$227.70
31612	T	Puncture/clear windpipe	0254	21.89	$1,138.48	$352.93	$227.70
31613	T	Repair windpipe opening	0254	21.89	$1,138.48	$352.93	$227.70
31614	T	Repair windpipe opening	0256	35.51	$1,846.84		$369.37
31615	T	Visualization of windpipe	0076	9.30	$483.68	$189.92	$96.74
31622	T	Dx bronchoscope/wash	0076	9.30	$483.68	$189.92	$96.74
31623	T	Dx bronchoscope/brush	0076	9.30	$483.68	$189.92	$96.74
31624	T	Dx bronchoscope/lavage	0076	9.30	$483.68	$189.92	$96.74
31625	T	Bronchoscopy with biopsy	0076	9.30	$483.68	$189.92	$96.74
31628	T	Bronchoscopy with biopsy	0076	9.30	$483.68	$189.92	$96.74
31629	T	Bronchoscopy with biopsy	0076	9.30	$483.68	$189.92	$96.74
31630	T	Bronchoscopy with repair	0076	9.30	$483.68	$189.92	$96.74
31631	T	Bronchoscopy with dilation	0076	9.30	$483.68	$189.92	$96.74
31635	T	Remove foreign body, airway	0076	9.30	$483.68	$189.92	$96.74
31640	T	Bronchoscopy & remove lesion	0076	9.30	$483.68	$189.92	$96.74
31641	T	Bronchoscopy, treat blockage	0076	9.30	$483.68	$189.92	$96.74
31643	T	Diag bronchoscope/catheter	0076	9.30	$483.68	$189.92	$96.74
31645	T	Bronchoscopy, clear airways	0076	9.30	$483.68	$189.92	$96.74
31646	T	Bronchoscopy, reclear airway	0076	9.30	$483.68	$189.92	$96.74
31656	T	Bronchoscopy, inj for xray	0076	9.30	$483.68	$189.92	$96.74
31700	T	Insertion of airway catheter	0072	1.66	$86.33	$37.99	$17.27
31708	N	Instill airway contrast dye					
31710	N	Insertion of airway catheter					
31715	N	Injection for bronchus x-ray					
31717	T	Bronchial brush biopsy	0073	3.63	$188.79	$74.14	$37.76
31720	T	Clearance of airways	0072	1.66	$86.33	$37.99	$17.27
31725	C	Clearance of airways					
31730	T	Intro, windpipe wire/tube	0073	3.63	$188.79	$74.14	$37.76
31750	T	Repair of windpipe	0256	35.51	$1,846.84		$369.37
31755	T	Repair of windpipe	0256	35.51	$1,846.84		$369.37
31760	C	Repair of windpipe					
31766	C	Reconstruction of windpipe					
31770	C	Repair/graft of bronchus					
31775	C	Reconstruct bronchus					
31780	C	Reconstruct windpipe					
31781	C	Reconstruct windpipe					
31785	T	Remove windpipe lesion	0254	21.89	$1,138.48	$352.93	$227.70
31786	C	Remove windpipe lesion					
31800	C	Repair of windpipe injury					
31805	C	Repair of windpipe injury					
31820	T	Closure of windpipe lesion	0253	14.79	$769.21	$284.61	$153.84
31825	T	Repair of windpipe defect	0254	21.89	$1,138.48	$352.93	$227.70
31830	T	Revise windpipe scar	0254	21.89	$1,138.48	$352.93	$227.70
31899	T	Airways surgical procedure	0076	9.30	$483.68	$189.92	$96.74
32000	T	Drainage of chest	0070	3.30	$171.63		$34.33
32002	T	Treatment of collapsed lung	0070	3.30	$171.63		$34.33
32005	T	Treat lung lining chemically	0070	3.30	$171.63		$34.33
32020	T	Insertion of chest tube	0070	3.30	$171.63		$34.33
32035	C	Exploration of chest					
32036	C	Exploration of chest					
32095	C	Biopsy through chest wall					
32100	C	Exploration/biopsy of chest					
32110	C	Explore/repair chest					
32120	C	Re-exploration of chest					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
32124	C	Explore chest free adhesions					
32140	C	Removal of lung lesion(s)					
32141	C	Remove/treat lung lesions					
32150	C	Removal of lung lesion(s)					
32151	C	Remove lung foreign body					
32160	C	Open chest heart massage					
32200	C	Drain, open, lung lesion					
32201	T	Drain, percut, lung lesion	0070	3.30	$171.63		$34.33
32215	C	Treat chest lining					
32220	C	Release of lung					
32225	C	Partial release of lung					
32310	C	Removal of chest lining					
32320	C	Free/remove chest lining					
32400	T	Needle biopsy chest lining	0005	3.02	$157.07	$69.11	$31.41
32402	C	Open biopsy chest lining					
32405	T	Biopsy, lung or mediastinum	0685	4.47	$232.48	$102.29	$46.50
32420	T	Puncture/clear lung	0070	3.30	$171.63		$34.33
32440	C	Removal of lung					
32442	C	Sleeve pneumonectomy					
32445	C	Removal of lung					
32480	C	Partial removal of lung					
32482	C	Bilobectomy					
32484	C	Segmentectomy					
32486	C	Sleeve lobectomy					
32488	C	Completion pneumonectomy					
32491	C	Lung volume reduction					
32500	C	Partial removal of lung					
32501	C	Repair bronchus add-on					
32520	C	Remove lung & revise chest					
32522	C	Remove lung & revise chest					
32525	C	Remove lung & revise chest					
32540	C	Removal of lung lesion					
32601	T	Thoracoscopy, diagnostic	0069	29.51	$1,534.79	$591.64	$306.96
32602	T	Thoracoscopy, diagnostic	0069	29.51	$1,534.79	$591.64	$306.96
32603	T	Thoracoscopy, diagnostic	0069	29.51	$1,534.79	$591.64	$306.96
32604	T	Thoracoscopy, diagnostic	0069	29.51	$1,534.79	$591.64	$306.96
32605	T	Thoracoscopy, diagnostic	0069	29.51	$1,534.79	$591.64	$306.96
32606	T	Thoracoscopy, diagnostic	0069	29.51	$1,534.79	$591.64	$306.96
32650	C	Thoracoscopy, surgical					
32651	C	Thoracoscopy, surgical					
32652	C	Thoracoscopy, surgical					
32653	C	Thoracoscopy, surgical					
32654	C	Thoracoscopy, surgical					
32655	C	Thoracoscopy, surgical					
32656	C	Thoracoscopy, surgical					
32657	C	Thoracoscopy, surgical					
32658	C	Thoracoscopy, surgical					
32659	C	Thoracoscopy, surgical					
32660	C	Thoracoscopy, surgical					
32661	C	Thoracoscopy, surgical					
32662	C	Thoracoscopy, surgical					
32663	C	Thoracoscopy, surgical					
32664	C	Thoracoscopy, surgical					
32665	C	Thoracoscopy, surgical					
32800	C	Repair lung hernia					
32810	C	Close chest after drainage					
32815	C	Close bronchial fistula					
32820	C	Reconstruct injured chest					
32850	C	Donor pneumonectomy					
32851	C	Lung transplant, single					
32852	C	Lung transplant with bypass					
32853	C	Lung transplant, double					
32854	C	Lung transplant with bypass					
32900	C	Removal of rib(s)					
32905	C	Revise & repair chest wall					
32906	C	Revise & repair chest wall					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
32940	C	Revision of lung					
32960	T	Therapeutic pneumothorax	0070	3.30	$171.63		$34.33
32997	C	Total lung lavage					
32999	T	Chest surgery procedure	0070	3.30	$171.63		$34.33
33010	T	Drainage of heart sac	0070	3.30	$171.63		$34.33
33011	T	Repeat drainage of heart sac	0070	3.30	$171.63		$34.33
33015	C	Incision of heart sac					
33020	C	Incision of heart sac					
33025	C	Incision of heart sac					
33030	C	Partial removal of heart sac					
33031	C	Partial removal of heart sac					
33050	C	Removal of heart sac lesion					
33120	C	Removal of heart lesion					
33130	C	Removal of heart lesion					
33140	C	Heart revascularize (tmr)					
33141	C	Heart tmr w/other procedure					
33200	C	Insertion of heart pacemaker					
33201	C	Insertion of heart pacemaker					
33206	T	Insertion of heart pacemaker	0089	108.92	$5,664.82	$1,642.80	$1,132.96
33207	T	Insertion of heart pacemaker	0089	108.92	$5,664.82	$1,642.80	$1,132.96
33208	T	Insertion of heart pacemaker	0089	108.92	$5,664.82	$1,642.80	$1,132.96
33210	T	Insertion of heart electrode	0106	29.23	$1,520.22	$410.46	$304.04
33211	T	Insertion of heart electrode	0106	29.23	$1,520.22	$410.46	$304.04
33212	T	Insertion of pulse generator	0090	77.15	$4,012.49	$1,444.50	$802.50
33213	T	Insertion of pulse generator	0090	77.15	$4,012.49	$1,444.50	$802.50
33214	T	Upgrade of pacemaker system	0089	108.92	$5,664.82	$1,642.80	$1,132.96
33216	T	Revise eltrd pacing-defib	0106	29.23	$1,520.22	$410.46	$304.04
33217	T	Revise eltrd pacing-defib	0106	29.23	$1,520.22	$410.46	$304.04
33218	T	Revise eltrd pacing-defib	0106	29.23	$1,520.22	$410.46	$304.04
33220	T	Revise eltrd pacing-defib	0106	29.23	$1,520.22	$410.46	$304.04
33222	T	Revise pocket, pacemaker	0027	15.73	$818.10	$343.60	$163.62
33223	T	Revise pocket, pacing-defib	0027	15.73	$818.10	$343.60	$163.62
33233	T	Removal of pacemaker system	0105	19.14	$995.45	$370.40	$199.09
33234	T	Removal of pacemaker system	0105	19.14	$995.45	$370.40	$199.09
33235	T	Removal pacemaker electrode	0105	19.14	$995.45	$370.40	$199.09
33236	C	Remove electrode/thoracotomy					
33237	C	Remove electrode/thoracotomy					
33238	C	Remove electrode/thoracotomy					
33240	T	Insert pulse generator	0107	181.51	$9,440.15	$2,076.83	$1,888.03
33241	T	Remove pulse generator	0105	19.14	$995.45	$370.40	$199.09
33243	C	Remove eltrd/thoracotomy					
33244	T	Remove eltrd, transven	0105	19.14	$995.45	$370.40	$199.09
33245	C	Insert epic eltrd pace-defib					
33246	C	Insert epic eltrd/generator					
33249	T	Eltrd/insert pace-defib	0108	232.69	$12,101.97		$2,420.39
33250	C	Ablate heart dysrhythm focus					
33251	C	Ablate heart dysrhythm focus					
33253	C	Reconstruct atria					
33261	C	Ablate heart dysrhythm focus					
33282	S	Implant pat-active ht record	0680	51.95	$2,701.87		$540.37
33284	T	Remove pat-active ht record	0109	7.68	$399.43	$131.49	$79.89
33300	C	Repair of heart wound					
33305	C	Repair of heart wound					
33310	C	Exploratory heart surgery					
33315	C	Exploratory heart surgery					
33320	C	Repair major blood vessel(s)					
33321	C	Repair major vessel					
33322	C	Repair major blood vessel(s)					
33330	C	Insert major vessel graft					
33332	C	Insert major vessel graft					
33335	C	Insert major vessel graft					
33400	C	Repair of aortic valve					
33401	C	Valvuloplasty, open					
33403	C	Valvuloplasty, w/cp bypass					
33404	C	Prepare heart-aorta conduit					
33405	C	Replacement of aortic valve					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
33406	C	Replacement of aortic valve					
33410	C	Replacement of aortic valve					
33411	C	Replacement of aortic valve					
33412	C	Replacement of aortic valve					
33413	C	Replacement of aortic valve					
33414	C	Repair of aortic valve					
33415	C	Revision, subvalvular tissue					
33416	C	Revise ventricle muscle					
33417	C	Repair of aortic valve					
33420	C	Revision of mitral valve					
33422	C	Revision of mitral valve					
33425	C	Repair of mitral valve					
33426	C	Repair of mitral valve					
33427	C	Repair of mitral valve					
33430	C	Replacement of mitral valve					
33460	C	Revision of tricuspid valve					
33463	C	Valvuloplasty, tricuspid					
33464	C	Valvuloplasty, tricuspid					
33465	C	Replace tricuspid valve					
33468	C	Revision of tricuspid valve					
33470	C	Revision of pulmonary valve					
33471	C	Valvotomy, pulmonary valve					
33472	C	Revision of pulmonary valve					
33474	C	Revision of pulmonary valve					
33475	C	Replacement, pulmonary valve					
33476	C	Revision of heart chamber					
33478	C	Revision of heart chamber					
33496	C	Repair, prosth valve clot					
33500	C	Repair heart vessel fistula					
33501	C	Repair heart vessel fistula					
33502	C	Coronary artery correction					
33503	C	Coronary artery graft					
33504	C	Coronary artery graft					
33505	C	Repair artery w/tunnel					
33506	C	Repair artery, translocation					
33510	C	CABG, vein, single					
33511	C	CABG, vein, two					
33512	C	CABG, vein, three					
33513	C	CABG, vein, four					
33514	C	CABG, vein, five					
33516	C	Cabg, vein, six or more					
33517	C	CABG, artery-vein, single					
33518	C	CABG, artery-vein, two					
33519	C	CABG, artery-vein, three					
33521	C	CABG, artery-vein, four					
33522	C	CABG, artery-vein, five					
33523	C	Cabg, art-vein, six or more					
33530	C	Coronary artery, bypass/reop					
33533	C	CABG, arterial, single					
33534	C	CABG, arterial, two					
33535	C	CABG, arterial, three					
33536	C	Cabg, arterial, four or more					
33542	C	Removal of heart lesion					
33545	C	Repair of heart damage					
33572	C	Open coronary endarterectomy					
33600	C	Closure of valve					
33602	C	Closure of valve					
33606	C	Anastomosis/artery-aorta					
33608	C	Repair anomaly w/conduit					
33610	C	Repair by enlargement					
33611	C	Repair double ventricle					
33612	C	Repair double ventricle					
33615	C	Repair, modified fontan					
33617	C	Repair single ventricle					
33619	C	Repair single ventricle					
33641	C	Repair heart septum defect					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
33645	C	Revision of heart veins					
33647	C	Repair heart septum defects					
33660	C	Repair of heart defects					
33665	C	Repair of heart defects					
33670	C	Repair of heart chambers					
33681	C	Repair heart septum defect					
33684	C	Repair heart septum defect					
33688	C	Repair heart septum defect					
33690	C	Reinforce pulmonary artery					
33692	C	Repair of heart defects					
33694	C	Repair of heart defects					
33697	C	Repair of heart defects					
33702	C	Repair of heart defects					
33710	C	Repair of heart defects					
33720	C	Repair of heart defect					
33722	C	Repair of heart defect					
33730	C	Repair heart-vein defect(s)					
33732	C	Repair heart-vein defect					
33735	C	Revision of heart chamber					
33736	C	Revision of heart chamber					
33737	C	Revision of heart chamber					
33750	C	Major vessel shunt					
33755	C	Major vessel shunt					
33762	C	Major vessel shunt					
33764	C	Major vessel shunt & graft					
33766	C	Major vessel shunt					
33767	C	Major vessel shunt					
33770	C	Repair great vessels defect					
33771	C	Repair great vessels defect					
33774	C	Repair great vessels defect					
33775	C	Repair great vessels defect					
33776	C	Repair great vessels defect					
33777	C	Repair great vessels defect					
33778	C	Repair great vessels defect					
33779	C	Repair great vessels defect					
33780	C	Repair great vessels defect					
33781	C	Repair great vessels defect					
33786	C	Repair arterial trunk					
33788	C	Revision of pulmonary artery					
33800	C	Aortic suspension					
33802	C	Repair vessel defect					
33803	C	Repair vessel defect					
33813	C	Repair septal defect					
33814	C	Repair septal defect					
33820	C	Revise major vessel					
33822	C	Revise major vessel					
33824	C	Revise major vessel					
33840	C	Remove aorta constriction					
33845	C	Remove aorta constriction					
33851	C	Remove aorta constriction					
33852	C	Repair septal defect					
33853	C	Repair septal defect					
33860	C	Ascending aortic graft					
33861	C	Ascending aortic graft					
33863	C	Ascending aortic graft					
33870	C	Transverse aortic arch graft					
33875	C	Thoracic aortic graft					
33877	C	Thoracoabdominal graft					
33910	C	Remove lung artery emboli					
33915	C	Remove lung artery emboli					
33916	C	Surgery of great vessel					
33917	C	Repair pulmonary artery					
33918	C	Repair pulmonary atresia					
33919	C	Repair pulmonary atresia					
33920	C	Repair pulmonary atresia					
33922	C	Transect pulmonary artery					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
33924	C	Remove pulmonary shunt					
33930	C	Removal of donor heart/lung					
33935	C	Transplantation, heart/lung					
33940	C	Removal of donor heart					
33945	C	Transplantation of heart					
33960	C	External circulation assist					
33961	C	External circulation assist					
33967	C	Insert ia percut device					
33968	C	Remove aortic assist device					
33970	C	Aortic circulation assist					
33971	C	Aortic circulation assist					
33973	C	Insert balloon device					
33974	C	Remove intra-aortic balloon					
33975	C	Implant ventricular device					
33976	C	Implant ventricular device					
33977	C	Remove ventricular device					
33978	C	Remove ventricular device					
33979	C	Insert intracorporeal device					
33980	C	Remove intracorporeal device					
33999	T	Cardiac surgery procedure	0070	3.30	$171.63		$34.33
34001	C	Removal of artery clot					
34051	C	Removal of artery clot					
34101	T	Removal of artery clot	0088	33.96	$1,766.23	$678.68	$353.25
34111	T	Removal of arm artery clot	0088	33.96	$1,766.23	$678.68	$353.25
34151	C	Removal of artery clot					
34201	T	Removal of artery clot	0088	33.96	$1,766.23	$678.68	$353.25
34203	T	Removal of leg artery clot	0088	33.96	$1,766.23	$678.68	$353.25
34401	C	Removal of vein clot					
34421	T	Removal of vein clot	0088	33.96	$1,766.23	$678.68	$353.25
34451	C	Removal of vein clot					
34471	T	Removal of vein clot	0088	33.96	$1,766.23	$678.68	$353.25
34490	T	Removal of vein clot	0088	33.96	$1,766.23	$678.68	$353.25
34501	T	Repair valve, femoral vein	0088	33.96	$1,766.23	$678.68	$353.25
34502	C	Reconstruct vena cava					
34510	T	Transposition of vein valve	0088	33.96	$1,766.23	$678.68	$353.25
34520	T	Cross-over vein graft	0088	33.96	$1,766.23	$678.68	$353.25
34530	T	Leg vein fusion	0088	33.96	$1,766.23	$678.68	$353.25
34800	C	Endovasc abdo repair w/tube					
34802	C	Endovasc abdo repr w/device					
34804	C	Endovasc abdo repr w/device					
34808	C	Endovasc abdo occlud device					
34812	C	Xpose for endoprosth, aortic					
34813	C	Xpose for endoprosth, femorl					
34820	C	Xpose for endoprosth, iliac					
34825	C	Endovasc extend prosth, init					
34826	C	Endovasc exten prosth, addl					
34830	C	Open aortic tube prosth repr					
34831	C	Open aortoiliac prosth repr					
34832	C	Open aortofemor prosth repr					
35001	C	Repair defect of artery					
35002	C	Repair artery rupture, neck					
35005	C	Repair defect of artery					
35011	T	Repair defect of artery	0093	26.29	$1,367.32	$277.34	$273.46
35013	C	Repair artery rupture, arm					
35021	C	Repair defect of artery					
35022	C	Repair artery rupture, chest					
35045	C	Repair defect of arm artery					
35081	C	Repair defect of artery					
35082	C	Repair artery rupture, aorta					
35091	C	Repair defect of artery					
35092	C	Repair artery rupture, aorta					
35102	C	Repair defect of artery					
35103	C	Repair artery rupture, groin					
35111	C	Repair defect of artery					
35112	C	Repair artery rupture,spleen					
35121	C	Repair defect of artery					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
35122	C	Repair artery rupture, belly					
35131	C	Repair defect of artery					
35132	C	Repair artery rupture, groin					
35141	C	Repair defect of artery					
35142	C	Repair artery rupture, thigh					
35151	C	Repair defect of artery					
35152	C	Repair artery rupture, knee					
35161	C	Repair defect of artery					
35162	C	Repair artery rupture					
35180	T	Repair blood vessel lesion	0093	26.29	$1,367.32	$277.34	$273.46
35182	C	Repair blood vessel lesion					
35184	T	Repair blood vessel lesion	0093	26.29	$1,367.32	$277.34	$273.46
35188	T	Repair blood vessel lesion	0088	33.96	$1,766.23	$678.68	$353.25
35189	C	Repair blood vessel lesion					
35190	T	Repair blood vessel lesion	0093	26.29	$1,367.32	$277.34	$273.46
35201	T	Repair blood vessel lesion	0093	26.29	$1,367.32	$277.34	$273.46
35206	T	Repair blood vessel lesion	0093	26.29	$1,367.32	$277.34	$273.46
35207	T	Repair blood vessel lesion	0088	33.96	$1,766.23	$678.68	$353.25
35211	C	Repair blood vessel lesion					
35216	C	Repair blood vessel lesion					
35221	C	Repair blood vessel lesion					
35226	T	Repair blood vessel lesion	0093	26.29	$1,367.32	$277.34	$273.46
35231	T	Repair blood vessel lesion	0093	26.29	$1,367.32	$277.34	$273.46
35236	T	Repair blood vessel lesion	0093	26.29	$1,367.32	$277.34	$273.46
35241	C	Repair blood vessel lesion					
35246	C	Repair blood vessel lesion					
35251	C	Repair blood vessel lesion					
35256	T	Repair blood vessel lesion	0093	26.29	$1,367.32	$277.34	$273.46
35261	T	Repair blood vessel lesion	0093	26.29	$1,367.32	$277.34	$273.46
35266	T	Repair blood vessel lesion	0093	26.29	$1,367.32	$277.34	$273.46
35271	C	Repair blood vessel lesion					
35276	C	Repair blood vessel lesion					
35281	C	Repair blood vessel lesion					
35286	T	Repair blood vessel lesion	0093	26.29	$1,367.32	$277.34	$273.46
35301	C	Rechanneling of artery					
35311	C	Rechanneling of artery					
35321	T	Rechanneling of artery	0093	26.29	$1,367.32	$277.34	$273.46
35331	C	Rechanneling of artery					
35341	C	Rechanneling of artery					
35351	C	Rechanneling of artery					
35355	C	Rechanneling of artery					
35361	C	Rechanneling of artery					
35363	C	Rechanneling of artery					
35371	C	Rechanneling of artery					
35372	C	Rechanneling of artery					
35381	C	Rechanneling of artery					
35390	C	Reoperation, carotid add-on					
35400	C	Angioscopy					
35450	C	Repair arterial blockage					
35452	C	Repair arterial blockage					
35454	C	Repair arterial blockage					
35456	C	Repair arterial blockage					
35458	T	Repair arterial blockage	0081	22.69	$1,180.08		$236.02
35459	T	Repair arterial blockage	0081	22.69	$1,180.08		$236.02
35460	T	Repair venous blockage	0081	22.69	$1,180.08		$236.02
35470	T	Repair arterial blockage	0081	22.69	$1,180.08		$236.02
35471	T	Repair arterial blockage	0081	22.69	$1,180.08		$236.02
35472	T	Repair arterial blockage	0081	22.69	$1,180.08		$236.02
35473	T	Repair arterial blockage	0081	22.69	$1,180.08		$236.02
35474	T	Repair arterial blockage	0081	22.69	$1,180.08		$236.02
35475	T	Repair arterial blockage	0081	22.69	$1,180.08		$236.02
35476	T	Repair venous blockage	0081	22.69	$1,180.08		$236.02
35480	C	Atherectomy, open					
35481	C	Atherectomy, open					
35482	C	Atherectomy, open					
35483	C	Atherectomy, open					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
35484	T	Atherectomy, open	0081	22.69	$1,180.08		$236.02
35485	T	Atherectomy, open	0081	22.69	$1,180.08		$236.02
35490	T	Atherectomy, percutaneous	0081	22.69	$1,180.08		$236.02
35491	T	Atherectomy, percutaneous	0081	22.69	$1,180.08		$236.02
35492	T	Atherectomy, percutaneous	0081	22.69	$1,180.08		$236.02
35493	T	Atherectomy, percutaneous	0081	22.69	$1,180.08		$236.02
35494	T	Atherectomy, percutaneous	0081	22.69	$1,180.08		$236.02
35495	T	Atherectomy, percutaneous	0081	22.69	$1,180.08		$236.02
35500	T	Harvest vein for bypass	0081	22.69	$1,180.08		$236.02
35501	C	Artery bypass graft					
35506	C	Artery bypass graft					
35507	C	Artery bypass graft					
35508	C	Artery bypass graft					
35509	C	Artery bypass graft					
35511	C	Artery bypass graft					
35515	C	Artery bypass graft					
35516	C	Artery bypass graft					
35518	C	Artery bypass graft					
35521	C	Artery bypass graft					
35526	C	Artery bypass graft					
35531	C	Artery bypass graft					
35533	C	Artery bypass graft					
35536	C	Artery bypass graft					
35541	C	Artery bypass graft					
35546	C	Artery bypass graft					
35548	C	Artery bypass graft					
35549	C	Artery bypass graft					
35551	C	Artery bypass graft					
35556	C	Artery bypass graft					
35558	C	Artery bypass graft					
35560	C	Artery bypass graft					
35563	C	Artery bypass graft					
35565	C	Artery bypass graft					
35566	C	Artery bypass graft					
35571	C	Artery bypass graft					
35582	C	Vein bypass graft					
35583	C	Vein bypass graft					
35585	C	Vein bypass graft					
35587	C	Vein bypass graft					
35600	C	Harvest artery for cabg					
35601	C	Artery bypass graft					
35606	C	Artery bypass graft					
35612	C	Artery bypass graft					
35616	C	Artery bypass graft					
35621	C	Artery bypass graft					
35623	C	Bypass graft, not vein					
35626	C	Artery bypass graft					
35631	C	Artery bypass graft					
35636	C	Artery bypass graft					
35641	C	Artery bypass graft					
35642	C	Artery bypass graft					
35645	C	Artery bypass graft					
35646	C	Artery bypass graft					
35647	C	Artery bypass graft					
35650	C	Artery bypass graft					
35651	C	Artery bypass graft					
35654	C	Artery bypass graft					
35656	C	Artery bypass graft					
35661	C	Artery bypass graft					
35663	C	Artery bypass graft					
35665	C	Artery bypass graft					
35666	C	Artery bypass graft					
35671	C	Artery bypass graft					
85681	C	Composite bypass graft					
35682	C	Composite bypass graft					
35683	C	Composite bypass graft					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
35685	T	Bypass graft patency/patch	0093	26.29	$1,367.32	$277.34	$273.46
35686	T	Bypass graft/av fist patency	0093	26.29	$1,367.32	$277.34	$273.46
35691	C	Arterial transposition					
35693	C	Arterial transposition					
35694	C	Arterial transposition					
35695	C	Arterial transposition					
35700	C	Reoperation, bypass graft					
35701	C	Exploration, carotid artery					
35721	C	Exploration, femoral artery					
35741	C	Exploration popliteal artery					
35761	T	Exploration of artery/vein	0115	23.48	$1,221.17	$439.62	$244.23
35800	C	Explore neck vessels					
35820	C	Explore chest vessels					
35840	C	Explore abdominal vessels					
35860	T	Explore limb vessels	0093	26.29	$1,367.32	$277.34	$273.46
35870	C	Repair vessel graft defect					
35875	T	Removal of clot in graft	0088	33.96	$1,766.23	$678.68	$353.25
35876	T	Removal of clot in graft	0088	33.96	$1,766.23	$678.68	$353.25
35879	T	Revise graft w/vein	0088	33.96	$1,766.23	$678.68	$353.25
35881	T	Revise graft w/vein	0088	33.96	$1,766.23	$678.68	$353.25
35901	C	Excision, graft, neck					
35903	T	Excision, graft, extremity	0115	23.48	$1,221.17	$439.62	$244.23
35905	C	Excision, graft, thorax					
35907	C	Excision, graft, abdomen					
36000	N	Place needle in vein					
36002	S	Pseudoaneurysm injection tri	0267	2.58	$134.18	$65.52	$26.84
36005	N	Injection ext venography					
36010	N	Place catheter in vein					
36011	N	Place catheter in vein					
36012	N	Place catheter in vein					
36013	N	Place catheter in artery					
36014	N	Place catheter in artery					
36015	N	Place catheter in artery					
36100	N	Establish access to artery					
36120	N	Establish access to artery					
36140	N	Establish access to artery					
36145	N	Artery to vein shunt					
36160	N	Establish access to aorta					
36200	N	Place catheter in aorta					
36215	N	Place catheter in artery					
36216	N	Place catheter in artery					
36217	N	Place catheter in artery					
36218	N	Place catheter in artery					
36245	N	Place catheter in artery					
36246	N	Place catheter in artery					
36247	N	Place catheter in artery					
36248	N	Place catheter in artery					
36260	T	Insertion of infusion pump	0119	25.88	$1,345.99		$269.20
36261	T	Revision of infusion pump	0124	23.47	$1,220.65		$244.13
36262	T	Removal of infusion pump	0109	7.68	$399.43	$131.49	$79.89
36299	N	Vessel injection procedure					
36400	N	Drawing blood					
36405	N	Drawing blood					
36406	N	Drawing blood					
36410	N	Drawing blood					
36415	E	Drawing blood					
36420	T	Establish access to vein	0035	0.24	$12.48	$3.74	$2.50
36425	T	Establish access to vein	0035	0.24	$12.48	$3.74	$2.50
36430	S	Blood transfusion service	0110	4.04	$210.12		$42.02
36440	S	Blood transfusion service	0110	4.04	$210.12		$42.02
36450	S	Exchange transfusion service	0110	4.04	$210.12		$42.02
36455	S	Exchange transfusion service	0110	4.04	$210.12		$42.02
36460	S	Transfusion service, fetal	0110	4.04	$210.12		$42.02
36468	T	Injection(s), spider veins	0098	1.90	$98.82	$20.88	$19.76
36469	T	Injection(s), spider veins	0098	1.90	$98.82	$20.88	$19.76
36470	T	Injection therapy of vein	0098	1.90	$98.82	$20.88	$19.76

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
36471	T	Injection therapy of veins	0098	1.90	$98.82	$20.88	$19.76
36481	N	Insertion of catheter, vein					
36488	T	Insertion of catheter, vein	0032	7.14	$371.34		$74.27
36489	T	Insertion of catheter, vein	0032	7.14	$371.34		$74.27
36490	T	Insertion of catheter, vein	0032	7.14	$371.34		$74.27
36491	T	Insertion of catheter, vein	0032	7.14	$371.34		$74.27
36493	X	Repositioning of cvc	0187	4.19	$217.92	$94.96	$43.58
36500	N	Insertion of catheter, vein					
36510	C	Insertion of catheter, vein					
36520	S	Plasma and/or cell exchange	0111	13.60	$707.32	$198.05	$141.46
36521	S	Apheresis w/ adsorp/reinfuse	0112	39.40	$2,049.15	$612.47	$409.83
36522	S	Photopheresis	0112	39.40	$2,049.15	$612.47	$409.83
36530	T	Insertion of infusion pump	0119	25.88	$1,345.99		$269.20
36531	T	Revision of infusion pump	0124	23.47	$1,220.65		$244.13
36532	T	Removal of infusion pump	0109	7.68	$399.43	$131.49	$79.89
36533	T	Insertion of access device	0115	23.48	$1,221.17	$439.62	$244.23
36534	T	Revision of access device	0109	7.68	$399.43	$131.49	$79.89
36535	T	Removal of access device	0109	7.68	$399.43	$131.49	$79.89
36540	N	Collect blood venous device					
36550	T	Declot vascular device	0677	2.80	$145.63		$29.13
36600	N	Withdrawal of arterial blood					
36620	N	Insertion catheter, artery					
36625	N	Insertion catheter, artery					
36640	T	Insertion catheter, artery	0032	7.14	$371.34		$74.27
36660	C	Insertion catheter, artery					
36680	T	Insert needle, bone cavity	0120	1.81	$94.14	$25.42	$18.83
36800	T	Insertion of cannula	0115	23.48	$1,221.17	$439.62	$244.23
36810	T	Insertion of cannula	0115	23.48	$1,221.17	$439.62	$244.23
36815	T	Insertion of cannula	0115	23.48	$1,221.17	$439.62	$244.23
36819	T	Av fusion/uppr arm vein	0088	33.96	$1,766.23	$678.68	$353.25
36820	T	Av fusion/forearm vein	0088	33.96	$1,766.23	$678.68	$353.25
36821	T	Av fusion direct any site	0088	33.96	$1,766.23	$678.68	$353.25
36822	C	Insertion of cannula(s)					
36823	C	Insertion of cannula(s)					
36825	T	Artery-vein graft	0088	33.96	$1,766.23	$678.68	$353.25
36830	T	Artery-vein graft	0088	33.96	$1,766.23	$678.68	$353.25
36831	T	Open thrombect av fistula	0088	33.96	$1,766.23	$678.68	$353.25
36832	T	Av fistula revision, open	0088	33.96	$1,766.23	$678.68	$353.25
36833	T	Av fistula revision	0088	33.96	$1,766.23	$678.68	$353.25
36834	T	Repair A-V aneurysm	0088	33.96	$1,766.23	$678.68	$353.25
36835	T	Artery to vein shunt	0115	23.48	$1,221.17	$439.62	$244.23
36860	T	External cannula declotting	0103	11.26	$585.62	$210.82	$117.12
36861	T	Cannula declotting	0115	23.48	$1,221.17	$439.62	$244.23
36870	T	Percut thrombect av fistula	0093	26.29	$1,367.32	$277.34	$273.46
37140	C	Revision of circulation					
37145	C	Revision of circulation					
37160	C	Revision of circulation					
37180	C	Revision of circulation					
37181	C	Splice spleen/kidney veins					
37195	C	Thrombolytic therapy, stroke					
37200	T	Transcatheter biopsy	0685	4.47	$232.48	$102.29	$46.50
37201	T	Transcatheter therapy infuse	0676	4.62	$240.28	$64.88	$48.06
37202	T	Transcatheter therapy infuse	0677	2.80	$145.63		$29.13
37203	T	Transcatheter retrieval	0103	11.26	$585.62	$210.82	$117.12
37204	T	Transcatheter occlusion	0115	23.48	$1,221.17	$439.62	$244.23
37205	T	Transcatheter stent	0229	49.00	$2,548.44	$662.59	$509.69
37206	T	Transcatheter stent add-on	0229	49.00	$2,548.44	$662.59	$509.69
37207	T	Transcatheter stent	0229	49.00	$2,548.44	$662.59	$509.69
37208	T	Transcatheter stent add-on	0229	49.00	$2,548.44	$662.59	$509.69
37209	T	Exchange arterial catheter	0103	11.26	$585.62	$210.82	$117.12
37250	S	Iv us first vessel add-on	0670	14.78	$768.69	$276.73	$153.74
37251	S	Iv us each add vessel add-on	0670	14.78	$768.69	$276.73	$153.74
37565	T	Ligation of neck vein	0093	26.29	$1,367.32	$277.34	$273.46
37600	T	Ligation of neck artery	0093	26.29	$1,367.32	$277.34	$273.46
37605	T	Ligation of neck artery	0091	27.03	$1,405.80	$348.23	$281.16
37606	T	Ligation of neck artery	0091	27.03	$1,405.80	$348.23	$281.16

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
37607	T	Ligation of a-v fistula	0092	24.97	$1,298.66	$505.37	$259.73
37609	T	Temporal artery procedure	0021	14.58	$758.29	$227.49	$151.66
37615	T	Ligation of neck artery	0091	27.03	$1,405.80	$348.23	$281.16
37616	C	Ligation of chest artery					
37617	C	Ligation of abdomen artery					
37618	C	Ligation of extremity artery					
37620	T	Revision of major vein	0091	27.03	$1,405.80	$348.23	$281.16
37650	T	Revision of major vein	0091	27.03	$1,405.80	$348.23	$281.16
37660	C	Revision of major vein					
37700	T	Revise leg vein	0091	27.03	$1,405.80	$348.23	$281.16
37720	T	Removal of leg vein	0092	24.97	$1,298.66	$505.37	$259.73
37730	T	Removal of leg veins	0092	24.97	$1,298.66	$505.37	$259.73
37735	T	Removal of leg veins/lesion	0092	24.97	$1,298.66	$505.37	$259.73
37760	T	Revision of leg veins	0091	27.03	$1,405.80	$348.23	$281.16
37780	T	Revision of leg vein	0091	27.03	$1,405.80	$348.23	$281.16
37785	T	Revise secondary varicosity	0091	27.03	$1,405.80	$348.23	$281.16
37788	C	Revascularization, penis					
37790	T	Penile venous occlusion	0181	29.88	$1,554.03	$621.82	$310.81
37799	T	Vascular surgery procedure	0035	0.24	$12.48	$3.74	$2.50
38100	C	Removal of spleen, total					
38101	C	Removal of spleen, partial					
38102	C	Removal of spleen, total					
38115	C	Repair of ruptured spleen					
38120	T	Laparoscopy, splenectomy	0131	42.44	$2,207.26	$1,001.89	$441.45
38129	T	Laparoscope proc, spleen	0130	31.99	$1,663.77	$659.53	$332.75
38200	N	Injection for spleen x-ray					
38220	T	Bone marrow aspiration	0003	1.24	$64.49	$27.08	$12.90
38221	T	Bone marrow biopsy	0003	1.24	$64.49	$27.08	$12.90
38230	S	Bone marrow collection	0123	4.86	$252.76		$50.55
38231	S	Stem cell collection	0111	13.60	$707.32	$198.05	$141.46
38240	S	Bone marrow/stem transplant	0123	4.86	$252.76		$50.55
38241	S	Bone marrow/stem transplant	0123	4.86	$252.76		$50.55
38300	T	Drainage, lymph node lesion	0008	16.32	$848.79		$169.76
38305	T	Drainage, lymph node lesion	0008	16.32	$848.79		$169.76
38308	T	Incision of lymph channels	0113	19.75	$1,027.18		$205.44
38380	C	Thoracic duct procedure					
38381	C	Thoracic duct procedure					
38382	C	Thoracic duct procedure					
38500	T	Biopsy/removal, lymph nodes	0113	19.75	$1,027.18		$205.44
38505	T	Needle biopsy, lymph nodes	0005	3.02	$157.07	$69.11	$31.41
38510	T	Biopsy/removal, lymph nodes	0113	19.75	$1,027.18		$205.44
38520	T	Biopsy/removal, lymph nodes	0113	19.75	$1,027.18		$205.44
38525	T	Biopsy/removal, lymph nodes	0113	19.75	$1,027.18		$205.44
38530	T	Biopsy/removal, lymph nodes	0113	19.75	$1,027.18		$205.44
38542	T	Explore deep node(s), neck	0114	37.55	$1,952.94	$507.76	$390.59
38550	T	Removal, neck/armpit lesion	0113	19.75	$1,027.18		$205.44
38555	T	Removal, neck/armpit lesion	0113	19.75	$1,027.18		$205.44
38562	C	Removal, pelvic lymph nodes					
38564	C	Removal, abdomen lymph nodes					
38570	T	Laparoscopy, lymph node biop	0131	42.44	$2,207.26	$1,001.89	$441.45
38571	T	Laparoscopy, lymphadenectomy	0132	57.95	$3,013.92	$1,239.22	$602.78
38572	T	Laparoscopy, lymphadenectomy	0131	42.44	$2,207.26	$1,001.89	$441.45
38589	T	Laparoscope proc, lymphatic	0130	31.99	$1,663.77	$659.53	$332.75
38700	T	Removal of lymph nodes, neck	0113	19.75	$1,027.18		$205.44
38720	T	Removal of lymph nodes, neck	0113	19.75	$1,027.18		$205.44
38724	C	Removal of lymph nodes, neck					
38740	T	Remove armpit lymph nodes	0114	37.55	$1,952.94	$507.76	$390.59
38745	T	Remove armpit lymph nodes	0114	37.55	$1,952.94	$507.76	$390.59
38746	C	Remove thoracic lymph nodes					
38747	C	Remove abdominal lymph nodes					
38760	T	Remove groin lymph nodes	0113	19.75	$1,027.18		$205.44
38765	C	Remove groin lymph nodes					
38770	C	Remove pelvis lymph nodes					
38780	C	Remove abdomen lymph nodes					
38790	N	Inject for lymphatic x-ray					
38792	N	Identify sentinel node					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
38794	N	Access thoracic lymph duct					
38999	S	Blood/lymph system procedure	0110	4.04	$210.12		$42.02
39000	C	Exploration of chest					
39010	C	Exploration of chest					
39200	C	Removal chest lesion					
39220	C	Removal chest lesion					
39400	T	Visualization of chest	0069	29.51	$1,534.79	$591.64	$306.96
39499	C	Chest procedure					
39501	C	Repair diaphragm laceration					
39502	C	Repair paraesophageal hernia					
39503	C	Repair of diaphragm hernia					
39520	C	Repair of diaphragm hernia					
39530	C	Repair of diaphragm hernia					
39531	C	Repair of diaphragm hernia					
39540	C	Repair of diaphragm hernia					
39541	C	Repair of diaphragm hernia					
39545	C	Revision of diaphragm					
39560	C	Resect diaphragm, simple					
39561	C	Resect diaphragm, complex					
39599	C	Diaphragm surgery procedure					
40490	T	Biopsy of lip	0251	1.92	$99.86		$19.97
40500	T	Partial excision of lip	0253	14.79	$769.21	$284.61	$153.84
40510	T	Partial excision of lip	0254	21.89	$1,138.48	$352.93	$227.70
40520	T	Partial excision of lip	0253	14.79	$769.21	$284.61	$153.84
40525	T	Reconstruct lip with flap	0254	21.89	$1,138.48	$352.93	$227.70
40527	T	Reconstruct lip with flap	0254	21.89	$1,138.48	$352.93	$227.70
40530	T	Partial removal of lip	0254	21.89	$1,138.48	$352.93	$227.70
40650	T	Repair lip	0252	6.27	$326.10	$114.24	$65.22
40652	T	Repair lip	0252	6.27	$326.10	$114.24	$65.22
40654	T	Repair lip	0252	6.27	$326.10	$114.24	$65.22
40700	T	Repair cleft lip/nasal	0256	35.51	$1,846.84		$369.37
40701	T	Repair cleft lip/nasal	0256	35.51	$1,846.84		$369.37
40702	T	Repair cleft lip/nasal	0256	35.51	$1,846.84		$369.37
40720	T	Repair cleft lip/nasal	0256	35.51	$1,846.84		$369.37
40761	T	Repair cleft lip/nasal	0256	35.51	$1,846.84		$369.37
40799	T	Lip surgery procedure	0253	14.79	$769.21	$284.61	$153.84
40800	T	Drainage of mouth lesion	0251	1.92	$99.86		$19.97
40801	T	Drainage of mouth lesion	0252	6.27	$326.10	$114.24	$65.22
40804	X	Removal, foreign body, mouth	0340	0.66	$34.33		$6.87
40805	T	Removal, foreign body, mouth	0252	6.27	$326.10	$114.24	$65.22
40806	T	Incision of lip fold	0251	1.92	$99.86		$19.97
40808	T	Biopsy of mouth lesion	0251	1.92	$99.86		$19.97
40810	T	Excision of mouth lesion	0253	14.79	$769.21	$284.61	$153.84
40812	T	Excise/repair mouth lesion	0253	14.79	$769.21	$284.61	$153.84
40814	T	Excise/repair mouth lesion	0253	14.79	$769.21	$284.61	$153.84
40816	T	Excision of mouth lesion	0254	21.89	$1,138.48	$352.93	$227.70
40818	T	Excise oral mucosa for graft	0251	1.92	$99.86		$19.97
40819	T	Excise lip or cheek fold	0252	6.27	$326.10	$114.24	$65.22
40820	T	Treatment of mouth lesion	0253	14.79	$769.21	$284.61	$153.84
40830	T	Repair mouth laceration	0251	1.92	$99.86		$19.97
40831	T	Repair mouth laceration	0252	6.27	$326.10	$114.24	$65.22
40840	T	Reconstruction of mouth	0254	21.89	$1,138.48	$352.93	$227.70
40842	T	Reconstruction of mouth	0254	21.89	$1,138.48	$352.93	$227.70
40843	T	Reconstruction of mouth	0254	21.89	$1,138.48	$352.93	$227.70
40844	T	Reconstruction of mouth	0256	35.51	$1,846.84		$369.37
40845	T	Reconstruction of mouth	0256	35.51	$1,846.84		$369.37
40899	T	Mouth surgery procedure	0252	6.27	$326.10	$114.24	$65.22
41000	T	Drainage of mouth lesion	0253	14.79	$769.21	$284.61	$153.84
41005	T	Drainage of mouth lesion	0251	1.92	$99.86		$19.97
41006	T	Drainage of mouth lesion	0254	21.89	$1,138.48	$352.93	$227.70
41007	T	Drainage of mouth lesion	0253	14.79	$769.21	$284.61	$153.84
41008	T	Drainage of mouth lesion	0253	14.79	$769.21	$284.61	$153.84
41009	T	Drainage of mouth lesion	0251	1.92	$99.86		$19.97
41010	T	Incision of tongue fold	0253	14.79	$769.21	$284.61	$153.84
41015	T	Drainage of mouth lesion	0251	1.92	$99.86		$19.97
41016	T	Drainage of mouth lesion	0252	6.27	$326.10	$114.24	$65.22

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
41017	T	Drainage of mouth lesion	0252	6.27	$326.10	$114.24	$65.22
41018	T	Drainage of mouth lesion	0252	6.27	$326.10	$114.24	$65.22
41100	T	Biopsy of tongue	0252	6.27	$326.10	$114.24	$65.22
41105	T	Biopsy of tongue	0253	14.79	$769.21	$284.61	$153.84
41108	T	Biopsy of floor of mouth	0252	6.27	$326.10	$114.24	$65.22
41110	T	Excision of tongue lesion	0253	14.79	$769.21	$284.61	$153.84
41112	T	Excision of tongue lesion	0253	14.79	$769.21	$284.61	$153.84
41113	T	Excision of tongue lesion	0253	14.79	$769.21	$284.61	$153.84
41114	T	Excision of tongue lesion	0254	21.89	$1,138.48	$352.93	$227.70
41115	T	Excision of tongue fold	0252	6.27	$326.10	$114.24	$65.22
41116	T	Excision of mouth lesion	0253	14.79	$769.21	$284.61	$153.84
41120	T	Partial removal of tongue	0254	21.89	$1,138.48	$352.93	$227.70
41130	C	Partial removal of tongue					
41135	C	Tongue and neck surgery					
41140	C	Removal of tongue					
41145	C	Tongue removal, neck surgery					
41150	C	Tongue, mouth, jaw surgery					
41153	C	Tongue, mouth, neck surgery					
41155	C	Tongue, jaw, & neck surgery					
41250	T	Repair tongue laceration	0251	1.92	$99.86		$19.97
41251	T	Repair tongue laceration	0252	6.27	$326.10	$114.24	$65.22
41252	T	Repair tongue laceration	0252	6.27	$326.10	$114.24	$65.22
41500	T	Fixation of tongue	0254	21.89	$1,138.48	$352.93	$227.70
41510	T	Tongue to lip surgery	0253	14.79	$769.21	$284.61	$153.84
41520	T	Reconstruction, tongue fold	0252	6.27	$326.10	$114.24	$65.22
41599	T	Tongue and mouth surgery	0251	1.92	$99.86		$19.97
41800	T	Drainage of gum lesion	0251	1.92	$99.86		$19.97
41805	T	Removal foreign body, gum	0254	21.89	$1,138.48	$352.93	$227.70
41806	T	Removal foreign body,jawbone	0253	14.79	$769.21	$284.61	$153.84
41820	T	Excision, gum, each quadrant	0252	6.27	$326.10	$114.24	$65.22
41821	T	Excision of gum flap	0252	6.27	$326.10	$114.24	$65.22
41822	T	Excision of gum lesion	0253	14.79	$769.21	$284.61	$153.84
41823	T	Excision of gum lesion	0254	21.89	$1,138.48	$352.93	$227.70
41825	T	Excision of gum lesion	0253	14.79	$769.21	$284.61	$153.84
41826	T	Excision of gum lesion	0253	14.79	$769.21	$284.61	$153.84
41827	T	Excision of gum lesion	0254	21.89	$1,138.48	$352.93	$227.70
41828	T	Excision of gum lesion	0253	14.79	$769.21	$284.61	$153.84
41830	T	Removal of gum tissue	0253	14.79	$769.21	$284.61	$153.84
41850	T	Treatment of gum lesion	0253	14.79	$769.21	$284.61	$153.84
41870	T	Gum graft	0254	21.89	$1,138.48	$352.93	$227.70
41872	T	Repair gum	0253	14.79	$769.21	$284.61	$153.84
41874	T	Repair tooth socket	0254	21.89	$1,138.48	$352.93	$227.70
41899	T	Dental surgery procedure	0253	14.79	$769.21	$284.61	$153.84
42000	T	Drainage mouth roof lesion	0251	1.92	$99.86		$19.97
42100	T	Biopsy roof of mouth	0252	6.27	$326.10	$114.24	$65.22
42104	T	Excision lesion, mouth roof	0253	14.79	$769.21	$284.61	$153.84
42106	T	Excision lesion, mouth roof	0253	14.79	$769.21	$284.61	$153.84
42107	T	Excision lesion, mouth roof	0254	21.89	$1,138.48	$352.93	$227.70
42120	T	Remove palate/lesion	0256	35.51	$1,846.84		$369.37
42140	T	Excision of uvula	0252	6.27	$326.10	$114.24	$65.22
42145	T	Repair palate, pharynx/uvula	0254	21.89	$1,138.48	$352.93	$227.70
42160	T	Treatment mouth roof lesion	0253	14.79	$769.21	$284.61	$153.84
42180	T	Repair palate	0251	1.92	$99.86		$19.97
42182	T	Repair palate	0256	35.51	$1,846.84		$369.37
42200	T	Reconstruct cleft palate	0256	35.51	$1,846.84		$369.37
42205	T	Reconstruct cleft palate	0256	35.51	$1,846.84		$369.37
42210	T	Reconstruct cleft palate	0256	35.51	$1,846.84		$369.37
42215	T	Reconstruct cleft palate	0256	35.51	$1,846.84		$369.37
42220	T	Reconstruct cleft palate	0256	35.51	$1,846.84		$369.37
42225	T	Reconstruct cleft palate	0256	35.51	$1,846.84		$369.37
42226	T	Lengthening of palate	0256	35.51	$1,846.84		$369.37
42227	T	Lengthening of palate	0256	35.51	$1,846.84		$369.37
42235	T	Repair palate	0253	14.79	$769.21	$284.61	$153.84
42260	T	Repair nose to lip fistula	0254	21.89	$1,138.48	$352.93	$227.70
42280	T	Preparation, palate mold	0251	1.92	$99.86		$19.97
42281	T	Insertion, palate prosthesis	0253	14.79	$769.21	$284.61	$153.84

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
42299	T	Palate/uvula surgery	0251	1.92	$99.86		$19.97
42300	T	Drainage of salivary gland	0253	14.79	$769.21	$284.61	$153.84
42305	T	Drainage of salivary gland	0253	14.79	$769.21	$284.61	$153.84
42310	T	Drainage of salivary gland	0251	1.92	$99.86		$19.97
42320	T	Drainage of salivary gland	0251	1.92	$99.86		$19.97
42325	T	Create salivary cyst drain	0251	1.92	$99.86		$19.97
42326	T	Create salivary cyst drain	0252	6.27	$326.10	$114.24	$65.22
42330	T	Removal of salivary stone	0253	14.79	$769.21	$284.61	$153.84
42335	T	Removal of salivary stone	0253	14.79	$769.21	$284.61	$153.84
42340	T	Removal of salivary stone	0253	14.79	$769.21	$284.61	$153.84
42400	T	Biopsy of salivary gland	0004	1.63	$84.77	$22.04	$16.95
42405	T	Biopsy of salivary gland	0253	14.79	$769.21	$284.61	$153.84
42408	T	Excision of salivary cyst	0253	14.79	$769.21	$284.61	$153.84
42409	T	Drainage of salivary cyst	0253	14.79	$769.21	$284.61	$153.84
42410	T	Excise parotid gland/lesion	0256	35.51	$1,846.84		$369.37
42415	T	Excise parotid gland/lesion	0256	35.51	$1,846.84		$369.37
42420	T	Excise parotid gland/lesion	0256	35.51	$1,846.84		$369.37
42425	T	Excise parotid gland/lesion	0256	35.51	$1,846.84		$369.37
42426	C	Excise parotid gland/lesion					
42440	T	Excise submaxillary gland	0256	35.51	$1,846.84		$369.37
42450	T	Excise sublingual gland	0254	21.89	$1,138.48	$352.93	$227.70
42500	T	Repair salivary duct	0254	21.89	$1,138.48	$352.93	$227.70
42505	T	Repair salivary duct	0256	35.51	$1,846.84		$369.37
42507	T	Parotid duct diversion	0256	35.51	$1,846.84		$369.37
42508	T	Parotid duct diversion	0256	35.51	$1,846.84		$369.37
42509	T	Parotid duct diversion	0256	35.51	$1,846.84		$369.37
42510	T	Parotid duct diversion	0256	35.51	$1,846.84		$369.37
42550	N	Injection for salivary x-ray					
42600	T	Closure of salivary fistula	0253	14.79	$769.21	$284.61	$153.84
42650	T	Dilation of salivary duct	0252	6.27	$326.10	$114.24	$65.22
42660	T	Dilation of salivary duct	0252	6.27	$326.10	$114.24	$65.22
42665	T	Ligation of salivary duct	0254	21.89	$1,138.48	$352.93	$227.70
42699	T	Salivary surgery procedure	0253	14.79	$769.21	$284.61	$153.84
42700	T	Drainage of tonsil abscess	0251	1.92	$99.86		$19.97
42720	T	Drainage of throat abscess	0253	14.79	$769.21	$284.61	$153.84
42725	T	Drainage of throat abscess	0256	35.51	$1,846.84		$369.37
42800	T	Biopsy of throat	0252	6.27	$326.10	$114.24	$65.22
42802	T	Biopsy of throat	0253	14.79	$769.21	$284.61	$153.84
42804	T	Biopsy of upper nose/throat	0253	14.79	$769.21	$284.61	$153.84
42806	T	Biopsy of upper nose/throat	0254	21.89	$1,138.48	$352.93	$227.70
42808	T	Excise pharynx lesion	0253	14.79	$769.21	$284.61	$153.84
42809	X	Remove pharynx foreign body	0340	0.66	$34.33		$6.87
42810	T	Excision of neck cyst	0254	21.89	$1,138.48	$352.93	$227.70
42815	T	Excision of neck cyst	0256	35.51	$1,846.84		$369.37
42820	T	Remove tonsils and adenoids	0258	21.15	$1,099.99	$437.25	$220.00
42821	T	Remove tonsils and adenoids	0258	21.15	$1,099.99	$437.25	$220.00
42825	T	Removal of tonsils	0258	21.15	$1,099.99	$437.25	$220.00
42826	T	Removal of tonsils	0258	21.15	$1,099.99	$437.25	$220.00
42830	T	Removal of adenoids	0258	21.15	$1,099.99	$437.25	$220.00
42831	T	Removal of adenoids	0258	21.15	$1,099.99	$437.25	$220.00
42835	T	Removal of adenoids	0258	21.15	$1,099.99	$437.25	$220.00
42836	T	Removal of adenoids	0258	21.15	$1,099.99	$437.25	$220.00
42842	T	Extensive surgery of throat	0254	21.89	$1,138.48	$352.93	$227.70
42844	T	Extensive surgery of throat	0256	35.51	$1,846.84		$369.37
42845	C	Extensive surgery of throat					
42860	T	Excision of tonsil tags	0258	21.15	$1,099.99	$437.25	$220.00
42870	T	Excision of lingual tonsil	0258	21.15	$1,099.99	$437.25	$220.00
42890	T	Partial removal of pharynx	0256	35.51	$1,846.84		$369.37
42892	T	Revision of pharyngeal walls	0256	35.51	$1,846.84		$369.37
42894	C	Revision of pharyngeal walls					
42900	T	Repair throat wound	0252	6.27	$326.10	$114.24	$65.22
42950	T	Reconstruction of throat	0254	21.89	$1,138.48	$352.93	$227.70
42953	C	Repair throat, esophagus					
42955	T	Surgical opening of throat	0254	21.89	$1,138.48	$352.93	$227.70
42960	T	Control throat bleeding	0250	1.68	$87.38	$30.58	$17.48
42961	C	Control throat bleeding					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
42962	T	Control throat bleeding	0256	35.51	$1,846.84		$369.37
42970	T	Control nose/throat bleeding	0250	1.68	$87.38	$30.58	$17.48
42971	C	Control nose/throat bleeding					
42972	T	Control nose/throat bleeding	0253	14.79	$769.21	$284.61	$153.84
42999	T	Throat surgery procedure	0252	6.27	$326.10	$114.24	$65.22
43020	T	Incision of esophagus	0252	6.27	$326.10	$114.24	$65.22
43030	T	Throat muscle surgery	0253	14.79	$769.21	$284.61	$153.84
43045	C	Incision of esophagus					
43100	C	Excision of esophagus lesion					
43101	C	Excision of esophagus lesion					
43107	C	Removal of esophagus					
43108	C	Removal of esophagus					
43112	C	Removal of esophagus					
43113	C	Removal of esophagus					
43116	C	Partial removal of esophagus					
43117	C	Partial removal of esophagus					
43118	C	Partial removal of esophagus					
43121	C	Partial removal of esophagus					
43122	C	Partial removal of esophagus					
43123	C	Partial removal of esophagus					
43124	C	Removal of esophagus					
43130	T	Removal of esophagus pouch	0254	21.89	$1,138.48	$352.93	$227.70
43135	C	Removal of esophagus pouch					
43200	T	Esophagus endoscopy	0141	7.82	$406.71	$150.48	$81.34
43202	T	Esophagus endoscopy, biopsy	0141	7.82	$406.71	$150.48	$81.34
43204	T	Esophagus endoscopy & inject	0141	7.82	$406.71	$150.48	$81.34
43205	T	Esophagus endoscopy/ligation	0141	7.82	$406.71	$150.48	$81.34
43215	T	Esophagus endoscopy	0141	7.82	$406.71	$150.48	$81.34
43216	T	Esophagus endoscopy/lesion	0141	7.82	$406.71	$150.48	$81.34
43217	T	Esophagus endoscopy	0141	7.82	$406.71	$150.48	$81.34
43219	T	Esophagus endoscopy	0141	7.82	$406.71	$150.48	$81.34
43220	T	Esoph endoscopy, dilation	0141	7.82	$406.71	$150.48	$81.34
43226	T	Esoph endoscopy, dilation	0141	7.82	$406.71	$150.48	$81.34
43227	T	Esoph endoscopy, repair	0141	7.82	$406.71	$150.48	$81.34
43228	T	Esoph endoscopy, ablation	0141	7.82	$406.71	$150.48	$81.34
43231	T	Esoph endoscopy w/us exam	0141	7.82	$406.71	$150.48	$81.34
43232	T	Esoph endoscopy w/us fn bx	0141	7.82	$406.71	$150.48	$81.34
43234	T	Upper GI endoscopy, exam	0141	7.82	$406.71	$150.48	$81.34
43235	T	Uppr gi endoscopy, diagnosis	0141	7.82	$406.71	$150.48	$81.34
43239	T	Upper GI endoscopy, biopsy	0141	7.82	$406.71	$150.48	$81.34
43240	T	Esoph endoscope w/drain cyst	0141	7.82	$406.71	$150.48	$81.34
43241	T	Upper GI endoscopy with tube	0141	7.82	$406.71	$150.48	$81.34
43242	T	Uppr gi endoscopy w/us fn bx	0141	7.82	$406.71	$150.48	$81.34
43243	T	Upper gi endoscopy & inject	0141	7.82	$406.71	$150.48	$81.34
43244	T	Upper GI endoscopy/ligation	0141	7.82	$406.71	$150.48	$81.34
43245	T	Operative upper GI endoscopy	0141	7.82	$406.71	$150.48	$81.34
43246	T	Place gastrostomy tube	0141	7.82	$406.71	$150.48	$81.34
43247	T	Operative upper GI endoscopy	0141	7.82	$406.71	$150.48	$81.34
43248	T	Uppr gi endoscopy/guide wire	0141	7.82	$406.71	$150.48	$81.34
43249	T	Esoph endoscopy, dilation	0141	7.82	$406.71	$150.48	$81.34
43250	T	Upper GI endoscopy/tumor	0141	7.82	$406.71	$150.48	$81.34
43251	T	Operative upper GI endoscopy	0141	7.82	$406.71	$150.48	$81.34
43255	T	Operative upper GI endoscopy	0141	7.82	$406.71	$150.48	$81.34
43256	T	Uppr gi endoscopy w stent	0141	7.82	$406.71	$150.48	$81.34
43258	T	Operative upper GI endoscopy	0141	7.82	$406.71	$150.48	$81.34
43259	T	Endoscopic ultrasound exam	0141	7.82	$406.71	$150.48	$81.34
43260	T	Endo cholangiopancreatograph	0151	18.23	$948.12	$245.46	$189.62
43261	T	Endo cholangiopancreatograph	0151	18.23	$948.12	$245.46	$189.62
43262	T	Endo cholangiopancreatograph	0151	18.23	$948.12	$245.46	$189.62
43263	T	Endo cholangiopancreatograph	0151	18.23	$948.12	$245.46	$189.62
43264	T	Endo cholangiopancreatograph	0151	18.23	$948.12	$245.46	$189.62
43265	T	Endo cholangiopancreatograph	0151	18.23	$948.12	$245.46	$189.62
43267	T	Endo cholangiopancreatograph	0151	18.23	$948.12	$245.46	$189.62
43268	T	Endo cholangiopancreatograph	0151	18.23	$948.12	$245.46	$189.62
43269	T	Endo cholangiopancreatograph	0151	18.23	$948.12	$245.46	$189.62
43271	T	Endo cholangiopancreatograph	0151	18.23	$948.12	$245.46	$189.62

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
43272	T	Endo cholangiopancreatograph	0151	18.23	$948.12	$245.46	$189.62
43260	T	Laparoscopy, fundoplasty	0132	57.95	$3,013.92	$1,239.22	$602.78
43289	T	Laparoscope proc, esoph	0130	31.99	$1,663.77	$659.53	$332.75
43300	C	Repair of esophagus					
43305	C	Repair esophagus and fistula					
43310	C	Repair of esophagus					
43312	C	Repair esophagus and fistula					
43313	C	Esophagoplasty congential					
43314	C	Tracheo-esophagoplasty cong					
43320	C	Fuse esophagus & stomach					
43324	C	Revise esophagus & stomach					
43325	C	Revise esophagus & stomach					
43326	C	Revise esophagus & stomach					
43330	C	Repair of esophagus					
43331	C	Repair of esophagus					
43340	C	Fuse esophagus & intestine					
43341	C	Fuse esophagus & intestine					
43350	C	Surgical opening, esophagus					
43351	C	Surgical opening, esophagus					
43352	C	Surgical opening, esophagus					
43360	C	Gastrointestinal repair					
43361	C	Gastrointestinal repair					
43400	C	Ligate esophagus veins					
43401	C	Esophagus surgery for veins					
43405	C	Ligate/staple esophagus					
43410	C	Repair esophagus wound					
43415	C	Repair esophagus wound					
43420	C	Repair esophagus opening					
43425	C	Repair esophagus opening					
43450	T	Dilate esophagus	0140	5.84	$303.73	$107.24	$60.75
43453	T	Dilate esophagus	0140	5.84	$303.73	$107.24	$60.75
43456	T	Dilate esophagus	0140	5.84	$303.73	$107.24	$60.75
43458	T	Dilate esophagus	0140	5.84	$303.73	$107.24	$60.75
43460	C	Pressure treatment esophagus					
43496	C	Free jejunum flap, microvasc					
43499	T	Esophagus surgery procedure	0141	7.82	$406.71	$150.48	$81.34
43500	C	Surgical opening of stomach					
43501	C	Surgical repair of stomach					
43502	C	Surgical repair of stomach					
43510	C	Surgical opening of stomach					
43520	C	Incision of pyloric muscle					
43600	T	Biopsy of stomach	0141	7.82	$406.71	$150.48	$81.34
43605	C	Biopsy of stomach					
43610	C	Excision of stomach lesion					
43611	C	Excision of stomach lesion					
43620	C	Removal of stomach					
43621	C	Removal of stomach					
43622	C	Removal of stomach					
43631	C	Removal of stomach, partial					
43632	C	Removal of stomach, partial					
43633	C	Removal of stomach, partial					
43634	C	Removal of stomach, partial					
43635	C	Removal of stomach, partial					
43638	C	Removal of stomach, partial					
43639	C	Removal of stomach, partial					
43640	C	Vagotomy & pylorus repair					
43641	C	Vagotomy & pylorus repair					
43651	T	Laparoscopy, vagus nerve	0132	57.95	$3,013.92	$1,239.22	$602.78
43652	T	Laparoscopy, vagus nerve	0132	57.95	$3,013.92	$1,239.22	$602.78
43653	T	Laparoscopy, gastrostomy	0131	42.44	$2,207.26	$1,001.89	$441.45
43659	T	Laparoscope proc, stom	0130	31.99	$1,663.77	$659.53	$332.75
43750	T	Place gastrostomy tube	0141	7.82	$406.71	$150.48	$81.34
43752	E	Nasal/orogastric w/stent					
43760	T	Change gastrostomy tube	0121	2.17	$112.86	$45.14	$22.57
43761	T	Reposition gastrostomy tube	0121	2.17	$112.86	$45.14	$22.57
43800	C	Reconstruction of pylorus					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
43810	C	Fusion of stomach and bowel					
43820	C	Fusion of stomach and bowel					
43825	C	Fusion of stomach and bowel					
43830	T	Place gastrostomy tube	0141	7.82	$406.71	$150.48	$81.34
43831	T	Place gastrostomy tube	0141	7.82	$406.71	$150.48	$81.34
43832	C	Place gastrostomy tube					
43840	C	Repair of stomach lesion					
43842	C	Gastroplasty for obesity					
43843	C	Gastroplasty for obesity					
43846	C	Gastric bypass for obesity					
43847	C	Gastric bypass for obesity					
43848	C	Revision gastroplasty					
43850	C	Revise stomach-bowel fusion					
43855	C	Revise stomach-bowel fusion					
43860	C	Revise stomach-bowel fusion					
43865	C	Revise stomach-bowel fusion					
43870	T	Repair stomach opening	0141	7.82	$406.71	$150.48	$81.34
43880	C	Repair stomach-bowel fistula					
43999	T	Stomach surgery procedure	0141	7.82	$406.71	$150.48	$81.34
44005	C	Freeing of bowel adhesion					
44010	C	Incision of small bowel					
44015	C	Insert needle cath bowel					
44020	C	Explore small intestine					
44021	C	Decompress small bowel					
44025	C	Incision of large bowel					
44050	C	Reduce bowel obstruction					
44055	C	Correct malrotation of bowel					
44100	T	Biopsy of bowel	0141	7.82	$406.71	$150.48	$81.34
44110	C	Excise intestine lesion(s)					
44111	C	Excision of bowel lesion(s)					
44120	C	Removal of small intestine					
44121	C	Removal of small intestine					
44125	C	Removal of small intestine					
44126	C	Enterectomy w/taper, cong					
44127	C	Enterectomy w/o taper, cong					
44128	C	Enterectomy cong, add-on					
44130	C	Bowel to bowel fusion					
44132	C	Enterectomy, cadaver donor					
44133	C	Enterectomy, live donor					
44135	C	Intestine transplnt, cadaver					
44136	C	Intestine transplant, live					
44139	C	Mobilization of colon					
44140	C	Partial removal of colon					
44141	C	Partial removal of colon					
44143	C	Partial removal of colon					
44144	C	Partial removal of colon					
44145	C	Partial removal of colon					
44146	C	Partial removal of colon					
44147	C	Partial removal of colon					
44150	C	Removal of colon					
44151	C	Removal of colon/ileostomy					
44152	C	Removal of colon/ileostomy					
44153	C	Removal of colon/ileostomy					
44155	C	Removal of colon/ileostomy					
44156	C	Removal of colon/ileostomy					
44160	C	Removal of colon					
44200	T	Laparoscopy, enterolysis	0131	42.44	$2,207.26	$1,001.89	$441.45
44201	T	Laparoscopy, jejunostomy	0131	42.44	$2,207.26	$1,001.89	$441.45
44202	C	Lap resect s/intestine singl					
44203	C	Lap resect s/intestine, addl					
44204	C	Laparo partial colectomy					
44205	C	Lap colectomy part w/ileum					
44209	T	Laparoscope proc, intestine	0130	31.99	$1,663.77	$659.53	$332.75
44300	C	Open bowel to skin					
44310	C	Ileostomy/jejunostomy					
44312	T	Revision of ileostomy	0027	15.73	$818.10	$343.60	$163.62

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
44314	C	Revision of ileostomy					
44316	C	Devise bowel pouch					
44320	C	Colostomy					
44322	C	Colostomy with biopsies					
44340	T	Revision of colostomy	0027	15.73	$818.10	$343.60	$163.62
44345	C	Revision of colostomy					
44346	C	Revision of colostomy					
44360	T	Small bowel endoscopy	0142	8.21	$426.99	$152.78	$85.40
44361	T	Small bowel endoscopy/biopsy	0142	8.21	$426.99	$152.78	$85.40
44363	T	Small bowel endoscopy	0142	8.21	$426.99	$152.78	$85.40
44364	T	Small bowel endoscopy	0142	8.21	$426.99	$152.78	$85.40
44365	T	Small bowel endoscopy	0142	8.21	$426.99	$152.78	$85.40
44366	T	Small bowel endoscopy	0142	8.21	$426.99	$152.78	$85.40
44369	T	Small bowel endoscopy	0142	8.21	$426.99	$152.78	$85.40
44370	T	Small bowel endoscopy/stent	0142	8.21	$426.99	$152.78	$85.40
44372	T	Small bowel endoscopy	0142	8.21	$426.99	$152.78	$85.40
44373	T	Small bowel endoscopy	0142	8.21	$426.99	$152.78	$85.40
44376	T	Small bowel endoscopy	0142	8.21	$426.99	$152.78	$85.40
44377	T	Small bowel endoscopy/biopsy	0142	8.21	$426.99	$152.78	$85.40
44378	T	Small bowel endoscopy	0142	8.21	$426.99	$152.78	$85.40
44379	T	S bowel endoscope w/stent	0142	8.21	$426.99	$152.78	$85.40
44380	T	Small bowel endoscopy	0142	8.21	$426.99	$152.78	$85.40
44382	T	Small bowel endoscopy	0142	8.21	$426.99	$152.78	$85.40
44383	T	Ileoscopy w/stent	0142	8.21	$426.99	$152.78	$85.40
44385	T	Endoscopy of bowel pouch	0143	8.37	$435.32	$186.06	$87.06
44386	T	Endoscopy, bowel pouch/biop	0143	8.37	$435.32	$186.06	$87.06
44388	T	Colon endoscopy	0143	8.37	$435.32	$186.06	$87.06
44389	T	Colonoscopy with biopsy	0143	8.37	$435.32	$186.06	$87.06
44390	T	Colonoscopy for foreign body	0143	8.37	$435.32	$186.06	$87.06
44391	T	Colonoscopy for bleeding	0143	8.37	$435.32	$186.06	$87.06
44392	T	Colonoscopy & polypectomy	0143	8.37	$435.32	$186.06	$87.06
44393	T	Colonoscopy, lesion removal	0143	8.37	$435.32	$186.06	$87.06
44394	T	Colonoscopy w/snare	0143	8.37	$435.32	$186.06	$87.06
44397	T	Colonoscopy w stent	0143	8.37	$435.32	$186.06	$87.06
44500	T	Intro, gastrointestinal tube	0121	2.17	$112.86	$45.14	$22.57
44602	C	Suture, small intestine					
44603	C	Suture, small intestine					
44604	C	Suture, large intestine					
44605	C	Repair of bowel lesion					
44615	C	Intestinal stricturoplasty					
44620	C	Repair bowel opening					
44625	C	Repair bowel opening					
44626	C	Repair bowel opening					
44640	C	Repair bowel-skin fistula					
44650	C	Repair bowel fistula					
44660	C	Repair bowel-bladder fistula					
44661	C	Repair bowel-bladder fistula					
44680	C	Surgical revision, intestine					
44700	C	Suspend bowel w/prosthesis					
44799	T	Intestine surgery procedure	0142	8.21	$426.99	$152.78	$85.40
44800	C	Excision of bowel pouch					
44820	C	Excision of mesentery lesion					
44850	C	Repair of mesentery					
44899	C	Bowel surgery procedure					
44900	C	Drain app abscess, open					
44901	C	Drain app abscess, percut					
44950	C	Appendectomy					
44955	C	Appendectomy add-on					
44960	C	Appendectomy					
44970	T	Laparoscopy, appendectomy	0130	31.99	$1,663.77	$659.53	$332.75
44979	T	Laparoscope proc, app	0130	31.99	$1,663.77	$659.53	$332.75
45000	T	Drainage of pelvic abscess	0149	16.91	$879.47	$293.06	$175.89
45005	T	Drainage of rectal abscess	0148	3.61	$187.75	$67.59	$37.55
45020	T	Drainage of rectal abscess	0149	16.91	$879.47	$293.06	$175.89
45100	T	Biopsy of rectum	0149	16.91	$879.47	$293.06	$175.89
45108	T	Removal of anorectal lesion	0150	22.02	$1,145.24	$437.12	$229.05

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
45110	C	Removal of rectum					
45111	C	Partial removal of rectum					
45112	C	Removal of rectum					
45113	C	Partial proctectomy					
45114	C	Partial removal of rectum					
45116	C	Partial removal of rectum					
45119	C	Remove rectum w/reservoir					
45120	C	Removal of rectum					
45121	C	Removal of rectum and colon					
45123	C	Partial proctectomy					
45126	C	Pelvic exenteration					
45130	C	Excision of rectal prolapse					
45135	C	Excision of rectal prolapse					
45136	C	Excise ileoanal reservoir					
45150	T	Excision of rectal stricture	0150	22.02	$1,145.24	$437.12	$229.05
45160	T	Excision of rectal lesion	0150	22.02	$1,145.24	$437.12	$229.05
45170	T	Excision of rectal lesion	0150	22.02	$1,145.24	$437.12	$229.05
45190	T	Destruction, rectal tumor	0150	22.02	$1,145.24	$437.12	$229.05
45300	T	Proctosigmoidoscopy dx	0146	3.47	$180.47	$64.40	$36.09
45303	T	Proctosigmoidoscopy dilate	0146	3.47	$180.47	$64.40	$36.09
45305	T	Protosigmoidoscopy w/bx	0146	3.47	$180.47	$64.40	$36.09
45307	T	Protosigmoidoscopy fb	0146	3.47	$180.47	$64.40	$36.09
45308	T	Protosigmoidoscopy removal	0147	7.30	$379.67	$83.53	$75.93
45309	T	Protosigmoidoscopy removal	0147	7.30	$379.67	$83.53	$75.93
45315	T	Protosigmoidoscopy removal	0147	7.30	$379.67	$83.53	$75.93
45317	T	Protosigmoidoscopy bleed	0146	3.47	$180.47	$64.40	$36.09
45320	T	Protosigmoidoscopy ablate	0147	7.30	$379.67	$83.53	$75.93
45321	T	Protosigmoidoscopy volvul	0147	7.30	$379.67	$83.53	$75.93
45327	T	Proctosigmoidoscopy w/stent	0147	7.30	$379.67	$83.53	$75.93
45330	T	Diagnostic sigmoidoscopy	0146	3.47	$180.47	$64.40	$36.09
45331	T	Sigmoidoscopy and biopsy	0146	3.47	$180.47	$64.40	$36.09
45332	T	Sigmoidoscopy w/fb removal	0146	3.47	$180.47	$64.40	$36.09
45333	T	Sigmoidoscopy & polypectomy	0147	7.30	$379.67	$83.53	$75.93
45334	T	Sigmoidoscopy for bleeding	0147	7.30	$379.67	$83.53	$75.93
45337	T	Sigmoidoscopy & decompress	0147	7.30	$379.67	$83.53	$75.93
45338	T	Sigmoidoscpy w/tumr remove	0147	7.30	$379.67	$83.53	$75.93
45339	T	Sigmoidoscopy w/ablate tumr	0147	7.30	$379.67	$83.53	$75.93
45341	T	Sigmoidoscopy w/ultrasound	0147	7.30	$379.67	$83.53	$75.93
45342	T	Sigmoidoscopy w/us guide bx	0147	7.30	$379.67	$83.53	$75.93
45345	T	Sigmodoscopy w/stent	0147	7.30	$379.67	$83.53	$75.93
45355	T	Surgical colonoscopy	0143	8.37	$435.32	$186.06	$87.06
45378	T	Diagnostic colonoscopy	0143	8.37	$435.32	$186.06	$87.06
45379	T	Colonoscopy w/fb removal	0143	8.37	$435.32	$186.06	$87.06
45380	T	Colonoscopy and biopsy	0143	8.37	$435.32	$186.06	$87.06
45382	T	Colonoscopy/control bleeding	0143	8.37	$435.32	$186.06	$87.06
45383	T	Lesion removal colonoscopy	0143	8.37	$435.32	$186.06	$87.06
45384	T	Lesion remove colonoscopy	0143	8.37	$435.32	$186.06	$87.06
45385	T	Lesion removal colonoscopy	0143	8.37	$435.32	$186.06	$87.06
45387	T	Colonoscopy w/stent	0143	8.37	$435.32	$186.06	$87.06
45500	T	Repair of rectum	0150	22.02	$1,145.24	$437.12	$229.05
45505	T	Repair of rectum	0150	22.02	$1,145.24	$437.12	$229.05
45520	T	Treatment of rectal prolapse	0098	1.90	$98.82	$20.88	$19.76
45540	C	Correct rectal prolapse					
45541	C	Correct rectal prolapse					
45550	C	Repair rectum/remove sigmoid					
45560	T	Repair of rectocele	0150	22.02	$1,145.24	$437.12	$229.05
45562	C	Exploration/repair of rectum					
45563	C	Exploration/repair of rectum					
45800	C	Repair rect/bladder fistula					
45805	C	Repair fistula w/colostomy					
45820	C	Repair rectourethral fistula					
45825	C	Repair fistula w/colostomy					
45900	T	Reduction of rectal prolapse	0148	3.61	$187.75	$67.59	$37.55
45905	T	Dilation of anal sphincter	0149	16.91	$879.47	$293.06	$175.89
45910	T	Dilation of rectal narrowing	0149	16.91	$879.47	$293.06	$175.89
45915	T	Remove rectal obstruction	0148	3.61	$187.75	$67.59	$37.55

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
45999	T	Rectum surgery procedure	0148	3.61	$187.75	$67.59	$37.55
46020	T	Placement of seton	0148	3.61	$187.75	$67.59	$37.55
46030	T	Removal of rectal marker	0148	3.61	$187.75	$67.59	$37.55
46040	T	Incision of rectal abscess	0155	10.05	$522.69	$188.17	$104.54
46045	T	Incision of rectal abscess	0150	22.02	$1,145.24	$437.12	$229.05
46050	T	Incision of anal abscess	0155	10.05	$522.69	$188.17	$104.54
46060	T	Incision of rectal abscess	0150	22.02	$1,145.24	$437.12	$229.05
46070	T	Incision of anal septum	0155	10.05	$522.69	$188.17	$104.54
46080	T	Incision of anal sphincter	0149	16.91	$879.47	$293.06	$175.89
46083	T	Incise external hemorrhoid	0148	3.61	$187.75	$67.59	$37.55
46200	T	Removal of anal fissure	0150	22.02	$1,145.24	$437.12	$229.05
46210	T	Removal of anal crypt	0149	16.91	$879.47	$293.06	$175.89
46211	T	Removal of anal crypts	0150	22.02	$1,145.24	$437.12	$229.05
46220	T	Removal of anal tab	0149	16.91	$879.47	$293.06	$175.89
46221	T	Ligation of hemorrhoid(s)	0148	3.61	$187.75	$67.59	$37.55
46230	T	Removal of anal tabs	0149	16.91	$879.47	$293.06	$175.89
46250	T	Hemorrhoidectomy	0150	22.02	$1,145.24	$437.12	$229.05
46255	T	Hemorrhoidectomy	0150	22.02	$1,145.24	$437.12	$229.05
46257	T	Remove hemorrhoids & fissure	0150	22.02	$1,145.24	$437.12	$229.05
46258	T	Remove hemorrhoids & fistula	0150	22.02	$1,145.24	$437.12	$229.05
46260	T	Hemorrhoidectomy	0150	22.02	$1,145.24	$437.12	$229.05
46261	T	Remove hemorrhoids & fissure	0150	22.02	$1,145.24	$437.12	$229.05
46262	T	Remove hemorrhoids & fistula	0150	22.02	$1,145.24	$437.12	$229.05
46270	T	Removal of anal fistula	0150	22.02	$1,145.24	$437.12	$229.05
46275	T	Removal of anal fistula	0150	22.02	$1,145.24	$437.12	$229.05
46280	T	Removal of anal fistula	0150	22.02	$1,145.24	$437.12	$229.05
46285	T	Removal of anal fistula	0150	22.02	$1,145.24	$437.12	$229.05
46288	T	Repair anal fistula	0150	22.02	$1,145.24	$437.12	$229.05
46320	T	Removal of hemorrhoid clot	0148	3.61	$187.75	$67.59	$37.55
46500	T	Injection into hemorrhoid(s)	0155	10.05	$522.69	$188.17	$104.54
46600	X	Diagnostic anoscopy	0340	0.66	$34.33		$6.87
46604	T	Anoscopy and dilation	0147	7.30	$379.67	$83.53	$75.93
46606	T	Anoscopy and biopsy	0147	7.30	$379.67	$83.53	$75.93
46608	T	Anoscopy/ remove for body	0147	7.30	$379.67	$83.53	$75.93
46610	T	Anoscopy/remove lesion	0147	7.30	$379.67	$83.53	$75.93
46611	T	Anoscopy	0147	7.30	$379.67	$83.53	$75.93
46612	T	Anoscopy/ remove lesions	0147	7.30	$379.67	$83.53	$75.93
46614	T	Anoscopy/control bleeding	0147	7.30	$379.67	$83.53	$75.93
46615	T	Anoscopy	0147	7.30	$379.67	$83.53	$75.93
46700	T	Repair of anal stricture	0150	22.02	$1,145.24	$437.12	$229.05
46705	C	Repair of anal stricture					
46715	C	Repair of anovaginal fistula					
46716	C	Repair of anovaginal fistula					
46730	C	Construction of absent anus					
46735	C	Construction of absent anus					
46740	C	Construction of absent anus					
46742	C	Repair of imperforated anus					
46744	C	Repair of cloacal anomaly					
46746	C	Repair of cloacal anomaly					
46748	C	Repair of cloacal anomaly					
46750	T	Repair of anal sphincter	0150	22.02	$1,145.24	$437.12	$229.05
46751	C	Repair of anal sphincter					
46753	T	Reconstruction of anus	0150	22.02	$1,145.24	$437.12	$229.05
46754	T	Removal of suture from anus	0149	16.91	$879.47	$293.06	$175.89
46760	T	Repair of anal sphincter	0150	22.02	$1,145.24	$437.12	$229.05
46761	T	Repair of anal sphincter	0150	22.02	$1,145.24	$437.12	$229.05
46762	T	Implant artificial sphincter	0150	22.02	$1,145.24	$437.12	$229.05
46900	T	Destruction, anal lesion(s)	0016	2.57	$133.66	$56.14	$26.73
46910	T	Destruction, anal lesion(s)	0017	16.46	$856.07	$227.84	$171.21
46916	T	Cryosurgery, anal lesion(s)	0013	1.10	$57.21	$14.30	$11.44
46917	T	Laser surgery, anal lesions	0695	19.65	$1,021.98	$266.59	$204.40
46922	T	Excision of anal lesion(s)	0695	19.65	$1,021.98	$266.59	$204.40
46924	T	Destruction, anal lesion(s)	0695	19.65	$1,021.98	$266.59	$204.40
46934	T	Destruction of hemorrhoids	0155	10.05	$522.69	$188.17	$104.54
46935	T	Destruction of hemorrhoids	0155	10.05	$522.69	$188.17	$104.54
46936	T	Destruction of hemorrhoids	0149	16.91	$879.47	$293.06	$175.89

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
46937	T	Cryotherapy of rectal lesion	0149	16.91	$879.47	$293.06	$175.89
46938	T	Cryotherapy of rectal lesion	0150	22.02	$1,145.24	$437.12	$229.05
46940	T	Treatment of anal fissure	0149	16.91	$879.47	$293.06	$175.89
46942	T	Treatment of anal fissure	0148	3.61	$187.75	$67.59	$37.55
46945	T	Ligation of hemorrhoids	0155	10.05	$522.69	$188.17	$104.54
46946	T	Ligation of hemorrhoids	0155	10.05	$522.69	$188.17	$104.54
46999	T	Anus surgery procedure	0148	3.61	$187.75	$67.59	$37.55
47000	T	Needle biopsy of liver	0685	4.47	$232.48	$102.29	$46.50
47001	N	Needle biopsy, liver add-on					
47010	C	Open drainage, liver lesion					
47011	T	Percut drain, liver lesion	0005	3.02	$157.07	$69.11	$31.41
47015	C	Inject/aspirate liver cyst					
47100	C	Wedge biopsy of liver					
47120	C	Partial removal of liver					
47122	C	Extensive removal of liver					
47125	C	Partial removal of liver					
47130	C	Partial removal of liver					
47133	C	Removal of donor liver					
47134	C	Partial removal, donor liver					
47135	C	Transplantation of liver					
47136	C	Transplantation of liver					
47300	C	Surgery for liver lesion					
47350	C	Repair liver wound					
47360	C	Repair liver wound					
47361	C	Repair liver wound					
47362	C	Repair liver wound					
47370	T	Laparo ablate liver tumor rf	0130	31.99	$1,663.77	$659.53	$332.75
47371	T	Laparo ablate liver cryosug	0130	31.99	$1,663.77	$659.53	$332.75
47379	T	Laparoscope procedure, liver	0130	31.99	$1,663.77	$659.53	$332.75
47380	C	Open ablate liver tumor rf					
47381	C	Open ablate liver tumor cryo					
47382	T	Percut ablate liver rf	0980		$1,875.00		$375.00
47399	T	Liver surgery procedure	0005	3.02	$157.07	$69.11	$31.41
47400	C	Incision of liver duct					
47420	C	Incision of bile duct					
47425	C	Incision of bile duct					
47460	C	Incise bile duct sphincter					
47480	C	Incision of gallbladder					
47490	T	Incision of gallbladder	0152	6.18	$321.42	$80.36	$64.28
47500	N	Injection for liver x-rays					
47505	N	Injection for liver x-rays					
47510	T	Insert catheter, bile duct	0152	6.18	$321.42	$80.36	$64.28
47511	T	Insert bile duct drain	0152	6.18	$321.42	$80.36	$64.28
47525	T	Change bile duct catheter	0122	3.89	$202.32	$46.53	$40.46
47530	T	Revise/reinsert bile tube	0121	2.17	$112.86	$45.14	$22.57
47550	C	Bile duct endoscopy add-on					
47552	T	Biliary endoscopy thru skin	0152	6.18	$321.42	$80.36	$64.28
47553	T	Biliary endoscopy thru skin	0152	6.18	$321.42	$80.36	$64.28
47554	T	Biliary endoscopy thru skin	0152	6.18	$321.42	$80.36	$64.28
47555	T	Biliary endoscopy thru skin	0152	6.18	$321.42	$80.36	$64.28
47556	T	Biliary endoscopy thru skin	0152	6.18	$321.42	$80.36	$64.28
47560	T	Laparoscopy w/cholangio	0130	31.99	$1,663.77	$659.53	$332.75
47561	T	Laparo w/cholangio/biopsy	0130	31.99	$1,663.77	$659.53	$332.75
47562	T	Laparoscopic cholecystectomy	0131	42.44	$2,207.26	$1,001.89	$441.45
47563	T	Laparo cholecystectomy/graph	0131	42.44	$2,207.26	$1,001.89	$441.45
47564	T	Laparo cholecystectomy/explr	0131	42.44	$2,207.26	$1,001.89	$441.45
47570	C	Laparo cholecystoenterostomy					
47579	T	Laparoscope proc, biliary	0130	31.99	$1,663.77	$659.53	$332.75
47600	C	Removal of gallbladder					
47605	C	Removal of gallbladder					
47610	C	Removal of gallbladder					
47612	C	Removal of gallbladder					
47620	C	Removal of gallbladder					
47630	T	Remove bile duct stone	0152	6.18	$321.42	$80.36	$64.28
47700	C	Exploration of bile ducts					
47701	C	Bile duct revision					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
47711	C	Excision of bile duct tumor					
47712	C	Excision of bile duct tumor					
47715	C	Excision of bile duct cyst					
47716	C	Fusion of bile duct cyst					
47720	C	Fuse gallbladder & bowel					
47721	C	Fuse upper gi structures					
47740	C	Fuse gallbladder & bowel					
47741	C	Fuse gallbladder & bowel					
47760	C	Fuse bile ducts and bowel					
47765	C	Fuse liver ducts & bowel					
47780	C	Fuse bile ducts and bowel					
47785	C	Fuse bile ducts and bowel					
47800	C	Reconstruction of bile ducts					
47801	C	Placement, bile duct support					
47802	C	Fuse liver duct & intestine					
47900	C	Suture bile duct injury					
47999	T	Bile tract surgery procedure	0152	6.18	$321.42	$80.36	$64.28
48000	C	Drainage of abdomen					
48001	C	Placement of drain, pancreas					
48005	C	Resect/debride pancreas					
48020	C	Removal of pancreatic stone					
48100	C	Biopsy of pancreas, open					
48102	T	Needle biopsy, pancreas	0685	4.47	$232.48	$102.29	$46.50
48120	C	Removal of pancreas lesion					
48140	C	Partial removal of pancreas					
48145	C	Partial removal of pancreas					
48146	C	Pancreatectomy					
48148	C	Removal of pancreatic duct					
48150	C	Partial removal of pancreas					
48152	C	Pancreatectomy					
48153	C	Pancreatectomy					
48154	C	Pancreatectomy					
48155	C	Removal of pancreas					
48160	E	Pancreas removal/transplant					
48180	C	Fuse pancreas and bowel					
48400	C	Injection, intraop add-on					
48500	C	Surgery of pancreatic cyst					
48510	C	Drain pancreatic pseudocyst					
48511	T	Drain pancreatic pseudocyst	0005	3.02	$157.07	$69.11	$31.41
48520	C	Fuse pancreas cyst and bowel					
48540	C	Fuse pancreas cyst and bowel					
48545	C	Pancreatorrhaphy					
48547	C	Duodenal exclusion					
48550	E	Donor pancreatectomy					
48554	E	Transpl allograft pancreas					
48556	C	Removal, allograft pancreas					
48999	T	Pancreas surgery procedure	0005	3.02	$157.07	$69.11	$31.41
49000	C	Exploration of abdomen					
49002	C	Reopening of abdomen					
49010	C	Exploration behind abdomen					
49020	C	Drain abdominal abscess					
49021	C	Drain abdominal abscess					
49040	C	Drain, open, abdom abscess					
49041	C	Drain, percut, abdom abscess					
49060	C	Drain, open, retrop abscess					
49061	C	Drain, percut, retroper absc					
49062	C	Drain to peritoneal cavity					
49080	T	Puncture, peritoneal cavity	0070	3.30	$171.63		$34.33
49081	T	Removal of abdominal fluid	0070	3.30	$171.63		$34.33
49085	T	Remove abdomen foreign body	0153	25.99	$1,351.71	$540.68	$270.34
49180	T	Biopsy, abdominal mass	0685	4.47	$232.48	$102.29	$46.50
49200	T	Removal of abdominal lesion	0130	31.99	$1,663.77	$659.53	$332.75
49201	C	Removal of abdominal lesion					
49215	C	Excise sacral spine tumor					
49220	C	Multiple surgery, abdomen					
49250	T	Excision of umbilicus	0153	25.99	$1,351.71	$540.68	$270.34

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
49255	C	Removal of omentum					
49320	T	Diag laparo separate proc	0130	31.99	$1,663.77	$659.53	$332.75
49321	T	Laparoscopy, biopsy	0130	31.99	$1,663.77	$659.53	$332.75
49322	T	Laparoscopy, aspiration	0130	31.99	$1,663.77	$659.53	$332.75
49323	T	Laparo drain lymphocele	0130	31.99	$1,663.77	$659.53	$332.75
49329	T	Laparo proc, abdm/per/oment	0130	31.99	$1,663.77	$659.53	$332.75
49400	N	Air injection into abdomen					
49420	T	Insert abdominal drain	0153	25.99	$1,351.71	$540.68	$270.34
49421	T	Insert abdominal drain	0153	25.99	$1,351.71	$540.68	$270.34
49422	T	Remove perm cannula/catheter	0105	19.14	$995.45	$370.40	$199.09
49423	T	Exchange drainage catheter	0152	6.18	$321.42	$80.36	$64.28
49424	N	Assess cyst, contrast inject					
49425	C	Insert abdomen-venous drain					
49426	T	Revise abdomen-venous shunt	0153	25.99	$1,351.71	$540.68	$270.34
49427	N	Injection, abdominal shunt					
49428	C	Ligation of shunt					
49429	T	Removal of shunt	0105	19.14	$995.45	$370.40	$199.09
49491	T	Repairing hern premie reduc	0154	26.98	$1,403.20	$491.12	$280.64
49492	T	Rpr ing hern premie, blocked	0154	26.98	$1,403.20	$491.12	$280.64
49495	T	Rpr ing hernia baby, reduc	0154	26.98	$1,403.20	$491.12	$280.64
49496	T	Rpr ing hernia baby, blocked	0154	26.98	$1,403.20	$491.12	$280.64
49500	T	Rpr ing hernia, init, reduce	0154	26.98	$1,403.20	$491.12	$280.64
49501	T	Rpr ing hernia, init blocked	0154	26.98	$1,403.20	$491.12	$280.64
49505	T	Rpr i/hern init reduc>5 yr	0154	26.98	$1,403.20	$491.12	$280.64
49507	T	Rpr i/hern init block>5 yr	0154	26.98	$1,403.20	$491.12	$280.64
49520	T	Rerepair ing hernia, reduce	0154	26.98	$1,403.20	$491.12	$280.64
49521	T	Rerepair ing hernia, blocked	0154	26.98	$1,403.20	$491.12	$280.64
49525	T	Repair ing hernia, sliding	0154	26.98	$1,403.20	$491.12	$280.64
49540	T	Repair lumbar hernia	0154	26.98	$1,403.20	$491.12	$280.64
49550	T	Rpr fem hernia, init, reduce	0154	26.98	$1,403.20	$491.12	$280.64
49553	T	Rpr fem hernia, init blocked	0154	26.98	$1,403.20	$491.12	$280.64
49555	T	Rerepair fem hernia, reduce	0154	26.98	$1,403.20	$491.12	$280.64
49557	T	Rerepair fem hernia, blocked	0154	26.98	$1,403.20	$491.12	$280.64
49560	T	Rpr ventral hern init, reduc	0154	26.98	$1,403.20	$491.12	$280.64
49561	T	Rpr ventral hern init, block	0154	26.98	$1,403.20	$491.12	$280.64
49565	T	Rerepair ventrl hern, reduce	0154	26.98	$1,403.20	$491.12	$280.64
49566	T	Rerepair ventrl hern, block	0154	26.98	$1,403.20	$491.12	$280.64
49568	T	Hernia repair w/mesh	0154	26.98	$1,403.20	$491.12	$280.64
49570	T	Rpr epigastric hern, reduce	0154	26.98	$1,403.20	$491.12	$280.64
49572	T	Rpr epigastric hern, blocked	0154	26.98	$1,403.20	$491.12	$280.64
49580	T	Rpr umbil hern, reduc <5 yr	0154	26.98	$1,403.20	$491.12	$280.64
49582	T	Rpr umbil hern, block < 5 yr	0154	26.98	$1,403.20	$491.12	$280.64
49585	T	Rpr umbil hern, reduc > 5 yr	0154	26.98	$1,403.20	$491.12	$280.64
49587	T	Rpr umbil hern, block > 5 yr	0154	26.98	$1,403.20	$491.12	$280.64
49590	T	Repair spigelian hernia	0154	26.98	$1,403.20	$491.12	$280.64
49600	T	Repair umbilical lesion	0154	26.98	$1,403.20	$491.12	$280.64
49605	C	Repair umbilical lesion					
49606	C	Repair umbilical lesion					
49610	C	Repair umbilical lesion					
49611	C	Repair umbilical lesion					
49650	T	Laparo hernia repair initial	0131	42.44	$2,207.26	$1,001.89	$441.45
49651	T	Laparo hernia repair recur	0131	42.44	$2,207.26	$1,001.89	$441.45
49659	T	Laparo proc, hernia repair	0131	42.44	$2,207.26	$1,001.89	$441.45
49900	C	Repair of abdominal wall					
49905	C	Omental flap					
49906	C	Free omental flap, microvasc					
49999	T	Abdomen surgery procedure	0153	25.99	$1,351.71	$540.68	$270.34
50010	C	Exploration of kidney					
50020	C	Renal abscess, open drain					
50021	T	Renal abscess, percut drain	0005	3.02	$157.07	$69.11	$31.41
50040	C	Drainage of kidney					
50045	C	Exploration of kidney					
50060	C	Removal of kidney stone					
50065	C	Incision of kidney					
50070	C	Incision of kidney					
50075	C	Removal of kidney stone					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
50080	T	Removal of kidney stone	0163	24.77	$1,288.26		$257.65
50081	T	Removal of kidney stone	0163	24.77	$1,288.26		$257.65
50100	C	Revise kidney blood vessels					
50120	C	Exploration of kidney					
50125	C	Explore and drain kidney					
50130	C	Removal of kidney stone					
50135	C	Exploration of kidney					
50200	T	Biopsy of kidney	0685	4.47	$232.48	$102.29	$46.50
50205	C	Biopsy of kidney					
50220	C	Remove kidney, open					
50225	C	Removal kidney open, complex					
50230	C	Removal kidney open, radical					
50234	C	Removal of kidney & ureter					
50236	C	Removal of kidney & ureter					
50240	C	Partial removal of kidney					
50280	C	Removal of kidney lesion					
50290	C	Removal of kidney lesion					
50300	C	Removal of donor kidney					
50320	C	Removal of donor kidney					
50340	C	Removal of kidney					
50360	C	Transplantation of kidney					
50365	C	Transplantation of kidney					
50370	C	Remove transplanted kidney					
50380	C	Reimplantation of kidney					
50390	T	Drainage of kidney lesion	0685	4.47	$232.48	$102.29	$46.50
50392	T	Insert kidney drain	0161	16.03	$833.70	$249.36	$166.74
50393	T	Insert ureteral tube	0161	16.03	$833.70	$249.36	$166.74
50394	N	Injection for kidney x-ray					
50395	T	Create passage to kidney	0161	16.03	$833.70	$249.36	$166.74
50396	T	Measure kidney pressure	0164	1.18	$61.37	$18.41	$12.27
50398	T	Change kidney tube	0122	3.89	$202.32	$46.53	$40.46
50400	C	Revision of kidney/ureter					
50405	C	Revision of kidney/ureter					
50500	C	Repair of kidney wound					
50520	C	Close kidney-skin fistula					
50525	C	Repair renal-abdomen fistula					
50526	C	Repair renal-abdomen fistula					
50540	C	Revision of horseshoe kidney					
50541	T	Laparo ablate renal cyst	0130	31.99	$1,663.77	$659.53	$332.75
50544	T	Laparoscopy, pyeloplasty	0130	31.99	$1,668.77	$659.53	$332.75
50545	C	Laparo radical nephrectomy					
50546	C	Laparoscopic nephrectomy					
50547	C	Laparo removal donor kidney					
50548	C	Laparo remove k/ureter					
50549	T	Laparoscope proc, renal	0130	31.99	$1,663.77	$659.53	$332.75
50551	T	Kidney endoscopy	0160	6.44	$334.94	$105.06	$66.99
50553	T	Kidney endoscopy	0161	16.03	$833.70	$249.36	$166.74
50555	T	Kidney endoscopy & biopsy	0160	6.44	$334.94	$105.06	$66.99
50557	T	Kidney endoscopy & treatment	0162	21.50	$1,118.19		$223.64
50559	T	Renal endoscopy/radiotracer	0160	6.44	$334.94	$105.06	$66.99
50561	T	Kidney endoscopy & treatment	0161	16.03	$833.70	$249.36	$166.74
50570	C	Kidney endoscopy					
50572	C	Kidney endoscopy					
50574	C	Kidney endoscopy & biopsy					
50575	C	Kidney endoscopy					
50576	C	Kidney endoscopy & treatment					
50578	C	Renal endoscopy/radiotracer					
50580	C	Kidney endoscopy & treatment					
50590	T	Fragmenting of kidney stone	0169	46.44	$2,415.30	$1,115.69	$483.06
50600	C	Exploration of ureter					
50605	C	Insert ureteral support					
50610	C	Removal of ureter stone					
50620	C	Removal of ureter stone					
50630	C	Removal of ureter stone					
50650	C	Removal of ureter					
50660	C	Removal of ureter					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
50684	N	Injection for ureter x-ray					
50686	T	Measure ureter pressure	0164	1.18	$61.37	$18.41	$12.27
50688	T	Change of ureter tube	0121	2.17	$112.86	$45.14	$22.57
50690	N	Injection for ureter x-ray					
50700	C	Revision of ureter					
50715	C	Release of ureter					
50722	C	Release of ureter					
50725	C	Release/revise ureter					
50727	C	Revise ureter					
50728	C	Revise ureter					
50740	C	Fusion of ureter & kidney					
50750	C	Fusion of ureter & kidney					
50760	C	Fusion of ureters					
50770	C	Splicing of ureters					
50780	C	Reimplant ureter in bladder					
50782	C	Reimplant ureter in bladder					
50783	C	Reimplant ureter in bladder					
50785	C	Reimplant ureter in bladder					
50800	C	Implant ureter in bowel					
50810	C	Fusion of ureter & bowel					
50815	C	Urine shunt to intestine					
50820	C	Construct bowel bladder					
50825	C	Construct bowel bladder					
50830	C	Revise urine flow					
50840	C	Replace ureter by bowel					
50845	C	Appendico-vesicostomy					
50860	C	Transplant ureter to skin					
50900	C	Repair of ureter					
50920	C	Closure ureter/skin fistula					
50930	C	Closure ureter/bowel fistula					
50940	C	Release of ureter					
50945	T	Laparoscopy ureterolithotomy	0131	42.44	$2,207.26	$1,001.89	$441.45
50947	T	Laparo new ureter/bladder	0131	42.44	$2,207.26	$1,001.89	$441.45
50948	T	Laparo new ureter/bladder	0131	42.44	$2,207.26	$1,001.89	$441.45
50949	T	Laparoscope proc, ureter	0130	31.99	$1,663.77	$659.53	$332.75
50951	T	Endoscopy of ureter	0160	6.44	$334.94	$105.06	$66.99
50953	T	Endoscopy of ureter	0160	6.44	$334.94	$105.06	$66.99
50955	T	Ureter endoscopy & biopsy	0161	16.03	$833.70	$249.36	$166.74
50957	T	Ureter endoscopy & treatment	0161	16.03	$833.70	$249.36	$166.74
50959	T	Ureter endoscopy & tracer	0161	16.03	$833.70	$249.36	$166.74
50961	T	Ureter endoscopy & treatment	0161	16.03	$833.70	$249.36	$166.74
50970	T	Ureter endoscopy	0160	6.44	$334.94	$105.06	$66.99
50972	T	Ureter endoscopy & catheter	0160	6.44	$334.94	$105.06	$66.99
50974	T	Ureter endoscopy & biopsy	0161	16.03	$833.70	$249.36	$166.74
50976	T	Ureter endoscopy & treatment	0161	16.03	$833.70	$249.36	$166.74
50978	T	Ureter endoscopy & tracer	0161	16.03	$833.70	$249.36	$166.74
50980	T	Ureter endoscopy & treatment	0161	16.03	$833.70	$249.36	$166.74
51000	T	Drainage of bladder	0165	12.62	$656.35		$131.27
51005	T	Drainage of bladder	0164	1.18	$61.37	$18.41	$12.27
51010	T	Drainage of bladder	0165	12.62	$656.35		$131.27
51020	T	Incise & treat bladder	0162	21.50	$1,118.19		$223.64
51030	T	Incise & treat bladder	0162	21.50	$1,118.19		$223.64
51040	T	Incise & drain bladder	0162	21.50	$1,118.19		$223.64
51045	T	Incise bladder/drain ureter	0160	6.44	$334.94	$105.06	$66.99
51050	T	Removal of bladder stone	0162	21.50	$1,118.19		$223.64
51060	C	Removal of ureter stone					
51065	T	Remove ureter calculus	0162	21.50	$1,118.19		$223.64
51080	T	Drainage of bladder abscess	0007	9.44	$490.96	$103.10	$98.19
51500	T	Removal of bladder cyst	0154	26.98	$1,403.20	$491.12	$280.64
51520	T	Removal of bladder lesion	0162	21.50	$1,118.19		$223.64
51525	C	Removal of bladder lesion					
51530	C	Removal of bladder lesion					
51535	C	Repair of ureter lesion					
51550	C	Partial removal of bladder					
51555	C	Partial removal of bladder					
51565	C	Revise bladder & ureter(s)					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
51570	C	Removal of bladder					
51575	C	Removal of bladder & nodes					
51580	C	Remove bladder/revise tract					
51585	C	Removal of bladder & nodes					
51590	C	Remove bladder/revise tract					
51595	C	Remove bladder/revise tract					
51596	C	Remove bladder/create pouch					
51597	C	Removal of pelvic structures					
51600	N	Injection for bladder x-ray					
51605	N	Preparation for bladder xray					
51610	N	Injection for bladder x-ray					
51700	T	Irrigation of bladder	0164	1.18	$61.37	$18.41	$12.27
51705	T	Change of bladder tube	0121	2.17	$112.86	$45.14	$22.57
51710	T	Change of bladder tube	0121	2.17	$112.86	$45.14	$22.57
51715	T	Endoscopic injection/implant	0167	27.15	$1,412.04	$555.84	$282.41
51720	T	Treatment of bladder lesion	0156	3.10	$161.23	$48.37	$32.25
51725	T	Simple cystometrogram	0156	3.10	$161.23	$48.37	$32.25
51726	T	Complex cystometrogram	0156	3.10	$161.23	$48.37	$32.25
51736	T	Urine flow measurement	0164	1.18	$61.37	$18.41	$12.27
51741	T	Electro-uroflowmetry, first	0164	1.18	$61.37	$18.41	$12.27
51772	T	Urethra pressure profile	0164	1.18	$61.37	$18.41	$12.27
51784	T	Anal/urinary muscle study	0164	1.18	$61.37	$18.41	$12.27
51785	T	Anal/urinary muscle study	0164	1.18	$61.37	$18.41	$12.27
51792	T	Urinary reflex study	0164	1.18	$61.37	$18.41	$12.27
51795	T	Urine voiding pressure study	0164	1.18	$61.37	$18.41	$12.27
51797	T	Intraabdominal pressure test	0164	1.18	$61.37	$18.41	$12.27
51800	C	Revision of bladder/urethra					
51820	C	Revision of urinary tract					
51840	C	Attach bladder/urethra					
51841	C	Attach bladder/urethra					
51845	C	Repair bladder neck					
51860	C	Repair of bladder wound					
51865	C	Repair of bladder wound					
51880	T	Repair of bladder opening	0162	21.50	$1,118.19		$223.64
51900	C	Repair bladder/vagina lesion					
51920	C	Close bladder-uterus fistula					
51925	C	Hysterectomy/bladder repair					
51940	C	Correction of bladder defect					
51960	C	Revision of bladder & bowel					
51980	C	Construct bladder opening					
51990	T	Laparo urethral suspension	0131	42.44	$2,207.26	$1,001.89	$441.45
51992	T	Laparo sling operation	0132	57.95	$3,013.92	$1,239.22	$602.78
52000	T	Cystoscopy	0160	6.44	$334.94	$105.06	$66.99
52001	T	Cystoscopy, removal of clots	0160	6.44	$334.94	$105.06	$66.99
52005	T	Cystoscopy & ureter catheter	0161	16.03	$833.70	$249.36	$166.74
52007	T	Cystoscopy and biopsy	0161	16.03	$833.70	$249.36	$166.74
52010	T	Cystoscopy & duct catheter	0160	6.44	$334.94	$105.06	$66.99
52204	T	Cystoscopy	0161	16.03	$833.70	$249.36	$166.74
52214	T	Cystoscopy and treatment	0162	21.50	$1,118.19		$223.64
52224	T	Cystoscopy and treatment	0162	21.50	$1,118.19		$223.64
52234	T	Cystoscopy and treatment	0163	24.77	$1,288.26		$257.65
52235	T	Cystoscopy and treatment	0163	24.77	$1,288.26		$257.65
52240	T	Cystoscopy and treatment	0162	21.50	$1,118.19		$223.64
52250	T	Cystoscopy and radiotracer	0162	21.50	$1,118.19		$223.64
52260	T	Cystoscopy and treatment	0161	16.03	$833.70	$249.36	$166.74
52265	T	Cystoscopy and treatment	0160	6.44	$334.94	$105.06	$66.99
52270	T	Cystoscopy & revise urethra	0161	16.03	$833.70	$249.36	$166.74
52275	T	Cystoscopy & revise urethra	0161	16.03	$833.70	$249.36	$166.74
52276	T	Cystoscopy and treatment	0161	16.03	$833.70	$249.36	$166.74
52277	T	Cystoscopy and treatment	0162	21.50	$1,118.19		$223.64
52281	T	Cystoscopy and treatment	0161	16.03	$833.70	$249.36	$166.74
52282	T	Cystoscopy, implant stent	0163	24.77	$1,288.26		$257.65
52283	T	Cystoscopy and treatment	0161	16.03	$833.70	$249.36	$166.74
52285	T	Cystoscopy and treatment	0161	16.03	$833.70	$249.36	$166.74
52290	T	Cystoscopy and treatment	0161	16.03	$833.70	$249.36	$166.74
52300	T	Cystoscopy and treatment	0161	16.03	$833.70	$249.36	$166.74

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
52301	T	Cystoscopy and treatment	0161	16.03	$833.70	$249.36	$166.74
52305	T	Cystoscopy and treatment	0161	16.03	$833.70	$249.36	$166.74
52310	T	Cystoscopy and treatment	0160	6.44	$334.94	$105.06	$66.99
52315	T	Cystoscopy and treatment	0161	16.03	$833.70	$249.36	$166.74
52317	T	Remove bladder stone	0162	21.50	$1,118.19		$223.64
52318	T	Remove bladder stone	0162	21.50	$1,118.19		$223.64
52320	T	Cystoscopy and treatment	0162	21.50	$1,118.19		$223.64
52325	T	Cystoscopy, stone removal	0162	21.50	$1,118.19		$223.64
52327	T	Cystoscopy, inject material	0162	21.50	$1,118.19		$223.64
52330	T	Cystoscopy and treatment	0162	21.50	$1,118.19		$223.64
52332	T	Cystoscopy and treatment	0162	21.50	$1,118.19		$223.64
52334	T	Create passage to kidney	0162	21.50	$1,118.19		$223.64
52341	T	Cysto w/ureter stricture tx	0162	21.50	$1,118.19		$223.64
52342	T	Cysto w/up stricture tx	0162	21.50	$1,118.19		$223.64
52343	T	Cysto w/renal stricture tx	0162	21.50	$1,118.19		$223.64
52344	T	Cysto/uretero, stone remove	0162	21.50	$1,118.19		$223.64
52345	T	Cysto/uretero w/up stricture	0162	21.50	$1,118.19		$223.64
52346	T	Cystouretero w/renal strict	0162	21.50	$1,118.19		$223.64
52347	T	Cystoscopy, resect ducts	0160	6.44	$334.94	$105.06	$66.99
52351	T	Cystouretro & or pyeloscope	0160	6.44	$334.94	$105.06	$66.99
52352	T	Cystouretro w/stone remove	0162	21.50	$1,118.19		$223.64
52353	T	Cystouretero w/lithotripsy	0163	24.77	$1,288.26		$257.65
52354	T	Cystouretero w/biopsy	0162	21.50	$1,118.19		$223.64
52355	T	Cystouretero w/excise tumor	0162	21.50	$1,118.19		$223.64
52400	T	Cystouretero w/congen repr	0162	21.50	$1,118.19		$223.64
52450	T	Incision of prostate	0162	21.50	$1,118.19		$223.64
52500	T	Revision of bladder neck	0162	21.50	$1,118.19		$223.64
52510	T	Dilation prostatic urethra	0161	16.03	$833.70	$249.36	$166.74
52601	T	Prostatectomy (TURP)	0163	24.77	$1,288.26		$257.65
52606	T	Control postop bleeding	0162	21.50	$1,118.19		$223.64
52612	T	Prostatectomy, first stage	0163	24.77	$1,288.26		$257.65
52614	T	Prostatectomy, second stage	0163	24.77	$1,288.26		$257.65
52620	T	Remove residual prostate	0163	24.77	$1,288.26		$257.65
52630	T	Remove prostate regrowth	0163	24.77	$1,288.26		$257.65
52640	T	Relieve bladder contracture	0162	21.50	$1,118.19		$223.64
52647	T	Laser surgery of prostate	0163	24.77	$1,288.26		$257.65
52648	T	Laser surgery of prostate	0163	24.77	$1,288.26		$257.65
52700	T	Drainage of prostate abscess	0162	21.50	$1,118.19		$223.64
53000	T	Incision of urethra	0166	15.63	$812.90	$218.73	$162.58
53010	T	Incision of urethra	0166	15.63	$812.90	$218.73	$162.58
53020	T	Incision of urethra	0166	15.63	$812.90	$218.73	$162.58
53025	T	Incision of urethra	0166	15.63	$812.90	$218.73	$162.58
53040	T	Drainage of urethra abscess	0166	15.63	$812.90	$218.73	$162.58
53060	T	Drainage of urethra abscess	0166	15.63	$812.90	$218.73	$162.58
53080	T	Drainage of urinary leakage	0166	15.63	$812.90	$218.73	$162.58
53085	C	Drainage of urinary leakage					
53200	T	Biopsy of urethra	0166	15.63	$812.90	$218.73	$162.58
53210	T	Removal of urethra	0168	24.10	$1,253.42	$405.60	$250.68
53215	T	Removal of urethra	0168	24.10	$1,253.42	$405.60	$250.68
53220	T	Treatment of urethra lesion	0168	24.10	$1,253.42	$405.60	$250.68
53230	T	Removal of urethra lesion	0168	24.10	$1,253.42	$405.60	$250.68
53235	T	Removal of urethra lesion	0168	24.10	$1,253.42	$405.60	$250.68
53240	T	Surgery for urethra pouch	0168	24.10	$1,253.42	$405.60	$250.68
53250	T	Removal of urethra gland	0166	15.63	$812.90	$218.73	$162.58
53260	T	Treatment of urethra lesion	0166	15.63	$812.90	$218.73	$162.58
53265	T	Treatment of urethra lesion	0166	15.63	$812.90	$218.73	$162.58
53270	T	Removal of urethra gland	0167	27.15	$1,412.04	$555.84	$282.41
53275	T	Repair of urethra defect	0166	15.63	$812.90	$218.73	$162.58
53400	T	Revise urethra, stage 1	0168	24.10	$1,253.42	$405.60	$250.68
53405	T	Revise urethra, stage 2	0168	24.10	$1,253.42	$405.60	$250.68
53410	T	Reconstruction of urethra	0168	24.10	$1,253.42	$405.60	$250.68
53415	C	Reconstruction of urethra					
53420	T	Reconstruct urethra, stage 1	0168	24.10	$1,253.42	$405.60	$250.68
53425	T	Reconstruct urethra, stage 2	0168	24.10	$1,253.42	$405.60	$250.68
53430	T	Reconstruction of urethra	0168	24.10	$1,253.42	$405.60	$250.68
53431	T	Reconstruct urethra/bladder	0168	24.10	$1,253.42	$405.60	$250.68

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
53440	T	Correct bladder function	0179	81.28	$4,227.29	$1,817.73	$845.46
53442	T	Remove perineal prosthesis	0166	15.63	$812.90	$218.73	$162.58
53444	T	Insert tandem cuff	0179	81.28	$4,227.29	$1,817.73	$845.46
53445	T	Insert uro/ves nck sphincter	0179	81.28	$4,227.29	$1,817.73	$845.46
53446	T	Remove uro sphincter	0168	24.10	$1,253.42	$405.60	$250.68
53447	T	Remove/replace ur sphincter	0179	81.28	$4,227.29	$1,817.73	$845.46
53448	C	Remov/replc ur sphinctr comp					
53449	T	Repair uro sphincter	0168	24.10	$1,253.42	$405.60	$250.68
53450	T	Revision of urethra	0168	24.10	$1,253.42	$405.60	$250.68
53460	T	Revision of urethra	0168	24.10	$1,253.42	$405.60	$250.68
53502	T	Repair of urethra injury	0166	15.63	$812.90	$218.73	$162.58
53505	T	Repair of urethra injury	0167	27.15	$1,412.04	$555.84	$282.41
53510	T	Repair of urethra injury	0166	15.63	$812.90	$218.73	$162.58
53515	T	Repair of urethra injury	0168	24.10	$1,253.42	$405.60	$250.68
53520	T	Repair of urethra defect	0168	24.10	$1,253.42	$405.60	$250.68
53600	T	Dilate urethra stricture	0156	3.10	$161.23	$48.37	$32.25
53601	T	Dilate urethra stricture	0164	1.18	$61.37	$18.41	$12.27
53605	T	Dilate urethra stricture	0161	16.03	$833.70	$249.36	$166.74
53620	T	Dilate urethra stricture	0165	12.62	$656.35		$131.27
53621	T	Dilate urethra stricture	0164	1.18	$61.37	$18.41	$12.27
53660	T	Dilation of urethra	0164	1.18	$61.37	$18.41	$12.27
53661	T	Dilation of urethra	0164	1.18	$61.37	$18.41	$12.27
53665	T	Dilation of urethra	0166	15.63	$812.90	$218.73	$162.58
53670	N	Insert urinary catheter					
53675	T	Insert urinary catheter	0164	1.18	$61.37	$18.41	$12.27
53850	T	Prostatic microwave thermotx	0675	51.57	$2,682.10		$536.42
53852	T	Prostatic rf thermotx	0675	51.57	$2,682.10		$536.42
53853	T	Prostatic water thermother	0977		$1,125.00		$225.00
53899	T	Urology surgery procedure	0164	1.18	$61.37	$18.41	$12.27
54000	T	Slitting of prepuce	0166	15.63	$812.90	$218.73	$162.58
54001	T	Slitting of prepuce	0166	15.63	$812.90	$218.73	$162.58
54015	T	Drain penis lesion	0007	9.44	$490.96	$103.10	$98.19
54050	T	Destruction, penis lesion(s)	0013	1.10	$57.21	$14.30	$11.44
54055	T	Destruction, penis lesion(s)	0017	16.46	$856.07	$227.84	$171.21
54056	T	Cryosurgery, penis lesion(s)	0012	0.76	$39.53	$10.67	$7.91
54057	T	Laser surg, penis lesion(s)	0017	16.46	$856.07	$227.84	$171.21
54060	T	Excision of penis lesion(s)	0017	16.46	$856.07	$227.84	$171.21
54065	T	Destruction, penis lesion(s)	0695	19.65	$1,021.98	$266.59	$204.40
54100	T	Biopsy of penis	0021	14.58	$758.29	$227.49	$151.66
54105	T	Biopsy of penis	0022	18.10	$941.36	$367.13	$188.27
54110	T	Treatment of penis lesion	0181	29.88	$1,554.03	$621.82	$310.81
54111	T	Treat penis lesion, graft	0181	29.88	$1,554.03	$621.82	$310.81
54112	T	Treat penis lesion, graft	0181	29.88	$1,554.03	$621.82	$310.81
54115	T	Treatment of penis lesion	0008	16.32	$848.79		$169.76
54120	T	Partial removal of penis	0181	29.88	$1,554.03	$621.82	$310.81
54125	C	Removal of penis					
54130	C	Remove penis & nodes					
54135	C	Remove penis & nodes					
54150	T	Circumcision	0180	18.95	$985.57	$304.87	$197.11
54152	T	Circumcision	0180	18.95	$985.57	$304.87	$197.11
54160	T	Circumcision	0180	18.95	$985.57	$304.87	$197.11
54161	T	Circumcision	0180	18.95	$985.57	$304.87	$197.11
54162	T	Lysis penil circumcis lesion	0180	18.95	$985.57	$304.87	$197.11
54163	T	Repair of circumcision	0180	18.95	$985.57	$304.87	$197.11
54164	T	Frenulotomy of penis	0180	18.95	$985.57	$304.87	$197.11
54200	T	Treatment of penis lesion	0156	3.10	$161.23	$48.37	$32.25
54205	T	Treatment of penis lesion	0181	29.88	$1,554.03	$621.82	$310.81
54220	T	Treatment of penis lesion	0156	3.10	$161.23	$48.37	$32.25
54230	N	Prepare penis study					
54231	T	Dynamic cavernosometry	0165	12.62	$656.35		$131.27
54235	T	Penile injection	0164	1.18	$61.37	$18.41	$12.27
54240	T	Penis study	0164	1.18	$61.37	$18.41	$12.27
54250	T	Penis study	0165	12.62	$656.35		$131.27
54300	T	Revision of penis	0181	29.88	$1,554.03	$621.82	$310.81
54304	T	Revision of penis	0181	29.88	$1,554.03	$621.82	$310.81
54308	T	Reconstruction of urethra	0181	29.88	$1,554.03	$621.82	$310.81

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
54312	T	Reconstruction of urethra	0181	29.88	$1,554.03	$621.82	$310.81
54316	T	Reconstruction of urethra	0181	29.88	$1,554.03	$621.82	$310.81
54318	T	Reconstruction of urethra	0181	29.88	$1,554.03	$621.82	$310.81
54322	T	Reconstruction of urethra	0181	29.88	$1,554.03	$621.82	$310.81
54324	T	Reconstruction of urethra	0181	29.88	$1,554.03	$621.82	$310.81
54326	T	Reconstruction of urethra	0181	29.88	$1,554.03	$621.82	$310.81
54328	T	Revise penis/urethra	0181	29.88	$1,554.03	$621.82	$310.81
54332	C	Revise penis/urethra					
54336	C	Revise penis/urethra					
54340	T	Secondary urethral surgery	0181	29.88	$1,554.03	$621.82	$310.81
54344	T	Secondary urethral surgery	0181	29.88	$1,554.03	$621.82	$310.81
54348	T	Secondary urethral surgery	0181	29.88	$1,554.03	$621.82	$310.81
54352	T	Reconstruct urethra/penis	0181	29.88	$1,554.03	$621.82	$310.81
54360	T	Penis plastic surgery	0181	29.88	$1,554.03	$621.82	$310.81
54380	T	Repair penis	0181	29.88	$1,554.03	$621.82	$310.81
54385	T	Repair penis	0181	29.88	$1,554.03	$621.82	$310.81
54390	C	Repair penis and bladder					
54400	T	Insert semi-rigid prosthesis	0182	83.80	$4,358.35	$1,438.26	$871.67
54401	T	Insert self-contd prosthesis	0182	83.80	$4,358.35	$1,438.26	$871.67
54405	T	Insert multi-comp penis pros	0182	83.80	$4,358.35	$1,438.26	$871.67
54406	T	Remove multi-comp penis pros	0181	29.88	$1,554.03	$621.82	$310.81
54408	T	Repair multi-comp penis pros	0181	29.88	$1,554.03	$621.82	$310.81
54410	T	Remove/replace penis prosth	0182	83.80	$4,358.35	$1,438.26	$871.67
54411	C	Remv/replc penis pros, comp					
54415	T	Remove self-contd penis pros	0181	29.88	$1,554.03	$621.82	$310.81
54416	T	Remv/repl penis contain pros	0182	83.80	$4,358.35	$1,438.26	$871.67
54417	C	Remv/replc penis pros, compl					
54420	T	Revision of penis	0181	29.88	$1,554.03	$621.82	$310.81
54430	C	Revision of penis					
54435	T	Revision of penis	0181	29.88	$1,554.03	$621.82	$310.81
54440	T	Repair of penis	0181	29.88	$1,554.03	$621.82	$310.81
54450	T	Preputial stretching	0156	3.10	$161.23	$48.37	$32.25
54500	T	Biopsy of testis	0005	3.02	$157.07	$69.11	$31.41
54505	T	Biopsy of testis	0183	22.19	$1,154.08	$448.94	$230.82
54512	T	Excise lesion testis	0183	22.19	$1,154.08	$448.94	$230.82
54520	T	Removal of testis	0183	22.19	$1,154.08	$448.94	$230.82
54522	T	Orchiectomy, partial	0183	22.19	$1,154.08	$448.94	$230.82
54530	T	Removal of testis	0154	26.98	$1,403.20	$491.12	$280.64
54535	C	Extensive testis surgery					
54550	T	Exploration for testis	0154	26.98	$1,403.20	$491.12	$280.64
54560	C	Exploration for testis					
54600	T	Reduce testis torsion	0183	22.19	$1,154.08	$448.94	$230.82
54620	T	Suspension of testis	0183	22.19	$1,154.08	$448.94	$230.82
54640	T	Suspension of testis	0154	26.98	$1,403.20	$491.12	$280.64
54650	C	Orchiopexy (Fowler-Stephens)					
54660	T	Revision of testis	0183	22.19	$1,154.08	$448.94	$230.82
54670	T	Repair testis injury	0183	22.19	$1,154.08	$448.94	$230.82
54680	T	Relocation of testis(es)	0183	22.19	$1,154.08	$448.94	$230.82
54690	T	Laparoscopy, orchiectomy	0131	42.44	$2,207.26	$1,001.89	$441.45
54692	T	Laparoscopy, orchiopexy	0132	57.95	$3,013.92	$1,239.22	$602.78
54699	T	Laparoscope proc, testis	0130	31.99	$1,663.77	$659.53	$332.75
54700	T	Drainage of scrotum	0183	22.19	$1,154.08	$448.94	$230.82
54800	T	Biopsy of epididymis	0004	1.63	$84.77	$22.04	$16.95
54820	T	Exploration of epididymis	0183	22.19	$1,154.08	$448.94	$230.82
54830	T	Remove epididymis lesion	0183	22.19	$1,154.08	$448.94	$230.82
54840	T	Remove epididymis lesion	0183	22.19	$1,154.08	$448.94	$230.82
54860	T	Removal of epididymis	0183	22.19	$1,154.08	$448.94	$230.82
54861	T	Removal of epididymis	0183	22.19	$1,154.08	$448.94	$230.82
54900	T	Fusion of spermatic ducts	0183	22.19	$1,154.08	$448.94	$230.82
54901	T	Fusion of spermatic ducts	0183	22.19	$1,154.08	$448.94	$230.82
55000	T	Drainage of hydrocele	0004	1.63	$84.77	$22.04	$16.95
55040	T	Removal of hydrocele	0154	26.98	$1,403.20	$491.12	$280.64
55041	T	Removal of hydroceles	0154	26.98	$1,403.20	$491.12	$280.64
55060	T	Repair of hydrocele	0183	22.19	$1,154.08	$448.94	$230.82
55100	T	Drainage of scrotum abscess	0007	9.44	$490.96	$103.10	$98.19
55110	T	Explore scrotum	0183	22.19	$1,154.08	$448.94	$230.82

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
55120	T	Removal of scrotum lesion	0183	22.19	$1,154.08	$448.94	$230.82
55150	T	Removal of scrotum	0183	22.19	$1,154.08	$448.94	$230.82
55175	T	Revision of scrotum	0183	22.19	$1,154.08	$448.94	$230.82
55180	T	Revision of scrotum	0183	22.19	$1,154.08	$448.94	$230.82
55200	T	Incision of sperm duct	0183	22.19	$1,154.08	$448.94	$230.82
55250	T	Removal of sperm duct(s)	0183	22.19	$1,154.08	$448.94	$230.82
55300	N	Prepare, sperm duct x-ray					
55400	T	Repair of sperm duct	0183	22.19	$1,154.08	$448.94	$230.82
55450	T	Ligation of sperm duct	0183	22.19	$1,154.08	$448.94	$230.82
55500	T	Removal of hydrocele	0183	22.19	$1,154.08	$448.94	$230.82
55520	T	Removal of sperm cord lesion	0183	22.19	$1,154.08	$448.94	$230.82
55530	T	Revise spermatic cord veins	0183	22.19	$1,154.08	$448.94	$230.82
55535	T	Revise spermatic cord veins	0154	26.98	$1,403.20	$491.12	$280.64
55540	T	Revise hernia & sperm veins	0154	26.98	$1,403.20	$491.12	$280.64
55550	T	Laparo ligate spermatic vein	0131	42.44	$2,207.26	$1,001.89	$441.45
55559	T	Laparo proc, spermatic cord	0130	31.99	$1,663.77	$659.53	$332.75
55600	C	Incise sperm duct pouch					
55605	C	Incise sperm duct pouch					
55650	C	Remove sperm duct pouch					
55680	T	Remove sperm pouch lesion	0183	22.19	$1,154.08	$448.94	$230.82
55700	T	Biopsy of prostate	0184	3.66	$190.35	$95.18	$38.07
55705	T	Biopsy of prostate	0184	3.66	$190.35	$95.18	$38.07
55720	T	Drainage of prostate abscess	0162	21.50	$1,118.19		$223.64
55725	T	Drainage of prostate abscess	0162	21.50	$1,118.19		$223.64
55801	C	Removal of prostate					
55810	C	Extensive prostate surgery					
55812	C	Extensive prostate surgery					
55815	C	Extensive prostate surgery					
55821	C	Removal of prostate					
55831	C	Removal of prostate					
55840	C	Extensive prostate surgery					
55842	C	Extensive prostate surgery					
55845	C	Extensive prostate surgery					
55859	T	Percut/needle insert, pros	0163	24.77	$1,288.26		$257.65
55860	T	Surgical exposure, prostate	0165	12.62	$656.35		$131.27
55862	C	Extensive prostate surgery					
55865	C	Extensive prostate surgery					
55870	T	Electroejaculation	0197	1.19	$61.89	$24.76	$12.38
55873	T	Cryoablate prostate	0674	69.25	$3,601.62		$720.32
55899	T	Genital surgery procedure	0164	1.18	$61.37	$18.41	$12.27
55970	E	Sex transformation, M to F					
55980	E	Sex transformation, F to M					
56405	T	I & D of vulva/perineum	0192	2.94	$152.91	$42.81	$30.58
56420	T	Drainage of gland abscess	0192	2.94	$152.91	$42.81	$30.58
56440	T	Surgery for vulva lesion	0194	18.88	$981.93	$397.84	$196.39
56441	T	Lysis of labial lesion(s)	0193	14.57	$757.77	$171.13	$151.55
56501	T	Destroy, vulva lesions, simp	0017	16.46	$856.07	$227.84	$171.21
56515	T	Destroy vulva lesion/s compl	0695	19.65	$1,021.98	$266.59	$204.40
56605	T	Biopsy of vulva/perineum	0019	3.94	$204.92	$75.82	$40.98
56606	T	Biopsy of vulva/perineum	0019	3.94	$204.92	$75.82	$40.98
56620	T	Partial removal of vulva	0195	24.37	$1,267.46	$483.80	$253.49
56625	T	Complete removal of vulva	0195	24.37	$1,267.46	$483.80	$253.49
56630	C	Extensive vulva surgery					
56631	C	Extensive vulva surgery					
56632	C	Extensive vulva surgery					
56633	C	Extensive vulva surgery					
56634	C	Extensive vulva surgery					
56637	C	Extensive vulva surgery					
56640	C	Extensive vulva surgery					
56700	T	Partial removal of hymen	0194	18.88	$981.93	$397.84	$196.39
56720	T	Incision of hymen	0193	14.57	$757.77	$171.13	$151.55
56740	T	Remove vagina gland lesion	0194	18.88	$981.93	$397.84	$196.39
56800	T	Repair of vagina	0194	18.88	$981.93	$397.84	$196.39
56805	T	Repair clitoris	0194	18.88	$981.93	$397.84	$196.39
56810	T	Repair of perineum	0194	18.88	$981.93	$397.84	$196.39
57000	T	Exploration of vagina	0194	18.88	$981.93	$397.84	$196.39

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
57010	T	Drainage of pelvic abscess	0194	18.88	$981.93	$397.84	$196.39
57020	T	Drainage of pelvic fluid	0192	2.94	$152.91	$42.81	$30.58
57022	T	I & d vaginal hematoma, pp	0007	9.44	$490.96	$103.10	$98.19
57023	T	I & d vag hematoma, non-ob	0007	9.44	$490.96	$103.10	$98.19
57061	T	Destroy vag lesions, simple	0194	18.88	$981.93	$397.84	$196.39
57065	T	Destroy vag lesions, complex	0194	18.88	$981.93	$397.84	$196.39
57100	T	Biopsy of vagina	0192	2.94	$152.91	$42.81	$30.58
57105	T	Biopsy of vagina	0194	18.88	$981.93	$397.84	$196.39
57106	T	Remove vagina wall, partial	0194	18.88	$981.93	$397.84	$196.39
57107	T	Remove vagina tissue, part	0195	24.37	$1,267.46	$483.80	$253.49
57109	T	Vaginectomy partial w/nodes	0202	39.09	$2,033.03	$996.18	$406.61
57110	C	Remove vagina wall, complete					
57111	C	Remove vagina tissue, compl					
57112	C	Vaginectomy w/nodes, compl					
57120	T	Closure of vagina	0194	18.88	$981.93	$397.84	$196.39
57130	T	Remove vagina lesion	0194	18.88	$981.93	$397.84	$196.39
57135	T	Remove vagina lesion	0194	18.88	$981.93	$397.84	$196.39
57150	T	Treat vagina infection	0191	0.22	$11.44	$3.32	$2.29
57155	T	Insert uteri tandems/ovoids	0192	2.94	$152.91	$42.81	$30.58
57160	T	Insert pessary/other device	0188	1.12	$58.25	$11.95	$11.65
57170	T	Fitting of diaphragm/cap	0191	0.22	$11.44	$3.32	$2.29
57180	T	Treat vaginal bleeding	0192	2.94	$152.91	$42.81	$30.58
57200	T	Repair of vagina	0194	18.88	$981.93	$397.84	$196.39
57210	T	Repair vagina/perineum	0194	18.88	$981.93	$397.84	$196.39
57220	T	Revision of urethra	0195	24.37	$1,267.46	$483.80	$253.49
57230	T	Repair of urethral lesion	0194	18.88	$981.93	$397.84	$196.39
57240	T	Repair bladder & vagina	0195	24.37	$1,267.46	$483.80	$253.49
57250	T	Repair rectum & vagina	0195	24.37	$1,267.46	$483.80	$253.49
57260	T	Repair of vagina	0195	24.37	$1,267.46	$483.80	$253.49
57265	T	Extensive repair of vagina	0195	24.37	$1,267.46	$483.80	$253.49
57268	T	Repair of bowel bulge					
57270	C	Repair of bowel pouch					
57280	C	Suspension of vagina					
57282	C	Repair of vaginal prolapse	0195	24.37	$1,267.46	$483.80	$253.49
57284	T	Repair paravaginal defect	0202	39.09	$2,033.03	$996.18	$406.61
57287	T	Revise/remove sling repair	0202	39.09	$2,033.03	$996.18	$406.61
57288	T	Repair bladder defect	0195	24.37	$1,267.46	$483.80	$253.49
57289	T	Repair bladder & vagina	0195	24.37	$1,267.46	$483.80	$253.49
57291	T	Construction of vagina					
57292	C	Construct vagina with graft	0195	24.37	$1,267.46	$483.80	$253.49
57300	T	Repair rectum-vagina fistula					
57305	C	Repair rectum-vagina fistula					
57307	C	Fistula repair & colostomy					
57308	C	Fistula repair, transperine	0195	24.37	$1,267.46	$483.80	$253.49
57310	T	Repair urethrovaginal lesion					
57311	C	Repair urethrovaginal lesion	0195	24.37	$1,267.46	$483.80	$253.49
57320	T	Repair bladder-vagina lesion	0195	24.37	$1,267.46	$483.80	$253.49
57330	T	Repair bladder-vagina lesion					
57335	C	Repair vagina	0194	18.88	$981.93	$397.84	$196.39
57400	T	Dilation of vagina	0194	18.88	$981.93	$397.84	$196.39
57410	T	Pelvic examination	0194	18.88	$981.93	$397.84	$196.39
57415	T	Remove vaginal foreign body	0189	1.63	$84.77	$18.60	$16.95
57452	T	Examination of vagina	0192	2.94	$152.91	$42.81	$30.58
57454	T	Vagina examination & biopsy	0193	14.57	$757.77	$171.13	$151.55
57460	T	Cervix excision	0192	2.94	$152.91	$42.81	$30.58
57500	T	Biopsy of cervix	0192	2.94	$152.91	$42.81	$30.58
57505	T	Endocervical curettage	0193	14.57	$757.77	$171.13	$151.55
57510	T	Cauterization of cervix	0189	1.63	$84.77	$18.60	$16.95
57511	T	Cryocautery of cervix	0193	14.57	$757.77	$171.13	$151.55
57513	T	Laser surgery of cervix	0194	18.88	$981.93	$397.84	$196.39
57520	T	Conization of cervix	0195	24.37	$1,267.46	$483.80	$253.49
57522	T	Conization of cervix	0195	24.37	$1,267.46	$483.80	$253.49
57530	T	Removal of cervix					
57531	C	Removal of cervix, radical					
57540	C	Removal of residual cervix					
57545	C	Remove cervix/repair pelvis					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
57550	T	Removal of residual cervix	0195	24.37	$1,267.46	$483.80	$253.49
57555	T	Remove cervix/repair vagina	0195	24.37	$1,267.46	$483.80	$253.49
57556	T	Remove cervix, repair bowel	0195	24.37	$1,267.46	$483.80	$253.49
57700	T	Revision of cervix	0194	18.88	$981.93	$397.84	$196.39
57720	T	Revision of cervix	0194	18.88	$981.93	$397.84	$196.39
57800	T	Dilation of cervical canal	0192	2.94	$152.91	$42.81	$30.58
57820	T	D & c of residual cervix	0196	16.32	$848.79	$338.23	$169.76
58100	T	Biopsy of uterus lining	0188	1.12	$58.25	$11.95	$11.65
58120	T	Dilation and curettage	0196	16.32	$848.79	$338.23	$169.76
58140	C	Removal of uterus lesion					
58145	T	Removal of uterus lesion	0195	24.37	$1,267.46	$483.80	$253.49
58150	C	Total hysterectomy					
58152	C	Total hysterectomy					
58180	C	Partial hysterectomy					
58200	C	Extensive hysterectomy					
58210	C	Extensive hysterectomy					
58240	C	Removal of pelvis contents					
58260	C	Vaginal hysterectomy					
58262	C	Vaginal hysterectomy					
58263	C	Vaginal hysterectomy					
58267	C	Hysterectomy & vagina repair					
58270	C	Hysterectomy & vagina repair					
58275	C	Hysterectomy/revise vagina					
58280	C	Hysterectomy/revise vagina					
58285	C	Extensive hysterectomy					
58300	E	Insert intrauterine device					
58301	T	Remove intrauterine device	0189	1.63	$84.77	$18.60	$16.95
58321	T	Artificial insemination	0197	1.19	$61.89	$24.76	$12.38
58322	T	Artificial insemination	0197	1.19	$61.89	$24.76	$12.38
58323	T	Sperm washing	0197	1.19	$61.89	$24.76	$12.38
58340	N	Catheter for hysterography					
58345	T	Reopen fallopian tube	0194	18.88	$981.93	$397.84	$196.39
58346	T	Insert heyman uteri capsule	0192	2.94	$152.91	$42.81	$30.58
58350	T	Reopen fallopian tube	0194	18.88	$981.93	$397.84	$196.39
58353	T	Endometr ablate, thermal	0193	14.57	$757.77	$171.13	$151.55
58400	C	Suspension of uterus					
58410	C	Suspension of uterus					
58520	C	Repair of ruptured uterus					
58540	C	Revision of uterus					
58550	T	Laparo-asst vag hysterectomy	0132	57.95	$3,013.92	$1,239.22	$602.78
58551	T	Laparoscopy, remove myoma	0131	42.44	$2,207.26	$1,001.89	$441.45
58555	T	Hysteroscopy, dx, sep proc	0194	18.88	$981.93	$397.84	$196.39
58558	T	Hysteroscopy, biopsy	0190	20.06	$1,043.30	$424.28	$208.66
58559	T	Hysteroscopy, lysis	0190	20.06	$1,043.30	$424.28	$208.66
58560	T	Hysteroscopy, resect septum	0190	20.06	$1,043.30	$424.28	$208.66
58561	T	Hysteroscopy, remove myoma	0190	20.06	$1,043.30	$424.28	$208.66
58562	T	Hysteroscopy, remove fb	0190	20.06	$1,043.30	$424.28	$208.66
58563	T	Hysteroscopy, ablation	0190	20.06	$1,043.30	$424.28	$208.66
58578	T	Laparo proc, uterus	0190	20.06	$1,043.30	$424.28	$208.66
58579	T	Hysteroscope procedure	0190	20.06	$1,043.30	$424.28	$208.66
58600	T	Division of fallopian tube	0194	18.88	$981.93	$397.84	$196.39
58605	C	Division of fallopian tube					
58611	C	Ligate oviduct(s) add-on					
58615	T	Occlude fallopian tube(s)	0194	18.88	$981.93	$397.84	$196.39
58660	T	Laparoscopy, lysis	0131	42.44	$2,207.26	$1,001.89	$441.45
58661	T	Laparoscopy, remove adnexa	0131	42.44	$2,207.26	$1,001.89	$441.45
58662	T	Laparoscopy, excise lesions	0131	42.44	$2,207.26	$1,001.89	$441.45
58670	T	Laparoscopy, tubal cautery	0131	42.44	$2,207.26	$1,001.89	$441.45
58671	T	Laparoscopy, tubal block	0131	42.44	$2,207.26	$1,001.89	$441.45
58672	T	Laparoscopy, fimbrioplasty	0131	42.44	$2,207.26	$1,001.89	$441.45
58673	T	Laparoscopy, salpingostomy	0131	42.44	$2,207.26	$1,001.89	$441.45
58679	T	Laparo proc, oviduct-ovary	0130	31.99	$1,663.77	$659.53	$332.75
58700	C	Removal of fallopian tube					
58720	C	Removal of ovary/tube(s)					
58740	C	Revise fallopian tube(s)					
58750	C	Repair oviduct					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
58752	C	Revise ovarian tube(s)					
58760	C	Remove tubal obstruction					
58770	C	Create new tubal opening					
58800	T	Drainage of ovarian cyst(s)	0195	24.37	$1,267.46	$483.80	$253.49
58805	C	Drainage of ovarian cyst(s)					
58820	T	Drain ovary abscess, open	0195	24.37	$1,267.46	$483.80	$253.49
58822	C	Drain ovary abscess, percut					
58823	T	Drain pelvic abscess, percut	0193	14.57	$757.77	$171.13	$151.55
58825	C	Transposition, ovary(s)					
58900	T	Biopsy of ovary(s)	0195	24.37	$1,267.46	$483.80	$253.49
58920	T	Partial removal of ovary(s)	0202	39.09	$2,033.03	$996.18	$406.61
58925	T	Removal of ovarian cyst(s)	0202	39.09	$2,033.03	$996.18	$406.61
58940	C	Removal of ovary(s)					
58943	C	Removal of ovary(s)					
58950	C	Resect ovarian malignancy					
58951	C	Resect ovarian malignancy					
58952	C	Resect ovarian malignancy					
58953	C	Tah, rad dissect for debulk					
58954	C	Tah rad debulk/lymph remove					
58960	C	Exploration of abdomen					
58970	T	Retrieval of oocyte	0194	18.88	$981.93	$397.84	$196.39
58974	T	Transfer of embryo	0197	1.19	$61.89	$24.76	$12.38
58976	T	Transfer of embryo	0197	1.19	$61.89	$24.76	$12.38
58999	T	Genital surgery procedure	0191	0.22	$11.44	$3.32	$2.29
59000	T	Amniocentesis, diagnostic	0198	1.33	$69.17	$32.92	$13.83
59001	T	Amniocentesis, therapeutic	0198	1.33	$69.17	$32.92	$13.83
59012	T	Fetal cord puncture,prenatal	0198	1.33	$69.17	$32.92	$13.83
59015	T	Chorion biopsy	0198	1.33	$69.17	$32.92	$13.83
59020	T	Fetal contract stress test	0198	1.33	$69.17	$32.92	$13.83
59025	T	Fetal non-stress test	0198	1.33	$69.17	$32.92	$13.83
59030	T	Fetal scalp blood sample	0198	1.33	$69.17	$32.92	$13.83
59050	E	Fetal monitor w/report					
59051	E	Fetal monitor/interpret only					
59100	C	Remove uterus lesion					
59120	C	Treat ectopic pregnancy					
59121	C	Treat ectopic pregnancy					
59130	C	Treat ectopic pregnancy					
59135	C	Treat ectopic pregnancy					
59136	C	Treat ectopic pregnancy					
59140	C	Treat ectopic pregnancy					
59150	T	Treat ectopic pregnancy	0131	42.44	$2,207.26	$1,001.89	$441.45
59151	T	Treat ectopic pregnancy	0131	42.44	$2,207.26	$1,001.89	$441.45
59160	T	D & c after delivery	0196	16.32	$848.79	$338.23	$169.76
59200	T	Insert cervical dilator	0189	1.63	$84.77	$18.60	$16.95
59300	T	Episiotomy or vaginal repair	0193	14.57	$757.77	$171.13	$151.55
59320	T	Revision of cervix	0194	18.88	$981.93	$397.84	$196.39
59325	C	Revision of cervix					
59350	C	Repair of uterus					
59400	E	Obstetrical care					
59409	T	Obstetrical care	0199	5.69	$295.93	$72.98	$59.19
59410	E	Obstetrical care					
59412	T	Antepartum manipulation	0199	5.69	$295.93	$72.98	$59.19
59414	T	Deliver placenta	0199	5.69	$295.93	$72.98	$59.19
59425	E	Antepartum care only					
59426	E	Antepartum care only					
59430	E	Care after delivery					
59510	E	Cesarean delivery					
59514	C	Cesarean delivery only					
59515	E	Cesarean delivery					
59525	C	Remove uterus after cesarean					
59610	E	Vbac delivery					
59612	T	Vbac delivery only	0199	5.69	$295.93	$72.98	$59.19
59614	E	Vbac care after delivery					
59618	E	Attempted vbac delivery					
59620	C	Attempted vbac delivery only					
59622	E	Attempted vbac after care					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
59812	T	Treatment of miscarriage	0201	15.84	$823.82	$329.65	$164.76
59820	T	Care of miscarriage	0201	15.84	$823.82	$329.65	$164.76
59821	T	Treatment of miscarriage	0201	15.84	$823.82	$329.65	$164.76
59830	C	Treat uterus infection					
59840	T	Abortion	0200	14.49	$753.61	$307.83	$150.72
59841	T	Abortion	0200	14.49	$753.61	$307.83	$150.72
59850	C	Abortion					
59851	C	Abortion					
59852	C	Abortion					
59855	C	Abortion					
59856	C	Abortion					
59857	C	Abortion					
59866	T	Abortion (mpr)	0198	1.33	$69.17	$32.92	$13.83
59870	T	Evacuate mole of uterus	0201	15.84	$823.82	$329.65	$164.76
59871	T	Remove cerclage suture	0194	18.88	$981.93	$397.84	$196.39
59898	T	Laparo proc, ob care/deliver	0130	31.99	$1,663.77	$659.53	$332.75
59899	T	Maternity care procedure	0198	1.33	$69.17	$32.92	$13.83
60000	T	Drain thyroid/tongue cyst	0252	6.27	$326.10	$114.24	$65.22
60001	T	Aspirate/inject thyriod cyst	0004	1.63	$84.77	$22.04	$16.95
60100	T	Biopsy of thyroid	0004	1.63	$84.77	$22.04	$16.95
60200	T	Remove thyroid lesion	0114	37.55	$1,952.94	$507.76	$390.59
60210	T	Partial thyroid excision	0114	37.55	$1,952.94	$507.76	$390.59
60212	T	Partial thyroid excision	0114	37.55	$1,952.94	$507.76	$390.59
60220	T	Partial removal of thyroid	0114	37.55	$1,952.94	$507.76	$390.59
60225	T	Partial removal of thyroid	0114	37.55	$1,952.94	$507.76	$390.59
60240	T	Removal of thyroid	0114	37.55	$1,952.94	$507.76	$390.59
60252	T	Removal of thyroid	0256	35.51	$1,846.84		$369.37
60254	C	Extensive thyroid surgery					
60260	T	Repeat thyroid surgery	0256	35.51	$1,846.84		$369.37
60270	C	Removal of thyroid					
60271	C	Removal of thyroid					
60280	T	Remove thyroid duct lesion	0114	37.55	$1,952.94	$507.76	$390.59
60281	T	Remove thyroid duct lesion	0114	37.55	$1,952.94	$507.76	$390.59
60500	T	Explore parathyroid glands	0256	35.51	$1,846.84		$369.37
60502	C	Re-explore parathyroids					
60505	C	Explore parathyroid glands					
60512	T	Autotransplant parathyroid	0022	18.10	$941.36	$367.13	$188.27
60520	C	Removal of thymus gland					
60521	C	Removal of thymus gland					
60522	C	Removal of thymus gland					
60540	C	Explore adrenal gland					
60545	C	Explore adrenal gland					
60600	C	Remove carotid body lesion					
60605	C	Remove carotid body lesion					
60650	C	Laparoscopy adrenalectomy					
60659	T	Laparo proc, endocrine	0130	31.99	$1,663.77	$659.53	$332.75
60699	T	Endocrine surgery procedure	0114	37.55	$1,952.94	$507.76	$390.59
61000	T	Remove cranial cavity fluid	0212	3.53	$183.59	$84.45	$36.72
61001	T	Remove cranial cavity fluid	0212	3.53	$183.59	$84.45	$36.72
61020	T	Remove brain cavity fluid	0212	3.53	$183.59	$84.45	$36.72
61026	T	Injection into brain canal	0212	3.53	$183.59	$84.45	$36.72
61050	T	Remove brain canal fluid	0212	3.53	$183.59	$84.45	$36.72
61055	T	Injection into brain canal	0212	3.53	$183.59	$84.45	$36.72
61070	T	Brain canal shunt procedure	0212	3.53	$183.59	$84.45	$36.72
61105	C	Twist drill hole					
61107	C	Drill skull for implantation					
61108	C	Drill skull for drainage					
61120	C	Burr hole for puncture					
61140	C	Pierce skull for biopsy					
61150	C	Pierce skull for drainage					
61151	C	Pierce skull for drainage					
61154	C	Pierce skull & remove clot					
61156	C	Pierce skull for drainage					
61210	C	Pierce skull, implant device					
61215	T	Insert brain-fluid device	0224	39.14	$2,035.63	$453.41	$407.13
61250	C	Pierce skull & explore					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
61253	C	Pierce skull & explore					
61304	C	Open skull for exploration					
61305	C	Open skull for exploration					
61312	C	Open skull for drainage					
61313	C	Open skull for drainage					
61314	C	Open skull for drainage					
61315	C	Open skull for drainage					
61320	C	Open skull for drainage					
61321	C	Open skull for drainage					
61330	T	Decompress eye socket	0256	35.51	$1,846.84		$369.37
61332	C	Explore/biopsy eye socket					
61333	C	Explore orbit/remove lesion					
61334	C	Explore orbit/remove object					
61340	C	Relieve cranial pressure					
61343	C	Incise skull (press relief)					
61345	C	Relieve cranial pressure					
61440	C	Incise skull for surgery					
61450	C	Incise skull for surgery					
61458	C	Incise skull for brain wound					
61460	C	Incise skull for surgery					
61470	C	Incise skull for surgery					
61480	C	Incise skull for surgery					
61490	C	Incise skull for surgery					
61500	C	Removal of skull lesion					
61501	C	Remove infected skull bone					
61510	C	Removal of brain lesion					
61512	C	Remove brain lining lesion					
61514	C	Removal of brain abscess					
61516	C	Removal of brain lesion					
61518	C	Removal of brain lesion					
61519	C	Remove brain lining lesion					
61520	C	Removal of brain lesion					
61521	C	Removal of brain lesion					
61522	C	Removal of brain abscess					
61524	C	Removal of brain lesion					
61526	C	Removal of brain lesion					
61530	C	Removal of brain lesion					
61531	C	Implant brain electrodes					
61533	C	Implant brain electrodes					
61534	C	Removal of brain lesion					
61535	C	Remove brain electrodes					
61536	C	Removal of brain lesion					
61538	C	Removal of brain tissue					
61539	C	Removal of brain tissue					
61541	C	Incision of brain tissue					
61542	C	Removal of brain tissue					
61543	C	Removal of brain tissue					
61544	C	Remove & treat brain lesion					
61545	C	Excision of brain tumor					
61546	C	Removal of pituitary gland					
61548	C	Removal of pituitary gland					
61550	C	Release of skull seams					
61552	C	Release of skull seams					
61556	C	Incise skull/sutures					
61557	C	Incise skull/sutures					
61558	C	Excision of skull/sutures					
61559	C	Excision of skull/sutures					
61563	C	Excision of skull tumor					
61564	C	Excision of skull tumor					
61570	C	Remove foreign body, brain					
61571	C	Incise skull for brain wound					
61575	C	Skull base/brainstem surgery					
61576	C	Skull base/brainstem surgery					
61580	C	Craniofacial approach, skull					
61581	C	Craniofacial approach, skull					
61582	C	Craniofacial approach, skull					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
61583	C	Craniofacial approach, skull					
61584	C	Orbitocranial approach/skull					
61585	C	Orbitocranial approach/skull					
61586	C	Resect nasopharynx, skull					
61590	C	Infratemporal approach/skull					
61591	C	Infratemporal approach/skull					
61592	C	Orbitocranial approach/skull					
61595	C	Transtemporal approach/skull					
61596	C	Transcochlear approach/skull					
61597	C	Transcondylar approach/skull					
61598	C	Transpetrosal approach/skull					
61600	C	Resect/excise cranial lesion					
61601	C	Resect/excise cranial lesion					
61605	C	Resect/excise cranial lesion					
61606	C	Resect/excise cranial lesion					
61607	C	Resect/excise cranial lesion					
61608	C	Resect/excise cranial lesion					
61609	C	Transect artery, sinus					
61610	C	Transect artery, sinus					
61611	C	Transect artery, sinus					
61612	C	Transect artery, sinus					
61613	C	Remove aneurysm, sinus					
61615	C	Resect/excise lesion, skull					
61616	C	Resect/excise lesion, skull					
61618	C	Repair dura					
61619	C	Repair dura					
61624	C	Occlusion/embolization cath					
61626	T	Occlusion/embolization cath	0081	22.69	$1,180.08		$236.02
61680	C	Intracranial vessel surgery					
61682	C	Intracranial vessel surgery					
61684	C	Intracranial vessel surgery					
61686	C	Intracranial vessel surgery					
61690	C	Intracranial vessel surgery					
61692	C	Intracranial vessel surgery					
61697	C	Brain aneurysm repr, complx					
61698	C	Brain aneurysm repr, complx					
61700	C	Brain aneurysm repr , simple					
61702	C	Inner skull vessel surgery					
61703	C	Clamp neck artery					
61705	C	Revise circulation to head					
61708	C	Revise circulation to head					
61710	C	Revise circulation to head					
61711	C	Fusion of skull arteries					
61720	C	Incise skull/brain surgery					
61735	C	Incise skull/brain surgery					
61750	C	Incise skull/brain biopsy					
61751	C	Brain biopsy w/ ct/mr guide					
61760	C	Implant brain electrodes					
61770	C	Incise skull for treatment					
61790	T	Treat trigeminal nerve	0220	16.66	$866.47		$173.29
61791	T	Treat trigeminal tract	0204	2.13	$110.78	$42.10	$22.16
61793	E	Focus radiation beam					
61795	S	Brain surgery using computer	0302	10.17	$528.93	$200.99	$105.79
61850	C	Implant neuroelectrodes					
61860	C	Implant neuroelectrodes					
61862	C	Implant neurostimul, subcort					
61870	C	Implant neuroelectrodes					
61875	C	Implant neuroelectrodes					
61880	T	Revise/remove neuroelectrode	0687	19.50	$1,014.18	$466.52	$202.84
61885	T	Implant neurostim one array	0222	140.56	$7,310.39		$1,462.08
61886	T	Implant neurostim arrays	0222	140.56	$7,310.39		$1,462.08
61888	T	Revise/remove neuroreceiver	0688	30.58	$1,590.44	$779.32	$318.09
62000	C	Treat skull fracture					
62005	C	Treat skull fracture					
62010	C	Treatment of head injury					
62100	C	Repair brain fluid leakage					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
62115	C	Reduction of skull defect					
62116	C	Reduction of skull defect					
62117	C	Reduction of skull defect					
62120	C	Repair skull cavity lesion					
62121	C	Incise skull repair					
62140	C	Repair of skull defect					
62141	C	Repair of skull defect					
62142	C	Remove skull plate/flap					
62143	C	Replace skull plate/flap					
62145	C	Repair of skull & brain					
62146	C	Repair of skull with graft					
62147	C	Repair of skull with graft					
62180	C	Establish brain cavity shunt					
62190	C	Establish brain cavity shunt					
62192	C	Establish brain cavity shunt					
62194	T	Replace/irrigate catheter	0121	2.17	$112.86	$45.14	$22.57
62200	C	Establish brain cavity shunt					
62201	C	Establish brain cavity shunt					
62220	C	Establish brain cavity shunt					
62223	C	Establish brain cavity shunt					
62225	T	Replace/irrigate catheter	0121	2.17	$112.86	$45.14	$22.57
62230	T	Replace/revise brain shunt	0224	39.14	$2,035.63	$453.41	$407.13
62252	S	Csf shunt reprogram	0691	3.14	$163.31	$89.02	$32.66
62256	C	Remove brain cavity shunt					
62258	C	Replace brain cavity shunt					
62263	T	Lysis epidural adhesions	0203	10.96	$570.02	$256.51	$114.00
62268	T	Drain spinal cord cyst	0212	3.53	$183.59	$84.45	$36.72
62269	T	Needle biopsy, spinal cord	0005	3.02	$157.07	$69.11	$31.41
62270	T	Spinal fluid tap, diagnostic	0206	4.89	$254.32	$75.55	$50.86
62272	T	Drain cerebro spinal fluid	0206	4.89	$254.32	$75.55	$50.86
62273	T	Treat epidural spine lesion	0206	4.89	$254.32	$75.55	$50.86
62280	T	Treat spinal cord lesion	0207	5.97	$310.49	$123.69	$62.10
62281	T	Treat spinal cord lesion	0207	5.97	$310.49	$123.69	$62.10
62282	T	Treat spinal canal lesion	0207	5.97	$310.49	$123.69	$62.10
62284	N	Injection for myelogram					
62287	T	Percutaneous diskectomy	0220	16.66	$866.47		$173.29
62290	N	Inject for spine disk x-ray					
62291	N	Inject for spine disk x-ray					
62292	T	Injection into disk lesion	0212	3.53	$183.59	$84.45	$36.72
62294	T	Injection into spinal artery	0212	3.53	$183.59	$84.45	$36.72
62310	T	Inject spine c/t	0206	4.89	$254.32	$75.55	$50.86
62311	T	Inject spine l/s (cd)	0206	4.89	$254.32	$75.55	$50.86
62318	T	Inject spine w/cath, c/t	0206	4.89	$254.32	$75.55	$50.86
62319	T	Inject spine w/cath l/s (cd)	0206	4.89	$254.32	$75.55	$50.86
62350	T	Implant spinal canal cath	0223	20.30	$1,055.78		$211.16
62351	T	Implant spinal canal cath	0208	39.95	$2,077.76		$415.55
62355	T	Remove spinal canal catheter	0203	10.96	$570.02	$256.51	$114.00
62360	T	Insert spine infusion device	0226	44.20	$2,298.80		$459.76
62361	T	Implant spine infusion pump	0227	128.03	$6,658.71		$1,331.74
62362	T	Implant spine infusion pump	0227	128.03	$6,658.71		$1,331.74
62365	T	Remove spine infusion device	0203	10.96	$570.02	$256.51	$114.00
62367	S	Analyze spine infusion pump	0691	3.14	$163.31	$89.02	$32.66
62368	S	Analyze spine infusion pump	0691	3.14	$163.31	$89.02	$32.66
63001	T	Removal of spinal lamina	0208	39.95	$2,077.76		$415.55
63003	T	Removal of spinal lamina	0208	39.95	$2,077.76		$415.55
63005	T	Removal of spinal lamina	0208	39.95	$2,077.76		$415.55
63011	T	Removal of spinal lamina	0208	39.95	$2,077.76		$415.55
63012	T	Removal of spinal lamina	0208	39.95	$2,077.76		$415.55
63015	T	Removal of spinal lamina	0208	39.95	$2,077.76		$415.55
63016	T	Removal of spinal lamina	0208	39.95	$2,077.76		$415.55
63017	T	Removal of spinal lamina	0208	39.95	$2,077.76		$415.55
63020	T	Neck spine disk surgery	0208	39.95	$2,077.76		$415.55
63030	T	Low back disk surgery	0208	39.95	$2,077.76		$415.55
63035	T	Spinal disk surgery add-on	0208	39.95	$2,077.76		$415.55
63040	T	Laminotomy, single cervical	0208	39.95	$2,077.76		$415.55
63042	T	Laminotomy, single lumbar	0208	39.95	$2,077.76		$415.55

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
63043	C	Laminotomy, addl cervical					
63044	C	Laminotomy, addl lumbar					
63045	T	Removal of spinal lamina	0208	39.95	$2,077.76		$415.55
63046	T	Removal of spinal lamina	0208	39.95	$2,077.76		$415.55
63047	T	Removal of spinal lamina	0208	39.95	$2,077.76		$415.55
63048	T	Remove spinal lamina add-on	0208	39.95	$2,077.76		$415.55
63055	T	Decompress spinal cord	0208	39.95	$2,077.76		$415.55
63056	T	Decompress spinal cord	0208	39.95	$2,077.76		$415.55
63057	T	Decompress spine cord add-on	0208	39.95	$2,077.76		$415.55
63064	T	Decompress spinal cord	0208	39.95	$2,077.76		$415.55
63066	T	Decompress spine cord add-on	0208	39.95	$2,077.76		$415.55
63075	C	Neck spine disk surgery					
63076	C	Neck spine disk surgery					
63077	C	Spine disk surgery, thorax					
63078	C	Spine disk surgery, thorax					
63081	C	Removal of vertebral body					
63082	C	Remove vertebral body add-on					
63085	C	Removal of vertebral body					
63086	C	Remove vertebral body add-on					
63087	C	Removal of vertebral body					
63088	C	Remove vertebral body add-on					
63090	C	Removal of vertebral body					
63091	C	Remove vertebral body add-on					
63170	C	Incise spinal cord tract(s)					
63172	C	Drainage of spinal cyst					
63173	C	Drainage of spinal cyst					
63180	C	Revise spinal cord ligaments					
63182	C	Revise spinal cord ligaments					
63185	C	Incise spinal column/nerves					
63190	C	Incise spinal column/nerves					
63191	C	Incise spinal column/nerves					
63194	C	Incise spinal column & cord					
63195	C	Incise spinal column & cord					
63196	C	Incise spinal column & cord					
63197	C	Incise spinal column & cord					
63198	C	Incise spinal column & cord					
63199	C	Incise spinal column & cord					
63200	C	Release of spinal cord					
63250	C	Revise spinal cord vessels					
63251	C	Revise spinal cord vessels					
63252	C	Revise spinal cord vessels					
63265	C	Excise intraspinal lesion					
63266	C	Excise intraspinal lesion					
63267	C	Excise intraspinal lesion					
63268	C	Excise intraspinal lesion					
63270	C	Excise intraspinal lesion					
63271	C	Excise intraspinal lesion					
63272	C	Excise intraspinal lesion					
63273	C	Excise intraspinal lesion					
63275	C	Biopsy/excise spinal tumor					
63276	C	Biopsy/excise spinal tumor					
63277	C	Biopsy/excise spinal tumor					
63278	C	Biopsy/excise spinal tumor					
63280	C	Biopsy/excise spinal tumor					
63281	C	Biopsy/excise spinal tumor					
63282	C	Biopsy/excise spinal tumor					
63283	C	Biopsy/excise spinal tumor					
63285	C	Biopsy/excise spinal tumor					
63286	C	Biopsy/excise spinal tumor					
63287	C	Biopsy/excise spinal tumor					
63290	C	Biopsy/excise spinal tumor					
63300	C	Removal of vertebral body					
63301	C	Removal of vertebral body					
63302	C	Removal of vertebral body					
63303	C	Removal of vertebral body					
63304	C	Removal of vertebral body					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
63305	C	Removal of vertebral body					
63306	C	Removal of vertebral body					
63307	C	Removal of vertebral body					
63308	C	Remove vertebral body add-on					
63600	T	Remove spinal cord lesion	0220	16.66	$866.47		$173.29
63610	T	Stimulation of spinal cord	0220	16.66	$866.47		$173.29
63615	T	Remove lesion of spinal cord	0220	16.66	$866.47		$173.29
63650	T	Implant neuroelectrodes	0225	44.47	$2,312.84		$462.57
63655	T	Implant neuroelectrodes	0225	44.47	$2,312.84		$462.57
63660	T	Revise/remove neuroelectrode	0687	19.50	$1,014.18	$466.52	$202.84
63685	T	Implant neuroreceiver	0222	140.56	$7,310.39		$1,462.08
63688	T	Revise/remove neuroreceiver	0688	30.58	$1,590.44	$779.32	$318.09
63700	C	Repair of spinal herniation					
63702	C	Repair of spinal herniation					
63704	C	Repair of spinal herniation					
63706	C	Repair of spinal herniation					
63707	C	Repair spinal fluid leakage					
63709	C	Repair spinal fluid leakage					
63710	C	Graft repair of spine defect					
63740	C	Install spinal shunt					
63741	T	Install spinal shunt	0228	55.05	$2,863.10	$696.46	$572.62
63744	T	Revision of spinal shunt	0228	55.05	$2,863.10	$696.46	$572.62
63746	T	Removal of spinal shunt	0109	7.68	$399.43	$131.49	$79.89
64400	T	Injection for nerve block	0204	2.13	$110.78	$42.10	$22.16
64402	T	Injection for nerve block	0204	2.13	$110.78	$42.10	$22.16
64405	T	Injection for nerve block	0204	2.13	$110.78	$42.10	$22.16
64408	T	Injection for nerve block	0204	2.13	$110.78	$42.10	$22.16
64410	T	Injection for nerve block	0204	2.13	$110.78	$42.10	$22.16
64412	T	Injection for nerve block	0204	2.13	$110.78	$42.10	$22.16
64413	T	Injection for nerve block	0204	2.13	$110.78	$42.10	$22.16
64415	T	Injection for nerve block	0204	2.13	$110.78	$42.10	$22.16
64417	T	Injection for nerve block	0204	2.13	$110.78	$42.10	$22.16
64418	T	Injection for nerve block	0204	2.13	$110.78	$42.10	$22.16
64420	T	Injection for nerve block	0207	5.97	$310.49	$123.69	$62.10
64421	T	Injection for nerve block	0207	5.97	$310.49	$123.69	$62.10
64425	T	Injection for nerve block	0204	2.13	$110.78	$42.10	$22.16
64430	T	Injection for nerve block	0204	2.13	$110.78	$42.10	$22.16
64435	T	Injection for nerve block	0204	2.13	$110.78	$42.10	$22.16
64445	T	Injection for nerve block	0204	2.13	$110.78	$42.10	$22.16
64450	T	Injection for nerve block	0204	2.13	$110.78	$42.10	$22.16
64470	T	Inj paravertebral c/t	0207	5.97	$310.49	$123.69	$62.10
64472	T	Inj paravertebral c/t add-on	0207	5.97	$310.49	$123.69	$62.10
64475	T	Inj paravertebral l/s	0207	5.97	$310.49	$123.69	$62.10
64476	T	Inj paravertebral l/s add-on	0207	5.97	$310.49	$123.69	$62.10
64479	T	Inj foramen epidural c/t	0207	5.97	$310.49	$123.69	$62.10
64480	T	Inj foramen epidural add-on	0207	5.97	$310.49	$123.69	$62.10
64483	T	Inj foramen epidural l/s	0207	5.97	$310.49	$123.69	$62.10
64484	T	Inj foramen epidural add-on	0207	5.97	$310.49	$123.69	$62.10
64505	T	Injection for nerve block	0204	2.13	$110.78	$42.10	$22.16
64508	T	Injection for nerve block	0204	2.13	$110.78	$42.10	$22.16
64510	T	Injection for nerve block	0207	5.97	$310.49	$123.69	$62.10
64520	T	Injection for nerve block	0207	5.97	$310.49	$123.69	$62.10
64530	T	Injection for nerve block	0207	5.97	$310.49	$123.69	$62.10
64550	A	Apply neurostimulator					
64553	T	Implant neuroelectrodes	0225	44.47	$2,312.84		$462.57
64555	T	Implant neuroelectrodes	0225	44.47	$2,312.84		$462.57
64560	T	Implant neuroelectrodes	0225	44.47	$2,312.84		$462.57
64561	T	Implant neuroelectrodes	0225	44.47	$2,312.84		$462.57
64565	T	Implant neuroelectrodes	0225	44.47	$2,312.84		$462.57
64573	T	Implant neuroelectrodes	0225	44.47	$2,312.84		$462.57
64575	T	Implant neuroelectrodes	0225	44.47	$2,312.84		$462.57
64577	T	Implant neuroelectrodes	0225	44.47	$2,312.84		$462.57
64580	T	Implant neuroelectrodes	0225	44.47	$2,312.84		$462.57
64581	T	Implant neuroelectrodes	0225	44.47	$2,312.84		$462.57
64585	T	Revise/remove neuroelectrode	0687	19.50	$1,014.18	$466.52	$202.84
64590	T	Implant neuroreceiver	0222	140.56	$7,310.39		$1,462.08

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
64595	T	Revise/remove neuroreceiver	0688	30.58	$1,590.44	$779.32	$318.09
64600	T	Injection treatment of nerve	0203	10.96	$570.02	$256.51	$114.00
64605	T	Injection treatment of nerve	0203	10.96	$570.02	$256.51	$114.00
64610	T	Injection treatment of nerve	0203	10.96	$570.02	$256.51	$114.00
64612	T	Destroy nerve, face muscle	0204	2.13	$110.78	$42.10	$22.16
64613	T	Destroy nerve, spine muscle	0204	2.13	$110.78	$42.10	$22.16
64614	T	Destroy nerve, extrem musc	0204	2.13	$110.78	$42.10	$22.16
64620	T	Injection treatment of nerve	0203	10.96	$570.02	$256.51	$114.00
64622	T	Destr paravertebrl nerve l/s	0203	10.96	$570.02	$256.51	$114.00
64623	T	Destr paravertebral n add-on	0203	10.96	$570.02	$256.51	$114.00
64626	T	Destr paravertebrl nerve c/t	0203	10.96	$570.02	$256.51	$114.00
64627	T	Destr paravertebral n add-on	0203	10.96	$570.02	$256.51	$114.00
64630	T	Injection treatment of nerve	0207	5.97	$310.49	$123.69	$62.10
64640	T	Injection treatment of nerve	0207	5.97	$310.49	$123.69	$62.10
64680	T	Injection treatment of nerve	0203	10.96	$570.02	$256.51	$114.00
64702	T	Revise finger/toe nerve	0220	16.66	$866.47		$173.29
64704	T	Revise hand/foot nerve	0220	16.66	$866.47		$173.29
64708	T	Revise arm/leg nerve	0220	16.66	$866.47		$173.29
64712	T	Revision of sciatic nerve	0220	16.66	$866.47		$173.29
64713	T	Revision of arm nerve(s)	0220	16.66	$866.47		$173.29
64714	T	Revise low back nerve(s)	0220	16.66	$866.47		$173.29
64716	T	Revision of cranial nerve	0220	16.66	$866.47		$173.29
64718	T	Revise ulnar nerve at elbow	0220	16.66	$866.47		$173.29
64719	T	Revise ulnar nerve at wrist	0220	16.66	$866.47		$173.29
64721	T	Carpal tunnel surgery	0220	16.66	$866.47		$173.29
64722	T	Relieve pressure on nerve(s)	0220	16.66	$866.47		$173.29
64726	T	Release foot/toe nerve	0220	16.66	$866.47		$173.29
64727	T	Internal nerve revision	0220	16.66	$866.47		$173.29
64732	T	Incision of brow nerve	0220	16.66	$866.47		$173.29
64734	T	Incision of cheek nerve	0220	16.66	$866.47		$173.29
64736	T	Incision of chin nerve	0220	16.66	$866.47		$173.29
64738	T	Incision of jaw nerve	0220	16.66	$866.47		$173.29
64740	T	Incision of tongue nerve	0220	16.66	$866.47		$173.29
64742	T	Incision of facial nerve	0220	16.66	$866.47		$173.29
64744	T	Incise nerve, back of head	0220	16.66	$866.47		$173.29
64746	T	Incise diaphragm nerve	0220	16.66	$866.47		$173.29
64752	C	Incision of vagus nerve					
64755	C	Incision of stomach nerves					
64760	C	Incision of vagus nerve					
64761	T	Incision of pelvis nerve	0220	16.66	$866.47		$173.29
64763	C	Incise hip/thigh nerve					
64766	C	Incise hip/thigh nerve					
64771	T	Sever cranial nerve	0220	16.66	$866.47		$173.29
64772	T	Incision of spinal nerve	0220	16.66	$866.47		$173.29
64774	T	Remove skin nerve lesion	0220	16.66	$866.47		$173.29
64776	T	Remove digit nerve lesion	0220	16.66	$866.47		$173.29
64778	T	Digit nerve surgery add-on	0220	16.66	$866.47		$173.29
64782	T	Remove limb nerve lesion	0220	16.66	$866.47		$173.29
64783	T	Limb nerve surgery add-on	0220	16.66	$866.47		$173.29
64784	T	Remove nerve lesion	0220	16.66	$866.47		$173.29
64786	T	Remove sciatic nerve lesion	0221	25.35	$1,318.43	$463.62	$263.69
64787	T	Implant nerve end	0220	16.66	$866.47		$173.29
64788	T	Remove skin nerve lesion	0220	16.66	$866.47		$173.29
64790	T	Removal of nerve lesion	0220	16.66	$866.47		$173.29
64792	T	Removal of nerve lesion	0221	25.35	$1,318.43	$463.62	$263.69
64795	T	Biopsy of nerve	0220	16.66	$866.47		$173.29
64802	T	Remove sympathetic nerves	0220	16.66	$866.47		$173.29
64804	C	Remove sympathetic nerves					
64809	C	Remove sympathetic nerves					
64818	C	Remove sympathetic nerves					
64820	T	Remove sympathetic nerves	0220	16.66	$866.47		$173.29
64821	T	Remove sympathetic nerves	0054	23.50	$1,222.21	$472.33	$244.44
64822	T	Remove sympathetic nerves	0054	23.50	$1,222.21	$472.33	$244.44
64823	T	Remove sympathetic nerves	0054	23.50	$1,222.21	$472.33	$244.44
64831	T	Repair of digit nerve	0221	25.35	$1,318.43	$463.62	$263.69
64832	T	Repair nerve add-on	0221	25.35	$1,318.43	$463.62	$263.69

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
64834	T	Repair of hand or foot nerve	0221	25.35	$1,318.43	$463.62	$263.69
64835	T	Repair of hand or foot nerve	0221	25.35	$1,318.43	$463.62	$263.69
64836	T	Repair of hand or foot nerve	0221	25.35	$1,318.43	$463.62	$263.69
64837	T	Repair nerve add-on	0221	25.35	$1,318.43	$463.62	$263.69
64840	T	Repair of leg nerve	0221	25.35	$1,318.43	$463.62	$263.69
64856	T	Repair/transpose nerve	0221	25.35	$1,318.43	$463.62	$263.69
64857	T	Repair arm/leg nerve	0221	25.35	$1,318.43	$463.62	$263.69
64858	T	Repair sciatic nerve	0221	25.35	$1,318.43	$463.62	$263.69
64859	T	Nerve surgery	0221	25.35	$1,318.43	$463.62	$263.69
64861	T	Repair of arm nerves	0221	25.35	$1,318.43	$463.62	$263.69
64862	T	Repair of low back nerves	0221	25.35	$1,318.43	$463.62	$263.69
64864	T	Repair of facial nerve	0221	25.35	$1,318.43	$463.62	$263.69
64865	T	Repair of facial nerve	0221	25.35	$1,318.43	$463.62	$263.69
64866	C	Fusion of facial/other nerve					
64868	C	Fusion of facial/other nerve					
64870	T	Fusion of facial/other nerve	0221	25.35	$1,318.43	$463.62	$263.69
64872	T	Subsequent repair of nerve	0221	25.35	$1,318.43	$463.62	$263.69
64874	T	Repair & revise nerve add-on	0221	25.35	$1,318.43	$463.62	$263.69
64876	T	Repair nerve/shorten bone	0221	25.35	$1,318.43	$463.62	$263.69
64885	T	Nerve graft, head or neck	0221	25.35	$1,318.43	$463.62	$263.69
64886	T	Nerve graft, head or neck	0221	25.35	$1,318.43	$463.62	$263.69
64890	T	Nerve graft, hand or foot	0221	25.35	$1,318.43	$463.62	$263.69
64891	T	Nerve graft, hand or foot	0221	25.35	$1,318.43	$463.62	$263.69
64892	T	Nerve graft, arm or leg	0221	25.35	$1,318.43	$463.62	$263.69
64893	T	Nerve graft, arm or leg	0221	25.35	$1,318.43	$463.62	$263.69
64895	T	Nerve graft, hand or foot	0221	25.35	$1,318.43	$463.62	$263.69
64896	T	Nerve graft, hand or foot	0221	25.35	$1,318.43	$463.62	$263.69
64897	T	Nerve graft, arm or leg	0221	25.35	$1,318.43	$463.62	$263.69
64898	T	Nerve graft, arm or leg	0221	25.35	$1,318.43	$463.62	$263.69
64901	T	Nerve graft add-on	0221	25.35	$1,318.43	$463.62	$263.69
64902	T	Nerve graft add-on	0221	25.35	$1,318.43	$463.62	$263.69
64905	T	Nerve pedicle transfer	0221	25.35	$1,318.43	$463.62	$263.69
64907	T	Nerve pedicle transfer	0221	25.35	$1,318.43	$463.62	$263.69
64999	T	Nervous system surgery	0204	2.13	$110.78	$42.10	$22.16
65091	T	Revise eye	0242	28.87	$1,501.50	$597.36	$300.30
65093	T	Revise eye with implant	0241	21.89	$1,138.48	$384.47	$227.70
65101	T	Removal of eye	0242	28.87	$1,501.50	$597.36	$300.30
65103	T	Remove eye/insert implant	0242	28.87	$1,501.50	$597.36	$300.30
65105	T	Remove eye/attach implant	0242	28.87	$1,501.50	$597.36	$300.30
65110	T	Removal of eye	0242	28.87	$1,501.50	$597.36	$300.30
65112	T	Remove eye/revise socket	0242	28.87	$1,501.50	$597.36	$300.30
65114	T	Remove eye/revise socket	0242	28.87	$1,501.50	$597.36	$300.30
65125	T	Revise ocular implant	0240	16.99	$883.63	$315.31	$176.73
65130	T	Insert ocular implant	0241	21.89	$1,138.48	$384.47	$227.70
65135	T	Insert ocular implant	0241	21.89	$1,138.48	$384.47	$227.70
65140	T	Attach ocular implant	0242	28.87	$1,501.50	$597.36	$300.30
65150	T	Revise ocular implant	0241	21.89	$1,138.48	$384.47	$227.70
65155	T	Reinsert ocular implant	0242	28.87	$1,501.50	$597.36	$300.30
65175	T	Removal of ocular implant	0240	16.99	$883.63	$315.31	$176.73
65205	S	Remove foreign body from eye	0698	1.01	$52.53	$20.49	$10.51
65210	S	Remove foreign body from eye	0231	2.24	$116.50	$52.43	$23.30
65220	S	Remove foreign body from eye	0231	2.24	$116.50	$52.43	$23.30
65222	S	Remove foreign body from eye	0231	2.24	$116.50	$52.43	$23.30
65235	T	Remove foreign body from eye	0233	13.43	$698.48	$266.33	$139.70
65260	T	Remove foreign body from eye	0236	20.62	$1,072.43		$214.49
65265	T	Remove foreign body from eye	0236	20.62	$1,072.43		$214.49
65270	T	Repair of eye wound	0240	16.99	$883.63	$315.31	$176.73
65272	T	Repair of eye wound	0233	13.43	$698.48	$266.33	$139.70
65273	C	Repair of eye wound					
65275	T	Repair of eye wound	0233	13.43	$698.48	$266.33	$139.70
65280	T	Repair of eye wound	0234	21.45	$1,115.59	$535.48	$223.12
65285	T	Repair of eye wound	0234	21.45	$1,115.59	$535.48	$223.12
65286	T	Repair of eye wound	0233	13.43	$698.48	$266.33	$139.70
65290	T	Repair of eye socket wound	0243	20.94	$1,089.07	$431.39	$217.81
65400	T	Removal of eye lesion	0233	13.43	$698.48	$266.33	$139.70
65410	T	Biopsy of cornea	0233	13.43	$698.48	$266.33	$139.70

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
65420	T	Removal of eye lesion	0233	13.43	$698.48	$266.33	$139.70
65426	T	Removal of eye lesion	0234	21.45	$1,115.59	$535.48	$223.12
65430	S	Corneal smear	0230	0.78	$40.57	$15.82	$8.11
65435	T	Curette/treat cornea	0239	6.91	$359.38	$115.94	$71.88
65436	T	Curette/treat cornea	0233	13.43	$698.48	$266.33	$139.70
65450	S	Treatment of corneal lesion	0231	2.24	$116.50	$52.43	$23.30
65600	T	Revision of cornea	0240	16.99	$883.63	$315.31	$176.73
65710	T	Corneal transplant	0244	38.14	$1,983.62	$851.42	$396.72
65730	T	Corneal transplant	0244	38.14	$1,983.62	$851.42	$396.72
65750	T	Corneal transplant	0244	38.14	$1,983.62	$851.42	$396.72
65755	T	Corneal transplant	0244	38.14	$1,983.62	$851.42	$396.72
65760	E	Revision of cornea					
65765	E	Revision of cornea					
65767	E	Corneal tissue transplant					
65770	T	Revise cornea with implant	0244	38.14	$1,983.62	$851.42	$396.72
65771	E	Radial keratotomy					
65772	T	Correction of astigmatism	0233	13.43	$698.48	$266.33	$139.70
65775	T	Correction of astigmatism	0233	13.43	$698.48	$266.33	$139.70
65800	T	Drainage of eye	0233	13.43	$698.48	$266.33	$139.70
65805	T	Drainage of eye	0233	13.43	$698.48	$266.33	$139.70
65810	T	Drainage of eye	0234	21.45	$1,115.59	$535.48	$223.12
65815	T	Drainage of eye	0234	21.45	$1,115.59	$535.48	$223.12
65820	T	Relieve inner eye pressure	0232	4.91	$255.36	$112.36	$51.07
65850	T	Incision of eye	0234	21.45	$1,115.59	$535.48	$223.12
65855	T	Laser surgery of eye	0247	4.97	$258.48	$108.56	$51.70
65860	T	Incise inner eye adhesions	0247	4.97	$258.48	$108.56	$51.70
65865	T	Incise inner eye adhesions	0233	13.43	$698.48	$266.33	$139.70
65870	T	Incise inner eye adhesions	0234	21.45	$1,115.59	$535.48	$223.12
65875	T	Incise inner eye adhesions	0234	21.45	$1,115.59	$535.48	$223.12
65880	T	Incise inner eye adhesions	0233	13.43	$698.48	$266.33	$139.70
65900	T	Remove eye lesion	0233	13.43	$698.48	$266.33	$139.70
65920	T	Remove implant of eye	0233	13.43	$698.48	$266.33	$139.70
65930	T	Remove blood clot from eye	0234	21.45	$1,115.59	$535.48	$223.12
66020	T	Injection treatment of eye	0233	13.43	$698.48	$266.33	$139.70
66030	T	Injection treatment of eye	0233	13.43	$698.48	$266.33	$139.70
66130	T	Remove eye lesion	0234	21.45	$1,115.59	$535.48	$223.12
66150	T	Glaucoma surgery	0233	13.43	$698.48	$266.33	$139.70
66155	T	Glaucoma surgery	0234	21.45	$1,115.59	$535.48	$223.12
66160	T	Glaucoma surgery	0234	21.45	$1,115.59	$535.48	$223.12
66165	T	Glaucoma surgery	0234	21.45	$1,115.59	$535.48	$223.12
66170	T	Glaucoma surgery	0234	21.45	$1,115.59	$535.48	$223.12
66172	T	Incision of eye	0673	27.47	$1,428.69	$685.77	$285.74
66180	T	Implant eye shunt	0673	27.47	$1,428.69	$685.77	$285.74
66185	T	Revise eye shunt	0673	27.47	$1,428.69	$685.77	$285.74
66220	T	Repair eye lesion	0236	20.62	$1,072.43		$214.49
66225	T	Repair/graft eye lesion	0673	27.47	$1,428.69	$685.77	$285.74
66250	T	Follow-up surgery of eye	0233	13.43	$698.48	$266.33	$139.70
66500	T	Incision of iris	0232	4.91	$255.36	$112.36	$51.07
66505	T	Incision of iris	0232	4.91	$255.36	$112.36	$51.07
66600	T	Remove iris and lesion	0233	13.43	$698.48	$266.33	$139.70
66605	T	Removal of iris	0234	21.45	$1,115.59	$535.48	$223.12
66625	T	Removal of iris	0233	13.43	$698.48	$266.33	$139.70
66630	T	Removal of iris	0233	13.43	$698.48	$266.33	$139.70
66635	T	Removal of iris	0234	21.45	$1,115.59	$535.48	$223.12
66680	T	Repair iris & ciliary body	0234	21.45	$1,115.59	$535.48	$223.12
66682	T	Repair iris & ciliary body	0234	21.45	$1,115.59	$535.48	$223.12
66700	T	Destruction, ciliary body	0233	13.43	$698.48	$266.33	$139.70
66710	T	Destruction, ciliary body	0233	13.43	$698.48	$266.33	$139.70
66720	T	Destruction, ciliary body	0233	13.43	$698.48	$266.33	$139.70
66740	T	Destruction, ciliary body	0233	13.43	$698.48	$266.33	$139.70
66761	T	Revision of iris	0247	4.97	$258.48	$108.56	$51.70
66762	T	Revision of iris	0247	4.97	$258.48	$108.56	$51.70
66770	T	Removal of inner eye lesion	0247	4.97	$258.48	$108.56	$51.70
66820	T	Incision, secondary cataract	0232	4.91	$255.36	$112.36	$51.07
66821	T	After cataract laser surgery	0247	4.97	$258.48	$108.56	$51.70
66825	T	Reposition intraocular lens	0234	21.45	$1,115.59	$535.48	$223.12

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
66830	T	Removal of lens lesion	0232	4.91	$255.36	$112.36	$51.07
66840	T	Removal of lens material	0245	14.39	$748.41	$251.21	$149.68
66850	T	Removal of lens material	0249	27.75	$1,443.25	$524.67	$288.65
66852	T	Removal of lens material	0249	27.75	$1,443.25	$524.67	$288.65
66920	T	Extraction of lens	0249	27.75	$1,443.25	$524.67	$288.65
66930	T	Extraction of lens	0249	27.75	$1,443.25	$524.67	$288.65
66940	T	Extraction of lens	0245	14.39	$748.41	$251.21	$149.68
66982	T	Cataract surgery, complex	0246	23.59	$1,226.89	$495.96	$245.38
66983	T	Cataract surg w/iol, 1 stage	0246	23.59	$1,226.89	$495.96	$245.38
66984	T	Cataract surg w/iol, i stage	0246	23.59	$1,226.89	$495.96	$245.38
66985	T	Insert lens prosthesis	0246	23.59	$1,226.89	$495.96	$245.38
66986	T	Exchange lens prosthesis	0246	23.59	$1,226.89	$495.96	$245.38
66999	T	Eye surgery procedure	0232	4.91	$255.36	$112.36	$51.07
67005	T	Partial removal of eye fluid	0237	35.09	$1,825.00	$818.54	$365.00
67010	T	Partial removal of eye fluid	0237	35.09	$1,825.00	$818.54	$365.00
67015	T	Release of eye fluid	0237	35.09	$1,825.00	$818.54	$365.00
67025	T	Replace eye fluid	0236	20.62	$1,072.43		$214.49
67027	T	Implant eye drug system	0237	35.09	$1,825.00	$818.54	$365.00
67028	T	Injection eye drug	0235	5.62	$292.29	$81.84	$58.46
67030	T	Incise inner eye strands	0236	20.62	$1,072.43		$214.49
67031	T	Laser surgery, eye strands	0247	4.97	$258.48	$108.56	$51.70
67036	T	Removal of inner eye fluid	0237	35.09	$1,825.00	$818.54	$365.00
67038	T	Strip retinal membrane	0237	35.09	$1,825.00	$818.54	$365.00
67039	T	Laser treatment of retina	0237	35.09	$1,825.00	$818.54	$365.00
67040	T	Laser treatment of retina	0672	39.95	$2,077.76	$1,038.88	$415.55
67101	T	Repair detached retina	0235	5.62	$292.29	$81.84	$58.46
67105	T	Repair detached retina	0248	4.44	$230.92	$96.99	$46.18
67107	T	Repair detached retina	0672	39.95	$2,077.76	$1,038.88	$415.55
67108	T	Repair detached retina	0672	39.95	$2,077.76	$1,038.88	$415.55
67110	T	Repair detached retina	0235	5.62	$292.29	$81.84	$58.46
67112	T	Rerepair detached retina	0672	39.95	$2,077.76	$1,038.88	$415.55
67115	T	Release encircling material	0236	20.62	$1,072.43		$214.49
67120	T	Remove eye implant material	0236	20.62	$1,072.43		$214.49
67121	T	Remove eye implant material	0237	35.09	$1,825.00	$818.54	$365.00
67141	T	Treatment of retina	0235	5.62	$292.29	$81.84	$58.46
67145	T	Treatment of retina	0248	4.44	$230.92	$96.99	$46.18
67208	T	Treatment of retinal lesion	0235	5.62	$292.29	$81.84	$58.46
67210	T	Treatment of retinal lesion	0248	4.44	$230.92	$96.99	$46.18
67218	T	Treatment of retinal lesion	0236	20.62	$1,072.43		$214.49
67220	T	Treatment of choroid lesion	0235	5.62	$292.29	$81.84	$58.46
67221	T	Ocular photodynamic ther	0235	5.62	$292.29	$81.84	$58.46
67225	T	Eye photodynamic ther add-on	0235	5.62	$292.29	$81.84	$58.46
67227	T	Treatment of retinal lesion	0235	5.62	$292.29	$81.84	$58.46
67228	T	Treatment of retinal lesion	0248	4.44	$230.92	$96.99	$46.18
67250	T	Reinforce eye wall	0240	16.99	$883.63	$315.31	$176.73
67255	T	Reinforce/graft eye wall	0237	35.09	$1,825.00	$818.54	$365.00
67299	T	Eye surgery procedure	0235	5.62	$292.29	$81.84	$58.46
67311	T	Revise eye muscle	0243	20.94	$1,089.07	$431.39	$217.81
67312	T	Revise two eye muscles	0243	20.94	$1,089.07	$431.39	$217.81
67314	T	Revise eye muscle	0243	20.94	$1,089.07	$431.39	$217.81
67316	T	Revise two eye muscles	0243	20.94	$1,089.07	$431.39	$217.81
67318	T	Revise eye muscle(s)	0243	20.94	$1,089.07	$431.39	$217.81
67320	T	Revise eye muscle(s) add-on	0243	20.94	$1,089.07	$431.39	$217.81
67331	T	Eye surgery follow-up add-on	0243	20.94	$1,089.07	$431.39	$217.81
67332	T	Rerevise eye muscles add-on	0243	20.94	$1,089.07	$431.39	$217.81
67334	T	Revise eye muscle w/suture	0243	20.94	$1,089.07	$431.39	$217.81
67335	T	Eye suture during surgery	0243	20.94	$1,089.07	$431.39	$217.81
67340	T	Revise eye muscle add-on	0243	20.94	$1,089.07	$431.39	$217.81
67343	T	Release eye tissue	0243	20.94	$1,089.07	$431.39	$217.81
67345	T	Destroy nerve of eye muscle	0238	3.04	$158.11	$58.96	$31.62
67350	T	Biopsy eye muscle	0699	2.37	$123.26	$55.47	$24.65
67399	T	Eye muscle surgery procedure	0243	20.94	$1,089.07	$431.39	$217.81
67400	T	Explore/biopsy eye socket	0241	21.89	$1,138.48	$384.47	$227.70
67405	T	Explore/drain eye socket	0241	21.89	$1,138.48	$384.47	$227.70
67412	T	Explore/treat eye socket	0241	21.89	$1,138.48	$384.47	$227.70
67413	T	Explore/treat eye socket	0241	21.89	$1,138.48	$384.47	$227.70

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
67414	T	Explr/decompress eye socket	0242	28.87	$1,501.50	$597.36	$300.30
67415	T	Aspiration, orbital contents	0239	6.91	$359.38	$115.94	$71.88
67420	T	Explore/treat eye socket	0242	28.87	$1,501.50	$597.36	$300.30
67430	T	Explore/treat eye socket	0242	28.87	$1,501.50	$597.36	$300.30
67440	T	Explore/drain eye socket	0242	28.87	$1,501.50	$597.36	$300.30
67445	T	Explr/decompress eye socket	0242	28.87	$1,501.50	$597.36	$300.30
67450	T	Explore/biopsy eye socket	0242	28.87	$1,501.50	$597.36	$300.30
67500	S	Inject/treat eye socket	0231	2.24	$116.50	$52.43	$23.30
67505	T	Inject/treat eye socket	0238	3.04	$158.11	$58.96	$31.62
67515	T	Inject/treat eye socket	0239	6.91	$359.38	$115.94	$71.88
67550	T	Insert eye socket implant	0242	28.87	$1,501.50	$597.36	$300.30
67560	T	Revise eye socket implant	0241	21.89	$1,138.48	$384.47	$227.70
67570	T	Decompress optic nerve	0242	28.87	$1,501.50	$597.36	$300.30
67599	T	Orbit surgery procedure	0239	6.91	$359.38	$115.94	$71.88
67700	T	Drainage of eyelid abscess	0238	3.04	$158.11	$58.96	$31.62
67710	T	Incision of eyelid	0239	6.91	$359.38	$115.94	$71.88
67715	T	Incision of eyelid fold	0240	16.99	$883.63	$315.31	$176.73
67800	T	Remove eyelid lesion	0238	3.04	$158.11	$58.96	$31.62
67801	T	Remove eyelid lesions	0239	6.91	$359.38	$115.94	$71.88
67805	T	Remove eyelid lesions	0238	3.04	$158.11	$58.96	$31.62
67808	T	Remove eyelid lesion(s)	0240	16.99	$883.63	$315.31	$176.73
67810	T	Biopsy of eyelid	0238	3.04	$158.11	$58.96	$31.62
67820	S	Revise eyelashes	0230	0.78	$40.57	$15.82	$8.11
67825	T	Revise eyelashes	0238	3.04	$158.11	$58.96	$31.62
67830	T	Revise eyelashes	0239	6.91	$359.38	$115.94	$71.88
67835	T	Revise eyelashes	0240	16.99	$883.63	$315.31	$176.73
67840	T	Remove eyelid lesion	0239	6.91	$359.38	$115.94	$71.88
67850	T	Treat eyelid lesion	0239	6.91	$359.38	$115.94	$71.88
67875	T	Closure of eyelid by suture	0239	6.91	$359.38	$115.94	$71.88
67880	T	Revision of eyelid	0233	13.43	$698.48	$266.33	$139.70
67882	T	Revision of eyelid	0240	16.99	$883.63	$315.31	$176.73
67900	T	Repair brow defect	0240	16.99	$883.63	$315.31	$176.73
67901	T	Repair eyelid defect	0240	16.99	$883.63	$315.31	$176.73
67902	T	Repair eyelid defect	0240	16.99	$883.63	$315.31	$176.73
67903	T	Repair eyelid defect	0240	16.99	$883.63	$315.31	$176.73
67904	T	Repair eyelid defect	0240	16.99	$883.63	$315.31	$176.73
67906	T	Repair eyelid defect	0240	16.99	$883.63	$315.31	$176.73
67908	T	Repair eyelid defect	0240	16.99	$883.63	$315.31	$176.73
67909	T	Revise eyelid defect	0240	16.99	$883.63	$315.31	$176.73
67911	T	Revise eyelid defect	0240	16.99	$883.63	$315.31	$176.73
67914	T	Repair eyelid defect	0240	16.99	$883.63	$315.31	$176.73
67915	T	Repair eyelid defect	0239	6.91	$359.38	$115.94	$71.88
67916	T	Repair eyelid defect	0240	16.99	$883.63	$315.31	$176.73
67917	T	Repair eyelid defect	0240	16.99	$883.63	$315.31	$176.73
67921	T	Repair eyelid defect	0240	16.99	$883.63	$315.31	$176.73
67922	T	Repair eyelid defect	0239	6.91	$359.38	$115.94	$71.88
67923	T	Repair eyelid defect	0240	16.99	$883.63	$315.31	$176.73
67924	T	Repair eyelid defect	0240	16.99	$883.63	$315.31	$176.73
67930	T	Repair eyelid wound	0240	16.99	$883.63	$315.31	$176.73
67935	T	Repair eyelid wound	0240	16.99	$883.63	$315.31	$176.73
67938	S	Remove eyelid foreign body	0698	1.01	$52.53	$20.49	$10.51
67950	T	Revision of eyelid	0240	16.99	$883.63	$315.31	$176.73
67961	T	Revision of eyelid	0240	16.99	$883.63	$315.31	$176.73
67966	T	Revision of eyelid	0240	16.99	$883.63	$315.31	$176.73
67971	T	Reconstruction of eyelid	0241	21.89	$1,138.48	$384.47	$227.70
67973	T	Reconstruction of eyelid	0241	21.89	$1,138.48	$384.47	$227.70
67974	T	Reconstruction of eyelid	0241	21.89	$1,138.48	$384.47	$227.70
67975	T	Reconstruction of eyelid	0240	16.99	$883.63	$315.31	$176.73
67999	T	Revision of eyelid	0240	16.99	$883.63	$315.31	$176.73
68020	T	Incise/drain eyelid lining	0240	16.99	$883.63	$315.31	$176.73
68040	S	Treatment of eyelid lesions	0698	1.01	$52.53	$20.49	$10.51
68100	T	Biopsy of eyelid lining	0232	4.91	$255.36	$112.36	$51.07
68110	T	Remove eyelid lining lesion	0699	2.37	$123.26	$55.47	$24.65
68115	T	Remove eyelid lining lesion	0239	6.91	$359.38	$115.94	$71.88
68130	T	Remove eyelid lining lesion	0233	13.43	$698.48	$266.33	$139.70
68135	T	Remove eyelid lining lesion	0239	6.91	$359.38	$115.94	$71.88

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
68200	S	Treat eyelid by injection	0698	1.01	$52.53	$20.49	$10.51
68320	T	Revise/graft eyelid lining	0240	16.99	$883.63	$315.31	$176.73
68325	T	Revise/graft eyelid lining	0242	28.87	$1,501.50	$597.36	$300.30
68326	T	Revise/graft eyelid lining	0241	21.89	$1,138.48	$384.47	$227.70
68328	T	Revise/graft eyelid lining	0241	21.89	$1,138.48	$384.47	$227.70
68330	T	Revise eyelid lining	0233	13.43	$698.48	$266.33	$139.70
68335	T	Revise/graft eyelid lining	0241	21.89	$1,138.48	$384.47	$227.70
68340	T	Separate eyelid adhesions	0240	16.99	$883.63	$315.31	$176.73
68360	T	Revise eyelid lining	0234	21.45	$1,115.59	$535.48	$223.12
68362	T	Revise eyelid lining	0234	21.45	$1,115.59	$535.48	$223.12
68399	T	Eyelid lining surgery	0239	6.91	$359.38	$115.94	$71.88
68400	T	Incise/drain tear gland	0238	3.04	$158.11	$58.96	$31.62
68420	T	Incise/drain tear sac	0240	16.99	$883.63	$315.31	$176.73
68440	T	Incise tear duct opening	0238	3.04	$158.11	$58.96	$31.62
68500	T	Removal of tear gland	0241	21.89	$1,138.48	$384.47	$227.70
68505	T	Partial removal, tear gland	0241	21.89	$1,138.48	$384.47	$227.70
68510	T	Biopsy of tear gland	0240	16.99	$883.63	$315.31	$176.73
68520	T	Removal of tear sac	0241	21.89	$1,138.48	$384.47	$227.70
68525	T	Biopsy of tear sac	0240	16.99	$883.63	$315.31	$176.73
68530	T	Clearance of tear duct	0240	16.99	$883.63	$315.31	$176.73
68540	T	Remove tear gland lesion	0241	21.89	$1,138.48	$384.47	$227.70
68550	T	Remove tear gland lesion	0242	28.87	$1,501.50	$597.36	$300.30
68700	T	Repair tear ducts	0241	21.89	$1,138.48	$384.47	$227.70
68705	T	Revise tear duct opening	0238	3.04	$158.11	$58.96	$31.62
68720	T	Create tear sac drain	0242	28.87	$1,501.50	$597.36	$300.30
68745	T	Create tear duct drain	0241	21.89	$1,138.48	$384.47	$227.70
68750	T	Create tear duct drain	0242	28.87	$1,501.50	$597.36	$300.30
68760	S	Close tear duct opening	0698	1.01	$52.53	$20.49	$10.51
68761	S	Close tear duct opening	0231	2.24	$116.50	$52.43	$23.30
68770	T	Close tear system fistula	0240	16.99	$883.63	$315.31	$176.73
68801	S	Dilate tear duct opening	0231	2.24	$116.50	$52.43	$23.30
68810	T	Probe nasolacrimal duct	0699	2.37	$123.26	$55.47	$24.65
68811	T	Probe nasolacrimal duct	0240	16.99	$883.63	$315.31	$176.73
68815	T	Probe nasolacrimal duct	0240	16.99	$883.63	$315.31	$176.73
68840	T	Explore/irrigate tear ducts	0699	2.37	$123.26	$55.47	$24.65
68850	N	Injection for tear sac x-ray					
68899	T	Tear duct system surgery	0699	2.37	$123.26	$55.47	$24.65
69000	T	Drain external ear lesion	0006	1.89	$98.30	$25.56	$19.66
69005	T	Drain external ear lesion	0007	9.44	$490.96	$103.10	$98.19
69020	T	Drain outer ear canal lesion	0006	1.89	$98.30	$25.56	$19.66
69090	E	Pierce earlobes					
69100	T	Biopsy of external ear	0019	3.94	$204.92	$75.82	$40.98
69105	T	Biopsy of external ear canal	0253	14.79	$769.21	$284.61	$153.84
69110	T	Remove external ear, partial	0021	14.58	$758.29	$227.49	$151.66
69120	T	Removal of external ear	0254	21.89	$1,138.48	$352.93	$227.70
69140	T	Remove ear canal lesion(s)	0254	21.89	$1,138.48	$352.93	$227.70
69145	T	Remove ear canal lesion(s)	0021	14.58	$758.29	$227.49	$151.66
69150	T	Extensive ear canal surgery	0252	6.27	$326.10	$114.24	$65.22
69155	C	Extensive ear/neck surgery					
69200	X	Clear outer ear canal	0340	0.66	$34.33		$6.87
69205	T	Clear outer ear canal	0022	18.10	$941.36	$367.13	$188.27
69210	X	Remove impacted ear wax	0340	0.66	$34.33		$6.87
69220	T	Clean out mastoid cavity	0012	0.76	$39.53	$10.67	$7.91
69222	T	Clean out mastoid cavity	0253	14.79	$769.21	$284.61	$153.84
69300	T	Revise external ear	0254	21.89	$1,138.48	$352.93	$227.70
69310	T	Rebuild outer ear canal	0256	35.51	$1,846.84		$369.37
69320	T	Rebuild outer ear canal	0256	35.51	$1,846.84		$369.37
69399	T	Outer ear surgery procedure	0251	1.92	$99.86		$19.97
69400	T	Inflate middle ear canal	0251	1.92	$99.86		$19.97
69401	T	Inflate middle ear canal	0251	1.92	$99.86		$19.97
69405	T	Catheterize middle ear canal	0252	6.27	$326.10	$114.24	$65.22
69410	T	Inset middle ear (baffle)	0252	6.27	$326.10	$114.24	$65.22
69420	T	Incision of eardrum	0251	1.92	$99.86		$19.97
69421	T	Incision of eardrum	0253	14.79	$769.21	$284.61	$153.84
69424	T	Remove ventilating tube	0252	6.27	$326.10	$114.24	$65.22
69433	T	Create eardrum opening	0252	6.27	$326.10	$114.24	$65.22

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
69436	T	Create eardrum opening	0253	14.79	$769.21	$284.61	$153.84
69440	T	Exploration of middle ear	0254	21.89	$1,138.48	$352.93	$227.70
69450	T	Eardrum revision	0256	35.51	$1,846.84		$369.37
69501	T	Mastoidectomy	0256	35.51	$1,846.84		$369.37
69502	T	Mastoidectomy	0254	21.89	$1,138.48	$352.93	$227.70
69505	T	Remove mastoid structures	0256	35.51	$1,846.84		$369.37
69511	T	Extensive mastoid surgery	0256	35.51	$1,846.84		$369.37
69530	T	Extensive mastoid surgery	0256	35.51	$1,846.84		$369.37
69535	C	Remove part of temporal bone					
69540	T	Remove ear lesion	0253	14.79	$769.21	$284.61	$153.84
69550	T	Remove ear lesion	0256	35.51	$1,846.84		$369.37
69552	T	Remove ear lesion	0256	35.51	$1,846.84		$369.37
69554	C	Remove ear lesion					
69601	T	Mastoid surgery revision	0256	35.51	$1,846.84		$369.37
69602	T	Mastoid surgery revision	0256	35.51	$1,846.84		$369.37
69603	T	Mastoid surgery revision	0256	35.51	$1,846.84		$369.37
69604	T	Mastoid surgery revision	0256	35.51	$1,846.84		$369.37
69605	T	Mastoid surgery revision	0256	35.51	$1,846.84		$369.37
69610	T	Repair of eardrum	0254	21.89	$1,138.48	$352.93	$227.70
69620	T	Repair of eardrum	0254	21.89	$1,138.48	$352.93	$227.70
69631	T	Repair eardrum structures	0256	35.51	$1,846.84		$369.37
69632	T	Rebuild eardrum structures	0256	35.51	$1,846.84		$369.37
69633	T	Rebuild eardrum structures	0256	35.51	$1,846.84		$369.37
69635	T	Repair eardrum structures	0256	35.51	$1,846.84		$369.37
69636	T	Rebuild eardrum structures	0256	35.51	$1,846.84		$369.37
69637	T	Rebuild eardrum structures	0256	35.51	$1,846.84		$369.37
69641	T	Revise middle ear & mastoid	0256	35.51	$1,846.84		$369.37
69642	T	Revise middle ear & mastoid	0256	35.51	$1,846.84		$369.37
69643	T	Revise middle ear & mastoid	0256	35.51	$1,846.84		$369.37
69644	T	Revise middle ear & mastoid	0256	35.51	$1,846.84		$369.37
69645	T	Revise middle ear & mastoid	0256	35.51	$1,846.84		$369.37
69646	T	Revise middle ear & mastoid	0256	35.51	$1,846.84		$369.37
69650	T	Release middle ear bone	0254	21.89	$1,138.48	$352.93	$227.70
69660	T	Revise middle ear bone	0256	35.51	$1,846.84		$369.37
69661	T	Revise middle ear bone	0256	35.51	$1,846.84		$369.37
69662	T	Revise middle ear bone	0256	35.51	$1,846.84		$369.37
69666	T	Repair middle ear structures	0256	35.51	$1,846.84		$369.37
69667	T	Repair middle ear structures	0256	35.51	$1,846.84		$369.37
69670	T	Remove mastoid air cells	0256	35.51	$1,846.84		$369.37
69676	T	Remove middle ear nerve	0256	35.51	$1,846.84		$369.37
69700	T	Close mastoid fistula	0256	35.51	$1,846.84		$369.37
69710	E	Implant/replace hearing aid					
69711	T	Remove/repair hearing aid	0256	35.51	$1,846.84		$369.37
69714	T	Implant temple bone w/stimul	0256	35.51	$1,846.84		$369.37
69715	T	Temple bne implnt w/stimulat	0256	35.51	$1,846.84		$369.37
69717	T	Temple bone implant revision	0256	35.51	$1,846.84		$369.37
69718	T	Revise temple bone implant	0256	35.51	$1,846.84		$369.37
69720	T	Release facial nerve	0256	35.51	$1,846.84		$369.37
69725	T	Release facial nerve	0256	35.51	$1,846.84		$369.37
69740	T	Repair facial nerve	0256	35.51	$1,846.84		$369.37
69745	T	Repair facial nerve	0256	35.51	$1,846.84		$369.37
69799	T	Middle ear surgery procedure	0253	14.79	$769.21	$284.61	$153.84
69801	T	Incise inner ear	0256	35.51	$1,846.84		$369.37
69802	T	Incise inner ear	0256	35.51	$1,846.84		$369.37
69805	T	Explore inner ear	0256	35.51	$1,846.84		$369.37
69806	T	Explore inner ear	0256	35.51	$1,846.84		$369.37
69820	T	Establish inner ear window	0256	35.51	$1,846.84		$369.37
69840	T	Revise inner ear window	0256	35.51	$1,846.84		$369.37
69905	T	Remove inner ear	0256	35.51	$1,846.84		$369.37
69910	T	Remove inner ear & mastoid	0256	35.51	$1,846.84		$369.37
69915	T	Incise inner ear nerve	0256	35.51	$1,846.84		$369.37
69930	T	Implant cochlear device	0259	291.05	$15,137.22	$7,417.24	$3,027.44
69949	T	Inner ear surgery procedure	0253	14.79	$769.21	$284.61	$153.84
69950	C	Incise inner ear nerve					
69955	T	Release facial nerve	0256	35.51	$1,846.84		$369.37
69960	T	Release inner ear canal	0256	35.51	$1,846.84		$369.37

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
69970	C	Remove inner ear lesion					
69979	T	Temporal bone surgery	0251	1.92	$99.86		$19.97
69990	N	Microsurgery add-on					
70010	S	Contrast x-ray of brain	0274	3.21	$166.95	$80.14	$33.39
70015	S	Contrast x-ray of brain	0274	3.21	$166.95	$80.14	$33.39
70030	X	X-ray eye for foreign body	0260	0.81	$42.13	$23.17	$8.43
70100	X	X-ray exam of jaw	0260	0.81	$42.13	$23.17	$8.43
70110	X	X-ray exam of jaw	0260	0.81	$42.13	$23.17	$8.43
70120	X	X-ray exam of mastoids	0260	0.81	$42.13	$23.17	$8.43
70130	X	X-ray exam of mastoids	0260	0.81	$42.13	$23.17	$8.43
70134	X	X-ray exam of middle ear	0261	1.37	$71.25	$34.15	$14.25
70140	X	X-ray exam of facial bones	0260	0.81	$42.13	$23.17	$8.43
70150	X	X-ray exam of facial bones	0260	0.81	$42.13	$23.17	$8.43
70160	X	X-ray exam of nasal bones	0260	0.81	$42.13	$23.17	$8.43
70170	X	X-ray exam of tear duct	0263	1.99	$103.50	$45.54	$20.70
70190	X	X-ray exam of eye sockets	0260	0.81	$42.13	$23.17	$8.43
70200	X	X-ray exam of eye sockets	0260	0.81	$42.13	$23.17	$8.43
70210	X	X-ray exam of sinuses	0260	0.81	$42.13	$23.17	$8.43
70220	X	X-ray exam of sinuses	0260	0.81	$42.13	$23.17	$8.43
70240	X	X-ray exam, pituitary saddle	0260	0.81	$42.13	$23.17	$8.43
70250	X	X-ray exam of skull	0260	0.81	$42.13	$23.17	$8.43
70260	X	X-ray exam of skull	0261	1.37	$71.25	$34.15	$14.25
70300	X	X-ray exam of teeth	0262	0.60	$31.21	$10.30	$6.24
70310	X	X-ray exam of teeth	0262	0.60	$31.21	$10.30	$6.24
70320	X	Full mouth x-ray of teeth	0262	0.60	$31.21	$10.30	$6.24
70328	X	X-ray exam of jaw joint	0260	0.81	$42.13	$23.17	$8.43
70330	X	X-ray exam of jaw joints	0260	0.81	$42.13	$23.17	$8.43
70332	S	X-ray exam of jaw joint	0275	3.09	$160.71	$69.09	$32.14
70336	S	Magnetic image, jaw joint	0335	6.46	$335.96	$151.46	$67.20
70350	X	X-ray head for orthodontia	0260	0.81	$42.13	$23.17	$8.43
70355	X	Panoramic x-ray of jaws	0260	0.81	$42.13	$23.17	$8.43
70360	X	X-ray exam of neck	0260	0.81	$42.13	$23.17	$8.43
70370	X	Throat x-ray & fluoroscopy	0272	1.38	$71.77	$38.64	$14.35
70371	X	Speech evaluation, complex	0272	1.38	$71.77	$38.64	$14.35
70373	X	Contrast x-ray of larynx	0263	1.99	$103.50	$45.54	$20.70
70380	X	X-ray exam of salivary gland	0260	0.81	$42.13	$23.17	$8.43
70390	X	X-ray exam of salivary duct	0264	2.75	$143.02	$77.23	$28.60
70450	S	Ct head/brain w/o dye	0332	3.62	$188.27	$91.27	$37.65
70460	S	Ct head/brain w/dye	0283	4.75	$247.04		$49.41
70470	S	Ct head/brain w/o&w dye	0333	5.69	$295.93	$146.98	$59.19
70480	S	Ct orbit/ear/fossa w/o dye	0332	3.62	$188.27	$91.27	$37.65
70481	S	Ct orbit/ear/fossa w/dye	0283	4.75	$247.04		$49.41
70482	S	Ct orbit/ear/fossa w/o&w dye	0333	5.69	$295.93	$146.98	$59.19
70486	S	Ct maxillofacial w/o dye	0332	3.62	$188.27	$91.27	$37.65
70487	S	Ct maxillofacial w/dye	0283	4.75	$247.04		$49.41
70488	S	Ct maxillofacial w/o&w dye	0333	5.69	$295.93	$146.98	$59.19
70490	S	Ct soft tissue neck w/o dye	0332	3.62	$188.27	$91.27	$37.65
70491	S	Ct soft tissue neck w/dye	0283	4.75	$247.04		$49.41
70492	S	Ct sft tsue nck w/o & w/dye	0333	5.69	$295.93	$146.98	$59.19
70496	S	Ct angiography, head	0662	5.96	$309.97	$170.48	$61.99
70498	S	Ct angiography, neck	0662	5.96	$309.97	$170.48	$61.99
70540	S	Mri orbit/face/neck w/o dye	0336	7.01	$364.58	$176.94	$72.92
70542	S	Mri orbit/face/neck w/dye	0284	7.74	$402.55	$201.02	$80.51
70543	S	Mri orbt/fac/nck w/o&w dye	0337	9.86	$512.81	$240.77	$102.56
70544	S	Mr angiography head w/o dye	0336	7.01	$364.58	$176.94	$72.92
70545	S	Mr angiography head w/dye	0284	7.74	$402.55	$201.02	$80.51
70546	S	Mr angiograph head w/o&w dye	0337	9.86	$512.81	$240.77	$102.56
70547	S	Mr angiography neck w/o dye	0336	7.01	$364.58	$176.94	$72.92
70548	S	Mr angiography neck w/dye	0284	7.74	$402.55	$201.02	$80.51
70549	S	Mr angiograph neck w/o&w dye	0337	9.86	$512.81	$240.77	$102.56
70551	S	Mri brain w/o dye	0336	7.01	$364.58	$176.94	$72.92
70552	S	Mri brain w/dye	0284	7.74	$402.55	$201.02	$80.51
70553	S	Mri brain w/o&w dye	0337	9.86	$512.81	$240.77	$102.56
71010	X	Chest x-ray	0260	0.81	$42.13	$23.17	$8.43
71015	X	Chest x-ray	0260	0.81	$42.13	$23.17	$8.43
71020	X	Chest x-ray	0260	0.81	$42.13	$23.17	$8.43

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
71021	X	Chest x-ray	0260	0.81	$42.13	$23.17	$8.43
71022	X	Chest x-ray	0260	0.81	$42.13	$23.17	$8.43
71023	X	Chest x-ray and fluoroscopy	0272	1.38	$71.77	$38.64	$14.35
71030	X	Chest x-ray	0260	0.81	$42.13	$23.17	$8.43
71034	X	Chest x-ray and fluoroscopy	0272	1.38	$71.77	$38.64	$14.35
71035	X	Chest x-ray	0260	0.81	$42.13	$23.17	$8.43
71040	X	Contrast x-ray of bronchi	0263	1.99	$103.50	$45.54	$20.70
71060	X	Contrast x-ray of bronchi	0264	2.75	$143.02	$77.23	$28.60
71090	X	X-ray & pacemaker insertion	0272	1.38	$71.77	$38.64	$14.35
71100	X	X-ray exam of ribs	0260	0.81	$42.13	$23.17	$8.43
71101	X	X-ray exam of ribs/chest	0260	0.81	$42.13	$23.17	$8.43
71110	X	X-ray exam of ribs	0260	0.81	$42.13	$23.17	$8.43
71111	X	X-ray exam of ribs/ chest	0261	1.37	$71.25	$34.15	$14.25
71120	X	X-ray exam of breastbone	0260	0.81	$42.13	$23.17	$8.43
71130	X	X-ray exam of breastbone	0260	0.81	$42.13	$23.17	$8.43
71250	S	Ct thorax w/o dye	0332	3.62	$188.27	$91.27	$37.65
71260	S	Ct thorax w/dye	0283	4.75	$247.04		$49.41
71270	S	Ct thorax w/o&w dye	0333	5.69	$295.93	$146.98	$59.19
71275	S	Ct angiography, chest	0662	5.96	$309.97	$170.48	$61.99
71550	S	Mri chest w/o dye	0336	7.01	$364.58	$176.94	$72.92
71551	S	Mri chest w/dye	0284	7.74	$402.55	$201.02	$80.51
71552	S	Mri chest w/o&w dye	0337	9.86	$512.81	$240.77	$102.56
71555	E	Mri angio chest w or w/o dye					
72010	X	X-ray exam of spine	0261	1.37	$71.25	$34.15	$14.25
72020	X	X-ray exam of spine	0260	0.81	$42.13	$23.17	$8.43
72040	X	X-ray exam of neck spine	0260	0.81	$42.13	$23.17	$8.43
72050	X	X-ray exam of neck spine	0261	1.37	$71.25	$34.15	$14.25
72052	X	X-ray exam of neck spine	0261	1.37	$71.25	$34.15	$14.25
72069	X	X-ray exam of trunk spine	0260	0.81	$42.13	$23.17	$8.43
72070	X	X-ray exam of thoracic spine	0260	0.81	$42.13	$23.17	$8.43
72072	X	X-ray exam of thoracic spine	0260	0.81	$42.13	$23.17	$8.43
72074	X	X-ray exam of thoracic spine	0260	0.81	$42.13	$23.17	$8.43
72080	X	X-ray exam of trunk spine	0260	0.81	$42.13	$23.17	$8.43
72090	X	X-ray exam of trunk spine	0261	1.37	$71.25	$34.15	$14.25
72100	X	X-ray exam of lower spine	0260	0.81	$42.13	$23.17	$8.43
72110	X	X-ray exam of lower spine	0261	1.37	$71.25	$34.15	$14.25
72114	X	X-ray exam of lower spine	0261	1.37	$71.25	$34.15	$14.25
72120	X	X-ray exam of lower spine	0260	0.81	$42.13	$23.17	$8.43
72125	S	Ct neck spine w/o dye	0332	3.62	$188.27	$91.27	$37.65
72126	S	Ct neck spine w/dye	0283	4.75	$247.04		$49.41
72127	S	Ct neck spine w/o&w dye	0333	5.69	$295.93	$146.98	$59.19
72128	S	Ct chest spine w/o dye	0332	3.62	$188.27	$91.27	$37.65
72129	S	Ct chest spine w/dye	0283	4.75	$247.04		$49.41
72130	S	Ct chest spine w/o&w dye	0333	5.69	$295.93	$146.98	$59.19
72131	S	Ct lumbar spine w/o dye	0332	3.62	$188.27	$91.27	$37.65
72132	S	Ct lumbar spine w/dye	0283	4.75	$247.04		$49.41
72133	S	Ct lumbar spine w/o&w dye	0333	5.69	$295.93	$146.98	$59.19
72141	S	Mri neck spine w/o dye	0336	7.01	$364.58	$176.94	$72.92
72142	S	Mri neck spine w/dye	0284	7.74	$402.55	$201.02	$80.51
72146	S	Mri chest spine w/o dye	0336	7.01	$364.58	$176.94	$72.92
72147	S	Mri chest spine w/dye	0284	7.74	$402.55	$201.02	$80.51
72148	S	Mri lumbar spine w/o dye	0336	7.01	$364.58	$176.94	$72.92
72149	S	Mri lumbar spine w/dye	0284	7.74	$402.55	$201.02	$80.51
72156	S	Mri neck spine w/o&w dye	0337	9.86	$512.81	$240.77	$102.56
72157	S	Mri chest spine w/o&w dye	0337	9.86	$512.81	$240.77	$102.56
72158	S	Mri lumbar spine w/o&w dye	0337	9.86	$512.81	$240.77	$102.56
72159	E	Mr angio spine w/o&w dye					
72170	X	X-ray exam of pelvis	0260	0.81	$42.13	$23.17	$8.43
72190	X	X-ray exam of pelvis	0260	0.81	$42.13	$23.17	$8.43
72191	S	Ct angiograph pelv w/o&w dye	0662	5.96	$309.97	$170.48	$61.99
72192	S	Ct pelvis w/o dye	0332	3.62	$188.27	$91.27	$37.65
72193	S	Ct pelvis w/dye	0283	4.75	$247.04		$49.41
72194	S	Ct pelvis w/o&w dye	0333	5.69	$295.93	$146.98	$59.19
72195	S	Mri pelvis w/o dye	0336	7.01	$364.58	$176.94	$72.92
72196	S	Mri pelvis w/dye	0284	7.74	$402.55	$201.02	$80.51
72197	S	Mri pelvis w/o & w dye	0337	9.86	$512.81	$240.77	$102.56

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
72198	E	Mr angio pelvis w/o&w dye					
72200	X	X-ray exam sacroiliac joints	0260	0.81	$42.13	$23.17	$8.43
72202	X	X-ray exam sacroiliac joints	0260	0.81	$42.13	$23.17	$8.43
72220	X	X-ray exam of tailbone	0260	0.81	$42.13	$23.17	$8.43
72240	S	Contrast x-ray of neck spine	0274	3.21	$166.95	$80.14	$33.39
72255	S	Contrast x-ray, thorax spine	0274	3.21	$166.95	$80.14	$33.39
72265	S	Contrast x-ray, lower spine	0274	3.21	$166.95	$80.14	$33.39
72270	S	Contrast x-ray of spine	0274	3.21	$166.95	$80.14	$33.39
72275	S	Epidurography	0274	3.21	$166.95	$80.14	$33.39
72285	S	X-ray c/t spine disk	0274	3.21	$166.95	$80.14	$33.39
72295	S	X-ray of lower spine disk	0274	3.21	$166.95	$80.14	$33.39
73000	X	X-ray exam of collar bone	0260	0.81	$42.13	$23.17	$8.43
73010	X	X-ray exam of shoulder blade	0260	0.81	$42.13	$23.17	$8.43
73020	X	X-ray exam of shoulder	0260	0.81	$42.13	$23.17	$8.43
73030	X	X-ray exam of shoulder	0260	0.81	$42.13	$23.17	$8.43
73040	S	Contrast x-ray of shoulder	0275	3.09	$160.71	$69.09	$32.14
73050	X	X-ray exam of shoulders	0260	0.81	$42.13	$23.17	$8.43
73060	X	X-ray exam of humerus	0260	0.81	$42.13	$23.17	$8.43
73070	X	X-ray exam of elbow	0260	0.81	$42.13	$23.17	$8.43
73080	X	X-ray exam of elbow	0260	0.81	$42.13	$23.17	$8.43
73085	S	Contrast x-ray of elbow	0275	3.09	$160.71	$69.09	$32.14
73090	X	X-ray exam of forearm	0260	0.81	$42.13	$23.17	$8.43
73092	X	X-ray exam of arm, infant	0260	0.81	$42.13	$23.17	$8.43
73100	X	X-ray exam of wrist	0260	0.81	$42.13	$23.17	$8.43
73110	X	X-ray exam of wrist	0260	0.81	$42.13	$23.17	$8.43
73115	S	Contrast x-ray of wrist	0275	3.09	$160.71	$69.09	$32.14
73120	X	X-ray exam of hand	0260	0.81	$42.13	$23.17	$8.43
73130	X	X-ray exam of hand	0260	0.81	$42.13	$23.17	$8.43
73140	X	X-ray exam of finger(s)	0260	0.81	$42.13	$23.17	$8.43
73200	S	Ct upper extremity w/o dye	0332	3.62	$188.27	$91.27	$37.65
73201	S	Ct upper extremity w/dye	0283	4.75	$247.04		$49.41
73202	S	Ct uppr extremity w/o&w dye	0333	5.69	$295.93	$146.98	$59.19
73206	S	Ct angio upr extrm w/o&w dye	0662	5.96	$309.97	$170.48	$61.99
73218	S	Mri upper extremity w/o dye	0336	7.01	$364.58	$176.94	$72.92
73219	S	Mri upper extremity w/dye	0284	7.74	$402.55	$201.02	$80.51
73220	S	Mri uppr extremity w/o&w dye	0337	9.86	$512.81	$240.77	$102.56
73221	S	Mri joint upr extrem w/o dye	0336	7.01	$364.58	$176.94	$72.92
73222	S	Mri joint upr extrem w/ dye	0284	7.74	$402.55	$201.02	$80.51
73223	S	Mri joint upr extr w/o&w dye	0337	9.86	$512.81	$240.77	$102.56
73225	E	Mr angio upr extr w/o&w dye					
73500	X	X-ray exam of hip	0260	0.81	$42.13	$23.17	$8.43
73510	X	X-ray exam of hip	0260	0.81	$42.13	$23.17	$8.43
73520	X	X-ray exam of hips	0260	0.81	$42.13	$23.17	$8.43
73525	S	Contrast x-ray of hip	0275	3.09	$160.71	$69.09	$32.14
73530	X	X-ray exam of hip	0261	1.37	$71.25	$34.15	$14.25
73540	X	X-ray exam of pelvis & hips	0260	0.81	$42.13	$23.17	$8.43
73542	S	X-ray exam, sacroiliac joint	0275	3.09	$160.71	$69.09	$32.14
73550	X	X-ray exam of thigh	0260	0.81	$42.13	$23.17	$8.43
73560	X	X-ray exam of knee, 1 or 2	0260	0.81	$42.13	$23.17	$8.43
73562	X	X-ray exam of knee, 3	0260	0.81	$42.13	$23.17	$8.43
73564	X	X-ray exam, knee, 4 or more	0260	0.81	$42.13	$23.17	$8.43
73565	X	X-ray exam of knees	0260	0.81	$42.13	$23.17	$8.43
73580	S	Contrast x-ray of knee joint	0275	3.09	$160.71	$69.09	$32.14
73590	X	X-ray exam of lower leg	0260	0.81	$42.13	$23.17	$8.43
73592	X	X-ray exam of leg, infant	0260	0.81	$42.13	$23.17	$8.43
73600	X	X-ray exam of ankle	0260	0.81	$42.13	$23.17	$8.43
73610	X	X-ray exam of ankle	0260	0.81	$42.13	$23.17	$8.43
73615	S	Contrast x-ray of ankle	0275	3.09	$160.71	$69.09	$32.14
73620	X	X-ray exam of foot	0260	0.81	$42.13	$23.17	$8.43
73630	X	X-ray exam of foot	0260	0.81	$42.13	$23.17	$8.43
73650	X	X-ray exam of heel	0260	0.81	$42.13	$23.17	$8.43
73660	X	X-ray exam of toe(s)	0260	0.81	$42.13	$23.17	$8.43
73700	S	Ct lower extremity w/o dye	0332	3.62	$188.27	$91.27	$37.65
73701	S	Ct lower extremity w/dye	0283	4.75	$247.04		$49.41
73702	S	Ct lwr extremity w/o&w dye	0333	5.69	$295.93	$146.98	$59.19
73706	S	Ct angio lwr extr w/o&w dye	0662	5.96	$309.97	$170.48	$61.99

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
73718	S	Mri lower extremity w/o dye	0336	7.01	$364.58	$176.94	$72.92
73719	S	Mri lower extremity w/dye	0284	7.74	$402.55	$201.02	$80.51
73720	S	Mri lwr extremity w/o&w dye	0337	9.86	$512.81	$240.77	$102.56
73721	S	Mri joint of lwr extre w/o d	0336	7.01	$364.58	$176.94	$72.92
73722	S	Mri joint of lwr extr w/dye	0284	7.74	$402.55	$201.02	$80.51
73723	S	Mri joint lwr extr w/o&w dye	0337	9.86	$512.81	$240.77	$102.56
73725	E	Mr ang lwr ext w or w/o dye					
74000	X	X-ray exam of abdomen	0260	0.81	$42.13	$23.17	$8.43
74010	X	X-ray exam of abdomen	0260	0.81	$42.13	$23.17	$8.43
74020	X	X-ray exam of abdomen	0260	0.81	$42.13	$23.17	$8.43
74022	X	X-ray exam series, abdomen	0261	1.37	$71.25	$34.15	$14.25
74150	S	Ct abdomen w/o dye	0332	3.62	$188.27	$91.27	$37.65
74160	S	Ct abdomen w/dye	0283	4.75	$247.04		$49.41
74170	S	Ct abdomen w/o&w dye	0333	5.69	$295.93	$146.98	$59.19
74175	S	Ct angio abdom w/o&w dye	0662	5.96	$309.97	$170.48	$61.99
74181	S	Mri abdomen w/o dye	0336	7.01	$364.58	$176.94	$72.92
74182	S	Mri abdomen w/dye	0284	7.74	$402.55	$201.02	$80.51
74183	S	Mri abdomen w/o&w dye	0337	9.86	$512.81	$240.77	$102.56
74185	E	Mri angio, abdom w or w/o dy					
74190	X	X-ray exam of peritoneum	0263	1.99	$103.50	$45.54	$20.70
74210	S	Contrst x-ray exam of throat	0276	1.69	$87.90	$41.72	$17.58
74220	S	Contrast x-ray, esophagus	0276	1.69	$87.90	$41.72	$17.58
74230	S	Cine/video x-ray, throat/eso	0276	1.69	$87.90	$41.72	$17.58
74235	S	Remove esophagus obstruction	0296	2.12	$110.26	$52.92	$22.05
74240	S	X-ray exam, upper gi tract	0276	1.69	$87.90	$41.72	$17.58
74241	S	X-ray exam, upper gi tract	0276	1.69	$87.90	$41.72	$17.58
74245	S	X-ray exam, upper gi tract	0277	2.50	$130.02	$60.47	$26.00
74246	S	Contrst x-ray uppr gi tract	0276	1.69	$87.90	$41.72	$17.58
74247	S	Contrst x-ray uppr gi tract	0276	1.69	$87.90	$41.72	$17.58
74249	S	Contrst x-ray uppr gi tract	0277	2.50	$130.02	$60.47	$26.00
74250	S	X-ray exam of small bowel	0276	1.69	$87.90	$41.72	$17.58
74251	S	X-ray exam of small bowel	0277	2.50	$130.02	$60.47	$26.00
74260	S	X-ray exam of small bowel	0277	2.50	$130.02	$60.47	$26.00
74270	S	Contrast x-ray exam of colon	0276	1.69	$87.90	$41.72	$17.58
74280	S	Contrast x-ray exam of colon	0277	2.50	$130.02	$60.47	$26.00
74283	S	Contrast x-ray exam of colon	0276	1.69	$87.90	$41.72	$17.58
74290	S	Contrast x-ray, gallbladder	0276	1.69	$87.90	$41.72	$17.58
74291	S	Contrast x-rays, gallbladder	0276	1.69	$87.90	$41.72	$17.58
74300	X	X-ray bile ducts/pancreas	0263	1.99	$103.50	$45.54	$20.70
74301	X	X-rays at surgery add-on	0263	1.99	$103.50	$45.54	$20.70
74305	X	X-ray bile ducts/pancreas	0263	1.99	$103.50	$45.54	$20.70
74320	X	Contrast x-ray of bile ducts	0264	2.75	$143.02	$77.23	$28.60
74327	S	X-ray bile stone removal	0296	2.12	$110.26	$52.92	$22.05
74328	N	Xray bile duct endoscopy					
74329	N	X-ray for pancreas endoscopy					
74330	N	X-ray bile/panc endoscopy					
74340	X	X-ray guide for GI tube	0272	1.38	$71.77	$38.64	$14.35
74350	X	X-ray guide, stomach tube	0263	1.99	$103.50	$45.54	$20.70
74355	X	X-ray guide, intestinal tube	0263	1.99	$103.50	$45.54	$20.70
74360	S	X-ray guide, GI dilation	0296	2.12	$110.26	$52.92	$22.05
74363	S	X-ray, bile duct dilation	0297	7.80	$405.67	$172.51	$81.13
74400	S	Contrst x-ray, urinary tract	0278	2.65	$137.82	$66.07	$27.56
74410	S	Contrst x-ray, urinary tract	0278	2.65	$137.82	$66.07	$27.56
74415	S	Contrst x-ray, urinary tract	0278	2.65	$137.82	$66.07	$27.56
74420	S	Contrst x-ray, urinary tract	0278	2.65	$137.82	$66.07	$27.56
74425	S	Contrst x-ray, urinary tract	0278	2.65	$137.82	$66.07	$27.56
74430	S	Contrast x-ray, bladder	0278	2.65	$137.82	$66.07	$27.56
74440	S	X-ray, male genital tract	0278	2.65	$137.82	$66.07	$27.56
74445	S	X-ray exam of penis	0278	2.65	$137.82	$66.07	$27.56
74450	S	X-ray, urethra/bladder	0278	2.65	$137.82	$66.07	$27.56
74455	S	X-ray, urethra/bladder	0278	2.65	$137.82	$66.07	$27.56
74470	X	X-ray exam of kidney lesion	0264	2.75	$143.02	$77.23	$28.60
74475	S	X-ray control,-cath insert	0297	7.80	$405.67	$172.51	$81.13
74480	S	X-ray control, cath insert	0296	2.12	$110.26	$52.92	$22.05
74485	S	X-ray guide, GU dilation	0296	2.12	$110.26	$52.92	$22.05
74710	X	X-ray measurement of pelvis	0260	0.81	$42.13	$23.17	$8.43

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
74740	X	X-ray, female genital tract	0264	2.75	$143.02	$77.23	$28.60
74742	X	X-ray, fallopian tube	0263	1.99	$103.50	$45.54	$20.70
74775	S	X-ray exam of perineum	0278	2.65	$137.82	$66.07	$27.56
75552	S	Heart mri for morph w/o dye	0336	7.01	$364.58	$176.94	$72.92
75553	S	Heart mri for morph w/dye	0284	7.74	$402.55	$201.02	$80.51
75554	S	Cardiac MRI/function	0335	6.46	$335.98	$151.46	$67.20
75555	S	Cardiac MRI/limited study	0335	6.46	$335.98	$151.46	$67.20
75556	E	Cardiac MRI/flow mapping					
75600	S	Contrast x-ray exam of aorta	0280	15.51	$806.66	$353.85	$161.33
75605	S	Contrast x-ray exam of aorta	0280	15.51	$806.66	$353.85	$161.33
75625	S	Contrast x-ray exam of aorta	0280	15.51	$806.66	$353.85	$161.33
75630	S	X-ray aorta, leg arteries	0280	15.51	$806.66	$353.85	$161.33
75635	S	Ct angio abdominal arteries	0662	5.96	$309.97	$170.48	$61.99
75650	S	Artery x-rays, head & neck	0280	15.51	$806.66	$353.85	$161.33
75658	S	Artery x-rays, arm	0280	15.51	$806.66	$353.85	$161.33
75660	S	Artery x-rays, head & neck	0279	8.41	$437.40	$174.57	$87.48
75662	S	Artery x-rays, head & neck	0279	8.41	$437.40	$174.57	$87.48
75665	S	Artery x-rays, head & neck	0280	15.51	$806.66	$353.85	$161.33
75671	S	Artery x-rays, head & neck	0280	15.51	$806.66	$353.85	$161.33
75676	S	Artery x-rays, neck	0280	15.51	$806.66	$353.85	$161.33
75680	S	Artery x-rays, neck	0280	15.51	$806.66	$353.85	$161.33
75685	S	Artery x-rays, spine	0279	8.41	$437.40	$174.57	$87.48
75705	S	Artery x-rays, spine	0279	8.41	$437.40	$174.57	$87.48
75710	S	Artery x-rays, arm/leg	0280	15.51	$806.66	$353.85	$161.33
75716	S	Artery x-rays, arms/legs	0280	15.51	$806.66	$353.85	$161.33
75722	S	Artery x-rays, kidney	0280	15.51	$806.66	$353.85	$161.33
75724	S	Artery x-rays, kidneys	0280	15.51	$806.66	$353.85	$161.33
75726	S	Artery x-rays, abdomen	0280	15.51	$806.66	$353.85	$161.33
75731	S	Artery x-rays, adrenal gland	0280	15.51	$806.66	$353.85	$161.33
75733	S	Artery x-rays, adrenals	0280	15.51	$806.66	$353.85	$161.33
75736	S	Artery x-rays, pelvis	0280	15.51	$806.66	$353.85	$161.33
75741	S	Artery x-rays, lung	0279	8.41	$437.40	$174.57	$87.48
75743	S	Artery x-rays, lungs	0280	15.51	$806.66	$353.85	$161.33
75746	S	Artery x-rays, lung	0279	8.41	$437.40	$174.57	$87.48
75756	S	Artery x-rays, chest	0279	8.41	$437.40	$174.57	$87.48
75774	S	Artery x-ray, each vessel	0668	5.36	$278.77	$122.66	$55.75
75790	S	Visualize A-V shunt	0281	5.23	$272.01	$115.16	$54.40
75801	X	Lymph vessel x-ray, arm/leg	0264	2.75	$143.02	$77.23	$28.60
75803	X	Lymph vessel x-ray,arms/legs	0264	2.75	$143.02	$77.23	$28.60
75805	X	Lymph vessel x-ray, trunk	0264	2.75	$143.02	$77.23	$28.60
75807	X	Lymph vessel x-ray, trunk	0264	2.75	$143.02	$77.23	$28.60
75809	X	Nonvascular shunt, x-ray	0263	1.99	$103.50	$45.54	$20.70
75810	S	Vein x-ray, spleen/liver	0279	8.41	$437.40	$174.57	$87.48
75820	S	Vein x-ray, arm/leg	0281	5.23	$272.01	$115.16	$54.40
75822	S	Vein x-ray, arms/legs	0281	5.23	$272.01	$115.16	$54.40
75825	S	Vein x-ray, trunk	0279	8.41	$437.40	$174.57	$87.48
75827	S	Vein x-ray, chest	0279	8.41	$437.40	$174.57	$87.48
75831	S	Vein x-ray, kidney	0287	7.13	$370.82	$114.51	$74.16
75833	S	Vein x-ray, kidneys	0279	8.41	$437.40	$174.57	$87.48
75840	S	Vein x-ray, adrenal gland	0287	7.13	$370.82	$114.51	$74.16
75842	S	Vein x-ray, adrenal glands	0287	7.13	$370.82	$114.51	$74.16
75860	S	Vein x-ray, neck	0287	7.13	$370.82	$114.51	$74.16
75870	S	Vein x-ray, skull	0287	7.13	$370.82	$114.51	$74.16
75872	S	Vein x-ray, skull	0287	7.13	$370.82	$114.51	$74.16
75880	S	Vein x-ray, eye socket	0287	7.13	$370.82	$114.51	$74.16
75885	S	Vein x-ray, liver	0279	8.41	$437.40	$174.57	$87.48
75887	S	Vein x-ray, liver	0280	15.51	$806.66	$353.85	$161.33
75889	S	Vein x-ray, liver	0279	8.41	$437.40	$174.57	$87.48
75891	S	Vein x-ray, liver	0279	8.41	$437.40	$174.57	$87.48
75893	N	Venous sampling by catheter					
75894	S	X-rays, transcath therapy	0297	7.80	$405.67	$172.51	$81.13
75896	S	X-rays, transcath therapy	0297	7.80	$405.67	$172.51	$81.13
75898	X	Follow-up angiography	0264	2.75	$143.02	$77.23	$28.60
75900	C	Arterial catheter exchange					
75940	X	X-ray placement, vein filter	0187	4.19	$217.92	$94.96	$43.58
75945	S	Intravascular us	0267	2.58	$134.18	$65.52	$26.84

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
75946	S	Intravascular us add-on	0267	2.58	$134.18	$65.52	$26.84
75952	C	Endovasc repair abdom aorta					
75953	C	Abdom aneurysm endovas rpr					
75960	S	Transcatheter intro, stent	0280	15.51	$806.66	$353.85	$161.33
75961	S	Retrieval, broken catheter	0280	15.51	$806.66	$353.85	$161.33
75962	S	Repair arterial blockage	0280	15.51	$806.66	$353.85	$161.33
75964	S	Repair artery blockage, each	0280	15.51	$806.66	$353.85	$161.33
75966	S	Repair arterial blockage	0280	15.51	$806.66	$353.85	$161.33
75968	S	Repair artery blockage, each	0280	15.51	$806.66	$353.85	$161.33
75970	S	Vascular biopsy	0280	15.51	$806.66	$353.85	$161.33
75978	S	Repair venous blockage	0668	5.36	$278.77	$122.66	$55.75
75980	S	Contrast xray exam bile duct	0296	2.12	$110.26	$52.92	$22.05
75982	S	Contrast xray exam bile duct	0297	7.80	$405.67	$172.51	$81.13
75984	X	Xray control catheter change	0264	2.75	$143.02	$77.23	$28.60
75989	N	Abscess drainage under x-ray					
75992	S	Atherectomy, x-ray exam	0280	15.51	$806.66	$353.85	$161.33
75993	S	Atherectomy, x-ray exam	0280	15.51	$806.66	$353.85	$161.33
75994	S	Atherectomy, x-ray exam	0280	15.51	$806.66	$353.85	$161.33
75995	S	Atherectomy, x-ray exam	0280	15.51	$806.66	$353.85	$161.33
75996	S	Atherectomy, x-ray exam	0280	15.51	$806.66	$353.85	$161.33
76000	X	Fluoroscope examination	0272	1.38	$71.77	$38.64	$14.35
76001	N	Fluoroscope exam, extensive					
76003	N	Needle localization by x-ray					
76005	N	Fluoroguide for spine inject					
76006	X	X-ray stress view	0260	0.81	$42.13	$23.17	$8.43
76010	X	X-ray, nose to rectum	0260	0.81	$42.13	$23.17	$8.43
76012	S	Percut vertebroplasty fluor	0274	3.21	$166.95	$80.14	$33.39
76013	S	Percut vertebroplasty, ct	0274	3.21	$166.95	$80.14	$33.39
76020	X	X-rays for bone age	0260	0.81	$42.13	$23.17	$8.43
76040	X	X-rays, bone evaluation	0260	0.81	$42.13	$23.17	$8.43
76061	X	X-rays, bone survey	0261	1.37	$71.25	$34.15	$14.25
76062	X	X-rays, bone survey	0261	1.37	$71.25	$34.15	$14.25
76065	X	X-rays, bone evaluation	0261	1.37	$71.25	$34.15	$14.25
76066	X	Joint survey, single view	0260	0.81	$42.13	$23.17	$8.43
76070	E	CT scan, bone density study					
76075	S	Dual energy x-ray study	0288	1.38	$71.77		$14.35
76076	S	Dual energy x-ray study	0665	0.73	$37.97		$7.59
76078	X	Radiographic absorptiometry	0261	1.37	$71.25	$34.15	$14.25
76080	X	X-ray exam of fistula	0263	1.99	$103.50	$45.54	$20.70
76085	A	Computer mammogram add-on					
76086	X	X-ray of mammary duct	0263	1.99	$103.50	$45.54	$20.70
76088	X	X-ray of mammary ducts	0263	1.99	$103.50	$45.54	$20.70
76090	S	Mammogram, one breast	0271	0.69	$35.89	$16.80	$7.18
76091	S	Mammogram, both breasts	0271	0.69	$35.89	$16.80	$7.18
76092	A	Mammogram, screening					
76093	E	Magnetic image, breast					
76094	E	Magnetic image, both breasts					
76095	X	Stereotactic breast biopsy	0187	4.19	$217.92	$94.96	$43.58
76096	X	X-ray of needle wire, breast	0289	1.84	$95.70	$44.80	$19.14
76098	X	X-ray exam, breast specimen	0260	0.81	$42.13	$23.17	$8.43
76100	X	X-ray exam of body section	0261	1.37	$71.25	$34.15	$14.25
76101	X	Complex body section x-ray	0264	2.75	$143.02	$77.23	$28.60
76102	X	Complex body section x-rays	0264	2.75	$143.02	$77.23	$28.60
76120	X	Cine/video x-rays	0260	0.81	$42.13	$23.17	$8.43
76125	X	Cine/ video x-rays add-on	0260	0.81	$42.13	$23.17	$8.43
76140	E	X-ray consultation					
76150	X	X-ray exam, dry process	0260	0.81	$42.13	$23.17	$8.43
76350	N	Special x-ray contrast study					
76355	S	CAT scan for localization	0283	4.75	$247.04		$49.41
76360	S	CAT scan for needle biopsy	0283	4.75	$247.04		$49.41
76362	N	Cat scan for tissue ablation					
76370	S	CAT scan for therapy guide	0282	1.76	$91.54	$44.51	$18.31
76375	S	3d/holograph reconstr add-on	0282	1.76	$91.54	$44.51	$18.31
76380	S	CAT scan follow-up study	0282	1.76	$91.54	$44.51	$18.31
76390	E	Mr spectroscopy					
76393	N	Mr guidance for needle place					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
76394	N	Mri for tissue ablation					
76400	S	Magnetic image, bone marrow	0335	6.46	$335.98	$151.46	$67.20
76490	N	Us for tissue ablation					
76499	X	Radiographic procedure	0260	0.81	$42.13	$23.17	$8.43
76506	S	Echo exam of head	0266	1.70	$88.42	$48.63	$17.68
76511	S	Echo exam of eye	0266	1.70	$88.42	$48.63	$17.68
76512	S	Echo exam of eye	0266	1.70	$88.42	$48.63	$17.68
76513	S	Echo exam of eye, water bath	0265	1.04	$54.09	$29.75	$10.82
76516	S	Echo exam of eye	0266	1.70	$88.42	$48.63	$17.68
76519	S	Echo exam of eye	0266	1.70	$88.42	$48.63	$17.68
76529	S	Echo exam of eye	0265	1.04	$54.09	$29.75	$10.82
76536	S	Us exam of head and neck	0266	1.70	$88.42	$48.63	$17.68
76604	S	Us exam, chest, b-scan	0266	1.70	$88.42	$48.63	$17.68
76645	S	Us exam, breast(s)	0265	1.04	$54.09	$29.75	$10.82
76700	S	Us exam, abdom, complete	0266	1.70	$88.42	$48.63	$17.68
76705	S	Us exam, abdom, limited	0266	1.70	$88.42	$48.63	$17.68
76770	S	Us exam abdo back wall, comp	0266	1.70	$88.42	$48.63	$17.68
76775	S	Us exam abdo back wall, lim	0266	1.70	$88.42	$48.63	$17.68
76778	S	Us exam kidney transplant	0266	1.70	$88.42	$48.63	$17.68
76800	S	Us exam, spinal canal	0266	1.70	$88.42	$48.63	$17.68
76805	S	Us exam, pg uterus, compl	0266	1.70	$88.42	$48.63	$17.68
76810	S	Us exam, pg uterus, mult	0265	1.04	$54.09	$29.75	$10.82
76815	S	Us exam, pg uterus limit	0265	1.04	$54.09	$29.75	$10.82
76816	S	Us exam pg uterus repeat	0265	1.04	$54.09	$29.75	$10.82
76818	S	Fetal biophy profile w/nst	0266	1.70	$88.42	$48.63	$17.68
76819	S	Fetal biophys profil w/o nst	0266	1.70	$88.42	$48.63	$17.68
76825	S	Echo exam of fetal heart	0671	1.68	$87.38	$45.44	$17.48
76826	S	Echo exam of fetal heart	0697	1.51	$78.53	$40.84	$15.71
76827	S	Echo exam of fetal heart	0671	1.68	$87.38	$45.44	$17.48
76828	S	Echo exam of fetal heart	0697	1.51	$78.53	$40.84	$15.71
76830	S	Us exam, transvaginal	0266	1.70	$88.42	$48.63	$17.68
76831	S	Echo exam, uterus	0266	1.70	$88.42	$48.63	$17.68
76856	S	Us exam, pelvic, complete	0266	1.70	$88.42	$48.63	$17.68
76857	S	Us exam, pelvic, limited	0265	1.04	$54.09	$29.75	$10.82
76870	S	Us exam, scrotum	0266	1.70	$88.42	$48.63	$17.68
76872	S	Echo exam, transrectal	0266	1.70	$88.42	$48.63	$17.68
76873	S	Echograp trans r, pros study	0266	1.70	$88.42	$48.63	$17.68
76880	S	Us exam, extremity	0266	1.70	$88.42	$48.63	$17.68
76885	S	Us exam infant hips, dynamic	0266	1.70	$88.42	$48.63	$17.68
76886	S	Us exam infant hips, static	0266	1.70	$88.42	$48.63	$17.68
76930	S	Echo guide, cardiocentesis	0268	1.48	$76.97		$15.39
76932	S	Echo guide for heart biopsy	0268	1.48	$76.97		$15.39
76936	S	Echo guide for artery repair	0268	1.48	$76.97		$15.39
76941	S	Echo guide for transfusion	0268	1.48	$76.97		$15.39
76942	S	Echo guide for biopsy	0268	1.48	$76.97		$15.39
76945	S	Echo guide, villus sampling	0268	1.48	$76.97		$15.39
76946	S	Echo guide for amniocentesis	0268	1.48	$76.97		$15.39
76948	S	Echo guide, ova aspiration	0268	1.48	$76.97		$15.39
76950	S	Echo guidance radiotherapy	0268	1.48	$76.97		$15.39
76965	S	Echo guidance radiotherapy	0268	1.48	$76.97		$15.39
76970	S	Ultrasound exam follow-up	0265	1.04	$54.09	$29.75	$10.82
76975	S	GI endoscopic ultrasound	0266	1.70	$88.42	$48.63	$17.68
76977	S	Us bone density measure	0265	1.04	$54.09	$29.75	$10.82
76986	S	Ultrasound guide intraoper	0266	1.70	$88.42	$48.63	$17.68
76999	S	Echo examination procedure	0265	1.04	$54.09	$29.75	$10.82
77261	E	Radiation therapy planning					
77262	E	Radiation therapy planning					
77263	E	Radiation therapy planning					
77280	X	Set radiation therapy field	0304	1.69	$87.90	$41.52	$17.58
77285	X	Set radiation therapy field	0305	3.87	$201.27	$91.38	$40.25
77290	X	Set radiation therapy field	0305	3.87	$201.27	$91.38	$40.25
77295	X	Set radiation therapy field	0310	14.38	$747.89	$339.05	$149.58
77299	E	Radiation therapy planning					
77300	X	Radiation therapy dose plan	0304	1.69	$87.90	$41.52	$17.58
77301	S	Radiotherapy dos plan, imrt	0712		$875.00		$175.00
77305	X	Radiation therapy dose plan	0304	1.69	$87.90	$41.52	$17.58

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
77310	X	Radiation therapy dose plan	0304	1.69	$87.90	$41.52	$17.58
77315	X	Radiation therapy dose plan	0305	3.87	$201.27	$91.38	$40.25
77321	X	Radiation therapy port plan	0305	3.87	$201.27	$91.38	$40.25
77326	X	Radiation therapy dose plan	0305	3.87	$201.27	$91.38	$40.25
77327	X	Radiation therapy dose plan	0305	3.87	$201.27	$91.38	$40.25
77328	X	Radiation therapy dose plan	0305	3.87	$201.27	$91.38	$40.25
77331	X	Special radiation dosimetry	0304	1.69	$87.90	$41.52	$17.58
77332	X	Radiation treatment aid(s)	0303	2.93	$152.39	$68.58	$30.48
77333	X	Radiation treatment aid(s)	0303	2.93	$152.39	$68.58	$30.48
77334	X	Radiation treatment aid(s)	0303	2.93	$152.39	$68.58	$30.48
77336	X	Radiation physics consult	0304	1.69	$87.90	$41.52	$17.58
77370	X	Radiation physics consult	0305	3.87	$201.27	$91.38	$40.25
77399	X	External radiation dosimetry	0304	1.69	$87.90	$41.52	$17.58
77401	S	Radiation treatment delivery	0300	1.53	$79.57		$15.91
77402	S	Radiation treatment delivery	0300	1.53	$79.57		$15.91
77403	S	Radiation treatment delivery	0300	1.53	$79.57		$15.91
77404	S	Radiation treatment delivery	0300	1.53	$79.57		$15.91
77406	S	Radiation treatment delivery	0300	1.53	$79.57		$15.91
77407	S	Radiation treatment delivery	0300	1.53	$79.57		$15.91
77408	S	Radiation treatment delivery	0300	1.53	$79.57		$15.91
77409	S	Radiation treatment delivery	0300	1.53	$79.57		$15.91
77411	S	Radiation treatment delivery	0300	1.53	$79.57		$15.91
77412	S	Radiation treatment delivery	0301	2.22	$115.46		$23.09
77413	S	Radiation treatment delivery	0301	2.22	$115.46		$23.09
77414	S	Radiation treatment delivery	0301	2.22	$115.46		$23.09
77416	S	Radiation treatment delivery	0301	2.22	$115.46		$23.09
77417	X	Radiology port film(s)	0260	0.81	$42.13	$23.17	$8.43
77418	S	Radiation tx delivery, imrt	0710		$400.00		$80.00
77427	E	Radiation tx management, x5					
77431	E	Radiation therapy management					
77432	E	Stereotactic radiation trmt					
77470	S	Special radiation treatment	0299	6.20	$322.46		$64.49
77499	E	Radiation therapy management					
77520	S	Proton trmt, simple w/o comp	0664	11.03	$573.66		$114.73
77522	S	Proton trmt, simple w/comp	0664	11.03	$573.66		$114.73
77523	S	Proton trmt, intermediate	0664	11.03	$573.66		$114.73
77525	S	Proton treatment, complex	0664	11.03	$573.66		$114.73
77600	S	Hyperthermia treatment	0314	4.24	$220.52	$101.77	$44.10
77605	S	Hyperthermia treatment	0314	4.24	$220.52	$101.77	$44.10
77610	S	Hyperthermia treatment	0314	4.24	$220.52	$101.77	$44.10
77615	S	Hyperthermia treatment	0314	4.24	$220.52	$101.77	$44.10
77620	S	Hyperthermia treatment	0314	4.24	$220.52	$101.77	$44.10
77750	S	Infuse radioactive materials	0300	1.53	$79.57		$15.91
77761	S	Apply intrcav radiat simple	0312	4.23	$220.00		$44.00
77762	S	Apply intrcav radiat interm	0312	4.23	$220.00		$44.00
77763	S	Apply intrcav radiat compl	0312	4.23	$220.00		$44.00
77776	S	Apply interstit radiat simpl	0312	4.23	$220.00		$44.00
77777	S	Apply interstit radiat inter	0312	4.23	$220.00		$44.00
77778	S	Apply interstit radiat compl	0312	4.23	$220.00		$44.00
77781	S	High intensity brachytherapy	0313	13.80	$717.72		$143.54
77782	S	High intensity brachytherapy	0313	13.80	$717.72		$143.54
77783	S	High intensity brachytherapy	0313	13.80	$717.72		$143.54
77784	S	High intensity brachytherapy	0313	13.80	$717.72		$143.54
77789	S	Apply surface radiation	0300	1.53	$79.57		$15.91
77790	N	Radiation handling					
77799	S	Radium/radioisotope therapy	0313	13.80	$717.72		$143.54
78000	S	Thyroid, single uptake	0290	2.16	$112.34	$56.17	$22.47
78001	S	Thyroid, multiple uptakes	0290	2.16	$112.34	$56.17	$22.47
78003	S	Thyroid suppress/stimul	0290	2.16	$112.34	$56.17	$22.47
78006	S	Thyroid imaging with uptake	0291	4.19	$217.92	$108.96	$43.58
78007	S	Thyroid image, mult uptakes	0292	4.53	$235.60	$117.80	$47.12
78010	S	Thyroid imaging	0291	4.19	$217.92	$108.96	$43.58
78011	S	Thyroid imaging with flow	0292	4.53	$235.60	$117.80	$47.12
78015	S	Thyroid met imaging	0291	4.19	$217.92	$108.96	$43.58
78016	S	Thyroid met imaging/studies	0292	4.53	$235.60	$117.80	$47.12
78018	S	Thyroid met imaging, body	0292	4.53	$235.60	$117.80	$47.12

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
78020	S	Thyroid met uptake	0291	4.19	$217.92	$108.96	$43.58
78070	S	Parathyroid nuclear imaging	0292	4.53	$235.60	$117.80	$47.12
78075	S	Adrenal nuclear imaging	0292	4.53	$235.60	$117.80	$47.12
78099	S	Endocrine nuclear procedure	0291	4.19	$217.92	$108.96	$43.58
78102	S	Bone marrow imaging, ltd	0291	4.19	$217.92	$108.96	$43.58
78103	S	Bone marrow imaging, mult	0291	4.19	$217.92	$108.96	$43.58
78104	S	Bone marrow imaging, body	0291	4.19	$217.92	$108.96	$43.58
78110	S	Plasma volume, single	0290	2.16	$112.34	$56.17	$22.47
78111	S	Plasma volume, multiple	0290	2.16	$112.34	$56.17	$22.47
78120	S	Red cell mass, single	0290	2.16	$112.34	$56.17	$22.47
78121	S	Red cell mass, multiple	0290	2.16	$112.34	$56.17	$22.47
78122	S	Blood volume	0290	2.16	$112.34	$56.17	$22.47
78130	S	Red cell survival study	0290	2.16	$112.34	$56.17	$22.47
78135	S	Red cell survival kinetics	0290	2.16	$112.34	$56.17	$22.47
78140	S	Red cell sequestration	0290	2.16	$112.34	$56.17	$22.47
78160	S	Plasma iron turnover	0290	2.16	$112.34	$56.17	$22.47
78162	S	Iron absorption exam	0290	2.16	$112.34	$56.17	$22.47
78170	S	Red cell iron utilization	0290	2.16	$112.34	$56.17	$22.47
78172	S	Total body iron estimation	0290	2.16	$112.34	$56.17	$22.47
78185	S	Spleen imaging	0291	4.19	$217.92	$108.96	$43.58
78190	S	Platelet survival, kinetics	0290	2.16	$112.34	$56.17	$22.47
78191	S	Platelet survival	0292	4.53	$235.60	$117.80	$47.12
78195	S	Lymph system imaging	0292	4.53	$235.60	$117.80	$47.12
78199	S	Blood/lymph nuclear exam	0291	4.19	$217.92	$108.96	$43.58
78201	S	Liver imaging	0291	4.19	$217.92	$108.96	$43.58
78202	S	Liver imaging with flow	0291	4.19	$217.92	$108.96	$43.58
78205	S	Liver imaging (3D)	0291	4.19	$217.92	$108.96	$43.58
78206	S	Liver image (3d) w/flow	0292	4.53	$235.60	$117.80	$47.12
78215	S	Liver and spleen imaging	0291	4.19	$217.92	$108.96	$43.58
78216	S	Liver & spleen image/flow	0291	4.19	$217.92	$108.96	$43.58
78220	S	Liver function study	0291	4.19	$217.92	$108.96	$43.58
78223	S	Hepatobiliary imaging	0292	4.53	$235.60	$117.80	$47.12
78230	S	Salivary gland imaging	0292	4.53	$235.60	$117.80	$47.12
78231	S	Serial salivary imaging	0292	4.53	$235.60	$117.80	$47.12
78232	S	Salivary gland function exam	0292	4.53	$235.60	$117.80	$47.12
78258	S	Esophageal motility study	0291	4.19	$217.92	$108.96	$43.58
78261	S	Gastric mucosa imaging	0291	4.19	$217.92	$108.96	$43.58
78262	S	Gastroesophageal reflux exam	0292	4.53	$235.60	$117.80	$47.12
78264	S	Gastric emptying study	0292	4.53	$235.60	$117.80	$47.12
78267	A	Breath tst attain/anal c-14					
78268	A	Breath test analysis, c-14					
78270	S	Vit B-12 absorption exam	0290	2.16	$112.34	$56.17	$22.47
78271	S	Vit B-12 absorp exam, IF	0290	2.16	$112.34	$56.17	$22.47
78272	S	Vit B-12 absorp, combined	0290	2.16	$112.34	$56.17	$22.47
78278	S	Acute GI blood loss imaging	0292	4.53	$235.60	$117.80	$47.12
78282	S	GI protein loss exam	0290	2.16	$112.34	$56.17	$22.47
78290	S	Meckel's divert exam	0292	4.53	$235.60	$117.80	$47.12
78291	S	Leveen/shunt patency exam	0292	4.53	$235.60	$117.80	$47.12
78299	S	GI nuclear procedure	0291	4.19	$217.92	$108.96	$43.58
78300	S	Bone imaging, limited area	0291	4.19	$217.92	$108.96	$43.58
78305	S	Bone imaging, multiple areas	0291	4.19	$217.92	$108.96	$43.58
78306	S	Bone imaging, whole body	0291	4.19	$217.92	$108.96	$43.58
78315	S	Bone imaging, 3 phase	0292	4.53	$235.60	$117.80	$47.12
78320	S	Bone imaging (3D)	0291	4.19	$217.92	$108.96	$43.58
78350	X	Bone mineral, single photon	0261	1.37	$71.25	$34.15	$14.25
78351	E	Bone mineral, dual photon					
78399	S	Musculoskeletal nuclear exam	0291	4.19	$217.92	$108.96	$43.58
78414	S	Non-imaging heart function	0290	2.16	$112.34	$56.17	$22.47
78428	S	Cardiac shunt imaging	0291	4.19	$217.92	$108.96	$43.58
78445	S	Vascular flow imaging	0291	4.19	$217.92	$108.96	$43.58
78455	S	Venous thrombosis study	0290	2.16	$112.34	$56.17	$22.47
78456	S	Acute venous thrombus image	0292	4.53	$235.60	$117.80	$47.12
78457	S	Venous thrombosis imaging	0291	4.19	$217.92	$108.96	$43.58
78458	S	Ven thrombosis images, bilat	0292	4.53	$235.60	$117.80	$47.12
78459	E	Heart muscle imaging (PET)					
78460	S	Heart muscle blood, single	0286	6.94	$360.94	$198.52	$72.19

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
78461	S	Heart muscle blood, multiple	0286	6.94	$360.94	$198.52	$72.19
78464	S	Heart image (3d), single	0286	6.94	$360.94	$198.52	$72.19
78465	S	Heart image (3d), multiple	0286	6.94	$360.94	$198.52	$72.19
78466	S	Heart infarct image	0291	4.19	$217.92	$108.96	$43.58
78468	S	Heart infarct image (ef)	0291	4.19	$217.92	$108.96	$43.58
78469	S	Heart infarct image (3D)	0291	4.19	$217.92	$108.96	$43.58
78472	S	Gated heart, planar, single	0286	6.94	$360.94	$198.52	$72.19
78473	S	Gated heart, multiple	0286	6.94	$360.94	$198.52	$72.19
78478	S	Heart wall motion add-on	0666	1.59	$82.69	$45.48	$16.54
78480	S	Heart function add-on	0666	1.59	$82.69	$45.48	$16.54
78481	S	Heart first pass, single	0286	6.94	$360.94	$198.52	$72.19
78483	S	Heart first pass, multiple	0286	6.94	$360.94	$198.52	$72.19
78491	E	Heart image (pet), single					
78492	E	Heart image (pet), multiple					
78494	S	Heart image, spect	0286	6.94	$360.94	$198.52	$72.19
78496	S	Heart first pass add-on	0666	1.59	$82.69	$45.48	$16.54
78499	S	Cardiovascular nuclear exam	0291	4.19	$217.92	$108.96	$43.58
78580	S	Lung perfusion imaging	0291	4.19	$217.92	$108.96	$43.58
78584	S	Lung V/Q image single breath	0292	4.53	$235.60	$117.80	$47.12
78585	S	Lung V/Q imaging	0292	4.53	$235.60	$117.80	$47.12
78586	S	Aerosol lung image, single	0291	4.19	$217.92	$108.96	$43.58
78587	S	Aerosol lung image, multiple	0291	4.19	$217.92	$108.96	$43.58
78588	S	Perfusion lung image	0292	4.53	$235.60	$117.80	$47.12
78591	S	Vent image, 1 breath, 1 proj	0291	4.19	$217.92	$108.96	$43.58
78593	S	Vent image, 1 proj, gas	0291	4.19	$217.92	$108.96	$43.58
78594	S	Vent image, mult proj, gas	0291	4.19	$217.92	$108.96	$43.58
78596	S	Lung differential function	0292	4.53	$235.60	$117.80	$47.12
78599	S	Respiratory nuclear exam	0291	4.19	$217.92	$108.96	$43.58
78600	S	Brain imaging, ltd static	0291	4.19	$217.92	$108.96	$43.58
78601	S	Brain imaging, ltd w/ flow	0291	4.19	$217.92	$108.96	$43.58
78605	S	Brain imaging, complete	0291	4.19	$217.92	$108.96	$43.58
78606	S	Brain imaging, compl w/flow	0291	4.19	$217.92	$108.96	$43.58
78607	S	Brain imaging (3D)	0291	4.19	$217.92	$108.96	$43.58
78608	E	Brain imaging (PET)					
78609	E	Brain imaging (PET)					
78610	S	Brain flow imaging only	0291	4.19	$217.92	$108.96	$43.58
78615	S	Cerebral vascular flow image	0291	4.19	$217.92	$108.96	$43.58
78630	S	Cerebrospinal fluid scan	0292	4.53	$235.60	$117.80	$47.12
78635	S	CSF ventriculography	0292	4.53	$235.60	$117.80	$47.12
78645	S	CSF shunt evaluation	0292	4.53	$235.60	$117.80	$47.12
78647	S	Cerebrospinal fluid scan	0292	4.53	$235.60	$117.80	$47.12
78650	S	CSF leakage imaging	0292	4.53	$235.60	$117.80	$47.12
78660	S	Nuclear exam of tear flow	0291	4.19	$217.92	$108.96	$43.58
78699	S	Nervous system nuclear exam	0291	4.19	$217.92	$108.96	$43.58
78700	S	Kidney imaging, static	0291	4.19	$217.92	$108.96	$43.58
78701	S	Kidney imaging with flow	0291	4.19	$217.92	$108.96	$43.58
78704	S	Imaging renogram	0291	4.19	$217.92	$108.96	$43.58
78707	S	Kidney flow/function image	0291	4.19	$217.92	$108.96	$43.58
78708	S	Kidney flow/function image	0292	4.53	$235.60	$117.80	$47.12
78709	S	Kidney flow/function image	0292	4.53	$235.60	$117.80	$47.12
78710	S	Kidney imaging (3D)	0291	4.19	$217.92	$108.96	$43.58
78715	S	Renal vascular flow exam	0291	4.19	$217.92	$108.96	$43.58
78725	S	Kidney function study	0290	2.16	$112.34	$56.17	$22.47
78730	S	Urinary bladder retention	0291	4.19	$217.92	$108.96	$43.58
78740	S	Ureteral reflux study	0292	4.53	$235.60	$117.80	$47.12
78760	S	Testicular imaging	0291	4.19	$217.92	$108.96	$43.58
78761	S	Testicular imaging/flow	0291	4.19	$217.92	$108.96	$43.58
78799	S	Genitourinary nuclear exam	0291	4.19	$217.92	$108.96	$43.58
78800	S	Tumor imaging, limited area	0292	4.53	$235.60	$117.80	$47.12
78801	S	Tumor imaging, mult areas	0292	4.53	$235.60	$117.80	$47.12
78802	S	Tumor imaging, whole body	0292	4.53	$235.60	$117.80	$47.12
78803	S	Tumor imaging (3D)	0292	4.53	$235.60	$117.80	$47.12
78805	S	Abscess imaging, ltd area	0292	4.53	$235.60	$117.80	$47.12
78806	S	Abscess imaging, whole body	0292	4.53	$235.60	$117.80	$47.12
78807	S	Nuclear localization/abscess	0292	4.53	$235.60	$117.80	$47.12
78810	E	Tumor imaging (PET)					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
78890	N	Nuclear medicine data proc					
78891	N	Nuclear med data proc					
78990	N	Provide diag radionuclide(s)					
78999	S	Nuclear diagnostic exam	0291	4.19	$217.92	$108.96	$43.58
79000	S	Init hyperthyroid therapy	0294	4.45	$231.44	$127.29	$46.29
79001	S	Repeat hyperthyroid therapy	0294	4.45	$231.44	$127.29	$46.29
79020	S	Thyroid ablation	0294	4.45	$231.44	$127.29	$46.29
79030	S	Thyroid ablation, carcinoma	0294	4.45	$231.44	$127.29	$46.29
79035	S	Thyroid metastatic therapy	0295	3.86	$200.75	$110.41	$40.15
79100	S	Hematopoetic nuclear therapy	0294	4.45	$231.44	$127.29	$46.29
79200	S	Intracavitary nuclear trmt	0295	3.86	$200.75	$110.41	$40.15
79300	S	Interstitial nuclear therapy	0294	4.45	$231.44	$127.29	$46.29
79400	S	Nonhemato nuclear therapy	0295	3.86	$200.75	$110.41	$40.15
79420	S	Intravascular nuclear ther	0295	3.86	$200.75	$110.41	$40.15
79440	S	Nuclear joint therapy	0294	4.45	$231.44	$127.29	$46.29
79900	M	Provide ther radiopharm(s)					
79999	S	Nuclear medicine therapy	0294	4.45	$231.44	$127.29	$46.29
80048	A	Basic metabolic panel					
80050	A	General health panel					
80051	A	Electrolyte panel					
80053	A	Comprehen metabolic panel					
80055	A	Obstetric panel					
80061	A	Lipid panel					
80069	A	Renal function panel					
80074	A	Acute hepatitis panel					
80076	A	Hepatic function panel					
80090	A	Torch antibody panel					
80100	A	Drug screen, qualitate/multi					
80101	A	Drug screen, single					
80102	A	Drug confirmation					
80103	N	Drug analysis, tissue prep					
80150	A	Assay of amikacin					
80152	A	Assay of amitriptyline					
80154	A	Assay of benzodiazepines					
80156	A	Assay, carbamazepine, total					
80157	A	Assay, carbamazepine, free					
80158	A	Assay of cyclosporine					
80160	A	Assay of desipramine					
80162	A	Assay of digoxin					
80164	A	Assay, dipropylacetic acid					
80166	A	Assay of doxepin					
80168	A	Assay of ethosuximide					
80170	A	Assay of gentamicin					
80172	A	Assay of gold					
80173	A	Assay of haloperidol					
80174	A	Assay of imipramine					
80176	A	Assay of lidocaine					
80178	A	Assay of lithium					
80182	A	Assay of nortriptyline					
80184	A	Assay of phenobarbital					
80185	A	Assay of phenytoin, total					
80186	A	Assay of phenytoin, free					
80188	A	Assay of primidone					
80190	A	Assay of procainamide					
80192	A	Assay of procainamide					
80194	A	Assay of quinidine					
80196	A	Assay of salicylate					
80197	A	Assay of tacrolimus					
80198	A	Assay of theophylline					
80200	A	Assay of tobramycin					
80201	A	Assay of topiramate					
80202	A	Assay of vancomycin					
80299	A	Quantitative assay, drug					
80400	A	Acth stimulation panel					
80402	A	Acth stimulation panel					
80406	A	Acth stimulation panel					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
80408	A	Aldosterone suppression eval					
80410	A	Calcitonin stimul panel					
80412	A	CRH stimulation panel					
80414	A	Testosterone response					
80415	A	Estradiol response panel					
80416	A	Renin stimulation panel					
80417	A	Renin stimulation panel					
80418	A	Pituitary evaluation panel					
80420	A	Dexamethasone panel					
80422	A	Glucagon tolerance panel					
80424	A	Glucagon tolerance panel					
80426	A	Gonadotropin hormone panel					
80428	A	Growth hormone panel					
80430	A	Growth hormone panel					
80432	A	Insulin suppression panel					
80434	A	Insulin tolerance panel					
80435	A	Insulin tolerance panel					
80436	A	Metyrapone panel					
80438	A	TRH stimulation panel					
80439	A	TRH stimulation panel					
80440	A	TRH stimulation panel					
80500	X	Lab pathology consultation	0343	0.47	$24.44	$13.20	$4.89
80502	X	Lab pathology consultation	0342	0.23	$11.96	$5.88	$2.39
81000	A	Urinalysis, nonauto w/scope					
81001	A	Urinalysis, auto w/scope					
81002	A	Urinalysis nonauto w/o scope					
81003	A	Urinalysis, auto, w/o scope					
81005	A	Urinalysis					
81007	A	Urine screen for bacteria					
81015	A	Microscopic exam of urine					
81020	A	Urinalysis, glass test					
81025	A	Urine pregnancy test					
81050	A	Urinalysis, volume measure					
81099	A	Urinalysis test procedure					
82000	A	Assay of blood acetaldehyde					
82003	A	Assay of acetaminophen					
82009	A	Test for acetone/ketones					
82010	A	Acetone assay					
82013	A	Acetylcholinesterase assay					
82016	A	Acylcarnitines, qual					
82017	A	Acylcarnitines, quant					
82024	A	Assay of acth					
82030	A	Assay of adp & amp					
82040	A	Assay of serum albumin					
82042	A	Assay of urine albumin					
82043	A	Microalbumin, quantitative					
82044	A	Microalbumin, semiquant					
82055	A	Assay of ethanol					
82075	A	Assay of breath ethanol					
82085	A	Assay of aldolase					
82088	A	Assay of aldosterone					
82101	A	Assay of urine alkaloids					
82103	A	Alpha-1-antitrypsin, total					
82104	A	Alpha-1-antitrypsin, pheno					
82105	A	Alpha-fetoprotein, serum					
82106	A	Alpha-fetoprotein, amniotic					
82108	A	Assay of aluminum					
82120	A	Amines, vaginal fluid qual					
82127	A	Amino acid, single qual					
82128	A	Amino acids, mult qual					
82131	A	Amino acids, single quant					
82135	A	Assay, aminolevulinic acid					
82136	A	Amino acids, quant, 2-5					
82139	A	Amino acids, quan, 6 or more					
82140	A	Assay of ammonia					
82143	A	Amniotic fluid scan					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
82145	A	Assay of amphetamines					
82150	A	Assay of amylase					
82154	A	Androstanediol glucuronide					
82157	A	Assay of androstenedione					
82160	A	Assay of androsterone					
82163	A	Assay of angiotensin II					
82164	A	Angiotensin I enzyme test					
82172	A	Assay of apolipoprotein					
82175	A	Assay of arsenic					
82180	A	Assay of ascorbic acid					
82190	A	Atomic absorption					
82205	A	Assay of barbiturates					
82232	A	Assay of beta-2 protein					
82239	A	Bile acids, total					
82240	A	Bile acids, cholylglycine					
82247	A	Bilirubin, total					
82248	A	Bilirubin, direct					
82252	A	Fecal bilirubin test					
82261	A	Assay of biotinidase					
82270	A	Test for blood, feces					
82273	A	Test for blood, other source					
82274	A	Assay test for blood, fecal					
82286	A	Assay of bradykinin					
82300	A	Assay of cadmium					
82306	A	Assay of vitamin D					
82307	A	Assay of vitamin D					
82308	A	Assay of calcitonin					
82310	A	Assay of calcium					
82330	A	Assay of calcium					
82331	A	Calcium infusion test					
82340	A	Assay of calcium in urine					
82355	A	Calculus analysis, qual					
82360	A	Calculus assay, quant					
82365	A	Calculus spectroscopy					
82370	A	X-ray assay, calculus					
82373	A	Assay, c-d transfer measure					
82374	A	Assay, blood carbon dioxide					
82375	A	Assay, blood carbon monoxide					
82376	A	Test for carbon monoxide					
82378	A	Carcinoembryonic antigen					
82379	A	Assay of carnitine					
82380	A	Assay of carotene					
82382	A	Assay, urine catecholamines					
82383	A	Assay, blood catecholamines					
82384	A	Assay, three catecholamines					
82387	A	Assay of cathepsin-d					
82390	A	Assay of ceruloplasmin					
82397	A	Chemiluminescent assay					
82415	A	Assay of chloramphenicol					
82435	A	Assay of blood chloride					
82436	A	Assay of urine chloride					
82438	A	Assay, other fluid chlorides					
82441	A	Test for chlorohydrocarbons					
82465	A	Assay, bld/serum cholesterol					
82480	A	Assay, serum cholinesterase					
82482	A	Assay, rbc cholinesterase					
82485	A	Assay, chondroitin sulfate					
82486	A	Gas/liquid chromatography					
82487	A	Paper chromatography					
82488	A	Paper chromatography					
82489	A	Thin layer chromatography					
82491	A	Chromotography, quant, sing					
82492	A	Chromotography, quant, mult					
82495	A	Assay of chromium					
82507	A	Assay of citrate					
82520	A	Assay of cocaine					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
82523	A	Collagen crosslinks					
82525	A	Assay of copper					
82528	A	Assay of corticosterone					
82530	A	Cortisol, free					
82533	A	Total cortisol					
82540	A	Assay of creatine					
82541	A	Column chromotography, qual					
82542	A	Column chromotography, quant					
82543	A	Column chromotograph/isotope					
82544	A	Column chromotograph/isotope					
82550	A	Assay of ck (cpk)					
82552	A	Assay of cpk in blood					
82553	A	Creatine, MB fraction					
82554	A	Creatine, isoforms					
82565	A	Assay of creatinine					
82570	A	Assay of urine creatinine					
82575	A	Creatinine clearance test					
82585	A	Assay of cryofibrinogen					
82595	A	Assay of cryoglobulin					
82600	A	Assay of cyanide					
82607	A	Vitamin B-12					
82608	A	B-12 binding capacity					
82615	A	Test for urine cystines					
82626	A	Dehydroepiandrosterone					
82627	A	Dehydroepiandrosterone					
82633	A	Desoxycorticosterone					
82634	A	Deoxycortisol					
82638	A	Assay of dibucaine number					
82646	A	Assay of dihydrocodeinone					
82649	A	Assay of dihydromorphinone					
82651	A	Assay of dihydrotestosterone					
82652	A	Assay of dihydroxyvitamin d					
82654	A	Assay of dimethadione					
82657	A	Enzyme cell activity					
82658	A	Enzyme cell activity, ra					
82664	A	Electrophoretic test					
82666	A	Assay of epiandrosterone					
82668	A	Assay of erythropoietin					
82670	A	Assay of estradiol					
82671	A	Assay of estrogens					
82672	A	Assay of estrogen					
82677	A	Assay of estriol					
82679	A	Assay of estrone					
82690	A	Assay of ethchlorvynol					
82693	A	Assay of ethylene glycol					
82696	A	Assay of etiocholanolone					
82705	A	Fats/lipids, feces, qual					
82710	A	Fats/lipids, feces, quant					
82715	A	Assay of fecal fat					
82725	A	Assay of blood fatty acids					
82726	A	Long chain fatty acids					
82728	A	Assay of ferritin					
82731	A	Assay of fetal fibronectin					
82735	A	Assay of fluoride					
82742	A	Assay of flurazepam					
82746	A	Blood folic acid serum					
82747	A	Assay of folic acid, rbc					
82757	A	Assay of semen fructose					
82759	A	Assay of rbc galactokinase					
82760	A	Assay of galactose					
82775	A	Assay galactose transferase					
82776	A	Galactose transferase test					
82784	A	Assay of gammaglobulin igm					
82785	A	Assay of gammaglobulin ige					
82787	A	Igg 1, 2, 3 or 4, each					
82800	A	Blood pH					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
82803	A	Blood gases: pH, pO2 & pCO2					
82805	A	Blood gases W/02 saturation					
82810	A	Blood gases, O2 sat only					
82820	A	Hemoglobin-oxygen affinity					
82926	A	Assay of gastric acid					
82928	A	Assay of gastric acid					
82938	A	Gastrin test					
82941	A	Assay of gastrin					
82943	A	Assay of glucagón					
82945	A	Glucose other fluid					
82946	A	Glucagon tolerance test					
82947	A	Assay, glucose, blood quant					
82948	A	Reagent strip/blood glucose					
82950	A	Glucose test					
82951	A	Glucose tolerance test (GTT)					
82952	A	GTT-added samples					
82953	A	Glucose-tolbutamide test					
82955	A	Assay of g6pd enzyme					
82960	A	Test for G6PD enzyme					
82962	A	Glucose blood test					
82963	A	Assay of glucosidase					
82965	A	Assay of gdh enzyme					
82975	A	Assay of glutamine					
82977	A	Assay of GGT					
82978	A	Assay of glutathione					
82979	A	Assay, rbc glutathione					
82980	A	Assay of glutethimide					
82985	A	Glycated protein					
83001	A	Gonadotropin (FSH)					
83002	A	Gonadotropin (LH)					
83003	A	Assay, growth hormone (hgh)					
83008	A	Assay of guanosine					
83010	A	Assay of haptoglobin, quant					
83012	A	Assay of haptoglobins					
83013	A	H pylori analysis					
83014	A	H pylori drug admin/collect					
83015	A	Heavy metal screen					
83018	A	Quantitative screen, metals					
83020	A	Hemoglobin electrophoresis					
83021	A	Hemoglobin chromotography					
83026	A	Hemoglobin, copper sulfate					
83030	A	Fetal hemoglobin, chemical					
83033	A	Fetal hemoglobin assay, qual					
83036	A	Glycated hemoglobin test					
83045	A	Blood methemoglobin test					
83050	A	Blood methemoglobin assay					
83051	A	Assay of plasma hemoglobin					
83055	A	Blood sulfhemoglobin test					
83060	A	Blood sulfhemoglobin assay					
83065	A	Assay of hemoglobin heat					
83068	A	Hemoglobin stability screen					
83069	A	Assay of urine hemoglobin					
83070	A	Assay of hemosiderin, qual					
83071	A	Assay of hemosiderin, quant					
83080	A	Assay of b hexosaminidase					
83088	A	Assay of histamine					
83090	A	Assay of homocystine					
83150	A	Assay of for hva					
83491	A	Assay of corticosteroids					
83497	A	Assay of 5-hiaa					
83498	A	Assay of progesterone					
83499	A	Assay of progesterone					
83500	A	Assay, free hydroxyproline					
83505	A	Assay, total hydroxyproline					
83516	A	Immunoassay, nonantibody					
83518	A	Immunoassay, dipstick					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
83519	A	Immunoassay, nonantibody					
83520	A	Immunoassay, RIA					
83525	A	Assay of insulin					
83527	A	Assay of insulin					
83528	A	Assay of intrinsic factor					
83540	A	Assay of iron					
83550	A	Iron binding test					
83570	A	Assay of idh enzyme					
83582	A	Assay of ketogenic steroids					
83586	A	Assay 17- ketosteroids					
83593	A	Fractionation, ketosteroids					
83605	A	Assay of lactic acid					
83615	A	Lactate (LD) (LDH) enzyme					
83625	A	Assay of ldh enzymes					
83632	A	Placental lactogen					
83633	A	Test urine for lactose					
83634	A	Assay of urine for lactose					
83655	A	Assay of lead					
83661	A	L/s ratio, fetal lung					
83662	A	Foam stability, fetal lung					
83663	A	Fluoro polarize, fetal lung					
83664	A	Lamellar bdy, fetal lung					
83670	A	Assay of lap enzyme					
83690	A	Assay of lipase					
83715	A	Assay of blood lipoproteins					
83716	A	Assay of blood lipoproteins					
83718	A	Assay of lipoprotein					
83719	A	Assay of blood lipoprotein					
83721	A	Assay of blood lipoprotein					
83727	A	Assay of lrh hormone					
83735	A	Assay of magnesium					
83775	A	Assay of md enzyme					
83785	A	Assay of manganese					
83788	A	Mass spectrometry qual					
83789	A	Mass spectrometry quant					
83805	A	Assay of meprobamate					
83825	A	Assay of mercury					
83835	A	Assay of metanephrines					
83840	A	Assay of methadone					
83857	A	Assay of methemalbumin					
83858	A	Assay of methsuximide					
83864	A	Mucopolysaccharides					
83866	A	Mucopolysaccharides screen					
83872	A	Assay synovial fluid mucin					
83873	A	Assay of csf protein					
83874	A	Assay of myoglobin					
83883	A	Assay, nephelometry not spec					
83885	A	Assay of nickel					
83887	A	Assay of nicotine					
83890	A	Molecule isolate					
83891	A	Molecule isolate nucleic					
83892	A	Molecular diagnostics					
83893	A	Molecule dot/slot/blot					
83894	A	Molecule gel electrophor					
83896	A	Molecular diagnostics					
83897	A	Molecule nucleic transfer					
83898	A	Molecule nucleic ampli					
83901	A	Molecule nucleic ampli					
83902	A	Molecular diagnostics					
83903	A	Molecule mutation scan					
83904	A	Molecule mutation identify					
83905	A	Molecule mutation identify					
83906	A	Molecule mutation identify					
83912	A	Genetic examination					
83915	A	Assay of nucleotidase					
83916	A	Oligoclonal bands					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
83918	A	Organic acids, total, quant					
83919	A	Organic acids, qual, each					
83921	A	Organic acid, single, quant					
83925	A	Assay of opiates					
83930	A	Assay of blood osmolality					
83935	A	Assay of urine osmolality					
83937	A	Assay of osteocalcin					
83945	A	Assay of oxalate					
83950	A	Oncorprotein, her-2/neu					
83970	A	Assay of parathormone					
83986	A	Assay of body fluid acidity					
83992	A	Assay for phencyclidine					
84022	A	Assay of phenothiazine					
84030	A	Assay of blood pku					
84035	A	Assay of phenylketones					
84060	A	Assay acid phosphatase					
84061	A	Phosphatase, forensic exam					
84066	A	Assay prostate phosphatase					
84075	A	Assay alkaline phosphatase					
84078	A	Assay alkaline phosphatase					
84080	A	Assay alkaline phosphatases					
84081	A	Amniotic fluid enzyme test					
84085	A	Assay of rbc pg6d enzyme					
84087	A	Assay phosphohexose enzymes					
84100	A	Assay of phosphorus					
84105	A	Assay of urine phosphorus					
84106	A	Test for porphobilinogen					
84110	A	Assay of porphobilinogen					
84119	A	Test urine for porphyrins					
84120	A	Assay of urine porphyrins					
84126	A	Assay of feces porphyrins					
84127	A	Assay of feces porphyrins					
84132	A	Assay of serum potassium					
84133	A	Assay of urine potassium					
84134	A	Assay of prealbumin					
84135	A	Assay of pregnanediol					
84138	A	Assay of pregnanetriol					
84140	A	Assay of pregnenolone					
84143	A	Assay of 17-hydroxypregneno					
84144	A	Assay of progesterone					
84146	A	Assay of prolactin					
84150	A	Assay of prostaglandin					
84152	A	Assay of psa, complexed					
84153	A	Assay of psa, total					
84154	A	Assay of psa, free					
84155	A	Assay of protein					
84160	A	Assay of serum protein					
84165	A	Assay of serum proteins					
84181	A	Western blot test					
84182	A	Protein, western blot test					
84202	A	Assay RBC protoporphyrin					
84203	A	Test RBC protoporphyrin					
84206	A	Assay of proinsulin					
84207	A	Assay of vitamin b-6					
84210	A	Assay of pyruvate					
84220	A	Assay of pyruvate kinase					
84228	A	Assay of quinine					
84233	A	Assay of estrogen					
84234	A	Assay of progesterone					
84235	A	Assay of endocrine hormone					
84238	A	Assay, nonendocrine receptor					
84244	A	Assay of renin					
84252	A	Assay of vitamin b-2					
84255	A	Assay of selenium					
84260	A	Assay of serotonin					
84270	A	Assay of sex hormone globul					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
84275	A	Assay of sialic acid					
84285	A	Assay of silica					
84295	A	Assay of serum sodium					
84300	A	Assay of urine sodium					
84305	A	Assay of somatomedin					
84307	A	Assay of somatostatin					
84311	A	Spectrophotometry					
84315	A	Body fluid specific gravity					
84375	A	Chromatogram assay, sugars					
84376	A	Sugars, single, qual					
84377	A	Sugars, multiple, qual					
84378	A	Sugars single quant					
84379	A	Sugars multiple quant					
84392	A	Assay of urine sulfate					
84402	A	Assay of testosterone					
84403	A	Assay of total testosterone					
84425	A	Assay of vitamin b-1					
84430	A	Assay of thiocyanate					
84432	A	Assay of thyroglobulin					
84436	A	Assay of total thyroxine					
84437	A	Assay of neonatal thyroxine					
84439	A	Assay of free thyroxine					
84442	A	Assay of thyroid activity					
84443	A	Assay thyroid stim hormone					
84445	A	Assay of tsi					
84446	A	Assay of vitamin e					
84449	A	Assay of transcortin					
84450	A	Transferase (AST) (SGOT)					
84460	A	Alanine amino (ALT) (SGPT)					
84466	A	Assay of transferrin					
84478	A	Assay of triglycerides					
84479	A	Assay of thyroid (t3 or t4)					
84480	A	Assay, triiodothyronine (t3)					
84481	A	Free assay (FT-3)					
84482	A	Reverse assay (t3)					
84484	A	Assay of troponin, quant					
84485	A	Assay duodenal fluid trypsin					
84488	A	Test feces for trypsin					
84490	A	Assay of feces for trypsin					
84510	A	Assay of tyrosine					
84512	A	Assay of troponin, qual					
84520	A	Assay of urea nitrogen					
84525	A	Urea nitrogen semi-quant					
84540	A	Assay of urine/urea-n					
84545	A	Urea-N clearance test					
84550	A	Assay of blood/uric acid					
84560	A	Assay of urine/uric acid					
84577	A	Assay of feces/urobilinogen					
84578	A	Test urine urobilinogen					
84580	A	Assay of urine urobilinogen					
84583	A	Assay of urine urobilinogen					
84585	A	Assay of urine vma					
84586	A	Assay of vip					
84588	A	Assay of vasopressin					
84590	A	Assay of vitamin a					
84591	A	Assay of nos vitamin					
84597	A	Assay of vitamin k					
84600	A	Assay of volatiles					
84620	A	Xylose tolerance test					
84630	A	Assay of zinc					
84681	A	Assay of c-peptide					
84702	A	Chorionic gonadotropin test					
84703	A	Chorionic gonadotropin assay					
84830	A	Ovulation tests					
84999	A	Clinical chemistry test					
85002	A	Bleeding time test					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
85007	A	Differential WBC count					
85008	A	Nondifferential WBC count					
85009	A	Differential WBC count					
85013	A	Hematocrit					
85014	A	Hematocrit					
85018	A	Hemoglobin					
85021	A	Automated hemogram					
85022	A	Automated hemogram					
85023	A	Automated hemogram					
85024	A	Automated hemogram					
85025	A	Automated hemogram					
85027	A	Automated hemogram					
85031	A	Manual hemogram, cbc					
85041	A	Red blood cell (RBC) count					
85044	A	Reticulocyte count					
85045	A	Reticulocyte count					
85046	A	Reticyte/hgb concentrate					
85048	A	White blood cell (WBC) count					
85060	X	Blood smear interpretation	0342	0.23	$11.96	$5.88	$2.39
85097	X	Bone marrow interpretation	0343	0.47	$24.44	$13.20	$4.89
85130	A	Chromogenic substrate assay					
85170	A	Blood clot retraction					
85175	A	Blood clot lysis time					
85210	A	Blood clot factor II test					
85220	A	Blood clot factor V test					
85230	A	Blood clot factor VII test					
85240	A	Blood clot factor VIII test					
85244	A	Blood clot factor VIII test					
85245	A	Blood clot factor VIII test					
85246	A	Blood clot factor VIII test					
85247	A	Blood clot factor VIII test					
85250	A	Blood clot factor IX test					
85260	A	Blood clot factor X test					
85270	A	Blood clot factor XI test					
85280	A	Blood clot factor XII test					
85290	A	Blood clot factor XIII test					
85291	A	Blood clot factor XIII test					
85292	A	Blood clot factor assay					
85293	A	Blood clot factor assay					
85300	A	Antithrombin III test					
85301	A	Antithrombin III test					
85302	A	Blood clot inhibitor antigen					
85303	A	Blood clot inhibitor test					
85305	A	Blood clot inhibitor assay					
85306	A	Blood clot inhibitor test					
85307	A	Assay activated protein c					
85335	A	Factor inhibitor test					
85337	A	Thrombomodulin					
85345	A	Coagulation time					
85347	A	Coagulation time					
85348	A	Coagulation time					
85360	A	Euglobulin lysis					
85362	A	Fibrin degradation products					
85366	A	Fibrinogen test					
85370	A	Fibrinogen test					
85378	A	Fibrin degradation					
85379	A	Fibrin degradation					
85384	A	Fibrinogen					
85385	A	Fibrinogen					
85390	A	Fibrinolysins screen					
85400	A	Fibrinolytic plasmin					
85410	A	Fibrinolytic antiplasmin					
85415	A	Fibrinolytic plasminogen					
85420	A	Fibrinolytic plasminogen					
85421	A	Fibrinolytic plasminogen					
85441	A	Heinz bodies, direct					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
85445	A	Heinz bodies, induced					
85460	A	Hemoglobin, fetal					
85461	A	Hemoglobin, fetal					
85475	A	Hemolysin					
85520	A	Heparin assay					
85525	A	Heparin					
85530	A	Heparin-protamine tolerance					
85536	A	Iron stain peripheral blood					
85540	A	Wbc alkaline phosphatase					
85547	A	RBC mechanical fragility					
85549	A	Muramidase					
85555	A	RBC osmotic fragility					
85557	A	RBC osmotic fragility					
85576	A	Blood platelet aggregation					
85585	A	Blood platelet estimation					
85590	A	Platelet count, manual					
85595	A	Platelet count, automated					
85597	A	Platelet neutralization					
85610	A	Prothrombin time					
85611	A	Prothrombin test					
85612	A	Viper venom prothrombin time					
85613	A	Russell viper venom, diluted					
85635	A	Reptilase test					
85651	A	Rbc sed rate, nonautomated					
85652	A	Rbc sed rate, automated					
85660	A	RBC sickle cell test					
85670	A	Thrombin time, plasma					
85675	A	Thrombin time, titer					
85705	A	Thromboplastin inhibition					
85730	A	Thromboplastin time, partial					
85732	A	Thromboplastin time, partial					
85810	A	Blood viscosity examination					
85999	A	Hematology procedure					
86000	A	Agglutinins, febrile					
86001	A	Allergen specific igg					
86003	A	Allergen specific IgE					
86005	A	Allergen specific IgE					
86021	A	WBC antibody identification					
86022	A	Platelet antibodies					
86023	A	Immunoglobulin assay					
86038	A	Antinuclear antibodies					
86039	A	Antinuclear antibodies (ANA)					
86060	A	Antistreptolysin o, titer					
86063	A	Antistreptolysin o, screen					
86077	X	Physician blood bank service	0343	0.47	$24.44	$13.20	$4.89
86078	X	Physician blood bank service	0344	0.66	$34.33	$18.54	$6.87
86079	X	Physician blood bank service	0344	0.66	$34.33	$18.54	$6.87
86140	A	C-reactive protein					
86141	A	C-reactive protein, hs					
86146	A	Glycoprotein antibody					
86147	A	Cardiolipin antibody					
86148	A	Phospholipid antibody					
86155	A	Chemotaxis assay					
86156	A	Cold agglutinin, screen					
86157	A	Cold agglutinin, titer					
86160	A	Complement, antigen					
86161	A	Complement/function activity					
86162	A	Complement, total (CH50)					
86171	A	Complement fixation, each					
86185	A	Counterimmunoelectrophoresis					
86215	A	Deoxyribonuclease, antibody					
86225	A	DNA antibody					
86226	A	DNA antibody, single strand					
86235	A	Nuclear antigen antibody					
86243	A	Fc receptor					
86255	A	Fluorescent antibody, screen					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
86256	A	Fluorescent antibody, titer					
86277	A	Growth hormone antibody					
86280	A	Hemagglutination inhibition					
86294	A	Immunoassay, tumor qual					
86300	A	Immunoassay, tumor ca 15-3					
86301	A	Immunoassay, tumor ca 19-9					
86304	A	Immunoassay, tumor, ca 125					
86308	A	Heterophile antibodies					
86309	A	Heterophile antibodies					
86310	A	Heterophile antibodies					
86316	A	Immunoassay, tumor other					
86317	A	Immunoassay,infectious agent					
86318	A	Immunoassay,infectious agent					
86320	A	Serum immunoelectrophoresis					
86325	A	Other immunoelectrophoresis					
86327	A	Immunoelectrophoresis assay					
86329	A	Immunodiffusion					
86331	A	Immunodiffusion ouchterlony					
86332	A	Immune complex assay					
86334	A	Immunofixation procedure					
86336	A	Inhibin A					
86337	A	Insulin antibodies					
86340	A	Intrinsic factor antibody					
86341	A	Islet cell antibody					
86343	A	Leukocyte histamine release					
86344	A	Leukocyte phagocytosis					
86353	A	Lymphocyte transformation					
86359	A	T cells, total count					
86360	A	T cell, absolute count/ratio					
86361	A	T cell, absolute count					
86376	A	Microsomal antibody					
86378	A	Migration inhibitory factor					
86382	A	Neutralization test, viral					
86384	A	Nitroblue tetrazolium dye					
86403	A	Particle agglutination test					
86406	A	Particle agglutination test					
86430	A	Rheumatoid factor test					
86431	A	Rheumatoid factor, quant					
86485	X	Skin test, candida	0341	0.16	$8.32	$3.08	$1.66
86490	X	Coccidioidomycosis skin test	0341	0.16	$8.32	$3.08	$1.66
86510	X	Histoplasmosis skin test	0341	0.16	$8.32	$3.08	$1.66
86580	X	TB intradermal test	0341	0.16	$8.32	$3.08	$1.66
86585	X	TB tine test	0341	0.16	$8.32	$3.08	$1.66
86586	X	Skin test, unlisted	0341	0.16	$8.32	$3.08	$1.66
86590	A	Streptokinase, antibody					
86592	A	Blood serology, qualitative					
86593	A	Blood serology, quantitative					
86602	A	Antinomyces antibody					
86603	A	Adenovirus antibody					
86606	A	Aspergillus antibody					
86609	A	Bacterium antibody					
86611	A	Bartonella antibody					
86612	A	Blastomyces antibody					
86615	A	Bordetella antibody					
86617	A	Lyme disease antibody					
86618	A	Lyme disease antibody					
86619	A	Borrelia antibody					
86622	A	Brucella antibody					
86625	A	Campylobacter antibody					
86628	A	Candida antibody					
86631	A	Chlamydia antibody					
86632	A	Chlamydia igm antibody					
86635	A	Coccidioides antibody					
86638	A	Q fever antibody					
86641	A	Cryptococcus antibody					
86644	A	CMV antibody					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
86645	A	CMV antibody, IgM					
86648	A	Diphtheria antibody					
86651	A	Encephalitis antibody					
86652	A	Encephalitis antibody					
86653	A	Encephalitis antibody					
86654	A	Encephalitis antibody					
86658	A	Enterovirus antibody					
86663	A	Epstein-barr antibody					
86664	A	Epstein-barr antibody					
86665	A	Epstein-barr antibody					
86666	A	Ehrlichia antibody					
86668	A	Francisella tularensis					
86671	A	Fungus antibody					
86674	A	Giardia lamblia antibody					
86677	A	Helicobacter pylori					
86682	A	Helminth antibody					
86684	A	Hemophilus influenza					
86687	A	Htlv-i antibody					
86688	A	Htlv-ii antibody					
86689	A	HTLV/HIV confirmatory test					
86692	A	Hepatitis, delta agent					
86694	A	Herpes simplex test					
86695	A	Herpes simplex test					
86696	A	Herpes simplex type 2					
86698	A	Histoplasma					
86701	A	HIV-1					
86702	A	HIV-2					
86703	A	HIV-1/HIV-2, single assay					
86704	A	Hep b core antibody, total					
86705	A	Hep b core antibody, igm					
86706	A	Hep b surface antibody					
86707	A	Hep be antibody					
86708	A	Hep a antibody, total					
86709	A	Hep a antibody, igm					
86710	A	Influenza virus antibody					
86713	A	Legionella antibody					
86717	A	Leishmania antibody					
86720	A	Leptospira antibody					
86723	A	Listeria monocytogenes ab					
86727	A	Lymph choriomeningitis ab					
86729	A	Lympho venereum antibody					
86732	A	Mucormycosis antibody					
86735	A	Mumps antibody					
86738	A	Mycoplasma antibody					
86741	A	Neisseria meningitidis					
86744	A	Nocardia antibody					
86747	A	Parvovirus antibody					
86750	A	Malaria antibody					
86753	A	Protozoa antibody nos					
86756	A	Respiratory virus antibody					
86757	A	Rickettsia antibody					
86759	A	Rotavirus antibody					
86762	A	Rubella antibody					
86765	A	Rubeola antibody					
86768	A	Salmonella antibody					
86771	A	Shigella antibody					
86774	A	Tetanus antibody					
86777	A	Toxoplasma antibody					
86778	A	Toxoplasma antibody, igm					
86781	A	Treponema pallidum, confirm					
86784	A	Trichinella antibody					
86787	A	Varicella-zoster antibody					
86790	A	Virus antibody nos					
86793	A	Yersinia antibody					
86800	A	Thyroglobulin antibody					
86803	A	Hepatitis c ab test					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
86804	A	Hep c ab test, confirm					
86805	A	Lymphocytotoxicity assay					
86806	A	Lymphocytotoxicity assay					
86807	A	Cytotoxic antibody screening					
86808	A	Cytotoxic antibody screening					
86812	A	HLA typing, A, B, or C					
86813	A	HLA typing, A, B, or C					
86816	A	HLA typing, DR/DQ					
86817	A	HLA typing, DR/DQ					
86821	A	Lymphocyte culture, mixed					
86822	A	Lymphocyte culture, primed					
86849	A	Immunology procedure					
86850	X	RBC antibody screen	0345	0.19	$9.88	$3.06	$1.98
86860	X	RBC antibody elution	0346	0.42	$21.84	$5.46	$4.37
86870	X	RBC antibody identification	0346	0.42	$21.84	$5.46	$4.37
86880	X	Coombs test	0341	0.16	$8.32	$3.08	$1.66
86885	X	Coombs test	0341	0.16	$8.32	$3.08	$1.66
86886	X	Coombs test	0341	0.16	$8.32	$3.08	$1.66
86890	X	Autologous blood process	0347	0.98	$50.97	$12.74	$10.19
86891	X	Autologous blood, op salvage	0345	0.19	$9.88	$3.06	$1.98
86900	X	Blood typing, ABO	0341	0.16	$8.32	$3.08	$1.66
86901	X	Blood typing, Rh (D)	0345	0.19	$9.88	$3.06	$1.98
86903	X	Blood typing, antigen screen	0345	0.19	$9.88	$3.06	$1.98
86904	X	Blood typing, patient serum	0345	0.19	$9.88	$3.06	$1.98
86905	X	Blood typing, RBC antigens	0345	0.19	$9.88	$3.06	$1.98
86906	X	Blood typing, Rh phenotype	0345	0.19	$9.88	$3.06	$1.98
86910	E	Blood typing, paternity test					
86911	E	Blood typing, antigen system					
86915	X	Bone marrow/stem cell prep	0346	0.42	$21.84	$5.46	$4.37
86920	X	Compatibility test	0346	0.42	$21.84	$5.46	$4.37
86921	X	Compatibility test	0345	0.19	$9.88	$3.06	$1.98
86922	X	Compatibility test	0346	0.42	$21.84	$5.46	$4.37
86927	X	Plasma, fresh frozen	0346	0.42	$21.84	$5.46	$4.37
86930	X	Frozen blood prep	0347	0.98	$50.97	$12.74	$10.19
86931	X	Frozen blood thaw	0347	0.98	$50.97	$12.74	$10.19
86932	X	Frozen blood freeze/thaw	0346	0.42	$21.84	$5.46	$4.37
86940	A	Hemolysins/agglutinins, auto					
86941	A	Hemolysins/agglutinins					
86945	X	Blood product/irradiation	0346	0.42	$21.84	$5.46	$4.37
86950	X	Leukacyte transfusion	0347	0.98	$50.97	$12.74	$10.19
86965	X	Pooling blood platelets	0346	0.42	$21.84	$5.46	$4.37
86970	X	RBC pretreatment	0345	0.19	$9.88	$3.06	$1.98
86971	X	RBC pretreatment	0345	0.19	$9.88	$3.06	$1.98
86972	X	RBC pretreatment	0345	0.19	$9.88	$3.06	$1.98
86975	X	RBC pretreatment, serum	0345	0.19	$9.88	$3.06	$1.98
86976	X	RBC pretreatment, serum	0345	0.19	$9.88	$3.06	$1.98
86977	X	RBC pretreatment, serum	0345	0.19	$9.88	$3.06	$1.98
86978	X	RBC pretreatment, serum	0345	0.19	$9.88	$3.06	$1.98
86985	X	Split blood or products	0347	0.98	$50.97	$12.74	$10.19
86999	X	Transfusion procedure	0345	0.19	$9.88	$3.06	$1.98
87001	A	Small animal inoculation					
87003	A	Small animal inoculation					
87015	A	Specimen concentration					
87040	A	Blood culture for bacteria					
87045	A	Feces culture, bacteria					
87046	A	Stool cultr, bacteria, each					
87070	A	Culture, bacteria, other					
87071	A	Culture bacteri aerobic othr					
87073	A	Culture bacteria anaerobic					
87075	A	Culture bacteria anaerobic					
87076	A	Culture anaerobe ident, each					
87077	A	Culture aerobic identify					
87081	A	Culture screen only					
87084	A	Culture of specimen by kit					
87086	A	Urine culture/colony count					
87088	A	Urine bacteria culture					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
87101	A	Skin fungi culture					
87102	A	Fungus isolation culture					
87103	A	Blood fungus culture					
87106	A	Fungi identification, yeast					
87107	A	Fungi identification, mold					
87109	A	Mycoplasma					
87110	A	Chlamydia culture					
87116	A	Mycobacteria culture					
87118	A	Mycobacteric identification					
87140	A	Cultur type immunofluoresc					
87143	A	Culture typing, glc/hplc					
87147	A	Culture type, immunologic					
87149	A	Culture type, nucleic acid					
87152	A	Culture type pulse field gel					
87158	A	Culture typing, added method					
87164	A	Dark field examination					
87166	A	Dark field examination					
87168	A	Macroscopic exam arthropod					
87169	A	Macacroscopic exam parasite					
87172	A	Pinworm exam					
87176	A	Tissue homogenization, cultr					
87177	A	Ova and parasites smears					
87181	A	Microbe susceptible, diffuse					
87184	A	Microbe susceptible, disk					
87185	A	Microbe susceptible, enzyme					
87186	A	Microbe susceptible, mic					
87187	A	Microbe susceptible, mic					
87188	A	Microbe suscept, macrobroth					
87190	A	Microbe suscept, mycobacteri					
87197	A	Bactericidal level, serum					
87198	A	Cytomegalovirus antibody dfa					
87199	A	Enterovirus antibody, dfa					
87205	A	Smear, gram stain					
87206	A	Smear, fluorescent/acid stai					
87207	A	Smear, special stain					
87210	A	Smear, wet mount, saline/ink					
87220	A	Tissue exam for fungi					
87230	A	Assay, toxin or antitoxin					
87250	A	Virus inoculate, eggs/animal					
87252	A	Virus inoculation, tissue					
87253	A	Virus inoculate tissue, addl					
87254	A	Virus inoculation, shell via					
87260	A	Adenovirus ag, if					
87265	A	Pertussis ag, if					
87270	A	Chlamydia trachomatis ag, if					
87272	A	Cryptosporidum/gardia ag, if					
87273	A	Herpes simplex 2, ag, if					
87274	A	Herpes simplex 1, ag, if					
87275	A	Influenza b, ag, if					
87276	A	Influenza a, ag, if					
87277	A	Legionella micdadei, ag, if					
87278	A	Legion pneumophilia ag, if					
87279	A	Parainfluenza, ag, if					
87280	A	Respiratory syncytial ag, if					
87281	A	Pneumocystis carinii, ag, if					
87283	A	Rubeola, ag, if					
87285	A	Treponema pallidum, ag, if					
87290	A	Varicella zoster, ag, if					
87299	A	Antibody detection, nos, if					
87300	A	Ag detection, polyval, if					
87301	A	Adenovirus ag, eia					
87320	A	Chylmd trach ag, eia					
87324	A	Clostridium ag, eia					
87327	A	Cryptococcus neoform ag, eia					
87328	A	Cryptospor ag, eia					
87332	A	Cytomegalovirus ag, eia					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
87335	A	E coli 0157 ag, eia					
87336	A	Entamoeb hist dispr, ag, eia					
87337	A	Entamoeb hist group, ag, eia					
87338	A	Hpylori, stool, eia					
87339	A	H pylori ag, eia					
87340	A	Hepatitis b surface ag, eia					
87341	A	Hepatitis b surface, ag, eia					
87350	A	Hepatitis be ag, eia					
87380	A	Hepatitis delta ag, eia					
87385	A	Histoplasma capsul ag, eia					
87390	A	Hiv-1 ag, eia					
87391	A	Hiv-2 ag, eia					
87400	A	Influenza a/b, ag, eia					
87420	A	Resp syncytial ag, eia					
87425	A	Rotavirus ag, eia					
87427	A	Shiga-like toxin ag, eia					
87430	A	Strep a ag, eia					
87449	A	Ag detect nos, eia, mult					
87450	A	Ag detect nos, eia, single					
87451	A	Ag detect polyval, eia, mult					
87470	A	Bartonella, dna, dir probe					
87471	A	Bartonella, dna, amp probe					
87472	A	Bartonella, dna, quant					
87475	A	Lyme dis, dna, dir probe					
87476	A	Lyme dis, dna, amp probe					
87477	A	Lyme dis, dna, quant					
87480	A	Candida, dna, dir probe					
87481	A	Candida, dna, amp probe					
87482	A	Candida, dna, quant					
87485	A	Chylmd pneum, dna, dir probe					
87486	A	Chylmd pneum, dna, amp probe					
87487	A	Chylmd pneum, dna, quant					
87490	A	Chylmd trach, dna, dir probe					
87491	A	Chylmd trach, dna, amp probe					
87492	A	Chylmd trach, dna, quant					
87495	A	Cytomeg, dna, dir probe					
87496	A	Cytomeg, dna, amp probe					
87497	A	Cytomeg, dna, quant					
87510	A	Gardner vag, dna, dir probe					
87511	A	Gardner vag, dna, amp probe					
87512	A	Gardner vag, dna, quant					
87515	A	Hepatitis b, dna, dir probe					
87516	A	Hepatitis b, dna, amp probe					
87517	A	Hepatitis b, dna, quant					
87520	A	Hepatitis c, rna, dir probe					
87521	A	Hepatitis c, rna, amp probe					
87522	A	Hepatitis c, rna, quant					
87525	A	Hepatitis g, dna, dir probe					
87526	A	Hepatitis g, dna, amp probe					
87527	A	Hepatitis g, dna, quant					
87528	A	Hsv, dna, dir probe					
87529	A	Hsv, dna, amp probe					
87530	A	Hsv, dna, quant					
87531	A	Hhv-6, dna, dir probe					
87532	A	Hhv-6, dna, amp probe					
87533	A	Hhv-6, dna, quant					
87534	A	Hiv-1, dna, dir probe					
87535	A	Hiv-1, dna, amp probe					
87536	A	Hiv-1, dna, quant					
87537	A	Hiv-2, dna, dir probe					
87538	A	Hiv-2, dna, amp probe					
87539	A	Hiv-2, dna, quant					
87540	A	Legion pneumo, dna, dir prob					
87541	A	Legion pneumo, dna, amp prob					
87542	A	Legion pneumo, dna, quant					
87550	A	Mycobacteria, dna, dir probe					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
87551	A	Mycobacteria, dna, amp probe					
87552	A	Mycobacteria, dna, quant					
87555	A	M.tuberculo, dna, dir probe					
87556	A	M.tuberculo, dna, amp probe					
87557	A	M.tuberculo, dna, quant					
87560	A	M.avium-intra, dna, dir prob					
87561	A	M.avium-intra, dna, amp prob					
87562	A	M.avium-intra, dna, quant					
87580	A	M.pneumon, dna, dir probe					
87581	A	M.pneumon, dna, amp probe					
87582	A	M.pneumon, dna, quant					
87590	A	N.gonorrhoeae, dna, dir prob					
87591	A	N.gonorrhoeae, dna, amp prob					
87592	A	N.gonorrhoeae, dna, quant					
87620	A	Hpv, dna, dir probe					
87621	A	Hpv, dna, amp probe					
87622	A	Hpv, dna, quant					
87650	A	Strep a, dna, dir probe					
87651	A	Strep a, dna, amp probe					
87652	A	Strep a, dna, quant					
87797	A	Detect agent nos, dna, dir					
87798	A	Detect agent nos, dna, amp					
87799	A	Detect agent nos, dna, quant					
87800	A	Detect agnt mult, dna, direc					
87801	A	Detect agnt mult, dna, ampli					
87802	A	Strep b assay w/optic					
87803	A	Clostridium toxin a w/optic					
87804	A	Influenza assay w/optic					
87810	A	Chylmd trach assay w/optic					
87850	A	N. gonorrhoeae assay w/optic					
87880	A	Strep a assay w/optic					
87899	A	Agent nos assay w/optic					
87901	A	Genotype, dna, hiv reverse t					
87902	A	Genotype, dna, hepatitis C					
87903	A	Phenotype, dna hiv w/culture					
87904	A	Phenotype, dna hiv w/clt add					
87999	A	Microbiology procedure					
88000	E	Autopsy (necropsy), gross					
88005	E	Autopsy (necropsy), gross					
88007	E	Autopsy (necropsy), gross					
88012	E	Autopsy (necropsy), gross					
88014	E	Autopsy (necropsy), gross					
88016	E	Autopsy (necropsy), gross					
88020	E	Autopsy (necropsy), complete					
88025	E	Autopsy (necropsy), complete					
88027	E	Autopsy (necropsy), complete					
88028	E	Autopsy (necropsy), complete					
88029	E	Autopsy (necropsy), complete					
88036	E	Limited autopsy					
88037	E	Limited autopsy					
88040	E	Forensic autopsy (necropsy)					
88045	E	Coroner's autopsy (necropsy)					
88099	E	Necropsy (autopsy) procedure					
88104	X	Cytopathology, fluids	0343	0.47	$24.44	$13.20	$4.89
88106	X	Cytopathology, fluids	0343	0.47	$24.44	$13.20	$4.89
88107	X	Cytopathology, fluids	0343	0.47	$24.44	$13.20	$4.89
88108	X	Cytopath, concentrate tech	0343	0.47	$24.44	$13.20	$4.89
88125	X	Forensic cytopathology	0342	0.23	$11.96	$5.88	$2.39
88130	A	Sex chromatin identification					
88140	A	Sex chromatin identification					
88141	N	Cytopath, c/v, interpret					
88142	A	Cytopath, c/v, thin layer					
88143	A	Cytopath, c/v, thin lyr redo					
88144	A	Cytopath, c/v, thin lyr redo					
88145	A	Cytopath, c/v, thin lyr sel					
88147	A	Cytopath, c/v, automated					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
88148	A	Cytopath, c/v, auto rescreen					
88150	A	Cytopath, c/v, manual					
88152	A	Cytopath, c/v, auto redo					
88153	A	Cytopath, c/v, redo					
88154	A	Cytopath, c/v, select					
88155	A	Cytopath, c/v, index add-on					
88160	X	Cytopath smear, other source	0342	0.23	$11.96	$5.88	$2.39
88161	X	Cytopath smear, other source	0343	0.47	$24.44	$13.20	$4.89
88162	X	Cytopath smear, other source	0343	0.47	$24.44	$13.20	$4.89
88164	A	Cytopath tbs, c/v, manual					
88165	A	Cytopath tbs, c/v, redo					
88166	A	Cytopath tbs, c/v, auto redo					
88167	A	Cytopath tbs, c/v, select					
88172	X	Cytopathology eval of fna	0343	0.47	$24.44	$13.20	$4.89
88173	X	Cytopath eval, fna, report	0343	0.47	$24.44	$13.20	$4.89
88180	X	Cell marker study	0343	0.47	$24.44	$13.20	$4.89
88182	X	Cell marker study	0344	0.66	$34.33	$18.54	$6.87
88199	A	Cytopathology procedure					
88230	A	Tissue culture, lymphocyte					
88233	A	Tissue culture, skin/biopsy					
88235	A	Tissue culture, placenta					
88237	A	Tissue culture, bone marrow					
88239	A	Tissue culture, tumor					
88240	A	Cell cryopreserve/storage					
88241	A	Frozen cell preparation					
88245	A	Chromosome analysis, 20-25					
88248	A	Chromosome analysis, 50-100					
88249	A	Chromosome analysis, 100					
88261	A	Chromosome analysis, 5					
88262	A	Chromosome analysis, 15-20					
88263	A	Chromosome analysis, 45					
88264	A	Chromosome analysis, 20-25					
88267	A	Chromosome analys, placenta					
88269	A	Chromosome analys, amniotic					
88271	A	Cytogenetics, dna probe					
88272	A	Cytogenetics, 3-5					
88273	A	Cytogenetics, 10-30					
88274	A	Cytogenetics, 25-99					
88275	A	Cytogenetics, 100-300					
88280	A	Chromosome karyotype study					
88283	A	Chromosome banding study					
88285	A	Chromosome count, additional					
88289	A	Chromosome study, additional					
88291	A	Cyto/molecular report					
88299	X	Cytogenetic study	0342	0.23	$11.96	$5.88	$2.39
88300	X	Surgical path, gross	0342	0.23	$11.96	$5.88	$2.39
88302	X	Tissue exam by pathologist	0342	0.23	$11.96	$5.88	$2.39
88304	X	Tissue exam by pathologist	0343	0.47	$24.44	$13.20	$4.89
88305	X	Tissue exam by pathologist	0343	0.47	$24.44	$13.20	$4.89
88307	X	Tissue exam by pathologist	0344	0.66	$34.33	$18.54	$6.87
88309	X	Tissue exam by pathologist	0344	0.66	$34.33	$18.54	$6.87
88311	X	Decalcify tissue	0342	0.23	$11.96	$5.88	$2.39
88312	X	Special stains	0342	0.23	$11.96	$5.88	$2.39
88313	X	Special stains	0342	0.23	$11.96	$5.88	$2.39
88314	X	Histochemical stain	0342	0.23	$11.96	$5.88	$2.39
88318	X	Chemical histochemistry	0342	0.23	$11.96	$5.88	$2.39
88319	X	Enzyme histochemistry	0342	0.23	$11.96	$5.88	$2.39
88321	X	Microslide consultation	0342	0.23	$11.96	$5.88	$2.39
88323	X	Microslide consultation	0343	0.47	$24.44	$13.20	$4.89
88325	X	Comprehensive review of data	0344	0.66	$34.33	$18.54	$6.87
88329	X	Path consult introp	0342	0.23	$11.96	$5.88	$2.39
88331	X	Path consult intraop, 1 bloc	0343	0.47	$24.44	$13.20	$4.89
88332	X	Path consult intraop, addl	0342	0.23	$11.96	$5.88	$2.39
88342	X	Immunocytochemistry	0344	0.66	$34.33	$18.54	$6.87
88346	X	Immunofluorescent study	0343	0.47	$24.44	$13.20	$4.89
88347	X	Immunofluorescent study	0344	0.66	$34.33	$18.54	$6.87

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
88348	X	Electron microscopy	0661	3.46	$179.95	$98.97	$35.99
88349	X	Scanning electron microscopy	0661	3.46	$179.95	$98.97	$35.99
88355	X	Analysis, skeletal muscle	0344	0.66	$34.33	$18.54	$6.87
88356	X	Analysis, nerve	0344	0.66	$34.33	$18.54	$6.87
88358	X	Analysis, tumor	0344	0.66	$34.33	$18.54	$6.87
88362	X	Nerve teasing preparations	0343	0.47	$24.44	$13.20	$4.89
88365	X	Tissue hybridization	0344	0.66	$34.33	$18.54	$6.87
88371	A	Protein, western blot tissue					
88372	A	Protein analysis w/probe					
88380	A	Microdissection					
88399	A	Surgical pathology procedure					
88400	A	Bilirubin total transcut					
89050	A	Body fluid cell count					
89051	A	Body fluid cell count					
89060	A	Exam synovial fluid crystals					
89100	X	Sample intestinal contents	0360	1.65	$85.81	$42.91	$17.16
89105	X	Sample intestinal contents	0360	1.65	$85.81	$42.91	$17.16
89125	A	Specimen fat stain					
89130	X	Sample stomach contents	0360	1.65	$85.81	$42.91	$17.16
89132	X	Sample stomach contents	0360	1.65	$85.81	$42.91	$17.16
89135	X	Sample stomach contents	0360	1.65	$85.81	$42.91	$17.16
89136	X	Sample stomach contents	0360	1.65	$85.81	$42.91	$17.16
89140	X	Sample stomach contents	0360	1.65	$85.81	$42.91	$17.16
89141	X	Sample stomach contents	0360	1.65	$85.81	$42.91	$17.16
89160	A	Exam feces for meat fibers					
89190	A	Nasal smear for eosinophils					
89250	X	Fertilization of oocyte	0348	0.83	$43.17		$8.63
89251	X	Culture oocyte w/embryos	0348	0.83	$43.17		$8.63
89252	X	Assist oocyte fertilization	0348	0.83	$43.17		$8.63
89253	X	Embryo hatching	0348	0.83	$43.17		$8.63
89254	X	Oocyte identification	0348	0.83	$43.17		$8.63
89255	X	Prepare embryo for transfer	0348	0.83	$43.17		$8.63
89256	X	Prepare cryopreserved embryo	0348	0.83	$43.17		$8.63
89257	X	Sperm identification	0348	0.83	$43.17		$8.63
89258	X	Cryopreservation, embryo	0348	0.83	$43.17		$8.63
89259	X	Cryopreservation, sperm	0348	0.83	$43.17		$8.63
89260	X	Sperm isolation, simple	0348	0.83	$43.17		$8.63
89261	X	Sperm isolation, complex	0348	0.83	$43.17		$8.63
89264	X	Identify sperm tissue	0348	0.83	$43.17		$8.63
89300	A	Semen analysis					
89310	A	Semen analysis					
89320	A	Semen analysis					
89321	A	Semen analysis					
89325	A	Sperm antibody test					
89329	A	Sperm evaluation test					
89330	A	Evaluation, cervical mucus					
89350	X	Sputum specimen collection	0344	0.66	$34.33	$18.54	$6.87
89355	A	Exam feces for starch					
89360	X	Collect sweat for test	0344	0.66	$34.33	$18.54	$6.87
89365	A	Water load test					
89399	A	Pathology lab procedure					
90281	E	Human ig, im					
90283	E	Human ig, iv					
90287	E	Botulinum antitoxin					
90288	E	Botulism ig, iv					
90291	E	Cmv ig, iv					
90296	N	Diphtheria antitoxin					
90371	K	Hep b ig, im	0356	0.69	$35.89		$7.18
90375	K	Rabies ig, im/sc	0356	0.69	$35.89		$7.18
90376	K	Rabies ig, heat treated	0356	0.69	$35.89		$7.18
90378	N	Rsv ig, im, 50mg					
90379	N	Rsv ig, iv					
90384	E	Rh ig, full-dose, im					
90385	N	Rh ig, minidose, im					
90386	E	Rh ig, iv					
90389	N	Tetanus ig, im					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
90393	N	Vaccina ig, im					
90396	N	Varicella-zoster ig, im					
90399	E	Immune globulin					
90471	N	Immunization admin					
90472	N	Immunization admin, each add					
90473	E	Immune admin oral/nasal					
90474	E	Immune admin oral/nasal addl					
90476	N	Adenovirus vaccine, type 4					
90477	N	Adenovirus vaccine, type 7					
90581	K	Anthrax vaccine, sc	0356	0.69	$35.89		$7.18
90585	N	Bcg vaccine, percut					
90586	N	Bcg vaccine, intravesical					
90632	N	Hep a vaccine, adult im					
90633	N	Hep a vacc, ped/adol, 2 dose					
90634	N	Hep a vacc, ped/adol, 3 dose					
90636	K	Hep a/hep b vacc, adult im	0355	0.24	$12.48		$2.50
90645	N	Hib vaccine, hboc, im					
90646	N	Hib vaccine, prp-d, im					
90647	N	Hib vaccine, prp-omp, im					
90648	N	Hib vaccine, prp-t, im					
90657	K	Flu vaccine, 6-35 mo, im	0354	0.09	$4.68		
90658	K	Flu vaccine, 3 yrs, im	0354	0.09	$4.68		
90659	K	Flu vaccine, whole, im	0354	0.09	$4.68		
90660	E	Flu vaccine, nasal					
90665	N	Lyme disease vaccine; im					
90669	E	Pneumococcal vacc, ped<5					
90675	N	Rabies vaccine, im					
90676	N	Rabies vaccine, id					
90680	N	Rotovirus vaccine, oral					
90690	N	Typhoid vaccine, oral					
90691	N	Typhoid vaccine, im					
90692	N	Typhoid vaccine, h-p, sc/id					
90693	K	Typhoid vaccine, akd, sc	0356	0.69	$35.89		$7.18
90700	N	Dtap vaccine, im					
90701	N	Dtp vaccine, im					
90702	N	Dt vaccine < 7, im					
90703	N	Tetanus vaccine, im					
90704	N	Mumps vaccine, sc					
90705	N	Measles vaccine, sc					
90706	N	Rubella vaccine, sc					
90707	N	Mmr vaccine, sc					
90708	N	Measles-rubella vaccine, sc					
90709	K	Rubella & mumps vaccine, sc	0356	0.69	$35.89		$7.18
90710	N	Mmrv vaccine, sc					
90712	N	Oral poliovirus vaccine					
90713	N	Poliovirus, ipv, sc					
90716	N	Chicken pox vaccine, sc					
90717	N	Yellow fever vaccine, sc					
90718	N	Td vaccine > 7, im					
90719	N	Diphtheria vaccine, im					
90720	N	Dtp/hib vaccine, im					
90721	N	Dtap/hib vaccine, im					
90723	K	Dtap-hep b-ipv vaccine, im	0356	0.69	$35.89		$7.18
90725	N	Cholera vaccine, injectable					
90727	N	Plague vaccine, im					
90732	K	Pneumococcal vaccine	0354	0.09	$4.68		
90733	N	Meningococcal vaccine, sc					
90735	N	Encephalitis vaccine, sc					
90740	K	Hepb vacc, ill pat 3 dose im	0356	0.69	$35.89		$7.18
90743	K	Hep b vacc, adol, 2 dose, im	0356	0.69	$35.89		$7.18
90744	K	Hepb vacc ped/adol 3 dose im	0356	0.69	$35.89		$7.18
90746	K	Hep b vaccine, adult, im	0356	0.69	$35.89		$7.18
90747	K	Hepb vacc, ill pat 4 dose im	0356	0.69	$35.89		$7.18
90748	K	Hep b/hib vaccine, im	0355	0.24	$12.48		$2.50
90749	N	Vaccine toxoid					
90780	E	IV infusion therapy, 1 hour					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
90781	E	IV infusion, additional hour					
90782	X	Injection, sc/im	0353	0.43	$22.36		$4.47
90783	X	Injection, ia	0359	0.83	$43.17		$8.63
90784	X	Injection, iv	0359	0.83	$43.17		$8.63
90788	X	Injection of antibiotic	0359	0.83	$43.17		$8.63
90799	X	Ther/prophylactic/dx inject	0352	0.14	$7.28		$1.46
90801	S	Psy dx interview	0323	1.95	$101.42	$21.26	$20.28
90802	S	Intac psy dx interview	0323	1.95	$101.42	$21.26	$20.28
90804	S	Psytx, office, 20-30 min	0322	1.44	$74.89	$12.40	$14.98
90805	S	Psytx, off, 20-30 min w/e&m	0322	1.44	$74.89	$12.40	$14.98
90806	S	Psytx, off, 45-50 min	0323	1.95	$101.42	$21.26	$20.28
90807	S	Psytx, off, 45-50 min w/e&m	0323	1.95	$101.42	$21.26	$20.28
90808	S	Psytx, office, 75-80 min	0323	1.95	$101.42	$21.26	$20.28
90809	S	Psytx, off, 75-80, w/e&m	0323	1.95	$101.42	$21.26	$20.28
90810	S	Intac psytx, off, 20-30 min	0322	1.44	$74.89	$12.40	$14.98
90811	S	Intac psytx, 20-30, w/e&m	0322	1.44	$74.89	$12.40	$14.98
90812	S	Intac psytx, off, 45-50 min	0323	1.95	$101.42	$21.26	$20.28
90813	S	Intac psytx, 45-50 min w/e&m	0323	1.95	$101.42	$21.26	$20.28
90814	S	Intac psytx, off, 75-80 min	0323	1.95	$101.42	$21.26	$20.28
90815	S	Intac psytx, 75-80 w/e&m	0323	1.95	$101.42	$21.26	$20.28
90816	S	Psytx, hosp, 20-30 min	0322	1.44	$74.89	$12.40	$14.98
90817	S	Psytx, hosp, 20-30 min w/e&m	0322	1.44	$74.89	$12.40	$14.98
90818	S	Psytx, hosp, 45-50 min	0323	1.95	$101.42	$21.26	$20.28
90819	S	Psytx, hosp, 45-50 min w/e&m	0323	1.95	$101.42	$21.26	$20.28
90821	S	Psytx, hosp, 75-80 min	0323	1.95	$101.42	$21.26	$20.28
90822	S	Psytx, hosp, 75-80 min w/e&m	0323	1.95	$101.42	$21.26	$20.28
90823	S	Intac psytx, hosp, 20-30 min	0322	1.44	$74.89	$12.40	$14.98
90824	S	Intac psytx, hsp 20-30 w/e&m	0322	1.44	$74.89	$12.40	$14.98
90826	S	Intac psytx, hosp, 45-50 min	0323	1.95	$101.42	$21.26	$20.28
90827	S	Intac psytx, hsp 45-50 w/e&m	0323	1.95	$101.42	$21.26	$20.28
90828	S	Intac psytx, hosp, 75-80 min	0323	1.95	$101.42	$21.26	$20.28
90829	S	Intac psytx, hsp 75-80 w/e&m	0323	1.95	$101.42	$21.26	$20.28
90845	S	Psychoanalysis	0323	1.95	$101.42	$21.26	$20.28
90846	S	Family psytx w/o patient	0324	2.71	$140.94		$28.19
90847	S	Family psytx w/patient	0324	2.71	$140.94		$28.19
90849	S	Multiple family group psytx	0325	1.55	$80.61	$18.27	$16.12
90853	S	Group psychotherapy	0325	1.55	$80.61	$18.27	$16.12
90857	S	Intac group psytx	0325	1.55	$80.61	$18.27	$16.12
90862	X	Medication management	0374	1.20	$62.41		$12.48
90865	S	Narcosynthesis	0323	1.95	$101.42	$21.26	$20.28
90870	S	Electroconvulsive therapy	0320	4.46	$231.96	$80.06	$46.39
90871	S	Electroconvulsive therapy	0320	4.46	$231.96	$80.06	$46.39
90875	E	Psychophysiological therapy					
90876	E	Psychophysiological therapy					
90880	S	Hypnotherapy	0323	1.95	$101.42	$21.26	$20.28
90882	E	Environmental manipulation					
90885	N	Psy evaluation of records					
90887	N	Consultation with family					
90889	N	Preparation of report					
90899	S	Psychiatric service/therapy	0322	1.44	$74.89	$12.40	$14.98
90901	S	Biofeedback train, any meth	0321	1.27	$66.05	$21.78	$13.21
90911	S	Biofeedback peri/uro/rectal	0321	1.27	$66.05	$21.78	$13.21
90918	A	ESRD related services, month					
90919	A	ESRD related services, month					
90920	A	ESRD related services, month					
90921	A	ESRD related services, month					
90922	A	ESRD related services, day					
90923	A	Esrd related services, day					
90924	A	Esrd related services, day					
90925	A	Esrd related services, day					
90935	S	Hemodialysis, one evaluation	0170	4.79	$249.12		$49.82
90937	E	Hemodialysis, repeated eval					
90939	N	Hemodialysis study, transcut					
90940	N	Hemodialysis access study					
90945	S	Dialysis, one evaluation	0170	4.79	$249.12		$49.82
90947	E	Dialysis, repeated eval					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
90989	E	Dialysis training, complete					
90993	E	Dialysis training, incompl					
90997	E	Hemoperfusion					
90999	E	Dialysis procedure					
91000	X	Esophageal intubation	0361	3.55	$184.63	$83.23	$36.93
91010	X	Esophagus motility study	0361	3.55	$184.63	$83.23	$36.93
91011	X	Esophagus motility study	0361	3.55	$184.63	$83.23	$36.93
91012	X	Esophagus motility study	0361	3.55	$184.63	$83.23	$36.93
91020	X	Gastric motility	0361	3.55	$184.63	$83.23	$36.93
91030	X	Acid perfusion of esophagus	0361	3.55	$184.63	$83.23	$36.93
91032	X	Esophagus, acid reflux test	0361	3.55	$184.63	$83.23	$36.93
91033	X	Prolonged acid reflux test	0361	3.55	$184.63	$83.23	$36.93
91052	X	Gastric analysis test	0361	3.55	$184.63	$83.23	$36.93
91055	X	Gastric intubation for smear	0360	1.65	$85.81	$42.91	$17.16
91060	X	Gastric saline load test	0360	1.65	$85.81	$42.91	$17.16
91065	X	Breath hydrogen test	0360	1.65	$85.81	$42.91	$17.16
91100	X	Pass intestine bleeding tube	0360	1.65	$85.81	$42.91	$17.16
91105	X	Gastric intubation treatment	0360	1.65	$85.81	$42.91	$17.16
91122	T	Anal pressure record	0156	3.10	$161.23	$48.37	$32.25
91123	N	Irrigate fecal impaction					
91132	X	Electrogastrography	0360	1.65	$85.81	$42.91	$17.16
91133	X	Electrogastrography w/test	0360	1.65	$85.81	$42.91	$17.16
91299	X	Gastroenterology procedure	0360	1.65	$85.81	$42.91	$17.16
92002	V	Eye exam, new patient	0601	1.04	$54.09		$10.82
92004	V	Eye exam, new patient	0602	1.57	$81.65		$16.33
92012	V	Eye exam established pat	0600	0.91	$47.33		$9.47
92014	V	Eye exam & treatment	0602	1.57	$81.65		$16.33
92015	E	Refraction					
92018	T	New eye exam & treatment	0699	2.37	$123.26	$55.47	$24.65
92019	S	Eye exam & treatment	0698	1.01	$52.53	$20.49	$10.51
92020	S	Special eye evaluation	0230	0.78	$40.57	$15.82	$8.11
92060	S	Special eye evaluation	0230	0.78	$40.57	$15.82	$8.11
92065	S	Orthoptic/pleoptic training	0230	0.78	$40.57	$15.82	$8.11
92070	N	Fitting of contact lens					
92081	S	Visual field examination(s)	0230	0.78	$40.57	$15.82	$8.11
92082	S	Visual field examination(s)	0698	1.01	$52.53	$20.49	$10.51
92083	S	Visual field examination(s)	0698	1.01	$52.53	$20.49	$10.51
92100	N	Serial tonometry exam(s)					
92120	S	Tonography & eye evaluation	0230	0.78	$40.57	$15.82	$8.11
92130	S	Water provocation tonography	0698	1.01	$52.53	$20.49	$10.51
92135	S	Opthalmic dx imaging	0230	0.78	$40.57	$15.82	$8.11
92136	S	Ophthalmic biometry	0230	0.78	$40.57	$15.82	$8.11
92140	S	Glaucoma provocative tests	0698	1.01	$52.53	$20.49	$10.51
92225	S	Special eye exam, initial	0698	1.01	$52.53	$20.49	$10.51
92226	S	Special eye exam, subsequent	0698	1.01	$52.53	$20.49	$10.51
92230	T	Eye exam with photos	0699	2.37	$123.26	$55.47	$24.65
92235	T	Eye exam with photos	0699	2.37	$123.26	$55.47	$24.65
92240	S	Icg angiography	0231	2.24	$116.50	$52.43	$23.30
92250	S	Eye exam with photos	0230	0.78	$40.57	$15.82	$8.11
92260	S	Ophthalmoscopy/dynamometry	0230	0.78	$40.57	$15.82	$8.11
92265	S	Eye muscle evaluation	0231	2.24	$116.50	$52.43	$23.30
92270	S	Electro-oculography	0698	1.01	$52.53	$20.49	$10.51
92275	S	Electroretinography	0231	2.24	$116.50	$52.43	$23.30
92283	S	Color vision examination	0230	0.78	$40.57	$15.82	$8.11
92284	S	Dark adaptation eye exam	0698	1.01	$52.53	$20.49	$10.51
92285	S	Eye photography	0230	0.78	$40.57	$15.82	$8.11
92286	S	Internal eye photography	0698	1.01	$52.53	$20.49	$10.51
92287	S	Internal eye photography	0231	2.24	$116.50	$52.43	$23.30
92310	E	Contact lens fitting					
92311	X	Contact lens fitting	0362	2.83	$147.19		$29.44
92312	X	Contact lens fitting	0362	2.83	$147.19		$29.44
92313	X	Contact lens fitting	0362	2.83	$147.19		$29.44
92314	E	Prescription of contact lens					
92315	X	Prescription of contact lens	0362	2.83	$147.19		$29.44
92316	X	Prescription of contact lens	0362	2.83	$147.19		$29.44
92317	X	Prescription of contact lens	0362	2.83	$147.19		$29.44

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
92325	X	Modification of contact lens	0362	2.83	$147.19		$29.44
92326	X	Replacement of contact lens	0362	2.83	$147.19		$29.44
92330	S	Fitting of artificial eye	0230	0.78	$40.57	$15.82	$8.11
92335	N	Fitting of artificial eye					
92340	E	Fitting of spectacles					
92341	E	Fitting of spectacles					
92342	E	Fitting of spectacles					
92352	X	Special spectacles fitting	0362	2.83	$147.19		$29.44
92353	X	Special spectacles fitting	0362	2.83	$147.19		$29.44
92354	X	Special spectacles fitting	0362	2.83	$147.19		$29.44
92355	X	Special spectacles fitting	0362	2.83	$147.19		$29.44
92358	X	Eye prosthesis service	0362	2.83	$147.19		$29.44
92370	E	Repair & adjust spectacles					
92371	X	Repair & adjust spectacles	0362	2.83	$147.19		$29.44
92390	E	Supply of spectacles					
92391	E	Supply of contact lenses					
92392	E	Supply of low vision aids					
92393	E	Supply of artificial eye					
92395	E	Supply of spectacles					
92396	E	Supply of contact lenses					
92499	S	Eye service or procedure	0230	0.78	$40.57	$15.82	$8.11
92502	T	Ear and throat examination	0251	1.92	$99.86		$19.97
92504	N	Ear microscopy examination					
92506	A	Speech/hearing evaluation					
92507	A	Speech/hearing therapy					
92508	A	Speech/hearing therapy					
92510	A	Rehab for ear implant					
92511	T	Nasopharyngoscopy	0071	1.01	$52.53	$14.18	$10.51
92512	X	Nasal function studies	0363	0.76	$39.53	$14.63	$7.91
92516	X	Facial nerve function test	0660	1.65	$85.81	$31.75	$17.16
92520	X	Laryngeal function studies	0660	1.65	$85.81	$31.75	$17.16
92525	A	Oral function evaluation					
92526	A	Oral function therapy					
92531	N	Spontaneous nystagmus study					
92532	N	Positional nystagmus test					
92533	N	Caloric vestibular test					
92534	N	Optokinetic nystagmus test					
92541	X	Spontaneous nystagmus test	0363	0.76	$39.53	$14.63	$7.91
92542	X	Positional nystagmus test	0363	0.76	$39.53	$14.63	$7.91
92543	X	Caloric vestibular test	0660	1.65	$85.81	$31.75	$17.16
92544	X	Optokinetic nystagmus test	0363	0.76	$39.53	$14.63	$7.91
92545	X	Oscillating tracking test	0363	0.76	$39.53	$14.63	$7.91
92546	X	Sinusoidal rotational test	0660	1.65	$85.81	$31.75	$17.16
92547	X	Supplemental electrical test	0363	0.76	$39.53	$14.63	$7.91
92548	X	Posturography	0660	1.65	$85.81	$31.75	$17.16
92551	E	Pure tone hearing test, air					
92552	X	Pure tone audiometry, air	0364	0.45	$23.40	$9.13	$4.68
92553	X	Audiometry, air & bone	0365	1.31	$68.13	$20.16	$13.63
92555	X	Speech threshold audiometry	0364	0.45	$23.40	$9.13	$4.68
92556	X	Speech audiometry, complete	0364	0.45	$23.40	$9.13	$4.68
92557	X	Comprehensive hearing test	0365	1.31	$68.13	$20.16	$13.63
92559	E	Group audiometric testing					
92560	E	Bekesy audiometry, screen					
92561	X	Bekesy audiometry, diagnosis	0365	1.31	$68.13	$20.16	$13.63
92562	X	Loudness balance test	0364	0.45	$23.40	$9.13	$4.68
92563	X	Tone decay hearing test	0364	0.45	$23.40	$9.13	$4.68
92564	X	Sisi hearing test	0364	0.45	$23.40	$9.13	$4.68
92565	X	Stenger test, pure tone	0364	0.45	$23.40	$9.13	$4.68
92567	X	Tympanometry	0364	0.45	$23.40	$9.13	$4.68
92568	X	Acoustic reflex testing	0364	0.45	$23.40	$9.13	$4.68
92569	X	Acoustic reflex decay test	0364	0.45	$23.40	$9.13	$4.68
92571	X	Filtered speech hearing test	0364	0.45	$23.40	$9.13	$4.68
92572	X	Staggered spondaic word test	0364	0.45	$23.40	$9.13	$4.68
92573	X	Lombard test	0364	0.45	$23.40	$9.13	$4.68
92575	X	Sensorineural acuity test	0365	1.31	$68.13	$20.16	$13.63
92576	X	Synthetic sentence test	0364	0.45	$23.40	$9.13	$4.68

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
92577	X	Stenger test, speech	0365	1.31	$68.13	$20.16	$13.63
92579	X	Visual audiometry (vra)	0365	1.31	$68.13	$20.16	$13.63
92582	X	Conditioning play audiometry	0365	1.31	$68.13	$20.16	$13.63
92583	X	Select picture audiometry	0364	0.45	$23.40	$9.13	$4.68
92584	X	Electrocochleography	0660	1.65	$85.81	$31.75	$17.16
92585	S	Auditor evoke potent, compre	0216	3.06	$159.15	$71.62	$31.83
92586	S	Auditor evoke potent, limit	0218	1.06	$55.13		$11.03
92587	X	Evoked auditory test	0363	0.76	$39.53	$14.63	$7.91
92588	X	Evoked auditory test	0660	1.65	$85.81	$31.75	$17.16
92589	X	Auditory function test(s)	0364	0.45	$23.40	$9.13	$4.68
92590	E	Hearing aid exam, one ear					
92591	E	Hearing aid exam, both ears					
92592	E	Hearing aid check, one ear					
92593	E	Hearing aid check, both ears					
92594	E	Electro hearng aid test, one					
92595	E	Electro hearng aid tst, both					
92596	X	Ear protector evaluation	0365	1.31	$68.13	$20.16	$13.63
92597	E	Voice Prosthetic Evaluation					
92598	E	Voice Prosthetic Modification					
92599	X	ENT procedure/service	0364	0.45	$23.40	$9.13	$4.68
92950	S	Heart/lung resuscitation cpr	0094	2.68	$139.38	$47.39	$27.88
92953	S	Temporary external pacing	0094	2.68	$139.38	$47.39	$27.88
92960	S	Cardioversion electric, ext	0679	5.70	$296.45	$100.79	$59.29
92961	S	Cardioversion, electric, int	0679	5.70	$296.45	$100.79	$59.29
92970	C	Cardioassist, internal					
92971	C	Cardioassist, external					
92973	T	Percut coronary thrombectomy	0973		$250.00		$50.00
92974	T	Cath place, cardio brachytx	0981		$2,250.00		$450.00
92975	C	Dissolve clot, heart vessel					
92977	T	Dissolve clot, heart vessel	0676	4.62	$240.28	$64.88	$48.06
92978	S	Intravasc us, heart add-on	0670	14.78	$768.69	$276.73	$153.74
92979	S	Intravasc us, heart add-on	0670	14.78	$768.69	$276.73	$153.74
92980	T	Insert intracoronary stent	0104	72.72	$3,782.09		$756.42
92981	T	Insert intracoronary stent	0104	72.72	$3,782.09		$756.42
92982	T	Coronary artery dilation	0083	47.83	$2,487.59		$497.52
92984	T	Coronary artery dilation	0083	47.83	$2,487.59		$497.52
92986	T	Revision of aortic valve	0083	47.83	$2,487.59		$497.52
92987	T	Revision of mitral valve	0083	47.83	$2,487.59		$497.52
92990	T	Revision of pulmonary valve	0083	47.83	$2,487.59		$497.52
92992	C	Revision of heart chamber					
92993	C	Revision of heart chamber					
92995	T	Coronary atherectomy	0082	75.42	$3,922.52	$1,137.53	$784.50
92996	T	Coronary atherectomy add-on	0082	75.42	$3,922.52	$1,137.53	$784.50
92997	T	Pul art balloon repr, percut	0081	22.69	$1,180.08		$236.02
92998	T	Pul art balloon repr, percut	0081	22.69	$1,180.08		$236.02
93000	E	Electrocardiogram, complete					
93005	S	Electrocardiogram, tracing	0099	0.38	$19.76		$3.95
93010	A	Electrocardiogram report					
93012	N	Transmission of ecg					
93014	E	Report on transmitted ecg					
93015	E	Cardiovascular stress test					
93016	E	Cardiovascular stress test					
93017	X	Cardiovascular stress test	0100	1.34	$69.69	$38.33	$13.94
93018	E	Cardiovascular stress test					
93024	X	Cardiac drug stress test	0100	1.34	$69.69	$38.33	$13.94
93025	X	Microvolt t-wave assess	0100	1.34	$69.69	$38.33	$13.94
93040	E	Rhythm ECG with report					
93041	S	Rhythm ECG, tracing	0099	0.38	$19.76		$3.95
93042	E	Rhythm ECG, report					
93224	E	ECG monitor/report, 24 hrs					
93225	X	ECG monitor/record, 24 hrs	0100	1.34	$69.69	$38.33	$13.94
93226	X	ECG monitor/report, 24 hrs	0100	1.34	$69.69	$38.33	$13.94
93227	E	ECG monitor/review, 24 hrs					
93230	E	ECG monitor/report, 24 hrs					
93231	X	Ecg monitor/record, 24 hrs	0100	1.34	$69.69	$38.33	$13.94
93232	X	ECG monitor/report, 24 hrs	0100	1.34	$69.69	$38.33	$13.94

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
93233	E	ECG monitor/review, 24 hrs					
93235	E	ECG monitor/report, 24 hrs					
93236	X	ECG monitor/report, 24 hrs	0100	1.34	$69.69	$38.33	$13.94
93237	E	ECG monitor/review, 24 hrs					
93268	E	ECG record/review					
93270	X	ECG recording	0097	0.84	$43.69	$23.80	$8.74
93271	X	Ecg/monitoring and analysis	0097	0.84	$43.69	$23.80	$8.74
93272	E	Ecg/review, interpret only					
93278	S	ECG/signal-averaged	0099	0.38	$19.76		$3.95
93303	S	Echo transthoracic	0269	3.42	$177.87	$92.49	$35.57
93304	S	Echo transthoracic	0697	1.51	$78.53	$40.84	$15.71
93307	S	Echo exam of heart	0269	3.42	$177.87	$92.49	$35.57
93308	S	Echo exam of heart	0697	1.51	$78.53	$40.84	$15.71
93312	S	Echo transesophageal	0270	5.65	$293.85	$146.79	$58.77
93313	S	Echo transesophageal	0270	5.65	$293.85	$146.79	$58.77
93314	N	Echo transesophageal					
93315	S	Echo transesophageal	0270	5.65	$293.85	$146.79	$58.77
93316	S	Echo transesophageal	0270	5.65	$293.85	$146.79	$58.77
93317	N	Echo transesophageal					
93318	S	Echo transesophageal intraop	0270	5.65	$293.85	$146.79	$58.77
93320	S	Doppler echo exam, heart	0671	1.68	$87.38	$45.44	$17.48
93321	S	Doppler echo exam, heart	0697	1.51	$78.53	$40.84	$15.71
93325	S	Doppler color flow add-on	0697	1.51	$78.53	$40.84	$15.71
93350	S	Echo transthoracic	0269	3.42	$177.87	$92.49	$35.57
93501	T	Right heart catheterization	0080	35.64	$1,853.60	$838.92	$370.72
93503	T	Insert/place heart catheter	0103	11.26	$585.62	$210.82	$117.12
93505	T	Biopsy of heart lining	0103	11.26	$585.62	$210.82	$117.12
93508	T	Cath placement, angiography	0080	35.64	$1,853.60	$838.92	$370.72
93510	T	Left heart catheterization	0080	35.64	$1,853.60	$838.92	$370.72
93511	T	Left heart catheterization	0080	35.64	$1,853.60	$838.92	$370.72
93514	T	Left heart catheterization	0080	35.64	$1,853.60	$838.92	$370.72
93524	T	Left heart catheterization	0080	35.64	$1,853.60	$838.92	$370.72
93526	T	Rt & Lt heart catheters	0080	35.64	$1,853.60	$838.92	$370.72
93527	T	Rt & Lt heart catheters	0080	35.64	$1,853.60	$838.92	$370.72
93528	T	Rt & Lt heart catheters	0080	35.64	$1,853.60	$838.92	$370.72
93529	T	Rt&lt heart catheterization	0080	35.64	$1,853.60	$838.92	$370.72
93530	T	Rt heart cath, congenital	0080	35.64	$1,853.60	$838.92	$370.72
93531	T	R & l heart cath, congenital	0080	35.64	$1,853.60	$838.92	$370.72
93532	T	R & l heart cath, congenital	0080	35.64	$1,853.60	$838.92	$370.72
93533	T	R & l heart cath, congenital	0080	35.64	$1,853.60	$838.92	$370.72
93539	N	Injection, cardiac cath					
93540	N	Injection, cardiac cath					
93541	N	Injection for lung angiogram					
93542	N	Injection for heart x-rays					
93543	N	Injection for heart x-rays					
93544	N	Injection for aortography					
93545	N	Inject for coronary x-rays					
93555	N	Imaging, cardiac cath					
93556	N	Imaging, cardiac cath					
93561	N	Cardiac output measurement					
93562	N	Cardiac output measurement					
93571	N	Heart flow reserve measure					
93572	N	Heart flow reserve measure					
93600	T	Bundle of His recording	0087	5.81	$302.17		$60.43
93602	T	Intra-atrial recording	0087	5.81	$302.17		$60.43
93603	T	Right ventricular recording	0087	5.81	$302.17		$60.43
93609	T	Map tachycardia, add-on	0087	5.81	$302.17		$60.43
93610	T	Intra-atrial pacing	0087	5.81	$302.17		$60.43
93612	T	Intraventricular pacing	0087	5.81	$302.17		$60.43
93613	T	Electrophys map, 3d, add-on	0087	5.81	$302.17		$60.43
93615	T	Esophageal recording	0087	5.81	$302.17		$60.43
93616	T	Esophageal recording	0087	5.81	$302.17		$60.43
93618	T	Heart rhythm pacing	0087	5.81	$302.17		$60.43
93619	T	Electrophysiology evaluation	0085	31.77	$1,652.33	$363.51	$330.47
93620	T	Electrophysiology evaluation	0085	31.77	$1,652.33	$363.51	$330.47
93621	T	Electrophysiology evaluation	0085	31.77	$1,652.33	$363.51	$330.47

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
93622	T	Electrophysiology evaluation	0085	31.77	$1,652.33	$363.51	$330.47
93623	T	Stimulation, pacing heart	0087	5.81	$302.17		$60.43
93624	S	Electrophysiologic study	0084	9.60	$499.29		$99.86
93631	T	Heart pacing, mapping	0087	5.81	$302.17		$60.43
93640	S	Evaluation heart device	0084	9.60	$499.29		$99.86
93641	S	Electrophysiology evaluation	0084	9.60	$499.29		$99.86
93642	S	Electrophysiology evaluation	0084	9.60	$499.29		$99.86
93650	T	Ablate heart dysrhythm focus	0086	43.70	$2,272.79	$772.75	$454.56
93651	T	Ablate heart dysrhythm focus	0086	43.70	$2,272.79	$772.75	$454.56
93652	T	Ablate heart dysrhythm focus	0086	43.70	$2,272.79	$772.75	$454.56
93660	S	Tilt table evaluation	0101	4.40	$228.84	$105.27	$45.77
93662	S	Intracardiac ecg (ice)	0670	14.78	$768.69	$276.73	$153.74
93668	E	Peripheral vascular rehab					
93701	S	Bioimpedance, thoracic	0099	0.38	$19.76		$3.95
93720	E	Total body plethysmography					
93721	X	Plethysmography tracing	0368	0.96	$49.93	$24.97	$9.99
93722	E	Plethysmography report					
93724	S	Analyze pacemaker system	0690	0.45	$23.40	$10.63	$4.68
93727	S	Analyze ilr system	0690	0.45	$23.40	$10.63	$4.68
93731	S	Analyze pacemaker system	0690	0.45	$23.40	$10.63	$4.68
93732	S	Analyze pacemaker system	0690	0.45	$23.40	$10.63	$4.68
93733	S	Telephone analy, pacemaker	0690	0.45	$23.40	$10.63	$4.68
93734	S	Analyze pacemaker system	0690	0.45	$23.40	$10.63	$4.68
93735	S	Analyze pacemaker system	0690	0.45	$23.40	$10.63	$4.68
93736	S	Telephone analy, pacemaker	0690	0.45	$23.40	$10.63	$4.68
93740	X	Temperature gradient studies	0367	0.60	$31.21	$15.61	$6.24
93741	S	Analyze ht pace device sngl	0689	0.60	$31.21	$12.03	$6.24
93742	S	Analyze ht pace device sngl	0689	0.60	$31.21	$12.03	$6.24
93743	S	Analyze ht pace device dual	0689	0.60	$31.21	$12.03	$6.24
93744	S	Analyze ht pace device dual	0689	0.60	$31.21	$12.03	$6.24
93760	E	Cephalic thermogram					
93762	E	Peripheral thermogram					
93770	N	Measure venous pressure					
93784	E	Ambulatory BP monitoring					
93786	X	Ambulatory BP recording	0097	0.84	$43.69	$23.80	$8.74
93788	E	Ambulatory BP analysis					
93790	E	Review/report BP recording					
93797	S	Cardiac rehab	0095	0.66	$34.33	$16.73	$6.87
93798	S	Cardiac rehab/monitor	0095	0.66	$34.33	$16.73	$6.87
93799	S	Cardiovascular procedure	0096	1.82	$94.66	$48.15	$18.93
93875	S	Extracranial study	0096	1.82	$94.66	$48.15	$18.93
93880	S	Extracranial study	0267	2.58	$134.18	$65.52	$26.84
93882	S	Extracranial study	0267	2.58	$134.18	$65.52	$26.84
93886	S	Intracranial study	0267	2.58	$134.18	$65.52	$26.84
93888	S	Intracranial study	0266	1.70	$88.42	$48.63	$17.68
93922	S	Extremity study	0096	1.82	$94.66	$48.15	$18.93
93923	S	Extremity study	0096	1.82	$94.66	$48.15	$18.93
93924	S	Extremity study	0096	1.82	$94.66	$48.15	$18.93
93925	S	Lower extremity study	0267	2.58	$134.18	$65.52	$26.84
93926	S	Lower extremity study	0267	2.58	$134.18	$65.52	$26.84
93930	S	Upper extremity study	0267	2.58	$134.18	$65.52	$26.84
93931	S	Upper extremity study	0266	1.70	$88.42	$48.63	$17.68
93965	S	Extremity study	0096	1.82	$94.66	$48.15	$18.93
93970	S	Extremity study	0267	2.58	$134.18	$65.52	$26.84
93971	S	Extremity study	0267	2.58	$134.18	$65.52	$26.84
93975	S	Vascular study	0267	2.58	$134.18	$65.52	$26.84
93976	S	Vascular study	0267	2.58	$134.18	$65.52	$26.84
93978	S	Vascular study	0267	2.58	$134.18	$65.52	$26.84
93979	S	Vascular study	0267	2.58	$134.18	$65.52	$26.84
93980	S	Penile vascular study	0267	2.58	$134.18	$65.52	$26.84
93981	S	Penile vascular study	0267	2.58	$134.18	$65.52	$26.84
93990	S	Doppler flow testing	0267	2.58	$134.18	$65.52	$26.84
94010	X	Breathing capacity test	0368	0.96	$49.93	$24.97	$9.99
94014	X	Patient recorded spirometry	0367	0.60	$31.21	$15.61	$6.24
94015	X	Patient recorded spirometry	0367	0.60	$31.21	$15.61	$6.24
94016	A	Review patient spirometry					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
94060	X	Evaluation of wheezing	0368	0.96	$49.93	$24.97	$9.99
94070	X	Evaluation of wheezing	0369	2.39	$124.30	$41.02	$24.86
94150	X	Vital capacity test	0367	0.60	$31.21	$15.61	$6.24
94200	X	Lung function test (MBC/MVV)	0367	0.60	$31.21	$15.61	$6.24
94240	X	Residual lung capacity	0368	0.96	$49.93	$24.97	$9.99
94250	X	Expired gas collection	0367	0.60	$31.21	$15.61	$6.24
94260	X	Thoracic gas volume	0368	0.96	$49.93	$24.97	$9.99
94350	X	Lung nitrogen washout curve	0368	0.96	$49.93	$24.97	$9.99
94360	X	Measure airflow resistance	0367	0.60	$31.21	$15.61	$6.24
94370	X	Breath airway closing volume	0367	0.60	$31.21	$15.61	$6.24
94375	X	Respiratory flow volume loop	0367	0.60	$31.21	$15.61	$6.24
94400	X	CO2 breathing response curve	0367	0.60	$31.21	$15.61	$6.24
94450	X	Hypoxia response curve	0367	0.60	$31.21	$15.61	$6.24
94620	X	Pulmonary stress test/simple	0368	0.96	$49.93	$24.97	$9.99
94621	X	Pulm stress test/complex	0369	2.39	$124.30	$41.02	$24.86
94640	S	Airway inhalation treatment	0077	0.26	$13.52	$7.44	$2.70
94642	S	Aerosol inhalation treatment	0078	0.68	$35.37	$15.21	$7.07
94650	S	Pressure breathing (IPPB)	0077	0.26	$13.52	$7.44	$2.70
94651	S	Pressure breathing (IPPB)	0077	0.26	$13.52	$7.44	$2.70
94652	C	Pressure breathing (IPPB)					
94656	S	Initial ventilator mgmt	0079	1.63	$84.77	$16.80	$16.95
94657	S	Continued ventilator mgmt	0079	1.63	$84.77	$16.80	$16.95
94660	S	Pos airway pressure, CPAP	0068	1.59	$82.69	$45.48	$16.54
94662	S	Neg press ventilation, cnp	0079	1.63	$84.77	$16.80	$16.95
94664	S	Aerosol or vapor inhalations	0077	0.26	$13.52	$7.44	$2.70
94665	S	Aerosol or vapor inhalations	0077	0.26	$13.52	$7.44	$2.70
94667	S	Chest wall manipulation	0077	0.26	$13.52	$7.44	$2.70
94668	S	Chest wall manipulation	0077	0.26	$13.52	$7.44	$2.70
94680	X	Exhaled air analysis, o2	0367	0.60	$31.21	$15.61	$6.24
94681	X	Exhaled air analysis, o2/co2	0368	0.96	$49.93	$24.97	$9.99
94690	X	Exhaled air analysis	0367	0.60	$31.21	$15.61	$6.24
94720	X	Monoxide diffusing capacity	0368	0.96	$49.93	$24.97	$9.99
94725	X	Membrane diffusion capacity	0368	0.96	$49.93	$24.97	$9.99
94750	X	Pulmonary compliance study	0367	0.60	$31.21	$15.61	$6.24
94760	N	Measure blood oxygen level					
94761	N	Measure blood oxygen level					
94762	N	Measure blood oxygen level					
94770	X	Exhaled carbon dioxide test	0367	0.60	$31.21	$15.61	$6.24
94772	X	Breath recording, infant	0369	2.39	$124.30	$41.02	$24.86
94799	X	Pulmonary service/procedure	0367	0.60	$31.21	$15.61	$6.24
95004	X	Allergy skin tests	0370	0.74	$38.49	$11.16	$7.70
95010	X	Sensitivity skin tests	0370	0.74	$38.49	$11.16	$7.70
95015	X	Sensitivity skin tests	0370	0.74	$38.49	$11.16	$7.70
95024	X	Allergy skin tests	0370	0.74	$38.49	$11.16	$7.70
95027	X	Skin end point titration	0370	0.74	$38.49	$11.16	$7.70
95028	X	Allergy skin tests	0370	0.74	$38.49	$11.16	$7.70
95044	X	Allergy patch tests	0370	0.74	$38.49	$11.16	$7.70
95052	X	Photo patch test	0370	0.74	$38.49	$11.16	$7.70
95056	X	Photosensitivity tests	0370	0.74	$38.49	$11.16	$7.70
95060	X	Eye allergy tests	0370	0.74	$38.49	$11.16	$7.70
95065	X	Nose allergy test	0370	0.74	$38.49	$11.16	$7.70
95070	X	Bronchial allergy tests	0369	2.39	$124.30	$41.02	$24.86
95071	X	Bronchial allergy tests	0369	2.39	$124.30	$41.02	$24.86
95075	X	Ingestion challenge test	0361	3.55	$184.63	$83.23	$36.93
95078	X	Provocative testing	0370	0.74	$38.49	$11.16	$7.70
95115	X	Immunotherapy, one injection	0352	0.14	$7.28		$1.46
95117	X	Immunotherapy injections	0353	0.43	$22.36		$4.47
95120	E	Immunotherapy, one injection					
95125	E	Immunotherapy, many antigens					
95130	E	Immunotherapy, insect venom					
95131	E	Immunotherapy, insect venoms					
95132	E	Immunotherapy, insect venoms					
95133	E	Immunotherapy, insect venoms					
95134	E	Immunotherapy, insect venoms					
95144	X	Antigen therapy services	0371	0.50	$26.00		$5.20
95145	X	Antigen therapy services	0371	0.50	$26.00		$5.20

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
95146	X	Antigen therapy services	0371	0.50	$26.00		$5.20
95147	X	Antigen therapy services	0371	0.50	$26.00		$5.20
95148	X	Antigen therapy services	0371	0.50	$26.00		$5.20
95149	X	Antigen therapy services	0371	0.50	$26.00		$5.20
95165	X	Antigen therapy services	0371	0.50	$26.00		$5.20
95170	X	Antigen therapy services	0371	0.50	$26.00		$5.20
95180	X	Rapid desensitization	0370	0.74	$38.49	$11.16	$7.70
95199	X	Allergy immunology services	0370	0.74	$38.49	$11.16	$7.70
95250	T	Glucose monitoring, cont	0972		$150.00		$30.00
95805	S	Multiple sleep latency test	0209	12.09	$628.79	$280.58	$125.76
95806	S	Sleep study, unattended	0213	3.38	$175.79	$70.41	$35.16
95807	S	Sleep study, attended	0209	12.09	$628.79	$280.58	$125.76
95808	S	Polysomnography, 1-3	0209	12.09	$628.79	$280.58	$125.76
95810	S	Polysomnography, 4 or more	0209	12.09	$628.79	$280.58	$125.76
95811	S	Polysomnography w/cpap	0209	12.09	$628.79	$280.58	$125.76
95812	S	Electroencephalogram (EEG)	0213	3.38	$175.79	$70.41	$35.16
95813	S	Electroencephalogram (EEG)	0213	3.38	$175.79	$70.41	$35.16
95816	S	Electroencephalogram (EEG)	0214	2.37	$123.26	$61.63	$24.65
95819	S	Electroencephalogram (EEG)	0214	2.37	$123.26	$61.63	$24.65
95822	S	Sleep electroencephalogram	0214	2.37	$123.26	$61.63	$24.65
95824	S	Electroencephalography	0214	2.37	$123.26	$61.63	$24.65
95827	S	Night electroencephalogram	0209	12.09	$628.79	$280.58	$125.76
95829	S	Surgery electrocorticogram	0214	2.37	$123.26	$61.63	$24.65
95830	E	Insert electrodes for EEG					
95831	N	Limb muscle testing, manual					
95832	N	Hand muscle testing, manual					
95833	N	Body muscle testing, manual					
95834	N	Body muscle testing, manual					
95851	N	Range of motion measurements					
95852	N	Range of motion measurements					
95857	S	Tensilon test	0218	1.06	$55.13		$11.03
95858	S	Tensilon test & myogram	0218	1.06	$55.13		$11.03
95860	S	Muscle test, one limb	0218	1.06	$55.13		$11.03
95861	S	Muscle test, two limbs	0218	1.06	$55.13		$11.03
95863	S	Muscle test, 3 limbs	0218	1.06	$55.13		$11.03
95864	S	Muscle test, 4 limbs	0218	1.06	$55.13		$11.03
95867	S	Muscle test, head or neck	0218	1.06	$55.13		$11.03
95868	S	Muscle test, head or neck	0218	1.06	$55.13		$11.03
95869	S	Muscle test, thor paraspinal	0215	0.60	$31.21		$6.24
95870	S	Muscle test, nonparaspinal	0218	1.06	$55.13		$11.03
95872	S	Muscle test, one fiber	0218	1.06	$55.13		$11.03
95875	S	Limb exercise test	0215	0.60	$31.21		$6.24
95900	S	Motor nerve conduction test	0218	1.06	$55.13		$11.03
95903	S	Motor nerve conduction test	0218	1.06	$55.13		$11.03
95904	S	Sense nerve conduction test	0215	0.60	$31.21		$6.24
95920	S	Intraop nerve test add-on	0216	3.06	$159.15	$71.62	$31.83
95921	S	Autonomic nerv function test	0218	1.06	$55.13		$11.03
95922	S	Autonomic nerv function test	0218	1.06	$55.13		$11.03
95923	S	Autonomic nerv function test	0215	0.60	$31.21		$6.24
95925	S	Somatosensory testing	0216	3.06	$159.15	$71.62	$31.83
95926	S	Somatosensory testing	0216	3.06	$159.15	$71.62	$31.83
95927	S	Somatosensory testing	0216	3.06	$159.15	$71.62	$31.83
95930	S	Visual evoked potential test	0218	1.06	$55.13		$11.03
95933	S	Blink reflex test	0215	0.60	$31.21		$6.24
95934	S	H-reflex test	0215	0.60	$31.21		$6.24
95936	S	H-reflex test	0215	0.60	$31.21		$6.24
95937	S	Neuromuscular junction test	0218	1.06	$55.13		$11.03
95950	S	Ambulatory eeg monitoring	0213	3.38	$175.79	$70.41	$35.16
95951	S	EEG monitoring/videorecord	0209	12.09	$628.79	$280.58	$125.76
95953	S	EEG monitoring/computer	0209	12.09	$628.79	$280.58	$125.76
95954	S	EEG monitoring/giving drugs	0214	2.37	$123.26	$61.63	$24.65
95955	S	EEG during surgery	0214	2.37	$123.26	$61.63	$24.65
95956	S	Eeg monitoring, cable/radio	0214	2.37	$123.26	$61.63	$24.65
95957	S	EEG digital analysis	0214	2.37	$123.26	$61.63	$24.65
95958	S	EEG monitoring/function test	0213	3.38	$175.79	$70.41	$35.16
95961	S	Electrode stimulation, brain	0216	3.06	$159.15	$71.62	$31.83

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95962	S	Electrode stim, brain add-on	0216	3.06	$159.15	$71.62	$31.83
95965	S	Meg, spontaneous	0717		$2,250.00		$450.00
95966	S	Meg, evoked, single	0714		$1,375.00		$275.00
95967	S	Meg, evoked, each addl	0712		$875.00		$175.00
95970	S	Analyze neurostim, no prog	0692	0.85	$44.21	$24.32	$8.84
95971	S	Analyze neurostim, simple	0692	0.85	$44.21	$24.32	$8.84
95972	S	Analyze neurostim, complex	0692	0.85	$44.21	$24.32	$8.84
95973	S	Analyze neurostim, complex	0692	0.85	$44.21	$24.32	$8.84
95974	S	Cranial neurostim, complex	0692	0.85	$44.21	$24.32	$8.84
95975	S	Cranial neurostim, complex	0692	0.85	$44.21	$24.32	$8.84
95999	S	Neurological procedure	0215	0.60	$31.21		$6.24
96000	S	Motion analysis, video/3d	0708		$150.00		$30.00
96001	S	Motion test w/ft press meas	0708		$150.00		$30.00
96002	S	Dynamic surface emg	0708		$150.00		$30.00
96003	S	Dynamic fine wire emg	0708		$150.00		$30.00
96004	E	Phys review of motion tests					
96100	X	Psychological testing	0373	2.37	$123.26		$24.65
96105	X	Assessment of aphasia	0373	2.37	$123.26		$24.65
96110	X	Developmental test, lim	0373	2.37	$123.26		$24.65
96111	X	Developmental test, extend	0373	2.37	$123.26		$24.65
96115	X	Neurobehavior status exam	0373	2.37	$123.26		$24.65
96117	X	Neuropsych test battery	0373	2.37	$123.26		$24.65
96150	S	Assess hlth/behave, init	0322	1.44	$74.89	$12.40	$14.98
96151	S	Assess hlth/behave, subseq	0322	1.44	$74.89	$12.40	$14.98
96152	S	Intervene hlth/behave, indiv	0322	1.44	$74.89	$12.40	$14.98
96153	S	Intervene hlth/behave, group	0322	1.44	$74.89	$12.40	$14.98
96154	S	Interv hlth/behav, fam w/pt	0322	1.44	$74.89	$12.40	$14.98
96155	S	Interv hlth/behav fam no pt	0322	1.44	$74.89	$12.40	$14.98
96400	E	Chemotherapy, sc/im					
96405	E	Intralesional chemo admin					
96406	E	Intralesional chemo admin					
96408	E	Chemotherapy, push technique					
96410	E	Chemotherapy infusion method					
96412	E	Chemo, infuse method add-on					
96414	E	Chemo, infuse method add-on					
96420	E	Chemotherapy, push technique					
96422	E	Chemotherapy infusion method					
96423	E	Chemo, infuse method add-on					
96425	E	Chemotherapy infusion method					
96440	E	Chemotherapy, intracavitary					
96445	E	Chemotherapy, intracavitary					
96450	E	Chemotherapy, into CNS					
96520	T	Pump refilling, maintenance	0125	1.73	$89.98		$18.00
96530	T	Pump refilling, maintenance	0125	1.73	$89.98		$18.00
96542	E	Chemotherapy injection					
96545	E	Provide chemotherapy agent					
96549	E	Chemotherapy, unspecified					
96567	T	Photodynamic tx, skin	0972		$150.00		$30.00
96570	T	Photodynamic tx, 30 min	0973		$250.00		$50.00
96571	T	Photodynamic tx, addl 15 min	0973		$250.00		$50.00
96900	S	Ultraviolet light therapy	0001	0.43	$22.36	$7.88	$4.47
96902	N	Trichogram					
96910	S	Photochemotherapy with UV-B	0001	0.43	$22.36	$7.88	$4.47
96912	S	Photochemotherapy with UV-A	0001	0.43	$22.36	$7.88	$4.47
96913	S	Photochemotherapy, UV-A or B	0683	2.11	$109.74	$39.51	$21.95
96999	T	Dermatological procedure	0010	0.70	$36.41	$10.56	$7.28
97001	A	Pt evaluation					
97002	A	Pt re-evaluation					
97003	A	Ot evaluation					
97004	A	Ot re-evaluation					
97005	E	Athletic train eval					
97006	E	Athletic train reeval					
97010	A	Hot or cold packs therapy					
97012	A	Mechanical traction therapy					
97014	A	Electric stimulation therapy					
97016	A	Vasopneumatic device therapy					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
97018	A	Paraffin bath therapy					
97020	A	Microwave therapy					
97022	A	Whirlpool therapy					
97024	A	Diathermy treatment					
97026	A	Infrared therapy					
97028	A	Ultraviolet therapy					
97032	A	Electrical stimulation					
97033	A	Electric current therapy					
97034	A	Contrast bath therapy					
97035	A	Ultrasound therapy					
97036	A	Hydrotherapy					
97039	A	Physical therapy treatment					
97110	A	Therapeutic exercises					
97112	A	Neuromuscular reeducation					
97113	A	Aquatic therapy/exercises					
97116	A	Gait training therapy					
97124	A	Massage therapy					
97139	A	Physical medicine procedure					
97140	A	Manual therapy					
97150	A	Group therapeutic procedures					
97504	A	Orthotic training					
97520	A	Prosthetic training					
97530	A	Therapeutic activities					
97532	A	Cognitive skills development					
97533	A	Sensory integration					
97535	A	Self care mngment training					
97537	A	Community/work reintegration					
97542	A	Wheelchair mngment training					
97545	A	Work hardening					
97546	A	Work hardening add-on					
97601	A	Wound(s) care, selective					
97602	N	Wound(s) care non-selective					
97703	A	Prosthetic checkout					
97750	A	Physical performance test					
97760	E	Acupuncture w/o stimul					
97781	E	Acupuncture w/stimul					
97799	A	Physical medicine procedure					
97802	A	Medical nutrition, indiv, in					
97803	A	Med nutrition, indiv, subseq					
97804	A	Medical nutrition, group					
98925	S	Osteopathic manipulation	0060	0.36	$18.72		$3.74
98926	S	Osteopathic manipulation	0060	0.36	$18.72		$3.74
98927	S	Osteopathic manipulation	0060	0.36	$18.72		$3.74
98928	S	Osteopathic manipulation	0060	0.36	$18.72		$3.74
98929	S	Osteopathic manipulation	0060	0.36	$18.72		$3.74
98940	S	Chiropractic manipulation	0060	0.36	$18.72		$3.74
98941	S	Chiropractic manipulation	0060	0.36	$18.72		$3.74
98942	S	Chiropractic manipulation	0060	0.36	$18.72		$3.74
98943	E	Chiropractic manipulation					
99000	E	Specimen handling					
99001	E	Specimen handling					
99002	E	Device handling					
99024	E	Postop follow-up visit					
99025	E	Initial surgical evaluation					
99050	E	Medical services after hrs					
99052	E	Medical services at night					
99054	E	Medical servcs, unusual hrs					
99056	E	Non-office medical services					
99058	E	Office emergency care					
99070	E	Special supplies					
99071	E	Patient education materials					
99075	E	Medical testimony					
99078	N	Group health education					
99080	E	Special reports or forms					
99082	E	Unusual physician travel					
99090	E	Computer data analysis					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
99091	E	Collect/review data from pt					
99100	E	Special anesthesia service					
99116	E	Anesthesia with hypothermia					
99135	E	Special anesthesia procedure					
99140	E	Emergency anesthesia					
99141	N	Sedation, iv/im or inhalant					
99142	N	Sedation, oral/rectal/nasal					
99170	T	Anogenital exam, child	0191	0.22	$11.44	$3.32	$2.29
99172	E	Ocular function screen					
99173	E	Visual acuity screen					
99175	N	Induction of vomiting					
99183	E	Hyperbaric oxygen therapy					
99185	N	Regional hypothermia					
99186	N	Total body hypothermia					
99190	C	Special pump services					
99191	C	Special pump services					
99192	C	Special pump services					
99195	X	Phlebotomy	0372	0.56	$29.13	$10.09	$5.83
99199	E	Special service/proc/report					
99201	V	Office/outpatient visit, new	0600	0.91	$47.33		$9.47
99202	V	Office/outpatient visit, new	0600	0.91	$47.33		$9.47
99203	V	Office/outpatient visit, new	0601	1.04	$54.09		$10.82
99204	V	Office/outpatient visit, new	0602	1.57	$81.65		$16.33
99205	V	Office/outpatient visit, new	0602	1.57	$81.65		$16.33
99211	V	Office/outpatient visit, est	0600	0.91	$47.33		$9.47
99212	V	Office/outpatient visit, est	0600	0.91	$47.33		$9.47
99213	V	Office/outpatient visit, est	0601	1.04	$54.09		$10.82
99214	V	Office/outpatient visit, est	0602	1.57	$81.65		$16.33
99215	V	Office/outpatient visit, est	0602	1.57	$81.65		$16.33
99217	N	Observation care discharge					
99218	N	Observation care					
99219	N	Observation care					
99220	N	Observation care					
99221	E	Initial hospital care					
99222	E	Initial hospital care					
99223	E	Initial hospital care					
99231	E	Subsequent hospital care					
99232	E	Subsequent hospital care					
99233	E	Subsequent hospital care					
99234	N	Observ/hosp same date					
99235	N	Observ/hosp same date					
99236	N	Observ/hosp same date					
99238	E	Hospital discharge day					
99239	E	Hospital discharge day					
99241	V	Office consultation	0600	0.91	$47.33		$9.47
99242	V	Office consultation	0600	0.91	$47.33		$9.47
99243	V	Office consultation	0601	1.04	$54.09		$10.82
99244	V	Office consultation	0602	1.57	$81.65		$16.33
99245	V	Office consultation	0602	1.57	$81.65		$16.33
99251	C	Initial inpatient consult					
99252	C	Initial inpatient consult					
99253	C	Initial inpatient consult					
99254	C	Initial inpatient consult					
99255	C	Initial inpatient consult					
99261	C	Follow-up inpatient consult					
99262	C	Follow-up inpatient consult					
99263	C	Follow-up inpatient consult					
99271	V	Confirmatory consultation	0600	0.91	$47.33		$9.47
99272	V	Confirmatory consultation	0600	0.91	$47.33		$9.47
99273	V	Confirmatory consultation	0601	1.04	$54.09		$10.82
99274	V	Confirmatory consultation	0602	1.57	$81.65		$16.33
99275	V	Confirmatory consultation	0602	1.57	$81.65		$16.33
99281	V	Emergency dept visit	0610	1.49	$77.49	$19.57	$15.50
99282	V	Emergency dept visit	0610	1.49	$77.49	$19.57	$15.50
99283	V	Emergency dept visit	0611	2.66	$138.34	$36.47	$27.67
99284	V	Emergency dept visit	0612	4.53	$235.60	$54.14	$47.12

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
99285	V	Emergency dept visit	0612	4.53	$235.60	$54.14	$47.12
99288	E	Direct advanced life support					
99289	N	Pt transport, 30-74 min					
99290	N	Pt transport, addl 30 min					
99291	S	Critical care, first hour	0620	10.25	$533.09	$150.55	$106.62
99292	N	Critical care, addl 30 min					
99295	C	Neonatal critical care					
99296	C	Neonatal critical care					
99297	C	Neonatal critical care					
99298	C	Neonatal critical care					
99301	E	Nursing facility care					
99302	E	Nursing facility care					
99303	E	Nursing facility care					
99311	E	Nursing fac care, subseq					
99312	E	Nursing fac care, subseq					
99313	E	Nursing fac care, subseq					
99315	E	Nursing fac discharge day					
99316	E	Nursing fac discharge day					
99321	E	Rest home visit, new patient					
99322	E	Rest home visit, new patient					
99323	E	Rest home visit, new patient					
99331	E	Rest home visit, est pat					
99332	E	Rest home visit, est pat					
99333	E	Rest home visit, est pat					
99341	E	Home visit, new patient					
99342	E	Home visit, new patient					
99343	E	Home visit, new patient					
99344	E	Home visit, new patient					
99345	E	Home visit, new patient					
99347	E	Home visit, est patient					
99348	E	Home visit, est patient					
99349	E	Home visit, est patient					
99350	E	Home visit, est patient					
99354	N	Prolonged service, office					
99355	N	Prolonged service, office					
99356	C	Prolonged service, inpatient					
99357	C	Prolonged service, inpatient					
99358	N	Prolonged serv, w/o contact					
99359	N	Prolonged serv, w/o contact					
99360	E	Physician standby services					
99361	E	Physician/team conference					
99362	E	Physician/team conference					
99371	E	Physician phone consultation					
99372	E	Physician phone consultation					
99373	E	Physician phone consultation					
99374	E	Home health care supervision					
99377	E	Hospice care supervision					
99379	E	Nursing fac care supervision					
99380	E	Nursing fac care supervision					
99381	E	Prev visit, new, infant					
99382	E	Prev visit, new, age 1-4					
99383	E	Prev visit, new, age 5-11					
99384	E	Prev visit, new, age 12-17					
99385	E	Prev visit, new, age 18-39					
99386	E	Prev visit, new, age 40-64					
99387	E	Prev visit, new, 65 & over					
99391	E	Prev visit, est, infant					
99392	E	Prev visit, est, age 1-4					
99393	E	Prev visit, est, age 5-11					
99394	E	Prev visit, est, age 12-17					
99395	E	Prev visit, est, age 18-39					
99396	E	Prev visit, est, age 40-64					
99397	E	Prev visit, est, 65 & over					
99401	E	Preventive counseling, indiv					
99402	E	Preventive counseling, indiv					
99403	E	Preventive counseling, indiv					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
99404	E	Preventive counseling, indiv					
99411	E	Preventive counseling, group					
99412	E	Preventive counseling, group					
99420	E	Health risk assessment test					
99429	E	Unlisted preventive service					
99431	V	Initial care, normal newborn	0600	0.91	$47.33		$9.47
99432	N	Newborn care, not in hosp					
99433	C	Normal newborn care/hospital					
99435	E	Newborn discharge day hosp					
99436	N	Attendance, birth					
99440	S	Newborn resuscitation	0094	2.68	$139.38	$47.39	$27.88
99450	E	Life/disability evaluation					
99455	E	Disability examination					
99456	E	Disability examination					
99499	E	Unlisted e&m service					
99500	E	Home visit, prenatal					
99501	E	Home visit, postnatal					
99502	E	Home visit, nb care					
99503	E	Home visit, resp therapy					
99504	E	Home visit mech ventilator					
99505	E	Home visit, stoma care					
99506	E	Home visit, im injection					
99507	E	Home visit, cath maintain					
99508	E	Home visit, sleep studies					
99509	E	Home visit day life activity					
99510	E	Home visit, sing/m/fam couns					
99511	E	Home visit, fecal/enema mgmt					
99512	E	Home visit, hemodialysis					
99539	E	Home visit, nos					
99551	E	Home infus, pain mgmt, iv/sc					
99552	E	Hm infus pain mgmt, epid/ith					
99553	E	Home infuse, tocolytic tx					
99554	E	Home infus, hormone/platelet					
99555	E	Home infuse, chemotheraphy					
99556	E	Home infus, antibio/fung/vir					
99557	E	Home infuse, anticoagulant					
99558	E	Home infuse, immunotherapy					
99559	E	Home infus, periton dialysis					
99560	E	Home infus, entero nutrition					
99561	E	Home infuse, hydration tx					
99562	E	Home infus, parent nutrition					
99563	E	Home admin, pentamidine					
99564	E	Hme infus, antihemophil agnt					
99565	E	Home infus, proteinase inhib					
99566	E	Home infuse, iv therapy					
99567	E	Home infuse, sympath agent					
99568	E	Home infus, misc drug, daily					
99569	E	Home infuse, each addl tx					
A0021	E	Outside state ambulance serv					
A0080	E	Noninterest escort in non er					
A0090	E	Interest escort in non er					
A0100	E	Nonemergency transport taxi					
A0110	E	Nonemergency transport bus					
A0120	E	Noner transport mini-bus					
A0130	E	Noner transport wheelch van					
A0140	E	Nonemergency transport air					
A0160	E	Noner transport case worker					
A0170	E	Noner transport parking fees					
A0180	E	Noner transport lodgng recip					
A0190	E	Noner transport meals recip					
A0200	E	Noner transport lodgng escrt					
A0210	E	Noner transport meals escort					
A0225	A	Neonatal emergency transport					
A0380	A	Basic life support mileage					
A0382	A	Basic support routine suppls					
A0384	A	Bls defibrillation supplies					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
A0390	A	Advanced life support mileag					
A0392	A	Als defibrillation supplies					
A0394	A	Als IV drug therapy supplies					
A0396	A	Als esophageal intub supplis					
A0398	A	Als routine disposble supplis					
A0420	A	Ambulance waiting 1/2 hr					
A0422	A	Ambulance 02 life sustaining					
A0424	A	Extra ambulance attendant					
A0425	A	Ground mileage					
A0426	A	Als 1					
A0427	A	ALS1-emergency					
A0428	A	bls					
A0429	A	BLS-emergency					
A0430	A	Fixed wing air transport					
A0431	A	Rotary wing air transport					
A0432	A	Pt volunteer ambulance co					
A0433	A	als 2					
A0434	A	Specialty care transport					
A0435	A	Fixed wing air mileage					
A0436	A	Rotary wing air mileage					
A0888	E	Noncovered ambulance mileage					
A0999	A	Unlisted ambulance service					
A4206	A	1 CC sterile syringe&needle					
A4207	A	2 CC sterile syringe&needle					
A4208	A	3 CC sterile syringe&needle					
A4209	E	5+ CC sterile syringe&needle					
A4210	E	Nonneedle injection device					
A4211	E	Supp for self-adm injections					
A4212	E	Non coring needle or stylet					
A4213	E	20+ CC syringe only					
A4214	A	30 CC sterile water/saline					
A4215	E	Sterile needle					
A4220	A	Infusion pump refill kit					
A4221	A	Maint drug infus cath per wk					
A4222	A	Drug infusion pump supplies					
A4230	A	Infus insulin pump non needl					
A4231	A	Infusion insulin pump needle					
A4232	A	Syringe w/needle insulin 3cc					
A4244	E	Alcohol or peroxide per pint					
A4245	E	Alcohol wipes per box					
A4246	E	Betadine/phisohex solution					
A4247	E	Betadine/iodine swabs/wipes					
A4250	E	Urine reagent strips/tablets					
A4253	A	Blood glucose/reagent strips					
A4254	A	Battery for glucose monitor					
A4255	A	Glucose monitor platforms					
A4256	A	Calibrator solution/chips					
A4257	A	Replace Lensshield Cartridge					
A4258	A	Lancet device each					
A4259	A	Lancets per box					
A4260	E	Levonorgestrel implant					
A4261	E	Cervical cap contraceptive					
A4262	N	Temporary tear duct plug					
A4263	N	Permanent tear duct plug					
A4265	A	Paraffin					
A4270	A	Disposable endoscope sheath					
A4280	A	Brst prsths adhsv attchmnt					
A4290	E	Sacral nerve stim test lead					
A4300	E	Cath impl vasc access portal					
A4301	E	Implantable access syst perc					
A4305	A	Drug delivery system >=50 ML					
A4306	A	Drug delivery system <=5 ML					
A4310	A	Insert tray w/o bag/cath					
A4311	A	Catheter w/o bag 2-way latex					
A4312	A	Cath w/o bag 2-way silicone					
A4313	A	Catheter w/bag 3-way					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
A4314	A	Cath w/drainage 2-way latex					
A4315	A	Cath w/drainage 2-way silcne					
A4316	A	Cath w/drainage 3-way					
A4319	A	Sterile H2O irrigation solut					
A4320	A	Irrigation tray					
A4321	A	Cath therapeutic irrig agent					
A4322	A	Irrigation syringe					
A4323	A	Saline irrigation solution					
A4324	A	Male ext cath w/adh coating					
A4325	A	Male ext cath w/adh strip					
A4326	A	Male external catheter					
A4327	A	Fem urinary collect dev cup					
A4328	A	Fem urinary collect pouch					
A4330	A	Stool collection pouch					
A4331	A	Extension drainage tubing					
A4332	A	Lubricant for cath insertion					
A4333	A	Urinary cath anchor device					
A4334	A	Urinary cath leg strap					
A4335	A	Incontinence supply					
A4338	A	Indwelling catheter latex					
A4340	A	Indwelling catheter special					
A4344	A	Cath indw foley 2 way silicn					
A4346	A	Cath indw foley 3 way					
A4347	A	Male external catheter					
A4348	A	Male ext cath extended wear					
A4351	A	Straight tip urine catheter					
A4352	A	Coude tip urinary catheter					
A4353	A	Intermittent urinary cath					
A4354	A	Cath insertion tray w/bag					
A4355	A	Bladder irrigation tubing					
A4356	A	Ext ureth clmp or compr dvc					
A4357	A	Bedside drainage bag					
A4358	A	Urinary leg or abdomen bag					
A4359	A	Urinary suspensory w/o leg b					
A4360	A	Adult incontinence garment					
A4361	A	Ostomy face plate					
A4362	A	Solid skin barrier					
A4364	A	Adhesive, liquid or equal					
A4365	A	Adhesive remover wipes					
A4367	A	Ostomy belt					
A4368	A	Ostomy filter					
A4369	A	Skin barrier liquid per oz					
A4370	A	Skin barrier paste per oz					
A4371	A	Skin barrier powder per oz					
A4372	A	Skin barrier solid 4x4 equiv					
A4373	A	Skin barrier with flange					
A4374	A	Skin barrier extended wear					
A4375	A	Drainable plastic pch w fcpl					
A4376	A	Drainable rubber pch w fcplt					
A4377	A	Drainable plstic pch w/o fp					
A4378	A	Drainable rubber pch w/o fp					
A4379	A	Urinary plastic pouch w fcpl					
A4380	A	Urinary rubber pouch w fcplt					
A4381	A	Urinary plastic pouch w/o fp					
A4382	A	Urinary hvy pistc pch w/o fp					
A4383	A	Urinary rubber pouch w/o fp					
A4384	A	Ostomy faceplt/silicone ring					
A4385	A	Ost skn barrier sld ext wear					
A4386	A	Ost skn barrier w flng ex wr					
A4387	A	Ost clsd pouch w att st barr					
A4388	A	Drainable pch w ex wear barr					
A4389	A	Drainable pch w st wear barr					
A4390	A	Drainable pch ex wear convex					
A4391	A	Urinary pouch w ex wear barr					
A4392	A	Urinary pouch w st wear barr					
A4393	A	Urine pch w ex wear bar conv					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
A4394	A	Ostomy pouch liq deodorant					
A4395	A	Ostomy pouch solid deodorant					
A4396	A	Peristomal hernia supprt blt					
A4397	A	Irrigation supply sleeve					
A4398	A	Ostomy irrigation bag					
A4399	A	Ostomy irrig cone/cath w brs					
A4400	A	Ostomy irrigation set					
A4402	A	Lubricant per ounce					
A4404	A	Ostomy ring each					
A4421	A	Ostomy supply misc					
A4454	A	Tape all types all sizes					
A4455	A	Adhesive remover per ounce					
A4460	A	Elastic compression bandage					
A4462	A	Abdmnl drssng holder/binder					
A4464	A	Joint support device/garment					
A4465	A	Non-elastic extremity binder					
A4470	A	Gravlee jet washer					
A4480	A	Vabra aspirator					
A4481	A	Tracheostoma filter					
A4483	A	Moisture exchanger					
A4490	E	Above knee surgical stocking					
A4495	E	Thigh length surg stocking					
A4500	E	Below knee surgical stocking					
A4510	E	Full length surg stocking					
A4550	E	Surgical trays					
A4554	E	Disposable underpads					
A4556	A	Electrodes, pair					
A4557	A	Lead wires, pair					
A4558	A	Conductive paste or gel					
A4561	N	Pessary rubber, any type					
A4562	N	Pessary, non rubber,any type					
A4565	A	Slings					
A4570	N	Splint					
A4572	A	Rib belt					
A4575	E	Hyperbaric o2 chamber disps					
A4580	N	Cast supplies (plaster)					
A4590	N	Special casting material					
A4595	A	TENS suppl 2 lead per month					
A4608	A	Transtracheal oxygen cath					
A4611	A	Heavy duty battery					
A4612	A	Battery cables					
A4613	A	Battery charger					
A4614	A	Hand-held PEFR meter					
A4615	A	Cannula nasal					
A4616	A	Tubing (oxygen) per foot					
A4617	A	Mouth piece					
A4618	A	Breathing circuits					
A4619	A	Face tent					
A4620	A	Variable concentration mask					
A4621	A	Tracheotomy mask or collar					
A4622	A	Tracheostomy or lamgectomy					
A4623	A	Tracheostomy inner cannula					
A4624	A	Tracheal suction tube					
A4625	A	Trach care kit for new trach					
A4626	A	Tracheostomy cleaning brush					
A4627	E	Spacer bag/reservoir					
A4628	A	Oropharyngeal suction cath					
A4629	A	Tracheostomy care kit					
A4630	A	Repl bat t.e.n.s. own by pt					
A4631	A	Wheelchair battery					
A4635	A	Underarm crutch pad					
A4636	A	Handgrip for cane etc					
A4637	A	Repl tip cane/crutch/walker					
A4640	A	Alternating pressure pad					
A4641	N	Diagnostic imaging agent					
A4642	N	Satumomab pendetide per dose					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
A4643	N	High dose contrast MRI					
A4644	N	Contrast 100-199 MGs iodine					
A4645	N	Contrast 200-299 MGs iodine					
A4646	N	Contrast 300-399 MGs iodine					
A4647	N	Supp- paramagnetic contr mat					
A4649	A	Surgical supplies					
A4651	A	Calibrated microcap tube					
A4652	A	Microcapillary tube sealant					
A4656	A	Dialysis needle					
A4657	A	Dialysis syringe w/wo needle					
A4660	A	Sphyg/bp app w cuff and stet					
A4663	A	Dialysis blood pressure cuff					
A4670	E	Automatic bp monitor, dial					
A4680	A	Activated carbon filter, ea					
A4690	A	Dialyzer, each					
A4706	A	Bicarbonate conc sol per gal					
A4707	A	Bicarbonate conc pow per pac					
A4708	A	Acetate conc sol per gallon					
A4709	A	Acid conc sol per gallon					
A4712	A	Sterile water inj per 10 ml					
A4714	A	Treated water per gallon					
A4719	A	"Y set" tubing					
A4720	A	Dialysat sol fld vol > 249cc					
A4721	A	Dialysat sol fld vol > 999cc					
A4722	A	Dialys sol fld vol > 1999cc					
A4723	A	Dialys sol fld vol > 2999cc					
A4724	A	Dialys sol fld vol > 3999cc					
A4725	A	Dialys sol fld vol > 4999cc					
A4726	A	Dialys sol fld vol > 5999cc					
A4730	A	Fistula cannulation set, ea					
A4736	A	Topical anesthetic, per gram					
A4737	A	Inj anesthetic per 10 ml					
A4740	A	Shunt accessory					
A4750	A	Art or venous blood tubing					
A4755	A	Comb art/venous blood tubing					
A4760	A	Dialysate sol test kit, each					
A4765	A	Dialysate conc pow per pack					
A4766	A	Dialysate conc sol add 10 ml					
A4770	A	Blood collection tube/vacuum					
A4771	A	Serum clotting time tube					
A4772	A	Blood glucose test strips					
A4773	A	Occult blood test strips					
A4774	A	Ammonia test strips					
A4801	A	Heparin per 1000 units					
A4802	A	Protamine sulfate per 50 mg					
A4860	A	Disposable catheter tips					
A4870	A	Plumb/elec wk hm hemo equip					
A4890	A	Repair/maint cont hemo equip					
A4911	A	Drain bag/bottle					
A4913	A	Misc dialysis supplies noc					
A4918	A	Venous pressure clamp					
A4927	A	Non-sterile gloves					
A4928	A	Surgical mask					
A4929	A	Tourniquet for dialysis, ea					
A5051	A	Pouch clsd w barr attached					
A5052	A	Clsd ostomy pouch w/o barr					
A5053	A	Clsd ostomy pouch faceplate					
A5054	A	Clsd ostomy pouch w/flange					
A5055	A	Stoma cap					
A5081	A	Pouch drainable w barrier at					
A5082	A	Drnble ostomy pouch w/o barr					
A5063	A	Drain ostomy pouch w/flange					
A5071	A	Urinary pouch w/barrier					
A5072	A	Urinary pouch w/o barrier					
A5073	A	Urinary pouch on barr w/flng					
A5081	A	Continent stoma plug					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
A5082	A	Continent stoma catheter					
A5093	A	Ostomy accessory convex inse					
A5102	A	Bedside drain btl w/wo tube					
A5105	A	Urinary suspensory					
A5112	A	Urinary leg bag					
A5113	A	Latex leg strap					
A5114	A	Foam/fabric leg strap					
A5119	A	Skin barrier wipes box pr 50					
A5121	A	Solid skin barrier 6x6					
A5122	A	Solid skin barrier 8x8					
A5123	A	Skin barrier, with flange					
A5126	A	Disk/foam pad +or- adhesive					
A5131	A	Appliance cleaner					
A5200	A	Percutaneous catheter anchor					
A5500	A	Diab shoe for density insert					
A5501	A	Diabetic custom molded shoe					
A5503	A	Diabetic shoe w/roller/rockr					
A5504	A	Diabetic shoe with wedge					
A5505	A	Diab shoe w/metatarsal bar					
A5506	A	Diabetic shoe w/off set heel					
A5507	A	Modification diabetic shoe					
A5508	A	Diabetic deluxe shoe					
A5509	A	Direct heat form shoe insert					
A5510	A	Compression form shoe insert					
A5511	A	Custom fab molded shoe inser					
A6000	A	Wound warming wound cover					
A6010	A	Collagen based wound filler					
A6021	A	Collagen dressing <=16 sq in					
A6022	A	Collagen drsg>6<=48 sq in					
A6023	A	Collagen dressing >48 sq in					
A6024	A	Collagen dsg wound filler					
A6025	E	Silicone gel sheet, each					
A6154	A	Wound pouch each					
A6196	A	Alginate dressing <=16 sq in					
A6197	A	Alginate drsg >16 <=48 sq in					
A6198	A	alginate dressing > 48 sq in					
A6199	A	Alginate drsg wound filler					
A6200	A	Compos drsg <=16 no border					
A6201	A	Compos drsg >16<=48 no bdr					
A6202	A	Compos drsg >48 no border					
A6203	A	Composite drsg <= 16 sq in					
A6204	A	Composite drsg >16<=48 sq in					
A6205	A	Composite drsg > 48 sq in					
A6206	A	Contact layer <= 16 sq in					
A6207	A	Contact layer >16<= 48 sq in					
A6208	A	Contact layer > 48 sq in					
A6209	A	Foam drsg <=16 sq in w/o bdr					
A6210	A	Foam drg >16<=48 sq in w/o b					
A6211	A	Foam drg > 48 sq in w/o brdr					
A6212	A	Foam drg <=16 sq in w/border					
A6213	A	Foam drg >16<=48 sq in w/bdr					
A6214	A	Foam drg > 48 sq in w/border					
A6215	A	Foam dressing wound filler					
A6216	A	Non-sterile gauze<=16 sq in					
A6217	A	Non-sterile gauze>16<=48 sq					
A6218	A	Non-sterile gauze > 48 sq in					
A6219	A	Gauze <= 16 sq in w/border					
A6220	A	Gauze >16 <=48 sq in w/bordr					
A6221	A	Gauze > 48 sq in w/border					
A6222	A	Gauze <=16 in no w/sal w/o b					
A6223	A	Gauze >16<=48 no w/sal w/o b					
A6224	A	Gauze > 48 in no w/sal w/o b					
A6228	A	Gauze <= 16 sq in water/sal					
A6229	A	Gauze >16<=48 sq in watr/sal					
A6230	A	Gauze > 48 sq in water/saine					
A6231	A	Hydrogel dsg<=16 sq in					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
A6232	A	Hydrogel dsg>16<=48 sq in					
A6233	A	Hydrogel dressing >48 sq in					
A6234	A	Hydrocolld drg <=16 w/o bdr					
A6235	A	Hydrocolld drg >16<=48 w/o b					
A6236	A	Hydrocolld drg > 48 in w/o b					
A6237	A	Hydrocolld drg <=16 in w/bdr					
A6238	A	Hydrocolld drg >16<=48 w/bdr					
A6239	A	Hydrocolld drg > 48 in w/bdr					
A6240	A	Hydrocolld drg filler paste					
A6241	A	Hydrocolloid drg filler dry					
A6242	A	Hydrogel drg <=16 in w/o bdr					
A6243	A	Hydrogel drg >16<=48 w/o bdr					
A6244	A	Hydrogel drg >48 in w/o bdr					
A6245	A	Hydrogel drg <= 16 in w/bdr					
A6246	A	Hydrogel drg >16<=48 in w/b					
A6247	A	Hydrogel drg > 48 sq in w/b					
A6248	A	Hydrogel drsg gel filler					
A6250	A	Skin seal protect moisturizr					
A6251	A	Absorpt drg <=16 sq in w/o b					
A6252	A	Absorpt drg >16 <=48 w/o bdr					
A6253	A	Absorpt drg > 48 sq in w/o b					
A6254	A	Absorpt drg <=16 sq in w/bdr					
A6255	A	Absorpt drg >16<=48 in w/bdr					
A6256	A	Absorpt drg > 48 sq in w/bdr					
A6257	A	Transparent film <= 16 sq in					
A6258	A	Transparent film >16<=48 in					
A6259	A	Transparent film > 48 sq in					
A6260	A	Wound cleanser any type/size					
A6261	A	Wound filler gel/paste /oz					
A6262	A	Wound filler dry form / gram					
A6263	A	Non-sterile elastic gauze/yd					
A6264	A	Non-sterile no elastic gauze					
A6265	A	Tape per 18 sq inches					
A6266	A	Impreg gauze no h20/sal/yard					
A6402	A	Sterile gauze <= 16 sq in					
A6403	A	Sterile gauze>16 <= 48 sq in					
A6404	A	Sterile gauze > 48 sq in					
A6405	A	Sterile elastic gauze /yd					
A6406	A	Sterile non-elastic gauze/yd					
A7000	A	Disposable canister for pump					
A7001	A	Nondisposable pump canister					
A7002	A	Tubing used w suction pump					
A7003	A	Nebulizer administration set					
A7004	A	Disposable nebulizer sml vol					
A7005	A	Nondisposable nebulizer set					
A7006	A	Filtered nebulizer admin set					
A7007	A	Lg vol nebulizer disposable					
A7008	A	Disposable nebulizer prefill					
A7009	A	Nebulizer reservoir bottle					
A7010	A	Disposable corrugated tubing					
A7011	A	Nondispos corrugated tubing					
A7012	A	Nebulizer water collec devic					
A7013	A	Disposable compressor filter					
A7014	A	Compressor nondispos filter					
A7015	A	Aerosol mask used w nebulize					
A7016	A	Nebulizer dome & mouthpiece					
A7017	A	Nebulizer not used w oxygen					
A7018	A	Water distilled w/nebulizer					
A7019	A	Saline solution dispenser					
A7020	A	Sterile H2O or NSS w lgv neb					
A7501	A	Tracheostoma valve w diaphra					
A7502	A	Replacement diaphragm/fplate					
A7503	A	HMES filter holder or cap					
A7504	A	Tracheostoma HMES filter					
A7505	A	HMES or trach valve housing					
A7506	A	HMES/trachvalve adhesivedisk					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
A7507	A	Integrated filter & holder					
A7508	A	Housing & Integrated Adhesiv					
A7509	A	Heat & moisture exchange sys					
A9150	E	Misc/exper non-prescript dru					
A9270	E	Non-covered item or service					
A9300	E	Exercise equipment					
A9500	N	Technetium TC 99m sestamibi					
A9502	N	Technetium TC99M tetrofosmin					
A9503	N	Technetium TC 99m medronate					
A9504	N	Technetium tc 99m apcitide					
A9505	N	Thallous chloride TL 201/mci					
A9507	K	Indium/111 capromab pendetid	1604	5.91	$307.37		$61.47
A9508	N	Iobenguane sulfate I-131					
A9510	N	Technetium TC99m Disofenin					
A9511	K	Technetium TC 99m depreotide	1095	0.25	$13.00		$2.60
A9600	K	Strontium-89 chloride	0701	6.43	$334.42		$66.88
A9605	K	Samarium sm153 lexidronamm	0702	15.02	$781.18		$156.24
A9700	G	Echocardiography Contrast	9016		$118.75		$17.00
A9900	A	Supply/accessory/service					
A9901	A	Delivery/set up/dispensing					
B4034	A	Enter feed supkit syr by day					
B4035	A	Enteral feed supp pump per d					
B4036	A	Enteral feed sup kit grav by					
B4081	A	Enteral ng tubing w/ stylet					
B4082	A	Enteral ng tubing w/o stylet					
B4083	A	Enteral stomach tube levine					
B4086	A	Gastrostomy/jejunostomy tube					
B4150	A	Enteral formulae category i					
B4151	A	Enteral formulae cat1natural					
B4152	A	Enteral formulae category ii					
B4153	A	Enteral formulae categoryIII					
B4154	A	Enteral formulae category IV					
B4155	A	Enteral formulae category v					
B4156	A	Enteral formulae category vi					
B4164	A	Parenteral 50% dextrose solu					
B4168	A	Parenteral sol amino acid 3.					
B4172	A	Parenteral sol amino acid 5.					
B4176	A	Parenteral sol amino acid 7-					
B4178	A	Parenteral sol amino acid >					
B4180	A	Parenteral sol carb > 50%					
B4184	A	Parenteral sol lipids 10%					
B4186	A	Parenteral sol lipids 20%					
B4189	A	Parenteral sol amino acid &					
B4193	A	Parenteral sol 52-73 gm prot					
B4197	A	Parenteral sol 74-100 gm pro					
B4199	A	Parenteral sol > 100gm prote					
B4216	A	Parenteral nutrition additiv					
B4220	A	Parenteral supply kit premix					
B4222	A	Parenteral supply kit homemi					
B4224	A	Parenteral administration ki					
B5000	A	Parenteral sol renal-amirosy					
B5100	A	Parenteral sol hepatic-fream					
B5200	A	Parenteral sol stres-brnch c					
B9000	A	Enter infusion pump w/o alrm					
B9002	A	Enteral infusion pump w/ ala					
B9004	A	Parenteral infus pump portab					
B9006	A	Parenteral infus pump statio					
B9996	A	Enteral supp not otherwise c					
B9999	A	Parenteral supp not othrws c					
C1010	K	Blood, L/R, CMV-NEG	1010	1.67	$86.86		$17.37
C1011	K	Platelets, HLA-m, L/R, unit	1011	6.03	$313.61		$62.72
C1012	K	PLATELET CONC, L/R, Irrad	0954	1.59	$82.69		$16.54
C1013	K	PLATELET CONC, L/R, Unit	1013	0.91	$47.33		$9.47
C1014	K	Platelet,Aph/Pher, L/R, unit	9501	5.10	$265.25		$53.05
C1016	K	BLOOD,L/R,FROZ/DEGLY/Washed	1016	1.09	$56.69		$11.34
C1017	K	Plt, APH/PHER,L/R,CMV-NEG	1017	4.78	$248.60		$49.72

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
C1018	K	Blood, L/R, IRRADIATED	1018	1.90	$98.82		$19.76
C1058	G	TC 99M oxidronate, per vial	1058		$36.74		$5.26
C1064	G	I-131 cap, each add mCi	1064		$5.86		$.75
C1065	G	I-131 sol, each add mCi	1065		$15.81		$2.03
C1066	N	IN 111 satumomab pendetide					
C1079	N	CO 57/58 per 0.5 uCi					
C1087	N	I-123 per 100 uCi					
C1088	T	LASER OPTIC TR Sys	0980		$1,875.00		$375.00
C1091	K	IN111 oxyquinoline,per0.5mCi	1091	4.36	$226.76		$45.35
C1092	K	IN 111 pentetate per 0.5 mCi	1092	4.78	$248.60		$49.72
C1094	N	TC99Malbumin aggr,per 1.0mCi					
C1096	K	TC 99M EXAMETAZIME, PER Dose	1096	3.35	$174.23		$34.85
C1097	N	TC 99M MEBROFENIN, PER Vial					
C1098	N	TC 99M PENTETATE, PER Vial					
C1099	N	TC 99M PYROPHOSPHATE,PER Via.					
C1122	K	Tc 99M ARCITUMOMAB PER VIAL	1122	8.33	$433.23		$86.65
C1166	N	CYTARABINE LIPOSOMAL, 10 mg					
C1167	K	EPIRUBICIN HCL, 2 mg	1167	0.32	$16.64		$3.33
C1178	K	BUSULFAN IV, 6 Mg	1178	0.53	$27.56		$5.51
C1188	N	I-131 cap, per 1-5 mCi					
C1200	N	TC 99M Sodium Glucoheptonat					
C1201	N	TC 99M SUCCIMER, PER Vial					
C1202	N	TC 99M SULFUR COLLOID, Vial					
C1207	K	OCTREOTIDE ACETATE DEPOT 1mg.	1207	1.22	$63.45		$12.69
C1300	S	HYPERBARIC Oxygen	0659	3.12	$162.27		$32.45
C1305	K	Apligraf	1305	12.47	$648.55		$129.71
C1348	K	I-131 sol, per 1-6 mCi	1348	0.19	$9.88		$1.98
C1713	N	Anchor/screw bn/bn,tis/bn					
C1714	N	Cath, trans atherectomy, dir					
C1715	N	Brachytherapy needle					
C1716	K	Brachytx seed, Gold 198	1716	0.35	$18.20		$3.64
C1717	N	Brachytx seed, HDR Ir-192					
C1718	K	Brachytx seed, Iodine 125	1718	0.64	$33.29		$6.66
C1719	K	Brachytx seed,Non-HDR Ir-192	1719	0.57	$29.65		$5.93
C1720	K	Brachytx seed, Palladium 103	1720	0.89	$46.29		$9.26
C1721	N	AICD, dual chamber					
C1722	N	AICD, single chamber					
C1724	N	Cath, trans atherec,rotation					
C1725	N	Cath, translumin non-laser					
C1726	N	Cath, bal dil, non-vascular					
C1727	N	Cath, bal tis dis, non-vas					
C1728	N	Cath, brachytx seed adm					
C1729	N	Cath, drainage					
C1730	N	Cath, EP, 19 or few elect					
C1731	N	Cath, EP, 20 or more elec					
C1732	N	Cath, EP, diag/abl, 3D/vect					
C1733	N	Cath, EP, othr than cool-tip					
C1750	N	Cath, hemodialysis,long-term					
C1751	N	Cath, inf, per/cent/midline					
C1752	N	Cath,hemodialysis,short-term					
C1753	N	Cath, intravas ultrasound					
C1754	N	Catheter, intradiscal					
C1755	N	Catheter, intraspinal					
C1756	N	Cath, pacing, transesoph					
C1757	N	Cath, thrombectomy/embolect					
C1758	N	Catheter, ureteral					
C1759	N	Cath, intra echocardiography					
C1760	N	Closure dev, vasc					
C1762	N	Conn tiss, human(inc fascia)					
C1763	N	Conn tiss, non-human					
C1764	N	Event recorder, cardiac					
C1765	H	Adhesion barrier	1765				
C1766	N	Intro/sheath,strble,non-peel					
C1767	N	Generator, neurostim, imp					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
C1768	N	Graft, vascular					
C1769	N	Guide wire					
C1770	N	Imaging coil, MR, insertable					
C1771	N	Rep dev, urinary, w/sling					
C1772	N	Infusion pump, programmable					
C1773	N	Ret dev, insertable					
C1774	G	Darbepoetin alfa, 1 mcg	0734		$4.74		$.68
C1775	G	FDG, per dose (4-40 mCi/ml)	1775		$475.00		$68.00
C1776	N	Joint device (implantable)					
C1777	N	Lead, AICD, endo single coil					
C1778	N	Lead, neurostimulator					
C1779	N	Lead, pmkr, transvenous VDD					
C1780	N	Lens, intraocular (new tech)					
C1781	N	Mesh (implantable)					
C1782	N	Morcellator					
C1783	H	Ocular imp, aqueous drain dev	1783				
C1784	N	Ocular dev, intraop, det ret					
C1785	N	Pmkr, dual, rate-resp					
C1786	N	Pmkr, single, rate-resp					
C1787	N	Patient progr, neurostim					
C1788	N	Port, indwelling, imp					
C1789	N	Prosthesis, breast, imp					
C1813	N	Prosthesis, penile, inflatab					
C1815	N	Pros, urinary sph, imp					
C1816	N	Receiver/transmitter, neuro					
C1817	N	Septal defect imp sys					
C1874	N	Stent, coated/cov w/del sys					
C1875	N	Stent, coated/cov w/o del sy					
C1876	N	Stent, non-coa/non-cov w/del					
C1877	N	Stent, non-coat/cov w/o del					
C1878	N	Matrl for vocal cord					
C1879	N	Tissue marker, implantable					
C1880	N	Vena cava filter					
C1881	N	Dialysis access system					
C1882	N	AICD, other than sing/dual					
C1883	N	Adapt/ext, pacing/neuro lead					
C1885	N	Cath, translumin angio laser					
C1887	N	Catheter, guiding					
C1888	H	Endovas non-cardiac abl cath	1888				
C1891	N	Infusion pump,non-prog, perm					
C1892	N	Intro/sheath,fixed,peel-away					
C1893	N	Intro/sheath, fixed,non-peel					
C1894	N	Intro/sheath, non-laser					
C1895	N	Lead, AICD, endo dual coil					
C1896	N	Lead, AICD, non sing/dual					
C1897	N	Lead, neurostim test kit					
C1898	N	Lead, pmkr, other than trans					
C1899	N	Lead, pmkr/AICD combination					
C1900	H	Lead coronary venous	1900				
C2615	N	Sealant, pulmonary, liquid					
C2616	N	Brachytx seed, Yttrium-90					
C2617	N	Stent, non-cor, tem w/o del					
C2618	H	Probe, cryoablation	2618				
C2619	N	Pmkr, dual, non rate-resp					
C2620	N	Pmkr, single, non rate-resp					
C2621	N	Pmkr, other than sing/dual					
C2622	N	Prosthesis, penile, non-inf					
C2625	N	Stent, non-cor, tem w/del sy					
C2626	N	Infusion pump, non-prog,temp					
C2627	N	Cath, suprapubic/cystoscopic					
C2628	N	Catheter, occlusion					
C2629	N	Intro/sheath, laser					
C2630	N	Cath, EP, cool-tip					
C2631	N	Rep dev, urinary, w/o sling					
C8900	S	MRA w/cont, abd	0284	7.74	$402.55	$201.02	$80.51
C8901	S	MRA w/o cont, abd	0336	7.01	$364.58	$176.94	$72.92

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
C8902	S	MRA w/o fol w/cont, abd	0337	9.86	$512.81	$240.77	$102.56
C8903	S	MRI w/cont, breast, uni	0284	7.74	$402.55	$201.02	$80.51
C8904	S	MRI w/o cont, breast, uni	0336	7.01	$364.58	$176.94	$72.92
C8905	S	MRI w/o fol w/cont, brst, un	0337	9.86	$512.81	$240.77	$102.56
C8906	S	MRI w/cont, breast, bi	0284	7.74	$402.55	$201.02	$80.51
C8907	S	MRI w/o cont, breast, bi	0336	7.01	$364.58	$176.94	$72.92
C8908	S	MRI w/o fol w/cont, breast,	0337	9.86	$512.81	$240.77	$102.56
C8909	S	MRA w/cont, chest	0284	7.74	$402.55	$201.02	$80.51
C8910	S	MRA w/o cont, chest	0336	7.01	$364.58	$176.94	$72.92
C8911	S	MRA w/o fol w/cont, chest	0337	9.86	$512.81	$240.77	$102.56
C8912	S	MRA w/cont, lwr ext	0284	7.74	$402.55	$201.02	$80.51
C8913	S	MRA w/o cont, lwr ext	0336	7.01	$364.58	$176.94	$72.92
C8914	S	MRA w/o fol w/cont, lwr ext	0337	9.86	$512.81	$240.77	$102.56
C9000	N	Na chromateCr51, per 0.25mCi					
C9003	K	Palivizumab, per 50 mg	9003	9.34	$485.76		$97.15
C9007	N	Baclofen Intrathecal kit-1am					
C9008	N	Baclofen Refill Kit-500mcg					
C9009	K	Baclofen Refill Kit-2000mcg	9009	0.79	$41.09		$8.22
C9010	K	Baclofen Refill Kit--4000mcg	9010	0.95	$49.41		$9.88
C9013	N	Co 57 cobaltous chloride					
C9019	G	Caspofungin acetate, 5 mg	9019		$34.20		$4.90
C9020	K	Sirolimussolution, 1 mg	9020	0.05	$2.60		$.52
C9100	N	Iodinated I-131 Albumin					
C9102	N	51 Na Chromate, 50mCi					
C9103	N	Na Iothalamate I-125, 10 uCi					
C9105	K	Hep B imm glob, per 1 ml	9105	1.58	$82.17		$16.43
C9108	K	Thyrotropin alfa, 1.1 mg	9108	8.79	$457.16		$91.43
C9109	K	Tirofiban hcl, 6.25 mg	9109	2.32	$120.66		$24.13
C9110	G	Alemtuzumab, per 10mg/ml	9110		$486.88		$69.70
C9111	G	Inj, bivalirudin, 250mg vial	9111		$397.81		$56.95
C9112	G	Perflutren lipid micro, 2ml	9112		$148.20		$21.22
C9113	G	Inj pantoprazole sodium, via	9113		$22.80		$3.26
C9114	G	Nesiritide, per 1.5 mg vial	9114		$433.20		$62.02
C9115	G	Inj, zoledronic acid, 2 mg	9115		$406.78		$58.23
C9200	G	Orcel, per 36 cm2	9200		$1,135.25		$162.52
C9201	G	Dermagraft, per 37.5 sq cm	9201		$577.60		$82.69
C9503	K	Fresh frozen plasma, ea unit	9503	0.77	$40.05		$8.01
C9701	T	Stretta System	0980		$1,875.00		$375.00
C9703	T	Bard Endoscopic Suturing Sys	0979		$1,625.00		$325.00
C9708	T	Preview Tx Planning Software	0973		$250.00		$50.00
C9711	T	H.E.L.P. Apheresis System	0978		$1,375.00		$275.00
D0120	E	Periodic oral evaluation					
D0140	E	Limit oral eval problm focus					
D0150	S	Comprehensve oral evaluation	0330	0.64	$33.29		$6.66
D0160	E	Extensv oral eval prob focus					
D0170	E	Re-eval,est pt,problem focus					
D0210	E	Intraor complete film series					
D0220	E	Intraoral periapical first f					
D0230	E	Intraoral periapical ea add					
D0240	S	Intraoral occlusal film	0330	0.64	$33.29		$6.66
D0250	S	Extraoral first film	0330	0.64	$33.29		$6.66
D0260	S	Extraoral ea additional film	0330	0.64	$33.29		$6.66
D0270	S	Dental bitewing single film	0330	0.64	$33.29		$6.66
D0272	S	Dental bitewings two films	0330	0.64	$33.29		$6.66
D0274	S	Dental bitewings four films	0330	0.64	$33.29		$6.66
D0277	S	Vert bitewings-sev to eight	0330	0.64	$33.29		$6.66
D0290	E	Dental film skull/facial bon					
D0310	E	Dental sialography					
D0320	E	Dental tmj arthrogram incl i					
D0321	E	Dental other tmj films					
D0322	E	Dental tomographic survey					
D0330	E	Dental panoramic film					
D0340	E	Dental cephalometric film					
D0350	E	Oral/facial images					
D0415	E	Bacteriologic study					
D0425	E	Caries susceptibility test					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
D0460	S	Pulp vitality test	0330	0.64	$33.29		$6.66
D0470	E	Diagnostic casts					
D0472	S	Gross exam, prep & report	0330	0.64	$33.29		$6.66
D0473	S	Micro exam, prep & report	0330	0.64	$33.29		$6.66
D0474	S	Micro w exam of surg margins	0330	0.64	$33.29		$6.66
D0480	S	Cytopath smear prep & report	0330	0.64	$33.29		$6.66
D0501	S	Histopathologic examinations	0330	0.64	$33.29		$6.66
D0502	S	Other oral pathology procedu	0330	0.64	$33.29		$6.66
D0999	S	Unspecified diagnostic proce	0330	0.64	$33.29		$6.66
D1110	E	Dental prophylaxis adult					
D1120	E	Dental prophylaxis child					
D1201	E	Topical fluor w prophy child					
D1203	E	Topical fluor w/o prophy chi					
D1204	E	Topical fluor w/o prophy adu					
D1205	E	Topical fluoride w/ prophy a					
D1310	E	Nutri counsel-control caries					
D1320	E	Tobacco counseling					
D1330	E	Oral hygiene instruction					
D1351	E	Dental sealant per tooth					
D1510	S	Space maintainer fxd unilat	0330	0.64	$33.29		$6.66
D1515	S	Fixed bilat space maintainer	0330	0.64	$33.29		$6.66
D1520	S	Remove unilat space maintain	0330	0.64	$33.29		$6.66
D1525	S	Remove bilat space maintain	0330	0.64	$33.29		$6.66
D1550	S	Recement space maintainer	0330	0.64	$33.29		$6.66
D2110	E	Amalgam one surface primary					
D2120	E	Amalgam two surfaces primary					
D2130	E	Amalgam three surfaces prima					
D2131	E	Amalgam four/more surf prima					
D2140	E	Amalgam one surface permanen					
D2150	E	Amalgam two surfaces permane					
D2160	E	Amalgam three surfaces perma					
D2161	E	Amalgam 4 or > surfaces perm					
D2330	E	Resin one surface-anterior					
D2331	E	Resin two surfaces-anterior					
D2332	E	Resin three surfaces-anterio					
D2335	E	Resin 4/> surf or w incis an					
D2336	E	Composite resin crown					
D2337	E	Compo resin crown ant-perm					
D2380	E	Resin one surf poster primar					
D2381	E	Resin two surf poster primar					
D2382	E	Resin three/more surf post p					
D2385	E	Resin one surf poster perman					
D2386	E	Resin two surf poster perman					
D2387	E	Resin three/more surf post p					
D2388	E	Resin four/more, post perm					
D2410	E	Dental gold foil one surface					
D2420	E	Dental gold foil two surface					
D2430	E	Dental gold foil three surfa					
D2510	E	Dental inlay metalic 1 surf					
D2520	E	Dental inlay metallic 2 surf					
D2530	E	Dental inlay metl 3/more sur					
D2542	E	Dental onlay metallic 2 surf					
D2543	E	Dental onlay metallic 3 surf					
D2544	E	Dental onlay metl 4/more sur					
D2610	E	Inlay porcelain/ceramic 1 su					
D2620	E	Inlay porcelain/ceramic 2 su					
D2630	E	Dental onlay porc 3/more sur					
D2642	E	Dental onlay porcelin 2 surf					
D2643	E	Dental onlay porcelin 3 surf					
D2644	E	Dental onlay porc 4/more sur					
D2650	E	Inlay composite/resin one su					
D2651	E	Inlay composite/resin two su					
D2652	E	Dental inlay resin 3/mre sur					
D2662	E	Dental onlay resin 2 surface					
D2663	E	Dental onlay resin 3 surface					
D2664	E	Dental onlay resin 4/mre sur					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
D2710	E	Crown resin laboratory					
D2720	E	Crown resin w/ high noble me					
D2721	E	Crown resin w/ base metal					
D2722	E	Crown resin w/ noble metal					
D2740	E	Crown porcelain/ceramic subs					
D2750	E	Crown porcelain w/ h noble m					
D2751	E	Crown porcelain fused base m					
D2752	E	Crown porcelain w/ noble met					
D2780	E	Crown 3/4 cast hi noble met					
D2781	E	Crown 3/4 cast base metal					
D2782	E	Crown 3/4 cast noble metal					
D2783	E	Crown 3/4 porcelain/ceramic					
D2790	E	Crown full cast high noble m					
D2791	E	Crown full cast base metal					
D2792	E	Crown full cast noble metal					
D2799	E	Provisional crown					
D2910	E	Dental recement inlay					
D2920	E	Dental recement crown					
D2930	E	Prefab stnlss steel crwn pri					
D2931	E	Prefab stnlss steel crown pe					
D2932	E	Prefabricated resin crown					
D2933	E	Prefab stainless steel crown					
D2940	E	Dental sedative filling					
D2950	E	Core build-up incl any pins					
D2951	E	Tooth pin retention					
D2952	E	Post and core cast + crown					
D2953	E	Each addtnl cast post					
D2954	E	Prefab post/core + crown					
D2955	E	Post removal					
D2957	E	Each addtnl prefab post					
D2960	E	Laminate labial veneer					
D2961	E	Lab labial veneer resin					
D2962	E	Lab labial veneer porcelain					
D2970	S	Temporary- fractured tooth	0330	0.64	$33.29		$6.66
D2980	E	Crown repair					
D2999	S	Dental unspec restorative pr	0330	0.64	$33.29		$6.66
D3110	E	Pulp cap direct					
D3120	E	Pulp cap indirect					
D3220	E	Therapeutic pulpotomy					
D3221	E	Gross pulpal debridement					
D3230	E	Pulpal therapy anterior prim					
D3240	E	Pulpal therapy posterior pri					
D3310	E	Anterior					
D3320	E	Root canal therapy 2 canals					
D3330	E	Root canal therapy 3 canals					
D3331	E	Non-surg tx root canal obs					
D3332	E	Incomplete endodontic tx					
D3333	E	Internal root repair					
D3346	E	Retreat root canal anterior					
D3347	E	Retreat root canal bicuspid					
D3348	E	Retreat root canal molar					
D3351	E	Apexification/recalc initial					
0001T	C	Endovas repr abdo ao aneurys					
D3352	E	Apexification/recalc interim					
D3353	E	Apexification/recalc final					
D3410	E	Apicoect/perirad surg anter					
D3421	E	Root surgery bicuspid					
D3425	E	Root surgery molar					
D3426	E	Root surgery ea add root					
D3430	E	Retrograde filling					
D3450	E	Root amputation					
D3460	S	Endodontic endosseous implan	0330	0.64	$33.29		$6.66
D3470	E	Intentional replantation					
D3910	E	Isolation- tooth w rubb dam					
D3920	E	Tooth splitting					
D3950	E	Canal prep/fitting of dowel					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
D3999	S	Endodontic procedure	0330	0.64	$33.29		$6.66
D4210	E	Gingivectomy/plasty per quad					
D4211	E	Gingivectomy/plasty per toot					
D4220	E	Gingival curettage per quadr					
D4240	E	Gingival flap proc w/ planin					
D4245	E	Apically positioned flap					
D4249	E	Crown lengthen hard tissue					
D4260	S	Osseous surgery per quadrant	0330	0.64	$33.29		$6.66
D4263	S	Bone replce graft first site	0330	0.64	$33.29		$6.66
D4264	S	Bone replce graft each add	0330	0.64	$33.29		$6.66
D4266	E	Guided tiss regen resorble					
D4267	E	Guided tiss regen nonresorb					
D4268	S	Surgical revision procedure	0330	0.64	$33.29		$6.66
D4270	S	Pedicle soft tissue graft pr	0330	0.64	$33.29		$6.66
D4271	S	Free soft tissue graft proc	0330	0.64	$33.29		$6.66
D4273	S	Subepithelial tissue graft	0330	0.64	$33.29		$6.66
D4274	E	Distal/proximal wedge proc					
D4320	E	Provision splnt intracoronal					
D4321	E	Provisional splint extracoro					
D4341	E	Periodontal scaling & root					
D4355	S	Full mouth debridement	0330	0.64	$33.29		$6.66
D4381	S	Localized chemo delivery	0330	0.64	$33.29		$6.66
D4910	E	Periodontal maint procedures					
D4920	E	Unscheduled dressing change					
D4999	E	Unspecified periodontal proc					
D5110	E	Dentures complete maxillary					
D5120	E	Dentures complete mandible					
D5130	E	Dentures immediat maxillary					
D5140	E	Dentures immediat mandible					
D5211	E	Dentures maxill part resin					
D5212	E	Dentures mand part resin					
D5213	E	Dentures maxill part metal					
D5214	E	Dentures mandibl part metal					
D5281	E	Removable partial denture					
D5410	E	Dentures adjust cmplt maxil					
D5411	E	Dentures adjust cmplt mand					
D5421	E	Dentures adjust part maxill					
D5422	E	Dentures adjust part mandbl					
D5510	E	Dentur repr broken compl bas					
D5520	E	Replace denture teeth complt					
D5610	E	Dentures repair resin base					
D5620	E	Rep part denture cast frame					
D5630	E	Rep partial denture clasp					
D5640	E	Replace part denture teeth					
D5650	E	Add tooth to partial denture					
D5660	E	Add clasp to partial denture					
D5710	E	Dentures rebase cmplt maxil					
D5711	E	Dentures rebase cmplt mand					
D5720	E	Dentures rebase part maxill					
D5721	E	Dentures rebase part mandbl					
D5730	E	Denture reln cmplt maxil ch					
D5731	E	Denture reln cmplt mand chr					
D5740	E	Denture reln part maxil chr					
D5741	E	Denture reln part mand chr					
D5750	E	Denture reln cmplt max lab					
D5751	E	Denture reln cmplt mand lab					
D5760	E	Denture reln part maxil lab					
D5761	E	Denture reln part mand lab					
D5810	E	Denture interm cmplt maxill					
D5811	E	Denture interm cmplt mandbl					
D5820	E	Denture interm part maxill					
D5821	E	Denture interm part mandbl					
D5850	E	Denture tiss conditn maxill					
D5851	E	Denture tiss condtin mandbl					
D5860	E	Overdenture complete					
D5861	E	Overdenture partial					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
D5862	E	Precision attachment					
D5867	E	Replacement of precision att					
D5875	E	Prosthesis modification					
D5899	E	Removable prosthodontic proc					
D5911	S	Facial moulage sectional	0330	0.64	$33.29		$6.66
D5912	S	Facial moulage complete	0330	0.64	$33.29		$6.66
D5913	E	Nasal prosthesis					
D5914	E	Auricular prosthesis					
D5915	E	Orbital prosthesis					
D5916	E	Ocular prosthesis					
D5919	E	Facial prosthesis					
D5922	E	Nasal septal prosthesis					
D5923	E	Ocular prosthesis interim					
D5924	E	Cranial prosthesis					
D5925	E	Facial augmentation implant					
D5926	E	Replacement nasal prosthesis					
D5927	E	Auricular replacement					
D5928	E	Orbital replacement					
D5929	E	Facial replacement					
D5931	E	Surgical obturator					
D5932	E	Postsurgical obturator					
D5933	E	Refitting of obturator					
D5934	E	Mandibular flange prosthesis					
D5935	E	Mandibular denture prosth					
D5936	E	Temp obturator prosthesis					
D5937	E	Trismus appliance					
D5951	E	Feeding aid					
D5952	E	Pediatric speech aid					
D5953	E	Adult speech aid					
D5954	E	Superimposed prosthesis					
D5955	E	Palatal lift prosthesis					
D5958	E	Intraoral con def inter plt					
D5959	E	Intraoral con def mod palat					
D5960	E	Modify speech aid prosthesis					
D5982	E	Surgical stent					
D5983	S	Radiation applicator	0330	0.64	$33.29		$6.66
D5984	S	Radiation shield	0330	0.64	$33.29		$6.66
D5985	S	Radiation cone locator	0330	0.64	$33.29		$6.66
D5986	E	Fluoride applicator					
D5987	S	Commissure splint	0330	0.64	$33.29		$6.66
D5988	E	Surgical splint					
D5999	E	Maxillofacial prosthesis					
D6010	E	Odontics endosteal implant					
D6020	E	Odontics abutment placement					
D6040	E	Odontics eposteal implant					
D6050	E	Odontics transosteal implnt					
D6055	E	Implant connecting bar					
D6056	E	Prefabricated abutment					
D6057	E	Custom abutment					
D6058	E	Abutment supported crown					
D6059	E	Abutment supported mtl crown					
D6060	E	Abutment supported mtl crown					
D6061	E	Abutment supported mtl crown					
D6062	E	Abutment supported mtl crown					
D6063	E	Abutment supported mtl crown					
D6064	E	Abutment supported mtl crown					
D6065	E	Implant supported crown					
D6066	E	Implant supported mtl crown					
D6067	E	Implant supported mtl crown					
D6068	E	Abutment supported retainer					
D6069	E	Abutment supported retainer					
D6070	E	Abutment supported retainer					
D6071	E	Abutment supported retainer					
D6072	E	Abutment supported retainer					
D6073	E	Abutment supported retainer					
D6074	E	Abutment supported retainer					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
D6075	E	Implant supported retainer					
D6076	E	Implant supported retainer					
D6077	E	Implant supported retainer					
D6078	E	Implnt/abut suprtd fixd dent					
D6079	E	Implnt/abut suprtd fixd dent					
D6080	E	Implant maintenance					
D6090	E	Repair implant					
D6095	E	Odontics repr abutment					
D6100	E	Removal of implant					
D6199	E	Implant procedure					
D6210	E	Prosthodont high noble metal					
D6211	E	Bridge base metal cast					
D6212	E	Bridge noble metal cast					
D6240	E	Bridge porcelain high noble					
D6241	E	Bridge porcelain base metal					
D6242	E	Bridge porcelain nobel metal					
D6245	E	Bridge porcelain/ceramic					
D6250	E	Bridge resin w/high noble					
D6251	E	Bridge resin base metal					
D6252	E	Bridge resin w/noble metal					
D6519	E	Inlay/onlay porce/ceramic					
D6520	E	Dental retainer two surfaces					
D6530	E	Retainer metallic 3+ surface					
D6543	E	Dental retainr onlay 3 surf					
D6544	E	Dental retainr onlay 4/more					
D6545	E	Dental retainr cast metl					
D6548	E	Porcelain/ceramic retainer					
D6720	E	Retain crown resin w hi nble					
D6721	E	Crown resin w/base metal					
D6722	E	Crown resin w/noble metal					
D6740	E	Crown porcelain/ceramic					
D6750	E	Crown porcelain high noble					
D6751	E	Crown porcelain base metal					
D6752	E	Crown porcelain noble metal					
D6780	E	Crown 3/4 high noble metal					
D6781	E	Crown 3/4 cast based metal					
D6782	E	Crown 3/4 cast noble metal					
D6783	E	Crown 3/4 porcelain/ceramic					
D6790	E	Crown full high noble metal					
D6791	E	Crown full base metal cast					
D6792	E	Crown full noble metal cast					
D6920	S	Dental connector bar	0330	0.64	$33.29		$6.66
D6930	E	Dental recement bridge					
D6940	E	Stress breaker					
D6950	E	Precision attachment					
D6970	E	Post & core plus retainer					
D6971	E	Cast post bridge retainer					
D6972	E	Prefab post & core plus reta					
D6973	E	Core build up for retainer					
D6975	E	Coping metal					
D6976	E	Each addtnl cast post					
D6977	E	Each addtl prefab post					
D6980	E	Bridge repair					
D6999	E	Fixed prosthodontic proc					
D7110	S	Oral surgery single tooth	0330	0.64	$33.29		$6.66
D7120	S	Each add tooth extraction	0330	0.64	$33.29		$6.66
D7130	S	Tooth root removal	0330	0.64	$33.29		$6.66
D7210	S	Rem imp tooth w mucoper flp	0330	0.64	$33.29		$6.66
D7220	S	Impact tooth remov soft tiss	0330	0.64	$33.29		$6.66
D7230	S	Impact tooth remov part bony	0330	0.64	$33.29		$6.66
D7240	S	Impact tooth remov comp bony	0330	0.64	$33.29		$6.66
D7241	S	Impact tooth rem bony w/comp	0330	0.64	$33.29		$6.66
D7250	S	Tooth root removal	0330	0.64	$33.29		$6.66
D7260	S	Oral antral fistula closure	0330	0.64	$33.29		$6.66
D7270	E	Tooth reimplantation					
D7272	E	Tooth transplantation					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
D7280	E	Exposure impact tooth orthod					
D7281	E	Exposure tooth aid eruption					
D7285	E	Biopsy of oral tissue hard					
D7286	E	Biopsy of oral tissue soft					
D7290	E	Repositioning of teeth					
D7291	S	Transseptal fiberotomy	0330	0.64	$33.29		$6.66
D7310	E	Alveoplasty w/ extraction					
D7320	E	Alveoplasty w/o extraction					
D7340	E	Vestibuloplasty ridge extens					
D7350	E	Vestibuloplasty exten graft					
D7410	E	Rad exc lesion up to 1.25 cm					
D7420	E	Lesion > 1.25 cm					
D7430	E	Exc benign tumor to 1.25 cm					
D7431	E	Benign tumor exc > 1.25 cm					
D7440	E	Malig tumor exc to 1.25 cm					
D7441	E	Malig tumor > 1.25 cm					
D7450	E	Rem odontogen cyst to 1.25cm					
D7451	E	Rem odontogen cyst > 1.25 cm					
D7460	E	Rem nonodonto cyst to 1.25cm					
D7461	E	Rem nonodonto cyst > 1.25 cm					
D7465	E	Lesion destruction					
D7471	E	Rem exostosis any site					
D7480	E	Partial ostectomy					
D7490	E	Mandible resection					
D7510	E	I&d absc intraoral soft tiss					
D7520	E	I&d abscess extraoral					
D7530	E	Removal fb skin/areolar tiss					
D7540	E	Removal of fb reaction					
D7550	E	Removal of sloughed off bone					
D7560	E	Maxillary sinusotomy					
D7610	E	Maxilla open reduct simple					
D7620	E	Clsd reduct simpl maxilla fx					
D7630	E	Open red simpl mandible fx					
D7640	E	Clsd red simpl mandible fx					
D7650	E	Open red simp malar/zygom fx					
D7660	E	Clsd red simp malar/zygom fx					
D7670	E	Closd rductn splint alveolus					
D7680	E	Reduct simple facial bone fx					
D7710	E	Maxilla open reduct compound					
D7720	E	Clsd reduct compd maxilla fx					
D7730	E	Open reduct compd mandble fx					
D7740	E	Clsd reduct compd mandble fx					
D7750	E	Open red comp malar/zygma fx					
D7760	E	Clsd red comp malar/zygma fx					
D7770	E	Open reduc compd alveolus fx					
D7780	E	Reduct compnd facial bone fx					
D7810	E	Tmj open reduct-dislocation					
D7820	E	Closed tmp manipulation					
D7830	E	Tmj manipulation under anest					
D7840	E	Removal of tmj condyle					
D7850	E	Tmj meniscectomy					
D7852	E	Tmj repair of joint disc					
D7854	E	Tmj excisn of joint membrane					
D7856	E	Tmj cutting of a muscle					
D7858	E	Tmj reconstruction					
D7860	E	Tmj cutting into joint					
D7865	E	Tmj reshaping components					
D7870	E	Tmj aspiration joint fluid					
D7871	E	Lysis + lavage w catheters					
D7872	E	Tmj diagnostic arthroscopy					
D7873	E	Tmj arthroscopy lysis adhesn					
D7874	E	Tmj arthroscopy disc reposit					
D7875	E	Tmj arthroscopy synovectomy					
D7876	E	Tmj arthroscopy discectomy					
D7877	E	Tmj arthroscopy debridement					
D7880	E	Occlusal orthotic appliance					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
D7899	E	Tmj unspecified therapy					
D7910	E	Dent sutur recent wnd to 5cm					
D7911	E	Dental suture wound to 5 cm					
D7912	E	Suture complicate wnd > 5 cm					
D7920	E	Dental skin graft					
D7940	S	Reshaping bone orthognathic	0330	0.64	$33.29		$6.66
D7941	E	Bone cutting ramus closed					
D7943	E	Cutting ramus open w/graft					
D7944	E	Bone cutting segmented					
D7945	E	Bone cutting body mandible					
D7946	E	Reconstruction maxilla total					
D7947	E	Reconstruct maxilla segment					
D7948	E	Reconstruct midface no graft					
D7949	E	Reconstruct midface w/graft					
D7950	E	Mandible graft					
D7955	E	Repair maxillofacial defects					
D7960	E	Frenulectomy/frenulotomy					
D7970	E	Excision hyperplastic tissue					
D7971	E	Excision pericoronal gingiva					
D7980	E	Sialolithotomy					
D7981	E	Excision of salivary gland					
D7982	E	Sialodochoplasty					
D7983	E	Closure of salivary fistula					
D7990	E	Emergency tracheotomy					
D7991	E	Dental coronoidectomy					
D7995	E	Synthetic graft facial bones					
D7996	E	Implant mandible for augment					
D7997	E	Appliance removal					
D7999	E	Oral surgery procedure					
D8010	E	Limited dental tx primary					
D8020	E	Limited dental tx transition					
D8030	E	Limited dental tx adolescent					
D8040	E	Limited dental tx adult					
D8050	E	Intercep dental tx primary					
D8060	E	Intercep dental tx transitn					
D8070	E	Compre dental tx transition					
D8080	E	Compre dental tx adolescent					
D8090	E	Compre dental tx adult					
D8210	E	Orthodontic rem appliance tx					
D8220	E	Fixed appliance therapy habt					
D8660	E	Preorthodontic tx visit					
D8670	E	Periodic orthodontc tx visit					
D8680	E	Orthodontic retention					
D8690	E	Orthodontic treatment					
D8691	E	Repair ortho appliance					
D8692	E	Replacement retainer					
D8999	E	Orthodontic procedure					
D9110	N	Tx dental pain minor proc					
D9210	E	Dent anesthesia w/o surgery					
D9211	E	Regional block anesthesia					
D9212	E	Trigeminal block anesthesia					
D9215	E	Local anesthesia					
D9220	E	General anesthesia					
D9221	E	General anesthesia ea ad 15m					
D9230	N	Analgesia					
D9241	E	Intravenous sedation					
D9242	E	IV sedation ea ad 30 m					
D9248	N	Sedation (non-iv)					
D9310	E	Dental consultation					
D9410	E	Dental house call					
D9420	E	Hospital call					
D9430	E	Office visit during hours					
D9440	E	Office visit after hours					
D9610	E	Dent therapeutic drug inject					
D9630	S	Other drugs/medicaments	0330	0.64	$33.29		$6.66
D9910	E	Dent appl desensitizing med					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
D9911	E	Appl desensitizing resin					
D9920	E	Behavior management					
D9930	S	Treatment of complications	0330	0.64	$33.29		$6.66
D9940	S	Dental occlusal guard	0330	0.64	$33.29		$6.66
D9941	E	Fabrication athletic guard					
D9950	S	Occlusion analysis	0330	0.64	$33.29		$6.66
D9951	S	Limited occlusal adjustment	0330	0.64	$33.29		$6.66
D9952	S	Complete occlusal adjustment	0330	0.64	$33.29		$6.66
D9970	E	Enamel microabrasion					
D9971	E	Odontoplasty 1-2 teeth					
D9972	E	Extrnl bleaching per arch					
D9973	E	Extrnl bleaching per tooth					
D9974	E	Intrnl bleaching per tooth					
D9999	E	Adjunctive procedure					
E0100	A	Cane adjust/fixed with tip					
E0105	A	Cane adjust/fixed quad/3 pro					
E0110	A	Crutch forearm pair					
E0111	A	Crutch forearm each					
E0112	A	Crutch underarm pair wood					
E0113	A	Crutch underarm each wood					
E0114	A	Crutch underarm pair no wood					
E0116	A	Crutch underarm each no wood					
E0130	A	Walker rigid adjust/fixed ht					
E0135	A	Walker folding adjust/fixed					
E0141	A	Rigid walker wheeled wo seat					
E0142	A	Walker rigid wheeled with se					
E0143	A	Walker folding wheeled w/o s					
E0144	A	Enclosed walker w rear seat					
E0145	A	Walker whled seat/crutch att					
E0146	A	Folding walker wheels w seat					
E0147	A	Walker variable wheel resist					
E0148	A	Heavyduty walker no wheels					
E0149	A	Heavy duty wheeled walker					
E0153	A	Forearm crutch platform atta					
E0154	A	Walker platform attachment					
E0155	A	Walker wheel attachment,pair					
E0156	A	Walker seat attachment					
E0157	A	Walker crutch attachment					
E0158	A	Walker leg extenders set of4					
E0159	A	Brake for wheeled walker					
E0160	A	Sitz type bath or equipment					
E0161	A	Sitz bath/equipment w/faucet					
E0162	A	Sitz bath chair					
E0163	A	Commode chair stationry fxd					
E0164	A	Commode chair mobile fixed a					
E0165	A	Commode chair stationry det					
E0166	A	Commode chair mobile detach					
E0167	A	Commode chair pail or pan					
E0168	A	Heavyduty/wide commode chair					
E0169	A	Seatlift incorp commodechair					
E0175	A	Commode chair foot rest					
E0176	A	Air pressre pad/cushion nonp					
E0177	A	Water press pad/cushion nonp					
E0178	A	Gel pressre pad/cushion nonp					
E0179	A	Dry pressre pad/cushion nonp					
E0180	A	Press pad alternating w pump					
E0181	A	Press pad alternating w/ pum					
E0182	A	Pressure pad alternating pum					
E0184	A	Dry pressure mattress					
E0185	A	Gel pressure mattress pad					
E0186	A	Air pressure mattress					
E0187	A	Water pressure mattress					
E0188	E	Synthetic sheepskin pad					
E0189	E	Lambswool sheepskin pad					
E0191	A	Protector heel or elbow					
E0192	A	Pad wheelchr low press/posit					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E0193	A	Powered air flotation bed					
E0194	A	Air fluidized bed					
E0196	A	Gel pressure mattress					
E0197	A	Air pressure pad for mattres					
E0198	A	Water pressure pad for mattr					
E0199	A	Dry pressure pad for mattres					
E0200	A	Heat lamp without stand					
E0202	A	Phototherapy light w/ photom					
E0205	A	Heat lamp with stand					
E0210	A	Electric heat pad standard					
E0215	A	Electric heat pad moist					
E0217	A	Water circ heat pad w pump					
E0218	E	Water circ cold pad w pump					
E0220	A	Hot water bottle					
E0221	A	Infrared heating pad system					
E0225	A	Hydrocollator unit					
E0230	A	Ice cap or collar					
E0231	A	Wound warming device					
E0232	A	Warming card for NWT					
E0235	A	Paraffin bath unit portable					
E0236	A	Pump for water circulating p					
E0238	A	Heat pad non-electric moist					
E0239	A	Hydrocollator unit portable					
E0241	E	Bath tub wall rail					
E0242	E	Bath tub rail floor					
E0243	E	Toilet rail					
E0244	E	Toilet seat raised					
E0245	E	Tub stool or bench					
E0246	E	Transfer tub rail attachment					
E0249	A	Pad water circulating heat u					
E0250	A	Hosp bed fixed ht w/ mattres					
E0251	A	Hosp bed fixd ht w/o mattres					
E0255	A	Hospital bed var ht w/ mattr					
E0256	A	Hospital bed var ht w/o matt					
E0260	A	Hosp bed semi-electr w/ matt					
E0261	A	Hosp bed semi-electr w/o mat					
E0265	A	Hosp bed total electr w/ mat					
E0266	A	Hosp bed total elec w/o matt					
E0270	E	Hospital bed institutional t					
E0271	A	Mattress innerspring					
E0272	A	Mattress foam rubber					
E0273	E	Bed board					
E0274	E	Over-bed table					
E0275	A	Bed pan standard					
E0276	A	Bed pan fracture					
E0277	A	Powered pres-redu air mattrs					
E0280	A	Bed cradle					
E0290	A	Hosp bed fx ht w/o rails w/m					
E0291	A	Hosp bed fx ht w/o rail w/o					
E0292	A	Hosp bed var ht w/o rail w/o					
E0293	A	Hosp bed var ht w/o rail w/					
E0294	A	Hosp bed semi-elect w/ mattr					
E0295	A	Hosp bed semi-elect w/o matt					
E0296	A	Hosp bed total elect w/ matt					
E0297	A	Hosp bed total elect w/o mat					
E0305	A	Rails bed side half length					
E0310	A	Rails bed side full length					
E0315	E	Bed accessory brd/tbl/supprt					
E0316	A	Bed safety enclosure					
E0325	A	Urinal male jug-type					
E0326	A	Urinal female jug-type					
E0350	E	Control unit bowel system					
E0352	E	Disposable pack w/bowel syst					
E0370	E	Air elevator for heel					
E0371	A	Nonpower mattress overlay					
E0372	A	Powered air mattress overlay					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E0373	A	Nonpowered pressure mattress					
E0424	A	Stationary compressed gas 02					
E0425	E	Gas system stationary compre					
E0430	E	Oxygen system gas portable					
E0431	A	Portable gaseous 02					
E0434	A	Portable liquid 02					
E0435	E	Oxygen system liquid portabl					
E0439	A	Stationary liquid 02					
E0440	E	Oxygen system liquid station					
E0441	A	Oxygen contents, gaseous					
E0442	A	Oxygen contents, liquid					
E0443	A	Portable 02 contents, gas					
E0444	A	Portable 02 contents, liquid					
E0450	A	Volume vent stationary/porta					
E0455	A	Oxygen tent excl croup/ped t					
E0457	A	Chest shell					
E0459	A	Chest wrap					
E0460	A	Neg press vent portabl/statn					
E0462	A	Rocking bed w/ or w/o side r					
E0480	A	Percussor elect/pneum home m					
E0481	A	Intrpulmnry percuss vent sys					
E0482	A	Cough stimulating device					
E0500	A	Ippb all types					
E0550	A	Humidif extens supple w ippb					
E0555	A	Humidifier for use w/ regula					
E0560	A	Humidifier supplemental w/ i					
E0565	A	Compressor air power source					
E0570	A	Nebulizer with compression					
E0571	A	Aerosol compressor for svneb					
E0572	A	Aerosol compressor adjust pr					
E0574	A	Ultrasonic generator w svneb					
E0575	A	Nebulizer ultrasonic					
E0580	A	Nebulizer for use w/ regulat					
E0585	A	Nebulizer w/ compressor & he					
E0590	A	Dispensing fee dme neb drug					
E0600	A	Suction pump portab hom modl					
E0601	A	Cont airway pressure device					
E0602	E	Manual breast pump					
E0603	A	Electric breast pump					
E0604	A	Hosp grade elec breast pump					
E0605	A	Vaporizer room type					
E0606	A	Drainage board postural					
E0607	A	Blood glucose monitor home					
E0608	A	Apnea monitor					
E0610	A	Pacemaker monitr audible/vis					
E0615	A	Pacemaker monitr digital/vis					
E0616	N	Cardiac event recorder					
E0617	A	Automatic ext defibrillator					
E0620	A	Cap bld skin piercing laser					
E0621	A	Patient lift sling or seat					
E0625	E	Patient lift bathroom or toi					
E0627	A	Seat lift incorp lift-chair					
E0628	A	Seat lift for pt furn-electr					
E0629	A	Seat lift for pt furn-non-el					
E0630	A	Patient lift hydraulic					
E0635	A	Patient lift electric					
E0650	A	Pneuma compresor non-segment					
E0651	A	Pneum compressor segmental					
E0652	A	Pneum compres w/cal pressure					
E0655	A	Pneumatic appliance half arm					
E0660	A	Pneumatic appliance full leg					
E0665	A	Pneumatic appliance full arm					
E0666	A	Pneumatic appliance half leg					
E0667	A	Seg pneumatic appl full leg					
E0668	A	Seg pneumatic appl full arm					
E0669	A	Seg pneumatic appli half leg					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E0671	A	Pressure pneum appl full leg					
E0672	A	Pressure pneum appl full arm					
E0673	A	Pressure pneum appl half leg					
E0690	A	Ultraviolet cabinet					
E0700	E	Safety equipment					
E0710	E	Restraints any type					
E0720	A	Tens two lead					
E0730	A	Tens four lead					
E0731	A	Conductive garment for tens/					
E0740	E	Incontinence treatment systm					
E0744	A	Neuromuscular stim for scoli					
E0745	A	Neuromuscular stim for shock					
E0746	E	Electromyograph biofeedback					
E0747	A	Elec osteogen stim not spine					
E0748	A	Elec osteogen stim spinal					
E0749	N	Elec osteogen stim implanted					
E0752	E	Neurostimulator electrode					
E0754	A	Pulsegenerator pt programmer					
E0755	E	Electronic salivary reflex s					
E0756	E	Implantable pulse generator					
E0757	E	Implantable RF receiver					
E0758	A	External RF transmitter					
E0759	A	Replace rdfrquncy transmittr					
E0760	E	Osteogen ultrasound stimltor					
E0765	E	Nerve stimulator for tx n&v					
E0776	A	Iv pole					
E0779	A	Amb infusion pump mechanical					
E0780	A	Mech amb infusion pump <8hrs					
E0781	A	External ambulatory infus pu					
E0782	E	Non-programble infusion pump					
E0783	E	Programmable infusion pump					
E0784	A	Ext amb infusn pump insulin					
E0785	E	Replacement impl pump cathet					
E0786	E	Implantable pump replacement					
E0791	A	Parenteral infusion pump sta					
E0830	N	Ambulatory traction device					
E0840	A	Tract frame attach headboard					
E0850	A	Traction stand free standing					
E0855	A	Cervical traction equipment					
E0860	A	Tract equip cervical tract					
E0870	A	Tract frame attach footboard					
E0880	A	Trac stand free stand extrem					
E0890	A	Traction frame attach pelvic					
E0900	A	Trac stand free stand pelvic					
E0910	A	Trapeze bar attached to bed					
E0920	A	Fracture frame attached to b					
E0930	A	Fracture frame free standing					
E0935	A	Exercise device passive moti					
E0940	A	Trapeze bar free standing					
E0941	A	Gravity assisted traction de					
E0942	A	Cervical head harness/halter					
E0943	A	Cervical pillow					
E0944	A	Pelvic belt/harness/boot					
E0945	A	Belt/harness extremity					
E0946	A	Fracture frame dual w cross					
E0947	A	Fracture frame attachmnts pe					
E0948	A	Fracture frame attachmnts ce					
E0950	E	Tray					
E0951	E	Loop heel					
E0952	E	Loop tie					
E0953	E	Pneumatic tire					
E0954	E	Wheelchair semi-pneumatic ca					
E0958	A	Whichr att- conv 1 arm drive					
E0959	E	Amputee adapter					
E0961	E	Wheelchair brake extension					
E0962	A	Wheelchair 1 inch cushion					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E0963	A	Wheelchair 2 inch cushion					
E0964	A	Wheelchair 3 inch cushion					
E0965	A	Wheelchair 4 inch cushion					
E0966	E	Wheelchair head rest extensi					
E0967	E	Wheelchair hand rims					
E0968	A	Wheelchair commode seat					
E0969	E	Wheelchair narrowing device					
E0970	E	Wheelchair no. 2 footplates					
E0971	E	Wheelchair anti-tipping devi					
E0972	A	Transfer board or device					
E0973	E	Wheelchair adjustabl height					
E0974	E	Wheelchair grade-aid					
E0975	E	Wheelchair reinforced seat u					
E0976	E	Wheelchair reinforced back u					
E0977	E	Wheelchair wedge cushion					
E0978	E	Wheelchair belt w/airplane b					
E0979	E	Wheelchair belt with velcro					
E0980	E	Wheelchair safety vest					
E0990	E	Whellchair elevating leg res					
E0991	E	Wheelchair upholstry seat					
E0992	E	Wheelchair solid seat insert					
E0993	E	Wheelchair back upholstery					
E0994	E	Wheelchair arm rest					
E0995	E	Wheelchair calf rest					
E0996	E	Wheelchair tire solid					
E0997	E	Wheelchair caster w/ a fork					
E0998	E	Wheelchair caster w/o a fork					
E0999	E	Wheelchr pneumatic tire w/wh					
E1000	E	Wheelchair tire pneumatic ca					
E1001	E	Wheelchair wheel					
E1031	A	Rollabout chair with casters					
E1035	E	Patient transfer system					
E1050	A	Whelchr fxd full length arms					
E1060	A	Wheelchair detachable arms					
E1065	E	Wheelchair power attachment					
E1066	E	Wheelchair battery charger					
E1069	E	Wheelchair deep cycle batter					
E1070	A	Wheelchair detachable foot r					
E1083	A	Hemi-wheelchair fixed arms					
E1084	A	Hemi-wheelchair detachable a					
E1085	A	Hemi-wheelchair fixed arms					
E1086	A	Hemi-wheelchair detachable a					
E1087	A	Wheelchair lightwt fixed arm					
E1088	A	Wheelchair lightweight det a					
E1089	A	Wheelchair lightwt fixed arm					
E1090	A	Wheelchair lightweight det a					
E1091	A	Wheelchair youth					
E1092	A	Wheelchair wide w/ leg rests					
E1093	A	Wheelchair wide w/ foot rest					
E1100	A	Whchr s-recl fxd arm leg res					
E1110	A	Wheelchair semi-recl detach					
E1130	A	Whlchr stand fxd arm ft rest					
E1140	A	Wheelchair standard detach a					
E1150	A	Wheelchair standard w/ leg r					
E1160	A	Wheelchair fixed arms					
E1170	A	Whlchr ampu fxd arm leg rest					
E1171	A	Wheelchair amputee w/o leg r					
E1172	A	Wheelchair amputee detach ar					
E1180	A	Wheelchair amputee w/ foot r					
E1190	A	Wheelchair amputee w/ leg re					
E1195	A	Wheelchair amputee heavy dut					
E1200	A	Wheelchair amputee fixed arm					
E1210	A	Whlchr moto ful arm leg rest					
E1211	A	Wheelchair motorized w/ det					
E1212	A	Wheelchair motorized w full					
E1213	A	Wheelchair motorized w/ det					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E1220	A	Whlchr special size/constrc					
E1221	A	Wheelchair spec size w foot					
E1222	A	Wheelchair spec size w/ leg					
E1223	A	Wheelchair spec size w foot					
E1224	A	Wheelchair spec size w/ leg					
E1225	A	Wheelchair spec sz semi-recl					
E1226	E	Wheelchair spec sz full-recl					
E1227	E	Wheelchair spec sz spec ht a					
E1228	A	Wheelchair spec sz spec ht b					
E1230	A	Power operated vehicle					
E1240	A	Whchr litwt det arm leg rest					
E1250	A	Wheelchair lightwt fixed arm					
E1260	A	Wheelchair lightwt foot rest					
E1270	A	Wheelchair lightweight leg r					
E1280	A	Whchr h-duty det arm leg res					
E1285	A	Wheelchair heavy duty fixed					
E1290	A	Wheelchair hvy duty detach a					
E1295	A	Wheelchair heavy duty fixed					
E1296	A	Wheelchair special seat heig					
E1297	A	Wheelchair special seat dept					
E1298	A	Wheelchair spec seat depth/w					
E1300	E	Whirlpool portable					
E1310	A	Whirlpool non-portable					
E1340	A	Repair for DME, per 15 min					
E1353	A	Oxygen supplies regulator					
E1355	A	Oxygen supplies stand/rack					
E1372	A	Oxy suppl heater for nebuliz					
E1390	A	Oxygen concentrator					
E1399	A	Durable medical equipment mi					
E1405	A	O2/water vapor enrich w/heat					
E1406	A	O2/water vapor enrich w/o he					
E1500	A	Centrifuge					
E1510	A	Kidney dialysate delivry sys					
E1520	A	Heparin infusion pump					
E1530	A	Replacement air bubble detec					
E1540	A	Replacement pressure alarm					
E1550	A	Bath conductivity meter					
E1560	A	Replace blood leak detector					
E1570	A	Adjustable chair for esrd pt					
E1575	A	Transducer protect/kd bar					
E1580	A	Unipuncture control system					
E1590	A	Hemodialysis machine					
E1592	A	Auto interm peritoneal dialy					
E1594	A	Cycler dialysis machine					
E1600	A	Deli/install chrg hemo equip					
E1610	A	Reverse osmosis h2o puri sys					
E1615	A	Deionizer H2O puri system					
E1620	A	Replacement blood pump					
E1625	A	Water softening system					
E1630	A	Reciprocating peritoneal dia					
E1632	A	Wearable artificial kidney					
E1635	A	Compact travel hemodialyzer					
E1636	A	Sorbent cartridges per 10					
E1637	A	Hemostats for dialysis, each					
E1638	A	Peri dialysis heating pad					
E1639	A	Dialysis scale					
E1699	A	Dialysis equipment noc					
E1700	A	Jaw motion rehab system					
E1701	A	Repl cushions for jaw motion					
E1702	A	Repl measr scales jaw motion					
E1800	A	Adjust elbow ext/flex device					
E1801	A	SPS elbow device					
E1805	A	Adjust wrist ext/flex device					
E1806	A	SPS wrist device					
E1810	A	Adjust knee ext/flex device					
E1811	A	SPS knee device					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E1815	A	Adjust ankle ext/flex device					
E1816	A	SPS ankle device					
E1818	A	SPS forearm device					
E1820	A	Soft interface material					
E1821	A	Replacement interface SPSD					
E1825	A	Adjust finger ext/flex devc					
E1830	A	Adjust toe ext/flex device					
E1840	A	Adj shoulder ext/flex device					
E1902	A	AAC non-electronic board					
E2000	A	Gastric suction pump hme mdl					
E2100	A	Bld glucose monitor w voice					
E2101	A	Bld glucose monitor w lance					
G0001	A	Drawing blood for specimen					
G0002	X	Temporary urinary catheter	0340	0.66	$34.33		$6.87
G0004	E	ECG transm phys review & int					
G0005	X	ECG 24 hour recording	0097	0.84	$43.69	$23.80	$8.74
G0006	X	ECG transmission & analysis	0097	0.84	$43.69	$23.80	$8.74
G0007	N	ECG phy review & interpret					
G0008	K	Admin influenza virus vac	0354	0.09	$4.68		
G0009	K	Admin pneumococcal vaccine	0354	0.09	$4.68		
G0010	K	Admin hepatitis b vaccine	0355	0.24	$12.48		$2.50
G0015	X	Post symptom ECG tracing	0097	0.84	$43.69	$23.80	$8.74
G0025	N	Collagen skin test kit					
G0026	A	Fecal leukocyte examination					
G0027	A	Semen analysis					
G0030	S	PET imaging prev PET single	0285	16.73	$870.11	$374.15	$174.02
G0031	S	PET imaging prev PET multple	0285	16.73	$870.11	$374.15	$174.02
G0032	S	PET follow SPECT 78464 singl	0285	16.73	$870.11	$374.15	$174.02
G0033	S	PET follow SPECT 78464 mult	0285	16.73	$870.11	$374.15	$174.02
G0034	S	PET follow SPECT 76865 singl	0285	16.73	$870.11	$374.15	$174.02
G0035	S	PET follow SPECT 78465 mult	0285	16.73	$870.11	$374.15	$174.02
G0036	S	PET follow cornry angio sing	0285	16.73	$870.11	$374.15	$174.02
G0037	S	PET follow cornry angio mult	0285	16.73	$870.11	$374.15	$174.02
G0038	S	PET follow myocard perf sing	0285	16.73	$870.11	$374.15	$174.02
G0039	S	PET follow myocard perf mult	0285	16.73	$870.11	$374.15	$174.02
G0040	S	PET follow stress echo singl	0285	16.73	$870.11	$374.15	$174.02
G0041	S	PET follow stress echo mult	0285	16.73	$870.11	$374.15	$174.02
G0042	S	PET follow ventriculogm sing	0285	16.73	$870.11	$374.15	$174.02
G0043	S	PET follow ventriculogm mult	0285	16.73	$870.11	$374.15	$174.02
G0044	S	PET following rest ECG singl	0285	16.73	$870.11	$374.15	$174.02
G0045	S	PET following rest ECG mult	0285	16.73	$870.11	$374.15	$174.02
G0046	S	PET follow stress ECG singl	0285	16.73	$870.11	$374.15	$174.02
G0047	S	PET follow stress ECG mult	0285	16.73	$870.11	$374.15	$174.02
G0050	S	Residual urine by ultrasound	0265	1.04	$54.09	$29.75	$10.82
G0101	V	CA screen;pelvic/breast exam	0600	0.91	$47.33		$9.47
G0102	N	Prostate ca screening; dre					
G0103	A	Psa, total screening					
G0104	S	CA screen;flexi sigmoidscope	0159	2.48	$128.98		$32.25
G0105	T	Colorectal scrn; hi risk ind	0158	7.56	$393.19		$98.30
G0106	S	Colon CA screen;barium enema	0157	2.73	$141.98	$22.19	$28.40
G0107	A	CA screen; fecal blood test					
G0108	A	Diab manage trn per indiv					
G0109	A	Diab manage trn ind/group					
G0110	A	Nett pulm-rehab educ; ind					
G0111	A	Nett pulm-rehab educ; group					
G0112	A	Nett;nutrition guid, initial					
G0113	A	Nett;nutrition guid,subseqnt					
G0114	A	Nett; psychosocial consult					
G0115	A	Nett; psychological testing					
G0116	A	Nett; psychosocial counsel					
G0117	S	Glaucoma scrn hgh risk direc	0230	0.78	$40.57	$15.82	$8.11
G0118	S	Glaucoma scrn hgh risk direc	0230	0.78	$40.57	$15.82	$8.11
G0120	S	Colon ca scrn; barium enema	0157	2.73	$141.98	$22.19	$28.40
G0121	T	Colon ca scrn not hi rsk ind	0158	7.56	$393.19		$98.30
G0122	E	Colon ca scrn; barium enema					
G0123	A	Screen cerv/vag thin layer					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
G0124	A	Screen c/v thin layer by MD					
G0125	S	PET img WhBD sgl pulm ring	0667	18.68	$971.53		$194.31
G0127	T	Trim nail(s)	0009	0.68	$35.37	$8.34	$7.07
G0128	E	CORF skilled nursing service					
G0129	P	Partial hosp prog service	0033	4.96	$257.96		$51.59
G0130	X	Single energy x-ray study	0260	0.81	$42.13	$23.17	$8.43
G0131	S	CT scan, bone density study	0288	1.38	$71.77		$14.35
G0132	S	CT scan, bone density study	0665	0.73	$37.97		$7.59
G0141	E	Scr c/v cyto,autosys and md					
G0143	A	Scr c/v cyto,thinlayer,rescr					
G0144	A	Scr c/v cyto,thinlayer,rescr					
G0145	A	Scr c/v cyto,thinlayer,rescr					
G0147	A	Scr c/v cyto, automated sys					
G0148	A	Scr c/v cyto, autosys, rescr					
G0151	E	HHCP-serv of pt,ea 15 min					
G0152	E	HHCP-serv of ot,ea 15 min					
G0153	E	HHCP-svs of s/l path,ea 15mn					
G0154	E	HHCP-svs of rn,ea 15 min					
G0155	E	HHCP-svs of csw,ea 15 min					
G0156	E	HHCP-svs of aide,ea 15 min					
G0166	T	Extrnl counterpulse, per tx	0678	2.55	$132.62		$26.52
G0167	E	Hyperbaric oz tx;no md reqrd					
G0168	X	Wound closure by adhesive	0340	0.66	$34.33		$6.87
G0173	S	Stereo radoisurgery,complete	0663	63.69	$3,312.45		$662.49
G0175	V	OPPS Service,sched team conf	0602	1.57	$81.65		$16.33
G0176	P	OPPS/PHP;activity therapy	0033	4.96	$257.96		$51.59
G0177	P	OPPS/PHP; train & educ serv	0033	4.96	$257.96		$51.59
G0179	E	MD recertification HHA PT					
G0180	E	MD certification HHA patient					
G0181	E	Home health care supervision					
G0182	E	Hospice care supervision					
G0185	T	Transpuppillary thermotx	0235	5.62	$292.29	$81.84	$58.46
G0186	T	Dstry eye lesn,fdr vasl tech	0235	5.62	$292.29	$81.84	$58.46
G0187	T	Dstry mclr drusen,photocoag	0235	5.62	$292.29	$81.84	$58.46
G0192	N	Immunization oral/intranasal					
G0193	A	Endoscopicstudyswallowfunctn					
G0194	A	Sensorytestingendoscopicstud					
G0195	A	Clinicalevalswallowingfunct					
G0196	A	Evalofswallowingwithradioopa					
G0197	A	Evalofptforprescipspeechdevi					
G0198	A	Patientedapation&trainforspe					
G0199	A	Reevaluationofpatientusespec					
G0200	A	Evalofpatientprescipofvoicep					
G0201	A	Modifortraininginusevoicepro					
G0202	A	Screeningmammographydigital					
G0204	S	Diagnosticmammographydigital	0669	0.95	$49.41		$9.88
G0206	S	Diagnosticmammographydigital	0669	0.95	$49.41		$9.88
G0210	S	PET img whbd ring dxlung ca	0667	18.68	$971.53		$194.31
G0211	S	PET img whbd ring init lung	0667	18.68	$971.53		$194.31
G0212	S	PET img whbd ring restag lun	0667	18.68	$971.53		$194.31
G0213	S	PET img whbd ring dx colorec	0667	18.68	$971.53		$194.31
G0214	S	PET img whbd ring init colre	0667	18.68	$971.53		$194.31
G0215	S	PET img whbd restag col	0667	18.68	$971.53		$194.31
G0216	S	PET img whbd ring dx melanom	0667	18.68	$971.53		$194.31
G0217	S	PET img whbd ring init melan	0667	18.68	$971.53		$194.31
G0218	S	PET img whbd ring restag mel	0667	18.68	$971.53		$194.31
G0219	E	PET img whbd ring noncov ind					
G0220	S	PET img whbd ring dx lymphom	0667	18.68	$971.53		$194.31
G0221	S	PET img whbd ring init lymph	0667	18.68	$971.53		$194.31
G0222	S	PET img whbd ring resta lymp	0667	18.68	$971.53		$194.31
G0223	S	PET img whbd reg ring dx hea	0667	18.68	$971.53		$194.31
G0224	S	PETimg whbd reg ring ini hea	0667	18.68	$971.53		$194.31
G0225	S	PET img whbd ring restag hea	0667	18.68	$971.53		$194.31
G0226	S	PET img whbd dx esophag	0667	18.68	$971.53		$194.31
G0227	S	PET img whbd ring ini esopha	0667	18.68	$971.53		$194.31
G0228	S	PET img whbd ring restg esop	0667	18.68	$971.53		$194.31

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
G0229	S	PET img metabolic brain rlng	0667	18.68	$971.53		$194.31
G0230	S	PET myocard viability rlng	0667	18.68	$971.53		$194.31
G0231	S	PET WhBD colorec; gamma cam	0667	18.68	$971.53		$194.31
G0232	S	PET whbd lymphoma; gamma cam	0667	18.68	$971.53		$194.31
G0233	S	PET whbd melanoma; gamma cam	0667	18.68	$971.53		$194.31
G0234	S	PET WhBD pulm nod; gamma cam	0667	18.68	$971.53		$194.31
G0236	S	Digital film convert diag ma	0706		$25.00		$5.00
G0237	T	Therapeutic procd strg endur	0970		$25.00		$5.00
G0238	T	Oth resp proc, indiv	0970		$25.00		$5.00
G0239	T	Oth resp proc, group	0970		$25.00		$5.00
G0240	A	Critic care by MD transport					
G0241	A	Each additional 30 minutes					
G0242	S	Multisource photon ster plan	0714		$1,375.00		$275.00
G0243	S	Multisour photon stero treat	0721		$5,500.00		$1,100.00
G0244	S	Observ care by facility topt	0339	7.60	$395.27		$79.05
G0245	V	Initial Foot Exam PTLOPS	0600	0.91	$47.33		$9.47
G0246	V	Follow-up Eval of Foot PTLOPS	0600	0.91	$47.33		$9.47
G0247	T	Routine footcare w LOPS	0009	0.68	$35.37	$8.34	$7.07
G0248	S	Demonstrate use home INR mon	0708		$150.00		$30.00
G0249	S	Provide test material,equipm	0708		$150.00		$30.00
G0250	E	MD review interpret of test					
G9001	E	MCCD, initial rate					
G9002	E	MCCD,maintenance rate					
G9003	E	MCCD, risk adj hi, initial					
G9004	E	MCCD, risk adj lo, initial					
G9005	E	MCCD, risk adj, maintenance					
G9006	E	MCCD, Home monitoring					
G9007	E	MCCD, sch team conf					
G9008	E	Mccd,phys coor-care ovrsght					
G9009	E	MCCD, risk adj, level 3					
G9010	E	MCCD, risk adj, level 4					
G9011	E	MCCD, risk adj, level 5					
G9012	E	Other Specified Case Mgmt					
G9016	A	Demo-smoking cessation coun					
H0001	E	Alcohol and/or drug assess					
H0002	E	Alcohol and/or drug screenin					
H0003	E	Alcohol and/or drug screenin					
H0004	E	Alcohol and/or drug services					
H0005	E	Alcohol and/or drug services					
H0006	E	Alcohol and/or drug services					
H0007	E	Alcohol and/or drug services					
H0008	E	Alcohol and/or drug services					
H0009	E	Alcohol and/or drug services					
H0010	E	Alcohol and/or drug services					
H0011	E	Alcohol and/or drug services					
H0012	E	Alcohol and/or drug services					
H0013	E	Alcohol and/or drug services					
H0014	E	Alcohol and/or drug services					
H0015	E	Alcohol and/or drug services					
H0016	E	Alcohol and/or drug services					
H0017	E	Alcohol and/or drug services					
H0018	E	Alcohol and/or drug services					
H0019	E	Alcohol and/or drug services					
H0020	E	Alcohol and/or drug services					
H0021	E	Alcohol and/or drug training					
H0022	E	Alcohol and/or drug interven					
H0023	E	Alcohol and/or drug outreach					
H0024	E	Alcohol and/or drug preventi					
H0025	E	Alcohol and/or drug preventi					
H0026	E	Alcohol and/or drug preventi					
H0027	E	Alcohol and/or drug preventi					
H0028	E	Alcohol and/or drug preventi					
H0029	E	Alcohol and/or drug preventi					
H0030	E	Alcohol and/or drug hotline					
H1000	A	Prenatal care atrisk assessm					
H1001	A	Antepartum management					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
H1002	A	Carecoordination prenatal					
H1003	A	Prenatal at risk education					
H1004	A	Follow up home visit/prental					
H1005	A	Prenatalcare enhanced srv pk					
J0120	N	Tetracyclin injection					
J0130	K	Abciximab injection	1605	5.82	$302.69		$60.54
J0150	N	Injection adenosine 6 MG					
J0151	E	Adenosine injection					
J0170	N	Adrenalin epinephrin inject					
J0190	N	Inj biperiden lactate/5 mg					
J0200	N	Alatrofloxacin mesylate					
J0205	K	Alglucerase injection	0900	0.53	$27.56		$5.51
J0207	K	Amifostine	7000	4.46	$231.96		$46.39
J0210	N	Methyldopate hcl injection					
J0256	K	Alpha 1 proteinase inhibitor	0901	0.02	$1.04		$.21
J0270	E	Alprostadil for injection					
J0275	E	Alprostadil urethral suppos					
J0280	N	Aminophyllin 250 MG inj					
J0282	N	Amiodarone HCl					
J0285	N	Amphotericin B					
J0286	K	Amphotericin B lipid complex	7001	2.05	$106.62		$21.32
J0290	N	Ampicillin 500 MG inj					
J0295	N	Ampicillin sodium per 1.5 gm					
J0300	N	Amobarbital 125 MG inj					
J0330	N	Succinycholine chloride inj					
J0350	N	Injection anistreplase 30 u					
J0360	N	Hydralazine hcl injection					
J0380	N	Inj metaraminol bitartrate					
J0390	N	Chloroquine injection					
J0395	N	Arbutamine HCl injection					
J0456	N	Azithromycin					
J0460	N	Atropine sulfate injection					
J0470	N	Dimecaprol injection					
J0475	N	Baclofen 10 MG injection					
J0476	E	Baclofen intrathecal trial					
J0500	N	Dicyclomine injection					
J0515	N	Inj benztropine mesylate					
J0520	N	Bethanechol chloride inject					
J0530	N	Penicillin g benzathine inj					
J0540	N	Penicillin g benzathine inj					
J0550	N	Penicillin g benzathine inj					
J0560	N	Penicillin g benzathine inj					
J0570	N	Penicillin g benzathine inj					
J0580	N	Penicillin g benzathine inj					
J0585	K	Botulinum toxin a per unit	0902	0.05	$2.60		$.52
J0587	G	Botulinum toxin type B	9018		$8.79		$1.26
J0600	N	Edetate calcium disodium inj					
J0610	N	Calcium gluconate injection					
J0620	N	Calcium glycer & lact/10 ML					
J0630	N	Calcitonin salmon injection					
J0635	N	Calcitriol injection					
J0640	N	Leucovorin calcium injection					
J0670	N	Inj mepivacaine HCL/10 ml					
J0690	N	Cefazolin sodium injection					
J0692	N	Cefepime HCl for injection					
J0694	N	Cefoxitin sodium injection					
J0696	N	Ceftriaxone sodium injection					
J0697	N	Sterile cefuroxime injection					
J0698	N	Cefotaxime sodium injection					
J0702	N	Betamethasone acet&sod phosp					
J0704	N	Betamethasone sod phosp/4 MG					
J0706	N	Caffeine citrate injection					
J0710	N	Cephapirin sodium injection					
J0713	N	Inj ceftazidime per 500 mg					
J0715	N	Ceftizoxime sodium / 500 MG					
J0720	N	Chloramphenicol sodium injec					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
J0725	N	Chorionic gonadotropin/1000u					
J0735	N	Clonidine hydrochloride					
J0740	N	Cidofovir injection					
J0743	N	Cilastatin sodium injection					
J0744	N	Ciprofloxacin iv					
J0745	N	Inj codeine phosphate /30 MG					
J0760	N	Colchicine injection					
J0770	N	Colistimethate sodium inj					
J0780	N	Prochlorperazine injection					
J0800	N	Corticotropin injection					
J0835	N	Inj cosyntropin per 0.25 MG					
J0850	K	Cytomegalovirus imm IV /vial	0903	0.34	$17.68		$3.54
J0895	N	Deferoxamine mesylate inj					
J0900	N	Testosterone enanthate inj					
J0945	N	Brompheniramine maleate inj					
J0970	N	Estradiol valerate injection					
J1000	N	Depo-estradiol cypionate inj					
J1020	N	Methylprednisolone 20 MG inj					
J1030	N	Methylprednisolone 40 MG inj					
J1040	N	Methylprednisolone 80 MG inj					
J1050	N	Medroxyprogesterone inj					
J1055	E	Medrxyprogester acetate inj					
J1056	E	MA/EC contraceptiveinjection					
J1060	N	Testosterone cypionate 1 ML					
J1070	N	Testosterone cypionat 100 MG					
J1080	N	Testosterone cypionat 200 MG					
J1095	N	Inj dexamethasone acetate					
J1100	N	Dexamethasone sodium phos					
J1110	N	Inj dihydroergotamine mesylt					
J1120	N	Acetazolamid sodium injectio					
J1160	N	Digoxin injection					
J1165	N	Phenytoin sodium injection					
J1170	N	Hydromorphone injection					
J1180	N	Dyphylline injection					
J1190	K	Dexrazoxane HCl injection	0726	2.40	$124.82		$24.96
J1200	N	Diphenhydramine hcl injectio					
J1205	N	Chlorothiazide sodium inj					
J1212	N	Dimethyl sulfoxide 50% 50 ML					
J1230	N	Methadone injection					
J1240	N	Dimenhydrinate injection					
J1245	N	Dipyridamole injection					
J1250	N	Inj dobutamine HCL/250 mg					
J1260	N	Dolasetron mesylate					
J1270	N	Injection, doxercalciferol					
J1320	N	Amitriptyline injection					
J1325	N	Epoprostenol injection					
J1327	N	Eptifibatide injection					
J1330	N	Ergonovine maleate injection					
J1364	N	Erythro lactobionate /500 MG					
J1380	N	Estradiol valerate 10 MG inj					
J1390	N	Estradiol valerate 20 MG inj					
J1410	N	Inj estrogen conjugate 25 MG					
J1435	N	Injection estrone per 1 MG					
J1436	N	Etidronate disodium inj					
J1438	N	Etanercept injection					
J1440	K	Filgrastim 300 mcg injection	0728	2.24	$116.50		$23.30
J1441	K	Filgrastim 480 mcg injection	7049	3.37	$175.27		$35.05
J1450	N	Fluconazole					
J1452	N	Intraocular Fomivirsen na					
J1455	N	Foscarnet sodium injection					
J1460	N	Gamma globulin 1 CC inj					
J1470	E	Gamma globulin 2 CC inj					
J1480	E	Gamma globulin 3 CC inj					
J1490	E	Gamma globulin 4 CC inj					
J1500	E	Gamma globulin 5 CC inj					
J1510	E	Gamma globulin 6 CC inj					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
J1520	E	Gamma globulin 7 CC inj					
J1530	E	Gamma globulin 8 CC inj					
J1540	E	Gamma globulin 9 CC inj					
J1550	E	Gamma globulin 10 CC inj					
J1560	E	Gamma globulin > 10 CC inj					
J1561	K	Immune globulin 500 mg	0905	0.45	$23.40		$4.68
J1563	E	IV immune globulin					
J1565	N	RSV-ivig					
J1570	N	Ganciclovir sodium injection					
J1580	N	Garamycin gentamicin inj					
J1590	N	Gatifloxacin injection					
J1600	N	Gold sodium thiomaleate inj					
J1610	N	Glucagon hydrochloride/1 MG					
J1620	N	Gonadorelin hydroch/ 100 mcg					
J1626	N	Granisetron HCl injection					
J1630	N	Haloperidol injection					
J1631	N	Haloperidol decanoate inj					
J1642	N	Inj heparin sodium per 10 u					
J1644	N	Inj heparin sodium per 1000u					
J1645	N	Dalteparin sodium					
J1650	E	Inj enoxaparin sodium					
J1655	N	Tinzaparin sodium injection					
J1670	N	Tetanus immune globulin inj					
J1700	N	Hydrocortisone acetate inj					
J1710	N	Hydrocortisone sodium ph inj					
J1720	N	Hydrocortisone sodium succ i					
J1730	N	Diazoxide injection					
J1742	N	Ibutilide fumarate injection					
J1745	K	Infliximab injection	7043	0.74	$38.49		$7.70
J1750	N	Iron dextran					
J1755	N	Iron sucrose injection					
J1785	K	Injection imiglucerase /unit	0916	0.05	$2.60		$.52
J1790	N	Droperidol injection					
J1800	N	Propranolol injection					
J1810	E	Droperidol/fentanyl inj					
J1820	N	Insulin injection					
J1825	K	Interferon beta-1a	0909	2.77	$144.06		$28.81
J1830	N	Interferon beta-1b / .25 MG					
J1835	N	Itraconazole injection					
J1840	N	Kanamycin sulfate 500 MG inj					
J1850	N	Kanamycin sulfate 75 MG inj					
J1885	N	Ketorolac tromethamine inj					
J1890	N	Cephalothin sodium injection					
J1910	N	Kutapressin injection					
J1940	N	Furosemide injection					
J1950	K	Leuprolide acetate /3.75 MG	0800	4.15	$215.84		$43.17
J1955	E	Inj levocarnitine per 1 gm					
J1956	N	Levofloxacin injection					
J1960	N	Levorphanol tartrate inj					
J1980	N	Hyoscyamine sulfate inj					
J1990	N	Chlordiazepoxide injection					
J2000	N	Lidocaine injection					
J2010	N	Lincomycin injection					
J2020	N	Linezolid injection					
J2060	N	Lorazepam injection					
J2150	N	Mannitol injection					
J2175	N	Meperidine hydrochl /100 MG					
J2180	N	Meperidine/promethazine inj					
J2210	N	Methylergonovin maleate inj					
J2250	N	Inj midazolam hydrochloride					
J2260	N	Inj milrinone lactate / 5 ML					
J2270	N	Morphine sulfate injection					
J2271	N	Morphine so4 injection 100mg					
J2275	N	Morphine sulfate injection					
J2300	N	Inj nalbuphine hydrochloride					
J2310	N	Inj naloxone hydrochloride					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
J2320	N	Nandrolone decanoate 50 MG					
J2321	N	Nandrolone decanoate 100 MG					
J2322	N	Nandrolone decanoate 200 MG					
J2352	K	Octreotide acetate injection	7031	0.90	$46.81		$9.36
J2355	K	Oprelvekin injection	7011	2.52	$131.06		$26.21
J2360	N	Orphenadrine injection					
J2370	N	Phenylephrine hcl injection					
J2400	N	Chloroprocaine hcl injection					
J2405	N	Ondansetron hcl injection					
J2410	N	Oxymorphone hcl injection					
J2430	K	Pamidronate disodium /30 MG	0730	3.46	$179.95		$35.99
J2440	N	Papaverin hcl injection					
J2460	N	Oxytetracycline injection					
J2500	N	Paricalcitol					
J2510	N	Penicillin g procaine inj					
J2515	N	Pentobarbital sodium inj					
J2540	N	Penicillin g potassium inj					
J2543	N	Piperacillin/tazobactam					
J2545	A	Pentamidine isethionte/300mg					
J2550	N	Promethazine hcl injection					
J2560	N	Phenobarbital sodium inj					
J2590	N	Oxytocin injection					
J2597	N	Inj desmopressin acetate					
J2650	N	Prednisolone acetate inj					
J2670	N	Totazoline hcl injection					
J2680	N	Fluphenazine decanoate 25 MG					
J2690	N	Procainamide hcl injection					
J2700	N	Oxacillin sodium injeciton					
J2710	N	Neostigmine methyisilte inj					
J2720	N	Inj protamine sulfate/10 MG					
J2725	N	Inj protirelin per 250 mcg					
J2730	N	Pralidoxime chloride inj					
J2760	N	Phentolaine mesylate inj					
J2765	N	Metoclopramide hcl injection					
J2770	N	Quinupristin/dalfopristin					
J2780	N	Ranitidine hydrochloride inj					
J2790	K	Rho d immune globulin inj	0884	0.70	$36.41		$7.28
J2792	K	Rho(D) immune globulin h, sd	1609	0.22	$11.44		$2.29
J2795	N	Ropivacaine HCl injection					
J2800	N	Methocarbamol injection					
J2810	N	Inj theophylline per 40 MG					
J2820	N	Sargramostim injection					
J2910	N	Aurothioglucose injeciton					
J2912	N	Sodium chloride injection					
J2915	N	NA Ferric Gluconate Complex					
J2920	N	Methylprednisolone injection					
J2930	N	Methylprednisolone injection					
J2940	N	Somatrem injection					
J2941	K	Somatropin injection	7034	0.78	$40.57		$8.11
J2950	N	Promazine hcl injection					
J2993	K	Reteplase injection	9005	10.84	$563.78		$112.76
J2995	N	Inj streptokinase /250000 IU					
J2997	N	Alteplase recombinant					
J3000	N	Streptomycin injection					
J3010	N	Fentanyl citrate injeciton					
J3030	N	Sumatriptan succinate / 6 MG					
J3070	N	Pentazocine hcl injection					
J3100	K	Tenecteplase injection	9002	25.46	$1,324.15		$264.83
J3105	N	Terbutaline sulfate inj					
J3120	N	Testosterone enanthate inj					
J3130	N	Testosterone enanthate inj					
J3140	N	Testosterone suspension inj					
J3150	N	Testosteron propionate inj					
J3230	N	Chlorpromazine hcl injection					
J3240	E	Thyrotropin injection					
J3245	K	Tirofiban hydrochloride	7041	4.82	$250.68		$50.14

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
J3250	N	Trimethobenzamide hcl inj					
J3260	N	Tobramycin sulfate injection					
J3265	N	Injection torsemide 10 mg/ml					
J3280	N	Thiethylperazine maleate inj					
J3301	N	Triamcinolone acetonide inj					
J3302	N	Triamcinolone diacetate inj					
J3303	N	Triamcinolone hexacetonl inj					
J3305	K	Inj trimetrexate glucoronate	7045	1.23	$63.97		$12.79
J3310	N	Perphenazine injeciton					
J3320	N	Spectinomycn di-hcl inj					
J3350	N	Urea injection					
J3360	N	Diazepam injection					
J3364	N	Urokinase 5000 IU injection					
J3365	N	Urokinase 250,000 IU inj					
J3370	N	Vancomycin hcl injection					
J3395	K	Verteporfin injection	1203	16.26	$845.67		$169.13
J3400	N	Triflupromazine hcl inj					
J3410	N	Hydroxyzine hcl injection					
J3420	N	Vitamin b12 injection					
J3430	N	Vitamin k phytonadione inj					
J3470	N	Hyaluronidase injection					
J3475	N	Inj magnesium sulfate					
J3480	N	Inj potassium chloride					
J3485	N	Zidovudine					
J3490	N	Drugs unclassified injection					
J3520	E	Edetate disodium per 150 mg					
J3530	N	Nasal vaccine inhalation					
J3535	E	Metered dose inhaler drug					
J3570	E	Laetrile amygdalin vit B17					
J7030	N	Normal saline solution infus					
J7040	N	Normal saline solution infus					
J7042	N	5% dextrose/normal saline					
J7050	N	Normal saline solution infus					
J7051	N	Sterile saline/water					
J7060	N	5% dextrose/water					
J7070	N	D5w infusion					
J7100	N	Dextran 40 infusion					
J7110	N	Dextran 75 infusion					
J7120	N	Ringers lactate infusion					
J7130	N	Hypertonic saline solution					
J7190	K	Factor viii	0925	0.01	$.52		$.10
J7191	K	Factor VIII (porcine)	0926	0.02	$1.04		$.21
J7192	K	Factor viii recombinant	0927	0.01	$.52		$.10
J7193	K	Factor IX non-recombinant	0931	0.01	$.52		$.10
J7194	K	Factor ix complex	0928	0.01	$.52		$.10
J7195	K	Factor IX recombinant	0932	0.03	$1.56		$.31
J7197	K	Antithrombin iii injection	0930	0.01	$.52		$.10
J7198	K	Anti-inhibitor	0929	0.01	$.52		$.10
J7199	E	Hemophilia clot factor noc					
J7300	E	Intraut copper contraceptive					
J7302	E	Levonorgestrel iu contracept					
J7308	N	Aminolevulinic acid hcl top					
J7310	N	Ganciclovir long act implant					
J7316	N	Sodium hyaluronate injection					
J7320	K	Hylan G-F 20 injection	1611	2.43	$126.38		$25.28
J7330	K	Cultured chondrocytes implnt	1059	43.64	$2,269.67		$453.93
J7340	E	Metabolic active D/E tissue					
J7500	N	Azathioprine oral 50mg					
J7501	N	Azathioprine parenteral					
J7502	K	Cyclosporine oral 100 mg	0888	0.04	$2.08		$.42
J7504	K	Lymphocyte immune globulin	0890	3.64	$189.31		$37.86
J7505	K	Monoclonal antibodies	7038	4.43	$230.40		$46.08
J7506	N	Prednisone oral					
J7507	K	Tacrolimus oral per 1 MG	0891	0.02	$1.04		$.21
J7508	E	Tacrolimus oral per 5 MG					
J7509	N	Methylprednisolone oral					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
J7510	N	Prednisolone oral per 5 mg					
J7511	K	Antithymocyte globuln rabbit	9104	1.97	$102.46		$20.49
J7513	K	Daclizumab, parenteral	1612	3.77	$196.07		$39.21
J7515	N	Cyclosporine oral 25 mg					
J7516	N	Cyclosporin parenteral 250mg					
J7517	G	Mycophenolate mofetil oral	9015		$2.40		$.34
J7520	K	Sirolimus, oral	9106	0.05	$2.60		$.52
J7525	N	Tacrolimus injection					
J7599	E	Immunosuppressive drug noc					
J7608	A	Acetylcysteine inh sol u d					
J7618	A	Albuterol inh sol con					
J7619	A	Albuterol inh sol u d					
J7622	A	Beclomethasone inhalatn sol					
J7624	A	Betamethasone inhalation sol					
J7626	A	Budesonide inhalation sol					
J7628	A	Bitolterol mes inhal sol con					
J7629	A	Bitolterol mes inh sol u d					
J7631	A	Cromolyn sodium inh sol u d					
J7635	A	Atropine inhal sol con					
J7636	A	Atropine inhal sol unit dose					
J7637	A	Dexamethasone inhal sol con					
J7638	A	Dexamethasone inhal sol u d					
J7639	A	Dornase alpha inhal sol u d					
J7641	A	Flunisolide, inhalation sol					
J7642	A	Glycopyrrolate inhal sol con					
J7643	A	Glycopyrrolate inhal sol u d					
J7644	A	Ipratropium brom inh sol u d					
J7648	A	Isoetharine hcl inh sol con					
J7649	A	Isoetharine hcl inh sol u d					
J7658	A	Isoproterenolhcl inh sol con					
J7659	A	Isoproterenol hcl inh sol ud					
J7668	A	Metaproterenol inh sol con					
J7669	A	Metaproterenol inh sol u d					
J7680	A	Terbutaline so4 inh sol con					
J7681	A	Terbutaline so4 inh sol u d					
J7682	A	Tobramycin inhalation sol					
J7683	A	Triamcinolone inh sol con					
J7684	A	Triamcinolone inh sol u d					
J7699	A	Inhalation solution for DME					
J7799	A	Non-inhalation drug for DME					
J8499	E	Oral prescrip drug non chemo					
J8510	N	Oral busulfan					
J8520	K	Capecitabine, oral, 150 mg	7042	0.03	$1.56		$.31
J8521	E	Capecitabine, oral, 500 mg					
J8530	N	Cyclophosphamide oral 25 MG					
J8560	K	Etoposide oral 50 MG	0802	0.54	$28.08		$5.62
J8600	N	Melphalan oral 2 MG					
J8610	N	Methotrexate oral 2.5 MG					
J8700	K	Temozolmide	1086	0.05	$2.60		$.52
J8999	E	Oral prescription drug chemo					
J9000	N	Doxorubic hcl 10 MG vl chemo					
J9001	K	Doxorubicin hcl liposome inj	7046	4.54	$236.12		$47.22
J9015	K	Aldesleukin/single use vial	0807	6.09	$316.73		$63.35
J9017	G	Arsenic trioxide	9012		$23.75		$3.40
J9020	N	Asparaginase injection					
J9031	N	Bcg live intravesical vac					
J9040	K	Bleomycin sulfate injection	0857	3.10	$161.23		$32.25
J9045	K	Carboplatin injection	0811	1.58	$82.17		$16.43
J9050	N	Carmus bischl nitro inj					
J9060	K	Cisplatin 10 MG injection	0813	0.47	$24.44		$4.89
J9062	E	Cisplatin 50 MG injection					
J9065	K	Inj cladribine per 1 MG	0858	0.84	$43.69		$8.74
J9070	N	Cyclophosphamide 100 MG inj					
J9080	E	Cyclophosphamide 200 MG inj					
J9090	E	Cyclophosphamide 500 MG inj					
J9091	E	Cyclophosphamide 1.0 grm inj					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
J9092	E	Cyclophosphamide 2.0 grm inj					
J9093	N	Cyclophosphamide lyophilized					
J9094	E	Cyclophosphamide lyophilized					
J9095	E	Cyclophosphamide lyophilized					
J9096	E	Cyclophosphamide lyophilized					
J9097	E	Cyclophosphamide lyophilized					
J9100	N	Cytarabine hcl 100 MG inj					
J9110	E	Cytarabine hcl 500 MG inj					
J9120	N	Dactinomycin actinomycin d					
J9130	N	Dacarbazine 10 MG inj					
J9140	E	Dacarbazine 200 MG inj					
J9150	K	Daunorubicin	0820	2.27	$118.06		$23.61
J9151	K	Daunorubicin citrate liposom	0821	3.17	$164.87		$32.97
J9160	K	Denileukin diftitox, 300 mcg	1084	13.94	$725.01		$145.00
J9165	K	Diethylstilbestrol injection	0822	2.21	$114.94		$22.99
J9170	K	Docetaxel	0823	4.01	$208.56		$41.71
J9180	E	Epirubicin HCl injection					
J9181	N	Etoposide 10 MG inj					
J9182	E	Etoposide 100 MG inj					
J9185	K	Fludarabine phosphate inj	0842	3.30	$171.63		$34.33
J9190	N	Fluorouracil injection					
J9200	K	Floxuridine injection	0827	2.42	$125.86		$25.17
J9201	K	Gemcitabine HCl	0828	1.49	$77.49		$15.50
J9202	K	Goserelin acetate implant	0810	5.94	$308.93		$61.79
J9206	K	Irinotecan injection	0830	1.86	$96.74		$19.35
J9208	K	Ifosfomide injection	0831	2.06	$107.14		$21.43
J9209	K	Mesna injection	0732	0.55	$28.60		$5.72
J9211	K	Idarubicin hcl injection	0832	4.57	$237.68		$47.54
J9212	N	Interferon alfacon-1					
J9213	N	Interferon alfa-2a inj					
J9214	N	Interferon alfa-2b inj					
J9215	N	Interferon alfa-n3 inj					
J9216	K	Interferon gamma 1-b inj	0838	2.49	$129.50		$25.90
J9217	K	Leuprolide acetate suspnsion	9217	6.30	$327.66		$65.53
J9218	K	Leuprolide acetate injeciton	0861	0.84	$43.69		$8.74
J9219	G	Leuprolide acetate implant	7051		$5,399.80		$773.02
J9230	N	Mechlorethamine hcl inj					
J9245	K	Inj melphalan hydrochl 50 MG	0840	4.09	$212.72		$42.54
J9250	N	Methotrexate sodium inj					
J9260	E	Methotrexate sodium inj					
J9265	K	Paclitaxel injection	0863	2.50	$130.02		$26.00
J9266	K	Pegaspargase/singl dose vial	0843	2.38	$123.78		$24.76
J9268	K	Pentostatin injection	0844	21.32	$1,108.83		$221.77
J9270	N	Plicamycin (mithramycin) inj					
J9280	K	Mitomycin 5 MG inj	0862	1.18	$61.37		$12.27
J9290	E	Mitomycin 20 MG inj					
J9291	E	Mitomycin 40 MG inj					
J9293	K	Mitoxantrone hydrochl / 5 MG	0864	3.02	$157.07		$31.41
J9300	K	Gemtuzumab ozogamicin	9004	1.05	$54.61		$10.92
J9310	K	Rituximab cancer treatment	0849	5.71	$296.97		$59.39
J9320	N	Streptozocin injection					
J9340	N	Thiotepa injection					
J9350	K	Topotecan	0852	7.61	$395.79		$79.16
J9355	K	Trastuzumab	1613	0.66	$34.33		$6.87
J9357	K	Valrubicin, 200 mg	1614	2.04	$106.10		$21.22
J9360	N	Vinblastine sulfate inj					
J9370	N	Vincristine sulfate 1 MG inj					
J9375	E	Vincristine sulfate 2 MG inj					
J9380	E	Vincristine sulfate 5 MG inj					
J9390	K	Vinorelbine tartrate/10 mg	0855	1.10	$57.21		$11.44
J9600	K	Porfimer sodium	0856	26.35	$1,370.44		$274.09
J9999	E	Chemotherapy drug					
K0001	A	Standard wheelchair					
K0002	A	Stnd hemi (low seat) whichr					
K0003	A	Lightweight wheelchair					
K0004	A	High strength ltwt whichr					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
K0005	A	Ultralightweight wheelchair					
K0006	A	Heavy duty wheelchair					
K0007	A	Extra heavy duty wheelchair					
K0009	A	Other manual wheelchair/base					
K0010	A	Stnd wt frame power whichr					
K0011	A	Stnd wt pwr whichr w control					
K0012	A	Ltwt portbl power whichr					
K0014	A	Other power whichr base					
K0015	A	Detach non-adjus hght armrst					
K0016	A	Detach adjust armrst cmplete					
K0017	A	Detach adjust armrest base					
K0018	A	Detach adjust armrst upper					
K0019	A	Arm pad each					
K0020	A	Fixed adjust armrest pair					
K0021	A	Anti-tipping device each					
K0022	A	Reinforced back upholstery					
K0023	A	Planr back insrt foam w/strp					
K0024	A	Plnr back insrt foam w/hrdwr					
K0025	A	Hook-on headrest extension					
K0026	A	Back upholst lgtwt whichr					
K0027	A	Back upholst other whichr					
K0028	A	Manual fully reclining back					
K0029	A	Reinforced seat upholstery					
K0030	A	Solid plnr seat sngl dnsfoam					
K0031	A	Safety belt/pelvic strap					
K0032	A	Seat uphols lgtwt whichr					
K0033	A	Seat upholstery other whichr					
K0034	A	Heel loop each					
K0035	A	Heel loop with ankle strap					
K0036	A	Toe loop each					
K0037	A	High mount flip-up footrest					
K0038	A	Leg strap each					
K0039	A	Leg strap h style each					
K0040	A	Adjustable angle footplate					
K0041	A	Large size footplate each					
K0042	A	Standard size footplate each					
K0043	A	Ftrst lower extension tube					
K0044	A	Ftrst upper hanger bracket					
K0045	A	Footrest complete assembly					
K0046	A	Elevat legrst low extension					
K0047	A	Elevat legrst up hangr brack					
K0048	A	Elevate legrest complete					
K0049	A	Calf pad each					
K0050	A	Ratchet assembly					
K0051	A	Cam release assem ftrst/lgrst					
K0052	A	Swingaway detach footrest					
K0053	A	Elevate footrest articulate					
K0054	A	Seat wdth 10-12/15/17/20 wc					
K0055	A	Seat dpth 15/17/18 ltwt wc					
K0056	A	Seat ht <17 or> =21 ltwt wc					
K0057	A	Seat wdth 19/20 hvy dty wc					
K0058	A	Seat dpth 17/18 power wc					
K0059	A	Plastic coated handrim each					
K0060	A	Steel handrim each					
K0061	A	Aluminum handrim each					
K0062	A	Handrim 8-10 vert/obliq proj					
K0063	A	Hndrm 12-16 vert/obliq proj					
K0064	A	Zero pressure tube flat free					
K0065	A	Spoke protectors					
K0066	A	Solid tire any size each					
K0067	A	Pneumatic tire any size each					
K0068	A	Pneumatic tire tube each					
K0069	A	Rear whl complete solid tire					
K0070	A	Rear whl compl pneum tire					
K0071	A	Front castr compl pneum tire					
K0072	A	Frnt cstr cmpl sem-pneum tir					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
K0073	A	Caster pin lock each					
K0074	A	Pneumatic caster tire each					
K0075	A	Semi-pneumatic caster tire					
K0076	A	Solid caster tire each					
K0077	A	Front caster assem complete					
K0078	A	Pneumatic caster tire tube					
K0079	A	Wheel lock extension pair					
K0080	A	Anti-rollback device pair					
K0081	A	Wheel lock assembly complete					
K0082	A	22 nf deep cycl acid battery					
K0083	A	22 nf gel cell battery each					
K0084	A	Grp 24 deep cycl acid battry					
K0085	A	Group 24 gel cell battery					
K0086	A	U-1 lead acid battery each					
K0087	A	U-1 gel cell battery each					
K0088	A	Battry chrgr acid/gel cell					
K0089	A	Battery charger dual mode					
K0090	A	Rear tire power wheelchair					
K0091	A	Rear tire tube power whichr					
K0092	A	Rear assem cmplt powr whichr					
K0093	A	Rear zero pressure tire tube					
K0094	A	Wheel tire for power base					
K0095	A	Wheel tire tube each base					
K0096	A	Wheel assem powr base complt					
K0097	A	Wheel zero presure tire tube					
K0098	A	Drive belt power wheelchair					
K0099	A	Pwr wheelchair front caster					
K0100	A	Amputee adapter pair					
K0101	A	One-arm drive attachment					
K0102	A	Crutch and cane holder					
K0103	A	Transfer board < 25"					
K0104	A	Cylinder tank carrier					
K0105	A	Iv hanger					
K0106	A	Arm trough each					
K0107	A	Wheelchair tray					
K0108	A	W/c component-accessory NOS					
K0112	A	Trunk vest supprt innr frame					
K0113	A	Trunk vest suprt w/o inr frm					
K0114	A	Whichr back suprt inr frame					
K0115	A	Back module orthotic system					
K0116	A	Back & seat modul orthot sys					
K0183	A	Nasal application device					
K0184	A	Nasal pillow or face seal					
K0185	A	Pos airway pressure headgear					
K0186	A	Pos airway prssure chinstrap					
K0187	A	Pos airway pressure tubing					
K0188	A	Pos airway pressure filter					
K0189	A	Filter nondisposable w PAP					
K0195	A	Elevating whichair leg rests					
K0268	A	Humidifier nonheated w PAP					
K0415	E	RX antiemetic drg, oral NOS					
K0416	E	Rx antiemetic drg,rectal NOS					
K0452	A	Wheelchair bearings					
K0455	A	Pump uninterrupted infusion					
K0460	A	WC power add-on joystick					
K0461	A	WC power add-on tiller cntrl					
K0462	A	Temporary replacement eqpmnt					
K0531	A	Heated humidifier used w pap					
K0532	A	Noninvasive assist wo backup					
K0533	A	Noninvasive assist w backup					
K0534	A	Invasive assist w backup					
K0538	A	Neg pressure wnd thrpy pump					
K0539	A	Neg pres wnd thrpy dsg set					
K0540	A	Neg pres wnd thrp canister					
K0541	A	SGD prerecorded msg <= 8 min					
K0542	A	SGD prerecorded msg > 8 min					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
K0543	A	SGD msg formed by spelling					
K0544	A	SGD w multi methods msg/accs					
K0545	A	SGD sftwre prgrm for PC/PDA					
K0546	A	SGD accessory,mounting systm					
K0547	A	SGD accessory NOC					
K0548	A	Insulin lispro					
K0549	A	Hosp bed hvy dty xtra wide					
K0550	A	Hosp bed xtra hvy dty x wide					
K0551	A	Residual limb support system					
L0100	A	Cranial orthosis/helmet mold					
L0110	A	Cranial orthosis/helmet nonm					
L0120	A	Cerv flexible non-adjustable					
L0130	A	Flex thermoplastic collar mo					
L0140	A	Cervical semi-rigid adjustab					
L0150	A	Cerv semi-rig adj molded chn					
L0160	A	Cerv semi-rig wire occ/mand					
L0170	A	Cervical collar molded to pt					
L0172	A	Cerv col thermplas foam 2 pi					
L0174	A	Cerv col foam 2 piece w thor					
L0180	A	Cer post col occ/man sup adj					
L0190	A	Cerv collar supp adj cerv ba					
L0200	A	Cerv col supp adj bar & thor					
L0210	A	Thoracic rib belt					
L0220	A	Thor rib belt custom fabrica					
L0300	A	TLSO flex surgical support					
L0310	A	Tlso flexible custom fabrica					
L0315	A	Tlso flex elas rigid post pa					
L0317	A	Tlso flex hypext elas post p					
L0320	A	Tlso a-p contrl w apron frnt					
L0321	A	Tlso anti-post-cntrl prefab					
L0330	A	Tlso ant-pos-lateral control					
L0331	A	Tlso ant-post-lat cntrl prfb					
L0340	A	Tlso a-p-l-rotary with apron					
L0350	A	Tlso flex compress jacket cu					
L0360	A	Tlso flex compress jacket mo					
L0370	A	Tlso a-p-l-rotary hyperexten					
L0380	A	Tlso a-p-l-rot w/ pos extens					
L0390	A	Tlso a-p-l control molded					
L0391	A	Tlso ant-post-lat-rot cntrl					
L0400	A	Tlso a-p-l w interface mater					
L0410	A	Tlso a-p-l two piece constr					
L0420	A	Tlso a-p-l 2 piece w interfa					
L0430	A	Tlso a-p-l w interface custm					
L0440	A	Tlso a-p-l overlap frnt cust					
L0500	A	Lso flex surgical support					
L0510	A	Lso flexible custom fabricat					
L0515	A	Lso flex elas w/ rig post pa					
L0520	A	Lso a-p-l control with apron					
L0530	A	Lso ant-pos control w apron					
L0540	A	Lso lumbar flexion a-p-l					
L0550	A	Lso a-p-l control molded					
L0560	A	Lso a-p-l w interface					
L0561	A	Prefab lso					
L0565	A	Lso a-p-l control custom					
L0600	A	Sacroiliac flex surg support					
L0610	A	Sacroiliac flexible custm fa					
L0620	A	Sacroiliac semi-rig w apron					
L0700	A	Ctlso a-p-l control molded					
L0710	A	Ctlso a-p-l control w/ inter					
L0810	A	Halo cervical into jckt vest					
L0820	A	Halo cervical into body jack					
L0830	A	Halo cerv into milwaukee typ					
L0860	A	Magnetic resonanc image comp					
L0900	A	Torso/ptosis support					
L0910	A	Torso & ptosis supp custm fa					
L0920	A	Torso/pendulous abd support					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L0930	A	Pendulous abdomen supp custm					
L0940	A	Torso/postsurgical support					
L0950	A	Post surg support custom fab					
L0960	A	Post surgical support pads					
L0970	A	Tlso corset front					
L0972	A	Lso corset front					
L0974	A	Tlso full corset					
L0976	A	Lso full corset					
L0978	A	Axillary crutch extension					
L0980	A	Peroneal straps pair					
L0982	A	Stocking supp grips set of f					
L0984	A	Protective body sock each					
L0986	A	Spinal orth abdm pnl prefab					
L0999	A	Add to spinal orthosis NOS					
L1000	A	Ctlso milwauke initial model					
L1005	A	Tension based scoliosis orth					
L1010	A	Ctlso axilla sling					
L1020	A	Kyphosis pad					
L1025	A	Kyphosis pad floating					
L1030	A	Lumbar bolster pad					
L1040	A	Lumbar or lumbar rib pad					
L1050	A	Sternal pad					
L1060	A	Thoracic pad					
L1070	A	Trapezius sling					
L1080	A	Outrigger					
L1085	A	Outrigger bil w/ vert extens					
L1090	A	Lumbar sling					
L1100	A	Ring flange plastic/leather					
L1110	A	Ring flange plas/leather mol					
L1120	A	Covers for upright each					
L1200	A	Furnsh initial orthosis only					
L1210	A	Lateral thoracic extension					
L1220	A	Anterior thoracic extension					
L1230	A	Milwaukee type superstructur					
L1240	A	Lumbar derotation pad					
L1250	A	Anterior asis pad					
L1260	A	Anterior thoracic derotation					
L1270	A	Abdominal pad					
L1280	A	Rib gusset (elastic) each					
L1290	A	Lateral trochanteric pad					
L1300	A	Body jacket mold to patient					
L1310	A	Post-operative body jacket					
L1499	A	Spinal orthosis NOS					
L1500	A	Thkao mobility frame					
L1510	A	Thkao standing frame					
L1520	A	Thkao swivel walker					
L1600	A	Abduct hip flex frejka w cvr					
L1610	A	Abduct hip flex frejka covr					
L1620	A	Abduct hip flex pavlik harne					
L1630	A	Abduct control hip semi-flex					
L1640	A	Pelv band/spread bar thigh c					
L1650	A	HO abduction hip adjustable					
L1660	A	HO abduction static plastic					
L1680	A	Pelvic & hip control thigh c					
L1685	A	Post-op hip abduct custom fa					
L1686	A	HO post-op hip abduction					
L1690	A	Combination bilateral HO					
L1700	A	Leg perthes orth toronto typ					
L1710	A	Legg perthes orth newington					
L1720	A	Legg perthes orthosis trilat					
L1730	A	Legg perthes orth scottish r					
L1750	A	Legg perthes sling					
L1755	A	Legg perthes patten bottom t					
L1800	A	Knee orthoses elas w stays					
L1810	A	Ko elastic with joints					
L1815	A	Elastic with condylar pads					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L1820	A	Ko elas w/ condyle pads & jo					
L1825	A	Ko elastic knee cap					
L1830	A	Ko immobilizer canvas longit					
L1832	A	KO adj jnt pos rigid support					
L1834	A	Ko w/0 joint rigid molded to					
L1840	A	Ko derot ant cruciate custom					
L1843	A	KO single upright custom fit					
L1844	A	Ko w/adj jt rot cntrl molded					
L1845	A	Ko w/ adj flex/ext rotat cus					
L1846	A	Ko w adj flex/ext rotat mold					
L1847	A	KO adjustable w air chambers					
L1850	A	Ko swedish type					
L1855	A	Ko plas doub upright jnt mol					
L1858	A	Ko polycentric pneumatic pad					
L1860	A	Ko supracondylar socket mold					
L1870	A	Ko doub upright lacers molde					
L1880	A	Ko doub upright cuffs/lacers					
L1885	A	Knee upright w/resistance					
L1900	A	Afo sprng wir drsftx calf bd					
L1902	A	Afo ankle gauntlet					
L1904	A	Afo molded ankle gauntlet					
L1906	A	Afo multiligamentus ankle su					
L1910	A	Afo sing bar clasp attach sh					
L1920	A	Afo sing upright w/ adjust s					
L1930	A	Afo plastic					
L1940	A	Afo molded to patient plasti					
L1945	A	Afo molded plas rig ant tib					
L1950	A	Afo spiral molded to pt plas					
L1960	A	Afo pos solid ank plastic mo					
L1970	A	Afo plastic molded w/ankle j					
L1980	A	Afo sing solid stirrup calf					
L1990	A	Afo doub solid stirrup calf					
L2000	A	Kafo sing fre stirr thi/calf					
L2010	A	Kafo sng solid stirrup w/o j					
L2020	A	Kafo dbl solid stirrup band/					
L2030	A	Kafo dbl solid stirrup w/o j					
L2035	A	KAFO plastic pediatric size					
L2036	A	Kafo plas doub free knee mol					
L2037	A	Kafo plas sing free knee mol					
L2038	A	Kafo w/o joint multi-axis an					
L2039	A	KAFO,plstic,medlat rotat con					
L2040	A	Hkafo torsion bil rot straps					
L2050	A	Hkafo torsion cable hip pelv					
L2060	A	Hkafo torsion ball bearing j					
L2070	A	Hkafo torsion unilat rot str					
L2080	A	Hkafo unilat torsion cable					
L2090	A	Hkafo unilat torsion ball br					
L2102	E	Afo tibial fx cast plstr mol					
L2104	E	Afo tib fx cast synthetic mo					
L2106	A	Afo tib fx cast plaster mold					
L2108	A	Afo tib fx cast molded to pt					
L2112	A	Afo tibial fracture soft					
L2114	A	Afo tib fx semi-rigid					
L2116	A	Afo tibial fracture rigid					
L2122	E	Kafo fem fx cast plaster mol					
L2124	E	Kafo fem fx cast synthet mol					
L2126	A	Kafo fem fx cast thermoplas					
L2128	A	Kafo fem fx cast molded to p					
L2132	A	Kafo femoral fx cast soft					
L2134	A	Kafo fem fx cast semi-rigid					
L2136	A	Kafo femoral fx cast rigid					
L2180	A	Plas shoe insert w ank joint					
L2182	A	Drop lock knee					
L2184	A	Limited motion knee joint					
L2186	A	Adj motion knee jnt lerman t					
L2188	A	Quadrilateral brim					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L2190	A	Waist belt					
L2192	A	Pelvic band & belt thigh fla					
L2200	A	Limited ankle motion ea jnt					
L2210	A	Dorsiflexion assist each joi					
L2220	A	Dorsi & plantar flex ass/res					
L2230	A	Split flat caliper stirr & p					
L2240	A	Round caliper and plate atta					
L2250	A	Foot plate molded stirrup at					
L2260	A	Reinforced solid stirrup					
L2265	A	Long tongue stirrup					
L2270	A	Varus/valgus strap padded/li					
L2275	A	Plastic mod low ext pad/line					
L2280	A	Molded inner boot					
L2300	A	Abduction bar jointed adjust					
L2310	A	Abduction bar-straight					
L2320	A	Non-molded lacer					
L2330	A	Lacer molded to patient mode					
L2335	A	Anterior swing band					
L2340	A	Pre-tibial shell molded to p					
L2350	A	Prosthetic type socket molde					
L2360	A	Extended steel shank					
L2370	A	Patten bottom					
L2375	A	Torsion ank & half solid sti					
L2380	A	Torsion straight knee joint					
L2385	A	Straight knee joint heavy du					
L2390	A	Offset knee joint each					
L2395	A	Offset knee joint heavy duty					
L2397	A	Suspension sleeve lower ext					
L2405	A	Knee joint drop lock ea jnt					
L2415	A	Knee joint cam lock each joi					
L2425	A	Knee disc/dial lock/adj flex					
L2430	A	Knee jnt ratchet lock ea jnt					
L2435	A	Knee joint polycentric joint					
L2492	A	Knee lift loop drop lock rin					
L2500	A	Thi/glut/ischia wgt bearing					
L2510	A	Th/wght bear quad-lat brim m					
L2520	A	Th/wght bear quad-lat brim c					
L2525	A	Th/wght bear nar m-l brim mo					
L2526	A	Th/wght bear nar m-l brim cu					
L2530	A	Thigh/wght bear lacer non-mo					
L2540	A	Thigh/wght bear lacer molded					
L2550	A	Thigh/wght bear high roll cu					
L2570	A	Hip clevis type 2 posit jnt					
L2580	A	Pelvic control pelvic sling					
L2600	A	Hip clevis/thrust bearing fr					
L2610	A	Hip clevis/thrust bearing lo					
L2620	A	Pelvic control hip heavy dut					
L2622	A	Hip joint adjustable flexion					
L2624	A	Hip adj flex ext abduct cont					
L2627	A	Plastic mold recipro hip & c					
L2628	A	Metal frame recipro hip & ca					
L2630	A	Pelvic control band & belt u					
L2640	A	Pelvic control band & belt b					
L2650	A	Pelv & thor control gluteal					
L2660	A	Thoracic control thoracic ba					
L2670	A	Thorac cont paraspinal uprig					
L2680	A	Thorac cont lat support upri					
L2750	A	Plating chrome/nickel pr bar					
L2755	A	Carbon graphite lamination					
L2760	A	Extension per extension per					
L2768	A	Ortho sidebar disconnect					
L2770	A	Low ext orthosis per bar/jnt					
L2780	A	Non-corrosive finish					
L2785	A	Drop lock retainer each					
L2795	A	Knee control full kneecap					
L2800	A	Knee cap medial or lateral p					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L2810	A	Knee control condylar pad					
L2820	A	Soft interface below knee se					
L2830	A	Soft interface above knee se					
L2840	A	Tibial length sock fx or equ					
L2850	A	Femoral lgth sock fx or equa					
L2860	A	Torsion mechanism knee/ankle					
L2999	A	Lower extremity orthosis NOS					
L3000	E	Ft insert ucb berkeley shell					
L3001	E	Foot insert remov molded spe					
L3002	E	Foot insert plastazote or eq					
L3003	E	Foot insert silicone gel eac					
L3010	E	Foot longitudinal arch suppo					
L3020	E	Foot longitud/metatarsal sup					
L3030	E	Foot arch support remov prem					
L3040	E	Ft arch suprt premold longit					
L3050	E	Foot arch supp premold metat					
L3060	E	Foot arch supp longitud/meta					
L3070	E	Arch suprt att to sho longit					
L3080	E	Arch supp att to shoe metata					
L3090	E	Arch supp att to shoe long/m					
L3100	E	Hallus-valgus nght dynamic s					
L3140	E	Abduction rotation bar shoe					
L3150	E	Abduct rotation bar w/o shoe					
L3160	E	Shoe styled positioning dev					
L3170	E	Foot plastic heel stabilizer					
L3201	E	Oxford w supinat/pronat inf					
L3202	E	Oxford w/ supinat/pronator c					
L3203	E	Oxford w/ supinator/pronator					
L3204	E	Hightop w/ supp/pronator inf					
L3206	E	Hightop w/ supp/pronator chi					
L3207	E	Hightop w/ supp/pronator jun					
L3208	E	Surgical boot each infant					
L3209	E	Surgical boot each child					
L3211	E	Surgical boot each junior					
L3212	E	Benesch boot pair infant					
L3213	E	Benesch boot pair child					
L3214	E	Benesch boot pair junior					
L3215	E	Orthopedic ftwear ladies oxf					
L3216	E	Orthoped ladies shoes dpth i					
L3217	E	Ladies shoes hightop depth i					
L3218	E	Ladies surgical boot each					
L3219	E	Orthopedic mens shoes oxford					
L3221	E	Orthopedic mens shoes dpth i					
L3222	E	Mens shoes hightop depth inl					
L3223	E	Mens surgical boot each					
L3224	A	Woman's shoe oxford brace					
L3225	A	Man's shoe oxford brace					
L3230	E	Custom shoes depth inlay					
L3250	E	Custom mold shoe remov prost					
L3251	E	Shoe molded to pt silicone s					
L3252	E	Shoe molded plastazote cust					
L3253	E	Shoe molded plastazote cust					
L3254	E	Orth foot non-stndard size/w					
L3255	E	Orth foot non-standard size/					
L3257	E	Orth foot add charge split s					
L3260	E	Ambulatory surgical boot eac					
L3265	E	Plastazote sandal each					
L3300	E	Sho lift taper to metatarsal					
L3310	E	Shoe lift elev heel/sole neo					
L3320	E	Shoe lift elev heel/sole cor					
L3330	E	Lifts elevation metal extens					
L3332	E	Shoe lifts tapered to one-ha					
L3334	E	Shoe lifts elevation heel /i					
L3340	E	Shoe wedge sach					
L3350	E	Shoe heel wedge					
L3360	E	Shoe sole wedge outside sole					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L3370	E	Shoe sole wedge between sole					
L3380	E	Shoe clubfoot wedge					
L3390	E	Shoe outflare wedge					
L3400	E	Shoe metatarsal bar wedge ro					
L3410	E	Shoe metatarsal bar between					
L3420	E	Full sole/heel wedge btween					
L3430	E	Sho heel count plast reinfor					
L3440	E	Heel leather reinforced					
L3450	E	Shoe heel sach cushion type					
L3455	E	Shoe heel new leather standa					
L3460	E	Shoe heel new rubber standar					
L3465	E	Shoe heel thomas with wedge					
L3470	E	Shoe heel thomas extend to b					
L3480	E	Shoe heel pad & depress for					
L3485	E	Shoe heel pad removable for					
L3500	E	Ortho shoe add leather insol					
L3510	E	Orthopedic shoe add rub insl					
L3520	E	O shoe add felt w leath insl					
L3530	E	Ortho shoe add half sole					
L3540	E	Ortho shoe add full sole					
L3550	E	O shoe add standard toe tap					
L3560	E	O shoe add horseshoe toe tap					
L3570	E	O shoe add instep extension					
L3580	E	O shoe add instep velcro clo					
L3590	E	O shoe convert to sof counte					
L3595	E	Ortho shoe add march bar					
L3600	E	Trans shoe calip plate exist					
L3610	E	Trans shoe caliper plate new					
L3620	E	Trans shoe solid stirrup exi					
L3630	E	Trans shoe solid stirrup new					
L3640	E	Shoe dennis browne splint bo					
L3649	E	Orthopedic shoe modifica NOS					
L3650	A	Shlder fig 8 abduct restrain					
L3660	A	Abduct restrainer canvas&web					
L3670	A	Acromio/clavicular canvas&we					
L3675	A	Canvas vest SO					
L3677	A	SO hard plastic stabilizer					
L3700	A	Elbow orthoses elas w stays					
L3710	A	Elbow elastic with metal joi					
L3720	A	Forearm/arm cuffs free motio					
L3730	A	Forearm/arm cuffs ext/flex a					
L3740	A	Cuffs adj lock w/ active con					
L3760	A	EO withjoint, Prefabricated					
L3800	A	Whfo short opponen no attach					
L3805	A	Whfo long opponens no attach					
L3807	A	WHFO,no joint, prefabricated					
L3810	A	Whfo thumb abduction bar					
L3815	A	Whfo second m.p. abduction a					
L3820	A	Whfo ip ext asst w/ mp ext s					
L3825	A	Whfo m.p. extension stop					
L3830	A	Whfo m.p. extension assist					
L3835	A	Whfo m.p. spring extension a					
L3840	A	Whfo spring swivel thumb					
L3845	A	Whfo thumb ip ext ass w/ mp					
L3850	A	Action wrist w/ dorsiflex as					
L3855	A	Whfo adj m.p. flexion contro					
L3860	A	Whfo adj m.p. flex ctrl & i.					
L3890	E	Torsion mechanism wrist/elbo					
L3900	A	Hinge extension/flex wrist/f					
L3901	A	Hinge ext/flex wrist finger					
L3902	A	Whfo ext power compress gas					
L3904	A	Whfo electric custom fitted					
L3906	A	Wrist gauntlet molded to pt					
L3907	A	Whfo wrst gauntlt thmb spica					
L3908	A	Wrist cock-up non-molded					
L3910	A	Whfo swanson design					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L3912	A	Flex glove w/elastic finger					
L3914	A	WHO wrist extension cock-up					
L3916	A	Whfo wrist extens w/ outrigg					
L3918	A	HFO knuckle bender					
L3920	A	Knuckle bender with outrigge					
L3922	A	Knuckle bend 2 seg to flex j					
L3923	A	HFO, no joint, prefabricated					
L3924	A	Oppenheimer					
L3926	A	Thomas suspension					
L3928	A	Finger extension w/ clock sp					
L3930	A	Finger extension with wrist					
L3932	A	Safety pin spring wire					
L3934	A	Safety pin modified					
L3936	A	Palmer					
L3938	A	Dorsal wrist					
L3940	A	Dorsal wrist w/ outrigger at					
L3942	A	Reverse knuckle bender					
L3944	A	Reverse knuckle bend w/ outr					
L3946	A	HFO composite elastic					
L3948	A	Finger knuckle bender					
L3950	A	Oppenheimer w/ knuckle bend					
L3952	A	Oppenheimer w/ rev knuckle 2					
L3954	A	Spreading hand					
L3956	A	Add joint upper ext orthosis					
L3960	A	Sewho airplan desig abdu pos					
L3962	A	Sewho erbs palsey design abd					
L3963	A	Molded w/ articulating elbow					
L3964	A	Seo mobile arm sup att to wc					
L3965	A	Arm supp att to wc rancho ty					
L3966	A	Mobile arm supports reclinin					
L3968	A	Friction dampening arm supp					
L3969	A	Monosuspension arm/hand supp					
L3970	A	Elevat proximal arm support					
L3972	A	Offset/lat rocker arm w/ ela					
L3974	A	Mobile arm support supinator					
L3980	A	Upp ext fx orthosis humeral					
L3982	A	Upper ext fx orthosis rad/ul					
L3984	A	Upper ext fx orthosis wrist					
L3985	A	Forearm hand fx orth w/ wr h					
L3986	A	Humeral rad/ulna wrist fx or					
L3995	A	Sock fracture or equal each					
L3999	A	Upper limb orthosis NOS					
L4000	A	Repl girdle milwaukee orth					
L4010	A	Replace trilateral socket br					
L4020	A	Replace quadlat socket brim					
L4030	A	Replace socket brim cust fit					
L4040	A	Replace molded thigh lacer					
L4045	A	Replace non-molded thigh lac					
L4050	A	Replace molded calf lacer					
L4055	A	Replace non-molded calf lace					
L4060	A	Replace high roll cuff					
L4070	A	Replace prox & dist upright					
L4080	A	Repl met band kafo-afo prox					
L4090	A	Repl met band kafo-afo calf/					
L4100	A	Repl leath cuff kafo prox th					
L4110	A	Repl leath cuff kafo-afo cal					
L4130	A	Replace pretibial shell					
L4205	A	Ortho dvc repair per 15 min					
L4210	A	Orth dev repair/repl minor p					
L4350	A	Pneumatic ankle cntrl splint					
L4360	A	Pneumatic walking splint					
L4370	A	Pneumatic full leg splint					
L4380	A	Pneumatic knee splint					
L4392	A	Replace AFO soft interface					
L4394	A	Replace foot drop spint					
L4396	A	Static AFO					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L4398	A	Foot drop splint recumbent					
L5000	A	Sho insert w arch toe filler					
L5010	A	Mold socket ank hgt w/ toe f					
L5020	A	Tibial tubercle hgt w/ toe f					
L5050	A	Ank symes mold sckt sach ft					
L5060	A	Symes met fr leath socket ar					
L5100	A	Molded socket shin sach foot					
L5105	A	Plast socket jts/thgh lacer					
L5150	A	Mold sckt ext knee shin sach					
L5160	A	Mold socket bent knee shin s					
L5200	A	Kne sing axis fric shin sach					
L5210	A	No knee/ankle joints w/ ft b					
L5220	A	No knee joint with artic ali					
L5230	A	Fem focal defic constant fri					
L5250	A	Hip canad sing axi cons fric					
L5270	A	Tilt table locking hip sing					
L5280	A	Hemipelvect canad sing axis					
L5301	A	BK mold socket SACH ft endo					
L5311	A	Knee disart, SACH ft, endo					
L5321	A	AK open end SACH					
L5331	A	Hip disart canadian SACH ft					
L5341	A	Hemipelvectomy canadian SACH					
L5400	A	Postop dress & 1 cast chg bk					
L5410	A	Postop dsg bk ea add cast ch					
L5420	A	Postop dsg & 1 cast chg ak/d					
L5430	A	Postop dsg ak ea add cast ch					
L5450	A	Postop app non-wgt bear dsg					
L5460	A	Postop app non-wgt bear dsg					
L5500	A	Init bk ptb plaster direct					
L5505	A	Init ak ischial pistr direct					
L5510	A	Prep BK ptb plaster molded					
L5520	A	Perp BK ptb thermopls direct					
L5530	A	Prep BK ptb thermopls molded					
L5535	A	Prep BK ptb open end socket					
L5540	A	Prep BK ptb laminated socket					
L5560	A	Prep AK ischial plast molded					
L5570	A	Prep AK ischial direct form					
L5580	A	Prep AK ischial thermo mold					
L5585	A	Prep AK ischial open end					
L5590	A	Prep AK ischial laminated					
L5595	A	Hip disartic sach thermopls					
L5600	A	Hip disart sach laminat mold					
L5610	A	Above knee hydracadence					
L5611	A	Ak 4 bar link w/fric swing					
L5613	A	Ak 4 bar ling w/hydraul swig					
L5614	A	4-bar link above knee w/swng					
L5616	A	Ak univ multiplex sys frict					
L5617	A	AK/BK self-aligning unit ea					
L5618	A	Test socket symes					
L5620	A	Test socket below knee					
L5622	A	Test socket knee disarticula					
L5624	A	Test socket above knee					
L5626	A	Test socket hip disarticulat					
L5628	A	Test socket hemipelvectomy					
L5629	A	Below knee acrylic socket					
L5630	A	Syme typ expandabl wall sckt					
L5631	A	Ak/knee disartic acrylic soc					
L5632	A	Symes type ptb brim design s					
L5634	A	Symes type poster opening so					
L5636	A	Symes type medial opening so					
L5637	A	Below knee total contact					
L5638	A	Below knee leather socket					
L5639	A	Below knee wood socket					
L5640	A	Knee disarticulat leather so					
L5642	A	Above knee leather socket					
L5643	A	Hip flex inner socket ext fr					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L5644	A	Above knee wood socket					
L5645	A	Bk flex inner socket ext fra					
L5646	A	Below knee air cushion socke					
L5647	A	Below knee suction socket					
L5648	A	Above knee air cushion socke					
L5649	A	Isch containmt/narrow m-l so					
L5650	A	Tot contact ak/knee disart s					
L5651	A	Ak flex inner socket ext fra					
L5652	A	Suction susp ak/knee disart					
L5653	A	Knee disart expand wall sock					
L5654	A	Socket insert symes					
L5655	A	Socket insert below knee					
L5656	A	Socket insert knee articulat					
L5658	A	Socket insert above knee					
L5660	A	Sock insrt syme silicone gel					
L5661	A	Multi-durometer symes					
L5662	A	Socket insert bk silicone ge					
L5663	A	Sock knee disartic silicone					
L5664	A	Socket insert ak silicone ge					
L5665	A	Multi-durometer below knee					
L5666	A	Below knee cuff suspension					
L5668	A	Socket insert w/o lock lower					
L5670	A	Bk molded supracondylar susp					
L5671	A	BK/AK locking mechanism					
L5672	A	Bk removable medial brim sus					
L5674	A	Bk suspension sleeve					
L5675	A	Bk heavy duty susp sleeve					
L5676	A	Bk knee joints single axis p					
L5677	A	Bk knee joints polycentric p					
L5678	A	Bk joint covers pair					
L5680	A	Bk thigh lacer non-molded					
L5682	A	Bk thigh lacer glut/ischia m					
L5684	A	Bk fork strap					
L5686	A	Bk back check					
L5688	A	Bk waist belt webbing					
L5690	A	Bk waist belt padded and lin					
L5692	A	Ak pelvic control belt light					
L5694	A	Ak pelvic control belt pad/l					
L5695	A	Ak sleeve susp neoprene/equa					
L5696	A	Ak/knee disartic pelvic join					
L5697	A	Ak/knee disartic pelvic band					
L5698	A	Ak/knee disartic silesian ba					
L5699	A	Shoulder harness					
L5700	A	Replace socket below knee					
L5701	A	Replace socket above knee					
L5702	A	Replace socket hip					
L5704	A	Custom shape cover BK					
L5705	A	Custom shape cover AK					
L5706	A	Custom shape cvr knee disart					
L5707	A	Custom shape cvr hip disart					
L5710	A	Kne-shin exo sng axi mnl loc					
L5711	A	Knee-shin exo mnl lock ultra					
L5712	A	Knee-shin exo frict swg & st					
L5714	A	Knee-shin exo variable frict					
L5716	A	Knee-shin exo mech stance ph					
L5718	A	Knee-shin exo frct swg & sta					
L5722	A	Knee-shin pneum swg frct exo					
L5724	A	Knee-shin exo fluid swing ph					
L5726	A	Knee-shin ext jnts fld swg e					
L5728	A	Knee-shin fluid swg & stance					
L5780	A	Knee-shin pneum/hydra pneum					
L5785	A	Exoskeletal bk ultralt mater					
L5790	A	Exoskeletal ak ultra-light m					
L5795	A	Exoskel hip ultra-light mate					
L5810	A	Endoskel knee-shin mnl lock					
L5811	A	Endo knee-shin mnl ick ultra					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L5812	A	Endo knee-shin frct swg & st					
L5814	A	Endo knee-shin hydral swg ph					
L5816	A	Endo knee-shin polyc mch sta					
L5818	A	Endo knee-shin frct swg & st					
L5822	A	Endo knee-shin pneum swg frc					
L5824	A	Endo knee-shin fluid swing p					
L5826	A	Miniature knee joint					
L5828	A	Endo knee-shin fluid swg/sta					
L5830	A	Endo knee-shin pneum/swg pha					
L5840	A	Multi-axial knee/shin system					
L5845	A	Knee-shin sys stance flexion					
L5846	A	Knee-shin sys microprocessor					
L5847	A	Microprocessor cntrl feature					
L5850	A	Endo ak/hip knee extens assi					
L5855	A	Mech hip extension assist					
L5910	A	Endo below knee alignable sy					
L5920	A	Endo ak/hip alignable system					
L5925	A	Above knee manual lock					
L5930	A	High activity knee frame					
L5940	A	Endo bk ultra-light material					
L5950	A	Endo ak ultra-light material					
L5960	A	Endo hip ultra-light materia					
L5962	A	Below knee flex cover system					
L5964	A	Above knee flex cover system					
L5966	A	Hip flexible cover system					
L5968	A	Multiaxial ankle w dorsiflex					
L5970	A	Foot external keel sach foot					
L5972	A	Flexible keel foot					
L5974	A	Foot single axis ankle/foot					
L5975	A	Combo ankle/foot prosthesis					
L5976	A	Energy storing foot					
L5978	A	Ft prosth multiaxial ankl/ft					
L5979	A	Multi-axial ankle/ft prosth					
L5980	A	Flex foot system					
L5981	A	Flex-walk sys low ext prosth					
L5982	A	Exoskeletal axial rotation u					
L5984	A	Endoskeletal axial rotation					
L5985	A	Lwr ext dynamic prosth pylon					
L5986	A	Multi-axial rotation unit					
L5987	A	Shank ft w vert load pylon					
L5988	A	Vertical shock reducing pylo					
L5989	A	Pylon w elctrnc force sensor					
L5990	A	User adjustable heel height					
L5999	A	Lowr extremity prosthes NOS					
L6000	A	Par hand robin-aids thum rem					
L6010	A	Hand robin-aids little/ring					
L6020	A	Part hand robin-aids no fing					
L6050	A	Wrst MLd sck fix hng tri pad					
L6055	A	Wrst mold sock w/exp interfa					
L6100	A	Elb mold sock flex hinge pad					
L6110	A	Elbow mold sock suspension t					
L6120	A	Elbow mold doub split soc ste					
L6130	A	Elbow stump activated lock h					
L6200	A	Elbow mold outsid lock hinge					
L6205	A	Elbow molded w/ expand inter					
L6250	A	Elbow inter loc elbow forarm					
L6300	A	Shlder disart int lock elbow					
L6310	A	Shoulder passive restor comp					
L6320	A	Shoulder passive restor cap					
L6350	A	Thoracic intern lock elbow					
L6360	A	Thoracic passive restor comp					
L6370	A	Thoracic passive restor cap					
L6380	A	Postop dsg cast chg wrst/elb					
L6382	A	Postop dsg cast chg elb dle/					
L6384	A	Postop dsg cast chg shlder/t					
L6386	A	Postop ea cast chg & realign					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L6388	A	Postop applicat rigid dsg on					
L6400	A	Below elbow prosth tiss shap					
L6450	A	Elb disart prosth tiss shap					
L6500	A	Above elbow prosth tiss shap					
L6550	A	Shldr disar prosth tiss shap					
L6570	A	Scap thorac prosth tiss shap					
L6580	A	Wrist/elbow bowden cable mol					
L6582	A	Wrist/elbow bowden cbl dir f					
L6584	A	Elbow fair lead cable molded					
L6586	A	Elbow fair lead cable dir fo					
L6588	A	Shdr fair lead cable molded					
L6590	A	Shdr fair lead cable direct					
L6600	A	Polycentric hinge pair					
L6605	A	Single pivot hinge pair					
L6610	A	Flexible metal hinge pair					
L6615	A	Disconnect locking wrist uni					
L6616	A	Disconnect insert locking wr					
L6620	A	Flexion-friction wrist unit					
L6623	A	Spring-ass rot wrst w/ latch					
L6625	A	Rotation wrst w/ cable lock					
L6628	A	Quick disconn hook adapter o					
L6629	A	Lamination collar w/ couplin					
L6630	A	Stainless steel any wrist					
L6632	A	Latex suspension sleeve each					
L6635	A	Lift assist for elbow					
L6637	A	Nudge control elbow lock					
L6640	A	Shoulder abduction joint pai					
L6641	A	Excursion amplifier pulley t					
L6642	A	Excursion amplifier lever ty					
L6645	A	Shoulder flexion-abduction j					
L6650	A	Shoulder universal joint					
L6655	A	Standard control cable extra					
L6660	A	Heavy duty control cable					
L6665	A	Teflon or equal cable lining					
L6670	A	Hook to hand cable adapter					
L6672	A	Harness chest/shlder saddle					
L6675	A	Harness figure of 8 sing con					
L6676	A	Harness figure of 8 dual con					
L6680	A	Test sock wrist disart/bel e					
L6682	A	Test sock elbw disart/above					
L6684	A	Test socket shldr disart/tho					
L6686	A	Suction socket					
L6687	A	Frame typ socket bel elbow/w					
L6688	A	Frame typ sock above elb/dis					
L6689	A	Frame typ socket shoulder di					
L6690	A	Frame typ sock interscap-tho					
L6691	A	Removable insert each					
L6692	A	Silicone gel insert or equal					
L6693	A	Lockingelbow forearm cntrbal					
L6700	A	Terminal device model #3					
L6705	A	Terminal device model #5					
L6710	A	Terminal device model #5x					
L6715	A	Terminal device model #5xa					
L6720	A	Terminal device model #6					
L6725	A	Terminal device model #7					
L6730	A	Terminal device model #7lo					
L6735	A	Terminal device model #8					
L6740	A	Terminal device model #8x					
L6745	A	Terminal device model #88x					
L6750	A	Terminal device model #10p					
L6755	A	Terminal device model #10x					
L6765	A	Terminal device model #12p					
L6770	A	Terminal device model #99x					
L6775	A	Terminal device model#555					
L6780	A	Terminal device model #ss555					
L6790	A	Hooks-accu hook or equal					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L6795	A	Hooks-2 load or equal					
L6800	A	Hooks-aprl vc or equal					
L6805	A	Modifier wrist flexion unit					
L6806	A	Trs grip vc or equal					
L6807	A	Term device grip1/2 or equal					
L6808	A	Term device infant or child					
L6809	A	Trs super sport passive					
L6810	A	Pincher tool otto bock or eq					
L6825	A	Hands dorrance vo					
L6830	A	Hand aprl vc					
L6835	A	Hand sierra vo					
L6840	A	Hand becker imperial					
L6845	A	Hand becker lock grip					
L6850	A	Term dvc-hand becker plylite					
L6855	A	Hand robin-aids vo					
L6860	A	Hand robin-aids vo soft					
L6865	A	Hand passive hand					
L6867	A	Hand detroit infant hand					
L6868	A	Passive inf hand steeper/hos					
L6870	A	Hand child mitt					
L6872	A	Hand nyu child hand					
L6873	A	Hand mech inf steeper or equ					
L6875	A	Hand bock vc					
L6880	A	Hand bock vo					
L6881	A	Autograsp feature ul term dv					
L6882	A	Microprocessor control uplmb					
L6890	A	Production glove					
L6895	A	Custom glove					
L6900	A	Hand restorat thumb/1 finger					
L6905	A	Hand restoration multiple fi					
L6910	A	Hand restoration no fingers					
L6915	A	Hand restoration replacmnt g					
L6920	A	Wrist disarticul switch ctrl					
L6925	A	Wrist disart myoelectronic c					
L6930	A	Below elbow switch control					
L6935	A	Below elbow myoelectronic ct					
L6940	A	Elbow disarticulation switch					
L6945	A	Elbow disart myoelectronic c					
L6950	A	Above elbow switch control					
L6955	A	Above elbow myoelectronic ct					
L6960	A	Shldr disartic switch contro					
L6965	A	Shldr disartic myoelectronic					
L6970	A	Interscapular-thor switch ct					
L6975	A	Interscap-thor myoelectronic					
L7010	A	Hand otto back steeper/eq sw					
L7015	A	Hand sys teknik village swit					
L7020	A	Electronic greifer switch ct					
L7025	A	Electron hand myoelectronic					
L7030	A	Hand sys teknik vill myoelec					
L7035	A	Electron greifer myoelectro					
L7040	A	Prehensile actuator hosmer s					
L7045	A	Electron hook child michigan					
L7170	A	Electronic elbow hosmer swit					
L7180	A	Electronic elbow utah myoele					
L7185	A	Electron elbow adolescent sw					
L7186	A	Electron elbow child switch					
L7190	A	Elbow adolescent myoelectron					
L7191	A	Elbow child myoelectronic ct					
L7260	A	Electron wrist rotator otto					
L7261	A	Electron wrist rotator utah					
L7266	A	Servo control steeper or equ					
L7272	A	Analogue control unb or equa					
L7274	A	Proportional ctl 12 volt uta					
L7360	A	Six volt bat otto bock/eq ea					
L7362	A	Battery chrgr six volt otto					
L7364	A	Twelve volt battery utah/equ					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L7366	A	Battery chrgr 12 volt utah/e					
L7499	A	Upper extremity prosthes NOS					
L7500	A	Prosthetic dvc repair hourly					
L7510	A	Prosthetic device repair rep					
L7520	A	Repair prosthesis per 15 min					
L7900	A	Vacuum erection system					
L8000	A	Mastectomy bra					
L8001	A	Breast prosthesis bra & form					
L8002	A	Brst prsth bra & bilat form					
L8010	A	Mastectomy sleeve					
L8015	A	Ext breastprosthesis garment					
L8020	A	Mastectomy form					
L8030	A	Breast prosthesis silicone/e					
L8035	A	Custom breast prosthesis					
L8039	A	Breast prosthesis NOS					
L8040	A	Nasal prosthesis					
L8041	A	Midfacial prosthesis					
L8042	A	Orbital prosthesis					
L8043	A	Upper facial prosthesis					
L8044	A	Hemi-facial prosthesis					
L8045	A	Auricular prosthesis					
L8046	A	Partial facial prosthesis					
L8047	A	Nasal septal prosthesis					
L8048	A	Unspec maxillofacial prosth					
L8049	A	Repair maxillofacial prosth					
L8100	E	Compression stocking BK18-30					
L8110	E	Compression stocking BK30-40					
L8120	E	Compression stocking BK40-50					
L8130	E	Gc stocking thighlngth 18-30					
L8140	E	Gc stocking thighlngth 30-40					
L8150	E	Gc stocking thighlngth 40-50					
L8160	E	Gc stocking full lngth 18-30					
L8170	E	Gc stocking full lngth 30-40					
L8180	E	Gc stocking full lngth 40-50					
L8190	E	Gc stocking waistlngth 18-30					
L8195	E	Gc stocking waistlngth 30-40					
L8200	E	Gc stocking waistlngth 40-50					
L8210	E	Gc stocking custom made					
L8220	E	Gc stocking lymphedema					
L8230	E	Gc stocking garter belt					
L8239	E	G compression stocking NOS					
L8300	A	Truss single w/ standard pad					
L8310	A	Truss double w/ standard pad					
L8320	A	Truss addition to std pad wa					
L8330	A	Truss add to std pad scrotal					
L8400	A	Sheath below knee					
L8410	A	Sheath above knee					
L8415	A	Sheath upper limb					
L8417	A	Pros sheath/sock w gel cushn					
L8420	A	Prosthetic sock multi ply BK					
L8430	A	Prosthetic sock multi ply AK					
L8435	A	Pros sock multi ply upper lm					
L8440	A	Shrinker below knee					
L8460	A	Shrinker above knee					
L8465	A	Shrinker upper limb					
L8470	A	Pros sock single ply BK					
L8480	A	Pros sock single ply AK					
L8485	A	Pros sock single ply upper l					
L8490	A	Air seal suction reten systm					
L8499	A	Unlisted misc prosthetic ser					
L8500	A	Artificial larynx					
L8501	A	Tracheostomy speaking valve					
L8505	A	Artificial larynx, accessory					
L8507	A	Trach-esoph voice pros pt in					
L8509	A	Trach-esoph voice pros md in					
L8510	A	Voice amplifier					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L8600	N	Implant breast silicone/eq					
L8603	N	Collagen imp urinary 2.5 ml					
L8606	A	Synthetic implnt urinary 1ml					
L8610	N	Ocular implant					
L8612	N	Aqueous shunt prosthesis					
L8613	N	Ossicular implant					
L8614	N	Cochlear device/system					
L8619	A	Replace cochlear processor					
L8630	N	Metacarpophalangeal implant					
L8641	N	Metatarsal joint implant					
L8642	N	Hallux implant					
L8658	N	Interphalangeal joint implnt					
L8670	N	Vascular graft, synthetic					
L8699	N	Prosthetic implant NOS					
L9900	A	O&P supply/accessory/service					
M0064	X	Visit for drug monitoring	0374	1.20	$62.41		$12.48
M0075	E	Cellular therapy					
M0076	E	Prolotherapy					
M0100	E	Intragastric hypothermia					
M0300	E	IV chelationtherapy					
M0301	E	Fabric wrapping of aneurysm					
P2028	A	Cephalin flocculation test					
P2029	A	Congo red blood test					
P2031	E	Hair analysis					
P2033	A	Blood thymol turbidity					
P2038	A	Blood mucoprotein					
P3000	A	Screen pap by tech w md supv					
P3001	E	Screening pap smear by phys					
P7001	E	Culture bacterial urine					
P9010	K	Whole blood for transfusion	0950	1.25	$65.01		$13.00
P9011	E	Blood split unit					
P9012	K	Cryoprecipitate each unit	0952	0.53	$27.56		$5.51
P9016	K	RBC leukocytes reduced	0954	1.59	$82.69		$16.54
P9017	K	One donor fresh frozn plasma	0955	0.71	$36.93		$7.39
P9019	K	Platelets, each unit	0957	0.67	$34.85		$6.97
P9020	K	Plaelet rich plasma unit	0958	1.12	$58.25		$11.65
P9021	K	Red blood cells unit	0959	1.12	$58.25		$11.65
P9022	K	Washed red blood cells unit	0960	1.42	$73.85		$14.77
P9023	K	Frozen plasma, pooled, sd	0949	1.26	$65.53		$13.11
P9031	K	Platelets leukocytes reduced	1013	0.91	$47.33		$9.47
P9032	K	Platelets, irradiated	9500	0.92	$47.85		$9.57
P9033	K	Platelets leukoreduced irrad	0954	1.59	$82.69		$16.54
P9034	K	Platelets, pheresis	9501	5.10	$265.25		$53.05
P9035	K	Platelet pheres leukoreduced	9501	5.10	$265.25		$53.05
P9036	K	Platelet pheresis irradiated	9502	1.99	$103.50		$20.70
P9037	K	Plate pheres leukoredu irrad	1019	6.93	$360.42		$72.08
P9038	K	RBC irradiated	9505	1.82	$94.66		$18.93
P9039	K	RBC deglycerolized	9504	1.91	$99.34		$19.87
P9040	K	RBC leukoreduced irradiated	9504	1.91	$99.34		$19.87
P9041	K	Albumin (human),5%, 50ml	0961	0.47	$24.44		$4.89
P9043	K	Plasma protein fract,5%,50ml	0956	1.94	$100.90		$20.18
P9044	K	Cryoprecipitatereducedplasma	1009	0.66	$34.33		$6.87
P9045	K	Albumin (human), 5%, 250 ml	0963	2.37	$123.26		$24.65
P9046	K	Albumin (human), 25%, 20 ml	0964	0.50	$26.00		$5.20
P9047	K	Albumin (human), 25%, 50ml	0965	1.25	$65.01		$13.00
P9048	K	Plasmaprotein fract,5%,250ml	0966	9.71	$505.01		$101.00
P9050	K	Granulocytes, pheresis unit	9506	0.45	$23.40		$4.68
P9603	A	One-way allow prorated miles					
P9604	A	One-way allow prorated trip					
P9612	N	Catheterize for urine spec					
P9615	N	Urine specimen collect mult					
Q0035	X	Cardiokymography	0100	1.34	$69.69	$38.33	$13.94
Q0081	T	Infusion ther other than che	0120	1.81	$94.14	$25.42	$18.83
Q0083	S	Chemo by other than infusion	0116	0.85	$44.21		$8.84
Q0084	S	Chemotherapy by infusion	0117	3.87	$201.27	$52.33	$40.25
Q0085	S	Chemo by both infusion and o	0118	5.68	$295.41	$72.03	$59.08

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
Q0086	A	Physical therapy evaluation/					
Q0091	T	Obtaining screen pap smear	0191	0.22	$11.44	$3.32	$2.29
Q0092	N	Set up port xray equipment					
Q0111	A	Wet mounts/ w preparations					
Q0112	A	Potassium hydroxide preps					
Q0113	A	Pinworm examinations					
Q0114	A	Fern test					
Q0115	A	Post-coital mucous exam					
Q0136	K	Non esrd epoetin alpha inj	0733	0.19	$9.88		$1.98
Q0163	N	Diphenhydramine HCl 50mg					
Q0164	N	Prochlorperazine maleate 5mg					
Q0165	E	Prochlorperazine maleate10mg					
Q0166	N	Granisetron HCl 1 mg oral					
Q0167	N	Dronabinol 2.5mg oral					
Q0168	E	Dronabinol 5mg oral					
Q0169	N	Promethazine HCl 12.5mg oral					
Q0170	E	Promethazine HCl 25 mg oral					
Q0171	N	Chlorpromazine HCl 10mg oral					
Q0172	E	Chlorpromazine HCl 25mg oral					
Q0173	N	Trimethobenzamide HCl 250mg					
Q0174	N	Thiethylperazine maleate10mg					
Q0175	N	Perphenazine 4mg oral					
Q0176	E	Perphenazine 8mg oral					
Q0177	N	Hydroxyzine pamoate 25mg					
Q0178	E	Hydroxyzine pamoate 50mg					
Q0179	N	Ondansetron HCl 8mg oral					
Q0180	N	Dolasetron mesylate oral					
Q0181	E	Unspecified oral anti-emetic					
Q0183	N	Nonmetabolic active tissue					
Q0184	N	Metabolically active tissue					
Q0187	K	Factor viia recombinant	1409	13.53	$703.68		$140.74
Q1001	E	Ntiol category 1					
Q1002	E	Ntiol category 2					
Q1003	E	Ntiol category 3					
Q1004	E	Ntiol category 4					
Q1005	E	Ntiol category 5					
Q2001	N	Oral cabergoline 0.5 mg					
Q2002	N	Elliotts b solution per ml					
Q2003	N	Aprotinin, 10,000 kiu					
Q2004	N	Bladder calculi irrig sol					
Q2005	K	Corticorelin ovine triflutat	7024	4.62	$240.28		$48.06
Q2006	K	Digoxin immune fab (ovine)	7025	2.77	$144.06		$28.81
Q2007	N	Ethanolamine oleate 100 mg					
Q2008	N	Fomepizole, 15 mg					
Q2009	N	Fosphenytoin, 50 mg					
Q2010	N	Glatiramer acetate, per dose					
Q2011	K	Hemin, per 1 mg	7030	0.01	$.52		$.10
Q2012	N	Pegademase bovine, 25 iu					
Q2013	N	Pentastarch 10% solution					
Q2014	N	Sermorelin acetate, 0.5 mg					
Q2017	K	Teniposide, 50 mg	7035	1.24	$64.49		$12.90
Q2018	N	Urofollitropin, 75 iu					
Q2019	K	Basiliximab	1615	9.64	$501.37		$100.27
Q2020	E	Histrelin acetate					
Q2021	N	Lepirudin					
Q2022	K	VonWillebrandFactrCmplxperIU	1618	0.01	$.52		$.10
Q3001	N	Brachytherapy Radioelements					
Q3002	N	Gallium ga 67					
Q3003	K	Technetium tc99m bicisate	1620	2.80	$145.63		$29.13
Q3004	N	Xenon xe 133					
Q3005	N	Technetium tc99m mertiatide					
Q3006	N	Technetium tc99m glucepatate					
Q3007	N	Sodium phosphate p32					
Q3008	K	Indium 111-in pentetreotide	1625	4.57	$237.68		$47.54
Q3009	N	Technetium tc99m oxidronate					
Q3010	N	Technetium tc99mlabeledrbcs					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
Q3011	K	Chromic phosphate p32	1628	1.35	$70.21		$14.04
Q3012	N	Cyanocobalamin cobalt co57					
Q3014	A	Telehealth facility fee					
Q3017	E	ALS assessment					
Q3019	A	ALS emer trans no ALS serv					
Q3020	A	ALS nonemer trans no ALS se					
Q4001	A	Cast sup body cast plaster					
Q4002	A	Cast sup body cast fiberglas					
Q4003	A	Cast sup shoulder cast plstr					
Q4004	A	Cast sup shoulder cast fbrgl					
Q4005	A	Cast sup long arm adult plst					
Q4006	A	Cast sup long arm adult fbrg					
Q4007	A	Cast sup long arm ped plster					
Q4008	A	Cast sup long arm ped fbrgls					
Q4009	A	Cast sup sht arm adult plstr					
Q4010	A	Cast sup sht arm adult fbrgl					
Q4011	A	Cast sup sht arm ped plaster					
Q4012	A	Cast sup sht arm ped fbrglas					
Q4013	A	Cast sup gauntlet plaster					
Q4014	A	Cast sup gauntlet fiberglass					
Q4015	A	Cast sup gauntlet ped plster					
Q4016	A	Cast sup gauntlet ped fbrgls					
Q4017	A	Cast sup lng arm splint plst					
Q4018	A	Cast sup lng arm splint fbrg					
Q4019	A	Cast sup lng arm splnt ped p					
Q4020	A	Cast sup lng arm splnt ped f					
Q4021	A	Cast sup sht arm splint plst					
Q4022	A	Cast sup sht arm splint fbrg					
Q4023	A	Cast sup sht arm splnt ped p					
Q4024	A	Cast sup sht arm splnt ped f					
Q4025	A	Cast sup hip spica plaster					
Q4026	A	Cast sup hip spica fiberglas					
Q4027	A	Cast sup hip spica ped plstr					
Q4028	A	Cast sup hip spica ped fbrgl					
Q4029	A	Cast sup long leg plaster					
Q4030	A	Cast sup long leg fiberglass					
Q4031	A	Cast sup lng leg ped plaster					
Q4032	A	Cast sup lng leg ped fbrgls					
Q4033	A	Cast sup lng leg cylinder pl					
Q4034	A	Cast sup lng leg cylinder fb					
Q4035	A	Cast sup lngleg cylndr ped p					
Q4036	A	Cast sup lngleg cylndr ped f					
Q4037	A	Cast sup shrt leg plaster					
Q4038	A	Cast sup shrt leg fiberglass					
Q4039	A	Cast sup shrt leg ped plster					
Q4040	A	Cast sup shrt leg ped fbrgls					
Q4041	A	Cast sup lng leg splnt plstr					
Q4042	A	Cast sup lng leg splnt fbrgl					
Q4043	A	Cast sup lng leg splnt ped p					
Q4044	A	Cast sup lng leg splnt ped f					
Q4045	A	Cast sup sht leg splnt plstr					
Q4046	A	Cast sup sht leg splnt fbrgl					
Q4047	A	Cast sup sht leg splnt ped p					
Q4048	A	Cast sup sht leg splnt ped f					
Q4049	A	Finger splint, static					
Q4050	A	Cast supplies unlisted					
Q4051	A	Splint supplies misc					
Q9920	A	Epoetin with hct <= 20					
Q9921	A	Epoetin with hct = 21					
Q9922	A	Epoetin with hct = 22					
Q9923	A	Epoetin with hct = 23					
Q9924	A	Epoetin with hct = 24					
Q9925	A	Epoetin with hct = 25					
Q9926	A	Epoetin with hct = 26					
Q9927	A	Epoetin with hct = 27					
Q9928	A	Epoetin with hct = 28					

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CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
Q9929	A	Epoetin with hct = 29					
Q9930	A	Epoetin with hct = 30					
Q9931	A	Epoetin with hct = 31					
Q9932	A	Epoetin with hct = 32					
Q9933	A	Epoetin with hct = 33					
Q9934	A	Epoetin with hct = 34					
Q9935	A	Epoetin with hct = 35					
Q9936	A	Epoetin with hct = 36					
Q9937	A	Epoetin with hct = 37					
Q9938	A	Epoetin with hct = 38					
Q9939	A	Epoetin with hct = 39					
Q9940	A	Epoetin with hct >= 40					
R0070	N	Transport portable x-ray					
R0075	N	Transport port x-ray multipl					
R0076	N	Transport portable EKG					
T1015	E	Clinic service					
V2020	A	Vision svcs frames purchases					
V2025	E	Eyeglasses delux frames					
V2100	A	Lens spher single plano 4.00					
V2101	A	Single visn sphere 4.12-7.00					
V2102	A	Singl visn sphere 7.12-20.00					
V2103	A	Spherocylindr 4.00d/12-2.00d					
V2104	A	Spherocylindr 4.00d/2.12-4d					
V2105	A	Spherocylinder 4.00d/4.25-6d					
V2106	A	Spherocylinder 4.00d/>6.00d					
V2107	A	Spherocylinder 4.25d/12-2d					
V2108	A	Spherocylinder 4.25d/2.12-4d					
V2109	A	Spherocylinder 4.25d/4.25-6d					
V2110	A	Spherocylinder 4.25d/over 6d					
V2111	A	Spherocylindr 7.25d/.25-2.25					
V2112	A	Spherocylindr 7.25d/2.25-4d					
V2113	A	Spherocylindr 7.25d/4.25-6d					
V2114	A	Spherocylinder over 12.00d					
V2115	A	Lens lenticular bifocal					
V2116	A	Nonaspheric lens bifocal					
V2117	A	Aspheric lens bifocal					
V2118	A	Lens aniseikonic single					
V2199	A	Lens single vision not oth c					
V2200	A	Lens spher bifoc piano 4.00d					
V2201	A	Lens sphere bifocal 4.12-7.0					
V2202	A	Lens sphere bifocal 7.12-20.					
V2203	A	Lens sphcyl bifocal 4.00d/.1					
V2204	A	Lens sphcy bifocal 4.00d/2.1					
V2205	A	Lens sphcy bifocal 4.00d/4.2					
V2206	A	Lens sphcy bifocal 4.00d/ove					
V2207	A	Lens sphcy bifocal 4.25-7d/.					
V2208	A	Lens sphcy bifocal 4.25-7/2.					
V2209	A	Lens sphcy bifocal 4.25-7/4.					
V2210	A	Lens sphcy bifocal 4.25-7/ov					
V2211	A	Lens sphcy bifo 7.25-12/.25-					
V2212	A	Lens sphcyl bifo 7.25-12/2.2					
V2213	A	Lens sphcyl bifo 7.25-12/4.2					
V2214	A	Lens sphcyl bifocal over 12.					
V2215	A	Lens lenticular bifocal					
V2216	A	Lens lenticular nonaspheric					
V2217	A	Lens lenticular aspheric bif					
V2218	A	Lens aniseikonic bifocal					
V2219	A	Lens bifocal seg width over					
V2220	A	Lens bifocal add over 3.25d					
V2299	A	Lens bifocal speciality					
V2300	A	Lens sphere trifocal 4.00d					
V2301	A	Lens sphere trifocal 4.12-7.					
V2302	A	Lens sphere trifocal 7.12-20					
V2303	A	Lens sphcy trifocal 4.0/.12-					
V2304	A	Lens sphcy trifocal 4.0/2.25					
V2305	A	Lens sphcy trifocal 4.0/4.25					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
V2306	A	Lens sphcyl trifocal 4.00/>6					
V2307	A	Lens sphcy trifocal 4.25-7/.					
V2308	A	Lens sphc trifocal 4.25-7/2.					
V2309	A	Lens sphc trifocal 4.25-7/4.					
V2310	A	Lens sphc trifocal 4.25-7/>6					
V2311	A	Lens sphc trifo 7.25-12/.25-					
V2312	A	Lens sphc trifo 7.25-12/2.25					
V2313	A	Lens sphc trifo 7.25-12/4.25					
V2314	A	Lens sphcyl trifocal over 12					
V2315	A	Lens lenticular trifocal					
V2316	A	Lens lenticular nonaspheric					
V2317	A	Lens lenticular aspheric tri					
V2318	A	Lens aniseikonic trifocal					
V2319	A	Lens trifocal seg width > 28					
V2320	A	Lens trifocal add over 3.25d					
V2399	A	Lens trifocal speciality					
V2410	A	Lens variab asphericity sing					
V2430	A	Lens variable asphericity bi					
V2499	A	Variable asphericity lens					
V2500	A	Contact lens pmma spherical					
V2501	A	Cntct lens pmma-toric/prism					
V2502	A	Contact lens pmma bifocal					
V2503	A	Cntct lens pmma color vision					
V2510	A	Cntct gas permeable sphericl					
V2511	A	Cntct toric prism ballast					
V2512	A	Cntct lens gas permbl bifocl					
V2513	A	Contact lens extended wear					
V2520	A	Contact lens hydrophilic					
V2521	A	Cntct lens hydrophilic toric					
V2522	A	Cntct lens hydrophil bifocl					
V2523	A	Cntct lens hydrophil extend					
V2530	A	Contact lens gas impermeable					
V2531	A	Contact lens gas permeable					
V2599	A	Contact lens/es other type					
V2600	A	Hand held low vision aids					
V2610	A	Single lens spectacle mount					
V2615	A	Telescop/othr compound lens					
V2623	A	Plastic eye prosth custom					
V2624	A	Polishing artifical eye					
V2625	A	Enlargemnt of eye prosthesis					
V2626	A	Reduction of eye prosthesis					
V2627	A	Scleral cover shell					
V2628	A	Fabrication & fitting					
V2629	A	Prosthetic eye other type					
V2630	N	Anter chamber intraocul lens					
V2631	N	Iris support intraocir lens					
V2632	N	Post chmbr intraocular lens					
V2700	A	Balance lens					
V2710	A	Glass/plastic slab off prism					
V2715	A	Prism lens/es					
V2718	A	Fresnell prism press-on lens					
V2730	A	Special base curve					
V2740	A	Rose tint plastic					
V2741	A	Non-rose tint plastic					
V2742	A	Rose tint glass					
V2743	A	Non-rose tint glass					
V2744	A	Tint photochromatic lens/es					
V2750	A	Anti-reflective coating					
V2755	A	UV lens/es					
V2760	A	Scratch resistant coating					
V2770	A	Occluder lens/es					
V2780	A	Oversize lens/es					
V2781	E	Progressive lens per lens					
V2785	F	Corneal tissue processing					
V2790	N	Amniotic membrane					
V2799	A	Miscellaneous vision service					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
V5008	E	Hearing screening					
V5010	E	Assessment for hearing aid					
V5011	E	Hearing aid fitting/checking					
V5014	E	Hearing aid repair/modifying					
V5020	E	Conformity evaluation					
V5030	E	Body-worn hearing aid air					
V5040	E	Body-worn hearing aid bone					
V5050	E	Hearing aid monaural in ear					
V5060	E	Behind ear hearing aid					
V5070	E	Glasses air conduction					
V5080	E	Glasses bone conduction					
V5090	E	Hearing aid dispensing fee					
V5100	E	Body-worn bilat hearing aid					
V5110	E	Hearing aid dispensing fee					
V5120	E	Body-worn binaur hearing aid					
V5130	E	In ear binaural hearing aid					
V5140	E	Behind ear binaur hearing ai					
V5150	E	Glasses binaural hearing aid					
V5160	E	Dispensing fee binaural					
V5170	E	Within ear cros hearing aid					
V5180	E	Behind ear cros hearing aid					
V5190	E	Glasses cros hearing aid					
V5200	E	Cros hearing aid dispens fee					
V5210	E	In ear bicros hearing aid					
V5220	E	Behind ear bicros hearing ai					
V5230	E	Glasses bicros hearing aid					
V5240	E	Dispensing fee bicros					
V5241	E	Dispensing fee, monaural					
V5242	E	Hearing aid, monaural, cic					
V5243	E	Hearing aid, monaural, itc					
V5244	E	Hearing aid, prog, mon, cic					
V5245	E	Hearing aid, prog, mon, itc					
V5246	E	Hearing aid, prog, mon, ite					
V5247	E	Hearing aid, prog, mon, bte					
V5248	E	Hearing aid, binaural, cic					
V5249	E	Hearing aid, binaural, itc					
V5250	E	Hearing aid, prog, bin, cic					
V5251	E	Hearing aid, prog, bin, itc					
V5252	E	Hearing aid, prog, bin, ite					
V5253	E	Hearing aid, prog, bin, bte					
V5254	E	Hearing id, digit, mon, cic					
V5255	E	Hearing aid, digit, mon, itc					
V5256	E	Hearing aid, digit, mon, ite					
V5257	E	Hearing aid, digit, mon, bte					
V5258	E	Hearing aid, digit, bin, cic					
V5259	E	Hearing aid, digit, bin, itc					
V5260	E	Hearing aid, digit, bin, ite					
V5261	E	Hearing aid, digit, bin, bte					
V5262	E	Hearing aid, disp, monaural					
V5263	E	Hearing aid, disp, binaural					
V5264	E	Ear mold/insert					
V5265	E	Ear mold/insert, disp					
V5266	E	Battery for hearing device					
V5267	E	Hearing aid supply/accessory					
V5268	E	ALD Telephone Amplifier					
V5269	E	Alerting device, any type					
V5270	E	ALD, TV amplifier, any type					
V5271	E	ALD, TV caption decoder					
V5272	E	Tdd					
V5273	E	ALD for cochlear implant					
V5274	E	ALD unspecified					
V5275	E	Ear impression					
V5299	E	Hearing service					
V5336	E	Repair communication device					
V5362	A	Speech screening					
V5363	A	Language screening					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDER YEAR 2003—Continued

CPT/ HCPCS	Status indicator	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
V5364	A	Dysphagia screening					

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ADDENDUM D.—PAYMENT STATUS INDICATORS FOR THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM

Indicator	Service	Status
A	Ambulance	Ambulance Fee Schedule.
A	Clinical Diagnostic Laboratory Services.	Laboratory Fee Schedule.
A	Durable Medical Equipment, Prosthetics and Orthotics (excluding implanted DME and prosthetics).	DMEPOS Fee Schedule.
A	EPO for ESRD Patients.	National Rate.
A	Physical, Occupational and Speech Therapy.	Physician Fee Schedule.
A	Physician Services for ESRD Patients.	Physician Fee Schedule.
A	Screening Mammography.	Physician Fee Schedule.

ADDENDUM D.—PAYMENT STATUS INDICATORS FOR THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM—Continued

Indicator	Service	Status
C	Inpatient Procedures.	Not Payable under OPPS; Admit Patient; Bill as Inpatient.
D	Deleted Code	Deleted Effective Beginning of Calendar Year.
E	Non-Covered Items and Services, Codes not Reportable in Hospital Outpatient Settings.	Not Paid Under Medicare or When Performed in a Hospital Outpatient Setting.
F	Acquisition of Corneal Tissue.	Paid at Reasonable Cost.
G	Drug/Biological Pass-Through.	Paid Under OPPS; Separate APC Payment Includes Pass Through Amount.
H	Device Category Pass-Through.	Paid Under OPPS; Separate Cost Based Pass Through Payment.

ADDENDUM D.—PAYMENT STATUS INDICATORS FOR THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM—Continued

Indicator	Service	Status
K	Non Pass-Through Drug/Biological, Certain Brachytherapy seeds.	Paid Under OPPS; Separate APC.
N	Items and Services Packaged into APC Rate.	Paid under OPPS; Payment Is Packaged Into Payment for Other Services.
P	Partial Hospitalization.	Paid under OPPS; Per Diem APC.
S	Significant Procedure, Not Discounted When Multiple.	Paid Under OPPS; Separate APC.
T	Significant Procedure, Multiple Procedure Reduction Applies.	Paid Under OPPS; Separate APC.
V	Visit to Clinic or Emergency Department.	Paid Under OPPS; Separate PC.
X	Ancillary Service.	Paid Under OPPS; Separate APC

ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES

[Calender Year 2003]

CPT/ HCPCS	Status indicator	Description
0001T	C	Endovas repr abdo ao aneurys
0002T	C	Endovas repr abdo ao aneurys
0005T	C	Perc cath stent/brain cv art
0006T	C	Perc cath stent/brain cv art
0007T	C	Perc cath stent/brain cv art
00174	C	Anesth, pharyngeal surgery
00176	C	Anesth, pharyngeal surgery
00192	C	Anesth, facial bone surgery
00214	C	Anesth, skull drainage

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued
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CPT/ HCPCS	Status indicator	Description
00215	C	Anesth, skull repair/tract
0021T	C	Fetal oximetry, trnsvag/cerv
0024T	C	Transcath cardiac reduction
00404	C	Anesth, surgery of breast
00406	C	Anesth, surgery of breast
00452	C	Anesth, surgery of shoulder
00474	C	Anesth, surgery of rib(s)
00524	C	Anesth, chest drainage
00540	C	Anesth, chest surgery
00542	C	Anesth, release of lung
00544	C	Anesth, chest lining removal
00546	C	Anesth, lung,chest wall surg
00560	C	Anesth, open heart surgery
00562	C	Anesth, open heart surgery
00580	C	Anesth heart/lung transplant
00604	C	Anesth, sitting procedure
00622	C	Anesth, removal of nerves
00632	C	Anesth, removal of nerves
00634	C	Anesth for chemonucleolysis
00670	C	Anesth, spine, cord surgery
00792	C	Anesth, hemorr/excise liver
00794	C	Anesth, pancreas removal
00796	C	Anesth, for liver transplant
00802	C	Anesth, fat layer removal
00844	C	Anesth, pelvis surgery
00846	C	Anesth, hysterectomy
00848	C	Anesth, pelvic organ surg
00864	C	Anesth, removal of bladder
00865	C	Anesth, removal of prostate
00866	C	Anesth, removal of adrenal
00868	C	Anesth, kidney transplant
00882	C	Anesth, major vein ligation
00904	C	Anesth, perineal surgery
00908	C	Anesth, removal of prostate
00928	C	Anesth, removal of testis
00932	C	Anesth, amputation of penis
00934	C	Anesth, penis, nodes removal
00936	C	Anesth, penis, nodes removal
00944	C	Anesth, vaginal hysterectomy
01140	C	Anesth, amputation at pelvis
01150	C	Anesth, pelvic tumor surgery
01190	C	Anesth, pelvis nerve removal
01212	C	Anesth, hip disarticulation
01214	C	Anesth, hip arthroplasty
01232	C	Anesth, amputation of femur
01234	C	Anesth, radical femur surg
01272	C	Anesth, femoral artery surg
01274	C	Anesth, femoral embolectomy
01402	C	Anesth, knee arthroplasty
01404	C	Anesth, amputation at knee
01442	C	Anesth, knee artery surg
01444	C	Anesth, knee artery repair
01486	C	Anesth, ankle replacement
01502	C	Anesth, lwr leg embolectomy
01632	C	Anesth, surgery of shoulder
01634	C	Anesth, shoulder joint amput
01636	C	Anesth, forequarter amput
01638	C	Anesth, shoulder replacement
01652	C	Anesth, shoulder vessel surg
01654	C	Anesth, shoulder vessel surg
01656	C	Anesth, arm-leg vessel surg
01756	C	Anesth, radical humerus surg
01990	C	Support for organ donor
15756	C	Free muscle flap, microvasc
15757	C	Free skin flap, microvasc

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued
[Calender Year 2003]

CPT/ HCPCS	Status indicator	Description
15758	C	Free fascial flap, microvasc
16035	C	Incision of burn scab, initi
16036	C	Incise burn scab, addl incis
19200	C	Removal of breast
19220	C	Removal of breast
19271	C	Revision of chest wall
19272	C	Extensive chest wall surgery
19361	C	Breast reconstruction
19364	C	Breast reconstruction
19367	C	Breast reconstruction
19368	C	Breast reconstruction
19369	C	Breast reconstruction
20660	C	Apply,remove fixation device
20661	C	Application of head brace
20662	C	Application of pelvis brace
20663	C	Application of thigh brace
20664	C	Halo brace application
20802	C	Replantation, arm, complete
20805	C	Replant, forearm, complete
20808	C	Replantation hand, complete
20816	C	Replantation digit, complete
20822	C	Replantation digit, complete
20824	C	Replantation thumb, complete
20827	C	Replantation thumb, complete
20838	C	Replantation foot, complete
20930	C	Spinal bone allograft
20931	C	Spinal bone allograft
20936	C	Spinal bone autograft
20937	C	Spinal bone autograft
20938	C	Spinal bone autograft
20955	C	Fibula bone graft, microvasc
20956	C	Iliac bone graft, microvasc
20957	C	Mt bone graft, microvasc
20962	C	Other bone graft, microvasc
20969	C	Bone/skin graft, microvasc
20970	C	Bone/skin graft, iliac crest
20972	C	Bone/skin graft, metatarsal
20973	C	Bone/skin graft, great toe
21045	C	Extensive jaw surgery
21141	C	Reconstruct midface, lefort
21142	C	Reconstruct midface, lefort
21143	C	Reconstruct midface, lefort
21145	C	Reconstruct midface, lefort
21146	C	Reconstruct midface, lefort
21147	C	Reconstruct midface, lefort
21150	C	Reconstruct midface, lefort
21151	C	Reconstruct midface, lefort
21154	C	Reconstruct midface, lefort
21155	C	Reconstruct midface, lefort
21159	C	Reconstruct midface, lefort
21160	C	Reconstruct midface, lefort
21172	C	Reconstruct orbit/forehead
21175	C	Reconstruct orbit/forehead
21179	C	Reconstruct entire forehead
21180	C	Reconstruct entire forehead
21182	C	Reconstruct cranial bone
21183	C	Reconstruct cranial bone
21184	C	Reconstruct cranial bone
21188	C	Reconstruction of midface
21193	C	Reconst lwr jaw w/o graft
21194	C	Reconst lwr jaw w/graft
21195	C	Reconst lwr jaw w/o fixation
21196	C	Reconst lwr jaw w/fixation
21247	C	Reconstruct lower jaw bone
21255	C	Reconstruct lower jaw bone

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued
[Calender Year 2003]

CPT/ HCPCS	Status indicator	Description
21256	C	Reconstruction of orbit
21268	C	Revise eye sockets
21343	C	Treatment of sinus fracture
21344	C	Treatment of sinus fracture
21346	C	Treat nose/jaw fracture
21347	C	Treat nose/jaw fracture
21348	C	Treat nose/jaw fracture
21356	C	Treat cheek bone fracture
21360	C	Treat cheek bone fracture
21365	C	Treat cheek bone fracture
21366	C	Treat cheek bone fracture
21385	C	Treat eye socket fracture
21386	C	Treat eye socket fracture
21387	C	Treat eye socket fracture
21395	C	Treat eye socket fracture
21408	C	Treat eye socket fracture
21422	C	Treat mouth roof fracture
21423	C	Treat mouth roof fracture
21431	C	Treat craniofacial fracture
21432	C	Treat craniofacial fracture
21433	C	Treat craniofacial fracture
21435	C	Treat craniofacial fracture
21436	C	Treat craniofacial fracture
21495	C	Treat hyoid bone fracture
21510	C	Drainage of bone lesion
21557	C	Remove tumor, neck/chest
21615	C	Removal of rib
21616	C	Removal of rib and nerves
21620	C	Partial removal of sternum
21627	C	Sternal debridement
21630	C	Extensive sternum surgery
21632	C	Extensive sternum surgery
21705	C	Revision of neck muscle/rib
21740	C	Reconstruction of sternum
21750	C	Repair of sternum separation
21810	C	Treatment of rib fracture(s)
21825	C	Treat sternum fracture
22110	C	Remove part of neck vertebra
22112	C	Remove part, thorax vertebra
22114	C	Remove part, lumbar vertebra
22116	C	Remove extra spine segment
22210	C	Revision of neck spine
22212	C	Revision of thorax spine
22214	C	Revision of lumbar spine
22216	C	Revise, extra spine segment
22220	C	Revision of neck spine
22222	C	Revision of thorax spine
22224	C	Revision of lumbar spine
22226	C	Revise, extra spine segment
22318	C	Treat odontoid fx w/o graft
22319	C	Treat odontoid fx w/graft
22325	C	Treat spine fracture
22326	C	Treat neck spine fracture
22327	C	Treat thorax spine fracture
22328	C	Treat each add spine fx
22548	C	Neck spine fusion
22554	C	Neck spine fusion
22556	C	Thorax spine fusion
22558	C	Lumbar spine fusion
22585	C	Additional spinal fusion
22590	C	Spine & skull spinal fusion
22595	C	Neck spinal fusion
22600	C	Neck spine fusion
22610	C	Thorax spine fusion
22612	C	Lumbar spine fusion

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued
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CPT/ HCPCS	Status indicator	Description
22614	C	Spine fusion, extra segment
22630	C	Lumbar spine fusion
22632	C	Spine fusion, extra segment
22800	C	Fusion of spine
22802	C	Fusion of spine
22804	C	Fusion of spine
22808	C	Fusion of spine
22810	C	Fusion of spine
22812	C	Fusion of spine
22818	C	Kyphectomy, 1-2 segments
22819	C	Kyphectomy, 3 or more
22830	C	Exploration of spinal fusion
22840	C	Insert spine fixation device
22841	C	Insert spine fixation device
22842	C	Insert spine fixation device
22843	C	Insert spine fixation device
22844	C	Insert spine fixation device
22845	C	Insert spine fixation device
22846	C	Insert spine fixation device
22847	C	Insert spine fixation device
22848	C	Insert pelv fixation device
22849	C	Reinsert spinal fixation
22850	C	Remove spine fixation device
22851	C	Apply spine prosth device
22852	C	Remove spine fixation device
22855	C	Remove spine fixation device
23200	C	Removal of collar bone
23210	C	Removal of shoulder blade
23220	C	Partial removal of humerus
23221	C	Partial removal of humerus
23222	C	Partial removal of humerus
23332	C	Remove shoulder foreign body
23472	C	Reconstruct shoulder joint
23900	C	Amputation of arm & girdle
23920	C	Amputation at shoulder joint
24149	C	Radical resection of elbow
24900	C	Amputation of upper arm
24920	C	Amputation of upper arm
24930	C	Amputation follow-up surgery
24931	C	Amputate upper arm & implant
24940	C	Revision of upper arm
25900	C	Amputation of forearm
25905	C	Amputation of forearm
25909	C	Amputation follow-up surgery
25915	C	Amputation of forearm
25920	C	Amputate hand at wrist
25924	C	Amputation follow-up surgery
25927	C	Amputation of hand
25931	C	Amputation follow-up surgery
26551	C	Great toe-hand transfer
26553	C	Single transfer, toe-hand
26554	C	Double transfer, toe-hand
26556	C	Toe joint transfer
26992	C	Drainage of bone lesion
27005	C	Incision of hip tendon
27006	C	Incision of hip tendons
27025	C	Incision of hip/thigh fascia
27030	C	Drainage of hip joint
27036	C	Excision of hip joint/muscle
27054	C	Removal of hip joint lining
27070	C	Partial removal of hip bone
27071	C	Partial removal of hip bone
27075	C	Extensive hip surgery
27076	C	Extensive hip surgery
27077	C	Extensive hip surgery

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued
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CPT/ HCPCS	Status indicator	Description
27078	C	Extensive hip surgery
27079	C	Extensive hip surgery
27090	C	Removal of hip prosthesis
27091	C	Removal of hip prosthesis
27120	C	Reconstruction of hip socket
27122	C	Reconstruction of hip socket
27125	C	Partial hip replacement
27130	C	Total hip arthroplasty
27132	C	Total hip arthroplasty
27134	C	Revise hip joint replacement
27137	C	Revise hip joint replacement
27138	C	Revise hip joint replacement
27140	C	Transplant femur ridge
27146	C	Incision of hip bone
27147	C	Revision of hip bone
27151	C	Incision of hip bones
27156	C	Revision of hip bones
27158	C	Revision of pelvis
27161	C	Incision of neck of femur
27165	C	Incision/fixation of femur
27170	C	Repair/graft femur head/neck
27175	C	Treat slipped epiphysis
27176	C	Treat slipped epiphysis
27177	C	Treat slipped epiphysis
27178	C	Treat slipped epiphysis
27179	C	Revise head/neck of femur
27181	C	Treat slipped epiphysis
27185	C	Revision of femur epiphysis
27187	C	Reinforce hip bones
27215	C	Treat pelvic fracture(s)
27217	C	Treat pelvic ring fracture
27218	C	Treat pelvic ring fracture
27222	C	Treat hip socket fracture
27226	C	Treat hip wall fracture
27227	C	Treat hip fracture(s)
27228	C	Treat hip fracture(s)
27232	C	Treat thigh fracture
27236	C	Treat thigh fracture
27240	C	Treat thigh fracture
27244	C	Treat thigh fracture
27245	C	Treat thigh fracture
27248	C	Treat thigh fracture
27253	C	Treat hip dislocation
27254	C	Treat hip dislocation
27258	C	Treat hip dislocation
27259	C	Treat hip dislocation
27280	C	Fusion of sacroiliac joint
27282	C	Fusion of pubic bones
27284	C	Fusion of hip joint
27286	C	Fusion of hip joint
27290	C	Amputation of leg at hip
27295	C	Amputation of leg at hip
27303	C	Drainage of bone lesion
27365	C	Extensive leg surgery
27445	C	Revision of knee joint
27447	C	Total knee arthroplasty
27448	C	Incision of thigh
27450	C	Incision of thigh
27454	C	Realignment of thigh bone
27455	C	Realignment of knee
27457	C	Realignment of knee
27465	C	Shortening of thigh bone
27466	C	Lengthening of thigh bone
27468	C	Shorten/lengthen thighs
27470	C	Repair of thigh

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued
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CPT/ HCPCS	Status indicator	Description
27472	C	Repair/graft of thigh
27475	C	Surgery to stop leg growth
27477	C	Surgery to stop leg growth
27479	C	Surgery to stop leg growth
27485	C	Surgery to stop leg growth
27486	C	Revise/replace knee joint
27487	C	Revise/replace knee joint
27488	C	Removal of knee prosthesis
27495	C	Reinforce thigh
27506	C	Treatment of thigh fracture
27507	C	Treatment of thigh fracture
27511	C	Treatment of thigh fracture
27513	C	Treatment of thigh fracture
27514	C	Treatment of thigh fracture
27519	C	Treat thigh fx growth plate
27535	C	Treat knee fracture
27536	C	Treat knee fracture
27540	C	Treat knee fracture
27556	C	Treat knee dislocation
27557	C	Treat knee dislocation
27558	C	Treat knee dislocation
27580	C	Fusion of knee
27590	C	Amputate leg at thigh
27591	C	Amputate leg at thigh
27592	C	Amputate leg at thigh
27596	C	Amputation follow-up surgery
27598	C	Amputate lower leg at knee
27645	C	Extensive lower leg surgery
27646	C	Extensive lower leg surgery
27702	C	Reconstruct ankle joint
27703	C	Reconstruction, ankle joint
27712	C	Realignment of lower leg
27715	C	Revision of lower leg
27720	C	Repair of tibia
27722	C	Repair/graft of tibia
27724	C	Repair/graft of tibia
27725	C	Repair of lower leg
27727	C	Repair of lower leg
27880	C	Amputation of lower leg
27881	C	Amputation of lower leg
27882	C	Amputation of lower leg
27886	C	Amputation follow-up surgery
27888	C	Amputation of foot at ankle
28800	C	Amputation of midfoot
28805	C	Amputation thru metatarsal
31225	C	Removal of upper jaw
31230	C	Removal of upper jaw
31290	C	Nasal/sinus endoscopy, surg
31291	C	Nasal/sinus endoscopy, surg
31292	C	Nasal/sinus endoscopy, surg
31293	C	Nasal/sinus endoscopy, surg
31294	C	Nasal/sinus endoscopy, surg
31360	C	Removal of larynx
31365	C	Removal of larynx
31367	C	Partial removal of larynx
31368	C	Partial removal of larynx
31370	C	Partial removal of larynx
31375	C	Partial removal of larynx
31380	C	Partial removal of larynx
31382	C	Partial removal of larynx
31390	C	Removal of larynx & pharynx
31395	C	Reconstruct larynx & pharynx
31584	C	Treat larynx fracture
31587	C	Revision of larynx
31725	C	Clearance of airways

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CPT/ HCPCS	Status indicator	Description
31760	C	Repair of windpipe
31766	C	Reconstruction of windpipe
31770	C	Repair/graft of bronchus
31775	C	Reconstruct bronchus
31780	C	Reconstruct windpipe
31781	C	Reconstruct windpipe
31786	C	Remove windpipe lesion
31800	C	Repair of windpipe injury
31805	C	Repair of windpipe injury
32035	C	Exploration of chest
32036	C	Exploration of chest
32095	C	Biopsy through chest wall
32100	C	Exploration/biopsy of chest
32110	C	Explore/repair chest
32120	C	Re-exploration of chest
32124	C	Explore chest free adhesions
32140	C	Removal of lung lesion(s)
32141	C	Remove/treat lung lesions
32150	C	Removal of lung lesion(s)
32151	C	Remove lung foreign body
32160	C	Open chest heart massage
32200	C	Drain, open, lung lesion
32215	C	Treat chest lining
32220	C	Release of lung
32225	C	Partial release of lung
32310	C	Removal of chest lining
32320	C	Free/remove chest lining
32402	C	Open biopsy chest lining
32440	C	Removal of lung
32442	C	Sleeve pneumonectomy
32445	C	Removal of lung
32480	C	Partial removal of lung
32482	C	Bilobectomy
32484	C	Segmentectomy
32486	C	Sleeve lobectomy
32488	C	Completion pneumonectomy
32491	C	Lung volume reduction
32500	C	Partial removal of lung
32501	C	Repair bronchus add-on
32520	C	Remove lung & revise chest
32522	C	Remove lung & revise chest
32525	C	Remove lung & revise chest
32540	C	Removal of lung lesion
32650	C	Thoracoscopy, surgical
32651	C	Thoracoscopy, surgical
32652	C	Thoracoscopy, surgical
32653	C	Thoracoscopy, surgical
32654	C	Thoracoscopy, surgical
32655	C	Thoracoscopy, surgical
32656	C	Thoracoscopy, surgical
32657	C	Thoracoscopy, surgical
32658	C	Thoracoscopy, surgical
32659	C	Thoracoscopy, surgical
32660	C	Thoracoscopy, surgical
32661	C	Thoracoscopy, surgical
32662	C	Thoracoscopy, surgical
32663	C	Thoracoscopy, surgical
32664	C	Thoracoscopy, surgical
32665	C	Thoracoscopy, surgical
32800	C	Repair lung hernia
32810	C	Close chest after drainage
32815	C	Close bronchial fistula
32820	C	Reconstruct injured chest
32850	C	Donor pneumonectomy
32851	C	Lung transplant, single

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CPT/ HCPCS	Status indicator	Description
32852	C	Lung transplant with bypass
32853	C	Lung transplant, double
32854	C	Lung transplant with bypass
32900	C	Removal of rib(s)
32905	C	Revise & repair chest wall
32906	C	Revise & repair chest wall
32940	C	Revision of lung
32997	C	Total lung lavage
33015	C	Incision of heart sac
33020	C	Incision of heart sac
33025	C	Incision of heart sac
33030	C	Partial removal of heart sac
33031	C	Partial removal of heart sac
33050	C	Removal of heart sac lesion
33120	C	Removal of heart lesion
33130	C	Removal of heart lesion
33140	C	Heart revascularize (tmr)
33141	C	Heart tmr w/other procedure
33200	C	Insertion of heart pacemaker
33201	C	Insertion of heart pacemaker
33236	C	Remove electrode/thoracotomy
33237	C	Remove electrode/thoracotomy
33238	C	Remove electrode/thoracotomy
33243	C	Remove eltrd/thoracotomy
33245	C	Insert epic eltrd pace-defib
33246	C	Insert epic eltrd/generator
33250	C	Ablate heart dysrhythm focus
33251	C	Ablate heart dysrhythm focus
33253	C	Reconstruct atria
33261	C	Ablate heart dysrhythm focus
33300	C	Repair of heart wound
33305	C	Repair of heart wound
33310	C	Exploratory heart surgery
33315	C	Exploratory heart surgery
33320	C	Repair major blood vessel(s)
33321	C	Repair major vessel
33322	C	Repair major blood vessel(s)
33330	C	Insert major vessel graft
33332	C	Insert major vessel graft
33335	C	Insert major vessel graft
33400	C	Repair of aortic valve
33401	C	Valvuloplasty, open
33403	C	Valvuloplasty, w/cp bypass
33404	C	Prepare heart-aorta conduit
33405	C	Replacement of aortic valve
33406	C	Replacement of aortic valve
33410	C	Replacement of aortic valve
33411	C	Replacement of aortic valve
33412	C	Replacement of aortic valve
33413	C	Replacement of aortic valve
33414	C	Repair of aortic valve
33415	C	Revision, subvalvular tissue
33416	C	Revise ventricle muscle
33417	C	Repair of aortic valve
33420	C	Revision of mitral valve
33422	C	Revision of mitral valve
33425	C	Repair of mitral valve
33426	C	Repair of mitral valve
33427	C	Repair of mitral valve
33430	C	Replacement of mitral valve
33460	C	Revision of tricuspid valve
33463	C	Valvuloplasty, tricuspid
33464	C	Valvuloplasty, tricuspid
33465	C	Replace tricuspid valve
33468	C	Revision of tricuspid valve

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CPT/ HCPCS	Status indicator	Description
33470	C	Revision of pulmonary valve
33471	C	Valvotomy, pulmonary valve
33472	C	Revision of pulmonary valve
33474	C	Revision of pulmonary valve
33475	C	Replacement, pulmonary valve
33476	C	Revision of heart chamber
33478	C	Revision of heart chamber
33496	C	Repair, prosth valve clot
33500	C	Repair heart vessel fistula
33501	C	Repair heart vessel fistula
33502	C	Coronary artery correction
33503	C	Coronary artery graft
33504	C	Coronary artery graft
33505	C	Repair artery w/tunnel
33506	C	Repair artery, translocation
33510	C	CABG, vein, single
33511	C	CABG, vein, two
33512	C	CABG, vein, three
33513	C	CABG, vein, four
33514	C	CABG, vein, five
33516	C	Cabg, vein, six or more
33517	C	CABG, artery-vein, single
33518	C	CABG, artery-vein, two
33519	C	CABG, artery-vein, three
33521	C	CABG, artery-vein, four
33522	C	CABG, artery-vein, five
33523	C	Cabg, art-vein, six or more
33530	C	Coronary artery, bypass/reop
33533	C	CABG, arterial, single
33534	C	CABG, arterial, two
33535	C	CABG, arterial, three
33536	C	Cabg, arterial, four or more
33542	C	Removal of heart lesion
33545	C	Repair of heart damage
33572	C	Open coronary endarterectomy
33600	C	Closure of valve
33602	C	Closure of valve
33606	C	Anastomosis/artery-aorta
33608	C	Repair anomaly w/conduit
33610	C	Repair by enlargement
33611	C	Repair double ventricle
33612	C	Repair double ventricle
33615	C	Repair, modified fontan
33617	C	Repair single ventricle
33619	C	Repair single ventricle
33641	C	Repair heart septum defect
33645	C	Revision of heart veins
33647	C	Repair heart septum defects
33660	C	Repair of heart defects
33665	C	Repair of heart defects
33670	C	Repair of heart chambers
33681	C	Repair heart septum defect
33684	C	Repair heart septum defect
33688	C	Repair heart septum defect
33690	C	Reinforce pulmonary artery
33692	C	Repair of heart defects
33694	C	Repair of heart defects
33697	C	Repair of heart defects
33702	C	Repair of heart defects
33710	C	Repair of heart defects
33720	C	Repair of heart defect
33722	C	Repair of heart defect
33730	C	Repair heart-vein defect(s)
33732	C	Repair heart-vein defect
33735	C	Revision of heart chamber

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CPT/ HCPCS	Status indicator	Description
33736	C	Revision of heart chamber
33737	C	Revision of heart chamber
33750	C	Major vessel shunt
33755	C	Major vessel shunt
33762	C	Major vessel shunt
33764	C	Major vessel shunt & graft
33766	C	Major vessel shunt
33767	C	Major vessel shunt
33770	C	Repair great vessels defect
33771	C	Repair great vessels defect
33774	C	Repair great vessels defect
33775	C	Repair great vessels defect
33776	C	Repair great vessels defect
33777	C	Repair great vessels defect
33778	C	Repair great vessels defect
33779	C	Repair great vessels defect
33780	C	Repair great vessels defect
33781	C	Repair great vessels defect
33786	C	Repair arterial trunk
33788	C	Revision of pulmonary artery
33800	C	Aortic suspension
33802	C	Repair vessel defect
33803	C	Repair vessel defect
33813	C	Repair septal defect
33814	C	Repair septal defect
33820	C	Revise major vessel
33822	C	Revise major vessel
33824	C	Revise major vessel
33840	C	Remove aorta constriction
33845	C	Remove aorta constriction
33851	C	Remove aorta constriction
33852	C	Repair septal defect
33853	C	Repair septal defect
33860	C	Ascending aortic graft
33861	C	Ascending aortic graft
33863	C	Ascending aortic graft
33870	C	Transverse aortic arch graft
33875	C	Thoracic aortic graft
33877	C	Thoracoabdominal graft
33910	C	Remove lung artery emboli
33915	C	Remove lung artery emboli
33916	C	Surgery of great vessel
33917	C	Repair pulmonary artery
33918	C	Repair pulmonary atresia
33919	C	Repair pulmonary atresia
33920	C	Repair pulmonary atresia
33922	C	Transect pulmonary artery
33924	C	Remove pulmonary shunt
33930	C	Removal of donor heart/lung
33935	C	Transplantation, heart/lung
33940	C	Removal of donor heart
33945	C	Transplantation of heart
33960	C	External circulation assist
33961	C	External circulation assist
33967	C	Insert ia percut device
33968	C	Remove aortic assist device
33970	C	Aortic circulation assist
33971	C	Aortic circulation assist
33973	C	Insert balloon device
33974	C	Remove intra-aortic balloon
33975	C	Implant ventricular device
33976	C	Implant ventricular device
33977	C	Remove ventricular device
33978	C	Remove ventricular device
33979	C	Insert intracorporeal device

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CPT/ HCPCS	Status indicator	Description
33980	C	Remove intracorporeal device
34001	C	Removal of artery clot
34051	C	Removal of artery clot
34151	C	Removal of artery clot
34401	C	Removal of vein clot
34451	C	Removal of vein clot
34502	C	Reconstruct vena cava
34800	C	Endovasc abdo repair w/tube
34802	C	Endovasc abdo repr w/device
34804	C	Endovasc abdo repr w/device
34808	C	Endovasc abdo occlud device
34812	C	Xpose for endoprosth, aortic
34813	C	Xpose for endoprosth, femorl
34820	C	Xpose for endoprosth, iliac
34825	C	Endovasc extend prosth, init
34826	C	Endovasc exten prosth, addl
34830	C	Open aortic tube prosth repr
34831	C	Open aortoiliac prosth repr
34832	C	Open aortofemor prosth repr
35001	C	Repair defect of artery
35002	C	Repair artery rupture, neck
35005	C	Repair defect of artery
35013	C	Repair artery rupture, arm
35021	C	Repair defect of artery
35022	C	Repair artery rupture, chest
35045	C	Repair defect of arm artery
35081	C	Repair defect of artery
35082	C	Repair artery rupture, aorta
35091	C	Repair defect of artery
35092	C	Repair artery rupture, aorta
35102	C	Repair defect of artery
35103	C	Repair artery rupture, groin
35111	C	Repair defect of artery
35112	C	Repair artery rupture,spleen
35121	C	Repair defect of artery
35122	C	Repair artery rupture, belly
35131	C	Repair defect of artery
35132	C	Repair artery rupture, groin
35141	C	Repair defect of artery
35142	C	Repair artery rupture, thigh
35151	C	Repair defect of artery
35152	C	Repair artery rupture, knee
35161	C	Repair defect of artery
35162	C	Repair artery rupture
35182	C	Repair blood vessel lesion
35189	C	Repair blood vessel lesion
35211	C	Repair blood vessel lesion
35218	C	Repair blood vessel lesion
35221	C	Repair blood vessel lesion
35241	C	Repair blood vessel lesion
35246	C	Repair blood vessel lesion
35251	C	Repair blood vessel lesion
35271	C	Repair blood vessel lesion
35276	C	Repair blood vessel lesion
35281	C	Repair blood vessel lesion
35301	C	Rechanneling of artery
35311	C	Rechanneling of artery
35331	C	Rechanneling of artery
35341	C	Rechanneling of artery
35351	C	Rechanneling of artery
35355	C	Rechanneling of artery
35361	C	Rechanneling of artery
35363	C	Rechanneling of artery
35371	C	Rechanneling of artery
35372	C	Rechanneling of artery

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CPT/ HCPCS	Status indicator	Description
35381	C	Rechanneling of artery
35390	C	Reoperation, carotid add-on
35400	C	Angioscopy
35450	C	Repair arterial blockage
35452	C	Repair arterial blockage
35454	C	Repair arterial blockage
35456	C	Repair arterial blockage
35480	C	Atherectomy, open
35481	C	Atherectomy, open
35482	C	Atherectomy, open
35483	C	Atherectomy, open
35501	C	Artery bypass graft
35506	C	Artery bypass graft
35507	C	Artery bypass graft
35508	C	Artery bypass graft
35509	C	Artery bypass graft
35511	C	Artery bypass graft
35515	C	Artery bypass graft
35516	C	Artery bypass graft
35518	C	Artery bypass graft
35521	C	Artery bypass graft
35526	C	Artery bypass graft
35531	C	Artery bypass graft
35533	C	Artery bypass graft
35536	C	Artery bypass graft
35541	C	Artery bypass graft
35546	C	Artery bypass graft
35548	C	Artery bypass graft
35549	C	Artery bypass graft
35551	C	Artery bypass graft
35556	C	Artery bypass graft
35558	C	Artery bypass graft
35560	C	Artery bypass graft
35563	C	Artery bypass graft
35565	C	Artery bypass graft
35566	C	Artery bypass graft
35571	C	Artery bypass graft
35582	C	Vein bypass graft
35583	C	Vein bypass graft
35585	C	Vein bypass graft
35587	C	Vein bypass graft
35600	C	Harvest artery for cabg
35601	C	Artery bypass graft
35606	C	Artery bypass graft
35612	C	Artery bypass graft
35616	C	Artery bypass graft
35621	C	Artery bypass graft
35623	C	Bypass graft, not vein
35626	C	Artery bypass graft
35631	C	Artery bypass graft
35636	C	Artery bypass graft
35641	C	Artery bypass graft
35642	C	Artery bypass graft
35645	C	Artery bypass graft
35646	C	Artery bypass graft
35647	C	Artery bypass graft
35650	C	Artery bypass graft
35651	C	Artery bypass graft
35654	C	Artery bypass graft
35656	C	Artery bypass graft
35661	C	Artery bypass graft
35663	C	Artery bypass graft
35665	C	Artery bypass graft
35666	C	Artery bypass graft
35671	C	Artery bypass graft

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CPT/ HCPCS	Status indicator	Description
35681	C	Composite bypass graft
35682	C	Composite bypass graft
35683	C	Composite bypass graft
35691	C	Arterial transposition
35693	C	Arterial transposition
35694	C	Arterial transposition
35695	C	Arterial transposition
35700	C	Reoperation, bypass graft
35701	C	Exploration, carotid artery
35721	C	Exploration, femoral artery
35741	C	Exploration popliteal artery
35800	C	Explore neck vessels
35820	C	Explore chest vessels
35840	C	Explore abdominal vessels
35870	C	Repair vessel graft defect
35901	C	Excision, graft, neck
35905	C	Excision, graft, thorax
35907	C	Excision, graft, abdomen
36510	C	Insertion of catheter, vein
36660	C	Insertion catheter, artery
36822	C	Insertion of cannula(s)
36823	C	Insertion of cannula(s)
37140	C	Revision of circulation
37145	C	Revision of circulation
37160	C	Revision of circulation
37180	C	Revision of circulation
37181	C	Splice spleen/kidney veins
37195	C	Thrombolytic therapy, stroke
37616	C	Ligation of chest artery
37617	C	Ligation of abdomen artery
37618	C	Ligation of extremity artery
37660	C	Revision of major vein
37788	C	Revascularization, penis
38100	C	Removal of spleen, total
38101	C	Removal of spleen, partial
38102	C	Removal of spleen, total
38115	C	Repair of ruptured spleen
38380	C	Thoracic duct procedure
38381	C	Thoracic duct procedure
38382	C	Thoracic duct procedure
38562	C	Removal, pelvic lymph nodes
38564	C	Removal, abdomen lymph nodes
38724	C	Removal of lymph nodes, neck
38746	C	Remove thoracic lymph nodes
38747	C	Remove abdominal lymph nodes
38765	C	Remove groin lymph nodes
38770	C	Remove pelvis lymph nodes
38780	C	Remove abdomen lymph nodes
39000	C	Exploration of chest
39010	C	Exploration of chest
39200	C	Removal chest lesion
39220	C	Removal chest lesion
39499	C	Chest procedure
39501	C	Repair diaphragm laceration
39502	C	Repair paraesophageal hernia
39503	C	Repair of diaphragm hernia
39520	C	Repair of diaphragm hernia
39530	C	Repair of diaphragm hernia
39531	C	Repair of diaphragm hernia
39540	C	Repair of diaphragm hernia
39541	C	Repair of diaphragm hernia
39545	C	Revision of diaphragm
39560	C	Resect diaphragm, simple
39561	C	Resect diaphragm, complex
39599	C	Diaphragm surgery procedure

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CPT/ HCPCS	Status indicator	Description
41130	C	Partial removal of tongue
41135	C	Tongue and neck surgery
41140	C	Removal of tongue
41145	C	Tongue removal, neck surgery
41150	C	Tongue, mouth, jaw surgery
41153	C	Tongue, mouth, neck surgery
41155	C	Tongue, jaw, & neck surgery
42426	C	Excise parotid gland/lesion
42845	C	Extensive surgery of throat
42894	C	Revision of pharyngeal walls
42953	C	Repair throat, esophagus
42961	C	Control throat bleeding
42971	C	Control nose/throat bleeding
43045	C	Incision of esophagus
43100	C	Excision of esophagus lesion
43101	C	Excision of esophagus lesion
43107	C	Removal of esophagus
43108	C	Removal of esophagus
43112	C	Removal of esophagus
43113	C	Removal of esophagus
43116	C	Partial removal of esophagus
43117	C	Partial removal of esophagus
43118	C	Partial removal of esophagus
43121	C	Partial removal of esophagus
43122	C	Partial removal of esophagus
43123	C	Partial removal of esophagus
43124	C	Removal of esophagus
43135	C	Removal of esophagus pouch
43300	C	Repair of esophagus
43305	C	Repair esophagus and fistula
43310	C	Repair of esophagus
43312	C	Repair esophagus and fistula
43313	C	Esophagoplasty congential
43314	C	Tracheo-esophagoplasty cong
43320	C	Fuse esophagus & stomach
43324	C	Revise esophagus & stomach
43325	C	Revise esophagus & stomach
43326	C	Revise esophagus & stomach
43330	C	Repair of esophagus
43331	C	Repair of esophagus
43340	C	Fuse esophagus & intestine
43341	C	Fuse esophagus & intestine
43350	C	Surgical opening, esophagus
43351	C	Surgical opening, esophagus
43352	C	Surgical opening, esophagus
43360	C	Gastrointestinal repair
43361	C	Gastrointestinal repair
43400	C	Ligate esophagus veins
43401	C	Esophagus surgery for veins
43405	C	Ligate/staple esophagus
43410	C	Repair esophagus wound
43415	C	Repair esophagus wound
43420	C	Repair esophagus opening
43425	C	Repair esophagus opening
43460	C	Pressure treatment esophagus
43496	C	Free jejunum flap, microvasc
43500	C	Surgical opening of stomach
43501	C	Surgical repair of stomach
43502	C	Surgical repair of stomach
43510	C	Surgical opening of stomach
43520	C	Incision of pyloric muscle
43605	C	Biopsy of stomach
43610	C	Excision of stomach lesion
43611	C	Excision of stomach lesion
43620	C	Removal of stomach

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CPT/ HCPCS	Status indicator	Description
43621	C	Removal of stomach
43622	C	Removal of stomach
43631	C	Removal of stomach, partial
43632	C	Removal of stomach, partial
43633	C	Removal of stomach, partial
43634	C	Removal of stomach, partial
43635	C	Removal of stomach, partial
43638	C	Removal of stomach, partial
43639	C	Removal of stomach, partial
43640	C	Vagotomy & pylorus repair
43641	C	Vagotomy & pylorus repair
43800	C	Reconstruction of pylorus
43810	C	Fusion of stomach and bowel
43820	C	Fusion of stomach and bowel
43825	C	Fusion of stomach and bowel
43832	C	Place gastrostomy tube
43840	C	Repair of stomach lesion
43842	C	Gastroplasty for obesity
43843	C	Gastroplasty for obesity
43846	C	Gastric bypass for obesity
43847	C	Gastric bypass for obesity
43848	C	Revision gastroplasty
43850	C	Revise stomach-bowel fusion
43855	C	Revise stomach-bowel fusion
43860	C	Revise stomach-bowel fusion
43865	C	Revise stomach-bowel fusion
43880	C	Repair stomach-bowel fistula
44005	C	Freeing of bowel adhesion
44010	C	Incision of small bowel
44015	C	Insert needle cath bowel
44020	C	Explore small intestine
44021	C	Decompress small bowel
44025	C	Incision of large bowel
44050	C	Reduce bowel obstruction
44055	C	Correct malrotation of bowel
44110	C	Excise intestine lesion(s)
44111	C	Excision of bowel lesion(s)
44120	C	Removal of small intestine
44121	C	Removal of small intestine
44125	C	Removal of small intestine
44126	C	Enterectomy w/taper, cong
44127	C	Enterectomy w/o taper, cong
44128	C	Enterectomy cong, add-on
44130	C	Bowel to bowel fusion
44132	C	Enterectomy, cadaver donor
44133	C	Enterectomy, live donor
44135	C	Intestine transpint, cadaver
44136	C	Intestine transplant, live
44139	C	Mobilization of colon
44140	C	Partial removal of colon
44141	C	Partial removal of colon
44143	C	Partial removal of colon
44144	C	Partial removal of colon
44145	C	Partial removal of colon
44146	C	Partial removal of colon
44147	C	Partial removal of colon
44150	C	Removal of colon
44151	C	Removal of colon/ileostomy
44152	C	Removal of colon/ileostomy
44153	C	Removal of colon/ileostomy
44155	C	Removal of colon/ileostomy
44156	C	Removal of colon/ileostomy
44160	C	Removal of colon
44202	C	Lap resect s/intestine singl
44203	C	Lap resect s/intestine, addl

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CPT/ HCPCS	Status indicator	Description
44204	C	Laparo partial colectomy
44205	C	Lap colectomy part w/ileum
44300	C	Open bowel to skin
44310	C	Ileostomy/jejunostomy
44314	C	Revision of ileostomy
44316	C	Devise bowel pouch
44320	C	Colostomy
44322	C	Colostomy with biopsies
44345	C	Revision of colostomy
44346	C	Revision of colostomy
44602	C	Suture, small intestine
44603	C	Suture, small intestine
44604	C	Suture, large intestine
44605	C	Repair of bowel lesion
44615	C	Intestinal stricturoplasty
44620	C	Repair bowel opening
44625	C	Repair bowel opening
44626	C	Repair bowel opening
44640	C	Repair bowel-skin fistula
44650	C	Repair bowel fistula
44660	C	Repair bowel-bladder fistula
44661	C	Repair bowel-bladder fistula
44680	C	Surgical revision, intestine
44700	C	Suspend bowel w/prosthesis
44800	C	Excision of bowel pouch
44820	C	Excision of mesentery lesion
44850	C	Repair of mesentery
44899	C	Bowel surgery procedure
44900	C	Drain app abscess, open
44901	C	Drain app abscess, percut
44950	C	Appendectomy
44955	C	Appendectomy add-on
44960	C	Appendectomy
45110	C	Removal of rectum
45111	C	Partial removal of rectum
45112	C	Removal of rectum
45113	C	Partial proctectomy
45114	C	Partial removal of rectum
45116	C	Partial removal of rectum
45119	C	Remove rectum w/reservoir
45120	C	Removal of rectum
45121	C	Removal of rectum and colon
45123	C	Partial proctectomy
45126	C	Pelvic exenteration
45130	C	Excision of rectal prolapse
45135	C	Excision of rectal prolapse
45136	C	Excise ileoanal reservoir
45540	C	Correct rectal prolapse
45541	C	Correct rectal prolapse
45550	C	Repair rectum/remove sigmoid
45562	C	Exploration/repair of rectum
45563	C	Exploration/repair of rectum
45800	C	Repair rect/bladder fistula
45805	C	Repair fistula w/colostomy
45820	C	Repair rectourethral fistula
45825	C	Repair fistula w/colostomy
46705	C	Repair of anal stricture
46715	C	Repair of anovaginal fistula
46716	C	Repair of anovaginal fistula
46730	C	Construction of absent anus
46735	C	Construction of absent anus
46740	C	Construction of absent anus
46742	C	Repair of imperforated anus
46744	C	Repair of cloacal anomaly
46746	C	Repair of cloacal anomaly

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CPT/ HCPCS	Status indicator	Description
46748	C	Repair of cloacal anomaly
46751	C	Repair of anal sphincter
47010	C	Open drainage, liver lesion
47015	C	Inject/aspirate liver cyst
47100	C	Wedge biopsy of liver
47120	C	Partial removal of liver
47122	C	Extensive removal of liver
47125	C	Partial removal of liver
47130	C	Partial removal of liver
47133	C	Removal of donor liver
47134	C	Partial removal, donor liver
47135	C	Transplantation of liver
47136	C	Transplantation of liver
47300	C	Surgery for liver lesion
47350	C	Repair liver wound
47360	C	Repair liver wound
47361	C	Repair liver wound
47362	C	Repair liver wound
47380	C	Open ablate liver tumor rf
47381	C	Open ablate liver tumor cryo
47400	C	Incision of liver duct
47420	C	Incision of bile duct
47425	C	Incision of bile duct
47460	C	Incise bile duct sphincter
47480	C	Incision of gallbladder
47550	C	Bile duct endoscopy add-on
47570	C	Laparo cholecystoenterostomy
47600	C	Removal of gallbladder
47605	C	Removal of gallbladder
47610	C	Removal of gallbladder
47612	C	Removal of gallbladder
47620	C	Removal of gallbladder
47700	C	Exploration of bile ducts
47701	C	Bile duct revision
47711	C	Excision of bile duct tumor
47712	C	Excision of bile duct tumor
47715	C	Excision of bile duct cyst
47718	C	Fusion of bile duct cyst
47720	C	Fuse gallbladder & bowel
47721	C	Fuse upper gi structures
47740	C	Fuse gallbladder & bowel
47741	C	Fuse gallbladder & bowel
47760	C	Fuse bile ducts and bowel
47765	C	Fuse liver ducts & bowel
47780	C	Fuse bile ducts and bowel
47785	C	Fuse bile ducts and bowel
47800	C	Reconstruction of bile ducts
47801	C	Placement, bile duct support
47802	C	Fuse liver duct & intestine
47900	C	Suture bile duct injury
48000	C	Drainage of abdomen
48001	C	Placement of drain, pancreas
48005	C	Resect/debride pancreas
48020	C	Removal of pancreatic stone
48100	C	Biopsy of pancreas, open
48120	C	Removal of pancreas lesion
48140	C	Partial removal of pancreas
48145	C	Partial removal of pancreas
48146	C	Pancreatectomy
48148	C	Removal of pancreatic duct
48150	C	Partial removal of pancreas
48152	C	Pancreatectomy
48153	C	Pancreatectomy
48154	C	Pancreatectomy
48155	C	Removal of pancreas

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CPT/ HCPCS	Status indicator	Description
48180	C	Fuse pancreas and bowel
48400	C	Injection, intraop add-on
48500	C	Surgery of pancreatic cyst
48510	C	Drain pancreatic pseudocyst
48520	C	Fuse pancreas cyst and bowel
48540	C	Fuse pancreas cyst and bowel
48545	C	Pancreatorrhaphy
48547	C	Duodenal exclusion
48556	C	Removal, allograft pancreas
49000	C	Exploration of abdomen
49002	C	Reopening of abdomen
49010	C	Exploration behind abdomen
49020	C	Drain abdominal abscess
49021	C	Drain abdominal abscess
49040	C	Drain, open, abdom abscess
49041	C	Drain, percut, abdom abscess
49060	C	Drain, open, retrop abscess
49061	C	Drain, percut, retroper absc
49062	C	Drain to peritoneal cavity
49201	C	Removal of abdominal lesion
49215	C	Excise sacral spine tumor
49220	C	Multiple surgery, abdomen
49255	C	Removal of omentum
49425	C	Insert abdomen-venous drain
49428	C	Ligation of shunt
49605	C	Repair umbilical lesion
49606	C	Repair umbilical lesion
49610	C	Repair umbilical lesion
49611	C	Repair umbilical lesion
49900	C	Repair of abdominal wall
49905	C	Omental flap
49906	C	Free omental flap, microvasc
50010	C	Exploration of kidney
50020	C	Renal abscess, open drain
50040	C	Drainage of kidney
50045	C	Exploration of kidney
50060	C	Removal of kidney stone
50065	C	Incision of kidney
50070	C	Incision of kidney
50075	C	Removal of kidney stone
50100	C	Revise kidney blood vessels
50120	C	Exploration of kidney
50125	C	Explore and drain kidney
50130	C	Removal of kidney stone
50135	C	Exploration of kidney
50205	C	Biopsy of kidney
50220	C	Remove kidney, open
50225	C	Removal kidney open, complex
50230	C	Removal kidney open, radical
50234	C	Removal of kidney & ureter
50236	C	Removal of kidney & ureter
50240	C	Partial removal of kidney
50280	C	Removal of kidney lesion
50290	C	Removal of kidney lesion
50300	C	Removal of donor kidney
50320	C	Removal of donor kidney
50340	C	Removal of kidney
50360	C	Transplantation of kidney
50365	C	Transplantation of kidney
50370	C	Remove transplanted kidney
50380	C	Reimplantation of kidney
50400	C	Revision of kidney/ureter
50405	C	Revision of kidney/ureter
50500	C	Repair of kidney wound
50520	C	Close kidney-skin fistula

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CPT/ HCPCS	Status indicator	Description
50525	C	Repair renal-abdomen fistula
50526	C	Repair renal-abdomen fistula
50540	C	Revision of horseshoe kidney
50545	C	Laparo radical nephrectomy
50546	C	Laparoscopic nephrectomy
50547	C	Laparo removal donor kidney
50548	C	Laparo remove k/ureter
50570	C	Kidney endoscopy
50572	C	Kidney endoscopy
50574	C	Kidney endoscopy & biopsy
50575	C	Kidney endoscopy
50576	C	Kidney endoscopy & treatment
50578	C	Renal endoscopy/radiotracer
50580	C	Kidney endoscopy & treatment
50600	C	Exploration of ureter
50605	C	Insert ureteral support
50610	C	Removal of ureter stone
50620	C	Removal of ureter stone
50630	C	Removal of ureter stone
50650	C	Removal of ureter
50660	C	Removal of ureter
50700	C	Revision of ureter
50715	C	Release of ureter
50722	C	Release of ureter
50725	C	Release/revise ureter
50727	C	Revise ureter
50728	C	Revise ureter
50740	C	Fusion of ureter & kidney
50750	C	Fusion of ureter & kidney
50760	C	Fusion of ureters
50770	C	Splicing of ureters
50780	C	Reimplant ureter in bladder
50782	C	Reimplant ureter in bladder
50783	C	Reimplant ureter in bladder
50785	C	Reimplant ureter in bladder
50800	C	Implant ureter in bowel
50810	C	Fusion of ureter & bowel
50815	C	Urine shunt to intestine
50820	C	Construct bowel bladder
50825	C	Construct bowel bladder
50830	C	Revise urine flow
50840	C	Replace ureter by bowel
50845	C	Appendico-vesicostomy
50860	C	Transplant ureter to skin
50900	C	Repair of ureter
50920	C	Closure ureter/skin fistula
50930	C	Closure ureter/bowel fistula
50940	C	Release of ureter
51060	C	Removal of ureter stone
51525	C	Removal of bladder lesion
51530	C	Removal of bladder lesion
51535	C	Repair of ureter lesion
51550	C	Partial removal of bladder
51555	C	Partial removal of bladder
51565	C	Revise bladder & ureter(s)
51570	C	Removal of bladder
51575	C	Removal of bladder & nodes
51580	C	Remove bladder/revise tract
51585	C	Removal of bladder & nodes
51590	C	Remove bladder/revise tract
51595	C	Remove bladder/revise tract
51596	C	Remove bladder/create pouch
51597	C	Removal of pelvic structures
51800	C	Revision of bladder/urethra
51820	C	Revision of urinary tract

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CPT/ HCPCS	Status indicator	Description
51840	C	Attach bladder/urethra
51841	C	Attach bladder/urethra
51845	C	Repair bladder neck
51860	C	Repair of bladder wound
51865	C	Repair of bladder wound
51900	C	Repair bladder/vagina lesion
51920	C	Close bladder-uterus fistula
51925	C	Hysterectomy/bladder repair
51940	C	Correction of bladder defect
51960	C	Revision of bladder & bowel
51980	C	Construct bladder opening
53085	C	Drainage of urinary leakage
53415	C	Reconstruction of urethra
53448	C	Remov/replc ur sphinctr comp
54125	C	Removal of penis
54130	C	Remove penis & nodes
54135	C	Remove penis & nodes
54332	C	Revise penis/urethra
54336	C	Revise penis/urethra
54390	C	Repair penis and bladder
54411	C	Remv/replc penis pros, comp
54417	C	Remv/replc penis pros, compl
54430	C	Revision of penis
54535	C	Extensive testis surgery
54560	C	Exploration for testis
54650	C	Orchiopexy (Fowler-Stephens)
55600	C	Incise sperm duct pouch
55605	C	Incise sperm duct pouch
55650	C	Remove sperm duct pouch
55801	C	Removal of prostate
55810	C	Extensive prostate surgery
55812	C	Extensive prostate surgery
55815	C	Extensive prostate surgery
55821	C	Removal of prostate
55831	C	Removal of prostate
55840	C	Extensive prostate surgery
55842	C	Extensive prostate surgery
55845	C	Extensive prostate surgery
55862	C	Extensive prostate surgery
55865	C	Extensive prostate surgery
56630	C	Extensive vulva surgery
56631	C	Extensive vulva surgery
56632	C	Extensive vulva surgery
56633	C	Extensive vulva surgery
56634	C	Extensive vulva surgery
56637	C	Extensive vulva surgery
56640	C	Extensive vulva surgery
57110	C	Remove vagina wall, complete
57111	C	Remove vagina tissue, compl
57112	C	Vaginectomy w/nodes, compl
57270	C	Repair of bowel pouch
57280	C	Suspension of vagina
57282	C	Repair of vaginal prolapse
57292	C	Construct vagina with graft
57305	C	Repair rectum-vagina fistula
57307	C	Fistula repair & colostomy
57308	C	Fistula repair, transperine
57311	C	Repair urethrovaginal lesion
57335	C	Repair vagina
57531	C	Removal of cervix, radical
57540	C	Removal of residual cervix
57545	C	Remove cervix/repair pelvis
58140	C	Removal of uterus lesion
58150	C	Total hysterectomy
58152	C	Total hysterectomy

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CPT/ HCPCS	Status indicator	Description
58180	C	Partial hysterectomy
58200	C	Extensive hysterectomy
58210	C	Extensive hysterectomy
58240	C	Removal of pelvis contents
58260	C	Vaginal hysterectomy
58262	C	Vaginal hysterectomy
58263	C	Vaginal hysterectomy
58267	C	Hysterectomy & vagina repair
58270	C	Hysterectomy & vagina repair
58275	C	Hysterectomy/revise vagina
58280	C	Hysterectomy/revise vagina
58285	C	Extensive hysterectomy
58400	C	Suspension of uterus
58410	C	Suspension of uterus
58520	C	Repair of ruptured uterus
58540	C	Revision of uterus
58605	C	Division of fallopian tube
58611	C	Ligate oviduct(s) add-on
58700	C	Removal of fallopian tube
58720	C	Removal of ovary/tube(s)
58740	C	Revise fallopian tube(s)
58750	C	Repair oviduct
58752	C	Revise ovarian tube(s)
58760	C	Remove tubal obstruction
58770	C	Create new tubal opening
58805	C	Drainage of ovarian cyst(s)
58822	C	Drain ovary abscess, percut
58825	C	Transposition, ovary(s)
58940	C	Removal of ovary(s)
58943	C	Removal of ovary(s)
58950	C	Resect ovarian malignancy
58951	C	Resect ovarian malignancy
58952	C	Resect ovarian malignancy
58953	C	Tah, rad dissect for debulk
58954	C	Tah rad debulk/lymph remove
58960	C	Exploration of abdomen
59100	C	Remove uterus lesion
59120	C	Treat ectopic pregnancy
59121	C	Treat ectopic pregnancy
59130	C	Treat ectopic pregnancy
59135	C	Treat ectopic pregnancy
59136	C	Treat ectopic pregnancy
59140	C	Treat ectopic pregnancy
59325	C	Revision of cervix
59350	C	Repair of uterus
59514	C	Cesarean delivery only
59525	C	Remove uterus after cesarean
59620	C	Attempted vbac delivery only
59830	C	Treat uterus infection
59850	C	Abortion
59851	C	Abortion
59852	C	Abortion
59855	C	Abortion
59856	C	Abortion
59857	C	Abortion
60254	C	Extensive thyroid surgery
60270	C	Removal of thyroid
60271	C	Removal of thyroid
60502	C	Re-explore parathyroids
60505	C	Explore parathyroid glands
60520	C	Removal of thymus gland
60521	C	Removal of thymus gland
60522	C	Removal of thymus gland
60540	C	Explore adrenal gland
60545	C	Explore adrenal gland

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CPT/ HCPCS	Status indicator	Description
60600	C	Remove carotid body lesion
60605	C	Remove carotid body lesion
60650	C	Laparoscopy adrenalectomy
61105	C	Twist drill hole
61107	C	Drill skull for implantation
61108	C	Drill skull for drainage
61120	C	Burr hole for puncture
61140	C	Pierce skull for biopsy
61150	C	Pierce skull for drainage
61151	C	Pierce skull for drainage
61154	C	Pierce skull & remove clot
61156	C	Pierce skull for drainage
61210	C	Pierce skull, implant device
61250	C	Pierce skull & explore
61253	C	Pierce skull & explore
61304	C	Open skull for exploration
61305	C	Open skull for exploration
61312	C	Open skull for drainage
61313	C	Open skull for drainage
61314	C	Open skull for drainage
61315	C	Open skull for drainage
61320	C	Open skull for drainage
61321	C	Open skull for drainage
61332	C	Explore/biopsy eye socket
61333	C	Explore orbit/remove lesion
61334	C	Explore orbit/remove object
61340	C	Relieve cranial pressure
61343	C	Incise skull (press relief)
61345	C	Relieve cranial pressure
61440	C	Incise skull for surgery
61450	C	Incise skull for surgery
61458	C	Incise skull for brain wound
61460	C	Incise skull for surgery
61470	C	Incise skull for surgery
61480	C	Incise skull for surgery
61490	C	Incise skull for surgery
61500	C	Removal of skull lesion
61501	C	Remove infected skull bone
61510	C	Removal of brain lesion
61512	C	Remove brain lining lesion
61514	C	Removal of brain abscess
61516	C	Removal of brain lesion
61518	C	Removal of brain lesion
61519	C	Remove brain lining lesion
61520	C	Removal of brain lesion
61521	C	Removal of brain lesion
61522	C	Removal of brain abscess
61524	C	Removal of brain lesion
61526	C	Removal of brain lesion
61530	C	Removal of brain lesion
61531	C	Implant brain electrodes
61533	C	Implant brain electrodes
61534	C	Removal of brain lesion
61535	C	Remove brain electrodes
61536	C	Removal of brain lesion
61538	C	Removal of brain tissue
61539	C	Removal of brain tissue
61541	C	Incision of brain tissue
61542	C	Removal of brain tissue
61543	C	Removal of brain tissue
61544	C	Remove & treat brain lesion
61545	C	Excision of brain tumor
61546	C	Removal of pituitary gland
61548	C	Removal of pituitary gland
61550	C	Release of skull seams

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CPT/ HCPCS	Status indicator	Description
61552	C	Release of skull seams
61556	C	Incise skull/sutures
61557	C	Incise skull/sutures
61558	C	Excision of skull/sutures
61559	C	Excision of skull/sutures
61563	C	Excision of skull tumor
61564	C	Excision of skull tumor
61570	C	Remove foreign body, brain
61571	C	Incise skull for brain wound
61575	C	Skull base/brainstem surgery
61576	C	Skull base/brainstem surgery
61580	C	Craniofacial approach, skull
61581	C	Craniofacial approach, skull
61582	C	Craniofacial approach, skull
61583	C	Craniofacial approach, skull
61584	C	Orbitocranial approach/skull
61585	C	Orbitocranial approach/skull
61586	C	Resect nasopharynx, skull
61590	C	Infratemporal approach/skull
61591	C	Infratemporal approach/skull
61592	C	Orbitocranial approach/skull
61595	C	Transtemporal approach/skull
61596	C	Transcochlear approach/skull
61597	C	Transcondylar approach/skull
61598	C	Transpetrosal approach/skull
61600	C	Resect/excise cranial lesion
61601	C	Resect/excise cranial lesion
61605	C	Resect/excise cranial lesion
61606	C	Resect/excise cranial lesion
61607	C	Resect/excise cranial lesion
61608	C	Resect/excise cranial lesion
61609	C	Transect artery, sinus
61610	C	Transect artery, sinus
61611	C	Transect artery, sinus
61612	C	Transect artery, sinus
61613	C	Remove aneurysm, sinus
61615	C	Resect/excise lesion, skull
61616	C	Resect/excise lesion, skull
61618	C	Repair dura
61619	C	Repair dura
61624	C	Occlusion/embolization cath
61680	C	Intracranial vessel surgery
61682	C	Intracranial vessel surgery
61684	C	Intracranial vessel surgery
61686	C	Intracranial vessel surgery
61690	C	Intracranial vessel surgery
61692	C	Intracranial vessel surgery
61697	C	Brain aneurysm repr, complx
61698	C	Brain aneurysm repr, complx
61700	C	Brain aneurysm repr , simple
61702	C	Inner skull vessel surgery
61703	C	Clamp neck artery
61705	C	Revise circulation to head
61708	C	Revise circulation to head
61710	C	Revise circulation to head
61711	C	Fusion of skull arteries
61720	C	Incise skull/brain surgery
61735	C	Incise skull/brain surgery
61750	C	Incise skull/brain biopsy
61751	C	Brain biopsy w/ ct/mr guide
61760	C	Implant brain electrodes
61770	C	Incise skull for treatment
61850	C	Implant neuroelectrodes
61860	C	Implant neuroelectrodes
61862	C	Implant neurostimul, subcort

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CPT/ HCPCS	Status indicator	Description
61870	C	Implant neuroelectrodes
61875	C	Implant neuroelectrodes
62000	C	Treat skull fracture
62005	C	Treat skull fracture
62010	C	Treatment of head injury
62100	C	Repair brain fluid leakage
62115	C	Reduction of skull defect
62116	C	Reduction of skull defect
62117	C	Reduction of skull defect
62120	C	Repair skull cavity lesion
62121	C	Incise skull repair
62140	C	Repair of skull defect
62141	C	Repair of skull defect
62142	C	Remove skull plate/flap
62143	C	Replace skull plate/flap
62145	C	Repair of skull & brain
62146	C	Repair of skull with graft
62147	C	Repair of skull with graft
62180	C	Establish brain cavity shunt
62190	C	Establish brain cavity shunt
62192	C	Establish brain cavity shunt
62200	C	Establish brain cavity shunt
62201	C	Establish brain cavity shunt
62220	C	Establish brain cavity shunt
62223	C	Establish brain cavity shunt
62256	C	Remove brain cavity shunt
62258	C	Replace brain cavity shunt
63043	C	Laminotomy, addl cervical
63044	C	Laminotomy, addl lumbar
63075	C	Neck spine disk surgery
63076	C	Neck spine disk surgery
63077	C	Spine disk surgery, thorax
63078	C	Spine disk surgery, thorax
63081	C	Removal of vertebral body
63082	C	Remove vertebral body add-on
63085	C	Removal of vertebral body
63086	C	Remove vertebral body add-on
63087	C	Removal of vertebral body
63088	C	Remove vertebral body add-on
63090	C	Removal of vertebral body
63091	C	Remove vertebral body add-on
63170	C	Incise spinal cord tract(s)
63172	C	Drainage of spinal cyst
63173	C	Drainage of spinal cyst
63180	C	Revise spinal cord ligaments
63182	C	Revise spinal cord ligaments
63185	C	Incise spinal column/nerves
63190	C	Incise spinal column/nerves
63191	C	Incise spinal column/nerves
63194	C	Incise spinal column & cord
63195	C	Incise spinal column & cord
63196	C	Incise spinal column & cord
63197	C	Incise spinal column & cord
63198	C	Incise spinal column & cord
63199	C	Incise spinal column & cord
63200	C	Release of spinal cord
63250	C	Revise spinal cord vessels
63251	C	Revise spinal cord vessels
63252	C	Revise spinal cord vessels
63265	C	Excise intraspinal lesion
63266	C	Excise intraspinal lesion
63267	C	Excise intraspinal lesion
63268	C	Excise intraspinal lesion
63270	C	Excise intraspinal lesion
63271	C	Excise intraspinal lesion

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued
[Calender Year 2003]

CPT/ HCPCS	Status indicator	Description
63272	C	Excise intraspinal lesion
63273	C	Excise intraspinal lesion
63275	C	Biopsy/excise spinal tumor
63276	C	Biopsy/excise spinal tumor
63277	C	Biopsy/excise spinal tumor
63278	C	Biopsy/excise spinal tumor
63280	C	Biopsy/excise spinal tumor
63281	C	Biopsy/excise spinal tumor
63282	C	Biopsy/excise spinal tumor
63283	C	Biopsy/excise spinal tumor
63285	C	Biopsy/excise spinal tumor
63286	C	Biopsy/excise spinal tumor
63287	C	Biopsy/excise spinal tumor
63290	C	Biopsy/excise spinal tumor
63300	C	Removal of vertebral body
63301	C	Removal of vertebral body
63302	C	Removal of vertebral body
63303	C	Removal of vertebral body
63304	C	Removal of vertebral body
63305	C	Removal of vertebral body
63306	C	Removal of vertebral body
63307	C	Removal of vertebral body
63308	C	Remove vertebral body add-on
63700	C	Repair of spinal herniation
63702	C	Repair of spinal herniation
63704	C	Repair of spinal herniation
63706	C	Repair of spinal herniation
63707	C	Repair spinal fluid leakage
63709	C	Repair spinal fluid leakage
63710	C	Graft repair of spine defect
63740	C	Install spinal shunt
64752	C	Incision of vagus nerve
64755	C	Incision of stomach nerves
64760	C	Incision of vagus nerve
64763	C	Incise hip/thigh nerve
64766	C	Incise hip/thigh nerve
64804	C	Remove sympathetic nerves
64809	C	Remove sympathetic nerves
64818	C	Remove sympathetic nerves
64866	C	Fusion of facial/other nerve
64868	C	Fusion of facial/other nerve
65273	C	Repair of eye wound
69155	C	Extensive ear/neck surgery
69535	C	Remove part of temporal bone
69554	C	Remove ear lesion
69950	C	Incise inner ear nerve
69970	C	Remove inner ear lesion
75900	C	Arterial catheter exchange
75952	C	Endovasc repair abdom aorta
75953	C	Abdom aneurysm endovas rpr
92970	C	Cardioassist, internal
92971	C	Cardioassist, external
92975	C	Dissolve clot, heart vessel
92992	C	Revision of heart chamber
92993	C	Revision of heart chamber
94652	C	Pressure breathing (IPPB)
99190	C	Special pump services
99191	C	Special pump services
99192	C	Special pump services
99251	C	Initial inpatient consult
99252	C	Initial inpatient consult
99253	C	Initial inpatient consult
99254	C	Initial inpatient consult
99255	C	Initial inpatient consult
99261	C	Follow-up inpatient consult

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued
[Calender Year 2003]

CPT/ HCPCS	Status indicator	Description
99262	C	Follow-up inpatient consult
99263	C	Follow-up inpatient consult
99295	C	Neonatal critical care
99296	C	Neonatal critical care
99297	C	Neonatal critical care
99298	C	Neonatal critical care
99356	C	Prolonged service, inpatient
99357	C	Prolonged service, inpatient
99433	C	Normal newborn care/hospital

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ADDENDUM H.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties)	Wage index
0040 Abilene, TX	0.9268
Taylor, TX	
0060 Aguadilla, PR	0.4634
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9685
Portage, OH	
Summit, OH	
0120 Albany, GA	1.0835
Dougherty, GA	
Lee, GA	
0160 [2] Albany-Schenectady-Troy, NY	0.8633
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9372
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.7929
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	0.9833
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9300
Blair, PA	
0320 Amarillo, TX Potter, TX	0.9051
Randall, TX	
0380 Anchorage, AK	1.2610
Anchorage, AK	
0440 Ann Arbor, MI	1.1217
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8126
Calhoun, AL	
0460 [2] Appleton-Oshkosh-Neenah, WI	0.9229
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 [2] Arecibo, PR	0.4400
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9682
Buncombe, NC	
Madison, NC	
0500 Athens, GA	1.0308
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 [1] Atlanta, GA	1.0091
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
DeKalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic-Cape May, NJ	1.1058
Atlantic, NJ	
Cape May, NJ	
0580 Auburn-Opelika, AL	0.8306
Lee, AL	
0600 Augusta-Aiken, GA-SC	1.0364
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 [1] Austin-San Marcos, TX	0.9529
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	1.0186
Kern, CA	
0720 [1] Baltimore, MD	0.9757
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Anne's, MD	
0733 Bangor, ME	0.9791
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.3127
Barnstable, MA	
0760 Baton Rouge, LA	0.8388
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8389
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.2407
Whatcom, WA	
0870 Benton Harbor, MI	0.9072
Berrien, MI	
0875 [1] Bergen-Passaic, NJ	1.2100
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.9114
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8830
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 [2] Binghamton, NY	0.8633
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9301
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7881
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8997
Monroe, IN	
1040 Bloomington-Normal, IL	0.9202
McLean, IL	
1080 Boise City, ID	0.9403
Ada, ID	

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ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Canyon, ID	
1123 [1] Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	1.1304
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	0.9688
Boulder, CO	
1145 Brazoria, TX	0.8617
Brazoria, TX	
1150 Bremerton, WA	1.1056
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8992
Cameron, TX	
1260 Bryan-College Station, TX	0.8410
Brazos, TX	
1280 [1] Buffalo-Niagara Falls, NY	0.9464
Erie, NY	
Niagara, NY	
1303 Burlington, VT	1.0176
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4453
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.9026
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.9788
Natrona, WY	
1360 Cedar Rapids, IA	0.9149
Linn, IA	
1400 Champaign-Urbana, IL	0.9983
Champaign, IL	
1440 [2] Charleston-North Charleston, SC	0.8607
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.8765
Kanawha, WV	
Putnam, WV	
1520 [1] Charlotte-Gastonia-Rock Hill, NC-SC	0.9839
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	1.0583
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	

ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
1560 Chattanooga, TN-GA	0.9069
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 [2] Cheyenne, WY	0.8890
Laramie, WY	
1600 [1] Chicago, IL	1.1088
Cook, IL	
DeKalb, IL	
DuPage, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 [2] Chico-Paradise, CA	0.9934
Butte, CA	
1640 [1] Cincinnati, OH-KY-IN	0.9354
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN-KY	0.8386
Christian, KY	
Montgomery, TN	
1680 [1] Cleveland-Lorain-Elyria, OH	0.9295
Ashtabula, OH	
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9968
El Paso, CO	
1740 Columbia, MO	0.8737
Boone, MO	
1760 Columbia, SC	0.8990
Lexington, SC	
Richland, SC	
1800 Columbus, GA-ALRussell, AL	0.8450
Chattahoochee, GA	
Harris, GA	
Muscogee, GA	
1840 [1] Columbus, OH	0.9705
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8154
Nueces, TX	
San Patricio, TX	
1890 Corvallis, OR	1.1569
Benton, OR	

ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
1900 [2] Cumberland, MD-WV (MD Hospitals)	0.8855
Allegany, MD	
Mineral, WV	
1900 [2] Cumberland, MD-WV (WV Hospitals)	0.8053
Allegany, MD	
Mineral, WV	
1920 [1] Dallas, TX	0.9831
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.8785
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA-IL	0.8872
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9378
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.9133
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.9066
Lawrence, AL	
Morgan, AL	
2040 [2] Decatur, IL	0.8301
Macon, IL	
2080 [1] Denver, CO	1.0401
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.8908
Dallas, IA	
Polk, IA	
Warren, IA	
2160 [1] Detroit, MI	1.0506
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.8028
Dale, AL	
Houston, AL	
2190 Dover, DE	0.9452
Kent, DE	
2200 Dubuque, IA	0.8801
Dubuque, IA	
2240 Duluth-Superior, MN-WI	1.0462
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0793
Dutchess, NY	
2290 [2] Eau Claire, WI	0.9229
Chippewa, WI	
Eau Claire, WI	

ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
2320 El Paso, TX	0.9137
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9851
Elkhart, IN	
2335 [2] Elmira, NY	0.8633
Chemung, NY	
2340 Enid, OK	0.8387
Garfield, OK	
2360 Erie, PA	0.9016
Erie, PA	
2400 Eugene-Springfield, OR	1.1077
Lane, OR	
2440 [2] Evansville-Henderson, IN-KY (IN Hospitals)	0.8796
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2440 Evansville-Henderson, IN-KY (KY Hospitals)	0.8254
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND-MN	0.9783
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.9055
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.8182
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ-UT	1.0791
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.1233
Genesee, MI	
2650 Florence, AL	0.7960
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8869
Florence, SC	
2670 Fort Collins-Loveland, CO	0.9923
Larimer, CO	
2680 [1] Ft. Lauderdale, FL	1.0792
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9456
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	0.9959
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR-OK	0.7811
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.9651
Okaloosa, FL	
2760 Fort Wayne, IN	0.9499
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 [1] Forth Worth-Arlington, TX	0.9620
Hood, TX	
Johnson, TX	
Parker, TX	

ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Tarrant, TX	
2840 Fresno, CA	1.0340
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8684
Etowah, AL	
2900 Gainesville, FL	0.9730
Alachua, FL	
2920 Galveston-Texas City, TX	0.9603
Galveston, TX	
2960 Gary, IN	0.9676
Lake, IN	
Porter, IN	
2975 [2] Glens Falls, NY	0.8633
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8982
Wayne, NC	
2985 Grand Forks, ND-MN	0.9338
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9824
Mesa, CO	
3000 [1] Grand Rapids-Muskegon-Holland, MI	0.9664
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.9057
Cascade, MT	
3060 Greeley, CO	0.9219
Weld, CO	
3080 Green Bay, WI	0.9599
Brown, WI	
3120 [1] Greensboro-Winston-Salem-High Point, NC	0.9270
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NCGuilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9257
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9177
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9362
Washington, MD	
3200 Hamilton-Middletown, OH	0.9484
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9315
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 \1, 2\ Hartford, CT	1.2520
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 [2] Hattiesburg, MS	0.7759
Forrest, MS	

ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.8958
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1121
Honolulu, HI	
3350 Houma, LA	0.8470
Lafourche, LA	
Terrebonne, LA	
3360 [1] Houston, TX	0.9746
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV-KY-OH	0.9744
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8901
Limestone, AL	
Madison, AL	
3480 [1] Indianapolis, IN	0.9828
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	1.0025
Johnson, IA	
3520 Jackson, MI	0.9591
Jackson, MI	
3560 Jackson, MS	0.8713
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.9370
Madison, TN	
Chester, TN	
3600 [1] Jacksonville, FL	0.9341
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 [2] Jacksonville, NC	0.8714
Onslow, NC	
3610 [2] Jamestown, NY	0.8633
Chautauqua, NY	
3620 Janesville-Beloit, WI	0.9696
Rock, WI	
3640 Jersey City, NJ	1.1200
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN-VA (TN Hospitals)	0.8384
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	

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ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3660 [2] Johnson City-Kingsport-Bristol, TN-VA (VA Hospitals)	0.8494
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 [2] Johnstown, PA	0.8525
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7906
Craighead, AR	
3710 Joplin, MO	0.8700
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.0689
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.9591
Kankakee, IL	
3760 [1] Kansas City, KS-MO	0.9809
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9741
Kenosha, WI	
3810 Killeen-Temple, TX	0.8447
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.9090
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.9031
Howard, IN	
Tipton, IN	
3870 [2] La Crosse, WI-MN (WI Hospitals)	0.9229
Houston, MN	
La Crosse, WI	
3870 [2] La Crosse, WI-MN (MN Hospitals)	0.9249
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8550
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.9515
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.8030
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.9170
Polk, FL	
4000 Lancaster, PA	0.9171
Lancaster, PA	
4040 Lansing-East Lansing, MI	0.9827
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.8504
Webb, TX	
4100 Las Cruces, NM	0.8888
Dona Ana, NM	
4120 [1] Las Vegas, NV-AZ	1.1018
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.7964
Douglas, KS	
4200 Lawton, OK	0.8251
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9249
Androscoggin, ME	
4280 Lexington, KY	0.8629
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9515
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9133
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.9045
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8588
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 [1] Los Angeles-Long Beach, CA	1.2044
Los Angeles, CA	
4520 [1] Louisville, KY-IN	0.9517
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.7809
Lubbock, TX	
4640 Lynchburg, VA	0.9311
Amherst, VA	
Bedford, VA	
Bedford City, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.9296
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0188
Dane, WI	
4800 Mansfield, OH	0.8989
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4921
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8419
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0605
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	1.0782
Brevard, Fl	
4920 [1] Memphis, TN-AR-MS	0.8839
Crittenden, AR	
DeSoto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	0.9937
Merced, CA	
5000 [1] Miami, FL	0.9878
Dade, FL	
5015 [1] Middlesex-Somerset-Hunterdon, NJ	1.1454
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 [1] Milwaukee-Waukesha, WI	0.9901
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 [1] Minneapolis-St. Paul, MN-WI	1.0969
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5140 Missoula, MT	0.9250
Missoula, MT	
5160 Mobile, AL	0.8181
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.0606
Stanislaus, CA	
5190 [1] Monmouth-Ocean, NJ	1.1290
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.8191
Ouachita, LA	

ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
5240 [2] Montgomery, AL	0.7853
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.9150
Delaware, IN	
5330 Myrtle Beach, SC	0.9141
Horry, SC	
5345 Naples, FL	0.9803
Collier, FL	
5360 [1] Nashville, TN	0.9456
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 [1] Nassau-Suffolk, NY	1.3441
Nassau, NY	
Suffolk, NY	
5483 \1, 2\New Haven-Bridgeport-Stamford-Waterbury-	1.2520
Danbury, CT	
Fairfield, CT	
New Haven, CT	
5523 [2] New London-Norwich, CT	1.2520
New London, CT	
5560 [1] New Orleans, LA	0.9050
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 [1] New York, NY	1.4069
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 [1] Newark, NJ	1.1546
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY-PA	1.1434
Orange, NY	
Pike, PA	
5720 [1] Norfolk-Virginia Beach-Newport News, VA-NC	0.8553
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City VA	
Williamsburg City, VA	
York, VA	
5775 [1] Oakland, CA	1.5324
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9526
Marion, FL	
5800 Odessa-Midland, TX	0.9233
Ector, TX	
Midland, TX	
5880 [1] Oklahoma City, OK	0.8997
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.1071
Thurston, WA	
5920 Omaha, NE-IA	1.0089
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 [1] Orange County, CA	1.1726
Orange, CA	
5960 [1] Orlando, FL	0.9537
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.8283
Daviess, KY	
6015 Panama City, FL	0.8926
Bay, FL	
6020 Parkersburg-Marietta, WV-OH (WV Hospitals)	0.8210
Washington, OH	
Wood, WV	
6020 [2] Parkersburg-Marietta, WV-OH (OH Hospitals)	0.8675
Washington, OH	
Wood, WV	
6060 [2] Pensacola, FL	0.8907
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8854
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 [1] Philadelphia, PA-NJ	1.0675
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 [1] Phoenix-Mesa, AZ	0.9562
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7866
Jefferson, AR	
6280 [1] Pittsburgh, PA	0.9403
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 [2] Pittsfield, MA	1.1257
Berkshire, MA	
6340 Pocatello, ID	0.9013
Bannock, ID	
6360 Ponce, PR	0.5221
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9932
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 [1] Portland-Vancouver, OR-WA	1.0792
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 [1] Providence-Warwick-Pawtucket, RI	1.0558
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	1.0190
Utah, UT	
6560 [2] Pueblo, CO	0.9104
Pueblo, CO	
6580 [2] Punta Gorda, FL	0.8907
Charlotte, FL	
6600 Racine, WI	0.9413
Racine, WI	
6640 [1] Raleigh-Durham-Chapel Hill, NC	1.0083
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8936
Pennington, SD	
6680 Reading, PA	0.9308
Berks, PA	
6690 Redding, CA	1.1249
Shasta, CA	
6720 Reno, NV	1.0664
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.1608
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9735
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	

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ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 [1]Riverside-San Bernardino, CA	1.1251
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8703
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.2263
Olmsted, MN	
6840 [1]Rochester, NY	0.9133
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.9456
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.9322
Edgecombe, NC	
Nash, NC	
6920 [1]Sacramento, CA	1.1636
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9709
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9858
Benton, MN	
Stearns, MN	
7000 [2]St. Joseph, MO	0.8099
Andrew, MO	
Buchanan, MO	
7040 [1]St. Louis, MO-IL	0.8907
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
7080 Salem, OR	1.0473
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4772
Monterey, CA	
7160 [1]Salt Lake City-Ogden, UT	1.0035
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.7956
Tom Green, TX	
7240 [1]San Antonio, TX	0.8649
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 [1]San Diego, CA	1.1247
San Diego, CA	
7360 [1]San Francisco, CA	1.4288
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 [1]San Jose, CA	1.4162
Santa Clara, CA	
7440 [1]San Juan-Bayamon, PR	0.4706
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1386
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0588
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.3630
Santa Cruz, CA	
7490 Santa Fe, NM	1.0822
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.3179
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9367
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.9961
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 [2]Scranton—Wilkes-Barre—Hazleton, PA	0.8525
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 [1]Seattle-Bellevue-Everett, WA	1.1571
Island, WA	
King, WA	
Snohomish, WA	
7610 [2]Sharon, PA	0.8525
Mercer, PA	
7620 [2]Sheboygan, WI	0.9229
Sheboygan, WI	
7640 Sherman-Denison, TX	0.9334
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.8813
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA-NE	0.9138
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.9098
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9902
St. Joseph, IN	
7840 Spokane, WA	1.0961
Spokane, WA	
7880 Springfield, IL	0.8654
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.8510
Christian, MO	
Greene, MO	
Webster, MO	
8003 [2]Springfield, MA	1.1257
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.9032
Centre, PA	
8080 Steubenville-Weirton, OH-WV	0.8893
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.0630
San Joaquin, CA	
8140 [2]Sumter, SC	0.8607
Sumter, SC	
8160 Syracuse, NY	0.9519
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.1052
Pierce, WA	
8240 [2]Tallahassee, FL	0.8907
Gadsden, FL	
Leon, FL	
8280 [1]Tampa-St. Petersburg-Clearwater, FL	0.9238
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 [2]Terre Haute, IN	0.8796
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana,AR-Texarkana, TX	0.8193
Miller, AR	
Bowie, TX	

ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
8400 Toledo, OH	0.9863
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.8952
Shawnee, KS	
8480 Trenton, NJ	1.0710
Mercer, NJ	
8520 Tucson, AZ	0.8993
Pima, AZ	
8560 Tulsa, OK	0.8398
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8303
Tuscaloosa, AL	
8640 Tyler, TX	0.9650
Smith, TX	
8680 [2]Utica-Rome, NY	0.8633
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3544
Napa, CA	
Solano, CA	
8735 Veritura, CA	1.1209
Ventura, CA	
8750 Victoria, TX	0.8814
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0296
Cumberland, NJ	
8780 2Visalia-Tulare-Porterville, CA	0.9934
Tulare, CA	
8800 Waco, TX	0.8802
McLennan, TX	
8840 [1]Washington, DC-MD-VA-WV	1.0852
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpeper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8970
Black Hawk, IA	
8940 Wausau, WI	0.9882
Marathon, WI	
8960 [1]West Palm Beach-Boca Raton, FL	0.9929
Palm Beach, FL	
9000 [2]Wheeling, WV-OH (WV Hospitals)	0.8053
Belmont, OH	
Marshall, WV	
Ohio, WV	
9000 [2]Wheeling, WV-OH (OH Hospitals)	0.8675
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9571
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.8023
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8624
Lycoming, PA	
9160 Wilmington-Newark, DE-MD	1.1287
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9471
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	1.0676
Yakima, WA	
9270 [2]Yolo, CA	0.9934
Yolo, CA	
9280 York, PA	0.9140
York, PA	
9320 Youngstown-Warren, OH	0.9485
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0310
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.8677
Yuma, AZ	

[1] Large Urban Area

[2] Hospitals geographically located in the area are assigned the statewide rural wage index.

ADDENDUM I.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7853
Alaska	1.2323
Arizona	0.8483
Arkansas	0.7670
California	0.9934
Colorado	0.9104
Connecticut	1.2520
Delaware	0.9126
Florida	0.8907
Georgia	0.8254
Hawaii	1.0342
Idaho	0.8799
Illinois	0.8301
Indiana	0.8796
Iowa	0.8395
Kansas	0.7964
Kentucky	0.8079
Louisiana	0.7719
Maine	0.8754
Maryland	0.8855
Massachusetts	1.1257
Michigan	0.8961
Minnesota	0.9249
Mississippi	0.7759
Missouri	0.8099
Montana	0.8567
Nebraska	0.8283
Nevada	0.9519
New Hampshire	0.9882
New Jersey [1]	
New Mexico	0.8645
New York	0.8633
North Carolina	0.8714
North Dakota	0.7830
Ohio	0.8675
Oklahoma	0.7664
Oregon	1.0408
Pennsylvania	0.8525
Puerto Rico	0.4400
Rhode Island [1]	
South Carolina	0.8607
South Dakota	0.7895
Tennessee	0.7873
Texas	0.7759
Utah	0.9426
Vermont	0.9402
Virginia	0.8494
Washington	1.0274
West Virginia	0.8053
Wisconsin	0.9229
Wyoming	0.8890

[1] All counties within the State are classified as urban.

ADDENDUM J.—WAGE INDEX FOR HOSPITALS THAT ARE RECLASSIFIED

Area	Wage index
Abilene, TX	0.8534
Akron, OH	0.9685
Albany, GA	1.0658
Albuquerque, NM	0.9372
Alexandria, LA	0.7929
Allentown-Bethlehem-Easton, PA	0.9833
Altoona, PA	0.9300
Amarillo, TX	0.8900
Anchorage, AK	1.2610
Ann Arbor, MI	1.1217
Anniston, AL	0.7983
Asheville, NC	0.9448
Athens, GA	1.0161
Atlanta, GA	0.9985
Augusta-Aiken, GA-SC	0.9981
Austin-San Marcos, TX	0.9529
Barnstable-Yarmouth, MA	1.2894
Baton Rouge, LA	0.8281
Bellingham, WA	1.2139
Benton Harbor, MI	0.9072
Bergen-Passaic, NJ	1.2100
Billings, MT	0.9114
Biloxi-Gulfport-Pascagoula, MS	0.8417
Binghamton, NY	0.8525

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ADDENDUM J.—WAGE INDEX FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index
Birmingham, AL	0.9301
Bismarck, ND	0.7881
Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	1.1304
Burlington, VT	0.9667
Caguas, PR	0.4453
Casper, WY	0.9655
Champaign-Urbana, IL	0.9334
Charleston-North Charleston, SC	0.8607
Charleston, WV	0.8602
Charlotte-Gastonia-Rock Hill, NC-SC	0.9839
Charlottesville, VA	1.0252
Chattanooga, TN-GA	0.8878
Chicago, IL	1.0953
Cincinnati, OH-KY-IN	0.9354
Clarksville-Hopkinsville, TN-KY	0.8239
Cleveland-Lorain-Elyria, OH	0.9295
Columbia, MO	0.8737
Columbia, SC	0.8990
Columbus, GA-AL (GA Hospitals)	0.8254
Columbus, GA-AL (AL Hospitals)	0.8041
Columbus, OH	0.9521
Corpus Christi, TX	0.8154
Dallas, TX	0.9831
Danville, VA	0.8530
Davenport-Moline-Rock Island, IA-IL	0.8872
Dayton-Springfield, OH	0.9378
Denver, CO	1.0401
Des Moines, IA	0.8908
Detroit, MI	1.0506
Dothan, AL	0.8028
Dover, DE	0.9274
Duluth-Superior, MN-WI	1.0462
Eau Claire, WI	0.9229
Elkhart-Goshen, IN	0.9484
Erie, PA	0.8850
Eugene-Springfield, OR	1.1077
Fargo-Moorhead, ND-MN	0.9564
Fayetteville, NC	0.9055
Flagstaff, AZ-UT	1.0234
Flint, MI	1.1041
Florence, AL	0.7960
Florence, SC	0.8869
Fort Collins-Loveland, CO	0.9923
Ft. Lauderdale, FL	1.0792
Fort Pierce-Port St. Lucie, FL	0.9959
Fort Smith, AR-OK	0.7681
Fort Walton Beach, FL	0.9365
Forth Worth-Arlington, TX	0.9620
Gadsden, AL	0.8684
Grand Forks, ND-MN	0.9338
Grand Junction, CO	0.9824
Grand Rapids-Muskegon-Holland, MI	0.9664
Great Falls, MT	0.9057
Greeley, CO	0.9219
Green Bay, WI	0.9347
Greensboro-Winston-Salem-High Point, NC	0.9131
Greenville, NC	0.9257
Harrisburg-Lebanon-Carlisle, PA	0.9315
Hartford, CT	1.1550
Hattiesburg, MS	0.7759
Hickory-Morganton-Lenoir, NC	0.8958
Houston, TX	0.9746
Huntington-Ashland, WV-KY-OH	0.9251
Huntsville, AL	0.8901
Indianapolis, IN	0.9828
Iowa City, IA	0.9828
Jackson, MS	0.8587
Jackson, TN	0.9032
Jacksonville, FL	0.9225
Johnson City-Kingsport-Bristol, TN-VA (VA Hospitals)	0.8494
Johnson City-Kingsport-Bristol, TN-VA (KY Hospitals)	0.8384
Johnstown, PA	0.0000
Jonesboro, AR (AR Hospitals)	0.7906
Jonesboro, AR (MO Hospitals)	0.8099
Joplin, MO	0.8700
Kalamazoo-Battlecreek, MI	1.0490
Kansas City, KS-MO	0.9809
Knoxville, TN	0.9090
Kokomo, IN	0.9031
Lafayette, LA	0.8392
Lakeland-Winter Haven, FL	0.9170
Las Vegas, NV-AZ	1.1018
Lawton, OK	0.8073
Lexington, KY	0.8629
Lima, OH	0.9515
Lincoln, NE	0.9133
Little Rock-North Little Rock, AR	0.8926
Longview-Marshall, TX	0.8588
Los Angeles-Long Beach, CA	1.2044
Louisville, KY-IN	0.9382
Lubbock, TX	0.7809
Lynchburg, VA	0.9114
Macon, GA	0.9296
Madison, WI	1.0188
Mansfield, OH	0.8989
Medford-Ashland, OR	1.0408
Memphis, TN-AR-MS	0.8667
Miami, FL	0.9878
Milwaukee-Waukesha, WI	0.9901
Minneapolis-St. Paul, MN-WI	1.0969
Missoula, MT	0.9139
Mobile, AL	0.8181
Modesto, CA	1.0606
Monmouth-Ocean, NJ	1.1290
Monroe, LA	0.8191
Montgomery, AL	0.7853
Nashville, TN	0.9283
New Haven-Bridgeport-Stamford-Waterbury-.	1.2520
Danbury, CT	1.1683
New London-Norwich, CT	0.9050
New Orleans, LA	1.3936
New York, NY	1.1546
Newark, NJ	1.0820
Newburgh, NY-PA	0.8714
Norfolk-Virginia Beach-Newport News, VA-NC	1.5324
Oakland, CA	0.9343
Ocala, FL	0.8910
Odessa-Midland, TX	0.8997
Oklahoma City, OK	1.0089
Omaha, NE-IA	1.1726
Orange County, CA	0.9537
Orlando, FL	0.8854
Peoria-Pekin, IL	1.0675
Philadelphia, PA-NJ	0.9562
Phoenix-Mesa, AZ	0.7760
Pine Bluff, AR	0.9268
Pittsburgh, PA	0.9869
Pittsfield, MA	0.9013
Pocatello, ID	
Portland, ME	0.9698
Portland-Vancouver, OR-WA	1.0792
Provo-Orem, UT	1.0088
Raleigh-Durham-Chapel Hill, NC	0.9978
Rapid City, SD	0.8936
Reading, PA	0.9126
Redding, CA	1.1249
Reno, NV	1.0445
Richland-Kennewick-Pasco, WA	1.1209
Richmond-Petersburg, VA	0.9735
Roanoke, VA	0.8703
Rochester, MN	1.2263
Rockford, IL	0.9456
Sacramento, CA	1.1636
Saginaw-Bay City-Midland, MI	0.9709
St. Cloud, MN	0.9858
St. Joseph, MO	0.8300
St. Louis, MO-IL	0.8907
Salinas, CA	1.4772
Salt Lake City-Ogden, UT	1.0035
San Antonio, TX	0.8649
San Diego, CA	1.1247
Santa Fe, NM	0.9927
Santa Rosa, CA	1.2891
Sarasota-Bradenton, FL	0.9367
Savannah, GA	0.9841
Seattle-Bellevue-Everett, WA	1.1571
Sherman-Denison, TX	0.9090
Shreveport-Bossier City, LA	0.8813
Sioux City, IA-NE	0.8736
Sioux Falls, SD	0.8950
South Bend, IN	0.9902
Spokane, WA	1.0770
Springfield, IL	0.8654
Springfield, MO	0.8236
Stockton-Lodi, CA	1.0630
Syracuse, NY	0.9519
Tampa-St. Petersburg-Clearwater, FL	0.9238
Texarkana,AR-Texarkana, TX	0.8193
Toledo, OH	0.9863
Topeka, KS	0.8840
Tucson, AZ	0.8993
Tulsa, OK	0.8398
Tuscaloosa, AL	0.8303
Tyler, TX	0.9249
Vallejo-Fairfield-Napa, CA	1.3544
Victoria, TX	0.8668
Waco, TX	0.8671
Washington, DC-MD-VA-WV	1.0852
Waterloo-Cedar Falls, IA	0.8970
Wausau, WI	0.9710
West Palm Beach-Boca Raton, FL	0.9929
Wichita, KS	0.9235
Wichita Falls, TX	0.7918
Wilmington-Newark, DE-MD	1.0973
Wilmington, NC	0.9336
York, PA	0.9140
Youngstown-Warren, OH	0.9485
Rural Alabama	0.7853
Rural Florida	0.8907
Rural Illinois (IA Hospitals)	0.8395
Rural Illinois (MO Hospitals)	0.8301
Rural Kentucky	0.8079
Rural Louisiana	0.7719
Rural Massachusetts	1.0417
Rural Michigan	0.8961
Rural Minnesota	0.9249
Rural Mississippi	0.7759

ADDENDUM J.—WAGE INDEX FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index
Rural Missouri	0.8099
Rural Montana	0.8567
Rural Nebraska	0.8283
Rural Nevada	0.9097
Rural Texas	0.7759
Rural Washington	1.0274
Rural Wyoming	0.8890

[FR Doc. 02–20146 Filed 8–6–02; 12:38 pm]
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Part VIII

Department of Education

Office of Special Education and Rehabilitative Services; Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children With Disabilities; Notice

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.326B]

Office of Special Education and Rehabilitative Services; Special Education—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2002.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services invites applications for FY 2002 under the Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities. This program is authorized by the Individuals with Disabilities Education Act (IDEA), as amended. This notice provides closing dates, a priority, and other information regarding the transmittal of applications.

Waiver of Rulemaking

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the rulemaking procedures in the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priority in this notice.

General Requirements

(a) The project funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) The project funded under this priority must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(d) If the project maintains a Web site, it must include relevant information and documents in an accessible form.

Purpose of Program: The purpose of this program is to provide technical assistance and information—through such mechanisms as institutes, regional resource centers, clearinghouses, and programs that support States and local entities in building capacity—to (1) improve early intervention, educational, and transitional services and results for children with disabilities and their families; and (2) address systemic-change goals and priorities.

Eligible Applicants: State educational agencies, local educational agencies, institutions of higher education, other public agencies, nonprofit private organizations, for-profit organizations, outlying areas, freely associated States, and Indian tribes or tribal organizations.

Applications Available: August 9, 2002.

Deadline for Transmittal of Applications: September 9, 2002.

Intergovernmental Review: This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Deadline for Intergovernmental Review: September 19, 2002.

Estimated Available Funds: $700,000.

Maximum Awards: $700,000.

Estimated Number of Awards: Under this priority, the Secretary will make one award for a cooperative agreement.

Note: The Department is not bound by any estimates in this notice.

Project Period: The project funded in this notice is for a project period of up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The selection criteria, chosen from the general selection criteria in 34 CFR 75.210. The specific selection criteria for this priority are included in the application package for the competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority: Under sections 661(e) and 685 of IDEA and 34 CFR 75.105(c)(3), we give an absolute preference to applications that meet the following priority. We will fund under this competition only those applications that meet this priority:

Absolute Priority—Urban Inclusion Technical Assistance Center (84.326B)

Background: Compared with suburban and rural local educational agencies (LEAs), urban LEAs place disproportionately more children with disabilities, particularly children with severe disabilities, in segregated classrooms or in separate schools, where they are less likely to have access to and instruction in the general education curriculum. In urban LEAs, special education services are often not aligned with or part of comprehensive school improvement efforts because special education is viewed as a separate system or a placement.

In addition, in many schools special education is seen as the only viable option to provide support to students who are falling behind. In these cases, children who could benefit substantially from scientifically-based interventions in such areas as reading are unnecessarily referred to special education.

Priority: The purpose of this priority is to support a center to promote placing children with disabilities in general education classrooms by assisting urban schools and LEAs to implement practices that have been shown to be effective in providing expanded access to, and improving results in, the general education classroom. In conducting its activities, the Center must put particular emphasis on education in the general education curriculum.

The Center funded under this priority must do the following:

(a) Identify effective practices for promoting inclusive placement in general education classrooms. These practices must include both effective practices in educating children, including early identification of children with learning difficulties and pre-referral intervention strategies, and effective practices in assisting and encouraging schools and LEAs to adopt those practices. The Center must identify these practices through such means as the Department's "What Works" clearinghouse, and planned OSERS centers targeted on (1) disproportionate representation of culturally and linguistically diverse students in special education and (2) improving access to and participation in the general education curriculum for children in elementary and secondary schools.

(b) Conduct a range of activities using the practices identified in paragraph (a) that promote instruction and support services in general education classrooms. These activities must include:

(1) General dissemination activities such as maintenance of a website and presentations at conferences that provide information on effective practices to broad audiences; and

(2) Creating partnerships with a limited number of LEAs that have demonstrated the ability and willingness to adopt new practices to help them design, implement, and evaluate practices that will expand or improve education in inclusive general education classroom for students with disabilities, including students with severe disabilities. Through these partnerships, the Center must provide technical assistance, training, and other support to the LEAs.

(c) In promoting access and participation in general education classrooms, the Center must:

(1) Take advantage of new tools for improving results for students provided by the No Child Left Behind (NCLB) Act of 2002. These include:

(A) School accountability for all students including, specifically, students with disabilities;

(B) Curricula and accountability systems aligned with statewide accountability systems; and

(C) State academic achievement standards that address, at a minimum, reading and mathematics; and

(2) Address the need for on-going, high quality professional development to ensure that personnel have skills and knowledge based on the most current findings related to effective practice; and

(3) Include ways that families, communities, and schools can work together to improve results.

(d) Evaluate its activities based on clear, measurable goals that are clearly linked to results.

Fourth and Fifth Years of Project: In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Page Limit: Part III of each application submitted under this notice, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A "page" is 8.5" x 11" (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I—the cover sheet; Part II—the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject without consideration or evaluation any application if —

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

For Applications Contact: Education Publications Center (ED Pubs), PO Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED-Pubs (1–877–433–7827). FAX: 301–470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free) 1–877–576–7734.

You may also contact Ed Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*.

Or you may contact Ed Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from Ed Pubs, be sure to identify this competition as follows: CFDA No. 84.326B.

FOR FURTHER INFORMATION CONTACT: Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team under **FOR FURTHER INFORMATION CONTACT**.

However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the internet at the following site: *www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo/nara/index.html*.

Program Authority: 20 U.S.C. 1485.

Dated: August 6, 2002.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

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Part IX

Department of Housing and Urban Development

24 CFR Parts 200 and 203
Single Family Mortgage Insurance; Section 203(k) Consultant Placement and Removal Procedures; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 200 and 203

[Docket No. FR–4592–F–02]

RIN 2502–AH51

Single Family Mortgage Insurance; Section 203(k) Consultant Placement and Removal Procedures

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes placement and removal procedures for HUD's list of qualified consultants under the Section 203(k) Rehabilitation Loan Insurance Program. A 203(k) lender may select a qualified independent consultant, who is an expert in the field of home inspection, cost estimating, and construction, to perform various tasks required for the rehabilitation of the property. The establishment of these placement and removal procedures will better protect 203(k) borrowers and lenders, and safeguard Federal Housing Administration (FHA) insurance funds. This final rule follows publication of an October 24, 2001 proposed rule.

DATES: *Effective Date:* September 9, 2002.

Comment Due Date: October 8, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Room 9266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–2121 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION

I. Background—The October 24, 2001 Proposed Rule

On October 24, 2001 (66 FR 53930), HUD published a proposed rule for public comment to establish placement and removal procedures for HUD's list of qualified consultants under the Section 203(k) Rehabilitation Loan Insurance Program. The 203(k) Program is the primary Federal Housing Administration (FHA) program for the rehabilitation and repair of single family properties. Section 203(k) loan insurance enables homebuyers and homeowners to finance both the purchase (or refinance) of a house and the cost of its rehabilitation through a single mortgage.

One of the most time consuming and difficult parts of the 203(k) loan process is for the borrower to properly prepare the required cost estimate, work write-up, and architectural exhibits. A borrower using the 203(k) Program may choose to have a qualified independent consultant, who is an expert in the field of home inspection, cost estimating, and construction, perform these tasks. The lender will then select a consultant and determine the scope of the work to be performed. The use of a consultant by the borrower is not required. However, many borrowers choose to use consultants to expedite processing of their 203(k) loans.

HUD, through its four Homeownership Centers (HOCs), maintains lists of qualified consultants on the applicable internet website. A lender may only select a consultant included on a HOC's list. Presently, there are no regulatory procedures for placing a consultant on, nor for removing a poorly performing consultant from the list. HUD published the October 24, 2001 proposed rule to establish such policies and procedures. The establishment of these placement and removal procedures will better protect 203(k) borrowers and lenders, and safeguard the FHA insurance fund. The October 24, 2001 proposed rule provides additional details regarding the 203(k) consultant placement and removal procedures.

II. This Final Rule

This final rule follows publication of the October 24, 2001 proposed rule. The public comment period on the proposed rule closed on December 24, 2001. HUD did not receive any public comments on the proposed rule; however, it has made three changes to the policies and procedures contained in the October 24, 2001 proposed rule.

First, the final rule no longer provides that a 203(k) consultant may be removed from HUD's list for having served as the consultant on properties in foreclosure, default, or claim status. HUD has determined that further consideration is required regarding this provision of the proposed rule, and the preamble of this rule, in Section IV, requests comment on specific issues related to establishing such a provision. After considering any comments that are received, should HUD at a future date decide to provide for the removal of 203(k) consultants based on excessive claim and default rates, it will do so through issuance of a new proposed rule.

Secondly, this final rule clarifies that a consultant may be removed from the 203(k) Consultant Roster for failure to retain standing as a state licensed home inspector, if the consultant is located in a state the requires such licensing. This final rule (as did the preceding October 24, 2001 proposed rule) provides that such licensing is required for placement on the Roster, but the proposed rule failed to specify that failure to maintain the licensing constituted grounds for removal. The final rule provides the necessary clarification.

Finally, § 203.50(l) of this final rule clarifies that, once a 203(k) borrower chooses to use the services of a consultant, the lender must select a consultant that has been placed on the 203(k) Consultant Roster. The proposed regulatory language would only have provided that a lender "may" select a consultant placed on the Roster. This language might have caused some 203(k) lenders to incorrectly assume that consultants not included on the Roster were eligible for selection.

III. Small Business Concerns Related to the Removal of Consultants

With respect to removing a 203(k) consultant from the list, or taking other appropriate enforcement action against a consultant, HUD is cognizant that section 222 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121) (referred to as "SBREFA") requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to "work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel." To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices that are provided to small businesses concerns at the time the enforcement action is undertaken. The language is as follows:

> Your Comments Are Important
>
> The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], call 1–888–REG–FAIR (1–888–734–3247).

As HUD stated in its notice describing HUD's actions on the implementation of SBREFA, which was published on May 21, 1998 (63 FR 28214), HUD intends to work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

IV. Request for Public Comment

HUD seeks to establish clear, consistent and familiar standards and procedures for a consultant to maintain status on, or be removed from, the 203(k) Consultant Roster. HUD is therefore seeking comment on whether, and if so, in what manner, it should establish "serving, or having served, as the rehabilitation consultant for properties securing 203(k) mortgages of which a significant percentage are in foreclosure, default or claim status" as a basis for removal from the Roster. In particular, HUD requests comments on the following issues:

1. Whether HUD should establish a minimum number of consultations as a threshold for any action, and if so, what number would be appropriate.
2. Whether HUD should specify the age of 203(k) mortgages that would be considered under a standard, and what age would be appropriate (*e.g.*, consultations on properties securing 203(k) mortgages not more than one, two or three years old.
3. What percentage of foreclosure, default or claims should be considered.
4. What period of time over which consultations are conducted should be used for evaluation purposes (*e.g.*, consultations over 12 months, or 18 months, or 24 months)?
5. What factors in addition to the percent of loan defaults, foreclosures and claims should HUD consider in evaluating consultant performance?
6. Should the severity of loss be considered as a factor in evaluating a consultant's performance?
7. If included as a factor, how should severity of loss be considered in evaluating performance?
8. What kinds of factors should be considered as mitigating for a consultant with higher than normal default, foreclosure and claim rates?
9. What are appropriate procedures and factors to consider for removal?
10. What is an appropriate period of removal from the Roster before a reinstatement is permitted?
11. What are appropriate procedures and factors to consider for reinstatement?

V. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502–0527. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Environmental Impact

This final rule establishes placement and removal procedures for HUD's list of qualified 203(k) rehabilitation loan consultants. The final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act

The Secretary has reviewed this final rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows.

The final rule establishes the procedure by which a consultant, who has violated FHA single family mortgage insurance program requirements, may be removed from HUD's list of qualified 203(k) consultants. Accordingly, to the extent that this final rule impacts small entities it will be as a result of actions taken by small entities themselves—that is, violation of single family program regulations and requirements.

Further, the final rule provides several procedural safeguards designed to minimize any potential impact on small entities. For example, the rule grants consultants, selected for removal from the list, the opportunity to provide a written response and to request a conference regarding a proposed removal. The rule also specifies that the official designated by HUD to review an appeal may not be the same HUD official involved in the initial removal decision. In addition, the examination requirements will be "phased-in" for consultants on the list, and will not take effect until six months after the effective date of promulgation. This delayed effective date will provide consultants on the list with additional time to meet the new requirements.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule will not have federalism implications and will not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

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Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This final rule will not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Number for the Section 203(k) Rehabilitation Loan Insurance program is 14.108.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 200 and 203 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for 24 CFR part 200 is revised to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

2. In subpart F, add §§ 200.190–200.193, under a new undesignated center heading reading "Section 203(k) Rehabilitation Loan Consultants," to read as follows:

Subpart F—Placement and Removal Procedures for Participation in FHA Programs

Section 203(k) Rehabilitation Loan Consultants

§ 200.190 HUD list of qualified 203(k) consultants.

(a) *Qualified consultant list.* HUD maintains a list of qualified consultants for use in the rehabilitation loan insurance program authorized by section 203(k) of the National Housing Act (12 U.S.C. 1709(k)) (referred to as the "203(k) Program").

(b) *Consultant functions.* Only a consultant included on the list may be selected by the lender to conduct any consultant function under the 203(k) Program (see § 203.50(l) of this title).

(c) *Disclaimer.* The inclusion of a consultant on the list means only that the consultant has met the qualifications and conditions prescribed by the Secretary for placement on the list of consultants qualified for the 203(k) Program. The inclusion of a consultant on the list does not create or imply a warranty or endorsement by HUD of the consultant, nor does it represent a warranty of any work performed by the consultant.

§ 200.191 Placement of 203(k) consultant.

(a) *Application.* To be considered for placement on the list, a consultant must apply to HUD using an application (or materials) in a form prescribed by HUD.

(b) *Eligibility.* To be eligible for placement on the list:

(1) The consultant must demonstrate to HUD that it either:

(i) Has at least three years' experience as a remodeling contractor, general contractor or home inspector; or

(ii) Is a state-licensed architect or state-licensed engineer;

(2) If located in a state that requires the licensing of home inspectors, the consultant must submit proof of such licensing;

(3) The consultant must submit a narrative description of the consultant's ability to perform home inspections, prepare architectural drawings, use proper methods of cost estimating and complete draw inspections.

(4) The consultant must certify that it has read and fully understands the requirements of the HUD handbook on the 203(k) Program (4240.4) and all HUD Mortgagee Letters and other instructions relating to the 203(k) Program.

(5) The consultant must not be listed on:

(i) The General Services Administration's Suspension and Debarment List;

(ii) HUD's Limited Denial of Participation List; or

(iii) HUD's Credit Alert Interactive Voice Response System.

(6) The consultant must have passed a comprehensive examination on the 203(k) Program, if HUD has developed such an exam.

(c) *Delayed effective date of examination requirement for consultants currently on the list.* Consultants who are included on the list on the date when the requirement for the examination described in paragraph (b)(6) of this section becomes effective have until 6 months following this date to pass the comprehensive exam. Failure to pass the examination by the deadline date constitutes cause for removal under § 200.192.

§ 200.192 Removal of 203(k) consultant.

(a) *Cause for removal.* HUD may remove a consultant from the list for any cause that HUD determines to be detrimental to HUD or its programs. Cause for removal includes, but is not limited to:

(1) Poor performance on a HUD quality control field review;

(2) Failure to comply with applicable regulations or other written instructions or standards issued by HUD;

(3) Failure to comply with applicable Civil Rights requirements;

(4) Being debarred or suspended, or subject to a limited denial of participation;

(5) Misrepresentation or fraudulent statements;

(6) Failure to retain standing as a state licensed architect or state-licensed engineer (unless the consultant can demonstrate the required three years experience as a home inspector or remodeling contractor);

(7) Failure to retain standing as a state licensed home inspector, if the consultant is located in a sate that requires such licensing; or

(8) Failure to respond within a reasonable time to HUD inquiries or requests for documentation.

(b) *Procedure for removal.* A consultant that is debarred or suspended, or subject to a limited denial of participation will be *automatically* removed from the list. In all other cases, the following procedure for removal will be followed:

(1) HUD will give the consultant written notice of the proposed removal. The notice will state the reasons for, and the duration of, the proposed removal.

(2) The consultant will have 20 days from the date of the notice (or longer, if provided in the notice) to submit a written response appealing the proposed removal and to request a conference. A request for a conference must be in writing and must be submitted along with the written response.

(3) A HUD official will review the appeal and send a response either affirming, modifying, or canceling the removal. The HUD official will not be someone who was involved in HUD's initial removal decision. HUD will respond with a decision within 30 days of receiving the appeal or, if the consultant has requested a conference, within 30 days after the completion of the conference. HUD may extend the 30-day period by providing written notice to the consultant.

(4) If the consultant does not submit a timely written response, the removal will be effective 20 days after the date of HUD's initial removal notice (or after a longer period provided in the notice). If a written response is submitted, and the removal decision is affirmed or modified, the removal will be effective on the date of HUD's notice affirming or modifying the initial removal decision.

(c) *Placement on the list after removal.* A consultant that has been removed from the list may apply for placement on the list (in accordance with § 200.191) after the period of the consultant's removal from the list has expired. An application will be rejected if the period for the consultant's removal from the list has not expired.

(d) *Other action.* Nothing in this section prohibits HUD from taking such other action against a consultant, as provided in 24 CFR part 24, or from seeking any other remedy against a consultant available to HUD by statute or otherwise.

§ 200.193 Responsibilities of 203(k) consultants on the list.

All consultants included on the list are responsible for:

(a) Obtaining and reading the HUD handbook on the 203(k) Program (4240.4) and any updates to the handbook.

(b) Complying with the HUD handbook on the 203(k) Program (4240.4), and any updates to the handbook, when performing any consultant function under the 203(k) Program.

(c) Obtaining and reading all Mortgagee Letters and other instructions issued by HUD relating to the 203(k) Program.

(d) Complying with all Mortgagee Letters and other instructions issued by HUD relating to the 203(k) Program, when undertaking any consultant function under the 203(k) Program.

(e) Complying with HUD's request for documentation relating to any 203(k) project on which the consultant has worked.

(f) Complying with HUD's monitoring requirements relating to the 203(k) Program.

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

3. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

4. Add § 203.50(l) to read as follows:

§ 203.50 Eligibility of rehabilitation loans.

* * * * *

(l) *Rehabilitation loan consultants.* HUD maintains a list of qualified consultants, in accordance with §§ 200.190 through 200.193 of this title. When the borrower elects to use the services of a consultant, the lender must select a consultant on the list to perform one or more of the following tasks:

(1) Conduct a preliminary feasibility analysis before or after the submission of a sales contract;

(2) Prepare the cost estimate, work write-up, and architectural exhibits required for the rehabilitation of the property;

(3) Conduct a plan review; and

(4) Conduct the draw inspections for the release of funds during the construction phase of the project.

Dated: July 8, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–20240 Filed 8–6–02; 8:45 am]

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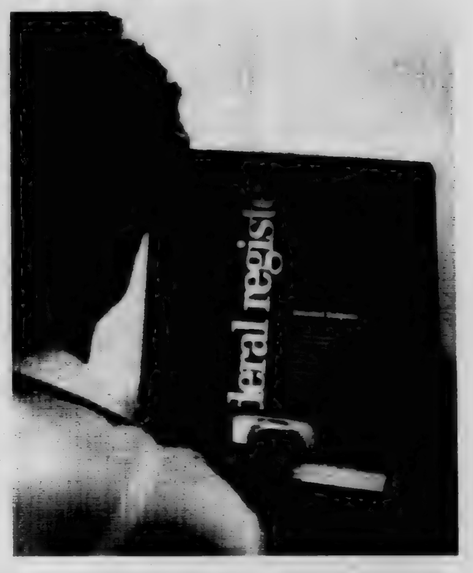
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Rules and Regulations

Federal Register
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Monday, August 12, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–029–2]

Citrus Canker; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the citrus canker regulations by removing a portion of Manatee County, FL, from the list of quarantined areas. The regulations require that an area be free from citrus canker for a period of at least 2 years before it may be removed from the list of quarantined areas. Surveys have shown that the Duette area of Manatee County, FL, has been free of citrus canker since February 4, 2000. The interim rule removed restrictions on the interstate movement of regulated articles from that portion of Manatee County, FL.

EFFECTIVE DATE: The interim rule became effective on May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–8899.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on May 8, 2002 (67 FR 30769–30771, Docket No. 02–029–1), we amended the citrus canker regulations in 7 CFR part 301 by removing a portion of Manatee County, FL, from the list of quarantined areas in § 301.75–4(a). The regulations require that an area be free from citrus canker for a period of at least 2 years before it may be removed from the list of quarantined areas, and surveys have shown that the 41-square-mile Duette area in eastern Manatee County, FL, has been free of citrus canker since February 4, 2000. Therefore, the interim rule removed restrictions on the interstate movement of regulated articles from that area.

Comments on the interim rule were required to be received on or before July 8, 2002. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, and Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 67 FR 30769–30771 on May 8, 2002.

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 7th day of August 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–20330 Filed 8–9–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 331

9 CFR Part 121

[Docket No. 02–082–1]

RIN 0579–AB47

Agricultural Bioterrorism Protection Act of 2002; Listing of Biological Agents and Toxins and Requirements and Procedures for Notification of Possession

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: In accordance with the Agricultural Bioterrorism Protection Act of 2002, we are establishing, by regulation, an initial list of biological agents and toxins determined to have the potential to pose a severe threat to animal or plant health, or to animal or plant products. The Act requires that all persons in possession of any listed biological agent or toxin must, within 60 days of the publication of this interim rule, notify the Secretary of such possession. This interim rule establishes the initial list of biological agents and toxins and provides guidance on the manner in which the required notice is to be provided.

DATES: This interim rule is effective August 12, 2002. We will consider all comments that we receive on or before October 11, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–082–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–082–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–082–1" on the subject line.

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You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information concerning the regulations in 7 CFR part 331, contact Dr. Arnold T. Tschanz, Senior Staff Officer, Regulatory Coordination, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737–1236, (301) 734–8790.

For information concerning the regulations in 9 CFR part 121, contact Dr. Denise Spencer, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–3277.

SUPPLEMENTARY INFORMATION:

Background

The President signed into law the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188) on June 12, 2002. Title II of Public Law 107 188, "Enhancing Controls on Dangerous Biological Agents and Toxins" (sections 201 through 231), provides for the regulation of certain biological agents and toxins by the Department of Health and Human Services (subtitle A, sections 201–204) and the Department of Agriculture (subtitle B, sections 211–213), and provides for interagency coordination between the two departments regarding overlap agents and toxins (subtitle C, section 221). Subtitle D (section 231) provides for criminal penalties regarding certain biological agents and toxins. For the Department of Health and Human Services, the Centers for Disease Control and Prevention (CDC) has been designated as the agency with primary responsibility for implementing the provisions of the Act; the Animal and Plant Health Inspection Service (APHIS) is the agency fulfilling that role for the Department of Agriculture (USDA).

In subtitle B (which is cited as the "Agricultural Bioterrorism Protection Act of 2002," referred to below as the Act), section 212(a) provides, in part, that the Secretary of Agriculture (the Secretary) must establish by regulation a list of each biological agent and each toxin that she determines has the potential to pose a severe threat to animal or plant health, or to animal or plant products. In determining whether to include an agent or toxin on the list, the Act requires the Secretary to consider:

- The effect of exposure to the agent or toxin on animal or plant health, and on the production and marketability of animal or plant products;
- The pathogenicity of the agent or the toxicity of the toxin and the methods by which the agent or toxin is transferred to animals or plants;
- The availability and effectiveness of pharmacotherapies and prophylaxis to treat and prevent any illness caused by the agent or toxin; and
- Any other criteria that the Secretary considers appropriate to protect animal or plant health, or animal or plant products.

The Act also calls on the Secretary to consult with appropriate Federal departments and agencies and with scientific experts representing appropriate professional groups.

Under section 213(a) of the Act, the Secretary must, not later than 60 days after the Act's date of enactment (*i.e.*, by August 11, 2002), promulgate an interim final rule that establishes the initial list required under section 212(a). The Act further requires (under section 213(b)) that all persons in possession of any listed biological agent or toxin must, within 60 days of the publication of that interim rule, notify the Secretary of such possession; the Act provides that the interim rule establishing the list must also furnish written guidance on the manner in which the required notice is to be provided.

In accordance with the statutory requirements discussed above, this interim rule establishes the initial lists of biological agents and toxins and sets out the manner in which persons in possession of listed agents and toxins are to provide notice of such possession. To accomplish this, we are establishing new parts in the Code of Federal Regulations (CFR), one part in the plant-related provisions of title 7, chapter III, and one part in the animal-related provisions of title 9, chapter I.

The two new parts, 7 CFR part 331 and 9 CFR part 121, are both titled "Possession of Biological Agents and Toxins" and are constructed similarly: Each contains a section that provides definitions for specific terms used in the part, a section in which the list of biological agents and toxins is set out, and a section that provides guidance on the manner in which the required notice is to be provided. The main difference between the two parts is in the lists: The regulations in 7 CFR part 331 list only those agents and toxins determined to have the potential to pose a severe threat to plant health or to the production and marketability of plant products, while the regulations in 9 CFR part 121 list those agents and toxins determined to have the potential to pose a severe threat to both human and animal health ("overlap agents and toxins"), to animal health, or to the production and marketability of animal products. These new parts are discussed in detail below.

Definitions

Both 7 CFR part 331 and 9 CFR part 121 begin with a definitions section, §§ 331.1 and 121.1, respectively. With one exception, the terms defined in each section are the same. Specifically, we define the terms *biological agent, facility, person, responsible facility official,* and *toxin* in both parts, while the term *overlap agent or toxin* is defined only in 9 CFR 121.1 (this term is not applicable to the plant-related regulations in 7 CFR part 331).

The definitions of *biological agent* and *toxin* are taken from 18 U.S.C. 178. Section 212(l) of the Act provides that "[t]he terms "biological agent" and "toxin" have the meanings given such terms in section 178 of title 18, United States Code." Thus, we define *biological agent* as "any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, capable of causing: (1) Death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism; (2) deterioration of food, water, equipment, supplies, or material of any kind; or (3) deleterious alteration of the environment." *Toxin* is defined as "the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including: (1) Any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or (2) any poisonous isomer or biological product, homolog, or derivative of such a substance."

In 9 CFR 121.1, we also define the term *overlap agent or toxin*. The definition we use is based on the definition provided for the term "select agent" in the CDC's regulations in 42 CFR 72.6(j). In appendix A to 42 CFR part 72, CDC provides a list of 36 select agents, 18 of which are microorganisms or toxins that pose a risk to both human and animal health. Those 18 microorganisms and toxins are listed as "overlap agents or toxins" in our regulations in § 121.2(a) and are characterized in the same manner by CDC for the purposes of carrying out its responsibilities under the Act.

Given that the agents and toxins listed in § 121.2(a) were drawn from the CDC's list of select agents, we believe that it is appropriate to adapt the CDC definition of the term "select agent" for use as our definition of the term "overlap agent or toxin" in order to provide regulated entities with a consistent frame of reference. Therefore, in 9 CFR 121.1, *overlap agent or toxin* is defined as "a microorganism (including a virus, bacterium, fungus, rickettsia) or toxin that poses a risk to both human and animal health and that is listed in § 121.2(a). The term also includes: (1) Genetically modified microorganisms or genetic elements from organisms listed in § 121.2(a), shown to produce or encode for a factor associated with a disease; and (2) genetically modified microorganisms or genetic elements that contain nucleic acid sequences coding for any of the toxins listed in § 121.2(a), or their toxic subunits."

The remaining three terms, which are defined in both 7 CFR 331.1 and 9 CFR 121.1, are *facility, responsible facility official,* and *person*. Like our definition of *overlap agent or toxin*, our regulations define the first two terms in the same manner as they are defined in CDC's regulations in 42 CFR 72.6(j) in order to provide a consistent frame of reference. *Facility* is defined as "any individual or government agency, university, corporation, company, partnership, society, association, firm, or other legal entity located at a single geographic site that may transfer or receive through any means a biological agent or toxin subject to this part." Generally speaking, "a single geographic site" can be viewed as the complex of buildings and laboratories at a single mailing address.

Responsible facility official is defined as "an official authorized to transfer and receive biological agents or toxins covered by this part on behalf of a facility. This person should be either a safety officer, a senior management official of the facility, or both. The responsible facility official should not be an individual who actually transfers or receives a biological agent or toxin at the facility." For the purposes of clarity, the definition of this term in 9 CFR 121.1 includes the words "including overlap agents and toxins" after the words "authorized to transfer and receive biological agents or toxins."

We have defined *person* as "any individual, firm, corporation, company, society, or association; any Federal, State, or local governmental entity; or any organized group of any of the foregoing." Where this term is defined elsewhere in our regulations in titles 7 and 9, the scope of the definition is limited to individuals, companies, and other legal entities. However, section 212(l)(5) of the Act, in defining "person," stipulates that the term includes Federal, State, and local governmental entities.

Lists of Biological Agents and Toxins

The initial lists of biological agents and toxins required under section 212(a)(1) of the Act are located in 7 CFR 331.2 and 9 CFR 121.2. The Act requires that these lists be reviewed and republished biennially, or more often as needed, and revised as necessary.

The list of nine biological agents and toxins provided in 7 CFR 331.2 was compiled by APHIS' Plant Protection and Quarantine (PPQ) program. The listed agents and toxins are viruses, bacteria, or fungi that can pose a severe threat to a number of important crops, including potatoes, rice, soybeans, corn, citrus, and stone fruit. PPQ staff, after internal discussions and a review of several existing or proposed lists of plant pathogens that potentially pose a severe threat to plant health or plant products, requested input from USDA's Agricultural Research Service, Forest Service, and Cooperative State Research, Education, and Extension Service, and consulted with the American Phytopathological Society. The resulting list of agents and toxins identified as potentially posing a severe threat to plant health or plant products is as follows:

Liberobacter africanus, Liberobacter asiaticus
Peronosclerospora philippinensis
Phakopsora pachyrhizi
Plum pox potyvirus
Ralstonia solanacearum Race 3
Sclerophthora rayssiae var. *zeae*
Synchytrium endobioticum
Xanthomonas oryzae pv. *oryzicola*
Xylella fastidiosa (citrus variegated chlorosis strain)

The list of 18 overlap agents and toxins in 9 CFR 121.2(a) was, as noted previously, drawn from CDC's list of 36 select agents, the 18 listed in our regulations being those select agents that pose a risk to both human and animal health. In June 2002, CDC convened an interagency working group to review the list of 36 select agents and develop recommendations regarding possible changes to that list. CDC has reviewed those recommendations and intends publish a document in the **Federal Register** to solicit comments from the public on potential changes to its list of select agents. Because the process of changing the list of select agents is still in its initial stages at the time this interim rule is being published, the list of overlap agents and toxins found in 9 CFR 121.2(a) reflects the select agent list promulgated by CDC in October 1996. The overlap agents and toxins listed in 9 CFR 121.2(a) are:

Bacillus anthracis
Brucella abortus, B. melitensis, B. suis
Burkholderia (Pseudomonas) mallei
Burkholderia (Pseudomonas) pseudomallei
Clostridium botulinum
Coccidioides immitis
Coxiella burnetii
Eastern equine encephalitis virus
Equine morbillivirus (Hendra virus)
Francisella tularensis
Rift Valley fever virus
Venezuelan equine encephalitis virus
Aflatoxins
Botulinum toxins
Clostridium perfringens epsilon toxin
Shigatoxin
Staphylococcal enterotoxins
T–2 toxin

The 23 agents and toxins listed in 9 CFR 121.2(b) include the causative agents of 14 of the 15 diseases classified by the Office International des Epizooties (OIE) as "List A" diseases. (The causative agent of the fifteenth List A disease, Rift Valley fever, is an overlap agent listed in § 121.2(a).) List A diseases are, according to OIE, those transmissible diseases that have the potential for very serious and rapid spread, irrespective of national borders, that are of serious socioeconomic or public health consequence and that are of major importance in the international trade of animals and animal products. The diseases drawn from OIE's List A are:

African horsesickness
African swine fever
Bluetongue (exotic)
Classical swine fever
Contagious bovine pleuropneumonia
Foot-and-mouth disease
Highly pathogenic avian influenza
Lumpy skin disease
Newcastle disease (exotic)
Peste des petits ruminants

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Rinderpest
Sheep pox and goat pox
Swine vesicular disease
Vesicular stomatitis (exotic)

Five of the remaining nine agents and toxins listed in 9 CFR 121.2(b) are OIE List B diseases, *i.e.*, transmissible diseases that are considered to be of socioeconomic and/or public health importance within countries and that are significant in the international trade of animals and animal products. The List B diseases included in 9 CFR 121.2(b) are:

Bovine spongiform encephalopathy
Cowdria ruminantium (heartwater)
Japanese encephalitis virus
Malignant catarrhal fever
Contagious caprine pleuropneumonia

The four remaining diseases/disease agents—two restricted foreign animal pathogens (Akabane virus and camel pox virus) and two emerging paramyxoviruses (Menangle virus and Nipah virus)—were included on the list in 9 CFR 121.2(b) based on our determination that they potentially pose a severe threat to animal health or animal products.

Exemptions From the Notification Requirement

Under section 212(g)(1)(C) of the Act, certain products that are, bear, or contain overlap agents or toxins may be exempted from regulation if those products have been cleared, approved, licensed, or registered pursuant to one of the following acts:

- The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*);
- Section 351 of Public Health Service Act (42 U.S.C. 262);
- The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading "Bureau of Animal Industry" in the Act of March 4, 1913; 21 U.S.C. 151–159); or
- The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 131 *et seq.*).

Paragraph (b) of § 213 of the Act extends that exemption provision to the notification requirements that are the subject of this interim rule. Therefore, the regulations 9 CFR 121.2(c) provide that persons possessing products that are, bear, or contain overlap agents or toxins listed in 9 CFR 121.2(a) will be exempt from the notification requirements of 9 CFR 121.3 if the products have been cleared, approved, licensed, or registered pursuant to one of the acts cited above.

Because the exemption under section 212(g)(1)(C) of the Act is limited to overlap agents and toxins, none of which appear in 7 CFR 331.2, we have not included those exemption provisions in the regulations in 7 CFR part 331. Further, while the Act, in section 212(g)(2), does provide general authority for exemptions not involving overlap agents or toxins when the Secretary determines that such exemptions are consistent with protecting animal and plant health and animal and plant products, no determination has yet been made with regard to exemptions other than those discussed above.

Notification Requirements and Procedures

Under section 213(b) of the Act, all persons (unless exempt under section 212(g) of the Act) in possession of a listed biological agent or toxin must notify the Secretary of such possession not later than 60 days after the date on which the interim rule required under section 212(a)(1) of the Act— *i.e.*, this interim rule—is promulgated. Therefore, 7 CFR 331.3 and 9 CFR 121.3 both provide that any person or facility that possesses any listed biological agent or toxin must notify APHIS of such possession by 60 days after the publication date of this interim rule. However, the regulations in 9 CFR 121.3 provide that persons possessing overlap agents or toxins listed in § 121.2(a)—which, as noted previously, are among CDC's select agents—must provide the required notification by September 10, 2002, which is the date that notice must be provided to CDC under subtitle A of Public Law 107–188. Further, the regulations in 9 CFR 121.3 make note of the exemptions discussed above and state that notification is not required for those products that meet the criteria of 9 CFR 121.2(c). The regulations in both 7 CFR 331.3 and 9 CFR 121.3 indicate the form to be used to provide the required notification (one form will be used for notification under 7 CFR part 331, and a different form will be used for notification under 9 CFR part 121) and explain where copies of each form may be obtained.

To facilitate the notification process, both sections provide that a single form should be submitted for each facility by a responsible facility official designated by the facility to ensure management oversight of the notification requirement, and that the responsible facility official should consult with others in the facility (*e.g.*, principal investigators) in order to obtain the information necessary to complete the notification form. The responsible facility official must review and sign the notification form and will be the individual contacted by APHIS if any questions arise concerning the facility's response.

Finally, both sections provide a mailing address for the submission of completed forms, as well as a telephone number to call if assistance in completing the form is required.

Immediate Action

Immediate action is necessary in order for USDA to comply with the requirements of Title II, subtitle B, of Public Law 107–188, which requires the publication of this interim rule not later than August 11, 2002. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In this interim rule, we are establishing, by regulation, an initial list of biological agents and toxins determined to have the potential to pose a severe threat to animal or plant health, or to animal or plant products. The Agricultural Bioterrorism Protection Act of 2002 requires that all persons in possession of any listed biological agent or toxin must, within 60 days of the publication of this interim rule, notify the Secretary of such possession. This interim rule establishes the initial list of biological agents and toxins and provides guidance on the manner in which the required notice is to be provided.

The Regulatory Flexibility Act requires that agencies specifically consider the economic effects of their rules on small entities. We expect that the entities that will be affected by this rule will be laboratories and other institutions conducting research and related activities that involve the use of the biological agents and toxins listed in this rule. Most affected entities (apart from Federal or State governmental entities) could be considered as falling under North American Industry Classification System (NAICS) code 541710, "Research and Development in the Physical, Engineering, and Life Sciences." The small business size standard established by the Small Business Administration for NAICS 541710 is 500 or fewer employees. Potentially affected entities could also fall under NAICS 541990, "All Other Professional, Scientific and Technical Services," and NAICS 611310, "Colleges, Universities and Professional Schools." The small business size standard for both of those classifications is annual receipts of $6 million or less.

Given that this interim rule simply requires that persons possessing a listed biological agent or toxin provide notice to APHIS of such possession, we do not expect that this rule will have any substantive economic effect on any entities, large or small. We expect that any costs associated with this rule will be limited to the staff time expended in completing a notification form. This rule provides for the submission of only one form for each facility, which should limit the amount of time necessary for the preparation of a facility's response. Further, we would expect that any facility handling the kinds of biological agents and toxins listed in this rule would have a database or other records containing a listing of agents and toxins currently in the facility. Therefore, we anticipate that any personnel costs resulting from compliance with this rule should be minimal.

The benefit of this action is enhanced protection of the U.S. agricultural sector as APHIS will have a detailed inventory of biological agents and toxins that could pose a threat to the sector.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control numbers 0579–0201 and 0579–0204 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 6 months. Please send written comments on the 6-month approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 02–082–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 02–082–1 and send your comments within 60 days of publication of this rule.

This rule establishes an initial list of biological agents and toxins determined to have the potential to pose a severe threat to animal or plant health, or to animal or plant products, and requires that all persons in possession of any listed biological agent or toxin must, within 60 days of the publication of this interim rule, notify the Secretary of such possession.

Two forms have been developed to provide the means by which persons in possession of listed agents or toxins will notify the Secretary of such possession. The first form, "Notification of Possession of Select Agents or High Consequence Livestock Pathogens and Toxins," was developed jointly by APHIS and the Centers for Disease Control and Prevention and will be used by persons possessing those agents and toxins determined to have the potential to pose a severe threat to human health, to both human and animal health ("overlap agents and toxins"), to animal health, or to the production and marketability of animal products. The second form, PPQ form 655, was developed by APHIS and will be used by persons possessing those agents and toxins determined to have the potential to pose a severe threat to plant health or to the production and marketability of plant products. We expect that the scope and nature of the research required to complete PPQ form 655 will be less complex than that associated with the first form, thus we have estimated a smaller reporting burden per response for this form.

We are soliciting comments from the public concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

For "Notification of Possession of Select Agents or High Consequence Livestock Pathogens and Toxins," (OMB Control No. 0579–0201):

Estimate of burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Researchers, universities, research and development organizations, diagnostic laboratories, and other entities that possess listed agents and toxins determined to have the potential to pose a severe threat to human health, to both human and animal health, to animal health, or to the production and marketability of animal products.

Estimated annual number of respondents: 50,000.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 50,000.

Estimated total annual burden on respondents: 100,000 hours.

For PPQ form 655 (OMB Control No. 0579–0204):

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Researchers, universities, research and development organizations, diagnostic laboratories, and other entities that possess listed agents and toxins determined to have the potential to pose a severe threat to plant health or to the production and marketability of plant products.

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Estimated annual number of respondents: 1,000.
Estimated annual number of responses per respondent: 1.
Estimated annual number of responses: 1,000.
Estimated total annual burden on respondents: 500 hours.
(Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

7 CFR Part 331

Agricultural research, Laboratories, Plant diseases and pests, Reporting and recordkeeping requirements.

9 CFR Part 121

Agricultural research, Animal diseases, Laboratories, Medical research, Reporting and recordkeeping requirements.

Accordingly, we are amending 7 CFR chapter III by removing the heading for reserved part 331 and adding a new part 331; and we are amending 9 CFR chapter I, subchapter E, by adding a new part 121 to read as follows:

7 CFR Chapter III

PART 331—POSSESSION OF BIOLOGICAL AGENTS AND TOXINS

Sec.
331.1 Definitions.
331.2 List of biological agents and toxins.
331.3 Notification requirements and procedures.

Authority: Secs. 211–213, Title II, Pub. L. 107–188, 116 Stat. 647 (7 U.S.C. 8401).

§331.1 Definitions.

Biological agent. Any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, capable of causing:

(1) Death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(2) Deterioration of food, water, equipment, supplies, or material of any kind; or

(3) Deleterious alteration of the environment.

Facility. Any individual or government agency, university, corporation, company, partnership, society, association, firm, or other legal entity located at a single geographic site that may transfer or receive through any means a biological agent or toxin subject to this part.

Person. Any individual, firm, corporation, company, society, or association; any Federal, State, or local governmental entity; or any organized group of any of the foregoing.

Responsible facility official. An official authorized to transfer and receive biological agents or toxins covered by this part on behalf of a facility. This person should be either a safety officer, a senior management official of the facility, or both. The responsible facility official should not be an individual who actually transfers or receives a biological agent or toxin at the facility.

Toxin. The toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including:

(1) Any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or

(2) Any poisonous isomer or biological product, homolog, or derivative of such a substance.

§331.2 List of biological agents and toxins.

The biological agents and toxins listed in this section have been determined to have the potential to pose a severe threat to plant health or to the production and marketability of plant products. Any person who possesses any listed agent or toxin or, in the case of a listed disease, the causative agent of that disease, must notify the Animal and Plant Health Inspection Service of that possession in accordance with § 331.3.

Liberobacter africanus, Liberobacter asiaticus
Peronosclerospora philippinensis
Phakopsora pachyrhizi
Plum pox potyvirus
Ralstonia solanacearum Race 3
Sclerophthora rayssiae var. *zeae*
Synchytrium endobioticum
Xanthomonas oryzae pv. *oryzicola*
Xylella fastidiosa (citrus variegated chlorosis strain)

§331.3 Notification requirements and procedures.

(a) Any person or facility that possesses any biological agent or toxin listed in § 331.2 must notify the Animal and Plant Health Inspection Service (APHIS) of such possession by October 11, 2002. Notice must be provided using Plant Protection and Quarantine (PPQ) form 655, which may be obtained by calling PPQ at (301) 734–8896. The form is also available on the Internet at *http://www.aphis.usda.gov/ppq/permits.*

(b) Each facility should designate a responsible facility official to complete PPQ form 655, and a single form that reflects all listed agents and toxins possessed by all persons within the facility should be submitted for each facility. The responsible facility official for each facility should consult with others in the facility (*e.g.*, principal investigators) in order to obtain the information necessary to complete the notification form. The responsible facility official must review and sign the notification form and will be the individual contacted by APHIS if any questions arise concerning the facility's response.

(c) Completed forms must be mailed to: U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Permits and Risk Assessment, 4700 River Road Unit 133, Riverdale, Md 20737–1236.

(d) Assistance in completing the form may be requested by calling (301) 734–8896.

(Approved by the Office of Management and Budget under control number 0579–0204)

9 CFR Chapter I

PART 121—POSSESSION OF BIOLOGICAL AGENTS AND TOXINS

Sec.
121.1 Definitions.
121.2 List of biological agents and toxins.
121.3 Notification requirements and procedures.

Authority: Secs. 211–213, Title II, Pub. L. 107–188, 116 Stat. 647 (7 U.S.C. 8401).

§121.1 Definitions.

Biological agent. Any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, capable of causing:

(1) Death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(2) Deterioration of food, water, equipment, supplies, or material of any kind; or

(3) Deleterious alteration of the environment.

Facility. Any individual or government agency, university, corporation, company, partnership, society, association, firm, or other legal entity located at a single geographic site that may transfer or receive through any means a biological agent or toxin subject to this part.

Overlap agent or toxin. A microorganism (including a virus, bacterium, fungus, rickettsia) or toxin that poses a risk to both human and animal health and that is listed in § 121.2(a). The term also includes:

(1) Genetically modified microorganisms or genetic elements from organisms listed in § 121.2(a), shown to produce or encode for a factor associated with a disease; and

(2) Genetically modified microorganisms or genetic elements that contain nucleic acid sequences coding for any of the toxins listed in § 121.2(a), or their toxic subunits.

Person. Any individual, firm, corporation, company, society, or association; any Federal, State, or local governmental entity; or any organized group of any of the foregoing.

Responsible facility official. An official authorized to transfer and receive biological agents or toxins, including overlap agents and toxins, covered by this part on behalf of a facility. This person should be either a safety officer, a senior management official of the facility, or both. The responsible facility official should not be an individual who actually transfers or receives a biological agent or toxin at the facility.

Toxin. The toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including:

(1) Any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or

(2) Any poisonous isomer or biological product, homolog, or derivative of such a substance.

§121.2 List of biological agents and toxins.

The biological agents and toxins listed in this section have been determined to have the potential to pose a severe threat to both human and animal health, to animal health, or to the production and marketability of animal products. Unless exempted under paragraph (c) of this section, any person who possesses any listed agent or toxin or, in the case of a listed disease, the causative agent of that disease, must notify the Animal and Plant Health Inspection Service of that possession in accordance with § 121.3.

(a) *Overlap agents and toxins.*

(1) *Bacillus anthracis.*

(2) *Brucella abortus, B. melitensis, B. suis.*

(3) *Burkholderia (Pseudomonas) mallei.*

(4) *Burkholderia (Pseudomonas) pseudomallei.*

(5) *Clostridium botulinum.*

(6) *Coccidioides immitis.*

(7) *Coxiella burnetii.*

(8) Eastern equine encephalitis virus.

(9) Equine morbillivirus (Hendra virus).

(10) *Francisella tularensis.*

(11) Rift Valley fever virus.

(12) Venezuelan equine encephalitis virus.

(13) Aflatoxins.

(14) Botulinum toxins.

(15) *Clostridium perfringens* epsilon toxin.

(16) Shigatoxin.

(17) Staphylococcal enterotoxins.

(18) T–2 toxin.

(b) *Animal agents and toxins.*

African horsesickness virus
African swine fever
Akabane virus
Avian influenza (highly pathogenic)
Bluetongue virus (exotic)
Bovine spongiform encephalopathy agent
Camel pox virus
Classical swine fever
Cowdria ruminantium (heartwater)
Foot-and-mouth disease virus
Goat pox virus
Japanese encephalitis virus
Lumpy skin disease virus
Malignant catarrhal fever
Menangle virus
Mycoplasma capricolum /M. F38/*M. mycoides capri* (contagious caprine pleuropneumonia)
Mycoplasma mycoides mycoides (contagious bovine pleuropneumonia)
Newcastle disease virus (exotic)
Nipah virus
Peste des petits ruminants
Rinderpest virus
Sheep pox
Swine vesicular disease virus
Vesicular stomatitis (exotic)

(c) *Exemptions.* Persons possessing products that are, bear, or contain overlap agents or toxins listed in paragraph (a) of this section will be exempt from the notification requirements of § 121.3 if the products have been cleared, approved, licensed, or registered pursuant to:

(1) The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*);

(2) Section 351 of Public Health Service Act (42 U.S.C. 262);

(3) The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading "Bureau of Animal Industry" in the Act of March 4, 1913; 21 U.S.C. 151–159); or

(4) The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 131 *et seq.*).

§121.3 Notification requirements and procedures.

(a) Any person or facility that possesses any biological agent or toxin listed in § 121.2(b) must notify the Animal and Plant Health Inspection Service (APHIS) of such possession by October 11, 2002. Any person or facility that possesses any biological agent or toxin listed in § 121.2(a) that is not exempt under § 121.2(c) must notify APHIS of such possession by September 10, 2002. Notice must be provided using the form "Notification of Possession of Select Agents or High Consequence Livestock Pathogens and Toxins." A machine-readable version of the form may be obtained by calling (866) 567–4232. An alternate version of the form is available on the Internet at *http://www.aphis.usda.gov/vs/ncie.*

(b) Each facility should designate a responsible facility official to complete the form, and a single form that reflects all listed agents and toxins possessed by all persons within the facility should be submitted for each facility. The responsible facility official for each facility should consult with others in the facility (*e.g.*, principal investigators) in order to obtain the information necessary to complete the notification form. The responsible facility official must review and sign the notification form and will be the individual contacted by APHIS if any questions arise concerning the facility's response.

(c) Completed forms must be mailed to: Analytical Sciences, Inc., Attn: FSO P.O. Box 341809, Bethesda, MD 20827–1809.

(d) Assistance in completing the form available on the Internet may be requested by calling (301) 734–3222. Assistance in completing the machine-readable form may be obtained by calling (866) 567–4232.

(Approved by the Office of Management and Budget under control number 0579–0201)

Done in Washington, DC, this 7th day of August, 2002.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 02–20354 Filed 8–9–02; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV02–989–6 IFR]

Raisins Produced From Grapes Grown in California; Decrease in Desirable Carryout Used to Compute Trade Demand

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the desirable carryout used to compute the yearly trade demand for raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). This rule decreases the amount of tonnage available early in the season and is expected to help the industry reduce an oversupply of California raisins.

DATES: Effective August 13, 2002. Comments must be received by August 22, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938; or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. Trade demand is computed based on a formula specified in the order, and is used to determine volume regulation percentages for each crop year, if necessary. Desirable carryout, one factor in this formula, is the amount of tonnage from the prior crop year needed during the first part of the next crop year to meet market needs, before new crop raisins are available. This rule decreases the desirable carryout for Natural (sun-dried) Seedless (NS) raisins from a rolling average of 3 to 2 months of prior year's shipments over the past 5 years, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. This rule also decreases the desirable carryout for all other varietal types of raisins covered under the order from a rolling average of 3 to 2–1/2 months of prior year's shipments over the past 5 years, dropping the high and low figures, and dividing the remaining sum by three. These actions were recommended by the Committee at meetings held on June 27 and July 24, 2002.

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the Committee. Reserve raisins are disposed of through certain programs authorized under the order. For instance, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Funds generated from sales of reserve raisins are also used to support handler sales to export markets. Net proceeds from sales of reserve raisins are ultimately distributed to the reserve pool's equity holders, primarily producers.

Section 989.54 of the order prescribes procedures to be followed in establishing volume regulation and includes methodology used to calculate volume regulation percentages. Trade demand is based on a computed formula specified in this section, and is also part of the formula used to determine volume regulation percentages. Trade demand is equal to 90 percent of the prior year's shipments, adjusted by the carryin and desirable carryout inventories.

At one time, § 989.54(a) also specified actual tonnages for desirable carryout for each varietal type regulated. However, in 1989, these tonnages were suspended from the order, and flexibility was added so that the Committee could adopt a formula for desirable carryout in the order's rules and regulations. The formula has allowed the Committee to periodically adjust the desirable carryout to better reflect changes in each season's marketing conditions.

The formula for desirable carryout has been specified since 1989 in § 989.154. Initially, the formula was established so that desirable carryout was based on shipments for the first 3 months of the prior crop year—August, September, and October (the crop year runs from August 1 through July 31). This amount was gradually reduced to 2½ months in 1991–92, 2¼ months in 1995–96, and to 2 months in 1996–97. The Committee reduced the desirable carryout between 1991–1997 because it believed that an excessive supply of raisins was available early in a new crop year creating unstable market conditions.

In 1998, the Committee determined that, because of the reduced desirable carryout, not enough raisins were being made available for growth. Thus, the desirable carryout was increased to 2½ months of prior year's shipments to allow for a higher trade demand figure and, thus, a higher free tonnage percentage, making more raisins available to handlers, especially for immediate use early in the season when supplies are often tight. This action also allowed desirable carryout to move towards what handlers actually hold in inventory at the end of a crop year, or about 100,000 tons. The Committee continued this practice and, in 2000, desirable carryout was changed to equal a rolling average of 3 months of prior year's shipments (August, September, and October) over the past 5 years, dropping the high and low figures.

June 27, 2002, Recommendation

At a meeting on June 27, 2002, the Committee reviewed the desirable carryout level. Most Committee members believe that the supply of free tonnage raisins on the market has once again become excessive and is contributing to unstable market conditions. The following table illustrates how handler inventories for NS raisins have been building in recent years:

CARRYOUT INVENTORY OVER PAST 5 YEARS

Crop years	[1] Inventory
2001–02	[2] 133,815
2000–01	116,131
1999–2000	101,946
1998–99	98,291
1997–98	92,769

[1] Carryout inventory (natural condition tons).
[2] Estimated.

To moderate the oversupply of marketable tonnage early in the crop year, the Committee recommended reducing the desirable carryout level for all varietal types of raisins from a rolling average of 3 months (August, September, and October) to 2½ months (August, September, and one-half of October) of prior year's shipments over the past 5 years, dropping the high and low figures. Committee staff estimated that this change to the desirable carryout level would reduce the 2002 trade demand for NS raisins by 15,000 tons. Decreasing the trade demand will reduce the free tonnage percentage, thus, making less free tonnage available to handlers for immediate use.

The Committee's vote on this action was 41 in favor and 5 opposed. Two of the members voting no commented that the large carryout at the end of the current crop year was due mainly to an extra 32,000 tons of reserve raisins that were purchased by handlers in September 2001. They believe that the carryout problem will correct itself next season. Other members commented that this action would create a hardship on producers by reducing the free tonnage percentage, thereby reducing producer payments. After much deliberation, the majority of Committee members supported reducing the desirable carryout from a rolling average of 3 to 2½ months of shipments over the past 5 years, dropping the high and low figures.

Most of the discussion at the Committee's meeting concerned the desirable carryout level for NS raisins. NS raisins are the major commercial varietal type of raisin produced in California. With the exception of the 1998–99 crop year, volume regulation has been implemented for NS raisins for the past several seasons. However, the Committee also believes that the decrease in desirable carryout should apply to the other varietal types of raisins covered under the order.

July 24, 2002, Revised Recommendation for NS Raisins

The raisin industry continued to explore other avenues to reduce the oversupply of California raisins, including implementing a "surplus pool and non-harvest" program for the 2002 crop year. However, rulemaking would be required as appropriate.

The Committee met on July 24, 2002, and revisited its oversupply situation and the desirable carryout issue. As a result, the Committee voted to further reduce the NS supply by decreasing the NS desirable carryout to a rolling average of 2 months (August and September) of prior year's shipments over the past 5 years, dropping the high and low figures, or 60,000 natural condition tons, whichever is higher. Committee staff estimated that this would reduce the 2002 trade demand for NS raisins by another 15,000 tons, or a total of 30,000 tons. The desirable carryout for all other varietal types would remain at the 2½ month level recommended in June 2002.

The Committee's vote on this action was 32 in favor, 10 opposed, and 2 abstentions. The members voting no were primarily concerned that this action would reduce the free tonnage percentage and producer payments.

Although this action will tighten the supply of raisins available early in the season, handlers will still be provided an opportunity to increase their inventories, if necessary, by purchasing raisins from the reserve pool under order-mandated 10 plus 10 offers and other releases of reserve raisins available under the order. The 10 plus 10 offers are two offers of reserve pool raisins, which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use. Although this rule tends to tighten the supply of raisins early in the season, handlers will still have the opportunity to obtain additional raisins from the 10 plus 10 offers. Thus, paragraph (a) in § 989.154 is modified accordingly.

Initial Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and

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the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule reduces the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. Trade demand is computed based on a formula specified under § 989.54(a) of the order. It is also part of another formula used to determine volume regulation percentages for each crop year, if necessary. Desirable carryout, one factor in this formula, is the amount of tonnage from the prior crop year needed during the first part of the next crop year to meet market needs, before new crop raisins are available. This rule reduces the desirable carryout specified in paragraph (a) of § 989.154 for NS raisins from a rolling average of 3 months (August, September, and October) to 2 months (August and September) of prior year's shipments for the past 5 years, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. This rule also reduces the desirable carryout for all other varietal types covered under the order from 3 months (August, September, and October) to 2½ months (August, September, and one-half of October) of prior year's shipments for the past 5 years, dropping the high and low figures, and dividing the remaining sum by three.

The desirable carryout level applies uniformly to all handlers in the industry, whether small or large, and there are no known additional costs incurred by small handlers. As previously mentioned, reducing the desirable carryout will reduce the trade demand and free tonnage percentage, thus making less raisins available to handlers early in the season. This action is expected to help reduce the burdensome supply of California raisins, thereby improving market conditions. Handlers will be provided opportunities throughout the crop year to purchase raisins from the reserve pool to increase their inventories.

The Committee considered a number of alternative levels of desirable carryout. The Committee has an appointed subcommittee, which periodically holds public meetings to discuss changes to the order and other issues. The subcommittee met on June 26, 2002, and discussed desirable carryout. Some industry members supported maintaining the status quo. Others supported an incremental reduction to the desirable carryout, reducing the level to a rolling average of 2¾ months in 2002, and to a rolling average of 2½ months in 2003. The subcommittee ultimately recommended to the full Committee in June that the desirable carryout be reduced for all varietal types to a rolling average of 2½ months of prior year's shipments for the past 5 years, dropping the high and low figures, and dividing the remaining sum by three. The full Committee adopted the subcommittee's June recommendation.

As mentioned earlier, the raisin industry continued to explore other avenues to reduce the oversupply of California raisins, including implementing a "surplus pool and non-harvest" program for the 2002 crop year. However, rulemaking would be required as appropriate.

The Committee revisited the desirable carryout issue on July 24, 2002. At that meeting, the Committee reviewed an alternative proposal that would revise the trade demand formula by eliminating the adjustment for carryin and carryout inventory. The Committee also reviewed the merits of reducing the desirable carryout for NS raisins to a rolling average of 2 months of prior year's shipments over the past 5 years, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. After much discussion, the majority of Committee members supported further reducing the desirable carryout for NS raisins to this level. Committee staff estimated that this would reduce the 2002 trade demand for NS raisins by another 15,000 tons, or a total of 30,000 tons. The desirable carryout for all other varietal types would remain at the 2½ month level recommended in June 2002.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's subcommittee meeting on June 26, 2002, and the Committee's meetings on June 27 and July 24, 2002, where this action was deliberated, were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on reducing the desirable carryout level specified under the order's regulations. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule needs to be in effect as soon as possible because the order specifies that the Committee must meet and compute trade demand on or before August 15 each year; (2) this action was recommended by more than two-thirds of the Committee members; (3) producers and handlers are aware of this action which was recommended by the Committee at a public meeting; and (4) this interim final rule provides a comment period for written comments and all comments timely received will be considered prior to finalization of this rule. Further, in view of the above, a ten-day comment period is deemed appropriate.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 989.154, paragraph (a) is revised to read as follows:

989.154 Marketing policy computations.

(a) *Desirable carryout levels.* The desirable carryout level to be used in computing and announcing a crop year's marketing policy for Natural (sun-dried) Seedless raisins shall be equal to the total shipments of free tonnage during August and September for each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. The desirable carryout level to be used in computing and announcing a crop year's marketing policy for all other varietal types of raisins specified in § 989.110 shall be equal to the total shipments of free tonnage during August, September, and one-half of October for each of the past 5 crop years, for each such varietal type, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three.

* * * * *

Dated: August 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–20440 Filed 8–8–02; 12:46 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 01–023–2]

Microchip Implants as an Official Form of Identification for Pet Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to allow the use of microchip implants as an acceptable form of identification for pet birds of U.S. origin returning to this country after being outside the United States. The regulations have previously provided only for the use of leg bands or tattoos to identify such birds, but microchips have become the preferred method of identification used by avian veterinary practitioners. This action provides for the use of an additional means of identifying certain U.S. origin pet birds while continuing to provide protection against the introduction of communicable poultry diseases into the United States.

EFFECTIVE DATE: September 11, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Sara Kaman, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as the regulations) regulate the importation of certain animals and birds, including pet birds, to prevent the introduction of communicable diseases of livestock and poultry.

On January 11, 2002, we published in the **Federal Register** (67 FR 1418–1419, Docket No. 01–023–1) a proposal to amend the regulations to allow the use of microchip implants as an acceptable form of identification for pet birds of U.S. origin returning to this country after being outside the United States.

We solicited comments concerning our proposal for 60 days ending March 12, 2002. We received four comments by that date. They were from private citizens, one breeder, and one group of students who had conducted an informal survey of seven local avian veterinarians and pet stores. All of the commenters were in favor of allowing the use of microchip implants as an acceptable form of identification for pet birds of U.S. origin returning to this country after being outside the United States. One commenter did suggest that a public hearing might be necessary "to provide affected parties an opportunity to present information that will later go into consideration as the final amendment is made." Given the limited scope of the rulemaking and the small number of commenters who responded to the proposal, we find that a public hearing is unnecessary.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the regulations to allow the use of microchip implants as an acceptable form of identification for pet birds of U.S. origin returning to this country after being outside the United States. The regulations have previously provided only for the use of leg bands or tattoos to identify such birds, but microchips have become the preferred method of identification used by avian veterinary practitioners. This action provides for the use of an additional means of identifying certain U.S. origin pet birds.

The groups affected by this action are pet bird owners who travel with their birds outside the United States and microchip manufacturers. According to the port of entry records of the Animal and Plant Health Inspection Service (APHIS), approximately 400 bird owners traveled outside of the United States with their pet birds in calendar year 2000. Under this final rule, those bird owners will be allowed to use microchip identification instead of the leg bands or tattoos that had been provided for by the regulations. Bird owners will benefit from this change because it is becoming more difficult to find a veterinarian who carries leg bands for pet bird identification, and tattoos are rarely used to identify birds any more. Microchips will thus make the task of identifying a pet bird before leaving the United States more convenient. In most cases, an APHIS inspector at the port of entry will be able use a microchip scanner to confirm the identity of the bird without handling the bird or removing it from the cage, thus avoiding additional stress on the bird.

Bird owners who choose to identify their birds with a microchip will have to pay $25 to $40 per microchip plus the cost of the veterinary office visit to insert the microchip. The cost of the microchips is projected to be slightly higher than the conventional leg band, although current costs for leg bands and tattoos are not available due to the lack of veterinarians who will perform these services.

Microchip manufacturers may benefit from a slight increase in microchip sales generated by this rule. It appears that all potentially affected microchip manufacturers (NAICS code 334111) are small entities, according to Small Business Administration criteria (i.e., 1,000 or fewer employees).

In summary, this rule provides pet bird owners with an additional means of identifying their pet birds while allowing APHIS to maintain the high level of security required in order to keep avian diseases, such as exotic Newcastle disease and highly pathogenic avian influenza, from entering the United States.

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Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.101 [Amended]

2. In § 93.101, paragraph (c)(2)(i) is amended by removing the words "leg band or tattoo number" and adding the words "number from the leg band, tattoo, or microchip" in their place and by removing the words "leg band or tattoo on" and adding the words "number from the leg band, tattoo, or microchip on" in their place.

Done in Washington, DC, this 7th day of August 2002 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–20329 Filed 8–9–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–135–AD; Amendment 39–12841; AD 2002–16–02]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Bombardier Model CL–600–2B19 series airplanes. This action requires revising the Airworthiness Limitations section of the maintenance requirements manual to incorporate life limits for certain horizontal stabilizer trim actuators (HSTAs), and replacing the HSTAs with new or serviceable HSTAs. This action is necessary to prevent failure of key components of the HSTAs, which could result in loss of horizontal trim control and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 27, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 27, 2002.

Comments for inclusion in the Rules Docket must be received on or before September 11, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–135–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via the Internet must contain "Docket No. 2002–NM–135–AD" in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on all Bombardier Model CL–600–2B19 series airplanes. TCCA advises that endurance test results indicate that Appendix B—Airworthiness Limitations, Part 2, of the Canadair Regional Jet Maintenance Requirements Manual must be revised to incorporate life limits for certain horizontal stabilizer trim actuators (HSTAs), and replacement of those HSTAs to prevent failure of key components. Such failure, if not corrected, could result in loss of horizontal trim control and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Bombardier has issued Canadair Regional Jet Temporary Revision (TR) 2B–816, dated November 28, 2001, which describes procedures for incorporating life limits for the HSTAs, Canadair part number (P/N) 601R92305–1 (vendor P/N 8396–2), and Canadair P/N 601R92305–3 (vendor P/N 8396–3), into Appendix B—Airworthiness Limitations, Part 2, of the Canadair Regional Jet Maintenance Requirements Manual. Accomplishment of the action specified in the TR is intended to adequately address the identified unsafe condition. TCCA classified this service information as mandatory and issued Canadian airworthiness directive CF–2002–20, dated March 20, 2002, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of key components of the HSTAs, which could result in loss of horizontal trim control and consequent reduced controllability of the airplane. This AD requires revising Appendix B—Airworthiness Limitations, Part 2, of the Canadair Regional Jet Maintenance Requirements Manual to incorporate life limits for certain HSTAs, and replacing the HSTAs with new or serviceable HSTAs. The actions are required to be accomplished per the service information described previously, except as discussed below.

Difference Between This AD and Service Information

Operators should note that the previously referenced Canadair airworthiness directive and TR do not include specific procedures for the replacement action. However, this AD requires replacement of the HSTAs with new or serviceable HSTAs per a method approved by the FAA.

Explanation of Action Taken by the FAA

In accordance with airworthiness standards requiring "damage tolerance assessments" for transport category airplanes [§ 25.571 of the Federal Aviation Regulations (14 CFR 25.571), and the Appendices referenced in that section], all products certificated to comply with that section must have Instructions for Continued Airworthiness (or, for some products, maintenance manuals) that include an Airworthiness Limitations Section (ALS). That section must set forth:

- Mandatory replacement times for structural components,
- Structural inspection intervals, and
- Related approved structural inspection procedures necessary to show compliance with the damage-tolerance requirements.

Compliance with the terms specified in the ALS is required by §§ 43.16 (for persons maintaining products) and 91.403 (for operators) of the Federal Aviation Regulations (14 CFR 43.16 and 91.403).

In order to require compliance with these inspection intervals and life limits, the FAA must engage in rulemaking, namely the issuance of an AD. For products certificated to comply with the referenced part 25 requirements, it is within the authority of the FAA to issue an AD requiring a revision to the ALS that includes reduced life limits, or new or different structural inspection requirements. These revisions then are mandatory for operators under § 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403), which prohibits operation of an airplane for which airworthiness limitations have been issued unless the inspection intervals specified in those limitations have been complied with.

After that document is revised, as required, and the AD has been fully complied with, the life limit or structural inspection change remains enforceable as a part of the airworthiness limitations. (This is analogous to ADs that require changes to the Limitations Section of the Airplane Flight Manual.)

Requiring a revision of the airworthiness limitations, rather than requiring individual inspections, is advantageous for operators because it allows them to record AD compliance status only once—at the time they make the revision—rather than after every inspection. It also has the advantage of keeping all airworthiness limitations, whether imposed by original certification or by AD, in one place within the operator's maintenance program, thereby reducing the risk of non-compliance because of oversight or confusion.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–135–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency

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regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–02 Bombardier, Inc. (Formerly Canadair): Amendment 39–12841. Docket 2002–NM–135–AD.

Applicability: All Model CL–600–2B19 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of key components of the horizontal stabilizer trim actuators (HSTAs), which could result in loss of horizontal trim control and consequent reduced controllability of the airplane, accomplish the following:

Airworthiness Limitations Revision

(a) Within 14 days after the effective date of this AD, revise Appendix B—Airworthiness Limitations, Part 2, of the Canadair Regional Jet Maintenance Requirements Manual to include life limits for the HSTAs, Canadair part number (P/N) 601R92305–1 (vendor P/N 8396–2), and Canadair P/N 601R92305–3 (vendor P/N 8396–3), as specified in Canadair Regional Jet Temporary Revision (TR) 2B–816, dated November 28, 2001. This may be accomplished by inserting the TR into the specified section of the maintenance requirements manual.

Replacement

(b) Prior to the accumulation of 19,200 flight hours or within 500 flight hours on the HSTAs, Canadair part number (P/N) 601R92305–1 (vendor P/N 8396–2) and Canadair P/N 601R92305–3 (vendor P/N 8396–3), after the effective date of this AD, whichever occurs later: Replace the HSTAs with new or serviceable HSTAs, per a method approved by the Manager, FAA, New York Aircraft Certification Office (ACO).

(c) Except as provided by paragraph (d) of this AD: After the replacement specified in paragraph (b) of this AD has been accomplished, no alternative replacement times may be approved for the life limits for the HSTAs, Canadair part number (P/N) 601R92305–1 (vendor P/N 8396–2) and Canadair P/N 601R92305–3 (vendor P/N 8396–3), as specified in Canadair Regional Jet TR 2B–816, dated November 28, 2001.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The Airworthiness Limitations revision to the maintenance requirements manual required by paragraph (a) of this AD shall be done in accordance with Canadair Regional Jet Temporary Révision 2B–816, dated November 28, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–20, dated March 20, 2002.

Effective Date

(g) This amendment becomes effective on August 27, 2002.

Issued in Renton, Washington, on July 29, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–19877 Filed 8–9–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–148–AD; Amendment 39–12842; AD 2002–16–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. This action requires determining exposure to runway deicing fluids containing potassium formate, and, for certain airplanes, repetitive inspections of certain electrical connectors in the wheel well of the main landing gear for corrosion, and follow-on actions. This action is necessary to prevent such corrosion, which could result in incorrect functioning of critical airplane systems essential to safe flight and landing of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 27, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 27, 2002.

Comments for inclusion in the Rules Docket must be received on or before October 11, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–148–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2002–NM–148–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2890; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that significant corrosion of the electrical connectors located in the main wheel well was found on some Boeing Model 737 series airplanes. Those airplanes land on runways treated with deicing fluids containing potassium formate, which has been determined as the cause of the corrosion. Tests conducted by the airplane manufacturer revealed that corrosion inhibiting compounds (CIC) can be used to form a shield against such corrosion and will not affect the electrical components or the systems. Corrosion of the electrical connectors could result in incorrect functioning of critical airplane systems essential to safe flight and landing of the airplane.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 737–24A1148, dated December 6, 2001, which recommends determining if airplanes have been exposed to runway deicing fluids containing potassium formate (by reviewing airport data on the type of components in deicing fluid used at airports that support their operations), and follow-on actions. If any airplane has been exposed, the service bulletin describes procedures for inspecting the line replaceable unit (LRU) electrical connectors (including the contacts and backshells) for corrosion. Signs of corrosion are the presence of moisture, corrosion pits, or white-colored material buildup on the connectors; black or reddish discoloration on the contacts; or loss of the olive-drab conversion coating on the backshells. The follow-on actions include cleaning the LRU connectors and applying CIC if no corrosion is found; and, if corrosion is found, replacing the LRU with a new LRU and applying CIC. The service bulletin also recommends an operational test of the affected systems after doing the applicable actions. Accomplishment of the inspections and follow-on actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Service Information and This AD

The service bulletin specifies an examination of the electrical connectors in the wheel well of the main landing gear for corrosion. For the purposes of this AD, we have determined that the procedures in the service bulletin constitute a "detailed inspection." Note 2 of this AD defines such an inspection.

The service bulletin specifies that no work is necessary for airplanes that have not been exposed to runways using deicing fluids containing potassium formate (this is determined by reviewing airport data, as specified previously). We have concluded that such airplanes, although not presently using those runways, could use them in the future due to changes in routes. Therefore, this AD requires operators of those airplanes to repeat the data review every 12 months.

The service bulletin states that airplane exposure to runway deicing fluids containing potassium format may be determined by reviewing airport data on the type of components in the deicing fluid used. This AD specifies that the determination be made in accordance with a review of the airport data, rather than specifying the determination in accordance with the service bulletin.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–148–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is

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determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–03 Boeing: Amendment 39–12842. Docket 2002–NM–148–AD.

Applicability: All Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion of the electrical connectors and contacts in the wheel well of the main landing gear (MLG), which could result in incorrect functioning of critical airplane systems essential to safe flight and landing of the airplane, accomplish the following:

Determination of Exposure/Inspections/Follow-On Actions

(a) Within 90 days after the effective date of this AD, do the requirements specified in either paragraph (a)(1) or (a)(2) of this AD.

(1) Determine airplane exposure to runway deicing fluids containing potassium formate by reviewing airport data on the type of components in the deicing fluid used at airports that support airplane operations.

(i) For airplanes that have not been exposed: Repeat the requirements in paragraph (a)(1) of this AD at least every 12 months.

(ii) For airplanes that have been exposed: Before further flight, do a detailed inspection of the line replaceable unit (LRU) electrical connectors (including the contacts and backshells) in the wheel well of the MLG for corrosion (the presence of moisture, corrosion pits, or white-colored material buildup), per Boeing Alert Service Bulletin 737–24A1148, dated December 6, 2001. Repeat the detailed inspection at least every 12 months.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(2) Do a detailed inspection of the LRU electrical connectors (including the contacts and backshells) in the wheel well of the MLG for corrosion (the presence of moisture, corrosion pits, or white-colored material buildup), per the service bulletin. Repeat the detailed inspection at least every 12 months.

(b) Before further flight after doing any inspection specified in paragraph (a)(1)(ii) or (a)(2) of this AD, as applicable; do the requirements specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD, as applicable, per Boeing Alert Service Bulletin 737–24A1148, dated December 6, 2001.

(1) If no corrosion is found, clean the LRU connector.

(2) If any corrosion is found, replace the LRU connector with a new connector.

(3) Apply D5026NS corrosion inhibiting compound, or equivalent, to the affected areas.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Except as provided by paragraph (a)(1) of this AD: The actions shall be done in accordance with Boeing Alert Service Bulletin 737–24A1148, dated December 6, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 27, 2002.

Issued in Renton, Washington, on July 29, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–19878 Filed 8–9–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–166–AD; Amendment 39–12845; AD 2002–16–06]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain **EMBRAER** Model EMB–135 and –145 series airplanes. This action requires determining whether a defective auxiliary power unit (APU) exhaust silencer is installed on the airplane; and corrective actions, if necessary. This action is necessary to prevent separation of the aft baffle assembly from the APU exhaust silencer and consequent separation of the assembly from the airplane, which could cause damage to other airplanes during takeoff and landing operations, or injury to people on the ground. This action is intended to address the identified unsafe condition.

DATES: Effective August 27, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 27, 2002.

Comments for inclusion in the Rules Docket must be received on or before September 11, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–166–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via the Internet must contain "Docket No. 2002–NM–166–AD" in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (**EMBRAER**), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain **EMBRAER** Model EMB–135 and –145 series airplanes. The DAC advises that one report indicated that the aft baffle assembly separated from the shell assembly of auxiliary power unit (APU) exhaust silencer, part number 4503801B. This separation was caused by the poor quality of some spot welds used in the aft joint of the APU exhaust silencer. This condition, if not corrected, could result in consequent separation of the aft baffle assembly from the airplane, which could cause damage to other airplanes during takeoff and landing operations, or injury to people on the ground.

Explanation of Relevant Service Information

EMBRAER has issued Alert Service Bulletin 145–49–A021, Change 01, dated May 13, 2002, which describes procedures for determining whether a defective APU exhaust silencer is installed on the airplane; and corrective actions, if necessary. If a defective APU exhaust silencer is found installed, corrective actions include reinforcing the spot welds on the exhaust silencer assembly with fasteners to ensure that the components are secure. Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition.

The **EMBRAER** service bulletin references Hamilton Sundstrand ASB–4503801–49–2, Revision 01, dated May 13, 2002, as a secondary source of information for the corrective actions required by this AD.

The DAC classified the **EMBRAER** service bulletin as mandatory and issued Brazilian airworthiness directive 2002–05–01, dated May 17, 2002, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent separation of the aft baffle assembly from the APU exhaust silencer and consequent separation of the assembly from the airplane, which could cause damage to other airplanes during takeoff and landing operations, or injury to people on the ground. This AD requires determining whether a defective exhaust silencer for the auxiliary power unit is installed on the airplane; and corrective actions, if necessary. The actions are required to be accomplished in accordance with the **EMBRAER** service bulletin described previously, except as discussed below.

Difference Between the Service Bulletin/Brazilian Airworthiness Directive and This AD

Operators should note that the **EMBRAER** service bulletin and Brazilian airworthiness directive specify certain serial numbers and airplanes on which the APU cowling was replaced during maintenance between January and April 2002. Regarding the specified dates, we contacted the Brazilian airworthiness authorities about why the applicability was limited to certain dates, and whether there was a change in maintenance practices after April 2002 that would prevent the installation of a defective APU exhaust silencer. In response, we were informed that no change was made to the maintenance practices after April 2002. For that reason, we cannot be sure that a defective assembly was not installed after that date. Therefore, the applicability of this AD also includes those airplanes on which the APU cowling has been replaced between January 1, 2002, and the effective date of this AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified

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under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–166–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–06 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–12845. Docket 2002–NM–166–AD.

Applicability: Model EMB–135 and –145 series airplanes, certificated in any category; having the serial numbers listed in the table below; and those airplanes on which the auxiliary power unit (APU) cowling has been replaced between January 1, 2002, and the effective date of this AD:

TABLE.—AIRPLANE SERIAL NUMBERS

145003	145149	145292	145311
145005	145151	145295	145318
145009	145159	145296	145323
145011	145238	145298	145562 through 145572 inclusive.
145110	145267	145302	145574 through 145585 inclusive.
145123	145269	145303	145587
145125	145274	145307	145588
145131	145281	145309	

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the aft baffle assembly from the APU exhaust silencer and consequent separation of the assembly from the airplane, which could cause damage to other airplanes during takeoff and landing operations, or injury to people on the ground, accomplish the following:

Inspection and Corrective Actions

(a) Within 50 flight hours after the effective date of this AD, inspect the APU exhaust silencer to determine whether part number (P/N) 4503801B, serial number L01–0314 through L01–0326 inclusive, and serial number M01–0327 through N01–0336 inclusive, is installed on the airplane; per the Accomplishment Instructions of **EMBRAER** Alert Service Bulletin 145–49–A021, Change 01, dated May 13, 2002.

(1) If the APU exhaust silencer identified in paragraph (a) of this AD is not found installed, no further action is required by this paragraph.

(2) If the APU exhaust silencer identified in paragraph (a) of this AD is found installed, before further flight, do the corrective actions (including reinforcing the spot welds on the exhaust silencer assembly with fasteners to ensure that the components are secure) per the **EMBRAER** service bulletin.

Note 2: EMBRAER Alert Service Bulletin No. 145–49–A021, Change 01, dated May 13, 2002, references Hamilton Sundstrand ASB–4503801–49–2, Revision 01, dated May 13, 2002, as an additional source of information for the inspection and corrective actions required by this AD.

Spares

(b) As of the effective date of this AD, no person shall install on any airplane an APU exhaust silencer, part number 4503801B, serial numbers L01–0314 through L01–0326 inclusive, and M01–0327 through M01–0336 inclusive, unless it has been modified in accordance with the requirements of paragraph (a)(2) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with **EMBRAER** Alert Service Bulletin 145–49–A021, Change 01, dated May 13, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (**EMBRAER**), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Brazilian airworthiness directive 2002–05–01, dated May 17, 2002.

Effective Date

(f) This amendment becomes effective on August 27, 2002.

Issued in Renton, Washington, on August 1, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20017 Filed 8–9–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–141–AD; Amendment 39–12844; AD 2002–16–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This action requires a one-time inspection for missing bolts on the inboard and outboard support of the inboard main flap, and follow-on inspections and corrective actions, if necessary. This action is necessary to detect missing, loose, or cracked bolts on the supports of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 27, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 27, 2002.

Comments for inclusion in the Rules Docket must be received on or before October 11, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–141–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–141–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: The FAA has received a report indicating that an operator found one missing bolt and two loose bolts out of four bolts at the aft attachment locations on the outboard support of the inboard main flap on a Boeing Model 767 series airplane. There was evidence that the bolts were not installed tightly, though when the improper installation occurred has not been determined. The outboard support for the inboard main flap cannot carry limit load with one bolt missing in the aft attachment locations. Prior to this report, an evaluation by the airplane manufacturer had revealed that the titanium bolts on the inboard main flap on Model 767 series airplanes did not have an acceptable fatigue life or damage-tolerance rating. Missing, loose, or cracked bolts in this location, if not detected, could lead to loss of the inboard main flap, which could result in loss of control of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002, which describes procedures for a one-time general visual inspection for missing bolts on the inboard and outboard support of the inboard main flap. If no bolt is missing, the service bulletin also describes a detailed inspection for gaps between the nut and surrounding structure or between shim and joint, which would indicate a loose bolt. (For airplanes listed in Group 1 in the service bulletin, the service bulletin recommends that this inspection for gaps be done repetitively.) If any gap is found, the service bulletin describes procedures for a torque check of the bolts. If any bolt is missing or any loose bolt is found, the service bulletin recommends removal of all bolts in the area, accomplishment of a fluorescent dye penetrant inspection for cracking of the bolts, and/or installation of new or serviceable bolts. For Group 1 airplanes, the service bulletin also provides instructions for replacement of the existing titanium bolts with new steel bolts, which eliminates the need for accomplishment of the inspections. For Group 1 airplanes, replacing the titanium bolts with new steel bolts is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect missing, loose, or cracked bolts on the inboard and outboard support of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane. This AD requires accomplishment of the actions specified in the service bulletin

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described previously, except as discussed below.

Differences Between This AD and Service Bulletin

The effectivity listing of the service bulletin includes all Boeing Model 767 series airplanes, line numbers 1 through 879, except Model 767–400ER series airplanes. However, this AD is applicable to all Model 767 series airplanes with those line numbers, including Model 767–400ER series airplanes. The FAA finds that, because the attachment joints of the supports for the inboard main flap on Model 767–400ER series airplane are similar to those on other Model 767 series airplanes, Model 767–400ER series airplanes may be subject to the same unsafe condition. If any bolt is missing or any gap is found on a Model 767–400ER series airplanes, this AD requires repairs to be accomplished before further flight per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative authorized by the FAA to make such findings.

Although the recommended compliance time for the general visual inspection described in Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002, is 60 days from the issue date of the service bulletin, this AD requires the inspection within 90 days after the effective date of this AD. During the development of this AD, the FAA received information demonstrating that a 60-day compliance time would impose significant difficulties for the operators and a loss of in-service time. Additionally, the individuals both stated that the actions required would necessitate unscheduled intermediate maintenance visits, including specific facilities, resources, and scheduling. Two individuals point out that, since there have been no reported flap losses associated with the attachment bolts of the inboard main flap, a compliance time fairly longer than 60 days should provide an acceptable level of safety. One individual suggests that the compliance time be specified as, "within 9 months after the last inspection per Maintenance Planning Data items 5753–655–02E and 5753–555–02E, or 180 days after the effective date of the AD, whichever occurs later." The other individual requests that the compliance time be specified as, "within 6 months." (Copies of these comments are available in the Rules Docket for examination by interested persons.)

The FAA has determined that the compliance time may be extended somewhat from the 60-day compliance time suggested in the alert service bulletin. However, we have determined that the Maintenance Planning Data inspections are not sufficient to detect loose bolts. Therefore, the compliance times may not be based on the "last inspection per Maintenance Planning Data items * * *." The required 90-day compliance time will provide an acceptable level of safety, yet still decrease the burden on operators. However, under the provisions of paragraph (f) of this AD, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

For all airplanes, the service bulletin specifies that an operator should submit a report to Boeing if any bolt is missing or cracked or any gap is found. This AD only requires a report to the FAA if any bolt is missing or any gap is found on a Model 767–400ER series airplane. For those airplanes, the report must contain the airplane's serial number, the total number of flight cycles and flight hours on the airplane, the number and specific location of discrepant bolts, and the nature of the discrepancy (*i.e.*, missing bolt or gap found).

Also, for Group 1 airplanes, the service bulletin specifies repetitive inspections for gaps between the nut and surrounding structure or between shim and joint, a torque check of the bolts, and eventual replacement of the existing bolts with steel bolts. This AD does not require accomplishment of these actions.

Interim Action

This is considered to be interim action. We are currently considering requiring the repetitive inspections for gaps, the torque check for loose bolts, and the replacement of existing titanium bolts with steel bolts described in the referenced service bulletin. However, the compliance time for these actions would be sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–141–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–05 Boeing: Amendment 39–12844. Docket 2002–NM–141–AD.

Applicability: Model 767 series airplanes, including Model 767–400ER series airplanes, line numbers 1 through 879 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect missing, loose, or cracked bolts on the outboard support of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane, accomplish the following:

Group 1 and 2 Airplanes: One-Time Inspection for Missing or Loose Bolts

(a) Within 90 days after the effective date of this AD, do a one-time general visual inspection to determine if any bolt is missing from the outboard support of the inboard main flap, per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002. Group 1 airplanes may comply with the replacement specified in paragraph (c) of this AD in lieu of the inspection in this paragraph, provided that the replacement per paragraph (c) of this AD is accomplished within the compliance time specified in this paragraph.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no bolt is missing, before further flight, do a general visual inspection for a gap between the nut and surrounding structure or between shim and joint (which would indicate a loose bolt), per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of the service bulletin. If no bolt is missing and no gap is found, no further action is required by this AD.

(2) If any bolt is missing, before further flight, do paragraph (b) of this AD. In lieu of paragraph (b) of this AD, airplanes in Group 1 may comply with paragraph (c) of this AD.

Group 1 and 2 Airplanes: Missing Bolts or Gaps—Follow-On Actions

(b) For Group 1 or 2 airplanes as listed in Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002: If any bolt is missing or any gap is found during the inspections per paragraph (a) of this AD, before further flight, remove all of the bolts in the subject area and replace them with new or serviceable bolts, per Figure 6, 7, or 8 of the service bulletin, as applicable. For any attachment hole where the bolt was missing, install a new or serviceable bolt made from the same material as the other bolts, per the Accomplishment Instructions of the service bulletin.

(1) An existing bolt may be reinstalled if a fluorescent dye penetrant inspection for cracking is done per Part 5 of the Accomplishment Instructions of the service bulletin, and the bolt is found to be free of any crack.

(2) Do not intermix BACB30MR*K* bolts with BACB30LE*K* or BACB30US*K* bolts in the joints subject to this AD.

Group 1 Airplanes: Optional Action

(c) For Group 1 airplanes as listed in Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002: Replacement of all subject titanium bolts with new steel bolts per Part 6 of the Accomplishment Instructions of the service bulletin is acceptable for compliance with paragraph (a) of this AD and eliminates the need for the inspections required by that paragraph. Do not intermix BACB30MR*K* bolts with BACB30LE*K* or BACB30US*K* bolts in the joints subject to this AD.

Model 767–400ER Series Airplanes: Initial Inspection and Corrective Actions

(d) For Model 767–400ER series airplanes: Within 90 days after the effective date of this AD, do a one-time general visual inspection to determine if any bolt is missing from the inboard and outboard support of the inboard main flap, and do a detailed inspection for a gap between the nut and surrounding structure or between shim and joint (which would indicate a loose bolt), per Figure 2 of Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002.

(1) If no bolt is missing and no gap is found: No further action is required by this AD.

(2) If any bolt is missing or any gap is found: Do paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.

(i) Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved as required by this paragraph, the approval must specifically refer to this AD.

(ii) Within 10 days after the inspection, submit a report of inspection findings to the Manager, Boeing Certificate Management Office, FAA, Transport Airplane Directorate, 2500 East Valley Road, Suite C2, Renton, Washington 98055; fax (425) 227–1159. The report must include the airplane's serial number, the total number of flight cycles and flight hours on the airplane, the number and specific location of discrepant bolts, and the nature of the discrepancy (*i.e.*, missing bolt or gap found). Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Previously Accomplished Inspections and Bolt Replacements

(e) Inspections and bolt replacements accomplished before the effective date of this AD per Boeing Alert Service Bulletin 767–27A0176, dated November 16, 2001, are acceptable for compliance with the corresponding actions required by this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

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used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraph (d)(2)(i) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on August 27, 2002.

Issued in Renton, Washington, on August 1, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20018 Filed 8–9–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–79–AD; Amendment 39–12843; AD 2002–16–04]

RIN 2120–AA64

Airworthiness Directives; Univair Aircraft Corporation Models (ERCO) 415–C, (ERCO) 415–CD, (ERCO) 415–D, (ERCO) 415–E, (ERCO) 415–G, (Forney) F–1, and (Forney) F–1A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two different airworthiness directives that require you to inspect the fuel line nipple for damage, replace any suspect part, and replace the elbow fitting on certain Univair Aircraft Corporation (Univair) Models (ERCO) 415–C, (ERCO) 415–CD, (ERCO) 415–D, (ERCO) 415–E, (ERCO) 415–G, (Forney) F–1, and (Forney) F–1A airplanes. This AD requires you to accomplish the following on airplanes with the gascolator connected to the side of the carburetor: Replace any aluminum fuel line nipple or elbow fitting with a brass or steel fuel line nipple or elbow fitting, inspect for double support tubes on the gascolator, install these tubes if they do not exist, and inspect the fuel line fittings between the carburetor and gascolator for cracks or misalignment and replace as necessary. This AD will not affect those airplanes with the gascolator mounted on the firewall. This AD is a result of cracks in the subject area on airplanes in compliance with the current ADs. The actions specified by this AD are intended to prevent failure of the fuel line fittings or the gascolator because of the current airplane design configuration (aluminum fuel line nipples, aluminum fuel line elbows, and/or no double support tubes on the gascolator). Such failure could result in a lack of fuel to the engine with consequent loss of control of the airplane.

DATES: This AD becomes effective on September 13, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of September 13, 2002.

ADDRESSES: You may get the service information referenced in this AD from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011; telephone: (303) 375–8882; facsimile: (303) 375–8888. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–79–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bumann, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 East 68th Avenue, Room 214, Denver, Colorado 80249; telephone: (303) 342–1083; facsimile: (303) 342–1088.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA Taken Any Action to This Point?

Reports of fuel leakage due to cracked fuel line nipples on Univair 415 series and Models F1 and F1A airplanes caused FAA to issue AD 86–22–09, Amendment 39–5457. This AD requires you to do the following on Univair Models (ERCO) 415–C, (ERCO) 415–CD, (ERCO) 415–D, (ERCO) 415–E, (ERCO) 415–G, (Forney) F–1, and (Forney) F–1A airplanes:

—inspect the fuel line nipple between the gascolator and the carburetor for cracks, incorrect alignment, or over torque; and

—replace any suspect part.

These actions are specified in Univair Service Bulletin No. 24A, dated August 22, 1986.

In addition, the potential for fuel system failures due to the installation of part number (P/N) 914–2D dural elbow fittings on Erco (now Univair) Models 415–C, 415–CD, and 415–D airplanes caused FAA to issue AD 46–38–03. This AD requires you to replace this P/N 914–2 D dural elbow fitting with a P/N 914–2 elbow fitting.

What Has Happened To Initiate This Action?

The FAA has received reports of failure of the aluminum fuel line nipple, part number AN911–2D, on airplanes that were in compliance with AD 86–22–09. In one instance, a Model (ERCO) 415–C made an emergency landing because the failure led to engine fuel starvation.

AD 86–22–09 requires a one-time inspection of the part number AN911–2D fuel line nipple. Since 15 years have passed since issuance of that AD, most of the affected airplanes have had this inspection accomplished. If the fuel line nipple was not suspect at the time of inspection, then final AD compliance was obtained. In 15 years, cracks could develop in the aluminum fuel line nipple on these airplanes in compliance with AD 86–22–09.

In addition, Univair Service Bulletin No. 24A, dated August 22, 1986, also specifies replacing any aluminum fuel line nipple with a brass or steel fuel line nipple and installing double support tubes on the gascolator for those airplanes with a gascolator connected to the side of the carburetor. AD 86–22–09 required the fuel line nipple replacement only if damage was found during the one-time inspection and did not require installation of the double support tubes.

The installation of these parts would eliminate the need for AD 46–38–03.

What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected, could result in failure of the fuel line nipple or the gascolator because of the current airplane design configuration (aluminum fuel line nipples or no double support tubes on the gascolator). Such failure could result in a lack of fuel to the engine with consequent loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Univair (ERCO) 415–C, (ERCO) 415–CD, (ERCO) 415–D, (ERCO) 415–E, (ERCO) 415–G, (Forney) F–1, and (Forney) F–1A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 4, 2001 (66 FR 50578). The NPRM proposed to supersede AD 86–22–09 with a new AD that would require you to accomplish the following on airplanes with the gascolator connected to the side of the carburetor:

—replace any aluminum fuel line nipple with a brass or steel fuel line nipple; and

—inspect for the existence of double support tubes on the gascolator and install these tubes if they do not exist.

The proposed AD would not affect those airplanes with the gascolator mounted on the firewall.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. Comments received on the NPRM caused us to revise the proposed action to add requirements to replace the elbow fittings with brass or steel elbow fittings and inspect the fuel line fittings between the carburetor and gascolator for cracks or misalignment and replace as necessary.

Because these additions increased the burden upon the public above that already proposed, we issued a supplemental NPRM on April 5, 2002 (67 FR 18141, April 15, 2002).

We then encouraged interested persons to again participate in the making of this amendment. We did not receive any comments on the supplemental NPRM.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed in the supplemental NPRM except for minor editorial corrections. We have determined that these minor corrections:

—provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 2,500 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the replacement and installation:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 per hour = $120	$70.	$190 per airplane	$475,000.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 46–38–03 and AD 86–22–09, Amendment 39–5457, and by adding a new AD to read as follows:

2002–16–04 Univair Aircraft Corporation: Amendment 39–12843; Docket No. 2000–CE–79–AD; Supersedes AD 46–38–03 and AD 86–22–09, Amendment 39–5457.

(a) *What airplanes are affected by this AD?* This AD affects all serial numbers of Models (ERCO) 415–C, (ERCO) 415–CD, (ERCO) 415–D, (ERCO) 415–E, (ERCO) 415–G, (Forney) F–1, and (Forney) F–1A airplanes that:

(1) are certificated in any category; and

(2) have the gascolator connected to the side of the carburetor. This AD does not affect those airplanes with the gascolator mounted on the firewall.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the fuel line fittings or the gascolator because of the current airplane design configuration (aluminum fuel line nipples, aluminum fuel line elbows, and/or no double support tubes on the gascolator). Such failure could result in a lack of fuel to the engine with consequent loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

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Actions	Compliance	Procedures
(1) Visually inspect the fuel line nipple and elbow located between the carburetor and gascolator for cracks or misalignment, and replace as necessary.	Inspect within the next 25 ours time-in-service (TIS) after September 13, 2002 (the effective date of this AD) and replace prior to further flight after the inspection. You must inspect even if you have inspected previously.	In accordance with Univair Service Bulletin No. 24B, dated January 29, 2002.
(2) Replace any aluminum fuel line nipple with one made of brass or steel.	Within the next 25 TIS after September 13, 2002 (the effective date of this AD), unless already accomplished (compliance with AD 86–22–09 and/or Univair Service Bulletin No. 24A, dated August 22, 1986).	In accordance with Univair Service Bulletin No. 24B, dated January 29, 2002.
(3) Replace any aluminum fuel elbow fitting with one made of brass or steel. Manufacturer replacement parts numbers are referenced in the service information.	Within the next 25 hours TIS after September 13, 2002 (the effective date of this AD), unless already accomplished (compliance with AD 46–38–03).	In accordance with Univair Service Bulletin No. 24B, dated January 29, 2002.
(4) Inspect for the existence of double support tubes on the gascolator and install these tubes if they do not exist, as follows: (i) For all affected airplanes except for (Forney) F–1 and (Forney) F–1A airplanes, install part numbers 48076 and 48096 (or FAA-approved equivalent part numbers) double support tubes; and (ii) For all affected (Forney) F–1 and (Forney) F1–A airplanes, install part numbers 48098 and 48099 (or FAA-approved equivalent part numbers) double support tubes.	Inspect within the next 25 hours TIS after September 13, 2002 (the effective date of this AD) and install the double support tubes prior to further flight after the inspection, unless already accomplished (compliance with Univair Service Bulletin No. 24A, dated August 22, 1986).	In accordance with Univair Service Bulletin No. 24B, dated January 29, 2002.
(5) Do not install, on any affected airplane, an aluminum fuel line nipple or aluminum elbow.	As of September 13, 2002 (the effective date of this AD).	Not Applicable.
(6) Do not install a gascolator on the side of the carburetor on any affected airplane, unless the double support tubes specified in paragraph (d)(4)(i) or (d)(4)(ii) of this AD are installed.	As of September 13, 2002 (the effective date of this AD).	Not Applicable.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Denver Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Denver ACO.

(2) Alternative methods of compliance approved in accordance with AD 46–38–03 and/or AD 86–22–09, which are superseded by this AD, are not approved as alternative methods of compliance with this AD.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Elizabeth Bumann, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 East 68th Avenue, Room 214, Denver, Colorado 80249; telephone: (303) 342–1083; facsimile: (303) 342–1088.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Univair Service Bulletin No. 24B, dated January 29, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 46–38–03 and AD 86–22–09, Amendment 39–5457.

(j) *When does this amendment become effective?* This amendment becomes effective on September 13, 2002.

Issued in Kansas City, Missouri, on July 30, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–19874 Filed 8–9–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 375 and 390

[Docket No. RM02–10–000; Order No. 891]

Electronic Registration

Issued August 5, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to establish a system of electronic registration (eRegistration) for persons and companies submitting documents to, and receiving documents from, the Commission. This system will enable the Commission to comply with paperwork elimination mandates and, combined with other rulemakings to take place in the near future, will result in cost savings to the Commission and the public while enhancing the accessibility of information relating to Commission programs and proceedings. The eRegistration system will become mandatory on January 7, 2003, but will be operated on a voluntary basis beginning in late August 2002.

EFFECTIVE DATE: The rule will become effective on January 7, 2003.

FOR FURTHER INFORMATION CONTACT: Christopher Cook (information technology advisor), Office of the Chief Information Officer, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1131.

Wilbur Miller (legal advisor), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0953.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

I. Introduction

1. The Federal Energy Regulatory Commission (Commission) is amending its regulations to establish a system of electronic registration for persons and companies wishing to submit documents to or receive documents from the Commission (collectively customers).

II. Background

2. This order initiates a series of measures that will largely eliminate the transmission of paper documents between the Commission and its customers. Collectively, these measures will ensure the Commission's compliance with the Government Paperwork Elimination Act;[1] result in cost savings, such as elimination of mailing costs and courier services, to the Commission and its customers; facilitate the Commission's management of information about the persons and entities that do business with it; and make information submitted to and issued by the Commission available more promptly and in more accessible formats.

3. This measure follows several initiatives undertaken by the Commission to begin the transition to an electronic environment. On May 26, 1999, the Commission revised its rules to permit parties to Commission proceedings to serve documents upon one another electronically. Electronic Service of Documents, 64 FR 31493, FERC Stats. & Regs., Regulations Preambles ¶ 31,074 (June 11, 1999). On September 14, 2000, the Commission revised its rules to permit participants in Commission proceedings to begin, on a voluntary basis, filing submissions via the Internet (eFiling). Electronic Filing of Documents, 65 FR 57088, FERC Stats. & Regs., Regulations Preambles ¶ 31,107 (Sept. 21, 2000). At first, the Commission applied this initiative only to a limited range of document types, but has gradually permitted other types of submissions to be made electronically. *See www.ferc.gov/documents/makeanelectronicfiling/doorbell.htm.* In addition, electronic submission and dissemination of structured data, including FERC Forms 1, 2, 6, and 423, are possible through the Commission's web page.

4. This order will resolve difficulties the Commission has encountered in updating various lists that it maintains of customers to whom it sends various types of information. These include, for example, service lists of persons who are required to receive documents in connection with Commission proceedings[2] and mailing lists of persons who receive informational copies of various documents. Many of the entries on the various lists that the Commission maintains are obsolete or duplicative, resulting, among other problems, in extensive waste in mailing out unneeded or unwanted copies of documents. The eRegistration system will allow the Commission to compile a comprehensive, more accurate list of its customers.

III. Discussion

A. General

5. Electronic registration will serve as the gateway to a number of electronic services at the Commission that are designed to transmit documents electronically between the Commission and its customers. These services, some of which are already in use, will permit the electronic submission of information to the Commission, including tariffs, forms, and documents submitted in docketed proceedings. Electronic registration also will apply to services that the Commission will be instituting that will allow customers to sign up to receive information about or be notified of events in docketed proceedings. The registration system implemented pursuant to this rulemaking will enable customers to submit necessary information once, rather than having to register separately to use each system. A brief description of the services to which electronic registration will pertain is included in Section III. C.

6. Electronic registration will apply only to specified applications; it will not be required for all submissions to the Commission. For example, it will not be required for correspondence that does not relate to docketed proceedings from members of Congress or the general public. It will not be required for a customer searching for documents on the Federal Energy Regulatory Records and Information System (FERRIS). It will not apply to requests under the Freedom of Information Act.[3] It also will not apply to certain correspondence in docketed proceedings that the Office of the Secretary finds to qualify for an exemption because the submissions are from members of the public who likely are one-time submitters.

7. The registration process will be brief and simple. Customers will input a few lines of information, generally a name, address, phone number and fax number. They will then input the information that the system will use to identify them: An e-mail address a password and a password hint. There will be a paper registration process for customers submitting paper documents to the Commission as the result of a waiver of electronic filing requirements for good cause shown. Customers will be able to access and manipulate their own data, thus keeping it current to ensure reliable service. Separate rulemakings will address other FERC information systems.

B. The Registration Process

8. Customers wishing to transact business at the Commission through any of the electronic services described in section III. C. will register via the Internet at *http://www.ferc.gov.* It will be possible for multiple persons or entities to be associated with one another. Thus, for example, a company that is a participant in a proceeding at the Commission may be represented by one or more persons or entities, such as attorneys or law firms, so that Commission issuances will be

[1] 44 U.S.C. 3504 (2002).

[2] 18 CFR 385.2010(b)(2002).

[3] 5 U.S.C. 552 (2001).

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distributed to all the persons or entities representing that company.

9. When a customer seeks to conduct an electronic transaction through the Commission's Web site, if that customer is not already registered, the customer will be automatically transferred to the eRegistration page. Alternately, the customer will be able to access the eRegistration page directly to register or to update registration information. The eRegistration page will contain data fields that must be filled in with specified identifying data.

10. Generally speaking, an individual customer—as opposed to an entity like a company or law firm—will receive a user ID, which will be the customer's e-mail address. All electronic services will also require a password selected by the user. For services requiring a higher level of security and authentication, further security requirements may be necessary as well. The exact nature of this security will be described at a later time, when filing of sensitive information becomes functional.

11. All customers also will receive a unique numeric identifier. This identifier may be used in identifying the customer in connection with electronic applications.

12. When an individual customer registers, that customer will, if appropriate, designate the entity—again, such as a company or law firm—with which that customer is associated. The first time that eRegistration information is entered on behalf of an entity, that entity will be assigned its own unique numeric identifier. Other identifying information, such as a Dun & Bradstreet number, may also be entered. If the entity has already been registered, the individual customer may select it from an index. If the individual is not aware that the entity has already been registered and tries to enter information about the entity, the system will alert the individual to the possibility that the entity is already registered and make an index available from which he or she may choose.

13. When an individual registers an entity with eRegistration, there will be an opportunity to list an additional contact for the entity—most likely another employee or official of the entity. This will ensure that the entity will receive necessary information should the individual who initially registers for the entity become unavailable. Customers will bear the responsibility of managing their own eRegistration information, just as a participant in a Commission proceeding is responsible for monitoring its affairs to ensure that the persons claiming to represent it are in fact authorized to do so.

14. Upon successful eRegistration, the customer will receive an e-mail containing the customer's user ID and numeric identifier, and any other identifying information that has been entered.

15. The process of associating an individual customer with multiple entities will not be a part of the eRegistration system, but instead will take place in the individual electronic services. For example, an attorney will be able to represent several different clients in multiple proceedings, but the attorney need not "register" on behalf of every client or in connection with every proceeding. Instead, the attorney will register once as an individual, if appropriate also designating a law firm as the entity with which the attorney is associated. When the attorney submits a document for filing in a particular proceeding, he or she will designate the appropriate client as part of the eFiling process. The attorney will receive service through the functions of the eService and eList services (described below), which will be addressed in a later rulemaking. Customers using eRegistration to represent other persons or entities are subject to Rule 2005,[4] and thus will be regarded as representing that they have the authority to undertake such representation.

16. The Commission understands that some customers will lack the means for submitting and receiving documents electronically and will provide for waiver of the mandatory aspects of electronic submissions and distribution. This rulemaking includes a delegation of authority to the Secretary to grant waivers of the eRegistration requirement. It will be possible for a customer to submit documents in hard copy by applying for a waiver for good cause shown. Registration, however, will still be required and will be accomplished by a paper process. Like electronic customers, customers registering through the paper process will receive a unique numeric identifier. This identifier must appear on paper submissions; without it, submissions will be rejected. Waivers of electronic registration will be valid for one year. It then will be necessary for a customer to register electronically or apply for another waiver. Customers registering by paper will be notified approximately three months prior to the expiration of their registration.

17. In addition to the waiver provision, the Commission is exempting from the registration requirement certain situations where registration would not be practical for, or beneficial to, the customer. The Commission often receives letters and other communications from individual citizens who are not familiar with, and do not regularly participate in, Commission proceedings. When such communications pertain to a particular proceeding, they are accepted for filing in that proceeding, become part of the official record, and are considered by the Commission in making the ultimate decision in the case. Registration in such situations would be an unnecessary formality because the customer often is unlikely to participate further in Commission proceedings. In some such cases, however, the customer may have the capability to register electronically and thus might not qualify for a waiver. The rulemaking thus exempts such communications from the registration requirements.[5]

18. This rulemaking will become effective January 7, 2003. Electronic registration thus will not be required prior to that time. The eRegistration system will, however, become operational, and available for use on a voluntary basis in late August 2002. Customers should check the Commission's Web site at *http://www.ferc.gov* for information about when eRegistration will become operational. This period of voluntary use will give both the Commission and its customers the opportunity to observe the system's functions. The Commission strongly urges customers to register well in advance of the effective date so as to familiarize themselves with the system. In addition, the Commission invites informal comments and suggestions regarding the system prior to the effective date. Comments or suggestions may be sent to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, or to *ERegComments@FERC.gov*. The Commission requests that informal comments and suggestions be submitted by October 1, 2002, so as to give Commission staff time to implement any needed changes before this rule takes effect.

[4] 18 CFR 385.2005(2002).

[5] Customers found to be exempt from the eRegistration requirements will not be able to receive electronic issuances and notifications from the Commission or otherwise be included in electronic distribution lists, nor will they be able to intervene as they will not be able to employ eFiling. In other words, they will not have access to the FERC online services, which necessarily require individualized registration, including a specific e-mail address.

C. Overview of Electronic Information Services

19. The following is a brief summary of the services for which electronic registration will be required:

20. *eFiling.* The Commission has instituted electronic filing of documents in its proceedings on a voluntary basis. Currently, many categories of documents may be submitted via the Internet, although some documents still may not.[6] Some time prior to October 1, 2003, however, the Commission will extend electronic filing to all documents submitted in Commission proceedings and will require all participants in those proceedings to submit documents electronically. There will be a waiver for participants for whom electronic submissions are impractical.

21. *eForms.* The Commission will establish an integrated interface for its customers to file structured data. The forms that will be filed electronically include, but may not be limited to, Forms 1, 2, 6 and 423. Customers filing such forms will be required to register electronically.

22. *eReports.* This system will provide an interface for customers submitting structured data in connection with Order No. 2001, issued by the Commission on April 25, 2002.[7]

23. *eTariffs.* This system will provide an interface for customers filing tariffs with the Commission.[8]

24. *eDistribution.* Electronic distribution refers to documents being distributed by the Commission, or with the Commission's assistance, as opposed to electronic filing, forms, reports and tariffs, all of which refer to documents being submitted to the Commission. There are several sub-categories of electronic distribution:

eService: Electronic service means the electronic distribution by the Commission of documents to participants in Commission proceedings, as required by 18 CFR 385.2010(b) (2001). After October 1, 2003, only electronic service will meet the Commission's legal service requirements under regulatory revisions that the Commission will implement prior to that time. The Commission will include a waiver provision for participants who show that it is impractical for them to receive service of documents electronically. With respect to legal service requirements among participants in Commission proceedings, the Commission's rules already allow participants to agree among themselves to serve documents electronically rather than serving paper copies.[9]

eList: The Commission will maintain a list of participants in each Commission proceeding that participants will use to serve documents upon one another as required by 18 CFR 385.2010(a) (2002). Electronic Registration will become a pre-requisite for addition to the Service List (eList) by the Secretary, sometime prior to October 1, 2003, although provision will be made for participants for whom sending and receiving electronic documents is impractical.

eNotification: The Commission currently distributes issuances in Commission proceedings to various interested persons who are not participants. Such recipients include state and federal elected officials, state commissions, and other state and federal resource agencies. The Commission will take steps to ensure that these persons continue to receive such information.

eSubscription: The Commission will establish a service that allows interested persons to subscribe to categories of documents published by FERC and receive e-mail stating when documents pertaining to subscribed-for categories are published. The first implementation of this service will permit customers to subscribe to individual FERC proceedings, *i.e.*, dockets; access (FERRIS) online; and automatically receive documents published therein. Participation in this service is voluntary. A customer choosing to participate in eSubscription, however, will have to access the service through eRegistration. That customer will be required to supply eRegistration with an e-mail address and password, and may provide other registration information on a voluntary basis.

IV. Information Collection Statement

25. The Office of Management and Budget's (OMB's) regulations require that OMB approve certain information collection requirements imposed by agency rule.[10] OMB regulations provide an exemption where a person is required to provide only facts that are necessary for identification.[11] This rulemaking requires only such information and thus OMB approval is not required.

V. Environmental Analysis

26. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[12] This Final Rule will not have such an effect. Part 380 of the Commission's regulations lists a number of situations in which an Environmental Analysis or Environmental Impact Statement will not be done. Included are exemptions for procedural, ministerial or internal administrative actions, and for information gathering, analysis and dissemination.[13] This rulemaking is exempt under those provisions.

VI. Regulatory Flexibility Act Certification

27. The Regulatory Flexibility Act of 1980 (RFA)[14] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission finds that this rule will not have such an impact on small entities. The Commission anticipates that its customers will achieve savings from the elimination of paper documents. The large majority of the Commission's customers already employ the technology that will be necessary for compliance with this rulemaking. For customers for whom the use of such technology is impractical, registration by paper will be possible.

VII. Document Availability

28. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

29. From FERC's Home Page on the Internet, this information is available in FERRIS. The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

30. User assistance is available for FERRIS and the FERC's Web site during normal business hours from our Help

[6] *See* 18 CFR 385.2003(c)(2)(2002).

[7] *See* Revised Public Utility Filing Requirements, FERC Stats. & Regs. ¶ 31,127 (April 25, 2002).

[8] *Id.*

[9] *Id.*

[10] 5 CFR Part 1320 (2002).

[11] 5 CFR 1320.3(h)(1).

[12] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[13] 18 CFR 380.4(a)(1) and (5) (2002).

[14] 5 U.S.C. 601–612 (2002).

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line at (202) 208–2222 or the Public Reference Room at (202) 208–1371 Press 0, TTY (202) 208–1659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*.

VIII. Effective Date and Congressional Notification

31. This Final Rule will take effect on January 7, 2003. Pursuant to 5 U.S.C. 804(3)(C) (2002), agencies are not required to notify Congress of any Final Rule that concerns matters of "agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties." This rulemaking falls within that provision. Furthermore, 5 U.S.C. 804(3)(A) exempts rules that provide for registration and permit new or improved applications of technology from the Congressional review requirements. Provisions governing Congressional review of agency rulemaking,[15] therefore do not apply.

32. The Commission is issuing this as a final rule without a period for public comment. Under 5 U.S.C. 553(b) (2002), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only matters of agency procedure and will not significantly affect regulated entities or the general public. In addition, the Commission is inviting informal comments about electronic registration during the voluntary period that will run from late August 2002, to January 7, 2003. Therefore, the Commission finds notice and comment procedures to be unnecessary.

List of Subjects

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 390

Administrative practice and procedure, Electronic filing, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends part 375 and adds part 390, Chapter I, Title 18, of the *Code of Federal Regulations* as follows:

PART 375—THE COMMISSION

1. In part 375, the authority citation continues to read as follows:

[15] 5 U.S.C. 801–808 (2002).

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

2. In § 375.302, paragraph (x) is added to read as follows:

§ 375.302 Delegations to the Secretary.

* * * * *

(x) Issue instructions for electronic registration pursuant to, grant applications for waivers of the requirements of, and make determinations regarding exemptions from 18 CFR part 390.

3. Part 390 is added to read as follows:

PART 390—ELECTRONIC REGISTRATION

Sec.

390.1 Electronic registration.
390.2 Activities requiring registration.
390.3 Waiver applications.
390.4 Exemptions.

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

§ 390.1 Electronic registration.

Any person who wishes to engage in any of the activities listed in § 390.2 must register electronically through the Commission's web site, in compliance with instructions located on the Web site, at *http://www.ferc.gov*.

§ 390.2 Activities requiring registration.

(a) Electronic registration is a requirement for the following activities:

(1) Submission of all documents in proceedings governed by 18 CFR part 385;

(2) Submission of Forms 1, 2, 6 and 423 pursuant to 18 CFR 141.1, 141.61, 260.1, and 357.2.

(3) Submission of reports in compliance with Order No. 2001.

(4) Filing of tariffs pursuant to 18 CFR 385.205.

(5) Receipt of service pursuant to 18 CFR 385.2010(a) or (b).

(b) Any person who wishes to subscribe to the Commission's automated document delivery system may register electronically but is not required to do so.

§ 390.3 Waiver applications.

(a) A person may satisfy the requirement of § 390.1 by submitting a paper registration form to be prescribed by the Secretary, together with a written statement showing good cause why the person is unable to register electronically. The form and statement must be mailed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, or hand delivered to Room 1A at the same address.

(b) Persons who register using the paper form prescribed under paragraph (a) of this section will receive a unique numeric identifier that must appear on all paper submissions to the Commission. A submission that does not include the identifier will be rejected. Notification of such rejection will be sent to the submitter at the address indicated on the paper submission. A request for a waiver may be submitted simultaneously with a document submitted for filing. If the waiver is granted, the Secretary will add the assigned numeric identifier to the submitted document(s), but will not do so for subsequent submissions.

(c) A waiver under paragraph (a) of this section will be valid for one year from the date of issuance by the Secretary. The Secretary will send notice of the pending expiration to the registered person's address of record approximately three months prior to the expiration of the waiver. After the waiver expires, a person wishing to engage in any of the activities listed in § 390.2 must comply with § 390.1, or must apply for another waiver under paragraph (a) of this section.

§ 390.4 Exemptions.

In instances in which the Commission receives communications from persons who are not registered under this part that relate to docketed proceedings and in which it appears that registration under this part offers no value to the person submitting the communication, the Commission may accept the communication for filing without requiring the person to comply with § 390.1 or § 390.3.

[FR Doc. 02–20283 Filed 8–9–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM02–11–000; Order No. 890]

Civil Monetary Penalty Inflation Adjustment Rule

August 5, 2002.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a final rule for a Civil Monetary Penalty Inflation Adjustment as mandated by the Debt Collection Improvement Act of 1996 (DCIA) to adjust the Commission's civil monetary penalties for inflation on a periodic basis. Prior to the enactment of this law, the Commission's penalties had never been adjusted for inflation. This rule will allow the Commission's penalties to keep pace with inflation and thereby maintain the deterrent effect Congress intended when it originally specified penalties.

The first mandatory adjustment, as mandated by the DCIA, increases all of the Commission's penalty provisions by ten percent. The Commission is required to review its penalties again at least once every four years thereafter and adjust them as necessary for inflation according to a specified formula.

DATES: This final rule is effective August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Carolyn Van Der Jagt, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2246.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

I. Background

1. The Federal Civil Penalties Inflation Adjustment Act of 1990[1] (Adjustment Act) as amended by the Debt Collection Improvement Act of 1996[2] (DCIA) provided for the regular evaluation of civil monetary penalties (CMP) to ensure that they continued to maintain their deterrent value and that penalty amounts due to the Federal Government were properly accounted for and collected. On April 26, 1996, the Adjustment Act was amended by the DCIA to require that each agency issue regulations to adjust its CMPs for inflation at least every four years. The amendment further provides that any resulting increases in a CMP due to the inflation adjustment should apply only to the violations that occur subsequent to the date of the publication in the **Federal Register** of the increased amount of the CMP. The first inflation adjustment of any penalty shall not exceed ten percent of such penalty.

II. Discussion

2. A CMP is defined as any penalty, fine, or other sanction that: (1) Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; (2) is assessed or enforced by an agency pursuant to Federal law; and (3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts. This final rule adjusts the civil penalties that are established by law and assessed or enforced by the Commission.

3. Section 5 of the DCIA sets forth the formula for adjusting the penalties for inflation:

The inflation adjustment described under Section 4 [of the DCIA] shall be determined by increasing the maximum CMP or the range of minimum and maximum CMPs as applicable, for each CMP by the cost-of-living adjustment. The term "cost of living" adjustment is the percentage for each CMP by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment, exceeds the CPI for the month of June of the calendar year in which the amount of such CMP was last set or adjusted pursuant to law.

However, the DCIA also sets a ten percent cap on the first adjustment for inflation. Since the Commission's penalties have never previously been adjusted for inflation, this first statutorily required adjustment will be limited to ten percent.

4. The DCIA rounding rules require that an increase be rounded as follows:

1. If the increase is greater than $0 and less than or equal to $100, round to the nearest multiple of $10.

2. If the increase is greater than $100 and less than or equal to $1,000, round to the nearest multiple of $100.

3. If the increase is greater than $1,000 and less than or equal to $10,000, round to the nearest multiple of $1,000.

4. If the increase is greater than $10,000 and less than or equal to $100,000, round to the nearest multiple of $5,000.

5. If the increase is greater than $100,000 and less than or equal to $200,000, round to the nearest multiple of $10,000.

6. If the increase is greater than $200,000, round to the nearest multiple of $25,000.

5. The Commission is implementing the following adjustments:

United States Code citation	Civil Monetary Penalty description	Current maximum penalty amount	New adjusted maximum penalty amount
15 U.S.C. 3414(b)(6)(A)(i), Sec. 504 Natural Gas Policy Act.	Failure to comply with NGPA's provisions.	$5,000.00	$5,500.00
16 U.S.C. 823b(c), Sec. 31 Federal Power Act.	Failure to comply with rule, license, and permit requirements under Subchapter 12.	10,000.00 per day	11,000.00 per day
16 U.S.C. 825n(a), Sec. 315 Federal Power Act.	Failure to comply with Commission orders and rules, failure to submit required reports.	1,000.00	1,100.00
16 U.S.C. 825(o)–1(b), Sec. 316a Federal Power Act.	Violation of Sec. 211, 212, 213, 214 of FPA.	10,000.00	11,000.00

III. Administrative Findings

6. The Administrative Procedure Act (APA) requires rulemakings to be published in the **Federal Register** and also mandates that an opportunity for comments be provided when an agency promulgates regulations. However, the APA exempts certain rules of agency procedures from its notice and comment requirements.[3] The Commission is required by the DCIA to adjust CMPs for inflation. Additionally, the formula for the amount of the penalty adjustment is prescribed by Congress and is not subject to the exercise of discretion by the Commission. The Commission is only required to determine the amount of inflation adjustments by performing administrative computations. Accordingly, the Commission has determined for good cause that public notice and comment are unnecessary, impractical, or contrary to the public interest and that the rule should be published in final form.

[1] 28 U.S.C. 2461.

[2] 31 U.S.C. 3701.

[3] 5 U.S.C. 553(b).

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IV. Regulatory Flexibility Statement

7. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,[4] (SBREFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because notice and opportunity for comment are not required by 5 U.S.C. 553, or any other law, a Regulatory Flexibility Analysis is not required and was not prepared for purposes of the RFA.

8. This action will not have a significant impact on a substantial number of small entities. As stated, the Commission is required by the DCIA to adjust civil monetary penalties for inflation. The formula for the amount of the penalty adjustment is prescribed by Congress and is not subject to the exercise of discretion by the Commission. The Commission's action implements this statutory mandate and does not substantively alter the existing regulatory framework. This rule does not affect mechanisms already in place, including statutory provisions and the Commission's policies, that address the special circumstances of small entities when assessing penalties in enforcement actions.

V. Effective Date

9. For the same reasons the Commission has determined that public notice and comment is unnecessary, impractical, and contrary to the public interest, the Commission finds that it has good cause to adopt an effective date that is less than 30 days after the date of publication in the **Federal Register** pursuant to the APA,[5] and therefore, the regulation is effective upon publication.

VI. Congressional Review Act

10. The Congressional Review Act,[6] as added by the SBREFA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The Commission will submit a report containing the rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), that this is not a "major rule" as defined in section 251 of the SBREFA. Therefore, for the reasons outlined above, this action will take effect August 12, 2002.

VII. Information Collection Statement

11. The OMB regulations require that OMB approve certain information collection requirements imposed by agency rules.[7] However, this final rule contains no information reporting requirements, and therefore is not subject to OMB approval.

VIII. Environmental Assessment

12. Commission regulations describe the circumstances where preparation of an environmental assessment or an environmental impact statement will be required.[8] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[9] This final rule promulgates a procedural rule that is considered a categorical exclusion under section 380.4(a)(2)(ii) of the Commission's regulations. Therefore, no environmental assessment or environmental impact statement is necessary.

IX. Document Availability

13. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

14. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

15. User assistance is available for FERRIS and the FERC's website during normal business hours from our Help line at (202) 208–2222 or the Public Reference Room at (202) 208–1371 Press 0, TTY (202) 208–1659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

In consideration of the foregoing, the Commission is amending Part 385, Title 18 of the Code of Federal Regulations, as follows:

PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 385 is revised to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

2. In part 385, subpart P is added to read as follows:

Subpart P—Civil Monetary Penalty Inflation Adjustment

Sec.

385.1601 Scope and purpose (Rule 1601).

385.1602 Civil penalties, as adjusted (Rule 1602).

§ 385.1601 Scope and purpose (Rule 1601).

The purpose of this subpart is to make inflation adjustments to the civil monetary penalties provided by law within the jurisdiction of the Commission. These penalties shall be subject to review and adjustment as necessary at least every four years in accordance with the Federal Civil Penalties Inflation Act of 1990, as amended.

§ 385.1602 Civil penalties, as adjusted (Rule 1602).

The civil monetary penalties provided by law within the jurisdiction of the Commission are:

(a) 15 U.S.C. 3414(b)(6)(A)(1), Natural Gas Policy Act: from $5,000 to $5,500.

(b) 16 U.S.C. 823b(c), Federal Power Act: from $10,000 to $11,000.

(c) 16 U.S.C. 825n(a), Federal Power Act: from $1,000 to $1,100.

(d) 16 U.S.C. 825(o)–1(b), Federal Power Act: from $10,000 to $11,000.

[FR Doc. 02–20284 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

[4] 5 U.S.C. 801 *et seq.*

[5] 5 U.S.C. 553(b)(3)(B).

[6] 5 U.S.C. 801 *et seq.*

[7] 5 CFR Part 1320.

[8] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), *codified at* 18 CFR Part 380.

[9] 18 CFR 380.4.

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 9

RIN 2900–AJ80

Accelerated Benefits Option for Servicemembers' Group Life Insurance and Veterans' Group Life Insurance

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Veterans Programs Enhancement Act of 1998 authorized the payment of accelerated benefits to terminally ill persons insured under Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI). This document amends the Department of Veterans Affairs (VA) regulations to establish a mechanism for implementing these statutory provisions.

DATES: *Effective Date.* August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Greg Hosmer, Senior Attorney/Insurance Specialist, Insurance Program Administration and Oversight, Department of Veterans Affairs Regional Office and Insurance Center, PO Box 8079, Philadelphia, Pennsylvania 19101, (215) 842–2000, ext. 4280 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on July 20, 2000 (65 FR 44999), the Department of Veterans Affairs proposed to establish a mechanism for the payment of accelerated death benefits to terminally ill Servicemembers' Group Life Insurance (SGLI) and Veterans' Group Life Insurance (VGLI) policyholders. We requested comments for a 60-day period that ended September 18, 2000. We received no comments. Based on the rationale set forth in the proposed rule, we are adopting the proposed rule as a final rule with minor nonsubstantive changes.

At the time of the publication of the proposed rule, the accelerated benefit provisions were only authorized for servicemembers and veterans. Recently, Public Law 107–14 amended 38 U.S.C. 1965 and 1967 to expand the provisions to SGLI family coverage. Accordingly, the final rule would apply also to SGLI family coverage. SGLI family coverage is provided as a rider to an insured member's SGLI coverage and therefore only the insured member may apply for SGLI family coverage accelerated benefits.

The final rule also reflects a change in the address for submitting an application for accelerated benefits. For consistency, this change also revises § 9.1(b). In, addition, changes are made for purposes of clarification.

Paperwork Reduction Act

This document contains provisions constituting collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520) approved by OMB under Control No. 2900–0618.

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only persons insured under the government's SGLI and VGLI programs could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this regulatory amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for the program affected by this document is 64.103.

List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Approved: June 6, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 9 is amended as set forth below:

PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

1. The authority citation for part 9 is revised to read as follows:

Authority: 38 U.S.C. 501, 1965–1980, unless otherwise noted.

2. Section 9.1(b) is revised to read as follows:

§ 9.1 Definitions.

* * * * *

(b) The term *administrative office* means the Office of Servicemembers' Group Life Insurance located at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

* * * * *

3. Section 9.14 is added to read as follows:

§ 9.14 Accelerated Benefits.

(a) *What is an Accelerated Benefit?* An Accelerated Benefit is a payment of a portion of your Servicemembers' Group Life Insurance or Veterans' Group Life Insurance to you before you die.

(b) *Who is eligible to receive an Accelerated Benefit?* You are eligible to receive an Accelerated Benefit if you have a valid written medical prognosis from a physician of 9 months or less to live, and otherwise comply with the provisions of this section.

(c) *Who can apply for an Accelerated Benefit?* Only you, the insured member, can apply for an Accelerated Benefit. No one can apply on your behalf.

(d) *How much can you request as an Accelerated Benefit?* (1) You can request as an Accelerated Benefit an amount up to a maximum of 50% of the face value of your insurance coverage.

(2) Your request for an Accelerated Benefit must be $5,000 or a multiple of $5000 (for example, $10,000, $15,000).

(e) *How much can you receive as an Accelerated Benefit?* You can receive as an Accelerated Benefit the amount you request up to a maximum of 50% of the face value of your insurance coverage, minus the interest reduction. The interest reduction is the amount the Office of Servicemembers' Group Life Insurance actuarially determines to be the amount of interest that would be lost because of the early payment of part of your insurance coverage. This means that if you have $100,000 in coverage and you request the maximum amount that you are eligible to request as an Accelerated Benefit, you will be paid $50,000 minus the interest reduction.

(f) *How do you apply for an Accelerated Benefit?* (1) You can obtain an application form entitled "Claim for Accelerated Benefits" by writing the

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Office of Servicemembers' Group Life Insurance, 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039; calling the Office of Servicemembers' Group Life Insurance toll-free at 1–800–219–1473; or downloading the form from the Internet at www.insurance.va.gov. You must submit the completed application form to the Office of Servicemembers' Group Life Insurance, 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

(2) As stated on the application form, you will be required to complete part of the application form and your physician will be required to complete part of the application form. If you are an active duty servicemember, your branch of service will also be required to complete part of the form.

To Be Completed by Insured

Claim for Accelerated Benefits

Your name: _____
Social Security Number: _____
Your home address: _____
Date of birth: _____
Branch of Service (if covered underSGLI): _____
Your mailing address (if different from above): _____
Amount of SGLI coverage: $ _____
Amount of claim (can be no more than one-half of coverage in increments of $5,000): _____
Type of coverage (check one):
SGLI (circle one of the following): *Active Duty Ready Reserve Army or Air National Guard Separated or Discharged*
VGLI

Note: If you checked SGLI, you must also have your military unit complete the attached form.

I acknowledge that I have read all of the attached information about the accelerated benefit. I understand that I can get this benefit only once during my lifetime and that I can use it for any purpose I choose. I further understand that the face amount of my coverage will reduce by the amount of accelerated benefit I choose to receive now.

Your signature: _____
Date: _____

Authorization To Release Medical Records

To all physicians, hospitals, medical service providers, pharmacists, employers, other insurance companies, and all other agencies and organizations:

You are authorized to release a copy of all my medical records, including examinations, treatments, history, and prescriptions, to the Office of Servicemembers' Group Life Insurance (OSGLI) or its representatives.

Printed name: _____
Signature: _____
Date: _____

A photocopy of this authorization will be considered as effective and valid as the original.

Valid for one year from date signed.

To Be Completed by Physician

Attending Physician's Certification

Patient's name: _____
Patient's Social Security Number: _____
Diagnosis: _____
ICD–9–CM Disease Code *: _____
Description of present medical condition (please attach results of x-rays, E.K.G. or other tests): _____

Is the patient capable of handling his/her own affairs? _____Yes____No____

The patient applied for an accelerated benefit under his/her government life insurance coverage. To qualify, the patient must have a life expectancy of nine (9) months or less.

Does your patient meet this requirement? _____Yes____No____

Attending Physician's name (please print): _____
State in which you are licensed to practice: _____
Specialty: _____
Mailing address: _____
Telephone number: _____
Fax Number: _____
Signature: _____
Date: _____

*ICD–9–CM is an acronym for International Classification of Diseases, 9th revision, Clinical Modification.

To Be Completed by Personnel Office of Servicemember's Unit

(Complete this form only if the applicant for Accelerated Benefits is covered under SGLI.)

Branch of Service Statement

Servicemember's name: _____
Social Security Number: _____
Branch of Service: _____
Amount of SGLI coverage: $ _____
Monthly premium amount: $ _____
Name of person completing this form: _____
Telephone Number: _____
Fax Number: _____
Title of person completing this form: _____
Duty Station and address: _____
Signature of person completing this form: _____
Date: _____

Notice: It is fraudulent to complete these forms with information you know to be false or to omit important facts. Criminal and/or civil penalties can result from such acts.

(g) *Who decides whether or not an Accelerated Benefit will be paid to you?* The Office of Servicemembers' Group Life Insurance will review your application and determine whether you meet the requirements of this section for receiving an Accelerated Benefit.

(1) They will approve your application if the requirements of this section are met.

(2) If the Office of Servicemembers' Group Life Insurance determines that your application form does not fully and legibly provide the information requested by the application form, they will contact you and request that you or your physician submit the missing information to them. They will not take action on your application until the information is provided.

(h) *How will an Accelerated Benefit be paid to you?* An Accelerated Benefit will be paid to you in a lump sum.

(i) *What happens if you change your mind about an application you filed for Accelerated Benefits?* (1) An election to receive the Accelerated Benefit is made at the time you have cashed or deposited the Accelerated Benefit. After that time, you cannot cancel your request for an Accelerated Benefit. Until that time, you may cancel your request for benefits by informing the Office of Servicemembers' Group Life Insurance in writing that you are canceling your request and by returning the check if you have received one. If you want to change the amount of benefits you requested or decide to reapply after canceling a request, you may file another application in which you request either the same or a different amount of benefits.

(2) If you die before cashing or depositing an Accelerated Benefit payment, the payment must be returned to the Office of Servicemembers' Group Life Insurance. Their mailing address is 290 W. Mt: Pleasant Avenue, Livingston, New Jersey 07039.

(j) *If you have cashed or deposited an Accelerated Benefit, are you eligible for additional Accelerated Benefits?* No.

(Approved by the Office of Management and Budget under control number 2900–0618)

(Authority: 38 U.S.C. 1965, 1966, 1967, 1980)

[FR Doc. 02–20278 Filed 8–9–02; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 112–0052c; FRL–7253–7]

Interim Final Determination That the State of Arizona Has Corrected Deficiencies and Stay of Sanctions, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published a direct final rulemaking fully approving the State of Arizona's submittal of a revision to the Maricopa County Environmental Services Department (MCESD) portion of the State Implementation Plan (SIP). We have also published a proposed rulemaking to provide the public with an opportunity to comment on EPA's action. If a person submits adverse comments on our direct final action, we will withdraw our direct final rule and will consider any comments received before taking final action on the State's submittal. Based on the proposed full approval, we are making an interim final determination by this action that the State has corrected the deficiencies for which a sanctions clock began on February 4, 2001. This action will stay the imposition of the offset sanction and defer the imposition of the highway sanction. Although this action is effective upon publication, we will take comment. If no comments are received on our approval of the State's submittal and on our interim final determination, the direct final action published in today's **Federal Register** will also finalize our determination that the State has corrected the deficiencies that started the sanctions clock. If comments are received on our approval or on this interim final determination, we will publish a final rule taking into consideration any comments received.

DATES: This interim final determination is effective August 12, 2002. Comments must be received by September 11, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSD at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

Arizona Department of Environmental Quality, Air Quality Division, 1110 West Washington Street, Phoenix, AZ 85007.

Maricopa County Environmental Services Department, Air Quality Division, 1001 North central Avenue, Suite 201, Phoenix, AZ 85004.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Background

On January 4, 1990, the State of Arizona submitted a revision to Rule 314 in the MCESD portion of the SIP, which we disapproved in part on January 4, 2001 (66 FR 730). Our disapproval action started an 18-month clock beginning on February 4, 2001 for the imposition of one sanction (followed by a second sanction 6 months later) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP). The State subsequently submitted amended Rule 314 on March 22, 2002. We have taken direct final action on this submittal pursuant to our modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the Rules and Regulations section of today's **Federal Register**, we have issued a direct final full approval of the State of Arizona's submittal of its SIP revision. In addition, in the Proposed Rules section of today's **Federal Register**, we have proposed full approval of the State's submittal. Based on the proposed full approval set forth in today's **Federal Register**, we believe that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, we are taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, we are also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on our proposed full approval of the State's submittal, we determine that the State's submittal is not fully approvable and this final action was inappropriate, we will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, we will also issue an interim final determination or a final determination that the deficiency has been corrected.

This action does not stop the sanctions clock that started for this area on February 4, 2001. However, this action will stay the imposition of the offsets sanction and will defer the imposition of the highway sanction. If our direct final action fully approving the State's submittal becomes effective, such action will permanently stop the sanctions clock and will permanently lift any imposed, stayed or deferred sanctions. If we must withdraw the direct final action based on adverse comments and we subsequently determine that the State, in fact, did not correct the disapproval deficiencies, we will also determine that the State did not correct the deficiencies and the sanctions consequences described in the sanctions rule will apply. See 59 FR 39832 (August 4, 1994), codified at 40 CFR 52.31.

II. EPA Action

We are taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clock. Based on this action, imposition of the offset sanction will be stayed and imposition of the highway sanction will be deferred until our direct final action fully approving the State's submittal becomes effective or until we take action proposing or finally disapproving in whole or part the State submittal. If our direct final action fully approving the State submittal becomes effective, at that time any sanctions clocks will be permanently stopped and any imposed, stayed, or deferred sanctions will be permanently lifted.

Because we have preliminarily determined that the State has an approvable submittal, relief from sanctions should be provided as quickly as possible. Therefore, we are invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act because the purpose of this notice is to relieve a restriction. *See* 5 U.S.C. 553(d)(1).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely stays and defers federal sanctions. Accordingly, the administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule only stays an imposed sanction and defers the imposition of another, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely stays a sanction and defers another one, and does not alter the relationship or the distribution of power and

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responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not contain technical standards, thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of August 12, 2002. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental regulations, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 16, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–20222 Filed 8–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 112–0052a; FRL–7253–5]

Revision to the Arizona State Implementation Plan, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Maricopa County Environmental Services Department (MCESD) portion of the Arizona State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving a local rule that regulates open outdoor fires.

DATES: This rule is effective on October 11, 2002, without further notice, unless EPA receives adverse comments by September 11, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted SIP revision at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Arizona Department of Environmental Quality, Air Quality Division, 1110 West Washington Street, Phoenix, AZ 85007.

Maricopa County Environmental Services Department, Air Quality Division, 1001 North Central Avenue, Suite 201, Phoenix, AZ 85004.

A copy of the rule may also be available via the Internet at *http://www.maricopa.gov/envsvc/air/ruledesc.asp*. This is not an EPA Web site and it may not contain the same version of the rule that was submitted to EPA. Readers should verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval and be aware that the official submittal is only available at the agency addresses listed above.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was revised by the local air agency and submitted by the Arizona Department of Environmental Quality.

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Revised	Submitted
MCESD	314	Open Outdoor Fires	12/19/01	03/22/02

On June 12, 2002, this rule submittal was found to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

A version of Rule 314 was finalized as a limited approval into the SIP and limited disapproval with sanctions on January 4, 2001 (66 FR 730).

C. What Is the Purpose of the Submitted Rule?

Rule 314 prohibits open outdoor fires unless a permit is obtained and the Control Officer has not declared a restricted burn period. The following are exemptions from these requirements:

- Fires for cooking, warmth for humans, recreation, branding of animals, the use of orchard heaters for frost protection, and fire extinguisher training.

Exemptions from only the permit requirement are as follows:

- Disposal of dangerous material, testing of explosive or flammable material, and fire fighting training.

The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). Section 189(a) of the CAA requires moderate PM–10 nonattainment areas to implement reasonably available control measures (RACM), including reasonably available control technology (RACT) for stationary sources of PM–10. Section 189(b) requires that serious PM–10 nonattainment areas, in addition to meeting the RACM/RACT requirements, implement best available control measures (BACM), including best available control technology (BACT). The Phoenix metropolitan area is a serious PM–10 nonattainment area. The MCESD regulates certain sources of PM–10 in the nonattainment area.

EPA's guidance for both moderate and serious PM–10 nonattainment areas provides that RACM/RACT and BACM/BACT are required to be implemented for all source categories unless the State demonstrates that a particular source category does not contribute significantly to PM–10 levels in excess of the NAAQS (*i.e.*, de minimis sources). *See Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 59 FR 41998, 42011 (August 16, 1994). PM–10 emissions from the source categories that are the subject of this direct final action are de minimis according to the December 1999 *Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area* (PM–10 Plan). Therefore, Rule 314 is not required to meet BACM/BACT control levels. However, the State submitted Rule 314 as a RACM/RACT rule on which the PM–10 Plan relies to achieve attainment. Thus EPA is evaluating Rule 314 to determine if it meets RACM/RACT requirements, but not for BACM/BACT.

B. Does the Rule Meet the Evaluation Criteria?

We believe the rule is consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and fulfilling RACM/RACT. All of the deficiencies identified in our previous limited approval and limited disapproval action of Rule 314 on January 4, 2001 have been adequately addressed as follows:

- We disapproved the exemption to burn dangerous materials, because the "dangerous material" is not defined. A satisfactory definition was added to the rule. § 314.202.
- We disapproved the exemption permitting open burning with a stipulation of conditions and time of day, because criteria for allowing exemptions were not specified and were subject to the discretion of the Control Officer. A requirement was added for a permittee to call the fire agency with jurisdiction and the Control Officer for permission to commence burning. The Control Officer must base his decision to allow burning on National Weather Service forecasts or other meteorological analyses. We have determined that this approach fulfills the requirements of RACM/RACT. § 314.302.
- We disapproved an exemption to burn with an air curtain destructor, because the Control Officer had unrestricted discretion. An appendix was added to Rule 314 to describe procedures and guidelines for air curtain destructors and burn pits to make the rule approvable.

The TSD has more information about our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements and corrects the deficiencies in the previous version. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by September 11, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 11, 2002. This will incorporate this rule into the federally enforceable SIP and will terminate all sanctions and sanction clocks associated with our January 4, 2001 action.

III. Background Information

A. Why Was This Rule Submitted?

PM–10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency PM–10 rules.

TABLE 2.—PM–10 NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977. 43 FR 8964; 40 CFR 81.305.
July 1, 1987	EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM–10). 52 FR 24672.
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted, Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
November 15, 1990.	PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the CAA were designated non-attainment by operation of law and classified as moderate pursuant to section 188(a). States are required by section 110(a) to submit rules regulating PM–10 emissions in order to achieve the attainment dates specified in section 188(c).

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211,

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"Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 11, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 16, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(105) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(105) Amended rule for the following agency was submitted on March 22, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa County Environmental Services Department.

(*1*) Rule 314, revised on December 19, 2001.

* * * * *

[FR Doc. 02–20223 Filed 8–9–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

49 CFR Part 1

[OST Docket No. OST 1999–6189]

RIN 9991–AA26

Organization and Delegation of Powers and Duties; Delegation to the Federal Highway Administrator

AGENCY: Office of the Secretary, U.S. DOT.

ACTION: Final rule.

SUMMARY: In this action, the Secretary of Transportation delegates to the Federal Highway Administrator limited authority to determine a Federal share of the costs, other than 80 percent, for Federal Highway Administration (FHWA) transportation research projects or activities that are funded under section 5001 of the Transportation Equity Act for the 21st Century (TEA–21). The Federal Highway Administrator is delegated this authority only with respect to the use of section 5001(b) funds for FHWA projects and activities, and exercises no authority with regard to cost share determinations with respect to projects or activities administered by the other U.S. Department of Transportation operating administrations. This delegation of authority is necessary because the Federal Highway Administration has the expertise and staff to administer the Highway Research Program and to make funding decisions in accordance with the statutory requirements. The Federal Highway Administrator may further redelegate this authority.

EFFECTIVE DATE: This rule is effective August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Wilbert Baccus, Office of the Chief Counsel (HCC–40), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–0780.

SUPPLEMENTARY INFORMATION:

Electronic Access

You can view and download this document by going to the web page of the Department's Docket Management System (*http://dms.dot.gov*). On that page, click on "search." On the next page, type in the last four digits of the docket number that appears in the heading of this document. Then click on "search." An electronic copy of this document may also be downloaded from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661 by using a computer, modem, and suitable communications software. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara*.

Background

Section 5001 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 419, Authorizations and Appropriations, provides funding for transportation research authorized to be appropriated out of the Highway Trust Fund. Subsection 5001(a) provides for sums that are authorized be appropriated for seven categories of transportation research and subsection 5001(b) provides that these funds shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code. Subsection 5001(b) also states that the Federal share of the cost of the project or activity carried out using these funds shall be 80 percent, unless otherwise expressly provided in title 5 of the TEA–21 or otherwise determined by the Secretary with respect to a project or activity.

In this action, the Secretary delegates to the Federal Highway Administrator the authority to determine a Federal share of the costs, other than 80 percent, for FHWA transportation research projects or activities that are funded under section 5001 of TEA–21. The Federal Highway Administrator is delegated this authority only with respect to the use of section 5001(b) funds for FHWA projects and activities, and exercises no authority with regard to cost share determinations with respect to projects or activities administered by the other U.S. Department of Transportation operating administrations. The reason for the delegation is that the FHWA has the expertise and staff to carry out these programs and make funding decisions according to the statutory requirements. The FHWA's Office of Acquisition Management approves the cooperative agreements to which this cost sharing provision applies. Additionally, the FHWA works with the smaller entities, such as not-for-profit organizations and universities, on a regular basis and is familiar with which organizations have the ability to cost share and which ones do not.

Notice and Comment Exemption

Since this rule relates to Departmental organization, procedure, and practice, notice and comment are unnecessary under 5 U.S.C. 553(b).

Justification for Immediate Adoption

Certain programs and activities are to be conducted over the course of a given fiscal year, and this delegation of authority assists the FHWA in ensuring the use of those funds during that year for transportation research. This amendment enhances the FHWA's ability to meet statutory deadlines in order that funds do not lapse. Since the rule expedites the Federal Highway Administration's ability to administer the Highway Research Program, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

For the reasons set forth in the preamble, the Office of the Secretary of Transportation amends 49 CFR part 1 as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 . continues to read as follows:

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub. L. 106–159, 113 Stat. 1748.

2. In § 1.48, add paragraph (oo) to read as follows:

§ 1.48 Delegations to Federal Highway Administrator.

* * * * *

(oo) Exercise the authority vested in the Secretary by subsection 5001(b) of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 420, titled Applicability of Title 23, United States Code to determine a Federal share of the costs, other than 80 percent, for a transportation research project or activity administered by the FHWA that is funded under section 5001 of TEA–21. This authority may be redelegated.

Issued on this 29th day of July, 2002.

Norman Y. Mineta,

Secretary, U.S. Department of Transportation.

[FR Doc. 02–20000 Filed 8–9–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH06

Endangered and Threatened Wildlife and Plants; Designating Critical Habitat for Plant Species From the Island of Molokai, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the draft economic analysis for the proposed designations of critical habitat for plant species from the island of Molokai, Hawaii. We are also providing notice of the reopening of the comment period for the proposal to determine prudency and to designate critical habitat for these plants to allow peer reviewers and all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this reopened comment period and will be fully considered in preparation of the final rule.

DATES: We will accept public comments until September 11, 2002.

ADDRESSES: Written comments and information should be submitted to Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., PO Box 50088, Honolulu, HI 96850–0001. For further instructions on commenting, refer to Public Comments Solicited section of this document.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

A total of 51 plant species historically found on Molokai were listed as endangered or threatened species under

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the Endangered Species Act of 1973, as amended (Act), between 1991 and 1999. Sixteen of these species are endemic to the island of Molokai, while 35 species are reported from one or more other islands, as well as Molokai.

In other published proposals we proposed that critical habitat was prudent for 48 of the 51 species (*Adenophorus periens, Alectryon macrococcus, Bidens wiebkei, Bonamia menziesii, Brighamia rockii, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea mannii, Cyanea procera, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense, Eugenia koolauensis, Flueggea neowawraea, Hedyotis mannii, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Marsilea villosa, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*) from the island of Molokai (65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83158, 67 FR 3940, 67 FR 9806, 67 FR 16492). In addition, we proposed that critical habitat was not prudent for *Pritchardia munroi* because it would likely increase the threats from vandalism or collection of this species on Molokai (65 FR 83158). At the time we listed *Labordia triflora* and *Melicope munroi* we determined that the designation of critical habitat was prudent for these two taxa from Molokai (64 FR 48307).

In the April 5, 2002, revised prudency and critical habitat proposal, we proposed critical habitat for 46 of the 51 species from the island of Molokaii (67 FR 16492). Critical habitat was not proposed for 4 of the 51 species (*Bonamia menziesii, Cyperus trachysanthos, Melicope munroi,* and *Solanum incompletum*) which no longer occur on the island of Molokai and for which we are unable to identify any habitat that is essential to their conservation on the island of Molokai. Critical habitat was not proposed for *Pritchardia munroi* for the reasons given above.

We have proposed to designate a total of 10 critical habitat units covering approximately 17,614 hectares (ha) (43,532 acres (ac)) on the island of Molokaii.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act (16 U.S.C. 1531 *et seq.*) with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available, and after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for plant species from Molokai, and comments received during the previous comment period, we have prepared a draft economic analysis of the proposed critical habitat designations. The draft economic analysis is available on the Internet and from the mailing address in the Public Comments Solicited section below.

Public Comments Solicited

We will accept written comments and information during this re-opened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., PO Box 50088, Honolulu, HI 96850–0001.

(2) You may send comments by electronic mail (e-mail) to: *Molokai_Crithab@r1.fws.gov.* If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018–AH08" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Honolulu Fish and Wildlife Office at telephone number 808/541–3441.

(3) You may hand-deliver comments to our Honolulu Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the draft economic analysis are available on the Internet at *http://pacificislands.fws.gov* or by request from the Field Supervisor at the address and phone number under (1 and 2) above.

Author(s)

The primary author of this notice is John Nuss, U.S. Fish and Wildlife Service, Regional Office, 911 NE 11th Avenue, 4th floor, Portland, OR 97232–4181.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 1, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–20340 Filed 8–9–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF96

Endangered and Threatened Wildlife and Plants; Establishment of Nonessential Experimental Population Status and Reintroduction of Four Fishes in the Tellico River

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), plan to reintroduce two federally listed endangered fishes—the duskytail darter (*Etheostoma percnurum*) and smoky madtom (*Noturus baileyi*)—and two federally listed threatened fishes—the yellowfin madtom (*Noturus flavipinnis*) and spotfin chub (=turquoise shiner) (*Cyprinella* (=*Hybopsis*) *monacha*)—into the Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile (TRM) 19 (30.4 kilometers (km))) and TRM 33 (52.8 km), near the Tellico Ranger Station, Monroe County, Tennessee.

These reestablished populations will be classified as nonessential experimental populations (NEPs) in accordance with section 10(j) of the Endangered Species Act of 1973, as amended (Act). Based on an evaluation by species experts, none of these species are currently known to exist in this river reach or its tributaries.

These reintroductions are recovery actions and are part of a series of reintroductions and other recovery actions that the Service, Federal and State agencies, and other partners are considering and conducting throughout the species' historic ranges. This rule provides a plan for establishing the NEPs and provides for limited allowable legal taking of the aforementioned fishes within the defined NEP area.

DATES: The effective date of this rule is September 11, 2002.

ADDRESSES: The complete administrative file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Butler at 828/258–3939, Ext. 235; facsimile 828/258–5330; or e-mail bob_butler@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

1. *Legislative:* Congress made significant changes to the Act with the addition of section 10(j), which provides for the designation of specific reintroduced populations of listed species as "experimental populations." Previously, we had authority to reintroduce populations into unoccupied portions of a listed species' historical range when doing so would foster the conservation and recovery of the species. However, local citizens often opposed these reintroductions because they were concerned about the placement of restrictions and prohibitions on Federal and private activities. Under section 10(j), the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range, but within its historical range, as "experimental."

Under the Act, species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of endangered wildlife. "Take" is defined by the Act as harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or attempt to engage in any such conduct. Service regulations (50 CFR 17.31) generally extend the prohibition of take to threatened wildlife. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitats. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

Section 10(j) is designed to increase our flexibility in managing an experimental population by allowing us to treat the population as threatened, regardless of the species' designation elsewhere in its range. Threatened designation gives us more discretion in developing and implementing management programs and special regulations for such a population and allows us to develop any regulations we consider necessary to provide for the conservation of a threatened species. In situations where we have experimental populations, most of the section 9 prohibitions that normally apply to threatened species no longer apply, and the special rule contains the prohibitions and exceptions necessary and appropriate to conserve that species. Regulations for NEPs may be developed to be more compatible with routine human activities in the reintroduction area.

Based on the best available information, we must determine whether experimental populations are "essential" or "nonessential" to the continued existence of the species. An experimental population that is essential to the survival of the species is treated as a threatened species. An experimental population that is nonessential to the survival of the species is also treated as a threatened species. However, for section 7 interagency cooperation purposes, if the NEP is located outside of a National Wildlife Refuge or National Park, it is treated as a species proposed for listing.

For the purposes of section 7 of the Act, in situations where there is an NEP located within a National Wildlife Refuge or National Park (treated as threatened), section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act would apply. Section 7(a)(1) requires all Federal agencies to use their authorities to conserve listed species. Section 7(a)(2) requires that Federal agencies consult with the Service before authorizing, funding, or carrying out any activity that would likely jeopardize the continued existence of a listed species or adversely modify its critical habitat. When NEPs are located outside a National Wildlife Refuge or National Park, only two provisions of section 7 apply—section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. However, since we determined that the experimental population is not essential to the continued existence of the species, it is very unlikely that we would ever determine jeopardy for a project impacting a species within an NEP outside a National Wildlife Refuge or National Park.

Individuals used to establish an experimental population may come from a donor population, provided their removal will not create adverse impacts upon the parent population and provided appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal.

2. *Biological:* Since the mid-1980s, Conservation Fisheries, Inc. (CFI), with support from us, the Tennessee Wildlife Resources Agency (TWRA), U.S. Forest Service (USFS), National Park Service (NPS), Tennessee Valley Authority (TVA), and Tennessee Aquarium (TA), has reintroduced the smoky madtom, duskytail darter, yellowfin madtom, and spotfin chub into Abrams Creek, within the Great Smoky Mountains National Park, Blount County, Tennessee. We have evidence that all four species are becoming reestablished in Abrams Creek (Rakes *et al.* 1998). Based on this success and CFI's intimate knowledge of the fishes' habitat needs, we contracted them to survey the Tellico River to determine if we could expand the recovery program for these fishes into the Tellico River.

CFI determined that the Tellico River appears to contain ideal habitat for the reintroduction of the four fishes, between the backwaters of the Tellico Reservoir (approximately TRM 19 (30.4 km)) and TRM 33 (52.8 km), near the Tellico Ranger Station, Monroe County, Tennessee (Rakes and Shute 1998). CFI concluded that the Tellico River's overall water quality and clarity, combined with substrate quality, were somewhat less optimal than Citico Creek, where three of the four species currently exist. However, they also concluded that the Tellico River contains as good or better habitat than that which exists in Abrams Creek, where reintroductions of all four species are apparently succeeding.

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Rakes and Shute (1998) reported that there are no confirmed historical collection records for these fishes from the Tellico River. However, they believe that all four species probably occurred in the river historically. They based their conclusion on two facts: (1) That the Tellico River is a Little Tennessee tributary just downstream from the mouths of Abrams and Citico Creeks (all four fishes historically occurred in these creeks) and (2) that all three streams drain the same physiographic provinces (Blue Ridge and Ridge and Valley). Additionally, all four species historically had access to the Tellico River. Prior to the construction of reservoirs on the main stem of the Little Tennessee River, no physical barriers prevented the movement of these fishes among Abrams Creek, Citico Creek, and the Tellico River (Peggy Shute, TVA, personal communication, 1998).

3. *Recovery Efforts:* We listed the duskytail darter (*Etheostoma percnurum*) (Jenkins 1994) as an endangered species on April 27, 1993 (58 FR 25758), and completed the recovery plan for this species in March 1994 (Service 1994). Although likely once more widespread in the upper Tennessee and middle Cumberland River systems, the species was historically known from only six populations—Little River and Abrams Creek, Blount County, Tennessee; Citico Creek, Monroe County, Tennessee; Big South Fork Cumberland River, Scott County, Tennessee, and McCreary County, Kentucky; Copper Creek and the Clinch River (this is one population), Scott County, Virginia; and the South Fork Holston River, Sullivan County, Virginia (Service 1994). The South Fork Holston River population is apparently extirpated. The Little River, Copper Creek/Clinch River, and Big South Fork Cumberland River populations are extant but small. CFI has reintroduced the duskytail darter into Abrams Creek, where a population is apparently becoming reestablished (Rakes *et al.* 1998).

The downlisting (reclassification from endangered to threatened status) criteria in the Duskytail Darter Recovery Plan are: (1) Protect and enhance existing populations and reestablish a population so that at least three distinct viable duskytail darter populations exist, (2) complete studies of the species' biological and ecological requirements, (3) develop management strategies from these studies that are or are likely to be successful, and (4) ensure that no foreseeable threats exist that would likely threaten the continued existence of the three aforementioned viable populations. The delisting criteria in the recovery plan are: (1) Protect and enhance existing populations and reestablish populations so that at least five distinct viable duskytail darter populations exist, (2) complete studies of the species' biological and ecological requirements, (3) develop management strategies from these studies that are or are likely to be successful, and (4) ensure that no foreseeable threats exist that would likely threaten the continued existence of the five aforementioned viable populations.

We listed the smoky madtom (*Noturus baileyi*) (Taylor 1969) as an endangered species on October 26, 1984 (49 FR 43065), and finalized the recovery plan for this species in August 1985 (Service 1985). Although once probably more widespread in tributaries to the lower Little Tennessee River system, this species was historically collected from only two creeks—Abrams Creek, Blount County, Tennessee, and Citico Creek, Monroe County, Tennessee (Service 1985). The Citico Creek population is still extant. CFI has reintroduced the smoky madtom into Abrams Creek, and a population is apparently becoming reestablished (Rakes *et al.* 1998).

The downlisting criteria in the Smoky Madtom Recovery Plan are: (1) Protect the existing Citico Creek population and reintroduce the species into Abrams Creek so that at least two distinct viable smoky madtom populations exist, and (2) eliminate threats to the species by implementing management activities. The delisting criteria in the recovery plan are: (1) Protect and enhance existing populations and reestablish populations so that at least four distinct viable smoky madtom populations (Abrams and Citico Creeks, plus two others) exist; (2) implement successful management plans for the populations in Abrams and Citico Creeks; and (3) protect all four populations and their habitat from present and foreseeable threats that could interfere with the survival of any of the populations.

We listed the yellowfin madtom (*Noturus flavipinnis*) (Taylor 1969) as a threatened species on September 9, 1977 (42 FR 45527), and finalized the recovery plan for this species in June 1983 (Service 1983a). This fish was probably once widely distributed in the Tennessee drainage, from the Chickamauga system upstream (Service 1983a). However, the yellowfin madtom was historically known from only six streams—South Chickamauga Creek, Catoosa County, Georgia; Hines Creek, a Clinch River tributary, Anderson County, Tennessee; North Fork Holston River, Smyth County, Virginia; Copper Creek, Scott and Russell Counties, Virginia; Powell River, Hancock County, Tennessee; and Citico Creek, Monroe County, Tennessee (Service 1983a). Although there are no historical yellowfin madtom records from Abrams Creek, Blount County, Tennessee, Lennon and Parker (1959) reported that the brindled madtom (the name given by early collectors for the yellowfin) was collected during a reclamation project of lower Abrams Creek in 1957. Based on this observation, Dinkins and Shute (1996) and others believe the species once occurred in the middle and lower reaches of Abrams Creek. Three small populations still persist—Citico Creek, Copper Creek, and the Powell River. CFI has reintroduced the species into Abrams Creek, and a population is apparently becoming reestablished (Rakes *et al.* 1998).

The delisting criteria in the Yellowfin Madtom Recovery Plan are: (1) Protect and enhance existing populations and/or reestablish populations so that viable populations exist in Copper Creek, Citico Creek, and the Powell River; (2) recreate and/or discover two additional viable populations; (3) ensure that noticeable improvements in coal-related problems and substrate quality exist in the Powell River; and (4) protect the species and its habitat in all five rivers from present and foreseeable threats that may adversely affect essential habitat or the survival of any of the populations.

We listed the spotfin chub (=turquoise shiner) (*Cyprinella* (=*Hybopsis*) *monacha*) (Cope 1868) as a threatened species on September 9, 1977 (42 FR 45527), and finalized the recovery plan for this species in November 1983 (Service 1983b). This once widespread species was historically known from 24 streams in the upper and middle Tennessee River system. It is now extant in only four rivers/river systems—the Buffalo River at the mouth of Grinders Creek, Lewis County, Tennessee; Little Tennessee River, Swain and Macon Counties, North Carolina; Emory River system (Obed River, Clear Creek, and Daddys Creek) Cumberland and Morgan Counties, Tennessee; Holston River and its tributary, the North Fork Holston River, Hawkins and Sullivan Counties, Tennessee, and Scott and Washington Counties, Virginia (Service 1983b; P. Shute, TVA, personal communication, 1998). CFI has reintroduced the species into Abrams Creek, and indications are that it may become reestablished (Rakes *et al.* 1998).

The delisting criteria in the Spotfin Chub Recovery Plan are: (1) protect and enhance existing populations and/or reestablish populations so that viable populations exist in the Buffalo River system, upper Little Tennessee River, Emory River system, and lower North Fork Holston River and (2) ensure, through reintroductions and/or the discovery of new populations, that two other viable populations exist.

The recovery criteria for all four of these fishes generally agree that, to reach recovery, we must: (1) Restore existing populations to viable levels, (2) reestablish viable populations in historical habitats, and (3) eliminate foreseeable threats that would likely threaten the continued existence of any viable populations. The number of secure, viable populations (existing and restored) needed to achieve recovery varies by species and depends on the extent of the species' probable historical range (*i.e.*, species that were once widespread require a greater number of populations for recovery than species that were historically more restricted in distribution). However, the reestablishment of historical populations is a critical component to the recovery of all four species.

4. *Reintroduction Site:* In March 1998, the Executive Director of the TWRA stated that he supports the conclusions of Rakes and Shute (1998) and requested that we consider designating the Tellico River an NEP area for reintroducing the four fishes. He further stated that: (1) The Tellico River was the probable historical habitat of the duskytail darter, smoky madtom, yellowfin madtom, and spotfin chub, and (2) the Tellico River appeared to have almost ideal habitat for the reintroduction of all four fishes.

Dr. David Etnier, Department of Ecology and Evolutionary Biology, University of Tennessee, Knoxville, Tennessee, stated in April 1998 that he supports the reintroduction of the four species into the Tellico River. Dr. Etnier presented several reasons for his support: (1) The mouth of the Tellico River is approximately 10 miles (16 km) downstream of the mouth of Citico Creek, which historically supported all four species and currently supports all but the spotfin chub; (2) CFI's habitat analysis indicated that the reintroduction of these fishes into the Tellico River has a greater potential for success than reintroductions into any other tributary of the Little Tennessee River system, except Abrams Creek, where apparently successful reintroductions are already occurring; (3) apparently, no fish collections were made from the Tellico River prior to the 1960s, so the extirpation of these fishes could have occurred prior to the 1960s due to siltation caused by heavy logging in the watershed around the turn of the century; and (4) none of these species display any biological attributes that suggest they could become a problem if successfully established into the Tellico River.

We will reintroduce populations of the duskytail darter, smoky madtom, yellowfin madtom, and spotfin chub (=turquoise shiner) into the Tellico River, between the backwaters of the Tellico Reservoir (approximately TRM 19 (30.4 km)) and TRM 33 (52.8 km), near the Tellico Ranger Station, Monroe County, Tennessee, and designate these populations as NEPs. This area is identified as the NEP area.

5. *Reintroduction Procedures:* At this time we cannot determine the dates for these reintroductions, the specific sites where the fish species will be released, and the actual number of individuals to be released. We will release primarily artificially propagated juveniles, but we could release some wild adult stock. Propagation and juvenile rearing technology is available for the spotfin chub and the duskytail darter. Limited numbers of smoky and yellowfin madtom juveniles can be reared using eggs and larvae taken from the wild. However, madtom artificial propagation technology, which is needed to produce large numbers of juvenile madtoms, is still in development.

The parents of the juveniles reintroduced into the NEP area will come from existing wild populations. The two madtoms and duskytail darters will come from a nearby Little Tennessee River tributary—Citico Creek, Monroe County, Tennessee. The spotfin chubs will come from upstream in the Little Tennessee River, Swain County, North Carolina. In some cases, the parents will be returned to the wild population from which they were taken. However, in most cases the parents will be permanently relocated to propagation facilities.

Status of Reintroduced Populations

The status of the extant populations of the duskytail darter, smoky madtom, yellowfin madtom, and spotfin chub is such that individuals can be removed to provide a donor source for reintroduction without appreciably reducing the likelihood of the species' survival in the wild. Therefore, we have determined that these reintroduced fish populations are not essential to the continued existence of the species. We will ensure, through our section 10 permitting authority and the section 7 consultation process, that the use of animals from any donor population for these reintroductions is not likely to jeopardize the continued existence of the species.

In addition, the anticipated success of these reintroductions will enhance the conservation and recovery potential of these species by extending their present ranges into currently unoccupied historic habitat. These species are not known to exist in the Tellico River or its tributaries at the present time.

Location of Reintroduced Populations

Sites for the reintroduction of these four fish species into the Tellico River, Monroe County, Tennessee, will be within the designated NEP area. This area is totally isolated from existing populations of these species by large reservoirs, and none of these fishes are known to occur or move through large reservoir habitat. Therefore, these reservoirs will act as barriers to the downstream expansion of these species into the main stem of the Little Tennessee River and its tributaries and ensure that these populations will remain geographically isolated.

Management

We do not believe these reintroductions will conflict with existing or proposed human activities or hinder public utilization of the NEP area. Special rules for experimental populations contain all the prohibitions and exceptions regarding the taking of individual animals. These special rules are more compatible with routine human activities in the reintroduction area.

Based on the habitat requirements of these four fishes, we do not expect them to become established outside the NEP area. However, if any of the four species move upstream or downstream or into tributaries outside the designated NEP area, we would presume that the animals had come from the reintroduced populations. The rule would then be amended, and the boundaries of the NEP area would be enlarged to include the entire range of the expanded population.

Previous Federal Actions

On June 26, 1998, we mailed letters to 67 potentially affected congressional offices, Federal and State agencies, local government offices, and interested parties that we were considering proposing NEP status for four fish species in the Tellico River. We received four written responses.

The USFS, which is significantly involved in reintroduction efforts for these fishes into Abrams Creek, supported the proposed reintroductions into the Tellico River as NEPs and offered to cooperate with us and TWRA in the reintroductions.

The Tennessee Department of Environment and Conservation, Division of Natural Heritage (TDEC),

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supported the proposed reintroduction of the four fishes into the Tellico River. They believed that designating the reintroduced populations as NEPs is appropriate because it should enable Federal, State, and local authorities to continue to promote the conservation and recovery of these fishes.

The Tennessee Chapter of the American Fisheries Society supported the proposed reintroduction of these fishes into the Tellico River under NEP status. They concluded that: (1) Although there is little information on the historical environmental conditions in the Tellico River, the river now supports a relatively healthy native fish community with respect to species diversity, species composition, fish abundance, and fish health; (2) the river appears to contain suitable habitat for the survival of all four species; (3) all four species probably historically occupied the river; and (4) designating reintroductions as NEPs greatly relaxes regulatory requirements and makes introduced populations more compatible with other resource use in the watershed.

The Southeast Aquatic Research Institute (SARI) fully supported the proposed reintroductions.

On June 8, 2001, we published the proposed rule in the **Federal Register** (66 FR 30853) to designate NEP status, under section 10(j) of the Act, for the reintroduction of the aforementioned four fishes into the Tellico River, Monroe County, Tennessee. Additionally, we announced this proposal in facsimiles dated June 7, 2001; in letters dated June 8, 2001; and in a legal notice published in the *Knoxville News-Sentinel*, Knoxville, Tennessee, on June 21, 2001. Those documents notified affected congressional offices, the Governor of Tennessee, Federal and State agencies, local government offices, scientific organizations, and interested parties of the proposed action and requested comments and information that might contribute to the development of a final determination.

Summary of Comments and Recommendations

In the June 8, 2001, proposed rule (66 FR 30853), we opened a 60-day comment period. We received eight responses—five supported the designation as an NEP, one supported the reintroduction but requested the experimental population be designated "essential" rather than "nonessential," and two respondents expressed concern that the designation would adversely impact recreational activities in the Tellico River watershed. These comments did not result in any changes to the final rule. Key issues raised and our responses are presented below.

Issue 1: Two respondents expressed concern that the NEP designation would adversely impact recreational activities in the Tellico River watershed. They were especially concerned with the impact to off-road-vehicle use in the Cherokee National Forest portion of the watershed.

Response: Because of the regulatory flexibility provided through an NEP designation, we do not believe the reintroduction of these fishes will have any adverse impact on recreational or other legal activities in the Tellico River watershed (see "Required Determinations" and "Management" sections). Federal agencies, like the USFS, are not required under the Act to change any recreational uses in the Cherokee National Forest to protect the continued existence of these fishes in the Tellico River watershed. State and local agencies, communities, and private citizens would not be required to change current uses in the watershed to protect the fishes in this NEP.

Issue 2: One respondent stated that we should classify the experimental populations as "essential" instead of "nonessential."

Response: In our August 27, 1984, final rule regarding experimental populations (49 FR 33885), we stated that, in some situations, the status of the extant population is such that individuals can be removed to provide a donor source for reintroduction without creating adverse impacts on the parent population. This is especially true if captive propagation efforts are providing individuals for release into the wild. Further, we cannot ignore Congressional intent in explaining the "essential" determination:

"* * * The Secretary shall consider whether the loss of the experimental population would be *likely to appreciably reduce the likelihood of survival of that species in the wild.* If the Secretary determines that it would, the population will be considered essential to the continued existence of the species. The level of reduction necessary to constitute "essentiality" is expected to vary among listed species, and *in most cases, experimental populations will not be essential.*" H.R. Conf. Rep. No. 835, supra at 34 [emphasis added]. An "essential" population will be a special case, not the general rule.

The status of the extant populations of the duskytail darter, smoky madtom, yellowfin madtom, and spotfin chub is such that individuals can be removed to provide a donor source for reintroduction without appreciably reducing the likelihood of the species' survival in the wild. Therefore, we have determined that these reintroduced fish populations are not essential to the continued existence of the species. We will ensure, through our section 10 permitting authority and the section 7 consultation process, that the use of animals from any donor population for these reintroductions is not likely to jeopardize the continued existence of the species.

Issue 3: Four respondents (TVA, TWRA, TDEC, and SARI) expressed support for the designation of the experimental population as "nonessential" because it provides greater management flexibility.

Response: We agree that an NEP designation provides more management flexibility than an essential experimental population designation. We also believe that the NEP designation is appropriate for the reasons discussed in our response to Issue 2 above.

Peer Review

In conformance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we provided copies of the proposed rule to ten specialists in order to solicit comments on the scientific data and assumptions relating to the supportive biological and ecological information for this NEP rule. The purpose of such review is to ensure that the NEP designation decision is based on the best scientific information available, as well as to ensure that reviews by appropriate experts and specialists are included into the review process of rulemakings. Although comments were solicited from ten specialists, none of these reviewers provided comments on the proposed rule. However, we did receive comments expressing support for the designation from the State (e.g., TWRA, TDEC), Tennessee Chapter of the American Fisheries Society, and SARI, and we are working closely with TWRA, USFS, NPS, TVA, and the TA on our reintroduction efforts, as mentioned above.

Required Determinations

Regulatory Planning and Review

This rule is not a significant rule as determined by the Office of Management and Budget (OMB) under Executive Order 12866. This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The area affected by this rule consists of a very limited and discrete geographic segment (only 14 river miles [22.4 km]) of the Tellico River in Monroe County, Tennessee. No significant impacts to existing human activities are expected as a result of this rule.

This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Designating reintroduced populations of federally listed species as NEPs significantly reduces the Act's regulatory requirements regarding the reintroduced listed species. Because of the substantial regulatory relief, we do not believe the reintroduction of these fishes will conflict with existing or proposed human activities or hinder public use of the Tellico River.

This rule does not alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. No entitlements, grants, user fees, or loan programs are associated with this rule.

This rule does not raise novel legal or policy issues. We have previously promulgated section 10(j) rules for experimental populations of other listed threatened or endangered species in various localities since 1984. The rules are designed to reduce the regulatory burden that would otherwise exist when reintroducing listed species to the wild.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Although most, if not all, of the identified businesses engaged in activities along the affected stream reaches are small businesses, this rule will have no economic effect in that it will operate to reduce or remove regulatory restrictions (see above for discussion of expected impacts).

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more on local or State governments or private entities. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The intent of this special rule is to facilitate and continue the existing commercial activities along the affected stream reaches, while providing for the conservation of species through reintroduction into suitable habitat.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. The TWRA, which manages the fishes in the Tellico River, requested that we consider this reintroduction under an NEP designation. However, this rule will not require the TWRA to specifically manage for any of these reintroduced species. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this rule does not have significant takings implications. When reintroduced populations of federally listed species are designated as NEPs, the Act's regulatory requirements regarding the reintroduced listed species within the NEP are significantly reduced. Section 10(j) of the Act can provide regulatory relief with regard to the taking of reintroduced species within an NEP area. For example, this rule allows for the taking of these reintroduced fishes when such take is incidental to an otherwise legal activity, such as recreation (*e.g.*, fishing, boating, wading, trapping, swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations. Because of the substantial regulatory relief provided by NEP designations, we do not believe the reintroduction of these fishes will conflict with existing or proposed human activities or hinder public use of the Tellico River system. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule will not have substantial direct effects on the States, in the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have coordinated extensively with the State of Tennessee regarding the reintroduction of these fishes into the Tellico River. We are undertaking this rulemaking at the request of the State wildlife agency (TWRA) in order to assist the State in restoring and recovering its native aquatic fauna. Achieving the recovery goals for these four fish species will contribute to the eventual delisting of these species and, thus, the return of these species to State management. We do not expect any intrusion on State policy or administration; the roles or responsibilities of Federal or State governments will not change; and fiscal capacity will not be substantially directly affected. This special rule operates to maintain the existing relationship between the States and the Federal Government and is being undertaken at the request of a State agency. We have endeavored to cooperate with the TWRA in the preparation of this final rule.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Department of the Interior has determined that this rule does not unduly burden the judicial system and meets the applicable standards provided in sections (3)(a) and (3)(b)(2) of the order.

Paperwork Reduction Act

This rule does not require an information collection from ten or more parties, and a submission under the Paperwork Reduction Act is not required. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB Control Number.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act (NEPA) is not required. We have determined that the issuance of a final rule for these NEPs is categorically excluded under our NEPA procedures (516 DM 6, Appendix 1.4 B (6)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive

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Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this final rule is not a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Literature Cited

Dinkins, G. R., and P. W. Shute. 1996. Life history of *Noturus baileyi* and *N. flavipinnis* (Pisces: Ictaluridae), two rare madtom catfishes in Citico Creek, Monroe County, Tennessee. Bull. Alabama. Mus. Nat. His. 18:43–69.

Lennon, R. E., and P. S. Parker. 1959. The reclamation of Indian and Abrams Creeks, Great Smoky Mountains National Park. U.S. Fish and Wildlife Service Scientific Report 306. 22 pp.

Rakes, P. L., and J. R. Shute. 1998. Results of an assay of portions of the Tellico and Hiwassee Rivers for suitable habitat to support reintroductions of rare fish. January 23, 1998, unpublished report prepared by Conservation Fisheries, Inc., Knoxville, Tennessee, for U.S. Fish and Wildlife Service, Asheville, North Carolina. 14 pp.

Rakes, P. L., P. W. Shute, and J. R. Shute. 1998. Captive propagation and population monitoring of rare Southeastern fishes. Final Report for 1997. Field Season and Second Quarter Report for Fiscal Year 1998, prepared for Tennessee Wildlife Resources Agency, Contract No. FA–4–10792–5–00. 32 pp.

U.S. Fish and Wildlife Service. 1983a. Yellowfin Madtom Recovery Plan. Atlanta, GA. 33 pp.

—1983b. Spotfin Chub Recovery Plan. Atlanta, GA. 46 pp.

—1985. Smoky Madtom Recovery Plan. Atlanta, GA. 28 pp.

—1994. Duskytail Darter Recovery Plan. Atlanta, GA. 25 pp.

Author

The principal author of this final rule is Richard G. Biggins. Please contact Bob Butler (see **ADDRESSES** section) for further information.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Final Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11(h), revise entries in the table under FISHES for "Chub, spotfin"; "Darter, duskytail"; "Madtom, smoky"; and "Madtom, yellowfin" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•		•
FISHES							
•	•	•	•	•	•		•
Chub, spotfin (=turquoise shiner).	*Cyprinella*(=*Hybopsis monacha*).	U.S.A. (AL, GA, NC, TN, VA).	Entire, except where listed as an experimental population.	T	28, 732	17.95(e)	17.44(c)
Do .....do	do .....do	do .....do	Tellico River, from the backwaters of the Tellico Reservoir (about Tellico River mile 19 [30.4 km]) upstream to Tellico River mile 33 (52.8 km), in Monroe County, TN.	XN	732	NA	17.84(m)
•	•	•	•	•	•		•
Darter, duskytail	*Etheostoma percnurum*	U.S.A. (TN, VA)	Entire, except where listed as an experimental population.	E	502, 732	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	.....do	.....do	Tellico River, from the backwaters of the Tellico Reservoir (about Tellico River mile 19 [30.4 km]) upstream to Tellico River mile 33 (52.8 km), in Monroe County, TN.	XN	732	NA	17.84(m)
•	•	•	•	•	•		•
Madtom, smoky	*Noturus baileyi*	U.S.A. (TN)	Entire, except where listed as an experimental population.	E	163, 732	17.95(e)	NA
Do	.....do	.....do	Tellico River, from the backwaters of the Tellico Reservoir (about Tellico River mile 19 [30.4 km]) upstream to Tellico River mile 33 (52.8 km), in Monroe County, TN.	XN	732	NA	17.84(m)
Madtom, yellowfin	*Noturus flavipinnis*	U.S.A. (TN, VA)	Entire, except where listed as an experimental population.	T	28, 317, 732	17.95(e)	17.44(c)
Do	.....do	.....do	N. Fork Holston River Watershed, VA, TN; S. Fork Holston R., upstream to Ft. Patrick Henry Dam, TN; Holston R. down-stream to John Sevier Detention Lake Dam, TN; and all tributaries thereto.	XN	317	NA	17.84(e)
Do	.....do	.....do	Tellico River, from the backwaters of the Tellico Reservoir (about Tellico River mile 19 [30.4 km]) upstream to Tellico River mile 33 (52.8 km), in Monroe County, TN.	XN	732	NA	17.84(e)
•	•	•	•	•	•		•

3. Amend § 17.84 by revising paragraph (e) and adding paragraph (m) as set forth below:

§ 17.84 Special rules-vertebrates.

* * * * *

(e) Yellowfin madtom (*Noturus flavipinnis*).

(1) Where is the yellowfin madtom designated as a nonessential experimental population (NEP)? We have designated two populations of this species as NEPs: the North Fork Holston River Watershed NEP and the Tellico River NEP.

(i) The North Fork Holston River Watershed NEP area is within the species' historic range and is defined as follows: The North Fork Holston River watershed, Washington, Smyth, and Scott Counties, Virginia; South Fork Holston River watershed upstream to Ft. Patrick Henry Dam, Sullivan County, Tennessee; and the Holston River from the confluence of the North and South Forks downstream to the John Sevier Detention Lake Dam, Hawkins County, Tennessee. This site is totally isolated from existing populations of this species by large Tennessee River tributaries and reservoirs. As the species is not known to inhabit reservoirs and because individuals of the species are not likely

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to move 100 river miles through these large reservoirs, the possibility that this population could come in contact with extant wild populations is unlikely.

(ii) The Tellico River NEP area is within the species' historic range and is defined as follows: The Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile 19 (30.4 kilometers) and Tellico River mile 33 (52.8 kilometers), near the Tellico Ranger Station, Monroe County, Tennessee. This species is not currently known to exist in the Tellico River or its tributaries. Based on its habitat requirements, we do not expect this species to become established outside this NEP area. However, if individuals of this population move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this rule and enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(2) We do not intend to change the NEP designations to "essential experimental," "threatened," or "endangered" within the NEP areas. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(3) What activities are not allowed in the NEP areas?

(i) Except as expressly allowed in paragraph (e)(4) of this section, all the prohibitions of § 17.31 (a) and (b) apply to the fishes identified in paragraph (e)(1) of this section.

(ii) Any manner of take not described under paragraph (e)(4) of this section is prohibited in the NEP area. We may refer unauthorized take of these fishes to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (e)(3) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (e)(3) of this section.

(4) What take is allowed in the NEP area? Take of this species that is incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(5) How will the effectiveness of these reintroductions be monitored? We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

* * * * *

(m) Spotfin chub (=turquoise shiner) (*Cyprinella* (=*Hybopsis*) *monacha*), duskytail darter (*Etheostoma percnurum*), smoky madtom (*Noturus baileyi*).

(1) Where are populations of these fishes designated as nonessential experimental populations (NEPs)?

(i) The NEP area for these three fishes is within the species' probable historic ranges and is defined as follows: The Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile 19 (30.4 kilometers) and Tellico River mile 33 (52.8 kilometers), near the Tellico Ranger Station, Monroe County, Tennessee.

(ii) None of the fishes named in paragraph (m) of this section are currently known to exist in the Tellico River or its tributaries. Based on the habitat requirements of these fishes, we do not expect them to become established outside the NEP area. However, if any individuals of any of the species move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced populations. We would then amend paragraph (m)(1)(i) of this section and enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designations to "essential experimental," "threatened," or "endangered" within the NEP area. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) What activities are not allowed in the NEP area?

(i) Except as expressly allowed in paragraph (m)(3) of this section, all the prohibitions of § 17.31 (a) and (b) apply to the fishes identified in paragraph (m)(1) of this section.

(ii) Any manner of take not described under paragraph (m)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of these species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (m)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (m)(2) of this section.

(3) What take is allowed in the NEP area? Take of this species that is incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) How will the effectiveness of these reintroductions be monitored? We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

Dated: July 23, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–20341 Filed 8–9–02; 8:45 am]

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Proposed Rules

Federal Register

Vol. 67, No. 155

Monday, August 12, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 02N–0241]

Amendment of Regulations on Aluminum in Large and Small Volume Parenterals Used in Total Parenteral Nutrition

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to amend its regulations to change the labeling requirements concerning aluminum in small volume parenterals (SVPs) and pharmacy bulk packages (PBPs) used in total parenteral nutrition (TPN). FDA proposes that the immediate container labels of SVPs and PBPs containing 25 micrograms per liter (µg/L) or less of aluminum may state: "Contains no more than 25 µg/L of aluminum" instead of stating the exact amount of aluminum they contain. FDA is taking this action in response to a request from industry.

DATES: Submit written or electronic comments by October 28, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments at http://www.fda.gov/dockets/ecomments. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 26, 2000 (65 FR 4103), FDA published a final rule amending its regulations in § 201.323 (21 CFR 201.323) to enact certain requirements regarding aluminum levels in large volume parenterals (LVPs), SVPs, and PBPs used in TPN. The final rule was originally scheduled to become effective on January 26, 2001. In the **Federal Register** of January 26, 2001 (66 FR 7864), the agency published a document extending the effective date to January 26, 2003.

Current § 201.323(c) requires the product's maximum level of aluminum at expiry to be stated on the immediate container label of SVPs and PBPs used in the preparation of TPN solutions. The statement on the immediate container label currently must read as follows: "Contains no more than __ µg/L of aluminum." For those SVPs and PBPs that are lyophilized powders used in the preparation of TPN solutions, the maximum level of aluminum at expiry must be printed on the immediate container label as follows: "When reconstituted in accordance with the package insert instructions, the concentration of aluminum will be no more than__ µg/L." The maximum level of aluminum must be stated as the highest of: (1) The highest level for the batches produced during the last 3 years; (2) the highest level for the latest five batches; or (3) the maximum historical level, but only until completion of production of the first five batches after the effective date of the rule. The labeling requirement applies to all SVPs and PBPs used in the preparation of TPN solutions, including, but not limited to: Parenteral electrolyte solutions, such as calcium chloride, calcium gluceptate, calcium gluconate, magnesium sulfate, potassium acetate, potassium chloride, potassium phosphate, sodium acetate, sodium lactate, and sodium phosphate; multiple electrolyte additive solutions; parenteral multivitamin solutions; single-entity parenteral vitamin solutions, such as vitamin K injection, folic acid, cyanocobalamin, and thiamine; and trace mineral solutions, such as chromium, copper, iron, manganese, selenium, and zinc.

On June 1, 2000, the agency met with the Health Industry Manufacturers Association (HIMA, now called AdvaMed). HIMA requested that FDA permit SVPs and PBPs containing less than 25 µg/L to be labeled "Contains no more than 25 µg/L of aluminum" rather than requiring such products to be labeled with the exact amount of aluminum as required by § 201.323© (Ref. 1). In support of this proposal, participants made the following points: (1) 25 µg/L of aluminum is a safe level of aluminum for SVPs because the agency has already determined that amount of aluminum to be safe for LVPs; (2) it would make no clinical difference to know the precise amount less than 25 µg/L that an SVP contained; and (3) permitting the label to state "Contains no more than 25 µg/L" rather than the exact amount of aluminum would avoid the need for labels to be reprinted in the future with the exact amounts of aluminum at expiry.

One comment to the proposed rule had asked FDA to set a minimum level below which the amount of aluminum in SVPs and PBPs would not have to be declared. In the final rule, the agency responded that it was important for health care practitioners to know as much as possible about aluminum levels so that practitioners could calculate the total aluminum exposure from multiple sources and would be able to prepare low-aluminum parenteral solutions for patients in high risk groups.

HIMA's request has caused the agency to reconsider its position on whether it is appropriate to set a minimum level of aluminum in SVPs and PBPs that would not have to be declared. While the comment to the proposed rule did not suggest a particular minimum level, HIMA has now proposed a specific level, 25 µg/L of aluminum. FDA has already determined that 25 µg/L is a safe upper limit for manufacturers to include in LVPs and believes that it is similarly appropriate for SVPs and PBPs.

An important factor for the agency when reconsidering its position was that if an SVP or PBP that contains 25 µg/L of aluminum is added to a TPN solution that contains 25 µg/L of aluminum, the concentration of aluminum in the mixture will still be 25 µg/L. Consistent with its approach to LVPs (to which SVPs and PBPs are added) that are permitted to contain 25 µg/L, FDA believes health care practitioners will be provided with sufficient information on the aluminum

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content of SVPs and PBPs if the label states that the product contains no more than 25 µg/L of aluminum. For this reason, the agency does not believe it is necessary for SVPs and PBPs that contain 25 µg/L or less of aluminum to be labeled with the precise concentration of aluminum. Therefore, the agency proposes to modify the required labeling as requested.

II. Description of the Proposed Rule

The proposed rule would add new § 201.323(d) to permit SVPs and PBPs that contain 25 µg/L or less of aluminum to be labeled "Contains no more than 25 µg/L" rather than requiring such products to state the exact amount of aluminum.

III. Proposed Implementation Plan

FDA proposes that the effective date of any final rule that may issue based on this proposed rule coincide with the effective date of the aluminum final rule that published in the **Federal Register** of January 26, 2000 (66 FR 7864). As discussed in section I of this document, the agency has extended this effective date to January 26, 2003. The agency intends to further extend this effective date as necessary to provide time for this proposed rule to be finalized.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order.

The proposed rule would relax the requirements of the final rule for labeling aluminum content in SVPs and PBPs used in TPN. Specifically, manufacturers would be allowed to use a standard statement of quantity of aluminum content in place of the exact amount for affected products that contain no more than 25 µg/L of aluminum. Thus, the proposed rule is not a significant action as defined by the Executive order.

In the Analysis of Impacts section of the final rule published on January 26, 2000, the agency relied on the Eastern Research Group (ERG) report entitled "Addendum to Compliance Cost Analysis for a Regulation for Parenteral Drug Products Containing Aluminum." In that report, ERG calculated the total relabeling costs for SVPs and PBPs to be about $523,000, or about $3,500 per product (equivalent to annualized costs totaling $128,000, or about $850 per product, discounted at 7 percent over 5 years). To the extent that manufacturers of SVPs and PBPs containing no more than 25 µg/L of aluminum use the added flexibility in labeling this proposal provides, the compliance burden cited above could be reduced.

Because this proposed rule could slightly decrease current compliance costs for the affected industry without imposing any additional costs, FDA has determined that the proposed rule is not a significant action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options to minimize any significant impact on a substantial number of small entities. FDA made the determination for the final rule published January 26, 2000, that very few small firms, if any, would be significantly impacted. Thus, the agency certified that the final rule would not have a significant impact on a substantial number of small entities. This proposed rule could slightly lessen the economic impact of the final rule published on January 26, 2000. Accordingly, FDA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. No further analysis is required under the Regulatory Flexibility Act (as amended).

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation).

The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the proposed rule because the rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is $110 million.

VII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. Request for Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IX. Reference

The following reference has been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Minutes of June 1, 2000, HIMA meeting, slide 10.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

PART 201—LABELING

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 201 be amended as follows:

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

2. Section 201.323 is amended by revising the first two sentences of the introductory text of paragraph (c); by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively; and by adding new paragraph (d) to read as follows:

§ 201.323 Aluminum in large and small volume parenterals used in total parenteral nutrition.

* * * * *

(c) The maximum level of aluminum present at expiry must be stated on the immediate container label of all small volume parenteral (SVP) drug products and pharmacy bulk packages (PBPs) used in the preparation of TPN solutions. Except as provided in paragraph (d) of this section, the aluminum content must be stated as follows: "Contains no more than __ µg/L of aluminum." * * *

(d) If the maximum level of aluminum is 25 µg/L or less, instead of stating the exact amount of aluminum as required in paragraph (c) of this section, the immediate container label may state: "Contains no more than 25 µg/L of aluminum." If the SVP or PBP is a lyophilized powder, the immediate container label may state: "When reconstituted in accordance with the package insert instructions, the concentration of aluminum will be no more than 25 µg/L."

* * * * *

Dated: July 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–20300 Filed 8–9–02; 8:45 am]

BILLING CODE 4160–01–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1626

RIN 3046–AA54

Procedures—Age Discrimination in Employment Act

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to amend its regulations on the processing of age discrimination charges to provide that it will issue a notice, when it has dismissed or otherwise terminated the processing of an age discrimination charge, that the right to file a lawsuit on the charge under the ADEA will expire in 90 days. These amendments also delete references to the previously applicable two-or three-year limitations period for filing a civil action. Finally, EEOC is deleting its list of ADEA referral states because the list is obsolete and unnecessary. These changes will conform the Commission's regulations to the procedures adopted by the Commission to implement section 115 of the Civil Rights Act of 1991.

DATES: Comments must be received by October 11, 2002.

ADDRESSES: Written comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507. As a convenience to commenters, the Executive Secretariat will accept comments of six pages or less transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 663–4114. This is not a toll free number. The six-page limitation is necessary to assure access to the equipment. Receipt of FAX transmissions will not be acknowledged although a sender may request confirmation by calling the Executive Secretariat at (202) 663–4078 (voice) or (202) 663–4077 (TTY). These are not toll free numbers. Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street NW., Washington, DC, between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel at (202) 663–4669 (voice) or (202) 663–7026 (TTY). This proposed rule is also available in the following formats: large print, braille, audiotape and electronic file on computer disk. Requests for this proposed rule in an alternative format should be made to EEOC's Publication Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking contains EEOC's proposed revisions to part 1626 of its regulations. These changes are proposed in order to conform the Commission's regulations to the procedures it adopted for the processing of charges under the Age Discrimination in Employment Act (ADEA) following passage of section 115 of the Civil Rights Act of 1991. Section 7(e) of the ADEA no longer incorporates the two- or three-year statute of limitations on civil actions in section 6 of the Portal to Portal Act nor does it incorporate the exemption to the Portal to Portal Act's limitations period during EEOC's conciliation efforts. Instead, upon dismissal or termination of proceedings, the Commission must notify the aggrieved person that his or her right to file a civil action under the ADEA will expire 90 days after receipt of the notice. This notice is denominated a "Notice of Dismissal or Termination." The Commission is also taking this opportunity to delete an obsolete and unnecessary list of State Fair Employment Practices Agencies to which EEOC will send copies of ADEA charges.

The current § 1626.7(a) provides that charges will not be rejected as untimely provided that they are not barred by the statute of limitations contained in section 6 of the Portal to Portal Act. This provision recognized the Commission's authority to file suit within the Portal to Portal Act's limitation period even if the charging party did not have a private right of action because the charge was filed more than 180 days (or 300 days in a referral jurisdictions) after the discriminatory event took place. Following passage of the Civil Rights Act of 1991, the statute of limitations contained in the Portal to Portal Act is no longer applicable to ADEA lawsuits filed by either the charging party or the Commission. We therefore propose to delete the current § 1626.7(a). The Commission will dismiss ADEA charges filed more than 180 days (or 300 days in a referral jurisdiction) after the discriminatory act, absent waiver, estoppel or equitable tolling.

The current § 1626.9(b) and (c) contain a list of states to which the Commission refers charges under section 14(b) of the ADEA. These lists were created when there were relatively few such agencies. Since almost all states now have laws prohibiting age discrimination, the lists are being deleted as obsolete and unnecessary. The regulation continues to provide that the Commission will refer age charges to appropriate state agencies.

Section 7(d) of the ADEA requires that, upon receipt of a charge, the Commission shall promptly attempt to eliminate any alleged unlawful practice by informal methods of conciliation, conference and persuasion. Under current § 1626.12, EEOC issues a notice if this attempt at conciliation fails. To eliminate any possible confusion between this failure of conciliation notice and the new Notice of Dismissal or Termination (NDT), we propose to add a sentence to § 1626.12 stating that notice under this section is not a Notice of Dismissal or Termination under § 1626.20.

The second sentence and last two sentences of the current § 1626.15(b) concern the tolling of the ADEA's statute of limitations during EEOC

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conciliation. Because this tolling provision no longer applies, we propose to delete these sentences. An editorial change is proposed to the third sentence, eliminating a reference to the current second sentence that we are proposing to delete.

The Commission is also proposing to add three new sections. Proposed § 1626.17 is modeled on 29 CFR 1601.28 and provides for issuance of a Notice of Dismissal or Termination to an aggrieved person when EEOC dismisses or otherwise terminates its processing of an ADEA charge. Notification will be made by issuing a Notice of Dismissal or Termination to each aggrieved person. In the case of a charge concerning more than one aggrieved person, Notices of Dismissal or Termination will only be issued when the charge is dismissed or EEOC's proceedings are terminated as to all aggrieved persons.

Proposed § 1626.18 concerns the institution of private civil actions. Paragraph (a) states that a civil action may be filed by an aggrieved person in either federal or state court under section 7 of the ADEA. Paragraph (b) makes clear that an aggrieved person need not wait for a Notice of Dismissal or Termination to be issued in order to file a civil action, but can file suit on a pending charge any time after 60 days have elapsed from the filing of the charge. Paragraph (c) provides that the right to file a private suit under the ADEA expires 90 days after receipt of a Notice of Dismissal or Termination. Paragraph (d) provides that when the Commission becomes aware that an aggrieved person has filed a private lawsuit under the ADEA against the respondent named in the charge, the Commission may terminate further processing of the charge or the portion of the charge affecting that person unless it is determined that further proceedings will effectuate the purposes of the ADEA.

Proposed § 1626.19 clarifies that, unlike Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, and Title I of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, the ADEA does not require the filing of a charge before the Commission has authority to investigate and litigate a possible violation of the ADEA. In addition, the termination of proceedings on an age discrimination charge and the issuance of a Notice of Dismissal or Termination does not prevent the Commission from investigating or litigating a matter that may have been the subject of or related to a charge on which a Notice of Dismissal or Termination was issued.

Regulatory Procedures

Executive Order 12866

Pursuant to Executive Order 12866, EEOC has coordinated this proposed rule with the Office of Management and Budget. Under section 3(f)(1) of Executive Order 12866, EEOC has determined that the regulation will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State or local tribal governments or communities. Therefore, a detailed cost-benefit assessment of the regulation is not required.

Paperwork Reduction Act

This proposal contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Regulatory Flexibility Act

The Commission certifies under 5 U.S.G. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities, because it implements a statutory change in the time limits for filing suit. For this reason, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 29 CFR Part 1626

Administrative practice and procedure, aged, equal employment opportunity.

For the Commission,

Cari M. Dominguez,

Chair.

For the reasons set forth in the preamble, EEOC proposes to amend 29 CFR part 1626 as follows:

PART 1626—PROCEDURES—AGE DISCRIMINATION IN EMPLOYMENT ACT

1. The authority citation for Part 1626 continues to read as follows:

Authority: Sec. 9, 81 Stat. 605, 29 U.S.C. 628; sec. 2, Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

§ 1626.7 [Amended]

2. Section 1626.7 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b).

§ 1626.9 [Amended]

3. Section 1626.9 is amended by removing the paragraph designation (a) and by removing paragraphs (b) and (c).

4. Section 1626.12 is amended by adding a sentence at the end of the section to read as follows:

§ 1626.12 Conciliation efforts pursuant to section 7(d) of the Act.

* * * Notification under this section is not a Notice of Dismissal or Termination under § 1626.17.

§ 1626.15 [Amended]

5. Paragraph (b) of § 1626.15 is amended by:

a. removing the second sentence;

b. removing the words "Such notice will" and adding in their place, the words "Notice of commencement of conciliation will"; and

c. removing the last two sentences.

§§ 1626.17, 1626.18, 1626.19 [Redesignated as §§ 1626.20, 1626.21, 1626.22]

6. Sections 1626.17, 1626.18 and 1626.19 are redesignated as §§ 1626.20, 1626.21 and 1626.22.

7. A new § 1626.17 is added to read as follows:

§ 1626.17 Notice of Dismissal or Termination.

(a) *Issuance of Notice of Dismissal or Termination.* (1) Where a charge filed with the Commission under the ADEA is dismissed or the Commission's proceedings are otherwise terminated, the Commission will issue a Notice of Dismissal or Termination on the charge as described in paragraph (c) of this section to the person(s) claiming to be aggrieved. In the case of a charge concerning more than one aggrieved person, the Commission will only issue a Notice of Dismissal or Termination when the charge is dismissed or proceedings are otherwise terminated as to all aggrieved persons.

(2) Where the charge has been filed under the ADEA and Title VII or the Americans with Disabilities Act (ADA), the Commission will issue a Notice of Dismissal or Termination under the ADEA at the same time it issues the Notice of Right to Sue under Title VII or the ADA.

(3) The issuance of a Notice of Dismissal or Termination does not preclude the Commission from offering such assistance to a person receiving the notice as the Commission deems necessary or appropriate. The issuance does not preclude or interfere with the Commission's continuing right to investigate and litigate the same matter or any ADEA matter under its enforcement authority.

(b) *Delegation of authority to issue Notices of Dismissal or Termination.* The Commission hereby delegates authority to issue Notices of Dismissal or Termination, in accordance with this section, to: District Directors; Area Directors; Local Directors; the Director of the Office of Field Programs; the Associate General Counsel for Systemic Investigations and Review Programs; the Director of Field Management Programs, Office of Field Programs; or their designees.

(c) *Contents of the Notice of Dismissal or Termination.* The Notice of Dismissal or Termination shall include:

(1) A copy of the charge;

(2) Notification that the proceedings of the Commission have been dismissed or otherwise terminated; and

(3) Notification that the aggrieved person's right to file a civil action against the respondent on the subject charge under the ADEA will expire 90 days after receipt of such notice.

8. A new § 1626.18 is added to read as follows:

§ 1626.18 Filing of private lawsuit.

(a) An aggrieved person may file a civil action against the respondent named in the charge in either federal or state court under section 7 of the ADEA.

(b) An aggrieved person whose claims are the subject of a timely pending charge may file a civil action at any time after 60 days have elapsed from the filing of the charge with the Commission without waiting for a Notice of Dismissal or Termination to be issued.

(c) The right of an aggrieved person to file suit expires 90 days after receipt of the Notice of Dismissal or Termination.

(d) If the Commission becomes aware that the aggrieved person whose claim is the subject of a pending ADEA charge has filed an ADEA lawsuit against the respondent named in the charge, it may terminate further processing of the charge or portion of the charge affecting that person unless the District Director; Area Director; Local Director; Director of the Office of Field Programs; the Associate General Counsel for Systemic Investigation and Review Programs; the Director of Field Management Programs; or their designees determine at that time or at a later time that it would effectuate the purpose of the ADEA to further process the charge.

9. A new § 1626.19 is added to read as follows:

§ 1626.19 Filing of Commission lawsuit.

The right of the Commission to file a civil action under the ADEA is not dependent on the filing of a charge and is not affected by the issuance of a Notice of Dismissal or Termination to any aggrieved person.

[FR Doc. 02–20126 Filed 8–9–02; 8:45 am]

BILLING CODE 6570–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 112–0052b; FRL–7253–6]

Revision to the Arizona State Implementation Plan, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Maricopa County Environmental Services Department (MCESD) portion of the Arizona State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing to approve a local rule that regulates open outdoor fires.

DATE: Any comments on this proposal must arrive by September 11, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted SIP revision at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

Arizona Department of Environmental Quality, Air Quality Division, 1110 West Washington Street, Phoenix, AZ 85007.

Maricopa County Environmental Services Department, Air Quality Division, 1001 North central Avenue, Suite 201, Phoenix, AZ 85004.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office(AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local MCESD Rule 314. In the Rules section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 16, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–20224 Filed 8–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–106–0062; FRL–7257–6]

Approval and Promulgation of Implementation Plans; Arizona; Motor Vehicle Inspection and Maintenance Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve two State Implementation Plan (SIP) revisions submitted by the Arizona Department of Environmental Quality (ADEQ). These revisions consist of several changes that have been made to Arizona's Basic and Enhanced Vehicle Emissions Inspection Programs since the programs were originally approved by EPA. Arizona's Basic Vehicle Emissions Inspection (VEI) Program is implemented in the Tucson Air Planning Area carbon monoxide (CO) nonattainment area (Area B). The Enhanced VEI Program is implemented in the Maricopa County ozone and (CO) nonattainment area (the Phoenix area or Area A). These revisions include a modeling demonstration that shows that the VEI program implemented in Area A meets EPA's high enhanced performance standard for inspection and maintenance (I/M) programs. Also included in these revisions are various program changes including the

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incorporation into the VEI programs of on-board diagnostic (OBD) testing, an exemption of the first five model year vehicles from the programs on a rolling basis, replacement of the previously approved remote sensing program implemented in Area A with an on-road testing study, and changes to the waiver provisions. Today's action proposes approval of Arizona's enhanced VEI program, implemented in Area A, as meeting EPA's high enhanced program requirements and proposes approval of changes to Arizona's previously approved basic VEI program implemented in Area B.

DATES: Comments must be received on or before September 11, 2002.

ADDRESSES: Mail comments to Sylvia Dugré, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Region 9 office and the Arizona Department of Environmental Quality, Library, 1110 W. Washington Street, Phoenix, Arizona 85012.

Electronic Availability

This document and the Technical Support Document (TSD) for this rulemaking are also available as electronic files on EPA's Region 9 Web Page at *http://www.epa.gov/region09/air.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 8, 1995 (60 FR 22518), EPA fully approved Arizona's Basic and Enhanced VEI Programs as meeting the applicable requirements of the Clean Air Act (CAA) and the federal I/M rule as amended. A basic I/M program was required in the Tucson Air Planning Area CO nonattainment area and in the Maricopa County CO and ozone nonattainment area (the Phoenix area). At that time, Arizona was not required to have an enhanced I/M program, although Arizona was implementing most elements of an enhanced program in the Phoenix area (Area A). Arizona's program as implemented in Area A, however, was not approved as an enhanced program, because the program did not satisfy all the provisions of EPA's I/M rule for enhanced programs. An enhanced I/M program became a requirement for the Phoenix area when the area was reclassified from a "low" moderate CO nonattainment area (with a design value less than 12.7 ppm) to a serious CO nonattainment area effective August 28, 1996 (61 FR 39343, July 29, 1996), and when the area was reclassified from a moderate to a serious nonattainment area for ozone effective February 13, 1998 (63 FR 7290, February 13, 1998). Since the Arizona VEI programs were originally approved in May 1995, EPA has amended the federal I/M regulations [1] several times to provide states with more flexibility in designing their programs and to require testing of the on-board diagnostic (OBD) system. Since that time, Arizona has also made a number of changes to its enhanced and basic VEI programs.

II. Summary of Arizona's Submittals

ADEQ submitted the changes to its Basic and Enhanced Vehicle Emissions Inspection and Maintenance Programs as a revision to its SIP on July 6, 2001. The July 6, 2001 SIP revision package includes, among various other program changes, ADEQ's revised rule which extends the exemption for newer model year vehicles from the current model year to the first five model year vehicles and the revised rules incorporating legislative changes to the provisions for issuing a waiver. Also included in the SIP revision is State legislation that discontinues the remote sensing program that had been implemented in Area A and authorizes a study to determine the most effective on-road testing program for Arizona.

A SIP revision supplementing the July 6, 2001 SIP revision was submitted by ADEQ on April 10, 2002. This submittal contains the ADEQ rule revisions incorporating on-board diagnostics (OBD) testing and, in accordance with the State legislation, deleting the previously approved remote sensing program from the ADEQ regulations. It also contains a modeling demonstration, with adjustments for the IM147 transient loaded-mode emissions test, showing the I/M program implemented in Area A meets EPA's high enhanced performance standard. EPA found this submittal complete on May 2, 2002.

III. EPA Review of the SIP Revisions

EPA's requirements for basic and enhanced I/M programs are contained in 40 CFR part 51 Subpart S. The SIP revisions submitted by ADEQ must be consistent with these requirements and must meet EPA's requirements for enforceability, as well as, CAA section 110(l) requirements.

A. Geographic Coverage

EPA's I/M regulations require that state I/M programs be implemented in the entire urbanized area, based on the 1990 census. 40 CFR 51.350. Since EPA approved the VEI programs into the SIP in 1995, Arizona has extended the boundaries of Area A [2], where the Phoenix VEI program is implemented, to incorporate high-growth areas surrounding metropolitan Phoenix. The Maricopa County geographic area covered by the VEI program was increased and portions of Yavapai and Pinal Counties were included for the first time. Inspection of subject vehicles included within the Maricopa and Yavapai County portions of expanded Area A began on December 31, 1998. Inspection of subject vehicles in the Pinal County portion of Area A began January 1, 2001. By expanding the boundaries of Area A, ADEQ projected that 60,676 vehicles were covered by the program in the geographic area that was added to the program.

B. Vehicle Coverage

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles and trucks. Light duty trucks are not included in the performance standard for basic I/M programs. Other levels of coverage may be approved if the necessary emission reductions are achieved. CFR 51.356.

The VEI programs approved by EPA in 1995 exempted vehicles manufactured in the current model year from inspection. Senate Bill 1427, enacted in 1998, expanded the exemption from testing for current model year vehicles to the prior four model years, making the first five model year vehicles exempt from testing on a rolling basis in both Area A and Area B. Implementation of this revision to the VEI programs began September 1, 1998. The exemption of newer model year vehicles from emissions testing results in a relatively small loss in emission benefit since newer vehicles are generally anticipated to be cleaner than older vehicles. Furthermore, recent data suggest that newer vehicles stay cleaner longer due to the slower rate of emission control system deterioration. An analysis of Arizona data done by Sierra Research shows that this portion of the vehicle fleet is responsible for only a small fraction of identifiable excess emissions.[3]

The federal regulations also require basic and enhanced I/M programs to include inspection of all 1996 and later motor vehicles equipped with OBD systems. EPA required I/M programs to begin OBD checks on January 1, 2002. 40 CFR 51.373. OBD consists of a computer which performs checks of a number of different vehicle systems for malfunctions or deterioration which could result in the vehicle exceeding its emissions standards and a malfunction indicator light which is required to be illuminated when the system detects a problem. In accordance with EPA's requirements, Arizona began OBD testing 1996 and newer OBD-equipped vehicles in Area A and Area B in January 2002. Vehicles which receive an OBD inspection do not receive an IM147 tailpipe test, which is described below.

C. On-Road Testing

On-road testing is required in enhanced I/M programs and is optional for basic I/M programs. The on-road testing requirement may be met by measuring on-road emissions through the use of remote sensing devices or through roadside pullovers including tailpipe or evaporative emission testing or a check of the OBD system. The federal regulations require on-road testing to evaluate annually the emission performance of 0.5% of the subject fleet statewide or 20,000 vehicles, whichever is less. 40 CFR 51.371.

Arizona began an on-road testing program using remote sensing devices (RSD) in Area A in 1995. Vehicles identified by RSD as high emitters were required to have a follow-up emissions test at a state run station and to undergo repairs if necessary. The State found that the program resulted in relatively small emissions reductions. Twenty-nine percent of the vehicles initially identified as high emitters were found to be meeting the applicable standards upon retest. Arizona estimated the cost effectiveness of the program as approximately $800–$1000 per ton of carbon monoxide and $16,000 to $20,000 per ton for volatile organic compounds (VOCs). In Arizona House Bill (HB) 2104, enacted in 2000, the State legislature replaced the RSD program with a requirement to conduct a study to identify more accurate and cost-effective on-road testing methods. The legislation authorized the analysis of alternative technologies, including remote sensing, to evaluate the performance of in-use vehicle emissions control systems. The goals of the study include improving methods of identifying high emission vehicles and increasing compliance with the annual/biennial inspection program. HB 2104 also provided dedicated funding to complete the study and develop the new program.

ADEQ has amended its VEI program rules to remove the RSD provisions. ADEQ has contracted with Eastern Research Group, Inc. (ERG) in Austin, Texas to conduct the baseline assessment and evaluation of alternative testing technologies for the Arizona Alternative Compliance and Testing Study. Under the provisions of the contract with ERG, Arizona continues to meet EPA's requirement for on-road testing of 0.5% of the subject fleet statewide or 20,000 vehicles, whichever is less, annually.[4] Arizona has also committed to submit a VEI program SIP revision when the study is completed and the new on-road testing program designed. EPA is proposing to find that the Arizona Alternative Compliance and Testing Study satisfies EPA's requirements for on-road testing.

D. Waivers

EPA's requirements permit I/M programs to provide a waiver which allows the motorist to comply with the program without meeting applicable test standards as long as certain prescribed criteria are met. 40 CFR 51.360. In basic programs, a minimum of $75 for pre-1981 vehicles and $200 for 1981 and newer vehicles must be spent by the motorist for appropriate repairs in order to qualify for a waiver. 40 CFR 51.360(a)(6). Beginning January 1, 1998, enhanced programs must require motorists to spend at least $450 for appropriate repairs. 40 CFR 51.360(a)(7).

Arizona's rules provide that a waiver from the applicable standards may only be issued after a retest is failed after qualifying repairs, including performance of a low-emissions tune-up, are made. Although the required expenditures under Arizona's enhanced I/M program for Area A differ from those described in EPA's I/M requirements for enhanced programs, a side-by-side comparison demonstrates that, overall, they are not less stringent.

For enhanced programs EPA requires a minimum expenditure of at least $450 to qualify for a waiver, but allows for an extension of time to repair a failed vehicle for the period of one test cycle for "economic hardship." 40 CFR 51.360(a)(9). EPA's regulations also allow a vehicle to receive multiple waivers as long as the vehicle fully passes the applicable test standards between such waivers. *Id.*

Arizona's program recognizes that the burden of repairs is greatest on owners of older vehicles. The Arizona program includes minimum expenditures that decrease with the age of the vehicle, *i.e.*, $450 for 1980+ model year vehicles, $300 for 1975–79 model years, and $200 for pre-1975 model years. The costs of repair due to tampering do not apply to the waiver cost limit. Under the State's program, waivers are denied to gross polluting vehicles, which are vehicles failing the emissions inspection at more than twice the applicable standard. A waiver may be granted only once in a vehicle's life. Waivers are denied if the vehicle has an inoperable catalytic convertor. Thus, unlike the federal program where relief may be allowed for "economic hardship" and multiple waivers may be granted for failure during subsequent test cycles, the Arizona program includes more limited allowances for waivers and allows only a single such waiver. Therefore, EPA proposes to conclude that, taken as a whole, Arizona's waiver requirements are not less stringent than those required by the federal I/M regulations.

The provisions which deny a waiver to vehicles failing the emissions test at more than twice the applicable standard and limit the issuance of a waiver to once in a vehicle's lifetime also apply to the Area B basic I/M program. These provisions strengthen the program and provide additional emissions reductions.

E. Enhanced I/M Performance Standard

EPA's I/M regulations require that the state perform modeling using the most current version of EPA's mobile source emissions model to determine that the emissions levels achieved by the state I/M program design meet the minimum performance standard provided in the federal regulations. 40 CFR 51.351(f). The elements of EPA's high enhanced program model program are contained in 40 CFR 51.351(f).

On January 1, 2000, ADEQ began using a revised test procedure called the IM147 for vehicles undergoing the transient, loaded emissions test in Area A. The IM147 test is derived from the IM240 test which had been used in Area A since 1995. The IM240 transient, loaded emissions test includes two phases. The IM147 is based on the second phase, which has a driving cycle that is longer and has significantly higher speeds than the first phase. The IM147 was developed to allow more vehicles to be tested per lane at the I/M testing facilities and to reduce the incidence of false failures due to

[1] See the Technical Support Document (TSD) for this proposed rulemaking for the list of federal register notices amending EPA's I/M regulations.

[2] The TSD for this proposed rulemaking contains the boundaries for Area A as defined by township and range.

[3] Sierra Research Draft Final Report, "Determination of Emissions Credit and Average Test Times for IM147 Testing," November 9, 1998, p. 59.

[4] A copy of the contract with ERG was included in the SIP revision and is part of the docket for this proposed rulemaking.

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inadequate preconditioning,[5] while maintaining stringency close to the level of the I/M240 test.

Because the IM147 test type was not available as an input option in the MOBILE5b emission factor model, Arizona performed its modeling using the closest available test type, the IM240. The resulting credit was then adjusted based upon the analysis of a 2,518 vehicle sample of paired IM240 and IM147 emission tests. Based on this analysis and previous work done by ADEQ, EPA, and Sierra Research, it was determined that multiplying the IM240 modeling output CO, HC and NO_X results by .994, .987, and .954 respectively,[6] was an appropriate surrogate for modeling the IM147 test directly.

At the time the Arizona SIP revision was developed, MOBILE5b was EPA's latest available approved emission factor model, and was therefore the model used to project the emission reductions attributable to Arizona's IM147 enhanced program. Because of the complexity of the program, i.e., different tests for different model year vehicles and types of vehicles, several different modeling scenarios were combined to determine the level of emission reductions achieved by the State's program. These emission reductions were then compared to the emission reductions associated with EPA's high enhanced I/M performance standard. The modeling demonstrated that Arizona's enhanced program with the IM147 test meets EPA's high enhanced I/M performance standard.

F. Legal Authority for the Program

The federal I/M rule requires the state I/M program to remain in operation until it is no longer necessary. 40 CFR 51.372. State legislation enacted in 1999 added Arizona Revised Statute (ARS) 41–3009.01 which extends the I/M program to January 1, 2009, well beyond the date of expected attainment of the CO and ozone national ambient air quality standards (NAAQS) for the Phoenix area. With respect to this sunset date, in a letter[7] to EPA, dated August 23, 1998, ADEQ stated that ARS 41–2955 limits to ten years the existence of an agency such as ADEQ before it undergoes a sunset review. Therefore the Vehicle Emissions Inspection Program (VEIP) has been extended for the maximum time that is consistent with ARS 41–2955, i.e., ten years. The letter supplies a recent history of legislative changes to the VEIP, concluding that "The VEIP has consistently received support for necessary program updates from the Legislature." In the final rule redesignating the Tucson area to attainment for CO and approving the Tucson maintenance plan, EPA concluded that, on the basis of this legislative history, it is reasonable to assume that the program will be extended when it expires at the end of 2008.[8] We continue to believe that ADEQ has demonstrated that the Arizona I/M programs will remain in operation as long as necessary and the requirements of 40 CFR 51.372 have been satisfied.

G. Effect of Program Changes on Emission Benefits

CAA section 110(l) states, in part, that EPA shall not approve a SIP revision if it would "interfere with any applicable requirement concerning attainment and reasonable further progress* * *or any other applicable requirement of [the Act]." One of the tests that EPA has used historically to determine whether a SIP revision would interfere with attainment or reasonable further progress (RFP) is the "no relaxation" test. Under this test, if a SIP revision does not reduce or delay emission reductions when compared to the unrevised SIP, then EPA can conclusively find that it will not interfere with the area's applicable requirements concerning attainment or RFP.

In a recent court decision (*Hall* v. *EPA*, 273 F.3d 1146 (9th Cir. 2001)), the Ninth Circuit Court of Appeals determined that EPA cannot invariably rely on the "no relaxation" test in determining if a SIP revision is allowed under section 110(l)'s prohibition on interference with attainment and RFP. Rather, the court determined that, before EPA can conclude that the SIP revision is allowed under section 110(l), EPA must first conclude that "the particular plan revision before it is consistent with the development of an overall plan capable of meeting the Act's attainment requirements." (*Hall*, 273 F.3d at 1160). However, the court also found that the "'no relaxation" test would "clearly be appropriate in areas that achieved attainment under preexisting rules." (*Hall*, 273 F.3d at 1160 n.11).

As described above, the changes to Arizona's VEI programs contained in the proposed SIP revision affect both the Phoenix and Tucson areas. Therefore, EPA needs to address the proposed SIP revision's effect in both of these areas before we can determine whether we can approve this revision under CAA section 110(l).

Tucson. Arizona implemented its VEI program in the Tucson area as part of the control strategy to attain and maintain the CO standard in the area. Under the 1990 CAA Amendments, the Tucson area was designated "nonattainment" and "not classified" for carbon monoxide. 56 FR 56694 (November 6, 1991). In 2000, EPA redesignated the area to attainment for CO. *See* 65 FR 36353 (June 8, 2000).

EPA can use here, per *Hall*, the "no relaxation" test to determine if the proposed SIP revision is allowed under section 110(l)'s prohibition on interference with attainment because the Tucson area attained under a pre-existing rule. In this case, the pre-existing rule is the VEI program in place at the time the area was redesignated to attainment in June 2000. The program in place in 2000 is the same revised VEI program being proposed for approval today. Therefore, EPA proposes to conclude that this SIP revision, if approved, will not interfere with any applicable requirement concerning CO attainment in the Tucson area.

As an attainment area, the Tucson area has neither a requirement to demonstrate RFP nor one for an I/M program; therefore, the proposed SIP revision does not interfere with any applicable requirement for RFP or any other applicable requirement of the CAA.

Phoenix. The Phoenix-area VEI program is an important component of the area's control strategies for both carbon monoxide and ozone.[9]

Carbon monoxide. In March, 2001, Arizona submitted a revised serious nonattainment area CO plan for the Phoenix area. This plan relied in part on the VEI program being proposed for approval today to demonstrate both progress toward and attainment of the CO standard in the area. See *Revised MAG 1999 Serious Area Carbon Monoxide Plan for the Maricopa County Nonattainment Area*, Maricopa Association of Governments, March 2001, Chapter 9. Therefore, these revisions to the VEI program are consistent with and support the development of the Phoenix area's plan for meeting the Act's attainment and RFP requirements. Also, the revisions to the program collectively provide a further reduction in total area CO emissions of around 3.0 percent over those achieved by the program as implemented prior to 2000. *Id.* As discussed above, the revised VEI program meets the CAA's requirements for enhanced I/M programs for serious CO nonattainment areas. Therefore, we propose to conclude that this SIP revision, if approved, will not interfere with any applicable requirements for attainment and RFP or any other applicable requirements of the CAA and is approvable under section 110(l).

Ozone. In April 2001, EPA determined that the Phoenix area had attained the 1-hour ozone standard by its statutory deadline of November 15, 1999. *See* 66 FR 29230 (May 30, 2001). The area has continued in attainment since 1999 with no recorded exceedances of the 1-hour ozone standard and an overall downward trend in ozone levels. *See* Letter, Nancy Wrona, ADEQ to Colleen McKaughan, EPA, June 12, 2002.

Because of its clean air record, Arizona was not required to submit a serious area attainment demonstration[10]; therefore, we are unable to judge whether the proposed revisions are consistent with the area's formal plan to attain the standard by its applicable statutory deadline. However, because the area has achieved attainment under the pre-existing program, we can use, per *Hall*, the "no relaxation" test to determine if the proposed SIP revision is allowed under section 110(l)'s prohibition on interference with attainment.

For the purposes of section 110(l), EPA compares the proposed revisions to the "pre-existing" VEI program which was in place during the 1997 to 1999 time frame when the area achieved attainment.[11] The most substantial changes to the VEI program are: (1) The change from the IM240 to the IM147 emission test; (2) the elimination of the remote sensing program; and (3) the expansion of the program into Pinal County. Collectively, these three program revisions reduce VOC, CO, and NO_X emissions as compared to emissions reductions achieved by the VEI program over the1997–1999 attainment period by approximately 1,400 metric tons per year (mtpy), 16,000 mtpy, and 95 mtpy, respectively. See Email, Teresa Pella, ADEQ to Frances Wicher, EPA, June 14, 2002.

While the VOC and CO reductions contribute to reducing ozone levels, the decrease in NO_X emissions may have the effect of potentially increasing ozone levels in the Phoenix area. However, the NO_X reductions are so small (less than 0.2 percent of the total NO_X inventory, *Id.*) that any increase in ozone levels resulting from the NO_X reductions will be negligible and more than offset by a decrease in ozone levels resulting from the much more substantial VOC and CO reductions.[12] Therefore, EPA proposes to conclude that this SIP revision, if approved, will not adversely affect the area's clean air status and is allowed under section 110(l)'s prohibition on interfering with any applicable requirement pertaining to attainment.

The only existing RFP demonstration for the area is the 15 percent rate-of-progress (ROP) demonstration required by CAA section 182(b)(1). *See* 64 FR 36243 (July 6, 1999). This ROP requirement addresses VOC only. Emission reductions from the VEI program are credited in the Phoenix area's 15% ROP plan, but that credit is based on the program as implemented in 1996. *See* 63 FR 3687, 3690. This proposed SIP revision results in additional reductions in VOC over the reductions achieved from the VEI program implemented in 1996; therefore, EPA proposes to conclude that the revision, if approved, will not interfere the area's applicable requirement to demonstrate RFP.

Finally, as discussed above, EPA has concluded that the revised program meets the enhanced I/M program requirements for serious ozone nonattainment areas.

IV. Proposed Action

In todays action EPA is proposing to find that the Arizona enhanced I/M program implemented in Area A meets CAA and EPA requirements for a high enhanced program. We are also proposing to find that the VEI program implemented in Area B continues to meet EPA's I/M requirements for basic programs. In addition, we are proposing to approve various Arizona statutes amending the VEI programs and the latest revisions to the basic and enhanced VEI program regulations. Specifically, the Arizona statutes are:

Amendments to A.R.S. 49–541, 49–542.05, 49–544, 49–545, 49–551 and the repeal of 49–542.01 submitted to EPA as a SIP revision on July 6, 2001.

Amendments to A.R.S. 49–542, 49–543, and the repeal of 49–541.01 submitted to EPA as a SIP revision on April 10, 2002.

The Arizona regulations are:

Arizona Administrative Code (AAC), Title 18, Chapter 2, Article 10 "Motor Vehicles; Inspection and Maintenance" as of December 31, 2000 except for AAC R 18–2–1020, submitted to EPA as a SIP revision on July 6, 2001.

Amendments to AAC R 18–2–1006 and 18–2–1019, and the repeal of AAC R 18–2–1014 and R 18–2–1015 submitted to EPA as a SIP revision on April 10, 2002.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described

[5] If a vehicle is not thoroughly warmed up, high emissions can be caused by air-fuel ratio enrichment or an inactive catalytic convertor.

[6] See the TSD in the docket for this proposed rulemaking for further information.

[7] See the TSD for this proposed rulemaking for a copy of the letter.

[8] 65 FR 36356, June 8, 2000.

[9] The Phoenix area is also a PM–10 nonattainment area; however, the VEI program plays a very minor roll in the control strategy for this pollutant. Moreover, the area's recently-approved PM–10 plan was prepared based on the VEI program that we are proposing to approve today. See 66 FR 50136 (October 2, 2001). Therefore, this SIP revision is consistent with and supports the development of the Phoenix area's plan for meeting the Act's attainment, RFP and control requirements (i.e., reasonably available control measures, best available control measures, and most stringent measures). There is no CAA requirement for I/M programs in PM–10 nonattainment areas.

[10] *See Memorandum*, John S. Seitz, Director, OAQPS, EPA, to Regional Air Directors, "Reasonable Further Progress, Attainment Demonstrations, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," May 10, 1995.

[11] Attainment of the 1-hour ozone standard is demonstrated when the average number of exceedances per year over a three-year period is 1 or less. Thus, to demonstrate attainment by November 1999, the Phoenix area had to average 1 or fewer exceedances per year over the 1997 to 1999 time period.

[12] Two previous analyses of the effect of NO_X reductions on 1-hour ozone levels in the Phoenix area show uncompensated NO_X reduction of 3.7 percent and 9 percent of the total NO_X inventory resulted a 0.001 ppm and 0.004 ppm, respectively, increase in peak 1-hour ozone levels. See Memorandum, Cari Anderson, MAGTPO, to Sharon G. Douglas and others, SAI, re: NO_X RACT Simulation for the 9–10 August 1992 Episode, March 29, 1994 and "Reanalysis of the Metropolitan Phoenix Voluntary Early Ozone Plan," ENSR, October 1997, p. 5–2. The 1-hour ozone standard is 0.12 ppm; current peak 1-hour ozone levels in Phoenix area are 0.115 ppm.

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in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental Regulations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 1, 2002.

Laura Yoshii,

Acting Regional Administrator, Region 9.

[FR Doc. 02–20353 Filed 8–9–02; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 67, No. 155

Monday, August 12, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–017N]

The National Advisory Committee on Meat and Poultry Inspection; Nominations for Membership

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Department of Agriculture (USDA) is soliciting nominations for membership on the National Advisory Committee on Meat and Poultry Inspection. The full Committee consists of 16–18 members, and each person selected is expected to serve a 2-year term.

DATES: The names of the nominees and their typed curricula vitae or resumes must be postmarked no later than September 26, 2002. Applications are available on-line at: *http://www/fsis.usda.gov/OPPDE/nacmpi/.*

ADDRESSES: Nominating materials should be submitted to Mr. William J. Hudnall, Acting Administrator, Food Safety and Inspection Service, USDA, Room 615—Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Ms. Sonya L. West, Meat and Poultry Advisory Committee Staff, FSIS, Room 615—Annex Building, 300 12th Street SW., Washington, DC 20250–3700; telephone (202) 205–0256; FAX (202) 205–0157; e-mail: *sonya.west@usda.gov.*

SUPPLEMENTARY INFORMATION: USDA again is seeking nominees for membership on the National Advisory Committee on Meat and Poultry Inspection. The Committee provides advice and recommendations to the Secretary on the meat and poultry inspection programs, pursuant to sections 7(c), 24, 301(a)(3), 301(a)(4), and 301(c) of the Federal Meat Inspection Act (21 U.S.C. 607(c), 624, 645, 661(a)(3), 661(a)(4), and 661(c)) and to sections 5(a)(3), 5(a)(4), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act (21 U.S.C. 454(a)(3), 454(a)(4), 454(c), 457(b), and 460(e)). Nominations for membership are being sought from persons representing producers; processors; exporters and importers of meat and poultry products; academia; Federal and State government officials; and consumers.

Appointments to the Committee will be made by the Secretary. To ensure that recommendations of the Committee take into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, persons with demonstrated ability to represent minorities, women, and persons with disabilities. It is anticipated that the Committee will meet at least twice annually.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm.* Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done at Washington, DC on: August 7, 2002.

William J. Hudnall,

Acting Administrator.

[FR Doc. 02–20331 Filed 8–9–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Flathead National Forest, Tally Lake Ranger District, Flathead County, State of Montana; Logan Creek Ecosystem Restoration Project Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for a proposal to harvest timber; reclaim, rehabilitate, and construct roads; change road and trail access; place large logs in streams; construct large pool habitat; re-vegetate habitat; and burn brushfields or forest understory trees within the Logan Creek watershed. The area is located northwest of Whitefish, Montana and southwest of Olney, Montana.

The Forest Service is seeking further information and comments from federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions. These comments will be used to prepare the draft and final EIS.

DATES: Comments concerning the scope of the analysis must be received by September 12, 2002, The draft EIS is expected to be filed with the Environmental Protection Agency and made available for public review in December, 2002. The comment period on the draft EIS will end 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. No date has yet been determined for filing the final EIS.

ADDRESSES: You may request to be placed on the project mailing list or direct questions, comments, and

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suggestions about the proposed action and EIS to Bryan Donner, EIS Team Leader, or Jane Kollmeyer, District Ranger, at Tally Lake Ranger District, 1335 Highway 93 West, Whitefish, MT 59937. Phone: (406) 863–5400.

FOR FURTHER INFORMATION CONTACT: Bryan Donner, EIS Team Leader, or Jane Kollmeyer, District Ranger, at Tally Lake Ranger District, 1335 Highway 93 West, Whitefish, MT 59937. Phone: (406) 863–5400.

SUPPLEMENTARY INFORMATION:

Affected Area

The Logan Creek assessment area, west of Whitefish, Montana, encompasses approximately 61,200 acres of which the Forest Service administers 48,300 acres. Private land accounts for 6047 acres, with the remainder evenly split between corporate (3553 acres) and state lands (3300 acres). Elevation ranges from 3100 feet at Round Meadow to 6300 feet at Ashley Mountain. Numerous recreational activities exist in this area and logging has been, and continues to be, active in the drainage. There are no existing wilderness or inventoried roadless areas within the watershed boundary.

The watershed assessment area includes eight major streams in addition to Logan Creek. The drainage supports several species of native and non-native fish as well as many amphibians and reptiles. Temperate coniferous forests dominate the landscape and provide habitat for terrestrial wildlife that includes several threatened, endangered, and sensitive species.

Purpose and Need for Action

A variety of current conditions in the watershed, identified from a recent Logan Creek watershed analysis, have generated a purpose and need for management action in this area. High fuel accumulations threatening public and private lands; undesirable vegetation composition, density, cover types, and structure classes; high tree mortality due to a Douglas-fir bark beetle epidemic; altered wildlife habitat; less than optimal fish habitat; and local economic issues have created a need for this project.

The purpose of this proposal is to reduce hazardous fuels to varying degrees across the landscape; to enhance fire suppression control efforts by reducing fire intensity; restore or maintain a historical pattern of vegetation cover and diversity; reduce the vulnerability of the forest to large scale, dramatic disturbance such as insects, disease, and unwanted fire; provide an ecosystem that sustains habitat for wildlife; improve water quality and reduce sediment delivery; improve aquatic habitat to enhance the recreational fishery; and meet the social and economic needs of the local communities.

Proposed Action

The proposed action to reduce accumulated fuels, manage insect infested stands, and improve fisheries and wildlife habitat are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25).

The proposed action describes 10,057 acres of vegetation treatments and fuel reductions that combine varying intensities of timber harvest, pre-commercial thinning, and prescribed burns. Sixteen miles of road reclamation, 5.0 miles of temporary roads, 4.4 miles of new specified road construction, and 143.9 miles of road rehabilitation (drainage improvements) would be included in this project. An additional 7.5 miles of road are proposed for access change. Large woody debris would be placed in 3.8 miles of streams, distributed between 12 different streams, and 5 large pools would be constructed on lower Logan Creek to improve fish habitat. Shrubs would be planted (500 acres) and slashed (25 acres) to improve ungulate browse. Harvested areas would also be re-vegetated with trees and shrubs to improve wildlife habitat.

Responsible Official

Cathy Barbouletos, Forest Supervisor, Flathead National Forest, 1935 3rd Ave. East, Kalispell, MT 59901

Nature of Decision To Be Made

The responsible official will decide if the Forest Service should implement the proposed action or any action to meet the purpose and need or to defer any action at this time within the Logan Creek watershed.

Scoping Process

Public and internal scoping on this project has consisted of one open house; one mailing to federal, state and local agencies, organizations, and individuals; personal conversations between interdisciplinary team members and the public, and news media releases. A public field trip is planned for October 23, 2002.

Preliminary Issues

Based on public and internal scoping, the following main issues emerged:

1. Effects of timber harvest, prescribed burning and road and trail access on wildlife security
2. Effects of vegetation treatment on fragmentation of existing and future old growth habitat
3. Effects of vegetation treatments on the size, shape, continuity, and edge effect on some late seral patches of trees
4. Effects of proposed action on forest connectivity that serves as a link for wildlife movement between important habitat such as riparian forests and ridgelines
5. Effects of timber harvest and road building on water quality, water yields, fish habitat, and stream channel stabilization
6. Effects of road reclamation on future management opportunities, fire suppression, and public recreation opportunities

Comment Requested

This notice of intent is a major component of the scoping process and guides the development of the EIS. A draft EIS will be prepared and open for public comment for 45 days from the date that the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. Comments received will be analyzed, considered, and responded to by the Forest Service in the final EIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA) at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection (*Authority:* NEPA 40 CFR 1501.7, 1508.22; Forest Service Handbook 1909.15, Section 21). The responsible official for the preparation of the EIS will make a decision regarding this proposal by considering the comments and responses, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies. The rationale for the decision will be documented in a Record of Decision. That decision will be subject to appeal under applicable Forest Service regulations.

Dated: August 5, 2002.

Earl Applekamp,

Acting Forest Supervisor.

[FR Doc. 02–20297 Filed 8–9–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

[I.D. 080702A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Surf Clam/Ocean Quahog Transfer Log.

Form Number(s): None.

OMB Approval Number: 0648–0238.

Type of Request: Regular submission.

Burden Hours: 52.

Number of Respondents: 206.

Average Hours Per Response: 5 minutes.

Needs and Uses: Persons holding Individual Transferable Quotas (ITQs) in the surf clam/ocean quahog fishery are annually issued a quota for harvest. To facilitate enforcement and tracking, sequentially numbered tags are issued to each owner on an annual basis and all cages of product must be tagged, with tag use reported by both the harvesting vessel and the purchasing dealer. Individual allocations are transferable, and owners may transfer their allocation on a permanent basis or may transfer tags to other vessel owners to use on a temporary basis. This transferability means that the allocation ownership changes constantly, and the ITQ Allocation Transfer Form is used by allocation holders to register these transfers with the National Marine Fisheries Service. Once processed, new allocation permits are issued and all databases are updated. The information registered is used for enforcement purposes.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 5, 2002.

Gwellnar Banks,,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–20378 Filed 8–9–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 080702B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: List of Gear by Fisheries and Fishery Management Council.

Form Number(s): None.

OMB Approval Number: 0648–0346.

Type of Request: Regular submission.

Burden Hours: 30.

Number of Respondents: 20.

Average Hours Per Response: 1.5.

Needs and Uses: Under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. *et. seq.*) as amended by the Sustainable Fisheries Act (P.L. 104-297), the Secretary of Commerce is required to publish a list of all fisheries under the authority of each Fishery Management Council and of all fishing gear to be used in such fisheries. This list has been published. Any person wishing to use gear not on the list, or engage in a fishery not on the list, must provide the appropriate Fishery Management Council (or in some cases the Secretary) with 90 days advance written notice. If the Secretary takes no action to prohibit such a fishery or use of such gear, the person may proceed.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 5, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–20379 Filed 8–9–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 080702C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the

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following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Vessel-Marking Requirements in Antarctic Fisheries.

Form Number(s): None.

OMB Approval Number: 0648–0368.

Type of Request: Regular submission.

Burden Hours: 2.

Number of Respondents: 3.

Average Hours Per Response: 15 minutes for each of three markings.

Needs and Uses: Vessels participating in Antarctic fisheries must display the vessel's official identification number or international radio call sign in three locations. The information is used for enforcement purposes. The authority for this requirement comes from the Magnuson-Stevens Fishery Management and Conservation Act and the Antarctic Marine Living Resources Convention Act of 1984.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 5, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–20380 Filed 8–9–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 080702D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Application to Shuck Surf Clam/Ocean Quahogs At Sea.

Form Number(s): None.

OMB Approval Number: 0648–0240.

Type of Request: Regular submission.

Burden Hours: 1.

Number of Respondents: 2.

Average Hours Per Response: 5 minutes.

Needs and Uses: Vessel owners who wish to shuck their surf clam/ocean quahog catch while at sea must apply for a permit to do so. The National Marine Fisheries Service (NMFS) requires a permit so that it can identify vessels seeking to do so and to place a NMFS-approved observer aboard those vessels. An observer is necessary because the shucking of catch at sea makes it difficult to track the catch against harvest quotas.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 5, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–20381 Filed 8–9–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Notice of Preliminary Results of Antidumping Duty New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) in response to requests from North Supreme Seafood (Zhejiang) Co., Ltd. (North Supreme) and Shouzhou Huaxiang Foodstuffs Co., Ltd. (Shouzhou Huaxiang). Shouzhou Huaxiang's period of review (POR) is September 1, 2000 through August 31, 2001. North Supreme's POR is September 1, 2000 through October 15, 2001.

We preliminarily determine that sales by Shouzhou Huaxiang have been made below normal value (NV). We also preliminarily determine that sales by North Supreme have not been made below NV. The preliminary results are listed below in the section titled "Preliminary Results of Reviews." If these preliminary results are adopted in our final results, for entries made by Shouzhou Huaxiang, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) and NV. Interested parties are invited to comment on these preliminary results. (*See* the "Preliminary Results of Reviews" section of this notice.)

EFFECTIVE DATE: August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Scott Lindsay, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4236 or (202) 482–0780, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations are to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2001).

Background

The Department published in the **Federal Register** an antidumping duty order on freshwater crawfish tail meat from the People's Republic of China on September 15, 1997 (62 FR 48218). On September 18, 2001 the Department received a properly filed request for a new shipper review, in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations, from North Supreme under the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China. On September 26, 2001 the Department received a properly filed request for a new shipper review, in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations, from Shouzhou Huaxiang under the antidumping duty order on freshwater crawfish tail meat from the PRC.

The new shipper requests were made pursuant to section 751(a)(2)(B) of the Act and section 351.214(b) of the Department's regulations, which state that, if the Department receives a request for review from an exporter or producer of the subject merchandise stating that it did not export the merchandise to the United States during the period of investigation (POI) and that such exporter or producer is not affiliated with any exporter or producer who exported the subject merchandise during that period, the Department shall conduct a new shipper review to establish an individual weighted-average dumping margin for such exporter or producer, if the Department has not previously established such a margin for the exporter or producer.

The regulations require that the exporter or producer shall include in its request, with appropriate certifications: (i) the date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot certify as to the date of first entry, the date on which it first shipped the merchandise for export to the United States, or if the merchandise has not yet been shipped or entered, the date of sale; (ii) a list of the firms with which it is affiliated; (iii) a statement from such exporter or producer, and from each affiliated firm, that it did not, under its current or a former name, export the merchandise during the period of investigation (POI); and (iv) in an antidumping proceeding involving inputs from a non-market-economy (NME) country, a certification that the export activities of such exporter or producer are not controlled by the central government. *See* 351.214(b)(2) of the Department's Regulations.

Pursuant to 19 CFR 351.214(b)(2)(i) and 19 CFR 351.214(b)(2)(iii)(A), in its September 18, 2001 request for review, North Supreme certified that it did not export the subject merchandise to the United States during the POI and that it is not affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), North Supreme further certified that its export activities are not controlled by the central government of the PRC.

Pursuant to 19 CFR 351.214(b)(2)(i) and 19 CFR 351.214(b)(2)(iii)(A), in its September 26, 2001 request for review, Shouzhou Huaxiang certified that it did not export the subject merchandise to the United States during the POI and that it is not affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), Shouzhou Huaxiang further certified that its export activities are not controlled by the central government of the PRC. These requests for new shipper reviews also included all documentation required under 19 CFR 351.214(b)(2)(iv).

The Department determined that each request met all of the requirements stipulated in section 351.214 of the regulations. On November 8, 2001, the Department published its initiation of these new shipper reviews for the period September 1, 2000 through August 31, 2001. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Administrative Reviews*, 66 FR 56536 (November 8, 2001).

On April 25, 2002, the Department received a request from North Supreme to extend its POR to include the entry date for its sales of crawfish tail meat, The Department determined that such an extension would not prevent the completion of the review within the regulatory time limits in accordance with section 351.214(f)(2)(ii) of the regulations. The Department extended the POR for North Supreme in this new shipper review by forty-five days, until October 15, 2001. *See Memorandum to Barbara E. Tillman through Dana S. Mermelstein, from Holly Hawkins: Extension of the Period of Review in the New Shipper Administrative Review of Freshwater Crawfish Tail Meat From the People's Republic of China*, dated April 29, 2002.

On April 30, 2002 the Department published an extension of the deadline for completion of the preliminary results of these new shipper reviews until August 5, 2002. *See Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Reviews: Freshwater Crawfish Tail Meat from the People 's Republic of China*, 67 FR 21219 (April 30, 2002).

Scope of the Antidumping Duty Order

The product covered by these reviews is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the U.S. Customs Service in 2000, and HTS items 0306.19.00.10 and 0306.29.00, which are reserved for fish and crustaceans in general. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

Verification

As provided in section 782(i) of the Act, we conducted verification of the responses of North Supreme and Shouzhou Huaxiang. We used standard verification procedures, including on-site inspection of the manufacturers' facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (CRU) located in room B–099 of the Main Commerce Building. (*See* the public versions of *New Shipper Review of Freshwater Crawfish Tail Meat (tail meat) from the People's Republic of China (PRC) (A–570–848): Sales and Factors Verification Report for Shouzhou Huaxiang Foodstuffs Co., Ltd.*, and *New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China (PRC) (A–570–848): Sales and Factors Verification Report for North Supreme Seafood Zhejiang Co., Ltd.*, dated July 17, 2002. (*Shouzhou Huaxiang Verification Report and North Supreme Verification Report*, respectively).)

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New Shipper Status

Based on the questionnaire responses received from North Supreme and Shouzhou Huaxiang, and our verification thereof, we preliminarily determine that these companies have met the requirements to qualify as new shippers during the POR. We have determined that both companies made their first sale or shipment of subject merchandise to the United States during the POR, that these sales were *bona fide* sales, and that these companies were not affiliated with any exporter or producer that previously shipped to the United States.

Separate Rates

North Supreme and Shouzhou Huaxiang both requested a separate, company-specific rate. In their questionnaire responses, both companies stated that each is an independent legal entity.

To establish whether a company operating in an NME country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) , as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). Under this policy, exporters in NMEs are entitled to separate, company-specific margins when they can demonstrate an absence of government control, in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: 1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management.

De Jure Control

With respect to the absence of *de jure* government control over the export activities of all the companies reviewed, evidence on the record supports the claims by both North Supreme and Shouzhou Huaxiang that their export activities are not controlled by the government. Both North Supreme and Shouzhou Huaxiang submitted evidence of their legal rights to set prices independently of all government oversight. The business licenses of both companies indicate that they are permitted to engage in the exportation of crawfish. We find no evidence of *de jure* government control restricting these companies' exportation of crawfish.

In general, no export quotas apply to crawfish. Prior verifications have confirmed that there are no commodity-specific export licenses required and no quotas for the seafood category "Other," which includes crawfish, in *China's Tariff and Non-Tariff Handbook* for 1996. In addition, we have previously confirmed that crawfish is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled *Temporary Provisions for Administration of Export Commodities*. (*See Freshwater Crawfish Tail Meat From The People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 8543 (February 22, 1999) and *Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review*, 64 FR 27961 (May 24, 1999) (*Ningbo New Shipper Review*).)

The Administrative Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons (*Legal Persons Law*), issued on June 13, 1988 by the State Administration for Industry and Commerce of the PRC and provided for the record of this review, indicates a lack of *de jure* government control over privately-owned companies, such as North Supreme and Shouzhou Huaxiang, and that control over these enterprises rests with the enterprises themselves. *The Legal Persons Law* provides that, to qualify as legal persons, companies must have the "ability to bear civil liability independently" and the right to control and manage their businesses. These regulations also state that, as an independent legal entity, a company is responsible for its own profits and losses. *See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China*, 60 FR 56045 (November 6, 1995) (*Manganese Metal*). At verification, we saw that the business licenses for North Supreme and Shouzhou Huaxiang were granted in accordance with this law. The results of verification support the information provided regarding the *Legal Persons Law*. (*See Shouzhou Huaxiang Verification Report* and *North Supreme Verification Report*.) Therefore, we preliminarily determine that there is an absence of *de jure* control over export activity with respect to these firms.

De Facto Control

With respect to the absence of *de facto* control over export activities, the information submitted on the record and reviewed at verification, indicates that the management of North Supreme and Shouzhou Huaxiang are responsible for the determination of export prices, profit distribution, marketing strategy, and contract negotiations. Our analysis indicates that there is no government involvement in the daily operations or the selection of management for these companies. In addition, we have found that the respondents' pricing and export strategy decisions are not subject to the review or approval of any outside entity, and that there are no governmental policy directives that affect these decisions.

There are no restrictions on the use of export earnings. The company general managers of both North Supreme and Shouzhou Huaxiang have the right to negotiate and enter into contracts, and may delegate this authority to employees within their respective companies. There is no evidence that this authority is subject to any level of governmental approval. North Supreme and Shouzhou Huaxiang both stated that their management is selected by a board of directors and/or their employees, and that there is no government involvement in the selection process. Finally, decisions made by each respondent concerning purchases of subject merchandise from other suppliers are not subject to government approval. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over the companies' export activities, we preliminarily determine that separate rates should be applied to both North Supreme and Shouzhou Huaxiang.

Application of Partial Adverse Facts Available

During the course of this new shipper review, the Department issued questionnaires to Shouzhou Huaxiang requesting that they provide factor of production information for our preliminary results. At verification, we found that Shouzhou Huaxiang's reported crawfish scrap and water factors were unverifiable. As a result, the Department has determined that it is appropriate to use facts otherwise available for the crawfish scrap and water factors of production in the calculation of normal value for Shouzhou Huaxiang's sales of crawfish tail meat.

Furthermore, section 776(b) of the Act provides that the Department may use an inference that is adverse to the interests of a party in selecting among the facts otherwise available if the Department finds that the party had failed to cooperate to the best of its ability. In this case, the Department has found that Shouzhou Huaxiang has failed to cooperate by not acting to the best of its ability by reporting unverifiable crawfish scrap and water factors of production. Shouzhou Huaxiang neither provided an explanation or notified the Department of any discrepancies or problems regarding its crawfish scrap and water factors. This information is within the sole possession of Shouzhou Huaxiang and cannot be obtained by the Department unless it is reported by Shouzhou Huaxiang. Moreover, this information is integral to our margin calculation for Shouzhou Huaxiang. We therefore determine that Shouzhou Huaxiang has failed to cooperate to the best of its ability in this new shipper review. Therefore, for the preliminary results of this review, we have made an inference that is adverse to Shouzhou Huaxiang in selecting from facts otherwise available for Shouzhou Huaxiang's crawfish scrap and water factors of production.

In addition, section 776(b) of the Act states that adverse facts available may include information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Section 776(c) of the Act provides that when the Department relies on secondary information, the Department shall, to the extent practicable, corroborate that information with independent sources reasonably at the Department's disposal. The Statement of Administrative Action (SAA) accompanying the URAA clarifies that the petition is secondary information. *See* SAA, H.R. Doc. 103–316 at 870 (1994). The SAA also clarifies that "corroborate" means to determine whether the information used has probative value. *Id.*

In this review, we are using, as adverse facts available, the lowest reported crawfish scrap to whole crawfish ratio and the highest reported water factor from the *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546, (April 22, 2002) (*Crawfish Final 1999/2000*). *See* memorandum to file dated August 5, 2002, which places on the record of these reviews the "Freshwater Crawfish Tail Meat from The People's Republic of China Placement of Yancheng Haiteng's and Huaiyin30's factors of production from the 1999–2000 Administrative Review on to the Record of the Current Review" on the record of these new shipper reviews. These factors are corroborated, in accordance with section 776(c) of the Act, because each factor is based on actual information from a previous review. *See* the proprietary memorandum, "Determination of Partial Adverse Facts Available for Shouzhou Huaxiang Foodstuffs Co., Ltd. in the New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China," dated August 5, 2002 which is in the CRU.

Normal Value Comparisons

To determine whether respondents' sales of the subject merchandise to the United States were made at prices below NV, we compared their United States prices to NV, as described in the "United States Price" and "Normal Value" sections of this notice.

United States Price

For North Supreme and Shouzhou Huaxiang, we based United States price on export price (EP) in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated purchaser in the United States. We deducted foreign inland freight from the starting price (gross unit price) in accordance with section 772(c) of the Act. Since the terms of sale for both Shouzhou Huaxiang's and North Supreme's sales were FOB China port, no other deductions for movement expenses were necessary.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the companies contested such treatment in these reviews. Accordingly, we have applied surrogate values to the factors of production to determine NV. *See Factor Values Memo for the Preliminary Results of the Antidumping Duty New Shipper Reviews of Freshwater Crawfish Tail Meat from the People's Republic of China*, August 5, 2002 (*Factor Values Memo*).

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the original investigation and the subsequent administrative reviews of this order, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. With the exceptions of the whole live crawfish input and the crawfish scrap by-product, we valued the factors of production using publicly available information from India. We adjusted the Indian import prices by adding freight expenses to make them delivered prices.

We valued the factors of production as follows:

To value the input of whole crawfish we used publicly available Spanish import data of whole live crawfish from Portugal for September 2000 through August 2001. *See Selection of Surrogate for the Valuation of Whole, Live Freshwater Crawfish in the 2000 - 2001 Administrative and New Shipper Reviews for Freshwater Crawfish Tail Meat from the People's Republic of China*, dated August 5, 2002. We adjusted the values of whole live crawfish to include freight costs incurred between the supplier and the factory. For transportation distances used in the calculation of freight expenses on whole live crawfish, we added, to surrogate values from India, a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From*

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the People's Republic of China, 62 FR 51410 (October 1, 1997) (*Roofing Nails*).

To value the by-product of wet crawfish scrap, we used a price quote from Indonesia for wet crab and shrimp shells. *See Surrogate Valuation of Shell Scrap: Freshwater Crawfish Tail Meat from the People's Republic of China (PRC), Administrative Review 9/1/00–8/31/01 and New Shipper Reviews 9/1/00–8/31/01 and 9/1/00–10/15/01*, dated August 5, 2002.

To calculate a value for steam, we derived the values by: 1) noting the BTU equivalent of the steam, then 2) obtaining a ratio of steam to the BTU equivalent of natural gas, and 3) multiplying this ratio by the surrogate value of natural gas.

To value coal, we used the average 1996 total price of "steam coal for industry" as published in the International Energy Agency's publication, *Energy Prices and Taxes, First Quarter, 2000*. We adjusted the cost of coal to include an amount for transportation. To value electricity, we used the average of the 1997 total cost per kilowatt hour (KWH) for "Electricity for Industry" as reported in the International Energy Agency's publication, *Energy Prices and Taxes, First Quarter, 2000*. For water, we relied upon public information from the October 1997 *Second Water Utilities Data Book: Asian and Pacific Region*, published by the Asian Development Bank.

To achieve comparability of energy and water prices to the factors reported for the crawfish tail meat processing periods applicable to the companies under review, we adjusted these factor values to reflect inflation to the applicable crawfish processing season during the POR using the Wholesale Price Index (WPI) for India, as published in the 2001 *International Financial Statistics (IFS)* by the International Monetary Fund (IMF).

To value packing materials (plastic bags, cardboard boxes and adhesive tape), we relied upon Indian import data for the period August 2000 through January 2001 as reported in the *Monthly Statistics of the Foreign Trade of India (Monthly Statistics)*. We adjusted these prices to reflect inflation to the crawfish processing season during the POR. We adjusted the values of packing materials to include freight costs incurred between the supplier and the factory. For transportation distances used in the calculation of freight expenses on packing materials, we added, to surrogate values from India, a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997) (*Roofing Nails*).

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we continued to use simple average derived from the publicly available 1996–97 financial statements of four Indian seafood processing companies. We applied these rates to the calculated cost of manufacture. *See Factor Values Memorandum*.

For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2001. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's web site is the *Year Book of Labour Statistics 2000*, International Labour Office (Geneva: 1998), Chapter 5: Wages in Manufacturing.

We valued movement expenses as follows: To value truck freight expenses we used seventeen price quotes from six different Indian trucking companies which were used in the antidumping investigation of *Bulk Aspirin from the People's Republic of China*, 65 FR 33805 (May 25, 2000). We adjusted the rates to reflect inflation to the month of sale of the finished product using the WPI for India from the IFS.

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank.

Preliminary Results of Reviews

We preliminarily determine that the following dumping margins exist:

Manufacturer and Exporter	Time Period	Margin (percent)
North Supreme Seafood (Zhejiang) Co., Ltd.	9/1/00–10/15/01	0.00
Shouzhou Huaxiang Foodstuffs Co., Ltd.	9/1/00–8/31/01	14.18

Cash-Deposit Requirements

If these preliminary results are not modified in the final results of these reviews, the following deposit rates will be effective upon publication of the final results of these new shipper reviews for all shipments of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption on or after publication date, as provided for by section 751(a)(2)(C) of the Act. The cash deposit rate for shipments produced and exported by Shouzhou Huaxiang will be the total amount of dumping duties divided by the total quantity exported during the POR. Since the margin for North Supreme is zero, no cash deposits would be required for shipments produced and exported by North Supreme. If these preliminary results are not changed in the final results, no other cash deposits under this order would be changed.

The Department will disclose calculations performed in connection with these preliminary results of reviews within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department will issue the final results of these new shipper reviews, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of these preliminary results, unless the time limit is extended.

Assessment Rates

Upon completion of these new shipper reviews, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service upon completion of these reviews. For assessment purposes, we calculated importer-specific assessment rates for freshwater crawfish tail meat from the PRC. We divided the total dumping margins (calculated as the difference between NV and EP) for each importer by the total quantity of subject merchandise sold to that importer during the POR. Upon the completion of these reviews, we will direct Customs to assess the resulting quantity-based rates against the weight in kilograms of each entry of the subject merchandise by the importer during the POR. *See* memorandum to file dated August 5, 2002, which places on the record of these reviews the "Memorandum to Barbara E. Tillman through Maureen Flannery, from Mark Hoadley: Collection of Cash Deposits and Assessment of Duties on Freshwater Crawfish from the PRC, dated August 27, 2001" on the record of these new shipper reviews.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These new shipper reviews and this notice are published in accordance with sections 751(a)(2)(B) and 777 (i)(1) of the Act.

Dated: August 5, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–20388 Filed 8–9–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–803]

Industrial Nitrocellulose From the United Kingdom: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: August 12, 2002.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on industrial nitrocellulose (INC) from the United Kingdom (U.K.) in response to a request by Imperial Chemical Industries PLC and its affiliates (ICI). This review covers sales of subject merchandise made by one manufacturer/exporter, ICI, to the United States during the period July 1, 2000, through June 30, 2001.

We have preliminarily determined that sales of subject merchandise have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the United States Customs Service (Customs) to assess antidumping duties, as appropriate.

We invite interested parties to comment on these preliminary results. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Michele Mire, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5193 or (202) 482–4711, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (2001).

Background

The Department published in the **Federal Register** the antidumping duty order on INC from the United Kingdom on July 10, 1990 (55 FR 28270). On July 2, 2001, we published in the **Federal Register** (66 FR 34910), a notice of "Opportunity to Request Administrative Review" of this order covering the period July 1, 2000, through June 30, 2001, here after, referred to as the POR.

In accordance with 19 CFR 351.213(b), on July 31, 2001, ICI requested that we conduct an administrative review of its sales and shipments of subject merchandise to the United States for the aforementioned period. The Department is now conducting this administrative review pursuant to section 751 of the Act.

On August 20, 2001, we published in the Federal Register a notice of initiation of administrative review (66 FR 43570, 43572). On March 12, 2002, we published in the **Federal Register** a notice of extension of time limit for the preliminary results (66 FR 11095). We issued the antidumping duty and supplemental questionnaires to respondent during the months of September 2001, and January and May 2002.[1] We received ICI's responses to these questionnaires in the months of November 2001, and February and May 2002, respectively.

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

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Scope of Review

Imports covered by this review are shipments of INC from the United Kingdom. INC is a dry, white amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2percent.

INC is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item number 3912.20.00. While the HTSUS item number is provided for convenience and Customs purposes, the written description remains dispositive as to the scope of the product coverage.

Product Comparisons

To determine whether sales of INC from the United Kingdom to the United States were made at less than NV, we compared the constructed export price (CEP) to the NV, as described in the *Constructed Export Price* and *Normal Value* sections of this notice. When making product comparisons in accordance with section 771(16) of the Act, we considered all products within the scope of the order that were sold by the respondent in the home market in the ordinary course of trade during the POR to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales, on a model-specific basis, to sales made in the home market during the same month. When there were no home market sales of comparable merchandise occurring in the same month as the U.S. sale, we compared U.S. sales to monthly average home market sales one month prior, two months prior, three months prior to the month of the U.S. sale. If unsuccessful, we looked one month after and finally two months after the month of the U.S. sale. Where there were no sales of identical or similar merchandise in the home market within this time to compare to U.S. sales, we compared U.S. sales to the constructed value (CV) of the product sold in the home market during the comparison period.

Constructed Export Price

For the price to the United States, we used CEP, as defined in section 772(b) of the Act, because all sales to the first unaffiliated purchaser in the United States took place after importation. We calculated CEP based on packed, delivered prices to unaffiliated customers in the United States. In accordance with sections 772(c) and (d) of the Act, we made deductions from the starting price, where appropriate, for rebates, international freight, marine insurance, U.S. brokerage and handling, U.S. inland freight, U.S. duties, and direct and indirect selling expenses to the extent that they were associated with economic activity occurring in the United States. Direct selling expenses include credit expenses and commissions, where applicable. ICI reported that it had no U.S. dollar denominated debt during the POR, and thus it calculated its U.S. credit expenses and inventory carrying costs based on an interest rate published by the British Bankers Association. Consistent with Department policy, we recalculated ICI's reported U.S. imputed credit expenses and inventory carrying costs using the Federal Reserve's weighted-average interest rate for commercial and industrial loans maturing between one month and one year. Finally, we made an adjustment for CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act.

Further Manufacturing

For INC that was imported by a U.S. affiliate of ICI and then further processed into lacquer and sealer products before being sold to unaffiliated parties in the United States, we determined that the special rule for merchandise with value added after importation under section 772(e) of the Act applies. Where appropriate, in accordance with section 772(d)(2) of the Act, the Department calculates the CEP by deducting from U.S. price the cost of any further manufacture or assembly in the United States, except where the special rule provided in section 772(e) of the Act is applied. Section 772(e) of the Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise sold in the United States if there is a sufficient quantity of sales to provide a reasonable basis for comparison. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP. To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added, pursuant to section 351.402(c)(2) of the Department's regulations, based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated person. Based on this analysis, we determined that the estimated value added in the United States by ICI's U.S. affiliate accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. Therefore, in accordance with 19 CFR 351.402(c)(2), we determined that the value added is likely to exceed substantially the value of the subject merchandise. We also determined that there was a sufficient quantity of sales of other subject merchandise available in the U.S. market to provide a reasonable basis for comparison and that the use of such sales is appropriate in accordance with section 772(e) of the Act. Accordingly, for purposes of determining dumping margins for this sale, we have used the weighted-average dumping margins calculated on sales of subject merchandise sold to unaffiliated persons in the United States. *See* 19 CFR 351.402(c)(3). For a complete discussion of the information used by the Department in making this determination, which is proprietary, *see Memorandum on Whether It Is Appropriate to Use the Special Rule for Certain Further-Manufactured Merchandise Sold by Imperial Chemical Industries PLC (ICI) in the United States During the Period of Review Under Section 772(e) of the Act* dated July 31, 2002, on file in the Central Records Unit (CRU), Room B–099 of the main Department building.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because ICI's aggregate volume of home market sales of the foreign like product is greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that sales in the home market provide a viable basis for calculating NV.

ICI reported that all home market sales during the POR were to unaffiliated parties. Therefore, we did not conduct the arm's length test. We calculated NV based on packed, delivered prices to unaffiliated purchasers in the home market. In accordance with section 773(a)(6) of the Act, we adjusted the starting price by deducting home market packing costs and adding U.S. packing costs. Where applicable, we deducted inland freight and inland insurance from the starting price. In addition, we made a circumstance of sale adjustment for direct selling expenses, in accordance with section 773(a)(6)(C)(iii) of the Act. Furthermore, we made adjustments, where appropriate, for physical differences in merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We based this adjustment on the difference between the variable costs of manufacturing the foreign like product and the subject merchandise.

Finally, we reduced NV by the CEP offset. This offset equals the amount of the indirect selling expenses incurred on sales in the home market limited by the amount of the indirect selling expenses deducted from CEP pursuant to section 772(d) of the Act. *See the Level of Trade*section of this notice.

Cost of Production (COP) Analysis

In the 1999 - 2000 administrative review of INC from the United Kingdom, the most recently completed segment of this proceeding, the Department disregarded ICI's home market sales that were found to have failed the cost test. *See Industrial Nitrocellulose from the United Kingdom: Final Results of Antidumping Duty Administrative Review*, 66 FR 40978 (August 6, 2001). Accordingly, the Department, pursuant to section 773(b)(2)(A)(ii) of the Act, initiated a COP investigation of ICI for purposes of this administrative review. We conducted the COP analysis as described below.

Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, by adding to the cost of materials and fabrication employed in producing the foreign like product, amounts for home market selling, general and administrative (SG&A) expenses and packing costs. We based these costs on the home market sales data and COP information provided by ICI in its questionnaire responses. ICI calculated its reported interest expense ratio using interest expenses incurred by its affiliate, Nobel's Explosives Company, Ltd. (Nobel's). Consistent with Department policy, and as requested in the Department's antidumping duty questionnaire, we recalculated ICI's reported net interest expense ratio based on the interest expenses reported on the parent's consolidated audited fiscal year financial statements.

1. Test of Home Market Prices

After calculating a weighted-average COP in accordance with section 773(b)(1) of the Act, we tested whether home market sales of INC were made at prices below the COP within an extended period of time in substantial quantities, and whether such prices permitted recovery of all costs within a reasonable period of time. We compared model-specific COP figures to the reported home market sales prices less any applicable movement charges, discounts, direct and indirect selling expenses, and packing costs.

2. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of ICI's sales of a given model were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." In accordance with section 773(b)(2)(B) and (D) of the Act where 20 percent or more of the home market sales of a given product during the POR were at prices less than the COP, we found that such sales were made in substantial quantities within an extended period of time. In such cases, because we compared prices to POR-average costs, we also determined that the sales prices would not permit recovery of all costs within a reasonable period of time. Therefore, we disregarded those below-cost sales and used the remaining sales to determine NV in accordance with section 773(b)(1) of the Act. For those models of INC for which there were no home market sales available for matching purposes, we compared CEP to CV.

Constructed Value

In accordance with section 773(e)(2)(A) of the Act, we calculated CV by adding to ICI's cost of materials and fabrication employed in producing the subject merchandise, U.S. packing costs, SG&A expenses and profit incurred and realized in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

In calculating CV, we used the cost of materials and fabrication, and the SG&A expenses reported in the CV portion of ICI's questionnaire response. In addition, we used the U.S. packing costs reported in the U.S. sales portion of ICI's questionnaire response. For profit, we first calculated the difference between the total home market net sales value and total home market COP for all home market sales in the ordinary course of trade, and divided the sum of this difference by the total home market COP for these sales. We then multiplied this percentage by the COP for each U.S. model to derive the profit amount.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market (in this case the home market) at the same level of trade (LOT) as the EP or CEP transactions. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. When U.S. price is based on CEP transactions, the LOT is the level of the constructed sale from the exporter to the importer.[2] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997) (*Carbon Steel Plate*).

To evaluate whether different LOTs exist in the U.S. and home markets, we examine information regarding the chain of distribution between the producer and the customers in both markets, including information on stages in the marketing process, selling functions, classes of customer, and the level of selling expenses incurred for each type of sale. Customer categories such as distributors, retailers, or end-users are commonly used by petitioners and respondents to describe different LOTs, but, without substantiation, they are insufficient to establish that a claimed LOT is valid. An analysis of the chain of distribution and the selling functions substantiates or invalidates the claimed LOTs.

Unless we find that there are different selling functions for sales to the United States and home market, we will not determine that there are different LOTs. Different LOTs necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not sufficient alone to establish a difference in LOTs. Differences in LOTs are characterized by purchasers at different marketing stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to those purchasers. If the home market sale is at a different LOT than the U.S. sale, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and home market sales at the LOT of the U.S. sale, we make a LOT adjustment

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under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the differences between the LOTs for NV and CEP affect price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Carbon Steel Plate*, 62 FR at 61732, 61733.

ICI did not claim a LOT adjustment. Nevertheless, we evaluated whether a LOT adjustment was appropriate by examining ICI's distribution system, including selling functions, classes of customers, and selling expenses. In reviewing ICI's home market distribution channels, we found that the same selling functions were performed for all sales of the foreign like product; and thus all home market sales were made at only one LOT. Moreover, ICI made all of its U.S. sales to unaffiliated U.S. customers through its affiliate, ICI Americas, Inc. (ICIA). With respect to U.S. sales, after making deductions to the CEP pursuant to section 772(d) of the Act, we found that the selling activities performed by ICI for all CEP sales to its affiliate were limited to demand forecasting, order processing, arranging transportation, and invoicing. Therefore, we found one LOT in the U.S. market and determined that the selling functions performed for the NV LOT (*i.e.*, sales solicitation, price negotiation, customer visits, advertising, technical support, invoicing, rebate administration and billing adjustment) were different from the U.S. selling functions and constituted a more advanced LOT than the U.S. LOT. We, therefore, evaluated whether we could determine if the difference in these LOTs affected price comparability. The effect on price comparability must be demonstrated by a pattern of consistent price differences between sales at the two relevant LOTs in the home market. Because there is only one home market LOT, we are unable to determine whether there is a pattern of consistent price differences based on home market sales of foreign like product, and, therefore, are unable to quantify a LOT adjustment. Therefore, in accordance with section 773(a)(7)(B) of the Act, we have preliminarily granted ICI a CEP offset. *See Memorandum Re: Industrial Nitrocellulose from the United Kingdom Level of Trade Analysis Imperial Chemical Industries, PLC* dated July 31, 2002, on file in the CRU.

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See Change in Policy Regarding Currency Conversions*, 61 FR 9434 (March 8, 1996).

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

Exporter/Manufacturer	Weighted-Average Margin
Imperial Chemical Industries PLC	3.64 percent

We will disclose the calculations used in our analysis to parties to this proceeding in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). We will issue a memorandum detailing the dates of a hearing, if any, and deadlines for submission of written comments and rebuttal comments, limited to issues raised in such comments, after verification of ICI. Parties who submit comments are requested to submit with the comments (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at the hearing, within 120 days from the publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the entered value of the same merchandise. Upon completion of this review, where the importer-specific assessment rate is above *de minimis*, the Department will instruct Customs to assess antidumping duties on all entries of subject merchandise by that importer during the POR.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the case deposit rate for the reviewed company will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.13 percent, the "all-others" rate established in the LTFV investigation (55 FR 21058, May 22,1990).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–20389 Filed 8–9–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–535–001]

Cotton Shop Towels from Pakistan: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On April 8, 2002, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on cotton shop towel from Pakistan for the period January 1, 2000, through December 31, 2000. *See Cotton Shop Towels From Pakistan: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 67 FR 16718 (April 8, 2002) (*Preliminary Results*).

Based on our analysis of the comments received, we have not made changes to the net subsidy rates. Therefore, the final results do not differ from the preliminary results. The final net subsidy rates for the reviewed companies are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Gayle Longest at (202) 482–3338, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

Background

On April 8, 2002, the Department published its preliminary results of administrative review of the countervailing duty order on cotton shop towels from Pakistan. *See Preliminary Results*. This review covers 14 manufacturers/exporters: Mehtabi Towel Mills Ltd. (Mehtabi), Quality Linen Supply Corp. (Quality), Fine Fabrico (Fabrico), Ranjha Linen (Ranjha), Iftikhar Corporation (Iftikhar), Faisalabad Cotton Products (Pvt.) Ltd. (Faisalabad), Shahi Textiles (Shahi), United Towel Exporters (United), R.I. Weaving (R.I.), Universal Linen (Universal), Ishaq Towel Factory (Ishaq), Jawwad Industries (Jawwad), Silver Textile Factory (Silver), and Sultex Industries (Sultex). The review covers the period January 1, 2000, through December 31, 2000, and seven programs. We did not conduct verification of the questionnaire response.

On May 7, 2002, the Government of Pakistan, Mehtabi, Fabrico, Iftikhar, Ranjha, Quality, Faisalabad, Shahi, Ishaq, Universal, R.I. and United filed a brief. Petitioner did not file a brief or a rebuttal brief. The Department did not conduct a hearing in this review because none was requested.

Scope of the Review

The merchandise subject to this review is cotton shop towels. The product covered in this review is provided for under item number 6307.10.20 of the *Harmonized Tariff Schedule of the United States* (HTSUS). The HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) dated concurrent with this notice which is hereby adopted by this notice. A list of issues which parties have raised, and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit in room B–099 of the Main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at http://ia.ita.doc.gov, under the heading "Federal Register Notices." The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have not made any changes to the subsidy rate calculations from the preliminary results.

Final Results of Review

In accordance with 19 CFR 351.221(b)(5), we calculated an individual subsidy rate for each producer/exporter subject to this review. We will instruct the U.S. Customs Service (Customs) to assess countervailing duties as indicated below on all appropriate entries. For the period January 1, 2000, through December 31, 2000, we determine the net subsidy rates for the reviewed companies to be as follows:

Company	Ad Valorem Rate
Mehtabi	3.57%
Quality	3.57%
Fabrico	3.57%
Ranjha	3.57%
Iftikhar	3.57%
Faisalabad	3.57%
Shahi	2.23%
United	2.81%
R.I.	2.81%
Universal	2.81%
Ishaq	2.81%
Jawwad	4.53%
Silver	1.75%
Sultex	3.42%

We will instruct Customs to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash

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deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and the Torrington Company v. United States*, 822 F. Supp. 782 (CIT 1993); *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the Act, as amended by the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding, pursuant to the statutory provisions that were in effect prior to the URAA amendments, is applicable. *See Cotton Shop Towels From Pakistan: Final Results of Countervailing Duty Administrative Reviews*, 62 FR 24082 (May 2, 1997). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 2000, through December 31, 2000, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) and 777(i)(1) of the Act.

Dated: August 6, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I - Issues Discussed in Decision Memorandum

http://ia.ita.doc.gov, under the heading ("Federal Register Notices").

Methodology and Background Information

I. *Use of Facts Available*

II. *Analysis of Programs*

A. Programs Conferring Subsidies
1. Export Finance Scheme
2. Sales Tax Rebate Program
3. Customs Duty Rebate Program

B. Program Determined Not to Confer a Benefit
1. Income Tax Reduction on Export Income Program

III. *Programs Determined To Be Not Used*

A. Rebate of Excise Duty
B. Export Credit Insurance
C. Import Duty Rebates

IV. *Total Ad Valorem Rate*

V. *Analysis of Comments*

Comment 1 - Export Finance Scheme
Comment 2 - Customs Duty Rebate Program
Comment 3 - Sales Tax Rebate Program
Comment 4 - EFS Benefits Attributed to Cross-Owned Companies

[FR Doc. 02–20386 Filed 8–9–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta from Italy: Final Results of the Fifth Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On April 8, 2002, the Department of Commerce published in the Federal Register its preliminary results of the fifth administrative review of the countervailing duty order on certain pasta from Italy for the period January 1 through December 31, 2000.

We have made no changes to our preliminary findings as a result of either our analysis of the comments received or of any new information or evidence of changed circumstances. Therefore, the final results do not differ from the preliminary results of this review.

EFFECTIVE DATE: August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Craig Matney, Audrey Twyman, or Stephen Cho, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1778, 482–3534, or 482–3798, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA"), effective January 1, 1995 ("the Act"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR 351 *et seq.* (2002).

Background

On July 24, 1996, the Department of Commerce ("the Department") published in the **Federal Register** (61 FR 38544) the countervailing duty order on certain pasta from Italy.

In accordance with 19 CFR 351.213(b), this review of the order covers the following producers or exporters of the subject merchandise for which a review was specifically requested: F.lli De Cecco di Filippo Fara S. Martino S.p.A. ("De Cecco"); Delverde S.p.A. ("Delverde"); Italian American Pasta Company, S.r.L. ("IAPC"); and Labor S.r.L. ("Labor").

Based on withdrawal of the request for review, we rescinded this administrative review for N. Puglisi & F. Industria Paste Alimentari S.p.A. ("Puglisi"). (*See, Certain Pasta from Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 67 FR 16722 (April 8, 2002) ("*Preliminary Results*").

Since the publication of the *Preliminary Results*, a case brief was submitted on May 8, 2002, by Delverde. The Department did not conduct a hearing in this review because none was requested.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Istituto Mediterraneo Di Certificazione, Bioagricoop Scrl, QC&I International Services, Ecocert Italia, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.L.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the countervailing duty order.(*See* August 25, 1997, memorandum from Edward Easton to Richard Moreland, which is on file in the Central Records Unit ("CRU") in Room B–099 of the main Commerce building.)

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the countervailing duty order. (*See* July 30, 1998, letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., which is on file in the CRU.)

(3) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the countervailing duty order. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the countervailing duty order. (*See* May 24, 1999, memorandum from John Brinkmann to Richard Moreland, which is on file in the CRU.)

Period of Review

The period of review ("POR") for which we are measuring subsidies is from January 1 through December 31, 2000.

Analysis of Comments Received

All issues raised in the case brief by the interested party to this administrative review are addressed in the August 6, 2002, *Issues and Decision Memorandum* ("*Decision Memorandum*") from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, which is hereby adopted by this notice. Attached to this notice as Appendix I is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the CRU, Room B–099 of the Department. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/ under the heading "Italy." The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

We have made no changes to our preliminary findings as a result of either our analysis of the comments received or of any new information or evidence of changed circumstances. Therefore, the final results do not differ from the preliminary results of this review.

Final Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1 through December 31, 2000, we determine the net subsidy rates for producers/exporters under review to be those specified in the chart shown below.

Company	*Ad valorem rate*
F.lli De Cecco di Filippo Fara San Martino, S.p.A.	1.90 percent
Delverde S.p.A.	2.83 percent
Italian American Pasta Company, S.r.L.	0.00 percent
Labor, S.r.L.	1.57 percent

We will instruct the U.S. Customs Service ("Customs") to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentage detailed above of the f.o.b. invoice prices on all shipments of the subject merchandise from the producers/exporters under review, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

The cash deposit rates for all companies not covered by this review are not changed by the results of this review. Thus, we will instruct Customs to continue to collect cash deposits for non-reviewed companies, except Barilla G. e R. F.lli S.p.A. ("Barilla") and Gruppo Agricoltura Sana S.r.L. ("Gruppo") (which were excluded from the order during the investigation), at the most recent rate applicable to the company. These rates shall apply to all non-reviewed companies until a review of the companies assigned these rates is completed. In addition, for the period January 1 through December 31, 2000, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.301. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

DATED: August 6, 2002.

Faryar Shirzad,

Assistant Secretaryfor Import Administration.

Appendix I Issues discussed in the Decision Memorandum

I. Subsidies Valuation Methodology

1. Change in Ownership
2. Benchmarks for Long-term Loans and Discount Rates

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3. Allocation Period
4. Attribution

II. Analysis of Programs

A. Programs Previously Determined to Confer Subsidies

1. Law 64/86 Industrial Development Grants
2. Law 488/92 Industrial Development Grants
3. Industrial Development Loans Under Law 64/86
4. Law 341/95 Interest Contributions on Debt ConsolidationLoans
5. Social Security Reductions and Exemptions - Sgravi
6. IRAP Exemptions
7. Law 304/90 Export Marketing Grants
8. Export Restitution Payments
9. IRPEG Exemptions

B. Programs Determined to Be Not Used

1. Law 64/86 VAT Reductions
2. Export Credits under Law 227/77
3. Capital Grants under Law 675/77
4. Retraining Grants under Law 675/77
5. Interest Contributions on Bank Loans under Law 675/77
6. Interest Grants Financed by IRI Bonds
7. Preferential Financing for Export Promotion under Law 394/81
8. Urban Redevelopment under Law 181
9. Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market ("PRISMA")
10. Law 183/76 Industrial Development Grants
11. Law 598/94 Interest Subsidies
12. Law 236/93 Training Grants
13. European Regional Development Fund ("ERDF")
14. Duty-Free Import Rights
15. Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77
16. Law 1329/65 Interest Contributions ("Sabatini Law")
17. European Social Fund ("ESF")

III. Analysis of Comments

Comment 1: Application of the Department's privatization methodology to Delverde (Delverde)
Comment 2: Presumption that subsidies continue after a change in ownership (Delverde)
Comment 3: Privatization and the U.K. Lead Bar Panel (Delverde)
Comment 4: Sale of shares vs. assets (Delverde)
Comment 5: Continuity of business operations (Delverde)

[FR Doc. 02–20387 Filed 8–9–02; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Exporters' Textile Advisory Committee; Notice of Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on Tuesday, August 20, 2002. The meeting will be from 10 a.m. to 12:30 p.m. at the Greensboro-High Point Marriott (Airport Marriott), Greensboro, North Carolina.

The Committee provides advice and guidance to Department officials on the identification and surmounting of barriers to the expansion of textile exports, and on methods of encouraging textile firms to participate in export expansion.

The Committee functions solely as an advisory body in accordance with the provisions of the Federal Advisory Committee Act.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact Monica Montavon, telephone: (202) 482–2257. Dated: August 7, 2002.

D. Michael Hutchinson,

Acting Chairman, Committee for Implementation of Textile Agreements.

[FR Doc.02–20385 Filed 8–9–02; 8:45 am]
BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Approval of the Indiana Coastal Management Program

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of the National Oceanic and Atmospheric Administration, National Ocean Service's approval of the Indiana Coastal Management Program pursuant to the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

SUMMARY: Notice is hereby given that the National Oceanic and Atmospheric Administration (NOAA) approved the Indiana Lake Michigan Coastal Management Program (LMCP) on August 5, 2002, pursuant to the provisions of section 306 of the Federal Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1455 (CZMA). The LMCP is described in the Indiana Coastal Management Program and Final Environmental Impact Statement (P/FEIS) published on June 21, 2002.

Indiana is the 34th state to receive Federal approval of its coastal management program. Indiana submitted a proposed coastal program to NOAA in April 2001. Upon reaching a preliminary decision that the program met the requirements of the CZMA, and in order to meet its responsibilities under the National Environmental Policy Act, NOAA published the Indian Coastal Management Program and Draft Environmental Impact Statement (P/DEIS) for public review on September 21, 2001. NOAA published the P/FEIS including public comments on the P/DEIS and responses to those comments on June 21, 2001. NOAA has also fulfilled the responsibilities under the Endangered Species Act through consultations with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. Upon completion of the 30-day review period, NOAA will prepare a Record of Decision in accordance with the requirements of 40 CFR 1502.2 of regulations to implement the National Environmental Policy Act.

The LMCP is the culmination of several years of development by the State of Indiana, in consultation with interest groups, the general public, Federal agencies, and NOAA. The LMCP consists of numerous state policies on diverse coastal management issues which are prescribed by statute and other legal mechanisms and made enforceable under state law. The LMCP will improve the decision making process for determining appropriate coastal land and water uses in light of resource consideration and increase public awareness of coastal resources and processes. The LMCP will increase long term protection of the state's coastal resources, while providing for sustainable economic development.

NOAA approval of the LMCP makes the state eligible for federal financial assistance for program administration and enhancement under sections 305, 306A, 308, 309 and 310 of the CZMA (16 U.S.C. Sec. 1455, 1455a, 1456a, and 1456b). Indiana has submitted an application for $1,150,000 in FY 2002 Federal CZMA funds, which are available for Indiana. These funds will generally be used to assist the state in administering the various state authorities included in the LMCP, as well as be used to fund local management efforts.

NOAA approval of the LMCP also makes operational, as of the date of this **Federal Register** Notice, the CZMA federal consistency requirement with respect to the LMCP (16 U.S.C. 1456; 15 CFR part 930). Therefore, as of today, direct federal activities occurring within or outside the Indiana coastal zone that are reasonably likely to affect any land or water use or natural resources of the Indiana coastal zone must be consistent to the maximum extent practicable with the enforceable policies of the LMCP. In addition, activities within or outside the Indiana coastal zone requiring a federal license or permit listed in the P/FEIS, and federal financial assistance to state agencies and local governments, that are reasonably likely to affect any land or water use or natural resource of the Indiana coastal zone must be consistent with the enforceable policies of the LMCP.

Chapter 5 of the P/FEIS identifies the enforceable policies of the Indian program. Chapter 11 of the P/FEIS identifies federally licensed or permitted activities subject to the federal consistency requirements. Chapter 4 of the P/FEIS, as well as the CZMA regulations at 15 CFR Part 930, provide specific procedures to be used in the Federal/State coordination process.

ADDRESSES: For further information and for a copy of the Record of Decision, please contact Diana Olinger at (301) 713–3155, Extension 149, or electronic mail at *diana.olinger@noaa.gov.*

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: August 5, 2002.

Alan Neuschatz,

Associate Assistant Administrator, Management and Budget Office, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 02–20294 Filed 8–9–02; 8:45 am]
BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080502J]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting via conference call of the Reef Fish Advisory Panel (AP) and Reef Fish Scientific and Statistical Committee (SSC).

DATES: The AP meeting will be via conference call on August 26, 2002 beginning at 10 a.m. EST. The SSC meeting will be via conference call on August 28, 2002 beginning at 10 a.m. EST.

ADDRESSES: A listening station will be available at the following locations: NMFS Southeast Regional Office, 9721 Executive Center Drive, North, St. Petersburg, FL 33702, Contact: Joyce Mochrie at 727–570–5305; NMFS Pascagoula Laboratory, 3909 Frederic Street, Pascagoula, MS 39567, Contact: Cheryl Hinkel at 228–762–4591, ext. 267.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Peter Hood, Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The AP and SSC will be convened to review the Council's proposed Secretarial Amendment 2 to the Reef Fish Fishery Management Plan (FMP) to set greater amberjack Sustainable Fisheries Act (SFA) targets and thresholds and to set a rebuilding plan. The AP and SSC will be convened via conference call beginning at 10 a.m. EST on August 26, 2002 and August 28, 2002, respectively. The greater amberjack resource in the Gulf of Mexico was declared overfished by NMFS on February 9, 2001 based on the 2000 greater amberjack stock assessment. The results of several analyses indicated that the stock biomass was below the level needed to sustain harvest at maximum sustainable yield (MSY), with the best estimate indicating that the stock biomass was at less than half the biomass needed to sustain MSY, below the minimum level allowed under the 1998 NMFS National Standard Guidelines. However, NMFS concluded that overfishing is not currently occurring due to the recent implementation of management measures that were not reflected in the stock assessment. These measures included: (1) a reduction in the greater amberjack recreational bag limit from 3 to 1 fish (implemented 1997); (2) a commercial closed season during March, April and May (implemented 1998); and (3) partial protection of misidentified juvenile greater amberjack by establishment of a slot limit on lesser amberjack/banded rudderfish of 14 and 22 inches fork length plus an aggregate 5–fish recreational bag limit. As a result of this finding, additional measures to end overfishing are not needed, but a plan to rebuild the stock is needed.

Because NMFS has declared the stock overfished, the Council is required to rebuild the stock to a level where it is no longer considered overfished. Before a plan can be put into effect, management targets and thresholds that the stock needs to achieve must be defined. These are: definitions for maximum sustainable yield (MSY), optimum yield (OY), the minimum stock size threshold (MSST) below which a stock is considered to be overfished, the maximum fishing mortality threshold (MFMT) above which a stock is considered to be undergoing overfishing. The proposed amendment also provides alternative rebuilding plans that will rebuild the stock within 10 years or less and are based on various rebuilding strategies.

A copy of the agenda can be obtained by contacting the Council (see **ADDRESSES**).

Although non-emergency issues not contained in the agenda may come before the AP/SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the MSFCMA, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by August 19, 2002.

Dated: August 7, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20382 Filed 8–9–02; 8:45am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080502H]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

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ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat Oversight Committee and Scientific and Statistical Committee in August, 2002 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held August 27-28, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Mansfield and Newburyport, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 50 Water Street, Mill 52, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Tuesday, August 27, 2002, 10 a.m.–Scientific and Statistical Committee Meeting

Location: Rossi's Restaurant, 50 Water Street, Mill #2, Newburyport, MA 01950; telephone: (978) 499–0240.

The committee will elect a chair and vice-chair. The agenda will include providing guidance to the Council on scallop management reference points as well as monkfish management reference points.

Wednesday, August 28, 2002, 9:30 a.m.–Habitat Oversight Committee Meeting

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

The agenda will include consideration and approval of methods for minimizing the effects of scallop fishing on essential fish habitat for Amendment 10 to the Scallop Fishery Management Plan (FMP). There will also be discussion of habitat issues in Scallop Framework 15. The committee will also discuss ongoing analyses for Amendment 13 to the Multispecies FMP.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: August 7, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20383 Filed 8–9–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080502G]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) and the Groundfish Subcommittee of the Scientific and Statistical Committee (SSC GF Subcommittee) will hold a working meeting which is open to the public.

DATES: The GMT and the SSC GF Subcommittee working meeting will begin Tuesday, August 27, 2002, at 10 a.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. to noon on Wednesday, August 28.

ADDRESSES: The meeting will be held at the Shilo Inn, 11707 NE Airport Way, Portland, OR 97220; telephone: (503) 252–5800.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Fishery Management Coordinator; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT and SSC GF Subcommittee meeting is to discuss a new yelloweye rockfish stock assessment and any other pertinent information in order to prepare final recommendations regarding groundfish harvest levels and management measures for 2003.

Although nonemergency issues not contained in this agenda may come before the GMT and SSC GF Subcommittee for discussion, those issues may not be the subject of formal GMT and SSC GF Subcommittee action during this meeting. GMT and SSC GF Subcommittee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMT and SSC GF Subcommittee's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: August 7, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20384 Filed 8–9–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The amendment consists of correcting a duplicate system identifier assigned to a system of records notice that was published on July 31, 2002, at 67 FR 49679. The system identifier for A0351 HSC–AHS, U.S. Army Medical Department School and Academy of Health Sciences Academic Records (February 15, 2002, 67 FR 7140) should have been changed to 'A0351a DASG'. This amendment corrects this oversight.

DATES: This proposed action will be effective without further notice on September 11, 2002, unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 5, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0351 HSC–AHS

SYSTEM NAME:

U.S. Army Medical Department School and Academy of Health Sciences Academic Records (February 15, 2002, 67 FR 7140).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0351a DASG'.

* * * * *

A0351a DASG

SYSTEM NAME:

U.S. Army Medical Department School and Academy of Health Sciences Academic Records.

SYSTEM LOCATION:

U.S. Army Medical Department Center and School, Academy of Health Sciences, Department of Academic Support, 2250 Stanley Road, Fort Sam Houston, TX 78234–6100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Resident and correspondence students enrolled in courses at the Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Student's name, Social Security Number, grade/rank, academic qualifications, progress reports, academic grades, ratings attained, aptitudes and personal qualities, including corporate fitness results; faculty board records pertaining to class standing/rating/classification/proficiency of students; class academic records maintained by instructors indicating attendance and progress of class members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 351–3, Professional Education and Training Programs of the Army Medical Department; and E.O. 9397 (SSN).

PURPOSE(S):

To determine eligibility for enrollment/attendance, monitor student progress, record accomplishments, and serve as record of courses which may be prerequisite for other formal courses of instruction, licensure, certification, and employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to civilian medical institutions for the purpose of accrediting the individual's training and instruction.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, microfiche, cards, magnetic tape and/or disc, and computer printouts.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Access to all records is restricted to designated individuals whose official duties dictate the need therefore.

RETENTION AND DISPOSAL:

Academic records are maintained 40 years at the Academy of Health Sciences. Except for the master file, automated data are erased after the fourth updating cycle.

SYSTEM MANAGER(S) AND ADDRESS:

Registrar, Academy of Health Sciences, 2250 Stanley Road, Fort Sam Houston, TX 78234–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Registrar, Academy of Health Sciences, 2250 Stanley Road, Fort Sam Houston, TX 78234–6000.

For verification purposes, individual should provide the full name, Social Security Number, date attended/enrolled, current address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Registrar, Academy of Health Sciences, 2250 Stanley Road, Fort Sam Houston, TX 78234–6000.

For verification purposes, individual should provide the full name, Social Security Number, date attended/enrolled, current address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and Academy of Health Sciences' staff and faculty.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–20270 Filed 8–9–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Uniformed Services University of the Health Sciences

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 8 a.m. to 4 p.m., August 13, 2002.

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3))

MATTERS TO BE CONSIDERED:

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8 a.m. Meeting—Board of Regents
(1) Approval of Minutes—May 17, 2002
(2) Faculty Matters
(3) Departmental Reports
(4) Financial Report
(5) Report—President, USUHS
(6) Report—Dean, School of Medicine
(7) Report—Dean, Graduate School of Nursing
(8) Comments—Chairman, Board of Regents
(9) New Business

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary, Board of Regents, (301) 295–3116.

Dated: August 8, 2002.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–20498 Filed 8–8–02; 3:07 pm]

BILLING CODE 5001–03–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by September 11, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: August 6, 2002.

Joseph Schubart,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New.
Title: Approval to Implement Consent for IRS to Disclose Your Tax Information Web Site.
Abstract: The "Consent for IRS to Disclose Your Tax Information" Web site will provide student aid applicants and their families a mechanism for electronically authorizing the IRS to disclose taxpayer information to participating pilot schools.
Additional Information: To review the Consent For IRS to Disclose Your Tax Information Web site, please go to: *http://consentpilot.sfa.ed.gov/IRSForm/home.jsp.*
Frequency: At the end of the pilot.
Affected Public: Individuals or household.
Reporting and Recordkeeping Hour Burden:
Responses: 600.
Burden Hours: 400.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2077. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Joseph Schubart at his Internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–20277 Filed 8–9–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No: 84.051B]

Office of Vocational and Adult Education; College and Career Transitions Initiative (CCTI)—Cooperative Agreement; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: The purpose of the college and career transitions initiative (CCTI) is to strengthen the role of community and technical colleges in easing student transitions between secondary and postsecondary education, and improving academic performance at both the secondary and postsecondary levels.

Eligible Applicants: Consortia that include both: (1) a national or international, non-profit, private membership organization—chiefly comprised of institutions of higher education that offer a two-year, associate degree or certificate program—and (2) two or more individual institutions of higher education that offer a two-year associate degree or certificate program.

Applications Available: August 12, 2002.

Deadline for Transmittal of Applications: September 11, 2002.

Deadline for Intergovernmental Review: September 11, 2002.
Estimated Available Funds: $2,500,000.
Estimated Amount of Award: $2,500,000.
Estimated Number of Awards: 1, in the form of a cooperative agreement.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months, depending upon the availability of appropriations in subsequent years under the current statutory authorization.

Applicable Statute and Regulations: (a) The relevant provisions of the Carl D. Perkins Vocational and Technical Education Act of 1998 (the Act), 20 U.S.C. 2301 *et seq.*, in particular section 114(c)(1)(A) of the Act (20 U.S.C. 2324(c)(1)(A)).

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, 86, 97, 98, and 99.

SUPPLEMENTARY INFORMATION: This initiative is designed to support the principles established in the No Child Left Behind Act of 2001 by investing in strategies to (1) close the achievement gap, (2) create meaningful educational options that help students with diverse backgrounds and needs reach uniformly high standards, and (3) ensure that students attain these high standards at each level of their educational careers.

The initiative will further the development, by postsecondary institutions in partnership with secondary schools, of academically rigorous programs of study organized around broad occupational areas. These programs of study, connecting course offerings at the secondary level with increasingly advanced academic and technical courses at the postsecondary level, will equip students with the skills and credentials required for success in high-demand, high-wage career fields.

Anticipated outcomes for participating students include: increased success rates for entry into, and completion of postsecondary education; acceleration of attainment of postsecondary certificate or degree; decreased need for remediation; and improved levels of academic and skill achievement.

Program Activities

The consortium must carry out the following activities with the assistance provided under the cooperative agreement:

(a) *Proposal and Partnership with Promising Programs.*

(1)(i) The consortium must retain control of and responsibility for the Federal funds awarded under CCTI, and must be responsible for carrying out the various required activities specified in this notice.

(ii) The consortium must propose in its application, and—in consultation with the Department—enter into at least 10 but no more than 20 partnerships, for the purpose of expanding promising career and college transition programs.

(iii) These programs must focus on one or more broad, high-growth, occupational areas.

(iv) The consortium must enter into partnerships at secondary or postsecondary sites, or both, to provide students with a coherent sequence of high-level academic and technical skills, ensure seamless connections between students' secondary and postsecondary coursework, and culminate in joint credit or a certificate.

(v) Each partnership must be led by an institution of higher education that is a member of the consortium submitting the application, in partnership with (A) one or more secondary schools or local educational agencies (LEAs), and (B) two or more local employers.

(vi) If the consortium regards it as beneficial to the project, the partnership may also include (A) the eligible State agency responsible for administering vocational and technical education, and (B) the State agency responsible for administering institutions of higher education that offer a two-year associate degree or certificate program.

(vii) Of the partnerships entered into by the consortium—

(A) Two must include a focus on health science;

(B) Two must include a focus on information technology; and

(C) The remaining partnerships must be focused on other occupational areas that are, at a minimum, high-growth and high-demand, and reflect the needs of national, State, or regional labor markets.

(2)(i) If selection of partnerships is possible before the application deadline, the consortium must list in its application each proposed partnership, including—

(A) The lead institution and all participating partners; and

(B) The occupational focus area or areas of each from section (a)(1)(vii)(A)–(C) of this notice.

(ii) If selecting partnerships is not possible before the application deadline, the consortium must state a specific timeframe within which it proposes to select partnerships.

(iii) In either case, the consortium must clearly describe the criteria and process for selecting the partnerships, including, at a minimum—

(A) Evidence of high academic and technical standards calibrated to the most rigorous State standards for which the State holds students, teachers, and administrators accountable;

(B) Evidence of curriculum alignment;

(C) Evidence of existing articulation agreements among the postsecondary institution and its secondary partner or partners; and

(D) Evidence of institutional commitment and capacity on the part of all partners to enhance and expand their programs of study in keeping with the requirements of this notice.

(3) To the extent practicable, the consortium must ensure that selected partnerships represent geographical dispersion, a variety of delivery mechanisms, and a range of strategies to connect the secondary and postsecondary levels, to facilitate student transitions.

(4) To solicit input from representatives of institutions of higher education, secondary schools, employers representing the selected broad occupational area or areas, and other relevant parties, the consortium may encourage each partnership to collaborate or consult with existing local advisory boards or business-education partnerships.

(b) *Project Activities.* The consortium must do the following:

(1) Describe in its application and implement on receipt of the CCTI cooperative agreement, a management plan.

(i) The management plan must be designed to ensure effective implementation of activities conducted together with each partnership.

(ii) The management plan must include, at a minimum, convening representatives of the partnerships—by telephone quarterly and in person yearly—possibly in coordination with other annual consortium events, to—

(A) Discuss the progress of implementation and share promising practices and lessons learned;

(B) Provide technical assistance to individual partnerships in addressing challenges and identifying successful strategies; and, if common needs are identified, to the partnerships as a group; and

(C) Provide for regular electronic communications to and among the partnerships to ensure that relevant information, research, news, reminders and other items of interest are shared in a consistent manner.

(2) (i) Through its collaboration with the partnerships, develop and refine practices that help students move effectively from high school to college by better aligning and improving the

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quality of secondary and postsecondary programs in high-demand career areas.

(ii) Specifically, the consortium and the partnerships must implement and enhance strategies such as—

(A) Curriculum development and course sequencing;

(B) Rigorous instructional strategies based on appropriate existing State standards;

(C) Regular, high-quality professional development for teachers;

(D) Academic assessments, assessment of employability skills, and industry-based assessments and certifications;

(E) Dual or concurrent enrollment for academic and technical courses;

(F) Academic and career-related counseling and other student support services;

(G) Distance learning using computer-based and internet-based technologies; and

(H) Articulation with postsecondary baccalaureate programs.

(3) Issue a contract for the documentation of program outcomes. This includes the following:

(i) The use of existing data sources or the establishment of systems for collecting data about participating students on a set of identified anticipated outcomes, including, at a minimum—

(A) Enrollment and persistence in postsecondary education;

(B) Academic and skill achievement;

(C) Rates of remediation;

(D) Postsecondary certificate or degree attainment; and

(E) Entry into employment.

(ii) Rigorous case studies of each partnership, describing each of the partners, selected occupational program or programs of study, and development and implementation activities. Each case study must include, but is not limited to, a description of the following:

(A) Governance structures.

(B) Faculty development.

(C) Strategies to coordinate activities among secondary, postsecondary, and other partners.

(D) Efforts to align postsecondary requirements to the State's established standards for secondary school students.

(E) Facilitators and barriers to project implementation.

(c) *Advisory Working Group and Outside Consultation.*

(1)(i) In carrying out the CCTI project, the consortium must establish an advisory working group to provide ongoing input to the project partners regarding the project activities.

(ii) The advisory working group must include among its members a representative of the Department, representatives of secondary and postsecondary career occupational areas, representatives of business and industry, and researchers whose expertise and counsel may contribute to the success of the project .

(iii) At a minimum, the consortium must convene the advisory working group in person at least once annually, and must make use of technology to ensure regular, timely, and cost-effective communication.

(iv) The advisory working group must—

(A) Provide advice to the consortium on the implementation of the project;

(B) Help ensure that the project results are useful to a larger audience;

(C) Make recommendations to the consortium and the Department on possible enhancements;

(D) Review and comment on draft evaluation instruments and consortium products; and

(E) Advise on dissemination activities listed in section (d) of this notice.

(d) *Dissemination.* As the project progresses, the consortium must do the following:

(1) Package and disseminate the findings of the case studies in formats appropriate for each audience to interested entities, such as: postsecondary and secondary institutions and their representative organizations; employer organizations; State agencies responsible for secondary education; State agencies responsible for vocational and technical education; LEAs; and secondary schools.

(2) (i) Assist institutions of higher education that offer a two-year degree or certificate and LEAs to implement or adapt promising programs and strategies developed by the partnerships in ways that meet local needs.

(ii) The consortium may accomplish this through such means as—

(A) Offering professional development activities for States and outlying areas;

(B) Developing training institutes and materials designed to promote the replication of these activities by other partnerships across the country;

(C) If appropriate, organizing a limited number of site visits for practitioners, policymakers, and other interested parties, to demonstrate how these activities work in practice; and

(D) Hosting sessions at conferences, workshops, and other events that provide opportunities to share the promising practices and implementation approaches developed through this cooperative agreement.

(3) Link this project with other efforts of the Department of Education, the Department of Labor, and the National Science Foundation to improve the preparation of individuals for postsecondary and career success.

(e) *Evaluation.* At the Department's request, the consortium and its partnerships must make available the data collected under section (b)(3)(i)(A)–(E) and (ii)(A)–(E), and participate in all evaluation activities the Department conducts related to this initiative.

(f) *Interim Reports.* Within 45 days after the conclusion of each project year— except for the final project year in which a final report must be submitted as described in paragraph (g) of this notice— the consortium must prepare and submit to the Department a progress report that—

(1) Provides an update on the completion of project goals and activities;

(2) Offers baseline and updated data on project participants;

(3) Outlines major challenges to achieving project goals, and strategies for addressing these challenges; and

(4) Describes major changes, if any, in project activities.

(g) *Final Report.* Within six months after the conclusion of the cooperative agreement, the consortium must prepare and submit to the Department a final technical report that—

(1) Outlines the activities and accomplishments of the partnerships;

(2) Provides evidence of the promising practices developed through the cooperative agreement;

(3) Includes the findings of the case studies and products based on these findings;

(4) Offers final data on student participants; and

(5) Includes the plan for disseminating the products and knowledge gained from the project, to appropriate audiences.

Selection Criteria

The Department will apply the following selection criteria in evaluating cooperative agreement applications under this competition.

The maximum total score any applicant may receive is 100 points.

The maximum score for each criterion is indicated in parentheses.

(a) Local Partner Support. (20 points)

(1) (i) The extent to which the applicant has in place a network of institutions that demonstrate capacity and support for the project.

(ii) The extent to which the applicant has demonstrated its capacity to obtain commitments and support from each partnership, such as support from eligible agencies, participating institutions of higher education, secondary schools, LEAs, and local employers.

(b) Technical Approach. (50 points)

(1) The extent to which the applicant presents—

(i) A clear justification for the occupational areas selected;

(ii) A clear delineation of academic and skill standards calibrated to the most rigorous State standards; and

(iii) The purpose and scope of the project. (15 points)

(2) The extent to which the applicant comprehensively addresses in its application each required activity, clearly defining the functions to be undertaken to accomplish each activity. (10 points)

(3) The extent to which the applicant—

(i) Identifies potential improvements in design and additional activities that may enhance the proposed project; and

(ii) Describes any anticipated problems and recommends solutions to these problems. (10 points)

(4) The extent to which the proposed project demonstrates its capacity to gather baseline and annual data on program participants under each partnership. (15 points)

(c) Management Plan. (20 points)

(1) The extent to which—

(i) The applicant includes a description, in a clear and sequential fashion, of the plan for managing the project; and

(ii) The plan provides credible evidence that the management of personnel, physical resources, activities, and work production will result in orderly and timely completion of work within the project performance period. (15 points)

(2) The extent to which the time commitments of the Project Director for the overall project and the time commitments of project personnel at each site are appropriate to the tasks assigned. (5 points)

(d) Project Management. (10 points)

The extent to which the Project Director for the overall project and project personnel at each site have clearly identified and documented qualifications, competencies, and experiences that are appropriate for the tasks to be carried out under this cooperative agreement.

Definitions

The definitions in section 3 of the Act apply to this competition. Specifically, the term "institution of higher education" has the meaning given the term in section 101 of the Higher Education Act of 1965.

In addition, the term "occupational area" means a group of related jobs and occupations within an industry sector, such as the following:

(a) *Health Science.* (1) This term comprises courses or programs or both related to planning, managing, and providing diagnostic, therapeutic, information, and environmental services in health care.

(2) The term includes the following programs of study: Therapeutic Services, Diagnostic Services, Information and Communication Services, Environmental Supportive Services, and Biotechnology and Pharmaceutical Services.

(b) *Information Technology.* (1) This term comprises courses or programs or both related to the design, development, support, and management of hardware, software, multimedia, and systems integration services.

(2) This term includes the following programs of study: Network Systems, Information and Support Services, Interactive Media, and Program and Software Development.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations and selection criteria. However, in order to make timely cooperative agreement awards in FY 2002, the Assistant Secretary has decided to issue this application notice with program requirements and selection criteria without first publishing the notice for public comment. These requirements and criteria will apply to the FY 2002 cooperative agreement competition only. The Assistant Secretary takes this action under authority of section 437(d)(1) of the General Education Provisions Act (GEPA).

Section 437(d)(1) of GEPA exempts from formal rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). The program authority for Vocational Education Research Activities (20 USC 2324 (c)) was substantially revised on October 31, 1998 by Pub. L. 105–332. This is the first competition under section 114(c)(1)(A) of the Act. Any requirements or criteria that the Department establishes in future years related to this authority will be published in proposed form in the **Federal Register** with an opportunity for interested parties to comment.

For Applications and Further Information Contact: Scott Hess, U.S. Department of Education, 400 Maryland Avenue, SW., room 4332, Mary Switzer Building, Washington, DC 20202–7241. Telephone: (202) 205–9422, or via Internet: *Scott.Hess@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Department

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/legislation/FedRegister.

You may also view this document and the application package in text or PDF at the following site: www.ed.gov/offices/OVAE. To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 20 U.S.C. 2324 (c)(1)(A).

Dated: August 7, 2002.

Carol D'Amico,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 02–20359 Filed 8–9–02; 8:45 am]

BILLING CODE 4000–01–P

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DEPARTMENT OF ENERGY

National Nuclear Security Administration; Notice of Comment Period Extension for the Notice of Intent To Prepare a Site-Wide Environmental Impact Statement for Lawrence Livermore National Laboratory

AGENCY: Department of Energy, National Nuclear Security Administration.

ACTION: Notice of comment period extension.

SUMMARY: On June 17, 2002, the National Nuclear Security Administration (NNSA) published, in the **Federal Register**, the Notice of Intent (NOI) to prepare a Site-Wide Environmental Impact Statement for Lawrence Livermore National Laboratory (67 FR 41224). The comment period for that NOI was scheduled to end on August 13, 2002. The NNSA has decided to extend the comment period until September 16, 2002. Written comments on the scope of the SWEIS or requests for information should be sent to Mr. Thomas Grim, Document Manager, 1301 Clay Street, Oakland, CA 94612–5208. Comments may also be sent by e-mail (*tom.grim@oak.doe.gov*) or facsimile (925–422–1776). Additionally, any agency, state, pueblo, tribe, or units of local government that desire to be designated a cooperating agency should contact: Mr. Thomas Grim at (925) 422–0704 by September 16, 2002.

Issued in Washington, DC, this 6th day of August, 2002.

James J. Rose,

Deputy NEPA Compliance Office, National Nuclear Security Administration.

[FR Doc. 02–20304 Filed 8–9–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Certification Notice—208]

Office of Fossil Energy; Notice of Filings of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of filings.

SUMMARY: The owners/operators of 10 baseload electric powerplants have submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended, in accordance with 10 CFR 501.60, 61.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Import/Export, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load electric powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy (DOE). The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of proposed new baseload electric powerplants have filed self-certifications pursuant to section 201(d) and in accordance with DOE regulations in 10 CFR 501.60, 61.

Owner/operator	Capacity	Plant location	In-service date
Tenaska Virginia Partners, L.P	885 MW	Palmyra, VA	June 1, 2004.
CalPeak Power—El Cajon LLC	49.5 MW	San Diego Cty, CA	May 21, 2002.
FPL Energy Marcus Hook, L.P	744 MW	Delaware City, PA	2nd Qrt. 2004.
Feather River Energy Ctr. LLC	45 MW	Sutter County, CA	4th Qrt. 2002.
Lambie Energy Center, LLC	45 MW	Solano County, CA	4th Qrt. 2002.
Goose Haven Energy Ctr, LLC	45 MW	Solano County, CA	4th Qrt. 2002.
Creed Energy Facility, LLC	45 MW	Solano County, CA	4th Qrt. 2002.
Pajaro Energy Center, LLC	45 MW	Monterey County, CA	4th Qrt. 2002.
Sunrise Power Company, LLC	585 MW	Fellows, CA	July 2003 Phase II.
Metcalfe Energy Center, LLC	600 MW	Santa Clara Cty., CA	Summer 2004.

Issued in Washington, DC, on August 1, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–20305 Filed 8–9–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–397–000]

ANR Pipeline Company; Notice of Tariff Filing

August 6, 2002.

Take notice that on July 29, 2002, ANR Pipeline Company (ANR) filed revised tariff sheets that propose changes to the procedures applicable to the Right of First Refusal ("ROFR") in ANR's FERC Gas Tariff. The changes are designed to (1) allow Shippers to exercise ROFR with respect to a specified level of expiring capacity; and (2) provide for notice periods that allow ANR sufficient time to resell capacity that shippers do not wish to retain. ANR has proposed Primary Tariff Sheets that revise the currently effective tariff sheets and an Alternate Tariff Sheet that revises the pending tariff sheets that have been filed as part of ANR's Order No. 637 settlement in Docket No. RP00–332–000. ANR proposes that the Primary Sheets be placed into effect on September 1, 2002, and that the Alternate Sheet be placed into effect upon acceptance of the pending sheets in Docket No. RP00–332–000.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20320 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–403–000]

ANR Pipeline Company; Notice of Tariff Filing

August 6, 2002.

Take notice that on July 31, 2002, ANR Pipeline Company (ANR) filed revised tariff sheets to allow it to agree to minimum pressure commitments upon specified conditions to ensure that such commitments do not have any adverse effect on its system. ANR requests an effective date of September 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20324 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3288–007]

Arizona Public Service Company; Notice of Filing

August 6, 2002.

Take notice that on July 30, 2002, Arizona Public Service Company (APS) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Quarterly Refund payments to eligible wholesale customers under the Company's Fuel Cost Adjustment Clause (FAC).

A copy of this filing has been served upon the affected parties, the California Public Utilities Commission, and the Arizona Corporation Commission.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: August 20, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20311 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–417–000]

Colorado Interstate Gas Company; Notice of Application

August 6, 2002.

Take notice that on July 31, 2002, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado, 80944, in Docket No. CP02–417–000 filed an application pursuant to section 7(b) of the Natural Gas Act (NGA) and the Commission's Rules and Regulations, for permission and approval for CIG to abandon by sale and transfer certain certificated and non-certificated facilities, involved in the gathering of natural gas, located in Carson, Moore, Potter, Hartley, Hutchinson and Oldham Counties, Texas, which are part of the Panhandle Field, to Pioneer Natural Resources USA, Inc. (Pioneer), all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659.

Any questions regarding CIG's application should be directed to Robert T. Tomlinson, Director, Regulatory Affairs, Colorado Interstate Gas Company, P. O. Box 1087, Colorado Springs, Colorado 80944 at (719) 520–3788 or by fax at (719) 667–7534 or Judy A. Heineman, Vice President and General Counsel, Colorado Interstate Gas Company, Post Office Box 1087 Colorado Springs, Colorado, 80944 at

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(719) 520–4829 or by fax at (719) 520–4898.

CIG and Pioneer have entered into an agreement for the transfer of these facilities at a value at the time of transfer of $19.5 million. CIG states that the facilities to be transferred consists of: (i) Approximately 700 miles of pipeline ranging in size from 2-inches to 24-inches in diameter with approximately 781 wells attached, (ii) approximately 49,000 horsepower of field compression, (iii) approximately 42 miles of fuel gas lines ranging in size from 2-inch to 20-inch diameter, and (iv) appurtenant facilities. CIG explains that the transfer to Pioneer consists of certain certificated facilities in addition to certain non-jurisdictional facilities that participate in the gathering of natural gas and the operation of a non-jurisdictional gathering system. CIG requests that the Commission issue an order approving the abandonment to be effective January 1, 2003, or earlier. CIG states that the transfer to Pioneer will not adversely affect customers as Pioneer will continue to provide the services that CIG previously provided.

As a result of the proposed abandonment, CIG also proposes to revise Volume No. 1 of its FERC Gas Tariff to remove references to gathering services and gathering rates and charges, and to cancel Rate Schedule X–5 and Volume No. 2 of its FERC Gas Tariff. Subsequently, Pioneer will file an application for a Declaratory Order with the Commission regarding these facilities.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 27, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20309 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–063]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

August 6, 2002.

Take notice that on July 30, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction: FTS–2 Service Agreement No. 73220 between Columbia Gulf Transmission Company and Florida Power & Light Company dated July 25, 2002.

Transportation service is to commence August 1; 2002 under the agreement.

Columbia Gulf states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20327 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–65–001]

Erie Boulevard Hydropower, L.P. and Orion Power New York GP II, Inc.; Notice of Filing

August 6, 2002.

Take notice that on July 25, 2002, Erie Boulevard Hydropower, L.P. (Erie) and Orion Power New York GP II, Inc. (Orion) pursuant to Section 203 of the Federal Power Act, filed with the Federal Energy Regulatory Commission an application seeking an order amending the Commission's Order of June 11, 2002, in this docket so as to authorize Orion instead of Erie to acquire the transmission facilities associated with the 2.2 MW Newton Falls hydroelectric project owned by Newton Falls Holdings, LLC.

Orion is a Delaware Corporation and, like Erie, is an indirect wholly-owned subsidiary of Reliant Resources, Inc. The facilities to be acquired are located on a tributary of the Oswegatchie River in St. Lawrence County, NY.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: August 15, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20310 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–32–000]

Horizon Pipeline Company, L.L.C.; Notice of Negotiated Rate

August 6, 2002.

Take notice that on August 1, 2002, Horizon Pipeline Company, L.L.C. (Horizon) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 7C, to be effective August 1, 2002.

Horizon states that the purpose of this filing is to implement a new negotiated rate transaction between Horizon and Natural Gas Pipeline Company of America under Horizon's Rate Schedule ITS pursuant to Section 33 of the General Terms and Conditions of Horizon's Tariff.

Horizon states that copies of the filing are being mailed to Horizon's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20312 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2388–000]

ISO New England Inc.; Notice of Filing

August 2, 2002.

Take notice that on July 31, 2002, ISO New England Inc., submitted as a Section 205 filing in the above docket revisions to Market Rule 11, with a requested effective date of three days following a Commission order accepting the proposed revisions.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: August 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20290 Filed 8–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–337–004 and RP01–93–004]

Kern River Gas Transmission Company; Notice of Tariff Filing

August 6, 2002.

Take notice that on July 30, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective January 1, 2003:

Substitute Original Sheet No. 201
Substitute Original Sheet No. 202

Kern River states that the purpose of this filing is to revise Kern River's pending segmentation procedures to clarify proposed restrictions on overlapping, out-of-path nominations submitted by a releasing shipper and a related replacement shipper.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the

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instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20319 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–401–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

August 6, 2002.

Take notice that on July 31, 2002, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective August 1, 2002:

Forty Seventh Revised Sheet No. 9

National states that under Article II, Section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (IG) rate semi-annually and monthly. Further, National is required to charge the recalculated monthly rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of $0.18 per dth. In addition, Article III, Section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20323 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–406–000]

Natural Gas Pipeline Company of America; Notice of Filing Final GSR Reconsiliation Report

August 6, 2002.

Take notice that on August 1, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing its Final Reconciliation Report relating to Gas Supply Realignment (GSR) cost recovery.

Natural states that the purpose of this filing is to comply with section 38.10(b)(3) of the General Terms and Conditions of Natural's FERC Gas Tariff which requires Natural to file a Final Reconciliation Report within 9 months after the close of Natural's GSR extended collection period, which ended on November 30, 2001.

Natural states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before August 13, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20325 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–452–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 6, 2002.

Take notice that on August 1, 2002, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective October 1, 2002:

Ninth Revised Sheet No.
231 Ninth Revised Sheet No. 231–A
Fourth Revised Sheet No. 231–B

Northwest states that the purpose of this filing is to change Northwest's current tariff provisions which require the fuel use requirements factor (Factor) applicable to its transportation rate schedules to be determined annually and instead provide for this Factor to be determined semi-annually.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20326 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–407–000]

Pine Needle LNG Company, L.L.C.; Notice of Tariff Filing

August 6, 2002.

Take notice that on August 1, 2002 Pine Needle LNG Company, L.L.C. (Pine Needle) tendered for filing as part of its FERC Gas Tariff, Volume No. 1, Fourth Revised First Revised Sheet No. 4, to become effective September 1, 2002.

Pine Needle states that the tariff sheet submitted in the filing reflects a general rate increase. Pine Needle states that the cost of service proposed in the filing is $21,074,411, compared to a cost of service of $20,332,566 underlying Pine Needle's rates found just and reasonable in Docket No. CP96–52, as more fully described in the filing. Pine Needle states that the principal factor supporting the increase in cost of service is an increase in rate of return and related taxes.

Pine Needle further states that the filing reflects the following as related to its pre-filed methods: (1) A proposal to leave unchanged the annual depreciation rate of 2.5% for its operating facilities and (2) proposes an amortization rate of 10% for its in-house developed software—major systems Pine Needle states that copies of the filing are being mailed to each of its affected customers, interested State Commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20318 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–398–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

August 6, 2002.

Take notice that on July 30, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective September 1, 2002,

Eighth Revised Sheet No. 247
Third Revised Sheet No. 247A
Second Revised Sheet No. 247B
Original Sheet No. 247C

TransColorado is proposing that it be permitted to assess a zero charge for the fuel component of its fuel gas reimbursement percentage (FGRP) and only charge the lost or gained and unaccounted-for gas component of its FGRP for specific backhaul and displacement transportation that it has specified in its revised tariff. TransColorado states that the backhaul and displacement transportation described in Section 12.9(d) to the General Terms and Conditions of its tariff will require no compression or consumption of fuel for any other purpose on TransColorado's system and therefore should not be subjected to the fuel component of TransColorado's FGRP.

TransColorado states that a copy of this filing, with the privileged material removed, has been served upon TransColorado's customers, the Colorado Public Utilities Commission and New Mexico Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20321 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–050]

TransColorado Gas Transmission Company; Notice of Compliance Filing

August 6, 2002.

Take notice that on August 1, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Forty-Ninth Revised Sheet No. 21 and Twenty-Second Revised Sheet No. 22A, to be effective August 1, 2002.

TransColorado states that the filing is being made in compliance with the

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Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000. The tendered tariff sheets propose to revise TransColorado's Tariff to reflect one amended negotiated-rate contract with Sempra Energy Trading, one new contract with ExxonMobil Gas Marketing Company (Exxon) and the deletion of the expired contract with Duke Energy Trading and Marketing, L.L.C.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20328 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–399–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

August 6, 2002.

Take notice that on July 30, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as become part of its FERC Gas Tariff, Third Revised Volume No. 1, Sixth Revised Twenty-First Revised Sheet No. 28, with a proposed effective date of August 1, 2002.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28, the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2. This filing is being made pursuant to tracking provisions under Section 26 of the General Terms and Conditions of Transco's Third Revised Volume No. 1 Tariff.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20322 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–494–001]

Williams Gas Pipelines Central, Inc.; Notice of Compliance Filing

August 6, 2002.

Take notice that on August 1, 2002, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets listed on Appendix A to the filing.

Williams states that this filing is being made to comply with the Commission's Order on Compliance with Order Nos. 637, 587–G and 587–L issued on July 3, 2002 (100 FERC ¶ 61,034 (2002). The tariff sheets incorporate changes directed by the Commission in its July 3 Order.

Williams states that copies of the revised tariff sheets are being mailed to Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20317 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4138–002, et al.]

Potomac Electric Power Company, et al.; Electric Rate and Corporate Regulation Filings

August 2, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Potomac Electric Power Company

[Docket No. ER98–4138–002]

Take notice that Potomac Electric Power Company, on July 30, 2002, tendered for filing a triennial update of market-based rate authority.

Comment Date: August 20, 2002.

2. Tampa Electric Company

[Docket No. ER02–1177–002]

Take notice that on July 30, 2002, Tampa Electric Company (TEC) tendered for filing in compliance with the July 1, 2002 letter order a revised Interconnection and Operating Agreement between TEC and Auburndale Peaker Energy Center, L.L.C. as a service agreement under TEC's open access transmission tariff.

Comment Date: August 20, 2002.

3. Progress Energy Inc. on behalf of Progress Ventures, Inc.

[Docket No. ER02–2337–000]

Take notice that on July 19, 2002, Progress Ventures, Inc., (Progress Ventures) tendered for filing an executed Service Agreement between Progress Ventures and the following eligible buyer, The Energy Authority, Inc. Service to this eligible buyer will be in accordance with the terms and conditions of Progress Ventures Market-Based Rates Tariff, FERC Electric Tariff No. 1.

Progress Ventures requests an effective date of June 19, 2002 for this Service Agreement. Copies of the filing were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission, the Florida Public Service Commission and the Georgia Public Service Commission.

Comment Date: August 19, 2002.

4. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER02–2340–001]

Take notice that on July 30, 2002, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) amended its filing of Service Agreement No. 156 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply continues to request a waiver of notice requirements for an effective date of June 24, 2002 for Indianapolis Power & Light Company.

Copies of the filing have been provided to the Customer.

Comment Date: August 20, 2002.

5. Power Choice, Inc.

[Docket No. ER02–2382–000]

Take notice that on July 30, 2002, Power Choice, Inc. (Power Choice) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Power Choice Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Power Choice intends to engage in wholesale electric power and energy purchases and sales as a marketer. Power Choice is not in the business of generating or transmitting electric power. Power Choice is a Texas corporation with no affiliates.

Comment Date: August 20, 2002.

6. Allegheny Energy Unit 1 and Unit 2, L.L.C.

[Docket No. ER02–2383–000]

Take notice that on July 30, 2002, Allegheny Energy Service Corporation on behalf of Allegheny Energy Unit 1 and Unit 2, L.L.C. (Units 1 and 2, L.L.C.) filed a Notice of Cancellation of its Market-Based Rate Schedule, FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1–7.

Units 1 and 2, L.L.C. requests an effective date for the cancellation of June 1, 2001.

Comment Date: August 20, 2002.

7. UGI Development Company

[Docket No. ER02–2384–000]

Take notice that on July 26, 2002, UGI Development Company (UGID) tendered for filing a Second Revised Service Agreement No. 2 for wholesale power sales transactions under UGID's Wholesale Power Sales Tariff, FERC Electric Tariff First Revised Volume No. 1, by and between UGID and UGI Utilities, Inc.

UGID requests an effective date of June 30, 2001 for the Second Revised Service Agreement No. 2.

Comment Date: August 16, 2002.

8. Pinnacle West Capital Corporation

[Docket No. ER02–2385–000]

Take notice that on July 30, 2002, Pinnacle West Capital Corporation (PWCC) tendered for filing a Service Agreement, Rate Schedule FERC No. 7, under PWCC's Rate Schedule FERC No. 1 for service to Phelps Dodge Energy Services (PDES).

A copy of this filing has been served on PDES.

Comment Date: August 20, 2002.

9. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–2386–000]

Take notice that on July 30, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with Maclaren Energy Inc.

Ameren Energy seeks Commission acceptance of these service agreements effective July 1, 2002. Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the counterparty.

Comment Date: August 20, 2002.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2387–000]

Take notice that on July 30, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a proposed Schedule 15 (Power Factor Correction Service) of the Midwest ISO's Open Access Transmission Tariff (OATT), which, among other things, requires a Transmission Customer supplying capacity and energy to loads within the Midwest ISO's Control Area to maintain a power factor within the same range as applicable to comparably configured and located loads on the Transmission System.

The Midwest ISO has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: August 20, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

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20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20285 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF02–3011–000, et al.]

Southeastern Power Administration, et al.; Electric Rate and Corporate Regulation Filings

August 5, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Southeastern Power Administration

[Docket No. EF02–3011–000]

Take notice that on July 29, 2002, the Secretary of Energy confirmed and approved Rate Schedules SOCO–1–A, SOCO–2–A, SOCO–3–A, SOCO–4–A, ALA–1–J, MIS–1–J, Duke–1–A, Duke–2–A., Duke–3–A, Duke–4–A, Sante1–A,Santee–2–A, Santee–3–A, Santee–4–A, SCE&G–1–A, SCE&G–2–A, SCE&G3–A, SCE&G–4–A, Regulation 1, Replacement 1, Pump–1–A, and Pump–2 for power from Southeastern Power Administration's (Southeastern) Georgia-Alabama-South Carolina System. The approval extends through September 30, 2007.

The Secretary of Energy states that the Federal Energy Regulatory Commission (Commission) by order issued November 9, 2000, in Docket No. EF98–3031–000, confirmed and approved Rate Schedules SOCO–1, SOCO–2, SOCO–3, SOCO–4, ALA–1–l MISS–1–l, Duke–1, Duke–2, Duke–3, Duke–4, Santee–1, Santee–2, Santee–3, Santee–4, SCE&G–1, SCE&G–2, SCE&G–3, SCE&G–4, and Pump 1. On April 23, 1999, in Docket No. EF98–3011–001, the Commission issued an order granting rehearing for further consideration. On July 31, 2001, the Commission issued an order denying rehearing on the same docket number.

Southeastern proposes in the instant filing to replace these rate schedules.

Comment Date: August 28, 2002.

2. Southeastern Power Administration

[Docket No. EF02–3031–000]

Take notice that on July 29, 2002, the Secretary of Energy confirmed and approved Rate Schedules JW–1–G and JW–2–D for power from Southeastern Power Administration's (Southeastern) Jim Woodruff System. The approval extends through September 19, 2005.

The Secretary of Energy states that the Commission, by order issued November 9, 2000, in Docket No. EF00–3031–000, confirmed and approved Rate Schedules JW–1–F and JW–2–C.

Southeastern proposes in the instant filing to replace these rate schedules.

Comment Date: August 28, 2002.

3. Lower Mount Bethel Energy, LLC

[Docket No. EG02–174–000]

Take notice that on August 1, 2002, Lower Mount Bethel Energy, LLC (Applicant), filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a Delaware limited liability company formed for the purpose of constructing, leasing and operating the Lower Mount Bethel Energy generating plant, located in Lower Mount Bethel Township, Northampton County, Pennsylvania, which will generate up to 600 MW. The Applicant is an indirect subsidiary of PPL Corporation, a public utility holding company exempt from registration under Section 3(a)(1) of the Public Utility Holding Company Act of 1935.

Comment Date: August 26, 2002.

4. Minergy Detroit, LLC

[Docket No. EG02–175–000]

Take notice that on August 1, 2002, Minergy Detroit, LLC filed an Application for Determination of Exempt Wholesale Generator Status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, all as more fully explained in the Application.

Comment Date: August 26, 2002.

5. Riverside Generating Company, L.L.C.

[Docket No. ER01–1044–003]

Take notice that on July 31, 2002, Riverside Generating Company, L.L.C. (Riverside) tendered for filing a notice of change in status.

Comment Date: August 21, 2002.

6. Arizona Public Service Company

[Docket No. ER02–2105–001]

Take notice that on July 31, 2002, Arizona Public Service Company (APS) tendered for filing a compliance with FERC Order No. 614 as directed in the above Docket for the Service Agreement to provide point-to-point transmission service to Southwest Transmission Cooperative, Inc. under APS" Open Access Transmission Tariff.

Comment Date: August 21, 2002.

7. Entergy Services, Inc.

[Docket No. ER02–2243–001]

Take notice that on July 31, 2002, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Mississippi, Inc. (Entergy Mississippi), tendered for filing an amendment to Entergy Services' July 2, 2002, filing of an unexecuted, amended Interconnection and Operating Agreement between Entergy Mississippi and Reliant Energy Choctaw County, LLC (Reliant). The amendment supplies the one-line diagram that was originally submitted in Docket No. ER02–164–000 with the original Interconnection and Operating Agreement between Entergy Mississippi, Inc., and Reliant.

Comment Date: August 21, 2002.

8. California Independent System Operator Corporation

[Docket No. ER02–2321–001]

Take notice that on July 30, 2002, the California Independent System Operator Corporation (ISO) submitted an errata filing concerning the ISO's July 15, 2002 filing of Amendment No. 46 to the ISO Tariff. The ISO has served copies of this filing upon all entities that are on the official service list for Docket No. ER02–2321–000.

Comment Date: August 20, 2002.

9. TransCanada Energy Ltd. (NorthernLights Transmission Project)

[Docket No. ER02–2389–000]

Take notice that on July 31, 2002, TransCanada Energy Ltd. (TCE) on behalf of one or more to be named affiliate companies, referred to as "NorthernLights", submitted for filing, pursuant to Section 205 of the Federal Power Act, an application requesting that the Federal Energy Regulatory Commission (the Commission) (1) authorize NorthernLights to sell transmission service at negotiated rates; and (2) grant certain waivers in connection with their proposed NorthernLights transmission project.

TCE requests that the Commission issue its approval no later than September 30, 2002, so that the initial open season can commence by November 1, 2002.

Comment Date: August 21, 2002.

10. West Texas Utilities Company

[Docket No. ER02–2390–000]

Take notice that on July 31, 2002, West Texas Utilities Company (WTU) submitted for filing the Interconnection Agreement, dated June 4, 2002, between WTU and the City of Coleman, Texas (Coleman) amended to include an additional point of interconnection to be established between the parties at WTU's East Coleman Substation.

WTU seeks an effective date of June 4, 2002, for the Interconnection Agreement. WTU served copies of the filing on Coleman and the Public Utility Commission of Texas.

Comment Date: August 21, 2002.

11. Southern California Edison Company

[Docket No. ER02–2391–000]

Take notice that on July 31, 2002, Southern California Edison Company (SCE) tendered for filing a Service Agreement For Wholesale Distribution Service under SCE's Wholesale Distribution Access Tariff, an Interconnection Facilities Agreement, and a Reliabilty Management System Agreement (Agreements) between SCE and Sierra Power Corporation (Sierra Power).

These Agreements specify the terms and conditions under which SCE will interconnect Sierra Power's Terra Bella generating facility to its electrical system and provide Distribution Service for up to 9 MW of power produced by the generating facility. Copies of this filing were served upon the Public Utilities Commission of the State of California and Sierra Power.

Comment Date: August 21, 2002.

12. Orion Power Midwest, L.P. FirstEnergy Operating Companies

[Docket No. ER02–2392–000]

Take notice that on July 31, 2002, Orion Power Midwest, L.P. and certain of FirstEnergy Corp."s operating company subsidiaries tendered for filing with the Federal Energy Regulatory Commission a Notice of Cancellation of three Must-Run Agreements between Orion Power Holdings, Inc. and American Transmission Systems, Incorporated, Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company. One agreement is for the Avon Lake generating facility, currently designated as Rate Schedule FERC No. 4, together with Supplement No. 1 to Rate Schedule FERC No. 4. The second agreement is for the New Castle generating facility, and is designated as Rate Schedule FERC No. 5, together with Supplement No. 1 to Rate Schedule FERC No. 5. The final agreement is for the Niles generating facility, designated as Rate Schedule FERC No. 6, together with Supplement No. 1 to Rate Schedule FERC No. 6.

Comment Date: August 21, 2002.

13. Boston Edison Company, Cambridge Electric Light Company, and Commonwealth Electric Company

[Docket No. ER02–2393–000]

Take notice that Boston Edison Company (BECo), Cambridge Electric Light Company (Cambridge), and Commonwealth Electric Company (Commonwealth) (collectively, the NSTAR Companies), on July 31, 2002, tendered for filing three executed service agreements under their respective market-based rate tariffs with Constellation Power Source, Inc.

Comment Date: August 21, 2002.

14. California Independent System Operator Corporation

[Docket No. ER02–2394–000]

Take notice that on July 31, 2002, the California Independent System Operator Corporation (ISO) submitted for Commission filing and acceptance an amendment (Amendment No. 2) to the Utility Distribution Company Operating Agreement (UDC Operating Agreement) between the ISO and the City of Anaheim, California, as well as the revised UDC Operating Agreement incorporating the terms of Amendment No. 2 to the UDC Operating Agreement. The ISO requests that the filing be made effective as of May 16, 2002. The ISO requests privileged treatment, pursuant to 18 CFR 388.112, with regard to portions of the filing.

The ISO has served copies of this filing upon the City of Anaheim, California, the Public Utilities Commission of the State of California, and all parties in Docket No. ER98–1923.

Comment Date: August 21, 2002.

15. New England Power Pool

[Docket No. ER02–2395–000]

Take notice that on July 31, 2002, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include Allied Utility Network LLC (Allied Utility), and to terminate the memberships of PSEG Energy Technologies Inc. and Public Service Electric and Gas Company (the PSEG Affiliates) and Enron Energy Marketing Corp. (EEMC). The Participants Committee requests an August 1, 2002 effective date for commencement of participation in NEPOOL by Allied Utility, and a July 1, 2002 effective date for the termination of the PSEG Affiliates and EEMC.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: August 21, 2002.

16. Northwestern Energy

[Docket No. ER02–2396–000]

Take notice that on July 31, 2002, NorthWestern Energy (NWE, formally The Montana Power Company) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 executed Network Integration Transmission Service Agreements with Barretts Minerals Inc. (Barretts) and Stillwater Mining Company (Stillwater) under NWE's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Barretts and Stillwater.

Comment Date: August 21, 2002.

17. Great Lakes Hydro America, LLC

[Docket No. ER02–2397–000]

Take notice that on July 31, 2002, GNE, LLC (GNE) tendered for filing with the Federal Energy Regulatory Commission (Commission) changes to its Commission-approved market-based rate tariff to reflect its legal name change to Great Lakes Hydro America, LLC. on July 26, 2002.

Comment Date: August 21, 2002.

18. Westar Energy, Inc.

[Docket No. ER02–2398–000]

Take notice that on July 31, 2002, Westar Energy, Inc., filed a Notice of Succession whereby Westar Energy adopted, ratified and made its own, in every respect all applicable rate schedules, and supplements thereto, listed below, heretofore filed with the

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Federal Energy Regulatory Commission (Commission) by Western Resources, Inc. The purpose of the filing is to recognize the change in name of Western Resources, Inc., to Westar Energy, Inc., adopted effective June 19, 2002. Westar Energy states in its Notice that no change in ownership or operation of jurisdictional facilities occurred as a result of the name change.

Westar Energy notes in its filing that its Notice of Succession was inadvertently filed out-of-time. Westar Energy requests waiver of the 30-day filing requirement and for a limited waiver of Order No. 614. Westar Energy submits that since this filing involves only name change with no change in ownership or operation of jurisdictional facilities, that no party has been harmed or prejudice by the short delay in filing.

Comment Date: August 21, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20286 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10855–002, Michigan; Project No. 2589–024, Michigan]

Upper Peninsula Power Company; Marquette Board of Light and Power; Notice of Availability of Final Environmental Assessment

August 5, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects Staff (Staff) has reviewed the application for an initial license for the Dead River Project and a new license for the Marquette Project, both located on the Dead River in Marquette County, Michigan, and has prepared a final environmental assessment (FEA) for the projects. In this FEA, the Staff has analyzed the potential environmental effects of the existing projects and has concluded that licensing the projects, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. This FEA may also be viewed on the Internet at *http://www.ferc.gov* using the "RIMS" link; select "Docket#" and follow the instructions. Please call (202) 208–2222 for assistance.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20288 Filed 8–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–387–000]

Petal Gas Storage, L.L.C.; Notice of Intent to Prepare an Environmental Assessment for the Proposed Natural Gas Storage Cavern Expansion Project and Request for Comments on Environmental Issues

August 6, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Petal Gas Storage, L.L.C.'s (Petal) proposed natural gas storage cavern expansion project in Forrest County, Mississippi.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a Petal representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, Petal could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" should have been attached to the project notice Petal provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (http://www.ferc.gov).

This Notice of Intent (NOI) is being sent to landowners along Petal's proposed pipeline route; Federal, state, and local government agencies; national elected officials; regional environmental and public interest groups; Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects; local libraries and newspapers; and the Commission's list of parties to the proceeding.

Government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern. Additionally, with this NOI we[2] are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated Petal's proposal relative to their agencies' responsibilities. Agencies who would like to request cooperating status should follow the instructions for filing comments described below.

[1] Petal's application was filed under section 7(c) of the Natural Gas Act and part 157 of the Commission's regulations on June 18, 2002.

[2] "We," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects.

Summary of the Proposed Project

Petal proposes to expand its existing natural gas storage facilities to meet projected future market demands. To accomplish this, Petal would:

- convert existing liquefied petroleum gas Cavern No. 3 into a storage cavern for natural gas, with a capacity up to 3 billion cubic feet (Bcf);
- construct new Cavern No. 8, with a working capacity up to 5 Bcf;
- add a 5,000 horsepower unit to Petal's existing Compressor Station No. 2;
- construct about 3,683 feet of 16-inch-diameter natural gas pipelines between Cavern No. 3, Cavern No. 8, and Compressor Station No.2;
- construct about 3,575 feet of 12-inch-diameter water and brine lines; and
- install dehydration and pressure regulation facilities at Compressor Station No. 2.

Cavern No. 3 is about 0.2 mile west of Petal's existing storage plant, on property Petal recently acquired from Suburban Propane, L.P. (Suburban). The former Suburban parcel contains existing leach plant facilities, brine disposal facilities, and water wells necessary for the conversion and expansion of Cavern No. 3. Cavern No. 8 is situated on a 23 acre parcel owed by Petal at the northwest corner of its existing storage plant. The water wells, leach plant, and brine disposal facilities necessary for the creation of Cavern No. 8 are extant within the Dynegy, Inc. property adjacent to Petal's storage plant. The new compressor unit, dehydration facilities, and regulation facilities would be installed within Petal's existing Compressor Station No. 2. The general location of the facilities proposed by Petal is shown on the map attached as appendix 1.[3]

Land Requirements for Construction

Construction of the facilities proposed by Petal would affect about 21 acres of land. The permanent facilities would occupy about 6 acres. The remaining land would only be used temporarily, and after construction would be restored to their previous condition and uses. About 65 percent of the land to be affected by construction is owned in fee by Petal. Petal claims to have reached agreements for all other necessary rights-of-way with adjacent landowners.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available for review at the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208–1371, or on the FERC Internet website (www.ferc.gov) using the FERRIS link. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this NOI, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA.

Our independent analysis of the issues will be in the EA. We will also evaluate possible alternatives to the proposed action, or portions of the project, and make recommendations on how to lessen or avoid impacts on various environmental resources.

Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, elected officials, affected landowners, regional public interest groups, Indian tribes, local newspapers and libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

The EA will discuss impacts that could occur as a result of construction and operation of the proposed project. We have already identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Petal. This preliminary list of issues may be changed based on your comments and our analysis.

- Geology and Soils
  - —Crossing soils with high erosion and poor revegetation potential.
  - —Crossing prime farmland soils.
- Water Resources and Wetlands
  - —Drilling for Cavern No. 8 will extend through the Miocene aquifer.
  - —Four wetlands were identified in the project area.
- Vegetation and Wildlife
  - —About 9 acres of upland forest would be affected.
  - —May affect the federally-listed threatened gopher tortoise.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas/Hydro Branch, PJ–11.3;
- Reference Docket No. CP02–387–000; and
- Mail your comments so that they will be received in Washington, DC on or before September 9, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments, interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Internet website at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

We may mail the EA for comments. If you are interested in receiving it, please return the Information Request (appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the

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proceeding known as an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional Information

Additional information about the proposed project is available from the Commission's Office of External Affairs at 1–866–208–FERC or on the FERC Internet website (*www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at (202) 502–8222, TTY (202) 208–1659. The FERRIS link on the FERC Internet website also provides access to the text of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20308 Filed 8–9–02; 8:45 am]

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[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

August 2, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No*: 12188–000.

c. *Date Filed*: June 10, 2002.

d. *Applicant*: Bumping Lake Hydro, LLC.

e. *Name of Project*: Bumping Lake Dam Hydroelectric Project.

f. *Location*: The proposed project would be located on an existing dam owned by Roza Irrigation District on the Bumping River in Yakima County, Washington. The proposed project would not occupy Federal land or facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442, Telephone: (208) 745–8630.

i. *FERC Contact*: Mr. Lynn R. Miles, Sr. (202) 219–2671.

j. *Deadline for filing motions to intervene, protests and comments*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12188–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project would consist of: (1) the existing 44-foot-high, 2,925-foot-long earthfill dam, (2) the existing Bumping Lake with a surface area of 1,303 acres and a storage capacity of 37,700 acre-feet at a normal maximum water surface elevation of 3,426 feet, (3) a 108-inch-diameter, 600-foot-long steel penstock, (4) a powerhouse with an installed capacity of 3 megawatts, (5) a 25-kv transmission line approximately 1 mile in length, and (6) appurtenant facilities. The project would have an annual generation of 16 GWh.

l. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20054 Filed 8–9–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for a New License

August 5, 2002.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File an Application for New License.

b. *Project No:* 2545.

c. *Date filed:* July 29, 2002.

d. *Submitted By:* Avista Corporation.

e. *Name of Project:* Spokane River Hydroelectric Project.

f. *Location:* The project consists of five developments located on Spokane River in eastern Washington and north Idaho.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from Debbie Biggs, Avista Utilities, 1411 E. Mission Ave., Spokane, Washington 99202, 509–495–2858.

I. *FERC Contact:* Alan Mitchnick, 202–219–2826. Alan *Mitchnick@Ferc.Gov.*

j. *Expiration Date of Current License:* July 31, 2007.

k. *Project Description:* The five developments includes a dam or dams (where multiple river channels are involved), an operating reservoir, a powerhouse, and various appurtenant structures and components. Total installed capacity of the five developments is 137 megawatts.

l. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2545. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2005.

A copy of the Notice of Intent is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20287 Filed 8–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request for Extension of Time to Commence and Complete Project Construction and Soliciting Comments, Motions to Intervene, and Protests

August 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Extension of Time.

b. *Project No.:* 10455–023.

c. *Date Filed:* July 3, 2002.

d. *Applicant:* JDJ Energy Company.

e. *Name of Project:* River Mountain Pumped Storage Project.

f. *Location:* The project is located on the Arkansas River in Logan County, near Dardanelle, Arkansas. The project utilizes Federal lands on the shoreline of Lake Dardanelle.

g. *Pursuant to:* Public Law 105–283, 112 Stat. 2100.

h. *Applicant Contact:* Donald H. Clarke, Esquire, Law Offices of GKRSE, 1500 K Street, NW.,Suite 330, Washington, DC 20005, (202) 408–5400.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671, or e-mail address: *lynn.miles@ferc.fed.us.*

j. *Deadline for filing comments and or motions:* September 2, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P–10455–023) on any comments or motions filed.

k. *Description of Request:* The licensee requests a two-year extension

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of time to commence and complete construction of the River Mountain Pump Storage Project. The licensee has filed monthly progress reports this year summarizing its pre-construction activities and requests the additional time to select a new engineering contractor to commence project. If granted, this would be the licensee's final extension authorized by Public Law No. 105–283, 112 Stat. 2100.

l. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. An additional copy must be sent to the Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20313 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

August 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No*: 12217–000.

c. *Date Filed*: June 17, 2002.

d. *Applicant*: Bayou D'Arbonne Hydro, LLC.

e. *Name of Project*: Bayou D'Arbonne Dam Hydroelectric Project.

f. *Location*: The proposed project would be located on an existing dam owned by D'Arbonne Lake Commission, on the Bayau D'Arbonne in Union Parish, Louisiana. The proposed project would not occupy Federal lands or facilities.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442, (208) 745–8630.

i. *FERC Contact*: Mr. Lynn R. Miles, Sr. (202) 219–2671.

j. *Deadline for filing motions to intervene, protests and comments*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P–12217–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project would consist of: (1) the existing 54-foot-high, 2,445-foot-long dam, (2) the existing Bayou D'Arbonne Reservoir, which has a surface area of 15,250 acres and a storage capacity of 130,000 acre-feet at a normal maximum water surface elevation of 80 feet, (3) an 84-inch-diameter, 100-foot-long steel penstock, (4) a powerhouse with an installed capacity of 1.8 megawatts, (5) a 15-kv transmission line approximately 1 mile in length, and (6) appurtenant facilities. The project would have an annual generation of 6.6 GWh.

l. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20314 Filed 8–9–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

August 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No:* 12222–000.

c. *Date Filed*: June 17, 2002.

d. *Applicant*: De Cordova Hydro, LLC.

e. *Name of Project*: De Cordova Dam Hydroelectric Project.

f. *Location*: The proposed project would be located on an existing dam owned by the Brazos River Authority, on the Brazos River in Hood County, Texas. The proposed project would not occupy federal lands or facilities.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442, (208) 745–8630.

i. *FERC Contact*: Mr. Lynn R. Miles, Sr. (202) 219–2671.

j. *Deadline for filing motions to intervene, protests and comments*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P–12222–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project would consist of: (1) the existing 84-foot-high, 2,200-foot-long dam, (2) the existing Lake Granbury, which has a surface area of 1,350 acres with a storage capacity of 240,640 acre-feet at a normal maximum water surface elevation of 692 feet, (3) a 120-inch-diameter, 200-foot-long steel penstock, (4) a powerhouse with an installed capacity of 4 megawatts, (5) a 25-kv transmission line approximately 1 mile in length, and (6) appurtenant facilities. The project would have an annual generation of 27.5 GWh.

l. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include

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an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20315 Filed 8–9–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

August 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 12244–000.

c. *Date Filed*: June 17, 2002.

d. *Applicant*: Town Lake Hydro, LLC.

e. *Name of Project*: Town Lake Dam Hydroelectric Project.

f. *Location*: The proposed project would be located on an existing dam owned by the City of Austin, on the Colorado River in Travis County, Texas. The proposed project would not occupy Federal lands or facilities.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

i. *FERC Contact*: Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671.

j. *Deadline for filing motions to intervene, protests and comments*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P–12244–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed run-of-river project using the City of Austin's existing Town Lake Dam would consist of: (1) the existing 65-foot-high, 1,240-foot-long dam and Lake Travis, which has a 900-acre surface area at a normal water surface elevation of 428 feet, (2) a 108-inch-diameter, 200-foot-long steel penstock, (2) a powerhouse containing one generating unit with an installed capacity of 2.5 MW, (3) a 15-kv transmission line approximately 1 mile long, and (4) appurtenant facilities. The project would have an annual generation of 9.2 GWh.

l. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20316 Filed 8–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

August 5, 2002.

This constitutes notice, in accordance with 18 CAR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CAR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CAR 1501.6, made under 18 CAR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

EXEMPT

Docket No.	Date filed	Presenter or requester
1. Project No. 1494–215	7–01–02	Jim Burroughs (B. Peter Yarrington).
2. Project No. 1494–215	7–01–02	B. Peter Yarrington.
3. Project Nos. 1494–232, –237 amd –240	7–2–02	Jack and Cheryl Lenhart.
4. CP01–361–000	7–30–02	Alex Brady.
5. Project No. 1864–016	7–31–02	Wayne Borseth.
6. CP02–396–000 PF01–1–000	7–31–02	Kenneth Frye /Tony Froonjian.
7. CP02–396–000	8–2–02	Kenneth Frye (Dana Beegle).

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Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–20289 Filed 8–8–02; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FR L–7256–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Construction Grants Program.

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Construction Grants Program Information Collection Request, EPA ICR No. 0827.06, OMB Control Number 2040–0027, current expiration date March 31, 2003.

Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 11, 2002.

ADDRESSES: Gajindar Singh, Office of Wastewater Management, Mail Code 4204M, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Interested persons may obtain a copy of the ICR without charge by writing to the preceding address.

FOR FURTHER INFORMATION CONTACT: Gajindar Singh, Telephone Number: (202) 564–0634 , Facsimile Number: (202) 501–2396, e-mail: *singh.gajindar@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments: Comments shall be submitted to Gajindar Singh, Mail Code 4204M, Environmental Protection Agency, Office of Wastewater Management, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed stamped envelope. Comments may also be submitted electronically to *singh.gajindar@epa.gov* or faxed to (202) 501–2396.

Electronic comments must be submitted as a Corel Word Perfect or Word file. Electronic comments must be identified by the use of words "Construction Grants Program Comments." No Confidential Business Information (CBI) should be submitted through e-mail. Comments and data will also be accepted on disks in Corel Word Perfect or Word file. The record for this proposed ICR renewal has been established in the Office of Wastewater Management, Municipal Assistance Branch, and includes supporting documentation. It does not include any information claimed as CBI. The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Municipal Assistance Branch, 1201 Constitution Ave., NW., Washington, DC 20004. For access to the docket materials, please call (202) 564–0634 to schedule an appointment.

Affected entities: Entities potentially affected by this action are States which administer elements of the construction grants program under a delegation agreement with EPA and municipalities which receive construction grants from EPA.

Title: Construction Grants Program Information Collection Request, OMB Control No. 2040–0027, EPA ICR No. 0827.06, expiring 3/31/2003.

Abstract: The purpose of this ICR is to revise and extend the current clearance for the collection of information under the EPA Construction Grants Program, 40 CFR part 35, subpart I, and Title II of the Clean Water Act (CWA). While the Construction Grants Program is being phased out and replaced by the State Revolving Loan Fund (SRF) program, collection activities for the Construction Grants Program must continue until program completion. The program includes reporting, monitoring, and program requirements for municipalities and States.

In order to obtain a construction grant, a municipality must submit information describing the project and its ability to manage it. Municipal managers use the information to plan, design, build, operate, and maintain treatment works that protect public health and the environment. In addition, the appropriate State or EPA Regional office reviews the information to determine if the project is necessary, reasonable, in accordance with sound planning principles, and a prudent use of Federal funds.

EPA collects information from the State to meet statutory and administrative program management requirements. Under this ICR, the only requirement for States is the listing of projects for funding in priority order. State program managers would develop this type of list for their own administrative needs. EPA reviews the information to determine if the State's program meets CWA requirements and evaluates the effectiveness of the State's program management. Under Title II, construction grant programs may be administered by EPA or delegated States. The requirements for the construction grants program are at 40 CFR part 35, subpart I, and Title II of the CWA. These provisions require grantees to submit information to EPA or delegated States, and also require States that award construction grants to submit information to EPA. Authority for collecting this information comes from the Construction Grants Information Collection Request (OMB No. 2040–0027, ICR 0827.06).

EPA is currently phasing out the Construction Grants Program. The program is being replaced by the State Revolving Loan Fund (SRF) Program (Title VI of the Clean Water Act). Established in the 1987 amendment to the CWA, the SRF program provides a continuous source of funding for publicly owned treatment works (POTWs). Because most States are now funding construction projects through the SRF program rather than the Construction Grants Program, the burden associated with the Construction Grants Program has decreased significantly.

The information collection activities described in this ICR are authorized under Section 205(g) of the Clean Water Act as amended, and under 40 CFR part 35 subpart I. The requested information provides the minimum data necessary for the Federal government to maintain appropriate fiscal accountability for use of construction grant funds. The information is also needed to assure an adequate management overview of those State project review activities that are most important to fiscal and project integrity, design performance, Federal budget control, and attainment of national goals.

Managers at the State and Federal levels both rely on the information described in this ICR. State managers rely on the information for their own program and project administration. Federal managers rely on this information to assess, control, and predict the impacts of the construction grants program on the Federal Treasury. Federal managers also use this information to respond to OMB and Congressional requests and to maintain fiscal accountability. In addition, builders of wastewater treatment plants may use the information discussed in this ICR.

EPA is also revising ICR for Construction Grants Delegation to States, OMB Control No. 2040–0095. First **Federal Register** notice for this ICR was published on July 5, 2002.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR part 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Respondents: States and municipalities.

Estimated Number of Respondents: 30.

Frequency of Response: Variable.

Estimated Total Annual Hour Burden: 26,558 hours.

Estimated Total Annualized Cost Burden: $0.0.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 25, 2002.

Jane S. Moore,
Deputy Director, Office of Wastewater Management.
[FR Doc. 02–19799 Filed 8–9–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7257–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Emergency Planning and Release Notification Requirements Under Emergency Planning and Community Right-To-Know Act Sections 302, 303, and 304

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Emergency Planning and Release Notification Requirements (EPCRA sections 302, 303, and 304), EPA ICR Number 1395.05, OMB Control Number 2050–0092, expiring January 31, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 11, 2002.

ADDRESSES: Chemical Emergency Preparedness and Prevention Office, Mailcode 5104A, U.S. EPA, 1200 Pennsylvania Avenue NW., Washington DC 20004. Interested persons may obtain a copy of the ICR without charge by contacting the person in **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, 202–564–8019, fax no. 202–564–8233, or e-mail: *jacob.sicy@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which have a threshold planning quantity of an extremely hazardous substance (EHS) listed in 40 CFR part 355, appendix A and those which have a release of any of the EHS above a reportable quantity. Entities more likely to be affected by this action may include chemical, non-chemical manufacturers, retailers, petroleum refineries, utilities, *etc.*

Title: Emergency Planning and Release Notification Requirements under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304, OMB Control No. 2050–0092, EPA ICR No. 1395.05.

Abstract: The authority for these requirements is sections 302, 303, and 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 1986 (42 U.S.C. 11002, 11003, and 11004). EPCRA established broad emergency planning and facility reporting requirements. Section 302 requires facilities to notify their state emergency response commission (SERC) that the facility is subject to emergency planning. This activity has been completed; only new facilities are subject to this requirement. Section 303 requires the local emergency planning committees (LEPCs) to prepare emergency plans for facilities that are subject to section 302. This activity has been also completed; this ICR only covers any updates needed for these emergency response plans. Section 304 requires facilities to report to SERCs and LEPCs releases in excess of the reportable quantities listed for each extremely hazardous substance (EHS). This ICR also covers the notification and the written follow-up required under this section.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

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whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The average reporting burden for emergency planning under 40 CFR 355.30 is 16.15 hours for new and newly regulated facilities and less than 1 hour for existing facilities. For new and newly regulated facilities, this burden includes the time required to read and understand the regulations, to determine reporting status, notify the SERC that the facility is subject to emergency planning, designate a facility representative and otherwise participate in initial planning activities. For a limited number of existing facilities, there may a burden to inform the LEPC of any changes at a facility that may affect emergency planning (2 hours), and provide information to the LEPC for planning purposes (11 hours). The average reporting burden for facilities reporting releases under 40 CFR 355.40 is estimated to average approximately 5 hours per release, including the time for determining if the release is a reportable quantity, notifying the LEPC and SERC, or the 911 operator, and developing and submitting a written follow-up notice. There are no recordkeeping requirements for facilities under EPCRA sections 302–304.

The average burden for emergency planning activities under 40 CFR 300.215 is 21 hours per plan for LEPCs, 16 hours per plan for SERCs. Each SERC and LEPC is also estimated to incur an annual recordkeeping burden of 10 hours.

The total burden to facility respondents over three years is 264,560 hours (88,190 hours annually) at a cost of $8.8 million ($2.9 million annually). The total burden to LEPC and SERC respondents over three years is 372,820 hours (124,275 hours annually) at a cost of $9.5 million ($3.1 annually).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: August 2, 2002.

Deborah Y. Dietrich,

Director, Chemical Emergency Preparedness and Prevention Office.

[FR Doc. 02–20348 Filed 8–9–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 02–179; DA 02–1550]

Resort Aviation Services, Inc. and Kootenai County Coeur D'Alene Airport

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice.

SUMMARY: In this document the Commission designates for comparative hearing the applications of Resort Aviation Services, Inc. (Resort Aviation) for renewal of aeronautical advisory (unicom) Station WYT9, Hayden, Idaho, and Kootenai County Coeur d'Alene Airport (Kootenai County) for a new unicom station at the same location. The comparative hearing will enable the Commission to determine the best qualified applicant.

DATES: August 13, 2002 at 9:30 a.m.

ADDRESSES: Federal Communications Commission, Hearing Room A TW A–363, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeffrey Tobias, Wireless Telecommunications Bureau, at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Hearing Designation Order, FCC 02–1550, adopted on July 1, 2002 and released on July 2, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov* via the Internet. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

1. On October 15, 2001, Resort Aviation Services, Inc. (Resort Aviation) filed an application for renewal of aeronautical advisory (unicom) Station WYT9, Hayden, Idaho. Unicom stations provide information concerning flying conditions, weather, availability of ground services, and other information to promote the safe and expeditious operation of aircraft. On November 5, 2001, Kootenai County Coeur d'Alene Airport (Kootenai County) filed the above-captioned application for a new unicom station at the same location. Both applicants propose to provide service at Coeur d'Alene Airport, where there is no control tower or FAA flight service station. Under section 87.215(b) of the Commission's Rules, only one unicom station may be licensed at such airports. Accordingly, the applicants are basically qualified, but these applications are mutually exclusive and must therefore be designated for comparative hearing.

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), and section 1.221(a) of the Commission's Rules, 47 CFR 1.221(a), the above-captioned applications are designated for hearing in a consolidated proceeding before an FCC Administrative Law Judge to resolve the following issues:

a. To determine which applicant would provide the public with better unicom service based on the following considerations:

(1) location of the fixed-based operation and proposed radio station in relation to the landing area and traffic patterns;

(2) hours of operation;

(3) personnel available to provide unicom service;

(4) experience of applicant and employees in aviation and aviation communications;

(5) ability to provide information pertaining to primary and secondary communications as specified in § 87.257 of the Commission's Rules;

(6) proposed radio system including control and dispatch points; and

(7) the availability of the radio facilities to other fixed-based operators;

b. To determine, in light of the evidence presented, which application, if any, should be granted to best serve the public interest, convenience, and necessity.

The burden of proceeding with the introduction of evidence with respect to all the issues listed here shall be upon Resort Aviation and Kootenai County with respect to their applications.

3. The applicants, Resort Aviation and Kootenai County, must each file with the Commission, within 20 days of the mailing of this Hearing Designation Order, a written notice of appearance in triplicate, stating their intentions to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order, in accordance with §§ 1.221(c), (f) and (g) of the Commission's Rules, 47 CFR 1.221(c), (f), (g). The written notice of Resort Aviation must be accompanied by a hearing fee of $9,020.00. Because it is a governmental entity, Kootenai County is exempt from the hearing fee.

4. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 CFR 0.131, 0.331.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–20437 Filed 8–9–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:46 a.m. on Tuesday, August 6, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, litigation, and enforcement activities.

In calling the meeting, the Board determined, on motion of Director John D. Hawke, Jr. (Comptroller of the Currency), seconded by Director John M. Reich (Appointive), and concurred in by Richard Riccobono, acting in the place and stead of James E. Gilleran (Director, Office of Thrift Supervision), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice earlier than August 1, 2002, of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Federal Deposit Insurance Corporation.

Dated: August 7, 2002.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 02–20426 Filed 8–8–02; 10:31 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: National Earthquake Hazard Reduction Program Publications Survey.

Type of Information Collection: New.

Abstract: FEMA will undertake this effort through an Internet-based survey to determine which publications are effective, which are in need of modification and which should be retired. In addition, FEMA will determine the need for additional publications, filling the information gaps identified in the review process.

Affected Public: Business or other for-profit; State, Local, or Tribal Government; Federal Government; Not-for-profit institutions; Individuals and households.

Number of Respondents: 1,150.

Estimated Time per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Total Annual Burden Hours: 288.

Comments

Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: For additional information contact Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency via e-mail at *InformationCollections@fema.gov*. or by telephone at (202) 646–2625.

Dated: August 6, 2002.

Reginald Trujillo,

Branch Chief, , Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–20301 Filed 8–9–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

NAME: Board of Visitors (BOV) for the National Fire Academy.

DATES OF MEETING: September 5, 2002.

PLACE: Building H, Room 300, National Emergency Training Center, Emmitsburg, Maryland.

TIME: September 5, 2002, 8:30 a.m.–12 noon (Open Meeting).

PROPOSED AGENDA: September 5, 2002, Brief BOV on responsibilities as "Special Government Employees," review BOV Charter, identify secretariat for the BOV and review responsibilities, identify Designated Federal Official or designee and review responsibilities, elect BOV Chair and Vice Chair.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before August 30, 2002.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the U.S. Fire Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes

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will be available upon request within 60 days after the meeting.

Dated: August 2, 2002.

R. David Paulison,

U.S. Fire Administrator.

[FR Doc. 02–20302 Filed 8–9–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
Transactions Granted Early Termination—07/08/2002			
20020908	Southern Wines & Spirits of America, Inc.	Anthony Terlato	Pacific/Southern Wine & Spirits of Illinois, LLC.
20020912	Philadelphia Suburban Corporation	Pennichuck Corporation	Pennichuck Corporation.
20020918	Staples, Inc.	FS Equity Partners IV, L.P	Medical Arts Press, Inc.
20020922	The Southern Company	The New Power Company	The New Power Company.
20020923	General Electric Company	Ralph Stern	CareCredit LLC
20020927	J.W. Childs Equity Partners III, L.P	Esselte AB	Esselte AB
20020932	Richard B. Cohen	Koninklijke Ahold N.V.	Tops Markets, LLC
Transactions Granted Early Termination—07/09/2002			
20020886	AT&T Broadband Corp.	Susquehanna Pfaltzgraff Co	Casco Cable Television Inc. SBC Cable Co. Susquehanna Cable Company. York Cable Television, Inc.
20020894	Group 1 Automotive, Inc	Michael E. Miller	Miller Automotive Group, Inc.
20020903	AmerisourceBergen Corporation	Robert L. Fisher	Automed Technologies, Inc.
20020910	BellSouth Corporation	Republican Technologies Integrated LLC.	Republic Technologies Integrated LLC
20020913	DLJ Merchant Banking Partners III, L.P.	Seabulk International Inc	Seabulk International Inc.
20020920	Warburg Pincus Private Equity VIII, L.P.	Proxim Corporation	Proxim Corporation
20020931	General Electric Company	The Williams Companies, Inc	Williams Gas Processing—Kansas Hugoton Company.
Transactions Granted Early Termination—07/10/2002			
20020897	Enbridge Energy Partners, L.P	Enbridge Inc.	Enbridge Midcoast Energy, Inc.
20020909	Providence Equity Partners IV L.P	Krause Publication, Inc. Employee Stock Ownership Plan.	Krause Publication, Inc.
Transactions Granted Early Termination—07/11/2002			
20020916	Providence Equity Partners IV L.P	Lewis T. Teffeau	Communications Concepts, Inc., Database Marketing Solutions, Inc. Mail-Gard Concepts, Inc. Marketing Communication Systems of Delaware, Inc. Marketing Communication Systems, Inc. Pacific Communication Concepts, Inc.,
20020929	Bemis Company, Inc	E.I. du Pont de Nemours and Company.	E.I. du Pont de Nemours and Company.
Transactions Granted Early Termination—07/12/2002			
20020317	Amgen Inc.	Immunex Corporation	Immunex Corporation
20020915	Sempra Energy	TNP Enterprises, Inc.	Texas Generating Company L.P. Texas-New Mexico Power Company.

Trans No.	Acquiring	Acquired	Entities
20020933	The St. Paul Companies, Inc.	Old Mutual plc	NWQ Investment Management Co., Inc.
20020940	Newhouse Broadcasting Corporation.	AOL Time Warner Inc.	Time Warner Entertainment Advance/Newhouse Partnership
20020942	Vestar Capital Partners IV, L.P	Pro-Fac Cooperative, Inc	Agrilink Foods, Inc.
20020945	Francisco Partners, L.P	General Electric Company	GE Information Services, Inc. RMS Electronic Commerce Systems, Inc.
20020947	Code, Hennessy & Simmons IV, L.P..	Atlantic Equity Partners International II L.P..	Otis Spunkmeyer, Inc.
20020950	AOL Timer Warner, Inc	AOL Time Warner, Inc.	Time Warner Entertainment Advance/Newhouse Partnership.
Transactions Granted Early Termination—07/15/2002			
20020778	FPL Group Inc.	BayCorp Holdings, Ltd.	BayCorp Holdings, Ltd.
20020781	FPL Group, Inc.	Northeast Utilities	Northeast Utilities.
20020782	FPL Group, Inc.	UIL Holdings Corporation	UIL Holdings Corporation.
20020783	FPL Group, Inc.	The National Grid Group PLC	The National Grid Group PLC.
20020875	Pliva d.d.	Sobel N.V.	Sobel Holdings Inc.
20020919	J.P. Morgan Chase & Co	Atlantic Equity Partners International, II, L.P.	BPC Holdings Corporation.
20020921	Public Service Enterprise Group Inc	Wisconsin Energy Corp	Wisvest-Connecticut, LLC.
Transactions Granted Early Termination—07/17/2002			
20020943	Intuit, Inc.	Eclipse, Inc.	Eclipse, Inc.
20020953	The News Corporation Limited	The News Corporation Limited	Affiliated Regional Communications, Ltd. ARC Holding, Ltd. Fox Sports Net National Network Holdings, LLC. Fox Sports Net Rocky Mountain LLC Liberty/Fox ARC, L.P. Prime Network LLC
20020959	MDCP IV Global Investments LP	Jefferson Smurfit Group plc	Jefferson Smurfit Group plc.
Transactions Granted Early Termination—07/18/2002			
20020951	State Street Corporation	James Kelly	International Fund Services (N.A.), L.L.C. Investment Management Services, Inc.
Transactions Granted Early Termination—07/19/2002			
20020935	Daniel Gilbert	Intuit Inc.	Quicken Loans, Inc. Title Source, Inc.
20020954	AT&T Wireless Services, Inc	AT&T Wireless Services, Inc	Boise City Cellular Partnership.
20020955	AT&T Wireless Services, Inc	AT&T Wireless Services, Inc	Greeley Cellular Telephone Company.
20020957	EPCOR Utilities, Inc.	Duke Energy Corporation	Frederickson Power L.P. Frederickson Power Management, Inc.
20020963	Francisco Partners, L.P	Agere Systems Inc	Agere Systems Inc.
20020964	The Katz Trust	Phar-Mor, Inc.	Phar-Mor, Inc.
20020969	First Data Corporation	BP p.l.c.	PayPoint Electronic Payment Systems, Inc.
20020973	Eikem ASA	Sapa AB	Sapa AB.
20020980	Kelso Investment Associates VI, L.P	Nortek Holding, Inc	Nortek Holding, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580. (202 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–20336 Filed 8–9–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 022 3095]

Philips Electronics North America Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

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ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 3, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Linda Badger or Matthew Gold, Federal Trade Commission, Western Regional Office, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 848–5151 or (415) 848–5176.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC home page (for August 5, 2002), on the World Wide Web, at "*http://www.ftc.gov/os/2002/08/index.htm.*" A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order with Philips Electronics North America Corporation ("Philips"). Philips manufactures, advertises, labels, offers for sale, sells, and distributes consumer electronic equipment and other electronic products to the public. Through its division, Philips Consumer Electronics North America, Philips manufactures, advertises, labels, offers for sale, sells, and distributes computer peripheral equipment, such as CD-rewritable drives and computer monitors.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns cash rebate offers that Philips made to consumers who purchased computer peripheral products. The complaint alleges that respondent engaged in deceptive and unfair practices relating to these rebate offers. Specifically, the complaint alleges that respondent falsely represented that it would deliver cash rebates to purchasers of its computer peripheral products within eight weeks. For its promotions offered through its division, Philips Consumer Electronics North America, from January 2001 to January 2002, over fifty thousand consumers experienced delays of up to six months or more. The rebates at issue ranged from $20 to $100 in value.

The complaint further alleges that, in the advertising and sale of its computer peripheral products, Philips offered to deliver rebates in eight weeks to consumers who purchased a Philips computer peripheral product and submitted a rebate form with proof of purchase. After receiving rebate requests in conformance with this offer, Philips unilaterally extended the time period in which it would deliver the rebates to consumers without consumers agreeing to this extension of time. According to the complaint, this constituted an unfair business practice.

The proposed consent order contains provisions designed to prevent Philips from engaging in similar acts and practices in the future. Part I applies to Philips' marketing of personal computer or personal computer-related product sold to consumers, including but not limited to, monitors, speakers, sound cards, CD–RW drives, DVD+RW drives, and multimedia projectors. With regard to these products, Part I.A. prohibits the respondent from misrepresenting the time in which it will mail any cash rebate or any credit towards future purchases. Parts I.B. and I.C. prohibit Philips from failing to provide any such rebate within the time specified, or if no time is specified, within thirty days.

Part I.D. prohibits the respondent from violating the Federal Trade Commission's Trade Regulation Rule Concerning Mail or Telephone Order Merchandise (the "Mail Order Rule") if it offers rebates in the form of merchandise. Part I.E. addresses rebates in the form of services or other consideration that the Mail Order Rule does not cover. That provision requires the respondent to provide the rebate in the time specified, or within thirty days if no time is specified, unless the respondent offers the purchaser the option of consenting to the delay or canceling the rebate request and promptly receiving reasonable cash compensation instead of the promised rebate. Part I.F. requires that the company not "misrepresent, in any manner, expressly or by implication, any material terms of any rebate program, including the status of or reasons for any delay in providing any rebate."

Part II of the proposed order is a redress provision which requires the company to pay out all valid rebates requests that are due or past due as of the date of service of the order. This provision also requires the respondent to send a rebate to any eligible consumer who contacts the respondent or the FTC for a period of 60 days after service of the order.

Parts III through VI of the proposed order are reporting and compliance provisions. Part VII is a provision, "sunsetting" the order after twenty years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 02–20334 Filed 8–9–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 012 3191]

Tim R. Wofford/OKie Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 3, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Kerry O'Brien, Federal Trade Commission, Western Regional Office, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 848–5189.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f) and § 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC home page (for August 5, 2002), on the World Wide Web, at "*http://www.ftc.gov/os/2002/08/index.htm.*" A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Tim R. Wofford, an officer of OKie Corporation (OKie). OKie did business as Prime Peripherals. Mr. Wofford and OKie advertised, labeled, offered for sale, sold, and distributed computer peripheral products to the public, including Prime Peripherals brand modems, CD-Rom drive kits, and recordable compact discs.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns cash rebate offers that respondent and OKie made to consumers who purchased Prime Peripherals computer peripheral products. The complaint alleges that respondent engaged in false advertising and unfair practices relating to these rebate offers. Specifically, the complaint alleges that respondent falsely represented that he would mail cash rebates to purchasers of Prime Peripherals computer peripheral products within either six to eight or eight to ten weeks, or within a reasonable period of time, of respondent's receipt of their requests. In many instances, consumers never received their cash rebates or experienced delays ranging from one to six months.

The complaint also alleges that, in the advertising and sale of Prime Peripherals computer peripheral products, respondent offered that consumers would receive cash rebates if they purchased a Prime Peripherals computer peripheral product and submitted a rebate form with proof of purchase. In making this offer, he did not require consumers to submit a telephone number, fax number, or e-mail address to be eligible to receive the offered cash rebates. In numerous instances, consumers accepted respondent's rebate offer by purchasing those products and submitting rebate forms with proof of purchase. After receiving rebate requests, respondent unfairly modified the terms or conditions of the rebate offer unilaterally by requiring that, in addition to submitting a rebate form with proof of purchase, consumers submit a telephone number, a fax number, and an e-mail address to receive a rebate. In breach of the original rebate offer, respondent rejected numerous rebate requests from consumers because they did not submit a telephone number, a fax number, and/or an e-mail address.

Finally, the complaint alleges that respondent represented that purchasers of Prime Peripherals computer peripheral products would receive cash rebates if they purchased those products and submitted a rebate form with proper documentation, yet failed to disclose that consumers were required to possess and disclose their telephone number, fax number, and e-mail address on a rebate form to receive those cash rebates. The complaint alleges that his failure to disclose these facts was a deceptive practice.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits respondent from failing to disclose all terms, conditions, or other limitations of a rebate offer on the rebate form. It also requires the respondent to disclose in any rebate advertising that the rebate offer requires consumers to disclose a fax number and/or e-mail address on their rebate form if such is the case. Part I of the proposed order also prohibits respondent from misrepresenting the time in which any cash rebate, or rebate in the form of credit towards future purchases, will be mailed to consumers. It also prohibits respondent from failing to provide such rebates within the time

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specified, or if no time is specified, within thirty days.

Part I of the proposed order also prohibits respondent from violating any provision of the Federal Trade Commission's trade Regulation Rule Concerning Mail or Telephone Order Merchandise (the "Mail Order Rule") in connection with rebates in the form of merchandise. Among other things, the Mail Order Rule prohibits marketers from failing to provide rebates in the form of merchandise within the time they specify for delivery, or if no time is specified, within thirty days, unless they offer consumers the option of consenting to a delay or canceling the rebate request and promptly receiving reasonable cash compensation instead of the merchandise originally offered. Finally, Part I of the proposed order similarly prohibits respondent from failing to provide rebates in the form of services or any other consideration (other than cash, credit towards future purchases, or merchandise) within the time he specifies for delivery, or if no time is specified, within thirty days, unless he offers consumers the option of consenting to a delay or canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered.

Parts II through IV of the proposed order are reporting and compliance provisions. Part V is a provision "sunsetting" the order after twenty years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 02–20335 Filed 8–9–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of Health and Human Services (DHHS), has submitted to the Office of Management and Budget (OMB) the following request for emergency review. We are requesting an emergency review because we believe the collection of this information will be extremely useful prior to the World Summit on Sustainable Development to be held in Johannesburg, South Africa, from 26 August—4 September, 2002. This summit is regarded as one of the most significant United Nations conferences in recent times. The Summit will shape future actions within a globally defined sustainable development agenda. Health is emerging as a particularly important global priority in the context of sustainable development. In this context, the information (opinions) from the two proposed groups is important, both for U.S. participation in the summit itself and for the follow-up that will need to begin immediately thereafter.

Most countries will be represented in Johannesburg by their head of state/government, cabinet level, and other appropriate senior government officials, among others. Details of the U.S. delegation have not been finalized. However, the United States will surely be represented at an appropriate senior level, along with other senior government officials, and others. The results of this study, related to the current awareness and perceptions of global health among key U.S. influencers and the general public, will be used to inform and shape U.S. participation and strategies at the summit, and in particular will shape important follow up activities for the Department of Health and Human Services beginning immediately after the summit. Following the normal clearance procedures would not allow us to complete the study in time to make this important information available in time for the United Nations world summit this summer. DHHS is requesting that OMB grant emergency approval as soon as possible for 180-days.

Title and Description of Information Collection: Global Health Public Opinion Research—The purpose of this information collection is to provide important information to U.S. policy makers as they prepare for this country's participation at The World Summit on Sustainable Development in August–September 2002. *Respondents:* Key influencers and the general public; *Number of Respondents:* 800 general public, 182 key influencers; *Number of Responses per Respondent:* one; *Average Burden per Response:* 0.2 hours—Key influencers, 0.25 hours—general public; *Total Burden on Respondents:* 236 hours.

To request more information please contact Cynthia Bauer at 202–690–6207 or Dr. Melinda Moore at 301–443–1774.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Written comments and recommendations for the proposed information collections should be sent immediately directly to Allison Eydt, the OMB Desk Officer, at the following address: OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

Comments may be faxed to Ms. Eydt at 202–395–6974.

Please send a copy of your comments to Cynthia Agnes Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Dated: August 2, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 02–20292 Filed 8–9–02; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB:

1 42 CFR 50 subpart B: Sterilization of Persons in Federally Assisted Planning Projects—0937–0166—Extension no Change—These regulations and informed consent procedures are associated with Federally-funded sterilization services. Selected consent forms are audited during site visits and program reviews to ensure compliance with regulations and the protection of the rights of individuals undergoing sterilization. *Burden Estimate for Consent Form—Annual Response:* 40,000; *Burden per Response:* one hour; *Total Burden for Consent Form:* 40,000 hours—Burden Estimate for Recordkeeping Requirement—*Number of Recordkeepers:* 4,000; Average *Burden per Recordkeeper:* 2.5 hours; *Total Burden for Recordkeeping:* 10,000 hours. *Total Burden:* 50,000 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address. Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: August 2, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 02–20293 Filed 8–9–02; 8:45 am]

BILLING CODE 4150–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Availability of Funds and Request for Applications for the Disease Prevention and Health Promotion Education and Training Program

AGENCY: Department of Health and Human Service, Office of the Secretary, Office of Public Health and Science, Office of Disease Prevention and Health Promotion.

ACTION: Notice.

SUMMARY: The Office of Disease Prevention and Health Promotion (ODPHP) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement to provide health promotion and disease prevention educational and training opportunities for medical students, preventive medicine residents, primary care residents, and practicing physicians.

Approximately $125,000 will be available in fiscal year 2002. This award will begin on or about September 30, 2002 for a 12-month budget period with a project period of 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds. The OMB Catalog of Federal Domestic Assistance number for the National Health Promotion Program is 93.990.

Authority: This program is authorized under section 301 and sections 1701 through 1704 of the Public Health Service Act, as amended, 42 U.S.C. 241 and 42 U.S.C. 300u through 300u–3.

ADDRESSES: Applications for this announcement shall be submitted to Ms. Karen Campbell, Grants Management Officer, Division of Management Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852. Send the original and 2 copies of the complete application to this address. Only original hard copy applications are acceptable.

DATES: To receive consideration, applications must be received by September 16, 2002. Applications will be considered as meeting the deadline if they are: Received on or before the deadline date by the Office of Minority Health by 5 PM EDT. Applications hand-carried by applicants or by applicant couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date between the hours of 9 a.m. to 5 p.m. at the address indicated above. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

FOR FURTHER INFORMATION CONTACT: Ms. Sally Jones, Administrative Officer, Office of Disease Prevention and Health Promotion, Hubert H. Humphrey Building Room 738–G, 200 Independence Avenue, SW., Washington, DC 20201, (202) 260–7654.

SUPPLEMENTARY INFORMATION: The Office of Disease Prevention and Health Promotion (ODPHP) uses cooperative agreements with public and non-profit organizations to support its mandate to provide leadership to promote health and prevent disease among Americans through management and coordination of the implementation of Healthy People 2010, the nation's health objectives for this decade. Through cooperative agreements, ODPHP has forged public-private partnerships to extend the reach and effectiveness of its work. For a copy of Healthy People 2010, visit the Internet site: *http://www.health.gov/healthypeople.*

ODPHP intends to provide $125,000 to one grantee to enhance core competencies in health promotion and disease prevention for medical students, residents, and physicians. Measurable outcomes will include increased knowledge and understanding of the content, value and usage of such materials as Healthy People 2010, the Leading Health Indicators, Guide to Clinical Preventive Services, Guide to Community Preventive Services, and health promotion and disease prevention in general.

Application Kit

For this cooperative agreement, Form PHS 5161–1 (Revised July, 2000 and approved by OMB under Control Number 0937–0189) must be used. An applicant is advised to pay close attention to the specific program guidelines and general instructions provided in the application kit. To get an application kit, write to: Ms. Karen Campbell, Grants Management Officer, Division of Management Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852; or call Karen Campbell at (301) 594–0758.

Eligible Applicants: To qualify for funding, an applicant must be a professional organization/society or institution of higher learning responsible for the education of medical students, preventive-medicine residents, primary-care residents, and practicing physicians from communities across the country. Eligible applicant organizations are encouraged to apply as partnerships.

Faith-based organizations that meet the definition of a professional organization/society or institution of higher learning responsible for the training of those populations listed above are eligible to apply for this Disease Prevention and Health Promotion Education and Training Program Cooperative Agreement.

Availability of Funds: About $125,000 is expected to be available in FY 2002 to fund one cooperative agreement. It is expected that this award will begin on or about September 30, 2002 and will be made for a 12-month budget period with a project period of five years. Funding estimates may change. Grantee may make contracts. Grantee will not be expected to match funds or share project costs.

Use of Funds: Funds cannot be used for construction or renovation, to purchase or lease vehicles or vans, to purchase a facility to house project staff or carry out project activities, or to

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substitute new activities and expenditures for current ones.

Grantee Responsibilities

1. The successful applicant, in collaboration with the ODPHP, will develop, implement and monitor Medical Student education in disease prevention and health promotion:

a. Develop and execute a 2–3 day educational seminar for selected medical students to enhance their understanding of community-based health promotion and disease prevention strategies in the context of Healthy People 2010 and the Leading Health Indicators. This may be modeled on the 2002 Paul Ambrose Health Promotion Medical Student Leadership Symposium. (See attached documentation for further specifics.)

b. Assist symposium students and their sponsoring institutions in the development of a specific health promotion or disease prevention project prior to and/or following the symposium by linking medical students to faculty at their institution of higher learning engaged in disease prevention and health promotional activities.

c. Provide a forum for students to present the results of their project.

2. The successful applicant, in collaboration with the ODPHP, will develop, implement and monitor Preventive Medicine and Primary Care Resident education in disease prevention and health promotion:

a. Facilitate/coordinate an elective rotation at ODPHP of 1–3 months duration. (2 month minimum for preventive medicine residents)

b. Recruit and select preventive medicine and primary care residents to participate in this elective.

c. Convene a meeting at the onset of the initial project year of relevant residency program directors and field placement/site mentors and/or advisors to review program goals, objectives and educational plans.

3. The successful applicant, in collaboration with the ODPHP, will develop and present a proposal to expand disease prevention and health promotion education opportunities for primary care providers. This may include, for example, expanding opportunities for continuing medical education or other mechanisms for educating practitioners on the principles of health promotion and disease prevention.

4. The successful applicant will assist ODPHP with the Luther Terry Fellowship including the framework for identifying education content and resources in the public health community for the development and implementation of the Luther Terry Fellowship.

ODPHP Responsibilities

Substantial programmatic involvement is as follows:

1. ODPHP will provide technical assistance and oversight as necessary for the overall design and implementation of the Disease Prevention and Health Promotion Education and Training programs.

2. ODPHP will participate with grantee in the development of, and ultimately approve, educational materials and program activities for medical students, residents, and practicing physicians.

3. Provide site location and mentorship for preventive medicine residents and primary care residents on educational assignment at ODPHP.

4. ODPHP will provide assistance to the management of program strategies, direction, evaluation activities, and any decisions related to adjustments in funding levels of participating institutions.

5. ODPHP will participate in site visits to training events, as deemed appropriate.

Review of Applications

Applications that are not complete or that do not conform to or address the criteria of the announcement will be returned without comment. Each organization may submit no more than one proposal under this announcement. Organizations submitting more than one proposal will be deemed ineligible. The proposals will be returned without comment. Accepted applications will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by an Objective Review Panel. Panel members are chosen for their expertise in disease prevention and health promotion issues at the national and local levels. Applications should be no more than 30 pages in length, excluding resumes and organizational background material.

Application Review Criteria

The technical review of applications will consider the following 5 generic factors:

(1) Education and Training Plan (30 points)

The proposed goals and objectives in the Education Plan relate to the goal of increasing knowledge and use of disease prevention and health promotion materials and methods among the targeted levels of medical students/residents and practitioners:

—Extent to which the plan summarizes the state of disease prevention and health promotion education for medical students, preventive medicine and primary care residents, and practicing primary care physicians. Including a description of the extent to which "disease prevention and health promotion" didactic and applied experiences and opportunities exist in medical education and clinical practice.
—Description of how the applicant develops each activity specific to the medical students, preventive medicine residents and primary care residents, and practicing physicians as outlined under *Grantee Responsibilities*.
—Appropriateness and relationship of strategies and objectives to the overall goal and implementation of the required activities.
—Appropriateness of specific, realistic, measurable and time-phased process and outcome objectives for each of the strategies to be implemented.
—Relevancy of the evidentiary basis for the proposed strategies.
—Degree to which the *Healthy People 2010* initiative, corresponding Healthy People State plans, the Leading Health Indicators, the Clinical and Community Guides to Preventive Services will be incorporated into proposed activities.
—Where applicable, how proposed strategies and objectives are currently being implemented using other resources.
—How applicant will leverage additional resources for implementation of components of the each educational/training activity.

(2) Project Evaluation (20 points)

—Extent to which application describes how process and outcome objectives for all educational activities will be measured, evaluated and documented.
—Identification of mechanisms to track: (1) The participants in the three educational/training activities, (2) the effect(s) the activities have on the respective careers, and (3) use of clinical preventive services and participation in health promotional activities.
—Feasibility and appropriateness of evaluation design;
—Ability to share and disseminate project results.

(3) Organizational Capabilities/ Qualifications (20 points)

—The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed activities is well defined.
—The application clearly demonstrates the successful management of projects of similar scope by the organization and or by the individual and/or team designated to manage the project.
—The organization's active involvement in education and or training of the targeted groups is demonstrated.
—Position descriptions and/or resumes of key personnel, including those of consultants/contractors, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the proposed approach and in the proposed budget of the application. Position descriptions clearly describe the position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the proposed activities. Either the position descriptions or the resumes contain the qualifications, and/or specialized skills, necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

(4) Partnerships (15 points)

—Description of how partners (if any) were selected and how they will contribute to the development, implementation, monitoring, and any modifications to the proposed activities over time.

(5) Budget (15 points)

A detailed and fully explained budget is provided which:
—Justifies each line item, with a well-written justification, in the budget categories of the application;
—Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed activities;
—Requests funds which are appropriate and necessary for the scope of the proposed activities; and
—Demonstrates administrative efficiency and value which allows for the maximizing of resources for the proposed activities.

General Reporting Requirements

A successful applicant under this notice will also submit (1) semi-annual progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by ODPHP, in accordance with provisions of the general regulations which apply under "Monitoring and Reporting Program Performance," 45 CFR 74.51–74.52, with the exception of State and local governments to which 45 CFR part 92, Subpart C reporting requirements apply.

Provision of Smoke-Free Workplace and Non-Use of Tobacco Products by Recipients of PHS

Grants

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Public Health System Reporting Requirements

This program is subject to Public Health System Reporting Requirements. Under these requirements, a community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted:

(a) A copy of the face page of the application (SF 424), and

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served,

(2) A summary of the services to be provided, and

(3) A description of the coordination planned with the appropriate State or local health agencies.

Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the Office of Disease Prevention and Health Promotion.

State Reviews

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit available under this notice will contain a list of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline established by the Office of Disease Prevention and Health Promotion's Acting Grants Management Officer. The Office of Disease Prevention and Health Promotion does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (*See* "Intergovernmental Review of Federal Programs" Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements).

Dated: August 2, 2002.

Randolph F. Wykoff,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), Director, Office of Disease Prevention and Health Promotion.

[FR Doc. 02–20306 Filed 8–9–02; 8:45 am]

BILLING CODE 4160–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Secretary's Council on Public Health Preparedness; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the Secretary's Council on Public Health Preparedness.

The purpose of this public meeting is to convene the Council to discuss issues related to preparing the nation to respond to public health emergencies in general and bioterrorism in particular. Major areas to be considered by the Council at this meeting may include the following: DHHS bioterrorism preparedness and response programs, oversight of states' preparedness programs, lessons from the anthrax experience, the research and development agenda, development of new products (against bioterrorism), public health emergency response planning, and pre-epidemic vaccination plans.

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Name of Committee: Secretary's Council on Public Health Preparedness.

Date: August 26–27, 2002.

Time: August 26, 10 a.m.–5:30 p.m.; August 27, 9 a.m.–3:30 p.m.

Place: Loews L'Enfant Plaza Hotel (Ballroom), 480 L'Enfant Plaza, SW., Washington, DC 20024, Telephone: (202) 484–100.

Contact Person: Lily Engstrom, Executive Director, Secretary's Council on Public Health Preparedness, Office of the Assistant Secretary for Public Health Emergency Preparedness, 200 Independence Avenue, SW., Room 638G, Washington, DC 20201, 202–690–6750.

Supplementary Information: The Secretary's Council on Public Health Preparedness was established on October 22, 2001 by the Secretary of Health and Human Services under the authorization of section 319 of the Public Health Service Act (42 U.S.C. 247d); section 222 of the Public Health Service Act (42 U.S.C. 217a). The purpose of the Secretary's Council on Public Health Preparedness will be to advise the Secretary on appropriate actions to prepare for and respond to public health emergencies, including acts of bioterrorism. The function of the Council is to advise the Secretary regarding steps that the U.S. Department of Health and Human Services can take to (1) improve the public health and health care infrastructure to better enable Federal, State, and local governments to respond to a public health emergency and, specifically, a bioterrorism event; (2) ensure that there are comprehensive contingency plans in place at the Federal, State, and local levels to respond to a public health emergency and, specifically, a bioterrorism event; and (3) improve public health preparedness at the Federal, State, and local levels.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first served basis. Members of the public who wish to attend the meeting may register by e-mailing *publichealth@iqsolutians.com* no later than close of business, Wednesday, August 21, 2002.

Opportunities for oral statements by the public will be provided on August 26, 2002, from 5 p.m. –5:30 p.m. (Time approximate). Oral comments will be limited to five minutes, three minutes to make a statement and two minutes to respond to questions from Council members. Due to time constraints, only one representative from each organization will be allotted time for oral testimony. The number of speakers and the time allotment may also be limited by the number of registrants. Members of the public who wish to present oral comments at the meeting may register by e-mailing *publichealth@iqsolutions.com* no later than close of business, Monday, August 19, 2002. All requests to present oral comments should include the name, address, telephone number, and business or professional affiliation of the interested party, and should indicate the areas of interest or issue to be addressed.

Any person attending the meeting who has not registered to speak in advance of the meeting will be allowed to make a brief oral statement during the time set aside for public comment if time permits and at the Chairperson's discretion. Individuals unable to attend the meeting, or any interested parties, may send written comments by e-mail to *publichealth@iqsolutions.com* for inclusion in the public record no later than close of business, Wednesday, August 21, 2002.

When mailing written comments, please provide your comments, if possible, as an electronic version or on a diskette. Persons needing special assistance, such as sign language interpretation or other special accommodations, should e-mail staff at *publichealth@iqsolutions.com* no later than close of business, Monday, August 19, 2002.

Because of the need to provide advice and recommendations on bioterrorism, this notice is being provided at the earliest possible time.

Dated: August 5, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20275 Filed 8–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Faculty Loan Repayment Program (FLRP) Application (OMB No. 0915–0150)—Revision

Under the Health Resources and Services Administration Faculty Loan Repayment Program, disadvantaged graduates from certain health professions may enter into a contract under which HRSA will make payments on eligible educational loans in exchange for a minimum of two years of service as a full-time or part-time faculty member of an accredited health professions school. Applicants must complete an application and provide current loan balances on all eligible educational loans.

The estimate of burden for the form are as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Applicants	94	1	94	1	94

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11A–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: August 5, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–20265 Filed 8–9–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Survey to Assess Gender, Race, and Ethnicity of Clients and Staff at BPHC Supported Community-Based Health Service Sites—New

The Office of Minority and Women's Health (OMWH), in the Bureau of Primary Health Care (BPHC), Health Resources and Services Administration (HRSA), recognizes that information on the gender, race, and ethnicity of clients and staff employed at BPHC supported programs is important in determining the extent to which BPHC supported programs reflect the populations they serve. The OMWH purposes to conduct a survey for the purpose of obtaining baseline data on the gender, racial, and ethnic composition of both users and staff at its supported programs.

This survey will permit the BPHC to determine the extent that gender, racial and ethnic composition of employees at supported community-based health care partners reflect the populations they serve. By obtaining this information, BPHC and its service partners will generate the baseline data necessary to determine if improvements should be made to increase the future diversity and knowledge base of staff working at its federally supported health service sites. If health care providers are informed regarding health care issues pertaining to their diverse clientele, and prepared to determine their health behaviors and needs, providers will be better equipped to effectively prevent and treat illnesses.

The burden estimate for this project is as follows:

Form name	Number of respondents	Responses per respondent	Total responses	Average time per response	Total burden hours
Staff Survey	150	74	11,100	.0833	925
Director Survey	150	1	150	.5	75
Total	300		11,250		1,000

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: August 5, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–20264 Filed 8–9–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 2002.

Name: National Advisory Council on the National Health Service Corps.

Date and Time:

September 12, 2002, 5 p.m.–7 p.m.

September 13, 2002; 8:30 a.m.–5 p.m.

September 14, 2002; 9 a.m.–5:30 p.m.

September 15, 2002; 8 a.m.–10:30 a.m.

Place: Churchill Hotel, 1914 Connecticut Avenue NW., Washington, DC 20009, (202) 797–2000.

The meeting is open to the public.

Agenda: The agenda will focus on goals set by the Council and the development of a set of recommendations for the management team from the Agency and the Bureau of Health Professions regarding the National Health Service Corps and the designation of health professional shortage areas.

For further information regarding this meeting please contact Ms. Tira Robinson, Office of the Director, Division of National Health Service Corps, at (301) 594–4140.

Agenda items and times are subject to change as priorities dictate.

Dated: August 6, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–20299 Filed 8–9–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

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would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, COX2 Inhibitors in Proteinuric Renal Insufficiency.

Date: August 29, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Blvd., Room 750, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 750, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600. (301) 594–7798. *muston@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hermatology Research, National Institutes of Health, HHS)

Dated: August 5, 2002

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20271 Filed 8–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: September 12–13, 2002.

Closed: September 12, 2002, 10:30 a.m. to recess.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Open: September 13, 2002, 8:30 a.m. to adjournment.

Agenda: Presentation of NIMH Acting Director's report and discussion on NIMH program and policy issues.

Place: National Institutes of Health, Shannon Building, Wilson Hall, 1 Center Drive, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, PhD, Director, Division of Extramural Activities, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609. 301–443–5047.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.nimh.nih.gov/council/advis.cfm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 5, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20272 Filed 8–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Services Research Applications on Depression.

Date: August 7, 2002.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Joel Sherrill, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606. 301–443–6102. *jsherril@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 5, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20273 Filed 8–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, National Cell Repository for Alzheimer's Disease.

Date: September 9, 2002.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Gateway Building, 7201 Wisconsin Ave Suite 2C212, Bethesda, MD 20814. (Telephone Conference Call).

Contact Person: Mary Nekola, PhD, Chief of the Scientific Review Office, National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814–9692. 301–496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Role of Glia in Neuronal Degeneration.

Date: September 12, 2002.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Scientific Review Office, National Institute on Aging, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814. (Telephone Conference Call).

Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Office, Gateway Building/Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20817.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 5, 2002.

LaVerne J. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20274 Filed 8–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–40]

Notice of Proposed Information Collection: Comment Request; Mortgagee's Certification and Application for Assistance or Interest Reduction Payments Due Under Sections 235(b), 235(j), or 235(i)

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

DATES: *Comments Due Date:* October 11, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joe McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed froms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other froms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Mortgagee's Certification and Application for Assistance or Interest Reduction Payments Due Under Sections 235(b) 235(j), or 235(i).

OMB Contol Number, if applicable: 2502–0081.

Description of the need for the information and proposed use: HUD must monitor all assistance payments disbursed under the Section 235 Program. Mortgagees submit these information collections in order to receive assistance payments each month. The information collection is used to bill HUD for these payments.

Agency form numbers, if applicable: HUD–300 and HUD–93102.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 5,250, the number is respondents is 350 generating approximately 8,400 annual responses, the frequency of response is on occasion and monthly, and the estimated time needed to prepare the responses varies from 15 minutes to one hour.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 31, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02–20333 Filed 8–9–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–010–5700–10; IDI–33300]

Classification of Lands for Recreation and Public Purposes, Elmore County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public lands in Elmore County, Idaho, have been examined and determined to be suitable for classification for lease or

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conveyance to Elmore County, under the provisions of the Recreation and Public Purposes (R&PP) Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*):

Boise Meridian, Idaho

T. 2 N., R. 10 E.,
Section 19: the northerly 110.00 feet of the SE¼NE¼NE¼SW¼.

Aggregating 0.833 acres, more or less.

DATES: Interested parties may submit comments through September 26, 2002 to the Four Rivers Field Manager.

ADDRESSES: Comments should be sent to Daryl Albiston, Four Rivers Field Manager, Bureau of Land Management, Lower Snake River District, 3948 Development Ave., Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Mike Austin, Four Rivers Realty Specialist at (208) 384–3339.

SUPPLEMENTARY INFORMATION: On January 2, 2001, Elmore County was granted a R&PP lease on 2½ acres of public land, for a senior citizen's center and snowmobile groomer shed. Elmore County has filed an application to amend this lease to accommodate a slightly different placement for the snowmobile groomer shed. This land will be developed and managed for community and recreational purposes, as described in the development plan submitted by Elmore County on March 10, 2002. We have determined that the lease or conveyance of the lands for the proposed community center and shed are in the public interest.

Publication of this notice in the **Federal Register** will segregate the above described public lands from the operation of the public land laws and the mining laws, except for mineral leasing and leasing or conveyance under the R&PP Act. In the absence of any adverse comments, the classification will become effective October 11, 2002. The segregative effect will automatically expire on February 12, 2004.

Comments: Comments may address whether the lands being classified are physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning or zoning, or if the use is consistent with State or Federal programs. Comments may also address the specific use proposed in the application or plan of development, whether the BLM followed proper administrative procedures in reaching the decision to lease the land under the R&PP Act, or any other factor not directly related to the suitability of the land for the stated purpose. Adverse comments will be reviewed by the District Manager.

The lease of the lands will not occur until after the classification becomes effective, and will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.
2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.
4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Dated: May 31, 2002.

Daryl Albiston,

Four Rivers Field Manager.

[FR Doc. 02–20337 Filed 8–9–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–1430–EQ; AA–081878]

Notice of Realty Action: Non-Competitive FLPMA Lease; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action: lease of public land.

SUMMARY: The following public lands along the Anvik River in western Alaska have been examined and found suitable for non-competitive lease to the State of Alaska Department of Fish and Game (ADF&G) under the provisions of Section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976 and 43 CFR Part 2920. ADF&G proposes to lease the Anvik fish counting station and associated storage and maintenance area for 20 years. The lease is intended to convert a permit to a lease for the continued operation and maintenance of existing facilities.

Seward Meridian, Alaska

T. 31 N., R. 61 W.
NE1/4NE1/4 of Section 34
NW1/4NW1/4 of Section 35

Containing approximately 2 acres.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed action to the Anchorage Field Manager.

FOR FURTHER INFORMATION CONTACT: Stuart Hirsh, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507, (907) 267–1252.

Dated: July 22, 2002.

June Bailey,

Acting Anchorage Field Manager.

[FR Doc. 02–20338 Filed 8–9–02; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting

AGENCY: National Park Service, U.S. Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the National Landmarks Committee of the National Park System Advisory Board will be held at 9 on the following dates and at the following location.

DATES: October 15 and October 16, 2002.

ADDRESSES: The Charles Sumner School, Museum and Archives, 1201 Seventeenth Street, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Patricia Henry, National Historic Landmarks Survey, National Register, History, and Education, National Park Service; in care of Ms. Shirley Sears Smith; National Park Service, Office of Policy; 1849 C Street, NW; Room 2414; Washington, DC 20240. Telephone (through Ms. Shirley Smith) (202) 208–7456.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the National Landmarks Committee of the National Park System Advisory Board is to evaluate nominations of historic properties in order to advise the full National Park System Advisory Board of the qualifications of properties being proposed for National Historic Landmark (NHL) designation, and to recommend to the National Park System Advisory Board those properties that the Landmarks Committee finds meet the criteria for designation as National Historic Landmarks. The members of the National Landmarks Committee are:

Dr. Janet Snyder Matthews, CHAIR
Dr. Allyson Brooks
Dr. Ian W. Brown
Mr. S. Allen Chambers, Jr.
Dr. Elizabeth Clark-Lewis
Dr. Bernard L. Herman
Professor E.L. Roy Hunt
Ms. Paula J. Johnson
Mr. Jerry L. Rogers
Dr. Richard Guy Wilson

The meeting will include presentations and discussions on the national historic significance and the historic integrity of a number of properties being nominated for National Historic Landmark designation. The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file for consideration by the committee written comments concerning nominations and matters to be discussed pursuant to 36 CFR Part 65.

Comments should be submitted to Carol D. Shull, Chief, National Historic Landmarks Survey and Keeper of the National Register of Historic Places; National Register, History, and Education (2280); National Park Service; in care of Ms. Shirley Sears Smith; National Park Service, Office of Policy; 1849 C Street, NW; Room 2414; Washington, DC 20240.

The committee will consider the following nominations:

Arkansas
Centennial Baptist Church
Illinois
Columbus Park
Indiana
Allen County Courthouse
Oldfields
Iowa
Terrace Hill
Maryland
Rebecca T. Ruark
Massachusetts
Beauport
Jacob's Pillow Dance Festival
Mount Auburn Cemetery
Revere Beach Reservation
Union Oyster House
New York
Dr. Oliver Bronson House and Estate
Philosophy Hall
Ohio
Adena (Thomas Worthington House)
Pennsylvania
Buckingham Friends Meeting House
Tennessee
Sun Record Company/Memphis Recording Service
Texas
USS *Lexington*
Virginia
Prestwould
Washington
Hashidate Yu at the Panama Hotel
West Virginia
The Baltimore and Ohio Railroad Martinsburg Shops
Wisconsin
Herbert and Katherine Jacobs First House
Herbert and Katherine Jacobs Second House
Ten Chimneys
Wyoming
Fort Yellowstone
Jackson Lake Lodge

The Committee will also consider the following boundary adjustments, additional documentation and withdrawals of designation:

Delaware
New Castle County Courthouse (name change and additional documentation)
District of Columbia, Maryland, and Virginia
Washington Aqueduct (boundary adjustment and additional documentation)
Tennessee
Nashville Union Station and Trainshed (withdrawal of designation)

The committee will also consider the recommendations presented in the Draft Star-Spangled Banner National Historic Trail Study, prepared under the auspices of Public Law 104–333.

Dated: July 31, 2002.

Carol D. Shull,

Chief, National Historic Landmarks Survey and Keeper of the National Register of Historic Places; National Park Service, Washington, DC.

[FR Doc. 02–20377 Filed 8–9–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 20, 2002. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St., NW, Suite 400, Washington DC 20002; or by fax, 202–343–1836. Written or faxed comments should be submitted by August 27, 2002.

Carol D. Shull,

Keeper of the National Register of Historic Places.

Illinois

Lake County:
Adler, Mrs. Isaac D., House, 1480 N. Milwaukee Ave., Libertyville, 02000901

Massachusetts

Barnstable County:
Jarves, John and Mary Waterman, House, 3 Jarves St., Sandwich, 02000903
Berkshire County:
Northeast School, 981 Summit Rd., Richmond, 02000902
Hampshire County:
Our Mother of Sorrows Monastery and Retreat Center, 110 Monastery Ave., West Springfield, 02000904

Missouri

Newton County:
Neosho High School, (Neosho MPS), W. McCord and N. Wood Sts., Neosho, 02000906
St. Louis County:
J. Milton Turner School, 238 Meacham Ave., and 245 Saratoga Ave., Kirkwood, 02000905

Texas

Hidalgo County:
Mission Canal Company Second Lift Pumphouse, (Mission, Hidalgo County: MPS), 6th St. and Canal, Mission, 02000910
Mission Citrus Growers Union Packing Shed, (Mission, Hidalgo County: MPS), 824 W. Business TX 83, Mission, 02000911
Roosevelt School Auditorium and Classroom Addition, (Mission, Hidalgo County: MPS), 407 E. 3rd St., Mission, 02000909
Shary, John, Building, (Mission, Hidalgo County: MPS), 900 Doherty, Mission, 02000907
Teatro La Paz, (Mission, Hidalgo County: MPS), 514, 516, 518 Doherty, Mission, 02000908

A request for REMOVAL has been received for the following resources:

Colorado

El Paso County:
Cragmor Sanatorium 1420 Austin Bluffs Pkwy, Colorado Springs, 98000586
Fremont County:
Howard Bridge, (Vehicular Bridges in Colorado TR), Off US 50, Howard, 85000209
Las Animas:
Avery Bridges (Vehicular Bridges in Colorado TR), Cty. Rd. Over Leitensdorfer Arroyo and Apishapa River, Hoehne and Aguilar vicinity, 85001403
Elson Bridge, (Vehicular Bridges in Colorado TR), Cty. Rd. 36, El Moro vicinity, 85000215

[FR Doc. 02–20375 Filed 8–9–02; 8:45 am]

BILLING CODE 4310–70–P

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DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

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Carol D. Shull,

Keeper of the National Register of Historic Places.

Connecticut

Litchfield County
Migeon Avenue Historic District, Roughly along Migeon Ave. and parts of Forest St., Torrington, 02000913
Skee's Diner, 589 Main St., Torrington, 02000912

Kentucky

Barren County:
Glasgow OMS #9, (Kentucky's National Guard Facilities MPS) Cavalry Dr., Glasgow, 02000922
Boyd County:
Ashland Armory, (Kentucky's National Guard Facilities MPS) 2519 Lexington Ave., Ashland, 02000920
Daviess County:
Owensboro Armory, (Kentucky's National Guard Facilities MPS) 1501 Parrish Ave., Owensboro, 02000919
Fayette County:
Woolworth, F.W., Building, 106 Main St., Lexington, 02000924
Franklin County:
Berry, George F., House, 700 Louisville Rd.,
Frankfort, 02000915 Frankfort Storage Building—Armory, (Kentucky's National Guard Facilities MPS) 208 Maryland Ave., Frankfort, 02000929
Hardin County:
Elizabethtown Armory, (Kentucky's National Guard Facilities MPS) 205 Warfield St., Elizabethtown, 02000921
Harrison County:
Second Battle of Cynthiana Battlefield, 1 mi. N of Cynthiana, E of KY 36, Cynthiana, 02000914
Henderson County:
Henderson Armory, (Kentucky's National Guard Facilities MPS) 735 N. Elm St., Henderson, 02000928
Hopkins County:
Madisonville Armory, (Kentucky's National Guard Facilities MPS) 670 Park Ave., Madisonville, 02000927
Jefferson County:
Masonic Widows and Orphans Home, 3701 Frankfort Ave., Louisville, 02000916
Kenton County:
Erlanger Proper Subdivision Historic District, (Erlanger, Kenton County:, Kentucky MPS) Roughly bounded by Hulbert, Division, Crescent, Dixie, and Graves., Erlanger, 02000918
Pike County:
Fordson Coal Company Buildings, 1355, 1377, and 1393 Pond Creek Rd., Stone, 02000917
Pulaski County:
Somerset Armory, (Kentucky's National Guard Facilities MPS) 109 Grand Ave., Somerset, 02000926
Scott County:
Scott County: Jail Complex, 117 N. Water St., Georgetown, 02000923
Warren County:
Bowling Green OMS #10, (Kentucky's National Guard Facilities MPS) 719 Old Morgantown Rd., Bowling Green, 02000925
Whitley County:
Williamsburg Ave. (Kentucky's National Guard Facilities MPS), S. Second St., Williamsburg, 02000930

Maryland

Nicollet County:
Nicollet County Courthouse and Jail, 501 S, Minnesota Ave., St. Peter, 02000939

Minnesota

Marshall County:
Taralseth, K.J., Company, 427 N. Main St., Warren, 02000938
Pine County:
Hinckley State Line Marker (Federal Relief Construction in Minnesota MPS AD), MN 48, Ogema, 02000935
Roseau County:
Lodge Boleslav Jablonsky No. 219, 30033 110th St., Poplar Grove, 02000936
St. Louis County:
Church of St. Joseph (Catholic), 7897 Elmer Rd., Elmer, 02000940
Lester River Bridge—Bridge No. 5772 (Reinforced-Concrete Highway Bridges in Minnesota MPS), London Rd. over the Lester R., Duluth, 02000934
Orr Roadside Parking Area (Federal Relief Construction in Minnesota MPS AD), MN 53 at First Ave., Orr, 02000937

North Carolina

Henderson County:
Stillwell, Erle, House II, 541 Blythe St., Hendersonville, 02000933
Iredell County:
Mitchell College Historic District (Boundary Increase, Roughly bounded by Mulberry, Race, Cherry, Oak and Alexander Sts., Statesville, 02000932
Lee County:
Lee Avenue Historic District (Lee County: MPS), Roughly along Lee Avenue, W. Main St., S. Academy St., and W. Raleigh St., Sanford, 02000944
Nash County:
Villa Place Historic District (Boundary Increase), Roughly along Chester St., Tillery St., NC 64, and Pearl St., Rocky Mount, 02000942
West Have Historic District, Roughly bounded by Lafayetter and Pinecrest Aves., and the Tar River, Rocky Mount, 02000931
Stokes County:
King Historic District, Dalton Rd., Main St., School St. and Railroad Right of Way, King, 02000941
Leak—Chaffin-Browder House, NC 8, 0.1 mi. S of jct. with NC 1941, Germantown, 02000943
Transylvania County:
Main Street Historic District (Transylvania County: MPS), Roughly bounded by Gaston St., England St., Probart St., and Jordan St., Brevard, 02000945
Wake County:
Depot Historic District, Bounded by W. Hargett, S. McDowell, S. Dawson, and W. Cabarrus St., Raleigh, 02000946

Ohio

Summit County:
Porter-Aue House (Canal, Railroad, and Industrial Resources of the Village of Clinton/Warwick, Ohio MPS), 2798 North Street, Clinton, 02000947

Oregon

Malheur County:
Vale Drug Store, 158 Main St. N, Vale, 02000950
Marion County:
Brown, Charles and Martha, House, 425 N. First Ave., Stayton, 02000949
Multnomah County:
Tannler—Armstrong House, 4420 NE Alameda, Portland, 02000948

Pennsylvania

Pike County:
Milford Historic District (Boundary Increase), Roughly encompassing the gridded portion of Milford, Milford, 02000951

Rhode Island

Providence County:
Exchange Street Historic District, Roughly along Exchange, Front and Fountain Sts., Pawtucket, 02000952

Vermont

Windsor County:
Fessenden, Joseph, House, 58 Bridge St., Royalton, 02000953

A request for REMOVAL has been made for the following resource:

Wisconsin

Milwaukee County:
Milwaukee County: Home for Dependent Children School, 9658 Watertown Plank Rd., Wauwatosa, 98001535

[FR Doc. 02–20376 Filed 8–9–02; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intentions of the Bureau of Reclamation to seek extension of the information collection for the Lower Colorado River Well Inventory. The current OMB approval expires on December 31, 2002.

DATES: Comments on this notice must be received by October 11, 2002.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the information collection form and to submit comments on this information collection contact: Mr. Jeffrey Addiego, Boulder Canyon Operations Office, PO Box 61470, Boulder City, NV 89006–1470; telephone (702) 293–8525; or e-mail at *JAddiego@lc.usbr.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Reclamation, including whether the information shall have practical utility; (b) the accuracy of Reclamation's estimated burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Title: Lower Colorado River Well Inventory.

OMB No. OMB No. 1006–0014.

Abstract: The Secretary of the Interior is responsible for accounting for all diversions of mainstream Colorado River water along the lower Colorado River, and for assuring that all Colorado River use is in accordance with a water use entitlement. This requires an inventory of wells along the lower Colorado River, and the gathering of specific information concerning these wells.

Description of respondents: All diversions of mainstream Colorado River water along the lower Colorado River must be accounted for and, for non-Indian diverters, in accordance with a water use contract with the Secretary of the Interior. This will affect every well owner and operator along the lower Colorado River in Arizona, California, and Nevada. Each diverter (including well pumpers) must be identified and their diversion locations and water use determined.

Frequency: These data will be collected only once for each well owner or operator as long as changes in water use, or other changes that would impact contractual or administrative requirements, are not made.

Estimated completion time: An average of 30 minutes is required for Reclamation to interview individual well owners or operators. Reclamation will use the information collected during these interviews to complete the information collection form.

Annual responses: 1,000.

Annual burden hours: 500 hours.

Dated: July 17, 2002.

Gary Palmeter,

Manager, Property and Office Services Division.

[FR Doc. 02–20298 Filed 8–9–02; 8:45 am]
BILLING CODE 4310–MN–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8:30 a.m. to 5 p.m. on Monday, October 21, 2002 and 8:30 a.m. to 12 noon on Tuesday, October 22, 2002.

Place: Raintree Plaza Hotel & Conference Center (soon to be Radisson Hotel & Conference Center), 1900 Ken Pratt Boulevard, Longmont, Colorado 80501.

Status: Open.

Matters to Be Considered: Presentations on Leadership/Management Competency Project, E-Learning and Children of Offenders; division reports; Quaterlly Report by Office of Justice Programs, Health and Human Services; and updates on Interstate Compact activities and Prison Rape Research/Data.

Contact Person For More Information: Larry Solomon, Deputy Director, 202–307–3106, ext, 44254.

Morris L. Thigpen,

Director.

[FR Doc. 02–20362 Filed 8–10–02; 8:45 am]
BILLING CODE 4410–36–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation; Wolf Creek Generating Station Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to revise the antitrust conditions applicable to Kansas Gas and Electric Company (KGE) contained in Appendix C to Facility Operating License No. NPF–42 for the Wolf Creek Generating Station (WCGS), located in Coffey County, Kansas. Wolf Creek Nuclear Operating Corporation (the licensee) operates WCGS and acts

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as the agent for KGE, which co-owns the facility. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the antitrust conditions for KGE in Appendix C of Facility Operating License No. NPF–42 to (1) add a statement that the antitrust conditions do not restrict the rights of Kansas Electric Power Cooperative, Inc. (KEPCo) or the duties of KGE, that may exist beyond, and are not inconsistent with, the antitrust conditions, (2) define "KGE members in licensee's service area" in the appendix to include all KEPCo members with facilities in Western Resources, Inc.'s and KGE's combined service area, (3) delete license conditions restricting KEPCo's use of the power from WCGS, (4) remove out-of-date conditions, and (5) update conditions to be consistent with the terms and conditions of Western Resources' Federal Energy Regulatory Commission open access transmission tariff. Western Resources is the parent company of KGE. The proposed action is in accordance with the licensee's application dated June 27, 2000, as supplemented by letters dated January 31, May 2, and October 30, 2001, and May 10, 2002.

The Need for the Proposed Action

The proposed action is needed, according to the licensee's application, to update KGE's antitrust conditions and make the antitrust conditions consistent with the terms and conditions of Western Resources' Federal Energy Regulatory Commission open access transmission tariff.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed license amendment involves administrative actions which have no effect on plant equipment or operation.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in NUREG–0878, "Final Environmental Statement Related to the Operation of Wolf Creek Generating Station, Unit No. 1," dated June 1982.

Agencies and Persons Consulted

On August 5, 2002, the staff consulted with the Kansas State official, Mr. Thomas A. Conley of the Kansas Department of Health and Environment regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated June 27, 2000, January 31, May 2, and October 30, 2001, and May 10, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 6th day of August 2002.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Chief, Section 2 Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–20343 Filed 8–9–02; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of proposal to consolidate two systems of records.

SUMMARY: The Postal Service, primarily for ease of reference, has determined it necessary to consolidate the descriptions of two records systems previously reported separately. The description of USPS 050.010—Finance Records, Employee Travel Records (Accounts Payable), is combined with USPS 050.060—Finance Records, Accounts Payable Files. The Postal Service has determined that the description of USPS 050.060 should be expanded in order to provide a more complete picture of the scope of the information maintained. System modifications and the two added new routine uses (3 and 4) enhance the description and permit disclosure of information about employees to the government credit card vendor and to the employee's designated financial institution.

DATES: Any interested party may submit written comments on the proposed amendments and additions. This proposal becomes effective without further notice September 23, 2002, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to the Records Office, Room 5846, 475 L'Enfant Plaza SW., Washington, DC 20260–5846. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert J. Faruq at (202) 268–2608.

SUPPLEMENTARY INFORMATION: The proposed revision to Privacy Act system of records USPS 050.060, Finance Records—Accounts Payable Files, reflects the changes in procedures and recordkeeping implemented by the Postal Service when accounts payable processing was decentralized and changes were made for reimbursing employee travel and related expenses through eTravel. The proposed revision also incorporates the implementation of the Electronic Funds Transfer (EFT) reimbursement capability for travelers. Therefore, the Postal Service is deleting from its Personal Systems of Sequential Inventory USPS 050.010, Finance Records—Employee Travel Records (Accounts Payable). Records that were subject to USPS 050.010 are covered by system of records USPS 050.060, Finance Records—Accounts Payable Files. The changes to USPS 050.060 do not alter the character or use of information contained in the system, but rather improved the system description to reflect information collection in today's environment.

Each of the proposed routine uses is compatible with the purpose for collecting the information. The purpose for collecting the information is, in part, "to reimburse employees and vendors for travel and other expenses incurred in conjunction with official business." Because the information within this system USPS 050.060 is collected to handle reimbursement for travel and other expenses, the proposed routine uses (3 and 4) are clearly compatible with the purpose of the system.

The system modifications and additions are not expected to have any effect on individual rights because the accounts payable information pertains primarily to businesses. To the extent that information within system USPS 050.060 pertains to individuals, it relates to business transactions rather than personal matters. However, appropriate safeguards are applied to protect information. Records are kept in a secured environment, with automated data processing physical and administrative security and technical software applied to data on computer media. Paper records are kept in a secured area and made available internally on an official need-to-know basis. Contractors who maintain data collected are made subject to the subsection (m) of the Privacy Act and are required to apply appropriate protection subject to the audit and inspection of the Postal Inspection Service.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed system changes has been sent to Congress and to the Office of Management and Budget for their evaluation.

USPS Privacy Act system 050.060 was last published in its entirety in the **Federal Register** on June 5, 1997 (62 FR 30898–30901). The Postal Service proposes amending this system as shown below.

USPS 050.060

SYSTEM NAME:

Finance Records—Accounts Payable Files, 050.060.

SYSTEM LOCATIONS:

[Change to Read]

Post Offices, district and area finance offices, Postal Service Headquarters, imprest funds offices, personnel offices, accounting service centers, computer operations service centers, and contract travel and relocation agency offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

[Change to Read]

Individuals or entities to whom the Postal Service makes payment(s) for materials and services received or expenses incurred in conjunction with official Postal Service business. Includes employees and officers authorized to travel, relocate, or otherwise incur expenses in performance of their official duties. Also includes persons that receive payment for indemnity claims for damage to or loss of mail, service failures, and administrative tort claims.

CATEGORIES OF RECORDS IN THE SYSTEM:

[Change to Read]

This system is made up of hard copy and electronic records. The records include hard copies of commitment documents, purchase orders, requisitions, invoices, claims, and receipts; and computerized transaction files and databases. These records contain creditors' name, address, vendor, tax identification, or social security number (employees and officers are considered vendors); finance number, e-mail address, logon identification code, travel and relocation plans, travel expense and relocation transaction details, expense dates, descriptions of expenses incurred, amount due, payment status, and payment history. For employees and officers using the government-supplied travel card for travel and relocation expenses, certain electronic records also contain the employee or officer's credit card account number. For electronic funds transfer transactions (EFT), files also include the creditor's financial institution routing number; and for EFT payments made by the Postal Service on behalf of employees and officers, the employee or officer's account number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

[Change to Read]

39 U.S.C. 401, 404, 1001, 1206, 2008, and Public Law 104–134.

PURPOSE(S):

[Change to Read]

The records in this system support payments to Postal Service creditors. Information from these records is used to: (1) Verify that goods and services were received by the Postal Service; (2) assure that expenses incurred were properly authorized; (3) reimburse employees, officers, and vendors for travel, relocation, and other expenses incurred in conjunction with official Postal Service business; (4) generate electronic funds transfer and hard copy check payment transactions to promptly pay creditors; and (5) offset delinquent debts that certain creditors owe to the Federal Government under the Department of the Treasury Offset Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

General routine use statements a, b, c, d, e, f, g, h, j, k, l, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses follow:

1. Disclosure of information about individuals for whom the Postal Service maintains accounts payable *records* may be made to the Department of the Treasury for cross-matching under its Treasury Offset Program. Disclosure will be limited to information needed to establish the identity of the individual as a delinquent debtor of another Federal agency and to offset the payment to pay the debt.

2. Disclosure of the name and address of the owner of leased property, or of the payee when different from the owner, may be made upon request.

[Add]:

3. Disclosure of the employee or officer's social security number and government-supplied credit card account number may be made to the government travel card vendor in conjunction with payment of charges for authorized expenses charged to the government-supplied travel card.

4. Disclosure of the employee or officer's account number may be made to the financial institution designated by the employee or officer when reimbursing the employee or officer for authorized travel relocation expenses

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not charged to government-supplied travel card.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

[Change to Read]

Hard copy documents are retained in Post Offices, district and area finance offices, Postal Service Headquarters, imprest fund offices, personnel offices, the St. Louis and San Mateo Accounting Service Centers, and contractor travel and relocation agency offices. Electronic records related to accounts payable transactions, including incoming invoices, government-supplied travel card transactions, and electronic funds transfer and other payment records, are maintained at the San Mateo Computer Operations Service Center (COSC). The electronic databases containing employee travel reimbursement system enrollment, logon ID, and travel expense transaction records are retained at the Eagan COSC.

RETRIEVABILITY:

[Change to Read]

Hard copy accounts payable records are retrieved by vendor name (including employees and officers) and identification number within processing location, transaction date, and/or batch number. Electronic records are retrieved by vendor name, identification number, credit card number, financial institution account number, transaction date, and/or batch number.

SAFEGUARDS:

[Change to Read]

Hard copy and electronic records within this system are located in buildings with controlled access. Hard copy records are stored in lockable file cabinets. Access to the buildings and to controlled areas within the buildings is restricted through use of guards and authorized badges and/or card keys and limited to persons whose duties require such access. Electronic records are protected with security software and operating system controls, including the use of logon identification codes and password firewalls that prevent unauthorized access to the private Postal Service computer network, and encryption of sensitive data elements. Information that is transmitted electronically between Postal Service facilities or between the Postal Service and external entities is also encrypted. Access is limited by these means to persons whose duties require it.

RETENTION AND DISPOSAL:

[Change to Read]

Note: In addition to this system of records, certain accounts payable records are duplicated in USPS Privacy Act Systems 010.030, 050.040, 150.030, 160.010, 160.020, 200.020, and 200.030, each of which has relevant retention periods established. See those systems for the retention of the records described therein.

a. Hard copies of accounts payable records, including requisitions, purchase orders, certified invoices, travel expense reports, relocation forms, and related records, are filed alphabetically by vendor name and invoice number (in the Postal Service facility where the payment transaction was processed) within batch number, and/or within accounting period. These records are retained for 3 years from the end of the fiscal year in which the expenses were paid, then shredded.

b. Hard copies of travel reimbursement system enrollment records are filed alphabetically, by employee or officer's last name, by responsible coordinator, within the Postal Service facility where the employee was enrolled into the system. These records are transferred to an inactive file when the employee or officer no longer participates in the electronic travel reimbursement system or separates from the Postal Service. The inactive records are retained until the end of the calendar year, then shredded.

c. Electronic accounts payable payment records are retained online at the San Mateo COSC for 1 year from the end of the fiscal year in which the payment was made; archived for 6 additional years, then destroyed.

d. Electronic travel reimbursement system employee and officer transaction records are retained online at the Eagan COSC for 3 years from the end of the fiscal year in which the reimbursement was claimed; archived for an additional year, then destroyed.

e. Electronic travel reimbursement system employee and officer enrollment and logon ID records are retained online at the Eagan COSC until they are cancelled or superseded, when they are transferred to an inactive file. The inactive records are retained for 3 years from the end of the calendar year in which they became inactive, then destroyed.

SYSTEM MANAGER(S) AND ADDRESSES:

Vice President, Controller, Finance, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–5200.

NOTIFICATION PROCEDURE:

Individuals wanting to know whether information about them is maintained in this system of records must address inquiries in writing to the system manager. Inquiries must contain the individual's name and taxpayer identification number (or social security number).

RECORDS ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedures above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Records Access Procedures above.

RECORD SOURCE CATEGORIES:

[Change to Read]

Information in this system is furnished by Postal Service creditors, employees, and officers; Postal Service financial systems; the government travel card vendor; employee-designated financial institutions; and other Federal agencies to which creditors are delinquently indebted. Some information may be duplicated in other Privacy Act systems of records including USPS 010.030, 050.040, 150.030, 160.010, 160.020, 200.020, and 200.030.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–20393 Filed 8–9–02; 8:45 am]

BILLING CODE 7710–12–U

POSTAL SERVICE

Postal Service Licensing Program

ACTION: Notice.

SUMMARY: The Postal Service is publishing notice that it has amended its *Administrative Support Manual* to include policy and information about the Postal Service's licensing policy and program.

DATES: The amendments to the *Administrative Support Manual* (ASM) are effective when published in the *Postal Bulletin* (issue 22082) on August 8, 2002.

ADDRESSES: Parties interested in reviewing these amendments may find them online at *http://www.usps.com/cpim/ftp/bulletin/pb.htm.*

FOR FURTHER INFORMATION CONTACT: Maria Pell, Senior Licensing Specialist, 202–268–6745.

SUPPLEMENTARY INFORMATION:

Discussion of Amendments

The Postal Service is adding ASM subchapter 66, Licensing, to include the Postal Service's licensing policy and information about the licensing program. Specifically, we:

- Added ASM section 333.647 to include a reference to the licensing policy in section 333.6, Endorsement of Nonpostal Products, Services, or Business. The reference is to remind employees to refer to and follow the appropriate policy if a company approaches them about manufacturing or distributing merchandise bearing USPS marks.
- Added ASM part 661 to include the responsibilities and authority of the Licensing group.
- Added ASM section 662.1, to describe the requirements of the licensing program as it relates to Postal Service employees making official purchases of merchandise that display a Postal Service trademark, stamp design, or other pictorial or graphic image that the Postal Service owns or uses.
- Added ASM section 662.2 to provide the definition of *officially-licensed merchandise.*
- Included a licensing handbook for Postal Service employees who work in the field [*Licensing: Field Handbook of Frequently Asked Questions (FAQs)*] and a list of the Postal Service's licensees, which will be updated monthly in the Postal Bulletin.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–20392 Filed 8–9–02; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46318; File No. SR–MSRB–2002–06]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of the Proposed Rule Change Relating to Disclosures in Connection With New Issues

August 6, 2002.

On June 21, 2002, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–2002–06). The proposed rule change relates to disclosures in connection with new issues.

The Commission published the proposed rule change for comment in the **Federal Register** on July 3, 2002.[3] The Commission did not receive comment letters relating to the forgoing proposed rule change. This order approves the Board's proposal.

I. Description of the Proposed Rule Change

To add greater convenience to customers and cost effectiveness to brokers, dealers and municipal securities dealers, the MSRB has determined to amend Rule G–32, on disclosures in connection with new issues. The proposed rule change amends Rule G–32(a) to reference Rule 154, of the Securities Act of 1933 ("Securities Act"), on householding.[4] The amendments to Rule G–8, on books and records, and Rule G–9, on preservation of records, account for the changes to Rule G–32.

Under the Securities Act's Rule 154, a broker-dealer may satisfy its prospectus delivery requirements with respect to two or more investors sharing the same address by sending a single prospectus to that address, subject to certain conditions.[5] The SEC refers to this process as "householding." In adopting Rule 154, the Commission noted that, as a result of increased ownership of securities by individuals through different accounts (*e.g.*, brokerage accounts, individual retirement accounts and custodial accounts for minors), duplicate copies of disclosure documents often were mailed to a single household.[6] The investors do not have to be related. The document may be addressed to the investors as a group (*e.g.*, "Jane Doe and Household" or "The Smith Family") or to each of the investors individually (*e.g.*, "Jane Doe and John Smith"). The address may be a residential, commercial, or electronic address (*i.e.*, it may be a street address, post office box, fax number, or e-mail address).[7] The purpose of Rule 154 is to reduce the number of duplicate disclosure documents delivered to such investors, thereby resulting in greater convenience for investors and cost savings for broker-dealers and issuers.[8]

The broker-dealer must obtain the investors' written consent to the delivery of a single document on behalf of all such investors, or the broker-dealer may rely on "implied consent" if the following conditions are met: (1) The investor has the same last name as the other investors, or the broker-dealer reasonably believes that they are members of the same family; (2) the dealer sends each investor written notice at least 60 days before relying on this provision, and provides each investor with an opportunity to opt out of this method of delivery; [9] (3) the investor does not opt out during the 60-day notice period; and (4) the dealer delivers the documents to a residential street address or a post office box.[10]

For open-end management investment companies (*i.e.*, mutual funds) and dealers that are required to deliver the disclosure documents of such companies, Rule 154(c) requires, at least annually, that the dealer explain to investors who have provided written or implied consent how such consent can be revoked. This information may be provided through any means reasonably designed to reach the investor, such as a prospectus, shareholder report or newsletter. Unlike other issuers, mutual funds typically send investors updated disclosure materials annually, and the ongoing nature of this relationship dictates that investors be informed of their right to revoke consent and begin receiving individual copies of disclosure documents, if they so desire.

MSRB Rule G–32, on disclosures in connection with new issues, generally requires that any dealer selling municipal securities to a customer during the issue's underwriting period must deliver the official statement in final form, if any, to the customer by settlement of the transaction. The MSRB believes that, with respect to this delivery requirement, if two or more customers share the same address, Rule G–32 should allow for the same "householding" process as that contained in Rule 154. In addition, Rule G–32(a)(i)(A) provides that, if a customer participates in a periodic municipal fund security plan or a non-periodic municipal fund security program and has previously received an official statement in final form in connection with such a plan or program,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–46124 (June 26, 2002), 67 FR 44656.

[4] Rule 154, on delivery of prospectuses to investors at the same address, permits broker-dealers to satisfy their delivery obligations by sending a single document to two or more investors sharing the same address. 17 CFR 230.154.

[5] The Commission has similar requirements under the Act and the Investment Company Act of 1940 with respect to shareholder reports.

[6] *See* Release No. 33–7912 (October 27, 2000).

[7] An e-mail address may be used if the dealer obtains the investors' written consent for electronic delivery and it is a shared e-mail address.

[8] *Id.*

[9] The dealer must provide either a toll-free number or a pre-addressed, postage paid form.

[10] Rule 154 provides that a dealer can assume that an address is a residential address unless it has information that indicates it is a business address. If the dealer has reason to believe that the address is a multi-unit dwelling, the address must include the investor's unit number. *See* Rule 154(b)(4) and (d).

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the dealer may sell additional shares or units to that customer if the dealer sends a copy of any new, supplemented, amended or "stickered" official statement in final form, by first class mail or other equally prompt means.[11] Allowing for householding in the context of municipal fund securities would be particularly beneficial, especially where one family has accounts for multiple children (or each parent has separate accounts for the same child) and the dealer may be required to deliver disclosure documents on an ongoing basis (*e.g.*, the customer participates in a periodic plan or non-periodic program).

Thus, the proposed rule change provides that a dealer may satisfy its official statement delivery obligations by complying with that Rule's requirements when sending disclosure documents to two or more customers sharing the same address. The amendment further provides that dealers that are required to send ongoing disclosure documents to customers who participate in a periodic municipal fund security plan or a non-periodic municipal fund security program are specifically required to comply with Rule 154(c) by providing those customers with information, at least annually, on how to revoke their consent to the householding process and thereby receive individual copies of disclosure documents, if they so desire.

II. Summary of Comments

The Commission did not receive comment letters relating to this proposed rule change.

III. Discussion

The Commission must approve a proposed MSRB rule change if the Commission finds that the proposal is consistent with the requirements set forth under the Act and the rules and regulations thereunder, which govern the MSRB.[12] The language of Section 15B(b)(2)(C) of the Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[13]

After careful review, the Commission finds that the Board's proposed rule change consisting of a proposed amendment to Rule G–32, on disclosures in connection with new issues, as well as amendments to Rule G–8, on books and records, and Rule G–9, on preservation of records, meets the requisite statutory standard. The Commission believes that this proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder. In addition, the Commission finds that the proposed rule is consistent with the requirements of Section 15B(b)(2)(C) of the Act, as set forth above.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (File No. MSRB–2002–06) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20332 Filed 8–9–02; 8:45 am]

BILLING CODE 8010–01–P

[11] If the dealer sends a supplement, amendment or sticker without including the remaining portions of the final official statement, the dealer must include a written statement describing which documents constitute the complete final official statement and stating that it is available upon request.

[12] Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78o–4(b)(2)(C).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46316; File No. SR–NASD–2002–90]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Modification of a Pilot Program To Provide Daily Share Volume Reports via NasdaqTrader.com

August 6, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on July 1, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed Amendment No. 1 to the proposal with the Commission on August 1, 2002.[3] Nasdaq filed the proposal pursuant to Section 19(b)(3) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend its Nasdaq PostData℠ ("PostData℠") pilot program to make the following additional information available through PostData℠: (1) Buy volume reports; (2) sell volume reports; (3) crossed volume reports; and (4) consolidated activity volume reports. New text is italicized.

* * * * *

Rule 7010 System Services

(a)–(o) No changes.

(q) NasdaqTrader.com Volume and Issue Data Package Fee

The charge to be paid by the subscriber for each entitled user receiving the Nasdaq Volume and Issue Data Package via NasdaqTrader.com shall be $70 per month. The charge to be paid by market data vendors for this information shall be $35 per month for each end user receiving the information through the data vendor. The availability of this service through NasdaqTrader.com shall be limited to NASD members, Qualified Institutional Buyers * and data vendors. The Volume and Issue Data package includes:
(1) Daily Share Volume reports

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Yvonne Fraticelli, Special Counsel, Division of Market Regulation, Commission, dated July 31, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq represented that the proposed modifications to Nasdaq PostData℠, a trading data distribution facility, will be made available at no charge to all vendors and direct subscribers of Nasdaq. Nasdaq further represented that it had made information on the proposed modifications available to market date vendors, but that no vendors currently accept the PostData℠ feed or re-distribute that feed to their subscribers. In addition, Nasdaq requested that the Commission waive both the five-day pre-filing notice requirement and the 30-day operative delay provided under Rule 19b–4(f)(6) of the Act.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

* For purposes of this service, see definition of "Qualified Institutional Buyer" found in Rule 144A of the Securities Act of 1933.

(2) Daily Issue Data
(3) Monthly Volume Summaries
(4) *Buy Volume Report*
(5) *Sell Volume Report*
(6) *Crossed Volume Report*
(7) *Consolidated Activity Volume Report*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 11, 2002, the Commission approved, on a twelve-month pilot basis, the creation of PostData℠, a voluntary trading data distribution facility accessible to NASD members, buy-side institutions and market data vendors through the NasdaqTrader.com website.[6] PostData℠ currently consists of three reports provided in a single package: (1) Daily share volume reports, which provide subscribers with T+1 daily share volume in each Nasdaq security, listing the volume by any NASD member firm that voluntarily permits the dissemination of this information; (2) daily issue data, which contains a summary of the previous day's activity for every Nasdaq issue; and (3) monthly volume summaries, which provide monthly trading volume statistics for the top 50 market participants sorted by industry sector, security, or type of trading (*e.g.*, block or total).

In response to requests from professional Nasdaq market participants to increase the availability and granularity of Nasdaq-verified trading data provided through NasdaqTrader.com, Nasdaq has determined to expand the information made available to PostData℠ subscribers. Specifically, Nasdaq has determined to make available through PostData℠ the following four additional reports: buy volume reports, sell volume reports, crossed volume reports, and consolidated activity volume reports. According to Nasdaq, each report would offer information regarding total Nasdaq reported buy, sell, cross, or consolidated volume in the security, as well as rankings of registered market makers based upon various aspects of their activity in Nasdaq. In addition, the reports would provide recipients with information about the number and character of each market maker's trades. Finally, the reports would also provide the information described above with respect to block volume, be it buy, sell, cross or consolidated interest. Nasdaq notes that these new reports, as well as the existing reports, would include the volume reported by another exchange only if that volume is executed through a Nasdaq execution system.

In its proposal to create PostData℠, Nasdaq represented that it would make product enhancements available to all PostData℠ users of the proposed products, whether the users were customers of Nasdaq or of a participating data vendor.[7] Specifically, Nasdaq represented that if it offered a free product enhancement during the pilot program, it would make the enhancement available to all direct and indirect users at no cost, and that such modifications to PostData℠ during the pilot period would be limited to minor enhancements to the content of the package.[8] In addition, Nasdaq represented that it would provide notice to vendors to allow vendors to implement programming changes if necessary.[9] Nasdaq believes that the current proposal meets these requirements because (1) the proposed modifications to PostData℠ will be made available at no charge to all vendors and direct subscribers of Nasdaq and (2) Nasdaq has made information on the proposed modifications available to market date vendors.[10]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(5)[11] and 15A(b)(6) of the Act.[12] Section 15A(b)(5) of the Act requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) of the Act requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that this program involves a reasonable fee assessed only to users and other persons utilizing the system and will provide useful information to all direct and indirect subscribers on a non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and subparagraph (f)(6) of Rule 19b–4[14] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay. Under Rule 19–4(f)(6) of the Act, a proposed "non-controversial" does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time. The Commission believes that waiving the five-day pre-filing notice requirement and the 30-day operative delay is

[6] *See* Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002) (Order approving File No. SR–NASD–99–12) ("Pilot Approval Order").

[7] *See* Pilot Approval Order, *supra* note 6.

[8] Nasdaq also represented that it would seek Commission approval of any fees to be assessed for such enhancements. *Id.*

[9] *See* Amendment No. 1, *supra* note 3.

[10] *See* Amendment No. 1, *supra* note 3.

[11] 15 U.S.C. 78o–3(b)(5).

[12] 15 U.S.C. 78o–3(b)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

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consistent with the protection of investors and the public interest. Acceleration of the operative date will allow Nasdaq to provide the additional PostData℠ information to all users of PostData℠ immediately. For this reason, the Commission designates the proposal, as amended, to be effective and operative upon filing with the Commission.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR–NASD–2002–90 and should be submitted by September 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20281 Filed 8–9–02; 8:45 am]

BILLING CODE 8010–01–P

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). In addition, for purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on August 1, 2002, the date Nasdaq filed Amendment No. 1.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46296; File No. SR–Phlx–2002–37]

Self-Regulatory Organization; Notice of Filings and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a 10–Up AUTO–X Guaranteed Size for Option Orders for the Proprietary Account(s) of Off-Floor Broker-Dealers in the Top 120 Options

August 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule19b–4 thereunder,[2] notice is hereby given that on July 22, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. On July 31, 2002, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 1080, Commentary .05(iv), to provide that the minimum guaranteed AUTO–X size shall be at least ten contracts for off-floor broker-dealer limit orders in the 120 most actively traded equity options (the "Top 120 Options").[4] The text of the proposed rule change is set forth below. New text is in italics; deletions are in brackets.

Rule 1080. Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

(a)–(j) No change.

Commentary:

.01–.03 No change.

.04 Reserved.

.05

(1)–(iii) No change.

(iv) *(a) The minimum guaranteed AUTO–X size shall be at least 10 contracts for off-floor broker-dealer limit orders in the 120 most actively traded equity options (the "Top 120 Options"). A Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts that were traded nationally for a specified month based on volume reflected by The Options Clearing Corporation ("OCC").*

(b) With respect to all other options. [O]off-floor broker-dealer limit orders may be eligible for automatic execution via AUTO–X on an issue-by-issue basis, subject to the approval of the Options Committee.

(c) The AUTO–X guarantee for off-floor broker-dealer limit orders may be for a different number of contracts, on an issue-by-issue basis, than the AUTO–X guarantee for public customer orders, subject to the approval of the Options Committee.

(v) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the placed specified in item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to guarantee automatic executions of at least ten contracts in Top 120 Options for orders delivered via AUTOM[5] from off the floor of the Exchange for the proprietary account(s) of off-floor broker-dealers.[6]

Currently, off-floor broker-dealer limit orders may be eligible for automatic execution via AUTO–X on an issue-by-issue basis, subject to the approval of the Options Committee. The instant proposal would require specialists to provide automatic executions of at least ten contracts for eligible orders for the account(s) of off-floor broker-dealers in the Top 120 Options.[7] Specialists may elect to guarantee a larger size for automatic execution of such orders, up to the maximum size allowable under Exchange rules.[8] The AUTO–X guarantee for off-floor broker-dealer limit orders may be for a different number of contracts, on an issue-by-issue basis, than the AUTO–X guarantee for public customer orders, subject to the approval of the Options Committee.[9]

The Exchange believes that the instant proposal should enhance competition in the options markets by enabling it to attract and compete for order flow in the Top 120 Options by guaranteeing automatic executions for eligible orders for the proprietary account(s) of off-floor broker-dealers. By requiring the automatic execution of such orders, the Exchange can guarantee order flow providers automatic executions in Top 120 Options for a minimum of ten contracts, thus ensuring that their proprietary orders would be handled automatically and reported expeditiously.

2. Statutory Basis

For these reasons, the Exchange believes that the proposed rule change is consistent with section 6 of the Act[10] in general, and with section 6(b)(5) of the Act[11] specifically, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by adding a requirement designed to attract order flow generated for the proprietary accounts of off-floor broker-dealers, thus fostering competition among exchanges for such order flow.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for thirty days from the date of filing, or such time as the Commission may designate if consistent with the protection of investors and the public interest,[12] the proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)[14] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change become operative upon filing and has requested that the Commission waive the thirty-day operative period in order that the Exchange may implement the proposal promptly and in an orderly fashion. The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately.[15] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–37 and should be submitted by September 3, 2002.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20280 Filed 8–9–02; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter to John C. Roeser, Special Counsel, Division of Market Regulation, Commission, from Richard S. Rudolph, Director and Counsel, Phlx, dated July 26, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposes to expand the definition of the Top 120 Options so that any equity option listed on the Exchange, regardless of when such equity option was listed can be considered a Top 120 Option. For purposes of calculating the sixty-day abrogation period, the Commission considers the abrogation period to have begun on July 31, 2002.

[4] The Exchange has defined a Top 120 Option as one of the 120 most actively traded equity options in terms of the total number of contracts that were traded nationally for a specified month based on volume reflected by The Option Clearing Corporation. *See* Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR–Phlx–2000–74). See also Amendment No. 1, *supra* note 3.

[5] AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[6] In April, 2002, the Commission approved the Exchange's proposal to adopt rules to allow limit orders for the proprietary accounts of off-floor broker-dealers to be delivered through AUTOM and, in certain issues, automatically executed via AUTO–X. *See* Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (SR–Phlx–2001–40).

[7] The initial proposal would have limited the definition of the Top 120 Options to options listed on the Exchange after January 1, 1997. *See* Amendment No. 1, *supra* note 3.

[8] The current maximum allowable guaranteed size for automatic execution of eligible orders via AUTO–X is 250 contracts. *See* Exchange Rule 1080(c).

[9] *See* Exchange Rule 1080, Commentary .05(iv).

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

[12] The Exchange provided the Commission with notice of its intent to file the proposed rule change more than five days prior to the filing date.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46307; File No. SR–Phlx–2002–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Increase in the Maximum Guaranteed Size for AUTO–X Eligible Orders in Options on the Nasdaq-100 Index Tracking Stock ("QQQ") SM From 250 Contracts to 1,000 Contracts

August 2, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 29, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The proposed rule change has been filed by the Exchange as a "non-controversial" rule change under Rule 19–4(f)(6).[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1080, which governs the Exchange's Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X),[4] to provide that, with respect to options overlying the Nasdaq-100 Index Tracking Stock ("QQQ") SM,[5] orders of up to 1,000 contracts would be eligible for automatic execution via AUTO–X.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to increase the maximum order size eligibility for AUTO–X in QQQSM options from 250 to 1,000 contracts [6] to match the size of orders in the same options eligible for AUTO–X on another options exchange.[7]

Currently, orders are routed through AUTOM from member firms directly to the appropriate specialist on the trading floor. Public customer market orders and marketable limit orders routed through AUTOM that are eligible for AUTO–X are automatically executed at the disseminated quotation price on the Exchange and reported back to the originating firm.[8]

Because AUTO–X affords prompt and efficient automatic executions at the displayed price, the Exchange believes that the proposed increase in automatic execution levels for eligible orders in QQQSM options from 250 to 1,000 contracts should provide the benefits of automatic execution to a larger number of customer orders. The Exchange further believes that the proposed increase in automatic execution levels in QQQSM options should enable the Exchange to remain competitive for order flow with other exchanges that trade QQQSM options.

The Exchange notes that there are many safeguards incorporated into its rules to ensure the proper handling of AUTO–X orders. First, Phlx Rule 1080(f)(iii) states that a specialist is responsible for the remainder of an AUTOM order where a partial execution occurred. Phlx Rule 1015 governs execution guarantees and requires the trading crowd to ensure that public orders are filled at the best market to a minimum of the disseminated size. Violations of any of these provisions could be referred to the Business Conduct Committee for disciplinary action.

Registered Options Traders ("ROTS") have discretion to participate on the Wheel that allocates AUTO–X trades among specialists and ROTs.[9] Consequently, an increase in the maximum AUTO–X order size in QQQSM options would not prevent a ROT from declining to participate on the Wheel. Because the Wheel currently rotates in two-lot to ten-lot increments depending upon the size of the order,[10] no single ROT would be allocated the entire 1,000 contracts. The Exchange also has procedures that allow specialists to disengage AUTO–X in extraordinary circumstances and provide that AUTOM users will be notified of such circumstances.[11]

With respect to issues involving financial responsibility, the Exchange notes that its rules provide a minimum net capital requirement for ROTs.[12] In addition, a ROT's clearing firm performs risk management functions to ensure that the ROT has sufficient financial resources to cover positions throughout the day. In this regard, the function includes real-time monitoring of positions. Further, the Exchange believes that clearing firm procedures address the issue of whether a ROT has the financial capability to support the AUTO–X trading of orders in QQQSM options as large as 1,000 contracts.

The Exchange believes that automatic execution of orders in QQQSM options for up to 1,000 contracts should provide AUTOM customers with quicker, more efficient executions for a larger number of orders, by providing automatic rather than manual executions, thereby reducing the amount of orders subject to manual processing. Further, increasing the AUTO–X maximum order size in QQQSM options should not impose a significant burden on operation or capacity of the AUTOM System and will give the Exchange better means of competing with other options exchanges for order flow.

2. Basis

For the reasons stated above, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [13] in general, and in particular, with Section 6(b)(5),[14] in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechaniSM of a free and open market and a national market system, as well as to protect investors and the public interest by enhancing efficiency by providing automatic executions to a larger number of options orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder [16] because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of the filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[17]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative date is consistent with the protection of investors and the public interest. The Commission also notes that a similar proposal was implemented by the Amex.[18] Acceleration of the operative date for this filing will enable the Phlx to compete on an equal basis with other exchanges and thus is consistent with Section 6(b)(8) of the Act.[19] For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–43 and should be submitted by September 3, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20282 Filed 8–9–02; 8:45 am]

BILLING CODE 8010–01–P

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[5] The Nasdaq-100®, Nasdaq-100 Index® Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 SharesSM, Nasdaq-100 TrustSM, Nasdaq-100 Index Tracking StockSM, and QQQSM are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the "Index") is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 TrustSM, or the beneficial owners of Nasdaq-100 SharesSM. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[6] Currently, the maximum option order size eligible for automatic execution via AUTO–X is 250 contracts for all options, including QQQSM options. *See* Phlx Rule 1080(c).

[7] Phlx Rule 1080(c) provides that The Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO–X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Commission pursuant to Section 19(b)(3)(A) of the Act. 15 U.S.C. 78s(b)(3)(A). The Exchange notes that the American Stock Exchange LLC ("Amex") allows automatic executions in QQQSM options for a size of up to 2,000 contracts in series in the two near-term expiration months, and up to 1,000 contracts in all other expiration months. *See* Amex Rule 933, Commentary .02. *See also* Securities Exchange Act Release No. 45828 (April 25, 2002), 67 FR 22140 (May 2, 2002) (SR–Amex-2002–30). Because the Amex rule allows automatic executions in QQQSM options for up to at least 1,000 contracts in all series, the Exchange proposes to match the 1,000 contract AUTO–X guarantee for QQQSM options in all series.

[8] *See* Phlx Rule 1080(c).

[9] Unlike ROTs, specialists are required to participate on the Wheel. *See* Phlx Rule 1080(g).

[10] *See* Phlx Options Floor Procedure Advice ("OFPA") F–24(e)(i).

[11] *See* Phlx OFPA A–13 and Phlx Rule 1080(e).

[12] *See* Phlx Rule 703.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] The Commission has determined to waive the requirement the Phlx provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[18] 18 See note 7, supra.

[19] 19 15 U.S.C. 78f(b)(8).

[20] 20 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3437]

State of California; Disaster Loan Areas

Kern County and the contiguous counties of Inyo, Kings, Los Angeles, San Bernardino, San Luis Obispo, Santa Barbara, Tulare and Ventura in the State of California constitute a disaster area as a result of a wildfire that occurred on July 21, 2002 in the Deer Point area of Bodfish and Lake Isabella, California. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 4, 2002, and for economic injury until the close of business on May 5, 2003, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P. O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage	
Homeowners with credit available elsewhere	6.625
Homeowners without credit available elsewhere	3.312
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

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The number assigned to this disaster for physical damage is 343705 and for economic damage is 9Q9200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 5, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–20361 Filed 8–9–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3428]

State of Texas, (Amendment #8); Disaster Loan Areas

In accordance with a notice received from the Federal Emergency Management Agency, dated July 31, 2002, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on June 29, 2002 and continuing through July 31, 2002.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 2, 2002, and for economic injury the deadline is April 4, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 6, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–20360 Filed 8–9–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4096]

Culturally Significant Objects Imported for Exhibition Determinations: Battle of the Nudes: Pollaiuolo's Renaissance Masterpiece

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Battle of the Nudes: Pollaiuolo's Renaissance Masterpiece," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Cleveland Museum of Art, Cleveland, OH, from on or about August 25, 2002, to on or about October 27, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 6, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–20391 Filed 8–9–02; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Capitol Goods (ISAC–2)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a partially opened meeting.

SUMMARY: The Industry Sector Advisory Committee on Capitol Goods (ISAC–2) will hold a meeting on September 6, 2002, from 12 p.m. to 4:30 p.m. The meeting will be opened to the public from 1:30 p.m. to 4:30 p.m. The meeting will be closed to the public from 12 p.m. to 1;30 p.m.

DATES: The meeting is scheduled for September 6, 2002, unless otherwise notified.

ADDRESSES: The meeting will be held at McCormick Place, 2301 S. Lake Shore Drive, Chicago, IL 60616.

FOR FURTHER INFORMATION CONTACT: Padraic Sweeney, at (202) 482–5024, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 or Christina Sevilla, Director for Intergovernmental Affairs, on (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the following agenda items will be discussed.

- Trade Promotion Authority (TPA) and the Administration's International Trade Policy Agenda.
- Steel Issues.
- USG Trade Finance Programs.
- Role of DOC/International Trade Administration.
- Overview of the Industry Consultations Program.
- Overview of the role of U.S. Export Assistance Centers.

Christina Sevilla,

Acting Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison (A).

[FR Doc. 02–20291 Filed 8–9–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Request for Comments on Advisory Circular (AC) 183–35H, Airworthiness Designee Function Codes and Consolidated Directory for DMIR/DAR/ODAR/DAS/DOA and SFAR No. 36; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments; correction.

SUMMARY: This is a correction to a Request for Comments document published on July 8, 2002, (67 FR 45169) that announced a proposed change to AC 183–35H authorizing a new function code identified as Data Management Code 50 (pending). It will allow a Designated Airworthiness Representative and Organizational Designated Airworthiness Representative responsible for managing alterations programs leading to the issuance of a FAA Field approval and/or approval for return to service to alter U.S.-registered aircraft.

FOR FURTHER INFORMATION CONTACT: George Torres, (405) 954–6923.

Correction of Publication

In the FR Doc. 02–16905, beginning on page 45169 in the **Federal Register** issue of July 8, 2002, make the following corrections:

1. On page 45169, in column 3, in the third line up from the bottom, correct "authorizing is sought." to read "authorizing is sought; or".

2. On Page 45170, in column 1, in the sixth line up from the bottom, correct "address: *georgetorres@mmac.iccbi.gov*" to read "address: " *george.torres@faa.gov*".

Issued in Washington, DC, on August 2, 2002.

Diana Frohn,

Manager, General Aviation and Commercial Branch.

[FR Doc. 02–19999 Filed 8–9–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13048]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ALTAR.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 11, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13048. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement:

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: ALTAR. *Owner:* Monument Yacht Charters, LLC.

(2) Size, capacity and tonnage of vessel. According to the applicant: "The size of the vessel is 67.3 feet over all. The capacity of the vessel is ten passengers. The tonnage of the vessel is 48GRT (44NRT)."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant:

The primary use of the vessel is for private use only. Secondarily the vessel maybe, but not intended for, charter. The geographic region of intended operation in The East Coast of the U.S., primarily New England in the summer months and Puerto and Caribbean through out the winter."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1994. *Place of construction:* Oyster Marine at Landamores Yacht Builders in Wroxham Norfolk England.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "The current operation of the vessel is for the private use only. The use of the vessel will change very little if the waiver is granted. The addition of one to two charters per year will be added to the operation. This will have an unperceivable impact on the commercial passenger vessel operators, as these charters would be to the friends and business associates of the owner."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "This waiver will have a positive impact on U.S. shipyards, as there will be a greater incentive for the vessel to return to U.S. waters each year. This will mean that all yard work will be done in the U.S. increasing the work for U.S. shipyards."

Dated: August 6, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20366 Filed 8–9–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13053]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel AMERICAN DREAM.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 11, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13053. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://*

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dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended.

By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: AMERICAN DREAM. *Owner:* Betty Becker.

(2) Size, capacity and tonnage of vessel. According to the applicant: "59'6"' tonnage Gross 47 net 38."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: Vessel to be used as a replacement vessel for the owners previous vessel Pacific Belle that was destroyed in a fire. The vessel will continue to charter in South East Alaska to her clientele of over 20 years."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1984. *Place of construction:* Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "Since the owner has been chartering in Alaska for 20 years there will be no impact on the other commercial operators. The bulk of the charter clients come from businesses that have been booking for the same times each year in advance. 2003 is sold out completely at this time."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The U.S. shipyards are the beneficiaries of over one hundred and fifty thousand spent on AMERICAN DREAM over the past five years. I see no down side to the shipyards, as they will get all the future work on the boat."

Dated: August 6, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20371 Filed 8–9–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13052]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ARVOR.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 11, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13052. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* ARVOR. *Owner:* Mark Tyler Sheldon.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "Length; 63 feet; Gross 70 tons, Net 56 tons; Beam: 18.2 feet; Draft 9.2 feet."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "Classic Wooden Motor Yacht Charter Cruises. Day charters for up to 12 persons, and overnight charters for up to 8 persons. Cruising in waters from Marblehead, Massachusetts, to Bass Harbor, Maine, no more than 20 miles out, U.S."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1962. *Place of construction:* Buckie, Scotland, U.K.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "My research (defined as maritime publications and local knowledge) has indicated there are little or no similar Classic Wooden Motor Yacht chartering entities of this type in the cruising areas previously described in question #3. My research has further indicated that the operation of existing operators in previously described areas include whale and/or specific nature watches, fishing excursions, and 2–4 hour type sightseeing tours. The intent of the applicant/vessel is to provide its passengers with the experience of cruising on a classic wooden yacht. This experience includes the ambiance of the yacht itself, overnight accommodations if so chartered, and meals or snacks, depending on the length of charter."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "To the best of my knowledge, the above described vessel would appear to have no impact on U.S. shipyards, other than her own maintenance."

Dated: August 6, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20367 Filed 8–9–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13047]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LADYHAWKE.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 11, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13047. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* LADYHAWKE. Owner: Steve Kirven.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "The length of vessel while on hover is 39 feet and off hover is 35 feet. The width of vessel while hovering is 19 feet and off hover is 14 feet. The height of vessel while hovering is 11 feet and off hover is 8 feet. The tonnage is 8.15 tons. Since this is not a normal hull design, I am not sure how tonnage measurements were take. The gross all up weight on vessel is 18,000 lbs."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* The intended use of the vessel is to operate as a tour boat offering tours in shallow waters where other vessels cannot operate. This craft rides on a cushion of air 30 inches above the surface producing no wake and having no negative impact on the environment." "The geographic region for the operation is the Miami, Biscayne Bay, and Keys area, located in Dade and Monroe Counties in the state of Florida. I would be providing tours in and around many of the small islands and areas not accessible by other conventional boats. There are no existing commercial hovercraft operators in this area."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1994. *Place of construction:* Australia.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "The insurance of this waiver will not impact other commercial passenger vessel operators, as there are no existing commercial hovercraft operators in this area. I will be providing tours in shallow water areas where other commercial convention vessels cannot operate. The only other commercial hovercraft operation in the United States is located in Alaska. In the area I propose to operate, there are several tour boat operators running sailing tours, deep sea fishing, dinner cruises, dive boats and thrill rides. None of these vessels can operate where I would be providing scenic tours."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "This waiver will have no impact on existing U.S. shipyards. There are several builders of recreational hovercraft throughout the United States building 1 and 2 passenger craft. My research indicates there are no commercial builders of hovercraft in the 12–20 passenger range that can be U.S. Coast Guard inspected. A proven design is imperative. There are builders of much larger craft that are used by the U.S.

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military such as General Dynamics and Bell Textron."

Dated: August 6, 2002.
By Order of the Maritime Administrator.
Joel C. Richard,
Secretary, Maritime Administration.
[FR Doc. 02–20365 Filed 8–9–02; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13046]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MALENA.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 11, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13046. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* MALENA. *Owner:* T&L Concepts, LLC.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "Size: 66'9" LOA, 18'6" Beam, 5'8" Draft; Type: 71 Gross Tons, 57 Net tons; Capacity: Sleeps 6 to 8."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "3–14 day Charters with two Couples or Family of Six. We are currently doing bareboat charters but someday will like to change to Crewed Charters and be able to operate in US waters as Crewed Chartered Vessel. No fish caught from this Vessel are sold commercially." "Operation and Trade area: Florida Keys, South Florida, Bahamas, US and British Islands."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1996. *Place of construction:* President Marine Intl., Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "The impact on existing operators offering the same type of services will be negligible. Our Service area will remain the same as in Bareboat Chartering but will allow us to simplify the charter contract, add Professional Crew to operate the Vessel and pick up passengers from various South Florida Areas and cruise the Florida Keys or Bahamas. Currently there is a very limited number of Yachts in MALENA's category and size performing this type of Charter at this time."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "There will be a positive impact on U.S. shipyards due to the, added, annual income from the maintenance on our vessel. In addition we will be able to do most all of our maintenance in South Florida."

Dated: August 6, 2002.
By Order of the Maritime Administrator.
Joel C. Richard,
Secretary, Maritime Administration.
[FR Doc. 02–20374 Filed 8–9–02; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13050]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MOTIVATION.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 11, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13050. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* MOTIVATION. *Owner:* Richard Keith Carroll, Jr. & Lauren C. Carroll.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "Length: 40", Breadth: 13'2", Depth: 6'5", Capacity: 6 or fewer passengers, Gross Tonnage: 21, Net Tonnage: 16."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: Sport fishing charters with twelve or fewer passengers. All contiguous U.S. coastal waters, primarily in New England and Florida and excluding Alaskan waters."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* June 1999. *Place of construction:* San Jose, Costa Rica.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "This waiver will have little or no impact. This vessel will carry six or fewer passengers on either full day of one-half day trips. This represents an extremely small percentage of the sport fishing charter business." 6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "None * * * Allowing this relatively small vessel to engage in sport fishing charter will not affect demand for boats from U.S. shipyards."

Dated: August 6, 2002.
By Order of the Maritime Administrator.
Joel C. Richard,
Secretary, Maritime Administration.
[FR Doc. 02–20373 Filed 8–9–02; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13051]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel REEL TIME.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 11, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13051. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: REEL TIME. *Owner:* Reel Time Charters, Inc.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "The vessel has a net weight of 15 tons and a gross weight of 19 tons with a passenger capacity of 12."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "The intended use of this vessel is for Inshore and Offshore Charter fishing for passengers up to (6) plus a Captain and a mate under a US Coast Guard Licensed Captain in the area of Chincoteague Is, VA."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of*

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construction: 1989. *Place of construction:* Taiwan, China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "There will be little to no impact on other commercial passenger vessels operators since the vessel will only be carrying up to (6) passengers. This vessel was Chartering Offshore under the Registry Endorsement since 1996."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "There will be no negative impact on U.S. shipyards since this vessel is no longer made. There is a positive impact on U.S. shipyards due to normal maintenance repairs."

Dated: August 6, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20372 Filed 8–9–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13049]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SAPPHIRE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 11, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13049. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* SAPPHIRE. *Owner:* Albatroz, LLC.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "Length: 86.8 ft., Breadth: 21.6 ft., Depth: 9.8 ft., Gross Tonnage: 77, Net Tonnage: 23."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "The Company intends to charter the Vessel between Bar Harbor, Maine and Newport, Rhode Island and will carry no more than 12 passengers for hire."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1997. *Place of construction:* Makkum, Netherlands.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "The Company does not believe that any existing commercial passenger vessel operators that provide, or intend to provide, similar commercial services in the same geographic region would suffer any unduly adverse affect as a result of the proposed operations of the Vessel. The Company contacted two large charter managers servicing similar commercial service operators in the same geographic region. In the combined fleet of these charter management companies, there were only two sailboats offering commercial passenger operations in the area. Both charter management companies indicated a strong need and demand for additional sailboats ranging between 60" and 120" for coastwise trade in the region."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The Company is aware of only one U.S.-vessel builder that has the capability and capacity to build a vessel similar to the Vessel. It is the opinion of the undersigned that this American builder would not suffer any unduly adverse affect as a result of this request of waiver of the coastwise trade laws."

Dated: August 6, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20370 Filed 8–9–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–10623]

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of Petition for Rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by Costa Technologies requesting that NHTSA initiate rulemaking to amend the Federal motor vehicle safety standard on glazing materials to include the words "to reduce or minimize the likelihood of personal injury from flying glazing material when the glazing material is broken," and to require the fracture test to use specimens that would represent the glazing as it would be installed in the vehicle.

FOR FURTHER INFORMATION CONTACT: *For non-legal issues:* John Lee, Office of Crashworthiness Standards, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2264. Fax: (202) 366–4329.

For legal issues: Nancy Bell, Office of Chief Counsel, NCC–20, National Highway Traffic Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992, Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION: On August 14, 2001, NHTSA received a petition from Costa Technologies (Costa) to initiate rulemaking to amend paragraph S2 of Federal motor vehicle safety standard (FMVSS) No. 205, "Glazing materials," to (1) include the words "to reduce or minimize the likelihood of personal injury from flying glazing material when the glazing material is broken," and to (2) include a requirement to use specimens representing the glazing as it would be installed in the vehicle for the fracture test. Costa did not identify any documented safety benefits that would result from making the requested amendments. NHTSA denies these two requests for the reasons discussed below.

Costa's first request stems from the concern that the stated purpose of FMVSS No. 205 does not expressly address injuries from flying glazing material. It is true that paragraph S2 of FMVSS No. 205 does not expressly mention such injuries: "[t]he purpose of this standard is to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collisions." However, the Standard's requirements do address the issue. Currently, paragraph S5 of FMVSS No. 205 incorporates by reference the commercial standard American National Standard Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways—Standard ANSI Z26.1–1977 (ANSI Z26.1–1977) as supplemented by Z26.1a–1980 (hereinafter referred to as "ANS Z26"). In ANS Z26, Section 5.7 "Fracture, Test No. 7" limits the size of individual glass fragments that form as a result of impact to a glazing surface. Requiring automotive glazing materials to meet this requirement has the effect of minimizing the size of individual glazing fragments that can form in a real world impact event. Consequently, the risk of two types of injuries is reduced: (1) Contact injuries with sharp shards remaining in the window casing as a result of glazing fracture, and (2) risk of lacerative or puncture type injuries that may result from flying glazing fragments. Both of these types of injuries are injuries that could result from "impacts to glazing surfaces", as specified in the purpose of FMVSS No. 205. Therefore, the current purpose of FMVSS No. 205, "* * * to reduce injuries resulting from impact to glazing surfaces* * *" addresses the reduction of an occupant's risk of injuries from flying glazing and does not require clarification or modification.

Second, Costa requested that FMVSS No. 205 be amended to specify that the specimens to be used for Fracture Test No. 7 of ANS Z26 "represent the glazing as it would be installed in the vehicle." FMVSS No. 205 does not require the fracture test to be conducted with the electrical terminals attached to the glazing material's conductors and soldered by processes that represent the manufacturer's production and rework processes. Costa was concerned that the heating and cooling due to the soldering process would cause localized annealing of the safety tempered glass, causing the individual glass fragments to be larger than 4.25 g (0.15 oz.). NHTSA agrees that temperature effects from heating and cooling can cause localized annealing and is addressing this issue in a current rulemaking.

NHTSA published a Notice of Proposed Rulemaking (NPRM) on August 4, 1999 (64 FR 42330), to amend FMVSS No. 205 so that it incorporates by reference the October 1996 version of ANS Z26, the industry standard on motor vehicle glazing. Currently, the Federal standard incorporates the 1977 version. Section 5.7 "Fracture, Test 7" of the October 1996 version requires that no individual glass fragment weigh more than 4.25 g (0.15 oz.) as in the current ANS Z26. However, it further requires that specimens: (1) Be selected from a range of glazing that a manufacturer produces or plans to produce; and (2) be of the most difficult part or pattern designation within the model number. Further, in selecting the specimens, thickness, color and conductors must be considered. Therefore, manufacturers would still be required to certify that glazing materials with conductors that may have localized annealing from a heating/cooling process would not produce any individual glass fragment weighing more than 4.25 g (0.15 oz.) in a fracture test. A final decision on that rulemaking is expected soon.

For the reasons discussed above, we are denying Costa's petition for rulemaking.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: August 2, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–20369 Filed 8–9–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket Number: RSPA–4957]

Pipeline Safety Reports of Abandoned Underwater Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice and request for public comments and OMB approval.

SUMMARY: This notice requests public participation in the Office of Management and Budget (OMB) approval process regarding the renewal of an existing RSPA/Office of Pipeline Safety (OPS) collection of information for Pipeline Safety Reports of Abandoned Underwater Pipelines. Specifically, public comment is requested to minimize the burden of this collection of information on the public, along with other factors listed in the body of this notice. RSPA/OPS published a notice requesting public comment on May 20, 2002 (67 FR 35618). No comments were received. RSPA/OPS is offering the public another opportunity to comment on this information collection. It is also requesting OMB approval for the renewal of this information collection under the Paperwork Reduction Act of 1995 and 5 CFR part 1320.

DATES: Comments on this notice must be received within 30 days of the publication date of this notice to be assured of consideration.

ADDRESSES: Interested persons are invited to send comments directly to OMB, Office of Information and Regulatory Affairs, 726 Jackson Place, Washington, DC 2003 ATTN: Desk Officer for the Department of Transportation. Comments can be reviewed at the Department of Transportation Dockets Facility, Plaza

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401, 400 Seventh Street SW., Washington, DC which is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays, when the facility is closed. Comments must identify docket number of this notice. Persons should submit the original documents and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a stamped, self-addressed postcard. Please identify the docket and notice numbers shown in the heading of this notice. Documents pertaining to this notice can be viewed in this docket. The docket can also be viewed electronically at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, to ask questions about this notice; or write by e-mail to *marvin.fell@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Pipeline Safety Reports of Abandoned Underwater Pipelines.

Type of Request: Renewal of existing information collection.

Abstract: Underwater pipelines are being abandoned at an increasing rate as older facilities reach the end of their useful life. This trend is expected to continue. In 1992, Congress responded to this issue by amending the Pipeline Safety Act (49 U.S.C. 60108(c)(6)(B) to direct the Secretary of Transportation to require operators of an offshore pipeline facility or a pipeline crossing navigable waters to report the abandonment to the Secretary of Transportation in a way that specifies whether the facility has been abandoned properly according to applicable Federal and State requirements. RSPA's/OPS's regulations for abandonment reporting can be found at Title 49 CFR 192.727 and 195.402.

Respondents: Gas and hazardous liquid pipeline operators.

Estimated Number of Respondents: 400.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,400 hours.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on August 7, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–20368 Filed 8–9–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 11 a.m. on Wednesday, August 28, 2002, by conference call in the Administrator's Office, Room 5424, 400 7th Street, SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than August 20, 2002, Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on August 7, 2002.

Marc C. Owen,

Chief Counsel.

[FR Doc. 02–20390 Filed 8–9–02; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34208]

Soo Line Railroad Company—Trackage Rights Exemption—Hennepin County Regional Rail Authority

Hennepin County Regional Rail Authority (HCRRA), pursuant to a written trackage rights agreement [1] entered into between HCRRA and Soo Line Railroad Company (Soo), d/b/a Canadian Pacific Railway (CPR),[2] has agreed to grant trackage rights to CPR over HCRRA's rail line from a point of connection with existing trackage rights in the City of Minneapolis, MN, at or near CNW milepost 16.2,[3] to approximately 330 feet west in the City of St. Louis Park, MN, at a point of connection with Soo-owned trackage located at or near Soo milepost 428.38, engineering station 381.90, at or near CNW milepost 16.3.[4]

The transaction was scheduled to be consummated on or shortly after July 30, 2002, the effective date of the exemption (7 days after the exemption was filed).

The purpose of the trackage rights is to allow CPR to continue to hold rights to operate over a 330-foot section of trackage that is being sold to HCRRA by CPR.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.-Lease and Operate,* 360 I.C.C. 653 (1980).

The notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34208, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Diane P. Gerth, Leonard, Street and Deinard Professional Association, 150 South Fifth Street, Minneapolis, MN 55402.

[1] A redacted version of the trackage rights agreement was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. A protective order is being served on August 5, 2002.

[2] Soo is a wholly owned subsidiary of CPR.

[3] Some of the trackage and right-of-way in the vicinity was formerly owned by the Chicago and North Western Transportation Company (CNW).

[4] CPR agreed to sell this segment of Soo's track to HCRRA. The segment is adjacent to track already owned by HCRRA over which CPR and the Twin Cities & Western Railroad Company have trackage rights under an August 10, 1998 agreement that will be supplemented to include this line segment under its terms.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 1, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–19943 Filed 8–9–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 5, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 11, 2002 to be assured of consideration.

Internal Revenue Service

OMB Number: New.

Form Number: IRS Form 8718.

Type of Review: New collection.

Title: User Fee for Exempt Organization Determination Letter Request.

Description: The Omnibus Reconciliation Act of 1990 requires payment of a "user fee" with each application for a determination letter. Because of this requirement, the Form 8718 was created to provide filers the means to make payment and indicate the type of request.

Respondents: Business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents: 200,000.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 16,667 hours.

OMB Number: 1545–0091.

Form Number: IRS Form 1040X.

Type of Review: Revision.

Title: Amended U.S. Individual Income Tax Return.

Description: Form 1040X is used by individuals to amend an original tax return to claim a refund of income taxes, pay additional income taxes, or designate $3 to the Presidential Election Campaign Fund. The information is needed to help verify that the individual has correctly figured his or her income tax.

Respondents: Individuals or households, business or other for-profit, farms.

Estimated Number of Respondents/Recordkeepers: 2,929,311.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8027	Form 8027–T
Recordkeeping	9 hr., 47 min.	43 min.
Learning about the law or the form	53 min.	0 min.
Preparing and sending the form to the IRS	1 hr., 4 min.	0 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 488,161 hours.

OMB Number: 1545–1788.

Form Number: IRS Form 13259.

Type of Review: Extension.

Title: Taxpayer Advocacy Panel (TAP) Membership Application.

Description: An application to volunteer to serve on the Taxpayer Advocacy Panel, an advisory panel to the IRS.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 750.

Estimated Burden Hours Per Respondent: 1 hour, 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,125 hours.

OMB Number: 1545–1791.

Form Number: IRS Form 12339–A.

Type of Review: Extension.

Title: Tax Check Waiver.

Description: The tax check waiver is necessary for the purpose of ensuring that all panel members are tax compliant. Information provided will be used to qualify or disqualify individuals to serve as panel members. The information will be used as appropriate by the Taxpayer Advocate service staff, and other appropriate IRS personnel.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 250.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 42 hours.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New

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Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 02–20342 Filed 8–9–02; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

Wool Manufacturer Payment Clarification and Technical Corrections Act

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: On August 6, 2002, President Bush signed into law the Trade Act of 2002. Section 5101 of the Trade Act of 2002 amends section 505 of the Trade and Development Act of 2000, which entitled U.S. manufacturers of certain wool articles to a limited refund of duties paid on imports of select wool products. The amendments concern the maximum amount manufacturers are eligible to receive and include a definition of the term "manufacturer" for purposes of determining eligibility. The amendments also authorize a new class of claimants as being eligible to receive a payment, establish new deadlines for the submission and payment of claims for all claimants, and generally simplify the claims process. Section 5102 of the Trade Act of 2002 authorizes Customs to make two additional payments to eligible manufacturers. As sections 5101 and 5102 are self-effectuating, Customs will not be issuing regulations to implement the program as amended. Manufacturers are directed to follow the statutory procedures to claim a payment. For ease of reference, this document describes the changes to the wool duty payment program as set forth in section 505 of the Trade Act of 2002, as amended. The document also sets forth the address to which all wool duty payment documentation should be sent.

DATES: Claims by eligible U.S. manufacturers of men's or boys' suits, suit-type jackets and trousers, and by eligible U.S. importing-manufacturers of wool fabric and wool yarn, must be submitted to Customs postmarked no later than August 21, 2002. Claims by eligible U.S. non-importing manufacturers of wool fabric and wool yarn must be received by Customs no later than September 20, 2002.

ADDRESSES: Claims for payments pursuant to section 505 of the Trade and Development Act, as amended, should be sent to the U.S. Customs Service, Office of Field Operations, Wool Duty Payment Unit, 5th Floor, Attention: Debbie Scott, 1300 Pennsylvania Avenue, NW., 5th Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Debbie Scott (202) 927–1962 or Sherri Lee Hoffman (202) 927–0542.

SUPPLEMENTARY INFORMATION:

Background

On May 18, 2000, President Clinton signed into law the Trade and Development Act of 2000 ("the Act"), Pub. L. 106–200, 114 Stat. 251. Title V of the Act concerns imports of certain wool articles and sets forth provisions intended to provide tariff relief to U.S. manufacturers of specific wool products. Within Title V, section 505 permits eligible U.S. manufacturers to claim a limited refund of duties paid on imports of select wool articles.

Section 505 was implemented in the Customs Regulations at § 10.184 (19 CFR 10.184).

On August 6, 2002, President Bush signed into law the Trade Act of 2002, H.R. 3009 (the Public Law citation is unavailable at the time of this document's filing for public inspection at the Office of the Federal Register. Division E of the Trade Act of 2002 contains miscellaneous provisions. Within Division E, Title L sets forth miscellaneous trade benefits with Subtitle A pertaining specifically to wool provisions. Within Subtitle A, section 5101, entitled the "Wool Manufacturer Payment Clarification and Technical Corrections Act," amends section 505. Specifically, section 5101 amends section 505 regarding the maximum payment amount manufacturers are eligible to receive, defines the term "manufacturer" for purposes of section 505, authorizes a new class of claimants as eligible to receive a payment, establishes new deadlines for the submission and payment of claims, and simplifies the claims process. Section 5102(c) is a related statutory provision that authorizes Customs to make two additional payments to eligible manufacturers in years 2004 and 2005.

Explanation of Amendments to Section 505 Effected by Section 5101

Section 5101 amends 505 in several key aspects, as discussed below.

I. Payment Amounts and Simplified Claim Procedures

The original terms of section 505 authorized certain manufacturers to claim a limited refund of duties paid in each of calendar years 2000, 2001 and 2002 on imports of select wool products. The maximum amount eligible to be refunded in each claim year was limited to an amount not to exceed one-third of the amount of duties actually paid on such wool products imported in calendar year 1999. In order to receive a refund, manufacturers had to substantiate their claim to Customs by submitting relevant entry summary documentation.

Section 5101 amends section 505 regarding the amount of payment an eligible manufacturer may receive. Specifically, section 5101 authorizes eligible manufacturers to receive a *pro rata* share of a statutorily designated amount. Section 5101(2) appropriates $36,251,000 out of amounts in the General Fund of the Treasury to carry out the amendments to section 505 made by section 5101(1). This amount is divided into six separate accounts which are established for the purposes of funding payments to different types of eligible manufacturers.

A claimant is no longer required to submit entry summary documentation to substantiate a claim. Rather, a claimant must make a claim for each claim year by submitting a signed affidavit to Customs, with return address clearly marked, that attests to the affiant's status as an eligible manufacturer. Claimants must submit affidavits by specific dates designated in the statute. Eligible U.S. manufacturers of men's or boys' suits, suit-type jackets and trousers, and eligible U.S. importing-manufacturers of wool fabric and wool yarn, must submit their 4 claims to Customs postmarked so that they are received by Customs no later than August 21, 2002. Eligible U.S. non-importing manufacturers of wool fabric and wool yarn must submit their claims so that Customs receives them no later than September 20, 2002.

II. Definition of "Manufacturer" Added to Section 505

Section 5101 adds a new paragraph (g) to section 505 that sets forth the definition of manufacturer for purposes of the statute. The definition authorizes the party that owns specified types of wool imports at the time the imports are processed into designated products in the United States to be eligible to receive a payment. This definition permits manufacturers who either import the specified wool products directly or purchase the specified imports to be eligible. Additionally, the definition includes manufacturers who perform their own processing operations in the United States, as well as manufacturers who contract the work out to a U.S. processing facility, so long as in both instances the manufacturer retains ownership of the wool imports at the time of processing.

III. New Class of Manufacturer Eligible to Receive Payment

The original terms of section 505(b) and (c) required that a manufacturer of wool fabric or yarn be the importer of the wool inputs used in the manufacturer of the finished product in order to receive a refund. Therefore, non-importing manufacturers of wool fabric and yarn were ineligible for a refund.

Pursuant to section 505(g)(2) and (3), non-importing manufacturers of wool fabric and yarn are now eligible to receive a payment. In order to be eligible to claim a payment, Customs must receive documentation from a non-importing manufacturer of wool fabric or yarn by September 20, 2002, that establishes the amount the manufacturer paid for eligible wool products in 1999. This information will be used by Customs to determine the non-importing manufacturer's *pro rata* share of the fund established for this class of claimant.

New Address To Send Documentation Pertaining to Wool Payments

As sections 5101 and 5102 are detailed and clear, Customs will not issue regulations to implement the wool duty payment program as amended (and 19 CFR 10.184 is superseded by statute). Accordingly, manufacturers are directed to follow the statutory procedures to claim a payment. While self-effectuating, section 505, as amended, does not state where claims and other documentation are to be sent. This document provides notice that claimants must send all statutorily required documentation pertaining to wool duty payments, including any additional information deemed necessary by Customs, to the U.S. Customs Service, Office of Field Operations, Wool Duty Payment Unit, 5th Floor, Attention: Debbie Scott, 1300 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20229.

Additional Wool Duty Payments

Section 5102(c) of the Trade Act of 2002 authorizes Customs to pay each eligible manufacturer that receives a payment for calendar year 2002 under section 505, as amended, two additional payments. To claim the additional payments, a manufacturer must submit a signed affidavit to the U.S. Customs Service, Office of Field Operations, Wool Duty Payment Unit, 5th Floor, Attention: Debbie Scott, 1300 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20229, for each additional claim year, attesting that the affiant remains a manufacturer in the United States as of January 1 of the additional claim year for which a payment is being sought. Each additional payment will be in an amount equal to the amount received by the claimant for calendar year 2002. The additional payments will be paid out in two installments: the first installment will be made by Customs after January 1, 2004, but on or before April 15, 2004, and; the second installment will be paid by Customs after January 1, 2005, but on or before April 15, 2005.

The Statute as Amended

Section 505, as amended, is set forth below in its entirety for ease of reference.

SEC. 505.

(a) Worsted Wool Fabrics.—For each of the calendar years 2000, 2001, and 2002, a manufacturer of men's or boys' suits, suit-type jackets, or trousers (not a broker or other individual acting on of the manufacturer to process the import) of imported worsted wool fabrics of the kind described in heading 9902.51.11 or 9902.51.12 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(1).

(b) Wool Yarn.—(1) *Importing Manufacturers.*—For each of the calendar years 2000, 2001, and 2002, a manufacturer of worsted wool fabrics who imports wool yarn of the kind described in heading 5107.10 or 9902.51.13 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(2).

(2) *Nonimporting Manufacturers.*—For each of the calendar years 2001 and 2002, any other manufacturer of worsted wool fabrics of imported wool yarn of the kind described in heading 5107.10 or 9902.51.13 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(2).

(c) Wool Fiber and Wool Top.—(1) *Importing Manufacturers.*—For each of the calendar years 2000, 2001, and 2002, a manufacturer of wool yarn or wool fabric who imports wool fiber or wool top of the kind described in heading 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21, 5105.29, or 9902.51.14 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(3).

(2) *Nonimporting Manufacturers.*—For each of the calendar years 2001 and 2002, any other manufacturer of wool yarn or wool fabric of imported wool fiber or wool top of the kind described in heading 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21, 5105.29, or 9902.51.14 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(3).

(d) Amount of Annual Payments to Manufacturers.— (1) *Manufacturers of men's suits, etc., of imported worsted wool fabrics.*—

(A) *Eligible to receive more than $5,000.*—Each annual payment to manufacturers described in subsection (a) who, according to the records of the Customs Service as of September 11, 2001, are eligible to receive more than $5,000 for each of the calendar years 2000, 2001, and 2002, shall be in an amount equal to one-third of the amount determined by multiplying $30,124,000 by a fraction—

(i) The numerator of which is the amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by the manufacturer making the claim, and

(ii) The denominator of which is the total amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by all the manufacturers described in subsection (a) who, according to the records of the Customs Service as of September 11, 2001, are eligible to receive more than $5,000 for each such calendar year under this section as it was in effect on that date.

(B) *Eligible wool products.*—For purposes of subparagraph (A), the term "eligible wool products" refers to imported worsted wool fabrics described in subsection (a).

(C) *Others.*—All manufacturers described in subsection (a), other than the manufacturers to which subparagraph (A) applies, shall each receive an annual payment in an amount equal to one-third of the amount determined by dividing $1,665,000 by the number of all such other manufacturers.

(2) *Manufacturers of worsted wool fabrics of imported wool yarn.*—

(A) *Importing manufacturers.*—Each annual payment to an importing manufacturer described in subsection (b)(1) shall be in an amount equal to one-third of the amount determined by multiplying $2,202,000 by a fraction—

(i) The numerator of which is the amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by the importing manufacturer making the claim, and

(ii) The denominator of which is the total amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by all the importing manufacturers described in subsection (b)(1).

(B) *Eligible wool products.*—For purposes of subparagraph (A), the term "eligible wool products" refers to imported wool yarn described in subsection (b)(1).

(C) *Nonimporting manufacturers.*—Each annual payment to a nonimporting manufacturer described in subsection (b)(2) shall be in an amount equal to one-half of the amount determined by multiplying $141,000 by a fraction—

(i) The numerator of which is the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by the nonimporting manufacturer making the claim, and

(ii) The denominator of which is the total amount attributable to the purchases of

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imported eligible wool products in calendar year 1999 by all the nonimporting manufacturers described in subsection (b)(2).

(3) *Manufacturers of wool yarn or wool fabric of imported wool fiber or wool top.*—

(A) *Importing manufacturers.*—Each annual payment to an importing manufacturer described in subsection (c)(1) shall be in an amount equal to one-third of the amount determined by multiplying $1,522,000 by a fraction—

(i) The numerator of which is the amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by the importing manufacturer making the claim, and

(ii) The denominator of which is the total amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by all the importing manufacturers described in subsection (c)(1).

(B) *Eligible wool products.*—For purposes of subparagraph (A), the term 'eligible wool products' refers to imported wool fiber or wool top described in subsection (c)(1).

(C) *Nonimporting manufacturers.*—Each annual payment to a nonimporting manufacturer described in subsection (c)(2) shall be in an amount equal to one-half of the amount determined by multiplying $597,000 by a fraction—

(i) The numerator of which is the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by the nonimporting manufacturer making the claim, and

(ii) The denominator of which is the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by all the nonimporting manufacturers described in subsection (c)(2).

(4) *Letters of intent.*—Except for the nonimporting manufacturers described in subsections (b)(2) and (c)(2) who may make claims under this section by virtue of the enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, only manufacturers who, according to the records of the Customs Service, filed with the Customs Service before September 11, 2001, letters of intent to establish eligibility to be claimants are eligible to make a claim for a payment under this section.

(5) *Amount attributable to purchases by nonimporting manufacturers.*—

(A) *Amount attributable.*—For purposes of paragraphs (2)(C) and (3)(C), the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by a nonimporting manufacturer shall be the amount the nonimporting manufacturer paid for eligible wool products in calendar year 1999, as evidenced by invoices. The nonimporting manufacturer shall make such calculation and submit the resulting amount to the Customs Service, within 45 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, in a signed affidavit that attests that the information contained therein is true and accurate to the best of the affiant's belief and knowledge. The nonimporting manufacturer shall retain the records upon which the calculation is based for a period of five years beginning on the date the affidavit is submitted to the Customs Service.

(B) *Eligible wool product.*—For purposes of subparagraph (A)—

(i) The eligible wool product for nonimporting manufacturers of worsted wool fabrics is wool yarn of the kind described in heading 5107.10 or 9902.51.13 of the Harmonized Tariff Schedule of the United States purchased in calendar year 1999; and

(ii) The eligible wool products for nonimporting manufacturers of wool yarn or wool fabric are wool fiber or wool top of the kind described in heading 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21, 5105.29, or 9902.51.14 of such Schedule purchased in calendar year 1999.

(6) *Amount attributable to duties paid.*—For purposes of paragraphs (1), (2)(A), and (3)(A), the amount attributable to the duties paid by a manufacturer shall be the amount shown on the records of the Customs Service as of September 11, 2001, under this section as then in effect.

(7) *Schedule of payments; Reallocations.*—

(A) *Schedule.*—Of the payments described in paragraphs (1), (2)(A), and (3)(A), the Customs Service shall make the first and second installments on or before the date that is 45 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, and the third installment on or before April 15, 2003. Of the payments described in paragraphs (2)(C) and (3)(C), the Customs Service shall make the first installment on or before the date that is 120 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, and the second installment on or before April 15, 2003.

(B) *Reallocations.*—In the event that a manufacturer that would have received payment under subparagraph (A) or (C) of paragraph (1), (2), or (3) ceases to be qualified for such payment as such a manufacturer, the amounts otherwise payable to the remaining manufacturers under such subparagraph shall be increased on a *pro rata* basis by the amount of the payment such manufacturer would have received.

(8) *Reference.*—For purposes of paragraphs (1)(A) and (6), the "records of the Customs Service as of September 11, 2001" are the records of the Wool Duty Unit of the Customs Service on September 11, 2001, as adjusted by the Customs Service to the extent necessary to carry out this section. The amounts so adjusted are not subject to administrative or judicial review.

(e) *Affidavits by Manufacturers.*—(1) *Affidavit Required.*—A manufacturer may not receive a payment under this section for calendar year 2000, 2001, or 2002, as the case may be, unless that manufacturer has submitted to the Customs Service for that calendar year a signed affidavit that attests that, during that calendar year, the affiant was a manufacturer in the United States described in subsection (a), (b), or (c).

(2) *Timing.*—An affidavit under paragraph (1) shall be valid—

(A) In the case of a manufacturer described in paragraph (1), (2)(A), or (3)(A) of subsection (d) filing a claim for a payment for calendar year 2000 or 2001, or both, only if the affidavit is postmarked no later than 15 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act; and

(B) In the case of a claim for a payment for calendar year 2002, only if the affidavit is postmarked no later than March 1, 2003.

(f) *Offsets.*—Notwithstanding any other provision of this section, any amount otherwise payable under subsection (d) to a manufacturer in calendar year 2001 and, where applicable, in calendar years 2002 and 2003, shall be reduced by the amount of any payment received by that manufacturer under this section before the enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act.

(g) *Definition.*—For purposes of this section, the manufacturer is the party that owns—

(1) Imported worsted wool fabric, of the kind described in heading 9902.51.11 or 9902.51.12 of the Harmonized Tariff Schedule of the United States, at the time the fabric is cut and sewn in the United States into men's or boys' suits, suit-type jackets, or trousers;

(2) Imported wool yarn, of the kind described in heading 5107.10 or 9902.51.13 of such Schedule, at the time the yarn is processed in the United States into worsted wool fabric; or

(3) Imported wool fiber or wool top, of the kind described in heading 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21, 5105.29, or 9902.51.14 of such Schedule, at the time the wool fiber or wool top is processed in the United States into wool yarn.

Dated: August 8, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–20478 Filed 8–8–02; 3:11 pm]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Electronic License Application Form

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed an/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Foreign Assets Control (OFAC) within the Department of the Treasury is soliciting comments concerning OFAC's Electronic License Application Form TD–F 90–22.54.

DATES: Written comments should be received on or before October 11, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Policy Planning and Program Management Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex—2d Floor, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filings or procedures should be directed to Policy Planning and Program Management Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., 1500 Pennsylvania Avenue, Annex—2d Floor, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Title: OFAC Form for OFAC License Applications to Unblock Funds Transfers.

Agency Form Number: TD–F 90–22.54.

OMB Number: 1505–0170.

Abstract: Transactions prohibited pursuant to the Trading With the Enemy Act, 50 U.S.C. App. 1–44, and the International Emergency Economic Powers Act, 50 U.S.C. 1701, may be authorized by means of specific licenses issued by the Office of Foreign Assets Control ("OFAC"). Such licenses are issued in response to applications submitted by persons or institutions whose property has been blocked or who wish to engage in transactions that would otherwise be prohibited. Form TD–F 90–22.54, which provides a standardized method of all applicants seeking the unblocking of funds transfers, is available in electronic format on OFAC's website. Use of the form greatly facilitates and speeds these applicant's submissions and OFAC's processing of such applications while simultaneously obviating the need for applicants to write lengthy letters to OFAC, thus reducing the overall burden of the application process. Since February 2000, use of the form to apply for the unblocking of funds transfers has been mandatory pursuant to a revision in OFAC's regulations at 31 CFR 501.801. *See* 65 FR 10708, February 29, 2000.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals/businesses and other for-profit institutions/banking institutions.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget ("OMB") control number. Books or records relating to a collection of information must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 6, 2002.

Loren L. Dohm,

Deputy Director, Office of Foreign Assets Control.

[FR Doc. 02–20344 Filed 8–9–02; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to conduct a study of war related illnesses and post-deployment health issues.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 11, 2002.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov*. Please refer to "OMB Control No. 2900–New" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff (202) 273–8310 or FAX (202) 273–9381. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Study of War Related Illnesses and Post-Deployment Health Issues, VA Form 10–21060(NR).

OMB Control Number: 2900–New.

Type of Review: New collection.

Abstract: The purpose of this study is to develop a plan for clinical, research, risk communication and educational

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activities for war-related illnesses and post-deployment health issues.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,750 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 3,500.

Dated: July 31, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–20279 Filed 8–9–02; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
August 12, 2002

Part II

Department of Housing and Urban Development

24 CFR Part 236

Retention of Section 236 Excess Income; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 236

[Docket No. FR–4689–P–01]

RIN 2502–AH68

Retention of Section 236 Excess Income

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the terms and procedures for owners of projects receiving section 236 rental assistance to participate in retaining some or all of their excess rental charges (Excess Income) for project use; to retain Excess Income charges for non-project use after a determination by HUD that the project is well-maintained housing in good condition and that the owner has not engaged in material adverse financial or managerial actions or omissions; and to request a return of Excess Income remitted to HUD.

DATES: *Comments Due Date:* October 11, 2002.

ADDRESSES: Address all comments concerning this proposed rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments should refer to the docket number and title listed above. A copy of each comment submitted will be available for public inspection and copying weekdays between 7:30 a.m. and 5:30 p.m. at the above address. Comments submitted by facsimile (FAX) will not be accepted.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Room 6134, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3000 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 532(b) of the Departments of Veterans Affairs, Housing and Urban Development, Independent Agencies Appropriations Act, 2000 (Pub. L. 106–74, 113 Stat. 1047, approved October 20, 1999) (FY 2000 Appropriations Act) amended section 236(g) of the National Housing Act (12 U.S.C. 1715z–1(g)) to permit owners (mortgagors) of projects receiving Section 236 rental assistance to participate in retaining some or all of their excess charges, referred to as "Excess Income" in this rule, for project use if authorized by HUD. Permitting project owners to retain Excess Income is an exception to the general requirement of section 236(g) that project owners pay to HUD all rental charges, collected on a unit-by-unit basis, that are in excess of the basic rental charges. Under the new statutory authority, Excess Income that mortgagors are permitted to retain is to be used for the project upon terms and conditions established by HUD. This rule establishes those terms and conditions.

Section 532(b) of the FY 2000 Appropriations Act also permits owners to retain Excess Income for non-project use after a determination by HUD that the project is well-maintained housing in good condition, and that the owner has not engaged in material adverse financial or managerial actions or omissions as described in section 516 of the Multifamily Assisted Housing Reform and Affordability Act of 1997.

This proposed rule would implement the section 236(g) authority to retain Excess Income by adding 24 CFR 236.60, formerly contained in the April 1, 1995 edition of 24 CFR, the provisions of which were saved pursuant to 24 CFR 236.1(c) of the current CFR. As added by this rule, § 236.60 would include the general rule requiring the return to HUD of Excess Income, but would also add new provisions to govern the process for a Section 236 mortgagor to apply for, and HUD to approve, the authority to retain Excess Income. HUD will not withhold approval of a mortgagor's request to retain Excess Income because of the existence of unpaid Excess Income charges, if the unpaid income is being repaid over a period of time in accordance with a Workout or Repayment Agreement with HUD. However, HUD will withhold approval if the mortgagor is in violation of such an Agreement.

Once approved to retain Excess Income, a mortgagor must continue to prepare and submit to HUD a revised Form HUD–93104, Monthly Report of Excess Income. If approved to retain Excess Income for project use, a mortgagor must also submit an annual narrative description of the amount and the uses made of Excess Income during the prior fiscal year of the project. Finally, this rule includes the procedure for withdrawing the authority to withhold income from a mortgagor.

This rule would also establish the procedures for mortgagors to request a return of Excess Income that has already been remitted to HUD. The Departments of Veterans Affairs, Housing and Urban Development, Independent Agencies Appropriations Act, 1999, (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998) (FY 1999 Appropriations Act), at section 227, permitted project owners to retain Excess Income upon terms and conditions established by HUD. Section 532(e) of the FY 2000 Appropriations Act allowed HUD to return any Excess Income remitted to HUD since October 21, 1998, the date of enactment of the FY 1999 Appropriations Act. Finally, section 861(b) of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569, 114 Stat. 2944, approved December 27, 2000) authorized HUD to return Excess Income remitted to HUD since the date of enactment of the FY 2000 Appropriations Act.

This rule proposes to permit mortgagors to request a return of Excess Income for project use or non-project use in accordance with the same procedures and conditions that apply to a request to retain Excess Income. For example, a request to return Excess Income for project use must include a description of how the funds will be used, and mortgagors may request a return of remitted Excess Income for non-project use only if the project has been well-maintained housing in good condition during the period from which a return is requested, and if the mortgagor has not engaged in material adverse financial or managerial actions or omissions.

A mortgagor may request a return of Excess Income that has been remitted to HUD since October 21, 1998, except for unpaid income that was repaid in accordance with a Workout or Repayment Agreement with HUD, or Excess Income generated between October 1, 2000, and October 27, 2000, by projects with State agency non-insured Section 236-assisted mortgages or HUD-held Section 236 mortgages. This rule further provides that a mortgagor may not request a return of any income after the date that is one year from the publication date of the final rule. HUD has set this time limit for requesting income returns to give mortgagors a period to plan for the retention and use of Excess Income on a current basis, which is more efficient than a procedure that would require constant reexaminations.

II. Findings and Certifications

Paperwork Reduction Act

The proposed new information collection requirements contained in §§ 236.60(c)(3), (d)(3), and (g), have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The public reporting burden for this new collection of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in the following table.

Information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours
§ 236.60(c)(3)	1,750	1	1,750	.25	438
§ 236.60(d)(3)	750	1	750	.25	188
§ 236.60(g)	1,750	1	1,750	.25	438
Total hours					1,064

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received by October 11, 2002. Comments must refer to the proposal by name and docket number (FR–4689–P–01) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

and

Rules Docket Clerk, Office of the General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Planning and Review

The Office of Management and Budget has reviewed this proposed rule under Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule will not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The FONSI is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule and in so doing certifies that the rule would not have a significant economic impact on a substantial number of small entities. The rule only establishes the requirements for mortgagors of section 236 projects to retain and use Excess Income.

Notwithstanding HUD's determination that this rule would not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Federalism Impact

This rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for section 236 assistance is 14.103.

List of Subjects in 24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 236 as follows:

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION

1. The authority citation for 24 CFR part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

2. Section 236.60 is added to read as follows:

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§ 236.60 Excess Income.

(a) *Definition.* Excess Income consists of cash collected as rent from the residents by the mortgagor, on a unit-by-unit basis, that is in excess of either the HUD-approved unassisted Basic Rent or the New Authorized Rent under the Section 8 mark-to-market program under 24 CFR part 401. The unit-by-unit requirement necessitates that, if a unit has Excess Income, it must be returned to HUD. It is not permissible to do an aggregate calculation of the Excess Income for all occupied rent-paying units, and then to offset or subtract from that figure any unpaid rent from occupied or vacant units, before remitting Excess Income to HUD.

(b) *General requirement to return Excess Income.* Except as otherwise provided in this section, or as agreed to by HUD pursuant to a plan of action approved under part 248 of this chapter or in connection with an adjustment of contract rents under section 8 of the 1937 Act, the mortgagor shall agree to pay monthly to HUD the total of all Excess Income in accordance with procedures prescribed by HUD.

(c) *Retention of Excess Income for project use*—(1) *Eligible mortgagors.* Any mortgagor of a project receiving Section 236 interest reduction payments may apply to retain Excess Income for project use unless the mortgagor owes prior Excess Income and is not current in payments under a HUD-approved Workout or Repayment Agreement.

(2) *Eligible uses.* Excess Income retained by a mortgagor for project use may be used for any necessary and reasonable operating expense of the project. Examples are:

(i) Project operating shortfalls, including repair costs;

(ii) Repair costs identified in the Comprehensive Needs Assessment, including increasing deposits to the Reserve Fund for Replacements to a limit necessary to adequately fund the reserve;

(iii) Service coordinators;

(iv) Neighborhood networks located at the project for project residents; and

(v) Enhanced supportive services for the residents.

(3) *Request for approval to retain Excess Income.* A mortgagor must submit a written request to retain Excess Income for project use to the local HUD Field Office. The request must describe:

(i) The amount or percentage of Excess Income requested;

(ii) The period from which Excess Income is being requested; and

(iii) The proposed use of the requested Excess Income.

(d) *Retention of Excess Income for non-project use*—(1) *Eligible mortgagors.* Any mortgagor of a project receiving Section 236 interest reduction payments may apply to retain Excess Income for non-project use unless the mortgagor owes prior Excess Income and is not current in payments under a HUD-approved Workout or Repayment Agreement or the mortgagor falls within any of the following categories:

(i) The mortgagor's Reserve for Replacement is not funded;

(ii) The mortgagor's project is not well maintained housing in good condition, as evidenced by:

(A) Failure to maintain the project in decent, safe, and sanitary condition and in good repair in accordance with HUD's Uniform Physical Condition Standards and Inspection Requirements in subpart G of 24 CFR part 5;

(B) A score below 60 on the physical inspection conducted by HUD's Real Estate Assessment Center (REAC);

(C) The existence of Exigent Health and Safety (EHS) deficiencies identified by REAC; or

(D) A Comprehensive Needs Assessment that finds there are significant current repair or maintenance needs;

(iii) The mortgagor has engaged in any one of the following material adverse financial or managerial actions or omissions:

(A) Materially violating any Federal, State, or local law or regulation with regard to the project or any other federally assisted project, including any applicable civil rights law or regulation, after receipt of notice and an opportunity to cure;

(B) Materially breaching a contract for assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), after receipt of notice and an opportunity to cure;

(C) Materially violating any applicable regulatory or other agreement with HUD or a participating administrative entity, after receipt of notice and an opportunity to cure;

(D) Repeatedly and materially violating any Federal, State, or local law or regulation, including any applicable civil rights law or regulation, with regard to the project or any other federally assisted project;

(E) Repeatedly and materially breaching a contract for assistance under section 8 of the United States Housing Act of 1937;

(F) Repeatedly and materially violating any applicable regulatory or other agreement with HUD or a participating administrative entity, including failure to submit audited financial statements or required tenant data;

(G) Repeatedly failing to make mortgage payments at times when project income was sufficient to maintain and operate the project;

(H) Materially failing to maintain the project in decent, safe, and sanitary condition and in good repair after receipt of notice and a reasonable opportunity to cure; or

(I) Committing any actions or omissions that would warrant suspension or debarment by HUD.

(2) *Eligible uses.* Excess Income retained by a mortgagor for non-project use may be used for any purpose, except that the non-project use of Excess Income by a nonprofit entity mortgagor is limited to activities that carry out the entity's nonprofit purpose.

(3) *Request for approval to retain Excess Income.* A mortgagor must submit a written request to retain Excess Income for non-project use to the local HUD Field Office. The request must describe:

(i) The amount or percentage of Excess Income requested; and

(ii) The period from which Excess Income is being requested.

(e) *Timing of request to retain Excess Income.* A mortgagor must submit a request to retain Excess Income at least 90 days before the beginning of each fiscal year, or 90 days before any other time during a fiscal year that the mortgagor plans to begin retaining Excess Income for that fiscal year.

(f) *HUD review and response procedure.* HUD will review the mortgagor's request to retain income and issue a letter of approval or denial as follows:

(1) *Approval letter.* The approval letter from HUD permitting the mortgagor to retain Excess Income must, at a minimum, assert:

(i) Retention rights are for the time specified in the approval letter, but cannot extend beyond the current fiscal year;

(ii) Failure of the mortgagor to maintain the Reserve for Replacement account in a fully funded amount at all times is grounds for HUD to rescind the approval;

(iii) Failure of the mortgagor to maintain the project in decent, safe, and sanitary condition and in good repair at all times is grounds for HUD to rescind the approval;

(iv) If the Excess Income requested for project use is not used for the proposed purpose described in the mortgagor's request, the income must be returned to HUD, unless the mortgagor has obtained prior HUD approval for the alternate use; and

(v) The failure of a mortgagor to return retained Excess Income to HUD for not complying with applicable requirements is a violation of the Regulatory Agreement for which there are enforcement remedies that HUD may take.

(2) *Denial letter.* A letter from HUD denying a mortgagor's request to retain Excess Income must cite the specific reasons for denial and state what requirements the mortgagor must meet to receive HUD's approval to retain Excess Income.

(3) *Environmental review.* Before approving a request to retain Excess Income for project use, HUD will perform an environmental review to the extent required under 24 CFR part 50 for activities that are not excluded under 24 CFR 50.19(b).

(g) *Post-approval requirements*—(1) *Monthly report.* Mortgagors approved to retain Excess Income must continue to prepare and submit to HUD a revised Form HUD–93104, Monthly Report of Excess Income, or successor form.

(2) *Other reporting requirements.* Mortgagors who retain Excess Income for project use must provide HUD, on an annual basis, two copies of a narrative description of the amount and the uses made of Excess Income during the prior fiscal year of the project. HUD may request additional follow-up information on a case-by-case basis. The report must contain the following certification:

> I certify that (1) the amount of Excess Income retained and used was for the purposes approved by HUD; (2) all eligibility requirements for retaining Excess Income were satisfied for the entire reporting period; and (3) all the facts and data on which this report is based are true and accurate. Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties (18 U.S.C. 1001, 1010, 1012; and 31 U.S.C. 3729 and 3802).

(h) *Return of remitted Excess Income*—(1) *For project use.* A mortgagor that is eligible to retain Excess Income for project use under paragraph (c)(1) of this section may apply for the return of Excess Income remitted to HUD since October 21, 1998 (except for unpaid income that was repaid in accordance with a Workout or Repayment Agreement with HUD, or Excess Income generated between October 1, 2000, and October 27, 2000, by projects with State agency non-insured Section 236-assisted mortgages or HUD-held Section 236 mortgages) in accordance with procedure in paragraph (c)(3) of this section.

(2) *For non-project use.* A mortgagor that is eligible to retain Excess Income for non-project use under paragraph (d)(1) of this section may apply for the return of Excess Income remitted to HUD since October 21, 1998 (except for unpaid income that was repaid in accordance with a Workout or Repayment Agreement with HUD, or Excess Income generated between October 1, 2000, and October 27, 2000, by projects with State agency non-insured Section 236-assisted mortgages or HUD-held Section 236 mortgages) in accordance with procedure in paragraph (d)(3) of this section.

(3) *Reporting requirement.* A mortgagor that receives returned Excess Income requested for project use is subject to the reporting requirements of paragraph (g)(2) of this section with respect to the returned Excess Income.

(4) *Time limit.* After [Insert date that is one year after the date of publication of the final rule], a mortgagor may no longer apply for the return of any Excess Income remitted to HUD.

(i) *HUD withdrawal of approval to retain Excess Income*—(1) *Bases for withdrawal of approval.* HUD may withdraw approval for any of the following reasons:

(i) If, at any time after approval, a mortgagor fails to meet the eligibility requirements of paragraph (c)(1) or (d)(1) of this section, as applicable;

(ii) If the mortgagor does not use the Excess Income requested for project use for purposes and activities as approved by HUD; or

(iii) Where the mortgagor has been approved to retain Excess Income for non-project use, if at any time during the fiscal year that such approval is in effect, the mortgagor fails to maintain the project in decent, safe, and sanitary condition and in good repair, or maintain the Reserve for Replacement account in a fully funded amount.

(2) *Notification of withdrawal of approval.* HUD will notify the mortgagor by certified mail that the authorization to retain Excess Income is withdrawn. The notification will state:

(i) Specific reasons for HUD's withdrawal of approval;

(ii) The effective termination date, which may be the date of the violation resulting in the withdrawal or the date of HUD's determination that the mortgagor was out of compliance;

(iii) The amount of retained Excess Income improperly retained that must be returned to HUD; and

(iv) The actions that the mortgagor must take to restore the authorization to retain Excess Income.

(3) *Mortgagor's request for reconsideration*—(i) *Letter of reconsideration.* A mortgagor may request that HUD reconsider its decision by submitting, to the Hub/Field Office Director or other party identified by HUD in the notification, within 30 days of receipt of the notification of withdrawal, a letter stating the basis for reconsideration. The letter must include documentation supporting a review of the denial.

(ii) *HUD response.* Within 30 days of HUD's receipt of the mortgagor's request for reconsideration, HUD will make a final determination and respond in writing to the mortgagor. HUD's response may:

(A) Affirm the withdrawal of authority to retain Excess Income;

(B) Reverse the withdrawal of authority to retain Excess Income; or

(C) Request additional information from the mortgagor before affirming or reversing the withdrawal of authority to retain Excess Income.

Dated: July 8, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

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Part III

Department of the Interior

National Park Service

36 CFR Part 61
Procedures for State, Tribal and Local Government Historic Preservation Programs; Proposed Rule

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 61

RIN 1024–AC79

Procedures for State, Tribal and Local Government Historic Preservation Programs

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes to establish the requirements for an Indian Tribe to assume the duties as State Historic Preservation Officer (SHPO) pursuant to section 101(d)(2) of the National Historic Preservation Act (NHPA). The 1992 amendments to the NHPA include a provision that enables a Tribe to assume any or all of the duties of a SHPO on tribal lands. The proposed rule establishes the formal process by which a Tribe may secure the Secretary of the Interior's (Secretary) approval to assume SHPO duties on tribal land.

DATES: The NPS will accept written comments through December 10, 2002. The NPS will hold public meetings on September 20, 2002, at 9 a.m. in Albuquerque, New Mexico; on September 18, 2002, at 9 a.m. in Phoenix, Arizona; on September 16, 2002, 9 a.m. in Reno, Nevada; on September 13, 2002, at 9 a.m. in Seattle, Washington; on October 4, 2002, at 10 a.m. in Oklahoma City, Oklahoma; on October 9, 2002, at 9 a.m. in Lac du Flambeau, Wisconsin; on October 22, 2002, at 9 a.m. in Washington, DC; on September 11, 2002, at 9 a.m. in Polson, Montana; and on October 2, 2002 at 9 a.m. in Fort Yates, North Dakota, to present the proposed rule and to receive oral comments.

ADDRESSES: Comments should be addressed to: Chief, Heritage Preservation Services Division, National Center for Cultural Resources, National Park Service, 1849 C Street, NW., NC 330, Washington, DC 20240; Attention: H. Bryan Mitchell. You may hand carry your comments or send them by overnight mail to 800 North Capitol Street, NW., Suite 330, Washington, DC 20002. Fax: (202) 343–3921. E-mail: *Bryan_Mitchell@nps.gov*. The public meetings noted in **DATES** will be at the Indian Pueblo Cultural Center, Inc. (Antelope Room) 2401 12th Street, NW., in Albuquerque, New Mexico; Intertribal Council of Arizona, El Encanto Building, Suite 130, 2214 North Central Avenue, in Phoenix, Arizona; University of Nevada at Reno, Continuing Education Bldg., Room 109, 1041 North Virginia Street, in Reno, Nevada; Daybreak Star Indian Cultural Center (Lounge Room), Discovery Park, 34th Avenue West and West Government Way, in Seattle, Washington; Shepherd Mall, Suite 65, NW 23rd Street and Villa, in Oklahoma City, Oklahoma; Lake of the Torches Resort Hotel (3rd Floor Conference Room), 510 Old Abe Road, in Lac du Flambeau, Wisconsin; Department of the Interior (Room 7000–B) 1849 C Street, NW., in Washington, DC; KwaTaqNuk Resort Hotel (Charlo Room), 303 U.S. Highway 93 East, in Polson, Montana; and Prairie Knights Casino and Lodge (Prairie View Room), 7932 Highway 24, in Fort Yates, North Dakota.

FOR FURTHER INFORMATION CONTACT: H. Bryan Mitchell, National Park Service, 1849 C Street, NW. (NC 330), Washington, DC 20240. Telephone: (202) 343–9558. Fax: (202) 343–3921. E-mail: *Bryan_Mitchell@nps.gov*.

SUPPLEMENTARY INFORMATION:

Background

The NPS has promulgated 36 CFR part 61 pursuant to the NHPA (16 U.S.C. 470 *et seq.*) that implemented the national historic preservation program as a partnership among Federal, State, Tribal, and local governments, non-profit organizations, and private individuals. The NHPA also created the mechanism for funding this partnership, the Historic Preservation Fund. This partnership promotes and carries out the preservation of irreplaceable historic and archeological resources that provide the foundation of the Nation's heritage. Through this partnership the vital legacy of cultural, educational, aesthetic, inspirational, and economic benefits of our historical patrimony will be maintained and enriched for future generations of Americans. 36 CFR part 61 provides the regulatory framework for voluntary participation by State, Tribal, and local governments in the national historic preservation program. The Secretary, operating through the Director of the National Park Service (Director), administers these programs.

The specific objects of this proposed rule are §§ 61.8 and 61.9 of 36 CFR part 61. These two sections, which the NPS reserved for future development in the recent overall revision of Part 61 (published for effect in the **Federal Register** on March 9, 1999), are specific to tribal participation in the national historic preservation program. Where a Tribe assumes responsibilities on tribal lands pursuant to this section of the NHPA, the SHPO does not have responsibility for those functions, except in those cases where a non-tribal land owner requests the State's participation in addition to the Tribe's. Prior to the enactment of the 1992 amendments, the NHPA included no provision by which a Tribe could formally assume these duties in the national program. Issuance of these two sections will complete the revision of Part 61 in response to the 1992 amendments to the NHPA.

Federally recognized Tribes that exercise governmental jurisdiction over tribal lands are eligible for this program. The NHPA defines tribal lands as all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities (16 U.S.C. 470w).

As of the date of publication of this proposed regulation, the Secretary has already approved 31 Tribes to assume SHPO duties pursuant to section 101(d)(2) of the NHPA. In the absence of a regulation specifically implementing that new section of the NHPA, the NPS has reviewed tribal proposals to date in accordance with and in reliance upon the existing statutory and regulatory requirements for SHPOs. The NPS has based this review process on the broad requirements that ensure a certain level of quality, consistency, and public participation in the delivery of the national program. The current review process has demonstrated the need for rules that establish a formal assumption process for Tribes and that respond more specifically to those values and needs of Tribes that are distinct from those of the States. Further, section 101(d)(2) of the NHPA, itself, specifically anticipates that the NPS will promulgate regulations that are specific to tribal assumption of SHPO duties.

Section by Section Analysis

Section 61.8 Tribal Programs

Taken as a whole, the section includes the process by which a Tribe can gain approval from the Secretary, acting through the Director, to assume SHPO duties on tribal lands. This section affirms that a Tribe must meet existing broad requirements for level of quality, consistency, and public participation in order to be deemed fully capable of assuming SHPO duties. However, an important purpose of this section is to distinguish tribal participation in the national program from state participation in the national program, where such distinctions are appropriate and consistent with the purposes of the NHPA. The section:

- Provides the necessary guidance for what a Tribe must include in a proposal;
- Establishes deadlines by which the NPS must respond to a tribal proposal;
- Implements the provisions of section 101(d)(1)(B) of the NHPA that allow for waivers and modifications of the requirements of the NHPA, in order to accommodate tribal values and the cultural setting of tribal heritage preservation goals and objectives;
- Provides a process by which a Tribe can request review by the Director of any decision to disapprove a tribal proposal or to deny a tribal request for a waiver or modification of requirements, or of any failure to act within certain deadlines; and
- Establishes the process for periodic review by the NPS of approved tribal programs, in accordance with sections 101(d)(2) and 101(b)(2) of the NHPA.

(a) What Is the Purpose of the Section?

This paragraph makes clear that the procedures and requirements set out in § 61.8 apply only to tribal assumption of SHPO responsibilities in the national historic preservation program. The procedures and requirements of this rule do not apply to tribal historic preservation programs and activities that are created and carried out solely pursuant to tribal ordinances.

For example, if a Tribe assumes the responsibility for nominating properties to the National Register of Historic Places, the Tribe must follow the National Register's nomination procedures, and it must use the National Register's evaluation criteria to assess the significance of the property being nominated. On the other hand, if the Tribe proposes to establish and maintain its own tribal register—either instead of or in addition to nominating properties to the National Register—the Tribe may establish whatever procedures and evaluation criteria it feels best meet the Tribe's needs. If a Tribe chooses only to establish and maintain a tribal register, then the responsibility for nominating properties to the National Register remains with the SHPO.

In another example, if a Tribe assumes the SHPO's responsibility for commenting on the possible effects of proposed Federal undertakings, the Tribe must carry out that responsibility in accordance with the regulations (36 CFR 800) of the Advisory Council on Historic Preservation. The Tribe's authority within that arena is set out in that regulation. On the other hand, if a Tribe adopts an ordinance requiring tribal approval and a permit for activities on tribal land that may affect historic or cultural resources, the terms of that ordinance are set out by the Tribe to meet its own needs. The two processes are separate and do not substitute for each other.

(b) What Policies Govern Tribal Participation in the National Historic Preservation Program?

The statements of policy affirm that:

(1) tribal assumption of SHPO duties is a governmental function and so is a part of the government-to-government relationship between the United States and Indian Tribes;

(2) tribal participation will strengthen the national historic preservation program [16 U.S.C. 470–1(2)]; and

(3) the program should encourage and facilitate tribal participation [16 U.S.C. 470–1(d)(1)(A)];

(c) How Will the NPS Implement These Policies in Carrying Out the Procedures and Requirements for Tribal Assumption of SHPO Duties?

The NPS will administer this rule in a manner sufficiently flexible to respond to the varying scopes of tribal programs and to tribal values while remaining consistent with the intent and purposes of the NHPA.

(d) What Terms Do I Need To Know?

The NHPA defines most of the terms used in this rule. Those definitions are not repeated here. This paragraph defines one very important term not defined elsewhere: "tribal traditional cultural authority." The definition affirms two important ideas for the purposes of this program. First, the only test for determining that someone is a tribal traditional cultural authority is whether the Tribe recognizes that person as such. Second, the NPS attributes the same professional standing and credibility to a tribal traditional cultural authority as he or she does to an individual who meets the Secretary of the Interior's Professional Qualifications Standards. This equivalent standing does not mean that a tribal traditional cultural authority is necessarily qualified to assess the archeological, historical, or architectural significance of a site. Likewise, a professionally qualified archeologist, historian, or architectural historian is not necessarily competent to assess the traditional cultural significance of that same site. The NPS recognizes each of these individuals as competent within a specific sphere of knowledge.

(e) How Does Our Tribe Seek Approval To Assume SHPO Functions?

This paragraph reiterates the NHPA's three fundamental procedural requirements that a Tribe must meet when it proposes to assume SHPO duties on tribal lands:

(1) submit an appropriate resolution from the Tribe's chief governing authority;

(2) duly designate a Tribal Historic Preservation Officer (THPO) who will be responsible for carrying out these duties; and

(3) submit a Program Plan that describes how the Tribe will carry out the duties it proposes to assume.

(f) What Are the General Requirements for Our Tribe's Program Plan?

This paragraph establishes the basic framework for a Program Plan. It refers to the SHPO functions as they are set out in the NHPA and calls on a Tribe to indicate in its Program Plan which functions the Tribe will assume and which ones it will not assume. The paragraph also makes clear that a Tribe must include in its Program Plan sufficient descriptive information on the Tribe's current historic preservation activities and on how the Tribe will carry out the functions it proposes to assume, so that the NPS can determine whether the Tribe is, in the words of the NHPA, "fully capable" of carrying out the functions it proposes to assume.

The paragraph also indicates that a Tribe may, at its discretion, include other materials in its Program Plan, such as a request for a waiver or modification of requirements, a request for technical assistance, and any other background information the Tribe wishes to include.

(g) What Are the Specific Elements That Must Be in a Tribal Program Plan?

This paragraph provides more detailed guidance on the descriptive information a Tribe must provide in its Program Plan. The NPS bases the required information directly on existing statutory and regulatory requirements for SHPO duties. The Tribe must demonstrate its familiarity with those requirements and describe how it will meet them, so that the NPS can determine, pursuant to section 101(d)(2)(D)(i) of the NHPA, whether the Tribe is "fully capable of carrying out the functions specified in the plan." However, the paragraph also modifies some of the requirements imposed on States, in order to take into account tribal values and to recognize that tribal programs may vary in scope from state programs.

The paragraph is divided into two parts. The first part concerns information about the Tribe's overall program:

(a) Information on how the Tribe will include professionally qualified individuals in its program;

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(b) Information on how the Tribe will include an adequate and qualified review board in its program; and

(c) Information on how the Tribe will provide for adequate public participation in its program.

Two examples of how these overall requirements are modified for Tribes are:

(1) The NHPA requires an SHPO to employ or appoint "such professionally qualified staff as may be necessary * * *" Existing regulations (36 CFR 61.4) require that such State staff include a professionally qualified architectural historian, a professionally qualified historian, and a professionally qualified archeologist. The Secretary recognizes that unique cultural settings, smaller workloads, more limited program scopes, and limited funding may make such full-time staffing requirements both unnecessary and infeasible for a Tribe. Therefore, this proposed rule offers a Tribe greater flexibility to arrange for access to professionally qualified individuals as necessary to meet the specific needs of a Tribe's program.

(2) The NHPA requires SHPO programs to include "an adequate and qualified" review board to review National Register nominations and to provide general programmatic advice to the SHPO. Existing regulations (36 CFR 61.4) require that a majority of the members of such State boards meet the Secretary's Professional Qualifications Standards. However, the Secretary recognizes that, like many local historic preservation programs that the Secretary has certified, Tribes may not have access to professionally qualified individuals who are locally available and willing to serve on the board. Further, the Secretary recognizes that the nature and scope of THPO programs may be such that they are better served by board members who are traditional cultural authorities, elders, and others experienced in the preservation of tribal culture. Therefore, this proposed rule only requires that tribal review board members be interested and experienced in historic preservation and/or tribal culture, in order for the board to be deemed "adequate and qualified."

The second part of the paragraph concerns information on the specific SHPO functions the Tribe may assume, with emphasis on the following three functions:

(a) The National Register nomination process;

(b) Consultation with Federal agencies pursuant to section 106 of the NHPA; and

(c) Review of proposals for rehabilitation of historic properties that may qualify for Federal tax credits.

The required information for these three functions makes clear that a Tribe that assumes any or all of these three functions must carry them out in a manner that is consistent with existing regulations applicable to SHPOs. However, the paragraph also makes clear that a Tribe that finds these existing regulations to be contrary to tribal values may seek and receive a waiver or modification of those regulations from the Secretary.

(h) How Does Our Tribe Obtain a Waiver or Modification of the Requirements of the NHPA or of This Rule?

This paragraph implements the provision of section 101(d)(1) of the NHPA that allows for waivers and modifications of existing legal requirements applicable to SHPOs in order to take into account tribal values and to conform to the cultural setting of tribal heritage goals and objectives. A Tribe may include such a waiver or modification request as a part of its Program Plan. While the NPS neither requires nor expects that a Tribe include or divulge any information that is sensitive or culturally inappropriate for the Tribe, the Tribe must explain why a waiver or modification is appropriate, and it must propose a specific alternative.

(i) How Will the NPS Consult With Us on Our Proposed Program Plan?

This paragraph makes clear that, when the NPS receives a proposed Program Plan from a Tribe, it will consult with the Tribe in an effort to clarify any ambiguities and remedy any deficiencies in that Plan. The paragraph also establishes deadlines by which the NPS must:

(a) Acknowledge receipt of a Tribe's Program Plan;

(b) Notify a Tribe of any ambiguities or apparent deficiencies in its Program Plan;

(c) Notify a Tribe of any ambiguities or apparent deficiencies remaining in its Program Plan following consultation with the NPS.

(j) Will the NPS Consult With Anyone Else About Our Proposed Program Plan?

This paragraph makes clear that the NHPA requires NPS to consult with the appropriate SHPO(s), any other Tribes whose traditional homelands may be affected, and, if you are assuming responsibilities pursuant to section 106, the Advisory Council on Historic Preservation. The paragraph establishes a deadline by which NPS must contact these other consulting parties, as well as a deadline by which the consulting parties must return any comments to NPS.

(k) On What Basis Will the Secretary Review Our Proposed Program Plan?

This paragraph makes clear that the NPS must decide to approve or not to approve a Tribe's Program Plan based on the statutory test of whether the Tribe is "fully capable" of carrying out the SHPO functions it proposes to assume. The paragraph binds the NPS to determine whether the Tribe is fully capable based on whether the Tribe has met the requirements set out in § 61.8(f) through § 61.8(i) of this rule.

The paragraph also affirms that, in any case where a Tribe has requested a waiver or modification of existing requirements applicable to SHPOs, the NPS will approve that request upon finding that such a waiver or modification is feasible, necessary to accommodate tribal values, and consistent with the purposes of the NHPA.

(l) How Will the NPS Make a Decision on Our Program Plan?

Item (1) of this paragraph requires the NPS to provide the Tribe with a written finding as to whether the Tribe is fully capable of carrying out its proposed duties and whether the NPS has approved any requested waivers or modifications.

Item (2) indicates that the finding must include an explanation for the NPS' decisions, a description of the necessary steps to correct any deficiencies that resulted in denial of the Tribe's request, an offer of technical assistance as appropriate, and a notice of the Tribe's right to request the Director's review of certain adverse decisions or actions.

Items (3) and (4) establish that the NPS may approve a Tribe's entire plan, disapprove the entire plan, or approve parts of the plan and disapprove other parts. The basis for partial approval of a plan by the NPS and/or partial assumption of duties by the Tribe is section 101(d)(2) of the NHPA, which provides that, "A tribe may assume *all or any part* of the functions of a State Historic Preservation Officer * * * [emphasis added]"

Item (5) makes clear that a Tribe that assumes only a portion of the SHPO duties at first may at any subsequent time assume any or all of the remaining duties upon approval by the NPS. Any Tribe that wants in the long term to assume all SHPO duties but feels that it should take on those duties gradually or in phases may do so.

(m) How Can We Obtain a Review of a Negative Decision by the NPS?

This paragraph establishes a clear process by which a Tribe can request the Director to review any decision that disapproved in whole or in part the Tribe's proposal to assume SHPO duties, any decision to deny the Tribe's request for a waiver or modification of requirements, or any failure to act by the deadlines established by this rule. The paragraph indicates what a Tribe should include in its request to the Director, and it establishes a 60-day deadline for making such a request. The paragraph calls for a meeting between the Tribe and the Director if the Tribe requests such a meeting, or if the Director believes that a meeting would be helpful. The paragraph requires that the Director's decision be in writing and that it include an explanation for the Director's action. Finally the paragraph requires the Director to act within 60 days of receiving the Tribe's request.

(n) May a Tribe That Assumes SHPO Functions Obtain Relevant Materials From the SHPO?

Existing survey inventories and archives of the SHPOs often include significant information on sites within the boundaries of Indian reservations, as well as on aboriginal lands now outside the reservation. A Tribe that assumes SHPO duties needs that information very much, not only so that it can build upon rather than duplicate previous work carried out pursuant to the NHPA, but also so that it can effectively and efficiently work with the Federal agencies that consult with the Tribe pursuant to the NHPA.

A few of the Tribes that have already assumed SHPO duties have reported some difficulties in acquiring copies of SHPO records. Those tribes have requested that the NPS require SHPOs to turn over their original records to the Tribes at no cost to the Tribes.

The NPS cannot require SHPOs to divest their archives of these official state records. In addition, the SHPOs will have a continuing need to refer to those records for their own planning purposes. The NPS also cannot require that an SHPO bear all the costs of making duplicate records for a Tribe.

On the other hand, the NPS recognizes the critical importance of these records for THPOs. This paragraph affirms that the State, if the Tribe requests, must provide the Tribe with original records or legible duplicates for sites on tribal lands or on a Tribe's aboriginal lands. While a State may charge the Tribe a fee not to exceed actual costs for transferring or duplicating materials, the NPS encourages the States to give whatever assistance they can to a Tribe that is assuming SHPO duties, so that the Tribe can obtain the necessary records quickly at the lowest possible cost.

(o) How Does the NPS Review the Performance of a Tribe That Has Assumed SHPO Functions?

Section 101(d)(2) of the NHPA says that a tribe may assume SHPO duties "in accordance with" section 101 (b)(2) of the NHPA. This latter section requires periodic review, not less often than once every 4 years, of each SHPO program to ensure that it remains consistent with the NHPA. 36 CFR 61.4 establishes the basic procedure by which the NPS carries out this review of state programs.

Accordingly, paragraph 61.8(o) of this rule establishes a basic process for review of each THPO program that is identical to the procedure for review of SHPO programs as set out in 36 CFR 61.4

The principal features of the review process are:

1. It is collegial;

2. It focuses on identifying both strengths and weaknesses;

3. It provides a Tribe with a reasonable opportunity to correct any problems;

4. It allows a Tribe to request a review by the Director of any findings or required actions; and

5. It results in a formal continuation of a Tribe's approved status, or, where major deficiencies remain uncorrected, in a revocation of approved status and suspension of any financial assistance.

(p) What Is the Effect of This Rule on Tribal Sovereignty, Treaty Rights, and Other Tribal Rights?

This paragraph affirms that nothing in this rule is intended to modify tribal sovereignty or to preempt any treaty rights or other rights in any way.

(q) What Is the Effect of This Rule on Tribes Previously Approved To Assume SHPO Functions?

This paragraph "grandfathers" those Tribes that have been approved to assume SHPO duties prior to the effective date of this rule, so that they retain their approved status without reapplying to the NPS for approval.

Section 61.9 Grants to Tribal Programs

(a) Are Tribes That Have Assumed SHPO Functions Eligible for Financial Assistance To Carry Out Those Functions?

Item (1) of this paragraph affirms that a Tribe that is approved to assume SHPO duties is eligible to receive financial assistance from the Historic Preservation Fund (HPF), just as SHPOs are eligible to receive financial assistance from the HPF.

Item (2) establishes the first day of the Federal fiscal year (October 1) as the deadline by which a tribal program must have been approved in order to be eligible for financial assistance in any given fiscal year. This deadline is important and necessary for two reasons:

1. The number of Tribes participating in this program is growing and will continue to grow for the foreseeable future. A Tribe may submit a program plan to the NPS for approval at any time during the year.

2. The NPS provides annual financial assistance to approved Tribes based on an apportionment formula very soon after Congress appropriates the funds. Each approved Tribe needs to know as early as possible what its funding level will be for the year. The Tribe also needs access to its funds as early in the fiscal year as possible to meet ongoing costs. Already-approved Tribes would suffer unfairly, if apportionment were delayed in order to wait for possible additional Tribes.

Section 61.9(b) What Requirements Govern the Financial Assistance for Tribes That Have Assumed SHPO Functions?

This paragraph affirms that the various departmental and government-wide requirements for receiving and spending Federal grant-in-aid money apply to the funds a Tribe receives through this program. This paragraph also affirms the provisions of section 101(e)(5) of the NHPA that the matching-share requirements normally attached to the HPF may be modified for Tribes.

Drafting Information

The primary author of this rule is H. Bryan Mitchell, Heritage Preservation Services, National Center for Cultural Resources, National Park Service.

Compliance With Laws, Executive Orders and Department Policy

Regulatory Planning and Review (Executive Orders 12866)

This document is not a significant rule and is not subject to review by the

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Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The proposed rule provides the framework for the voluntary participation of individual Indian tribes in the national historic preservation program. Current grant funding available to participating tribes is under $5 million nationwide.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule establishes the formal relationship between the NPS and participating tribes. Consultation between Federal agencies and Indian tribes concerning Federal undertakings on tribal lands is already required by section 110 of the NHPA and by the regulations (36 CFR part 800) of the Advisory Council on Historic Preservation.

(3) This rule does not alter any existing budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule does make clear that Indian tribes that choose to participate in the national historic preservation program are eligible for additional grant funding from the Historic Preservation Fund to assist the tribe in carrying out the activities of that program. The rule establishes an annual deadline by which a tribe must be approved in order to be eligible for the next funding cycle; it also affirms that various government-wide and departmental requirements apply to grants received by participating tribes.

(4) This rule does not raise novel legal or policy issues. The programmatic requirements established by this proposed rule for tribes that choose to participate in the program are consistent with the broad programmatic requirements that have been in place for states for over 25 years. At the same time, the proposed rule recognizes the differences in scope, workload, and program emphasis that exist between states and tribes, as well as among tribes.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As noted above, the proposed rule only establishes procedures and requirements for Indian tribes that voluntarily choose to participate in the national historic preservation program. Total grant funding available for participating tribes is less than $5 million annually.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. As noted above, the proposed rule only establishes procedures and requirements for Indian tribes that voluntarily choose to participate in the national historic preservation program. Total grant funding available for participating tribes is less than $5 million annually. The proposed rule establishes no new requirements for small businesses.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Federal agencies are already required by section 110 of the NHPA and by the regulations (36 CFR part 800) of the Advisory Council on Historic Preservation to consult with Indian tribes concerning proposed Federal undertakings. Where a tribe has assumed SHPO functions pursuant to this proposed rule, the costs to Federal agencies may actually be reduced in some cases, because consultation with the SHPO in addition to the tribe would no longer be required.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The proposed rule establishes the procedures and requirements for any Indian tribe that chooses to enter into a formal relationship with the Secretary in which the tribe carries out the national historic preservation program on tribal lands.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector. Tribal assumption of SHPO duties pursuant to the NHPA and this proposed rule is completely at the discretion of individual tribal governments with jurisdiction over tribal lands, so that no mandate of any kind arises from this proposed rule. In addition, the proposed rule creates no significant or unique effect on any unit of government.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. The rule creates administrative procedures for the organization of Tribal historic preservation offices. This rule does not affect private property owners. The SHPO duties a tribe may assume pursuant to the NHPA and this proposed rule do not include any responsibilities or activities that affect property rights protected by the Constitution or that pose any risk of being a compensable taking. A takings implication assessment is not required.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Tribal participation in the national program is voluntary. Nonetheless, the NPS has consulted with participating tribes in drafting this proposed rule. This proposed rule has evolved directly from a draft prepared by the participating tribes and provided to the NPS in July, 1997. Later in the drafting process the NPS met with the participating tribes in October, 1998 to discuss the draft at that point. The NPS also solicited written comments from the participating tribes following that meeting but received none. While the proposed rule has undergone a series of editorial refinements since the 1998 meeting, it remains substantively the same. The proposed rule has no significant effect on states' abilities to make their own decisions. Where a tribe is approved by the NPS to assume SHPO functions on tribal lands, the state no longer has those responsibilities on tribal lands. However, the level of SHPO activity on tribal lands is relatively small and consists of providing technical assistance requested by tribes and consulting with Federal agencies on the potential impacts of their undertakings. Allowing tribes to assume SHPO functions with regard to tribal lands is mandated by the NHPA and not created by this proposed rule. The NHPA also calls for promulgation of regulations to implement the mandate, so that there is no alternative to publishing the proposed rule. A Federalism Assessment is not required.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

The Office of Management and Budget has approved the collection of information contained in this rule under 44 U.S.C. 3507 *et seq.* and has assigned clearance number 1024–0038. The information collected is part of the process for reviewing the procedures and programs of State, Tribal, and local governments participating in the national historic preservation program and the Historic Preservation Fund grant program. The NPS will use the information to evaluate those programs and procedures for consistency with the National Historic Preservation Act of 1966, as amended, and compliance with government-wide grant requirements. Participating State, Tribal, and local governments must respond in order to obtain a benefit under these programs. Note that a Federal agency may not conduct or sponsor, nor must a person respond to, a collection of information unless it displays a currently valid OMB control number. The NPS provides no assurance of confidentiality to respondents with the exception for the information concerning the location of some properties included in government historic preservation property inventories. Pursuant to Section 304 of the National Historic Preservation Act of 1966, as amended, the NPS tightly controls the release of information, when such release could have the potential of damaging those qualities that make a property historic or of vital cultural or religious significance.

We estimate the public reporting burden for the collection of this information averages 14.06 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to Ms. Diane M. Cooke, Information Collection Officer, National Park Service, 1849 C Street NW., MS 3317, Washington, DC 20240 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior (1024–0038), Washington, DC 20503.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249) and President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2:

We have evaluated the possible effects on federally recognized Indian tribes. The proposed rule does not, in and of itself, have any effect on tribal trust resources, as contemplated by 512 DM 2. However, the proposed rule is of particular concern to those tribes. The proposed rule formalizes the process established by the National Historic Preservation Act, whereby a tribe can voluntarily choose to assume certain responsibilities pursuant to that Act. If a tribe chooses not to assume those duties and therefore takes no action to request approval to do so, this proposed rule has no effect upon the tribe. There is no consequence to the tribe that chooses not to assume these duties. Even where a tribe does choose to assume these responsibilities in accordance with this proposed rule, the tribe is assuming responsibilities previously assigned to a State Historic Preservation Officer, not to an agency of the Federal government, so that the trust relationship between the tribe and the Federal government is unaltered. The overall policy goal of this proposed rule and of section 101(d)(2) of the National Historic Preservation Act is the enhancement of tribes' abilities to identify, evaluate, and protect those cultural and historic resources that are of particular importance to the tribes.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) paragraphs? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240.

Public Comment Solicitation

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Heritage Preservation Services, National Center for Cultural Resources, National Park Service, 1849 C Street, NW (NC 330), Washington, DC 20240 You may also comment via the internet by sending your comments to the following e-mail address: *Bryan_Mitchell@nps.gov*. Please include "Attn: RIN 1024–AC79" and your name and return address in your message. In addition, any interested person will have the opportunity to make oral comments at one of the public meetings noted at the beginning of this rulemaking. Finally, you may hand-deliver comments to Heritage Preservation Services, National Center for Cultural Resources, National Park Service, 800 North Capitol Street, Room 330, Washington, DC. Our practice is to make comments, including names and home addresses or respondents, available for public review during regular business hours. Individual respondents may request that we withhold their name or home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

List of Subjects in 36 CFR Part 61

Grant programs—natural resources, Historic preservation, Indians—tribal government, Reporting and recordkeeping requirements.

We propose to amend 36 CFR part 61 as set forth below:

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PART 61—PROCEDURES FOR STATE, TRIBAL, AND LOCAL GOVERNMENT HISTORIC PRESERVATION PROGRAMS

1. The authority citation for part 61 continues to read as follows:

Authority: 16 U.S.C. 470 *et seq.*

2. Revise § 61.8 to read as follows:

§ 61.8 Tribal programs.

(a) *What is the purpose of this section?* This section sets out procedures and requirements for the assumption by Indian Tribes of any or all functions of a State Historic Preservation Officer (SHPO) with respect to tribal lands, in accordance with section 101(b)(2) and (b)(3) of the NHPA. A Tribe that has assumed any or all functions of an SHPO in accordance with the NHPA shall have the same authority and discretion accorded to an SHPO by the NHPA for the purpose of carrying out those functions.

(b) *What policies govern tribal participation in the national historic preservation program?* (1) Congress has recognized that the national historic preservation program will be strengthened by providing Indian Tribes with the opportunity to become full partners in the program.

(2) Our program and regulations should assist Indian Tribes in expanding and accelerating their historic preservation programs to protect their historic properties.

(3) The program to assist Tribes in their preservation activities shall ensure that tribal values are taken into account to the extent feasible.

(4) Qualified tribes are encouraged to assume all or any part of the functions of a SHPO and to plan, conduct, and administer programs, functions, services and activities for which they have assumed responsibility.

(5) An Indian Tribe has an inherent legal right to self-determination and the distinctive rights that flow from its inherent sovereignty. Assuming responsibility for functions in accordance with the NHPA and this regulation is an exercise of the government-to-government relationship between the United States and the Indian tribes.

(6) To the extent feasible, the National Park Service (NPS) will construe this section so as to facilitate tribal assumption of functions pursuant to the NHPA.

(c) *How will the NPS implement these policies in carrying out the procedures and requirements for tribal assumption of SHPO duties?* (1) The NPS will consult with each Indian Tribe proposing to assume SHPO duties on a government-to-government basis, in a manner respectful of tribal sovereignty, and with the aim of building an effective working relationship between the two governments.

(2) In accordance with section 101(d)(1)(B) of the NHPA, the NPS will recognize the need for flexibility, in order to respond to the varying scopes of tribal historic preservation programs, and in order to accommodate tribal values and the cultural setting of tribal heritage preservation goals and objectives.

(d) *What terms do I need to know?* For the purposes of this section:

Tribal traditional cultural authority means any individual recognized as such by an Indian Tribe. For the purposes of this section, a tribal traditional cultural authority has standing equivalent to that of an individual who meets the Secretary of the Interior's Professional Qualifications Standards. For example, in determining the overall historic significance of a property or site, a tribal traditional cultural authority's assessment of the traditional cultural value of that property or site has the same standing as a professionally qualified archeologist's assessment of the archeological value of that property.

(e) *How does our Tribe seek approval to assume SHPO functions?* A Tribe that seeks to assume SHPO functions must do three things:

(1) Submit a resolution to the NPS from the Tribe's chief governing authority requesting the assumption of SHPO functions by the Tribe;

(2) Designate a Tribal Historic Preservation Officer (THPO), through appointment by the Tribe's chief governing authority or as a tribal ordinance may otherwise provide, who shall be responsible for administering the tribal historic preservation program; and

(3) Submit a Tribal Historic Preservation Program Plan (hereinafter the Program Plan) to the NPS.

(f) *What are the general requirements for Tribal Program Plans?* (1) When submitting a Tribal Program Plan for review and approval, you must include the following in your Program Plan:

(i) A clear list of the SHPO functions set out in section 101(b)(3) of the NHPA that you propose to assume.

(ii) Sufficient descriptive information on your current historic preservation program or activities and on the individual functions you propose to assume to allow the NPS to determine whether you are fully capable of carrying out the functions you propose to assume (see paragraph (g) of this section for further guidance on this requirement).

(iii) A clear list of the SHPO functions, if any, that you propose will remain the responsibility of the SHPO.

(2) You may include the following in your Program Plan:

(i) A request for any waiver or modification of the requirements of the NHPA or of this rule that you believe is necessary to accommodate tribal values or the cultural setting of tribal heritage preservation goals and objectives (see paragraph (h) of this section for further guidance).

(ii) Any additional information you believe will assist the NPS in determining that you are fully capable of carrying out the functions you propose to assume.

(iii) A request for any technical assistance you believe would benefit the Tribe in carrying out the functions you propose to assume.

(g) *What are the specific elements that must be in a Tribal Program Plan?* (1) In describing the overall assumption of SHPO functions set out in your Program Plan, your Program Plan must include:

(i) Information on how the THPO will employ or appoint such professionally qualified individuals as may be necessary for carrying out those functions the Tribe proposes to assume. Such employment or appointment must be through establishment of full or part-time staff positions, or through other arrangements suitable to the workload of the THPO and to the scope of the tribal program. A professionally qualified individual meets the Secretary of the Interior's Professional Qualifications Standards or is recognized by the Tribe as a traditional cultural authority.

(ii) Information on how the THPO will include an adequate and qualified tribal historic preservation review board in the operations of the tribal historic preservation program. The THPO appoints such a board, unless tribal ordinance or the Tribe's chief governing authority provides for another appointment process. Members of the board must have sufficient interest and experience in historic preservation and/or tribal culture to provide the THPO with meaningful advice. The board's duties include providing general advice and guidance to the THPO, reviewing appropriate documentation submitted to the NPS in connection with the Historic Preservation Fund, reviewing National Register nominations where the Tribe has assumed responsibility for that nomination process, and such other duties as may be appropriate.

(iii) Information on how the THPO will provide for adequate participation in the historic preservation program by Tribal traditional cultural authorities, representatives of other Tribes whose traditional lands are under the jurisdiction of the Tribe, and the interested public. At a minimum, adequate participation of the interested public means that, no less frequently than annually, the THPO solicits and considers comments on the goals and activities of the tribal historic preservation program. The THPO solicits these comments through means such as locally publishing a notice, holding an open meeting, or some other process consistent with the routine procedures of the tribal government.

(iv) An affirmation that on tribal land that is neither owned by a member of the Tribe nor held in trust by the Secretary for the benefit of the Tribe, at the request of the owner of such land, the State Historic Preservation Officer, in addition to the Tribal Historic Preservation Officer, may exercise the historic preservation responsibilities in accordance with section 101(b)(2) and (b)(3) of the NHPA.

(2) In setting out each of the duties in section 101(b)(3) of the NHPA that the Tribe proposes to assume, your Program Plan must include a description of how the Tribe will carry out each of those duties, and a description of how those duties are related to the Tribe's current historic preservation program or activities. If the Tribe proposes to assume responsibility for administering the National Register nomination process, for advising and assisting in the evaluation of proposals for rehabilitation of historic properties that may qualify for Federal tax credits, and/or for consulting with Federal agencies pursuant to section 106 of the NHPA, your Program Plan must include the following:

(i) Information on the process the Tribe proposes for considering and submitting such nominations where the Tribe proposes to assume responsibility for submitting nominations to the National Register of Historic Places. The Tribe's process must be consistent with the National Register process set out in 36 CFR part 60 as it applies to State Historic Preservation Officers. The THPO must ensure that the tribal historic preservation review board has access to advice from appropriately qualified individuals in accordance with paragraph (g)(1)(i) of this section carrying out its responsibilities for reviewing National Register nominations. In the event that the process in 36 CFR part 60 is incompatible with tribal values and/or cultural preservation goals and objectives, the Tribe may propose an alternative process that provides at a minimum for review of nominations by professionally qualified individuals, review of nominations by a qualified advisory board or other independent, qualified entity, and reasonable opportunity for public comment on nominations before they are submitted to the National Register (*see* paragraph (h) of this section on waivers and modifications of requirements).

(ii) Information on the Tribe's process for reviewing such projects and submitting them to the NPS where the Tribe proposes to assume responsibility for advising and assisting in the evaluation of proposals for rehabilitation of historic properties that may qualify for Federal tax credits or other Federal assistance. The Tribe's process must be consistent with the process set out in 36 CFR part 67 as it applies to State Historic Preservation Officers. In the event that the process in 36 CFR part 67 is incompatible with tribal values and/or cultural preservation goals and objectives, the Tribe may propose an alternative process that provides at a minimum for professional review and timely submission of project documentation to the NPS in a manner that is consistent with the overall purposes of 36 CFR part 67 (see paragraph (h) of this section on waivers and modifications of requirements).

(iii) Information that indicates how the Tribe will carry out this responsibility in accordance with the regulations of the Advisory Council on Historic Preservation at 36 CFR part 800, or in accordance with alternate tribal procedures that have been specifically approved by the Council pursuant to section 101(d)(5) of the NHPA where the Tribe proposes to assume responsibility for consulting with Federal agencies for the purposes of section 106 of the NHPA.

(h) *How does our Tribe obtain a waiver or modification of the requirements of the NHPA or of this section?* (1) If, in preparing your Program Plan, you determine that the requirements of the NHPA and/or of this regulation that are applicable to SHPOs are incompatible with tribal values or with the cultural setting of your tribal heritage goals and objectives, you may include as a part of your Program Plan a request that the NPS waive or modify those requirements in order to conform to tribal values and/or the cultural setting of tribal heritage preservation goals and objectives.

(2) Your request must include:

(i) An explanation of the inconsistency between the pertinent requirements and tribal values and/or the cultural setting of tribal heritage preservation goals and objectives.

(ii) The specific remedy or alternate tribal procedures you propose.

(3) Nothing in this paragraph (h) authorizes the waiver or modification of the duties and responsibilities of the Secretary.

(i) *How will the NPS consult with us on our proposed Program Plan?* (1) Within 21 days of receipt, the NPS will notify you in writing that it has received your proposal. In accordance with section 101(d)(2) of the NHPA and paragraph (g) of this section, a complete proposal includes the formal resolution from the Tribe's chief governing authority, the official designation of a Tribal Historic Preservation Officer, and the Program Plan. If your proposal is incomplete, the NPS will indicate which parts are missing. The consultation process set out in paragraph (j) of this section will begin upon receipt of the missing parts.

(2) Within 45 days of receipt of a complete proposal, the NPS will notify the Tribal Historic Preservation Officer, or other representative specifically designated by the Tribe, in writing of any ambiguities or apparent deficiencies that remain in the proposal and indicate how those ambiguities or apparent deficiencies may be remedied. Within 30 days of receipt of a written response from the Tribe, the NPS will notify the Tribe in writing whether or not the ambiguities or apparent deficiencies have been remedied.

(j) *Will the NPS consult with anyone else about our proposed Program Plan?* (1) Unless the Tribe notifies the NPS that it wishes to have additional time to revise its proposal, within 21 days of completion of the consultation process in paragraph (i) of this section, the NPS, pursuant to section 101(d)(2)(D) of the NHPA, will provide copies of the Tribe's proposal, including any revisions, to the appropriate SHPO(s), to any other Tribes whose tribal or aboriginal lands may be affected by the conduct of the tribal historic preservation program and, if the Tribe proposes to assume Section 106 responsibilities, to the Advisory Council on Historic Preservation.

(2) The SHPO(s), other Tribes, and the Advisory Council will have 30 days in which to provide written comments to the NPS on the Tribe's proposal.

(k) *On what basis will the Secretary review our proposed Program Plan?* (1) Following the consultation process set out in paragraph (j) of this section, the NPS must review the Program Plan in accordance with section 101(d)(2)(E) of the NHPA. That review must determine:

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(i) Whether the Tribe's chief governing authority has requested to assume SHPO functions.

(ii) Whether the Tribe has duly designated a THPO to carry out the functions assumed by the Tribe.

(iii) Whether the Tribe has submitted a Program Plan that demonstrates that the Tribe is fully capable of carrying out the functions it proposes to assume in accordance with the requirements of the NHPA and of this section.

(2) Where the Program Plan includes a request for waiver or modification of requirements in accordance with paragraph (h) of this section, the NPS will review the Tribe's request as a part of its review of the Tribe's Program Plan, pursuant to section 101(d)(1)(B) of the NHPA. Upon finding that a waiver or modification of the requirements of the NHPA is consistent with the purposes of the NHPA, feasible, and necessary to accommodate tribal values and/or the cultural setting of tribal heritage preservation goals and objectives, the NPS will waive or modify such requirements.

(l) *How will the NPS make a decision on our Program Plan?* (1) Within 30 days of completion of the consultation process set forth in paragraph (j) of this section, the NPS must send to the Tribal Historic Preservation Officer or other designated representative of the Tribe a written finding as to:

(i) Whether or not the Tribe is fully capable of carrying out the functions specified in the proposed program plan, including any modifications to that plan as were mutually agreed upon by the NPS and the Tribe pursuant to the consultation process set forth in paragraph (j) of this section; and

(ii) Whether any requested waivers or modifications have been approved.

(2) The written finding must:

(i) Explain the basis for finding that the Tribe is or is not fully capable of carrying out a function or functions. The explanation for any finding that the Tribe is not fully capable must include a reference to the specific requirements(s) of this section and/or of the NHPA that the Tribe has failed to meet.

(ii) Explain the basis for approving or denying any requested waiver or modification.

(iii) Describe the steps the Tribe can take to correct any deficiency the NPS has identified as the basis for a finding that the Tribe is not fully capable of carrying out a function or functions.

(iv) Identify the technical assistance available to the Tribe to correct any noted deficiency.

(v) Clearly specify the Tribe's right to request a review of the decision by the Director and provide appropriate information on the procedure for filing such a request in accordance with paragraph (m) of this section.

(3) If the NPS finds that the Tribe is fully capable of carrying out the functions specified in the program plan, including any mutually agreed upon modifications to the plan, the NPS must approve the program plan as it may have been modified and transmit the approved plan to the Tribe.

(4) If the NPS finds that the Tribe is not fully capable of carrying out the functions specified in the program proposal as it may have been modified by mutual agreement between the NPS and the Tribe, the NPS will either:

(i) Approve the tribal program plan in part for those portions that the Tribe is fully capable of carrying out; disapprove those portions of the program plan for which the Tribe is not fully capable of carrying out the function(s); and transmit to the Tribe the approved portions of the program plan; or

(ii) Disapprove the entire program plan.

(5) In any case where a Tribe initially assumes only a portion of the responsibilities of section 101(b)(3) of the NHPA, the Tribe may at any subsequent time request approval to assume any or all of the remaining responsibilities in accordance with this section.

(m) *How can we obtain a review of a negative decision by the NPS?* (1) You may request a review by the Director of:

(i) Any decision to disapprove in whole or in part your Program Plan to assume any or all of the functions of an SHPO.

(ii) Any decision to deny your request for a waiver or modification of requirements.

(iii) Any failure to act within the deadlines specified by this section.

(2) You must make your request to the Director within 60 days of the adverse decision or missed deadline. Your request must be in writing, must come from the Tribe's chief governing authority, and must include:

(i) A statement of the decision to be reviewed by the Director.

(ii) A statement of the issues involved in the request for review.

(iii) An explanation of why the Tribe believes the decision is wrong.

(iv) Any appropriate supporting documentation.

(3) If the chief governing authority of your Tribe asks for a meeting with the Director to discuss its request, or, if the Director on his or her own initiative desires such a meeting, the Director will convene a meeting with the designated representatives of the Tribe.

(4) The Director must either meet with the Tribe's representatives or issue a decision in writing within 60 days of receipt of the Tribe's request. In any case where the Director and the Tribe's representatives have met in accordance with paragraph (m)(3) of this section, the Director must issue a decision in writing either within 60 days of receipt of the Tribe's request or within 30 days of the meeting, whichever is later. The Director and the Tribe may agree to extend these deadlines for reasons of mutual convenience or to allow for additional efforts to resolve the disagreement between the Tribe and the NPS. The Director's decision may affirm or overrule the previous decision, either in whole or in part. The Director must base his or her decision on the relevant provisions of this section and/or of the NHPA and must include an explanation that refers specifically to those provisions. The Director's decision is the final administrative decision on the appeal. No person shall be considered to have exhausted administrative remedies with respect to the decision described in this part until the Director has issued a final administrative decision pursuant to this section.

(n) *May a Tribe that assumes SHPO functions obtain relevant materials from the SHPO?* (1) Upon formal assumption of SHPO responsibilities, a Tribe is entitled to receive from the affected SHPO(s) those records, data, maps, and reports, or legible copies thereof, that pertain to sites on tribal land, as well as to those sites on the Tribe's aboriginal lands to which the Tribe attaches religious and cultural significance.

(2) The NPS will foster communication and cooperation between the Tribe and the affected SHPO(s) to ensure that the Tribe receives the information necessary to carry out its responsibilities.

(3) The SHPO may charge the Tribe a fee not to exceed the actual cost of transferring or duplicating the materials.

(o) *How does the NPS review the performance of a Tribe that has assumed SHPO duties?* (1) Pursuant to section 101(b)(2) and (d)(2) of the NHPA, the NPS periodically will evaluate each tribal program for consistency with the NHPA and with the Tribe's approved program plan. The review will occur at least once every four years. The NPS may use on-site and/or off-site inquiries to perform such evaluation. The review will provide the Tribe with written findings and analyses that highlight program strengths and weaknesses.

(2) To the greatest extent feasible the review will be a collegial process that involves both the NPS and the Tribe in a mutual evaluation and assessment of the program. The NPS will approve the Tribe's program if the NPS determines that it continues to meet the program requirements of the NHPA and of this section.

(3) Each Tribe with a program determined to be consistent with the NHPA will receive timely written notice from the NPS that its approved status is continued.

(4) Any Tribe found to have major program aspects not consistent with the NHPA or with its approved program plan will receive timely written notice of deficiencies from the NPS, along with the required actions for correcting them. Unless circumstances warrant immediate action, the NPS will defer making a decision on program approval for a specified period to allow the Tribe to correct deficiencies or present a justifiable plan and timetable for correcting deficiencies. During this period the Tribe may request that the Director review any findings and required actions.

(5) A Tribe that successfully resolves deficiencies will receive timely written notice from the NPS of continued approved status. Once the NPS renews a Tribe's approved status, the NPS generally will not review that Tribe's program again until the next regular evaluation period, although the NPS may conduct evaluations more often if the NPS deems it necessary.

(6) A Tribe with deficiencies that warrant immediate action or that remain after the expiration of the period specified pursuant to paragraph (o)(4) of this section will receive notice from the NPS that its approved status is revoked. The NPS will then initiate financial suspension and other actions in accordance with applicable regulatory requirements and applicable related guidance issued by the Secretary.

(p) *What is the effect of this section on tribal sovereignty, treaty rights, and other tribal rights?* Nothing in this section is intended to alter, amend, repeal, interpret, or modify tribal sovereignty, or to preempt treaty rights, or other rights of an Indian Tribe, or modify or limit the exercise of such rights.

(q) *What is the effect of this section on Tribes previously approved to assume SHPO functions?* Any Tribal Historic Preservation Program approved prior to [the effective date of the final rule]:

(1) Retains that status in accordance with the terms of the previously executed Memorandum of Agreement, and

(2) May, at the Tribe's request, modify its existing agreement in accordance with this section.

3. Revise § 61.9 to read as follows:

§ 61.9 Grants to tribal programs.

(a) *Are Tribes that have assumed SHPO functions eligible for financial assistance to carry out those functions?* (1) Each Tribe with an approved tribal program is eligible for grants-in-aid from the Historic Preservation Fund.

(2) A Tribe must have an approved program not later than the first day of the Federal fiscal year (October 1), in order to be eligible for a grant-in-aid during that same fiscal year.

(b) *What requirements govern the financial assistance for Tribes that have assumed SHPO functions?* (1) The HPF will administer HPF grants-in-aid in accordance with the NHPA, OMB Circular A–133 (For availability, see 5 CFR 1310.3.), and 43 CFR part 12, and related guidance issued by the Secretary. Pursuant to section 101(e)(5) of the NHPA, the Secretary may modify matching fund requirements for Tribes.

(2) Failure by a Tribe to meet the applicable requirements will be cause for comment and appropriate action by the NPS.

Dated: April 16, 2002.

Craig Manson,

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 02–19816 Filed 8–9–02; 8:45 am]

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Monday,
August 12, 2002

Part IV

Office of Management and Budget

Federal Financial Assistance Management Improvement Act of 1999; Implementation; Notices

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OFFICE OF MANAGEMENT AND BUDGET

Grants Streamlining Activities Under Public Law 106–107, Federal Financial Assistance Management Improvement Act of 1999

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This Notice precedes five additional notices that relate to the interagency grants streamlining effort, prepared jointly by the Office of Management and Budget (OMB) staff and the interagency groups dedicated to implementing Public Law (Pub. L.) 106–107, the Federal Financial Assistance Management Improvement Act of 1999. This first Notice provides background and contextual information for the next five notices, which:

- Propose revisions to Office of Management and Budget (OMB) Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations,"
- Provide information about the OMB decision to not revise OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," based on comments relating to the May 1, 2000, Advanced Notice of Proposed Revision;
- Propose a standard format for Federal agency use in announcing discretionary grant and cooperative agreement funding opportunities;
- Propose standard data elements for Federal agency use in creating grant funding opportunity announcement summaries, to be used under the E-Grants initiative for its "E-FIND" option; and
- Propose revisions to three OMB circulars (A–21, "Cost Principles for Educational Institutions;" A–87, "Cost Principles for State, Local and Indian Tribal Governments;" and A–122, "Cost Principles for Non-Profit Organizations)" to clarify ambiguous language, thereby preventing inconsistent interpretations of similar cost items across the three circulars.

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Phillips, Office of Federal Financial Management, Office of Management and Budget, telephone 202–395–3053 (direct) or 202–395–3993 (main office) and e-mail: *ephillip@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: The purposes of Pub. L. 106–107 are to (1) improve the effectiveness and performance of Federal financial assistance programs, (2) simplify Federal financial assistance application and reporting requirements, (3) improve the delivery of services to the public, and (4) facilitate greater coordination among those responsible for delivering the services. Pub. L. 106–107 requires the Director of the Office of Management and Budget (OMB) to direct, coordinate, and assist Federal agencies in establishing a common application and reporting system, including electronic processes, and uniform administrative rules for Federal financial assistance programs across different Federal agencies.

Under joint leadership from OMB and a lead agency (the Department of Health and Human Services) agencies are working together to make it easier for States, local, and Tribal governments; universities; and non-profit organizations to administer Federal grant programs. The work is done under interagency work groups created in June 2000 to develop and recommend streamlining and simplification proposals to the Grants Management Committee of the Chief Financial Officers Council, and include the Pre-Award, Post-Award, and Audit Oversight Work Groups. A fourth group, the Electronic Processing Work Group, operational in 2000 and 2001, was integrated this year into the organizational structure that supports an electronic grants (E-Grants) initiative. [E-Grants is part of the electronic government (E-Gov) priority under the President's Management Agenda.]

Streamlining improvements to the grant process were proposed in hundreds of comments sent by 77 different sources responding to the January 17, 2001, **Federal Register** notice. Many of those comments directly relate to the proposals which follow this background Notice. Future notices will propose government-wide standards for grant applications and reports. OMB expects to issue these proposals in Fall 2002. E-Grants plans to deploy an electronic application process (E-APPLY) using the government-wide standards in Fall 2003.

A. The next Notice proposes to revise OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations," by (1) increasing the threshold for audit from $300,000 to $500,000; (2) increasing the threshold for cognizant agency for audit from $25 million to $50 million; and (3) making related technical changes to facilitate the determination of cognizant agency for audit and provide for Federal agency reassignment of oversight agency for audit.

This Notice was endorsed by the Audit Oversight Work Group, whose goal under grants streamlining is to ensure that audits provide useful and reliable information to Federal agencies and pass-through entities, and that recipient audits are in compliance with Federal audit requirements. An audit threshold increase, as proposed from $300,000 to $500,000, would relieve almost 6,000 entities from the audit requirements of Circular A–133 while retaining audit coverage for 99.5 percent of Federal awards currently audited (in dollars).

B. The third Notice explains the conclusions reached by OMB and the Grants Management Committee of the Chief Financial Officers (CFO) Council regarding a previous request for comment from Federal agencies and grant recipients, in May 2000, on the merits of pooled payment systems and grant-by-grant payment systems. The proposal to amend OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, that would have required Federal agencies to offer recipients the option to request cash advances on a pooled basis, resulted in 65 comment letters from universities, State and local government agencies, Federal agencies, and other sources. There were differing perspectives on the issue, leading OMB and the CFO Council to believe that a revision to Circular A–110 is not needed. This Notice was prepared by the Post-Award Work Group after analysis of the comments received in response to the May 1, 2000, Advanced Notice of Proposed Revision.

C. The fourth Notice proposes a government-wide standard format for Federal agency use in announcing discretionary grant and cooperative agreement funding opportunities. Each year the agencies publish hundreds of funding opportunity announcements for discretionary grants under programs with a broad range of purposes, to give potential applicants the information they need, such as the types of activity the agency will support, who is eligible to apply, and when/how to apply. Comments from the applicant and recipient communities noted vast differences in Federal agencies' announcement formats, making it hard for potential applicants to quickly locate key information, such as who is eligible to apply or whether cost sharing is required. Commentors asked for clear language in announcements and consistency in the placement of information.

This Notice was developed by the Pre-Award Work Group after a review of agency announcements and related business processes. The group developed the standard format for government-wide use, which will make it easier for potential applicants to quickly find the information they need.

D. The fifth Notice proposes standard data elements for Federal agency use in creating grant funding opportunity announcement summaries, to be used under the E-Grants initiative for its E-FIND option. The E-Grants initiative plans to provide a single Internet site for Federal agencies to post electronic summaries, or synopses, of the funding opportunity announcements on the General Services Administration's FedBizOpps Internet site (*http://www.FedBizOps.gov*). E–FIND will greatly facilitate a potential applicant's search for funding opportunities.

This Notice was prepared by the Pre-Award Work Group, which made use of previous work on a set of FedBizOpps data elements completed by the Inter-Agency Electronic Grants Committee. The earlier work proposed a limited set of synopsis data elements (nine) to be used in a pilot on the use of FedBizOpps for grant opportunities. The result of that pilot demonstrated that agencies could, indeed, use the FedBizOpps Internet site to post electronic synopses of funding opportunities leading to the award of grants, cooperative agreements, and other financial assistance instruments. The Pre-Award Work Group expanded the synopsis to become a standard data set of twenty data elements. These data elements and the posting of information at the FedBizOpps site respond to many comments received during the Public Law 106–107 consultation process. Commentors requested a single searchable Internet site for information about Federal agencies' funding opportunities, to reduce potential their frustration with having to search multiple sites that individual Federal agencies configure in different ways.

E. The sixth and final Notice relating to grants streamlining proposes revisions to three OMB circulars (A–21, "Cost Principles for Educational Institutions;" A–87, Cost Principles for State, Local and Indian Tribal Governments;" and A–122, "Cost Principles for Non-Profit Organizations") to clarify ambiguous language, thereby addressing many grantee concerns expressed in the comments relating to the Public Law 106–107 initial plan published in the **Federal Register** on January 16, 2001. Commentors noted inconsistent allocation methods and different interpretations about indirect cost recovery. The three circulars apply to different types of recipient organizations and were developed separately. Consequently, different language is used in the three circulars to describe similar cost items, sometimes causing inconsistent interpretations by Federal staff, recipients, and auditors.

This Notice was prepared by the Cost Principles Subgroup of the Post-Award Work Group, after reviewing 74 cost items in the three circulars for consistency. The Subgroup determined that 11 cost items can be deleted, 22 cost items do not need changes, and 41 cost items need common language in the three circulars. The Notice proposes revisions to incorporate consistent descriptions of similar cost items and, where possible, clarify existing policies in the three circulars. Information about the proposed revisions is also available on the OMB Internet site (*http://www.whitehouse.gov/omb/grants*).

Dated: July 31, 2002.

Mark W. Everson,

Controller.

[FR Doc. 02–20257 Filed 8–9–02; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Audits of States, Local Governments, and Non-Profit Organizations

AGENCY: Office of Management and Budget.

ACTION: Proposed revisions to OMB Circular A–133.

SUMMARY: This Notice proposes to revise Office of Management and Budget (OMB) Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations," by (1) increasing the threshold for audit from $300,000 to $500,000, (2) increasing the threshold for cognizant agency for audit from $25 million to $50 million, and (3) making related technical changes to facilitate the determination of cognizant agency for audit and provide for Federal agency reassignment of oversight agency for audit.

DATES: All comments on this proposal should be in writing, and must be received by October 11, 2002. It is planned that the proposed revisions shall apply to audits of fiscal years ending after December 31, 2003, and earlier implementation will not be permitted.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to: *tramsey@omb.eop.gov*. Please include "A–133 Comments" in the subject line and the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and E-mail address in the text of the message. Comments may also be submitted via facsimile to 202–395–4915.

Comments may be mailed to Terrill W. Ramsey, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

A copy of the current Circular A–133 published in the **Federal Register** on June 30, 1997 (62 FR 35277), is available on the Internet at *http://www.omb.gov* and then select "Grants Management."

FOR FURTHER INFORMATION CONTACT: Terrill W. Ramsey, Office of Federal Financial Management, Office of Management and Budget, telephone 202–395–3812 (direct) or 202–395–3993 (main office) and e-mail: *tramsey@omb.eop.gov*.

SUPPLEMENTARY INFORMATION:

A. Increase the Threshold for Audit from $300,000 to $500,000—OMB proposes to increase the audit threshold amount from $300,000 to $500,000.

The Single Audit Act Amendments of 1996, 31 U.S.C. 7502(a)(3), provide for the Director of OMB to review the single audit threshold and increase it as appropriate. The current audit threshold requires all non-Federal entities (States, local governments, and non-profit organizations) that expend $300,000 or more in a year in Federal awards to have an audit conducted in accordance with Circular A–133.

As shown in the following table, an audit threshold increase from $300,000 to $500,000 would relieve almost 6,000 entities from the audit requirements of Circular A–133 while only exempting from audit less than one half of one percent of Federal awards expended (in dollars) by entities currently filing Circular A–133 audits.

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Federal awards expended range	Number of entities filing reports	Percent of entities filing reports	Percent of Federal awards expended within range
$300,000 to $500,000	6,000	18	.5
$500,000 and above	28,000	82	99.5
Total	34,000	100	100.0

(The above data was compiled by the Federal Audit Clearinghouse (FAC) from its database of Circular A–133 audit submissions for non-Federal entity fiscal years ending in 2000. The FAC database is publicly accessible on the Internet at *http://harvester.census.gov/sac.*)

Many pass-through entities use Circular A–133 audit results as a primary tool in ensuring compliance for Federal awards passed through to a subrecipient. With the proposed increase in the audit threshold, subrecipients expending between $300,000 and $500,000 will no longer be required to have an audit under Circular A–133 so their pass-through entities will not be able to use the Circular A–133 audit as a monitoring tool.

However, the Circular A–133 audit is only one of many subrecipient monitoring tools available and subrecipient monitoring should occur throughout the year rather than relying solely on a once-a-year audit. Monitoring activities may take various forms; however, a first monitoring tool should be identifying to the subrecipient the Federal award information (e.g., Catalog of Federal Domestic Assistance (CFDA) title and number, award name, name of Federal agency) and applicable compliance requirements. Other monitoring tools include reviewing financial and performance reports submitted by the subrecipient, performing site visits to the subrecipient to review financial and programmatic records and observe operations, and arranging for agreed-upon procedures engagements for certain aspects of subrecipient activities, such as eligibility determinations as described in § ___.230(b)(2) of Circular A–133. Factors such as the size of awards, percentage of the pass-through entity's total program funds awarded to subrecipients, the complexity of the compliance requirements, and risk of subrecipient non-compliance as assessed by the pass-through entity may influence the nature and extent of monitoring procedures. Additionally, Federal laws or regulations may impose subrecipient monitoring requirements specific to a Federal program.

The OMB Circular A–133 Compliance Supplement, Chapter 6, provides a list of typical internal controls for subrecipient monitoring. The Compliance Supplement is available on the Internet at *http://www.omb.gov* and then select "Grants Management." Additionally, OMB plans to request one or more single audit constituent groups to volunteer to develop additional tools and techniques which pass-through entities may use to monitor their subrecipients.

B. Increase the Threshold for Cognizant Agency for Audit from $25 Million to $50 Million—OMB proposes to increase the threshold for cognizant agency for audit from $25 million to $50 million.

Currently, recipients (non-Federal entities that expend Federal awards received directly from a Federal awarding agency) which expend more than $25 million a year in Federal awards have a Federal agency designated as their cognizant agency for audit. All other non-Federal entities have a Federal agency as their oversight agency for audit. (Cognizant agency for audit and oversight agency for audit responsibilities are described in paragraphs § ___.400(a) and (b) of Circular A–133, respectively.) The basic difference is that a cognizant agency for audit is required to perform certain oversight functions as listed in Circular A–133 and an oversight agency for audit is given the option to assume these responsibilities. The only responsibility the oversight agency for audit is required to perform is to provide technical advice to auditors and auditees upon request.

Of the approximately 34,000 non-Federal entities currently filing Circular A–133 audits, approximately 1,000 have a cognizant agency for audit. Increasing this threshold from $25 million to $50 million will reduce the number of non-Federal entities with a cognizant agency for audit assignments to approximately 500. This change will allow the Federal agencies to provide more focused audit oversight where there is the greatest risk in terms of Federal awards expended but still provide each non-Federal entity with an assigned oversight agency for audit from which to request technical advice.

(Note, whether an entity has a cognizant agency for audit for a fiscal year is determined based on the expenditures for that fiscal year, not whether they met the threshold for cognizant agency for audit in the base year (see next paragraph for discussion of "base year"). For example, under the current threshold of $25 million, if a non-Federal entity had only $20 million Federal awards expended in 2002, they would not have a cognizant agency for audit for that year even if they had greater than $25 million in Federal awards expended in the base year of 2000. Similarly, if the cognizant agency for audit threshold is increased effective for fiscal years ending after December 31, 2003, only non-Federal entities with Federal awards expended greater than $50 million will have a cognizant agency for audit for those years. The cognizant agency for audit would continue to be the Federal agency that provided the predominant amount of direct funding in the base year.)

C. Technical Change—Base Year for Cognizant Agency for Audit Determination—OMB proposes to change the base year for cognizant agency for audit determination from one to two years before the start of the five year audit cognizance period. This change is needed to provide sufficient time to make cognizant agency for audit determinations before the start of the audit cognizance period.

Cognizant agency for audit is based upon which Federal agency provides the predominant amount of direct Federal awards funding to a recipient in the base year. For example, cognizant agency for audit determinations for the years 2001 through 2005 were based upon which Federal agency provided the predominant amount of Federal awards expended in the base years ending in 2000. Since Circular A–133 reports for the non-Federal entities' fiscal years ending December 31, 2000 were not required to be filed until September 30, 2001, it was not possible to produce a cognizant agency for audit assignment list at the start of 2001.

Under the proposed change, 2004 will be the base year for determining the cognizant agency for audit for 2006 through 2010. All fiscal year 2004 Circular A–133 reports are due to the FAC on or before September 30, 2005. This will provide sufficient time for Federal agencies to use the FAC database to produce a cognizant agency for audit list for the 2006 through 2010 audit cognizance period at the start of 2006. (Note, the base year for 2001 through 2005 will remain at 2000.)

D. Technical Change—Oversight Agency for Audit reassignment—OMB proposes to change the definition of oversight agency for audit to permit Federal agencies to make reassignments.

Currently Circular A–133 definitions do not specifically provide for the reassignment of oversight agency for audit. The proposed revision would explicitly provide for the reassignment of oversight agency for audit by Federal agencies similar to the reassignment of cognizant agency for audit.

Dated: July 31, 2002.

Mark W. Everson,

Controller.

Circular A–133 is proposed to be revised as follows:

1. In the following sections, replace $300,000 with $500,000: § __.200(a); § __.200(b); § __.200(d); § __.230(b)(2); and § __.400(d)(4).

2. In section § __.400(a), first sentence, replace $25 million with $50 million.

3. Replace section § __.400(a), third, forth, and fifth (parenthetical) sentences with the following:

§ __.400 Responsibilities.

(a) * * * The determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 2004, 2009, 2014, and every fifth year thereafter. For example, audit cognizance for periods ending in 2006 through 2010 will be determined based on Federal awards expended in 2004. (However, for 2001 through 2005, cognizant agency for audit is determined based on the predominant amount of direct Federal awards expended in the recipient's fiscal year ending in 2000).

* * * * *

4. In section § __.105, definition of oversight agency for audit, add the following at the end of the definition: "A Federal agency with oversight for an auditee may reassign oversight to another Federal agency which provides substantial funding and agrees to be the oversight agency for audit. Within 30 days after any reassignment, both the old and the new oversight agency for audit shall notify the auditee, and, if known, the auditor of the reassignment."

[FR Doc. 02–20258 Filed 8–9–02; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Circular A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This notice explains the conclusions reached by OMB and the Grants Management Committee of the Chief Financial Officers (CFO) Council regarding their previous request for comments on the desirability of requiring Federal grant-making agencies to offer their grantees the option to request cash advances on a pooled basis, and on the merits of pooled payment systems and grant-by-grant payment systems. They have decided not to propose an amendment to OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," which would include such a requirement. The rationale for this determination is explained below.

FURTHER INFORMATION CONTACT: Gilbert Tran, Technical Manager, Office of Management and Budget, at (202) 395–3052.

SUPPLEMENTARY INFORMATION:

I. Purpose

This notice explains the conclusions reached by OMB and the Grants Management Committee of the CFO Council regarding their previous request for comments on the desirability of requiring Federal grant-making agencies to offer their grantees the option to request cash advances on a pooled basis (*i.e.*, when cash advances are requested from a pool rather than on a grant-by-grant basis), and on the merits of the two systems. The rationale for the decision not to propose an amendment to OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," that would include such a requirement, is explained below.

It is also intended that this notice explain the differing perspectives and clarify when pooling is applicable, in order to maintain a policy which can work for all.

II. Background

On May 1, 2000, 65 FR 25396, OMB published an Advance Notice of Proposed Revision (ANPR) in which comments were sought on several questions relating to Federal requirements for requesting and issuing cash payments under Federal awards. The core issue was whether OMB should amend A–110 to require Federal awarding agencies to make the pooling method of requesting and issuing cash payments under awards available to their award recipients.

III. Grant-By-Grant Payment Systems

With the grant-by-grant payment method, a recipient identifies estimated costs for each award and requests cash advances on that basis. Some of these agencies approve the requests on a grant-by-grant basis, pool the individual amounts, and issue payments in the aggregate.

Some Federal agencies systems currently require grant-by-grant requests, and several indicated that their grant-by-grant payment systems are more streamlined than the pooled systems. One agency said it had eliminated the need for the SF–272 (Report of Federal Cash Transactions) and SF–269 (Financial Status Report) by accepting grant-by-grant cash requests as reports of cash usage and recording them as expenditures.

Agencies that use this method believe it generates better data and strengthens their recipient monitoring programs. With grant-by-grant systems, it was reported that agencies have more timely information on payments and can provide more immediate technical assistance to a recipient experiencing problems with a particular grant. It was also reported that pooled payment reports often arrive too late for agencies to help recipients take corrective actions on specific grants.

IV. The Pooled Payment System

Under a pooled payment process, the recipient estimates the aggregate amount of cash that it will need for all of its awards from the awarding agency and requests a cash advance in that amount. The awarding agency uses a methodology it has developed to estimate how the recipient will distribute the cash advances among its various awards; it then assigns the estimated amounts to awards in its internal accounts. When recipients

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report actual expenditures, the agency adjusts the allocation to the actual reported expenditures. Recipients report expenditures for each grant via financial reports such as the SF–269 or SF–272. Since these estimates are adjusted to actual when the recipients submit their reports, accurate and timely reporting is essential.

Since many recipients, particularly those with a high volume of grant awards, are unable to determine actual cash needs on a grant-by-grant basis at the time of draw without expending considerable time and effort, requiring this determination up-front may cause recipients to draw larger amounts of cash, less frequently. Some agencies believe that a transition from grant-by-grant to pooled payments must be accompanied by monthly reporting of actual expenditures, in an electronic format, rather than the paper-based quarterly reporting that is currently required by some agencies using pooled payment systems.

V. Summary of Comments Received

Altogether, 65 comments were received: 33 from universities, 14 from State and local agencies, 14 from Federal agencies, and four from other sources. The following text explains the conclusions reached after considering these comments.

Comments were requested on whether Circular A–110 should be amended to require that Federal grant-making agencies make the pooling option available to their grantees, and on questions relating to the merits of pooled payments and grant-by-grant payment systems.

The 33 comments received from universities unanimously supported making the pooling option available to recipients. The 14 Federal commenters were divided, as indicated in Sections III and IV, above, with some agencies preferring grant-by-grant payments and other agencies supportive of a pooled payment process. Of the 14 State and local agencies commenting, only eight has comments on this question, with five opposed to the idea of requiring Federal awarding agencies to make the pooling method available and one that expressed concern about being forced to pool. Their opposition must be viewed as theoretical, however, because Circular A–110 does not apply to State and local governments. [The audience for Circular A–110 consists of universities, hospitals, and other not-for-profit organizations.]

The universities' strong support for the pooling method stems from the ways in which their administrative needs differ from those of State and local governments. Major research universities typically have large grant portfolios that may include hundreds, or even thousands, of discretionary grants. Indeed, one university responding to the ANPR submitted an itemized list of its Federal awarding agencies and the number of active awards from each; the commenter had 1,260 awards from nine Federal agencies, with the number of awards per agency ranging from ten to 400. Many of the awards received by such universities may be for relatively small dollar amounts; awards to the aforementioned commenter from one Federal agency averaged $2,500. The universities find the pooling method of requesting advances responsive to the difficulty of gauging their cash needs for each of their Federal awards at the specific point in time that they need to make a cash draw.

To illustrate, an organization representing the higher education community commented that "[our] membership firmly believes that a pooled payment system as described in the subject notice would be a significant step toward streamlining the payment procedures for recipients of federal assistance. We know that streamlining is a priority for the government and concur with the findings of the CFO Council that the pooling method as currently practiced at NSF and DHHS provides a more efficient and customer-friendly method of drawing cash for grant purposes."

Conversely, universities find it much more labor-intensive and administratively burdensome to generate actual, grant-by-grant data. The aforementioned commenter added that "drawing cash on a grant-by-grant basis is time consuming and adds no value to the process. [Our] member universities report that much more effort is required for grant-by-grant drawdowns than is necessitated by pooled draws * * * This practice is not conducive to good management of federal funds and results in poor management of university resources. Using the grant-by-grant drawdown process in effect converts an advance payment system into a reimbursement system. The cost and burden of estimating, executing and adjusting for grant-by-grant drawdowns is excessive."

VI. Conclusion

Given the differing perspectives on this issue and the division between the 14 Federal commenters, revising Circular A–110 does not appear to be the most effective approach. In order to maintain a policy that can work for all, OMB and the CFO Council believe that the grant-by-grant option is not encouraged; however, this method is permitted when a Federal agency and its Circular A–110 grant recipient agree that grant-by-grant requests for cash advances are preferable to pooled requests. We are committed to encouraging the pooling method for the Circular A–110 community, yet permitting the grant-by-grant method when both the Federal agency and the grant recipient prefer that method, or when the awarding agency determines that conditions require it.

OMB will, therefore, leave Circular A–110 unchanged. The existing Circular A–110 text does not require Federal awarding agencies to make the pooled payment method available to their recipients, but it does authorize them to do so. Section 22(c) provides that, "Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Federal awarding agency to the recipient." Since the awarding agency must determine when conditions merit making pooled payments to a recipient, the existing text takes a permissive, rather than a mandatory, approach to the issue.

Dated: July 31, 2002.

Mark W. Everson,

Controller.

[FR Doc. 02–20259 Filed 8–9–02; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Financial Management Policy Directive on Financial Assistance Program Announcements

AGENCY: Office of Management and Budget.

ACTION: Notice of proposed policy issuance directive.

SUMMARY: The Office of Federal Financial Management (OFFM) proposes to establish a standard format for Federal agency announcements of funding opportunities under programs that award discretionary grants or cooperative agreements. The purpose of the standard format is to have information organized in a consistent way in program announcements for the hundreds of Federal programs that make financial assistance awards to non-Federal recipients. The Federal awarding agencies jointly developed this format as one part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107). Consistent with the streamlining and simplification purposes of that public law, a standard format will make it easier for potential applicants to quickly find the information they need.

DATES: All comments on this proposal should be in writing, and must be received by October 11, 2002.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U. S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to: *ephillip@omb.eop.gov*. Please include "Grant Announcement Format Comments" in the subject line and the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to 202–395–3952.

Comments may be mailed to Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, telephone 202–395–3053 (direct) or 202–395–3993 (main office) and e-mail: *ephillip@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: This notice proposes to establish, by way of a policy directive, a standard format for organizing the information that Federal agencies include in their announcements of funding opportunities under programs that use discretionary grants or cooperative agreements. This policy directive will implement an outcome of the Federal agencies' streamlining and simplification efforts, under Public Law 106–107. There may be subsequent OFFM policy directives to implement other outcomes of those efforts where revision of OMB circulars, or issuance of a rule or Executive Order is not warranted.

This action addresses a need that non-Federal entities identified during the public consultation process mandated by Public Law 106–107. Commenters suggested that if all agencies' program announcements were to present information in the same order, a potential applicant could more easily and quickly find the key pieces of information it needed at each point in the process (*e.g.*, to decide at the outset whether it was eligible and wished to apply and to later prepare and submit an application).

The proposed announcement format is an interim product in that it addresses some, but not all, of the public comments on program announcements. It responds to comments on the need for consistency in placement and ease of locating pertinent information within announcements. It also incorporates language in Sections III and V to address comments that some announcements are not sufficiently clear about the way in which applicants' cost sharing is considered in selecting applications for funding. The Federal agencies are proposing this announcement format as an interim product so that potential applicants can begin to realize the benefits of a standard format while we continue to consider other issues addressed in the public comments, including suggestions that we try to establish a uniform approach to defining what constitutes a late application. As we complete work on the issues identified in those comments, we will propose updates to the announcement format, as warranted.

The proposed announcement format described in this Notice relates to another proposal described in a subsequent notice in this section of today's **Federal Register**. That proposal is a set of data elements that Federal agencies would use to synopsize available funding opportunities at FedBizOpps, an Internet site maintained by the General Services Administration. The purposes of FedBizOpps synopses are to give potential applicants a single site to search for Federal funding opportunities, to provide enough information for them to decide whether they want to read the full announcement, and to provide one or more ways (*e.g.*, an electronic link to another Internet site, an e-mail address or a telephone number) to get that announcement. The FedBizOpps information therefore complements the full announcement described in this Notice.

We welcome your input on any aspect of the proposed format. Questions that you may wish to address include:

- Is there additional information that should appear in the overview segment preceding the full text of the announcement?
- Do you feel that we need to add or delete any categories or subcategories of information in the full text of the announcement? For example, should you choose to apply, are the information elements sufficient for you to determine what you must submit, and when and how you must do so? If you suggest an additional information element, please explain why you recommend its inclusion.
- Are terms used in the format readily understandable? Are the terms generic enough to cover all programs and agencies in which you might have an interest? Do you have suggestions for alternate terms?

Dated: July 31, 2002.

Mark W. Everson,

Controller.

To the Heads of Executive Departments and Establishments

Subject: Format for Financial Assistance Program Announcements

1. *Purpose.* This policy directive establishes a government-wide funding opportunity announcement format for Executive Branch departments and agencies to use in programs that make discretionary awards of grants or cooperative agreements. Program announcements include all paper and electronic issuances that Federal departments and agencies use to announce funding opportunities, whether they are called "program announcements," "notices of funding availability," "broad agency announcements," "research announcements," "solicitations," or something else.

2. *Authority.* This policy directive is a part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

3. *Background.* The Federal Financial Assistance Management Improvement Act of 1999 required the Office of Management and Budget (OMB) to direct, coordinate, and assist Executive Branch departments and agencies in establishing an interagency process to streamline and simplify Federal financial assistance procedures for non-Federal entities. It also required each Executive agency to develop, submit to the Congress, and implement a plan for that streamlining and simplification.

Twenty-six Executive Branch agencies jointly submitted a plan to the Congress in May 2001, as the Act required. The plan described the interagency process through which the agencies would review current policies and practices and seek to streamline and simplify them. The process involved interagency work groups under the auspices of the Grants Management Committee of the Chief Financial Officers Council. The plan also identified substantive areas in which the interagency work groups had begun their review.

One of the substantive areas that the agencies identified in the plan was the form and

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content of program announcements. The agencies stated in the May 2001 plan that their preliminary analysis suggested a potential for developing a more consistent announcement format across the many Federal agencies and programs. A standard announcement format with information content organized in a consistent way will let applicants quickly and efficiently find the information they need, in order to decide whether a particular funding opportunity is of interest and to prepare an application. An interagency work group developed the format attached to this policy letter and recommended that the OMB's Office of Federal Financial Management (OFFM) issue it as the standard for all programs that use discretionary grants or cooperative agreements.

4. *Policy.* The format attached to this policy directive is the government-wide standard format for programs that make discretionary awards of grants or cooperative agreements, with the exception of programs that do not issue separate announcements apart from the program description in the *Catalog of Federal Domestic Assistance* (CFDA). For those excepted programs, the format will continue to conform with the guidance in OMB Circular A–89 for program information in the CFDA.

5. *Responsibilities.*

a. Agency Responsibilities. Executive Branch departments and agencies:

(1) Must issue any needed direction to offices that award grants or cooperative agreements under discretionary programs, in order to establish the attached format as the standard for those programs' announcements. All announcements must include information elements that are marked "required" in the format. An announcement for a given program may use elements that are marked "optional," as appropriate for the program. Whether or not the announcement includes any "optional" elements, the information that is included must be organized to conform with the standard format.

(2) Are to request exceptions from this OFFM policy directive for any program announcement(s) with information organized in a way that deviates from the standard format.

b. OMB Responsibilities. The OMB:

(1) Will update this policy directive as needed, based on recommendations from interagency work groups such as those sponsored by the Chief Financial Officers Council.

(2) Must respond within 30 days to an agency's request for an exception from this policy letter, either with a final decision or an estimate of the time needed to render that decision.

6. *Information Contact.* Direct any questions regarding this policy directive to Elizabeth Phillips, OFFM, 202–395–3053 (direct) or 202–395–3993 (main office).

7. *Effective Date.* The policy directive is effective 30 days after issuance. All implementing actions other than regulatory revisions must be completed by the Executive departments and agencies within 6 months of the effective date; regulatory revisions must be completed within 12 months.

Mark W. Everson,

Controller.

Attachment

Announcement of Federal Funding Opportunity

This document is a uniform format for Federal agencies' announcements of funding opportunities under which discretionary awards of grants or cooperative agreements may be made. The format has two parts, the first for overview information and the second for the full text of the announcement.

Overview Information

The agency must display prominently the following information (not necessarily in the same sequential order) in a location preceding the full text of the announcement:

- Agency Name(s)—Required. Include the name of your department or agency, the specific office(s) within the agency (*e.g.*, bureau, directorate, division, or institute) that are involved in the funding opportunity, and the mailing address with zip code.
- Program Name—Optional. If your agency has a program name that is different from the Funding Opportunity Title, you could include it here.
- Funding Opportunity Title—Required.
- Funding Opportunity Number—Optional. Your agency may wish to assign identifying numbers to announcements.
- Catalog of Federal Domestic Assistance (CFDA) Number(s)—Required.
- CFDA Title(s)—Optional. This is the program name listed in the CFDA for each CFDA number given above.
- Dates—Required. Include key dates that potential applicants need to know. Key dates include due dates for applications or Executive Order 12372, "Intergovernmental Review of Federal Programs" (July 14, 1982), submissions, as well as any letters of intent or pre-applications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released.

The program office must present the overview information described above and may present other information it wishes. It can do so in any of the following ways:

- Executive Summary. An agency may wish to include an executive summary of the announcement before the full text. For announcements that are long (25 pages or more in length) or complex, agencies should consider including executive summaries with the overview information described above and additional key information (e.g., who is eligible to apply and where one can get application materials), so that potential applicants can more quickly and easily find what they need. An executive summary should be short, preferably one page, with information in concise bullets to give an overview of the funding opportunity.
- Cover and/or Inside Cover. If the agency does not wish to include an executive summary, an alternative is to provide the overview information on the cover and/or inside cover of the announcement (or the first screen a potential applicant would see, in the case of an electronic announcement).
- **Federal Register** Format. For an announcement that appears as a notice in the **Federal Register**, some of the required overview information will appear with other information near the beginning of the notice, due to the **Federal Register**'s standard format for notices. Remaining overview information may be included in the **SUMMARY** section of the **Federal Register** notice or immediately preceding the full text of the announcement in the **SUPPLEMENTARY INFORMATION** section.

Full Text of Announcement

The full text of the announcement is organized in sections. The format indicates immediately following the title of each section whether that section is required in every announcement or is an agency option.

The format is designed so that similar types of information will appear in the same sections in announcements of different Federal funding opportunities. Toward that end, there is text in each of the format's sections to describe the types of information that an agency would include in that section of an actual announcement.

An agency that wishes to include information on a subject that the format does not specifically discuss may address that subject in whatever section(s) is most appropriate. For example, if an announcement chooses to address performance goals in the announcement, it might do so in the funding opportunity description, the application content, and/or the reporting requirements.

Similarly, when this format calls for a type of information to be in one particular section, an agency wishing to address that subject in other sections may elect to repeat the information in those sections or use cross references between the sections. For example, an agency may want to include in Section I information about the types of recipients who are eligible to apply. The format specifies a standard location for that information in Section III.1 but that does not preclude repeating the information in Section I or creating a cross reference between Sections I and III.1, as long as a potential applicant can find the information quickly and easily from the standard location.

The sections of the full text of the announcement are described in the following paragraphs.

I. Funding Opportunity Description—Required

This section contains the full programmatic description of the funding opportunity. It may be as long as needed to adequately communicate to potential applicants the areas in which funding may be provided. It describes the agency's funding priorities or the technical or focus areas in which the agency intends to provide assistance. As appropriate, it may include any program history (*e.g.*, whether this is a new program or a new or changed area of program emphasis). This section may communicate indicators of successful projects (*e.g.*, if the program encourages collaborative efforts) and may include examples of projects that have been funded previously. This section also may include other information the agency deems necessary, such as citations for authorizing statutes and regulations for the funding opportunity.

II. Award Information—Required

Provide sufficient information to help an applicant make an informed decision about whether or not to submit a proposal. Relevant information could include the total amount of funding that your agency expects to award through the announcement; the anticipated number of awards; the expected amounts of individual awards (which may be a range); the amount of funding per award, on average, experienced in previous years; and the anticipated start dates and periods of performance for new awards. This section also should address whether applications for renewal or supplementation of existing projects are eligible to compete with applications for new awards.

This section also must indicate the type(s) of assistance instrument (i.e., grant, cooperative agreement, and/or other instrument) that may be awarded if applications are successful. If cooperative agreements may be awarded, this section either should describe the "substantial involvement" that the agency expects to have or should reference where the potential applicant can find that information (*e.g.*, in the funding opportunity description in Section I or award administration information in Section VI). If procurement contracts also may be awarded, you must say so.

III. Eligibility Information

This section addresses considerations or factors that make an applicant or application eligible or ineligible for consideration. This includes the eligibility of particular types of applicant organizations, any factors affecting the eligibility of the principal investigator or project director, and any criteria that make particular projects ineligible. You should make clear whether an applicant's failure to meet an eligibility criterion by the time of an application deadline will result in your agency's returning the application without review or, even though an application may be reviewed, will preclude the agency from making an award. Key elements to be addressed are:

1. Eligible Applicants—Required. You must clearly identify the types of entities that are eligible to apply. If there are no restrictions on eligibility, this section may simply indicate that all potential applicants are eligible. If there are restrictions on eligibility, it is important to be clear about the specific types of entities that are eligible, not just the types that are ineligible. For example, if your program is limited to non-profit organizations subject to Section 501(c)(3) of the tax code, your announcement should say so. Similarly, it is better to state explicitly that Native American tribal organizations are eligible than to assume that they can unambiguously infer that from a statement that non-profit organizations may apply. Eligibility also can be expressed by exception, (e.g., open to all types of domestic applicants other than individuals). This section should refer to any portion of Section IV specifying documentation that must be submitted to support an eligibility determination (*e.g.*, proof of 501(c)(3) status as determined by the Internal Revenue Service or an authorizing tribal resolution).

2. Cost Sharing—Required. You must state whether there is required cost sharing, matching, or cost participation without which an application would be ineligible (if cost sharing is not required, you must explicitly say so). Required cost sharing may be a certain percentage or amount, or may be in the form of contributions of specified items or activities (*e.g.*, provision of equipment). Cost sharing as an eligibility criterion includes requirements based in statute or regulation, as well as those imposed by administrative decision of the agency. This section should refer to the appropriate portion(s) of Section IV stating any pre-award requirements for submission of letters or other documentation to verify commitments to meet cost-sharing requirements if an award is made.

3. Other—Required, if applicable. If there are other eligibility criteria (*i.e.*, criteria that have the effect of making an application or project ineligible for award, whether you refer to them as "responsiveness" criteria, "go-no go" criteria, "threshold" criteria, or in other ways), you must clearly state them. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, it is important to say so. In this section you also may indicate whether there is any limit to the number of applications an applicant may submit under the announcement. You also should use this section to address any eligibility criteria for beneficiaries or for program participants other than award recipients.

IV. Application and Submission Information

1. Address to Request Application Package—Required. You must tell potential applicants how to get application forms, kits, or other materials they need to apply (if this announcement contains everything they need, this section need only say so). You may give an Internet address where they can access the materials.* Since high-speed Internet access is not yet universally available for downloading documents, there also should be a way for potential applicants to request paper copies of materials, such as a U.S. Postal Service mailing address, telephone or fax number, Telephone Device for the Deaf (TDD) number, and/or Federal Information Relay Service (FIRS) number.

2. Content and Form of Application Submission—Required. This section should identify the required content of an application and the forms or formats that an applicant must use to submit it. This section also should address any

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preliminary submissions that the agency requires or encourages, either to facilitate its own planning or to provide potential applicants with feedback to help them decide whether to submit a full proposal.

For a full application, this includes all content and forms or formats that constitute a complete application, including: general information (*e.g.*, applicant name and address), budgetary information, narrative programmatic information, biographical sketches, and all other required information (*e.g.*, documentation that an applicant meets stated eligibility criteria or certifications or assurances of compliance with applicable requirements). If any requirements are stated elsewhere because they are general requirements that apply to multiple programs or funding opportunities, this section may refer to where those requirements may be found. You must either include required forms or formats as part of this announcement or state where the applicant may obtain them.

In this section, you should specifically address content and form or format requirements for:

- Pre-applications, letters of intent, or white papers that your agency requires or encourages (see Section IV.3), including any limitations on the number of pages or other formatting requirements similar to those for full applications.
- The application as a whole. For hard copy submissions, that could include any limitations on the number of pages, font size and typeface, margins, paper size, number of copies, and sequence or assembly requirements. If electronic submission is permitted or required,* that could include special requirements for formatting or signatures.
- Component pieces of the application (*e.g.*, if all copies of the application must bear original signatures on the face page or the program narrative may not exceed 10 pages). This includes any pieces that may be submitted separately by third parties (*e.g.*, references or letters confirming commitments from third parties that will be contributing a portion of any required cost sharing).
- Information that successful applicants must submit after your agency notifies them of its intent to make awards, but prior to award. This could include evidence of compliance with human subjects requirements or information your agency needs to comply with the National Environmental Policy Act (NEPA).

3. Submission Dates and Times—Required. Your announcement must identify due dates and times for all submissions. This includes not only the full applications but also any preliminary submissions (*e.g.*, letters of intent, white papers, or pre-applications). It also includes any other submissions of information before award that are separate from the full application. If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, this section should say so. Note that the information on dates that is included in this section also must appear with other overview information in a location preceding the full text of the announcement (see "Overview Information" segment of this format).

For each type of submission that you address, this section should indicate whether the submission is encouraged or required and, if required, any deadline date for submission (or dates, if the agency plans more than one cycle of application submission, review, and award under the announcement). The announcement should state (or provide a reference to another document that states):

- Any deadline in terms of a date and local time.
- What the deadline means (*e.g.*, whether it is the date and time by which the agency must receive the application, the date by which the application must be postmarked, or something else) and how that depends, if at all, on the submission method (*e.g.*, mail, electronic, or personal/courier delivery).
- The effect of missing a deadline (*e.g.*, whether late applications are neither reviewed nor considered or are reviewed and considered under some circumstances).
- How the receiving Federal office determines whether an application or pre-application has been submitted before the deadline. This includes the form of acceptable proof of mailing or system-generated documentation of receipt date and time.

This section also may indicate whether, when, and in what form the applicant will receive an acknowledgment of receipt.

You should consider displaying the above information in ways that will be easy to understand and use. It can be difficult to extract all needed information from narrative paragraphs, even when they are well written. A tabular form for providing a summary of the information may help applicants for some programs and give them what effectively could be a checklist to verify the completeness of their application package before submission. For example, a summary table might look like:

What to submit	Required content	Required form or format	When to submit it
Preapplication (optional, but encouraged).	Described in Section IV.2 of this announcement.	Format described in section ___ of grants policy manual at (give URL or where to obtain the manual)*.	By (give pre-application due date).
Application:			
Cover sheet	(Per required form)	Form SF-___, available from (give source).	
Budget information	(Per required form)	Form SF-___, available from (give source).	
Narrative	Described in Section IV.2 of this announcement.	Format described in Section IV.2 of this announcement.	
Assurances	(Per required form)	Form SF-___, available from (give source).	
Letters from third parties contributing to cost sharing.	Third parties' affirmations of amounts of their commitments.	No specific form or format.	

What to submit	Required content	Required form or format	When to submit it
Statement of intent to comply with human subjects requirement.	(Per required form)	Form SF-___, available from (give source).	Prior to award, when requested by grants officer (if application is successful).

*With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973, as amended by the Workforce Investment Act of 1998.

4. Intergovernmental Review—Required, if applicable. If the funding opportunity is subject to Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs," you must say so. In alerting applicants that they must contact their State's Single Point of Contact (SPOC) to find out about and comply with the State's process under EO 12372, you should inform them that the names and addresses of the SPOCs are listed in the Office of Management and Budget's home page at: *http://www.whitehouse.gov/omb/grants/spoc.html* to ensure the most up-to-date contact information is made available.

5. Funding Restrictions—Required. You must include information on funding restrictions in order to allow an applicant to develop an application and budget consistent with program requirements. Examples are whether construction is an allowable activity, if there are any limitations on direct costs such as foreign travel or equipment purchases, and if there are any limits on indirect costs (or facilities and administrative costs).

6. Other Submission Requirements—Required. This section must address any other submission requirements not included in the other paragraphs of this section. This might include the form of submission, i.e., paper or electronic, for each type of required submission. Applicants should not be required to submit in more than one format and this section should indicate whether they may choose whether to submit applications in hard copy or electronically, may submit only in hard copy, or may submit only electronically.

This section also must indicate where applications (and any pre-applications) must be submitted if sent by postal mail, electronic means, or hand-delivery. For postal mail submission, this should include the name of an office, official, individual or function (e.g., application receipt center) and a complete mailing address. For electronic submission, this should include the "url" or e-mail address; whether a password(s) is required; whether particular software or other electronic capabilities are required; what to do in the event of system problems and a point of contact that will be available in the event the applicant experiences technical difficulties.*

V. Application Review Information

1. Criteria—Required. This section must address the criteria that your agency will use to evaluate applications. This includes the merit and other review criteria that evaluators will use to judge applications, including any statutory, regulatory, or other preferences (e.g., minority status or Native American tribal preferences) that will be applied in the review process. These criteria are distinct from eligibility criteria that are addressed before an application is accepted for review and any program policy or other factors that are applied during the selection process, after the review process is completed. The intent is to give applicants visibility into the evaluation process so that they can make informed decisions when preparing their applications and so that the process is as fair and equitable as possible.

The announcement should clearly describe all criteria, including any sub-criteria. If criteria vary in importance, the announcement should specify the relative percentages, weights, or other means used to distinguish among them. For statutory, regulatory, or other preferences, the announcement should provide a detailed explanation of those preferences with an explicit indication of their effect (e.g., whether they result in additional points being assigned).

If an applicant's proposed cost sharing will be considered in the review process (as opposed to being an eligibility criterion described in Section III.2), the announcement must specifically address how it will be considered (e.g., to assign a certain number of additional points to applicants who offer cost sharing, or to break ties among applications with equivalent scores after evaluation against all other factors). If cost sharing will not be considered in the evaluation, the announcement should say so, so that there is no ambiguity for potential applicants. Vague statements that cost sharing is encouraged, without clarification as to what that means, are unhelpful to applicants.

2. Review and Selection Process—Required. This section may vary in the level of detail provided. The announcement must list any program policy or other factors or elements, other than merit criteria, that the selecting official may use in selecting applications for award (e.g., geographical dispersion, program balance, or diversity).

You also may include other details you deem appropriate. For example, this section may indicate who is responsible for evaluation against the merit criteria (e.g., peers external to the agency or Federal agency personnel) and/or who makes the final selections for award. If you have a multi-phase review process (e.g., an external panel advising internal agency personnel who make final recommendations to the deciding official), you may describe the phases. You also may include: The number of people on an evaluation panel and how it operates, the way reviewers are selected, reviewer qualifications, and the way that conflicts of interest are avoided. In addition, if you permit applicants to nominate suggested reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest, that information should be included in this section.

3. Anticipated Announcement and Award Dates—Optional. This section is intended to provide applicants with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, the agency can include in this section information about the anticipated dates for announcing successful applicants and for having awards in place. If applications are received and evaluated on a "rolling" basis at different times during an extended period, it may be appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of the agency's decision.

VI. Award Administration Information

1. Award Notices—Required. This section should address what a successful applicant can expect to receive following selection. If your

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practice is to provide a separate notice stating that an application has been selected before you actually make the award, this section would be the place to indicate that the letter is not an authorization to begin performance (except at the recipient's own risk, to the extent that you allow charging to awards of pre-award costs). This section should indicate that the notice of award signed by the grants officer (or equivalent) is the authorizing document, and whether it is provided through postal mail or by electronic means and to whom. It also may address the timing, form, and content of notifications to unsuccessful applicants.

2. Administrative Requirements—Required. This section should address the administrative requirements your agency's awards include, so that a potential applicant may identify any requirements with which it would have difficulty complying if its application is successful. In those cases, early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before award. The announcement need not include all of the award terms and conditions, but may refer to a document (with information about how to obtain it) or Internet site* where applicants can see the terms and conditions.

If this funding opportunity will lead to awards with some special terms and conditions that differ from your agency's usual (sometimes called "general") terms and conditions, this section should highlight those special terms and conditions. Doing so will alert applicants who have received awards from your agency previously and might not otherwise expect different terms and conditions. For the same reason, you may wish to inform potential applicants about special requirements that could apply to particular awards after review of applications and other information, based on the particular circumstances of the effort to be supported (e.g., if human subjects were to be involved).

3. Reporting—Optional. If the funding opportunity may attract first-time applicants, it is helpful to include in this section some general information about the type (e.g., financial or performance), frequency, and means of submission (paper or electronic) of post-award reporting requirements, even if the details are included in the award terms and conditions.

You also should highlight any special reporting requirements for awards under this funding opportunity that differ (e.g., by report type, frequency, form/format, or circumstances for use) from what your agency's awards usually require. This section should clearly indicate whether any special reporting requirement is in addition to or in lieu of the usual reporting requirements.

VII. Agency Contact(s)—Required

You must give potential applicants a point(s) of contact for answering questions or helping with problems while the funding opportunity is open. The intent of this requirement is to be as helpful as possible to potential applicants, so you should consider approaches such as giving:

- Points of contact who may be reached in multiple ways (e.g., by telephone, FAX, and/or e-mail, as well as regular mail).
- A fax or e-mail address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.
- Different contacts for distinct kinds of help (e.g., one for questions of programmatic content and a second for administrative questions).

VIII. Other Information

This section may include any additional information that will assist a potential applicant. For example, the section might:

- Indicate whether this is a new program or a one-time initiative.
- Mention related programs or other upcoming or ongoing agency funding opportunities for similar activities.
- Include Internet addresses for agency Web sites that may be useful to an applicant in understanding the program (**Note:** you should make certain that any Internet sites are current and accessible).*
- Alert applicants to the need to identify proprietary information and inform them about the way the agency will handle it.
- Let applicants know where the agency will post any subsequent amendments to the announcement, particularly if an alternative medium is used for that purpose.
- Include certain routine notices to applicants (e.g., that the government is not obligated to make any award as a result of the announcement or that only grants officers can bind the government to the expenditure of funds).

*With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973, as amended by the Workforce Investment Act of 1998.

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OFFICE OF MANAGEMENT AND BUDGET

Standard Data Elements for Electronically Posting Synopses of Federal Agencies' Financial Assistance Program Announcements at FedBizOpps

AGENCY: Office of Management and Budget (OMB).

ACTION: Notice of proposed standard data elements.

SUMMARY: The Office of Federal Financial Management (OFFM) proposes to establish a standard set of data elements for Federal agencies to use to electronically post synopses of announcements of funding opportunities under programs that award discretionary grants or cooperative agreements. The purpose of the data elements would be to give potential applicants: (1) Enough information about each funding opportunity to decide whether they are interested enough to look at the full announcement; and (2) one or more ways (*e.g.*, an Internet site, e-mail address or phone number) to get the full announcement with the detailed information they need to decide whether they wish to apply. The proposed data elements would be the government-wide standard set for the hundreds of Federal programs that award discretionary grants or cooperative agreements. The Federal awarding agencies jointly developed these proposed data elements as one part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

DATES: All comments on the proposed data elements should be in writing, and must be received by October 11, 2002.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U. S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to: *ephillip@omb.eop.gov*. Please include "FedBizOpps Data Elements Comments" in the subject line and put the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to 202–395–3952. Comments may be mailed to Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, telephone 202–395–3053 (direct) or 202–395–3993 (main office) and e-mail: *ephillip@omb.eop.gov*

SUPPLEMENTARY INFORMATION: To widely disseminate information about Federal funding opportunities more rapidly than was possible before the advent of electronic business practices, the General Services Administration has established the FedBizOpps Internet site (*www.FedBizOpps.gov*). Federal agencies now use FedBizOpps as the single site for giving the public access to relevant information about procurement opportunities that exceed $25,000, including procurement notices, solicitations, drawings, and amendments. In the future, the Federal agencies also will use the FedBizOpps site to post electronic synopses of funding opportunities leading to the award of grants, cooperative agreements, and other financial assistance instruments. This **Federal Register** announcement seeks public comment on the proposed data elements that Federal agencies would include in their synopses of those financial assistance funding opportunities.

These data elements and the posting of information at the FedBizOpps site address a need that non-Federal entities identified during the public consultation process mandated by Public Law 106–107. Commenters suggested the need for a single searchable Internet site for information about Federal agencies' funding opportunities, to reduce potential applicants' frustration with having to search multiple sites that individual Federal agencies configure in different ways. A standard data set and single site for synopses of announcements should help potential applicants easily and quickly find the key pieces of information they need about each funding opportunity to decide whether they wish to review the full announcement.

The Federal agencies selected the proposed data elements to enable you to do that and to use search criteria that would let you identify from the numerous funding opportunities posted at FedBizOpps at any given time the ones most likely to be of interest to you. For example, the proposed data elements will let you search using the name of a particular agency or the *Catalog of Federal Domestic Assistance* (CFDA) number for a particular program. You also may search by choosing a class or classes of activity, as defined in the CFDA, as well as limiting the search to programs open to certain types of entities (using categories of eligible applicants adapted from the Federal Assistance Awards Data System maintained by the Bureau of the Census at the Department of Commerce). You still would need to read the full announcement for the funding opportunities identified by your search, since the announcements provide much greater detail about each of the program's aspects (*e.g.*, you might isolate programs that show the category of "State controlled institutions of higher education" as being eligible, but find in the full announcement that only selected types of those institutions, such as land-grant institutions, are eligible).

While some of the proposed data elements for financial assistance parallel those currently in FedBizOpps for synopses of procurement opportunities, others differ in ways that reflect differences between procurement and assistance. For example, the activity class codes for financial assistance opportunities are categories from the CFDA. In contrast, FedBizOpps synopses of procurement opportunities use supply code classifications that are appropriate for buying goods and services.

Many of the data elements proposed for FedBizOpps also are key information elements in the proposed standard format for financial assistance funding announcements (*see* related Notice in this section of the **Federal Register**). Examples are the CFDA number, eligible applicants, and cost-sharing requirements. Including these key elements responds to comments received from non-Federal entities through the public comment process under Public Law 106–107.

The proposed data elements also are designed to provide Federal agencies the flexibility to give you the needed information for programs that are designed to operate in different ways. For example, some programs have a single due date for applications. A numeric "application due date" field accommodates those programs, giving potential applicants concise information in a searchable field. Other programs, however, have announcements that remain open for extended periods; some have applications accepted and reviewed at multiple discrete points in time, while others will accept and review applications at any time during those periods. The proposed data elements include an application due date text field to let agencies give potential applicants clear and unambiguous information about those programs, in a way that the numeric field by itself would not support.

We welcome your input on any aspect of the data elements. Questions that you may wish to address include:

- Are the proposed data elements the essential ones that you need to help you quickly judge whether a funding opportunity is one for which you likely will want to read the full announcement? The intent is for the data elements to be the minimum set needed. That should allow potential applicants to more quickly see essential information, because they will not have to extract it from a larger data set that includes information they do not need until they are preparing and submitting an application. Those additional details are in the full announcement to which FedBizOpps provides electronic links. If you recommend adding or deleting any data elements, please explain why.
- Are the names of data elements and any terms used in describing them readily understandable? Are the terms generic enough to cover all programs and agencies in which you might have an interest? Do you have suggestions for alternate terms? Do you have suggestions for additional codes, such as those listed as choices for the data elements "category of funding activity" and "eligible applicants"?

Dated: July 31, 2002.

Mark W. Everson,

Controller.

Data element	Description	Required?
Federal agency user identification	User ID of Federal agency representative who is authorized to post information to the FedBizOpps site.	One entry required.
Federal agency password	Password of Federal agency user representative who is authorized to post information to the FedBizOpps site.	One entry required.

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Data element	Description	Required?
Funding opportunity title	The Federal agency's title for the funding opportunity (including program subcomponent names, as the agency deems appropriate).	One entry required.
Funding opportunity number	The number, if any, that the Federal agency assigns to its announcement.	Optional.
Catalog of Federal Domestic Assistance (CFDA) number(s).	Number(s) of the CFDA listing(s) for program(s) included in the announcement (e.g., 12.300).	At least one entry required (may list more than one) if the Federal agency is subject to the requirement in 31 U.S.C. chapter 61 to report to the CFDA.
Federal agency mailing address	Regular (United States Postal Service) mailing address of the Federal organization responsible for the announcement, including agency name and specific subcomponent (e.g., department, bureau, directorate, or division), street address, city, State, and zip code.	Optional. If you give no office name and address, FedBizOpps will insert the office name and address you gave when you initially registered and got your user ID and password.
Federal agency contact for electronic accesss problems.	Should list name of person (e.g., webmaster) to whom potential applicants should refer questions if they cannot link from FedBizOpps to the full announcement (this person is distinct from programmatic and other agency contacts who are listed in the full announcement).	At least one entry required. May list more than one.
Type of help available from the Federal agency contact.	The hypertext description accompanying the Federal agency contact e-mail address, to describe types of problems or questions with which the agency contact may be able to provide assistance (e.g., "If you have problems linking to the full announcement, contact:").	Required. May list only one.
Federal agency contact e-mail address	E-mail address of Federal agency contact who can help with electronic access problems..	Required. May list only one.
Funding opportunity description	A concise description of the funding opportunity, designed to contain sufficient information for potential applicants to decide whether they are interested enough to read the full announcement.	Required.
Funding instrument types	List codes for types of instruments that may be awarded: G = Grant CA = Cooperative Agreement PC = Procurement Contract O = Other Note that if your announcement states that you may award procurement contracts, as well as assistance instruments, the announcement must be posted to both the procurement and assistance modules of FedBizOpps.	Required. Select all that apply (up to 4 codes).
Category of funding activity	Designed to allow potential applicants to narrow their searches to programs in CFDA categories of interest to them. Note that the terms are defined in the CFDA. List all codes that apply: AG = Agriculture AR = Arts (see "Cultural Affairs" in the CFDA) BC = Business and Commerce CD = Community Development CP = Consumer Protection DPR = Disaster Prevention and Relief ED = Education ELT = Employment, Labor and Training EN = Energy ENV = Environment FN = Food and Nutrition HL = Health HO = Housing HU = Humanities (see "Cultural Affairs" in the CFDA) ISS = Income Security and Social Services IS = Information and Statistics LJL = Law, Justice and Legal Services NR = Natural Resources RD = Regional Development ST = Science and Technology and other Research and Development T = Transportation O = Other	At least one required and may list as many as needed. There is no default value.

Data element	Description	Required?
Eligible applicants	Designed to help potential applicants narrow their searches to programs where they are most likely to be eligible (although they still must read the full announcement for details because eligibility may be further limited to certain subsets of applicants within the categories below).. 99 = Unrestricted (i.e., open to any type of entity below) Government codes: 00 = State governments 01 = County governments 02 = City or township governments 04 = Special district governments 05 = Independent school districts 06 = State controlled institutions of higher education 07 = Native American tribal governments (Federally recognized) 08 = Public housing authorities/Indian housing authorities Non-Government organizations: 11 = Native American tribal organizations (other than Federally recognized tribal governments) 12 = Nonprofits other than institutions of higher education [includes community action agencies and other organizations having a 501(c)(3) status with the IRS] 20 = Private institutions of higher education 21 = Individuals 22 = For-profit organizations other than small businesses 23 = Small businesses 25 = All others [e.g., U.S. Federal or Foreign Governmental entities and nonprofits that do not have a 501(c)(3) status with the IRS]	Required to either select "99" for unrestricted or select all others that apply.
How to get full announcement	Hypertext stating where to get the full announcement. If it is available on the Internet, this field should include the descriptor that precedes the URL for the full announcement (e.g., "Click on the following link to see the full text of the announcement for this funding opportunity:").	Required.
Electronic link to full announcement	The URL for the full announcement, if it is on the Internet.	Optional.
Cost sharing requirement	Answer to question: is cost sharing required: (Y or N).	Required.
Due date for applications	Date when applications are due (or latest date when applications accepted, if announcement has multiple due dates or is a general announcement that is open for a specified period with applications accepted at any time during that period).	Required if "Explanation of application due dates" field is not completed. Optional otherwise.
Explanation of application due dates	Used by agencies wishing to post more information about due date(s) for potential applicants. For example, the field may be used to describe programs with multiple due dates or ones where applications are accepted, reviewed, and funded at any point within a broad time window. The field also may be used to add information about the time when applications are due (e.g., 5:00 p.m. EDT on the date given in the "Due date for applications" field).	Optional (note that "Due date for applications" field is required if this "Explanation of application due dates" text field is not completed).
Date of FedBizOpps posting	Month, day, and year when the agency wants the synopsis posted on FEdBizOpps (e.g., some agencies may build in delays to allow announcements to appear first in the FEDERAL REGISTER or at agency Internet sites). Format is MMDDCCYY.	Required.
Date for FedBizOpps to archive	Month, day, and year when the agency wants the synpopsis archived. Format is MMDDCCYY.	Optional. Default, if agency provides no input, is 30 days after the date given in the "Due date for applications" field.

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[FR Doc. 02–20261 Filed 8–9–02; 8:45 am]
BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cost Principles for Educational Institutions, for State, Local, and Indian Tribal Governments and for Non-Profit Organizations

AGENCY: Office of Management and Budget.

ACTION: Proposed revisions to Office of Management and Budget (OMB) cost principles' Circulars A–21, A–87, and A–122.

SUMMARY: OMB proposes to amend OMB cost principles A–21, A–87, and A–122. These changes are intended to further the objectives of Public Law (Pub. L.) 106–107, the Federal Financial Assistance Management Improvement Act. On May 18, 2001, agencies working with OMB published a plan to implement Pub. L. 106–107. The plan included a proposal to simplify the cost principles to make the descriptions of similar cost items consistent with one another where possible, thus reducing the possibility of misinterpretation.

DATES: All comments on this proposal should be in writing and must be received by October 11, 2002.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic comments may be submitted to: *hai_m._tran@omb.gov.* Please include "Cost Principles Revision Comments" in the subject line and put the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to 202–395–4915.

Comments may be mailed to Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3052 (direct) or (202) 395–3993 (main office) and e-mail: *Hai_M._Tran@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) provides both a mandate and a challenge for the administration of Federal financial assistance programs and activities. The purposes of Pub. L. 106–107 are to (1) improve the effectiveness and performance of Federal financial assistance programs, (2) simplify Federal financial assistance application and reporting requirements, (3) improve the delivery of services to the public, and (4) facilitate greater coordination among those responsible for delivering the services. Federal financial assistance includes grants, cooperative agreements, loans, loan guarantees, scholarships, and other forms of assistance.

The grant and cooperative agreement portion of that enterprise, commonly referred to as "grants," involves more than 600 programs and their subprograms, with awards of more than $325 billion a year administered by 26 Federal agencies. Grant programs stimulate or support public purposes in areas such as health, social services, law enforcement, agriculture, housing, community and regional development, economic development, education and training, and national security. Many of these programs require complex arrangements, such as intergovernmental coordination or public-private partnerships, to coordinate and deliver the needed services. Among the recipient constituencies are State, local, and Native American tribal governments, public housing authorities and resident organizations, and private, non-profit organizations, including institutions of higher education. The funding mechanisms for these programs include mandatory grants, such as formula and block grants, and discretionary grants and cooperative agreements in support of specific programs or projects.

Public Law 106–107 states that some Federal administrative requirements are duplicative, burdensome, and conflicting, sometimes impeding cost-effective delivery of services at the local level. Grant recipients deal with increasingly complex problems that require the delivery and coordination of many kinds of services. Their need to respond to numerous Federal grant administration requirements only adds to that complexity.

Implementation of Public Law 106–107

The Director of OMB partnered with the Department of Health and Human Services (HHS) and the former Grants Management Committee (GMC) of the Chief Financial Officers Council to coordinate and oversee the government-wide implementation of Pub. L. 106–107. Five interagency groups were established to implement the steps laid out in the plan that was submitted to Congress and OMB on May 18, 2001.

The General Policy and Oversight group provides detailed oversight of the other work groups' planning and implementation efforts and is examining broad issues. Three groups represent various parts of the grant life cycle: Pre-Award; Post-Award; and Audit Oversight. The Electronic Processing group supports the development of an electronic option for application for and reporting of grants.

The Post-Award group includes a cost consistency sub-group charged with reviewing the cost principles in OMB Circulars A–21, A–87, and A–122 to ensure they are current, consistent, and appropriate for covered recipients. The sub-group's objectives are to make the descriptions of similar cost items consistent, where possible, and reduce the possibility of misinterpretation by clarifying existing policies. The sub-group's mission did not include adding restrictions or modifying current requirements.

The three OMB's cost circulars established government-wide principles for costs incurred under Federal awards (Circulars A–21, "Cost Principles for Educational Institutions;" A–87, "Cost Principles for State, Local and Indian Tribal Governments;" and A–122, "Cost Principles for Non-Profit Organizations"). These cost principles specify allowable and unallowable costs. The three circulars apply to different types of recipient entities and were developed accordingly. As a result, in a number of cases, similar cost items are described in varying terms. This can cause inconsistent interpretations by Federal staff, recipients, and auditors. Public comments indicate the need for language that is more consistent and for clarification regarding some aspects of the cost principles. Many Federal assistance grant programs require organizations that are subject to different cost circulars to work together in consortia to achieve the objectives of a grant program. It is important in these situations that, to the greatest extent possible, all participants in a consortium be subject to the same treatment for the same kinds of transactions.

The groups focused initially on the definitions in the circulars and the 30 cost items that appear in all three cost circulars. They drafted common descriptions for those cost items that should have similar treatment, but are

currently described differently. Where different outcomes are intended, the language should definitely show the difference. Those cost items that are currently in one or more but not all of the circulars also have been reviewed to determine if it is appropriate and beneficial to include them in one or both of the other cost circulars. In those cases where the groups believe that a cost principle in one circular might be applicable to entities subject to the other circulars, they have tried to state the principle in such a way that it does not change the current policy in the circulars to which the principle is added. In all of the cases where a cost principle in one circular has been applied to one or both of the other circulars, we have done that only to clarify that the outcome is the same under the circular(s) to which the principle is added.

The approach included:

- Reviewing the cost item descriptions in all the circulars;
- Noting the similarities and differences in the descriptions;
- Researching the history of the cost policies related to the cost item;
- Determining if the cost policies are consistent among the circulars;
- Preparing common language, where possible, for the descriptions of those cost items that have a consistent cost policy basis; and
- Restating the principles in simpler language, to the extent possible without changing the meaning of the principles.

Presentation of the Circulars

Rather than include the revised language in the three cost principles separately, the team created a chart that allows side-by-side comparison of proposed changes to the language contained in the current circulars. In addition, the three circulars use different standard terminology to refer to "recipients" and "awards;" the groups adopted conventions for the circulars so they would all use the same standard terminology. The conventions are as follows:

Proposed change language	Existing terms in A–21, A–87, and A–122
"Non-Federal entity".	"Institution," "unit of government" and "organization"
"Federal award"	"Sponsored agreement," "Federal award" and "Sponsored award"

When the cost principles are published in final form, OMB will use the new conventions in the revised version. However, OMB plans to use the same words to describe the units of organization, *i.e.*, A–21 would still be divided into "sections" and "subsections" while A–87 and A–122 would still use "paragraphs" and "subparagraphs."

Clarity of the Regulations

Executive Order 12866, *Regulatory Planning and Review,* and the Presidential memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand. OMB invites comments on how to make these cost principles easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed circulars clearly stated?
- Do the cost principles contain technical terms or other wording that interferes with their clarity?
- Would the cost principles be easier to understand if divided into more (but shorter) paragraphs or sections; or used the question and answer format?
- What else would make the proposed circulars easier to understand?

To give commenters an idea about how a circular might appear in plain language, the groups provided at the end of the chart a plain language version of one cost item to show how it would look in a different style of drafting.

Send any comments that concern how we could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble. If the comments generated by the plain language treatment indicate that the circulars could be written using this convention, OMB will publish any changes based on those comments for another round of comment.

Inadvertent Changes in Policy

OMB has not attempted to change the policy in any of the circulars. However, in the effort to make the language more consistent, some unintended changes in policy may have been made. OMB encourages comments on any proposed changes that could be construed as changes to current policy.

Also, there are places where different language in the current circulars for a particular treatment could be viewed either as intending the same or intending different policies. When faced with this ambiguity, in most cases, OMB has not attempted to write a common treatment. However, OMB is interested in comments on the extent to which some of these treatments could be viewed as expressing the same policy in all three circulars.

Response to Public Bodies and Cost Shifting

Where professional bodies such as the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB) have issued pronouncements that contradicted existing circular provisions or otherwise clarified "generally accepted accounting principles" (GAAP), the policy of the professional bodies has been reflected in this draft.

Lastly, in the process of reviewing the circulars for better consistency and clarity, we concluded that this provided another opportunity to address an area of much confusion concerning one of the general standards contained in A–87, Attachment A, C.3., Allocable costs. In attempting to recognize situations where two or more Federal programs might allow identical services or assistance and served the identical population, an effort was made to distinguish between "funding allocations" vs. "cost allocation". Unfortunately, this section was phrased in a manner that could be interpreted as allowing cost shifting. Cost shifting has always been unallowable. The confusing language has been eliminated in this Notice and no change in policy is intended. The following reflects the proposed revision to OMB Circular A–87, Attachment A, C.3.c., where the last sentence in brackets would be deleted.

"Any cost allocable to a particular Federal award or cost objective under the principles provided for in this Circular may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of Federal awards, or for other reasons. [However, this prohibition would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program agreements.]"

Organization of the Chart

In the chart, the first column lists the current A–21 item, the second column lists the similar item, if any, from A–87, the third column lists the similar item, if any, from A–122 and the fourth column lists any proposed change to the item and which of the circulars would include the revised item. In some cases one or more of the circulars do not have a cost item that is included in one or more of the other circulars. If a circular does not have an item equivalent to the other circulars, the column for that circular is blank. Also, given the separate development of the three circulars, some items contain more than one concept and some of those concepts

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are stated in different places in the other circulars. In some cases, we have moved a cost item in one circular to the place where that item appears in the other circulars. In every case where one circular handles an item in a different place than the others, we explain in the fourth column where we propose to treat a particular concept in the three circulars.

How To Obtain the Chart

Due to its size, the chart is not printed in this **Federal Register** notice. It is displayed on the OMB Web site at: *http://www.omb.gov* under the "Grants Management/Current Documents" section. You can also request a hard copy by calling Gilbert Tran at (202) 395–3052.

Dated: July 31, 2002.

Mark W. Everson,

Controller.

[FR Doc. 02–20262 Filed 8–9–02; 8:45 am]

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Federal Register

Monday,
August 12, 2002

Part V

Department of Education

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research—Assistive Technology Act (AT Act) Technical Assistance Program; Notice Inviting Applications for Fiscal Year (FY) 2002; Notice

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.224B]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research—Assistive Technology Act (AT Act) Technical Assistance Program; Notice Inviting Applications for Fiscal Year (FY) 2002

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions you need to apply for a grant under this competition.

Purpose of the Program: The purpose of the Assistive Technology Act of 1998 (AT Act) Technical Assistance Program is to award grants to entities to address issues raised by interested parties; collect data in order to provide information about assistive technology (AT) devices and services that can be used for determining policy; and provide information on increased access to AT devices, AT services and other disability-related resources. For FY 2002, the competition for new awards focuses on projects designed to meet the priorities we described in the priorities section of this notice.

Eligible Applicants: Parties eligible to apply for technical assistance grants must have documented experience with and expertise in AT service delivery or systems, interagency coordination, and capacity building and advocacy activities.

Parties eligible to apply for a grant under Priority 1 and Priority 2 are States, public or private agencies including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

Parties eligible to apply for a grant under Priority 3 are institutions of higher education that emphasize research and engineering, have a multidisciplinary research center, and have demonstrated expertise in (1) working with AT and intelligent agent interactive information dissemination systems; (2) managing libraries of AT and disability-related resources; (3) delivering education, information, and referral services to individuals with disabilities, including technology-based curriculum development services for adults with low-level reading skills; (4) developing cooperative partnerships with the private sector, particularly with private sector computer software, hardware, and Internet services entities; and (5) developing and designing advanced Internet sites.

APPLICATION NOTICE FOR FISCAL YEAR 2002

Assistive Technology Act (AT Act) Technical Assistance Program, CFDA No. 84.224B

Funding priority	Deadline for transmittal of applications	Estimated available funds	Maximum award amount (per year)*	Estimated number of awards	Project period (months)
84.224B–1 Technical Assistance to AT State Grant Program.	September 11, 2002	$525,000	Year 1—$525,000; Year 2—$525,000; Year 3—$525,000.	1	36
84.224B–2 Technical Assistance to AT P&A Program.	September 11, 2002	160,000	Year 1—$160,000; Year 2—$160,000; Year 3—$160,000.	1	36
84.224B–3 Establishment and Maintenance of a National Assistive Technology Internet Site.	September 11, 2002	250,000	Year 1—$250,000 Year 2—$250,000; Year 3—$250,000.	1	36

Note 1: We will reject without consideration any application that proposes a budget exceeding the stated maximum award amount in any year (*See* 34 CFR 75.104(b)).

Note 2: The Department is not bound by any estimates in this notice.

Applicable Regulations and Statute: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86, and (b) 29 U.S.C. 3014.

Priorities

Absolute Priority 1—Technical Assistance to AT State Grant Program Grantees and Other Public Entities

Under 34 CFR 75.105(c)(3) and section 104(c)(2) of the AT Act, the project that will provide technical assistance to AT State Grant Program grantees and other public entities must:

(1) Address State-specific information requests concerning AT from grantees and other public entities, including:

(a) Requests for state-of-the-art, or model, Federal, State, and local laws, regulations, policies, practices, procedures, and organizational structures, that facilitate, and overcome barriers to, funding for, and access to, AT devices and AT services;

(b) Requests for examples of policies, practices, procedures, regulations, administrative hearing decisions, or legal actions, that have enhanced or may enhance access to and funding for AT devices and AT services for individuals with disabilities;

(c) Requests for information on effective approaches to Federal-State coordination of programs for individuals with disabilities, related to improving funding for or access to AT devices and AT services for individuals with disabilities of all ages;

(d) Requests for information on effective approaches to the development of consumer-controlled systems that increase access to, funding for, and awareness of, AT devices and AT services;

(e) Other requests for technical assistance from grantees and other public entities; and

(f) Other assignments specified by the Secretary including assisting entities described in section 103(b) of the AT Act to develop corrective action plans;

(2) Assist targeted individuals (as defined in section 3(a)(14) of the AT Act) by disseminating information about:

(a) Federal, State, and local laws, regulations, policies, practices, procedures, and organizational structures, that facilitate, and overcome barriers to, funding for, and access to, AT devices and AT services, to promote fuller independence, productivity, and inclusion in society for individuals with disabilities of all ages; and

(b) Technical assistance activities listed above.

For FY 2002, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet the priority.

Invitational Priority

Within the absolute priority for this competition, we are particularly interested in applications that meet the following invitational priority:

Production of a yearly report of the technical assistance activities described above that will include information on:

(1) The demonstrated successes of the AT State Grant Program activities in improving interagency coordination relating to AT, streamlining access to and funding for AT, and producing beneficial outcomes for users of AT;

(2) The demonstration activities carried out through the AT State Grant Program to:

(a) Promote access to AT funding in public programs that were in existence on the date of the initiation of the AT State Grant Program; and

(b) Establish additional options for obtaining AT funding;

(3) The education and training activities carried out through the AT State Grant Program to educate and train targeted individuals about AT, including increasing awareness of funding through public programs for AT;

(4) The research activities carried out through the AT State Grant Program to improve understanding of the costs and benefits of access to AT for individuals with disabilities who represent a variety of ages and types of disabilities;

(5) The program outreach activities to rural and inner-city areas that are carried out through the AT State Grant Program;

(6) The activities carried out through the AT State Grant Program that are targeted to reach underrepresented populations and rural populations;

(7) The consumer involvement activities carried out through the AT State Grant Program; and

(8) Information on the availability of AT devices and AT services for individuals with disabilities.

Under 34 CFR 75.105(c)(1) an application that meets an invitational does not receive competitive or absolute preference over other applications.

Absolute Priority 2—Technical Assistance to AT Protection and Advocacy (P&A) Program Grantees and Other Public Entities

Under 34 CFR 75.105(c)(3) and section 104(c)(2) of the AT Act, the project that will provide Technical Assistance to AT P&A Program Grantees and other public entities must:

(1) Address State-specific information requests concerning AT from grantees and other public entities, including:

(a) Requests for state-of-the-art, or model, Federal, State, and local laws, regulations, policies, practices, procedures, and organizational structures, that facilitate, and overcome barriers to, funding for, and access to, AT devices and AT services;

(b) Requests for examples of policies, practices, procedures, regulations, administrative hearing decisions, or legal actions, that have enhanced or may enhance access to and funding for AT devices and AT services for individuals with disabilities;

(c) Other requests for technical assistance from grantees and other public entities;

(2) Assist targeted individuals (as defined in section (3)(a)(14) of the AT Act) by disseminating information about:

(a) Federal, State, and local laws, regulations, policies, practices, procedures, and organizational structures, that facilitate, and overcome barriers to, funding for, and access to, AT devices and AT services, to promote fuller independence, productivity, and inclusion in society for individuals with disabilities of all ages; and

(b) Technical assistance activities listed above.

Absolute Priority 3—Establishment and Maintenance of a National Assistive Technology Internet Site

Under 34 CFR 75.105(c)(3) and section 104(c)(1) of the AT Act, the National Assistive Technology Internet Site, established and maintained under this program, must contain the following features:

(1) Availability of information at any time—The site shall be designed so that any member of the public may obtain information posted on the site at any time.

(2) Innovative Automated Intelligent Agent—The site shall be constructed with an innovative automated intelligent agent that is a diagnostic tool for assisting users in problem definition and the selection of appropriate AT devices and AT resources.

(3) Resources.

(a) Library on Assistive Technology—The site shall include access to a comprehensive working library on AT for all environments, including home, workplace, transportation, and other environments.

(b) Resources for a Number of Disabilities—The site shall include resources relating to the largest possible number of disabilities, including resources relating to low-level reading skills.

(4) Links to Private Sector Resources and Information—To the extent feasible, the site shall be linked to relevant private sector resources and information, under agreements developed between the institution of higher education and cooperating private sector entities.

(5) Minimum Library Components—At a minimum, the Internet site shall maintain updated information on:

(a) How to plan, develop, implement, and evaluate activities to further extend comprehensive statewide programs of technology-related assistance, including the development and replication of effective approaches to:

(i) Providing information and referral services;

(ii) promoting interagency coordination of training and service delivery among public and private entities;

(iii) conducting outreach to underrepresented populations and rural populations;

(iv) mounting successful public awareness activities;

(v) improving capacity building in service delivery;

(vi) training personnel from a variety of disciplines; and

(vii) improving evaluation strategies, research and data collection;

(b) Effective approaches to the development of consumer-controlled systems that increase access to, funding for, and awareness of, AT devices and AT services;

(c) Successful approaches to increasing the availability of public and private funding for and access to the provision of AT devices and AT services by appropriate State agencies; and

(d) Demonstration sites where individuals may try out AT.

Selection Criteria: In evaluating applications for grants under the AT Act, the Secretary uses selection criteria chosen from 34 CFR 75.210. The maximum score for all criteria to be used for this competition is 100 points.

(a) *Significance* (8 points total)

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies.

(b) *Quality of the project design* (35 points total)

(1) The Secretary considers the quality of the design of the proposed project.

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(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (12 points).

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs (10 points).

(iii) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition (8 points).

(iv) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources (5 points).

(c) *Quality of project services* (16 points total)

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible proposed project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (5 points).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services (5 points).

(ii) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources (6 points).

(d) *Quality of project personnel* (12 points total)

(1) The Secretary considers the quality of the personnel who will carry out the project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (3 points).

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator (5 points).

(ii) The qualifications, including relevant training and experience, of key project personnel (4 points).

(e) *Adequacy of resources* (6 points total)

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization (3 points).

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project (3 points).

(f) *Quality of the management plan* (11 points total)

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (6 points).

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (5 points).

(g) *Quality of the project evaluation* (12 points total)

(1) The Secretary considers the quality of the evaluation to be conducted OF the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project (6 points).

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible (6 points).

Application Instructions and Forms

The Appendix to this notice contains forms and instructions, a statement regarding estimated public reporting burden, and various assurances and certifications. Please organize the parts and additional materials in the following order:

- PART I: Application for Federal Assistance (ED 424 (Rev. 11/30/2004)) and instructions.
- PART II: Budget Form—Non-Construction Programs (ED 524) and instructions and definitions.
- PART III: Application Narrative.
- PART IV: Additional Materials.
- Estimated Public Reporting Burden.
- Assurances—Non-Construction Programs (Standard Form 424B).
- Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

(**NOTE:** ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

- Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

You may submit information on a photocopy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

Application Procedures

The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

The Secretary strongly recommends the following:

(1) a one-page abstract;

(2) an Application Narrative (*i.e.*, part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more than 75 numbered, double-spaced (no more than 3 lines per vertical inch) 8.5″ x 11″ pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(3) a font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

Instructions for Transmitting Applications

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(a) *If You Send Your Application by Mail*

You must mail the original and two copies of the application on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional seven copies of your application. Mail your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.224B and title), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(b) *If You Deliver Your Application by Hand*

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional seven copies of your application. Deliver your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.224B and title), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

The Application Control Center accepts application deliveries daily between 8 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

Notes

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or if you or your courier deliver it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any, and title—of the competition under which you are submitting your application.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via Internet: *Donna.Nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD) you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 29 U.S.C. 3014.

Dated: August 6, 2002.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this collection of information is 1820–0027. Expiration date: 2/28/2003. We estimate the time required to complete this collection of information to average 30 hours per response, including the time to review instructions, search existing data sources, gather the data needed, and complete and review the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651. If you have comments or concerns regarding the status of your submission of this form, write directly to: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645.

Frequent Questions

1. *Can I get an Extension of the Due Date?*

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. *What Should be Included in the Application?*

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many

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cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. *What Format Should be Used for the Application?*

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. *May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?*

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. *What is the Allowable Indirect Cost Rate?*

The limits on indirect costs vary according to the program and the type of application. An applicant for an RRTC is limited to an indirect rate of 15%. An applicant for a Disability and Rehabilitation Research Project should limit indirect charges to the organization's approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate.

6. *Can Profitmaking Businesses Apply for Grants?*

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. *Can Individuals Apply for Grants?*

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. *Can NIDRR Staff Advise me Whether my Project is of Interest to NIDRR or Likely to be Funded?*

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. *How do I Assure That my Application will be Referred to the Most Appropriate Panel for Review?*

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. *How Soon After Submitting my Application can I Find out if it will be Funded?*

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. *Can I Call NIDRR to Find out if my Application is Being Funded?*

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. *If my Application is Successful, can I Assume I will get the Requested Budget Amount in Subsequent Years?*

No. Funding in subsequent years is subject to availability of funds and project performance.

13. *Will all Approved Applications be Funded?*

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000-01-P

Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____ Organizational Unit
Address: _____
City _____ State _____ County _____ ZIP Code + 4

2. Applicant's D-U-N-S Number

3. Applicant's T-I-N

4. Catalog of Federal Domestic Assistance #: 8 4
Title: _____

5. Project Director: _____
Address: _____
City _____ State _____ ZIP Code + 4
Tel. #: _____ Fax #: _____
E-Mail Address: _____

6. Novice Applicant ☐ Yes ☐ No

7. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

8. Type of Applicant (Enter appropriate letter in the box.)

A State
B Local
C Special District
D Indian Tribe
E Individual
F Independent School District
G Public College or University
H Private, Non-Profit College or University
I Non-Profit Organization
J Private, Profit-Making Organization
K Other (Specify): _____

Application Information

9. Type of Submission:
—PreApplication ☐ Construction ☐ Non-Construction
—Application ☐ Construction ☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes (Date made available to the Executive Order 12372 process for review): _____
☐ No (If "No," check appropriate box below.)
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: _____ End Date: _____

12. Are any research activities involving human subjects planned at any time during the proposed project period?
☐ Yes (Go to 12a.) ☐ No (Go to item 13.)

12a. Are all the research activities proposed designated to be exempt from the regulations?
☐ Yes (Provide Exemption(s) #): _____
☐ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	0.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (Please type or print name clearly.)

b. Title

c. Tel. #: _____ Fax #: _____

d. E-Mail Address:

e. Signature of Authorized Representative Date: _____

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Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

   Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

    Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the

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activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

U.S. DEPARTMENT OF EDUCATION
BUDGET INFORMATION
NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004
Expiration Date: 02/28/2003

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

Name of Institution/Organization

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

ED Form No. 524

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Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

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ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

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Prescribed by OMB Circular A-102

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

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CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

OMB Control No. 1890-0007 (Exp. 09/30/2004)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Public Law (P.L.) 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1890-0007**. The time required to complete this information collection is estimated to average 1.5 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248.

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Federal Register

Monday,
August 12, 2002

Part VI

Department of Justice

Immigration and Naturalization Service

8 CFR Parts 214 and 264
Registration and Monitoring of Certain Nonimmigrants; Final Rule

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 214 and 264

[INS No. 2216–02; AG Order No. 2608–2002]

RIN 1115–AG70

Registration and Monitoring of Certain Nonimmigrants

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: Recent terrorist incidents have underscored the need to broaden the special registration requirements for nonimmigrant aliens from certain designated countries, and other nonimmigrant aliens whose presence in the United States requires closer monitoring, to require that they provide specific information at regular intervals to ensure their compliance with the terms of their visas and admission, and to ensure that they depart the United States at the end of their authorized stay. On June 13, 2002, the Department published a proposed rule to modify the regulations to require certain nonimmigrant aliens to make specific reports to the Immigration and Naturalization Service: upon arrival; approximately 30 days after arrival; every twelve months after arrival; upon certain events, such as a change of address, employment, or school; and at the time they leave the United States. This final rule adopts the proposed rule without substantial change.

DATES: This rule is effective September 11, 2002.

FOR FURTHER INFORMATION CONTACT: Dan Brown, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW, Room 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION:

Introduction

This final rule applies to only a small percentage of the more than 35 million nonimmigrant aliens who enter the United States each year: (1) Nonimmigrant aliens from selected countries specified in notices published in the **Federal Register**, and (2) individual nonimmigrant aliens who are designated by a consular officer outside the United States or an inspection officer at the port of entry based on information that indicates the need for closer monitoring of the alien's compliance with the terms of his or her visa or admission because of the national security or law enforcement interests of the United States. This rule expands the existing special registration rule to require that these designated nonimmigrant aliens provide more detailed and frequent information to ensure that they comply with the conditions of their visas and admissions, along with leaving the United States.

Adoption of the Proposed Rule Without Substantial Change

The Department received 14 comments on the proposed rule (67 FR 40581, June 13, 2002). Some comments supported the adoption of the proposed rule while other comments opposed the proposed rule. In several instances, specific comments repeated the views of other comments in a different form. Rather than respond to each comment individually, the Department is responding to the nature of the comments by subject matter.

In adopting the proposed rule as a final rule, the Department reiterates and adopts the Supplementary Information included in the proposed rule as explaining the final rule. The Department has made one set of changes in the final rule to reflect the fact that the special registration system will be paperless; the Department will not be developing a paper form to collect information. The second set of changes clarifies and limits the scope and applicability of 8 CFR 264.1(f)(8). The Department provides the following additional information in responding to the comments received.

Response to Comments Received

A. Constitutional Implications

1. Notice of the Requirements of the Rule

Several commenters argued that the notice requirement for nonimmigrant aliens subject to special registration who are already residing in the United States violates their due process rights. One commenter suggested that there needed to be a more formal notification structure developed before provisions relating to nonimmigrant aliens subject to special registration already in the United States could be enforced because the proposal affects such a small segment of society. The commenter argued that these individuals should be given some other way to voice their opinions other than the notice and comment period, citing *Londoner* v. *City & County of Denver*, 210 U.S. 373 (1908), and the notion that due process requires that they be given an individualized hearing. The commenter argues that those individuals, with limited English proficiency or literacy, are not being given adequate notice and that the opportunity to be heard must be tailored to the regulated group. Another commenter suggested that publication in the **Federal Register** as public notification of a requirement is a legal fiction.

These comments raise an issue related to two different processes. First, the commenters appear to raise the issue of whether the publication of the proposed and final rule in the **Federal Register** is sufficient notice of the content and applicability of the regulation under the Due Process Clause of the Fifth Amendment to the United States Constitution. Second, the commenters appear to raise the issue of whether publication of a notice in the **Federal Register**, as required by § 264.1(f)(4), of the applicability of the requirements of this rule to a specific country or class, is sufficient notice of the application of the rule under the Due Process Clause.

Such notice by publication in the **Federal Register** unequivocally constitutes sufficient notice for due process purposes. Congress has specified this form of notice and made that notice binding on all who are within the jurisdiction of the United States. 44 U.S.C. 1507 (publication in **Federal Register** "is sufficient to give notice of the contents of the document to a person subject to or affected by it"). The courts have clearly relied upon the adequacy of notice by publication in the **Federal Register** since the **Federal Register's** inception. *See, e.g., Lyng* v. *Payne*, 476 U.S. 926, 942–43 (1986); *Dixson* v. *United States*, 465 U.S. 482, 489 n.6 (1984); *Federal Crop Ins. Corp.* v. *Merrill*, 332 U.S. 380, 385 (1947). The Department rejects the notion that more notice is required as a matter of law.

The Department does recognize that the efficacy of the law is more assured when those subject to the law have actual notice of its terms, and, accordingly, the Department is taking steps in addition to publication in the **Federal Register** to publicize its actions relating to immigration matters. When classes of nonimmigrant aliens already in the United States are required to present themselves for special registration, the Department expects to publicize such announcements in additional fora, beyond what is required by the Constitution and the laws of the United States. However, as a legal matter there is no question that one who is within the jurisdiction of the law of the United States, whether by statute or regulation, must comply with the terms of the law. It is the individual's responsibility to know the law.

2. Notice of Violative Conduct

One commenter argued that the proposed rule, in defining the special registration requirements and applying the Attorney General's interpretive authority to violations of the requirements as indicia of disregard for the laws of the United States and the potential for further violations, creates a new violation of the Immigration and Nationality Act ("INA" or "Act") that would be both obscure and *de minimis*, based only on publicity by **Federal Register** notices rather than actual notice. The commenter suggests that this rule would provide the most technical and non-substantive bases by which individuals could be detained and eventually removed.

The Department disagrees. As noted above, all who are subject to the jurisdiction of the laws of the United States are required to abide by those laws. Notice of the laws by publication is sufficient notice under the Constitution.

3. Discrimination

Several commenters argued that the rule targets specific minority ethnic groups and members of a specific religion, i.e., Arabs and Muslims. The commenters noted that several individuals currently being detained or prosecuted would not have been covered by the specific criteria set forth in the proposed rule. One commenter in particular argued that the proposal "will further stigmatize innocent Arab and Muslim visitors * * * who have committed no crimes and pose no danger to us."

The Department disagrees with this analysis. There are several means by which an alien may become subject to special registration. First, as provided in the regulations being amended and in the final rule, the Attorney General may designate specific countries, the nationals and citizens of which are subject to special registration. Currently, nonimmigrant aliens from Iran, Iraq, Libya, and Sudan are subject to special registration requirements, including fingerprinting. 63 FR 39109 (July 21, 1998). Accordingly, contrary to what some commenters appear to believe, this method is not new.

Second, a specific alien may be subject to special registration if intelligence information indicates that the individual, while qualified for a visa, warrants closer attention. Pre-established criteria will be applied. These criteria will be based on intelligence regarding the activities and behavior patters of terrorist organizations, not on racial, ethnic, or religious stereotypes. The Department strongly disagrees with the implication that it would develop or apply such criteria in an invidious manner on the basis of race, religion, or membership in a social group.

The Department strongly disagrees with the premise of the comments that the rule is invidiously discriminatory. Congressional enactments and regulations concerning immigration have historically drawn distinctions on the basis of nationality and related criteria. The political branches of the government have plenary authority in the immigration area. *See Fiallo* v. *Bell*, 430 U.S. 787, 792 (1977); *Matthews* v. *Diaz*, 476 U.S. 67, 80–82 (1976). In the context of immigration and nationality laws, the Supreme Court has particularly "underscore[d] the limited scope of judicial inquiry." *Fiallo*, 430 U.S. at 792. The Supreme Court has stated that

> over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens * * * [T]he power to expel or exclude aliens [i]s a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.

Id. (internal quotations and citations omitted). Congress's "inevitable process of 'line drawing'" in the immigration context is therefore given great deference. *Id.* at 795 n.6. The substantive decision to relax requirements for only specified nationals, while excluding all others, is among those political decisions that are "wholly outside the concern and competence of the Judiciary," *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 596 (1952) (Frankfurter, J., concurring). When the Executive Branch exercises authority delegated by Congress in the immigration area, a court will not "look behind the exercise of that discretion." *See Fiallo*, 430 U.S. at 794–95 (citing *Kleindienst* v. *Mandel*, 408 U.S. 753 (1972)). As in *Fiallo*, the Attorney General must here make compromises involving "the inevitable process of 'line drawing,'" [whereby] Congress has determined that certain classes of aliens are more likely than others to satisfy national objectives without undue cost, and [it] granted preferential status only to those classes." *Fiallo*, 430 U.S. at 795 n.6. "Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews*, 426 U.S. at 80. The distinctions drawn by the rule are appropriate in the context of immigration law and national security.

The Department recognizes that a few individuals in the United States have questioned the loyalty of some Muslim Americans to the United States. The Department also recognizes that some American Muslims have been targets of discrimination. Some mosques have been damaged and desecrated. A number of Muslim Americans—and others wrongly believed to be Muslims—have been threatened or attacked. These attacks against Muslim Americans and the Muslim communities are not only reprehensible; like terrorism, they are also attacks against the United States and humanity. The Federal Bureau of Investigation (FBI) has investigated such attacks and threats against Arab, Muslim, and Sikh Americans. The FBI has initiated more than 360 investigations in concert with state and local law enforcement authorities. More than 100 individuals have already been charged with federal, state, and local crimes relating to such attacks. The Department continues to treat such crimes as civil rights violations and will vigorously prosecute these violations.

The Department remains firmly committed to protecting the civil rights of all individuals in the United States while seeking to prevent acts of terrorism. The Department unequivocally rejects the notion that the requirements of the final rule, or the criteria for application of the final rule, to nonimmigrant aliens subject to special registration are, or are intended to be, invidiously discriminatory.

4. Applicability of the Act

One commenter argued that the reporting structure for nonimmigrant aliens subject to special registration once they have arrived in the United States does not fully comply with the reporting structure formulated in the Act. This commenter believed that section 265 of the Act (8 U.S.C. 1305) continues to require that aliens report to the Attorney General, in writing, their current address before January 31st of every year and that certain aliens update this address every three months for the duration of the time that they remain in the United States. These provisions of the Act were modified in 1981 to eliminate the "January registration" and 3-month provisions. The amendments continued a 10-day notification of change of address requirement. Public Law 97–116, section 11, 95 Stat. 1617 (1981).

As discussed in the proposed rule, section 262(a) of the Act (8 U.S.C. 1302(a)) provides that all aliens who have not previously been registered and fingerprinted pursuant to section 221(b) of the Act (8 U.S.C. 1201(b)), have a duty to apply for registration and to be fingerprinted if they remain in the

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United States for 30 days or longer.[1] Under the existing regulations at 8 CFR 264.1(a), the Immigration and Naturalization Service ("Service" or "INS") registers nonimmigrants using Form I–94 (Arrival-Departure Record). As authorized by section 262(c) of the Act (8 U.S.C. 1302(c)), however, the Service's existing regulations at 8 CFR 264.1(e) contain general provisions waiving the fingerprinting requirement for many nonimmigrants. Accordingly, the vast majority of nonimmigrant aliens are admitted to the United States without being either fingerprinted or photographed.

Notwithstanding the general registration requirements, section 263(a) of the Act (8 U.S.C. 1303(a)) also authorizes the Attorney General to prescribe special regulations and forms for the registration, among other classes, of "aliens of any other class not lawfully admitted to the United States for permanent residence." Pursuant to this section, as well as the Attorney General's general registration authority under section 262 of the Act (8 U.S.C. 1302), the Attorney General promulgated 8 CFR 264.1(f), which authorizes the Attorney General, by notice published in the **Federal Register**, to direct that certain nonimmigrant aliens from designated foreign countries be registered, fingerprinted, and photographed by the Service at the port of entry at the time the nonimmigrant aliens apply for admission. *See* 58 FR 68024 (Dec. 23, 1993) (final rule); 63 FR 39109 (July 21, 1998) (notice). Moreover, the Attorney General is authorized to prescribe conditions for the admission of nonimmigrant aliens under section 214 of the Act (8 U.S.C. 1184). Section 265 of the Act (8 U.S.C. 1305) requires that all aliens who remain in the United States for 30 days or more (other than A or G nonimmigrants) must file a notice of change of address with the Attorney General within 10 days of any change of address.

This final rule provides for implementation of these requirements for nonimmigrant aliens subject to special registration. However, this Supplementary Information also serves as a reminder to all aliens (not just those nonimmigrant aliens subject to special registration) of their legal obligations under section 265 of the Act to notify the Attorney General, as delegated to the Service, within 10 days of any change of address by filing the general change of address form, Form AR–11.

[1] The only exception is for aliens admitted as A or G nonimmigrants, which pertain to diplomats, employees of certain international organizations, etc. INA section 263(b)(8 U.S.C. 1303(b)).

B. Efficacy of the Rule

1. Acquiring Information Prior to Travel

Several commenters suggested that data acquisition for any effective monitoring of aliens after admission could be better performed at the visa issuance stage. A commenter questioned whether "it would [be] more effective to have these biometrics collected at the U.S. Department of State Consular Offices that would be issuing the nonimmigrant visas." The commenter stated a belief that all ports of entry are, or soon will be, electronically connected to the United States Department of State consular database in order that, when an individual applies for admission to the United States, the inspector at the port of entry can call up the picture and other data about the individual.

The Department notes that the Department of State is acquiring a great deal of information through Form DS–156, the visa application, and related documents. These forms contain much, but not all, of the information that would be required through special registration. Accordingly, special registration is warranted to obtain the full array of information that is necessary to locate aliens who violate the terms of their visas or admission. However, even if all of the required information were acquired by the consular officers at the point at which they issue a visa, it would still be necessary to confirm the information—as a way of confirming identity—at the port of entry and subsequently during the alien's stay in the United States.

The INS has been working with the State Department to expand data sharing to ensure that Immigration Inspectors have access to the information gathered in the visa issuance process in the Consolidated Consular Database. As a result, this information is now available at all United States ports-of-entry (POEs), and INS has trained inspectors on how to use that data to detect and prevent fraud. Similarly, information is being provided to consular officers regarding the special registration process that can be provided to appropriate visa applicants.

2. Intelligence and Visa Disapproval

A commenter argued that the rule will not change terrorist or criminal methods: they will either comply fully, and registration will not prevent them from committing terrorist or criminal acts at any time; comply upon entry, but "go underground"; enter without inspection; or use proxies. Several commenters contended that this system would not have acquired the required information on several individuals currently involved in certain notorious cases. At the same time, the commenter claimed that the rule does not mitigate visa fraud or immigration document fraud. This commenter concluded that fingerprinting, photographing, and periodically interviewing a person, whether citizen or alien, cannot predict or deter future terrorist or criminal behavior. One commenter also suggested that it was more important to deny the visa in the first place than attempt to monitor the individual once in the United States.

Another commenter noted that the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. No. 107–173, 116 Stat. 543 (2002), provides for such things as the use of pre-arrival passenger manifests, enhanced database sharing, improved technology, and increased staffing of inspections, all with the hope of enhancing the government's ability to interdict, outside of the United States, those who would harm America. The commenter further noted that section 212(a)(3)(A) of the Act (8 U.S.C. 1182(a)(3)(A)) provides consular officers and immigration inspectors with broad authority to prevent the admission of persons whom they believe may engage in any unlawful activity from entering the United States. Given this authority, the commenter questioned why the government would admit such persons and subject them to special registration.

The Department agrees that, where an individual is inadmissible, the Department of State should deny an application for a visa. However, when an alien is admissible and is granted a visa (or enters the United States properly without a visa), but should nevertheless be more closely monitored in the national security interest of the United States, this rule will provide the basis for that monitoring. The rule is not a substitute for proper determination of visa and admission eligibility, it is only a supplemental monitoring process for those who are eligible for a visa and admissible, but who warrant closer monitoring based on the standards set out in the rule.

The rule must be understood as a third line of defense. First, the Department of State must be satisfied that the individual is eligible for a visa. Section 306 of the Enhanced Border Security and Visa Entry Reform Act of 2002 bars the issuance of visas from a country that is a state sponsor of international terrorism unless the Secretary of State, in consultation with the Attorney General and the heads of other appropriate agencies, makes a determination that an alien from such a country does not pose a threat to the safety or national security of the United States. 8 U.S.C. 1735(a).

Second, the inspecting officer must determine that the alien is admissible. In this context, it is the alien's responsibility to prove admissibility. INA section 212 (8 U.S.C. 1182). If the nonimmigrant alien can satisfy these requirements, then the alien may be admitted.

However, there are national security and law enforcement reasons why some aliens who are admissible and have visas (or enter properly without a visa) require further monitoring. The final rule, like the proposed rule, provides a process under which such aliens will provide additional, confirmable information that will enable the INS to contact them quickly if necessary and will ensure that such aliens comply with the terms of their visas and the conditions of their admission. As for the terrorist who complies upon entry, but seeks to go underground immediately thereafter, this rule will provide a basis for alerting law enforcement organizations to that fact when the would-be terrorist fails to register at the 30-day point.

3. Change of Address and Form AR–11

One commenter acknowledged that the provision requiring filing of a change of address has long been in the statute and regulations, but argued that its "notorious ineffectuality has long since rendered the provision irrelevant." A number of commenters noted that the Service does not maintain a central address file and that the most effective way to file a change of address is to file it with the office holding an application for benefits. Several commenters raised issues concerning whether there would be any electronic retrieval system to support the information provided; whether aliens know that the form is required; whether any means exist to confirm receipt of a change of address; and whether "widespread ignorance" of the provision renders "virtually all "violations" of this provision" not willful.

The Department has recognized the historical shortcomings of the address notification system and has taken steps to develop the necessary infrastructure to provide a complete address record system. For example, the Department's Inspector General recently reported on the historical process for recording student visas, and the failures of that system, and made recommendations for improvement. *See* Office of the Inspector General, *The Immigration and Naturalization Service's Contacts with Two September 11, Terrorists: A Review of the INS's Admissions of Mohamed Atta and Marwan Alshehhi, its Processing of their Change of Status Applications, and its Efforts to Track Foreign Students in the United States* 187 (May 20, 2002). The existing student visa process is being replaced by the Student and Exchange Visitor Information System (SEVIS). 67 FR 34862 (May 16, 2002); (Proposed Rule: Retention and Reporting of Information for F, J and M Nonimmigrants; Student and Exchange Visitor Information System (SEVIS)); 67 FR 44344 (July 1, 2002) (Interim Rule with Request for Comments: Allowing Eligible Schools To Apply for Preliminary Enrollment in the Student and Exchange Visitor Information System). Moreover, the Department has proposed changes in the forms that aliens use to ensure that they are aware of the requirements of the Act. 67 FR 48818 (July 26, 2002) (Proposed Rule: Address Notification to be Filed with Designated Applications). As a part of these processes, the INS is reconfiguring its computer systems to enhance the utilization of address and other information. Accordingly, the Department believes that the address notification system supporting this final rule is already sufficiently effective and will be improved in the future.

One commenter supported overall enforcement of address change requirements, but recommended leeway for previously unreported changes in address and electronic filing of the form. This commenter suggested that electronic filing would ease compliance while benefitting the INS in its efforts to provide electronic filing of various petition types. The commenter suggests that the vast majority of previous unreported changes of address were not willful violations of the Act, but an oversight in light of different INS priorities and confusion. Thus, the commenter suggests, employers and foreign nationals often file a change of address with an INS Service Center or District Office where a filing or petition is pending, believing this will provide INS with the proper notification of a change of address.

The Department does not disagree with the notion that electronic filing may be beneficial, provided that biometric and other identity confirmations can be included in such a system. However, until such a system is fully implemented, the Department will continue to require nonimmigrant aliens subject to special registration to make their special registrations in person to ensure the accuracy and integrity of the special registrations.

The Department notes that the process of registration will be essentially "paperless" in that information will generally be entered directly into an electronic format. While the proposed rule refers to the information being provided in the "form" required by the Service, the Department has found that a paper form will not be necessary. To ensure clarity, the Department has made minor revisions to the final rule to eliminate the suggestion that a paper form is being developed and will be used in special registration. The only paper process that is continued will be that of the change of address form (AR–11) and nonimmigrant aliens subject to special registration will be instructed at the time of their initial registration on the proper filing of this form. The limited number of individuals who are also within the SEVIS system will be required to notify their schools and the Service of changes of address.

One commenter suggested that there must be assurances that those who have previously moved without reporting a change of address will be able to rectify this oversight without subjecting themselves to fines, imprisonment, and possible removal. The commenter recommended that the rule include a provision recognizing the shift in enforcement priorities, and allow for electronically filed address corrections, while clarifying the process to effectuate a change of address throughout the Service. The Department has considered this idea carefully but declines to adopt it. The concept is technically outside the scope of this rule in that it applies to all address changes, not merely the prospective special registration system embodied in this final rule. This rule is designed to deal with nonimmigrant aliens subject to special registration, not the broader class of aliens.

The Department disagrees with the necessity of providing a specific mechanism to rectify past failures to provide a change of address, or a recognition of a "shift" in enforcement priorities. The requirements of the Act have been in effect for many years and a lack of publicity about specific enforcement of the provision does not change the legal effect of the requirements. The commenter's suggestion that electronic filing of changes of address should be provided does merit consideration and the Department is considering how best to implement such an electronic filing system.

The Department recognizes that the development and implementation of the information technology necessary to

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support the special registration system requires time. In particular, the installation of data entry systems requires the acquisition of hardware in some ports-of-entry. Accordingly, while the registration system is expected to be brought on line in a timely fashion, it is also expected that 100 percent coverage will not be immediately available. The Department will exercise prosecutorial discretion, as is deemed appropriate based on the particular circumstances, with regard to the enforcement of the system at those ports-of-entry where the electronic system, or a manual system, is not immediately available. This exercise of discretion not to pursue the individual alien beyond requiring delayed compliance does not, however, absolve any alien from the requirements of the rule.

4. Airport Inspection Facilities

Several commenters stated concern that efficient passenger processing through POEs, airport facilities and airport operations may be negatively impacted by the special registration entry and exit processes. Commenters offered different solutions to perceived problems in the actual flow of arrivals.

One commenter recommended fingerprinting and photographing in secondary inspection areas of airports. The commenter suggested that this would allow the majority of international passengers to be processed efficiently through the primary inspection area, which would allow the Service to continue to strive to meet the 45-minute passenger-processing goal. The Department intends to conduct fingerprinting and photographing in secondary inspection areas in airports precisely because of this reasoning, even though there are no longer any statutorily mandated time limits for inspection.

One commenter suggested that facilities at ports-of-entry do not have the capacity to take fingerprints and photographs. The commenter's assertion is incorrect. The Department has been utilizing both two- and ten-fingerprint systems for the purpose of identifying aliens and rapidly comparing a specific set of fingerprints with existing fingerprint files, including the Federal Bureau of Investigation's Integrated Automated Fingerprint Identification System (IAFIS). Photographing capabilities also exist at all ports-of-entry.

Another commenter recommended that the Service work with international air carriers servicing United States international airports so that registration information can be electronically transmitted via the advanced passenger information system (APIS) to the Service and queried through the interagency border identification system (IBIS) prior to the non-immigrant alien's entry into the United States. This commenter noted that INS, Customs, and international air carriers have agreed to adopt the U.N. Edifact format for transmitting electronic information. Additionally, the commenter suggested that INS establish a consortium with each of the airport operators and international carriers servicing that federal inspection service area. The commenter noted that without federal funding possible modifications or expansion of a federal inspection service area is limited and costly to the airport.

The Department notes that many of these suggestions are already being implemented as part of the INS's continuing improvement of the inspection service. These issues do not address the provisions of the rule, but the manner in which the INS relates to the air carriers and airport administrations.

5. Economic Impact of the Rule

Several commenters suggested that the proposed rule on registration and monitoring of certain nonimmigrants could have the potential significantly to deter legitimate international travel to the United States. Accordingly, they suggested that registration of nonimmigrants must be targeted in a manner that enhances United States national security while not eroding economic security. The Department has attempted to balance these interests in adopting the proposed and final rules. The national security benefits from this rule outweigh the economic costs.

C. Specific Issues

1. Condition of Admission

One commenter argued that the proposal to amend 8 CFR 214.1(f) to make compliance with the special registration requirements a condition of maintenance of status is flawed because it is a ministerial requirement, not intrinsic to a nonimmigrant's maintenance of status. The commenter suggests that *Mashi* v. *INS*, 585 F.2d 1309 (5th Cir. 1978), limits the use of conditions of admission. However, *Mashi* v. *INS* holds no more than that the immigration judge and the Board of Immigration Appeals used the wrong regulatory provision in resolving that alien's case. The remainder of the opinion does not discuss the proposition cited by the commenter.

This commenter also argued that 8 CFR part 214 could not be used to establish conditions because, the commenter argued, one court had found that the Attorney General exceeded his authority when he promulgated 8 CFR 214.1(f), which imposes as a condition of a nonimmigrant's admission and continued stay in the United States the full and truthful disclosure of all information requested by the INS, regardless of whether the information is material, *Romero* v. *INS*, 39 F.3d 977, 979 (9th Cir. 1994). However, that case related to whether the Service could properly impose a condition to provide full and truthful disclosure of information that was *not material* to the respondent's immigration status. *Id.* at 980. Here the information that aliens are required to provide *is* material to their immigration status. Moreover, this rule is promulgated under the Attorney General's authority not only to establish conditions of admission under section 214 of the Act (8 U.S.C. 1184), but also to promulgate regulations for the registration, reporting of changes of address, and special registration of non-immigrants under sections 263 and 265 of the Act (8 U.S.C. 1303, 1305). This confluence of authority is much broader than the authority interpreted in *Romero* and depends not merely upon an interpretation of the Act, but the specific delegations of authority in the cited provisions of the Act.

2. Identification of Aliens

One commenter argued that it is impossible for many nonimmigrant aliens subject to special registration to acquire a second form of identification from their country of origin. The commenter suggests that some countries do not have second forms of identification. The Department disagrees. Many countries issue more than one form of identification, such as a national identification card and a driver's license. A second form of photographic identification is not specifically required by the regulation, but the Service is authorized to request confirmatory information.

3. Pre-existing Criteria

One commenter argued that, while the proposed 8 CFR 264.1(f)(2)(iii) states that nonimmigrant aliens subject to special registration will be subject to special registration if they meet "pre-existing criteria," no criteria are provided. The commenter questions what these criteria would be, and how specific they would be.

The criteria by which an alien may be required to make a special registration cannot be made public without defeating the national security and law enforcement effectiveness of the criteria. As with the criteria the United States Customs Service and the Drug Enforcement Administration use in determining which individuals entering the United States will be subject to greater scrutiny for trafficking in controlled substances, publicly announced criteria for requiring special registration could be evaded by those who are subject to the requirements. Even if some details of a specific profile were to become publicly available, it is worth noting that the constantly changing patterns of criminal activity require constant adjustment of the criteria through improved intelligence and more refined analysis, *cf. United States* v. *Berry*, 670 F.2d 583, 598–599 & n.17 (5th Cir. 1982), and cases cited therein, and any public profile is, at best, of evanescent value.

The international response to the September 11th attacks has been defined by multilateral cooperation. The success of this response has depended in large part on improved sharing among governments of information relating to terrorists, their associates, and their activities. Continued vigilance requires procedures to institutionalize such coordination of information. Accordingly, the Attorney General has directed the FBI to establish procedures to obtain, on a regular basis, the fingerprints, other identifying information, and available biographical data of all known or suspected foreign terrorists who have been identified and processed by foreign law enforcement agencies. The FBI also coordinates with the Department of Defense to obtain, to the extent permitted by law, the fingerprints, other identifying information, and available biographical data of known or suspected foreign terrorists who have been processed by the United States armed forces. Such information is, and will continue to be, regularly evaluated in order to update the criteria that are used in identifying nonimmigrant aliens who are appropriately subject to special registration.

In the same vein, sections 203 and 905 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Public Law 107–56, 115 Stat. 272, 278, 388 (2001), authorized and required sharing of foreign intelligence and counterintelligence information in new ways, subject to limitations otherwise provided by law and exceptions delineated in regulations to be issued by the Department.

4. Reason to Believe

A commenter noted that proposed 8 CFR 264.1(f)(2) also states that a nonimmigrant will be subject to the special registration requirements if there is "reason to believe" that the nonimmigrant is a national or citizen of a specific country or meets the pre-existing criteria, and questioned what criteria would be used. In this context, the commenter questioned whether language or dress would be considered appropriate indicia. Another commenter argued that the proposed rule was a delegation of the Attorney General's discretion to the inspecting officer at the ports-of-entry, allowing discretion for the inspecting officers to choose aliens who they believe to be a risk. Although the commenter noted that the Act authorizes any employee of the Department to perform or exercise any of the powers, privileges, or duties conferred or imposed by this chapter, the commenter was concerned over the possibility of abuse.

Under 8 CFR 264.1(f)(2)(i), (ii), as added by this final rule, the authority to designate the classes of nonimmigrant aliens who will be subject to special registration requirements is retained by the Attorney General, in consultation with the Secretary of State. The final rule notes that such designation will apply to "nationals" or "citizens" of a specified country. The Act, moreover, permits the Attorney General to designate "class[es]" of aliens for special registration, not merely countries. INA section 263(a)(6) (8 U.S.C. 1303(a)(6)). In light of the fact that individual aliens involved in terrorist activity or other activity inimical to the interests of the United States may commit document fraud to gain admission to the United States for nefarious purposes, the rule allows immigration inspectors to conclude that an alien will be subject to special registration requirements if they have "reason to believe" that the individual alien actually does fall within the classes of nonimmigrant aliens subject to special registration.

This "reason to believe" phrase is used throughout the Act to refer to situations where there is a basis for believing in fact that a provision of the Act applies. *See, e.g.*, INA section 204(f)(2)(A) (8 U.S.C. 1154(f)(2)(A)) (procedure for granting immigrant status; certain aliens whom the Attorney General has reason to believe were born in certain countries and were fathered by a United States citizen); INA section 212(a)(2)(C) (8 U.S.C. 1182(a)(2)(C)) (alien inadmissible if consular or immigration officer has reason to believe alien is a controlled substance trafficker); INA section 214(n)(1) (8 U.S.C. 1184(n)(1)) (alien inadmissible if substantial reason to believe alien committed act of severe form of human trafficking); INA section 221(g)(3) (8 U.S.C. 1201(g)(3)) (non-issuance of visa if consular officer has reason to believe alien not eligible) of the Act. In the final rule, the "reason to believe" standard will not have such drastic consequences, but instead will merely require certain nonimmigrant aliens to provide more detailed information at regular intervals. Where information indicates that an alien is, in fact, a national or citizen of a designated country, or that other provisions of the rule apply, the inspecting officer must be authorized to make the special registration requirements applicable to that alien.

5. Notice of New Country Listings

One commenter was concerned that a specific country that is not currently listed might be listed in the future. The commenter believed that this would be antithetical to the relationship between the United States and that country and its citizens.

The listing of countries from which nonimmigrant aliens will be subject to special registration is determined by the Attorney General in consultation with the Secretary of State, thereby ensuring that foreign policy implications will be considered when evaluating the possible designation of any specific country. However, because the final rule only provides the framework for the special registration process, and does not make any specific designations, this comment is outside the scope of this final rule.

6. Reporting at 30-day and Annual Intervals

One commenter suggested that interval reporting is problematic. As the States are making it increasingly difficult, if not impossible, for some nonimmigrants to obtain driver's licenses or identification cards, some aliens may find that an alternative form of identification is not available. The commenter suggested proof of tenancy is often impossible because "short-term visitors (such as students touring for the summer) often travel around the United States, with no set address as they stay in hostels or camp"; in other cases aliens may not have established proof of tenancy in their names if they are staying with relatives or friends. Another commenter suggested that nonimmigrants sponsored by a charity, such as for a speaking tour, be permitted to use the charity's address.

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A commenter also argued that interval reregistration will be burdensome, both in traveling to a specified office and in the process of scheduling and appearing at an overburdened office. This commenter also discussed, and discounted, the notion that nonimmigrants might be required to report to state or local police offices.

The rule continues to provide that an individual must reregister at a 30-day interval and annually. Neither of these requirements appears to the Department to be burdensome. However, if an individual nonimmigrant alien subject to special registration can show a specific burden, that nonimmigrant alien subject to special registration may seek relief from the appropriate district director.

7. Relief

Several commenters stated that the provision allowing a district director to grant relief from the provisions of the rule was insufficient. They were concerned that travel to a distant office was still required, that some offices would not grant dispensation, and that officials would not be available by telephone. One commenter specifically noted that the provision does not include any provision regarding failure to register due to a serious illness or other emergency circumstance that would prevent the nonimmigrant from complying.

The Department does not believe that these situations require any amendment to the rule. The rule is specific that reregistration must be in person and, therefore, telephone communication is irrelevant. Moreover, the reregistration dates are intentionally established as windows before and after a specific date to accommodate such intervening events as illness. The second registration is required to be made between 30 and 40 days after admission, while annual reregistration may be made within 10 days—before or after—the anniversary of admission. The totality of this inconvenience must be kept in perspective with the scope of this rule: the rule applies only to the small number of nonimmigrant aliens subject to special registration, and the registrations are not so frequent or so rigid as to be burdensome in comparison with the national security or law enforcement interests of the United States.

8. Final Registration

The proposed rule provided that a nonimmigrant subject to special registration also report when leaving the United States. This final registration would occur through inspection at a port of entry. One commenter suggested that this final registration, like the entry process, would take substantial time to develop and implement with airports, even for the small number of aliens covered by this rule. The commenter noted that, for some period of time, nonimmigrant aliens subject to special registration would be permitted to depart the United States only through the limited number of ports with sufficient facilities. The commenter argued against such a provision because it would create a substantial inconvenience and expense to the alien, and, in some instances, a bar to departure.

The Department recognizes that a small number of persons presently in the United States who will become subject to the rule possess a return ticket, and some of these tickets are non-refundable and non-changeable without penalty. However, the Department is making every effort to ensure that there will be sufficient facilities to accommodate final registration at all ports at the time the rule becomes effective. Because special registration will be a paperless system, the Department will be establishing additional computer links to ensure that the system is available nationwide. Nevertheless, for a short period of time, because aliens will be permitted to depart from any port when the rule becomes effective, the Department expects that initially some inspectors will need to record information provided by nonimmigrant aliens subject to special registration on paper records that will not be entered into the system until shortly thereafter. If the Service determines that a port is inappropriate for the departure of nonimmigrant aliens subject to special registration, the Service will give appropriate notice by publication in the **Federal Register**. The Department agrees that individual aliens should not be inconvenienced during the ongoing development of the system. To provide sufficient time to procure equipment and provide training to all inspection personnel, paragraph (f)(8) of the final rule will not become applicable until October 1, 2002. Moreover, the final registration requirement of 8 CFR 264.1(f)(8) will apply only to those nonimmigrant aliens who have been registered under paragraph (f)(3), or who are or have been required to register pursuant to paragraph (f)(4).

Another commenter conceded that subjecting departing aliens to special registration requirements is not new, but is not often done. The commenter noted that departure will now be confirmed by actual presentation by the nonimmigrant alien subject to special registration, and that the alien's departure can then be confirmed by reference to other records, such as the electronic manifests provided by air carriers. The commenter suggested that INS and the air carriers use APIS to collect an alien's departure information. The commenter suggested a system by which an alien would proceed to the flight gate and the air carrier would electronically collect his departure information and then transmit it to the INS. The commenter suggested that, if prior to an alien's scheduled departure, the INS determined it must conduct a face-to-face interview, INS could arrange for the alien to meet a departure control officer in the federal inspection service (FIS) area before flight time. In all other cases, the air carrier's electronic transmission of the alien's departure would serve as confirmation to the INS.

The Department appreciates the thought given to this approach, but must decline to adopt it. Final registration, like inspection, requires a face-to-face confirmation of identity until such time as electronic verification of biometrics can ensure that the nonimmigrant alien subject to special registration actually is the individual departing the United States.

9. Future Inadmissibility

Another commenter stated that the proposed rule would effectively create a new ground of inadmissibility by characterizing failure to comply with the final registration provisions as "unlawful activity." The commenter noted that the individual would thereafter be presumed to be inadmissible to the United States under section 212(a)(3)(A)(ii) of the Act as an alien "who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in * * * any other unlawful activity." 8 U.S.C. 1182(a)(3)(A)(ii).

The commenter's analysis is faulty in that only Congress can establish grounds for removal and inadmissibility to the United States. Congress has made clear, however, that the Attorney General may find an alien inadmissible if he has "a reasonable ground to believe [the alien] seeks to enter the United States to engage solely, principally, or *incidentally* in * * * any other unlawful activity * * *." INA section 212(a)(3)(A)(ii) (8 U.S.C. 1182(a)(3)(A)(ii)) (emphasis added). An alien is subject to special registration requirements because that alien meets pre-established criteria that the Department found to be associated with national security risks. When such an alien violates the terms of his or her special registration by failing to register upon leaving the United States and then seeks to reenter the United States, the alien can reasonably be seen as attempting to reenter for the purpose of engaging in "unlawful activity" under section 212(a)(3)(A)(ii) of the Act. If an alien complies with the regulations, he or she will not, in the future, be presumed inadmissible under this provision.

The Department recognizes that there may be reasons why a departing alien may not be able personally to report for final registration when leaving the United States. The Department acknowledges that some failures to register upon leaving are not likely to be the result of a preconceived intent to engage in unlawful activity at the time of an alien's future entry into the United States. However, if the nonimmigrant alien subject to special registration violates the specific regulations relating to final registration at the time of exiting the United States, that nonimmigrant alien subject to special registration will be presumed to be inadmissible. The presumption may be overcome, but, despite the concerns of at least one commenter, it is not necessary for the Attorney General to provide a complete and exhaustive catalogue of the manner in which he will exercise his discretion.

D. Issues Not Raised in the Rule

Several commenters opposed the entry of violation information into the National Crime Information Center. The Attorney General's announcement of his direction to the Federal Bureau of Investigation and the INS to include this information is not covered by, and need not be covered by, this rule. Accordingly, these comments are not considered in developing the final rule.

Regulatory Procedures

Regulatory Flexibility Act

The Department of Justice, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This rule will affect individual nonimmigrant aliens who are not considered small entities as that term is defined in 5 U.S.C. 601(6).

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

Information collection associated with this regulation has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The OMB control number for this collection is 1115–0254.

List of Subjects

8 CFR Part 214

Aliens, Immigration, Registration, Reporting and recordkeeping requirements.

8 CFR Part 264

Aliens, Immigration, Registration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931 note, respectively; 8 CFR part 2.

2. Amend § 214.1 by revising paragraph (f) to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(f) *Registration and false information.* A nonimmigrant's admission and continued stay in the United States is conditioned on compliance with any registration, photographing, and fingerprinting requirements under § 264.1(f) of this chapter that relate to the maintenance of nonimmigrant status and also on the full and truthful disclosure of all information requested by the Service. Willful failure by a nonimmigrant to register or to provide full and truthful information requested by the Service (regardless of whether or not the information requested was material) constitutes a failure to maintain nonimmigrant status under section 237(a)(1)(C)(i) of the Act (8 U.S.C. 1227(a)(1)(C)(i)).

* * * * *

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

3. The authority citation for part 264 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1184, 1201, 1301–1305.

4. Amend § 264.1 by revising paragraph (f) to read as follows:

§ 264.1 Registration and fingerprinting.

* * * * *

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(f) *Registration, fingerprinting, and photographing of certain nonimmigrants.* (1) Notwithstanding the provisions in paragraph (e) of this section, nonimmigrant aliens identified in paragraph (f)(2) of this section are subject to special registration, fingerprinting, and photographing requirements upon arrival in the United States. This requirement shall not apply to those nonimmigrant aliens applying for admission to the United States under sections 101(a)(15)(A) (8 U.S.C. 1101(a)(15)(A)) or 101(a)(15)(G) (8 U.S.C. 1101(a)(15)(G)) of the Act. In addition, this requirement shall not apply to those classes of nonimmigrant aliens to whom the Attorney General and the Secretary of State jointly determine it shall not apply, or to any individual nonimmigrant alien to whom the Attorney General or the Secretary of State determines it shall not apply. Completion of special registration pursuant to this paragraph (f) is a condition of admission under section 214 of the Act (8 U.S.C. 1184) if the inspecting officer determines that the alien is subject to registration under this paragraph (f) (hereinafter "nonimmigrant alien subject to special registration").

(2) Nonimmigrant aliens in the following categories are subject to the requirements of paragraph (f)(3) of this section:

(i) Nonimmigrant aliens who are nationals or citizens of a country designated by the Attorney General, in consultation with the Secretary of State, by a notice in the **Federal Register**;

(ii) Nonimmigrant aliens who is a consular officer or an inspecting officer has reason to believe are nationals or citizens of a country designated by the Attorney General, in consultation with the Secretary of State, by a notice in the **Federal Register**; or

(iii) Nonimmigrant aliens who meet pre-existing criteria, or who is a consular officer or the inspecting officer has reason to believe meet pre-existing criteria, determined by the Attorney General or the Secretary of State to indicate that such aliens' presence in the United States warrants monitoring in the national security interests, as defined in section 219 of the Act (8 U.S.C. 1189), or law enforcement interests of the United States.

(3)(i) Any nonimmigrant alien who is included in paragraph (f)(2) of this section, and who applies for admission to the United States, shall be specially registered by providing information required by the Service, shall be fingerprinted, and shall be photographed, by the Service, at the port-of-entry at such time the nonimmigrant alien applies for admission to the United States. The Service shall advise the nonimmigrant alien subject to special registration that, if the alien remains in the United States for 30 days or more, the nonimmigrant alien subject to special registration must appear at a Service office in person to complete registration by providing additional documentation confirming compliance with the requirements of his or her visa. The nonimmigrant alien subject to special registration must appear at such office between 30 and 40 days after the date on which the nonimmigrant alien subject to special registration was admitted into the United States.

(ii) At the time of verification of information for registration pursuant to paragraph (f)(3)(i) of this section, the nonimmigrant alien subject to special registration shall provide the Service with proof of compliance with the conditions of his or her nonimmigrant visa status and admission, including, but not limited to, proof of residence, employment, or registration and matriculation at an approved school or educational institution. The nonimmigrant alien subject to special registration shall provide any additional information required by the Service.

(4) The Attorney General, by publication of a notice in the **Federal Register**, also may impose such special registration, fingerprinting, and photographing requirements upon nonimmigrant aliens who are nationals, citizens, or residents of specified countries or territories (or a designated subset of such nationals, citizens, or residents) who have already been admitted to the United States or who are otherwise in the United States. A notice under this paragraph (f)(4) shall explain the procedures for appearing in person and providing the information required by the Service, providing fingerprints, photographs, or submitting supplemental information or documentation.

(5) A nonimmigrant alien subject to special registration shall annually reregister in person with the Service at the district office for the district in which the nonimmigrant alien subject to special registration's residence is located. Annual reregistration shall be in the same manner as provided in paragraph (f)(3) of this section, and shall occur within 10 days of the month and day of the anniversary of his or her original admission to the United States. Annual reregistration of a nonimmigrant alien subject to special registration under paragraph (f)(4) of this section shall be in the manner prescribed in the applicable notice, subject to any modifications or changes included in any applicable intervening notice.

(6) In addition to the 30-day and annual reregistrations pursuant to paragraphs (f)(3) and (f)(5) of this section, any nonimmigrant alien subject to special registration who remains in the United States for 30 days or more shall notify the Service by mail or other such means as determined by the Attorney General, using a notification form designated by the Service, of any change of address of residence, change of employment, or change of educational institution, within 10 days of such change.

(7) A nonimmigrant alien subject to special registration may apply to the district director, or such other official as the Attorney General may designate, at the Service's district office in which the nonimmigrant alien subject to special registration's residence address is located and registered, for relief from the requirements of this paragraph (f). The decision of the district director or such other official is final and not appealable.

(8) When a nonimmigrant alien subject to special registration departs from the United States, he or she shall report to an inspecting officer of the Service at any port of entry, unless the Service has, by publication in the **Federal Register**, specified that nonimmigrant aliens subject to special registration may not depart from specific ports. Any nonimmigrant alien subject to special registration who fails, without good cause, to be examined by an inspecting officer at the time of his or her departure, and to have his or her departure confirmed and recorded by the inspecting officer, shall thereafter be presumed to be inadmissible under, but not limited to, section 212(a)(3)(A)(ii) of the Act (8 U.S.C. 1182(a)(3)(A)(ii)), as an alien whom the Attorney General has reasonable grounds to believe, based on the alien's past failure to conform with the requirements for special registration, seeks to enter the United States to engage in unlawful activity. An alien may overcome this presumption by making a showing that he or she satisfies conditions set by the Attorney General and the Secretary of State. This paragraph (f)(8) applies only to those nonimmigrant aliens who have been registered under paragraph (f)(3) of this section, or who are or have been required to register pursuant to paragraph (f)(4) of this section. This paragraph (f)(8) will become applicable on October 1, 2002.

(9) Registration under this paragraph (f) is not deemed to be complete unless all of the information required by the Service, and all requested documents,

are provided in a timely manner. Each annual reregistration and each change of material fact is a registration that is required under sections 262 and 263 of the Act (8 U.S.C. 1302, 1303). Each change of address required under this paragraph (f) is a change of address required under section 265 of the Act (8 U.S.C. 1305).

* * * * *

Dated: August 9, 2002.

John Ashcroft,

Attorney General.

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

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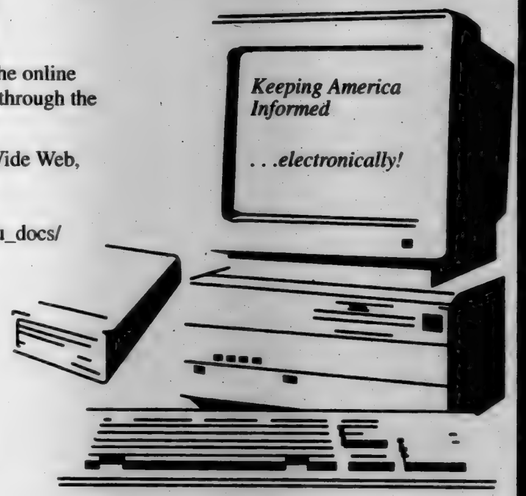
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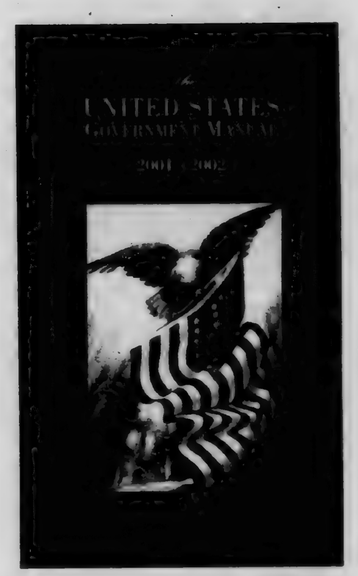
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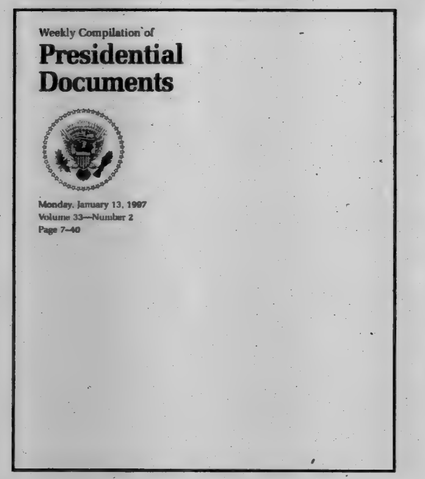
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 451

RIN 3206–AJ65

Awards

AGENCY: Office of Personnel Management.

ACTION: Interim rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to amend the rules governing Presidential Rank Awards to implement the Treasury and General Government Appropriations Act of 2002 which extends eligibility for Presidential Rank Awards to certain senior career employees. The regulations also incorporate existing requirements pertaining to rank awards for career members of the Senior Executive Service (SES) currently found in guidance that OPM provides annually to agencies and previously included in the former Federal Personnel Manual. The amendments will also enhance the clarity of the regulations and improve readability.

DATES: *Effective Date:* The interim regulations are effective on September 12, 2002.

Comments Date: Comments must be received on or before October 15, 2002.

ADDRESSES: Send or deliver written comments to Joyce Edwards, Director, Office of Executive Resources Management, U.S. Office of Personnel Management, 1900 E Street NW., Room 6484, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Anne Kirby, (202) 606–1610, or e-mail to *SESmgmt@opm.gov*.

SUPPLEMENTARY INFORMATION: The regulations amend part 451 to add a new subpart, subpart C—Presidential Rank Awards. This new subpart incorporates current requirements for awards for members of the Senior Executive Service (SES) found in subpart B—Presidential Awards, as well as new requirements for awards for senior career employees.

Background

Each year, the President may award the ranks of *Distinguished Executive* and *Meritorious Executive* to a small select group of career members of the Senior Executive Service (SES) to recognize sustained, extraordinary leadership accomplishments. The Office of Personnel Management administers the rank award program for the President. Agency heads submit nominations for rank awards to OPM, which reviews the nominations and recommends to the President which nominees should receive the awards, in accordance with 5 U.S.C. 4507 and regulations currently at 5 CFR part 451, subpart B. Section 4506 of title 5 authorizes OPM to prescribe regulations and instructions to implement the Presidential Rank Awards program.

Ranks for Senior Career Employees

Section 641 of the Treasury and General Government Appropriations Act of 2002 (Pub. L. 107–67, enacted 11–12–01) extended eligibility for Presidential Rank Awards to certain senior career employees. This new provision is codified in a new section of Chapter 45 of title 5 (5 U.S.C. 4507a). The public law defines a "senior career employee" as an individual appointed to a position classified above GS–15 and paid under 5 U.S.C. 5376, who is not serving under a time-limited appointment or in a position that is excepted from the competitive service because of its confidential or policy-making character. Senior career employees are individuals who occupy Senior-Level (SL) or Scientific-Professional (ST) positions.

Agency heads may nominate senior career employees to be awarded the ranks of *Distinguished Senior Professional* for sustained extraordinary accomplishment and *Meritorious Senior Professional* for sustained accomplishment in a manner similar to the nominations of career members of the SES.

In accordance with 5 U.S.C. 4507a, the regulations establish basic eligibility criteria that are consistent with criteria long-established for the SES. These eligibility requirements are: (1) Hold a career appointment in a Senior-Level (SL) or Scientific-Professional (ST) position that is subject to OPM position allocations under part 319 and paid under 5 U.S.C. 5376 on the nomination deadline set by OPM; (2) be an employee of the nominating agency on the nomination deadline set by OPM; and (3) have at least 3 years of career or career-type Federal civilian service above GS–15. Individuals who have been awarded a Distinguished or Meritorious rank are not entitled to receive the same rank during the next 4 fiscal years. In addition, the Governmentwide number of career senior employees awarded the rank of *Distinguished Senior Professional* may not exceed 1 percent of the total number of career appointees to OPM-allocated Senior-Level (SL) and Scientific-Professional (ST) positions, and the number awarded the rank of *Meritorious Senior Professional* is limited to 5 percent of the total number of career appointees to OPM-allocated Senior-Level (SL) and Scientific-Professional (ST) positions.

As with SES nominations, agencies may nominate up to 9 percent of their career senior employees for rank awards. Generally, there should be no more than one Distinguished nominee from an agency for every five Meritorious nominees, in keeping with the proportion of awardees allowed Governmentwide.

Senior career employees receiving the Distinguished rank award will receive a lump-sum payment of 35 percent of basic pay; those receiving the Meritorious rank award will receive a lump-sum payment of 20 percent of basic pay.

Senior career employees will be eligible for rank awards beginning with awards granted by the President in 2003.

Ranks for Members of the Senior Executive Service

The regulations incorporate existing eligibility and other requirements for career members of the SES currently found in guidance and instructions that OPM provides annually to agencies on rank award nominations and that was previously included in the former Federal Personnel Manual, Supplement 920–1. Although agencies are required under 5 U.S.C. 4506 to comply with OPM regulations and instructions on award programs, we have decided to

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place all requirements in regulation. This is a more compact and effective way to convey the requirements and may avoid misinterpretations.

The basic eligibility requirements are: (1) The SES appointee must hold a career appointment in the SES on the nomination deadline set by OPM; (2) the nominee must be an employee of the nominating agency on the nomination deadline set by OPM; and (3) the nominee must have at least 3 years of career or career-type Federal civilian service at the SES level. Qualifying service includes appointments in the SES, Senior Foreign Service, the Defense Intelligence Senior Executive Service, and similar senior executive systems. Qualifying service does not include noncareer, limited term, or limited emergency appointments in the SES or their equivalent, Scientific and Professional (ST) appointments, or Senior-Level (SL) appointments.

The number of Distinguished and Meritorious rank recipients is limited Governmentwide to a total of 6 percent of the career SES, but there is no statutory limit on the number of recipients by agency. In order to provide adequate competition, agencies may nominate up to 9 percent of their career SES appointees for rank awards.

Table of Changes

The following table lists the changes to the current regulations. The "current rule" column lists the regulations in the current subpart B affected by the interim regulations. The "interim rule" column shows the disposition of the current rules and new rules in the new subpart C. The third column explains the changes.

Current rule	Interim rule	Explanation of change
451.201(c)	451.301(a)	Moves current SES provisions from subpart B to the new subpart C; redesignates remaining paragraphs in 451.201.
451.203(a)	451.305(a) and (b)	Moves current OPM responsibilities for reviewing rank award nominations and making recommendations to the President from subpart B to the new subpart C; separates the responsibilities into two paragraphs; and redesignates remaining paragraphs in 451.203.
	451.301(b) and (c)	Incorporates in regulation existing SES rank award eligibility requirements. These requirements have been included in annual rank award guidance and instructions to agencies and were included in the former FPM Supplement 92–1.
	451.302(a)	Implements new statutory provisions for rank awards for senior career employees.
	451.302(b) and (c)	Provides rank award eligibility requirements for senior career employees. Requirements are consistent with those for SES members.
	451.303	Implements statutory restrictions on awards for SES appointees and senior career employees, including Governmentwide limits on the number of awards that the President may grant each year and limits on how often individual employees can receive awards.
	451.304	Implements statutory provisions for paying rank awards, including individual award amounts and compliance with annual aggregate compensation limits.

Waiver of Notice of Proposed Rulemaking

I find that good cause exists to waive the general notice of proposed rulemaking. These regulations implement section 641 of Public Law 107–67, which mandates that the amendments shall take effect for awards granted in 2003. Implementing regulations must be published and supplemental guidance issued to agencies before OPM invites agency heads to submit nominations for the 2003 rank awards. The invitations are issued annually, in July or August, in order to give agencies maximum time to carefully evaluate and select nominees and prepare supporting documentation. Agency head nominations for the 2003 awards will be due to OPM in January 2003. The waiver of proposed rulemaking is necessary to ensure timely implementation of the law as intended by Congress.

E.O. 12866, Regulatory Review

This interim rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

List of Subjects in 5 CFR Part 451

Decorations, medals, awards, Government employees.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is amending 5 CFR part 451 as follows:

PART 451—AWARDS

1. The authority citation for part 451 continues to read as follows:

Authority: 5 U.S.C. 4302, 4501–4509, E.O. 11438, 12828.

Subpart B—Presidential Awards

§ 451.201 [Amended]

2. Section 451.201 is amended by removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

§ 451.203 [Amended]

3. Section 451.203 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

4. Subpart C—Presidential Rank Awards is added to read as follows:

Subpart C—Presidential Rank Awards

Sec.

451.301 Ranks for the Senior Executive Service.
451.302 Ranks for senior career employees.
451.303 Restrictions.
451.304 Payment of Rank Awards.
451.305 Responsibilities of the Office of Personnel Management.

§ 451.301 Ranks for the Senior Executive Service.

(a) The circumstances under which the President may award the rank of Distinguished Executive and Meritorious Executive to a Senior Executive Service (SES) career appointee are set forth in 5 U.S.C. 4507.

(b) To be eligible for a rank award, a senior executive must:

(1) Hold a career appointment in the SES, as defined at 5 U.S.C. 3132(a)(4), on the nomination deadline set by OPM;

(2) Be an employee of the agency, as defined at 5 U.S.C. 3132(a)(1), on the nomination deadline set by OPM; and

(3) Have at least 3 years of career or career-type Federal civilian service at the SES level. Service need not be continuous.

(i) Qualifying service includes appointments in the SES, the Senior Foreign Service, the Defense Intelligence Senior Executive Service, and similar senior executive systems.

(ii) Qualifying service does not include noncareer, limited term, or limited emergency appointments in the SES or their equivalent, Scientific and Professional (ST) appointments, and Senior-Level (SL) appointments.

(c) Each agency may nominate up to 9 percent of its SES career appointees for rank awards.

§ 451.302 Ranks for senior career employees.

(a) The circumstances under which the President may award the rank of Distinguished Senior Professional and Meritorious Senior Professional to a senior career employee are set forth in 5 U.S.C. 4507a.

(b) To be eligible for a rank award, a senior career employee must:

(1) Hold a career appointment in a Senior-Level (SL) or Scientific-Professional (ST) position that is subject to OPM position allocations under part 319 of this chapter and paid under 5 U.S.C. 5376 on the nomination deadline set by OPM;

(2) Be an employee of the agency on the nomination deadline set by OPM; and

(3) Have at least 3 years of career or career-type Federal civilian service above GS–15. Service need not be continuous. Qualifying service includes appointments that are not—

(i) Time-limited; or

(ii) To positions that are excepted from the competitive service because of their confidential or policy-making character.

(c) Each agency may nominate up to 9 percent of its career senior employees for rank awards.

§ 451.303 Restrictions.

(a) *Governmentwide limitations*—SES. During any fiscal year—

(i) The number of career SES appointees awarded the rank of Meritorious Executive may not exceed 5 percent of the career SES; and

(ii) The number of career SES appointees awarded the rank of Distinguished Executive may not exceed 1 percent of the career SES.

(b) *Governmentwide limitations—Senior career employees.* During any fiscal year—

(i) The number of career senior employees awarded the rank of Meritorious Senior Professional may not exceed 5 percent of the total number of career appointees to OPM-allocated Senior-Level (SL) and Scientific-Professional (ST) positions; and

(ii) The number of career senior employees awarded the rank of Distinguished Senior Professional may not exceed 1 percent of the total number of career appointees to OPM-allocated Senior-Level (SL) and Scientific-Professional (ST) positions.

(c) *Frequency of awards.* Individuals awarded a Distinguished or Meritorious rank under this subpart shall not be entitled to be awarded that rank during the following 4 fiscal years.

§ 451.304 Payment of Rank Awards.

(a) Receipt of the Distinguished rank by an SES career appointee or a career senior employee entitles the individual to a lump-sum payment of an amount equal to 35 percent of annual basic pay, which shall be in addition to the basic pay paid under 5 U.S.C. 5376 or 5382, or any award paid under 5 U.S.C. 5384.

(b) Receipt of the Meritorious rank by an SES career appointee or a career senior employee entitles such individual to a lump-sum payment of an amount equal to 20 percent of annual basic pay, which shall be in addition to the basic pay paid under 5 U.S.C. 5376 or 5382, or any award paid under 5 U.S.C. 5384.

(c) Payment of rank awards must comply with the restrictions on annual aggregate compensation at 5 U.S.C. 5307.

§ 451.305 Responsibilities of the Office of Personnel Management.

(a) Annually, OPM shall establish criteria, including terms, conditions, and evaluation factors, for rank award nominations, in consultation with agencies and other stakeholders. Agencies shall nominate individuals for rank awards in accordance with OPM criteria and any other instructions.

(b) Annually, OPM shall review agency recommendations for Presidential Rank Awards for SES career appointees and senior career employees under 5 U.S.C. 4507 and 4507a, and recommend to the President which of those individuals should receive rank awards.

[FR Doc. 02–20435 Filed 8–12–02; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF00

Small Business Size Standards; Adoption of Size Standards by 2002 North American Industry Classification System for Size Standards

AGENCY: Small Business Administration (SBA).

ACTION: Direct final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is amending its Small Business Size Regulations by incorporating the Office of Management and Budget's (OMB) 2002 modifications of the North American Industry Classification System (NAICS) into its table of small business size standards. These modifications are limited to industries in six (6) NAICS Sectors. The modifications result in a small number of size standard changes to certain NAICS activities.

SBA believes that this rule is noncontroversial and routine, and SBA anticipates no adverse comments to this action. If SBA receives adverse comments, it will withdraw this rule. SBA is publishing concurrently in this issue of the **Federal Register** a proposed rule to achieve the same result, that is, to modify its Small Business Size Regulations as contemplated in this direct final rule.

DATES: This rule is effective October 1, 2002, without further action, unless adverse comment is received by September 12, 2002. If adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Address all comments concerning this rule to Gary M. Jackson, Assistant Administrator for Size Standards, Office of Size Standards, 409 Third Street, SW., Washington, DC 20416, via e-mail to *sizestandards@sba.gov*, or via facsimile, (202) 205–6390. SBA will make all public comments available to any person or concern upon request.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, at (202) 205–6618 or *sizestandards@sba.gov*.

SUPPLEMENTARY INFORMATION: SBA adopted North American Industry Classification System (NAICS) industry definitions as a basis for its table of

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small business size standards effective October 1, 2000. The final rule was published in the **Federal Register** on May 5, 2000 (65 FR 30836) (NAICS 1997) and states the SBA Administrator's determination that the industry descriptions in NAICS shall be the basis for small business size standards.

OMB restructured and modified parts of NAICS effective January 1, 2002 (66 FR 3825, January 16, 2001) (NAICS 2002). This rule incorporates OMB's restructuring and modifications into SBA's table of size standards. NAICS 2002 is the same as NAICS 1997 for sixteen of the twenty industry Sectors. Two Sectors, Construction and Wholesale Trade are substantially changed. OMB also modified a number of classifications in the Retail Trades Sector, and the organization of the Information Sector.

Section 121.101(b) of Title 13 of the Code of Federal Regulations states "NAICS is described in the *North American Industry Classification Manual—United States, 1997* * * *." At the time SBA published the final rule in the **Federal Register**, the only description of NAICS available was the NAICS 1997 manual. However, with OMB's 2002 modification of NAICS 1997, SBA believes that retaining a definition in its regulations based on a particular year is confusing and inconsistent with the SBA Administrator's determination in the May 5, 2000, **Federal Register** notice, which does not refer to any specific year.

Justification for October 1, 2002 Effective Date

SBA determined that NAICS 2002 should be implemented on October 1, 2002, because:

1. Federal Government recordkeeping and statistics will be collected more consistently and will be more comparable with other data for analyzing small business activity. The first Federal Government fiscal year after January 1, 2002, is October 1, 2002.

2. SBA and other users of size standards can collect data on their small business programs using the more recent NAICS format and can compare those data with future Federal statistics collected using NAICS 2002 industry classifications. The availability of such comparable data will ensure the credibility of analyses comparing program data with industry.

3. Small business size standards apply to most Federal agencies and their programs involving small businesses. Federal agencies that use NAICS and SBA's small business size standards will need time to determine how to implement the new size standards and to develop training tools necessary to do so. SBA believes that publishing this rule now provides sufficient time for agencies to convert and update their databases and tracking systems for implementation by the beginning of FY 2003.

How SBA Arrived at the Size Standards for NAICS 2002 Industries

On October 22, 1999, SBA published in the **Federal Register** (64 FR 57188) a proposed rule to establish a new table of small business size standards based on NAICS. SBA developed guidelines to transition from the Standard Industrial Classification System to NAICS. The guidelines were intended to minimize the impact on SBA's small business size standards. Table A, below, lists those guidelines. SBA received no negative comments to the guidelines specified in the proposed rule. Because the guidelines produced the desired results and received public acceptance, SBA published its final rule on May 5, 2000 (corrected on September 5, 2000, 65 FR 53533), establishing a new table of size standards based on NAICS without change from its proposed rule. For purposes of adopting NAICS 2002, SBA is applying the same guidelines in this rule.

TABLE A

If the NAICS 2002 industry is composed of:	The size standard for the NAICS industry would be:
1. One NAICS 1997 industry or part of one NAICS1997 industry	The same size standard as for the NAICS 1997 industry or part.
2. More than one NAICS 1997 industry; parts of more than one NAICS 1997 industry; or one or more NAICS 1997 industry and part(s) of one or more NAICS 1997 industry, and they all have the same size standard.	The same size standard as for those NAICS 1997 industries or parts of NAICS 1997 industries.
3. More than one NAICS 1997 industry; parts of more than one NAICS 1997 industry; or one or more NAICS 1997 industry and part(s) of one or more NAICS 1997 industry, and they do not all have the same size standard.	The same size standard as for the NAICS 1997 industry or NAICS 1997 industry part(s) that most closely matches the economic activity described by the NAICS 2002 industry.
4. One or more parts of an NAICS 1997 industry for which SBA has established specific size standards (*i.e.*, further segmented).	The same size standard as for that specific NAICS 1997 industry part.
5. One or more NAICS 1997 industries and/or parts of NAICS 1997 industries that were categorized broadly under the NAICS system as Services, Retail Trade, Wholesale Trade or Manufacturing, but are now categorized differently under NAICS.	SBA will (a) apply a size standard measure (*e.g.*, number of employees, annual receipts) typical of the NAICS Sector; and (b) apply the corresponding "anchor" size standard. The "anchor" size standards are $6 million [effective February 22, 2002] for Services and Retail Trade, 500 employees for Manufacturing and 100 employees for Wholesale Trade (except for Federal procurement programs, where the standard is 500 employees under the non-manufacturer rule).

Changes in Size Standards

Applying the guidelines to the NAICS 2002 restructuring and modifications results in a limited number of changes to current small business size standards. Specifically, there are 12 economic activities within nine (9) NAICS 1997 industries that reflect a size standard change when related to NAICS 2002. Eight (8) of those 12 economic activities increase, three (3) decrease, and for the remaining activity the basis for the size standard changes from annual receipts to number of employees. For the balance of the NAICS 1997 codes and their size standards, there are no size standards changes as a result of the NAICS 2002 reclassifications and recategorizations.

For complete information on the relationship between NAICS 1997 and NAICS 2002, please see the U.S. Bureau of the Census (Census Bureau) Web site at *http://www.census.gov/epcd/naics02/* That Web site contains complete information on the establishment and implementation of NAICS 2002, including the January 16, 2001 (66 FR 3825) **Federal Register** notice of final decision to adopt NAICS 2002. The Census Bureau's Web site also contains three correspondence tables: (1) 2002 NAICS–US matched to 1997 NAICS–US; (2) 1997 NAICS–US matched to 2002 NAICS–US; and (3) 2002 NAICS–US matched to 1987 Standard Industrial Classification.

Table B below identifies the twelve (12) NAICS 1997 industries and economic activities that have revised size standards in the new table based on industries as they are described in NAICS 2002.

TABLE B

NAICS 1997 Code	NAICS 1997 Size std. ($ million)	NAICS 1997 activity	NAICS 2002 Code	NAICS 2002 Size std. ($ million)	NAICS 2002 industry
213112	$6.0	Construction of Field Gathering Lines on a Contract Basis (one activity of the Support Activities for Oil and Gas Operations Industry).	237120	$28.5	Oil and Gas Pipeline and Related Structures Construction.
213112	6.0	Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Oil and Gas Operations Industry).	238910	12.0	Site Preparation Contractors.
213113	6.0	Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Coal Mining Industry).	238910	12.0	Site Preparation Contractors.
213114	6.0	Site Preparation and Related Constuction Activities on a Contract Basis (one activity of the Support Activities for Metal Mining Industry).	238910	12.0	Site Preparation Contractors.
213115	6.0	Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Nonmetallic Minerals Industry).	238910	12.0	Site Preparation Contractors.
234990	28.5	Right-of-way Clearing and Line Slashing, Blasting, Trenching, and Equipment Rental (Except Cranes) With Operator (three activities of the All Other Heavy Construction Industry).	238910	12.0	Site Preparation Contractors.
234990	28.5	Rental of Cranes With Operator (one activity of the All Other Heavy Construction Industry).	238990	12.0	All Other Specialty Trade Contractors.
235810	12.0	Water Well Drilling Contractors (Entire Industry)	237110	28.5	Water and Sewer Line and Related Structures Construction.
235990	12.0	Indoor Swimming Pools (one activity if the All Other Special Trade Contractors Industry).	236220	28.5	Commercial and Institutional Building Construction.
235990	12.0	Anchored Earth Retention Contractors (one activity if the All Other Special Trade Contractors Industry).	237990	28.5	Other Heavy and Civil Engineering Construction.
514199	6.0	Internet Broadcasting (one activity of the All Other Information Services Industry).	516110	(1)	Internet Publishing and Broadcasting.
561720	14.0	Cleaning Buildings During and Immediately after Construction (one activity of the Janitorial Services Industry).	238990	12.0	All Other Specialty Trade Contractors.

[1] 500 Emp.

The 12 activities with a size standard change moved to seven (7) NAICS 2002 industries. Tables 3 through 9 show the composition of these NAICS 2002 industries and discuss the basis for selecting their size standards.

1. NAICS 236220, Commercial and Institutional Building Construction, $28.5 Million

This industry is the same as NAICS 233320 (NAICS 1997) with the addition of several activities from parts of three other construction (NAICS 1997) industries (see Table 1). Only one activity within the revised industry did not have a size standard of $28.5 million under NAICS 1997. The activities of the previously defined industry continue to represent most activities in the industry. Therefore, the $28.5 million size standard for this industry is retained.

TABLE 1

AICS 1997 activity	NAICS 1997 code (* = part)	Size standard ($ million)
Barrack and Dormitory Construction (one activity of the Multifamily Housing Construction Industry)	233220	$28.5
Grain Elevators, Dry Cleaning Plants, and Manufacturing and Industrial Warehouses (activities of the Manufacturing and Industrial Building Construction Industry)	*233310	28.5
Commercial and Institutional Building Construction (entire industry)	*233320	28.5
Indoor Swimming Pools (one activity of the All Other Special Trade Contractors Industry)	*235990	12.0

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2. NAICS 237110, Water and Sewer Line and Related Structures Construction, $28.5 Million

This industry is the same as NAICS 234910 (NAICS 1997) with the addition of several heavy construction related activities and the Water Well Drilling industry (see Table 2). Water and sewer line activities constituted a large majority of the previously defined industry. The inclusion of the Water Well Drilling industry accounts for less than 15 percent of the revised industry. The activities of the previously defined industry continue to represent most activities in the industry. Therefore, the $28.5 million size standard for this industry is retained.

TABLE 2

NAICS 1997 activity	NAICS 1997 code (* = part)	Size standard ($ million)
Water/Sewer Pumping Stations, Sewage Collection and Disposal Lines, Storm Sewers, Sewer/Water Mains and Lines, Water Storage Tanks and Towers, and Construction Management of these Projects (activities of the Water, Sewer, and Pipeline Construction Industry)	234910	$28.5
Irrigation Systems, Sewage Treatment and Water Treatment Plants, Construction Management of these Projects (activities of the All Other Heavy Construction Industry)	*234990	28.5
Water Well Drilling Contractors (entire industry)	235810	12.0

3. NAICS 237120, Oil and Gas Pipeline and Related Structures Construction, $28.5 Million

This is a new industry under the Heavy and Civil Engineering Subsector. It is comprised of activities from parts of three NAICS 1997 industries (see Table 3). All but one activity comprising this new industry had a $28.5 million size standard under NAICS 1997. Therefore, a $28.5 million size standard is adopted for this industry.

TABLE 3

NAICS 1997 activity	NAICS 1997 code (* = part)	Size standard ($ million)
Construction of Field Gathering Lines on a Contract Basis (one activity of the Support Activities for Oil and Gas Operations Industry)	*213112	$6.0
Gas and Oil Pumping Stations, Gas and Oil Pipeline Construction, Gas Mains, Gas and Oil storage Tank Construction, and Construction Management of these Projects (activities of the Water, Sewer, and Pipeline Construction Industry)	*234910	28.5
Petrochemical Plants, Refineries, and Construction Management of these Projects (activities of the Industrial Nonbuilding Structure Construction Industry)	*234930	28.5

4. NAICS 237990, Other Heavy and Civil Engineering Construction, $28.5 Million

This industry is the same as NAICS 234990 (NAICS 1997) with a few minor changes (see Table 4). Two activities of parts of two construction industries were added to the previous (1997) NAICS industry and several activities were transferred from NAICS 234990 to other construction industries. Only one activity had a size standard different than $28.5 million under NAICS 1997. The activities of the previously defined industry continue to represent most activities in the industry. Therefore, the $28.5 million size standard for this industry is retained.

TABLE 4

NAICS 1997 activity	NAICS 1997 code (* = part)	Size standard ($ million)
Tunnel Construction (one activity of the Bridge and Tunnel Construction Industry)	*234910	$28.5
All Otner Heavy Construction (Except Waste Disposal Plant Construction, Irrigation Systems, Sewage Treatment and Water Treatment Plants, Right-of-way Clearing and Line Slashing, Blasting, Trenching, and Equipment Rental with Operator)	234990	28.5
Anchored Earth Retention Contractors (one activity of the Other Special Trade Contractors Industry)	*235810	12.0

5. NAICS 238910, Site Preparation Contractors, $12.0 Million

This is a revised industry under the Special Trade Contractors Subsector. It is comprised predominately of two Special Trade Contractors industries. In addition, the revised industry includes one activity from parts of four mining support industries, several activities from part of one heavy construction industry, and several activities from parts of two other Special Trade Contractors industries (see Table 5). Because most of the activities of the revised industry are from NAICS 1997 Special Trade Contractors industries, a $12.0 million size standard is adopted for this industry.

TABLE 5

NAICS 1997 activity	NAICS 1997 code (* = part)	Size standard ($ million)
Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Oil and Gas Operations Industry)	*213112	$6.0
Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Coal Mining Industry	*213113	6.0
Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Metal Mining Industry)	*213114	6.0
Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Nonmetallic Minerals (except Fuels) Industry	*213115	6.0
Right-of-way Clearing and Line Slashing, Blasting, Trenching, and Equipment Rental (except cranes) with Operator (Activities of the All Other Heavy Construction Industry)	*234990	28.5
Septic Tank, Cesspool, and Dry Well Construction Contractors (Activities of the Plumbing, Heating, and Air-Conditioning Contractors Industry)	*235110	12.0
Excavation Contractors (Entire Industry)	235930	12.0
Wrecking and Demolition Contractors (Entire Industry)	235940	12.0
Dewatering Contractors, Core Drilling for Construction, and Test Drilling for Construction (Activities of the All Other Special Trade Contractors Industry)	*235990	12.0

6. NAICS 238990, All Other Specialty Trade Contractors, $12.0 Million

This industry is the same as NAICS 235990 under NAICS 1997 with a few minor changes. Several activities of the previous NAICS 1997 industry transferred to other construction industries and three activities from parts of three other industries were incorporated (see Table 6). The activities of the previously defined industry continue to represent most activities in the industry. Therefore, the $12.0 million size standard is retained.

TABLE 6

NAICS 1997 activity	NAICS 1997 code (* = part)	Size standard ($ million)
Rental of Cranes with Operator (one activity of the All Other Heavy Construction Industry)	*234990	$28.5
Residential and Commercial Asphalt, Brick, and Concrete Paving) (one activity of the Concrete Contractors Industry)	*235710	12.0
All Other Special Trade Contractors (except Indoor Swimming Pools, Earth Retention Contractors, Forming Contractors, Ornamental Metal Work, Building Equipment Contractors, Building Finishing Contractors, Dewatering Contractors, Core Drilling for Construction, and Test Boring for Construction)	*235990	12.0
Cleaning Buildings During and Immediately after Construction (one activity of the Janitorial Services Industry)	*561720	14.0

7. NAICS 516110, Internet Publishing and Broadcasting, 500 Employees

This is a new industry under NAICS 2002. It is comprised of activities related to the publishing of materials via the Internet (see Table 7). All but one of these activities had a 500 employee size standard under NAICS 1997. Therefore, 500 employees is established for this industry because it represents the most prevalent size standard for the activities within this new industry.

TABLE 7

NAICS 1997 activity	NAICS 1997 code (* = part)	Size standard
Internet Newspaper Publishers (one activity of the Newspaper Publishers Industry)	*511110	500 employees.
Internet Book Publishers (one activity of the Book Publishers Industry)	*511120	500 employees.
Internet Periodical Publishers (one activity of the Periodical Publishers Industry)	*511130	500 employees.
(Internet Directory Publishers (one activity of the Directory and Database Publishers Industry)	*511140	500 employees.
Internet Greeting Card Publishers (one activity of the Greeting Card Publishers Industry)	*511191	500 employees.
All Other Internet Publishers (activities of the All Other Publishers Industry)	*511199	500 employees.
Internet Broadcasting (one activity of the All Other Information Services Industry)	*514199	$6.0 million.

Alternatives To Adopting NAICS 2002 That SBA Considered

SBA considered retaining the NAICS 1997 codes as the basis for small business size standards. However, SBA believes that doing so will lead to inconsistency with other Federal agencies that adopt NAICS 2002 for their programs. More importantly, if SBA does not adopt NAICS 2002 it will not be able to analyze and evaluate small business size standards adequately because available Census Bureau data based on NAICS 2002 industries will not be compatible with NAICS 1997 industry data. Without useful data SBA cannot properly analyze size standards and their effects on businesses.

An alternative to not adopting NAICS 2002 as a basis for size standards is to

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adopt part(s) of NAICS 2002. SBA believes this alternative is impractical because of the inherent inconsistencies that would result in using industry definitions from two systems.

Consideration of Comments

This is a direct final rule, but SBA will consider all submitted comments. SBA believes that this rule is non-controversial and routine, and SBA anticipates no adverse comments to this action. If SBA receives adverse comments, it will withdraw this direct final rule. SBA is publishing concurrently in this issue of the **Federal Register** a proposed rule to modify its Small Business Size Regulations as contemplated in this direct final rule. If SBA does receive adverse comments, it will consider the comment(s) before making a final decision. If SBA decides to adopt NAICS 2002 as proposed, or with limited modifications, it will publish a final rule which addresses the comments and explains the basis for its final decision.

Other Change

SBA is also making an administrative change to the heading of the size standards table. In the table titled "Small Business Size Standards by NAICS Industry" (13 CFR 121.201), SBA is removing "N.E.C. = Not Elsewhere Classified" from the heading. "N.E.C." is not used in NAICS because NAICS contains no unclassified industries, unlike the Standard Industrial Classification system.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35.) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

OMB has determined that this rule is not a "significant" regulatory action for purposes of Executive Order (E.O.) 12866. This rule incorporates the latest revisions of the NAICS, which is being used by SBA to identify industries in the economy for purposes of establishing small business size standards. As discussed in the preamble, the size standard of a limited number of activities will change as a result of the NAICS revisions. Almost all businesses currently defined as small under the NAICS 1997 industries will continue to be small under the NAICS 2002 industries. The rule also affects Federal Government programs that provide a benefit for businesses. SBA welcomes comments describing the impact on small businesses of the size standard changes resulting from this rule.

Furthermore, SBA was made aware that some Federal Government programs had already begun to use, albeit improperly, the NAICS 2002 codes and assigned small business size standards to them. SBA believes that these actions indicate that Federal agencies expect to use and will readily accept the NAICS 2002 codes.

For purposes of E.O. 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

For purposes of E.O. 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule does not impose any new reporting or recordkeeping requirements.

When an agency promulgates a rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) requires the agency to prepare a regulatory flexibility analysis describing the economic impact of the rule on small entities and alternatives that may minimize that impact. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. SBA has determined that this rule as drafted, including the alternatives discussed in the supplementary information above, will not have a significant impact on a substantial number of small entities. OMB's modifications are the restructuring and recategorization of the construction and wholesale trade sectors, and a small number of industries in the retail and information sectors. The modifications result in size standards changes to a minimal number of activities within certain NAICS industries detailed above in the supplementary information, with little, if any, effect on small businesses. Those activities now relate to more appropriate NAICS codes.

As part of OMB's restructuring of certain NAICS industries, a small number of specific activities within certain NAICS 1997 codes were classified within NAICS 2002 industries that have size standards different from what they had been in NAICS 1997. They are listed in Table 2, above. These activities are very specialized, and the Census Bureau does not publish data about these activities upon which to precisely assess the impact on small businesses. SBA believes that the impact on small businesses is minimal because these activities represent minor components of the NAICS 1997 industries from which they are derived. Only NAICS 235810, Water Well Drilling Contractors, is reclassified in its entirety to an industry with a different size standard, namely NAICS 237110, Water and Sewer Line and Related Structures Construction. Based on 1997 Economic Census data, there were only four water well drilling contractors out of a total of 3,795 that had annual receipts between $12.0 million and $28.5 million. SBA does not consider this number of businesses affected by a size standard change to be substantial.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA amends part 121 of title 13 of the Code of Federal Regulation as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403,108 Stat. 4175, 4188.

2. Amend the first sentence of § 121.101(b) to remove "*1997*".

3. Amend § 121.201 as follows:

a. In the table "Small Business Size Standards by NAICS Industry," remove the heading "Description (N.E.C. = Not Elsewhere Classified)" and add in its place "NAICS U.S. industry title".

b. In the table "Small Business Size Standards by NAICS Industry," remove the following three (3) Subsectors together with all entries within those Subsectors: Subsector 233—Building, Developing and General Contracting, Subsector 234—Heavy Construction, and Subsector 235—Special Trade Contractors, and add in their place the following:

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standard in number of employees or million of dollars
	. . . . .	
	Subsector 236—Construction of Buildings	
236115	New Single-Family Housing Construction (except Operative Builders)	28.5
236116	New Multifamily Housing Construction (except Operative Builders)	28.5
236117	New Housing Operative Builders	28.5
236118	Residential Remodelers	28.5
236210	Industrial Building Construction	28.5
236220	Commercial and Institutional Building Construction	28.5
	Subsector 237—Heavy and Civil Engineering Construction	
237110	Water and Sewer Line and Related Structures Construction	28.5
237120	Oil and Gas Pipeline and Related Structures Construction	28.5
237130	Power and Communication Line and Related Structures Construction	28.5
237210	Land Subdivision	6.0
237310	Highway, Street, and Bridge Construction	28.5
237990	Other Heavy and Civil Engineering Construction	28.5
Except	Except Dredging and Surface Cleanup Activities [2]	17.0
	Subsector 238—Specialty Trade Contractors	
238110	Poured Concrete Foundation and Structure Contractors	12.0
238120	Structural Steel and Precast Concrete Contractors	12.0
238130	Framing Contractors	12.0
238140	Masonry Contractors	12.0
238150	Glass and Glazing Contractors	12.0
238160	Roofing Contractors	12.0
238170	Siding Contractors	12.0
238190	Other Foundation, Structure, and Building Exterior Contractors	12.0
238210	Electrical Contractors	12.0
238220	Plumbing, Heating, and Air Conditioning Contractors	12.0
238290	Other Building Equipment Contractors	12.0
238310	Drywall and Insulation Contractors	12.0
238320	Painting and Wall Covering Contractors	12.0
238330	Flooring Contractors	12.0
238340	Tile and Terrazzo Contractors	12.0
238350	Finish Carpentry Contractors	12.0
238390	Other Building Finishing Contractors	12.0
238910	Site Preparation Contractors	12.0
238990	All Other Specialty Trade Contractors	12.0
Except	Base Housing Maintenance [13]	12.0

c. In the table "Small Business Size Standards by NAICS Industry," remove the following two (2) Subsectors together with all entries within those Subsectors: Subsector 421__Wholesale Trade__Durable Goods and Subsector 422__Wholesale Trade__Nondurable Goods, and add their place the following:

NAICS codes	NAICS U.S. industry title	Size standard in number of employees or million of dollars
	Subsector 423—Merchant Wholesalers, Durable Goods	
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	100
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	100
42313	Tire and Tube Merchant Wholesalers	100
423140	Motor Vehicle Parts (Used) Merchant Wholesalers	100
423210	Furniture Merchant Wholesalers	100
423220	Home Furnishing Merchant Wholesalers	100
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	100
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	100
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers	100
423390	Other Construction Material Merchant Wholesalers	100
423410	Photographic Equipment and Supplies Merchant Wholesalers	100
423420	Office Equipment Merchant Wholesalers	100

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NAICS codes	NAICS U.S. industry title	Size standard in number of employees or million of dollars
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	100
423440	Other Commercial Equipment Merchant Wholesalers	100
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	100
423460	Ophthalmic Goods Merchant Wholesalers	100
423490	Other Professional Equipment and Supplies Merchant Wholesalers	100
423510	Metal Service Centers and Other Metal Merchant Wholesalers	100
423520	Coal and Other Mineral and Ore Merchant Wholesalers	100
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	100
423620	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers	100
423690	Other Electronic Parts and Equipment Merchant Wholesalers	100
423710	Hardware Merchant Wholesalers	100
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	100
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers	100
423740	Refrigeration Equipment and Supplies Merchant Wholesalers	100
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	100
423820	Farm and Garden Machinery and Equipment Merchant Wholesalers	100
423830	Industrial Machinery and Equipment Merchant Wholesalers	100
423840	Industrial Supplies Merchant Wholesalers	100
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	100
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers	100
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers	100
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers	100
423930	Recyclable Material Merchant Wholesalers	100
423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers	100
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	100
	Subsector 424—Merchant Wholesalers, Nondurable Goods	
424110	Printing and Writing Paper Merchant Wholesalers	100
424120	Stationery and Office Supplies Merchant Wholesalers	100
424130	Industrial and Personal Service Paper Merchant Wholesalers	100
424210	Drugs and Druggists' Sundries Merchant Wholesalers	100
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers	100
424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers	100
424330	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers	100
424340	Footwear Merchant Wholesalers	100
424410	General Line Grocery Merchant Wholesalers	100
424420	Packaged Frozen Food Merchant Wholesalers	100
424430	Dairy Product (except Dried or Canned) Merchant Wholesalers	100
424440	Poultry and Poultry Product Merchant Wholesalers	100
424450	Confectionery Merchant Wholesalers	100
424460	Fish and Seafood Merchant Wholesalers	100
424470	Meat and Meat Product Merchant Wholesalers	100
424480	Fresh Fruit and Vegetable Merchant Wholesalers	100
424490	Other Grocery and Related Products Merchant Wholesalers	100
424510	Grain and Field Bean Merchant Wholesalers	100
424520	Livestock Merchant Wholesalers	100
424590	Other Farm Product Raw Material Merchant Wholesalers	100
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	100
424690	Other Chemical and Allied Products Merchant Wholesalers	100
424710	Petroleum Bulk Stations and Terminals	100
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	100
424810	Beer and Ale Merchant Wholesalers	100
424820	Wine and Distilled Alcoholic Beverage Merchant Wholesalers	100
424910	Farm Supplies Merchant Wholesalers	100
424920	Book, Periodical, and Newspaper Merchant Wholesalers	100
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	100
424940	Tobacco and Tobacco Product Merchant Wholesalers	100
424950	Paint, Varnish, and Supplies Merchant Wholesalers	100
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	100
	Subsector 425—Wholesale Electronic Markets and Agents and Brokers	
425110	Business to Business Electronic Markets	100
425120	Wholesale Trade Agents and Brokers	100

d. In the table "Small Business Size Standards by NAICS Industry," remove the entry 452110, and add in its place the following:

NAICS codes	NAICS U.S. industry title	Size standard in number of employees or million of dollars
452111	Department Stores (except Discount Department Stores)	$23.0
452112	Discount Department Stores	23.0

e. In the table "Small Business Size Standards by NAICS Industry," remove the entry 454110, and add in its place the following:

NAICS codes	NAICS U.S. industry title	Size standard in number of employees or million of dollars
454111	Electronic Shopping	$21.0
454112	Electronic Auctions	21.0
454113	Mail-Order Houses	21.0

f. In the table "Small Business Size Standards by NAICS Industry," revise the heading "Subsector 511—Publishing Industries" to read "Subsector 511—Publishing Industries (except internet)."

g. In the table "Small Business Size Standards by NAICS Industry," in NAICS 511140 revise "Database and Directory Publishers" to read "Directory and Mailing List Publishers."

h. In the table "Small Business Size Standards by NAICS Industry," remove the following two (2) Subsectors together with all entries within those Subsectors: Subsector 513—Broadcasting and Telecommunications and Subsector 514 Information Services and Data Processing Services, and add in their place the following:

NAICS codes	NAICS U.S. industry title	Size standard in number of employees or million of dollars
	Subsector 515—Broadcasting (except Internet)	
515111	Radio Networks	$6.0
515112	Radio Stations	6.0
515120	Television Broadcasting	12.0
515210	Cable and Other Subscription Programming	12.5
	Subsector 516—Internet Publishing and Broadcasting	
516110	Internet Publishing and Broadcasting	12.5
	Subsector 517—Telecommunications	
517110	Wired Telecommunications Carriers	1,500
517211	Paging	1,500
517212	Cellular and Other Wireless Telecommunications	1,500
517310	Telecommunications Resellers	1,500
517410	Satellite Telecommunications	12.5
517510	Cable and Other Program Distribution	12.5
517910	Other Telecommunications	12.5
	Subsector 518—Internet Service Providers, Web Search Portals, and Data Processing Services	
518111	Internet Service Providers	21.0
518112	Web Search Portals	6.0
518210	Data Processing, Hosting, and Related Services	21.0
	Subsector 519—Information Services and Data Processing Services	
519110	News Syndicates	6.0
519120	Libraries and Archive	6.0
519190	All Other Information Services	6.0

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Dated: August 5, 2002.
Hector V. Barreto,
Administrator.
[FR Doc. 02–20357 Filed 8–12–02; 8:45 am]
BILLING CODE 4025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–506]

RIN 2115–AA97

Security Zone: Lake Erie, Perry, OH

AGENCY: Coast Guard, DOT.
ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the Captain of the Port Cleveland zone for the Perry Nuclear Power Plant. This security zone is necessary to protect the Perry Nuclear Power Plant from possible sabotage or other subversive acts, accidents, or possible acts of terrorism. This security zone is intended to restrict vessel traffic from a portion of Lake Erie.

DATES: This rule is effective from 10 a.m. August 1, 2002 until 10 a.m. October 1, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–02–506 and are available for inspection or copying at U.S. Coast Guard Marine Safety Cleveland, 1055 East Ninth Street, Cleveland, Ohio 44114 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Allen Turner, U.S. Coast Guard Marine Safety Office Cleveland, at (216) 937–0111.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Following the catastrophic nature and extent of damage realized from the aircraft flown into the World Trade Center towers, this rulemaking is urgently necessary to protect the national security interests of the United States against future potential terrorists strikes against public and governmental targets. A similar attack was conducted against the Pentagon on the same day. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to protect against the possible loss of life, injury, or damage to property.

On May 24, 2002 we published a notice of proposed rulemaking (NPRM) (67 FR 36554) giving the public the chance to comment on our proposal to make permanent a security zone adjacent to the Perry nuclear power plant. We anticipate this temporary final rule will shortly be removed by a final rule which will respond to any public comment received during the comment period for the NPRM.

Background and Purpose

A temporary security zone is necessary to ensure the security of the Perry nuclear power plant, as a result of the terrorist attacks on the United States on 11 September 2001. The security zone consists of all navigable waters of Lake Erie bound by a line drawn between the following coordinates beginning at 41° 48.187′ N, 081° 08.818′ W; due north to 41° 48.7′ N, 081° 08.818′ W; due east to 41° 48.7′ N, 081° 08.455′ W; due south to the south shore of Lake Erie at 41° 48.231′ N, 081° 08.455′ W; thence westerly following the shoreline back to the beginning. These coordinates are based upon North American Datum 1983 (NAD 83). Entry into, transit through or anchoring within this security zone is prohibited unless authorized by the Captain of the Port Cleveland or his designated on-scene representative. The designated on-scene representative will be the Patrol Commander and may be contacted via VHF/FM Marine Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Cleveland (see **ADDRESSES.**)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, it is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subject in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.T09–506 to read as follows:

§ 165.T09–506 Security Zone; Lake Erie, Perry, OH.

(a) *Location*: The following area is a temporary security zone: all navigable waters of Lake Erie bound by a line drawn between the following coordinates beginning at 41° 48.187′ N, 081° 08.818′ W; due north to 41° 48.7′ N, 081° 08.818′ W; due east to 41° 48.7′ N, 081° 08.455′ W; due south to the south shore of Lake Erie at 41° 48.231′ N, 081° 08.455′ W; thence westerly following the shoreline back to the beginning.

(b) *Effective time and date*. This section is effective from 10 a.m. August 1, 2002 until 10 a.m. October 1, 2002.

(c) *Regulations*. In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Cleveland, or the designated on-scene representative. The designated on-scene representative will be the Patrol Commander who may be contacted on VHF–FM Channel 16.

(d) *Authority*. In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: August 1, 2002.
L. W. Thomas,
Commander, U.S. Coast Guard, Captain of the Port Cleveland.
[FR Doc. 02–20479 Filed 8–12–02; 8:45 am]
BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–207]

RIN 2115–AA97

Security Zone; Seabrook Nuclear Power Plant, Seabrook, New Hampshire

AGENCY: Coast Guard, DOT.
ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is extending the effective period for the Seabrook Nuclear Power Plant, Seabrook, New Hampshire Security Zone. This change will extend the effective period of this temporary final rule until November 15, 2002, allowing adequate time to continue with informal rulemaking to develop a permanent rule. This rule will continue to close certain land and water areas in the vicinity of the Seabrook Nuclear Power Plant.

DATES: The amendment to § 165.T01–207 in this rule is effective August 13, 2002. Section 165.T01–207, added at 66 FR 67487, December 31, 2002, effective December 7, 2001 until June 15, 2002, and extended in effect until August 15, 2002 at 67 FR 30807, May 8, 2002, as amended in this rule is extended in effect until November 15, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection and copying at Marine Safety Office Portland, Maine, 103 Commercial Street, Portland, Maine 04101 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) R. F. Pigeon, Port Operations Department, Marine Safety Office Portland, Maine at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 31, 2001, the Coast Guard published a temporary final rule (TFR) entitled "Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire" in the **Federal Register** (66 FR 67487). The effective period for this rule was from December 7, 2001 until June 15, 2002. The effective period for this rule was extended until August 15, 2002 in a TFR of the same title published in the **Federal Register** on May 8, 2002 (67 FR 30807). We expected the extension of the temporary rule through August 15, 2002, would have provided us enough time to complete the rulemaking process for a

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permanent security zone surrounding Seabrook. Now, however, we are extending the effective period of the temporary rule until November 15, 2002, to ensure sufficient time to complete the rulemaking process, for public comment and advanced publication. Continuing the temporary rule in effect while the permanent rulemaking is in progress will ensure the security of the Seabrook Nuclear Power Plant and the maritime and surrounding communities during that period.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. The original temporary final rule was urgently required to protect the plant from subversive activity, sabotage or possible terrorist attacks initiated from waters surrounding the plant. It was anticipated that the Coast Guard would assess the security environment at the end of the effective period to determine whether continuing security precautions were required and, if so, to propose regulations responsive to existing conditions. We have determined the need for continued security regulations does exist. The Coast Guard will utilize the extended effective period of this TFR to complete notice and comment rulemaking in order to develop a permanent regulation tailored to the present and foreseeable security environment within the Captain of the Port, Portland, Maine zone.

Under 5 U.S.C. 553(d)(3), we find that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures contemplated by the original rule were intended to prevent possible terrorist attacks against the Seabrook Nuclear Power Plant and were needed to protect the facility, persons at the facility, the public and the surrounding communities from subversive activity, sabotage or possible terrorist attacks, either from the water or by access to the facility by utilizing public trust lands between the low and high water tide lines.

The Coast Guard published a NPRM entitled "Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire" in the **Federal Register** on July 31, 2002 (67 FR 49643). This NPRM proposes to establish a permanent security zone that is temporarily effective under this rule.

Background and Purpose

Due to the terrorist attacks on New York City, New York and Washington DC on September 11, 2001 and continued warnings from national security and intelligence officials that future terrorist attacks are possible, heightened security measures are necessary surrounding the Seabrook Nuclear Power Plant. A temporary security zone was implemented around the Seabrook Nuclear Power Plant to protect against possible damage to the facility from subversive activity, sabotage or terrorist attacks initiated from the surrounding waters. The rule was also implemented to protect persons at the facility, the public and surrounding communities from the catastrophic impact release of nuclear radiation would have on the surrounding area, and to provide the Captain of the Port, Portland, Maine with enforcement options to deal with potential threats to the security of the plant.

There is a continuing need for the protection of the plant. The temporary security zone surrounding the plant is only effective until August 15, 2002. The Coast Guard intends to implement a permanent security zone surrounding the facility. In order to provide continuous protection to the plant until the permanent zone is promulgated, the Coast Guard is extending the effective date of the rule until November 15, 2002. This extension will permit sufficient time to implement a permanent zone through notice and comment rulemaking, while ensuring that there is no lapse in coverage of the facility.

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Portland, Maine. Each person or vessel in a security zone shall obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port, Portland, Maine. These regulations were issued under authority contained in 33 U.S.C. 1223, 1225 and 1226.

Regulatory Evaluation

This temporary final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The effect of this regulation will not be significant for several reasons: there is ample room for vessels to navigate around the zone, notifications will be made to the local maritime community and signs will be posted informing the public of the boundaries of the zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. For the reasons enumerated in the Regulatory Evaluation section above, this security zone will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Public Law 104–121], the Coast Guard offered to assist small entities in understanding this temporary final rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business, organization or governmental jurisdiction would be affected by this rule, and you have questions concerning its provisions or options for compliance, please call Lieutenant (Junior Grade) R. F. Pigeon, Marine Safety Office, Portland, Maine, at (207) 780–3251.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory action. In particular, the Act addresses actions that may require expenditure by a State, local or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administer of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Revise paragraph (b) of § 165.T01—207 to read as follows:

§ 165.T01—207; Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire.

* * * * *

(b) *Effective period.* This section is effective from December 7, 2001 until November 15, 2002.

* * * * *

Dated: August 2, 2002.

M. P. O'Malley,

Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.

[FR Doc. 02–20482 Filed 8–12–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–006]

RIN 2115–AA97

Security Zone; Lake Erie, Perry, Ohio

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent security zone on the navigable waters of Lake Erie in the Captain of the Port Zone Cleveland for the Perry Nuclear Power Plant. This security zone is necessary to protect the Perry Nuclear Power Plant from possible sabotage or other subversive acts, accidents, or possible acts of terrorism. This security zone is intended to restrict vessel traffic from a portion of Lake Erie.

DATES: This rule is effective August 13, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–02–006 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Cleveland, 1055 East Ninth Street, Cleveland, Ohio 44114 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Allen Turner, U.S. Coast Guard Marine Safety Office Cleveland, at (216) 937–0111.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 24, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Security Zone; Lake Erie, Perry, OH" in the **Federal Register** (67 FR 36556). We did not receive any letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permanent security zone established by this rule is smaller in size than the temporary security zone previously in effect. *See* 66 FR 52043

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(Oct. 12, 2001) or 67 FR 39848 (June 11, 2002) for a description of the previous larger security zone. By immediately implementing the smaller zone size, we will be relieving some of the burden placed on the public by the previous larger security zone. This rule removes a temporary security zone identical to that established by this rule. The identical temporary security zone was established on August 1, 2002 after the previous larger security zone expired that date.

Background and Purpose

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists resulting in catastrophic loss of life, the destruction of the World Trade Center, and significant damage to the Pentagon. National security and intelligence officials warn that future terrorists attacks are likely. This regulation establishes a permanent security zone for the Perry Nuclear Power Plant. The security zone consists of all navigable waters of Lake Erie bound by a line drawn between the following coordinates: beginning at 41° 48.187′ N, 081° 08.818′ W; due north to 41° 48.7′ N, 081° 08.818′ W; due east to 41° 48.7′ N, 081° 08.455′ W; due south to the south shore of Lake Erie at 41° 48.231′ N, 081° 08.455′ W; thence westerly following the shoreline back to the beginning. These coordinates are based upon North American Datum 1983 (NAD 83). Entry into, transit through or anchoring within this security zone is prohibited unless authorized by the Captain of the Port Cleveland or his designated on-scene representative.

Discussion of Comments and Changes

No comments were received and no changes are being made from the proposed rule in this final rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No comments or questions were received from any small businesses.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule will call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, it is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

§ 165.T09–506 [Removed]

2. Remove § 165.T09–506

3. Add § 165.912 to read as follows:

§ 165.912 Security Zone; Lake Erie, Perry, OH.

(a) *Location:* The following area is a security zone: all navigable waters of Lake Erie bounded by a line drawn between the following coordinates beginning at 41° 48.187′ N, 081° 08.818′ W; then due north to 41° 48.7′ N, 081° 08.818′ W; then due east to 41° 48.7′ N, 081° 08.455′ W; then due south to the south shore of Lake Erie at 41° 48.231′ N, 081° 08.455′ W; thence westerly following the shoreline back to the beginning (NAD 83).

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Cleveland, or the designated on-scene representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: July 31, 2002.

L. W. Thomas,

Commander, U.S. Coast Guard, Captain of the Port, MSO Cleveland.

[FR Doc. 02–20483 Filed 8–12–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA246–0353a; FRL–7254–8]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the South Coast Air Quality Management District (SCAQMD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from miscellaneous metal parts coating, aerospace assembly and component manufacture and coating, pleasure craft coating and boatyard operations, and resin manufacturing. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on October 15, 2002 without further notice, unless EPA receives adverse comments by September 12, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814;

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765; and,

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA, 93993.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4111.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
SCAQMD	1141	Control of Volatile Organic Compound Emissions From Resin Manufacturing	11/17/00	03/14/01
SCAQMD	1124	Aerospace Assembly and Component Manufacturing Operations	09/21/01	01/22/02
SCAQMD	1107	Coating of Miscellaneous Metal Parts and Products	11/19/01	03/15/02
VCAPCD	74.24.1	Pleasure Craft Coating and Commercial Boatyard Operations	01/08/02	03/15/02

We determined these rule submittals met the completeness criteria in 40 CFR part 51 Appendix V on the following dates: Rule 1141, May 25, 2001; Rule 1124, February 27, 2002; Rule 1107, May 7, 2002; and, Rule 74.24.1, May 7,

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2002. These completeness criteria must be met before formal EPA review can begin.

B. Are There Other Versions of These Rules?

We approved versions of these rules into the SIP on the dates listed: SCAQMD Rule 1141, December 20, 1993; SCAQMD Rule 1124, August 1, 1998; SCAQMD Rule 1107, February 12, 2002; and, VCAPCD Rule 74.24.1, August 31, 1999. Between these SIP incorporations and today, CARB has made no intervening submittals of these rules.

C. What Is the Purpose of the Submitted Rule Revisions?

SCAQMD Rule 1141 specifies process and manufacturing requirements for resin manufacturers designed to reduce VOC emissions. These processes include resin manufacturing by continuous polystyrene process, a liquid phase high density polyethylene slurry, and a liquid phase polypropylene process. SCAQMD made the following revisions to Rule 1141:

- The definitions of Exempt Compound and VOCs are deleted and replaced with a reference to Rule 102—Definition of Terms;
- An alternative for monthly recordkeeping is added if the resin manufacturing operations are not subject to a daily production limit or daily VOC limit within any other rule or permit; and,
- A usage cut-off exemption is added providing for a monthly limit of 220 pounds of VOC per month should a facility keep monthly records.

SCAQMD Rule 1124 is a rule designed to reduce VOC emissions at industrial sites engaged in the assembly and manufacture of aerospace components for aircraft and space vehicles. Rule 1124's requirements apply to maskant applicators, aircraft refinishers, aircraft fastener manufacturers, aircraft operators, and aircraft maintenance and service facilities. The revisions SCAQMD made to Rule 1124 are listed below.

- An additional year is allowed for the 250 gr/l emission limit for adhesive bonding primers to become effective in 1/1/03.
- Adhesive bonding primers used in remanufactured parts will remain indefinitely at 805 gr/l instead of lowered to 250 gr/l as in the 1998 SIP rule.
- Adhesion promotors are reinstated at an 850 gr/l limit and dropping to 250 gr/l in 2005.
- The exemption for rubber solution fuel tank coatings is extended from 1/01/02 to 1/01/05.
- The emissions limit for antichafe coatings is reduced from 600 gr/l to 420 gr/l, effective 3/01/02.
- The emissions limit for fire resistant coating used in military applications is reduced from 970 gr/l to 800 gr/l, effective 3/01/02.
- The emissions limit for extrudable, brushable, and rollable sealants is reduced from 600 gr/l to 280 gr/l, effective 3/01/02.
- A specialty category for mold release coatings is added with an emissions limit of 750 gr/l.
- Finally, the emissions limit for Type II chemical milling maskants is reduced from 250 gr/l to 160 gr/l, effective 3/01/02.

SCAQMD Rule 1107 is a rule designed to reduce VOC emissions at industrial sites engaged in metal coating operations. VOCs are emitted during the preparation and coating of the metal parts, as well as the drying phase of the coating process. Listed below are the significant revisions that SCAQMD made to Rule 1107. Other minor revisions are listed in the TSD.

- A limited exemption for electrocoatings with a 450 gram/liter VOC content. These coatings are further limited by use to 66 gallons per month. Additional definitions were added to facilitate this amendment.
- The applicability statement has been amended to distinguish Rule 1107 from Rule 1113—Architectural Coatings.
- Test methods were added to determine the acid content of pretreatment primers and etching filters, to quantify the weight percent of elemental aluminum metal coatings and the metal content for metals other than aluminum in coatings, and to determine low concentration non-ethane organic compound emissions.
- Finally, several expired compliance dates were deleted.

VCAPCD Rule 74.24.1 is a rule designed to reduce VOC emissions at industrial sites engaged in manufacturing or repairing vessels in commercial boatyards. Most of these vessels are operated, leased, rented, or chartered to a person or business for recreational purposes. VOCs are emitted during the preparation, repair, and coating of vessels, as well as the drying phase of the coating process.

VCAPCD amendments to Rule 74.24.1 included the changes described below.

- The emissions limit for antifoulant coatings was raised from 330 grams per liter (gr/l) to 400 gr/l.
- The emissions limit for two-component topcoats was raised from 490 gr/l to 650 gr/l.
- New spray gun cleaning requirements were added to the rule.
- Low vapor pressure cleaning solvent requirements for spray gun cleaning and general clean up were added to the rule.
- Test methods were added for determining composite vapor pressure and active and passive solvent losses from spray gun cleaning.
- Finally, definitions were added to facilitate the new spray gun cleaning and solvent requirements.

Each of the subject TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Clean Air Act (CAA or the Act)), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SCAQMD and VCAPCD regulate an ozone nonattainment area (see 40 CFR part 81), so each of these rules must fulfill RACT.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently are listed below.

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
3. "Control of Volatile Organic Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations," USEPA, 1997, EPA–453/R–97–004, and subsequent revisions.
4. "Control of Volatile Organic Emissions from Existing Stationary Sources Volume VI: Surface Coating of Miscellaneous Metal Parts and Products," USEPA, June 1978, EPA–450/2–78–015.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The revisions to each rule will be reviewed particularly concerning SIP relaxations.

With Rule 1141 and similar rules, SCAQMD staff did several studies to examine the probable emissions effects of amending the recordkeeping threshold. These studies examined the overall emission effects and 1141 rule-related effects of a change in recordkeeping requirements. The concern was whether or not a facility would change its daily activities and resulting emission patterns when allowed a monthly recordkeeping regime as opposed to a daily requirement. From the results of the overall study, it appeared that average daily usage did not change under either recordkeeping regime. Also, SCAQMD found that there would be no change in either overall, or daily VOC emissions for the resin manufacturers due to adding the monthly recordkeeping option. The requirements of the rule do not change regardless of the recordkeeping option chosen.

The exemption for 220 pounds of VOC per calendar month is an extension of the size-cutoff of 10 pounds per day. It is unlikely that a manufacturing firm would so significantly increase its operations and resulting emissions as to idle its plant for most of a month while operating under a 220 pound emissions cap related to recordkeeping. SCAQMD's study found that 35 of 40 resin manufacturing firms in the South Coast did not qualify for either the daily or monthly exemption. The remaining 5 firms were already exempt from the rule. Therefore, adding a monthly size-cutoff for recordkeeping would not allow sources to avoid regulation. To conclude, the submitted Rule 1141 does not interfere with reasonable further progress or attainment. We do not expect either the daily pattern of emissions, or the number of exempt sources to increase.

Concerning Rule 1124, SCAQMD staff calculated the net effect on VOC emissions of the amendments to the rule. Initial foregone emission reductions are estimated to be 48 pounds per day. By 2005, when all lower emissions limits take effect, the amount of foregone emissions reductions is estimated to be 12 pounds per day. Compared to an estimated annual average VOC emissions of 5211 pounds per day for the aerospace source category, these foregone emission reductions amount to an increase of 0.23%. Furthermore, an added 12 pounds/day is unlikely to interfere with RFP or attainment of the NAAQS when considered against the 323 tons per day of VOC emissions that would be allowed under the current SIP approved attainment plan. In conclusion, EPA has determined that 12 pounds per day are unlikely to interfere with reasonable further progress or attainment.

Prior to amending Rule 1107, SCAQMD staff compared a 3 pounds (lb) of VOC/gallon coating, the SIP-approved rule VOC content, applied with existing conventional techniques, with using a 3.75 lb VOC/gallon coating applied using electrophoresis. Because of the higher transfer efficiency and the thinner applied coating thickness, the electrophoresis coating technique resulted in less VOC emissions when coating the same surface area. At this time, the exemption for electrophoresis coating techniques is used by a single source. To conclude, the Rule 1107 will not interfere with reasonable further progress or attainment. Net emissions are expected to decrease slightly given the different application methodology.

When considering the revisions to Rule 74.24.1, VCAPCD staff estimated that the new spray gun cleaning and low vapor pressure solvent requirements will offset the two relaxed emission limits by 1000 pounds per year. The rule relaxations for anti-foulant and two component topcoats will result in an increase of 900 pounds per year. This estimate is based on actual coating use and permit limits for the four boatyards affected by the rule. New spray gun cleaning and low vapor pressure cleaning solvent use are expected to reduce emissions by 1900 pounds per year. To conclude, the submitted Rule 74.24.1 does not interfere with reasonable further progress or attainment. The net effect of amendments to the rule is to reduce ROC emissions.

The subject TSD has more information on our evaluation of each rule.

C. EPA Recommendations To Further Improve the Rules

The TSDs for SCAQMD Rules 1141 and 1124 describe additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by September 12, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 15, 2002. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

A. Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

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TABLE 2—OZONE NONATTAINMENT MILESTONES

Date	Event
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 16, 2002.

Keith Takata,

Associate Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by revising paragraph (c)(286) introductory text, and by adding paragraphs (c)(286)(i)(A)(*3*), (c)(293)(i)(A)(*2*), (c)(297)(i)(A)(*3*) and (c)(297(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(286) New and amended regulations for the following APCDs were submitted on March 14, 2001 by Governor's designee.

(i) * * *

(A) * * *

(*3*) Rule 1141 adopted on July 8, 1983, and amended on November 17, 2000.

* * * * *

(293) * * *

(i) * * *

(A) * * *

(*2*) Rule 1124 adopted on July 6, 1979, and amended on September 21, 2001.

* * * * *

(297) * * *

(i) * * *

(A) * * *

(*3*) Rule 74.24.1 adopted on November 10, 1998, and amended on January 8, 2002.

* * * * *

(C) South Coast Air Quality Management District.

(*1*) Rule 1107 adopted on June 1, 1979, and amended on November 9, 2001.

* * * * *

[FR Doc. 02–20349 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 143–1a; FRL–7249–4]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On March 5, 2002, the Indiana Department of Environmental Management (IDEM) submitted revisions to the Indiana Administrative Code (IAC) for approval into the Indiana State Implementation Plan (SIP). IDEM amended this submittal in a letter dated May 3, 2002. This regulatory update changes rule language concerning Indiana's permitting programs. Included in this submittal is a provision to assure that applicable requirements exist independently of title V permits. EPA is approving the rule language in this submittal because it is consistent with EPA's regulations governing state permit programs.

DATES: This direct final rule is effective October 15, 2002 without further notice unless EPA receives adverse comments in writing by September 12, 2002. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to Ms. Pamela Blakley, Chief, Permits and Grants Section (IL/IN/OH), Attention: Mr. Sam Portanova, at the EPA Region 5 office listed below. Copies of the state's submittal and other supporting information used in developing this direct final rule are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois, 60604. Please contact Sam Portanova at (312) 886–3189 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, Telephone Number: (312) 886–3189, E-Mail Address: *portanova.sam@epa.gov.*

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is being addressed in this document?
What are the program changes that EPA is approving?
What is involved in this final action?

What Is Being Addressed in This Document?

On March 5, 2002, IDEM submitted regulatory provisions for approval into the state SIP. IDEM amended this submittal on May 3, 2002. This submittal includes 326 IAC 2–1.1–9.5 which is related to the implementation of Indiana's air permit programs. In today's action, EPA approves the submitted rule language into the Indiana SIP.

What Are the Program Changes That EPA Is Approving?

Indiana's construction permits expire upon issuance of a valid title V permit. Title V requires, however, that applicable requirements exist independently of title V permits. Prior to the adoption of 326 IAC 2–1.1–9.5, Indiana's rules did not assure that construction permit conditions exist independently of title V permits. Therefore, this issue was identified as not meeting the program approval requirements of title V and 40 CFR part 70 in a notice of program deficiency (NOD) for the Indiana title V program published in the December 11, 2001 **Federal Register** (66 FR 64039).

Indiana revised the state regulations in 326 IAC 2–1.1–9.5 to say that "any condition established in a permit issued pursuant to a permitting program approved into the state implementation plan shall remain in effect until: (1) The condition is modified in a subsequent permit action; or (2) the emission unit to which the condition pertains permanently ceases operation." "Subsequent permit action" in this rule refers to a permit action taken pursuant to Indiana's construction permit authority. Since title V does not confer authority to modify existing applicable requirements, including construction permit conditions, "subsequent permit action" does not include permit actions taken pursuant to Indiana's title V program. In today's action, EPA approves this regulatory provision into the Indiana SIP. This approval satisfies Indiana's requirement to correct an identified title V program deficiency and resolves the issue published in the December 11, 2001 NOD.

What Is Involved in This Final Action?

EPA approves 326 IAC 2–1.1–9.5 into the Indiana SIP. The approval of this regulation resolves a deficiency issue raised in EPA's December 11, 2001 NOD of the Indiana title V program.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the

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absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Dioxide, Volatile organic compounds.

Dated: June 28, 2002.

Jo Lynn Traub,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.770 is amended by adding paragraph (c)(151) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(151) On March 5, 2002, the Indiana Department of Environmental Management requested a revision to the Indiana State Implementation Plan in the form of revisions to the Permit Review Rules intended to add regulations to assure that construction permit conditions exist independently of title V permits. This revision took the form of an amendment to Title 326: Air Pollution Control Board of the Indiana Administrative Code (326 IAC) 2–1.1–9.5 General Provisions; Term of Permit.

(i) Incorporation by reference.

(A) Indiana Administrative Code Rules 326 IAC 2–1.1–9.5. Adopted by the Indiana Air Pollution Control Board October 3, 2001. Filed with the Secretary of State December 20, 2001. Effective January 19, 2002. Published at Indiana Register, Volume 25, Number 5, February 1, 2002.

[FR Doc. 02–20345 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7258–8]

RIN 2060–AE77

National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On June 14, 2002, the EPA promulgated amendments to the national emission standards for the secondary aluminum production industry as a direct final rule, along with a parallel proposal to be used as a basis for final action in the event that we received any adverse comments on the direct final amendments. Because one commenter submitted adverse comments on several of the provisions in the direct final rule, we are withdrawing the entire direct final rule. We will address the adverse comments in a subsequent final rule based on the parallel proposal published on June 14, 2002. We intend to publish the subsequent final rule as soon as possible.

DATES: As of August 13, 2002, the EPA withdraws the amendments to §§ 63.1501, 63.1505, 63.1506, 63.1510, 63.1511, 63.1515 and Appendix A to subpart RRR published at 67 FR 41118 on June 14, 2002.

ADDRESSES: Docket number A–2002–05, containing supporting information used in the development of this notice, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102T), 1301 Constitution Avenue, NW, Room B108, Washington, DC 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. John Schaefer, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–0296, facsimile number (919) 541–5600, electronic mail address: *schaefer.john@epa.gov*.

SUPPLEMENTARY INFORMATION: On June 14, 2002, we published a direct final rule (67 FR 41118) and a parallel proposed rule (67 FR 41136) to amend the national emission standards for secondary aluminum production (40 CFR part 63, subpart RRR). The amendments were the result of settlement agreements which we executed in two cases which were brought seeking judicial review of the subpart RRR. The intent of the amendments in the direct final rule was to eliminate confusion and to clarify various compliance dates in the promulgated standard, to encourage early performance tests, and to resolve some basic applicability questions being addressed in a separate rulemaking before the compliance date for certain new sources.

We stated in the preamble to the direct final rule and parallel proposal that if we received significant material adverse comment by July 15, 2002, on one or more distinct provisions of the direct final rule, we would publish a timely notice in the **Federal Register** specifying which provisions will become effective and which provisions will be withdrawn due to adverse comment. We subsequently received from one commenter adverse comments on six of the amendments:

- § 63.1501(c), which deferred the compliance date for new and reconstructed affected sources which are located at existing aluminum die casting, foundry, or extrusion facilities; and
- § 63.1505(c),(d),(e),(f), and (k), which deferred the compliance date for thermal chip dryers, scrap dryers/delacquering kilns/decoating kilns, sweat furnaces and secondary aluminum processing units from the date on which performance testing was completed until the compliance date specified in § 63.1501.

In light of the relationship between the sections which were commented on and some of the remaining amendments, and to avoid the possibility of confusion resulting from partial adoption of the amendments, we have decided to withdraw all amendments contained in the direct final rule. Accordingly, all amendments in the direct final rule are withdrawn as of August 13, 2002. We recognize the potential disruptive effect of this withdrawal action on affected facilities. Therefore, after considering the adverse comments, we intend to take final action on the accompanying proposed rule as soon as possible. We will not institute a second comment period on this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: August 7, 2002.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 02–20448 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 260

[FRL–7257–7]

Exclusion from the Definition of Solid Waste; Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today granting a variance from EPA's hazardous waste requirements for certain materials reclaimed by the World Resources Company (WRC) from metal-bearing sludges. This action responds to a petition submitted by WRC requesting that the Agency exclude from the definition of solid waste under the Resource Conservation and Recovery Act (RCRA) its concentrate material that is partially reclaimed from metal-bearing sludges and sold to smelters. In response to the petition, EPA published a **Federal Register** notice proposing to grant the variance on December 9, 1999 (64 FR 68968).

EFFECTIVE DATE: This variance is effective August 13, 2002.

ADDRESSES: Supporting materials for this variance are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–2002–WRCF–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, we recommend making an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket without charge. Additional copies cost $0.15 per page. The docket index and some supporting materials are available electronically. For information on accessing them, see the beginning of the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund/EPCRA/UST Call Center at (800) 424–9346 (toll free) or TDD (800) 553–7672 (hearing impaired). In the Washington, D.C. metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this rulemaking, contact Ms. Marilyn Goode, U.S. Environmental Protection Agency, MC 5304W, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (703) 308–8800, electronic mail: *goode.marilyn@epa.gov*.

SUPPLEMENTARY INFORMATION: The index to the docket record and some supporting documents for this proposal are available on the Internet. Follow these instructions to access the information electronically: *http://www.epa.gov/epaoswer/hazwaste/id/index/htm*.

The official record for this action will be kept in paper form. The official record is the paper record maintained at the RCRA Information Center, also referred to as the Docket, at the address provided in the **ADDRESSES** section at the beginning of this document.

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I. Background

A. Authority

Under 40 CFR 260.30(c), facilities may petition EPA to exclude from the definition of solid waste material that has been reclaimed but must be reclaimed further before recovery is complete. To qualify for the exclusion, the material resulting from initial reclamation must be commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). Petitioners must provide sufficient information to EPA to allow the Agency to make a determination that the material is not a solid waste, pursuant to criteria set forth at 40 CFR 260.31(c).

B. Summary of Petition

Pursuant to 40 CFR 260.30(c), WRC submitted to EPA a petition for a variance from classification as solid waste for metal-rich concentrate material produced at its facility in Phoenix, Arizona. WRC produces the concentrate primarily from sludges generated by electroplating operations. The sludges are rich in metals, and are generally classifed as hazardous wastes. WRC then sells the partially reclaimed material to primary smelters for metals extraction. Currently, the partially reclaimed material produced at the Phoenix facility is fully regulated as hazardous waste, must be managed and sold as hazardous waste, and off-site shipments must be accompanied by a hazardous waste manifest. In support of its variance application, WRC provided data and information in its application about each of the factors listed in 40 CFR 260.31(c).

1. Applicability of the Variance

At its Phoenix facility, WRC principally reclaims wastewater treatment sludges (F006) received from generators who conduct electroplating and metal finishing operations. From

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these sludges, WRC "produces" a metal-rich concentrate material. In addition, the facility also receives and partly reclaims hazardous wastes listed as F019 (wastewater treatment sludges from chemical conversion coating of aluminum) and D004 through D011 (characteristic hazardous wastes). WRC's petition, and the proposed exclusion addressed in this notice, pertain only to the metal-bearing sludges listed as hazardous wastes F006 and F019 and partially reclaimed at WRC's Phoenix, Arizona facility. Other hazardous wastes managed by WRC at its Arizona facility and all hazardous wastes managed at other WRC facilities are not addressed in this decision and must continue to be managed as solid and/or hazardous wastes in accordance with all applicable RCRA regulatory requirements.

The Agency notes that sludges that are hazardous only because they exhibit a characteristic of hazardous waste that are reclaimed are currently excluded from classification as solid waste pursuant to 40 CFR 261.2(c)(3). Therefore, sludges that are reclaimed by WRC and designated as hazardous wastes D004 through D011 are not solid wastes. In addition, if these characteristic sludges are mixed with the listed metal-bearing sludges covered by the variance prior to or during the reclamation process at WRC's Phoenix facility, the mixture will not be classified as a solid waste provided the mixture is sent off-site for further reclamation and is handled in accordance with all the conditions of this variance.

2. Description of WRC's Partial Reclamation Process

Operations at WRC's Phoenix facility are governed by a Consent Agreement and Consent Order (CA/CO) executed by EPA Region IX, WRC, and the Arizona Department of Environmental Quality, hereafter referred to as "ADEQ" (*see* In the Matter of World Resources Company, EPA I.D. No. AZD980735500, United States Environmental Protection Agency, Region IX, September 3, 1996). The CA/CO includes a requirement to submit an application for a treatment and storage permit to ADEQ. At the Arizona facility, WRC accepts F006 raw material (as well as other metal-bearing sludges) that it judges to be acceptable for recycling based on laboratory and process testing of generated sludges. WRC prepares a waste profile for the wastestreams received from each generator, which includes physical descriptions and constituent content. The material is unloaded, examined, and sampled on receiving pads in a processing enclosure. WRC dries the received waste through evaporative processes. The material is spread out in a controlled area, mechanically furrowed, and periodically rotor-tilled to facilitate drying. The physical characteristics of the material changes from a wet cohesive nonfree-flowing mass into a granular free-flowing form. The moisture content of the F006 received is reduced by one-half. The entire processing area is located on a concrete pad which covers several acres, with a compacted native soil and flexible membrane liner underneath the pad.

The F006 is then blended by mechanical mixing with other waste streams received from various generators to achieve concentrates that meet the contractual specifications (e.g, recoverable metals contents) of its customers. Other than water, WRC neither adds any materials to, nor removes any materials from the F006 and F019 metal-bearing sludges that it receives from generators and processes. The resulting concentrate contains metal hydroxides and oxides of iron, aluminum and magnesium. WRC markets the concentrates as copper, nickel, and tin concentrates to smelters that recover various metals contained in these concentrates.

II. Summary of the Agency's Final Decision

For the reasons described below in our response to public comments, the Agency is today conditionally granting the petitioner's (WRC's) request for a variance from classification as solid waste for the metal concentrate partially reclaimed from materials listed as hazardous waste F006 and F019 received at its Arizona facility, which are sold to metal smelters after being partially reclaimed by WRC. The variance is granted subject to conditions that are very similar to those proposed in the **Federal Register** on December 9, 1999 (64 FR 68968), namely:

(1) Metal-bearing sludges F006 and F019 accepted by the facility from off-site and used in the production of the partially reclaimed concentrate materials must have a metals concentration level of no less than two percent on a dry weight basis, or an equivalent economic value in precious metals (e.g., gold, silver, platinum, or palladium). In addition, the facility may only process two shipments of listed sludge materials that do not meet the two percent metals concentration level from a single generator within a 14-day time period before taking action to ensure that subsequent shipments will meet the minimum metal content. Specifically, WRC may not accept more than one non-conforming shipment from a generator, unless the second non-conforming shipment is received within 14 days following the first event. Thereafter, WRC may not accept additional materials from that generator until WRC determines that the generator's subsequent sludge shipments will meet the minimum metal content requirements of this condition.

(2) WRC shall provide to ADEQ an annual audit, performed by an independent third party mutually acceptable to WRC and ADEQ, to be completed within the six months following the end of each calendar year. The scope of the annual audit will cover WRC's concentrate shipments during the year to certify that all shipments were: (1) Made to metal smelting facilities; (2) documented and shipped in accordance with all applicable U.S. Department of Transportation regulations; and (3) documented to have reached the designated destination.

(3) The partially reclaimed concentrate materials must have a concentration of no greater than 590 ppm total cyanide. Cyanide must be analyzed using method 9010 or 9012 found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

(4) WRC must send a one-time notification of the variance and its conditions to any foreign country where metal smelters accepting WRC concentrate are located. In addition, WRC must include on its Material Safety Data Sheet shipped with the concentrate a notification that the concentrate may contain up to 590 ppm cyanide and that low pH environments can result in the production of hydrogen cyanide gas.

(5) To ensure that its customers handle the processed concentrates as valuable commodities in a manner that minimizes loss, WRC must place a provision stipulating no land placement of the materials in its contractual agreements with smelting facilities.

(6) This conditional variance from classification as solid waste for the metal concentrate reclaimed from listed hazardous wastes F006 and F019 at WRC's Phoenix, Arizona facility takes effect at the point at which the concentrate is loaded for shipment. This conditional variance does not affect the regulatory status of any other hazardous wastes handled by WRC at the Phoenix facility. In addition, the variance does not apply to or affect the regulatory status of any wastes managed at any other WRC facility.

III. Response to Public Comments on the Proposed Variance

40 CFR 260.30 provides that the EPA Administrator may grant a variance from the classification of solid waste, on a case-by-case basis, for materials that have been reclaimed but must be reclaimed further before recovery is completed. Such a variance generally is contingent upon the material resulting from the initial reclamation being "commodity-like." When this variance is effective, the concentrates partially reclaimed from metal-bearing sludges F006 and F019 that are shipped to smelters may travel without a hazardous waste manifest and will not be subject to any RCRA controls other than the conditions of this variance (listed above in this notice). Incoming hazardous waste received by WRC at the Phoenix facility is not covered by the variance and must be manifested and managed as a hazardous waste until shipped to smelters for further reclamation.

EPA's rules at 40 CFR 260.31(c) specifies five criteria for evaluating whether a specific material qualifies for a "partially reclaimed material" variance from the definition of solid waste. In addition, 40 CFR 260.31(c)(6) also allows EPA to consider "other relevant factors" when determining whether or not to grant a requested variance for materials that have been partially reclaimed. The criteria of 40 CFR 260.31(c) do not constitute separate legal thresholds, each of which must be met before EPA can grant a variance under this regulatory provision. Instead, EPA must consider all the criteria in their totality to determine whether the partially reclaimed concentrate is "commodity-like". A strong demonstration that several criteria have been met may outweigh the fact that an applicant is weak in another area. Weighing all of the factors together, EPA has concluded that WRC's processed concentrates are more commodity-like than waste-like, and that it is reasonable to grant the variance.

This section sets out EPA's findings, describes the principal comments concerning these findings, and gives EPA's responses to these comments. All other comments, and the Agency's responses, may be found in the record for this rulemaking (*see* RCRA Docket Number F–2002–WRCF–FFFFF).

A. Degree of Processing

The first evaluation criterion (40 CFR 260.31(c)(1)) is the degree of processing a material has undergone and the degree of further processing that is required for the material to be rendered "commodity-like." Materials that have undergone substantial processing to reclaim valuable or recyclable materials (but still must undergo a degree of further processing) generally satisfy this criterion. Materials that are still substantially "waste-like" and that need a significant degree of further processing or "treatment" to be rendered "commodity-like" may not satisfy the evaluation criterion.

One commenter stated that the greater part of the processing is accomplished at the smelter rather than at the WRC facility and that WRC therefore does not meet the criteria for the variance. EPA agrees that this processing is not technically complicated. As discussed below, however, WRC has a sophisticated quality control program which allows it to blend sludges to meet smelter specifications. In fact, WRC has made a very strong showing that its processing adds substantial economic value to electroplating sludges. It takes in a material that has little or no market value (electroplaters pay WRC to take their sludges) and converts it into a material that smelters will buy (see the discussion of economic value in the following section of this notice). WRC also made a strong showing that it meets the fourth criterion, relating to a guaranteed end market for its reclaimed material. Weighing all the factors together, EPA has concluded that the amount of processing performed by WRC is sufficient to meet this criterion.

Another commenter said that evaporation and blending represent the most minimal form of waste handling and should not be interpreted to constitute significant value-added processing. This commenter stated that any electroplater would be able to obtain a variance for hazardous waste that has been evaporated in a 90-day or other exempt unit, and any smelter would be able to accept it. Another commenter speculated that other 90-day generators would dewater other wastes and claim partially-reclaimed variances.

EPA does not agree that any electroplater would be able to obtain a variance to dry sludges in onsite units. Although WRC's mechanical methods for sludge drying and blending may be technically simple, the company has a sophisticated quality control program used to ensure that the sludge from each generator meets contract specifications, and that the partially reclaimed material has also been formulated to meet purchaser specifications. The process involves a chemical analysis laboratory program and computer software programs which yield over 200,000 test results yearly to provide needed operational information to control WRC's recycling activities. These specifications and analyses also played a role in EPA's decision that the sludges undergo meaningful processing at WRC. EPA would not be likely to grant variances to electroplaters or other waste generators who could not show similarly strong indicators that they engaged in significant processing to create "commodities."

One commenter stated that using the value of services to generators as a measure for determining the degree of processing of a waste material does not appear in any regulation and is not discussed in any of the Agency's correspondence or guidance on this subject.

EPA did not consider the value of services that WRC provides to generators in its evaluation of this criterion. Although WRC urged EPA to take into account the amount of money it spends to process each ton of sludge, and although it is true that WRC does derive some of its profit from fees paid by generators, EPA's decision is based on the fact that WRC's activities make its concentrate marketable to smelters as discussed elsewhere in this notice (see section B below).

B. Economic Value of Material That Has Been Reclaimed

The second evaluation criterion (§ 260.31(c)(2)) requires an evaluation of the economic value of the material that has been reclaimed, but must be further reclaimed. This criterion is also useful in determining whether a material is indeed "commodity-like." To satisfy this criterion, petitioners must demonstrate that the initial reclamation process increases or contributes to the value of the material and that there is a market for the reclaimed material. Petitioners generally can demonstrate that this factor is met by providing sales information, including quantities of the material sold, additional demand for the material (if any), and the price paid for the material by purchasers.

In the proposal, EPA stated that the processed concentrate that WRC produces has positive economic value and is purchased by smelters. EPA based this conclusion primarily on sales data provided by WRC for January 1994–June 1995. EPA found that this data showed that WRC in fact sold its partially reclaimed material to smelters and received a positive economic value (taking into account average transportation costs).

One commenter stated that WRC and EPA have mis-characterized the "economic value" of the concentrate.

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This commenter asserted that the true economic value of metal-bearing sludges is determined by the value of the metals in the material at a given time, not by how much is spent to process the material or how much the processor charges for the material. The commenter asserted that, on this basis, WRC's process adds no value, because the amount of the metals in the sludges does not change.

EPA agrees that the presence of the valuable metals in metal-bearing sludges is one factor to be used in determining whether WRC's partially reclaimed concentrate is commodity-like. However, EPA does not agree that WRC must increase the amount of metal to add value to the materials that it processes. There are other ways to make these metal-bearing materials more valuable. WRC's services in aggregating sludges into larger volumes which smelters are willing to accept and in custom-blending sludges to meet specific smelter specifications add significant value. The fact that WRC is able to sell processed concentrates to smelters (while few electroplaters are able to persuade smelters to accept unprocessed sludges, and most who do have to pay smelters to accept their sludges), demonstrates that WRC's services add value.

One commenter questioned whether WRC would be able to claim positive economic value if it analyzed sales data for sludges that were reclaimed for common metals only. This commenter argued that the economic value would not be as high if only common metals were sold, instead of precious metals. Another commenter said that information in the record indicated that WRC's concentrate contained substantially lower levels of recoverable metals than virgin concentrates.

In response to these comments, Agency points out that the regulatory criteria for granting a variance under 40 CFR 260.30(c) do not require the Agency to distinguish between the common metals and precious metals contained in WRC's partially reclaimed concentrate, if in fact the concentrate contains both kinds of metals. The Agency also disagrees that recoverable levels for many metals are lower in WRC's concentrate than those found in virgin concentrate. If in some cases the levels of metals are lower, smelters are nevertheless willing to pay for the concentrates, demonstrating that they have positive economic value.

The commenter also pointed out that a significant portion of WRC's revenue comes from fees it charges generators, as opposed to the revenue received for selling its concentrate to smelters. The commenter believed that this fact is indicative of sham recycling. If the commenter means that WRC's operation is a "sham", the issue is not relevant to this variance. The sham recycling criteria help EPA distinguish facilities that engage in recycling that is not subject to RCRA regulation from facilities that engage in waste treatment that is subject to RCRA. WRC is not claiming that its operation is exempt from RCRA; therefore, the sham recycling criteria do not apply. Similarly, the commenter may be suggesting that smelters using WRC concentrates are engaged in waste treatment rather than recycling. EPA does not believe that the fees generators pay to WRC are relevant to the legitimacy of the smelters' processes. The argument might have relevance if WRC paid smelters to take its concentrates; however, the record shows that WRC sells its concentrates to smelters.

Finally, the commenter may be suggesting that WRC's process adds so little value to the sludges that no variance is warranted, so that WRC concentrates should continue to be regulated as hazardous wastes during transportation and during storage at smelters. EPA disagrees. Data provided by WRC show that, during 1996–1999, WRC made more money from selling concentrates to smelters than from charging fees to generators. WRC received approximately $0.59 from generator fees for every $1.00 it received in metal sales (after adjusting generator fees to eliminate charges for optional transportation services).

This commenter also stated that EPA should not have used "average" transportation costs in assessing whether WRC received positive economic value for its concentrate. This commenter suggested that the Agency should require recordkeeping and auditing of WRC's records to ensure that each shipment generates a return. The commenter further suggested that EPA should assess the transportation cost of a single trip for each load, any administrative activities by the smelter, and smelter processing costs. These costs should then be compared to similar costs for "as-generated" sludges shipped directly to smelters. The commenter also stated that EPA should determine monetary value to smelters of reducing sludge moisture content and blending sludges to meet smelter specifications.

In response to these comments, the Agency notes that it is not feasible to evaluate the profitability of each and every shipment made by WRC to smelters. Such profitability will depend on several factors, such as the concentration of metals in a particular shipment, the price of the metals at the time, and freight costs. We do not believe that the regulatory criteria at 40 CFR 260.31(c) require the Agency to examine all of these factors with respect to each shipment. For this reason, EPA instead assessed the average cost of transportation over the period covered by the variance application. We believe that such averaged costs are sufficient to help us assess the economic value of WRC's concentrate.

EPA believes that the record shows that smelters value the reduction of moisture content and the blending of sludges. Smelters will pay more for WRC's concentrates, which have undergone these steps, than they will pay for sludges marketed by electroplaters which have not been dried and blended. Contrary to the commenter's assertion, EPA does not need to determine precise values for each of these activities to make a finding on this issue.

One commenter also stated that EPA's assertion that smelters are reluctant to accept F006 sludges directly from generators is not supported in the rulemaking record, and that at least one smelter takes "as-generated" sludges directly from electroplaters. In response, the Agency notes that we did not intend to imply that smelters refuse to take sludges directly from electroplaters. Rather, EPA meant that WRC's concentrates are more attractive to smelters than sludges shipped directly from electroplaters. EPA believes that the concentrates are more attractive for two reasons. First, WRC's shipments are much larger than typical shipments from electroplaters. For example, in 1995 the average amount of F006 generated from an individual electroplater was 120 tons (*see* Regulatory Impact Analysis for the Final Rule for a 180-Day Accumulation Time for F006 Wastewater Treatment Sludges, USEPA, Office Of Solid Waste, January 14, 2000). During the same year, WRC processed over 16,000 tons of F006 and related wastes for metal recovery (*see* Hazardous Waste Recycling in the United States: Summary Statistics and Trends for 1993–1997, USEPA, Office of Solid Waste, June 7, 2001, p. 18). Larger shipments reduce transaction costs for smelters, and smelters will penalize for smaller lots (*see* Pollution Prevention and Control Technology for Plating Operations, George C. Cushnie Jr., 1994). They also allow for economies of scale in shipping and handling costs. Second, smelter personnel contacted by EPA indicated that they believe that WRC more consistently meets

specifications for metal content and impurities (see personal communication between Paul Borst, USEPA, Office of Solid Waste and Bob Sippel, Vice-President for Recycling, Noranda Minerals, Inc., July 22–24, 1996).

C. Degree to Which Reclaimed Material Resembles Analogous Raw Material

The third evaluation criterion (40 CFR 260.31(c)(3)) is the degree to which the reclaimed material is like an analogous raw material. The partially reclaimed material should be similar to an analogous raw material or feedstock for which the material may be substituted in a production or reclamation process. In addition, the partially reclaimed material should not contain significant concentrations of hazardous constituents not found in an analogous raw material and that do not contribute to the value of the partially reclaimed material when used for its intended purpose.

As explained in the proposal, EPA conducted an analysis comparing levels of the inorganic constituents and cyanide in the processed concentrates that WRC sells with levels of constituents in virgin ore concentrates. EPA found that, with the exception of cyanide, the levels of constituents in WRC's concentrates are generally comparable to the levels of constituents found in concentrates made from virgin ores. Also, EPA considered data showing that toxic organic constituents are not likely to be prevalent or present in more than trace amounts in F006 being recycled (*see* EPA's Metal Finishing F006 Benchmark Study, September 1998, p. 23, and letter (with attachment) from D. Daniel Chandler of Browning, Kaleczyc, Berry and Hoven to Paul Borst, USEPA, June 2, 1993)). To make WRC's concentrate more commodity-like, EPA decided to limit the levels of cyanide that could be allowed.

The 590 ppm total cyanide limit that we proposed is the current Universal Treatment Standard (UTS) for land disposal at 40 CFR 268.48 for total cyanide in hazardous wastes that are land disposed. This limit currently applies to any WRC concentrate that is stored on the land before smelting. In response to requests for clarification from two commenters, we are today stating that the limit refers to total cyanide, and we are adding the test method specified in 40 CFR 268.48.

Some commenters did not believe that the limit set for cyanide in WRC's concentrate should be 590 ppm. One commenter argued that EPA should limit cyanides to the amount present in analogous "virgin" sources of metals. Another argued that the cyanide limit should be risk-based, and asserted that EPA's assessment of risks did not ensure protection of human health and the environment.

This criterion is intended to help EPA distinguish materials that are waste-like from materials that are commodity-like. Where EPA finds a constituent at higher levels in the partially reclaimed, waste-derived material, it does not have to conduct a risk assessment and impose a condition based on limiting risks to human health and the environment (as demonstrated through some type of risk assessment). Rather, EPA need only ensure that the constituent levels are commodity-like.

Limiting constituent levels in the partially reclaimed material to levels in analogous virgin raw materials, as one commenter suggested, is an acceptable way to accomplish this. It is not, however, the only way. In this case, the analogous raw materials appear to have extremely low levels of cyanide. EPA is concerned that WRC might not be able to reduce cyanide levels in electroplating sludges to this level. EPA, however, is confident that WRC can meet the land disposal restriction level for cyanide, which currently applies while WRC's concentrates are classified as hazardous wastes. As previously stated, WRC makes strong showings for the second and fourth criteria of the variance, causing EPA to conclude that its concentrates are commodity-like. Under these circumstances, EPA finds the 590 ppm limit to be sufficient to ensure that WRC's concentrates are more commodity-like than waste-like.

In spite of the fact that it was not legally required, EPA conducted a screening analysis to determine whether land storage of concentrates with cyanides at this level would pose ground water risks. The analysis suggested that cyanide concentration would not exceed the federal drinking water standard for cyanide at a downgradient drinking water well if cyanide underwent hydrolysis. The screening analyis did show some potential for risk if cyanide did not hydrolize. One commenter challenged EPA's assumption that hydrolysis was likely to occur. The Agency made this assumption because the scientific literature shows that cyanide is often amenable to that process, since it tends to break down or dissociate if it comes in contact with water (*see* Kollig P. Heinz *et. al*, Environmental Fate Constants for Organic Chemicals Under Consideration for EPA's Hazardous Waste Identification Projects, Office of Research and Development, USEPA).

Moreover, the screening analysis is likely to overestimate risks for several reasons. EPA conducted the screening assuming 200 to 300 metric tons of electroplating sludge stored outdoors, even though such sludge is usually stored indoors, with reduced likelihood of releases to groundwater, and even though volumes of concentrate at a single smelter at any one time are likely to be smaller. In addition, information available to the Agency indicate that WRC's metal concentrate is unlikely to remain in storage at a smelter for a long period of time. First, the cost and efficiency of the smelting process itself are negatively affected by water content; therefore, any stored materials are used as soon as possible to avoid inadvertent moistening by rainfall. Second, under the purchasing agreement, the smelter must pay WRC by a specified time after the concentrate is received, often before the material is fully unloaded. This practice would lead the smelter to assume the risk of metal price changes if the material is not used promptly. Consequently, it is difficult to conclude that the concentrates would pose unacceptable ground water risk even if hydrolysis occurred slowly or did not occur at all.

The Agency also notes that the other conditions of this variance will protect against air inhalation risks from cyanide. For example, a Material Safety Data Sheet must accompany the concentrate with a notification that the concentrate may contain up to 590 ppm cyanide and that low pH environments can result in the production of hydrogen cyanide gas. Moreover, Department of Transportation regulations for hazardous materials will continue to apply to WRC's processed concentrates even after the RCRA exemption takes effect. In addition, the Agency notes that WRC is not seeking a variance for its own operations. Hazardous waste regulations will continue to apply to processed concentrates held at WRC's facility.

One commenter questioned the validity of EPA's assessment of groundwater risks for cyanide, noting that EPA decided not to propose an "exit" level for hazardous wastes containing cyanide in the proposed hazardous waste identification rule (HWIR) due to technical concerns with predicting the fate of cyanide in the environment. However, for this variance EPA did not need to conduct a risk assessment. Moreover, the technical difficulties are less important in a simple groundwater screening analysis than in the complex, multipathway analysis conducted for the HWIR rule.

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Another commenter suggested that EPA should set a toxic-along-for-the-ride limit for the cyanide in incoming sludges to WRC's facility, so that WRC would not be able to dilute high incoming cyanide concentrations to achieve specified concentration levels in the outgoing concentrate.

RCRA regulations do not prohibit dilution during reclamation. While dilution is impermissible in the LDR program to avoid a treatment standard (*see* 40 CFR 268.3 generally), dilution is permissible when done to facilitate treatment (*i.e*, adding cement to stabilize waste). The type of dilution that may occur at WRC in drying and blending is analogous to that which takes place to facilitate treatment, since drying and blending makes metal concentrates smelter-ready and amenable for high temperature metal recovery. Whatever cyanide dilution takes place in WRC's blending process is incidental to the main purpose of the blending, which is to ensure that the concentrates contain sufficient metal content to assure high process efficiency and limit contaminant concentrations of tramp constituents that may interfere with the smelting process.

One commenter thought the limit for total organic hazardous constituents, including cyanides, should be 500 ppm, apparently because other organic hazardous constituents may be present in sludges received by WRC and because this value is the cutoff point for determining whether a smelter is burning solely for metal recovery, and thus eligible for an exemption to the current permitting rules for boilers and industrial furnaces (BIFs) (*see* CFR 266.100(c)(2)(i)). Another commenter believed that even the 500 ppm limit was not sufficiently protective, because it could create health risks if burning were conducted improperly, and the limit was not intended for use in a delisting or a variance.

EPA established a 500 ppm limit for total organic constituents in secondary materials burned at smelters to distinguish smelters engaged in metals recovery from smelters engaged in the treatment of hazardous organic constituents. The limit is not risk-based. Moreover, as stated earlier, EPA is not required to ensure that the concentrate will pose low risks before granting the variance. However, EPA has also found that unprocessed electoplating sludges typically contain very low levels of organics (except cyanide) that are well below the cutoff point for smelter metals recovery (*see* EPA's Metal Finishing F006 Benchmark Study, September 1998, p. 23, and letter (with attachment) from D. Daniel Chandler of Browning, Kaleczyc, Berry and Hoven to Paul Borst, USEPA, June 2, 1993)). EPA is imposing a limit for cyanide.

Two commenters stated that EPA should evaluate risks presented by all toxic constituents potentially present in the waste, just as it does when considering delisting requests. One of these commenters suggested that EPA should set a "toxics-along-for-the-ride" threshold level for each toxic constituent in each incoming load of sludge that WRC receives, and that any level set for toxic constituents, including cyanide, should be risk-based rather than technology-based.

In response, EPA notes that we found no need for limits on any other constituents to demonstrate that the processed concentrates are commodity-like. The relevant test is the degree to which the concentrate resembles analogous raw materials. To determine whether WRC's concentrate is similar to analogous raw materials, we compared its inorganic constituents to inorganic constituents found in primary copper and nickel concentrates. We concluded that cyanide was the sole hazardous constituent that was not present in the analogous raw material that did not contribute to the value of the WRC concentrate when sent for metals recovery. Moreover, with the exception of cyanide, the Agency concluded that the Appendix VIII metals typically contained in WRC's concentrate are similar to those found in virgin ore concentrates. In addition, we note that commercial contracts under which smelters purchase WRC's concentrate typically specify limits on several such metals (such as lead or chromium) to ensure that levels do not interfere with the extraction process. As noted above, we also found that organic constituents are not found in significant amounts in unprocessed electroplating sludges. Therefore, EPA does not need to set limits for other constituents, either to ensure that WRC's concentrates are commodity-like or to ensure that WRC does not engage in sham recycling.

Some commenters suggested that EPA should place limits on Appendix VIII metals in incoming sludges at the WRC facility, at least for those metals in high concentrations that are not recovered and have no "ore equivalency" levels, such as chromium, cadmium or zinc. One commenter argued that recoverable metals could also be toxics-along-for-the-ride if the receiving smelter does not in fact recover all of them.

The Agency does not believe that such a limitation is necessary to ensure that WRC's concentrates resemble virgin ores. We did not find metals that are not present in virgin ores. We note that there are Appendix VIII metals at high concentrations in the analogous primary copper and nickel concentrates which are not recovered. Arsenic levels in primary copper concentrates are often present in levels as high as 3000 ppm and are not recovered.

D. Extent to Which End Market Is Guaranteed

Under the fourth evaluation criterion (40 CFR 260.31(c)(4)), petitioners must demonstrate that an end market for the partially reclaimed material is guaranteed. Petitioners must demonstrate that there is a secure demand and long-term market for the partially reclaimed material and that the chance of large quantities of the material being stockpiled due to insufficient demand is unlikely. If a petitioner cannot demonstrate that the material enjoys a consistent level of demand, with reasonable expectations for the same or greater level of demand once a variance is granted, there may be risk of the material being stockpiled or stored for a significant period of time in containers or other storage units that do not have to meet RCRA Subtitle C storage standards. Such situations may pose significant risks to human health or the environment.

In the proposal, EPA found that WRC demonstrated that it has multi-year contracts for the sale of its processed concentrates with at least four smelters, and that these smelters have excess capacity exceeding WRC's production capabilities. The record also shows that the smelters have been customers for significant periods of time; contracts with one smelter extend back to the 1970's. Even the most recent customers have had contracts since the middle 1990's. At the same time, however, to help ensure that concentrates meet their end market, EPA proposed to require that WRC ship concentrates only to metal smelting facilities, that WRC comply with DOT regulations regarding shipments of hazardous materials, and that WRC document that all shipments reached their designated destination. To assist in ensuring compliance with these shipping conditions, EPA also proposed to require WRC to provide an annual audit to the Arizona Department of Environmental Quality (ADEQ). The annual audit, conducted by an independent third party, must certify that all shipments of WRC's partially reclaimed concentrate were made to metal smelting facilities, were documented and shipped in accordance with all applicable U.S. Department of Transportation regulations, and were documented to have reached the designated destination. EPA is retaining these conditions for the final variance.

One commenter thought that there was insufficient information in the proposal and in EPA's supporting analyses to fully evaluate the underlying economics of WRC's business. This commenter suggested that *at a minimum* (emphasis supplied in the original comments) EPA should conduct an analysis covering the entire 17 years of WRC's operations, reviewing all contracts over this time period, the primary and secondary metals market over the same period, and any other regulatory or enforcement actions EPA or authorized states have taken with respect to F006 and F019 recycling, including all prior interpretations of the legitimacy of F006 and F019 recycling activities. In particular, the commenter stated that EPA should analyze WRC's 17 year history to determine if there had ever been a period when metals prices were so low that the concentrate could not be sold. This commenter also felt that EPA's position was weakened by the fact that WRC has contracts with foreign smelters. Another commenter expressed similar concerns about fluctuations in metal prices, fearing bankruptcies, abandonments, and "stockpiling" when minerals become less valuable.

In response, EPA notes that the considerable amount of data submitted by WRC and available to the Agency from other sources have provided an accurate view of the nature of F006 recycling in general and of WRC's operations in particular. This information has been sufficient to allow the Agency to evaluate whether WRC's concentrate meets the regulatory criteria of 40 CFR 260.31(c). The Agency also believes that the existence of past fluctuations in commodity prices should not be a decisive or even strong consideration in evaluating variance applications under 40 CFR 260.30(c), especially since price fluctuations for these materials tend to be the rule rather than the exception. In addition, as noted above, WRC has numerous multi-year, long-term contracts in place, indicating that WRC's processed sludges remain valuable to smelters over time, even with changes in the values of the metals they contain.

Moreover, we note that the variance does not apply to materials held at WRC prior to shipment. Storage there must comply with Subtitle C requirements. These requirements adequately address threats posed by materials "stockpiled" at WRC. With regard to the risks that a smelter might accept a shipment, but stockpile it at the smelting facility during a "down" market, we note that these materials are blended to specific smelter specifications, and smelters pay to receive them (often before the materials are processed). It therefore seems more likely that smelters will use them rather than store them for extended periods of time. These considerations are true for both domestic and foreign smelters.

The Agency notes that in the proposal, the introductory paragraph to the variance language included a reference to metal concentrate sold to "smelters or other metal recovery facilities", although the proposed numbered variance conditions referred only to "smelters" (see 64 FR 68968 at 68972). Today's final notice limits the variance to WRC's metal concentrate that is sold to smelters, since the available data submitted in support of the variance concerns sales to smelters rather than to other kinds of facilities.

One commenter opposed the requirement for an independent annual audit as an unnecessary expense and believed a statement signed by WRC would suffice. Two commenters believed that the audit should contain additional requirements, such as recordkeeping and evaluations of the management of WRC's concentrate at smelters, and one commenter suggested an audit every four months during the first two years. Some commenters were concerned that an independent audit would replace the role of a regulatory agency inspection.

In response to these comments, EPA notes that the conditions of all variances under 40 CFR 260.30 are site-specific in nature. This audit was proposed as a mutual agreement between ADEQ and WRC to satisfy both parties' concerns about compliance with the terms of the variance. An independent annual audit ensures an objective review of the company's operations, and provides information on how the material is handled after partial reclamation. However, the fact that an audit is required as a condition of this variance does not mean that similar audits would be considered appropriate for all such variances. The Agency does not believe that the additional requirements for increased recordkeeping, evaluation at smelters, and more frequent review suggested by some commenters are necessary to help regulators determine whether WRC has complied with these variance conditions. EPA also notes that nothing in this variance would legally affect or preclude inspections or review of WRC's operations by the regulatory authority. The State or EPA Region can conduct the number of inspections and reviews it believes necessary to ascertain compliance with conditions of the variance, as well as compliance with other RCRA requirements applicable to the facility.

E. Handling To Minimize Loss

The fifth evaluation criterion (40 CFR 260.31(c)(5)) concerns the extent to which the partially reclaimed material is handled to minimize loss. Petitioners must demonstrate that the material is handled as if it were a valuable commodity and in a manner that is protective of human health and the environment.

In the proposal, EPA stated that the value of the concentrates and the contracts between WRC and both generators and smelters provide incentives for WRC to manage both the unprocessed sludges and the processed concentrates to prevent loss. EPA also noted that the processed concentrates will remain subject to Subtitle C storage regulations while held at WRC prior to shipment, because the variance will not take effect until the concentrates are loaded for shipment. Even after the RCRA variance takes effect, the concentrates will remain subject to DOT regulations for hazardous substances during shipment to smelters. The smelters' payments for the concentrates show that the smelters value them and have incentives to manage them carefully. The custom blending for each shipment also makes it more likely that smelters will value the concentrates and handle them appropriately.

EPA, however, also proposed to impose a condition that prohibits land placement of WRC's concentrates because land storage has a high potential for loss, and because EPA does not believe that analogous concentrates derived from virgin materials are stored on the land. EPA also proposed to ensure that smelters received notice of this limitation by requiring WRC to re-state the condition in all contracts with smelters. In our proposal, EPA described this limit in its discussion of the third criterion, the extent to which constituents in the partially reclaimed material resemble constituents in the analogous raw material. EPA is clarifying here that we are imposing this condition to ensure that WRC's customers handle the exempt material in a manner that will minimize loss.

One commenter claimed that WRC's assertions that smelters handle concentrates to minimize loss are not a sufficient basis for EPA to make a conclusion about smelters' operations. EPA, however, is not basing its finding on this criterion on these assertions. Rather, EPA has independently evaluated the factors that would influence smelters' handling of these

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materials, and concluded that the smelter payments, WRC's custom blending activities, and the risks to the smelters from prolonged storage make it likely that smelters will minimize losses. Moreover, the Agency is imposing a condition which provides that concentrates stored on the land will not be excluded under the variance.

One commenter suggested that contracts between WRC and smelters could not be directly enforced by WRC, and that the Agency should therefore condition the variance on enforcement agreements between the smelters and ADEQ. EPA does not agree that enforcement agreements of the type suggested by the commenter are necessary to prevent land storage at smelters. The variance clearly makes land storage a violation of the variance conditions. Concentrates stored on the land would not be excluded from the definition of solid waste, and EPA and the State could take enforcement action if the storage did not comply with all applicable Subtitle C requirements. This commenter also suggested that EPA should promulgate a rule establishing management conditions at all metal recyclers and smelters. However, such a rule would far exceed the scope of our variance proposal.

F. Additional factors

In addition to the five evaluation factors discussed above, EPA may consider other relevant factors in determining whether or not to grant a variance from the definition of solid waste for materials that have been reclaimed but must be reclaimed further before recovery is complete (40 CFR 260.31(c)(6)). These other factors may be raised by the petitioner, the Agency, or other interested parties. Such factors may be directly applicable to EPA's decision to grant a variance, or may be indirectly applicable, but relevant in assigning priorities for evaluating a particular petition.

1. Minimum Metals Content for Incoming Sludges

In the proposal, EPA considered the possibility that WRC could engage in "sham recycling" by blending electroplating sludges with low metal concentrations into sludges with higher concentrations, and marketing the blended "product" to smelters. EPA was concerned that WRC's processing would be a form of treatment for sludges which would ultimately be disposed of in smelter wastes, without contributing any significant metal content to smelter products. To ensure that WRC would be engaged in legitimate recycling, the Agency proposed to require each incoming sludge to have a minimum content of either two percent of copper, nickel or tin (on a dry weight basis), or a precious metal content with monetary value equivalent to the copper, nickel or tin value.

One commenter stated that no non-conforming shipments should be allowed, since this would be contrary to EPA's policy at other hazardous waste treatment, storage, and disposal facilities (TSDFs). In response, the Agency notes that our proposal to allow a certain number of non-conforming shipments does not affect the status of the incoming material as a hazardous waste. Such shipments would still be subject to all applicable Subtitle C requirements, as is the case with all other TSDFs. We are allowing WRC to accept a minimum number of shipments below the normal minimum metal content which will still be eligible for the variance because, as a practical matter, some shipments from generators will (albeit very infrequently) contain less than the desired metal content, and there is a possibility that this may not be discovered until processing of the shipment has begun.

Some commenters questioned the use of a two percent dry weight limit for copper, nickel, or tin. One commenter stated that EPA should provide a broader discussion of the data which it used to require that the minimum copper, nickel, or tin content of a sludge arriving at WRC must be two percent dry weight in order for the dewatered sludge to be equivalent in quality to virgin ore feedstocks. This commenter appeared to believe that the levels of both base and precious metals in the incoming sludges should be the same as the levels found in virgin ore feedstocks sent to smelters.

For example, this commenter questioned why economic value was used to determine equivalency of precious metals with base metals in incoming sludges, rather than expected virgin ore quality with respect to precious metals. The commenter stated that the value of gold per unit weight is approximately 5,000 times that of copper (based on current market prices). Therefore, the current economic equivalent of two percent copper (about 20,000 ppm) would be about 4 ppm gold, or about 0.09 troy ounce per ton. The commenter expressed doubt that ores containing such a low concentration of gold would be mined and smelted commercially. The commenter appeared to be suggesting that the required threshold level of precious metals in the incoming sludges be the same as the levels of such metals that smelters will accept in virgin ores. Two commenters stated that concentrate shipped by WRC to smelters can contain a significant moisture content (up to 50%). Therefore, according to these commenters, if the metal concentration in the incoming sludges were two percent on a dry weight basis, the actual concentration as shipped to the smelter would be below two percent. If feedstock equivalency required a copper concentration of at least 2.5 percent, the dry weight concentration in the sludge that WRC received would need to be at least four percent copper.

In response to this comment, EPA notes that we did not intend to require incoming sludges at the WRC facility to be equivalent to virgin ore feedstocks with respect to metal content. The purpose of this proposed requirement was to establish a minimum metal threshold below which little recovery of metals would occur. After reviewing available literature and discussing this issue with smelter representatives, the Agency concluded that the two percent limit appears to be a "smelter cutoff," meaning the lowest concentration of metal that a given smelter will allow through the gate on a dry weight basis (*see* memorandum from Paul Borst titled "Analysis of Minimum Metal Content of Secondary Feedstocks Destined for Primary Smelting Operations in North America," May 7, 1999).

The minimum metal content ensures that at least one smelter in North America would be able to receive and process all incoming sludges to the WRC facility.This condition on the variance ensures that secondary materials which have little or no recoverable metal may not be blended in with metal-bearing secondary materials with higher metal content. The condition therefore prevents surrogate treatment and disposal of the secondary materials with little or no recoverable metal content. It is not necessary to require WRC's concentrates to contain as much metal as virgin ore concentrates. Similarly, with respect to the reduction of moisture content, even if significant moisture reduction of the incoming sludges occurs, WRC is still responsible for meeting the minimum metal content on a dry weight basis required under contract specifications for particular smelters. In addition, we note that moisture reduction tends to concentrate metals levels, rather than dilute them, as the commenter implied. It is therefore unnecessary to require higher metals levels in the incoming sludges to account for moisture reduction.

Similarly, EPA is not aware of any smelters that refuse to give credit for precious metals in secondary materials when their concentrations are lower than those considered acceptable for virgin ores, so long as the monetary values are equivalent. The Agency believes that it is reasonable to base minimum metal levels in the incoming sludges on smelter acceptance and pricing policies.

Another commenter said that EPA's choice of a two percent minimum metal content level for incoming sludges or an equivalent value in precious metals to assure the "legitimacy" of WRC's operation is based on faulty and incomplete analysis. This commenter suggested that the required minimum metal content should account for transportation and storage costs incurred by smelters receiving WRC concentrate, as well as WRC's processing costs. The commenter also stated that the highest rather than the lowest smelter cutoff should be used in determining legitimate recovery of metals from incoming material to WRC.

EPA does not agree that the highest smelter cutoff (*i.e.*, the most stringent metal limit required by any smelter) is an appropriate number for the incoming limit on metals in the sludges. If other smelters are purchasing materials with lower metal concentrations and reclaiming metals from these materials, there appears no reason to conclude that this is not legitimate reclamation. Nor does the Agency agree that transportation and storage costs should affect which level of metals allows legitimate recycling to occur.

Two commenters questioned how WRC would segregate its incoming loads into: (1) Sludges containing the required minimum levels of recoverable metals, and (2) sludges with lower levels of metals. EPA notes that the conditions of the variance do not absolutely prohibit WRC from receiving sludges with lower metal concentrations than those specified in the variance. However, listed sludges used in producing the concentrate that is eligible for the variance must conform to the minimum metals limit (except for two non-conforming loads). Sludges not used for this purpose need not contain minimum levels of metals. The Agency does not believe it is necessary to specify in the variance a particular method for segregating the two types of sludges. EPA notes that many facilities manage different wastestreams, some of which are regulated under RCRA and some of which are excluded. For purposes of retaining the regulatory exclusion, it often may be important to segregate wastestreams. However, EPA does not specify in its regulations a particular procedure for conducting such segregation.

Another commenter feared that waste streams containing recyclable levels of one metal could be diluted down to non-recyclable levels when mixed with waste streams containing other metals. This commenter proposed an additional condition for the WRC variance that would be implemented according to the following example. The company receives a sludge that has three percent copper and five percent nickel, so that the sludge is above the two percent minimum metal threshold for both metals. Hypothetically, the company makes a business decision to blend this sludge with other nickel-bearing sludges and ship the blended mixture to a nickel smelter for reclamation. The commenter is concerned that the copper in the original incoming shipment has been diluted below two percent and is non-recoverable at the nickel smelter. The commenter believes that this procedure would constitute sham recycling. The condition that the commenter proposed would require that a nickel/copper bearing sludge be only blended with other nickel/copper-bearing sludges and that the blend only be destined to a smelter or other recycling facility where both metals are recovered.

EPA does not agree that recovering nickel values would constitute sham recycling merely because the copper in the sludge could be diluted and possibly not recovered. WRC's processing would make the concentrate marketable by increasing the nickel value. Without WRC's drying, blending, and consolidating operations, the electroplating sludge most likely would not go to a smelter for recovery for either copper or nickel. So long as WRC increased the concentration for one metal, EPA does not think the fact that it diluted a second metal shows that recycling is not legitimate. Moreover, EPA believes that many virgin ores contain multiple metals that smelters do not extract.

2. Exports and Imports

One commenter noted that changing the regulatory status of the partially reclaimed material removes RCRA import and export requirements, thus taking away a safeguard designed to put foreign governments on notice that these materials are hazardous. This commenter suggested that if EPA grants the variance, it should continue to require compliance with these requirements. The same commenter was concerned that because WRC's facility is one of the top ten receivers of hazardous waste from Mexico, the granting of the variance may increase the flow of waste across the border, increasing the transportation risks inherent in long distance transport. The commenter believed that the variance could inadvertently discourage the development of much-needed hazardous waste disposal and recycling facilities in Mexico by creating an incentive for shipping exempted waste from Mexico into the U.S. Finally, the commenter stated that EPA should evaluate whether waste shipments from Mexico are compatible with Mexican and other applicable international or bilateral agreements concerning these wastes.

The Agency believes that the conditions of this variance are adequate to provide notice to foreign governments. The variance contains a requirement that WRC must send a one-time notification of the variance and its conditions to any country where metal smelters accepting WRC concentrates are located. WRC is also required to submit a Material Safety Data Sheet shipped with the concentrate and a notification that the concentrate may contain up to 590 ppm cyanide and that low pH environments can result in the production of hydrogen cyanide gas. EPA believes that this is sufficient notice to inform foreign governments of the nature of WRC's concentrate, and of the Agency's decision to exclude WRC's concentrate from the definition of solid waste. In addition, the Agency believes that the RCRA notification and consent requirements for imports and exports of hazardous waste are not necessary for materials that have been determined to resemble commodities more than wastes. We note that these requirements do not apply to any materials that are excluded from the definition of solid waste.

With respect to imports from Mexico, EPA believes that the commenter's concerns are speculative. The commenter gives no data or detailed theory to back up its concern that shipments from Mexico will increase or that Mexico will fail to develop needed waste management capacity. The status under RCRA of shipments of F006 imported from Mexico will not be affected by this variance. In addition, even though the Agency believes that RCRA export requirements should not apply to commodity-like materials, we note that this variance does not automatically affect the status of WRC's concentrate under foreign jurisdictions. If the concentrate is classified as a hazardous waste in a foreign jurisdiction, it would retain that status unless the appropriate regulatory authority in that jurisdiction decided to change the classification.

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IV. Final Variance

The Agency is today conditionally granting the petitioner's (WRC's) request for a variance from classification as solid waste for the metal concentrate partially reclaimed from materials listed as hazardous waste F006 and F019 received at its Arizona facility, which are sold to metal smelters after being partially reclaimed by WRC. The variance is granted subject to the following conditions:

(1) Metal-bearing sludges F006 and F019 accepted by the facility from off-site and used in the production of the partially reclaimed concentrate materials must have a metals concentration level of no less than two percent on a dry weight basis, or an equivalent economic value in precious metals (*e.g.*, gold, silver, platinum, or palladium). In addition, the facility may only process two shipments of listed sludge materials that do not meet the two percent metals concentration level from a single generator within a 14-day time period before taking action to ensure that subsequent shipments will meet the minimum metal content. Specifically, WRC may not accept more than one non-conforming shipment from a generator, unless the second non-conforming shipment is received within 14 days following the first event. Thereafter, WRC may not accept additional materials from that generator until WRC determines that the generator's subsequent sludge shipments will meet the minimum metal content requirements of this condition.

(2) WRC shall provide to ADEQ an annual audit, performed by an independent third party mutually acceptable to WRC and ADEQ, to be completed within the six months following the end of each calendar year. The scope of the annual audit will cover WRC's concentrate shipments during the year to certify that all shipments were: (1) Made to metal smelting facilities; (2) documented and shipped in accordance with all applicable U.S. Department of Transportation regulations; and (3) documented to have reached the designated destination.

(3) The partially reclaimed concentrate materials must have a cyanide concentration of no greater than 590 ppm and may not be placed on the land at metal smelting facilities. Cyanide must be analyzed using method 9010 or 9012 found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and five minutes.

(4) WRC must send a one-time notification of the variance and its conditions to any foreign country where metal smelters accepting WRC concentrate are located. In addition, WRC must include on its Material Safety Data Sheet shipped with the concentrate a notification that the concentrate may contain up to 590 ppm cyanide and that low pH environments can result in the production of hydrogen cyanide gas.

(5) To ensure that its customers handle the processed concentrates as valuable commodities in a manner that minimizes loss, WRC must place a provision stipulating no land placement of the materials in its contractual agreements with smelting facilities.

(6) This conditional variance from classification as solid waste for the metal concentrate reclaimed from listed hazardous wastes F006 and F019 at WRC's Phoenix, Arizona facility takes effect at the point at which the concentrate is loaded for shipment. This conditional variance does not affect the regulatory status of any other hazardous wastes handled by WRC at the Phoenix facility. In addition, the variance does not apply to or affect the regulatory status of any wastes managed at any other WRC facility.

V. Effect of Variance in Arizona

EPA notes that Arizona is authorized to administer and enforce the RCRA hazardous waste program pursuant to section 3006 of RCRA. Generally, when EPA grants a variance under 40 CFR 260.30, the variance would be automatically effective only in unauthorized States. However, there are two circumstances that make this variance effective in the State of Arizona. First, WRC, EPA Region IX and the Arizona Department of Environmental Quality (ADEQ) executed a Consent Agreement and Consent Order (CA/CO) that finalized regulatory requirements for the WRC recycling facility at Phoenix. Under the CA/CO, if EPA makes a favorable decision regarding WRC's petition for a variance, Arizona is obligated to "honor and give legal effect to the variance determination within the State of Arizona." Second, Arizona's regulations at A.A.C. R18–8–260(J)(Supp. 98–2) (which incorporates and modifies 40 CFR 260.30 entitled "Variances from classification as a solid waste") provides that "any person wishing to submit a variance petition shall submit the petition, under this subsection, to EPA. Where the Administrator of EPA has granted a variance from classification as a solid waste under 40 CFR 260.30, 260.31, and 260.33, the Director shall accept the determination, provided the Director determines that the action is consistent with the policies and purposes of the HWMA" (the Hazardous Waste Management Act underlying Arizona's authorized status). Since the Director has made such a determination, no further action will be necessary before the variance takes effect under state law upon promulgation by EPA.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a "regulatory action" subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of tribal governments, as specified in Executive Order 13175 (63 FR 27655, May 10, 1998). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

Dated: August 6, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–20352 Filed 8–12–02; 8:45 am]

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Proposed Rules

Federal Register

Vol. 67, No. 156

Tuesday, August 13, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 212, and 240

[EOIR No. 130I; AG Order No. 2607–2002]

RIN 1125–AA33

Executive Office for Immigration Review; Section 212(c) Relief for Aliens With Certain Criminal Convictions Before April 1, 1997

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations of the Executive Office for Immigration Review (EOIR) and the Immigration and Naturalization Service (INS) by establishing procedures for lawful permanent residents (LPRs) with certain criminal convictions arising from plea agreements reached prior to a verdict at trial to apply for relief from deportation or removal pursuant to former section 212(c) of the Immigration and Nationality Act. It also sets forth procedures and deadlines for filing special motions to seek such relief before an Immigration Judge or the Board of Immigration Appeals for LPRs currently in proceedings or under final orders of deportation or removal.

DATES: Written comments must be submitted on or before October 15, 2002.

ADDRESSES: Please submit written comments to Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041. E-mail comments may be submitted to the following e-mail address: <*212crule@usdoj.gov*>.

FOR FURTHER INFORMATION CONTACT: *For matters relating to the Executive Office for Immigration Review:* Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041, telephone (703) 305–0470 (not a toll-free call). *For matters relating to the Immigration and Naturalization Service:* Daniel S. Brown, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 6100, Washington, DC. 20536, telephone (202) 514–2895 (not a toll-free call).

SUPPLEMENTARY INFORMATION: This proposed rule would permit certain lawful permanent residents (LPRs) who have pleaded guilty or nolo contendere to crimes before April 1, 1997, to seek relief, pursuant to former section 212(c) of the Immigration and Nationality Act (INA or Act), from being deported or removed from the United States on account of those pleas. Under the proposed rule, eligible LPRs currently in immigration proceedings or former LPRs under a final order of deportation or removal could file a request to apply for relief under former section 212(c) of the Act, as in effect on the date of their plea, regardless of the date the plea was entered by the court.

Until the recent Supreme Court decision in *INS* v. *St. Cyr*, 533 U.S. 289 (2001), the Department had relied upon the date on which the alien was placed into deportation or removal proceedings to determine whether or not an LPR was eligible to apply for section 212(c) relief, not the date of the alien's conviction. This proposed rule would allow aliens with prior criminal pleas to apply for waivers under former section 212(c), under the law as it existed at the time of their pleas, in light of the Court's interpretation of the law in *St. Cyr*. The Department would continue to treat convictions entered as the result of a trial as it had prior to *St. Cyr*. Former LPRs who are under a final order of deportation or removal would also be eligible to apply for relief under former section 212(c) of the INA as it existed at the time of their pleas. This proposed rule is applicable only to certain eligible aliens who were convicted by pleas made prior to April 1, 1997.

What Is the Historical Background of This Rule?

Former section 212(c) of the INA. Since 1996, section 212(c) of the INA has undergone two major changes, the first one made by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104–132, 110 Stat. 1214, and the second by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104–208, Div. C, 110 Stat. 3009–546. The first amendment narrowed the availability of the waiver by making LPRs with certain kinds of criminal convictions ineligible. The second amendment eliminated the section 212(c) waiver entirely for LPRs placed into removal proceedings on or after April 1, 1997, and substituted a somewhat similar form of relief known as cancellation of removal. See INA § 240A(a), 8 U.S.C. 1229b.

These amendments of section 212(c) generated extensive litigation, as discussed below, culminating in the Supreme Court's recent decision in *St. Cyr*. This rule consolidates the Department's interpretation of the availability of the section 212(c) waiver for LPRs in light of this litigation.

Before the comprehensive revision of the INA by IIRIRA and AEDPA, section 212(c) provided that LPRs who temporarily proceeded abroad voluntarily and not under an order of deportation, and who were returning to a lawful unrelinquished domicile in the United States of seven consecutive years, could be admitted to the United States in the discretion of the Attorney General. 8 U.S.C. 1182(c) (1994). This form of relief was discretionary, but, if granted, allowed the LPR to remain in the United States notwithstanding the prior conviction. Judicial interpretation of former section 212(c) permitted the waiver of certain grounds of deportability as well as certain grounds of excludability (now known as inadmissibility).

Litigation on eligibility for section 212(c) relief. In AEDPA, Congress significantly restricted the availability of discretionary relief from deportation under section 212(c). Section 440(d) of AEDPA made aliens ineligible for relief under section 212(c) if they were deportable because of convictions for certain criminal offenses, including aggravated felonies, controlled substance offenses, certain firearms offenses, espionage, or more than one crime of moral turpitude.

On February 21, 1997, former Attorney General Janet Reno concluded that section 440(d) applied to (and thereby rendered ineligible for section 212(c) relief) all aliens who had committed one of the specified offenses and who had not finally been granted section 212(c) relief before the date

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AEDPA was enacted, including those who were already in deportation proceedings or who had already applied for section 212(c) relief at the time of the AEDPA's enactment. *See Matter of Soriano*, 21 I. & N. Dec. 516 (BIA 1996, A.G. 1997).

The *Soriano* issue gave rise to widespread litigation in almost every circuit on several time and reliance-related eligibility issues. These issues included the possible relevance of various other dates in determining whether or not a particular alien was eligible to apply for section 212(c) relief: the date the alien was placed into proceedings; the date the alien applied for section 212(c) relief; the date any relevant crimes were committed; and the date any relevant pleas or convictions were entered. *See* 66 FR 6436, 6437–38 (Jan. 22, 2001) for a more detailed summary of this litigation.

Most of the courts of appeals held that, despite the changes made by AEDPA, aliens who had filed applications for section 212(c) relief before the enactment of AEDPA were still eligible for that relief. One court further held that AEDPA did not apply to aliens who had been placed into deportation proceedings before the enactment of AEDPA, even if they did not actually request section 212(c) relief until after AEDPA was enacted.

With respect to aliens who were first put into proceedings after the enactment of AEDPA, several courts held that AEDPA section 440(d) foreclosed section 212(c) relief for those aliens, even if their criminal convictions occurred before the enactment of AEDPA. Some other courts, however, had concluded that AEDPA should not be interpreted to foreclose section 212(c) relief, at least with respect to aliens who had pleaded guilty and were convicted of crimes prior to AEDPA in reliance on the existing immigration laws—at a time when those convictions did not disqualify the alien from eligibility to apply for section 212(c) relief.

The Department's Soriano regulation. In response to this extensive litigation, the Department issued a rule creating a uniform procedure for applying the law, as amended by AEDPA, with respect to aliens who had been placed into proceedings before that law was enacted (April 24, 1996). *See* 66 FR 6436 (Jan. 22, 2001) (codified at 8 CFR 3.44) (the Soriano rule). That rule allowed all eligible LPRs who had been placed into proceedings prior to April 24, 1996, to apply for relief under section 212(c), under the pre-AEDPA standards, and also provided a 180-day period for aliens with final orders of deportation who were adversely affected by the Attorney General's ruling in Soriano to move to reopen their proceedings. That 180-day period for motions to reopen ended on July 23, 2001.

The Supreme Court's Decision. On June 25, 2001, the Supreme Court issued its decision in *INS* v. *St. Cyr*, 533 U.S. 289 (2001), which held that "§ 212(c) relief remains available for aliens * * * whose convictions were obtained through plea agreements and who, notwithstanding those convictions, would have been eligible for § 212(c) relief at the time of their plea under the law then in effect." 533 U.S. at 326. As a matter of statutory construction, based on concerns about the retroactive application of IIRIRA to aliens who may have negotiated plea agreements in reliance on the continued availability of section 212(c) relief, the Court concluded that Congress had not made clear in IIRIRA an intent to deny such aliens the opportunity to seek such relief once they were placed into proceedings. Thus, the Court looked to the law as of the date of the alien's plea agreement to determine whether the alien was eligible to apply for section 212(c) relief, rather than the date the deportation or removal proceedings commenced. Although the Supreme Court addressed only the IIRIRA amendment and not the AEDPA limitation on section 212(c) relief, the reasoning of *St. Cyr* applies equally to section 440(d) of AEDPA. Indeed, the Supreme Court's above-quoted statement of the holding is best read to encompass section 440(d) of AEDPA. *See, e.g., Attwood* v. *Ashcroft*, 260 F.3d 1, 3 (1st Cir. 2001) (holding that, in light of the Supreme Court's decision in *St. Cyr*, an alien who pleaded guilty prior to the date of AEDPA's enactment and was placed into proceedings before IIRIRA is eligible to apply for section 212(c) relief).

Why Is the Department Issuing This Proposed Rule?

In light of the recent Supreme Court decision in *St. Cyr*, this proposed rule would provide procedures for eligible aliens to apply for section 212(c) relief before an Immigration Judge or the Board of Immigration Appeals. Because this proposed rule would revise the Department's interpretation of the availability of section 212(c) relief in light of *St. Cyr*, the Department also will modify the provisions of § 3.44 as adopted in January 2001 (the Soriano rule) to provide that this rule will govern the adjudication of relief applications filed by aliens who fall within the ambit of the *St. Cyr* decision. This proposed rule provides an important opportunity for LPRs covered by the Court's decision to apply for relief from deportation or removal or otherwise achieve finality in their immigration matters.

Scope of section 212(c) relief. This proposed rule is intended to further eliminate the disparity among the courts of appeals on the variety of issues relating to section 212(c) relief. Accordingly, this proposed rule would codify the Supreme Court's holding.

Conforming changes to the existing regulations. Because IIRIRA had repealed section 212(c) (which applied to exclusion and deportation proceedings) and substituted different forms of relief for purposes of removal proceedings commenced on or after April 1, 1997, this proposed rule would also make several necessary technical conforming changes in §§ 212.3 and 240.1 of the existing regulations to take account of the circumstances in which aliens would be able to apply for section 212(c) relief with respect to pleas made prior to April 1, 1997, even if they were placed into removal proceedings on or after that date.

The Department notes that former section 242B(e) of the Act, 8 U.S.C. 1252b (1994), barred certain aliens who were ordered deported in absentia from receiving specific forms of discretionary relief for a period of 5 years after the barring act. This statutory provision was repealed by section 308(b)(6) of IIRIRA. The regulatory provision implementing former section 242B(e) is found at 8 CFR 212.3(f)(5). Because section 242B(e) of the Act was repealed by the IIRIRA, § 212.3(f)(5) will be striken from the regulation.

Who Is Eligible To Apply for Section 212(c) Relief Pursuant to This Proposed Rule?

An applicant must, at a minimum, meet the following criteria to be considered for a waiver under section 212(c):

- The alien is now an LPR (or was an LPR prior to receiving a final order of deportation or removal);
- The alien is returning to a lawful, unrelinquished domicile of seven consecutive years (or is a former LPR who had established a lawful, unrelinquished domicile of seven consecutive years prior to a final order of deportation or removal);
- The alien is admissible in the discretion of the Attorney General without regard to section 212(a) (other than paragraph (3) (terrorism and security grounds) or paragraph (9)(C) (unlawfully present after previous immigration violations);
- The alien is deportable or removable on a ground that has a corresponding ground of exclusion or inadmissibility; and
- The alien would have not have been barred from applying for section 212(c) relief with respect to his or her pleas based on the law as it existed at time of the pleas, unless the alien has been charged and found to be removable based on a crime that is an aggravated felony as defined in section 321(a) of IIRIRA, regardless of the date the alien's plea was made.

This proposed rule would not apply to aliens who have departed, and are currently outside the United States; aliens who were subject to a final order of deportation or removal and who have illegally returned to this country; and aliens who are present in the United States without having been admitted or paroled.

Aliens who have been deported or have departed under an order of deportation or removal will not be eligible for relief under the regulation. This policy is consistent with the Soriano rule. *See* 66 FR 6436 (Jan. 22, 2001) (codified at 8 CFR 3.44). As a general rule, aliens who have been deported or departed, and for whom the period of time for filing a petition for review of their removal orders in the court of appeals has closed (or if a petition has been filed, it has been denied), may not challenge their prior immigration proceedings. *See* 8 U.S.C. 1231(a)(5); 8 CFR 3.2(d).

The Department's decision to draw a line between those aliens who are in the United States and those aliens who have been deported is reasonable and consistent with the plenary authority of the political branches of the government in the immigration area. *See Fiallo* v. *Bell*, 430 U.S. 787, 792 (1977); *Mathews* v. *Diaz*, 426 U.S. 67, 80–82 (1976). Aliens whose final orders of removal or deportation have been executed, and for whom the period of time for filing a petition for review of their removal orders in the court of appeals has closed (or if a petition has been filed, it has been denied), are not situated similarly to those aliens who are present in the United States with removal orders because the deportation process for the former class of aliens has been completed. They are barred from reentering the United States for a period of at least five years (except with the permission of the Attorney General), and if they do reenter illegally, the Service may re-execute their prior order. *See* 8 U.S.C. 1231(a)(5). Thus, these aliens stand in a different position from an alien who is present in the United States. *Cf. Zadvydas* v. *Davis*, 533 U.S. 678, 693 (2001) ("It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders"). Moreover, refusing to allow aliens who have been deported from the United States to obtain relief under the regulation is consistent with Congress's intent as demonstrated by the language in former section 212(c), which makes relief available to aliens "lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and *not under an order of deportation*. * * *" 8 U.S.C. 1182(c) (1994) (emphasis added).

Furthermore, the distinction is reasonable because it is logically related to the orderly administration of this country's immigration laws. Allowing aliens who have been deported to seek relief under the regulation would create certain verification problems relating to the applicant's identity and criminal history. Aliens who were denied 212(c) relief pursuant to AEPDA, and who were deported years ago, may have been convicted of crimes abroad that would disqualify them from relief under the regulation, but which would be difficult, if not impossible, for the INS to discover and verify. Restricting relief to aliens in the United States eliminates this burden. Finally, the Department's distinction is reasonable and fair because aliens who have been deported had a sufficient opportunity to challenge the denial of their applications for 212(c) relief in administrative and judicial proceedings.

Can All Convictions Entered Prior to April 1, 1997 Be Waived Under This Proposed Rule?

Under this rule, aliens whose pleas were made before April 24, 1996, regardless of when they were entered by the court, will be eligible to apply for section 212(c) relief without regard to the amendments made by AEDPA. Thus, an LPR who has not served an aggregate term of at least five years for aggravated felonies may apply for section 212(c) relief, if otherwise eligible, with respect to any criminal convictions arising from a plea made before April 24, 1996. *See* former INA § 212(c), 8 U.S.C. 1182(c) (1994). Nothing in this proposed rule would affect the applicability of the bar to 212(c) relief for aliens who have served sentences of five years or more for aggravated felonies, regardless of whether the conviction occurred before that bar's enactment in 1990. The Supreme Court in *St. Cyr* addressed only the bars enacted by AEDPA and IIRIRA, not the 1990 amendments. As to the latter, the courts have uniformly held that the bar for aggravated felons imprisoned for five years or more applies without regard to the date of the conviction. *See, e.g., Scheidemann* v. *INS*, 83 F.3d 1517, 1523 (3rd Cir. 1996); *Samaniego-Meraz* v. *INS*, 53 F.3d 254, 256 (9th Cir. 1995); *Asencio* v. *INS*, 37 F.3d 614, 617 (11th Cir. 1994); *Campos* v. *INS*, 16 F.3d 118, 122 (6th Cir. 1994); *De Osorio* v. *INS*, 10 F.3d 1034, 1041 (4th Cir. 1993); *Buitrago-Cuesta* v. *INS*, 7 F.3d 291, 294 (2nd Cir. 1993); *Barreiro* v. *INS*, 989 F.2d 62, 64 (1st Cir. 1993); Ignacio v. INS, 955 F.2d 295, 299 (5th Cir. 1992).

Section 440(d) of AEDPA amended section 212(c) of the INA to provide that section 212(c) "shall not apply to an alien who is deportable by reason of having committed any criminal offense covered by [former] section 241(a)(2)(A)(iii), (B), (C), or (D), or any offense covered by [former] section 241(a)(2)(A)(ii) for which both predicate offenses are, without regard to the date of their commission, otherwise covered by [former] section 241(a)(2)(A)(i)." AEDPA § 440(d), as amended by IIRIRA § 306(d).

The effect of section 440(d) of AEDPA was to render an alien ineligible for relief under section 212(c) if he or she was deportable because of convictions for certain criminal offenses, including aggravated felonies, controlled substance offenses, certain firearms offenses, espionage, and multiple crimes of moral turpitude. This narrower version of section 212(c) relief is available to aliens who made pleas on or after April 24, 1996, and before April 1, 1997, regardless of when the plea was entered by the court. Section 212(c) relief is unavailable to aliens who made pleas on or after April 1, 1997, the effective date of IIRIRA, which eliminated this form of relief.

Which Definition of an "Aggravated Felony" Should Be Used To Determine Eligibility for Section 212(c) Relief?

The definition of an aggravated felony is contained in section 101(a)(43) of the Act. 8 U.S.C. 1101(a)(43). Congress has amended this definition over time, to add additional crimes to the list of aggravated felonies. Thus, some aliens have been convicted of crimes in the past that were not defined as aggravated felonies at the time of conviction, but are now among the listed crimes that are aggravated felonies under current law.

The definition of aggravated felony, as amended by IIRIRA, applies to convictions entered before, on, or after the date of enactment of IIRIRA. *See* INA § 101(a)(43), 8 U.S.C. 1101(a)(43); IIRIRA § 321(b). This definition applies to determine whether an alien is deportable on account of having

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committed an aggravated felony. This definition also applies to determine the eligibility for section 212(c) relief in those cases where an alien is deportable as an aggravated felon. *See Matter of Fortiz*, 21 I. & N. Dec. 1199 (BIA 1998). Thus, if an alien pleaded guilty to a crime before the enactment of IIRIRA, and his or her crime became an aggravated felony after the enactment date of IIRIRA, the alien could be charged as an aggravated felon and be ineligible for section 212(c) relief. However, aliens who have not been charged and found deportable as aggravated felons would not be affected by section 321 of IIRIRA.

How Is 7 Years Lawful, Unrelinquished Domicile in the United States Defined in This Proposed Rule?

An eligible alien must have lived in the United States as either an LPR, or a lawful temporary resident pursuant to INA section 245A, 8 U.S.C. 1255a, or INA section 210, 8 U.S.C. 1160, for at least seven years, as defined in 8 CFR 212.3(f)(2). For purposes of this rule, an alien begins accruing time as of the date of entry or admission as either a lawful permanent resident or lawful temporary resident and the accrual of time ceases when there is a final administrative order in the alien's case, as defined in 8 CFR 240.52 and 3.39. Accordingly, if an alien is the subject of a final order of removal, the alien who files a motion for section 212(c) relief pursuant to this proposed rule must have accrued seven years of lawful, unrelinquished domicile as of the date of his or her final administrative order. The Board of Immigration Appeals has long held that lawful domicile ends at the issuance of a final administrative order of deportation or removal. *See Matter of Cerna*, 20 I. & N. Dec. 399 (BIA 1991).

What Are the Procedures for Filing for Section 212(c) Relief?

The procedure to follow depends on whether the alien is currently in proceedings. Aliens who are currently in proceedings before an Immigration Judge or the Board of Immigration Appeals must follow different procedures than those aliens who have administratively final orders.

1. *Aliens not currently in proceedings who are seeking a 212(c) waiver prior to temporarily leaving the United States*: This rule does not change the practice, pursuant to 8 CFR 212.3(a)(1), of allowing an alien to apply directly to a district director for section 212(c) relief if he or she qualifies for the waiver.

2. *Aliens in pending deportation or removal proceedings*: An eligible alien who is the subject of a pending deportation or removal proceeding before an Immigration Judge should file a section 212(c) application pursuant to this rule, or request a reasonable period of time to submit an application pursuant to this rule. If the alien has previously filed an application, he or she may file a supplement to the existing section 212(c) application.

3. *Aliens with an appeal pending before the Board*: An eligible alien who has an appeal pending before the Board should file with the Board a motion for remand to the Immigration Court in order to file a section 212(c) application, or a motion to supplement his or her existing section 212(c) application on the basis of eligibility for such relief pursuant to this rule. If the alien appears to be statutorily eligible for relief under this rule, the Board will remand the case to the Immigration Court for adjudication, unless the Board chooses to exercise its discretionary authority to adjudicate the matter on the merits without a remand.

4. *Aliens under a final order of deportation or removal*: An alien who is the subject of a final order of deportation or removal who is eligible to apply for section 212(c) relief pursuant to this rule must file a "special motion to seek 212(c) relief" with the Immigration Court or the Board, whichever last held jurisdiction, as provided in § 3.44 as added by this rule. The front page of the motion and any envelope containing the motion should include the notation "special motion to seek 212(c) relief." Even if the alien has previously filed a motion to reopen or a motion to reconsider with the Immigration Court or the Board on other grounds, pursuant to 8 CFR 3.23 or 3.2, an eligible alien who is the subject of a final order must file a separate "special motion to seek 212(c) relief" under § 3.44 in order to receive the benefits of this rule.

Any proceeding arising from grant of the special motion under § 3.44 will be limited to issues concerning the alien's eligibility for relief under section 212(c), and may not address the alien's deportability, excludability, removability, or any other basis for relief from deportation or removal unless the Immigration Judge or the Board has reopened the case for other reasons under other applicable provisions of law, in which case the issues may be consolidated for hearing as appropriate and all appropriate motions fees will apply.

If the alien previously filed an application for section 212(c) relief, he or she must file a copy of that application or a copy of a new application and supporting documents with the motion. If the motion is granted, an alien who previously paid a filing fee and filed a Form I–191 application for section 212(c) relief will not be required to pay a new filing fee.

If the alien has not previously filed an application for section 212(c) relief, the alien must submit a copy of his or her completed application and supporting documents with the motion. If the motion is granted, the alien must then file the application with the appropriate fee pursuant to 8 CFR 103.7.

An alien may file only one "special motion to seek 212(c) relief" for purposes of establishing eligibility under this proposed rule. A motion filed pursuant to this proposed rule either before the Immigration Court or the Board, whichever last had jurisdiction, must specify whether the alien has any pending motions before the Immigration Court or the Board. All "special motions to seek 212(c) relief" filed pursuant to this rule are subject to the restrictions specified in this proposed rule. The usual time and number restrictions on motions, as articulated in 8 CFR 3.2 and 3.23, shall apply to all other motions, but are not applicable to a "special motion to seek 212(c) relief" under this proposed rule.

Are Aliens Who Were Eligible To Seek Section 212(c) Relief Under the Department's Soriano Rule Eligible To Seek Section 212(c) Relief Under This Rule?

Eligible aliens who have already filed a motion under the Soriano rule (the current version of § 3.44) would not need to file a motion under this proposed rule because they would have already been provided the opportunity to seek relief. Aliens who did not file a motion under the Soriano rule, if they are otherwise eligible under this proposed rule, would be able to file under this rule.

However, this rule does not allow an alien to relitigate the merits of a prior motion for section 212(c) relief. An alien who has previously been denied section 212(c) relief as a matter of discretion will not be able to get a second opportunity to apply for relief under this rule.

Is There a Time Limit for Filing a "Special Motion To Seek 212(c) Relief"?

Yes. An alien must file a "special motion to seek 212(c) relief" 180 days from the effective date of the final rule.

Is There a Fee for Filing a "Special Motion To Seek 212(c) Relief"?

There is no fee to file this motion. However, the usual fees apply to any other motions filed by the alien.

Is There a Fee To File a Section 212(c) Application?

Unless the alien has already filed a section 212(c) application and only needs to update the application, the alien must pay the fee required by 8 CFR 103.7(b)(1) for Form I–191 (currently $170). *See* 8 CFR 103.7. An alien currently in deportation or removal proceedings who did not previously file a section 212(c) application shall submit the Form I–191 to the Immigration Court with the appropriate fee receipt attached.

If the case is pending on appeal before the Board, the alien must submit a copy of the section 212(c) application with the motion to remand. If the motion to remand to the Immigration Court is granted, the alien must then file the application and the appropriate fee receipt with the Immigration Court at that time.

An eligible alien who is the subject of a final administrative order of deportation or removal is not required to pay a fee at the time of filing the "special motion to seek 212(c) relief." However, if the motion is granted, he or she must file the section 212(c) application with the appropriate fee receipt.

Nothing in this proposed rule would change the requirements and procedures in 8 CFR 3.31(b), 103.7(b)(1), and 240.11(f) for paying the application fee for a section 212(c) application after a motion is granted if such an application was not previously filed. Fees must be submitted to the local office of the Service in accordance with 8 CFR 3.31. An applicant who is eligible for section 212(c) relief and is unable to pay the filing fee may request a fee waiver in accordance with 8 CFR 103.7(c).

Does the Filing of a "Special Motion To Seek 212(c) Relief" Stay the Execution of a Final Order?

The mere filing of a motion with the Immigration Court or the Board does not stay the execution of the final order of deportation or removal. To request a stay of the execution of the final order from the Service, the alien must file an Application for Stay of Removal (Form I–246), following the procedures set forth in 8 CFR 241.6. To request that execution of the final order be stayed by the Immigration Courts or the Board, the alien must file a request for a stay with either the Court or the Board. *See* 8 CFR 3.2(f) or 3.23(b)(1)(v).

What Happens If an Alien Fails To Appear for a Hearing Before an Immigration Judge on a Section 212(c) Application?

An alien must appear for all scheduled hearings before an Immigration Judge, unless his or her appearance is waived by the Immigration Judge. An alien who is in deportation or removal proceedings before an Immigration Judge, and who fails to appear for a hearing regarding a section 212(c) application, will be subject to the applicable statutory and regulatory in absentia procedures (*i.e.*, former section 242B of the Act as it existed prior to amendment by IIRIRA, 8 U.S.C. 1252b (1994), or section 240(a)(5) of the Act, 8 U.S.C. 1229a(a)(5), and applicable regulations).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule would provide a more uniform review process governing the eligibility of certain aliens to apply for 212(c) relief. This rule does not affect small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041, telephone (703) 305–0470.

Paperwork Reduction Act

This rule will increase the use of Form I–191 but will not result in a material change in that form, and the INS is adjusting the total burden hours of the form accordingly. Prior to AEDPA and IIRIRA, approximately 4,900 applications for this waiver were considered annually. From the date of the amendments to section 212(c) by AEDPA and IIRIRA, approximately 30,000 LPRs were affected. Some unknown number of the affected LPR's will file either new or amended Form I–191.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Aliens, Immigration, Legal services, Organization and functions (Government agencies).

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 240

Administrative practice and procedure, Aliens, Immigration.

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Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

2. Revise § 3.44 and revise to read as follows:

§ 3.44 Special motion to seek section 212(c) relief for aliens who pleaded guilty or nolo contendere to certain crimes before April 1, 1997.

(a) *Standard for adjudication.* This section applies to certain aliens who formerly were lawful permanent residents, who are subject to an administratively final order of exclusion, deportation or removal, and who are eligible to apply for relief under former section 212(c) of the Act and § 212.3 of this chapter with respect to convictions obtained by plea agreements reached prior to a verdict at trial prior to April 1, 1997. A special motion to seek relief under section 212(c) of the Act will be adjudicated under the standards of this section and § 212.3 of this chapter.

(b) *General eligibility.* Generally, a special motion to seek section 212(c) relief must establish that the alien:

(1) Was a lawful permanent resident and is now subject to a final order of deportation or removal;

(2) Made a plea of guilty or nolo contendere on or before April 1, 1997, to an offense rendering the alien deportable or removable;

(3) Had seven consecutive years of lawful unrelinquished domicile in the United States prior to the date of the final administrative order of deportation or removal; and

(4) Is otherwise eligible to apply for section 212(c) relief under the standards that were in effect at the time the alien's plea was made, regardless of when the plea was entered by the court.

(c) *Aggravated felony definition.* For purposes of eligibility to apply for section 212(c) relief under this section and § 212.3 of this chapter, the definition of aggravated felony in section 101(a)(43) of the Act is that in effect at the time the special motion or the application for section 212(c) relief is adjudicated under this section. An alien shall be deemed to be ineligible for section 212(c) relief if he or she has been charged and found removable on the basis of a crime that is an aggravated felony. However, an alien whose plea pre-dates April 24, 1996, is ineligible for section 212(c) relief only if he or she has served a term of imprisonment of five years or more for a crime that is an aggravated felony.

(d) *Effect of prior denial of section 212(c) relief.* A motion under this section will be granted with respect to any conviction where an alien has previously been denied section 212(c) relief by an Immigration Judge or by the Board on discretionary grounds.

(e) *Scope of proceedings.* Proceedings shall be reopened under this section solely for the purpose of adjudicating the application for section 212(c) relief, but if the Immigration Judge or the Board grants a motion by the alien to reopen the proceedings on other applicable grounds under §§ 3.2 or 3.23 of this chapter, all issues encompassed within the reopened proceedings may be considered together, as appropriate.

(f) *Procedure for filing a special motion to seek section 212(c) relief.* An eligible alien shall file a special motion to seek section 212(c) relief with the Immigration Court or the Board, whichever last held jurisdiction over the case. An eligible alien must submit a copy of the Form I–191 application, and supporting documents, with the special motion. The motion must contain the notation "special motion to seek 212(c) relief." The Service shall have 45 days from the date of filing of the special motion to respond. In the event the Service does not respond to the motion, the Service retains the right in the proceedings to contest any and all issues raised.

(g) *Relationship to motions to reopen or reconsider on other grounds.* (1) *Other pending motions.* An alien who has previously filed a motion to reopen or reconsider that is still pending before the Immigration Court or the Board, other than a motion for section 212(c) relief, must file a separate special motion to seek section 212(c) relief pursuant to this section. The new motion shall specify any other motions currently pending before the Immigration Court or the Board. Any motion for section 212(c) relief described in this section pending before the Board or the Immigration Courts on the date of publication of the interim rule in the **Federal Register** that would be barred by the time or number limitations on motions shall be deemed to be a motion filed pursuant to this section, and shall not count against the number restrictions for other motions to reopen.

(2) *Limitations for motions.* The filing of a special motion under this section has no effect on the time and number limitations for motions to reopen or reconsider that may be filed on grounds unrelated to section 212(c).

(h) *Deadline to file a special motion to seek section 212(c) relief under this section.* An alien subject to a final administrative order of deportation or removal must file a special motion to seek section 212(c) relief on or before 180 days from date of publication of the final rule. An eligible alien may file one special motion to seek section 212(c) relief under this section.

(i) *Fees.* No filing fee is required at the time the alien files a special motion to seek section 212(c) relief under this section. However, if the special motion is granted, and the alien has not previously filed an application for section 212(c) relief, the alien will be required to submit the appropriate fee receipt at the time the alien files the Form I–191 with the Immigration Court.

(j) *Remands of appeals.* If the Board has jurisdiction and grants the motion to apply for section 212(c) relief pursuant to this section, it shall remand the case to the Immigration Court solely for adjudication of the section 212(c) application unless the Board chooses to exercise its discretionary authority to adjudicate the matter on the merits without a remand.

(k) *Limitations on eligibility under this section.* This section does not apply to:

(1) Aliens who have departed the United States;

(2) Aliens with a final order of deportation or removal who have illegally returned to the United States; or

(3) Aliens who have not been admitted or paroled.

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

3. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227; 8 CFR part 2.

4. Amend § 212.3 by revising paragraph (a)(2), the second to last sentence of paragraph (b), paragraph (d), the first sentence of paragraph (e)(1), and paragraphs (e)(3), (f)(3), (f)(4), and (g), and by removing paragraph (f)(5) to read as follows:

§ 212.3 Application for the exercise of discretion under section 212(c).

(a) * * *

(2) The Immigration Court if the application is made in the course of proceedings under section 240 of the Act, or under former sections 235, 236, or 242 of the Act (as it existed prior to April 1, 1997).

(b) * * * All material facts or circumstances that the applicant knows or believes apply to the grounds of excludability, deportability, or inadmissibility must be described in the application. * * *

* * * * *

(d) *Validity.* Once an application is approved, that approval is valid indefinitely. However, the approval covers only those specific grounds of excludability, deportability, or inadmissibility that were described in the application. An applicant who failed to describe any other grounds of excludability, deportability, or inadmissibility, or failed to disclose material facts existing at the time of the approval of the application, remains excludable, deportable, or inadmissible under the previously unidentified grounds. If the applicant is excludable, deportable, or inadmissible based upon any previously unidentified grounds a new application must be filed.

(e) * * *

(1) An eligible alien may renew or submit an application for the exercise of discretion under former section 212(c) of the Act in proceedings before an Immigration Judge under section 240 of the Act, or under former sections 235, 236, or 242 of the Act (as it existed prior to April 1, 1997), and under this chapter. * * *

* * * * *

(3) An alien otherwise entitled to appeal to the Board of Immigration Appeals may appeal the denial by the Immigration Judge of this application in accordance with the provisions of § 3.38 of this chapter.

(f) * * *

* * * * *

(3) The alien is subject to exclusion or inadmissibility from the United States under paragraphs (3)(A), (3)(B), (3)(C), or (3)(E) or (9)(C) of section 212(a) of the Act (8 U.S.C. 1182);

(4) The alien has been convicted of an aggravated felony or felonies, as defined by section 101(a)(43) of the Act. 8 U.S.C. 1101(a)(43). With respect to pleas made prior to April 24, 1996, the alien is ineligible only if he or she has served a term of imprisonment of at least five years for such aggravated felony or felonies.

(g) *Availability of section 212(c) relief for aliens who pleaded guilty or nolo contendere to certain crimes.* For purposes of this chapter, the date of the plea will be considered the date the plea was agreed to by the parties.

(1) *Pleas before April 24, 1996.* Regardless of whether an alien is in exclusion, deportation, or removal proceedings, section 440(d) of the Antiterrorism and Effective Death Penalty Act of 1996 shall not apply to any pleas made before April 24, 1996.

(2) *Pleas between April 24, 1996 and April 1, 1997.* Regardless of whether an alien is in exclusion, deportation, or removal proceedings, an eligible alien who pleaded guilty or nolo contendere and whose plea was made on or after April 24, 1996, and before April 1, 1997, may apply for relief under section 212(c) of the Act, as amended by section 440(d) of the Antiterrorism and Effective Death Penalty Act of 1996.

(3) *Pleas on or after April 1, 1997.* Section 212(c) relief is not available with respect to pleas made on or after April 1, 1997.

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

5. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR part 2.

6. In § 240.1, amend paragraph (a)(1)(ii) by adding at the end ", and former section 212(c) (as it existed prior to April 1, 1997);".

Dated: August 6, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–20403 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–30–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE99

Small Business Size Standards; Size Standards by 2002 North American Industry Classification System

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to amend its Small Business Size Regulations by incorporating the Office of Management and Budget's (OMB) 2002 modifications of the North American Industry Classification System (NAICS) into its table of small business size standards. These modifications are limited to industries in six (6) NAICS Sectors. The modifications result in a small number of size standard changes to certain NAICS activities.

SBA believes that the subject of this proposed rule is noncontroversial and routine, and SBA anticipates no adverse comments to this proposal. Therefore, SBA is publishing concurrently in this issue of the **Federal Register** a direct final rule to achieve the same result, that is, to modify its Small Business Size Regulations as proposed here.

DATES: SBA must receive comments to this proposed rule on or before September 12, 2002.

ADDRESSES: Address all comments concerning this rule to Gary M. Jackson, Assistant Administrator for Size Standards, Office of Size Standards, 409 3rd Street, SW., Washington, DC 20416, via email to *sizestandards@sba.gov*, or via facsimile, (202) 205–6390. SBA will make all public comments available to any person or concern upon request.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, at (202) 205–6618 or *sizestandards@sba.gov*.

SUPPLEMENTARY INFORMATION: SBA adopted NAICS industry definitions as a basis for its table of small business size standards effective October 1, 2000. The final rule was published in the **Federal Register** on May 5, 2000 (65 FR 30836) and states the SBA Administrator's determination that the industry descriptions in NAICS shall be the basis for small business size standards.

OMB restructured and modified parts of NAICS effective January 1, 2002. This rule both incorporates the restructuring and modifications into SBA's table of size standards. NAICS 2002 is the same as NAICS 1997 for sixteen of the twenty industry sectors. Construction and wholesale trade are substantially changed. NAICS 2002 also modified a number of retail trade classifications and the organization of the information sector.

13 CFR 121.101(b) states "NAICS is described in the *North American Industry Classification Manual—United States, 1997* * * *." At the time SBA published the final rule in the **Federal Register**, the only description of NAICS available was the NAICS 1997 manual. However, with OMB's 2002 modification of NAICS 1997, SBA believes that retaining a definition in its regulations based on a particular year is confusing and inconsistent with the

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SBA Administrator's determination in the May 5, 2000, **Federal Register** notice, which does not refer to any specific year.

How SBA Arrived at the Size Standards for NAICS 2002 Industries

On October 22, 1999, SBA published in the **Federal Register** (64 FR 57188) a proposed rule to establish a new table of small business size standards based on NAICS. SBA developed guidelines to transition from the Standard Industrial Classification System to NAICS. The guidelines were intended to minimize the impact on SBA's small business size standards. Table A, below, lists those guidelines. SBA received no negative comments to the guidelines specified in the proposed rule. Because the guidelines produced the desired results and received public acceptance, SBA published its final rule on May 5, 2000 (corrected on September 5, 2000, 65 FR 53533), establishing a new table of size standards based on NAICS without change from its proposed rule. For purposes of adopting NAICS 2002, SBA is applying the same guidelines in this rule.

TABLE A

If the NAICS 2002 industry is composed of:	The size standard for the NAICS industry would be:
1. One NAICS 1997 industry or part of one NAICS 1997 industry	The same size standard as for the NAICS 1997 industry or part.
2. More than one NAICS 1997 industry; parts of more than one NAICS 1997 industry; or one more NAICS 1997 industry and part(s) of one or more NAICS 1997 industry, and they all have the same size standard.	The same size standard as for those NAICS 1997 industries or parts of NAICS 1997 industries.
3. More than one NAICS 1997 industry; parts of more than one NAICS 1997 industry; or one or more NAICS 1997 industry and part(s) of one or more NAICS 1997 industry, and they do not all have the same size standard.	The same size standard as for the NAICS 1997 industry or NAICS 1997 industry part(s) that most closely matches the economic activity described by the NAICS 2002 industry.
4. One or more parts of an NAICS 1997 industry for which SBA has established specific size standards (*i.e.*, further segmented).	The same size standard as for that specific NAICS 1997 industry part.
5. One or more NAICS 1997 industries and/or parts of NAICS 1997 industries that were categorized broadly under the NAICS system as Services, Retail Trade, Wholesale Trade or Manufacturing, but are now categorized differently under NAICS.	SBA will (a) apply a size standard measure (*e.g.*, number of employees, annual receipts) typical of the NAICS Sector; and (b) apply the corresponding "anchor" size standard. The "anchor" size standards are $6 million [effective February 22, 2002] for Services and Retail Trade, 500 employees for Manufacturing and 100 employees for Wholesale Trade (except for Federal procurement programs, where the standard is 500 employees under the non-manufacturer rule).

Changes in Size Standards

Applying the guidelines to the NAICS 2002 restructuring and modifications results in a limited number of changes to current small business size standards. Specifically, there are 12 economic activities within nine (9) NAICS 1997 industries that reflect a size standard change when related to NAICS 2002. Eight (8) of those 12 economic activities increase, three (3) decrease, and for the remaining activity the basis for the size standard changes from annual receipts to number of employees. For the balance of the NAICS 1997 codes and their size standards, there are no size standards changes as a result of the NAICS 2002 reclassifications and recategorizations.

For complete information on the relationship between NAICS 1997 and NAICS 2002, please see the U.S. Bureau of the Census (Census Bureau) Web site at *http://www.census.gov/epcd/naics02/* That Web site contains complete information on the establishment and implementation of NAICS 2002, including the January 16, 2001 (66 FR 3825) **Federal Register** notice of final decision to adopt NAICS 2002. The Census Bureau's Web site also contains three correspondence tables: (1) 2002 NAICS–US matched to 1997 NAICS–US; (2) 1997 NAICS–US matched to 2002 NAICS–US; and (3) 2002 NAICS–US matched to 1987 Standard Industrial Classification.

Table B below identifies the twelve (12) NAICS 1997 industries and economic activities that have revised size standards in the new table based on industries as they are described in NAICS 2002.

TABLE B

NAICS 1997 Code	NAICS 1997 Size std. ($ million)	NAICS 1997 activity	NAICS 2002 Code	NAICS 2002 Size std. ($ million)	NAICS 2002 industry
213112	$6.0	Construction of Field Gathering Lines on a Contract Basis (one activity of the Support Activities for Oil and Gas Operations Industry).	237120	$28.5	Oil and Gas Pipeline and Related Structures Construction.
213112	6.0	Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Oil and Gas Operations Industry).	238910	12.0	Site Preparation Contractors.
213113	6.0	Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Coal Mining Industry).	238910	12.0	Site Preparation Contractors.
213114	6.0	Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Metal Mining Industry).	238910	12.0	Site Preparation Contractors.

TABLE B—Continued

NAICS 1997 Code	NAICS 1997 Size std. ($ million)	NAICS 1997 activity	NAICS 2002 Code	NAICS 2002 Size std. ($ million)	NAICS 2002 industry
213115	6.0	Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Nonmetallic Minerals Industry).	238910	12.0	Site Preparation Contractors.
234990	28.5	Right-of-way Clearing and Line Slashing, Blasting, Trenching, and Equipment Rental (Except Cranes) With Operator (three activities of the All Other Heavy Construction Industry).	238910	12.0	Site Preparation Contractors.
234990	28.5	Rental of Cranes With Operator (one activity of the All Other Heavy Construction Industry).	238990	12.0	All Other Specialty Trade Contractors.
235810	12.0	Water Well Drilling Contractors (Entire Industry)	237110	28.5	Water and Sewer Line and Related Structures Construction.
235990	12.0	Indoor Swimming Pools (one activity if the All Other Special Trade Contractors Industry).	236220	28.5	Commercial and Institutional Building Construction.
235990	12.0	Anchored Earth Retention Contractors (one activity if the All Other Special Trade Contractors Industry).	237990	28.5	Other Heavy and Civil Engineering Construction.
514199	6.0	Internet Broadcasting (one activity of the All Other Information Services Industry).	516110	(1)	Internet Publishing and Broadcasting.
561720	14.0	Cleaning Buildings During and Immediately after Construction (one activity of the Janitorial Services Industry).	238990	12.0	All Other Specialty Trade Contractors.

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The 12 activities with a size standard change moved to seven (7) NAICS 2002 industries. Tables 3 through 9 show the composition of these NAICS 2002 industries and discuss the basis for selecting their size standards.

1. NAICS 236220, Commercial and Institutional Building Construction, $28.5 Million

This industry is the same as NAICS 233320 (NAICS 1997) with the addition of several activities from parts of three other construction (NAICS 1997) industries (see Table 1). Only one activity within the revised industry did not have a size standard of $28.5 million under NAICS 1997. The activities of the previously defined industry continue to represent most activities in the industry. Therefore, the $28.5 million size standard for this industry is retained.

TABLE 1

NAICS 1997 activity	NAICS 1997 code (*=part)	Size standard ($ million)
Barrack and Dormitory Construction (one activity of the Multifamily Housing Construction Industry)	233220	$28.5
Grain Elevators, Dry Cleaning Plants, and Manufacturing and Industrial Warehouses (activities of the Manufacturing and Industrial Building Construction Industry)	*233310	28.5
Commercial and Institutional Building Construction (entire industry)	*233320	28.5
Indoor Swimming Pools (one activity of the All Other Special Trade Contractors Industry)	*235990	12.0

2. NAICS 237110, Water and Sewer Line and Related Structures Construction, $28.5 Million

This industry is the same as NAICS 234910 (NAICS 1997) with the addition of several heavy construction related activities and the Water Well Drilling industry (see Table 2). Water and sewer line activities constituted a large majority of the previously defined industry. The inclusion of the Water Well Drilling industry accounts for less than 15 percent of the revised industry. The activities of the previously defined industry continue to represent most activities in the industry. Therefore, the $28.5 million size standard for this industry is retained.

TABLE 2

NAICS 1997 activity	NAICS 1997 code (*=part)	Size standard ($ million)
Water/Sewer Pumping Stations, Sewage Collection and Disposal Lines, Storm Sewers, Sewer/Water Mains and Lines, Water Storage Tanks and Towers, and Construction Management of these Projects (activities of the Water, Sewer, and Pipeline Construction Industry)	234910	$28.5
Irrigation Systems, Sewage Treatment and Water Treatment Plants, Construction Management of these Projects (activities of the All Other Heavy Construction Industry)	*234990	28.5
Water Well Drilling Contractors (entire industry)	235810	12.0

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3. NAICS 237120, Oil and Gas Pipeline and Related Structures Construction, $28.5 Million

This is a new industry under the Heavy and Civil Engineering Subsector. It is comprised of activities from parts of three NAICS 1997 industries (see Table 3). All but one activity comprising this new industry had a $28.5 million size standard under NAICS 1997. Therefore, a $28.5 million size standard is adopted for this industry.

TABLE 3

NAICS 1997 activity	NAICS 1997 code (*=part)	Size standard ($ million)
Construction of Field Gathering Lines on a Contract Basis (one activity of the Support Activities for Oil and Gas Operations Industry)	*213112	$6.0
Gas and Oil Pumping Stations, Gas and Oil Pipeline Construction, Gas Mains, Gas and Oil Storage Tank Construction, and Construction Management of these Projects (activities of the Water, Sewer, and Pipeline Construction Industry)	*234910	28.5
Petrochemical Plants, Refineries, and Construction Management of these Projects (activities of the Industrial Nonbuilding Structure Construction Industry)	*234930	28.5

4. NAICS 237990, Other Heavy and Civil Engineering Construction, $28.5 Million

This industry is the same as NAICS 234990 (NAICS 1997) with a few minor changes (see Table 4). Two activities of parts of two construction industries were added to the previous NAICS 1997 industry and several activities were transferred from NAICS 234990 to other construction industries. Only one activity had a size standard different than $28.5 million under NAICS 1997. The activities of the previously defined industry continue to represent most activities in the industry. Therefore, the $28.5 million size standard for this industry is retained.

TABLE 4

NAICS 1997 activity	NAICS 1997 code (*=part)	Size standard ($ million)
Tunnel Construction (one activity of the Bridge and Tunnel Construction Industry)	*234910	$28.5
All Other Heavy Construction (Except Waste Disposal Plant Construction, Irrigation Systems, Sewage Treatment and Water Treatment Plants, Right-of-way Clearing and Line Slashing, Blasting, Trenching, and Equipment Rental with Operator)	234990	28.5
Anchored Earth Retention Contractors (one activity of the Other Special Trade Contractors Industry)	*235810	12.0

5. NAICS 238910, Site Preparation Contractors, $12.0 Million

This is a revised industry under the Special Trade Contractors Subsector. It is comprised predominately of two Special Trade Contractors industries. In addition, the revised industry includes one activity from parts of four mining support industries, several activities from part of one heavy construction industry, and several activities from parts of two other Special Trade Contractors industries (see Table 5). Because most of the activities of the revised industry are from NAICS 1997 Special Trade Contractors industries, a $12.0 million size standard is adopted for this industry.

TABLE 5

NAICS 1997 activity	NAICS 1997 code (*=part)	Size standard ($ million)
Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Oil and Gas Operations Industry)	*213112	$6.0
Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Coal Mining Industry)	*213113	6.0
Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Metal Mining Industry)	*213114	6.0
Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Nonmetallic Minerals (except Fuels) Industry	*213115	6.0
Right-of-way Clearing and Line Slashing, Blasting, Trenching, and Equipment Rental (except cranes) with Operator (Activities of the All Other Heavy Construction Industry)	*234990	28.5
Septic Tank, Cesspool, and Dry Well Construction Contractors (Activities of the Plumbing, Heating, and Air-Conditioning Contractors Industry)	*235110	12.0
Excavation Contractors (Entire Industry)	235930	12.0
Wrecking and Demolition Contractors (Entire Industry)	235940	12.0
Dewatering Contractors, Core Drilling for Construction, and Test Drilling for Construction (Activities of the All Other Special Trade Contractors Industry)	*235990	12.0

6. NAICS 238990, All Other Specialty Trade Contractors, $12.0 Million

This industry is the same as NAICS 235990 under NAICS 1997 with a few minor changes. Several activities of the previous NAICS 1997 industry transferred to other construction industries and three activities from parts of three

other industries were incorporated (see Table 6). The activities of the previously defined industry continue to represent most activities in the industry. Therefore, the $12.0 million size standard is retained.

TABLE 6

NAICS 1997 activity	NAICS 1997 code (*=part)	Size standard ($ million)
Rental of Cranes with Operator (one activity of the All Other Heavy Construction Industry)	*234990	$28.5
Residential and Commercial Asphalt, Brick, and Concrete Paving) (one activity of the Concrete Contractors industry)	*235710	12.0
All Other Special Trade Contractors (except Indoor Swimming Pools, Earth Retention Contractors, Forming Contractors, Ornamental Metal Work, Building Equipment Contractors, Building Finishing Contractors, Dewatering Contractors, Core Drilling for Construction, and Test Boring for Construction)	*235990	12.0
Cleaning Buildings During and Immediately after Construction (one activity of the Janitorial Services Industry)	*561720	14.0

7. NAICS 516110, Internet Publishing and Broadcasting, 500 Employees

This is a new industry under NAICS 2002. It is comprised of activities related to the publishing of materials via the Internet (see Table 7). All but one of these activities had a 500 employee size standard under NAICS 1997. Therefore, 500 employees is established for this industry because it represents the most prevalent size standard for the activities within this new industry.

TABLE 7

NAICS 1997 activity	NAICS 1997 code (*=part)	Size standard
Internet Newspaper Publishers (one activity of the Newspaper Publishers Industry)	*511110	500 employees.
Internet Book Publishers (one activity of the Book Publishers Industry)	*511120	500 employees.
Internet Periodical Publishers (one activity of the Periodical Publishers Industry)	*511130	500 employees.
(Internet Directory Publishers (one activity of the Directory and Database Publishers Industry)	*511140	500 employees.
Internet Greeting Card Publishers (one activity of the Greeting Card Publishers Industry)	*511191	500 employees.
All Other Internet Publishers (activities of the All Other Publishers Industry)	*511199	500 employees.
Internet Broadcasting (one activity of the All Other Information Services Industry)	*514199	$6.0 million.

Alternatives to Adopting NAICS 2002 That SBA Considered

SBA considered retaining the NAICS 1997 codes as the basis for small business size standards. However, SBA believes that doing so will lead to inconsistency with other Federal agencies that adopt NAICS 2002 for their programs. More importantly, if SBA does not adopt NAICS 2002 it will not be able to analyze and evaluate small business size standards adequately because available Census Bureau data based on NAICS 2002 industries will not be compatible with NAICS 1997 industry data. Without useful data SBA cannot properly analyze size standards and their effects on businesses.

An alternative to not adopting NAICS 2002 as a basis for size standards is to adopt part(s) of NAICS 2002. SBA believes this alternative is impractical because of the inherent inconsistencies that would result in using industry definitions from two systems.

Consideration of Comments

SBA will consider all comments submitted to this proposed rule. Commenters should address whether they agree SBA should adopt NAICS 2002 and what they believe the impact on small businesses will be. SBA will carefully consider these comments prior to making a final decision on adopting the NAICS 2002.

Other Change

SBA also proposes to make an administrative change to the heading of the size standards table. In the table titled "Small Business Size Standards by NAICS Industry" (13 CFR 121.201), SBA is removing "N.E.C. = Not Elsewhere Classified" from the heading. "N.E.C." is not used in NAICS because NAICS contains no unclassified industries, unlike the Standard Industrial Classification system.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35.) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

OMB has determined that this rule is not a "significant" regulatory action for purposes of Executive Order (E.O.) 12866. This rule incorporates the latest revisions of the NAICS, which is being used by SBA to identify industries in the economy for purposes of establishing small business size standards. As discussed in the preamble, the size standard of a limited number of activities will change as a result the NAICS revisions. Almost all businesses currently defined as small under the NAICS 1997 industries will continue to be small under the NAICS 2002 industries. The rule also affects Federal Government programs that provide a benefit for businesses. SBA welcomes comments describing the impact on small businesses of the size

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standard changes resulting from this rule.

Furthermore, SBA was made aware that some Federal Government programs had already begun to use, albeit improperly, the NAICS 2002 codes and assigned small business size standards to them. SBA believes that these actions indicate that Federal agencies expect to use and will readily accept the NAICS 2002 codes.

For purposes of E.O. 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

For purposes of E.O. 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule does not impose any new reporting or recordkeeping requirements.

When an agency promulgates a rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) requires the agency to prepare a regulatory flexibility analysis describing the economic impact of the rule on small entities and alternatives that may minimize that impact. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. SBA has determined that this rule as drafted, including the alternatives discussed in the supplementary information above, will not have a significant impact on a substantial number of small entities. OMB's modifications are the restructuring and recategorization of the construction and wholesale trade sectors, and a small number of industries in the retail and information sectors. The modifications result in size standards changes to a minimal number of activities within certain NAICS industries detailed above in the supplementary information, with little, if any, effect on small businesses. Those activities now relate to more appropriate NAICS codes.

As part of OMB's restructuring of certain NAICS industries, a small number of specific activities within certain NAICS 1997 codes were classified within NAICS 2002 industries that have size standards different from what they had been in NAICS 1997. They are listed in Table B, above. These activities are very specialized, and the Census Bureau does not publish data on these activities upon which to precisely assess the impact on small businesses. SBA believes that the impact on small businesses is minimal because these activities represent minor components of the NAICS 1997 industries from which they are derived. Only NAICS 235810, Water Well Drilling Contractors, is reclassified in its entirety to an industry with a different size standard, namely NAICS 237110, Water and Sewer Line and Related Structures Construction. Based on 1997 Economic Census data, there were only four water well drilling contractors out of a total of 3,795 that had annual receipts between $12.0 million and $28.5 million. SBA does not consider this number of businesses affected by a size standard change to be substantial.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA amends part 121 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403,108 Stat. 4175, 4188.

2. Amend the first sentence of § 121.101(b) to remove "*1997*".

3. Amend § 121.201 as follows:

a. In the table "Small Business Size Standards by NAICS Industry," remove the heading "Description (N.E.C. = Not Elsewhere Classified)" and add in its place "NAICS U.S. industry title".

b. In the table "Small Business Size Standards by NAICS Industry," remove the following three (3) Subsectors together with all entries within those Subsectors: Subsector 233—Building, Developing and General Contracting, Subsector 234—Heavy Construction, and Subsector 235—Special Trade Contractors, and add in their place the following:

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in number of employees or million of dollars
. . . . .		
Subsector 236—Construction of Buildings		
236115	New Single-Family Housing Construction (except Operative Builders)	$28.5
236116	New Multifamily Housing Construction (except Operative Builders)	28.5
236117	New Housing Operative Builders	28.5
236118	Residential Remodelers	28.5
236210	Industrial Building Construction	28.5
236220	Commercial and Institutional Building Construction	28.5
Subsector 237—Heavy and Civil Engineering Construction		
237110	Water and Sewer Line and Related Structures Construction	28.5
237120	Oil and Gas Pipeline and Related Structures Construction	28.5
237130	Power and Communication Line and Related Structures Construction	28.5
237210	Land Subdivision	6.0
237310	Highway, Street, and Bridge Construction	28.5
237990	Other Heavy and Civil Engineering Construction	28.5

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in number of employees or million of dollars
Except	Except Dredging and Surface Cleanup Activities	17.0 [2]
Subsector 238—Specialty Trade Contractors		
238110	Poured Concrete Foundation and Structure Contractors	12.0
238120	Structural Steel and Precast Concrete Contractors	12.0
238130	Framing Contractors	12.0
238140	Masonry Contractors	12.0
238150	Glass and Glazing Contractors	12.0
238160	Roofing Contractors	12.0
238170	Siding Contractors	12.0
238190	Other Foundation, Structure, and Building Exterior Contractors	12.0
238210	Electrical Contractors	12.0
238220	Plumbing, Heating, and Air Conditioning Contractors	12.0
238290	Other Building Equipment Contractors	12.0
238310	Drywall and Insulation Contractors	12.0
238320	Painting and Wall Covering Contractors	12.0
238330	Flooring Contractors	12.0
238340	Tile and Terrazzo Contractors	12.0
238350	Finish Carpentry Contractors	12.0
238390	Other Building Finishing Contractors	12.0
238910	Site Preparation Contractors	12.0
238990	All Other Specialty Trade Contractors	12.0
Except	Base Housing Maintenance [13]	12.0 [13]

c. In the table "Small Business Size Standards by NAICS Industry," remove the following two (2) Subsectors together with all entries within those Subsectors: Subsector 421—Wholesale Trade—Durable Goods and Subsector 422—Wholesale Trade—Nondurable Goods, and add in their place the following:

NAICS codes	NAICS U.S. industry title	Size standards in number of employees or million of dollars
Subsector 423—Merchant Wholesalers, Durable Goods		
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	100
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	100
42313	Tire and Tube Merchant Wholesalers	100
423140	Motor Vehicle Parts (Used) Merchant Wholesalers	100
423210	Furniture Merchant Wholesalers	100
423220	Home Furnishing Merchant Wholesalers	100
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	100
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	100
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers	100
423390	Other Construction Material Merchant Wholesalers	100
423410	Photographic Equipment and Supplies Merchant Wholesalers	100
423420	Office Equipment Merchant Wholesalers	100
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	100
423440	Other Commercial Equipment Merchant Wholesalers	100
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	100
423460	Ophthalmic Goods Merchant Wholesalers	100
423490	Other Professional Equipment and Supplies Merchant Wholesalers	100
423510	Metal Service Centers and Other Metal Merchant Wholesalers	100
423520	Coal and Other Mineral and Ore Merchant Wholesalers	100
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	100
423620	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers	100
423690	Other Electronic Parts and Equipment Merchant Wholesalers	100
423710	Hardware Merchant Wholesalers	100
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	100
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers	100
423740	Refrigeration Equipment and Supplies Merchant Wholesalers	100
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	100
423820	Farm and Garden Machinery and Equipment Merchant Wholesalers	100
423830	Industrial Machinery and Equipment Merchant Wholesalers	100

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NAICS codes	NAICS U.S. industry title	Size standards in number of employees or million of dollars
423840	Industrial Supplies Merchant Wholesalers	100
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	100
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers	100
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers	100
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers	100
423930	Recyclable Material Merchant Wholesalers	100
423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers	100
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	100
	Subsector 424—Merchant Wholesalers, Nondurable Goods	
424110	Printing and Writing Paper Merchant Wholesalers	100
424120	Stationery and Office Supplies Merchant Wholesalers	100
424130	Industrial and Personal Service Paper Merchant Wholesalers	100
424210	Drugs and Druggists' Sundries Merchant Wholesalers	100
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers	100
424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers	100
424330	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers	100
424340	Footwear Merchant Wholesalers	100
424410	General Line Grocery Merchant Wholesalers	100
424420	Packaged Frozen Food Merchant Wholesalers	100
424430	Dairy Product (except Dried or Canned) Merchant Wholesalers	100
424440	Poultry and Poultry Product Merchant Wholesalers	100
424450	Confectionery Merchant Wholesalers	100
424460	Fish and Seafood Merchant Wholesalers	100
424470	Meat and Meat Product Merchant Wholesalers	100
424480	Fresh Fruit and Vegetable Merchant Wholesalers	100
424490	Other Grocery and Related Products Merchant Wholesalers	100
424510	Grain and Field Bean Merchant Wholesalers	100
424520	Livestock Merchant Wholesalers	100
424590	Other Farm Product Raw Material Merchant Wholesalers	100
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	100
424690	Other Chemical and Allied Products Merchant Wholesalers	100
424710	Petroleum Bulk Stations and Terminals	100
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	100
424810	Beer and Ale Merchant Wholesalers	100
424820	Wine and Distilled Alcoholic Beverage Merchant Wholesalers	100
424910	Farm Supplies Merchant Wholesalers	100
424920	Book, Periodical, and Newspaper Merchant Wholesalers	100
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	100
424940	Tobacco and Tobacco Product Merchant Wholesalers	100
424950	Paint, Varnish, and Supplies Merchant Wholesalers	100
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	100
	Subsector 425—Wholesale Electronic Markets and Agents and Brokers	
425110	Business to Business Electronic Markets	100
425120	Wholesale Trade Agents and Brokers	100

d. In the table "Small Business Size Standards by NAICS Industry," remove the entry 452110, and add in its place the following:

NAICS codes	NAICS U.S. industry title	Size standards in number of employees or million of dollars
452111	Department Stores (except Discount Department Stores)	$23.0
452112	Discount Department Stores	23.0

e. In the table "Small Business Size Standards by NAICS Industry," remove the entry 454110, and add in its place the following:

NAICS codes	NAICS U.S. industry title	Size standards in number of employees or million of dollars
454111	Electronic Shopping	$21.0
454112	Electronic Auctions	21.0
454113	Mail-Order Houses	21.0

f. In the table "Small Business Size Standards by NAICS Industry," revise the heading "Subsector 511—Publishing Industries" to read "Subsector 511—Publishing Industries (except internet)."

g. In the table "Small Business Size Standards by NAICS Industry," in NAICS 511140 revise "Database and Directory Publishers" to read "Directory and Mailing List Publishers."

h. In the table "Small Business Size Standards by NAICS Industry," remove the following two (2) Subsectors together with all entries within those Subsectors: Subsector 513—Broadcasting and Telecommunications and Subsector 514 Information Services and Data Processing Services, and add in their place the following:

NAICS codes	NAICS U.S. industry title	Size standards in number of employees or million of dollars
	Subsector 515—Broadcasting (except Internet)	
515111	Radio Networks	$6.0
515112	Radio Stations	6.0
515120	Television Broadcasting	12.0
515210	Cable and Other Subscription Programming	12.5
	Subsector 516—Internet Publishing and Broadcasting	
516110	Internet Publishing and Broadcasting	12.5
	Subsector 517—Telecommunications	
517110	Wired Telecommunications Carriers	1,500
517211	Paging	1,500
517212	Cellular and Other Wireless Telecommunications	1,500
517310	Telecommunications Resellers	1,500
517410	Satellite Telecommunications	12.5
517510	Cable and Other Program Distribution	12.5
517910	Other Telecommunications	21.0
	Subsector 518—Internet Service Providers, Web Search Portals, and Data Processing Services	
518111	Internet Service Providers	21.0
518112	Web Search Portals	6.0
518210	Data Processing, Hosting, and Related Services	21.0
	Subsector 519—Information Services and Data Processing Services	
519110	News Syndicates	6.0
519120	Libraries and Archive	6.0
519190	All Other Information Services	6.0

Dated: August 5, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–20358 Filed 8–12–02; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 190

RIN 3038–AB31

Denomination of Customer Funds and Location of Depositories

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to adopt a new rule that would permit futures commission merchants and derivatives clearing organizations, under certain conditions, to deposit customer funds in foreign depositories and in certain currencies other than United States

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dollars. The Commission is also proposing to adopt an amendment to Appendix B of its bankruptcy rules that would govern the distribution of property where the bankrupt futures commission merchant or derivatives clearing organization maintains customer property in depositories outside the United States or in a foreign currency. This new distributional framework is intended to assure that customers whose funds are held in a United States depository will not be adversely affected by a shortfall in the pool of funds held in a depository outside the United States that is due to the sovereign action of a foreign government or court. The proposed rule would replace Financial and Segregation Interpretation No. 12.

DATES: Comments on the proposed new rule and amendments must be received by October 15, 2002.

ADDRESSES: Comments on the proposed rule should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5528, or by e-mail to *secretary@cftc.gov*. Reference should be made to "Foreign Depositories."

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Deputy Director, or Michael A. Piracci, Attorney-Advisor, Division of Clearing and Intermediary Oversight, for further information regarding amendments to appendix B of part 190, contact Robert B. Wasserman, Associate Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Background

One of the most important functions of the Commodity Exchange Act (the "Act")[1] and the rules thereunder is the protection of customer funds. Section 4d(a)(2) of the Act requires that every futures commission merchant ("FCM"):

> treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person, or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such commission merchant or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held.

Prior to 1988, the Commission, and its predecessor agency, the Commodity Exchange Authority, had construed this provision to require that customer funds deposited with an FCM relating to trading on a domestic exchange be held in the United States ("U.S."), unless the funds were being held for a foreign-domiciled customer.[2] In light of the growing internationalization of the futures and options markets, the Commission in 1988 issued Financial and Segregation Interpretation No. 12 ("Interp. 12"),[3] which provided that, under certain conditions, an FCM may deposit segregated funds of customers domiciled in the U.S. in foreign depositories.

Interp. 12 permits FCMs to hold the funds of customers domiciled in the U.S. offshore if such funds are used to margin positions "in a contract traded on a domestic contract market that is priced and settled in a foreign currency or accrue to such a customer as a result of positions in such contracts."[4] Interp. 12 requires that such funds be held in depositories that meet the criteria under Commission Rule 30.7(c)[5] and are located in the country of the applicable currency or a country with which the Commission has an information sharing arrangement. Additionally, FCMs and clearing organizations must obtain from the depository a written acknowledgement of the applicability of Commission regulations regarding the segregation of customer funds required under Commission Rule 1.20.

Under Interp. 12, before an FCM may deposit customer funds offshore, it must obtain an agreement from the customer that authorizes the deposit of the customer's funds into a foreign depository. The agreement must also authorize the "subordination of the customer's claim attributable to funds held offshore in a particular foreign currency to the claims of customers whose funds are held in [U.S.] dollars or other foreign currencies in the event the FCM is placed in bankruptcy or receivership and there are insufficient funds available for distribution from the funds held in the particular currency to satisfy all customer claims against those funds."[6] The subordination applies if the insufficiency in funds was a result of the offshore account being underfunded or if all of the funds in the account could not be recovered. For example, the government of the foreign country where the funds are being held may freeze or confiscate the assets or the applicable bankruptcy laws may prevent the full recovery of the funds. An FCM must hold in segregation in the U.S. sufficient funds denominated in U.S. dollars to meet all U.S. dollar-denominated obligations to persons domiciled in the U.S., regardless of whether there are excess funds in segregation in a foreign currency-denominated account.

As stated above, when the Commission issued Interp. 12, it noted that the change in the Commission's interpretation concerning appropriate depositories for segregated customer funds was appropriate "in light of the growing internationalization of the futures and option markets."[7] In the more than a dozen years since Interp. 12 was issued, the futures and options markets, along with almost all other segments of the business world, have seen greater internationalization. As a result, there is an increased need and desire of certain customers to be able to more easily conduct business in currencies other than the U.S. dollar.

In the Commodity Futures Modernization Act of 2000 (the "CFMA"),[8] Congress noted that "regulatory impediments to the operation of global interests can compromise the competitiveness of [U.S.] business" and that regulatory policy should be "flexible to account for rapidly changing derivatives industry practices."[9] Due to restrictions placed on holding segregated funds offshore, U.S. markets and futures professionals may find themselves at a disadvantage

[1] 7 U.S.C. 1 *et seq.* (2000).

[2] *See* Commodity Exchange Authority Administrative Determination No. 238 (Sep. 4, 1974); *see also* Foreign Options and Foreign Futures Transactions, 51 FR 12104, note 36 (Apr. 8, 1986); Leverage Transactions, [1982–1984 Transfer Binder] Comm. Fut. L. Rep. ¶ 21,742 at p. 26,952, note 52 (May 25, 1983).

[3] Financial and Segregation Interpretation No. 12—Deposit of Customer Funds in Foreign Depositories, 53 FR 46911 (Nov. 21, 1988). The document was published in the **Federal Register** as a Statement of Agency Interpretation. It was also published in the Commodity Futures Law Reporter at ¶ 7122 together with a series of Financial and Segregation Interpretations issued by the Commission's Division of Trading and Markets.

[4] *Id.* at 46913.

[5] Commission Rules referred to herein are found at 17 CFR Ch. I (2001). Rule 30.7(c) provides that the funds of foreign futures or foreign options customers maintained in a separate account be with a depository that is: "(1) A bank or trust company located in the United States or as designated; (2) Another person registered as a futures commission merchant; (3) The clearing organization of any foreign board of trade; (4) Any member of such board of trade; or (5) Such member or clearing organization's designated depositories." *See also* CFTC Advisory 87–5, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,997 (Dec. 3, 1987) (discussing Rule 30.7(c)).

[6] 53 FR at 46913.

[7] *Id.* at 46912.

[8] Appendix E of Pub. L. No. 106–554, 114 Stat. 2763 (2000).

[9] Section 126(a) of the CFMA.

to their foreign competitors. One of the purposes of the CFMA is to "enhance the competitive position of [U.S.] financial institutions and financial markets."[10] Based upon the foregoing, the Commission is now proposing a rule to permit FCM obligations owed to customers to be denominated in currencies other than the U.S. dollar and to permit FCMs and derivatives clearing organizations ("DCOs") to hold segregated customer funds in certain foreign depositories, subject to certain restrictions, but without requiring customers to sign a subordination agreement. The Commission previously solicited comments on possible rulemaking in this area.[11]

II. The Proposed New Rule and Amendments

A. Proposed New Rule 1.49

1. Permissible Currencies

The Commission is proposing to adopt Rule 1.49 to provide that FCM obligations owed to customers shall be held in: (1) U.S. dollars; (2) a currency in which funds were deposited by the customer, or converted to at the request of the customer, to the extent of such deposits and conversions; or (3) a currency in which funds have accrued to the customer as a result of trading on a designated contract market or registered derivatives transaction execution facility ("DTF"). Any customer would be able to deposit foreign currency with an FCM if the FCM permits it, not just those customers trading contracts priced and settled in a foreign currency.

As noted above, the internationalization of the futures markets has resulted in customers who, for many different reasons, want funds denominated in currencies other than the U.S. dollar. If a customer or prospective customer of an FCM prefers to deposit funds with an FCM in a currency other than the U.S. dollar, or to convert funds from one currency to another, the FCM should not be prevented from accepting or holding funds in the preferred currency of the customer or prospective customer. An FCM may not convert customer funds from one currency to another without customer authorization. An account agreement could provide, however, that by placing an order in a contract settled in a particular currency, a customer agrees to convert to the appropriate currency funds sufficient to meet the applicable margin requirement. Under the proposed rule, an FCM would be required to prepare and maintain a written record each time customer funds were converted from one currency to another. The record must include the date the transaction was executed, the currencies converted, the amount converted, and the resulting amount.

The FCM will also be required to make the information contained in this record available to the customer upon the customer's request. The FCM may provide this information through any means agreed upon by the customer and FCM. Additionally, the Commission notes that, pursuant to Rule 1.33(a), the FCM must include this information in the monthly statements provided to the customer.

Another aspect of the internationalization of the futures and options markets is the increasing number of contracts offered on foreign financial instruments and indices. For example, the Chicago Mercantile Exchange offers a futures contract on the Nikkei Stock Average. These contracts are priced and settled in the currency of the underlying instrument or index. Accordingly, accruals resulting from trading in such instruments will be in currency other than U.S. dollars. Under the proposed rule, such accruals may be held in the applicable currency. A customer may, of course, request that such accruals be converted to U.S. dollars.

Currently, pursuant to Interp. 12, customers must authorize the deposit of foreign currency funds into foreign depositories as part of the subordination agreement. The Commission is proposing to eliminate this written authorization requirement.[12] If a customer deposits funds with an FCM in a currency other than U.S. dollars, or requests a conversion of funds to a non-U.S. dollar currency, the customer will be aware of the fact that the funds are being held in a currency other than U.S. dollars. With regard to funds other than U.S. dollars that have accrued to the customer as a result of trading in contracts priced and settled in a non-U.S. currency, the Commission notes that the specifications for contracts traded on designated contract markets are widely known and generally available.[13] Accordingly, when a customer trades in a futures or options contract that is priced and settled in a currency other than U.S. dollars, a customer should be aware that the accruals from such trading may be made in the applicable currency. If a customer has previously not traded in contracts that are priced and settled in a currency other than U.S. dollars, a firm should inform the customer if the accruals from the trades will be held in a currency other than U.S. dollars, at the time the customer places an order that might result in such accruals.[14] FCMs and their associated persons ("APs") should also be ready to respond to inquiries that any customer may have about accruals or other issues arising in connection with monthly account statements.[15]

2. Location of Depositories

The proposed rule would permit an FCM or DCO to hold customer funds of any denomination in the United States or in any money center country (Canada, France, Italy, Germany, Japan, and the United Kingdom). Hence, customer funds of any denomination could be held in any of the Group of Seven ("G7") countries. The G7 countries represent the world's largest industrial democracies. Furthermore, representatives from these countries meet several times a year to coordinate their cooperation on issues of economic policy. In this regard, the United States and its financial regulatory agencies have had successful cooperation with the respective financial regulatory agencies of these countries.

An FCM or DCO also could hold any particular currency in the country of origin of that currency,[16] except that customer funds may not be held in any of the restricted countries subject to sanctions by the Office of Foreign Assets and Control ("OFAC") of the U.S. Department of the Treasury.[17] The rule would further provide that funds could be held outside the United States only to the extent specifically authorized by the customer. Holding funds in each country may pose different risks and different operational costs and benefits.

[10] Section 2(8).

[11] 62 FR 67841 (Dec. 30, 1997).

[12] As discussed below, the proposal would also eliminate the need for a subordination agreement.

[13] For example, the specifications for contracts traded on the Chicago Mercantile Exchange are available on its web site at: *www.cme.com*.

[14] *See, Clayton Brokerage Co. v. Commodity Futures Trading Commission*, 794 F.2d 573, 580 (11th Cir. 1986) (providing a customer with the risk disclosure statement does not relieve a broker of any obligation to disclose all material information about risk to customers). With respect to accounts controlled by a registered commodity trading advisor on behalf of a commodity or option customer, the FCM would not need to inform the customer about such accruals.

[15] The basic risk disclosure statement required under Commission Rule 1.55 for customers contemplating trading foreign futures and options includes a warning about currency risks (see paragraph 8), as does the generic risk disclosure statement used internationally (Appendix A to Commission Rule 1.55(c), paragraph 9).

[16] For the Euro, the country of origin includes any country that is a member of the European Union and has recognized the Euro as its official currency.

[17] The list of restricted countries may be viewed on OFAC's web site at *www.ustreas.gov/ofac*.

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Therefore, the Commission believes that the customer must be able to choose whether, and to what extent, to incur such risks and costs. The Commission, however, is not establishing a particular format that such an authorization must follow. It is simply requiring that the FCM make and maintain a written record detailing the terms and conditions of any such authorization. No separate customer signature would be required.

FCMs and DCOs should also be aware that the Financial Action Task Force ("FATF") of the Organization for Economic Co-Operation and Development maintains a list of non-cooperative countries or territories with respect to anti-money laundering programs and that the Secretary of the Treasury may designate, in accordance with Section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism ("USA PATRIOT") Act of 2001,[18] certain countries as areas of primary money laundering concern.[19] Before holding any customer funds in a depository in any of these countries or territories, FCMs and DCOs should undertake due diligence to assure themselves that the depository is reputable, has appropriate operational systems to safeguard customer funds, and has an adequate program to deter money laundering.

3. Qualifications of Depositories

Under the proposal, if the depository is located in the U.S., it must be: (1) A bank or trust company; (2) an FCM registered with the Commission; or (3) a DCO. If the depository is located outside the U.S., it must be: (1) A bank or trust company that has (a) in excess of $1 billion in regulatory capital, or (b) commercial paper or long-term debt rated in the highest rating category by at least one nationally recognized statistical rating organization (where the bank or trust company is part of a holding company system, the holding company may satisfy the rating criterion); (2) an FCM registered with the Commission; or (3) a DCO.

Only depositories that provide the FCM or DCO with the written acknowledgment required under Commission Rules 1.20 or 1.26 may hold customer funds required to be segregated.[20] However, a DCO acting as a depository does not need to provide an acknowledgment letter to an FCM where the DCO's rules provide for the segregation of funds held on behalf of customers.[21]

4. Segregation Requirements

As noted above, protection of customer funds is one of the most important purposes of the Act and the Commission's regulations. Customer funds must be segregated so as to assure that the obligations owed to customers will be met. Through segregation, customer funds are readily identifiable in the event that a registrant becomes insolvent. Accordingly, the proposed rule requires that the FCM or DCO, at the close of each business day, have in segregated accounts on behalf of its customers sufficient U.S. dollars held in the U.S. to meet all U.S. dollar obligations and sufficient funds in each other currency to meet obligations in such currency with certain permitted substitutions. The segregation requirements of the proposed rule are meant to ensure that FCMs and DCOs maintain enough funds, and in the appropriate currency, to meet the obligations owed to customers.

As noted, the proposed rule would permit limited substitutions among currencies. U.S. dollars held in the U.S. may be used to meet obligations denominated in any other currency. Money center currencies and U.S. dollars held in money center countries may be held to meet obligations denominated in currencies other than the U.S. dollar. In essence, three tiers of currencies would be established, U.S. dollars held in the U.S. ("Tier I"), U.S. dollars and money center currencies held in money center countries or money center currencies held in the U.S. ("Tier II"), and non-money center currencies ("Tier III"). Tier I currency could be used for any obligation. For U.S. dollar obligations to customers only Tier I currency could be used. Tier II currencies could be used for any obligation except U.S. dollars. Tier III currencies could only be used for obligations denominated in that particular currency.

B. Recordkeeping

The Commission is also proposing to amend Rule 1.32 to require FCMs to compute segregated funds on a currency-by-currency basis if they are held in other than U.S. dollars, in accordance with proposed new Rule 1.49. Under proposed Rule 1.49, customer funds may be held in the United States, a money center country, or the country of origin of the currency. Proposed Rule 1.49 also would require FCMs and DCOs that hold funds in foreign currency or offshore to maintain records sufficient to demonstrate compliance with the additional segregation requirements set forth in proposed paragraph 1.49(e).

C. Bankruptcy

In Interp. 12, the Commission noted two types of risk associated with holding funds offshore that might result in customers failing to fully recover segregated funds, either upon demand or in a bankruptcy or receivership, (1) currency risk and (2) location risk.[22]

Currency risk is the risk of currency exchange rate fluctuations. This can be a concern where an FCM is in bankruptcy or receivership and it holds deposits denominated in currencies other than U.S. dollars. Due to changes in currency exchange rates, the size of the pool of funds available for distribution to customers and the size of claims against the funds may vary from day to day while the bankruptcy is pending, thereby exposing customers with U.S. dollar-denominated claims to currency risk.[23]

Location risk is the risk that funds held in a foreign depository might not be fully recoverable by a customer upon demand or in the event of bankruptcy or receivership. It includes the risk that foreign depositories may not be cooperative with the Commission concerning questions of compliance with segregation requirements, or that a foreign court might refuse to enforce provisions of the Commission's rules that prohibit a foreign depository from offsetting obligations of an FCM against customer funds. There is also a risk that, in the event of an FCM becoming insolvent, deposits at a foreign depository might be subject to an insolvency regime that is different from U.S. bankruptcy law. Additionally, a foreign government might limit the availability of funds by freezing or confiscating assets held within its jurisdiction or taking actions that affect their currency, even if the assets are located in the U.S.[24]

Currently, pursuant to Interp. 12, before placing a customer's funds offshore, an FCM must obtain from the customer a subordination agreement. In the agreement, the customer consents to the subordination of claims concerning funds held offshore or in a foreign currency to the claims of customers whose funds are held in U.S. dollars in the U.S. or in other currencies in the event the FCM is placed in bankruptcy or receivership and there are insufficient funds available for distribution from the funds held in that particular currency to satisfy customer claims against those funds. The subordination agreement was meant to protect customers whose funds are held in the U.S. and denominated in U.S. dollars from both currency and location risk that might result in customers receiving less than their pro-rata share of funds.

In Interp. 12, the Commission stated that "currency risk is similar to the price risk which can occur in cases where an FCM becomes insolvent while holding customer deposits in forms which fluctuate in value," using the example of Treasury securities.[25] The Commission noted, however, that there were distinctions between price risk and currency risk, such that it was more equitable to spread the price risk among all customers in the event of a bankruptcy than it was the currency risk. First, the Commission indicated that all customers had the opportunity to post Treasury securities as margin, but under Interp. 12 only customers trading certain contracts could post foreign currency. Second, shortfalls in foreign currency accounts were more likely because of sovereign or location risk. Third, it would be easier and quicker for a trustee or receiver to convert Treasury securities held in the U.S. to cash than to convert foreign currency held offshore into U.S. dollars.

Under proposed rule 1.49, subject to exchange margin rules, any customer may deposit foreign currency with an FCM, not just those trading certain contracts. Additionally, as discussed below, the proposed rule and the amendment to Appendix B of the Commission's bankruptcy rules limit sovereign risk and protect customers who deposit U.S. dollars from being adversely affected due to the sovereign action of a foreign government or court, including the effect of a non-U.S. insolvency regime. While converting Treasury securities held in the U.S. to cash may be quick and easy, converting foreign currency into U.S. dollars or transferring U.S. dollars held offshore to the U.S. is not extremely difficult. This is particularly true in the money center countries. As a result, the Commission believes spreading currency risk among all customers is no less equitable than spreading price risk among all customers.

In this proposal, the Commission has sought to address many aspects of currency and location risks through the safeguards discussed above. One aspect of location risk that remains, however, is sovereign risk. This is the risk that the actions of a foreign government or court might result in a shortfall in segregated funds.

To address sovereign risk, the Commission is proposing to amend Framework 2 of Appendix B of its bankruptcy rules to govern the distribution of customer funds segregated pursuant to the Act and Commission rules thereunder, held by an FCM or DCO in a depository outside the U.S. or in a foreign currency.[26] The maintenance of customer funds in a depository outside the U.S. or denominated in a foreign currency would result, in certain circumstances, in the reduction of customer claims for such funds.

For purposes of the proposed bankruptcy convention, sovereign action of a foreign government or court would include, but not be limited to, the application or enforcement of statutes, rules, regulations, interpretations, advisories, decisions, or orders, formal or informal, by a federal, state, or provincial executive, legislature, judiciary, or government agency.

If an FCM filed, or had filed against it, a petition in bankruptcy and maintained customer funds in a depository located in the U.S. in a currency other than U.S. dollars, or in a depository outside the U.S., the following allocation procedure would be used to calculate the claim of each customer. After reducing each customer's claim by the percentage of the shortfall that is not attributable to sovereign action, certain customer claims will be further reduced based upon their exposure to loss attributable to sovereign action. This framework is designed to prevent a shortfall in funds held outside the U.S. or in a currency other than U.S. dollars resulting from the sovereign action of a foreign government or court from adversely affecting customers whose funds are held in U.S. dollars or in the U.S. or in a currency or a country other than the one undertaking the sovereign action resulting in the shortfall.

The proposed rule and the proposed framework to the bankruptcy appendix address the risks associated with holding customer funds outside the U.S. or in currencies other than U.S. dollars. Accordingly, the requirement that each customer who seeks to have funds held outside the U.S. must execute a separate subordination agreement would be eliminated.

III. Request for Comments Regarding the Location of Foreign Futures or Foreign Options Secured Amount

The rule proposed herein would expand the permitted depositories at which customer funds for trading on designated contract markets and registered DTFs could be held. The proposed rule, however, would not be applicable to the funds of U.S. customers for purposes of trading on a foreign board of trade; Commission Rule 30.7 would still govern in that situation.

Rule 30.7 provides, among other things, that an FCM must maintain the funds of foreign futures or options customers, in a separate account, with: (1) A bank or trust company located in the U.S. or as designated; (2) another person registered as an FCM; (3) the clearing organization of a foreign board of trade; (4) any member of such board of trade; or (5) such member or clearing organization's designated depository. To the extent that an FCM wishes to maintain customer funds at a bank or trust company outside the U.S., pursuant to Rule 30.7(c)(1), the Commission must first recognize the depository. The Commission's Division of Trading and Markets, in CFTC

[18] Pub. L. No. 107–56.

[19] The list of non-cooperative countries and territories may be viewed on FATF's web site at: *www1.oecd.org/fatf/*. The Secretary of the Treasury has not yet designated any countries as being of primary money laundering concern; however, if such designations are made, the Commission understands that they will be publicly available on the Department of the Treasury web site at: *www.ustreas.gov*.

[20] Commission Rule 1.20 provides that when an FCM or DCO deposits customer funds with a depository the FCM or DCO must obtain and retain a written acknowledgement from the depository that it was informed that the funds are subject to the provisions of the Act and regulations. Rule 1.26 requires an FCM or DCO to obtain such an acknowledgment in regard to the deposit of instruments purchased with customer funds as described under Rule 1.25.

[21] *See* 65 FR 77993, 78009–13 (Dec. 13, 2000) (amending, among other things, Rules 1.20 and 1.26 to provide that a DCO acting as a depository does not need to provide an acknowledgement letter where the DCO's rules provide for the segregation of funds held on behalf of customers); 65 FR 82270 (Dec. 28, 2000) (moving forward the effective date of the amendments to Rule 1.20 and 1.26 to December 28, 2000).

[22] 53 FR at 46912.

[23] *See* 53 FR at 46915 (providing an example of currency risk).

[24] Part of the impetus for Interp. 12 was the fact that, historically, U.S. banks could not pay interest on deposits of foreign currency. Shortly after the issuance of Interp. 12, however, the Board of Governors of the Federal Reserve System permitted U.S. banks to pay interest on foreign currency deposits, increasing the likelihood of such deposits. Presumably, certain sovereign action of a foreign government could affect foreign currency even if held in the U.S. Any discussion of sovereign risk herein pertains to non-U.S. currency, wherever held.

[25] 53 FR at 46915, note 22.

[26] The current Framework 2 sets forth a plan for distribution in the case of trades made on the Chicago Board of Trade-London International Financial Futures and Options Exchange Link ("Link"). Since the Link ceased operations in 1997, there is no need to maintain the existing Framework 2. Accordingly, the Commission is proposing to replace the existing Framework 2 related to Link with a new Framework 2 that addresses U.S. held segregated funds and non-U.S. held segregated funds.

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Advisory 87–5,[27] indicated that any bank or trust company located outside the U.S. whose commercial paper or long term debt is rated in one of the two highest rating categories by Standard & Poor's Corporation or Moody's Investors Service, Inc., is automatically deemed recognized. With regard to a bank or trust company located outside the U.S. that is not rated in one of the two highest rating categories by Standard & Poor's Corporation or Moody's Investors Service, Inc., an FCM must file an application for recognition of the subject depository, as set forth in Advisory 87–5.[28]

The Commission seeks comment on whether, in light of the proposed rules herein, Rule 30.7 should also be amended to expand the types of depositories at which an FCM may hold the funds of foreign futures or options customers. In particular, the Commission seeks comment on whether such amendments should permit the holding of customer funds in the same depositories as those permitted under proposed Rule 1.49, or whether there are special circumstances regarding foreign futures and options customers that would require a unique approach.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[29] requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[30] The Commission has previously determined that FCMs are not small entities for the purpose of the RFA.[31] Additionally, the Commission has determined that DCOs are not small entities for purposes of the RFA.[32] Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to section 3(a) of the RFA [33] that the proposed rules will not have a significant economic impact on a substantial number of small entities.

[27] *See* note 5, *supra*. As of July 1, 2002, a reorganization of Commission staff became effective. The Division of Trading and Markets is the predecessor to the Division of Clearing and Intermediary Oversight.

[28] CFTC Advisory 87+5, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 34,496–34,497.

[29] 5 U.S.C. 601 *et seq.*

[30] 47 FR 18618 (April 30, 1982).

[31] 47 FR 18619.

[32] 47 FR 45604, 45609 (Aug. 29, 2001.

[33] 5 U.S.C. 605(b).

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")[34] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. This proposed rulemaking contains information or collection requirements. The Commission has submitted a copy of this part to the Office of Management and Budget ("OMB") for its review.

Collection of Information

Regulations and Forms Pertaining to the Financial Integrity of the Marketplace, OMB Control Number 3038–0024.

The effect of the proposed rules would be to increase the burden previously approved by OMB by 120 hours. The burden associated with the proposed new rule is estimated to be 120 hours, which will result from new recordkeeping requirements for FCMs that, at the request of the customer, convert customer funds to a currency other than that deposited with the FCM and for FCMs that, as authorized by the customer, hold customer funds outside the United States.

The estimated burden of the proposed new rule was calculated as follows:

Estimated number of respondents: 120.

Reports annually by each respondent: 100.

Total annual responses: 12,000.

Estimated average number of hours per response: .01.

Estimated total number of hours of annual burden in fiscal year: 120.

Persons wishing to comment on the information collection requirements that would be required by the proposed rule should contact the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhancing the quality, utility, and clarity of the information to be collected; and
- Minimizing the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581 (202) 418–5160.

C. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by Section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The proposed rule and amendments are intended to provide greater flexibility for FCMs, DCOs, and their customers in their methods of doing business. The Commission is considering the costs and benefits of these rules in light of the specific provisions of Section 15(a) of the Act:

1. *Protection of market participants and the public.* To protect market participants and the public, the proposal requires that depositories used to hold customer funds meet certain requirements to assure that customer funds are dealt with properly. Additionally, the proposal includes a new framework to the bankruptcy appendix to protect customer funds held in U.S. dollars in the U.S. from being diluted if there is an insufficiency in the funds held outside the U.S. or in a currency other than U.S. dollars due to the sovereign action of a foreign government or court.

2. *Efficiency and competition.* The proposed rules are expected to benefit competition and market efficiency. The proposed rule will help to facilitate continued international growth of the futures industry by permitting customer funds to be denominated in currencies other than U.S. dollars and to be held in offshore depositories.

3. *Financial integrity of futures markets and price discovery.* The proposed rules should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets.

4. *Sound risk management practices.* The Commission in proposing the rule and amendments has included risk-limiting features, such as requiring FCMs and DCOs to maintain sufficient funds to meet obligations in each currency, and requiring depositories to meet certain criteria, including signing an acknowledgment regarding the segregation requirements under the Act and Commission rules, to minimize the risks to customer funds.

5. *Other public interest considerations.* The proposed rules and amendments contained herein offer greater opportunity for taking full advantage of contracts being offered by domestic designated contract markets and registered DTFs and the ever increasing internationalization of the futures industry, while establishing safeguards for customer funds.

After considering these factors, the Commission has determined to propose the rule and amendments discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposal with their comment letters.

[34] 44 U.S.C. 3501 *et seq.*

Lists of Subjects

17 CFR Part 1

Brokers, Commodity Futures, Consumer protection.

17 CFR Part 190

Bankruptcy.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1)(A), 4d, 8a(5), and 20, 7 U.S.C. 2(i), 6d, 12a(5), and 24, and 11 U.S.C. 362, 546, 548, 556 and 761–766, the Commission hereby proposes to amend chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by the Commodity Futures Modernization Act of 2001, Appendix E of Pub. L. No. 106–554, 114 Stat. 2763 (2000).

2. Section 1.32 is amended by revising paragraph (a) introductory text to read as follows:

§ 1.32 Segregated account; daily computation and record.

(a) Each futures commission merchant must compute as of the close of each business day, on a currency-by-currency basis:

* * * * *

3. Section 1.49 is added to read as follows:

§ 1.49 Denomination of customer funds and location of depositories.

(a) *Definitions.* For purposes of this section:

(1) *Money center country.* This term means Canada, France, Italy, Germany, Japan, and the United Kingdom.

(2) *Money center currency.* This term means the currency of any money center country and the Euro.

(3) *Non-money center country.* This term means any country other than a money center country or the United States.

(4) *Non-money center currency.* This term means any currency other than a money center currency or the United States dollar.

(b) *Permissible denominations of obligations.* (1) Subject to the terms and conditions set forth in this section, a futures commission merchant's obligations to a customer shall be denominated:

(i) In the United States dollar;

(ii) In a currency in which funds were deposited by the customer or were converted at the request of the customer, to the extent of such deposits and conversions; or

(iii) In a currency in which funds have accrued to the customer as a result of trading conducted on a designated contract market or registered derivatives transaction execution facility, to the extent of such accruals.

(2)(i) A futures commission merchant shall prepare and maintain a written record of each transaction converting customer funds from one currency to another.

(ii) A written record prepared under paragraph (b)(2)(i) of this section must include the date the transaction was executed, the currencies converted, the amount converted, and the resulting amount.

(iii) The information required under paragraph (b)(2)(ii) of this section must be provided to the customer upon the customer's request.

(c) *Permissible locations of depositories.* (1) Subject to paragraphs (c)(2) and (c)(3) of this section, a futures commission merchant or a derivatives clearing organization may hold customer funds:

(i) In the United States;

(ii) In a money center country; or

(iii) In the country of origin of the currency.

(2) Customer funds may not be held in a restricted country subject to sanctions by the Office of Foreign Assets and Control of the U.S. Department of Treasury.

(3) Customer funds may be held outside the United States only to the extent specifically authorized by the customer. A futures commission merchant must make and maintain a written record detailing the terms and conditions of any such authorization.

(d) *Qualifications for depositories.* (1) To hold customer funds required to be segregated pursuant to the Act and §§ 1.20 through 1.30, 1.32 and 1.36, a depository must provide the depositing futures commission merchant or derivatives clearing organization with the appropriate written acknowledgment as required under §§ 1.20 and 1.26.

(2) A depository, if located in the United States, must be:

(i) A bank or trust company;

(ii) A futures commission merchant registered as such with the Commission; or

(iii) A derivatives clearing organization.

(3) A depository, if located outside the United States, must be:

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(i) A bank or trust company:

(A) That has in excess of $1 billion of regulatory capital, or

(B) Whose commercial paper or long-term debt instrument or, if a part of a holding company system, its holding company's commercial paper or long-term debt instrument, is rated in the highest rating category by at least one nationally recognized statistical rating organization;

(ii) A futures commission merchant that is registered as such with the Commission; or

(iii) A derivatives clearing organization.

(e) *Segregation requirements.* (1) Each futures commission merchant and each derivatives clearing organization must, as of the close of each business day, hold in segregated accounts on behalf of commodity or option customers:

(i) Sufficient United States dollars, held in the United States, to meet all United States dollar obligations; and

(ii) Sufficient funds in each other currency to meet obligations in such currency.

(2) Notwithstanding paragraph (e)(1)(ii) of this section, assets denominated in one currency may be held to meet obligations denominated in another currency as follows:

(i) United States dollars may be held in the United States or in money center countries to meet obligations denominated in any other currency; and

(ii) Funds in money center currencies may be held in the United States or in money center countries to meet obligations denominated in currencies other than the United States dollar.

(3) Each futures commission merchant and each derivatives clearing organization shall make and maintain records sufficient to demonstrate compliance with this paragraph (e).

PART 190—BANKRUPTCY RULES

4. The authority citation for Part 190 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7, 7a, 12, 19, 23, and 24, and 11 U.S.C. 362, 546, 548, 556 and 761–766, unless otherwise noted.

5. Part 190 is amended by revising at the end of Appendix B, Framework 2 to read as follows:

Appendix B to Part 190—Special Bankruptcy Distributions

* * * * *

Framework 2—Special Allocation of Shortfall to Customer Claims When Customer Funds Are Held in a Depository Outside of the United States or in a Foreign Currency

The Commission has established the following allocation convention with respect to customer funds segregated pursuant to the Act and Commission rules thereunder held by a futures commission merchant ("FCM") or derivatives clearing organization ("DCO") in a depository outside the United States ("U.S.") or in a foreign currency. The maintenance of customer funds in a depository outside the U.S. or denominated in a foreign currency will result, in certain circumstances, in the reduction of customer claims for such funds. For purposes of this proposed bankruptcy convention, sovereign action of a foreign government or court would include, but not be limited to, the application or enforcement of statutes, rules, regulations, interpretations, advisories, decisions, or orders, formal or informal, by a federal, state, or provincial executive, legislature, judiciary, or government agency. If an FCM enters into bankruptcy and maintains customer funds in a depository located in the U.S. in a currency other than U.S. dollars or in a depository outside the U.S., the following allocation procedures shall be used to calculate the claim of each customer.

I. Reduction in Claims for General Shortfall

A. Determination of Losses Not Attributable to Sovereign Action

1. Convert each customer's claim in each currency to U.S. Dollars at the exchange rate in effect on the Final Net Equity Determination Date, as defined in § 190.01(s) (the "Exchange Rate").

2. Determine the amount of assets available for distribution to customers. In making this calculation, *include* customer funds that would be available for distribution but for the sovereign action.

3. Convert the amount of assets available for distribution to U.S. Dollars at the Exchange Rate.

4. Determine the Shortfall Percentage that is *not* attributable to sovereign action, as follows:

$$\text{Shortfall Percentage} = \left(1 - \left[\frac{\text{Total Customer Assets}}{\text{Total Customer Claims}}\right]\right)$$

B. Allocation of Losses Not Attributable to Sovereign Action

1. Reduce each customer's claim by the Shortfall Percentage.

II. Reduction in Claims for Sovereign Loss

A. Determination of Losses Attributable to Sovereign Action ("Sovereign Loss")

1. If any portion of a customer's claim is required to be kept in U.S. dollars in the U.S., that portion of the customer's claim is not exposed to Sovereign Loss.

2. If any portion of a customer's claim is authorized to be kept in only one location and that location is:

a. The U.S. or a location in which there is no Sovereign Loss, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. A location in which there is Sovereign Loss, then that entire portion of the customer's claim is exposed to Sovereign Loss.

3. If any portion of a customer's claim is authorized to be kept in only one currency and that currency is:

a. U.S. dollars or a currency in which there is no Sovereign Loss, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. A currency in which there is Sovereign Loss, then that entire portion of the customer's claim is exposed to Sovereign Loss.

4. If any portion of a customer's claim is authorized to be kept in more than one location and:

a. There is no Sovereign Loss in any of those locations, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. There is Sovereign Loss in one of those locations, then that entire portion of the customer's claim is exposed to Sovereign Loss.

c. There is Sovereign Loss in more than one of those locations, then an equal share of that portion of the customer's claim will be exposed to Sovereign Loss in each such location.

5. If any portion of a customer's claim is authorized to be kept in more than one currency and:

a. There is no Sovereign Loss in any of those currencies, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. There is Sovereign Loss in one of those currencies, then that entire portion of the customer's claim is exposed to Sovereign Loss.

c. There is Sovereign Loss in more than one of those currencies, then an equal share of that portion of the customer's claim will be exposed to Sovereign Loss.

B. Calculation of Sovereign Loss

1. The total Sovereign Loss for each location is the difference between:

a. The total customer funds deposited in depositories in that location and

b. The amount of funds in that location that are available to be distributed to customers, after taking into account any sovereign action.

2. The total Sovereign Loss for each currency is the difference between:

a. The value, in U.S. dollars, of the funds held in that currency on the Final Net Equity Determination Date.

C. Allocation of Sovereign Loss

1. Each portion of a customer's claim exposed to Sovereign Loss in a location will be reduced by:

$$\text{Total Sovereign Loss} \times \frac{\text{Portion of the customer's claim exposed to loss in that location}}{\text{All portions of customer claims exposed to loss in that location}}$$

2. Each portion of a customer's claim exposed to Sovereign Loss in a currency will be reduced by:

$$\text{Total Sovereign Loss} \times \frac{\text{Portion of the customer's claim exposed to loss in that currency}}{\text{All portions of customer claim exposed to loss in that currency}}$$

3. A portion of a customer's claim exposed to Sovereign Loss in a location or currency will not be reduced below zero. (The above calculations might yield a result below zero where the FCM kept more customer funds in a location or currency than it was authorized to keep.)

4. Any amount of Sovereign Loss from a location or currency in excess of the total amount of funds authorized to be kept in that location or currency (calculated in accord with Section II.1 above) ("Total Excess Sovereign Loss") will be divided among all customers who have authorized funds to be kept outside the U.S., or in currencies other than U.S. dollars, with each such customer claim reduced by the following amount:

$$\text{Total Excess Sovereign Loss} \times \left[\frac{\text{(This customer's total claim - The portion of this Customer's claim required to be kept in U.S. dollars, in the U.S.)}}{\text{Total customer claims - Total of all customer claims required to be kept in U.S. dollars, in the U.S.}}\right]$$

The following examples illustrate the operation of this convention. 1. No shortfall in any location:

Customer	Claim	Location(s) customer has consented to having funds held
A	$50	U.S.
B	€50	U.K.
C	€50	Germany.
D	£300	U.K.

Location	Actual asset balance
U.S.	$50
U.K.	£300
U.K.	€50
Germany	€50

Conversion Rates: €1 = $1; £1=$1.5

Convert each customer's claim in each currency to U.S. dollars:

Customer	Claim	Conversion Rate	Claim in US$
A	$50	1.0	$50
B	€50	1.0	50
C	€50	1.0	50
D	£300	1.5	450
Total			600

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S	$50	1.0	$50			$50
U.K	£300	1.5	450			450
U.K	€50	1.0	50			50

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	Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
Germany		€50	1.0	50			50
Total				600		0	600

There are no shortfalls in funds held in any location. Accordingly, there will be no reduction of customer claims.

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A	$50	$0	$50
B	50	0	50
C	50	0	50
D	450	0	450
Total	600	0	600

2. Shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A	$100	U.S.
B	€50	U.K.
C	€100	U.K., Germany, or Japan.

Location	Actual asset balance
U.S	$50
U.K	€100
Germany	€50

Conversion Rates: €1 = $1.

Reduction in Claims for General Shortfall

There is a shortfall in the funds held in the U.S. such that only ½ of the funds are available.
Convert each customer's claim in each currency to U.S. dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$100	1.0	$100
B	€50	1.0	50
C	€100	1.0	100
Total			250

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S	$50	1.0	$50			$50
U.K	€100	1.0	100			100
Germany	€50	1.0	50			50
Total			200			200

Determine the percentage of shortfall that is not attributable to sovereign action:
Shortfall Percentage = (1 − 200/250) = (1 − 80%) = 20%.

Reduce each customer's claim by the Shortfall Percentage:

Customer	Claim in U.S.$	Allocated Shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$100	$20.00	$80.00
B	50	10.00	40.00
C	100	20.00	80.00
Total	250	50	200

Reduction in Claims for Shortfall Due to Sovereign Action

There is no shortfall due to sovereign action. Accordingly, the customer claims will not be further reduced.

Claims After Reductions

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A	$80		$80.00
B	40		40.00
C	80		80.00
Total	200	0	200.00

3. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action.

Customer	Claim	Location(s) where customer has consented to have funds held
A	$50	U.S.
B	€50	U.K.
C	€50	Germany
D	$100	U.S.
D	€100	U.K. or Germany.

Location	Actual asset balance
U.S	$150
U.K	€100
Germany	€100

Conversion Rates: €1 = $1; ¥1=$0.01, £1=$1.5.

Reduction in Claims for General Shortfall

Convert each customer's claim in each currency to U.S. dollars:

Customer	Claim	Conversion rate	Claim in U.S.$
A	$50	1.0	$50
B	€50	1.0	50
C	€50	1.0	50
D	$100	1.0	100
D	€100	1.0	100
Total			350

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$150	1.0	$150			$150
U.K.	€100	1.0	100			100
Germany	€100	1.0	100	50	$50	50

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Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
Total			350		50	300

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = (1−350/350) = (1−100%) = 0%. Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$50	$0	$50.00
B	50	0	50.00
C	50	0	50.00
D	200	0	200.00
Total	350	0	350.00

Reduction in Claims for Shortfall Due to Sovereign Action

Due to sovereign action, only ½ of the funds in Germany are available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A	$50		
B		$50	
C			$50
D	100		100
Total	150	50	150

Calculation of the allocation of the shortfall due to sovereign action.
Germany ($50 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	$50/$150	33.3% of $50	$16.67
D	$100/$150	66.7% of 50	33.33
Total			50.00

Claims After Reductions

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Claim after all reductions
A	$50		$50
B	50		50
C	50	$16.67	33.33
D	200	33.33	166.67
Total	350	50.00	300.00

4. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action and a shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A	$100	U.S.
B	€50	U.K.
C	€150	Germany
D	$100	U.S.
D	£300	U.K.
D	€150	U.K. or Germany.

Location	Actual asset balance
U.S	$100
U.K	£300
U.K	€200
Germany	€150

Conversion Rates: €1=$1; £1=$1.5.

Reduction in Claims for General Shortfall

Convert each customer s claim in each currency to U.S. dollars:

Customer	Claim	Conversion rate	Claim in US $
A	$100	1.0	$100
B	€50	1.0	50
C	€150	1.0	150
D	$100	1.0	100
D	£300	1.5	450
D	€150	1.0	150
Total			1000

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$100	1.0	$100			$100
U.K.	£300	1.5	450			450
U.K.	€200	1.0	200			200
Germany	€150	1.0	150	100	150	0
Total			900		150	750

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = (1–900/1000)= (1–90%) = 10%. Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$100	$10.00	$90.00
B	50	5.00	45.00
C	150	15.00	135.00
D	700	70.00	630.00
Total	1000	100.00	900.00

Reduction in Claims for Shortfall Due to Sovereign Action

Due to sovereign action, none of the money in Germany is available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A	$100		
B		50	
C			150
D	100	450	150
Total	200	500	300

Calculation of the allocation of the shortfall due to sovereign action.
Germany ($150 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	$150/$300	50% of $150	$75

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Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
D	$150/$300	50% of $150	75
Total			150

Claims After Reductions:

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Claim after all reductions
A	$90		$90
B	45		45
C	135	$75	60
D	630	75	555
Total	900	150	750

5. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, not due to sovereign action.

Customer	Claim	Location(s) customer has consented to having funds held
A	$150	U.S.
B	€100	U.K.
C	€50	Germany.
D	$100	U.S.
D	€100	U.K. or Germany.

Location	Actual asset balance
U.S	$250
U.K	€50
Germany	€100

Conversion Rates: €1 = $1.

Reduction in Claims for General Shortfall

Convert each customer's claim in each currency to U.S. dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$150	1.0	$150
B	€100	1.0	100
C	€50	1.0	50
D	$100	1.0	100
D	€100	1.0	100
Total			500

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$250	1.0	$250			$250
U.K.	€50	1.0	50			50
Germany	€100	1.0	100			100
Total			400		0	400

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = (1 − 400/500) = (1 − 80%) = 20%. Reduce each customer's claim by the shortfall percentage:

Customer	Claim in U.S.$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$150	$30.00	$120.00
B	100	20.00	80.00
C	50	10.00	40.00

Customer	Claim in U.S.$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
D	200	40.00	160.00
Total	500	100.00	400.00

Reduction in Claims for Shortfall Due to Sovereign Action

There is no shortfall due to sovereign action. Accordingly, the claims will not be further reduced.

Claims After Reductions

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A	$120.00		$120
B	80.00		80
C	40.00		40
D	160.00		160
Total	400.00	0	400

6. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action, shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, not due to sovereign action, and a shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A	$50	U.S.
B	€50	U.K.
C	$20	U.S.
C	€50	Germany.
D	$100	U.S.
D	£300	U.K.
D	€100	U.K., Germany, or Japan.
E	$80	U.S.
E	¥10,000	Japan

Location	Actual asset balance
U.S	$200
U.K	£200
U.K	€100
Germany	€50
Japan	¥1000

Conversion Rates: €1 = $1; ¥1=$0.01, £1=$1.5.

Reduction in Claims for General Shortfall

Convert each customer's claim in each currency to U.S. dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$50	1.0	$50
B	€50	1.0	50
C	$20	1.0	20
C	€50	1.0	50
D	$100	1.0	100
D	£300	1.5	450
D	€100	1.0	100
E	$80	1.0	80
E	¥10,000	0.01	100
Total			1000

Determine assets available for distribution to customers, converting to U.S. dollars:

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Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actual available
U.S	$200	1.0	$200			$200
U.K	£200	1.5	300			300
U.K	€100	1.0	100			100
Germany	€50	1.0	50	100	$50	0
Japan	¥10000	0.01	100	50	50	50
Total			750		100	650

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = (1 − 750/1000) = (1 − 75%) = 25%.

Reduce each customer's claim by the shortfall percentage:

Customer	Claim in U.S.$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$50	$12.50	$37.50
B	50	12.50	37.50
C	70	17.50	52.50
D	650	162.50	487.50
E	180	45.00	135.00
Total	1000	250.00	750.00

Reduction in Claims for Shortfall Due to Sovereign Action

Due to sovereign action, none of the money in Germany and only ½ of the funds in Japan are available.

Customer	Presumed location of funds			
	U.S.	U.K.	Germany	Japan
A	$50			
B		$50		
C	20		$50	
D	100	450	50	$50
E	80			100
Total	250	500	100	150

Calculation of the allocation of the shortfall due to sovereign action.
Germany ($50 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	$50/$100	50% of $50 ..	$25
D	$50/$100	50% of $50 ..	25
Total			50

Japan ($50 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
D	$50/$150	33.3% of $50	$16.67
E	$100/$150	66.6% of $50	33.33
Total			50.00

Claims After Reductions:

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Allocation of shortfall due to sovereign action from Japan	Claims after reductions
A	$37.50			$37.50
B	37.50			37.50
C	52.50	$25		27.50
D	487.50	25	$16.67	445.83
E	135.00		33.33	101.67
Total	750.00	50	50.00	650.00

7. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action, where the FCM kept more funds than permitted in such location or currency.

Customer	Claim	Location(s) customer has consented to having funds held
A	$50	U.S.
B	$50	U.S.
B	€50	U.K.
C	€50	Germany
D	$100	U.S.
D	€100	U.K. or Germany
E	$50	U.S.
E	€50	U.K.

Location	Actual asset balance
U.S.	$250
U.K.	€50
Germany	€200

Conversion Rates: €1 = $1.

Reduction in Claims for General Shortfall

Convert each customer's claim in each currency to U.S. dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$50	1.0	$50
B	$50	1.0	50
B	€50	1.0	50
C	€50	1.0	50
D	$100	1.0	100
D	€100	1.0	100
E	$50	1.0	50
E	€50	1.0	50
Total			500

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$250	1.0	$250			$250
U.K.	€50	1.0	50			50
Germany	€200	1.0	200	100%	200	0
Total			500		200	300

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = (1–500/500) = (1–100%) = 0%.

Reduce each customer's claim by the shortfall percentage:

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Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$50	$0	$50.00
B	100	0	100.00
C	50	0	50.00
D	200	0	200.00
E	100	0	100.00
Total	500	0	500

Reduction in Claims for Shortfall Due to Sovereign Action

Due to sovereign action, none of the money in Germany is available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A	$50		
B	50	$50	
C			$50
D	100		100
E	50	50	
Total	250	100	150

Calculation of the allocation of the shortfall due to sovereign action. Germany ($200 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	$50/$150	33.3% of $200.	$66.67
D	$100/$150	66.7% of $200.	133.33
Total			200.00

This would result in the claims of customers C and D being reduced below zero. Accordingly, the claims of customer C and D will only be reduced to zero, or $50 for C and $100 for D. This results in a Total Excess Shortfall of $50.

Actual shortfall	Allocation of shortfall for customer C	Allocation of shortfall for customer D	Total Excess shortfall
$200	$50	$100	$50

This shortfall will be divided among the remaining customers who have authorized funds to be held outside the U.S. or in a currency other than U.S. dollars.

Customer	Total claims of customers permitting funds to be held outside the U.S.	Portion of claim required to be in the U.S.	Allocation Share (Column B–C / Column B Total—All Customer Claims in U.S.)	Allocation share of actual total excess shortfall	Actual total excess shortfall allocated
B	$100	$50	$50/$200	25% of $50 ..	$12.50
C	50	0	(1)		0
D	200	100	$100/$200	50% of $50 ..	25
E	100	50	$50/$100	25% of $50 ..	12.50
Total	450				50.00

[1] Claim already reduced to $0.

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Allocation of total excess shortfall	Claims after all reductions
Claims after reductions:				
A	$50			$50.00
B	100		12.50	87.50
C	50	50		0.00
D	200	100	25.00	75.00
E	100		12.50	87.50
Total	500	150	50.00	300.00

Issued in Washington, DC, on August 7, 2002, by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 02–20471 Filed 8–12–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

[IA–007–FOR]

Iowa Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Iowa abandoned mine land reclamation plan (Iowa plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation (DSC) proposes to assume responsibility of the abandoned mine land reclamation (AMLR) emergency program in Iowa. DSC also proposes to revise its AMLR plan in response to a letter sent by OSM (Administrative Record No. AML–IA–39) and to update other portions of its AMLR plan to reflect current practices. Iowa intends to revise the Iowa plan to be consistent with the corresponding Federal regulations and to improve operational efficiency. In addition, we are including in this notice Iowa's proposal to revise its statute.

This document gives the times and locations that the Iowa plan and the amendment to that plan are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.d.t., September 12, 2002. If requested, we will hold a public hearing on the amendment on September 9, 2002. We will accept requests to speak at a hearing until 4 p.m., c.d.t. on August 28, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to John W. Coleman, Mid-Continent Regional Coordinating Center, at the address listed below.

You may review copies of the Iowa plan, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Mid-Continent Regional Coordinating Center.

John W. Coleman, Mid-Continent Regional Coordinating Center, Office of Surface Mining, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463–6460, Internet: *jcoleman@osmre.gov*.

Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation, Henry A. Wallace Building, Des Moines, Iowa 50319, Telephone (515) 281–6147.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone (618) 463–6460. Internet: *jcoleman@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Iowa Plan

The AMLR Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary of the Interior approved the Iowa plan on March 28, 1983. You can find background information on the Iowa plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the March 28, 1983, **Federal Register** (48 FR 12711). You can find later actions concerning the Iowa plan and amendments to the plan at 30 CFR 915.25.

II. Description of the Proposed Amendment

By letter dated June 14, 2002 (Administrative Record No. AML–IA–44), Iowa sent us a proposed amendment to its AMLR plan under SMCRA (30 U.S.C. 1201 *et seq.*). Iowa sent the amendment at its own initiative and in response to a letter dated September 26, 1994 (Administrative Record No. AML–IA–39), that we sent to Iowa in accordance with 30 CFR 884.15(d). Iowa intends to revise the Iowa plan to be consistent with the corresponding Federal regulations. In addition, Iowa proposes to revise its statute at Iowa Code, Chapter 207. Below is a summary of the changes proposed by Iowa. The full text of the amendment is available for your inspection at the locations listed above under **ADDRESSES**.

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A. Iowa's Proposed AMLR Plan Revisions

1. Section 410 of SMCRA authorizes the Secretary to use funds under the AMLR program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. On September 29, 1982 (47 FR 42729), we invited states to amend their AMLR plans for the purpose of undertaking emergency reclamation programs on our behalf. States would have to demonstrate that they have the statutory authority to undertake emergencies, the technical capability to design and supervise the emergency work, and the administrative mechanisms to quickly respond to emergencies either directly or through contractors.

a. The following information, taken from the approved Iowa plan, is included by reference in Iowa's formal submission to us to verify that the Iowa DSC has the statutory authority to assume AMLR emergency program responsibilities:

i. A letter from the Governor that designates the Iowa Department of Soil Conservation as the agency responsible for the AMLR Program in Iowa. By virtue of the state government reorganization in 1986, all the powers of the Department of Soil Conservation were transferred to the new DSC within the Department of Agriculture and Land Stewardship. A final rule codifying this change was published in the **Federal Register** on October 7, 1986 (51 FR 35632).

ii. A legal opinion from the office of the Iowa Attorney General that the Iowa Department of Soil Conservation has the power to administer the AMLR Program in Iowa. By virtue of the state government reorganization in 1986, all the powers of the Department of Soil Conservation were transferred to the new DSC within the Department of Agriculture and Land Stewardship.

iii. A copy of the Iowa Code (IC) 1999 Supplement (IC sections 207.21, .22, .23, .25, and .29). IC section 207.21 states that the DSC shall participate in the AMLR reclamation program and establishes a state reclamation fund under the control of the DSC. IC section 207.29 authorizes the DSC to engage in any work and do all things necessary or expedient, including adoption of rules, to implement and administer the provisions of an abandoned mine reclamation program.

iv. A copy of the Iowa AMLR Program regulations, Iowa Administrative Code (IAC) 27–50.10 through 27–50.190. Iowa's regulations at IAC 27–50.70 provide authorization and procedures for the DSC to enter upon property to perform reclamation where the owner will give voluntary consent. Iowa's regulations at IAC 27–50.90 provide the right for the DSC or its agents, employees or contractors, to enter upon land to perform reclamation activities if consent of the owner cannot be obtained. Procedures are provided for this entry.

b. Iowa submitted the following statement to demonstrate the DSC's technical capability to design and supervise the emergency work:

DSC has operated a successful AML reclamation program for nearly 20 years. We have completed numerous mine shaft closure projects under that program and have been assisting OSM in its abatement of AML subsidence emergencies since 1995. We have a geotechnical engineer on staff who is familiar with emergency project design practices and we have the ability to prepare project design plans, specifications and contract documents in-house. The DSC staff can also provide in-house project inspection services since emergency projects are normally of short duration. Based on the past experience of the AML Program and the current capabilities of our staff, the Division is seeking authority to assume responsibility for the day-to-day administration of the AML emergency program in Iowa.

c. Iowa proposes to update the following policy and procedure sections of its AMLR plan to reflect that the state has the administrative mechanisms to quickly respond to emergencies either directly or through contractors: Section III. C. Ranking and Selection Procedures (30 CFR 884.13(c)(2)); Section III. G. Rights of Entry (30 CFR 884.13(c)(6)); and Section IV. C. Purchasing and Procurement Systems (30 CFR 884.13(d)(3)).

2. Iowa proposes to amend the following sections in its AMLR plan: Section III. A. Purposes of the State Reclamation Program (30 CFR 884.13(c)(1)); Section III. B. Identification of Eligible Land and Water (30 CFR 884.13(c)(2)); Section III. C. Ranking and Selection Procedures (30 CFR 884.13(c)(2)); Section III. D. Coordination of Reclamation Work (30 CFR 884.13(c)(3)); Section III. E. Acquisition, Management, and Disposition of Land and Water (30 CFR 884.13(c)(4)); Section III. F. Reclamation on Private Land (30 CFR 884.13(c)(5)); Section III. H. Public Participation Policies (30 CFR 884.13(c)(7)); Section IV. A. Organizational Structure (30 CFR 884.13(d)(1)); Section IV. B. Personnel Policies (30 CFR 884.13(d)(2)); Section IV. C. Purchasing and Procurement Systems (30 CFR 884.13(d)(3)); Section IV. D. Management Accounting (30 CFR 884.13(d)(4)); Section V. B. AML Problem Descriptions (30 CFR 884.13(e)(2)); and Section V. C. AML Corrective Measures (30 CFR 884.13(e)(3)).

B. Iowa's Proposed Statute Revisions

Iowa proposes to amend the following sections in its statute at Iowa Code, Chapter 207: Section 207.21 regarding lands and water eligible for reclamation or drainage abatement expenditures under the AMLR program and the priority order for expending the moneys; and Section 207.23 regarding liens. Iowa also proposes to add new Section 207.29 Powers and Authority.

III. Public Comment Procedures

Under the provisions of 30 CFR 884.15(a), we are requesting comments on whether the amendment satisfies the applicable State reclamation plan approval criteria of 30 CFR 884.14. If we approve the amendment, it will become part of the Iowa plan.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Mid-Continent Regional Coordinating Center may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: [IA–007–FOR]" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Mid-Continent Regional Coordinating Center at (618) 463–6460.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on August 28, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and plan amendments because each plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and plan amendments submitted by a State or Tribe are based solely on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Part 884 of the Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of abandoned mine reclamation programs. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 405(d) of SMCRA requires State abandoned mine reclamation programs to be in compliance with the procedures, guidelines, and requirements established under SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because agency decisions on proposed State and Tribal abandoned mine land reclamation plans and plan amendments are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

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List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 24, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 02–20464 Filed 8–12–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

[IA–011–FOR]

Iowa Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Iowa regulatory program (Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Iowa proposes revisions to rules about inspections and enforcement. Iowa intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Iowa program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.d.t., September 12, 2002. If requested, we will hold a public hearing on the amendment on September 9, 2002. We will accept requests to speak at a hearing until 4 p.m., c.d.t., on August 28, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to John W. Coleman, Mid-Continent Regional Coordinating Center, at the address listed below.

You may review copies of the Iowa program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Mid-Continent Regional Coordinating Center.

John W. Coleman, Mid-Continent Regional Coordinating Center, Office of Surface Mining, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463–6460, Internet: *jcoleman@osmre.gov.*

Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation, Henry A. Wallace Building, Des Moines, Iowa 50319, Telephone: (515) 281–6147.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463–6460. Internet: *jcoleman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Iowa Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Iowa Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Iowa program effective April 10, 1981. You can find background information on the Iowa program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the January 21, 1981, **Federal Register** (46 FR 5885). You can also find later actions concerning the Iowa program and program amendments at 30 CFR 915.10, 915.15, and 915.16.

II. Description of the Proposed Amendment

By letter dated June 14, 2002 (Administrative Record No. IA–447), Iowa sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Iowa sent the amendment in response to a letter dated June 17, 1997 (Administrative Record No. IA–440), that we sent to Iowa in accordance with 30 CFR 732.17(c). Below is a summary of the changes proposed by Iowa. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

Iowa proposes to revise its program at Part 7, Rule 27–40.71(207), at 27 Iowa Administrative Code, Chapter 40 to incorporate by reference 30 CFR 840.11, as in effect on July 1, 2001. Currently, Iowa's provision incorporates by reference 30 CFR 840.11, as in effect on July 1, 1992.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Mid-Continent Regional Coordinating Center may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: [IA–011–FOR]" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Mid-Continent Regional Coordinating Center at (618) 463–6460.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t., on August 28, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

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List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 25, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 02–20465 Filed 8–12–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–048–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of revisions to a previously proposed amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions concern corrections of incorrect reference citations and the addition of two sentences to the proposed definition of "valid existing rights (VER)." Texas intends to revise its program to be consistent with the corresponding Federal regulations.

DATES: We will accept written comments until 4 p.m., c.d.t., August 28, 2002.

ADDRESSES: You should mail or hand deliver written comments to Michael C. Wolfrom, Director, Tulsa Field Office at the address listed below.

You may review copies of the Texas program, the amendment and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P. O. Box 12967, Austin, Texas 78711–2967, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet: *mwolfrom@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program in the February 27, 1980, **Federal Register** (45 FR 12998). You can also find later actions concerning the Texas program and program amendments at 30 CFR 943.10, 943.15 and 943.16.

II. Discussion of the Proposed Amendment

By letter dated July 25, 2001 (Administrative Record No. TX–653.02), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment in response to our letter dated August 23, 2000 (Administrative Record No. TX–653), that we sent to Texas under 30 CFR 732.17(c). Texas proposed to amend Title 16, Texas Administrative Code, Chapter 12.

We announced receipt of the amendment in the September 20, 2001, **Federal Register** (66 FR 48396). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on October 22, 2001.

During our review of the amendment, we identified incorrect reference citations and a concern regarding Texas' proposed definition of "valid existing rights." We notified Texas of these concerns by email dated September 24, 2001 (Administrative Record No. TX–653.04). By letters dated October 22, 2001, and June 5, 2002 (Administrative Record Nos. TX–653.05 and TX–653.06, respectively), Texas sent us additional explanatory information and revisions to its program amendment.

Texas corrected the incorrect reference citations that we identified. The state also submitted a revision for its proposed definition of "valid existing rights" found at section 12.3(187). In paragraph (A) of this definition, Texas proposed to add two sentences so that the definition reads as follows:

(A) Property rights demonstration. Except as provided in subparagraph (C) of this definition, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of § 12.71(a) of this title or § 134.022 of the Act. Applicable State statutory or case law will govern interpretation of documents relied upon to establish property rights. If no applicable State law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.

III. Public Comment Procedures

We are reopening the comment period on the proposed Texas program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. Under the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Texas program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 15-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the administrative record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments: Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. TX–048-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581–6430.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Tulsa Field Office (*see* **ADDRESSES**). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The taking implications assessment for the Federal valid existing rights rule appears in Part XXIX.E. of the preamble to that rule. *See* 64 FR 70766, 70822–27, December 17, 1999.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary under SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of this section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 25, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 02–20466 Filed 8–12–02; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA246–0353b; FRL–7254–9]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) and

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Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from miscellaneous metal parts coating, aerospace assembly and component manufacture and coating, pleasure craft coating and boatyard operations, and resin manufacturing. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by September 12, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814;

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765; and,

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA, 93993.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4111.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: SCAQMD Rule 1141—Control of Volatile Organic Compound Emissions From Resin Manufacturing; SCAQMD Rule 1124—Aerospace Assembly and Component Manufacturing Operations; SCAQMD Rule 1107—Coating of Miscellaneous Metal Parts and Products; and, VCAPCD Rule 74.24.1—Pleasure Craft Coating and Commercial Boatyard Operations. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 16, 2002.

Keith Takata,

Associate Regional Administrator, Region IX.

[FR Doc. 02–20350 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 143–1b; FRL–7249–3]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (EPA) approves into the Indiana State Implementation Plan (SIP) revisions to the Indiana Administrative Code. These regulatory updates change rule language concerning Indiana's permitting programs. Included in this submittal is a provision to assure that applicable requirements exist independently of title V permits. EPA is proposing to approve these rules because they are consistent with EPA's regulations governing State permit programs.

In a separate action in the "Rules and Regulations" section of this **Federal Register**, EPA is approving these revisions into the State Implementation Plan as a direct final rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. The EPA has explained reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse written comments, EPA will take no further action on this proposed rule. If EPA receives adverse written comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. In that event, EPA will address all relevant public comments in a subsequent final rule based on this proposed rule. In either event, EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by September 12, 2002.

ADDRESSES: Written comments should be addressed to Ms. Pamela Blakley, Chief, Permits and Grants Section (IL/IN/OH), Attention: Mr. Sam Portanova, at the EPA Region 5 office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following location: Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Anyone wanting to examine these documents should make an appointment at least two working days in advance by contacting Sam Portanova.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, Environmental Engineer, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, telephone (312) 886–3189.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Rule which is published in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 28, 2002.

Jo Lynn Traub,

Acting Regional Administrator, Region 5.

[FR Doc. 02–20346 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[ID–02–002; FRL–7258–7]

Approval and Promulgation of Implementation Plans; Idaho Designation of Areas for Air Quality Planning Purposes; Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA invites public comment on its proposal to approve numerous revisions to the State of Idaho Implementation Plan submitted to EPA by the Director of the Idaho Department of Environmental Quality (IDEQ), on May 17, 1994, May 11, 1995, November 21, 1996, February 28, 1997, December 18, 1997, April 9, 1998, May 5, 1999, December 5, 2000, and May 30, 2002. The revisions were submitted in accordance with the requirements of section 110 and part D of the Clean Air Act (hereinafter the Act). EPA is taking no action in this rulemaking on a number of submitted rule provisions which are unrelated to the purposes of the implementation plan, including the Idaho provisions for implementing the Title V operating permit program.

EPA also invites public comment on its proposal to revoke the total suspended particulates (TSP) area designations for Idaho in 40 CFR part 81 and adjust the PM–10 area designations to conform to the requirements of EPA's prevention of significant deterioration (PSD) regulations.

DATES: Written comments must be received on or before September 12, 2002.

ADDRESSES: Written comments should be addressed to: David C. Bray, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's request and other information supporting this proposed action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Idaho, Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706–1255.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Senior Air Pollution Scientist, EPA, Office of Air Quality (OAQ–107), Seattle, Washington 98101, (206) 553–4253.

SUPPLEMENTARY INFORMATION:

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I. Background

On November 15, 1990, Congress amended the Clean Air Act (CAA) to require, among other things, revisions to state implementation plans (SIPs) to attain and maintain the National Ambient Air Quality Standards (NAAQS) in areas which violate those standards (nonattainment areas). Under the provisions of the Act, revisions to title I, part D (nonattainment area) new source review (NSR) rules were required to be submitted by June 30, 1992 for PM–10 nonattainment areas, by November 15, 1992 for most ozone and carbon monoxide nonattainment areas, and by November 15, 1993 for the remainder of the ozone and carbon monoxide nonattainment areas. IDEQ amended its part D NSR rules on April 8, 1994 and submitted them to EPA on May 17, 1994 as a revision to the Idaho SIP.

The Clean Air Act Amendments of 1990 also established a new Title V which requires States to develop operating permit programs for most stationary sources. Although Title V operating permit programs are not intended to be part of the SIP, many provisions of the SIP interact closely with the Title V operating permit program. As such, Idaho, like many States, revised provisions of its SIP to facilitate and improve the relationship between the Idaho SIP and Title V operating permit program. In addition, since EPA last approved the Idaho SIP in 1993, Idaho has revised nearly every section of its air quality rules to some degree. Many of these amendments have been editorial and are renumberings, changes to citations for cross-referenced rules or statutes, changes in terminology, or grammatical corrections. Finally, during the 2000 legislative session, the Idaho Division of Environmental Quality became a separate department rather than a division of the Idaho Department of Health and Welfare, which remained a separate department. *See* Idaho Code sections 39–102A and 39–104. At the same time, IDEQ was given the SIP authorities previously held by the Department of Health and Welfare. *See* Idaho Code sections 39–108 to 39–118D. As a result, Idaho has renumbered and recodified all of its air quality regulations in a new IDAPA Chapter 58. IDEQ has submitted these various revisions to its rules for air pollution sources to EPA on May 17, 1994, May 11, 1995, November 21, 1996, February 28, 1997, December 18, 1997, April 9, 1998, May 5, 1999, December 5, 2000, and May 30, 2002, as revisions to the Idaho SIP.

II. Discussion of SIP Submittal

A. Description of SIP Submittals

On May 17, 1994, the Director of the IDEQ submitted IDAPA 16, Title 01, Chapter 01 "Rules for the Control of Air Pollution in Idaho" (with the exception of sections 009, 010, 140 through 149, 161, 203.03, 210, 220.05, 221.04.a.i, 222.04.b, 225, 585, 586, 587, 590, 591, and 855 through 858), as amended on May 1, 1994, as a revision to the Idaho SIP. On May 11, 1995, the Director submitted amendments to IDAPA 16, Title 01, Chapter 01 (specifically, changes to sections 006, 008, 313, 314, 525, 526, 527, 530, and 537; and new sections 317 and 470), as amended on March 3, 1995, March 7, 1995, and May 1, 1995, as revisions to the Idaho SIP. On November 21, 1996, the Director submitted amendments to IDAPA 16, Title 01, Chapter 01 (specifically, changes to sections 006, 130, 131, 132, 133, 134, 135, 136, 209, 220, 222, 313, 314, and 332; and the rescission of sections 326 through 331), as amended on November 4, 1996, as revisions to the Idaho SIP. On February 28, 1997, the Director submitted amendments to IDAPA 16, Title 01, Chapter 01 (specifically, changes to section 107), as amended on February 28, 1997, as revisions to the Idaho SIP. On December 18, 1997, the Director submitted amendments to IDAPA 16, Title 01, Chapter 01 (specifically, changes to sections 006, 007, 125, 126, 136, 201, 202, 205, 209, 213, 787, and 788), as amended on November 17, 1997, as revisions to the Idaho SIP. On April 9, 1998, the Director submitted amendments to IDAPA 16, Title 01, Chapter 01 (specifically, changes to sections 006, 008, 107, 202, 577, 579, 581, and 751), as amended on June 21, 1996, and amendments to IDAPA 16, title 01, chapter 01, section 107, as amended on February 12, 1998, as revisions to the Idaho SIP. On May 5, 1999, the Director submitted amendments to IDAPA 16, title 01, chapter 01 (specifically, changes to sections 006, 007, 008, 107, 122, 128, 130, 131, 132 through 136, 155, 157, 160, 200, 201 through 202, 204 through 205, 208, 209, 210, 213, 220 through 223, 401, 402, 404, 440 through 441, 460 through 461, 511 through 513, 526 through 527, 537, 553, 556, 560 through 561, 575, 577, 579, 580 through 581, 590, 600, 612, 613, 625, 626, 675, 679, 681, 700, 701 through 703, 725, 786, 824, 846, and 847), as amended on November 12, 1998 and April 22, 1999, as revisions to the Idaho SIP. On December 5, 2000, the Director submitted amendments to IDAPA 16, Title 01, Chapter 01 (specifically, changes to sections 008, 107, 128, 201, 301, 313, 586, and new sections 563 through 574), as amended on November 18, 1999, October 18, 2000, and November 9, 2000, as revisions to the

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Idaho SIP. Note that IDAPA 16 was recodified as IDAPA 58 prior to the December 5, 2000 submittal. Finally, on May 30, 2002, the Director submitted amendments to IDAPA 58, Title 01, Chapter 01 (specifically, changes to sections 552, 553, 556, 558, and 561) as amended on November 8, 2001, as revisions to the Idaho SIP.

As discussed above, the Idaho rules have been renumbered and recodified and numerous editorial and technical changes have been made throughout. The following sections of the amended rules include substantive changes to the respective sections of the currently-approved SIP: Section 107 INCORPORATION BY REFERENCE; Section 121 COMPLIANCE REQUIREMENTS BY DEPARTMENT; Section 128 CONFIDENTIAL INFORMATION; Sections 130 through 136 STARTUP, SHUTDOWN, SCHEDULED MAINTENANCE, SAFETY MEASURES, UPSET AND BREAKDOWN; Section 157 SAMPLING AND ANALYTICAL PROCEDURES; Section 160 PROVISIONS GOVERNING SPECIFIC ACTIVITIES AND CONDITIONS; Sections 200 through 224 PROCEDURES AND REQUIREMENTS FOR PERMITS TO CONSTRUCT; Sections 400 through 406 PROCEDURES AND REQUIREMENTS FOR TIER II OPERATING PERMITS; Section 440 REQUIREMENTS FOR ALTERNATIVE EMISSION LIMITS (BUBBLES); Section 441 DEMONSTRATION OF AMBIENT EQUIVALENCE; Section 460 REQUIREMENTS FOR EMISSION REDUCTION CREDIT; Section 461 REQUIREMENTS FOR BANKING EMISSION REDUCTION CREDITS; Sections 550 through 562 AIR POLLUTION EMERGENCY RULE; Section 575 AIR QUALITY STANDARDS AND AREA CLASSIFICATION; Section 577 AMBIENT AIR QUALITY STANDARDS FOR SPECIFIC AIR POLLUTANTS; Section 579 BASELINES FOR PREVENTION OF SIGNIFICANT DETERIORATION; Section 580 CLASSIFICATION OF PREVENTION OF SIGNIFICANT DETERIORATION AREAS; and Section 581 PREVENTION OF SIGNIFICANT DETERIORATION INCREMENTS.

The amended rules also include the following new sections which are revised and recodified provisions from the previous rules: Section 005 DEFINITIONS; Section 006 GENERAL DEFINITIONS; Section 007 DEFINITIONS FOR THE PURPOSES OF SECTIONS 200 THROUGH 225 AND 400 THROUGH 461; and Section 700 PARTICULATE MATTER—PROCESS WEIGHT LIMITATIONS.

The amended rules include the following entirely new sections: Section 002 WRITTEN INTERPRETATIONS; Section 003 ADMINISTRATIVE APPEALS; Section 004 CATCHLINES; Section 106 ABBREVIATIONS; Section 008 DEFINITIONS FOR PURPOSES OF SECTIONS 300 THROUGH 387; Section 122 INFORMATION ORDERS BY THE DEPARTMENT; Section 123 CERTIFICATION OF DOCUMENTS; Section 124 TRUTH, ACCURACY AND COMPLETENESS OF DOCUMENTS; Section 125 FALSE STATEMENTS; Section 126 TAMPERING; Section 213 PRE-PERMIT CONSTRUCTION, Sections 300 through 387 PROCEDURES AND REQUIREMENTS FOR TIER I OPERATING PERMITS; Section 470 PERMIT APPLICATION FEES FOR TIER II PERMITS; Sections 563 through 574 TRANSPORTATION CONFORMITY; Section 582 INTERIM CONFORMITY PROVISIONS FOR NORTHERN ADA COUNTY FORMER NONATTAINMENT AREA; Section 681 TEST METHODS AND PROCEDURES; and Section 703 PARTICULATE MATTER—OTHER PROCESSES. Finally, the amended rules delete the following sections of the current EPA-approved SIP: Section 01.01001 POLICY; Section 01.01052.03 CRITERIA FOR DEFINING EPISODE STAGES; Section 01.01503 DESIGN STANDARDS; Sections 01.01551 to 01.01553 RULES FOR CONTROL OF MOTOR VEHICLES; Section 01.01996 ADMINISTRATIVE PROVISIONS; Section 01.01998 INCLUSIVE GENDER AND NUMBER; and Section 01.01999 SEVERABILITY.

B. Key Changes to Idaho's SIP

Included in the docket for this SIP action is a table showing all of the provisions of IDAPA Chapter 16, now codified at IDAPA Chapter 58, and showing the type of change made to the provisions (*e.g.*, new section, amended, editorial change, unchanged, relocated, deleted). The table also indicates those provisions that were not submitted by IDEQ as part of a SIP revision and those provisions that were submitted as part of a SIP revision but on which EPA is taking no action. For example, several provisions or parts of IDEQ's air rules are not designed to attain and maintain the NAAQS, but instead are designed to implement other CAA programs, such as the Title V air operating permits program, New Source Performance Standards (NSPS), and National Emissions Standards for Hazardous Air Pollutants (NESHAPs), or are designed to implement other provisions of State law, and are not appropriate for inclusion in the SIP.

In addition, the docket includes a Technical Support Document (TSD), which describes in more detail the substantive changes to the Idaho rules that have been submitted by Idaho as revisions to the SIP, EPA's evaluation of how these rules comply with EPA's minimum requirements for SIPs, and the basis for EPA's proposed action. A summary of the key changes to Idaho's rules and EPA's proposed action follows.

1. Excess Emissions Rules

IDEQ has substantially revised its provisions addressing excess emissions attributable to startup, shutdown, scheduled maintenance, safety measures, upset, and breakdown. Previously, excess emissions due to such events were not deemed to be violations if such events were promptly reported and reasonable corrective actions were taken with all practicable speed. As revised, sections 130 to 136 establish procedures and requirements that must be followed in all cases of excess emissions due to such events, including the filing of procedures to be taken to minimize emissions, prompt reporting of excess emissions, and taking prompt corrective action. Idaho's rules make clear, however, that emissions in excess of emission limits are considered violations and are not automatically excused. Instead, section 131 contains criteria to be used in determining whether the Department should take enforcement action to impose penalties for excess emissions due to such events. EPA believes Idaho's provisions for excess emissions are consistent with EPA's interpretation of the CAA, as set forth in a guidance document EPA issued to States regarding excess emissions during startup, shutdown, and malfunctions. *See* Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Monitoring, and Robert Perciasepe, Assistant Administrator for Air And Radiation, to the Regional Administrators, entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 20, 1999).

2. Permit to Construct Rules

EPA is proposing to approve those portions of IDAPA 58, Title 01, Chapter 01 that relate to the permitting of new and modified stationary sources (specifically, Section 000. LEGAL AUTHORITY; Section 002. WRITTEN INTERPRETATIONS; Section 003. ADMINISTRATIVE APPEALS; Section 006. DEFINITIONS; Section 007 DEFINITIONS FOR THE PURPOSES OF SECTIONS 200 THROUGH 225 AND 400 THROUGH 461; Section 107. INCORPORATIONS BY REFERENCE, subsections .03.a., 03.e., .03.f., and .03.i.; Sections 200 through 222. PROCEDURES AND REQUIREMENTS FOR PERMITS TO CONSTRUCT (except for subsection 222.03); Section 460. REQUIREMENTS FOR EMISSION REDUCTION CREDIT; Section 461. REQUIREMENTS FOR BANKING EMISSION REDUCTION CREDITS (ERC'S); Sections 510 through 516. STACK HEIGHTS AND DISPERSION TECHNIQUES; Section 578. DESIGNATION OF ATTAINMENT, UNCLASSIFIABLE, AND NONATTAINMENT AREAS; Section 579. BASELINES FOR PREVENTION OF SIGNIFICANT DETERIORATION; Section 580. CLASSIFICATION OF PREVENTION OF SIGNIFICANT DETERIORATION AREAS; and Section 581. PREVENTION OF SIGNIFICANT DETERIORATION INCREMENTS).

The current SIP-approved permit to construct rules have been amended throughout, primarily to bring them up to date with EPA's current regulations, to make them more consistent with EPA requirements for construction permits, and to make them more consistent with the Title V operating permit program. The majority of the amendments involve the permit to construct provisions for major stationary sources and major modifications (the prevention of significant deterioration (PSD), nonattainment area (part D), and visibility protection programs). Changes have been made to the applicability provisions (section 201), application requirements (section 202), permit requirements for new major facilities and major modifications in nonattainment areas (section 204), permit requirements for new major facilities and major modifications in attainment or unclassifiable areas (section 205), requirements for emission reduction credit (section 207), demonstration of net air quality benefit (section 208), procedures for issuing permits (section 209), and conditions for permits to construct (section 211). EPA has reviewed these amendments and finds them to be consistent with the requirements of EPA's regulations, specifically, 40 CFR 51.160 through 51.164 for minor source construction permits, 40 CFR 51.165 for nonattainment area (part D) permits, 40 CFR 51.166 for PSD permits, and 40 CFR 51.301 and 51.307 for visibility protection permits to construct.

Two new provisions of the Idaho permit to construct rules, however, require specific consideration—Section 213. PRE-PERMIT CONSTRUCTION, and sections 220 through 222, which provide exemptions from the minor source permits-to-construct rules.

Construction Prior to Final Permit Issuance. Section 213, entitled "Pre-Permit Construction," allows construction to commence on certain non-major sources and non-major modifications prior to receiving a final permit to construct, provided certain conditions are met. EPA believes that this provision is consistent with the requirements of section 110(a)(2)(C) of the CAA and 40 CFR 51.160, including 40 CFR 51.160(b), which requires States to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the NAAQS. Idaho's "Pre-Permit Construction" provision has numerous requirements and safeguards to ensure that no major source or major modification would be allowed to commence construction prior to receiving its final permit to construct. Furthermore, Idaho's rule does not allow sources which propose to "net out" of major NSR, use offsets to mitigate unacceptable ambient impacts, or which could impact a Class I area, to commence construction prior to receiving final permits. The provision also includes numerous requirements which are intended to limit its applicability to sources which have sufficiently demonstrated that they will be able to comply with all requirements and therefore will be able to receive a final permit to construct. These include more comprehensive and rigorous permit applications (including dispersion modeling meeting EPA's Guideline for Air Quality Models) than would normally be required of minor sources and minor modifications; a requirement to hold a public meeting in the community; and written approval of the Department before it can commence construction on this provision. Importantly, the provision precludes any actual operation of the new or modified source before the final permit to construct is issued. Finally, the provision includes language intended to prevent sources from making equitable arguments should the final permit be denied, or include conditions inconsistent with the application to construct. The provision also makes it clear that if the permit is ultimately denied, the source has been in violation of the requirement to have a permit from the date that it actually commenced construction. It is important to note that Idaho does not have a requirement for a case-by-case control technology determination (*e.g.*, BACT) for new or modified minor sources, so the likelihood of equity in the ground arguments are significantly reduced.

Idaho's "Pre-Permit Construction" provision would allow sources which are requesting limits on their potential to emit (PTE) (both greenfield sources proposing to be synthetic minors and existing sources proposing to limit the PTE of a modification) to commence construction prior to receiving final permits to construct. Under the terms of this provision, the written approval issued by IDEQ is an administrative action that makes the PTE limits requested by the source enforceable by the State. However, since the written approval is not a final permit to construct and has not been through the public notice and comment process, it is not federally enforceable. But because Federal law does not currently require that PTE limits be federally enforceable to be effective in limiting a source's potential to emit, EPA believes that this aspect of the Idaho provision meets EPA's current requirements. (Note that permits to construct issued under the EPA-approved Idaho rules are federally enforceable in accordance with section 113 of the Act.)

Although this provision is somewhat different than the traditional minor new source review programs in most States, EPA believes it is consistent with the requirements of the CAA and EPA's regulations, and is therefore approvable as a SIP revision. Section 110(a)(2)(C) of the CAA requires that State SIPs include a program for regulating the construction and modification of stationary sources as necessary to ensure that the NAAQS are achieved. This Idaho provision clearly regulates the construction and modification of stationary sources and ensures that the NAAQS will be met for any source which is allowed to commence construction prior to obtaining a final permit to construct.

In addition, EPA's regulations do not require the issuance of a permit for the construction or modification of minor sources, but only that the SIP include a procedure to prevent the construction of a source or modification that would violate the SIP control strategy or interfere with attainment or maintenance of the NAAQS. SIP minor NSR programs in several States do not require permits prior to construction, but instead require sources to submit a notice and authorize sources to begin construction after a specified time if the permitting authority does not issue an order preventing construction. As discussed above, this Idaho provision

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includes enforceable procedures to prevent the construction of any source or modification that would violate SIP requirements or the NAAQS because a source cannot begin actual construction unless it has received an approval from the State in the form of either a written approval under this provision or an actual permit to construct. In fact, the permit application requirements of Idaho's "Pre-Permit Construction" provision are more stringent than those of Idaho's general minor NSR provisions, and sources which utilize this pre-permit construction provision must meet a higher hurdle than other minor NSR permit applicants in Idaho in demonstrating that they comply with all requirements.

While EPA has some concerns regarding the implementation of this provision, it nevertheless meets EPA's requirements for a minor source permit to construct rule. However, in order to ensure that sources do not inappropriately begin construction using this provision, EPA is proposing to approve this rule with the condition that IDEQ submit to EPA, within five (5) working days of issuance, copies of all written approvals, draft permits, and final permits for sources which utilize this provision. EPA specifically invites comments on the appropriateness of approving this provision into the Idaho SIP.

"De Minimis" Exemptions from minor NSR. The Idaho permit to construct rules exempt non-major sources from permitting requirements if they meet *all* of several criteria. These criteria are:

(1) The source's uncontrolled potential to emit must be less than 100 tpy (section 220.01.a.i);

(2) the source's uncontrolled potential to emit must not increase emissions of a major facility by more than the significant emission rates (section 220.01.a.ii);

(3) the modeled impact of the source's uncontrolled potential to emit must not cause or contribute to a NAAQS violation (section 220.01.a.iii);

(4) the source cannot be part of a new major facility or a major modification of an existing major facility (section 220.01.b); and

(5) either the controlled potential emissions must be "below regulatory concern," which is generally defined as less than 10% of the significant emission rates (section 221) or the source must be on a list of categorically exempt sources (section 222).

EPA believes States may exempt from minor new source review certain categories of changes based on *de minimis* or administrative necessity grounds in accordance with the criteria set out in *Alabama Power Co.* v. *Costle, 636 F.2d 323* (D.C. Cir. 1979). *De minimis* sources are presumed not to have an impact and their emissions would not prevent or interfere with attainment of the NAAQS, even within nonattainment areas. Criteria (1), (2), (4), and (5) set forth above are generally consistent with the approaches used by other States to exempt minor sources and minor modifications from permit to construct requirements. These provisions are intended to ensure that all major sources and major modifications are subject to permit to construct requirements and that only *de minimis* sources are exempted.

Criteria (3) and one aspect of criteria (5), however, merit further discussion. Criteria (3), section 220.01.a.iii. requires that, to be exempt from minor NSR permitting in Idaho, the modeled impact of the source's uncontrolled potential to emit will not cause or contribute to a NAAQS violation. A requirement to conduct modeling is usually an element of the permitting process, subject to review by the permitting authority, and is not typically included as a criteria that a source must meet to qualify for an exemption from the permitting process. Because this criteria is included in an exemption determination that is made in the first instance by the source, the determination of whether a source needs a permit depends in part on the source's own analysis of whether it would cause a NAAQS violation—that is, a source that determines that it will not cause an air quality problem and which meets the other four criteria, does not need to apply for a permit to construct.

Idaho indicates that the purpose of this modeling provision is to ensure that sources which would individually have *de minimis* impacts do not in fact cause or contribute to violations when located in or near areas which are marginally attaining the NAAQS. Idaho notes that sources which meet all of the other criteria would normally qualify as *de minimis* and could be exempted completely from minor NSR without having to model compliance with NAAQS prior to being exempted.

EPA has carefully reviewed the list of categorically exempt sources and the "below regulatory concern" levels in sections 221, 222.01, and 222.02 and believes that these categories and levels are consistent with what has been approved elsewhere for purposes of exempting *de minimis* sources from minor NSR requirements. As a result, Idaho's requirement for self-modeling as an additional exemption criterion only further narrows exemption provisions which would be approvable even without the modeling provision. EPA proposes to approve this provision as part of Idaho's SIP. However, EPA feels that it is important to point out that this provision establishes a federally-enforceable requirement and that sources are subject to EPA enforcement or citizen suit if they fail to perform the necessary modeling and/or keep adequate records.

With respect to criteria (5), EPA is concerned with section 222.03, a provision which allows Idaho to add individual sources to the categorical insignificant list without rulemaking or SIP revision. Idaho has explained that the purpose of section 222.03 is to be able to exempt individual sources which meet criteria (1) through (4) above, but may marginally exceed the "below regulatory concern" levels and whose source categories were not evaluated at the time of rulemaking for inclusion on the list of categorically insignificant sources. EPA does not believe that section 222.03 is approvable. CAA section 110(a)(2)(C) and 40 CFR 51.160(a) require the State to develop legally enforceable procedures to review new and modified sources. In addition, 40 CFR 51.160(e) specifically requires the SIP to identify the types and sizes of sources which are subject to review under the State's new source review program. A provision which authorizes the State to grant additional exemptions without a SIP revision is contrary to the requirements of the CAA and its implementing regulations. Section 110(i) of the CAA specifically precludes States from changing the requirements of the SIP except through SIP revisions approved by EPA. SIP revisions will be approved by EPA only if they meet all requirements of section 110 of the CAA and the implementing regulations at 40 CFR part 51. *See* CAA section 110(l); 40 CFR 51.104. The "director's discretion" provision of section 222.03 does not meet all of the requirements of section 110 of the CAA. Therefore, it is not appropriate for EPA to approve this provision into the SIP. It is important to emphasize that even if IDEQ determines to exempt a source from new source review under the authority of section 222.03, the source is not exempt from new source review as a matter of Federal law unless and until the exemption has been approved by EPA as a source-specific SIP revision.

3. Tier II Permits To Operate

The Idaho SIP currently includes a permit to operate program in Section 01.01012 PROCEDURES AND REQUIREMENTS FOR PERMITS TO CONSTRUCT AND OPERATING

PERMITS (12/31/91) which has been approved by EPA as a federally-enforceable State operating permit (FESOP) program. This permit to operate program is applicable to all stationary sources and facilities. In May 1, 1994, Idaho revised its permit to operate program to implement the title V operating permits program. In this revision, Idaho adopted two separate operating permit programs: Idaho's title V program (called "Tier I" operating permits) and a program which contained much of the previous permits to operate program (called "Tier II" operating permits). This Tier II operating permits program differs from the previous program in a number of ways. Idaho revised the applicability of the program so that some provisions do not apply to Tier I sources, made the Tier II operating permit program separate from the previously consolidated permit to construct and operating permit format, and added a requirement for Tier II permit application fees.

The Tier II operating permit program applies to sources in four circumstances. Each of these circumstances, and EPA's proposed action on them, is discussed in detail below.

Section 401.01 provides a mechanism for sources not subject to Title V operating permits to apply for an enforceable operating permit in order to:

(1) Authorize the use of an alternative emission limit (bubble) pursuant to section 440;

(2) authorize the use of an emission offset pursuant to sections 204 or 206;

(3) authorize the use of a potential to emit limitation, an emission reduction, or a netting transaction to exempt a facility or modification from permit to construct requirements;

(4) authorize the use of a potential to emit limitation to exempt a facility from Title V; or

(5) bank an emission reduction credit pursuant to section 461.

All of these are the types of actions EPA envisioned when setting forth the requirements for a SIP-approved federally-enforceable operating permit program (FESOP) (*See* 54 FR 27281, June 28, 1989) and SIP-approved generic bubble rules (*See* 51 FR 43814, December 4, 1986).[1] However, as noted below, EPA is proposing to take no action on section 440, Idaho's bubble rule. Therefore, EPA is proposing to approve section 401.01 with the exception of subsection 401.01.a, a provision which implements Idaho's bubble rule.

Section 401.02 only applies to non-Title V sources that have already received permits to construct under the SIP-approved rules: However, the Tier II rules do not include any provisions indicating what is to be included in the Tier II operating permit for such sources. EPA notes that Section 209.04 Revision of Permits to Construct states that permits to construct can only be revised using the procedures in section 209 and that a revised permit to construct must continue to comply with the requirements of sections 200 to 223. In addition, under the Clean Air Act and EPA regulations, a permit to construct is a permanent element of the SIP and cannot be superseded by an operating permit. Therefore, EPA is proposing to approve this section based on the understanding that it would be used only to establish requirements in addition to those contained in existing permits to construct and that section 404.04 (Permit Revision or Permit Renewal) cannot be used to revise terms and conditions of permits to construct. Such revisions would be done under the authority of section 209.04. This could be done through a single permit that is issued under the authority of section 400 as well as under the authority of sections 200 to 223.

Section 401.03.a. authorizes the Department to issue a Tier II operating permit to any source when emission reductions are necessary to attain or maintain any ambient air quality standard or applicable PSD increment. Although a Tier II operating permit is an appropriate State mechanism for creating new enforceable requirements, it does not alleviate the need for a source-specific SIP revision in certain situations. The Act and EPA regulations specifically require the SIP to be revised whenever a violation of the NAAQS or PSD increment is found (*See* section 110(a)(2)(H) of the Act and 40 CFR 51.166(a)(3) of EPA's regulations). Therefore, EPA is proposing to approve this section with the understanding that the emission limits and other conditions contained in Tier II operating permits issued under this section will continue to be submitted to EPA for approval when they are submitted as parts of a control strategy for a nonattainment or maintenance area or in response to a finding of violation of a NAAQS or PSD increments.

Section 401.03.b. authorizes the Department to impose specific emission standards, or requirements on operation or maintenance, on any source as necessary to ensure compliance with any applicable emission standard or rule. EPA understands that this section will be used to impose requirements in addition to those already applicable to the source and not to change any applicable requirement. The Idaho rules include section 406. OBLIGATION TO COMPLY, which states that "Receiving a Tier II operating permit shall not relieve any owner or operator of the responsibility to comply with all applicable local, state and Federal rules and regulations." This is consistent with EPA's requirements for approvable FESOP programs which state that a program must "requires(s) that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise federally enforceable" (54 FR 27282). Based on this understanding, EPA is proposing to approve this section of the Tier II operating permit rule.

Section 401.04 authorizes the Department to issue a Tier II operating permit to any source that includes a future compliance date (*e.g.*, a compliance extension) for any provision of the Idaho rules. The section, however, conditions the issuance of such permit upon the approval of the EPA. EPA regulations specifically require that compliance date extensions be submitted to and approved by EPA as revisions to the SIP (*See* 40 CFR part 51 subpart N—Compliance Schedules and 40 CFR 51.104(b)). Since section 401.04 specifically requires the approval of EPA, and EPA's regulations require such approval to be accomplished through a SIP revision, EPA is proposing to take no action on this section. Tier II operating permits containing compliance schedules will become federally-enforceable upon EPA approval of each individual permit as a revision to the Idaho SIP.

The Tier II operating permit rules also include a section on permit applications (Section 402. APPLICATION

[1] Note that sections 204, 206, 440, 460, 461, and the definition of "net emission increase" authorize the Department to create new requirements directly in the Title V (Tier I) operating permit for subject sources. After EPA approval of sections 204, 206, 460, 461 and the definition of "net emission increase" into the Idaho SIP, terms and conditions in Title V (Tier I) operating permits that are created under the authority of these sections will be federally-enforceable. Since EPA is not proposing to approve section 440 into the SIP, terms and conditions created under the authority of that section will need to be identified in the Title V (Tier I) operating permit as state-enforceable only until such time as those terms and conditions are submitted to, and approved by, EPA as a source-specific revision to the Idaho SIP.

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PROCEDURES), a requirement that the Department not issue a permit unless the source would comply with all applicable local, State or Federal emission standards, and not cause or significantly contribute to a NAAQS violation (Section 403. PERMIT REQUIREMENTS FOR TIER II SOURCES), procedures for issuing, revising and renewing permits, including the opportunity for public comment (Section 404. PROCEDURES FOR ISSUING PERMITS), requirements for permit content (Section 405. CONDITIONS FOR TIER II OPERATING PERMITS), and a provision which states that receiving a Tier II operating permit shall not relieve any source or operator of the responsibility to comply with all applicable local, state and Federal rules and regulations (Section 406. OBLIGATION TO COMPLY).

EPA has evaluated the Idaho Tier II operating permit program and has determined that, with the exceptions noted above, it continues to comply with EPA's requirements for federally-enforceable State operating permit programs as set forth in the June 28, 1989 **Federal Register** (54 FR 27281). EPA is, therefore, proposing to approve the Tier II operating permit program (including Section 007 DEFINITIONS FOR THE PURPOSES OF SECTIONS 200 THROUGH 225 AND 400 THROUGH 461; Sections 400 through 406. PROCEDURES AND REQUIREMENTS FOR TIER II OPERATING PERMIT (except that EPA is taking no action on subsection 401.01.a. and section 401.04); and Section 470. PERMIT APPLICATION FEES FOR TIER II PERMITS) into the Idaho SIP as a federally-enforceable State operating permit program. The effect of this approval will be that emission limitations and other provisions contained in Optional Tier II operating permits (except for Tier II operating permits that authorize the use of alternative emission limits (bubbles) under subsection 401.01.a or that authorize future compliance dates under section 401.04) shall be applicable requirements of the Federally-approved Idaho SIP (in addition to any other provisions) for the purposes of section 113 of the CAA and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP. Alternative emission limits and future compliance dates in Tier II operating permits will not change the otherwise applicable requirements of the Idaho SIP until such time as they are submitted to, and approved by, EPA as source-specific SIP revisions.

4. Miscellaneous Changes

There are numerous amendments to the existing rules, including renumbering and reordering the rules, and technical changes for clarification and improving the enforceability of existing emission limits. These are mainly administrative in nature to conform the existing sections to current State statutes and to other provisions of IDAPA 58. EPA finds these changes to be consistent with EPA's requirements and proposes to approve the rules as amended.

EPA is also proposing to approve the rescission of several rules, specifically Section 01.01001 POLICY; Section 01.01052.03 CRITERIA FOR DEFINING EPISODE STAGES; Section 01.01503 DESIGN STANDARDS (for incinerators); Sections 01.01551 to 01.01553 RULES FOR CONTROL OF MOTOR VEHICLES; Section 01.01996 ADMINISTRATIVE PROVISIONS; Section 01.01998 INCLUSIVE GENDER AND NUMBER; and Section 01.01999 SEVERABILITY. EPA has reviewed these changes and finds them to be unnecessary for purposes of the SIP and therefore approvable.

C. Provisions Related to Emissions Trading

EPA is proposing to take no action on certain provisions relating to the trading of emissions, specifically Section 440. REQUIREMENTS FOR ALTERNATIVE EMISSION LIMITS (BUBBLES) and Section 441. DEMONSTRATION OF AMBIENT EQUIVALENCE. The Idaho "bubble" rules provide authority to IDEQ to approve source-specific alternative emission limits when certain conditions are met (*e.g.*, no plant-wide increase in emissions and a demonstration of ambient equivalence). However, the Idaho rules do not require DEQ to ensure that all of the requirements of section 110 of the CAA are met (*e.g.*, visibility impairment in Class I areas) when it approves a bubble. Nor do the Idaho rules comply with the guidelines set forth in EPA's Final Emissions Trading Policy Statement (51 FR 43814, December 4, 1986) for "generic" bubble rules (*e.g.*, the rules do not limit generic trades to just VOC or de minimis amounts, nor do they include replicable procedures for demonstrating ambient equivalence).

SIP rules and standards are relied on to attain and maintain the NAAQS. Section 110(i) of the CAA specifically precludes States from changing the requirements of the SIP except through SIP revisions approved by EPA. SIP revisions will be approved by EPA only if they meet all requirements of section 110 of the CAA and the implementing regulations at 40 CFR part 51. *See* CAA section 110(l); 40 CFR 51.104. As discussed above, Idaho's "bubble" rules do not meet all of the requirements of section 110 of the CAA. Therefore, it is not appropriate for EPA to approve sections 440 and 441 into the Idaho SIP. Moreover, there is no requirement for the SIP to include bubble rules—they are an optional element of a State program and EPA has indicated that it will approve them into the SIP only if they meet the requirements of the Final Emissions Trading Policy Statement.

It is important to emphasize that even if DEQ approves an alternative emission limit for a State air regulation, which regulation has been approved as part of the Idaho SIP, EPA is not precluded from enforcing the federally-approved SIP limit against the source. The approval of an alternative emission limit to a SIP requirement by DEQ does not change the federally-enforceable SIP requirement for that source unless and until the alterative emission limit has been approved by EPA as a source-specific SIP revision.

D. Sulfur Dioxide Control Strategy for the Eastern Idaho Intrastate Air Quality Control Region

Idaho has made numerous changes to Sections 845 through 848 RULES FOR CONTROL OF SULFUR OXIDE FROM SULFURIC ACID PLANTS. Although the numerical limits have not been changed, the rules have been revised to improve their clarity and enforceability. Specifically, where needed, source test methods and averaging periods have been specified.

EPA is proposing to approve these revisions. This proposed approval, however, does not affect or change EPA's previous disapproval of the Idaho SIP with respect to its adequacy to attain and maintain the NAAQS for sulfur dioxide in the Eastern Idaho Intrastate Air Quality Control Region (*see* 40 CFR 52.675(a)(1) and (2)), nor does it affect or change the source-specific Federal regulations at 40 CFR 52.675(b) that EPA promulgated in response to that disapproval.

E. Provisions Unrelated to the SIP

EPA is proposing to take no action on certain provisions that are not related to the criteria pollutants regulated under title I of the CAA or to the requirements for SIPs under section 110 of the Act. Specifically, EPA is proposing to take no action on the provisions related to Idaho's title V operating permit program (Section 008. DEFINITIONS FOR THE PURPOSES OF SECTIONS 300 THROUGH 387; Sections 300 through 387. PROCEDURES AND REQUIREMENTS FOR TIER I OPERATING PERMITS; Sections 525 through 538. REGISTRATION AND REGISTRATION FEES); those provisions related to EPA regulations adopted by the State (Section 107. INCORPORATION BY REFERENCE, paragraphs 03.v. through 03.aa.), and those provisions which regulate pollutants other than criteria pollutants (Section 577.07 FLOURIDES; Section 586. TOXIC AIR POLLUTANT CARCINOGENIC INCREMENTS; Sections 750 and 751. RULES FOR CONTROL OF FLUORIDE EMISSIONS; Sections 775 and 776. RULES FOR CONTROL OF ODORS; Section 818. RECOVERY FURNACE STANDARDS; Section 819. RECOVERY FURNACE TRS STANDARDS; Section 820. DIGESTER AND EVAPORATOR STANDARDS; Section 824.01. Continuous Monitoring Requirements; Sections 835 through 839. RULES FOR CONTROL OF RENDERING PLANTS).

F. TSP and PM–10 Area Designations

In this rulemaking, EPA is also proposing to delete the total suspended particulates (TSP) area designations for Idaho in 40 CFR 81.313 and to adjust the PM–10 area designations in 40 CFR 81.313 to preserve the particulate matter minor source baseline dates as required by EPA's regulations (*see* 58 FR 31635, June 3, 1993) and section 579.01.d of the Idaho rules. In the June 3, 1993 **Federal Register**, EPA indicated that it would leave the current TSP designations in place until such time as each SIP replaced the TSP increments with PM–10 increments and ensured that any minor source baseline dates for TSP would be preserved for PM–10 areas. The Idaho rules now include PM–10 increments and provisions ensuring that any minor source baseline dates for particulate matter remain in effect.

G. Scope of Proposed Action

Idaho has not demonstrated authority to implement and enforce IDAPA Chapter 58 within "Indian Country" as defined in 18 U.S.C. 1151.[2] Therefore, EPA proposes that this SIP approval not extend to "Indian Country" in Idaho. *See* CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA's previous approval of Idaho's PSD program, in which EPA specifically disapproved the program for sources within Indian Reservations in Idaho because the State had not shown it had authority to regulate such sources. *See* 40 CFR 52.683(b). It is also consistent with EPA's approval of Idaho's title V air operating permits program. *See* 61 FR 64622, 64623 (December 6, 1996) (interim approval does not extend to Indian Country); 66 FR 50574, 50575 (October 4, 2001) (full approval does not extend to Indian Country).

III. Summary of Action

EPA is soliciting public comment on its proposed approval of revisions to the State of Idaho Implementation Plan. Specifically, EPA is proposing to approve all of the amendments to the Rules for the Control of Air Pollution in Idaho as submitted by the Director of the IDEQ on May 17, 1994, May 11, 1995, November 21, 1996, February 28, 1999, December 18, 1997, April 9, 1998, May 5, 1999, December 5, 2000, and May 30, 2002, except that EPA is proposing to take no action on section 008; subsections 107.03.v. through aa; section 222.03; sections 300 through 387; sections 440 and 441; sections 525 through 538; section 577.07; section 586; sections 750 and 751; sections 775 and 776; section 818; section 819; section 820; section 824.01; and sections 835 through 839.[3] EPA approved section 204 on April 17; 2001 (66 FR 19722) and sections 563 through 574 and section 582 on April 12, 2001 (66 FR 18873).

EPA is also proposing to delete the total suspended particulates (TSP) area designations for Idaho in 40 CFR 81.313 and to adjust the PM–10 area designations in 40 CFR 81.313.

Interested parties are invited to comment on all aspects of this proposed approval. Comments should be submitted to the address listed in the front of this document. Written comments received by September 12, 2002 will be considered in the final rulemaking action taken by EPA.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety

[2] "Indian country" is defined under 18 U.S.C. 1151 as: (1) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Idaho, Indian country includes, but is not limited to, the Coeur d'Alene Reservation, the Duck Valley Reservation, the Reservation of the Kootenai Tribe, the Fort Hall Indian Reservation, and the Nez Perce Reservation as described in the 1863 Nez Perce Treaty.

[3] Sections 009, 010, 140 through 149, 161, 203.03, 210, 220.05, 221.04.a.i, 222.04.b, 225, 585, 586, 587, 590, 591, and 855 through 858 were not submitted for inclusion in the Idaho SIP. In addition, Section 710 PARTICULATE MATTER—PROCESS EQUIPMENT EMISSION LIMITATIONS ON OR AFTER JULY 1, 2000, which was submitted to EPA on December 5, 2000, was returned to the State as incomplete, so it is not before EPA to act on at this time.

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Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Authority: U.S.C. 7401 *et seq.*

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: August 2, 2002.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 02–20449 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 262 and 403

[FRL–7255–8]

RIN 2090–AA13

National Environmental Performance Track Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Available only to members in EPA's National Environmental Performance Track program, this action proposes: a provision that would allow hazardous waste generators who are members in Performance Track up to 180 days to accumulate their hazardous waste without a RCRA permit or interim status; simplifications to reporting requirements for facilities governed by Maximum Available Control Technology (MACT) provisions of the Clean Air Act (CAA); and specific reporting modifications for Publicly Owned Treatment Works (POTWs) regulated by the Clean Water Act (CWA). Additionally, this action solicits comments on a potential pilot of consolidated reporting that would allow Performance Track facilities to submit a single report that would contain data routinely required under the CAA, the CWA, the Emergency Planning and Community Right-to-know Act (EPCRA), and the Resource Conservation and Recovery Act (RCRA). These provisions are intended to serve as incentives for facility membership in the National Environmental Performance Track, and as demonstrations of the concept for reporting streamlining.

DATES: Submit comments on or before November 12, 2002. A public hearing on this proposed rule will be held on September 27, 2002. Submit requests to present oral testimony on or before September 25, 2002.

ADDRESSES: *Comments.* Submit comments (in duplicate if possible) to: Docket No. A–2000–47, U.S. Environmental Protection Agency, Mailcode 6102, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Public Hearing will be located at 1200 Pennsylvania Avenue, Washington, DC 20460.

Electronic Access and Filing. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.*

Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: A–2000–47. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Documents related to this rulemaking may be viewed at: U.S. EPA Air Docket, Room M–1500, 401 M Street, SW, Washington, DC 20460 (on the ground floor in Waterside Mall) from 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. Submit electronic comments and other data to *a-and-r-docket@epa.gov. See* **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Robert D. Sachs, 202–260–2765, *sachs.robert@epa.gov. Public Hearing information:* Robert D. Sachs, 202–260–2765, *sachs.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: In addition to being available in the docket, an electronic copy of today's proposed rule will be available on the World Wide Web through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Docket. The docket is an organized and complete file of all the information considered by us in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. The regulatory text and other materials related to this rulemaking are available for review in the Air Docket under Docket Number A–2000–47 (*see* **ADDRESSES** above) or copies may be mailed on request by calling the Air Docket at (202) 260–7548 or by facsimile at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

Regulated Entities. Categories and entities potentially regulated by this action include those listed in the following table.

Category	Examples of NAICS
Utilities	221
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I. Overview

A. What Is the History of This Action?

EPA announced the National Environmental Performance Track (Performance Track) program on June 26, 2000. The program is designed to recognize and encourage top environmental performers—those who go beyond compliance with regulatory requirements to attain levels of environmental performance and management that provide greater benefit to people, communities, and the environment. The program is based upon the experiences of EPA, states, businesses, and community and environmental groups with new approaches that achieve high levels of environmental protection with greater efficiency. This experience includes: EPA's Common Sense Initiative, designed to improve environmental results by tailoring strategies for six industry sectors; the national Environmental Leadership Program and EPA Region I's Star Track program, designed as new ways to encourage businesses to do better than required; and many performance track-type programs in states such as Oregon, Wisconsin, New Jersey and Virginia.

EPA currently is implementing the National Environmental Performance Track (Performance Track), formerly known as the Achievement Track. The program is designed to recognize facilities that consistently meet their legal requirements, that have implemented management systems to monitor and improve performance, that have voluntarily achieved environmental improvements beyond compliance, and that publicly commit to specific environmental improvements and report on progress. A complete description of the Performance Track program, its requirements, and other program materials are available on EPA's Web site (*www.epa.gov/performancetrack*) or by calling the Performance Track Information Center toll free at 1–888–339-PTRK (7875).

EPA has held three Performance Track application periods—between July 2000 and September 2000, between February 2001 and April 2001, and between August 2001 and October 2001. In the future, EPA plans to hold two entry periods each year. A total of 279 facilities have been accepted into the program. The National Environmental Performance Track is a voluntary program. Decisions to accept and remove facilities is wholly discretionary to EPA, and applicants or potential applicants have no legal right to challenge EPA's decision.

Today's proposal creates several regulatory provisions that constitute enforceable legal requirements for facilities that are members of the Performance Track program and have taken all other necessary steps required for the applicability or implementation of the individual regulatory incentive provisions. Full eligibility and other program requirements can be found at the Performance Track Web site (*www.epa.gov/performancetrack*). The Agency believes that, because of the stringency of the program criteria, facilities in the Performance Track should receive the non-regulatory and regulatory benefits outlined in the Program Description (and summarized below). Specifically, for acceptance in the Performance Track, facilities must:

- Have adopted and implemented an environmental management system (EMS) that includes specific elements;
- Be able to demonstrate environmental achievements and commit to continued improvement in particular environmental categories;
- Engage the public and report publicly on their performance; and
- Have a record of sustained compliance with environmental requirements.

In addition, the Performance Track is designed so that EPA and other stakeholders can monitor and track the implementation of the benefits currently being offered to program members, as well as those being considered. Member facilities commit to providing annual reports on the status of their efforts to achieve their commitments to improvements in specific environmental categories. This reporting plus additional activities to engage the public result in a high level of scrutiny that will aid in monitoring the activities of the Performance Track program. Lastly, facilities are accepted into the Performance Track for a period of three years. To continue receiving the benefits associated with the program, facilities will reapply, which will include developing additional, ongoing

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commitments to environmental performance improvements.

In its efforts to promote improved environmental performance through the National Environmental Performance Track, EPA is evaluating further regulatory incentives that could be applied to qualifying facilities. This rulemaking is the first in what are expected to be several steps in developing incentives that will promote participation in the program and the associated environmental benefits. These incentives will include both those that will be implemented through rulemaking (such as the regulatory changes proposed today) and those that may be accomplished through administrative action by EPA or the states. EPA encourages interested parties to submit comments on additional incentives that are consistent with the design and goals of the Performance Track.

B. How Have Stakeholders Been Involved?

During the development of the Performance Track Program and subsequent to its announcement in June 2000, EPA has had many meetings with a wide array of stakeholders. Stakeholders included companies, non-governmental organizations, states, associations, and others. Over the course of these meetings, EPA has discussed many issues including any incentives that would reward Performance Track members, as well as those incentives that would motivate non Performance Track facilities to implement environmental improvements that would qualify them for membership in the program.

This proposed rulemaking grew out of the stakeholders' collective interest in promoting incentives for participating facilities. Since the inception of the program, EPA has held three meetings with state regulators: May 2000 in Denver, February 2001 in Chicago, and November 2001 in Charleston. At each of these meetings, break-out sessions were held to solicit feedback from state personnel on potential incentives to be offered to Performance Track members.

On December 12, 2000, EPA held a "Charter Event" for the first round of Performance Track members. At this meeting EPA held a series of breakout discussions. During these sessions, ideas about incentives that could become part of the regulatory framework were discussed.

Similarly, on October 30, 2001 EPA met with a variety stakeholders including associations, non-governmental organizations and states to discuss EPA's "Innovations Strategy." During this meeting EPA held a specific breakout session on incentives that could be made available for performance track members.

In addition, EPA has consulted regularly with individual Performance Track participants and the Performance Track Participants Association (PTPA), which is composed of 141 members. The PTPA is a nonprofit organization that provides a forum for corporations, trade associations and public entities dedicated to improving their environmental performance through the vehicle of the Performance Track program. The PTPA met twice, in June and November of 2001, and is convening its first annual conference in April, 2002. The PTPA also has an Incentives workgroup that focuses on identifying and advocating for incentives for Performance Track members.

Furthermore, EPA is working with nine trade organizations through the Performance Track network to further enhance participation in the program. Network Partners include the following organizations: American Chemistry Council, American Textile Manufacturers Institute, Cement Kiln Recycling Coalition, National Association of Chemical Distributors, National Paint and Coatings Association, National Stone, Sand and Gravel Association, NORA (an Association of Responsible Recyclers), North American Die Casting Association, and Screenprinting and Graphic Imaging Association International.

C. What Incentives for Members Are Envisioned?

The Performance Track Program Description provides a list of incentives the Agency intended to make available to member facilities. EPA currently offers several incentives that are available to members when they enter the program (*e.g.*, recognition, networking opportunities, discretionary inspection benefits). EPA is also in the process of making other incentives available through taking administrative action (other than rulemaking) and by issuing or amending guidance documents (*e.g.*, reduced reporting under Discharge Monitoring Reports). These incentives will be available when those steps have been completed. In some cases, other steps also must be taken before a facility may take advantage of an incentive. For example, states are responsible for implementing parts of many federal environmental programs. In such cases, states may need to revise regulations, seek EPA approval of a revised program, re-issue permits, or take other actions. EPA has made funds available to approximately 20 states to identify where existing state laws may need to be revised to support the National Environmental Performance Track. See the National Environmental Performance Track Program Description for a fuller discussion of these incentives.

In the Program Description, EPA also committed to propose specific regulatory changes as incentives for membership in the Performance Track. The proposed changes in this rulemaking follow up on this commitment. EPA believes the modest regulatory changes proposed here are appropriate for facilities that are members of the program.

EPA is proposing the following regulatory changes to promote membership in the program and to realize the environmental and other benefits resulting from the actions of member facilities. EPA excluded incentives that would involve a relaxation of substantive standards of performance or that would require statutory change. EPA identified incentives that would apply broadly to different types of facilities; that reduce the reporting and other operating costs of the current system; and that can be implemented nationally.

EPA believes it is important to offer the kinds of incentives described here for several reasons. First, the achievements of these facilities deserve public recognition. Second, some of the reporting and other administrative requirements that apply generally to facilities may not be needed for facilities that have met the entry criteria for the Performance Track because these facilities have implemented appropriate environmental management systems, have consistently met their regulatory commitments, and have agreed to make information regarding their performance publicly available. Third, these incentives may offer the opportunity for qualifying facilities to apply their resources to achieving even better environmental performance. And finally, the availability of these incentives should encourage other facilities to make environmental improvements that will enable them to qualify for membership.

In this rulemaking, EPA is proposing changes to certain regulatory programs to offer incentives exclusively to Performance Track facilities. They include:

- Reducing the frequency of reports required under the air toxics provisions of Section 112 of the Clean Air Act (air toxics standards promulgated under this section of the CAA are often referred to as MACT Standards or Maximum Achievable Control Technology Standards). In this incentive, EPA proposes to reduce the frequency of required MACT reporting for all eligible Performance Track facilities to an interval that is twice the length of the regular reporting period, but not less frequently than once every six months. Second, if Performance Track facilities reduce their emissions through pollution prevention or process changes to below MACT levels, and below the major source threshold, required reporting elements in the periodic report may be met through an annual certification. Performance Track facilities must continue to meet all relevant monitoring and recordkeeping requirements. For major sources, reports must still be submitted at least semi-annually in order to meet Title V permitting requirements.
- Reducing the reporting costs for POTWs in the Performance Track that must publish notices of violations by facilities that use their services. These POTWs would be allowed to use the Internet rather than paid newspaper notices. POTWs would also be allowed to reduce their oversight of some smaller industrial users; they would be allowed the discretion to determine that some of these users are "nonsignificant." Also proposed are other alternative environmental performance-based incentives for POTWs in the Performance Track.
- Allowing large quantity hazardous waste generators who are members of the Performance Track up to 180 days (and 270 days if the waste must be transported 200 miles or more) to accumulate hazardous waste without a RCRA permit or interim status, provided that these generators meet certain conditions. This incentive would also assist EPA in learning more about appropriate hazardous waste generator accumulation times.

In this notice, EPA solicits comments on another potential incentive—the opportunity for Performance Track facilities to consolidate reporting under various environmental statutes into a single report. The incentives in this notice—both those for which we propose rulemaking changes and the opportunity for participating in a consolidated reporting pilot—are just a part of an overall package of incentives that EPA intends to provide for Performance Track members. We noted above that the National Environmental Performance Track Program Description lists several other incentives that EPA intends to make available through administrative action not requiring rulemaking changes. That same document notes that EPA is considering another potential incentive—the opportunity for expedited review for companies that submit Premanufacturing Notifications (PMNs) under the Toxic Substances Control Act, if the substance is manufactured in a Performance Track facility and the applicant uses EPA's Pollution Prevention Framework in preparing the PMN submission. If EPA decides to make the TSCA incentive a part of the Performance Track Program, we would propose rulemaking to do so at a later time.

We solicit comments on whether EPA should add other incentives beyond the ones in this notice and in the Program Description, and what they might be. EPA will consider at least three criteria in devising and selecting additional incentives. One is the make-up of the current set of Performance Track facilities and the potential applicant pool. Another is the extent to which the characteristics of Performance Track facilities (including their use of effective EMSs and their commitment to public reporting beyond that required by regulations) may be appropriate substitutes for some aspects of existing regulatory and other requirements. The third criterion is that incentives do not represent a reduction in protectiveness when compared to current requirements. We solicit comments on these criteria and suggestions of others.

D. What Is EPA's Rationale for This Rule?

EPA is proposing to modify reporting and other requirements that affect facilities that are subject to various environmental statutes and regulations. The proposed rulemaking would make these modifications available only to those facilities that successfully achieve the status of members in the National Environmental Performance Track Program and continue to meet the conditions of the program.

The environmental benefits that will be generated by Performance Track member facilities are related to the criteria for membership in the Performance Track. These were enumerated and fully described in EPA's announcement of this program (*www.epa.gov/performancetrack*), and are summarized below:

Facilities must satisfy the following four entry criteria to be accepted into the Performance Track:

(1) Facilities must be in compliance with Federal, State, Local and Tribal environmental regulations.

(2) They must operate a well-designed environmental management system (EMS) as part of their overall management system.

(3) They must demonstrate a record of environmental improvements for the previous two years beyond the minimums required of them. They also must take additional future actions and commit to further improvements in the succeeding three years.

(4) Facilities must engage the public and each year they must report publicly on their progress toward meeting the goals that they have chosen, as well as summarize their compliance and the performance of their EMS. EPA will also make the applications of each facility member available to the public.

These criteria are the key to generating the incremental environmental improvements; they were designed to work together as an integrated approach. No single criterion, standing alone, would provide EPA with the necessary assurance that the changes proposed here would lead to increased compliance or performance. However, in combination the Agency believes that these criteria ensure that the facilities eligible for these proposed changes are both capable of and committed to maintaining beyond-compliance environmental performance and that any lapses will be rare and quickly corrected by facility management. Further, the Agency and the public will continue to receive information on facility compliance and performance. Nothing in this proposal would compromise the ability of the Agency to investigate and sanction suspected environmental violations.

Compliance with environmental regulations: Although the first criterion merely re-iterates the existing obligation of all facilities to comply with relevant policies and regulations, the other criteria go beyond the environmental problems addressed under existing regulations and focus on the unique set of environmental challenges faced by each individual facility. EPA believes that a strong compliance history is an important factor in defining performance in the Performance Track. EPA, in cooperation with State and local authorities to the extent possible, reviews the compliance history of applicants.

Environmental management systems: To satisfy the second program criterion, a Performance Track member facility must have a mature environmental management system. These systems integrate environmental considerations into routine decision-making at facilities, establish work practices that consistently reduce environmental risks and releases, evaluate environmental performance, and set management

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priorities based on the environmental impacts of individual facilities. Because they organize and consolidate information on a facility's environmental obligations and potential weaknesses for management, an EMS often improves the facility's compliance record and reduces accidents. However, many EMS frameworks address unregulated environmental impacts as well as regulated impacts. Thus, an EMS provides a facility with the ability to assess and mitigate impacts that are most significant for the facility or that pose the most risk to the ecosystem and community surrounding the facility. An EMS allows a facility to take additional environmental mitigation actions that are highly effective and appropriate, providing better environmental results as well as more flexibility than the existing regulatory structure alone.

EMSs are being used increasingly by organizations around the world to help integrate environmental considerations into day-to-day decisions and practices and to address environmental issues more consistently and effectively. The increasing use of EMSs has resulted in the development of an international EMS standard (ISO 14001). In light of their growing use and potential for improving environmental results, especially in the area of unregulated impacts, EPA has focused more attention on EMSs in recent years. The Agency has a research program underway with the States to pilot test and evaluate the effectiveness of EMSs in several industry settings. The Agency has developed and tested EMSs for specific sectors, including local governments and metal finishing and screen printing firms. We have promoted EMSs through several voluntary partnership programs, such as Design for the Environment (DfE), and we have incorporated EMS requirements in enforcement settlement agreements. In June 2000, the Administrator supported the North American Commission for Environmental Cooperation (CEC) document "Improving Environmental Compliance: 10 Elements of Effective Environmental Management Systems."

The EMS provisions in the Performance Track are designed to ensure that member facilities will continue to not only meet their regulatory obligations but also to perform better than required by regulation. The Performance Track specifies that a qualifying facility must have an EMS that includes detailed elements in the following categories: environmental policy (including compliance with both legal requirements and voluntary commitments), planning, implementation and operation, checking and corrective action, and management review. Additionally, the EMS must have been in full operation for at least one review cycle (generally one year) and must have been audited (may be a self-audit). The EMS requirements are described in more detail in EPA's National Environmental Performance Track Program description at *www.epa.gov/performancetrack*.

Past and future environmental improvements: Facilities must demonstrate their commitment to continuous environmental performance. To do this, facilities must identify accomplishments in specific categories. The categories are: energy use, water use, materials use, air emissions (including greenhouse gases), waste, discharges to water, accidental releases, habitat preservation/restoration, and product performance. Past improvements must have been beyond regulatory requirements. In addition, Performance Track facilities must make use of their EMSs to set and commit to achieving environmental performance goals that go beyond regulatory requirements and that mitigate some facility-selected significant environmental impacts. These performance goals must be chosen among the specific categories identified above including both regulated and unregulated environmental impacts.

Because these performance goals and accomplishments go beyond requirements and in some cases, well beyond areas covered by existing environmental regulations, EPA believes that facilities that qualify for the Performance Track have demonstrated a serious commitment to real environmental improvement. By their willingness to undertake greater environmental responsibilities, these facilities have earned the confidence that they will maintain compliance with regulatory requirements under the streamlined procedures proposed in this Notice.

Public commitments: To satisfy the fourth program criterion, all Performance Track facilities publicly disclose progress toward their commitments and other performance information each year, including summary information regarding their EMS and compliance with legal requirements. Because these commitments and the performance reporting go beyond those required by current regulation, communities will have access to more information about the performance of local facilities. This public scrutiny also will provide an incentive for firms to make meaningful commitments and achieve them.

We believe that facilities that make the choice to apply and to demonstrate their commitments to environmental improvements in the public spotlight will be imposing upon themselves a unique and particularly strong set of pressures to deliver this heightened level of performance.

In time, we expect the Performance Track program to produce additional environmental gains as a result of the more efficient use of the resources of federal, state, and local environmental authorities. Because we expect the entry criteria to result in member facilities that are carrying out their environmental obligations in a manner beyond what is required of them, we believe that EPA and the other authorities will be able to shift enforcement and compliance activities to other facilities in the regulated community. We believe that this resource reallocation may bring further environmental improvements, as limited compliance resources are applied more effectively.

Each of the regulatory changes we are proposing today would enable some Performance Track members to reduce their reporting or other compliance costs.

1. What Environmental Benefits Will the Performance Track Program Bring to Society?

EPA believes that its refocus of resources may lead to additional environmental compliance. Public recognition and reporting requirement relief, to the extent that they affect companies bottom lines, may influence company decisions to undertake regulatory projects that go beyond regulatory requirements. The public will be able to judge the nature and magnitude of these environmental benefits by examining the annual reports that Performance Track facilities are required to prepare and make public.

2. How Will Incentives Maximize the Benefits of the Performance Track Program?

Incentives play a crucial role in maximizing the environmental benefits of any voluntary program. Facilities must perceive a benefit to themselves that is at least equal to their perceived costs of membership in a voluntary program. These costs include the administrative burden of membership as well as any costs incurred in meeting the substantive requirements of the program. Facility members of the Performance Track Program also face the additional risk of adverse public reaction if they fail to meet their environmental goals or if their internal audits of compliance or EMS performance reveal problems. These public risks are unique to Performance Track facilities. Facilities participating in other EPA voluntary programs as well as facilities that do not participate in any voluntary program may and do keep audit information confidential. Improved public information about the environmental performance of facilities is an important component and public benefit of the Performance Track program and it significantly raises the costs perceived by facility managers for internal oversights or lapses.

The greater the benefits to facility members in the Performance Track program, the more facilities will participate. Increased program incentives may also generate environmental benefits from non-members. If facilities that do not currently meet the Performance Track program criteria believe that membership would benefit them, they may work to improve their management systems and environmental performance to become eligible.

3. Will These Incentives Undercut Existing Environmental Protections?

EPA believes that the proposed 180-day accumulation period for hazardous waste and the changes proposed in reporting for MACT facilities and for POTWs will have no direct deleterious effects on the environmental performance of those facilities. We believe that, although EPA and other regulatory bodies will receive compliance information from these facilities less frequently, the facilities' demonstrated strong environmental performance and the presence of their EMSs more than compensate for reduced reporting. As a safeguard, EPA and the other governmental authorities will not be giving up their ability to take enforcement actions against any facility that fails to comply with permits or other obligations. The risk of a very public removal from this program for failure to comply adds an extra incentive to comply with program requirements. EPA believes that this, plus the incentives that facilities have to be perceived by the public and by governmental offices as better environment performers than their competitors, reduces the risk that any environmental damages will result from this program or the regulatory changes we are proposing.

We believe that the changes proposed here for POTWs' public reporting will not decrease the public's ability to learn about violations by the POTWs' permittees. Rather, EPA believes that these changes may actually enhance the public's ability to learn about these violations and thus to participate in ensuring compliance by dischargers.

4. How Does the Program Design Limit Membership to a Uniquely Appropriate Set of Facilities?

EPA designed the Performance Track program to generate improvements in environmental performance of facilities. EPA believes that the entry criteria and the ongoing obligations for continued membership in Performance Track as described above will bring about benefits to the environment such as decreased releases of pollutants to the air, water, and land, of greater efficiency in energy and raw material usage, and of decreased risks of accidental releases of hazardous substances. These incremental environmental benefits will flow from the facilities' activities that are tied to their membership in Performance Track, and this justifies making available to this category of facilities the benefits of the modified requirements that we propose today.

Further, EPA believes that there are controls and safeguards built into the Performance Track program that reduce the possibility a facility would receive the benefits of the modified requirements we propose today without the facility delivering improved environmental performance.

EPA's announcement of this program (*www.epa.gov/performancetrack*) describes how we review the applications and make selections of facilities that meet the entry criteria. It also summarizes other steps we will take to run the program, including conducting site visits at up to 20 percent of the member facilities and the possible removal of facilities if they are found not to be meeting the commitments they have taken on. We believe that this approach is generally capable of identifying those facilities, among the tens of thousands of facilities subject to environmental regulations, which have and will continue to comply with and exceed regulatory requirements. We also believe that the combination of the administrative controls of the Performance Track program and the public reporting voluntarily accepted by program members will, as a rule, be effective in limiting membership to only such facilities.

II. The Proposed Rulemaking Changes

A. Maximum Achievable Control Technology (MACT)

1. Reduced Frequency of Required MACT Reporting for All Eligible Performance Track Facilities

Facilities covered by the MACT provisions of the Clean Air Act must meet a variety of recordkeeping, monitoring, and reporting requirements as specified in 40 CFR part 63—National Emission Standards for Hazardous Air Pollutants for Source Categories. For facility members in the Performance Track, EPA proposes to reduce the reporting frequency while assuring the availability of information required for compliance with MACT standards.

Because of the high-level environmental performance of Performance Track facilities, EPA believes it is appropriate to provide these facilities the opportunity to reduce their reporting frequency under part 63. Since the underlying data required from these facilities would still be gathered, the Agency would still receive the information needed to ascertain any lapses in compliance.

MACT reporting requirements differentiate between facilities, based on facility performance, with respect to reporting frequency. For example, reporting frequency may be increased from semi-annually to quarterly for some reports based on the frequency of excursions outside of required performance parameters. The approach the Agency is proposing today applies a similar concept by reducing reporting frequency for the best performers.

EPA is proposing to reduce the frequency of certain required periodic MACT reports for eligible Performance Track facilities. Periodic reports include a range of reports that are required to be sent in to the Permit Authority on intervals that range from quarterly, or more frequently if required by special circumstances, to semi-annually. The reports are different from records, which must be kept on site and incorporated into the periodic reports and other reports. There are general reporting requirements in 40 CFR part 63, subpart A, and additional reporting requirements under subparts applying to specific categories of stationary sources that emit (or have the potential to emit) one or more hazardous air pollutants.

EPA is proposing to double the reporting intervals for these reports by amending §§ 63.2 and 63.10, and adding a new § 63.16. For major sources, however, reports must still be submitted at least semi-annually to meet Title V

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permitting requirements specified in section 504(a) of the Clean Air Act.

This proposed rulemaking would not revise other requirements concerning event reporting, record keeping, and monitoring. EPA is seeking comment, however, on whether there are also opportunities to reduce these burdens for Performance Track facilities while still providing the information required to assure protection of health and the environment.

2. Reporting Reductions for Performance Track Facilities That Achieve MACT or Better Emission Levels Through Pollution Prevention Methods Such as Process Changes

EPA is also proposing to reduce the level of detail of the required reporting, under some circumstances, for those facilities which reduce emissions below 25 tons per year of aggregate hazardous air pollutant (HAP) emissions and 10 tons per year of any individual HAP, and which have reduced emissions to a level which is fully in compliance with the applicable MACT standard.

For those Performance Track facilities which are below the thresholds for major sources of HAPs (25 tons per year aggregate or 10 tons per year for an individual HAP), and which have reduced the levels of all HAP emissions to at least the level required by full compliance with the applicable standard, additional reductions in reporting requirements would be available, depending on the nature of the requirement and the means the facility is using to meet the requirement. As above, however, for major sources, reports would still be submitted at least semi-annually to meet Title V permitting requirements.

Once again, the objective is to reduce the reporting burden for the best performing facilities, without compromising the Agency's ability to ensure compliance.

For those facilities using pollution prevention technologies or techniques to meet MACT standards, reductions in reporting burden would depend on the requirements of the Part 63 standard and facility performance. The term "source reduction" is defined in the Pollution Prevention Act (PPA) section 6603. Members in this program should refer to this statutory definition and any subsequent rulemakings and interpretations pursuant to PPA section 6607. The specific incentives are listed below:

(1) If the standard calls for control technology and the facility complies using control technology: The facility can substitute a simplified annual report, to meet all required reporting elements in the applicable part 63 periodic report, certifying that they are continuing to use the control technology to meet the emission standard, and are running it properly. The facility would still have all monitoring and recordkeeping requirements.

(2) If the standard calls for control technology and the facility complies using pollution prevention (P2):

The facility can substitute a simplified annual report, to meet all required reporting elements in the applicable part 63 periodic report, certifying that they are continuing to use P2 to reduce HAP emissions to levels at or below the MACT standard requirements. The facility would have to maintain records demonstrating the veracity of the certification.

(3) If the standard calls for pollution prevention and the facility complies using pollution prevention:

There is no reduction in the requirements unless the facility is achieving performance 50% better than the standard. If the facility is achieving that level of performance or better, then the facility can substitute a simplified annual report, to meet all required reporting elements in the applicable part 63 periodic report, certifying that they are continuing to use P2 to reduce HAP emissions to levels below the MACT standard. The facility would have to maintain records demonstrating the veracity of the certification.

For each of the above alternatives, EPA is proposing that if the facility no longer meets the criteria for continued membership in the program, the incentive would no longer apply. In addition, the facility may be removed from the program.

EPA solicits comments on the proposed changes described above.

B. Alternative Environmental Performance-Based Incentives for POTWs in the Performance Track

Publicly Owned Treatment Works (POTWs) regulated under the National Pretreatment Program (General Pretreatment Regulations for Existing and New Sources of Pollution) are required to identify industrial users discharging to their systems, issue permits to these users, monitor industrial user activities through on-site sampling and inspections, and carry out other administrative functions involving extensive recordkeeping and reporting.

In order to become a member in the National Environmental Performance Track program, a POTW must demonstrate a historical record of meeting legal requirements associated with its operation, implement an Environmental Management System, and achieve environmental improvements that go beyond compliance with their basic NPDES permit conditions. For those POTWs, EPA has concluded that it is reasonable to provide administrative relief from certain requirements. EPA considers that the proposed reporting and other programmatic and administrative changes proposed today are particularly appropriate for Performance Track POTWs. Such facilities, because of their EMSs and their commitment to continued environmental improvements, can implement these changes with less risk of adverse environmental effect.

1. Electronic Web posting for SNC notification.

a. What Are the Existing Requirements?

POTWs are currently required to publish a list of industrial users which, at any time during the preceding 12 months, were in significant noncompliance. "Significant Noncompliance" (SNC) is defined in 40 CFR 403.8(f)(2)(vii) to include violations that meet one or more of eight criteria. The criteria are: (1) Chronic violations of discharge limits (where 66 percent of all measurements taken during a six-month period exceed the daily maximum limit or the average limit for the same pollutant parameter); (2) technical review criteria (TRC) violations (where 33 percent or more of all measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC equals 1.4 for Biological Oxygen Demand (BOD), Total Suspended Solids (TSS), fats, oil and grease and 1.2 for all other pollutants except pH)); (3) any other violation of a pretreatment effluent limit that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through; (4) any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the Control Authority's exercise of its emergency authority to halt or prevent such a discharge; (5) failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for certain activities; (6) failure to provide required reports within 30 days after the due date; (7) failure to accurately report noncompliance; and (8) any other violation or group of violations which the Control Authority determines will adversely affect the operation or

implementation of the local Pretreatment Program.

On July 24, 1990, EPA modified 40 CFR 403.8(f)(2)(vii) to include the existing definition of SNC (55 FR 30082). The purpose of that modification was to provide some certainty and consistency among Control Authorities for publishing their lists of Industrial Users in noncompliance. Currently, Control Authorities are required to annually publish a list of Industrial Users (IUs) in SNC at any time during the previous twelve months. The Control Authority must publish this list in the largest daily newspaper published in the municipality in which the POTW is located. Independent of this publication requirement, Control Authorities are required to develop and implement Enforcement Response Plans, which describe the range of enforcement responses they will use in addressing various types of IU Noncompliance. Where an IU is identified as being in SNC, EPA guidance recommends that the Control Authority respond with some type of formal enforcement action such as an enforceable order ("Guidance for Developing Control Authority Enforcement Response Plans," EPA 832–B–89–102, September 1989.)

b. What Is in Today's Proposal?

Under today's proposed rule, a Performance Track POTW would have the discretion to not publish certain instances of SNC in a newspaper. The POTW would be allowed, in lieu of a newspaper publication, to provide information on all instances of SNC on its Web site for a designated 30-day period. EPA believes that this change would provide faster public notice of SNC and would reserve additional newspaper publication of SNC for cases where this format is needed for its potentially greater effect. Importantly, the Performance Track POTW would continue to be required to provide newspaper publication of any violation which is not corrected within thirty (30) calendar days, or which results in pass through or interference. This would ensure that members of the community without access to a computer would still have notice of a subset of the significant and/or ongoing violations. The POTW must keep historic compliance data for each Industrial User in SNC as part of its web page beginning with the first web publication. Historic compliance data must be easy to access and well documented as part of the web page and must be continual. The POTW must certify as part of its annual report that it has posted the significant noncompliance information and historic compliance data on the web site. Furthermore, a hard copy of the web page listing the significant noncompliance data must be sent to the Approval Authority as part of the annual report and must be made available to EPA, State, and the public upon request. All SNC violations, whether published in a newspaper or not would be published as soon as is practicable or annually on a schedule determined by the Control Authority's permit on the Control Authority Web site. The Web site must contain an explanation of how SNC is determined, as well as a contact name and phone number for additional information. The SNC information will be added to the historic compliance data at the end of the 30 day notice period.

The purpose of the current provision is to comply with the public participation requirements of 40 CFR part 25, while also serving as a deterrent to violators because of the public notification of noncompliance. Allowing POTWs to report such violators on their Web sites would reduce the printing costs incurred by municipalities to publish the list, while potentially providing increased public visibility and access to the information. Typically, newspaper notices are published once per week for two succeeding weeks; the Web site would include the information every day for at least 30 days. The Internet provides an entirely new mechanism for access to information, and provides for the information to be available on a longer-term basis than in a single edition of a newspaper. Moreover, posting on the POTW's Web site is likely to provide better and more focused access for members of the public particularly interested in the activities of the POTW. Given the wide availability of access to electronic information at public facilities, such as libraries, this information may be, in fact, more readily available to all members of the public than that obtained through newspaper publication. It is also likely that local newspapers would utilize this information in their reporting on environmental issues.

The Agency solicits comment on whether it is necessary to require public notice of a subset of SNC, or for ongoing instances of SNC to be published in a newspaper. In particular, the Agency seeks comment on how it might dispense with newspaper publication of SNC in its entirety for Performance Track POTWs while still providing equal and permanent access to this important information to all members of the community, regardless of socioeconomic status, race, or physical ability. How would a substitution affect the availability of this information to the public? Is the publication of this information on the internet an adequate substitute for newspaper publication? Is a 30-day listing, followed by availability of a historic listing of all listed SNC violations on the Control Authority's Web site an adequate substitute for the current practice? What are the cost and other resource implications for the POTWs of taking advantage of this alternative approach? Is access to the Internet readily available in all communities, through the use of personal computers, libraries and schools? What would be adequate notice of this kind of a change in the public notice procedures?

2. Oversight of Significant Industrial Users

a. What Are the Existing Requirements?

Why does it matter which industrial users are considered significant?

POTWs with Approved Pretreatment Programs and States acting as Pretreatment Control Authorities are required to provide certain minimum oversight of Significant Industrial Users (SIUs). The required minimum oversight includes inspection and sampling of each SIU annually, reviewing the need for a slug control plan every two years, and issuing a permit or equivalent control mechanism every five years (40 CFR 403.8(f)(1)(iii) and (f)(2)(v) and 403.10(f)(2)(i)).

Control Authorities have expressed concern with the rigidity of the oversight requirements, especially with respect to smaller facilities that are subject to categorical Pretreatment Standards and facilities that have no potential to cause pass through or interference problems at their plants. If these facilities were excluded from the definition of SIU, Control Authorities could, on a case-by-case basis, determine adequate sampling and inspection frequencies and whether individual permits are necessary for the facilities.

What facilities are currently defined as Significant Industrial Users?

"Significant Industrial User" is defined in 40 CFR 403.3(t) to include two types of facilities. The first includes all industrial users that are subject to a Pretreatment Standard for New or Existing Sources. These standards are often referred to as national categorical pretreatment standards and facilities subject to the standards are referred to as categorical industrial users (CIUs).

The second category of facilities included in the definition of SIU includes those which are not categorical

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industrial users. All non-categorical facilities that discharge over 25,000 gallons per day of process wastewater are considered SIUs unless a Control Authority excludes a facility based upon a finding that it does not have a reasonable potential of adversely affecting the operation of the plant or of causing a violation of any pretreatment standard or requirement. Control Authorities may also consider smaller facilities to be SIUs if the facilities have the potential to cause problems with a POTW's operations or violate pretreatment standards or requirements.

What is the history of the definition of SIU?

The definition of SIU and related requirements was established in July 1990 by the rule to implement the Domestic Sewage Study ("the DSS Rule"). 55 FR 30082, July 24, 1990. Before this regulatory revision, sampling and inspection frequency were only recommended in EPA guidance. *Pretreatment Compliance Monitoring and Enforcement Guidance* (1986). The proposed DSS Rule would have required Control Authorities to inspect and sample SIUs at least once every two years. The DSS proposal requested comment on whether to require annual inspections and sampling. 53 FR 47649, November 23, 1988. The preambles to the proposed and final rule did not specifically address whether to adopt a different requirement for oversight of smaller SIUs.

The proposed Metal Products and Machinery rule (60 FR 28269, May 21, 1995) solicited comment on whether, as an alternative to exempting low discharge industrial users from the rule, EPA should revise part 403 to reduce monitoring, reporting and inspection requirements applicable to small-flow facilities. Today's proposal elaborates on the issue of categorical industrial users that may be considered nonsignificant.

What changes to the definition of Significant Industrial User has EPA considered in the past?

In 1996, the Water Environment Federation (WEF) and the Association of Metropolitan Sewerage Authorities (AMSA) convened a workshop to discuss potential opportunities to streamline the pretreatment regulations. One of the recommendations from the Pretreatment Streamlining Workshop was to exclude facilities under 100 Gallons Per Day (GPD) from the definition of Significant Industrial User. The Workshop also presented recommendations for additional streamlining. One of the Workshop's recommendations was that Control Authorities be able to exempt from the definition of SIU any categorical industrial user that has no reasonable potential to adversely affect the POTW's operation.

The Workshop also recommended that EPA allow Control Authorities more flexibility in the oversight of facilities that would continue to be defined as SIUs. Specifically, the Workshop recommended that EPA allow Control Authorities more flexibility in sampling SIUs, while perhaps keeping the annual inspection requirement.

In 1997, EPA sent a letter to stakeholders that solicited comment on revising the current definition of Significant Industrial User to exclude certain "*de minimis*" (now referred to as "nonsignificant") facilities that are subject to national categorical pretreatment standards. The draft suggested a definition of nonsignificant that included (1) facilities that never discharge concentrated wastes such as solvents, spent plating baths, filter backwash, and sludges, or more than 100 GPD of other process wastewater, and (2) facilities subject only to certification requirements after having met Baseline Monitoring Report requirements (*e.g.*, pharmaceutical manufacturers). EPA's letter sought comment on the recommendations from the WEF/AMSA Workshop and also on whether to allow POTWs more flexibility in sampling SIUs that had been in consistent compliance.

In 1999, EPA proposed changes to the Pretreatment regulations in the **Federal Register**. Included in the proposed changes is a new definition for Significant Industrial User.

Did the stakeholders agree with EPA's suggestion?

Most of the commenters in the 1999 proposal supported the concept of allowing POTWs to reduce some oversight of nonsignificant categorical industrial users. However, no clear consensus exists for what the definition of nonsignificant should be.

Several commenters thought that the definition of SIU should not be changed. Some commenters opposed a definition based on flow and preferred one based on total mass or on potential to impact the POTW. One made a specific recommendation that SIU status be determined by considering both the flow and its toxicity using the Toxic Weighting Factors used by EPA in guideline development.

A few commenters addressed whether facilities that are in consistent compliance should be allowed to be excluded from oversight as SIUs. One commented that, regardless of consistent compliance, any SIU with the potential to adversely impact the POTW should be an SIU. Approval Authority commenters generally opposed and POTW commenters generally supported not requiring Control Authorities to regulate as an SIU any industrial user that did not present a potential to adversely impact the facility.

b. What Is in Today's Proposal?

What changes to the SIU definition is EPA proposing today?

EPA is proposing to authorize Control Authorities that have been approved as National Environmental Performance Track facilities to designate certain categorical industrial users as "nonsignificant." Today's proposal would keep the existing definition of significant industrial user, but allow Control Authorities to exempt certain Categorical Industrial Users (CIUs) from the definition if the appropriate Control Authority determines the CIU is "nonsignificant." In making the determination that a CIU is "nonsignificant," the Control Authority will be required to consider the potential for the CIU to violate any pretreatment standard and the potential impact of the facility on the POTW, alone and in combination with other discharges. The Control Authority will be required to document the decision and demonstrate the CIU has no reasonable potential to adversely impact the POTW and no reasonable potential to violate any applicable Pretreatment Standard established by EPA, the State, or the local Control Authority. Additionally, the CIU must have been in compliance for 3 years preceding the determination.

Regardless of whether they are considered SIUs, all CIUs would still be required to comply with applicable categorical pretreatment standards and the related reporting requirements in 40 CFR 403.12. Control Authorities would still be required to perform the same oversight of "nonsignificant" CIUs that is required for other facilities that are not SIUs, including notifying the CIU of its status and requirements (§ 403.8(f)(2)(iii)); receiving and reviewing required reports (§ 403.8(f)(2)(iv) and § 403.12(b), (d), and (e)); random sampling and inspection (§ 403.8(f)(2)(v)) and taking enforcement action as necessary (§ 403.8(f)(2)(vi)).

The POTW's annual Performance Track report to EPA would provide a list of the facilities that are being regulated as nonsignificant CIUs. After an initial list is provided, deletions and additions may be keyed to the previously submitted list.

Will EPA consider other criteria for designating a CIU as "nonsignificant"?

Yes. Various stakeholders in the past have suggested different flow cut-off criteria for "nonsignificant" CIUs. EPA recognizes that any numeric flow cut off is likely to be somewhat arbitrary. For instance, the 100 GPD criterion was supported by the stakeholders at the WEF/AMSA meeting, and EPA included this criterion in its 1999 proposal. EPA is interested in other ideas specific to Performance Track facilities, and therefore, is requesting comment on other criteria.

3. Program Modifications

a. What Are the Existing Requirements?

What are the current requirements addressing Program Modifications?

40 CFR 403.18 States, in part;

(a) General. Either the Approval Authority or a POTW with an approved POTW Pretreatment Program may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a significant change in the operation of a POTW Pretreatment Program that differs from the information in the POTW's submission, as approved under § 403.11.

(b) Substantial modifications defined. Substantial modifications include:

(1) Modifications that relax POTW legal authorities (as described in § 403.8(f)(1)), except for modifications that directly reflect a revision to this Part 403 or to 40 CFR chapter I, subchapter N, and are reported pursuant to paragraph (d) of this section;

(2) Modifications that relax local limits, except for the modifications to local limits for pH and reallocations of the Maximum Allowable Industrial Loading of a pollutant that do not increase the total industrial loadings for the pollutant, which are reported pursuant to paragraph (d) of this section. Maximum Allowable Industrial Loading means the total mass of a pollutant that all Industrial Users of a POTW (or a subgroup of Industrial Users identified by the POTW) may discharge pursuant to limits developed under § 403.5(c);

(3) Changes to the POTW's control mechanism, as described in § 403.8(f)(1)(iii);

(4) A decrease in the frequency of self-monitoring or reporting required of industrial users;

(5) A decrease in the frequency of industrial user inspections or sampling by the POTW;

(6) Changes to the POTW's confidentiality procedures; and

(7) Other modifications designated as substantial modifications by the Approval Authority on the basis that the modification could have a significant impact on the operation of the POTW's Pretreatment Program; could result in an increase in pollutant loadings at the POTW; or could result in less stringent requirements being imposed on Industrial Users of the POTW.

(c) Approval procedures for substantial modifications.

(1) The POTW shall submit to the Approval Authority a statement of the basis for the desired program modification, a modified program description (*see* § 403.9(b)), or such other documents the Approval Authority determines to be necessary under the circumstances.

(2) The Approval Authority shall approve or disapprove the modification based on the requirements of § 403.8(f) and using the procedures in § 403.11(b) through (f), except as provided in paragraphs (c)(3) and (4) of this section. The modification shall become effective upon approval by the Approval Authority.

(3) The Approval Authority need not publish a notice of decision under § 403.11(e) provided: The notice of request for approval under § 403.11(b)(1) states that the request will be approved if no comments are received by a date specified in the notice; no substantive comments are received; and the request is approved without change

(4) Notices required by § 403.11 may be performed by the POTW provided that the Approval Authority finds that the POTW notice otherwise satisfies the requirements of § 403.11.

(d) Approval procedures for non-substantial modifications.

(1) The POTW shall notify the Approval Authority of any non-substantial modification at least 45 days prior to implementation by the POTW, in a statement similar to that provided for in paragraph (c)(1) of this section.

(2) Within 45 days after the submission of the POTW's statement, the Approval Authority shall notify the POTW of its decision to approve or disapprove the non-substantial modification.

(3) If the Approval Authority does not notify the POTW within 45 days of its decision to approve or deny the modification, or to treat the modification as substantial under paragraph (b)(7) of this section, the POTW may implement the modification.

(e) Incorporation in permit. All modifications shall be incorporated into the POTW's NPDES permit upon approval. The permit will be modified to incorporate the approved modification in accordance with 40 CFR 122.63(g).

Many of these requirements are a result of the revisions to the Program Modification regulations made in 1997. The 1997 revision streamlined the procedures for modifying approved POTW Pretreatment Programs in several ways. First, fewer categories of modifications are considered "substantial" and, therefore, automatically subject to the detailed public notice procedures. Modifications that will no longer automatically be considered "substantial" include: changes that result in more prescriptive POTW legal authority; changes to legal authority that reflect changes to the Federal regulations; changes to local limits for pH; reallocations of local limits that do not increase the authorized discharge of the pollutant from the POTW; and other changes discussed below. 40 CFR 403.18(b). Second, the rule no longer requires the Approval Authority to issue a public notice of its final approval of a modification if it received no comments on its proposed approval of the modification and the modification is approved as proposed. 403.18(c)(3). Third, public notice provided by a POTW will satisfy the Approval Authority's obligation to provide notice in certain circumstances. 40 CFR 403.18(c)(4). Fourth, the rule allows a POTW to report changes to its list of industrial users in the POTW's annual reports, rather than being required to obtain advance approval. 40 CFR 403.8(f)(6) and 403.12(i)(1). Fifth, the period of notice that POTWs must provide for non-substantial modifications and the time for review by Approval Authorities will both be 45 days; POTWs may implement a non-substantial modification if the Approval Authority does not disapprove it within that time. 40 CFR 403.18(d). Sixth, the rule grants additional flexibility regarding the type of newspaper that may publish the notices and the government agencies that receive individual notice of all modifications. 40 CFR 403.11(b)(1) (A) and (B).

b. What Additional Flexibility Is Being Considered as Part of the National Environmental Performance Track Program?

For POTWs with approved Pretreatment Programs that are part of the National Environmental Performance Track Program, EPA is proposing additional flexibility in the manner notice is provided of a request to modify the pretreatment program. This is similar to the flexibility being proposed for the publication of

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industries in significant noncompliance (SNC).

Under today's proposed rule, a Performance Track POTW would have the discretion to either provide public notice of their Program Modification request through newspaper publication or by posting the request on a Web site. Today's proposal does not change the substantive requirements of any modification notification requirements. EPA believes that public notice through use of a Web site would provide faster public notice of Program Modifications and allow a more open process with greater opportunity for stakeholders to be involved. Importantly, the Performance Track POTW would continue to be required to provide individual notice to stakeholders that have requested individual notice. This would ensure that members of the community without access to a computer would still have notice of substantial program modifications.

The purpose of the current provision is to comply with the public participation requirements of the pretreatment program. Allowing POTWs to post modification requests on their Web sites would reduce the printing costs incurred by municipalities to publish the proposed change, while potentially providing increased public visibility and access to the information. Typically, newspaper notices are published once per week for two succeeding weeks; the Web site would include the information every day for the time necessary to finalize the modification. Also, the Web site will contain detailed information about the modification and the program in general. This will allow the public to more easily review and make decisions about the merit of the modification. As explained in the discussion of SNC, the internet provides an entirely new mechanism for access to information, and provides for the information to be available on a longer-term basis than in a single edition of a newspaper. It is also likely that local newspapers would utilize this information in their reporting on environmental issues.

The Agency solicits comment on whether it is necessary to require certain program modifications to be published in a newspaper. In particular, the Agency seeks comment on how it might dispense with newspaper publication of Program Modifications entirely for Performance Track POTWs while still providing equal and permanent access to this important information to all members of the community, regardless of socioeconomic status, race, or physical ability.

Under the existing rule, Approval Authorities may consider local notice by the POTW to constitute a program modification request and notice of decision under § 403.11(b)–(f). This issue is also addressed under § 403.18(c)(4). Under the existing rule, Approval Authorities also remain ultimately responsible for assuring the publication of the notice. POTWs are not required to provide the notice described in § 403.11. The existing rule leaves POTWs and Approval Authorities free to negotiate arrangements for the publication of the required notice. In the absence of voluntary and adequate notice by the POTW, the Approval Authority would still be required to provide the notice. In order for a local POTW public notice to substitute for an Approval Authority notice, the local notice must meet the requirements of § 403.11(b)(1). The existing rule acknowledges that Approval Authorities may find the notice provided by POTWs to be legally adequate. 40 CFR 403.18(c)(4).

In the preamble to the 1997 revisions to the regulations, EPA noted that one industry trade association argued that local procedures were not adequate.

> The commenter noted that there was no record that most significant changes are worked out in advance at the local level. The commenter asserted that a more objective forum is needed than the local forums, where decisions are diverse and not always based on environmental considerations. Because local participation varies, the commenter asserted that § 403.18 is needed to level the playing field. EPA agrees that Approval Authority review of modifications helps assure their consistency with state and federal regulations. State and EPA Approval Authorities retain the right to review modifications under today's rule regardless of who issues the notices. The lack of comments on State and EPA issued notices suggests that many issues are resolved at the local level. Approval Authorities must assure that notice provided at the local level is adequate and includes an opportunity to request a hearing from the Approval Authority.

Also in the 1997 revisions, EPA solicited comment on how the public might be educated as to the importance of Pretreatment Program requirements, so that public input will occur in response to notice of program modifications.

> "One industry commenter stated that the content of public notices is not adequate for business to know what is being proposed. The commenter recommended that POTWs be required to directly notify businesses and to hold seminars to educate the businesses. One POTW supported allowing POTWs to provide notice but specifically opposed requiring POTWs to educate the public on the importance of the program." Also, "An environmental group commented that public participation would be improved if POTWs were required to maintain a mailing list, with annual solicitation to be on the list, of parties wanting notice of non-substantial modifications. A similar procedure is already in place for substantial modifications."

With today's action, EPA is soliciting comment on alternative methods for Public Notice to achieve the intent of § 403.11(b).

Today, EPA is proposing to allow approved Pretreatment Programs that are part of the National Environmental Performance Track Program to Public Notice all Program Modifications on a Web site in lieu of publication in the newspaper. Further, this Public Notice may be used by the Approval Authority to meet the requirements under 40 CFR 403.11. The information provided on the Web site would be more detailed than a notice of availability. The information would need to include an explanation of current requirements, a detailed description of the modification, and an explanation of the need for the modification.

As with the SNC issue, EPA is interested in views on how a substitution would affect the availability of this information to the public. Is the publication of this information on the Internet an adequate substitute for newspaper publication? Is access to the Internet readily available to all communities, for example via personal computers, libraries and schools? What would be adequate notice of this kind of a change in the public notice procedures? For example, back issues of newspapers are commonly available in the library.

4. Revisions to the Requirements for the Pretreatment Program Annual Report

a. What Are the Current Requirements?

For any POTW with an approved pretreatment program, a condition of the NPDES permit [*see* 40 CFR 403.12(i)] is that the POTW provide the Approval Authority (either the State or EPA, as applicable) with an annual report that briefly describes the POTW's program activities. These requirements must, at a minimum, include:

A. An updated list of all Industrial Users discharging to the POTW and, more specifically, a list of those IUs that are classified as Significant Industrial Users (SIUs) that are subject to categorical pretreatment standards and a description of what standards apply to each facility;

B. A summary of the status of each IU's compliance during the reporting period;

C. A summary of the compliance and enforcement activities conducted by the POTW during the reporting period; and

D. Any other specific information requested by the Approval Authority.

This information is critical for the Approval Authority to oversee both the industrial users and the POTW. The annual report provides the Approval Authority with information on the compliance of the industrial users that discharge into the POTW. It also provides information on the enforcement responses and activities that the POTW has undertaken.

b. What Additional Flexibility Is Being Proposed as Part of the National Environmental Performance Track Program?

EPA is proposing to modify the submission procedures for the annual report, as well as streamline one part of the annual report. Instead of annually submitting the report, the POTW must annually post the report on the POTW's website and provide written certification to the Approval Authority when the information has been posted. The information must remain accessible as part of the website for at least three years.

The POTW will be required to submit written copies of the annual reports every two years to the Approval Authority. The written report no longer needs to include compliance data for all IUs, although the website posting must still contain compliance data for all IUs. The written report need only include specific information for only those SIUs found to be in significant noncompliance (SNC) during the reporting period (2 years) instead of a summary of the status of all IU compliance over the reporting period. The submission every two years will contain reports for each of the two preceding years. The POTW's permit will be modified to incorporate this requirement and will require that the POTW post the annual report on the website and that all information posted must be accurate and truthful. If the annual report is not posted annually, or if it contains inaccurate information, it will be a violation of the NPDES permit. The POTW must provide a copy of the annual report to EPA, the State, or the public upon request.

EPA believes allowing a POTW to post the annual report on the website would reduce printing costs to the POTW and provide the public greater access to information about the POTW's program. The Agency is seeking comment on whether this is an appropriate option for the annual reports. There is no national database that tracks information on individual indirect dischargers, so the Agency relies upon the annual reports to oversee the compliance of these indirect dischargers. Furthermore, the States or EPA would still input summary information from the annual reports into EPA's national database (Permit Compliance System-PCS). EPA is seeking comment on how the extended time period for submitting the annual reports will impact programmatic and enforcement oversight overall.

C. 180-Day Accumulation Time for Performance Track Hazardous Waste Generators

1. Background

EPA is proposing to allow large quantity hazardous waste generators who are members in the Performance Track program up to 180 days (or up to 270 days if the generator must transport its waste, or offer its waste for transportation, a distance of 200 miles or more) to accumulate hazardous waste without a RCRA permit or interim status. This RCRA regulatory flexibility is intended to provide an additional incentive for membership in the Performance Track program, and should provide the Agency with useful information on the environmental, economic and other implications of extended accumulation times for hazardous waste generators. As discussed below, we believe that the regulatory flexibility provided in this rulemaking will also serve to ensure protection of human health and the environment at Performance Track facilities.

Including this RCRA incentive as part of the Performance Track program is consistent with the general objectives of the program, as discussed in Section IV of this preamble. In addition, this aspect of the proposal may assist EPA in learning more about how accumulation times for hazardous waste generators may affect the ultimate disposition of hazardous wastes (*e.g.*, recycling vs. disposal), the economics of hazardous waste generation and accumulation, and the overall environmental performance of hazardous waste generator facilities. More specifically, EPA believes that additional accumulation time may allow generators to accumulate enough waste to make transportation to waste management facilities more cost-effective and efficient for the generator. In particular, EPA is interested in learning whether additional accumulation time may result in increased recycling of generator waste (EPA has found this to be the case with F006 (metal finishing) hazardous waste, *see* 65 FR 12377). EPA also believes that additional accumulation time may result in environmental benefits related to the reduction in the movement and handling of hazardous waste on-site, as well as reduced off-site shipments.

The Performance Track program presents a good opportunity for EPA, the States and the regulated community to experiment with this type of regulatory flexibility in a way that should pose negligible incremental risks to human health or the environment. We believe that the criteria for membership in the Performance Track—strong past performance, effective EMSs, promised specific future improvements in environmental performance, and additional public reporting of environmental information—should ensure that this regulatory flexibility will be provided only to companies who will use it responsibly. This, combined with the safeguards built into the proposal and the relatively modest regulatory relief that the rule would provide (*i.e.*, additional time to accumulate waste), should ensure that this rulemaking is fully protective of human health and the environment.

2. What Are the Current Requirements for Large Quantity Generator Accumulation?

The current standards under 40 CFR part 262 for generators of hazardous waste who generate greater than 1,000 kilograms of hazardous waste per month (or one kilogram or more of acute hazardous waste), known as large quantity generators (LQGs), limit the amount of time hazardous waste can be accumulated at the generator's facility without a RCRA permit. According to § 262.34, LQGs may accumulate hazardous waste on-site for up to 90 days without having to obtain a RCRA permit. The generator must comply with certain unit-specific standards (*e.g.*, tank, container, containment building, and drip pad standards) for accumulation units, and certain general facility requirements such as for marking and labeling of containers, preparedness and prevention, and emergency response procedures. Generators may also petition the EPA Regional Administrator to grant an extension of up to 30 days to the 90-day accumulation time limit due to unforeseen, temporary, and uncontrollable circumstances, on a case-by-case basis (*see* § 262.34(b)).

Today's proposed rule would not make any changes to the existing regulations that apply generally to 90-day accumulation by LQGs, and EPA is not soliciting comment on those provisions or any other existing

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provision of § 262.34. This includes the provisions for extended accumulation times for F006 wastes, which are specified at § 262.34(g). Those provisions, which apply only to generators who accumulate F006 wastes, allow for extended accumulation times that are similar in many respects (including the time limits) to those being proposed today for Performance Track members. It is therefore possible that, once today's rule is promulgated, a generator of F006 waste who is also a member in Performance Track could take advantage of extended accumulation times under either regulatory scheme (*i.e.*, under § 262.34(g), (h) and (i), or under § 262.34(j), (k) and (l)).

3. What is in Today's Proposal?

Today's proposed rule would allow LQGs of hazardous waste that are members of the Performance Track program to accumulate hazardous waste at their facilities for longer than the 90 days currently specified in § 262.34, subject to certain limitations and conditions. The proposal would not affect other existing generator requirements; for example, Performance Track members would still have to manifest their hazardous waste shipments (*see* Subpart B of part 262) and comply with other generator requirements in part 262 (*e.g.*, packaging and labeling of waste shipments).

The requirements for Performance Track extended accumulation times would be added as new paragraphs (j), (k) and (l) to subpart C of part 262. The following is a discussion of each proposed provision.

Time Limits. Proposed § 262.34(j)(1) specifies that hazardous waste generators who are Performance Track members may accumulate hazardous wastes for an extended period of time—up to 180 days, or up to 270 days if the generator must transport waste, or offer waste for transportation, over a distance of 200 miles or more. Such generators would not need RCRA permits or interim status if they stay within these limits. Note that these extended accumulation time limits would be consistent with the current limits for generators of F006 wastes (*see* § 262.34(g)).

Initial Notice. Under proposed § 262.34(j)(2), Performance Track generators would need to give prior notice to EPA or the authorized state agency of their intent to accumulate hazardous waste in excess of 90 days in accordance with these regulations. These notices will assist EPA and state agencies in monitoring implementation of this element of the Performance Track program. Such notices would need to identify the generator and facility, specify when extended accumulation at the facility will begin, and include a description of the wastes that will be accumulated for extended time periods and the units that will be used for that purpose.

The initial notice would also need to include a statement that the facility has made all changes to its operations, procedures and equipment necessary to accommodate extended time periods for accumulating hazardous wastes (§ 262.34(j)(2)(ii)). This is to address situations in which longer accumulation times may involve, for example, changing the design, location, or capacity of the unit(s) in which the wastes are accumulated. Such changes could affect how the facility addresses other generator requirements, such as those for personnel training or emergency response procedures. This statement in the notice should help ensure in advance that Performance Track members are aware of and have implemented any changes at the facility that may be needed to accommodate extended accumulation times.

For generators who intend to accumulate hazardous waste for as long as 270 days (because the waste must be transported, or offered for transport, more than 200 miles from the generating facility), the notice submitted by the generator would also need to contain a certification that an appropriate off-site hazardous waste management facility for the waste is not available within 200 miles of the facility. The provision for accumulation up to 270 days is intended primarily to address situations where wastes must be transported for considerable distances to off-site facilities, and where extended accumulation time may enable the facility to more efficiently ship fewer (but larger) loads of wastes to those facilities.

Today's proposal does not specify any particular criteria or restrictions as to what may be considered an "appropriate" hazardous waste management facility in this context. At a minimum, any such facility would need to be operating in compliance with applicable environmental regulations. However, EPA is concerned that the 270-day limit could conceivably be abused unless there is some further definition in the final rule as to what is meant by "appropriate" facility. The provision for accumulation of up to 270 days by Performance Track facilities is primarily intended by EPA to address situations where hazardous waste generators are located in areas remote from commercial hazardous waste facilities, or where the additional accumulation time is needed to facilitate beneficial, legitimate reuse or recycling of the wastes. The 270-day limit was not intended simply to provide additional convenience or cost savings for the generator. In any case, EPA requests comment as to whether the 270-day limit should be available under Performance Track only when the additional accumulation time allows the generator to achieve some specific environmental objective (*e.g.*, increased recycling rates), or whether other types of restrictions or limits should be placed on its availability to Performance Track members.

Standards for Accumulation Units. Another proposed condition ((262.34(j)(3)) would require Performance Track generators to accumulate hazardous wastes in storage units (such as containers, tanks, drip pads and containment buildings) that meet the standards for storing hazardous wastes at RCRA interim status facilities (*see* subparts I, J, W and DD of 40 CFR part 265, respectively). These are standard requirements for large quantity generators.

If Performance Track facilities use containers for extended accumulation of hazardous wastes, today's proposal would additionally require secondary containment systems for containers to prevent releases into the environment that might be caused by handling accidents, deterioration, or other circumstances. Secondary containment is a standard requirement for RCRA permitted facilities that use containers to store hazardous wastes containing free liquids and certain listed hazardous wastes (*i.e.*, F020, F021, F023, F026, and F027). It is not, however, typically required for hazardous waste generators or interim status facilities. We believe that requiring secondary containment in the context of this rulemaking is a reasonable, common-sense precaution to take in exchange for extending accumulation time limits.

EPA is also requesting comment on an option that would not require secondary containment for accumulation of hazardous wastes in containers. Specifically, we seek comment as to what type of containment is appropriate for Performance Track facilities, given that the containment requirements for permitted RCRA facilities are intended to ensure protections for what may essentially be indefinite storage of hazardous wastes, while accumulation at Performance Track generator facilities will be limited to 180 (or in some cases 270) days.

Because secondary containment involves the use of devices such as berms or walls to prevent releases (*see* § 264.175), which are generally consistent with normal industry practices for handling and storage of hazardous materials, we believe that this secondary containment requirement will impose only minimal costs on Performance Track facilities. EPA solicits information regarding incremental compliance costs and benefits associated with the secondary containment requirement in this proposed rule.

There is currently an upper bound estimate of 43 facilities in the Performance Track program to which secondary containment provisions could apply. Cost estimates for installing secondary containment, if necessary, are based on the costs of installing secondary containment for tanks. Estimated installation costs range from $1,200 for 275-gallon tanks to $55,000 for 125,000 gallon tanks.[1] These estimates, however, are likely to represent an upper bound cost for containers, since construction of a secondary containment system for containers, such as a berm, is likely to be less than that required for tanks. The extent of total costs depends on how many Performance Track generators use containers holding solid hazardous wastes that would not presently have secondary containment units. Notable however, is anecdotal information that many of these facilities already have secondary containment installed at their facilities. EPA solicits comment on how many Performance Track facilities currently have secondary containment installed for containers.

Volume Limit. Under proposed § 262.34(j)(4), member generators would be allowed to accumulate no more than 30,000 kilograms of hazardous waste at the facility at any one time. The Agency has information that the typical capacity for a hazardous waste truck transport vehicle ranges from an average of approximately 16,400 kg to a maximum of approximately 27,300 kg.[2] In addition, generators shipping hazardous waste by rail may have capacities of approximately 50,000 kg.[3] Based on this preliminary information, EPA believes that a 30,000 kg waste accumulation limit is reasonable and appropriate in ensuring economical shipments of wastes in a wide range of transport vehicle sizes. We seek comment on this provision of today's proposal, as well as relevant information on: (a) The capacities of vehicles involved in hazardous waste shipping; (b) the likely impacts of less frequent shipments on the risks of spills and leaks at hazardous waste generating facilities and in the transport process; (c) the cost impacts of such changes—both transportation-related and other operational costs; and (d) other pros and cons of quantity limits larger or smaller than the 30,000 kilograms that we are proposing today.

Recordkeeping, Labeling and Marking. Proposed § 262.34(j)(5) specifies the types of records that program members would need to maintain at their facilities as a condition for extended accumulation times. These records are primarily intended to document that the accumulation time limits are not exceeded. Retaining these records is a standard requirement for all LQGs of hazardous waste.

Similarly, § 262.24(j)(6) would require that tanks and container units used for extended accumulation be marked or labeled with the words "Hazardous Waste", and containers would have to be marked to indicate when the accumulation period began. These are also standard conditions for hazardous waste generators, and are specified in this rule mainly for the sake of clarity.

General Facility Standards. Under current regulations, all hazardous waste generators are subject to certain general facility standards relating to personnel training, preparedness and prevention, and contingency plans and emergency procedures. These general facility requirements would also apply to Performance Track generators, and have been included in this rule for the sake of clarity.

Pollution Prevention. Under today's proposal Performance Track facilities would have to implement pollution prevention practices as a condition for using extended accumulation times. This condition is consistent with the Agency's general policy of encouraging waste minimization and pollution prevention as alternatives to disposal. It is also consistent with our goal of using Performance Track to recognize and encourage outstanding environmental performance. We seek comment on this condition. We also request comments on whether extended accumulation times for Performance Track generators should in some way be linked to achieving reductions of certain types of high-risk chemicals (*e.g.*, RCRA Waste Minimization Priority Chemicals that are known to be highly persistent, bioaccumulative, and toxic). For a list of these priority chemicals, *see http://www.epa.gov/epaoswer/hazwaste/minimize/chemlist/pdt-fact.pdf.*

Annual Report. Under proposed § 262.34(j)(9), Performance Track generators accumulating their hazardous waste for more than 90 days would be required to provide information regarding the impact of the additional accumulation time. This information would be submitted in the Annual Performance Report which is required of all Performance Track members (*see www.epa.gov/performancetrack*, or the document entitled "National Environmental Performance Track Program Guide," EPA 240–F–01–002). Specifically, the report would need to include for the previous year information on the quantity of each hazardous waste that was accumulated for extended time periods, the number of off-site waste shipments, identification of destination facilities and how the wastes were managed at those facilities, information on the impact of extended accumulation time limits on the facility's operations (including any cost savings that may have occurred), and information on any on-site or off-site spills or other environmental problems associated with handling these wastes. The information submitted in these reports will assist the Agency in evaluating the success of this Performance Track program incentive, and may inform future Agency decisions pertaining to hazardous waste accumulation.

In accordance with today's rule, if in the past year a Performance Track generator accumulated hazardous waste for more than 180 days (but no more than 270 days), the generator would have to include in its Annual Performance Report a statement affirming that an appropriate off-site hazardous waste management facility was at the time (or is still) not available within 200 miles of the generating facility. This condition is intended to help ensure against any potential abuse of the provision that allows accumulation beyond 180 days under certain circumstances.

EPA believes that these annual reporting requirements are reasonable, and should not create undue burdens for Performance Track members. We solicit comments on these requirements of the proposed rule, including

[1] DPRA, Incorporated, "Unit Cost Compendium" prepared for U.S. EPA's Office of Solid Waste, Economics, Methods, and Risk Analysis Division, September 30, 2000 presents formulas for estimating the capital costs of installing secondary containment units for above ground storage tanks.

[2] Unit Cost Compendium, prepared by DPRA Incorporated, for USEPA, Office of Solid Waste, September 30, 2000 and personal communication with DPRA.

[3] Rail car capacities vary depending on whether the transport unit is a rail box car (from 160 cubic yards to 370-cubic yards), a rail gondola (from 15 cubic yards to 262 cubic yards), or a rail tanker (22,000 gallons), R.S. Means, Environmental Remediation Estimating Methods, 1997. In general, one cubic yard of solid equals 1.5 tons and one cubic yard of liquid equals 1 ton.

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comments on how burdensome such reporting might be to program members, and whether there may be other means of obtaining the information EPA will need for monitoring the success of the Performance Track program.

Accumulation Time Extensions. Today's proposal would also add a new paragraph (k) to § 262.34, to address extensions of accumulation time limits in certain situations. This provision is consistent with the current regulations that apply generally to LQGs (*see* § 262.34(b)), and has been included in today's proposal for the sake of clarity. Specifically, it would allow the overseeing agency the option of granting a Performance Track generator an additional 30 days of accumulation time, if such extra time is needed due to unforseen, temporary and uncontrollable circumstances. We expect that requests for such time extensions would be reviewed and approved (or disapproved) in the same manner as they currently are for non-Performance Track LQGs.

Withdrawal/Termination from Program. Proposed § 262.34(l) would address situations in which a Performance Track facility that has been accumulating hazardous wastes for extended periods of time under these regulations decides to withdraw from the program, or when the overseeing agency has for some reason decided to terminate the generator's membership in the program. In such cases the generator would need to return to compliance as soon as possible, but no later than six months after withdrawal or termination, with the standard requirements for less-than-90-day accumulation by large quantity generators.

4. How Will Today's Proposal Affect Applicability of RCRA Rules in Authorized States?

Under section 3006 of RCRA, EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State in lieu of the federal program, and to issue and enforce permits in the State. (*See* 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, a State continues to have enforcement responsibilities under its law to pursue violations of its hazardous waste program. EPA continues to have independent authority under RCRA sections 3007, 3008, 3013, and 7003.

After authorization, Federal rules written under RCRA provisions that predate the Hazardous and Solid Waste Amendments of 1984 (HSWA), no longer apply in the authorized state. New Federal requirements imposed by those rules that predate HSWA do not take effect in an authorized State until the State adopts the requirements as State law.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in non-authorized States. EPA is directed to carry out HSWA requirements and prohibitions in authorized States until the State is granted authorization to do so.

Today's proposed rule would not be promulgated under HSWA authorities. Consequently, the final rule would not amend the authorized program for states upon promulgation, and EPA would not implement the rule. The authorized RCRA program would change when EPA approves a State's application for a revision to its RCRA program.

For the proposed Performance Track Rule, EPA would encourage States to expeditiously adopt Performance Track regulations and begin program implementation. To revise the federally-authorized RCRA program, States would need to seek formal authorization for the Performance Track Rule after program implementation. EPA encourages states to begin implementing this incentive as soon as it is allowable under state law, while the RCRA authorization process proceeds.[4]

III. Other Potential Incentives: Consolidated Reporting

The program description for Performance Track (*www.epa.gov/performancetrack*) announces EPA's intention to initiate a pilot test of consolidated reporting, to be available for Performance Track facilities, as an incentive to encourage membership. Consolidated reporting would allow facilities to reduce the number or scope of reports submitted to EPA or its delegated authority under current regulations. It could provide for reductions or revisions in reporting elements or the submission of a single report in lieu of several reports now required by regulation. In addition, consolidated reporting could be designed to increase the extent to which environmental reporting could be integrated with the data systems facilities use to manage their manufacturing operations, thus reducing to some extent the need for environmental reporting data systems entirely separate from other data systems at the facility. From the public's perspective, such a revision of reporting requirements could also provide for more effective and transparent communication of information about a facility's environmental performance, within the constraints necessary for protecting confidential business information.

EPA has explored approaches to consolidated reporting with a variety of stakeholders. For example, under the Common Sense Initiative (CSI), the Agency made considerable progress in developing options for consolidated reporting on a multimedia basis for the computer and electronics industry. Since the Common Sense Initiative, EPA has continued to work with the petroleum refining industry to develop a consolidated reporting model focused on air reporting, with the long-term objective of expanding the approach on a multi-media basis.

EPA believes that the Performance Track provides a special opportunity to further explore the potential benefits of consolidated reporting. EPA believes that the Performance Track facilities would be an appropriate group for piloting an approach to consolidated reporting because these facilities are required to have well-developed environmental management systems and excellent compliance records. These qualifications indicate that a facility has a high level of organizational competence and a capacity to manage environmental data. Both of these factors are important because a consolidated reporting project will touch on several areas of regulation. In addition, a Performance Track facility's commitment to public reporting indicates an openness with regard to information sharing that can be expected to support the extensive EPA-facility coordination that this pilot would require. A Performance Track facility's commitment to going beyond regulatory requirements also gives evidence of the facility's ability to innovate, which is also a necessary quality in pilot projects.

One possible model for a Performance Track consolidated reporting pilot is the multimedia Consolidated Uniform Report for the Environment (CURE) initiative developed by the CSI consumer and electronics subcommittee. Over the course of more than three years, the subcommittee developed a consolidated reporting approach which would consolidate twelve federal and state reports in a single reporting system. The project was a joint effort of EPA and the Texas Natural Resource Conservation Commission (TNRCC). As CSI concluded in 1998, the subcommittee and the CSI Council recommended that EPA continue the development of CURE. While CURE specifically focuses on the reports which are required for facilities in the computer and electronics sector, the stakeholders who participated saw the application to this sector as a pilot which would provide the opportunity to test a concept which could be applied more broadly. They also focused initially on some of the most generally applicable and broadest types of environmental reports, but the final report points out the potential—once a CURE pilot is underway—for exploring consolidation of a far wider array of data than is captured under the final draft report on CURE. Nonetheless, a system modeled on CURE would be a dramatic step towards a consolidated multi-media reporting system. It could potentially both substantially reduce the reporting burden for member facilities and increase both the accessibility and comprehensibility of facility information available to the public.

CURE tried to eliminate redundancies, to use "smart" programs to guide data submission, to create greater context for understanding of the data, and to provide for electronic submission to reduce and improve reporting. It reduced more than 800 data elements in current reports to approximately 400—including new data elements agreed to by stakeholders to facilitate better interpretation of the data. Five facilities tested a partial prototype of CURE in 1998. The CURE study estimated annual total savings of $250,000–$290,000 would be realized if most of the computer and electronics facilities in Texas could take advantage of such consolidated reporting.

There are, however, some limitations to the use of CURE as the model for a consolidated reporting pilot for Performance Track facilities:

- CURE focuses only on those reports of specific interest to computer and electronics facilities. To expand the CURE model for applicability to other sectors would require extensive additional effort, both by EPA and the states.
- Since CURE was developed in the context of Texas rules, additional work would need to be done both by EPA and the states, even for reports for the computer and electronics industry, to develop the model more fully for other states.
- There were a number of areas in which the CURE working group failed to reach consensus, which would require additional decisions. For example, the working group failed to reach agreement as to whether materials accounting data elements should be included, even on a voluntary reporting basis, within the CURE reporting system.
- While the CURE model covers many environmental reports commonly required of industrial facilities, it does not cover all reports. Many facilities would find that the CURE report model would substitute for several separate standard reports, but that they would still need to file additional reports to state or EPA offices for reporting obligations that are not covered by this consolidated report.

We have included additional information in the docket on the CURE study and how it might function as a pilot program.

EPA seeks comment on how best to establish a pilot consolidated reporting program for the Performance Track. EPA is particularly interested in which Performance Track applicants (and the States where they are located) would be interested in participating in a Consolidated Reporting Pilot. This would help EPA further define the scope for such a pilot program and the need for regulatory changes (both at the Federal and the State levels) necessary to implement consolidated reporting. In addition, EPA is interested in suggestions on the elements of a consolidated reporting system that would be most critical to Performance Track members, and how comprehensive the scope of such a pilot should be for facilities to benefit from participating in the pilot.

In order to meet the requirement that the party submitting the report be in a position to attest to the accuracy of the information reported, EPA expects that the person submitting the report will be required to be in a position to have such knowledge, and/ or would be required to attest to such knowledge in making the report. EPA solicits comment on how best to accomplish this goal.

EPA believes that it must promulgate at least some regulatory changes to make it possible for such a pilot program to take place. The scope and content of such changes would depend on the particular reports that would be included in such a pilot. We solicit comments on this. Commenters should also be aware that some States may have to modify existing regulations to permit facilities to use the consolidated reporting option. In some jurisdictions, permits may have to be amended before facilities may take advantage of this option. EPA is committed to consulting with the States on ways to tailor the consolidated reports to their needs and requirements. Potential members should consider how the pilot program would benefit them in spite of the existence of conflicting statutory or regulatory reporting due dates. EPA invites comments on this issue.

IV. Summary of Environmental, Energy and Economic Impacts

A. What Are the Cost and Economic Impacts?

The rulemaking changes being proposed today will reduce some reporting and other compliance costs for the covered facilities. Most of these cost reductions result from reduced waste management costs or reduced respondent reporting burden hours, so these proposed changes also reduce the total number of such hours resulting from EPA's regulatory programs.

EPA has completed the first three open enrollment periods for the Performance Track program. This resulted in a total of 281 facilities (mostly industrial facilities, but also a number of facilities in the service sector, several federal facilities and POTWs). Because EPA plans to solicit and to accept additional facilities into the program, it is not possible to project the cost and burden hour reductions with complete accuracy. Another factor that hinders such projections is that, just as membership in Performance Track is voluntary, it is up to the facilities themselves to decide which incentives apply to them and which to avail themselves of.

Maximum Achievable Control Technology: We estimate that there are approximately 12 current Performance Track facilities that may be eligible for the rule change. For these facilities with emissions of HAPs that are lower than the 25 ton per year aggregate or the 10 ton per year limit for an individual HAP, they may be able to submit a simplified annual report rather than multiple periodic reports. If we assume an average reduction of one periodic report per year (estimated to require an average of 25.5 labor hours), the cost savings per facility equals $1307. In the aggregate, we estimate a total cost savings for the 12 Performance Track facilities of $15,680 annually and a total reduction of 306 labor hours.

Alternative Environmental Performance-Based Incentives for POTWs in the Performance Track: Currently there is one POTW in the Performance Track program. To implement this incentive, it is estimated that a POTW would incur, on a one-time basis, 47 hours and $1837 in costs to request the pretreatment program modification required to use this incentive, publish the public notification of a change in the public

[4] EPA encourages states to take this approach for less stringent federal requirements where rapid implementation is important. For example, EPA encouraged states to implement state Corrective Action Management Unit Regulations, once adopted as a matter of state law, prior to authorization (see 58 FR 8677, February 16, 1993).

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notice procedures to website posting, and a certification to the Approving Authority that the pretreatment annual report had been posted on its website. No net savings or costs are anticipated from the rule revision that allows POTWs to publish the list of SIUs in SNC annually on a website instead of in the newspaper, in part because any SNC that continues past 30 days will still need to be published in the newspaper. Any cost savings resulting from less newspaper text may be netted out by the additional costs of preparing the list for website publication. Similarly, the rule revisions that allow publication of the annual POTW report on the web and submitting the written report every other year to EPA or the state agency and the publication of modifications to pretreatment programs on the web are not likely to result in any cost savings. Lastly, it is difficult at this point to quantify the potential cost savings that could result by allowing POTWs to reclassify as "nonsignificant" CIUs which have no reasonable potential to adversely affect the POTW or to violate any applicable EPA pretreatment standard, and that have not been in noncompliance for the past three years. The net effect of this provision depends to a significant degree on the number and type of CIUs served by the POTW. We estimate that, for State and local authorities, some such authorities will need to spend time and money adopting revisions to their regulations to conform with the rulemaking changes we propose today and to re-open and re-issue permits to Performance Track facilities earlier than they would otherwise. However, these are primarily one-time costs, and we estimate that there will be long-term benefits from the simplifications we propose for reporting by POTWs and the reclassification of CIUs determined to be "nonsignificant."

180-Day Accumulation Time for Performance Track Hazardous Waste Generators: Potential aggregate transport cost savings for Performance Track member facilities that accumulate hazardous waste up to 180 days range from $14,900 to $77,100 per year, depending on the type of waste (*i.e.*, liquid or solid) and the distance the waste is transported.[5] The extent of savings depends on how many Performance Track generators are likely to take advantage of the provision. It is expected that Performance Track generators would only take advantage of this provision if it enables them to accumulate their wastes more efficiently and at a reduced cost. Although there is likely to be some reduction in labor hours for the Performance Track facilities, we do not anticipate it to be significant as most of the labor is included in the transporter's fees. Additional cost savings that have not been quantified are likely to result from costs associated with the handling and/or storage of hazardous waste, reduced pick-up costs, the reduced need for rush procurements, and a reduction in mobilization fees.

There may be additional costs for installation of secondary containment. There is currently an upper bound estimate of 43 facilities in the Performance Track program to which secondary containment provisions could apply. Cost estimates for installing secondary containment, if necessary, are based on the costs of installing secondary containment for tanks. Such costs range from $1,200 for 275-gallon tanks to $55,000 for 125,000 gallon tanks. The extent of costs depends on how many Performance Track generators use containers holding solid hazardous wastes that would not presently have secondary containment units. These estimates, however, are likely to represent an upper bound cost for containers, since construction of a secondary containment area for containers, such as a berm, is likely to be less than that required for tanks.[6] The extent of total costs depends on how many Performance Track generators use containers holding solid hazardous wastes that would not presently have secondary containment units.

Total Estimated Impact of Proposed Rule on Costs and Labor Hours

The total economic impact of the proposed rule for Performance Track facilities is estimated to range between a savings of $18,170 to $73,780, and between 40 and 119 labor hours on an annual basis depending on the number of facilities eligible for the rule and whether such facilities elect to avail themselves of the incentives. This estimate excludes the cost of secondary containment units because of the uncertainty associated with how many Performance Track facilities will need to install such units. Not all of these savings will be available immediately upon promulgation of this rulemaking because of the other actions necessary to make these incentives available to facilities. We estimate that the full resource savings described above will begin to be realized about two years after this rulemaking's promulgation or after the relevant state rule revisions are promulgated. Finally, these rulemaking changes will result in some increased costs for State/local agencies and EPA.

B. What Are the Health, Environmental and Energy Impacts?

We expect that there will be no adverse effects on the environment from the direct impacts of these rulemaking changes. As we discussed above, most of these changes relate to reporting, and do not in any way loosen the underlying environmental obligations of the Performance Track facilities. We expect that the reporting changes will not result in any of these facilities becoming more lax in their diligence.

EPA believes that its refocus of resources may lead to additional environmental compliance. Public recognition and reporting requirement relief, to the extent that they affect companies' bottom lines, may influence company decisions to undertake regulatory projects that go beyond regulatory requirements. The public will be able to judge the nature and magnitude of these environmental benefits by examining the annual reports that Performance Track facilities are required to prepare and make public.

V. Solicitation of Comments and Public Participation

We would like to have full public participation in arriving at our final decisions, and we encourage comment on all aspects of this proposal from all interested parties. Interested parties should submit supporting data and detailed analyses with their comments so we can make maximum use of them. Information on where and when to submit comments is listed in "Comments" under the **ADDRESSES** and **DATES** sections. Information on procedures for submitting proprietary information in the comments is listed in "Comments" under the **SUPPLEMENTARY INFORMATION** section.

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

The total economic impact of the proposed rule for Performance Track facilities is estimated to range between a savings of $18,170 to $73,780, and between 40 and 119 labor hours on an annual basis depending on the number of facilities eligible for the rule and whether such facilities elect to avail themselves of the incentives. Not all of these savings will be available immediately upon promulgation of this rulemaking because of the other actions necessary to make these incentives available to facilities. The cost savings estimated for this proposed rulemaking could potentially be impacted (and result in total costs, not savings for the rulemaking) by any installation costs associated with installation of secondary containment. As noted in section IV A, secondary containment costs are not included in total rule cost savings estimate because of the uncertainty associated with how many Performance Track facilities will need to install such units.

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule provides incentives that states can adopt to provide benefits to their state member facilities in the National Performance Track program. As a voluntary program, Performance Track allows states the option to adopt the provisions in this rule. Thus, Executive Order 13132 does not apply to this rule.

Stakeholders, including many states, were consulted during the development of the Performance Track Program. Many suggestions and ideas generated by states and other stakeholders provided the basis for some of the provisions in this rule. The stakeholder involvement process undertaken is fully discussed in Section I B of this document. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

C. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Any effects that Tribes may accrue from this rule will result in cost savings. Thus, Executive Order 13175 does not apply to this rule. Stakeholder involvement is discussed in Section I B of this document. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to the provisions of this rulemaking.

E. Executive Order 13211 (Energy Effects)

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 04–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may

[5] Memorandum dated March 6, 2002 from Industrial Economics, Incorporated to EPA's Office of Policy, Economics, and Innovation.

[6] DPRA, Incorporated, "Unit Cost Compendium" prepared for U.S. EPA's Office of Solid Waste, Economics, Methods, and Risk Analysis Division, September 30, 2000 presents formulas for estimating the capital costs of installing secondary containment units for above ground storage tanks.

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result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Participation by facilities in the Performance Track is voluntary, and so is participation by state or local government agencies. There are no significant or unique effects on State, local, or tribal governments, however there may be some minor effects incurred by these entities. EPA projects these costs to be very low. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Nevertheless, as discussed in section I B and elsewhere, EPA did engage these stakeholders in the process of developing the National Environmental Performance Track Program.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to the Small Business Administration definition for the business's NAICS code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's rule will relieve regulatory burden and result in cost savings to entities, including any small entities, that are members of the Performance Track Program, so there will be no adverse impacts on small entities. Many small entities (both businesses and governments) and their association representatives were invited to, and attended, the public hearings we conducted early in 2000 on the design of the Performance Track program. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

H. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1922.01), and a copy may be obtained from Susan Auby by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Avenue NW., Washington, DC 20460, by email at *auby.susan@epa.gov*, or by calling (202) 566–1672. You may also download a copy from the Internet at *http://www.epa.gov/icr*.

The total economic impact of the proposed rule for Performance Track facilities is estimated to range between a savings of $18,170 to $73,780, and between 40 and 119 labor hours on an annual basis depending on the number of facilities eligible for the rule and whether such facilities elect to avail themselves of the incentives. Not all of these savings will be available immediately upon promulgation of this rulemaking because of the other actions necessary to make these incentives available to facilities. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: (1) Review instructions; (2) develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; (3) adjust the existing ways to comply with any previously applicable instructions and requirements; (4) train personnel to be able to respond to a collection of information; (5) search data sources; (6) complete and review the collection of information; and (7) transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Submit requests to present oral testimony on or before September 25, 2002. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 13, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by September 12, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory and procurement activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Thus, the provisions of NTTAA do not apply to this rulemaking and EPA is not considering the use of any voluntary consensus standards. We welcome comments on this aspect of the proposed rulemaking and, specifically, invite the public to identify potentially-applicable voluntary consensus standards and to explain why EPA should use such standards in this regulation.

List of Subjects

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 403

Environmental protection, Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: July 30, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, parts 63, 262 and 403 of title 40, chapter I of the Code of the Federal Regulations are proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart A—[Amended]

2. Section 63.2 is amended by adding in alphabetical order definitions of "Periodic report," "Pollution prevention," "Source in the performance track" and "Source reduction" to read as follows:

§ 63.2 Definitions.

* * * * *

Periodic report means the report of all information which is required to be reported on a periodic basis, including, but not limited to, monitoring information and required recordkeeping, as well as summaries of event-related reports.

* * * * *

Pollution prevention means "source reduction," as defined under the Pollution Prevention Act (42 U.S.C. 13102), and other practices that reduce or eliminate the creation of pollutants through: increased efficiency in the use of raw materials, energy, water, or other resources, or protection of natural resources by conservation.

Source reduction, as defined in the Pollution Prevention Act means any practice which: reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants. The term includes: equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

* * * * *

Source in the Performance Track means a source which has been accepted by EPA for membership in the Performance Track Program (as described in www.epa.gov/performancetrack, formerly known as the Achievement Track Program) and is still a member of the program. The Performance Track program is a voluntary public-private partnership that encourages continuous environmental improvement through the use of environmental management systems, local community outreach, and measurable results.

* * * * *

3. Section 63.10 is amended by:

a. Revising paragraph (d)(1); and

b. Adding paragraph (e)(3)(i)(D).

The revision and addition read as follows:

§ 63.10 Recordkeeping and reporting requirements.

* * * * *

(d) * * *

(1) Notwithstanding the requirements in this paragraph or paragraph (e) of this section, and except as provided in § 63.16, the owner or operator of an affected source subject to reporting requirements under this part shall submit reports to the Administrator in accordance with the reporting requirements in the relevant standard(s).

* * * * *

(e) * * *

(3) * * *

(i) * * *

(D) The affected source is complying with the Performance Track provisions of § 63.16, which allows less frequent reporting.

* * * * *

4. Section 63.16 is added to Subpart A and reads as follows:

§ 63.16 Performance track provisions.

(a) Notwithstanding any other requirements in this part, an affected source at any major source or any area source that is a member of the Performance Track, which is subject to regular periodic reporting under any subpart of this part, may submit such periodic reports at an interval that is twice the length of the regular period specified in the applicable subparts; provided, that for sources subject to permits under 40 CFR part 70 or 71 no interval so calculated for any report of the results of any required monitoring may be less frequent than once in every

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six months. (b) Notwithstanding any other requirements in this part, the following modifications of reporting requirements apply to any major source that is a member of Performance Track which is subject to requirements under any of the subparts of this part and which has: (1) Reduced its total HAP emissions to less than 25 tons per year;

(2) Reduced its emissions of any individual HAP to less than 10 tons per year; and (3) Reduced emissions of all HAPs covered by each MACT standard to at least the level required by full compliance with the applicable emission standard. (c) For affected sources at any area source member of Performance Track and which meet the requirements of paragraph (b)(3) of this section, or for affected sources at any major source that meet the requirements of paragraph (b) of this section:

(1) If the emission standard to which the affected source is subject is based on add-on control technology, and the affected source complies by using add-on control technology, then all required reporting elements in the periodic report may be met through an annual certification that the affected source is meeting the emission standard by continuing to use that control technology. The affected source must continue to meet all relevant monitoring and recordkeeping requirements. The compliance certification must meet the requirements delineated in Clean Air Act Section 114(a)(3).

(2) If the emission standard to which the affected source is subject is based on add-on control technology, and the affected source complies by using pollution prevention, then all required reporting elements in the periodic report may be met through an annual certification that the affected source is continuing to use pollution prevention to reduce HAP emissions to levels at or below those required by the applicable emission standard. The affected source must maintain records of all calculations that demonstrate the level of HAP emissions required by the emission standard as well as the level of HAP emissions achieved by the affected source. The affected source must continue to meet all relevant monitoring and recordkeeping requirements. The compliance certification must meet the requirements delineated in Clean Air Act Section 114(a)(3).

(3) If the emission standard to which the affected source is subject is based on pollution prevention, and the affected source complies by using pollution prevention and reduces emissions by an additional 50 percent or greater than required by the applicable emission standard, then all required reporting elements in the periodic report may be met through an annual certification that the affected source is continuing to use pollution prevention to reduce HAP emissions by an additional 50 percent or greater than required by the applicable emission standard. The affected source must maintain records of all calculations that demonstrate the level of HAP emissions required by the emission standard as well as the level of HAP emissions achieved by the affected source. The affected source must continue to meet all relevant monitoring and recordkeeping requirements. The compliance certification must meet the requirements delineated in Clean Air Act Section 114(a)(3).

(4) Notwithstanding the provisions of paragraphs (c)(1) through (3), of this section, for sources subject to permits under 40 CFR part 70 or 71, the results of any required monitoring and recordkeeping must be reported not less frequently than once in every six months.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

2. Section 262.34 is amended by adding paragraphs (j), (k), and (l) to read as follows:

§ 262.34 Accumulation time.

* * * * *

(j) A generator member of the Performance Track Program, a voluntary public-private partnership that encourages continuous environmental improvement through the use of environmental management systems, local community outreach, and measurable results (as described at *www.epa.gov/performancetrack*, formerly known as the Achievement Track Program), who generates 1000 kg or greater of hazardous waste per month (or one kilogram or more of acute hazardous waste) may accumulate hazardous waste on-site without a permit or interim status for an extended period of time, provided that:

(1) The generator accumulates the hazardous waste for no more than 180 days, or for no more than 270 days if the generator must transport the waste (or offer the waste for transport) more than 200 miles from the generating facility; and

(2) The generator first notifies the Regional Administrator and the Director of the authorized State in writing of its intent to begin accumulation of hazardous waste for extended time periods under the provisions of this section. Such advance notice must include:

(i) Name and EPA ID number of the facility, and specification of when the facility will begin accumulation of hazardous wastes for extended periods of time in accordance with this section; and

(ii) A description of the types of hazardous wastes that will be accumulated for extended periods of time, and the units that will be used for such extended accumulation; and

(iii) A statement that the facility has made all changes to its operations, procedures, including emergency preparedness procedures, and equipment, including equipment needed for emergency preparedness, that will be necessary to accommodate extended time periods for accumulating hazardous wastes; and

(iv) If the generator intends to accumulate hazardous wastes on-site for up to 270 days, a certification that an appropriate off-site hazardous waste management facility is not available within 200 miles of the generating facility; and

(3) The waste is managed in:

(i) Containers, in accordance with the applicable requirements of subparts I, AA, BB, and CC of 40 CFR part 265 and 40 CFR 264.175; or

(ii) Tanks, in accordance with the applicable requirements of subparts J, AA, BB, and CC of 40 CFR part 265, except for §§ 265.197(c) and 265.200; or

(iii) Drip pads, in accordance with subpart W of 40 CFR part 265; or

(iv) Containment buildings, in accordance with subpart DD of 40 CFR part 265; and

(4) The volume of hazardous waste that is accumulated for extended time periods at the facility does not exceed 30,000 kg; and

(5) The generator maintains the following records at the facility for each unit used for extended accumulation times:

(i) A written description of procedures to ensure that each waste volume remains in the unit for no more than 180 days (or 270 days, as applicable), a description of the waste generation and management practices at the facility showing that they are consistent with respecting the extended accumulation time limit, and documentation that the procedures are complied with; or

(ii) Documentation that the unit is emptied at least once every 180 days (or 270 days, if applicable); and

(6) Each container or tank that is used for extended accumulation time periods is labeled or marked clearly with the words "Hazardous Waste", and for each container the date upon which each period of accumulation begins is clearly marked and visible for inspection; and

(7) The generator complies with the requirements for owners and operators in subparts C and D in 40 CFR part 265, with § 265.16, and with § 268.7(a)(5). In addition, such a generator is exempt from all the requirements in subparts G and H of part 265 of this chapter, except for § 265.111 and § 265.114; and

(8) The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants or contaminants released to the environment prior to its recycling, treatment or disposal; and

(9) The generator includes the following in its Performance Track Annual Performance Report, which must be submitted to the Regional Administrator and the Director of the authorized State:

(i) Information on the total quantity of each hazardous waste generated at the facility that has been managed in the previous year according to extended accumulation time periods; and

(ii) Information for the previous year on the number of off-site shipments of hazardous wastes generated at the facility, the types and locations of destination facilities, how the wastes were managed at the destination facilities (*e.g.*, recycling, treatment, storage or disposal), and what changes in on-site or off-site waste management practices have occurred as a result of extended accumulation times or other pollution prevention provisions of this section; and

(iii) Information for the previous year on any hazardous waste spills or accidents occurring at or from extended accumulation units at the facility, or during off-site transport of accumulated wastes; and

(iv) If the generator has accumulated hazardous wastes on-site for more than 180 days but less than 270 days, a certification affirming that an appropriate off-site hazardous waste management facility is not available within 200 miles of the generating facility; and

(k) If hazardous wastes must remain on-site at a Performance Track member facility for longer than 180 days (or 270 days, if applicable) due to unforseen, temporary and uncontrollable circumstances, an extension to the extended accumulation time period of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(l) If a generator who is a member of the Performance Track Program withdraws from the Performance Track Program, or if the Regional Administrator terminates a generator's membership, the generator must return to compliance with all otherwise applicable hazardous waste regulations as soon as possible, but no later than six months after the date of withdrawal or termination.

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

1. The authority for part 403 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 403.3 is amended by revising paragraph (t)(2) to read as follows:

§ 403.3 Definitions.

* * * * *

(t) * * *

(2) Upon a finding that an industrial user meeting the criteria in paragraph (t)(1)(i) or (t)(1)(ii) of this section has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Control Authority (as defined in § 403.12(a)) may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with § 403.8(f)(6), determine that such industrial user is not a significant industrial user. The Control Authority may not determine that any industrial user meeting the criteria in paragraph (t)(1)(i) of this section is not a significant industrial user if the industrial user has been in noncompliance at any point during the 3 years preceding a potential determination.

* * * * *

3. Section 403.21 is added to read as follows:

§ 403.21 Pretreatment Program Under National Environmental Performance Track Program.

The Approval Authority may authorize a POTW that is a member of the National Environmental Performance Track Program, a voluntary public-private partnership that encourages continuous environmental improvement through the use of environmental management systems, local community outreach, and measurable results (as described at *www.epa.gov/performancetrack*, formerly known as the Achievement Track Program), to adopt legal authorities and requirements that are different from the requirements otherwise applicable under this part. The POTW must submit any such alternative requirements as a substantial program modification for approval by the Approval Authority in accordance with the procedures outlined in § 403.18. The Approval Authority must approve the modified program and include it as an enforceable provision of the POTW's NPDES permit before the POTW can implement any such modification. The Approval Authority must include a reopener clause in the POTW's NPDES permit that directs the POTW to discontinue implementing the approved alternative requirements and resume implementation of its previously approved pretreatment program, if the POTW no longer meets the eligibility criteria for the National Environmental Performance Track Program. The Approval Authority may authorize adoption of the following alternative requirements:

(a) A POTW that is a member of the National Environmental Performance Track Program may adopt an alternative approach to the requirement of § 403.8(f)(2)(vii) for a POTW to publish at least annually notification of Industrial Users (IUS) which were in significant noncompliance with pretreatment requirements (SNC) at any time during the previous twelve months. Under this alternative approach, the following is required:

(1) The POTW must adequately notify the public of the change in the public notice procedures;

(2) The POTW must annually public notice all IUS in SNC (as determined under § 403.8(f)(2)(vii)) on a website maintained and managed by the Control Authority. Notice of the violation must remain posted at this site for a period of no less than thirty days. The POTW must post an explanation of how SNC is determined, along with a contact name and phone number for information;

(3) The POTW must keep historic compliance data for all IUS on the website beginning with the first website publication. This historic compliance data must be easy to access, well-documented, and continual;

(4) If a violation is not corrected within thirty (30) calendar days, or if a violation results in pass through or interference, the POTW must also annually provide the newspaper public notice for these violations in the format specified in § 403.8(f)(2)(vii);

(5) The POTW must certify as part of its annual report required by § 403.12(i) that it posted the SNC data and the historic compliance data on the website; and

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(6) The POTW must provide a hard copy of the public notice to the EPA, State, or public upon request.

(b) A POTW that is a member of the National Environmental Performance Track Program may take an alternative approach to the requirements of §§ 403.11 and 403.18 for public notification of modifications to approved pretreatment programs. Under this alternative approach, the following is required:

(1) The POTW must adequately notify the public of the change in public notice procedures;

(2) The POTW must post its public notice of program modifications under §§ 403.11 and 403.18 on a website maintained and managed by the Control Authority; and

(3) The POTW must provide a hard copy of the public notice to the EPA, State, or public upon request.

(c) A POTW that is a member of the National Environmental Performance Track Program may take an alternative approach to submitting its annual report under § 403.12 (i). Under this alternative approach, the following is required:

(1) The POTW must annually post their annual report (§ 403.12(i)) on a website maintained and managed by the Control Authority;

(2) The information must remain accessible as part of the website for at least three years;

(3) The POTW must provide written notice to the Approval Authority within five days of posting the annual report on the website. This notice must include a certification consistent with the certification language provided in 40 CFR 122.22(d) by an official attesting to the accuracy of the submitted information;

(4) Every other year, the POTW must submit a written report to the Approval Authority. The report must include specific information for only those SIUs found to be in significant noncompliance (SNC) during the reporting period instead of a summary of the status of all IU compliance over the reporting period; and

(5) The POTW must provide a written copy of the annual report containing all information currently required under § 403.12(i) to the EPA, State, or public upon request.

(d) A POTW that is a member of the National Environmental Performance Track Program shall prepare and maintain a list of its industrial users meeting the criteria in paragraph (a) of this section. The list shall identify the criteria in paragraph (a) of this section applicable to each industrial user and, where applicable, shall also indicate whether the POTW has made a determination pursuant to § 403.3 (t)(2) that such industrial user should not be considered a significant industrial user. The initial list shall be submitted to the Approval Authority pursuant to § 403.9 or as a non-substantial modification pursuant to § 403.18(b)(2). Modifications to the list shall be submitted to the Approval Authority pursuant to § 403.12(i)(1).

[FR Doc. 02–20347 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–7258–2]

Control of Air Pollution From Motor Vehicles and New Motor Vehicle Engines; Revisions to Regulations Requiring Availability of Information for Use of On-Board Diagnostic Systems and Emission-Related Repairs on 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks and 2005 and Later Model Year Heavy-Duty Vehicles and Engines Weighing 14,000 Pounds Gross Vehicle Weight or Less; Notice of Document Availability

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule, notice of document availability.

SUMMARY: On June 8, 2001, the U.S. Environmental Protection Agency (EPA) published a Notice of Proposed Rulemaking (66 FR 30830) proposing revisions to regulations requiring availability of information for use of on-board diagnostic systems (OBD) and emission-related repairs. One of the proposed changes specified that manufacturers comply with SAE Standardized Practice J2534 for "pass-through reprogramming" for MY 2003 and later OBD-equipped vehicles with reprogramming capabilities. At the time the proposal was issued in June 2001, SAE J2534 had not yet been finalized. In the proposal, EPA committed to issuing a notice of document availability in the **Federal Register** to announce that SAE J2534 had been finalized.

SAE J2534 was finalized in February of 2002 and is now available for inspection only in EPA Air Docket A–2000–49 (*see* **ADDRESSES**). In addition, interested parties can purchase this document directly from the Society of Automotive Engineers (SAE) (*see* **ADDRESSES**).

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–2000–49. The docket is located at The Air Docket, 401 M. Street, SW., Washington, DC 20460, and may be viewed in room M1500 between 8 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 260–7549 and the facsimile number is (202) 260–4400 and the Internet e-mail is *a-and-r-docket@epamail.epa.gov*. A reasonable fee may be charged by EPA for copying docket material.

SAE J2534 can be purchased from the Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096–0001 or at *www.sae.org*.

FOR FURTHER INFORMATION CONTACT: Holly Pugliese, Certification and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, MI 48105, Telephone (734) 214–4288, or Internet e-mail at *pugliese.holly@epa.gov*.

Dated: August 5, 2002.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 02–20451 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 13

Implementation of the Equal Access to Justice Act in Agency Proceedings

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would extend the coverage of the Department's regulation implementing the Equal Access to Justice Act to include adversary administrative adjudications commenced after September 30, 1984. It would also amend the eligibility criteria and certain other aspects of that regulation to conform with amendments to the Act. Finally, it would reflect the separation of the Social Security Administration from HHS, and that component's establishment as an independent agency in 1995.

DATE: HHS will accept comments on this proposed rule through October 12, 2002. The Office of Management and Budget will accept comments on the amendments to §§ 13.10 through 13.12 through the same date.

ADDRESSES: Comments must be in writing. Please send them to: Katherine M. Drews, Acting Associate General Counsel, Business and Administrative Law Division, Room 5362, 330 Independence Ave., SW., Cohen Building, Room 5362, Washington, DC 20201. Please send comments on the amendments to subpart B to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HHS.

FOR FURTHER INFORMATION CONTACT: Katherine M. Drews, Acting Associate General Counsel. Telephone: (202) 619–0150.

SUPPLEMENTARY INFORMATION:

Background

The Equal Access to Justice Act (EAJA), enacted in 1980, requires the Government to pay attorney fees to parties prevailing against it in litigation where the Government's position is not substantially justified. The Act applies to certain types of adversary administrative proceedings and to certain court litigation where attorney fees are not otherwise available.

The EAJA requires each agency to issue rules implementing the Act as it applies to administrative proceedings. The current rule of the Department of Health and Human Services (HHS) was published on October 4, 1983, and is codified at 45 CFR part 13. (All citations below to section 13 are to sections of 45 CFR part 13.)

The original Act had a sunset provision, causing it to expiring on September 30, 1984 (although it would continue to cover proceedings pending on that date). The HHS regulation presently in effect contains a similar sunset provision. A subsequent statutory change eliminated the sunset provision, revised the eligibility criteria for parties, and amended the Act in certain other respects. Public Law No. 99–80, 99 Stat. 183 (1985).

HHS published a Notice of Proposed Rulemaking to revise its EAJA regulation on June 19, 1987 (52 FR 23311). Pursuant to the notice, we received only one set of comments, from the Office of the Chairman of the Administrative Conference of the United States (ACUS), an agency that no longer exists. Since then, the Social Security Administration, certain proceedings of which were addressed in the proposed rule, became an independent agency. *See* Pub. L. No. 103–296, § 101 (codified at 42 U.S.C. 901). Also since than, the EAJA has been amended by section 231 of the Contract with America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996). Because of those changes because substantial time has passed since the initial Notice of Proposed Rulemaking, we are publishing a new Notice of Proposed Rulemaking; this notice replaces the earlier notice. We considered the ACUS comments carefully, and this notice reflects some of those comments. This notice also reflects the changes effected by Pub. L. 104–121. Since the statutory change, we have been processing fee applications under the current regulation except to the extent that the amended statute requires changes.

This proposed rule would amend the existing rule in the following ways:

1. The Act provided for fee shifting only where the agency's position was not substantially justified. Pub. L.; 1–4–121 added a provision of fee shifting where the agency's demand was substantially in excess of the ultimate decision and was unreasonable when compared with decision. The proposed regulation would amend section 13.1, and would revise sections 13.5 and 13.10 (a)(2), to incorporate this new basis for fee awards. Pub. L. 104–121 also added a new category of party that would be eligible for a fee award, though only for awards made based on this excessive and unreasonable demand criterion. The proposed regulation would amend sections 13.4; 13.10(a)(3), (5); and 13.11(a) to the same effect.

2. The Act included a sunset clause, section 203(c), providing that the Act would not apply to administrative adjudications initiated after September 30, 1984. HHS's regulation includes a similar provisions, 45 CFR 13.2. Section 6(b)(1) of Pub. L. 99–80 repealed the sunset provision in the Act. The proposed regulation would similarly amend Section 13.2.

3. Section 13.3 generally provides that we have listed the covered proceedings in the Appendix to the rule. We propose revision this section to provide for situations involving proceedings not listed in the Appendix. The new provision would automatically cover proceedings where the procedural rights are incorporated by reference from certain statutes that we have already determined invoke the Act. It would also allow a party in any other administrative proceeding to file an EAJA application and claim coverage, and have the issue resolved in the resulting proceeding on the fee application.

4. Section 1(c)(1) of Pub. L. 99–80 increased the net worth limitations on parties eligible to recover fees under EAJA. It also added local government units to the categories of eligible entities. Section 7 of Pub. L. 99–80 makes these expanded eligibility criteria applicable to proceedings pending on or after August 5, 1985 (the effective date of that statute), and to proceedings commenced after September 30, 1984 (the sunset date of the original EAJA), even if finally disposed of before August 5, 1985. The proposed regulation would amend Sections 13.3(b) and 13.10(a)(5) to make the same changes with respect to the same categories of cases. The passage of time has made it unnecessary to provide explicitly for older cases. However, for proceedings commenced before October 1, 1984, and finally decided before August 5, 1985, the older eligibility criteria would govern, as follows: Individuals with a net worth of not more than $1 million; sole owners of unincorporated businesses if the owner has a net worth of not more than $5 million, including both personal and business interests, and if the business has no more than 500 employees; and all other partnerships, corporations, associations, or public or private organizations with a net worth of not more than $5 million and with not more than 500 employees.

5. Section 1(c)(3) of Pub. L. 99–80 defines the "position of the agency" to include the action or omission that was the basis for the proceeding, and section 1(a)(1) restricts the analysis of whether that position was substantially justified to the administrative record. The proposed regulation would revise sections 13.5(a) and 13.10(a)(2) likewise, and it would also amend section 13.25(a) to the same end.

6. We no longer take the position that the applicant must have actually paid (or must have actually become obligated to pay) the attorney fees and expenses in order to recover those fees and expenses under EAJA. Accordingly, the proposed regulation would delete the sentence in section 13.6(a) that stated this position.

7. Pub. L. 104–121 increased the allowable hourly rate for fees from $75 to $125. The proposed regulation would amend section 13.6(b) to the same effect.

8. The proposed regulation would amend section 13.12(d) to make clear that the adjudicative officer may require further substantiation of fees as well as expenses.

9. The EAJA and the HHS regulation require the prevailing party to file the fee application within 30 days of the final disposition of the administrative proceeding. 5 U.S.C. 504(a)(2); 45 CFR 13.22(a). Section 7(b) of Pub. L. 99–80 provides that, in cases commenced after September 30, 1984 (the sunset date of the original EAJA), and finally disposed of before August 5, 1985 (the effective date of the new law), this 30-day period runs from the latter date. The proposed

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regulation would amend section 13.22(a) to this effect.

10. Section 1(B) of Pub. L. 99–80 provides that when the Government appeals the merits of a proceeding, any fee application is stayed until the appeal is finally resolved, and it specifies that a court decision is deemed to finally dispose of such an appeal only when that decision is final and unreviewable. There is a similar, but more inclusive, stay provision in section 13.22(d). The proposed regulation would amend sections 13.22(b) and (d) to conform with the statute. The proposed regulation would also revise section 13.23(a) to make clear that, when a fee proceeding is stayed in these circumstances, the agency need answer the fee application only after the final disposition of the underlying controversy.

11. The proposed rule would revise section 13.27 to designate as the review authority on fee decisions the same person or component that would have jurisdiction over an appeal of the merits of the adjudication. It would eliminate as unnecessary the requirement that the appellate authority review fee awards where neither party appeals. It would also revise section 13.27(b) to provide for cross-exceptions to be filed from an initial decision on a fee application.

12. Appendix A to the regulation lists the HHS proceedings that are covered by the regulation if the agency's litigating party enters an appearance and participates. The proposed regulation would revise the appendix to correct descriptions of categories of proceedings, to correct statutory citations for categories of proceedings, to add regulatory citations for categories, and to add new categories of proceedings that are covered.

13. The legislative history of Pub. L. 99–80 contains several references to the Social Security Administration Representation Project, under which SSA representatives participated in certain disability hearings involving Social Security benefits or Supplemental Security Income benefits. That project was discontinued in 1987. *See* 52 FR 17285 (May 7, 1987). We have taken the position that proceedings in that project were not within the scope of the EAJA as originally enacted, and thus Appendix A to the current regulation does not list them. The legislative history of Pub. L. 99–80 evidences the intent of some members of Congress that the EAJA as revised and amended should apply to cases in this project. As noted above, the project has been discontinued, and, in any case, the Social Security Administration is now an independent agency. However, we have determined that the EAJA should be applied to other HHS proceedings for which the statutory entitlement to a hearing rests either on a statute tracking the language of the provision underlying the disability hearings (section 205(b) of the Social Security Act, 42 U.S.C. 405(b)), or on a statute incorporating that provision by reference. Thus, the proposed regulation would add these proceedings to Appendix A.

Economic Impact

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132 (Federalism).

Executive Order 12866 (the Order) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant affects ($100 million or more in any 1 year).

We have determined that the proposed rule is consistent with the principles set forth in the Order, and we also find that the proposed rule would not have economically significant effects. In addition, the rule is not a major rule as defined at 5 USC 804(2). In accordance with the provisions of the Order, this regulation was reviewed by the Office of Management and Budget.

The Secretary certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The basis for the Secretary's certification is that, although small entities are eligible to apply for awards, the regulation will apply only to a small number of the proceedings held by the Department each year, and, in many of those proceedings, there will not be any fee award because the Department's position will be substantially justified or its demand will be reasonable. Also, most of the changes reflected in the regulation are mandated by the statue, so it is the statute rather than the regulation that would have any impact. Finally, the procedures prescribed by the regulation are no more onerous than those imposed by the current rule. In sum, the regulation will have negligible effect on such entities.

The Secretary states, in accordance with section 3(c) of Executive Order 12988 (Civil Justice Reform), that the Department has reviewed this regulatory proposal in light of section 3 of that Order and that the proposal meets the applicable standards in subsections (a) and (b) of that Order.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. As noted above, we find that this proposal would not have an effect of this magnitude on the economy.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under the threshold criteria of Executive order 13132, and we find that there would be no substantial direct effect on the States, on the relationship between the States and the national Government, or on the distribution of power between the levels of government on our federal system. Thus, a federalism impact statement is not required.

Information Collection

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. Subpart B of the proposed 45 CFR part 13 contains collection of information requirements. These collection of information requirements are necessary to carry out the provisions of the EAJA. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

—Whether the information collection is necessary and useful to carry out the proper functions of the agency;
—The accuracy of the agency's estimate of the information collection burden;
—The quality, utility, and clarity of the information to be collected; and
—Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Section 13.10 of the proposed rule contains the requirements for the application for an award of fees and expenses. The burden associated with these requirements is the time and effort necessary for an applicant to prepare and submit the application. On an annual basis it is estimated that it will take 10 applicants 20 hours each to prepare and submit an application. The total annual burden associated with this requirement is 200 hours.

Section 13.11 of the proposed rule contains the requirements for the submission of the applicant's net worth exhibits. The burden associated with these requirements is the time and effort necessary for an applicant to prepare and submit the net worth exhibits. On an annual basis it is estimated that it will take 10 applicants 10 hours each to prepare and submit net worth exhibits. The total annual burden associated with this requirement is 100 hours.

Section 131.12 of the proposed rules contains the requirements for submission of the applicant's documentation of fees and expenses. The burden associated with these requirements is the time and effort necessary for an applicant to prepare and submit the fee and expense documentation. On an annual basis it is estimated that it will take 10 applicants 5 hours each to prepare and submit fee and expense documentation. The total annual burden associated with this requirement is 50 hours.

The Department will submit a copy of this proposed Rule to OMB for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection requirements, please mail copies directly to the following:

Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201; and
Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, ATTN: Allison Eydt, HHS Desk Officer.

List of Subjects in 45 CFR Part 13

Administrative practice and procedure, Claims, Equal access to justice.

For the reasons set out in the preamble, the Secretary proposes to amend 45 CFR part 13 as follows:

1. The authority citation for part 13 is revised to read as follows:

Authority: 5 U.S.C. 504(c)(1).

2. In § 13.1, the third sentence is revised to read as follows:

§ 13.1 Purpose of these rules.

* * * the Department may reimburse parties for expenses incurred in adversary adjudications if the party prevails in the proceeding and if the Department's position in the proceeding was not substantially justified or if the action is one to enforce compliance with a statutory or regulatory requirement and the Department's demand is substantially in excess of the ultimate decision and is unreasonable when compared with that decision. * * *

3. Section 13.2 is revised to read as follows:

§ 13.2 When these rules apply.

These rules apply to adversary adjudications before the Department.

4. Section 13.3 is amended by removing the last sentence in paragraph (a), by redesignating paragraph (b) as paragraph (c), and by adding a new paragraph (b) as follows:

§ 13.3 Proceedings covered.

* * * * *

(b) If the agency's litigating party enters an appearance, Department proceedings listed in Appendix A to this part are covered by these rules. Also covered are any other proceedings under statutes that incorporate by reference the procedures of sections 1128(f), 1128A(c)(2), or 1842(j)(2) of the Social Security Act, 42 U.S.C. 1320a–7(f), 1320a–7a(c)(2), or 1395u(j)(2). If a proceeding is not covered under either of the two previous sentences, a party may file a fee application as otherwise required by this part and may argue that the act covers the proceeding. Any coverage issue shall be determined by the adjudicative officer and, if necessary, by the appellate authority on review.

* * * * *

5. Section 13.4(b) is revised to read as follows:

§ 13.4 Eligibility of applicants.

* * * * *

(b) The categories of eligible applicants are as follows:

(1) Charitable or other tax-exempt organizations described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(2) Cooperative associations as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees;

(3) Individuals with a net worth of not more than $2 million;

(4) Sole owners of unincorporated businesses if the owner has a net worth of not more than $7 million, including both personal and business interests, and if the business has not more than 500 employees;

(5) All other partnerships, corporations, associations, local governmental units, and public and private organizations with a net worth of not more than $7 million and with not more than 500 employees; and

(6) Where an award is sought on the basis stated in § 13.5(c) of this part, small entities as defined in 5 U.S.C. 601.

* * * * *

6. Section 13.5 is amended by redesignating paragraphs (a) through (d) as paragraphs (b)(1) through (b)(4), respectively; adding new paragraph (a) and a paragraph (b) heading; revising newly designated paragraph (b)(1); and adding a new paragraph (c) to read as follows:

§ 13.5 Standards for awards.

(a) An award of fees and expenses may be made either on the basis that the Department's position in the proceeding was not substantially justified or on the basis that, in a proceeding to enforce compliance with a statutory or regulatory requirement, the Department's demand substantially exceeded the ultimate decision and was unreasonable when compared with that decision. These two bases are explained in greater detail in paragraphs (b) and (c) of this section.

(b) *Awards where the Department's position was not substantially justified.* (1) Awards will be made on this basis only where the Department's position in the proceeding was not substantially justified. The Department's position includes, in addition to the position taken by the agency in the proceeding, the agency action or failure to act that was the basis for the proceeding. Whether the Department's position was substantially justified is to be determined on the basis of the administrative record as a whole. The fact that a party has prevailed in a proceeding does not create a presumption that the Department's position was not substantially justified. The burden of proof as to substantial justification is on the agency's litigating party, which may avoid an award by showing that its position was reasonable in law and fact.

* * * * *

(c) *Awards where the Department's demand was substantially excessive and*

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unreasonable. (1) Awards will be made on this basis only where the adversary adjudication arises from the Department's action to enforce a party's compliance with a statutory or regulatory requirement. An award may be made on this basis only if the Department's demand that led to the proceeding was substantially in excess of the ultimate decision in the proceeding, and that demand is unreasonable when compared with that decision, given all the facts and circumstances of the case.

(2) Any award made on this basis shall be limited to the fees and expenses that are primarily related to defending against the excessive nature of the demand. An award shall not include fees and expenses that are primarily related to defending against the merits of charges, or fees and expenses that are primarily related to defending against the portion of the demand that was not excessive, to the extent that these fees and expenses are distinguishable from the fees and expenses primarily related to defending against the excessive nature of the demand.

(3) Awards will be denied if the party has committed a willful violation of law or otherwise acted in bad faith, or if special circumstances make an award unjust.

7. In § 13.6, the second sentence of paragraph (a) is removed and the first sentence of paragraph (b) is amended by removing "$75.00" and adding in its place "$125.00".

8.–9. In § 13.10, paragraphs (a)(2) and (a)(3) and the first sentence of paragraph (a)(5) introductory text are revised; paragraph (a)(5)(i) is amended by removing the word "or" at the end and paragraph (a)(5)(ii) is amended by adding the word "or" at the end; and paragraph (a)(5)(iii) is added to read as follows:

§ 13.10 Contents of application.

(a) * * *

(2) Where an award is sought on the basis stated in § 13.5(b) of this part, a declaration that the applicant believes it has prevailed, and an identification of the position of the Department that the applicant alleges was not substantially justified. Where an award is sought on the basis stated in § 13.5(c) of this part, an identification of the statutory or regulatory requirement that the applicant alleges the Department was seeking to enforce, and an identification of the Department's demand and of the document or documents containing that demand;

(3) Unless the applicant is an individual, a statement of the number of its employees on the date on which the proceeding was initiated, and a brief description of the type and purpose of its organization or business. However, where an award is sought solely on the basis stated in § 13.5(c) of this part, the applicant need not state the number of its employees;

* * * * *

(5) A statement that the applicant's net worth as of the date on which the proceeding was initiated did not exceed the appropriate limits as stated in § 13.4(b) of this part. * * *

* * * * *

(iii) It states that it is applying for an award solely on the basis stated in § 13.5(c) of this part, and that it is a small entity as defined in 5 U.S.C. 601, and it describes the basis for its belief that it qualifies as a small entity under that section.

* * * * *

10.–12. Section 13.11(a) is amended by removing the first sentence and adding in its place the sentences reading as follows:

§ 13.11 Net worth exhibits.

(a) Each applicant must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 13.4(f) of this part) when the proceeding was initiated. This requirement does not apply to a qualified tax-exempt organization or cooperative association. Nor does it apply to a party that states that it is applying for an award solely on the basis stated in § 13.5(c) of this part.

* * * * * *

13. Section 13.12(d) is revised to read as follows:

§ 13.12 Documentation of fees and expenses.

* * * * *

(d) The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any fees or expenses claimed, pursuant to § 13.25 of this part.

14. Section 13.22 is amended by revising paragraphs (b) and (d), as follows:

§ 13.22 When an application may be filed.

* * * * *

(b) For purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the agency and to the courts.

* * * * *

(d) If review or reconsideration is sought or taken, whether within the agency or to the courts, of a decision as to which an applicant believes it has prevailed, proceedings on the application shall be stayed pending final disposition of the underlying controversy.

15. In § 13.23(a), the first sentence is removed and two sentences are added in its place to read as follows:

§ 13.23 Responsive pleadings.

(a) The agency's litigating party shall file an answer within 30 calendar days after service of the application or, where the proceeding is stayed as provided in § 13.22(d) of this part, within 30 calendar days after the final disposition of the underlying controversy. The answer shall either consent to the award or explain in detail any objections to the award requested and identify the facts relied on in support of the agency's position. * * *

* * * * * *

16. Section 13.25(a) is amended by adding the following sentence at the end:

§ 13.25 Further proceedings.

(a) * * * In no such further proceeding shall evidence be introduced from outside the administrative record in order to prove that the Department's position was, or was not, substantially justified.

* * * * *

17. Section 13.27 is revised to read as follows:

§ 13.27 Agency review.

(a) The appellate authority for any proceedings shall be the official or component that would have jurisdiction over an appeal of the merits.

(b) If either the applicant or the agency's litigating party seeks review of the adjudicative officer's decision on the fee application, it shall file and serve exceptions within 30 days after issuance of the initial decision. Within another 30 days after receipt of such exceptions, the opposing party, if it has not done so previously, may file its own exceptions to the adjudicative officer's decision. The appellate authority shall issue a final decision on the application as soon as possible or remand the application to the adjudicative officer for further proceedings. Any party that does not file and serve exceptions within the stated time limit loses the opportunity to do so.

18. Appendix A to part 13 is revised to read as follows:

Appendix A To Part 13

Proceedings covered	Statutory authority	Applicable regulations
Office of Inspector General		
1. Proceedings to impose civil monetary penalties, assessments, or exclusions from Medicare and State health care program.	42 U.S.C. 1320a–7a(c)(2); 1320b–10(c); 1395l–3(b)(3)(B)(ii), (g)(2)(A)(i); 1395*l*(h)(5)(D), (i)(6); 1395m(a)(11)(A), (a)(18), (b)(5)(C), (j)(2)(A)(iii); 1395u(j)(2), (k), (*l*)(3), (m)(3), (n)(3), (p)(3)(A); 1395y(b)(3)(C), (b)(6)(B); 1395cc(g); 1395dd(d)(1)(A), (B); 1395mm(i)(6)(B); 1395nn(g)(3), (4); 1395ss(d); 1395bbb(c)(1); 1396b(m)(5)(B); 1396r(b)(3)(B)(ii), (g)(2)(A)(i); 1396t(i)(3); 11131(c); 11137(b)(2).	42 CFR Part 1003; 42 CFR Part 1005.
2. Appeals of exclusions from Medicare and State health care programs and/or other programs under the Social Security Act.	42 U.S.C. 1320a–7(f); 1395*l*(h)(5)(D); 1395m(a)(11)(A), (b)(5)(C); 1395u(j)(2), (k), (*l*)(3), (m)(3), (n)(3), (p)(3)(B).	42 CFR Part 1001; 42 CFR Part 1005.
3. Appeal of exclusions from programs under the Social Security Act, for which services may be provided on the recommendation of a Peer Review Organization.	42 U.S.C. 1320c–5(b)(4), (5)	42 CFR Part 1004; 42 CFR Parts 1005.
4. Proceedings to impose civil penalties and assessments for false claims and statements.	31 U.S.C. 3803	45 CFR Part 79.
Centers for Medicare and Medicaid Services		
1. Proceedings to suspend or revoke licenses of clinical laboratories.	42 U.S.C. 263a(i); 1395w–2	42 CFR Part 493, Subpart R.
2. Proceedings provided to a fiscal intermediary before assigning or reassigning Medicare providers to a different fiscal intermediary.	42 U.S.C. 1395h(e)(1)–(3)	42 CFR 421.114, 421.128.
3. Appeals of determinations that an institution or agency is not a Medicare provider of services, and appeals of terminations or nonrenewals of Medicare provider agreements.	42 U.S.C. 1395cc(h); 1395dd(d)(1)(A)	42 CFR 489.53(d); 42 CFR Part 498.
4. Proceedings before the Provider Reimbursement Review Board when Department employees appear as counsel for the intermediary.	42 U.S.C. 1395oo	42 CFR Part 405, Subpart R.
5. Appeals of CMS determinations that an intermediate care facility for the mentally retarded (ICFMR) no longer qualifies as an ICFMR for Medicaid purposes.	42 U.S.C. 1396i	42 CFR Part 498.
6. Proceedings to impose civil monetary penalties, assessments, or exclusions from Medicare and State health care programs.	42 U.S.C. 1395l–3(h)(2)(B)(ii); 1395*l*–(q)(2)(B)(i); 1395m(a)(11)(A), (c)(4)(C); 1395w–2(b)(2)(A); 1395w–4(g)(1), (g)(3)(B), (g)(4)(B)(ii); 1395nn–(g)(5); 1395ss–(a)(2), (p)(8), (p)(9)(C), (q)(5)(C), (r)(6)(A), (s)(3), (t)(2); 1395bbb(f)(2)(A); 1396r(h)(3)(C)(ii); 1396r–8(b)(3)(B), (C)(ii); 1396t(j)(2)(C); 1396u(h)(2).	42 CFR Part 1003.
7. Appeals of exclusions from Medicare and State health care programs and/or other programs under the Social Security Act.	42 U.S.C. 1395*l*(q)(2)(B)(ii); 1395m(a)(11)(A), (c)(5)(C); 1395w–4(g)(1), (g)(3)(B), (g)(4)(B)(ii).	42 CFR Part 498; 42 CFR 1001.107.
Food and Drug Administration		
1. Proceedings to withdraw approval of new drug applications.	21 U.S.C. 355(e)	21 CFR Part 12; 21 CFR 314.200.
2. Proceedings to withdraw approval of new animal drug applications and medicated feed applications.	21 U.S.C. 360b(e), (m)	21 CFR Part 12; 21 CFR Part 514, Subpart B.
3. Proceedings to withdraw approval of medical device premarket approval applications.	21 U.S.C. 306e(e), (g)	21 CFR Part 12.
Office for Civil Rights		
1. Proceedings to enforce Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin by recipients of Federal financial assistance.	42 U.S.C. 2000d–1	45 CFR 80.9.
2. Proceedings to enforce section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap by recipients of Federal financial assistance.	29 U.S.C. 794a; 42 U.S.C. 2000d–1	45 CFR 84.61.
3. Proceedings to enforce the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age by recipients of Federal financial assistance.	42 U.S.C. 6104(a)	45 CFR 91.47.
4. Proceedings to enforce Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in certain education programs by recipients of Federal financial assistance.	20 U.S.C. 1682	45 CFR 86.71.

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Dated: May 10, 2002.
Tommy G. Thompson,
Secretary.
[FR Doc. 02–20307 Filed 8–12–02; 8:45 am]
BILLING CODE 4150–26–M

Notices

Federal Register
Vol. 67, No. 156
Tuesday, August 13, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Establishment of New Advisory Committee and Solicitation for Nomination to the Research, Education, and Economics Task Force

AGENCY: Agricultural Research Service, United States Department of Agriculture.

ACTION: Establishment and Solicitation for Nominations.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II, the United States Department of Agriculture announces the establishment of the Research, Education, and Economics Task Force and the solicitation for nominations to fill the 8 membership positions.

DATES: Deadline for Task Force member nominations is August 30, 2002.

ADDRESSES: Address all nominations to Marshall Tarkington, U.S. Department of Agriculture, Agricultural Research Service, 1400 Independence Avenue SW., 351–A Jamie Whitten Building, Washington, DC 20250 or fax the information to 202–720–6882.

FOR FURTHER INFORMATION CONTACT: Marshall Tarkington, 202–720–3173.

SUPPLEMENTARY INFORMATION: Sec. 7404 of the Farm Security and Rural Investment Act of 2002, Pub. L. 107–171, authorized the creation of a Task Force comprised of 8 members, primarily from the private sector and having broad-based background in plant, animal, and agricultural sciences research, food, nutrition, biotechnology, crop production methods, environmental science, or related disciplines. The members must also be familiar with the role and infrastructure used to conduct Federal and private research, including the Agricultural Research Service; the National Institutes of Health; the National Science Foundation; the National Aeronautics and Space Administration; the Department of Energy laboratory system; or the Cooperative State Research, Education, and Extension Service. Nominees will be carefully reviewed for their broad expertise, leadership, and relevance to this criteria. Additional information regarding the Task Force mandate and membership is in the attached charter.

Nominations are being accepted from individuals, organizations, associations, societies, councils, federations, groups, and companies that represent a wide variety of food and agricultural interests. Please indicate the specific qualification(s) for each nominee. Each nominee must fill out a form AD–755, "Advisory Committee Membership Background Information", which can be obtained on the following web link: *(http://www.ars.usda.gov/newla/ree_task.html)*. Each nomination submission must include the nominee's name, resume, and completed AD–755. Incomplete nomination documentation will not be considered and all nominations will be vetted before selection by the Secretary.

Dated: August 6, 2002.
Edward B. Knipling,
Acting Administrator.
[FR Doc. 02–20467 Filed 8–12–02; 8:45 am]
BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

National Sheep Industry Improvement Center; Inviting Grant Proposals for the Sheep and Goat Industry Grant Initiative

AGENCY: National Sheep Industry Improvement Center, USDA.

ACTION: Notice.

SUMMARY: The National Sheep Industry Improvement Center (NSIIC) announces the availability of approximately $200,000 in competitive grants for product or business development, producer information or education, marketing and promotion for sheep or goats or their products, genetic retention or animal health. Funds have been made available by the Board of Directors of the National Sheep Industry Improvement Center (NSIIC) to be awarded in Fiscal Year (FY) 2003 with projects completed by the end of FY 2004. The intent is to fund a variety of proposals that will benefit the U.S. sheep and goat industries.

DATES: Completed proposals must be received no later than October 15, 2002. Proposals received after that date will not be considered.

ADDRESSES: Completed proposals and other required materials should be submitted to Jay B. Wilson, Executive Director, National Sheep Industry Improvement Center, U.S. Department of Agriculture, PO Box 23483, Washington, DC 20026–3483 if using the US Postal Service or Room 2117, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250 if using other carriers. Telephone (202) 690–0632 or (207) 236–6567.

FOR FURTHER INFORMATION CONTACT: Jay B. Wilson, Executive Director, National Sheep Industry Improvement Center, U.S. Department of Agriculture, PO Box 23483, Washington, DC 20026–3483 if using the US Postal Service or Room 2117, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250 if using other carriers. Telephone (202) 690–0632 or (207) 236–6567.

SUPPLEMENTARY INFORMATION:

General Information

The Board of Directors of the National Sheep Industry Improvement Center (NSIIC) makes this grant initiative of up to $200,000 available. The NSIIC is authorized under section 375 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 2008j). A fund is established in the Treasury of the United States, without fiscal year limitations, to provide funds for the enhancement and marketing of sheep or goat products in the United States. Grants are authorized by section 375(e)(3)(A) of the Consolidated Farm and Rural Development Act.

Projects that are submitted in the proposals should be completed in a timely fashion as provided in the proposal, but under no circumstances later than September 30, 2004. The primary objective of the Sheep and Goat Industry Grant Initiative (SGIGI) is to fund a number of diverse projects that will benefit the U.S. sheep or goat industries through product or business development, producer information or education, marketing and promotion for sheep or goats or their products, genetic retention or animal health at the

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regional, national or international level. The program is administered through USDA, NSIIC.

Eligible Applicants

An Eligible entity is an organization that promotes the betterment of the United States sheep or goat industries that is: (A) A public, private, or cooperative organization; (B) an association, including a corporation not operated for profit; (C) a federally recognized Indian Tribe; or (D) a public or quasi-public agency. Individuals are ineligible. Eligible entities must have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence. Under the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 501 (c)(4)) which engages in lobbying activities, is not eligible to apply.

Use of Funds

Use of funds should directly impact the U.S. sheep or goat industries through product or business development, producer information or education, marketing and promotion for sheep or goats or their products, genetic retention, or animal health programs. Funds may not be used to: (a) Pay costs of preparing the application package; (b) pay costs incurred prior to the effective date of the grant; (c) conduct duplicative research; or (d) fund political activities. Preference may be given to proposals that have over 50 percent of the project costs in matching funds, including in kind contributions. Overhead costs cannot exceed 25 percent.

Available Funds and Award Limitations

The total amount of funds available for grants in FY 2003 is approximately $200,000. It is anticipated that all funds will be awarded in FY 2003 for projects that will be completed by September 30, 2004. It is expected that there will be proposals submitted that address a variety of needs related to the U.S. sheep and goat industries. Awards will be segregated so that a variety of needs will be addressed by the funded proposals. The actual number of grants funded will depend on the quality of proposals received and the amount of funding requested. A proposal may be partially funded or funded in its entirety. The maximum amount of Federal funds through this grant initiative awarded for any one proposal will be $50,000.

Selection Criteria

The proposal will initially be reviewed to determine whether the entity submitting the proposal meets the eligibility requirements and whether the proposal application contains the information required. After this initial evaluation, the following criteria will be used to rate and rank proposals received in response to this notice of funding availability. Failure to address any one of the criteria will disqualify the proposal. Equal weight shall be given to each of the criterion listed below and points will be awarded to each criterion on a scale of 5, 4, 3, 2, 1. A score of 5 indicates that the proposal was judged to be highly relevant to the criteria and a score of 1 indicates that the proposal was judged not to sufficiently address the criteria. Each proposal criteria area will be evaluated and judged on its own merits using the following criteria:

1. *Potential Industry Impact*—Describe the proposed project and demonstrate how it will stimulate the U.S. sheep or goat industries. Provide a detailed analysis of the sheep or goat industry issue that is being addressed by the proposal by including the: (A) Product or group that will be impacted by the proposal (B) geographic area affected (C) target audience or end user; (D) and expected results. Is the industry issue and need well-defined? Does the proposed project provide an effective and efficient approach to resolving the identified need?

2. *Industry Commitment*—Describe the commitment of the producers, processor, end-users or other involved parties in participating in the proposed project. This may include, but is not limited to, individual producers, producer groups, processors, seminar participants, local organizations, local or state governments or trade associations. Is there a commitment from all who are expected to participate and benefit from the proposed project?

3. *Business Soundness*—Provide a timetable and objectives along with a quantifiable benchmark and expected results. Does the proposal include: (A) A clear objective; (B) well-defined tasks that will accomplish the objectives; (C) realistic benchmarks; (D) a realistic timetable for the completion of the proposed tasks? Has the business strategy been adequately developed?

4. *Financial Feasibility*—Provide a well-defined budget for the proposal. Are the funding requirements and budget for the project well defined and financially feasible? Are matching funds or other resources that will be used to leverage the requested funds in the proposal identified?

5. *Management Ability*—Identify the management team needed to complete the proposal objectives and describe their qualifications. Is the management team identified, and are they capable of implementing the proposal?

Selection Process

The Board of Directors of the NSIIC will evaluate proposal applications. Applications will be evaluated competitively and points awarded as specified in the Selection Criteria section of this notice. Grants will be awarded on a competitive basis to eligible entities. A proposal may be partially funded. After assigning points based upon those criteria, applications will be funded in rank order until all available funds have been expended. The Board of Directors reserves the right to award up to five additional points in order to provide a diversity of projects targeting various situations, geographic areas, subject matter distribution of funded projects, or for proposals with over 50 percent in matching funds. Projects that are approved for further processing will be subject to the grant terms that are negotiated between the applicant and the Board of Directors including, but not limited to, the amount to be funded, project goals, timetables, completion date or other terms as deemed necessary.

Proposal Submission

All proposals, except for forms, are to be submitted on standard 8.5′ × 11′ paper with typing on one side of the page only. In addition, margins must be at least 1", type must be 12 characters per inch (12 pitch or 10 point) or larger, no more than 6 lines per inch, and there should be no page reductions.

Content of a Proposal

A proposal should contain the following:

1. Form SF–424 "Application for Federal Assistance."
2. Form SF–424A "Budget Information-Non Construction Programs."
3. Form SF–424B "Assurances-Non Construction Programs."
4. *Table of Contents*—For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required forms. The Table of Contents should include page numbers for each component of the proposal. Page numbering should begin immediately following the Table of Contents.
5. *Project Summary*—The proposal must contain a project summary of 1 page or less on a separate page. This page must include the title of the project and the names of the primary project contacts and the applicant organization, followed by the summary. The summary should be self-contained and should describe the overall goals and relevance of the project. The summary should also contain a listing of all organizations involved in the project. The Project Summary should immediately follow the Table of Contents.
6. *Project Narrative*—The narrative portion of the Project Proposal is limited to 10 pages of text and should contain the following:

a. *Introduction.* A clear statement of the goals and objectives of the project. The problem should be set in context of the present-day situation. Summarize the body of knowledge which substantiates the need for the proposed project.

b. *Rationale and Significance.* Substantiate the need for the proposed project. Describe the impact of the project on the U.S. sheep or goat industry. Describe the project's specific relationship to the segment of sheep or goat industry issue, product or market being addressed.

c. *Objectives and Approach.* Discuss the specific objectives to be accomplished under the project. A detailed description of the approach must include: (1) Techniques or procedures used to carry out the proposed activities and for accomplishing the objectives; (2) The results expected.

d. *Time Table.* Tentative schedule for conducting the major steps of the project.

e. *Evaluation.* Provide a plan for assessing and evaluating the accomplishments of the stated objectives during the project and describe ways to determine the effectiveness (impact) of the end results upon conclusion of the project. Awardees will be required to submit written project performance reports on a semi-annual basis.

f. *Coordination and Management Plan.* Describe how the project will be coordinated among various participants and the nature of the collaborations. Describe plans for management of the project to ensure its proper and efficient administration.

What To Submit

An original and 10 copies must be submitted. Each copy must be stapled in the upper left-hand corner. (DO NOT BIND). All copies of the proposal must be submitted in one package.

Other Federal Statutes and Regulations That Apply

Several Federal statutes and regulations apply to proposals considered for review and to grants awarded by USDA. These include, but are not limited to:

7 CFR part 1.1—USDA implementation of the Freedom of Information Act.

7 CFR part 15a—USDA implementation of title VI of the Civil Rights Act of 1964.

7 CFR part 3015—USDA Uniform Federal Assistance Regulations.

7 CFR part 3016—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

7 CFR part 3017—Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for drug-free workplace (grants).

7 CFR part 3018—New Restrictions on Lobbying.

7 CFR part 3019—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR part 3052—Audits of State, Local Governments, and Non-Profit Organizations.

The terms of the above parts will be incorporated in a grant made by the NSIIC.

Public Burden in This Notice

Form SF–424, "Application for Federal Assistance." This form is used by applicants as a required face sheet for applications for Federal assistance.

Form SF–424A, "Budget Information-Non Construction Programs." This form must be completed by applicants to show the project's budget breakdown, both as to expense categories and the division between Federal and non-Federal sources.

Form SF–424B, "Assurances-Non Construction Programs." The applicant must complete this form to give the Federal government certain assurances that the applicant has the legal authority to apply for Federal assistance and the financial capability to pay the non-Federal share of project costs. The applicant also gives assurance it will comply with various legal and regulatory requirements as described in the form.

Grantees will be required to sign a grant agreement acceptable to the NSIIC.

Reporting Requirements

In addition to any other required reports, awardees will be required to submit written project performance reports on a semi-annual basis and a final report at the completion of the project. The project performance report and final report shall include, but need not be limited to: (1) A comparison of timeline, tasks and objectives outlined in the proposal as compared to the actual accomplishments; (2) If report varies from the stated objectives or they were not met, the reasons why established objectives were not met; (3) Problems, delays, or adverse conditions which will materially affect attainment of planned project objectives; (4) Objectives established for the next reporting period; and (5) Status of compliance with any special conditions on the use of awarded funds.

Dated: July 31, 2002.

Jay B. Wilson,

Executive Director, National Sheep Industry Improvement Center.

[FR Doc. 02–20402 Filed 8–12–02; 8:45 am]

BILLING CODE 1351–01–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–030N]

Codex Alimentarius Commission: 21st Session of the Codex Committee on Processed Fruits and Vegetables

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting, request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture (USDA), and the Agricultural Marketing Service (AMS), are sponsoring a public meeting on August 13, 2002, to provide information and receive public comments on agenda items that will be discussed at the Codex Committee on Processed Fruits and Vegetables (CCPFV), which will be held in San Antonio, Texas, on September 23–27, 2002. The Under Secretary and AMS recognize the importance of providing interested parties with information about the Processed Fruits and Vegetables Committee of the Codex Alimentarius Commission (Codex) and to address items on the Agenda for the 21st CCPFV.

DATES: The public meeting is scheduled for Tuesday, August 13, 2002 from 10:00 am to 12:00 noon.

ADDRESSES: The public meeting will be held in Room 3501 South Building, United States Department of Agriculture, 1400 Independence Avenue

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SW., Washington, DC. To receive copies of the documents referenced in this notice contact the FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.* If you have comments, please send an original and two copies to the FSIS Docket Clerk and reference Docket # 02–030N. All comments submitted will be available for public inspection in the Docket Clerk's office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. William James, Acting Director, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Dr. James at the above number.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and the Environmental Protection Agency manage and carry out U.S. Codex.

The Codex Committee on Processed Fruits and Vegetables elaborates world wide standards for various processed fruits and vegetables, including certain dried and canned products. This committee does not cover standards for fruit and vegetable juices. The Commission has also allocated to this Committee the work of revision of standards for quick frozen fruits and vegetables. The Committee is chaired by the United States of America.

Issues to Be Discussed at the Public Meeting

The provisional agenda items will be discussed during the public meeting:

1. Adoption of the Agenda
2. Matters Referred by the Codex Alimentarius Commission and other Codex Committees
3. Consideration of Codex Draft Revised Standards at Step 7
   - Canned Bamboo Shoots
   - Pickled Products
   - Canned Stone Fruits
   - Guidelines for Packing Media for Canned Fruits
   - Aqueous Coconut Products
4. Consideration of Proposed Draft Codex Standards at Step 4
   - (a.) Proposed Draft Code of Practice for the Processing and Handling of Quick Frozen Foods
   - (b.) Proposed Draft Codex Standards for Processed Fruits and Vegetables
   - Canned Citrus Fruits
   - Ginseng
   - Jams, Jellies and Marmalades
   - Soy Sauce
   - Canned Tomatoes
   - Processed Tomato Concentrates
   - Canned Vegetables
   - Guidelines for Packing Media for Canned Vegetables
5. Methods of Analysis for Processed Fruits and Vegetables
6. Proposals for Amendments to the Priority List for the Standardization of Processed Fruits and Vegetables
7. Other Business and Future Work

Each issue listed will be fully described in documents distributed, or to be distributed, by the United States' Secretariat to the Meeting. Members of the public may access or request copies of these documents (*see* **ADDRESSES**).

Public Meeting

At the August 13th public meeting, the agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Comments may be sent to the FSIS Docket Room (*see* **ADDRESSES**). Written comments should state that they relate to activities of the 21st CCPFV (Docket # 02–030N).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC, on: August 8, 2002.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 02–20445 Filed 8–12–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region, Arizona, New Mexico, West Texas and Oklahoma; Proposed Surface Management of Natural Gas Resource Development on Jicarilla Ranger District, Carson National Forest, Rio Arriba County, NM

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Carson National Forest, Jicarilla Ranger District is preparing an environmental impact statement (EIS) on a proposal to amend the Forest's Land and Resource Management Plan (hereafter called Forest Plan) to incorporate standards and guidelines for surface management of natural gas resource development on the Jicarilla Ranger District. The proposal would also determine the availability of all unleased National Forest System lands on the Jicarilla Ranger District (4,385 acres) and, if determined available for leasing, add any needed surface protection stipulations to be forwarded to the Bureau of Land Management (BLM) for future lease sales. Once a decision is made to amend the Forest Plan, the standards and guidelines in that decision would remain in effect until the Forest Plan is revised. The Carson National Forest is scheduled to begin a scheduled revision process in 2007 for completion by 2010.

Ninety-seven percent of the Jicarilla Ranger District of the Carson National Forest is currently leased. Most of the leases were issued between 1950 and 1970, prior to the passage of NEPA. Over 500 gas wells, with hundreds of miles of associated access roads, pipelines, compressor stations and other facilities currently exist on the District. Anticipated future development over the next 20 years on the District has been forecast to be around 700 more new wells. There is a need for an evaluation and determination of how to facilitate the orderly development of energy resources in the area, while minimizing disturbance to surface resources and uses. A comprehensive cumulative effects analysis that considers surface resource concerns of oil and gas development, such as impacts to wildlife, recreation, cultural resources and water quality, would provide information needed to establish new standards and guidelines in the Carson Forest Plan for management of oil and gas development on the Jicarilla Ranger District.

DATES: The Forest Service is asking that comments on the proposed action (scoping) be received by September 9, 2002. It is estimated that the draft EIS will be completed and distributed by February 2003. A 45-day comment period will follow the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The final EIS and record of decision are estimated to be released in October 2003.

ADDRESSES: The draft and final EIS will be available upon request from the Carson Forest Supervisor's Office, Attn: Lands and Minerals, 208 Cruz Alta Road, Taos, NM 87571. Comments related to the draft EIS can be sent to the Forest Supervisor, Attn: Jicarilla Gas Development EIS at the same address.

Responsible Official: The Forest Supervisor, Carson National Forest, is the responsible official and will decide whether or not: (1) 4,385 unleased acres scattered throughout the Jicarilla Ranger District would be made available for lease, and if so under what conditions; (2) the Forest Plan should be amended to provide for standards and guidelines (stipulations) for the issuance of any new leases that may result from the expiration, termination, or relinquishment of currently leased National Forest System lands; (3) the Forest Plan should be amended to provide standards and guidelines (conditions of approval) for approving development activities on currently leased National Forest System lands, if so what would they be and where would they be applied (4) monitoring is necessary, if so what type of monitoring.

FOR FURTHER INFORMATION CONTACT: Assistant Recreation, Lands and Minerals Staff Officer, Carson Forest Supervisor's Office (505) 758–6272.

SUPPLEMENTARY INFORMATION: The Forest Service is planning to amend the Carson Forest Plan to include new standards and guidelines for surface management of gas development on the Jicarilla Ranger District and to determine the availability of all unleased National Forest System lands on the Jicarilla Ranger District and if determined available for leasing, add any needed surface protection stipulations to be forwarded to the BLM for future lease sales.

Reasonable Foreseeable Development Scenario

In 2001, the BLM commissioned a study conducted by New Mexico Institute of Mining and Technology, with input from oil and gas industry representatives, to identify reasonable foreseeable development of oil and gas in the New Mexico portion of the San Juan Basin. This study resulted in a Reasonable Foreseeable Development Scenario (RFDS), which forms the basis for projected oil and gas development in the San Juan Basin over the next 20 years. The environmental analysis will address the cumulative effects of the RFDS. An RFDS is the prediction of the type and amount of oil and gas activity that would occur in a given area. The prediction is based on geologic and engineering factors, past history of drilling, and well spacing and density according to state regulations. The purpose of the RFDS is to provide a reasonable projection of the expected demand for development.

Details of the Proposed Action

Jicarilla Ranger District (except Special Areas—Bancos, Fierro, La Jara, Valencia and Highway 64)

In order to ensure access is available to reach gas resources, meet the energy needs of the Nation, sustain the productivity of the land for other uses, support biodiversity and maintain long-term health of the ecosystems on the Jicarilla Ranger District, the Forest Service proposes to include standards and guidelines in the Carson Forest Plan for the Jicarilla Ranger District (except Bancos, Fierro, La Jara, Valencia and Highway 64 Special Areas, which are described separately below). These proposed standards and guidelines would:

—Maintain a total road (open and gated) density of not more than 3 miles/mi² averaged over a 4 mi² area;
—Not exceed 50 acres averaged over a 4 mi² area of total surface disturbance (other than roads) resulting from gas development activities (past, present and future);
—Locate collector pipelines (tie-ins) along roads;
—Not allow well pad construction on slopes greater than 20 percent, with cuts over 15 feet, except when other resource needs indicate;
—Minimize new roads crossing slopes greater than 40 percent and ensure maximum grades of 8 percent (except on pitch grades not exceeding 300 feet in length and 10 percent in grade). Require an engineering design to support road construction on slopes greater than 40 percent;
—Gate all new roads over 300 feet, except when other resource needs indicate the road should be left open;
—Not allow gas field construction or rig activities to occur from November 1st to April 1st;
—Exclude well pad construction and minimize road crossings in riparian areas;
—Not see or hear gas development structures and activities from designated recreation sites;
—Not exceed a decibel level of 48.6 in all noise sensitive areas as established in the Noise Policy proposed by the BLM and require noise abatement measures on all new facilities throughout the Jicarilla Ranger District.

Bancos Canyon

The Forest Service proposes to continue to allow current leaseholders their legal access to the gas resource from the surrounding rim of Bancos Canyon. To protect unique cultural sites and the unroaded characteristics of Bancos Canyon, surface disturbing activities, such as well pads, pipelines or roads, would not be allowed or would be significantly restricted within the canyon itself. Any new leases would have a "no surface occupancy" stipulation.

Fierro Canyon and Mesa

The Forest Service proposes to continue to allow current leaseholders their legal access to the gas resource from the surrounding rim of Fierro Canyon. To protect the unroaded characteristics and wildlife values of Fierro Canyon, surface disturbing activities, such as well pads, pipelines or roads, would not be allowed or would be significantly restricted within the canyon itself. Any new leases for Fierro Canyon would have a "no surface occupancy" stipulation. The Forest Service proposes development on Fierro

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Mesa would be accomplished through gated access road(s). Overall surface disturbance on the Mesa would be limited. Water would be piped to a central location either on the Mesa, behind a gate, or off the Mesa. Use of remote sensing would be implemented to minimize road use.

La Jara and Valencia Canyons

The Forest Service proposes to continue to allow current leaseholders their legal access to the gas resource from the surrounding canyon rims of La Jara or Valencia Canyons. To protect unique cultural sites, wildlife values and the unroaded characteristics of these canyons, surface disturbing activities, such as well pads, pipelines or roads, would not be allowed or would be significantly restricted within the canyons themselves. Any new leases for La Jara or Valencia canyons proposed in the future would have "no surface occupancy" stated in the lease.

US Highway 64 Corridor

In order to protect the unique vistas and riparian vegetation seen from the US Highway 64 corridor, the Forest Service proposes to manage the US Highway 64 Corridor with a visual quality objective of Retention. Under Retention the existing character of the landscape is retained. The level of change to the characteristic landscape is low. Management activities may be seen, but should not attract attention of the casual observer. Any changes must repeat the basic elements of form, line, color and texture found in the predominant natural features of the characteristic landscape. In order to meet this objective, future well sites would require the use of low profile facilities, tanks painted in a dark color, tree screens and topography to hide facilities. Well sites would not be permitted on ridgelines and cuts in slopes over 15 feet would be prohibited. These visual quality standards would reduce or eliminate the visual impacts of gas development along US Highway 64.

Mitigation Measures

Along with the above standards and guidelines for each area, this proposed action assumes that the site-specific Conditions of Approval would be incorporated in any approved application for permit to drill (APD) a gas well. These conditions include standard mitigation measures and best management practices, such as inventory and protection of archeological sites, stabilization of disturbed sites and road maintenance.

Preliminary Issues and Alternatives

The Forest Service has developed this proposed action to meet a purpose and need with the best information available—it is not a decision. This proposal is intended to facilitate public involvement in identifying pertinent issues, developing meaningful alternatives, and analyzing relevant effects. The intent of a NEPA analysis is to consider and disclose the effects of a proposed action and its alternatives before making a decision.

Public Involvement

Public review and comments on the proposed action will help the Forest Service identify any issues generated by the proposal and aid in the development of alternatives to be analyzed. The EIS for Surface Management of the Natural Gas Resource Development on the Jicarilla Ranger District will evaluate the effects on watersheds, vegetation, wildlife, threatened and endangered plants and animals, riparian areas, soils, air and water quality, reaching gas resources, social and economic conditions, recreation, heritage resources, noise and other concerns that may arise from public response to this notice.

In addition to sending this report to the Ranger District's mailing list and others known to be interested in gas development activities in the area, the Forest Service will be holding two open houses. No presentation will be given, but the Forest Service and others will be on hand to answer questions, provide additional information (maps, fact sheets, etc.), and give you a chance to talk one-on-one with those involved in the environmental analysis. Anyone is invited to submit written or oral comments before and during the open house. These comments will be considered in developing alternatives for the Draft EIS.

Date	Time	Place
Thursday, September 5th	3 pm–8 pm	Bloomfield Cultural Complex, 333 South First St., Bloomfield.
Friday, September 6th	3 pm–8 pm	Farmington Civic Center, 200 W. Arrington, Farmington.

The Forest Service is requesting that public concerns and comments on the proposed action be submitted to the address below by September 9, 2002: Forest Supervisor, Attn: Jicarilla Gas Development EIS, Carson National Forest, 208 Cruz Alta Rd., Taos, NM 87571.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within seven days.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. City of *Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The Carson National Forest has contracted with Science Applications International Corporation (SAIC–Albuquerque) to develop the environmental impact statement in cooperation with the staff from the Jicarilla Ranger District and the Forest Supervisor's Office. In addition to conducting the technical analyses and developing the documents, SAIC will assist the Forest Service with public outreach efforts.

Dated: August 5, 2002.

Martin D. Chavez Jr.,

Forest Supervisor, Carson National Forest.

[FR Doc. 02–20399 Filed 8–12–02; 8:45 am]

BILLING CODE 3410–11–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting: Public Hearing; Motiva Enterprise's Delaware City Refinery (DCR) Incident (July 17, 2001)

AGENCY: U.S. Chemical Safety and Hazard Investigation Board (CSB).

ACTION: Notice announcing Sunshine Act public hearing.

SUMMARY: The CSB is planning to hold a public hearing to review a staff report concerning an incident that occurred at Motiva Enterprise's Delaware City Refinery (DCR) on July 17, 2001. The staff will present its findings and analysis of the incident and submit its report and recommendations to the Board for approval.

DATES: The Public Hearing will be held on Wednesday, August 28, 2002 from 9 a.m. to 12 p.m. at the Wilmington/Christiana Hilton Hotel, 100 Continental Drive, Newark, DE.

PRE-REGISTRATION: The event is open to the public and there is no fee for attendance. However, attendees are strongly encouraged to pre-register, to ensure adequate seating arrangements. To pre-register, please email your name and affiliation by August 24, 2002, to *motiva@csb.gov*.

FOR FURTHER INFORMATION CONTACT: David Heller, Office of Investigations and Safety Programs, 202.261.7682 or e-mail at: *motiva@csb.gov*.

SUPPLEMENTARY INFORMATION: On July 17, 2001, an explosion occurred at Motiva Enterprise's Delaware City Refinery (DCR) in Delaware City, Delaware. Jeffrey Davis, a boilermaker with The Washington Group, a Motiva maintenance contractor, was killed, and 8 others were injured. A crew of contract workers had been repairing grating on a catwalk in an acid storage tank farm when a spark from their hot work ignited flammable vapors in one of the storage tanks. The tank separated from its floor, releasing its contents instantaneously. Other tanks in the tank farm area also released their contents. A fire burned for approximately one-half hour and sulfuric acid reached the Delaware River, resulting in significant damage to aquatic life.

Because of the serious nature of this incident, the U.S. Chemical Safety and Hazard Investigation Board (CSB) launched an investigation to determine the root and contributing causes and to issue recommendations to help prevent similar occurrences. Key issues to be addressed in the report concern: mechanical integrity, engineering management, management of change, and hot work systems.

Raymnd C. Porfiri

Deputy General Counsel.

[FR Doc. 02–20668 Filed 8–9–02; 3:07 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Extension of Waiting Period for the Final Environmental Impact Statement/Final Management Plan (FEIS/FMP) for the Proposed San Francisco Bay National Estaurine Research Reserve

AGENCY: The Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Extension of waiting period.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, is extending the 30-day waiting period for the Final Environmental Impact Statement/Management Plan (FEIS/FMP) for the proposed San Francisco Bay National Estuarine Research Reserve to August 26, 2002. The availability of the FEIS/FMP was announced on July 16, 2002 (67 FR 46637) with the waiting period ending on August 19, 2002. The time extension is due to mailing delays on the FEIS/FMP. The FEIS/FMP addresses research, monitoring, education, and resource protection needs for the proposed reserve.

If no substantive comments have been submitted to NOAA by August 26, 2002, a notice of availability of a Record of Decision will be published in the **Federal Register** and a Designation Document will be signed by the Under Secretary of NOAA and the Director of the Romberg Tiburon Center of the San Francisco State University.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie McGilvray, Chief, Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA 1305 East West Highway, N/ORM5, Silver Spring, Maryland 20910, (301) 713–3155, Extension 158. Copies of the FEIS/FMP are available upon request to the Estuarine Reserves Division.

Dated: August 9, 2002.

Alan Neuschatz,

Chief Financial Officer/Chief Administrative Officer for Ocean Services and Coastal Zone Management.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves

[FR Doc. 02–20641 Filed 8–12–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

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Title: Electronic Application for Patent Examiners—Job Application Rating System (JARS).

Form Number(s): PTO–2041.

Agency Approval Number: 0651–0042.

Type of Request: Extension of a currently approved collection.

Burden: 2,500 hours annually.

Number of Respondents: 5,000 responses per year.

Avg. Hours Per Response: Based on USPTO time and motion studies, the agency estimates that it will take the public approximately 30 minutes to gather and prepare the necessary information, and submit the electronic employment application.

Needs and Uses: The Electronic Application for Patent Examiners—Job Application Rating System (JARS) is used by the public to apply for entry-level patent examiner positions in a user-friendly process. The USPTO uses the electronic transmission of this information to review and rate applicants on-line almost instantaneously. It is also used by the USPTO to expedite the hiring process by eliminating the time used in the mail distribution process, thereby streamlining labor and reducing costs.

Affected Public: Individuals or households; farms; Federal Government, and state, local, or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, (703) 308–7400, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before Sepetember 12, 2002 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 2, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 02–20424 Filed 8–12–02; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Managed Funds Issues; Meeting

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Public Meeting.

SUMMARY: Notice is hereby given that the Commodity Futures Trading Commission ("Commission") will hold a public roundtable meeting at which invited participants will discuss managed funds issues. Participants will be announced at a later date.

DATES: Thursday, September 19, 2002, from 10 a.m. to 12:30 p.m.

PLACE: 1155 21st Street, NW., Washington, DC. Lobby Level Hearing Room located at Room 1000. Status: Open.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Issued in Washington, DC, this 7th day of August, 2002.

By the Commodity Futures Trading Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 02–20472 Filed 8–12–02; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 02–C0006]

Briggs & Stratton Corporation, a Corporation Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Federal Hazardous Substances Act in the **Federal Register** in accordance with the terms of 16 CFR 1118–20(e). Published below is a provisionally-accepted Settlement Agreement with Briggs & Stratton Corporation, a corporation containing a civil penalty of $400,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 28, 2002.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 02–C0006 Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Ronald G. Yelenik, Trial Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0980, 1351.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: August 8, 2002.

Todd A. Stevenson,

Secretary.

United States of America, Consumer Product Safety Commission

In the Matter of Briggs & Stratton Corporation, a corporation

[CPSC Docket No. 02–C0006]

Settlement Agreement and Order

1. This Settlement Agreement, made by and between the staff ("the staff") of the U.S. Consumer Product Safety Commission (the "Commission") and Briggs & Stratton Corporation ("Briggs & Stratton" or "Respondent"), a corporation, in accordance with 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act ("CPSA"), is a settlement of the staff allegations set forth below.

The Parties

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. 2051–2084.

3. Briggs & Stratton is a corporation organized and existing under the laws of the State of Wisconsin with its principal corporate offices located in Wauwatosa, Wisconsin.

Staff Allegations

4. Between 1992 and 1995, Briggs & Stratton manufactured and sold nationwide approximately 133,000 series 1352 engines for use on fun karts. Between December 1994 and May 1995, Briggs & Stratton manufactured and sold approximately 29,000 series 1362 engines with vented gas caps for use on fun karts.

5. Both the series 1352 engines and the series 1362 engines with vented gas caps ("engines") are "consumer products" and Respondent is a "manufacutrer" of "consumer products", which were "distributed in commerce" as those terms are defined in sections 3(a)(1),(4),(11) and (12) of the CPSA, 15 U.S.C. 2052(a)(1),(4),(11), and (12).

6. The engines are defective because when tipped over or inverted they spill gasoline that can result in fires. If a fun kart equipped with the subject engine(s) should overturn, fun kart riders could suffer serious burn injuries or death.

7. In early 1994, Briggs & Stratton became aware of an incident where a fun kart equipped with a series 1352 engine tipped over, spilled gasoline and caught fire.

8. Between January 1994 and sometime in 1999, Briggs & Stratton received at least eight reports of incidents, where fun karts with 1352 engines tipped over, spilled gasoline and caught fire, causing severe burn injuries to four kart riders ages 10–16.

9. In response to the fuel spillage problem manifested by the series 1352 engines, Briggs & Stratton attempted a number of design changes beginning in 1994. This included the production of the subject 1362 engines with vented gas caps from December 1994 through may 1995. These design changes failed to eliminate the gasoline spillage problem.

10. Between January 1995 and the present, Briggs & Stratton received at least nine reports of incidents, where fun karts equipped with 1362 engines with vented gas caps caught fire. No fire related injuries have been reported involving the 1362 engines.

11. In May 1995, Briggs & Stratton in an attempt to remedy the gasoline spillage problem redesigned the 1362 series engine to include a check valve in the gas tank.

12. Despite being aware of the information set forth in paragraphs 6 through 11, Briggs & Stratton did not report to the Commission about the subject engines until March 17, 1999, when it responded to an earlier request from Commission staff for information about the engines.

13. Briggs & Stratton obtained information which reasonably supported the conclusion that the engines described in paragraph 6 contained a defect which could create a substantial product hazard and created an unreasonable risk of serious injury or death, but failed to report such information to the Commission as required by sections 15(b)(2), (3) of the CPSA, 15 U.S.C. 2064(b)(2), (3).

14. Briggs & Stratton also failed to report to the Commission information about lawsuit settlements concerning the subject engines as required by section 37 of the CPSA, 15 U.S.C. 2084.

15. By failing to provide information as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), and section 37 of the CPSA, 15 U.S.C. 2084, Briggs & Stratton violated sections 19(a)(4), (11) of the CPSA, 15 U.S.C. 2068(a)(4), (11).

16. Respondent committed these failures to report to the Commission "knowingly" as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), and Respondent is subject to civil penalties under section 20 of the CPSA.

Response of Briggs & Stratton

17. Briggs & Stratton denies all of the allegations of the staff set forth in paragraphs 4–16 above.

18. Briggs & Stratton denies that the engines contain any defect which could create a substantial product hazard, or create an unreasonable risk of serious injury or death pursuant to section 15(b) of the CPSA, 15 U.S.C. 2064(b).

19. Briggs & Stratton denies that a particular model of an engine manufactured by Briggs & Stratton was the subject of at least three civil actions alleging the involvement of grievous bodily or death and resulting in a final settlement involving Briggs & Stratton or a court judgment in favor of the plaintiff within a 24-month period pursuant to section 37 of the CPSA, 15 U.S.C. 2084.

20. Respondent denies that it violated the CPSA Reporting Requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b) and section 37 of the CPSA, 15 U.S.C. 2084. Briggs & Stratton states that no other violation of law occurred warranting imposition of a civil penalty. In settling this matter, Briggs & Stratton does not admit any fault, liability or statutory or regulatory violation.

21. Briggs & Stratton further states that it designed and implemented product improvements to address the risk of gasoline spillage; it considered the reporting requirements of the CPSA and made, based on its understanding of the law, good faith judgments about reporting; and it did not knowingly violate any reporting requirements.

22. With respect to the allegations of incidents of severe burn injuries referenced in paragraph 8 above, Briggs & Stratton denies that a defect in the engines was the cause of the injuries and states that each incident involved either an alternate cause of fire or injury, misuse of the product or changes made to the product after Respondent's manufacturing of the product.

Agreement of the Parties

23. The Commission has jurisdiction over this matter and over Briggs & Stratton under the CPSA, 15 U.S.C. 2051–2084.

24. This Agreement is entered into for settlement purposes only and does not constitute an admission by Respondent or a determination by the Commission that Respondent knowingly violated the CPSA Reporting Requirements.

25. Briggs & Stratton agrees to pay to the order of the U.S. Treasury a civil penalty in the amount of four hundred thousand dollars ($400,000.00), in settlement of this matter, payable within twenty (20) days after service of the Final Order of the Commission accepting this Settlement Agreement.

26. Briggs & Stratton knowingly, voluntarily and completely waives any rights it may have in the above captioned case (i) to the issuance of a Complaint in this matter, (ii) to an administrative or judicial hearing with respect to the staff's allegations cited herein; (iii) to judicial review of other challenge or contest of the validity of the Settlement Agreement or the Commission's Order; (iv) to be a determination by the Commission as to whether a violation of sections 15(b) or 37 of the CPSA, has occurred, (v) to a statement of findings of fact and conclusions of law with regard to the staff's allegations; and (vi) to any claims under the Equal Access to Justice Act.

27. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, the Commission shall place this Agreement and Order on the public record and shall publish it in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

28. This Settlement Agreement and Order becomes effective after its final acceptance by the Commission and service upon Respondent.

29. Upon final acceptance of this Settlement Agreement by the Commission, the Commission may publicize the terms of the Settlement Agreement and Order.

30. Respondent agrees to the entry of the attached Order, which is incorporated herein by reference, and agrees to be bound by its terms.

31. This Settlement Agreement and Order is binding upon Briggs & Stratton, its parent and each of their assigns and successors.

32. This Settlement Agreement and Order fully resolves the matters set forth in paragraphs 4 through 16 above.

33. If, after the effective date hereof, any provisions of this Settlement Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Settlement Agreement

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and Order, such provision shall be fully severable. The rest of the Settlement Agreement and Order shall remain in full effect, unless the Commission and Briggs & Stratton determine that severing the provision materially impacts the purpose of the Settlement Agreement and Order.

34. This Settlement Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, except in writing executed by the party against whom such amendment, modification, alteration, or waiver is sought to be enforced, and approved by the Commission.

35. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made outside of his Settlement Agreement and Order may not be used to vary or to contradict its terms.

Dated: August 7, 2002.
Briggs & Stratton Corporation.

Thomas R. Savage,
Vice President.
The Consumer Product Safety Commission.

Alan H. Schoem,
Director, Office of Compliance.
Eric L. Stone,
Director Legal Division, Office of Compliance.

Dated: August 7, 2002.

Ronald G. Yelenick,
Trial Attorney, Legal Division, Office of Compliance.

United States of America Consumer Product Safety Commission

In the Matter of Briggs & Stratton Corporation, a corporation

[CPSC Docket No. 02–C0006]

Order

Upon consideration of the Settlement Agreement between Respondent Briggs & Stratton Corporation, a corporation, and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over Briggs & Stratton Corporation, and it appearing the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted, and it is

Further Ordered, that Briggs & Stratton shall pay to the order of the U.S. Treasury a civil penalty in the amount of four hundred thousand dollars ($400,000.00), payable within twenty (20) calendar days after service of this Final Order upon Briggs & Stratton Corporation.

Provisionally accepted and Provisional Order issued on the 8th day of August, 2002.

By Order of the Commission.

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.

[FR Doc. 02–20496 Filed 8–12–02; 8:45 am]
BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability for Donation of the Patrol Combatant ex-CANON (PG 90)

AGENCY: Department of the Navy, DOD.
ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the availability for donation, under the authority of 10 U.S.C. section 7306, of the patrol combatant ex-CANON (PG 90) located at the NAVSEA Inactive Ships On-Site Maintenance Office (NISMO), Philadelphia, PA. Eligible recipients include: (1) Any state, commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof; (2) the District of Columbia; or (3) any organization incorporated as a non-profit entity under section 501 of the Internal Revenue Code. The transfer of a ship for donation under 10 U.S.C 7306 shall be made at no cost to the United States Government. The donee will be required to maintain the ship as a static museum/memorial in a condition that is satisfactory to the Secretary of the Navy. Prospective donees must submit a comprehensive application that addresses the significant financial, technical, environmental and curatorial responsibilities associated with donated Navy ships. Further application information can be found on the Navy Ship Donation Program website at *www.navsea.navy.mil/ndp*.

Other ships that are currently available for donation include:

—Destroyer ex-CONOLLY (DD 979), Philadelphia, PA.
—Cruiser ex-STERETT (CG 31), Benecia, CA.
—Guided Missile Frigate ex-OLIVER HAZARD PERRY (FFG 7), Philadelphia, PA.
—Heavy Cruiser ex-DES MOINES (CA 134), Philadelphia, PA.
—Destroyer ex-FORREST SHERMAN (DD 931), Philadelphia, PA

FOR FURTHER INFORMATION CONTACT: Commander, Naval Sea Systems Command, ATTN: Ms. Gloria Carvalho (PMS 333G), 1333 Isaac Hull Ave SE Stop 2701, Washington Navy Yard, DC 20376–2701, telephone number (202) 781–0485.

Dated: August 1, 2002.

R. E. Vincent II,
Lieutenant Commander, Judge Advocate General's Corps, , U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–20423 Filed 8–12–02; 8:45 am]
BILLING CODE 3810–FF–U

DEPARTMENT OF ENERGY

[DE–PS07–02ID14308]

Glass Industry of the Future

AGENCY: Idaho Operations Office, DOE.
ACTION: Notice of Competitive Financial Assistance Solicitation.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for cost-shared research, development and demonstration of innovative glass technologies that will reduce energy consumption, reduce environmental impacts, and enhance economic competitiveness in the U.S. glass industry.

The proposed research and development (R&D) projects must address priorities as identified in the Glass Industry Technology Roadmap *(http://www.oit.doe.gov/glass/pdfs/glass2002roadmap.pdf)*. Proposals must address at least one of the four priority areas in the Roadmap: Production Efficiency, Energy Efficiency, Environmental Performance and Innovative Uses, and must have a high-energy efficiency component.

DATES: The issuance date of Solicitation Number DE–PS07–02ID14308 will be on or about August 5, 2002. The application, SF 424, technical proposal, and the Energy Savings Estimator Impact Table, must have an IIPS transmission time stamp of not later than 3 p.m. MST on Friday, September 27, 2002. Late applications will not be considered.

ADDRESSES: Completed applications are required to be submitted via the U.S. Department of Energy Industry Interactive Procurement System (IIPS) at the following URL: *http://e-center.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Elizabeth Dahl, Contract Specialist at *dahlee@id.doe.gov*, facsimile at (208) 526–5548, or by telephone at (208) 526–7214.

SUPPLEMENTARY INFORMATION: DOE anticipates making approximately 4 to 6 cooperative agreement awards under this solicitation with a maximum estimated DOE funding of $350,000 per year for each cooperative agreement up to a three-year period, subject to the availability of funds. Approximately $5 million in federal funds are expected to be available to fund selected research projects over the three-year period. A minimum 50% non-federal cost share is required for research and development projects over the life of the project. The solicitation is available in its full text via the Internet at the following address: *http://e-center.doe.gov*. The statutory authority for this program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086, Conservation Research and Development.

Issued in Idaho Falls on August 5, 2002.

R. J. Hoyles,
Director, Procurement Services Division.

[FR Doc. 02–20458 Filed 8–12–02; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–25; Plasma Physics Junior Faculty Development Program

AGENCY: U.S. Department of Energy.
ACTION: Notice inviting grant applications.

SUMMARY: The Office of Fusion Energy Sciences (OFES) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving grant applications for support under its Plasma Physics Junior Faculty Development Program. Applications should be from tenure-track faculty investigators who are currently involved in experimental or theoretical plasma physics research and should be submitted through a U.S. academic institution. The purpose of this program is to support the development of the individual research programs of exceptionally talented scientists and engineers early in their careers.

DATES: To permit timely consideration for awards in Fiscal Year 2003, formal applications in response to this notice must be received on or before January 7, 2003.

ADDRESSES: We encourage you to submit formal applications in response to this solicitation electronically through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/.IIPS* provides for the posting of solicitations and receipt of applications in a paperless environment via the World Wide Web. Applications must be submitted through IIPS in PDF format by an authorized institutional business official. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov* or you may call the help desk at (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html*.

If you are unable to submit the application through IIPS, formal applications may be sent to: Director, Grants and Contracts Division, Office of Science, SC–64/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–1290. ATTN: Program Notice 02–25. When submitting applications by U.S. Postal Service Express, any commercial Mail delivery service, or when hand carried by the applicant the following address must be used: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 02–25.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald McKnight, U.S. Department of Energy, Office of Fusion Energy Sciences, Science Division, SC–55/Germantown Building, 1000 Independence Avenue, SW, Washington, DC 20585–1290. Telephone: (301) 903–4597. E-mail: *ronald.mcknight@science.doe.gov*.

SUPPLEMENTARY INFORMATION: The Plasma Physics Junior Faculty Development Program was started in Fiscal Year 1997. A principal goal of this program is to identify exceptionally talented plasma faculty members early in their careers and assist and facilitate the development of their research programs. Eligibility for awards under this notice is, therefore, restricted to tenure-track regular academic faculty investigators who are conducting experimental or theoretical plasma physics research. Those Junior Faculty members presently holding career development awards will not be considered under this announcement.

Applications from Junior Faculty involved in any areas of plasma physics research, not only magnetic fusion, are welcomed and encouraged. Emphasis is to be placed on basic plasma science research. For applications to be considered for funding, certification of the status of the applicant as a tenure-track regular academic faculty member by the head of the applicant's academic department or other university/college certifying official will be required before the grant is awarded. Awards made under this program will help to maintain the vitality of university plasma physics research and assure continued excellence in the teaching of plasma physics and related disciplines.

It is anticipated that annual funding levels up to $150,000 per award may be made available for grants under this notice during Fiscal Year 2003, contingent upon the availability of appropriated funds. Funding for equipment above this level will be considered on a case-by-case basis. The number of awards during Fiscal Year 2003 will depend on the number of meritorious applications and the availability of appropriated funds. Multiple year funding of grant awards is expected, with funding provided on an annual basis subject to availability of funds. The usual duration of these grants is three years and they will not normally be renewed after the project period is completed. It is anticipated that at the end of the grant period, grantees will submit new grant applications to continue their research to the Department of Energy or other Federal funding agencies. For the Office of Science, these applications should follow the usual application process. Applications will be subjected to scientific merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR part 605:

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources; and
4. Reasonableness and appropriateness of the proposed budget.

An additional review criteria will address educational aspects of the proposed work including the involvement of graduate and undergraduate students. These aspects should be discussed in the application.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605 which is available on the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

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(The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605).

Issued in Washington, DC on August 5, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–20457 Filed 8–12–02; 8:45 am]

BILLING CODE 6450–02–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–854–003, et al.]

Florida Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

August 7, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Florida Power & Light Company

[Docket No. ER02–854–003]

Take notice that on August 1, 2002, Florida Power & Light Company (FPL) filed, pursuant to the Federal Energy Regulatory Commission's Order issued on July 23, 2002 in Docket Nos. ER02–854–001 and ER02–854–002, a compliance filing making the required changes to the Interconnection & Operation Agreement between FPL and Blue Heron Energy Center, LLC.

Comment Date: August 22, 2002.

2. American Transmission Company LLC

[Docket Nos. ER02–1870–001, ER02–1871–001, ER02–1872–001, ER02–1873–001, ER02–1874–001, ER02–1875–001, ER02–1876–001, ER02–1877–001, ER02–1878–001, ER02–1879–001, ER02–1880–001, ER02–1881–001, ER02–1882–001, and ER02–1883–001]

Take notice that on August 1, 2002, American Transmission Company LLC (ATCLLC) tendered for filing fourteen Distribution-Transmission Interconnection Agreements reformatted in accordance with Order No. 614 in compliance with the Commission's July 2, 2002 Letter Order.

Comment Date: August 22, 2002.

3. Southern Company Services, Inc.

[Docket No. ER02–2219–001]

Take notice that on August 1, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Georgia Power Company (GPC) and Savannah Electric and Power Company (Savannah), filed with the Federal Energy Regulatory Commission (Commission) a supplement to its July 1, 2002 filing of a letter agreement (Agreement) between Southern Power Company, GPC and Savannah that authorizes Georgia Power and Savannah to commence, and Southern Power to pay for costs associated with activities to interconnect Southern Power's generating facility in Effingham County, Georgia. The supplement consists of a letter agreement extending the term of the Agreement.

Comment Date: August 22, 2002.

4. Arizona Public Service Company

[Docket No. ER02–2328–001]

Take notice that on August 1, 2002, Arizona Public Service Company (APS) tendered for filing a correction to the two Service Agreements with Public Service Company of New Mexico, Wholesale Power Marketing under APS" Open Access Transmission Tariff filed in the above referenced docket.

A copy of this filing has been served on Public Service Company of New Mexico, Wholesale Power Marketing, New Mexico Public Regulation Commission, and the Arizona Corporation Commission.

Comment Date: August 22, 2002.

5. Accent Energy Inc.

[Docket No. ER02–2399–000]

Take notice that on July 31, 2002, Accent Energy Inc. (Accent) petitioned the Commission for acceptance of Accent Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Accent is a Delaware corporation with its principal place of business in Dublin, Ohio. Accent is involved in natural gas marketing and the marketing of electricity. Accent proposes to act as a retail energy marketer, selling natural gas and power to commercial and industrial customers. However, from time to time it may be deemed to act as a power marketer, purchasing electricity and reselling it to wholesale customers through its supply agreements with its wholesale suppliers. Accent is not in the business of generating or transmitting electric power.

Comment Date: August 21, 2002.

6. Southern California Water Company

[Docket No. ER02–2400–000]

Take notice that on July 31, 2002, Southern California Water Company (SCWC) tendered for filing with the Federal Energy Regulatory Commission an application for market-based rate authority under which SCWC will engage in wholesale electric power and energy transactions at market-based rates. Copies of this filing were served upon the Public Utilities Commission of the State of California.

Comment Date: August 21, 2002.

7. Duke Energy Corporation

[Docket No. ER02–2401–000]

Take notice that on July 31, 2002, Duke Energy Corporation (Duke) on behalf of Duke Electric Transmission (Duke ET), tendered for filing Service Agreement for Network Integration Transmission Service (NITSA) between Duke ET and the Commissioners of Public Works of the City of Greenwood, South Carolina under Duke's Open Access Transmission Tariff.

Duke seeks an effective date for the NITSA of July 1, 2002.

Comment Date: August 21, 2002.

8. Great Bay Power Corporation

[Docket No. ER02–2402–000]

Take notice that on July 31, 2002, Great Bay Power Corporation (Great Bay) filed with the Federal Energy Regulatory Commission pursuant to Section 205 of the Federal Power Act and 18 CFR 35.13 to amend its Purchased Power Agreement executed in 1993 between Great Bay and Unitil Power Corp. (UPC) (1993 PPA) as provided in the Amended and Restated Purchased Power Agreement, along with the Agreement to Amend, entered into by Great Bay and UPC (Amended PPA). The amendments to the 1993 PPA are a result of Great Bay's intention to sell its interest in the Seabrook Nuclear Power Station (Seabrook). Great Bay requests an effective date of the earlier of the Seabrook transaction's closing date or December 1, 2002.

Comment Date: August 21, 2002.

9. Commonwealth Edison Company

[Docket No. ER02–2403–000]

Take notice that on July 31, 2002, Commonwealth Edison Company (ComEd) submitted for filing an executed Network Service and Network Operating Agreement (Service Agreement) between ComEd and Ameren Energy Marketing (Ameren), two executed agreements for dynamic scheduling of transmission service (Scheduling Agreements), and an agreement for short-term firm point-to-point transmission service (Transmission Agreement) between ComEd and Exelon Generation Company, LLC, (EXGN) under ComEd's FERC Electric Tariff, Second Revised Volume No. 5.

ComEd seeks an effective date of May 20, 2002 for the Service Agreement, an effective date of July 1, 2002 for the first of the Scheduling Agreements and the Transmission Agreement, and an effective date of July 8, 2002 for the second of the Scheduling Agreements, and, accordingly, seeks waiver of the Commission's notice requirements. ComEd states that a copy of this filing has been served on Ameren, EXGN and the Illinois Commerce Commission.

Comment Date: August 21, 2002.

10. WPS Energy Services, Inc.

[Docket No. ER02–2404–000]

Take notice that on July 31, 2002, WPS Energy Services, Inc. (ESI) filed a brokering and dispatch agreement between ESI and WPS Empire State, Inc. (Empire) (the Agreement). ESI requests waiver of the Federal Energy Regulatory Commission's notice of filing requirements to permit the Agreement to become effective on May 31, 2002.

A copy of the filing was served upon Empire.

Comment Date: August 21, 2002.

11. California Independent System Operator Corporation

[Docket No. ER02–2405–000]

Take notice that on July 31, 2002, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and TXU Energy Trading Company LP for acceptance by the Federal Energy Regulatory Commission.

The ISO states that this filing has been served on TXU Energy Trading Company LP and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective as of July 19, 2002.

Comment Date: August 21, 2002.

12. Conectiv

[Docket No. ER02–2406–000]

Take notice that on July 31, 2002, Conectiv, on behalf of Atlantic City Electric Company (ACE), tendered for filing a Notice of Cancellation and two revised cover sheets to cancel two interconnection agreements between ACE and NRG Energy, Inc. (NRG) on file as Service Agreement No. 481 and Service Agreement No. 482, respectively, under PJM Interconnection, L.L.C.'s (PJM) open access transmission tariff, FERC Electric Tariff, Third Revised Volume No. 1.

Conectiv initially filed the two interconnection agreements in anticipation of a sale by ACE to NRG of two electrical generating stations that was terminated after the filing of the two interconnection agreements with the Commission. Conectiv respectfully requests that the Commission waive its notice requirements and allow the Notice of Cancellation and the revised cover sheets to become effective as of September 1, 2000.

Copies of the filing were served upon NRG, the Maryland Public Service Commission, the Delaware Public Service Commission, the New Jersey Board of Public Utilities, the Virginia State Corporation Commission, the Pennsylvania Public Utility Commission and PJM.

Comment Date: August 21, 2002.

13. Maclaren Energy, Inc.

[Docket No. ER02–2407–000]

Take notice that on August 1, 2002, Maclaren Energy, Inc. (Maclaren) tendered for filing with the Federal Energy Regulatory Commission (Commission) a transmittal letter notifying the Commission that Maclaren legally changed its name to Brascan Energy Marketing Inc. on June 27, 2002. The filing also proposes a revision to Maclaren's tariff to add the language required by the Commission in its November 20, 2001 order in Docket No. EL01–118–000 to ensure that Maclaren's rates remain just and reasonable.

Comment Date: August 22, 2002.

14. Lower Mount Bethel Energy, LLC

[Docket No. ER02–2408–000]

Take notice that on August 1, 2002, Lower Mount Bethel Energy, LLC filed with the Federal Energy Regulatory Commission (Commission) an application for authority to sell electric energy, capacity and certain ancillary services at market-based rates.

Comment Date: August 22, 2002.

15. California Independent System Operator Corporation

[Docket No. ER02–2409–000]

Take notice that on August 2, 2002, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Public Service Company of New Mexico for acceptance by the Commission.

The ISO states that this filing has been served on Public Service Company of New Mexico and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective as of July 19, 2002.

Comment Date: August 23, 2002.

16. California Independent System Operator Corporation

[Docket No. ER02–2410–000]

Take notice that on August 2, 2002, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Midway Sunset Cogeneration Company for acceptance by the Commission.

The ISO states that this filing has been served on Midway Sunset Cogeneration Company and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective as of July 22, 2002.

Comment Date: August 23, 2002.

17. Southern California Edison Company

[Docket No. ER02–2411–000]

Take notice that on August 2, 2002, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between SCE and the City of Corona (Corona). The Letter Agreement specifies the terms and conditions under which SCE will commence performance of the engineering, design, procurement, and preparation of specifications necessary for the required interconnection facilities and any required system upgrades to commence Distribution Service to Corona by Corona's proposed in-service date of December 1, 2002.

SCE respectfully requests that the Letter Agreement become effective on July 24, 2002. Copies of this filing were served upon the Public Utilities Commission of the State of California and Corona.

Comment Date: August 23, 2002.

18. PowerSól Energy Marketing, LLC

[Docket No. ER02–2413–000]

Take notice that on August 1, 2002, PowerSól Energy Marketing, LLC (PowerSól) petitioned the Commission for acceptance of PowerSól Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

PowerSól intends to engage in wholesale electric power and energy purchases and sales as a marketer. PowerSól is not in the business of generating or transmitting electric power. PowerSól is a wholly-owned subsidiary of PowerSól Group, LP, which, through its affiliates, engaged in public affairs, public relations, financial services and real estate.

Comment Date: August 23, 2002.

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19. Florida Power & Light Company

[Docket No. ER02–2414–000]

Take notice that on August 2, 2002, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission an unexecuted Interconnection and Operation Agreement between FPL and Duke Energy Fort Pierce, LLC (Duke) that sets forth the terms and conditions governing the interconnection between Duke's generating project and FPL's transmission system. A copy of this filing has been served on Duke and the Florida Public Service Commission.

Comment Date: August 23, 2002.

20. PJM Interconnection, L.L.C.

[Docket No. ER02–2415–000]

Take notice that on August 2, 2002, PJM Interconnection, L.L.C. (PJM), submitted amendments to the PJM Open Access Transmission Tariff to add provisions under which generators that benefit from transmission capability created by facilities or upgrades that were built to accommodate, and at the expense of, generators previously interconnected with the transmission system will be responsible for a proportional share of the costs of the previous facilities or upgrades, provided that the generator that originally paid for the relevant facilities or upgrades agrees to relinquish Incremental FTRs proportional to the cost responsibility assigned to the subsequent generator.

Copies of this filing have been served on all PJM members, and the state electric utility commissions in the PJM region.

Comment Date: August 23, 2002.

21. PJM Interconnection, L.L.C.

[Docket No. ER02–2416–000]

Take notice that on August 2, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interconnection service agreement between PJM and Sweetheart Cup Company, Inc. PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective date agreed to by the parties.

Copies of this filing were served upon each of the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: August 23, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20406 Filed 8–12–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7257–9]

Agency Information Collection Activities: Continuing Collection; Comment Request; National Health Protection Survey of Beaches

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval: National Health Protection Survey of Beaches, EPA ICR Number 1814.02, OMB Control Number 2040–0189, expiration date 01/31/2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 15, 2002.

ADDRESSES: Send or deliver comments to the following addresses: Mr. Rick Hoffmann, Office of Water, Office of Science and Technology, Standards and Health Protection Division (4305T), 1200 Pennsylvania Avenue, Washington, DC 20460. Location for Hand Delivery: EPA West (Connecting Wing, Room 5233LL, 1301 Constitution Avenue, NW., Washington, DC. Interested persons may obtain a copy of the ICR without charge by contacting EPA staff listed in the section below.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Hoffmann at EPA, (202) 566–0388, by email at *hoffmann.rick@epa.gov*, or facsimile at 202–566–0409. Or download a copy of the ICR off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1814.02.

SUPPLEMENTARY INFORMATION:

Title: National Health Protection Survey of Beaches (OMB Control No. 2040–0189; EPA ICR No. 1814.02; expiring 01/31/03).

Abstract: Bacterial and other microbiological contaminants continue to pose potentially serious human health problems for the Nation's recreational waters, including bathing beaches. These adverse effects have been one of EPA's long-standing concerns. They are directly related to such Clean Water Act responsibilities as water quality standards and surface water quality, and to the Agency's efforts to ensure that the waters of the United States are "fishable" and "swimmable." In response to this concern, EPA initiated its annual National Health Protection Survey of Beaches (Beach Survey) starting in 1997. This voluntary nationwide survey collects, and makes available to the public, information related to beach water quality including: monitoring agency and organization, monitoring and public notification procedures and responsibilities; water quality standards; advisories and closings; and reasons for advisories and closings.

Currently, all beach information collected by EPA is obtained through the Beach Survey. However, EPA plans to significantly reduce the amount of information collected through the survey and instead obtain this information through grants to state and local governments awarded under the authority of the Beaches Environmental Assessment and Coastal Health (BEACH) Act. Since the information will be collected either through the Beach Survey or BEACH Act grants (but not both), there will be no duplication of effort and the net burden will be the same.

An Information Collection Request for the BEACH Act grant program has been approved by the Office of Management and Budget (EPA ICR Number 2048.01, OMB Control Number 2040–0244). Congress passed the BEACH Act in October 2000. The BEACH Act amended the Clean Water Act by adding section 406 "Coastal Recreation Water Monitoring and Notification." Section 406(b) authorizes EPA to make grants to States and local governments to develop and implement programs for monitoring and public notification for coastal recreation waters adjacent to beaches or similar points of access that are used by the public, if the State or local government satisfies the requirements of the BEACH Act. Several of these requirements require a grant awardee to collect and submit information to EPA as a condition of receiving a grant. Section 406(b) requires a grant awardee to identify the factors that the awardee uses to prioritize use of the grant funds, and a list of waters that will be monitored using grant funds. Section 406(b) also requires that a grant awardee's program be consistent with the grant program performance criteria established by EPA under section 406(a). EPA published these program performance criteria on July 19, 2002 (**Federal Register:** July 19, 2002 (67 FR 47540)). EPA needs information from the grant awardee to determine if the monitoring and notification programs are consistent with these criteria. Section 406(b) of the Clean Water Act also requires a grant awardee to submit a report to EPA that describes the data collected as part of a monitoring and notification program, and the actions taken to notify the public when water quality standards are exceeded. Section 406(c) of the Clean Water Act requires a grant awardee to identify lists of coastal recreation waters, processes for States to delegate to local governments the responsibility for implementing a monitoring and notification program, and the content of the monitoring and notification program. The information is required of States and local governments that seek to obtain BEACH Act funding. It allows EPA to properly review State and local governments' monitoring and notification programs to determine if they are eligible for BEACH Act grant funding. This information also enables EPA to fulfill its obligations to make this information available to the public as required by sections 406(e) and (g).

This BEACH Act requirement will greatly reduce the amount of information collected by the National Health Protection Survey of Beaches. However, there is still a need to conduct a limited survey. EPA proposes to send its voluntary survey to those agencies that are not eligible for BEACH grants. For example, agencies responsible for monitoring inland recreational waters are not eligible to receive grants under the BEACH Act. EPA proposes to continue collecting information about these inland waters because they are an important concern. For example, the National Health Protection Survey of Beaches for the 2001 swim season received information about more than 600 inland beaches. Approximately 23% of these beaches were under advisory or closed at least once during the swim season due to the potential risk of bacteriological contamination. Therefore, water quality at inland bathing beach areas remains an important concern to EPA. If an eligible state decides not to apply for a grant, EPA would send its voluntary surveys to appropriate agencies. EPA will ensure that these surveys are not sent to agencies receiving beach grants.

The annual Beach Survey will be sent to appropriate environmental health officials from State, tribal, county, and city agencies, as well as representatives from various interest groups. It will obtain and verify information on the location and condition of swimming beaches and the agencies and persons responsible for maintaining and issuing advisories or closings for those beaches. Responses to the questionnaire will be gathered either on paper questionnaires or electronically via the Internet.

EPA will assemble the information into an electronic database and that can be readily analyzed and shared with responsible parties (*e.g.*, EPA program and regional offices, other federal, state, tribal, county, and city agencies), as well as the public. The nationwide collection of information is conducted annually, with an average estimated number of respondents of approximately 300 agencies in the first year, declining to an estimated 50 agencies in the third year. The estimated annual cost for the survey per respondent is anticipated to decrease each year, since respondents will only be requested to provide information that has changed during the year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 2.4 hours per response. For the first year of the survey covered by this Information Collection Request it is estimated that 300 surveys will be completed. During the second and third years of the survey covered by this ICR it is estimated that 50 surveys will be received each year. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

This burden estimate assumes that there will be a major drop in current participants due to reporting of data through BEACH Act grants. However, there may be a very gradual increase in the inland, freshwater beach participants as interest increases in the survey.

Respondents/Affected Entities: Entities potentially affected by this action are State, County, City, and Tribal representative with responsibilities for assessing the impact of water contaminated by microbiological pollutants on persons using beaches and related recreational waters.

Comments: You may submit comments by mail, e-mail, or delivered by hand to the addresses shown in the **ADDRESSES** section of this notice.

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Dated: August 2, 2002.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 02–20450 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7258–1]

Agency Information Collection Activities: Continuing Collection; Comment Request; General Hazardous Waste Facility Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): General Hazardous Waste Facility Standards, EPA ICR # 1571.07, OMB Control Number 2050–0120, expires December 31, 2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 15, 2002.

ADDRESSES: Comments may be submitted by mail, through hand delivery/courier, or electronically. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

The mailing address, referencing Docket ID No. RCRA–1999–0027, is: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters, 1200 Pennsylvania Avenue NW., Washington, DC 20460–001. Hand deliveries of comments should be made to the Arlington, Virginia address below. Comments may also be submitted electronically through the Internet to: *rcra-docket@epa.gov*. Comments in electronic format should also be identified by the Docket ID No. RCRA–1999–0027. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5303W), U.S. EPA, 1200 Pennsylvania Avenue NW., Washington DC 20460–001.

Hand deliveries must be brought to the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: David Eberly by phone at (703) 308–8645, by mail at the Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–001, or by e-mail at *eberly.david@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. How Can I Get Copies of the ICR Supporting Statement and Other Related Information?

1. *Docket.* EPA has established an official public docket for this ICR under Docket ID No. RCRA–1999–0027. The official public docket consists of the documents specifically referenced in the ICR, any public comments received, and other information related to this ICR. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the RCRA Information Center (see **ADDRESSES** above). This Docket Facility is open from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding federal holidays. It is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies are $0.15/page

2. *Electronic Access.* You may access this Federal Register document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in A.1 above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments in formulating a final decision.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. RCRA–1999–0027. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov*, Attention Docket ID No. RCRA–1999–0027. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in **ADDRESSES.** These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and two copies of their comments, referencing Docket ID No. RCRA–1999–0027, to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters, 1200 Pennsylvania Avenue NW., Washington, DC 20460–001.

3. *By Hand Delivery or Courier.* Deliver your comments to: RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA, Attention Docket ID No. RCRA–1999–0027. Such deliveries are only accepted during the Docket's normal hours of operation, from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to: RCRA CBI Document Control Officer, Office of Solid Waste (5303W), U.S. EPA, 1200 Pennsylvania Avenue NW., Washington DC 20460–001, Attention Docket ID No. RCRA–1999–0027. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information. In particular, for this ICR, EPA is soliciting information on the estimates for performing waste analyses as required in 40 CFR 264.13(a)(1) and 40 CFR 265.13(a)(1).

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Affected entities: Entities potentially affected by this action are owners and operators of hazardous waste treatment, storage, and disposal facilities.

Title: General Hazardous Waste Facility Standards, EPA ICR # 1571.07, OMB Control Number 2050–0120, expires on December 31, 2002.

Abstract: Section 3004 of the Resource Conservation and Recovery Act (RCRA), as amended, requires that the U.S. Environmental Protection Agency (EPA) develop standards for hazardous waste treatment, storage, and disposal facilities (TSDFs) as may be necessary to protect human health and the environment. Subsections 3004(a)(1), (3), (4), (5), and (6) specify that these standards include, but not be limited to, the following requirements:

- Maintaining records of all hazardous wastes identified or listed under subtitle C that are treated, stored, or disposed of, and the manner in which such wastes were treated, stored, or disposed of;
- Operating methods, techniques, and practices for treatment, storage, or disposal of hazardous waste;
- Location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;
- Contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste; and

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• Maintaining or operating such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility as may be necessary or desirable.

The regulations implementing these requirements are codified in the *Code of Federal Regulations* (CFR) Title 40, parts 264 and 265. The collection of this information enables EPA to properly determine whether owners/operators or hazardous waste treatment, storage, and disposal facilities meet the requirements of Section 3004(a) of RCRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Burden Statement: This proposed ICR is an estimate of the total respondent burden for all activities related to general facility operating requirements, record keeping requirements, contingency plan and emergency reporting requirements, releases from solid waste management units, closure/post-closure requirements, financial requirements, corrective action management unit requirements, and conditions applicable to all permits.

The total burden to respondents as estimated in the proposed ICR for "General Facility Standards (#1571.07)" is 719,059 hours per year, at a cost of $45,380,950 per year. This estimate was based on owners and operators of hazardous waste management facilities complying with the information collection requirements set forth in 40 CFR parts 264 and 265, subparts B–H and by using an average hourly respondent labor cost (including overhead) of $108.00 for legal staff, $77.00 for managerial staff, $57.00 for technical staff, and $29.00 for clerical staff. EPA estimates the total number of respondents per year to be 2,724, which includes both permitted and interim status facilities. The number of respondents varies depending upon the category of each facility and the required activity.

The annual public reporting burden and record keeping burden for this collection of information is estimated to average 319 hours per respondent.

For general facility operating standards, there is no associated reporting. The record keeping burden for general facility operating standards is estimated to average 119 hours per respondent per year. This estimate includes time for reading the regulations, preparing and submitting notices, collecting and documenting waste analysis data, and developing a waste analysis plan, inspection schedule, personnel training schedule, and construction quality assurance plan.

For operating record requirements, the record keeping burden is estimated to average 131 hours per year. This burden includes time to collect and file information in the operating record. There is no associated reporting burden for these requirements.

For contingency plan and emergency procedure requirements, there is no associated reporting burden. The record keeping burden is estimated to average one hour per respondent per year.

For requirements covering releases from solid waste management units, the public reporting burden is estimated to average 1 hour per respondent per year. This estimate includes time to read the regulations and prepare and submit demonstrations. There is no associated record keeping burden for these requirements.

For closure and post-closure requirements, the public reporting burden is estimated to average 45 hours per respondent per year. This estimate includes time to read the regulations; prepare and submit plans, notices, demonstrations, certifications, and records; and make modifications to plans. The record keeping burden is estimated to average 1 hour per respondent per year.

For financial requirements, the public reporting burden is estimated to average 16 hours per respondent per year. This estimate includes time to read the regulations and prepare and submit financial and liability assurance documentation. There is no associated record keeping burden for these requirements.

For permit condition requirements, the public reporting burden is estimated to average 6 hours per respondent per year. This estimate includes time to read the regulations, and prepare and submit information requested by EPA, required by the permit, or required as a result of an incident that occurs at the facility. There is no associated record keeping burden for these requirements.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: August 2, 2002.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 02–20453 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7252–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; 2003 Hazardous Waste (Biennial) Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: We are announcing our plan to submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB): The 2003 Hazardous Waste Report, also known as the Biennial Report. Before submitting this ICR to OMB for review and approval, we are asking for comments on the information collection.

DATES: Comments must be submitted on or before October 15, 2002.

ADDRESSES: EPA, Office of Solid Waste (5302W), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert Burchard (703) 308–8450, fax: (703) 308–8433, *burchard.robert@epa.gov*.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities affected by this action are those which generate, treat, store, or dispose of hazardous waste.

Title: "The 2003 Hazardous Waste Report (Biennial Report)" EPA ICR No.0976.10, OMB Control No. 2050–0024.

This ICR renews an on-going information collection from hazardous waste generators and treatment, storage, or disposal facilities. This collection is done on a two year cycle, and is required by Sections 3002 and 3004 of the Resource Conservation and Recovery Act (RCRA). The information collected is collected via a mechanism known as the Biennial Report.

The Biennial Report provides information on the quantities, type, and management of hazardous waste in the United States. The Biennial Report data are used by EPA and the states to understand available capacity to treat, store, dispose, and recycle hazardous wastes; to provide information for analysis of trends in waste generation, waste treatment, recycling, and source reduction; to target facility inspections; and to understand how much waste a state receives from out of state or sends out of state.

Data are collected from respondents and entered into an electronic database by state and EPA Regions. States coordinate with EPA Regions and Headquarters to supply EPA with the data. These data are maintained in RCRAInfo, a database residing on centrally managed servers at the Agency's National Computing Center (accessible through the Envirofacts web page: *www.epa.gov/enviro).*

Once an initial version of the national database is compiled, EPA Headquarters coordinates a data quality review with the states and EPA Regions. This process identifies cases where the state or Region may want to confirm that data were correctly entered, and where they should contact a respondent to confirm what they reported and provide them with the opportunity to submit an updated report if the original contained errors. Following the submittal of revised data, no further changes are made to the database and it becomes the final version.

For the 2003 cycle, we plan to use most of the 2001 Biennial Report forms and instructions. There will be some small changes for 2003: eliminating the reporting of radioactive mixed waste, clarifying the explanations for some of the Source and Management codes, and providing better directions for determining which North American Industrial Classification System (NAICS) code is appropriate. We are eliminating radioactive mixed waste because the information is not used by program implementers. We plan to have the 2003 forms and instructions available to the public by the beginning of the 2003 calendar year.

Burden Statement

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

The EPA solicits comments to help us:

(i) Evaluate whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's burden estimate;

(iii) find ways to enhance the quality and utility of the information; and

(iv) minimize the burden of the information collection, such as using automated techniques.

Based on the 2001 Biennial Report ICR, EPA estimates there will be 20,300 respondents to the 2003 Biennial Report. We also estimate that Biennial Report will impose an annual burden of 195,200 hours on the states and regulated community and require the expenditure of $10,260,000.

The annual reporting burden is estimated at 17 hours per respondent, which includes time for reviewing instructions, gathering data, completing and reviewing the forms, and submitting the report. The annual record keeping requirement is estimated at 2.5 hours per respondent, which includes the time for filing and storing the Biennial Report submission for three years. Burden means the total time, effort, or financial resources expended to generate, maintain, retain, disclose or provide information.

Dated: August 6, 2002.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 02–20454 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7257–6]

Privacy Act of 1974: System of Records, Creation of a New Privacy Act System of Records

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of establishment of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of the Inspector General (OIG) is giving notice that it proposes to establish a new system of records, AutoAudit. This system of records is an automated information tracking and storage system employed in connection with OIG audits, consulting services, and evaluations commenced on or after April 8, 2002.

EFFECTIVE DATES: The proposed amendments will be effective without further notice on September 23, 2002 unless comments received require a contrary determination.

ADDRESSES: Send written comments to Gary Johnson, Acting Assistant Inspector General for Mission Systems, Office of Inspector General (2441), 1200 Pennsylvania Ave., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Acting Assistant Inspector General for Mission Systems, on (202 566–0848).

SUPPLEMENTARY INFORMATION: The OIG, pursuant to the Privacy Act of 1974, currently maintains four systems of records: (1) Investigative Files of the Office of Inspector General (EPA–40) ; (2) Personnel Security Files of the Office of Inspector General (EPA–41); (3) Inspector General's Operation and Reporting (IGOR) System Audit, Assignment, and Timesheet Files (EPA–42); and (4) Hotline Files of the Office of Inspector General (EPA–30). The notice for the first three systems of records was published on October 1, 2001 (66 FR 49947). The notice for the Hotline system of records was published on February 22, 2002 (67 FR 8246).

Section 552a(e)(4) and (11) of Title 5, United States Code, provides that the public be afforded a 30-day period in which to comment on this addition to OIG's existing record systems. Additionally, a copy of this notice has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to 5 U.S.C. 552a(r).

AutoAudit, OIG's new automated information tracking and storage system, is an electronic database which organizes and contains assignment work papers. The software cross-references, indexes, and tracks work papers in a centralized, paper-less environment. Records maintained in AutoAudit primarily will be accessed by assignment number. In addition, records may be accessed by reference to any information entered into such system, including name, alias, social security number, address, etc.

EPA–50

SYSTEM NAME:

OIG AutoAudit—EPA/OIG.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Technology Service Division, Office of Technology Operations and Planning, U.S. Environmental Protection Agency; 79 Alexander Drive; Building 4201, MD–34; Research Triangle Park, North Carolina 27711.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include the assigned OIG auditor or evaluator, the audit or evaluation

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requestor, or the interviewee. (If Federal employees, this information will include their name, title, EPA office, EPA organization mail code, General Schedule occupation series and grade, geographic location, and type of employee (*e.g.*, EPA employee or EPA OIG employee).)

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of materials compiled and/or generated in connection with audits, evaluations, and other non-audit services performed by OIG staff. These materials include information regarding the planning, conduct, and resolution of audits and evaluations of EPA programs and participants in those programs, information requests, responses to such requests, reports of findings, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended, 5 U.S.C. app. 3.

PURPOSE(S):

The records contained in the systems are used by the OIG in furtherance of the responsibilities of the Inspector General under the Inspector General Act of 1978, as amended, to conduct and supervise audits and other reviews relating to programs and operations of the EPA; to promote economy, efficiency, and effectiveness in the administration of such programs and operations; and to prevent and detect fraud and abuse in such programs and operations. The records, especially work papers, are used to generate audit and other reports. The system will automate the work papers including organization, retrieval, and indexing.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses: EPA's general routine uses A through K apply to this system. *See* 66 FR 49947–49948 for a list of EPA's general routine uses. In addition, EPA OIG's 13 specific routine uses for its Inspector General's Operating and Reporting System Investigative Files apply to this system. *See* 66 FR 49948–49949.

POLICIES AND PRACTICES FOR STORING, RETRIEVING ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Records are stored electronically in office automation equipment and manually in file jackets.

RETRIEVABILITY:

Records primarily will be retrieved by assignment number. Records may also be retrieved by audit report number; name of the assigned OIG auditor or evaluator; or the name of the audit or evaluation requestor, interviewee, or subject matter of the audit.

SAFEGUARDS:

Computer records are maintained in a secure, password protected computer system. All records are maintained in secure areas or buildings with physical access and environmental controls. Direct access to the electronic database is limited to authorized employees of the OIG.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with EPA Records Control Schedule 700, Inspector General Records, approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Audits, Office of Inspector General (2421), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

NOTIFICATION PROCEDURES:

The System Manager will accept inquiries from individuals seeking notification of whether the system contains records pertaining to them.

RECORD ACCESS PROCEDURES:

Requests for access should be made in writing to the System Manager in accordance with EPA's regulations at 40 CFR part 16. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification procedures may be required in some instances.

CONTESTING RECORD PROCEDURES:

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are set out in 40 CFR part 16.

RECORD SOURCE CATEGORIES:

The OIG collects information from a wide variety of sources, including from EPA, other Federal agencies, the General Accounting Office (GAO), law enforcement agencies, program participants, subject individuals, complainants, witnesses and other non-governmental sources.

SYSTEMS EXEMPT FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: July 5, 2002.

Kim Nelson,

Assistant Administrator and Chief Information Officer.

[FR Doc. 02–20452 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 27, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Craig L. Larson*, Bismarck, North Dakota; to acquire voting shares of First Southwest Bancorporation, Bismark, North Dakota, and thereby indirectly acquire voting shares of First Southwest Bank, Bismarck, North Dakota.

Board of Governors of the Federal Reserve System, August 7, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–20397 Filed 8–12–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 6, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. *Morrill Bancshares, Inc.*, Sabetha, Kansas; to acquire and merge with Morrill & Janes Bancshares, Inc., Hiawatha, Kansas, Onaga Bancsahares Inc., Merriam, Kansas; and thereby acquire shares of Morrill & Janes Bank & Trust Co., Hiawatha, Kansas; The First National Bank of Onaga, Onaga, Kansas; Century Capital Financial, Inc., Kilgore, Texas; Century Capital Financial - Delaware, Inc., Wilmington, Delaware; and City National Bank, Kilgore, Texas.

In connection with this application, Applicant also has applied to acquire FBC Financial Corporation, Claremore, Oklahoma, and thereby indirectly acquire 1st Bank Oklahoma, Claremore, Oklahoma, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

In addition, Applicant also has applied to engage *de novo* through First Trust Company of Onaga, Onaga, Oklahoma, in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, August 7, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–20398 Filed 8–12–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 012 3240]

Microsoft Corporation; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 9, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: J. Howard Beales, III, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3240.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f) and section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 8, 2002), on the World Wide Web, at "*http://www.ftc.gov/os/2002/08/index.htm.*" A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Microsoft Corporation Microsoft Corporation ("Microsoft").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

Microsoft develops, manufacturers, license, and supports a myriad of software products, sells hardware devices, provides consulting services, trains and certified system developers, and offers a variety of online services. This matter concerns allegedly false or misleading representations made in connection with three related Microsoft services: the Passport Single Sign-In service ("Passport"); Passport Express Purchase (generally referred to as "Passport Wallet"); and Kids Passport (referred to collectively as the "Passport services"). Passport is an online authentication service that allows consumers to sign in at multiple Web sites with a single username and password. Passport Wallet and Kids Passport are add-on services that provide online purchasing and parental consent services.

The Commission's proposed complaint alleges that Microsoft misrepresented:

(1) that it maintained a high level of online security by employing sufficient measures reasonable and appropriate under the circumstances to maintain and protect the privacy and confidentiality of personal information obtained from or about consumers in connection with the Passport and Passport Wallet services;

(2) that purchase made at a Passport Express Purchase site with Passport Wallet are safer or more secure than purchases made at the same Passport

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Express Purchase site without using the Passport Wallet;

(3) that Passport did not collect any personally identifiable information other than that described in its privacy policy, when, in fact, Passport collected, and maintained for a limited period of time, a personally identifiable record of the sites to which a Passport user signed in, along with the dates and times of sign in, which customer service representatives linked to a user's name in order to respond to a user's request for service; and

(4) that the Kids Passport service provides parents with control over the information their children could provide to participating Passport sites and the use of that information by such sites.

The proposed consent order applies to the collection and storage of personal information from or about consumers in connection with the advertising, marketing, promotion, offering for sale, or sale of Passport, Kids Passport, Passport Wallet, any substantially similar product or service, or any multisite online authentication service. It contains provisions designed to prevent Microsoft from engaging in practices similar to those alleged in the complaint in the future.

Specifically, Part I of the proposed order prohibits misrepresentations regarding Microsoft's information practices, including:

- what personal information is collected from or about consumers;
- the extent to which respondent's product or service will maintain, protect or enhance the privacy, confidentiality, or security of any personally identifiable information collected from or about consumers.
- the steps respondent will take with respect to personal information it has collected in the event that it changes the terms of the privacy policy in effect at the time the information was collected;
- the extent to which the service allows parents to control what information their children can provide to participating sites or the use of that information by such sites; and
- any other matter regarding the collection, use, or disclosure of personally identifiable information.

Part II of the proposed order requires Microsoft to establish and maintain a comprehensive information security program in writing that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. The security program must contain administrative, technical, and physical safeguards appropriate to Microsoft's size and complexity, the nature and scope of its activities, and the sensitivity of the personal information collected from or about consumers. Specifically, the order requires Microsoft to:

- designate an employee or employees to coordinate and be accountable for the information security program;
- identify material internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks. At a minimum, this risk assessment will include consideration of risks in each area of relevant operation, including: (1) employee training and management; (2) information systems, including network and software design, information processing, storage, transmission and disposal; and (3) prevention, detection, and response to attacks, intrusions, or other systems failures;
- design and implement reasonable safeguards to control the risks identified through risk assessment, and regularly test or monitor the effectiveness of the safeguards' key controls, systems, and procedures; and
- evaluate and adjust its information security program in light of the results of testing and monitoring, any material changes to its operations or business arrangements, or any other circumstances that Microsoft knows or has reason to know may have a material impact on its information security program.

Part III of the proposed order requires that Microsoft obtain within one year, and on a biannual basis thereafter, an assessment and report from a qualified, objective, independent third-party professional, using procedures and standards generally accepted in the profession, certifying that: (1) Microsoft has in place a security program that provides protections that meet or exceed the protections required by Part II of this order; and (2) Microsoft's security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of consumer's personal information has been protected.

Parts IV through VII of the proposed order are reporting and compliance provisions. Part IV requires Microsoft's retention of materials relating to its privacy and security representations and to its compliance with the order's information security program. Part V requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part VI ensures notification to the FTC of changes in corporate status. Part VII mandates compliance reports within sixty (60) days after service of the order and at such other times as the Federal Trade Commission may require. Part VII is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

By direction of the Commission.

C. Landis Plummer,

Acting Secretary.

[FR Doc. 02–20473 Filed 8–12–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–42–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Joint Canadian U.S. Survey of Health (CUJHS)—New—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). CUJHS is a one-time collaborative effort of Statistics Canada and the U.S. National Center for Health Statistics to conduct a telephone survey in both countries using the same questionnaire. Approximately 3,000 adults will be interviewed in Canada and 5,000 adults in the U.S. The questionnaire will cover chronic health conditions, functional status and limitations, smoking, height and weight, cancer screening, access to health care, and demographics. The project will be jointly funded with each agency

covering the costs of data collection of their own sample and the sharing of all other costs.

The purpose of the survey is to move the national health surveys of both countries toward closer comparability so the health status among residents of countries can be compared in a more concrete manner. This will allow researchers to study the effect of variations in health systems on health care, health status and functional status. This effort can also serve as a model for improving comparability among national health studies generally. A need for such comparability has been noted by the World Health Organization, the Centers for Disease Control and Prevention and the Robert Wood Johnson Foundation who is funding the study in part.

The specific data from the CUJHS may well contribute toward meeting some of the research needs directly. Its longer term impact will be to demonstrate best practices for use in bi-national and multi-national health surveys. The annual burden for this data collection is 2,292 hours.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hours)
Screener	7500	1	5/60
Survey	5000	1	20/60

. Dated: August 6, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, , Centers for Disease Control and Prevention.

[FR Doc. 02–20427 Filed 8–12–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–293]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Telephone Customer Satisfaction Survey; *Form No.:* CMS–R–293 (OMB# 0938–0780); *Use:* In response to the National Partnership for Reinventing Government Performances and Results Act (GPRA), CMS is implementing a number of initiatives to measure and then improve the customer service that is provided by Medicare Call Centers, that service over 21 million calls annually. This particular initiative is to provide the 75+ call centers with suitably trained staff and survey materials to conduct a standardized random sample of beneficiary calls, and then administer a customer satisfaction questionnaire. The goal is to develop a national baseline measure of customer satisfaction with the Medicare telephone service provided by carriers and fiscal intermediaries. The respondents for this study will consist of beneficiaries and their advocates who phone Medicare call centers.; *Frequency:* On occasion, semi -annually, and other (single 800# survey); *Affected Public:* Individuals or households; *Number of Respondents:* 50,000; *Total Annual Responses:* 50,000; *Total Annual Hours:* 3,500

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances Attention: Melissa Musotto Room N2–14–26 7500 Security Boulevard Baltimore, Maryland 21244–1850.

Dated: August 6, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–20469 Filed 8–12–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–2746]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or

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other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* End Stage Renal Disease Death Notification; *Form No.:* CMS–2746 (OMB# 0938–0448); *Use:* The form is completed by all Medicare approved ESRD facilities upon the death of an ESRD patient. Its primary purpose is to collect fact and cause of death. Reports of deaths are used to show cause of death and demographic characteristics of these patients.; *Frequency:* On occasion, weekly; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government; *Number of Respondents:* 4,500; *Total Annual Responses:* 63,989; *Total Annual Hours:* 1,088.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at http://www.hcfa.gov/regs/prdact95.htm, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 6, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–20470 Filed 8–12–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0400]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Regulations Requiring Manufacturers to Assess the Safety and Effectiveness of New Drugs and Biological Products in Pediatric Patients

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by September 12, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Regulations Requiring Manufacturers to Assess the Safety and Effectiveness of New Drugs and Biological Products in Pediatric Patients—(OMB Control Number 0910–0392)—Reinstatement

FDA regulations require pediatric studies of certain new and marketed drugs and biological products to ensure that those products that are likely to be commonly used in children or that represent a meaningful therapeutic benefit over existing treatments contain adequate pediatric labeling for the approved indications at the time of, or soon after, approval (see 63 FR 66632, December 2, 1998). Many drugs and biological products represent treatments that are the best available treatment for children, but most of them have not been adequately tested in the pediatric population. As a result, product labeling frequently fails to provide directions for safe and effective use in pediatric patients. The regulations are intended to increase the number of drugs and biological products, with clinically significant use in children, that carry adequate labeling for use in that subpopulation. Specifically, the regulations are intended to address the following concerns: (1) Avoidable adverse drug reactions in children—drug reactions that occur because of the use of inadvertent drug overdoses or other drug administration problems that could have been avoided with better information on appropriate pediatric use; and (2) undertreatment of children with a potentially safe and effective drug because the physician either prescribed an inadequate dosage or regimen, prescribed a less effective drug, or did not prescribe a drug, due to the physician's uncertainty about whether the drug or the dose was safe and effective in children.

The regulations contain the following reporting requirements that are subject to the PRA:

21 CFR 201.23(a)—Manufacturers of marketed drug products submit an application containing data adequate to assess whether the drug product is safe and effective in pediatric populations; applicants develop a pediatric formulation for FDA approval.

21 CFR 201.23(c)—Applicants request a full waiver of the requirements under § 201.23(a) by certifying that necessary studies are impossible or highly impractical or there is evidence that the product would be ineffective or unsafe in all pediatric age groups. Applicants request a partial waiver of the requirements under § 201.23(a) by certifying that: (1) The product does not represent a meaningful therapeutic benefit over existing therapies for pediatric patients in that age group, it is not likely to be used in a substantial number of patients in that age group, and the absence of adequate labeling could not pose significant risks to pediatric patients; or (2) necessary studies are impossible or highly impractical, or there is strong evidence that the product would be ineffective or unsafe in that age group, or the applicant can demonstrate that reasonable attempts to produce a pediatric formulation necessary for that age group have failed.

21 CFR 312.47(b)(1)(iv)—Sponsors submit background information on the sponsor's plan for phase 3, including plans for pediatric studies, including a time line for protocol finalization, enrollment, completion, and data analysis, or information to support any planned request for waiver or deferral of pediatric studies.

21 CFR 312.47(b)(2)—Sponsors submit information on the status of needed or ongoing pediatric studies.

21 CFR 314.50(d)(7)—Applicants submit a pediatric use section, describing the investigation of the drug for use in pediatric populations.

21 CFR 314.55(a)—Applications contain data that are adequate to assess the safety and effectiveness of the drug product for the claimed indications in pediatric subpopulations and to support dosing and administration.

21 CFR 314.55(b)—Applicants request a deferred submission of some or all assessments of safety and effectiveness required under § 314.55(a) by certifying to the grounds for delaying pediatric studies, a description of planned or ongoing studies, and evidence that studies will be conducted at the earliest possible time.

21 CFR 314.55(c)—Applicants request a full waiver of the requirements under § 314.55(a) by certifying that the product does not represent a meaningful therapeutic benefit over existing treatments for pediatric patients and is not likely to be used in a substantial number of pediatric patients, necessary studies are impossible or highly impractical, or there is strong evidence that the product would be ineffective or unsafe in all pediatric age groups. Applicants request a partial waiver of the requirements under § 314.55(a) by certifying that: (1) The product does not represent a meaningful therapeutic benefit over existing treatments for pediatric patients in that age group and it is not likely to be used in a substantial number of patients in that age group; (2) necessary studies are impossible or highly impractical; (3) there is evidence that the product would be ineffective or unsafe in that age group; or (4) the applicant can demonstrate that reasonable attempts to produce a pediatric formulation necessary for that age group have failed.

21 CFR 314.81(b)(2)(i)—Applicant's annual report includes a brief summary of whether labeling supplements for pediatric use have been submitted and whether new studies in the pediatric population have been initiated.

21 CFR 314.81(b)(2)(vi)(c)—Applicant's annual report includes an analysis of available safety and efficacy data in the pediatric population and changes proposed in the labeling based on this information.

21 CFR 314.81(b)(2)(vii)—Applicant's annual report includes a status report containing a statement indicating whether postmarketing clinical studies in pediatric populations were required by FDA under § 201.23, and if so, the status of these studies.

21 CFR 601.27(a)—Applications for new biological products contain data that are adequate to assess the safety and effectiveness of the biological product for the claimed indications in pediatric subpopulations, and to support dosing and administration information.

21 CFR 601.27(b)—Applicants request a deferred submission of some or all assessments of safety and effectiveness required under § 601.27(a).

21 CFR 601.27(c)—Applicants request a full waiver of the requirements under § 601.27(a) by certifying that the product does not represent a meaningful therapeutic benefit over existing treatments for pediatric patients and is not likely to be used in a substantial number of patients in that age group; (2) necessary studies are impossible or highly impractical; (3) there is evidence that the product would be ineffective or unsafe in all pediatric age groups. Applicants request a partial waiver of the requirements under § 601.27(a) by certifying that: (1) The product does not represent a meaningful therapeutic benefit over existing treatments for pediatric patients in that age group and it is not likely to be used in a substantial number of patients in that age group; (2) necessary studies are impossible or highly impractical; (3) there is evidence that the product would be ineffective or unsafe in all pediatric age groups. Applicants request a partial waiver of the requirements under § 601.27(a) by certifying that: (1) The product does not represent a meaningful therapeutic benefit over existing treatments for pediatric patients in that age group and it is not likely to be used in a substantial number of patients in that age group; (2) necessary studies are impossible or highly impractical; (3) there is evidence that the product would be ineffective or unsafe in that age group; or (4) the applicant can demonstrate that reasonable attempts to produce a pediatric formulation necessary for that age group have failed.

21 CFR 601.28(a)—Sponsors annually submit to FDA a brief summary stating whether labeling supplements for pediatric use have been submitted and whether new studies in the pediatric population to support appropriate labeling for the pediatric population have been initiated.

21 CFR 601.28(b)—Sponsors submit to FDA an analysis of available safety and efficacy data in the pediatric population and changes proposed in the labeling based on this information.

21 CFR 601.28(c)—Sponsors submit to FDA a statement on the current status of any postmarketing studies in the pediatric population performed by, or on behalf of, the applicant.

FDA estimates that the collection of information resulting from these regulations is as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
201.23(a)	2	1	2	48	96
201.23(c)	0	0	0	0	0
312.47(b)(1)(iv)	107	1.2	131	16	2,096
312.47(b)(2)	100	1.3	127	16	2,032
314.50(d)(7) and 314.55(a)	59	1.3	78	50	3,900
314.55(b)	60	1.3	80	24	1,920
314.55(c)	79	1.3	105	8	840
314.81(b)(2)(i)	119	1.3	158	8	1,264
314.81(b)(2)(vi)(c)	119	1.3	158	24	3,792
314.81(b)(2)(vii)	6	1	6	1.5	9
601.27(a)	2	1	3	48	144
601.27(b)	5	1	5	24	120
601.27(c)	3	1	4	8	32
601.37(a)	69	1	69	8	552
601.37(b)	69	1	69	24	1,656
601.37(c)	69	1	69	1.5	104
Total					18,557

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In the **Federal Register** of September 27, 2001 (66 FR 49389), FDA requested comments on the proposed collection of information. FDA received one comment. The comment stated, generally, that FDA underestimated the resources required to satisfy the collection of information, and requested that the agency provide a more detailed discussion of the assumptions and methodology used to develop the estimates.

First, the comment stated that the burden to comply with the information collection requirements in § 201.23(a) "would involve hundreds of hours of development time and a variety of scientific specialities" if a sponsor had to submit a supplemental application or a new drug application (NDA) for a pediatric formulation. The comment said that even if the burden for submitting a pediatric application is included under the other estimates in the **Federal Register** notice (66 FR 49389), the burden for § 201.23(a) (which "would be limited to the sponsor's 'opportunity for a written response and a meeting which may include an advisory committee meeting'") would still be greater than the 48 hours per response estimated by FDA.

Second, the comment stated that FDA's estimate for compliance with the information collection requirements in §§ 314.55(a) and 601.27(a) is low "because the collection, analysis, and reporting of data adequate to support pediatric use of a new drug or biological product * * * involves extensive resources of a multidisciplinary team to plan and execute the necessary clinical development program * * *."

Third, the comment questioned why FDA's estimate for the number of annual responses in § 314.50(d)(7) is not equal to the estimate for the number of annual responses in § 314.55(a), because "§ 314.50(d)(7) requires the pediatric section of an application to include "information submitted under § 314.55."

Fourth, the comment questioned why FDA did not provide a burden estimate for § 314.50(d)(3) (human pharmacokinetics (PK) and bioavailability section of an application) and (d)(5) (clinical data section of an application).

Fifth, the comment stated that FDA's estimate of 100 respondents for § 314.81(b)(2)(i), (b)(2)(vi)(c), and (b)(2)(vii) is low, and that "FDA might expect approximately 3,000 responses annually" (not including responses from holders of approved biological license applications) because there are approximately 3,000 NDAs included in the *Approved Drug Products With Therapeutic Equivalence Evaluations*.

FDA appreciates the information provided by the comment and has reconsidered the burden estimates in the September 27, 2001, notice.

Concerning the question whether the numbers in table 1 (66 FR 49389 at 49390) represent totals of all submissions since December 2, 1998, or whether they represent an annualized number based on the total received, table 1 of this document contains annualized estimates based on the submissions received.

Concerning the comments on the adequacy of FDA's burden estimates for §§ 201.23(a) and 314.55(a), the agency agrees that the collection and analysis of data adequate to support pediatric use and to develop a pediatric formulation would be more burdensome than the estimates provided in the September 27, 2001, notice. The September 27, 2001, notice and this document, however, are part of the process to request that OMB extend approval for the collection of information described in the final rule entitled "Regulations Requiring Manufacturers to Assess the Safety and Effectiveness of New Drugs and Biologicals Products in Pediatric Patients," published in the **Federal Register** of December 2, 1998 (63 FR 66632 at 66659). In the final rule (63 FR 66632 at 66660), FDA also estimated the costs associated with conducting and analyzing efficacy studies, PK studies, and new dosage form development. These industry costs total approximately $80 million annually. The analysis of the economic impact of the regulation is required under Executive Order 12866, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act. The added burden cited by the comment for §§ 201.23(a) and 314.55(a) has been estimated by FDA in the economic analysis. Only the burden associated with compiling and reporting to FDA information already obtained is the subject of this notice and the September 27, 2001, notice. FDA published for public comment its initial estimate of this collection of information in the **Federal Register** of August 15, 1997 (62 FR 43900 at 43909). In the final rule, FDA discussed the comments on the burden estimates and revised the estimate for §§ 201.23(a) and 314.55(a) from 16 hours to 48 hours. Thus, FDA believes that the collection of information estimate together with the cost estimate made in the analysis of the economic impact of the regulation provide an adequate assessment of the industry burden resulting from §§ 201.23(a) and 314.55(a).

As a result of the comment that the number of annual responses in § 314.50(d)(7) should be equal to the number of annual responses in § 314.55(a), FDA has reconsidered its analysis of the collection of information resulting from these sections of the regulation. Under § 314.50(d)(7), applicants must submit as part of an application and supplement to an approved application a "pediatric use section." This section must describe the investigation of the drug for use in pediatric populations, including an integrated summary of the information that is relevant to the safety and effectiveness and benefits and risks of the drug in pediatric populations for the claimed indications, a reference to the full descriptions of such studies provided under § 314.50(d)(3) and (d)(5), and information required to be submitted under § 314.55. Under § 314.55(a), applications must contain data that are adequate to assess the safety and effectiveness of the drug product for the claimed indications in all relevant pediatric subpopulations, and to support dosing and administration for each pediatric subpopulation for which the drug is safe and effective. FDA has determined that, for purposes of this collection of information analysis, the requirement to submit pediatric use information would more appropriately come under § 314.50(d)(7). Section § 314.55(a) is the requirement to obtain pediatric use information for reporting to FDA under § 314.50(d)(7). Thus, FDA is including the reference to § 314.55(a) in the same entry as § 314.50(d)(7) in table 1 of this document. As a result of more recent data, FDA has revised its estimate of the number of responses and respondents under § 314.50(d)(7). Based on the number of submissions to FDA of the required assessments of pediatric safety and effectiveness during 2001, FDA estimates that approximately 59 applicants will submit approximately 78 assessments annually.

Concerning the comment that FDA did not provide a burden estimate for § 314.50(d)(3) and (d)(5), this notice and the September 27, 2001, notice are part of the process to request that OMB extend approval for the collection of information described in the December 2, 1998, final rule. The final rule did not amend § 314.50(d)(3) and (d)(5) and, therefore, these sections were not included in the collection of information analysis in the final rule. The information collection under § 314.50(d)(3) and (d)(5), as well as other provisions under 21 CFR part 314, are already approved by OMB until November 30, 2004, under OMB control number 0910–0001.

The comment also stated that FDA's estimate of 100 respondents for § 314.81(b)(2)(i), (b)(2)(vi)(c), and (b)(2)(vii) is low, and that over 3,000 responses should be expected annually. Under these sections, applicants must submit in their annual report: (1) A brief summary of whether labeling supplements for pediatric use have been submitted and whether new studies in the pediatric population have been initiated; (2) an analysis of available safety and efficacy data in the pediatric population and changes proposed in the labeling based on this information; and (3) a status report containing a statement indicating whether postmarketing clinical studies in pediatric populations were required by FDA under § 201.23, and if so, the status of these studies. Thus, only the annual reports for those approved applications that contain or will contain pediatric use information would be covered by these sections. As a result of more recent data, FDA has revised its estimates of the number of responses and respondents for these sections. Based on the number of currently approved applications and the number of pending applications that contain pediatric use information, FDA estimates approximately 119 applicants will submit approximately 158 annual reports under § 314.81(b)(2)(i), approximately 119 applicants will submit approximately 158 annual reports under § 314.81(b)(2)(vi)(c), and approximately 6 applicants will submit approximately 6 annual reports under § 314.81(b)(2)(vii).

As a result of more recent FDA data on the number of requests for deferrals and waivers received by the agency in 2001, FDA has also revised the estimates for § 314.55(b) and (c) as reflected in the table 1 of this document.

Dated: August 6, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–20431 Filed 8–12–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Regional AIDS Education and Training Centers; Open Competition Announcement

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Open Competition Grant Program.

SUMMARY: The Health Resources and Services Administration (HRSA), HIV/AIDS Bureau (HAB), announces that applications will be accepted for fiscal year (FY) 2002 awards for up to three Regional AIDS Education and Training Centers (AETCs) to provide services to Michigan, Ohio, Kentucky, New York, Tennessee, and New Jersey. The Regional AETCs will provide services in regions consisting of two or more States; existing regional AETCs may apply to expand their current areas by one or more States. The regional AETCs enhance the availability of high quality HIV care through training and support of clinical providers, and prioritize the clinical educational needs of direct medical care providers, physicians, nurses, physicians assistants, advance practice nurses, pharmacists, and oral health providers. The regional AETCs conduct assessments of regional HIV/AIDS care delivery systems and develop innovative programs to build HIV/AIDS care capacity, through training and support, to fill identified gaps. The regional AETCs target clinical providers caring for minority and disproportionately affected populations, particularly minority providers and those associated with Ryan White Comprehensive AIDS Resources Emergency (CARE) Act supported facilities.

Availability of Funds: It is anticipated that up to three grant recipients will be selected as regional AETCs, and total available funds are approximately $4,000,000. Grant periods are for 2 years and 9 months, with initial funding for 9 months. Continuation awards will be made on the basis of satisfactory progress and the availability of funds.

Eligible Applicants: Grants may be awarded to public or private non-profit entities including schools and academic health sciences centers. Faith-based and community-based organizations are eligible to apply.

Authorizing Legislation: The Authority for this grant program is Section 2692(a) of the Public Health Service Act, as amended, 42 U.S.C. 300ff–111(a).

DATES: A letter of intent to submit an application is requested by August 27, 2002. Applications for this grant must be received in the HRSA Grant Application Center by close of business September 12, 2002. Applications shall be considered as meeting the deadline if they are received on or before the deadline date. Applicants should request a legibly dated receipt from a commercial carrier or U.S. Postal Service postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications postmarked after the due date will be returned to the applicant.

Where to Request and Send an Application

To obtain an application kit: Call the HRSA Grants Application Center at 877–477–2123 and request the OMB Catalogue of Federal Domestic Assistance number 93.145.

ADDRESSES: Letter of intent to apply for funding should be mailed to Marisol M. Rodriguez, HIV/AIDS Bureau, HRSA, 5600 Fishers Lane, Room 7–46, Rockville, Maryland, 20857. All applications should be mailed or delivered to HRSA Grant Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, Maryland 20879. Grant applications sent to any other address are subject to being returned. **Federal Register** notices are available on the world wide web via the Internet. The Web address for HAB is *http://www.hrsa.gov/hab/*.

FOR FURTHER INFORMATION CONTACT: Additional technical information may be obtained from Marisol M. Rodriguez, HIV/AIDS Bureau (HAB), HRSA, 5600 Fishers Lane, Room 7–46, Rockville, Maryland 20857. The telephone number is (301) 443–4082; fax number (301) 443–9887; and the e-mail is *mrodriguez@hrsa.gov*. You may also contact Laura W. Cheever, M.D., Chief, HIV Education Branch, Division of Training and Technical Assistance, HAB, HRSA, 5600 Fishers Lane, Room 7–46, Rockville, Maryland 20857. Her telephone number is (301) 443–3067 and fax number is (301) 443–9887.

SUPPLEMENTARY INFORMATION: Applications will be reviewed by an objective review committee using the following criteria: Adequacy of Comprehensive Regional Needs Assessment, Adequacy of the Proposed Program Plan for Providing Education and Training Activities, HIV Expertise within the Regional AETC; Coordination and Collaboration; Management, Plan, Staffing, Project Organization and Resources, Program Documentation, Evaluation and Quality Improvement, and Appropriateness, and Justification of the Budget. The Secretary shall give preference to qualified projects which will-

(A)Train, or result in the training of, health professionals who will provide treatment for minority individuals with HIV disease and other individuals who are at high risk of contracting such disease; and

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(B)Train, or result in the training of, minority health professional and minority allied health professionals to provide treatment for individuals with such disease.

Paperwork Reduction Act: If there is a data collection associated with this application OMB approval will be sought.

Dated: July 22, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–20556 Filed 8–12–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: July 2002

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of July 2002, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject City, State	Effective Date
Program-Related Convictions	
Agazarian, Stepan, Los Angeles, CA	08/20/2002
Bahamon, Ramiro, Colton, CA	08/20/2002
Barton, Lupe Eva, Lake Forest, CA	08/20/2002
Brooks-McArthur, Pamela, Detroit, MI	08/20/2002
Bufkin, Anthony L, Kingstree, SC	08/20/2002
Burks, Louis, Clythe, CA	08/20/2002
Butcher, Holly W, The Colony, TX	08/20/2002
Butt, Audrey Renee, Iowa City, IA	08/20/2002
Candelaria, Christina Marie, Wheat Ridge, CO	08/20/2002
Cummings, Patricia Ann, Holbrook, AZ	08/20/2002
Devera, Monica T, Dumont, NJ	08/20/2002
Diaz, Jesus, Miami, FL	08/20/2002
Dotson, Janice, Branch, AR	08/20/2002
Foster, Donald Edgar, Nashville, TN	08/20/2002
Garcia, Eduardo, Los Angeles, CA	08/20/2002
Gonzalez, Ana Rosa, Miami, FL	04/10/2001
Harris, Shawanda, Miami, FL	08/20/2002
Hart, Jimmy Willis, Memphis, TN	08/20/2002
Hawkinberry, Cynthia L, Wakeman, OH	08/20/2002
Hudson, Paul Edward, Sacramento, CA	08/20/2002
Huff, Deanna Rachelle, Detroit, MI	08/20/2002
Jimenez, Aurelio, P, Oxford, WI	08/20/2002
Jones, Shirley A, Ft Worth, TX	08/20/2002
Jones, Steven L, Big Spring, TX	08/20/2002
Krayzman, Boris, Encino, CA	08/20/2002
Lewis, Terry Lamond, Rialto, CA	08/20/2002
Luna, Javier, Corona, CA	08/20/2002
Maye, Rose Mary, Laurel, MS	08/20/2002
Mayo, Kevin Allen, Morgantown, WV	08/20/2002
Meyers, Carliss R, Box Elder, SD	08/20/2002
Nelson, David S, Winston-Salem, NC	04/16/2001
Rector, Joel M, New York, NY	08/20/2002
Renick, John T, Lynn Haven, FL	08/20/2002
Riazi, Ali Motamed, Beverly Hills, CA	08/20/2002
Rohar, Lynette Mae, San Bernardino, CA	08/20/2002
Sell, Mary R, Troy, MO	08/20/2002
Sharpe, Mark J, Hardwick, GA	08/20/2002
Sill, Burnie Lee, Cedaredge, CO	08/20/2002
Stomat, Michelle Marie, Mt Union, IA	08/20/2002
Stoltzfus, Warren, Lewisville, TX	08/20/2002
Suarez, Luis Ramon, Miami, FL	08/20/2002
Sudaria, Nicanor C, Anchorage, AK	08/20/2002
Tekeian, Gohar, Los Angeles, CA	08/20/2002
Thompson, Lisa, Pine Bluff, AR	08/20/2002
Trotter, Mary, Rochester, NY	08/20/2002
Vaughn, John L, Knoxville, TN	08/20/2002
Vega, Armando Richard, Elkton, OH	08/20/2002
Wahba, Samuel, Palm Harbor, FL	08/20/2002
Walker, Robert D, Pewee Valley, KY	08/20/2002
Wallace, Linda C, Lebanon, OH	08/20/2002
Ward, Douglas Austin, Lancaster, CA	08/20/2002
Wilson-Zupa, Karen, Houston, TX	08/20/2002
Woo, Yu Moon, Elmhurst, NY	08/20/2002
Woods, Brenda Joyce, Sacramento, CA	08/20/2002
Felony Conviction for Health Care Fraud	
Allen, Derlyn G, Tampa, FL	08/20/2002
Concessi, Michael J, Goldsboro, NC	08/20/2002
Foster, Jack Randall, Springfield, MO	08/20/2002
Healthwise Medical Rehab Ctrs, Chesapeake, VA	08/20/2002
Hemphill, Robert, Saginaw, MI	08/20/2002
Schape-Self, Rosemarie Susanne, Spokane, WA	08/20/2002
Seals, Inez J, Pikeville, TN	08/20/2002
Silvino, Emmanuel, San Antonio, TX	08/20/2002
Spatz, Marvin Charles, San Diego, CA	08/20/2002
Spatz, Marvin Charles, San Diego, CA	08/20/2002
Spatz, Marvin Charles, San Diego, CA	08/20/2002
Stock, Rodolpho K, Charleston, WV	08/20/2002
Vavilikolanu, Sheshiqiri Rao, Terre Haute, IN	08/20/2002
Wood, Faye W, Princeton, NJ	08/20/2002
Felony Control Substance Conviction	
Arellano, Teresa Marie, San Francisco, CA	08/20/2002
Borne, Maxie Joseph, Las Vegas, NV	08/20/2002
Fisher, Robin Noel, Marshalltown, IA	08/20/2002
Gaskins, Shawna Gail, Gatesville, TX	08/20/2002
Gibson, Pamela Gaynelle, Jonesville, VA	08/20/2002
Harrell, Pamela L, Katy, TX	08/20/2002
Jorgensen, Bruce Craig, Clinton, UT	08/20/2002
Morris, Craig Alan, Lakewood, CO	08/20/2002
Osler, Karen Ann, Malvern, IA	08/20/2002
Pizarro, Michelle Linn, Sioux City, IA	08/20/2002
Rohaus, Robert, Bridgewater, NJ	08/20/2002
Scott, Dona Lee, Southfield, MI	08/20/2002
Patient Abuse/Neglect Convictions	
Akaya, Nicodemus Ichabu, Los Angeles, CA	08/20/2002
Alger, Tony L, Worcester, VT	08/20/2002
Andres, Gilbert Tamayo, Corcoran, CA	08/20/2002
Bratcher, Louis, Fresno, CA	08/20/2002
Cianci, Marilyn I, Monroe, NY	08/20/2002
Courtyard Manor Farmington Hill, Walled Lake, MI	08/20/2002
Darlington, Casey Shawn, Rock Springs, WY	08/20/2002
Dennis, Tammye Lynn, Stillwater, OK	08/20/2002
Doran, Faith L, Syracuse, NY	08/20/2002
Edwards, Lorna F, Bronx, NY	08/20/2002

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Eltringham, Teresa Ann, St Mary's, WV	08/20/2002
Gardner, Darrell, Bakersfield, CA	08/20/2002
Goldstein, Seymour, Wilmington, DE	08/20/2002
Gorondy, Larry Joe, Gunther, TX	08/20/2002
Hampton, Yolanda V, Kingfisher, OK	08/20/2002
Herring, Gary Jr, Youngstown, OH	08/20/2002
Hildebrand, John Francis, Elk Grove, CA	08/20/2002
Hoskins, Valerie Lynn, Somerset, KY	08/20/2002
Houston, Vivian Shunn, Clarendon, AR	08/20/2002
Ingold, William Alan, Searcy, AR	08/20/2002
Joiner, Elizabeth Rodriguez, Lovell, WY	08/20/2002
Jones, Rosalie S, Galatia, IL	08/20/2002
Leodones, Jeffrey Domingo, Represa, CA	08/20/2002
Lewis, Jerry D, Millington, TN	08/20/2002
Manns, Carl, Arlington, TN	08/20/2002
McCarthy, Michael J, Everett, WA	08/20/2002
McCulley, Willie, Oakland, TN	08/20/2002
McDougle, Carl, Memphis, TN	08/20/2002
McGillen, James W, Harwich, MA	08/20/2002
McLemore, Alma Abeyta, Concord, CA	08/20/2002
Mohammed, Idris G, Sacramento, CA	08/20/2002
Resvaloso, Robert Kenneth, Fresno, CA	08/20/2002
Sarabia, Epifanio Fierro, FT Stockton, TX	08/20/2002
Tafoya, Robert Anthony, Santa Cruz, CA	08/20/2002
Truitt, Eve P, Jonesboro, AR	08/20/2002
Wannamaker, Julie, Albion, NY	08/20/2002
Zherebnyuk, Nokolay, Sacramento, CA	08/20/2002
Conviction For Health Care Fraud	
Durham, Rebecca, Elkin, SC	08/20/2002
Conviction-Obstruction of an Investigation	
Reyes, Patricia Yvonne, El Paso, TX	08/20/2002
Controlled Substance Convictions	
Crespo, Lucinda, Schuyler Falls, NY	08/20/2002
License Revocation/Suspension/ Surrendered	
Adkins, Darryel Lewis, San Antonio, TX	08/20/2002
Adkins, Tammy G, Mount Pleasant, PA	08/20/2002
Aucoin, Byron L, Morgan City, LA	08/20/2002
Avery, Thomas Andrew, Shawnee, OK	08/20/2002
Ballard, Charisse Camille, Cabot, AR	08/20/2002
Barbour, Angela L, Martinsville, VA	08/20/2002
Barkhurst, Jennifer L, Richmond, VA	08/20/2002
Beardsley, Major J, Elba, NY	08/20/2002
Behan, Kevin M, Poestenkill, NY	08/20/2002
Berkenpas, Sandra S, Salt Lake City, UT	08/20/2002
Beyrer, Robert Norval, Spring Valley, CA	08/20/2002
Bibawy, Adly Anis, Staten Island, NY	08/20/2002
Bizub, Madeline C, Biloxi, MS	08/20/2002
Blevins, Donna Lorraine, Grass Valley, CA	08/20/2002
Bockover, Carol Frizzell, Salisbury, MD	08/20/2002
Boesker, Debra S, Hutchinson, KS	08/20/2002
Bowcutt, Timothy Earl, Tremonton, UT	08/20/2002
Bowes, Peter Joseph, Milwaukee, WI	08/20/2002
Bowick, Judy C, Asbury Park, NJ	08/20/2002
Branson, Cindy Kay, Hutchinson, KS	08/20/2002
Braswell, Bonni J, Alexandria, VA	08/20/2002
Bressickello, John Antony, Torrance, CA	08/20/2002
Brodsky, Ted Marc, Granada Hills, CA	08/20/2002
Brown, Elizabeth Ann, Oxnard, CA	08/20/2002
Bryant, Sara J, St Johnsbury, VT	08/20/2002
Buchanan, Darren Patrick, Moneton NB, Canada,	08/20/2002
Buckner, Michael O, Knoxville, TN	08/20/2002
Byrnes, Robert L, Cortlandt Manor, NY	08/20/2002
Carson, Stephen L, Fall River, MA	08/20/2002
Castro, Lisa Y, Des Plaines, IL	08/20/2002
Caulker, Alex, Alexandria, VA	08/20/2002
Cerny, Michael David, Rushville, NE	08/20/2002
Chickos, Lawrence Edward, Gilroy, CA	08/20/2002
Clack, John Steven, Culver City, CA	08/20/2002
Clark, Illetha, Gautier, MS	08/20/2002
Clemens, Scott E, Pittsburgh, PA	08/20/2002
Colbert, Elizabeth R, Phoenix, AZ	08/20/2002
Comeaux, Gary Wayne, League City, TX	08/20/2002
Cook, Rosemary, Phoenix, AZ	08/20/2002
Cookson, Linda J, Fairfield, ME	08/20/2002
Cooper, William James, Monte Vista, CO	08/20/2002
D'Agostino Cox, Elizabeth A, West Haven, CT	08/20/2002
Daberkow, Glendene Helena, West Point, NE	08/20/2002
Datta, Jagat Kumar, Streamwood, IL	08/20/2002
Debouvier, Jude J, Fayetteville, NC	08/20/2002
Devore, Mary Davis, Phoenix, AZ	08/20/2002
Diamandis, Sotiris P, Canton, MA	08/20/2002
Dorman, Courtney Dawn, Clarendon, AR	08/20/2002
Dziedzic, David M, McHenry, IL	08/20/2002
Elium, Kevin, Porterville, CA	08/20/2002
Elizalde, Christian, Canoga Park, CA	08/20/2002
Elliott, Roger K, Newark, OH	08/20/2002
Eustaquio, Marcos Antonio, Woodhaven, NY	08/20/2002
Farrar, Cynthia, E Rockaway, NY	08/20/2002
Ferebee, Sandra Kaye, Poplar Grove, AR	08/20/2002
Foster, Robert W, Henrico, NC	08/20/2002
Foust, Martha Louise, Lacrosse, KS	08/20/2002
Frigon, Lisa M, Barre, VT	08/20/2002
Frost, Glenda S, Glendale, AZ	08/20/2002
Garcia, Eric Patrick, Carmichael, CA	08/20/2002
Garcia, Patricia Ann, McQueeney, TX	08/20/2002
Garcia, Omar Rene, Waco, TX	08/20/2002
Garcia, Victor M, Eagle Pass, TX	08/20/2002
Gardea, Teresa Marie, Pomona, CA	08/20/2002
Geraci, Caroline Elizabeth, Cincinnati, OH	08/20/2002
Gilbert, Christina, Massapequa, NY	08/20/2002
Ginnetti, John M, New Haven, CT	08/20/2002
Glaenzer, James M, St Charles, MO	08/20/2002
Godfrey, Susanne B, Columbia, SC	08/20/2002
Gonzalez, Guillermo F, Rancho Cucamonga, CA	08/20/2002
Gopalani, Hanif A, Crownsville, MD	08/20/2002
Gover, Marshall, Baton Rouge, LA	08/20/2002
Gowen, Laura, Hatfield, PA	08/20/2002
Greco, Michael Richard, Roy, UT	08/20/2002
Greene, Michael T, Erie, PA	08/20/2002
Griffin, Bridget R, W Topsham, VT	08/20/2002
Groehn, Craig Alan, Ames, IA	08/20/2002
Gryder, Sheila Lynn, McCamey, TX	08/20/2002
Guyton, Kathleen, E Orange, NJ	08/20/2002
Hall, Joan M, Cheshire, CT	08/20/2002
Hambrick, Maureen L, Chicago, IL	08/20/2002
Hamon, Eric Wayne, Sebring, OH	08/20/2002
Harlan, Olivia, Fairbury, NE	08/20/2002
Harmon, David Russell, Steamboat Springs, CO	08/20/2002
Harper, Elayne Woodall, Culpepper, VA	08/20/2002
Haynie, Craig A, Victoria, TX	08/20/2002
Heckler, Sheri Lynn, Lancaster, PA	08/20/2002

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Hiller, Donald John, Tempe, AZ	08/20/2002
Holcombe, Donna, Farmington, NM	08/20/2002
Holmberg, Melissa, Richmond, VA	08/20/2002
Holmes, Wanda Jean, Richford, VT	08/20/2002
Householder, Sharon, Mckeesport, PA	08/20/2002
Humphreys, Jessica N, York, PA	08/20/2002
Hysell, Connie Sue, Shelbyville, IL	08/20/2002
Incelli, Jade Thomas, Levittown, PA	08/20/2002
Ingram, Fannie, Oakdale, LA	08/20/2002
Johnson, Diana Lee, Trinity, TX	08/20/2002
Johnson, Alfred Lane, Boaz, AL	08/20/2002
Johnson, Benjamin Taylor, Golden, CO	08/20/2002
Jones, Veronica L, Morton, MS	08/20/2002
Jones, Cynthia R, Manahawkin, NJ	08/20/2002
Juliano, Linda, Bear, DE	08/20/2002
Ketchale, Joel F, Enfield, CT	08/20/2002
Khaleq, Tory Renee, Houston, TX	08/20/2002
Khan, Farhad Parvez, Simi Valley, CA	08/20/2002
Kirby, Yvonne Edna, Las Vegas, NV	08/20/2002
Klemm, Joanne Marie, Clear Lake, IA	08/20/2002
Kohout, Mary Christine, Nebraska City, NE	08/20/2002
Koory, Christine Lynn, Omaha, NE	08/20/2002
Kordich, Patricia Louise, Azusa, CA	08/20/2002
Kube, Jean Carol, St Paul, MN	08/20/2002
Kunkel, Jon R, Hanover Park, IL	08/20/2002
Kwak, Noik, Astoria, NY	08/20/2002
Leach, David M, Newtown, PA	08/20/2002
Leary, Kenneth, E Greenwich, RI	08/20/2002
Leblanc, Melissa, Prairieville, LA	08/20/2002
Lemon, Karmen L, Denver, CO	08/20/2002
Lewis, Arthur Stephen, Goshen, IN	08/20/2002
Lynn, Jerry Harold, New York, NY	08/20/2002
Mabry, Linda L, Phoenix, AZ	08/20/2002
Maloney, Donna H, West Seneca, NY	08/20/2002
Matlock, John Edward, Chino Valley, AZ	08/20/2002
Maynard, Royce, Abilene, TX	08/20/2002
McBride, Darla Gay, Kilgore, TX	08/20/2002
McColm, Paula Jeanette, Long Beach, CA	08/20/2002
McHattie, Sheila Seybert, Portersville, PA	08/20/2002
McKinney-Reynolds, Beverly, Alta Loma, CA	08/20/2002
McManus, Kathleen M, Jenkintown, PA	08/20/2002
Merica, Sandra Rose, Fairbanks, AK	08/20/2002
Miesel, Patricia J, Eighty Four, PA	08/20/2002
Miller, Debra Renee, Sandpoint, ID	08/20/2002
Mitchell, Elvin, Fullerton, CA	08/20/2002
Moore, Rebecca Jay, Luling, TX	08/20/2002
Myers, Cindy L, Sandpoint, ID	08/20/2002
Myers, Phyllis June, Elkhart, IN	08/20/2002
Nicholson, Robert J Jr, Baton Rouge, LA	08/20/2002
Noel, Linda Sue, Chicago, IL	08/20/2002
Nygren, Jerry Eugene, York, NE	08/20/2002
O'Keefe, Gregory III, Little Falls, NY	08/20/2002
O'Leary, Mary Bernadette, South Bend, IN	08/20/2002
O'Neil, Jerri Lynn, Dayton, TX	08/20/2002
Oliver, Christine P, Selden, NY	08/20/2002
Ori, Vincent Egido, Fair Oaks, CA	08/20/2002
Pape, Beverly J, East Calais, VT	08/20/2002
Paredez, Jude, Beaumont, TX	08/20/2002
Park, John H, Flushing, NY	08/20/2002
Passell, Carlene Ann, Lawrence, KS	08/20/2002
Paszkiewicz, Joseph Edward, Rialto, CA	08/20/2002
Patterson, Carolyn E, Richmond, VA	08/20/2002
Percifield, Brenda Sue, North Vernon, IN	08/20/2002
Phillips, Kurt N, Anchorage, AK	08/20/2002
Pollard, Joanna M, New London, CT	08/20/2002
Powe, Leisa, Tylertown, MS	08/20/2002
Powers, Gary Kent, Cullman, AL	08/20/2002
Privett, Erin Elizabeth, Citrus Hgts, CA	08/20/2002
Ragan, Angela Lynn, Yantis, TX	08/20/2002
Rapp, Timothy J, Dayton, OH	08/20/2002
Reed, Catherine Barbara, Denver, CO	08/20/2002
Reid, Janniet L, Inglewood, CA	08/20/2002
Renfrow, David, Ridgeland, MS	08/20/2002
Reynolds-Bonilla, Elizabeth A, Salina, KS	08/20/2002
Richmond, Eula Ann, Marion, KS	08/20/2002
Ricke, Gregory A, Fort Collins, CO	08/20/2002
Riley, Michele Beaumont, San Diego, CA	08/20/2002
Rivene, Zaida, San Mateo, CA	08/20/2002
Rivera, Tanya M, Sheffield, VT	08/20/2002
Roberts, William K, Salt Lake City, UT	08/20/2002
Rodriguez, Joe Vasquez, Ontario, CA	08/20/2002
Roma, Donna K, Warwick, RI	08/20/2002
Rondosh, Margie Leh, Hazleton, PA	08/20/2002
Roney, George Dane, Evansville, IN	08/20/2002
Roos, Nettie A, Iowa City, IA	08/20/2002
Saltenberger, Patricia E, Farmington, NY	08/20/2002
Schoonhoven, David Lee, Oostburg, WI	08/20/2002
Schram, Thomas Alan, Homosassa, FL	08/20/2002
Senick, Thomas Charles, Pittsburgh, PA	08/20/2002
Serlemitsos, John Paul, Crownsville, MD	08/20/2002
Sheets, Phyllis M, Elliston, VA	08/20/2002
Silvas, George R, Porterville, CA	08/20/2002
Slan, Steven M, Virginia Bch, VA	08/20/2002
Slaughter, Maunetta, Ellisville, MS	08/20/2002
Smith, Heath, Glennville, GA	08/20/2002
Smith, Terri Dianne, Globe, AZ	08/20/2002
Smith, Alphonso L, Woodbury, NJ	08/20/2002
Soderstrom, Linnea A, Glastonbury, CT	08/20/2002
Sommers, Lorin D, N Canton, OH	08/20/2002
Springel, Ronald David, Spokane, WA	08/20/2002
Strempel, Linda Beth, Hermosa Beach, CA	08/20/2002
Sturckow, Karl H, Lakeside, CA	08/20/2002
Sucarichi, Brenda, Pasadena, TX	08/20/2002
Sykora, Viktor, W Coxsackie, NY	08/20/2002
Tankersley, Jeanne Kay, Sapulpa, OK	08/20/2002
Tate, Marian Kay, Murray, UT	08/20/2002
Teed, Elspeth Ann, Uvalde, TX	08/20/2002
Thomas, Billy R, Los Angeles, CA	08/20/2002
Thompson, Paula Marie, Victoria, TX	08/20/2002
Ticzon, Renato A, Watertown, NY	08/20/2002
Trisdale, Sandra, Tucson, AZ	08/20/2002
Vasso, Laura, Kearns, UT	08/20/2002
Vespia, Susan M, Esmond, RI	08/20/2002
Vierow, Morgen Lynn, Sherrill, NY	08/20/2002
Vigil, Susan K Peace, Berea, KY	08/20/2002
Walker, Robin Elaine, Austin, TX	08/20/2002
Wangsgard, Mary M, Salt Lake City, UT	08/20/2002
Wanke, Samantha G, Manlius, NY	08/20/2002
Wariner, Andrew William, Houston, TX	08/20/2002
Warren, Lauri Evelyn, Houston, TX	08/20/2002
Watkins, Helen Colleluori, Wellsboro, PA	08/20/2002
Watkins, Penny R, Meridian, MS	08/20/2002
Waz, Danny James, Ontario, CA	08/20/2002
Weghorn, Pamela Jane, Fridley, MN	08/20/2002
White, Judith A, Putnam, CT	08/20/2002
Wick, Rebecca L, Hallettsville, TX	08/20/2002
Williams, Janson S, Erie, PA	08/20/2002
Williams, R Michael, Troy, NY	08/20/2002
Willing, Kathryn Marie, Sleepy Eye, MN	08/20/2002
Wisely, Betty Anny, Bloomington, IN	08/20/2002
Witriol, Sol, Baltimore, MD	08/20/2002
Wojcik, Jeffery R, Tucson, AZ	08/20/2002
Woods, Kenneth Bruce, Roseville, CA	08/20/2002
Yacker, Tomi Lynn, Colleyville, TX	08/20/2002
Ybarra, Robert A, Shasta, CA	08/20/2002
Yellowhair, Robert Lanny, Tucson, AZ	08/20/2002
Federal/State Exclusion/Suspension	
Lazopoulos, George, McHenry, IL	08/20/2002
Rinaldi, Serguis, Springfield, IL	08/20/2002
Fraud/Kickbacks	
Adams, Koule, Chicago, IL	06/12/2002
Mejia, Gloria, Bryan, TX	10/24/2000
Royal Transportation, Hazel Crest, IL	06/12/2002
Thompson, Scott, Clayton, NC	11/13/2001
Williams, Tommy E, Lytle, TX	01/11/2001
Williams, Devon, Lytle, TX	01/11/2001
Owned/Controlled by Convicted Entities	
Edward J Urban, D O, INC, Cortland, OH	08/20/2002
Express Medical Home Health, Los Angeles, CA	08/20/2002
G & A Medical Clinic, Inc, Miami, FL	08/20/2002
K & G Medical Supply, Glendale, CA	08/20/2002
Professional Medical Ctr, Inc, Miami, FL	08/20/2002
Sam's Drugs & Medical, Inc, Palm Harbor, FL	08/20/2002
Default on Heal Loan	
Chow, Aaron L, Spanaway, WA	06/28/2002
Metcalf, John W, Tampa, FL	06/19/2002
Urling, Wendell P, Cheshire, CT	07/02/2002
Washington, Diane, S Holland, IL	05/18/2002

Dated: August 1, 2002.

Calvin Anderson, Jr.,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 02–20425 Filed 8–12–02; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(6), as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Dates: September 9–10, 2002.

Open: September 9, 2002, 8:30 a.m. to 4 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Closed: September 9, 2002, 4 p.m. to Recess.

Agenda: Review of grant applications; Discussion of confidential personnel issues.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Open: September 10, 2002, 8:45 a.m. to 11:45 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

An interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home Page: *http://deainfo.nci.nih.gov/advisory/ncab.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control; National Institutes of Health, HHS)

Dated: August 6, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20420 Filed 8–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel.

Date: August 8, 2002.[1]

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: 6701 Democracy Blvd., Suite 710, Bethesda, MD 20892–4870, (Telephone Conference Call).

Contact Person: John E. Richters, Ph.D., Scientific Review Administrator, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd. Room 715, Bethesda, MD 20817, (301) 594–5971, *jrichters@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

[1] **Editorial Note:** This document was received at the Office of the Federal Register on August 7, 2002.

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(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: August 6, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20422 Filed 8–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, August 3, 2002, 12 p.m. to August 3, 2002, 1 p.m., NIH, Rockledge 2, Bethesda, MD 20892 which published in the **Federal Register** on July 26, 2002, 67 FR 48931–48932.

The meeting will be held on August 20, 2002. The time and location remain the same. The meeting is closed to the public.

Dated: August 6, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20421 Filed 8–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4630–FA–29]

Announcement of Funding Awards for the Indian Community Development Block Grant (ICDBG) Program for Fiscal Year 2001

AGENCY: Office of Native American Programs, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fiscal Year 2001 Notice of Funding Availability (NOFA) for the Indian Community Development Block Grant (ICDBG) Program. This announcement contains the consolidated names and addresses of this years award recipients under the ICDBG.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Indian Community Development Block Grant Program awards, contact the Area Office of Native American Programs serving your area or Jackie Kruszek, Office of Native Programs, Denver Program Office, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone (303) 675–1600 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This program provides grants to Indian tribes and Alaska Native Villages to develop viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities primarily for persons with low and moderate incomes as defined in 24 CFR 1003.4.

The FY 2001 awards announced in this Notice were selected for funding in a competition announced in a NOFA published in the **Federal Register** on February 26, 2001 (66 FR 11709). Applications were scored and selected for funding based on the selection criteria in that Notice and Area Office of Native American Programs (ONAPs) geographic jurisdictional competitions.

The amount appropriated in FY 2001 to fund the ICDBG was $70,843,800 million. Two million of this amount was retained to fund imminent threat grants in FY 2001. Including $440,861 in unused funds from the amount reserved by the Assistant Secretary in FY 2000 for imminent threat grants, a total of $69,284,661 were available to fund single purpose ICDBG grants. The allocations for the Area ONAP geographic jurisdictions are as follows:

Eastern/Woodlands	$5,481,761
Southern Plains	12,972,631
Northern Plains	10,941,946
Southwest	29,848,823
Northwest	4,180,66
Alaska	5,858,836
Total	$69,284,661

The Catalog of Federal Domestic Assistance number for the ICDBG Program is 14.862.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat.1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 108 awards made under the various regional competitions in Appendix A to this document.

Dated: August 2, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

APPENDIX A.—2001 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT AWARDS

Cherokee Nation, P.O. Box 948, Tahlequah, OK 74465	$750,000
Cheyenne-Arapaho Tribes of Oklahoma, P.O. Box 68, Concho, OK 73022	750,000
Chitimacha Tribe of Louisiana, P.O. Box 661, Charenton, LA 70523	750,000
Choctaw Nation of Oklahoma, P.O. Drawer 1210, Durant, OK 74702	750,000
Chickasaw Nation, P.O. Box 1548, Ada, OK 74821	750,000
Citizen Potawatomi Nation, 1601 S. Gordon Cooper Drive, Shawnee, OK 74801	750,000
Delaware Tribe of Oklahoma, 220 N.W. Virginia Ave., Bartlesville, OK 74003	750,000
Iowa Tribe of Oklahoma, RR1, Box 721, Perkins, OK 74059	409,376
Kialeegee Tribal Town, P.O. Box 332, Wetumka, OK 74883	313,790
Muscogee Creek Nation, P.O. Box 580, Okmulgee, OK 74447	750,000
Osage Tribe, 627 Grandview, Pawhuska, OK 74056	600,000
Ottawa Tribe of Oklahoma, P.O. Box 110, Miami, OK 74355	750,000
Ponca Tribal Business Committee, 20 White Eagle Drive, Ponca City, OK 74601	750,000
Sac & Fox Nation of Oklahoma, Route 2, Box 246, Stroud, OK 74079	750,000
Seminole Nation of Oklahoma, P.O. Box 1498, Wewoka, OK 74884	750,000
Seneca-Cayuga Tribe of Oklahoma, P.O. Box 1283, Miami, OK 74355	750,000
Thlopthlocco Tribal Town, P.O. Box 188, Okemah, OK 74859	528,000
Tunica-Biloxi Tribe of Louisiana, P.O. Box 331, Marksville, LA 71351	750,000
Wichita and Affiliated Tribes, P.O. Box 729, Anadarko, OK 73005	749,986
Ak-Chin Indian Reservation, 42507 West Peters & Nall Road, Maricopa, AZ 85239	550,000
Big Valley Rancheria of Pomo and Pit River Indians, 2726, Rancheria Road, Lakeport, CA 95453	550,000

APPENDIX A.—2001 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT AWARDS—Continued

Blue Lake Rancheria, P.O. Box 428, Blue Lake, CA 95525	550,000
Chemehuevi Indian Tribe, P.O. Box 1976, Chemehuevi Valley, CA 92363	550,000
Colusa Indian Community, 3730 Highway 45, Colusa, CA 95932	550,000
Cortina Indian Rancheria of Wintun Indians, P.O. Box 1630, Williams, CA 95987	120,000
Duck Valley Shoshone-Paiute Tribe, P.O. Box 219, Owyhee, NV 89832	550,000
Duckwater Shoshone Tribe, P.O. Box 140068, Duckwater, NV 89314	270,318
Ely Shoshone Tribe, 16 Shoshone Circle, Ely, NV 89301	550,000
Ft. Bidwell Paiute Indian Community, P.O. Box 129, Ft. Bidwell, CA 96112	536,000
La Posta Band of Diegueno Mission Indians, P.O. Box 1048, Boulevard, CA 91095	549,931
Las Vegas Tribe of Paiute Indians, One Paiute Drive, Las Vegas, NV 89106	550,000
Lone Pine Indian Tribe, P.O. Box 747, Lone Pine, CA 93545	550,000
Los Coyotes Band of Cahuilla Indians, P.O. Box 189, Warner Springs, CA 92086	550,000
Mooretown Rancheria of Maidu Indians, 1 Alverda Drive, Oroville, CA 95966	550,000
Navajo Nation, P.O. Box 9000, Window Rock, AZ 86515	5,000,000
North Fork Rancheria of Mono Indians, P.O. Box 929, North Fork, CA 93643	550,000
Pascua Yaqui Indian Tribe, 7474 South Camino de Oeste, Tucson, AZ 85746	2,500,000
Pinoleville Rancheria of Pomo Indians, 367 North State Street, Suite 204, Ukiah, CA 95482	390,636
Pueblo of Pojoaque, 39 Camino del Rincon, Suite 6, Santa Fe, NM 87501	550,000
Ramona Band of Cahuilla Band of Mission Indians, P.O. Box 391372, Anza, CA 92539	550,000
Redding Rancheria, 2000 Redding Rancheria, Redding, CA 96001	550,000
Reno-Sparks Indian Colony, 98 Colony Road, Reno, NV 89502	550,000
Rincon Band of Luiseno Mission Indians, P.O. Box 68, Valley Center, CA 92082	550,000

APPENDIX A.—2001 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT AWARDS—Continued

Round Valley Indian Tribe, P.O. Box 448, Covelo, CA 95428	522,050
Salt River Pima-Maricopa Indian Community, 10005 East Osborn Road, Scottsale, AZ 85256	2,000,000
San Pasqual Band of Diegueno Mission Indians, P.O. Box 365, Valley Center, CA 92082	550,000
Santa Rosa Band of Cahuilla Mission Indians, 325 North Western Avenue, Hemet, CA 92543	550,000
Santa Ysabel Band of Diegueno Mission Indians, P.O. Box 130, Santa Ysabel, CA 92070	550,000
Sherwood Valley Rancheria of Pomo Indians, 190 Sherwood Hill Drive, Willits, CA 95490	550,000
Smith River Rancheria, 250 North Indian Road, Smith River, CA 95567	550,000
Timbisha Shoshone Tribe, P.O. Box 206, Death Valley, CA 92328	550,000
Torres-Martinez Band of Cahuilla Indians, P.O. Box 1160, Thermal, CA 92274	550,000
White Mountain Apache Tribe, P.O. Box 700, Whiteriver, AZ 85941	2,500,000
Yavapai Apache Nation, P.O. Box 1188, Camp Verde, AZ 86322	550,000
Yurok Tribe of the Hoopa Valley Reservation, 1034 6th Street, Eureka, CA 95501	550,000
Crow Creek Sioux Tribe, P.O. Box 50, Fort Thompson, SD 57339	607,000
Crow Tribe of Montana, P.O. Box 159, Crow Agency, MT 59022,	800,000,
Fort Peck Assiniboine & Sioux Tribe, P.O. Box 1027, Poplar, MT 59255	500,000
Lower Brule Sioux Tribe, P.O. Box 187, Lower Brule, SD 57548	743,750
Northern Arapaho Tribe, P.O. Box 396, Fort Washakie, WY 82514	735,000
Rocky Boy Chippewa-Cree Tribe, P.O. Box 544, Box Elder, MT 59521	800,000
Rosebud Sioux Tribe, P.O. Box 430, Rosebud, SD 57570	800,000
Santee Sioux Tribe, 425 Frazier Avenue North, Suite 2, Niobrara, NE 68760	800,000
Shoshone Tribe of Wind River, P.O. Box 538, Fort Washakie, WY 82514	800,000

APPENDIX A.—2001 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT AWARDS—Continued

Sisseton-Wahpeton Sioux Tribe, P.O. Box 509, Agency Village, SD 57262	800,000
Standing Rock Sioux Tribe, P.O. Box D, Fort Yates, ND 58538	800,000
Turtle Mountain Band of Chippewa Tribe, P.O. Box 900, Belcourt, ND 58316	798,521
Paiute Indian Tribe of Utah, 440 North Paiute Drive, Cedar City, UT 84720	377,230
Ute Mountain Tribe, P.O. Box 248, Towaoc, CO 81334	800,000
Yankton Sioux Tribe, P.O. Box 248, Marty, SD 57361	800,000
Bois Forte Reservation, P.O. Box 16, Nett Lake, MN 55772	500,000
Ho-Chunk Nation, W9814 Airport Road, P.O. Box 667, Black River Falls, WI 54615	500,000
Keweenaw Bay Indian Community, 107 Beartown Road, Baraga, MI 49908	500,000
Lac du Flambeau Band of Lake Superior Chippewa Indians, P.O. Box 67, Lac du Flambeau, WI 54538	500,000
Lac Courte Oreilles Tribal Governing Board, 13394 W. Trepania Road, Hayward, WI 54843	500,000
Little River Band of Ottawa Indians, 375 River Street, Manistee, MI 49660	500,000
Little Traverse Bay Bands of Odawa Indians, 915 Emmet Street—P.O. Box 246, Petoskey, MI 49770	500,000
Menominee Indian Tribe of Wisconsin, P.O. Box 910, Keshena, WI 54135	68,000
Poarch Band of Creek Indians, 5811 Jack Springs Road, Atmore, AL 36502	500,000
Seminole Tribe of Florida, 6300 Stirling Road, Hollywood, FL 33024	500,000
Stockbridge-Munsee Community, N8476 Mo He Con Nuck Road, Bowler, WI 54416	500,000
White Earth Reservation Tribal Council, P.O. Box 418, White Earth, MN 56591	500,000
Colville Confederated Tribes, P.O. Box 5, Coulee Dam, WA 99116	350,000
Shoalwater Bay Indian Tribe, P.O. Box 130, Tokeland, WA 98590	348,000
Quileute Indian Tribe, P.O. Box 279, LaPush, WA	350,000
Confederate Tribes of the Umatillla Reservation, P.O. Box 638, Pendleton, OR 97801	350,000

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APPENDIX A.—2001 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT AWARDS—Continued

Samish Indian Nation, P.O. Box 217, Anacortes, WA 98221	350,000
Skokomish Indian Tribe, N. 100 Tribal Center Road, Shelton, WA 98584	350,000
Spokane Tribe of Indians, P.O. Box 100, Wellpinit, WA 99040	350,000
Quinault Indian Nation, P.O. Box 159, Taholah, WA 98587	350,000
The Suquamish Tribe, P.O. Box 498, Suquamish, WA 98392	282,000
Makah Indian Tribe, P.O. Box 115, Neah Bay, WA 98357	100,000
Confederated Tribes of Warm Springs, P.O. Box C, Warm Springs, OR 97761	350,000
Snoqualmie Tribe, P.O. Box 670, Fall City, WA 98024	350,000
Lummi Indian Business Council, 2616 Kwina Road, Bellingham, WA 98226	285,664
Iqurmiut Tribal Council, P.O. Box 9, Russian Mission, AK 99657	230,000
Shageluk IRA Tribal Council, P.O. Box 35, Shageluk, AK 99665	250,000
Pilot Station Native Village, P.O. Box 5119, Pilot Station, AK 99650	215,000
Native Village of Nanwalek, P.O. Box 8065, Nanwalek, AK 99603–6665	500,000
Seldovia Village Tribe, P.O. Drawer L, Seldovia, AK 99663	500,000
Native Village of Elim, P.O. Box 39070, Elim, AK 99739	500,000
Qagan Tayagungin Tribe, Box 447, Sand Point, AK 99661	500,000
Unga Tribe, Box 508, Sand Point, AK 99661	500,000
Native Village of Mekoryuk, P.O. Box 66, Mekoryuk, AK 99630	469,593
Tanacross Village Council, P.O. Box 76009, Tanacross, AK 99776	500,000
Valdez Native Tribe, P.O. Box 1108, Valdez, AK 99686	500,000
Tetlin, P.O. Box TTL, Tetlin, AK 99779	500,000
Venetie Village Council, P.O. Box 81119, Venetie, AK 99781	500,000

[FR Doc. 02–20394 Filed 8–12–02; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4724–FA–02]

Announcement of Funding Awards for Fiscal Year 2002; Urban Scholars Fellowship Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with the Department of Housing and Urban Development Reform Act of 1970, Title V, this document notifies the public of funding awards for the Fiscal Year 2002 Urban Scholars Fellowship Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to attract scholars with recent Ph.D.'s and academic appointments at institutions of higher education to undertake research now, and throughout their careers, on research topics of interest to HUD.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3061, extension 3852. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on (800) 877–8399, or 202–708–1455. (Telephone numbers, other than the two "800" numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: The Urban Scholars Fellowship Program is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. The Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education and creates initiatives which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

Eligible applicants include only Ph.D.'s who have an academic appointment at an institution of higher education and have received their Ph.D. no earlier than January 1, 1997. The Urban Scholar Fellowship Program provides each participating scholar $55,000 for expenses such as salary for two summers, graduate assistants to work on the research project, partial cost of paying for replacements to cover a reduced course load, computer software, the purchase of data, and travel expenses to collect data and make presentations at meetings.

The Catalog of Federal Domestic Assistance number for this program is 14.518.

On May 1, 2002 (67 FR 21970), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $550,500 in carryover FY 2001 funds for the Urban Scholars Fellowship Program. The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as set forth below.

List of Awardees for Grant Assistance Under the FY 2002 Urban Scholars Fellowship Program Funding Competition, by Name, Institution, Grant Amount and Research Topic

New England

1. Dr. Brian Jacob, Harvard University, $55,000. The Effects of Housing Vouchers on Low-Income Families: Evidence from a Randomized Lottery for Section 8 Vouchers.

Mid-Atlantic

2. Dr. Angela Foster, University of Pittsburgh, $55,000. The Path to Home Ownership: Racial Difference in the Home Ownership Process.

3. Dr. Amy Hillier, University of Pennsylvania, $55,000. Searching for Red Lines: A GIS and Spatial Statistical Analysis of Mortgage Discrimination.

Midwest

4. Dr. Lincoln Quillian, University of Wisconsin—Madison, $55,000. Sources of the Spatial Concentration of Poverty in U.S. Metropolitan Areas.

5. Dr. Rachel Weber, University of Illinois-Chicago, $55,000. The Impact of Tax Increment Financing on Residential Property Values.

Southwest

6. Dr. Nathan Berg, University of Texas-Dallas, $55,000. Perceptions and Housing Prices: A Longitudinal Case Study of Scattered-Site Public Housing in North Dallas.

7. Dr. James Elliott, Tulane University, $55,000. Immigrant Redistribution and Adaptation through Gateway Cities.

8. Dr. Cecilia Giusti, Texas A&M University, $55,000. Microbusinesses in the Texas-Mexico Border Region: Potential for Economic Community Development.

Northwest/Alaska

9. Dr. Rachel Garshick Kleit, University of Washington, $55,000. HOPE VI New Communities: Mapping Relationships in Mixed-Income Housing.

Dated: August 2, 2002.

Harold Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 02–20395 Filed 8–12–02; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[CA–660–1430–ER–CACA–44491]

Proposed Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Imperial Irrigation District's Proposed New California Desert Southwest Transmission Line Project, California

AGENCY: Bureau of Land Management (BLM) and the Imperial Irrigation District (IID).

ACTION: Notice of intent to prepare a joint EIS/EIR addressing a proposed 230 or 500kV transmission line project and possible California Desert Conservation Area (CDCA) Plan Amendment.

SUMMARY: In compliance with regulations at 40 CFR 1501.7 and 43 CFR 1610.2, notice is hereby given that the BLM, together with the IID, propose to prepare a joint EIS/EIR for the IID's proposed 230 or 500 kilovolt (kV) "California Desert Southwest" Transmission Line Project. The BLM is the lead Federal agency for the preparation of this EIS/EIR in compliance with the requirements of the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulations for implementing NEPA (40 Code of Federal Regulations [CFR] 1500–1508), and the Department of the Interior's manual guidance on NEPA; and the IID is the lead State of California agency for the preparation of this EIS/EIR in compliance with the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 *et seq*), and implementing guidelines (California Code of Regulations [CCR] Title 14, Section 15000 *et seq*), and IID's rules and regulations to implement CEQA. This notice initiates the public participation process for planning, initiates public scoping for the EIS and also serves as an invitation for other cooperating agencies. Potential cooperating agencies include the U.S. Fish and Wildlife Service, Western Area Power Administration, the Department of Defense, the State Historic Preservation Officer, and the California Department of Fish and Game.

DATES: For scoping meetings and comments: Two public scoping meetings will be held during 2002 on the following dates:

1. August 14, from 7–9 p.m., at the Blythe City Council Multipurpose Room, Blythe, CA.

2. August 15, from 7–9 p.m., at the IID Board Room, La Quinta, CA.

Written comments must be postmarked no later than 30 days from the date of this notice in order to be included in the draft EIS/EIR. Please submit any comments to the address listed below.

ADDRESSES: Written comments should be addressed to Mr. James G. Kenna—Field Manager, Bureau of Land Management, Palm Springs-South Coast Field Office, 690 West Garnet Ave, PO Box 581260, North Palm Springs, California 92258–1260.

The meeting locations are:

1. Blythe City Council Multipurpose Room, 235 N. Broadway, Blythe, CA.

2. Imperial Irrigation District, 81–600 Ave. 58, La Quinta, CA.

FOR FURTHER INFORMATION CONTACT: John Kalish, Bureau of Land Management, Palm Springs-South Coast Field Office, 690 West Garnet Ave, PO Box 581260, North Palm Springs, California 92258–1260, (760) 251–4849.

SUPPLEMENTARY INFORMATION: The Imperial Irrigation District (IID) is a community owned utility providing power to more than 90,000 customers in Imperial County and parts of Riverside and San Diego Counties, all in California. The IID is experiencing an increase in electrical demand at an estimated rate of 20 to 30 megawatts annually. In an effort to meet electrical power demand, the IID is proposing to construct a 230 or 500 kilovolt (kV) electrical transmission line located parallel and adjacent to Interstate Highway 10 between North Palm Springs and Blythe, California, a distance of approximately 118 miles. The proposed Project will operate at either 230-kV or 500-kV and will provide increased transmission line capabilities from the existing Devers substation at North Palm Springs, to the proposed Hobsonway substation located west of Blythe.

The proposed transmission line is located within the designated Utility Corridor "H" under the California Desert Conservation Area (CDCA) Plan of 1980, as amended. This utility Corridor directly parallels Interstate Highway 10. An amendment to the CDCA Plan would be required if an alternative to this proposed project, analyzed in the EIS/EIR, is ultimately chosen that is not within one of the 16 utility corridors designated in the CDCA Plan. The CDCA Plan states that new utility needs which do not conform to the adopted corridor system will be processed by means of a Plan Amendment in conjunction with necessary permit hearings required by other agencies. Under the CDCA Plan, the BLM may either authorize installation of a 161kV or larger transmission line within existing utility corridors, deny the proposed project or amend the CDCA Plan to accommodate an alternative alignment that is outside of existing designated utility corridors. Any proposed amendments to the CDCA Plan would be analyzed in this EIS/EIR.

BLM has identified a preliminary list of issues which will need to be addressed in this analysis. Members of the public are invited to identify additional issues and concerns to be addressed. The preliminary list of issues includes potential impacts to the habitat of species listed under the Endangered Species Act (ESA) of 1973, as amended, including the desert tortoise, Coachella Valley fringed toed lizard, Coachella Valley milkvetch, as well as to several BLM administered areas including the Coachella Valley Preserve, Alligator Rock Area of Critical Environmental Concern (ACEC), Chuckwalla Valley Dune Thicket ACEC and Camp Young of the WWII Desert Training Center, California-Arizona Maneuver Area.

Planning criteria (43 CFR 1610.4–2) are parameters, generally based on applicable law, which guide development of a plan amendment to ensure the planning process is tailored to the issues and unnecessary data collection is avoided. The BLM has put together the following preliminary list of planning criteria and also invites the public to provide written comments on these criteria.

1. The Proposed Northern and Eastern Colorado Desert (NECO) Plan/Final EIS and the draft California Desert Conservation Area (CDCA) Plan Amendment for the Coachella Valley/EIS shall be considered to ensure that there are no inconsistencies between either of these plans and the IID proposal. This is critical as these plans

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are being prepared to address the recovery of Federally listed species under the ESA.

2. The IID proposal itself will be subject to Section 7 consultation in accordance with the ESA to address potential impacts to listed species, including cumulative impacts.

The planning process and environmental review analysis for a CDCA Plan Amendment shall be conducted from an interdisciplinary perspective to ensure all issues are adequately addressed. At a minimum, input shall be sought from the following disciplines: biological resources, cultural resources, visual resource management, recreation, wilderness and lands and realty.

Interested members of the public are now invited to participate in a NEPA scoping process, and are requested to help identify new issues or concerns and alternatives to be considered related to this proposed Project. Written comments must be submitted no later than 30 days from the date of this notice to ensure that your comments are included in the draft EIS/EIR. When available, the public will be provided a 60-day public review period on the draft EIS/EIR and a 30-day protest period on the final EIS/EIR. These documents will be made available on the Internet at BLM's Web site: *www.ca.blm.gov* and at local public libraries in the cities of Blythe, Niland, La Quinta and Palm Springs, California. Contact the BLM if you would like to be included in the mailing list to receive copies of all public notices relevant to this project.

James G. Kenna,
Field Manager.
[FR Doc. 02–20418 Filed 8–12–02; 8:45 am]
BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–1430–ES; N–61871]

Notice of Realty Action: Segregation Terminated, Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Segregation terminated, recreation and public purposes lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada was segregated for exchange purposes on July 23, 1997 under serial number N–61855. The exchange segregation on the subject land will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Clark County School District proposes to use the land for an elementary school.

Mount Diablo Meridian, Nevada,

T. 19 S., R. 60 E.,
sec. 7, a portion of lot 5, generally known as W½NE¼NE¼, W½E½NE¼NE¼.

Approximately 30.0 acres.

The school is located near N. Fort Apache Road and Iron Mountain Road.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for water line purposes which have been granted to the Las Vegas Valley Water District by Permit No. N–62751 under the Act of October 21, 1976(43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV, or by calling (702) 515–5088. Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws, and disposal under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the land to the Las Vegas Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130–2301.

Classification Comments: Interested parties may submit comments involving the suitability of the land for an elementary school. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor directly related to the suitability of the land for an elementary school. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, these realty actions will become the final determination of the Department of the Interior. The classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The land will not be offered for lease/conveyance until after the classification becomes effective.

Dated: July 12, 2002.

Rex Wells,
Assistant Field Manager, Division of Lands, Las Vegas, NV.
[FR Doc. 02–20419 Filed 8–12–02; 8:45 am]
BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Availability of Environmental Documents. Prepared for OCS Mineral Proposals on the Gulf of Mexico OCS.

SUMMARY: Minerals Management Service (MMS), in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: MMS prepares an SEA and FONSI for proposals that relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA examines the potential environmental effects of activities described in the proposals and presents MMS conclusions regarding the significance of those effects.

Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

This listing includes all proposals for which the Gulf of Mexico OCS Region prepared a FONSI in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
Chevron U.S.A. Production Company, Initial Development Operations and Pipeline Bundle Activity, SEA Nos. N–7217, P–13720, P–13721 and P–13722.	Viosca Knoll Area, Blocks 384 and 340, Leases OCS–G 16541 and 10933, located 38.5–40.8 miles south of Mobile County, Alabama.	03/29/02
Freeport McMoran Sulphur, L.L.C., Structure Removal Activity, SEA Nos. ES/SR 02–010, 02–011, 02–012, 02–13, 02–014, 02–015, 02–016, 02–017, 02–018, 02–019 and 02–020.	Grand Isle Area, Block 17, Lease OCS–G 00025, located 5.5 miles southeast of Jefferson Parish, Louisiana, and 54 miles southeast of Houma, Louisiana.	03/14/02
Nippon Oil Exploration U.S.A. Limited, Structure Removal Activity, SEA No. ES/SR 02–021.	West Cameron (West Addition) Area, Block 407, Lease OSC–G 15089, located 63 miles south-southwest of Cameron, Louisiana, and 70 miles south-southeast of Cameron, Louisiana.	03/12/02
Samedan Oil Corporation, Structure Removal Activity, SEA Nos. ES/SR 02–022, 02–023 and 02–024.	Eugene Island Area, Block 56, Lease OCS–G 03780, located 8 miles east-southeast of Terrebonne Parish, Louisiana, and 57 miles southeast of Intracoastal City, Louisiana.	03/12/02
El Paso Production Company, Structure Removal Activity, SEA Nos. ES/SR 02–025, 02–026 and 02–027.	Viosca Knoll Area, Block 121, Lease OCS–G 14595; East Cameron Area, Block 188, Lease OCS–G 13586; East Cameron Area, Block 193, Lease OCS–G 08651; located 22 miles south of Mobile County, Alabama, and 43 miles south of Theodore, Alabama; and 56–58 miles south-southwest of Cameron Parish, Louisiana, and 73–75 miles south-southeast of Cameron, Louisiana, respectively.	03/28/02
Samedan Oil Corporation, Structure Removal Activity, SEA No. ES/SR 02–028.	Vermilion Area, Block 100, Lease OCS–G 15174, located 27 miles south of Vermilion Parish, Louisiana, and 47 miles southwest of Intracoastal City, Louisiana.	04/16/02
Williams Field Services-Offshore Gathering Company, Structure Removal Activity, SEA No. ES/SR 02–029.	High Island Area, Block A–69, Lease OCS–G 06187, located 43 miles southeast of Galveston and Galveston County, Texas.	04/18/02
El Paso Production Company, Structure Removal Activity, SEA No. ES/SR 02–030.	High Island Area (East Addition South Extension), Block A–313, Lease OCS–G 02410, located 104 miles south of Cameron Parish, Louisiana, and 110 miles south-southwest of Cameron, Louisiana.	04/22/02
Pioneer Natural Resources USA, Inc., Structure Removal Activity, SEA No. ES/SR 02–031.	Vermilion Area (South Addition), Block 348, Lease OCS–G 02271, located 93 miles south of Vermilion Parish, Louisiana, and 111 miles south-southwest of Intracoastal City, Louisiana.	04/22/02
El Paso Production Company, Structure Removal Activity, SEA Nos. ES/SR 02–032 and 02–033.	High Island Area (East Addition South Extension), Block A–314, Lease OCS–G 08570, located 106 miles south of Cameron Parish, Louisiana, and 11 miles south-southwest of Cameron, Louisiana.	04/22/02
Samedan Oil Corporation, Structure Removal Activity, SEA No. ES/SR 02–034.	South Pass Area, Block 47, Lease OCS–G 09695, located 27 miles southeast of Venice, Louisiana, and 4 miles south of Plaquemines Parish, Louisiana.	04/15/02
Devon Production Company, L.P., Structure Removal Activity, SEA No. ES/SR 01–038A.	Eugene Island Area (South Addition), Block 305, Lease OCS–G 02108, located 63 miles southwest of Terrebonne Parish, Louisiana, and 109 miles southeast of Intracoastal City, Louisiana.	04/18/02
Hall-Houston Oil Company, Structure Removal Activity, SEA No. ES/SR 01–072A.	West Delta Area, Block 94, Lease OCS–G 00839, located 25 miles southeast of LaFourche Parish, Louisiana, and 29 miles southeast of Fourchon, Louisiana.	05/02/02
Chevron U.S.A., Inc., Structure Removal Activity, SEA Nos. ES/SR 02–035, 02–036 and 02–037.	Ship Shoal Area, Block 108, Lease OCS–G 00814; Ship Shoal Area, Block 170, Lease OCS–G 03584; South Marsh Area, Block 61, Lease OCS–G 01196; located 17 miles southwest of Terrebonne Parish, Louisiana, and 89 miles southeast of Intracoastal City, Louisiana; 28 miles southwest of Terrebonne Parish, Louisiana, and 101 miles southeast of Intracoastal City, Louisiana; and 49 miles south of Iberia Parish, Louisiana, and 78 miles south southeast of Intracoastal City, Louisiana, respectively.	05/09/02
Pioneer Natural Resources USA, Inc., Structure Removal Activity, SEA Nos. ES/SR 02–038, 02–039 and 02–040.	West Delta Area, Block 61, Lease OCS–G 03186; Ship Shoal Area, Block 115, OCS–G 02619; located 14 miles west northwest of Plaquemines Parish, Louisiana, and 162 miles southeast of Intracoastal City, Louisiana; and 14 miles south of Terrebonne Parish, Louisiana, and 106 miles southeast of Intracoastal City, Louisiana, respectively.	05/09/02

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Activity/Operator	Location	Date
Walter Oil & Gas Corporation, Structure Removal Activity, SEA No. ES/SR 02–041.	Eugene Island Area, Block 72, Lease OCS–G 10720, located 21 miles south-southeast of Iberia Parish, Louisiana, and 93 miles west of Fourchon, Louisiana.	05/17/02
Devon Energy Production Co., L.P., Structure Removal Activity, SEA No. ES/SR 02–042.	South Marsh Island (North Addition) Area, Block 256, Lease OCS–G 04112, located 16 miles south-southwest of Iberia Parish, Louisiana, and 42 miles south-southeast of Intracoastal City, Louisiana.	05/14/02
Unocal Corporation, Structure Removal Activity, SEA No. ES/SR 02–043.	Mobile Area, Block 829, Lease OCS–G 06844, located 5 miles south of Baldwin County, Alabama, and 29 miles southeast of Theodore, Alabama.	05/20/02
Taylor Energy Company, Structure Removal Activity, SEA No. ES/SR 02–044.	Matagorda Island Area, Block 665, Lease OCS–G 03464, located 12 miles southeast of Calhoun County, Texas, and 31 miles east-northeast of Harbor Island, Texas.	05/20/02
El Paso Production, Structure Removal Activity, SEA No. ES/SR 02–045.	Main Pass (South & East Addition) Area, Block 198, Lease OCS–G 13659, located 42 miles southeast of Chandeleur Islands, and 72 miles south of Theodore, Alabama.	05/29/02
Prime Natural, Resources, Inc. Structure Removal Activity, SEA No. ES/SR 02–046.	High Island Area (East Addition), Block 130, Lease OCS–G 14883, located 29 miles south of Jefferson County, Texas, and 34 miles south of Sabine Pass, Texas.	06/11/02
El Paso Production, Structure Removal Activity, SEA Nos. ES/SR 02–047, 02–048 and 02–049.	High Island Area (East Addition South Extension), Block A–313, Platform A, Lease OCS–G 02410; High Island Area (East Addition South Extension), Block A–349, Platform B, Lease OCS–G 02743; and High Island Area (South Addition), Block A–497, Platform A, Lease OCS–G 06231; located (Platform A) 102 miles south of Jefferson County, Texas, and 111 miles south of Cameron Parish, Louisiana, (Platform B) 115 miles south of Cameron Parish, Louisiana, and 117 miles south of Cameron, Louisiana, and (Platform A) 88 miles southeast of Galveston County, Texas, and 119 miles south-southwest of Cameron, Louisiana, respectively.	06/10/02
Newfield Exploration Company, Structure Removal Activity, SEA Nos. ES/SR 02–050, 02–051, 02–052, 02–053, 02–054 and 02–055.	Ship Shoal Area, Block 69, Lease OCS–G 03577, Caissons 7, 8, 9, 10, 11 and 13, located approximately 6 miles south of Terrebonne Parish, Louisiana, and 98 miles southeast of Intracoastal City, Louisiana.	05/31/02
El Paso Production, Structure Removal Activity, SEA No. ES/SR 02–056.	High Island Area (East Addition South Extension), Block A–271, Lease OCS–G 06245, located 85 miles south of Jefferson County, Texas, and 95 miles south-southwest of Cameron, Louisiana.	06/12/02
Maritech Resources, Inc., Structure Removal Activity, SEA Nos. ES/SR 02–057 and 02–058.	Main Pass (South and East Addition), Block 187, Lease OCS–G 08756, located 37 miles east-southeast of Chandeleur Islands, and 65 miles east-northeast of Venice, Louisiana.	06/14/02
Apache Corporation, Structure Removal Activity, SEA No. ES/SR 02–059.	West Cameron Area, Block 199, Lease OCS–G 14319, located 29 miles south-southwest of Cameron Parish, Louisiana, and 52 miles southeast of Sabine Pass, Louisiana.	06/13/02
McMoran Oil & Gas, Structure Removal Activity, SEA No. ES/SR 02–061.	Vermilion Area, Block 144, Lease OCS–G 03125, located 40 miles south of Vermilion Parish, Louisiana, and 58 miles southwest of Intracoastal City, Louisiana.	06/14/02
El Paso Production, Structure Removal Activity, SEA No. ES/SR 02–062.	High Island Area (East Addition South Extension), Block A–330, Lease OCS–G 02421, located 11 miles south-southeast of Jefferson County, Texas, and 115 miles south-southwest of Cameron, Louisiana.	06/10/02
Energy Resource Technology, Inc., Structure Removal Activity, SEA Nos. ES/SR 02–063 and 02–064.	Vermilion Area, Block 147, Lease OCS–G 02071, located 37 miles south of Vermilion Parish, Louisiana, and 85 miles west-southwest of Morgan City, Louisiana.	06/14/02
Newfield Exploration Company, Structure Removal Activity, SEA No. ES/SR 02–065.	Viosca Knoll Area, Block 209, Lease OCS–G 08744, located 29 miles south of Bladwin County, Alabama, and 88 miles northeast of Venice, Louisiana.	06/17/02
Westport Resources Corporation, Structure Removal Activity, SEA No. ES/SR 02–066.	Eugene Island Area, Block 85, OCS–G 16347, located 19 miles southeast of Terrebonne Parish, Louisiana, and 80 miles west of Fourchon, Louisiana.	06/17/02
Williams Energy Services, Structure Removal Activity, SEA No. ES/SR 02–067.	Mustang Island Area, Block 803, Lease OCS–G 17076, located 22 miles southeast of Nueces County, Texas, and 24 miles southeast of Habor Island, Texas.	06/17/02
Fairways Specialty Sales & Service, Inc., Structure Removal Activity, SEA No. ES/SR 02–068.	High Island (South Addition) Area, Block A–511, Lease OCS–G 02694, located 77 miles southeast of Brazoria County.	06/19/02
Walter Oil & Gas Corporation, Structure Removal Activity, SEA No. ES/SR 02–069.	Brazos Area, Block 572, Lease OCS–G 10228, located 24 miles southeast of Matagorda County, Texas, and 60 miles southwest of Freeport, Texas.	06/19/02
Pioneer Natural Resources, Structure Removal Activity, SEA No. ES/SR 02–NG1.	Brazos Area, Block A–7, Lease OCS–G 04558, located 32 miles southeast of Matagorda County, Texas, and 56 miles east of Port O'Connor, Texas.	06/10/02

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EAs and FONSIs prepared for activities on the Gulf of Mexico OCS are encouraged to contact MMS at the address or telephone listed in the **FOR FURTHER INFORMATION** section.

Dated: July 8, 2002.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 02–20438 Filed 8–12–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Albuquerque Drinking Water Project, NM

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Extension of Public Comment Period for Thirty Days.

SUMMARY: Notice is hereby given that the comment period for the Draft Environmental Impact Statement (DEIS) for the City of Albuquerque Drinking Water Project is extended an additional 30 days to September 12, 2002.

DATES: The end of the public comment period, as noted in the **Federal Register** (67 FR 40961) on June 14, 2002, was August 13, 2002. The public comment period is now extended to September 12, 2002.

ADDRESSES: Written comments on the DEIS should be addressed to Lori Robertson, Bureau of Reclamation, Albuquerque Area Office, 505 Marquette, NW., Suite 1313, Albuquerque, New Mexico 87102; faxogram (505) 248–5356; e-mail: *lrobertson@uc.usbr.gov*. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Lori Robertson, Environment and Lands Division Manager, (505) 248–5326.

Dated: August 1, 2002.

Shelly Wiser,

Acting Regional Director.

[FR Doc. 02–20429 Filed 8–12–02; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–406]

Certain Lens-Fitted Film Packages, Consolidated Enforcement and Advisory Opinion Proceedings; Notice of Review-in-Part, Nonreview-in-Part, and Remand of Enforcement Initial Determination and Initial Advisory Opinion to the Presiding Administrative Law Judge

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part and remand to the presiding administrative law judge (ALJ) the initial advisory opinion (IAO) and the enforcement initial determination (EID) issued by the ALJ on May 2, 2002, in the above-captioned proceedings under section 337 of the Tariff Act as amended, 19 U.S.C. 1337. Specifically, the Commission determined to review and remand to the ALJ an issue of infringement under the doctrine of equivalents in view of the Supreme Court's decision in *Festo Corp.* v. *Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 122 S.Ct. 1831 (May 28, 2002). The Commission determined not to review the remainder of the IAO and EID.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, *Esq.*, telephone 202–205–3104, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol.public.* Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission's original investigation in this matter was terminated on June 2, 1999, with a finding of violation of section 337 by 26 respondents by reason of importation or sales after importation of certain lens-fitted film packages (LFFPs) (*i.e.*, disposable cameras) that were found to infringe one or more claims of 15 patents held by complainant Fuji Photo Film Co. (Fuji). 64 FR 30541 (June 8, 1999). The Commission issued a general exclusion order, prohibiting the importation of LFFPs that infringe any of the claims at issue, and issued cease and desist orders to twenty domestic respondents. Id. Three respondents appealed the part of the Commission's determination that concerned refurbished LFFPs to the U.S. Court of Appeals for the Federal Circuit. No party appealed the Commission's determinations concerning newly-manufactured LFFPs.

On June 27, 2001, Fuji filed a "Complaint for Enforcement Proceedings Under Rule 210.75, Petition for Modification Under Rule 210.76 and/or Request for Advisory Opinion Under Rule 210.79." Fuji's enforcement complaint asserted 22 claims contained in nine utility patents and named twenty entities as respondents. Fuji later withdrew its complaint as to three of the respondents. Fuji's complaint concerns only newly-manufactured cameras that were not the subject of the appeal to the Federal Circuit. On July 31, 2001, the Commission instituted advisory opinion and enforcement proceedings and referred them to the presiding ALJ for issuance of a separate initial advisory opinion (IAO) and enforcement initial determination (EID). 63 FR 40721 (August 3, 2002).

On May 2, 2002, the ALJ issued his IAO and EID in which he made 59 separate infringement determinations involving seven patents and 13 respondents and 28 different types of accused LFFP. Eight petitions for review of the IAO and/or EID were filed on May 16, 2002. Responses were filed on May 24, 2002. On June 7, 2002, Fuji filed a supplemental brief concerning the application of intervening Supreme Court precedent. Responses to Fuji's motion were filed on June 19 and June 24, 2002, by the Commission investigative attorneys (IAs) and respondent Vastfame Camera Ltd., respectively.

The Commission, having examined the petitions for review and the responses thereto, determined to review the findings of the IAO and EID on the issue of infringement of claim 9 of U.S. Letters Patent 4,972,649 in view of the Supreme Court decision, *Festo Corp.* v. *Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 122 S.Ct. 1831, which was handed down after the IAO and EID were issued. The Commission has determined not to review any other part of the IAO or EID.

In connection with final disposition of the enforcement proceedings, the Commission may issue cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of lens fitted film packages. If the Commission contemplates issuance of cease and desist orders, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with

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those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission issues cease and desist orders, the conduct prohibited by any cease and desist order may be continued during the sixty (60) day period in which the cease and desist orders are under review by the President pursuant to subsection (j) of section 337, 19 U.S.C. 1337(j). During this period, the subject articles would be entitled to be sold under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

The Commission may also levy civil penalties for violations of cease and desist orders that it issued at the completion of the Lens-Fitted Film Packages investigation.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on remedy, the public interest, and bonding. Such submissions should address the recommended remedy determinations made by the ALJ in the EID that issued on May 2, 2002, including the ALJ's recommendations with regard to civil penalties. Complainant and the Commission investigative attorneys are also requested to submit proposed cease and desist orders for the Commission's consideration. The written submissions and proposed cease and desist orders must be filed no later than close of business on August 28, 2002. Response submissions must be filed no later than the close of business on September 6, 2002. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* section 201.6 of the Commission's rules of practice and procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.75 and 210.79 of the Commission's rules of practice and procedure (19 CFR 210.75 and 210.79).

By order of the Commission.

Issued: August 7, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–20430 Filed 8–12–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–024]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 22, 2002 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1013 (Preliminary) (Saccharin from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before August 26, 2002; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before September 3, 2002.).
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 9, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–20577 Filed 8–9–02; 11:52 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Policing Services: Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 30-Day notice of Information Collection Under Review: Reinstatement, With Change, of a Previously Approved Collection for Which Approval has Expired, Regional Community Policing Institute Quarterly Progress Report.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 73, page 18636 on April 16, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 12, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, With Change, of a Previously Approved Collection for Which Approval has Expired.

(2) *Title of the Form/Collection:* Regional Community Policing Institute Quarterly Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: COPS 022/01. Office of Community Oriented Policing Services, Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: State, Local or Tribal Government. Other: None. Abstract: This information collection requests information required to monitor the progress and use of funds by the Regional Community Policing Institutes through the one-year cooperative agreements to provide training and technical assistance to COPS grantees and other participants in the area of community-oriented policing.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are 32 respondents. The amount of estimated time required for the average respondent to respond is 11.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 1,472 hours associated with this information collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 7, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–20439 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Policing Services: Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 30-Day notice of Information Collection Under Review: New Technology Initiative Grant Application Kit

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 99, page 36023 on May 22, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 12, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Technology Initiative Grant Application Kit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: none. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and local law enforcement entities. Other: None. Abstract: The information collected by the Technology Initiative Grant Application Kit is requested to obtain a comprehensive understanding of project objectives in accordance with the Federally appropriated mandate and grant program policies of the COPS Office.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 200 responses. The estimated amount of time required for the average respondent to respond is 25 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are estimated 5,200 annual burden hours associated with this information collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: August 7, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–20442 Filed 8–12–02; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Auto Body Consortium, Inc.—"Hot Metal Gas Forming" ("HMGF")

Notice is hereby given that, on July 19, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Auto Body Consortium, Inc.—"Hot Metal Gas Forming" ("HMGF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Antarum Institute, Ann Arbor, MI has merged with Auto Body Consortium, Inc., Ann Arbor, MI and assumed its membership in the venture. Also, Temper Incorporated, Rockford, MI has been added as a party to this venture. In addition, Tower Automotive, Milwaukee, WI and Troy Design and Manufacturing, Medford, MI have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Auto Body Consortium, Inc.—"Hot Metal Gas Forming" ("HMGF") intends to file additional written notification disclosing all changes in membership.

On December 21, 1998, Auto Body Consortium, Inc.—"Hot Metal Gas Forming" ("HMGF") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 18, 1999 (64 FR 8124).

The last notification was filed with the Department on March 8, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 4, 2002 (67 FR 16124).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20408 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on June 26, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IMS Global Learning Consortium, Inc., has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Carnegie Mellon University, Pittsburgh, PA; Massachusetts Institute of Technology, Cambridge, MA; The Boeing Company, St. Louis, MO; and UK eUniversities Worldwide Limited, London, England, UNITED KINGDOM have been added as parties to this venture. Also, Central Software, Lexington, MA; and Epic Group, Brighton, England, UNITED KINGDOM have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on March 23, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 30, 2002 (67 FR 21271).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20413 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–134a (IPACT–I)

Notice is hereby given that, on June 13, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (the "Act"), the International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–134a (IPACT–I) filed written notifications simultaneously with the Attorney General and the Federal Trade Commission announcing the termination of IPACT–I, effective June 30, 2002.

Although membership in IPACT–I is no longer open, the data that IPACT–I generated on HFA–134a will continue to be available through a cost-sharing license.

On August 7, 1990, IPACT–I filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 6, 1990 (55 FR 36710).

The last notification was filed with the Department on July 6, 2000. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 10, 2000 (65 FR 60212).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20414 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–227 (IPACT–II)

Notice is hereby given that, on June 13, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (the "Act"), the International Pharmaceutical Aerosol Consortium for Toxicololgy Testing of HFA–227 (IPACT–II) filed written notifications simultaneously with the Attorney General and the Federal Trade Commission announcing the termination of IPACT–II, effective April 30, 2001.

Although membership in IPACT–II is no longer open, the data that IPACT–II generated oin HFA–227 will continue to be available through a cost-sharing license.

On February 21, 1991, IPACT–II filed its original notification pursuant to 15 U.S.C. 4305(a). The Department of Justice published a notice in the **Federal Register** pursuant to 15 U.S.C. 4305(b) on April 2, 1991 (56 FR 13489).

The last notification was filed with the Department on March 15, 2000. The Department of Justice published a notice in the **Federal Register** pursuant to 15 U.S.C. 4305(b) on August 17, 2000 (65 FR 20218).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20416 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation ("POSC")

Notice is hereby given that, on May 10, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Petrotechnical Open Software Corporation ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Petrolink, Houston, TX; Paradigm Geophysical Ltd., Houston, TX; Pioneer Natural Resources, Irving, TX; and OFS Protal LLC, Houston, TX have been added as parties to this venture.

No other changes have been made in either the membership of planned activity of the group research project. Membership in this group research project remains open, and Petrotechnical Open Software Corporation ("POSC") intends to file additional written notification disclosing all changes in membership.

On January 12, 1991, Petrotechnical Open Software Corporation ("POSC") filed its original notification pursuant to Section 6(a) of the Act, The Department of Justice published a notice in **Federal Register** pursuant to Section 6(b) of the Act on February 7, 1991 (56 FR 5021).

The last notification was filed with the Department on March 14, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 18, 2002 (67 FR 19253).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20407 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation ("POSC")

Correction

Notice Document 02–15240, relating to notice pursuant to the National Cooperative Research and Production Act of 1993 for Petrotechnical Open Software Corporation ("POSC"), appearing on page 41484 in the issue of Tuesday, June 18, 2002, in the first column is retracted.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20410 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on July 22, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Portland Cement Association has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Inland Cement Limited, Edmonton, Alberta, CANADA has changed its name to Lehigh Inland Cement Limited; Krup Polysius Corp., Atlanta, GA (an Associate Member) has changed its name to Polysius Corp.; BMH Americans, Dallas, TX (an Associate Member) has changed its name to Claudius Peters (Americas); and Baker Refractories, York, PA (an Associate Member) has changed its name to LWB Refractories.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Portland Cement Association intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, Portland Cement Association filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on March 5, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 4, 2002 (67 FR 16124).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20411 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Salutation Consortium, Inc.

Notice is hereby given that, on July 3, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Salutation Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Subramanyam Mallela (individual member), Austin, TX; and William A. Rhodes (individual member), Knoxville, TN have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Salutation Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On March 30, 1995, Salutation Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice

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published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 27, 1995 (60 FR 33233).

The last notification was filed with the Department on February 6, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2002 (67 FR 10761).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20417 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Equipment and Materials International ("SEMI")

Notice is hereby given that, on July 3, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Semiconductor Equipment and Materials International ("SEMI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Asyst Technologies, Inc., Fremont, CA acquired Domainlogix, Austin, TX and has changed its name to Asyst Connectivity Technologies, Inc., Austin, TX.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SEMI intends to file additional written notification disclosing all changes in membership.

On January 8, 2002, SEMI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2002 (67 FR 10762).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20415 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on July 12, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ARC International PLC, Nashua, NH; Beijing Hongsi Electronic Technology Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; Himanshu Dwivedi (individual member), San Francisco, CA; Robert Helt (individual member), Moraga, CA; Dr. Rabi Mahapatra (individual member), College Station, TX; Seijiro Moriyama (individual member), Yokohama, JAPAN; Prosilog SA, Cergy-Prefectire. FRANCE; TTChip Entwicklungsges.m.b.H., Vienna, AUSTRIA; University of Kitakyushu, Dept. of Information & Media Sciences, Kitakyusha-shi, JAPAN; and Vast Systems Technology, Sunnyvale, CA have been added as parties to this venture.

Also, Adaptive Silicon, Inc., Lost Gatos, CA; Alcatel Internetworking (PE), Inc., Spokane, WA; Altera Corporation, San Jose, CA; Arc Cores Ltd., San Jose, CA; Patrick Beauvillard (individual member), Saint Lambert des Bois, FRANCE; BOPS, Inc., Chapel Hill, NC; Easics NV, Leuven, BELGIUM; HCL Technologies India Pvt. Ltd., Chennai, INDIA; IDEC–IC Design Education Center, Taejon, REPUBLIC OF KOREA; Logic Research Corporation, Fukuoka-shi, JAPAN; Memec Core, Raleigh, NC; MystiCom Ltd, Netanya, ISRAEL; Nazomi Communications, Inc., Santa Clara, CA; Nogatech Ltd., Kfar-Saba, ISRAEL; Palmchip, San Jose, CA; Qualis Design Corporation, Lake Oswego, OR; RealChip, Sunnyvale, CA; Tensilica, Inc., Santa Clara, CA; and Virtual Silicon Technology, Inc., Sunnyvale, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on April 16, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 29, 2002 (67 FR 37441).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20412 Filed 8–12–02 8:45am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—XtremeSpectrum Inc.

Notice is hereby given that, on July 23, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), XtremeSpectrum Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are XtremeSpectrum Inc., Vienna, VA; and Motorola Inc., Schaumburg, IL. The nature and objectives of the venture are cooperative research to develop a Fireground Personnel Location & Communication System.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20409 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration Collection Activities: Comment Request

ACTION: 60-day notice of information collection under review; INS case status service online.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 and the Privacy Act of 1974 as amended, and Pub. L. 93–589.

INS now provides case status to individuals and their representatives by request through an INS toll phone line or walk-in at INS local offices. INS proposes to implement case status online service that will provide case status of an immigration or naturalization action to customers (and their representatives) via an interactive voice response system on a toll free, 1–800 line or a web-based application. Individuals or their representatives will look up status on the Internet by typing in the receipt number of the submitted form or through interaction on a toll-free telephone line. For individuals or organizations such as law firms and non-profit organizations that represent many individuals and their respective cases, the INS proposes to implement a capability for each requestor to develop their own log of pending cases on the web. The log will include multiple receipt numbers that correspond to individuals' cases. A requestor will have access only to a non-attributable case status receipt number.

INS will provide an option for the requestor to receive email notification of status. The requestor would query the system and, if desired, request email notification of further status changes. This option reduces the number of times that a customer must access the system for case status.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until October 15, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: New information collection.*

(2) *Title of the Form/Collection:* INS Case Status Service Online.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form No. (File No. OMB–33). National Customer Service Center, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individual or households. The INS proposes to implement an electronic website as a part of the Customer Relationship Interface System (CRIS) initiative. The system will allow individuals or their representatives to request case status. The INS proposes to permit the requestor to look up status by entering on a website the receipt number of the submitted action.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000,000 responses at 4.5 minutes (0.75) per response.

(6) *An estiamte of the total public burden (in hours) associated with the collection:* 75,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: August 6, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–20476 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: extension of a currently approved collection; Equal Employment Opportunity Plan certification and short form.

The Department of Justice (DOJ), Office of Justice Programs, Office for Civil Rights, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 15, 2002.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions with instructions or additional information, please contact Daphne Felten-Green (202) 305–3010, Office of Justice Programs, US Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

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are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, With Change, of a Previously Approved Collection for Which Approval has Expired.

(2) *Title of the Form/Collection:* Accounting System and Financial Capability Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: OJP Form 7120/1. Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Not-for-profit institutions. *Other:* For-profit institutions. This form will be completed by applicants that are newly-formed firms or established forms with no previous grants awarded by the Office of Justice Programs. It is used as an aide to determine those applicants/grantees that may require special attention in matters relating to the accountability of Federal funds. This information is required for assessing the financial risk of a potential recipient in administrating federal funds in accordance with OMB Circular A–110 and 28 CFR part 70.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,250 respondents receiving a grant of $500,000 or more will complete a 1-hour Equal Employment Opportunity Plan Short Form and submit it to the Office of Justice Programs. In addition, an estimated 7000 respondents seeking grants ranging from $25,000 up to $500,000 will be required to complete the ¼ hour certification stating that they are maintaining a current Equal Employment Opportunity Plan on file and submit the certification to the Office of Justice Programs.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the Equal Employment Opportunity Plan Short Form is 1250 hours. The total hour burden to complete the EEOP certification is 1750. The annual burden hours is 3000.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: August 8, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–20443 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

International Labor Reporting Initiative

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of availability of funds and solicitation for cooperative agreement applications (SGA 02–24).

This notice contains all of the necessary information and forms needed to apply for cooperative agreement funding.

SUMMARY: The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), will award funds for up to three cooperative agreements to an organization or organizations to develop and implement projects to assist ILAB, as mandated by its 2002 Congressional Appropriation, to build its permanent capacity to monitor and report regularly and in-depth to the Congress on the extent to which foreign countries with trade and investment agreements with the United States respect internationally recognized worker rights and promote core labor standards. USDOL is seeking applications from qualified organizations for the implementation of innovative, effective, and sustainable approaches to quality information gathering at the global, regional, or national level.

DATES: The closing date for receipt of applications is September 11, 2002. Applications must be received by 4:45 p.m. Eastern Daylight Savings Time (EDST) at the address below. No exceptions to the mailing, delivery, and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored.

ADDRESSES: Application forms will not be mailed. They are published in this **Federal Register** Notice, and in the **Federal Register** which may be obtained from your nearest U.S. Government office, public library or on-line at *http://www.archives.gov/federal_register/index.html.* Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW, Room N–5416, Attention: Lisa Harvey, Reference: SGA 02–24, Washington, D.C. 20210. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted; however, the applicant bears the responsibility for timely submission.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey: E-mail address: *harvey-lisa@dol.gov.* All applicants are advised that U.S. mail delivery in the Washington, DC area has been slow and erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this it not a toll free number), prior to the closing deadline. All inquiries should reference SGA 02–24. See Section III. C for further information.

SUPPLEMENTARY INFORMATION: ILAB is seeking innovative, reliable, and sustainable approaches to gathering valid and credible information and data on the extent to which foreign countries with trade and investment agreements with the United States effectively promote core labor standards as embodied in the ILO Declaration on Fundamental Principles and Rights at Work and respect internationally recognized worker rights as currently required under various U.S. laws.

For the purposes of these cooperative agreements, core labor standards and their principles are those outlined in the International Labor Organization's 1998 Declaration of Principles and Rights at Work namely: (1) Freedom of Association and the effective recognition of the right to collective bargaining; (2) the elimination of all forms of forced or compulsory labor; (3) the effective abolition of child labor; and (4) the elimination of discrimination in respect of employment and occupation.

Internationally recognized worker rights, as defined by Section 507 of the Generalized System of Preferences (GSP), include the: (A) The right of association; (B) the right to organize and bargain collectively; (C) a prohibition on the use of any form or forced or compulsory labor; (D) a minimum age for the employment of children; and (E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

ILAB engages in a multitude of activities that demand a clear understanding of countries' national labor laws, systems of enforcement, and current labor practices in regards to international labor standards and acceptable conditions of work. ILAB uses this information in fulfilling its overall mission of participating in the development and implementation of U.S. Government economic, trade and immigration policy.

The cooperative agreement(s) is to be actively managed by ILAB's Office of Foreign Relations to assure achievement of the stated objectives. Applicants are encouraged to be creative in proposing innovative and cost-effective interventions that will have a demonstrable impact on the gathering better quality, and sustainable information at the global, regional, or national levels. Applicants will be expected to complement and coordinate with, but not to duplicate, other existing ILAB efforts at labor monitoring, in particular the National Academy of Science's *Committee on Monitoring International Labor Standards*[1]. Further, applicants are encouraged to draw from and seek to build the capacity of national governments in this framework by cooperating with national institutions that are responsible for implementing labor laws such as the Labor Inspection Departments at Ministries of Labor. The project also looks for proposals that advance democratic institution building through civil society.

I. Background and Project Scope

An understanding of workers' rights and conditions around the world is critical for the United States as it seeks to promote compliance with core labor standards through economic interactions with other countries. The United States' regional and global trade agreements provide the United States and its trading partners with unique opportunities in the global economy. But increased trade also presents a challenge in terms of the breadth of countries in which we need a better understanding of adherence with labor standards and treatment of workers. The United States' commitment to promote compliance with international labor standards and acceptable conditions of work requires a system to measure and understand what actual international labor standards and acceptable conditions of work are required by each country's labor laws, what enforcement compliance mechanisms are used, and their progress on adherence to them.

ILAB has specific responsibility for USDOL's international activities. ILAB, in close cooperation with other government agencies, non-governmental organizations, and businesses, supports the promotion and implementation of internationally recognized labor standards. The goal of these shared activities is to create a prosperous international economy in which workers are allowed their basic democratic rights to organize, to safely work, and to achieve greater economic security. ILAB has been given the charge to develop a resource system for monitoring compliance with international labor standards and acceptable conditions of work.

Successfully developing and implementing such a system is a complex process, requiring expertise, innovation, and objectivity. Approaches may vary but all should emphasize understanding, through some form of measurement, country-level compliance with international standards and acceptable conditions of work. Projects should also put an emphasis on sustainability through national-capacity building.

II. Authority

USDOL is authorized to award and administer this project by the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2002, Pub. L. 107–116, 115 Stat. 2177 (2002).

III. Application Process

A. Eligible Applicants

Any commercial, international, or non-profit organization, which may include faith-based organizations, capable of successfully implementing a project to advance labor reporting is eligible for this cooperative agreement. An applicant may partner with one or more organizations to implement a project. In the case of co-applicants, a lead organization must be identified. The capability of an applicant or co-applicants to perform necessary aspects of this solicitation will be determined under Section V.B Rating Criteria.

Please note that eligible cooperative agreement applicants must not be classified under the internal revenue code as a section 501(c)(4) entity. See 26 U.S.C. 501(c)(4). According to the Lobbying Disclosure Act of 1995, as amended 2 U.S.C. 1611, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

B. Submission of Applications

One (1) ink-signed original, complete application plus two (2) copies of the proposal must be submitted to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW, Room N–5416, Washington, DC 20210, not later than 4:45 p.m. EDST, August 27, 2002.

The application must consist of two (2) separate parts. Part I of the application must contain the Standard Form (SF) 424, "Application for Federal Assistance" (Appendix A) (The entry on SF 424 for the Catalog of Federal Domestic Assistance Number (CFDA) is 17.700) and sections A-F of the Budget Information Form SF 424A (Appendix B). Part II must contain a technical proposal that demonstrates capabilities in accordance with the Statement of Work (Section IV. A) and the selection criteria (Section V. B).

To be considered *responsive* to this solicitation, the application must consist of the above-mentioned separate sections not to exceed 40 single-sided (8½″ × 11″), double-spaced, 10 to 12 pitch typed pages for which a response is submitted. Any applications that do not conform to these standards may be deemed non-responsive to this solicitation and may not be evaluated. Standard forms and attachments are not included in the page limit. The application must include a table of contents and an abstract summarizing the application in not more than two (2) pages. These pages are also *not* included in the page limits.

Upon completion of negotiations, the individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant.

C. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Office of Procurement Services after 4:45 pm EDST September 11, 2002, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before September 11, 2002;

2. it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

[1] The website for the National Academy of Sciences project is: *http://www.nas.edu/internationallabor.*

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3. it was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 pm at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to September 11, 2002.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted, however, the applicant bears the responsibility for timely submission. Because of delay in the receipt of mail in the Washington, DC area, it is recommended that you confirm receipt of your application by contacting Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. All inquires should reference SGA 02–24.

D. Funding Levels

Approximately U.S. $3 million is budgeted for this project, to fund up to three projects, globally, regionally, or at the national level, with a particular emphasis on countries or areas where the United States has trade and investments interests such as the GSP, the African Growth and Opportunity Act (AGOA), or the Caribbean Basin Trade Partnership Act (CBTPA). Potential bilateral or regional agreements such as the U.S.-Chile Free Trade Agreement or the Free Trade Area of the Americas (FTAA) may also be considered. A partnership of more than one organization may apply to implement the project. Applicants will submit one application and are encouraged to utilize local NGOs and Ministries of Labor to implement much of the project in order to institutionalize and sustain project improvements and reduce costs. The award of any sub-contract will be subject to USDOL approval.

E. Project Duration

The duration of the project(s) funded by this SGA is up to three (3) years. The start date of project activities will be negotiated upon the awarding of the cooperative agreements.

IV. Requirements

A. Statement of Work

In developing their proposals, potential cooperative agreement recipients should develop a strategy designed to elicit better information on national labor laws, their enforcement, and country practices in relation to the core labor standards of: 1. Freedom of Association and effective recognition of the right to collective bargaining; 2. The elimination of all forms of forced or compulsory labor; 3. The effective abolition of child labor; and 4. The elimination of discrimination in respect of employment and occupation. In addition, "acceptable conditions of work" as defined by U.S. trade law (hours of work, minimum wage, and occupational safety and health) may also be included. Projects may address one, several, or all of the standards. Acknowledging the vast differences in economic development across countries, this project is not necessarily seeking comparative data, nor is it interested in the specificity of individual company level information. The strategy may also demonstrate how the applicant proposes to strengthen national capacity by involving Ministries of Labor, labor organizations, employer organizations, and/or NGOs in the implementation of the project. The applicant should draft a strategy demonstrating how it will define and meet the project objectives by the end of the grant period, and how the issue of sustainability will be integral to project implementation. Critical to sustainability will be the need to work cooperatively with stakeholders in the countries, including Ministries/Departments of Labor and Education, trade unions, employer organizations and U.S. Embassies.

The organization or organizations awarded the cooperative agreement(s) (hereinafter referred to as the "grantee") may be required to work cooperatively with ILAB's current monitoring initiative through the National Academy of Sciences, the *Committee on Monitoring International Labor Standards*, and that project's resulting database.

B. Deliverables

This section is provided so that applicants may more accurately estimate the staffing budgetary requirements when preparing their proposal.

Following the award of the cooperative agreement(s), grantees shall meet with ILAB at a Post-Award Meeting to discuss the project design, components, and outcomes; ensure complementation of projects without duplication; timelines and coordination; and final approval. At that meeting the grantees and the Department will discuss the specific deliverables. Subject to the nature of the project(s), the applicant will be required to submit copies of the following to USDOL by the specified due dates. Other documents, such as project designs and work plans, are to be submitted by mutually agreed-upon deadlines.

1. *Project Designs and Work Plan.* The grantee(s) will submit a project document in a format that includes a background/justification section, project strategy (*i.e.*, objectives, outputs, activities, indicators), project timetable, project management organizational chart, project budget, and method to systematically monitor project results. The document will also include sections that cover coordination strategies, project management, and sustainability of project improvements. The project design and corresponding work plan will be drawn, in part, from the proposal written in response to this solicitation.

2. *Progress Reports.* The grantee(s) must furnish a typed quarterly report to USDOL, no later than 15 days from the last date of each quarter, *i.e.*, 31 March, 30 June, 30 September and 31 December of each year. The grantee(s) must also furnish a separate financial report (SF 272) to USDOL on the same quarterly basis. The report shall contain the following information:

a. An accurate account of activities carried out under project objectives during the reporting period as it relates to the work plan;

b. Major trends in the project that note particular success with a particular activity or trends that indicate a need to re-adjust or expand the work plan;

c. An accounting of staff, sub-contractor hours expended per task, broken down by individual;

d. An accounting of travel performed under the grant during the reporting period, including purpose of trip, persons or organizations contacted, and benefits derived;

e. A description of current problems that may impede performance, and proposed corrective action;

f. For each task in the work plan, a discussion of the work to be performed during the balance of the grant;

g. Lessons learned in project implementation;

h. Future actions planned in support of each project objectives; and

i. Aggregate amount of costs incurred during the reporting period, including estimated expenditures vs. budget.

3. *Monitoring and Evaluation.* Applicants shall explain their proposed approach for monitoring, including beginning and ending dates for projects, as well as indicators and methods for project evaluation.

4. *Final Report with Executive Summary.* The grantee shall submit to the USDOL a draft final report with executive summary sixty (60) days prior to grant expiration. The USDOL will review the report and provide comments to the grantee within thirty (30) days after it is received. The final report shall contain sections on the strategy, design, implementation, outcomes, and sustainability of the project including cost information. It shall also contain information on lessons learned and conclusions. It shall be accompanied by an executive summary not exceeding ten (10) pages in length and highlighting the above information. Two hard copies and an electronic version shall be submitted.

C. Production of Deliverables

1. *Materials Prepared and Purchased Under the Cooperative Agreement.* The grantee(s) must submit to USDOL all media-related and educational materials by it or it's sub-contract developed under this cooperative agreement(s), including relevant press releases, for use in this project(s) before they are reproduced, published, or used. The grantee(s) must consult with USDOL to ensure that materials are compatible with USDOL materials relating to the project, e.g., public relations material such as video and web site. USDOL considers brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the project, educational materials. USDOL will review materials for technical accuracy. USDOL will also review training curricula and purchased training materials for accuracy before they are used. The grantee(s) must obtain prior approval from the Grant Officer for all materials developed or purchased under this cooperative agreement(s). All materials produced by grantee(s) must be provided to USDOL in a digital format for possible publication on the Internet by USDOL.

2. *Acknowledgment of USDOL Funding.* In all circumstances, the following must be displayed on printed materials:

"Preparation of this item was funded by the United States Department of Labor under Cooperative Agreement No. [insert the appropriate cooperative agreement number].

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or projects funded in whole or in part with Federal money, all grantees receiving Federal funds, including State and local governments and recipients of research grants, must clearly state:

a. The percentage of the total costs of the project or project, which will be financed with Federal money;

b. The dollar amount of Federal funds for the project or project; and

c. The percentage and dollar amount of the total costs of the project or project that will be financed by non-governmental sources.

In consultation with USDOL, identification of USDOL's role will be acknowledged in one of the following ways:

a. The USDOL logo may be applied to USDOL-funded material prepared for world-wide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of global interest. The grantee(s) will consult with USDOL on whether the logo should be used on any such items prior to final draft or final preparation for distribution. In no event shall the USDOL logo be placed on any item until USDOL has given the grantee written permission to use the logo, after obtaining appropriate internal USDOL approval for use of the logo on the item.

b. If the USDOL determines the logo is not appropriate and does not give written permission, the following notice must appear on the document:

"This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

D. Administrative Requirements

1. *General.* Grantee organizations will be subject to applicable Federal laws (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, e.g., Non-Profit Organizations—OMB Circular A–122. The cooperative agreement(s) awarded under this SGA will be subject to the following administrative standards and provisions, if applicable:

29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Projects or Activities Receiving Federal Financial Assistance.

29 CFR Part 93—New Restrictions on Lobbying.

29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

29 CFR Part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

29 CRF Part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

2. *Sub-contracts.* Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. In compliance with Executive Orders 12876 as amended, 13230, 12928, 13021 as amended, the grantee(s) is strongly encouraged to provide sub-contracting opportunities to Historically Black Colleges and Universities, Hispanic-Serving Institutions and Tribal Colleges and Universities and faith based organizations.

3. *Key Personnel.* The applicant must list the individual(s) who has been designated as having primary responsibility for the conduct and completion of all work in project(s) it proposes. The grantee(s) agrees to

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inform the (Grants Officer's Technical Representative) GOTR whenever it appears impossible for one or more of these individual(s) to continue work on the project as planned. The grantee(s) may nominate substitute personnel for approval of the GOTR; however, the grantee(s) must obtain prior approval from the Grant Officer for all key personnel. If the Grant Officer determines not to approve the personnel change, he/she reserves the right to terminate the cooperative agreement.

4. *Encumbrance of Cooperative Agreement Funds.* Cooperative agreement funds may not be encumbered/obligated by the grantee(s) before or after the cooperative agreement period of performance. Encumbrances/obligations outstanding as of the end of the cooperative agreement period may be liquidated (paid out) after the end of the cooperative agreement period. Such encumbrances/obligations may involve only commitments for which a need existed during the cooperative agreement period and which are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the grantee(s)'s purchasing procedures and incurred within the cooperative agreement period. All encumbrances/obligations incurred during the cooperative agreement period must be liquidated within 90 days after the end of the cooperative agreement period, if practicable.

5. *Site Visits.* USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of the grantee(s) or a sub-contractor(s) under this cooperative agreement(s), the grantee(s) must provide and must require its sub-contractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations must be performed in such a manner as will not unduly delay the work.

V. Review and Selection of Applications for Cooperative Agreement Award

A. The Review Process

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable. A technical panel will objectively rate each complete application against the criteria described in this announcement. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select one or more grantee on the basis of the initial proposal submission; or, the Grant Officer may establish a competitive or technically acceptable range for the purpose of selecting qualified applicants. If deemed appropriate, following the Grant Officer's call for the preparation and receipt of final revisions of proposals, the evaluation process described above will be repeated to consider such revisions. The Grant Officer will make a final selection determination based on what is most advantageous to the Government, considering factors such as panel findings, geographic presence of the applicants, the availability of funds, the best value to the Government, and other factors. The Grant Officer's determination for award under this SGA 02–24 is final.

Notice: Selection of an organization as a cooperative agreement recipient does not constitute approval of the cooperative agreement application as submitted. Before a actual cooperative agreement is awarded, the Grant Officer will enter into negotiations concerning such items as project components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the proposal.

B. Rating Criteria and Selection

The technical panel will review applicants against the criteria listed below on the basis of 100 points with up to additional five points available for non-federal or leveraged resources.

The criteria are presented in the order of emphasis that they will receive.

1. *Approach, Understanding of the Issue, and Budget Plan (50 points).*

a. *Overview.* This section of the proposal must explain the strategy employed by the applicant to achieve results that:

(1) Collect systematic, sustainable information and or data on how countries comply with one or more of the core labor standards of: 1. Freedom of Association and effective recognition of the right to collective bargaining; 2. The elimination of all forms of forced or compulsory labor; 3. The effective abolition of child labor; and 4. The elimination of discrimination in respect of employment and occupation. In addition, 'acceptable conditions of work' as defined by U.S. trade law may also be included;

(2) Develop national institutional capacity to simultaneously strengthen adherence to core labor standards and to provide regular, reliable reporting on progress made toward improved compliance;

(3) Complement and coordinate, not duplicate or replicate, ongoing ILAB efforts on labor monitoring, namely the *National Academy of Sciences Committee on Monitoring International Labor Standards;* and

(4) Produce other expected outcomes over the period of performance for each of the tasks as defined by the applicant.

The applicant must describe in detail the proposed approach, including all tasks and methods to be utilized to implement the project. Also, the applicant must explain the rationale for using this approach. In addition, this section of the proposal must demonstrate the applicant's thorough knowledge and understanding of the core labor standards in the workplace, potential solutions to measuring and monitoring progress toward compliance with them, ability to work with the tripartite partners and NGOs, and any organizational experience in the field of labor monitoring related to the country or countries that are the focus of this initiative.

b. *Logical Framework.* The strategy should include an outline of the objectives, activities and indicators envisioned for implementation of the project.

c. *Implementation Plan.* The applicant must submit an implementation plan for the entire project, preferably with a visual such as a Gantt chart. The implementation plan should outline the approach that will be used to implement the project. The plan should list the activities envisioned for the life of the project as well as scheduling of activities by objective starting with the execution of the cooperative agreement and ending with the final report. In describing the implementation plan, the applicant must address the following points:

(1) Describe the use of existing or potential infrastructure and use of qualified personnel, including qualified nationals, to implement the project in the proposed countries or regions. The applicant also must include a project organizational chart, demonstrating management structure, key personnel positions and indicating proposed links with the relevant Government ministries, employer organizations, trade unions and other significant local actors.

(2) Develop a list of activities and explain how each relates to the overall development objective of measuring compliance with the described standard(s).

(3) Explain the strategy for researching and measuring progress on the compliance with the standards.

(4) Demonstrate how the applicant will strengthen national institutions and policies related to the core labor standards.

(5) Demonstrate how the applicant will systematically report on project performance to measure the achievement of the project objective(s).

d. *Management and Staff Loading Plan.* This section must also include a management and staff plan. The management plan should include the following:

(1) A project organization chart and accompanying narrative which differentiates between elements of the applicant's staff and sub-contractors or consultants who will be retained;

(2) A description of the functional relationship between elements of the project's organization; and

(3) The identity of the individual responsible for project management and the lines of authority between this individual and other elements of the project.

The staff loading plan must identify all key tasks and the person-days required to complete each task. Labor estimates for each task must be broken down by individuals assigned to the task, including sub-contractors and consultants. All key tasks must be charted to show time required to perform them by months or weeks.

This section will be evaluated in accordance with applicable Federal laws and regulations. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars) and with ILAB budget requirements contained in the application instructions in Section III of this solicitation.

e. *Budget Plan.* The applicant must develop a proposed budget for implementation of the project. This section of the application must explain the costs for performing all of the requirements presented in this solicitation and for producing all required reports and other deliverables presented in this solicitation; costs must include labor, training, material production and dissemination, equipment, travel and other related costs. The budget plan will be evaluated solely for the purpose of determining the efficient and effective allocation of funding for proposed project implementation. Preference may be given to applicants with low administrative costs. Administrative costs shall be reflected separately on the budget plan from project costs.

2. *Experience and Qualifications of the Applicant (25 points).*

The evaluation criteria in this category are as follows:

a. The applicant, including any partners, must demonstrate a thorough understanding of and experience with the application of the core labor standards, as described above, and potential ways to measure country progress on their implementation; research capabilities; working directly with government Ministries, employers organizations, trade unionists and other local organizations, *e.g.,* NGOs or community or faith-based groups. The applicant must submit a signed letter of agreement between its partners or co-applicants verifying the intention of the parties to work together to implement the project.

b. The capability of the applicant(s) for the labor reporting project may be demonstrated by one or more staff member assigned to oversee the project with experience in the following area:

(1) Core Labor Standards and their application;

(2) In-depth social science research capacity; and

(3) Coordination with the Ministries of Labor and Education, Employer Organizations, non-governmental organizations and Trade Union officials.

c. The applicant(s) must also demonstrate either that it has an international system of operations either by affiliates or by agreement in the regions or that it has an effective system of operations in each designated country. These contacts must enable the applicant(s) to demonstrate that it can perform in the proposed regions or countries.

3. *Experience and Qualifications of Key Personnel (25 points).* This section of the application must include sufficient information for judging the quality and the competence of key staff proposed to be assigned to the project(s) proposed to assure that they meet the required qualifications. Successful performance of the proposed work depends heavily on the qualifications of the individuals committed to the project. Accordingly, in its evaluation of the applicant's proposal, USDOL will place emphasis on the applicant's commitment of key personnel qualified for the work involved in accomplishing the assigned tasks. Information provided on the experience and educational background of personnel must indicate the following:

a. The identity of key personnel assigned to the project. "Key personnel" are staff who are essential to the successful operation of the project and completion of the proposed work and, therefore, may not be replaced or have their hours reduced without the approval of the Grant Officer.

b. The educational background and experience of all staff to be assigned to the project.

c. The special capabilities of staff that demonstrate prior experience in organizing, managing and performing similar efforts.

d. The current employment status of staff and availability for this project. The applicant must also indicate whether the proposed work will be performed by persons currently employed or is dependent upon planned recruitment or sub-contracting.

Note that management and professional technical staff members comprising the applicant's proposed team should be individuals who have prior experience with organizations working in similar efforts, and are fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance is proposed, organizational control should be clearly delineated to ensure responsiveness to the needs of USDOL. Key personnel must sign letters of agreement to serve on the project, and indicate availability to commence work within three weeks of grant award.

The following information must be furnished:

a. The applicant must designate a Project Director to oversee the project(s) and other key personnel to perform the requirements for the International Labor Reporting Project. The Project Director must have a minimum of three years of professional experience in a field related to this initiative.

b. The applicant should specify other personnel proposed to carry out the requirements of this solicitation.

c. An organization chart showing the applicant's proposed organizational structure for performing task requirements for the project(s) proposed, along with a description of the roles and responsibilities of all key personnel proposed for this project(s). The chart should also differentiate between elements of the applicant's staff and sub-contractors or consultants who will be retained.

d. The applicant must identify all key tasks and the person-days required to complete each task. Labor estimates for each task must be broken down by individuals assigned to the task, including sub-contractors and consultants. All key tasks must be

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charted to show time required to perform them by months or weeks.

e. A résumé for each of the key personnel to be assigned to the project. At a minimum, each resume must include: the individual's current employment status and previous work experience, including position title, duties performed, dates in position, employing organizations and educational background. Duties must be clearly defined in terms of role performed, *e.g.*, manager, team leader, consultant, etc. (Résumés must be included as attachments, which do not count against the page limitation).

5. *Leveraging of Funding (5 points).* USDOL will give up to five (5) additional rating points to applications that include non-Federal resources that significantly expand the dollar amount, size and scope of the proposal. These programs will not be financed by the project but can complement and enhance project objectives. The applicant may include any leveraging or co-funding anticipated. To be eligible for additional points under this criterion, the applicant must list the source(s) of funds, the nature, and activities anticipated with these funds under this cooperative agreement, and any partnerships, linkages or coordination of activities, and/or cooperative funding.

This stated commitment will be incorporated into the text of the cooperative agreement with the selected applicant(s).

Signed at Washington, DC, this seventh day of August, 2002.

Lawrence J. Kuss,

Grant Officer.

Attachments:

Appendix A: SF 424—Application Form

Appendix B: Budget Information Sheet

BILLING CODE 4510-29-P

Appendix A: SF 424 - Application Form.

APPLICATION FOR	APPENDIX AA@	OMB
		Approval No. 0348-0043

FEDERAL ASSISTANCE		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION:		3. DATE RECEIVED BY STATE	State Application Identifier
Application ~ Construction ~ Non-Construction	Preapplication ~ Construction ~ Non-Construction	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION	
Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name, telephone number and fax number of the person to be contacted on matters involving this application (give area code):

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6. EMPLOYER IDENTIFICATION NUMBER (EIN): GG-GGGGGGG	7. TYPE OF APPLICANT: (enter appropriate letter in box) G A. State H Independent School Dist. B. County I State Controlled Institution of Higher Learning C. Municipa J . Private University D. Township K Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify):
8. TYPE OF APPLICATION: ~ New ~ Continuation ~ Revision If Revision, enter appropriate letter(s) in box(es): G G A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify):	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: GG-GGG TITLE:	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):	
13. PROPOSED	

PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____
b. Applicant	$ .00	
c. State	$ .00	
d. Local	$ .00	b. NO. ~ PROJECT IS NOT COVERED BY E.O. 12372 ~ OR PROJECT HAS NOT BEEN SELECTED BY STATE FOR REVIEW
e. Other	$ .00	
f. Project Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ~ Yes If "Yes," attach an explanation. ~ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS

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APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.		
a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)

Prescribed by OMB Circular A-102

Authorized for Local Reproduction

APPENDIX B

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			

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11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	*(B)*	*(C)*
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. *Personnel: Show salaries to be paid for project personnel which you are required to provide with W2 forms.*
2. *Fringe Benefits: Indicate the rate and amount of fringe benefits.*
3. *Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. *Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.*
5. *Supplies: Include the cost of consumable supplies and materials to be used during the project period.*
6. *Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*
7. *Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*
8. *Total, Direct Costs: Add lines 1 through 7.*
9. *Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*
10. *Training /Stipend Cost: (If allowable)*
11. *Total Federal funds Requested: Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 02–20463 Filed 8–12–02; 8:45 am]
BILLING CODE 4510–28–C

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection; Comment Request; Regulation Regarding Participant Directed Individual Account Plans Under ERISA 404(c)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the extension of the information collection request (ICR) incorporated in a regulation pertaining to participant directed individual account plans under section 404(c) of the Employee Retirement security Act of 1974 (ERISA). A copy of the ICR may be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section below on or before October 15, 2002.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Section 404(c) of ERISA provides that if an individual account pension plan permits a participant or beneficiary to exercise control over assets in his account and the participant or beneficiary in fact exercises such control, that participant or beneficiary shall not be deemed to be a fiduciary by such exercise of control, and that no person otherwise a fiduciary shall be liable for any loss or breach that results from this exercise of control.

The opportunity to exercise control includes the opportunity to obtain sufficient information to make informed decisions with respect to investment alternatives. This regulation describes the type and extent of information required to be made available to participants and beneficiaries for this purpose. In the absence of such disclosures, participants might not be able to make informed decisions about investing their individual accounts, and persons who are otherwise fiduciaries with respect to these plans would not be afforded relief from the fiduciary responsibility provisions of Title I of ERISA with respect to these transactions.

II. Desired Focus of Comments

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

III. Current Action

This notice requests comments on the extension of the ICR included in the regulation pertaining to participant directed individual account plans under section 404(c) of ERISA. The Department is not proposing or implementing changes to the existing ICR at this time.

Type of Review: Extension of a currently approved collection of information.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: Regulation Regarding Participant Directed Individual Account Plans (ERISA section 404(c) Plans).

OMB Number: 1210–0090.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 324,000.

Frequency of Response: On occasion.

Responses: 324,000.

Estimated Total Burden Hours: 37,000.

Total Burden Cost (Operating and Maintenance): $17,755,000.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: August 6, 2002.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 02–20462 Filed 8–12–02; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–095)]

NASA Advisory Council, Biological and Physical Research Committee, Physical Science Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Committee, Physical Science Advisory Subcommittee.

DATES: Wednesday, August 28, 2002, from 8 a.m. to 5 p.m..

ADDRESSES: NASA Headquarters Street, Room MIC–7 (7H46), 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Brad Carpenter, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202–358–0826.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Introduction
—Program Issues and Status
—OBPR Plans
—Concepts for New Initiatives
—Proposed PSAS Activities 2002–2003
—Discussion and Summary
—Administrative/Assignments

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: August 7, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–20460 Filed 8–12–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before September 12, 2002 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Brooke Dickson, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on May 20, 2002 (67 FR 35593 and 35594). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Returned Request Form, Reply to Request Involving Relief Agencies, Walk-In Request for OPM Records or Information.

OMB number: 3095–0037.

Agency form number: NA Forms 13022, 13064, 13068.

Type of review: Regular.

Affected public: Former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 4,500.

Estimated time per response: 5 minutes.

Frequency of response: On occasion, when individuals desire to acquire information from civilian personnel or medical records.

Estimated total annual burden hours: 375 hours.

Abstract: In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. The authority for this information collection is contained in 36 CFR 1228.164. When former Federal civilian employees and other authorized individuals request information from or copies of documents in OPF's or EMF's, they must provide in forms or in letters certain information about the employee and the nature of the request. The NA Form 13022, Returned Request Form, is used to request additional information about the former Federal employee. The NA Form 13064, Reply to Request Involving Relief Agencies, is used to request additional information about the former relief agency employee. The NA Form 13068, Walk-In Request for OPM Records or Information, is used by members of the public, with proper authorization, to request a copy of a Personnel or Medical record.

Dated: August 7, 2002.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 02–20432 Filed 8–12–02; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–4]

Notice of Issuance of Amendment to Materials License No. SNM–2503; Duke Energy Corporation; Oconee Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Amendment 7 to Materials License SNM–2503 held by Duke Energy Corporation (Duke) for the receipt, possession, transfer, and storage of spent fuel at the Oconee Independent Spent Fuel Storage Installation (ISFSI), located in Oconee County, South Carolina. The amendment is effective as of the date of issuance.

By application dated October 31, 2001, Duke requested an amendment to Materials License SNM–2503 for the Oconee Independent Spent Fuel Storage Installation (ISFSI) to change the technical specifications for environmental reporting to the NRC. The request involved changing the frequency for submitting an environmental report of radioactive effluent releases from semi-annually to annually, in accordance with current NRC environmental reporting requirements in 10 CFR 72.44(d).

This amendment complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

The Commission has determined that the issuance of the amendment meets the criteria for a categorical exclusion set forth in 10 CFR 51.22(c)(10) of the regulations. Therefore, an environmental assessment need not be prepared in connection with issuance of the amendment.

The request for amendment was docketed under 10 CFR part 72, Docket 72–4. For further details with respect to this action, see the amendment request

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dated October 31, 2001. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 31st day of July, 2002.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–20433 Filed 8–12–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of August 12, 19, 26, September 2, 9, 16, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 12, 2002

Tuesday, August 13, 2002

9:25 a.m.—Affirmation Session (Public Meeting) (If needed)

9:30 a.m.—Briefing on Special Review Group Response to the Differing Professional Opinion/Differing Professional View (DPO/DPV) Review (Public Meeting) (Contact: John Craig, 301–425–1703)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Thursday, August 15, 2002

3 p.m.—Discussion of Intragovernmental Issues (Closed—Ex. 1 & 9)

Week of August 19, 2002—Tentative

Wednesday, August 21, 2002

9:30 a.m.—Briefing on NRC International Activities (Public Meeting) (Contact: Janice Dunn Lee, 301–415–1780)

This meeting will be webcast live at the Web address—*www.nrc.gov*

1:55 p.m.—Affirmation Session (Public Meeting) (If needed)

2 p.m.—Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, 301–415–2308)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of August 26, 2002—Tentative

There are no meetings scheduled for the Week of August 26, 2002.

Week of September 2, 2002—Tentative

There are no meetings scheduled for the Week of September 2, 2002.

Week of September 9, 2002—Tentative

There are no meetings scheduled for the Week of September 9, 2002.

Week of September 16, 2002—Tentative

There are no meetings scheduled for the Week of September 16, 2002.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

Additional Information: By a vote of 5–0 on August 6 and 7, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Intragovernmental Issues (Closed-Ex. 1 & 9)" be held on August 15, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: August 8, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–20555 Filed 8–9–02; 10:25 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions, granting authority to make appointments under Schedule A and Schedule C in the excepted service as required by 5 CFR 6.1 and 213.103.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are 1 Schedule A authority and the individual authorities established under Schedule C between June 1, 2002 and June 30, 2002. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

Chemical Safety and Hazard Investigation Board

Six positions of either Chemical Incident Investigators or Chemical Safety Recommendations Specialist, in the Office of Investigations and Safety Programs. No new appointments may be made under this authority after September 30, 2002.

Schedule C

The following Schedule C authorities were established during June 2002:

Department of Agriculture

Special Assistant to the Administrator, Farm Service Agency. Effective June 7, 2002.

Special Assistant to the Administrator, Rural Utilities Service. Effective June 14, 2002.

Confidential Assistant to the Director, Office of Small and Disadvantaged Business Utilization. Effective June 18, 2002.

Special Assistant to the Administrator, Rural Utilities Service. Effective June 19, 2002.

Special Assistant to the Deputy Administrator, Office of Community Development. Effective June 19, 2002.

Department of Commerce

Deputy Director to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective June 4, 2002.

Special Assistant to the Assistant Secretary for Trade Development, International Trade Administration. Effective June 13, 2002.

Special Assistant to the Chief of Staff. Effective June 14, 2002.

Policy Advisor to the Chief of Staff. Effective June 18, 2002.

Confidential Assistant to the Director, Office of Public Affairs. Effective June 20, 2002.

Department of Defense

Research Assistant to the Deputy Assistant Secretary of Defense for Issues and Strategy Management. Effective June 4, 2002.

Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective June 6, 2002.

Director of Protocol to the Special Assistant to the Secretary and Deputy Secretary of Defense. Effective June 13, 2002.

Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison). Effective June 14, 2002.

Department of Education

Director, Faith-Based and Community Initiatives Center to the Secretary of Education. Effective June 6, 2002.

Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective June 7, 2002.

Special Assistant to the Assistant Secretary, Office of Vocational and Adult Education. Effective June 18, 2002.

Confidential Assistant to the Deputy Assistant Secretary for Legislation and Congressional Affairs. Effective June 21, 2002.

Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective June 25, 2002.

Confidential Assistant to the Deputy Assistant Secretary for Regional Services. Effective June 25, 2002.

Department of Energy

Special Assistant to the Assistant Secretary for Fossil Energy. Effective June 6, 2002.

Deputy Assistant Secretary for Budget and Appropriations to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective June 7, 2002.

Senior Advisor to the Executive Director, Secretary of Energy Advisory Board. Effective June 12, 2002.

Program Manager (Energy Reliability) to the Director, Office of Security. Effective June 24, 2002.

Senior Manager of Public Affairs, National Nuclear Security Administration to the Director, Congressional Intergovernmental and Public Affairs. Effective June 26, 2002.

Department of Health and Human Services

Special Assistant to the White House Liaison for Political Personnel, Boards and Commissioners. Effective June 5, 2002.

Department of Housing and Urban Development

Staff Assistant to the Assistant Secretary for Public Affairs. Effective June 4, 2002.

Deputy Assistant Secretary for Economic Affairs to the Assistant Secretary for Community Planning and Development. Effective June 11, 2002.

Staff Assistant to the Director, Executive Scheduling. Effective June 27, 2002.

Department of the Interior

Special Assistant to the Director, Fish and Wildlife Service. Effective June 7, 2002.

Special Assistant to the Assistant Secretary, Fish, Wildlife and Parks. Effective June 14, 2002.

Special Assistant to the Director, Fish and Wildlife Service. Effective June 21, 2002.

Special Assistant to the Deputy Director for External Affairs. Effective June 26, 2002.

Department of Justice

Special Assistant for International Protocol to the Director, Office of International Affairs, Criminal Division. Effective June 10, 2002.

Counsel to the Director, Office of International Affairs. Effective June 20, 2002.

Secretary (OA) to the Assistant United States Attorney, Northern District of Oklahoma. Effective June 25, 2002.

Secretary (OA) to the United States Attorney, Eastern District of Arkansas. Effective June 25, 2002.

Department of Labor

Special Assistant to the Assistant Secretary for Office of Congressional and Intergovernmental Affairs. Effective June 3, 2002.

Special Assistant to the Assistant Secretary for Public Affairs. Effective June 7, 2002.

Special Assistant to the Director, Office of Faith Based and Community Initiatives. Effective June 7, 2002.

Staff Assistant to the White House Liaison. Effective June 19, 2002.

Special Assistant to the Director, Office of Public Liaison. Effective June 26, 2002.

Deputy Director to the Director, Office of Faith-Based and Community Initiatives. Effective June 26, 2002.

Staff Assistant to the Executive Assistant to the Secretary of Labor. Effective June 26, 2002.

Department of State

Foreign Affairs Officer to the Coordinator for United States Assistance to Europe and Eurasia. Effective June 7, 2002.

Executive Assistance to the Inspector General. Effective June 13, 2002.

Staff Assistant to the Director, White House Liaison. Effective June 13, 2002.

Staff Assistant to the Assistant Secretary for Resource Management. Effective June 13, 2002.

Senior Advisor to the Assistant Secretary, International Narcotics and Law Enforcement Affairs. Effective June 13, 2002.

Special Assistant to the Coordinator, International Information Program. Effective June 13, 2002.

Foreign Affairs Officer to the Assistant Secretary for Western Hemisphere Affairs. Effective June 14, 2002.

Office Director (Foreign Affairs) to the Assistant Secretary, Democracy, Human Rights and Labor. Effective June 19, 2002.

Special Assistant to the Assistant Secretary for Resource Management. Effective June 20, 2002.

Special Assistant to the Deputy Assistant Secretary. Effective June 26, 2002.

Resource, Plans, and Policy Advisor to the Assistant Secretary for Resource Management. Effective June 26, 2002.

Legislative Analyst to the Assistant Secretary for Legislative Affairs. Effective June 27, 2002.

Resources, Plans and Policy Advisor to the Assistant Secretary for Resource Management. Effective June 28, 2002.

Department of Transportation

Senior Advisor to the Maritime Administrator. Effective June 20, 2002.

Department of Veterans Affairs

Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective June 5, 2002.

Environmental Protection Agency

Program Advisor (Advance Person) to the Administrator. Effective June 4, 2002.

Special Assistant (Advance Person) to the Administrator. Effective June 7, 2002.

Director of Long Term Communication Planning to the Administrator. Effective June 14, 2002.

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Director, Advance Staff to the Director of Long-Range Communications Planning. Effective June 21, 2002.

Special Assistant to the Associate Administrator for the Office of Public Affairs. Effective June 21, 2002.

Federal Emergency Management Agency

Staff Assistant to the Assistant Director, Administration and Planning Resource Directorate. Effective June 6, 2002.

Executive Assistant to the Assistant Director, Administration and Resource Planning. Effective June 7, 2002.

General Services Administration

Events Management Specialist to the Director of External Affairs. Effective June 18, 2002.

National Credit Union Administration

Special Assistant for Legislative Affairs to the Director of Public and Congressional Affairs. Effective June 3, 2002.

Office of National Drug Control Policy

Press Secretary (Assistant Director) to the Director, Office of National Drug Control Policy. Effective June 5, 2002.

Office of the United States Trade Representative

Confidential Assistant to the Chief Agricultural Negotiator. Effective June 11, 2002.

Pension Benefit Guaranty Corporation

Assistant Executive Director for Legislative Affairs to the Executive Director, Pension Benefit Guaranty Corporation. Effective June 7, 2002.

Small Business Administration

Assistant Scheduler to the Administrator, Small Business Administration. Effective June 10, 2002.

Special Assistant to the Assistant Administrator for Communications and Public Liaison. Effective June 12, 2002.

Deputy Press Secretary and Senior Advisor to the Associate Administrator for Communications and Public Liaison. Effective June 20, 2002.

Senior Advisor to the Associate Deputy Administrator for Capital Access. Effective June 26, 2002.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958 Comp., P.218.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–20434 Filed 8–12–02; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46319; File No. SR–OCC–2002–12]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Accelerating the Maturity Date for Certain Adjusted Security Futures Contracts

August 6, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 25, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC Rule 1304 to permit OCC to accelerate the maturity date of security futures contracts that have been adjusted to call only for the delivery of a fixed amount of cash.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit OCC to accelerate the maturity date of security futures contracts that have been adjusted to call only for delivery of a fixed amount of cash. If the issuer of an underlying security were party to a cash merger in which its stock was converted into a right to receive cash only, futures on that stock would ordinarily be adjusted to call for delivery of the cash. Under the proposed rule change, OCC would have authority to accelerate the maturity dates of the adjusted futures to fall on or shortly after the effective date of the merger. The final settlement price for all accelerated futures, regardless of maturity date, would be fixed at the amount of cash into which the underlying security has been converted.

The proposed rule change parallels OCC Rule 807, which applies to European-style FLEX equity options. Acceleration of the expiration date for European-style options that have been adjusted to call for delivery of cash results in the acceleration of the options' ability to be exercised and therefore in the acceleration of payment of the exercise settlement amount to the holder if the option is in the money. Futures contracts, by contrast, are marked to market daily and settlement of an accelerated contract will occur through a final mark-to-market payment based on the amount of cash into which the underlying security has been converted. Like Rule 807, the proposed rule change would relieve market participants of the burden of continuing to maintain and account for open interest in contracts that no longer are subject to increases or decreases in value.

The proposed rule change is consistent with the requirements of section 17A of the Act[3] and the rules and regulations thereunder applicable to OCC because it promotes the prompt and accurate clearance and settlement of securities transactions, fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and in general, protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received. OCC will notify the Commission of any written comments received by OCC.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] 15 U.S.C. 78q–1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–2002–12 and should be submitted by September 3, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20405 Filed 8–12–02; 8:45 am]

BILLING CODE 8010–01–P

[4] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3428, Amdt. 4]

State of Texas; Corrected Copy

In accordance with a notice received from the Federal Emergency Management Agency, dated July 17, 2002, the above numbered declaration is hereby amended to include Callahan, Live Oak, San Patricio and Zavala Counties in the State of Texas as disaster areas due to damages caused by severe storms and flooding occurring on June 29, 2002 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Aransas County in Texas. All contiguous counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 2, 2002, and for economic injury the deadline is April 4, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 7, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–20461 Filed 8–12–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4095]

Culturally Significant Objects Imported for Exhibition Determinations: "Modigliani and the Artists of Montparnasse"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, I hereby determine that the objects to be included in the exhibition, "Modigliani and the Artists of Montparnasse," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Albright-Knox Art Gallery, Buffalo, New York, from on or about October 19, 2002, to on or about January 12, 2003, the Kimbell Art Museum, Fort Worth, Texas, from on or about February 9, 2003, to on or about May 25, 2003, the Los Angeles County Museum of Art, from on or about June 29, 2003, to on or about September 28, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: August 6, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–20474 Filed 8–12–02; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–248]

WTO Dispute Settlement Proceeding Regarding United States—Safeguard Measures on Certain Steel Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on June 3, 2002, a dispute settlement panel was established at the request of the European Communities ("EC") under the Marrakesh Agreement Establishing the World Trade Organization ("WTO") to examine safeguard measures imposed on certain steel products pursuant to section 203 of the Trade Act of 1974 (19 U.S.C. 2253) ("safeguard measures") and established in Presidential Proclamation 7529 of March 5, 2002 (67 FR 10553 (Mar. 7, 2002)). Panels were also established at the request of Brazil, China, Japan, Korea, New Zealand, Norway, and Switzerland to examine these safeguard measures. Pursuant to an agreement with these countries (the "complaining parties"), one panel will examine all of these disputes. The

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complaining parties allege that the safeguard measures are inconsistent with the obligations of the United States under the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and the WTO Agreement on Safeguards ("SA"). USTR invites written comment from the public concerning the issues raised in this dispute. Canada, Chinese Taipei, Cuba, Malaysia, Mexico, Thailand, Turkey, and Venezuela have notified the WTO of their intention to participate as third parties.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before September 12, 2002, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0025@ustr.gov*, Attn: "Steel Safeguard Measures Dispute" in the subject line, or (ii) by mail, to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, Attn: Steel Safeguard Measures Dispute, with a confirmation copy sent electronically or by fax to 202–395–3640.

FOR FURTHER INFORMATION CONTACT: Willis S. Martyn, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Pursuant to Section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)), USTR is providing notice that on June 3, 2002, a WTO dispute settlement panel was established at the request of the EC. Panels were also established at the request of Brazil, China, Japan, Korea, New Zealand, Norway, and Switzerland to examine these safeguard measures. Pursuant to an agreement with these countries (the "complaining parties"), one panel will examine all of these disputes. The Panel, which would hold its meetings in Geneva, Switzerland, is expected to issue a report on its findings and recommendations within six to nine months after its establishment.

Major Issues Raised and Legal Basis of the Complaint

The complaining parties allege that the safeguard measures are inconsistent with certain obligations of the United States under GATT 1994 and the SA. The safeguard measures consist of additional tariffs and a tariff-rate quota on the following steel products:

(a) Certain flat steel, consisting of slabs provided for in the superior text to subheadings 9903.72.30 through 9903.72.48 of the Harmonized Tariff Schedule of the United States ("HTS"); plate provided for in the superior text to subheadings 9903.72.50 through 9903.72.60 of the HTS; hot-rolled steel provided for in the superior text to subheadings 9903.72.62 through 9903.72.77 of the HTS; cold-rolled steel provided for in the superior text to subheadings 9903.72.80 through 9903.72.98 of the HTS; and coated steel provided for in the superior text to subheadings 9903.72.99 through 9903.73.14 of the HTS;

(b) Certain hot-rolled bar provided for in the superior text to subheadings 9903.73.28 through 9903.73.38 of the HTS;

(c) Certain cold-finished bar provided for in the superior text to subheadings 9903.73.39 through 9903.73.44 of the HTS;

(d) Certain rebar provided for in the superior text to subheadings 9903.73.45 through 9903.73.50 of the HTS;

(e) Certain certain tubular products provided for in the superior text to subheadings 9903.73.51 through 9903.73.62 of the HTS;

(f) Certain carbon and alloy fittings provided for in the superior text to subheadings 9903.73.66 through 9903.73.72 of the HTS;

(g) Certain stainless steel bar provided for in the superior text to subheadings 9903.73.74 through 9903.73.81 of the HTS;

(h) Certain stainless steel rod provided for in the superior text to subheadings 9903.73.83 through 9903.73.89 of the HTS;

(i) certain tin mill products provided for in the superior text to subheadings 9903.73.15 through 9903.73.27 of the HTS; and

(j) Certain stainless steel wire provided for in the superior text to subheadings 9903.73.91 through 9903.73.96 of the HTS.

The complaining parties allege that the safeguard measures are inconsistent with certain obligations of the United States under GATT 1994 and the SA. Specifically, they allege that the safeguard measures are inconsistent with:

- Article XIX:1 of GATT 1994 because the United States did not show that imports increased in such conditions as to cause serious injury or threat of serious injury as a result of unforeseen developments;
- Articles 2.1, 4.2(a), and 4.2(c) of the SA and Article XIX of GATT 1994 because the United States failed to properly define the domestic industry producing a product like or directly competitive with increased imports;
- Articles 2.1 and 4.2(a) of the SA and Article XIX:1 of GATT 1994 because there were no increased imports;
- Articles 2.1 and 4.2(a) of the SA and Article XIX of the GATT 1994 because the domestic industry was not experiencing serious injury or the threat of serious injury;
- Articles 2.1 and 4.2(b) of the SA and Article XIX:1 of GATT 1994 because the United States neither demonstrated the causal connection between imports and serious injury nor distinguished injury caused by factors other than increased imports from injury caused by imports;
- Articles 3.1 and 4.2(c) of the SA because the report of the U.S. competent authorities was inadequate;
- Article 5.1 of the SA and Article XIX:1 of GATT 1994 because the United States applied the measure beyond the extent necessary to prevent or remedy serious injury;
- Article 5.2 of the SA and Article XIII of GATT 1994 because the allocation of the tariff-rate quota on steel slab was incorrect;
- Articles 2.1, 2.2, 4.2, and 5.1 of the SA because the United States included free trade agreement partners in its investigation but excluded them from the safeguard measures;
- Article 2.2 of the SA and Articles I, XIII, and XIX of GATT 1994 because the United States excluded its free trade agreement partners from the safeguard measures;
- Articles 9.1 of the SA and Article I:1 of GATT 1994 because the United States excluded developing countries in a discriminatory manner;
- Article II of the GATT 1994 because the United States withdrew concessions without justification under Article XIX of the GATT 1994;
- Article X:3 of the GATT 1994 because the United States did not administer its laws in a uniform, impartial, and reasonable manner;
- Article 12 of the SA because the United States failed to provide adequate opportunity for prior consultations with affected Members of the WTO; and
- Article 8.1 of the SA because the United States did not endeavor to maintain a substantially equivalent level of concessions with members of the WTO.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Persons submitting comments may either send one copy by U.S. mail, first class, postage prepaid, to Sandy McKinzy at the address listed above or transmit a copy electronically to *FR0025@ustr.gov*, with "Steel Safeguard Measures Dispute" in the subject line. For documents sent by U.S. mail, USTR requests that the submitter provide a confirmation copy, either electronically or by fax to 202–395–3640. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter.

Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 3, First Floor, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–248, Steel Safeguard Measures ROO Dispute) may be made by calling the Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Bruce R. Hirsh,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 02–20396 Filed 8–12–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending August 2, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–13005.
Date Filed: July 31, 2002.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 ME 0108 dated 5 July 2002
TC2 Within Middle East Resolutions r1–r14
Minutes—PTC2 ME 0109 dated 30 July 2002
Tables—PTC2 ME FARES 0038 (RE–ISSUE) dated 9 July 2002
Intended effective date: 1 January 2003

Docket Number: OST–2002–13006.
Date Filed: July 31, 2002.
Parties: Members of the International Air Transport Association.
Subject:
PTC Comp 0946 dated 30 July 2002
Composite Expedited Resolution 024d
Intended effective date: 1 September 2002.

Docket Number: OST–2002–13007.
Date Filed: July 31, 2002.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP 0947 dated 30 July 2002
Composite Expedited Resolution 210
Intended effective date: 1 October 2002

Docket Number: OST–2002–13008.
Date Filed: July 31, 2002.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP 0948 dated 30 July 2002
Composite Expedited Resolution 002hh
Intended effective date: 1 November 2002

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–20485 Filed 8–12–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending August 2, 2002

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's procedural regulations (See 14 CFR 301.201 *et seq.*). The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2002–12987.
Date Filed: July 30, 2002.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 20, 2002.

Description: Application of USA Jet Airlines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart B, requesting a certificate of public convenience and necessity to authorize it to engage in foreign charter air transportation of persons, property, and mail.

Docket Number: OST–2002–12989.
Date Filed: July 30, 2002.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 20, 2002.

Description: Application of USA Jet Airlines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart B, requesting a certificate of public convenience and necessity to authorize it to engage in interstate charter air transportation of persons, property, and mail.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–20486 Filed 8–12–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Review under 49 U.S.C. 41720 of United/US Airways Agreements

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice on Comment Procedures.

SUMMARY: The Department is giving interested persons an opportunity to submit comments by August 15, 2002, on agreements filed by United Air Lines and US Airways for Department review under 49 U.S.C. 41720. 67 FR 50745 (August 5, 2002). The Department wishes to provide additional information on its planned comment procedures.

DATES: All comments are due August 15, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: On July 25 United and US Airways submitted code-share and frequent flyer program reciprocity agreements for review under 49 U.S.C. 41720. We have invited interested persons to submit comments on the agreements. 67 FR 50745 (August 5, 2002). In response to the questions asked by some interested persons about the applicable procedures, we are issuing this notice to provide additional information on our treatment of the documents and on the agreement review process.

As we stated in our notice inviting comments, the statute, 49 U.S.C. 41720, requires certain types of agreements between major U.S. airlines to be submitted to the Department at least thirty days before they can be implemented. By publishing a notice in the **Federal Register**, we may extend the waiting period by 150 days with respect to a code-sharing agreement and by sixty days for the other types of agreements covered by the advance-filing requirement. Since the parties to such an agreement do not require our prior approval, they may implement their agreement at the end of the waiting period (either the thirty-day period or any extended period implemented by us). Blocking them from implementing their agreements would normally require a determination by us under 49 U.S.C. 41712 (formerly section 411 of the Federal Aviation Act) that the agreements' implementation would be an unfair or deceptive practice or unfair method of competition that would violate that section. Formal enforcement proceedings would be necessary to make such a determination.

When we have reviewed other agreements under 49 U.S.C. 41720, we have done so informally and have not invited public comment. However, due to the public interest in the agreements between United and US Airways, we decided to give interested persons an opportunity to submit comments as part of our informal review. All comments are due by August 15.

We have made the redacted copies of the agreements between United and US Airways available for reading and copying in room PL–401 of the Nassif Building, located at 400 7th St. SW., Washington, DC. We plan to make the comments public as well, although this is not a docketed matter, except to the extent that commenters request confidential treatment under our rules, 14 CFR 302.12. Commenters need not serve their comments on anyone else. While we are allowing public access to the comments, we are not requesting reply comments. We plan to use the comments and other information in our possession to determine whether the waiting periods should be extended and whether we should institute a formal proceeding to investigate whether the implementation of the United/US Airways agreements would constitute an unfair or deceptive practice or unfair method of competition that would violate 49 U.S.C. 41712.

Issued in Washington, DC on August 8, 2002.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–20441 Filed 8–12–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–13027]

Great Lakes Pilotage Office Relocation Study

AGENCY: Coast Guard, DOT.

ACTION: Notice of study; request for comments.

SUMMARY: The Coast Guard will conduct a study to determine whether its Office of Great Lakes Pilotage should move from Washington, DC, to a location closer to the Great Lakes. It will do this to determine the best place from which to serve the public. The right choice should improve service to all concerned.

DATES: The study will begin August 27, 2002 with telephonic interviews of designated representatives of associations representing a broad spectrum of Great Lakes stakeholders. Written comments should reach the Docket Management Facility on or before September 12, 2002.

ADDRESSES: Please identify your comments and related material by the docket number of this rulemaking [USCG 2002–13027]. Then, to make sure they enter the docket just once, submit them by just one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*.

In choosing among these means, please give due regard to the recent difficulties with delivery of mail by the U.S. Postal Service to Federal facilities.

The Docket Management Facility maintains the public docket for this notice. Comments and related material received from the public, as well as documents mentioned in this Notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Wasserman, telephone 202–267–0093 or e-mail at *http://pwasserman@comdt.uscg.mil* for questions on the study. For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

Background: This study will weigh the benefits of moving the Office of Great Lakes Pilotage from its current location in Washington, DC, to a location near the Great Lakes. Should this study conclude that such a move is justified, the Coast Guard will examine suitable locations for the office near the Great Lakes and make a final recommendation concerning where to relocate.

From 1960 to 1990, the Office of Great Lakes Pilotage was located in Cleveland, Ohio. In 1990, the Coast Guard moved the office to Washington, DC, to better serve the community. A review of Coast Guard's management and oversight of the Office completed this year, however, recommended that the Office be relocated to Massena, New York, where it would be closer to the pilotage community it regulates and to other government agencies (Saint Lawrence Seaway Development Corporation and the Canadian Great Lakes Pilotage Authority) that share regulatory responsibilities in the Great Lakes. Acting on this recommendation, the Coast Guard is conducting this study to determine whether the office should be relocated and, if so, to what location.

Study Process: The study will be conducted in four phases. Phase 1 will explore the benefits of relocating the function from Washington, DC, to a location closer to the Great Lakes. Phase 1 will include telephone interviews with the representatives of the following stakeholder associations: (1) St. Lawrence Seaway Pilots' Association; (2) Great Lakes District Council, International Longshoremen's Association; (3) American Great Lakes Ports' Association; (4) United States Great Lakes Shipping Association; (5) Lakes Pilots' Association, Inc.; and (6) Western Great Lakes Pilots' Association. In addition, phase 1 will include interviews with U.S. and Canadian governmental agencies that conduct business in the Great Lakes area, and will take into consideration public comments received in connection with this study.

If relocation is recommended, phase 2 will investigate suitable locations in the Great Lakes community. And in that case, phase 3 will develop a specific implementation plan. Phase 4 will examine whether the office should remain a unit of Coast Guard Headquarters or transferred to the Ninth Coast Guard District, with its headquarters in Cleveland.

The study will consider the specific effects of a relocation as they relate to: (1) Communications with the pilot associations, port authorities, shippers, agents, unions other stakeholders and interested parties; (2) Communications with other governmental entities, such as the St. Lawrence Seaway Development Corporation and the Canadian Great Lakes Pilotage Authority; and (3) Whether the Great Lakes Pilotage Office remains a Headquarters unit or is transferred to the Ninth Coast Guard District.

Dated: August 6, 2002.

Joseph J. Angelo,

Acting Assistant Commandant Marine Safety, Security And Environmental Protection.

[FR Doc. 02–20480 Filed 8–12–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–13067]

Requested Non-Availability Waiver

AGENCY: Maritime Administration, Department of Transportation ("MARAD", "we", "us" or "our").

ACTION: Notice of requested administrative waiver of the Cargo Preference Act of 1954 to allow cargo carriage by a non-qualified U.S.-flag vessel in the absence of available qualified U.S.-flag vessels, with request for comments.

SUMMARY: The Cargo Preference Act of 1954, Pub. L. 83–664, 46 App. U.S.C. 1241(b), requires that at least 50 percent of Government-sponsored cargoes (75 percent with regard to certain agricultural exports) transported on ocean-going vessels be transported on certain U.S.-flag vessels when such vessels are available at a fair and reasonable rate for U.S.-flag commercial vessels. The statute excludes from eligibility to carry such cargoes foreign built or foreign rebuilt vessels or vessels previously registered under a foreign flag, unless the vessel has been registered under the United States flag for at least three years. Implicit in the statute is that we may waive the preference for qualified U.S.-flag vessels when they are not available. Here, we are inviting comments on how we should respond to a specific request to waive the Cargo Preference Act to allow U.S.-flag vessels which have not met the three year wait requirement to carry preference cargo when no fully qualified U.S.-flag vessel is available.

DATES: Submit comments on or before September 12, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13067. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas W. Harrelson, Director, Office of Cargo Preference, MAR–580 Room 8118, 400 7th St., SW Washington, DC 20590. Telephone no. (202) 366–5515.

SUPPLEMENTARY INFORMATION: The Government of Israel, Ministry of Defense (GOI–MOD) purchases jet fuel from the Defense Security Cooperative Agency (DSCA) under the Foreign Military Sales Program. The cargo is subject to the Cargo Preference Act of 1954, but longstanding U.S. Government policy set forth in the DSCA manual requires 100 percent U.S.-flag carriage. GOI–MOD has expressed a concern that qualified U.S.-flag vessels may not be available in 2004 and beyond, due to many U.S.-flag tankers being retired under the Oil Pollution Act of 1990. Their efforts to conclude a multi-year contract with a U.S.-flag carrier were frustrated for this very reason earlier this year.

If foreign built tankers are entered into U.S. registry, they would be ineligible for three years to carry DSCA cargoes. However, the statute permits foreign vessels to carry such cargoes if no qualified U.S.-flag vessels are available. GOI–MOD is proposing that when qualified U.S.-flag vessels are not available, that instead of granting a waiver for a foreign vessel to carry the cargo, that we grant a waiver so that non-qualified U.S.-flag vessels can carry the cargo. From the national policy perspective of fostering a sufficient U.S. merchant marine employing U.S. citizen crew members, it would be preferable for U.S. sponsored cargoes to be carried by a non-qualified U.S.-flag vessel rather than a foreign-flag vessel.

By this notice, we are seeking public views on this proposal. Comments should refer to the docket number of this notice in order for us to properly consider the comments. After consideration of such views, we will decide the matter and publish our decision in this docket.

Dated: August 8, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20487 Filed 8–12–02; 8:45 am]

BILLING CODE 4910–81–P

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DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

[Docket No. TSA–2002–11602]

Intent To Request Renewal From the Office of Management and Budget (OMB) of One Current Public Collection of Information; Security Programs for Foreign Air Carriers

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Notice.

SUMMARY: TSA invites public comment on a currently-approved information collection requirement concerning security programs for foreign air carriers, which will be submitted to OMB for renewal.

DATES: Send your comments on or before October 15, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number TSA–2002–11602 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that TSA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Nouri Larbi, Security Regulation and Policy, Room 323, Transportation Security Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8543; facsimile (202) 267–5359, e-mail *nouri.larbi@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You can get an electronic copy using the Internet through the DOT's public docket at *http://dms.dot.gov*, through the Government Printing Offices Web Page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*, or through the TSA's Laws and Regulations Web Page at *http://www.tsa.gov/laws_regs/gov_index.shtm*.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number previously mentioned at the beginning of this notice.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501, *et seq.*) an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. With this notice, TSA solicits comments on the collection of information described below, in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew clearance of the following information collection:

Security Programs for Foreign Air Carriers, 49 CFR part 1546; 2110–0006. The Federal Aviation Administration initially required this collection under 14 CFR part 129 (now 49 CFR part 1546) and cleared under OMB control number 2120–0536. The responsibility for the collection has been transferred to TSA and assigned OMB control number 2110–0006. The information collected is used to determine compliance with 49 CFR part 1546 and to ensure passenger safety by monitoring foreign air carrier security procedures. These security programs establish procedures that foreign air carriers must carry out to protect persons and property against acts of criminal violence, aircraft piracy, and terrorist activities. The current estimated annual reporting burden is 5,193 hours.

Issued on August 8, 2002.

Tom Blank,

Associate Under Secretary for Security Regulation and Policy.

[FR Doc. 02–20484 Filed 8–12–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Senior Executive Service; Financial Management Service Performance Review Board

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members to the Financial Management Service (FMS) Performance Review Board (PRB).

DATES: This notice is effective on August 13, 2002.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Papaj, Deputy Commissioner, Financial Management Service, 401 14th Street, SW., Washington, DC; telephone (202) 874–7000.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4), this notice is given of the appointment of individuals to serve as members of the Financial Management Service (FMS) Performance Review Board (PRB). The FMS PRB reviews the performance appraisals of career senior executives below the Assistant Commissioner level and makes recommendations regarding ratings, bonuses, and other personnel actions. Four voting members constitute a quorum. The names and titles of the FMS PRB members are as followings:

Primary Members

Kenneth R. Papaj, Deputy Commissioner; Nancy C. Fleetwood, Assistant Commissioner, Information Resources; Bettsy H. Lane, Assistant Commissioner, Federal Finance; James Mills, Assistant Commissioner, Debt Management Service; Anthony Torrice, Assistant Commissioner, Regional Operations.

Alternate Members

Scott Johnson, Assistant Commissioner, Management (Chief Finance Officer); Donald J. Sturgill, Assistant Commissioner, Governmentwide Accounting Operations; Judith R. Tillman, Assistant Commissioner, Financial Operations.

Dated: August 7, 2002.

Kenneth R. Papaj,

Acting Commissioner.

[FR Doc. 02–20401 Filed 8–12–02; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1096

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1096, Annual Summary and Transmittal of U.S. Information Returns.

DATES: Written comments should be received on or before October 15, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the Internal (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Annual Summary and Transmittal of U.S. Information Returns.

OMB Number: 1545–0108.

Form Number: 1096.

Abstract: Form 1096 is used to transmit information returns (Forms 1099, 1098, 5498, and W–2G) to the IRS service centers. Under Internal Revenue Code section 6041 and related regulations, a separate Form 1096 is used for each type of return sent to the service center by the payer. It is used by IRS to summarize, categorize, and process the forms being filed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, Federal government, and State, local or tribal governments.

Estimated Number of Responses: 4,420,919.

Estimated Time Per Response: 14 min.

Estimated Total Annual Burden Hours: 1,016,812.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 5, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20488 Filed 8–12–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–45–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–45–91 (TD 8529), Limitations on Corporate Net Operating Loss Carryforwards. (§ 1.382–9).

DATES: Written comments should be received on or before October 15, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or through the internet (*Larnice.Mack@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Limitations on Corporate Net Operating Loss Carryforwards.

OMB Number: 1545–1275.

Regulation Project Number: CO–45–91.

Abstract: Sections 1.382–9(d)(2)(iii) and (d)(4)(iv) of the regulation allow a loss corporation to rely on a statement by beneficial owners of indebtedness in determining whether the loss corporation qualifies for the benefits of Internal Revenue Code section 382(1)(5). Regulation section 1.382–9(d)(6)(ii) requires a loss corporation to file an election if it wants to apply the regulation retroactively, or revoke a prior Code section 382(1)(6) election.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 650.

Estimated Time Per Respondent: The estimated annual time per respondent with respect to the §§ 1.382–9(d)(2)(iii) and (d)(4)(iv) statements is 15 minutes. The estimated annual time per respondent with respect to the § 1.382–9(d)(6)(ii) election is 1 hour.

Estimated Total Annual Burden Hours: 200 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of

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information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 5, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20489 Filed 8–12–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 941–M

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 941–M, Employer's Monthly Federal Tax Return.

DATES: Written comments should be received on or before October 15, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the Internet (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Employer's Monthly Federal Tax Return.

OMB Number: 1545–0718.

Form Number: 941–M.

Abstract: Form 941–M is used by certain employers to report payroll taxes on a monthly rather than a quarterly basis. Employers who have failed to file Form 941 or who have failed to deposit taxes as required are notified by the District Director that they must file Form 941–M monthly.

Current Actions: There are no changes being made to Form 941–M monthly.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals.

Estimated Number of Respondents: 12,000.

Estimated Time Per Respondent: 13 hr. 52 min.

Estimated Total Annual Burden Hours: 166,320.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 6, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20490 Filed 8–12–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–83–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing regulation, IA–83–90 (8383), Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews; Disclosure of Tax Return Information Due to Incapacity or Death of Tax Return Preparer (§ 301.7216–2(o)).

DATES: Written comments should be received on or before October 15, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews; Disclosure of Tax Return Information Due to Incapacity or Death of Tax Return Preparer.

OMB Number: 1545–1209.

Regulation Project Number: IA–83–90.

Abstract: These regulations govern the circumstances under which tax return information any be disclosed for purposes of conducting quality or peer reviews, and disclosures that are necessary because of the tax return preparer's death or incapacity.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Recordkeepers: 250,000.

Estimated Time Per Recordkeeper: 1 hour.

Estimated Total Annual Recordkeeping Hours: 250,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 7, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20491 Filed 8–12–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–62–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–62–93 (TD 8688), Certain Elections Under the Omnibus Budget Reconciliation Act of 1993 (§§ 1.108–5, 1.163(d)–1, 1.1044(a)–1, and 1.6655(e)–1).

DATES: Written comments should be received on or before October 15, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Certain Elections Under the Omnibus Budget Reconciliation Act of 1993.

OMB Number: 1545–1421.

Regulation Project Number: IA–62–93.

Abstract: These regulations established various elections enacted by the Omnibus Budget Reconciliation Act of 1993 (OBRA) and provided immediate interim guidance of the time and manner of making the elections. These regulations enable taxpayers to take advantage of various benefits provided by OBRA and the Internal Revenue Code.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 410,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 202,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 6, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20492 Filed 8–12–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8621

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8621, Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.

DATES: Written comments should be received on or before October 15, 2002 to be assured of consideration.

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ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the internal (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.

OMB Number: 1545–1002.

Form Number: 8621.

Abstract: Form 8621 is filed by a U.S. shareholder who owns stock in a foreign investment company. The form is used to report income, make an election to extend the time for payment of tax, and to pay an additional tax and interest amount. The IRS uses Form 8621 to determine if these shareholders have correctly reported amounts of income, made the election correctly, and have correctly computed the additional tax and interest amount. recapture of the low-income housing credit.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 27 hr. 2 min.

Estimated Total Annual Burden Hours: 54,080.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 5, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20493 Filed 8–12–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8109, 8109–B, and 8109–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 8109 and 8109–B, Federal Tax Deposit Coupon, and Form 8109–C, FTD Address Change.

DATES: Written comments should be received on or before October 15, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Federal Tax Deposit Coupon (Forms 8109 and 8109–B) and FTD Address Change (Form 8109–C).

OMB Number: 1545–0257.

Form Numbers: 8109, 8109–B, and 8109–C.

Abstract: Federal tax deposit coupons (Forms 8109 and 8109–B) are used by taxpayers to deposit certain types of taxes at authorized depositaries or in certain Federal Reserve Banks. Form 8109–C, FTD Address Change, is used to change the address on the FTD coupon. The information on the deposit coupon is used by the IRS to monitor compliance with the deposit rules and insure that taxpayers are depositing the proper amounts within the proper time periods with respect to the different taxes imposed by the Internal Revenue Code.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Responses: 62,513,333.

Estimated Time Per Respondent: 2 minutes.

Estimated Total Annual Burden Hours: 1,841,607.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 7, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20494 Filed 8–12–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8693

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8693, Low-Income Housing Credit Disposition Bond.

DATES: Written comments should be received on or before October 15, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the internal (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit Disposition Bond.

OMB Number: 1545–1029.

Form Number: 8693.

Abstract: Section 42(j)(6) of the Internal Revenue Code states that when a taxpayer disposes of a building (or an interest therein) on which the low-income housing credit has been claimed, the taxpayer may post a bond in lieu of paying the recapture tax if the building continues to be operated as a qualified low-income building for the remainder of the compliance period. For 8693 is used to post a bond under Code section 42(j)(6) to avoid recapture of the low-income housing credit.

Current Actions: There are no changes being made to Form 8693 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hr. 8 min.

Estimated Total Annual Burden Hours: 1,130.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 5, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20495 Filed 8–12–02; 8:45 am]

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Federal Register

Tuesday,
August 13, 2002

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Surface Coating of Miscellaneous Metal Parts and Products; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7229–7]

RIN 2060–AG56

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Miscellaneous Metal Parts and Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for miscellaneous metal parts and products surface coating operations located at major sources of hazardous air pollutants (HAP). The proposed standards would implement section 112(d) of the Clean Air Act (CAA) by requiring these operations to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The HAP emitted by these operations include xylene, toluene, methyl ethyl ketone (MEK), phenol, cresols/cresylic acid, 2-butoxyethanol, styrene, methyl isobutyl ketone (MIBK), ethyl benzene, and glycol ethers. Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the lung, eye, and mucus membranes, asthma, effects on the central nervous system, and cancer. In general, these findings have only been shown with concentrations higher than those typically in the ambient air. The proposed standards would reduce nationwide HAP emissions from major sources in this source category by approximately 48 percent.

DATES: *Comments.* Submit comments on or before October 15, 2002.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing, they should do so by September 2, 2002. If requested, a public hearing will be held within approximately 30 days following publication of this notice in the **Federal Register**.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–34, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–34, U.S. EPA, 401 M Street, SW., Room M–1500, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT**.

Public Hearing. If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, North Carolina. You should contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–7946, to request to speak at a public hearing or to find out if a hearing will be held.

Docket. Docket No. A–97–34 contains supporting information used in developing the proposed standards. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Teal, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–5580; facsimile number (919) 541–5689; electronic mail (e-mail) address: *teal.kim@epa.gov*.

SUPPLEMENTARY INFORMATION:

Comments

Comments and data may be submitted by e-mail to: *a-and-r-docket@epa.gov*. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® file format. All comments and data submitted in electronic form must note the docket number: A–97–34. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Ms. Kim Teal, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing

Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–7946 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also contact Ms. Eck to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (*See* section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW)

In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the World Wide Web through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities

The proposed source category definition includes facilities that apply coatings to miscellaneous metal parts and products. Facilities that coat miscellaneous metal parts and products are covered under a wide range of Standard Industrial Classification (SIC) and North American Industrial Classification System (NAICS) codes. Some examples of common product types included in this source category are listed in the following table. However, facilities classified under many other SIC or NAICS codes may be subject to the proposed standards if they meet the applicability criteria.

TABLE 1.—CATEGORIES AND ENTITIES POTENTIALLY REGULATED BY THE PROPOSED STANDARDS

Category	SIC	NAICS	Examples of potentially regulated entities
Aerospace Equipment	3724	336413	Aircraft engines, aircraft parts, aerospace ground equipment.
	3728	336414	
	376X	336415	
		54171	
Automobile Parts	3711	335312	Engine parts, vehicle parts and accessories, brakes, axles, etc.
	3713	336111	
	3714	336211	
	3292	336312	
	3429	33632	
	3465	33633	
	3694	33634	
	3829	33637	
		336399	
Extruded Aluminum	3354	331316	Extruded aluminum, architectural components, coils, rod, and tubes.
	3365	331524	
	3442	332321	
	3446	332323	
Heavy Equipment	3511	33312	Tractors, earth moving machinery.
	3519	333611	
	352X	333618	
	353X	.....	
Job Shops	3441	332312	Any of the products from the miscellaneous metal parts and products segments.
	3471	332722	
	3499	332813	
	3999	332991	
		332999	
		334119	
		336413	
		339999	
Large Trucks and Buses	3711	33612	Large trucks and buses.
	3713	336211	
	3716	.....	
Magnet Wire	3351	331319	Magnet wire.
	3357	331422	
		335929	
Metal Buildings	3448	332311	Prefabricated metal: buildings, carports, docks, dwellings, greenhouses, panels for buildings.
Metal Containers	2655	33242	Drums, kegs, pails, shipping containers.
	3089	81131	
	3325	322214	
	3412	326199	
	3443	331513	
	5085	332439	
Metal Pipe and Foundry	331X	331111	Plate, tube, rods, nails, spikes, etc.
	332X	331513	
	336X	33121	
	3399	331221	
		331511	
Rail Transportation	3731	33651	Brakes, engines, freight cars, locomotives.
	3743	336611	
	4011	482111	
	4741	.....	
Recreational Vehicles	3083	3369	Motorcycles, motor homes, semitrailers, truck trailers.
	3354	331316	
	3713	336991	
	3714	336211	
	3716	336112	
	375X	336213	
	3792	336214	
		336399	
Rubber-to-Metal Products	3061	326291	Engine mounts, rubberized tank tread, harmonic balancers.
	3069	326299	
	3479	.....	
Structural Steel	3441	332311	Joists, railway bridge sections, highway bridge sections.

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TABLE 1.—CATEGORIES AND ENTITIES POTENTIALLY REGULATED BY THE PROPOSED STANDARDS—Continued

Category	SIC	NAICS	Examples of potentially regulated entities
Other Transportation Equipment	3448	332312	Miscellaneous transportation related equipment and parts.
	3711	336212	
	3519	336999	
	3714	33635	
	3715	56121	
	3795	8111	
	3621	56211	

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your coating operation is regulated by this action, you should examine the applicability criteria in § 63.3881 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline

The information presented in this preamble is organized as follows:

I. Background
A. What is the source of authority for development of NESHAP?
B. What criteria are used in the development of NESHAP?
C. What are the health effects associated with HAP emissions from the surface coating of miscellaneous metal parts and products?
II. Summary of the Proposed Rule
A. What source categories are affected by the proposed rule?
B. What is the relationship to other rules?
C. What are the primary sources of emissions and what are the emissions?
D. What is the affected source?
E. What are the emission limits, operating limits, and other standards?
F. What are the testing and initial compliance requirements?
G. What are the continuous compliance provisions?
H. What are the notification, recordkeeping, and reporting requirements?
III. Rationale for Selecting the Proposed Standards
A. How did we select the source category?
B. How did we select the regulated pollutants?
C. How did we select the affected source?
D. How did we determine the basis and level of the proposed standards for existing and new sources?
E. How did we select the format of the proposed standards?
F. How did we select the testing and initial compliance requirements?
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I. How did we select the compliance date?
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A. What are the air impacts?
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V. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
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C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The Miscellaneous Metal Parts and Products (Surface Coating) category of major sources was listed on July 16, 1992 (57 FR 31576) under the Surface Coating Processes industry group. Major sources of HAP are those that emit or have the potential to emit equal to or greater than 9.1 megagrams per year (Mg/yr) (10 tons per year (tpy)) of any one HAP or 22.7 Mg/yr (25 tpy) of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emission reductions, any non-air quality health and environmental impacts, and energy requirements.

C. What Are the Health Effects Associated With HAP Emissions From the Surface Coating of Miscellaneous Metal Parts and Products?

The HAP emitted from the surface coating of miscellaneous metal parts and products include xylene, toluene, MEK, phenol, cresols/cresylic acid, 2-butoxyethanol, styrene, MIBK, ethyl benzene, and glycol ethers. These compounds account for about 90 percent of the nationwide HAP emissions from this source category. The HAP that would be controlled with the proposed rule are associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (*e.g.*, irritation of the lung, eyes, and mucus membranes and effects on the central nervous system) and acute health disorders (*e.g.*, lung irritation and congestion, alimentary effects such as nausea and vomiting, and effects on the central nervous system).

We do not have the type of current detailed data on each of the facilities covered by the proposed emission standards for this source category and the people living around the facilities that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and potential for resultant health effects. Therefore, we do not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, the proposed rule would reduce emissions and subsequent exposures.

II. Summary of the Proposed Rule

A. What Source Categories Are Affected by the Proposed Rule?

The proposed rule would apply to you if you own or operate a miscellaneous metal parts and products surface coating facility that uses at least 250 gallons of coating materials per year and is a major source, or is located at a major source, or is part of a major source of HAP emissions. We have defined a miscellaneous metal parts and products surface coating facility as any facility engaged in the surface coating of any metal part or product that is not included in the definition of the affected source in NESHAP for another source category. The proposed rule would also apply to the surface coating of the plastic contained in parts and products that are pre-assembled from plastic and metal components, where greater than 50 percent of the coatings (by volume, determined on a rolling 12-month basis) are applied to the metal surfaces, and where the surface coating of the metal surfaces is subject to the proposed rule. If your source is subject to the proposed rule and you can demonstrate that more than 50 percent of your coatings are applied to the metal surfaces of pre-assembled plastic and metal components, then compliance with the proposed rule constitutes compliance with the plastic parts and products surface coating NESHAP currently under development. You must maintain records (such as coating usage or surface area) to document that more than 50 percent of the coatings are applied to metal surfaces.

You would not be subject to the proposed rule if your miscellaneous metal parts and products surface coating facility is located at an area source. An area source of HAP is any facility that has the potential to emit HAP but is not a major source. You may establish area source status by limiting the source's potential to emit HAP through appropriate mechanisms available through your permitting authority.

The proposed rule also does not apply to surface coating conducted at a source that uses only coatings, thinners, and cleaning materials that contain no organic HAP, as determined according to the provisions in the proposed rule.

The source category does not include research or laboratory facilities; janitorial, building, and facility maintenance operations; or hobby shops that are operated for personal rather than for commercial purposes. The source category also does not include coating applications using handheld non-refillable aerosol containers.

Also included on the July 16,1992 source category list (57 FR 31576) were major sources emitting HAP from "asphalt/coal tar application-metal pipes" (hereafter referred to as asphalt coating). In developing the proposed rule, we decided not to establish MACT standards separately for the asphalt coating category but, rather, to include asphalt coating of metal pipes in the source category for coating of miscellaneous metal parts and products. Data and information gathered from the asphalt coating industry indicate that the equipment, emission characteristics, and applicable emission reduction measures are similar to the broad group of miscellaneous metal sources. Therefore, we are including asphalt coating in the proposed rule.

We believe it is technically feasible to regulate emissions from a variety of metal coating operations by a single rule. Many of the metal coating operations that we are proposing to regulate are collocated within individual facilities. Facilities with collocated metal coating operations could more easily comply with a single rule than with individual rules for each of the collocated operations. Several industry representatives also expressed interest in a generic rule that would specify consistent requirements for a wide range of coating operations. Another reason to develop a single rule to regulate metal coating operations is that it is more efficient and less costly to develop a single rule than to develop separate rules for several individually listed source categories which have similar emission characteristics and applicable emission reduction measures. A single rule will ensure that coating operations with comparable HAP emissions and emission reduction measures are subject to the same requirements. In addition, compliance and enforcement activities would be more efficient and less costly.

B. What Is the Relationship to Other Rules?

Affected sources subject to the proposed rule may also be subject to other rules if they perform surface coating of products that are included in another source category. If you own or operate an affected source that is subject to the proposed rule and at the same affected source you also perform surface coating that is subject to any other NESHAP, you may choose to be subject to the requirements of the more stringent of the NESHAP for the entire surface coating affected source. If you choose to comply with the requirements of more stringent NESHAP and you demonstrate that the resulting HAP emission level (tpy) would be less than or equal to that achieved by complying separately with all applicable subparts, compliance with the more stringent NESHAP will constitute compliance with the requirements of the proposed rule. We specifically request comments on how monitoring, recordkeeping, and reporting requirements can be consolidated for sources that are subject to more than one rule.

C. What Are the Primary Sources of Emissions and What Are the Emissions?

HAP Emission Sources

Emissions from coating applications account for approximately 80 percent of the HAP emissions from miscellaneous metal parts and products surface coating operations. The remaining emissions are primarily from cleaning operations. In most cases, HAP emissions from mixing and storage are relatively small. The organic HAP emissions associated with coatings (the term "coatings" includes protective and decorative coatings as well as adhesives) occur at several points. Coatings are most often applied either by using a spray gun in a spray booth or by dipping the substrate in a tank containing the coating. In a spray booth, volatile components evaporate from the coating as it is applied to the part and from the overspray. The coated part then passes through an open (flash-off) area where additional volatiles evaporate from the coating. Finally, the coated part passes through a drying/curing oven, or is allowed to air dry, where the remaining volatiles are evaporated.

Organic HAP emissions also occur from the activities undertaken during cleaning operations, where solvent is

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used to remove coating residue or other unwanted materials. Cleaning in this industry includes cleaning of spray guns and transfer lines (*e.g.*, tubing or piping), tanks, and the interior of spray booths. Cleaning also includes applying solvents to manufactured parts prior to coating application and to equipment (*e.g.*, cleaning rollers, pumps, conveyors, *etc.*).

Mixing and Storage

Organic HAP emissions can also occur from displacement of organic vapor-laden air in containers used to store HAP solvents or to mix coatings containing HAP solvents. The displacement of vapor-laden air can occur during the filling of containers and can be caused by changes in temperature or barometric pressure, or by agitation during mixing.

Organic HAP

Available emission data collected during the development of the proposed NESHAP show that the primary organic HAP emitted from the surface coating of miscellaneous metal parts and products include xylene, toluene, MEK, phenol, cresols/cresylic acid, 2-butoxyethanol, styrene, MIBK, ethyl benzene, and glycol ethers. These compounds account for approximately 90 percent of this category's nationwide organic HAP emissions.

Inorganic HAP

Based on information reported in survey responses during the development of the proposed NESHAP, inorganic HAP, including chromium, cobalt, lead, and manganese compounds, are components of some coatings used by this source category. No inorganic HAP were reported in cleaning materials. Most of the inorganic HAP components remain as solids in the dry coating film on the parts being coated or are deposited onto the walls, floor, and grates of the spray booths in which they are applied. Some of the inorganic HAP particles are entrained in the spray booth exhaust air. Spray booths in the miscellaneous metal parts and products industry typically have either water curtains or dry filters to remove overspray particles. Therefore, inorganic HAP emission levels are expected to be very low and have not been quantified.

D. What Is the Affected Source?

We define an affected source as a stationary source, a group of stationary sources, or part of a stationary source to which a specific emission standard applies. The proposed standards define the affected source as the collection of all operations associated with the surface coating of miscellaneous metal parts and products. These operations include preparation of a coating for application (*e.g.*, mixing with thinners); surface preparation of the miscellaneous metal parts and products (including paint stripping for the purpose of preparing a substrate for the application of a coating); coating application and flash-off; drying and/or curing of applied coatings; cleaning of equipment used in surface coating; storage of coatings, thinners, and cleaning materials; and handling and conveyance of waste materials from the surface coating operations. The coating operation does not include the application of coatings using hand-held aerosol containers.

E. What Are the Emission Limits, Operating Limits, and Other Standards?

Emission Limits

We are proposing to limit organic HAP emissions from each affected source as specified in the following tables. For each of the subcategories (defined in the proposed standards), the emission limit is expressed as the mass of HAP emissions per volume of coating solids used during each 12-month compliance period.

TABLE 2.—EMISSION LIMITS FOR NEW AND RECONSTRUCTED AFFECTED SOURCES

Coating type	Emission limit (kg HAP/liter of coating solids)	Emission limit (lbs HAP/gallon of coating solids)
General Use Subcategory:		
• General Use Coatings	0.23	1.94
• High Performance Coatings	3.30	27.54
Magnet Wire Subcategory	0.05	0.44
Rubber-to-Metal Subcategory	0.82	6.80

TABLE 3.—EMISSION LIMITS FOR EXISTING AFFECTED SOURCES

Coating type	Emission limit (kg HAP/liter of coating solids)	Emission limit (lbs HAP/gallon of coating solids)
General Use Subcategory:		
• General Use Coatings	0.31	2.60
• High Performance Coatings	3.30	27.54
Magnet Wire Subcategory	0.12	1.00
Rubber-to-Metal Subcategory	4.50	37.70

The proposed standards contain provisions that allow you to calculate a facility-specific emission limit if your facility is in the general use subcategory and applies both general use and high performance coatings. The facility-specific limit is a weighted average emission limit based on the relative percentages of each coating type you use during the compliance period.

You can choose from several compliance options in the proposed rule to achieve the emission limits. You could comply by applying materials (coatings, thinners, and cleaning materials) that meet the emission limits, either individually or collectively, during each compliance period. You could also use a capture system and add-on control device to meet the emission limits. You could also comply by using a combination of both approaches.

Operating Limits

If you reduce emissions by using a capture system and add-on control device (other than a solvent recovery system for which you conduct a liquid-liquid material balance), the proposed operating limits would apply to you. These limits are site-specific parameter limits that you determine during the initial performance test of the system. For capture systems that are not permanent total enclosures, you would establish average volumetric flow rates or duct static pressure limits for each capture device (or enclosure) in each capture system. For capture systems that are permanent total enclosures, you would establish limits on average facial velocity or pressure drop across openings in the enclosure.

For thermal oxidizers, you would monitor the combustion temperature. For catalytic oxidizers, you would monitor the temperature immediately before and after the catalyst bed, or you would monitor the temperature before the catalyst bed and implement a site-specific inspection and maintenance plan for the catalytic oxidizer. For carbon adsorbers for which you do not conduct a liquid-liquid material balance, you would monitor the carbon bed temperature and the amount of steam or nitrogen used to desorb the bed. For condensers, you would monitor the outlet gas temperature from the condenser.

The site-specific parameter limits that you establish must reflect operation of the capture system and control devices during a performance test that demonstrates achievement of the emission limits during representative operating conditions.

Work Practice Standards

If you use an emission capture system and control device for compliance, you would be required to develop and implement a work practice plan to minimize organic HAP emissions from mixing operations, storage tanks and other containers, and handling operations for coatings, thinners, cleaning materials, and waste materials. The work practice plan must include steps to ensure that, at a minimum: all organic HAP coatings, thinners, cleaning materials, and waste materials are stored in closed containers; spills of organic HAP coatings, thinners, cleaning materials, and waste materials are minimized; organic HAP coatings, thinners, cleaning materials, and waste materials are conveyed from one location to another in closed containers or pipes; mixing vessels which contain organic HAP coatings and other materials are closed except when adding to, removing, or mixing the contents; and emissions of organic HAP are minimized during cleaning of storage, mixing, and conveying equipment.

If your affected source has an existing documented plan that incorporates steps taken to minimize emissions from the aforementioned sources, then your existing plan may be used to satisfy the requirement for a work practice plan.

Operations During Startup, Shutdown, or Malfunction

If you use a capture system and control device for compliance, you would be required to develop and operate according to a startup, shutdown, and malfunction plan (SSMP) during periods of startup, shutdown, or malfunction of the capture system and control device.

General Provisions

The NESHAP General Provisions (40 CFR part 63, subpart A) also would apply to you as indicated in the proposed standards. The General Provisions codify certain procedures and criteria for all 40 CFR part 63 NESHAP. The General Provisions contain administrative procedures, preconstruction review procedures for new sources, and procedures for conducting compliance-related activities such as notifications, reporting and recordkeeping, performance testing, and monitoring. The proposed standards refer to individual sections of the General Provisions to emphasize key sections that are relevant. However, unless specifically overridden in the proposed standards, all of the applicable General Provisions requirements would apply to you.

F. What Are the Testing and Initial Compliance Requirements?

Compliance Dates

Existing affected sources would have to be in compliance with the final standards no later than [DATE 3 YEARS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]. New and reconstructed sources would have to be in compliance upon startup of the affected source or no later than [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], whichever is later.

The proposed initial compliance period begins on the applicable compliance date and ends on the last day of the twelfth month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. We have defined "month" as a calendar month or a pre-specified period of 28 to 35 days to allow for flexibility at sources where data are based on a business accounting period. Being "in compliance" means that the owner or operator of the affected source meets the requirements to achieve the proposed emission limitations by the end of the initial compliance period. At the end of the initial compliance period, the owner or operator would use the data and records generated to determine whether or not the affected source is in compliance for that period. If the affected source does not meet the applicable limits and other requirements, it is out of compliance for the entire initial compliance period.

Emission Limits

There are several options for complying with the proposed emission limits, and the testing and initial compliance requirements vary accordingly.

Option 1: Compliance Based on Materials Used in the Affected Source

If you demonstrate compliance based on the materials used, you would determine the mass of organic HAP and the volume fraction of coating solids in all materials used during the compliance period.

To determine the mass of organic HAP in coatings, thinners, and cleaning materials and the volume fraction of coating solids, you could either rely on manufacturer's data or on results from the test methods listed below. You may use alternative test methods provided you get EPA approval in accordance with the NESHAP General Provisions, 40 CFR 63.7(f). However, if there is any inconsistency between the test method results (either EPA's or an approved alternative) and manufacturer's data, the test method results would prevail for compliance and enforcement purposes.

- For organic HAP content, use Method 311 of 40 CFR part 63, appendix A.
- The proposed rule allows you to use nonaqueous volatile matter as a surrogate for organic HAP, which would include all organic HAP plus all other organic compounds, and excluding water. If you choose this option, use Method 24 of 40 CFR part 60, appendix A.
- For volume fraction of coating solids, use either Equation 1 in § 63.3941 of the proposed rule, ASTM Method D2697–86 (1998), or ASTM Method D6093–97.

To demonstrate initial compliance based on the materials used, you would be required to demonstrate that either the organic HAP content of each coating meets the emission limits and that you use no organic HAP-containing thinners or cleaning materials, or that the total mass of organic HAP in all coatings, thinners, and cleaning materials divided by the total volume of coating solids meets the emission limits. For the latter option, you would be required to:

- Determine the quantity of each coating, thinner, and cleaning material used.
- Determine the mass of organic HAP in each coating, thinner, and cleaning material.
- Determine the volume fraction of coating solids for each coating.
- Calculate the total mass of organic HAP in all materials and the total volume of coating solids for the compliance period. You may subtract from the total mass of organic HAP the amount contained in waste materials you send to a hazardous waste treatment, storage, and disposal facility regulated under 40 CFR part 262, 264, 265, or 266.

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- Calculate the ratio of the total mass of organic HAP for the materials used to the total volume of coating solids used.
- Record the calculations and results and include them in your Notification of Compliance Status.

Option 2: Compliance Based on Using a Capture System and Add-On Control Device

If you use a capture system and add-on control device other than a solvent recovery system for which you conduct a liquid-liquid material balance, your testing and initial compliance requirements are as follows:

- Conduct an initial performance test to determine the capture and control efficiencies of the equipment and to establish operating limits to be achieved on a continuous basis. The performance test would have to be completed no later than the compliance date for existing sources and 180 days after the compliance date for new and reconstructed sources. You would also need to schedule it in time to obtain the results for use in completing your compliance determination for the initial compliance period.
- Determine the mass of organic HAP in each material and the volume fraction of coating solids for each coating used during the initial compliance period.
- Calculate the organic HAP emissions from the controlled coating operations using the capture and control efficiencies determined during the performance test and the total mass of organic HAP in materials used in controlled coating operations.
- Calculate the ratio of the total mass of HAP emissions to the total volume of coating solids used during the initial compliance period.
- Record the calculations and results and include them in your Notification of Compliance Status.

If you use a capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, you would determine both the efficiency of the capture system and the emission reduction efficiency of the control device. To determine the capture efficiency, you would either verify the presence of a permanent total enclosure using EPA Method 204 of 40 CFR part 51, appendix M (and all materials must be applied and dried within the enclosure), or use one of three protocols in § 63.3965 of the proposed rule to measure capture efficiency. If you have a permanent total enclosure and all materials are applied and dried within the enclosure and you route all exhaust gases from the enclosure to a control device, you would assume 100 percent capture.

To determine the emission reduction efficiency of the control device, you would conduct measurements of the inlet and outlet gas streams. The test would consist of three runs, each run lasting 1 hour, using the following EPA Methods in 40 CFR part 60, appendix A:

- Method 1 or 1A for selection of the sampling sites.
- Method 2, 2A, 2C, 2D, 2F, or 2G to determine the gas volumetric flow rate.
- Method 3, 3A, or 3B for gas analysis to determine dry molecular weight.
- Method 4 to determine stack moisture.
- Method 25 or 25A to determine organic volatile matter concentration. Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, and approved by the Administrator, could be used.

If you use a solvent recovery system, you could determine the overall control efficiency using a liquid-liquid material balance instead of conducting an initial performance test. If you use the material balance alternative, you would be required to measure the amount of all materials used in the affected source during the compliance period and determine the total volatile matter contained in these materials. You would also measure the amount of volatile matter recovered by the solvent recovery system during the compliance period. Then you would compare the amount recovered to the amount used to determine the overall control efficiency and apply this efficiency to the organic HAP-to-coating solids ratio for the materials used. You would record the calculations and results and include them in your Notification of Compliance Status.

Operating Limits

As mentioned above, you would establish operating limits as part of the initial performance test of a capture system and control device other than a solvent recovery system for which you conduct liquid-liquid material balances. The operating limits are the minimum or maximum (as applicable) values achieved for capture systems and control devices during the most recent performance test that demonstrated compliance with the emission limits. If you operate your capture system and control device at different sets of representative operating conditions, you must establish operating limits for the parameters for each different operating condition.

The proposed rule specifies the parameters to monitor for the types of emission control systems commonly used in the industry. You would be required to install, calibrate, maintain, and continuously operate all monitoring equipment according to manufacturer's specifications and ensure that the continuous parameter monitoring systems (CPMS) meet the requirements in § 63.3968 of the proposed rule. If you use control devices other than those identified in the proposed rule, you would submit the operating parameters to be monitored to the Administrator for approval. The authority to approve the parameters to be monitored is retained by EPA and is not delegated to States.

If you use a thermal or catalytic oxidizer, you would continuously monitor the appropriate temperature and record it at least every 15 minutes. For thermal oxidizers, the temperature monitor is placed in the firebox or in the duct immediately downstream of the firebox before any substantial heat exchange occurs. The operating limit would be the average temperature measured during the performance test, and for each consecutive 3-hour period the average temperature would have to be at or above this limit. For catalytic oxidizers, temperature monitors are placed immediately before and after the catalyst bed. The operating limits would be the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed during the performance test, and for each 3-hour period the average temperature and the average temperature difference would have to be at or above these limits. As an alternative method for catalytic oxidizers, you would continuously monitor the temperature immediately before the catalyst bed and record it at least every 15 minutes. The operating limit would be the average temperature just before the catalyst bed during the performance test, and for each 3-hour period the average temperature would have to be at or above these limits. As part of the alternative method, you must also develop and implement an inspection and maintenance plan for your catalytic oxidizer.

If you use a carbon adsorber and do not conduct liquid-liquid material balances to demonstrate compliance, you would monitor the carbon bed temperature after each regeneration and the total amount of steam or nitrogen used to desorb the bed for each regeneration. The operating limits would be the carbon bed temperature (not to be exceeded) and the amount of steam or nitrogen used for desorption (to be met as a minimum).

If you use a condenser, you would monitor the outlet gas temperature to ensure that the air stream is being cooled to a low enough temperature. The operating limit would be the average condenser outlet gas temperature measured during the performance test, and for each consecutive 3-hour period the average temperature would have to be at or below this limit.

For each capture system that is not a permanent total enclosure, you would establish operating limits for gas volumetric flow rate or duct static pressure for each enclosure or capture device. The operating limit would be the average volumetric flow rate or duct static pressure during the performance test, to be met as a minimum. For each capture system that is a permanent total enclosure, the operating limit would require the average facial velocity of air through all natural draft openings to be at least 200 feet per minute or the pressure drop across the enclosure to be at least 0.007 inches water.

Work Practices

If you use the emission rate with add-on controls option, you would be required to develop and implement on an ongoing basis a work practice plan for minimizing organic HAP emissions from storage, mixing, material handling, and waste handling operations. You would have to make the plan available for inspection if the Administrator requests to see it.

If your affected source has an existing documented plan that incorporates steps taken to minimize emissions from the aforementioned sources, then your existing plan may be used to satisfy the requirement for a work practice plan.

Operations During Startup, Shutdown, or Malfunction

If you use a capture system and control device for compliance, you would be required to develop and operate according to a SSMP during periods of startup, shutdown, or malfunction of the capture system and control device.

G. What Are the Continuous Compliance Provisions?

Emission Limits

If you demonstrate compliance with the proposed emission limits based on the materials used, you would demonstrate continuous compliance if, for each compliance period, the ratio of organic HAP to coating solids is less than or equal to the emission limits. A compliance period consists of 12 months. Each month after the end of the initial compliance period is the end of a compliance period consisting of that month and the preceding 11 months. You would follow the same procedures for calculating the organic HAP to coating solids ratio that you used for the initial compliance period.

For each coating operation on which you use a capture system and control device other than solvent recovery for which you conduct a liquid-liquid material balance, you would use the continuous parameter monitoring results for the compliance period in determining the mass of organic HAP emissions. If the monitoring results indicate no deviations from the operating limits and there were no bypasses of the control device, you would assume the capture system and control device are achieving the same percent emission reduction efficiency as they did during the most recent performance test in which compliance was demonstrated. You would then apply this percent reduction to the total mass of organic HAP in materials used in controlled coating operations to determine the compliance period emission rate from those operations. If there were any deviations from the operating limits during the compliance period or any bypasses of the control device, you would account for them in the calculation of the compliance period emission rate by assuming the capture system and control device were achieving zero emission reduction during the periods of deviation.

For each coating operation on which you use a solvent recovery system and conduct a liquid-liquid material balance each compliance period, you would use the liquid-liquid material balance to determine control efficiency. To determine the overall control efficiency, you must measure the amount of all materials used during each compliance period and determine the volatile matter content of these materials. You must also measure the amount of volatile matter recovered by the solvent recovery system during the compliance period, calculate the overall control efficiency, and apply it to the total mass of organic HAP in the materials used to determine total organic HAP emissions.

Operating Limits

If you use a capture system and control device, the proposed rule would require you to achieve on a continuous basis the operating limits you establish during the performance test. If the continuous monitoring shows that the capture system and control device are operating outside the range of values established during the performance test, you have deviated from the established operating limits.

If you operate a capture system and control device that allow emissions to bypass the control device, you would have to demonstrate that HAP emissions from each emission point within the affected source are being routed to the control device by monitoring for potential bypass of the control device. You may choose from the following four monitoring procedures:

- Flow control position indicator to provide a record of whether the exhaust stream is directed to the control device;
- Car-seal or lock-and-key valve closures to secure the bypass line valve in the closed position when the control device is operating;
- Valve closure continuous monitoring to ensure any bypass line valve or damper is closed when the control device is operating; or
- Automatic shutdown system to stop the coating operation when flow is diverted from the control device.

If the bypass monitoring procedures indicate that emissions are not routed to the control device, you have deviated from the emission limits.

Work Practice Plan

If you use the emission rate with add-on controls option, you would be required to implement, on an ongoing basis, the work practice plan you developed during the initial compliance period. If you did not develop a plan for reducing organic HAP emissions or you do not implement the plan, this would be a deviation from the work practice standard.

Operations During Startup, Shutdown, and Malfunction

If you use a capture system and control device for compliance, you would be required to develop and operate according to a SSMP during periods of startup, shutdown, and malfunction of the capture system and control device.

H. What Are the Notification, Recordkeeping, and Reporting Requirements?

You are required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in the proposed rule. The General Provisions notification requirements include: Initial notifications, notification of performance test if you are complying using a capture system and control device, notification of compliance status, and additional notifications required for affected sources with continuous monitoring systems. The

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General Provisions also require certain records and periodic reports.

Initial Notifications

If the proposed standards apply to you, you must send a notification to the EPA Regional Office in the region where your facility is located and to your State agency, no later than 1 year after the effective date for existing sources and no later than 120 days after the date of initial startup for new and reconstructed sources, or 120 days after publication of the final rule, whichever is later. That report notifies us and your State agency that you have an existing facility that is subject to the proposed standards or that you have constructed a new facility. Thus, it allows you and the permitting authority to plan for compliance activities. You would also need to send a notification of planned construction or reconstruction of a source that would be subject to the proposed rule and apply for approval to construct or reconstruct.

Notification of Performance Test

If you demonstrate compliance by using a capture system and control device for which you do not conduct a liquid-liquid material balance, you would conduct a performance test. The performance test would be required no later than the compliance date for an existing affected source, and no later than 180 days after startup or 180 days after publication of the final rule, whichever is later, for a new or reconstructed source. You must notify us (or the delegated State or local agency) at least 60 calendar days before the performance test is scheduled to begin and submit a report of the performance test results no later than 60 days after the test as indicated in the General Provisions for the NESHAP.

Notification of Compliance Status

Your compliance procedures would depend on which compliance option you choose. For each compliance option, you would send us a Notification of Compliance Status within 30 days after the end of the initial compliance period. In the notification, you would certify whether the affected source has complied with the proposed standards, identify the option(s) you used to demonstrate initial compliance, summarize the data and calculations supporting the compliance demonstration, and describe how you will determine continuous compliance.

If your facility is subject to the proposed standards and to NESHAP for another surface coating source category and you have chosen to comply with the more stringent of the standards for the entire facility, your notification would include a certification to that effect. You would also submit documentation that the resulting HAP emission levels are less than or equal to the level that would be achieved by complying with each applicable NESHAP.

If you elect to comply by using a capture system and control device for which you conduct performance tests, you must provide the results of the tests. Your notification would also include the measured range of each monitored parameter and the operating limits established during the performance test, and information showing whether the source has complied with its operating limits during the initial compliance period.

Recordkeeping Requirements

You would be required to keep records of reported information and all other information necessary to document compliance with the proposed rule for 5 years. As required under the General Provisions, records for the 2 most recent years must be kept on-site; the other 3 years' records may be kept off-site. Records pertaining to the design and operation of the control and monitoring equipment must be kept for the life of the equipment.

Depending on the compliance option that you choose, you may need to keep records of the following:

- Organic HAP content, volatile matter content, coating solids content, and quantity of the coatings, thinners, and cleaning materials used during each compliance period; and
- All documentation supporting initial notifications and notifications of compliance status.

If you demonstrate compliance by using a capture system and control device, you would also need to keep records of the following:

- The occurrence and duration of each startup, shutdown, or malfunction of the emission capture system and control device;
- All maintenance performed on the capture system and control device;
- Actions taken during startup, shutdown, and malfunction that are different from the procedures specified in the affected source's SSMP;
- All information necessary to demonstrate conformance with the affected source's SSMP when the plan procedures are followed;
- All information necessary to demonstrate conformance with the affected source's plan for minimizing emissions from mixing, storage, and waste handling operations;
- Each period during which a CPMS is malfunctioning or inoperative (including out-of-control periods);
- All required measurements needed to demonstrate compliance with the standards; and
- All results of performance tests.

The proposed rule would require you to collect and keep records according to certain minimum data requirements for the CPMS. Failure to collect and keep the specified minimum data would be a deviation that is separate from any emission limits, operating limits, or work practice standards.

Deviations, as determined from these records, would need to be recorded and also reported. A deviation is any instance when any requirement or obligation established by the proposed rule, including but not limited to, the emission limits, operating limits, and work practice standards, is not met.

If you use a capture system and control device to reduce HAP emissions, you would have to make your SSMP available for inspection if the Administrator requests to see it. It would stay in your records for the life of the affected source or until the source is no longer subject to the proposed standards. If you revise the plan, you would need to keep the previous superseded versions on record for 5 years following the revision.

Periodic Reports

Each reporting year is divided into two semiannual reporting periods. If no deviations occur during a semiannual reporting period, you would submit a semiannual report stating that the affected source has been in continuous compliance. If deviations occur, you would include them in the report as follows:

- Report each deviation from the emission limitations that apply to you.
- If you are complying by using a thermal oxidizer, report all times when a consecutive 3-hour average temperature is below the operating limit.
- If you are complying by using a catalytic oxidizer, report all times when a consecutive 3-hour average temperature difference across the catalyst bed is below the operating limit and also report all times when a 3-hour average temperature before the catalyst bed is below the operating limit.
- If you are complying by using oxidizers, or solvent recovery systems where liquid-liquid material balances are not conducted, report all times when the value of the site-specific operating parameter used to monitor the capture system performance was less than the operating limit established for the capture system.
- If you are complying by using a carbon adsorber for which you do not conduct liquid-liquid material balances, report all times when the steam or nitrogen flow is less than the operating limit and also report all times when the carbon bed temperature is more than the operating limit.
- If you are complying by using a condenser, report all times when a 3-hour average outlet temperature is higher than the operating limit.
- If your capture system contains bypass lines that could divert emissions from the control device to the atmosphere, report all times when emissions were not routed to the control device.
- Report other specific information on the periods of time the deviations occurred.

You would also have to include an explanation in each semiannual report if a change occurs that might affect the compliance status of the affected source, or you change to another option for meeting the emission limit.

Other Reports

You would be required to submit reports for periods of startup, shutdown, and malfunction of the capture system and control device. If the procedures you follow during any startup, shutdown, or malfunction are inconsistent with your plan, you would report those procedures with your semiannual reports in addition to immediate reports required by § 63.10(d)(5)(ii) of the General Provisions. You must also submit reports of performance test results for emission capture systems and add-on control devices no later than 60 days after completing the tests as specified in § 63.10(d)(2).

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Source Category?

The surface coating of miscellaneous metal parts and products is a source category that is on the list of source categories to be regulated because it contains major sources which emit or have the potential to emit at least 9.7 Mg (10 tons) of any one HAP or at least 22.7 Mg (25 tons) of any combination of HAP annually. The proposed rule would control HAP emissions from both new and existing major sources. Area sources are not being regulated under the proposed rule.

The surface coating of miscellaneous metal parts and products as described in the listing includes any facility engaged in the surface coating of miscellaneous metal parts or products. We have used product lists contained in the SIC and NAICS code descriptions to describe examples of the vast array of miscellaneous metal parts and products.

We intend the source category to include facilities for which the surface coating of miscellaneous metal parts and products is either their principal activity or an integral part of a production process that is the principal activity. Most coating operations are located at plant sites that are dedicated to these activities. However, some may be located at sites for which some other activity is principal. Collocated surface coating operations comparable to the types and sizes of the dedicated facilities, in terms of the coating operation and applicable emission control techniques, are included in the source category.

The source category does not include research or laboratory facilities; janitorial, building, and facility maintenance operations; or hobby shops where surface coating is performed for noncommercial purposes.

B. How Did We Select the Regulated Pollutants?

Organic HAP

Available emission data collected during the development of the proposed NESHAP show that the primary organic HAP emitted from the surface coating of miscellaneous metal parts and products include xylene, toluene, MEK, phenol, cresols/cresylic acid, 2-butoxyethanol, styrene, MIBK, ethyl benzene, and glycol ethers. These compounds account for approximately 90 percent of this category's nationwide organic HAP emissions. However, many other organic HAP are used, or can be used, in miscellaneous metal parts and products coatings, thinners, and cleaning materials. Therefore, the proposed rule would regulate emissions of all organic HAP.

Inorganic HAP

Although most of the coatings used in this source category do not contain inorganic HAP, some special purpose coatings used by this source category do contain inorganic HAP such as chromium, cobalt, lead, and manganese. Emissions of these materials to the atmosphere are minimal because the facilities in this source category employ either water curtains or dry filters that remove overspray particles from the spray booth exhaust. At this time, it does not appear that emissions of inorganic HAP from this source category warrant Federal rulemaking.

C. How Did We Select the Affected Source?

In selecting the affected source(s) for emission standards, our primary goal is to ensure that MACT is applied to HAP-emitting operations or activities within the source category being regulated. The affected source also serves to establish where new source MACT applies under a particular standard. Specifically, the General Provisions in subpart A of 40 CFR part 63 define the terms "construction" and "reconstruction" with reference to the term "affected source" (40 CFR 63.2) and provide that new source MACT applies when construction or reconstruction of an affected source occurs (40 CFR 63.5). The collection of equipment and activities evaluated in determining MACT (including the MACT floor) is used in defining the affected source.

When an emission standard is based on a collection of emissions sources or total facility emissions, we select an affected source based on that same collection of emission sources or the total facility as well. This approach for defining the affected source broadly is particularly appropriate for industries where a plantwide emission standard provides the opportunity and incentive for owners and operators to utilize control strategies that are more cost effective than if separate standards were established for each emission point within a facility.

Selection of Affected Source

The affected source for the proposed standards is broadly defined to include all operations associated with the coating of miscellaneous metal parts and products and the cleaning of product substrates or coating operation equipment. These operations include storage and mixing of coatings and other materials; surface preparation of the miscellaneous metal parts and products prior to coating application; coating application and flash-off, drying and curing of applied coatings; cleaning operations; and waste handling operations.

In selecting the affected source, we considered, for each operation, the extent to which HAP-containing materials are used and the amount of HAP that are emitted. Cleaning and coating application, flash-off, and curing/drying operations account for the majority of HAP emissions at miscellaneous metal parts and products surface coating operations. These operations are included in the affected source.

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We were not able to obtain data to adequately quantify HAP emissions from storage, mixing, and waste handling. However, solvents that are added to coatings as thinners and other HAP-containing additives to coatings may be emitted during mixing and storage. The level of emissions depends on the type of mixing and the type of storage container and the work practices used at the facility. Emissions from waste handling operations depend on the type of system used to collect and transport organic HAP-containing waste coatings, thinners, and cleaning materials in the facility. For example, solvent-laden rags that are used to clean spray booths or tanks could be a source of HAP emissions. The method used to isolate and store such rags affects the level of emissions to ambient air. Mixing, storage, and waste handling operations are included in the affected source.

A broad definition of the affected source was selected to provide maximum flexibility in complying with the proposed emission limits for organic HAP. In planning its total usage of HAP-containing materials, each facility can select among available coatings, thinners, and cleaning materials to comply with the proposed limits.

Additional information on the miscellaneous metal parts and products surface coating operations selected for rulemaking, and other operations, are included in the docket for the proposed standards.

D. How Did We Determine the Basis and Level of the Proposed Standards for Existing and New Sources?

The sections below present the rationale for determining the MACT floor, regulatory alternatives beyond the floor, and selection of the proposed standards for existing and new affected sources.

After we identify the specific source categories or subcategories of sources to regulate under section 112 of the CAA, we must develop emission standards for each category and subcategory. Section 112(d)(3) establishes a minimum baseline or "floor" for standards. For new sources in a category or subcategory, the standards cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

The miscellaneous metal parts and products surface coating source category includes facilities that coat metal parts and products which are not applicable to other specific surface coating MACT source categories. This source category comprises numerous diverse operations that apply surface coatings to metal parts and products including, but not limited to, railroad cars, medical equipment, electronic equipment, wheelbarrows, magnet wire, heavy duty trucks, hardware, power tools, pipes, structural steel, sporting goods, lawn mowers, bicycles, auto parts, musical instruments, steel drums, army tanks, and industrial machinery. In addition, a wide variety of coating technologies and application methods are employed across all these industry segments. Nationwide, there are thousands of facilities involved in coating of miscellaneous metal parts and products, with an estimated 1,500 or more being classified as major sources. Because of the diversity of the products coated and the coating technologies and application methods employed, identification of the top performing facilities in this category is inherently difficult, especially since the control techniques that make these facilities the top performers must be transferrable to other facilities in the category. Consequently, it has been necessary to employ innovation in developing a regulatory approach for this category that provides significant emission reductions while being achievable across the source category.

There are no existing Federal or State regulations requiring control of HAP emissions from this category. Reasonably available control technology (RACT) requirements have been in place for reduction of volatile organic compound (VOC) emissions from this category since the late 1970's and may have resulted in some degree of coincidental reductions in HAP emissions. However, since the RACT requirements generally apply only to facilities located in ozone nonattainment areas, and many States have applicability thresholds for the RACT requirements, there are a great number of unregulated miscellaneous metal parts and products facilities remaining.

To gather data to support the development of the proposed rule, we utilized written requests for information submitted to owners and operators of facilities within the source category. The results of a two-page screening survey sent to approximately 3,000 facilities were used to identify major and synthetic minor sources that perform coating operations on miscellaneous metal parts and products. This list was augmented with names of facilities provided by trade associations and resulted in a list of 312 corporate owners to which a subsequent, more detailed survey was distributed.

The detailed survey resulted in responses from 639 major and synthetic minor sources. Of the facilities responding to the survey, only 332 submitted data of sufficient quality to perform some degree of analysis on coating material usage.

We explored various approaches to determining the MACT floor and eventual regulatory strategy based on the data obtained from our data gathering efforts. From the outset, the various facilities were grouped into industry "segments" based on the type of products coated. This was done to identify trends among the segments and to indicate whether one or more segments were influencing the floor determination. It also enabled the stakeholders to more easily check the results for their respective industry segments and give us feedback on the apparent accuracy of the information reported.

One approach considered in an effort to minimize the effect of the extreme diversity of the miscellaneous metal parts and products source category was to develop MACT floors using a "coating category" approach. In the coating category approach, the specific industry and the part or product coated had no bearing on the analysis. For this analysis, coatings would be grouped according to their type (primers, color coats, top coats, clear coats, adhesives, *etc.*) along with the thinners and additives specified for their use. They could be further categorized by resin type (acrylic, alkyd, epoxy, polyurethane, etc.). Then, the HAP content "as applied" (*i.e.*, after thinning and mixing of additives) could be determined and the average of the best coatings in each category could represent the MACT floor for that coating category. This approach is similar to the coating category approaches used in the wood furniture manufacturing NESHAP (40 CFR part 63, subpart JJ) and the shipbuilding and ship repair NESHAP (40 CFR part 63, subpart II). However, it is more complex than those since the miscellaneous metal parts and products category comprises a vast array of coatings and is further broken down by resin type.

A serious drawback to the detailed coating category approach was that the analysis depended on high quality survey responses that would allow us to correlate coating type with resin type and HAP content for a multitude of combinations. Unfortunately, the survey data did not provide the level of information required to enable us to perform a meaningful analysis of the coating categories.

As an alternative to the detailed coating category approach, we attempted an analysis of each facility based on emissions reported from the various coating operations. In many cases, respondents reported HAP emissions for individual coating lines and other emission points as requested. In many others, however, such estimates were not provided. In those cases, we used available survey information on materials used to derive emission estimates for the various emission points at the facility. The combined reported and derived emission estimates were used in conjunction with material data reported to develop a facilitywide ratio of HAP emitted per volume of solids used. This "one number" approach accounted for all coating-related emissions (painting, mixing, thinning, cleaning, etc.) and eliminated the need to separately account for thinning and cleaning solvents, paint additives, etc.

Although the "one number" approach is relatively simple, allows flexibility, and accounts for emissions from all operations within the boundaries of the coating operation, we questioned the appropriateness of using a combination of bases to estimate emissions. To check for potential problems, we examined the emissions and materials data reported for several facilities. In many cases, the emissions reported could not be reconciled with the HAP content of the materials used. In some cases, the emissions were reported to be greater than the total HAP content of all materials reported. To avoid basing the MACT floor and eventual rules on questionable, unreconcilable data, we decided to abandon the "emissions" approach and rely solely on the reported HAP content of materials to determine the overall "one number" ratio of pounds HAP to gallons (gal) solids.

Using material formulation data reported in the survey, the volatile HAP content and the solids content were both summed across all materials, and a ratio of pounds (lb) HAP used per gal solids used was calculated for each facility. This number was modified to reflect any reductions from add-on controls or from waste materials collected and shipped offsite. Solvents recycled onsite were not subtracted, since they would be reused within the boundaries of the coating operation and would not affect the material balance. Recycled materials coming into the operation from offsite were counted the same as new materials purchased.

Once the overall HAP-to-solids ratio was determined for each facility, the facilities were ranked in ascending order based on this ratio (*i.e.*, ranked best performing to worst performing). The top 12 percent of these facilities were identified and their average ratio represented the MACT floor for the entire source category. A similar procedure was performed on the facilities in 16 individual industry segments to determine the effect certain segments may have on the floor calculation and to qualitatively assess how individual segments may be affected by rules based on the floor. The floor calculation based on all facilities (*i.e.*, no segmentation) yielded an average ratio of less than 0.1 lb HAP per gal of coating solids. The floor calculations for individual segments yielded averages ranging from zero lb HAP/gal solids (auto parts, structural steel) to very high averages of 13 lb HAP/gal solids (magnet wire) and 56 lb HAP/gal solids (rubber-to-metal products). This variation from segment to segment indicated that a single floor, with no subcategorization, would not be representative of all sources in the source category. A tentative decision was made to divide the source category into at least three subcategories (magnet wire, rubber-to-metal, and all other facilities grouped into a "general use" subcategory) and possibly more depending on the level of homogeneity that could be achieved within each subcategory. In order for the MACT floor to be calculated based on similar sources within a subcategory, the makeup of the subcategory must be homogeneous in terms of processes, application methods, coating types, and applicable HAP control technologies. Too much diversity (with respect to products coated, coating performance requirements, *etc.*) within a subcategory could result in an inappropriate MACT floor since the top-performing facilities (and the specific products they coat) may not be representative of the subcategory. After careful review of the survey results from individual facilities and consultation with several stakeholder groups, we concluded that the diversity within the various industry segments of the general use subcategories remained extremely broad. We concluded that some other means of disaggregating the miscellaneous metal parts and products general use subcategory was needed.

Because of this lack of homogeneity, we attempted to regroup the products coated within the general use subcategory into a different set of potential subcategories. For example, instead of "automobile parts," "large trucks and buses," "recreational vehicles," "heavy equipment," and "rail transportation," the products within these industry segments were regrouped as "vehicle finishing," "vehicle body parts," "vehicle mechanical parts," "engines and engine parts," and "electrical parts" in order to group more homogeneous products and performance requirements within the subcategory. After further analysis of the data and discussions with stakeholders associated with these existing segments and potential subcategories, we concluded that the top performing facilities within the newly regrouped potential subcategories were still unrepresentative.

We concluded at this point that the most frequently used approaches to determining a MACT floor for a source category were unlikely to be applicable to the miscellaneous metal parts and products general use subcategory. An innovative approach was needed to provide reasonable HAP emission reductions while maintaining a realistic expectation that the control measures imposed could, in fact, be achievable across this diverse collection of industries. Instead of determining the MACT floor directly from facility emissions or materials information, we decided to use a combination of State VOC limits and locations of specific miscellaneous metal parts and products facilities to establish the MACT floor using the VOC limits as a surrogate for HAP.

The miscellaneous metal parts and products database contains 321 facilities (332 facilities with usable materials information, minus the 11 magnet wire and rubber-to-metal facilities) that are major sources or synthetic minor sources. Using information from the survey, we identified the State in which each facility is located. A review of existing State and local VOC requirements showed that the most stringent limits are those imposed by the various air quality management districts in California. For most coating types, this limit is 2.80 lb VOC per gal of coating (as applied), less water and exempt (non-VOC) solvents. The State of Louisiana imposes a VOC limit of 3.00 lb VOC/gal coating as applied, less water and exempt solvents. The remainder of the States require the 3.50 lb VOC/gal coating limit presented in the Federal control techniques guidelines (CTG) document (Massachusetts and North Carolina express their limits as 6.70 lb VOC/gal solids, which is equivalent to 3.50 lb VOC/gal coating, less water and exempt solvents). The limits discussed here

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apply to most coating types (general use coatings). Certain specialty coatings are subject to different VOC limits under the California rules and will be addressed in later paragraphs.

Knowing the State VOC limits and the locations of the miscellaneous metal parts and products facilities in the database, we were able to determine what the average State VOC limit would be for the top 12 percent of the industry. From a total of 321 facilities, 39 facilities comprised the top 12 percent as follows: California—9 facilities @ 2.80 lb VOC/gal; Louisiana—no facilities @ 3.00 lb VOC/gal; and other States—30 facilities @ 3.50 lb VOC/gal. Using these limits and the facilities subject to them, the average State limit for the top 12 percent was calculated to be 3.30 lb VOC/gal coating, less water and exempt solvents, or 6.00 lb VOC/gal solids. Similarly, the best controlled similar sources would be those subject to the California limit of 2.80 lb VOC/gal coating, or 4.50 lb VOC/gal solids.

In order to use the average VOC limit as a surrogate for HAP emissions, we developed a correction factor that relates VOC emissions to HAP emissions within the miscellaneous metal parts and products category. To develop this factor, we calculated the average HAP-to-VOC ratio for all material usage reported by the facilities in the miscellaneous metal parts and products database. By dividing the total amount of HAP reported by the total amount of VOC reported across the miscellaneous metal parts and products category (except for magnet wire and rubber-to-metal products), we determined that the average HAP-to-VOC ratio of materials used is 43 percent.

Using this approach, the MACT floor for existing sources was determined by multiplying the average of the top 12 percent (6.00 lb VOC/gal solids) by the correction factor (43 lb HAP/100 lb VOC). This results in an existing source MACT floor of 2.60 lb HAP/gal solids. A similar calculation using the California limit results in a new source MACT floor of 1.90 lb HAP/gal solids. As mentioned earlier, these floor determinations apply to most coatings (those now referred to as "general use" coatings) used within the miscellaneous metal parts and products category. General use coatings are any coatings that do not meet the definitions of the specialty coating categories that are addressed in the following paragraphs.

For most industries within the general use subcategory, the coating type used will be defined as "general use coatings" and will be represented by the MACT floor values described above. Certain specialty coatings that are used by some facilities within the general use subcategory have been identified as "high performance coatings." These coatings are not used in any one industry exclusively, but may be used in varying amounts in many different industries. This coating type includes coatings used in severe conditions such as high temperatures or exposure to a variety of harsh chemicals. Certain architectural coatings are also included in this coating type. The proposed rule contains specific definitions that must be met for coatings to be considered high performance coatings. The new and existing source MACT floor for these types of coatings was developed from California's 6.20 lbs VOC/gal of coating provisions for specialty coatings. This limit was used for both the new and existing source MACT floors because it is the most stringent limit found specifically for these coating types, and because it is currently applicable to facilities in California. The HAP-to-VOC ratio of these coatings, based on information received from industry, is on average about 70 percent. The MACT floor for these coatings is, therefore, 27.54 lbs HAP/gal coating solids (3.30 kg HAP/liter coating solids).

The rubber-to-metal products industry segment is considered as a separate subcategory because acceptable low HAP coatings have not been demonstrated for many applications within this industry. Because there are less than 30 facilities within this subcategory, the MACT floor was based on data from the five best performing facilities for which we have data. An analysis of the HAP data provided by the industry in the survey responses lead to the development of a new source floor of 6.80 lbs HAP/gal coating solids (0.82 kg HAP/liter coating solids) and an existing source floor of 37.70 lbs HAP/gal coating solids (4.50 kg HAP/liter coating solids).

Magnet wire coating is also considered as a separate subcategory for which specific MACT floor values were determined. The magnet wire industry is unique within the source category because of the design of the curing ovens used in the industry. These ovens are designed to utilize volatile organics in the exhaust gas stream as a supplemental fuel. They typically operate at temperatures that achieve high volatile organic destruction efficiencies. Based on the HAP data provided by the best performing five of the seven facilities for which we have data (there are less than 30 facilities in the subcategory), the new source MACT floor is 0.44 lbs HAP/gal coating solids (0.05 kg HAP/liter coating solids). The MACT floor for existing facilities is 1.00 lb HAP/gal coating solids (0.12 kg HAP/liter coating solids). These values include a factor of 0.27 lb HAP/gal coating solids (0.03 kg HAP/liter coating solids) to account for emissions from cleaning operations. This factor was necessary because the emissions from most cleaning operations that employ solvents containing HAP are not captured and controlled by the ovens.

After the floors have been determined for new and existing sources in a source category or subcategory, we must set emission standards that are technically achievable and no less stringent than the floors. Such standards must then be met by all sources within the category or subcategory. We identify and consider any reasonable regulatory alternatives that are "beyond-the-floor," taking into account emissions reductions, cost, non-air quality health and environmental impacts, and energy requirements. These alternatives may be different for new and existing sources because of different MACT floors, and separate standards may be established for new and existing sources.

We identified three regulatory alternatives more stringent than the MACT floor level of control for organic HAP. These alternatives are the use of powder coatings as an alternative to HAP-containing liquid coatings; the use of liquid coatings that have a very low, or no, organic HAP content as an alternative to higher HAP content liquid coatings; and use of add-on capture systems and control devices.

Information indicates that several miscellaneous metal parts and products surface coating facilities have converted to using only powder coatings. Such facilities typically produce a single type of product (such as lawn and garden equipment), do not require unusual finishes, and use a small number of colors. Many miscellaneous metal parts and products surface coating facilities, however, manufacture more than one product and often use a wide array of colors. Although powder coatings may be somewhat more durable than conventional liquid coatings, specialty finishes such as antique and crackle, as well as the palette of designer colors offered by some manufacturers, may not be adequately duplicated by powder coatings. Consequently, while powder coating is a proven technology that can be used in many situations, it is not universally applicable in the miscellaneous metal parts and products industry and was, therefore, rejected as a beyond-the-floor option for existing or new sources.

Lower organic HAP liquid coatings fall into two primary categories. The most common category is coatings formulated with solvents that are not organic HAP (but may be VOC). The second category is those coatings that result from alternate technologies such as ultraviolet (UV)-curable coatings and electron beam (EB)-curable coatings. These coatings do not employ organic HAP or VOC to keep the pigment and other components of the coating in solution until curing. Therefore, organic HAP emissions are very small.

These lower organic HAP coatings are currently in production use in some industries, but their applicability in many other industries is limited. Given the limited applicability of UV-curable and EB-curable coatings, we do not believe it is feasible to require the use of these coatings and rejected them as a beyond-the-floor option for existing or new sources.

It is technically feasible to reduce emissions from affected sources by at least 95 percent through the use of capture systems and add-on control devices. However, the estimated cost of a permanent total enclosure and a control device, such as an oxidizer, for facilities in this source category could be as much as $1 million.

Without having information on the benefits that would be achieved by further reducing emissions beyond-the-floor, we determined that the additional emissions reductions that could be achieved do not warrant the costs that each existing and new source could incur by using add-on controls. Therefore, we are not requiring beyond-the-floor levels of emissions reductions at this time. After implementation of these standards, we will evaluate the health and environmental risks that may be posed as a result of exposure to emissions from the miscellaneous metal parts and products surface coating source category. At that time, we will determine whether the additional costs are warranted, in light of the available risk information.

For existing sources, we based the proposed standards on the existing source MACT floor. As described earlier, we determined that beyond-the-floor options were either not technically feasible or economically justified for all existing sources. For the same reasons, we based the proposed standards for new sources on the new source MACT floor.

The MACT levels of control for new and existing sources can be achieved in several different ways. Many sources would be able to use lower-HAP coatings, although they may not be available to meet the needs of every source. If a source is also using cleaning materials that contain organic HAP, then it may be able to switch to lower-HAP or non-HAP cleaning materials, which are widely available, to reduce the sourcewide organic HAP emissions rate to the MACT level. Other available options are the use of powder coatings or capture systems and add-on control devices to reduce emissions.

We note here that our assumption that 100 percent of the organic HAP in the materials used are emitted by the affected source would not apply when the source sends waste organic HAP-containing materials to a facility for treatment or disposal. We made that assumption because the industry survey responses provided little information as to the amount of organic HAP recovered and recycled or treated and disposed. We, therefore, concluded that this practice may not be common within the industry. We recognize, however, that some facilities may conduct such activities and should be allowed to account for such activities in determining their emissions. Thus, the proposed rule allows you to reduce the organic HAP emissions by the amount of any organic HAP contained in waste treated or disposed at a hazardous waste treatment, storage, and disposal facility that is regulated under 40 CFR part 262, 264, 265, or 266.

Because it is expected that some facilities in the general use subcategory may use both general use and high performance coating types, an equation was developed in the proposed NESHAP that allows a facility-specific emission limit to be calculated based on the relative amounts of each of the coating types used. The emission limit for each facility is a weighted average calculated using the MACT limit and the percentage of solids for each coating type. For example, if an existing facility applies 10,000 gal of solids of general use coatings and 5,000 gal of solids of high performance coatings, the facility's emission limit would be calculated as follows:

Limit =

$$\frac{(2.60)*(10{,}000)+(27.54)*(5{,}000)}{(10{,}000)+(5{,}000)} = 10.9 \text{ lbs HAP/gal solids.}$$

For facilities that use only general use or only high performance coatings, the MACT floor emission limit for the entire affected facility is the value specified for that coating type.

E. How Did We Select the Format of the Proposed Standards?

Numerical emission standards are required by section 112(h) of the CAA unless we can justify that it is not feasible to prescribe or enforce an emission standard, in which case a design, equipment, work practice, or operational standard can be set.

We selected the format of the standards to be mass of organic HAP per volume of coating solids. The performance-based nature of this proposed format would allow the owners and operators of miscellaneous metal parts and products coating operations flexibility in choosing any combination of means to comply with the emission limits. Options for complying with the standards include coating reformulation, use of lower-HAP or non-HAP materials, solvent elimination, work practices, and add-on control devices.

We selected volume of coating solids as a component of the proposed standards to normalize the rate of organic HAP emissions across all sizes and types of facilities. We selected the volume of coating solids used because it is directly related to the surface area coated (*i.e.*, the average dry film thickness of coatings on most miscellaneous metal parts and products is generally consistent) and, therefore, provides an equitable basis for all coatings, regardless of differences in coating densities.

Other choices for the format of the proposed standards that we considered, but rejected, included a usage limit (mass per unit time) and a never-to-be-exceeded limit on the organic HAP content of coatings, solvents, or cleaning materials. As it is not our intent to limit a facility's production under the proposed standards, we rejected a usage limit. We also rejected a never-to-be-exceeded limit as the proposed standards allow averaging of HAP emissions from the materials used during the compliance period.

F. How Did We Select the Testing and Initial Compliance Requirements?

The proposed standards would allow you to choose among several methods to demonstrate compliance with the

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proposed standards for organic HAP: Coatings with low- or no-organic-HAP; an overall organic HAP emission rate from all coatings, thinners, and cleaning materials that is less than the applicable emission limit; or capture systems and control devices.

Coatings With Low- or No-Organic-HAP

You would be required to document the organic HAP content of all coatings and show that each is less than the applicable emission limit. You would also have to show that each thinner and each cleaning material used contains no organic HAP. Method 311 of 40 CFR part 63, appendix A, is the method developed by EPA for determining the mass fraction of organic HAP in coatings and has been used in previous surface coating NESHAP. We have not identified any other methods that provide advantages over Method 311 for use in the proposed standards.

Method 24 of 40 CFR part 60, appendix A, is the method developed by EPA for determining the mass fraction of volatile matter for coatings and can be used if you choose to determine the nonaqueous volatile matter content as a surrogate for organic HAP. In past standards, VOC emission control measures have been implemented in coating industries with Method 24 as the compliance method. We have not identified any other methods that provide advantages over Method 24 for use in the proposed standards.

The proposed requirements for determining volume fraction of coating solids would allow you to choose between obtaining the information for each coating from the supplier (or manufacturer) or measuring the volume with either ASTM Method D2697–86 (1998) or ASTM Method D6093–97.

Overall Organic HAP Emission Rate

To demonstrate initial compliance using this option, you would calculate the organic HAP emission rate for one or more coating operations in the affected source based on the mass of organic HAP in all coatings, thinners, and cleaners and the volume of coating solids used during the compliance period and demonstrate that it does not exceed the applicable emission limit. You would determine these values using the methods discussed previously.

Capture Systems and Control Devices

If you use a capture system and control device other than a solvent recovery device for which you conduct a liquid-liquid material balance, you would be required to conduct an initial performance test of the system to determine its overall control efficiency. For a solvent recovery system for which you conduct a liquid-liquid material balance, you would determine the quantity of volatile matter applied and the quantity recovered during the initial compliance period to determine its overall control efficiency. For both cases, the overall control efficiency would be combined with the mass of organic HAP in the coatings and other materials used to calculate the compliance period HAP emission rate in kilograms (kg) HAP/liter of coating solids. If you conduct a performance test, you would also determine parameter operating limits during the test. The test methods that the proposed standards would require for the performance test have been required under many standards of performance for industrial surface coating sources under 40 CFR part 60 and NESHAP under 40 CFR part 63. We have not identified any other methods that provide advantages over these methods.

G. How Did We Select the Continuous Compliance Requirements?

To ensure continuous compliance with the proposed organic HAP emission limits and/or operating limits, the proposed standards would require continuous parameter monitoring of capture systems and control devices and recordkeeping. We selected the following requirements based on reasonable cost, ease of execution, and usefulness of the resulting data to both the owners or operators and EPA for ensuring continuous compliance with the emission limits and/or operating limits.

We are proposing that certain parameters be continuously monitored for the types of capture systems and control devices commonly used in the industry. These monitoring parameters have been used in other standards for similar industries. The values of these parameters that correspond to compliance with the proposed emission limits are established during the initial or most recent performance test that demonstrates compliance. These values are your operating limits for the capture system and control device.

You would be required to determine 3-hour average values for most monitored parameters for the affected source. We selected this averaging period to reflect operating conditions during the performance test to ensure the control system is continuously operating at the same or better control level as during a performance test demonstrating compliance with the emission limits.

To demonstrate continuous compliance with the applicable emission limitations, you would also need records of the quantity of coatings and other materials used and the data and calculations supporting your determination of their organic HAP content. If you conduct liquid-liquid material balances, you would need records of the quantity of volatile matter used and the quantity recovered by the solvent recovery system during each compliance period.

H. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?

You would be required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in Table 2 of the proposed subpart MMMM. We evaluated the General Provisions requirements and included those we determined to be the minimum notification, recordkeeping, and reporting necessary to ensure compliance with, and effective enforcement of, the proposed standards.

I. How Did We Select the Compliance Date?

You would be allowed 3 years to comply with the final standards for existing affected sources. This is the maximum period allowed by the CAA. We believe that 3 years for compliance is necessary to allow adequate time to accommodate the variety of compliance methods that existing sources may use. Most sources in this category would need this 3-year maximum amount of time to develop and test reformulated coatings, particularly those that may opt to comply using a different lower-emitting coating technology. We want to encourage the use of these pollution prevention technologies. In addition, time would be needed to establish records management systems required for enforcement purposes. Some sources may need the time to purchase and install emission capture and control systems. In such cases, you would need to obtain a permit for the use of add-on controls, which will require time for approval from the permitting authority.

The CAA requires that new or reconstructed affected sources comply with standards immediately upon startup or the effective date of the final rule, whichever is later.

IV. Summary of Environmental, Energy, and Economic Impacts

Model plants were developed to aid in the estimation of the impacts the proposed standards would have on miscellaneous metal parts and products surface coating operations. Five model plants distinguished by size, as measured by the total volume of coating solids used, were developed. Impacts were then developed for each model plant, and these individual impacts were scaled to nationwide levels based on the number of facilities corresponding to each model plant size. We used the model plant approach because we did not have adequate data to estimate impacts for each actual facility.

A variety of compliance methods are available to the industry to meet the proposed emission limits. We analyzed the information obtained from the industry survey responses, industry site visits, trade groups, and industry representatives to determine which compliance methods would most likely be used by existing and new sources. We expect that the most widely-used method for existing sources would be low-HAP content liquid coatings (coatings with HAP contents at or below the emission limits). Powder coatings, no-HAP cleaning materials, and add-on capture and control systems would likely be used by existing sources, but to a lesser extent. Various combinations of these methods may be used. New sources are expected to use a combination of powder coatings, low-HAP coatings, and no-HAP cleaning materials.

For the purpose of assessing impacts, we assumed that all existing sources would convert to liquid coatings and thinners with lower-HAP content than presently used and no-HAP cleaning materials. We assumed that new sources would use either powder coatings or lower-HAP coatings and no-HAP cleaning materials.

We first estimated the impacts of the proposed emission limits on the five model plants. To scale up the model plant impacts to nationwide levels, we multiplied the individual model plant impacts by the estimated number of major sources in the United States corresponding to each plant size. We estimated that there are 1,500 existing major source facilities nationwide, and that an additional 45 new facilities would become affected sources each year.

A. What Are the Air Impacts?

For existing major sources, we estimated that compliance with the proposed emission limits would result in reductions of nationwide organic HAP emissions of 25,822 tpy. This represents a reduction of about 48 percent from the baseline organic HAP emissions of 53,869 tpy.

For the purpose of estimating the impacts of the proposed standards on new sources, we estimated the percentage of new facilities that would, in the absence of the standards, emit HAP at levels that would exceed the proposed standards. For new sources, we believe that many will use coating technologies that are considered to be "state-of-the-art" coatings (*e.g.*, powder coatings and low-HAP liquid coatings). However, we assumed for the impacts estimation that the same percentage of both new and existing facilities would be noncomplying at baseline conditions. The baseline emission rate for these noncomplying facilities was assumed to be the same as that determined for the existing source model plants. Using these assumptions, we have estimated the nationwide HAP reductions resulting from new facilities complying with the proposed standards would be about 603 tpy from the 45 new sources that would become subject to the rule each year.

B. What Are the Cost Impacts?

We have estimated the costs related to complying with the emission limitations and meeting the monitoring, recordkeeping, and reporting requirements. The costs to comply with the emission limitations include the increased cost of reformulated low-HAP coating materials, as well as any capital expenditures that would be required to facilitate the use of these materials. Alternatively, facilities could choose to purchase, install, and operate capture systems and add-on control devices. We have assumed for this analysis that all affected facilities will comply through the use of reformulated coatings, thinners, and cleaning materials, and that these materials can be utilized without the need for capital expenditures. Annual costs for meeting the monitoring, recordkeeping, and reporting requirements of the proposed rule have also been included.

Existing Sources

To comply with the proposed standards, existing facilities will likely use reformulated coatings, thinners, and cleaning materials. Compliance costs were estimated to be the incremental cost difference between the materials currently used and the complying materials. Estimates of cost impacts were based on five model plants that were developed to represent the range of sizes and coating materials found throughout the industry. Each model plant was assumed to comply with the proposed standards by switching to non-HAP adhesives, surface preparation materials and cleaning materials and reducing the HAP content of the coatings and thinners. The annual incremental cost of the reformulated raw materials ranged from approximately $2,635 for model plant 1, representing the segment of industry with the lowest coating solids usage, to $114,540 for model plant 5, representing the segment of industry that uses over 75,000 gal of coating solids. The nationwide cost impact was estimated for each industry segment by multiplying the annual costs for each model plant by the number of facilities represented by that model plant. A total nationwide cost impact associated with material usage was estimated by summing the nationwide costs for each of the five industry segments. In addition, we included estimates for monitoring, recordkeeping, and reporting costs for all 1,500 existing affected sources.

We estimate total nationwide annual costs in the fifth year to comply with the proposed emission limits to be $47.5 million for existing sources. These costs include approximately $8.9 million for direct costs associated with material usage and $38.6 million for recordkeeping and reporting.

New Sources

We estimate the number of new major sources to be 45 per year, based on an average growth rate of 3 percent per year. Applying the same assumptions for estimating costs that were used for existing sources results in an estimate of the fifth year costs for new sources of about $9.8 million. Of this total, $3.6 million represents the incremental costs of low-HAP materials, and $6.2 million represents the costs for recordkeeping and reporting.

C. What Are The Economic Impacts?

We performed an economic impact analysis (EIA) to provide an estimate of the impacts on facilities, firms, and markets within this source category. Given the wide diversity of products that will be affected by the proposed standards, EPA relied upon estimated compliance costs and publicly available financial data on affected firms to determine these impacts. In general, we expect the economic impacts of the proposed standards to be minimal, with little or no change in market prices or production. Therefore, no adverse impact will occur for those industries that consume coated metal parts such as building and construction, transportation equipment and vehicle parts, and other industrial and consumer products.

Based on the industry survey responses, EPA was able to identify 176 companies that owned 321 potentially affected facilities within this source category. Of this total, we obtained sales

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data for 147 companies and net income data for 76 companies. For those companies with sales data, the EIA indicates that these regulatory costs average less than 0.1 percent of company sales with a range from zero to 1.25 percent. For those companies with net income data, these regulatory costs average 0.2 percent of company net income with a range from zero to 3.6 percent. This analysis indicates that the cost of the proposed standards should not cause producers to cease or significantly alter their current operations. Hence, no firms or facilities are expected to be at risk of closure because of the proposed standards. For more information, consult the docket for this project.

D. What Are the Non-Air Health, Environmental, and Energy Impacts?

Based on information from the industry survey responses, we found no indication that the use of low-organic-HAP content coatings, thinners, and cleaning materials at existing sources would result in any increase or decrease in non-air health, environmental, and energy impacts. There would be no change in the utility requirements associated with the use of these materials, so there would be no change in the amount of energy consumed as a result of the material conversion. Also, there would be no significant change in the amount of materials used or the amount of waste produced.

Because new sources are expected to comply with the proposed standards through the use of low-HAP coating technologies rather than add-on control devices, there would be no significant change in energy usage or waste production.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the proposed rule is not a "significant regulatory action" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

The proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Pursuant to the terms of Executive Order 13132, it has been determined that the proposed rule does not have "federalism implications" because it does not meet the necessary criteria. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed rule. Although Section 6 of Executive Order 13132 does not apply to the proposed rule, EPA did consult with State and local officials to enable them to provide timely input in the development of the proposed rule.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments own or operate miscellaneous metal parts and products surface coating facilities. Thus, Executive Order 13175 does not apply to the proposed rule.

D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed rule is not subject to Executive Order 13045 because it does not establish environmental standards based on an assessment of health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, the proposed rule has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more to State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the proposed rule for any 1 year has been estimated to be about $57.5 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of Section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S:C. 601, et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to Small Business Administration (SBA) size standards ranging from 100–1,000 employees or less than $5 million in annual sales; (2) a small governmental jurisdiction that is a government of a city, town, county, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. It should be noted that companies affected by this proposed rule, and the small business definition applied to each industry by NAICS code is that listed in the Small Business Administration size standards (13 CFR part 121).

For purposes of assessing the impacts of today's proposed rule on small entities, EPA conducted an assessment of the proposed standards on small businesses within the miscellaneous metal parts source category. Based on SBA size definitions and reported sales and employment data, EPA's survey identified 29 of the 147 companies owning major source facilities as small businesses. The average (median) total annual compliance cost is projected to be $59,000 ($36,000) per small company. Under the proposed standards, the average (median) annual compliance cost share of sales for small businesses was only 0.25 (0.04) percent with a range of zero to 1.25 percent. After considering the economic impact of today's proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Although the proposed rule will not have a significant economic impact on a substantial number of small entities, EPA has nonetheless worked aggressively to minimize the impact of the proposed rule on small entities, consistent with our obligations under the CAA. We solicited input from small entities during the data-gathering phase of the proposed rulemaking. We are proposing compliance options which give small entities flexibility in choosing the most cost-effective and least burdensome alternative for their operation. For example, a facility could purchase and use low-or no-HAP coatings, thinners, and cleaning materials (*i.e.*, pollution prevention) that meet the proposed standards rather than being required to purchase add-on control systems. The low-or no-HAP option can be demonstrated with minimum burden by using already-maintained purchase and usage records. No testing of materials would be required as the facility owner could show that their coatings meet the emission limits by providing formulation data supplied by the manufacturer.

We are also proposing one option that allows compliance demonstrations to be conducted on a rolling 12-month basis, meaning that the facility would each month calculate a 12-month organic HAP emission rate for the previous 12 months to determine compliance. This will give affected small entities extra flexibility in complying with the emission limits since small entities are more likely to use lower monthly volumes and/or a limited number of materials.

Furthermore, we are proposing the minimum monitoring, recordkeeping,

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and reporting requirements needed for enforcement and compliance assurance.

We continue to be interested in the potential impacts of the proposed standards on small entities and welcome comments on issues related to such impacts. For more information, consult the docket for this rulemaking.

H. Paperwork Reduction Act

The information collection requirements in the proposed rule has been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq*. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2056.01) and a copy may be obtained from Sandy Farmer by mail at the Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*.

The information collection requirements are not effective until OMB approves them. The information collection requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The proposed standards would require maintaining records of all coatings, thinners, and cleaning materials data and calculations used to determine compliance. This information includes the volume used during each 12-month compliance period, mass fraction of organic HAP, density, and, for coatings only, volume fraction of coating solids.

If an add-on control device is used, records must be kept of the capture efficiency of the capture system, destruction or removal efficiency of the add-on control device, and the monitored operating parameters. In addition, records must be kept of each calculation of the affected sourcewide emissions for each 12-month compliance period and all data, calculations, test results, and other supporting information used to determine this value.

The monitoring, recordkeeping, and reporting burden in the 5th year after the effective date of the promulgated rule is estimated to be 824,343 labor hours at a cost of $44.76 million for new and existing sources.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. By U.S. Postal Service, send comments on the ICR to the Director, Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20460; or by courier, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822), 401 M Street, SW, Room 925H, West Tower, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 13, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by September 12, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in the proposal.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when EPA does not use available and applicable VCS.

The proposed rule involves technical standards. The EPA proposes to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 24, 25, 25A, 204, 204A–F, and 311. Consistent with the NTTAA, we conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, and 204A–F. The search and review results have been documented and are available in the docket of the proposed rule.

Two VCS were identified for determining the volume solids content of coatings, and we propose to use them in the rule. The standards are ASTM D2697–86 (1998), "Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings," and ASTM D6093–97, "Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer." These standards fill a void in EPA Method 24 which directs that volume solids content be calculated from the coating manufacturer's formulation. The proposed rule does allow for the use of the volume solids content values calculated from the coating manufacturer's formulation; however, test results will take precedence if they do not agree with calculated values.

Six VCS: ASTM D1475–98, ASTM D2369–98, ASTM D3792–99, ASTM D4017–96a, ASTM D4457–85 (Reapproved 1991), and ASTM D5403–93, are already incorporated by reference (IBR) in EPA Method 24. In addition, we are separately specifying the use of ASTM D1475–98 for measuring the density of individual coating components, such as organic solvents.

Five VCS: ASTM D1979–97, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS 9–94 are IBR in EPA Method 311.

In addition to the VCS we propose to use in the rule, the search for emissions measurement procedures identified 14 other VCS. We determined that 11 of these 14 standards identified for measuring emissions of the HAP or surrogate subject to emission standards in the proposed rule were impractical alternatives to EPA test methods for the purposes of the proposed rule. Therefore, the EPA does not intend to adopt these standards. (*See* docket A–97–34 for further information on the methods.)

Three of the 14 VCS identified in this search were not available at the time the review was conducted for the purposes of the proposed rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 2 (and possibly 1); ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2; and ISO/DIS 12039, "Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods," for EPA Method 3A. While we are not including these three VCS in today's proposal, EPA will consider the standards when final.

The EPA takes comment on the compliance demonstration requirements in the proposed rule and specifically invites the public to identify potentially-applicable VCS. Commenters should also explain why the proposed rule should adopt these VCS in lieu of or in addition to EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, appendix A, was used).

Sections 63.3941, 63.3965, 63.3966, and Table 2 to subpart MMMM of the proposed standards list EPA testing methods included in the proposed rule. Under the NESHAP General Provisions, 40 CFR 63.8, subpart A, a source may apply to EPA for permission to use alternative monitoring in place of any EPA testing methods.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 5, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq*.

2. Part 63 is amended by adding subpart MMMM to read as follows:

Subpart MMMM—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Miscellaneous Metal Parts and Products

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What This Subpart Covers

§ 63.3880 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for miscellaneous metal parts and products surface coating facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.3881 Am I subject to this subpart?

(a) Except as provided in paragraph (c) of this section, the source category to which this subpart applies is the surface coating of miscellaneous metal parts and products, and it includes the subcategories listed in paragraphs (a)(1) through (3) of this section. Surface coating is the application of coatings to a substrate using, for example, spray guns or dip tanks. Miscellaneous metal parts and products include, but are not limited to, metal components of the following types of products: automotive parts and accessories, bicycles and sporting goods, recreational vehicles, extruded aluminum structural components, railroad cars, heavy duty trucks, medical equipment, lawn and garden equipment, electronic equipment, magnet wire, steel drums, industrial machinery, and numerous

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other industrial and consumer products. The source category also includes the surface coating of the plastic contained in parts and products that are pre-assembled from plastic and metal components, where greater than 50 percent of the coatings (by volume, determined on a rolling 12-month basis) are applied to the metal surface, and where the surface coating of the metal surface is subject to this subpart. If your source is subject to this subpart and you can demonstrate that more than 50 percent of your coatings are applied to metal surfaces, then compliance with this subpart constitutes compliance with the NESHAP for plastic parts and products surface coating.[1] You must maintain records (such as coating usage or surface area) to document that more than 50 percent of the coatings are applied to metal surfaces.

(1) The general use subcategory includes all surface coating operations in the miscellaneous metal parts and products source category that are not included in the magnet, wire, or rubber to metal subcategories.

(2) The magnet wire subcategory includes surface coating operations that are performed using coatings that meet the definition of magnet wire coatings in § 63.3981.

(3) The rubber to metal subcategory includes surface coating operations that are performed using coatings that meet the definition of rubber to metal coatings in § 63.3981.

(b) You are subject to this subpart if you own or operate a new, reconstructed, or existing affected source, as defined in § 63.3882, that uses 946 liters (250 gallons) per year, or more, of coatings in the source category defined in paragraph (a) of this section and that is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants (HAP). A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (Mg) (10 tons) or more per year or any combination of HAP at a rate of 22.68 Mg (25 tons) or more per year.

(c) This subpart does not apply to surface coating that meets the criteria of paragraphs (c)(1) through (5) of this section.

(1) Surface coating conducted at a source that uses only coatings, thinners, and cleaning materials that contain no organic HAP, as determined according to § 63.3941(a).

[1] Currently under development.

(2) Surface coating subject to any other NESHAP in this part as of [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

(3) Surface coating that occurs at research or laboratory facilities, that is part of janitorial, building, and facility maintenance operations, or that occurs at hobby shops operated for noncommercial purposes.

(4) For the purpose of this subpart, the extrusion of a plastic covering onto metal wire or cable is not considered to be a surface coating operation.

(5) The provisions of this subpart do not apply to coatings used in volumes of less than 189 liters (50 gallons) per year, provided that the total volume of coatings exempt under this paragraph (c)(5) does not exceed 946 liters (250 gallons) per year at the facility.

(d) If you own or operate an affected source that is subject to this subpart and at the same affected source you also perform surface coating subject to any other NESHAP in this part, you may choose to be subject to the requirements of the more stringent of the subparts for the entire surface coating facility. If you choose to be subject to the requirements of another subpart and demonstrate that, by doing so, your facilitywide HAP emissions in kilograms (kg) per year (tons per year (tpy)) from surface coating operations will be less than or equal to the emissions achieved by complying separately with all applicable subparts, compliance with the more stringent NESHAP will constitute compliance with this subpart.

§ 63.3882 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, and existing affected source within each of the three subcategories listed in § 63.3881(a).

(b) The affected source is the collection of all of the items listed in paragraphs (b)(1) through (4) of this section that are used for surface coating of miscellaneous metal parts and products within each subcategory.

(1) All coating operations as defined in § 63.3981;

(2) All storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed;

(3) All manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and

(4) All storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation.

(c) An affected source is a new affected source if you commenced its construction after August 13, 2002, and the construction is of a completely new miscellaneous metal parts and products surface coating facility where previously no miscellaneous metal parts and products surface coating facility had existed.

(d) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.3883 When do I have to comply with this subpart?

The date by which you must comply with this subpart is called the compliance date. The compliance date for each type of affected source is specified in paragraphs (a) through (c) of this section. The compliance date begins the initial compliance period during which you conduct the initial compliance demonstration described in §§ 63.3940, 63.3950, and 63.3960.

(a) For a new or reconstructed affected source, the compliance date is the applicable date in paragraph (a)(1) or (2) of this section.

(1) If the initial startup of your new or reconstructed affected source is before [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the compliance date is [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

(2) If the initial startup of your new or reconstructed affected source occurs after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the compliance date is the date of initial startup of your affected source.

(b) For an existing affected source, the compliance date is the date 3 years after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

(c) For an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP emissions, the compliance date is specified in paragraphs (c)(1) and (2) of this section.

(1) For any portion of the source that becomes a new or reconstructed affected source subject to this subpart, the compliance date is the date of initial startup of the affected source or [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], whichever is later.

(2) For any portion of the source that becomes an existing affected source subject to this subpart, the compliance date is the date 1 year after the area source becomes a major source or 3 years after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], whichever is later.

(d) You must meet the notification requirements in § 63.3910 according to the dates specified in that section and in subpart A of this part. Some of the notifications must be submitted before the compliance dates described in paragraphs (a) through (c) of this section.

Emission Limitations

§ 63.3890 What emission limits must I meet?

(a) For a new or reconstructed affected source, you must limit organic HAP emissions to the atmosphere from the affected source to the applicable limit specified in paragraphs (a)(1) through (4) of this section, determined according to the requirements in § 63.3941, § 63.3951, or § 63.3961.

(1) For a new or reconstructed general use affected source, you must limit organic HAP emissions to the atmosphere from the affected source to the HAP limit specified by Equation 1 of this section during each 12-month compliance period.

$$\text{HAP Limit} = \frac{0.23(GU) + 3.30(HP)}{(GU + HP)} \qquad \text{(Eq. 1)}$$

Where:

HAP limit = total allowable organic HAP that can be emitted to the atmosphere from the miscellaneous metal parts and products surface coating operations, in kg organic HAP per liter of coating solids used during the 12-month compliance period.

0.23 = HAP emission limit for general use coatings, kg HAP/liter coating solids (1.94 pounds (lbs) HAP/gal coating solids).

GU = volume of general use coating solids used during the 12-month compliance period, liters.

3.30 = HAP emission limit for high performance coatings, kg HAP/liter coating solids (27.54 lbs HAP/gal coating solids).

HP = volume of high performance coating solids used during the 12-month compliance period, liters.

(2) If you use only one of the coating types (general use or high performance), then you must limit organic HAP emissions to the atmosphere to no more than the HAP emission limit specified for that coating type in the definition of terms used in Equation 1 of this section.

(3) For each new or reconstructed magnet wire affected source, limit organic HAP emissions to no more than 0.05 kg HAP/liter coating solids (0.44 pound (lb) HAP/gallon (gal) coating solids) used during each 12-month compliance period.

(4) For each new or reconstructed rubber to metal affected source, limit organic HAP emissions to no more than 0.82 kg HAP/liter coating solids (6.80 lb HAP/gal coating solids) used during each 12-month compliance period.

(b) For an existing affected source, you must limit organic HAP emissions to the atmosphere from the affected source to the applicable limit specified in paragraphs (b)(1) through (4) of this section, determined according to the requirements in § 63.3941, § 63.3951, or § 63.3961.

(1) For each existing general use affected source, you must limit organic HAP emissions to the atmosphere from the affected source to the HAP limit specified by Equation 2 of this section during each 12-month compliance period.

$$\text{HAP Limit} = \frac{0.31(GU) + 3.30(HP)}{(GU + HP)} \qquad \text{(Eq. 2)}$$

Where:

HAP limit = total allowable organic HAP that can be emitted to the atmosphere from the miscellaneous metal parts and products surface coating operations, in kg organic HAP per liter of coating solids used during the 12-month compliance period.

0.31 = HAP emission limit for general use coatings, kg HAP/liter coating solids (2.60 lbs HAP/gal coating solids).

GU = volume of general use coating solids used during the 12-month compliance period, liters.

3.30 = HAP emission limit for high performance coatings, kg HAP/liter coating solids (27.54 lbs HAP/gal coating solids).

HP = volume of high performance coating solids used during the 12-month compliance period, liters.

(2) If you use only one of the coating types, then you must limit organic HAP emissions to the atmosphere to no more than the HAP emission limit specified for that coating type in the definition of terms used in Equation 2 of this section.

(3) For each existing magnet wire affected source, limit organic HAP emissions to no more than 0.12 kg HAP/liter coating solids (1.00 lb HAP/gal coating solids) used during each 12-month compliance period.

(4) For each existing rubber to metal affected source, limit organic HAP emissions to no more than 4.50 kg HAP/liter coating solids (37.70 lbs HAP/gal coating solids) used during each 12-month compliance period.

§ 63.3891 What are my options for meeting the emission limits?

You must include all coatings, thinners, and cleaning materials used in the affected source when determining whether the organic HAP emission rate is equal to or less than the applicable emission limit in § 63.3890. To make this determination, you must use at least one of the three compliance options listed in paragraphs (a) through (c) of this section. You may apply any of the compliance options to an individual coating operation, or to multiple coating operations as a group, or to the entire affected source. You may use different compliance options for different coating operations, or at different times on the same coating operation. However, you may not use different compliance options at the same time on the same coating operation. If you switch between compliance options for any coating operation or group of coating operations, you must document this switch as required by § 63.3930(c), and you must report it in the next semiannual compliance report required in § 63.3920.

(a) *Compliant material option.* Demonstrate that the organic HAP content of each coating used in the coating operation(s) is less than or equal to the applicable emission limit in § 63.3890, and that each thinner and each cleaning material used contains no organic HAP. You must meet all the

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requirements of §§ 63.3940, 63.3941, and 63.3942 to demonstrate compliance with the applicable emission limit using this option.

(b) *Emission rate without add-on controls option.* Demonstrate that, based on the coatings, thinners, and cleaning materials used in the coating operation(s), the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit in § 63.3890, calculated as a rolling 12-month emission rate and determined on a monthly basis. You must meet all the requirements of §§ 63.3950, 63.3951, and 63.3952 to demonstrate compliance with the emission limit using this option.

(c) *Emission rate with add-on controls option.* Demonstrate that, based on the coatings, thinners, and cleaning materials used in the coating operation(s), and the emissions reductions achieved by emission capture systems and add-on controls, the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit in § 63.3890, calculated as a rolling 12-month emission rate and determined on a monthly basis. If you choose to use this option, you must also demonstrate that all emission capture systems and add-on control devices for the coating operation(s) meet the operating limits required in § 63.3892, except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j); and that you meet the work practice standards required in § 63.3893. You must meet all the requirements of §§ 63.3960 through 63.3968 to demonstrate compliance with the emission limits, operating limits, and work practice standards using this option.

§ 63.3892 What operating limits must I meet?

(a) For any coating operation(s) on which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any operating limits.

(b) For any controlled coating operation(s) on which you use the emission rate with add-on controls option, except those for which you use a solvent recovery system and conduct a liquid-liquid material balance according to § 63.3961(j), you must meet the operating limits specified in Table 1 to this subpart. These operating limits apply to the emission capture and control systems on the coating operation(s) for which you use this option, and you must establish the operating limits during the performance test according to the requirements in § 63.3967. You must meet the operating limits at all times after you establish them.

(c) If you use an add-on control device other than those listed in Table 1 to this subpart, or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

§ 63.3893 What work practice standards must I meet?

(a) For any coating operation(s) on which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any work practice standards.

(b) If you use the emission rate with add-on controls option, you must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, the controlled coating operation(s) for which you use this option; or you must meet an alternative standard as provided in paragraph (c) of this section. The plan must specify practices and procedures to ensure that, at a minimum, the elements specified in paragraphs (b)(1) through (5) of this section are implemented.

(1) All organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be stored in closed containers.

(2) Spills of organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be minimized.

(3) Organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be conveyed from one location to another in closed containers or pipes.

(4) Mixing vessels which contain organic-HAP-containing coatings and other materials must be closed except when adding to, removing, or mixing the contents.

(5) Emissions of organic HAP must be minimized during cleaning of storage, mixing, and conveying equipment.

(c) As provided in § 63.6(g), we, the U.S. Environmental Protection Agency (EPA), may choose to grant you permission to use an alternative to the work practice standards in this section.

General Compliance Requirements

§ 63.3900 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations in this subpart as specified in paragraphs (a)(1) and (2) of this section.

(1) Any coating operation(s) for which you use the compliant material option or the emission rate without add-on controls option, as specified in § 63.3891(a) and (b), must be in compliance with the applicable emission limit in § 63.3890 at all times.

(2) Any coating operation(s) for which you use the emission rate with add-on controls option, as specified in § 63.3891(c), must be in compliance with the emission limitations as specified in paragraphs (a)(2)(i) through (iii) of this section.

(i) The coating operation(s) must be in compliance with the applicable emission limit in § 63.3890 at all times except during periods of startup, shutdown, and malfunction.

(ii) The coating operation(s) must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.3892 at all times except during periods of startup, shutdown, and malfunction, and except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j).

(iii) The coating operation(s) must be in compliance with the work practice standards in § 63.3893 at all times.

(b) You must always operate and maintain your affected source, including all air pollution control and monitoring equipment you use for purposes of complying with this subpart, according to the provisions in § 63.6(e)(1)(i).

(c) If your affected source uses an emission capture system and add-on control device, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date specified for your affected source in § 63.3883 and the date when the initial emission capture system and add-on control device performance tests have been completed, as specified in § 63.3960. This requirement does not apply to a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3961(j) in lieu of conducting performance tests.

(d) If your affected source uses an emission capture system and add-on control device, you must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). The plan must address startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control device. The plan must also address any coating operation equipment that may cause increased emissions or that would affect capture efficiency if the process equipment malfunctions, such as conveyors that move parts among enclosures.

§ 63.3901 What parts of the General Provisions apply to me?

Table 2 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

Notifications, Reports, and Records

§ 63.3910 What notifications must I submit?

(a) *General.* You must submit the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (e) and (h) that apply to you by the dates specified in those sections, except as provided in paragraphs (b) and (c) of this section.

(b) *Initial notification.* You must submit the Initial Notification required by § 63.9(b) for a new or reconstructed affected source no later than 120 days after initial startup or 120 days after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], whichever is later. For an existing affected source, you must submit the Initial Notification no later than 1 year after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

(c) *Notification of compliance status.* You must submit the Notification of Compliance Status required by § 63.9(h) no later than 30 calendar days following the end of the initial compliance period described in § 63.3940, § 63.3950, or § 63.3960 that applies to your affected source. The Notification of Compliance Status must contain the information specified in paragraphs (c)(1) through (10) of this section and in § 63.9(h).

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of the report and beginning and ending dates of the reporting period. The reporting period is the initial compliance period described in § 63.3940, § 63.3950, or § 63.3960 that applies to your affected source.

(4) Identification of the compliance option or options specified in § 63.3891 that you used on each coating operation in the affected source during the initial compliance period.

(5) Statement of whether or not the affected source achieved the emission limitations for the initial compliance period.

(6) If you had a deviation, include the information in paragraphs (c)(6)(i) and (ii) of this section.

(i) A description of and statement of the cause of the deviation.

(ii) If you failed to meet the applicable emission limit in § 63.3890, include all the calculations you used to determine the kg (lbs) organic HAP emitted per liter (gal) of coating solids used. You do not need to submit information provided by the materials suppliers or manufacturers or test reports.

(7) For each of the data items listed in paragraphs (c)(7)(i) through (iv) of this section that is required by the compliance option(s) you used to demonstrate compliance with the emission limit, include an example of how you determined the value, including calculations and supporting data. Supporting data can include a copy of the information provided by the supplier or manufacturer of the example coating or material, or a summary of the results of testing conducted according to § 63.3941(a), (b), or (c). You do not need to submit copies of any test reports.

(i) Mass fraction of organic HAP for one coating, for one thinner, and for one cleaning material.

(ii) Volume fraction of coating solids for one coating.

(iii) Density for one coating, one thinner, and one cleaning material, except that if you use the compliant material option, only the example coating density is required.

(iv) The amount of waste materials and the mass of organic HAP contained in the waste materials for which you are claiming an allowance in Equation 1 of § 63.3951.

(8) The calculation of kg (lb) organic HAP emitted per liter (gal) coating solids used for the compliance option(s) you used, as specified in paragraphs (c)(8)(i) through (iii) of this section.

(i) For the compliant material option, provide an example calculation of the organic HAP content for one coating, using Equation 1 of § 63.3941.

(ii) For the emission rate without add-on controls option, provide the calculation of the total mass of organic HAP emissions for each month; the calculation of the total volume of coating solids used each month; and the calculation of the 12-month organic HAP emission rate, using Equations 1 and 1A through 1C, 2, and 3, respectively, of § 63.3951.

(iii) For the emission rate with add-on controls option, provide the calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.3951; the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3951; the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.3961 and Equations 2, 3, and 3A through 3C of § 63.3961 as applicable; the calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.3961; and the calculation of the 12-month organic HAP emission rate, using Equation 5 of § 63.3961.

(9) For the emission rate with add-on controls option, you must include the information specified in paragraphs (c)(9)(i) through (iv) of this section, except that the requirements in paragraphs (c)(9)(i) through (iii) of this section do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j).

(i) For each emission capture system, a summary of the data and copies of the calculations supporting the determination that the emission capture system is a permanent total enclosure (PTE) or a measurement of the emission capture system efficiency. Include a description of the protocol followed for measuring capture efficiency, summaries of any capture efficiency tests conducted, and any calculations supporting the capture efficiency determination. If you use the data quality objective (DQO) or lower confidence limit (LCL) approach, you must also include the statistical calculations to show you meet the DQO or LCL criteria in appendix A to subpart KK of this part. You do not need to submit complete test reports.

(ii) A summary of the results of each add-on control device performance test. You do not need to submit complete test reports.

(iii) A list of each emission capture system's and add-on control device's operating limits and a summary of the data used to calculate those limits.

(iv) A statement of whether or not you developed and implemented the work practice plan required by § 63.3893.

(10) If you have chosen to comply with this subpart by being subject to the requirements of another subpart, your Notification of Compliance Status report for this subpart must include a statement certifying your intent, as well as documentation (and supporting materials) that doing so will result in an overall HAP emission level in kg per year (tpy) equal to or less than the emission level that would result from complying separately with each applicable subpart.

§ 63.3920 What reports must I submit?

(a) *Semiannual compliance reports.* You must submit semiannual

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compliance reports for each affected source according to the requirements of paragraphs (a)(1) through (7) of this section. The semiannual compliance reporting requirements may be satisfied by reports required under other parts of the Clean Air Act (CAA), as specified in paragraph (a)(2) of this section.

(1) *Dates.* Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must prepare and submit each semiannual compliance report according to the dates specified in paragraphs (a)(1)(i) through (iv) of this section. Note that the information reported for each of the months in the reporting period will be based on the last 12 months of data prior to the date of each monthly calculation.

(i) The first semiannual compliance report must cover the first semiannual reporting period which begins the day after the end of the initial compliance period described in § 63.3940, § 63.3950, or § 63.3960 that applies to your affected source and ends on June 30 or December 31, whichever occurs first following the end of the initial compliance period.

(ii) Each subsequent semiannual compliance report must cover the subsequent semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iii) Each semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(iv) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the date specified in paragraph (a)(1)(iii) of this section.

(2) *Inclusion with title V report.* Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a semiannual compliance report pursuant to this section along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the semiannual compliance report includes all required information concerning deviations from any emission limitation in this subpart, its submission shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a semiannual compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permitting authority.

(3) *General requirements.* The semiannual compliance report must contain the information specified in paragraphs (a)(3)(i) through (v) of this section, and the information specified in paragraphs (a)(4) through (7) and (c)(1) of this section that is applicable to your affected source.

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period. The reporting period is the 6-month period ending on June 30 or December 31. Note that the information reported for each of the 6 months in the reporting period will be based on the last 12 months of data prior to the date of each monthly calculation.

(iv) Identification of the compliance option or options specified in § 63.3891 that you used on each coating operation during the reporting period. If you switched between compliance options during the reporting period, you must report the beginning and ending dates you used each option.

(v) If you used the emission rate without add-on controls or the emission rate with add-on controls compliance option (§ 63.3891(b) or (c)), the calculation results for each rolling 12-month organic HAP emission rate during the 6-month reporting period.

(4) *No deviations.* If there were no deviations from the emission limitations in §§ 63.3890, 63.3892, and 63.3893 that apply to you, the semiannual compliance report must include a statement that there were no deviations from the emission limitations during the reporting period. If you used the emission rate with add-on controls option and there were no periods during which the continuous parameter monitoring systems (CPMS) were out-of-control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out-of-control during the reporting period.

(5) *Deviations: compliant material option.* If you used the compliant material option, and there was a deviation from the applicable emission limits in § 63.3890, the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (iv) of this section.

(i) Identification of each coating used that deviated from the emission limit, and of each thinner and cleaning material used that contained organic HAP, and the dates and time periods each was used.

(ii) The calculation of the organic HAP content, using Equation 1 of § 63.3941 for each coating identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation, for example, information provided by coating suppliers or manufacturers, or test reports.

(iii) The determination of mass fraction of organic HAP for each coating, thinner, and cleaning material identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation, for example, information provided by material suppliers or manufacturers, or test reports.

(iv) A statement of the cause of each deviation.

(6) *Deviations: emission rate without add-on controls option.* If you used the emission rate without add-on controls option and there was a deviation from the applicable emission limit in § 63.3890, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (iii) of this section.

(i) The beginning and ending dates of each compliance period during which the 12-month organic HAP emission rate exceeded the applicable emission limit in § 63.3890.

(ii) The calculations used to determine the 12-month organic HAP emission rate for the compliance period in which the deviation occurred. You must submit the calculations for Equations 1, 1A through 1C, 2, and 3 in § 63.3951; and if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3951(e)(4). You do not need to submit background data supporting these calculations, for example, information provided by materials suppliers or manufacturers, or test reports.

(iii) A statement of the cause of each deviation.

(7) *Deviations: emission rate with add-on controls option.* If you used the emission rate with add-on controls option and there was a deviation from an emission limitation (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xiv) of this section. This includes periods of startup, shutdown, and malfunction during which deviations occurred.

(i) The beginning and ending dates of each compliance period during which the 12-month organic HAP emission rate exceeded the applicable emission limit in § 63.3890.

(ii) The calculations used to determine the 12-month organic HAP emission rate for each compliance period in which a deviation occurred. You must provide the calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.3951 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3951(e)(4); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3951; the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.3961 and Equations 2, 3, and 3A through 3C of § 63.3961 as applicable; the calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.3961; and the calculation of the 12-month organic HAP emission rate, using Equation 5 of § 63.3961. You do not need to submit the background data supporting these calculations, for example information provided by materials suppliers or manufacturers, or test reports.

(iii) The date and time that each malfunction started and stopped.

(iv) A brief description of the CPMS.

(v) The date of the latest CPMS certification or audit.

(vi) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(vii) The date, time, and duration that each CPMS was out-of-control, including the information in § 63.8(c)(8).

(viii) The date and time period of each deviation from an operating limit in Table 1 to this subpart; date and time period of any bypass of the add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(ix) A summary of the total duration of each deviation from an operating limit in Table 1 to this subpart and each bypass of the add-on control device during the semiannual reporting period, and the total duration as a percent of the total source operating time during that semiannual reporting period.

(x) A breakdown of the total duration of the deviations from the operating limits in Table 1 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(xi) A summary of the total duration of CPMS downtime during the semiannual reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that semiannual reporting period.

(xii) A description of any changes in the CPMS, coating operation, emission capture system, or add-on control device since the last semiannual reporting period.

(xiii) For each deviation from the work practice standards, a description of the deviation, the date and time period of the deviation, and the actions you took to correct the deviation.

(xiv) A statement of the cause of each deviation.

(b) *Performance test reports.* If you use the emission rate with add-on controls option, you must submit reports of performance test results for emission capture systems and add-on control devices no later than 60 days after completing the tests as specified in § 63.10(d)(2).

(c) *Startup, shutdown, malfunction reports.* If you used the emission rate with add-on controls option and you had a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified in paragraphs (c)(1) and (2) of this section.

(1) If your actions were consistent with your startup, shutdown, and malfunction plan, you must include the information specified in § 63.10(d) in the semiannual compliance report required by paragraph (a) of this section.

(2) If your actions were not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report as described in paragraphs (c)(2)(i) and (ii) of this section.

(i) You must describe the actions taken during the event in a report delivered by facsimile, telephone, or other means to the Administrator within 2 working days after starting actions that are inconsistent with the plan.

(ii) You must submit a letter to the Administrator within 7 working days after the end of the event, unless you have made alternative arrangements with the Administrator as specified in § 63.10(d)(5)(ii). The letter must contain the information specified in § 63.10(d)(5)(ii).

§ 63.3930 What records must I keep?

You must collect and keep records of the data and information specified in this section. Failure to collect and keep these records is a deviation from the applicable standard.

(a) A copy of each notification and report that you submitted to comply with this subpart, and the documentation supporting each notification and report.

(b) A current copy of information provided by materials suppliers or manufacturers, such as manufacturer's formulation data, or test data used to determine the mass fraction of organic HAP and density for each coating, thinner, and cleaning material and the volume fraction of coating solids for each coating. If you conducted testing to determine mass fraction of organic HAP, density, or volume fraction of coating solids, you must keep a copy of the complete test report. If you use information provided to you by the manufacturer or supplier of the material that was based on testing, you must keep the summary sheet of results provided to you by the manufacturer or supplier. You are not required to obtain the test report or other supporting documentation from the manufacturer or supplier.

(c) For each compliance period, the records specified in paragraphs (c)(1) through (4) of this section.

(1) A record of the coating operations at which you used each compliance option and the time periods (beginning and ending dates and times) you used each option.

(2) For the compliant material option, a record of the calculation of the organic HAP content for each coating, using Equation 1 of § 63.3941.

(3) For the emission rate without add-on controls option, a record of the calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used each month, using Equations 1, 1A through 1C, and 2 of § 63.3951 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3951(e)(4); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3951; and the

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calculation of each 12-month organic HAP emission rate, using Equation 3 of § 63.3951.

(4) For the emission rate with add-on controls option, records of the calculations specified in paragraphs (c)(4)(i) through (v) of this section.

(i) The calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.3951 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3951(e)(4).

(ii) The calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3951.

(iii) The calculation of the mass of organic HAP emission reduction by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.3961 and Equations 2, 3, and 3A through 3C of § 63.3961 for as applicable.

(iv) The calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.3961.

(v) The calculation of each 12-month organic HAP emission rate, using Equation 5 of § 63.3961.

(d) A record of the name and volume of each coating, thinner, and cleaning material used during each compliance period.

(e) A record of the mass fraction of organic HAP for each coating, thinner, and cleaning material used during each compliance period.

(f) A record of the volume fraction of coating solids for each coating used during each compliance period.

(g) A record of the density for each coating used during each compliance period and, if you use either the emission rate without add-on controls or the emission rate with add-on controls compliance option, the density for each thinner and cleaning material used during each compliance period.

(h) If you use an allowance in Equation 1 of § 63.3951 for organic HAP contained in waste materials sent to or designated for shipment to a treatment, storage, and disposal facility (TSDF) according to § 63.3951(e)(4), you must keep records of the information specified in paragraphs (h)(1) through (3) of this section.

(1) The name and address of each TSDF to which you sent waste materials for which you use an allowance in Equation 1 of § 63.3951; a statement of which subparts under 40 CFR parts 262, 264, 265, and 266 apply to the facility; and the date of each shipment.

(2) Identification of the coating operations producing waste materials included in each shipment and the month or months in which you used the allowance for these materials in Equation 1 of § 63.3951.

(3) The methodology used in accordance with § 63.3951(e)(4) to determine the total amount of waste materials sent to or the amount collected, stored, and designated for transport to a TSDF each month; and the methodology to determine the mass of organic HAP contained in these waste materials. This must include the sources for all data used in the determination, methods used to generate the data, frequency of testing or monitoring, and supporting calculations and documentation, including the waste manifest for each shipment.

(i) [Reserved]

(j) You must keep records of the date, time, and duration of each deviation.

(k) If you use the emission rate with add-on controls option, you must keep the records specified in paragraphs (k)(1) through (8) of this section.

(1) For each deviation, a record of whether the deviation occurred during a period of startup, shutdown, or malfunction.

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) The records required to show continuous compliance with each operating limit specified in Table 1 to this subpart that applies to you.

(4) For each capture system that is a PTE, the data and documentation you used to support a determination that the capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and has a capture efficiency of 100 percent, as specified in § 63.3965(a).

(5) For each capture system that is not a PTE, the data and documentation you used to determine capture efficiency according to the requirements specified in §§ 63.3964 and 63.3965(b) through (e), including the records specified in paragraphs (k)(5)(i) through (iii) of this section that apply to you.

(i) *Records for a liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* Records of the mass of total volatile hydrocarbon (TVH) as measured by Method 204A or F of appendix M to 40 CFR part 51 for each material used in the coating operation, and the total TVH for all materials used during each capture efficiency test run, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run, as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(ii) *Records for a gas-to-gas protocol using a temporary total enclosure or a building enclosure.* Records of the mass of TVH emissions captured by the emission capture system as measured by Method 204B or C of appendix M to 40 CFR part 51 at the inlet to the add-on control device, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(iii) *Records for an alternative protocol.* Records needed to document a capture efficiency determination using an alternative method or protocol as specified in § 63.3965(e), if applicable.

(6) The records specified in paragraphs (k)(6)(i) and (ii) of this section for each add-on control device organic HAP destruction or removal efficiency determination as specified in § 63.3966.

(i) Records of each add-on control device performance test conducted according to §§ 63.3964 and 63.3966.

(ii) Records of the coating operation conditions during the add-on control device performance test showing that the performance test was conducted under representative operating conditions.

(7) Records of the data and calculations you used to establish the emission capture and add-on control device operating limits as specified in § 63.3967 and to document compliance with the operating limits as specified in Table 1 to this subpart.

(8) A record of the work practice plan required by § 63.3893 and documentation that you are implementing the plan on a continuous basis.

§ 63.3931 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database.

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You may keep the records off site for the remaining 3 years.

Compliance Requirements for the Compliant Material Option

§ 63.3940 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements in § 63.3941. The initial compliance period begins on the applicable compliance date specified in § 63.3883 and ends on the last day of the twelfth month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. The initial compliance demonstration includes the calculations according to § 63.3941 and supporting documentation showing that, during the initial compliance period, you used no coating with an organic HAP content that exceeded the applicable emission limits in § 63.3890, and that you used no thinners or cleaning materials that contained organic HAP.

§ 63.3941 How do I demonstrate initial compliance with the emission limitations?

You may use the compliant material option for any individual coating operation, for any group of coating operations in the affected source, or for all the coating operations in the affected source. You must use either the emission rate without add-on controls option or the emission rate with add-on controls option for any coating operation in the affected source for which you do not use this option. To demonstrate initial compliance using the compliant material option, the coating operation or group of coating operations must use no coating with an organic HAP content that exceeds the applicable emission limits in § 63.3890 and must use no thinner or cleaning material that contains organic HAP as determined according to this section. Any coating operation for which you use the compliant material option is not required to meet the operating limits or work practice standards required in §§ 63.3892 and 63.3893, respectively. To demonstrate initial compliance with the emission limitations using the compliant material option, you must meet all the requirements of this section for the coating operation or group of coating operations using this option. Use the procedures in this section on each coating, thinner, and cleaning material in the condition it is in when it is received from its manufacturer or supplier and prior to any alteration. You do not need to redetermine the HAP content of cleaning materials that have been reclaimed and reused onsite provided these materials in their condition as received were demonstrated to comply with the compliant material option.

(a) *Determine the mass fraction of organic HAP for each material used.* You must determine the mass fraction of organic HAP for each coating, thinner, and cleaning material used during the compliance period by using one of the options in paragraphs (a)(1) through (5) of this section.

(1) *Method 311 (appendix A to 40 CFR part 63).* You may use Method 311 for determining the mass fraction of organic HAP. Use the procedures specified in paragraphs (a)(1)(i) and (ii) of this section when performing a Method 311 test.

(i) Count each organic HAP that is measured to be present at 0.1 percent by mass or more for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (for example, 0.3791).

(ii) Calculate the total mass fraction of organic HAP in the test material by adding up the individual organic HAP mass fractions and truncating the result to three places after the decimal point (for example, 0.763).

(2) *Method 24 (appendix A to 40 CFR part 60).* For coatings, you may use Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP.

(3) *Alternative method.* You may use an alternative test method for determining the mass fraction of organic HAP once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence.

(5) *Solvent blends.* Solvent blends may be listed as single components for some materials in data provided by manufacturers or suppliers. Solvent blends may contain organic HAP which must be counted toward the total organic HAP mass fraction of the materials. When test data and manufacturer's data for solvent blends are not available, you may use the default values for the mass fraction of organic HAP in these solvent blends listed in Table 3 or 4 to this subpart. If you use the tables, you must use the values in Table 3 for all solvent blends that match Table 3 entries, and you may only use Table 4 if the solvent blends in the materials you use do not match any of the solvent blends in Table 3, and you only know whether the blend is aliphatic or aromatic. However, if the results of a Method 311 test indicate higher values than those listed on Table 3 or 4 to this subpart, the Method 311 results will take precedence.

(b) *Determine the volume fraction of coating solids for each coating.* You must determine the volume fraction of coating solids (liters of coating solids per liter of coating) for each coating used during the compliance period by a test or by information provided by the supplier or the manufacturer of the material, as specified in paragraphs (b)(1) and (2) of this section. If test results obtained according to paragraph (b)(1) of this section do not agree with the information obtained under paragraph (b)(2) of this section, the test results will take precedence.

(1) *ASTM Method D2697–86 (1998) or D6093–97.* You may use ASTM Method D2697–86 (1998) or D6093–97 to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids.

(2) *Information from the supplier or manufacturer of the material.* You may

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obtain the volume fraction of coating solids for each coating from the supplier or manufacturer.

(c) *Determine the density of each coating.* Determine the density of each coating used during the compliance period from test results using ASTM Method D1475–98 or information from the supplier or manufacturer of the material. If there is disagreement between ASTM Method D1475–98 test results and the supplier's or manufacturer's information, the test results will take precedence.

(d) *Calculate the organic HAP content of each coating.* Calculate the organic HAP content, kg organic HAP per liter coating solids, of each coating used during the compliance period, using Equation 1 of this section:

$$H_c = \frac{(D_c)(W_c)}{V_s} \qquad \text{(Eq. 1)}$$

Where:

H_c = organic HAP content of the coating, kg organic HAP per liter coating solids.

D_c = density of coating, kg coating per liter coating, determined according to paragraph (c) of this section.

W_c = mass fraction of organic HAP in the coating, kg organic HAP per kg coating, determined according to paragraph (a) of this section.

V_s = volume fraction of coating solids, liter coating solids per liter coating, determined according to paragraph (b) of this section.

(e) *Compliance demonstration.* The calculated organic HAP content for each coating used during the initial compliance period must be less than or equal to the applicable emission limits in § 63.3890; and each thinner and cleaning material used during the initial compliance period must contain no organic HAP, determined according to paragraph (a) of this section. You must keep all records required by §§ 63.3930 and 63.3931. As part of the Notification of Compliance Status required in § 63.3910, you must identify the coating operation(s) for which you used the compliant material option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because you used no coatings for which the organic HAP content exceeded the applicable emission limits in § 63.3890, and you used no thinners or cleaning materials that contained organic HAP, determined according to paragraph (a) of this section.

§ 63.3942 How do I demonstrate continuous compliance with the emission limitations?

(a) For each compliance period to demonstrate continuous compliance, you must use no coating for which the organic HAP content determined using Equation 1 of § 63.3941, exceeds the applicable emission limits in § 63.3890, and use no thinner or cleaning material that contains organic HAP, determined according to § 63.3941(a). A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.3940 is the end of a compliance period consisting of that month and the preceding 11 months.

(b) If you choose to comply with the emission limitations by using the compliant material option, the use of any coating, thinner, or cleaning material that does not meet the criteria specified in paragraph (a) of this section is a deviation from the emission limitations that must be reported as specified in §§ 63.3910(c)(6) and 63.3920(a)(5).

(c) As part of each semiannual compliance report required by § 63.3920, you must identify the coating operation(s) for which you used the compliant material option. If there were no deviations from the emission limitations in § 63.3890, submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the reporting period because you used no coating for which the organic HAP content exceeded the applicable emission limits in § 63.3890, and you used no thinner or cleaning material that contained organic HAP, determined according to § 63.3941(a).

(d) You must maintain records as specified in §§ 63.3930 and 63.3931.

Compliance Requirements for the Emission Rate Without Add-On Controls Option

§ 63.3950 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3951. The initial compliance period begins on the applicable compliance date specified in § 63.3883 and ends on the last day of the twelfth month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the calculations according to § 63.3951 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the applicable emission limit in § 63.3890.

§ 63.3951 How do I demonstrate initial compliance with the emission limitations?

You may use the emission rate without add-on controls option for any individual coating operation, for any group of coating operations in the affected source, or for all the coating operations in the affected source. You must use either the compliant material option or the emission rate with add-on controls option for any coating operation in the affected source for which you do not use this option. To demonstrate initial compliance using the emission rate without add-on controls option, the coating operation or group of coating operations must meet the applicable emission limit in § 63.3890, but is not required to meet the operating limits or work practice standards in §§ 63.3892 and 63.3893, respectively. You must meet all the requirements of this section to demonstrate initial compliance with the applicable emission limit in § 63.3890. When calculating the organic HAP emission rate according to this section, do not include any coatings, thinners, or cleaning materials used on coating operations for which you use the compliant material option or the emission rate with add-on controls option. You do not need to redetermine the mass of organic HAP in coatings, thinners, or cleaning materials that have been reclaimed and reused in the coating operation for which you use the emission rate without add-on controls option.

(a) *Determine the mass fraction of organic HAP for each material.* Determine the mass fraction of organic HAP for each coating, thinner, and cleaning material used during each month according to the requirements in § 63.3941(a).

(b) *Determine the volume fraction of coating solids for each coating.* Determine the volume fraction of coating solids for each coating used during each month according to the requirements in § 63.3941(b).

(c) *Determine the density of each material.* Determine the density of each coating, thinner, and cleaning material used during each month from test results using ASTM Method D1475–98, information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–98 test results and other such information sources, the test results will take precedence.

(d) *Determine the volume of each material used.* Determine the volume (liters) of each coating, thinner, and cleaning material used during each month by measurement or usage records.

(e) *Calculate the mass of organic HAP emissions.* The mass of organic HAP emissions is the combined mass of organic HAP contained in all coatings, thinners, and cleaning materials used during each month minus the organic HAP in certain waste materials. Calculate the mass of organic HAP emissions using Equation 1 of this section.

$$H_e = A + B + C - R_w \qquad \text{(Eq. 1)}$$

Where:

H_e = total mass of organic HAP emissions during the month, kg.

A = total mass of organic HAP in the coatings used during the month, kg, as calculated in Equation 1A of this section.

B = total mass of organic HAP in the thinners used during the month, kg, as calculated in Equation 1B of this section.

C = total mass of organic HAP in the cleaning materials used during the month, kg, as calculated in Equation 1C of this section.

R_w = total mass of organic HAP in waste materials sent or designated for shipment to a hazardous waste TSDF for treatment or disposal during the month, kg, determined according to paragraph (e)(4) of this section. (You may assign a value of zero to R_w if you do not wish to use this allowance.)

(1) Calculate the kg organic HAP in the coatings used during the month using Equation 1A of this section:

$$A = \sum_{i=1}^{m} (Vol_{c,i})(D_{c,i})(W_{c,i}) \qquad \text{(Eq. 1A)}$$

Where:

A = total mass of organic HAP in the coatings used during the month, kg.

$Vol_{c,i}$ = total volume of coating, i, used during the month, liters.

$D_{c,i}$ = density of coating, i, kg coating per liter coating.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg organic HAP per kg coating.

m = number of different coatings used during the month.

(2) Calculate the kg of organic HAP in the thinners used during the month using Equation 1B of this section:

$$B = \sum_{j=1}^{n} (Vol_{t,j})(D_{t,j})(W_{t,j}) \qquad \text{(Eq. 1B)}$$

Where:

B = total mass of organic HAP in the thinners used during the month, kg.

$Vol_{t,j}$ = total volume of thinner, j, used during the month, liters.

$D_{t,j}$ = density of thinner, j, kg per liter.

$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg organic HAP per kg thinner.

n = number of different thinners used during the month.

(3) Calculate the kg organic HAP in the cleaning materials used during the month using Equation 1C of this section:

$$C = \sum_{k=1}^{p} (Vol_{s,k})(D_{s,k})(W_{s,k}) \qquad \text{(Eq. 1C)}$$

Where:

C = total mass of organic HAP in the cleaning materials used during the month, kg.

$Vol_{s,k}$ = total volume of cleaning material, k, used during the month, liters.

$D_{s,k}$ = density of cleaning material, k, kg per liter.

$W_{s,k}$ = mass fraction of organic HAP in cleaning material, k, kg organic HAP per kg material.

p = number of different cleaning materials used during the month.

(4) If you choose to account for the mass of organic HAP contained in waste materials sent or designated for shipment to a hazardous waste TSDF in Equation 1 of this section, then you must determine it according to paragraphs (e)(4) (i) through (iv) of this section.

(i) You may include in the determination only waste materials that are generated by coating operations for which you use Equation 1 of this section and that will be treated or disposed of by a facility regulated as a TSDF under 40 CFR part 262, 264, 265, or 266. The TSDF may be either off-site or on-site. You may not include organic HAP contained in wastewater.

(ii) You must determine either the amount of the waste materials sent to a TSDF during the month or the amount collected and stored during the month and designated for future transport to a TSDF. Do not include in your determination any waste materials sent to a TSDF during a month if you have already included them in the amount collected and stored during that month or a previous month.

(iii) Determine the total mass of organic HAP contained in the waste materials specified in paragraph (e)(4)(ii) of this section.

(iv) You must document the amount of waste materials and the total mass of organic HAP they contain, as required in § 63.3930(h). To the extent that waste manifests include this information, they may be used as part of the documentation of the amount of waste materials and mass of organic HAP contained in them.

(f) *Calculate the total volume of coating solids used.* Determine the total volume of coating solids used, liters, which is the combined volume of coating solids for all the coatings used during each month, using Equation 2 of this section.

$$V_{st} = \sum_{i=1}^{m} (Vol_{c,i})(V_{s,i}) \qquad \text{(Eq. 2)}$$

Where:

V_{st} = total volume of coating solids used during the month, liters.

$Vol_{c,i}$ = total volume of coating, i, used during the month, liters.

$V_{s,i}$ = volume fraction of coating solids for coating, i, liter solids per liter coating, determined according to § 63.3941(b).

m = number of coatings used during the month.

(g) *Calculate the organic HAP emission rate.* Calculate the organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids used, using Equation 3 of this section:

$$H_{yr} = \frac{\sum_{y=1}^{12} H_e}{\sum_{y=1}^{12} V_{st}} \qquad \text{(Eq. 3)}$$

Where:

H_{yr} = organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids.

H_e = total mass of organic HAP emissions from all materials used during month, y, kg, as calculated by Equation 1 of this section.

V_{st} = total volume of coating solids used during month, y, liters, as calculated by Equation 2 of this section.

y = identifier for months.

(h) *Compliance demonstration.* The organic HAP emission rate for the initial 12-month compliance period must be less than or equal to the applicable emission limit in § 63.3890. You must keep all records as required by §§ 63.3930 and 63.3931. As part of the

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Notification of Compliance Status required by § 63.3910, you must identify the coating operation(s) for which you used the emission rate without add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.3890, determined according to this section.

§ 63.3952 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance, the organic HAP emission rate for each compliance period, determined according to § 63.3951(a) through (g), must be less than or equal to the applicable emission limit in § 63.3890. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.3950 is the end of a compliance period consisting of that month and the preceding 11 months. You must perform the calculations in § 63.3951(a) through (g) on a monthly basis using data from the previous 12 months of operation.

(b) If the organic HAP emission rate for any 12-month compliance period exceeded the applicable emission limit in § 63.3890, this is a deviation from the emission limitations for that compliance period and must be reported as specified in §§ 63.3910(c)(6) and 63.3920(a)(6).

(c) As part of each semiannual compliance report required by § 63.3920, you must identify the coating operation(s) for which you used the emission rate without add-on controls option. If there were no deviations from the emission limitations, you must submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.3890, determined according to § 63.3951(a) through (g).

(d) You must maintain records as specified in §§ 63.3930 and 63.3931.

Compliance Requirements for the Emission Rate With Add-On Controls Option

§ 63.3960 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) *New and reconstructed affected sources.* For a new or reconstructed affected source, you must meet the requirements of paragraphs (a)(1) through (4) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3883. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j), you must conduct a performance test of each capture system and add-on control device according to §§ 63.3964, 63.3965, and 63.3966 and establish the operating limits required by § 63.3892 no later than 180 days after the applicable compliance date specified in § 63.3883. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3961(j), you must initiate the first material balance no later than the applicable compliance date specified in § 63.3883.

(2) You must develop and begin implementing the work practice plan required by § 63.3893 no later than the compliance date specified in § 63.3883.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3961. The initial compliance period begins on the applicable compliance date specified in § 63.3883 and ends on the last day of the twelfth month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.3964, 63.3965, and 63.3966; results of liquid-liquid material balances conducted according to § 63.3961(j); calculations according to § 63.3961 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the applicable emission limit in § 63.3890; the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3968; and documentation of whether you developed and implemented the work practice plan required by § 63.3893.

(4) You do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.3892 until after you have completed the performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits for your affected source on the date you complete the performance tests specified in paragraph (a)(1) of this section. The requirements in this paragraph do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements in § 63.3961(j).

(b) *Existing affected sources.* For an existing affected source, you must meet the requirements of paragraphs (b)(1) through (3) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3883. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j), you must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.3964, 63.3965, and 63.3966 and establish the operating limits required by § 63.3892 no later than the compliance date specified in § 63.3883. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3961(j), you must initiate the first material balance no later than the compliance date specified in § 63.3883.

(2) You must develop and begin implementing the work practice plan required by § 63.3893 no later than the compliance date specified in § 63.3883.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3961. The initial compliance period begins on the applicable compliance date specified in § 63.3883 and ends on the last day of the twelfth month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the results of emission capture system and

add-on control device performance tests conducted according to §§ 63.3964, 63.3965, and 63.3966; results of liquid-liquid material balances conducted according to § 63.3961(j); calculations according to § 63.3961 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the applicable emission limit in § 63.3890; the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3968; and documentation of whether you developed and implemented the work practice plan required by § 63.3893.

§ 63.3961 How do I demonstrate initial compliance?

(a) You may use the emission rate with add-on controls option for any coating operation, for any group of coating operations in the affected source, or for all of the coating operations in the affected source. You may include both controlled and uncontrolled coating operations in a group for which you use this option. You must use either the compliant material option or the emission rate without add-on controls option for any coating operation in the affected source for which you do not use the emission rate with add-on controls option. To demonstrate initial compliance, the coating operation(s) for which you use the emission rate with add-on controls option must meet the applicable emission limitations in §§ 63.3890, 63.3892, and 63.3893. You must meet all the requirements of this section to demonstrate initial compliance with the emission limitations. When calculating the organic HAP emission rate according to this section, do not include any coatings, thinners, or cleaning materials used on coating operations for which you use the compliant material option or the emission rate without add-on controls option. You do not need to redetermine the mass of organic HAP in coatings, thinners, or cleaning materials that have been reclaimed and reused in the coating operation(s) for which you use the emission rate with add-on controls option.

(b) *Compliance with operating limits.* Except as provided in § 63.3960(a)(4), and except for solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements of paragraph (j) of this section, you must establish and demonstrate continuous compliance during the initial compliance period with the operating limits required by § 63.3892, using the procedures specified in §§ 63.3967 and 63.3968.

(c) *Compliance with work practice requirements.* You must develop, implement, and document your implementation of the work practice plan required by § 63.3893 during the initial compliance period, as specified in § 63.3930.

(d) *Compliance with emission limits.* You must follow the procedures in paragraphs (e) through (n) of this section to demonstrate compliance with the applicable emission limit in § 63.3890.

(e) *Determine the mass fraction of organic HAP, density, volume used, and volume fraction of coating solids.* Follow the procedures specified in § 63.3951(a) through (d) to determine the mass fraction of organic HAP, density, and volume of each coating, thinner, and cleaning material used during each month; and the volume fraction of coating solids for each coating used during each month.

(f) *Calculate the total mass of organic HAP emissions before add-on controls.* Using Equation 1 of § 63.3951, calculate the total mass of organic HAP emissions before add-on controls from all coatings, thinners, and cleaning materials used during each month in the coating operation or group of coating operations for which you use the emission rate with add-on controls option.

(g) *Calculate the organic HAP emission reduction for each controlled coating operation.* Determine the mass of organic HAP emissions reduced for each controlled coating operation during each month. The emission reduction determination quantifies the total organic HAP emissions that pass through the emission capture system and are destroyed or removed by the add-on control device. Use the procedures in paragraph (h) of this section to calculate the mass of organic HAP emission reduction for each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances. For each controlled coating operation using a solvent recovery system for which you conduct a liquid-liquid material balance, use the procedures in paragraph (j) of this section to calculate the organic HAP emission reduction.

(h) *Calculate the organic HAP emission reduction for each controlled coating operation not using liquid-liquid material balance.* For each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction using Equation 1 of this section. The calculation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings, thinners, and cleaning materials that are used in the coating operation served by the emission capture system and add-on control device during each month. For any period of time a deviation specified in § 63.3963(c) or (d) occurs in the controlled coating operation, including a deviation during a period of startup, shutdown, or malfunction, you must assume zero efficiency for the emission capture system and add-on control device. Equation 1 of this section treats the materials used during such a deviation as if they were used on an uncontrolled coating operation for the time period of the deviation.

$$H_c = (A_C + B_C + C_C - H_{unc})\left(\frac{CE}{100} \times \frac{DRE}{100}\right) \quad \text{(Eq. 1)}$$

Where:

H_C = mass of organic HAP emission reduction for the controlled coating operation during the month, kg.

H_C = total mass of organic HAP in the coatings used in the controlled coating operation during the month, kg, as calculated in Equation 1A of this section.

B_C = total mass of organic HAP in the thinners used in the controlled coating operation during the month, kg, as calculated in Equation 1B of this section.

C_C = total mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, kg, as calculated in Equation 1C of this section.

H_{unc} = total mass of organic HAP in the coatings, thinners, and cleaning materials used during all deviations specified in § 63.3963(c) and (d) that occurred during the month in

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the controlled coating operation, kg, as calculated in Equation 1D of this section.

CE = capture efficiency of the emission capture system vented to the add-on control device, percent. Use the test methods and procedures specified in §§ 63.3964 and 63.3965 to measure and record capture efficiency.

DRE = organic HAP destruction or removal efficiency of the add-on control device, percent. Use the test methods and procedures in §§ 63.3964 and 63.3966 to measure and record the organic HAP destruction or removal efficiency.

(1) Calculate the mass of organic HAP in the coatings used in the controlled coating operation, kg, using Equation 1A of this section.

$$A_C = \sum_{i=1}^{m} (Vol_{c,i})(D_{c,i})(W_{c,i}) \quad \text{(Eq. 1A)}$$

Where:

A_C = Total mass of organic HAP in the coatings used in the controlled coating operation during the month, kg.

$Vol_{c,i}$ = total volume of coating, i, used during the month, liters.

$D_{c,i}$ = density of coating, i, kg per liter.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg per kg.

m = number of different coatings used.

(2) Calculate the mass of organic HAP in the thinners used in the controlled coating operation, kg, using Equation 1B of this section.

$$B_C = \sum_{j=1}^{n} (Vol_{t,j})(D_{t,j})(W_{t,j}) \quad \text{(Eq. 1B)}$$

Where:

B_C = total mass of organic HAP in the thinners used in the controlled coating operation during the month, kg.

$Vol_{t,j}$ = total volume of thinner, j, used during the month, liters.

$D_{t,j}$ = density of thinner, j, kg per liter.

$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg per kg.

n = number of different thinners used.

(3) Calculate the mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, kg, using Equation 1C of this section.

$$C_C = \sum_{k=1}^{p} (Vol_{s,k})(D_{s,k})(W_{s,k}) \quad \text{(Eq. 1C)}$$

Where:

C_C = total mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, kg.

$Vol_{s,k}$ = total volume of cleaning material, k, used during the month, liters.

$D_{s,k}$ = density of cleaning material, k, kg per liter.

$W_{s,k}$ = mass fraction of organic HAP in cleaning material, k, kg per kg.

p = number of different cleaning materials used.

(4) Calculate the mass of organic HAP in the coatings, thinners, and cleaning materials used in the controlled coating operation during deviations specified in § 63.3963(c) and (d), using Equation 1D of this section.

$$H_{unc} = \sum_{h=1}^{q} (Vol_h)(D_h)(W_h) \quad \text{(Eq. 1D)}$$

Where:

H_{unc} = total mass of organic HAP in the coatings, thinners, and cleaning materials used during all deviations specified in § 63.3963(c) and (d) that occurred during the month in the controlled coating operation, kg.

Vol_h = total volume of coating, thinner, or cleaning material, h, used in the controlled coating operation during deviations, liters.

D_h = density of coating, thinner, or cleaning material, h, kg per liter.

W_h = mass fraction of organic HAP in coating, thinner, or cleaning material, h, kg organic HAP per kg coating.

q = number of different coatings, thinning solvents, or cleaning materials.

(i) [Reserved]

(j) *Calculate the organic HAP emission reduction for each controlled coating operation using liquid-liquid material balances.* For each controlled coating operation using a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction by applying the volatile organic matter collection and recovery efficiency to the mass of organic HAP contained in the coatings, thinners, and cleaning materials that are used in the coating operation controlled by the solvent recovery system during each month. Perform a liquid-liquid material balance for each month as specified in paragraphs (j)(1) through (6) of this section. Calculate the mass of organic HAP emission reduction by the solvent recovery system as specified in paragraph (j)(7) of this section.

(1) For each solvent recovery system, install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile organic matter recovered by the solvent recovery system each month. The device must be initially certified by the manufacturer to be accurate to within + 2.0 percent of the mass of volatile organic matter recovered.

(2) For each solvent recovery system, determine the mass of volatile organic matter recovered for the month, kg, based on measurement with the device required in paragraph (j)(1) of this section.

(3) Determine the mass fraction of volatile organic matter for each coating, thinner, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, kg volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using Method 24 of 40 CFR part 60, appendix A, or an EPA approved alternative method, or you may use information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24 of 40 CFR part 60, appendix A, or an approved alternative method, the test method results will govern.

(4) Determine the density of each coating, thinner, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, kg per liter, according to § 63.3951(c).

(5) Measure the volume of each coating, thinner, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, liters.

(6) Each month, calculate the solvent recovery system's volatile organic matter collection and recovery efficiency using Equation 2 of this section.

$$R_V = 100 \frac{M_{VR}}{\sum_{i=1}^{m} Vol_i D_i MV_{c,i} + \sum_{j=1}^{n} Vol_j D_j WV_{t,j} + \sum_{k=1}^{p} Vol_k D_k WV_{s,k}} \quad \text{(Eq. 2)}$$

Where:

R_V = volatile organic matter collection and recovery efficiency of the solvent recovery system during the month, percent.

M_{VR} = mass of volatile organic matter recovered by the solvent recovery system during the month, kg.

Vol_i = volume of coating, i, used in the coating operation controlled by the solvent recovery system during the month, liters.

D_i = density of coating, i, kg per liter.

$WV_{c,i}$ = mass fraction of volatile organic matter for coating, i, kg volatile organic matter per kg coating.

Vol_j = volume of thinner, j, used in the coating operation controlled by the solvent recovery system during the month, liters.

D_j = density of thinner, j, kg per liter.

$WV_{t,j}$ = mass fraction of volatile organic matter for thinner, j, kg volatile organic matter per kg thinner.

Vol_k = volume of cleaning material, k, used in the coating operation controlled by the solvent recovery system during the month, liters.

D_k = density of cleaning material, k, kg per liter.

$WV_{s,k}$ = mass fraction of volatile organic matter for cleaning material, k, kg volatile organic matter per kg cleaning material.

m = number of different coatings used in the coating operation controlled by the solvent recovery system during the month.

n = number of different thinners used in the coating operation controlled by the solvent recovery system during the month.

p = number of different cleaning materials used in the coating operation controlled by the solvent recovery system during the month.

(7) Calculate the mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system during the month using Equation 3 of this section.

$$H_{CSR} = (A_{CSR} + B_{CSR} + C_{CSR})\left(\frac{R_V}{100}\right) \quad \text{(Eq. 3)}$$

Where:

H_{CSR} = mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system using a liquid-liquid material balance during the month, kg.

A_{CSR} = total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 3A of this section.

B_{CSR} = total mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 3B of this section.

C_{CSR} = total mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 3C of this section.

R_V = volatile organic matter collection and recovery efficiency of the solvent recovery system, percent, from Equation 2 of this section.

(i) Calculate the mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, kg, using Equation 3A of this section.

$$A_{CSR} = \sum_{i=1}^{m} (Vol_{c,i})(D_{c,i})(W_{c,i}) \quad \text{(Eq. 3A)}$$

Where:

A_{CSR} = total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{c,i}$ = total volume of coating, i, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{c,i}$ = density of coating, i, kg per liter.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg per kg.

m = number of different coatings used.

(ii) Calculate the mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system, kg, using Equation 3B of this section.

$$B_{CSR} = \sum_{j=1}^{n} (Vol_{t,j})(D_{t,j})(W_{t,j}) \quad \text{(Eq. 3B)}$$

Where:

B_{CSR} = total mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{t,j}$ = total volume of thinner, j, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{t,j}$ = density of thinner, j, kg per liter.

$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg per kg.

n = number of different thinners used.

(iii) Calculate the mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system during the month, kg, using Equation 3C of this section:

$$C_{CSR} = \sum_{k=1}^{p} (Vol_{s,k})(D_{s,k})(W_{s,k}) \quad \text{(Eq. 3C)}$$

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Where:

C_{CSR} = total mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{s,k}$ = total volume of cleaning material, k, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{s,k}$ = density of cleaning material, k, kg per liter.

$W_{s,k}$ = mass fraction of organic HAP in cleaning material, k, kg per kg.

p = number of different cleaning materials used.

(k) *Calculate the total volume of coating solids used.* Determine the total volume of coating solids used, liters, which is the combined volume of coating solids for all the coatings used during each month in the coating operation or group of coating operations for which you use the emission rate with add-on controls option, using Equation 2 of § 63.3951.

(l) *Calculate the mass of organic HAP emissions for each month.* Determine the mass of organic HAP emissions, kg, during each month, using Equation 4 of this section:

$$H_{HAP} = H_e - \sum_{i=1}^{q}(H_{C,i}) - \sum_{j=1}^{r}(H_{CSR,j}) \quad \text{(Eq. 4)}$$

Where:

H_{HAP} = total mass of organic HAP emissions for the month, kg.

H_e = total mass of organic HAP emissions before add-on controls from all the coatings, thinners, and cleaning materials used during the month, kg, determined according to paragraph (f) of this section.

$H_{C,i}$ = total mass of organic HAP emission reduction for controlled coating operation, i, not using a liquid-liquid material balance, during the month, kg, from Equation 1 of this section.

$H_{CSR,j}$ = total mass of organic HAP emission reduction for coating operation, j, controlled by a solvent recovery system using a liquid-liquid material balance, during the month, kg, from Equation 3 of this section.

q = number of controlled coating operations not using a liquid-liquid material balance.

r = number of coating operations controlled by a solvent recovery system using a liquid-liquid material balance.

(m) *Calculate the organic HAP emission rate for the 12-month compliance period.* Determine the organic HAP emission rate for the 12-month compliance period, kg of organic HAP per liter coating solids used, using Equation 5 of this section:

$$H_{annual} = \frac{\sum_{y=1}^{12} H_{HAP,y}}{\sum_{y=1}^{12} V_{st,y}} \quad \text{(Eq. 5)}$$

Where:

H_{annual} = organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids.

$H_{HAP,y}$ = organic HAP emission rate for month, y, determined according to Equation 4 of this section.

$V_{st,y}$ = total volume of coating solids used during month, y, liters, from Equation 2 of § 63.3951.

y = identifier for months.

(n) *Compliance demonstration.* To demonstrate initial compliance with the emission limit, calculated using Equation 5 of this section, must be less than or equal to the applicable emission limit in § 63.3890. You must keep all records as required by §§ 63.3930 and 63.3931. As part of the Notification of Compliance Status required by § 63.3910, you must identify the coating operation(s) for which you used the emission rate with add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.3890, and you achieved the operating limits required by § 63.3892 and the work practice standards required by § 63.3893.

§ 63.3962 [Reserved]

§ 63.3963 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance with the applicable emission limit in § 63.3890, the organic HAP emission rate for each compliance period, determined according to the procedures in § 63.3961, must be equal to or less than the applicable emission limit in § 63.3890. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.3960 is the end of a compliance period consisting of that month and the preceding 11 months. You must perform the calculations in § 63.3961 on a monthly basis using data from the previous 12 months of operation.

(b) If the organic HAP emission rate for any 12-month compliance period exceeded the applicable emission limit in § 63.3890, this is a deviation from the emission limitation for that compliance period and must be reported as specified in §§ 63.3910(c)(6) and 63.3920(a)(7).

(c) You must demonstrate continuous compliance with each operating limit required by § 63.3892 that applies to you, as specified in Table 1 to this subpart.

(1) If an operating parameter is out of the allowed range specified in Table 1 to this subpart, this is a deviation from the operating limit that must be reported as specified in §§ 63.3910(c)(6) and 63.3920(a)(7).

(2) If an operating parameter deviates from the operating limit specified in Table 1 to this subpart, then you must assume that the emission capture system and add-on control device were achieving zero efficiency during the time period of the deviation. For the purposes of completing the compliance calculations specified in § 63.3961(h), you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation as indicated in Equation 1 of § 63.3961.

(d) You must meet the requirements for bypass lines in § 63.3968(b) for controlled coating operations for which you do not conduct liquid-liquid material balances. If any bypass line is opened and emissions are diverted to the atmosphere when the coating operation is running, this is a deviation that must be reported as specified in §§ 63.3910(c)(6) and 63.3920(a)(7). For the purposes of completing the compliance calculations specified in §§ 63.3961(h), you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation as indicated in Equation 1 of § 63.3961.

(e) You must demonstrate continuous compliance with the work practice standards in § 63.3893. If you did not develop a work practice plan, or you did not implement the plan, or you did not keep the records required by § 63.3930(k)(8), this is a deviation from the work practice standards that must be reported as specified in §§ 63.3910(c)(6) and 63.3920(a)(7).

(f) As part of each semiannual compliance report required in § 63.3920, you must identify the coating operation(s) for which you used the emission rate with add-on controls option. If there were no deviations from the emission limitations, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.3890, and you achieved the operating limits required by § 63.3892 and the work practice standards required by § 63.3893 during each compliance period.

(g) During periods of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency, you must operate in accordance with the startup, shutdown, and malfunction plan required by § 63.3900(d).

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan. The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations according to the provisions in § 63.6(e).

(i) [Reserved]

(j) You must maintain records as specified in §§ 63.3930 and 63.3931.

§ 63.3964 What are the general requirements for performance tests?

(a) You must conduct each performance test required by § 63.3960 according to the requirements in § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or malfunction, and during periods of nonoperation do not constitute representative conditions. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation.

(2) *Representative emission capture system and add-on control device operating conditions.* You must conduct the performance test when the emission capture system and add-on control device are operating at a representative flow rate, and the add-on control device is operating at a representative inlet concentration. You must record information that is necessary to document emission capture system and add-on control device operating conditions during the test and explain why the conditions represent normal operation.

(b) You must conduct each performance test of an emission capture system according to the requirements in § 63.3965. You must conduct each performance test of an add-on control device according to the requirements in § 63.3966.

§ 63.3965 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of the performance test required by § 63.3960.

(a) *Assuming 100 percent capture efficiency.* You may assume the capture system efficiency is 100 percent if both of the conditions in paragraphs (a)(1) and (2) of this section are met:

(1) The capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and directs all the exhaust gases from the enclosure to an add-on control device.

(2) All coatings, thinners, and cleaning materials used in the coating operation are applied within the capture system; coating solvent flash-off and coating, curing, and drying occurs within the capture system; and the removal of or evaporation of cleaning materials from the surfaces they are applied to occurs within the capture system. For example, this criterion is not met if parts enter the open shop environment when being moved between a spray booth and a curing oven.

(b) *Measuring capture efficiency.* If the capture system does not meet both of the criteria in paragraphs (a)(1) and (2) of this section, then you must use one of the three protocols described in paragraphs (c), (d), and (e) of this section to measure capture efficiency. The capture efficiency measurements use TVH capture efficiency as a surrogate for organic HAP capture efficiency. For the protocols in paragraphs (c) and (d) of this section, the capture efficiency measurement must consist of three test runs. Each test run must be at least 3 hours duration or the length of a production run, whichever is longer, up to 8 hours. For the purposes of this test, a production run means the time required for a single part to go from the beginning to the end of production, which includes surface preparation activities and drying or curing time.

(c) *Liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* The liquid-to-uncaptured-gas protocol compares the mass of liquid TVH in materials used in the coating operation to the mass of TVH emissions not captured by the emission capture system. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (c)(1) through (6) of this section to measure emission capture system efficiency using the liquid-to-uncaptured-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings, thinners, and cleaning materials are applied, and all areas where emissions from these applied coatings and materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions for routing to an add-on control device, such as the entrance and exit areas of an oven or spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204A or F of appendix M to 40 CFR part 51 to determine the mass fraction, kg TVH per kg material, of TVH liquid input from each coating, thinner, and cleaning material used in the coating operation during each capture efficiency test run. To make the determination, substitute TVH for each occurrence of the term volatile organic compounds (VOC) in the methods.

(3) Use Equation 1 of this section to calculate the total mass of TVH liquid input from all the coatings, thinners, and cleaning materials used in the coating operation during each capture efficiency test run.

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$$TVH_{used} = \sum_{i=1}^{n} (TVH_i)(Vol_i)(D_i) \quad \text{(Eq. 1)}$$

Where:

TVH_{used} = mass of liquid TVH in materials used in the coating operation during the capture efficiency test run, kg.

TVH_i = mass fraction of TVH in coating, thinner, or cleaning material, i, that is used in the coating operation during the capture efficiency test run, kg TVH per kg material.

Vol_i = total volume of coating, thinner, or cleaning material, i, used in the coating operation during the capture efficiency test run, liters.

D_i = density of coating, thinner, or cleaning material, i, kg material per liter material.

n = number of different coatings, thinners, and cleaning materials used in the coating operation during the capture efficiency test run.

(4) Use Method 204D or E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D if the enclosure is a temporary total enclosure.

(ii) Use Method 204E if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(5) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 2 of this section:

$$CE = \frac{(TVH_{used} - TVH_{uncaptured})}{TVH_{used}} \times 100 \quad \text{(Eq. 2)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent.

TVH_{used} = total mass of TVH liquid input used in the coating operation during the capture efficiency test run, kg.

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, kg.

(6) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(d) *Gas-to-gas protocol using a temporary total enclosure or a building enclosure.* The gas-to-gas protocol compares the mass of TVH emissions captured by the emission capture system to the mass of TVH emissions not captured Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (d)(1) through (5) of this section to measure emission capture system efficiency using the gas-to-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings, thinners, and cleaning materials are applied, and all areas where emissions from these applied coatings and materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions generated by the coating operation for routing to an add-on control device, such as the entrance and exit areas of an oven or a spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204B or C of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions captured by the emission capture system during each capture efficiency test run as measured at the inlet to the add-on control device. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) The sampling points for the Method 204B or C measurement must be upstream from the add-on control device and must represent total emissions routed from the capture system and entering the add-on control device without a single common duct, then the emissions entering the add-on control device must be simultaneously measured in each duct and the total emissions entering the add-on control device must be determined.

(3) Use Method 204D or E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D if the enclosure is a temporary total enclosure.

(ii) Use Method 204E if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(4) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 3 of this section:

$$CE = \frac{TVH_{captured}}{(TVH_{captured} + TVH_{uncaptured})} \times 100 \quad \text{(Eq. 3)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent.

$TVH_{captured}$ = total mass of TVH captured by the emission capture system as measured at the inlet to the add-on control device during the emission capture efficiency test run, kg.

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, kg.

(5) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(e) *Alternative capture efficiency protocol.* As an alternative to the procedures specified in paragraphs (c) and (d) of this section, you may determine capture efficiency using any other capture efficiency protocol and test methods that satisfy the criteria of either the DQO or LCL approach as described in appendix A to subpart KK of this part.

§ 63.3966 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by § 63.3960. You must conduct three test runs as specified in § 63.7(e)(3) and each test run must last at least 1 hour.

(a) For all types of add-on control devices, use the test methods specified in paragraphs (a)(1) through (5) of this section.

(1) Use Method 1 or 1A of appendix A to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use Method 3, 3A, or 3B of appendix A to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight.

(4) Use Method 4 of appendix A to 40 CFR part 60, to determine stack gas moisture.

(5) Methods for determining gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run.

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either Method 25 or 25A of appendix A to 40 CFR part 60, as specified in paragraphs (b)(1) through (3) of this section. You must use the same method for both the inlet and outlet measurements.

(1) Use Method 25 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million (ppm) at the control device outlet.

(2) Use Method 25A if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use Method 25A if the add-control device is not an oxidizer.

(c) If two or more add-on control devices are used for the same emission stream, then you must measure emissions at the outlet of each device. For example, if one add-on control device is a concentrator with an outlet for the high-volume, dilute stream that has been treated by the concentrator, and a second add-on control device is an oxidizer with an outlet for the low-volume, concentrated stream that is treated with the oxidizer, you must measure emissions at the outlet of the oxidizer and the high volume dilute stream outlet of the concentrator.

(d) For each test run, determine the total gaseous organic emissions mass flow rates for the inlet and the outlet of the add-on control device, using Equation 1 of this section. If there is more than one inlet or outlet to the add-on control device, you must calculate the total gaseous organic mass flow rate using Equation 1 of this section for each inlet and each outlet and then total all of the inlet emissions and total all of the outlet emissions.

$$M_f = Q_{sd} C_c (12)(0.0416)(10^{-6}) \quad \text{(Eq. 1)}$$

Where:

M_f = total gaseous organic emissions mass flow rate, kg/per hour (h).

C_c = concentration of organic compounds as carbon in the vent gas, as determined by Method 25 or Method 25A, parts per million by volume (ppmv), dry basis.

Q_{sd} = volumetric flow rate of gases entering or exiting the add-on control device, as determined by Method 2, 2A, 2C, 2D, 2F, or 2G, dry standard cubic meters/hour (dscm/h).

0.0416 = conversion factor for molar volume, kg-moles per cubic meter (mol/m^3) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg).

(e) For each test run, determine the add-on control device organic emissions destruction or removal efficiency, using Equation 2 of this section:

$$DRE = \frac{M_{fi} - M_{fo}}{M_{fi}} \times 100 \quad \text{(Eq. 2)}$$

Where:

DRE = organic emissions destruction or removal efficiency of the add-on control device, percent.

M_{fi} = total gaseous organic emissions mass flow rate at the inlet(s) to the add-on control device, using Equation 1 of this section, kg/h.

M_{fo} = total gaseous organic emissions mass flow rate at the outlet(s) of the add-on control device, using Equation 1 of this section, kg/h.

(f) Determine the emission destruction or removal efficiency of the add-on control device as the average of the efficiencies determined in the three test runs and calculated in Equation 2 of this section.

§ 63.3967 How do I establish the emission capture system and add-on control device operating limits during the performance test?

During the performance test required by § 63.3960 and described in §§ 63.3964, 63.3965, and 63.3966, you must establish the operating limits required by § 63.3892 according to this section, unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.3892.

(a) *Thermal oxidizers.* If your add-on control device is a thermal oxidizer, establish the operating limits according to paragraphs (a)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) Use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. This average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) *Catalytic oxidizers.* If your add-on control device is a catalytic oxidizer, establish the operating limits according to either paragraphs (b)(1) and (2) or paragraphs (b)(3) and (4) of this section.

(1) During the performance test, you must monitor and record the temperature just before the catalyst bed and the temperature difference across the catalyst bed at least once every 15

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minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. These are the minimum operating limits for your catalytic oxidizer.

(3) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During the performance test, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer.

(4) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (b)(3) of this section. The plan must address, at a minimum, the elements specified in paragraphs (b)(4)(i) through (iii) of this section.

(i) Annual sampling and analysis of the catalyst activity (*i.e.*, conversion efficiency) following the manufacturer's or catalyst supplier's recommended procedures.

(ii) Monthly inspection of the oxidizer system, including the burner assembly and fuel supply lines for problems and, as necessary, adjust the equipment to assure proper air-to-fuel mixtures.

(iii) Annual internal and monthly external visual inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found, you must replace the catalyst bed and conduct a new performance test to determine destruction efficiency according to § 63.3966.

(c) *Carbon adsorbers.* If your add-on control device is a carbon adsorber, establish the operating limits according to paragraphs (c)(1) and (2) of this section.

(1) You must monitor and record the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle, and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

(2) The operating limits for your carbon adsorber are the minimum total desorbing gas mass flow recorded during the regeneration cycle and the maximum carbon bed temperature recorded after the cooling cycle.

(d) *Condensers.* If your add-on control device is a condenser, establish the operating limits according to paragraphs (d)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(e) *Concentrators.* If your add-on control device includes a concentrator, you must establish operating limits for the concentrator according to paragraphs (e)(1) through (4) of this section.

(1) During the performance test, you must monitor and record the desorption concentrate stream gas temperature at least once every 15 minutes during each of the three runs of the performance test.

(2) Use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption concentrate gas stream temperature.

(3) During the performance test, you must monitor and record the pressure drop of the dilute stream across the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(4) Use the data collected during the performance test to calculate and record the average pressure drop. This is the maximum operating limit for the dilute stream across the concentrator.

(f) *Emission capture systems.* For each capture device that is not part of a PTE that meets the criteria of § 63.3965(a), establish an operating limit for either the gas volumetric flow rate or duct static pressure, as specified in paragraphs (f)(1) and (2) of this section. The operating limit for a PTE is specified in Table 1 to this subpart.

(1) During the capture efficiency determination required by § 63.3960 and described in §§ 63.3964 and 63.3965, you must monitor and record either the gas volumetric flow rate or the duct static pressure for each separate capture device in your emission capture system at least once every 15 minutes during each of the three test runs at a point in the duct between the capture device and the add-on control device inlet.

(2) Calculate and record the average gas volumetric flow rate or duct static pressure for the three test runs for each capture device. This average gas volumetric flow rate or duct static pressure is the minimum operating limit for that specific capture device.

§ 63.3968 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) *General.* You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), (f), and (g) of this section according to paragraphs (a)(1) through (6) of this section. You must install, operate, and maintain each CPMS specified in paragraphs (b) and (d) of this section according to paragraphs (a)(3) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four equally spaced successive cycles of CPMS operation in 1 hour.

(2) You must determine the average of all recorded readings for each successive 3-hour period of the emission capture system and add-on control device operation.

(3) You must record the results of each inspection, calibration, and validation check of the CPMS.

(4) You must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments).

(6) You must not use emission capture system or add-on control device parameter data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits.

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor

maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out-of-control and data are not available for required calculations is a deviation from the monitoring requirements.

(b) *Capture system bypass line.* You must meet the requirements of paragraphs (b)(1) and (2) of this section for each emission capture system that contains bypass lines that could divert emissions away from the add-on control device to the atmosphere.

(1) You must monitor or secure the valve or closure mechanism controlling the bypass line in a nondiverting position in such a way that the valve or closure mechanism cannot be opened without creating a record that the valve was opened. The method used to monitor or secure the valve or closure mechanism must meet one of the requirements specified in paragraphs (b)(1)(i) through (iv) of this section.

(i) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that takes a reading at least once every 15 minutes and provides a record indicating whether the emissions are directed to the add-on control device or diverted from the add-on control device. The time of occurrence and flow control position must be recorded, as well as every time the flow direction is changed. The flow control position indicator must be installed at the entrance to any bypass line that could divert the emissions away from the add-on control device to the atmosphere.

(ii) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. You must visually inspect the seal or closure mechanism at least once every month to ensure that the valve is maintained in the closed position, and the emissions are not diverted away from the add-on control device to the atmosphere.

(iii) *Valve closure monitoring.* Ensure that any bypass line valve is in the closed (nondiverting) position through monitoring of valve position at least once every 15 minutes. You must inspect the monitoring system at least once every month to verify that the monitor will indicate valve position.

(iv) *Automatic shutdown system.* Use an automatic shutdown system in which the coating operation is stopped when flow is diverted by the bypass line away from the add-on control device to the atmosphere when the coating operation is running. You must inspect the automatic shutdown system at least once every month to verify that it will detect diversions of flow and shut down the coating operation.

(2) If any bypass line is opened, you must include a description of why the bypass line was opened and the length of time it remained open in the semiannual compliance reports required in § 63.3920.

(c) *Thermal oxidizers and catalytic oxidizers.* If you are using a thermal oxidizer or catalytic oxidizer as an add-on control device (including those used with concentrators or with carbon adsorbers to treat desorbed concentrate streams), you must comply with the requirements in paragraphs (c)(1) through (3) of this section.

(1) For a thermal oxidizer, install a gas temperature monitor in the firebox of the thermal oxidizer or in the duct immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For a catalytic oxidizer, install gas temperature monitors both upstream and downstream of the catalyst bed. The temperature monitors must be in the gas stream immediately before and after the catalyst bed to measure the temperature difference across the bed.

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraph (a) and paragraph (c)(3)(i) through (vii) of this section for each gas temperature monitoring device.

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) Use a temperature sensor with a measurement sensitivity of 4 degrees Fahrenheit or 0.75 percent of the temperature value, whichever is larger.

(iii) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(iv) If a gas temperature chart recorder is used, it must have a measurement sensitivity in the minor division of at least 20 degrees Fahrenheit.

(v) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 30 degrees Fahrenheit of the process temperature sensor reading.

(vi) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(vii) At least monthly, inspect components for integrity and electrical connections for continuity, oxidation, and galvanic corrosion.

(d) *Carbon adsorbers.* If you are using a carbon adsorber as an add-on control device, you must monitor the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle, the carbon bed temperature after each regeneration and cooling cycle, and comply with paragraphs (a)(3) through (5) and paragraphs (d)(1) and (2) of this section.

(1) The regeneration desorbing gas mass flow monitor must be an integrating device having a measurement sensitivity of plus or minus 10 percent capable of recording the total regeneration desorbing gas mass flow for each regeneration cycle.

(2) The carbon bed temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater, and must be capable of recording the temperature within 15 minutes of completing any carbon bed cooling cycle.

(e) *Condensers.* If you are using a condenser, you must monitor the condenser outlet (product side) gas temperature and comply with paragraph (a) and paragraphs (e)(1) and (2) of this section.

(1) The gas temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater.

(2) The temperature monitor must provide a gas temperature record at least once every 15 minutes.

(f) *Concentrators.* If you are using a concentrator, such as a zeolite wheel or rotary carbon bed concentrator, you must comply with the requirements in paragraphs (f)(1) and (2) of this section.

(1) You must install a temperature monitor in the desorption gas stream. The temperature monitor must meet the requirements in paragraph (a) and paragraph (c)(3) of this section.

(2) You must install a device to monitor pressure drop across the zeolite wheel or rotary carbon bed. The pressure monitoring device must meet the requirements in paragraph (a) and paragraphs (f)(2)(i) through (vii) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Use a gauge with a minimum tolerance of 0.5 inch of water or a

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transducer with a minimum tolerance of 1 percent of the pressure range.

(iv) Check the pressure tap daily.

(v) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(vi) Conduct calibration checks anytime the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vii) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(g) *Emission capture systems.* The capture system monitoring system must comply with the applicable requirements in paragraphs (g)(1) and (2) of this section.

(1) For each flow measurement device, you must meet the requirements in paragraph (a) and paragraphs (g)(1)(i) through (iv) of this section.

(i) Locate a flow sensor in a position that provides a representative flow measurement in the duct from each capture device in the emission capture system to the add-on control device.

(ii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iii) Conduct a flow sensor calibration check at least semiannually.

(iv) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(2) For each pressure drop measurement device, you must comply with the requirements in paragraph (a) and paragraphs (g)(2)(i) through (vi) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure drop across each opening you are monitoring.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Check pressure tap pluggage daily.

(iv) Using an inclined manometer with a measurement sensitivity of 0.0002 inch water, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vi) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

Other Requirements and Information

§ 63.3980 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the Administrator has delegated authority to your State, local, or tribal agency, then that agency (as well as the EPA) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are as follows:

(1) Approval of alternatives to the work practice standards in § 63.3893 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.3981 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, the General Provisions of this part, and in this section as follows:

Add-on control means an air pollution control device, such as a thermal oxidizer or carbon adsorber, that reduces pollution in an air stream by destruction or removal before discharge to the atmosphere.

Adhesive means any chemical substance that is applied for the purpose of bonding two surfaces together.

Capture device means a hood, enclosure, room, floor sweep, or other means of containing or collecting emissions and directing those emissions into an add-on air pollution control device.

Capture efficiency or capture system efficiency means the portion (expressed as a percentage) of the pollutants from an emission source that is delivered to an add-on control device.

Capture system means one or more capture devices intended to collect emissions generated by a coating operation in the use of coatings or cleaning materials, both at the point of application and at subsequent points where emissions from the coatings or cleaning materials occur, such as flashoff, drying, or curing. As used in this subpart, multiple capture devices that collect emissions generated by a coating operation are considered a single capture system.

Cleaning material means a solvent used to remove contaminants and other materials, such as dirt, grease, oil, and dried or wet coating (*e.g.*, depainting), from a substrate before or after coating application or from equipment associated with a coating operation, such as spray booths, spray guns, racks, tanks, and hangers. Thus, it includes any cleaning material used on substrates or equipment or both.

Coating means a material applied to a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, sealants, caulks, inks, adhesives, and maskants. Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances are not considered coatings for the purposes of this subpart.

Coating operation means equipment used to apply cleaning materials to a substrate to prepare it for coating application or to remove dried coating from a substrate to prepare for the application of a coating (surface preparation), to apply coating to a substrate (coating application) and to dry or cure the coating after application, or to clean coating operation equipment (equipment cleaning). A single coating operation may include any combination of these types of equipment, but always includes at least the point at which a coating or cleaning material is applied and all subsequent points in the affected source where organic HAP emissions from that coating or cleaning material occur. There may be multiple coating operations in an affected source. Coating application with hand-held nonrefillable aerosol containers, touchup markers, or marking pens is not a coating operation for the purposes of this subpart.

Coating solids means the nonvolatile portion of the coating that makes up the dry film.

Continuous parameter monitoring system (CPMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart, used to sample, condition (if applicable), analyze, and provide a record of coating operation, or capture system, or add-on control device parameters.

Controlled coating operation means a coating operation from which some or all of the organic HAP emissions are routed through an emission capture system and add-on control device.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limit, or operating limit, or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, or operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means an emission limit, operating limit, or work practice standard.

Enclosure means a structure that surrounds a source of emissions and captures and directs the emissions to an add-on control device.

Exempt compound means a specific compound that is not considered a VOC due to negligible photochemical reactivity. The exempt compounds are listed in 40 CFR 51.100(s).

Facility maintenance means the routine repair or renovation (including the surface coating) of the tools, equipment, machinery, and structures that comprise the infrastructure of the affected facility and that are necessary for the facility to function in its intended capacity.

General use coating means any material that meets the definition of "coating" but does not meet the definition of "high performance coating," "rubber to metal coating," or "magnet wire coating" as defined in this section.

High performance architectural coating means any coating applied to architectural subsections which is required to meet the specifications of Architectural Aluminum Manufacturer's Association's publication number AAMA 605.2–1980.

High performance coating means any coating that meets the definition of "high performance architectural coating," "high temperature coating," or "military combat, tactical, and munitions coating" in this section.

High temperature coating means any coating applied to a substrate which during normal use must withstand temperatures of at least 538 degrees Celcius (1000 degrees Fahrenheit).

Magnet wire coating means any coating applied to wire that will subsequently be used in the fabrication of electrical devices such as motors or generators.

Manufacturer's formulation data means data on a material (such as a coating) that are supplied by the material manufacturer based on knowledge of the ingredients used to manufacture that material, rather than based on testing of the material with the test methods specified in § 63.3941. Manufacturer's formulation data may include, but are not limited to, information on density, organic HAP content, volatile organic matter content, and coating solids content.

Mass fraction of organic HAP means the ratio of the mass of organic HAP to the mass of a material in which it is contained, expressed as kg of organic HAP per kg of material.

Military combat, tactical, and munitions coating means coating materials and/or groups of coating materials that singularly or in combination provide military-unique performance and/or battlefield survival capabilities. These coatings include all coating components that have been qualified, or must be compatible with components that are qualified, by the military under a military specification, standard or equivalent as providing military-unique performance and battlefield survival capabilities.

Month means a calendar month or a pre-specified period of 28 days to 35 days, to allow for flexibility in recordkeeping when data are based on a business accounting period.

Organic HAP content means the mass of organic HAP per volume of coating solids for a coating calculated using Equation 1 of § 63.3941. The organic HAP content is determined for the coating in the condition it is in when received from its manufacturer or supplier and does not account for any alteration after receipt.

Permanent total enclosure (PTE) means a permanently installed enclosure that meets the criteria of Method 204 of appendix M, 40 CFR part 51, for a PTE and that directs all the exhaust gases from the enclosure to an add-on control device.

Protective oil means an organic material that is applied to metal for the purpose of providing lubrication or protection from corrosion without forming a solid film. This definition of protective oil includes, but is not limited to, lubricating oils, evaporative oils (including those that evaporate completely), and extrusion oils.

Research or laboratory facility means a facility whose primary purpose is for research and development of new processes and products, that is conducted under the close supervision of technically trained personnel, and is not engaged in the manufacture of final or intermediate products for commercial purposes, except in a de minimis manner.

Responsible official means responsible official as defined in 40 CFR 70.2.

Rubber to metal coating means the coatings that are applied to a metal substrate to provide an adhesive surface necessary for a rubber component to be bonded to the substrate.

Startup, initial means the first time equipment is brought online in a facility.

Surface preparation means use of a cleaning material on a portion of or all of a substrate. This includes use of a cleaning material to remove dried coating (referred to as paint stripping or depainting) for the purpose of preparing a substrate for application a coating.

Temporary total enclosure means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source as defined in Method 204 of appendix M, 40 CFR part 51.

Thinner means an organic solvent that is added to a coating after the coating is received from the supplier.

Total volatile hydrocarbon (TVH) means the total amount of nonaqueous volatile organic matter determined according to Methods 204 and 204A through 204F of appendix M to 40 CFR part 51 and substituting the term TVH each place in the methods where the term VOC is used. The TVH includes both VOC and non-VOC.

Uncontrolled coating operation means a coating operation from which none of the organic HAP emissions are routed through an emission capture system and add-on control device.

Volatile organic compound (VOC) means any compound defined as VOC in 40 CFR 51.100(s).

Volume fraction of coating solids means the ratio of the volume of coating solids (also known as volume of nonvolatiles) to the volume of coating; liters of coating solids per liter of coating.

Wastewater means water that is generated in a coating operation and is collected, stored, or treated prior to being discarded or discharged.

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If you are required to comply with operating limits by §63.3892, you must comply with the applicable operating limits in the following table:

TABLE 1 TO SUBPART MMMM OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION

For the following device* * *	You must meet the following operating limit * * *	And you must demonstrate continuous compliance with the operating limit * * *
1. thermal oxidizer	a. the average combustion temperature in any 3-hour period must not fall below the combustion temperature limit established according to §63.3967(a).	i. collecting the combustion temperature combustion data according to §63.3968(c); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average combustion temperature at or above the temperature limit.
2. catalytic oxidizer	a. the average temperature measured just before the catalyst bed in any 3-hour period must not fall below the limit established according to §63.3967(b); and either.	i. collecting the temperature data according to §63.3968(c); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average temperature before the catalyst bed at or above the temperature limit.
	b. ensure that the average temperature difference across the catalyst bed in any 3-hour period does not fall below the temperature difference limit established according to §63.3967(b)(2); or.	i. collecting the temperature data according to §63.3968(c); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average temperature difference at or above the temperature difference limit.
	c. develop and implement an inspection and maintenance plan according to §63.3967(b)(4).	i. maintaining an up-to-date inspection and maintenance plan, records of annual catalyst activity checks, records of monthly inspections of the oxidizer system, and records of the annual internal inspections of the catalyst bed. If a problem is discovered during a monthly or annual inspection required by §63.3967(b)(4), you must take corrective action as soon as practicable consistent with the manufacturer's recommendations.
3. carbon adsorber	a. the total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each carbon bed regeneration cycle must not fall below the total regeneration desorbing gas mass flow limit established according to §63.3967(c).	i. measuring the total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each regeneration cycle according to §63.3968(d); and ii. maintaining the total regeneration desorbing gas mass flow at or above the mass flow limit.
	b. the temperature of the carbon bed, after completing each regeneration and any cooling cycle, must not exceed the carbon bed temperature limit established according to §63.3967(c).	i. measuring the total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each regeneration cycle according to §63.3968(d); and ii. operating the carbon beds such that each carbon bed is not returned to service until completing each regeneration and any cooling cycle until the recorded temperature of the carbon bed is at or below the temperature limit.
4. condenser	a. the average condenser outlet (product side) gas temperature in any 3-hour period must not exceed the temperature limit established according to §63.3967(d).	i. collecting the condenser outlet (product side) gas temperature according to §63.3968(e); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average gas temperature at the outlet at or below the temperature limit.
5. concentrators, including zeolite wheels and rotary carbon adsorbers.	a. the average gas temperature desorption concentrate stream in any 3-hour period must not fall below the limit established according to §63.3967(e).	i. collecting the temperature data according to 63.3968(f); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average temperature at or above the temperature limit.
	b. the average pressure drop of the dilute stream across the concentrator in any 3-hour period must not fall below the limit established according to §63.3967(e).	i. collecting the pressure drop data according to §3.3968(f); and ii. reducing the pressure drop data to 3-hour block averages; and iii. maintaining the 3-hour average pressure drop at or above the pressure drop limit.

TABLE 1 TO SUBPART MMMM OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION—Continued

For the following device* * *	You must meet the following operating limit * * *	And you must demonstrate continuous compliance with the operating limit * * *
6. emission capture system that is a PTE according to §63.3965(a).	a. the direction of the air flow at all times must be into the enclosure; and either. b. the average facial velocity of air through all natural draft openings in the enclosure at all at least 200 feet per minute; or. c. the pressure drop across the enclosure must be at least 0.007 inch H2O, as established in Method 204 of appendix M to 40 CFR part 51..	i. collecting the direction of air flow, and either the according to §63.3968(g)(1) or the according to enclosure; and pressure drop across the according to §63.3968(g)(2); and ii. maintaining the facial velocity of air flow through all natural draft openings or the pressure drop at or above the facial velocity limit or pressure drop limit, and maintaining the direction of air flow into enclosure at all times.
7. emission capture system that is not a PTE according to §63.3965(a).	a. the average gas volumetric flow rate or duct static pressure in each duct between a capture device and add-on control device inlet in any 3-hour period must not fall below the average volumetric flow rate or duct static pressure limit established for that capture device according to §63.3967(f).	i. collecting the gas volumetric flow rate or duct static pressure for each capture device according to §63.3968(g); ii. reducing the data to 3-hour block according averages; and iii. maintaining the 3-hour average gas volumetric flow rate or duct static pressure for each capture device at or above the gas volumetric flow rate or duct static pressure limit.

You must comply with the applicable General Provisions requirements according to the following table:

TABLE 2 TO SUBPART MMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM

Citation	Subject	Applicable to subpart MMMM	Explanation
§63.1(a)(1)–(14)	General Applicability	Yes	
§63.1(b)(1)–(3)	Initial Applicability Determination.	Yes	Applicability to subpart MMMM is also specified in §63.3881.
§63.1(c)(1)	Applicability After Standard Established.	Yes	
§63.1(c)(2)–(3)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart MMMM.
§63.1(c)(4)–(5)	Extensions and Notifications	Yes	
§63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes	
§63.2	Definitions	Yes	Additional definitions are specified in §63.3981.
§63.3(a)–(c)	Units and Abbreviations	Yes	
§63.4(a)(1)–(5)	Prohibited Activities	Yes	
§63.4(b)–(c)	Circumvention/Severability	Yes	
§63.5(a)	Construction/Reconstruction	Yes	
§63.5(b)(1)–(6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes	
§63.5(d)	Application for Approval of Construction/Reconstruction.	Yes	
§63.5(e)	Approval of Construction/Reconstruction.	Yes	
§63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes	
§63.6(a)	Compliance With Standards and Maintenance Requirements— Applicability.	Yes	
§63.6(b)(1)–(7)	Compliance Dates for New and Reconstructed Sources.	Yes	Section 63.3883 specifies the compliance dates.
§63.6(c)(1)–(5)	Compliance Dates for Existing Sources.	Yes	Section 63.3883 specifies the compliance dates.
§63.6(e)(1)–(2)	Operation and Maintenance	Yes.	
§63.6(e)(3)	Startup, Shutdown, and Malfunction Plan.	Yes	Only sources using an add-on control device to comply with the standard must complete startup, shutdown, and malfunction plans.
§63.6(f)(1)	Compliance Except During Startup, Shutdown, and Malfunction.	Yes	Applies only to sources using an add-on control device to comply with the standards.

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TABLE 2 TO SUBPART MMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM—Continued

Citation	Subject	Applicable to subpart MMMM	Explanation
§63.6(f)(2)–(3)	Methods for Determining Compliance.	Yes.	
§63.6(g)(1)–(3)	Use of an Alternative Standard.	Yes.	
§63.6(h)	Compliance With Opacity/Visible Emission Standards.	No	Subpart MMMM does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§63.6(i)(1)–(16)	Extension of Compliance	Yes.	
§63.6(j)	Presidential Compliance Exemption.	Yes.	
§63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§63.3964, 63.3965, and 63.3966.
§63.7(a)(2)	Performance Test Requirements—Dates.	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standards. Section 63.3960 specifies the schedule for performance test requirements that are earlier than those specified in §63.7(a)(2).
§63.7(a)(3)	Performance Tests Required By the Administrator.	Yes.	
§63.7(b)–(e)	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing, Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§63.7(f)	Performance Test Requirements—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.
§63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§63.8(a)(1)–(3)	Monitoring Requirements—Applicability.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for monitoring are specified in §63.3968.
§63.8(a)(4)	Additional Monitoring Requirements.	No	Subpart MMMM does not have monitoring requirements for flares.
§63.8(b)	Conduct of Monitoring	Yes	
§63.8(c)(1)–(3)	Continuous Monitoring Systems (CMS) Operation and Maintenance.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for CMS operations and maintenance are specified in §63.3968.
§63.8(c)(4)	CMS	No	Section 63.3968 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§63.8(c)(5)	COMS	No	Subpart MMMM does not have opacity or visible emission standards.
§63.8(c)(6)	CMS Requirements	No	Section 63.3968 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§63.8(c)(7)	CMS Out-of-Control Periods	Yes	
§63.8(c)(8)	CMS Out-of-Control Periods and Reporting.	No	Section 63.3920 requires reporting of CMS out-of-control periods.
§63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
§63.8(f)(1)–(5)	Use of an Alternative Monitoring Method.	Yes	
§63.8(f)(6)	Alternative to Relative Accuracy Test.	No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
§63.8(g)(1)–(5)	Data Reduction	No	Sections 63.3967 and 63.3968 specify monitoring data reduction.
§63.9(a)–(d)	Notification Requirements	Yes.	
63.9(e)	Notification of Performance Test.	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standard.
63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart MMMM does not have opacity or visible emission standards.

TABLE 2 TO SUBPART MMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM—Continued

Citation	Subject	Applicable to subpart MMMM	Explanation
63.9(g)(1)–(3)	Additional Notifications When Using CMS.	No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
63.9(h)	Notification of Compliance Status.	Yes	Section 63.3910 specifies the dates for submitting the notification of compliance status.
63.9(i)	Adjustment of Submittal Deadlines.	Yes.	
63.9(j)	Change in Previous Information.	Yes.	
63.10(a)—	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
63.10(b)(1)	General Recordkeeping Requirements.	Yes	Additional requirements are specified in §63.3930 and 63.3931.
63.10(b)(2) (i)–(v)	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	Yes	Requirements for startup, shutdown, malfunction and records only apply to add-on control devices used to comply with the standard.
63.10(b)(2) (vi)–(xi)		Yes.	
63.10(b)(2) (xii)	Records	Yes.	
63.10(b)(2) (xiii)		No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
63.10(b)(2) (xiv)		Yes.	
63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§63.10(c)(7)–(8)		No	The same records are required in §63.3920(a)(7).
§63.10(c)(9)–(15)		Yes.	
§63.10(d)(1)	General Reporting Requirements.	Yes	Additional requirements are specified in §63.3920.
§63.10(d)(2)	Report of Performance Test Results.	Yes	Additional requirements are specified in §63.3920(b).
§63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart MMMM does not require opacity or visible emissions observations.
§63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	
§63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Yes	Applies only to add-on control devices at sources using these to comply with the standard.
§63.10(e)(1)–(2)	Additional CMS Reports	No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
§63.10(e)(3)	Excess Emissions/CMS Performance Reports.	No	Section 63.3920(b) specifies the contents of periodic compliance reports.
§63.10(e)(4)	COMS Data Reports	No	Subpart MMMM does not specify requirements for opacity or COMS.
§63.10(f)	Recordkeeping/Reporting Waiver.	Yes.	
§63.11	Control Device Requirements/Flares.	No	Subpart MMMM does not specify use of flares for compliance.
§63.12	State Authority and Delegations.	Yes.	
§63.13	Addresses	Yes.	
§63.14	Incorporation by Reference	Yes.	
§63.15	Availability of Information/Confidentiality.	Yes.	

You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data.

TABLE 3 TO SUBPART MMMM OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS

Solvent/solvent blend	CAS. No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
1. Toluene	108–88–3	1.0	Toluene
2. Xylene(s)	1330–20–7	1.0	Xylenes, ethylbenzene

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TABLE 3 TO SUBPART MMMM OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS

Solvent/solvent blend	CAS. No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
3. Hexane	110–54–3	0.5	n-hexane
4. n-Hexane	110–54–3	1.0	n-hexane
5. Ethylbenzene	100–41–4	1.0	Ethylbenzene
6. Aliphatic 140		0	None
7. Aromatic 100		0.02	1% xylene, 1% cumene
8. Aromatic 150		0.09	Naphthalene
9. Aromatic naphtha	64742–95–6	0.02	1% xylene, 1% cumene
10. Aromatic solvent	64742–94–5	0.1	Naphthalene
11. Exempt mineral spirits	8032–32–4	0	None
12. Ligroines (VM & P)	8032–32–4	0	None
13. Lactol spirits	64742–89–6	0.15	Toluene
14. Low aromatic white spirit	64742–82–1	0	None
15. Mineral spirits	64742–88–7	0.01	Xylenes
16. Hydrotreated naphtha	64742–48–9	0	None
17. Hydrotreated light distillate	64742–47–8	0.001	Toluene
18. Stoddard solvent	8052–41–3	0.01	Xylenes
19. Super high-flash naphtha	64742–95–6	0.05	Xylenes
20. Varsol® solvent	8052–49–3	0.01	0.5% xylenes, 0.5% ethylbenzene
21. VM & P naphtha	64742–89–8	0.06	3% toluene, 3% xylene
22. Petroleum distillate mixture	68477–31–6	0.08	4% naphthalene, 4% biphenyl

You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data.

TABLE 4 TO SUBPART MMMM OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR PETROLEUM SOLVENT GROUPS[a]

Solvent type	Average organic HAP, mass fraction	Typical organic HAP, percent by mass
Aliphatic[b]	0.03	1% Xylene, 1% Toluene, and 1% Ethylbenzene
Aromatic[c]	0.06	4% Xylene, 1% Toluene, and 1% Ethylbenzene

[a] Use this table only if the solvent blend does not match any of the solvent blends in table 3 to this subpart and you only know whether the blend is aliphatic or aromatic.
[b] *e.g.*, Mineral Spirits 135, Mineral Spirits 150 EC, Naphtha, Mixed Hydrocarbon, Aliphatic Hydrocarbon, Aliphatic Naphtha, Naphthol Spirits, Petroleum Spirits, Petroleum Oil, Petroleum Naphtha, Solvent Naphtha, Solvent Blend.
[c] *e.g.*, Medium-flash Naphtha, High-flash Naphtha, Aromatic Naphtha, Light Aromatic Naphtha, Light Aromatic Hydrocarbons, Aromatic Hydrocarbons, Light Aromatic Solvent.

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Part III

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 39
Indian School Equalization Program; Final Rule

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 39

RIN 1076–AE14

Indian School Equalization Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule with request for comments.

SUMMARY: In order to comply with part B of the Individuals with Disabilities Education Act (IDEA), the Bureau of Indian Affairs is revising the sections of the Indian School Equalization Program (ISEP) Exceptional Child Program regulations concerning placement and funding. The changes will ensure that the funding mechanism under the Indian School Education program (ISEP) does not result in placements that violate the requirement of IDEA that special education students are placed in the least restrictive environment possible and that placements are based upon the needs of students, not the funding formula.

DATES: *Effective Date:* August 19, 2002.

Comment Date: Comments must be received on or before September 12, 2002.

ADDRESSES: If you wish to comment on the interim rule, you may submit your comments to William Mehojah, Director, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., Mail Stop 3512–MIB, Washington, DC 20240. *See* **SUPPLEMENTARY INFORMATION** section for other methods to submit comments.

FOR FURTHER INFORMATION CONTACT: Glenn F. Allison, Office of Indian Education Programs, Bureau of Indian Affairs, 202–208–3628 (This is not a toll free number).

SUPPLEMENTARY INFORMATION: The Department of Education—Office of Special Education Programs (Education) has found us to be out of compliance with certain requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et seq.* Specifically, Education determined that special education students are not being served in the least restrictive environment in part because of our funding formula under the Indian School Equalization Program (ISEP). This funding formula resulted in placements that violated the requirement that, to the maximum extent appropriate, children with disabilities be placed in the least restrictive environment for educational services based upon their individual needs. In accordance with section 612(a)(5)(B) of IDEA, the Secretary of the Interior and the Office of Indian Education Programs assured the Department of Education that the curent regulations regarding the funding mechanism would be revised as soon as possible to ensure that the regulations do not result in pavements that violate the least restrictive environment requirements of IDEA.

What Regulations Will Be Changed

In order to comply with IDEA and maintain the Bureau of Indian Affairs's eligibility for IDEA funding, we are making the following changes:

1. Eliminating the definitions of high and moderate service levels in 25 CFR 39.11(i)(16) and 25 CFR 39.11(i)(17);
2. Changing the weighted student unit factors under 25 CFR 39.12 and eliminating the Exceptional Child Residential Program weights under 25 CFR 39.13; and
3. Eliminating the eligibility restrictions for the Exceptional Child Residential Programs and the Intensive Residential Guidance Program under 25 CFR 39.11(h)(1)(v).

We are also changing the weighted unit for the Gifted and Talented Program to conform with Public Law 100–297, which states that a gifted and talented student generates two weighted units. Because we changed the basic instructional program weight by grade level, the gifted and talented weighted unit had to be changed to conform with Public Law 100–297.

Purpose of the Change

The purpose of this change is to ensure that all children with disabilities as defined under IDEA, including those students living in dormitories, are provided a free and appropriate public education in the least restrictive environment under a neutral placement funding formula.

Detailed Discussion of Change

Education found that the definitions in our current regulations do not encourage neutral placement funding for children with disabilities as required by IDEA. As now written, the regulations inadvertently encourage schools to place the children outside the regular classroom in order to receive additional funding. (See § 39.11(i)(16), Full Time—High Service Level, and § 9.11(i)(17), Part Time—Moderate Service Level, and the weighted formula found in § 39.12.) As now written, the regulations also inadvertently encourage schools to place children in certain disability categories outside the regular classroom.

In response to the Department of Education's findings, we certified on January 2, 2001, that we would correct the ISEP formula. We presented these changes in the regulations to the various Indian tribes at consultation proceedings in several locations. We then reviewed and considered comments generated by those sessions and made changes to the formula based upon those comments. The changes resulting from this process:

1. Change the funding mechanism under ISEP to comply with Part B of IDEA;
2. Ensure the Department of Education that the Bureau is in compliance with the law; and
3. Provide a free and appropriate public education to children with disabilities and place them in an educational setting which provides the least restrictive environment appropriate to the child's disability.

No Child Left Behind Act of 2001—Negotiated Rulemaking Requirement

This interim rule is not intended to supplant the requirements of negotiated rulemaking defined under Public Law 107–110, No Child Left Behind Act of 2001 (NCLBA). We recognize our responsibility to include the ISEP formula in the negotiated rulemaking process and will do so. Negotiating changes under NCLBA would delay compliance with IDEA for at least 2 years and would jeopardize funding under Part B of IDEA. Therefore, until we complete the negotiated rulemaking process, the changes we publish today will ensure that we do not forfeit Part B monies because we have failed to comply with our certification to the Department of Education. In addition, it is in the public interest that all eligible students attending Bureau funded schools receive a free and appropriate public education in the least restrictive environment. Any delay in implementing these changes, pending notice and comment, might place those children in jeopardy of not receiving those services.

Determination To Make Rule Effective Immediately

The Department has determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply because of the good cause exception created under 5 U.S.C. (b)(3) which allows the agency to suspend the notice and comment period provisions. The Department further concludes that this rule should be effective immediately because it relieves possible restrictions on the efficient and necessary distribution of IDEA Part B funds for all Bureau funded schools. It is in the public interest, and in the interest of the IDEA eligible students attending Bureau funded schools, not to delay implementation. However, BIA invites and will consider public comments submitted in response to this final rule. BIA will consider the comments and amend the rule as appropriate.

General Comments

Interested persons may submit written comments regarding the interim rule to William Mehojah, Director, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, Mail Stop 3512–MIB, Washington, DC, 20240; or hand-deliver to Room 3512 at the above address. You may send comments by facsimile to 202–208–3312. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record. We will honor the request to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submission from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Electronic Access and Filing

Electronic Access and Filing is not available at this time.

Regulatory Planning and Review (Executive Order 12866)

This interim rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(a) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. For example, in School Year 2001—2002, BIA received $48,938,830 in Part B funds to distribute to Bureau funded schools; in School Year 2002—2003, BIA will receive $62,179,630 in Part B funds for distribution.

(b) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule applies only to Bureau-funded elementary and secondary schools enrolling ISEP eligible students. The Bureau of Indian Affairs has worked closely with the Department of Education in preparing this rule.

(c) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The program does not impose any additional rights to any other program.

(d) This rule does not raise novel legal or policy issues. The regulations have not changed since the passage of Title XI, the Education Amendments of 1978, Public Law 95–561, November 1978, establishing formula funding for Bureau-funded elementary and secondary schools.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to Indian tribes.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The amount of money available for special education servicing eligible ISEP students is $48,938,830 in School Year 2001–2002, and $62,179,630 in School Year 2002–2003.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The small amount of money and the student oriented uses of the funding are too limited to affect competition between U.S. firms and foreign-based firms.

Unfunded Mandates Reform Act

This interim rule imposes no unfunded mandates on any government or private entity of more than $100 million per year. The rule does not have a significant or unique effect on state, local, or tribal governments or the private sector because of the limited amount of special education funds available. A statement containing the information required by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) is not required.

Takings Implication Assessment (Executive Order 12630)

The Department has determined that this interim rule does not have "significant" takings implications. The interim rule does not pertain to "taking" of private property interests, nor does it impact private property.

Federalism (Executive Order 13132)

The Department has determined that this interim rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirement of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Department has determined that this interim rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Department of the Interior reviewed and sent an information collection request package to the Office of Management and Budget for its approval. The information collection, with OMB Control Number of 1076–0122, was approved for use until June 30, 2002. We are currently renewing OMB approval for this information collection. This change to the regulations will not affect the information collection. All information is collected annually from each eligible ISEP student. The annual responses are submitted in order to maintain or to obtain a benefit, specifically funding for instructional and/or residential programs covered by the Indian School Equalization Program. Please note that we will not sponsor nor conduct, and a person need not respond to, a request for information unless we have a valid OMB Control Number.

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Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In keeping with this Executive Order and with the Bureau's Government-to-Government Consultation Policy, the rewriting of this interim rule was subject to a process involving the open discussion and joint deliberation of options with respect to potential issues or changes between the Bureau and all interested parties, in May 1998 and July 2000.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with it clarity? (3) Does the format of the rule (grouping and order of the sections, use of headings, paragraphing, etc.,) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, § 39.1 Purpose and scope). (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the interim rule? What else could we do to make the rule easier to understand? Send a copy of any comments that concern how we could make this interim rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240.

List of Subjects in 25 CFR Part 39

Indians—education, Schools, Elementary and secondary education programs, Grant programs—Indians, Government programs—education.

For the reasons given in the preamble, we are amending selected sections of part 39 of Title 25 of the Code of Federal Regulations as follows:

PART 39—INDIAN SCHOOL EQUALIZATION PROGRAM

1. The authority citation for part 39 continues to read as follows:

Authority: 25 U.S.C. 13; 25 U.S.C. 2008.

2. In § 39.11, remove paragraph (h)(2)(v) and remove paragraphs (i)(16) through (18).

3. Revise § 39.12 to read as follows:

§ 39.12 Instructional funding.

(a) Schools are to use the following sources to fund their special Education programs:

(1) 15 percent of the Indian Student Equalization Program (ISEP) funds generated by their ADM; and

(2) Funds under Part B of the Individuals with Disabilities Education Act (IDEA), if the 15 percent of ISEP funds is inadequate to fund the services needed by all eligible ISEP students with disabilities.

(b) All ISEP special education funds must be spent before the need for Part B of IDEA funds can be demonstrated. Part B funds are designed to provide for special education needs not funded by ISEP. By demonstrating that 15 percent of the ISEP base instructional funds were spent on special education, there is support for the need for Part B funds.

(c) To receive ISEP special education funding a student must be:

(1) At least 5 years old by December 31 to be counted as a kindergarten student;

(2) At least 6 years old by December 31 to be counted as a first grade student; and

(3) Under 22 years of age and not have received a high school diploma or its equivalent on the first day of full attendance during the ISEP student count week.

(d) A school may spend ISEP funds on school-wide programs to benefit all students (including those without disabilities) only if all of the following conditions are met:

(1) The school sets aside 15 percent of the basic instructional allotment to meet the needs of students with disabilities;

(2) The school can document that it has met all needs of students with disabilities and addressed all components of IDEA; and

(3) There are unspent funds after the conditions in paragraphs (d)(1) and (d)(2) of this section are met.

(e) Public Law 100–297 establishes a weighted unit for each ISEP-eligible full-time student that is gifted and talented. The weighted unit for gifted and talented is 2.0 weighted student units minus the basic instructional program weight by grade level. The weights for eligible gifted and talented students must be computed according to the following revised weighted student unit factors:

Grade level	Add-on weight
Kindergarten	0.85
Grades 1 to 3	0.62
Grades 4 to 6	0.85
Grades 7 to 8	0.62
Grades 9 to 12	0.50

(f) This paragraph applies to disabled students who are eligible for ISEP and were not counted during the ISEP Student Count Week. Schools must fund services for these students using the 15 percent of the ISEP funds based upon the school ADM for those students counted during the ISEP Student Count Week. *See* paragraph (a)(2) of this section for further guidance.

(g) To compute the funding for individual elementary and secondary children, schools must use the weighted student unit factors in paragraphs (g)(1) and (g)(2) of this section.

(1) The factors for basic programs are contained in the following table:

Basic programs	Base weights
Kindergarten	1.15
Grades 1 to 3	1.38
Grades 4 to 6	1.15
Grades 7 to 8	1.38
Grades 9 to 12	1.50

(2) For each student in the intense bilingual supplemental program, the school must add to the base weight an add-on weight of .20.

4. Revise § 39.13 to read as follows:

§ 39.13 Residential funding.

Basic funds for student residential purposes must be computed according to the following weighted student unit factors:

Basic programs	Add-on weights
Grades 1 to 3	1.40
Grades 4 to 8	1.25
Grades 9 to 12	1.25
Intensive Residential Guidance	.50

Dated: August 5, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–20497 Filed 8–12–02; 8:45 am]

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Part IV

Department of Housing and Urban Development

24 CFR Part 3284

Manufactured Housing Program Fee; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3284

[Docket No. FR–4665–F–02]

RIN 2502–AH62

Manufactured Housing Program Fee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: In accordance with recent statutory direction, the Department is publishing this rule to modify the amount of the fee that is collected from manufacturers of manufactured homes to fund HUD's responsibilities under the National Manufactured Housing Construction and Safety Standards Act of 1974. The rule also sets minimum payments to States participating in the program as State Administrative Agencies. This final rule follows publication of an April 15, 2002, proposed rule and takes into consideration public comments received on the proposed rule. This final rule adopts the proposed rule without substantive change.

DATES: *Effective Date:* September 12, 2002.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Manufactured Housing Program, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–6401 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On April 15, 2002, the Department published a proposed rule (67 FR 18398) to modify the amount of the fee to be collected from manufactured home manufacturers in accordance with section 620(d) (42 U.S.C. 5419(d)) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act). These fees are used to offset HUD's expenses for carrying out its responsibilities under the Act and have not been increased for over 12 years. Section 620(d) of the Act, added by the Manufactured Housing Improvement Act of 2000 (Pub. L. 106–569, 114 Stat. 2944, approved December 27, 2000) (the MHI Act), provides that the amount of any fee "may only be modified: (1) as specifically authorized in advance in an annual appropriations Act; and (2) pursuant to rulemaking in accordance with section 553 of title 5, United States Code." (Section 553 of title 5, United States Code contains the "informal" rulemaking requirements of the Administrative Procedure Act.) Section 620(e) of the Act (unless otherwise noted in this preamble, references to a section of the Act include the amendments made to that section by the MHI Act) further provides that amounts from any fee shall be available for expenditure only to the extent approved in advance in an annual appropriations Act.

The fee that HUD collects under the Act is levied upon the transportable sections of each new manufactured housing unit, and the total amount of the fees that HUD collects annually is dependent upon the number of transportable sections produced per year. The amendments made by the MHI Act in section 620(d) of the Act, which make the modification of the amount of the fee subject to implementation only pursuant to rulemaking in accordance with section 553 of title 5, United States Code, prompt this rulemaking.

II. This Final Rule

This rule establishes a new part 3284, under which the amount of the fee is codified. This final rule adopts the proposed rule with only minor changes.

The amount established in this rule is unchanged from the final rule and has been determined by dividing $13,566,000, the amount appropriated for Fiscal Year (FY) 2002, by 350,000, the number of manufactured housing transportable units projected to be produced in the FY. This calculation results in a revised fee of $39. The explanation of this calculation of the amount of the fee has been removed from the final rule as unnecessary.

The final rule also clarifies in § 3284.5 that the manufacturer that must pay the fee of $39 is the "manufacturer" as defined in § 3282.7.

In accordance with section 620(e)(3) of the Act, which was also added by the MHI Act, this rule also provides (as it did at the proposed rule stage) that HUD will continue to fund States that have approved State plans in amounts not less than the allocated amounts, based on the fee distribution system in effect on December 26, 2000. The yearly payment to a State would be set by this rule as not less than the amount paid to that State for the 12 months ending on December 26, 2000. As a conforming matter, this final rule adds a specific reference to States having approved plans to § 3284.1, Applicability.

III. Public Comments

HUD specifically invited comment on the projected number of transportable sections. None of the commenters suggested that a different production projection should be used in the final calculation of the amount of the fee. Therefore, the projected production level announced in the proposed rule has been used in the final calculation of the fee.

HUD received comments from 15 commenters on other aspects of the fee. These comments resulted in the issues set out in the numbered comments that follow, together with HUD's responses.

Comment 1: HUD's proposed fee modification was not specifically authorized in advance in an annual appropriations Act. Congress has not specifically authorized an increase in the amount of the label fee.

Response: Section 620(d) of the Act states that the "amount of any fee . . . may only be modified" when two conditions are met: (1) in advance of HUD's modification, Congress specifically authorizes in an appropriations Act that the amount of the fee be modified; and (2) the modification is made through notice-and-comment rulemaking. In HUD's FY 2002 Appropriations Act (Pub. L. 107–73, 115 Stat. 651, 669, approved November 26, 2001), Congress appropriated $13,566,000 for the manufactured housing program, and specifically directed that the fee established and collected pursuant to section 620 of the Act "shall be *modified* as necessary" to ensure that the general fund of the Treasury could be reimbursed by fee collections received up to the amount of the appropriation (emphasis added). Therefore, through this rule, HUD is modifying the amount of the fee as specifically authorized by Congress, *i.e.*, HUD is modifying the amount of the fee based on the amount necessary to collect $13,566,000. HUD, therefore, both has satisfied the requirement in section 620(d)(1) and is complying with the subsequent congressional enactment in the FY 2002 Appropriations Act.

Comment 2: Establishment of a specific level of appropriation by Congress does not satisfy the requirement that a modification of the amount of the fee be specifically authorized. Rather, specific advance authorization in an annual appropriations Act is required for both program expenditures (section 620(e)) and fee changes (section 620(d)).

Response: Congress authorized HUD, in its FY 2002 Appropriations Act, to spend up to $13,566,000 for the manufactured housing program for the fiscal year. In addition, as discussed in the response to Comment 1, Congress mandated that fees be modified as necessary to ensure that the general fund of the Treasury could be reimbursed for that amount. Therefore, Congress has authorized program expenditures, as contemplated in section 620(e), and has authorized modification of the amount of the fee, as contemplated in section 620(d).

Comment 3: If specific authorization of a level of program expenditures, as required under section 620(e), also authorizes a fee increase, the provision in section 620(d) is surplusage.

Response: As discussed above, HUD does not base its authority to issue this rule on the fact that Congress established a level of program expenditures, as referenced in section 620(e), but on the fact that Congress mandated in the FY 2002 Appropriations Act that fees be modified to ensure a level of collections that is defined by the amount of the appropriations for the program. This mandate comports with the requirements in section 620(d).

Comment 4: The opportunity for HUD to receive and consider evidence of projected production levels through a proposed rule are limited at best, so HUD should ask Congress for a specific fee modification. Congress can thoroughly test and evaluate the relevant information.

Response: If Congress is to analyze such information and make a determination of a specific fee amount, there is little justification for the other statutory requirement that the amount be subject to notice-and-comment rulemaking. Congress does not ordinarily involve itself with this level of management of such regulatory programs, and the mandate in the FY 2002 Appropriations Act that HUD modify fees as necessary to ensure the level of appropriations reflects authorization by Congress for HUD to pursue a fee modification within certain limits. The requirement in the Act for notice-and-comment rulemaking in accordance with the Administrative Procedure Act satisfies the interest of Congress in establishing appropriate safeguards for HUD's modification of the amount of the fee.

Comment 5: The formula used by HUD to determine the fee level is appropriate, but should only be applied after HUD follows the processes and procedures in the Act.

Response: As discussed previously, HUD believes that it has followed the required procedures. HUD agrees with the commenter that the formula used to establish the new level of the fee is appropriate, and notes that none of the commenters suggested changes to the production levels used by HUD to calculate the final fee.

Comment 6: One of the stated purposes of the Act is "to ensure that the public interest in, and need for, affordable manufactured housing is duly considered in all determinations relating to the Federal standards and their enforcement." This statement of purpose mandates a specific analysis of the impact of the increased fee on the affordability of manufactured housing. Further, the Conferees on the FY 2002 HUD Appropriations Act directed HUD "to identify the use of all program fees as part of the fiscal year 2003 HUD Budget Justification."

Response: HUD has always believed that it was required to consider the potential effect of its actions in the manufactured housing program on the cost of this affordable housing alternative. HUD has considered the potential effect on cost of raising the fee to $39. It is HUD's position that the $15 increase would have a negligible effect on the cost of manufactured housing. While the amount of the fee has been increased in comparison to the earlier fee, the $39 fee still represents a very small proportion of the overall cost of a manufactured home. However, cost is not the only important consideration. The first purpose stated in the Act is "to protect the quality, durability, safety, and affordability of manufactured homes." The Conferees also directed HUD "to place a priority on monitoring safety inspection of homes and the issuance of inspection labels when determining the funding requirements for this program during fiscal year 2002." H.R. Conf. Rep. No. 107–272, p. 112 (2001). HUD has done everything required to meet the various mandates established by Congress in the authorizing statute for the manufactured housing program, the appropriations process, and other relevant legislation, as well as various Executive Branch issuances.

Comment 7: Before the final rule, HUD should publish specific information with line-by-line details about its proposed program expenditures.

Response: HUD is not required to publish such information. Choosing the most appropriate management of a Federal program is a governmental function. While the public has the right and a responsibility to observe government operations, the public is represented in the management of individual programs through elected officials and the structure of the powers accorded to the branches of the Federal government. The Secretary has the statutory responsibility to administer an effective program that ensures the quality, durability, safety, and affordability of manufactured homes. In order to meet that responsibility efficiently, the Secretary has concomitant authority to manage the resources dedicated to the program, subject to the law and the direction of the President.

On the other hand, Congress has the authority and responsibility to establish appropriations levels for government operations, and HUD has provided, and will continue to provide, Congress with the information it needs to review HUD's operating budget for this program. Through this process, the public will be assured that their representatives have determined the level of Federal oversight that is appropriate in exchange for the benefit of Federal preemption of multiple State and local construction and safety requirements as applied to manufactured housing.

Comment 8: HUD has used program fees to engage in unauthorized activities.

Response: HUD strongly disagrees with this comment. In fact, although legal challenges to HUD's actions are rare, no court has ever found that HUD has acted outside of its authority or responsibility in this program. HUD has always been careful to ensure that its actions are legal and appropriate. In addition, HUD has tried to be responsive, in proportion to its program responsibilities, when consumers or industry participants present questions about the authority for, or effectiveness of, HUD's actions within the manufactured housing program.

Comment 9: It is unfair to manufacturers and consumers and a violation of the Act for HUD to increase the label fee by 62.5 percent. HUD should phase in the fee increase over several years to be more in line with inflation indices.

Response: As noted in the preamble of the proposed rule, the regulatory fee assessed for each section of manufactured housing to assure the public that such housing meets a minimum level of performance and safety has not been increased for over 12 years. In addition, Congress amended the statute in December 2000 to require the Secretary to exercise significant new responsibilities for nationwide programs for installation and dispute resolution and for a consensus rulemaking procedure, and to authorize the Secretary to use fee collections to fund a new program administrator. Although

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the amount of increase of the fee appears large as a percentage change, the percent-increase statistic mostly reflects a very small initial fee and a substantial increase in the program responsibilities.

Further, in recent years fee revenue has not covered program expenses, even though HUD has significantly reduced "monitoring safety inspections" and other oversight activities performed by HUD staff with the assistance of HUD contractors. As discussed in the response to Comment #6, the Conferees on HUD's FY 2002 Appropriations Act had directed HUD to place a priority on monitoring safety inspections of homes when determining the funding requirements for the program during FY 2002. In addition, certain regulatory functions that do not depend on the level of production must continue to be performed, such as monitoring Design Approval Primary Inspection Agencies (DAPIA's), Production Inspection Primary Inspection Agencies (IPIA's), and State Administrative Agencies (SAA's) and training. These functions are necessary to protect consumers and the public, and to maintain confidence in the industry's product. Nevertheless, as fee revenues have fallen corresponding to diminished production levels, the program has reduced monitoring inspections and has exhausted reserve operating funds that had been available in the program account. Therefore, the $15-per-section fee increase at this time is reasonable and necessary.

Comment 10: OMB has determined that the rule is a "significant regulatory action." As such, the proposed rule carries a significant risk of harming small manufacturing businesses, especially at a time when production levels are down.

Response: The OMB designation is dictated by Executive Order 12866 and does not necessarily establish a risk of harm. Most rules that receive this designation are deemed significant because they either have an annual economic effect of at least $100 million, or adversely affect in a material way a sector of the economy or public health or safety. The proposed rule noted that OMB did not determine that the proposal was economically significant. Rather, the designation resulted from another criterion: it "raise(s) novel legal or policy issues arising out of legal mandates.* * *" The comments, as presented and responded to in this preamble, reflect such "novel" issues, and validate the OMB designation of the rule as a significant regulatory action. As noted in the response to Comment 6, HUD has undertaken all of the required analyses and met all of its responsibilities in issuing this rule.

Comment 11: The State's cost to carry out the required functions of an SAA is much higher than the funding provided by HUD, and will increase as the State takes on additional responsibilities related to retailer alterations and inspections and installation. Proposed § 3284.10 should be modified to guarantee a State payment of at least $50,000.

Response: The rule ensures that HUD's payments to the States will comply with the statutory minimum requirement. HUD appreciates that a higher payment may permit some States to participate more consistently in the manufactured housing program, and HUD would like to encourage such participation. In the past, HUD has considered whether establishment of a minimum payment such as $50,000 would be feasible, and in the future, such payments may be possible. This rule merely establishes a minimum payment to the States; it does not prevent HUD from taking action in the future to seek higher payments to States, if such payments are found to be feasible, and it does not affect the per-section payments to be made to the States under current regulations. Because the demands on the program funds are so great at this time, however, HUD has not proposed the change suggested by the commenter.

Comment 12: Based on HUD's stated intent in the final rule that established the current fee distribution system (56 FR 65183, December 16, 1991), proposed § 3284.10 should be modified to provide that 38 percent of each label fee be paid to the State in which a new manufactured home is sited, and 8 percent of each label fee be paid to the State in which a new home is produced. This would help the States to meet the costs associated with the new requirements for dispute resolution and installation programs.

Response: HUD believes that § 3284.10 in today's final rule is a reasonable interpretation of the intent of Congress, especially in light of the December 1991 rule cited by the commenter (56 FR 65183). In the December 1991 rule, HUD changed the method of payments to States from a formula focused solely on the State of siting to a formula based on both the States of production and siting. HUD expressly rejected utilization of a fixed percentage to define the payments to States, stating that "a more equitable method of distribution of funds to SAAs is one based on a fixed fee dollar amount." (56 FR 65184–5) HUD noted that utilization of a percentage formula could have the effect of requiring HUD to seek unnecessarily high fee increases in the future, in order to cover HUD's needs but maintain the percentages specified for distribution to the States. (*See* 56 FR 65184.)

However, HUD understands that the States may need funding beyond what is provided by HUD pursuant to new § 3284.10 and 24 CFR 3282.307(b) to implement optional new State programs for dispute resolution and installation. In the December 1991 rule, HUD also noted that States could assess their own fees to defray expenses in excess of funding received from HUD. (*See* 56 FR 65185) The law relating to this power of the States has not changed; nor has the requirement that a State participating as an SAA must provide satisfactory assurance that it will devote adequate funds to the administration and enforcement of the standards.

As discussed in the response to Comment 11, this rule merely establishes a minimum payment to the States that complies with the requirements of the Act and does not foreclose future actions regarding payments to the States. The provision is not intended to minimize the States' importance to the program, or to limit the amount of funding that could eventually be made available to the States from fee collections. HUD and the Consensus Committee can consider increasing the amounts available to the States for carrying out their approved State plans as part of future rulemaking.

Comment 13: HUD's FY 2002 appropriation request of $13,566,000 did not consider the States' costs to implement the Act. However, this amount was intended to cover HUD's costs for services that are no longer necessary because of lower production levels, and the difference could be used for additional funding to the States.

Response: In its budget request, HUD considered the moneys that would need to be paid to the States for activities conducted under approved State plans, which the Act authorizes to be offset from the fee. Congress did not appropriate the full amount initially requested by HUD for the manufactured housing program in FY 2002. Even with lower production levels, HUD does not expect to be able to perform all of its program activities at optimal levels during the fiscal year. As discussed in the response to Comment 9, certain of HUD's regulatory functions must continue to be performed, regardless of the level of production. Therefore, HUD's regulatory responsibilities are not reduced in direct correlation to reduced production levels. HUD does not have any reserves available to fund program activity, but if such reserves are available in the future, HUD agrees that increased funding for approved State activities should be given priority consideration.

IV. Findings and Certifications

Paperwork Reduction Act Statement

Although there are no information collection requirements in this rule, which establishes the fee to be collected from manufacturers of manufactured homes to fund HUD's responsibilities under the National Manufactured Housing Construction and Safety Standards Act of 1974, the collection of the fee is related to a form that has been reviewed and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The form has been assigned OMB control number 2502–0233. However, the form will be modified to reflect the cost data as modified by this rule, and a modification has been submitted to OMB with a request for approval. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the UMRA.

Environmental Impact

In accordance with 24 CFR 50.19(c)(6) of the HUD regulations, this rule sets forth fiscal requirements which do not constitute a development decision that affects the physical condition of specific project areas or building sites, and therefore is categorically excluded from the requirements of the National Environmental Policy Act and related Federal laws and authorities.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule will have a total economic impact this Federal Fiscal Year of no more than $13,566,000, the amount approved by Congress in HUD's FY 2002 Appropriations Act. Congress further requires HUD to collect this amount in fees from manufacturers of manufactured housing. The rule will implement this mandate by establishing a per unit fee on transportable sections of manufactured housing that is proportional in its impact, with a greater impact on larger manufacturers and a lesser impact on smaller manufacturers.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Rules Docket Clerk, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

List of Subjects in 24 CFR Part 3284

Consumer protection, Manufactured homes.

Accordingly, for the reasons discussed in this preamble, HUD adds 24 CFR part 3284, as follows:

PART 3284—MANUFACTURED HOUSING PROGRAM FEE

Sec.
3284.1 Applicability.
3284.5 Amount of fee.
3284.10 Payments to States.

Authority: 42 U.S.C. 3535(d), 5419 and 5424.

§ 3284.1 Applicability.

This part applies to manufacturers that are subject to the requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act), and to States having State plans approved in accordance with the Act. The amounts established under this part for any fee collected from manufacturers will be used, to the extent approved in advance in an annual appropriations Act, to offset the expenses incurred by HUD in connection with the manufactured housing program authorized by the Act.

§ 3284.5 Amount of fee.

Each manufacturer, as defined in § 3282.7 of this chapter, must pay a fee of $39 per transportable section of each manufactured housing unit that it manufactures under the requirements of part 3280 of this chapter.

§ 3284.10 Payments to States.

Each calendar year HUD will pay each State that, on December 27, 2000, had a State plan approved pursuant to subpart G of part 3282 of this chapter a total amount that is not less than the amount paid to that State for the 12 months ending at the close of business on December 26, 2000.

Dated: August 6, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

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Part V

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

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DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education.

ACTION: Request for comments on title III of the Assistive Technology Act and the need for rulemaking.

SUMMARY: The Assistant Secretary invites written comments on the Alternative Financing Mechanisms Program (AFP) under title III of the Assistive Technology Act (AT Act) of 1998, which is administered by the National Institute on Disability and Rehabilitation Research (NIDRR). We encourage individuals to comment on how well the purpose and objectives of title III are being met by the States and suggestions for improving the implementation of title III. In particular, we are soliciting written comments in order to determine what issues have arisen in the implementation of the AFP that could be addressed through rulemaking. We are particularly interested in comments related to the following:

(1) Selection criteria for the review of applications and the experience and expertise required of the reviewers;

(2) How words and terms used in title III such as "cash," "permanent and separate account," "community-based organization," "obligation period," "project period," "reporting period" should be interpreted within this authority;

(3) Data collection, reporting requirements and deadlines;

(4) The fiscal, administrative, and programmatic responsibilities of grantees and community-based organizations, and the scope and nature of fiscal control and administrative oversight required for a permanent AFP; and

(5) The ways in which title III may be used by employers to secure loans, guarantee loans, and purchase AT devices or services for employees with disabilities for whom the employer does not have an Americans with Disability Act (ADA) responsibility.

While we seek comments on any aspect of the implementation of Title III, the purpose of this solicitation is to aid us in considering where rulemaking may be necessary to clarify and enhance understanding of the existing statute in an effort to stimulate States' interest in the program and to increase the number of high quality applications. We cannot consider for rulemaking comments suggesting statutory changes.

DATES: We would like to receive your written comments on Title III on or before September 12, 2002.

ADDRESSES: Address all comments to Carol Cohen, U.S. Department of Education, 400 Maryland Avenue, SW., room 3420, SW., Washington, DC 20202–2645. Fax: (202) 205–8515. If you prefer to send your comments through the Internet, use the following address: *carol.cohen@ed.gov*.

During and after the comment period, you may inspect all public comments about these priorities in room 3420, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Comments

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Carol G. Cohen, Telephone: (202) 205–5666.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *carol.cohen@ed.gov*.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Background and Description of Title III of the Assistive Technology Act of 1998

The purpose of the AFP under title III is to maximize independence and participation in society by individuals with disabilities by assisting them in obtaining AT. The AFP pays a share of the cost of establishment or expansion, and administration of programs that offer individuals with disabilities, their families and authorized representatives funding alternatives to the traditional payment options of public assistance and self-financing for AT devices and services. Under the AFP, a grantee may implement one or more alternative financing mechanisms to allow individuals with disabilities and their family members, guardians, advocates, and others to purchase AT devices and services.

NIDRR funded six States under the AFP in FY 2000 and 14 States in FY 2001. In FY 2000, NIDRR funded one Technical Assistance project for a 24-month period to assist States as they prepare applications for AFP grants and to assist recipients of grants to develop and implement the new loan programs in their States. Loan programs enhance access to AT devices and services in a way that underscores independence and inclusion.

The New Freedom Initiative (NFI)

NIDRR is interested in suggestions for the implementation of Title III that will contribute to one or more of the following objectives that support the NFI. The NFI is designed to help individuals with disabilities by increasing access to assistive technologies, expanding educational opportunities, increasing the ability of individuals with disabilities to integrate into the workforce, and promoting increased access into daily community life.

Objectives that support the NFI are the following:

- Increasing access to assistive and universally designed technologies through alternative financing mechanisms.
- Expanding educational opportunities for individuals with disabilities through increased access to AT.
- Integrating individuals with disabilities into the workforce through increased availability of AT and purchasing opportunities.
- Expanding telecommuting; promoting innovative transportation solutions through the provision of an alternative loan program.
- Promoting full access to community life through the increased acquisition of AT.
- Promoting the successful implementation of the Olmstead Decision by virtue of increased access to AT.

Availability of Copies of the NFI

The NFI can be accessed at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html*.

Individuals who are unable to access the Internet may obtain copies of the NFI by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** Individuals with disabilities may obtain a copy of the NFI in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the person listed under **FOR FURTHER INFORMATION CONTACT.**

Recommended Format for Comments

We recommend that your written comments be no longer than two single-spaced pages. We recommend that your comments include the following information:

(1) A brief background statement on your relationship to or interest in the Title III program and description of the problem or issue that you are addressing.

(2) A description of the activities or guidance that could address the identified problem or issue.

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(Catalog of Federal Domestic Assistance Number 84.224C, Alternative Financing Program.)

Program Authority:
29 U.S.C. 3051–3056.

Dated: August 8, 2002.

Loretta Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

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107th Congress

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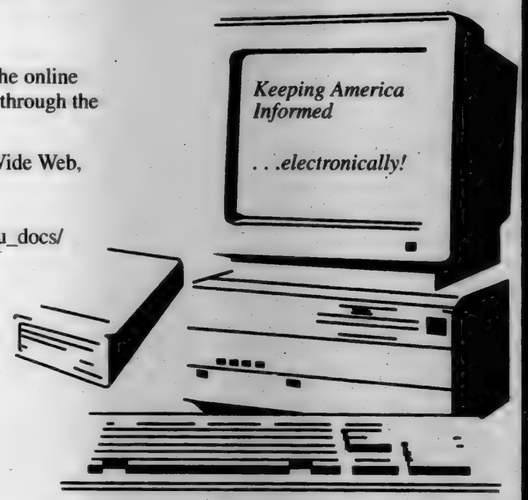
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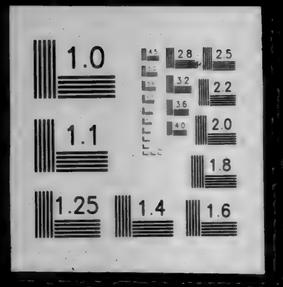
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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Sugarcane Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule, Common Crop Insurance Regulations; Sugarcane Crop Insurance Provisions that the Federal Crop Insurance Corporation published in the **Federal Register** on Friday, July 12, 2002 (67 FR 46093–46096).

EFFECTIVE DATE: August 14, 2002.

FOR FURTHER INFORMATION CONTACT: Arden Routh, Risk Management Specialist, Product Development Division, Federal Crop Insurance Córporation, United States Department of Agriculture, 6501 Beacon Drive, Kansas City, MO, 64133, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION: On page 46093, in the first column, under Summary, the year 2003 should read 2004, and on page 46095, in the second column, under Section 457.116, Sugarcane crop insurance provisions, introductory text, the year 2003 should read 2004. These changes are needed because the final rule was published after the contract change date for the 2003 crop year.

Signed in Washington DC, on August 7, 2002.

Ross J. Davidson, Jr.,

Administrator, Federal Crop Insurance Corporation.

[FR Doc. 02–20522 Filed 8–13–02; 8:45 am]
BILLING CODE 3410–08–P

DEPARTMENT OF ENERGY

10 CFR Part 852

RIN 1901–AA90

Guidelines for Physician Panel Determinations on Worker Requests for Assistance in Filing for State Workers' Compensation Benefits

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is today publishing a final rule providing procedures to implement Part D of the Energy Employees Occupational Illness Compensation Program Act of 2000 under which a DOE contractor employee or an employee's estate or survivor can seek assistance from the DOE Office of Worker Advocacy (Program Office) in filing a claim with the appropriate State workers' compensation system based on an illness or death that arose out of exposure to a toxic substance during the course of employment at a DOE facility. These procedures deal with how: (1) An individual may submit an application to the Program Office for review and assistance; (2) the Program Office determines whether to submit an application to a Physician Panel; (3) a Physician Panel determines whether the illness or death of a DOE contractor employee arose out of and in the course of employment by a DOE contractor and through exposure to a toxic substance at a DOE facility; (4) the Program Office processes a determination by a Physician Panel; and (5) appeals may be undertaken.

EFFECTIVE DATE: September 13, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Loretta Young, telephone: 202–586–2819; fax: 202–586–0956; e-mail: *loretta.young@eh.doe.gov;* address: Office of Advocacy, EH–8, U.S. Department of Energy, 1000 Independence Avenue, Washington, DC 20585.

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I. Introduction

Part A of the Energy Employees Occupational Illness Compensation Program Act of 2000 ("the Act") (42 U.S.C. 7384, *et seq.*) establishes a program for compensating covered DOE and DOE contractor employees, as well as covered employees of certain private companies that did work for DOE and its predecessor agencies, including work involved in nuclear weapons production (Part A program). Covered workers with certain illnesses, including chronic beryllium disease, radiation-induced cancers, and silicosis, may be eligible for specified Federal benefits under the Part A program. Executive Order 13179 (65 FR 77487, December 7, 2000) assigns the Department of Labor (DOL) primary responsibility for that program. Workers with illnesses eligible for compensation under the Part A program, as well as workers with illnesses not eligible for the Part A program, may also apply to their respective State workers' compensation systems if they wish to receive benefits not provided by the Federal compensation system, notably lost wages and benefits for permanent partial disability.

Part D of the Act (42 U.S.C. 7385) authorizes the Secretary of Energy to enter into an agreement with each State to provide assistance to a DOE contractor employee in filing a claim under that State's workers' compensation system for an illness caused by exposure to a toxic substance at a DOE facility ("State Agreement"). An applicant can submit an application to the Program Office at DOE for assistance in filing a claim with that State's workers' compensation system. If the application comes within the terms and conditions of the relevant State Agreement and contains reasonable evidence that the illness or death of a covered worker may be related to employment at a DOE facility, then DOE must submit the application to a Physician Panel established under the

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Act to determine the validity of the applicant's claim that the illness or death arose out of exposure to a toxic substance during the course of employment at a DOE facility. Section 3661(d) of Part D of the Act provides that a Physician Panel must make its determination "under guidelines established by the Secretary [of Energy], by regulation." If a Physician Panel makes a positive determination and the Program Office accepts it, then the Program Office must assist the applicant in filing a claim with the relevant State's workers' compensation system. In addition, DOE may not contest the applicant's workers' compensation claim or any award made to settle the claim to the extent such claim or award is based on the same health condition that was the subject of a positive determination by a Physician Panel. And, to the extent permitted by law, DOE may direct a DOE contractor not to contest such a claim or award. Furthermore, if the DOE contractor employer contests the claim or award, the costs of contesting the claim or award are not allowable costs under a DOE contract.

Part D operates to ensure that DOE will assist, and not hinder, the processing of an applicant's claim under a State workers' compensation system if the claim is based on the same health condition that was the subject of a positive determination by a Physician Panel. DOE will not contest and DOE will direct its contractors not to contest such a claim. Part D, however, does not federalize State workers' compensation standards, or affect the normal operation of State workers' compensation systems other than the limits Part D places on the extent to which DOE and DOE contractors can contest certain claims. Part D does not expand or contract the scope of any State workers' compensation system, and does not change the rights, obligations, conditions, and compensation amounts for a claimant under any such system. Thus, significant variations will continue to exist among State workers' compensation systems with respect to matters such as benefit levels, length of coverage, and the types and computation of medical costs, lost wages and disabilities eligible for compensation. Moreover, neither Part D nor DOE's rules implementing Part D will make a worker eligible for compensation under a State workers' compensation system if the worker is not otherwise eligible. However, use contract administration to encourage DOE contractors to pay workers' compensation claims against which they might have technical defenses not going to the question of whether a contractor employee's illness arose out of employment at DOE. DOE will seek to carry out this statutory mandate faithfully.

DOE published a notice of proposed rulemaking (NOPR) under Part D on September 7, 2001, 66 FR 46742. DOE received numerous comments on the NOPR during the comment period, and continued to receive comments after the close of the comment period from various Members of Congress and their staffs, as well as other commenters.

II. Discussion of Rule

A. What Is The Purpose of This Rule?

The rule establishes procedures for implementing Part D of the Act. Section 852.1(a) of the final rule provides that these procedures address how: (1) An individual may obtain and submit an application to the Program Office for review and assistance; (2) the Program Office determines whether to submit an application to a Physician Panel; (3) a Physician Panel determines whether the illness or death of a DOE contractor employee arose out of and in the course of employment by a DOE contractor and through exposure to a toxic substance at a DOE facility; (4) the Program Office processes a determination by a Physician Panel; and (5) appeals may be undertaken.

B. What Is the Scope of This Rule?

Section 852.1(b) makes clear that the procedures only cover applications that meet three criteria. First, the application must be filed by or on behalf of a DOE contractor employee, or a deceased employee's estate or survivor. Second, the application must be based on the illness or death of DOE contractor employee that may have been caused by exposure to a toxic substance. Third, the application must be based on an illness or death that may have been related to employment at a DOE facility.

Consistent with the statutory emphasis on State Agreements as a precondition for action under Part D of the Act, section 852.1(c) provides that all DOE actions under the Part D program must be pursuant to a relevant State Agreement and consistent with its terms and conditions.

C. What Definitions Are Used in This Rule?

The rule contains definitions of "Act", "Applicant", "DOE", "DOE contractor employee", "DOE facility", "Physician Panel", "Program Office", "State Agreement", and "Toxic Substance".

D. What Is the Act?

The Act is the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384, *et seq.*)

E. Who Is an Applicant?

An applicant is an individual seeking assistance from the Program Office in filing a claim with the relevant State workers' compensation system, including but not limited to a living DOE contractor employee, the estate of a deceased DOE contractor employee, or any survivor of a deceased DOE contractor employee who is eligible to apply for a death benefit or a survivor's benefit under the State workers' compensation system for which the applicant is seeking assistance in filing a claim.

Proposed section 852.2 had defined an applicant as a DOE contractor employee or the employee's estate seeking assistance from the Program Office in filing a claim with the relevant State workers' compensation system. In the final rule, the definition has been extended to survivors because State workers' compensation systems generally provide income benefits to specific survivors, notably spouses and dependent children of deceased workers. The final rule permits such individuals to apply to DOE for assistance in filing for State workers' compensation benefits, based upon the illness or death of the deceased DOE contractor employee.

F. Who Is a DOE Contractor Employee?

Section 852.2 defines a DOE contractor employee to be an individual who is or was in residence at a DOE facility as a researcher for one or more periods aggregating at least 24 months, or an individual who is or was employed at a DOE facility by either an entity that contracted with DOE to provide management and operating, management and integration, or environmental remediation at the facility, or a contractor or subcontractor that provided services, including construction and maintenance, at the facility. This definition repeats the language used to define a DOE contractor employee in section 3621(11) of the Act and is the same as the definition in the NOPR that referenced the definition found in section 3621(11) of the Act. DOE believes incorporating the actual statutory language into the rule will make the rule more understandable and easier to use.

The term "DOE contractor employee" does not include all employees eligible for the Part A program. It does not include atomic weapons or beryllium vendor employees who were not employed by a DOE contractor at a DOE facility. In addition, it does not include Federal employees.

A commenter stated that the definition of a DOE contractor employee needs to include subcontractor employees. DOE agrees that subcontractor employees are covered by Part D of the Act, but no change in the rule is necessary to confirm this coverage. The definition of a DOE contractor employee clearly includes an individual who is or was employed at a DOE facility by a subcontractor that provided services at that facility.

G. What Is a DOE Facility?

As with the definition of DOE contractor employee, section 852.2 of this final rule defines "DOE facility" by repeating the definition found in section 3621(12) of the Act, rather than merely cross-referencing the statutory definition as the proposed rule did. This is a nonsubstantive change to the proposed rule, and is made only for the purposes of clarity in the text of the final rule. "DOE facility" thus is defined as any building, structure, or premise, including the grounds upon which such building, structure, or premise is located in which operations are, or have been, conducted by, or on behalf of, DOE and with regard to which DOE has or had a proprietary interest; or entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services. Further, this definition specifically excludes facilities covered by Executive Order No. 12344, dated February 1, 1982 (42 U.S.C. 7158 note), pertaining to the Naval Nuclear Propulsion Program. DOE has published a list of facilities it considers to be DOE facilities for purposes of the Act. (66 FR 4003, January 17, 2001; revised 66 FR 31218, June 11, 2001).

H. What Are Physician Panels?

Physician Panels are appointed by the Secretary of Health and Human Services (HHS) in response to requests by DOE pursuant to Part D of the Act. Physician Panels provide DOE with impartial and independent determinations as to whether the illness or death of a DOE contractor employee arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility. Physician Panels may be asked to review new applications that have not undergone prior Physician Panel review, or to reexamine applications that have already undergone Physician Panel review.

I. What Is the Program Office?

The Program Office is the DOE Office of Worker Advocacy or any other DOE office subsequently designated by the Secretary of Energy.

J. What Is a State Agreement?

Section 852.2 defines "State Agreement" as an agreement negotiated between DOE and a State that sets forth the terms and conditions for dealing with an application for assistance under Part D of the Act in filing a claim with the State's workers' compensation system. The existence of a State Agreement with a particular State is necessary before the Program Office can refer to a Physician Panel a claim by an applicant who will file his/her worker's compensation claim in that State. Part D is clear that any action by DOE must be in accordance with the terms and conditions of the relevant State agreement.

K. What Is a Toxic Substance?

Section 852.2 defines "toxic substance" as "any material that has the potential to cause illness or death because of its radioactive, chemical, or biological nature." This definition is the same as that proposed in the NOPR. DOE believes that this definition is consistent with the intent of Part D of the Act and will permit DOE to assist claimants with claims based on illnesses or deaths that arose from exposure to toxic substances to the extent such claims are recognized by a State workers' compensation system.

There were a number of comments on the NOPR definition of "toxic substance." Many commenters supported the NOPR definition, though others suggested modifications to the definition. One commenter suggested that noise should be included as a toxic substance. DOE understands that noise can cause harm to workers in certain situations. However, the dictionary defines "toxic" as "of, relating to, or caused by a poison or toxin." DOE does not believe that noise operates to poison people because it does not injure by chemical action. Hence, it does not fit comfortably within the ordinary meaning of "toxic substance." Neither the text of Part D nor its legislative history suggests otherwise.

Another commenter suggested that only chemicals be considered toxic substances for the purpose of the rule. However, radioactive or biologically harmful substances are commonly described as being "toxic," and these substances fit comfortably within the ordinary meaning of "toxic substance." Given the content of the legislation, DOE does not believe it would be consistent with the general thrust of the Act to limit "toxic substances" to chemicals and to exclude other substances, or to define the term solely by reference to the chemical properties of a substance and to ignore radioactive or biological properties.

L. How Does an Individual Obtain and Submit an Application for Review and Assistance?

Section 852.3 describes how an individual obtains and submits an application for review and assistance. An application can be obtained in person from the Program Office, from any Resource Center, and from any DOE-sponsored Former Worker Program project. A Resource Center is a publicly accessible office administered jointly by DOE and DOL for the purpose of assisting an individual in applying for assistance or benefits under the programs established under the Act. There are currently ten Resource Centers located throughout the United States. There are presently approximately one dozen Former Worker Program projects throughout the United States. These pilot projects currently offer screening examinations for the detection of occupational illnesses for individuals formerly employed at some DOE facilities. The Program Office's current mailing address, phone number and web site, at time of publication of this final rule are included in this section. Any future changes in this contact information will be published in the **Federal Register** and noted on the Program Office's web site.

A commenter suggested that applications should also be obtainable in person from any DOE Operations or Area Offices, or from an employer who is currently a DOE contractor. Other commenters requested that section 852.3 include the Program Office's mailing address and web site. DOE finds that it would be logistically difficult for the Program Office to assure that complete application packages would be available at all times from all of the many DOE contractor facilities and DOE Operations and Area Offices. DOE believes that the nationwide network of Resource Centers, coupled with the availability of applications through mail or telephone requests to the Program Office, or in a printable format, from the Program Office's web site, provide adequate accessibility to application materials. The program has and will continue to be publicized so that potential applicants are aware of the

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program and how to apply. In the final rule, section 852.3 has been revised to include the Program Office's current phone number and mailing address for requesting an application, as well as the web site from which application forms can be printed.

Section 852.3 also describes how an application is submitted. An application can be submitted in person to the Program Office, to any Resource Center, or to any DOE-sponsored Former Worker Program, where staff will be available to answer questions and assist the individual in filling out the application. An application can also be submitted by mail to the Program Office.

Section 852.4 describes the information and materials that the individual must submit as a part of the application for Physician Panel review, additional discretionary information and materials that the applicant may choose to submit, and the essential information that must be included in records released by a third party or submitted by the applicant in support of an application.

Section 852.4 specifies that the individual must complete and sign any application forms required by the Program Office. The application forms request basic information about the applicant and the worker upon whose illness or death the application is based.

In order to assure that the Program Office has reasonable evidence to determine whether an individual meets the eligibility criteria for Physician Panel review, and that the Physician Panel has sufficient information to make a causation determination on an application, section 852.4 requires the applicant to provide:

(a) the name and address of any licensed physician who is the source of a diagnosis based upon documented medical information that the employee has or had an illness and that the illness may have been related to exposure to a toxic substance while the employee was employed at a DOE facility and, to the extent practicable, a copy of the diagnosis and a summary of the information upon which the diagnosis is based; and

(b) a signed medical release, authorizing non-DOE sources of medical information to provide the Program Office with any diagnosis, medical opinion and medical records documenting the diagnosis or opinion relevant to whether the employee has or had an illness and whether the illness arose from exposure to a toxic substance while the employee was employed at a DOE facility.

The requirement that the applicant submit the information identified in section 852.4 is intended to satisfy the statutory provision that an applicant must supply the Program Office with reasonable evidence that the statutory threshold is met for referral to a Physician Panel. Among other things, and even though an applicant is not required to supply a physician's diagnosis as part of an application, applicants who wish to rely on such a diagnosis to support their applications should identify the diagnosing physician and submit a copy of the diagnosis. DOE encourages the submission of diagnoses where possible because they will enable the Program Office and Physician Panels to do their work more quickly, efficiently and reliably.

Part D neither directs DOE to provide nor bars DOE from providing assistance to an applicant in obtaining a medical diagnosis or developing other medical evidence to support the applicant's application before a decision is made whether to refer it to a Physician Panel. However, and while Part D makes clear that the applicant bears primary responsibility for submitting sufficient information to support his/her application and meet the requirements of section 852.6 of the final rule, DOE will assist applicants as it is able. Specifically, DOE may be able to provide certain types of information as discussed below in connection with section 852.6.

Section 852.4 of the final rule also permits the applicant to submit to the Program Office any other information or materials providing evidence that the employee has or had an illness that arose from exposure to a toxic substance during the course of employment at a DOE facility.

The applicant must sign an affidavit attesting to the authenticity and completeness of any information or materials submitted to the Program Office, or provide the Program Office with other evidence of authenticity of submitted materials, such as certification of submitted copies of originals.

To the extent practicable and appropriate, the records submitted by the worker or released by a third party must also include an occupational history obtained by a physician, an occupational health professional, or a DOE-sponsored Former Worker Program. DOE does not intend that a worker should incur financial or other hardship in having such a history taken, but instead requests that any such occupational history already in a worker's medical records be submitted to the Program Office by the applicant. If the worker's records do not already include such a history, then DOE requests that the worker have such a history obtained and have this history released to the Program Office, if the worker can readily have such a history obtained from a Former Worker Program or other source without incurring undue hardship. If such an occupational history is not reasonably available by these means, and is deemed by the Program Office to be needed for the fair adjudication of the claim, then the Program Office must assist the applicant in obtaining this history, if it can be obtained from the worker upon whom the application is based.

In section 852.4(d) of the NOPR, there was a provision for submission of an "employment history" as a part of the application. In the final rule, the requirement for submission of an "employment history" appears in section 852.4(a)(4), and the term "employment history" is changed to "occupational history" because the latter is in more general usage in the occupational health field. The other changes in this section were made to assure that an adequate occupational history is available for Physician Panel review.

Omitted from the final rule is section 852.4(c) of the NOPR which would have required an applicant to sign a release of information permitting the Program Office to obtain any records under the control of DOE and relevant to the application. Under the Privacy Act of 1974, as it pertains to DOE records system "DOE–10 Worker Advocacy Records" (66 FR 27307), such a release is not required for DOE to obtain records controlled by DOE for legitimate purposes related to this program.

M. What Information May an Employer Submit in Response to an Application Submitted to a Physician Panel?

New section 852.5 requires the Program Office to notify an employer when the Program Office has determined that an application by or on behalf of a current or former employee of that DOE contractor meets the requirements of section 852.4. After receiving this notification, the employer has 15 working days to provide the Program Office with any information deemed by the employer to be relevant to the application. The employer must sign an affidavit attesting to the authenticity and completeness of any information or materials submitted to the Program Office for this purpose, or provide the Program Office with other evidence of authenticity of submitted materials, such as certification of submitted copies of originals. DOE will provide the Physician Panel with materials submitted by an employer for use in making its determination.

Two commenters expressed the opinion that the contractor has the right to be notified that a claim has been filed, and be given the opportunity to provide information relevant to the application, including information that might rebut the claim. Others noted that the employer may be the only source of certain relevant information, including information relating to the issue of causation, and noted that, under the proposed rule, the employer would not be able to present evidence to a Physician Panel or to present evidence to contest a determination by a Physician Panel in a State workers' compensation proceeding. Both commenters felt that the employer should be afforded the opportunity to provide the Program Office with evidence relevant to the application. DOE agrees with these commenters and has added this new section 852.5 to provide employers with notice and the opportunity to submit relevant information before the Program Office makes a determination whether to submit an application to a Physician Panel.

N. How Does the Program Office Decide Which Applications To Submit to a Physician Panel?

As proposed in the NOPR, section 852.6 (proposed as section 852.5) would have required DOE to apply eligibility criteria contained in the relevant State workers' compensation statutes and used by the relevant State in determining the validity of a workers' compensation claim. The criteria would have been specified in the State Agreement with the State in which the claim would be filed, as specified in proposed section 852.6. In the NOPR, DOE solicited comments on whether these State criteria should be applied by the Program Office, or alternatively, by State officials on a reimbursable basis. DOE also requested comments as to whether the use of a screening mechanism is consistent with the statutory framework and whether the use of applicable State criteria or uniform Federal criteria better achieves the statutory objectives.

Commenters generally opposed the application of State specific criteria during the screening of applications and urged that the Program Office submit to the Physician Panel those applications that meet the minimum statutory criteria identified in the Act. Commenters also expressed the concern that application of State specific criteria at this stage would erect barriers to claims that should be presented to the Physician Panel. Still other commenters urged the establishment of a uniform Federal standard for eligibility and causality.

Some States commented that they would not be willing to screen applications on a reimbursable basis. Several States also questioned whether DOE would be able to screen applications on the basis of whether an application presented a compensable claim under a State workers compensation system.

After considering the comments, DOE has decided that the eligibility criteria for referral of a claim to a Physician Panel should be based on the criteria specifically set forth in the Act, and should focus on whether the applicant provides reasonable evidence of an illness or death that may have been caused by exposure to a toxic substance during the course of employment at a DOE facility. Thus, section 852.6(a)(1) and section 852.6(a)(3) of the final rule track the language in Part D. Section 852.6(a)(2) further requires that an applicant submit reasonable evidence that the employee's illness or death "may have been caused by exposure to a toxic substance." While this requirement does not appear in section 7385o(b)(2) of the statute, it reflects part of the determination that Part D requires a Physicians Panel to make if the panel is to render a determination in an applicant's favor. DOE believes that it is only logical for the applicant to be required to submit, and for the Program Office only to refer to Physician Panels applications in which the applicant has submitted, reasonable evidence in support of the determination the Physician Panel is being asked to make.

Consistent with the general tenor of the comments, today's final regulations provide that applications which satisfy these minimum criteria should be submitted to a Physician Panel for review. It is the role of the Physician Panel to determine if the applicant can satisfy the medical criteria for causation specified in these final regulations. Non-medical criteria, such as statutes of limitations, should not be used by the Program Office to screen applications, or by the Physician Panels to make medical causation determinations.

DOE is aware that by excluding non-medical criteria from the screening process, it may submit to a Physician Panel an application by an applicant whose State workers' compensation claim might be barred by non-medical criteria (such as the applicable statute of limitations). A Physician Panel could in turn make a causation determination in favor of an applicant, and the Program Office could accept such a determination even though there might be various medical or non-medical impediments to the applicant's State workers' compensation claim as will be discussed below. Part D is designed to remove obstacles to recovery of this type when it can do so through contract administration tools. These results do not impose a Federal standard on a State workers' compensation system. States will continue to have the ability to administer their workers' compensation systems in accordance with applicable State law. DOE's action merely would constitute a decision by DOE not to raise defenses to a workers' compensation claim by an applicant who has received a favorable Physician Panel determination.

Section 852.6 identifies the criteria the Program Office uses to determine whether to submit an application to a Physician Panel. An application must contain reasonable evidence allowing the Program Office to make an initial determination that the following three conditions are met. First, the application was filed by or on behalf of a DOE contractor employee or the employee's estate or survivor. Second, the illness or death of the DOE contractor employee may have been caused by exposure to a toxic substance. Third, the illness or death may have been related to employment at a DOE facility. The Program Office must refer to a Physician Panel any application that provides reasonable evidence meeting each of these criteria. Applicants with a medical diagnosis to support their applications should submit that diagnosis and supporting medical documentation because such information likely will constitute the strongest evidence in support of an applicant's causation argument. Applicants who do not submit a diagnosis by a licensed physician will have a more difficult time meeting the section 852.6 standard. However, the regulations do not require that a medical diagnosis be submitted before an application meets the applicable standard, and as section 852.4 makes clear, applicants are free to submit whatever information they have that they believe supports their application.

O. What Provisions Does a State Agreement Contain?

Proposed section 852.6 in the NOPR identified three elements to be included in a State Agreement: a provision that the State would identify the applicable criteria used to determine the validity of a workers' compensation claim under State workers' compensation law and describe how these criteria are applied in a State workers' compensation

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proceeding; a provision that only those applications that could satisfy the identified applicable criteria would be submitted to a Physician Panel; and a provision that the Program Office would provide assistance only to those applicants that satisfy the applicable criteria.

DOE intends the State Agreement to be the understanding between DOE and a State as to the terms and conditions for dealing with an application for DOE assistance in filing a workers' compensation claim. State Agreements are not intended to alter State criteria.

As noted in the discussion of section 852.6, a number of commenters objected to the concept of the Program Office using State criteria to screen applicants for assistance prior to submission of an application to a Physician Panel. As a result, that section has been revised to eliminate consideration of State criteria at that point in the screening process. Similarly, several commenters objected to inclusion in the State Agreements of State criteria for determining causation and other medical eligibility issues. Some commenters stated that State Agreements should contain Federal standards to be applied in determining eligibility and causality. As will be discussed below, DOE believes that it is consistent with the statutory requirement and structure of the program under Part D for the Physician Panels to use a uniform federal standard for determining causation rather than the specific causation requirements of the workers' compensation system for the State in which an applicant will file his/her claim.

DOE also solicited comments as to what other provisions should be included in State Agreements. Commenters argued that the State Agreements should include a provision for reimbursement or indemnification to contractors or insurance carriers for claims accepted under Part D. DOE has determined that such provisions should not be placed in the State Agreements. Rather, section 852.19 of the final rule provides for reimbursement of contractors for additional workers' compensation costs incurred as a result of workers' compensation awards on claims based on the same health condition that was the subject of a positive Physician Panel determination. However, the Act does not authorize DOE to reimburse or indemnify insurers; nor does it authorize the appropriation of funds to do so. Therefore, neither the final regulations nor the State Agreements provide for reimbursement or indemnification of insurers.

Commenters also expressed concern for the precedential effect of a Physician Panel finding of medical causation. A positive finding by a Physician Panel is not binding on a State worker's compensation system or any person other than DOE and, if so directed by DOE, a DOE contractor. The effect of a positive Physician Panel determination is to obligate DOE to assist the applicant in the State worker's compensation proceeding. It does not prevent anyone other than DOE or a DOE contractor so directed by DOE from contesting causation or any other issue.

One commenter observed that Part D of the Act is permissive, not required, and that the Secretary has the option to decide not to negotiate State Agreements with States. While the commenter is correct that the program under Part D is discretionary and dependent on the negotiation of State Agreements, DOE believes Congress did not enact Part D in the expectation that DOE would make it a dead letter by refraining from attempting to negotiate any State Agreements. DOE therefore has determined that it should seek to negotiate agreements with the States as anticipated by this Part. Of course, implementation of the program under this Part with respect to any particular State or state workers' compensation program will depend on the successful negotiation of a State Agreement between DOE and the relevant State.

One commenter expressed concern that there are jurisdictions without a State agency to enter into such an agreement. DOE finds that all jurisdictions have a workers' compensation administrative agency with which DOE believes it can work.

As revised, section 852.7 provides for four standard provisions in State Agreements. First, the State Agreement must include a provision that an application will be submitted to a Physician Panel only if it contains reasonable evidence, including appropriate medical documentation, that (1) the worker who is the subject of the application is or was a DOE contractor employee, (2) the worker has, had or died of an illness that may have been caused by exposure to a toxic substance, and (3) the exposure occurred during the course of employment at a DOE facility.

Second, a State Agreement must include a provision that requires a Physician Panel to apply the standard of causation set forth in section 852.8 of DOE's regulations when making determinations of medical causation.

Third, a State Agreement must include a statement that the Program Office provides assistance only to an applicant who receives a positive determination from a Physician Panel.

Fourth, a State Agreement must include a statement that a positive determination by a Physician Panel has no effect on the normal operation of a State workers' compensation system. However, as provided elsewhere in this rule, the determination will prevent DOE from contesting a State workers' compensation claim or award with regard to the health condition that was the subject of the Physician Panel determination. It also will result in DOE's direction to the relevant DOE contractor not to contest such claims or awards. State processes concerning issues such as benefit level determinations, disability determinations such as permanent partial disability (PPD), and apportionment, will proceed according to routine State workers' compensation system operation.

P. What Guidelines Does a Physician Panel Use To Determine Whether an Illness or Death Arose Out of and in the Course of Employment by a DOE Contractor and Exposure to a Toxic Substance at a DOE Facility?

Section 852.8 provides that a Physician Panel determines whether an illness or death arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility based whether it is at least as likely as not that exposure to a toxic substance at a DOE facility during the course of the worker's employment by a DOE contractor was a significant factor in aggravating, contributing to or causing the worker's illness or death.

In proposed section 852.7 of the NOPR, a common federal causation standard and burden of proof were specified, namely, that it is more likely than not that exposure to a toxic substance at a DOE facility during the course of employment by a DOE contractor caused the illness or death. DOE solicited and received a number of comments on the appropriate burden of proof and causation standard to be applied by the Physician Panels. Some commenters expressed support for an "as likely as not," or a "more likely than not" standard. Other commenters supported a standard of "any contributing factor" or "a substantial contributing factor." Still other commenters suggested a standard of "significant factor in aggravating, contributing to or causing illness, disability or death," and other commenters supported State-specific causation standards.

DOE has decided, for several reasons, that Physician Panels should not use standards of the individual States with regard to medical causality or burden of proof determinations, and that instead, the regulations should require Physician Panels to use the single uniform federal standard for burden of proof and medical causality set forth in section 852.8. First, while Part D certainly is susceptible of more than one interpretation on this point, DOE believes the best interpretation of the statutory text is that DOE should adopt a uniform federal standard. Nowhere does the statute indicate that Physician Panels should apply State standards for burden of proof or causation; indeed, 42 USC § 7385o(d)(3) speaks in terms that seem to call for a single federal standard (i.e., the panels shall determine "whether the illness or death that is the subject of the application arose out of and in the course of employment by the Department of Energy and exposure to a toxic substance at a Department of Energy facility").

Second, DOE believes it will better effectuate the purpose and policy of Part D for the Physician Panels to apply a uniform federal standard. In DOE's view, the primary purposes of Part D are for DOE to assist deserving applicants in applying for and obtaining State workers' compensation benefits, to ease the administrative burden on applicants when applying for State workers' compensation benefits, and to enable some applicants to gain benefits that they might not receive under normal operation of the State systems by requiring DOE and its contractors not to contest certain State workers' compensation claims, using contract administration tools to encourage outcomes of this type. These purposes can be better fulfilled through a uniform federal causation standard for the Physician Panels. If the Physician Panels were required to use State standards of causation and burden of proof, applicants potentially would be forced to endure the administrative burden at the Physician Panel stage that Part D in fact wishes to relieve applicants from bearing at the State worker compensation proceeding stage.

Third, DOE believes that application of a single federal standard by the Physician Panels will make administration of the Part D program much more equitable and efficient. A requirement that Physician Panels (as well as the Program Office in reviewing Physician Panel determinations) use State-specific causation and burden of proof standards would require that the panels and Program Office become intimately familiar with the laws of numerous different States, and likely would lead to inconsistencies in how State law is interpreted and applied by the States, the Program Office and the Physician Panels. Such inconsistencies could, in turn, lead to inequitable results and wasteful controversy and litigation. A single federal standard will be easier for the Program Office and the Physician Panels to administer and will allow DOE to treat equally similarly situated applicants in different States.

Fourth, DOE believes a uniform federal causation standard allows DOE to promote the purposes of Part D by setting the standard at a level that fairly interprets the statutory command while also attempting to assist the largest possible number of deserving applicants. The use of State-specific causation standards would prevent DOE from furthering the statutory purposes in this manner. Such a result would be particularly inequitable and would not be a sound policy choice or interpretation of Part D, simply because Part D quite clearly does not compel the Program Office or Physician Panels to use State-specific causation standards.

As to the federal standard to be adopted and promulgated in section 852.8, DOE has decided that a Physician Panel must render a causation determination in the applicant's favor if the panel determines that it is at least as likely as not that exposure to a toxic substance at a DOE facility during the course of employment by a DOE contractor was a significant factor in aggravating, contributing to or causing the illness or death of the worker at issue. DOE intends that, as used in this context, the word "significant" should have its normal dictionary definition and meaning—that is, "meaningful" and/or "important."

DOE believes that the standard set forth in section 852.8 fairly interprets the text of Part D. It also represents a policy decision by DOE to aggressively pursue the purposes of Part D by setting the causation standard at a level that is below the level of proof that applicants might be required to demonstrate to obtain workers' compensation benefits in some States.

DOE has decided to adopt the "significant factor" causation standard rather than the "more likely than not" standard proposed in the NOPR because the "more likely than not" standard is too high and could result in deserving applicants being denied the assistance Part D was intended to afford. On the other hand, DOE rejects extremely lenient standards (such as "any contributing factor") because such standards do not constitute a fair interpretation of the statutory language (*i.e.*, that the illness or death "arose out of and in the course of" employment at a DOE facility and exposure to a toxic substance).

DOE recognizes that the causation standard in section 852.8, and the causation standard applied by DOL for certain benefits determinations under other compensation programs established by the Act, are different. DOE further recognizes that this difference in causation standards may contribute to some applicants who file applications in both the DOE and DOL programs receiving inconsistent causation determinations from the two agencies. However, DOE determined that nothing in the Act required that the same causation standard be used for both the program administered by DOL and the Part D program administered by DOE. Indeed, the Act itself sets forth different causation standards for the different programs.

Furthermore, and as noted above, DOE intends to aggressively pursue the purposes of Part D. DOE believes as a policy matter that this objective can best be accomplished through DOE's adoption of the "significant factor" causation standard set forth in section 852.8 even thought it may differ from the standards that DOL is required by law to apply.

In addition, regardless what standard DOE adopts, it is extremely unlikely that all applicants would receive identical causation determinations from both the DOL and DOE programs. The statutory language for the two agencies' programs is different, the two programs focus on entirely different benefit mechanisms (i.e., DOE's program under Part D focuses on assisting applicants obtain State workers' compensation benefits while the program administered by DOL focuses on direct federal payments to applicants), the programs are administered by two different federal agencies, and the Act requires that independent Physician Panels make the causation determinations for the applications submitted to DOE under the Part D program. DOE believes that rather than adopting a causation standard set forth in another part of the Act in a vain attempt to assure consistency in outcomes between the DOE and DOL programs, it should adopt the "significant factor" causation standard set forth in section 852.8. This standard is similar to the causation tests applied by many State workers' compensation programs and is appropriate for all the other reasons explained above. In short, DOE believes that the standard it has adopted is appropriate and properly carries out the intent of Part D, and that DOE should

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not adopt a causation standard that attempts to mandate the same result for all applicants from both the DOE and DOL programs when perfect consistency in outcomes is extremely unlikely regardless of the causation standard DOE adopts.

Section 852.8 further specifies that Physician Panels should use the "at least as likely as not" burden of proof when determining whether exposure to a toxic substance at a DOE facility during the course of employment by a DOE contractor was a significant factor in aggravating, contributing to or causing the illness or death of the worker at issue. The NOPR stated that a panel would make its determination based on "whether there is sufficient information to support" the applicant's requested finding; that language implied that panels should use a preponderance of the evidence burden of proof. The final rule adopted by DOE is more favorable to applicants in that it requires that they meet only an "at least as likely as not" burden of proof.

The standard adopted today in section 852.8 is, DOE believes, very favorable to applicants while at the same time being consistent with the statutory language and good policy. DOE believes this standard will result in its being able to assist the largest number of deserving claimants consistent with the structure and statutory text of Part D.

Q. What Materials Must a Physician Panel Review Prior to Making a Determination?

Section 852.9 (proposed as section 852.8) stipulates that the Physician Panel must review all records relating to the application that are provided by the Program Office. Such records may include medical records, employment records, exposure records, an occupational history, workers' compensation records, pertinent medical literature or reports, and any other records or evidence pertaining to the applicant's request for assistance, including additional discretionary information submitted by the applicant or the employer. For a deceased worker, such records may include a Medical Examiner's or Coroner's report or a death certificate. For an applicant who has also submitted a claim to DOL under the Act, such records may include any available information submitted as a part of such a claim or developed by DOL or HHS in the course of processing such a claim, including estimates of an applicant's cumulative radiation dose and the calculated probability that the employee's illness or death was caused by that radiation dose.

Proposed section 852.8 had stated that each Physician Panel should review all such records prior to making a determination. A commenter expressed an opinion that a Physician Panel must be required to review all relevant information, both supportive and non-supportive, and render a determination based on all of the information. DOE agrees that a fair and accurate adjudication of a claim is predicated on a Physician Panel reviewing all available information presented to it, and has accordingly changed "should" to "must" in section 852.9.

Several commenters asked questions or made suggestions as to what role DOE should have in assisting the applicant in gathering information in support of an application, including a suggestion that an independent medical examination might help expedite the Physician Panel review by focusing on information relevant to determining compensability under State law. Commenters expressed the opinion that DOE should pay for the development of medical evidence in support of an application, and suggested that DOE should use the Former Worker Medical Surveillance Program to accelerate and enhance implementation of Part D.

Part D does not authorize DOE to create a new program of examination and testing for applicants, nor does it authorize appropriations for this purpose. DOE believes that the Program Office's role is to assist an applicant in obtaining and assembling existing information relevant to a claim, including employment, exposure and medical information under the control of DOE and its contractors, information provided by the applicant, and information from outside sources whose transmittal to DOE has been authorized by the applicant.

However, where it is able, DOE will assist applicants by providing to them and to the Physician Panel relevant information in DOE's control. DOE's Former Worker Medical Surveillance Program currently consists of pilot projects run by consortia of universities, unions and occupational health experts funded through cooperative agreements with DOE for the purpose of providing former DOE contractor employees with medical surveillance examinations directed at detecting potential work-related disorders. The Former Worker Medical Surveillance Program is distinct from the program authorized by Part D of the Act and administered by the Program Office. The Program Office intends to utilize information generated by the Former Worker Program projects in the following manner. First, the Program Office will utilize the projects' hazard surveys of DOE sites (know as "Phase I/Needs Assessments") as sources of occupational exposure information for use by the Physician Panels. Second, if an applicant has previously received a medical surveillance examination through a Former Worker Program project, the Program Office will ask the applicant to sign a release so that the Program Office can obtain the results of this examination.

A commenter stated that in assisting the applicants seeking compensation from their State's workers compensation systems, DOE should make use of state-of-the-art analytical techniques to determine amounts of radionuclide body burdens that the applicants may have. As stated above, DOE is not funding further medical examinations of applicants under this program. However, HHS will be conducting radiation dose reconstructions for those applicants who have submitted a claim for cancer to DOL under Part A of EEOICPA and whose claim is not for compensation under provisions governing compensation for members of the Special Exposure Cohort. These dose reconstructions will evaluate and make use of existing information from DOE and other sources, including claimants, relevant to estimating the radiation doses incurred by cancer claimants in the performance of duty for DOE and it contractors. HHS will report the methods and results of these dose reconstructions to claimants, DOL and DOE. DOE intends to provide copies of these reports to the Physician Panels for radiation-related claims. In these cases, the applicant may also want to provide the Physician Panel with the probability of causation determination established by DOL based on the NIOSH dose reconstruction.

R. How May a Physician Panel Obtain Additional Information or a Consultation That It Needs To Make a Determination?

A Physician Panel may, on occasion, need additional information or consultations to make its determination. For expediency, documentation of evidence, maintenance of confidentiality, and records control, section 852.10 (proposed as section 852.9) requires the Physician Panel to make all requests for additional information through the Program Office. The panel may request an interview with the applicant, if the panel believes that only the applicant can supply the necessary information. Based upon the experiences of similar physician panels, including the Expert Panel of the

Fernald II Workers' Settlement Fund,[1] it is anticipated that such a request will be unusual, but may be necessary in rare cases in order to obtain essential information. The panel can also request that the applicant provide additional medical information. The Physician Panel may request consultation with specialists in fields relevant to its deliberations, if needed, as provided for in section 3661(d)(4) of the Act, or refer to relevant medical and scientific literature. The Program Office will maintain a roster of available specialists for this purpose.

New section 852.10(c) was added in the final regulations in order to codify within the rule a requirement of section 3661(d)(4) of the Act. Section 3661(d)(4) requires that, at the request of a Physician Panel, DOE or a DOE contractor who employed the DOE contractor employee must provide additional information relevant to the panel's deliberations. Under new section 852.10(c), a Physician Panel may also request additional information under the control of DOE or its contractors. It is anticipated that these will be important sources of information in many cases.

One commenter expressed an opinion that a duty to produce the historical exposure records should be placed on the contractor, instead of placing it wholly on the Program Office. DOE notes that section 3661(d)(4) of the Act (42 U.S.C. 7385o(d)(4)) implicitly places this obligation on both DOE and on the DOE contractor. Section 852.10(c) permits a Physician Panel to request relevant information in control of DOE or its contractors. DOE intends that all relevant information should be provided to a Physician Panel whether in possession of DOE or its contractor, to the extent permitted by law.

A commenter stated that requiring applicants to interview before a Physician Panel may result in a financial burden and physical hardship on applicants and stated that alternative methods of obtaining information should be explored. This commenter asked who will pay for any travel associated with an applicant's interview, if a panel requests such an interview. This commenter also asked whether a specialist will be paid, when consultation with a specialist is required, and what the rate of pay for specialists will be.

DOE recognizes the hardships for the applicant associated with an interview, and anticipates that such an interview will only be required in those unusual instances when essential information is not available from any other source. When an interview with the applicant is required, the Program Office will strive to arrange such an interview at a time and place convenient to the applicant and consider alternatives (e.g., telephone interviews) to face to face meetings. As discussed previously, the applicant is responsible for developing the medical information upon which the applicant bases its claim, and therefore DOE is not responsible for paying for the development of new medical information. However, to the extent the Physician Panel requests a consultation with a specialist to discuss medical information already in its possession, DOE will pay the costs associated with this consultation.

S. How Is a Physician Panel To Carry Out Its Deliberations and Arrive at a Determination?

After each member of a Physician Panel reviews the information submitted to the panel, the panel members will discuss an application and arrive at a determination. Because it is anticipated that Physician Panels will be spread out geographically, section 852.11 (proposed as section 852.10) permits teleconferencing. This system has worked well for prior Physician Panels, such as the Expert Panel of the Fernald II Workers' Settlement Fund.[2]

In the NOPR, DOE proposed that the panel members be required to reach a "common" determination. The NOPR did not explain what might happen if such a common or unanimous determination could not be reached. Some commenters objected to the requirement for panel unanimity, apparently on the ground that this could result in a single panel member defeating the will of the majority to make a causation determination in an applicant's favor.

DOE has decided that a panel determination should require only a majority of the panel members approving that determination, and thus DOE had modified the text of section 852.11 accordingly. This approach will promote the purposes of the statute by enabling more deserving employees to receive favorable panel determinations. This approach also will promote efficient administration of the program by eliminating the problems that otherwise might arise with respect to a non-unanimous panel. Furthermore, allowing panel determinations to be based on a majority rather than a unanimous decision by the panel members better accommodates the inherent uncertainty of some medical and medical causation decisions, and ensures that applicants will receive a fair determination even in situations where, for whatever reason, the determination is not unanimous.

T. How Must a Physician Panel Issue Its Determination?

In order to ensure that a Physician Panel has made its determination based upon the relevant evidence and that it has provided the basis for its determination, section 852.12 (proposed as section 852.11) requires the Physician Panel to identify the materials it has reviewed in making its determination, and express the determination and its basis in a series of findings that logically links the evidence reviewed to the conclusions drawn.

DOE anticipates that some covered workers who have applied for benefits under the DOL program will also apply for assistance from the Program Office in filing a claim with a State workers' compensation system. However, filing a claim under the DOL program is not a requirement for the DOE program. In addition, and as explained above, some applicants who submit applications in both the DOE and DOL programs may receive different causation determinations from the two agencies. For example, under the DOL program, a member of a Special Exposure Cohort, as defined in section 3621(14) of the Act (42 U.S.C. 7384l(14)), who has a specified cancer could establish entitlement to benefits for a specified cancer without showing that the disease is the result of exposure to a toxic substance because the statute dispenses with that requirement for Special Exposure Cohort members in the DOL program. A Physician Panel, however, can make a positive determination only if sufficient evidence is provided to meet the standard as specified in section 852.8. As to non-Special Cohort members in the DOL program, factual findings made by DOL, including findings based on dose reconstructions performed by HHS regarding the likelihood that cancer was caused by occupational exposure to radiation, while relevant to a panel's assessment, are not binding on a Physician Panel. A

[1] The Fernald II Workers' Settlement Fund was established to settle a class action lawsuit by the employees of National Lead of Ohio (NLO), which operated the Feed Materials Production Center (Fernald) DOE facility from 1951 to 1985. A component of this settlement fund is an Expert Panel Review to determine the work relatedness of an illness claimed by an NLO employee as resulting from exposure to radioactive material or other toxins. The Expert Panel consists of three Occupational/Environmental Health physicians who have the option of interviewing a claimant, but rarely need such an interview to make a determination, relying in most cases on existing written records.

[2] Ibid.

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Physician Panel would be expected to explain the extent to which it based its determination on the findings of any agency in its report to the Program Office.

Proposed section 852.11(c)(4) in the NOPR required a Physician Panel, if explicitly requested by the Program Office, to provide the Program Office with a finding as to whether a specific criterion in a State Agreement has been satisfied. Three commenters asserted that Physician Panels should not be called upon to interpret State law. Another stated that State workers' compensation systems recognize and accept physicians' findings as to causality, and do not rely on physicians to make findings as to compensability.

DOE agrees that the role of the Physician Panel is to make a determination as to the relationship between a claimed illness and exposures to a toxic substance at a DOE facility. Accordingly, the Physician Panel will not be required to provide a specific interpretation of a non-medical provision of a State workers' compensation system. However, if a State Agreement provides for a Physician Panel to make a determination concerning a medical issue in addition to causation and specifies the medical criteria to be applied, then panels will make such determinations in appropriate cases. For example, a State Agreement could set forth the State criteria for determining the extent of disability or impairment and provide for the Physician Panels to make determinations on these medical issues. However, the panel determinations with respect to such issues will not affect whether a "positive" or "favorable" determination is rendered for an applicant with all its attendant consequences under this program. Whether a positive or favorable determination is rendered is to be based solely on the standard and criteria set forth in section 852.8.

U. When Must a Physician Panel Issue Its Determination?

Section 852.13 (proposed as section 852.12) requires a Physician Panel to submit its determination to the Program Office within 30 working days of receiving the application materials, unless granted an extension by the Program Office, which then sets the new deadline. New section 852.13(b) further stipulates that, when a Physician Panel requests additional information or a consultation necessary to the panel's deliberations, the deadline for panel determination is extended to 15 working days after receipt of the requested information or the consultant's recommendations.

A commenter stated that the rule should define the "applicant's material" and describe the Physician Panel's obligation if the "applicant's material" is deemed incomplete or otherwise inadequate for consideration.

Because section 852.4 allows some discretion on the part of the applicant and the employer as to what materials are submitted, and because there will be a wide variation in the type and amount of information available from other sources, it is not possible to define precisely what the application materials will consist of, beyond the materials that the applicant is required to submit, as outlined in section 852.4. In those instances where the Physician Panel deems the application materials to be insufficient, the Physician Panel's obligations are defined in section 852.10, which requires the Physician Panel to request any additional information needed. New section 852.13 further requires a Physician Panel to issue a determination in a timely fashion after receiving additional requested information or a consultation with a specialist.

V. What Precautions Must Each Physician Panel Member and Each Specialist Take in Order To Keep an Applicant's Personal and Medical Information Confidential?

Because records for review by the Physician Panels and by medical specialists consulted at the request of these panels contain confidential, personal, and medical information, section 852.14 (proposed as section 852.13) is included to provide safeguards that Physician Panels and specialists must follow to preserve the confidentiality of this information. Physician Panel members and specialists are required to comply with all provisions of the Privacy Act of 1974 applicable to worker advocacy records, including maintaining paper records in locked cabinets and desks. Release of information to a third party is also barred, unless such release is authorized by the applicant.

W. What Actions Must a Physician Panel Member Take if a Member of the Panel Has a Potential Conflict of Interest in Relation to a Specific Application Submitted to the Panel?

In order to ensure objectivity and fairness, section 852.15 (proposed as section 852.14) requires each panel member to report to the Program Office any real or perceived conflict of interest with regard to a particular application to the Program Office, and to cease reviewing the application pending instruction by the Program Office. The Program Office will then take appropriate actions to remedy the situation, which generally will mean referring the application to a different Physician Panel. At least two Physician Panels will be designated to review applications submitted by employees of each DOE facility.

A commenter suggested that the proposed section 852.14 did not go far enough in addressing potential conflicts of interest, and called for public disclosure of potential conflicts of interest. It is DOE's position that, in addition to the reporting requirements of section 852.15, adequate safeguards have been taken to avoid potential conflicts of interest because, among other things, the selection of Physician Panel members will be performed by HHS independently of DOE.

X. When May the Program Office Ask a Physician Panel To Reexamine an Application That Has Undergone Prior Physician Panel Review?

Section 852.16 (proposed as section 852.15) provides that the Program Office may refer a case for reexamination to the same panel or to a different panel, after the original panel has made a determination if: there is significant evidence contrary to the panel determination; the Program Office obtains new information the consideration of which would be reasonably likely to result in a different determination; the Program Office becomes aware of a real or potential conflict of interest on the part of a member of the original panel in relation to the application under review; or reexamination is necessary to ensure consistency among panels.

Several commenters felt that the Program Office's review powers were too broad in the NOPR. DOE agrees that a Physician Panel determination should be accorded deference and DOE generally anticipates accepting a Physician Panel determination in favor of an applicant. The statute does, however, specifically contemplate review and discretion by the Program Office in determining whether to accept such a determination, in that the statute specifies that the Program Office shall accept such a finding unless there is "significant evidence to the contrary." In the final rule, the discretion of the Program Office to ask a Physician Panel to reexamine an application has been delineated to balance these competing considerations.

Y. Must the Program Office Accept the Determination of a Physician Panel?

Unless a reexamination is requested pursuant to section 852.16, section 852.17 (proposed as section 852.16) requires the Program Office to accept a Physician Panel's determination, except where the Program Office determines there is significant evidence contrary to the panel determination. The Program Office must notify the applicant and the employer, in a timely fashion, of its acceptance or rejection of a Physician Panel determination.

Proposed section 852.16 required only the prompt notification of the applicant of a determination. In the final rule, notification is extended to the relevant DOE contractor employers because of the potential impact of the Program Office's determination on those parties.

Z. Is There an Appeals Process?

Section 852.18 (proposed as section 852.17) provides that an applicant may request DOE's Office of Hearings and Appeals (OHA) to review certain Program Office decisions. An applicant may appeal a decision by the Program Office not to submit an application to a Physician Panel, a negative determination by a Physician Panel that is accepted by the Program Office, and a final decision by the Program Office not to accept a Physician Panel determination in favor of an applicant. An applicant may not, however, appeal to OHA a Program Office decision to submit an application for reexamination pursuant to section 852.16.

An applicant must file a notice of appeal with OHA on or before 30 days from the date of a letter from the Program Office notifying the applicant of a decision appealable under this section. OHA will consider appeals in accordance with its procedures set forth in 10 CFR Part 1003. A decision by OHA constitutes DOE's final determination with respect to an application.

A commenter agreed that an applicant should have a right to appeal a determination not to submit the application to the Physician Panel, but expressed concern about the independence of OHA. OHA is an office within DOE. However, apart from being within the same agency, it is administratively and functionally independent of the Program Office. Although a decision by OHA constitutes DOE's final determination with respect to an application, it is not the final remedy for an applicant. Regardless of DOE's final determination on a claim, an applicant may still file a claim with the applicable State workers' compensation program.

AA. What Is the Effect of the Acceptance by the Program Office of a Determination by a Physician Panel in Favor of an Applicant?

Section 852.19 (proposed as section 852.18) sets forth the effect of acceptance by the Program Office of a determination by a Physician Panel in an applicant's favor. In the event the Program Office accepts such a determination by a Physician Panel, the Program Office must assist the applicant in filing a claim with the relevant State's workers' compensation system and cannot contest the claim or any award made regarding the health condition that was the subject of the Physician Panel determination in the applicant's favor.

There were many comments regarding proposed section 852.18. Commenters expressed concerns about what actions DOE will take in order to ensure that claims based upon positive Physician Panel determination will not be contested by its contractors. Section 852.19 requires the Program Office to advise the cognizant Secretarial Officer to recommend to the relevant Contracting Officer that, to the extent permitted by law, the DOE contractor be directed not to contest the claim or award. Furthermore, any cost of contesting the claim or award is not an allowable cost under a DOE contract.

All workers' compensation costs incurred as a result of an award on a claim based on the health condition that was the subject of a Physician Panel determination in favor of an applicant are allowable, reimbursable contract costs to the fullest extent permitted under a contract. This final provision of section 852.19 was added in final rulemaking in order to ensure that a DOE contractor who incurs additional workers' compensation award costs as a result of the rule is able to recover such costs from DOE.

Part D only provides that DOE may direct its contractors not to contest a determination by a Physician Panel. It neither affects nor authorizes DOE to give directives to persons who are not DOE contractors. Thus, it will not affect persons who have no privity of contract with DOE, such as insurers. Likewise, it will not affect persons who lease DOE facilities for commercial purposes. While leases may be considered contracts, they typically have no provisions that would permit DOE to direct a lessee not to contest a workers' compensation claim or that would require DOE to reimburse the lessee for a workers' compensation claim. In addition, DOE may direct its contractors not to contest a determination by a Physician Panel only to the extent permitted by law. Thus, DOE cannot direct a contractor to take action that would violate the contractor's obligations under a State workers' compensation system or other legal obligations such as a contractual obligation to an insurer.

Part D further provides that, in the case of a Physician Panel determination in an applicant's favor that has been accepted by the Program Office, DOE must assist an applicant in filing a claim under the appropriate State workers' compensation system. DOE notes that there is nothing in Part D of the Act requiring an applicant to file a claim after the Program Office accepts a positive Physician Panel determination. The applicant is responsible for evaluating the merits of filing a claim. If an applicant elects to seek relief under a State workers' compensation Program, Part D places an obligation upon DOE to assist the applicant in filing a claim. This assistance will include the provision of the determination and other information developed by a Physician Panel. It will not include representation or other such assistance after the filing of a claim with a State workers' compensation system.

A commenter stated that even when causation has been established, there is still a disability determination that needs to be made under the State workers' compensation system. DOE believes that all such determinations should be made in the normal course of the operation of State workers' compensation statutes and administrative procedures. A commenter was concerned that costs associated with a disability determination would not be allowable. DOE has concluded that the disallowance of costs associated with contesting a claim that has been the subject of a Physician Panel determination in an applicant's favor pertains to all costs of supporting arguments or activities with the intent or effect of delaying or defeating a claimant's ability to recover State workers' compensation benefits for the health condition for which the applicant has received a final favorable Physician Panel determination. This obviously applies not only to "contesting" claims before the relevant State workers' compensation authority, but also to "contesting" such claims on appeal or in any other administrative or judicial forum. Subsequent employer costs are allowable to the extent that, and if consistent with the contractor's contract with DOE, under the applicable State workers' compensation statutes, it is customary for the employer to take an

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active role in settling issues related to the claim, such as the extent of injury, allocation of liability among multiple employers, or calculation of actual benefits, but only to the extent such activities do not have the intent or effect of delaying or defeating a claimant's ability to recover workers' compensation benefits. If a State Agreement provides for a Physician Panel to determine a State-specific medical issue such as the degree of disability or impairment, DOE may direct a contractor not to contest that determination in a State proceeding and may not reimburse costs incurred in contesting such a determination.

A commenter noted that this program will result in increased workers' compensation premiums to its contractors, and that additional workers' compensation claims will affect a contractor's State experience rating as a result of its workers' compensation experience. To the extent premium increases do occur or experience ratings are adversely affected, those effects are the necessary results of the Program established by Congress under Part D.

BB. General Comments on the NOPR

A number of workers, former workers, their survivors and representatives had general comments on the NOPR without specific reference to a particular section. A number of commenters stated that the affected workers had endured exposure to many hazards, and deserved a program of real assistance. Two commenters noted the patriotism of these workers. A number of commenters felt that the rule, as proposed, was not assisting sick workers, as intended by the Act.

In this notice of final rulemaking, DOE has carefully considered the major issues emerging from the comments on the NOPR, and believes that the final rule has addressed those issues. DOE believes that the final rule goes as far as the Act authorizes DOE to go in providing assistance.

A commenter expressed concern about the status of applications for Physician Panel review already received under this Act. The commenter wanted to know if these filings are null and void, pending negotiation of the State Agreements. DOE will retain and act on these filings when the administrative machinery is in place to process them. Under the Act, the promulgation of this rule is the necessary first step in that endeavor. The establishment of State Agreements can now begin. That in turn will allow DOE to begin processing these claims.

A commenter asked for clarification on how DOE will respond to cases where State has already considered and denied a workers' compensation claim for the same or related health condition that will be the basis for the applicants claim under the Part D program. The Program Office will process these claims in the same manner as other claims. It must be noted, however, that the Act does not change the normal operation of any State workers' compensation system, and does not create any new grounds for re-opening any decision already rendered under State law.

III. Regulatory Review and Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The rule would provide guidelines for the operation and determinations of Physician Panels established to provide expert opinion to DOE on the cause of a worker's illness or death. It would not impose costs or burdens on any small business or other small entity. DOE, therefore, certifies that the rule will not have a significant economic impact on a substantial number of small entities.

C. Review Under the Paperwork Reduction Act

The rule provides that an individual may submit an application for review and assistance to the Program Office that contains information relating to the individual's employment by a DOE contractor, the nature of the illness or death, and the relationship between the illness or death and the individual's employment at a DOE facility. The application is required for DOE to determine whether reasonable evidence exists for submitting the individual's application to a Physician Panel.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection has been reviewed and assigned a control number by OMB. DOE submitted the proposed collection of information in the rule to OMB, simultaneously with the publication of the NOPR for review and approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB has approved the collection of information in the rule and assigned it control number 1910.

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of the rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the rule deals only with Physician Panel procedures, and, therefore, is covered under the Categorical Exclusion for rulemakings that are strictly procedural in paragraph A6 of Appendix A to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), imposes certain requirements on Agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have "federalism implications." Policies that have federalism implications are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government." On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and has determined that it does not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The scope of the rule is limited to defining how a Physician Panel established under the Act will determine whether the illness or death that is the subject of an application for assistance in filing a claim under a State's workers' compensation system arose out of and in the course of employment by DOE and exposure to a toxic substance at a DOE facility. Referral of an application to a Physician Panel can occur only by agreement with the applicable State. The rule would leave to the State the determination of benefits. Thus, the rule would not preempt State workers' compensation law. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal Agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear, legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear, legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal Agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any single year. The Act also requires a Federal Agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate," and it requires an Agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect small governments. The rule published today does not contain any Federal mandate, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal Agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. The rulemaking would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has not prepared a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA, as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits energy supply, distribution, and use.

Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

List of Subjects in 10 CFR Part 852

Administrative practice and procedure, Government contracts, Hazardous substances, Workers' compensation.

Issued in Washington, DC, on August 7, 2002.

Beverly A. Cook,

Assistant Secretary for Environment, Safety and Health.

For the reasons stated in the preamble, DOE hereby amends Chapter III of title 10 of the Code of Federal Regulations by adding part 852 to read as follows:

PART 852—GUIDELINES FOR PHYSICIAN PANEL DETERMINATIONS ON WORKER REQUESTS FOR ASSISTANCE IN FILING FOR STATE WORKERS' COMPENSATION BENEFITS

Sec.

852.1 What is the purpose and scope of this part?
852.2 What are the definitions of terms used in this part?
852.3 How does an individual obtain and submit an application for review and assistance?
852.4 What information and materials does an individual submit as a part of the application for review and assistance?
852.5 What information and materials may an employer submit in response to a submission of an application to a Physician Panel?
852.6 Which applications are submitted to a Physician Panel?
852.7 What provisions are set forth in State Agreements?
852.8 How does a Physician Panel determine whether an illness or death arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility?
852.9 What materials must a Physician Panel review prior to making a determination?
852.10 How may a Physician Panel obtain additional information or a consultation that it needs to make a determination?
852.11 How is a Physician Panel to carry out its deliberations and arrive at a determination?
852.12 How must a Physician Panel issue its determination?
852.13 When must a Physician Panel issue its determination?
852.14 What precautions must each Physician Panel member and each specialist take in order to keep an applicant's personal and medical information confidential?
852.15 What actions must a Physician Panel member take if that member has a

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potential conflict of interest in relation to a specific application?
852.16 When may the Program Office ask a Physician Panel to reexamine an application that has undergone prior Physician Panel review?
852.17 Must the Program Office accept the determination of a Physician Panel?
852.18 Is there an appeals process?
852.19 What is the effect of the acceptance by the Program Office of a determination by a Physician Panel in favor of an applicant?

Authority: 42 U.S.C. 7384, *et seq.*; 42 U.S.C. 2201 and 7101, *et seq.*; 50 U.S.C. 2401 *et seq.*

§ 852.1 What is the purpose and scope of this part?

(a) This part implements Part D of the Act by establishing the procedures under which:

(1) An individual may obtain and submit an application to the Program Office for review and assistance;

(2) The Program Office processes and submits eligible applications to a Physician Panel;

(3) Physician Panels determine whether the illness or death of a DOE contractor employee arose out of and in the course of employment by a DOE contractor and through exposure to a toxic substance at a DOE facility;

(4) The Program Office processes a determination by a Physician Panel; and,

(5) Appeals may be undertaken.

(b) This part covers applications filed by or on behalf of a DOE contractor employee, or a deceased employee's estate or survivor, with respect to an illness or death of a DOE contractor employee that may have been caused by exposure to a toxic substance during the course of employment at a DOE facility.

(c) All actions under this part must be pursuant to the relevant State Agreement and consistent with its terms and conditions.

§ 852.2 What are the definitions of terms used in this part?

Act means the Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. 7384 *et seq.*

Applicant means an individual seeking assistance from the Program Office in filing a claim with the relevant State workers' compensation system, including but not limited to, a living DOE contractor employee, the estate of a deceased DOE contractor employee, or any survivor of a deceased DOE contractor employee who is eligible to apply for a death benefit or a survivor's benefit under the State workers' compensation system for which the applicant is seeking assistance in filing a claim.

DOE means the U.S. Department of Energy, and its predecessor agencies, including the Manhattan Engineering District, the Atomic Energy Commission, and the Energy Research and Development Administration.

DOE contractor employee means any of the following:

(a) An individual who is or was in residence at a DOE facility as a researcher for one or more periods aggregating at least 24 months.

(b) An individual who is or was employed at a DOE facility by

(i) An entity that contracted with DOE to provide management and operation, management and integration, or environmental remediation at the facility; or

(ii) A contractor or subcontractor that provided services, including construction and maintenance, at the facility.

DOE facility means any building, structure or premise, including the grounds upon which such building, structure, or premise is located:

(a) In which operations are, or have been, conducted by, or on behalf of DOE (except for buildings, structures, premises, grounds, or operations covered by Executive Order No. 12344, dated February 1, 1982 (42 U.S.C. 7158 note), pertaining to the Naval Nuclear Propulsion Program); and

(b) With regard to which DOE has or had

(i) A proprietary interest; or

(ii) Entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services.

Physician panel means a group of three physicians appointed by the Secretary of Health and Human Services, pursuant to Part D of the Act, to evaluate potential claims of DOE contractor employees under the appropriate State workers' compensation system.

Program office means the Office of Worker Advocacy within DOE's Office of Environment, Safety and Health, or any other DOE office subsequently assigned to perform the functions of the Secretary of Energy under Part D of the Act.

State agreement means an agreement negotiated between DOE and a State that sets forth the terms and conditions for dealing with an application for assistance under Part D of the Act in filing a claim with the State's workers' compensation system.

Toxic substance means any material that has the potential to cause illness or death because of its radioactive, chemical, or biological nature.

§ 852.3 How does an individual obtain and submit an application for review and assistance?

(a) An individual obtains an application for review and assistance:

(1) In person from the Program Office, from any of the Resources Centers listed in Appendix A to this section, or from any DOE-sponsored Former Worker Program project;

(2) Through a written request mailed to Assistant Secretary, Office of Environment, Safety and Health, Office of Worker Advocacy, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585. or to any other address that DOE may subsequently publish by notice in the **Federal Register**;

(3) Through telephone request to 1–877–447–9756 or to any other telephone number that DOE may subsequently publish by notice in the **Federal Register**; or

(4) In printable format, from the Program Office's Web site at *http://tis.eh.doe.gov/advocacy/* or from any other Web site that DOE may subsequently publish by notice in the **Federal Register**.

(b) An individual submits an application for review and assistance—

(1) In person to the Program Office, to any Resource Center, or to any DOE-sponsored Former Worker Program project.

(2) By mail to the Program Office at the address identified in paragraph (a)(2) of this section, or to any other address that DOE may subsequently publish by notice in the **Federal Register**.

§ 852.4 What information and materials does an individual submit as a part of the application for review and assistance?

(a) As a part of the application for review and assistance, an individual must submit, in writing:

(1) Any application forms required by the Program Office.

(2) The name and address of any licensed physician who is the source of a diagnosis based upon documented medical information that the employee has or had an illness and that the illness may have resulted from exposure to a toxic substance while the employee was employed at a DOE facility and, to the extent practicable, a copy of the diagnosis and a summary of the information upon which the diagnosis is based.

(3) A signed medical release, authorizing non-DOE sources of medical information to provide the Program Office with any diagnosis, medical opinion and medical records documenting the diagnosis or opinion

that the employee has or had an illness and that the illness may have resulted from exposure to a toxic substance while the employee was employed at a DOE facility.

(4) To the extent practicable and appropriate, an occupational history obtained by a physician, an occupational health professional, or a DOE-sponsored Former Worker Program. (If such an occupational history is not reasonably available and is deemed by the Program Office to be needed for the fair adjudication of the claim, then the Program Office will assist the applicant in obtaining this history.)

(5) Any other information or materials deemed by the Program Office to be necessary to provide reasonable evidence that the employee has or had an illness that may have arisen from exposure to a toxic substance while employed at a DOE facility.

(b) The applicant may also submit directly to the Program Office any other information or materials providing evidence that the employee has or had an illness that may have resulted from exposure to a toxic substance during the course of employment at a DOE facility.

(c) The applicant must sign an affidavit attesting to the authenticity and completeness of any information or materials submitted to the Program Office, or provide the Program Office with other evidence of authenticity of submitted materials, such as certification of submitted copies of originals.

§ 852.5 What information and materials may an employer submit in response to a submission of an application to a Physician Panel?

(a) Upon receipt of an application and the Program Office's determination that the application meets the requirements of § 852.4, the Program Office must notify each of the applicant's relevant DOE contractor employers in writing of:

(1) The existence of the application;

(2) The name of the employee;

(3) The diagnosis claimed; and

(4) The likely date of onset or date of diagnosis, if known.

(b) The employer has 15 working days from receipt of this notification to submit to the Program Office any information deemed by the employer to be relevant to either the Program Office's determination of whether to refer an application to a Physician Panel, or to adjudication of the application by a Physician Panel.

(c) The employer must sign an affidavit attesting to the authenticity and completeness of any information provided to the Program Office under this section, or provide the Program Office with other evidence of authenticity of submitted materials, such as certification of submitted copies of originals.

§ 852.6 Which applications are submitted to a Physician Panel?

(a) The Program Office must submit an application and any information submitted under § 852.5 of this part to a Physician Panel if there is reasonable evidence to make an initial determination that:

(1) The application was filed by or on behalf of a DOE contractor employee or a deceased DOE contractor employee's estate or survivor;

(2) The illness or death of the DOE contractor employee may have been caused by exposure to a toxic substance; and,

(3) The illness or death of the DOE contractor employee may have been related to employment at a DOE facility.

(b) The Program Office must promptly notify the applicant in writing of an initial determination under this section.

§ 852.7 What provisions are set forth in State Agreements?

DOE may not execute a State Agreement that does not contain the following provisions:

(a) A statement that an application is submitted to a Physician Panel only if the application satisfies the criteria in § 852.6 of this part:

(1) The application was filed by or on behalf of a DOE contractor employee or a deceased DOE contractor employee's estate or survivor;

(2) The illness or death of the DOE contractor employee may have been caused by exposure to a toxic substance; and

(3) The illness or death of the DOE contractor employee may have been related to employment at a DOE facility.

(b) An agreement that a Physician Panel must apply the standards set forth in § 852.8 of this part when making a determination that an illness or death arose from exposure to a toxic substance during the course of employment at a DOE facility;

(c) An agreement that the Program Office must provide assistance to only those applicants with a positive determination from the Physician Panel; and

(d) An agreement that a positive determination by the Physician Panel has no effect on the scope of State workers' compensation proceedings, the conditions for compensation, or the rights and obligations of the participants in the proceeding; provided that consistent with Part D of the Act such a determination will prevent DOE and may prevent a DOE contractor from contesting an applicant's workers' compensation claim.

§ 852.8 How does a Physician Panel determine whether an illness or death arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility?

A Physician Panel must determine whether the illness or death arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility on the basis of whether it is at least as likely as not that exposure to a toxic substance at a DOE facility during the course of employment by a DOE contractor was a significant factor in aggravating, contributing to or causing the illness or death of the worker at issue.

§ 852.9 What materials must a Physician Panel review prior to making a determination?

The Physician Panel must review all records relating to the application that are provided by the Program Office, including but not limited to:

(a) Medical records;

(b) Employment records;

(c) Exposure records;

(d) Occupational history;

(e) Workers' compensation records;

(f) Medical literature or reports;

(g) Any other records or evidence pertaining to the applicant's request for assistance;

(h) A medical examiner's report, coroner's report, or death certificate for any application submitted by an estate or survivor of a deceased worker; and

(i) Information submitted as a part of such a claim or developed by the Department of Labor (DOL) or by the Department of Health and Human Services (HHS) in the course of processing a claim for the applicant, including, where applicable, estimates of an applicant's cumulative radiation dose and the calculated probability that this dose was responsible for a cancer that is the subject of the claim, for any application submitted by an applicant also applying to DOL for benefits available under the Act.

§ 852.10 How may a Physician Panel obtain additional information or a consultation that it needs to make a determination?

If, after reviewing all materials provided by the Program Office, a Physician Panel finds that it needs additional information or consultation with a specialist in order to make a determination, it must request this information or consultation through the Program Office. A Physician Panel may request:

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(a) A recorded interview under oath with the applicant, by an individual designated by the Program Office, if the Physician Panel believes only the applicant can provide the necessary information.

(b) That the applicant provide additional medical information;

(c) Additional relevant information under the control of DOE or its contractors;

(d) Consultation with designated specialists in fields relevant to its deliberations;

(e) Specific articles or reports, or assistance searching the medical or scientific literature; or

(f) Other needed information or materials.

§ 852.11 How is a Physician Panel to carry out its deliberations and arrive at a determination?

(a) Each panel member reviews all materials relating to the application.

(b) All panel members meet in conference, in person, or by teleconference in order to discuss the application and arrive at a determination agreed to by a majority of the members of the Physician Panel.

§ 852.12 How must a Physician Panel issue its determination?

A Physician Panel must submit its determination under § 852.8 and the findings that provide the basis for its determination to the Program Office. The determination and the findings must be in writing and signed by all panel members. The findings must include:

(a) Each illness or cause of death that is the subject of the application.

(b) For each illness or cause of death listed under paragraph (a) of this section:

(1) Diagnosis;

(2) Approximate date of onset;

(3) Date of death, if applicable;

(4) Whether the illness or death arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility;

(5) The basis for the determination under paragraph (b)(4) of this section;

(6) A determination concerning any other medical issue identified in the relevant State Agreement; and

(7) The basis for the determination under paragraph (b)(6) of this section.

(c) The Physician Panel must provide the Program Office with:

(1) Any evidence to the contrary of the panel's determination, and why the panel finds this evidence is not persuasive.

(2) A listing of information and materials reviewed by the panel in making its determination, including:

(i) Information and materials provided by the Program Office; and,

(ii) Information and materials obtained by the panel, including consultations with specialists, scientific articles, and the record of any interview with an applicant.

(3) Any other information the panel concludes that the Program Office should have in order to understand the panel's deliberations and determination.

§ 852.13 When must a Physician Panel issue its determination?

(a) A Physician Panel must submit its determination and findings to the Program Office within 30 working days of the time that panel members have received the complete application for review from the Program Office.

(b) The Program Office may extend the deadline for a panel determination under the following circumstances:

(1) The Physician Panel indicates to the Program Office that it needs additional information or a consultation in order to carry out its deliberations, as provided for in § 852.10. In this case, the panel's determination is due 15 working days after receipt of the additional information (or notice from the Program Office that the requested information is unavailable), or 15 working days after receiving the consultant's recommendations, whichever is applicable; or

(2) The Physician Panel has requested and the Program Office has granted an extension.

(c) If an extension is granted pursuant to section 852.13(b)(2), the Program Office will specify the new deadline.

§ 852.14 What precautions must each Physician Panel member and each specialist take in order to keep an applicant's personal and medical information confidential?

In order to maintain the confidentiality of an applicant's personal and medical information, each Physician Panel member and each specialist consulted at the request of a Physician Panel must take the following precautions:

(a) Maintain the confidentiality of applicant records, keep them in a secure, locked location, and, upon completion of panel deliberations, follow the instructions of the Program Office with regard to the disposal or temporary retention of these records;

(b) Conduct all case reviews and conferences in private, in such a fashion as to prevent the disclosure of personal applicant information to any individual who has not been authorized to access this information;

(c) Release no information to a third party, unless authorized to do so in writing by the applicant; and

(d) Adhere to the provisions of the Privacy Act of 1974 regarding Worker Advocacy Records.

§ 852.15 What actions must a Physician Panel member take if that member has a potential conflict of interest in relation to a specific application?

(a) If a panel member has a past or present relationship with an applicant, an applicant's employer, or an interested third party that may affect the panel member's ability to objectively review the application, or that may create the appearance of a conflict of interest, then that panel member must immediately:

(1) Cease review of the application; and

(2) Notify the Program Office and await further instruction from the Office.

(b) The Program Office must then take such action as is necessary to assure an objective review of the application.

§ 852.16 When may the Program Office ask a Physician Panel to reexamine an application that has undergone prior Physician Panel review?

The Program Office may direct the original Physician Panel or a different Physician Panel to reexamine an application that has undergone prior Physician Panel review if:

(a) There is significant evidence contrary to the panel determination;

(b) The Program Office obtains new information the consideration of which would be reasonably likely to result in a different determination;

(c) The Program Office becomes aware of a real or potential conflict of interest of a member of the original panel in relation to the application under review; or

(d) Reexamination is necessary to ensure consistency among panels.

§ 852.17 Must the Program Office accept the determination of a Physician Panel?

(a) Subject to the ability of the Program Office to direct a reexamination pursuant to § 852.16, the Program Office must accept the determination by the Physician Panel unless the Program Office determines there is significant evidence contrary to the panel determination.

(b) The Program Office must promptly notify an applicant and the relevant DOE contractor(s) of its acceptance or rejection of a determination by a Physician Panel.

§ 852.18 Is there an appeals process?

(a) An applicant may request DOE's Office of Hearings and Appeals (OHA) to review:

(1) A decision by the Program Office not to submit an application to a Physician Panel;

(2) A negative determination by a Physician Panel that is accepted by the Program Office; and

(3) A final decision by the Program Office not to accept a determination in the applicant's favor by a Physician Panel.

(b) An applicant must file a notice of appeal with OHA on or before 30 days from the date of a letter from the Program Office notifying the applicant of a determination appealable under this section.

(c) An appeal under this section is subject to the procedures of OHA in 10 CFR Part 1003.

(d) A decision by OHA constitutes DOE's final determination with respect to an application.

§ 852.19 What is the effect of the acceptance by the Program Office of a determination by a Physician Panel in favor of an applicant?

In the event the Program Office accepts a determination by a Physician Panel in favor of an applicant:

(a) The Program Office must assist the applicant in filing a claim with the relevant State's workers' compensation system by providing the determination and other information provided to the Program Office by a Physician Panel pursuant to§ 852.12 of this part;

(b) The Program Office may not contest the determination;

(c) The Program Office must advise the cognizant DOE Secretarial Officer to recommend to the Contracting Officer (CO) for a DOE contractor that, to the extent permitted by law, the CO direct the contractor not to contest an applicant's workers' compensation claim or award in any administrative or judicial forum with respect to the same health condition for which the applicant received a favorable final Physician Panel determination;

(d) Any costs of contesting a claim or award identified in paragraph (c) of this section—that is, any costs of supporting arguments or activities with the intent or effect of delaying or defeating such a claim or award—are not allowable costs under a DOE contract; and,

(e) All workers' compensation costs incurred as a result of a workers' compensation award on a claim based on the same health condition that was the subject of a positive Physician Panel determination are allowable, reimbursable contract costs to the full extent permitted under the DOE contractor's contract with DOE.

[FR Doc. 02–20459 Filed 8–13–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE172, Special Condition 23–125–SC]

Special Conditions; GROB–WERKE, Burkhurt Grob e.k., Unternehmensbereich Luft-und Raumfahrt, Model G120A Airplane; Protection of Systems From High Intensity Radiated Fields (HIRF): Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; correction.

SUMMARY: The FAA published a document in the **Federal Register** on February 5, 2002, concerning final special conditions on the GROB–WERKE, Burkhurt Grob e.k., Unternehmensbereich Luft-und Raumfahrt, Model G120A airplane. There was an inadvertent error in the special condition number in the document. This document contains a correction to the special condition number for the final special conditions.

DATES: The effective date of these corrected special conditions is January 29, 2002.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

SUPPLEMENTARY INFORMATION:

Need for Correction

The FAA published a document on February 5, 2002 (67 FR 5196) that issued final special conditions. In the document heading, a special condition number appears that had already been issued for another set of special conditions with a different docket number. This document corrects that error.

Correction of Publication

Accordingly, the special condition number, which appears in the heading of Docket No. CE172, is revised from 23–110–SC to 23–125–SC.

Issued in Kansas City, Missouri on July 25, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20628 Filed 8–13–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE170, Special Condition 23–124–SC]

Special Conditions; Byerly Aviation, Twin Commander Models 690, 690A, 690B, 690C, 690D, 695, 695A, and 695B; Protection of Systems From High Intensity Radiated Fields (HIRF): Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; correction.

SUMMARY: The FAA published a document in the **Federal Register** on October 5, 2001, concerning final special conditions on the Byerly Aviation Twin Commander Models 690, 690A, 690B, 690C, 690D, 695, 695A, and 695B airplane. There was an inadvertent error in the special condition number in the document. This document contains a correction to the special condition number for the final special conditions.

DATES: The effective date of these corrected special conditions is September 17, 2001.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

SUPPLEMENTARY INFORMATION:

Need for Correction

The FAA published a document on October 5, 2001 (66 FR 50819) that issued final special conditions. In the document heading, a special condition number appears that had already been issued for another set of special conditions with a different docket number. This document corrects that error.

Correction of Publication

Accordingly, the special condition number, which appears in the heading of Docket No. CE170, is revised from 23–109–SC to 23–124–SC.

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Issued in Kansas City, Missouri on July 25, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20630 Filed 8–13–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE150, Special Condition 23–122–SC]

Special Conditions; Raytheon Aircraft Company, Raytheon Model 390 Airplane; Protection of Systems From High Intensity Radiated Fields (HIRF): Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; correction.

SUMMARY: The FAA published a document in the **Federal Register** on December 28, 1998, concerning final special conditions on the Raytheon Aircraft Company Model 390 airplane. There was an inadvertent error in the special condition number in the document. This document contains a correction to the special condition number for the final special conditions.

DATES: The effective date of these corrected special conditions is December 11, 1998.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

SUPPLEMENTARY INFORMATION:

Need for Correction

The FAA published a document on December 28, 1998 (63 FR 71369) that issued final special conditions. In the document heading, a special condition number appears that had already been issued for another set of special conditions with a different docket number. This document corrects that error.

Correction of Publication

Accordingly, the special condition number, which appears in the heading of Docket No. CE150, is revised from 23–094–SC to 23–122–SC.

Issued in Kansas City, Missouri on July 25, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20629 Filed 8–13–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE186, Special Condition 23–126–SC]

Special Conditions; S–TEC on the New Piper Aircraft Corporation, PA 34–200T, Seneca V; Protection of Systems From High Intensity Radiated Fields (HIRF): Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; correction.

SUMMARY: The FAA published a document in the **Federal Register** on July 17, 2002, concerning final special conditions for S–TEC on the New Piper Aircraft Corporation Model PA 34–200T airplane. There was an inadvertent error in the special condition number in the document. This document contains a correction to the special condition number for the final special conditions.

DATES: The effective date of these corrected special conditions is July 5, 2002.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

SUPPLEMENTARY INFORMATION:

Need for Correction

The FAA published a document on July 17, 2002, that issued final special conditions. In the document heading, a special condition number appears that had already been issued for another set of special conditions with a different docket number. This document corrects that error.

Correction of Publication

Accordingly, the special condition number, which appears in the heading of Docket No. CE186, is revised from 23–119–SC to 23–126–SC.

Issued in Kansas City, Missouri on July 25, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20631 Filed 8–13–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–346–AD; Amendment 39–12853; AD 2002–16–14]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 series airplanes. This AD requires inspection of certain installed electrical relays to determine whether they have certain manufacturing date codes, and replacement of the electrical relays with those date codes with new relays with different manufacturing date codes. This action is necessary to prevent the failure of an electrical relay due to a defective moving blade assembly, which could result in the inability to generate electrical power from the emergency system, if needed. This action is intended to address the identified unsafe condition.

DATES: Effective September 18, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 18, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Luciano Castracane, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7535; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 series airplanes was published in the **Federal Register** on April 4, 2002 (67 FR 16067). That action proposed to require inspection of certain installed electrical relays to determine whether they have certain manufacturing date codes, and replacement of the electrical relays with those date codes with new relays with different manufacturing date codes.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Credit Language

Since the language in Notes 2, 3, and 4 of the proposed AD is regulatory in nature, the notes have been redesignated as paragraphs (b), (e), and (g) in this final rule. The remaining paragraphs of this final rule have been redesignated to accommodate these changes.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA had determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 160 airplanes of U.S. registry will be affected by this AD. It will take approximately 1 work hour per airplane to accomplish the required inspection at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required inspection on U.S. operators is estimated to be $9,600, or $60 per airplane.

It will take approximately 2 work hours per airplane to accomplish the required replacement of suspect relay K1XC at an average labor rate of $60 per work hour. There will be no charge for the replacement part. Based on these figures, the cost impact of the required replacement of suspect relay K1XC on U.S. operators is estimated to be a maximum of $19,200, or $120 per airplane.

It will take approximately 2 work hours per airplane to accomplish the required replacement of suspect relays K2XD and K3XD at an average labor rate of $60 per work hour. There will be no charge for the replacement parts. Based on these figures, the cost impact of the required replacement of suspect relays K2XD or K3XD on U.S. operators is estimated to be a maximum of $19,200, or $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–14 Bombardier, Inc. (Formerly Canadair): Amendment 39–12853. Docket 2001–NM–346–AD.

Applicability: Model CL–600–2B19 series airplanes, serial numbers 7003 through 7495 inclusive, 7497 through 7502 inclusive, and 7505 through 7507 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of an electrical relay due to a defective moving blade assembly, which could result in the inability to generate electrical power from the emergency system, if needed, accomplish the following:

Inspection

(a) Within 14 days after the effective date of this AD: Perform an inspection to determine whether installed Leach 'H' series power transfer relays K1XC, K2XD, and K3XD, all having part number (P/N) H–A4A–039, have a manufacturing date code of 0011 through 0050. The inspection for such "suspect relays" is to be performed in accordance with Bombardier Alert Service Bulletin A601R–24–105, Revision 'A', dated July 20, 2001.

(b) Inspections accomplished prior to the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–24–105, dated July 4, 2001, are considered acceptable for compliance with the applicable action specified in this amendment.

(c) As of the effective date of this AD: For airplanes determined to have suspect Leach 'H' series relays K1XC or K2XD installed, dispatch with an inoperative integrated-drive generator (IDG) or auxiliary power unit (APU) is prohibited until replacement of the relay with a new relay is accomplished in accordance with paragraphs (d) and (f) of this AD.

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Replacement

(d) Within 500 flight hours after the effective date of this AD: Replace suspect relay K1XC with a new relay having a manufacturing date code other than 0011 through 0050, in accordance with Bombardier Alert Service Bulletin A601R–24–105, Revision 'A', dated July 20, 2001.

(e) Replacement of suspect relay K1XC accomplished prior to the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–24–105, dated July 4, 2001, is considered acceptable for compliance with the applicable action specified in this amendment.

(f) Within 1,000 flight hours after the effective date of this AD: Replace suspect relays K2XD and K3XD with new relays having a manufacturing date code other than 0011 through 0050, in accordance with Bombardier Alert Service Bulletin A601R–24–105, Revision 'A', dated July 20, 2001.

(g) Replacement of suspect relays K2XD and K3XD accomplished prior to the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–24–105, dated July 4, 2001, is considered acceptable for compliance with the applicable action specified in this amendment.

Spares

(h) As of the effective date of this AD, no person shall install a Leach 'H' series electrical relay having P/N H–A4A–039 that has a manufacturing date code of 0011 through 0050 on any airplane.

Alternative Methods of Compliance

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(k) Unless otherwise specified in this AD, the actions shall be done in accordance with Bombardier Alert Service Bulletin A601R–24–105, Revision 'A', dated July 20, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–27, dated July 24, 2001.

Effective Date

(l) This amendment becomes effective on September 18, 2002.

Issued in Renton, Washington, on August 5, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20268 Filed 8–13–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–37–AD; Amendment 39–12857; AD 2002–16–18]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–5B and –7B Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to CFM International (CFMI) CFM56–5B and –7B series turbofan engines. This amendment requires retirement of stage 2 low pressure turbine (LPT) nozzle segments and stage 3 LPT nozzle segments, listed in Table 1 of this AD, from service before accumulating 25,000 cycles-since-new (CSN) or at the next LPT module shop visit when either stage 2 LPT nozzle segments or stage 3 LPT nozzle segments are exposed, whichever occurs first. This amendment also requires installation of new design (either new or reworked) nozzle segments, that will aid in containment of the LPT rotor in the event of LPT shaft failure. This amendment is prompted by a report of an LPT shaft failure caused by a hydromechanical unit (HMU) malfunction that induced a higher than anticipated LPT rotor overspeed. The actions specified by this AD are intended to aid in containment of the LPT rotor in the event of LPT shaft failure, which could result in uncontained engine failure and damage to the airplane.

DATES: Effective September 18, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800; fax (513) 552–2816.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7152; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to CFMI CFM56–5B and –7B series turbofan engines was published in the **Federal Register** on April 4, 2002 (67 FR 16069). That action proposed to require retirement of stage 2 LPT nozzle segments and stage 3 LPT nozzle segments, listed in Table 1 of that proposed AD, from service before accumulating 25,000 cycles-since-new (CSN), or by October 31, 2008, whichever occurs earlier.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Remove Compliance Date

Three commenters request that the compliance date of October 31, 2008, be removed. This date would not provide enough engine operating time to reach scheduled major maintenance when the affected parts would be exposed.

The FAA agrees. The alternate AD compliance requirement of retiring stage 2 LPT nozzle segments and stage 3 LPT nozzle segments from service before accumulating 25,000 CSN meets the manufacturer's removal criteria. In addition, the FAA wishes to clarify that compliance with this AD is required before accumulating 25,000 CSN or at the next LPT module shop visit when either stage 2 LPT nozzle segments or stage 3 LPT nozzle segments are exposed, whichever occurs first.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 3,187 CFMI CFM56–5B and –7B series engines of the affected design in the worldwide fleet. The FAA estimates that 910 engines installed on airplanes of U.S. registry would be affected by this AD. The FAA also estimates that it would take approximately 10 work hours per engine to perform the actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $34,984 per engine. Based on these figures, the total cost of the AD on U.S. operators is estimated to be $32,381,440.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–16–18 CFM International: Amendment 39–12857. Docket No. 2001–NE–37–AD.

Applicability

This airworthiness directive (AD) is applicable to CFM International (CFMI) CFM56–5B and –7B series turbofan engines. These engines are installed on, but not limited to Boeing 737–600, –700, –800, and –900; and Airbus A319, A320, and A321 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required before accumulating 25,000 cycles-since-new (CSN) on the parts listed in Table 1 of this AD, or at the next low pressure turbine (LPT) module shop visit when either stage 2 LPT nozzle segments or stage 3 LPT nozzle segments are exposed, whichever occurs first, unless already done.

To aid in containment of the LPT rotor in the event of LPT shaft failure, which could result in uncontained engine failure and damage to the airplane, do the following:

(a) Retire from service stage 2 LPT nozzle segments and stage 3 LPT nozzle segments listed in the following Table 1, and install new design (either new or reworked) nozzle segments:

TABLE 1.—STAGE 2 AND STAGE 3 LPT NOZZLE SEGMENT PART NUMBERS TO BE RETIRED

Nozzle segments	Part numbers
(1) Stage 2	338–109–104–0, 338–109–105–0, 338–109–106–0, 338–109–204–0, 338–109–205–0, 338–109–206–0, 338–109–304–0, 338–109–305–0, 338–109–306–0.
(2) Stage 3.	338–109–702–0, 338–109–802–0.

(b) Information on reworking stage 2 LPT nozzle segments and stage 3 LPT nozzle segments, listed in Table 1 of this AD, can be found in CFM International Service Bulletins (SB's) 72–0328, dated May 25, 2000, for CFM56–5 series engines, and SB 72–0241, dated May 25, 2000, for CFM56–7 series engines.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Effective Date

(e) This amendment becomes effective on September 18, 2002.

Issued in Burlington, Massachusetts, on August 5, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–20515 Filed 8–13–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 02–48]

Pleasure Vessels of Marshall Islands Entitled to Cruising Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding the Marshall Islands to the list of countries whose pleasure vessels may be issued U.S. cruising licenses. Customs has been informed that yachts used and

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employed exclusively as pleasure vessels belonging to any resident of the U.S. are allowed to arrive at and depart from the Marshall Islands ports and cruise in the waters of the Marshall Islands without being subject to formal entry and clearance procedures. Therefore, Customs is extending reciprocal privileges to Marshall Islands-flag pleasure vessels.

EFFECTIVE DATES: These reciprocal privileges became effective for the Marshall Islands on July 9, 2002. This amendment is effective August 14, 2002.

FOR FURTHER INFORMATION CONTACT: Glen Vereb, Entry Procedures and Carriers Branch, (202) 572–8730.

SUPPLEMENTARY INFORMATION:

Background

Section 4.94(a), Customs Regulations (19 CFR 4.94(a)), provides that U.S. documented vessels with a recreational endorsement, used exclusively for pleasure, not engaged in any trade, and not violating the Customs or navigation laws of the U.S., may proceed from port to port in the U.S. or to foreign ports without entering or clearing, as long as they have not visited hovering vessels. When returning from a foreign port or place, such pleasure vessels are required to report their arrival pursuant to § 4.2, Customs Regulations (19 CFR 4.2).

Generally, foreign-flag yachts entering the U.S. are required to comply with the laws applicable to foreign vessels arriving at, departing from, and proceeding between ports of the U.S. However, as provided in § 4.94(b), Customs Regulations (19 CFR 4.94(b)), Customs may issue cruising licenses to pleasure vessels from certain countries if it is found that yachts of the United States are exempt from formal entry and clearance procedures (e.g., filing manifests, obtaining permits to proceed and paying entry and clearance fees) in those countries.

If a foreign-flag yacht is issued a cruising license, the yacht, for a stated period not to exceed one year, may arrive and depart from the United States and to cruise in specified waters of the United States without entering and clearing, without filing manifests and obtaining or delivering permits to proceed, and without the payment of entrance and clearance fees, or fees for receiving manifests and granting permits to proceed, duty on tonnage, tonnage tax, or light money. Upon arrival at each port in the U.S., the master of a foreign-flag yacht with a cruising license must report the fact of arrival to the appropriate Customs office. A list of countries whose yachts are eligible for cruising licenses is set forth in § 4.94(b).

By an exchange of diplomatic notes between the Government of the Marshall Islands and the United States Department of State, the Marshall Islands and the United States agree to extend to yachts of each other's country reciprocal privileges. Accordingly, U.S.-flag yachts, used exclusively as pleasure vessels and belonging to any resident of the U.S., may arrive at and depart from Marshall Islands ports and to cruise the waters of the Marshall Islands without entering and clearing the Marshall Islands Customs and without payment of any charges for entering or clearing, dues, duty per ton, tonnage taxes, or charges for cruising licenses. Marshall Islands yachts will be entitled to reciprocal privileges in the United States.

On July 22, 2002, the Department of State advised the Acting Chief, Entry Procedures and Carriers Branch, U.S. Customs Service, of the agreement between the United States and the Marshall Islands, which became effective July 9, 2002. The Acting Chief, Entry Procedures and Carriers Branch, is of the opinion that satisfactory evidence has been furnished to establish the reciprocity required in § 4.94(b), effective July 9, 2002. Accordingly, the Marshall Islands is added to the list of countries set forth in § 4.94(b). The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations Branch.

Inapplicability of Public Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act and Executive Order 12866

Because this amendment merely implements a statutory requirement and confers a benefit upon the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary for this amendment. Further, for the same reasons, good cause exists for the dispensing with a delayed effective date under 5 U.S.C. 553(d)(1) and (3). Since this document is not subject to notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Janet Johnson, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Maritime carriers, Vessels, Yachts.

Amendment to the Regulations

To reflect the reciprocal privileges granted to vessels registered in the Marshall Islands, Part 4, Customs Regulations (19 CFR Part 4), is amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority for Part 4 and the specific authority for § 4.94 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

Section 4.94 also issued under 19 U.S.C. 1441; 46 U.S.C. App. 104.

* * * * *

2. Section 4.94(b), Customs Regulations (19 CFR 4.94(b)), is amended by inserting, in appropriate alphabetical order, "Marshall Islands" in the list of countries.

Dated: August 8, 2002.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 02–20563 Filed 8–13–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9014]

RIN 1545–AX27

Furnishing Identifying Number of Income Tax Return Preparer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that allow income tax return preparers to elect an alternative to their social security number for purposes of identifying themselves on returns they prepare. The regulations are needed to implement section 6109(a) as amended by the Internal Revenue Service Restructuring and Reform Act of 1998. The regulations affect individual preparers who elect to identify themselves using a number other than their social security number.

DATES: *Effective Date:* These regulations are effective August 12, 2002.

Applicability Date: For dates of applicability, see §§ 1.6109–2A(d) and 1.6109–2(d).

FOR FURTHER INFORMATION CONTACT: Michelle B. Baxter, (202) 622–4910 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 6109(a)(4) of the Internal Revenue Code provides that any return or claim for refund prepared by an income tax return preparer must bear the identifying number of the preparer as required by regulations prescribed by the Secretary. Prior to the amendment of section 6109(a) by the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–206, 112 Stat. 685 (RRA '98)), section 6109(a) limited the identifying number of an individual preparer to that preparer's social security number.

Section 3710 of RRA '98 amended section 6109(a) by removing the requirement that an individual preparer's identifying number be the preparer's social security account number. Instead, under section 6109(a)(4), the Secretary may prescribe alternatives to the social security account number for purposes of identifying individual preparers.

On December 21, 1998, the IRS published Notice 98–63, 1998–2 C.B. 760, to inform preparers of the IRS's intention to develop a system of alternative identifying numbers. On August 12, 1999, the Service published a temporary regulation (TD 8835) permitting a preparer to use an alternative identifying number. **Federal Register** (64 FR 43910). On August 12, 1999, the Service also published a notice of proposed rulemaking (REG–105237–99) allowing a preparer to use an alternative to their social security number for purposes of identifying themselves on returns they prepare. **Federal Register** (64 FR 43969). No public hearing was requested or held. No written comments were received. The proposed regulations are adopted by this Treasury decision, and the corresponding temporary regulations are removed.

Explanation of Provisions

This document contains amendments to the Income Tax Regulations (26 CFR part 1) to allow individual preparers to either use their social security number or elect an alternative identifying number for purposes of identifying themselves on returns they prepare. The IRS developed Form W–7P, Application for Preparer Tax Identification Number, on which preparers may apply for an alternative identifying number.

Effective Date

The final regulations under § 1.6109–2 apply to returns or claims for refund filed after December 31, 1999. The current rules of § 1.6109–2, which are retained in § 1.6109–2A, continue to apply with respect to returns or claims for refund filed prior to January 1, 2000.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Michelle B. Baxter, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Immediately following § 1.6115–1, an undesignated center heading is added to read as follows: REGULATIONS APPLICABLE TO RETURNS OR CLAIMS FOR REFUND FILED PRIOR TO JANUARY 1, 2000.

Par. 3. Section 1.6109–2 is redesignated as § 1.6109–2A, and transferred immediately after the undesignated center heading "REGULATIONS APPLICABLE TO RETURNS OR CLAIMS FOR REFUND FILED PRIOR TO JANUARY 1, 2000."

Par. 4. The second sentence of redesignated § 1.6109–2A(d) is revised to read:

§ 1.6109–2A Furnishing identifying number of income tax return preparer.

* * * * *

(d) * * * For returns or claims for refund filed after December 31, 1999, see § 1.6109–2(a).

* * * * *

Par. 5. New § 1.6109–2 is added to read as follows:

§ 1.6109–2 Income tax return preparers furnishing identifying numbers for returns or claims for refund filed after December 31, 1999.

(a) *Furnishing identifying number.*— (1) Each return of tax, or claim for refund of tax, under subtitle A of the Internal Revenue Code prepared by one or more income tax return preparers must include the identifying number of the preparer required by § 1.6695–1(b) to sign the return or claim for refund. In addition, if there is a partnership or employment arrangement between two or more preparers, the identifying number of the partnership or employer must also appear on the return or claim for refund. For the definition of the term "income tax return preparer" (or "preparer") see section 7701(a)(36) and § 301.7701–15 of this chapter.

(2) The identifying number of a preparer who is an individual (not described in paragraph (a)(3) of this section) is that individual's social security account number, or such alternative number as may be prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(3) The identifying number of a preparer (whether an individual, corporation, or partnership) who employs or engages one or more persons to prepare the return or claim for refund (other than for the preparer) is that preparer's employer identification number.

(b) and (c) [Reserved]. For further guidance, see § 1.6109–2A(b) and (c).

(d) *Effective date.* Paragraph (a) of this section and this paragraph (d) apply to returns or claims for refund filed after December 31, 1999. For returns or claims for refund filed prior to January 1, 2000, see § 1.6109–2A(a).

§ 1.6109–2T [Removed]

Par. 6. Section 1.6109–2T is removed.

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Approved: August 8, 2002.
David A. Mader,
Acting Deputy Commissioner of Internal Revenue.
Pamela F. Olson,
Acting Assistant Secretary of the Treasury.
[FR Doc. 02–20621 Filed 8–12–02; 2:56 pm]
BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–093]

RIN 2115–AA97

Safety Zones; Coast Guard Activities New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones for the Hudson Riverway Grand Opening located on the Hudson River and Midland Beach Fireworks located on Lower New York Bay. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the affected waterways.

DATES: This rule is effective from 4 p.m. on August 10, 2002, to 10 p.m. on August 18, 2002.

ADDRESSES: The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–02–093 and are available for inspection or copying at Waterways Oversight Branch, Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander E. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM. A permanent safety zone has been published at 33 CFR 100.122 for the Hudson Riverway Waterski show on the Hudson River effective on the first Sunday after July 4th. The date for this year's event has been moved to August 10, 2002. The zone will only be enforced for one hour and 45 minutes, which is a much shorter period than in previous years. Further, it is an annual, local event. The City of Albany is closing the public boat launch located within the safety zone during this event.

The Midland Beach safety zone will have minimal impact on Lower New York Bay. Vessels may still transit around the zone during the event. The zone will only be enforced for one and one half hours; vessels can be given permission to transit the zone for all but about 20 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

Under 5 U.S.C. 553(d)(3), the Coast Guard further finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this rule's effective date would be unnecessary and contrary to public interest since immediate action is needed to close the waterways and protect the maritime public from the hazards associated with a water ski show in confined waters and fireworks launched from a barge in the area.

Background and Purpose

The Coast Guard received an application to hold a water ski show on the waters of the Hudson River. This rule would establish a safety zone in all waters of the Hudson River from the Dunn Memorial Bridge (river mile 145.4) to the Albany Rensselaer Swing Bridge (river mile 146.2). The safety zone would be enforced from 4 p.m. until 5:45 p.m. on Saturday, August 10, 2002. The safety zone would prevent vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with a water ski show held in the area. There are no commercial or recreational piers within the zone. The City of Albany is closing the public boat launch located within the safety zone during this event. Public notifications will be made prior to the event via the Local Notice to Mariners and Marine Information Broadcasts.

This safety zone covers the minimum area needed and imposes the minimum restrictions necessary to ensure the protection of all vessels and water ski show participants.

The Coast Guard received an application to hold a fireworks program on the waters of Lower New York Bay. This rule would establish a safety zone in all waters of Lower New York Bay within a 300-yard radius of the fireworks barge in approximate position 40°34′12.0″ N 074°04′29.6″ W (NAD 1983), about 800 yards southeast of Midland Beach. The safety zone would be enforced from 8:30 p.m. until 10 p.m. on Saturday, August 17, 2002. If the event is cancelled due to inclement weather, then this safety zone would be enforced from 8:30 p.m. until 10 p.m. on Sunday, August 18, 2002. The safety zone would prevent vessels from transiting a portion of Lower New York Bay and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic would still be able to transit around the zone during this event. Additionally, recreational vessels would not be precluded from mooring at or getting underway from piers in the vicinity of the zone. Public notifications will be made prior to the event via the Local Notice to Mariners.

The size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for ten inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in the area.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This finding is based on: the minimal time that vessels would be restricted from the zones; the Hudson Riverway water ski show is an annual, local event; the zone is only in effect for one hour and 45 minutes, which is less than half the enforcement period in previous years; there are no commercial or recreational piers within the zone; and the City of Albany is closing the public boat launch located within the safety zone during this event. The Midland Beach Fireworks zone is only in effect for one and one half hours; and vessels can be given permission to transit the zone for all but about 20 minutes during this time. Advance notifications will be made to the local maritime community by Local Notice to Mariners and marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Hudson River and Lower New York Bay during the time these zones are activated.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: the Hudson Riverway water ski show is an annual, local event of relatively short duration; there are no commercial or recreational piers within the zone; the minimal time that vessels will be restricted from the zones; and the City of Albany is closing the public boat launch located within the safety zone during this event. Recreational vessels may still transit around the Midland Beach zone during the event and will not be precluded from mooring at or getting underway from piers in the vicinity of the zone; the zone is only in effect for one and one half hours; and vessels can be given permission to transit the zone for all but about 20 minutes during this time. We will ensure wide dissemination of maritime advisories to users of the Hudson River and Lower New York Bay via the Local Notice to mariners and marine information broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes two safety zones. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. From 4 p.m. August 10, 2002, to 10 p.m. August 18, 2002, add temporary § 165.T01–093 to read as follows:

§ 165.T01–093 Safety Zones; Coast Guard Activities New York.

(a) The following areas are established as safety zones:

(1) *Hudson Riverway Water Ski Show.*

(i) *Location.* All waters of the Hudson River from the Dunn Memorial Bridge (river mile 145.4) to the Albany Rensselaer Swing Bridge (river mile 146.2).

(ii) *Enforcement period.* Paragraph (a)(1)(i) of this section will be enforced from 4 p.m. to 5:45 p.m. on Saturday, August 10, 2002.

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(2) *Lower New York Bay Safety Zone.* (i) *Location.* All waters of Lower New York Bay within a 300-yard radius of the fireworks barge in approximate position 40°34'12.0" N 074°04'29.6" W, (NAD 1983) about 800 yards southeast of Midland Beach.

(ii) *Enforcement period.* Paragraph (a)(2)(i) of this section will be enforced from 8:30 p.m. to 10 p.m. on Saturday, August 17, 2002. In the event of inclement weather on that date, this section will be enforced from 8:30 p.m. to 10 p.m. on Sunday, August 18, 2002.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard.

Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: July 25, 2002.

C.E. Bone,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 02–20624 Filed 8–9–02; 4:02 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0181; FRL–7192–9]

Chlorsulfuron; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of chlorsulfuron; (2-chloro-*N*-[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)aminocarbonyl]benzenesulfonamide) in or on grass, forage and grass, hay. E.I. du Pont de Nemours and Company, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective August 14, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0181, must be received on or before October 15, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0181 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–6224; e-mail address: miller.joanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0181. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of March 8, 2002 (67 FR pages 10722 – 10727) (FRL–6825–8), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the filing of a pesticide petition (PP 6F4752) by E.I. du Pont de Nemours and Company, Inc., P.O. Box 30, Newark, Delaware 19714–0030. This notice included a summary of the petition prepared by E.I. du Pont de Nemours and Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.405 be amended by establishing tolerances for residues of the herbicide chlorsulfuron; (2-chloro-*N*-[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)aminocarbonyl]benzenesulfonamide), in or on grass, forage at 11.0 part per million (ppm) and grass, hay at 19.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of chlorsulfuron in or on grass, forage at 11.0 ppm and grass, hay at 19.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by chlorsulfuron are discussed in the following Table 1 as well as the no observed adverse effect level and the lowest observed adverse effect level from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3150	6 Month oral toxicity in nonrodents	NOAEL = 18.5 mg/kg/day LOAEL = 82.3 mg/kg/day based on decreased body weight and body-weight gain.
870.3700	Prenatal developmental in rodents	Maternal NOAEL = 165 mg/kg/day LOAEL = 500 mg/kg/day based on clinical signs, vaginal discharge with associated alopecia. Developmental NOAEL = 500 mg/kg/day LOAEL = 1500 mg/kg/day based on decreased fetal body weight.
870.3700	Prenatal developmental in nonrodents	Maternal NOAEL = 75 mg/kg/day LOAEL = 200 mg/kg/day based on decreased body weight gain. Developmental NOAEL = 200 mg/kg/day LOAEL = 400 mg/kg/day based on a slight increase in visceral malformations and decreased fetal body weight.
870.3800	3-Generation Reproduction in rodents	Parental NOAEL = 125 mg/kg/day LOAEL is greater than 125 mg/kg/day, no effects observed. Reproductive NOAEL = 5 mg/kg/day LOAEL = 25 mg/kg/day based on decreased female fertility Offspring NOAEL = 125 mg/kg/day LOAEL = 125 mg/kg/day, no effects observed.
870.4100	Chronic toxicity dogs	NOAEL = 60.6 mg/kg/day LOAEL = 215 mg/kg/day based on decreased body-weight gain, erythrocyte counts and hemoglobin levels.
870.4200	Carcino-genicity mice	NOAEL = 108 mg/kg/day LOAEL = 750 mg/kg/day based on decreased body weight and body-weight gain. (no) evidence of carcinogenicity
870.4300	Carcinogenicity rats	NOAEL = 5 mg/kg/day LOAEL = 25 mg/kg/day based on decreased body weight in males. (no) evidence of carcinogenicity
870.5385	Cytogenetics	No evidence of chromosomal aberrations
870.7485	Metabolism and pharmacokinetics	Chlorsulfuron is rapidly absorbed, metabolized, and excreted following oral exposure. The major routes of elimination are the urine (58% – 72%) and feces (20% – 35%).

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B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences. The 3-generation reproductive toxicity study is classified unacceptable, and it is considered a datagap. Reproductive toxicity was observed but was of questionable significance in both litters of the F_3 generation, as evidenced by decreased female fertility. Offspring toxicity was not observed. This study had numerous deficiencies including but not limited to:

1. No assessment of estrous cyclicity, sperm parameters.
2. No assessment of male reproductive performance.
3. Parental animals not subjected to gross pathology or histopathology examinations.
4. No assessment of developmental landmarks.
5. Pup histopathology evaluations conducted only for the F_{3B} generation.

Although this reproduction study on chlorsulfuron conformed to the old guideline requirements, it is unacceptable under the current guideline requirement in light of the fact that most of the parameters used for FQPA assessment are not provided in the available study. The Agency applied a FQPA database uncertainty factor of 3X to account for the unacceptable reproduction study. Exposure estimates are upper bound and will not underestimate exposure to chlorsulfuron. The 3X FQPA database uncertainty factor applies to all dietary and non-dietary residential exposure scenarios and no Special FQPA safety factor is required.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for chlorsulfuron used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CHLORSULFURON FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary females 13–50 years of age	no appropriate endpoint for this exposure scenario was identified		
Acute Dietary general population including infants and children	no appropriate endpoint for this exposure scenario was identified		
Chronic Dietary all populations	NOAEL = 5 mg/kg/day UF = 300 ..... Chronic RfD = 0.02 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD ÷ FQPA SF = 0.02 mg/kg/day.	rat chronic toxicity/carcinogenicity LOAEL = 25 mg/kg/day based on decreased body weight in males
Incidental Oral, Short-Term Residential Only	NOAEL = 75 mg/kg/day UF=300	FQPA SF = 1 LOC for MOE = 300	developmental toxicity study in rabbits LOAEL=200 mg/kg/day based on decreased body-weight gain
Incidental Oral, Intermediate-Term Residential Only	NOAEL = 75 mg/kg/day UF=300	FQPA SF = 1 LOC for MOE = 300	developmental toxicity study in rabbits LOAEL=200 mg/kg/day based on decreased body-weight gain
Short-Term Dermal (1 to 7 days) (Residential)	NOAEL = 75 mg/kg/day UF = 300	FQPA SF = 1 LOC for MOE = 300 (Residential).	developmental toxicity study in rabbits LOAEL = 200 mg/kg/day based on decreased body-weight gain

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CHLORSULFURON FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Intermediate-Term Dermal (1 week to several months) (Residential)	NOAEL = 75 mg/kg/day UF = 300	FQPA SF = 1 LOC for MOE = 300 (Residential).	developmental toxicity study in rabbits LOAEL = 200 mg/kg/day based on decreased body-weight gain
Long-Term Dermal (several months to lifetime) (Residential)	NOAEL = 5 mg/kg/day UF = 300 when appropriate)	FQPA SF = 1 LOC for MOE = 300 (Residential).	chronic toxicity/carcinogenicity study in rats LOAEL = 25 mg/kg/day based on decreased body weight in males
Short-Term Inhalation (1 to 7 days) (Residential)	NOAEL = 75 mg/kg/day UF = 300	FQPA SF = 1 LOC for MOE = 300 (Residential).	developmental toxicity study in rabbits LOAEL = 200 mg/kg/day based on decreased body-weight gain
Intermediate-Term Inhalation (1 week to several months) (Residential)	NOAEL = 75 mg/kg/day UF = 300)	FQPA SF = 1 LOC for MOE = 300 (Residential).	developmental toxicity study in rabbits LOAEL = 200 mg/kg/day based on decreased body weight gain
Long-Term Inhalation (several months to lifetime) (Residential)	NOAEL = 5 mg/kg/day UF = 300)	FQPA SF = 1 LOC for MOE = 300 (Residential).	chronic toxicity/carcinogenicity study in rats LOAEL = 25 mg/kg/day based on decreased body weight in males

*The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.405) for the residues of chlorsulfuron, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from chlorsulfuron in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. No toxicological endpoint attributable to a single exposure was identified in the available toxicology studies. No appropriate studies available show any acute dietary effects of concern.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Residue levels are at the recommended tolerances and 100% crop treated with chlorsulfuron. Results of dietary analyses showed exposure to chlorsulfuron consumed no more than 19.3% of the cPAD.

iii. *Cancer.* Chlorsulfuron was classified as having "no evidence of carcinogenicity" based upon lack of evidence of carcinogenicity in rats and mice. Therefore, a cancer dietary exposure analysis was not performed.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for chlorsulfuron in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of chlorsulfuron.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The Screening Concentration in Ground Water (SCI-GROW) model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to chlorsulfuron, they are further discussed in the aggregate risk sections in Unit III. E. of this preamble.

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Based on the FIRST and SCI-GROW models the EECs of total chlorsulfuron residues (both parent and degradation products) for acute exposures are estimated to be 59.7 parts per billion (ppb) and for chronic exposures are estimated to be 41.3 ppb in surface water. The EECs for acute and chronic exposures of chlorsulfuron (parent only) are estimated to be 3.5 ppb in ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Chlorsulfuron is currently registered for use on the following residential non-dietary sites: Lawns. The risk assessment was conducted using the following residential exposure assumptions: Adult handlers and adult and toddler postapplication exposure to treated turf. Residential exposure risk was assessed using the Residential Exposure Assessment Standard Operating Procedures (ResSOPs) standard values and assumptions. Adult handler exposure risk was not of concern with MOEs ranging between 8,800 and 190,000. Postapplication exposure risks for adults and toddlers also exceeded target MOEs, ranging between 770 and 400,000. Since the ResSOPs ranged between median and high end assessments, and the use assessed was for spot treatment, not the entire lawn, the residential postapplication exposure risk assessment was conservative.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether chlorsulfuron has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, chlorsulfuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that chlorsulfuron has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* The toxicology database for chlorsulfuron contains acceptable guideline developmental studies which show no quantitative or qualitative evidence of increased susceptibility following *in utero* exposure. Susceptibility cannot be assessed in the 3-generation reproduction study in rats. The Agency determined that a 2-generation reproduction study is required for chlorsulfuron.

3. *Conclusion.* The existing toxicological database for chlorsulfuron, while not complete, supports the establishment of permanent tolerances for chlorsulfuron per se and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. For dietary exposure estimates, a FQPA safety factor of 3 was used. Due to data deficiencies in the toxicology database, the Agency determined that an additional 3X database UF is needed for the protection of infants and children. An UF of 3X (as opposed to a 10X) is adequate because the chronic RfD is based on the NOAEL of 5 mg/kg/day established in the Combined Chronic/Carcinogenicity Study in Rats. This dose (5 mg/kg/day) is 25X lower than the highest dose tested (125 mg/kg/day) in the existing 3-generation Reproduction Study in which the effects noted were considered of questionable toxicological significance.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure [(i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* An appropriate endpoint attributable to a single dose was not identified, therefore, no acute risk is expected.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to chlorsulfuron from food will utilize no more than 6.6% of the cPAD for the U.S. population, 7.3% of the cPAD for all infants and 19.3% of the cPAD for children 1–6 years old. Based on the use pattern, chronic residential exposure to residues of chlorsulfuron is not expected. Since no chronic residential scenarios have been identified, chronic DWLOCs for chlorsulfuron were calculated based on residues in food alone. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO CHLORSULFURON

Population Subgroup	cPADmg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.02	6.6	41.3	3.5	654
Females 13–50 years old	0.02	4.3	41.3	3.5	574
Children 1–6 years old	0.02	19.3	41.3	3.5	161
All Infants	0.02	7.3	41.3	3.5	185

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Chlorsulfuron is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for chlorsulfuron.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 1,265 for adult males, 1,274 for adult females and 722 for toddlers. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of chlorsulfuron in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO CHLORSULFURON

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
Adult Male	1,265	300	41.3	3.5	6,674
Adult Female	1,274	300	41.3	3.5	5,734
Toddler	722	300	41.3	3.5	1,461

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). The intermediate-term aggregate risk is the same as the short-term aggregate risk (Table 4) since the toxicity end points are the same for both exposures.

5. *Aggregate cancer risk for U.S. population.* The carcinogenic potential of chlorsulfuron was classified as no evidence of carcinogenicity. Therefore, no cancer risk is expected.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to chlorsulfuron residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Methods are available for the enforcement of tolerances for chlorsulfuron residues in/on plant and animal commodities. PAM Vol. II lists Methods I and II, High performance liquid chromotography methods with photoconductivity detection, for the determination of chlorsulfuron residues in plants and livestock commodities and milk.

B. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits, therefore, issues of compatibility do not exist.

C. Conditions

The following data gaps must be fulfilled; a 21–day repeat dermal toxicity study, a subchronic inhalation study, and a 2-generation reproduction study.

V. Conclusion

Therefore, tolerances are established for residues of chlorsulfuron in or on grass, forage at 11.0 ppm and grass, hay at 19.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made.

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The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0181 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 15, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0181, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 30, 2002.

Donald R. Stubbs,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.405 is revised to read as follows:

§ 180.405 Chlorsulfuron; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of chlorsulfuron (2-chloro-*N*-[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)aminocarbonyl]benzenesulfonamide) and its metabolite, 2-chloro-5-hydroxy-*N*-[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)aminocarbonyl] benzenesulfonamide in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley, grain	0.1
Barley, straw	0.5
Oat, forage	20.0
Oat, grain	0.1
Oat, straw	0.5
Wheat, forage	20.0
Wheat, grain	0.1
Wheat, straw	0.5

(2) Tolerances are established for residues of chlorsulfuron (2-chloro-*N*-[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)aminocarbonyl] benzenesulfonamide) in or on the following raw agricultural commodities.

Commodity	Parts per million
Cattle, fat	0.3
Cattle, meat	0.3
Cattle, meat byproducts	0.3
Goat, fat	0.3
Goat, meat	0.3
Goat, meat byproducts	0.3
Grass, forage	11.0
Grass, hay	19.0
Hog, fat	0.3
Hog, meat	0.3
Hog, meat byproducts	0.3
Horse, fat	0.3
Horse, meat	0.3
Horse, meat byproducts	0.3
Milk	0.1
Sheep, fat	0.3
Sheep, meat	0.3
Sheep, meat byproducts	0.3

(b) *Section 18 emergency exemptions.* [Reserved].

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 02–20229 Filed 8–13–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1898, MM Docket No. 01–161, RM–10181]

Digital Television Broadcast Service; Victoria, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Surtsey Productions, Inc., license of station KVCT–TV, Victoria, Texas, substitutes DTV channel 11 for DTV channel 34 at Victoria. *See* 66 FR 39727, August 1, 2001. DTV channel 11 can be allotted to Victoria, Texas, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 28–50–26 N. and 97–07–47 W. with a power of 18, HAAT of 311 meters and with a DTV service population of 229 thousand. Since the community of Victoria is located within 275 kilometers of the U.S.-Mexican border, concurrence from the Mexican government has been obtained for this allotment.

With this action, this proceeding is terminated.

DATES: Effective September 23, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–161, adopted August 2, 2002, and released August 9, 2002. The full text of this document is available for public inspection and copying during regular

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business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Texas, is amended by removing DTV channel 34 and adding DTV channel 11 at Victoria.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–20590 Filed 8–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1899, MB Docket No. 02–104, RM–10390]

Digital Television Broadcast Service; Dawson, Pelham, Savannah, Waycross, and Wrens, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Georgia Public Telecommunications Commission, licensee of stations WCES–TV, WVAN–TV, WXGA–TV, WACS–TV, and WABW–TV, substitutes DTV channel *2 for DTV channel *36 at Wrens; DTV channel *13 for DTV channel *46 at Savannah; DTV channel *9c for DTV channel *18 at Waycross; DTV channel *8 for DTV channel *26c at Dawson; and DTV channel *5 for DTV channel DTV *20 at Pelham. See 67 FR 36137, May 23, 2002. DTV channels *2, *13, *9c, *8 and *5 can be allotted to Wrens, Savannah, Waycross, Dawson, and Pelham, Georgia, in compliance with the principle community coverage requirements of Section 73.625(a). DTV Channel *2 can be allotted with a power of 4.9, (HAAT) of 436 meters; DTV channel *13 with a power of 10, (HAAT) of 293; DTV channel *9 with a power of 4.6 and (HAAT) of 286 meters; DTV channel *8 with a power of 4.9 and (HAAT) of 331 meters; and DTV channel *5 with a power of 0.75 and (HAAT) of 474 meters. With this action, this proceeding is terminated.

DATES: Effective September 23, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–104, adopted August 2, 2002, and released August 9, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Georgia, is amended by removing DTV Channel *26c and adding DTV Channel *8 at Dawson.

3. Section 73.622(b), the Table of Digital Television Allotments under Georgia, is amended by removing DTV Channel *20 and adding DTV Channel *5 at Pelham.

4. Section 73.622(b), the Table of Digital Television Allotments under Georgia, is amended by removing DTV Channel *46 and adding DTV Channel *13 at Savannah.

5. Section 73.622(b), the Table of Digital Television Allotments under Georgia, is amended by removing DTV Channel *18 and adding DTV Channel *9c at Waycross.

6. Section 73.622(b), the Table of Digital Television Allotments under Georgia, is amended by removing DTV Channel*36 and adding DTV Channel *2 at Wrens.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–20591 Filed 8–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1914, MB Docket No. 02–93, RM–10414]

Digital Television Broadcast Service; Sacramento, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of La Dov Educational Outreach, Inc., an applicant for a new television station to operate on NTSC channel *52, substitutes DTV channel *43 for NTSC channel *52 at Sacramento. *See* 67 FR 34669, May 15, 2002. DTV channel *43 can be allotted to Sacramento in compliance with the principal community coverage requirements of section 73.625(a) at reference coordinates 38–37–49 N. and 120–51–20 W. with a power of 100, HAAT of 304 meters and with a DTV service population of 1557 thousand. With this action, this proceeding is terminated.

DATES: Effective September 23, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–93, adopted August 8, 2002, and released August 9, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under California, is amended by removing TV channel *52 at Sacramento.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under California, is amended by adding DTV channel *43 at Sacramento.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–20599 Filed 8–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1915, MB Docket No. 02–96, RM–10410]

Digital Television Broadcast Service; Amarillo, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Amarillo Junior College District, licensee of noncommercial station KACV–TV, substitutes DTV channel *8c for DTV channel *21 at Amarillo, Texas. *See* 67 FR 31753, May 10, 2002. DTV channel *8c can be allotted to Amarillo in compliance with the principal community coverage requirements of Section 73.625(a) at reference coordinates 35–22–30 N. and 101–52–56 W. with a power of 5, HAAT of 519 meters and with a DTV service population of 282 thousand. With this action, this proceeding is terminated.

DATES: Effective September 23, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–96, adopted August 2, 2002, and released August 9, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Texas, is amended by removing DTV channel *21 and adding DTV channel *8c at Amarillo.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–20600 Filed 8–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1916, MB Docket No. 02–75, RM–10151]

Digital Television Broadcast Service; Lynchburg, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WSET, Inc., licensee of station WSET–TV, NTSC channel 13, Lynchburg, Virginia, substitutes DTV channel 34 for DTV channel 56 at Lynchburg. *See* 67 FR 17041, April 9, 2002. DTV channel 34 can be allotted to Lynchburg in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 37–18–52 N. and 79–38–04 W. with a power of 660, HAAT of 625 meters and with a DTV service population of 1048 thousand. With this action, this proceeding is terminated.

DATES: Effective September 23, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–75, adopted August 2, 2002, and released August 9, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Virginia, is amended by removing DTV channel 56 and adding DTV channel 34 at Lynchburg.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–20601 Filed 8–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1763; MM Docket No.01–279; RM–10290]

Radio Broadcasting Services; Rocksprings, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 235C3 to Rocksprings, Texas, in

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response to a petition filed by Linda Crawford. *See* 66 FR 53192, October 19, 2001. The coordinates for Channel 235C3 at Rocksprings are 30–07–06 and 100–19–18. There is a site restriction 16 kilometers (9.9 miles) northwest of the community. With this action, this proceeding is terminated. A filing window for Channel 235C3 at Rocksprings will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective September 16, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–279, adopted July 17, 2002, and released August 2, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 235C3 at Rocksprings.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–20585 Filed 8–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1765; MM Docket No.01–280; RM–10291]

Radio Broadcasting Services; Benjamin, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 237C3 to Benjamin, Texas, in response to a petition filed by Katherine Pyeatt. *See* 66 FR 52735, October 17, 2001. The coordinates for Channel 237C3 at Benjamin are 33–44–27 and 99–48–54. There is a site restriction 17.5 kilometers (10.9 miles) north of the community. With this action, this proceeding is terminated. A filing window for Channel 237C3 at Benjamin will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective September 16, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–280, adopted July 17, 2002, and released August 2, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Benjamin, Channel 237C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–20586 Filed 8–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1877; MM Docket No. 98–155; RM–9082, RM–9133]

Radio Broadcasting Services; Alva, Mooreland, Tishomingo, and Woodward, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule, application for review.

SUMMARY: At the request of Ralph Tyler this document reallots Channel 259C3 from Tishomingo to Tuttle, Oklahoma, and modifies the Station KTSH license to specify Tuttle as the community of license. See 65 FR 82296, published December 28, 2000. In order to accommodate this reallotment, this document substitutes Channel 260C1 for Channel 259C1 at Alva, Oklahoma, and modifies the Station KXLS license to specify operation on Channel 260C1 at Alva. This document also substitutes Channel 292C1 for Channel 261C1 at Woodward, Oklahoma, and modifies the Station KWFX license to specify operation on Channel 292C1 at Woodward. The reference coordinates for the Channel 259C3 allotment at Tuttle, Oklahoma, are 35–17–33 and 97–42–58. The reference coordinates for the Channel 292C1 allotment at Woodward, Oklahoma, are 36–25–42 and 99–24–10. The reference coordinates for the Channel 260C1 allotment at Alva, Oklahoma, are 36–35–41 and 98–15–38. In view of the grant of the reallotment of Channel 259C3 to Tuttle, the Application for Review filed by Ralph Tyler directed against an earlier action denying this reallotment is dismissed. With this action, the proceeding is terminated.

DATES: Effective September 17, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 98–155 adopted July 31, 2002, and released August 2, 2002. The full text of this decision is available for inspection and copying during normal

business hours in the FCC's Reference Information Center at Portals II, CY–257, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 259C1 and adding Channel 260C1 at Alva; by removing Tishomingo, Channel 259C3, and adding Tuttle, Channel 259C3; and by removing Channel 261C1 and adding Channel 292C1 at Woodward.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–20587 Filed 8–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1861; MM Docket No. 99–246; RM–9593, RM–9770]

Radio Broadcasting Services; Camp Verde, Mayer, and Sun City West and Winslow, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule, application for review.

SUMMARY: At the request of Desert West Air Ranchers Corporation, this document reallots Channel 236C from Winslow to Sun City West, Arizona, and modifies the Station KFMR license to specify Sun City West as the community of license. This document also sets aside an earlier action reallotting Channel 236C to Mayer, Arizona. *See* 66 FR 29237, published May 30, 2001. In addition, this document dismisses an Application for Review filed by Desert West Air Ranchers Corporation directed against that earlier action. The reference coordinates for the Channel 236C allotment at Sun City West, Arizona, are 34–14–33 and 112–21–53. With this action, the proceeding is terminated.

DATES: Effective September 17, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 99–246, adopted July 31, 2002, and released August 2, 2002. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Mayer, Channel 236C and adding Sun City West, Channel 236C.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–20588 Filed 8–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1813; MM Docket No. 99–196; RM–9619, RM–9874]

Radio Broadcasting Services; Bethel Springs, Martin, Tiptonville, Trenton, and South Fulton, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule, petition for reconsideration.

SUMMARY: This document grants a petition for reconsideration filed by Thunderbolt Broadcasting Company, licensee of Station WCMT–FM, Channel 269A, Martin, TN, and grants Option I of its counterproposal that had been denied in the *Report and Order* in this proceeding. *See* 66 FR 63653, published December 10, 2001. The document reasons that the public interest benefits of upgrading and reallotting Station WCMT–FM to South Fulton, TN, outweigh downgrading vacant Channel 267C3 at Tiptonville, TN, to Channel 247A because a first local service will be provided to South Fulton. The reference coordinates for Channel 267C3 at South Fulton, TN, are 36–26–27 and 88–58–00. The reference coordinates for Channel 247A at Tiptonville, TN, are 36–22–42 and 89–23–18. To accommodate the South Fulton allotment, this document also substituted Channel 249C3 for Channel 248C3 at Trenton, TN, and modified the license for Station WTNE–FM, Trenton, to specify operation on Channel 249C3. The reference coordinates for Channel 249C3 at Trenton are 36–05–10 and 88–54–39.

DATES: Effective September 16, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 99–196, adopted July 17, 2002, and released August 2, 2002. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

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§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Martin, Channel 269A, by adding South Fulton, Channel 267C3, and by removing Channel 267C3 and adding Channel 247A at Tiptonville.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–20589 Filed 8–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1764; MM Docket No. 01–307; RM–10307]

Radio Broadcasting Services; Camp Wood, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 271A to Camp Wood, Texas, in response to a petition filed by Linda Crawford. *See* 66 FR 56630, November 9, 2001. The coordinates for Channel 271A at Camp Wood are 29–48–01 and 100–02–35. There is a site restriction 14.8 kilometers (9.2 miles) north of the community. Although Mexican concurrence has been requested for the allotment of Channel 271A at Camp Wood, notification has not been received. Therefore, operation with the facilities specified for Camp Wood herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico. With this action, this proceeding is terminated. A filing window for Channel 271A at Camp Wood will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective September 16, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–307, adopted July 17, 2002, and released August 2, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 271A at Camp Wood.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–20593 Filed 8–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1875; MM Docket No. 02–25; RM–10361]

Radio Broadcasting Services; Beverly Hills and Spring Hill, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission reallots Channel 292C3 from Beverly Hills to Spring Hill, Florida, as the community's first local aural transmission service, and modifies WGUL–FM, Inc.'s license for Station WGUL–FM to reflect the change of community. *See* 67 FR 8219 (02/22/2002). Coordinates for Channel 292C3 at Spring Hill are: NL 28–36–00 and WL 82–33–45.

DATES: Effective September 16, 2002.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 02–25, adopted July 24, 2002, and released August 2, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.* This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Spring Hill, Channel 292C3, and removing Beverly Hills, Channel 292C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–20596 Filed 8–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications*, 8 FCC Rcd 4735 (1993).

DATES: Effective August 14, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted July 31, 2002, and released August 2, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by removing Channel 284C2 and adding Channel 284C at Lanai City.

3. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 273C and adding Channel 273C0 at Des Moines.

4. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 223A and adding Channel 223C3 at Poplar Bluff.

5. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 299C3 and adding Channel 299C2 at Henderson.

6. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 252A and adding Channel 252C3 at Pecos and by removing Channel 276C3 and adding Channel 276C2 at Pittsburg.

7. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 297C2 and adding Channel 297C1 at Kemmerer.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–20597 Filed 8–13–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI19

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Tumbling Creek Cavesnail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), determine the Tumbling Creek cavesnail (*Antrobia culveri*) to be an endangered species under the Endangered Species Act of 1973, as amended (Act). This species is known to occur in one cave in Missouri. The distribution of this species in Tumbling Creek has decreased by 90 percent since 1974. Although cavesnail numbers fluctuated seasonally and annually between 1996 and 2000, the species was not found in the monitored section of the cave stream during six surveys in 2001 and two surveys in 2002. Small numbers of individuals continue to exist in other portions of the cave stream. Because the sudden population decline demonstrates a significant and imminent risk to the well-being of the Tumbling Creek cavesnail, we find that listing this species is necessary to provide Federal protection pursuant to the Act.

DATES: This final rule is effective August 14, 2002.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Columbia Field Office, 608 E. Cherry St., Room 200, Columbia, MO 65201–7712.

FOR FURTHER INFORMATION CONTACT: Paul McKenzie, Ph.D., Columbia Field Office (*see* **ADDRESSES**) (telephone: 573–876–1911, ext. 107; e-mail: *paul_mckenzie@fws.gov;* facsimile: 573–876–1914). Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

The Tumbling Creek cavesnail (*Antrobia culveri*) was described as a new species by Hubricht (1971) from specimens taken by David Culver, Thomas Aley, and Leslie Hubricht in 1969 and 1970. *Antrobia culveri* is the type species for the genus *Antrobia*, also described new to science in 1971 by Hubricht. Hershler and Hubricht (1988) examined specimens of *A. culveri* and confirmed the taxonomic placement of this species in the subfamily Littoridininae of the Gastropod family Hydrobiidae. They also noted the similarity of the genus *Antrobia* to, but distinguished it from, the genus *Fontigens*, which contains cave-adapted snails found in other caves and springs of the Ozark Plateau in Missouri and Arkansas. The Tumbling Creek cavesnail is a small, white, blind, aquatic snail. Hubricht (1971) provided the following measurements of the type specimen: height 2.3 millimeters (mm) (0.09 inches (in)); diameter 2.0 mm (0.08 in); aperture height 1.2 mm (0.05 in); aperture diameter 1.1 mm (0.04 in); with a small, conical, well-rounded, pale-yellow shell containing about 3.5 whorls (Hubricht 1971). The Tumbling Creek cavesnail is restricted to a single cave stream in Tumbling Creek Cave in Taney County, southwestern Missouri.

Greenlee (1974) provided the first information on the habitat of the species. He reported that the species was found primarily on "3 inch gravel substrate" (presumably meaning small stones or cobble of 3-inch (7.5 cm) diameter), with a few individuals observed using the recesses of a solid rock stream bottom. Greenlee's use of a Surber Sampler, however, may have biased his survey to search for rocks smaller than 25 cm (10 in) in diameter (Julian J. Lewis; J. Lewis & Associates, Clarksville, IN; *in litt.*, January 27, 2002). Greenlee (1974) did not note whether the snails used the upper or lower surface of the 3-inch gravel he observed them on, or whether the species was ever observed using larger rocks within the cave stream. Subsequent surveyors, however, have failed to document *A. culveri* using a solid rock bottom, and the species is usually observed on the undersurface of rocks and gravel of various sizes (Ashley unpub. data; McKenzie *in litt.*, September 16, 1996; Ashley and McKenzie, pers. obs.). Although Greenlee (1974) stated that the Tumbling Creek cavesnail was absent from areas of the stream that contained bat guano, subsequent observers (Ashley 2001a; Ashley and McKenzie, pers. obs.) have noted *A. culveri* in portions of

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Tumbling Creek where bat guano occurs. Greenlee (1974) noted that the species appears to prefer areas of the stream that lack silt, but Ashley (2000) found no significant differences in snail populations between habitats having silt and those lacking silt. There is insufficient data currently available to determine if silt is detrimental to the Tumbling Creek cavesnail. Tom and Cathy Aley suggested (pers. comm., August 30, 2001) that silt deposition in recent years in the stream has "cemented" smaller rocks to the stream bottom making their undersurface unavailable to cavesnails. This hypothesis is supported by observations made by researchers while conducting cavesnail surveys (e.g., Ashley and McKenzie, pers. obs.).

Although little is known regarding the biology of this cavesnail, Greenlee (1974) postulated that the species feeds on aquatic microfauna. Because Tumbling Creek cavesnails have been concentrated in sections of Tumbling Creek Cave that are usually adjacent to large deposits of bat guano, it has been postulated that *Antrobia culveri* is indirectly dependent upon these deposits for food (Greenlee 1974). Other life history aspects of this species, including its reproductive behavior, are unknown. Although nothing is known about the longevity or movements of this species, some limited information is available on the frequency of shell sizes within the population across different seasons. Ashley (2000) examined shell length data collected between 1996 and 2000 and noted that the average length of *A. culveri* shells exhibited a slight peak during summer months but further noted that the difference was not statistically significant. Ashley (2000) also analyzed the frequency distribution of cavesnail shell lengths from fall data collected between 1997 and 2000 and noted a decrease in the frequency of smaller shells over that period. Ashley (2000) concluded that both fewer snails and fewer smaller snails in the younger age classes were observed in the more recent fall visits conducted from 1997 through 2000. This suggests that there has been a reduction in recruitment of younger age classes into the population between 1997 and 2000.

The fauna of Tumbling Creek Cave is highly diverse (Thomas Aley, Ozark Underground Laboratory (OUL), *in litt.* 1978; Cecil Andrus, USDI, *in litt.* 1980). In addition to one species included in the Missouri Department of Conservation's (MDC) *Checklist of Species of Conservation Concern* (Missouri Natural Heritage Program 2001) (*i.e.*, a cave millipede (*Scoterpes dendropus*)), *Antrobia culveri* is associated with at least three, and possibly as many as six, species that are new to science but have not yet been formally described: a millipede (*Chaetaspis* sp.), a terrestrial isopod (*Caucasonethes* sp.), an amphipod (*Stygobromus* sp.), a dipluran (*Plusiocampa* sp.), a phalangodid harvestman (*Phalangium* sp.), and a cave spider (*Islandiana* sp.). Tumbling Creek Cave also provides habitat for a large maternity colony of federally listed gray bats (*Myotis grisescens*), with a recent estimated breeding population of 12,400 in 1998 (Dr. William Elliott, MDC, in litt. October 9, 2001). Historically, the gray bat breeding population included an estimated 50,000 individuals (MDC 1992, Missouri Natural Heritage Program 2000). The Gray Bat Recovery Plan lists Tumbling Creek Cave as a "Priority 1" cave. Priority 1 gray bat caves have the highest level of biological significance for a gray bat maternity site (*i.e.*, a cave deemed to be "absolutely essential" in preventing the extinction of the endangered gray bat) (U.S. Fish and Wildlife Service 1982). There have also been historical observations of a very small hibernating population of the federally listed Indiana bat (*Myotis sodalis*). However, the Indiana bat has not been documented at the site since 1989 (Missouri Natural Heritage Program 2000).

Tumbling Creek Cave is owned by Tom and Cathy Aley of Protem, MO. Because of its rich cave fauna, the large maternity colony for the endangered gray bat, and its diverse physical features, Tumbling Creek Cave was designated as a National Natural Landmark and approved for inclusion on the National Registry of Natural Landmarks under the authority of the Historic Sites Act of 1935 (49 Stat. 666; 16 U.S.C. 461 *et seq.*) (Cecil Andrus, USDI, *in litt.*, 1980; 48 FR 8693). Tumbling Creek Cave and approximately 395 acres surrounding the cave were embodied in the designation, including about 140 surface acres owned by the Aleys and about 255 surface acres owned by two adjacent property owners.

Status and Distribution

Antrobia culveri is known only from Tumbling Creek Cave in Taney County, southwestern Missouri. In an extensive survey of publicly and privately owned Missouri caves, no additional populations of this cavesnail were discovered (Gardner 1986). Recent surveys conducted in nearby caves and springs by Dr. David Ashley of Missouri Western State College, St. Joseph, MO, have also failed to locate this species at any other sites (David Ashley, *in litt.* November 2001). The fact that no additional populations were found in springs in close proximity to Tumbling Creek Cave supports the long-held contention that Tumbling Creek cave is the only location where this species occurs.

Antrobia culveri was historically known from an estimated area of 1,016 square meters (m^2) (10,900 square feet (ft^2) or 0.25 acres) of Tumbling Creek along approximately 229 meters (m) (750 feet (ft)) of the stream in the middle one-third of the lower stream passage in Tumbling Creek Cave (Greenlee 1974). Based on a survey of approximately 630 m^2 (6,800 ft^2) of suitable habitat within the 457 m (1,500 ft) of human-accessible cave-stream habitat, Greenlee (1974) estimated the population of Tumbling Creek cavesnails at 15,118 individuals.

In 1995, we reviewed the status of the species, including the survey methodology originally established by Greenlee (1974), and determined that an inadequate description of the survey methods made it difficult to determine the number of plots taken. Our lack of knowledge on the number of plots sampled by Greenlee made it difficult to interpret his population estimates and impossible to duplicate his survey methods. Therefore, we concluded that a new and more rigorous statistical survey design would be necessary to establish population trends for the species. Following meetings with Dr. Pam Haverland of the U.S. Geological Survey, Columbia Environmental Research Center in Columbia, MO, and Mr. Tom Aley, President of Ozark Underground Laboratory (OUL) and owner of Tumbling Creek Cave, a sampling protocol was established within an approximate 75 m (247 ft) section of Tumbling Creek that was known to be inhabited by *Antrobia culveri* but that would minimize any potential impacts to the federally endangered gray and Indiana bats.

Following the establishment of sampling stations within Tumbling Creek Cave, and an initial September 1996 survey using those stations (McKenzie, *in litt.* 1996), we contracted Dr. David Ashley, of Missouri Western State College, St. Joseph, MO, to monitor population trends of the Tumbling Creek cavesnail. Ashley completed 19 separate monitoring trips between September 3, 1997, and March 23, 2002 (Ashley 2000, 2001a, 2001b, 2001c, 2002). Ashley (2000, 2001a, 2001b, 2001c, 2002) determined that population estimates of *Antrobia culveri* within the monitoring stations fluctuated both seasonally and annually, and ranged from a high of 1,166 individuals on September 3, 1997, to a low of 0 individuals on January 11, March 17, May 8, July 16, August 31, and November 2, 2001, and January 9 and March 23, 2002. Ashley concluded that a significant decrease in the numbers of cavesnails had occurred between September 9, 1996, and March 23, 2002 (Ashley 2002).

Although the 2001 and 2002 surveys failed to document the presence of any cavesnails within the established monitoring stations, 40 individuals were discovered upstream of the sampling stations in March 2001. During March 16–18, 2001, Ashley and others surveyed the entire human-accessible 457 m (1,500 ft) of Tumbling Creek, including a small tributary that has approximately 9 additional meters (30 ft) of accessible habitat. A total of 39 person-hours was expended in searching a total of 1,054 rocks in the 466 m (1,530 ft) of available habitat. A total of 39 cavesnails were located in a 14-m (45-ft) section of the stream upstream from the monitoring stations, and another cavesnail was found in the tributary (Ashley 2001a). Subsequent surveys in May, July, September, and November, 2001, and January, 2002, documented the presence of cavesnails only in this 14-m section upstream of the established sampling stations. The small tributary stream was not searched during those subsequent surveys. A more thorough search was not conducted in either the tributary or the area upstream from the sampling stations in order to minimize disturbance to cavesnails in those areas. Observations made between September 1997 and March 2002 suggest that the numbers of *Antrobia culveri* have declined significantly from estimates obtained by Greenlee (1974); however, differing sampling methods make it impossible to directly compare Ashley's estimates with those of Greenlee.

In addition to Greenlee's 1974 survey and the standardized surveys conducted between 1996 and 2002, other attempts have been made to monitor the species' status and derive estimates of its abundance. A June 1991 survey conducted by Tom Aley, Paul McKenzie (Service, Columbia, MO), and Dennis Figg (MDC, Jefferson City, MO) located 42 individuals after a 9 person-hour search (McKenzie, pers. obs.). A June 1993 survey conducted by Monty Holder (a high school biology instructor) of Sedalia, MO, and three assistants located 21 individuals during 6 person-hours of search effort (Tom Aley, *in litt.* 1993), but the number of plots sampled is unknown. On August 29, 1995, Paul McKenzie and Cathy Aley searched for the species and attempted to estimate the number of cavesnails discovered per 0.3 m^2 (1 ft^2) plot. This survey yielded 6 cavesnails in 22 plots or 0.27 cavesnails per plot (McKenzie, unpubl. data). This compares to an estimated 2.16 cavesnails per plot observed by Greenlee (1974) when equivalent plot sizes were calculated for analysis purposes. Although it is impossible to determine the exact number of plots sampled by Greenlee (1974), he did record the average number of snails per plot, and this can be compared to the same variable measured in 1995. A decrease from 2.16 cavesnails per plot to 0.27 cavesnails per plot would represent an approximate 88 percent decrease in the species' density over the 22-year period between 1974 and 1995.

Previous Federal Action

On January 6, 1989, the Service published an Animal Notice of Review (54 FR 54554–54579) which included the Tumbling Creek cavesnail as a category 2 candidate species for possible future listing as threatened or endangered. Category 2 candidates were those taxa for which information contained in the Service's files indicated that listing may be appropriate but for which additional data were needed to support a listing proposal. On November 21, 1991, the Service published an Animal Candidate Notice of Review (56 FR 58804–58836), which elevated the Tumbling Creek cavesnail to category 1 status. Category 1 candidates were those taxa for which the Service had on file sufficient information on biological vulnerability and threats to support preparation of listing proposals. In the subsequent February 28, 1996, Candidate Notice of Review (61 FR 7596–7613), we indicated that the category 2 candidate species list was being discontinued, and that henceforth the term "candidate species" would be applied only to those taxa that would have earlier fit the definition of the former category 1 candidate taxa, that is, those species for which we had on hand sufficient information to support a listing proposal. *Antrobia culveri* was retained as a candidate species in that notice.

In 1996, we initiated a 5-year set of standardized surveys designed to better assess and quantify the decline in the species' population that was apparent from the earlier data. In January 2001, Ashley (pers. comm. January 14, 2001) notified the Service that no cavesnails were observed within the established monitoring stations during the January 11 survey. He further reported that an analysis of 5 years of data collected between September 1996 and March 2001 indicated that the population of the species had exhibited an alarming decline (Ashley 2001b). Based on this information, the Service determined that it was necessary to more closely monitor the species by having surveys conducted once every two months. Surveys conducted every two months between March 2001 and March 2002 have yielded the same results—no cavesnails have been found within the established sampling section of Tumbling Creek (Ashley 2002).

Recognizing the need for prompt additional conservation actions for the species, on January 30, 2001, Region 3 of the Service recommended changing the listing priority number for the Tumbling Creek cavesnail from 7 to 1 based upon the mid-January monitoring that failed to locate any cavesnails (Service 2001). Region 3 also recommended pursuing an emergency listing of the species and simultaneously publishing a proposal for long-term listing as endangered under the Act as soon as funding became available. On October 30, 2001, we published an updated Candidate Species Notice of Review (66 FR 54808) that formally changed the listing priority number for *Antrobia culveri* from 7 to 1, reflecting our increased concern for the survival of the species.

On August 29, 2001, the U.S. Department of the Interior reached an agreement with several conservation organizations regarding a number of listing actions that had been delayed by court-ordered critical habitat designations and listing actions for other species. That agreement was subsequently approved by the U.S. District Court for the District of Columbia. Under the agreement, the Service and the organizations agreed to significantly extend the existing court-approved deadlines for the actions on the other species, thereby making funds available for a number of listing actions judged to be higher priority by the Service. Those higher priority listing actions included the emergency listing of the Tumbling Creek cavesnail.

On December 27, 2001 (66 FR 66803), we listed *Antrobia culveri* on an emergency basis for 240 days through August 26, 2002. On the same date (66 FR 66868), we published a proposal to list the Tumbling Creek cavesnail as an endangered species under the standard listing provisions of the Act, and solicited comments on the proposed rule. The comment period was opened for 60 days and closed February 25, 2002.

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Summary of Peer Review and Public Comments

In the December 27, 2001, proposed rule, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We also provided a notice indicating that a request for a public hearing could be made by February 11, 2002. We contacted appropriate Federal and State agencies, county governments, scientific organizations, and interested parties and requested their comments. We published notices inviting public comment in the Springfield, MO, News Leader and the Branson, MO, Tri-Lakes Daily News. In accordance with our July 1, 1994, Interagency Policy on Peer Review (59 FR 34270), we requested the expert opinions of independent specialists regarding pertinent scientific or commercial data and assumptions relating to the supportive biological and ecological information in the proposed rule. The purpose of such review is to ensure that the listing decision is based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists.

We requested scientific peer review of our proposed endangered listing from four invertebrate zoologists who possess expertise on the cavesnail or other invertebrates, and also solicited comments from one research fisheries biologist who has expertise on the potential impacts of contaminants on aquatic invertebrates. We received a written response and comments from all five of these experts; we also received comments from five private land owners within the recharge area for Tumbling Creek Cave during the open comment period. No requests for a public hearing were received. All species experts and private landowners strongly supported the listing proposal and agreed that this species is in need of Federal protection as an endangered species. Four of the five peer reviewers commented that the data on changes in cavesnail numbers were very thorough and that there was clear scientific evidence for listing the species as endangered. The fifth peer reviewer did not comment on adequacy of the data.

A. Technical and Editorial Comments

Several technical and editorial comments and corrections were provided by two peer reviewers. Clarification of biological terminology, enhanced explanations of information cited from several references, and the inclusion of additional literature citations to strengthen Factors A through D, discussed below, were recommended. We have incorporated the majority of the recommended changes, as appropriate. In a few cases, suggested changes were not made if we determined that incorporating the change in text would not improve the clarity of the discussion.

B. Suggestions Related to Recovery Actions

Three peer reviewers and two private land owners suggested various recovery actions that could benefit the cavesnail or its habitat. We will prepare a recovery plan for the cavesnail following the publication of the final rule, and these comments will be considered for incorporation into the recovery plan at that time. They are not discussed in this document, because they are not germane to this listing decision.

C. Specific Comments

All peer reviewers commented on the possible reasons for the recent decline in cavesnail numbers. With the exception of the introduction of a few new suggestions discussed below, most of the reasons provided by the peer reviewers are identical to those outlined in the December 27, 2001, emergency rule. All peer reviewers reaffirmed the supposition that siltation from erosion problems, overgrazing, poor land management, deforestation, or the sudden appearance and population explosion of limpets probably contributed to the decline in the species. Other reasons presented by peer reviewers that were previously provided in the Service's emergency rule were: eutrophication or nutrient runoff from livestock operations within the recharge area; disease; depressed dissolved oxygen levels; and degraded water quality from various waterborne contaminants. Two private landowners also believed that silt deposited into Tumbling Creek cave was a major contributor to habitat loss of the species. Newly suggested reasons given by peer reviewers for the decline in cavesnail numbers that were not addressed in the emergency rule were: residual toxins in the surrounding substrate that could adversely affect the water quality of the cave stream and cause changes in water chemistry (*e.g.*, change in pH or imbalances in the anion/cation exchange).

Four of the five private landowners who provided comments stated their belief that the listing of Tumbling Creek cavesnail as an endangered species would not impact their property rights. The fifth landowner did not comment on this issue. Two respondents indicated that the declining population of *Antrobia culveri* served as a barometer on the quality of water important to area land owners and further noted that listing the species was important in preserving the rich biological diversity of the Ozarks on esthetic and ecological grounds. One peer reviewer and two land owners recommended that the entire recharge area of Tumbling Creek cave be designated as critical habitat. Comments related to the issue of critical habitat for this species are addressed below.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we determine that the Tumbling Creek cavesnail should be classified as an endangered species. We followed procedures found in section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act. We may determine a species to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the Tumbling Creek cavesnail (*Antrobia culveri*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Antrobia culveri has exhibited a large decline in numbers since the first estimate was made by Greenlee (1974) (see Status and Distribution, above). Systematic sampling within various sections of Tumbling Creek was initiated in 1996 (McKenzie *in litt.* 1996). Placement of sampling quadrats was done by inspecting the area within each of the sampling sections and arbitrarily placing the sampling squares approximately equidistant along each section. Ashley reported a statistically significant decline in the snail population over the period between 1996 and the first quarter of 2002 (Ashley 2001c, 2002). Additionally, no cavesnails have been located at established monitoring stations during the last eight surveys (Ashley 2001a, 2001b, 2001c, 2002).

We also have documented a large reduction in the portion of the cave stream occupied by the cavesnail. *Antrobia culveri* was historically known from an estimated 229 m (750 ft) of Tumbling Creek (Greenlee 1974). The 229 m of occupied habitat in 1974 constituted 50 percent of the 457 m (1,500 ft) of human-accessible cave-stream habitat that is believed to be suitable for the cavesnail. The entire accessible 457 m (1,500 ft) of Tumbling Creek, including a small tributary that has approximately 9 additional meters (30 ft) of accessible suitable habitat, was surveyed in March 2001. Cavesnails were found solely in one small (14-m) (45-ft) section of the stream and in the small tributary (Ashley 2001a). Observations between March and August 2001 suggest that *A. culveri* is now restricted to 23 m of available stream habitat or approximately 5 percent of the 457 m of accessible suitable habitat. These figures indicate that distribution of this species in Tumbling Creek Cave has decreased by 90 percent.

Species such as the Tumbling Creek cavesnail, which spend all of their life cycle in subterranean waters, are highly vulnerable to changes in the quality and quantity of that water. In turn, the quality and quantity of the subsurface water is highly dependent upon conditions and human activities on the land surface. Water feeds into losing streams and sinkholes that drain into underground karst conduits. Surface water moves into the subsurface system by a number of mechanisms, including sinkholes, percolation through sandy or gravelly soils and stream bottoms, and seepage and flowage into crevices. As water moves from the surface to the subsurface system, it carries the chemicals and particulate matter from the surface (Gines and Gines 1992). The land surface that feeds water into a particular cave stream is referred to as the "recharge area" for that cave stream. Because recharge areas may be large and may consist of all or parts of several surface watersheds, it is critically important to accurately determine the boundaries of the recharge area with reliable hydrogeological methods. Only when the recharge area is accurately delineated can water quality threats be successfully addressed (Aley and Aley 1991).

The recharge area that feeds water into Tumbling Creek Cave has been recently delineated by the cave owner, Mr. Thomas Aley of the OUL, who is also a recognized cave specialist and expert karst hydrogeologist (Aley and Aley 2001). Pending the results of additional recharge delineation studies currently being conducted by Aley on a tract of land recently purchased by him and Cathy Aley (Tom Aley, pers. comm., September 24, 2001), he estimated the recharge area to be approximately 2,349 hectares (5,804 acres or 9.07 square miles). Land ownership based on current data within the recharge area is: (1) Tom and Cathy Aley own approximately 1,550 acres, or 25 percent of the total; (2) employees of Ozark Underground Laboratory and other private individuals, who manage their property to protect water quality and benefit the species, own approximately 1,268 acres or 22 percent; (3) an estimated 1,300 acres or 23 percent is within Mark Twain National Forest; (4) the U.S. Army Corps of Engineers (CE) owns an estimated 100 acres or 2 percent; and (5) other private landowners, whose land use practices and knowledge of the cavesnail are currently unknown to us, own approximately 1,636 acres or 28 percent. Thus, within the delineated recharge area for Tumbling Creek Cave, roughly 4,168 acres or approximately 72 percent is either in public or private ownership by entities who can be expected to manage their land to benefit the species. This includes 920 acres recently purchased by Tom and Cathy Aley, or about 22 percent of the total conservation ownership. However, most of this recently purchased land was subject to land use practices (*e.g.*, over-grazing and removal of riparian vegetation) by the previous owner that resulted in heavy soil erosion that probably continues to contribute to deteriorating water quality in Tumbling Creek Cave. Remediation and restoration of these lands are planned and will require considerable funds, effort, and time.

The Tumbling Creek cavesnail is likely threatened by habitat degradation through diminished water quality from upstream locations within the unprotected or improperly managed areas within the cave's delineated recharge zone. The dramatic decrease in the population and area occupied by this species is probably attributable to degraded water quality from these sources. In recent years, there has been a noticeable increase in water turbidity in Tumbling Creek; the increased turbidity has probably had an adverse effect on the water quality in the cave's stream (Tom and Cathy Aley, pers. comm., August 30, 2001). Increased silt loads within Tumbling Creek could adversely affect the cavesnail by hampering reproduction and recruitment by suffocating juvenile cavesnails (Ashley 2000). Several authors (*e.g.*, Poulson 1996, Elliott 2000, Taylor *et al.* 2000) have noted that high sediment loads usually have a negative impact on aquatic species. Tom and Cathy Aley have also observed that clay particles within deposited silt have settled between gravel and rocks and cemented them together and to the stream bottom (Tom and Cathy Aley, pers. comm., August 2001). Such cementing decreases habitat available to cavesnails, especially interstitial areas, because the species is generally restricted to the undersurface of gravel and rocks. Coineau and Boutin (1992) demonstrated that interstitial habitats are critically important to the dispersal capabilities of animals with limited movements. Comacho (1992) suggested that the size, porosity, and compaction of sediment grains (*e.g.*, clay vs. sand) was a limiting factor in the availability of interstitial habitats to aquatic cave organisms. Interestingly, Ashley (2000) determined that some Tumbling Creek cavesnails use silt-covered substrates. This is different from the observations made by Greenlee (1974) who noted that cavesnails were not observed in areas of the stream where fine silt was deposited. Ashley's observations may be due to a reduction in the amount of silt-free substrates preferred by cavesnails which could force the species to use less favorable habitats. Although silt has been a component of Tumbling Creek since Greenlee's initial survey in 1974, it has apparently increased since that date (Tom and Cathy Aley, pers. comm., August 2001).

Silt could also be harmful to *Antrobia culveri* indirectly due to the interrelationship between various harmful bacteria or viruses and some sediment mediums. Taylor and Webb (2000) reported that the survival of some bacteria and viruses may increase when they become attached to the surface of silt and clay particles and organic matter. Additionally, they noted that such harmful bacteria as coliform and fecal coliform bacteria "may persist and reach much higher concentrations in aquatic sediments (especially in the presence of organic nutrients) than in the water column." Consequently, an increase of silt into Tumbling Creek could exacerbate the potential problems from bacteria and viruses originating from livestock wastes entering Tumbling Creek. Additional research is needed to determine the degree of silt deposition within Tumbling Creek and if the deposition of silt into the cave is adversely impacting the species, especially smaller and younger individuals (Ashley 2000).

Potential sources of silt within the cave's recharge area have been identified on the two tracts recently purchased by Tom and Cathy Aley, including an earthen dam that burst, as well as severely degraded and eroded pastureland due to overgrazing. In the latter case, soil erosion has been exacerbated in the last six years by the removal of nearly all vegetation by bulldozing equipment within the riparian corridors of all semi-permanent

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and intermittent streams on one of those parcels. Tree removal activities associated with pasture expansion have increased soil erosion and resulted in the subsequent movement of silt into the cave system (Aley, Ashley, and McKenzie, pers. obs.). Harvey (1980) concluded that "accelerated erosion and sediment transport" was a problem within drainage basins that have "excessive slopes," and identified "timber cutting and land clearing for raising livestock, extending urban sprawl, and highway building" as potential sources of "accelerated erosion." In addition to these sources, the construction of fire lanes associated with controlled burning on Forest Service property within the recharge area may increase the threat of soil erosion with a resulting decrease in water quality in Tumbling Creek.

Other factors within the recharge area of Tumbling Creek Cave that could contribute to the deterioration of the water quality of Tumbling Creek include: (1) Nutrient enrichment from livestock feedlots or from fertilizers used for crop production or pasture improvement within the recharge area that could reduce dissolved oxygen levels in Tumbling Creek or become toxic to aquatic organisms at high concentrations; (2) chemicals used for highway maintenance or from accidental spills; (3) contaminants from different types of trash or hazardous waste materials deposited into sinkholes, ravines, and depressions; and (4) contamination from hormones, antibiotics, disinfectants, or other chemicals found in human and livestock wastes (Koplin *et al.* 2002). Contaminants presumably from crop fertilizers were detected at levels high enough in cave streams within the Perryville Karst Region of southeastern Missouri to be detrimental to aquatic life (Vandike 1985; Burr *et al.* 2001). Contamination of groundwater has occurred due to spills associated with traffic accidents in the Mammoth Cave area of Kentucky (U.S. Department of Interior 1983; U.S. Fish and Wildlife Service 1988; Taylor *et al.* 2000). Because portions of Routes 160 and 125 occur within the recharge area for Tumbling Creek Cave, accidental spills resulting from traffic accidents could potentially occur. Taylor and Webb (2000) summarized the deleterious effects of various inorganic ions on the distribution and abundance of different aquatic cave isopods and amphipods. Taylor *et al.* (2000) suggested that several parameters, including depressed oxygen levels, improper pH levels, and the presence of metals, pesticides, and harmful bacteria may all contribute to the persistence or decline of aquatic cave organisms. Burr *et al.* (2001) reported that "no less than one-half of sinkholes in Perry County, MO, contain anthropomorphic refuse, ranging from household cleansers and sewage to used pesticide and herbicide containers." Some unidentified point source pollution that was apparently dumped accidentally into Running Bull Cave in Perry County, MO, resulted in a mass mortality of cave-dwelling grotto sculpin (Burr *et al.* 2001). Eliott (2000) summarized the documented impact of various chemical pollutants into cave systems including sewage, contaminants from old batteries, nitric acid, leaks from petroleum products, brine pollution, herbicides, pesticides, solvents, fertilizers, milk, cream, tobacco waste products, and medical waste. Kolpin *et al.* (2002) sampled 139 streams across 30 States, including Missouri, and documented the presence of human and livestock antibiotics, human prescription and nonprescription drugs, steroid compounds including several biogenic and synthetic reproductive compounds, and 30 different organic wastewater contaminants in 80 percent of the streams sampled. Although there are no waste water treatment facilities within the recharge area for Tumbling Creek cave, livestock antibiotics, hormones, and chemical treatments for controlling insect pests could originate from livestock facilities that occur within the cave's recharge area. The extent to which any of these factors have contributed to the decline of the Tumbling Creek cavesnail remains to be determined. Refer to Factor E for further discussion of these potential threats.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Because access to Tumbling Creek Cave is controlled by the cave owners, all collection of and research on *Antrobia culveri* is strictly controlled. Consequently, there is no evidence, and very little likelihood, of overutilization of this species for commercial, recreational, scientific, or educational purposes. There is also no evidence that disturbance associated with conducting regular surveys is adversely affecting the species. Rocks that are examined for cavesnails are carefully replaced in the location from which they were removed, any specimens discovered are disturbed as little as possible and kept moist to reduce stress, and only a small percentage of the available habitat is sampled during each survey.

C. Disease or Predation

The direct effect of disease on the Tumbling Creek cavesnail is not known and such risks to the species have not been determined. Because the Tumbling Creek cavesnail is known to inhabit only a single location, disease must be considered a potential significant threat to the survival of the species. Certain species of salamanders have been shown to be adversely impacted by the bacterium *Acinetobacter* that flourished due to increasing levels of nitrogen associated with the overstocking of livestock (Worthylake and Hovingh 1989). Similarly, Lefcort *et al.* (1997) and Kiesecker and Blaustein (1997) found that amphibians exposed to high levels of silt are susceptible to infection by different species of water mold of the genus *Saprolegnia*. *Saprolegnia* spp. are widespread in natural waters and commonly grow on dead organic material (Wise *et al.* 1995). Speer (1995) stated that some species of *Saprolegnia* are parasitic on aquatic invertebrates such as rotifers, nematodes, diatoms, and arthropods. High nitrogen and silt levels from overgrazing or other agricultural or urban runoff may increase the cavesnail's susceptibility to disease and may act synergistically with other risk factors (e.g., competition from limpets, discussed below) to jeopardize the survival of the remaining individuals. Whether the Tumbling Creek cavesnail is being adversely affected by bacteria or water molds associated with increased loads of nitrogen or silt into Tumbling Creek is unknown but warrants further investigation.

During the December 6, 1997, survey, a few individuals of an unknown species of limpet (*Ferrissia* sp.) were discovered for the first time on the same substrates used by Antrobia culveri within the established monitoring stations (Ashley, pers. comm., September 10, 2001). Limpets were not observed again until the January 11, 2001, survey, after which their numbers began to increase. By the August 31, 2001, survey, limpet numbers had increased explosively, and the presence of many small limpets, as well as larger limpets with visible, developing embryos, indicated that reproduction was taking place (Ashley, pers. comm., September 10, 2001; McKenzie pers. obs.) The reasons that caused these organisms to appear and increase in numbers within Tumbling Creek are unknown; it is also unknown whether they compete with the cavesnails for food, breeding substrates, or other necessary resources. Dr. Julian J. Lewis documented that the disappearance of the rare isopod crustacean *Caecidotea rotunda* coincided with the appearance of limpets in a cave in southern Indiana (J. Lewis, *in litt.*, January 27, 2002). Numerous investigations by David Culver and others (*e.g.*, Culver 1970, 1975) have demonstrated that interspecific competition between aquatic cave invertebrates may reduce the availability of important niche habitats. Other cave invertebrates (*e.g.*, a troglobitic isopod, *Caecidota antricola*.; a troglobitic amphipod, *Stygobromus* sp.; and a troglophilic amphipod, *Gammarus* sp.) coexist with *A. culveri*, often on the same rocks, but it is unknown if these species compete with the cavesnail in any way. Additional research is needed to determine if local environmental changes have provided a competitive advantage for one or more of these species over the Tumbling Creek cavesnail.

D. The Inadequacy of Existing Regulatory Mechanisms

The primary cause of the decline of the Tumbling Creek cavesnail is unknown but is believed to be associated with factors within the 2,349-hectare (5,804-acre) delineated recharge area that have adversely affected the water quality of Tumbling Creek. Federal, State, and local laws have not been sufficient to prevent past and ongoing impacts to areas within the cave's delineated recharge area. *Antrobia culveri* is listed as critically imperiled globally (G1) by The Nature Conservancy, as well as critically imperiled in the State (S1) on the *Missouri Species of Conservation Concern Checklist* (Missouri Natural Heritage Program 2001). The designation as G1/S1 on this checklist, however, provides no legal protection, but is simply utilized for planning and communication purposes (Missouri Natural Heritage Program 2001). Nonetheless, the species currently receives some protection under the *Wildlife Code of Missouri* (Wildlife Code) (Missouri Department of Conservation 2001) as a "biological diversity element" (Missouri Natural Heritage Program 2001). "Biological diversity elements" are protected under the following general prohibitions of chapter 4 of the Wildlife Code (3CSR10–4.110): "(1) No bird, fish, amphibian, reptile, mammal or other form of wildlife, including their homes, dens, nests and eggs in Missouri shall be molested, pursued, taken, hunted, trapped, tagged, marked, enticed, poisoned, killed, transported, stored, served, bought, imported, exported or liberated to the wild in any manner, number, part, parcel or quantity, at any time, except as specifically permitted by these rules and any laws consistent with Article IV, sections 40–46 of the *Constitution of Missouri*. (2) Except as otherwise provided in this Code, wildlife may be taken only by holders of the prescribed permits and in accordance with prescribed methods. (3) No person, corporation, municipality, county, business or other public or private entity shall cause or allow any deleterious substance to be placed, run or drained into any of the waters of this State in quantities sufficient to injure, stupefy or kill fish or other wildlife which may inhabit such waters."

Under the Section 6 Cooperative Agreement between MDC and the Service, if a species is listed as endangered under the Act, the Conservation Commission of Missouri shall list the species as State endangered. The protection of all species in Missouri is outlined in Chapter 4 of the Wildlife Code, and regulations pertaining to endangered species are listed in section 3CSR10–4.111. Under the Wildlife Code, citizens can possess (but not sell or purchase) up to five individuals of any species without a permit and when not specifically protected elsewhere in the code (3CSR10–9.110). However, when a species is listed as endangered, citizens cannot possess any individuals and cannot import, transport, purchase, or take the species without a scientific collecting or special use permit. Although the term "refuge" is not defined under the Wildlife Code, there is also a provision that enables MDC's Director to establish refuges not to exceed 1 square mile for not more than 60 days to provide essential protection to endangered species. Furthermore, the Wildlife Code states that a species' "home" is protected. The term "home" is not defined in this statute and may provide limited or no protection for the cavesnail's habitat. For instance, the creek where the cavesnail resides and the cave's recharge area would probably not be considered a home and thus receive no protection under the Wildlife Code (Bob White, MDC, Protection Division Chief, pers. comm., October 2, 2001).

The Federal Cave Resources Protection Act of 1988 (18 U.S.C. 4301–4309; 102 Stat. 4546) was passed to "secure, protect, and preserve significant caves on Federal lands" and to "foster increased cooperation and exchange of information between governmental authorities and those who utilize caves located on Federal lands for scientific, educational, or recreational purposes." Although this statute and a final rule to implement the Federal Cave Resources Protection Act on Forest Service land (59 FR 31152; June 17, 1994) provide protection for caves located on property owned by the Forest Service, they do not provide protection for caves whose recharge areas are within Forest Service boundaries if the caves themselves are under private lands, as is the case with Tumbling Creek Cave.

Under Section 578.215 of the Missouri Cave Resources Act (Missouri Department of Conservation 2002), the following actions are prohibited: "A person shall not purposely introduce into any cave, cave system, sinkhole, or subsurface waters of the state any substance that will or could violate any provision of the Missouri clean water law as set forth in chapter 204, RSMo (Revised Statutes of Missouri), or any water quality standard or effluent limitation promulgated pursuant thereto." Although this statute is intended to prevent harmful chemicals from being placed into a cave, it is rarely enforced, and an individual prosecuted for a violation of this measure can be convicted of no more than a Class A misdemeanor; therefore, it is largely ineffective at providing protection for aquatic animals within a cave stream (Bill Elliott, Cave Biologist, Missouri Department of Conservation, Jefferson City, MO, pers. comm., March 15, 2002).

The protection afforded *Antrobia culveri* from the statutes mentioned above is limited, does not provide adequate protections to its habitat, and includes no provisions to protect areas within the delineated recharge area for Tumbling Creek Cave. Therefore, we conclude the most likely threats to the species cannot be addressed by existing regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Several other potential factors, including point and non-point pollution, threats from residential and commercial development, and recent changes to the hydrological cycle within the 2,349-hectare (5,804-acre) delineated recharge area supporting Tumbling Creek Cave may have negative effects on the species. It is possible that the recent decline in cavesnail numbers is attributable to some yet to be identified point or non-point source pollution within the cave's recharge area. Because the Tumbling Creek cavesnail occupies a permanent, flowing stream, it will likely come in contact with any deleterious chemical or other material that enters the cave's recharge system. Silt deposition has been identified as a potential problem, especially to younger

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cohorts of the cavesnail's population, but additional research is needed to determine if other contaminants are potentially involved. (*See* Factor A above.)

Non-point source pollution may be a problem in a significant portion of the recharge area that feeds Tumbling Creek Cave. Potential sources of pollution include the drainage of barnyard and feedlot wastes and the discharge of treated sewage into sinkholes and losing streambeds within the cave's recharge area. The water quality of Tumbling Creek may also be threatened due to accidental spills into sinkholes or losing stream valleys feeding Tumbling Creek Cave from State and county highways passing through the recharge area. Such sources of pollution have been identified as potential problems for ground water in the Springfield-Salem Plateaus of southern Missouri (including the watershed that encompasses Tumbling Creek and its identified recharge zone) (Harvey 1980). The decline in numbers of the Tumbling Creek cavesnail may be due to one or several sources of pollution that have resulted in a deterioration of water quality within the recharge area for Tumbling Creek as outlined in Factor A. In comparing the quality of groundwater sites within the Ozark Plateaus (including southwestern Missouri) with other National Water-Quality Assessment Program (NAWQA) sites, Petersen *et al.* (1998) documented that: (1) Nitrate concentrations in parts of the Springfield Plateau aquifer were higher than in most other NAWQA drinking-water aquifers, and (2) volatile organic compounds were detected more frequently in drinking-water aquifers within the Ozark Plateaus than in most other drinking-water aquifers. Tumbling Creek Cave is within the NAWQA study boundaries; consequently, the cavesnail could be threatened from these contaminants. Peck (1998) concluded that all aquatic cave species were especially vulnerable to karst groundwater pollution. Elliott (2000) summarized numerous examples of cave systems being contaminated by a wide range of pollutants that are directly or indirectly dumped into cave streams and further suggested that reduced biotic diversity correlated with degraded water quality in three caves in Tennessee. Although no detailed water analyses have yet been performed on Tumbling Creek, an instrumentation package to measure water quality parameters will be installed in Tumbling Creek Cave during the summer of 2002.

Aley (pers. comm., Jan. 19, 2001) postulated that the decline in cavesnail numbers may actually be because of too much gray bat guano that could deplete oxygen levels in Tumbling Creek, especially during periods of reduced flows as occurred during 1999–2001. Vandike (1982) and Elliott (2000) reported on a massive die-off of the Salem cave crayfish (*Cambarus hubrichti*) and the southern cavefish (*Typhlichthys subterraneus*) when a large quantity of liquid fertilizer containing ammonium nitrate and urea accidentally spilled into a losing stream and significantly lowered dissolved oxygen levels in Meramec Spring, which is 21 km (13 mi) downstream from the spill. What importance gray bat guano plays in the life history requirements of the Tumbling Creek cavesnail is yet to be tested experimentally. The instrumentation package mentioned above will provide data on dissolved oxygen levels once it is installed.

Tumbling Creek Cave is approximately 45 km (28 mi) southeast of Branson, MO, which is one of the most rapidly expanding areas in the State due to tourism, outdoor recreation, and entertainment developments. If recent trends continue, it has been projected that the number of visitors attracted to this area would increase from an estimated level of 6 million in 1992 to 11 million by the year 2015. The accompanying growth in entertainment- and recreation-related activities will place even greater demands on this area of the State (Mullen and Keith 1992). Tumbling Creek Cave is about 4 km (2.5 mi) northwest of Bull Shoals Lake which is also undergoing additional real estate development. Consequently, it is likely that sections of the recharge zone for Tumbling Creek Cave will be adversely affected by real estate development and related construction and land management activities. Elliott (2000) provided multiple examples of how various land development activities have adversely impacted important karst resources in the eastern United States.

Another potential threat to the species results from the close hydrologic association of Tumbling Creek with nearby Bull Shoals Lake. Occasional high water levels in this CE reservoir are believed to cause water to backup into the cave stream, threatening roosting bats and the cavesnail (Aley, pers. comm., July 16, 2000). The CE is considering raising the conservation pool of the reservoir by 10 feet, which will likely increase the frequency and duration of the backup events in Tumbling Creek Cave. Lewis (1994) reported that the habitat of the subterranean hydrobiid snail *Antroselates spiralis* in Mammoth Cave, KY, was reduced significantly due to ponding of the adjacent Green River by a dam downstream of the cave. The back-flooding created a siltation problem that fragmented previously occupied areas into disjunct islands of habitat (J. Lewis *in litt.*, January 27, 2002).

Climatic changes, especially recent periods of drought, may also be a contributing factor to the decline of the cavesnail. The National Oceanic and Atmospheric Administration's (NOAA) Palmer Drought Severity Index provides a widely recognized and accepted standard measurement of moisture conditions (NOAA 2001). The Index varies roughly from −6.0 (extreme drought) to +6.0 (extremely wet), with −0.49 to 0.49 indicating near normal conditions. Since the 1974 survey by Greenlee, there have been 4 periods in Southwest Missouri where the Index was below normal for 6 months or longer and was below an Index value of -2.0 (moderate drought) for some part of that period. These events occurred in 2-year cycles: 1980–1981; 1991–1992; 1995–1996; and 1999–2000. The 1980–1981 drought was the most prolonged and severe, with the Index reaching −5.0 (extreme drought). We further analyzed a 6-year period between 1995 and 2000, which is the approximate period that Ashley conducted his cavesnail monitoring. The Index was below normal for 6 months or more for 4 of these 6 years. The years, number of months the Index was below normal, and the averages for the negative indices are: 1995, 6 months, average Index −1.54; 1996, 7 months, average Index −1.2; 1999, 6 months, average Index −1.29; 2000, 10 months, average Index −1.65. Preliminary data on NOAA's Web site indicate that below-normal moisture (negative Palmer Index) occurred in this region during the early part of 2001, but precipitation levels are now near normal.

According to these climatic data, in 2 recent periods (1995–1996 and 1999–2000) precipitation within the recharge area for Tumbling Creek Cave was below normal for an extended period. The direct or indirect impacts of these droughts on the cavesnail are unknown. Reduced flows in the cave stream, especially when combined with other threats, could hamper essential life history requirements (*e.g.*, reproduction, food availability, water temperature); decrease the flushing of silt, guano, and harmful contaminants from the stream; and create an environment more favorable for competitors (*e.g.*, limpets, isopods, and amphipods).

The small population size and endemism (*i.e.*, restricted to a single site) of *Antrobia culveri* makes it vulnerable to extinction due to genetic drift, inbreeding depression, and random or chance changes to the environment (Smith 1990) that can significantly impact cavesnail habitat. Inbreeding depression can result in death, decreased fertility, smaller body size, loss of vigor, reduced fitness, and various chromosome abnormalities (Smith 1990). Despite any evolutionary adaptations for rarity, habitat loss and degradation increase a species' vulnerability to extinction (Noss and Cooperrider 1994). Numerous authors (*e.g.*, Noss and Cooperrider 1994, Thomas 1994) have indicated that the probability of extinction increases with decreasing habitat availability. Although changes in the environment may cause populations to fluctuate naturally, small and low-density populations are more likely to fluctuate below a minimum viable population (*i.e.*, the minimum or threshold number of individuals needed in a population to persist in a viable state for a given interval; Gilpin and Soule 1986, Shaffer 1981, Shaffer and Samson 1985). Current threats to the habitat of the Tumbling Creek cavesnail may exacerbate potential problems associated with its low population numbers and increase the chances of this species going extinct.

Conclusion

Tumbling Creek cavesnail is known from a single cave in Taney County, southwestern Missouri. The distribution of this species has decreased in Tumbling Creek by 90 percent since 1974. Analysis of survey data collected at established sampling points between September 9, 1996, and March 23, 2002, indicates that numbers of the species have decreased significantly, and the cavesnail is vulnerable to extinction. This decline has continued to the point that cavesnails are no longer present in portions of Tumbling Creek where they had always been found prior to 2001 using the same monitoring methodology. The Tumbling Creek cavesnail is likely threatened by habitat degradation through diminished water quality from upstream locations within the unprotected or improperly managed areas within the cave's delineated recharge zone. The dramatic decrease in the population and area occupied by this species is probably attributable to degraded water quality from one or a number of the following sources: siltation from poor land management practices within the cave's recharge area; contamination from numerous chemicals associated with point or non-point source pollution; or imbalances in dissolved oxygen, pH, or cation/anion exchange. The species may also be threatened with competition from limpets or from changes in the cave's normal hydrological cycles due to recent droughts. Because the sudden population decline and high magnitude of threats demonstrates a significant and imminent risk to the well-being of the Tumbling Creek cavesnail, we find that listing this species as endangered is appropriate.

In making this determination, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Tumbling Creek cavesnail. From the discussion under Factor D of this section, it is clear that currently applicable Federal, State, and local laws, regulations, and ordinances, individually and collectively, do not provide adequate protection for the Tumbling Creek cavesnail or its habitat or assure that the species will continue to survive.

We believe that the survival of the Tumbling Creek cavesnail now depends on protecting the delineated recharge area of Tumbling Creek Cave from further degradation and restoring and rehabilitating areas within the recharge area to improve the water quality in Tumbling Creek. The small remaining population is vulnerable to extinction from ongoing threats, as well as from random natural or human-caused events unless sufficient habitat is protected, water quality improves, and the current small population greatly increases in size. The recent rapid population decline makes it clear that this cavesnail is on the brink of extinction. By listing the Tumbling Creek cavesnail as an endangered species, we believe the additional protection, funding, and recognition that immediately become available to the species will greatly increase the likelihood that extinction can be prevented and the species ultimately recovered.

We are making this rule effective immediately in order to ensure there is no gap in the protection provided by the Act to the Tumbling Creek cavesnail. The temporary protection that was provided by our emergency listing of the species on December 27, 2001, ends on August 26, 2002. This final rule results in no change to the temporary protection and regulatory authority that was provided by the emergency listing, so there is no overriding need for a delayed effective date in order to provide adequate time to notify individuals, agencies, and organizations of new regulations that may affect them.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. However, our budget for listing and critical habitat activities is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Listing the Tumbling Creek cavesnail without designation of critical habitat will allow us to concentrate our limited resources on other listing actions that must be addressed, while allowing us to invoke protections needed for the conservation of this species without further delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without critical habitat designations when it is essential that such determinations be promptly published. The legislative history of the 1982 Act amendments also emphasized this point: "The Committee feels strongly, however, that, where biology relating to the status of the species is clear, it should not be denied the protection of the Act because of the inability of the Secretary to complete the work necessary to designate critical habitat. * * * The committee expects the agencies to make the strongest attempt possible to determine critical habitat within the time period designated for listing, but stresses that the listing of species is not to be delayed in any instance past the time period allocated for such listing if the biological data is clear but the habitat designation process is not complete." (H.R. Rep. No. 97–567 at 20 (1982)). If prudent and determinable, we will prepare a critical habitat proposal in the future at such time as our

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available resources and other listing priorities under the Act will allow.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, Tribal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. If a species is listed on an emergency basis, or is listed under a non-emergency listing proposal, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal agency action may adversely affect a listed species or adversely modify its designated critical habitat, the responsible Federal agency must initiate formal consultation with the Service. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Federal agency actions that may affect the Tumbling Creek cavesnail and may require consultation with the Service include, but are not limited to, those within the jurisdiction of the U.S. Forest Service, U.S. Army Corps of Engineers, Natural Resources Conservation Service, Environmental Protection Agency, and Federal Highway Administration.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt any such conduct), import or export, ship in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to Service agents and those of State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. For endangered species, such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

As published in the **Federal Register** on July 1, 1994 (59 FR 34272), it is the Service's policy to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range.

We believe that, based on the best available information, the following actions are not likely to result in a violation of section 9, provided these actions are carried out in accordance with any existing regulations and permit requirements:

(1) Possession of a Tumbling Creek cavesnail legally acquired prior to the effective date of this rule;

(2) Actions that may affect the Tumbling Creek cavesnail that are authorized, funded, or carried out by a Federal agency, when the action is conducted in accordance with an incidental take statement issued by the Service under section 7 of the Act;

(3) Actions that may affect the Tumbling Creek cavesnail that are not authorized, funded, or carried out by a Federal agency, when the action is conducted in accordance with an incidental take permit issued by the Service under section 10(a)(1)(B) of the Act. Applicants design a Habitat Conservation Plan (HCP) and apply for an incidental take permit. These HCPs are developed for species listed under section 4 of the Act and are designed to minimize and mitigate impacts to the species to the greatest extent practicable; and

(4) Actions that may affect the Tumbling Creek cavesnail that are conducted in accordance with the conditions of a section 10(a)(1)(A) permit for scientific research or to enhance the propagation or survival of the species.

We believe that the following actions could result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized possession, collecting, trapping, capturing, killing, harassing, sale, delivery, or movement, including interstate and foreign commerce, or harming, or attempting any of these actions, of Tumbling Creek cavesnails without a permit (research activities where cavesnails are collected will require a permit under section 10(a)(1)(A) of the Endangered Species Act);

(2) Illegal discharges or dumping of toxic chemicals, silt, or other pollutants (point source and non-point source pollution) within the recharge area of Tumbling Creek Cave that alters or degrades the water quality of Tumbling Creek to the point that it results in death or injury to individuals of the species or results in degradation of cavesnail-occupied habitat;

(3) Intentional release of exotic species (including, but not limited to, fish and crayfish) into Tumbling Creek that adversely affect the cavesnail;

(4) Unlawful destruction or alteration of the species' occupied habitat (e.g., vandalism to Tumbling Creek); and

(5) Violation of any discharge or water withdrawal permit within Tumbling Creek.

We will review other activities not identified above on a case-by-case basis to determine whether they are likely to result in a violation of section 9 of the Act. We do not consider these lists to be exhaustive and provide them as information to the public.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Columbia, Missouri Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Requests for copies of the regulations regarding listed species and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, Bishop Whipple Federal Building, 1 Federal Dr., Fort Snelling, MN 55111–4056 (612/713–5343, facsimile 612/713–5292).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. The Service published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any collections of information that require additional Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned control number 1018–0094, which expires on July 31, 2004. This rule does not alter that information collection requirement. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. For additional information concerning permits and associated requirements for endangered wildlife, *see* 50 CFR 17.21 and 17.22.

Effective Date

This rule is effective upon publication. The Administrative Procedures Act provides Federal agencies a means under 5 U.S.C. (d)(3) for making rules effective less than 30 days following publication in the **Federal Register** for "good cause." We believe that we have good cause for making this rule effective upon publication. The emergency listing rule for the Tumbling Creek cavesnail was published in the **Federal Register** on December 27, 2001 (66 FR 66803). That rule listed the Tumbling Creek cavesnail as endangered on an emergency basis for 240 days through August 26, 2002. We are now publishing a final rule to the proposed rule (66 FR 66868) that we published on the same day as the emergency listing rule. To continue to provide this species the protections of the Act originally provided under the emergency rule, we must make this final rule effective upon publication.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Columbia Field Office (*see* **ADDRESSES**).

Author

The primary author of this proposed rule is Paul M. McKenzie, Ph.D., U.S. Fish and Wildlife Service, Columbia Field Office (*see* **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under SNAILS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
SNAILS							
Cavesnail, Tumbling Creek	*Antrobia culveri*	U.S.A. (MO)	NA	E	731	NA	NA

Dated: July 26, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–20339 Filed 8–13–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D. 080202E]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action 7–Adjustment of the Commercial Fishery from the U.S.-Canada Border to Cape Falcon, OR

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment; request for comments.

SUMMARY: NMFS announces that the commercial fishery for all salmon except coho in the area from the U.S.–Canada Border to Cape Falcon, OR, was modified to reopen on July 26 and close at midnight, August 5, 2002, with a vessel limit of 500 chinook salmon for the 11–day open period. The Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that these management measures should be implemented to provide fishers greater access to the chinook and coho quotas. This action was necessary to conform to the 2002 management goals.

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DATES: Adjustment in the area from the U.S.–Canada Border to Cape Falcon, OR effective 0001 hours local time (l.t.), July 26, 2002, through 2359 hours l.t. August 5, 2002, after which the fishery will remain closed until opened through an additional inseason action, which will be published in the **Federal Register** for the west coast salmon fisheries, or until the effective date of the year 2003 management measures. Comments will be accepted through August 29, 2002.

ADDRESSES: Comments on this action must be mailed or faxed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070, facsimile 206–526–6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132, facsimile 562–980–4018.

Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator modified the season for the commercial fishery in the area from the U.S.–Canada Border to Cape Falcon, OR to reopen on July 26 and close at midnight, August 5, 2002, with a vessel limit of 500 chinook salmon for the 11–day open period. Information provided on July 25 regarding the available catch and effort data indicated that these management measures should be implemented to allow fishers to fully access the chinook and coho quotas. Modification of fishing seasons are authorized by regulations at 50 CFR 660.409(b)(1)(i).

In the 2002 annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002), NMFS announced that the commercial fishery for all salmon except coho in the area from the U.S.-Canada Border to Cape Falcon, OR would open July 1 and run through the earlier of September 8 or a 32,500–chinook quota, except for a selective fishery for marked coho scheduled at the end of the season with a 5,000–marked coho quota.

The fishery in the area from the U.S.-Canada Border to Cape Falcon, OR has been modified twice by inseason action. The first inseason action opened the fishery as scheduled on July 1, but modified it to close at midnight, July 8, 2002, with the provision that no vessel may possess, land, or deliver more than 250 chinook for the entire 8–day open period (67 FR 47334, July 18, 2002). The second inseason action reopened the area on July 12 and closed it at midnight, July 22, 2002, with the provision that no vessel may possess, land, or deliver more than 400 chinook for the entire 11–day open period (67 FR 49876, August 1, 2002). These modifications to the fishing season were adopted to avoid closing the fishery early due to reaching the chinook quota, thus precluding the opportunity to catch available marked hatchery coho salmon later in the season.

On July 25, 2002, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife (ODFW) by conference call. Information related to catch to date, the chinook catch rate, and effort data indicated that it was likely that the chinook quota would be reached prematurely unless adequately controlled, potentially foreclosing opportunity of fishers to conduct the selective fishery for marked coho later in the season. As a result, the states of Washington and Oregon recommended, and the Regional Administrator concurred, that the commercial fishery in the area from the U.S.–Canada Border to Cape Falcon, OR would reopen on July 26 and close at midnight, August 5, 2002, with the provision that no vessel may possess, land, or deliver more than 500 chinook for the entire 11–day open period. All other restrictions that apply to this fishery remain in effect as announced in the 2002 annual management measures. The State of Oregon added a landing restriction for this fishery in their regulations requiring that fishers fishing north of Cape Falcon, and intending to land salmon south of Cape Falcon, notify the ODFW before they leave the area at the following phone number (541) 867–0300, Ext. 252. In addition, the parties agreed to reevaluate the fishery on August 8, and assess the possibility of further openings in the fishery.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the effective date by telephone hotline numbers 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), or delaying the effectiveness of this rule for 30 days under 5 U.S.C. 553(d)(3), because such notification and delay would be impracticable and contrary to the public interest. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002) and the West Coast Salmon Plan. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries and the time the limits to which the fishery must be adjusted to reduce harvest rates in the fishery must be in place. Moreover, such prior notice and the opportunity for public comment is contrary to the public interest because it does not allow commercial fishermen appropriately controlled access to the available fish at the time they are available.

The AA finds good cause to waive the 30–day delay in effectiveness required under 5 U.S.C. 553(d)(3). A delay in effectiveness of this action would not allow commercial fishermen appropriately controlled access to the available fish at the time they are available.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 7, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20653 Filed 8–13–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D. 080202C]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action 5 - Adjustment of the Recreational Fishery from the U.S.-Canada Border to Cape Falcon, OR

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment; request for comments.

SUMMARY: NMFS announces that the recreational fishery for all salmon in the area from the U.S.-Canada Border to Cape Falcon, OR, was modified to establish a chinook salmon minimum size limit of 28 inches (71.1 cm) total length for the area from the U.S.-Canada Border to Leadbetter Point, WA, and 26 inches (66.0 cm) total length for the area from Leadbetter Point to Cape Falcon, starting on Sunday, July 21. The Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that these management measures should be implemented to provide greater access to the chinook and coho quotas. This action was necessary to conform to the 2002 management goals.

DATES: Adjustment in the area from the U.S.-Canada Border to Cape Falcon, OR, effective 0001 hours local time (l.t.), July 21, 2002, through 2359 hours l.t., September 30, 2002, or until the effective date of the year 2003 management measures. Comments will be accepted through August 29, 2002.

ADDRESSES: Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator modified the season for the recreational fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, to establish a chinook minimum size limit of 28 inches (71.1 cm) total length from the U.S.-Canada Border to Leadbetter Point, WA, and 26 inches (66.0 cm) total length from Leadbetter Point to Cape Falcon, starting on Sunday, July 21, 2002. Information provided on July 18 regarding the available catch and effort data indicated that these management measures should be implemented to provide recreational fishers extended access to the chinook and coho quotas. Modification of fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i).

In the 2002 annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002), NMFS announced a minimum size limit of 24 inches (61.0 cm) total length for chinook for the recreational fishery in the area from the U.S.-Canada Border to Cape Falcon, OR and its four sub-areas, Neah Bay, La Push, Westport, and Columbia River.

On July 18, 2002, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife by conference call. Information related to catch to date, the chinook catch rate, and effort data indicated that it was likely that the chinook quota would be reached prematurely unless adequately controlled, potentially foreclosing the opportunity for fishers to harvest marked coho, which arrive in greater numbers later in the season. As a result, the States of Washington and Oregon recommended, and the Regional Administrator concurred, that the recreational fishery in the area from the U.S.-Canada Border to Cape Falcon required a modification of the chinook size limit to slow the catch rate for chinook. Effective Sunday, July 21, the minimum size limit for chinook for the Neah Bay, La Push, and Westport sub-areas was increased from 24 inches (61.0 cm) to 28 inches (71.1 cm) total length, and for the Columbia River sub-area from 24 inches (61.0 cm) to 26 inches (66.0 cm) total length. All other restrictions that apply to this fishery remain in effect as announced in the 2002 annual management measures.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the effective date by telephone hotline numbers 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), or delaying the effectiveness of this rule for 30 days under 5 U.S.C. 553(d)(3), because such notification and delay would be impracticable and contrary to the public interest. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002) and the West Coast Salmon Plan. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the limits to which the fishery must be adjusted to reduce harvest rates in the fishery must be in place. Moreover, such prior notice and opportunity for public comment is contrary to the public interest because it does not allow fishers appropriately controlled access to the available fish at the time they are available.

Moreover, the AA finds good cause to waive the 30–day delay in effectiveness required under 5 U.S.C. 553(d)(3). A delay in effectiveness of this action would not allow fishers appropriately controlled access to the available fish at the time they are available.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

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Dated: August 7, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20656 Filed 8–13–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D. 060802D]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action 6 - Closure of the Commercial Fishery from Horse Mountain to Point Arena (Fort Bragg)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure; request for comments.

SUMMARY: NMFS announces that the commercial fishery for all salmon except coho in the Fort Bragg area was closed at midnight on July 23, 2002. The Northwest Regional Administrator, NMFS (Regional Administrator), determined that the quota of 10,000 chinook salmon had been reached. This action was necessary to conform to the 2002 management goals.

DATES: Closure in the area from Horse Mountain to Point Arena, CA effective 2359 hours local time (l.t.), July 23, 2002, until 0001 hours l.t., August 1, 2002. Comments will be accepted through August 29, 2002.

ADDRESSES: Comments on this action must be mailed or faxed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070, facsimile 206–526–6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132, facsimile 562–980–4018. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator closed the commercial fishery in the Fort Bragg area effective at midnight on Tuesday, July 23, 2002. Information provided on July 23 estimated that the quota of 10,000 chinook salmon had been reached. Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1).

In the 2002 annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002), NMFS announced that the commercial fishery for all salmon except coho in the Fort Bragg area would open July 20 through the earlier of July 30 or a 10,000–chinook quota. The fishery would then reopen on August 1 through August 30, and again from September 1 through September 30.

On July 23, 2002, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council and California Department Fish and Game (CDFG) by conference call. Information related to catch to date, the chinook catch rate, and effort data indicated that it was likely that the quota had been reached. As a result, the State of California recommended, and the Regional Administrator concurred, that the commercial fishery in the Fort Bragg area close effective at midnight on Tuesday, July 23, 2002. All other regulations that apply to this fishery remain in effect as announced in the 2002 annual management measures and subsequent inseason actions.

The Regional Administrator determined that the best available information indicated that the catch and effort data and projections supported the above inseason action recommended by the CDFG. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the effective date by telephone hotline numbers 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), or delaying the effectiveness of this rule for 30 days under 5 U.S.C. 553(d)(3), because such notification and delay would be impracticable and contrary to the public interest. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002) and the West Coast Salmon Plan. Prior notice and opportunity for public comment is impracticable because NMFS and the state agencies have insufficient time to allow for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the fishery closure must be implemented to avoid exceeding the quota. Moreover, such prior notice and the opportunity for public comment is contrary to the public interest because not closing the fishery upon attainment of the quota would allow the quota to be exceeded, resulting in fewer spawning fish and reduced yield of the stocks. The 30–day delay in effectiveness required under U.S.C. 553(d)(3) is also hereby waived due to the immediate need to stop a fishery upon attainment of a quota.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 7, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20661 Filed 8–13–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 67, No. 157

Wednesday, August 14, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–032–1]

Environmental Impact Statement for the Importation of Wood Packaging Material

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement, scope of study, and notice of public meetings.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service intends to prepare an environmental impact statement in connection with regulations we are considering regarding the importation of wood packaging material. This notice identifies potential alternatives and issues that we plan to examine in the environmental impact statement, requests public comment to further delineate the scope of the alternatives and issues, and provides notice of public meetings.

DATES: We will consider all comments that we receive on or before September 13, 2002. We will also consider comments made at public hearings that will be held in Washington, DC, on September 3, 2002, beginning at 10 a.m., and in Long Beach, CA, on September 5, 2002, beginning at 1 p.m. and again at 7 p.m. (two sessions).

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–032–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737 1238. Please state that your comment refers to Docket No. 02–032–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–032–1" on the subject line.

The September 3, 2002, public hearing will be held at the USDA South Building, Jefferson Auditorium, 14th Street and Independence Avenue SW., Washington, DC. The September 5, 2002, public hearing will be held at the Hilton of Long Beach, 701 West Ocean Blvd., Long Beach, CA.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Harold Smith, Environmental Protection Officer, Environmental Services, PPD, APHIS, 4700 River Road, Unit 149, Riverdale, MD 20737–1238; (301) 734–6742.

SUPPLEMENTARY INFORMATION:

The Animal and Plant Health Inspection Service is planning to amend its regulations on the importation of logs, lumber, and other unmanufactured wood articles to decrease the risk of wood packaging material (*e.g.*, crates, dunnage, wooden spools, pallets, and packing blocks) introducing exotic plant pests into the United States. Under the provisions of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), we are required to consider the potential environmental effects of our proposed actions and alternatives. The purpose of this notice is to inform the public of our intent to prepare an environmental impact statement (EIS), to advise the public of the schedule for two public meetings, and to solicit public comments on the scope of the environmental issues to be examined in the EIS.

The regulations in 7 CFR 319.40–1 through 319.40–11 (referred to below as the regulations) are intended to mitigate the plant pest risk presented by the importation of logs, lumber, and other unmanufactured wood articles, including wood packaging material (WPM). Introductions into the United States of exotic plant pests such as the pine shoot beetle and the Asian longhorned beetle have been linked to the importation of WPM. Recently, the emerald ash borer has been found in five counties in Michigan. These and other plant pests that could be carried by imported WPM pose a serious threat to U.S. agriculture and to natural, cultivated, and urban forests.

In 1998, we took regulatory action to require that WPM from China be heat treated, fumigated, or treated with preservatives prior to arrival in the United States. This action has decreased interceptions of pests associated with WPM from China. However, since then, a number of factors, including increased international trade, additional interceptions of serious exotic plant pests in WPM from other countries, and the adoption by the International Plant Protection Convention (IPPC) of international standards to mitigate pest risk from WPM, have demonstrated the need for the United States to take further measures to mitigate the pest risk from WPM from other countries.

In addition to establishing the necessary framework for protecting U.S. agriculture and forests, we must give full consideration to harmonizing our regulations with the new international standards (the "International Standards for Phytosanitary Measures—Guidelines for Regulating Wood Packaging Materials in International Trade," Publication 15 of the Secretariat of the IPPC of the Food and Agriculture Organization of the United Nations, Rome, Italy, 2002).

The continually increasing risk of invasive exotic plant pest species imparts a degree of urgency to our development of regulations to mitigate risk from the importation of WPM. Therefore, our rulemaking and environmental processes are being undertaken at an accelerated rate. This is entirely consistent with regulations implementing NEPA (40 CFR 1501.8(b)). We anticipate that the proposed rule we publish will provide advance notice to industry of specific regulatory

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requirements that may be made final and implemented within 30 days of the publication of a final rule.

We are requesting public comment to help us identify and/or confirm potential alternatives and environmental issues that should be examined in the EIS. We have identified five broad alternatives that we plan to consider in the EIS, as follows:

- Take no action. This would be characterized as no change in the existing regulations that apply to the importation of WPM (while not contributing to the further mitigation of risk, the analysis of the no action alternative provides a baseline and is required by NEPA and its implementing regulations);
- Apply the same requirements concerning WPM from China to WPM from the rest of the world (*i.e.*, require WPM imported from any part of the world to be heat treated, fumigated, or treated with preservatives prior to arrival in the United States);
- Implement a comprehensive risk reduction program (more expansive than the regulations currently applying to China or provided for under the new international standards). This would be categorized as a broad risk mitigation strategy that involves various options such as increased inspection, heat treatment, fumigation, wood preservatives, irradiation, controlled atmosphere, selective prohibition, and disposal;
- Adopt the new international standards and apply their methods (heat treatment at 56 °C for 30 minutes, fumigation with methyl bromide, and marking of WPM) to all countries; and
- Require the use of substitute materials that are not hosts of plant pests or diseases (*e.g.*, metal, rubber, or fiberglass).

We will examine the potential effects on the human environment of each alternative. We also are interested in comments that identify other issues that should be examined in the EIS. Potential issues could include new treatment methods, logistical considerations, environmental regulations and constraints, and harmonization of regulatory efforts.

Comments regarding the proposed scope of the EIS are welcome and will be considered fully. When the draft EIS is completed, a notice announcing its availability and an invitation to comment on it will be published in the **Federal Register**.

Done in Washington, DC, this 8th day of August 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–20523 Filed 8–13–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–07–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 36, A36, A36TC, B36TC, 58, and 58A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 2000–26–16, which applies to certain Raytheon Aircraft Company (Raytheon) Beech Models A36, B36TC, and 58 airplanes. AD 2000–26–16 currently requires you to inspect for missing rivets on the right hand side of the fuselage and, if necessary, install rivets. AD 2000–26–16 resulted from Raytheon identifying several instances of missing rivets on these airplanes. AD 2000–26–16 incorporated an incorrect listing of serial numbers for the affected model airplanes and omitted certain airplane models from the applicability section of AD 2000–26–16. This proposed AD would retain the actions required in AD 2000–26–16 and correct the applicability section. The actions specified by this proposed AD are intended to detect and correct missing rivets in the right hand fuselage panel assembly in the area above the right wing and below the cabin door threshold. These rivets must be present for the fuselage to carry the ultimate load and prevent critical structural failure with loss of airplane control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before October 18, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–07–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: 9-ACE-7-Docket@faa.gov. Comments sent electronically must contain "Docket No. 2002–CE–07–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–07–AD." We will date stamp and mail the postcard back to you.

Discussion

Has FAA Taken Any Action to This Point?

Raytheon production and inspection personnel identified several instances of missing rivets on Models A36, B36TC, and 58 airplanes. The missing rivets are the result of a quality control problem. This condition caused us to issue AD 2000–26–16, Amendment 39–12066 (66 FR 1253, January 8, 2001). AD 2000–26–16 requires you to inspect for missing rivets on the right hand fuselage and if necessary, install rivets.

What Has Happened Since AD 2000–26–16 To Initiate This Action?

Raytheon notified FAA that the airplane models and serial numbers listed in Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 1, Revised: May, 2000, and the applicability section of AD 2000–26–16 are incorrect. The serial number designations did not correctly refer to the applicable airplane models. We are correcting this in this document.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Raytheon Beech Models 36, A36, A36TC, B36TC, 58, and 58A airplanes of the same type design;

—The applicability of AD 2000–26–16 should be changed as discussed earlier; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would supersede AD 2000–26–16 with a new AD that would retain the actions required in AD 2000–26–16 and add certain airplane models to the applicability section of this proposed AD.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 3632 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 per hour = $60	No parts required for the inspection.	$60 per airplane	$60 × 3632 = $217,920.

We estimate the following costs to accomplish the modification if necessary:

Labor cost	Parts cost	Total cost per airplane
4 workhours × $60 per hour = $240	$100 per airplane	$340 per airplane.

What Is the Difference Between the Cost Impact of This Proposed AD and the Cost Impact of AD 2000–26–16?

The only difference between this proposed AD and AD 2000–26–16 is the correction to the applicability. No additional actions are being proposed. The FAA has determined that this proposed AD action does not increase the cost impact over that already required by AD 2000–26–16.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2000–26–16, Amendment 39–12066 (66 FR 1253, January 8, 2001), and by adding a new AD to read as follows:

Raytheon Aircraft Company: Docket No. 2002–CE–07AD; Supersedes AD 2000–26–16, Amendment 39–12066.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
(1) Group 1:	
A36	E–185 through E–3231 and E–3233.
B36TC	EA–242 and EA–273 through EA–635.
58	TH–1 through TH–1811 and TH–1813 through TH–1897.
(2) Group 2:	
36	E–1 through E–184.
A36TC	EA–1 through EA–241 and EA–243 through EA–272.
58A	TH–1 through TH–1811 and TH–1813 through TH–1897.

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(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct missing rivets in the right hand fuselage panel assembly in the area above the right wing and below the cabin door threshold. These rivets must be present for the fuselage to carry the ultimate load and prevent critical structural failure with loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following, unless already accomplished:

Actions	Compliance	Procedures
(1) For Group airplanes: inspect for up to 9 missing rivets between fuselage station (F.S.) 83.00 and F.S. 91.00 at water line (W.L.) 90.3.	Within the next 100 hours time-in-service (TIS) after February 16, 2001 (the effective date of AD 200–26–16).	In accordance with the ACCOMPLISHMENT INSTRUCTIONS paragraph of Raytheon Mandatory Service Bulletin SB 53–3341, Revision 1, Revised: May 2000, and the Bonanza Series Maintenance Manual or Baron Model 58 Series Maintenance Manual.
(2) For Group 2 airplanes: inspector for up to 9 missing rivets between fuselage station (F.S.) 83.00 and F.S. 91.00 at water line (W.L.) 90.3.	Within the next 100 hours time-in-service after the effective date of this AD.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS paragraph of Raytheon Mandatory Service Bulletin SB 53–3341, Revision 1, Revised: May 2000, and the Bonanza Series Maintenance Manual.
(3) For all affected airplanes: if you find rivets are missing, install these rivets.	Before further flight after the inspection	In accordance with the ACCOMPLISHMENT INSTRUCTIONS paragraph of Raytheon Mandatory Service Bulletin SB 53–3341l Revision 1, Revised: May 200, and the Bonanza Series Maintenance Manual or Baron Model 58 Series Maintenance Manual.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) Alternative methods of compliance approved in accordance with AD 2000–26–16, which is superseded by this AD, are approved as alternative methods of compliance with this AD.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2000–26–16, Amendment 39–12066.

Issued in Kansas City, Missouri, on August 6, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20519 Filed 8–13–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–34–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Eurocopter France (ECF) Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters. This proposal would require inspecting the 9-degree frame (frame) for the correct edge distance of the two attachment holes for the reinforced latch support and for a crack and repairing the frame if necessary. This proposal is prompted by the detection of a fatigue crack on the left-hand (LH) side of the frame during maintenance. The actions specified by this proposed AD are intended to prevent failure of the frame due to a crack at the latch support, loss of a passenger door, damage to the rotor system, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before October 15, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–34–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001–SW–34–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–34–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters incorporating MOD 0753B31. The DGAC advises of the discovery of a crack on the left-hand side of the frame.

ECF has issued AS 365 Alert Service Bulletin No. 53.00.42, dated January 31, 2001, which specifies measuring the edge distance of the attachment holes for the reinforced latch support of the frame, inspecting for a crack, and installing a repair on the frame or stop-drilling the crack, and monitoring the crack for continued growth. The DGAC classified this service bulletin as mandatory and issued AD No. 2001–060–052(A), dated February 21, 2001, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other ECF model helicopters of the same type design registered in the United States. Therefore, the proposed AD would require, within 50 hours time-in-service, inspecting the frame at the two attachment holes for the latch support for the correct edge distance and for a crack and repairing the frame if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 45 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours to visually inspect all helicopters and 8 work hours to repair an estimated 10 helicopters to correct edge distance only and 12 work hours to repair edge distance and cracks for an estimated 5 helicopters, and that the average labor rate is $60 per work hour. Required parts would cost approximately $200 assuming a repair is necessary for 15 helicopters. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $19,500.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2001–SW–34–AD.

Applicability: Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters, with MOD 0753B31 installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the frame due to a crack at the latch support, loss of a passenger door, damage to the rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service, inspect each 9-degree frame (frame) by measuring the edge distance at the two 5.2 mm (0.205 inch)

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diameter attachment holes for the latch support for the passenger door in accordance with the Accomplishment Instructions, paragraph 2.B.1., of Eurocopter France AS 365 Alert Service Bulletin 53.00.42, dated January 31, 2001 (ASB). Inspect the area around the attachment holes for a crack.

(1) If the edge distance of both attachment holes is equal to or more than 8 mm (0.315 inch) and no crack is present, no action is required by this AD.

(2) If the edge distance is less than 8 mm and no crack is present, before further flight, install a reinforcing plate in accordance with the Accomplishment Instructions paragraph 2.B.2. of the ASB. Accomplishing the requirements of paragraph 2.B.2. of the ASB constitutes terminating action for the requirements of this AD.

(3) If there is a crack, before further flight, stop-drill the crack with a 3-millimeter diameter hole and repair the frame in accordance with the Accomplishment Instructions, paragraph 2.B.3 of the ASB. Accomplishing the requirements of paragraph 2.B.3. of the ASB constitutes terminating action for the requirements of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 2001–060–052(A), dated February 21, 2001.

Issued in Fort Worth, Texas, on August 5, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–20518 Filed 8–13–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–26–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC 155B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Eurocopter France (ECF) Model EC 155B helicopters. This proposal would require inspecting and adjusting, if necessary, the position of the locking pins on each pilot, co-pilot, and passenger-hinged and sliding door (door) initially and each time a door is replaced. This proposal is prompted by two reports of inadvertent opening of the passenger-hinged doors in flight due to improper adjustment of the door-locking mechanism. The actions specified by this proposed AD are intended to prevent loss of a door in flight, contact with the main rotor or tail rotor, and subsequent loss of helicopter control.

DATES: Comments must be received on or before October 15, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–26–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–26–AD." The postcard will be date stamped and returned to the commenter.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model EC 155B helicopters. The DGAC advises of two reports of the passenger-hinged doors opening in flight. The investigation revealed noncompliant installation and adjustment of the door-locking mechanism, which can result in the door unlocking and a risk of losing the door in flight.

ECF has issued Alert Telex 52–A008, dated March 11, 2002, which specifies checking and adjusting the position of each door's locking pins to prevent the door opening in flight. The DGAC classified this service bulletin as mandatory and issued AD No. 2002–186–005(A), dated April 3, 2002, to ensure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, the proposed AD would require inspecting and, if necessary, adjusting the door-locking mechanism initially and each time a door is replaced. Replacing a door is not expected during the life of the rotorcraft except in extremely rare instances where a door may be damaged from an outside source. The actions would be required to be accomplished in accordance with the service bulletin described previously except compliance with the caution and reporting requirements are not mandatory. In addition, the FAA considers shimming by the addition of washers as a permanent repair.

The FAA estimates that 2 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $480.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2002–SW–26–AD.

Applicability: Model EC 155B helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 25 hours time-in-service, unless accomplished previously, and each time a pilot, co-pilot, or passenger hinged or sliding (door) is replaced.

To prevent loss of a door in flight and subsequent loss of helicopter control, accomplish the following:

(a) Inspect and adjust, if necessary, the position of each door's locking pins in accordance with the Accomplishment Instructions, paragraph 2., of Eurocopter France Alert Telex No. 52-A008, dated March 11, 2002 (Telex), except you are not required to comply with the caution and with the reporting requirements of the Telex, and you may consider shimming by washers a permanent repair.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2002–186–005(A), dated April 3, 2002.

Issued in Fort Worth, Texas, on August 5, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–20517 Filed 8–13–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–71–AD]

RIN 2120–AA64

Airworthiness Directives; MORAVAN a.s. Models Z–143L and Z–242L Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain MORAVAN a.s. (Moravan) Models Z–143L and Z–242L airplanes. This proposed AD would require you to modify the engine secondary vent line. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. The actions specified by this proposed AD are intended to prevent the engine crankcase ventilation lines from freezing during flight in cold weather (winter) conditions, which could result in oil leaking from the engine. Such a condition could lead to engine failure.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 20, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–71–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 99–CE–71–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Moravan, Inc., 765 81 Otrokovice, Czech Republic; telephone: +420 67 767 3940; facsimile: +420 67 792 2103. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901

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Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 99–CE–71–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the Czech Republic, notified FAA that an unsafe condition may exist on certain Moravan Models Z–143L and Z–242L airplanes. The CAA reports that during a production delivery flight of a Model Z–242L airplane, smoke accumulated in the cockpit of the airplane, and engine oil pressure dropped significantly. As a result of this situation, the pilot was forced to make an emergency landing.

Investigation analysis revealed that the engine crankcase ventilation lines became frozen while flying in low ambient air temperature (winter) conditions. When the engine crankcase ventilation lines freeze, the front crankcase seal ring slips out, which allows oil to leak from the engine.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not corrected, could result in the engine crankcase ventilation lines freezing during flight in cold weather (winter) conditions. Such a condition could lead to engine failure.

Is There Service Information That Applies to This Subject?

Moravan has issued Mandatory Service Bulletin Z 242L/19a—Rev. 3, Z 143L/20a, dated April 30, 1999.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for modifying the engine vent lines.

What Action Did the CAA Take?

The CAA classified this service bulletin as mandatory and issued Czech Republic AD Number CAA–AD–042/1999, dated August 18, 1999, in order to ensure the continued airworthiness of these airplanes in the Czech Republic.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in the Czech Republic and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the CAA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Moravan Models Z–143L and Z–242L airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 39 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 per hour = $60	No parts required	$60	$60 × 39 = $2,340.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Moravan A.S.: Docket No. 99–CE–71–AD

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
Z–143L	All serial numbers up to and including 0029, except 0025 and 0027.
Z–242L	All serial numbers up to and including 0733.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the engine crankcase ventilation lines from freezing during flight in cold weather (winter) conditions, which could result in oil leaking from the engine. Such a condition could lead to engine failure.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
Modify the engine vent lines	Within the next 100 hours time-in-service after the effective date of this AD.	In accordance with Moravan Mandatory Service Bulletin Z 242L/19a—Rev. 3, Z vent service after the 143L/20a, dated April 30, 1999.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Moravan, Inc., 765 81 Otrokovice, Czech Republic; telephone: +420 67 767 3940; facsimile: +420 67 792 2103. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in Czech Republic AD Number CAA–AD–042/1999, August 18, 1999.

Issued in Kansas City, Missouri, on August 7, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20516 Filed 8–13–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 02N–0305]

Dental Devices; Classification of the Dental Sonography Device and the Jaw Tracking Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to classify the dental sonography device into class I, when it is used to monitor temporomandibular joint sounds, and into class II, when it is used to interpret temporomandibular joint sounds for the diagnosis of temporomandibular joint disorders and associated orofacial pain. FDA is also proposing to classify the jaw tracking device into class I, when it is used to monitor mandibular jaw positions relative to the maxilla, and into class II, when it is used to interpret mandibular jaw positions relative to the maxilla, for the diagnosis of temporomandibular joint disorders and associated orofacial pain. FDA is publishing the recommendations of the Dental Products Advisory Panel (the panel) regarding the classification of these devices in this document. After considering public comments on the proposed classification, FDA will publish a final regulation classifying these devices. This action is being taken to establish sufficient regulatory controls that will provide reasonable assurance of the safety and effectiveness of these devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a draft guidance document that would serve as the special control for the class II devices if this proposal becomes final.

DATES: Submit written or electronic comments by November 12, 2002.

ADDRESSES: Submit written or electronic comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

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FOR FURTHER INFORMATION CONTACT: Mary S. Runner, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

A device that was not in commercial distribution before May 28, 1976, generally referred to as a postamendments device, is classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of the premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of the premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

FDAMA added a new section 510(l) to the act. New section 510(l) of the act provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury. Hereafter, these are referred to as "reserved criteria." Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting a premarket notification to FDA. FDA believes that certain changes to devices within a generic type that is generally exempt may make the device intended for a use which is of substantial importance in preventing impairment of human health or may make the device present a potential unreasonable risk of illness or injury. Accordingly, devices changed in this manner would fall within the reserved criteria under section 510(l) of the act and would require premarket notification. For example, FDA considers a class I device to be subject to premarket notification requirements if the device operates using a different fundamental scientific technology than that used by a legally marketed device in that generic type.

FDAMA also added a new section 510(m) to the act. New section 510(m) of the act provides that a class II device may be exempted from the premarket notification requirements under section 510(k) of the act, if the agency determines that premarket notification is not necessary to assure the safety and effectiveness of the device.

II. Recommendation of the Panel

In the **Federal Register** of August 12, 1987 (52 FR 30082), FDA published a final rule classifying dental devices. At that time, FDA was not aware that the dental sonography device and the jaw tracking device were preamendments devices, and inadvertently omitted classifying them.

Consistent with the act and the regulations, at a public meeting, held on August 4, 1998, FDA consulted with the panel, an FDA advisory committee, regarding the classification of these devices.

A. Identification

FDA is proposing the following device identifications based on the panel's recommendation and the agency's review:

1. The class I dental sonography device is an electrically powered device, intended to be used to monitor temporomandibular joint sounds. The device is used to detect and record sounds made by the temporomandibular joint.

2. The class II dental sonography device is an electrically powered device, intended to interpret temporomandibular joint sounds for the diagnosis of temporomandibular joint disorders and associated orofacial pain. The device detects, records, displays, and stores sounds made by the temporomandibular joint during jaw movement. The device interprets these sounds to generate meaningful output, either directly or by connection to a personal computer. The device may be a part of a system of devices, contributing joint sound information to be considered with data from other diagnostic components.

3. The class I jaw tracking device is a nonpowered or electrically powered device used to monitor mandibular jaw positions relative to the maxilla. The device measures and records anatomical distances and angles in three-dimensional space, to determine the relative position of the mandible with respect to the location and position of the maxilla, while at rest and during jaw movement.

4. The class II jaw tracking device is an electrically powered device, intended to interpret mandibular jaw positions relative to the maxilla, for the diagnosis of temporomandibular joint disorders and associated orofacial pain. The device measures and records anatomical distances and angles to determine the relative position of the mandible in three dimensional space, with respect to the location and position of the maxilla, while at rest and during jaw movement. The device records, displays, and stores information about joint position. The device interprets jaw position to generate meaningful output, directly or by connection to a personal computer. The device may be a part of a system of devices, contributing jaw position information to be considered with data from other diagnostic components.

B. Recommended Classification of the Panel

During a public meeting, held on August 4, 1998, the panel made the classification recommendations (Ref. 1) for the dental sonography device and the jaw tracking device. The panel recommended that these devices be classified into class I (general controls), and that the devices should be subject to premarket notification. The panel also recommended that these devices be restricted to sale by, or on the order of a licensed dentist or physician (§ 801.109 (21 CFR 801.109)).

C. Summary of Reasons for Recommendation

The panel concluded that safety and effectiveness of the dental sonography device and the jaw tracking device can reasonably be assured by general controls. Specifically, the panel believed that safety and effectiveness of both devices can be reasonably assured by registration and listing (section 510 of the act); general requirements concerning reports (21 CFR 820.180) and complaint files (21 CFR 820.198); and good manufacturing practices requirements (section 520(f) of the act (21 U.S.C. 360j(f).) The panel also recommended that these devices be restricted to sale by, or on the order of a licensed dentist or physician (§ 801.109).

D. Summary of the Data Upon Which the Recommendation Was Based

The panel believes that these devices have provided dental practitioners adjunctive diagnostic information, as a part of the treatment of temporomandibular joint disorders, for over 23 years. When used with other dental devices and clinical techniques, these devices help the clinician to diagnose symptoms related to malfunction of the temporomandibular joint and associated musculature.

After reviewing the literature provided to panel members by FDA (Refs. 2 to 34); information provided by device manufacturers; several panel members' personal knowledge of and clinical experience with the devices; and in consideration of the consensus derived from the open panel discussion, the panel gave the following reasons in support of its recommendation to classify these devices into class I: (1) The devices provide adjunctive information in the form of temporomandibular joint sounds and relative jaw position, not otherwise available to the clinician; (2) no invasive procedures are required; (3) no energy is applied to craniofacial structures; and (4) the devices have been used for many years without documented medical devices reports or other published incident reports.

E. Risks to Health

The panel identified the following risks to health associated with the dental sonography device and the jaw tracking device:

1. Electrical Interference

Electrical interference generated by these devices may affect diagnostic and therapeutic medical devices, such as certain types of cardiac pacemakers. Manufacturers should validate the isolation of electrical circuitry of these devices from other medical devices.

2. Improper Treatment

There is no general consensus or established standard of care regarding interpretation of the output of these devices. Therefore, a misdiagnosis of a condition or abnormality may result in improper or unnecessary therapeutic intervention. The outputs of these devices are adjunctive to other diagnostic and therapeutic modalities.

III. Proposed Classification

FDA concurs that the dental sonography device and the jaw tracking device intended to be used for monitoring sounds made by the temporomandibular joint and mandibular jaw positions relative to the maxilla, respectively, should be classified into class I (general controls). General controls would provide reasonable assurance of safety and effectiveness of these devices for these intended uses. FDA, however, believes that the dental sonography device and jaw tracking device intended to interpret temporomandibular joint sounds and mandibular jaw positions for the diagnosis of temporomandibular joint disorders and associated orofacial pain should be classified into class II (special controls). Premarket notifications for dental sonography and jaw tracking devices with these intended uses should include clinical data to demonstrate performance, as well as labeling instructing the user on proper technique, interpretation of the device outputs, and appropriate warnings and precautions. FDA tentatively concurs with the panel's recommendation that these devices should be restricted to sale by or on the order of a licensed dentist or physician (§ 801.109).

FDA disagrees with the panel that the class I devices should require premarket notification because they meet the reserved criteria of new section 510(1) of the act. FDA believes that the intended uses of monitoring sounds emanated from the temporomandibular joint and mandibular jaw positions should be exempt from premarket notification. These devices for these intended uses are not of substantial importance in preventing impairment of human health, nor do they present an unreasonable risk of illness or injury.

FDA, however, is proposing that the jaw tracking device and the dental sonography device when used to interpret temporomandibular joint position or sounds for the diagnosis of temporomandibular joint disorder and associated orofacial pain be class II. As noted previously, section 510(m) of the act provides that a class II device may be exempted from the premarket notification requirements under section 510(k) of the act, if the agency determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. FDA tentatively concludes that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the jaw tracking device and the dental sonography device when used to interpret temporomandibular joint position or sounds for the diagnosis of temporomandibular joint disorder and associated orofacial pain.

IV. Special Controls

FDA has included the special controls that it believes are necessary to provide reasonable assurance of the safety and effectiveness of the devices proposed for class II in the draft guidance document entitled "Class II Special Controls Guidance Document: Dental Sonography and Jaw Tracking Devices; Guidance for Industry and FDA Reviewers." FDA intends this guidance to serve as the special control for these devices, if FDA classifies them in class II. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of the draft guidance document. The draft guidance document sets forth recommendations on 510(k) submissions for the class II devices on device characterization, intended use and indications for use, preclinical and bench testing, device comparison, instructions for use, clinical information, and software validation. The draft guidance document would address the risk of electrical interference by assuring that the 510(k) includes preclinical and bench testing concerning this risk and by assuring that the device labeling includes adequate information for the user to minimize the risk of electrical interference. The guidance document

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would address the risk of improper treatment by assuring that the 510(k) includes clinical information on this risks, by assuring that the labeling includes adequate information for the health professional using the device, and by assuring that the manufacturer has properly validated the software. If adopted, following the effective date of a final rule classifying the device, any firm submitting a 510(k) premarket nitification for the device would need to address the issues covered in the special control guidance. However, the firm would need to show only that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

V. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The class I devices are already subject to the general controls provisions of the act. If FDA finalizes this rule, it would impose no new requirements on manufacturers of class I devices. Manufacturers of class II jaw tracking and dental sonography devices currently are required to submit premarket notifications. The guidance document reflects existing FDA practice in the review of these premarket notifications. FDA expects that manufacturers of cleared class II jaw tracking and dental sonography devices will not have to take any additional action in response to this rule, if FDA finalizes this rule. This rule will help expedite the review process for any new manufacturers of these devices. The agency therefore certifies that this proposed rule, if issued, will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VII. Paperwork Reduction Act of 1995

FDA tentatively concludes that this rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Proposed Implementation Plan

FDA proposes that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

IX. Comments

You may submit written or electronic comments regarding this proposal to the Dockets Management Branch (see **ADDRESSES**) by November 12, 2002. You should submit two copies of any comments. Individuals may submit one copy. You must identify comments with the docket number found in brackets in the heading of this document. You may see any comments that FDA receives in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

X. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Dental Products Panel Meeting, Transcript and Meeting Minutes, August 4, 1998.

2. Airoldi, R. L., L. M. Gallo, and S. Palla, "Precision of the Jaw Tracking System JAWS–3D," *Journal of Orofacial Pain*, 8: 155–164, 1994.

3. Balkhi, K. M., R. H. Tallents, B. Goldin, and J. A. Catania, "Error Analysis of a Magnetic Jaw-Tracking Device," *Journal of Craniomandibular Disorders: Facial & Oral Pain*, 5: 51–56, 1991.

4. Braun, B. and E. L. Schiffman, "The Validity and Predictive Value of Four Assessment Instruments for Evaluation of the Cervical Stomatognathic Systems," *Journal of Craniomandibular Disorders: Facial & Oral Pain*, 5: 239–244, 1991.

5. Copper, B. C. and D. D. Rabuzzi, "Myofacial Pain Dysfunction Syndrome: A Clinical Study of Asymptomatic Subjects," *Laryngoscope 94*, January: 68–75, 1984.

6. Cooper, B. C., M. Alleva, D. L. Cooper, and F. E. Lucente, "Myofacial Pain Dysfunction: Analysis of 476 Patients," *Laryngoscope 96*, October: 1099–1106, 1986.

7. Feine, J. S., M. O. Hutchins, and J. P. Lund, "An Evaluation of the Criteria Used to Diagnose Mandibular Dysfunction With the Mandibular Kinesiograph," *The Journal of Prosthetic Dentistry*, 60: 374–380, 1988.

8. Friction, J. R. "Recent Advances in Temporomandibular Disorders and Orofacial Pain," *Journal of the American Dental Association*, 122: 24–32, 1991.

9. Gay, T., C. N. Bertolami, R. B. Donoff, D. A. Keith, and J. P. Kelly, "The Acoustical Characteristics of the Normal and Abnormal Temporomandibular Joint," *Journal of Oral and Maxillofacial Surgery*, 45: 397–407,1987.

10. Gay, T. and C. N. Bertolami, "The Accoustical Characteristics of the Normal Temporomandibular Joint," *Journal of Dental Research*, 67: 56–60, 1988.

11. Greene, C. S. and D. M. Laskin, "Long-Term Status of TMJ Clicking in Patients With Myofacial Pain and Dysfunction," *Journal of the American Dental Association*, 117: 461–465, 1983.

12. Hampf, G., V. Aalberg, and V. Sundén, "Assessment of Patients Suffering From Chronic Orofacial Pain of Nonspecific Origin," *Journal of Craniomandibular Disorders: Facial & Oral Pain*, 4: 30–34, 1990.

13. Kerstein, R. B. and S. Farrell, "Treatment of Myofacial Pain-Dysfunction Syndrome With Occlusal Equilibration," *The Journal of Prosthetic Dentistry*, 63: 695–700, 1990.

14. Laskin, D. M. and S. Block, "Diagnosis and Treatment of Myofacial Pain-Dysfunction (MPD) Syndrome," *The Journal of Prosthetic Dentistry*, 56: 75–83, 1986.

15. Laskin, D. M. and C. S. Greene, "Technological Methods in the Diagnosis and Treatment of Temporomandibular Disorders," *International Journal of Technology Assessment in Health Care*, 6: 558–568, 1990.

16. Lederman, K. H., "Patients With Restored Occlusions. Part I: TMJ Dysfunction Determined by a Pantographic Reproducibility Index," *The Journal of Prosthetic Dentistry*, 47: 198–205, 1982.

17. Levitt, S. R. and M. W. McKinney, "Appropriate Use of Predictive Values in Clinical Decision Making and Evaluating Diagnostic Tests for TMD," *Journal of Orofacial Pain*, 8: 298–308, 1994.

18. Lund, J. P., Widmer, C. G., and J. S. Feive, "Validity of Diagnostic and Monitoring Tests Used for Temporomandibular Disorders," *Journal of Dental Research*, 74: 1133–1143, 1995.

19. Maeda, Y., M. Okada, T. Mori, K. Enomoto, M. Sogo, and Y. Okuno, "Development of a Mandibular Tracking Device with Six Degrees of Freedom Using Optoelectronic System," *Journal of the Osaka University Dental School*, 32: 45–50, 1992.

20. McNeill, C., N. D. Mohl, J. Rugh, and T. Tanaka, "Temporomandibular Disorders Diagnosis, Management, Education and Research," *Journal of the American Dental Association*, 120: 253–263, 1990.

21. Minagi, S., H. Watanabe, T. Sato, and H. Tsuru, "The Relationship Between Balancing-Side Occlusal Contact Patterns and Temporomandibular Joint in Humans: Proposition of the Concept of Balancing-Side Protection," *Journal of Craniomandibular Disorders: Facial & Oral Pain*, 4: 251–256, 1990.

22. Mohl, N. D., J. P. Lund, C. G. Widmer, and W. D. McCall, "Devices for the Diagnosis and Treatment of Temporomandibular Disorders. Part II: Electromyography and Sonography," *The Journal of Prosthetic Dentistry*, 63: 332–336, 1990.

23. Mohl, N. D., W. D. McCall, Jr., J. P. Lund, and O. Plesh, "Devices for the Diagnosis and Treatment of Temporomandibular Disorders. Part I: Introduction, Scientific Evidence, and Jaw Tracking," *The Journal of Prosthetic Dentistry*, 63: 198–201, 1990.

24. Garcia-Moreira, C., F. Angeles-Medina, H. Gonzalez-Gomez, A. Nuno Licono, J. Garcia-Ruiz, A. Galicia-Arias, and M. Rodriguez-Espinoza, "Improved Automated Recording of Masticatory Reflexes Through Analysis of Effort Trajectory During Biofeedback," *Medical Progress Through Technology*, 20: 63–73, 1994.

25. Nihon, J., "A Study of Temporomandibular Joint Sounds: Part 2: Acoustic Characteristics of Joint Sounds," *Journal of the Nihon University School of Dentistry*, 137: 47–54, 1995.

26. Sadowsky, C., T. A. Thelsen, and E. I. Sakois, "Orthodontic Treatment and Temporomandibular Joint Sounds—A Longitudinal Study," *American Journal of Orthodontic and Dentofacial Orthopedics*, 99: 441–447, 1991.

27. Dos Santos, Jose, "Supportive Conservative Therapies for Temporomandibular Disorders," *Dental Clinics of North America*, 39: 459–477, 1995.

28. Shields, J. M., J. A. Clayton, and L. D. Sindledecker, Using Pantographic Tracings to Detect TMJ and Muscle Dysfunctions," *The Journal of Prosthetic Dentistry*, 39: 80–91, 1978.

29. Tallenta, R. H., J. Catania and E. Sommers, "Temporomandibular Joint Findings in Pediatric Populations and Young Adults: A Critical Review," *The Angle Orthodontist*, 61: 7–16, 1991.

30. Tripodakis, A. P., J. B. Smulow, N. R. Mehta and R. E. Clark, "Clinical Study of Location and Reproducibility of Three Mandibular Positions in Relation to Body Posture and Muscle Function," *The Journal of Prosthetic Dentistry*, 73: 190–198, 1995.

31. Tsolka, P. and H. W. Preiskel, "Kinesiographic and Electromyographic Assessment of the Effects of Occlusal Adjustment Therapy on Craniomandibular Disorders by a Double-Blind Method," *The Journal of Prosthetic Dentistry*, 69: 85–92, 1993.

32. Wabeke, K. B., R. J. Spruijt, and L. L. M. H. Habets, "Spatial and Morphologic Aspects of Temporomandibular Joints With Sounds," *Journal of Oral Rehabilitation*, 22: 21–27, 1995.

33. Widmer, C., "Temporomandibular Joint Sounds: A Critique of Techniques for Recording and Analysis," *Journal of Craniomandibular Disorders: Facial & Oral Pain*, 3: 213–217, 1989.

34. Management of Temporomandibular Disorders, National Institutes of Health Technology Assessment Conference Statement, April 29-May 1, pp. 1–31, 1996.

List of Subjects in 21 CFR Part 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA is proposing to amend 21 CFR part 872 as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 872.2050 is added to subpart B to read as follows:

§ 872.2050 Dental sonography device.

(a) *Dental sonography device for monitoring*—(1) *Identification.* A dental sonography device for monitoring is an electrically powered device, intended to be used to monitor temporomandibular joint sounds. The device detects and records sounds made by the temporomandibular joint.

(2) *Classification.* Class I. The device is exempt from the premarket notification provisions of subpart E of part 807 of this chapter.

(b) *Dental sonography device for interpretation and diagnosis*—(1) *Identification.* A dental sonography device for interpretation and diagnosis is an electrically powered device, intended to interpret temporomandibular joint sounds for the diagnosis of temporomandibular joint disorders and associated orofacial pain. The device detects, records, displays, and stores sounds made by the temporomandibular joint during jaw movement. The device interprets these sounds to generate meaningful output, either directly or by connection to a personal computer. The device may be part of a system of devices, contributing joint sound information to be considered with data from other diagnostic components.

(2) *Classification.* Class II (special controls). The special control for this device is FDA's guidance document entitled "Class II Special Controls Guidance Document: Dental Sonography and Jaw Tracking Devices; Guidance for Industry and FDA Reviewers."

3. Section 872.2060 is added to subpart B to read as follows:

§ 872.2060 Jaw tracking device.

(a) *Jaw tracking device for monitoring mandibular jaw positions relative to the maxilla*—(1) *Identification.* A jaw tracking device for monitoring mandibular jaw positions relative to maxilla is a nonpowered or electrically powered device that measures and records anatomical distances and angles in three dimensional space, to determine the relative position of the mandible with respect to the location and position of the maxilla, while at rest and during jaw movement.

(2) *Classification.* Class I (general controls). The device is exempt from the premarket notification provisions of subpart E of part 807 of this chapter.

(b) *Jaw tracking device for interpretation of temporomandibular joint position for the diagnosis of temporomandibular joint disorders and associated orofacial pain*—(1) *Identification.* A jaw tracking device for interpretation of temporomandibular joint position for the diagnosis of temporomandibular joint disorders and associated orofacial pain is a nonpowered or electrically powered device that measures and records anatomical distances and angles to determine the relative position of the mandible in three dimensional space, with respect to the location and position of the maxilla, while at rest and during jaw movement. The device records, displays, and stores information about jaw position. The device interprets jaw position to generate meaningful output, either directly or by connection to a personal computer. The device may be a part of a system of devices, contributing jaw position information to be considered with data from other diagnostic components.

(2) *Classification.* Class II (special controls). The special control for this device is FDA's guidance document entitled "Class II Special Controls Guidance Document: Dental Sonography and Jaw Tracking Devices; Guidance for Industry and FDA Reviewers."

Dated: August 1, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–20499 Filed 8–13–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 2, 26, 62, 64, 95, 100, 120, and 165

46 CFR Parts 7 and 28

[USCG 2001–9044]

RIN 2115–AG13

Territorial Seas, Navigable Waters, and Jurisdiction

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would conform the Coast Guard's definitions of jurisdictional terms to existing law. We propose these updates so that our regulatory definitions will reflect statutory changes and Presidential proclamations affecting our jurisdiction. These changes would clarify how the Coast Guard interprets its jurisdiction to enforce treaties, laws, and regulations of the United States.

DATES: Comments and related materials must reach the Docket Management Facility on or before November 12, 2002.

ADDRESSES: To make sure that your comments and related materials are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–9044), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) By electronic means through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Alex Weller, Office of Maritime and International Law, U.S. Coast Guard, telephone 202–267–0097. If you have questions on viewing or submitting materials to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. If you do, please include your name and address, identify the docket number for this rulemaking (USCG–2001–9044), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and materials by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and materials by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and materials received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Part 2 of title 33 of the Code of Federal Regulations (33 CFR part 2) contains definitions of jurisdictional terms. The Coast Guard uses these definitions to enforce treaties, laws, and regulations of the United States. Most of the definitions in this part have not been amended since they were written in 1975. Since 1975, however, statutes and other legal authorities on which these jurisdictional terms were based have changed.

Discussion of Proposed Rule

We propose to update the jurisdictional terms in 33 CFR part 2 and related jurisdictional terms in other parts of the Code of Federal Regulations so that their meaning conforms to existing law. Our proposed rule would also clarify how the Coast Guard interprets its jurisdiction with reference to these terms.

The following are the jurisdictional terms we propose to update:

Territorial sea baseline. In proposed § 2.20, the only change we propose for this definition is to include a reference to the 1982 United Nations Convention on the Law of the Sea (UNCLOS)(21 I.L.M. 1261) as a reference for how the baselines are determined.

Territorial sea. As originally drafted and amended in 1975, 33 CFR 2.05–5 defined the extent of the U.S. territorial sea seaward of the baseline as 3 nautical miles. This was the consistent position of the United States up to that time, both internationally and for domestic law purposes.

On December 27, 1988, by Presidential Proclamation 5928 (103 Stat. 2981; 54 FR 777, January 9, 1989), the breadth of the U.S. territorial sea was declared to be 12 nautical miles from the baseline, but only for international law purposes. Presidential Proclamation 5928 specifically stated it was not intended to and did not change existing federal or state domestic laws or regulations.

Certain statutes set the breadth of the United States' "territorial sea" as 3 nautical miles for purposes of the statute. Section 502(8) of the Clean Water Act (33 U.S.C. 1362 (8)) is an example of one of these statutes.

Other statutes authorize the United States to make domestic law applicable in the expanded territorial sea, the area between 3 and 12 nautical miles seaward of the baseline. The Ports and Waterways Safety Act (33 U.S.C. 1221 *et seq.*) is an example of one of these statutes.

Proposed § 2.22(a)(1) lists the purposes, with respect to the United States, for which the 12 nautical mile wide territorial sea is used. These include the statutes within Title 46 U.S.C. subtitle II and the Ports and Waterways Safety Act (PWSA), as amended (33 U.S.C. 1221 *et seq.*) and any regulations issued under the authority of these statutes. They also include the criminal jurisdiction of the United States pursuant to Title 18 U.S.C., and the special maritime and territorial jurisdiction of the United States under 18 U.S.C. 7. Proposed § 2.22(a)(1)(v) states that any statute, treaty, or regulation we interpret as referring to the expanded territorial sea (out to 12 nautical miles) would fall under the proposed § 2.22(a)(1) territorial sea definition. For those purposes not specified in (a)(1), proposed paragraph (a)(2) defines territorial sea as being 3 nautical miles wide.

For Coast Guard regulations promulgated under two or more statutes, our proposed definition in § 2.22(a)(3) sets forth the standard for their territorial sea limit. If one or more of the statutes authorizes regulatory activity out to 12 nautical miles and one or more of the other statutes does not, the Coast Guard may apply the 12 nautical mile territorial sea definition in § 2.22(a)(1) to the regulation.

The proposed definition of "territorial sea" in § 2.22(b) recognizes and describes the effect of Presidential Proclamation 5928 on international law.

Internal Waters. The definition of "internal waters" in proposed § 2.24 has not been changed substantively from the current definition, however, for ease of understanding and because, in certain respects, the definition of "inland waters" has changed, the two terms, which are currently in the same section (33 CFR 2.05–20), have been placed in separate sections.

Inland Waters. In proposed § 2.26, we have changed the definition of "inland waters" by eliminating the specific reference to the definition of that term in certain statutes, including the Inland Navigation Rules Act. We did this in part because the definition of inland waters in the Inland Navigation Rules Act has been changed from that which appears in 33 CFR 2.05–20(b), and no purpose would be served by simply repeating the new definition in the regulation.

Further, there is no purpose served by separately listing each statute that contains a definition of inland waters that is different than this general definition. If a definition of inland waters appears in a statute or other regulation, for example, the Inland Navigational Rules Act of 1980 (33 U.S.C. chapter 34, specifically 33 U.S.C. 2003(o)) and 46 CFR 10.103, the rule of construction in proposed § 2.5 would apply, so that the specific definition in the statute concerned controls over the inland waters general definition in proposed § 2.26.

Contiguous Zone. In proposed § 2.28(a), we have defined the "contiguous zone" for purposes of the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, because that statute contains a delimited definition, which is more restrictive than the President's Proclamation 7219 of September 2, 1999 (113 Stat. 2138; 64 FR 48701, September 8, 1999, as corrected by 64 FR 49844, September 14, 1999). We have also included a definition in proposed § 2.28(b) that conforms to Presidential Proclamation 7219 for all other purposes.

Two regulations, 46 CFR 7.105 and 46 CFR 28.50, that define the boundary lines in the Gulf of Mexico pursuant to the authority in 33 U.S.C. 151, contain references to the 12-nautical-mile contiguous zone as currently defined in 33 CFR 2.05–15. Those regulations would be amended to conform to the proposed definition of the "territorial sea" in 33 CFR 2.22(a)(1).

Exclusive Economic Zone. In proposed § 2.30 we revise the definition of the "Exclusive Economic Zone" ("EEZ") to conform to that found in the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Certain laws contain specific definitions of the EEZ that differ from the general definition contained in this regulation. In those instances, the rule of construction contained in proposed § 2.5 would apply. No substantive change is intended; the revision is intended to clarify the definition.

High Seas. In proposed § 2.32 we have reorganized and clarified the definitions of "high seas" as used in the various statutes. We have also deleted the discussion of the Coast Guard authority under 14 U.S.C. 89, contained in footnote 1 to 33 CFR 2.05–1(a) because we consider it to be unnecessary to an understanding of the territorial application of the laws and regulations the Coast Guard administers and enforces.

We have also clarified that the waters of the Exclusive Economic Zone are not considered high seas for international law purposes, although UNCLOS makes clear that high seas freedoms of navigation exist in the EEZ. Our proposed definition recognizes this principle.

Finally, we have differentiated between the various breadths of the territorial seas defined in proposed § 2.22, to recognize that territorial seas have different breadths for purposes of different laws. The different breadths of the territorial seas impacts the corresponding location of the high seas for implementation of the particular statute.

Waters subject to tidal influence, waters subject to the ebb and flow of the tide, and mean high water. In proposed § 2.34, we have made only editorial changes to definitions of these terms currently found in 33 CFR 2.05–27.

Navigable Waters. "Navigable waters of the United States" and "navigable waters" are defined with reference to the different statutes that use those terms and contain specific definitions. The most notable example of this is the Federal Water Pollution Control Act (FWPCA). The legislative history of the FWPCA, as well as judicial decisions, which have interpreted these terms in that Act—until the U.S. Supreme Court's decision in *Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (SWANCC)—had adopted the broadest possible definition of navigable waters of the United States consistent with the U.S. Constitution in order to further the purposes of the FWPCA.

The Coast Guard's current definition, 33 CFR 2.05–25, incorporated this concept. In SWANCC, however, the Supreme Court interpreted the term "waters of the United States" and "navigable waters" as used in the FWPCA more narrowly, and invalidated an assertion of jurisdiction under the FWPCA over isolated, non-navigable waters where jurisdiction was based solely on the use of those waters as breeding and feeding grounds by migratory birds. Accordingly, we propose to replace the broad definition in the current regulation, 33 CFR 2.05–25, with one that is consistent with SWANCC.

Our definition in proposed § 2.36 (b) of navigable "waters of the United States" and "navigable waters" for purposes of laws other than the FWPCA is consistent with our proposed paragraph 2.22 (a) that defines territorial sea. Our § 2.36 definition also includes waters over which State governments and the Federal government exercise concurrent jurisdiction.

We have prepared the following table to help you compare our proposed regulations with existing regulations.

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TABLE 1.—33 CFR PART 2 DISTRIBUTION AND DERIVATION TABLE

If the regulation is in the current 33 CFR part 2 . . .	You will find it in the NPRM at proposed . . .	If you are looking at the proposed NPRM cite . . .	It is derived from the current 33 CFR . . .
2.01–1	2.1	2.1	2.01–1.
—	2.5	2.5.	
2.05–10	2.20	2.20	2.05–10.
2.05–5	2.22	2.22	2.05–5.
2.05–20	2.24 and 2.26	2.24	2.05–20.
—	—	2.26	2.05–20.
2.05–15	2.28	2.28	2.05–15.
2.05–35	2.30	2.30	2.05–35.
2.05–1	2.32	2.32	2.05–1.
2.05–27	2.34	2.34	2.05–27.
2.05–25	2.36	2.36	2.05–25.
2.05–30	2.38	2.38	2.05–30.
2.10–1	2.40	2.40	2.10–1.
2.10–5	2.45	2.45	2.10–5 and 2.10–10.
2.10–10	2.45.		

Finally, we have included a visual aid depicting the terms defined in this part (see figure 2.1 in proposed § 2.1).

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because we are conforming our jurisdictional definitions to current statutes and presidential proclamations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses; not-for-profit organizations that are independently owned and operated, and are not dominant in their fields; and governmental jurisdictions with populations of less than 50,000.

We are merely conforming our regulatory definitions to statutory authority and presidential proclamations, therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what extent this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call (202–267–0097) or write (*see* **ADDRESSES**) Alex Weller.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG-FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that order and have determined that it does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100 million or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications, under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. Some of the proposed changes are mandated by statute and should be categorically excluded.

Where a statute does not mandate a change, we will revise the existing language to maintain the status quo for geographical scope. These changes should also be categorically excluded. The Coast Guard believes that merely updating the regulations to reflect movement of the boundary of the territorial sea from 3 nautical miles to 12 nautical miles from shore will not have any impact on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 2

Administrative practice and procedure, Law enforcement.

33 CFR Part 26

Communications equipment, Marine safety, Radio, Telephone, Vessels.

33 CFR Part 62

Navigation (water).

33 CFR Part 64

Navigation (water), Reporting and recordkeeping requirements.

33 CFR Part 95

Alcohol abuse, Drug abuse, Marine safety, Penalties.

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 120

Passenger vessels, Reporting and recordkeeping requirements, Security measures.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

46 CFR Part 7

Law Enforcement, Vessels.

46 CFR Part 28

Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 2, 26, 62, 64, 95, 100, 120, and 165 and 46 CFR parts 7 and 28 as follows:

Title 33—Navigation and Navigable Waters

PART 2—JURISDICTION

1. Revise part 2 to read as follows:

PART 2—JURISDICTION

Subpart A—General

Sec.
2.1 Purpose.
2.5 Specific definitions control.

Subpart B—Jurisdictional Terms

2.20 Territorial sea baseline.
2.22 Territorial sea.
2.24 Internal waters.
2.26 Inland waters.
2.28 Contiguous zone.
2.30 Exclusive Economic Zone.
2.32 High seas.
2.34 Waters subject to tidal influence; waters subject to the ebb and flow of the tide; mean high water.
2.36 Navigable waters of the United States, navigable waters, territorial waters.
2.38 Waters subject to the jurisdiction of the United States; waters over which the United States has jurisdiction.

Subpart C—Availability of Jurisdictional Decisions

2.40 Maintenance of decisions.
2.45 Decisions subject to change or modification and availability of lists and charts.

Authority: 14 U.S.C. 633, 80 Stat. 931 (49 U.S.C. 108); 49 CFR 1.4(b), 1.46(b).

PART 2—JURISDICTION

Subpart A—General

§ 2.1 Purpose.

(a) The purpose of this part is to define terms the Coast Guard uses in regulations, policies, and procedures, to determine whether it has jurisdiction on certain waters in cases where specific jurisdictional definitions are not otherwise provided.

(b) Figure 2.1 is a visual aid depicting the terms defined in this part.

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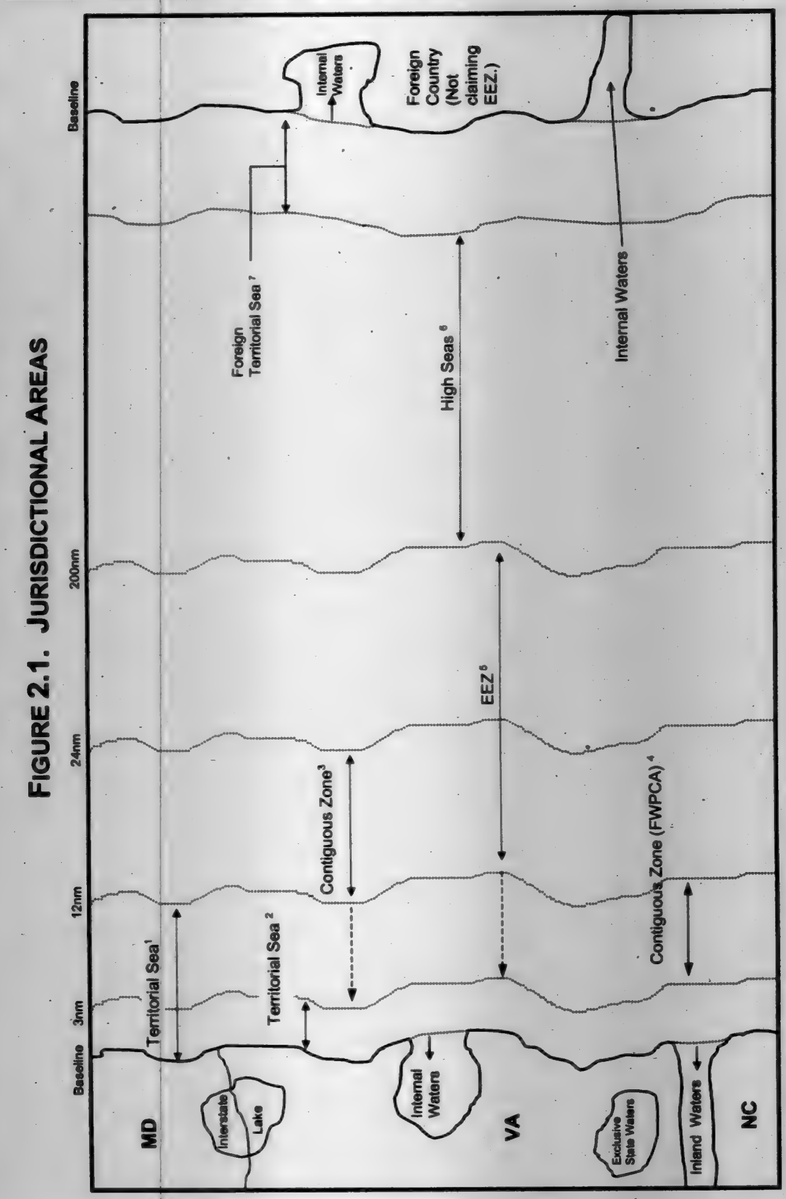


FIGURE 2.1. JURISDICTIONAL AREAS

[1] Territorial sea for purposes identified in §2.22(a)(1).
[2] Territorial sea for purposes identified in §2.22(a)(2).
[3] Contiguous zone as described in §2.28(b), varies with territorial sea width for particular purpose involved.
[4] Contiguous zone as described in §2.28(a), for Federal Water Pollution Control Act purposes.
[5] Exclusive Economic Zone (EEZ) is measured from the seaward limit of the territorial sea, as variously defined in §2.22(a), to a distance of 200 nautical miles from the baseline.
The inner (shoreward) boundary of the EEZ will vary for particular purposes.
[6] High seas as defined in §2.32(c). When a nation has not proclaimed an EEZ, the high seas begin at the seaward edge of the territorial sea or a distance of 12 nautical miles from the baseline.
[7] The U.S. recognizes territorial sea claims of other nations up to a maximum distance of 12 nautical miles from the baseline.

BILLING CODE 4910–15–C

§ 2.5 Specific definitions control.

In cases where a particular statute, regulation, policy or procedure provides a specific jurisdictional definition that differs from the definitions contained in this part, the former definition controls.

Note to § 2.5: For example, the definition of "inland waters" in the Inland Navigational Rules Act of 1980 (33 U.S.C. 2003 (o)) would control the interpretation of inland navigation rules created under that Act and the "inland waters" definition in 46 CFR 10.103 would control regulations in 46 CFR part 10.

Subpart B—Jurisdictional Terms

§ 2.20 Territorial sea baseline.

Territorial sea baseline means the line defining the shoreward extent of the territorial sea of the United States drawn according to the principles, as recognized by the United States, of the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1606, and the 1982 United Nations Convention on the Law of the Sea (UNCLOS), 21 I.L.M. 1261. Normally, the territorial sea baseline is the mean low water line along the coast of the United States. Note to § 2.20: Charts depicting the territorial sea baseline are available for examination in accordance with § 1.10–5 of this chapter.

§ 2.22 Territorial sea.

(a) With respect to the United States, the following apply—

(1) *Territorial sea* means the waters, 12 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline, for—

(i) Statutes included within subtitle II, title 46, U.S.C., and the Ports And Waterways Safety Act, as amended (33 U.S.C. 1221 *et seq.*), and any regulations issued under the authority of these statutes.

(ii) Purposes of criminal jurisdiction pursuant to title 18, United States Code.

(iii) The special maritime and territorial jurisdiction as defined in 18 U.S.C. 7.

(iv) Interpreting international law.

(v) Any other treaty, statute, or regulation, or amendment thereto, interpreted by the Coast Guard as incorporating the definition of territorial sea in paragraph (a)(1) of this section.

(2) Unless otherwise specified in paragraph (a)(1) of this section, *territorial sea* means the waters, 3 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline.

(3) In cases where regulations are promulgated under the authority of statutes covered by both paragraphs (a)(1) and (a)(2) of this section, the Coast Guard may use the definition of territorial sea in paragraph (a)(1) of this section.

(b) With respect to any other nation, *territorial sea* means the waters adjacent to its coast that have a width and baseline recognized by the United States.

§ 2.24 Internal waters.

(a) With respect to the United States, *internal waters* means the waters shoreward of the territorial sea baseline.

(b) With respect to any other nation, *internal waters* means the waters shoreward of its territorial sea baseline, as recognized by the United States.

§ 2.26 Inland waters.

Inland waters means the waters shoreward of the territorial sea baseline.

§ 2.28 Contiguous zone.

(a) For the purposes of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), *contiguous zone* means the zone, 9 nautical miles wide, adjacent to and seaward of the territorial sea, as defined in § 2.22(a)(2), that was declared to exist in Department of State Public Notice 358 of June 1, 1972 (37 FR 11906, June 15, 1972) and that extends from 3 nautical miles to 12 nautical miles as measured from the territorial sea baseline.

(b) For all other purposes, *contiguous zone* means all waters within the area adjacent to and seaward of the territorial sea, as defined in § 2.22(a), and extending to 24 nautical miles from the territorial sea baseline, but in no case extending within the territorial sea of another nation, as declared in Presidential Proclamation 7219 of September 2, 1999 (113 Stat. 2138).

§ 2.30 Exclusive Economic Zone.

(a) With respect to the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands (to the extent consistent with the Covenant and the United Nations Trusteeship Agreement); and United States' overseas possessions and territories,

Exclusive Economic Zone means the zone seaward of and adjacent to the territorial sea, as defined in § 2.22(a), including the contiguous zone, and extending 200 nautical miles from the territorial sea baseline, except where otherwise limited by treaty or other agreement recognized by the United States.

(b) For the purposes of interpretation of international law consistent with the 1982 United Nations Convention on the Law of the Sea, and with respect to other nations, *Exclusive Economic Zone* means the waters seaward and adjacent to the territorial sea, not extending beyond 200 nautical miles from the territorial sea baseline, as recognized by the United States.

§ 2.32 High seas.

(a) For the purposes of the special maritime and territorial jurisdiction of the United States as defined in 18 U.S.C. 7, *high seas* means the Great Lakes and all waters seaward of the territorial sea baseline.

(b) For the purposes of section 2 of the Act of February 19, 1895, as amended (33 U.S.C 151) and the Inland Navigational Rules Act of 1980 (33 U.S.C chapter 34), *high seas* means the waters seaward of any lines established under these statutes, including the lines described in part 80 of this chapter and 46 CFR part 7.

(c) For the purposes of interpretation of international law, consistent with the United Nations Convention on the Law of the Sea, *high seas* means all waters that are neither the Exclusive Economic Zone, territorial sea (as defined in § 2.22) nor internal waters of the United States or any other nation.

(d) For all other purposes, *high seas* means all waters that are neither territorial seas (as defined in § 2.22) nor internal waters of the United States or any other nation.

§ 2.34 Waters subject to tidal influence; waters subject to the ebb and flow of the tide; mean high water.

Waters subject to tidal influence and *waters subject to the ebb and flow of the tide* are waters below mean high water. These terms do not include waters above mean high water caused by flood flows, storms, high winds, seismic waves, or other non-lunar phenomena.

Mean high water is the average of the height of the diurnal high water at a particular location measured over a lunar cycle of 19 years.

§ 2.36 Navigable waters of the United States, navigable waters, and territorial waters.

(a) For the purposes of sections 311 and 312 of the Federal Water Pollution Control Act (FWPCA), as amended (33 U.S.C. 1321 and 1322),and the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), *navigable waters of the United States* and *navigable waters*, mean—

(1) Territorial sea as defined in § 2.22(a)(2) of this chapter;

(2) Internal waters of the United States, as described in paragraphs (b)(2) and (b)(3) of this section and all waters of the United States adjacent or tributary thereto;

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(3) Waters subject to the jurisdiction of the United States, as defined in § 2.38 (b); and

(4) All other waters included within the definitions of "navigable waters" and "territorial seas" in 33 U.S.C. 1362 (7) and (8) and 33 U.S.C. 2701 (21) and (35).

(b) For all other purposes, except where Congress has designated them not to be navigable waters of the United States, *navigable waters of the United States, navigable waters,* and *territorial waters* mean —

(1) Territorial sea of the United States as defined in § 2.22(a) of this chapter;

(2) Internal waters of the United States that are subject to tidal influence; and

(3) Internal waters that are not subject to tidal influence and—

(i) That are or have been used, or are or have been susceptible for use, by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce, notwithstanding natural or man-made obstructions that require portage; or

(ii) That a governmental or non-governmental body having expertise in waterway improvement determines to be capable of improvement at a reasonable cost (a favorable balance between cost and need) to provide, by themselves or in connection with other waters, highways for substantial interstate or foreign commerce.

§ 2.38 Waters subject to the jurisdiction of the United States; waters over which the United States has jurisdiction.

Waters subject to the jurisdiction of the United States and *waters over which the United States has jurisdiction* mean the following waters—

(a) Navigable waters of the United States, as defined in § 2.36(b).

(b) Waters, other than those under paragraph (a) of this section, that are located on lands for which the United States has acquired title or controls and—

(1) Has accepted jurisdiction according to 40 U.S.C. 255; or

(2) Has retained concurrent or exclusive jurisdiction from the date that the State in which the lands are located entered the Union.

(c) Waters made subject to the jurisdiction of the United States by operation of the international agreements and statutes relating to the former Trust Territory of the Pacific Islands, and waters within the territories and possessions of the United States.

Subpart C—Availability of Jurisdictional Decisions

§ 2.40 Maintenance of decisions.

(a) From time to time, the Coast Guard makes navigability determinations of specific waterways, or portions of thereof, in order to determine its jurisdiction on those waterways. Copies of these determinations are maintained by the District Commander in whose district the waterway is located.

(b) If the district includes portions of the territorial sea, charts reflecting Coast Guard decisions as to the location of the territorial sea baseline for the purposes of Coast Guard jurisdiction are maintained by the District Commander in whose district the waterway is located.

§ 2.45 Decisions subject to change or modification and availability of lists and charts.

The determinations referred to in § 2.40 are subject to change or modification. The determinations are made for Coast Guard use at the request of Coast Guard officials. Determinations made or subsequently changed are available to the public under § 1.10–5(b) of this chapter. Inquiries concerning whether a determination has been made for specific waters, for the purposes of Coast Guard jurisdiction, should be directed to the District Commander of the district in which the waters are located.

PART 26—VESSEL BRIDGE-TO-BRIDGE RADIOTELEPHONE REGULATIONS

2. The authority citation for part 26 continues to read as follows:

Authority: 14 U.S.C. 2, 33 U.S.C. 1201–1208; 49 CFR 1.45(b), 1.46; Rule 1. International Regulations for the Prevention of Collisions at Sea.

3. In § 26.02, add, in alphabetical order, the definition of "territorial sea" to read as follows:

§ 26.02 Definitions.

* * * * *

Territorial sea means all waters as defined in § 2.22(a)(2) of this chapter.

* * * * *

PART 62—UNITED STATES AIDS TO NAVIGATION SYSTEM

4. The authority citation for part 62 continues to read as follows:

Authority: 14 U.S.C. 85; 33 U.S.C. 1233; 43 U.S.C. 1333; 49 CFR 1.46.

5. In § 62.3, revise paragraph (g) to read as follows:

§ 62.3 Definition of terms.

* * * * *

(g) *Navigable waters of the United States.* The term navigable waters of the United States is defined in § 2.36(b) of this chapter.

* * * * *

PART 64—MARKING OF STRUCTURES, SUNKEN VESSELS AND OTHER OBSTRUCTIONS

6. The authority citation for part 64 continues to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 409, 1231; 42 U.S.C. 9118; 43 U.S.C. 1333; 49 CFR 1.46.

7. In § 64.06, add, in alphabetical order, a definition of "navigable waters of the United States" to read as follows:

§ 64.06 Definition of terms.

* * * * *

Navigable waters of the United States means those waters described in § 2.36(b) of this chapter, specifically including the waters described in § 2.22(a)(2) of this chapter.

* * * * *

PART 95—OPERATING A VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL OR A DANGEROUS DRUG

8. The authority citation for part 95 continues to read as follows:

Authority: 33 U.S.C. 2071; 46 U.S.C. 2302; 49 CFR 1.46.

9. In § 95.010, add, in alphabetical order, a definition of "waters subject to the jurisdiction of the United States" to read as follows:

§ 95.010 Definition of terms as used in this part.

* * * * *

Waters subject to the jurisdiction of the United States means those waters described in § 2.38 of this chapter.

PART 100—MARINE EVENTS

10. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

11. In § 100.05, add paragraph (e) to read as follows:

§ 100.05 Definition of terms used in this part.

* * * * *

(e) *Navigable waters of the United States* means those waters described in § 2.36(b) of this chapter, specifically including the waters described in § 2.22(a)(2) of this chapter.

PART 120—SECURITY OF PASSENGER VESSELS

12. The authority citation for part 120 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

13. In § 120.110, revise the definitions of "high seas" to read as follows:

§ 120.110 Definitions.

* * * * *

High seas means the waters defined in § 2.32 (d) of this chapter.

* * * * *

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

14. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

15. Add § 165.9 to read as follows:

§ 165.9 Geographic application of limited and controlled access areas and regulated navigation areas.

(a) *General.* The geographic application of the limited and controlled access areas and regulated navigation areas in this part are determined based on the statutory authority under which each is created.

(b) *Safety zones and regulated navigation areas.* These zones and areas are created under the authority of the Ports and Waterways Safety Act, 33 U.S.C. 1221 *et seq.* Safety zones established under 33 U.S.C. 1226 and regulated navigation areas may be established in waters of the United States as defined in § 2.38 of this chapter including the territorial sea to a seaward limit of 12 nautical miles from the baseline.

(c) *Security zones.* These zones have two sources of authority—the Ports and Waterways Safety Act, 33 U.S.C. 1226, and the Magnuson Act, 50 U.S.C. 191. Security zones established under 33 U.S.C. 1226 may be established in waters of the United States as defined in § 2.38 of this chapter including the territorial sea to a seaward limit of 12 nautical miles from the baseline. Security zones established under the Magnuson Act, 50 U.S.C. 191, may be established in waters subject to the jurisdiction of the United States as defined in § 2.38 of this chapter, including the territorial sea out to a seaward limit of 3 n.m. from the baseline. Security zones established under the Ports and Waterways Safety Act and the Magunson Act may be established in waters subject to the jurisdiction of the United States as defined in § 2.38 of this chapter, including the territorial sea to a seaward limit of 3 n.m. from the baseline.

(d) *Naval vessel protection zones.* These zones are issued under the authority of 14 U.S.C. 91 and 633 and may be established in waters subject to the jurisdiction of the United States as defined in § 2.38 of this chapter, including the territorial sea to a seaward limit of 3 n.m. from the baseline.

Title 46—Shipping

PART 7—BOUNDARY LINES

16. The authority citation for part 7 continues to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 151; 49 CFR 1.46.

17. Revise § 7.105 to read as follows:

§ 7.105 Marquesas Keys, FL to Rio Grande, TX.

A line drawn from Marquesas Keys, Florida at approximate position latitude 24°47.5′ N, longitude 82°11.2′ W; along the 12-mile line which marks the seaward limits of the territorial sea (as defined in 33 CFR 2.22 (a)(1)) to Rio Grande, Texas at approximate position latitude 25°58.6′ N, longitude 96°55.5′ W.

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

18. The authority citation for part 28 continues to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; 49 CFR 1.46.

19. In § 28.50, revise the definitions of "boundary lines" and "coastline", to read as follows:

§ 28.50 Definition of terms used in this part.

* * * * *

Boundary lines means the lines described in part 7 of this chapter. In general, they follow the trend of the seaward high water shorelines and cross entrances to small bays, inlets, and rivers. In some areas, they are along the 12-mile line that marks the seaward limits of the territorial sea and, in other areas, they come ashore.

* * * * *

Coastline means the territorial sea baseline as defined in 33 CFR 2.20.

* * * * *

Dated: August 6, 2002.

Calvin M. Lederer,

Acting Chief Counsel, U.S. Coast Guard.

[FR Doc. 02–20481 Filed 8–13–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–238–200112; FRL–7258–9]

Approval and Promulgation of Implementation Plans: Tennessee: Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed conditional approval.

SUMMARY: EPA is proposing to conditionally approve a State Implementation Plan (SIP) revision submitted by the State of Tennessee on November 7, 2000, with additional material submitted on January 11, 2001, and October 4, 2001. This revision responds to the EPA's regulation entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_X SIP Call." This revision establishes and requires a nitrogen oxides (NO_X) allowance trading program for large electric generating and industrial units, and reductions for cement kilns, beginning in 2004. The intended effect of this SIP revision is to reduce emissions of NO_X in order to help attain the national ambient air quality standard for ozone. EPA is proposing to approve Tennessee's NO_X Reduction and Trading Program, with one exception, because it meets the requirements of the Phase I NO_X SIP Call that will significantly reduce ozone transport in the eastern United States. The exception refers to Section 96.40 State trading program budget. Tennessee revised the model rule to allow for the allocation of additional allowances to NO_X budget units that have been generated through NO_X emission reductions from industrial, mobile, and area source sectors. However, Tennessee's rule provides for approval of the allocation of additional allowances solely by the permitting authority, without approval by EPA. Therefore, EPA is proposing to approve Tennessee's NO_X Reduction and Trading Program with the condition that Tennessee correct the deficiencies in Section 96.40 State trading program budget by replacing or revising the unapprovable language.

DATES: Written comments must be received on or before September 13, 2002.

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ADDRESSES: All comments should be addressed to: Steven M. Scofield at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Tennessee Department of Environment and Conservation, L & C Annex, 401 Church Street, Nashville, Tennessee 37243.

FOR FURTHER INFORMATION CONTACT: Steven M. Scofield, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9034. Mr. Scofield can also be reached via electronic mail at *scofield.steve@epa.gov*.

SUPPLEMENTARY INFORMATION: On November 7, 2000, the Tennessee Department of Environment and Conservation (TDEC) submitted a draft NO_X emission control rule to the EPA for pre-adoption review, requesting parallel processing to the development of the rule at the State level and included a schedule for development and adoption of the rule by the State. On January 11, 2001, TDEC submitted adopted revisions to its SIP to meet the requirements of the Phase I NO_X SIP Call. After adoption by the Tennessee Air Pollution Control Board, all rule revisions in Tennessee must be sent to the Secretary of State. Rule revisions become State-effective upon certification by the Secretary of State. Tennessee submitted State-effective rule revisions on October 4, 2001. The revisions comply with the requirements of the Phase I NO_X SIP Call with one exception regarding deficiencies in Section 96.40 State trading program budget. Included in this document are new rules 1200–3–27–.04 STANDARDS FOR CEMENT KILNS and 1200–3–27–.06 NO_X BUDGET TRADING PROGRAM FOR STATE IMPLEMENTATION PLANS (40 CFR part 96). The information in this proposal is organized as follows:

I. EPA's Action
A. What action is EPA proposing today?
B. Why is EPA proposing this action?
C. What are the NO_X SIP Call general requirements?
D. What is EPA's NO_X budget and allowance trading program?
E. What guidance did EPA use to evaluate Tennessee's submittal?
F. What is the result of EPA's evaluation of Tennessee's program?
II. Tennessee's Control of NO_X Emissions
A. When did Tennessee submit the SIP revision to EPA in response to the NO_X SIP Call?
B. What is the Tennessee NO_X Budget Trading Program?
C. What is the Compliance Supplement Pool?
D. What is the New Source Set-Aside program?
III. Proposed Action
IV. Administrative Requirements

I. EPA's Action

A. What Action Is EPA Proposing Today?

EPA is proposing to conditionally approve revisions to Tennessee's SIP concerning the adoption of its NO_X Reduction and Trading Program, submitted for parallel processing on November 7, 2000, with additional material submitted on January 11, 2001, and State-effective rules submitted on October 4, 2001.

B. Why Is EPA Proposing This Action?

EPA is proposing this action because Tennessee's NO_X Reduction and Trading Program regulations meet the requirements of the Phase I NO_X SIP Call with one exception. The exception refers to deficiencies in Section 96.40 State trading program budget. Tennessee revised the model rule to allow for the allocation of additional allowances to NO_X budget units that have been generated through NO_X emission reductions from industrial, mobile, and area source sectors. However, Tennessee's rule provides for approval of the allocation of additional allowances solely by the permitting authority, without approval by EPA. In a letter dated June 25, 2002, EPA informed Tennessee of the deficiencies in Section 96.40 and how the State could correct these deficiencies. In the letter EPA also required the State to commit to correct the deficiencies within 12 months. Therefore, EPA is proposing to approve Tennessee's NO_X Reduction and Trading Program, including a rule for cement kilns, with the condition that Tennessee correct the deficiencies in Section 96.40 State trading program budget.

C. What Are the NO_X SIP Call General Requirements?

On October 27, 1998, EPA published a final rule entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_X SIP Call." See 63 FR 57356. The NO_X SIP Call requires 22 States and the District of Columbia to meet statewide NO_X emission budgets during the five month period from May 1 through September 30 in order to reduce the amount of ground level ozone that is transported across the eastern United States.

EPA identified NO_X emission reductions by source category that could be achieved by using cost-effective measures. The source categories included were electric generating units (EGUs) and non-electric generating units (non-EGUs), internal combustion engines, and cement kilns. EPA determined state-wide NO_X emission budgets based on the implementation of these cost-effective controls for each affected jurisdiction to be met by the year 2007. Internal combustion engines are not addressed by Tennessee in this response to Phase I, but will be in Phase II. In the NO_X SIP Call notice, EPA suggested that imposing statewide NO_X emissions caps on large fossil-fuel fired industrial boilers and EGUs would provide a highly cost-effective means for states to meet their NO_X budgets. In fact, the state-specific budgets were set assuming an emission rate of 0.15 pounds NO_X per million British thermal units (lb. NO_X/mmBtu) at EGUs, multiplied by the projected heat input (mmBtu) from burning the quantity of fuel needed to meet the 2007 forecast for electricity demand. See 63 FR 57407. The calculation of the 2007 EGU emissions assumed that an emissions trading program would be part of an EGU control program. The NO_X SIP Call state budgets also assumed on average a 30 percent NO_X reduction from cement kilns, and a 60 percent reduction from industrial boilers and combustion. The non-EGU control assumptions were applied at units where the heat input capacities were greater than 250 mmBtu per hour, or in cases where heat input data were not available or appropriate, at units with actual emissions greater than one ton per day. However, the NO_X SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets.

To assist the states in their efforts to meet the SIP Call, the NO_X SIP Call final rulemaking notice included a model NO_X allowance trading regulation, called "NO_X Budget Trading Program for State Implementation Plans," (40 CFR part 96), that could be used by states to develop their regulations. The NO_X SIP Call notice explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by the EPA. *See* 63 FR 57458–57459.

There were several periods during which EPA received comments on various aspects of the NO_X SIP Call emissions inventories. On March 2, 2000, EPA published additional technical amendments to the NO_X SIP Call in the **Federal Register** (65 FR 11222). On March 3, 2000, the D.C. Circuit issued its decision on the NO_X SIP Call ruling in favor of EPA on all the major issues. Michigan v. EPA, 213 F.3d 663 (D.C. Cir. 2000). The DC Circuit Court denied petitioners' requests for rehearing or rehearing en banc on July 22, 2000. However, the Circuit Court remanded four specific elements to EPA for further action: The definition of electric generating unit, the level of control for stationary internal combustion engines, the geographic extent of the NO_X SIP Call for Georgia and Missouri, and the inclusion of Wisconsin. On March 5, 2001, the U.S. Supreme Court declined to hear an appeal by various utilities, industry groups and a number of upwind states from the D.C. Circuit's ruling on EPA's NO_X SIP Call rule.

EPA published a proposal that addresses the remanded portion of the NO_X SIP Call Rule on February 22, 2002 (67 FR 8396). Any additional emissions reductions required as a result of a final rulemaking on that proposal will be reflected in the second phase portion (Phase II) of the State's emission budget. On April 11, 2000, in response to the Court's decision, EPA notified Tennessee of the maximum amount of NO_X emissions allowed for the State during the ozone season. This emission budget reflected adjustments to Tennessee's NO_X emission budget to reflect the Court's decision regarding internal combustion engines and cogeneration facilities. Although the Court did not order EPA to modify Tennessee's budget, the EPA believes these adjustments are consistent with the Court's decision.

D. What Is EPA's NO_X Budget and Allowance Trading Program?

EPA's model NO_X budget and allowance trading rule, 40 CFR part 96, sets forth a NO_X emissions trading program for large EGUs and non-EGUs. A state can voluntarily choose to adopt EPA's model rule in order to allow sources within its borders to participate in regional allowance trading. The October 27, 1998, **Federal Register** notice contains a full description of the EPA's model NO_X budget trading program. *See* 63 FR 57514–57538 and 40 CFR part 96.

Air emissions trading, in general, uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a "cap and trade" program.

In an emissions budget and allowance trading program, the state or EPA sets a regulatory limit, or emissions budget, in mass emissions from a specific group of sources. The budget limits the total number of allowances for each source covered by the program during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the state or EPA then assigns, or allocates, allowances to the participating entities up to the level of the budget. Each allowance authorizes the emission of a quantity of pollutant, *e.g.*, one ton of airborne NO_X.

At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner.

E. What Guidance Did EPA Use To Evaluate Tennessee's Submittal?

The final NO_X SIP Call rule included a model NO_X budget trading program regulation. See 40 CFR part 96. EPA used the model rule and 40 CFR 51.121–51.122 to evaluate Tennessee's NO_X reduction and trading program.

F. What Is the Result of EPA's Evaluation of Tennessee's Program?

EPA has evaluated Tennessee's October 4, 2001, SIP submittal and finds it approvable with conditions. The Tennessee NO_X reduction and trading program is consistent with EPA's guidance and meets the requirements of the Phase I NO_X SIP Call with one exception regarding deficiencies in Section 96.40 State trading program budget. EPA finds the NO_X control measures in Tennessee's NO_X reduction and trading program, including the cement kiln rule, approvable.

The October 4, 2001, submittal will strengthen Tennessee's SIP for reducing ground level ozone by providing NO_X reductions beginning in 2004. Also, EPA finds that the submittal contained the information necessary to demonstrate that Tennessee has the legal authority to implement and enforce the control measures, and to demonstrate their appropriate distribution of the compliance supplement pool. Furthermore, EPA proposes to find that the submittal demonstrates that the compliance dates and schedules, and the monitoring, recordkeeping and emission reporting requirements will be met.

II. Tennessee's Control of NO_X Emissions

A. When Did Tennessee Submit the SIP Revision to EPA in Response to the NO_X SIP Call?

On November 7, 2000, the Tennessee Department of Environment and Conservation submitted a draft NO_X emission control rule to the EPA for pre-adoption review, requesting parallel processing to the development of the rule at the State level and included a schedule for development and adoption of the rule by the State. On January 11, 2001, TDEC submitted adopted revisions to its SIP to meet the requirements of the Phase I NO_X SIP Call. After adoption by the Tennessee Air Pollution Control Board, all rule revisions in Tennessee must be sent to the Secretary of State. Rule revisions become State-effective upon certification by the Secretary of State. Tennessee submitted State-effective rule revisions on October 4, 2001.

B. What Is Tennessee's NO_X Budget Trading Program?

Tennessee's rule, as in the model rule, allows the large EGUs, boilers and turbines to participate in the multi-state cap and trade program. Cement kilns are not included in the trading program, but will be required to install low NO_X burners, mid-kiln system firings or technology that achieves the same emission decreases. Tennessee's SIP revision to meet the requirements of the NO_X SIP Call consists of new rules 1200–3–27–.04 STANDARDS FOR CEMENT KILNS and 1200–3–27–.06 NO_X BUDGET TRADING PROGRAM FOR STATE IMPLEMENTATION PLANS (40 CFR 96). The regulations under 1200–3–27–.06 affect EGUs and non-EGUs. Rule 1200–3–27–.06 NO_X BUDGET TRADING PROGRAM FOR STATE IMPLEMENTATION PLANS (40 CFR 96) added 10 new subparts: Subpart A—NO_X Budget Trading Program General Provisions; Subpart B—Authorized Account Representative for NO_X Budget Sources; Subpart C—

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Permits; Subpart D—Compliance Certification; Subpart E—NO_X Allowance Allocations; Subpart F—NO_X Allowance Tracking System; Subpart G—NO_X Allowance Transfers; Subpart H—Monitoring and Reporting; Subpart I—Individual Unit Opt-ins; and Subpart J—Mobile and Area Sources [Reserved].

Tennessee's NO_X Budget Trading Program establishes and requires a NO_X allowance trading program for large EGUs and non-EGUs. The regulations under 1200–3–27–.06 establish a NO_X cap and allowance trading program for the ozone control seasons beginning May 31, 2004.

The State of Tennessee voluntarily chose to follow EPA's model NO_X budget and allowance trading rule, 40 CFR part 96, that sets forth a NO_X emissions trading program for large EGUs and non-EGUs. Tennessee's NO_X Budget Trading Program is based upon EPA's model rule, therefore, Tennessee sources are allowed to participate in the interstate NO_X allowance trading program that EPA will administer for the participating states. The State of Tennessee has adopted regulations that are substantively identical to 40 CFR part 96, with the exceptions of the allocation period and the State trading program budget. Tennessee chose to use a 15-year allocation period (2004–2018) for NO_X allowance allocations, with the NO_X allowance allocations, in accordance with Sec. 96.42, being submitted by April 1, 2016 (15 years after initial allocation), and April 1st of each year thereafter, to the Administrator for the control period in the year that is three years after the year of the applicable deadline. Tennessee's NO_X allocations do not exceed the values allowed to meet the State cap. Therefore, pursuant to 40 CFR 51.121(p)(1), Tennessee's SIP revision is approvable as satisfying the State's NO_X emission reduction obligations. Under 1200–3–27–.06, Tennessee allocates NO_X allowances to the EGU and non-EGU units that are affected by these requirements. The NO_X trading program applies to all Phase I units that are fossil fuel-fired EGUs with a nameplate capacity greater than 25 MW or more and selling any amount of electricity to the grid, or that are fossil fuel-fired non-EGUs that have a heat input capacity equal to or greater than 250 mmBtu per hour. Each NO_X allowance permits a source to emit one ton of NO_X during the seasonal control period. NO_X allowances may be bought or sold. Unused NO_X allowances may also be banked for future use, with certain limitations.

Tennessee also chose to revise Section 96.40 (State trading program budget) from the model rule at 1200–3–27–.06(1)(f) to allow for the allocation of additional allowances to NO_X budget units that have been generated through NO_X emission reductions from industrial, mobile, and area source sectors. However, Tennessee's rule provides for approval of the allocation of additional allowances solely by the permitting authority, without approval by EPA. Therefore, EPA is proposing to approve Tennessee's NO_X Reduction and Trading Program with the condition that Tennessee correct the deficiencies in Section 96.40 State trading program budget by removing or making specific revisions to the unapprovable language. By letter dated June 25, 2002, EPA explained in detail the problems with this language and stated that the language should be deleted or replaced with specified, revised language.

Source owners will monitor their NO_X emissions by using systems that meet the requirements of 40 CFR part 75, subpart H, and report resulting data to EPA electronically. Each budget source complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a source holds, it cannot emit at levels that would violate other federal or state limits, for example, reasonably available control technology (RACT), new source performance standards, or Title IV (the Federal Acid Rain program).

Tennessee's Rule 1200–3–27–.04 STANDARDS FOR CEMENT KILNS establishes requirements for cement manufacturing facilities, however, these sources are subject to NO_X reduction requirements but do not participate in the NO_X trading program. Cement kilns are not included in the trading program, but will be required to install low NO_X burners, mid-kiln system firings or technology that achieves the same emission decreases. Tennessee's submittal does not rely on any additional reductions beyond the anticipated Federal measures in the mobile and area source categories. However, Tennessee revised the model rule to allow for the allocation of additional allowances to NO_X budget units that have been generated through NO_X emission reductions from industrial, mobile, and area source sectors in the future. It is expected that Tennessee will revise this provision to be consistent with EPA requirements. Therefore, Tennessee may comply in the future using measures beyond the measures anticipated by the Federal rule.

Tennessee's submittal demonstrates that the Phase I NO_X emission budgets established by EPA will be met as follows:

Source category	EPA 2007 NO_X budget emissions (tons/season)	Tennessee 2007 NO_X budget emissions (tons/season)
EGUs	25,814	25,814
Non-EGUs	5,519	5,519
Area Sources	13,333	13,333
Non-road Sources	52,920	52,920
Highway Sources	66,342	66,342
Total	163,928	163,928

C. What Is the Compliance Supplement Pool?

To provide additional flexibility for complying with emission control requirements associated with the NO_X SIP Call, the final NO_X SIP Call rule provided each affected state with a "compliance supplement pool." The compliance supplement pool is a quantity of NO_X allowances that may be used to cover excess emissions from sources that are unable to meet control requirements during the 2004 and 2005 ozone seasons. Allowances from the compliance supplement pool will not be valid for compliance past the 2005 ozone season. The NO_X SIP Call included these voluntary provisions in order to address commenters' concerns about the possible adverse effect that the control requirements might have on the reliability of the electricity supply or on other industries required to install controls as the result of a state's response to the NO_X SIP Call.

A state may issue some or all of the compliance supplement pool via two mechanisms.

First, a state may issue some or all of the pool to sources with credits from implementing NO_X reductions beyond all applicable requirements in the ozone season during 2000–2003 (i.e., early reductions). This allows sources that cannot install controls prior to May 31, 2004, to purchase other sources' early reduction credits in order to comply. Second, a state may issue some or all of the pool to sources that demonstrate a need for an extension of the May 31, 2004, compliance deadline due to undue risk to the electricity supply or other industrial sectors, and where early reductions are not available. See 40 CFR 51.121(e)(3). In Tennessee's rule, each NO_X Budget unit for which the owner or operator requests any early reduction credits shall reduce its NO_X emission rate, for each control period in 2001, 2002, and 2003 for which early reduction credits are requested, to less than both 0.25 lb/mmBtu and 80 percent of the unit's NO_X emission rate in the 2000 control period for EGUs, and for non-EGUs, to less than 95 percent of the unit's NO_X emission rate in the 2000 control period. In order to qualify for early reduction credits, a source will have had to been monitoring according to part 75, subpart H, in the 2000 ozone season to establish a baseline against which the subsequent reductions may be demonstrated. Further, all reductions must be above and beyond any requirement under the Clean Air Act.

D. What Is the New Source Set-Aside?

40 CFR Part 96 requires that new sources hold allowances to cover their emissions. EPA maintains that as much as possible within the context of the overall trading budget, allocations should be provided to new sources on the same basis as that used for existing units until the time when the new sources receive an allocation as part of an updating allocation system. In order to provide NO_X allowances to new NO_X Budget units, § 96.42(d) establishes an allocation set-aside account equaling 5 percent of the State trading program budget in 2004 and 2005, and 2 percent thereafter. (However, a state may have any size set-aside, may allocate the set-aside in whatever manner it chooses, and may carry over from one year to the next any amount of allowances.) Authorized account representatives from a new source may request NO_X allowances from the State on a first-come, first-served basis, at an emission rate (0.15 lb/mmBtu for EGUs and 0.17 lb/mmBtu for non-EGUs) multiplied by a budget unit's maximum design heat input and by the hours in the control period starting with the first hour of operation. After the control period, EPA will deduct NO_X allowance based on the unit's actual utilization during the control period. As a result of the deduction, the allocation for the new unit from the set-aside will effectively equal the product of the emission rate and the unit's actual heat input for the control period season. Allowances not issued to new sources in the applicable control period will be returned to the existing sources in the State on a pro-rata basis to guard against the possibility of a disproportionately large set-aside.

Tennessee's SIP provides for New Source Set-asides. For EGUs the allocation set-aside will be allocated NO_X allowances equal to 4.3 percent of the tons of NO_X emissions in the State trading program budget apportioned to EGUs under section 96.40, rounded to the nearest whole NO_X allowance as appropriate. The allocation set-aside for new source growth will be the NO_X allowances remaining in the state trading program budget for non-EGUs after allocations are set for all NO_X budget units. This approach to allocations for new units is acceptable because it falls within the flexibility of the NO_X SIP Call requirements for a state's allocation to new sources.

III. Proposed Action

EPA is proposing to conditionally approve the Tennessee's SIP revision consisting of its draft NO_X Budget Trading Program, which was submitted on November 7, 2000, with additional material submitted on January 11, 2001, and State-effective rules submitted on October 4, 2001. EPA finds that Tennessee's submittal is approvable with one exception because it meets the requirements of the Phase I NO_X SIP Call.

The exception refers to Section 96.40 State trading program budget. Tennessee revised the model rule at 1200–3–27–.06(1)(f) to allow for the allocation of additional allowances to NO_X budget units that have been generated through NO_X emission reductions from industrial, mobile, and area source sectors. However, Tennessee's rule provides for approval of the allocation of additional allowances solely by the permitting authority, without approval by EPA. Therefore, EPA is proposing to approve Tennessee's NO_X Reduction and Trading Program, including a rule for cement kilns, with the condition that Tennessee correct the deficiencies in Section 96.40 State trading program budget by removing or revising the unapprovable language.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement

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for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 30, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–20580 Filed 8–13–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7257–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Standard Steel and Metals Salvage Yard Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, announces its intent to delete the Standard Steel and Metals Salvage Yard Site (Site) from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Alaska Department of Environmental Conservation have determined that the remedial action for the site has been successfully executed by the responsible parties and no further response under CERCLA is needed.

DATES: Comments concerning the proposed deletion of this Site from the NPL may be submitted on or before September 14, 2002.

ADDRESSES: Comments may be mailed to: Beverly Gaines, EPA Point of Contact, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Stop, ECL–110, Seattle, Washington 98101.

Comprehensive information on this Site is available through the Region 10 public docket which is available for reviewing at: U.S. Environmental Protection Agency, Region 10, Superfund Records Center, 1200 Sixth Avenue, Seattle, Washington 98101.

Information on the site and a copy of the deletion docket are available for viewing at the Information Repository which is located at: Alaska Resources Library & Information Services, 3150 C Street, Suite 100, Anchorage, Alaska 99513, (907) 272–7547.

FOR FURTHER INFORMATION CONTACT: Beverly Gaines, EPA Point of Contact, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Stop, ECL–110, Seattle, Washington 98101, phone: (206) 553–1066, fax: (206) 553–0124, e-mail: gaines.beverly@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region 10 announces its intent to delete the Standard Steel and Metals Salvage Yard Site, which is located in Anchorage, Alaska, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. EPA and the State of Alaska Department of Environmental Conservation have determined that the remedial action for the site has been successfully executed by the responsible parties and no further response under CERCLA is needed.

EPA will accept comments on the proposal to delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures EPA is using for this action. Section IV discusses the Standard Steel & Salvage Yard Site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from, or recategorized on the NPL, where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate, or

(iii) The Remedial Investigation has shown that the site poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate additional remedial actions. Whenever there is a significant release from a deleted site from the NPL, the site may be restored to the NPL without application of the Hazard Ranking System.

In the case of this site, the selected remedy is protective of human health and the environment, however, because the remedy leaves waste on site above levels that allow for unlimited use and unrestricted exposure, a review of the selected remedy will be conducted at least every five years from initiation of the remedial action.

III. Deletion Procedures

The following procedures were used for the intended deletion of this site: (1) Responsible parties have implemented all appropriate response actions required; (2) the State of Alaska has concurred with the proposed deletion decision; (3) a notice has been published in the local newspapers and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and (4) all relevant documents have been compiled in the site deletion docket and made available in the local site information repositories.

Deletion of the site from the NPL does not in itself, create, alter or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of this site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

Site Background and History

The Standard Steel and Metals Salvage Yard Site was a 6.2 acre metal salvage yard in Anchorage, Alaska. The site is located near the intersection of Railroad Avenue and Yakutat Street, adjacent to Ship Creek. The site is zoned I–2, denoting a heavy industrial district, by the Municipality of Anchorage. The property is in the possession and control of the Alaska Railroad Corporation. The site is located within the City of Anchorage, where the majority of the population of the State of Alaska live. A residential area is located a half mile southeast of the site on the other side of Ship Creek and Elmendorf Air Force Base is a third of a mile to the North.

The first documented use of the site occurred in October 1950, when it was leased by a construction company for maintenance and storage equipment. Beginning in 1955, various metal recycling and salvage business operated at the site. During recycling and salvage activities, electrical transformers and batteries were handled. Releases of hazardous substances occurred from these activities and inappropriate burial or burning of transformer oil.

From 1986 through 1988, EPA conducted a series of removal actions to address widespread contamination. EPA removed 1000 gallons of polychlorinated biphenyls (PCBs) contaminated oil, eighty-two 55 gallon drums of Resource Conservation and Recovery Act (RCRA) hazardous waste, 10,450 gallons of waste oil, 185 PCB-contaminated transformers, and 781,000 pounds of lead acid batteries. EPA proposed the site to the NPL on July 14, 1989. The site was finalized on the NPL on August 30, 1990.

An Remedial Investigation/Feasibility Study was completed in January 1996. The study identified polychlorinated biphenyls (PCBs), lead, and dioxin/furans as contaminants of concern at the site. The site posed potential threats to human health and the environment through ingestion, dermal contact, and inhalation of contaminated soils. Site groundwater was impacted by soil contamination. Off-site groundwater was not impacted. Dioxin/furans were determined to be a contaminant of concern; however, all detections of dioxin/furans were collocated with soils contaminated with 10 mg/kg or greater PCBs. Therefore, all actions taken to address PCBs would also address dioxin/furans.

Selected Remedy

On July 16, 1996, the Regional Administrator signed a Record of Decision (ROD) selecting the following remedy:

—Removal of regulated material currently stockpiled on-site and investigation derived wastes with subsequent disposal in a RCRA Subtitle C or D landfill, or recycling of the materials;

—Off-site disposal of remaining scrap debris by recycling or disposal in a RCRA Subtitle D landfill or, if the debris is a characteristic hazardous waste or contains greater than 50 mg/kg PCBs or 10ug/100cm^2 PCBs by standard wipe tests, treatment, and disposal in a RCRA Subtitle C or Toxic Substances Control Act (TSCA) landfill;

—Excavation and consolidation of all soils exceeding cleanup levels; the Settling Defendants chose to incorporate cleanup criteria stricter than the Record of Decision for soils within three feet of the surface, namely; 1mg/Kg for PCBs and 250mg/Kg for lead.

—Treatment of all soils at or greater than 1000 mg/kg lead or 50 mg/kg PCB by stabilization/solidification;

—On-site disposal of treated soils and excavated soils between 10 mg/kg and 50 mg/kg PCBs in a TSCA landfill. Certain TSCA landfill requirements were waived subsequent to the remedial action due to design changes. The waivers were consistent with TSCA and were not implemented through CERCLA waiver provisions;

—Excavation of soils impacted above 1.0 mg/kg PCBs and 500 mg/kg lead from the flood plain and consolidation of these soils elsewhere on the site;

—Maintenance and repair of the erosion control structure on the bank of Ship Creek;

—Maintenance of treated soils and the landfill;

—Institutional controls to limit land uses of the site and, if appropriate, access;

—Monitoring of groundwater at the site to ensure the effectiveness of the remedial action.

Response Actions

On January 26, 1996, a Consent Decree to conduct a Remedial Action (RA) design and RA construction was entered into by Chugach Electric Association, Inc., J.C. Penney Company, Inc., Bridgestone/Firestone, Inc., Sears Roebuck and Company, and Westinghouse Electric Corporation. The Alaska Railroad Corporation signed the Consent Decree exclusively for the purpose of agreeing to provide access and implement institutional controls. The Settling Defendants agreed to perform the remedial design/remedial action selected in the ROD. The remedial design was conducted in conformance with the approved ROD and Statement of Work for the consent decree. The remedial action was formally initiated in March 1998. The contractor conducted the remedial actions pursuant to the approved remedial design/remedial action work plans. The only significant new contaminant encountered was potential unexploded ordnance. However, the work plans anticipated this possibility and remedial actions proceeded with some changes. All suspected unexploded ordnance was removed and treated by a U.S. Military Explosive Ordnance Detachment from Fort Richardson, Alaska.

The TSCA disposal cell is located on 2.5 acres of the 6.2 acre site along the

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northwest boundary of the site. It is approximately 320 feet by 340 feet and extends to a depth of approximately 15 feet below finished grade. The cell holds approximately 55,000 tons of contaminated material, 22,272 of which was stabilized. The contaminated soils are covered with a closed cell foam insulation, 40 mil geomembrane cover, geocomposite drainage layer, and three feet of clean soil. The cell is designed to be utilized for vehicle/equipment storage or future building area. The cell is surrounded on three sides by a 14,000 ton rip rap barrier wall designed to protect against a 500 year (minimum) flood event.

The selected remedy was enhanced by the following approved design changes, which were implemented in 1998 and 1999:

—Excavating all upland surface soils outside the limits of the TSCA landfill which exceed 1.0 mg/Kg PCBs or 250 mg/Kg lead to a depth of three feet; and disposal in the on-site TSCA landfill.
—Including a geomembrane cover system consisting of a four-inch foam insulation layer, 40 mil liner, geonet drainage layer, filter fabric and three feet of clean soil over the landfill;
—Creation of a flood protection barrier on three sides of the landfill;
—Replacement of the rip rap erosion control wall adjacent to Ship Creek with an Alaska Department of Fish and Game requested natural erosion protection system. This system incorporates native vegetation and artificial logs to secure the stream bank and provide habitat. Based on these changes, an Explanation of Significant Differences was signed on November 18, 1998 to waive 40 CFR 761.75(b)(9)(i), which requires a fence around a TSCA landfill. A Remedial Action Report was signed on August 1, 1999 and a Final Closeout Report was signed on June 26, 2002 which documents that all work at the site has been completed and all cleanup levels established in the ROD have been achieved.

Operation and Maintenance

Pursuant to the Consent Decree, Chugach Electric Association, Inc., Westinghouse Electric Corporation, Sears, Roebuck and Company, J. C. Penney Company, Inc., and Bridgestone/Firestone, Inc. are responsible for the operation and maintenance procedures. The remedy requires maintenance of the landfill to ensure that it retains its structural integrity and prevents the release of PCBs and lead through erosion, leaching, and excavation. The Operation and Maintenance requirements are presented in the Operations and Maintenance Plan (revised) July 2001 by Alta GeoSciences, Inc. Operation and maintenance has been happening properly, with the exception of damage to an up gradient well. EPA was notified of the damage and the well was restored.

Institutional Controls

The Site has institutional controls in place to restrict access, prevent use of groundwater, and land use on the property. The Alaska Railroad Corporation (ARRC) is the owner of an exclusive license to the property under the Alaska Railroad Transfer Act. ARRC executed and filed the Declaration of Restrictive Covenants per the Consent Decree requirements with the local land recording district office in Anchorage. ARRC's lease agreements for the property notify the lessee of the Institutional Controls which must be complied with. Additionally, notice of the remedy and the Declaration of Restrictive Covenants was provided to applicable state and local government agencies and all local utility companies.

The Institutional Controls contained in the RD/RA Consent Decree, Record of Decision and recorded through a Declaration of Restrictive Covenants are:

—Ensure that site use continues to be industrial or commercial and prevent use of the site for commercial developments that involve potential chronic exposures of children to soil (*e.g.*, use of the site for a day care center);
—Restrict activities at the site that could potentially impair the integrity of the TSCA landfill;
—Prevent movement of soil containing greater than 1,000 mg/kg lead or 10mg/kg PCBs to the surface or within the top foot of soil where chronic long-term worker exposure could occur;
—Groundwater use restriction recorded with local, regional, and State agencies, departments and utilities.

Five-Year Review

Hazardous substances will remain at the site above levels that allow unlimited use and unrestricted exposure after the completion of the remedial action. Pursuant to CERCLA section 121(c) and provided in the current guidance on Five-Year Reviews, EPA must conduct a statutory five-year review to ensure that the remedy continues to provide adequate protection of human health and the environment. The Five-Year Review Report will be completed prior to March 2003.

Community Involvement

EPA held four public meetings, issued five fact sheets and published three public comment periods in the **Federal Register**. The meetings and fact sheets focused on CERCLA-required comment periods, informational meetings, publications of previous cleanup actions, enforcement actions, alternative analysis or schedule announcements, and public involvement sessions. There was not much public involvement at this site.

Applicable Deletion Criteria

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if "responsible parties have implemented all appropriate response actions required." EPA, with the concurrence of the State of Alaska, believe that this criterion for deletion has been met. There is no significant threat to human health or the environment and; therefore, no further remedial action is necessary. Subsequently, EPA is proposing deletion of this site from the NPL. Documents supporting this action are available in the deletion docket at the information repositories.

State Concurrence

In a letter dated July 24, 2002, from the Alaska Department of Environmental Conservation (ADEC), ADEC concurs with the proposed deletion of the Standard Steel and Metals Salvage Yard Superfund Site from the NPL.

Dated: August 2, 2002.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 02–20351 Filed 8–13–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1913, MM Docket No. 01–44, RM–10022]

Digital Television Broadcast Service; Derby, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Pappas Telecasting of America proposing the allotment of DTV channel 46 to Derby, Kansas. DTV Channel 46 can be allotted to Derby, Kansas at reference coordinates 37–54–12 N. and 97–37–06 W. with a power of 1000, a height above average terrain HAAT of 246 meters.

DATES: Comments must be filed on or before September 30, 2002, and reply comments on or before October 15, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Vincent J. Curtis, Jr. Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, Eleventh Floor, Arlington, Virginia 22209 (Counsel for Pappas Telecasting of America).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rule Making, MM Docket No. 01–44, adopted August 2, 2002, and released August 9, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Kansas is amended by adding Georgetown, DTV channel 46.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–20592 Filed 8–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1901, MB Docket No. 02–220, RM–10518]

Digital Television Broadcast Service; Christiansted, VI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Virgin Blue, Inc., licensee of station WCVI-TV, Christiansted, Virgin Islands, requesting the substitution of DTV channel 23 for DTV channel 5. DTV Channel 23 can be allotted to at reference coordinates 17–44–40 N. and 64–43–40 W. with a power of 0.85, a height above average terrain (HAAT) of 130 meters.

DATES: Comments must be filed on or before September 30, 2002, and reply comments on or before October 15, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Gold, President, WCVI-TV, P.O. Box 24027, Christiansted, Virgin Islands (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–220, adopted August 2, 2002, and released August 9, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the

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Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Virgin Islands is amended by removing DTV channel 5 and adding DTV channel 23 at Christiansted.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–20602 Filed 8–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1900, MB Docket No. 02–221, RM–10519]

Digital Television Broadcast Service; Wailuku, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by LeSea Broadcasting Corporation, licensee of station KWHM(TV), Wailuku, Hawaii, requesting the substitution of DTV channel 45 for station KWHM(TV)'s assigned DTV channel 20. DTV Channel 20 can be allotted to Wailuku at reference coordinates 20–40–58 N. and 156–19–07 W. with a power of 87, a height above average terrain HAAT of 1298 meters.

DATES: Comments must be filed on or before September 30, 2002, and reply comments on or before October 15, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Joseph C. Chautin, III, Hardy, Carey & Chautin, LLP, 110 Veterans Boulevard, Suite 300, Metairie, Louisiana 70005, (Counsel for LeSea Broadcasting Corporation).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–221, adopted August 2, 2002, and released August 9, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Hawaii is amended by removing DTV channel 20 and adding DTV channel 45 at Wailuku.

Federal Communications Commission

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–20603 Filed 8–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1897, MB Docket No. 02–219, RM–10506]

Digital Television Broadcast Service; Lawton, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KSWO Television Company, Inc., licensee of station KSWO–TV, Lawton, Oklahoma, requesting the substitution of DTV channel 11 for station KSWO–TV's assigned DTV channel 23. DTV Channel 11 can be allotted to Lawton at reference coordinates 34–12–55 N. and 98–43–13 W. with a power of 138, a height above average terrain (HAAT) of 327 meters.

DATES: Comments must be filed on or before September 30, 2002, and reply comments on or before October 15, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David D. Oxenford, Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037–1128 (Counsel for KSWO Television Company, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–219, adopted August 2, 2002, and released August 9, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Oklahoma is amended by removing DTV channel 23 and adding DTV channel 11 at Lawton.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–20604 Filed 8–13–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1912, MB Docket No. 02–222, RM–10491]

Digital Television Broadcast Service; Spokane, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KSKN Television, Inc., licensee of station KSKN–TV, NTSC channel 22, Spokane, Washington, proposing the substitution of DTV channel 48 for station KSKN–TV's assigned DTV channel 36. DTV Channel 48 can be allotted to at reference coordinates 47–35–41 N. and 117–17–53 W. With a power of 1000, a height above average terrain HAAT of 596 meters. Since the community of Spokane is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian must be obtained for this allotment.

DATES: Comments must be filed on or before September 30, 2002, and reply comments on or before October 15, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's

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Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James R. Bayes, Wiley, Rein & Fielding LLP, 1776 K Street, NW, Washington, DC 20006 (Counsel for KSKN Television, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–222, adopted August 2, 2002, and released August 9, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Washington is amended by removing DTV channel 36 and adding DTV channel 48 at Spokane.

Federal Communications Commission

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–20605 Filed 8–13–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1874; MB Docket No. 02–209, RM–10512; MB Docket No. 02–210, RM–10510; MB Docket No. 02–211, RM–10511]

Radio Broadcasting Services; Greenwood, MS; Hyannis, NE; and Wall, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes three new allotments in Greenwood, Mississippi, Hyannis Nebraska, and Wall, South Dakota. The Audio Division requests comment on a petition filed by David P. Garland proposing the allotment of Channel 277A at Greenwood, Mississippi, as the community's fourth local aural transmission service. Channel 277A can be allotted to Greenwood in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.1 kilometers (6.3 miles) east to avoid a short-spacing to an application site of Station KZYQ, Channel 278C2, Lake Village, Arkansas. The coordinates for Channel 277A at Greenwood are 33–32–19 North Latitude and 90–04–27 West Longitude. *See* Supplementary Information, *infra*.

DATES: Comments must be filed on or before September 23, 2002, and reply comments on or before October 8, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: David P. Garland, 1110 Hackney Street, Houston, Texas, 77023 (petitioner); John M. Pelkey, Garvey, Schubert & Barer, 5th Floor, 1000 Potomac Street, NW., Washington, DC 20007 (Counsel for Grant County Broadcasters and Wall Radio Broadcasters).

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 02–209, 02–210, and 02–211, adopted July 24, 2002, and released August 2, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The Audio Division requests comments on a petition filed by Grant County Broadcasters proposing the allotment of Channel 250C1 at Hyannis, Nebraska, as the community's first local aural transmission service. Channel 250C1 can be allotted to Hyannis in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 250C1 at Hyannis are 42–00–02 North Latitude and 101–45–41 West Longitude.

The Audio Division requests comments on a petition filed by Wall Radio Broadcasters proposing the allotment of Channel 288C at Wall, South Dakota, as the community's first local aural transmission service. Channel 288C can be allotted to Wall in compliance with the Commission's minimum distance separation requirements at city reference coordinates.

The coordinates for Channel 288C at Wall are 43–59–47 North Latitude and 102–13–07 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Channel 277A at Greenwood.

3. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Hyannis, Channel 250C1.

4. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by adding Wall, Channel 288C.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–20594 Filed 8–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1805; MB Docket No. 02–197; RM–10509]

Radio Broadcasting Services; Bishopville and Lamar, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Miller Communications, Inc., licensee of Station WKHT(FM), Channel 229A, Bishopville, South Carolina, requesting the reallotment of Channel 229A from Bishopville to Lamar, South Carolina, and modification of its authorization accordingly, pursuant to the provisions of section 1.420(i) of the Commission's Rules. The coordinates for requested Channel 229A at Lamar, South Carolina, are 34–07–10 NL and 80–08–49 WL.

Petitioner's reallotment proposal complies with the provisions of section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 229A at Lamar, South Carolina, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before September 23, 2002, and reply comments on or before October 8, 2002.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Gary S. Smithwick, Esq., Smithwick & Belendiuk, P.C.; 5028 Wisconsin Avenue, NW., Suite 301; Washington, DC 20016.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–197, adopted July 17, 2002, and released August 2, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by adding Lamar, Channel 229A, and removing Bishopville, Channel 229A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–20595 Filed 8–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1873; MB Docket No. 02–208; RM–10615]

Radio Broadcasting Services; Buttonwillow, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Dangerous Broadcasting, L.P., II proposing the allotment of Channel 265A at Buttonwillow, California, as that community's first local FM service. The coordinates for Channel 265A at Buttonwillow are 35–23–56 and 119–29–52. There is a site restriction 2.5 kilometers (1.6 miles) west of the community to avoid a short-spacing to a license site of Station KGFM, Channel 268B, Bakersfield, CA.

DATES: Comments must be filed on or before September 23, 2002, and reply comments on or before October 8, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Dangerous Broadcasting, L.P., II, c/o John J. McVeigh, Attorney at Law, 12101 Blue Paper Trail, Columbia, Maryland, 21044–2787.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–208, adopted July 24 , 2002, and released August 2, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554 (CY–A257). The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

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Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Buttonwillow, Channel 265A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–20598 Filed 8–13–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 073002C]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS).

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject exempted fishing permit (EFP) application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from the Gulf of Maine (GOM) cod landing exemption certificate requirement for vessels fishing in the Georges Bank Regulated Mesh Area (GB RMA); the landing and possession limit restriction for GB cod; the requirement to possess on board an exemption certificate to fish for, possess, or land yellowtail flounder, minimum mesh size requirements for the GB RMA and minimum fish size requirements specified for the temporary retention of undersized fish for data collection purposes.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before August 29, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on URI Large Codend Mesh Size Selectivity EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Van Pelt, Fishery Policy Analyst, 978–281–9244.

SUPPLEMENTARY INFORMATION: An application for an EFP was submitted by URI on June 18, 2002, with a final submission on June 24, 2002. The EFP would facilitate the collection of data on mesh sizes and shapes that are the same or larger than those currently required by regulation to provide mesh size selectivity curves for commercially important groundfish species. These data would be used to conduct YPR and SSBPR analyses to determine optimal yields (overall and per recruit) for each species targeted by the larger mesh sizes, including 6.5-, 7.0-, and 8.0–inch square and diamond shaped (16.5, 17.8, and 20.3 cm, respectively) mesh codends. The results of the study would be presented to resource managers (New England Fisheries Management Council, NMFS, state agencies, and others) and fishers in various fora, as requested, and allow these groups to evaluate the potential conservation equivalencies resulting from increases in codend mesh size.

The EFP would cover the period September 1, 2002, through December 31, 2002; however, the field sampling portion of the mesh selectivity study would require 15 days at sea on board one commercial fishing vessel. The experiment proposes to conduct mesh selectivity studies with current minimum mesh sizes/shapes, as well as larger mesh size codends to develop selectivity curves for four species of regulated groundfish, including Atlantic cod, haddock, winter flounder, and yellowtail flounder on GB. This information would be integrated into yield per recruit (YPR) and spawning stock biomass per recruit (SSBPR) analyses to determine whether incremental increases in mesh size could reduce growth overfishing and improve percent spawning stock biomass. That is, the study would attempt to determine if increasing mesh size would decrease fishing mortality on younger-aged fish in the stock and increase the number of age classes in the stock for greater overall yields of commercially important Northeast (NE) multispecies. While these yields may not be realized immediately, the experiment proposes to conduct an outreach program to educate fisheries managers and fishers on the benefits and costs associated with increasing mesh size based on the results of industry-cooperative mesh selectivity studies in the region. The EFP would allow these exemptions for one commercial vessel, for not more than 15 days of sea trials. All experimental work would be monitored by University of Rhode Island (URI) scientists/observers.

The experimental tows would be conducted by alternating "experimental" mesh sizes (i.e., mesh size larger than that currently regulated under the FMP and mesh sizes that are currently in use), with small mesh control codends (3–inch (7.62 cm)) within the GB RMA. The experimental protocol would require 9 tows of 2 hour duration per day, thus including the 6 experimental codends and 3 control codends in a randomly selected sequence for 15 days of sea trials (roughly 60 experimental tows

required). The anticipated bycatch of regulated species incidental to the catch of target species retained by all experimental codends (6 tows per day) is expected to be minimal. For those control tows using small mesh (3 per tows day) the proposal estimated a 50% discard rate of sub-legal size fish. Total catch rates were estimated at 10,000 lb (4,536 kg) per day, of which 2,000–4,000 lb (907–1814 kg) would be discarded and 6,000–8,000 lb (2722–3629 kg) would be retained. The percent composition of species in the total catch, including discards is 30% Atlantic cod (3,000 lb (1361 kg) per day total catch), 30% winter flounder (3,000 lb (1361 kg) per day total catch), 20% yellowtail flounder (2,000 lb (907 kg) per day total catch), and 20% haddock (2,000 lb (907 kg) per day total catch).

The participating vessel would be required to report all regulated species catch retained for commercial sale in its Vessel Trip Report. During the sea trial phase each data collection trip would have a URI sea sampler/scientist on board and the catch would be measured according to NMFS sea sampling methodology and recorded on NMFS logbooks. Any sub-legal sized fish would be processed by the sea samplers (e.g., measured and recorded) and returned immediately to the water. The results of the analysis phase would be summarized in a report that presents selectivity curves for each species according to mesh size and shape, and the results of the YPR and SSBPR analyses including isopleth diagrams. The collection of mesh size selectivity data for mesh sizes at or above the current minimum is expected to increase our understanding of factors that may effect sustainable stock production due to growth overfishing and the potential to increase spawning stock biomass.

An exemption from the requirement to carry an exemption certificate to fish for, possess, and land NE multispecies that are harvested from the GB RMA (i.e., Atlantic cod and yellowtail flounder) is necessary because the work may involve exceeding the applicable landing and/or possession limit restrictions for these species. The applicant has justified the number of trips (i.e., the level of catch) in terms of a target sample size that if not reached may not yield meaningful results. The Regional Administrator is seeking comments on this aspect of the request.

The EFP would exempt one federally permitted commercial fishing vessel from certain requirements of the NE Multispecies FMP. Specifically, the vessel would be exempt from the requirement to carry a GOM cod exemption certificate to fish for, possess, and land cod in excess of the GOM cod landing limits while fishing in the GB RMA, the GB cod landing and possession limit restrictions (50 CFR 648.86(b)(2)), the requirement to possess on board an exemption certificate to fish for, possess, or land yellowtail flounder in the GB RMA (50 CFR 648.86(h)(1)(i)), to temporarily possess regulated species less than the minimum fish size, and to fish with mesh less than the minimum mesh size specified at 50 CFR part 648, subpart F.

Based on the results of this EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 8, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20652 Filed 8–13–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 080502B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NOAA Fisheries (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NOAA Fisheries announces that the Regional Administrator proposes to issue an EFP that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for a 20–day exemption from the Gulf of Maine (GOM) Rolling Closures specified at 50 CFR 648.81 and for a 20–day exemption from the northeast (NE) multispecies days-at-sea (DAS) notification requirements at 50 CFR 648.10(c) and 648.82(a). The exempted fishing activity would support research to design, develop and test a soft species separation system for commercial flatfish trawls in the GOM. The system is intended to separate roundfish (particularly cod) from flatfish in trawl nets by exploiting behavioral differences between the species.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before August 29, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on UNH Species Separation System EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, 978–281–9279.

SUPPLEMENTARY INFORMATION: The application for an EFP was submitted by the University of New Hampshire (UNH) Cooperative Extension for research being funded through NOAA Fisheries' Cooperative Research Partners Program. The applicant is requesting an exemption for one commercial vessel from the NE multispecies DAS notification requirements at 50 CFR 648.10(c) and 648.82(a) for 20 days of at-sea gear testing and from the GOM Rolling Closures specified at 50 CFR 648.81 for the same duration. This experiment proposes to design, develop and test a soft species separation system for commercial flatfish trawls in the GOM. The objective of the research is to separate flatfish from roundfish in trawl nets and to reduce the inadvertent bycatch of roundfish (particularly cod) when fishing for flatfish. The separation device is designed to separate roundfish from flatfish by exploiting behavioral differences that exist between the species. The experimental design consists of a soft species separation panel, or ramp, that would be positioned in front of a double codend in a trawl net. It would take advantage

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of the tendency of flatfish to swim towards the ocean bottom after encountering the separation panel and thereby into the lower codend portion of the net. Roundfish, which are not expected to swim towards the seafloor after encountering the panel, would swim into the upper codend portion of the net, which could be left open if roundfish were not being retained.

Underwater video equipment would be employed to observe fish behavior and functioning of the experimental selectivity device. Catch and bycatch are proposed to be sampled from each tow. If available, 100 each of cod, haddock, yellowtail flounder, whiting (silver hake), American plaice and witch flounder (including both legal and sub-legal sizes) would be measured from the catch in both the control net (commercial trawl net) and from the experimental trawl net, using alternating tows. The total weight of roundfish and flatfish would be determined from the upper and lower codends of the experimental trawl net and from the control net. Finally, the catch of each species in the upper and lower codend of the experimental net would be analyzed using statistical methods to calculate a separation index to determine whether the experimental system is effective at separating the species.

To avoid the Cape Cod yellowtail flounder stock area, the vessel would be required to conduct experimental fishing activity north of 42°50' N. lat. (the northern boundary of the Cape Cod yellowtail flounder stock area), due to the significant reduction in fishing mortality that is currently required for that stock to eliminate overfishing. The sea trials would be conducted in shallow water (30 to 50 fathoms (54.9 - 91.4 meters)) off the coasts of New Hampshire, southern Maine, and a small portion of northern Massachusetts. UNH researchers would be aboard the vessel during all experimental work. All undersized fish, and/or protected species, would be returned to the sea as quickly as possible after measurement. However, legal-sized fish that would otherwise have to be discarded would be allowed to be retained and sold. The overall catch levels are not expected to have a detrimental impact on the NE multispecies resource. Estimated total landings for the 20 days are: Cod - 6,000 lb (2721.5 kg); flatfish (witch flounder, American plaice, winter flounder, yellowtail flounder) - 6,000 lb (2721.5 kg); other groundfish (haddock, cusk, white hake, silver hake, red hake, ocean pout, wolffish, etc.) - 4,000 lb (1814.4 kg). This is approximately one-half the level of landings that would be expected for 20 days of normal commercial fishing for this vessel. The participating vessel would be required to report all of its landings in its Vessel Trip Reports.

This experimental work is important because it could lead to the development of gear that could reduce bycatch of species that are subject to restrictive trip limits, such as cod, when fishing for species that are not subject to restrictive trip limits. The successful development of a soft species separation device, which could easily be installed in commercial trawl nets, could provide the fishing industry with more flexibility in conducting fishing activities, while simultaneously providing additional conservation for overfished species.

Based on the results of this EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 9, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20657 Filed 8–13–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 080602E]

Fisheries off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Intent to Prepare an Environmental Impact Statement (EIS) for Fishing Conducted Under the Pacific Coast Groundfish Fishery Management Plan (FMP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an EIS; request for written comments.

SUMMARY: The Pacific Fishery Management Council (Council) announces its intention to prepare an EIS in accordance with the National Environmental Policy Act (NEPA) to assess the impacts of the 2003 Pacific Coast groundfish fishery specifications and management measures on the human environment.

DATES: Written comments must be received no later than 5 p.m, local time (l.t.), on September 13, 2002. A public scoping meeting is scheduled as part of the Council's August 28–29, 2002, Allocation Committee meeting in Portland, OR (see **SUPPLEMENTARY INFORMATION**).

ADDRESSES: Written comments on suggested alternatives and potential impacts should be sent to Donald Mclsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384. Comments may also be sent via facsimile (fax) to 503–820–2299. Comments will not be accepted if submitted via e-mail or Internet. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

FOR FURTHER INFORMATION CONTACT: John DeVore, Groundfish Fishery Management Coordinator; phone: 503–820–2280 and e-mail: john.devore@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

There are more than 80 species managed under the Pacific Coast Groundfish FMP, nine of which have been declared overfished. The groundfish stocks support an array of commercial, recreational, and Indian tribal fishing interests in state and Federal waters off the coasts of Washington, Oregon, and California. In addition, groundfish are also harvested incidentally in nongroundfish fisheries, most notably the trawl fisheries for pink shrimp, spot/ridgeback prawns, California halibut, and sea cucumber. Restrictive management measures intended to rebuild overfished species have been adopted and implemented over the past several years for most commercial and recreational fishing sectors.

The proposed action is the identification and evaluation of 2003 groundfish harvest level specifications and fishery management measures intended to meet but not exceed those specifications. These specifications include acceptable biological catches and optimum yields (OYs) for groundfish species or species groups in need of particular protection; OYs may be represented by harvest guidelines or quotas for species that need individual management. The allocation of commercial OYs between the open access and limited entry segments of the fishery is also part of the proposed action. The FMP requires that these specifications for groundfish be annually evaluated and revised as necessary, and that management measures designed to achieve the OYs be published in the **Federal Register** and made effective by January 1, the beginning of the fishing year. The Magnuson-Stevens Fishery Conservation and Management Act and the FMP also require that NMFS implement actions to prevent overfishing and to rebuild overfished stocks. These specifications include fish caught in state ocean waters (0–3 nautical miles (nm) offshore) as well as fish caught in the U.S. exclusive economic zone (3–200 nm offshore). Management measures intended to control the rate at which different groundfish species or species groups are taken in the fisheries include trip limits, bag limits, size limits, time/area closures, and gear restrictions.

For 2003, the Council is considering management measures that could include time/area closures of large portions of the continental shelf off the U.S. West Coast. These measures would be necessary to prevent fishing vessels from directly targeting or incidentally catching the overfished species that are primarily found on the continental shelf. In particular, large time/area closures would focus on protecting bocaccio, canary rockfish, darkblotched rockfish, and yelloweye rockfish. While other overfished species could also be expected to benefit from these closures, the rebuilding needs of these particular overfished species would likely shape the design of the closed areas. A more detailed description of the management alternatives that will be considered by the Council at its September 9–13, 2002, meeting in Portland, OR is available on the Council's web site at *http://www.pcouncil.org.*

A principal objective of the scoping and public input process is to identify significant issues that will be analyzed in depth in the EIS. The EIS will address these significant issues through a range of reasonable management alternatives and an analysis of their impacts on the human environment. Alternatives will be analyzed for impacts on essential fish habitat, target and non-target species of fish, discarded fish, marine mammals, and other protected species present in the Pacific Coast ecosystem. In addition, the environmental consequences section of the EIS will contain an analysis of impacts from fishery management measures on the following groups of individuals: (1) Those who participate in harvesting the fishery resources and other living marine resources; (2) those who process and market the fish and fish products; (3) those who are involved in allied support industries; (4) those who consume fish products; (5) those who rely on living marine resources in the management area, either for subsistence needs or for recreational benefits; (6) those who benefit from non-consumptive uses of living marine resources; (7) those involved in managing and monitoring fisheries; and (8) fishing communities.

Scoping documents that identify the management issues, initial alternatives, and an outline of the proposed analysis will be made available at the August 28–29, 2002, meeting.

Dates and Times of the Scoping Meeting and Associated Informational Meetings

A scoping meeting for this EIS will be held in concurrence with a meeting of the Council's Allocation Committee on August 28–29, 2002, at the Shilo Inn, 11707 NE Airport Way, Portland, OR 97220. The Council will be particularly seeking comments on the EIS at 4 p.m., l.t., on August 28, 2002. The purpose of the Allocation Committee's meeting is to discuss the Council's proposed 2003 groundfish specifications and management measures prior to and in preparation for the Council's September 9–13, 2002 meeting in Portland, OR. Issues to be analyzed in this EIS were also discussed at the Council's June 18–21, 2002 meeting in Foster City, CA, at the meetings of the Allocation Committee and the Groundfish Management Team (GMT) that preceded that June Council meeting, and a July 29 through August 2, 2002, meeting of the Council's GMT. The scoping hearing held as part of the Council's August 28–29, 2002, Allocation Committee meeting, and the earlier meetings listed above are intended to meet NEPA scoping guidelines at 40 CFR 1501.7(b).

Special Accommodations

These meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Porter 503–820–2280 (voice) or 503–820–2299 (fax), at least 5 days prior to the scheduled meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 9, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20663 Filed 8–13–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D.080902A]

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings/public hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will meet on August 29, 2002, at 2 p.m.

ADDRESSES: The Council meeting will be held via telephone conference call at the Council offices, 1164 Bishop Street, Suite 1400, Honolulu Hawaii 96813; telephone: 808–522–8220; FAX: (808)522–8226.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION:

Public Hearing

A public hearing will be conducted for final action on American Samoa longline fishery limited entry program, on Wednesday, August 29, 2002, at 3 p.m.

Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business. The agenda during the Council meeting will include the items listed below:

1.Pelagic Fisheries

(i) American Samoa longline limited entry program

(ii) public hearing

The Council will hold a public hearing on the preferred alternative for the American Samoa longline fishery limited entry program, and may take final action on these management measures. At its 113th meeting, the Council adopted a limited entry program for the American Samoa longline fishery. This action was prompted by the doubling of the number of fishing vessels participating in the American Samoa longline fishery during 2001, and a fourfold rise in the level of fishing effort in terms of hooks set. Unlike Hawaii, American Samoa is surrounded by the exclusive economic zones (EEZs) of other nations and options for fishing elsewhere are

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limited. Consequently, gear conflict and competition for resources are likely to increase as the level of fishing within the American Samoa EEZ increases. At the 113th Council meeting, the Council reviewed the options for a limited entry program and developed and adopted a preferred alternative that would limit entry into the American Samoa EEZ longline fishery. The proposed program would create four vessel size classes and limit initial entry to historical participants in the longline fishery. Permits would be transferable subject to certain criteria. Provisions would be made to allow participants to upgrade from small to larger longline vessels. The Council also discussed measures to require observers and vessel monitoring systems on some vessels. However, the Council recognized that the final format of the limited entry program required additional revisions to the draft Pelagic Fisheries Management Plan (PFMP) amendment and the draft regulations therein and put these on the agenda for the 114th Council meeting. The Council will review the revised PFMP amendment and regulations, consider final management measures, and vote on whether to send the amendment document to NMFS for review and approval.

2. Fishery rights of indigenous peoples: Community demonstration projects program

A. selection of projects for funding

B. solicitation of new project proposalsFollowing the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) in 1996, The Secretary of Commerce and the Secretary of the Interior were authorized to make direct grants to eligible western Pacific communities, as recommended by the Council, for the purpose of establishing fishery demonstration projects to foster and promote traditional indigenous fishing practices. Criteria for fishery demonstration projects were published in April 2002, and proposals for fishery demonstration projects were subsequently solicited. The Native and Indigenous Advisory Panel will review these proposals in the week preceding the Council meeting and recommend to the Council which projects should be funded. The Council may concur with these recommendations or prefer to make recommendations of its own on those projects for funding. The Council may also decide to initiate another request for project proposals.

Other Business

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and to any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 9, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20662 Filed 8–13–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 157

Wednesday, August 14, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: This notice announces a public comment period on the information collection requests (ICRs) associated with the interpretation of statutory and regulatory provisions administered by Federal Crop Insurance Corporation (FCIC).

DATES: Written comments on this notice will be accepted until close of business October 15, 2002.

ADDRESSES: Interested persons are invited to submit written comments to Craig Witt, Acting Deputy Administrator Insurance Services Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 1400 Independence Ave. SW., Stop 0805, Washington, DC 20250–0805. Comments titled "Information Collection OMB 0563–0055" may be sent via the Internet to: *Craig_Witt@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Anne Jenkins, Insurance Management Specialist, Federal Crop Insurance Corporation, at the above address, telephone (814) 624–0737.

SUPPLEMENTARY INFORMATION:

Title: General Administrative Regulations; Interpretations of Statutory and Regulatory Provisions.

OMB Number: 0563–0055.

Expiration Date of Approval: August 31, 2002.

Type of Request: Extension of a currently approved information collection.

Abstract: FCIC is proposing to renew the currently approved information collection, OMB Number 0563–0055. It is currently up for renewal and extension for three years. FCIC is conducting a thorough review of information collections associated with providing an interpretation of statutory and regulatory provisions under this collection. The information collection requirements for this renewal package are necessary for FCIC to provide an interpretation of statutory and regulatory provisions upon request. This data is used to administer the provisions of 7 CFR part 400, subpart X in accordance with the Federal Crop Insurance Act, as amended.

We are asking the Office of Management and Budget (OMB) to extend its approval of our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public concerning this information collection activity. These comments will help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents/Affected Entities: Parties affected by the information collection requirements included in this Notice are any applicant for crop insurance, a producer with a valid crop insurance policy, or a private insurance company with a reinsurance agreement with FCIC or their agents, loss adjusters, employees or contractors.

Estimated annual number of respondents: 45.

Estimated annual number of responses per respondent: 3.5.

Estimated annual number of responses: 156.

Estimated total annual burden hours on respondents: 78.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed in Washington DC, on August 7, 2002.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 02–20444 Filed 8–13–02; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Counties Payments Committee Meeting; Cancellation

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Due to the conflicting schedules of committee members, the Forest Counties Payments Committee meeting that was scheduled for August 23, 2002, in Rhinelander, WI, is cancelled. The meeting will be rescheduled for sometime in September. Date and location for the September meeting will be published in the **Federal Register** within the next two weeks.

FOR FURTHER INFORMATION CONTACT: Randle G. Phillips, Executive Director, Forest Counties Payments Committee, (202) 208–6574 or via e-mail at *rphillips01@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Forest Counties Payments Committee was created by the 2001 Interior and Related Agencies Appropriations Act (Pub. L. 106–291). The committee meets periodically in different locations to discuss and make recommendations to Congress on a long term solution for making Federal payments to eligible States and counties in which Federal lands are situated.

Notice of the now-cancelled Rhinelander, WI, meeting was published in the **Federal Register** on August 1, 2002 (67FR49903).

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Dated: August 8, 2002.
Mary H. Davis,
Acting Deputy Chief, Programs and Legislation.
[FR Doc. 02–20557 Filed 8–13–02; 8:45 am]
BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Crook County Resource Advisory Committee, Sundance, Wyoming, USDA, Forest Service.
ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Black Hills National Forests' Crook County Resource Advisory Committee will meet Monday, September 16, 2002, in Sundance, Wyoming for a business meeting. The meeting is open to the public.
SUPPLEMENTARY INFORMATION: The business meeting on September 16, begins at 6:30 PM, at Crook County Courthouse Community Room, 309 Cleveland St, Sundance, Wyoming. Agenda topics will include an overview of the committee's enabling legislation, the committee charter, development of operating guidelines, election of chairperson, and scheduling of future meetings. A public forum will begin at 8:30 PM (MT).
FOR FURTHER INFORMATION CONTACT: Steve Kozel, Bearlodge District Ranger and Designated Federal Officer, at (307) 283–1361.

Dated: August 8, 2002.
John Twiss,
Forest Supervisor.
[FR Doc. 02–20558 Filed 8–13–02; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).
Agency: U.S. Census Bureau.
Title: 2003 National Census Test.
Form Number(s): DA–11A Questionnaires: DA–1B, DA–1C, DA–1D, DA–1DD, DA–1(RH–1), DA–1(RH–2), DA–1(RH–3), DA–1(RH–4), DA–1(RH–5), DA–1(RH–6), DA–1(RH–7) Guides: DA–3IVR, DA 3I/IVR.
Agency Approval Number: None.
Type of Request: New collection.
Burden: 40,000 hours.
Number of Respondents: 240,000.
Avg Hours Per Response: 10 minutes.
Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the two-part 2003 National Census Test. The first part, which tests self-response options, is planned to take advantage of evolving technology. The Census Bureau needs to research various self-response options in order to develop a strategy that encourages the public to respond to the census using either paper or electronic means before Nonresponse Followup (NRFU) occurs. This part will examine the impact of offering various options on overall response rates and data quality. These options include mail, Internet, Telephone Interactive Voice Response (IVR), and a combination of Internet and IVR. Also, part of this test is designed to address questions about the effectiveness of various types of contacts with respondents.
In part one of this test, we hope to answer the following questions:
1. What is the effect of offering alternative data collection modes on response (*e.g.*, increase, decrease, shift)?
2. What is the effect of new or additional contact strategies on overall response?
3. Do any of the alternative panels offer a gain over the Census 2000 approach?
The goal of the self-response options part of the test is to identify for further testing, in 2004, the best strategy for increasing self-enumerated response to the census, thus reducing the NRFU workload. Successful accomplishment of this goal will greatly reduce the cost of data collection while improving the data quality of Census 2010.
The second part of the test will examine revisions to the question on Hispanic origin and race. The goal of this portion of the test is to develop question wording and content that will lead to improved self-reporting of both race and Hispanic origin in the census and surveys. In order to obtain more complete reporting of these detailed groups, the revisions will include additional examples of "Other Hispanic, "Other Asian", and "Other Pacific Islander" groups for these response categories. Adding examples of these groups may improve comparability between the decennial census and survey data.
In addition, we will examine the effect of dropping the "Some other race" (SOR) response option to the question on race. Although the Census Bureau received an exception from the OMB which allowed it to include a SOR category in past decennial censuses, this category is a source of non-comparability between the decennial census and survey data produced by other agencies.
Affected Public: Individuals or households.
Frequency: One time.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13 U.S.C., Sections 141 and 193.
OMB Desk Officer: Susan Schechter, (202) 395–5103.
Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).
Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 8, 2002.
Madeleine Clayton,
Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.
[FR Doc. 02–20502 Filed 8–13–02; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Revolving Loan Fund Reporting Requirements—Request for Comments; Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 5).
Agency: Economic Development Administration (EDA).
Title: Revolving Loan Fund (RLF) Reporting Requirements (includes RLF Standards Terms and Conditions, RLF Plan, RLF Annual Report, RLF Semiannual Report, RLF Income and Expense Statement and RLF Audit Requirements).
Agency Form Number: ED–209A, ED–209S and ED–209I.

OMB Approval Number: 0610–0095.
Type of Request: Extension of a currently approved collection.
Burden: 15,448 hours.
Average Hours Per Response: 12 burden hours for post-approval monitoring; and 40 hours for the Revolving Loan Fund Plan.
Number of Respondents: Approximately 627 respondents (1,254 responses annually for post-approval monitoring) and 10 respondents annually for the RLF Plan.
Needs and Uses: The Economic Development Administration (EDA) provides investments that will help our partners across the nation (states, regions and communities) create wealth and minimize poverty by promoting a favorable business environment to attract private capital investment and high skill, high wage jobs through world-class capacity building, infrastructure, business assistance, research grants and strategic initiatives. EDA's Revolving Loan Fund (RLF) Reporting Requirements are needed to ensure proper monitoring and compliance with program and administrative requirements as set forth in EDA's authorizing legislation (Pub. L. 105–393) and EDA's implementing regulations at 13 CFR Chapter III.
The RLF Reporting Requirements are used by EDA to monitor grantee progress in establishing the loan funds, making initial loans, collecting and relending the proceeds from loans, and compliance with time schedules and federal requirements for administering grants, civil rights, environmental and other requirements prior to grant disbursement. The RLF Reporting Requirements are based on OMB administrative requirements for Federal grants as implemented by DOC rules at 15 CFR Parts 14, 24, 29, and CFR 13 CFR Part III and are intended to supplement and explain such requirements and are not intended to replace or negate such requirements.
Affected Public: State, local or Tribal Government and not-for-profit organizations.
Frequency: On occasion for post-approval monitoring, and related reports.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: David Rostker, (202) 395–7340.
Copies of the above information collection proposal can be obtained by calling or writing Madeleine G. Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, U.S. Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230, (or via Internet at *Mclayton@doc.gov*).
Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 8, 2002.
Madeleine G. Clayton,
Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.
[FR Doc. 02–20501 Filed 8–13–02; 8:45 am]
BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–412–801]

Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom; Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.
ACTION: Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Reviews.

EFFECTIVE DATE: August 14, 2002.
SUMMARY: The Department of Commerce is extending the time limit for the final results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom. The reviews covers 40 manufacturers/exporters. The period of review is May 1, 2000, through April 30, 2001.
FOR FURTHER INFORMATION CONTACT: Kristin Case or Mark Ross, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W.; Washington, D.C. 20230; telephone: (202) 482–3174 or (202) 482–4794, respectively.
SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to Act by the Uruguay Round Agreements Act.

Extension of Time Limit for Final Results

The Department of Commerce (the Department) published the preliminary results of these administrative reviews on April 10, 2002 (67 FR 17361). The deadline for completing the final results of these reviews is August 8, 2002. Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. Due to the complexity of the issues and the large number of companies involved in these reviews, the Department determines that it is not practicable to complete the final results of these administrative reviews within the statutory time limit. Therefore, the Department is extending the time limit for the final results of these administrative reviews by 15 days to August 23, 2002.

Dated: August 7, 2002.
Richard W. Moreland,
Deputy Assistant Secretary for Import Administration.
[FR Doc. 02–20562 Filed 8–13–02; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Continuation of Antidumping Duty Order: Brake Rotors from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.
ACTION: Notice of Continuation of Antidumping Duty Order: Brake Rotors from the People's Republic of China.

SUMMARY: On July 9, 2002, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty order on brake rotors from the People's Republic of China ("PRC") would be likely to lead to continuation or recurrence of dumping.[1] On August 2, 2002, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on brake rotors from the PRC would be likely to lead to

[1] *Final Results of Expedited Sunset Review: Brake Rotors from the People's Republic of China*, 67 FR 45458 (July 9, 2002).

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continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2] Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on brake rotors from the PRC.

EFFECTIVE DATE: August 14, 2002.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background:

On March 1, 2002, the Department initiated, and the Commission instituted, a sunset review of the antidumping duty order on brake rotors from PRC, pursuant to section 751(c) of the Act.[3] As a result of its review, the Department found that revocation of the antidumping duty order would be likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the order to be revoked.[4]

On August 2, 2002, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on brake rotors from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope:

The products covered by this antidumping duty order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under "one ton and a half," and light trucks designated as "one ton and a half." Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning. These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer ("OEM") which produces vehicles sold in the United States (e.g., General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in the order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of the order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are currently classifiable under subheading 8708.39.50.10 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Determination:

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on brake rotors from the PRC. The Department will instruct Customs to continue to collect antidumping at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of this order not later than July 2007.

Dated: August 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–20643 Filed 8–13–02; 8:45 am]

BILLING CODE 3510–DS–S

[2] *Brake Rotors from China*, 67 FR 50459 (August 2, 2002).

[3] *Antidumping and Countervailing Duties: Five Year Reviews*, 67 FR 9439 (March 1, 2002), and *Brake Rotors From China*, 67 FR 9462 (March 1, 2002).

[4] *Final Results of Expedited Sunset Review: Brake Rotors from the People's Republic of China*, 67 FR 45458 (July 9, 2002).

[5] *See Brake Rotors from China*, 67 FR 50459 (August 2, 2002), and USITC Publication 3528 (July 2002), Brake Rotors From China: Investigation No. 731-TA-744 (Review).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–602–804]

Notice of Correction to Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Australia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 14, 2002.

FOR FURTHER INFORMATION CONTACT: Sam Zengotitabengoa at (202) 482–4195, Office of AD/CVD Enforcement IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (Department) regulations are to the regulations at 19 CFR part 351 (April 2001).

Correction to Scope of Investigations

On July 19, 2002, the Department issued the Notice of Final Determination of Sales at Less Than Fair Value for Certain Cold-Rolled Carbon Steel Flat Products From Australia (*Australia Cold-Rolled Final*), one of the concurrent investigations on cold-rolled steel products, 67 FR 47509 (July 19, 2002). A description of the scope of these investigations was contained in the "Scope Appendix" attached to the *Australia Cold-Rolled Final*. However, one of the exclusions of porcelain enameling sheet was not fully described in that appendix and the exclusion of texture-rolled steel strip (SORBITEX) did not contain the proper width measurement in that appendix. The corrected scope is appended to this notice. For a full discussion of the comments received on the preliminary scope rulings see the "Issues and Decision Memorandum for the Final Scope Rulings in the Antidumping Duty Investigations on Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, and in the Countervailing Duty Investigations of Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and Korea," dated July 10, 2002, which is on file in the Department of Commerce's Central Records Unit, room B099.

Notification

The Department will notify the U.S. Customs Service and the International Trade Commission of these corrections to the scope.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: July 30, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I: Final Scope Rulings; Scope of the AD/CVD Investigations on Certain Cold-Rolled Steel Products

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the HTSUS, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2% or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80% of manganese, or 2.25% of silicon, or 1.00% of copper, or 0.50% of aluminum, or 1.25% of chromium, or 0.30% of cobalt, or 0.40% of lead, or 1.25% of nickel, or 0.30% of tungsten, or 0.10% of molybdenum, or 0.10% of niobium (also called columbium), or 0.15% of vanadium, or 0.15% of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded.

The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25%;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25%, and (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (0.001 inch), or (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (0.001 inch);
- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inch
Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight	<0.002%

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:

Thickness: ≤1.0 mm
Width: ≤152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

MECHANICAL PROPERTIES

Tensile Strength	≥ 162 Kgf/mm².
Hardness	≥ 475 Vickers hardness number.

PHYSICAL PROPERTIES

Flatness	< 0.2% of nominal strip width.

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area percentage
Sulfide Inclusion	≤ 0.04

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NON-METALLIC INCLUSION—Continued

	Area percentage
Oxide Inclusion	≤ 0.05

Compressive Stress: 10 to 40 Kgf/mm²

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μm)
t ≤ 0.209	Rz ≤ 0.5
0.209 < t ≤ 0.310	Rz ≤ 0.6
0.310 < t ≤ 0.440	Rz ≤ 0.7
0.440 < t ≤ 0.560	Rz ≤ 0.8
0.560 < t	Rz ≤ 1.0

• Certain ultra thin gauge steel strip, which meets the following characteristics:
Thickness: ≤0.100 mm ± 7%
Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	< 3%
Tensile Strength	600 to 850 N/mm

PHYSICAL PROPERTIES

Surface Finish	≤0.3 micron.
Camber (in 2.0 m)	<3.0 mm.
Flatness (in 2.0 m)	≤0.5 mm.
Edge Burr	<0.01 mm greater than thickness.
Coil Set (in 1.0 m)	<75.0 mm.

• Certain silicon steel, which meets the following characteristics:
Thickness: 0.024 inch ± 0.0015 inch
Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

MECHANICAL PROPERTIES

Hardness	B60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches).
Gamma Crown (in 5 inches)	0.0005 inch, start measuring one-quarter inch from slit edge.
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable).
Camber (in any 10 feet)	1/16 inch.
Coil Size I.D.	20 inches.

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical. 1500 minimum.

• Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:
Thickness: 0.025 to 0.245 mm
Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	< 0.01	0.004 to 0.007	< 0.007

• Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.
Surface Treatment as follows: The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA microinches (micrometers)		
	Aim	Min.	Max.
Extra Bright	5(0.1)	0(0)	7(0.2)

• Certain annealed and temper-rolled cold-rolled continuously cast steel, in coils, with a certificate of analysis per Cable System International ("CSI") Specification 96012, with the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Base Weight	55 pounds.
Theoretical Thickness	0.0061 inch (±10% of theoretical thickness).
Width	787 mm to 813 mm.
Tensile Strength	45,000–55,000 psi.
Elongation	minimum of 15% in 2 inches.

• Concast cold-rolled drawing quality sheet steel, ASTM A–620–97, Type B, or single reduced black plate, ASTM A–625–92, Type D, T–1, ASTM A–625–76 and ASTM A–366–96, T1–T2–T3 Commercial bright/luster 7a both sides, RMS 12 max. Thickness range of 0.0088 to 0.038 inches, width of 23.0 inches to 36.875 inches.
• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 53 pound base weight (0.0058 inch thick) with a Temper classification of T–2 (49–57 hardness using the Rockwell 30 T scale).
• Certain single reduced black plate, meeting ASTM A–625–76 specifications, 55 pound base weight, MR type matte finish, TH basic tolerance as per A263 trimmed.
• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 65 pound base weight (0.0072 inch thick) with a Temper classification of T–3 (53–61 hardness using the Rockwell 30 T scale).
• Certain cold-rolled black plate bare steel strip, meeting ASTM A–625 specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0058 inch ±0.0003 inch.
Hardness	T2/HR 30T 50—60 aiming.
Elongation	≥15%.
Tensile Strength	51,000.0 psi ±4.0.

• Certain cold-rolled black plate bare steel strip, in coils, meeting ASTM A–623, Table II, Type MR specifications, which meet the following characteristics:

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CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.04	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0060 inch (±0.0005 inch).
Width	10 inches (+¼ to ⅜ inch ±0).
Tensile Strength	55,000 psi max.
Elongation	Minimum of 15% in 2 inches.

- Certain "blued steel" coil (also known as "steamed blue steel" or "blue oxide"), with a thickness of 0.30 mm to 0.42 mm and width of 609 mm to 1219 mm, in coil form;
- Certain cold-rolled steel sheet, coated with porcelain enameling prior to importation, which meets the following characteristics:
Thickness (nominal): ≤0.019 inch
Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %		0.010	0.012

- Certain cold-rolled steel, which meets the following characteristics:
Width: > 66 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	Si
Max. Weight %	0.07	0.67	0.14	0.03

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–2.000
Min. Yield Point (MPa)	265
Max. Yield Point (MPa)	365
Min. Tensile Strength (MPa)	440
Min. Elongation %	26

- Certain band saw steel, which meets the following characteristics:
Thickness: ≤1.31 mm
Width: ≤80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤0.03	≤0.007	0.3 to 0.5	≤0.25

Other properties:
Carbide: Fully spheroidized having > 80% of carbides, which are ≤ 0.003 mm and uniformly dispersed
Surface finish: Bright finish free from pits, scratches, rust, cracks, or seams, smooth edges.
Edge camber (in each 300 mm of length): ≤ 7 mm arc height
Cross bow (per inch of width): 0.015 mm max.

- Certain transformation-induced plasticity (TRIP) steel, which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.09	1.0	0.90
Max. Weight %	0.13	2.1	1.7

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive).
Min. Yield Point (MPa)	320.
Max. Yield Point (MPa)	480.
Min. Tensile Strength (MPa)	590.
Min. Elongation %	24 (if 1.000–1.199 thickness range).
	25 (if 1.200–1.599 thickness range).

PHYSICAL AND MECHANICAL PROPERTIES—Continued

	26 (if 1.600–1.999 thickness range).
	27 (if 2.000–2.300 thickness range).

Variety 2

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.12	1.5	1.1
Max. Weight %	0.16	2.1	1.9

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive).
Min. Yield Point (MPa)	340.
Max. Yield Point (MPa)	520.
Min. Tensile Strength (MPa)	690.
Min. Elongation %	21 (if 1.000–1.199 thickness range).
	22 (if 1.200–1.599 thickness range).
	23 (if 1.600–1.999 thickness range).
	24 (if 2.000–2.300 thickness range).

Variety 3

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.13	1.3	1.5
Max. Weight %	0.21	2.0	2.0

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.200–2.300 (inclusive).
Min. Yield Point (MPa)	370.
Max. Yield Point (MPa)	570.
Min. Tensile Strength (MPa)	780.
Min. Elongation %	18 (if 1.200–1.599 thickness range).
	19 (if 1.600–1.999 thickness range).
	20 (if 2.000–2.300 thickness range).

- Certain cold-rolled steel, which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.10	0.40	0.10	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.600–0.800.
Min. Yield Point (MPa)	185.
Max. Yield Point (MPa)	285.
Min. Tensile Strength (MPa)	340.
Min. Elongation	31 (ASTM standard 31% = JIS standard 35.

Variety 2

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.05	0.40	0.08	0.35

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PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–1.000.
Min. Yield Point (MPa)	145.
Max. Yield Point (MPa)	245.
Min. Tensile Strength (MPa)	295.
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%).

Variety 3

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cu	Ni	Al	Nb, V, Ti, B	Mo
Max.Weight %	0.01	0.05	0.40	0.10	0.023	0.15–.35	0.35	0.10	0.10	0.30

PHYSICAL AND MECHANICAL PROPERTIES

Thickness (mm)	0.7
Elongation %	≥ 35

- Porcelain enameling sheet, drawing quality, in coils, 0.014 inch in thickness, +0.002, −0.000, meeting ASTM A–424–96 Type 1 specifications, and suitable for two coats.
- Porcelain-enameling sheet whether or not coated prior to importation with the following additional characteristics:
  Cold-rolled steel for porcelain enameling, the foregoing being continuous annealed cold-reduced steel with a nominal thickness of not more than 0.48 mm and widths from 762 mm to 1,524 mm, having a chemical composition, by weight, of not more than 0.004 percent carbon, nor more than 0.010 percent aluminum, 0.006 percent or more of nitrogen, 0.012 percent or more of boron, and more than 0.005 percent silicon, and 0.010 percent or more of oxygen; having no intentional addition of and less than 0.002 percent by weight of titanium, no intentional addition of and less than 0.002 percent by weight of vanadium, no intentional addition of and less than 0.002 percent by weight of niobium, and no intentional addition of and less than 0.002 percent of antimony; having a yield strength of from 179.3 MPa to 344.7 MPa, a tensile strength of from 303.7 MPa to 413.7 MPa, a percent of elongation of from 28 percent to 46 percent on a standard ASTM sample with a 5.08 mm gauge length; for Fishscale resistance; hydrogen traps provided; with a product shape of flat after annealing, with flat defined as less than or equal to 1 I unit with no coil set.
- Cold-rolled steel strip to specification SAE 4130, with the following characteristics:
  HTSUS item number 7226.92.80.50
  Width up to 24 inches
  Gauge of "0.0500.014 inches," and gauge tolerance of ±0.0018 inches
- Texture-rolled steel strip (SORBITEX), with the following characteristics:
  Thickness: 0.0039 to 0.0600 inches
  Width: 0.118 to <0.5 inches (3 to <12.7 mm)

CHEMICAL COMPOSITION

C	Si	Mn	P	S	Al	Cr	Ni	Cu
0.76–0.96%	0.10–.035%	0.30–0.60%	<.025%	<.020%	<.060%	<.30%	<.20%	<.20%

Tensile strength ranges: 245,000 to 365,000 psi.
HTSUS 7211.29.20.30 and HTSUS 7211.29.45.00

- Reed steel, with the following characteristics:
  Grades Eberle 18, 18C (SAE 1095 modified alloyed steel) HTSUS 7211.90.00

PHYSICAL CHARACTERISTICS

Thickness	0.0008 to 0.04 inches (0.0203 to 1.015 mm).
Width	0.276 to 0.472 inches (7 mm to 12.0 mm), with width tolerances of ±0.04 to 0.06 mm.
Tensile strength	1599 Mpa to 2199 Mpa.

CHEMICAL COMPOSITION

C	Si	Mn	P	S	Cr
0.95–1.05%	0.15–0.30%	0.25–0.50%	less than 0.015%	less than 0.012%	less than 0.040%

Surface: Rmax 1.5 to 3.0 micrometers
Straightness: Max. deviation of 0.56mm/m
Flatness: Deviation of 0.1 to 0.3% of the width

- Feeler gauge steel, with the following characteristics:
  Polished surface and deburred or rounded edges Grades Eberle 18, 18C (SAE 1095 modified alloyed steel) HTSUS 7211.90.00

PHYSICAL AND MECHANICAL PROPERTIES

Max. width	0.4975 inches width.

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Thickness Range	0.001–0.045 inches.
Thickness tolerances	T2–T4 international standard.
Tensile strength UTS	246–304 ksi.

- Wood Band Saw Steel with Nickel Content Exceeding 1.25% by Weight, with the following characteristics:
  Both variety 1 and variety 2 are classified under HTSUS item number 7226.99.00.00

Variety # 1

Nickel-alloyed Band Saw Steel, which meets the following characteristics:
Thickness: >1.1 mm, ≤3.00 mm
Width: <400 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni	Cu	Al
Weight %	0.70–0.80	0.20–0.35	0.30–0.45	max. 0.020	max. 0.006	0.05–0.20	1.90–2.10	max. 0.15	0.02–0.04

Microstructure: Tempered Martensite with Bainite, no surface decarburization
Mechanical Properties: Hardness: 446 +12/−23 HV respectively 45 +1/−2 HRC
Surface Finish: bright, polished
Edges: treated edges
Cross Bow: max. 0.1 mm per mm width

Variety #2

UHB15N20 band saw steel according to the alloy composition:

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	0.70–0.80	0.20–0.35	0.30–0.45	Pmax. 0.020	S max. 0.016	—	1.90–2.10

Typical material properties: Hardened and tempered
Tensile Strength: 1450 N/mm² for thickness < 2 mm and 1370 N/mm² for thickness > 2mm
Width tolerance: B1 = ±0.35 mm
Thickness tolerance: T1 (±0.039 mm)
Flatness: P4 (max. deviation 0.1 % of width of strip)
Straightness: (±0.25 mm/1000 mm)
Dimensions:
Widths: 6.3–412.8 mm
Thickness: 0.40 to 3.05 mm

- 2% nickel T5 tolerances and ra less than 8 my, with the following characteristics:
  Thickness: 0.5–3.5 mm
  Width: 50–650 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Al	Cr	Ni
Weight %	0.70–0.80	0.15–0.35	0.30–0.50	max. 0.020	max. 0.010	max. 0.020	0.05–0.30	1.90–2.20

High precision T5 tolerance
Roughness: Ra (RMS) max. 8 inches
The product is classified under HTSUS item number 7226.92.50.00

- Ski-edge profile steel, with the following characteristics:
  For both Grade SAE 1070 and German Grade SAE X35CrMo17:
  HTSUS item numbers 7228.60.80 and 7216.69.00
  Hardened and tempered, HRC 44–52
  Surface: bright finished, sandblasted or primer coated stamped condition

DIMENSIONS

	Width mm	Width mm	Thickness mm	Thickness mm
Ski 39	6	1.90	2	0.50
Ski 40	6	1.70	2	0.50
Ski 129	7.70	2.00	2.20	0.60

CHEMICAL COMPOSITION FOR GRADE SAE 1070:

Element	C	Si	Mn	P	S
Weight %	0.65–0.75	max. 0.40	max. 0.60–0.90	max. 0.04	max. 0.05

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CHEMICAL COMPOSITION FOR GERMAN GRADE SAE X35CRMO17

Element	C	Si	Mn	P	S	CR	Mo	Ni
Weight %	0.33–0.45	max. 1.0	max 1.50	max 0.04	max 0.025	15.5–17.5	0.8–1.3	max. 1.0

Note that this is an angle shape or section steel that is not covered by this scope.

- Flat wire, with the following characteristics:
  SAE 1074 alloyed, annealed, skin passed
  Hardened and tempered
  Formed edges
  Widths of less than 12.7 mm
  Thickness from 0.50–2.40 mm
- Shadow/aperture mask steel, which is Aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and meets the following characteristics:
  Thickness: 0.001 to 0.010 inch
  Width: 15 to 35 inches
  Increased tensile strength of 800 to 1,200 N/mm²

CHEMICAL COMPOSITION

Element	C	N	Mn
Weight %	< 0.01 %	0.01–0.017%	0.06–0.85 %

HTSUS item numbers 7209.18.25.10 or 7211.23.60.75, depending on the width of the material.

- Grade 13C cement kiln steel, with the following specifications:

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.65	0.25	0.65	max. 0.020	max. 0.010

Microstructure: Fine grained and homogenous. Matrix of tempered martensite with a small amount of undissolved carbides
Decarburization: No free ferrit is allowed. Total decarburization should not exceed 4% per plane
Mechanical Properties: Tensile strength: 1200–1700 N/mm2, (Standard 1280 ±80 N/mm2)
Surface Finish: Gray hardened condition. Ra/CLA—max. 0.25 m. Cut off 0.25 mm Rmax—max. 2.5 m
Edge Condition: Slit edges free from cracks and damages
Dimensions:
Thickness: 0.4–1.40 mm, Tolerance: T1
Width: 250–1200 mm, Tolerance: B1
Flatness: Unflatness Across Strip: max. 0.4% of the nominal strip width
Coil Size: Inside Diameter: 600 mm
Coil Weight: max. 6.5 kg/mm strip width

- Certain valve steel (type 2), with the following specifications: Hardened tempered high-carbon strip, characterized by high fatigues strength and wear resistance, hardness combined with ductility, surface and end-finishes, and good blanking and forming properties.

HTSUS item number: 7211.90.00.00
Typical size ranges:
Thickness: 0.15–1.0 mm
Width: 10.0–140 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Ni	Cr
Weight %	0.7–0.8	0.2–0.35	0.3–0.45	Max. 0.020	Max. 0.016	1.9–2.1	—

The merchandise subject to this investigation is typically classified in the HTSUS at item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS item numbers are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

[FR Doc. 02–20561 Filed 8–13–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Investigation of Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Opportunity To Comment on Petitioner's Allegation That Vietnam Has a Non-Market Economy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Request for comments.

SUMMARY: The Department of Commerce is requesting comment on Petitioner's allegation that Vietnam has a non-market economy.

DATES: August 14, 2002.

FOR FURTHER INFORMATION CONTACT: Shauna Lee-Alaia or George Smolik, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2097, (202) 482–1843, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("Department's") regulations are to 19 CFR part 351 et al. (2001).

Background

On June 28, 2002, the Department of Commerce ("Department") received a petition on imports of certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam") filed in proper form by Catfish Farmers of America ("CFA") and the individual U.S. catfish processors America's Catch Inc.; Consolidated Catfish Co., L.L.C.; Delta Pride Catfish, Inc.; Harvest Select Catfish, Inc.; Heartland Catfish Company; Pride of the Pond; Simmons Farm Raised Catfish, Inc.; and Southern Pride Catfish Co., Inc., hereinafter referred to collectively as "the petitioners." In accordance with section 732(b) of the Act, the petitioners alleged that imports of certain frozen fish fillets from Vietnam are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring and threaten to injure an industry in the United States. Based upon our examination of the petition on frozen fish fillets from Vietnam, we found that the petition met the requirements of section 732 of the Act and subsequently initiated an antidumping duty investigation on July 18, 2002.

Petitioners have also alleged that Vietnam has a non-market economy. We are therefore undertaking an analysis of Vietnam's economy in the context of the investigation referred to herein. In order to provide greater certainty to all parties as this investigation proceeds, we intend to carry out this analysis on an expedited basis and anticipate that a determination on the market/non-market economy status of Vietnam will be issued prior to or concurrent with the issuance of the preliminary determination.

Opportunity for Public Comment

The Department invites public comment on Vietnam's economy in regards to the factors listed in section 771(18)(B) of the Act, which the Department must take into account when making a non-market economy status determination:

(i) The extent to which the currency of the foreign country is convertible into the currency of other countries;

(ii) The extent to which wage rates in the foreign country are determined by free bargaining between labor and management;

(iii) The extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country;

(iv) The extent of government ownership or control of the means of production;

(v) The extent of government control over allocation of resources and over price and output decisions of enterprises; and

(vi) Such other factors as the administering authority considers appropriate.

Comments—Deadline, Format, and Number of Copies

The deadline for submission of comments will be 21 calender days after the date of publication of this notice in the **Federal Register**. All comments should be filed at the Department of Commerce Central Records Unit located at the address listed below. Rebuttal comments may be submitted up to10 calender days after the date initial comments are due.

Each party submitting comments should include his or her name and address, and fully document or support all assertions and claims, using the following format: (1) Begin each comment on a separate page; (2) concisely state the issue identified and discussed in the comment and include any supporting documentation in exhibits or appendices; (3) provide a brief summary of the comment (a maximum of 3 sentences) and label this section "summary of comment"; (4) provide an index or table of contents; and (5) include the case number A–552–801 in the top right hand corner of the submission.

To simplify the processing and distribution of comments, the Department requests that submission of documents in electronic form be accompanied by an original and 6 copies in paper form. We require that documents filed in electronic form be on DOS formatted 3.5" diskettes and prepared in either WordPerfect 9 format or a format that the Word Perfect program can convert and import into WordPerfect 9. Please submit comments in separate files on the diskette. Comments received on diskette will be made available to the public on the Internet at Import Administration's Web site, *http://ia.ita.doc.gov*. Paper copies will be available for reading and photocopying in the Central Records Unit, Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Any questions concerning file formatting, document conversion, access on the Internet, or other file requirements should be addressed to Andrew Lee Beller, Import Administration Webmaster, (202) 482–0866.

Public Hearing

After reviewing all comments and rebuttal comments, the Department will determine if a public hearing on the non-market economy issue is warranted, if one is requested in the initial comments on this issue, and, if so, will announce a place and time for that hearing, which will be held no later than 30 days after the final rebuttal comments are due.

This determination is issued and published in accordance with section 771(18)(c)(ii).

Dated: August 9, 2002.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–20674 Filed 8–13–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–802]

Uranium from the Russian Federation: Rescission of Administrative Review of the Agreement Suspending the Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of administrative review.

SUMMARY: In response to a request from the Ministry of the Russian Federation for Atomic Energy ("MINATOM"), the Department of Commerce ("the Department") initiated an administrative review of the suspension

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agreement on uranium from the Russian Federation on November 21, 2001 (66 FR 58433). On July 17, 2002, the Department received a letter from MINATOM withdrawing its request for the administrative review. This review has now been rescinded as a result of the withdrawal of the request for review by MINATOM, the only party which requested the review.

EFFECTIVE DATE: August 14, 2002.

FOR FURTHER INFORMATION CONTACT: James Doyle or Catherine Bertrand, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0159 or (202) 482–3207, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2001).

Background

On October 31, 2001, the Department received a timely request from MINATOM to conduct an administrative review of the Suspension Agreement ("Agreement") on uranium from the Russian Federation. On November 21, 2001, the Department initiated a review of the Agreement. See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, 66 FR 58433 (November 21, 2001).

On April 22, 2002, the Department extended the time limits for the preliminary results of review by 120 days. See Notice of Extension of Time Limits of the Preliminary Results of Administrative Review of Agreement Suspending the Antidumping Investigation of Uranium from the Russian Federation, as Amended, 67 FR 19554 (April 22, 2002). On July 17, 2002, MINATOM withdrew its request for the review.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1) of the Department's regulations, the Department will allow a party that requests an administrative review to withdraw such request within 90 days of the date of publication of the notice of initiation of the administrative review. Furthermore, the Department may extend this time limit if the Secretary decides it is reasonable to do so, pursuant to 19 CFR 351.213(d)(1). Given that we have received no submissions opposing MINATOM's request for withdrawal of the administrative review and the fact that MINATOM was the only party to request a review, we find it reasonable to extend the 90 days time period for filing a withdrawal request. Therefore, we are rescinding this review of the agreement suspending the antidumping duty investigation on uranium from the Russian Federation.

This notice is issued and published in accordance with section 351.213(d)(4) of the Department's regulations.

Dated: August 7, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–20646 Filed 8–13–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–032. *Applicant:* Thomas Jefferson University, 1020 Walnut Street, Philadelphia, PA 19107–5587. *Instrument:* Electron Microscope, Model Morgagni 268 Film version. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used in research on fixed rat brain tissue to identify interactions between endogenous opioids and corticotropin-releasing factor (CFR) that impact on a biogenic amine system which is involved in both stress and opioid actions, the locus coeruleus (LC)-norepinephrine (NE) system. *Application accepted by Commissioner of Customs:* July 16, 2002.

Docket Number: 02–033. *Applicant:* University of Vermont, Burlington, VT 05405. *Instrument:* High Speed CCD Camera, Model CPL MS1000. *Manufacturer:* Canadian Photonic Labs, Canada. Intended Use: The instrument is intended to be used to visualize high speed fluid flow in a variety of applications including: (1) Detachment of mechanisms of compound droplets from submerged needles and (2) visualize particulate flows in microchannels under videomicroscopy. The experimental objectives are to aid in the understanding of fundamental fluid mechanical mechanisms which cannot be observed with the human eye or normal video. The camera may be used for educational purposes in the following courses: (1) ME143 (Intro to Fluid Mechanics), (2) ME243 (Inviscid Flow), (3) ME249 (Computational Fluids Engineering) and (4) ME343 (Advanced Fluid Dynamics). *Application accepted by Commissioner of Customs:* July 30, 2002.

Docket Number: 02–034. *Applicant:* Alaska Department of Fish & Game, Division of Commercial Fisheries, 333 Raspberry Road, Anchorage, AK 99518. *Instrument:* (Two) Digital Fish Measuring Boards. Model FMB IV/64/10. *Manufacturer:* Limnoterra Ltd., Canada. *Intended Use:* The instrument is intended to be used to monitor salmon and herring populations including measuring fish weight and lengths. Growth data will be collected from discreet herring and salmon runs when they enter their spawning grounds to understand the relationships between natural cycling, environmental pressures, and fish stock overall health more completely. *Application accepted by Commissioner of Customs:* July 30, 2002.

Docket Number: 02–035. *Applicant:* West Chester University of Pennsylvania, Purchasing Office, 201 Carter Drive, Suite 200, West Chester, PA 19383. *Instrument:* Electron Microscope, Model Tecnai 12 TWIN. *Manufacturer:* FEI Company, The Netherlands. Intended Use: The instrument is intended to be used in research programs including: (1) A taxonomic investigation of bryophytes, (2) the nuclear localization of the retinol metabolizing enzyme 9-cis retinol dehydrogenase within cancerous and normal mammary tissue and (3) the visualization of the early events that occur at the gap junctions of insect ovarian follicle cells. The instrument will also be used in the following courses: (1) Research Techniques I (Comparative Microscopy, Internship, and Independent Study and (2) Field Techniques, Techniques in Mineralogy and Internship. *Application accepted by Commissioner of Customs:* August 1, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–20644 Filed 8–13–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–839]

Preliminary Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty expedited reviews.

SUMMARY: The Department of Commerce (the Department) is conducting expedited reviews of the countervailing duty order on certain softwood lumber products from Canada for the period April 1, 2000 through March 31, 2001. This notice includes the preliminary results for 18 of the companies that are being reviewed under the expedited methodology. *See* "Notice of Initiation of Expedited Reviews" (67 FR 46955, July 17, 2002) (Notice of Initiation). For information on estimated net subsidies, please see the "Preliminary Results of Reviews" section of this notice. If the final results remain the same as these preliminary results of reviews, we will instruct the U.S. Customs Service (Customs) to amend the cash deposit for each reviewed company as detailed in the "Preliminary Results of Reviews" section of this notice. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 14, 2002.

FOR FURTHER INFORMATION CONTACT: Maria MacKay or Gayle Longest, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1775 or (202) 482–3338.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2002).

Background

On May 22, 2002, the Department published in the **Federal Register** its amended final affirmative countervailing duty determination and countervailing duty order on certain softwood lumber products (subject merchandise) from Canada (67 FR 36068), as corrected (67 FR 37775, May 30, 2002). On July 17, 2002, the Department published the Notice of Initiation of Expedited Reviews. As indicated in that notice, the Department had received 100 timely requests for expedited review. Since the publication of that notice, we have accepted as timely nine other applications for expedited review (*see, Memorandum to the File* from Gayle Longest, Case Analyst, through Melissa Skinner, Director, Office VI, dated August 2, 2002, concerning Reconsideration of Timeliness of Certain Applications—Expedited Reviews of the Countervailing Duty Order on Softwood Lumber from Canada, filed in the Central Record Unit, Room B–099, Main Commerce Building (CRU)).

In the Notice of Initiation, we initiated expedited reviews on the 73 companies that we found to have filed complete and timely applications. We have provided the remaining 36 companies, which we found to have filed incomplete applications, the opportunity to perfect their filings.

As explained in the Notice of Initiation, we reached the conclusion that the most efficient way to conduct such a large number of reviews in an expedited manner, and at the same time respond to the concerns expressed by the interested parties, is to adopt a bifurcated and streamlined methodology. The comments we received support this view. Our methodology involves segregating the applicants into two groups. Group 1 consists of companies that obtain the majority of their wood (over 50 percent of their inputs) from the United States, the Maritime Provinces, Canadian private lands, and Canadian companies excluded from the order; as well as companies that source less than a majority of their wood from these sources and do not have tenure. Group 2 includes companies that source less than a majority of their wood from these sources and have acquired Crown timber through their own tenure contracts. We reviewed the applications we received and assigned each of the 73 companies to one of the two groups. We found that 45 companies satisfied the requirements of Group 1 and 28 companies satisfied the requirements of Group 2. Within Group 1, 17 companies primarily used inputs from the United States, Canadian private forests, or the Maritime Provinces, and 25 primarily used Crown inputs but did not have tenure (for three companies, we need additional information to determine whether they will be in Group 1(a) or (b)).

In our review of the applications in Group 1, we noted that, in order to conduct our analysis, we required only minimal supplemental data for 24 of the 45 companies. The other Group 1 companies require additional information and more extensive analysis. Rather than delaying the process to provide all Group 1 companies the opportunity to submit the necessary information, we issued a short questionnaire to the 24 companies requiring only minimal information and set a short deadline for the response. Of the 24 companies, 18 were able to supply the information by the deadline. We have therefore been able to complete our preliminary analysis of those 18 companies, using the Group 1 methodology (see "Methodology" section below). We are continuing to process the other applications in Groups 1 and 2, and will be issuing additional questionnaires shortly.

Four of the companies to whom we sent questionnaires asked for extensions of time to submit their responses; we granted the extensions. In addition, two companies, Olav Haavalsrud Timber Company Limited and Western Commercial Millwork withdrew their requests for review. This notice includes the preliminary results of review for the following 18 companies:

Bois Daaquam Inc.
Bois Omega Ltée
City Lumber Sales & Services Limited
Herridge Sawmills Ltd.
Interbois, Inc.
J. A. Fontaine et fils Inc.
Jointfor (3207021 Canada Inc.)
Les Bois d'Oeuvre Beaudoin & Gauthier Inc.
Les Moulures Jacomau 2000, Inc.
Les Produits Forestiers Dube Inc
Lonestar Lumber Inc.
Maibec Industries, Inc.

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Materiaux Blanchet Inc.
Meunier Lumber Company Ltd.
MF Bernard Inc.
Richard Lutes Cedar, Inc.
Scierie Nord-Sud Inc.
Scierie West-Brome Inc.

Scope of the Reviews

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to this order is dispositive.

As specifically stated in the Issues and Decision Memorandum accompanying the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002) (*see* comment 53, item D, page 116, and comment 57, item B–7, page 126), available at *www.ia.ita.doc.gov*, drilled and notched lumber and angle cut lumber are covered by the scope of this order.

The following softwood lumber products are excluded from the scope of this order provided they meet the specified requirements detailed below:

(1) *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.

(2) *Box-spring frame kits:* if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1″ in actual thickness or 83″ in length.

(3) *Radius-cut box-spring-frame components,* not exceeding 1″ in actual thickness or 83″ in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.

(4) *Fence pickets* requiring no further processing and properly classified under HTSUS heading 4421.90.70, 1″ or less in actual thickness, up to 8″ wide, 6′ or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring ¾ inch or more.

(5) *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: (1) The processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and (2) if the importer establishes to Customs' satisfaction that the lumber is of U.S. origin.

(6) *Softwood lumber products contained in single family home packages or kits,*[1] regardless of tariff classification, are excluded from the scope of this order if the importer certifies to items 6 A, B, C, D, and requirement 6 E is met:

A. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

B. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, sub floor, sheathing, beams, posts, connectors, and if included in the purchase contract, decking, trim, drywall and roof shingles specified in the plan, design or blueprint.

C. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

D. Softwood lumber products entered as part of a single family home package or kit, whether in a single entry or multiple entries on multiple days, will be used solely for the construction of the single family home specified by the home design matching the entry.

E. For each entry, the following documentation must be retained by the importer and made available to the U.S. Customs Service upon request:

i. A copy of the appropriate home design, plan, or blueprint matching the entry;

ii. A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

iii. A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;

iv. In the case of multiple shipments on the same contract, all items listed in E(iii) which are included in the present shipment shall be identified as well.

Lumber products that the Customs Service may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.45.90 , 4421.90.70.40, and 4421.90.97.40.

Finally, as clarified throughout the course of the investigation, the following products, previously identified as Group A, remain outside the scope of this order. They are:

1. Trusses and truss kits, properly classified under HTSUS 4418.90;
2. I-joist beams;
3. Assembled box spring frames;
4. Pallets and pallet kits, properly classified under HTSUS 4415.20;
5. Garage doors;
6. Edge-glued wood, properly classified under HTSUS item 4421.90.98.40;
7. Properly classified complete door frames;
8. Properly classified complete window frames;
9. Properly classified furniture.

[1] To ensure administrability, we clarified the language of exclusion number 6 to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

Methodology

In the Notice of Initiation we invited comments on our approach and indicated that we would consider alternative methodologies. We received comments from petitioners, Fred Tebb and Sons (Fred Tebb) (a U.S. remanufacturer), and from 27 respondents. We also received rebuttal comments from six respondents. We are addressing in this notice those comments that are pertinent to (1) our methodology in general and (2) company-specific issues for the 18 companies covered by this notice.

Comment 1: Petitioners state that, even if the Department had authority to undertake expedited reviews in this case, it would have to observe limitations that apply to analogous situations. Specifically, the Department would have to follow the timeline applicable to the most expedited type of review addressed in section 751(a) of the Act, the new shipper review. Under those procedures, expedited reviews could not be initiated before November 2002, a preliminary determination would have to be issued 180 days later, and a final determination would be issued 90 days after the preliminary determination.

Department's position: Although the Department has the statutory authority to conduct expedited reviews of countervailing duty orders issued as a result of an investigation based on aggregate data, there is no statutory or regulatory guidance on the procedures for conducting such reviews. Nevertheless, as the Department explained in the Notice of Initiation, in establishing the approach to the conduct of this segment of the proceeding, we took into account, although we are not bound by, existing regulations for similar types of reviews. Unfortunately, none of our existing regulations was intended to provide workable timelines for expedited reviews of more than 100 companies. We concluded that, in order to reach our goal of completing these reviews in an expedited manner, it was incumbent upon the Department to divide the companies into two groups and to adopt a special bifurcated time schedule. This approach allows us to process the largest number of companies in the shortest period of time.

Comment 2: Petitioners claim that the methodology proposed by the Department sacrifices accuracy for the sake of expediency. Specifically, petitioners state that using the Province-wide average benefit for everyone underestimates the amount of the benefits for entities that are highly subsidized. Furthermore, petitioners object to the Department's treatment of private land timber as unsubsidized, since the Department did not investigate whether export restraints on Canadian logs give rise to subsidies, as alleged by the Coalition. In petitioners' view, the Department cannot now base decisions to grant expedited reviews on the claim that private logs are never subsidized.

Department's position: Petitioners expressed similar views during the investigation, in their comments on the methodology adopted by the Department in the exclusion process (*see* "Company Exclusions" section of the *Issues and Decision Memorandum* to Faryar Shirzad, Assistant Secretary for Import Administration from Bernard Carreau, Deputy Assistant Secretary for AD/CVD Enforcement II, concerning Final Results of the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada, dated March 21, 2002, on file in the CRU (Issues Memorandum)). At that time, we responded that the use of the Province-wide average benefit to measure whether a requestor received a *de minimis* benefit is appropriate and consistent with past practice.

Consideration of more in-depth methodologies, such as those presumably envisioned by petitioners, would require extensive information collection and analysis, and we are simply unable to do this consistent with our dual goals of providing company-specific analyses and conducting these reviews in an expeditious manner. Furthermore, we note that petitioners have not proposed an alternative methodology that addresses these dual goals, as we requested in the Notice of Initiation. As we stated during the investigation, we believe that the methodology we have adopted is appropriate in this case and in accordance with past practice. Furthermore, in seeking to strike a balance between accuracy and expeditiousness, we took into account the fact that these reviews are intended to provide an estimated cash deposit rate, rather than an assessment rate. Assessment rates will be determined in a full administrative review (if one is requested), in which the Department will have an opportunity to revisit methodological issues.

With regard to the issue of whether private land timber can be considered unsubsidized, this issue was also raised by petitioners during the investigation. In the investigation, we stated that we did not address the allegation that the log export ban provides a subsidy to softwood lumber producers "because any conceivable benefit provided through a log ban would already be included in the calculation of the stumpage benefit based upon our selected market-based benchmark prices for stumpage." *See Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products from Canada*, 66 FR 43191, August 17, 2001. In the memorandum detailing the methodology that the Department adopted in the exclusion process, we stated that "[c]ompanies that produce lumber from logs harvested in the Maritime Provinces, the United States, or on private lands in Canada, are unlikely to benefit to any significant extent from federal or provincial stumpage programs* * *" *See Memorandum* to Faryar Shirzad, Assistant Secretary for Import Administration from Bernard T. Carreau, Deputy Assistant Secretary, Group II regarding Countervailing Duty (CVD) Investigation on Softwood Products from Canada, dated February 20, 2002, on file in the CRU (Exclusion Memorandum). Consequently, private land timber was treated as unsubsidized in the exclusion process. In the Notice of Initiation, we indicated that we would not revisit issues addressed in the investigation. Therefore, for purposes of these expedited reviews, we continue to treat private land timber as unsubsidized.

Comment 3: Petitioners note that the methodology described by the Department does not address verification and enforcement. In petitioners' view, all producers should have to certify the accuracy of their claims, specifically authorize on-going verification by the United States, commit to periodic reports, and specifically concede that if the basis of their claim should prove inaccurate or should change materially, their request can be denied.

Fred Tebb also expresses reservations concerning the accuracy of the information requested and obtained by the Department. Fred Tebb claims that, if a review is conducted, it should be conducted in an organized and verifiable fashion that results in

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accurate findings. If, due to its limited resources, the Department must rely upon the applicants to provide accurate information, Tebb recommends that the Department require that the applications and any supplemental information be audited by independent U.S. auditors at applicant's expense.

Department's position: Concerning verification, we intend to verify all the companies that receive a zero or *de minimis* rate in the preliminary results. The decision of whether or not to verify other companies will be made on a case-by-case basis.

Concerning enforcement, companies covered by these reviews are subject to the legal requirements intended to address enforcement, such as certification and verification, as are companies in any other proceeding. With regard to those companies that may be excluded as a result of this process and therefore would not be subject to administrative reviews, they are receiving the same treatment as all companies that are excluded during an antidumping or countervailing duty investigation.

Concerning the accuracy of the information provided to the Department, we would point out that our regulations require all submissions to be accompanied by a statement by an official of the company attesting to the accuracy of the information provided to the Department. On this basis, it is the Department's standard practice to rely on questionnaire responses and, whenever we deem it necessary or are legally required to do so, to conduct verifications to ensure accuracy and completeness. Because of the highly technical and specialized nature of the analysis, review by an independent auditor is both unwarranted and unnecessary.

Comment 4: The Maine Forest Council expresses support for the request by Maibec and Materiaux Blanchet that the Department calculate mill-specific, not company-specific, rates. The Maine Forest Council claims that Maibec's and Materiaux Blanchet's mills are in the unique situation of sourcing a majority of their logs from the United States, as the Department verified during the investigation. Materiaux Blanchet also claims that the Department already conducted a mill-specific analysis of its St. Pamphile mill in the underlying investigation, calculated a mill-specific rate for that mill, and indeed relied on that rate in determining that the rate was just over the threshold for exclusion from the countervailing duty order. Thus, no change in methodology would be required in this review. Materiaux Blanchet further claims that the Department excluded a number of individual mills in Quebec that were affiliated with Maritime producers. A mill exclusion would also be consistent with 19 CFR section 351.214(k), which allows expedited reviews for non-investigated exporters. Furthermore, providing mill-specific rates is well within the Department's broad discretion in administering the countervailing duty law, as the Department acknowledged in the underlying investigation when it excluded the Maritime provinces completely. Maibec produces subject merchandise only at one of its mills. Since softwood stumpage for subject merchandise is used by that mill, and only that mill, which produces subject merchandise, an expedited review rate based only on Maibec's St. Pamphile mill alone is both feasible and not subject to potential circumvention.

Department's position: We disagree with respondents' contention that the Department should calculate subsidy rates for individual mills, rather than for the company as a whole. The Department's practice and regulations with respect to the calculation of *ad valorem* subsidy rates and attribution of domestic subsidies are clear. Under these rules, in the case of a domestic subsidy that is not tied to a specific product, the subsidy is attributed to all of the firm's sales. *See* section 351.525 of *Countervailing Duties; Final Rule*, 63 FR 65416, November 25, 1998 (*CVD Regulations*). Neither the statute nor the regulations provide for the attribution of a domestic subsidy to a specific entity within a firm. Rather, the attribution regulations distinguish among *products or markets*, not production facilities.

While these parties are correct that the Department indicated in the final determination that it calculated rates on a company- or mill-specific basis, no company or mill was excluded from the order on the basis of a mill-specific rate. The purpose of the exclusion process during the underlying investigation was to determine whether, based on the existence of a *de minimis* subsidy rate, a company should be excluded from the order. With respect to the mill related to a Maritime province company, we note that had the production of the remainder of the company, production that could not have benefitted from the subsidies under investigation, been included in our calculations, the calculated subsidy rate would only have decreased. Further, with respect to Materiaux Blanchet's mill-specific request, we note that the information we verified during the investigation, related to both of its mills, indicates that the subsidy rate would not have been *de minimis* regardless of whether the calculation was conducted on a mill- or company-specific basis.

Comment 5: Several respondents raise the issue of whether an arm's-length sale of logs or lumber allows for a pass-through of the stumpage benefit on timber and suggest alternative methodologies to measure whether or not the subsidy passes through. Dunkley Lumber suggests that the Department take into account the purchase price of the logs and compare it to one of the market benchmarks provided on the record. If the price is at or above the benchmark, the company is receiving no benefits from those logs.

Treeline Wood Products Ltd. contends that remanufacturers purchasing lumber on the open market are not receiving subsidies. Treeline claims to be an arm's length purchaser. Therefore, its lumber should be treated as non-subsidized. Alternatively, the Department should determine whether the subsidy passes through by establishing a benchmark on the basis of the manufacturing costs of comparable U.S. companies. The Department would determine the raw material inventory costs of comparable U.S. companies and determine the percentage of total sales that these costs represent (this could be derived from trade publications). If Treeline's ratio of material costs to sales is within the range established for these U.S. companies (approximately 50 percent), the Department should conclude that there are no subsidies.

Goodfellow Inc. (Goodfellow) recommends that the Department resolve early on in these reviews the threshold question of pass-through: whether any portion of the alleged subsidies should be attributed to a remanufacturer who purchases sawn lumber at arm's length from an unaffiliated primary mill. In Goodfellow's view, if the Department's position is that subsidies do not pass through, as allegedly stated in *Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada*, 57 FR 22,574 (May 28, 1992) (Lumber III), at least 27 of the 73 companies (one third of the total) would be found not to be subsidized and this would save time and effort both for the companies and for the Department. If, instead, the Department has changed its position since Lumber III and determines that subsidies pass through, then Goodfellow and other remanufacturers may decide that further participation in this proceeding is not economically viable, because their records do not normally indicate the timber origin for each lumber purchase and the search for such information would be expensive and not practicable.

Furthermore, Goodfellow contends that, if the Department does not resolve the pass-through issue early in these reviews, all respondents who intend to rely on the Department's alleged decision in Lumber III will continue to participate fully in the hope that the issue will be decided favorably. If the Department does not take a position or decides to abandon its prior position taken in Lumber III, as interpreted by Goodfellow, such efforts will have served no useful purpose. Even if the Department decides the issue favorably at the end of the review, respondents' and the Department's resources will have been wasted on an analysis that relies on elements such as the geographical source of the lumber, which has become a superfluous detail. Under any scenario, wasted effort is a natural result if the Department fails to make an early decision on the pass-through issue.

Department's position: Under the Department's proposed methodology, all Crown inputs into subject merchandise (logs and lumber) are included in the subsidy calculations. Because of the expedited nature of these reviews, we proposed not considering whether subsidies pass through in the context of alleged arm's-length transactions. As articulated in the Exclusion Memorandum from the investigation, such an analysis would require additional time to collect and examine information on the purchaser, the suppliers (whether or not they are affiliated), and the nature of the transaction itself. The determination of affiliation, for example, is an extremely complicated matter, as indicated by (1) the statutory definition contained in section 771(33) of the Act, (2) the discussion in the Statement of Administrative Action accompanying the URAA (H. R. Doc. 103–316 at 838 (1994)), and (3) section 351.102 of the regulations. Affiliation covers not just control through stock ownership, but also operational control, and the statute directs the Department to examine such factors as corporate or family groupings, franchises or joint venture agreements, debt financing, and close supplier relationships. *See Ferro Union, Inc. et al.* v. *United States*, 74 F.Supp.2d 1289 (Ct. Int'l Trade 1999); *Mitsubishi Heavy Industries, Ltd.*, v. *United States*, 54 F.Supp.2d 1183 (Ct. Int'l Trade 1999), aff'd, 275 F.3d 1056 (Fed. Cir. 2001).

Contrary to Goodfellow's contention, the Department did not in Lumber III reach any conclusions with respect to the pass-through of subsidies resulting from an arm's-length transaction. No remanufacturers were excluded on that basis in Lumber III. Furthermore, the question of whether, or to what extent, the stumpage benefit passes through in an arm's-length transaction was not directly addressed in the underlying investigation because we conducted the case on an aggregate basis. As such, the investigation provides no methodology, no benchmarks applicable to the log market, and no readily available information sources with which to approach this issue.

The methodologies proposed in the comments do not lend themselves to a rational and expedient analysis of this issue. Specifically, Dunkley Lumber proposes a methodology that relies on the comparison of log prices to a benchmark already on the record. However, in the underlying investigation, we compared stumpage costs, not log prices; the benchmarks already on the record would therefore not be helpful. The other proposal, by Treeline Wood Products, is also not relevant to this issue, because it is based on a comparative analysis of manufacturing costs between Canadian and U.S. companies. Such a comparison is irrelevant under the countervailing duty law. The third comment, by Goodfellow, does not put forward a new methodology but relies on Goodfellow's own interpretation of the Department's position in Lumber III. In that investigation, however, as pointed out above, the Department did not specifically address how to conduct a pass-through analysis of this type of transaction and took no position on the effect of an arm's-length transaction. In short, none of the comments offers the Department an approach that would enhance our ability to perform these complex reviews accurately and expeditiously.

After consideration of the above comments, we determined that the most expeditious approach would be to proceed with the issuance of the preliminary results for the first 18 companies of Group 1. None of those companies raised the issue of an arm's-length analysis. The Department is prepared, however, to conduct such analyses for companies that request them, to the extent practicable. Because of the complexity of the fact patterns and the extensive analysis involved, we will need to extend the time period to complete the reviews for companies that request an arm's-length analysis beyond the time frame we announced for Group 2 in the Notice of Initiation. Furthermore, given the time frame of these expedited reviews, and the number of companies involved, it is unlikely that we could conduct such analyses for more than a limited number of companies. Therefore, we invite those companies that wish the Department to conduct a pass-through analysis to advise the Department in writing. Such requests must be received by the Department within 14 days from the date of publication of this notice. We will determine, based on the number of the requests received, how many companies it is practicable to consider for such an analysis, as well as the amount of time that will be necessary for this aspect of the reviews.

We note that certain respondents (Bois Daquaam Inc., Bois Omega, Limitee, J.A. Fontaine et fils Inc., Maibec Industries Inc., Materiaux Blanchet Inc., and Scierie West Brome Inc.) have acquiesced to the Department's application of the exclusion methodology, but have reserved the right to raise methodological issues in the course of a regular administrative review. We would note that the Department's application of streamlined methodologies in these expedited reviews does not preclude *any* respondent from raising methodological issues in the context of full administrative reviews.

Comment 6: Woodtone Industries (Woodtone) recommends that the conversion factor from MFB (thousand board feet) to cubic meters for lumber inputs be standardized. Woodtone also expresses the view that benefits from other programs should not be included in the company-specific calculations on a pro-rata, averaging, or company-specific basis unless producers in fact benefitted from the programs.

Department's position: We examined extensively in the investigation the conversion factor from MFB to cubic meters for *logs*. Woodtone, however, raises the issue with regard to *lumber*. As explained below, for the subsidy calculations in these reviews, the Department does not need to adopt a standardized conversion factor for lumber inputs.

In Canada, lumber and logs are uniformly measured in cubic meters. The only instance in which we might need to convert MBF to cubic meters for lumber inputs would be in the case of lumber purchased from the United States. We are not, however, including the quantity of U.S. lumber in our calculations, because we are not attributing a subsidy to U.S. origin lumber.

With regard to the measurement of benefits other than stumpage, as we did in the exclusion process in the investigation, we intend to measure

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those subsidies in these reviews on a company-by-company basis, in accordance with all relevant regulatory and statutory procedures.

Preliminary Results of Reviews

After consideration of all the above comments, we have applied the following methodology. We calculated company-specific rates based on the exclusion methodology used in the investigation. To obtain the company-specific stumpage benefit, we multiplied the quantity of Crown logs and the quantity of lumber inputs (except for those specified below) by the province-specific stumpage benefit calculated in the underlying investigation, i.e., the average per-unit differential between the calculated adjusted stumpage fee for the relevant province and the appropriate benchmark for that province. For those provinces, such as British Columbia and Ontario, for which we calculated more than one per-unit benefit in the investigation, we calculated one province-wide per-unit benefit in these reviews by weight-averaging the previously calculated values by the corresponding volumes of harvested softwood. As indicated in the Notice of Initiation, we have not attributed a benefit to (1) logs or lumber acquired from the Maritime Provinces, if accompanied by the appropriate certification, (2) logs or lumber of U.S. origin, (3) lumber produced by mills excluded in the investigation, or (4) logs from Canadian private land. We divided the stumpage benefit by the appropriate value of the company's sales to determine the company's estimated subsidy rate from stumpage and then added any benefit from other programs to obtain the cash deposit rate for the company.

In accordance with 19 CFR § 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to these expedited reviews. For the period April 1, 2002 to March 31, 2001, we preliminarily determine the net subsidy to be as follows:

Net subsidies—producer/exporter	Net subsidy rate %
Bois Dasquam Inc.	2.99
Bois Omega Ltée	3.10
City Lumber Sales & Services Limited	6.60
Herridge Sawmills Ltd.	4.91
Interbois, Inc.	0.88
J. A. Fontaine et fils Inc.	3.28
Jointfor (3207021 Canada Inc.	1.96
Les Bois d'Oeuvre Beaudoin & Gauthier Inc.	9.98
Les Moulures Jacomau 2000, Inc.	0.58
Les Produits Forestiers Dube Inc	1.39
Lonestar Lumber Inc.	13.42
Maibec Industries, Inc.	1.98
Materiaux Blanchet Inc.	10.32
Meunier Lumber Company Ltd.	35.35
MF Bernard Inc.	4.96
Richard Lutes Cedar, Inc.	0.25
Scierie Nord-Sud Inc.	2.22
Scierie West-Brome Inc.	1.16

If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct Customs to collect cash deposits of estimated countervailing duties in the amounts indicated above of the f.o.b. invoice price on all shipments of the subject merchandise produced by the reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews.

Those exporters whose final estimated net subsidy rate, based on verified information, is zero or *de minimis* will be excluded from the order. Because, in the Department's view, there is no relevant difference for purposes of the *de minimis* rule between expedited reviews of orders resulting from investigations conducted on an aggregate basis and expedited reviews of orders resulting from investigations conducted on a company-specific basis, we believe it is appropriate in these reviews to treat *de minimis* rates in accordance with section 19 CFR section 351.214(k)(3)(iv). Therefore, after the issuance of its final results, the Department intends to instruct Customs to liquidate, without regard to countervailing duties, all outstanding shipments of the subject merchandise produced by those exporters, for whom the Department has calculated an estimated cash deposit rate of zero or *de minimis, i.e.* less than one percent *ad valorem*.

These expedited reviews cover only those companies that we have specifically identified as qualifying for expedited reviews. The cash deposit rate for all other companies will be adjusted in the final results of these reviews to account for the benefit and the sales values of the companies that have received company-specific rates. We will instruct Customs to collect cash deposits for all non-reviewed companies at the new cash deposit rates established in the final results of these reviews.

Public Comment

Pursuant to 19 CFR section 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR section 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be received by the Department within 21 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be received no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR section 351.303(f).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR section 351.309(c)(ii), are due. The Department will include the results of its analysis of issues raised in any case or rebuttal briefs in the final results of these expedited reviews. The Department will continue to issue preliminary results in the most expeditious manner practicable, and will follow the same approach in issuing final results of review.

In the interests of giving each respondent an informed opportunity to request rescission of their expedited review, we are amending the timeline announced in the application form. Requests for rescission must be received by the Department no later than 30 days after the date of publication of the preliminary results of the relevant expedited review.

These expedited reviews and notice are issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677(f)(i)).

Dated: August 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–20645 Filed 8–13–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On July 2, 2002, Sun Land Beef Company filed a First Request for Panel Review with the Mexican Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping duty determination made by the Secretaria de Economia, Unidad de Practicas Comerciales Internacionales, Direccion, General Adjunta Tecnica Juridica, Direccion de Procedimientos y Consultas, respecting Bovine Carcasses and Half Carcasses, Fresh or Chilled, Originating in the United States of America. This determination was published in the *Diario Oficial de la Federacion del*, on June 4, 2002. The NAFTA Secretariat has assigned Case Number MEX–USA–2002–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the Mexican Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on July 2, 2002, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is August 1, 2002);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is August 16, 2002); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: July 29, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–20436 Filed 8–13–02; 8:45 am]

BILLING CODE 3510–GT–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060102C]

Advisory Committee and Species Working Group Technical Advisor Appointments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Nominations.

SUMMARY: NMFS is soliciting nominations to the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) as established by the Atlantic Tunas Convention Act (ATCA). NMFS is also soliciting nominations for technical advisors to the Advisory Committee's species working groups.

DATES: Nominations are due by September 16, 2002.

ADDRESSES: Nominations to the Advisory Committee or as technical advisor to a species working group should be sent to Dr. William T. Hogarth, Assistant Administrator, National Marine Fisheries Service, NOAA, 1315 East-West Highway, Silver Spring, MD 20912. A copy should also be sent to Erika Carlsen, International Fisheries Division, Office of Sustainable Fisheries, NMFS, Room 13137, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Erika Carlsen, 301–713–2276.

SUPPLEMENTARY INFORMATION: Section 971b of the ATCA (16 U.S.C. 971 *et seq.*) requires that an advisory committee be established that shall be composed of (1) not less than 5 nor more than 20 individuals appointed by the U.S. Commissioners to ICCAT who shall select such individuals from the various groups concerned with the fisheries covered by the ICCAT Convention; and (2) the chairs (or their designees) of the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf Fishery Management Councils. Each member of the Advisory Committee appointed under item (1) shall serve for a term of 2 years and shall be eligible for reappointment. Members of the Advisory Committee may attend all public meetings of the ICCAT Commission, Council, or any Panel and any other meetings to which they are invited by the ICCAT Commission, Council, or any Panel. The Advisory Committee shall be invited to attend all nonexecutive meetings of the U.S. Commissioners to ICCAT and, at such meetings, shall be given the opportunity to examine and be heard on all proposed programs of investigation, reports, recommendations, and regulations of the ICCAT Commission. Members of the Advisory Committee shall receive no compensation for such services. The Secretary of Commerce and the Secretary of State may pay the necessary travel expenses of members of the Advisory Committee.

There are currently 20 appointed Advisory Committee members. The terms of these members expire on December 31, 2002. New appointments will be made as soon as possible, but will not take effect until January 1, 2003.

Section 971b–1 of the ACTA specifies that the U.S. Commissioners may establish species working groups for the purpose of providing advice and recommendations to the U.S. Commissioners and to the Advisory Committee on matters relating to the conservation and management of any highly migratory species covered by the ICCAT Convention. Any species

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working group shall consist of no more than seven members of the Advisory Committee and no more than four scientific or technical personnel, as considered necessary by the Commissioners. Currently, there are four species working groups advising the Committee and the U.S. Commissioners. Specifically, there is a Bluefin Tuna Working Group, a Swordfish Working Group, a Billfish Working Group, and a BAYS (Bigeye, Albacore, Yellowfin, and Skipjack) Tunas Working Group. Technical Advisors to the species working groups serve at the pleasure of the U.S. Commissioners; therefore, the Commissioners can choose to alter appointments at any time.

Nominations to the Advisory Committee or to a species working group should include a letter of interest and a resume or curriculum vitae. Letters of recommendation are useful but not required. Self-nominations are acceptable. When making a nomination, please clearly specify which appointment (Advisory Committee member or technical advisor to a species working group) is being sought. Requesting consideration for placement on both the Advisory Committee and a species working group is acceptable. Those interested in a species working group technical advisor appointment should indicate which of the four working groups is preferred. Placement on the requested species working group, however, is not guaranteed.

Dated: August 8, 2002.

Virginia M. Fay,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20654 Filed 8–13–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080502C]

ICCAT Advisory Committee; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT), in conjunction with the International Fisheries Division of NMFS, announces the schedule of regional public meetings to be held this fall.

DATES: The meetings are scheduled for September 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the meetings.

ADDRESSES: The meetings will be held in New Jersey, Massachusetts, South Carolina, and Florida. See **SUPPLEMENTARY INFORMATION** for specific addresses of the meetings.

FOR FURTHER INFORMATION CONTACT: Erika Carlsen at 301–713–2276.

SUPPLEMENTARY INFORMATION: The regional public meetings are scheduled as follows:

Tuesday, September 3, 2002, 7 p.m. to 9:30 p.m. - Atlantic Cape Community College, 5100 Black Horse Pike, Mays Landing, NJ;

Wednesday, September 4, 2002, 7 p.m. to 9:30 p.m. - Holiday Inn Boston Logan Airport, 225 McClellan Highway, Boston, MA;

Tuesday, September 17, 2002, 7 p.m. to 9:30 p.m. - Town and Country Inn, 2008 Savannah Highway, Charleston, SC;

Wednesday, September 18, 2002, 7 p.m. to 9:30 p.m. - Sheraton Biscayne Bay Hotel, 495 Brickell Avenue, Miami, FL.

The following topics may be presented to the public for discussion at the regional meetings:

(1) Background on ICCAT

(2) Information on the Advisory Committee and Commissioners

(3) Status of Highly Migratory Species Managed by ICCAT

(4) Topics for the 2002 ICCAT Annual Meeting

Representatives from the Advisory Committee to the U.S. Section to ICCAT and NMFS will be in attendance at the regional meetings. There will be an opportunity for public comment on each of these international issues. The length of the meetings may be adjusted based on the progress of the discussions.

Additionally, the annual fall meeting of the Advisory Committee will be held on October 14 - 16, 2002, at the Hilton Hotel Silver Spring, 8727 Colesville Road, Silver Spring, MD. There will be opportunity for public comment on international issues on Monday, October 14. The time for public comment period will be announced in a future notice. Domestic issues will not be discussed. An agenda for the annual fall Advisory Committee meeting will be available at a later date.

Please be reminded that NMFS expects members of the public to conduct themselves appropriately for the duration of the meeting. At the beginning of the public comment session, an explanation of the ground rules will be provided (e.g., alcohol in the meeting room is prohibited, speakers will be called to give their comments in the order in which they registered to speak, each speaker will have an equal amount of time to speak, and speakers should not interrupt one another). The session will be structured so that all attending members of the public are able to comment, if they so choose, regardless of the degree of controversy of the subject(s). Those not respecting the ground rules will be asked to leave the meeting.

Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Erika Carlsen at (301) 713–2276 at least 5 days prior to the meeting date.

Dated: August 8, 2002.

Virginia M. Fay,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20658 Filed 8–13–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080902B]

North Pacific Fishery Management Council; Notice of Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Committee Meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Improved Retention/Improved Utilization (IR/IU) Technical Committee will meet in Seattle, Washington.

DATES: The Committee meeting is scheduled for August 28–29, 2002.

ADDRESSES: The meeting location is at the Alaska Fisheries Science Center, 7600 Sand Point Way NE, Bldg. 4, Room 2079, Seattle, Washington 98115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council Staff: 907–271–2809.

SUPPLEMENTARY INFORMATION: The Committee will meet from 9–5 p.m. The agenda consists of: A review of June 2002 Council motion, NMFS Management and Implementation considerations for IR/IU; an industry presentation of bycatch reduction cooperative proposals; a discussion of the selection of bycatch alternatives to be presented to the Council, and the development of work assignments and set the date for next meeting.

Although other issues not contained in this notice may come before the Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during the meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 9, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20655 Filed 8–13–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080502I]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Improved Retention/Improved Utilization (IR/IU) Technical Committee will meet in Seattle, WA.

DATES: The meeting will be held on August 28–29, 2002, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Alaska Fishery Science Center, 7600 Sand Point Way NE, Bldg. 4, Room 2079, Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council Staff: 907–271–2809

SUPPLEMENTARY INFORMATION: On Wednesday, August 28th and Thursday, August 29th, the Committee will meet at the Alaska Fishery Science Center. Agenda consists of: Review of June 2002 Council motion, NMFS Management and Implementation considerations for IR/IU; industry presentation of bycatch reduction cooperative proposals; discussion of selection of alternatives to be presented to the Council; develop work assignments of set dates for next meeting.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 9, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20659 Filed 8–13–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080502F]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting; public scoping meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Allocation Committee (Committee) will hold a working meeting, which is open to the public.

DATES: The Committee meeting will be held Wednesday, August 28, 2002, from 1 p.m. until business for the day is completed. The Committee meeting will reconvene on Thursday, August 29, 2002, from 8 a.m. until business is completed.

ADDRESSES: The Committee meeting will be held at the Shilo Inn, 11707 NE Airport Way, Portland, OR 97220; telephone: (503) 252–5800.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Fishery Management Coordinator; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the Committee meeting is to develop options for allocations and other management measures for the 2003 Pacific Coast groundfish fishery. In addition, the Committee will evaluate current catch levels of overfished groundfish species and may propose inseason adjustments. The Committee will discuss the types of provisions that may be necessary to prevent further overfishing, to reduce bycatch of overfished species in the various groundfish fisheries, and to reduce bycatch in non-groundfish fisheries. The Committee will also review a new stock assessment and rebuilding analysis for yelloweye rockfish. No management actions will be decided by the Committee. The Committee's role will be development of recommendations for consideration by the Pacific Fishery Management Council at its September meeting in Portland, OR.

Additionally, the Council will solicit public scoping comments for preparing the 2003 Pacific Coast groundfish annual specifications Environmental Impact Statement at 4 p.m. on August 28. This will be the Council's primary decision document for recommending harvest specifications and management measures for the 2003 Pacific Coast groundfish fishery.

Although nonemergency issues not contained in the meeting agenda may come before the Committee for discussion, those issues may not be the subject of formal Committee action during this meeting. Committee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Committee's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms.

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Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: August 9, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20660 Filed 8–13–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

August 8, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of customs adjusting limits.

EFFECTIVE DATE: August 14, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, carryover, and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59581, published on November 29, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 8, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 23, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on August 14, 2002, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Nepal:

Category	Adjusted twelve-month limit [1]
341	1,006,878 dozen.
347/348	1,106,244 dozen.
369–S [2]	1,109,880 kilograms.
641	440,664 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–20578 Filed 8–13–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 227. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 227 is being published in the Federal Register to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: September 1, 2002.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 226. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the Federal Register now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

Dated: August 8, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGES IN CIVILIAN BULLETIN 227 ARE UPDATES TO RATES FOR GUAM; ROTA, SAIPAN, AND TINIAN, NORTHERN MARIANA ISLANDS. THE FOLLOWING LOCATIONS WERE ADDED MOLOKAI AND LANAI, HAWAII.				
ALASKA				
ANCHORAGE [INCL NAV RES]				
05/01 - 09/15	161	85	246	05/01/2002
09/16 - 04/30	85	77	162	05/01/2002
BARROW	159	95	254	05/01/2002
BETHEL	129	66	195	05/01/2002
CLEAR AB	80	55	135	09/01/2001
COLD BAY	90	73	163	05/01/2002
COLDFOOT	135	71	206	10/01/1999
COPPER CENTER	99	63	162	05/01/2002
CORDOVA	105	89	194	05/01/2002
CRAIG	75	57	132	05/01/2002
DEADHORSE	95	67	162	05/01/2002
DELTA JUNCTION	79	58	137	05/01/2002
DENALI NATIONAL PARK				
06/01 - 08/31	125	66	191	09/01/2001
09/01 - 05/31	90	63	153	09/01/2001
DILLINGHAM	95	69	164	05/01/2002
DUTCH HARBOR-UNALASKA	120	78	198	05/01/2002
EARECKSON AIR STATION	80	55	135	09/01/2001
EIELSON AFB				
05/01 - 09/15	149	78	227	05/01/2002
09/16 - 04/30	75	70	145	05/01/2002
ELMENDORF AFB				
05/01 - 09/15	161	85	246	05/01/2002
09/16 - 04/30	85	77	162	05/01/2002
FAIRBANKS				
05/01 - 09/15	149	78	227	05/01/2002
09/16 - 04/30	75	70	145	05/01/2002
FOOTLOOSE	175	18	193	06/01/2002
FT. GREELY	79	58	137	05/01/2002
FT. RICHARDSON				
05/01 - 09/15	161	85	246	05/01/2002
09/16 - 04/30	85	77	162	05/01/2002
FT. WAINWRIGHT				
05/01 - 09/15	149	78	227	05/01/2002
09/16 - 04/30	75	70	145	05/01/2002
GLENNALLEN				
05/01 - 09/30	137	61	198	09/01/2001
10/01 - 04/30	89	56	145	09/01/2001
HEALY				
06/01 - 08/31	125	66	191	09/01/2001
09/01 - 05/31	90	63	153	09/01/2001
HOMER				
05/15 - 09/15	109	76	185	06/01/2002
09/16 - 05/14	76	72	148	06/01/2002

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LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
JUNEAU	119	83	202	05/01/2002
KAKTOVIK	165	86	251	05/01/2002
KAVIK CAMP	150	69	219	05/01/2002
KENAI-SOLDOTNA				
04/01 - 10/31	95	76	171	05/01/2002
11/01 - 03/31	60	71	131	05/01/2002
KENNICOTT	159	77	236	05/01/2002
KETCHIKAN				
05/01 - 09/30	130	80	210	05/01/2002
10/01 - 04/30	100	80	180	05/01/2002
KING SALMON				
05/01 - 10/01	225	91	316	05/01/2002
10/02 - 04/30	125	81	206	05/01/2002
KLAWOCK	75	57	132	05/01/2002
KODIAK	105	81	186	05/01/2002
KOTZEBUE				
05/01 - 08/31	167	99	266	06/01/2002
09/01 - 04/30	136	96	232	06/01/2002
KULIS AGS				
05/01 - 09/15	161	85	246	05/01/2002
09/16 - 04/30	85	77	162	05/01/2002
MCCARTHY	159	77	236	05/01/2002
METLAKATLA				
05/30 - 10/01	98	48	146	05/01/2002
10/02 - 05/29	78	47	125	05/01/2002
MURPHY DOME				
05/01 - 09/15	149	78	227	05/01/2002
09/16 - 04/30	75	70	145	05/01/2002
NOME	120	103	223	07/01/2002
NUIQSUT	180	53	233	05/01/2002
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PORT ALSWORTH	135	88	223	05/01/2002
PRUDHOE BAY	95	67	162	05/01/2002
SEWARD				
05/31 - 09/30	174	105	279	07/01/2002
10/01 - 05/30	79	96	175	07/01/2002
SITKA-MT. EDGECUMBE				
05/16 - 09/16	159	98	257	05/01/2002
09/17 - 05/15	139	97	236	05/01/2002
SKAGWAY				
05/01 - 09/30	130	80	210	05/01/2002
10/01 - 04/30	100	80	180	05/01/2002
SPRUCE CAPE	105	81	186	05/01/2002
ST. GEORGE	105	39	144	07/01/2002
TALKEETNA	100	89	189	07/01/2002
TANANA	120	103	223	07/01/2002
TOGIAK	100	39	139	07/01/2002
UMIAT	200	20	220	05/01/2002
VALDEZ				

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LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
05/01 - 10/01	124	71	195	05/01/2002
10/02 - 04/30	69	66	135	05/01/2002
WAINWRIGHT	120	83	203	05/01/2002
WASILLA	95	60	155	01/01/2000
WRANGELL				
05/01 - 09/30	130	80	210	05/01/2002
10/01 - 04/30	100	80	180	05/01/2002
YAKUTAT	110	68	178	03/01/1999
[OTHER]	80	55	135	09/01/2001
AMERICAN SAMOA				
AMERICAN SAMOA	85	67	152	03/01/2000
GUAM				
GUAM (INCL ALL MIL INSTAL)	135	76	211	09/01/2002
HAWAII				
CAMP H M SMITH	112	72	184	06/01/2002
EASTPAC NAVAL COMP TELE AREA	112	72	184	06/01/2002
FT. DERUSSEY	112	72	184	06/01/2002
FT. SHAFTER	112	72	184	06/01/2002
HICKAM AFB	112	72	184	06/01/2002
HONOLULU (INCL NAV & MC RES CTR)	112	72	184	06/01/2002
ISLE OF HAWAII: HILO	108	69	177	06/01/2002
ISLE OF HAWAII: OTHER	89	54	143	05/01/2000
ISLE OF KAUAI				
05/01 - 11/30	158	88	246	06/01/2002
12/01 - 04/30	203	93	296	06/01/2002
ISLE OF KURE	65	41	106	05/01/1999
ISLE OF MAUI	159	89	248	06/01/2002
ISLE OF OAHU	112	72	184	06/01/2002
KEKAHA PACIFIC MISSILE RANGE FAC				
05/01 - 11/30	158	88	246	06/01/2002
12/01 - 04/30	203	93	296	06/01/2002
KILAUEA MILITARY CAMP	108	69	177	06/01/2002
LANAI	299	138	437	09/01/2002
LUALUALEI NAVAL MAGAZINE	112	72	184	06/01/2002
MCB HAWAII	112	72	184	06/01/2002
MOLOKAI	195	111	306	09/01/2002
NAS BARBERS POINT	112	72	184	06/01/2002
PEARL HARBOR [INCL ALL MILITARY]	112	72	184	06/01/2002
SCHOFIELD BARRACKS	112	72	184	06/01/2002
WHEELER ARMY AIRFIELD	112	72	184	06/01/2002
[OTHER]	72	61	133	01/01/2000
JOHNSTON ATOLL				
JOHNSTON ATOLL	0	14	14	05/01/2002
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	150	47	197	02/01/2000
NORTHERN MARIANA ISLANDS				
ROTA	129	88	217	09/01/2002
SAIPAN	152	120	272	09/01/2002
TINIAN	66	72	138	09/01/2002
[OTHER]	55	72	127	04/01/2000

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LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PUERTO RICO				
BAYAMON				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
CAROLINA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
FAJARDO [INCL CEIBA & LUQUILLO]	82	54	136	01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR,				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
HUMACAO	82	54	136	01/01/2000
LUIS MUNOZ MARIN IAP AGS				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
MAYAGUEZ	85	59	144	01/01/2000
PONCE	96	69	165	01/01/2000
ROOSEVELT RDS & NAV STA	82	54	136	01/01/2000
SABANA SECA [INCL ALL MILITARY]				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
SAN JUAN & NAV RES STA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	93	72	165	01/01/2000
12/15 - 04/14	129	76	205	01/01/2000
ST. JOHN				
04/15 - 12/14	219	84	303	01/01/2000
12/15 - 04/14	382	100	482	01/01/2000
ST. THOMAS				
04/15 - 12/14	163	73	236	01/01/2000
12/15 - 04/14	288	86	374	01/01/2000
WAKE ISLAND				
WAKE ISLAND	60	32	92	09/01/1998

[FR Doc. 02–20503 Filed 8–13–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, announcement is made of the following meeting:

Name of Committee: Armed Forces Epidemiological Board (AFEB).

Dates: September 17–18, 2002.

Time: 7:30 a.m.–5:30 p.m. (September 17, 2002). 7:00 a.m.–5:20 p.m. (September 18, 2002).

Location: The Thayer Hotel, 674 Thayer Road, West Point Military Academy, West Point, NY 10996.

Agenda: The purpose of the meeting is to address pending and new Board issues, provide briefings for Board members on topics related to ongoing and new Board issues, conduct subcommittee meetings, and conduct an executive working session.

FOR FURTHER INFORMATION CONTACT: Colonel James R. Riddle, Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 682, Falls Church, Va 22041–3258, (703) 681–8012/3.

SUPPLEMENTARY INFORMATION: Open sessions of the meeting will be limited by space accommodations. The meeting will be open to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof and Title 5, U.S.C., appendix 1, subsection 10(d). Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–20647 Filed 8–13–02; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Supplemental Environmental Impact Statement for the Lower Mud River Watershed Project, Milton, Cabell County, WV

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (Corps), Huntington District will prepare a Supplemental Environmental Impact Statement (SEIS). The SEIS will evaluate potential impacts to the natural, physical, and human environment as a result of the proposed flood damage reduction measures for the area at the City of Milton, Cabell County, West Virginia (Lower Mud River Project). The Corps is soliciting public concerns/issues to be evaluated during the study process.

ADDRESSES: Send written comments and suggestions concerning this proposed project to S. Michael Worley PM–PD, U.S. Army Corps of Engineers, Huntington District, 502 Eighth Street, Huntington, WV 25701–2070. Telephone: (304) 529–5712. Electronic mail: *Stephen.M.Worley @Lrh01.usace.army.mil*. Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Louis E. Aspey PM–P, U.S. Army Corps of Engineers, Huntington District, 502 Eighth Street, Huntington, WV, 25701–2070. Telephone: (304) 528–7446. Electronic mail: *louisa@Lrh01.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Authority:* The proposed project is authorized under Section 580 of the Water Resources Development Act (WRDA) of 1996, which provides the Corps authority "* * * to conduct a limited reevaluation of the watershed plan and environmental impact statement prepared for the Lower Mud River, Milton, W.V., by the Natural Resources Conservation Service, pursuant to the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001 *et seq.*) and may carry out the project," and Section 340 of the WRDA of 2000, which reads: "Modifies Lower Mud River project at Milton authority (Sec 580 of WRDA of 1996) to direct the COE to construct the project as selected in the COE reevaluation report."

2. *Background:* Under authority of the Watershed Protection and Flood Prevention Act (Pub. L. 83–566), the Natural Resources Conservation Service (NRCS) began an investigation of land and water resource problems, including flooding, in the Lower Mud River watershed in 1972. This early investigation culminated with completion of the Lower Mud River Watershed Plan and Environmental Impact Statement (EIS) in May 1993, in which a channel modification project on the Mud River in the vicinity of Milton was recommended. Section 580 of WRDA 1996 provided the Corps authority to re-evaluate that study and construct a project.

Alternatives being initially considered include the NRCS recommended plan (channel modification); four levee alternatives; a diversion alternative; non-structural alternatives; and the no action. The levee alternatives include a levee providing low-level of protection, two levees that would provide protection from 100-year floods, and a levee that would protect Milton to a 500-year flood level. Alternatives to be evaluated in detail in the SEIS will be selected from the those described above.

3. *Public Participation:* The Corps invites full public participation to promote open communication and better decision-making. All persons and organizations that have an interest in the Lower Mud River flooding problems as they affect the community of Milton, West Virginia and the environment are urged to participate in this NEPA environmental analysis process. Assistance will be provided upon request to anyone having difficulty with learning how to participate.

Public comments are welcomed anytime throughout the NEPA process. Formal opportunities for public participation include: (1) Public meetings to be held near the community of Milton; (2) Anytime during the NEPA process via mail, telephone or e-mail; (3) During Review and Comment on the Draft EIS—approximately January 2003; and, (4) Review of the Final EIS–Spring 2003. Schedules and locations will be announced in local news media. Interested parties should submit contact information to be included on the mailing list for public distribution of meeting announcements and documents (*See* **ADDRESSES**).

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–20650 Filed 8–13–02; 8:45 am]
BILLING CODE 3710–GN–M

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DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Coastal Engineering Research Board

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Date of Meeting: September 10–11, 2002.

Place: The Sanderling, Duck, North Carolina.

Time: 8 a.m. to 3:45 p.m. (September 10, 2002), 8 a.m. to 4 p.m. (September 11, 2002).

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to Colonel John W. Morris III, Executive Secretary, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199.

SUPPLEMENTARY INFORMATION:

Proposed Agenda: The theme of the meeting is "Field Data Collection." On Tuesday, September 10, the morning session will consist of presentations dealing with the "National Shoreline Management Study," "National Regional Sediment Management (RSM) Demonstration Program," "Section 227 Report and Coastal Engineering Manual—Status and Maintenance," "Coastal Louisiana Study," and panel presentations concerning "Agency Approaches to Regional Coastal Mapping." The afternoon session will consist of panel presentations concerning "Beach-Fill Monitoring Performance Analysis." On the evening of September 10, a tour of the Field Research Facility is scheduled. On Wednesday, September 11, there will be panel presentations concerning "The Integrated Ocean Observing System—National Program" and "The Integrated Ocean Observing System—Corps Activities," followed by an Executive Working Session. An optional field trip is planned for the afternoon on September 11.

These meetings are open to the public; participation by the public is scheduled for 11:15 a.m. on September 11.

The entire meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

John W. Morris III,

Colonel, Corps of Engineers, Executive Secretary.

[FR Doc. 02–20649 Filed 8–13–02; 8:45 am]

BILLING CODE 3710–61–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Estuary Habitat Restoration Council; Meeting

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 105(h) of the Estuary Restoration Act of 2000, (Title I, Pub. L. 106–457), announcement is made of the forthcoming meeting of the Estuary Habitat Restoration Council. The meeting is open to the public.

Date: August 28, 2002, from 10 a.m. to 12 p.m.

Location: 441 G Street, NW., Room 3M60/70, Washington, DC

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4558; or Ms. Cynthia Garman-Squier, Office of the Assistant Secretary of the Army (Civil Works), Washington, DC, (703) 695–6791.

SUPPLEMENTARY INFORMATION: The Estuary Habitat Restoration Council consists of representatives of five agencies. These are the National Oceanic and Atmospheric Administration, Environmental Protection Agency, U.S. Fish and Wildlife Service, Department of Agriculture, and Army. Among the duties of the Council is development of a national estuary restoration strategy designed in part to meet the goal of restoring one million acres by 2010.

Items the Council will consider at this meeting include the nature of the comments received on the draft Estuary Habitat Restoration Strategy, general extent and nature of proposed revisions, and the guidelines for submission of estuary restoration project proposals. There will be an informational presentation on the National Estuary Program by a representative of the Environmental Protection Agency.

Current security measures require that persons interested in attending the meeting must pre-register with us before 2 p.m. August 26, 2002. Please contact Ellen Cummings at 202–761–4558 to pre-register. When leaving a voice mail message please provide the name of the individual attending, the company or agency represented, and a telephone number, in case there are any questions. The public should enter on the "G" Street side of the GAO building. All attendees are required to show photo identification and must be escorted to the meeting room by Corps personnel. Attendee's bags and other possessions are subject to being searched. All attendees arriving between one-half hour before and one-half hour after 10 a.m. will be escorted to the hearing. Those that are not pre-registered and/or arriving later than the allotted time will be unable to attend the public hearing.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–20648 Filed 8–13–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 15, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 9, 2002.

John D. Tressler,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Education Longitudinal Study (ELS) of 2002, First Followup.

Frequency: One time.

Affected Public: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,270.

Burden Hours: 941.

Abstract: The ELS:2002 first followup is the second time this cohort of students, who were in 10th grade in 2002, will be interviewed and assessed. The field test for this survey will be conducted in spring 2003 with 53 schools in five states. Data will be collected from students, dropouts, and school administrators. The full scale study will be conducted in spring 2004 in 754 schools in all 50 states and the District of Columbia. This longitudinal study is intended to measure school effectiveness and impact on postsecondary and labor market outcomes.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2064. When you access the information collection, click on "Download Attachments "to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.Reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–20664 Filed 8–13–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 13, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 8, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: International Adult Literacy and Lifeskills Survey.

Frequency: One time.

Affected Public: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 9,740. Burden Hours: 6,731.

Abstract: The International Adult Literacy and Lifeskills Survey (IALLS) will collect internationally comparable information on the literacy and numberacy performancy of adults from around the world. The IALLS will be administered in the general household population aged 16–65 and in selected federally-funded adult education programs. The IALLS household assessment will provide a detailed picture of the literacy and numeracy skills of U.S. adults compared to adults in other countries. The IALLS adult education program assessment will show the literacy skills of the adults enrolled in adult education programs and how they differ from the U.S. general population and international populations.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2063. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also

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be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–20504 Filed 8–13–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Secretary of Education's Commission on Opportunity in Athletics; Meeting

AGENCY: Secretary of Education's Commission on Opportunity in Athletics; Department of Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming public meeting of the Secretary of Education's Commission on Opportunity in Athletics (the Commission). The Commission invites comments from the public regarding the application of current Federal standards for ensuring equal opportunity for men and women and boys and girls to participate in athletics under Title IX of the Education Amendments of 1972 ("Title IX"). The meeting will take place in Atlanta, Georgia. Individuals who will need accommodations for a disability in order to attend the meetings should notify the Commission office no later than Thursday, August 22, 2002.

We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: August 27–28, 2002.

Location: Wyndham Downtown Hotel, 160 Spring St., NW., Atlanta, Georgia, 30309.

Times: August 27: 9 a.m.–12:30 p.m., 2 p.m.–5 p.m. August 28: 9 a.m.–1 p.m.:

Meeting Format: This meeting will be held according to the following schedule:

1. *Date:* August 27, 2002, Time: 9 a.m. to 12:30 p.m., 2 p.m.–5p.m.

2. *Date:* August 28, 2002, Time: 9 a.m. to 1 p.m.

Attendees: If you would like to attend any or all of the above listed meetings, we ask that you register with the Commission office by email or fax to the address listed under **ADDRESSES**. Please provide us with your name and contact information.

Participants: The meeting scheduled for August 27, 2002 will begin with presentations from panels of invited speakers. After the presentations by invited speakers, there will be time reserved for comments from the public. This period for public comment will continue on August 28.

If you are interested in participating in the public comment period to present comments on the Federal standards for ensuring equal opportunity for men and women to participate in athletics under Title IX at this meeting, you are requested to reserve time on the agenda of the meeting by contacting the Commission office by email or fax.

We request that you submit a request to the Commission office by email or fax. Please include your name, the organization you represent if appropriate, and a brief description of the issue you would like to present. Participants will be allowed approximately 3 to 5 minutes to present their comments, depending on the number of individuals who reserve time on the agenda. At the meeting, participants are also encouraged to submit two written copies of their comments. Persons interested in making comments are encouraged to address the issues and questions discussed under **SUPPLEMENTARY INFORMATION.**

Given the expected number of individuals interested in providing comments at the meetings, reservations for presenting comments should be made as soon as possible. Persons who are unable to obtain reservations to speak during the meetings are encouraged to submit written comments. Written comments will be accepted at each meeting site or may be mailed to the Commission at the address listed under **ADDRESSES.**

In addition to making reservations, individuals attending the public meetings, for security purposes, must be prepared to show photo identification in order to enter the meeting location.

Request for Written Comments: In addition to soliciting input during the public meetings, we invited the public to submit written comments relevant to the Commission.

DATES: We would like to receive your written comments on the Act by November 29, 2002.

ADDRESSES: Submit all comments to the Commission using one of the following methods:

1. *Internet:* We encourage you to send your comments through the Internet to the following address: *OpportunityinAthletics@ed.gov*

2. *Mail.* You may submit your comments to The Secretary of Education's Commission on Opportunity in Athletics, 400 Maryland Avenue, SW., ROB–3 Room 3060, Washington, DC 20202. Due to delays in mail delivery caused by heightened security, please allow adequate time for the mail to be received.

3. *Facsimile.* You may submit comments by facsimile at (202) 260–4560.

FOR FURTHER INFORMATION CONTACT: See the Commission address under the **ADDRESSES** section of the notice. View the Commission's Web site at: *http://www.ed.gov/inits/commissionsboards/athletics*. The Commission office number is 202–708–7417.

SUPPLEMENTARY INFORMATION: The nation is commemorating the 30th anniversary of the passage of Title IX, the landmark legislation prohibiting recipients of Federal funds from discriminating on the basis of sex. Since this legislation was enacted, there has been a dramatic increase in the number of women participating in athletics at the high school and college levels. The Secretary of Education has determined that this anniversary provides an appropriate time to review the application of Title IX to educational institutions' efforts to provide equal opportunity in athletics to women and men. In order to do so, the Secretary established the Commission on Opportunity in Athletics. The Commission will produce a report no later than January 31, 2002, outlining its findings relative to the opportunities for men and women in athletics in order to improve the effectiveness of Title IX.

Comments are encouraged on the following priority areas:

1. Are Title IX standards for assessing equal opportunity in athletics working to promote opportunities for male and female athletes?

2. Is there adequate Title IX guidance that enables colleges and school districts to know what is expected of them and to plan for an athletic program that effectively meets the needs and interests of their students?

3. Is further guidance or are other steps need at the junior and senior high school levels where the availability or absence of opportunities will critically affect the prospective interests and abilities of student athletes when they reach college age?

4. How should activities such as cheerleading or bowling factor into the analysis of equitable opportunities?

5. How do revenue producing and large-roster teams affect the provision of equal athletic opportunities? The Department has heard from some parties that whereas some men athletes will "walk-on" to intercollegiate teams—without athletic financial aid and without having been recruited—women rarely do this. Is this accurate and, if so, what are its implications for Title IX analysis?

6. In what ways do opportunities in other sports venues, such as the Olympics, professional leagues, and community recreation programs, interact with the obligations of colleges and school districts to provide equal athletic opportunity? What are the implications for Title IX?

7. Apart from Title IX enforcement, are there other efforts to promote athletic opportunities for male and female students that the Department might support, such as public-private partnerships to support the efforts of schools and colleges in this area?

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Dated: August 9, 2002.

Deborah Price,

Executive Director, the Secretary of Education's Commission on Opportunity in Athletics.

[FR Doc. 02–20675 Filed 8–9–02; 5:06 pm]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket Nos. 02–44–NG, 00–23–NG, 02–48–NG, 02–47–NG, 02–49–NG, 01–67–NG, 02–50–NG, 02–52–NG, 02–51–NG, 02–53–NG]

BP West Coast Products, LLC, et al.; Orders Granting, Amending and Vacating Authority To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during July 2002, it issued Orders granting, amending and vacating authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 6, 2002.

Clifford F. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

Appendix; Orders Granting, Amending and Vacating Import/Export Authorizations

DOE/FE AUTHORITY

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1794	7–2–02	BP West Coast Products, LLC, 02–44–NG.	25 Bcf	25 Bcf	Import and export natural gas from and to Canada, beginning on July 2, 2002, and extending through July 1, 2004.
1794	7–2–02	ARCO Products Company, 00–23–NG			Vacate of blanket authority.
1795	7–2–02	Sempra Energy Trading Corp., 02–48–NG.	300 Bcf 300 Bcf 300 Bcf	300 Bcf 300 Bcf	Import and export natural gas from and to Canada, and to import and export from and to Mexico, and to import LNG from various international sources beginning on June 16, 2001, and extending through June 15, 2003.
1796	7–3–02	Conoco Canada Limited, 02–47–NG	100 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on June 1, 2002, and extending through May 31, 2004.
1797	7–3–02	Union Gas Limited, 02–49–NG	216 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on August 15, 2002, and extending through August 14, 2004.
1751–A	7–23–02	Sunoco Inc., 01–87–NG			Vacate of blanket authority.
1798	7–23–02	Marathon Oil Company, 02–50–NG	100 Bcf		Import and export a combined total of natural gas from and to Canada and Mexico, beginning on August 1, 2002, and extending through July 31, 2004.
1799	7–29–02	IGI Resources, Inc., 02–52–NG	400 Bcf		Import natural gas from Canada, beginning on August 1, 2002, and extending through July 31, 2004.
1800	7–31–02	Superior Energy Management, 02–51–NG.	200 Bcf	200 Bcf	Import and export natural gas from and to Canada, beginning on October 1, 2002, and extending through September 30, 2004.

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DOE/FE AUTHORITY—Continued

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1801	7–31–02	Emera Energy Services Inc., 02–53–NG	200 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on August 1, 2002, and extending through July 31, 2004.

[FR Doc. 02–20569 Filed 8–13–02; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under the Biomass Research and Development Act of 2000. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that agencies publish these notices in the Federal Register to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee.

Date: September 4 and 5, 2002.

Time: 8:30 a.m.

Address: Hilton Crystal City Hotel at National Airport, Crystal Room, 2399 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Douglas E. Kaempf, Designated Federal Officer for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–7766.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance that promotes research and development leading to the production of biobased industrial products.

Tentative Agenda: Agenda will include discussions on the following:

- Full committee discussion on the development of a Vision and a Roadmap document for federal biomass research and development programs.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you should contact Douglas E. Kaempf at 202–586–7766 or *Bioenergy @ee.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August 7, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–20568 Filed 8–13–02; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2120–000]

FPLE Rhode Island State Energy, L.P.; Notice of Issuance of Order

August 7, 2002.

FPLE Rhode Island State Energy, LP (FPLE) submitted for filing an application for authorization to sell energy, capacity and certain ancillary services at market-based rates. FPLE also requested waiver of various Commission regulations. In particular, FPLE requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by FPLE.

On July 29, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by FPLE should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, FPLE is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of FPLE, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of FPLE's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 28, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20544 Filed 8–13–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–000, EL00–98–000 and ER02–1656–000]

San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents, Investigation of Practices of the California Independent System Operator and the California Power Exchange, and California Independent System Operator (MD02); Amended Notice of Technical Conference and Agenda

August 8, 2002.

The Federal Energy Regulatory Commission Staff is convening a technical conference to facilitate continued discussions between the California Independent System Operator Corporation (CAISO), market participants, state agencies and other interested participants on the development of a revised market design for the CAISO. Attached is the proposed agenda for the conference. The conference will be held in San Francisco, California, at the Renaissance Parc 55 Hotel, 55 Cyril Magnin Street, San Francisco, CA, on August 13, 14 and 15, 2002, beginning at 9 a.m.

For additional information concerning the conference, interested persons may contact Susan G. Pollonais at (202) 502–6011 or by electronic mail at "*susan.pollonais@ferc.gov.*" No telephone communication bridge will be provided at this technical conference.

Linwood A. Watson, Jr.,

Deputy Secretary.

Discussion Issues for FERC Technical Conference on California Market Design (MD02), August 13–15, 2002

1. Introduction and Statement of Goals for Technical Conference
2. Overview and Discussion on Forthcoming Process
   a. Short-term Issues—Process for Resolving Issues Related to Phase II
   b. Long-term Issues—Process for Resolving Issues Related to Phase III
3. Standard Market Design (SMD) Overview
   a. Market Power Mitigation b. Day-Ahead and Real-Time Markets
   c. Resource Adequacy
   d. Congestion Revenue Rights (CRRs)
4. Implementation Issues and Milestones
   a. Introduction—Overview of FERC Directives
   b. Phase IA
   i. Status Report on Development of Automatic Mitigation Procedures(AMP)
   ii. Status Report on RFP for Independent Entity to Develop AMP Reference Prices
   c. Phase IB
   i. Status Report on Implementation of Real-Time EconomicDispatch/Deviation Penalties (enhanced Scheduling Logging for the ISO of California (SLIC))
   d. Phase 2
   i. Update on Implementation Requirements and Timeline
   ii. Issues:
   - Integrated Forward Markets and Simultaneous Optimization
   - Residual Unit Commitment
   - Financial v. Physical Forward Schedules

   e. Phase III (including Locational Marginal Pricing (LMP) and CRRs)
   i. Update on Implementation Timeline
   ii. Issues:
   - Network Model and State Estimator MP and Optimal Power Flow (OPF)
   - CRRs
   - Financial v. Physical Foward Schedules

5. California ISO Market Surveillance Committee—Opinion and Comment
6. Next Steps/Future Conferences

[FR Doc. 02–20543 Filed 8–13–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–416–000]

Williams Gas Pipelines Central, Inc.; Notice of Application

August 8, 2002.

On July 31, 2002, Williams Gas Pipelines Central, Inc. (Williams), 3800 Frederica Street, Owensboro, Kentucky 42301, filed an application pursuant to Section 7(c) of the Natural Gas Act (NGA), as amended, and the Federal Energy Regulatory Commission's (Commission) Rules and Regulations thereunder. Williams requests authorization to: construct 15.67 miles of pipeline; and, perform piping upgrades at a compressor station. The facilities are necessary to provide additional incremental firm transportation service of 66,800 Decatherms per Day(Dth/d) for electric power generation expansion and LDC load growth, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Following its open season, Williams received binding requests from Empire District Electric Co.(63,800 Dth/d) and Kansas Gas Service(3,000 Dth/d) for 15 years of firm transportation service.

Williams requests authority to: (1) Construct approximately 15.67 miles of 20-inch pipeline from the Southern Trunk 20-inch Loop Line "FR" in Cherokee County, Kansas to Jasper County, Missouri; and, (2) install piping upgrades at the Saginaw compressor station in Newton County, Missouri to increase maximum allowable operating pressure from 820 psig to 900 psig. The cost of these modifications is estimated to be approximately $10,500,000. Further, Williams requests that the Commission determine that costs of the proposed facilities should be rolled-in with existing facility costs in their next general rate case.

Questions regarding the application may be directed to David N. Roberts, Manager of Certificates and Tariffs, P.O. Box 20008, Owensboro, Kentucky 42304, or call (270) 688–6712.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 28, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to

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the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the nonparty commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20533 Filed 8–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–159–000, *et al.*]

Delaware Mountain Wind Farm, LP, *et al.*; Electric Rate and Corporate Regulation Filings

August 8, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Delaware Mountain Wind Farm, LP

[Docket No. EG02–159–000]

Take notice that on August 6, 2002, Delaware Mountain Wind Farm, LP (Applicant), filed with the Federal Energy Regulatory Commission (Commission) an amendment to its June 26, 2002 application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited partnership engaged directly and exclusively in the business of owning and operating an approximately 30 MW wind-powered generation facility located in Culberson County, Texas. Electric energy produced by the facility will be sold at wholesale.

Comment Date: August 29, 2002.

2. Williams Generating Memphis, L.L.C.

[Docket No. EG02–176–000]

Take notice that on August 5, 2002, Williams Generating Memphis, L.L.C. (WGM) tendered for filing pursuant to Part 365 of the Federal Energy Regulatory Commission's Regulations, 18 CFR part 365, its application for determination of exempt wholesale generator status.

WGM, a wholly-owned subsidiary of Williams Refining & Marketing, L.L.C., will own a natural gas-fired electric generating facility with a capacity of approximately 75 MW net in summer ambient conditions and 80 MW net in winter conditions.

Comment Date: August 29, 2002.

3. LMB Funding, Limited Partnership

[Docket No. EG02–177–000]

Take notice that on August 5, 2002, LMB Funding, Limited Partnership (LMB), filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations and section 32 of the Public Utility Holding Company Act, as amended (the Application).

The Application seeks a determination that LMB qualifies for Exempt Wholesale Generator status. LMB is a Delaware limited partnership that will own, but not operate a gas-fired combined cycle electric generating facility rated at approximately 600 MW capacity. The facility will be used for the generation of electricity exclusively for sale at wholesale. Copies of this application have been served upon the Securities and Exchange Commission and the Pennsylvania Utility Commission.

Comment Date: August 28, 2002.

4. Cargill-Alliant, LLC v. New York Independent System Operator, Inc.

[Docket No. EL02–116–000]

Take notice that on August 6, 2002, Cargill-Alliant, LLC (Cargill-Alliant), filed a complaint against New York Independent System Operator, Inc (NYISO). Cargill-Alliant alleges that the NYISO, in violation of its tariff, has unlawfully withheld interest on Cargill-Alliant's cash deposit held in escrow by the NYISO.

Comments and Answers: August 28, 2002.

5. Commonwealth Edison Company

[Docket No. ER01–2985–002]

Take notice that on August 5, 2002, Commonwealth Edison Company (Com Ed) submitted for filing, in compliance with the Commission's letter order dated February 13, 2002 in Docket Nos. ER01–2985–000 and -001, an executed copy of the Interconnection Agreement between Com Ed and Zion Energy LLC (Zion).

ComEd states that a copy of this filing has been served on Zion and the Illinois Commerce Commission.

Comment Date: August 26, 2002.

6. Arizona Public Service Company

[Docket No. ER02–2417–000]

Take notice that on August 5, 2002, Arizona Public Service Company tendered for filing Service Agreement No. 147 under FERC Electric Tariff, Eleventh Revised Volume No. 2, effective date January 1, 2001 and filed with the Federal Energy Regulatory Commission by Arizona Public Service Company is to be cancel effective June 30, 2002.

Comment Date: August 26, 2002.

7. Northeast Utilities Service Companies

[Docket No. ER02–2418–000]

Take notice that on August 5, 2002, the Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, and Holyoke Power and Electric Company, submitted pursuant to section 205 of the Federal Power Act and Part 35 of the Federal Energy Regulatory Commission's (Commission) regulations, rate schedule changes to modify the Northeast Utilities Companies' existing transmission arrangement with the Connecticut Municipal Electric Energy Cooperative (CMEEC) to provide for the delivery of firm power to the Fort Hill Farms substation at the Mohegan Trust Land Border.

A May 1, 2002 effective date has been requested. NUSCO states that copies of these materials were sent to CMEEC and the regulatory commission for the State of Connecticut.

Comment Date: August 29, 2002.

8. PPL Electric Utilities Corporation

[Docket No. ER02–2419–000]

Take notice that on August 5, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) tendered for filing an Interconnection Agreement between PPL Electric Utilities and Bloomsburg Hospital.

Comment Date: August 26, 2002.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2420–000]

Take notice that on August 2, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted modifications to amend the energy imbalance provisions set forth in Schedule 4A of its Joint Open Access Transmission Tariff of the Midwest Independent Transmission System Operator, Inc. for the Transmission System (Michigan) (Midwest ISO JOATT).

The Midwest ISO has requested an effective date of May 1, 2002. The Midwest ISO has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: August 23, 2002.

10. Williams Generating Memphis, L.L.C.

[Docket No. ER02–2421–000]

Take notice that on August 5, 2002, Williams Generating Memphis, L.L.C. (WGM) tendered for filing pursuant to section 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, its application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its Electric Rate Schedule FERC No. 1.

Comment Date: August 26, 2002.

11. Progress Energy on Behalf of Carolina Power & Light Company

[Docket No. ER02–2422–000]

Take notice that on August 6, 2002, Carolina Power & Light Company (CP&L) tendered for filing Service Agreements for Non-Firm and Short-Term Firm Point-to-Point Transmission Service with Allegheny Energy Supply Company, LLC. Service to this Eligible Customer will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on behalf of CP&L.

CP&L is requesting an effective date of July 15, 2002 for these Service Agreements. A copy of the filing was served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: August 27, 2002.

12. Southern California Edison Company

[Docket No. ER02–2423–000]

Take notice that on August 6, 2002, effective the First day of January 2002, Rate Schedule FERC No. 214 and all supplements thereto and Rate Schedule FERC No. 442, filed with the Federal Energy Regulatory Commission by Southern California Edison Company, are to be canceled.

Notice of the proposed cancellation has been served upon the Public Utilities Commission of the State of California and PacifiCorp.

Comment Date: August 27, 2002.

13. New England Power Company

[Docket No. ER02–2424–000]

Take notice that on August 6, 2002, New England Power Company (NEP) submitted for filing Second Revised Service Agreement No. 86 between NEP and Green Mountain Power Corporation under NEP's FERC Electric Tariff, Second Revised Volume No. 9.

Comment Date: August 27, 2002.

14. New England Power Company

[Docket No. ER02–2425–000]

Take notice that on August 6, 2002, New England Power Company (NEP) submitted for filing Third Revised Service Agreement No. 7 between NEP and Green Mountain Power Corporation under NEP's FERC Electric Tariff, Original Volume No. 1.

Comment Date: August 27, 2002.

15. PJM Interconnection, L.L.C. and Allegheny Power

[Docket No. RT01–98–008]

Take notice that on August 5, 2002, PJM Interconnection, L.L.C. (PJM) in compliance with the Federal Energy Regulatory Commission's (Commission) July 23, 2002 order in these proceedings, submitted for filing revised tariff sheets to implement the approved rate settlement in this proceeding. PJM states that, consistent with the settlement and the Commission's order, the revised tariff sheets, which effect a rate reduction, have an effective date of April 1, 2002.

PJM states that it served a copy of its filing on all PJM members, and each of the state electric regulatory commissions within the PJM region.

Comment Date: September 9, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20565 Filed 8–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–031–000]

Iroquois Gas Transmission System, L.P.; Notice of Availability of the Environmental Assessment for the Proposed Brookfield Expansion Project

August 8, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or

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Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Iroquois Gas Transmission System, L.P. (Iroquois) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed compressor station, including:

- A new 10,000 horsepower compressor;
- A turbo-compressor building and three additional control/monitoring/maintenance buildings;
- A 500-foot-long access road;
- A security fence; and
- Water well and septic system.

The purpose of the proposed facilities would be to allow for the delivery of natural gas to customers in Queens and Long Island, New York. Iroquois states that both the City of New York and Long Island are experiencing a substantial increase in the demand for gas fired electric generation, which is directly tied to the growth in population and demand in this particular region of the Northeast.

We are currently reviewing a fifth alternative site proposed by the Town of Brookfield and the Brookfield Board of Education. This site is located on Vail Road approximately one mile west of the proposed project site. We are continuing to evaluate in greater detail this site alternative and specifically request reviewers to comment on the merits of this alternative versus Iroquois' proposed site. This site alternative is described more fully in section C.4. of the EA.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Reference Docket No. CP02–031–000; and
- Mail your comments so that they will be received in Washington, DC on or before September 9, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our final order. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's rules of practice and procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at (202) 502–8222, TTY (202) 208–1659. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20527 Filed 8–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12186–000.

c. *Date filed:* June 4, 2002.

d. *Applicant:* Calero Hydro, LLC.

e. *Name of Project:* Calero Dam Project.

f. *Location:* On Calero Creek and the Guadalupe River, Santa Clara County, California utilizing the Calero Dam. The Calero Dam is owned by the Santa Clara Valley Water District.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208)745–0834, E-mail *npsi@nwpwrservices.com.*

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.* Please include the project number (P–12186–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 840-foot-long, 90-foot-high concrete dam, (2) an existing reservoir having a surface area of 337 acres with storage capacity of 9,850 acre-feet and normal water surface elevation of 485 feet msl, (3) a proposed 200-foot-long,72-inch-diameter steel penstock, (4) a proposed powerhouse containing one generating unit having an installed capacity of 1.5 MW, (5) a proposed 1-mile-long, 15 kV transmission line, and (6) appurtenant facilities.

Applicant estimates that the average annual generation would be 12 GWh and would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number to access the document. For assistance call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item h above.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20528 Filed 8–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12241–000.

c. *Date filed:* June 17, 2002.

d. *Applicant:* Rock Creek Hydro, LLC.

e. *Name of Project:* Rock Creek Lake Dam Project.

f. *Location:* On Rock Creek, in Powell County, Montana utilizing the Rock Creek Lake Dam owned by Castle Mountain Ranch, Inc.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208)745–0834, E-mail *npsi@nwpwrservices.com.*

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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Comments, motions to intervene, and protests may be electronically filed via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm*. Please include the project number (P–12241–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 320-foot-long, 30-foot-high concrete dam, (2) an existing reservoir having a surface area of 177 acres with storage capacity of 2,552 acre-feet and normal water surface elevation of 5,844 feet msl, (3) a proposed 500-foot-long, 84-inch-diameter steel penstock, (4) a proposed powerhouse containing one generating unit having an installed capacity of 1.5 MW, (5) a proposed 5-mile-long, 25 kV transmission line, and (6) appurtenant facilities.

Applicant estimates that the average annual generation would be 6.3 GWh and would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number to access the document. For assistance call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item h above.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20529 Filed 8–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12246–000.

c. *Date filed:* June 18, 2002.

d. *Applicant:* Bear Creek Hydro, LLC.

e. *Name of Project:* Bear Creek Dam Project.

f. *Location:* On Bear Creek, in Franklin County, Alabama utilizing the Bear Creek Dam administered by the Tennessee Valley Authority.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208)745–0834, E-mail *npsi@nwpwrservices.com*.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene; protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm*. Please include the project number (P–12246–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 1,385-foot-long, 68-foot-high concrete dam, (2) an existing reservoir having a surface area of 320 acres with storage capacity of 2,550 acre-feet and normal water surface elevation of 610 feet msl, (3) a proposed 200-foot-long, 90-inch-diameter steel penstock, (4) a proposed powerhouse containing one generating unit having an installed capacity of 2 MW, (5) a proposed 1-mile-long, 25 kV transmission line, and (6) appurtenant facilities.

Applicant estimates that the average annual generation would be 5.8 GWh and would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number to access the document. For assistance call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item h above.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE"; as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20530 Filed 8–13–02; 8:45 am]

BILLING CODE 6717–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12263–000.

c. *Date filed:* June 24, 2002.

d. *Applicant:* Great Salt Plains Hydro, LLC.

e. *Name of Project:* Great Salt Plains Dam Project.

f. *Location:* On the Salt Fork of the Arkansas River, in Alfalfa County, Oklahoma utilizing the Great Salt Plains Dam administered by the Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834, E-mail *npsi@nwpwrservices.com.*

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.* Please include the project number (P–12263–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Great Salt Plains Dam and would consist of: (1) A proposed intake structure, (2) a proposed 500-foot-long, 96-inch-diameter steel penstock, (3) a proposed powerhouse containing one generating unit having an installed capacity of 1.6 MW, (4) a proposed 1-mile-long, 15 kV transmission line, and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 11 GWh and would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number to access the document. For assistance call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item h above.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20531 Filed 8–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of Licenses and Solicitation of Comments, Motions To Intervene, and Protests

August 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Conveyance of Project Lands and Change in Land Rights.

b. *Project Nos.:* 2300–030, 2311–039, 2326–026, 2327–027, 2422–030, and 2423–016.

c. *Date Filed:* June 27, 2002.

d. *Applicants:* American Tissue—New Hampshire Electric, Inc. (Current licensee) and GNE, LLC (Transferee).

e. *Name of Projects:* Shelburne, Gorham, Cross Power, Cascade, Sawmill, and Riverside.

f. *Location:* All of the projects are located on the Androscoggin River in Coos County, New Hampshire. The projects do not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)).

h. *Applicants Contacts:* Amy S. Koch and Judith Andrade, Cameron McKenna LLP, 2175 K Street, NW., Fifth Floor, Washington, DC 20037, (202) 466–0060, and Jeff Martin, GNE, LLC, 1024 Central Street, Millinocket, ME 04462, (207) 723–4341 (for GNE).

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 219–3097, or e-mail address: *heather.campbell@ferc.gov.*

j. *Deadline for filing comments and or motions:* September 13, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Please include the Project Number (2300–030, *et al.*) on any comments or motions filed.

k. *Description of Filing:* The licensee and transferee of the above projects have filed a request for approval to transfer certain portions of the Androscoggin riverbed and banks to the State of New Hampshire. The transferee would retain all rights to operate and maintain the projects as licensed.

l. *Location of the Application:* This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, 214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20532 Filed 8–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12235–000.

c. *Date filed:* June 17, 2002.

d. *Applicant:* Moose Creek Hydro, LLC.

e. *Name of Project:* Moose Creek Dam Project.

f. *Location:* On the Chena River, in Fairbanks Northstar Borough, Alaska utilizing the Moose Creek Dam administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208)745–0834, e-mail *npsi@nwpwrservices.com.*

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.* Please include the project number (P–12235–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on

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each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Moose Creek Dam and would consist of: (1) A proposed intake structure, (2) a proposed 250-foot-long, 84-inch-diameter steel penstock, (3) a proposed powerhouse containing one generating unit having an installed capacity of 1.5 MW, (4) a proposed 5-mile-long, 25 kV transmission line, and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 7 GWh and would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number to access the document. For assistance call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item h above.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20534 Filed 8–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12242–000.

c. *Date filed:* June 17, 2002.

d. *Applicant:* San Jacinto Hydro, LLC.

e. *Name of Project:* San Jacinto Dam Project.

f. *Location:* On the San Jacinto River, in Harris County, Texas utilizing the San Jacinto Dam owned by the City of Houston.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208)745–0834, e-mail *npsi@nwpwrservices.com.*

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. Deadline for filing motions to intervene, protests and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.* Please include the project number (P–12242–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 8,656-foot-long, 66-foot-high concrete dam, (2) an existing reservoir having a surface area of 12,240 acres with storage capacity of 281,800 acre-feet and normal water surface elevation of 43 feet msl, (3) a proposed 500-foot-long, 144-inch-diameter steel penstock, (4) a proposed powerhouse containing two generating units having a total installed capacity of 5 MW, (5) a proposed 3-mile-long, 25 kV transmission line, and (6) appurtenant facilities.

Applicant estimates that the average annual generation would be 15.3 GWh and would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number to access the document. For assistance call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item h above.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20535 Filed 8–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12251–000.

c. *Date filed:* June 18, 2002.

d. *Applicant:* Ute Hydro, LLC.

e. *Name of Project:* Ute Dam Project.

f. *Location:* On the Canadian River, in Quay County, New Mexico utilizing the Ute Dam owned by the New Mexico Interstate Stream Commission.

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g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208)745–0834, E-mail *npsi@nwpwrservices.com.*

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.* Please include the project number (P–12251–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 6,530-foot-long,132-foot-high concrete dam, (2) an existing reservoir having a surface area of 3,392 acres with storage capacity of 403,000 acre-feet and normal water surface elevation of 3,770 feet msl, (3) a proposed 200-foot-long, 78-inch-diameter steel penstock, (4) a proposed powerhouse containing one generating unit having an installed capacity of 2.6 MW, (5) a proposed 2-mile-long, 25 kV transmission line, and (6) appurtenant facilities.

Applicant estimates that the average annual generation would be 3.8 GWh and would be sold to a local utility

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number to access the document. For assistance call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item h above.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20536 Filed 8–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12274–000.

c. *Date filed:* June 25, 2002.

d. *Applicant:* Meyers Hydro, LLC.

e. *Name of Project:* John T. Meyers Lock and Dam Project.

f. *Location:* On the Ohio River, in Posey County, Indiana utilizing the John T. Meyers Lock and Dam administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., PO Box 535, Rigby, ID 83442, (208)745–0834, e-mail *npsi@nwpwrservices.com.*

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.* Please include the project number (P–12274–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' John T. Meyers Lock and Dam and would consist of: (1) A proposed intake structure, (2) three proposed 50-foot-long, 240-inch-diameter steel penstock, (3) a proposed powerhouse containing three generating units having a total installed capacity of 45 MW, (4) a proposed 1-mile-long, 50 kV transmission line, and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 325 GWh and would be sold to a local utility

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number to access the document. For assistance call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item h above.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file

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comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–20537 Filed 8–13–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 12183–000.
c. *Date filed:* June 4, 2002.
d. *Applicant:* Medina Hydro, LLC.
e. *Name of Project:* Medina Dam Project.
f. *Location:* On the Medina River, Medina County, Texas utilizing the Medina Dam owned by Bexar-Medina-Atacosa Counties Water Improvement.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., PO Box 535, Rigby, ID 83442, (208)745–0834, e-mail *npsi@nwpwrservices.com.*
i. *FERC Contact:* Robert Bell, (202) 219–2806.
j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.* Please include the project number (P–12183–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 1,580-foot-long, 164-foot-high concrete dam, (2) an existing reservoir having a surface area of 5,575 acres with storage capacity of 25,400 acre-feet and normal water surface elevation of 1,064 feet msl, (3) a proposed 200-foot-long, 60-inch-diameter steel penstock, (4) a proposed powerhouse containing one generating unit having an installed capacity of 1.5 MW, (4) a proposed 5-mile-long, 15 kV transmission line, and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 5.2 GWh and would be sold to a local utility

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number to access the document. For assistance call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item h above.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents

must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–20538 Filed 8–13–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11887–000]

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

August 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.
b. *Project No:* 12237–000.
c. *Date Filed:* June 17, 2002.
d. *Applicant:* Nimrod Hydro, LLC.
e. *Name of Project:* Nimrod Dam Hydroelectric Project.
f. *Location:* The proposed project would be located on an existing dam owned by the U.S. Army Corps of Engineers, on the Fourche La Fave River in Perry County, Arkansas.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).
h. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., PO Box 535, Rigby, ID 83442, (208) 745–8630.
i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671.
j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Please include the project number(P–12237–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed run-of-river project using the existing Corps of Engineers' Nimrod Dam would consist of: (1) A 96-inch-diameter, 200-foot-long steel penstock, (2) a powerhouse containing one generating unit with an installed capacity of 2.5 MW, (3) a 25-kv transmission line approximately 1 mile long, and (4) appurtenant facilities. The project would have an annual generation of 8.3 GWh.

l. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents

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must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20539 Filed 8–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12243–000.

c. *Date filed:* June 17, 2002.

d. *Applicant:* Spavinaw Hydro, LLC.

e. *Name of Project:* Spavinaw Dam Project.

f. *Location:* On Spavinaw Creek, Mayes County, Oklahoma utilizing the Spavinaw Dam owned by the City of Tulsa.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., PO Box 535, Rigby, ID 83442, (208)745–0834, e-mail *npsi@nwpwrservices.com.*

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.* Please include the project number (P–12243–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 3,680-foot-long, 75-foot-high concrete dam, (2) an existing reservoir having a surface area of 1,584 acres with storage capacity of 38,000 acre-feet and normal water surface elevation of 680 feet msl, (3) a proposed 200-foot-long, 84-inch-diameter steel penstock, (4) a proposed powerhouse containing one generating unit having an installed capacity of 2.3 MW, (5) a proposed 1-mile-long, 15 kV transmission line, and (6) appurtenant facilities.

Applicant estimates that the average annual generation would be 6.6 GWh and would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number to access the document. For assistance call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item h above.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the

Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20540 Filed 8–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12262–000.

c. *Date filed:* June 21, 2002.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Shenango Dam Project.

f. *Location:* On the Shenango River in Mercer County, Pennsylvania. The existing Shenango Dam is administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115, e-mail *uep@neo.rr.com.*

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.* Please include the project number (P–12262–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project utilizing the existing U.S. Army Corps of Engineer's Shenango Dam and reservoir would consist of: (1) A penstock and discharge works; (2) a powerhouse on the tailrace side of the dam with a total installed capacity of 1,510 kW; (3) a transmission line; and (4) other appurtenances.

Applicant estimates that the average annual generation would be 5,800 MWh and would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number to access the document. For assistance call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item h above.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation

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of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20541 Filed 8–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12277–000.

c. *Date filed:* June 26, 2002.

d. *Applicant:* G.V. Montgomery Hydro LLC.

e. *Name of Project:* G.V. Montgomery L & D Project.

f. *Location:* On the Tombigbee River in Itawamba County, Mississippi. The existing G. V. Montgomery L & D is administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208)745–0834, e-mail *npsi@nwpwrservices.com.*

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and Iterrventions may be filed electronically via the Internet in lieu of paper; *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site. Please include the project number (P–12277–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project utilizing the existing U.S. Army Corps of Engineer's G. V. Montgomery Lock and Dam and reservoir would consist of: (1) A proposed intake structure, (2) a proposed 100-foot-long, 108-inch-diameter steel penstock, (3) a proposed powerhouse containing one generating unit having an installed capacity of 1.8 MW, (4) a proposed 2-mile-long, 15 kV transmission line, and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 13.2 GWh and would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number to access the document. For assistance call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item h above.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of infent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20542 Filed 8–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

August 7, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2726–012.

c. *Date Filed:* July 29, 2002.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Upper and Lower Malad Hydroelectric Project.

f. *Location:* On the Malad River in Gooding County, Idaho, approximately 3 miles north of Hagerman, Idaho.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825").

h. *Applicant Contact:* Robert W. Stahman, Idaho Power Company, P.O. Box 70, Boise, Idaho 83707, (208) 388–2676.

I. *FERC Contact:* John Blair (202) 502–6092 or john.blair@FERC.gov.

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: September 26, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link.

m. This application is not ready for environmental analysis at this time.

n. The existing project consists of: (1) An upper diversion dam consisting of a gated spillway section 100 feet long and a flume section 123 feet long; (2) A concrete flume 4,635 feet long between the upper diversion dam and the upper intake structure; (3) The upper concrete intake structure 80.5 feet long and approximately 21 feet wide; (4) A steel penstock 10 feet in diameter and approximately 238 feet long connected to the upper powerhouse; (5) The upper reinforced concrete powerhouse containing one generating unit having an installed nameplate capacity of 8.27 megawatts; (6) A lower diversion dam consisting of a gated spillway section 163 feet long and a flume section 136 feet long; (7) A concrete flume 5,318 feet long between the lower diversion dam and the lower intake structure; (8) The lower concrete intake structure 85 feet long and approximately 23 feet wide; (9) A steel penstock 12 feet in diameter and approximately 301 feet long connected to the lower powerhouse; (10) The lower reinforced concrete powerhouse containing one generating unit having an installed nameplate capacity of 13.5 megawatts; and (11) Other appurtenances.

o. A copy of the application is on file with the Commission and is available

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for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for Text Telephone (TTY) call (202) 208–1659. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the *Idaho State Historic Preservation Officer (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance Letter—October 2002;
Request Additional Information—October 2002;
Issue Scoping Document 1 for comments—January 2003;
Request Additional Information—March 2003;
Issue Scoping Document 2—April 2003;
Notice of application is ready for environmental analysis—May 2003;
Notice of the availability of the draft EA—October 2003;
Notice of the availability of the final EA—January 2004;
Ready for Commission's decision on the application—February 2004;

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20545 Filed 8–13–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7259–1]

Notice of Outer Continental Shelf Final Determination for McCovey Prospect

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of Final Action.

SUMMARY: EPA Region 10 is hereby providing notice that it issued an Outer Continental Shelf (OCS) permit to EnCana Oil & Gas (USA) Inc. The permit (Authority to Construct) was issued on May 29, 2002, and became effective July 4, 2002.

EnCana proposes to conduct exploratory oil and gas drilling in the OCS near-shore waters of the Beaufort Sea at the McCovey Prospect exploration site, north-northeast of the Midway Islands, in the vicinity of Prudhoe Bay, Alaska. EnCana proposes to utilize a mobile offshore drilling unit consisting of a converted crude tanker with topside drilling facilities that sits on top of an all steel submersible barge. Exploratory drilling will be conducted from November 2002 through March 2003, and / or, from November 2003 through March 2004.

The proposed facility is subject to the State of Alaska requirements applicable to OCS sources. See 40 CFR part 55, Appendix A. The facility has proposed and accepted operating restrictions to avoid PSD review. No New Source Performance Standards (40 CFR part 60) or National Emissions Standards for Hazardous Air Pollutants (40 CFR parts 61 and 63) apply to emission units at the facility.

40 CFR 55.6(a)(3) requires EPA to follow the procedures in 40 CFR part 124 used to issue PSD permits. In accordance with those procedures, comments were received during the public comment period. EPA Region 10 responded to comments, and certain proposed permit conditions were changed in the final permit. EnCana received the final permit on June 3, 2002. A copy of the final permit was concurrently provided to commentors. Review of the final permit by the Environmental Appeals Board was not requested within 30 days of EnCana's receipt of the final permit, pursuant to 40 CFR 124.19, and thus the final permit became effective July 4, 2002.

40 CFR 124.19(f)(2) requires notice of any final agency action regarding a PSD (OCS) permit to be published in the **Federal Register** Review. This notice satisfies that requirement.

FOR FURTHER INFORMATION CONTACT: If you have any questions or would like a copy of the permit, please contact Dan Meyer at (206) 553–4150. You may also contact Mr. Meyer by mail at: Office of Air Quality (OAQ–107), U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

Dated: August 6, 2002.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 02–20582 Filed 8–13–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0032; FRL–7191–2]

Access to Confidential Business Information by Midwest Research Institute (MRI)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Midwest Research Institute (MRI) of Kansas City, MO access to information which has been submitted to EPA under sections 4 and 5 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA under sections 4 and 5 of TSCA occurred as a result of an approved waiver dated June 24, 2002.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara A. Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

III. What Action is the Agency Taking?

Under contract number GS–10F–0127J, MRI of 425 Volker Boulevard, Kansas City, MO, will assist the Office of Pollution Prevention and Toxics (OPPT) in providing technical support for chemical management activities authorized under TSCA on halogenated dibenzodioxins and dibenzofurans (HDDs/HDFs) in commercial products. They will also provide support in the review of analytical protocols; sampling; and quality assurance projects plans, submitted by industries involved in the production, processing, distribution, use, and disposal of chemicals listed in 40 CFR 766.27.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number GS–10F–0127J, MRI will require access to CBI submitted to EPA under sections 4 and 5 of TSCA, to perform successfully the duties specified under the contract.

MRI personnel was given access to information submitted to EPA under sections 4 and 5 of TSCA. Some of the information may be claimed or determined to be CBI. Access to the confidential data submitted to EPA under sections 4 and 5 of TSCA occurred as a result of an approved waiver dated June 24, 2002. This waiver was necessary to allow MRI to assist OPPT in providing technical support for chemical management activities authorized under TSCA on HDDs/HDFs in commercial produets.

EPA is issuing this notice to inform all submitters of information under sections 4 and 5 of TSCA, that the Agency may provide MRI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA's Region VII site in Kansas City, MO and MRI's site located at 425 Volker Boulevard, Kansas City, MO. However, access will not occur at MRI's Kansas City, MO facility until after it has been inspected and approved for the storage of TSCA CBI.

MRI will be required to adhere to all provisions of EPA's *TSCA Confidential Business Information Security Manual.*

Clearance for access to TSCA CBI under this contract may continue until January 14, 2003.

MRI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: July 25, 2002.

Allan S. Abramson,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–20583 Filed 8–13–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–1531; FRL–7192–4]

Organophosphate Pesticides; Reassessment of Meat Commodity Tolerances for Tetrachlorvinphos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As part of its ongoing review of existing organophosphate (OP) tolerances under the Food Quality Protection Act (FQPA), EPA has determined that 11 meat commodity tolerances for tetrachlorvinphos can be reassessed at this time. These "non-contributor" tolerances meet the FQPA safety standard in section 408(b)(2) of the Federal Food, Drug and Cosmetic Act (FFDCA) and can be reassessed for the purposes of FFDCA section 408 (q). EPA has concluded that these tolerances make, at most, a negligible contribution to the cumulative risk from OP pesticides. This notice closely relates to a previous **Federal Register** notice of May 22, 2002 (67 FR 35991, FRL–7178–9) in which EPA announced the reassessment of non-contributing tolerances for certain meats, animal feeds, and refined sugars. EPA expects that additional tolerances will be appropriate for reassessment based on the kind of approach described in this notice.

DATES: The reassessment of these tolerances is effective as of July 23, 2002.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7805C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general who are interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of this notice may also be accessed at http: www.epa.gov/oppsrrd1/op.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–1531. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

The Food Quality Protection Act of 1996 significantly amended the FFDCA, creating a new safety standard for judging the acceptability of tolerances for pesticide residues in food. The new statutory standard allows EPA to approve a new tolerance or leave an existing tolerance in place only if the tolerance is "safe." The statute defines "safe" to mean "that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable data" [FFDCA section

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408(b)(2)(A)(ii)]. In making the safety determination, EPA "shall consider, among other relevant factors . . . available information concerning the cumulative effects of such residues and other substances that have a common mechanism of toxicity" [FFDCA section 408(b)(2)(D)(v)]. The FQPA amendments not only made the new safety standard applicable to new tolerances, but also to tolerances in existence when FQPA became law. FQPA set a ten year schedule for EPA to reassess all existing tolerances, with interim deadlines for completion of 33 percent and 66 percent of tolerance reassessments three and six years, respectively, after the date of enactment. Pesticide tolerances subject to reassessment under the FQPA section 408(q) may only remain in effect without modification if they meet the section 408(b)(2) safety standard. Finally, FQPA instructed EPA to give priority to the review of tolerances which appear to pose the greatest risk to public health.

Consistent with the FQPA mandate, EPA identified organophosphate pesticides as high priority for tolerance reassessment. EPA has determined that the OPs share a "common mechanism of toxicity," and therefore that the Agency will consider the cumulative risks of OPs in making the safety determination for any tolerance for a pesticide in this group. The Agency has reviewed individual OP pesticides to determine whether they meet the current health and safety standards of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the FFDCA safety standard, and has presented its determinations in documents called "Interim Reregistration Eligibility Decisions" (IREDs). When the pesticide covered by an IRED shares a common mechanism of toxicity with other pesticides, the IRED addresses the aggregate risk of the chemical but does not take a position on the FFDCA standard until the Agency has also considered the potential cumulative risks of the group of pesticides.

In addition to its consideration of individual OP pesticides, EPA has also conducted a preliminary CRA for all of the OPs and sought public comment on the assessment. The Agency recently released the revised OP CRA for public comment. The preliminary and revised OP cumulative risk assessment documents are available at www.epa.gov/pesticides/cumulative. In addition, EPA presented the assessments to its FIFRA Scientific Advisory Panel (SAP) for expert, independent scientific peer review. The SAP provided a generally favorable review of the preliminary assessment. See www.epa.gov/scipoly/sap/index.htm. EPA has raised with stakeholders during a number of public meetings the concept of reassessing selected OP tolerances because, based on available data and assessments, EPA could determine that they make, at most, no more than a negligible contribution to risk. Most recently, the concept of reassessing such "non-contributors" was an agenda topic for the February, 2002, meeting of the Committee to Advise on Reassessment And Transition (CARAT). In a **Federal Register** notice of May 22, 2002 (67 FR 35991, FRL–7178–9), EPA announced the reassessment of non-contributing tolerances for certain meats, animal feeds, and refined sugars, and requested suggestions on other approaches for identifying tolerances that do not contribute risk to the OP cumulative risk assessment.

III. What Action is the Agency Taking?

A. Reassessment of Non-Contributor Tolerances

In this notice, EPA identifies non-contributor meat commodity tolerances for the OP pesticide tetrachlorvinphos and considers these tolerances reassessed for the purposes of FQPA section 408 (q) as of July 23, 2002. A pesticide tolerance subject to reassessment under the FQPA section 408(q) may only remain in effect without modification if it meets the section 408(b) safety standard. This standard is met if EPA finds that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue." In evaluating tolerances under the standard, the FQPA also instructs the Agency to consider the cumulative effects of the pesticide and other substances that have a common mechanism of toxicity. The Agency has now completed the Interim Reregistration Eligibility Decision (IRED) for tetrachlorvinphos, which found that, apart from consideration of the potential cumulative risks from all of the OPs, each of the tolerances would meet the FFDCA safety standard. EPA has now considered the impact of these cumulative risks in the reassessment of these tolerance and has determined that these tolerances make, at most, only a negligible contribution to the overall risks from OPs. Therefore, these tolerances can be maintained regardless of the outcome of the OP cumulative assessment and any potential regulatory action taken as a result of that assessment. Accordingly, EPA believes it is appropriate to consider these tolerances reassessed for the purposes of FQPA section 408(q) as of July 23, 2002.

In making the determination that these tolerances contribute negligible (if any) residues and/or risk, EPA considered, among other things, the nature of the use of the pesticide, the data used in conducting aggregate risk assessments for each individual OP, the potential for drinking water contamination, and other data and analyses available to the Agency (such as food residue monitoring and other information that the Agency is using for the CRA). The Agency concludes that these pesticide uses result in minimal or no detectable residues in food, and have no or negligible effects through drinking water. Because a tolerance may apply to more than one raw agricultural commodity, no tolerance is herein reassessed as a non-contributor unless all of the raw agricultural commodities (food forms) that are part of that tolerance are also considered to be non-contributors. EPA also considered the potential impacts of future OP risk management decisions and determined that such decisions would be very unlikely to increase the use of the pesticide on these use sites in a manner or to a degree that the potential exposure under the tolerance would no longer be negligible. As part of its preliminary cumulative risk assessment, the Agency developed an estimate of the potential contribution that OP pesticides used in different parts of the country could make to overall risk as a result of the presence of residues of such pesticides in drinking water. Because of the nature of the available data, EPA's estimate employs assumptions that are designed not to understate potential drinking water exposure. The OP preliminary and revised CRA concluded that drinking water was not a significant source of potential exposure. In reaching the determination to reassess these tolerances, EPA has considered this analysis, the public comment and the SAP's advice, as well as the information developed to assess the aggregate exposure from drinking water for each of the individual pesticides being reassessed.

The Agency's assessment of these tolerances is effectively complete and the tolerances are considered reassessed. Nothing in this notice is intended to modify in any way any determination or requirement set forth in individual pesticide IREDs, or affect existing or future regulatory agreements or use cancellation actions required for some other purpose (e.g., due to worker or ecological risk concerns). For any of the uses that may be cancelled pursuant to any such decision, EPA expects that the associated tolerance would be revoked at the appropriate time unless it is properly supported for an import tolerance. In addition, all of these pesticide/use pattern combinations are included in the preliminary CRA and will remain in the CRA even though they involve exposures that pose negligible/minimal risk.

No conclusions about reassessment should be drawn about tolerances that are not identified as non-contributors in this notice. EPA expects that additional tolerances will be appropriate for reassessment based on the kind of approach described here and in a previous the **Federal Register** notice of May 22, 2002 (67 FR 35991, FRL–7178–9) in which EPA announced the reassessment of non-contributing tolerances for certain meats, animal feeds, and refined sugars. Additional tolerances may be reassessed without the need for regulation upon completion of the CRA. In other words, the failure of a tolerance to be identified as a non-contributor in this or any other announcement does not imply that the pesticide/use combination will ultimately be subject to regulatory action. For tolerances reassessed as announced in this notice or using the approach described herein, EPA has concluded that the decision to reassess these tolerances will have no impact on any subsequent determination or decisions that may be necessary if the CRA were to conclude that cumulative exposure to the OPs poses risks of concern.

B. Meat Commodity Tolerances for Tetrachlorvinphos

EPA has determined that 11 meat commodity tolerances for tetrachlorvinphos, listed later in the notice, are reassessed at this time. EPA reassessed other OP non-contributing meat tolerances in an earlier **Federal Register** notice (May 22, 2002, 67 FR 35991, FRL–7178–9). The assessment approach applied to those meat tolerances is now being applied to the tetrachlorvinphos non-contributor meat commodity tolerances listed in this notice, and is decsribed below.

Currently, there are OP tolerances for many animal commodities: Milk, eggs, poultry, and other meats (cattle, goats, hogs, horses, and sheep). Human exposure to pesticide residues can occur as a consequence of the use of a pesticide on animals or their feed if the residues transfer to the animal commodities that humans consume. EPA examined the potential for the transfer to such human foods of OP residues from animal feeds, and from the direct application of the OP to an animal (e.g., to control nuisance pests such as biting flies), and concludes that residue transfer generally does not occur, or if it does, the transfer is minimal. The following summarizes the factors that the Agency considered in making the decision to reassess these tolerances.

The Agency examined the available study data for the OPs, which includes extensive livestock feeding/metabolism studies. These study results are confirmed by extensive monitoring data on animal commodities reflecting all registered uses. There are very few detectable residues in the OP monitoring data for animal commodities. The extensive monitoring data are from the U.S. Department of Agriculture's (USDA) Pesticide Data Program (PDP) and U.S. Food and Drug Administration's (FDA) Total Diet Study (TDS) covering residues of multiple OPs in meats and poultry. The residue monitoring data showed infrequent detections, and those residues were detected at low levels. Out of approximately 400 meat samples analyzed by the TDS for multiple OPs from 1991–1999, only 9 samples detected any OP residues (the residues ranged between 0.002 ppm and 0.009 ppm). Out of the approximately 500 poultry samples analyzed by PDP for multiple OPs for 1997–2000, only 1 sample detected an OP residue (0.01 ppm) for a pesticide that currently has a tolerance.

For milk and eggs, extensive monitoring data are available from USDA's PDP and FDA's Surveillance Program. The residue monitoring data show no detectable OP residues in milk (there was only one trace sample detected out of approximately 1,800 samples analyzed by PDP for multiple OPs from 1996–1998). The residue monitoring for eggs also showed no detectable OP residues (only one trace sample was detected out of approximately 1,300 samples analyzed by the FDA's Surveillance Program for multiple OPs from 1992–1998).

In addition to an examination of the meat, poultry, milk, and egg monitoring data, as described above, the potential risk associated with the detected residues was addressed in the Agency's preliminary CRA of the OP pesticides. Although EPA concluded that OP residues would not be expected to occur in significant amounts in meat or milk, EPA nonetheless made the conservative assumption that all meat food forms contained OP residues equal to a level that was the highest found in the FDA monitoring program (TDS). Despite the fact that this assumption would overestimate potential exposure, the analysis in the OP CRA indicated that animal commodities do not significantly contribute to OP dietary exposure and total OP dietary risk.

EPA expects to announce other meat/poultry/egg/milk and animal feed tolerances as reassessed in future notices as appropriate in light of their individual OP assessments. In addition, some of these tolerances may be revoked in future notices in the **Federal Register** if EPA determines that the tolerances are no longer needed. The Agency plans to issue a notice announcing the Agency's intention to revoke several animal meat tolerances because they are no longer necessary.

The following 11 tetrachlorvinphos meat commodity tolerances (40 CFR 180.252) are considered reassessed:

Cattle, beef
Cattle, dairy
Cattle, fat
Egg
Goat, fat
Hog
Hog, fat
Horse
Horse, fat
Milk, fat
Poultry, fat

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: July 31, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–20455 Filed 8–13–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0152; FRL–7192–6]

Organophosphate Pesticides; Reassessment of Additional Non-Contributing Commodity Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As part of its ongoing review of existing organophosphate (OP) tolerances under the Food Quality Protection Act (FQPA), EPA has determined that 37 OP tolerances can be reassessed at this time. EPA has concluded that these tolerances make, at most, a negligible contribution to the cumulative risk from OP pesticides. These tolerances are considered to be "non-contributors" based on the especially small number (less than 1 percent) of reported pesticide residue

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detections in the monitoring data being used in the OP cumulative risk assessment (U.S. Department of Agriculture's [USDA] Pesticide Data Program [PDP]). These non-contributor tolerances meet the FQPA safety standard in section 408(b)(2) of the Federal Food, Drug and Cosmetic Act (FFDCA) and can be reassessed for the purposes of FFDCA sec. 408 (q). This notice discusses the concept and basis for this approach to reassessing selected OP tolerances based on available information relating to the revised OP cumulative risk assessment (CRA). Nothing in this notice is intended to modify in any way any determination or requirement set forth in individual pesticide IREDs, or affect regulatory agreements or use cancellation actions required for some other purpose (e.g., due to worker or ecological risk concerns). This notice closely relates to two previous **Federal Register** notices: The notice of July 17, 2002 (67 FR 46972, FRL–7186–8) in which EPA announced the reassessment of non-contributing tolerances for certain commodities with no pesticide residue detections in PDP, and the notice of May 22, 2002 (67 FR 35991, FRL–7178–9) in which EPA announced the reassessment of non-contributing tolerances for certain meats, animal feeds, and refined sugars, and requested suggestions on other approaches for identifying tolerances that do not contribute risk to the OP cumulative risk assessment.

DATES: The reassessment of these tolerances is effective as of July 23, 2002.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7805C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general who are interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of this notice may also be accessed at http: www.epa.gov/oppsrrd1/op.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0152. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

The Food Quality Protection Act of 1996 significantly amended the FFDCA, creating a new safety standard for judging the acceptability of tolerances for pesticide residues in food. The new statutory standard allows EPA to approve a new tolerance or leave an existing tolerance in place only if the tolerance is "safe." The statute defines "safe " to mean "that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable data" [FFDCA section 408(b)(2)(A)(ii)]. In making the safety determination, EPA "shall consider, among other relevant factors . . . available information concerning the cumulative effects of such residues and other substances that have a common mechanism of toxicity" [FFDCA section 408(b)(2)(D)(v)]. The FQPA amendments not only made the new safety standard applicable to new tolerances, but also to tolerances in existence when FQPA became law. FQPA set a ten year schedule for EPA to reassess all existing tolerances, with interim deadlines for completion of 33 percent and 66 percent of tolerance reassessments three and six years, respectively, after the date of enactment. Pesticide tolerances subject to reassessment under the FQPA section 408(q) may only remain in effect without modification if they meet the section 408(b)(2) safety standard. Finally, FQPA instructed EPA to give priority to the review of tolerances which appear to pose the greatest risk to public health.

Consistent with the FQPA mandate, EPA identified organophosphate pesticides as high priority for tolerance reassessment. EPA has determined that the OPs share a "common mechanism of toxicity," and therefore that the Agency will consider the cumulative risks of OPs in making the safety determination for any tolerance for a pesticide in this group. The Agency has reviewed individual OP pesticides to determine whether they meet the current health and safety standards of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the FFDCA safety standard, and has presented its determinations in documents called "Interim Reregistration Eligibility Decisions" (IREDs). When the pesticide covered by an IRED shares a common mechanism of toxicity with other pesticides, the IRED addresses the aggregate risk of the chemical but does not take a position on the FFDCA standard until the Agency has also considered the potential cumulative risks of the group of pesticides.

In addition to its consideration of individual OP pesticides, EPA has also conducted a preliminary CRA for all of the OPs and sought public comment on the assessment. The Agency recently released the revised OP CRA for public comment. The preliminary and revised OP cumulative risk assessment documents are available at www.epa.gov/pesticides/cumulative. In addition, EPA presented the assessments to its FIFRA Scientific Advisory Panel (SAP) for expert, independent scientific peer review. The SAP provided a generally favorable review of the preliminary assessment. See www.epa.gov/scipoly/sap/index.htm.

EPA has raised with stakeholders during a number of public meetings the concept of reassessing selected OP tolerances because, based on available data and assessments, EPA could determine that they make, at most, no more than a negligible contribution to risk. Most recently, the concept of reassessing such "non-contributors" was an agenda topic for the February, 2002, meeting of the Committee to Advise on Reassessment And Transition (CARAT). In a **Federal Register** notice of May 22, 2002 (67 FR 35991, FRL–7178–9), EPA announced the reassessment of non-contributing tolerances for certain meats, animal feeds, and refined sugars, and requested suggestions on other approaches for identifying tolerances that do not contribute risk to the OP cumulative risk assessment. EPA announced in a **Federal Register** notice of July 17, 2002 (67 FR 46972, FRL–7186–8) the reassessment of non-contributing tolerances for certain commodities with no pesticide residue detections in PDP.

III. What Action is the Agency Taking?

A. Reassessment of Non-Contributor Tolerances

In this notice, EPA identifies non-contributor tolerances and considers these tolerances reassessed for the purposes of FQPA section 408 (q) as of July 23, 2002. A pesticide tolerance subject to reassessment under the FQPA section 408(q) may only remain in effect without modification if it meets the section 408(b) safety standard. This standard is met if EPA finds that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue." In evaluating tolerances under the standard, the FQPA also instructs the Agency to consider the cumulative effects of the pesticide and other substances that have a common mechanism of toxicity. For each of the tolerances being reassessed, the Agency has issued an Interim Reregistration Eligibility Decision (IRED), which found that, apart from consideration of the potential cumulative risks from all of the OPs, each of the tolerances would meet the FFDCA safety standard. EPA has now considered the impact of these cumulative risks in the reassessment of these tolerance and has determined that these tolerances make, at most, only a negligible contribution to the overall risks from OPs. Therefore, these tolerances can be maintained regardless of the outcome of the OP cumulative assessment and any potential regulatory action taken as a result of that assessment. Accordingly, EPA believes it is appropriate to consider these tolerances reassessed for the purposes of FQPA section 408(q) as of July 23, 2002.

In making the determination that these tolerances contribute negligible (if any) residues and/or risk, EPA considered, among other things, the nature of the use of the pesticide, the data used in conducting aggregate risk assessments for each individual OP, the potential for drinking water contamination, and other data and analyses available to the Agency (such as food residue monitoring and other information that the Agency is using for the CRA). The Agency concludes that these pesticide uses result in minimal detectable residues in food, and have no or negligible effects through drinking water. Because a tolerance may apply to more than one raw agricultural commodity, no tolerance is herein reassessed as a non-contributor unless all of the raw agricultural commodities (food forms) that are part of that tolerance are also considered to be non-contributors. EPA also considered the potential impacts of future OP risk management decisions and determined that such decisions would be very unlikely to increase the use of the pesticide on these use sites in a manner or to a degree that the potential exposure under the tolerance would no longer be minimal. As part of its preliminary and revised cumulative risk assessments, the Agency developed an estimate of the potential contribution that OP pesticides used in different parts of the country could make to overall risk as a result of the presence of residues of such pesticides in drinking water. Because of the nature of the available data, EPA's estimate employs assumptions that are designed not to understate potential drinking water exposure. The OP preliminary and revised CRA concluded that drinking water was not a significant source of potential exposure. In reaching the determination to reassess these tolerances, EPA has considered this analysis, the public comment and the SAP's advice, as well as the information developed to assess the aggregate exposure from drinking water for each of the individual pesticides being reassessed.

The Agency's assessment of these tolerances is effectively complete and the tolerances are considered reassessed. Nothing in this notice is intended to modify in any way any determination or requirement set forth in individual pesticide IREDs, or affect regulatory agreements or use cancellation actions required for some other purpose (e.g., due to worker or ecological risk concerns). For any of the uses that may be canceled pursuant to any such decision, EPA expects that the associated tolerance would be revoked at the appropriate time unless it is properly supported for an import tolerance. In addition, all of these pesticide/use pattern combinations are included in the preliminary and revised CRA and will remain in the CRA even though they involve exposures that pose negligible/minimal risk.

No conclusions about reassessment should be drawn about tolerances that are not identified as non-contributors in this notice. EPA expects that additional tolerances will be appropriate for reassessment based on the kind of approach described here and in previous **Federal Register** notices of May 22, 2002 (67 FR 35991, FRL–7178–9) in which EPA announced the reassessment of non-contributing tolerances for certain meats, animal feeds, and refined sugars, and July 17, 2002 (67 FR 46972, FRL–7186–8) in which EPA announced the reassessment of non-contributing tolerances for certain commodities with no pesticide residue detections in PDP. Additional tolerances may be reassessed without the need for regulation upon completion of the CRA. In other words, the failure of a tolerance to be identified as a non-contributor in this or any other announcement does not imply that the pesticide/use combination will ultimately be subject to regulatory action. For tolerances reassessed as announced in this notice or using the approach described herein, EPA has concluded that the decision to reassess these tolerances will have no impact on any subsequent determination or decisions that may be necessary if the CRA were to conclude that cumulative exposure to the OPs poses risks of concern.

B. Tolerances With Less Than One Percent Residue Detections in PDP

EPA has determined that certain OP tolerances, listed later in the notice, are reassessed at this time because they make, at most, a minimal contribution to OP risk. The Agency examined the monitoring data being used in the OP cumulative risk assessment and found that pesticide residue was detected only in an insignificant number of the samples (less than one percent) that were analyzed for these food commodity/OP combinations, including the parent chemical and the degradates that were tested. In addition, the revised OP cumulative risk assessment indicates that relatively few pesticide/crop combinations account for the vast majority of exposure. These tolerances are not among those pesticide/crop

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combinations that are major contributors to risk.

The monitoring data being used in the OP cumulative assessment, USDA's PDP data, are the Agency's preferred data for risk assessment. The number of samples analyzed in the PDP for these food commodity/OP combinations ranged from 275 to 2,600 samples. USDA's PDP program has been collecting data on pesticide residues found on foods since 1991, primarily for purposes of estimating dietary exposure to pesticides. For several years, EPA has routinely used the PDP database in developing assessments of dietary risk. The PDP's sampling procedures were designed to capture actual residues of the pesticide and selected metabolites in the food supply as close as possible to the time of consumption. Data collected close to actual consumption, such as PDP data, depicts a more realistic estimate of exposure, i.e., residues that could be encountered by consumers. The real-world nature of PDP data makes it preferable for the purposes of this assessment than pesticide field trials, which are another data source available to the Agency. Field trial data are designed to test for residues under exaggerated application scenarios, and are primarily used in establishing tolerances.

The PDP is designed to focus on foods highly consumed by children and to reflect foods typically available throughout the year. PDP's commodity testing profile includes not only fresh fruits and vegetables, but also canned and frozen fruits/vegetables, fruit juices, whole milk, wheat, soybeans, oats, corn syrup, peanut butter, rice, poultry, beef, and drinking water. The PDP generally collects foods at wholesale distribution centers and stores them frozen until analysis. Foods are washed and inedible portions are removed before analysis but these foods are not further cooked or processed. A complete description of the PDP and all data through 1999 are available on the internet at www.ams.usda.gov/science/pdp.

PDP data are not available for all food commodities with current OP registrations, including a limited number of food commodity tolerances that are listed in this notice. When PDP data are not available for a commodity, EPA uses data when it is appropriate to do so from commodities that are measured by PDP to serve as surrogate data sources. This well established practice of using surrogate, or "translated," data is based upon the concept that families of commodities with similar cultural practices and insect pests are likely to have similar pesticide use patterns. For example, data on peaches can be used as surrogate data for apricots. The practice of translating data from tested sources to similar situations that have not been directly tested has been used for some time by EPA in the development of pesticide-specific dietary exposure assessments when monitoring data are unavailable. The methods of translation, specifically, what commodities may be used to represent other commodities, have been made public. EPA is using translated data where appropriate for the purposes of the OP cumulative risk assessment and tolerance reassessment as discussed in this notice.

EPA has examined the PDP data that is being used for the OP cumulative risk assessment and found that residues of the parent pesticide or any tested metabolite were reported in less than one percent of the samples analyzed for the 37 OP tolerances listed below. As a result, EPA has concluded that these tolerances make, at most, a minimal contribution to the cumulative risk from OP pesticides, and, therefore, these tolerances are considered reassessed. EPA expects to announce as reassessed other tolerances that have fewer than one percent detections in PDP in future notices as appropriate in light of their individual OP assessments.

The following 37 tolerances are considered reassessed at this time:

Azinphos methyl (40 CFR 180.154)
Fruit, citrus, group
Eggplant
Grape
Parsley, leaves
Parsley, root
Pepper
Spinach
Strawberry
Tomato, postharvest

Chlorpyrifos (40 CFR 180.342)
Bean, lima
Bean, snap
Brussels sprouts
Cabbage
Cabbage, chinese
Legume vegetables, succulent or dried (except soybean)
Pumpkin
Radish
Rutabaga
Strawberry
Turnip

Disulfoton (40 CFR 180.183)
Cabbage
Lettuce
Pepper
Potato
Soybean
Wheat, grain

Mevinphos (40 CFR 180.157)
Broccoli
Cucumber
Pepper
Strawberry
Tomato

Oxydemeton methyl (40 CFR 180.330)
Cucumber
Pepper
Squash, summer

Phorate (40 CFR 180.206)
Wheat, grain

Phosalone (40 CFR 180.263)
Apple

Phosmet (40 CFR 180.261)
Cherry

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: July 31, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–20456 Filed 8–13–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0175; FRL–7191–7]

Notice of Filing Pesticide Petitions to Establish Tolerances for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0175, must be received on or before September 13, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0175 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9368; e-mail address: *jamerson.hoyt@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet home page at *http://www.epa.gov/.* To access this document, on the home page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0175. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8;30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0175 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *opp-docket@epa.gov,* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0175. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

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Dated: July 31, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the summaries verbatim without editing them in any way. The summaries announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR-4)

Dow Agro Sciences LLC

PP 1E6227, 1E6241, 1E6283, 1E6291, 1E6320, 1E6329, 1E6333, 1E6334, 1E6335, 1E6399, and 1E6340

EPA has received pesticide petitions (PP) (1E6227, 1E6241, 1E6283, 1E6291, 1E6320, 1E6329, 1E6333, 1E6334, 1E6335, 1E6399 and 1E6340) from the Interregional Research Project Number 4 (IR-4), P.O. Box 231, Rutgers University, New Brunswick, NJ 08903 and PP 4F4379 from Dow Agro Sciences LLC, Indianapolis, IN 46268, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish tolerances for clopyralid in or on the raw agricultural commodities as follows:

1. PP 1E6227 proposes a tolerance for flax seed at 3.0 part per million (ppm).
2. PP 1E6241 proposes a tolerance for strawberry at 1.0 ppm.
3. PP 1E6283 proposes a tolerance for hop, dried cones at 5.0 ppm.
4. PP 1E6291 proposes tolerances for rapeseed seed, rapeseed forage, canola seed, mustard seed, and crambe seed at 3 ppm, and canola meat at 6.0 ppm.
5. PP 1E6320 proposes a tolerance for spinach at 5.0 ppm.
6. PP 1E6329 proposes a tolerance for the stone fruit group at 0.5 ppm.
7. PP 1E6333 proposes tolerances for garden beet tops at 3.0 ppm and garden beet roots at 4.0 ppm.
8. PP 1E6334 proposes a tolerance for mustard greens at 5.0 ppm.
9. PP 1E6335 proposes tolerances for turnip roots at 1.0 ppm and turnip greens at 4.0 ppm.
10. PP 1E6340 proposes a tolerance for cranberry at 4 ppm.
11. PP 4F4379 proposes tolerances for sweet corn, kernel plus cob with husks removed at 1.0 ppm, sweet corn forage at 7.0 ppm, sweet corn stover at 10.0 ppm, pop corn grain at 1.0 ppm, pop corn stover at 10.0 ppm, liver of cattle, goat, horse, and sheep at 3.0 ppm, meat byproducts, except liver, of cattle, goat, horse and sheep at 36.0 ppm, and milk at 0.2 ppm.
12. PP 1E3999 proposes a tolerance for the Brassica, head and stem, subgroup at 2.0 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions. This notice includes a summary of the petition prepared by Dow Agro Sciences LLC, Indianapolis, IN 46268.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism in plants is adequately understood. No metabolites of significance were detected in plant metabolism studies.

2. *Analytical method.* There is a practical analytical method for detecting and measuring levels of clopyralid in or on food with a limit of quantitation (LOQ) of 0.05 ppm that allows monitoring of food with residues at or above the levels set in these tolerances. EPA has provided information on this method to FDA. The method is available to anyone who is interested in pesticide residue enforcement.

3. *Magnitude of residues.* For flax, magnitude of residue data on flax in Canada were used. The maximum residue limits for clopyralid in Canada are 0.2 ppm for flax. Trial sites conducted in Canada include Manitoba and Alberta which borders North Dakota and Minnesota. Clopyralid was applied at 150 to 300 g ai/ha (0.13 to 0.27 lb ai/acre). The maximum combined residue was 0.22 ppm.

For mustard greens, magnitude of residue data were collected from field trials conducted in New Jersey, California, South Carolina, Texas, Florida, Michigan, and Tennessee. Each of eight field trial sites consisted of one untreated control plot and one treated plot. The treated plots received one application of the test substance at a rate of approximately 0.187 lb ai/acre. Marketable greens (mustard plants) were collected approximately 30 days following the application. In treated greens (mustard) samples, clopyralid residues ranged from 0.48 to 4.4 ppm.

For turnip roots and tops, magnitude of residue data were collected from field trials conducted in Tennessee, North Carolina, Texas, Georgia, Wisconsin, and California. Each of the six field trial sites consisted of one untreated control plot and one treated plot. The treated plots received one application of the test substance at a rate of approximately 0.187 lb ai/acre. At the North Carolina trial, a banded application was made to simulate regional practices; broadcast applications were made at the five remaining trials. Marketable turnip tops and roots were collected approximately 15 days and 30 days following the application, respectively. In treated tops samples, clopyralid residues ranged from 0.64 to 3.2 ppm. Clopyralid residues in treated roots samples ranged from 0.059 to 0.56 ppm.

For garden beet, magnitude of residue data were collected from field trials conducted in Florida, Michigan, New York, Texas, Wisconsin, and Washington. Each of the seven field trial sites consisted of one untreated control plot and one treated plot. The treated plots received one application of the test substance at a rate of approximately 0.187 lb ai/acre. Marketable beet (garden) roots and tops were collected approximately 30 days following the application, respectively. In treated tops samples, clopyralid residues ranged from 0.36 to 2.8 ppm. Clopyralid residues in treated roots samples ranged from 0.71 to 3.0 ppm.

For stone fruit, cherry field trials were conducted in Michigan, Washington, and New Jersey. Cherry plots were treated once by a broadcast application directed to the orchard floor with clopyralid at approximately 0.5 lb ai/acre. Samples were taken 21 to 31 days after the last treatment. All cherries were pitted prior to freezing. Peach trials were conducted in New Jersey, Michigan, North Carolina, and California. One application of clopyralid at approximately 0.5 lb ai/acre was made to a band on each side of the trees in the treated plots. The fruit in the New Jersey trials matured quickly and were harvested after 20 to 21 days. In North Carolina, the peaches were harvested after 20 days because insect and disease pressure threatened to ruin the crop. All peaches were pitted prior to freezing. Plum trials were conducted in New Jersey, Washington, and California. One application of clopyralid at approximately 0.5 lb ai/acre was made to a bank on each side of the trees in the treated plots. The fruit in one California trial matured quickly and was harvested after 21 days. The other California trial included collection of both fresh and dried plums. All plums were pitted prior to freezing or drying.

No detectable residues of clopyralid were found in any of the untreated peach samples. The treated samples from California and one of the treated samples from North Carolina also had no detectable residues. The residues in the other samples were no higher than 0.35 ppm. No detectable residues of clopyralid were found in any of the untreated or treated cherries in this study. No detectable residues of clopyralid were found in any of the untreated plums or dried plums. No detectable residues of clopyralid were found in the treated plum samples from California. The treated plum samples from New Jersey and Washington had residues in the range 0.05 to 0.41 ppm. The dried plum samples had residues in the range 0.16 to 0.19 ppm.

For hops, magnitude of residue data were collected from field trials conducted in Oregon and Washington. Each field trial site consisted of one untreated control plot and one treated plot. The treated plots received two applications of the test substance at a rate of 0.38 lb ai/acre ± 5%. All applications were made post-emergence, directed, 21 to 22 days apart. Dried hop cone samples were collected 27 to 32 days following the final application. Residue concentrations from treated samples ranged from a high 4.14 ppm to a low 0.3 ppm. All residues found in treated samples fell between the highest and lowest concentrations tested in method validation, 0.1 ppm and 0.5 ppm. None of the untreated samples were found to contain clopyralid above the instrumental detection limit of 0.08 ppm.

For cranberry, field trials were conducted in Maine, New Jersey, Oregon, Washington, and Wisconsin. Clopyralid was broadcast onto fruiting cranberry vines at approximately 0.25 lb ai/acre to the treated plots, twice, at an interval of 13 to 16 days. Treated and untreated cranberries were harvested 44 to 51 days after the second application and stored frozen. No detectable residues of clopyralid were found on untreated cranberries from any of the field trials. Residues on treated samples were in the range 0.88 to 3.1 ppm.

For spinach, field trials were conducted in Texas, New York, California, Tennessee, South Carolina, and Georgia. Clopyralid was applied once at a rate of 0.092 to 0.290 lb ai/acre 20 to 22 days before harvest. Spinach was harvested and stored frozen. Residues on treated samples were in the range 0.056 to 3.8 ppm.

For strawberry, field trials were conducted in Oregon, California, North Carolina, New Jersey, and Michigan. Clopyralid applied foliar post-emergence in the late summer or early fall at a use rate of approximately 0.25 lb ai/acre, followed by a second application of approximately 0.125 lb ai/acre at 28 to 31 days before harvest resulted in residues of clopyralid ranging from 0.10 to 0.505 ppm. When applied at 0.50 lb ai/acre followed by a second application of approximately 0.25 lb ai/acre at 28 to 31 days before harvest resulted in residues of clopyralid ranging from 0.295 to 1.61 ppm.

For sweet corn, field trials were conducted in California, Georgia, Illinois, Michigan, Minnesota, North Carolina, New York, Ohio and Pennsylvania. Clopyralid was applied once as a post-emergent broadcast spray with water as a carrier at the rate of 0.66 to 0.70 percent treated (pt)/acre (0.25 to 0.26 lb ai/acre). The application was made when the corn was 12 to 18 inches in height and prior to tasseling. The ears were removed before the remaining plant (forage) was chopped. Residues were detected at the following ppm ranges: Grain, 0.087–0.12; forage, 0.34–2.0; ears (K + CWHR) 0.029–0.23; cannery waste, no residues were detected above the limit of quantitation (LOQ) of the method.

For popcorn, field trials were conducted in Indiana, Iowa, Nebraska and Ohio. Clopyralid was applied once as a post-emergent broadcast spray with water as the carrier at the rate of 0.67 pt/acre (0.25 lb ai/acre). The application was made when the popcorn was 22 to 24 inches in height. Green forage was collected when kernels were in the milk stage (i.e., at a pre-harvest interval of 45 to 55 days). Kernels and fodder were collected at normal harvest (i.e., at pre-harvest intervals of 78 to 129 days). Residues were detected at the following ppm ranges: Grain, 0.03–0.91; fodder, no detectable residues above the LOQ of the method - 0.60; forage, 0.14–1.2.

In the magnitude of residue field studies for canola, crambe, and mustard seed, the first study had three field trials, one each in Georgia, South Dakota, and Washington. Each field trial site consisted of one untreated control plot and one treated plot. The treated plots received one broadcast application of the test substance 70 to 74 days before harvest. The test substance was applied to the treated plot at a rate of 0.211 lb ai/acre to 0.256 lb ai/acre. Residues of clopyralid detected in the field treated samples ranged from 0.42 to 1.32 ppm. The second field study had three field trials, one each in Georgia, South Dakota, and Washington. Again, each field trial site consisted of one untreated control plot and one treated plot. The treated plots received one broadcast application of the test substance 48 to 49 days before harvest. The test substance was applied to the treated plot at a rate of 0.231 lb ai/acre to 0.255 lb ai/acre. Two additional samples from the Washington trial (one treated and one untreated) were sent for processing into oil and meal. Residues of clopyralid detected in the field treated samples of canola seed ranged from >0.05 to 1.86 ppm. There were no detectable residues of clopyralid in either the canola oil or canola meal samples.

B. Toxicological Profile

1. *Acute toxicity.* Clopyralid has low acute toxicity. The rat oral LD_{50} is 5,000 milligrams/kilogram (mg/kg) or greater for males and females. The rabbit dermal LD_{50} is greater than 2,000 mg/kg and the rat inhalation LC_{50} is greater than 1.0 mg/L air (the highest attainable concentration). In addition, clopyralid is not a skin sensitizer in guinea pigs and is not a dermal irritant. Technical clopyralid is an ocular irritant, but ocular exposure to the technical material would not normally be expected to occur to infants or children or the general public. End use formulations of clopyralid have similar low acute toxicity profiles and most have low ocular toxicity as well.

2. *Genotoxicty.* Clopyralid is not genotoxic. The following studies have been conducted and all were negative for genotoxic responses: Ames bacterial mutagenicity assay (with and without exogenous metabolic activation); host-mediated assay *in vivo* cytogenetic test, rat; *in vivo* cytogenetic test, mouse; *in vivo* dominant lethal test, rat; *in vitro* unscheduled DNA synthesis assay in primary rat hepatocyte cultures; *in vitro* mammalian cell gene mutations assay in Chinese hamster ovary cell cultures (with and without exogenous metabolic activation).

3. *Reproductive and developmental toxicity.* Developmental toxicity was studied using rats and rabbits. The developmental study in rats resulted in a developmental no observed adverse effect level (NOAEL) of >250 mg/kg/day (a maternally toxic dose) and a maternal toxicity NOAEL of 75 mg/kg/day. A 1974 study in rabbits revealed no evidence of developmental or maternal toxicity at 250 mg/kg/day; thus, the developmental and maternal NOEL was >250 mg/kg/day. A more recent study in rabbits (1990) resulted in developmental and maternal NOAELs of 110 mg/kg/day based on maternal toxicity at 250 mg/kg/day. Based on all of the data for clopyralid, there is no evidence of developmental toxicity at dose levels that do not result in maternal toxicity.

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In a 2-generation reproduction study in rats, pups from the high dose group which were fed diets containing clopyralid had a slight reduction in body weight during lactation and an increase in liver weights in F1a and F1b weanlings. The NOAEL for parental systemic toxicity was 500 mg/kg/day. There was no effect on reproductive parameters at >1,500 mg/kg/day nor was there an adverse effect on the morphology, growth or viability of the offspring; thus, the reproductive NOAEL is >1,500 mg/kg/day.

4. *Subchronic toxicity.* The following studies have been conducted using clopyralid. In a rat 90–day feeding study, Fischer 344 rats were fed diets containing clopyralid at doses of 5, 15, 50, or 150 mg/kg/day with no adverse effects attributed to treatment. In a second study, Fischer 344 rats were fed diets containing clopyralid at doses of 300, 1,500, and 2,500 mg/kg/day. Effects at the highest doses were decreased food consumption accompanied by decreased body weights and weight gains in both males and females. Slightly increased mean relative liver and kidney weights were noted in males of all doses and in females at the top two doses. Because there were no other effects, the kidney and liver weight effects were judged as being adaptive rather than directly toxic. The NOAEL was 1,500 mg/kg/day for males and females. The NOAEL was 300 mg/kg/day for females. In a mouse 90–day feeding study, B6C3F1 mice were fed diets containing clopyralid at doses of 200, 750, 2,000, or 5,000 mg/kg/day. A slight decrease in body weight occurred at the top dose in both sexes. The liver was identified as the target organ based on slight increases in liver weights and minimal microscopic alterations at the higher dose levels. The liver changes were considered to be reversible and adaptive. The NOAEL for males was 2,000 mg/kg/day and for females was 750 mg/kg/day. In a 180–day feeding study, beagle dogs were fed diets containing clopyralid at doses of 15, 50, or 150 mg/kg/day; there were no adverse effects. In a second dietary study, dogs also were fed diets containing clopyralid at doses of 15, 50, or 150 mg/kg/day; the only effect was an increase in the mean relative liver weight in females at the 150 mg/kg/day. In a 21–day dermal study, clopyralid was applied by repeated dermal application to New Zealand White rabbits at dose levels up to 1,000 mg/kg/day. Treatment produced no systemic effects.

5. *Chronic toxicity.* In a chronic toxicity and oncogenicity study, Sprague-Dawley rats were fed diets containing clopyralid at doses of 5, 15, 50 or 150 mg/kg/day. The only effect was a trend toward a decreased body weight of female rats receiving the 150 mg/kg/day dose and the NOAEL was 50 mg/kg/day. In a second study, clopyralid was fed to Fischer 344 rats in the diet at doses of 15, 150, or 1,500 mg/kg/day. The effects were confined almost entirely to the 1,500 mg/kg/day dose groups and included slightly decreased food consumption and body weights, slightly increased liver and kidney weights and macroscopic and microscopic changes in the stomach. No tumorigenic response was present. The NOAEL for this study was 150 mg/kg/day. B6C3F1 mice were maintained for 2 years on diets formulated to provide targeted dose levels of 10, 500, or 2,000 mg/kg/day. The only evidence of toxicity was body weight depression in males dosed at 2,000 mg/kg/day. There was no evidence of tumorigenic response at any dose level. Based on the chronic toxicity data, EPA has established the reference dose (RfD) for clopyralid at 0.5 mg/kg/day. The RfD for clopyralid based on a 2–year chronic oncogenicity study in rats with a NOAEL of 50 mg/kg/day and an uncertainty (or safety) factor of 100.

6. *Carcinogenicity.* Using Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), clopyralid would be classified as Group E for carcinogenicity (no evidence of carcinogenicity) based on the results of the carcinogenicity studies. There was no evidence of carcinogenicity in 2–year feeding studies in mice and rats at the dosage levels tested. The doses tested are adequate for identifying a cancer risk. Thus, a cancer risk assessment would not be appropriate.

7. *Animal metabolism.* Disposition and metabolism of clopyralid were tested in male and female rats at a dose of 5 mg/kg (oral). The majority of a radioactive dose was excreted in 24 hours of all dose groups. Fecal elimination was minor. Detectable levels of residual radioactivity were observed in the carcass and stomach at 72 hours post-dose. High performance liquid chromotography (HPLC) and thin layer chromotography (TLC) analysis of urine and fecal extracts showed no apparent metabolism of clopyralid.

8. *Metabolite toxicology.* There are no clopyralid metabolites of toxicological significance.

9. *Endocrine disruption.* There is no evidence to suggest that clopyralid has an effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure.* Acute dietary risk assessment is performed for a food-use pesticide if a toxicological study has indicated the possibility of an acute effect of concern occurring as a result of a 1–day or single exposure. EPA has previously used a NOAEL of 75 mg/kg/day from a rat developmental toxicity study to assess risk from acute dietary exposure, which is also the value used for assessment of acute dietary risk in this analysis. An acute RfD of 0.75 mg/kg/day was calculated, based on a NOAEL of 75 mg/kg/day and an uncertainty factor of 100 (10 for interspecies extrapolation and 10 for intraspecies variation). The maternal NOAEL was 75 mg/kg/day based on decreased weight gain during gestation days 6–9. The developmental NOEL was >250 mg/kg/day, indicating no additional sensitivity for developing young relative to adults. The acute RfD of 0.75 mg/kg/day was used to assess acute dietary risk for the general population, including infants and children.

Chronic dietary exposure to clopyralid is possible due to the potential presence of clopyralid residue in certain foods and drinking water. Chronic dietary risk was evaluated using a chronic RfD of 0.5 mg/kg/day, which is based on a NOAEL of 50 mg/kg/day from a chronic rat study along with an uncertainty factor of 100.

Since there was no evidence of carcinogenicity in the toxicology studies, a cancer risk assessment is not applicable.

i. *Food.* The dietary exposure assessment was based on all commodities with tolerances for clopyralid established at 40 CFR 180.431 together with the following proposed tolerances: Sweet corn: 3.0 ppm; popcorn: 3.0 ppm; canola: 3.0 ppm; flax seed: 0.3 ppm; hops: 5.0 ppm; strawberries: 1.0 ppm; mustard seed: 3 ppm; mustard greens: 5 ppm; stone fruits (crop group 12): 0.5 ppm; spinach: 5 ppm; garden-beet tops: 3 ppm; garden-beet roots: 4 ppm; turnip tops: 4 ppm; turnip roots: 1 ppm; and cranberry: 4 ppm. Crambe seed tolerance at 3 ppm is also requested, although it was not included within the residue file, since it is not considered by the Dietary Exposure Evaluation Model (DEEM) version 7.76 due to low cultivated area and low consumption patterns. The DEEM 7.76, which is produced by Novigen Sciences, Inc. and licensed to Dow AgroSciences, was used to estimate dietary exposure. This software used the food consumption data for the 1994–96 USDA Continuing Surveys of Food Intake by Individuals (CSFII 1994–96).

a. *Acute.* A Tier 1 acute dietary risk assessment was conducted with the conservative assumptions of 100% crop treated and tolerance level residues for 108 crop commodities. Acute dietary risk was assessed using an acute RfD of 0.75 mg/kg/day. Even with conservative assumptions used in this analysis, acute dietary exposure was estimated to occupy only 3.97% of the acute RfD for the overall U.S. population, at the 95th percentile. Acute dietary exposure for children 1–6 years old, the population subgroup estimated to have the highest exposure, occupies only 6.91% of the acute RfD, at the 95th percentile. Adverse effects are not expected for exposures occupying 100% or less of the RfD. Therefore, acute exposure and risk from food is well within acceptable levels.

b. *Chronic.* A Tier 1 chronic dietary exposure and risk was estimated with the conservative assumptions of 100% crop treated and tolerance level residues for all crops. The estimate of potential chronic exposure and risk is very conservative and estimated risk would be substantially reduced with further refinement to the exposure estimate. Even with the conservative assumptions used in this analysis, chronic exposure is estimated to occupy only 2.3% of the RfD for the general U.S. population. Chronic dietary exposure for children 1–6 years old, the population subgroup estimated to have the highest exposure, occupies only 5.4% the chronic RfD. Therefore, chronic exposure and risk from food is well within acceptable levels.

ii. *Drinking water.* There is no established Maximum Contaminant Level (MCL) or Health Advisory Level (HAL) for residues of clopyralid in drinking water. High-end potential drinking water concentrations of clopyralid were estimated for ground water and surface water using the Screening Concentration in Ground Water (SCI-GROW) and Generic Expected Environmental Concentration (GENEEC) models respectively. Both GENEEC and SCI-GROW are Tier I screening level models that provide very conservative Estimated Environmental Concentrations (EECs) of pesticide residue in surface water and ground water, respectively. The EECs of a pesticide in surface water and ground water can be compared to a Drinking Water Level of Comparison (DWLOC) as a surrogate estimate of exposure and risk. The DWLOC is the concentration of a pesticide in drinking water that would be acceptable as an upper limit in light of total aggregate exposure to that pesticide in food and from residential uses.

The EEC of clopyralid in ground water according to SCI-GROW is 2 mg/L. Based on GENEEC, the estimated peak and 56–day concentration of clopyralid in surface water is 27 mg/L. EPA has previously indicated that the 56–day value from GENEEC should be divided by 3 for comparison to short-term and chronic DWLOC values. Therefore, a surface water concentration of 9 mg/L was used for comparison to short-term and chronic DWLOCs.

a. *Acute.* EPA has indicated that peak concentrations of a pesticide in surface water should be used in an acute assessment for comparison with DWLOC values. The peak surface water concentration of clopyralid was estimated to be 27 parts per billion (ppb) while the potential concentration in ground water was estimated to be 2 ppb. The DWLOC for acute exposure was based on an acute RfD of 0.75 mg/kg/day and was calculated to be 13,664 ppb and 8,853 ppb for the overall U.S. population and children 1–6 years old, respectively. Therefore, the acute DWLOC is substantially greater than estimated high-end concentrations of clopyralid in surface water or ground water, indicating that potential acute exposure and risk from drinking water is well within acceptable levels.

b. *Chronic.* As indicated previously, EECs in ground water and surface water for chronic exposures were estimated at 2 ppb and 9 ppb, respectively. The chronic DWLOC was calculated based on a chronic RfD of 0.5 mg/kg/day and accounted for potential chronic exposure to clopyralid through residues in food. The chronic DWLOC for the general U.S. population and children 1–6 years old was calculated to be 17,100 ppb and 4,740 ppb, respectively. Therefore, the chronic DWLOCs are substantially greater than estimated residue concentrations in surface water or ground water, indicating that chronic exposure and risk from drinking water is well with acceptable levels.

2. *Non-dietary exposure.* Clopyralid is registered for residential use on turf. Therefore, there is potential for both residential applicator exposure and post-application reentry exposure. EPA previously determined that there was no dermal toxicity endpoint since no systemic toxicity was observed at the highest dose tested (HDT) in a rabbit dermal toxicity study. Therefore, a dermal risk assessment is not required for residential exposure. EPA previously selected a maternal NOAEL of 75 mg/kg/day from a rat developmental toxicity study for assessing risk from short-term residential exposure through oral and inhalation routes, which is also the value used in this assessment. Inhalation exposure for residential applicators as well as post-application reentry exposure for children through incidental non-dietary ingestion of clopyralid residues were estimated using default values given in EPA's SOPs for Residential Exposure Assessments. Clopyralid residues have been found to dissipate rapidly from turfgrass, having a half-life of approximately 1–day. Considering the rapid dissipation of residues from turf along with the labeled use pattern, residential exposure may occur over a short-term interval, but would not be expected over an intermediate-term interval. Therefore, a short-term residential risk assessment was conducted, but an intermediate-term assessment was not required.

EPA has previously indicated that it is appropriate to aggregate chronic food and water exposure with short-term residential exposures for clopyralid. In addition to its use in assessment of risk from short-term residential exposure, the short-term NOAEL of 75 mg/kg/day was also used for assessing risk from dietary and drinking water exposure during a short-term interval. A Tier 1 estimate of aggregated exposure for adults from food and from inhalation for residential applicators resulted in a Margin of Exposure (MOE) of 6,800. Additionally, a short-term DWLOC for adults was calculated to be 25,800 ppb. Aggregated exposure for children 1–6 years old from food and from incidental non-dietary ingestion of clopyralid residues from treated turf resulted in an MOE of 2,300. Additionally, a short-term DWLOC for children 1–6 years old was calculated to be 7,100 ppb. EPA has indicated that the EECs for chronic exposure through ground water and surface water may also be used for assessing short-term exposure and risk. Therefore, the short-term ground water and surface water EECs are 2 ppb and 9 ppb, respectively. The minimum acceptable MOE was based on an uncertainty factor of 100. Since the short-term MOE for adults and children is well above 100 and DWLOCs are well above EECs for drinking water, aggregated short-term exposures are not expected to exceed a level of concern.

D. Cumulative Effects

The potential for cumulative effects of clopyralid and other substances that have a common mechanism of toxicity was considered. The mammalian toxicity of clopyralid is well defined. However, no reliable information exists to indicate that toxic effects produced by clopyralid would be cumulative with those of any other chemical compound. Additionally, clopyralid does not appear to produce a toxic metabolite produced by other substances. Therefore, consideration of a common

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mechanism of toxicity with other compounds is not appropriate at this time. Thus, potential exposures to clopyralid were considered only in an aggregate exposure assessment.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions previously described, acute dietary exposure to residues of clopyralid from current and proposed uses was estimated to occupy only 3.97% of the RfD for the general U.S. population. EPA generally has no concern for exposures below 100% of the RfD since the RfD represents the level at or below which exposure will not pose appreciable risks to human health. Additionally, the acute DWLOC was calculated to be over 1,500 fold greater than potential clopyralid residue in drinking water as predicted by conservative screening-level models. A conservative Tier 1 assessment indicated that chronic dietary exposure would occupy only 2.3% of the chronic RfD for the general U.S. population. Additionally, the chronic DWLOC was calculated to be over 1,900 fold greater than surface water or ground water EECs developed by screening-level models. A Tier 1 estimate of short-term dietary and residential exposure resulted in an MOE of 6,800, which is well above the minimum acceptable MOE of 100. Further, the short-term DWLOC is over 2,800 fold greater than the short-term EEC for surface water and ground water. Thus, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Dow AgroSciences concludes that there is a reasonable certainty that no harm will result to the general U.S. population from aggregate acute, short-term or chronic exposure to clopyralid residues from current and proposed uses.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of clopyralid, data are considered from developmental toxicity studies in the rat and rabbit, and from multiple generation reproduction studies in rats. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproductive studies provide information relating to prenatal and postnatal effects from exposure to the pesticide, on the reproductive capability of mating animals, and data on systemic toxicity.

Based on the results of developmental toxicity and multigenerational reproduction studies, there are no indications of prenatal or postnatal toxicity concerns for infants and children from exposure to clopyralid. FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database for clopyralid relative to prenatal and postnatal effects for children is complete. There were no indications of neurotoxicity and developmental toxicity was not observed in the absence of maternal toxicity. It is concluded that there is no indication of increased sensitivity of infants and children relative to adults and that an additional FQPA safety factor is not required.

Using conservative exposure assumptions previously described, acute dietary exposure to residues of clopyralid from current and proposed uses was estimated to occupy only 6.91% of the RfD for children 1–6 years old, the population subgroup estimated to be most highly exposed. EPA generally has no concern for exposures below 100% of the RfD since the RfD represents the level at or below which exposure will not pose appreciable risks to human health. Additionally, the acute DWLOC was calculated to be over 900 fold greater than potential clopyralid residue in drinking water as predicted by conservative screening-level models. A conservative Tier 1 assessment indicated that chronic dietary exposure for children 1–6 years old would occupy only 5.4% of the chronic RfD. Additionally, the chronic DWLOC was calculated to be over 500 fold greater than surface water or ground water EECs developed by screening-level models. A Tier 1 estimate of short-term dietary and residential exposure for children 1–6 years old resulted in an MOE of 2,300, which is well above the minimum acceptable MOE of 100. Further, the short-term DWLOC is over 700 fold greater than the short-term EEC for surface water and ground water. Thus, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Dow AgroSciences concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate acute, short-term or chronic exposure to clopyralid residues from current and proposed uses.

F. International Tolerances

There are no Codex or Mexican maximum residue limits. Canada has set a maximum residue limit of 2.0 ppm for barley, oats, and wheat, and 7.0 ppm for the milled fractions of barley, oats, and wheat (excluding flour).

[FR Doc. 02–20230 Filed 8–13–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0174; FRL–7191–9]

Notice of Filing Pesticide Petitions to Establish Tolerances for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0174, must be received on or before September 13, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0174 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet home page at *http://www.epa.gov/.* To access this document, on the home page select "Laws and Regulations," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0174. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0174 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *opp-docket@epa.gov,* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0174. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 31, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioner and represents the view of the petitioner. EPA is publishing the summaries verbatim without editing them in any way. The summaries announce the availability of a description of the analytical methods available to EPA for

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the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4, (IR-4)

PP 2E6382, 2E6408, and 2E6441

EPA has received pesticide petitions (2E6382, 2E6408, and 2E6441) from the Interregional Research Project Number 4 (IR-4), Technology Centre of New Jersey, the State University of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing tolerances for residues of methoxyfenozide in or on the raw agricultural commodities as follows:

1. PP 2E6382 proposes a tolerance for artichoke, globe at 3.0 parts per million (ppm).

2. PP 2E6408 proposes a tolerance for lychee, longan, spanish lime, rambutan and pulasan at 2.0 ppm.

3. PP 2E6441 proposes a tolerance for cranberry at 0.5 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

This notice includes a summary of the petitions prepared by Dow Agro Sciences, LLC, Indianapolis, IN 46268–1054, the manufacturer of methoxyfenozide.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of methoxyfenozide residues in plants and animals is adequately understood and was previously published in the **Federal Register** of July 5, 2000 (65 FR 41355) (FRL–6497–5).

2. *Analytical method.* An high performance liquid chromatography using ultra-violet detection (HPLC/UV) method TR 34–00–109 for the enforcement of tolerances in stone fruits has been developed and is adequate to support the proposed tolerances. Confirmatory method validation data have been submitted for this method. The validated limit of quantitation (LOQ) of the analytical method was 0.02 ppm in all matrices for methoxyfenozide.

3. *Magnitude of residues.* Complete residue data for methoxyfenozide on artichoke, globe; longan; spanish lime; rambutan; pulasan; and cranberry have been submitted. The requested tolerances are adequately supported.

B. Toxicological Profile

1. *Acute toxicity.* The toxicological profile and endpoints for methoxyfenozide which support this petition to establish tolerances were previously published in the **Federal Register** of July 5, 2000 (65 FR 41355).

2. *Endocrine disruption.* The petitioner believes that, since the definition and regulatory significance of the term "endocrine disruptor chemical" have not yet been established by the Agency, it is not clear whether methoxyfenozide, on the basis of observed effects on the thyroid gland and adrenal gland, should be considered to be an "endocrine disruptor chemical." Other than the morphological changes reported in the above referenced document (July 5, 2000, 65 FR 41355), there were no signs of thyroid or adrenal dysfunction in these or in any other studies on methoxyfenozide.

C. Aggregate Exposure

1. *Dietary exposure—i. Food.* Assessments were conducted to evaluate potential risks due to chronic and acute dietary exposure of the U. S. population subgroups to residues of methoxyfenozide. These analyses cover all registered crops, as well as, uses pending with the Agency, active and proposed section 18 uses, and proposed IR-4 minor uses. There are no registered residential nonfood uses of methoxyfenozide.

a. *Acute risk.* No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicology studies on methoxyfenozide including the acute neurotoxicity study in rats, the developmental toxicity study in rats and the developmental toxicity study in rabbits. Since no acute toxicological endpoints were established, Dow Agro Sciences considers acute aggregate risk to be negligible.

b. Chronic assessments were conducted to evaluate potential risks due to chronic dietary exposure of the U.S. population and selected population subgroups to residues of methoxyfenozide. These analyses cover all registered crops, uses pending with the EPA, active and proposed section 18 uses and new proposed IR-4 uses. Dow Agro Sciences used the Dietary Exposure Evaluation Model™ (DEEM), (Novigen Sciences, Washington, DC) software for conducting a chronic dietary (food) risk analysis. DEEM is a dietary exposure analysis system that is used to estimate exposure to a pesticide chemical in foods comprising the diets of the U.S. population, including population subgroups. DEEM contains food consumption data as reported by respondents in the U.S. Department of Agriculture Continuing Surveys of Food Intake by Individuals conducted in 1994–1996. Dow Agro Sciences assumed 100% of crops would be treated and contain methoxyfenozide residues at tolerance levels. The resulting chronic dietary exposure analysis is summarized in Table 1.

TABLE 1.—CHRONIC DIETARY EXPOSURE ANALYSIS BY DEEM (TIER 1)

Population subgroup	Exposure milligrams/kilogram/day (mg/kg/day)	Percent of chronic population adjusted dose
U.S. population - 48 contiguous States	0.0189	18.9
All infants (<1 year old)	0.0315	31.5
Nursing infants (<1 year old)	0.0134	13.4
Non-nursing infants (<1 year old)	0.0368	36.8
Children 1 to 6 years old	0.0376	37.6
Children 7 to 12 years old	0.0216	21.6

TABLE 1.—CHRONIC DIETARY EXPOSURE ANALYSIS BY DEEM (TIER 1)—Continued

Population subgroup	Exposure milligrams/kilogram/day (mg/kg/day)	Percent of chronic population adjusted dose
Females 13+ (nursing)	0.0156	19.1
U.S. population (autumn season)	0.0191	19.1
U.S. population (spring season)	0.0190	19.0
Northeast region	0.0206	20.6
Western region	0.0210	21.0
Hispanics	0.0191	19.1
Non-Hispanic/non-white/non-black	0.0249	24.8

Percent chronic PAD = (Exposure divided by chronic PAD) x 100%.
The subgroups listed are:
1. The U.S. population (total)
2. Those for infants and children
3. The other subgroup(s), if any, for which the percentage of the chronic PAD occupied is greater than that occupied by the subgroup U.S. population (total).

The resulting dietary food exposures occupy up to 37.6% of the chronic population adjusted dose (PAD) for the most highly exposed population subgroup, children 1 to 6 years old. These results should be viewed as conservative (health protective) risk estimates. Refinements such as use of percent crop-treated (PCT) information and/or anticipated residue values would yield even lower estimates of chronic dietary exposure.

ii. *Drinking water.* There are no water-related exposure data from monitoring to complete a quantitative drinking water exposure analysis and risk assessment for methoxyfenozide. Generic Expected Environmental Concentration (GENEEC) and/or EPA's Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) (both product estimates of pesticide concentration in a farm pond) are used to generate estimated environmental concentrations (EECs) for Surface Water and Screening Concentration in Ground Water (SCI-GROW) (an empirical model based upon actual monitoring data collected for a number of pesticides that serve as benchmarks) predicts EECs in ground water. These models take into account the use patterns and the environmental profile of a pesticide, but do not include consideration of the impact that processing raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models at this stage is to provide a coarse screen for assessing whether a pesticide is likely to be present in drinking water at concentrations which would exceed human health levels of concern

A drinking water level of comparison (DWLOC) is the concentration of a pesticide in drinking water that would be acceptable as a theoretical upper limit in light of total aggregate exposure to that pesticide from food, water, and residential uses. EPA uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. In the absence of monitoring data for a pesticide, the DWLOC is used as a point of comparison against the conservative EECs provided by computer modeling SCI-GROW, GENEEC, and PRZM/EXAMS.

a. *Acute exposure and risk.* Because no acute dietary endpoint was determined, Dow Agro Sciences concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

b. *Chronic exposure and risk.* Tier II screening-level assessments can be conducted using the simulation models SCI-GROW and PRZM/EXAMS to generate EECs for ground water and surface water, respectively. The modeling was conducted based on the environmental profile and the maximum seasonal application rate proposed for methoxyfenozide (1.0 lb ai/acre/season). PRZM/EXAMS was used to generate the surface water EECs, because it can factor the persistent nature of the chemical into the estimates.

The EECs for assessing chronic aggregate dietary risk used by HED are 6 parts per billion (ppb) (in ground water, based on SCI-GROW) and 98.5 ppb (in surface water, based on the PRZM/EXAMS, long-term mean). The back-calculated DWLOCs for assessing chronic aggregate dietary risk range from 624 ppb for the most highly exposed population subgroup (children 1 to 6 years old) to 2,839 ppb for the U.S. population (48 contiguous States - all seasons).

The SCI-GROW and PRZM/EXAMS chronic EECs are less than the Agency's level of comparison (the DWLOC value for each population subgroup) for methoxyfenozide residues in drinking water as a contribution to chronic aggregate exposure. Dow Agro Sciences thus concludes with reasonable certainty that residues of methoxyfenozide in drinking water will not contribute significantly to the aggregate chronic human health risk and that the chronic aggregate exposure from methoxyfenozide residues in food and drinking water will not exceed the Agency's level of concern (100% of the chronic PAD) for chronic dietary aggregate exposure by any population subgroup. EPA generally has no concern for exposures below 100% of the chronic PAD, because it is a level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to the health and safety of any population subgroup. This risk assessment is considered high confidence, conservative, and very protective of human health.

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TABLE 2.—DWLOC FOR CHRONIC EXPOSURE TO METHOXYFENOZIDE

Population subgroup	Chronic PAD (mg/kg/day)	Food exposure (mg/kg/day)	Maximum water exposure (mg/kg/day	SCI-GROW (µg/L)	GENEEC 56-day average (µg/L)	DWLOC (µg/L)
U.S. population (48 contiguous States)		0.0189	0.0811			2,839
Females 13+ (nursing)		0.0191	0.0809			2,427
Non-nursing infants (<1 year old)	0.10	0.0368	0.0632	6	98.5	632
Children 1 to 6 years old		0.0376	0.0624			624
Children 7 to 12 years old		0.0216	0.0784			784

Maximum water exposure (mg/kg/day) = chronic PAD (mg/kg/day) - chronic food exposure.
1. DWLOC (µg/L) = (Maximum water exposure mg/kg/day) x body weight (kg)) divided by (1/1,000 mg/µg x water consumed daily (L/day)).
2. Body weights (kg) for adults is 70, for females 13+ is 60 kg and for all children is 10 kg.
3. Drinking water consumption is 2 liters per day for adults and 1 liter per day for children.

2. *Non-dietary exposure.* Methoxyfenozide is not currently registered for use on any residential non-food sites. Therefore, there is no non-dietary acute, chronic, short- or intermediate-term exposure.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency considers "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether methoxyfenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, methoxyfenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, it is assumed that methoxyfenozide does not have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* Using the DEEM exposure assumptions described in this unit, Dow Agro Sciences has concluded that aggregate exposure to methoxyfenozide from the proposed new tolerances will utilize 18.9% of the chronic PAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children 1 to 6 years old at 37.6% of the chronic PAD and is discussed below. EPA generally has no concern for exposures below 100% of the chronic PAD because the chronic PAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to methoxyfenozide in drinking water, the aggregate exposure is not expected to exceed 100% of the chronic PAD. Dow Agro Sciences concludes that there is a reasonable certainty that no harm will result from aggregate exposure to methoxyfenozide residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of methoxyfenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional ten-fold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (UF) (usually 100 for combine interspecies and intraspecies variability) and not the additional ten-fold MOE/UF when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

The toxicology data base for methoxyfenozide included acceptable developmental toxicity studies in both rats and rabbits as well as a 2-generation reproductive toxicity study in rats. The data provided no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to methoxyfenozide. There is a complete toxicity data base for methoxyfenozide an exposure data are complete or are estimated based on data that reasonably account for potential exposures. Based on the completeness of the data base and the lack of prenatal and postnatal toxicity, EPA determined that an additional safety factor was not needed for the protection of infants and children.

Since no toxicological endpoints were established, acute aggregate risk is considered to be negligible. Using the exposure assumptions described in this unit, Dow AgroSciences has concluded that aggregate exposure to methoxyfenozide from the proposed new tolerances will utilize 37.6% of the cPAD for infants and children. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to methoxyfenozide in drinking water, Dow Agro Sciences does not expect the aggregate exposure to exceed 100% of the cPAD. Short-term and intermediate-term risks are judged to be negligible due to the lack of significant toxicological effects observed. Based on these risk assessments, Dow Agro Sciences concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to methoxyfenozide residues.

F. International Tolerances

There are no established or proposed Codex, Canadian or Mexican limits for residues of methoxyfenozide in/on plant or animal commodities. Therefore, no compatibility issues exist with regard to the proposed U.S. tolerances.

[FR Doc. 02–20356 Filed 8–13–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7259–2]

Real-Time Monitoring for Toxicity Caused by Harmful Algal Blooms and Other Water Quality Perturbations

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a final report titled, *Real-Time Monitoring for Toxicity Caused by Harmful Algal Blooms and Other Water Quality Perturbations* (EPA/600/R–01/103), which was prepared by the U.S. Environmental Protection Agency's (EPA) National Center for Environmental Assessment (NCEA) of the Office of Research and Development (ORD). This project, sponsored by EPA's Environmental Monitoring for Public Access and Community Tracking (EMPACT) program, evaluated the ability of an automated biological monitoring system that measures fish ventilatory responses (ventilatory rate, ventilatory depth, and cough rate) to detect developing toxic conditions in water.

DATES: This document will be available on August 14, 2002.

ADDRESSES: The document is available electronically through the NCEA Web site at (*www.epa.gov/ncea*) under the *What's New or Publications menus.* A limited number of paper copies will be available from EPA's National Service Center for Environmental Publications (NSCEP), PO Box 42419, Cincinnati, Ohio 45242; telephone: 1–800–490–8190 or 513–489–8190; facsimile: 5–13–489–8695. Please provide your name and mailing address and the title and EPA number of the requested publication.

FOR FURTHER INFORMATION CONTACT: For further information contact the Technical Information Staff, National Center for Environmental Assessment/Washington Office (8623D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: 202–564–3261; fax: 202–565–0050.

SUPPLEMENTARY INFORMATION: This report describes the development and operation of a real-time automated biomonitoring system for detecting toxicity caused by harmful algal blooms and other water quality perturbations. The system was developed and evaluated over a 2-year period (March 1999 through November 2000) on the Chicamacomico and Transquaking Rivers, tributaries to the Chesapeake Bay on Maryland's Eastern Shore. Relevant literature has been reviewed through May 2001.

Dated: August 6, 2002.

Michael Slimak,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–20581 Filed 8–13–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0046; FRL–7193–1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on 1,1,2-Trichloroethane (1,1,2-TCE) (CAS No. 79–00–5). These data were submitted pursuant to an enforceable testing consent agreement/order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA).

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are concerned about data on health and/or environmental effects and other characteristics of this chemical. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet home page at *http://www.epa.gov/.* To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

2. *In person.* The Agency has established an official record for this action under docket ID number OPPT–2002–0046. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

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III. Test Data Submissions

Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to enforceable consent agreements/orders will be announced to the public in accordance with section 4(d) of TSCA.

Test data for 1,1,2-TCE, a hazardous air pollutant (HAP) listed under section 112 of the Clean Air Act Amendments of 1990, were submitted by the HAP Task Force. These data were submitted pursuant to a TSCA section 4 enforceable consent agreement/order and were received by EPA on June 14, 2002. The submission includes two final reports titled: (1) "A 90–Day Inhalation Toxicity Study of 1,1,2-Trichloroethane (1,1,2-TCE) in Rats (With Satellite Groups for Pharmacokinetic Evaluations in Rats and Mice)," and (2) "Physiologically Based Pharmacokinetic Model Development, Simulations, and Sensitivity Analysis for Repeated Exposure to 1,1,2-Trichloroethane." 1,1,2-TCE is used as a feedstock intermediate in the production of vinylidene chloride and some tetrachloroethanes. It is used as a solvent where its high solvency for chlorinated rubbers and other substances is needed, and for pharmaceuticals and electronic components.

EPA has initiated its review and evaluation process for this submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Hazardous substances, Toxic substances.

Dated: August 6, 2002.

Rebecca S. Cool,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–20355 Filed 8–13–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010099–036.

Title: International Council of Containership Operators.

Parties: A.P. Moller-Maersk Sealand; American President Lines, Ltd.; ANL Container Line Pty, Ltd.; APL Co. PTE Ltd.; Atlantic Container Line AB; Australia-New Zealand Direct Line; Canada Maritime; Cast Line; COSCO Container Lines Company, Ltd.; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; Compania Sud Americana de Vapores S.A.; Companhia Libra de Navegacao; Contship Containerlines; Crowley Maritime Corp.; Evergreen Marine Corp. (Taiwan), Ltd.; Hamburg Sud; Hanjin Shipping Company, Ltd.; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Italia de Navigazione SpA; Kawasaki Kisen Kaisha, Ltd.; Lykes Lines Ltd.; Malaysia International Shipping Corp. Berhad; Mediterranean Shipping Company, S.A.; Montemar Maritime S.A.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Norasia Container Line Ltd.; Orient Overseas Container Line Limited; P&O Nedlloyd Limited; P&O Nedlloyd B.V.; Pacific International Lines (Pte) Ltd.; TMM Lines Ltd.; United Arab Shipping Co. (S.A.G.); Wan Hai Lines, Ltd.; Wallenius Wilhelmsen Lines AS; Yang Ming Marine Transport Corp.; Zim Israel Navigation Co. Ltd.

Synopsis: The amendment adds Pacific International Lines (Pte) Ltd. as an agreement party.

Agreement No.: 011325–028.

Title: Westbound Transpacific Stabilization Agreement.

Parties: A.P. Moller-Maersk Sealand, American President Lines, Ltd., APL Co. PTE Ltd., COSCO Container Lines Company, Ltd., Evergreen Marine Corp. (Taiwan), Ltd., Hapag-Lloyd Container Linie GmbH, Hanjin Shipping Company, Ltd., Hyundai Merchant Marine Co., Ltd., Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, Orient Overseas Container Line Limited, P&O Nedlloyd Limited, P&O Nedlloyd B.V., Yang Ming Marine Transport.

Synopsis: The amendment deletes A.P. Moller-Maersk Sealand as an agreement party.

Agreement No.: 11737–007.

Title: The MCA Agreement.

Parties: Alianca Navegacao e Logistica Ltda., Antillean Marine Shipping Corporation, CMA CGM S.A., Companhia Libra de Navegacao, Compania Sud Americana de Vapores S.A., CP Ships (UK) Limited d/b/a ANZDL and d/b/a Contship Containerlines, Crowley Liner Services, Inc., Dole Ocean Cargo Express, Inc., Hamburg-Sud d/b/a Columbus Line and d/b/a Crowley American Transport, Hapag-Lloyd Container Linie, King Ocean Central America S.A., King Ocean Service de Colombia S.A., King Ocean Service de Venezuela S.A., Lykes Lines Limited, LLC, Montemar Maritima S.A., Nippon Yusen Kaisha, Norasia Container Line Limited, Wallenius Wilhelmsen Lines AS, TMM Lines Limited, LLC, Tecmarine Lines, Inc., Tropical Shipping & Construction Co., Ltd.

Synopsis: The proposed amendment adds Atlantic Container Line to the membership list and includes further indemnification language regarding confidentiality.

Agreement No.: 011813.

Title: Frontier/Tecmarine Space Charter Agreement.

Parties: Tecmarine Lines, Inc., Frontier Liner Services, Inc.

Synopsis: The proposed agreement authorizes the parties to charter space to each other in the trade between U.S. East Coast ports and ports in the Dominican Republic.

Agreement No.: 011814.

Title: CAT/King Ocean Space Charter Agreement.

Parties: Hamburg-Süd, King Ocean Services Limited, King Ocean Services de Venezuela.

Synopsis: The proposed agreement authorizes the parties to charter space to/from one another on their respective vessels in the trade between ports on the Atlantic Coast of Florida and ports in Aruba, Bonaire, Curaçao, Colombia, and Venezuela.

Agreement No.: 011815.

Title: Transpacific Space Charter Agreement.

Parties: COSCO Container Lines Company, Limited, Hapag-Lloyd Container Linie GmbH, Nippon Yusen Kaisha, Orient Overseas Container Line Limited/Orient Overseas Container Line Inc./Orient Overseas Container Line (UK) Limited, P&O Nedlloyd Limited/P&O Nedlloyd BV.

Synopsis: The proposed agreement would authorize COSCO to charter space to the other parties on its vessels operating between Asia and the West Coast of North America.

Agreement No.: 011816.

Title: Mediterranean Ancillary Agreement.

Parties: CP Ships Limited, D'Amico Societa di Navigazione SpA, Italia di Navigazione SpA, Medbulk Maritime Co.

Synopsis: Under the proposed agreement, D'Amico agrees not to compete with CP Ships between the United States and ports on the Mediterranean Sea and in Mexico, Central America, and South America for five years.

Agreement No.: 200860–002.

Title: Lease and Operating Agreement.

Parties: Philadelphia Regional Port Authority, Dependable Distribution Services Inc.

Synopsis: The amendment allows for the construction of a temporary storage facility upon Pier 84 South, provides how much the lessor and the lessee will each contribute to the cost of the construction, includes provisions regarding the ownership and control of the temporary structure, and makes adjustments in tonnage fees paid by the lessee.

Dated: August 9, 2002.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–20667 Filed 8–13–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

FCC Logistics Inc. dba GOF Logistics Group, 10722 S. La Cienega Blvd., Inglewood, CA 90304. Officers: Tan-Ing Chou (aka Tammy), Secretary, (Qualifying Individual); Zeng Chun Guan, CEO.

Sinotrans Express Inc., 10338 Rush Street, S. El Monte, CA 91733. Officers: Daniel D.L. Au, Vice President, (Qualifying Individual); Kaiyang Lin, President.

Ocean Air Freight International, Inc., 3921 NW 144th Street, Bldg. 66, Opalooka, FL 33054. Officers: Paul Kupke, Vice President, (Qualifying Individual); Greg Cole, President.

Gift and Parcel, Inc. dba FP Express; Pesocard, 4700 Mission Street, San Francisco, CA 94112. Officers: Fernando M. Banaria, Jr., President, (Qualifying Individual); Steven Foo, CEO.

American Logistics Intermodal, Inc., 320 Pine Avenue, Suite 503, Long Beach, CA 90802. Officers: Romika K. Singh, Vice President, (Qualifying Individual); Mian S. Waheed, CEO.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Re Transportation, Inc. dba Re Trans, 7305 Mont Blanc, Germantown, TN 38138. Officer: David Wedaman, President, (Qualifying Individual).

Power Link Logistic Inc., 1751 Deerwood Drive, Fullerton, CA 92833. Officers: Polly Yang, General Manager, (Qualifying Individual); Pamela Yang, CEO.

Pactrans Air & Sea Inc., 950 Thornedale Avenue, Elk Grove Village, IL 60007. Officers: Kitty Pon, Vice President, (Qualifying Individual); Alexander Pon, President.

Dated: August 9, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–20666 Filed 8–13–02; 8:45 am]

BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

President's Homeland Security Advisory Council

AGENCY: Office of Governmentwide Policy, General Services Administration.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The President's Homeland Security Advisory Council (PHSAC or Council) will meet in an open session on Thursday, August 29, 2002, from 8:30 a.m. to 12:35 p.m., in the Indian Treaty Room of the Eisenhower Executive Office Building, 725 Seventeenth NW., Washington, DC. The PHSAC will meet to receive briefings and to discuss best practices in the areas of mergers/acquisitions, information technology, personnel management and related issues that may concern the creation of the proposed Department of Homeland Security, and homeland security in general.

Objectives: The President's Homeland Security Advisory Council was established by Executive Order 13260 (67 FR 13241, March 21, 2002). The objectives of the PHSAC are to provide advice and recommendations to the President of the United States through the Assistant to the President for Homeland Security on matters relating to homeland security.

Public Attendance: Due to limited availability of seating, members of the public will be admitted on a first-come, first-served basis. In addition, due to the security requirements of the Eisenhower Executive Office Building, any members of the public who wish to attend the meeting must provide their name, social security number, and date of birth no later than 5 p.m. EDT, Monday, August 26, 2002, to Mr. Fred Butterfield, General Services Administration, by phone: (202) 273–3566, or e-mail: *fred.butterfield@gsa.gov*. Photo identification will be required for entry into the building. Persons with disabilities who require assistance should indicate this in their message.

Public Comments: Members of the public who wish to file a written statement with the PHSAC may do so by mail to Mr. Fred Butterfield at the following address: President's Homeland Security Advisory Council, U.S. General Services Administration (GSA/MC, Room G230), 1800 F St. NW., Washington, DC 20405. Comments may also be sent to Fred Butterfield by e-mail at *fred.butterfield@gsa.gov*, or by facsimile (FAX) to (202) 273–3559.

Dated: August 9, 2002.

James L. Dean,

Director, Committee Management Secretariat, Office of Governmentwide Policy, General Services Administration.

[FR Doc. 02–20705 Filed 8–13–02; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Cooperative Agreements for Centers of Excellence in Health Statistics, Program Announcement No. 02193

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements for

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Centers of Excellence in Health Statistics, PA# 02193.

Times and Dates: 1 p.m.–1:30 p.m., September 5, 2002 (Open), 1:30 p.m.–5:30 p.m., September 5, 2002 (Closed).

Place: Teleconference number (800) 713–1971.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 02193.

CONTACT PERSON FOR MORE INFORMATION: Linda Blankenbaker, Program Specialist, National Center for Health Statistics, CDC, 6525 Belcrest Road, Room 1140, Hyattsville, Maryland 20782, (301) 458–4612.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 6, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–20559 Filed 8–13–02; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–9042]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Request for Accelerated Payments and Supporting Regulations in 42 CFR Sections 412.116, 412.632, 413.64, 413.350, and 484.245; *Form No.:* CMS–9042; *Use:* These forms/instructions are used by fiscal intermediaries to access a provider's eligibility for accelerated payments. Such payment is granted if there is an unusual delay in processing bills. *Frequency:* On occasion; *Affected Public:* Business or other for-profit, and Not for-profit institutions; *Number of Respondents:* 750; *Total Annual Responses:* 750; *Total Annual Hours Requested:* 375.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, CMS–9042, Room: N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 6, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–20520 Filed 8–13–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–138]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Medicare Geographic Classification Review Board (MGCRG) Procedures and Criteria and Supporting Regulations in 42 CFR, Section 412.256 & 412.230; *Form No.:* CMS–R–138 (OMB# 0938–0573); *Use:* This collection sets up an application process for prospective payment system hospitals who choose to appeal their geographic status to the Medicare Geographic Classification Review Board (MGCRB). This also establishes procedural guidelines for the MGCRB.; *Frequency:* Annually; *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 650; *Total Annual Responses:* 650; *Total Annual Hours:* 650.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: August 7, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–20521 Filed 8–13–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0306]

Medical Devices; Class II Special Controls Guidance Document: Dental Sonography and Jaw Tracking Devices; Draft Guidance for Industry and FDA Reviewers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Class II Special Controls Guidance Document: Dental Sonography and Jaw Tracking Devices; Draft Guidance for Industry and FDA Reviewers." This draft guidance document was developed as a special control guidance to support the classification of certain dental sonography and jaw tracking devices into class II. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to classify these device types. This guidance is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments on the draft guidance by November 12, 2002.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the draft guidance document entitled "Class II Special Controls Guidance Document: Dental Sonography and Jaw Tracking Devices; Draft Guidance for Industry and FDA Reviewers" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments concerning this draft guidance to the Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Mary S. Runner, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283.

SUPPLEMENTARY INFORMATION:

I. Background

FDA developed this draft guidance document as a special control guidance to support the classification of certain dental sonography and jaw tracking devices into class II. FDA believes that special controls, when combined with the general controls, will be sufficient to provide reasonable assurance of the safety and effectiveness of dental sonography and jaw tracking devices. This draft guidance document identifies the class, product code, and classification definition for these devices. In addition, it identifies the risks to health generally associated with this generic type of device, describes the device evaluation and labeling measures that FDA believes will mitigate those risks, explains how manufacturers should address those risks in a premarket notification submission, and serves as a special control that, when combined with the general controls, will address the risks associated with this generic device type.

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on certain dental sonography and jaw tracking devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

The agency has adopted good guidance practices (GGPs), and published the final rule, which set forth the agency's regulations for the development, issuance, and use of guidance documents (21 CFR 10.115). This guidance document is issued as a level 1 draft guidance in accordance with the GGP regulations.

III. Electronic Access

In order to receive the draft guidance entitled "Class II Special Controls Guidance Document: Dental Sonography and Jaw Tracking Devices; Draft Guidance for Industry and FDA Reviewers" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1393) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. The Center for Devices and Radiological Health (CDRH) maintains an entry on the Internet for easy access to information including text, graphics, and files that you may download to a personal computer. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. You may access the CDRH home page at http://www.fda.gov/cdrh. You may search for all CDRH guidance documents at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available at http://www.fda.gov/ohrms/dockets.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The burden hours associated with 21 CFR part 807, subpart E were approved under OMB control number 0910–0120.

V. Comments

You may submit to the Dockets Management Branch (see **ADDRESSES**) written comments regarding this draft guidance by November 12, 2002. You should submit two copies of any comments. Individuals may submit one copy. You must identify comments with the docket number found in brackets in the heading of this document. You may see the guidance document and any

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comments FDA receives in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 1, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–20500 Filed 8–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority and Health Disparities Special Emphasis Panel PROJECT EXPORT.

Date: August 7–9, 2002.

Time: 8:30 AM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Teresa Chapa, PHD, Chief, Division of Extramural Activities, National Center on Minority Health and Health Disparities, National Institutes of Health, Bethesda, MD 20852, 301/402–1366, *chapat@od.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the time limitations imposed by the review and funding cycle.

Dated: August 7, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20548 Filed 8–13–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel. Review of R01 Applications.

Date: August 20, 2002.

Time: 1 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: 6707 Democracy Boulevard, Building II, Room 106, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Tracy A. Shahan, PhD., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 7, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20549 Filed 8–13–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 15, 2002.

Time: 4 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

August 7, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20550 Filed 8–13–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, August 12, 2002, 12 PM to August 12, 2002, 1 PM, NIH, Rockledge 2, Bethesda, MD, 20892 which was published in the **Federal Register** on August 5, 2002, 67 FR 50682–50683.

The meeting will be held August 13, 2002, from 11:30 AM to 12:30 PM. The location remains the same. The meeting is closed to the public.

Dated: August 7, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20551 Filed 8–13–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4665–N–03]

Manufactured Housing Program: Notice Announcing the Selection of Members for the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Selection of Manufactured Housing Consensus Committee Members.

SUMMARY: This notice announces the voting members who have been appointed to the Consensus Committee for manufactured housing under the Manufactured Housing Improvement Act of 2000. The twenty-one voting members are comprised of seven representatives from each of three interest categories: producers, users, and general interest and public officials.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Manufactured Housing Program, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: In accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401 *et seq.*) (the Act), the Department initiated a program that, in part, provides for establishment of standards by which all manufactured homes are constructed. The Act provides that these construction and safety standards preempt all standards of a State or political subdivision applicable to the same aspect of performance of a manufactured home that are not identical to the Federal manufactured home construction and safety standards.

The Manufactured Housing Improvement Act of 2000 (Title VI of Public Law 106–569, approved December 27, 2000) (the 2000 Act) amended the Act in several areas. The 2000 Act specifically provides for the establishment of a Consensus Committee for manufactured housing. In accordance with the 2000 Act, the Department acquired the services of an Administering Organization (AO), in part to undertake the process of seeking qualified candidates and recommending to HUD the initial members for the Consensus Committee. The AO selected candidates to recommend as the initial members based on procedures for consensus committees promulgated by the American National Standards Institute (ANSI). As required by the 2000 Act, the selections were designed to ensure equal representation among the prescribed interest categories: producers, users, and general interest and public officials.

Twenty-one individuals have been selected by HUD to serve as voting members on the committee. Those persons selected are listed below, with the localities and States from which they come, in the major interest category they represent. In order to remain eligible for service, each member must continue to qualify as a representative of the category for which he or she has been selected.

Producers

C. Edgar Bryant, Auburn Hills, MI
William Farish, Riverside, CA
Danny Ghorbani, Washington, DC
Douglas Gorman, Tulsa, OK
Ronald LaMont, Grand Prairie, TX
Nader Tomasbi, Goshen, IN
Frank Walter, Arlington, VA

Users

Jack Berger, Camp Hill, PA
Karl Braun, Las Vegas, NV
Susan Brenton, Tempe AZ
Earl Gilson, Port Angeles, WA
Charles Leven, Millbrook, NY
Jerome McHale, Port Charlotte, FL
Alan Youse, Salem, OR

General Interest and Public Officials

William Lagano, Clearwater, FL
Bryan Portz, Cleveland, OH
Dana Roberts, Salem, OR
Randy Vogt, St. Paul, MN
Christine Walsh Rogers, Seattle, WA
Richard Weinert, Sacramento, CA
Michael Zieman, Long Beach, CA

Authority: 42 U.S.C. 5403(a)(3).

Dated: August 6, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–20546 Filed 8–13–02; 8:45 am]

BILLING CODE 4210–27–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–476]

Certain Radios and Components Thereof; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 12, 2002, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Bose Corporation of Framingham, Massachusetts. Letters supplementing the complaint were filed on July 30, 2002, and August 5, 2002. The complaint as supplemented alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain radios and components thereof by reason of infringement of U.S. Trademark Registration No. 2,299,158. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

FOR FURTHER INFORMATION CONTACT: David H. Hollander, Jr., Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2746.

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Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's rules of practice and procedure, 19 CFR § 210.10 (2002).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 7, 2002, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain radios or components thereof by reason of infringement of U.S. Trademark Registration No. 2,299,158, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Bose Corporation, The Mountain, Framingham, Massachusetts 01701.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Sun Coast Merchandise Corporation, 6315 Bandini Blvd., Commerce, California 90040.

(c) David H. Hollander, Jr., Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Delbert R. Terrill, Jr., is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's rules of practice and procedure, 19 CFR § 210.13. Pursuant to 19 CFR §§ 201.16(d) and 210.13(a), such response will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. An extension of time for submitting a response to the complaint will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 9, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–20579 Filed 8–13–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review, Comment Request

August 1, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or E-mail *Howze-Marlene@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Housing Terms and Conditions.

OMB Number: 1215–0146.

Affected Public: Farms; individuals or households; and business or other for-profit.

Frequency: On occasion.

Number of Respondents: 1,300.

Number of Annual Responses: 1,300.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 650.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section 201(c) of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 USC 1801 *et seq.*, requires that any farm labor contractor, agricultural employer or agricultural association that provides housing to any migrant agricultural worker post in a conspicuous place or present to such worker a statement of the terms and conditions, if any, of occupancy of such housing. In addition, Section 201(g) of MSPA requires that such information be provided in English, or as necessary and reasonable, in a language common to the workers and that the Department of Labor make forms available to provide such information. Section 500.75(f) and (g) of Regulations, 29 CFR part 500, of MSPA, sets forth the terms of occupancy of housing which are to be posted or given in a written statement to the worker. Section 500.1(i)(2) provides for optional Form WH–521, which may be used to satisfy sections 201(c) and 201(g) of MSPA. While use of the form is optional, disclosure of the information is required by MSPA. Less frequent disclosure would prevent the Department of Labor from determining compliance with this requirement of MSPA.

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 02–20608 Filed 8–13–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Secretary

A Bangladesh Network of Women Workers' Education Centers

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of Availability of Funds and Solicitation for Cooperative Agreement Applications (SGA 02–23).

This notice contains all of the necessary information and forms needed to apply for cooperative agreement funding.

SUMMARY: The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), will award up to US $700,000 through one or more cooperative agreements to an organization or organizations ("the applicant") to implement a program in the Bangladeshi garment industry to increase adherence to internationally-recognized worker rights; improve workplace safety and health; and to provide garment workers with access to basic health care and legal counseling. USDOL is seeking applications from qualified applicants for the expansion of a pilot project initiated in Dhaka, Bangladesh, in 2000 to design and establish a Working Women's Education Center (WWEC) for the delivery of information and services to women working in the garment industry—the country's largest export industry. The pilot project, funded by USAID and implemented by the American Center for International Labor Solidarity (ACILS), involved a partnership with a number of local non-governmental organizations (such as Ain o Shalish Kendra, the Bangladesh Legal Aid and Services Trust, the Bangladesh National Women's Lawyers Association, and the Welfare Association of Repatriated Bangaldeshi Employees) and the Bangladesh Independent Garment Workers Union Federation.

DATES: The closing date for receipt of applications is September 11th, 2002. As described in Section III.B. and C., applications must be received by 4:45 p.m. (Eastern Daylight Savings Time) at the address below. No exceptions to the mailing, delivery, and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored.

ADDRESSES: Application forms will not be mailed. They are published in this **Federal Register** Notice, and in the **Federal Register** which may be obtained from your nearest U.S. Government office, public library or on-line at *http://www.archives.gov/federal_register/index*. Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Reference: SGA 02–23, Washington, DC 20210. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted; however, the applicant bears the responsibility for timely submission. Submission requirements are described in Section III.C. of this notice.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey: e-mail address: *harvey-lisa@dol.gov*. All applicants are advised that U.S. mail delivery in the Washington, DC area has been slow and erratic due to the recent enhanced security measures. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this it not a toll-free number), prior to the closing deadline. All inquiries should reference SGA 02–23. *See* Section III.B. for further information regarding submission of applications.

SUPPLEMENTARY INFORMATION: ILAB announces the availability of funds to be granted by cooperative agreement to a qualifying organization to achieve the following program objectives in the Bangladesh garment export industry: (1) Increase adherence to internationally-recognized worker rights as described in the 1998 ILO Declaration on Fundamental Principles and Rights at Work; (2) promote greater awareness of national and international labor law among workers; (3) provide workers with access to basic health care and legal counseling; and (4) improve the occupational safety and health of workers, particularly with regard to fire prevention and safety. The cooperative agreement will be carried out in collaboration with local NGOs and workers' representatives, and with the participation of employers and employer organizations. Proposals must include ways to support the existing WWEC in Dhaka, and must include recommendations for the location of additional centers. Of the additional centers, one must be located in Dhaka. In each location, the pilot project should address the above-mentioned objectives. In addition, the project should take into consideration the availability of local collaborating organizations, the specific needs of workers in that location, and the prospects for sustained improvements.

The cooperative agreement is to be actively managed by ILAB to assure the achievement of the stated objectives. Applicants are encouraged to be creative in proposing an innovative and cost-effective program that will have a demonstrable impact on achieving the overall objectives.

I. Background and Program Scope

A. Background: Bangladesh Garment Export Industry

The driving force of the Bangladeshi economy is the sustained growth of its garment industry, which now accounts for 75% of the country's export revenues and employs 1.5 million workers. The country is in the very early stages of implementing laws and regulations to protect workers. The workers in the garment industry are mostly young women who lack access to education regarding their rights in the workplace and have difficulty exercising these rights. Consequently, abusive labor practices, including the harassment of women workers, are alleged to occur frequently.

The Working Women's Education Center (WWEC) pilot project was established in 2000 to address these challenges. The WWEC sponsors education programs on labor issues, and it offers participants, mainly young women working in garment factories, basic medical care, and legal counseling. Issues covered at the center include workers' rights and responsibilities, factory laws, family laws, gender issues, trafficking in persons, and dispute resolution. In the first year of the pilot project, the center sponsored 200 activities benefiting approximately 2,500 female workers. The program has demonstrated strengths in several ways. First, program activities directly and effectively address the day-to-day concerns of the workers; timely assistance is provided to resolve issues that often directly affect the lives of workers and their families (such as gender-based discrimination in the workplace, dangerous, and even life-threatening, working conditions, and the payment of legal wages). Second, workshops and legal counseling sessions are conducted primarily by leading Bangladeshi legal and labor experts.

Support for this program has helped forge stronger links between key actors in the emerging civil society and garment workers and it operates with the endorsement of the Government of Bangladesh. "Promoting democracy" is

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a key U.S. objective in Bangladesh, where the U.S. mission is currently focusing on efforts that ensure seamless introduction of effective and responsible modern industrial relations practices in the Export Processing Zones.

B. Program Scope

For any proposal to be considered responsive to this solicitation, it must contain proposed projects that cover all of the following four aspects: (i) Strengthening the rule of labor law; (ii) the development of one or more WWECs; (iii) the provision of workers' education and services; and (iv) the preparation, publication, translation, and distribution of research and educational materials for workers. Applicants are encouraged to develop innovative forms of cooperative relationships with employers, employers' and workers' representatives, the Government of Bangladesh, and national organizations, including non-governmental organizations in performing activities proposed.

(i) Strengthening the Rule of Law

Applicants should propose specifically how they will provide legal aid to garment workers. Applicants may consider offering counseling at the WWECs, providing services directly or through referrals to other local, national, or international organizations.

(ii) Development of WWEC(s)

Applicants should: (a) Define the number and location of WWECs; (b) offer a rationale for said number and location; (c) describe the way in which workers will be made aware of the WWECs and the services they offer; (d) specify the total number of workers to be served over the duration of the project and their characteristics; (e) detail the staffing and administration of the centers; (f) explain how workers will actually receive services; and (g) describe how the centers will be sustained after the grant period.

(iii) Provision of Workers' Education Programs and Services

Applicants should provide a description of the variety of education programs that will provide workers with important information on a broad range of subjects such as: sexual harassment and other gender-related issues; family law; labor law, grievance handling and court procedures; occupational safety and health, particularly fire safety; collective bargaining; leadership skills; and health and hygiene, including the prevention of HIV/AIDS.

(iv) Research, Publication, Translation, and Distribution of Research and Education Materials for Workers

Applicants should describe the education materials and pedagogical approach that will be used at the Centers and indicate if materials already exist or will be developed after the initiation of the project. Applicants should propose a program of formal and informal research as needed to build broad-based support for the issues to be addressed by the WWECs' education programs and they should include a component on publication, translation, and distribution to ensure the use and effectiveness of the research findings.

II. Authority

ILAB is authorized to award and administer this program by the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, 2002, Public Law 107–116, 115 Stat. 2177 (2002).

III. Application Process

A. Eligible Applicants

Any commercial, international, or non-profit organization, including faith-based organizations, capable of successfully implementing the scope of work and meeting the following requirements is eligible to submit an application. Joint applications, consisting of more than one organization, are also eligible and are encouraged. In such a case, a lead organization must be identified. The capability of an applicant and collaborating organizations to perform necessary aspects of this solicitation will be determined under Section V.B. Rating Criteria and Selection.

Please note that eligible cooperative agreement applicants must not be classified under the Internal Revenue Code as a Section 501(c)(4) Entity. *See* 26 U.S.C. 501(c)(4). According to the Lobbying Disclosure Act of 1995, as amended, 2 U.S.C. 1611, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

B. Submission of Applications

One (1) ink-signed original, complete application plus two (2) copies must be submitted to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210, not later than 4:45 p.m. EDST, September 11th, 2002.

The application must consist of two (2) separate parts. Part I of the application must contain the Standard Form (SF) 424, "Application for Federal Assistance" (Appendix A) (The entry on SF 424 for the Catalog of Federal Domestic Assistance Number (CFDA) is 17.700) and sections A–F of the Budget Information Form SF 424A (Appendix B). Part II must contain a technical proposal that demonstrates capabilities in accordance with the Program Scope (Section I.B.), the Statement of Work (Section IV.A.) and the selection criteria (Section V.B.).

To be considered responsive to this solicitation, the application must consist of the above-mentioned separate sections not to exceed 40 single-sided (8½" x 11"), double-spaced, 10 to 12 pitch typed pages. Any applications that do not conform to these standards may be deemed non-responsive to this solicitation and may not be evaluated. Standard forms and attachments are not included in the page limit. The application must include a table of contents and an abstract summarizing the application in not more than two (2) pages. These pages are also *not* included in the page limits.

Upon completion of negotiations, the individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant.

C. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Procurement Services Center after 4:45 p.m. EDST, September 11th, 2002, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before September 11th, 2002;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 pm at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to September 11th, 2002.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, *etc.*, will be accepted, however, the applicant bears the responsibility for timely submission. Because of delay in the receipt of mail in the Washington, DC area, it is recommended that you confirm receipt of your application by contacting Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570, prior to the closing deadline. All inquires should reference SGA 02–23.

D. Funding Levels

Approximately US $700,000 is budgeted to fund this program. Although USDOL reserves the right to award more than one cooperative agreement, several collaborating organizations may apply jointly to implement the program. Joint applicants will submit one application for the implementation of all projects (including pilot projects in localities) and are encouraged to utilize local organizations to implement portions of the program in order to institutionalize and sustain project improvements and reduce costs. The award of any contract or sub-contract to a local organization will be subject to USDOL approval. *See* Section IV.D. Administrative Requirements.

E. Program Duration

The duration of the program is two (2) years. The start date of project activities will be negotiated upon the award of the cooperative agreements.

IV. Requirements

A. Statement of Work

In developing their proposals, applicants should develop a strategy for implementation of the project objectives as stated in the section **SUPPLEMENTARY INFORMATION**. The strategy should take into account the implementing environment in Bangladesh as well as that of the specific locations of the centers. The strategy should also demonstrate how the applicant proposes to build upon the success of existing or past projects supported by other international donors, and coordinate activities among them at the local and national level. Further, the applicant should draft a strategy demonstrating how it will meet the project objectives by the end of the grant period, and how sustainability will be an integral element of the overall program. The strategy should also demonstrate how it will include nongovernmental organizations, as appropriate, in the development and implementation of the project.

The applicants must present a strategy that demonstrates that at least

- 15,000 to 20,000 working women will receive services sponsored by the WWECs; and
- 800 to 1,600 events (for the purpose of this notice, events are classes, training activities, or consultation activities, *etc.*) will be held under the auspices of the WWECs.

These figures are supported by the results of the pilot project initiated in 2000. The strategy must also include the collection of baseline data from WWEC participants so that indicators of performance may be established as part of the project design document discussed below.

B. Deliverables

Following the award of the cooperative agreement(s), unless otherwise indicated, the grantee must submit copies of all required reports to USDOL by the specified due dates. Other documents, such as project designs, are to be submitted by mutually agreed-upon deadlines.

1. Project Designs

The grantee(s) will draft the design and submit a project document, in consultation with ILAB officials and in the format established by ILAB, to include a background/justification section, project strategy (objectives, outputs, activities, indicators); project implementation timetable, project management organizational chart, project budget, logical framework and performance monitoring plan to systematically monitor project results. The document shall also include sections, which cover coordination strategies, project management, and sustainability of project improvements involving government, employers' and workers' organizations as well as other nongovernmental organizations as appropriate. The project design will be drawn, in part, from the proposal written in response to this solicitation. USDOL may determine that it is necessary for the organization(s) awarded the cooperative agreement (grantee) to travel to Bangladesh with USDOL officials on a project design mission trip in order to prepare this document.

2. Technical Progress Reports

The grantee(s) must furnish a typed technical report to USDOL on a quarterly basis, no later than 15 days from the last date of each quarter, *i.e.*, 31 March, 30 June, 30 September and 31 December of each year. The 30 June (2nd quarter) and 31 December (4th quarter) reports are abbreviated and need only indicate whether the work plan was fully implemented and if not, explain why not and attach the amended work plan. The grantee(s) must also furnish a separate financial report (SF 272) to USDOL on the same quarterly basis. The format for the technical progress report will be the standard format developed by USDOL and must contain the following information:

a. For each project objective, an accurate account of activities carried out under that objective during the reporting period as it relates to the work plan;

b. Major trends in the project that note particular success with a particular activity or trends that indicate a need to readjust or expand the work plan;

c. An account of problems, proposed solutions, actions taken or required regarding implementation of the project;

d. New proposals for activities, staffing, funding, *etc.*;

e. Lessons learned in project implementation;

f. Future actions planned in support of each project objective;

g. An accounting of staff and any sub-contractor hours expended; and

h. Aggregate amount of costs incurred during the reporting period, including

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estimated budget expenditures vs. actual expenditures.

3. Annual Work Plan

An annual work plan for the project will be submitted within 45 days after the approval of the project design by USDOL. The second annual work plan, when revised, will be delivered to reflect modifications in implementation, no later than one year following submission of the previous work plan, or when based on recommendations made during mid-term evaluations, no later than 30 days following the mid-term evaluation.

4. Monitoring and Evaluation

A performance monitoring plan will be developed in collaboration with USDOL, including beginning and ending dates for projects and dates for mid-term and final project evaluations, and will be included as part of the submission of the project document for USDOL approval. The plan will include performance indicators and instruments to collect and report on performance data on a semi-annual basis.

5. Evaluation Reports

The Grant Officer's Technical Representative (GOTR) will determine whether a mid-term evaluation will be conducted by an internal or external evaluation team. The final evaluation will be external in nature. In all cases, evaluations will be objective and carried out by independent evaluators. The grantee(s) must respond to any comments and recommendations resulting from the review of the mid-term report and will submit a work plan for implementing the recommendations of the mid-term report within 15 days following formal submission of the report to the grantee(s) by USDOL. Applicants need to allocate funds for these activities in the proposed budget.

C. Production of Deliverables

1. Materials Prepared and Purchased Under the Cooperative Agreement

The grantee(s) must obtain prior approval from the Grant Officer for all materials developed or purchased under this cooperative agreement. The grantee(s) must submit to USDOL all media-related and educational materials developed by it or its sub-contractor under this cooperative agreement(s), including relevant press releases, for use in this project(s) before they are reproduced, published, or used. The grantee(s) must consult with USDOL to ensure that such materials are compatible with USDOL materials relating to the program, *i.e.*, public relations material such as video and web site. USDOL considers brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the program as media-related and educational materials. USDOL will review materials for technical accuracy. USDOL will also review training curricula and purchased training materials for accuracy before they are used. All materials produced by grantee(s) must be provided to USDOL in a digital format for possible publication on the Internet by USDOL.

2. Acknowledgment of USDOL Funding

In all circumstances, the following must be displayed on printed materials:

Preparation of this item was funded by the United States Department of Labor under Cooperative Agreement No. [insert the appropriate cooperative agreement number].

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including State and local governments and recipients of research grants, must clearly state:

a. The percentage of the total costs of the program or project that will be financed with Federal money;

b. The dollar amount of Federal funds for the project or program; and

c. The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

In consultation with USDOL, USDOL's role will be acknowledged in one of the following ways:

a. The USDOL logo may be applied to USDOL-funded material prepared for world-wide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of global interest. The grantee(s) will consult with USDOL on whether the logo should be used on any such items prior to final draft or final preparation for distribution. In no event shall the USDOL logo be placed on any item until USDOL has given the grantee written permission to use the logo, after obtaining appropriate internal USDOL approval for use of the logo on the item.

b. If the USDOL determines the logo is not appropriate and does not give written permission, the following notice must appear on the document:

"This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

D. Administrative Requirements

1. General

Grantee organizations will be subject to applicable Federal laws (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, *e.g.*, Non-Profit Organizations—OMB Circular A–122. The cooperative agreement(s) awarded under this SGA will be subject to the following administrative standards and provisions, if applicable:

29 CFR part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

29 CFR part 93—New Restrictions on Lobbying.

29 CFR part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

29 CFR part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

29 CFR part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

29 CRF part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

2. Sub-contracts

Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. In compliance with Executive Orders 12876 as amended, 13230, 12928, and 13021 as amended, the grantee(s) is strongly encouraged to provide subcontracting opportunities to Historically Black Colleges and Universities, Hispanic-Serving Institutions, and Tribal Colleges and Universities.

3. Key Personnel

The applicant must list the individual(s) who has been designated as having primary responsibility for the conduct and completion of all work in the project(s) it proposes. The grantee(s) agrees to inform the GOTR whenever it appears impossible for one or more of these individual(s) to continue work on the project as planned. The grantee(s) may nominate substitute personnel for approval of the GOTR; however, the grantee(s) must obtain prior approval from the Grant Officer for all key personnel. If the Grant Officer determines not to approve the personnel change, he/she reserves the right to terminate the cooperative agreement.

4. Encumbrance of Cooperative Agreement Funds

Cooperative agreement funds may not be encumbered/obligated by the grantee(s) before or after the cooperative agreement period of performance. Encumbrances/obligations outstanding as of the end of the cooperative agreement period may be liquidated (paid out) after the end of the cooperative agreement period. Such encumbrances/obligations may involve only commitments for which a need existed during the cooperative agreement period and which are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the grantee(s)'s purchasing procedures and incurred within the cooperative agreement period. All encumbrances/obligations incurred during the cooperative agreement period must be liquidated within 90 days after the end of the cooperative agreement period, if practicable.

5. Site Visits

USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of the grantee(s) or a sub-contractor(s) under this cooperative agreement(s), the grantee(s) must provide and must require its sub-contractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations must be performed in such a manner as will not unduly delay the work.

V. Review and Selection of Applications for Cooperative Agreement Award

A. The Review Process

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable. A technical panel will objectively rate each complete application against the criteria described in this announcement. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may choose to select one or more grantees on the basis of the initial proposal submission; or, the Grant Officer may establish a competitive or technically acceptable range for the purpose of selecting qualified applicants. If deemed appropriate, following the Grant Officer's call for the preparation and receipt of final revisions of proposals, the evaluation process described above will be repeated to consider such revisions. The Grant Officer will make a final selection determination based on what is most advantageous to the Government, considering factors such as panel findings, geographic presence of the applicants, the best value to the Government, cost, and other factors. The Grant Officer's determination for award under this SGA 02–20 is final.

Notice: Selection of an organization as a cooperative agreement recipient does not constitute approval of the cooperative agreement application as submitted. Before the actual cooperative agreement is awarded, the Grant Officer may enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application.

B. Rating Criteria and Selection

The technical panel will review grant applicants against the criteria listed below on the basis of 100 points with up to five additional points available for applications identifying non-federal or leveraged resources.

The criteria are presented in the order of emphasis that they will receive.

1. Approach, Understanding of the Issue, and Program Plans (40 points)

a. *Overview.* This section of the proposal must explain the strategy employed by the applicant to achieve the objectives of the project within the specified timeframe. The applicant must describe in detail the proposed approach to comply with each requirement in Section IV.A. of this solicitation, including all tasks and methods to be utilized to implement the project. Also, the applicant must demonstrate how the proposed activities would address issues discussed in Sections I.A. and B.

b. *Logical Framework.* The strategy should include an outline of the objectives, activities, and indicators envisioned for implementation of the program.

c. *Implementation Plan.* The applicant must submit an implementation plan for the entire program, preferably with a visual aid such as a Gantt chart. The implementation plan should outline the approach that will be used to implement the program. The plan should list the activities envisioned for the duration of the program and should lay out an activity schedule by objective, starting with the execution of the cooperative agreement and ending with the final report. In describing the implementation plan, the applicant must address the following points:

(1) Describe the use of existing or potential infrastructure and use of qualified personnel, including qualified nationals, to implement the project in Dhaka as well as in other selected project sites. The applicant also must include a project organizational chart, demonstrating the management structure, key personnel positions, and indicating proposed links with the relevant government ministries, local government agencies/bureaus, NGOs, universities, and other significant local actors.

(2) Develop a list of activities and explain how each relates to the overall development objectives as stated in Section I.

(3) Explain how appropriate information and education materials and training curriculum will be developed.

(4) Explain the strategy for coordinating activities conducted at each center with lessons learned.

(5) Demonstrate how the program will strengthen the ability of working women to protect their rights as prescribed by national law.

(6) Demonstrate how the grantee will collect baseline data and systematically monitor and report on project performance to measure the achievement of the project objective(s).

(7) Demonstrate how the grantee will build national and local capacity to ensure that project efforts to enhance the implementation and enforcement of national labor laws would be sustained after completion of the project.

d. *Management and Staff Loading Plan.* The application must also include a management and staff loading plan. The management plan should include the following:

(1) If two organizations are applying for the award in collaboration, they must demonstrate an approach to ensure successful collaboration including clear delineation of respective roles and responsibilities. The applicants must also identify the lead organization and submit the collaboration agreement.

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(2) A project organization chart and accompanying narrative which differentiates between elements of the applicant's staff and subcontractors or consultants who will be retained;

(3) A description of the functional relationship between elements of the project's organization; and

(4) The identity of the individual(s) responsible for project management and the lines of authority between this/these individual(s) and other elements of the project.

The staff loading plan must identify all key tasks and the person-days required to complete each task. Labor estimates for each task must be broken down by individuals assigned to the task, including sub-contractors and consultants. All key tasks must be charted to show time required to perform them by months or weeks.

2. Experience and Qualifications of the Applicant (25 points)

The evaluation criteria in this category are as follows:

a. The applicant organization and collaborating organizations must demonstrate experience of working on developmental projects in Bangladesh.

b. The applicant must demonstrate prior experience of working directly with government ministries, local government organizations, employers, workers, NGOs, and academic institutions, as well as with U.S. Missions, in the area of legal aid and worker education generally and more specifically in applying that experience to the following issues: sexual harassment and other gender-related issues; family law; labor law, grievance handling and court procedures; occupational safety and health, particularly fire safety; collective bargaining; leadership skills; and health and hygiene, including the prevention of HIV/AIDS.

c. The applicant must also demonstrate that it can negotiate and implement developmental projects in Bangladesh and that it has the appropriate international experience and expertise to carry out program responsibilities in Bangladesh.

d. The applicant must demonstrate that it has staff or is able to recruit staff that can communicate effectively with Bangladeshi employers, workers, migrant workers, and officials. Preference will be given to applicant organizations with staff that have local language skills.

e. The proposal must include information regarding previous grants, contracts, or cooperative agreements relevant to this solicitation. This information must include:

(1) The organization for whom the work was done;

(2) A contact person in that organization with his/her current phone number;

(3) The dollar value of the grant, contract or cooperative agreement for the project(s);

(4) The time frame and administrative and programmatic effort involved in the project(s);

(5) A brief summary of the work performed; and

(6) A brief summary of accomplishments.

This information on previous grants and contracts shall be provided in appendices and will not count toward the 40-page maximum page requirement.

3. Experience and Qualifications of Key Personnel (25 points)

This section of the application must include sufficient information for judging the quality and the competence of key staff proposed to be assigned to the project(s) proposed to assure that they meet the required qualifications. Successful performance of the proposed work depends heavily on the qualifications of the individuals committed to the project. Accordingly, in its evaluation of each application, USDOL will place emphasis on the applicant's commitment of key personnel qualified for the work involved in accomplishing the assigned tasks. Information provided on the experience and educational background of personnel must indicate the following:

(a) The identity of key personnel assigned to the project. "Key personnel" are staff who are essential to the successful operation of the project and completion of the proposed work and, therefore, may not be replaced or have his or her hours reduced without the approval of the Grant Officer.

(b) The educational background, relevant language skills, and experience of proposed staff.

(c) The special capabilities of key personnel that demonstrate prior experience in organizing, managing and performing similar efforts.

(d) The current employment status of key personnel and availability for this project. The applicant must also indicate whether the proposed work will be performed by persons currently employed or is dependent upon planned recruitment or sub-contracting.

Note that management and professional technical staff members comprising the applicant's proposed team should be individuals who have prior experience with organizations working in similar efforts, and are fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance is proposed, organizational control should be clearly delineated to ensure responsiveness to the needs of USDOL. Key personnel must sign letters of agreement to serve on the project, and indicate availability to commence work within three weeks of grant award.

The following information must be furnished:

(a) The applicant must designate a Program Director and other key personnel to oversee the program. The Program Director must have a minimum of three years of professional experience in a leadership role in implementation of complex labor programs in developing countries. He or she must demonstrate sufficient knowledge of and understanding of Bangladesh's political and economic development, its government, and the complexity of employer and worker relations.

(b) The applicant should specify other key personnel proposed to carry out the requirements of this solicitation.

(c) An organization chart showing the applicant's proposed organizational structure for performing task requirements for the project(s) proposed, along with a description of the roles and responsibilities of all key personnel proposed for this project(s). The chart should also differentiate between elements of the applicant's staff and sub-contractors or consultants who will be retained. (Also see requirement under Section V.B.I.c.(1). Applicants may submit only one organization chart.)

(d) Identify all key tasks and the person-days required to complete each task. Labor estimates for each task must be broken down by individuals assigned to the task, including sub-contractors and consultants. All key tasks must be charted to show time required to perform them by months or weeks.

(e) A resume for each of the key personnel to be assigned to the program. At a minimum, each resume must include: the individual's current employment status and previous work experience, including position title, duties performed, dates in position, employing organizations and educational background, including local language skills (if any). Duties must be clearly defined in terms of role performed, *i.e.*, manager, team leader, consultant, *etc.* (Resumes must be included as attachments, which do not count toward the page limitation.)

(f) The special capabilities of staff that demonstrate prior experience in organization, managing and performing similar efforts.

4. Budget Plan (10 points)

The applicant must develop one proposed budget for the implementation of the entire program, including pilot projects in localities. This section of the application must explain the costs for performing all of the requirements presented in this solicitation and for producing all required reports and other deliverables presented in this solicitation; costs must include labor, training, material production and dissemination, equipment, travel and other related costs. The budget plan will be evaluated to determine the efficient and effective allocation of funding for proposed program implementation. Preference may be given to applicants with low administrative costs. Administrative costs shall be reflected separately on the budget plan from programmatic costs. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars).

5. Leveraging of Funding (extra 5 points)

USDOL will give up to five (5) additional rating points to applications that include non-Federal resources that significantly expand the dollar amount, non-monetary resources, size and scope of the proposal, or capitalize upon previous U. S. government or private investments. The applicant may include any leveraging or co-funding anticipated. To be eligible for additional points under this criterion, the applicant must list the source(s) of funds, the nature, and activities anticipated with these funds under this cooperative agreement, and any partnerships, linkages or coordination of activities, and/or cooperative funding.

The earlier paragraphs will be incorporated into the text of the cooperative agreement with the selected applicant(s).

Signed in Washington, DC, on this 9th day of August, 2002.

Lawrence J. Kuss,

Grant Officer.

Appendix A: Application for Federal Assistance (SF424)

Appendix B: Budget Information (SF424A)

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OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED		Applicant Identifier	
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		**3. DATE RECEIVED BY STATE**	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐–☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐–☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. Applicant	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?** ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ 0.00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as Item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Previous Edition Usable

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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INSTRUCTIONS FOR THE SF-424A

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PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

[FR Doc. 02–20584 Filed 8–13–02; 8:45 am]
BILLING CODE 4510–28–C

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,047]

C.G. Bretting Manufacturing Corporation, Inc., Ashland, WI; Notice of Termination of Certification

This notice terminates the Certification Regarding Eligibility to Apply For Worker Adjustment Assistance issued by the Department on June 19, 2002, applicable to workers of C.G. Bretting Manufacturing Corporation, Inc., in Ashland, Wisconsin. The notice was published in the **Federal Register** on July 9, 2002 (67 FR 45544).

The Department, on its own motion, reviewed the worker certification. Workers at the subject firm produce paper folding machines. The review of the investigation findings show that the survey of C.G. Bretting's major declining customers was conducted for paper holding machines instead of paper folding machines. Another survey was undertaken for the same customers for the same time periods. The survey revealed that none of the customers purchased imported paper folding machines.

Based on this new information, the Department is terminating the certification for petition number TA–W–41,047. Further coverage for workers under this certification would serve no purpose, and the certification has been terminated.

Signed at Washington, DC, this 6th day of August, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–20616 Filed 8–13–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,015 and TA–W–41,015A]

E.J. Footwear LLC, Franklin, Tennessee, and E.J. Footwear LLC, Endicott, New York; Notice of Termination of Certification

Pursuant to section 223 of the Trade Act of 1974, on June 4, 2002, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to workers of the subject firm. The notice was published in the **Federal Register** on June 21, 2002 (67 FR 42285).

The State agency requested that the Department review the certification for workers of the subject firm engaged in the production of work boots. Information shows that the E.J. Footwear LLC certification, TA–W–40,899, was amended on July 15, 2002 to include workers at the Franklin, Tennessee and Vestal (Endicott), New York locations of the subject firm.

Consequently, continuance of this certification would serve no purpose and the certification is terminated.

Signed in Washington, DC, this 6th day of August, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–20615 Filed 8–13–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,614 and TA–W–41,614A]

Great Northern Paper, Inc., Millinocket, ME, Great Northern Paper, Inc., East Millinocket, ME; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 15, 2002, applicable to workers of Great Northern Paper, Inc., Millinocket, Maine. The notice was published in the **Federal Register** on July 29, 2002 (67 FR 49039).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that workers engaged in employment related to the production of groundwood pulp were separated from employment at the subject firm's East Millinocket, Maine facility. A meaningful portion of the groundwood pulp produced at Great Northern Paper, Inc., East Millinocket, Maine was consumed by the subject firm's mill in Millinocket, Maine, for its production of coated and uncoated specialty paper.

Workers at Great Northern Paper, Inc., East Millinocket, Maine, also produce paper for telephone directories and are separately identifiable from those producing groundwood pulp. There was no allegation that imports of paper for telephone directories contributed to worker separations.

The Department is amending the certification to cover workers at Great Northern Paper, Inc., East Millinocket, Maine, engaged in employment related to the production of groundwood pulp.

The amended notice applicable to TA–W–41,614 is hereby issued as follows:

"All workers of Great Northern Paper, Inc., Millinocket, Maine (TA-W–41,614); and workers engaged in employment related to the production of groundwood pulp at Great Northern Paper, East Millinocket (TA–W–41,616A) who became totally or partially separated from employment on or after May 17, 2001, through July 15, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington DC, this 31st day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–20617 Filed 8–13–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,983]

Symbol Techologies, Telxon Corporation, Houston, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 7, 2002, applicable to workers of Symbol Technologies, Houston, Texas. The notice was published in the **Federal Register** on May 17, 2002 (67 FR 35141).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of bar code scanners and handheld computers used for retail sales.

Information received from the State shows that Symbol Technologies merged with Telxon Corporation in 2000. Information also shows that some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Telxon Corporation.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Symbol Technologies, Houston Texas who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,983 is hereby issued as follows:

"All workers of Symbol Technologies, Telxon Corporation, Houston, Texas, engaged in the production of bar code scanners and handheld computers, who became totally or partially separated from employment on or after January 3, 2001, through May 7, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 6th day of August, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–20614 Filed 8–13–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Temporary Extended Unemployment Compensation Program Reports; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed extension of approval for the collection of reports concerning the Temporary Extended Unemployment Compensation (TEUC) program. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before October 15, 2002.

ADDRESSES: Thomas Stengle, U.S. Department of Labor, Employment and Training Administration, Room S–4231, 200 Constitution Ave. NW., Washington, DC 20210. Phone number: 202–693–2991. Fax: 202–693–3229. (These are not toll free numbers.) e-mail: *tstengle@doleta.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The TEUC program was created under Public Law 107–147. This program allows for the application for and receipt of additional weeks of unemployment compensation under certain circumstances. This program is scheduled to expire December 31, 2002. In order to track participation in the program, plan for workloads, and plan for and distribute budget allocations, it is essential that certain basic data be collected and maintained. The collection of this information has previously been approved through an emergency clearance process through November 30, 2002. The TEUC program is currently due to expire December 28, 2002, and ETA is requesting that reporting for all reports continue for twelve full months or four full quarters after the last payable week of the TEUC program. However, to provide for potential congressional extensions of this program, ETA is seeking approval of a 2 year extension for this collection package.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) for continuing an existing collection of information previously approved and assigned OMB Control No. 1205–0009.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Temporary Extended Unemployment Compensation Reports

OMB Number: 1205–0433.

Agency Numbers: ETA 207, ETA 218, ETA 227, ETA 539, ETA 2112, ETA 5130, ETA 5159.

Affected Public: State Government.

Cite/Reference/Form/etc: ETA 207, ETA 218, ETA 227, ETA 539, ETA 2112, ETA 5130, ETA 5159.

Total Respondents: 53.

Frequency: Monthly.

Total Responses: 5300.

Average Time per Response: .33 hours.

Estimated Total Burden Hours: 1,787 hours per year.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 8, 2002.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 02–20611 Filed 8–13–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

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The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request if filed in writing with the Director of DTAA not later than August 26, 2002.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than August 26, 2002.

Petitions filed with Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 7th day of August, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at governor's office	Petition number	Articles produced
Aerus LLC (Co.)	Piney Flats, TN	07/10/2002	NAFTA–6,352	vacuum cleaner power nozzle wands.
American Meter (Co.)	Erie, PA	06/21/2002	NAFTA–6,353	diaphram meters.
E and A Technology (Wkrs)	El Paso, TX	07/10/2002	NAFTA–6,354	computer chassis.
Donaldson Co., Inc. (Co.)	Baldwin, WI	07/10/2002	NAFTA–6,355	metal fabrication.
Breed Technologies, Inc. (Co.)	Knoxville, TX	07/10/2002	NAFTA–6,356	automatic seat belt components.
Tecumseh Product (Co.)	Grafton, WI	07/09/2002	NAFTA–6,357	compressors.
Dana Corporation (Co.)	Columbia City, IN	06/14/2002	NAFTA–6,358	hoses and tubing.
Agrium US Inc. (Co.)	Soda Springs, ID	06/12/2002	NAFTA–6,359	phosphate fertilizer.
Neoplan USA Corp. (Wkrs)	Brownsville, TX	07/09/2002	NAFTA–6,360	bus manufacturer.
Encana (Co.)	Butte, MT	07/08/2002	NAFTA–6,361	oil and gas.
D and L Tool, Inc. (Co.)	Meadville, PA	06/20/2002	NAFTA–6,362	molds.
Corning Frequency Control (Co.)	Mercersburg, PA	06/20/2002	NAFTA–6,363	crystal blanks.
Computer Sciences Corp. (Co.)	Houston, TX	07/11/2002	NAFTA–6,364	mailroom operations.
Oki Data Americas (Co.)	Mount Laurel, NJ	07/15/2002	NAFTA–6,365	ribbon and toner cartridges.
Sitel Corp. (Wkrs)	Longview, TX	07/15/2002	NAFTA–6,366	call center.
Harvard Industries (UAW)	Albion, MI	07/08/2002	NAFTA–6,367	iron casting for automotive.
Penske Truck Leasing (Wkrs)	Chesterfield, MO	07/12/2002	NAFTA–6,368	trucking leasing.
Holloway Sportswear (Wkrs)	Ville Platte, LA	07/15/2002	NAFTA–6,369	sportswear.
Bee Paper (Wkrs)	Wayne, NU	07/01/2002	NAFTA–6,370	paper.
Dura Automotive Systems (Co.)	Pikeville, TN	07/12/2002	NAFTA–6,371	power windows.
Jam'ng Five (Wkrs)	Medley, FL	07/15/2002	NAFTA–6,372	children wear.
Oxford Automotive (Wkrs)	Argos, IN	07/12/2002	NAFTA–6,373	stamped metal auto parts.
IBM Global Services (Wkrs)	Jacksonville, FL	07/15/2002	NAFTA–6,374	computer system and support.
VF Imagewear (Co.)	Mt. Pleasant, TN	07/15/2002	NAFTA–6,375	uniforms (shirts and pants).
Tellabs Operations (Wkrs)	Hawthorne, NY	07/12/2002	NAFTA–6,376	hardware modules.
Cummins (Co.)	Montello, WI	07/03/2002	NAFTA–6,377	gas Turbins.
Willamette Industries-Weyerhaeuser (Co.)	Albany, OR	07/12/2002	NAFTA–6,378	lumber.
American Technical Ceramics (Wkrs)	Jacksonville, FL	07/16/2002	NAFTA–6,379	electronic capacitors.
Klaussner Furniture (Wkrs)	Asheboro, NC	07/16/2002	NAFTA–6,380	cloth and leather upholstery furniture.
Mountain High Timber (Co.)	LaPine, OR	07/17/2002	NAFTA–6,381	wood chips.
Tom Harmon Logging (Co.)	LaPine OR	07/17/2002	NAFTA–6,382	wood chips.
New York Air Brake Corporation (Co.)	Akron, OH	07/19/2002	NAFTA–6,383	train line hose.
Southern Transformer Co. (Ce.)	East Point, GA	07/20/2002	NAFTA–6,384	transformers.
Plantronics (Wkrs)	Garden Grove, CA	07/10/2002	NAFTA–6,385	hearing aides.
Nova bus (Wkrs)	Niskayuna, NY	07/16/2002	NAFTA–6386	transit buses.
Susquehanna Pfaltzgraff Co. (Wkrs)	York, PA	07/19/2002	NAFTA–6,387	dinnerware.
IBM Corp. (Wkrs)	Rochester, MN	07/19/2002	NAFTA–6,388	AS/400 computer systems.
Federal-Mogul Corporation (Wkrs)	Winchester, VA	07/19/2002	NAFTA–6,389	friction products.
McManus Wyatt Produce (Wkrs)	Weslaco, TX	07/22/2002	NAFTA–6,390	produce.
Krone, Inc. (Co.)	El Paso, TX	07/18/2002	NAFTA–6,391	wire termination products.
Copeland Corp. (Wkrs)	Ava, MO	07/16/2002	NAFTA–6,392	scroll sets.
Ergo Systems, Inc. (Co.)	Green Lane, PA	07/18/2002	NAFTA–6,393	computer support equipment.
General Cable (IUE)	Sanger, CA	07/10/2002	NAFTA–6,394	datacom wire and cable.
Switching Systems International (Wkrs)	Anaheim, CA	07/10/2002	NAFTA–6,395	power supplies.
Aermotor Pumps, Inc. (Co.)	Conway, AR	07/12/2002	NAFTA–6,396	sump pumps.
Johnson and Johnson Apparel (UNITE)	Bailey, NC	07/16/2002	NAFTA–6,397	children's dresses.
American Uniform Co. (Co.)	Blue Ridge, GA	07/15/2002	NAFTA–6,398	shirts, flat goods, and aprons.

APPENDIX—Continued

Subject firm	Location	Date received at governor's office	Petition number	Articles produced
United Plastics Group, Inc. (Wkrs)	Brooksville, FL	07/16/2002	NAFTA–6,399	automotive injections.
Komatsu America Corp. (Co.)	Peoria, IL	06/26/2002	NAFTA–6,400	ball studs, pins and castings.
Volant Ski (Wkrs)	Wheatridge, Co	06/10/2002	NAFTA–6,401	alpine skis.
National Electrical Carbon (Wkrs)	Birmingham, AL	07/23/2002	NAFTA–6,402	carbon brushes.
Coper Wiring Devices (Eagle Electric) (Wkrs)	Long Island City, NY	07/23/2002	NAFTA–6,403	switches, adapters, etc.
Clark Alabma (Co.)	Pell City, AL	07/23/2002	NAFTA–6,404	Industrial material handling equipment.
Saint Gobain Abrasives North America (PACE)	Niagara Falls, NY	07/23/2002	NAFTA–6,405	abrasive products.
Don Alleson Athletic (Co.)	Toccoa, GA	07/24/2002	NAFTA–6,406	athletic apparel, gym shorts.
Amcoe Speciality Packaging (Co.)	Newport News, VA	07/08/2002	NAFTA–6,407	plastic food containers.
Emerson Electric (Co.)	Vernon, AL	07/25/2002	NAFTA–6,408	electric heating/residential appliances.
Skyworks Solutions (Co.)	Havenhill, MA	07/16/2002	NAFTA–6,409	semiconductor components.
Goodyear Tire and Rubber (The) (USWA)	Green, OH	07/26/2002	NAFTA–6,410	air springs.
Carolina Mills (Co.)	Gastonia, NC	07/25/2002	NAFTA–6,411	spur synthetic yarns.
U.S. Precision Glass (Co.)	Lewisburg, OH	07/11/2002	NAFTA–6,412	glass for furniture.
Kelly Springfield (Wkrs)	Fayetteville, NC	07/29/2002	NAFTA–6,413	tires.
Harris Welco—J.W. Harris (Co.)	Kings Mountain, NC	07/29/2002	NAFTA–6,414	machinery.
MEL, Inc. (Co.)	Winchester, MA	07/29/2002	NAFTA–6,415	dyeing of materials.
Norscan, Inc. (Co.)	Conover, NC	07/30/2002	NAFTA–6,416	cable protection devices.
Gate City Printing (Wkrs)	Greensboro, NC	07/25/2002	NAFTA–6,417	printed packaging.
Lapcor Plastic—Mirro/Wearever. Co. (Wkrs)	Manitowoc, WI	07/29/2002	NAFTA–6,418	cookware sets.

[FR Doc. 02–20612 Filed 8–13–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6124]

Holophane, a Division of Acuity Lighting Group, Inc., Springfield, OH; Notice of Negative Determination Regarding Application for Reconsideration

By application dated July 9, 2002, the International Union, UAW, Region 2B and Local Union No. 1876 requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on May 22, 2002, and was published in the **Federal Register** on June 11, 2002 (67 FR 40005).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The denial of NAFTA–TAA for workers engaged in activities related to the production of castings which are sold within the corporation at Holophane, a Division of Acuity Lighting Group, Inc., Springfield, Ohio was based on the finding that criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of Section 250 of the Trade Act, as amended, were not met. There were no company imports of castings from Mexico or Canada, nor did the subject firm shift production from Springfield, Ohio to Mexico or Canada. The subject firm has decided to outsource castings domestically and transfer some other secondary functions to another company facility in the United States.

The petitioner alleges that the subject firm shifted subject plant machinery and equipment to a warehouse located in Brownsville, Texas and then shipped the machinery to an affiliated plant located in Matamoros, Mexico that produces outdoor architectural lighting fixtures and poles. The petitioner also supplied pictures and various shipping information (printed and handwritten) pertaining to the shifts in plant machinery to Mexico.

A review of the company data supplied in the initial decision shows the subject plant was an internal component supplier of Aluminum Die-Castings, Low Pressure Castings and Sand Casting to an affiliated Holophane manufacturing plant located in Newark, New Jersey. As part of a business diagnostics project, an evaluation was made by the company to determine if Holophane should continue to produce its own castings since manufacturing Aluminum castings is not a core competency of Holophane. Consequently, the building and Die Cast equipment was sold to a domestic company located in Arkansas with a production plant located in Tennessee. The plant located in Tennessee will supply the Die cast component parts to Holophane. With regard to the Low-pressure Castings and Sand Casting, other firms located in Ohio are now supplying Holophane products produced by the subject plant. All secondary operations previously performed at the Springfield facility have been transferred to affiliated plants located in Utica, Ohio. Therefore, all of the work performed at the subject plant prior to the closure is still being

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produced in the United States, either at Company facilities or by various domestic suppliers.

Further review of the initial decision shows that a very small amount of the foundry equipment from Springfield was transferred to the company's existing foundry operation at the Cast Light de Mexico S. A. plant located in Matamoros, Mexico. The transferred equipment to Mexico shows the machinery was not being used and therefore has not replaced any of the production previously performed at the Springfield, Ohio plant during the relevant period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of August, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–20619 Filed 8–13–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—05977]

Progress Lighting, Philadelphia, PA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on March 12, 2002, in response to a petition filed on behalf of workers at Progress Lighting, Philadelphia, Pennsylvania.

An active certification covering the petitioning group of workers is already in effect (NAFTA–04208A, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 25th day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–20618 Filed 8–13–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6205]

ZF-Meritor, LLC, Meritor Clutch Company, Maxton, North Carolina; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at ZF Meritor, LLC, Meritor Clutch Company, Maxton, North Carolina. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

NAFTA–6205; ZF Meritor, LLC, Meritor Clutch Company Maxton, North Carolina (August 6, 2002)

Signed at Washington, DC this 8th day of August, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–20620 Filed 8–13–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration, Wage and Hour Division, is soliciting comments concerning the proposed collection "Application for Federal Certificate of Age"(WH–14)." A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before October 15, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, e-mail *pforkel@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

Section 3(1) of the Fair Labor Standards Act (FLSA) provides, in part, that an employer may protect against unwitting employment of "oppressive child labor" [as defined in section 3(1)], by having on file a certificate issued pursuant to Department of Labor (DOL) regulations certifying that the named person meets the FLSA minimum wage requirements for employment. Section 11(c) of the FLSA requires that all employers covered by the Act make, keep, and preserve records of wages, hours, and other conditions and practices of employment with respect to their employees. Regulations 29 CFR part 570, subpart B, set forth the requirements for obtaining certifications of age. State age, employment or working certificates which substantially meet the Federal regulatory requirements for certificates of age are an acceptable alternative to obtaining a Federal Certificate of Age. Form WH–14 is the application which is to be completed by the youth and prospective employer to obtain a Federal Certificate of Age in those States where no State certificates are issued or State certificates do not meet the Federal regulatory requirements. This information collection is currently approved by the Office of Management and Budget (OMB) for use through January 2003.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks an extension of approval of the information collection to protect employers from unwitting violation of the minimum age standards of the Fair Labor Standards Act. There is no change to the form or method of collection.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Application for Federal Certificate of Age.

OMB Number: 1215–0083.

Agency Number: WH–14.

Affected Public: Businesses or other for-profit; individuals or households; not-for-profit institutions; farms; State, Local or Tribal Government.

Total Respondents: 10.

Total Responses: 10.

Burden Hours per Response(Reporting): 10 minutes.

Burden Hours Per Response: (Recordkeeping): ½ minute.

Total Burden Hours: (Reporting and Recordkeeping): 2.

Total Burden Cost: (capital/startup): $0.

Total Burden Cost: (operation/maintenance): $4.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 8, 2002.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, , Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 02–20609 Filed 8–13–02; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collection: Agreement and Undertaking (OWCP–1). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before October 15, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Cnstitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, e-mail *pforkel@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

I. Background

Coal mine operators and longshore companies desiring to be self-insurers are required by law (30 U.S.C. 933, Black Lung Benefits Act) and 33 U.S.C. 932 (Longshore and Harbor Workers' Compensation Act) to produce security in terms of an indemnity bond, security deposit, or, for Black Lung only, a letter of credit or 501(c)(21) trust. Once a company's application to become self-insured is reviewed by the Division of Coal Mine Workers' Compensation (DCMWC) or by the Division of Longshore and Harbor Workers' Compensation (DLHWC) and it is determined the company is potentially eligible, an amount of security is determined to guarantee the payment of benefits required by the Act. The OWCP–1 form is executed by the self-insurer who agrees to abide by the Department's rules and authorizes the Secretary, in the event of default, to file suit to secure payment from a bond underwriter or, in the case of a Federal Reserve account, to sell the securities for the same purpose. Regulations establishing this requirement are at 20 CFR 726.110 for DCMWC and 20 CFR 703.304 for DLHWC. A company cannot be authorized to self-insure until this requirement is met. This information collection is currently approved for use through January 31, 2003.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to determine if a coal mine or longshore company is potentially eligible to become self-insured. The information is reviewed to deposited, indemnity bond is purchased, letter of credit is obtained, or 501(c)(21) trust assets are available; and that in case of default, OWCP has the authority to utilize the securities or bond. If this Agreement and Undertaking were not required, OWCP would not be empowered to utilize the

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company's security deposit to meet its financial responsibilities for the coal mine or longshore benefits in case of default. There is no change in this information collection since the last OMB clearance.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Agreement and Undertaking.

OMB Number: 1215–0034.

Agency Number: OWCP–1.

Affected Public: Businesses or other for-profit.

Total Respondents: 300.

Frequency: On occasion.

Total Responses: 300.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 75.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $120.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 8, 2002.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, , Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 02–20610 Filed 8–13–02; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Goya de Puerto Rico, Inc., Debarment

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of Debarment: Goya de Puerto Rico, Inc., Bayamon, P.R. 00959.

SUMMARY: This notice advises of the debarment of Goya de Puerto Rico, Inc., as an eligible bidder on Government contracts or extensions or modifications of existing contracts. The debarment is effective immediately.

EFFECTIVE DATE: August 14, 2002.

FOR FURTHER INFORMATION CONTACT: Charles E. James, Sr., Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, 200 Constitution Ave., NW., Room C–3325, Washington, DC 20210 (202–693–1062).

SUPPLEMENTARY INFORMATION: This notice pertains to Goya de Puerto Rico, Inc., Road No. 28, Corner Road No. 5, Luchetti Industrial Park, Bayamon, P.R. 00959. (It is not applicable to Goya Foods, Inc., a separate entity.) On March 21, 2002, the U.S. Department of Labor Administrative Review Board ("ARB") issued a Final Decision and Order, pursuant to Executive Order 11246, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, Section 503 of the Rehabilitation Act of 1973 and their implementing regulations (41 CFR Parts 60–1 to 60–50, 41 CFR Part 60–250, and 41 CFR Part 60–741), *OFCCP* v. *Goya de Puerto Rico, Inc.*, No. 99–104. The Final Decision provides that Goya de Puerto Rico, Inc., its officers, agents, employees, successors, divisions, subsidiaries, and all persons in active concert or participation with them, are permanently enjoined from failing or refusing to comply with the requirements of the Executive Order, Section 503, and VEVRAA. The decision further ordered that Goya de Puerto Rico, Inc. be debarred from having or entering into government contracts, or from extensions or modifications of existing contracts, until the later of the expiration of six months or the fulfillment of the following three conditions: (1) That Goya de Puerto Rico, Inc. submit a complete affirmative action plan to OFCCP; (2) that OFCCP has the opportunity to complete an on-site investigation and to conduct a full compliance review to confirm the accuracy of the affirmative action program and to verify compliance with all regulations; and (3) that the Secretary of Labor, through OFCCP, declares Goya de Puerto Rico Inc.'s affirmative action plan acceptable. Finally, the ARB ordered that Goya de Puerto Rico's existing government contracts, subcontracts and blanket purchase agreements, and all of the contracts, subcontracts, and blanket purchase agreements of Goya de Puerto Rico Inc.'s officers, agents, employees, successors, divisions, subsidiaries, and all persons in active concert or participation with it, be canceled and terminated. Pursuant to Section 209(a)(5) of Executive Order 11246, as amended, the process of consultation with Federal contracting agencies has been initiated, and existing contracts, subcontracts and blanket purchase agreements may be terminated thereafter.

Signed August 8, 2002, Washington, DC.

Harold M. Busch,

Acting Deputy Director, Office of Federal Contract Compliance Programs.

[FR Doc. 02–20607 Filed 8–13–02; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "Cognitive and Psychological Research." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section below on or before October 15, 2002.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Labor Statistics' (BLS) Behavior Science Research Laboratory (BSRL) conducts theoretical, applied and evaluative research aimed at improving the quality of data collected and published by the Bureau. Since its creation in 1988, the BSRL has advanced the study of survey methods research, approaching issues of non-sampling error within a framework that draws heavily on the theories and methods of the cognitive, statistical and social sciences. The BSRL research focuses primarily on the assessment of survey instrument design and survey administration, as well as on issues related to interviewer training, and on the interaction between interviewer and respondent in the interview process. Improvements in these areas result in better accuracy and response rates of BLS surveys, frequently reduce costs in training and survey administration, and further ensure the effectiveness of the Bureau's overall mission.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

The purpose of this clearance request by the BSRL is to conduct cognitive and psychological research for the purpose of enhancing the quality of the Bureau's data collection and data management procedures. The BLS is committed to producing the most accurate and complete data under high quality assurance guidelines. For the past 15 years, research conducted by the BSRL has led to substantial improvements in BLS estimates and procedures. Over the next few years, demand for BSRL consultation is expected to rise, as information processing approaches to survey methods research become even more common and visible. In addition, as data collection methods involving computers and web-based surveys become increasing wide-spread, careful instrument design and testing will be required. The BSRL is uniquely equipped with both the skills and facilities to accommodate these demands.

The revisions in the accompanying clearance package reflect an attempt to accommodate an increasing interest by BLS program offices and other agencies in the methods used, and the results obtained, by the BSRL. This package reflects planned research and development activities for FY2003 through FY2005. Its approval will enable the continued productivity of a state-of-the-art, multi-disciplinary program of behavioral science research to improve BLS survey methodology.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Cognitive and Psychological Research.

OMB Number: 1220–0141.

Affected Public: Individuals and households.

Total Respondents: 4,000.

Frequency: One time.

Total Responses: 4,000.

Average Time Per Response: 60 minutes.

Estimated Total Burden Hours: 4,000 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 30th day of July, 2002.

Jesús Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 02–20613 Filed 8–13–02; 8:45 am]

BILLING CODE 4510–24–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension request with burden revisions.

2. *The title of the information collection:* 10 CFR part 26, "Fitness for Duty Program'.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* All licensees authorized to construct or operate a nuclear power reactor and all licensees authorized to possess, use, or transport unirradiated Category 1 nuclear materials.

6. *An estimate of the number of responses:* 1514 (1440 responses plus 74 recordkeepers).

7. *The estimated number of annual respondents:* 74.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 64,446 (6273 hours of reporting burden or an average of 85 hours per licensee and 58,173 hours of recordkeeping burden or an average of 786 hours per licensee).

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR part 26, "Fitness for Duty Program," requires licensees of nuclear power plants and licensees authorized to possess, use, or transport unirradiated Category 1 nuclear material to implement fitness-for-duty programs to assure that personnel are not under the influence of any substance or mentally or physically impaired, to retain certain records associated with the management of these programs, and to provide reports concerning significant events and program performance. Compliance with these program requirements is mandatory for licensees subject to 10 CFR part 26.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 13, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen, Office of Information and Regulatory Affairs (3150–0146),

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NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 8th day of August, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–20564 Filed 8–13–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25694, 812–12692]

Commonfund Institutional Funds, et al.; Notice of Application

August 7, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under: (a) Section 6(c) of the Investment Company Act of 1940 ("Act") requesting an exemption from sections 12(d)(3) and 17(e) of the Act and rule 17e–1 under the Act; (b) sections 6(c) and 17(b) of the Act requesting an exemption from section 17(a) of the Act; and (c) section 10(f) of the Act requesting an exemption from section 10(f) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered open-end management investment companies advised by several investment advisers to engage in principal and brokerage transactions with a broker-dealer affiliated with one of the investment advisers and to purchase securities in certain underwritings. The transactions would be between the broker-dealer and a portion of the investment company's portfolio not advised by the adviser affiliated with the broker-dealer. The order also would permit these investment companies not to aggregate certain purchases from an underwriting syndicate in which an affiliated person of one of the investment advisers is a principal underwriter. Further, applicants request relief to permit a portion of an investment company's portfolio to purchase securities issued by a broker-dealer that is an affiliated person of an investment adviser to another portion, subject to the limits in rule 12d3–1 under the Act.

APPLICANTS: Commonfund Institutional Funds (the "Company") and Commonfund Asset Management Company, Inc. ("COMANCO").

FILING DATES: The application was filed on November 21, 2001 and amended on August 6, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 3, 2002 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, c/o John W. Auchincloss, Commonfund Institutional Funds, 15 Old Danbury Road, Wilton, CT 06897.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942–0614, or Todd F. Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Company is an open-end management investment company registered under the Act and currently consists of eight investment portfolios (the "CIF Portfolios"). COMANCO, an indirect, wholly owned subsidiary of The Common Fund for Nonprofit Organizations, is an investment adviser registered under the Investment Advisers Act of 1940, as amended ("Advisers Act"). COMANCO serves as investment adviser to each of the CIF Portfolios, including CIF Portfolios ("Multi-Managed Portfolios") that are advised by COMANCO and investment sub-advisers ("Sub-Advisers"). Each Sub-Adviser is registered under the Advisers Act or is exempt from registration. Each Sub-Adviser is responsible for making independent investment and brokerage allocation decisions for a discrete portion of a Multi-Managed Portfolio ("Portion") based on its own research and credit evaluations. Each Sub-Adviser is paid a fee by COMANCO out of the management fee received by COMANCO from the Multi-Managed Portfolios, which fee is based on a percentage of the value of assets allocated to the Sub-Adviser. COMANCO may also directly advise a Portion of a Multi-Managed Portfolio.

2. Applicants request relief to permit: (a) A broker-dealer that serves as a Sub-Adviser or is an affiliated person of a Sub-Adviser (the broker-dealer, an "Affiliated Broker-Dealer"; the Sub-Adviser, an "Affiliated Sub-Adviser") to engage in principal transactions with a Portion of a Multi-Managed Portfolio that is advised by another Sub-Adviser that is not an affiliated person of the Affiliated Broker-Dealer or Affiliated Subadviser (the Portion, an "Unaffiliated Portion"; the other Sub-Adviser, an "Unaffiliated Sub-Adviser"); (b) an Affiliated Broker-Dealer to provide brokerage services to an Unaffiliated Portion, and the Unaffiliated Portion to use such brokerage services, without complying with rule 17e–1(b) or (d) under the Act; (c) an Unaffiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Sub-Adviser or a person of which an Affiliated Sub-Adviser is an affiliated person ("Affiliated Underwriter"); (d) a Portion advised by an Affiliated Sub-Adviser ("Affiliated Portion") to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, in accordance with the conditions of rule 10f–3 under the Act, except that paragraph (b)(7) of the rule would not require the aggregation of purchases by the Affiliated Portion with purchases by Unaffiliated Portions; and (e) an Unaffiliated Portion to purchase securities issued by an Affiliated Sub-Adviser, or an affiliated person of an Affiliated Sub-Adviser engaged in securities-related activities ("Securities Affiliate"), subject otherwise to the limits in rule 12d3–1 under the Act.[1]

[1] The terms "Unaffiliated Subadviser" and "Subadviser" include COMANCO and the term "Unaffiliated Portion" includes the Portion of a Multi-Managed Portfolio directly advised by COMANCO provided that it manages its Portion of the Multi-Managed Portfolio independently of the Portions managed by other Sub-Advisers to the Multi-Managed Portfolio, and COMANCO does not control or influence any other Sub-Adviser's investment decisions for its portion of the Multi-Managed Portfolio. COMANCO does not currently directly manage a Portion of any Multi-Managed Portfolio.

3. Applicants request that the exemptive relief apply to the Company or any existing or future open-end management investment company registered under the Act, or series thereof, for which COMANCO or any entity controlling, controlled by, or under common control with (within the meaning of section 2(a)(9) of the Act) COMANCO currently or in the future acts as investment adviser. The Company is the only registered investment company that currently intends to rely on the order. COMANCO will take steps designed to ensure that any other existing or future entity that relies on the order will comply with the terms and conditions of the application.

Applicants' Legal Analysis

A. Principal Transactions between Unaffiliated Portions and Affiliated Broker-Dealers

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person of, promoter of, or principal underwriter for such company, or any affiliated person of an affiliated person, promoter, or principal underwriter ("second-tier affiliate"). Section 2(a)(3)(E) of the Act defines an affiliated person to be any investment adviser of an investment company, and section 2(a)(3)(C) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling, controlled by, or under common control with such person. Applicants state that an Affiliated Sub-Adviser would be an affiliated person of a Multi-Managed Portfolio, and an Affiliated Broker-Dealer would be either an Affiliated Sub-Adviser or an affiliated person of the Affiliated Sub-Adviser to the same Multi-Managed Portfolio, and thus a second-tier affiliate of a Multi-Managed Portfolio, including the Unaffiliated Portions. Accordingly, applicants state that any transactions to be effected by an Unaffiliated Sub-Adviser on behalf of an Unaffiliated Portion of a Multi-Managed Portfolio with an Affiliated Broker-Dealer are subject to the prohibitions of section 17(a).

2. Applicants seek relief under sections 6(c) and 17(b) of the Act, to exempt principal transactions prohibited by section 17(a) where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Sub-Adviser is the Sub-Adviser to another Portion of the same Multi-Managed Portfolio.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provisions of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

4. Applicants contend that section 17(a) is intended to prevent persons who have the power to control an investment company from using that power to the person's own pecuniary advantage. Applicants assert that when the person acting on behalf of an investment company has no direct or indirect pecuniary interest in a party to a principal transaction, the abuses that section 17(a) was designed to prevent are not present. Applicants state that if an Unaffiliated Sub-Adviser were to purchase securities on behalf of an Unaffiliated Portion in a principal transaction with an Affiliated Broker-Dealer, any benefit that might inure to the Affiliated Broker-Dealer would not be shared by the Unaffiliated Sub-Adviser. Applicants state that Sub-Advisers are paid on the basis of a percentage of the value of the assets under their management. The execution of a transaction to the disadvantage of an Unaffiliated Portion would also disadvantage the Unaffiliated Sub-Adviser to the extent that it diminishes the value of the Unaffiliated Portion. Applicants further state that COMANCO's power to dismiss Sub-Advisers or to change the Portion of a Multi-Managed Portfolio allocated to each Sub-Adviser reinforces a Sub-Adviser's incentive to maximize the investment performance of its own Portion of the Multi-Managed Portfolio.

5. Applicants state that each Sub-Adviser's contract assigns it responsibility to manage a discrete Portion of the Multi-Managed Portfolio. Each Sub-Adviser is responsible for making independent investment and brokerage allocation decisions based on its own research and credit evaluations. Applicants state that COMANCO does not dictate brokerage allocation or investment decisions for any Multi-Managed Portfolio, or have the contractual right to do so, except for any Portion of a Multi-Managed Portfolio advised directly by COMANCO. Applicants submit that, in managing a discrete Portion of a Multi-Managed Portfolio, each Sub-Adviser acts for all practical purposes as though it is managing a separate investment company.

6. Applicants state that the proposed transactions will be consistent with the policies of the Multi-Managed Portfolios, since each Unaffiliated Sub-Adviser is required to manage the Unaffiliated Portion in accordance with the investment objectives and related investment policies of the Multi-Managed Portfolio as described in its prospectus and statement of additional information. Applicants assert that permitting the transactions will be consistent with the general purposes of the Act and in the public interest because the ability to engage in such transactions increases the likelihood of the Multi-Managed Portfolio achieving best price and execution on its principal transactions, while giving rise to none of the abuses that the Act was designed to prevent.

B. Payment of Brokerage Compensation by an Unaffiliated Portion to an Affiliated Broker-Dealer

1. Section 17(e)(2) of the Act prohibits an affiliated person or a second-tier affiliate of a registered investment company from receiving compensation for acting as a broker in connection with the sale of securities to or by the investment company if the compensation exceeds the limits prescribed by the section unless otherwise permitted by rule 17e–1 under the Act. Rule 17e–1 sets forth the conditions under which an affiliated person or a second-tier affiliate of an investment company may receive a commission that would not exceed the "usual and customary broker's commission" for purposes of section 17(e)(2) of the Act. Rule 17e–1(b) requires the investment company's board of directors, including a majority of the directors who are not interested persons under section 2(a)(19) of the Act, to adopt certain procedures and to determine at least quarterly that all transactions effected in reliance on the rule complied with the procedures. Rule 17e–1(d) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e–1.

2. As discussed above, applicants state that an Affiliated Broker-Dealer is either an affiliated person (as Sub-Adviser to another Portion of a Multi-Managed Portfolio) or a second-tier affiliate of an Unaffiliated Portion and thus subject to section 17(e). Applicants request relief under section 6(c) of the

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Act from section 17(e) of the Act and rule 17e–1 under the Act to the extent necessary to permit the Unaffiliated Portion to pay brokerage compensation to an Affiliated Broker-Dealer acting as broker in the ordinary course of business without complying with the requirements of rule 17e–1(b) and (d). The requested exemption would apply only where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Sub-Adviser is the Sub-Adviser to another Portion of the same Multi-Managed Portfolio.

3. Applicants believe that the proposed brokerage transactions involve no conflicts of interest or possibility of self-dealing and will meet the standards of section 6(c) of the Act. Applicants assert that the interests of an Unaffiliated Sub-Adviser are directly aligned with the interests of the Unaffiliated Portion it advises, and an Unaffiliated Subadviser will enter into brokerage transactions with Affiliated Broker-Dealers only if the fees charged are reasonable and fair, as required by rule 17e–1(a). Applicants note that an Unaffiliated Sub-Adviser has a fiduciary duty to obtain best price and execution for the Unaffiliated Portion.

C. Purchases of Securities From Offerings With Affiliated Underwriters

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) when a principal underwriter of the security, or an affiliated person of the principal underwriter, is an officer, director, member of an advisory board, investment adviser or employee of the investment company. Section 10(f) also provides that the Commission may exempt by order any transaction or classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f–3 under the Act exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f–3 limits the securities purchased by the investment company, or by two or more investment companies having the same investment adviser, to 25% of the principal amount of the offering of the class of securities.

2. Applicants state that each Sub-Adviser, although under contract to manage only a Portion of a Multi-Managed Portfolio, is an investment adviser to the entire Multi-Managed Portfolio. Therefore, all purchases of securities by an Unaffiliated Portion from an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, would be subject to section 10(f).

3. Applicants request relief under section 10(f) to permit an Unaffiliated Portion to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter. Applicants request relief from section 10(f) only to the extent those provisions apply solely because an Affiliated Sub-Adviser is an investment adviser to the Multi-Managed Portfolio. Applicants also seek relief from section 10(f) to permit an Affiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, provided that the purchase is in accordance with the conditions of rule 10f–3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

4. Applicants state that section 10(f) was adopted in response to concerns about the "dumping" of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from its underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Multi-Managed Portfolios because a decision by an Unaffiliated Sub-Adviser to a Portion of a Multi-Managed Portfolio to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, involves no potential for "dumping." In addition, applicants state that aggregating purchases would serve no purpose because there is no collaboration among Sub-Advisers, and any common purchases by an Affiliated Sub-Adviser and an Unaffiliated Sub-Adviser would be coincidence.

D. Purchases of Securities Issued by Securities Affiliates

1. Section 12(d)(3) of the Act generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting. Rule 12d3–1 under the Act exempts certain transactions from the prohibitions of section 12(d)(3) if certain conditions are met. One of these conditions, set forth in paragraph (c) of rule 12d3–1, provides that the exemption provided by the rule is not available when the issuer of the securities is the investment company's investment adviser, promoter, or principal underwriter, or an affiliated person of the investment adviser, promoter, or principal underwriter.

2. Applicants state that because each Sub-Adviser to a Multi-Managed Portfolio is considered to be an investment adviser to the entire Multi-Managed Portfolio, an Unaffiliated Portion may not purchase securities of a Securities Affiliate in reliance on rule 12d3–1. Applicants request an exemption under section 6(c) from section 12(d)(3) to permit an Unaffiliated Portion to acquire securities issued by a Securities Affiliate subject to the limits in rule 12d3–1, except for paragraph (c) to the extent that the paragraph applies solely because the Securities Affiliate is an Affiliated Sub-Adviser, or an affiliated person of an Affiliated Sub-Adviser. The requested relief would not extend to securities issued by the Sub-Adviser making the purchase, COMANCO, or a Securities Affiliate of any of these entities.

3. Applicants state that their proposal does not raise the conflicts of interest that rule 12d3–1(c) was designed to address because of the nature of the affiliation between a Securities Affiliate and the Unaffiliated Portion. Applicants submit that each Sub-Adviser acts independently of the other Sub-Advisers in making investment decisions for the assets allocated to its portion of the Multi-Managed Portfolio. Further, applicants assert that prohibiting the Unaffiliated Portions from purchasing securities issued by Securities Affiliates could harm the interests of shareholders by preventing the Unaffiliated Sub-Adviser from achieving optimal investment results.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Multi-Managed Portfolio relying on the requested order will be advised by an Affiliated Subadviser and at least one Unaffiliated Sub-Adviser, and will be operated in the manner described in the application.

2. No Affiliated Sub-Adviser, Affiliated Broker-Dealer, Affiliated Underwriter or Securities Affiliate (except by virtue of serving as Sub-Adviser to a Portion of a Multi-Managed Portfolio) will be an affiliated person or second-tier affiliate of (a) COMANCO; (b) the Unaffiliated Sub-Adviser making the investment decision with respect to the Unaffiliated Portion of the Multi-Managed Portfolio; (c) any principal underwriter or promoter of a Multi-Managed Portfolio, or (d) any officer, director or employee of the Multi-Managed Portfolio engaging in the transaction.

3. No Affiliated Sub-Adviser will directly or indirectly consult with any Unaffiliated Sub-Adviser concerning allocation of principal or brokerage transactions or concerning the purchase of securities issued by Securities Affiliates. Sub-Advisers may consult with COMANCO in order to monitor compliance with the limits in rule 12d3–1.

4. No Affiliated Sub-Adviser will participate in any arrangement whereby the amount of its sub-advisory fees will be affected by the investment performance of an Unaffiliated Sub-Adviser.

5. With respect to purchases of securities by an Affiliated Portion during the existence of any underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f–3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

6. With respect to purchases by an Unaffiliated Portion of securities issued by a Securities Affiliate, the conditions of rule 12d3–1 will be satisfied except for paragraph (c) of such rule to the extent such paragraph is applicable solely because such issuer is an Affiliated Sub-Adviser or an affiliated person of an Affiliated Sub-Adviser.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20524 Filed 8–13–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: [67 FR 51900, August 9, 2002]

Status: Closed Meeting.

Place: 450 Fifth Street, NW., Washington, DC.

Date and Time of Previously Announced Meeting: Tuesday, August 13, 2002 at 10:00 a.m.

Change in the Meeting: Date Change.

The closed meeting scheduled for Tuesday, August 13, 2002 at 10 a.m. has been changed to Monday, August 12, 2002, at 3 p.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: August 9, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20681 Filed 8–9–02; 4:09 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46320; File No. SR–NASD–2002–84]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Display Requirements When Using Reserve Size Functionality in Nasdaq's Future Order Display and Collector Facility

August 6, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 18, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On July 25, 2002, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] On August 5, 2002, Nasdaq submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to alter the display requirement when using the reserve size feature in Nasdaq's future Order Display and Collector Facility ("SuperMontage").

The text of the proposed rule change, as amended, appears below. New text is in italics. Deleted text is in brackets.

4710. Participant Obligations in NNMS

(a) No Change.

(b)(1)(A) through (b)(1)(D) No Change.

(2) Refresh Functionality

(A) Reserve Size Refresh—Once a Nasdaq Quoting Market Participant's Displayed Quote/Order size on either side of the market in the security has been decremented to zero due to NNMS processing Nasdaq will refresh the displayed size out of Reserve Size to a size-level designated by the Nasdaq Quoting Market Participant, or in the absence of such size-level designation, to the automatic refresh size. To utilize the Reserve Size functionality, a minimum of [1,000] *100* shares must initially be displayed in the Nasdaq Quoting Market Participant's Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least [1000] *100* shares. This functionality will not be available for use by UTP Exchanges.

(B) No Change.

(3) through (8) No Change.

(c) through (e) No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 24, 2002 ("Amendment No.1"). Amendment No. 1 replaced in its entirety the original rule proposal filed on June 18, 2002. In Amendment No. 1, Nasdaq, in part, made a minor technical correction to its rule text and clarified that only Nasdaq Quoting Market Participants would be permitted to use the reserve size functionality on SuperMontage.

[4] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated August 5, 2002 ("Amendment No. 2"). In Amendment No. 2, Nasdaq requested that the Commission waive the 30-day waiting period for the proposed rule change to become operative, and removed a sentence containing an inadvertent error regarding the possibility of decrementing a displayed quote to below 100 shares. For purposes of determining the effective date and calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers August 5, 2002 to be the effective date of the proposed rule change, the date Nasdaq filed Amendment No. 2. 15 U.S.C. 78s(b)(3)(C).

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forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its ongoing preparation for the launch of SuperMontage, Nasdaq is engaging in a continuing review of the system's functionality and rules with a view to constant improvement. As a result of this review, and in consultation with industry professionals, Nasdaq has determined to reduce, from 1000 shares to 100 shares, the initial display requirement when using the reserve size feature of SuperMontage.

Background

SuperMontage allows Nasdaq Quoting Market Participants to divide quoted share amounts submitted to the system between those shares they direct to display publicly in the Nasdaq montage and the shares they desire to keep in reserve. Known as "reserve size," shares kept in reserve are available for execution through SuperMontage but are not shown to the marketplace.[5] Nasdaq asserts that reserve size is an important tool for market participants seeking to execute large securities transactions while limiting negative market price impacts associated with public knowledge of those attempted sales or purchases.

Currently, the rules of Nasdaq's SuperMontage system prohibit the use of its reserve size functionality unless a Nasdaq Quoting Market Participant is displaying at least 1000 shares in its public quote. To Nasdaq's knowledge, it is the only market or trading venue that imposes such a display obligation. The 1000 share display requirement in SuperMontage was initially proposed to be consistent with a similar 1000 share display obligation applicable to trading in Nasdaq's SuperSoes system. Recent experience in the post-decimals SuperSoes environment, however, caused Nasdaq to re-examine the 1000 share display obligation and file with the Commission a proposal, since approved, to reduce, from 1000 to 100 shares, the display amount required to use reserve size in SuperSoes.[6] In this filing, Nasdaq seeks to adopt the same 100-share display standard in SuperMontage.

Under the rule change proposed here, Nasdaq Quoting Market Participants would be allowed to use SuperMontage reserve size any time they displayed a quote of at least one round lot (100 shares). Nasdaq states that the elimination of the 1000-share display requirement makes SuperMontage reserve size functionality available to market makers on terms similar to the reserve size facilities of competing trading systems while continuing to encourage the display of trading interest through SuperMontage's "displayed size first" execution algorithm.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[7] in general, and Section 15A(b)(6) of the Act,[8] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, does not:

(1) Significantly affect the protection of investors or the public interest;

(2) Impose any significant burden on competition; and

(3) Become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b-4(f)(6)[10] thereunder. At any time within 60 days of August 5, 2002, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

Nasdaq requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the 5-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that it has already approved a reduction of the minimum display size to 100 shares for use of reserve size in SuperSOES and believes that the proposal to implement the same change in SuperMontage raises no new regulatory issues.[12] As a result, the Commission designates the proposal to be effective and operative upon filing with the Commission.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

[5] Under SuperMontage's various execution algorithms, the system generally executes against all publicly displayed shares at the same price level before executing in time priority against reserve size at that same price. Telephone conversation between Thomas Moran, Office of General Counsel, Nasdaq, and Terri Evans, Assistant Director, and Ira Brandriss, Special Counsel, Division, Commission, on July 8, 2002.

[6] *See* Securities Exchange Act Release No. 45998 (May 29, 2002), 67 FR 39759 (June 10, 2002) (File No. SR–NASD–2001–66).

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[12] *See* Securities Exchange Act Release No. 45998 (May 29, 2002), 67 FR 39759 (June 10, 2002).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–84 and should be submitted by September 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20525 Filed 8–13–02; 8:45 am]

BILLING CODE 8010–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Notice of Availability and Request for Public Comment on Draft Environmental Review of United States-Singapore Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of availability and request for public comment.

SUMMARY: The Office of the U.S. Trade Representative (USTR), on behalf of the Trade Policy Staff Committee (TPSC), seeks comment on the draft environmental review of the proposed U.S.-Singapore Free Trade Agreement (FTA). The draft environmental review is available at *http://www.ustr.gov/environment/environmental.shtml.* Copies of the review will also be sent to interested members of the public by mail upon request.

DATES: Comments on the draft environmental review are requested by September 20, 2002.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the environmental review, or requests for copies, should be addressed to Alice Mattice or David Brooks, Environment and Natural Resources Section, Office of the USTR, telephone 202–395–7320.

SUPPLEMENTARY INFORMATION: Executive Order 13121—*Environmental Review of Trade Agreements* (64 FR 63,169, Nov. 18, 1999) and its implementing guidelines (65 FR 79,442, Dec. 19, 2000) require environmental reviews of certain major trade agreements. The Trade Act of 2002, signed by the President on August 6, 2002, provides that the President shall conduct environmental reviews consistent with the Order and its relevant guidelines, and report on such reviews to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. The Order and guidelines are available at *http://www.ustr.gov/environment/environmental.shtml.*

On November 29, 2000, at the outset of the negotiations, the TPSC initiated the environmental review of the Singapore FTA and requested public comments on the scope of the review, including the potential environmental effects that might flow from the FTA and the potential implications for environmental laws and regulations. *See* 65 FR 71,197 (Nov. 29, 2000); 65 FR 80,982 (Dec. 22, 2000) (extending public comment period). Because the negotiating schedule proved to be more extended than originally anticipated, the TPSC provided a supplemental opportunity for public comments. *See* 67 FR 8833 (Feb. 26, 2002). The TPSC also held a public hearing to discuss issues raised in connection with the Singapore FTA, including environmental issues. *See* 67 FR 9349 (Feb. 28, 2002).

Written Comments

In order to facilitate prompt processing of submissions of comments, the Office of the Unites States Trade Representative strongly urges and prefers e-mail submissions in response to this notice. Persons submitting comments by e-mail should use the following e-mail address: *FR0029@ustr.gov* with the subject line: "Singapore Draft Environmental Review." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. If submission by e-mail is impossible, comments should be made by facsimile to (202) 395–6143, attention: Gloria Blue.

Written comments will be placed in a file open to public inspection in the USTR Reading Room at 1724 F Street, NW., Washington DC. An appointment to review the file may be made by calling (202) 395–6186. The Reading Room is open to the public from 10–12 a.m. and from 1–4 p.m., Monday through Friday.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 02–20505 Filed 8–13–02; 8:45 am]

BILLING CODE 3190–01–P

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice on Honoring Tickets of Insolvent Airlines Pursuant to Section 145 of the Aviation and Transportation Security Act

August 8, 2002.

AGENCY: Office of the Secretary, DOT.

SUMMARY: The Department is publishing the following notice regarding the obligation of carriers to honor the tickets of insolvent airlines pursuant to the requirements of section 145 of the Aviation and Transportation Security Act.

FOR FURTHER INFORMATION CONTACT: Dayton Lehman, Jr., Deputy Assistant General Counsel, Office of Aviation Enforcement and Proceedings (C–70), 400 7th Street, SW., Washington, DC 20590, (202) 366–9349.

The purpose of this notice is to clarify the obligation of airlines under section 145 of the Aviation and Transportation Security Act ("Act") to provide transportation to passengers of airlines that have ceased operations due to insolvency or bankruptcy. (Pub. L. 107–71, 115 Stat. 645 (November 19, 2001).) This notice is needed because of numerous consumer complaints received by the Department regarding the treatment of passengers holding Vanguard Airline tickets by other airlines in the wake of Vanguard's July 30, 2002, cessation of operations.

In the wake of the September 11, 2001, terrorist attacks on the United States, Congress passed the Aviation and Transportation Security Act, which was signed into law on November 19, 2001. At least in part due to concerns that airlines might become insolvent, with resulting harm to consumers holding tickets on such airlines, Congress included in the law a provision to protect such consumers. The provision, section 145, requires airlines that operate on the same route as an insolvent carrier that has ceased operations to transport, "to the extent practicable," the ticketed passengers of the insolvent carrier. Specifically, section 145, which applies to interruptions in air service that occur within 18 months of the enactment of the Act, states in pertinent part:

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(a) * * * Each air carrier that provides scheduled air transportation on a route shall provide, to the extent practicable, air transportation to passengers ticketed for air transportation on that route by any other air carrier that suspends, interrupts, or discontinues air passenger service on the route by reason of insolvency or bankruptcy of the other air carrier.

(b) * * * An air carrier is not required to provide air transportation under subsection (a) to a passenger unless that passenger makes alternative arrangements with the air carrier for such transportation within 60 days after the date on which that passenger's air transportation was suspended, interrupted, or discontinued (without regard to the originally scheduled travel date on the ticket).

After the recent cessation of operations of Vanguard Airlines, there has been considerable confusion, on the part of airlines and the traveling public, over airlines' responsibilities under section 145, particularly with regard to the meaning of the phrase "to the extent practicable" as it relates to the carriers" duties to transport persons holding Vanguard tickets. Carriers have implemented varying policies regarding the treatment afforded to persons holding Vanguard tickets. Some carriers are providing those passengers transportation at no additional cost, either on a confirmed or stand-by basis. Others permit passengers to fly stand-by but assess up to a $100 "administrative fee" each way, along with offering to drop advance purchase requirements for restricted positive-space fares, and still others offer restricted positive-space fares and do not permit stand-by travel at all. In some of the instances, carriers have announced that their accommodations for Vanguard passengers will be available for only a short period of time.

It is the Department's position that section 145 requires, at a minimum, that passengers holding valid confirmed tickets, whether paper or electronic, of the insolvent or bankrupt carrier must be transported by other carriers who operate on the route for which the passenger is ticketed on a space-available basis on the date of travel shown on the ticket or other documentation demonstrating e-ticketing, without significant additional charges. We recognize that there is a cost to airlines of transporting such passengers and we do not believe that in enacting section 145 Congress intended to prohibit carriers from recovering from accommodated passengers minimal amounts associated with the actual cost of providing such transportation, such as direct cost of rewriting a passenger's ticket, onboard meal costs, and additional fuel costs for transporting an additional passenger. However, in no case do we foresee those costs exceeding $25 each way.

We also believe that the 60-day provision in the statute is clear. Consumers holding Vanguard tickets have until 60 days after the carrier suspended operations, or until September 28, 2002, to attempt to make alternative arrangements with another carrier.

It should be noted that passengers who purchased their Vanguard tickets using a credit card are entitled under the Fair Credit Billing Act to a credit refund from their credit card issuer, under specific circumstances, to the extent they do not receive the services for which they paid. If a passenger elects to accept alternate transportation under section 145, this choice is likely to affect his or her right to a refund under the Fair Credit Billing Act. The public may obtain information on obtaining refunds for Vanguard tickets on the Department's website at *http://www.dot.gov/airconsumer/vanguard.htm*.

Questions regarding this notice may be addressed to the Office of Aviation Enforcement and Proceedings (C–70), 400 7th St., SW., Washington, DC 20590.

Note: An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov/reports*.

Dated: August 8, 2002.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–20627 Filed 8–13–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airworthiness Approval of Global Navigation Satellite System (GNSS) Equipment

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of and requests comments on a revised draft Advisory Circular (AC) 20–138A airworthiness approach of Global Navigation Satellite System (GNSS) equipment. This AC addresses the following types of installations—

a. GNSS sensors, including those incorporating Wide Area Augmentation System (WAAS), Local Area Augmentation System (LAAS), or the Russian Global Navigation Satellite System (GLONASS).

b. GNSS stand-alone navigation equipment that provides deviations (including Category 1 precision approach).

DATES: Comments submitted must be received on or before September 16, 2002.

ADDRESSES: Send all comments on the proposed advisory circular to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionics Systems Branch, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Bruce DeCleene, Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 385–4640, FAX: (202) 267–5340.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested person are invited to comment on the draft AC listed in this notice by submitting such written data, views, or arguments, as they desire, to the aforementioned specified address. Comments must be marked "Comments to AC 20–138A." Comments received on the draft advisory circular may be examined, both before and after the closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified will be considered by the Director of the Aircraft Certification Service before issuing the Final AC.

Background

The FAA is developing a new Advisory Circular, AC 20–138A, Airworthiness Approval of Global Navigation Satellite System (GNSS) Equipment. This advisory circular (AC) provide guidance material for the airworthiness approval of all types of GNSS equipment. This revision to the current AC is in support of the deployment of the Wide Area Augmentation System (WAAS) and the local Area Augmentation System (LASS). WAAS services will be commissioned in 2003, providing en route, terminal area, and approach navigation. WAAS avionics may be approved under an authorization to Technical Standard Order (TSO) C–1145a, GPS/WAAS Sensors, or TSO–C146a, GPS/WAAS Stand Alone Navigation Equipment. This equipment may be installed prior to the commissioning of WAAS, and this AC is needed to provide the unique policy applicable to such installations. In addition, the LAAS will become operational in 2004. LAAS guidance is included in this AC to support the early installation of the associated avionics.

***How To Obtain Copies**

A copy of the revised draft AC may be obtained via Internet (*http://www.faa.gov/avr/air/airhome.htm*) or on request from the individual listed under FOR FURTHER INFORMATION CONTACT.

Issued in Washington, DC, on August 8, 2002.

David Hempe,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 02–20637 Filed 8–13–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-use Assurance, St. Louis Regional Airport, East Alton, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of airport land from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of the sale of Parcel I–54A (a 0.023-acre portion of Parcel I—54, also known as Lot 43 in Wayside Estates), Parcel I–56A (a 0.038-acre portion of Parcel I–56, also known as Lot 42 in Wayside Estates), Parcel I–58A (a 0.036-acre portion of Parcel I–58, also known as Lot 41 in Wayside Estates), Parcel I–99A (a 0.0370-acre portion of Parcel I–99, also known as Lot 40 in Wayside Estates), Parcel I–101A (a 0.036-acre portion of Parcel I–101, also known as Lot 39 in Wayside Estates), and Parcel I–103A (a 0.049-acre portion of Parcel I–103, also known as Lot 38 in Wayside Estates). Presently the land is vacant and used for control of FAR Part 77 surfaces and for land use and noise compatibility purposes and is not needed for appropriate use, as shown on the Airport Layout Plan. Parcel I–54 (0.293 acre, more or less) was acquired in 1996 with Federal participation under AIP grant 3–17–SBGP–12. Parcel I–56 (0.311 acre, more or less) was acquired in 1996 with Federal participation under AIP grant 3–17–SBGP–13. Parcel I–58 (0.285 acre, more or less) was acquired in 1996 with Federal participation under AIP grant 3–17–SBGP–10. Parcel I–99 (0.227 acre, more or less) was acquired in 1997 with Federal participation under AIP-grant 3–17–SBGP–16. Parcel I–101 (0.252 acre, more or less) was acquired in 1998 with Federal participation under AIP grant 3–17–SBGP–20. Parcel I–103 (0.254 acre, more or less) was acquired in 1997 with Federal participation under AIP grant 3–17–SBGP–20. It is the intent of the St. Louis Regional Airport Authority (SLRAA) to sell Parcels I–54A, I–56A, I–58A, I–99A, I–101A and I–103A in fee. This notice announces that the FAA intends to authorize the disposal of the subject airport property at St. Louis Regional Airport, East Alton, IL. Approval does not constitute a commitment by the FAA to financially assist in disposal of the subject airport property nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA Order 5100.38B "Airport Improvement Program Handbook."

In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before September 13, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Pur, Program Manager, 2300 East Devon Avenue, Des Plaines, IL, 60018. Telephone Number 847–294–7527/FAX Number 847–294–7046. Documents reflecting this FAA action may be reviewed at this same location by appointment or at the St. Louis Regional Airport Authority, St. Louis Regional Airport, 8 Terminal Drive, East Alton, IL 62024.

SUPPLEMENTARY INFORMATION: The following legal description of the proposed land sale is:

Parcel I–54A

That part of Lot 43 in Wayside Estates, a subdivision of part of the East Half of Section 11, Township 5 North, Range 9 West of the Third Principal Meridian in Madison County, Illinois, according to the plat thereof recorded in Plat Book 32, Page 83, described as follows:

Beginning at the northwest corner of said Lot 43; thence on an assumed bearing of North 79 degrees 02 minutes 13 seconds East, 21.18 feet on the north line of said Lot 43; thence South 01 degree 34 minutes 36 seconds East, 16.91 feet; thence South 11 degrees 36 minutes 36 seconds West, 41.52 feet to the south line of said Lot 43; thence North 58 degrees 27 minutes 11 seconds West, 12.09 feet on said south line to the southwest corner of said Lot 43; thence North 00 degrees 56 minutes 11 seconds West, 52.59 feet (52.56 feet recorded) on the west line of said Lot 43 to the Point of Beginning.

Said parcel herein described contains 0.023 acre, more or less.

Parcel I–56A

That part of Lot 42 in Wayside Estates, a subdivision of part of the East half of Section 11, Township 5 North, Range 9 West of the Third Principal Meridian in Madison County, Illinois, according to the plat thereof recorded in Plat Book 32, Page 83, described as follows:

Beginning at the northwest corner of said Lot 42, thence on an assumed bearing of North 79 degrees 01 minute 48 seconds East, 20.27 feet on the north line of said Lot 42; thence South 01 degree 34 minutes 36 seconds East, 81.05 feet to the south line of said Lot 42; thence South 79 degrees 02 minutes 13 seconds West, 21.18 feet on said south line to the southwest corner of said Lot 42; thence North 00 degrees 56 minutes 11 seconds West, 81.20 feet (81.15 feet recorded) on said west line to the Point of Beginning.

Said parcel herein described contains 0.038 acre, more or less.

Parcel I–58A

That part of Lot 41 in Wayside Estates, a subdivision of part of the East Half of Section 11, Township 5 North, Range 9 West of the Third Principal Meridian in Madison County, Illinois, according to the plat thereof recorded in Plat Book 32, Page 83, described as follows:

Beginning at the northwest corner of said Lot 41; thence on an assumed bearing of North 79 degrees 01 minute 59 seconds East, 19.35 feet on the north line of said Lot 41; thence South 01 degree 34 minutes 36 seconds East, 81.07 feet to the south line of said Lot 41; thence South 79 degrees 01 minute 48 seconds West, 20.27 feet on said south line to the southwest corner of said Lot 41; thence North 00 degrees 56

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minutes 11 seconds West, 81.23 feet (81.18 feet recorded) on the west line of said Lot 41 to the Point of Beginning.

Said parcel herein described contains 0.036 acre, more or less.

Parcel I–99A

That part of Lot 40 in Wayside Estates, a subdivision of part of the East Half of Section 11, Township 5 North, Range 9 West of the Third Principal Meridian in Madison County, Illinois, according to the plat thereof recorded in Plat Book 32, Page 83, described as follows:

Beginning at the northwest corner of said Lot 40, thence on an assumed bearing of North 81 degrees 53 minutes 26 seconds East, 18.22 feet on the north line of said Lot 40; thence South 01 degree 34 minutes 36 seconds East, 86.92 feet to the south line of said Lot 40; thence South 79 degrees 01 minute 59 seconds West, 19.35 feet on said south line to the southwest corner of said Lot 40; thence North 00 degrees 56 minutes 11 seconds West, 88.01 feet (87.95 feet recorded) on the west line of said Lot 40 to the Point of beginning.

Said parcel herein contains 0.037 acre, more or less.

Parcel I–101A

That part of Lot 39 in Wayside Estates, a subdivision of part of the East Half of Section 11, Township 5 North, Range 9 West of the Third Principal Meridian in Madison County, Illinois, according to the plat thereof recorded in Plat Book 32, Page 83, described as follows:

Beginning at the northwest corner of said Lot 39; thence on an assumed bearing on North 85 degrees 58 minutes 11 seconds East, 17.12 feet on the north line of said Lot 39; thence South 01 degree 34 minutes 36 seconds East, 88.26 feet to the south line of said Lot 39; thence South 81 degrees 53 minutes 26 seconds West, 18.22 feet on said south line to the southwest corner of said Lot 39; thence North 00 degrees 56 minutes 11 seconds West, 89.61 feet (89.55 feet recorded) on the west line of said Lot 39 to the Point of Beginning.

Said parcel herein described contains 0.036 acre, more or less.

Parcel I–103A

That part of Lot 38 in Wayside Estates, a subdivision of part of the East Half of Section 11, Township 5 North, Range 9 West of the Third Principal Meridian in Madison County, Illinois, according to the plat thereof recorded in Plat Book 32, Page 83, described as follows:

Beginning at the northwest corner of said Lot 38; thence on an assumed bearing of South 86 degrees 20 minutes 45 seconds East, 30.89 feet on the north line of said Lot 38; thence South 09 degrees 51 minutes 07 seconds West, 74.38 feet; thence South 01 degree 34 minutes 36 seconds East, 20.33 feet to the south line of said Lot 38; thence South 85 degrees 58 minutes 11 seconds West, 17.12 feet on said south line to the southwest corner of said Lot 38; thence North 00 degrees 56 minutes 11 seconds West, 96.79 feet (96.73 feet recorded) on the west line of said Lot 38 to the Point of Beginning.

Said parcel herein described contains 0.049 acre, more or less.

This legal description does not represent a boundary survey and is based on a suggested land description provided by the Illinois Department of Transportation.

Issued in Des Plaines, Illinois on July 19, 2002.

Philip M. Smithmeyer,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 02–20640 Filed 8–13–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Two Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the FAA invites public comment on two currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before October 15, 2002.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address. Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collections, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearances of the following information collections.

1. 2120–0543, Pilots Convicted of Alcohol or Drug-Related Vehicle Offenses or Subject to State Motor Vehicle Administration Procedures. The information requested from airmen is needed to mitigate potential hazards presented by airmen using alcohol or drugs in flight; it is used to identify persons possibly unsuitable for pilot certification; and it affects those pilots who have been or will be convicted of a drug or alcohol-related traffic violation. The current estimated annual reporting burden is 370 hours.

2. 2120–0653, Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area. The National Parks Overflights Act mandates that the recommendations provide for "substantial restoration of the natural quiet and experience of the park and protection of public health and safety from adverse effects associated with aircraft overflight." The FAA will use the information to monitor compliance with the regulations. The current estimated annual reporting burden is 466 hours.

Issued in Washington, DC, on August 8, 2002.

Judith D. Street,

FAA Information Collection Clearance Officer, APF–100.

[FR Doc. 02–20639 Filed 8–13–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Four Agency Information Collection Activities Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the four Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collections. The ICR describes the nature of the information collections and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collections of information was published on March 28, 2002.

DATES: Comments must be submitted on or before September 13, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

(1) *Title:* Pilot Schools—FAR 141.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0009.

Forms(s): FAA Form 8420–8.

Affected Public: A total of 524 applicants for pilot school certification.

Abstract: Chapter 447, Subsection 44707, authorizes certification of civilian schools in instruction in flying. 14 CFR part 141 prescribes requirements for pilot schools certification. The information collected is used for certification and to determine compliance. The respondents are applicants who wish to be issued pilot school certificates and associated ratings.

Estimated Annual Burden Hours: An estimated 28,878 hours annually.

(2) *Title:* Rotorcraft External-Load Operator Certificate Application—FAR—133.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0044.

Forms(s): FAA 8710–4.

Affected Public: A total of 400 applicants and rotorcraft operators.

Abstract: The information required by part 133 is used by the FAA to process the operating certificate as a record of aircraft authorized for use, and to monitor Rotorcraft External-Load Operations. Part 133 establishes certification and operating rules governing nonpassenger-carrying rotorcraft-external load operations conducted for compensation or hire.

Estimated Annual Burden Hours: An estimated 3,268 hours annually.

(3) *Title:* General Aviation/Air Taxi activity and Avionics Survey.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0060.

Forms(s): FAA Form 1800–54.

Affected Public: A total of 30,000 applicants.

Abstract: Respondents to this survey are owners of general aviation aircraft. The information is used by the FAA, National Transportation Safety Board, and other government agencies, the aviation industry, and others for safety assessment, planning, forecasting, cost/benefit analysis, and to target areas of research

Estimated Annual Burden Hours: An estimated 5,500 hours annually.

(4) *Title:* Aviator Safety Studies.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0587.

Forms(s): N/A.

Affected Public: A total of 3,333 applicants for pilot school certification.

Abstract: In order to develop effective intervention programs to improve aviation safety, data are required on the type and range of various pilot attributes related to their skill in making safety-related aeronautical decisions. The information collected is used to develop new training methods particularly suited to general aviation pilots.

Estimated Annual Burden Hours: An estimated 28,878 hours annually.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 2, 2002.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 02–20638 Filed 8–13–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Free Flight Steering Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Government/Industry Free Flight Steering Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Government/Industry Free Flight Steering Committee.

DATES: The meeting will be held August 21, 2002, from 1–3:30 p.m.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Conference Rooms 5 ABC, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Free Flight Steering Committee meeting. **NOTE:** *Non-Government attendees to the meeting must go through security and be escorted to and from the conference room.* The agenda will include:

- *August 21:*
  - Opening Session (Welcome and Introductory Remarks, Review/Approve Summary of Previous Meeting)
- Free Flight Select Committee Report
  - National Airspace System Concept of Operations, Revision 1
  - Concept of Equipage/Mandatory vs Voluntary Equipage
  - Recommendations
- Federal Aviation Administration Reports
  - ADS–B Link Decision and Next Steps
  - Operational Evolution Plan
- Closing Session (Other Business, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 1, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–20635 Filed 8–13–02; 8:45 am]

BILLING CODE 4910–13–M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 195: Flight Information Services Communications (FISC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 195 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 195: Flight Information Services Communications (FISC).

DATES: The meeting will be held August 27–28, 2002, starting at 8:30 a.m.

ADDRESSES: The meeting will be held at ALPH Headquarters, 535 Herndon Parkway, Herndon, VA.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Washington, DC 20036; telephone (202) 833–9339; fax (202) 883–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 195 meeting. The agenda will include:

- *August 27*
- Opening Plenary Session (Welcome and Introductory Remarks, Approval of Agenda, Approval of Minutes, Review of Action Items)
- *Working Group 1:* Aircraft Cockpit Weather Display
  - Use of Color Discussion
  - Progress on Change 1 to DO–267, Minimum Aviation System Performance Standards (MASPS) for Flight Information Services-Broadcast (FIS–B) Data Link
- Continue Plenary Session
- Review of Product Registry Guidance Draft Document
- Work on DO–267 Change 1
- *August 28*
- Review of Aerodrome and Airspace Product Specifications
- Review of Proposed Appendix F, Universal Access Transceiver Material
- Working Group 1 Report
- Work on DO–267 Change 1
- Closing Plenary Session (Review Action Items, Discussion of Future Workplan, Other Business, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Dated: Issued in Washington, DC, on August 2, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–20636 Filed 8–13–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In May 2002, there were six applications approved. This notice also includes information on one application, approved in April 2002, inadvertently left off the April 2002 notice. Additionally, 21 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City and Borough of Juneau, Juneau, Alaska.
Application Number: 02–06–C–00–JNU.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $2,425,779.
Earliest Charge Effective Date: July 1, 2002.
Estimated Charge Expiration Date: May 1, 2005.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use:
Rehabilitate access road.
Terminal expansion feasibility study/design, phase I.
Brief Description of Projects Approved for Collection:
Snow removal equipment building.
Runway safety area phase II—mitigation and construction.
Northwest quadrant development.
Decision Date: April 30, 2002.
FOR FURTHER INFORMATION CONTACT: Debbie Roth, Alaska Region Airports Division, (907) 271–5443.

Public Agency: Beaufort County Council, Hilton Head, South Carolina.
Application Number: 02–03–U–00–HXD.
Application Type: Use PFC revenue.
PFC Level: $3.00.
Total PFC Revenue Approved for Use in This Decision: $2,076,657.
Charge Effective Date: December 1, 2000.
Estimated Charge Expiration Date: October 1, 2007.
Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.
Brief Description of Projects Approved for Use:
Land acquisition (10 acres).
General aviation development.
Decision Date: May 3, 2002.
FOR FURTHER INFORMATION CONTACT: Aimee McCormick, Atlanta Airports District Office, (404) 305–7153.

Public Agency: City of Dayton, Ohio.
Application Number: 01–04–C–00–DAY.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $64,544,267.
Earliest Charge Effective Date: July 1, 2003.
Estimated Charge Expiration Date: December 1, 2013.
Class of Air Carriers Not Required To Collect PFC's: All air taxi/commercial operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Dayton International Airport (DAY).
Brief Description of Projects Approved for Collection at Day and Use at Day:
Runway pavement rehabilitation.
Environmental impact study.
Deicing system improvements.
Back-up generator—airfield.
Aircraft rescue and firefighting (ARFF) station renovation and expansion.
Taxiways A and Z rehabilitation.
Taxiways H, K, E, C, L, and V rehabilitation.
Cargo and terminal aircraft apron rehabilitation.
Land acquisition—approach and runway protection.

Airfield snow removal equipment.
ARFF vehicle replacement (Rescue 22).
Back-up generator—terminal.
Terminal gate expansion.
Terminal Drive and related roads rehabilitation.
Southwest terminal apron, northeast deice apron, and perimeter road.
Part 150 noise study, phases 1, 2, and final.
Airport police office renovation.
Brief Description of Projects Approved for Collection at Day and Use at Dayton-Wright Brothers Airport:
Land acquisition and approach protection for runway 20.
Runway 2/20 and other pavement rehabilitation.
Brief Description of Projects Approved in Part for Collection at Day and Use at Day: Geographical information system (GIS) implementation and computerized airfield lighting and control system (CALCS).
Determination: Partially approved. The public agency did not provide enough information to allow the FAA to determine that the GIS is adequately justified in accordance with § 158.15(c) and paragraph 4–8 of FAA Order 5500.1, Passenger Facility Charge (August 9, 2001). Nor could the FAA determine from the information provided by the public agency that the GIS met one of the PFC objectives in accordance with § 158.15(a).
Decision Date: May 9, 2002.
FOR FURTHER INFORMATION CONTACT: Arlene B. Draper, Detroit Airports District Office, (734) 487–7282.

Public Agency: City of Cleveland, Ohio.
Application Number: 02–09–U–00–CLE.
Application Type: Use PFC revenue.
PFC Level: $3.00.
Total PFC Revenue Approved for Use in This Decision: $3,410,400.
Charge Effective Date: June 1, 1999.
Estimated Charge Expiration Date: December 1, 2007.
Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.
Brief Description of Projects Approved for Use:
Analex office building demolition.
Installation of instrument landing system on runway 6L/24R.
Decision Date: May 16, 2002.
FOR FURTHER INFORMATION CONTACT: Arlen B. Draper, Detroit Airports District Office, (734) 487–7282.

Public Agency: City of Redmond, Oregon.
Application Number: 02–04–C–00–RDM.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $1,968,545.
Earliest Charge Effective Date: June 1, 2003.
Estimated Charge Expiration Date: April 1, 2006.
Class of Air Carriers Not Required To Collect PFC's: Air taxis.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Roberts Field.
Brief Description of Projects Approved for Collection and Use:
Expand terminal access road.
Conceptual design of terminal expansion.
Install perimeter security fence.
Wildlife mitigation.
Design and rehabilitate air carrier terminal apron.
Rock obstruction removal.
Decision Date: May 24, 2002.
FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Yakima Air Terminal Board, Yakima, Washington.
Application Number: 02–08–C–00–YKM.
Application Type: Impose and use a PFC.
PFC Level: $34.00.
Total PFC Revenue Approved in This Decision: $55,000.
Earliest Charge Effective Date: March 1, 2004.
Estimated Charge Expiration Date: July 1, 2004.
Class of Air Carriers Not Required To Collect PFC's: Air Taxi/commercial operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Yakima Air Terminal—McAllister Field.
Brief Description of Project Approved for Collection and Use: 2002 airport security improvement project.
Decision Date: May 24, 2002.
FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Monterey Peninsula Airport District, Monterey, California.
Application Number: 02–08–C–00–MRY.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $320,122.
Earliest Charge Effective Date: August 1, 2002.
Estimated Charge Expiration Date: May 1, 2003.
Class of Air Carriers Not Required To Collect PFC's: Unscheduled Part 135 Air taxi operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Monterey Peninsula Airport.
Brief Description of Projects Approved for Collection and Use:
Airport biological assessment for airport roadway circulation projects.
Improve airport drainage.
Improve airport emergency assess gate.
Residential soundproofing, phase 8.
Brief Description of Disapproved Project: Environmental impact report for airport roadway circulation project.
Determination: This project is not eligible as a stand-alone document in accordance with FAA Order 5050.4A, Airport Environmental Handbook (October 8, 1985).
Brief Description of Withdrawn Project: Airport property map.
Determination: This project was withdrawn by the public agency on April 28, 2002.
Decision Date: May 30, 2002.
FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
97–05–C–01–TYS, Knoxville, TN	02/12/02	$1,751,812	$1,467,737	05/01/99	05/01/99
[1] 00–05–C–01–SAW, Marquette, MI	04/04/02	369,235	335,998	11/01/05	12/01/02
95–02–C–05–CVG, Covington, KY	04/26/02	76,095,000	75,857,000	12/01/98	11/01/98

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AMENDMENTS TO PFC APPROVALS—Continued

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
98–03–C–05–CVG, Covington, KY	04/26/02	24,261,000	24,004,000	08/01/99	09/01/99
98–04–C–05–CVG, Covington, KY	04/26/02	33,338,000	35,198,000	07/01/00	07/01/00
99–05–C–04–CVG, Covington, KY	04/26/02	18,620,000	18,136,000	08/01/01	02/01/02
01–06–C–01–CVG, Covington, KY	04/26/02	21,117,000	20,265,000	06/01/02	10/01/02
01–07–C–01–CVG, Covington, KY	04/26/02	27,138,000	29,046,000	06/01/03	08/01/03
93–01–C–05–IAD, Chantilly, VA	05/01/02	225,967,396	226,410,192	05/01/03	05/01/03
99–02–C–02–APF, Naples, FL	05/08/02	186,606	158,948	02/01/01	02/01/01
01–03–C–01–APF, Naples, FL	05/08/02	850,000	877,658	06/01/07	04/01/07
99–01–C–02–ANC, Anchorage, AK	05/13/02	15,000,000	15,000,000	01/01/04	01/01/04
96–04–C–04–YAK, Yakima, WA	05/15/02	965,075	965,075	06/01/00	06/01/00
01–03–C–01–FOD, Fort Dodge, IA	05/21/02	284,903	290,193	04/01/08	04/01/08
[1]92–01–C–03–HLN, Helena, MT	05/28/02	1,877,003	1,877,003	09/01/04	06/01/03
96–02–U–02–HLN, Helena, MT	05/28/02	NA	NA	09/01/04	06/01/03
93–01–C–03–DCA, Arlington, VA	05/28/02	166,100,974	166,739,069	02/01/02	04/01/02
94–02–U–03–DCA, Arlington, VA	05/28/02	NA	NA	02/01/02	04/01/02
98–04–C–02–DCA, Arlington, VA	05/28/02	73,203,813	73,203,813	09/01/06	09/01/06
93–01–C–06–IAD, Chantilly, VA	05/29/02	226,410,194	225,967,400	05/01/03	01/01/04
[1]01–05–C–01–DFW, Dallas-Fort Worth, TX	05/31/02	1,681,378,893	1,681,378,893	12/01/13	07/01/11

(Note: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Marquette, MI and Dallas, TX, this change is effective on July 1, 2002. For Helena, MT, this change is effective on August 1, 2002.)

Issued in Washington, DC, on August 5, 2002.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 02–20634 Filed 8–13–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 7, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 13, 2002 to be assured of consideration.

Departmental Offices/International Portfolio Investment Data Systems

OMB Number: 1505–0149.

Form Number: None.

Type of Review: Extension.

Title: Reporting of International Capital and Foreign Currency Transactions and Positions, 31 CFR Part 128.

Description: 31 CFR Part 128 establishes general guidelines for report on United States claims on and liabilities to foreigners; on transactions in securities with foreigners; and on monetary reserves of the United States. It also establishes guidelines for reporting on the foreign currency transactions of U.S. persons. It includes a recordkeeping requirement § 128.5.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 2,000.

Estimated Burden Hours Per Recordkeeper: 3 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 6,000 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–20552 Filed 8–13–02; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 7, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 13, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1004.

Form Number: IRS Form 1120–REIT.

Type of Review: Revision.

Title: U.S. Income Tax Return for Real Estate Investment Trusts.

Description: Form 1120–REIT is filed by a corporation, trust, or association electing to be taxed as a REIT in order to report its income, and deductions, and to compute its tax liability. IRS uses Form 1120–REIT to determine whether the REIT has correctly reported its income, deductions, and tax liability.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 363.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	58 hr., 35 min.
Learning about the law or the form.	24 hr., 7 min.
Preparing the form	42 hr., 51 min.
Copying, assembling, and sending the form to the IRS.	4 hr., 49 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 46,490 hours.

OMB Number: 1545–1008.

Form Number: IRS Form 8582.

Type of Review: Revision.

Title: Passive Activity Loss Limitation.

Description: Under Internal Revenue Code section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax return.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents/Recordkeepers: 3,622,282.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	1 hr., 25 min.
Learning about the law or the form.	1 hr., 43 min.
Preparing the form	1 hr., 45 min.
Copying, assembling, and sending the form to the IRS.	20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 19,355,758 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–20553 Filed 8–13–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4361

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4361, Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners.

DATES: Written comments should be received on or before October 15, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the internal (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners.

OMB Number: 1545–0168.

Form Number: 4361.

Abstract: Form 4361 is used by ministers, members of religious orders, or Christian Science practitioners to file for an exemption from self-employment tax on certain earnings and to certify that they have informed the church or order that they are opposed to the acceptance of certain public insurance benefits.

Current Actions: There are no changes being made to the Form 4361 at this time.

Type of Review: Extension of a current OMB approval.

Affected Public: Individuals.

Estimated Number of Respondents: 10,270.

Estimated Time Per Response: 59 min.

Estimated Total Annual Burden Hours: 10,167.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 5, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20623 Filed 8–13–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Performance Review Board

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Bernie Doyle, 1111 Constitution Avenue, NW, N:ADC:H:S Room 3513, Washington, DC 20224, (202) 927–6421.

SUPPLEMENTARY INFORMATION: As required by Chapter 43, Subchapter II, Section 4314(4) of Title 5, U.S. Code

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and Part 430, Subpart C. Section 430.310, the following executives are members of the Internal Revenue Service's Senior Executive Service Performance Review Board (PRB):

Robert E. Wenzel, Deputy Commissioner and Chairperson, Service-wide Performance Review Board
Tyrone B. Ayers, Director, Communications, Assistance, Research, and Education
Leonard Baptiste, Jr., Director, Security and Privacy Oversight
Darlene R. Berthod, Deputy Commissioner, Tax Exempt and Government Entities
Helen H. Bolton, Director, Human Resources Policy and Program
Delena D. Bratton, Deputy Chief/ National Director, Government Liaison and Disclosure
Dennis E. Crawford, Deputy Chief, Criminal Investigation
Richard J. Cronin, Director, Personnel Services
John M. Dalrymple, Commissioner, Wage and Investment
Mary E. Davis, Director, Strategy and Finance
John C. Duder, Deputy Commissioner, Wage and Investment
Fred L. Forman, Associate Commissioner for Business Systems Modernization
Linda M. Garrard, Deputy Chief, Appeals
W. Todd Grams, Chief Financial Officer
Thelma Harris, Director, EEO & Diversity Field Services
Dale F. Hart, Deputy Commissioner, Small Business and Self-Employed
Joseph G. Kehoe, Commissioner, Small Business and Self-Employed
Francis M. Keith Jr., National Director, Communication
Henry O. Lamar Jr., Deputy, National Taxpayer Advocate
Larry R. Langdon, Commissioner, Large and Mid-Size Business
David A. Mader, Assistant Deputy Commissioner
Richard J. Morgante, Director, Management and Finance
Deborah M. Nolan, Deputy Commissioner, Large and Mid-Size Business
Evelyn A. Petschek, Commissioner, Tax Exempt and Government Entities
William E. Porter, Director, Resources Allocation
John C. Reece, Deputy Commissioner Modernization & CIO
John A. Ressler, Director, Customer Account Services
David B. Robison, Chief, Appeals
Johnny C. Rose, Director, Operations Policy and Support
Gregory D. Rothwell, Deputy Chief, Agency-Wide Shared Services
Gerald J. Songy, Director, Taxpayer Education and Communication
Richard Speier Jr., Director of Field Operations, Pacific Area
Ronald Stephen, Director, Real Estate & Facilities
Linda E. Stiff, Director, Compliance
Martha Sullivan, Director, Compliance
Robert C. Turner, National Director, Strategic Planning and Client Services
John R. Watson, Director, Customer Accounts Services
Dan Whitten, Director of Field Operations, Mid-Atlantic Area
Floyd L. Williams III, National Director, Legislative Affairs Division
Toni L. Zimmerman, Deputy Director, Information Technology

This document does not meet the Department of Treasury's criteria for significant regulations.

Dated: July 25, 2002.

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 02–20622 Filed 8–13–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0067]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection for which approval has expired and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a claimant eligibility for automobile allowance and adaptive equipment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 15, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0067" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Automobile or other Conveyance and Adaptive Equipment (under 38 U.S.C. 3901–3904), VA Form 21–4502.

OMB Control Number: 2900–0067.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4502 is used to gather the necessary information to determine a veteran's entitlement to automobile allowance and adaptive equipment.

Affected Public: Individuals and households.

Estimated Annual Burden: 375.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,500.

Dated: July 31, 200.

By direction of the Secretary:

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–20573 Filed 8–13–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0005]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a parent's eligibility for the death benefit sought subsequent to a veteran's death.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 15, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0005" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Dependency and Indemnity Compensation by Parent(s), (Including Accrued Benefits and Death Compensation, When Applicable), VA Form 21–535.

OMB Control Number: 2900–0005.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–535 is completed by a surviving parent or parents of a deceased veteran to file for benefits subsequent to the veteran's death. VA uses the information to determine a parent's eligibility, dependency and income, as applicable, for the death benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 25,056 hours.

Estimated Average Burden Per Respondent: 1 hour 12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,880.

Dated: July 31, 2002.

By direction of the Secretary:

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–20574 Filed 8–13–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0381]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the holder's election to convey and transfer foreclosed property to VA.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 15, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0381" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Notice for Election to Convey and/or Invoice for Transfer of Property, VA Form 26–8903.

OMB Control Number: 2900–0381.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–8903 serves four purposes: holder's election to convey, invoice for the purchase price of the property, VA's voucher for authorizing payment to the holder, and establishment of VA's property records. When VA specifies an amount in relation to the foreclosure of a GI home loan and the holder elects to convey the property to VA, Section 3732 of Title 38, U.S.C., and 38 CFR 36.4320(a)(1), provide that if a minimum amount for credit to the borrower's indebtedness has been specified by VA in relation to the sale of the real property and the holder is the successful bidder at the sale for no more than the amount

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specified by VA, the holder will credit the indebtedness with that amount. The holder may then retain the property, or not later than 15 days after the date of sale, advise VA of its election to convey and transfer the property to the VA. VA needs to know the amount bid at the sale, the type of deed to be used for transferring title from the holder to VA, occupancy information, and the hazard insurance coverage.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 4,167 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 25,000.

Dated: July 31, 2002.

By direction of the Secretary:

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–20575 Filed 8–13–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed by VA to determine the process used by medical examiners and coroners to identify unclaimed persons as veterans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 15, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to "OMB Control No. 2900–NEW" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Questionnaire For Coroners and Medical Examiners, VA Form 21–0766.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: VA Form 21–0766 is used by medical examiners and coroners to help identify unclaimed decedents as veterans who are entitled to burial benefits. The information collected is needed to determine how often medical examiners and coroners attempt to verify veteran status, how long records of decedents are maintained and who the medical examiners and coroners contact to verify veteran status.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 525 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,158.

Dated: July 31, 2002.

By direction of the Secretary:

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–20576 Filed 8–13–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW (Pension and Parents DIC Participants)]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Policy and Planning, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Policy and Planning (OPPA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 13, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–NEW (Pension and Parents DIC Participants)".

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–NEW (Pension and Parents DIC Participants)".

SUPPLEMENTARY INFORMATION:

Title: Survey of Department of Veterans Affairs Pension and Parents DIC Participants.

OMB Control Number: 2900–New.

Type of Review: New collection.

Abstract: The purpose of this evaluation is to assess the effectiveness and efficiency of the VA Pension and Parents DIC programs. These are needs-based programs that provide benefits to wartime veterans who are permanently and totally disabled due to non-service-connected causes, surviving spouses of deceased wartime veterans, and needy parents of veterans whose deaths were service-connected.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 4, 2002, at pages 38547–38548.

Affected Public: Individuals or households.

Estimated Time Per Respondent and Annual Burden: 2,871 hours.

a. Veterans @ 45 minutes per response = 981.75 hours.

b. Spouses @ 45 minutes per response = 978 hours.

c. Parents @ 45 minutes per response = 911.25 hours.

Frequency of Response: One-time.

Estimated Number of Respondents: 3,828.

a. Veterans—1,309.

b. Spouses—1,304.

c. Parents—1,215.

Dated: August 6, 2002.

By direction of the Secretary:

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–20571 Filed 8–13–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0368]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 et seq.), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 13, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0368."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0368" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Monthly Statement of Wages Paid to Trainee VA (Chapter 31, Title 38, U.S.C.), VA Form 28–1917.

OMB Control Number: 2900–0368.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1917 is used by employers providing on-job or apprenticeship training to veterans to report each veteran's wages during the preceding month. VA uses the information to determine whether the veteran is receiving the appropriate wage increase and to ensure the veteran is receiving the correct rate of subsistence allowance.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 6, 2002, at page 39099–39100.

Affected Public: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Annual Burden: 1,800 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 300.

Estimated Total Annual Responses: 3,600.

Dated: July 31, 2002.

By direction of the Secretary:

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–20572 Filed 8–13–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Professional Certification and Licensure Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 (Federal Advisory Committee Act) that the Professional Certification and Licensure Advisory Committee will meet at the Department of Veterans Affairs, Veterans Benefits Administration Education Conference Room 601V, 1800 G St., NW., Washington, DC, on Wednesday, September 4, 2002, from 8:30 a.m. to 4 p.m., and from 8 a.m. to 12 p.m. on Thursday, September 5, 2002. The purpose of the Committee is to review the requirements of organizations or entities offering licensing and certification tests to individuals for which payment for such tests may be made under chapters 30, 32, 34, or 35 of Title 38, United States Code.

On September 4, the meeting will begin with opening remarks and an overview by Ms. Sandra Winborne, Committee Chair. During the morning session, the Committee will receive presentations on the National Association of State Approving Agencies Conference and the Professional Certification Advisory Board Meeting. The afternoon session will include discussion of the VA responses to previous Committee recommendations. On September 5, the Committee will discuss what the Committee's direction should be for the coming year.

Those planning to attend the open meeting should contact Mr. Giles Larrabee or Mr. Michael Yunker at (202) 273–7187. Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before the meeting, or within 10 days after the meeting. Oral statements will be heard at 9 a.m. Thursday, September 5, 2002.

Dated: August 7, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–20570 Filed 8–13–02; 8:45 am]

BILLING CODE 8320–01–M

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Corrections

Federal Register
Vol. 67, No. 157
Wednesday, August 14, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–99–6266]

RIN 2126–AA46

Brake Performance Requirements for Commercial Motor Vehicles Inspected by Performance-Based Brake Testers

Correction

In rule document 02–20248 beginning on page 51770 in the issue of Friday, August 9, 2002, make the following correction:

On page 51770, in the second column, under the **DATES** section, in the second line, "February 5, 2002" should read "February 5, 2003".

[FR Doc. C2–20248 Filed 8–13–02; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Wednesday,
August 14, 2002

Part II

Environmental Protection Agency

40 CFR Parts 86, 90, 1045, 1051 and 1068
Control of Emissions From Spark-Ignition Marine Vessels and Highway Motorcycles; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86, 90, 1045, 1051, and 1068

[AMS–FRL–7253–8]

RIN 2060–AJ90

Control of Emissions From Spark-Ignition Marine Vessels and Highway Motorcycles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this action, we are proposing evaporative emissions standards for marine vessels that use spark-ignition engines (including sterndrive, inboard, and outboard engines and personal watercraft) and we discuss our plans to propose standards in the future regulating exhaust emissions from spark-ignition marine engines. This action also proposes new emission standards for highway motorcycles, including motorcycles of less than 50 cubic centimeters in displacement. This action is related to our proposal for emission standards for several sources that cause or contribute to air pollution. On October 5, 2001 we published proposed standards for large spark-ignition engines such as those used in forklifts and airport tugs; recreational vehicles using spark-ignition engines such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines.

Nationwide, marine evaporative hydrocarbon (HC) emissions contribute to ozone, and motorcycles contribute to ozone, carbon monoxide (CO), and particulate matter (PM) nonattainment. These pollutants cause a range of adverse health effects, especially in terms of respiratory impairment and related illnesses. The proposed standards would help states achieve and maintain air quality standards. In addition, the proposed evaporative emission standards would help reduce acute exposure air toxics and the proposed motorcycle exhaust standards would help reduce exposure to CO, air toxics, and PM for operators and other people close to emission sources. They would also help address other environmental problems, such as visibility impairment in our national parks.

We believe that manufacturers would be able to maintain or even improve the performance of their products in certain respects when producing engines and vessels meeting the proposed standards. In fact, we estimate that the evaporative emission standards would reduce fuel consumption by enough to offset any costs associated with the evaporative emission control technology. Overall, the gasoline fuel savings associated with the anticipated changes in technology resulting from the rule proposed in this notice are estimated to be about 31 million gallons per year once the program is fully phased in (2030). The proposal also has several provisions to address the unique limitations of small-volume manufacturers.

DATES: *Comments:* Send written comments on this proposal by November 8, 2002. See Section VII for more information about written comments.

Hearings: We will hold a public hearing on September 17, 2002 starting at 9:30 a.m. EDT. This hearing will focus on issues related to highway motorcycles. In addition, we will hold a public hearing on September 23, 2002 starting at 9:30 a.m. EDT. This hearing will focus on issues related to marine vessels. If you want to testify at a hearing, notify the contact person listed below at least ten days before the hearing. See Section VII for more information about public hearings.

ADDRESSES: *Comments:* You may send written comments in paper form or by e-mail. We must receive them by November 8, 2002. Send paper copies of written comments (in duplicate if possible) to the contact person listed below. You may also submit comments via e-mail to "MCNPRM@epa.gov." In your correspondence, refer to Docket A–2000–02.

Hearings: We will hold a public hearing for issues related to highway motorcycles on September 17 at the Ypsilanti Marriott at Eagle Crest, Ypsilanti, Michigan (734–487–2000).

We will host a public hearing for issues related to marine vessels on September 23 at the National Vehicle and Fuel Emission Laboratory, 2000 Traverwood Dr., Ann Arbor, Michigan (734–214–4334). See Section VII, "Public Participation" below for more information on the comment procedure and public hearings.

Docket: EPA's Air Docket makes materials related to this rulemaking available for review in Public Docket Nos. A–2000–01 and A–2000–02 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500 (on the ground floor in Waterside Mall), 401 M Street, SW., Washington, DC 20460 between 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–7548, and by facsimile (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4334; FAX: (734) 214–4816; E-mail: *borushko.margaret@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities

This proposed action would affect companies that manufacture or introduce into commerce any of the engines or vehicles that would be subject to the proposed standards. These include: Marine vessels with spark-ignition engines and highway motorcycles. This proposed action would also affect companies buying engines for installation in vessels and motorcycles. There are also proposed requirements that apply to those who rebuild any of the affected engines. Regulated categories and entities include:

Category	NAICS codes[a]	SIC codes[b]	Examples of potentially regulated entities
Industry		3732	Manufacturers of marine vessels.
Industry	811310	7699	Engine repair and maintenance.
Industry	336991		Motorcycles and motorcycle parts manufacturers.
Industry	421110		Independent Commercial Importers of Vehicles and Parts.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be regulated by this action. To determine whether particular activities may be regulated by this action, you should carefully examine the proposed regulations. You may direct questions regarding the applicability of this action to the person listed in **FOR FURTHER INFORMATION CONTACT**.

Obtaining Electronic Copies of the Regulatory Documents

The preamble, regulatory language, Draft Regulatory Support Document, and other rule documents are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost incurred for internet connectivity. The electronic version of this proposed rule is made available on the day of publication on the primary Web site listed below. The EPA Office of Transportation and Air Quality also publishes official **Federal Register** notices and related documents on the secondary Web site listed below.

1. *http://www.epa.gov/docs/fedrgstr/EPA–AIR/* (either select desired date or use Search feature)
2. *http://www.epa.gov/otaq/* (look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the documents and the software into which the document may be downloaded, format changes may occur.

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I. Plain Language

I. Introduction

A. Overview

Air pollution is a serious threat to the health and well-being of millions of Americans and imposes a large burden on the U.S. economy. Ground-level ozone, carbon monoxide, and particulate matter are linked to potentially serious respiratory health problems, especially respiratory effects and environmental degradation, including visibility impairment in our precious national parks. Over the past quarter century, state and federal representatives have established emission-control programs that significantly reduce emissions from individual sources. Many of these sources now pollute at only a small fraction of their pre-control rates. This proposal is part of a new effort that further addresses these air-pollution concerns by proposing national standards regulating emissions from several types of nonroad engines and vehicles that are currently unregulated by establishing standards for nonroad engines and vehicles, as required by Clean Air Act section 213(a)(3). The first part of this effort was a proposal published on October 5, 2001 which included industrial spark-ignition engines such as those used in forklifts and airport tugs; recreational vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines.[1]

This action, the second part, includes evaporative emission standards for marine vessels with spark-ignition engines and their fuel systems.[2] In addition, we are proposing new emission standards for highway motorcycles. The proposed standards for motorcycles reflect the development of emission-control technology that has occurred since we last set standards for these engines in 1978. Including highway motorcycles in this proposal is also appropriate as we consider new emission standards for the counterpart off-highway motorcycle models.

Nationwide, the sources covered by this proposal are significant contributors to mobile-source air pollution. Marine evaporative emissions currently account for 1.3 percent of mobile-source hydrocarbon (HC) emissions, and highway motorcycles currently account for about 1.1 percent of mobile-source HC emissions, 0.4 percent of mobile-source carbon monoxide (CO) emissions, 0.1 percent of mobile-source oxides of nitrogen (NO_X) emissions, and 0.1 percent of mobile-source particulate matter (PM) emissions.[3] The proposed standards would reduce exposure to these emissions and help avoid a range of adverse health effects associated with ambient ozone and PM levels, especially in terms of respiratory impairment and related illnesses. In addition, the proposed standards would help reduce acute exposure air toxics and PM for persons who operate or who work with or are otherwise active in close proximity to these sources. They would also help address other environmental problems associated with these sources, such as visibility impairment in our national parks and other wilderness areas where recreational vehicles and marine vessels are often used.

This proposal follows EPA's Advance Notice of Proposed Rulmaking (ANRPM) published on December 7, 2000 (65 FR 76797). In that Advance Notice, we provided an initial overview of possible regulatory strategies for nonroad vehicles and engines and invited early input to the process of developing standards. We received comments on the Advance Notice from a wide variety of stakeholders, including the engine industry, the equipment industry, various governmental bodies, environmental groups, and the general public. These comments are available for public viewing in Docket A–2000–01. The Advance Notice, the related comments, and other new information provide the framework for this proposal.

[1] See 66 FR 51098.

[2] Diesel-cycle engines, referred to simply as "diesel engines" in this document, may also be referred to as compression-ignition (or CI) engines. These engines typically operate on diesel fuel, but other fuels may also be used. Otto-cycle engines (referred to here as spark-ignition or SI engines) typically operate on gasoline, liquefied petroleum gas, or natural gas.

[3] While we characterize emissions of hydrocarbons, this can be used as a surrogate for volatile organic compounds (VOC), which is broader group of compounds.

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B. How Is This Document Organized?

This proposal covers both marine vessels and highway motorcycles and many readers may only be interested in one or the other of theses applications. We have attempted to organize the document in a way that allows each reader to focus on the application of particular interest. The Air Quality discussion in Section II is general in nature, however, and applies to the proposal as a whole.

The next three sections contain our proposal for the marine vessels and highway motorcycles that are the subject of this action. Section III presents the proposed evaporative emission program for marine vessels using spark-ignition engines. Section IV discusses our intentions for controlling exhaust emissions from spark-ignition marine engines in the future. Section V contains our proposed highway motorcycle standards.

Section VI summarizes the projected impacts and a discussion of the benefits of this proposal. Finally, Sections VII and VIII contain information about public participation, how we satisfied our administrative requirements, and the statutory provisions and legal authority for this proposal.

The remainder of this Section I summarizes important background information about this proposal, including the engines covered, the proposed standards, and why we are proposing them.

C. What Categories of Vessels and Vehicles Are Covered in This Proposal?

1. Which Marine Vessels Are Covered in This Proposal?

We are proposing evaporative emission requirements for marine vessels that use any kind of spark ignition (SI) engine, including boats using sterndrive, inboard, and outboard engines and personal watercraft. These vessels are currently unregulated for evaporative emissions. Although we are not proposing exhaust emission standards for SI marine, we discuss our intent for a future emission control program.

This proposal covers new vessels that are used in the United States, whether they are made domestically or imported.[4] A more detailed discussion of the meaning of the terms "new," "imported," as well as other terms that help define the scope of application of this proposal, is contained in Section III.B of this preamble.

2. Which Highway Vehicles Are Covered in This Proposal?

We are proposing standards for new highway motorcycles, including those with engines with displacements of less than 50 cubic centimeters (cc). The federal emission standards for highway motorcycles were established over twenty years ago. Technology has advanced significantly over the last two decades, and many advancements are currently being used on highway motorcycles in California and elsewhere in the world. Despite these advancements, highway motorcycles currently produce more harmful emissions per mile than driving a car, or even a large SUV. (This discrepancy will become even larger when the Tier 2 emissions standards for passenger cars and SUVs take effect starting in 2004, when SUVs will have to meet the same set of standards as passenger cars.) Present technology already in use on highway motorcycles can be applied easily and cost-effectively to achieve additional improvements in emissions. California, which has separately regulated motorcycles, recently adopted more advanced emissions standards in several stages. New emission standards and test procedures have also been proposed or finalized internationally. Proposing more stringent standards nationwide will reduce emissions from these engines, which operate predominantly in warmer weather when ozone formation is a greater concern. In addition, we believe it is important to consider the emissions standards for highway motorcycles in the context of setting standards for off-highway motorcycles. Some degree of consistency between the standards for these related products may allow manufacturers to transfer technologies across product lines. (At the same time, we recognize that there are other factors which may argue for treating these categories differently.)

D. What Requirements Are We Proposing?

Clean Air Act section 213 directs EPA to establish standards which achieve the greatest degree of emission reductions from nonroad engines and vehicles achievable through the application of technology that will be available, giving appropriate consideration to cost, noise, energy, and safety factors. Other requirements such as certification procedures, engine and vehicle labeling, and warranty requirements are necessary for implementing the proposed program in an effective way.

For vessels that use spark-ignition marine engines, we are proposing emission standards, beginning in 2008, that would reduce evaporative hydrocarbon emissions by more than 80 percent. To meet these standards, manufacturers would need to design and produce fuel systems that prevent gasoline vapors from escaping. While we are not proposing exhaust emission standards for spark-ignition marine engines at this time, we are participating with California and industry representatives in a technology development program that is evaluating the feasibility of using catalyst controls on these engines. We considered setting emission standards for sterndrive and inboard marine engines in this rulemaking, but have decided not to pursue these standards at this time. We instead intend to propose exhaust emission standards for these engines after the results of this development program are available. We also intend at that time to review, and if appropriate, propose to update emission standards for outboard and personal watercraft engines based on the results of the ongoing catalyst test program.

With respect to highway motorcycles, section 202(a)(3)(E) of the Clean Air Act states, in part: "In any case in which such standards are promulgated for such emissions from motorcycles as a separate class or category, the Administrator, in promulgating such standards, shall consider the need to achieve equivalency of emission reductions between motorcycles and other motor vehicles to the maximum extent practicable." Given that it has been more than twenty years since the first (and only) federal emission regulations for motorcycles were implemented, we believe it is consistent with the Act to set new standards for highway motorcycles. Thus, for highway motorcycles we are proposing to harmonize with the California program, but with some additional flexibilities. This is a two-phase program that would result in reductions of $HC+NO_X$ of about 50 percent when fully phased in.

E. Why Is EPA Taking This Action?

There are important public health and welfare reasons supporting the standards proposed in this document. As described in Section II, these sources contribute to air pollution which causes public health and welfare problems. Emissions from these engines contribute to ground level ozone and ambient CO and PM levels. Exposure to ground level ozone, CO, and PM can cause serious respiratory problems. These emissions also contribute to other serious

[4] For this proposal, we consider the United States to include the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

environmental problems, including visibility impairment.

F. Putting This Proposal Into Perspective

This proposal should be considered in the broader context of EPA's nonroad and highway vehicle emission-control programs; state-level programs, particularly in California; and international efforts. Each of these are described in more detail below.

1. EPA's Emission-Control Programs

a. EPA's nonroad process. Clean Air Act section 213(a)(1) directs us to study emissions from nonroad engines and vehicles to determine, among other things, whether these emissions "cause, or significantly contribute to, air pollution that may reasonably be anticipated to endanger public health or welfare." Section 213(a)(2) further required us to determine whether emissions of CO, VOC, and NO_X from all nonroad engines significantly contribute to ozone or CO emissions in more than one nonattainment area. If we determine that emissions from all nonroad engines were significant contributors, section 213(a)(3) then requires us to establish emission standards for classes or categories of new nonroad engines and vehicles that in our judgment cause or contribute to such pollution. We may also set emission standards under section 213(a)(4) regulating any other emissions from nonroad engines that we find contribute significantly to air pollution.

We completed the Nonroad Engine and Vehicle Emission Study, required by Clean Air Act section 213(a)(1), in November 1991.[5] On June 17, 1994, we made an affirmative determination under section 213(a)(2) that nonroad emissions are significant contributors to ozone or CO in more than one nonattainment area. We also determined that these engines make a significant contribution to PM and smoke emissions that may reasonably be anticipated to endanger public health or welfare. In the same document, we set a first phase of emission standards (now referred to as Tier 1 standards) for land-based nonroad diesel engines rated at or above 37 kW. We recently added a more stringent set of Tier 2 and Tier 3 emission levels for new land-based nonroad diesel engines at or above 37 kW and adopted Tier 1 standards for land-based nonroad diesel engines less than 37 kW. Our other emission-control programs for nonroad engines are listed in Table I.F–1. This proposal takes another step toward the comprehensive nonroad engine emission-control strategy envisioned in the Act by proposing an emission-control program for the remaining unregulated nonroad engines.

TABLE I.F–1.—EPA'S NONROAD EMISSION-CONTROL PROGRAMS

Engine category	Final rule	Date
Land-based diesel engines ≥ 37 kW—Tier 1	56 FR 31306	June 17, 1994.
Spark-ignition engines ≤19 kW—Phase 1	60 FR 34581	July 3, 1995.
Spark-ignition marine	61 FR 52088	October 4, 1996.
Locomotives	63 FR 18978	April 16, 1998.
Land-based diesel engines—Tier 1 and Tier 2 for engines < 37 kW—Tier 2 and Tier 3 for engines ≥ 37 kW.	63 FR 56968	October 23, 1998.
Commercial marine diesel	64 FR 73300	December 29, 1999.
Spark-ignition engines ≤19 kW (Non-handheld)—Phase 2	64 FR 15208	March 30, 1999.
Spark-ignition engines ≤19 kW (Handheld)—Phase 2	65 FR 24268	April 25, 2000.

b. National standards for marine engines. In the October 1996 final rule for spark-ignition marine engines, we set standards only for outboard and personal watercraft engines. We decided not to finalize emission standards for sterndrive or inboard marine engines at that time. Uncontrolled emission levels from sterndrive and inboard marine engines were already significantly lower than the outboard and personal watercraft engines. We did, however, leave open the possibility of revisiting the need for emission standards for sterndrive and inboard engines in the future.

c. National standards for highway motorcycles. National standards for highway motorcycles were first established in the 1978 model year. Interim standards were effective for the 1978 and 1979 model years, and final standards took effect with the 1980 model year. These standards remain in effect today, unchanged from more than two decades ago. These standards, which have resulted in the phase-out of two-stroke engines for highway motorcycles above 50cc displacement, achieved significant reductions in emissions. The level of technology required to meet these standards is widely considered to be comparable to the pre-catalyst technology in the automobile. However, for the past two decades, other agencies in Europe, Asia, and California have caused motorcycle emission controls to keep some pace with the available technology. It is clear that the impact of the current federal standards on technology was fully realized by the mid-1980's, and that the international and other efforts have been the recent driving factor in technology development for motorcycle emissions control.

2. State Initiatives

Under Clean Air Act section 209, California has the authority to regulate emissions from new motor vehicles and new motor vehicle engines. California may also regulate emissions from nonroad engines, with the exception of new engines used in locomotives and new engines used in farm and construction equipment rated under 130 kW.[6] So far, the California Air Resources Board (California ARB) has adopted requirements for four groups of nonroad engines: (1) Diesel- and Otto-cycle small off-road engines rated under 19 kW; (2) new land-based nonroad diesel engines rated over 130 kW; (3) land-based nonroad recreational engines, including all-terrain vehicles, off-highway motorcycles, go-carts, and other similar vehicles; and (4) new nonroad SI engines rated over 19 kW. They have approved a voluntary registration and control program for existing portable equipment.

Other states may adopt emission standards set by California ARB, but are otherwise preempted from setting

[5] This study is avaialble in docket A–92–28.

[6] The Clean Air Act limits the role states may play in regulating emissions from new motor vehicles and nonroad engines. California is permitted to establish emission standards for new motor vehicles and most nonroad engines; other states may adopt California's programs (sections 209 and 177 of the Act). The Act specifies the power rating minimum in terms of horsepower for farm and construction equipment (175 hp = 130 kW).

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emission standards for new engines or vehicles. In contrast, there is generally no federal preemption of state initiatives related to the way individuals use individual engines or vehicles.

a. SI Marine engines. California ARB developed exhaust emission standards for SI marine engines through two rulemakings. In 1998, they adopted standards for outboards and personal watercraft that have three stages. Beginning with the 2001 model year, manufacturers must meet the 2006 EPA national averaging standard for engines sold in California. In addition, they require two more phases in 2004 and 2008 which reduce the standards an additional 20 and 60 percent, respectively, beyond the EPA standards.

Last year, California ARB also adopted exhaust emission standards for sterndrive and inboard marine engines. These standards cap HC+NO_X emissions at 15 g/kW-hr beginning in 2003. In 2007, 45 percent of each manufacturer's product line must meet 5 g/kW-hr HC+NO_X. This production fraction becomes 75 percent in 2008 and 100 percent in 2009. Manufacturers will likely need to use catalytic converters to meet this standard.

As part of the emission-control program for sterndrive and inboard marine engines, California ARB has committed to performing a review of emission-control technology in conjunction with the industry, U.S. Coast Guard, and EPA. They intend to hold a technology review in 2003, and if necessary, hold another technology review in 2005. The technology review will focus on applying catalytic control to marine engines operating in boats on the water. EPA is working with these groups to continue to assess technical concerns related to introducing catalysts on these marine engines.

b. Highway motorcycles. Motorcycle emission standards in California were originally identical to the federal standards. However, California ARB has revised their standards several times to bring them to their current levels. In the 1982 model year the standards were modified to tighten the HC standard from 5.0 g/km to 1.0 or 1.4 g/km, depending upon engine displacement. California adopted an evaporative emission standard of 2.0 g/test for 1983 and later model year motorcycles, and later amended the regulations for 1988 and later model year motorcycles, resulting in standards of 1.0 g/km HC for engines under 700cc and 1.4 g/km HC for 700cc and larger engines.

In 1999 California ARB finalized new standards for Class III highway motorcycles that will take effect in two phases—"Tier 1" standards starting with the 2004 model year, followed by "Tier 2"standards starting with the 2008 model year. The Tier 1 standard is 1.4 g/km HC+NO_X, and the Tier 2 standard is 0.8 g/km HC+NO_X. The CO standard remains at 12.0 g/km.

3. Actions in Other Countries

a. European action—Recreational Marine Engines. The European Commission has proposed emission standards for recreational marine engines, including both diesel and gasoline engines. These requirements would apply to all new engines sold in member countries. The numerical emission standards for SD/I marine engines, are shown in Table I.F–2. Table I.F–2 also presents average baseline emissions based on data that we have collected. These data are presented in Chapter 4 of the Draft Regulatory Support Document. We have received comment that we should apply these standards in the U.S., but the proposed European emission standards for SD/I marine engines may not result in a decrease in emissions, and based on emissions information we now have, would in some cases allow an increase in emissions from current designs of engines operated in the U.S.

TABLE I.F–2.—PROPOSED EUROPEAN EMISSION STANDARDS FOR FOUR-STROKE SPARK-IGNITION MARINE ENGINES

Pollutant	Emission standard (g/kW-hr)	Baseline emissions (g/kW–hr)
NO_X	15.0	9.7
HC	[a]7.2	5.8
CO	[a]154	141

[a] For a 150 kW engine; decreases slightly with increasing engine power rating.

b. Highway motorcycles. Under the auspices of the United Nations/Economic Commission for Europe (UN/ECE) there is an ongoing effort to develop a global harmonized world motorcycle test cycle (WMTC). The objective of this work is to develop a scientifically supported test cycle that accurately represents the in-use driving characteristics of motorcycles. The United States is also a participating member of UN/ECE. This is an ongoing process that EPA is actively participating in, but that will not likely result in an action until sometime in 2003 or 2004. If an international test procedure is agreed upon by the participating nations, we plan to initiate a rulemaking process to propose adopting the global test cycle as part of the U.S. regulations.

The European Union (EU) recently finalized a new phase of motorcycle standards, which will start in 2003, and are considering a second phase to start in 2006. The 2003 European standards are more stringent than the existing Federal standards, being somewhat comparable to the California Tier 1 standards taking effect in 2004. The standards being considered for 2006, along with a revised test cycle (as an interim cycle to bridge between the current EU cycle and a possible WMTC cycle in the future) are likely to be proposed soon by the EU. As of April 2002 the 2006 European standards and test cycle are being considered and debated by the European Parliament and the European Commission.

Many other nations, particularly in southeast Asia where low-displacement two-stroke motorcycles are ubiquitous, have established standards that could be considered quite stringent. Taiwan, in particular, is often noted for having some of the most stringent standards in the world, but India, China, Japan, and Thailand, are moving quickly towards controlling what is, in those nations, a significant contributor to air pollution problems.

4. Recently Proposed EPA Standards for Nonroad Engines

This proposal is the second part of an effort to control emissions from nonroad engines that are currently unregulated and for updating Federal emissions standards for highway motorcycles. The first part of this effort was a proposal published on October 5, 2001 for emission control from large spark-ignition engines such as those used in forklifts and airport tugs; recreational vehicles using spark-ignition engines such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. The October 5, 2001 proposal includes general provisions in proposed 40 CFR part 1068 that address the applicability of nonroad engine standards, which could be relevant to commenters.

With regard to Large SI engines, we proposed a two-phase program. The first phase of the standards, to go into effect in 2004, are the same as those recently adopted by the California Air Resources Board. In 2007, we propose to supplement these standards by setting limits that would require optimizing the same technologies but would be based on a transient test cycle. New requirements for evaporative emissions and engine diagnostics would also start in 2007.

For recreational vehicles, we proposed emission standards for snowmobiles separately from off-highway motorcycles and all-terrain vehicles. For snowmobiles, we proposed a first phase of standards for HC and CO emissions based on the use of clean carburetion or 2-stroke electronic fuel injection (EFI) technology, and a second phase of emission standards for snowmobiles that would involve use of direct fuel injection 2-stroke and some 4-stroke technology. For off highway motorcycles and all-terrain vehicles, we proposed standards based mainly on moving these engines from 2-stroke to 4-stroke technology. In addition, we proposed a second phase of standards for all-terrain vehicles that could require some catalyst use.

For marine diesel engines, we proposed to extend our commercial marine diesel engine standards to diesel engines used on recreational vessels. These standards would phase in beginning in 2006.

II. Public Health and Welfare Effects of Emissions From Covered Engines

A. Background

This proposal contains regulatory strategies to control evaporative emissions from marine vessels that use spark ignition engines. Spark-ignition marine vessels include vessels that use sterndrive and inboard engines as well as outboards and personal watercraft. Most of these vessels are recreational, but there are some commercial vessels that use spark-ignition engines as well. The standards we are proposing in this document for marine vessels may require changes to the fuel system or fuel tank. We are also proposing revised standards for highway motorcycles. The current HC and CO emission standards for highway motorcycles were set in 1978 and are based on 1970s technology. The proposed standards are harmonized to California's emission limits, but also include new requirements for under 50 cc motorcycles.

Nationwide, marine vessels and on-highway motorcycles are an important source of mobile-source air pollution (see section II–C). We determined that marine vessels that use spark-ignition engines cause or contribute to ozone and carbon monoxide pollution in more than on nonattainment area in an action dated February 7, 1996 (61 FR 4600). These engines continue to contribute to these problems because they are primarily used in warm weather and therefore their HC, NO_X, CO, and PM emissions contribute to ozone formation and ambient PM and CO levels, and because they are primarily used in marinas and commercial ports that are frequently located in nonattainment areas such as Chicago and New York. Evaporative emissions from marine vessels are also significant for similar reasons and because the emissions occur all the time rather than just when the engine is running. Similarly, on-highway motorcycles are typically used in warm, dry weather when their HC and NO_X emissions are most likely to form ozone, thus adding to ground-level ozone levels and contributing to ozone nonattainment.

We expect that implementation of the proposed standards would result in about a 50 percent reduction in HC emissions and NO_X emissions from highway motorcycles in 2020. We expect that the proposed standards would result in about a 56 percent reduction in evaporative HC emissions from marine vessels using spark-ignition engines in 2020 (see Section VI below for more details). These emission reductions would reduce ambient concentrations of ozone, and fine particles, which is a health concern and contributes to visibility impairment. The standards would also reduce personal exposure for people who operate or who work with or are otherwise in close proximity to these engines and vehicles. As summarized below and described more fully in the Draft Regulatory Support Document for this proposal, many types of hydrocarbons are air toxics. By reducing these emissions, the proposed standards would provide assistance to states facing ozone air quality problems, which can cause a range of adverse health effects, especially in terms of respiratory impairment and related illnesses. States are required to develop plans to address visibility impairment in national parks, and the reductions proposed in this rule would assist states in those efforts.

B. What Are the Public Health and Welfare Effects Associated With Emissions From Nonroad Engines and Motorcycles Subject to the Proposed Standards?

Marine vessels that use spark-ignition engines and highway motorcycles generate emissions that contribute to ozone formation and ambient levels of PM, and air toxics. This section summarizes the general health effects of these pollutants. National inventory estimates are set out in Section II.C, and estimates of the expected impact of the proposed control programs are described in Section VI. Interested readers are encouraged to refer to the Draft Regulatory Support Document for this proposal for more in-depth discussions.

1. Health and Welfare Effects Associated with Ground Level Ozone and its Precursors

Volatile organic compounds (VOC) and NO_X are precursors in the photochemical reaction which forms tropospheric ozone. Ground-level ozone, the main ingredient in smog, is formed by complex chemical reactions of VOCs and NO_X in the presence of heat and sunlight. Hydrocarbons (HC) are a large subset of VOC, and to reduce mobile-source VOC levels we set maximum emissions limits for hydrocarbon and particulate matter emissions.

A large body of evidence shows that ozone can cause harmful respiratory effects including chest pain, coughing, and shortness of breath, which affect people with compromised respiratory systems most severely. When inhaled, ozone can cause acute respiratory problems; aggravate asthma; cause significant temporary decreases in lung function of 15 to over 20 percent in some healthy adults; cause inflammation of lung tissue; produce changes in lung tissue and structure; may increase hospital admissions and emergency room visits; and impair the body's immune system defenses, making people more susceptible to respiratory illnesses. Children and outdoor workers are likely to be exposed to elevated ambient levels of ozone during exercise and, therefore, are at a greater risk of experiencing adverse health effects. Beyond its human health effects, ozone has been shown to injure plants, which has the effect of reducing crop yields and reducing productivity in forest ecosystems.

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There is strong and convincing evidence that exposure to ozone is associated with exacerbation of asthma-related symptoms. Increases in ozone concentrations in the air have been associated with increases in hospitalization for respiratory causes for individuals with asthma, worsening of symptoms, decrements in lung function, and increased medication use, and chronic exposure may cause permanent lung damage. The risk of suffering these effects is particularly high for children and for people with compromised respiratory systems.

Ground level ozone today remains a pervasive pollution problem in the United States. In 1999, 90.8 million people (1990 census) lived in 31 areas designated nonattainment under the 1-hour ozone NAAQS.[7] This sharp decline from the 101 nonattainment areas originally identified under the Clean Air Act Amendments of 1990 demonstrates the effectiveness of the last decade's worth of emission-control programs. However, elevated ozone concentrations remain a serious public health concern throughout the nation.

Over the last decade, declines in ozone levels were found mostly in urban areas, where emissions are heavily influenced by controls on mobile sources and their fuels. Twenty-three metropolitan areas have realized a decline in ozone levels since 1989, but at the same time ozone levels in 11 metropolitan areas with 7 million people have increased.[8] Regionally, California and the Northeast have recorded significant reductions in peak ozone levels, while four other regions (the Mid-Atlantic, the Southeast, the Central and Pacific Northwest) have seen ozone levels increase.

The highest ambient concentrations are currently found in suburban areas, consistent with downwind transport of emissions from urban centers. Concentrations in rural areas have risen to the levels previously found only in cities. Particularly relevant to this proposal, ozone levels at 17 of our National Parks have increased, and in 1998, ozone levels in two parks, Shenandoah National Park and the Great Smoky Mountains National Park, were 30 to 40 percent higher than the ozone NAAQS over part of the last decade.[9]

To estimate future ozone levels, we refer to the modeling performed in conjunction with the final rule for our most recent heavy-duty highway engine and fuel standards.[10] We performed ozone air quality modeling for the entire Eastern U.S. covering metropolitan areas from Texas to the Northeast.[11] This ozone air quality model was based upon the same modeling system as was used in the Tier 2 air quality analysis, with the addition of updated inventory estimates for 2007 and 2030. The results of this modeling were examined for those 37 areas in the East for which EPA's modeling predicted exceedances in 2007, 2020, and/or 2030 and the current 1-hour design values are above the standard or within 10 percent of the standard. This photochemical ozone modeling for 2020 predicts exceedances of the 1-hour ozone standard in 32 areas with a total of 89 million people (1999 census) after accounting for light- and heavy-duty on-highway control programs.[12] We expect the NO_X and HC control strategies contained in this proposal for marine vessels that use spark-ignition engines and highway motorcycles will further assist state efforts already underway to attain and maintain the 1-hour ozone standard.

In addition to the health effects described above, there exists a large body of scientific literature that shows that harmful effects can occur from sustained levels of ozone exposure much lower than 0.125 ppm.[13] Studies of prolonged exposures, those lasting about 7 hours, show health effects from prolonged and repeated exposures at moderate levels of exertion to ozone concentrations as low as 0.08 ppm. The health effects at these levels of exposure include transient pulmonary function responses, transient respiratory symptoms, effects on exercise performance, increased airway responsiveness, increased susceptibility to respiratory infection, increased hospital and emergency room visits, and transient pulmonary respiratory inflammation.

Prolonged and repeated ozone concentrations at these levels are common in areas throughout the country, and are found both in areas that are exceeding, and areas that are not exceeding, the 1-hour ozone standard. Areas with these high concentrations are more widespread than those in nonattainment for that 1-hour ozone standard. Monitoring data indicates that 334 counties in 33 states exceeded these levels in 1997–99.[14] The Agency's most recent photochemical ozone modeling forecast that 111 million people are predicted to live in areas that are at risk of exceeding these moderate ozone levels for prolonged periods of time in 2020 after accounting for expected inventory reductions due to controls on light- and heavy-duty on-highway vehicles.[15]

2. Health and Welfare Effects Associated With Particulate Matter

Highway motorcycles contribute to ambient particulate matter through direct emissions of particulate matter in the exhaust. Both marine vessels and highway motorcycles contribute to indirect formation of PM through their emissions of organic carbon, especially HC. Organic carbon accounts for between 27 and 36 percent of fine particle mass depending on the area of the country.

[7] National Air Quality and Emissions Trends Report, 1999, EPA, 2001, at Table A–19. This document is available at *http://www.epa.gov/oar/aqtrnd99/*. The data from the Trends report are the most recent EPA air quality data that have been quality assured. A copy of this table can also be found in Docket No. A–2000–01, Document No. II–A–64.

[8] National Air Quality and Emissions Trends Report, 1998, March, 2000, at 28. This document is available at *http://www.epa.gov/oar/aqtrnd98/*. The data from the Trends report are the most recent EPA air quality data that have been quality assured. A copy of this table can also be found in Docket No. A–2000–01, Document No. II–A.–63.

[9] National Air Quality and Emissions Trends Report, 1998, March, 2000, at 32. This document is available at *http://www.epa.gov/oar/aqtrnd98/*. The data from the trends report are the most recent EPA air quality data that have been quality assured. A copy of this table can also be found in Docket No. A–2000–01, Document No. II–A–63.

[10] Additional information about this modeling can be found in our Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Contro Requirements, document EPA420–R–00–026, December 2000. This document is available at *http://www.epa.gov/otaq/diesel.htm#documents* and in Docket No. 1–2000–01, Document No. II–A–13.

[11] We also performed ozone air quality modeling for the western United States but, as described further in the air quality technical support document, model predictions were well below corresponding ambient concentrations for out heavy-duty engine standards and fuel sulfur control rulemaking. Because of poor model performance for this region of the country, the results of the Western ozone modeling were not relied on for that rule.

[12] Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, US EPA, EPA420–R–00–026, December 2000, at II–14, Table II.A–2. Docket No. A–2000–01, Document Number II–A–13. This document is also available at *http://www.epa.gpa.gov/otaq/diesel/htm#documents*.

[13] Additional information about theses studies can be found in Chapter 2 of "Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements," December 2000, EPA420–R–00–026. Docket No. A–2000–01, Document Number II–A–13. This document is also available at *http://www.epa.gov/otaq/diesel.htm#documents*.

[14] A copy of this data can be found in Air Docket A–2000–01, Document No. II–A–80.

[15] Memorandum to Docket A–99–06 from Eric Ginsburg, EPA, "Summary of Model-Adjusted Ambient Concentrations for Certain Levels of Ground-Level Ozone over Prolonger Periods," November 22, 2000, at Table C, Control Scenario—2020 Populations In Eastern Metropolitan Counties with Predicted Daily 8-Hour Ozone greater than or equal to 0.080 ppm. Docket A–2000–01, Document Number II–B–13.

Particulate matter represents a broad class of chemically and physically diverse substances. It can be principally characterized as discrete particles that exist in the condensed (liquid or solid) phase spanning several orders of magnitude in size. All particles equal to and less than 10 microns are called PM_{10}. Fine particles can be generally defined as those particles with an aerodynamic diameter of 2.5 microns or less (also known as $PM_{2.5}$), and coarse fraction particles are those particles with an aerodynamic diameter greater than 2.5 microns, but equal to or less than a nominal 10 microns.

Particulate matter, like ozone, has been linked to a range of serious respiratory health problems. Scientific studies suggest a likely causal role of ambient particulate matter (which is attributable to several of sources including mobile sources) in contributing to a series of health effects. The key health effects categories associated with ambient particulate matter include premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences, work loss days, and restricted activity days), aggravated asthma, acute respiratory symptoms, including aggravated coughing and difficult or painful breathing, chronic bronchitis, and decreased lung function that can be experienced as shortness of breath. Observable human noncancer health effects associated with exposure to diesel PM include some of the same health effects reported for ambient PM such as respiratory symptoms (cough, labored breathing, chest tightness, wheezing), and chronic respiratory disease (cough, phlegm, chronic bronchitis and suggestive evidence for decreases in pulmonary function). Symptoms of immunological effects such as wheezing and increased allergenicity are also seen. Epidemiology studies have found an association between exposure to fine particles and such health effects as premature mortality or hospital admissions for cardiopulmonary disease.

PM also causes adverse impacts to the environment. Fine PM is the major cause of reduced visibility in parts of the United States, including many of our national parks. Other environmental impacts occur when particles deposit onto soils, plants, water or materials. For example, particles containing nitrogen and sulphur that deposit on to land or water bodies may change the nutrient balance and acidity of those environments. Finally, PM causes soiling and erosion damage to materials, including culturally important objects such as carved monuments and statues. It promotes and accelerates the corrosion of metals, degrades paints, and deteriorates building materials such as concrete and limestone.

The NAAQS for PM_{10} were established in 1987. The most recent PM_{10} monitoring data indicate that 14 designated PM_{10} nonattainment areas with a projected population of 23 million violated the PM_{10} NAAQS in the period 1997–99. In addition, there are 25 unclassifiable areas that have recently recorded ambient concentrations of PM_{10} above the PM_{10} NAAQS.[16]

Current 1999 $PM_{2.5}$ monitored values, which cover about a third of the nation's counties, indicate that at least 40 million people live in areas where long-term ambient fine particulate matter levels are at or above 16 $\mu g/m^3$ (37 percent of the population in the areas with monitors).[17] According to our national modeled predictions, there were a total of 76 million people (1996 population) living in areas with modeled annual average $PM_{2.5}$ concentrations at or above 16 $\mu g/m^3$ (29 percent of the population).[18] This 16 $\mu g/m^3$ threshold is the low end of the range of long term average $PM_{2.5}$ concentrations in cities where statistically significant associations were found with serious health effects, including premature mortality.[19]

We expect the PM reductions that result from control strategies contained in this proposal will further assist state efforts already underway to attain and maintain the PM NAAQS.

3. Health Effects Associated with Air Toxics

In addition to the human health and welfare impacts described above, emissions from the engines covered by this proposal also contain several Mobile Source Air Toxics, including benzene, 1,3-butadiene, formaldehyde, acetaldehyde, and acrolein.[20] The health effects of these air toxics are described in more detail in Chapter 1 of the Draft Regulatory Support Document for this rule. Additional information can also be found in the Technical Support Document for our final Mobile Source Air Toxics rule.[21] The hydrocarbon controls contained in this proposal are expected to reduce exposure to air toxics and therefore may help reduce the impact of these engines on cancer and noncancer health effects.

C. What Is the Inventory Contribution of These Sources?

The spark-ignition marine vessels and highway motorcycles that would be subject to the proposed standards contribute to the national inventories of pollutants that are associated with the health and public welfare effects described in Section II.B. To estimate nonroad engine and vehicle emission contributions, we used the latest version of our NONROAD emissions model. This model computes nationwide, state, and county emission levels for a wide variety of nonroad engines, and uses information on emission rates, operating data, and population to determine annual emission levels of various pollutants. Emission estimates for highway motorcycles were developed using information on the certification levels of current motorcycles and updated information on motorcycle use provided by the motorcycle industry. A more detailed description of the modeling and our estimation methodology can be found in the

[16] EPA adopted a policy in 1996 that allows areas with PM_{10} exceedances that are attributable to natural events to retain their designation as unclassifiable if the State is taking all reasonable measures to safeguard public health regardless of the sources of PM_{10} emissions.

[17] Memorandum to Docket A–99–06 from Eric O. Ginsburg, Senior Program Advisor, "Summary of 1999 Ambient Concentrations of Fine Particulate Matter," November 15, 2000. Air Docket A–2000–01, Docket No. II–B–12. For information regarding estimates for future $PM_{2.5}$ levels, See information about the Regulatory Model System for Aerosols and Deposition (REMSAD) and our modeling protocols, which can be found in the Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Controls Requirements, document EPA 420–R–00–026, December 2000. Docket No. A–2000–01, Document No. A–II–13. This document is also available at *http://www.epa.gov/otaq/diesel.htm#documents*. Also see Technical Memorandum, EPA Air Docket A–99–06, Eric O. Ginsburg, Senior Program Advisor, Emissions Monitoring and Analysis Division, OAQPs, Summary of Absolute Modeled and Model-Adjusted Estimates of Fine Particulate Matter for Selected Years, December 6, 2000, Table P–2. Docket Number 2000–01, Document Number II–B–14.

[18] Memorandum to Docket A–99–06 from Eric O. Ginsburg, Senior Program Advisor, "Summary of Absolute Modeled and Model-Adjusted Estimates of Fine Particulate Matter for Selected Years," December 6, 2000. Air Docket A–2000–01, Docket No. II–B–14.

[19] EPA (1996) Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information OAQPS Staff Paper. EPA–452/R–96–013. Docket Number A–99–06, Documents Nos. II–A–18, 19, 20, and 23. The particulate matter air quality criteria documents are also available at *http://www.epa.gov/ncea/partmatt.htm*.

[20] EPA recently finalized a list of 21 Mobile Source Air Toxics, including VOCS, metals, and diesel particulate matter and diesel exhaust organic gases (collectively DPM+DEOG). 66 FR 17230, March 29, 2001.

[21] See our Mobile Source Air Toxics final rulemaking, 66 FR 17230, March 29, 2001, and the Technical Support Document for that rulemaking. Docket No. A–2000–01, Documents Nos. II–A–42 and II–A–30.

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Chapter 6 of the Draft Regulatory Support Document.

Baseline emission inventory estimates for the year 2000 for the marine vessels and highway motorcycles covered by this proposal are summarized in Table II.C–1. This table shows the relative contributions of the different mobile-source categories to the overall national mobile-source inventory. Of the total emissions from mobile sources, evaporative emissions from spark-ignition marine vessels contribute about 1.3 percent of HC. Highway motorcycles contribute about 1.1 percent, 0.1 percent, 0.4 percent, and 0.1 percent of HC, NO_X, CO, and PM emissions, respectively, in the year 2000.

Our draft emission projections for 2020 for the spark-ignition marine vessels and highway motorcycles that would be subject to the proposed standards show that emissions from these categories are expected to increase over time if left uncontrolled. The projections for 2020 are summarized in Table II.C–2 and indicate that the evaporative emissions from marine vessel are expected to contribute 1.8 percent of mobile source HC, and motorcycles are expected to contribute 2.3 percent, 0.2 percent, 0.6 percent, and 0.1 percent of mobile source HC, NO_X, CO, and PM emissions in the year 2020. Population growth and the effects of other regulatory control programs are factored into these projections.

TABLE II.C–1.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE-SOURCE CATEGORIES IN 2000

[Thousand short tons]

Category	NO_X		HC		CO		PM	
	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source
Highway Motorcycles	8	0.1	35	0.5	331	0.4	0.4	0.1
Marine SI Evaporative	0	0.0	108	1.3	0	0.0	0	0.0
Marine SI Exhaust	32	0.2	708	9.6	2,144	2.8	38	5.4
Nonroad Industrial SI > 19 kW	306	2.3	247	3.2	2,294	3.0	1.6	0.2
Recreational SI	13	0.1	737	9.6	2,572	3.3	5.7	0.8
Recreation Marine CI	24	0.2	1	0.0	4	0.0	1	0.1
Nonroad SI < 19 kW	106	0.8	1,460	19.1	18,359	23.6	50	7.2
Nonroad CI	2,625	19.5	316	4.1	1,217	1.6	253	36.2
Commercial Marine CI	977	7.3	30	0.4	129	0.2	41	5.9
Locomotive	1,192	8.9	47	0.6	119	0.2	30	4.3
Total Nonroad	5,275	39	3,646	48	26,838	35	420	60
Total Highway	7,981	59	3,811	50	49,813	64	240	34
Aircraft	178	1	183	2	1,017	1	39	6
Total Mobile Sources	13,434	100	7,640	100	77,668	100	699	100
Total Man-Made Sources	24,538		18,586		99,747		3,095	
Mobile Source percent of Total Man-Made Sources	55%		41%		78%		23%	

TABLE II.C–2.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE-SOURCE CATEGORIES IN 2020

[Thousand short tons]

Category	NO_X		HC		CO		PM	
	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source
Highway Motorcycles	14	0.2	58	0.9	572	0.6	0.8	0.1
Marine SI Evaporative	0	0.0	114	1.8	0	0.0	0	0.0
Marine SI Exhaust	58	0.9	284	4.6	1,985	2.2	28	4.4
Nonroad Industrial SI > 19 kW	486	7.8	348	5.6	2,991	3.3	2.4	0.4
Recreational SI	27	0.4	1,706	27.7	5,407	3.3	7.5	1.2

TABLE II.C–2.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE-SOURCE CATEGORIES IN 2020—Continued

[Thousand short tons]

Category	NO_X		HC		CO		PM	
	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source
Recreation Marine CI	39	0.6	1	0.0	6	0.0	1.5	0.2
Nonroad SI < 19 kW	106	1.7	986	16.0	27,352	30.5	77	12.2
Nonroad CI	1,791	28.8	142	2.3	1,462	1.6	261	41.3
Commercial Marine CI	819	13.2	35	0.6	160	0.2	46	7.3
Locomotive	611	9.8	35	0.6	119	0.1	21	3.3
Total Nonroad	3,937	63	3,651	59	39,482	44	444	70
Total Highway	2,050	33	2,276	37	48,906	54	145	23
Aircraft	232	4	238	4	1,387	2	43	7
Total Mobile Sources	6,219	100	6,165	100	89,775	100	632	100
Total Man-Made Sources	16,195		16,234		113,443		3,016	
Mobile Source percent of Total Man-Made Sources	38%		38%		79%		21%	

III. Evaporative Emission Control From Boats

A. Overview

Evaporative emissions refer to hydrocarbons released into the atmosphere when gasoline, or other volatile fuels, evaporate from a fuel system. These emissions come from four primary mechanisms: hot soak, diurnal heating, vapor displacement during refueling, and permeation from tanks and hoses. Hot soak emissions occur when fuel evaporates from hot engine surfaces such as parts of the carburetor as a result of engine operation. These are minimal on fuel-injected engines. Control of hot soak emissions involves the engine manufacturer rather than the tank manufacturer.

Currently, most fuel tanks in boats are vented to atmosphere through vent hoses. Diurnal emissions, which represent about 20 percent of the evaporative emissions from boats, occur as the fuel in the tank and fuel lines heats up due to increases in ambient temperature. As the fuel heats, it forms hydrocarbon vapor which is vented to the atmosphere. Refueling emissions are vapors that are displaced from the fuel tank to the atmosphere when fuel is dispensed into the tank and only represent a small portion of the total evaporative emissions. Permeation refers to when fuel penetrates the material used in the fuel system and is most common through plastic fuel tanks and rubber hoses. This permeation makes up the majority of the evaporative emissions from fuel tanks and hoses. Table III.A–1 presents our national estimates of the evaporative hydrocarbon emissions from boats using spark-ignition engines for 2000.

TABLE III.A–1.—ESTIMATED EVAPORATIVE EMISSIONS FROM TANKS/HOSES IN 2000

Evaporative emission component	HC [tons]
Diurnal breathing losses	22,700
Permeation through the fuel tank	26,600
Permeation through hoses	43,200
Refueling vapor displacement	6,700
Hot Soak	260
Total evaporative emissions	100,000

This section describes the new provisions proposed for 40 CFR part 1045, which would apply only to boat manufacturers and fuel system component manufacturers. This section also discusses proposed test equipment and procedures (for anyone who tests fuel tanks and hoses to show they meet emission standards) and proposed general compliance provisions (for boat manufacturers, fuel system component manufacturers, operators, repairers, and others).

We are proposing performance standards intended to reduce permeation and diurnal evaporative emissions from boats using spark-ignition engines. The proposed standards, which would apply to new boats starting in 2008, are nominally based on manufacturers reducing these sources of evaporative emissions by about 80 percent overall. Because of the many small businesses that manufacture boats and fuel tanks, we are proposing a flexible compliance program that is intended to help minimize the burden of meeting the proposed requirements.

Based on a database maintained by the U.S. Coast Guard, we estimate that there are nearly 1,700 boat builders producing boats that use engines for propulsion. At least 1,200 of these boat builders install gasoline-fueled engines and would therefore be subject to the evaporative emission-control program discussed below. Our understanding is that more than 90 percent of the boat builders identified so far would be considered small businesses as defined by the Small Business Administration for SIC code 3732. Some of these boat builders construct their own fuel tanks either out of aluminum or fiberglass reinforced plastic. However, the majority of fuel tanks used by boat builders are purchased from fuel tank manufacturers.

We have determined that fuel tank manufacturers sell approximately 550,000 fuel tanks per year for gasoline storage on boats. The market is divided into manufacturers that produce plastic tanks and manufacturers that produce aluminum tanks. We have identified

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nine companies that make plastic marine fuel tanks with total sales of approximately 440,000 units per year. Of these plastic tanks, about 20 percent are portable while the rest are installed. We have determined that there are at least five companies that make aluminum marine fuel tanks with total sales of approximately 110,000 units per year. All but one of the fuel tank manufacturers that we have identified are small businesses as defined by the Small Business Administration for SIC Code 3713.

Our understanding is that there are four primary manufacturers of marine hose used in fuel supply lines and venting. At least two of these four manufacturers produce hoses for other transportation sources as well and already supply low permeation hoses that would meet our proposed standards. Only one U.S. manufacturer of fill neck hose has been identified. The rest is shipped from overseas.

B. Boats/Fuel Systems Covered by This Proposal

Generally speaking, this proposed rule would cover the fuel systems of all new marine vessels with spark-ignition (SI) engines. We include boats and fuel systems that are used in the United States, whether they are made domestically or imported.

In the ANPRM, we discussed exhaust and evaporative emissions from boats using only sterndrive or inboard engines. As discussed later in Section IV, we are not proposing exhaust emission standards for these engines at this time. We are, however, proposing to expand the scope of the evaporative emission standards discussed in the ANPRM, because we see no significant technological differences between fuel tanks and hoses used for sterndrive or inboard engines and those used for other SI marine engines. In fact, fuel tank and hose manufacturers often sell their products without knowing what type of marine engine will be used with it.

1. Why Does This Apply Only to Marine Vessels Using Spark-Ignition Engines?

Spark-ignition marine engines generally use gasoline fuel while compression-ignition marine engines generally use diesel fuel. We are proposing evaporative emission standards only for boats using spark-ignition engines because diesel fuel has low volatility and, therefore, does not evaporate readily. In fact, the evaporative emissions from boats using diesel fuel are already significantly lower than standards we are proposing for boats using spark-ignition marine engines.

2. Would the Proposed Standards Apply to All Vessels Using SI Engines or Only to New Vessels?

The scope of this proposal is broadly set by Clean Air Act section 213(a)(3), which instructs us to set emission standards for new nonroad engines and new nonroad vehicles. Generally speaking, the proposed rule is intended to cover all new vessels. Once the emission standards apply to these vessels, individuals or companies must get a certificate of conformity from us before selling them in the United States. This includes importation and any other means of introducing engines and vehicles into commerce. The certificate of conformity (and corresponding label) provide assurance that manufacturers have met their obligation to make engines that meet emission standards over the useful life we specify in the regulations.

3. How Do I Know if My Vessel Is New?

We are proposing to define "new" consistent with previous rules. Under the proposed definition, a vessel is considered new until its title has been transferred to the ultimate purchaser or the vessel has been placed into service. Imported vessels would also be considered to be new.

4. When Would Imported Vessels Need to Meet the Proposed Emission Standards?

The proposed emissions standards would apply to all new vessels in the United States. According to Clean Air Act section 216, "new" includes vessels that are imported by any person, whether freshly manufactured or used. All vessels imported for introduction into commerce would need an EPA-issued certificate of conformity to clear customs, with limited exemptions (as described below).

Any marine vessel built after these emission standards take effect and subsequently imported into the U.S. would be a new vessel for the purpose of the regulations proposed in this document. This means it would need to comply with the applicable emission standards. For example, a marine vessel manufactured in a foreign country in 2004, then imported into the United States in 2006, would be considered "new." This provision is important to prevent manufacturers from avoiding emission standards by building vessels abroad, transferring their title, and then importing them as used vessels.

5. Would the Proposed Standards Apply to Exported Vessels?

Vessels intended for export would generally not be subject to the requirements of the proposed emission-control program. However, vessels that are exported and subsequently re-imported into the United States would need to be certified.

6. Are There Any New Vessels That Would Not Be Covered?

We are proposing to extend our basic nonroad exemptions to the engines and vehicles covered by this proposal. These include the testing exemption, the manufacturer-owned exemption, the display exemption, and the national security exemption. These exemptions are described in more detail under Section III.E.3. In addition, the Clean Air Act does not consider vessels used solely for competition to be nonroad vehicles, so they are exempt from meeting the proposed emission standards.

C. Proposed Evaporative Emission Requirements

Our general goal in designing the proposed standards is to develop a program that will achieve significant emission reductions. The standards are designed to "achieve the greatest degree of emission reduction achievable through the application of technology the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology." Section 213(a)(3) of the Clean Air Act also instructs us to first consider standards equivalent in stringency to standards for comparable motor vehicles or engines (if any) regulated under section 202, taking into consideration technological feasibility, costs, and other factors.

1. What are the Proposed Evaporative Emission Standards?

We are proposing to require reductions in diurnal emissions, fuel tank permeation, and fuel system hose permeation from new vessels beginning in 2008. The proposed standards are presented in Table III.C–1 and represent more than a 25 percent reduction in diurnal emissions and a 95 percent reduction in permeation from both plastic fuel tanks and from hoses. Section III.F.1 presents the test procedures associated with these proposed standards. Test temperatures are presented in Table III.C–1 because they represent an important parameter in defining the emission levels. The proposed fuel tank venting and permeation standards are based on the total capacity of the fuel tank as described below. The proposed hose permeation standards are based on the inside surface area of the hose. We are not proposing standards for hot soak and refueling emissions, as described above, at this time.

TABLE III. C–1.—PROPOSED EVAPORATIVE STANDARDS

Evaporative emission component	Proposed emission standard	Test temperature
Diurnal Venting	1.1 g/gallon/day	22.2–35.6°C (72–96°F)
Fuel tank permeation	0.08 g/gallon/day	40°C (104°F)
Hose permeation	5 g/m²/day	23°C (73°F)
	(15 g/m²/day with 15% methanol blend)	

The proposed emission standards are based on our evaluation of several fuel system technologies (described in Section III.H) which vary in cost and in efficiency. The proposed implementation date gives manufacturers about five years to comply after we expect to issue final standards . As discussed in more detail in Section III.H.1, this would help minimize costs by allowing fuel tank manufacturers time to implement controls in their tanks as designs normally turnover as opposed to forcing turnover premature to normal business practice. There are a multiplicity of tank sizes and shapes produced every year and the cost and efficiency of the available emission-control technologies will vary with these different configurations. In determining the proposed standards, we considered costs and focused on straightforward approaches that could potentially be used by all businesses. As discussed in Section H.3, we believe that the approaches in this proposal would comply with U.S. Coast Guard safety requirements for fuel systems. Given all this, in the 2008 time frame, we believe an average reduction of at least 80 percent in total evaporative emissions from new boats can be achieved, considering the availability and cost of technology, lead time, noise, energy and safety. We request comment on the proposed standards and implementation dates, on the units used for the fuel tank permeation standards (*i.e.* g/gallon/day versus g/m²/day), and on the certification provisions discussed below. We are also interested in comments regarding the cost of implementing the proposed standards. Commenters are encouraged to provide specific data when possible.

2. Will Averaging, Banking and Trading Be Allowed Across a Manufacturer's Product Line?

An emission-credit program is an important factor we take into consideration in setting emission standards that are appropriate under Clean Air Act section 213. An emission-credit program can reduce the cost and improve the technological feasibility of achieving standards, helping to ensure the attainment of the standards earlier than would otherwise be possible. Manufacturers gain flexibility in product planning and the opportunity for a more cost-effective introduction of product lines meeting a new standard. Emission-credit programs also create an incentive for the early introduction of new technology, which would allow certain vessels to be used to evaluate new technology. This can provide valuable information to manufacturers on the technology before they apply it throughout their product line. This early introduction of lower-emitting technology improves the feasibility of achieving the standards and can provide valuable information for use in other regulatory programs that may benefit from similar technologies.

Emission-credit programs may involve averaging, banking, and trading (ABT). Averaging allows a manufacturer to certify one or more products at an emission level less stringent than the applicable emission standard, as long as the increased emissions are offset by products certified to a level more stringent than the applicable standard. The over-complying products generate credits that can be used by the under-complying products. Compliance is determined on a total mass emissions basis to account for differences in production volume and tank sizes among emission families. The average of all emissions for a particular manufacturer's production must be at or below that level of the applicable emission standard. Early banking allows a manufacturer to certify early and generate credits for modifying their fuel system to the 2008 compliance strategy. In 2008 and later, the banking program would allow a manufacturer to generate credits and retain them for future use. Trading involves the sale of banked credits from one company to another.

We believe there is a variety of technology options that could be used to meet the proposed standards for diurnal emissions. By using different combinations of these technologies, manufacturers will be able to produce products that achieve a range of emission reductions. However, certain technologies may be more appropriate for different applications. In some cases, manufacturers may need flexibility in applying the emission-control technology to their products. For this reason, we are proposing that the 1.1 g/gallon/day diurnal emission standard be based a corporate average of a manufacturer's total production. To meet this average level, manufacturers would be able to divide their fuel tanks into different emission families and certify each of their emission families to a different Family Emissions Level (FEL). The FELs would then be weighted by sales volume and fuel tank capacity to determine the average level across a manufacturer's total production. An additional benefit of a corporate average approach is that it provides an incentive for developing new technology that can be used to achieve even larger emission reductions.

Participation in the ABT program would be voluntary. Any manufacturer could choose to certify each of its evaporative emission control families at levels which would meet the 1.1 g/gallon/day proposed standard and would then comply with the average by default. Some manufacturers may choose this approach as the could see it as less complicated to implement.

The following is an example of how the proposed averaging program for diurnal emissions could give a boat manufacturer flexibility in its production. Suppose a boat builder was selling 10 boats, three with 100-gallon fuel tanks and seven with 50-gallon fuel tanks. In this case, the boat builder constructs its own fuel tanks believes that an open-vent configuration without any emission control is necessary for the vessel application using the 100 gallon tanks. However, the manufacturer is able to use closed-vent fuel tanks with a 2.0 psi pressure relief valve in the

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smaller fuel tanks. Using the design certification levels described in Section III..F.3, the 100 gallon fuel tanks would have an FEL of 1.5 g/gallon/day and the 50 gallon fuel tanks would have an FEL of 0.7 g/gallon/day. The manufacturer would generate debits for the three boats with 100 gallon fuel tanks using the following equation:

Debits = (1.5 g/gallon − 1.1 g/gallon) × 3 tanks × 100 gallon/tank = 120 g

The manufacturer would need to use credits to cover these debits. The boats certified using a closed vent with a 2.0 psi pressure relief valve in this example would generate the following credits:

Credits = (1.1 g/gallon − 0.7 g/gallon) × 7 tanks × 50 gallon/tank = 140 g

Because the credits are larger than the debits in this example, the boat builder would meet the proposed corporate average standard by certifying these ten boats.

We also propose to allow manufacturers to bank and trade emission credits. We are proposing that emission credits generated under this program have no expiration, with no discounting applied. The credits would belong to the entity that certifies the fuel tank. In the above example, the manufacturer would have 20 grams of credits (140 g − 120 g = 20 g) that it could bank, either for trading or for later model year averaging.

Beginning in 2004, we propose to allow early banking for diurnal evaporative emissions. Under this program, manufacturers generate early credits in 2004 through 2007 for adding new evaporative emission control technology which would reduce diurnal emissions. These credits could be banked and then used in 2008 and later. As a precaution against creating an opportunity for windfall credits to be generated from fuel systems already below the average baseline level we would only allow credits to be generated below the proposed standard.

The following is an example of how early emission credits could be generated. In this example, a boat builder sells 20 boats in the 2004 to 2007 time period, each with a 50 gallon fuel tank. If this boat builder decided to sell one boat per year with a sealed tank and a 1.5 psi pressure relief valve (0.9 g/gallon/test), the boat builder would be able to generate emission credits using the following equation:

Credits = (1.1 g/gallon − 0.9 g/gallon/test) × 4 tanks × 50 gallon/tank = 40 g

Over this time period, the boat builder would not generate any emission debits. Therefore, the boat builder would have 40 grams of credits that it could use in 2008 and later. We request comment on the proposed ABT program for diurnal emissions.

We are supportive of the concept of ABT in general. An ABT program can reduce cost and improve technological feasibility, and provide manufacturers with additional product planning flexibility. This allows EPA to consider emissions standards with the most appropriate level of stringency and lead time, as well as providing an incentive for the early introduction of new technology. However, while we are open to the idea of including the program in the rule, we are not at this time proposing to allow ABT for meeting the proposed fuel tank and hose permeation standards. In preliminary discussions, manufacturers indicated a desire to meet requirements directly rather than using an ABT concept. From EPA's perspective including an ABT program in the rule creates a long-term administrative burden that is not worth taking on if the industry does not intend to take advantage of the flexibility. While we believe that all fuel tanks and fuel hoses can meet the proposed permeation standards using straight forward technology as discussed in Section III.H, industry may find value in an early banking program, especially for fuel tanks. Under this concept, industry could certify some tanks early in exchange for time to delay some tanks. This could potentially be done on a one-on-one basis, or perhaps on a volumetric exchange basis. In addition, we do not preclude the value of an averaging and trading program as a compliance flexibility to meet the proposed permeation standards which represent a 95 percent reduction in permeation. We request comment on whether we should adopt an ABT program for hose and fuel tank permeation emissions.

3. Would These Standards Apply to Portable Fuel Tanks as Well?

For personal watercraft and most boats using SD/I or large outboard engines, the fuel tanks are permanently mounted in the vessel. However, small boats using outboard engines may have portable fuel tanks that can be removed from the boat and stored elsewhere. Because these fuel tanks are not sold as part of a boat, we would not require boat builders that use only portable fuel tanks to certify to the proposed evaporative emission standards described above for fuel tanks. The fuel tank manufacturer would have to certify to the fuel tank diurnal and permeation standards. For this purpose, we would consider a portable fuel tank to be one that is not permanently mounted on the boat, has a handle, and has no more than 12 gallons of fuel capacity.

Portable fuel tanks generally have a quick-connect that is used to detach the fuel line between the engine and tank. Once the fuel line is detached, this quick-connect will close. In addition, these tanks generally have a valve that either closes automatically when the tank is disconnected from the engine or a valve that can be closed by the user which will prevent vapors from escaping from the tank when it is stored.

We propose to allow design-based certification of portable fuel tanks to the diurnal emission standard based on the criteria that they seal automatically when the tank is disconnected from the engine and that they meet the proposed fuel tank permeation standard. We believe that the diurnal emissions from a typical portable fuel tank would be well below the proposed standard provided that it is sealed when not in use. Because the emission control depends on user practices, (such as disconnecting the tank after use) we propose not allowing any credits to be generated for diurnal emissions. We request comment on allowing design-based certification of portable fuel tanks that have valves that must be closed by the user.

4. Is EPA Proposing Voluntary "Blue Sky" Emissions Standards?

Several state and environmental groups and manufacturers of emissions controls have supported our efforts to develop incentive programs to encourage the use of emission control technologies that go beyond federal emission standards. In the final rule for land-based nonroad diesel engines, we included a program of voluntary standards for low-emitting engines, referring to these as "Blue Sky Series" engines (63 FR 56967, October 23, 1998). Since then, we have included similar programs in several of our other nonroad rules. The general purposes of such programs are to provide incentives to manufacturers to produce clean products as well as create market choices and opportunities for environmental information for consumers regarding such products. The voluntary aspects of these programs, which in part provides an incentive for manufacturers willing to certify their products to more stringent standards than necessary, is an important part of the overall application of "Blue Sky Series" programs.

We are proposing a voluntary Blue Sky Series standard for diurnal emissions from marine fuel tanks. Under this proposal we are targeting

close to a 95-percent reduction in diurnal evaporative emissions beyond the proposed mandatory diurnal emission standards as a qualifying level for Blue Sky fuel tanks. The proposed Blue Sky standard is 0.1 g/gallon/day, which, as discussed in Section III.F.3, could be met through the use of technologies such as a low permeation bladder fuel tank.

Creating a voluntary standard for low diurnal emissions will be an important step in advancing emission control technology. While these are voluntary standards, they become binding on tanks produced under that certificate once a manufacturer chooses to participate. EPA certification will therefore provide protection against false claims of environmentally beneficial products. A manufacturer choosing to certify a fuel tank under this approach must comply with all the proposed certification requirements including useful life, warranty, and other general compliance provisions. This program would become effective when we finalize this rule.

For the program to be most effective, however, incentives should also be in place to motivate the production and sale of lower emitting fuel tanks. We solicit ideas that could encourage the creation and use of these incentive programs by users and state and local governments. We believe it is important that such incentive programs lead to a net benefit to the environment; therefore, we are proposing that fuel tanks with the Blue Sky designation not generate extra ABT credits for demonstrating compliance with this proposed standard. We also request comment on additional measures we could take to encourage development and introduction of low emission control technology. Finally, we request comment on the Blue Sky approach in general as it would apply to marine fuel tanks.

5. What Is Consumer-Choice Labeling?

California ARB has recently proposed consumer/environmental label requirements for outboard and personal watercraft engines. Under this approach, manufacturers would label their engines or vehicles based on their certified emission level. California has proposed three different labels to differentiate varying degrees of emission control—one for meeting the EPA 2006 standard, one for being 20 percent lower, and one for being 65 percent below. More detail on this concept is provided in the docket.[22]

We are considering a similar approach to labeling the vessels subject to this proposal. This would apply especially to consumer products. Consumer-choice labeling would give people the opportunity to consider varying emission levels as a factor in choosing specific models. This may also give the manufacturer an incentive to produce more of their cleaner models. A difficulty in designing a labeling program is in creating a scheme that communicates information clearly and simply to consumers. Also, some are concerned that other organizations could use the labeling provisions to mandate certain levels of emission control, rather than relying on consumer choice as a market-based incentive. We request comment on this approach for marine vessels.

D. Demonstrating Compliance

1. How Would I Certify My Products?

We are proposing to apply our emission standards to vessels, but allow certification of fuel tanks and hoses separately. For both cases, we are proposing a certification process similar to our existing program for other mobile sources. In the existing program, manufacturers test representative prototype designs and submit the emission data along with other information to EPA in an application for a Certificate of Conformity. As discussed in Section III.F.3, we are proposing to allow manufacturers to certify based on either design (for which there is data) or emissions testing. If we approve the application, then the manufacturer's Certificate of Conformity allows the manufacturer to produce and sell the vessels or fuel systems described in the application in the U.S.

We are proposing that manufacturers certify their vessels, fuel tanks, or hoses by grouping them into emission families. Under this approach, vessels, fuel tanks, or hoses systems expected to have similar emission characteristics would be classified in the same emission family. The emission family definition is fundamental to the certification process and to a large degree determines the amount of testing required for certification. To address a manufacturer's unique product mix, we may approve using broader or narrower emission families.

Once an emission family is certified, we would require every vessel, fuel tank, or hose a manufacturer produces from the emission family to have a label with basic identifying information. The proposed regulation text details the proposed requirements for design and content of the labels. We request comment on this approach.

2. Who Will be Responsible for Certifying the Vessel or Fuel System?

Every boat powered by a spark-ignition marine engine and every portable fuel tank would have to be covered by an emissions certificate (or separate certificates for fuel tanks and hoses). The proposed regulations require that compliance to the emission standards must be demonstrated before the sale of the boat (or tank, in the case of portable fuel tanks). However, to allow additional flexibility in complying with standards, we propose to allow tank and hose manufacturers to certify their product lines separately. Therefore, if a boat builder were to use certified fuel tanks and hoses, the boat builder could rely on the tank and hose manufacturers' certificates. The boat builder would only need to state that they are using components that, combined, will meet the proposed standard and properly install the fuel system. We request comment on this approach.

3. How Long Would My Vessel or Fuel System Have To Comply?

Manufacturers would be required to build vessels that meet the emission standards over each vessel's useful life. The useful life we adopt by regulation is intended to reflect the period during which vessels are designed to properly function without being remanufactured. We propose a regulatory useful life of ten years for marine evaporative emission control. This is consistent with the regulatory useful life for outboard marine engines. We use the same useful life based on the belief that engines and boats are intended to have the same design life. We request comment on the proposed useful life requirement.

4. What Warranty Requirements Apply to Certified Vessels and Fuel Systems?

Consistent with our current emission-control programs, we are proposing that manufacturers provide a design and defect warranty covering emission-related components. For marine vessels, we propose that the fuel systems be warranted for five years for the emission related components. The proposed regulations would require that the warranty period must be longer than this minimum period we specify if the manufacturer offers a longer warranty for the fuel system or any of its components; this includes extended warranties on the fuel system or any of its components that are available for an extra price. See the proposed regulation

[22] "Public Hearing to Consider Amendments to the Spark-Ignition Marine Engine Regulations," Mail Out #MSC 99–15, June 22, 1999 (Docket A–2000–01, Document II–A–27).

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language for a description of which components are emission-related. We request comment on whether the warranty provisions should apply only to the certificate holder or to all manufacturers of the fuel system components used by the certificate holder.

If an operator makes a valid warranty claim for an emission-related component during the warranty period, the manufacturer is generally obligated to replace the component at no charge to the operator. The manufacturer may deny warranty claims if the operator failed to do prescribed maintenance that contributed to the warranty claim.

We are also proposing a defect reporting requirement that applies separate from the emission-related warranty (see Section III.E.6). In general, defect reporting applies when a manufacturer discovers a pattern of component failures, whether that information comes from warranty claims, voluntary investigation of product quality, or other sources. We request comment on the proposed warranty and defect reporting requirements.

E. General Compliance Provisions

This section describes a wide range of compliance provisions that would apply to marine vessels (or fuel tanks or hoses as appropriate) and are the same as those recently proposed for the nonroad engines September 2001 (*see* 66 FR 51098). Several of these provisions apply not only to manufacturers, but also to operators, and others.

The following discussion of the general compliance provisions reflects the organization of the proposed regulatory text. For ease of reference, the subpart designations are provided. We request comment on all these provisions.

1. Miscellaneous Provisions (Part 1068, Subpart A)

This proposed regulation contains some general provisions, including general applicability and the definitions that apply to 40 CFR part 1068. Other provisions concern good engineering judgment, how we would handle confidential information; how the EPA Administrator delegates decision-making authority; and when we may inspect a manufacturer's facilities, vessels, or records.

The process of testing for evaporative emissions (or certifying based on design) and preparing an application for certification requires the manufacturer to make a variety of judgments. Section 1068.5 of the proposed regulations describes the methodology we propose to use to evaluate concerns related to manufacturers' use of good engineering judgment in cases where the manufacturer has such discretion. If we find a problem in these areas, we would take into account the degree to which any error in judgment was deliberate or in bad faith. This subpart is consistent with provisions in the final rule for light-duty highway vehicles and commercial marine diesel engines.

2. Prohibited Acts and Related Requirements (Part 1068, Subpart B)

The proposed provisions in this subpart lay out a set of prohibitions for manufacturers and operators to ensure that vessels comply with the emission standards. These provisions are summarized below, but readers are encouraged to review the proposed regulatory text. These provisions are intended to help ensure that each new vessel or portable tank sold or otherwise entered into commerce in the United States is certified to the relevant standards.

a. General prohibitions (§ 1068.100). This proposed regulation contains several prohibitions consistent with the Clean Air Act. Under this proposal, no one may sell a vessel or portable fuel tank in the United States without a valid certificate of conformity issued by EPA, deny us access to relevant records, or keep us from entering a facility to test or inspect vessels or fuel system components. In addition, no one may remove or disable a device or design element that may affect an vessel's emission levels, or manufacture any device that will make emission controls ineffective, which we would consider tampering. We have generally applied the existing policies developed for tampering with highway engines and vehicles to nonroad engines.[23] Other proposed prohibitions reinforce manufacturers' obligations to meet various certification requirements. We would also prohibit selling parts that prevent emission-control systems from working properly. Finally, for vessels that are excluded for certain applications (i.e. solely for competition), we would generally prohibit using these vessels in other applications.

These proposed prohibitions are the same as those that apply to other applications we have regulated in previous rules. Each prohibited act has a corresponding maximum penalty as specified in Clean Air Act section 205. As provided for in the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 10–410, these maximum penalties are in 1970 dollars and should be periodically adjusted by regulation to account for inflation. The current penalty amount for each violation is $27,500.[24]

b. In-service systems (§ 1068.110). The proposed regulations would prevent manufacturers from requiring owners to use any certain brand of aftermarket parts and give the manufacturer responsibility for servicing related to emissions warranty, leaving the responsibility for all other maintenance with the owner. This proposed regulation would also reserve our right to do testing (or require testing) to investigate potential defeat devices, as authorized by the Act.

3. Exemptions (Part 1068, Subpart C)

We are proposing to include several exemptions for certain specific situations. Most of these are consistent with previous rules. We highlight the new or different proposed provisions in the following paragraphs. In general, exempted vessels would need to comply with the requirements only in the sections related to the exemption. Note that additional restrictions could apply to importing exempted vessels (*see* Section III.E.4). Also, we are also proposing that we may require manufacturers (or importers) to add a permanent label describing that the vessel or fuel system component is exempt from emission standards for a specific purpose. In addition to helping us enforce emission standards, this would help ensure that imported vessels clear U.S. Customs without difficulty.

a. Testing. Anyone would be allowed to request an exemption for vessels or fuel system components used only for research or other investigative purposes.

b. Manufacturer-owned vessels and fuel systems. Vessels and fuel system components that are used by manufacturers for development or marketing purposes could be exempted from regulation if they are maintained in the manufacturers' possession and are not used for any revenue-generating service. They would no longer be exempt if they were later offered for sale.

c. Display vessels or fuel systems. Boat builders and fuel system component manufacturers would get an exemption if the vessels or fuel systems are for display only. They would no longer be exempt if they were later offered for sale.

[23] "Interim Tampering Enforcement Policy," EPA memorandum from Norman D. Shulter, Office of General Counsel, June 25, 1974 (Docket A–2000–01; document II–B20).

[24] EPA acted to adjust the maximum penalty amount in 1996 (61 FR 69364, December 31, 1996). See also 40 CFR part 19.

d. National security. Manufacturers could receive an exemption for vessels or portable fuel tanks they can show are needed by an agency of the federal government responsible for national defense. For cases where the vessels will not be used on combat applications, the manufacturer would have to request the exemption with the endorsement of the procuring government agency.

e. Exported vessels. Vessels and portable fuel tanks that will be exported to countries that don't have the same emission standards as those that apply in the United States would be exempted without need for a request. This exemption would not be available if the destination country has the same emission standards as those in the United States.

f. Competition vessels. New vessels that are used solely for competition are excluded from regulations applicable to nonroad equipment. For purposes of our certification requirements, a manufacturer would receive an exemption if it can show that it produces the vessel specifically for use solely in competition. In addition, vessels that have been modified for use in competition would be exempt from the prohibition against tampering described above (without need for request). The literal meaning of the term "used solely for competition" would apply for these modifications. We would therefore not allow the vessel to be used for anything other than competition once it has been modified. This also applies to someone who would later buy the vessel, so we would require the person modifying the vessel to remove or deface the original label and inform a subsequent buyer in writing of the conditions of the exemption. The exemption would no longer apply.

4. Imports (Part 1068, Subpart D)

In general, the same certification requirements would apply to vessels whether they are produced in the U.S. or are imported. This proposed regulation also includes some additional provisions that would apply if someone wants to import an exempted or excluded vessel. For example, the importer would need written approval from us to import any exempted vessel; this is true even if an exemption for the same reason doesn't require approval for vessels produced in the U.S.

All the proposed exemptions described above for new vessels would also apply to importation, though some of these apply only on a temporary basis. If we approve a temporary exemption, it would be available only for a defined period and could require the importer to post bond while the vessel is in the U.S. There are several additional proposed exemptions that would apply only to imported vessels.

—*Identical configuration:* This would be a permanent exemption to allow individuals to import vessels that were designed and produced to meet applicable emission standards. These vessels may not have the emission label only because they were not intended for sale in the United States.

—*Repairs or alterations:* This would be a temporary exemption to allow companies to repair or modify vessels.

—*Diplomatic or military:* This would be a temporary exemption to allow diplomatic or military personnel to use uncertified vessels during their term of service in the U.S.

We request comment on all the proposed exemptions for domestically produced and imported vessels.

5. Selective Enforcement Audit (Part 1068, Subpart E)

Clean Air Act section 206(b) gives us the authority and discretion in any program with vehicle or engine emission standards to do selective enforcement auditing of production vessels and fuel systems. The proposed regulation text describes the audit procedures in greater detail. We intend generally to rely on inspecting manufacturers' designs to ensure they comply with emission standards. However, we would reserve our right to do selective enforcement auditing if we have reason to question the emission testing conducted or data reported by the manufacturer.

6. Defect Reporting and Recall (Part 1068, Subpart F)

We are proposing provisions for defect reporting. Specifically, we are proposing that manufacturers tell us when they learn of a defect occurring 25 times or more for emission families with annual sales up to 10,000 units. This threshold of defects would increase proportionately for larger families. While these thresholds would depend on sales, counting defects would not be limited to a single emission family. For example, if a manufacturer learns that operators reported 25 cases of problems with a limiting orifice from three different low-volume models spread over five years, that would trigger the need to file a defect report. This information could come from warranty claims, customer complaints, product performance surveys, or anywhere else. The proposed regulation language in § 1068.501 also provides information on the thresholds for triggering a further investigation for where a defect report is more likely to be necessary. We request comment on the proposed defect reporting provisions.

Under Clean Air Act section 207, if we determine that a substantial number of vessels, fuel tanks, or hoses within an emission family, although properly used and maintained, do not conform to the appropriate emission standards, the manufacturer will be required to remedy the problem and conduct a recall of the noncomplying emission family. However, we also recognize the practical difficulty in implementing an effective recall program for marine vessels. It would likely be difficult to properly identify all the affected owners. The response rate for affected owners or operators to an emission-related recall notice is also a critical issue to consider. We recognize that in some cases, recalling noncomplying marine vessels may not achieve sufficient environmental protection, so our intent is to generally allow manufacturers to nominate alternative remedial measures to address most potential noncompliance situations. We expect that successful implementation of appropriate alternative remediation would obviate the need for us to make findings of substantial nonconformity under section 207 of the Act. We would consider alternatives nominated by a manufacturer based on the following criteria; the alternatives should—

(1) Represent a new initiative that the manufacturer was not otherwise planning to perform at that time, with a clear connection to the emission problem demonstrated by the emission family in question;

(2) Cost more than foregone compliance costs and consider the time value of the foregone compliance costs and the foregone environmental benefit of the emission family;

(3) Offset at least 100 percent of the emission exceedance relative to that required to meet emission standards; and

(4) Be possible to implement effectively and expeditiously and to complete in a reasonable time.

These criteria would guide us in evaluating projects to determine whether their nature and burden is appropriate to remedy the environmental impact of the nonconformity. However, in no way would the consideration of such a provision diminish our statutory authority to direct a recall if that is deemed the best course of action. We request comment on this approach to addressing the Clean Air Act provisions related to recall. In addition, we request comment on the proposed requirement

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to keep recall-related records until three years after a manufacturer completes all responsibilities under a recall order.

7. Public Hearings (Part 1068, Subpart G)

According to this regulation, manufacturers would have the opportunity to challenge our decision to suspend, revoke, or void an emission family's certificate. This also applies to our decision to reject the manufacturer's use of good engineering judgment (see § 1068.5). Part 1068, subpart G describes the proposed procedures for a public hearing to resolve such a dispute.

F. Proposed Testing Requirements

In order to obtain a certificate allowing sale of products meeting EPA emission standards, manufacturers generally must show compliance with such standards through emission testing. 40 CFR part 86 details specifications for test equipment and procedures that apply to highway vehicle evaporative emission testing. We propose to base the SI marine evaporative emission test procedures on this part. However, we propose to modify this test procedure somewhat to more accurately reflect the anticipated technology for meeting the evaporative emission standards proposed in this rule. We are also proposing design-based certification as an alternative to performing specific testing.

1. What Are the Proposed Test Procedures for Measuring Diurnal Emissions?

We propose that the evaporative emission test will be representative of ambient temperatures ranging from 22° C to 36° C (72° F to 96° F). Emissions would be measured in a Sealed Housing for Evaporative

Determination (SHED) over a 72-hour period. The fuel tank would be set up in the SHED and sealed except for the vent(s). The fuel tank would be set up in the SHED with all hoses, seals, and other components attached. The fuel tank would be filled completely and drained to 40-percent capacity with 9 RVP test fuel and soaked with an open vent until the fuel reached 22° C.[25] Immediately after the fuel reaches this temperature, the SHED would be purged, and the diurnal temperature cycling would begin. The temperature cycle is actually three repeats of a 24-hour diurnal trace and is described in Chapter 4 of the Draft Regulatory Support Document. During the test a minimum of 5 mph wind speed would be simulated using a fan. The final g/gallon/day result is based on the highest mass emission rate from these three 24-hour cycles, divided by the fuel tank capacity. Fuel tank capacity refers the maximum amount of fuel in the tank under in-use conditions.

These proposed test procedures are designed to simulate near worst case conditions for a typical boat. We believe that typical in-use fuel tanks will rarely be exposed to a temperature cycle larger than 24°F in a single day. However, in special applications where the fuel tank is exposed to direct sunlight, the tank temperature can change much more than 24°F over the course of a single day. Therefore, we are proposing that special test procedures that simulate the radiant effect of sunlight be used to test fuel tanks that will be exposed to direct sunlight. We would not require this for exposed fuel tanks that are shielded from the sun.

This diurnal cycle is consistent with the test requirements in 40 CFR part 86 for highway vehicles. However, the test procedure for highway vehicles includes engine operation and hot soaks.[26] One purpose of the engine operation is to purge the charcoal canister that collects evaporative emissions in highway applications. However, we are excluding engine operation from the evaporative test procedures for boats using SI marine engines because we do not anticipate the use of charcoal canisters in these applications. Another purpose of running the engine and the purpose of the hot soaks is to measure evaporative emissions due to the heating of the engine and exhaust system. However, this would significantly increase the difficulty of the SHED testing due to the large size of most boats. Because most boats are operated only 50 hours per year, these running loss and hot soak emissions are considerably smaller than diurnal and permeation emissions. In addition, most of the emission-control strategies that could be used to meet the proposed standards would also reduce running loss and hot soak emissions. We request comment on the proposed test procedures for determining evaporative emissions from boats using SI marine engines.

2. What Are the Proposed Test Procedures for Measuring Permeation Emissions?

a. Fuel tanks. We propose that tank permeation be based on a test procedure consistent with the Coast Guard requirements in 33 CFR 183.620. Specifically, the rate of permeation from the tank will be measured at 40°C using the same test fuel as for the diurnal testing. We request comment on using 40°C as the test temperature or if 23°C should be used to be consistent with the hose testing. Our understanding is that 40°C represents higher temperatures that may be seen in an engine compartment during operation while 23°C represents typical ambient conditions. If a lower test temperature were used, the standards would need to be adjusted appropriately. Based on data presented in Chapter 4 of the draft RSD, the standards would have to be reduced on the order of 50 percent for every 10°C reduction in test temperature. We also request comment on using ASTM Fuel "C" and a 15% methanol blend to be consistent with the hose permeation test procedures or on using 10% ethanol consistent with on-highway evaporative emission testing. The tank would have to be filled and soaked for a minimum of 60 days to ensure that permeation emissions are accurately reflected in the test procedure. The tank would be sealed during testing, and care would have to be made that the environment in which the tank was tested was continuously purged of vapor to prevent the saturation of vapor with hydrocarbons around the outside of the tank. Permeation would be measured through weight loss in the tank or using equivalent procedures.

We also request comment on whether we should require specific durability test procedures for fuel tanks. Such durability tests could include pressure vacuum cycle testing, slosh testing, and temperature cycling. Information on these tests is included in the docket.[27]

b. Hoses. We propose to use the current practices for measuring permeation from marine hoses that are specified in SAE J 1527. Under this procedure, the hose is tested at 23°C with both ASTM Fuel "C" (50% toluene, 50% isooctane) and with a blend on fuel "C" with 15% methanol. SAE J 1527 sets permeation limits for hose of 100 g/m²/day for fuel C and 300 g/m²/day for the 15% methanol blend. Consistent with this relationship, we propose to allow the permeation rate to be three times higher than the proposed standard for fuel C when the hose is tested on the 15% methanol blend. Because permeation rates double, roughly, with every 10°C increase in temperature, the test procedure has a large effect on emissions measured for a given hose material. In addition, the temperature effects may be greater for some materials than for others. For low permeation non-metal fuel lines used in automotive applications, the current practices are specified in SAE J 2260 and SAE J 1737. Under these test procedures, the hose permeation is measured at 60°C with an 85%-15% blend of fuel "C" and methanol. We request comment on using the higher test temperature in the automotive test procedure. We also request comment on requiring testing using a 10% ethanol blend consistent with on-highway evaporative emission testing.

3. Could I Certify Based on Engineering Design Rather Than Through Testing?

We recognize that performing SHED testing could be cost-prohibitive for many fuel tank manufacturers or boat builders. In addition, many of the technologies that can be used to reduce evaporative emissions are straightforward design strategies. For these reasons, we propose that manufacturers have the option of certifying to the diurnal evaporative emission requirements based on fuel system designs, as described in the proposed regulations. Test data would be required to certify fuel tanks and hoses to the proposed permeation standards. However, we would allow carryover of test data from year to year for a given emission control design. We believe the cost of testing tanks and hose designs for permeation would be considerably lower than running variable temperature diurnal testing. In addition, the data could be carried over from year to year, and there is a good possibility that the broad emission family concepts under consideration could lead to minimum testing. For instance, a hose manufacturer could test its hose design once, and all the boat builders who use this hose could incorporate this data in their certification applications.

We are proposing design based certification to the tank permeation standard for one case. We would consider an aluminum fuel tank to meet the design criteria for a low permeation fuel tank. However, we would not consider this design to be any more effective than a low permeation fuel tank for the purposes of any sort of credit program. Although aluminum is impermeable, seals and gaskets used on the fuel tank may not be. The design criteria for the seals and gaskets would be that either they would not have a total exposed surface area exceeding 1000 mm², or the seals and gaskets would have to be made of a material with a permeation rate of 10 g/m²/day or less at 23°C.

The rest of this section discusses designs that we propose to be acceptable for design-based certification to the proposed diurnal emission standard. The emission data we used to develop these proposed design options are presented in Chapter 4 of the Draft Regulatory Support Document. Additional testing may help us more precisely set the appropriate emission levels associated with each design. Manufacturers wanting to use designs other than those we discuss here would have to perform the above test procedures for their design. However, once a new design is proven, we could add this new design to the list of designs for this certification flexibility and assign it to the appropriate averaging bin. For example, if several manufacturers were to pool their resources to test a diurnal emission control strategy and submit this data to EPA, we would consider this particular strategy and emission level as a new design level for design based certification. We request comment on the concept of design-based certification and on the technologies and associated emission levels discussed below. Section III.H.3 presents a more detailed description of what each of these technologies are and how they can be used to reduce evaporative emissions.

We have identified several technologies for reducing diurnal emissions from marine fuel tanks. The design levels proposed below represent our understanding of the effectiveness of various emission control technologies over the proposed test procedure. Table III.F.1 summarizes design-based emission levels associated with several emission control strategies. These control strategies are discussed in more detail after the table. Manufacturers would be required to submit information demonstrating that the components they use would be durable over the useful life of the vessel. For tanks that allow pressure build-up, a low-pressure vacuum-relief valve would also be necessary for the engine to be able to draw fuel during operation. Also, in the cases where anti-siphon valves are used with these designs, the anti-siphon system would have to be designed such that fuel could not spill out through this valve when the system is under pressure.

TABLE III.F–1.—EMISSION LEVELS FOR DESIGN BASED CERTIFICATION TO THE PROPOSED DIURNAL EMISSION STANDARD

Emission level [g/gallon/day]	Technology
1.5	Baseline (open vent with a normal length vent hose).
1.3	Near zero pressure limited flow orifice and insulation (R-value ≥15), or closed vent, 0.5 psi relief valve.
1.1*	Closed vent, 1.0 psi relief valve.
0.9	Closed vent, 1.5 psi relief valve.
0.7	Closed vent, 2.0 psi relief valve.
0.5	Closed vent, 0.5 psi relief valve with a volume compensating air bag.
0.1	Bladder fuel tank.

*Proposed average standard for diurnal emissions.

1.5 g/gal/test: Typical fuel tanks used in boats currently have an open vent to the atmosphere through a vent hose. This vent is intended to prevent pressure from building up in the fuel tank. This uncontrolled fuel tank configuration would be considered to be at this level based on the data presented in Chapter 4 of the Draft RSD.

1.3 g/gal/test: The design criteria for this level would be a fuel tank with a near zero pressure limited flow orifice and insulation. The limited flow orifice would be defined as having a maximum cross-sectional area defined by the following equation: Area [mm²] = 0.04 x fuel tank capacity [gallons]. For example, a 20 gallon tank would need an orifice with no more than a 1 mm diameter. This size orifice is sufficient to limit diffusion of hydrocarbons without causing significant pressure to build in the fuel tank. The design criteria for the insulation would be to use insulation having at least an R-value of 15 (see section III.H.3.b).

1.1 g/gal/test: An alternative design criterion for this level would be a sealed fuel tank with a pressure-relief valve that would open at a pressure of 0.5 psi.

1.1 g/gal/test: The design criterion for this level would be a sealed fuel tank with a pressure-relief valve that would open at a pressure of 1.0 psi.

0.9 g/gal/test: The design criterion for this level would be a sealed fuel tank with a pressure-relief valve that would open at a pressure of 1.5 psi.

0.7 g/gal/test: The design criterion for this level would be a sealed fuel tank

[25] Reid Vapor Pressure (psi). This is a measure of the volatility of the fuel. 9 RVP represents a typical summertime fuel in northern states.

[26] Hot soak emissions are those caused by residual heat in the engine and exhaust system immediately after the engine is shut down. Running loss emissions are those caused by engine and exhaust heat while the engine is operating.

[27] Draft SAE Information Report J1769, "Test Protocol for Evalution of Long Term Permeation Barrier Durability on Non-Metallic Fuel Tanks," (Docket A–2000–01, document IV–A–24).

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with a pressure-relief valve that would open at a pressure of 2.0 psi.

0.5 g/gal/test: The design criterion for this level would be a volume-compensating air bag used in conjunction with a 0.5 psi pressure-relief valve if the bag is designed to fill 25 percent of the fuel tank capacity when inflated. This bag would have no leaks to the fuel tank and would be constructed out of a non permeable material.

0.1 g/gal/test: The design criterion for this level would be to use a bladder tank. The bladder would have to be sealed and built of low permeable material. This bladder would collapse as fuel was drawn out of it and expand when refueled thereby eliminating the vapor space needed for diurnal vapor generation.

G. Special Compliance Provisions

The scope of this proposal includes many boat and fuel tank manufacturers that have not been subject to our regulations or certification process. Many of these manufacturers are small businesses for which a typical regulatory program may be burdensome. This section describes the proposed special compliance provisions designed to address this concern. As described in Section VIII.B, the report of the Small Business Advocacy Review Panel addresses the concerns of small manufacturers of gasoline fuel tanks for marine applications and small boat builders that use these tanks.

To identify representatives of small businesses for this process, we used the definitions provided by the Small Business Administration for fuel tank manufacturers and boat builders (less than 500 employees). Twelve small businesses agreed to serve as small-entity representatives. These companies represented a cross-section of both gasoline and diesel engine marinizers, as well as boat builders.

In this industry sector, we believe some of the burden reduction approaches presented in the Panel Report should be applied to all businesses. All of the marine fuel tank manufacturers except for one qualify as small businesses. We believe the purpose of these options is to reduce the potential burden on companies for which fixed costs cannot be distributed over a large product line. For this reason, we often times also consider the production volume when making decisions regarding flexibilities. The one fuel tank manufacturer not qualifying as a small business still has low production volumes of marine fuel tanks, thus we believe some flexibilities should be made available to this manufacturer as well.

Three of the five burden reduction approaches discussed in the Panel Report are design-based certification, allowance to use emission credits with design-based certification, and a 5-year lead time with early banking. As discussed above, we are proposing these approaches for all manufacturers certifying marine fuel tanks to the proposed evaporative emission standards. This section discusses the other two approaches in the Panel Report and how we propose to apply them to the marine industry.

1. Broadly Defined Product Certification Families

To certify to the evaporative emission standards, we propose that manufacturers would have to classify their vessels, fuel tanks, or hoses in emission families based on having similar emission characteristics. We would expect to differentiate families by fuel type, diurnal control technology, and the tank and hose material/treatment. The manufacturer would then certify each of these evaporative emission families. The purpose of emission families has traditionally been to reduce testing burden by allowing a family to be certified based on the test results from its highest-emitting member.

For highway evaporative emission requirements, each manufacturer divides its products into several evaporative emission families based on characteristics of the fuel system. These characteristics include: fuel type, charcoal canister type and capabilities, seals, valves, hoses, and tank material. The manufacturer then has to certify each of these evaporative emission families. Unlike highway vehicles, evaporative emission controls for marine vessels are not likely to rely on charcoal canisters as a control technology. Furthermore, most or all SI marine engines will use gasoline and most manufacturers do not make both plastic and aluminum fuel tanks. Most manufacturers will therefore have very few emission families and it will be unlikely that emission families could be much broader than discussed here. In addition, broadening emission families may not reduce compliance burden, considering the proposed design-based certification approach. However, we request comment on whether there are reasonable ways to broaden these engine families, and whether or not small businesses would benefit from any such broadened definitions.

2. Hardship Provisions for Small Businesses Producing Marine Fuel Tanks

There are two types of hardship provisions. The first type of hardship program would allow small businesses to petition EPA for additional lead time (*e.g.*, up to 3 years) to comply with the standards. A small manufacturer would have to make the case that it has taken all possible business, technical, and economic steps to comply but the burden of compliance costs would have a significant impact on the company's solvency. A manufacturer would be required to provide a compliance plan detailing when and how it would achieve compliance with the standards.

Hardship relief could include requirements for interim emission reductions and/or purchase and use of emission credits. The length of the hardship relief decided during review of the hardship application would be up to one year, with the potential to extend the relief as needed. The second hardship program would allow companies to apply for hardship relief if circumstances outside their control cause the failure to comply (*i.e.*, supply contract broken by parts supplier) and if the failure to sell the subject vessels would have a major impact on the company's solvency. See the proposed regulatory text in 40 CFR 1068.240 and 1068.241 for additional details.

H. Technological Feasibility

We believe there are several strategies that manufacturers can use to meet our proposed evaporative emission standards. We have collected and will continue to collect emission test data on a wide range of evaporative emission control technology. The design-based certification levels discussed above are based on this test data and we may amend the list of approved designs and emission levels as more data become available.

1. Implementation Schedule

There are several strategies available to reduce evaporative emissions (diurnal and permeation) from marine fuel tanks. Some of these may require changes to the tank design, structure, and material that would cause a change in the molds used to make the plastic tanks. These molds need to be replaced periodically as part of normal manufacturing practices. Small manufacturers using rotational molding to produce plastic fuel tanks have commented that the molds covering the majority of their production line have about a five-year life before replacement. However, for the low-production fuel tanks, they may use their molds for 10 to 15 years. They have stated that their costs would be greatly reduced if they could turn over fuel tank molds in a manner more consistent with their current business practice, rather than doing so solely in response to an evaporative control requirement.

We recognize that tank manufacturers and boat builders will need time to choose and implement the evaporative emission control strategies that work best for them. We believe the implementation date of 2008, coupled with the option for early banking, provides sufficient lead time beyond the anticipated publication of the final rule. This 5-year lead time is consistent with the general turnover schedule of most molds used in plastic fuel tank production. We request comment whether there are small entities whose product line is dominated by tanks for which the molds are turned over at a slower rate.

Surface treatments to reduce tank permeation are widely used today in other container applications and the technology and production facilities needed to conduct this process exist. While there is definitely value in an organized approach to compliance on the part of the manufacturers, the lead time requirement is largely driven by modifications needed to comply with the diurnal requirements. EPA requests comment on the feasibility of implementing the tank permeation requirement in 2006 or 2007.

Low permeation marine hose is used today on some vessels that is close to meeting the proposed standards. In addition, the development time for new hose designs is on the order of 1–2 years. Therefore, we request comment on whether an earlier implementation date for the proposed permeation standards for marine hoses would be appropriate. We are proposing an implementation date for hose permeation standards of 2008, consistent with the fuel tank standards, because hose fitting modifications may be required which could affect tank design. Manufacturers have commented that low permeation hoses require special connection fittings with better tolerances than seen on many fittings today. Automotive fuel lines also already exist that meet the proposed permeation standards. However, manufacturers have raised concerns with the cost of applying these less flexible fuel lines in marine applications. In any case, using these automotive fuel lines would probably also require fitting changes. EPA requests comment on the feasibility of implementing the hose permeation requirement in 2006 or 2007.

2. Standard Levels

We tested several diurnal emission-control strategies using the procedures discussed in VI.D.1. Based on this testing we believe there are several emission-control technologies that could be used to significantly reduce diurnal emissions. Also, we have identified several strategies for reducing permeation emissions from fuel tanks and hoses. We recognize that some of these technologies may be more desirable than others for some manufacturers, and we recognize that different strategies for equal emission reductions may be better for different applications. Specific examples of technology that could be used to meet the proposed standards would be fuel tank with a 1 psi valve in the vent, a fluorinated plastic fuel tank, and hose constructed with a thermoplastic barrier. We present several other technological approaches below.

3. Technological Approaches

We believe several emission-control technologies can be used to reduce evaporative emissions from marine fuel tanks. In addition, there are a few technologies that are used in other applications that may not be as effective here. The advantages and disadvantages of various emission-control strategies are discussed below. Chapter 4 of the Draft Regulatory Support Document presents more detail on these technologies and Chapter 5 provides information on the estimated costs.

a. Closed fuel vent with pressure relief. Evaporative emissions are formed when the fuel heats up, evaporates, and passes through the vent into the atmosphere. By closing that vent, evaporative emissions are prevented from escaping. However, as vapor is generated, pressure builds up in fuel tank. Once the fuel cools back down, the pressure subsides.

The U.S Coast Guard safety regulations (33 CFR part 183) require that fuel tanks be able to withstand pressure up to 3 psi and must be able to pass a pressure-impulse test which cycles the tank from 0 to 3 psi 25,000 times. The Coast Guard also requires that these fuel tanks be vented such that the pressure in the tank in-use never exceeds 80 percent of the pressure that the tank is designed to withstand without leaking. The American Boat and Yacht Council makes the additional recommendation that the vent line should have a minimum inner diameter of $\frac{7}{16}$ inch (H–24.13). However, these recommended practices also note that "there may be EPA or state regulations that limit the discharge of hydrocarbon emissions into the atmosphere from gasoline fuel systems. The latest version of these regulations should be consulted."

To prevent pressure from building too high, we first considered a 2 psi pressure-relief valve. This is a typical automotive rating and is within the Coast Guard requirements. With this valve, vapors would be retained in the tank until 2 psi of pressure is built up in the tank due to heating of the fuel. Once the tank pressure reached 2 psi, just enough of the vapor would be vented to the atmosphere to maintain 2 psi of pressure.

As the fuel cooled, the pressure would decrease. We estimate that this would achieve about a 55-percent reduction in evaporative emissions over the proposed test procedure. A 1 psi valve would achieve a reduction of about half of this over the proposed test procedure. However, in use, this reduction could be much greater because the test procedure is designed to represent a hotter than average day. On a more mild day there could be less pressure buildup in the tank and the valve may not even need to open.

As discussed in Chapter 4 of the draft RSD, we tested fuel tanks for diurnal emissions with pressure relief valves ranging from 0.4 to 2.2 psi.

With the use of a sealed system, a low-pressure vacuum-relief valve would also be necessary so air could be drawn into the tank to replace fuel drawn from the tank when the engine is running.

Manufacturers of plastic fuel tanks have expressed concern that their tanks are not designed to operate under pressure. For instance, although they will not leak at 3 psi, rotationally molded fuel tanks with large flat surfaces could begin deforming at pressures as low as 0.5 psi. At higher pressures, the deformation would be greater. This deformation would affect how the tank is mounted in the boat. Also, fuel tank manufacturers commented that some of the fittings or valves used today may not work properly under even 2 psi of pressure. Finally, they commented that backup pressure-relief valves would be necessary for safety.

We believe that, with enough lead time, fuel tank manufacturers will be able to redesign their fuel tanks to be more resistant to deformation under pressure. By reducing the size of flat areas on the tank through adding contours to the tank, or by increasing the thickness of the tank walls, the fuel tanks can be designed to resist deformation under pressure. Portable

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plastic fuel tanks are generally sealed without any pressure relief and are designed to withstand any pressure that may occur under these conditions. We also believe that if certain fittings and valves cannot withstand pressure today, they can be designed to do so. In addition, we are proposing a standard which can be met with a 1 psi valve which we believe would require significantly less modification to current tanks than designing for 3 psi of pressure. In developing this level we considered first 2.0 psi valves which is consistent with on-highway fuel tanks and is below the Coast Guard tank pressure requirement. However, we proposed a standard based on a 1.0 psi pressure relief valve to give manufacturers some margin to minimize fuel tank deflection under pressure. Although we do not consider this to be a feasibility issue, we recognize that if the tank were to deflect too much in-use that either the fuel tank compartment would have to be enlarged to accommodate this expansion or a smaller fuel tank would need to be used. We request comment on this issue.

Below, we discuss strategies that could be used in conjunction with a sealed system to minimize the build-up of pressure in the fuel tank. Such technologies are insulation, volume-compensating air bags, and bladder fuel tanks. With the use of these technologies, the same emission reductions could be achieved with a pressure-relief valve set to allow lower vent pressures. Finally the structure of the proposed standards gives manufacturers the flexibility to meet the emission limits without building up pressure in the fuel tank.

b. Limited flow orifice. An alternative to using a pressure-relief valve to hold vapors in the fuel tank would be to use a limited-flow orifice. This would essentially be a plug in the vent line with a pin hole in it that would be small enough to limit vapor flow out of the fuel tank. However, the orifice size may be so small that there would be a risk of fouling. In addition, an orifice designed for a maximum of 2 psi under worst-case conditions may not be very effective at lower temperatures. We tested a 17-gallon tank with a 75-micron diameter limited-flow orifice over the proposed diurnal test procedure and saw close to a 25 percent reduction in diurnal emissions. The peak pressure in this test was 1.6 psi.

c. Insulated fuel tank. Another option we evaluated was insulating either the fuel tank or the compartment around the fuel tank. Rather than capturing the vapors in the fuel tank, we minimize the fuel heating, which therefore minimizes the vapor generation. This could be used in conjunction with a limited-flow orifice to reduce the loss of vapor through the vent line due to diffusion. Our test data suggest that a 50-percent reduction in emissions over the proposed test procedure can be achieved using insulation with an R-value of 15.[28] However, it should be noted that today's fuel tanks, when installed in boats, have some amount of "inherent insulation." This is especially true for boats that remain in the water. This inherent insulation is considered in our baseline emission factors. Additional control could be achieved with the use of a pressure-relief valve coupled with an insulated tank. Note that an insulated tank could maintain the same emission control while using a pressure-relief valve that allowed lower peak pressures, compared with a tank that was not insulated.

The method of insulation would have to be consistent with U.S. Coast Guard fuel system requirements. These requirements regulate the resistance to fuels, oils and other chemicals, water adsorption, compressive strength, and density of foam used to encase fuel tanks. In addition, the Coast Guard requirements protect against corrosion of metal fuel tanks due to foam pulling away from the fuel tank causing water to be trapped or from improper drainage. There are several methods that could be used to insulate the fuel tank while maintaining safe practices. These methods include an insulation barrier within the walls of the fuel tank, insulating the compartment that the tank is in rather than the tank itself, and foaming the tank in place by filling the entire compartment the tank is in. The Coast Guard requirements and potential insulation strategies are discussed further in Chapter 3 of the Draft Regulatory Support Document.

d. Volume-compensating air bag. Another concept for minimizing pressure in a sealed fuel tank is through the use of a volume-compensating air bag. The purpose of the bag is to fill up the vapor space in the fuel tank above the fuel. By minimizing the vapor space, the equilibrium concentration of fuel vapors occupies a smaller volume, resulting in a smaller mass of vapors. As the equilibrium vapor concentration increases with increasing temperature, the vapor space expands, which forces air out of the bag through the vent to atmosphere. Because the bag volume decreases to compensate for the expanding vapor space, total pressure inside the fuel tank stays very close to atmospheric pressure.[29] Once the fuel tank cools as ambient temperature goes down, the resulting vacuum in the fuel tank will make the bag expand again by drawing air from the surrounding ambient. Our test results showed that pressure could be kept below 0.8 psi using a bag with a capacity equal to 25 percent of the fuel tank capacity. Therefore, the use of a volume-compensating air bag could allow a manufacturer to reduce the pressure limit on its relief valve.

We are still investigating materials that would be the most appropriate for the construction of these bags. The bags would have to hold up in a fuel tank for several years and resist permeation, while at the same time being light and flexible. One such material we are considering is fluorosilicon fiber. Also, the bag would have to be positioned to avoid interfering with other fuel system components such as the fuel pick-up or catching on any sharp edges in the fuel tank. We estimate that this would be more expensive than using a pressure relief valve with some reinforcement of the fuel tank for pressure; however, it is also more effective at emission control and would minimize pressure in the fuel tank.

e. Bladder fuel tank. Probably the most effective technology for reducing diurnal emissions from marine fuel tanks is through the use of a collapsible fuel bladder. In this concept, a low permeation bladder is installed in the fuel tank to hold the fuel. As fuel is drawn from the bladder, the vacuum created collapses the bladder. Therefore, there is no vapor space and no pressure build up from fuel heating. Because the bladder is sealed, there would be no vapors vented to atmosphere. This option could also significantly reduce emissions during refueling that would normally result from dispensed fuel displacing vapor in the fuel tank. We have received comments that this would be cost-prohibitive because it could increase costs from 30 to 100 percent depending on tank size. However, bladder fuel tanks have positive safety implications as well and are already sold by at least one manufacturer to meet market demand in niche applications.

f. Charcoal canister. The primary evaporative emission-control device used in automotive applications is a charcoal canister. With this technology, vapor generated in the tank is vented through a charcoal canister. The activated charcoal collects and stores the hydrocarbons. Once the engine is running, purged air is drawn through the canister and the hydrocarbons are burned in the engine. These charcoal canisters generally are about a liter in size and have the capacity to store three days of vapor over the test procedure conditions. This technology does not appear to be attractive for marine fuel tanks because boats may sit for weeks at a time without the engine running. Once the canister is saturated, it provides no emission control.

g. Floating fuel and vapor separator. Another concept used in some stationary engine applications is a floating fuel and vapor separator. Generally small, impermeable plastic balls are floated in the fuel tank. The purpose of these balls is to provide a barrier between the surface of the fuel and the vapor space. However, this strategy does not appear to be effective for marine fuel tanks. Because of the motion of the boat, the fuel sloshes and the barrier would be continuously broken. Even small movements in the fuel could cause the balls to rotate and transfer fuel to the vapor space. In addition, the unique geometry of many fuel tanks could cause the balls to collect in one area of the tank.

h. Low permeability fuel tanks. We estimate that more than a quarter of the evaporative emissions from boats with plastic fuel tanks come from permeation through the walls of the fuel tanks. In highway applications, non-permeable plastic fuel tanks are produced by blow molding a layer of ethylene vinyl alcohol or nylon between two layers of polyethylene. However, blow molding has high fixed costs and therefore requires high production volumes to be cost effective. For this reason, this manufacturing technique is generally only used for portable fuel tanks which are generally produced in higher volumes. For these tanks, however, multi-layer fuel tank construction may be an inexpensive and effective approach to controlling permeation emissions

Manufacturers of rotationally molded plastic fuel tanks generally have low production volumes and have commented that they could not produce their tanks with competitive pricing in any other way. Currently, they use cross-link polyethylene which is a low density material that has relatively high rate of permeation. One material that could be used as a low permeation alternative in the rotational molding process is nylon. The use of nylon in the construction of these fuel tanks would reduce permeation by more than 95 percent when compared to cross-link polyethylene such as is used today.

Another type of barrier technology for fuel tanks would be to treat the surfaces of a plastic fuel tanks with fluorine. The fluorination process causes a chemical reaction where exposed hydrogen atoms are replaced by larger fluorine atoms which a barrier on surface of the fuel tank. In this process, fuel tanks are be stacked in a steel container. The container is then be voided of air and flooded with fluorine gas. By pulling a vacuum in the container, the fluorine gas is forced into every crevice in the fuel tanks. As a result of this process, both the inside and outside surfaces of the fuel tank would be treated. As an alternative, for tanks that are blow molded, the inside surface of the fuel tank can be exposed to fluorine during the blow molding process. A similar barrier strategy is called sulfonation where sulfur trioxide is used to create the barrier by reacting with the exposed polyethylene to form sufonic acid groups on the surface. Either of these processes can be used to reduce gasoline permeation by more than 95 percent. Achieving reductions at this level repeatedly would require tanks with consistent material quality, amount, and composition including pigments and any additive packages. This would enable process and efficiency optimization and consistency in the effectiveness of surface treatment processes.

Over the first month or so of use, polyethylene fuel tanks can expand by as much as three percent due to saturation of the plastic with fuel. Manufacturers have raised the concern that this hydrocarbon expansion could affect the effectiveness of surface treatments like fluorination or sulfonation. We believe that this will not have a significant effect on the effectiveness of these surface treatments. The California Air Resources Board has performed extensive permeation testing on portable fuel containers with and without these surface treatments. Prior to the permeation testing, the tanks were prepared by first performing a durability procedure where the fuel container is cycled a minimum of 1000 times between 5 psi and -1 psi. In addition, the fuel containers are soaked with fuel for a minimum of four weeks prior to testing. Their test data, presented in Chapter 4 of the draft RSD, show that fluorination and sulfonation are still effective after this durability testing.

The U.S. Coast Guard has raised the issue that any process applied to marine fuel tanks to reduce permeation would also need to pass Coast Guard flame resistance requirements. We are not aware of any reason that a fluorination or sulfonation surface treatment would affect the flame resistance of a marine fuel tank. Since this issue was raised, we contracted to have a fluorinated fuel tank tested. This tank passed the U.S. Coast Guard flame resistance test.

Also, about a third of marine fuel tanks used today are made of aluminum. Hydrocarbons do not permeate through aluminum.

We request comment on the low-permeable materials and strategies discussed above, and other options that are available, for use in marine fuel tanks and on their cost and effectiveness.

i. Low permeability hoses. We also estimate that permeation through fuel and vapor hoses make up more 40 percent of the evaporative emissions from boats. This fraction is higher for boats using aluminum fuel tanks, because they are inherently low in tank permeation emissions. By replacing rubber hoses with low permeability hoses, evaporative emissions through the fuel supply and vent hoses can be reduced by more than 95 percent.

Marine fuel hoses are designated as either Type A or B and eitherClass 1 or 2.[30] Type A hose passes the U.S. Coast Guard fire test while Type B represents hose that has not passed this test. Class 1 hose is intended for fuel feed lines where the hose is normally in contact with fuel and has a permeation limit of 100 g/m2/day at 23°C. Class 2 hose is intended for vent lines and fuel fill necks where fuel is not continuously in contact with the hose and has a permeation limit of 300 g/m2/day at 23°C. In general practice, most boat builders use Class 1 hose for vent lines as well as fuel lines to prevent having to carry two hose types. However, most fuel fill necks, which have a much larger diameter and are constructed differently, are Class 2 hose. Marine hose with permeation rates of less than one tenth of the Class 1 permeation limit is also used by some boat builders today for fuel and vent lines. Given sufficient lead time, we believe that hose manufacturers can modify their designs to use thicker barriers or lower permeating materials to further reduce the permeation rates from this hose.

Low permeability fuel supply and vent hoses produced today are generally constructed in one of two ways: either with a low permeability layer or by using a low permeability rubber blend. One hose design, already used in some marine applications, uses a

[28] R-value measures resistance to heat flow and is defined in 16 CFR 460.5.

[29] The Ideal Gas Law states that pressure and volume are inversely related. By increasing the volume of the vapor space, the pressure can be held constant.

[30] Society of Automotive Engineers Surface Vehicle Standard, "Marine Fuel Hoses," SAE J 1527 (Docket A–2000–01; document IV–A–19).

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thermoplastic layer between two rubber layers to control permeation. This thermoplastic barrier may either be nylon or ethyl vinyl acetate. In automotive applications, other barrier materials are used such as fluoroelastomers and fluoroplastics such as Teflon®. An added benefit of low permeability lines is that some fluoropolymers can be made to conduct electricity and therefore can prevent the buildup of static charges. Currently, fuel fill necks used in marine applications generally are not made with barrier layers and permeate more than fuel supply lines. However, hoses are produced for chemical applications by the same companies, using the same process, that include barrier layers. This same production methodology could be used for marine fuel hoses. Also, EPA also expects low permeability fill neck hoses to be used in automotive applications in the 2004 as a result of the Tier 2 motor vehicle evaporative emission standards.

An alternative approach to reducing the permeability of marine hoses would be fluorination. This process would be performed in a manner similar to discussed above for fuel tanks.

Fuel lines used to meet the proposed standards would also have to meet Coast Guard specifications in 33 CFR 183 which include a flame resistance test. Although the automotive standard, SAE J 2260, does not specifically include a flame resistance test like that included in the Coast Guard specifications, manufacturers generally design (and test) their hoses to be flame resistant.

4. Summary

EPA believes that the proposed standards for evaporative emissions from boats using spark-ignition marine engines reasonably reflect what manufacturers can achieve through the application of available technology. Marine fuel tank manufacturers and boat builders will need to use the five years of lead time to select, design, and produce evaporative emission-control strategies that will work best for their product line. We expect that meeting these requirements will pose a challenge, but one that is feasible taking into consideration the availability and cost of technology, lead time, noise, energy, and safety. The role of these factors is presented in detail in Chapters 3 and 4 of the draft RSD.

We believe there are several options that can be used to reduce diurnal emissions from marine fuel tanks. This, coupled with the proposed emission-credit program for diurnal emissions, gives manufacturers flexibility in how they choose to comply with the proposed standards. We believe the most likely approach meeting the proposed emission diurnal standard will be for manufacturers to use a closed vent with a 1 psi pressure relief valve. Although we evaluated several technologies that have the potential to achieve larger emission reductions, we believe that more stringent standards are not appropriate at this time. This industry is primarily made up of small manufacturers and would likely need more time to develop technology options for further emission control. In addition, there are a wide range of fuel tank designs and applications in the recreational marine market, and the technologies discussed above may not be appropriate for all applications. Given these issues, and U.S. Coast Guard requirements, we believe that the flexibility given in the proposed diurnal requirements is appropriate.

The proposed permeation standards are based on the effective application of low permeable materials or surface treatments. This is essentially a step change in technology; therefore, we believe that even if we were to propose a less stringent permeation standard, these technology options would likely still be used. In addition, this technology is relatively inexpensive and can achieve meaningful emission reductions. The proposed standards are expected to achieve a 95 percent reduction in permeation emissions from marine fuel tanks and hoses. We believe that more stringent standards could result in significantly more expensive materials without large additional emission reduction. We request comment on our proposed permeation emission standards.

IV. Sterndrive and Inboard Marine Engines

This section describes our current thinking regarding exhaust emissions from sterndrive and inboard marine engines (SD/I). We are not proposing SD/I exhaust emission standards at this time. We are investigating whether the application of catalysts on marine engines could be a cost-effective way to control emissions. We believe, that setting catalyst-forcing standards now would be premature, given the open issues related to catalyst use in the marine environment. However, we are continuing our efforts to develop and demonstrate catalytic control on SD/I marine engines in the laboratory and in-use, and will place new information in the docket when it is available. In fact, we intend to follow with another rulemaking in the future that will address exhaust emissions from SD/I engines once we have collected more information. We intend to include outboards and personal watercraft in this rulemaking as well.

There are three primary approaches that we believe could be used to reduce exhaust emissions from sterndrive and inboard marine engines. The first is through lower emission calibration of the engine, especially through the use of electronic fuel injection. This could be implemented quickly, but would only result in small emission reductions. The second approach would be through the use of exhaust gas recirculation (EGR) which could be used to get a 40 to 50-percent reduction in NO_X. Although this would be feasible, it would not be nearly as effective at controlling emissions as the third approach of using catalytic control. We believe catalytic control could be used to achieve much larger emission reductions than either of the first two approaches; therefore, we intend to implement catalyst-based standards as soon as we believe it is feasible. We believe we can implement these stringent standards sooner if we do not set an interim standard based on EGR. Manufacturers have raised concerns that if they were to focus on designing for an EGR-based standard, it would divert resources needed for catalyst development.

We are in the process of resolving technical issues with the use of catalysts in a marine environment. Ongoing testing has shown promising results; we believe that, in the near future, continued efforts will resolve the remaining issues raised by the marine industry and by Coast Guard. One issue is that operation in the marine environment could result in unique durability problems for catalysts. Another issue to be addressed in developing this technology is ensuring that salt water does not reach the catalyst so that salt does not accumulate on the catalyst and reduce its efficiency. A third issue is addressing any potential safety concerns.

As discussed in Section I.F, California ARB has recently put into place $HC+NO_X$ exhaust emission standards for SD/I marine engines. These standards include a cap on baseline emission levels in 2003 followed by catalyst-forcing standards (5 g/kW-hr $HC+NO_X$) phased in from 2007 through 2009. These standards are contingent on technology reviews in 2003 and 2005. ARB and industry have agreed on a catalyst development program for marine engines over the next several years. We will participate in and monitor catalyst development efforts for marine engines over the next few years.

Since the ANPRM, we have collected laboratory emission data on a SD/I marine engine through a joint effort with ARB, engine marinizers, and Southwest Research Institute.[31] We collected baseline emission data as well as emission data from closed-loop control, exhaust gas recirculation, and several catalyst concepts. This work included catalyst packaging strategies designed to prevent water reversion to the catalyst. With the combination of closed-loop electronic control and EGR, we saw a reduction of 22 percent $HC+NO_X$ and 39 percent CO from baseline. A catalyst was placed in a stock riser extension which resulted in a 74-percent reduction in $HC+NO_X$ and 46-percent reduction in CO from baseline. Other catalyst configurations were also tested with varying emissions reductions depending on their design.

In the testing discussed above, the 74 percent reduction in $HC+NO_X$ was achieved using a two catalysts with a combined volume of less than 1.5 liters on a SD/I engine with a 7.4 liter total engine displacement. SD/I marine engines sold today generally range from 3.0 to 8.1 liters of total cylinder displacement. A smaller engine would need less catalyst volume for the same emissions reduction. Further information on the emission reductions associated with SD/I emission control strategies and associated costs will be included in future rulemaking documents.

As discussed above, we are working with the marine industry, ARB, and Coast Guard on technology assessment of catalytic converters on sterndrive and inboard marine engines. However, we do not believe this technology has been sufficiently demonstrated for us to set national standards based on implementation of catalyst technology at this time. We will also need to consider other factors such as cost and energy impacts in determining appropriate levels of standards.

As we work towards low emission marine engines through catalyst technology for SD/I we also intend to investigate this technology for use on outboards and personal watercraft (OB/PWC). We believe many of the same issues with applying catalysts to SD/I marine engines also apply to OB/PWC marine engines. In addition, the annual emissions contribution of OB/PWC marine is several times larger than the contribution from SD/I marine engines so there is the potential for significant additional reductions from OB/PWC. Therefore, we intend to look into the feasibility and cost effectiveness of applying catalytic control to outboards and personal watercraft as well.

Manufacturers have argued that the development effort required for EGR may detract resources from catalyst development. We are sensitive to this issue and are not proposing EGR-based standards at this time as it could ultimately slow industry's ability to meet catalyst-based standards. Clearly, the greatest potential for emission reductions is through the use of catalysts and we wish to implement standards as soon as feasible. However, if it were to become apparent that catalysts would not be feasible for SI marine engines in the time frame of the California ARB technology reviews, we would contemplate proposal of a standard based on EGR. EGR has been used in automotive applications for decades and we believe there are no significant technical hurdles for applying this inexpensive technology to marine engines. Although current marine engines do not generally have a port for exhaust gas recirculation, the electronic fuel injection systems are capable of controlling an EGR valve and control feedback loop. Given enough lead time, we believe manufacturers could apply this technology effectively on SI marine engines.

We request comment on the feasibility of applying electronic fuel injection, exhaust gas recirculation, catalysts, or other technology that could be used to reduce emissions from SI marine engines. We also request comment on the costs and corresponding potential emission reductions from using these technologies, as well as any potential effects on engine performance, safety, and durability.

[31] Carroll, J., White, J., "Marine Gasoline Engine Testing," Prepared by Southwest Research Institute for the Environmental Protection Agency and the California Air Resources Board, EPA Contract 68–C–98–169, WA 2–11, September 2001 (Docket A–2000–01; document IV–A–91).

V. Highway Motorcycles

We are proposing revised exhaust emission standards for highway motorcycles. This section includes background material, a description of the proposed standards and other important provisions, and a discussion of the technological feasibility of the proposed standards.

A. Overview

In general, we are proposing to harmonize the federal exhaust emission standards for all classes of motorcycles with those of the California program, but on a delayed schedule relative to implementation in California. For Class I and Class II motorcycles, this would mean meeting exhaust emission standards that apply today in California. For Class III motorcycles, this would mean meeting the two tiers of exhaust emission standards that California ARB has put in place for future model years. The existing federal CO standard of 12.0 g/km would remain unchanged. The process by which manufacturers certify their motorcycles, the test procedures, the driving cycle, and other elements of the federal program would also remain unchanged. We are also proposing standards for the currently unregulated category of motorcycles with engines of less than 50cc displacement.

1. What Are Highway Motorcycles and Who Makes Them?

Motorcycles come in a variety of two- and three-wheeled configurations and styles. For the most part, however, they are two-wheeled, self-powered vehicles. EPA regulations currently define a motorcycle as "any motor vehicle with a headlight, taillight, and stoplight and having: two wheels, or three wheels and a curb mass less than or equal to 793 kilograms (1749 pounds)" (See 40 CFR 86.402–98). Both EPA and California regulations sub-divide highway motorcycles into classes based on engine displacement. Table V.A–1 below shows how these classes are defined.

TABLE V.A–1.—MOTORCYCLE CLASSES

Motorcycle class	Engine displacement (cubic centimeters)
Class I	50*–169
Class II	170–279
Class III	280 and greater

* This proposal would extend Class I to include <50cc.

It is important to note that this definition excludes off-highway motorcycles from the regulatory definition of motorcycle. This is because the term "motor vehicle," as used in the Act, applies only to vehicles "designed for transporting persons or property on a street or highway" (CAA section 216). In addition, EPA has promulgated regulations, in 40 CFR 85.1703, that elaborate on the Act's definition of motor vehicles and set forth three criteria, which, if any one is met, would cause a vehicle not to be considered a motor vehicle under the regulations, and therefore not subject to requirements applicable to motor vehicles. These criteria are:

(1) The vehicle cannot exceed a maximum speed of 25 miles per hour over a level paved surface; or

(2) The vehicle lacks features customarily associated with safe and practical street or highway use, including such things as a reverse gear (except motorcycles), a differential, or

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safety features required by state and/or Federal law; or

(3) The vehicle exhibits features which render its use on a street or highway unsafe, impractical, or highly unlikely, including tracked road contact means, an inordinate size, or features ordinarily associated with military combat or tactical vehicles such as armor and/or weaponry.

Thus, vehicles not meeting the criteria noted above are not covered by the proposed emission standard for motorcycles, because they fail to meet the definition of motor vehicle in the Clean Air Act and in 40 CFR 85.1703. Vehicles that are not considered to be a motor vehicle under these statutory and regulatory provisions are generally considered under the Clean Air Act to be nonroad vehicles. In an earlier proposal, we discussed proposed emission standards for nonroad recreational vehicles, a category which includes off-highway motorcycles (66 FR 51098, October 5, 2001). Also falling into the nonroad definition category are the mopeds and scooters that do not meet the definition of "motor vehicle," *i.e.*, the smaller cousins of the mopeds and scooters that are currently considered highway motorcycles and certified as Class I motorcycles. In other words, if a moped or scooter or similar "motorbike" cannot exceed 25 miles per hour, it is not considered a motor vehicle, but it is instead categorized as a nonroad recreational vehicle and would be subject to the emission standards recently proposed for off-highway motorcycles.

Furthermore, vehicles that otherwise meet the motorcycle definition (*i.e.*, are highway motorcycles as opposed to off-highway motorcycles) but have engine displacements less than 50 cubic centimeters (cc) (generally, youth motorcycles, most mopeds, and some motor scooters) are currently not required to meet EPA standards. Also currently excluded are motorcycles which, "with an 80 kg (176 lb) driver, * * * cannot: (1) Start from a dead stop using only the engine; or (2) Exceed a maximum speed of 40 km/h (25 mph) on level paved surfaces" (*e.g.*, some mopeds). Most scooters and mopeds have very small engine displacements and are typically used as short-distance commuting vehicles. Motorcycles with larger engine displacement are more typically used for recreation (racing or touring) and may travel long distances.

The currently regulated highway category includes motorcycles termed "dual-use" or "dual-sport," meaning that their designs incorporate features that enable them to be competent for both street and nonroad use. Dual-sport motorcycles generally can be described as street-legal dirt bikes, since they often bear a closer resemblance in terms of design features and engines to true off-highway motorcycles than to highway cruisers, touring, or sport bikes. These dual-sport motorcycles tend to fall in Class I or Class II.

The larger displacement Class III motorcycles are by far the most common motorcycles in the current U.S. market. Of the 175 engine 2002 families certified as of January 2002 by manufacturers for sale in the U.S., 151 fall in the Class III category, representing more than 93 percent of projected sales. Most of these are quite far from the bottom limit of Class III motorcycles (280cc); more than three-quarters of projected 2002 highway motorcycle sales are above 700cc, with engine displacements exceeding 1000cc for the most powerful "superbikes," large cruisers, and touring bikes. The average displacement of all certified engine families is about 980cc, and the average displacement of certified Class III engine families is above 1100cc. The sales-weighted average displacement of 2002 highway motorcycles is about 1100cc. Class I and Class II motorcycles, which together make up less than seven percent of projected 2002 sales and only 24 out of 175 certified 2002 engine families, consist mostly of dual-sport bikes, scooters, and entry-level sportbikes and cruisers.

According to the Motorcycle Industry Council, in 1998 there were about 5.4 million highway motorcycles in use in the United States (565,000 of these were dual-sport). Total sales in 1999 of highway motorcycles was estimated to be about 387,000, or about 69 percent of motorcycle sales. About 15,000 of these were dual-sport motorcycles.[32] Recent figures for the 2000 calendar year show that retail sales approached 438,000 highway motorcycles, about 19,000 of which were dual-sport bikes.[33]

Six companies account for about 95 percent of all motorcycles sold (Honda, Harley Davidson, Yamaha, Kawasaki, Suzuki, and BMW). All of these companies except Harley-Davidson and BMW also manufacture off-highway motorcycles and ATVs for the U.S. market. Harley-Davidson is the only company of these six that is manufacturing highway motorcycles in the U.S. for the domestic market. Dozens of other companies make up the remaining five percent. Many of these are small U.S. companies manufacturing anywhere from a few dozen to a few thousand motorcycles, although importers and U.S. affiliates of larger international companies also contribute to the remaining five percent. See the draft Regulatory Support Document for more information regarding the makeup of the industry.

As of the 2002 model year, all highway motorcycles with engines greater than 50cc displacement are powered by four-stroke engines. (Prior to the 2002 model year, Kawasaki was certifying a 100cc two-stroke dual-sport motorcycle to the federal emission standards.) In the scooter and moped segment with engines under 50cc displacement, two-stroke engines have traditionally outnumbered four-strokes, although that appears to be changing. In particular, Honda is now marketing a 2002 49cc four-stroke scooter. Of the several dozen manufacturers in the under 50cc market, about a third are offering four-stroke engines. Therefore, as of the 2002 model year, it appears that about one third of the sales of scooters and mopeds under 50cc are powered by four-stroke engines.

2. What Is the History of Emission Regulations for Highway Motorcycles?

Emissions from highway motorcycles have been regulated for more than 20 years. While the federal requirements have remained unchanged since the initial standards were adopted more than 20 years ago, regulations in California, Europe, and many nations around the world have been periodically updated to reflect the availability of technology and the need for additional emission reductions.

a. EPA regulations. In 1977 EPA issued a Final Rule (42 FR 1126, Jan. 5, 1977), which established interim exhaust emission standards effective for the 1978 and 1979 model years and ultimate standards effective starting with the 1980 model year. The interim standards ranged from 5.0 to 14.0 g/km HC depending on engine displacement, while the CO standard of 17.0 g/km applied to all motorcycles. The standards and requirements effective for 1980 and later model year motorcycles, which do not include NO_X emission standards, remain in effect today. While the final standards did not differ based on engine displacement, the useful life over which these standards must be met ranged from 12,000 km (7,456 miles) for Class I motorcycles to 30,000 km (18,641 miles) for Class III motorcycles. Crankcase emissions from motorcycles have also been prohibited since 1980. There are no current federal standards for evaporative emissions from motorcycles. The current federal standards are shown in Table V.A–2.

[32] "2000 Motorcycle Statistical Annual", Motorcycle Industry Council (Docket A–2000–01; document II–D–192).

[33] DealerNews, volume 37, no. 2, February 2001 (Docket A–2000–01; document II–D–190).

TABLE V.A–2.—CURRENT FEDERAL EXHAUST EMISSION STANDARDS FOR MOTORCYCLES

Engine size	HC (g/km)	CO (g/km)
All	5.0	12.0

b. California ARB regulations. Motorcycle exhaust emission standards in California were originally identical to the federal standards that applied to 1978 through 1981 model year motorcycles. The definitions of motorcycle classes used by California ARB continue to be identical to the federal definitions. However, California ARB has revised its standards several times in bringing them to their current levels (see Table V.A–3). In the 1982 model year the standards were modified to tighten the HC standard from 5.0 g/km to 1.0 or 1.4 g/km, depending on engine displacement. California adopted an evaporative emission standard of 2.0 g/test for all three motorcycle classes for 1983 and later model year motorcycles. California later amended the regulations for 1988 and later model year motorcycles to further lower emissions and to make the compliance program more flexible for manufacturers. The 1988 and later standards could be met on a corporate-average basis, and the Class III bikes were split into two separate categories: 280 cc to 699 cc and 700 cc and greater. These are the standards that apply in California now. Like the federal standards, there are currently no limits on NO_X emissions for highway motorcycles in California. Under the corporate-average scheme, no individual engine family is allowed to exceed a cap of 2.5 g/km HC. Like the federal program, California also prohibits crankcase emissions.

TABLE V.A–3.—CURRENT CALIFORNIA HIGHWAY MOTORCYCLE EXHAUST EMISSION STANDARDS

Engine size (cc)	HC (g/km)	CO (g/km)
50–279	1.0	12.0
280–699	1.0	12.0
700 and above	1.4	12.0

In November 1999, California ARB adopted new exhaust emission standards for Class III motorcycles that would take effect in two phases. Tier 1 standards starting with the 2004 model year, followed by Tier 2 standards starting with the 2008 model year (see Table V.A–4). Existing California standards for Class I and Class II motorcycles, which have been in place since 1982, remain unchanged, as does their evaporative emissions standard. As with the current standards in California, manufacturers will be able to meet the requirements on a corporate-average basis. Perhaps most significantly, California ARB's Tier 1 and Tier 2 standards control NO_X emissions for the first time by establishing a combined $HC+NO_X$ standard. California ARB made no changes to the CO emission standard, which remains at 12.0 g/km, equivalent to the existing federal standard. In addition, California ARB is providing an incentive program to encourage the introduction of Tier 2 motorcycles before the 2008 model year. This incentive program allows the accumulation of emission credits that manufacturers can use to meet the 2008 standards. Like the federal program, these standards will also apply to dual-sport motorcycles.

TABLE V.A–4.—TIER 1 AND TIER 2 CALIFORNIA CLASS III HIGHWAY MOTORCYCLE EXHAUST EMISSION STANDARDS

Model year	Engine displacement	$HC+NO_X$ (g/km)	CO (g/km)
2004 through 2007 (Tier 1)	280 cc and greater	1.4	12.0
2008 and subsequent (Tier 2)	280 cc and greater	0.8	12.0

California ARB also adopted a new definition of small-volume manufacturer that will take effect with the 2008 model year. Currently and through the 2003 model year, all manufacturers must meet the standards, regardless of production volume. Small-volume manufacturers, defined in California ARB's recent action as a manufacturer with California sales of combined Class I, Class II, and Class III motorcycles not greater than 300 units annually, do not have to meet the new standards until the 2008 model year, at which point the Tier 1 standard applies. California ARB intends to evaluate whether the Tier 2 standard should be applied to small-volume manufacturers in the future.[34]

c. International regulations. The European Commission (EC) recently finalized a new phase of motorcycle standards, which will start in 2003, and the EC intends a second phase to start in 2006. Whereas the current European standards make a distinction between two-stroke and four-stroke engines, the proposed standards would apply to all motorcycles regardless of engine type. The 2003 standards would require emissions to be below the values shown in Table V.A–5, as measured over the European ECE–40 test cycle.[35] The standards considered for 2006 are still in a draft form and have not yet been officially proposed, but the expectation is that they will be considerably more stringent. In addition to taking another step in reducing motorcycle emissions, the 2006 standards may incorporate an improved motorcycle test cycle, as noted below. The standards in the following table apply to motorcycles of less than 50cc (*e.g.*, scooters and mopeds) only if the motorcycle can exceed 45 kilometers per hour (28 miles per hour). Starting in 2002 motorcycles of less than 50cc that cannot exceed 45 kilometers per hour (28 miles per hour) are subject to a new $HC+NO_X$ standard of 1.2 grams per kilometer and a CO standard of 1.0 gram per kilometer.

TABLE V.A–5.—EUROPEAN COMMISSION 2003 MOTORCYCLE EXHAUST EMISSION STANDARDS

HC (g/km)	CO (g/km)	NO_X (g/km)
1.2	5.5	0.3

Many other nations around the world, particularly in South Asia where two-stroke mostly small displacement motorcycles can be a majority of the vehicle population, have also recently improved their emission standards or are headed that way in the next several years. For example, Taiwan has adopted an $HC+NO_X$ standard of 1.0 gram per

[34] California ARB, October 23, 1998 "Proposed Amendments to the California On-Road Motorcycle Regulation" Staff Report: Initial Statement of Reasons (Docket A–2000–01; document II–D–12).

[35] The ECE–40 cycle is used by several countries around the world for motorcycle emission testing. It has its origins in passenger car driving, being derived from the European ECE–15 passenger car cycle. The speed-time trace is simply a combination of straight lines, resulting in a "modal" cycle, rather than the transient nature of the U.S. Federal Test Procedure (FTP).

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kilometer for all two-strokes starting in 2003 (as tested on the European ECE–40 test cycle). (Four-stroke motorcycle engines will have to meet at standard of 2.0 grams per kilometer.) India has proposed a standard for all motorcycles of 1.3 grams per kilometer HC+NO_X in 2003 and 1.0 grams per kilometer HC+NO_X in 2005 (as tested on the Indian Drive Cycle, or IDC).[36] China has adopted the European standards described above, implementing them in 2004, a year later than Europe.

d. Test cycle. In the ANPRM we requested comment on the adequacy of the current test cycle (the Federal Test Procedure, or FTP) for representing the highway motorcycle operation. We suggested that the existing US06 test cycle (more aggressive accelerations and higher speeds than the FTP) or another more representative test cycle might be appropriate for highway motorcycles. In addition, we noted the effort underway under the auspices of the United Nations/Economic Commission for Europe (UN/ECE) to develop a global harmonized world motorcycle test cycle (WMTC), and requested comment on adopting such a test cycle. The objective of the WMTC project is to develop a scientifically supported test cycle that accurately represents the in-use driving characteristics of highway motorcycles. The advantages of such a test cycle are numerous. First, the industry could have a single test cycle to meet emission standards in many countries (the process recognizes that nations will have differing emission standards due the varying air-pollution concerns). Second, the test cycle could potentially be better than the existing FTP in that it intends to better represent how a wide range of riders drive their motorcycles.

Similar comments were submitted on this issue by the Motorcycle Industry Council (MIC) and by Harley-Davidson Motor Company. In general MIC and Harley-Davidson stated that while pursuing a global emissions test procedure for motorcycles makes good business sense, the timing of the ongoing international process is not consistent with the current EPA rulemaking to establish new motorcycle standards.

At this time we are not proposing any modifications to the highway motorcycle test cycle. We continue to be involved in the WMTC process and are hopeful that a test cycle meeting the stated objectives can be agreed on by the international participants. Although a draft test cycle has been developed, several issues remain unresolved and it will likely be a couple of years before a new cycle can be issued as a global technical regulation under the process established by a 1998 international agreement. Under that process, if a test cycle is brought to a vote and the United States votes in the affirmative, we will then be committed to initiating a rulemaking that may lead to a proposal to adopt the new test cycle. We request comment on the best way to transition to a new global test cycle in the future, should that time come. Among the many options we could consider are: an immediate transition; a phasing in of the new cycle and a phasing out of the FTP; or a phasing in of the new cycle while maintaining the FTP as an option for a specified number of years.

e. Consumer modifications. Many motorcycle owners personalize their motorcycles in a variety of ways. This is one of the aspects of motorcycle ownership that is appealing to a large number of motorcycle owners, and they take their freedom to customize their bikes very seriously. However, there are some forms of customization that are not legal under the provisions of Clean Air Act section 203(a), which states that it is illegal: "for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title ... after such sale and delivery to the ultimate purchaser* * *"

In other words, under current law, owners of motor vehicles[37] cannot legally make modifications that cause the emissions to exceed the applicable emissions standards, and they cannot remove or disable emission-control devices installed by the manufacturer.[38]

We use the term "tampering" to refer specifically to actions that are illegal under Clean Air Act section 203; the term, and the prohibition, do not apply generally to the wide range of actions that a motorcycle enthusiast can take to personalize his or her motorcycle, but only to actions that remove or disable emission control devices or cause the emissions to exceed the standards. We know, from anecdotal reports and from some data collected from in-use motorcycles, that a portion of the motorcycle riding population has removed, replaced, or modified the original equipment on their motorcycles. This customization can include changes that can be detrimental (or, in some cases, possibly beneficial) to the motorcycle's emission levels. The ANPRM sought comments and data that could better help us understand the nature of the issue, such that our proposal could be made with the best understanding possible of current consumer practices. We did not intend to suggest that we would be revising the existing tampering restrictions to prohibit many of the things that motorcycle owners are now doing legally.

The proposed emissions standards, if adopted by EPA, would not change this "tampering" prohibition, which has been in place for more than 20 years. Owners would still be free generally to customize their motorcycles in any way, as long as they do not disable emission controls or cause the motorcycle to exceed the emission standards.

They would also be free, as they are now, to perform routine maintenance on their motorcycles to restore or maintain the motorcycle engine and related components in their original condition and configuration.

This proposal would increase the number of motorcycle models employing emission reduction technologies such as sequential fuel injection, pulse air injection, and catalytic converters. We request comment on the impact, if any, that these technologies could have on the difficulty and/or cost of routine maintenance or other legal modifications performed by or for the consumer. As discussed below and in the draft RSD, we do not anticipate detrimental impacts to the performance ch aracteristics of motorcycles that will meet the proposed emission standards. We request comment and supporting data on potential performance impacts (positive and negative) of these technologies.

B. Motorcycles Covered by This Proposal

Highway, or "street-legal," motorcycles are covered by the proposal described in this section. EPA regulations currently define a "motorcycle" as "any motor vehicle with a headlight, taillight, and stoplight and having: two wheels, or three wheels and a curb mass less than or equal to 793 kilograms (1749 pounds)." (See 40 CFR 86.402–98). This definition would continue to apply; therefore, the term "motorcycle" would continue to refer only to highway motorcycles. In addition, these "motorcycles" that are currently subject to emissions standards would be subject to the proposed standards. However, we are also proposing to modify the regulations to include some motorcycles that are currently excluded from the emission regulations, as described below.

EPA regulations currently exclude motorcycles (*i.e.*, motor vehicles that meet the definition of "motorcycle" stated above) from the emission standards requirements based on several criteria laid out in 40 CFR 86.401-97. First, motorcycles are excluded if they have an engine displacement of less than 50cc. Second, a motorcycle is excluded if, with an 80 kg (176 lb) driver, it cannot start from a dead stop using only the engine or exceed 40 kph (25 mph) on a level paved surface. These provisions have the effect of excluding many mopeds, youth motorcycles, and some scooters from having to comply with any emission standards requirements. As discussed above, motorcycle-like vehicles that cannot exceed 25 miles per hour are not considered motor vehicles, and thus would be regulated under the nonroad recreational vehicle standards proposed earlier this year (66 FR 51098, October 5, 2001).

Highway motorcycles with engine displacements less than 50cc are generally most mopeds, as well as some motor scooters ("scooters," or sometimes, "motorbikes"). Many of these vehicles are powered by 49cc two-stroke engines, although four-stroke engines are becoming more popular. Honda, for example, will no longer be marketing any two-stroke street-use motorcycles as of the 2003 model year; everything, including their 49cc scooter, will be powered by a four-stroke engine. We are proposing to revise two aspects of the regulations such that we would require most of these currently excluded vehicles to meet emission standards in the future. First, the general exclusion for motorcycles under 50cc would be changed such that no motorcycles would be excluded from the emission standards on the basis of engine displacement alone. Second, the definition of Class I motorcycles would be revised to accommodate motorcycles under 50cc (*i.e.*, a Class I motorcycle would be defined as a motorcycle with an engine displacement of less than 170cc). The standards that would apply to these vehicles are described in the following section. It is important to note that the motorcycle-like vehicles under 50cc that cannot be defined as a motor vehicle (*e.g.*, one that can't exceed 25 mph), continue to be excluded from these standards; they would, however, be covered by the recently proposed standards for nonroad recreational vehicles (66 FR 51098, October 5, 2001). We request comment on our proposed regulation of this previously unregulated category of motorcycle.

The cost per ton of controlling emissions from motorcycles with less than 50cc displacement engines is higher than for the proposed standards for larger motorcycles. However, the scooters and mopeds are very likely to be operated exclusively within populated urban areas. Scooters and mopeds, by virtue of their limited speeds, are not appropriate for use on highways; these small two-wheelers are often purchased for limited commuting within large urban areas or college campuses. Thus, it is likely that the air quality benefits of controlling emissions from these engines would be greater than indicated by the cost per ton comparison alone. We request comments on the merits of applying standards to these vehicles.

Parties have raised concerns regarding the potential for losses in environmental benefits from the highway use of off-highway motorcycles. Because the standards are different today (off-highway motorcycles do not currently have emissions standards) and would be somewhat different under our proposed standards, emissions reductions potentially could be lost if consumers purchased off-highway motorcycles for highway use on a widespread basis. State requirements vary considerably and in some states it may be difficult to meet requirements by modifying an off-highway motorcycle, while in others it may require-only a few minor modifications. We request comment on current practices and the potential for this to occur in the future. We also request comment on steps we could reasonably take to address air pollution concerns associated with highway use of off-highway motorcycles.

C. Proposed Standards

1. What Are the Proposed Standards and Compliance Dates?

In general, we are proposing to harmonize the federal exhaust emission standards for all classes of motorcycles with those of the California program, but on a delayed schedule relative to implementation in California. (The exception would be motorcycles with engines of less than 50cc displacement, which are not currently regulated by California, for which we are also proposing standards.) For Class I and Class II motorcycles as currently defined, this would mean meeting exhaust emission standards that apply now in California (and have applied since 1982). For Class III motorcycles, this would mean meeting the two tiers of exhaust emission standards that California ARB has put in place for future model years. The existing federal CO standard of 12.0 g/km would remain unchanged. The process by which manufacturers certify their motorcycles, the test procedures, the driving cycle, and other elements of the federal program would remain unchanged.

In the development of this proposal following the publication of the ANPRM we considered several regulatory alternatives. These included: no revision to the standards, harmonization with one of the "tiers" of California standards (current, 2004 Tier-1, 2008 Tier-2), more stringent standards than those in place in California, or possibly different implementation timing. We also considered various alternatives designed to reduce the burden on small manufacturers (these are presented in section VII.B on the Regulatory Flexibility Act).

After considering comments on the ANPRM, we believe that the standards should be revised. The existing Federal standards were established more than twenty years ago, and it is clear that emission control technology has advanced a great deal in that time. California has continued to revise their standards to maintain some contact with current technology, and manufacturers have generally (but not uniformly) responded by producing motorcycles for sale nationwide that meet the more stringent California standards. Thus, in large part the existing federal standards has been superseded because of the preponderance of manufacturers that have responded in this way. Those arguing against new emission standards often cite the fact that motorcycles are typically far cleaner than the existing federal standards require. Although we agree, we see this fact as a reason for improving emission standards and as evidence that the current federal standards are out of touch with the reality of today's technology.

We believe it is most appropriate at this time to propose harmonizing with the California exhaust emission standards, as opposed to other options discussed in the ANPRM. For example, the dissimilarities between on- and off-highway motorcycles do not encourage a one-size-fits-all approach for all motorcycles (this opinion is supported by a significant number of those who commented on the ANPRM). Off-highway motorcycles are powered predominantly by two-stroke engines, whereas highway motorcycles are all powered by four-stroke engines as of the

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[36] The IDC, although not a transient cycle like the FTP, appears to be the only cycle currently in use that is based on actual measurements of motorcycles in use.

[37] A motorcycle is a "motor vehicle" as defined under section 216 of the Clean Air Act, which states that "[t]he motor vehicle' means any self-propelled vehicle designed for transporting persons or property on a street or highway."

[38] See Mobile Source Enforcement Memorandum No. 1A, Interim Tampering Enforcemetn Policy, Office of Enforcement and General Council, June 25, 1974 (Docket A–2000–01; document IV–A–27). (*http://www.epa.gov/oeca/aed/comp/hcomp.html*)

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2002 model year. On- and off-highway motorcycle engines also lie at vastly different ends of the size spectrum. The average highway motorcycle sold today has a displacement of nearly 1000cc, whereas almost 90 percent of off-highway motorcycle engines have an engine displacement of less than 350cc. In addition, on- and off-highway motorcycles are used in very different ways; finding a set of standards and a test procedure that adequately represents the typical range of operation for both types would therefore be extremely challenging. On-highway motorcycle manufacturers have commented that, to the extent the standards are revised, harmonization with California, rather than a distinctly different set of standards, is preferable because it eliminates the possibility of needing two distinct product lines for California and Federal regulations.[39]

Delaying implementation of the California standards on a nationwide basis by two years would provide an opportunity for manufacturers to gain some experience with the technology needed to meet the new standards. Two years provides time for technology optimization and cost reduction. Providing a longer delay could potentially provide the option of a further decrease in the level of the emission standards, given that the technological feasibility of the California standards has been adequately demonstrated (at least one manufacturer is already selling a motorcycle meeting the 2008 California standards). However, this would be a tradeoff against a more timely introduction of the new standards.

We also evaluated whether the federal motorcycle program should incorporate averaging provisions, as the California program does. Given the desire of most manufacturers to manufacture a motorcycle for nationwide sale, such a program without averaging would not be desirable because it would not provide the flexibility needed to meet the California and federal requirements together and could have at least potentially led to a somewhat less stringent Federal standard. Therefore, we are proposing to provide an averaging program comparable to California's.

EPA uses the term "useful life" to describe the period (usually years and/or miles) over which the manufacturer must demonstrate the effectiveness of the emission control system. For example, the "useful life" of current passenger cars is 10 years or 100,000 miles, whichever first occurs. It does not mean that a vehicle is no longer useful or that the vehicle must be scrapped or turned in once these limits are reached. The term has no effect on the owners' ability to ride their motorcycles for as long as they want. In the ANPRM we requested comment on whether the current definitions of useful life for the three motorcycle classes remains appropriate, given that these definitions were established more than 20 years ago. For example, we question whether, given that the average distance traveled per year for highway motorcycles is around 4,200 km (2,600 miles), the useful life for Class III motorcycles of 30,000 km (18,680 miles) is really appropriate. A typical motorcycle would reach the useful life mileage in about seven years at that rate. Based on data received from an industry trade group, we estimated an average operating life of 12.5 years for on-highway motorcycles. We request comment on extending the useful life by up to 10,000 km (6,200 miles) to reflect a value more consistent with actual use.

a. Class I and Class II motorcycles. We are proposing that Class I and Class II motorcycles would have to meet the current California ARB exhaust emission standards on a nationwide basis starting with the 2006 model year. These standards, which have been in place in California since 1982, are 1.0 g/km HC and 12.0 g/km CO, as measured on the existing Federal Test Procedure (FTP) for motorcycles.

In addition to applying to motorcycles currently in Class I and Class II (*i.e.*, those over 50cc), we are also proposing that these standards apply to those motorcycles encompassed by the proposed revised Class I definition, which would include the previously-excluded engines under 50cc, as described above. As discussed in further detail below, we are considering ways of including Class I and Class II motorcycles in the overall emissions averaging program, and request comment on this issue.

Class I motorcycles as currently defined are currently tested on a version of the Federal Test Procedure (FTP) that has lower top speeds and reduced acceleration rates relative to the FTP that is used for Class II and III motorcycles. The Class I FTP has a top speed of just under 60 km/hr, or around 37 mph, whereas the Class II/III FTP has a top speed of just over 90 km/hr, or just above 55 mph. By proposing to define motorcycles with engine displacements of less than 50cc as Class I motorcycles, these "new" Class I motorcycles would likewise be tested on the Class I FTP. We believe that this use of this test cycle is feasible and appropriate for the new Class I motorcycles (many are advertised with a top speed in the range of 40–50 mph). We request comment on the feasibility of the proposed test cycle for motorcycles with engine displacements of less than 50cc; in particular, we request comment on whether experience in meeting existing European or Asian requirements provides any insight on this issue. We request comment on alternative test cycles and certification options, including whether the cycle required for low-speed, small-displacement scooters and mopeds in Europe should be used or allowed by EPA.

Despite the fact that virtually all Class I and Class II motorcycles already meet and certify to these standards,[40] we are proposing nationwide implementation in 2006 for two reasons. First, there are those motorcycles under 50cc that require some lead time to meet new standards. Second, any averaging provisions, if finalized, that would provide flexibility in meeting the Class I and Class II standards would not be useful until the 2006 model year, when some exchange of emission credits between the three motorcycle classes may be allowed (see the request for comment on averaging flexibilities for Classes I and II in section C.2 below). Nevertheless, we request comment on the 2006 implementation date, and whether it should be earlier for the current Class I and II motorcycles, given that all 2002 motorcycles in these classes are already certified at emission levels that would meet the proposed standards. For example, we could implement standards for the over 50cc motorcycles in 2004 and for those under 50cc in 2006.

We recognize, as discussed in detail below, that the U.S. is a small market for scooters and mopeds with engine displacements of under 50cc, and that many of the factors that are currently driving technology development are actions by the governments in the major world markets for these types of two-wheelers. A U.S. attempt to drive technology to achieve emission limits more stringent or sooner than those applicable in the largest scooter markets (South Asia, Europe) might result in some manufacturers choosing to withdraw from the U.S. market, rather than develop specific technologies to address U.S. requirements. (This appeared to occur in the mid-to late-1980's when new California standards,

[39] See comments on the ANPRM from Harley-Davidson and the Motorcycle Industry Council, available in the public docket for review (Docket A–2000–01; document II–D–48).

[40] Based on analysis of motorcycle emissions certification data.

combined with fairly active advertising by Honda, drove the European manufacturers from the U.S. market.) For the Class I motorcycles under 50cc, we therefore request comment on the cost and technology that would be associated with standards within a range of 1.0 to 2.0 grams per kilometer HC (or HC+NO_X). We believe that, in view of the standards that apply or will soon apply in many of the major scooter markets around the world (see Table V.A–6), that a standard in this range is similar to standards in other countries and would allow the use of similar technologies for U.S. standards. Standards in this range would be intended to allow the U.S. to be more certain that we would receive the same scooters being marketed in the rest of major scooter markets.

TABLE V.A–6.—SUMMARY OF CURRENT AND FUTURE WORLDWIDE EMISSION STANDARDS FOR MOTORCYCLES LESS THAN 50CC DISPLACEMENT

Country	HC	CO	NO_X	HC+NO_X	Test cycle	Notes
European Union	.....	6.0	.....	3.0	ECE R47	Current ("Euro1").
	.....	1.0	.....	1.2	ECE R47	2002 ("Euro 2").
Switzerland	0.5	0.5	0.1	.....	ECE R47	Current.
India	.....	2.0	.....	2.0	India Drive (IDC)	Current.
	.....	1.3	.....	1.3	India Drive (IDC)	2003 Proposed.
	.....	1.0	.....	1.0	India Drive (IDC)	2005 Proposed.
China	.....	6.0	.....	3.0	ECE R47	Current.
	.....	1.0	.....	1.2	ECE R47	2005.
Japan	5.26	14.4	0.14	.....	ISO 6460	Current 2-stroke.
	2.93	20.0	0.51	.....	ISO 6460	Current 4-stroke.
Korea	4.0	8.0	0.1	.....	ECE R47	Current.
Singapore	5.0	12.0	.....	.....	FTP	Current.
Taiwan	.....	3.5	2.0	.....	ECE R47	Current.
	.....	7.0	.....	1.0	ECE R47	2003 2-stroke.
	.....	7.0	.....	2.0	ECE R47	2003 4-stroke.
Thailand	3.0	4.5	.....	.....	ECE R40	Current.

b. Class III Motorcycles. We are proposing to harmonize the federal Class III motorcycle standards with the exhaust emission standards of the recently finalized California program. Specifically, we propose to adopt the Tier 1 standard of 1.4 g/km HC+NO_X starting in the 2006 model year, and the Tier 2 standard of 0.8 g/km starting in the 2010 model year. Because both HC and NO_X are ozone precursors, this new standard would better reduce ozone than an HC-only standard. Implementation on a nationwide basis would therefore take place starting two model years after implementation of identical exhaust emission standards in California, ensuring that manufacturers have adequate lead time to plan for these new standards. As described below in further detail, these standards can be met on a corporate-average basis.

As noted earlier, California ARB plans a technology progress review in 2006 to evaluate manufacturers' progress in meeting the Tier 2 standards. We plan to participate in that review and work with California ARB, intending to make any appropriate adjustments to the standards or implementation schedule if warranted. For example, if California ARB determines in the review process that the standards are achievable, but in 2010 rather than 2008, we could follow with a rulemaking that would consider appropriate adjustment to the federal requirements.

2. Could I Average, Bank, or Trade Emission Credits?

To provide flexibility in meeting the standards, we are proposing to adopt an emission-credit program comparable to the existing California ARB regulations, and requesting comment on some additional flexibility relative to California ARB's program that could be included in our proposed program. There is currently no federal emission-credit program for highway motorcycles. As proposed, the program allows manufacturers to meet the standards on a fleet-average basis (*i.e.*, an averaging program).

Under the emission-credit program, manufacturers would be able to balance the certified HC+NO_X emissions of their Class III motorcycles so that the sales-weighted HC+NO_X emissions level meets the applicable standard. This means that some engine families may have HC+NO_X emissions below the standards, while others have HC+NO_X emissions higher than the standards. For enforcement purposes, manufacturers are required to specify a certification limit, or "Family Emission Limit" for each engine family. For example, one of a manufacturer's Class III engine families could be certified at 1.7 g/km HC+NO_X; this would be allowable under the California regulations if the sales-weighted average of all the manufacturer's engine families met the applicable 1.4 or 0.8 g/km HC+NO_X standard.

As discussed below, EPA is proposing early credits provisions where credits may be banked prior to the beginning of the program. In several other emissions control programs, EPA allows manufacturers to bank credits after the start of the program for future use, or trade them to another manufacturer. In general, EPA has been supportive of these additional flexibilities and sees the potential for added value here as a means to reduce cost and provide additional compliance flexibility as needed * * * California's current program, however, does not contain banking (except for early banking) and trading provisions and manufacturers have not shown an interest in such provisions. Harmonization with California has been the overarching concern. Banking and trading provisions

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that are out-of-step with the California program may have little use because manufacturers plan on carrying over their California products nationwide. In addition, such provisions complicate the certification and compliance protocols because EPA must set up systems for tracking credits and these systems must be established even if the use of the credit provisions is unlikely.

Because EPA believes banking and trading provisions would complicate the program, EPA is requesting comment on them rather than proposing them. EPA requests comment on an approach where manufacturers would establish $HC+NO_X$ family emissions limits (FELs) that are either below the standard, for generating credits, or above the standard, for using credits. These FELs, in effect, become the standard for the individual family. This would be similar in nature to the program for heavy-duty engines (see 40 CFR 86.004–15), but without transient conversion factors. Those commenting in support of credit banking and trading are encouraged to also provide detailed comments on any related provisions which would need to be considered in establishing the program for generating and using credits such as credit life, discounts (if any), cross displacement class trading issues, etc.

To maintain equity, California ARB adopted a cap on Family Emission Limits of 2.5 g/km HC for all individual engine families under the existing emission-credit program (*i.e.*, for Class III motorcycles). Because the 2.5 g/km HC-only standard was in effect in California before the emission-credit program was adopted, the 2.5 g/km cap continues to prevent manufacturers from selling motorcycles with emissions higher than the previous standard. Based on this reasoning, we are proposing a similar cap. However, because the current federal standard is 5.0 g/km, we are proposing an emissions cap on individual engine families of 5.0 g/km $HC+NO_X$. This will provide the added benefit of enabling manufacturers to retain some of the federally certified engine families that might otherwise have had some difficulty meeting the somewhat lower cap specified by California. Manufacturers producing these higher-emitting models would need to offset these emissions with other models certified below the standard.

To provide additional flexibility for manufacturers, we are requesting comment on the possible benefits of incorporating Class I and Class II motorcycles into the averaging program described above. This could be done in various ways. One option would be to define the proposed Class I and Class II HC-only standard of 1.0 g/km as an averaging standard, either within each class or for Class I and Class II combined. However, we believe this option would be of limited use, given the small number of engine families in these motorcycle classes. A second option would be to develop a credit program similar to that in place for the California Low-Emission Vehicle Program. Under this type of program, for example, credits accumulated by Class III motorcycles could be used to offset "debits" accumulated in one or both of the other classes. Credits would be accumulated by having a sales-weighted fleet-average value of the class below the applicable standard, while debits would result from having a class fleet-average value above the standard. A third option would be to allow the certification of Class I and II motorcycles to the Class III "averaging set." In other words, under this option the combined sales-weighted fleet average of Class I, II, and III motorcycles would, at the manufacturer's option, be certified to the Tier 1 and Tier 2 fleet average $HC+NO_X$ standards. We request comment on the value of provisions of this nature, and on the advantages and disadvantages of each of these basic approaches. We also request comment on whether there are any adaptations of this averaging program that would improve the flexibility for small volume manufacturers.

To encourage early compliance, we are also proposing incentives in the emission-credit program similar to those in place in California, with timing adjusted due to the differing federal implementation schedule. We believe such incentives will encourage manufacturers to introduce Tier 2 motorcycles nationwide earlier than required by this proposal. In addition, we believe some manufacturers can reduce emissions even further than required by the Tier 2 standard; we would like to encourage the early introduction of these very low-emission vehicles. This proposal would provide incentives for early compliance by assigning specific multiplier factors based on how early a manufacturer produces a Tier 2 motorcycle and a motorcycle certified at 0.4 g/km $HC+NO_X$; these multipliers are shown in Table V.C–1.

Because we expect the Tier 2 technologies to become more widespread as 2010 approaches, the multipliers decrease linearly in value from 2006 until 2010, when the early compliance incentive would no longer have any value (*i.e.*, the multiplier has a value of 1.0) and the program would terminate. As shown in Table V.C–1, each unit of early Tier 2 motorcycles (those certified at 0.8 g/km $HC+NO_X$) would count as Y motorcycles at 0.8 g/km $HC+NO_X$ for purposes of corporate averaging in 2010, where Y is 1.5 for those motorcycles sold during model years (MY) 2003 through 2006, 1.375 for those sold in MY 2007, 1.250 for those sold in MY 2008, and 1.125 for those sold in MY 2009. A similar set of multipliers is shown in Table V.C–1 for pre-MY 2010 motorcycles certified even lower at 0.4 g/km $HC+NO_X$.

TABLE V.C–1.—MULTIPLIERS TO ENCOURAGE EARLY COMPLIANCE WITH THE PROPOSED TIER 2 STANDARD AND BEYOND

Model year sold	Multiplier (Y) for use in MY 2010 corporate averaging*	
	Early tier 2	Certified at 0.4 g/km $HC+NO_X$
2003 through 2006	1.5	3.0
2007	1.375	2.5
2008	1.250	2.0
2009	1.125	1.5

*Early Tier 2 motorcycles and motorcycles certified to 0.4 g/km are counted cumulatively toward the MY 2010 corporate average.

In 2010 and later model years the program would become a basic averaging program, where each manufacturer would have to meet the applicable $HC+NO_X$ standard on a fleet-average basis. See the proposed regulations at § 86.449.

3. Is EPA Proposing Blue Sky Standards for These Engines?

We are not proposing Blue Sky Standards for motorcycles at this time. Under the proposed averaging program there is an incentive to produce very clean motorcycles early, but it is of limited duration. However, several possible approaches could include a Blue Sky program, such as the ones discussed for marine evaporative emissions earlier in this document. For example, a Blue Sky standard could be set at the 0.4 g/km $HC+NO_X$ level used under the proposed averaging program. We request comment on whether a Blue Sky program is desirable for motorcycles, and what standards would be appropriate for such a program.

4. Do These Standards Apply to Alternative-Fueled Engines?

The proposed emission standards would apply to all motorcycles, regardless of fuel. Although the federal numerical emission standards have not been updated in more than twenty years, the regulations were revised twice in the 1990's to apply the standards to certain alternative-fueled motorcycles. In 1990 the emission standards became applicable to methanol-fueled motorcycles (see 54 FR 14539, Apr. 11, 1989), and in 1997 the standards became applicable to natural gas-fueled and liquified petroleum gas-fueled motorcycles (see 59 FR 48512, Sept. 21, 1994).

We propose to apply the emission standards for highway motorcycles, regardless of fuel. This would have the effect of including any motorcycles that operate on diesel fuel. We do not believe the provisions in this proposal create any unique issues for motorcycles powered by alternative fuels. However, we request comment on whether there are unique aspects to motorcycles fueled with these alternative fuels (if there are any such motorcycles) that would make the proposed standards particularly challenging or infeasible.

5. Should Highway and Off-Highway Regulations Be Integrated?

We recognize that many motorcycle manufacturers produce both on- and off-highway motorcycles and are interested in receiving comment on integrating the two sets of requirements into a single part of the regulations. Currently, EPA regulations for highway motorcycles are in 40 CFR part 86, while the proposed regulations for recreational vehicles and engines are in 40 CFR part 1051. Given that the proposed requirements for off-highway motorcycles and ATVs would duplicate many of the requirements that apply to highway motorcycles (such as test procedures and certification protocol), it may be appropriate to integrate the highway motorcycle requirements with the recreational vehicle requirements in part 1051. This may help manufacturers with both on- and off-highway products by eliminating differing or inconsistent paperwork or testing requirements for the different products. We request comment on the value of centralizing the requirements in this way.

6. Is EPA Proposing Production Line Testing Requirements for Highway Motorcycles?

Production line testing requirements have never been required for highway motorcycles, but we are seeking comment on them as part of this proposal. However, we recognize that production-line testing may serve as a valuable tool to ensure that newly assembled engines control emissions at least as well as the prototype models used for certification. We believe testing highway motorcycles from the production line would add little additional burden and could easily be incorporated into the existing production-line quality checks that most manufacturers routinely perform. In fact, some nonroad engine manufacturers use emission measurements as part of their standard quality-control protocol at the assembly line to ensure proper engine functioning. Also, we would waive testing requirements for manufacturers with consistently good emission results. We request comment on extending to highway motorcycles the production-line testing requirements recently proposed for nonroad engines and vehicles (66 FR 51098). If such requirements were extended to highway motorcycles, we request comment on the impact of such requirements on smaller manufacturers and whether such requirements should apply to small manufacturers (*i.e.*, those with less than 3,000 annual unit sales). In the absence of production line testing we are not likely to allow post-certification changes to be made to the Family Emission Limits (FELs) applicable to a given engine family under the emissions averaging program.

7. What Test Fuel Is Specified for Emission Testing of Motorcycles?

The specifications for gasoline to be used by the EPA and by manufacturers for emission testing can be found in 40 CFR 86.513–94. These regulations also specify that the fuel used for vehicle service accumulation shall be "representative of commercial fuels and engine lubricants which will be generally available through retail outlets." During the last twenty years of regulation of motorcycle emissions, the fuel specifications for motorcycle testing have been essentially identical to those for automotive testing. However, on February 10, 2000, EPA issued a final rule entitled "Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements" (65 FR 6697, Feb. 10, 2000). In addition to finalizing a single set of emission standards that will apply to all passenger cars, light trucks, and larger passenger vehicles (*e.g.*, large SUVs), the rule requires the introduction of low-sulfur gasoline nationwide. To provide consistency with the fuels that will be in the marketplace, the rule amended the test fuel specifications, effective starting in 2004 when the new standards will take effect. The principal change that was made was a reduction in the allowable levels of sulfur in the test fuel, from a maximum of 0.10 percent by weight to a range of 0.0015 to 0.008 percent by weight.

Given that low-sulfur fuel will be the existing fuel in the marketplace when our proposed program would take effect (and therefore required for service accumulation), we propose to amend the motorcycle test fuel to reflect the true nature of the fuels available in the marketplace. Doing so would remove the possibility that a test could be conducted with an unrealistically high level of sulfur in the fuel.

8. Highway Motorcycle Evaporative Emissions

In addition to California's exhaust emission standards, California ARB has also established evaporative emission standards for highway motorcycles. These standards took effect with the 1983 model year for Class I and II motorcycles, and the 1984 model year for Class III motorcycles. An initial evaporative emission standard that applied for two model years was set at 6.0 grams of hydrocarbons per test. Following two model years at this level, the standard was reduced to a more stringent 2.0 grams of hydrocarbons per test for all motorcycle classes. This is the currently applicable standard, and it was not changed during California's recent revisions to their motorcycle exhaust emission standards.

We believe that it is not necessary at this time to propose adopting broad evaporative emission standards such as California's. The fuel tanks are generally small, resulting in diurnal and refueling emissions that we expect to be proportionately low. The use rates of motorcycles is likewise low, and we expect that hot soak emissions will be low as well. California has unique air quality concerns that may prompt the State to pursue and select emissions controls that we may find unnecessary for a national program. However, our investigation into the hydrocarbon emissions related to permeation of fuel tanks and fuel hoses with respect to marine applications has raised a new emissions concern that has a broad reach across many different vehicle types. Permeation of fuel tanks and hoses is one of four components of a vehicle's evaporative emissions. The other three primary evaporative components are: hot soak emissions, which occur when fuel evaporates from hot engine surfaces; diurnal emissions, which occur when fuel in tanks and hoses heats up in response to increases in ambient temperature; and refueling emissions, which occur when fuel vapors are displaced from the tank during refueling. As described in section III, the permeation emissions

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from boats outweigh other evaporative emissions significantly; in fact, permeation from tanks and hoses results in more emissions than the other three types of evaporative emissions combined. Given this, we are assessing other vehicle types, including highway motorcycles, off-road motorcycles, and all-terrain vehicles, that may use fuel tanks or hoses with less-than-optimal control of permeation emissions. The fact that the fuel tanks in these types of vehicles are generally small does not significantly affect the importance of these emissions; it is the fact that permeation is occurring every hour of every day when there is fuel in the tank that results in the significance of emissions related to permeation.

Section III.H of this preamble, as well as the Draft Regulatory Support Document, detail some of the technological strategies that may be employed to reduce fuel permeation. The application of several of these technologies to highway motorcycles appears to be relatively straightforward, with little cost and essentially no adverse performance or aesthetic impacts. These technologies, which are already available and which appear to be relatively inexpensive, could reduce permeation of tanks and hoses by 95 percent or more. In addition, the control technology may pay for itself in many instances due to positive fuel consumption impacts.

We request comment on finalizing standards that would require low permeability fuel tanks on highway motorcycles, starting with the 2006 model year. We would presume that the metal fuel tanks that equip most highway motorcycles would already meet the low permeability requirement, and thus, there would be no need for any fuel tank design or material changes on the vast majority of highway motorcycles. However, many if not all of the dual-sport motorcycles are equipped with plastic fuel tanks, as are some motorcycles in the sport or super-sport categories. These motorcycles, under the type of regulation that we are requesting comment on, would have to employ metal tanks or plastic fuel tanks using one of the barrier technologies (*e.g.*, a fluorination or sulfonation treatment) described in section III.H to meet the standards. We expect that any standards finalized would be similar in design to those proposed regarding fuel tank permeation for marine engines, as discussed earlier in this preamble.

Retail sales data from Dealernews for the 2001 calendar year indicates that sales of motorcycles in the sport category amounted to just over 20 percent of total highway motorcycle sales, and dual-sport motorcycles were a much smaller 4 percent of the total. We may then conservatively estimate that approximately 25 percent of current motorcycles now have plastic tanks that would need upgrading. This is a conservative estimate for two reasons: (1) Some of these motorcycles are probably using metal tanks; and (2) it is highly likely that some of the existing plastic tanks have already been upgraded with a barrier treatment in order to meet the California evaporative emission requirements. We are interested in collecting more information regarding the degree to which plastic fuel tanks are used on highway motorcycles, and, to the extent they are, what if any measures have been taken by manufacturers to reduce permeation emissions.

Highway motorcycle fuel tanks range in capacity from just over one gallon on some small scooters to about 7.5 gallons on some large touring and sport touring motorcycles. Most of the sport and super-sport motorcycles appear to have fuel tanks that fall generally in the range of 4 to 6 gallons, while dual-sport motorcycles may be slightly smaller on average, perhaps typically in the 3 to 5 gallon range. If we select 5 gallons as a conservative estimate of the average size of the fuel tanks for those types of motorcycles most likely to have to employ one of the fuel tank barrier technologies, the additional cost per tank (assuming fluorination treatment) is estimated to be about $3.25 (see section 5.2.1 of the Draft Regulatory Support Document). We estimate that shipping, handling, and overhead costs would be an additional $0.85, resulting in a total average cost of about $4.10. Therefore, the average industry-wide price increase that would be associated with a requirement of this nature would be about $1.00.

We also request comment on promulgating standards that would require the use of low permeability fuel hoses on all highway motorcycles, starting in the 2006 model year. Like low permeation fuel tanks, it is very likely that some manufacturers have already addressed permeation from the fuel hoses on some of their product line due to the California evaporative emission requirements. However, we will conservatively estimate that no current motorcycles are equipped with fuel hoses that significantly reduce or eliminate permeation. The cost of a fuel line with low permeation properties is estimated to be about $1.30 per foot (see section 5.2.1 of the Draft Regulatory Support Document). Highway motorcycles are estimated to have about one to two feet of fuel line on average; thus, using the average cost and a fuel line length of 18 inches, we estimate an average industry-wide price increase associated with a low permeation fuel line requirement to be about $2.00 per motorcycle. We therefore estimate that the total increased cost per motorcycle that would result from requiring low permeation fuel tanks and fuel hoses would be about $3.00. We are interested in collecting more information regarding fuel hoses currently used on highway motorcycles, in particular regarding the typical length, the material, and the permeation properties.

We request comment on the form these standards would take (*e.g.*, whether there should be absolute numerical limits or percentage reduction requirements, if we determined they were appropriate.) We also request comment on implementing requirements such as those described above by allowing the manufacturer to submit a statement at the time of certification that the fuel tanks and hoses used on their products meet standards, specified materials, or construction requirements based on testing results. For example, a manufacturer using plastic fuel tanks could state that the engine family at issue is equipped with a fuel tank with a low permeability barrier treatment such as fluorination. Fuel hoses could be certified as being manufactured in compliance with certain accepted SAE specifications. These certification statements could be done on an engine family basis, or possibly a blanket statement could cover a manufacturer's entire product line. EPA expects that 95 percent reductions over uncontrolled emission levels for permeation are achievable for plastic fuel tanks. These reductions imply a tank permeability standard of about 0.024 g/gal/day for fuel tanks. For fuel hoses, we would consider the proposed standards for marine hoses of 5 grams per square meter per day. We request comment on these and other options that would enable regulation and enforcement of low permeability requirements.

As was discussed earlier regarding marine evaporative emissions, California ARB and EPA have conducted permeation testing with regard to evaporative emissions from HDPE plastic tanks. There are 8 data points for tanks of 3.9 to 7.5 gallons capacity. The permeation rates varied from 0.2 to1.0 grams per gallon per day with an average value of 0.75 g/gal/day. This data was based on tests with an average temperature of about 29°C. As discussed in Chapter 4 of the draft RSD, temperature has a first order effect on the rate of permeation. Roughly, permeation doubles with every 10°C increase in temperature. For the 5 gallon tank discussed above, at 23°C, the average emission rate is about 0.50 g/gal/day or 2.5 g/day.

For the purposes of this analysis we assumed a fuel hose with an inside diameter of about 1cm (⅜ inch) and a permeation rate of 550 grams per square meter per day at 23°C. This permeation rate is based on the SAE J30 requirement for R7 fuel hose; the type of hose found on a small sample of motorcycles we examined. For the 18 inch hose mentioned above this yields an emission rate of 7.5 g/day.

Combining the average emission rates determined for the fuel tanks and fuel hoses above and adjusting for the 25 percent of tanks that would be affected by permeation standards yields a daily average emission rate of 8.1 g/day (7.5 g/day + (0.25 x 2.5 g/day)). The total combined tank and hose emission rate for those motorcycles that we estimate will require fuel tank treatments (25 percent of motorcycles) is 9.9 g/day (7.5 g/day + 2.5 g/day).

Table V.C–2 presents national totals for permeation emissions from motorcycles. These permeation estimates are based on the emission rates discussed above and population, turnover, and temperature projections discussed in Chapter 6 of the draft RSD.

TABLE V.C–2.—PROJECTED MOTORCYCLE PERMEATION HYDROCARBON EMISSIONS

[short tons]

Calendar year	Baseline	Control	Reduction
2005	14,600	14,600	0
2010	16,900	10,800	6,100
2015	19,200	6,010	13,200
2020	21,500	1,950	19,600
2030	26,200	317	25,900

The average lifetime of a typical motorcycle is estimated to be about 12.5 years. Permeation control techniques can reduce emissions by 95 percent for tanks and more than 99 percent for hoses. Multiplying this efficiency and these emission rates by 12.5 years and discounting at 7 percent yields lifetime per motorcycle emission reductions of 0.0013 tons for the fuel tank, 0.017 tons for the fuel hose, and 0.019 tons on average overall. In turn, using the cost estimates above, these emission reductions yield HC cost per ton values of $794 for the 5 gallon tank, $112 for the fuel hose, and $160 for the average overall.

Because evaporative emissions are composed of otherwise useable fuel that is lost to the atmosphere, measures that reduce evaporative emissions can result in potentially significant fuel savings. For a motorcycle with a 5 gallon fuel tank, we estimate that the low permeability measures discussed in this section could save 9.6 gallons over the 12.5 year average operating lifetime, which translates to a discounted lifetime savings of $6.75 at an average fuel price of $1.10 per gallon. Combining this savings with an estimated cost per motorcycle of $3.00 results in a discounted lifetime savings per motorcycle of $3.75. The cost per ton of the evaporative emission reductions described above is $160; however, if the fuel savings are included, the estimated cost per ton is actually -$203. This means that the fuel savings are larger than the cost of using low permeation technology.

D. Special Compliance Provisions

While the highway motorcycle market is dominated by large companies, there are over 30 small businesses manufacturing these products. They are active in both the federal and California markets. California has been much more active than EPA in setting new requirements for highway motorcycles, and indeed, the California requirements have driven the technology demands and timing for highway motorcycle emission controls. We have developed our special compliance provisions partly in response to the technology, timing, and scope of the requirements that apply to the small businesses in California's program. The provisions discussed below would reduce the economic burden on small businesses, allowing harmonization with California requirements in a phased, but timely manner.

We propose that the flexibilities described below will be available for small entities with highway motorcycle annual sales of fewer than 3,000 units per model year (combined Class I, II, and III motorcycles) and fewer than 500 employees. These provisions are appropriate because of the significant research and development resources may be necessary to meet the proposed emission standards. These provisions would reduce the burden while ensuring the vast majority of the program is implemented to ensure timely emission reductions. We also understand that many small highway motorcycle manufacturers market "classic" and "custom" motorcycles, often with a "retro" appearance, that tends to make the addition of new technologies a uniquely resource-intensive prospect.

1. Delay of Proposed Standards

We propose to delay compliance with the Tier 1 standard of 1.4 g/km HC+NO_x until the 2008 model year for small-volume manufacturers. We are proposing a Tier 1 standard beginning in the 2006 model year for highway motorcycles. Small manufacturers are required to meet the Tier 1 standard in 2008 in California. Given that the California requirements apply in 2008 for small businesses, we seek comment on whether additional time is needed for small businesses to comply with the federal program.

The current California regulations do not require small manufacturers to comply with the Tier 2 standard of 0.8 g/km HC+NO_x. The California Air Resources Board found that the Tier 2 standard represents a significant technological challenge and is a potentially infeasible limit for these small manufacturers. We share the California ARB's concern regarding this issue. As noted above, many of these manufacturers market a specialty product with a "retro" simplicity that may not easily lend itself to the addition of advanced technologies like catalysts. However, the ARB has acknowledged that, in the course of their progress review planned for 2006, they will revisit their small-manufacturer provisions. Therefore, we plan to participate with the ARB in the 2006 progress review as these provisions are revisited, and delay making decisions on the applicability to small businesses of Tier 2 or other revisions to the federal regulations that are appropriate following the review.

2. Broader Engine Families

Small businesses have met EPA certification requirements since 1978. Nonetheless, certifying motorcycles to revised emission standards has cost and lead time implications. Relaxing the criteria for what constitutes an engine or vehicle family could potentially allow small businesses to put all of their models into one vehicle or engine family (or more) for certification purposes. Manufacturers would then certify their engines using the "worst case" configuration within the family. This is currently allowed under the existing regulations for small-volume highway motorcycle manufacturers. We propose that these provisions remain in place.

3. Exemption From Production Line Testing

There is currently no mandatory production line testing requirement for highway motorcycles. The current

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regulations allow us to request production vehicles from any certifying manufacturer for testing. We are proposing no changes to these existing provisions at this time.

4. Averaging, Banking, and Trading

An emission-credit program allows a manufacturer to produce and sell engines and vehicles that exceed the applicable emission standards, as long as the excess emissions are offset by the production of engines and vehicles emitting at levels below the standards. The sales-weighted average of a manufacturer's total production for a given model year must meet the standards. An emission-credit program typically also allows a manufacturer to bank credits for use in future model years, as well as buy credits from, or sell credits to, other manufacturers. Emission-credit programs are generally made available to all manufacturers, though special provisions for small businesses could be created to increase flexibility. We therefore propose an emission-credit program for highway motorcycles similar to that discussed above in V.C.2. for all motorcycle manufacturers.

For the reasons described in section V.C.2., we are not proposing post implementation emissions credits banking and trading provisions, but are requesting comment on them. This is not consistent with the Panel's recommendations for small entities. We request comment on the usefulness of banking and trading for small entities. For additional information on this subject, commenters may review a report prepared for the Small Business Administration on credits programs, "Emissions Trading for Small Business", for ideas on how such programs could be useful for small entities.[41]

5. Hardship Provisions

We are proposing two types of provisions to address unusual hardship circumstances for motorcycle manufacturers. The first type of hardship program would allow small businesses to petition EPA for additional lead time (*e.g.*, up to 3 years) to comply with the standards. A small manufacturer would have to make the case that it has taken all possible business, technical, and economic steps to comply but the burden of compliance costs would have a significant impact on the company's solvency. A manufacturer would be required to provide a compliance plan detailing when and how it would achieve compliance with the standards. Hardship relief could include requirements for interim emission reductions and/or purchase and use of emission credits. The length of the hardship relief decided during review of the hardship application would be up to one year, with the potential to extend the relief as needed. The second hardship program would allow companies to apply for hardship relief if circumstances outside their control cause the failure to comply (*i.e.*, supply contract broken by parts supplier) and if the failure to sell the subject engines would have a major impact on the company's solvency. See the proposed regulatory text in 40 CFR 1068.240 and 1068.241 for additional details.

In light of the California requirements, which do not include hardship provisions, we request comment on this alternative.

6. Reduced Certification Data Submittal and Testing Requirements

Current regulations allow significant flexibility for certification by manufacturers projecting sales below 10,000 units of combined Class I, II, and III motorcycles. For example, a qualifying manufacturer must submit an application for certification with a statement that their vehicles have been tested and, on the basis of the tests, conform to the applicable emission standards. The manufacturer retains adequate emission test data, for example, but need not submit it. Qualifying manufacturers also need not complete the detailed durability testing required in the regulations. We are proposing no changes to these existing provisions.

7. Nonconformance Penalties

Clean Air Act section 206(g) (42 U.S.C. 7525(g)), allows EPA to issue a certificate of conformity for heavy-duty engines or for highway motorcycles that exceed an applicable section 202(a) emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays a nonconformance penalty established by rulemaking. Congress adopted section 206(g) in the Clean Air Act Amendments of 1977 as a response to perceived problems with technology-forcing heavy-duty engine emissions standards. If strict standards were maintained, then some manufacturers, "technological laggards," might be unable to comply initially and would be forced out of the marketplace. Nonconformance penalties were intended to remedy this potential problem. The laggards would have a temporary alternative that would permit them to sell their engines or vehicles by payment of a penalty. There are three criteria for determining the eligibility of emission standards for nonconformance penalties in any given model year. First, the emission standard in question must become more difficult to meet, either by becoming more stringent itself or by its interaction with another emission standard that has become more stringent. Second, substantial work must be required to meet the emission standard. We consider "substantial work" to mean the application of technology not previously used in that vehicle or engine class/ subclass, or a significant modification of existing technology, to bring that vehicle/engine into compliance. We do not consider minor modifications or calibration changes to be classified as substantial work. Third, it must be likely that a company will become a technological laggard. A technological laggard is defined as a manufacturer who cannot meet a particular emission standard due to technological (not economic) difficulties and who, in the absence of nonconformance penalties, might be forced from the marketplace.

Nonconformance penalties have been offered on occasion as a compliance option for several heavy-duty engine emission standards, but they have never been offered for highway motorcycles. However, as noted above, the Clean Air Act provides us with the authority to provide nonconformance penalties for highway motorcycles if they can be justified. While we do not currently believe that the three criteria established by rulemaking could be satisfied with respect to the Tier 1 standard (the "substantial work" criterion may not be applicable), there is a greater possibility that the criteria could be satisfied with respect to the Tier 2 standard. We request comment on whether the three criteria noted above could apply to the Tier 1 or Tier 2 standard, and if so, whether nonconformance penalties should be considered as an option. Typically, however, it is impossible at the time of a rulemaking to make the finding that a technological laggard has emerged with respect to a standard taking effect well into the future. For example, the proposed program would provide eight years of lead time to meet the Tier 2 standard, and making a judgment in this rulemaking regarding the existence of a technological laggard is impossible. It would be likely, for example, that we revisit this issue in the context of California ARB's 2006 progress review, or even later. However, we request comment nevertheless on whether nonconformance penalties would be a desirable option, should conditions develop that warrant them. We also request comment on, given the availability of the hardship provisions described above, whether non-conformance penalties would potentially be needed.

[41] "Emissions Trading for Small Businesses", Final Report, Jack Faucett Associates, March 2002, *http://www.sba.gov/advo/research/rs216tot.pdf* (Docket A–2000–01; document IV–A–26).

E. Technological Feasibility of the Standards

1. Class I and Class II Motorcycles Between 50 and 180cc

As noted above, we are proposing to adopt the current California standards for Class I and Class II motorcycles. These standards have been in place in California since 1982. The question of whether or not these standards are technically feasible has been answered in the affirmative, since 21 of the 22 EPA-certified 2001 model year motorcycle engine families in these classes are already certified to these standards, and all 24 of the 2002 model year engine families meet these standards. These 24 engine families are all powered by four-stroke engines, with a variety of emission controls applied, including basic engine modifications on almost all engine families, secondary air injection on three engine families, and a two-way oxidation catalyst on one engine family.

In past model years, but not in the 2002 model year, an engine family that does not meet the California standards had certified to the existing federal standards and not sold in California. It was a 100cc dual-sport motorcycle powered by a two-stroke engine, with an HC certification level of 3.9 g/km. This motorcycle no longer appears to be available as of the 2002 model year. Adopting the California standards for these motorcycle classes could preclude this motorcycle or others like it from being certified and sold federally, unless the federal program includes additional flexibility relative to the California program. As discussed above, we are proposing that the HC standard for Class I and Class II motorcycles be an averaging standard, in a departure from California's treatment of these motorcycle classes. This in itself could be of limited use given the low number of Class I and Class II engine families, but, as discussed in Section V.C.2 above, we are also proposing to allow credits accumulated by certifying Class III engine families to a level lower than the standard to be used to offset Class I or Class II engine families certified to levels above the fleet-average standard.[42]

2. Class I Motorcycles Under 50cc

As we have described earlier we are proposing to apply the current California standard for Class I motorcycles to motorcycles with displacements of less than 50cc (e.g., most motor scooters). These motorcycles are currently not subject to regulation by the U.S. EPA or by the State of California. They are, however, subject to emission standards in Europe and much of the rest of the world. Historically these motorcycles have been powered by 2-stroke engines, but a trend appears to be developing that would result in most of these being replaced by 4-stroke engines or possibly by advanced technology 2-stroke engines, in some cases with catalysts.

The 4-stroke engine is capable of meeting our proposed standards. Class I motorcycles above 50cc are already meeting it, most of them employing nothing more than a 4-stroke engine. For example, the existing Class I scooters certify at levels ranging from 0.4 to 0.8 grams per kilometer HC. All of these achieve the standards with 4-stroke engine designs, and only one incorporates additional technology (a catalyst). These engines range from 80 to 151cc in displacement, indicating that a smaller engine should encounter few problems meeting the proposed standards.

In order to meet more stringent standards being implemented worldwide, manufacturers are developing and implementing a variety of options. Honda, perhaps the largest seller of scooters in the U.S., has entirely eliminated 2-stroke engines from their scooter product lines as of the 2002 model year. They continue to offer a 50cc model, but with a 4-stroke engine. Both of Aprilia's 49cc scooters available in the U.S. have incorporated electronic direct injection technology, which, in the case of one model, enables it to meet the "Euro-2" standards of 1.2 grams per kilometer HC and 0.3 grams per kilometer NO_X, without use of a catalytic converter.[43] Piaggio, while currently selling a 49cc basic 2-stroke scooter in the U.S., expects to begin production of a direct injection version in 2002, and a 4-stroke 50cc scooter is also in development. Numerous 49cc models marketed by Piaggio in Europe are available either as a 4-stroke or a 2-stroke with a catalyst. Piaggio, also an engine manufacturer and seller, is already offering a 50cc 4-stroke engine to its customers for incorporation into scooters.

The U.S. represents a very small portion of the market for small motorcycles and scooters. There are few, if any, manufacturers that develop a small-displacement motorcycle exclusively for the U.S. market; the domestic sales volumes do not appear large enough at this time to support an industry of this kind. The Italian company Piaggio (maker of the Vespa scooters), for example, sold about as many scooters worldwide in 2000 (about 480,000) as the entire volume of highway motorcycles of all sizes sold in the U.S. in that year. U.S. sales of Vespas in 2000 amounted to about 4800. The largest scooter markets today are in South Asia and Europe, where millions are sold annually. In Taiwan alone almost 800,000 motorcycles were sold domestically. More than one third of these were powered by 2-stroke engines. Two- and three-wheelers constitute a large portion of the transportation sector in Asia, and in some urban areas these vehicles—many of them powered by 2-stroke engines—can approach 75 percent of the vehicle population. According to a World Bank report, two-stroke gasoline engine vehicles are estimated to account for about 60 percent of the total vehicle fleet in South Asia.[44]

Many nations are now realizing that the popularity of these vehicles and the high density of these vehicles in urban areas are contributing to severe air-quality problems. As a consequence, some of the larger small motorcycle markets in Asia and India are now placing these vehicles under fairly strict regulation. It is clear that actions in these nations will move the emission control technology on small motorcycles, including those under 50cc, in a positive direction. For example, according to the World Bank report, as of 2000 catalytic converters are installed in all new two-stroke engine motorcycles in India, and 2003 standards in Taiwan will effectively ban new two-strokes with emission

[42] The manufacturer taht had certified this two-stroke for highway use has typically certified 4–5 other Class I or II engine families; therefore, a basic averaging program could enable them to continue to market their two-stroke dual-sport. However, other manufacturers may not have adequate additional engine families in these classes, making a basic average standard less useful to them.

[43] Aprilia website, *http://www.apriliausa.com/ridezone/ing/models/scarabeo50dt/moto.htm*. Available in the public docket for review.

[44] Improving Urban Air Quality in South Asia by Reducing Emissions from Two-Stroke Engine Vehicles. Masami Kojima, Carter Brandon, and Jitendra Shah. December 2000. Prepared for the World Bank. Available in the public docket for review (Docket A–2000–01; document II–D–191), or on the internet at: *http://www.worldbank.org/html/fpd/esmpa/publication/airquality.html*.

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standards so stringent that only a four-stroke engine is capable of meeting them.

Given the emerging international picture regarding emission standards for scooters, we believe that scooter manufacturers will be producing scooters of less than 50cc displacement that meet our proposed standards well in advance of the 2006 model year, the first year we propose to subject this category of motorcycle to U.S. emission standards. We would expect that small entities that import scooters into the U.S. from the larger scooter markets would be able to import complying vehicles. We request comment on this assessment.

There are other numerous factors in the international arena that may affect the product offerings in the less than 50cc market segment. For example, the European Union recently changed the requirements regarding insurance and helmet use for under 50cc scooters and mopeds. Previously, the insurance discounts and lack of helmet requirements in Europe provided two relatively strong incentives to purchasers to consider a 49cc scooter. Recently, however, the provisions were changed such that helmets are now required and the insurance costs are comparable to larger motorcycles. The result was a drop of about 30% in European sales of 49cc scooters in 2001 due to customers perceiving little benefit from a 49cc scooter relative to a larger displacement engine.

3. Class III motorcycles

a. Tier 1 standards. In the short term, the proposed Tier 1 HC+NO_X standard of 1.4 g/km HC+NO_X reflects the goal of achieving emission reductions that could be met with reasonably available control technologies, primarily involving engine modifications rather than catalytic converters. As noted earlier, we are proposing that this standard be effective for the 2006 model year. Based on current certification data, a number of existing engine families already comply with this standard or would need relatively simple modifications to comply. In other cases, the manufacturers will need to use control technologies that are available but are not yet used on their particular vehicles (*e.g.*, electronic fuel injection to replace carburetors, changes to cam lobes/timing, etc.). For the most part, manufacturers will not need to use advanced technologies such as close-coupled, closed-loop three way catalysts.

While manufacturers will use various means to meet the Tier 1 standard, there are four basic types of existing, non-catalyst-based, emission-control systems available to manufacturers. The most important of these is the use of secondary pulse-air injection. Other engine modifications and systems include more precise fuel control, better fuel atomization and delivery, and reduced engine-out emission levels from engine changes. The combinations of low-emission technologies ultimately chosen by motorcycle manufacturers are dependent on the engine-out emission levels of the vehicle, the effectiveness of the prior emission-control system, and individual manufacturer preferences.

Secondary pulse-air injection, as demonstrated on current motorcycles, is applied using a passive system (i.e., no air pump involved) that takes advantage of the flow of gases ("pulse") in the exhaust pipes to draw in fresh air that further combusts unburned hydrocarbons in the exhaust. Engine modifications include a variety of techniques designed to improve fuel delivery or atomization; promote "swirl" (horizontal currents) and "tumble" (vertical currents); maintain tight control on air-to-fuel (A/F) ratios; stabilize combustion (especially in lean A/F mixtures); optimize valve timing; and retard ignition timing.

Secondary pulse air injection involves the introduction of fresh air into the exhaust pipe immediately after the gases exist the engine. The extra air causes further combustion to occur, thereby controlling more of the hydrocarbons that escape the combustion chamber. This type of system is relatively inexpensive and uncomplicated because it does not require an air pump; air is drawn into the exhaust through a one-way reed valve due to the pulses of negative pressure inside the exhaust pipe. Secondary pulse-air injection is one of the most effective non-catalytic emission-control technologies; compared to engines without the system, reductions of 10 to 40 percent for HC are possible with pulse-air injection. Sixty-five of the 151 2001 model year Class III engine families certified for sale in the U.S employ secondary pulse-air injection to help meet the current California standards. We anticipate that most of the remaining engine families will use this technique to help meet the Tier 1 and Tier 2 standards.

Improving fuel delivery and atomization primarily involves the replacement of carburetors, currently used on most motorcycles, with more precise fuel injection systems. There are several types of fuel injection systems and components manufacturers can choose. The most likely type of fuel injection manufacturers will choose to help meet the Tier 1 standard is sequential multi-point fuel injection (SFI).

Unlike conventional multi-point fuel injection systems that deliver fuel continuously or to paired injectors at the same time, sequential fuel injection can deliver fuel precisely when needed by each cylinder. With less than optimum fuel injection timing, fuel puddling and intake-manifold wall wetting can occur, both of which hinder complete combustion. Use of sequential-fuel-injection systems help especially in reducing cold start emissions when fuel puddling and wall wetting are more likely to occur and emissions are highest.

Motorcycle manufacturers are already beginning to use sequential fuel injection (SFI). Of the 152 Class III motorcycle engine families certified for sale this year, 36 employ SFI systems. We anticipate increased applications of this or similar fuel injection systems to achieve the more precise fuel delivery needed to help meet the Tier 1 and Tier 2 standards.

In addition to the techniques mentioned above, various engine modifications can be made to improve emission levels. Emission performance can be improved, for example, by reducing crevice volumes in the combustion chamber. Unburned fuel can be trapped momentarily in crevice volumes before being subsequently released. Since trapped and re-released fuel can increase engine-out emissions, the elimination of crevice volumes would be beneficial to emission performance. To reduce crevice volumes, manufacturers can evaluate the feasibility of designing engines with pistons that have reduced, top "land heights" (the distance between the top of the piston and the first ring).

Lubrication oil which leaks into the combustion chamber also has a detrimental effect on emission performance since the heavier hydrocarbons in oil do not oxidize as readily as those in gasoline and some components in lubricating oil may tend to foul the catalyst and reduce its effectiveness. Also, oil in the combustion chamber may trap HC and later release the HC unburned. To reduce oil consumption, manufacturers can tighten the tolerances and improve the surface finish on cylinders and pistons, piston ring design and materials, and exhaust valve stem seals to prevent excessive leakage of lubricating oil into the combustion chamber.

Increasing valve overlap is another engine modification that can help reduce emissions. This technique helps reduce NO_X generation in the combustion chamber by essentially providing passive exhaust gas recirculation (EGR). When the engine is undergoing its pumping cycle, small amounts of combusted gases flow past the intake valve at the start of the intake cycle. This creates what is essentially a passive EGR flow, which is then either drawn back into the cylinder or into another cylinder through the intake manifold during the intake stroke. These combusted gases, when combined with the fresh air/fuel mixture in the cylinder, help reduce peak combustion temperatures and NO_X levels. This technique can be effected by making changes to cam timing and intake manifold design to optimize NO_X reduction while minimizing impacts to HC emissions.

Secondary pulse-air injection and engine modifications already play important parts in reducing emission levels; we expect increased uses of these techniques to help meet the Tier 1 standard. Direct evidence of the extent these technologies can help manufacturers meet the Tier 1 standard can be found in EPA's highway motorcycle certification database. This database is comprised of publicly-available certification emission levels as well as some confidential data reported by the manufacturers pursuant to existing motorcycle emission certification requirements.

We do not expect any of these possible changes to adversely affect performance. Indeed, the transition to some of these technologies (*e.g.*, advanced fuel injection) would be expected to improve performance, fuel economy, and reliability. A direct comparison of several motorcycle models in the EPA certification database between the "California" model (where one is offered; it is the exception rather than the rule that a manufacturer offers a separate engine system for California) and the model sold in the rest of the U.S. reveals no change in the performance characteristics in the database (*e.g.*, rated horsepower, torque). We request comment on the impact these anticipated changes might have on performance-related factors.

b. Tier 2 standards. In the long term, the proposed Tier 2 HC+NO_X standard of 0.8 g/km would ensure that manufacturers will continue to develop and improve emission control technologies. We are proposing the Tier 2 standard to be effective by the 2010 model year. We believe this standard is technologically feasible, though it will present some challenges for manufacturers. Several manufacturers are, however, already using some of the technologies that will be needed to meet this standard. In addition, our proposed implementation time frame gives manufacturers two years of experience in meeting this standard in California before having to meet it on a nationwide basis. At least one manufacturer already uses closed-loop, three-way catalysts on several of its product lines. One manufacturer has already certified a large touring motorcycle to the Tier 2 standards for sale in California. Depending on assumptions regarding NO_X levels, other manufacturers have products currently in the market with emission levels close to the Tier 2 standards using two-way catalysts, fuel injection, secondary pulse-air injection, and other engine modifications. The current average HC certification level for Class III motorcycles is just under 1.0 g/km, with a number of motorcycles from a variety of manufacturers at levels of 0.5 g/km or lower. We expect that the proposed eight years of lead time prior to meeting these standards on a nationwide basis would allow manufacturers to optimize these and other technologies to meet the Tier 2 standard.

To meet the proposed Tier 2 standard for HC+NO_X, manufacturers would likely use more advanced engine modifications and secondary air injection. Specifically, we believe manufacturers would use computer-controlled secondary pulse-air injection (i.e., the injection valve would be connected to a computer-controlled solenoid). In addition to these systems, manufacturers would probably need to use catalytic converters on some motorcycles to meet the proposed Tier 2 standards. There are two types of catalytic converters currently in use: two-way catalysts (which control only HC and CO) and three-way catalysts (which control HC, CO, and NO_X). Under the proposed Tier 2 standard, manufacturers would need to minimize levels of both HC and NO_X. Therefore, to the extent catalysts are used, manufacturers would likely use a three-way catalyst in addition to engine modifications and computer-controlled, secondary pulse-air injection.

As discussed previously, improving fuel control and delivery provides emission benefits by helping to reduce engine-out emissions and minimizing the exhaust variability which the catalytic converter experiences. One method for improving fuel control is to provide enhanced feedback to the computer-controlled fuel injection system through the use of heated oxygen sensors. Heated oxygen sensors (HO2S) are located in the exhaust manifold to monitor the amount of oxygen in the exhaust stream and provide feedback to the electronic control module (ECM). These sensors allow the fuel control system to maintain a tighter band around the stoichiometric A/F ratio than conventional oxygen sensors (O2S). In this way, HO2S assist vehicles in achieving precise control of the A/F ratio and thereby enhance the overall emissions performance of the engine. At least one manufacturer is currently using this technology on several 2001 engine families.

In order to further improve fuel control, some motorcycles with electronic controls may utilize software algorithms to perform individual cylinder fuel control. While dual oxygen sensor systems are capable of maintaining A/F ratios within a narrow range, some manufacturers may desire even more precise control to meet their performance needs. On typical applications, fuel control is modified whenever the O2S determines that the combined A/F of all cylinders in the engine or engine bank is "too far" from stoichiometric. The needed fuel modifications (*i.e.*, inject more or less fuel) are then applied to all cylinders simultaneously. Although this fuel control method will maintain the "bulk" A/F for the entire engine or engine bank around stoichiometric, it would not be capable of correcting for individual cylinder A/F deviations that can result from differences in manufacturing tolerances, wear of injectors, or other factors.

With individual cylinder fuel control, A/F variation among cylinders will be diminished, thereby further improving the effectiveness of the emission controls. By modeling the behavior of the exhaust gases in the exhaust manifold and using software algorithms to predict individual cylinder A/F, a feedback fuel control system for individual cylinders can be developed. Except for the replacement of the conventional front O2S with an HO2S sensor and a more powerful engine control computer, no additional hardware is needed in order to achieve individual cylinder fuel control. Software changes and the use of mathematical models of exhaust gas mixing behavior are required to perform this operation.

In order to maintain good driveability, responsive performance, and optimum emission control, fluctuations of the A/F must remain small under all driving conditions including transient operation. Virtually all current fuel systems in automobiles incorporate an adaptive fuel control system that automatically adjusts the system for component wear, varying environmental

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conditions, varying fuel composition, etc., to more closely maintain proper fuel control under various operating conditions. For some current fuel control systems, this adaptation process affects only steady-state operating conditions (i.e., constant or slowly changing throttle conditions). However, most vehicles are now being introduced with adaptation during "transient" conditions (*e.g.*, rapidly changing throttle, purging of the evaporative system).

Accurate fuel control during transient driving conditions has traditionally been difficult because of the inaccuracies in predicting the air and fuel flow under rapidly changing throttle conditions. Because of air and fuel dynamics (fuel evaporation in the intake manifold and air flow behavior) and the time delay between the air flow measurement and the injection of the calculated fuel mass, temporarily lean A/F ratios can occur during transient driving conditions that can cause engine hesitation, poor driveability and primarily an increase in NO_X emissions. However, by utilizing fuel and air mass modeling, vehicles with adaptive transient fuel control are more capable of maintaining accurate, precise fuel control under all operating conditions. Virtually all cars will incorporate adaptive transient fuel control software; motorcycles with computer controlled fuel injection can also benefit from this technique at a relatively low cost.

Three-way catalytic converters traditionally utilize rhodium and platinum as the catalytic material to control the emissions of all three major pollutants (hydrocarbons (HC), CO, NO_X). Although this type of catalyst is very effective at converting exhaust pollutants, rhodium, which is primarily used to convert NO_X, tends to thermally deteriorate at temperatures significantly lower than platinum. Recent advances in palladium and tri-metal (*i.e.*, palladium-platinum-rhodium) catalyst technology, however, have improved both the light-off performance (light-off is defined as the catalyst bed temperature where pollutant conversion reaches 50-percent efficiency) and high temperature durability over previous catalysts. In addition, other refinements to catalyst technology, such as higher cell density substrates and adding a second layer of catalyst washcoat to the substrate (dual-layered washcoats), have further improved catalyst performance from just a few years ago.

Typical cell densities for conventional catalysts used in motorcycles are less than 300 cells per square inch (cpsi). To meet the Tier 2 standard, we expect manufacturers to use catalysts with cell densities of 300 to 400 cpsi. If catalyst volume is maintained at the same level (we assume volumes of up to 60 percent of engine displacement), using a higher density catalyst effectively increases the amount of surface area available for reacting with pollutants. Catalyst manufacturers have been able to increase cell density by using thinner walls between each cell without increasing thermal mass (and detrimentally affecting catalyst light-off) or sacrificing durability and performance.

In addition to increasing catalyst volume and cell density, we believe that increased catalyst loading and improved catalyst washcoats will help manufacturers meet the Tier 2 standard. In general, increased precious metal loading (up to a certain point) will reduce exhaust emissions because it increases the opportunities for pollutants to be converted to harmless constituents. The extent to which precious metal loading is increased will be dependent on the precious metals used and other catalyst design parameters. We believe recent developments in palladium/rhodium catalysts are very promising since rhodium is very efficient at converting NO_X, and catalyst suppliers have been investigating methods to increase the amount of rhodium in catalysts for improved NO_X conversion.

Double layer technologies allow optimization of each individual precious metal used in the washcoat. This technology can provide reduction of undesired metal-metal or metal-base oxide interactions while allowing desirable interactions. Industry studies have shown that durability and pollutant conversion efficiencies are enhanced with double layer washcoats. These recent improvements in catalysts can help manufacturers meet the Tier 2 standard at reduced cost relative to older three-way catalysts.

New washcoat formulations are now thermally stable up to 1050 °C. This is a significant improvement from conventional washcoats, which are stable only up to about 900 °C. With the improvements in light-off capability, catalysts may not need to be placed as close to the engine as previously thought. However, if placement closer to the engine is required for better emission performance, improved catalysts based on the enhancements described above would be more capable of surviving the higher temperature environment without deteriorating. The improved resistance to thermal degradation will allow closer placement to the engines where feasible, thereby providing more heat to the catalyst and allowing them to become effective quickly.

It is well established that a warmed-up catalyst is very effective at converting exhaust pollutants. Recent tests on advanced catalyst systems in automobiles have shown that over 90 percent of emissions during the Federal Test Procedure (FTP) are now emitted during the first two minutes of testing after engine start up. Similarly, the highest emissions from a motorcycle occur shortly after start up. Although improvements in catalyst technology have helped reduce catalyst light-off times, there are several methods to provide additional heat to the catalyst. Retarding the ignition spark timing and computer-controlled, secondary air injection have been shown to increase the heat provided to the catalyst, thereby improving its cold-start effectiveness.

In addition to using computer-controlled secondary air injection and retarded spark timing to increase the heat provided to the catalyst, some vehicles may employ warm-up, pre-catalysts to reduce the size of their main catalytic converters. Palladium-only warm-up catalysts (also known as "pipe catalysts" or "Hot Tubes") using ceramic or metallic substrates may be added to further decrease warm-up times and improve emission performance. Although metallic substrates are usually more expensive than ceramic substrates, some manufacturers and suppliers believe metallic substrates may require less precious metal loading than ceramic substrates due to the reduced light-off times they provide.

Improving insulation of the exhaust system is another method of furnishing heat to the catalyst. Similar to close-coupled catalysts, the principle behind insulating the exhaust system is to conserve the heat generated in the engine for aiding catalyst warm-up. Through the use of laminated thin-wall exhaust pipes, less heat will be lost in the exhaust system, enabling quicker catalyst light-off. As an added benefit, the use of insulated exhaust pipes will also reduce exhaust noise. Increasing numbers of manufacturers are expected to utilize air-gap exhaust manifolds (*i.e.*, manifolds with metal inner and outer walls and an insulating layer of air sandwiched between them) for further heat conservation.

Besides the hardware modifications described above, motorcycle manufacturers may borrow from other current automobile techniques. These include using engine calibration changes such as a brief period of substantial ignition retard, increased cold idling speed, and leaner air-fuel mixtures to quickly provide heat to a catalyst after cold-starts. Only software modifications are required for an engine which already uses a computer to control the fuel delivery and other engine systems. For these engines, calibration modifications provide manufacturers with an inexpensive method to quickly achieve light-off of catalytic converters. When combined with pre-catalysts, computer-controlled secondary air injection, and the other heat conservation techniques described above, engine calibration techniques may be very effective at providing the required heat to the catalyst for achieving the Tier 2 standard. These techniques are currently in use on most low emission vehicle (LEV) automobiles and may have applications in on-road motorcycles.

The nature of motorcycling makes riders particularly aware of the many safety issues that confront them. Many riders that submitted comments to us following the publication of the ANPRM in December of 2000 questioned whether catalytic converters could be implemented on motorcycles without increasing the risk of harm to the rider and/or passenger. The primary concern is regarding the close proximity of the riders to hot exhaust pipes and the catalytic converter. Protecting the rider from the excessive heat is a concern for both riders and manufacturers. The current use of catalytic converters on a number of motorcycles (accounting for tens of thousands of motorcycles in the current U.S. fleet and over 15 million worldwide) already indicates that these issues are not insurmountable on a variety of motorcycle styles and engine sizes. Countries that have successfully implemented catalyst-based emission control programs for motorcycles (some of which have many years of experience) do not report any safety issues associated with the use of catalytic converters on motorcycles under real-world conditions.[45] A number of approaches to shielding the rider from the heat of the catalytic converter are possible, such as exterior pipe covers, shielded foot rests, and similar components. Some manufacturers have found that placing the converter on the underside of the engine can keep it adequately distant from the rider. Others may use double-pipe systems that reduce overall heat loss while remaining cooler on the exterior. Based on the significant lead time proposed that would be allowed for meeting these standards, as well as on the two years of prior experience in California before meeting the requirements federally, we believe that these issues can be satisfactorily resolved for the proportion of motorcycles for which catalytic converters would likely be used to meet the proposed standards.

We do not expect any of these possible changes to adversely affect performance. Indeed, the transition to some of these technologies (*e.g.*, advanced fuel injection) would be expected to improve performance, fuel economy, and reliability. A direct comparison of several motorcycle models in the EPA certification database between the "California" model (where one is offered; it is the exception rather than the rule that a manufacturer offers a separate engine system for California) and the model sold in the rest of the U.S. reveals no change in the performance characteristics in the database (*e.g.*, rated horsepower, torque). We request comment on the impact these anticipated changes might have on performance-related factors.

VI. Projected Impacts

This section summarizes the projected impacts of the proposed emission standards. The anticipated environmental benefits are compared with the projected cost of the program for an assessment of the cost per ton of reducing emissions for this proposal.

A. Environmental Impact

Diurnal evaporative emission factors from marine vessels were developed using established equations for determining evaporative emission factors as a function of ambient conditions and fuel tank size. Permeation emissions were developed based on known material permeation rates as a function of surface area and temperature. Other inputs for these calculations were taken from the latest version of our NONROAD model. Emission estimates for highway motorcycles were developed using information on the emission levels of current motorcycles and updated information on motorcycle use provided by the motorcycle industry. A more detailed description of the methodology used for projecting inventories and projections for additional years can be found in the Chapter 6 of the Draft Regulatory Support Document. We request comment on all aspects of the emission inventory analysis, including the usage rates and other inputs used in the analysis.

Tables V.A–1 and V.A–2 contain the projected emission inventories for the years 2010 and 2020, respectively, from the engines and vehicles subject to this proposal. The inventories are presented for the base case which assumes no change from current conditions (*i.e.*, without the proposed standards taking effect) and assuming the proposed standards take effect. The inventories for 2010 and 2020 include the effect of growth. The percent reductions based on a comparison of estimated emission inventories with and without the proposed emission standards are also presented.

TABLE VI.A–1.—2010 PROJECTED EMISSIONS INVENTORIES

[Thousand short tons]

Category	NO_X			HC*		
	Base case	With proposed standards	Percent reduction	Base case	With proposed standards	Percent reduction
Marine SI Evap	0	0	0	106	91	14
Highway motorcycles	11	10	9	46	41	11
Total	11	10	9	152	132	13

*Evaporative HC for marine SI; exhaust HC for highway motorcycles.

[45] See written testimony of the Manufacturers of Emission Controls Association on the Proposed Rulemaking on Control of Emissions from Nonroad Large Spark-Ignited Engines and Recreational Engines. Available in the public docket for review (Docket A–2000–01; document IV–D–219).

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TABLE VI.A–2.—2020 PROJECTED EMISSIONS INVENTORIES

[Thousand short tons]

Category	NO_x			HC*		
	Base case	With proposed standards	Percent reductions	Base case	With proposed standards	Percent reduction
Marine SI Evap	0	0	0	114	50	56
Highway motorcycles	14	7	50	58	29	50
Total	14	7	50	172	79	53

*Evaporative HC for marine SI; exhaust HC for highway motorcycles.

As described in Section II, there will also be environmental benefits associated with reduced haze in many sensitive areas.

Finally, anticipated reductions in hydrocarbon emissions will correspond with reduced emissions of the toxic air emissions referenced in Section II. In 2020, the projected reduction in hydrocarbon emissions should result in an equivalent percent reduction in air toxic emissions.

B. Economic Impact

In assessing the economic impact of setting emission standards, we have made a best estimate of the technologies and their associated costs to meet the proposed standards. In making our estimates we have relied on our own technology assessment, which includes information supplied by individual manufacturers and our own in-house testing. Estimated costs include variable costs (for hardware and assembly time) and fixed costs (for research and development, retooling, and certification). We projected that manufacturers will recover the fixed costs over the first five years of production and used an amortization rate of 7 percent in our analysis. The analysis also considers total operating costs, including maintenance and fuel consumption. Cost estimates based on the projected technologies represent an expected change in the cost of engines as they begin to comply with new emission standards. All costs are presented in 2001 dollars. Full details of our cost analysis can be found in Chapter 5 of the Draft Regulatory Support Document. We request comment on this cost information.

Cost estimates based on the current projected costs for our estimated technology packages represent an expected incremental cost of vehicles in the near term. For the longer term, we have identified factors that would cause cost impacts to decrease over time. First, as noted above, we project that manufacturers will spread their fixed costs over the first five years of production. After the fifth year of production, we project that the fixed costs would be retired and the per unit costs would be reduced as a result.

For highway motorcycles above 50cc, the analysis also incorporates the expectation that manufacturers and suppliers will apply ongoing research and manufacturing innovation to making emission controls more effective and less costly over time. Research in the costs of manufacturing has consistently shown that as manufacturers gain experience in production and use, they are able to apply innovations to simplify machining and assembly operations, use lower cost materials, and reduce the number or complexity of component parts.[46] (see the Draft Regulatory Support Document for additional information). The cost analysis generally incorporates this learning effect by decreasing estimated variable costs by 20 percent starting in the third year of production and an additional 20 percent starting in the sixth year of production. Long-term impacts on costs are expected to decrease as manufacturers fully amortize their fixed costs and learn to optimize their designs and production processes to meet the standards more efficiently. The learning curve has not been applied to the marine evaporative controls or the motorcycles under 50cc because we expect manufacturers to use technologies that will be well established prior to the start of the program. We request comment on the methodology used to incorporate the learning curve into the analysis.

Evaporative emission controls for boats with marine SI engines have an average projected cost of about $36 per boat. While manufacturers may choose from a wide variety of technologies to meet emission standards, we base these cost estimates on all boats using limited-flow orifices for diurnal emission control, fluorination for fuel tank permeation control and low permeability barrier for fuel hose permeation control. Under the proposed emission-credit program, manufacturers would have the option of offering different technologies to meet emission standards. Where there is a current demand for more sophisticated fuel-tank technology, we would expect a greater cost impact than from the lower-cost, high-production models. Emissions are reduced by preventing evaporation of fuel, so these controls translate directly into a fuel savings, which we have estimated to be about $27 per boat (net present value at the point of sale). Therefore, we get an average cost of $9 per boat when the fuel savings are considered.

We project average costs of $26 per Class III highway motorcycle to meet the Tier 1 standard and $35 to meet the Tier 2 standards. We anticipate the manufacturers will meet the proposed emission standards with several technology changes, including electronic fuel injection, catalysts, pulse-air systems, and other general improvements to engines. For motorcycles with engines of less than 50cc, we project average costs of $44 per motorcycle to meet the proposed standards. We anticipate the manufacturers of these small motorcycles (mostly scooters) will meet the proposed emission standards by transitioning any remaining two-stroke engines to four-strokes. The costs are based on the conversion to 4-stroke because we believe this to be the most likely technology path for the majority of scooters. Manufacturers could also choose to employ advanced technology two-stroke (*e.g.*, direct injection and/or catalysts) designs. The process of developing clean technologies is very much underway already as a result of regulatory actions in Europe and the rest of world where the primary markets for small motorcycles exist. Chapter 4 of the Draft Regulatory Support Document describes these technologies further. Because several models are already available with the anticipated long-term emission-control technologies, we believe that manufacturers and consumers will be able to bear the added cost associated with the new emission standards.

[46] For further information on learning curves, see previous final rules for Tier 2 highway vehicles (65 FR 6698, February 10, 2000), marine diesel engines (64 FR 73300, December 29, 1999), nonroad diesel engines (63 FR 56968, October 23, 1998), and highway diesel engines (62 FR 54694, October 21, 1997).

The above analysis presents unit cost estimates for each engine type. These costs represent the total set of costs the engine manufacturers will bear to comply with emission standards. With current and projected estimates of engine and equipment sales, we translate these costs into projected direct costs to the nation for the new emission standards in any year. A summary of the annualized costs to manufacturers by equipment type is presented in Table VI.B–1. (The annualized costs are determined over the first twenty-years that the proposed standards would be effective.) The annual cost savings for marine vessels and highway motorcycles (<50cc only) are due to reduced fuel costs. The total fleetwide fuel savings start slowly, then increase as greater numbers of compliant vessels or motorcycles (<50cc only) enter the fleet. Table VI.B–1 presents a summary of the annualized reduced operating costs as well.

TABLE VI.B–1.—ESTIMATED ANNUAL COST TO MANUFACTURERS AND ANNUAL FUEL SAVINGS DUE TO THE PROPOSED STANDARDS

[Millions/year]

Category	Annualized cost to manufacturers	Annual fuel savings
Marine SI Evap	$27.5	$15.6
Highway Motorcycles	18.8	0.2
Aggregate*	42.0	13.3

*Because of the different proposed implementation dates for the two classes, the aggregate is based on a 22 year (rather than 20 year) annualized cost. Therefore, the aggregate is not equal to the sum of the costs for the two engine types.

C. Cost per Ton of Emissions Reduced

We calculated the cost per ton of emission reductions for the proposed standards. For these calculations, we attributed the entire cost of the proposed program to the control of ozone precursor emissions (HC or NO_x or both). Table VI.C–1 presents the discounted cost-per-ton estimates for this proposal. Reduced operating costs offsets a portion of the increased cost of producing the cleaner marine vessels and highway motorcycles (<50cc only).

TABLE VI.C–1.—ESTIMATED COST-PER-TON OF THE PROPOSED EMISSION STANDARDS

Category	Effective date	Discounted reductions per engine (short tons)	Pollutants	Discounted cost per ton	
				Without fuel savings	With fuel savings
Marine SI:					
Diurnal	2008	0.01	Evaporative HC	$745	$382
Tank permeation		0.02		523	160
Hose permeation		0.04		367	4
Aggregate		0.07		478	115
Highway motorcycles >50cc	2006	0.03	Exhaust HC+NO_x	970	970
Highway motorcycles >50cc	2010	0.03	Exhaust HC+NO_x	1,230	1,230
Highway motorcycles >50cc	2006	0.02	Exhaust HC	2,130	1,750

Because the primary purpose of cost-effectiveness is to compare our program to alternative programs, we made a comparison between the cost per ton values presented in this chapter and the cost-effectiveness of other programs. Table VI.C–2 summarizes the cost effectiveness of several recent EPA actions for controlled emissions from mobile sources. Additional discussion of these comparisons is contained in the Regulatory Impact Analysis.

TABLE VI.C–2—COST-EFFECTIVENESS OF PREVIOUSLY IMPLEMENTED MOBILE SOURCE PROGRAMS

[Costs adjusted to 2001 dollars]

Program	$/ton
Tier 2 vehicle/gasoline sulfur	1,437–2,423
2007 Highway HD diesel	1,563–2,002
2004 Highway HD diesel	227–444
Off-highway diesel engine	456–724

TABLE VI.C–2—COST-EFFECTIVENESS OF PREVIOUSLY IMPLEMENTED MOBILE SOURCE PROGRAMS—Continued

[Costs adjusted to 2001 dollars]

Program	$/ton
Tier 1 vehicle	2,202–2,993
NLEV	2,069
Marine SI engines	1,255–1,979
On-board diagnostics	2,480
Marine CI engines	26–189

D. Additional Benefits

For the marine evaporative emission standards, we expect there will be a fuel savings as manufacturers redesign their vessels to comply with the proposed standards. This savings is the result of preventing fuel from evaporating into the atmosphere. Overall, the fuel savings associated with the anticipated changes in technology are estimated to be about 31 million gallons per year once the program is fully phased in.

For the motorcycle emission standards, we expect there will be a fuel savings as manufacturers redesign their engines to comply with the proposed standards. This savings is the result of converting motorcycles <50cc from 2-stroke designs to more fuel efficient 4-stroke designs. Overall, the fuel savings associated with the anticipated changes in technology are estimated to be about 0.3 million gallons per year once the program is fully phased in.

The controls in this rule are a highly cost-effective means of obtaining reductions in HC and NO_x emissions. A related subject concerns the value of the health and welfare benefits these reductions might produce. While we have not conducted a formal benefit-cost analysis for this rule, we believe the benefits of this rule clearly will greatly outweigh any cost.

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Ozone causes a range of health problems related to breathing, including chest pain, coughing, and shortness of breath Exposure to PM (including secondary PM formed in the atmosphere from NO_X and NMHC emissions) is associated with premature death, increased emergency room visits, and increased respiratory symptoms and disease Children, the elderly, and individuals with pre-existing respiratory conditions are most at risk regarding both ozone and PM. In addition, ozone, NO_X, and PM adversely affect the environment in various ways, including crop damage, acid rain, and visibility impairment.

In two recent mobile-source control rules, for light-duty vehicles (the Tier 2/ Gasoline Sulfur rule) and for highway heavy-duty engines and diesel fuel, we conducted a full analysis of the expected benefits once the rules were fully implemented. These rules, which primarily reduced NO_X and NMHC emissions, were seen to yield health and welfare benefits far exceeding the costs. Besides reducing premature mortality, there were large projected reductions in chronic bronchitis cases, hospital admissions for respiratory and cardiovascular causes, asthma attacks and other respiratory symptoms, and a variety of other effects.

Given the similarities in pollutants being controlled, we would expect this rule to produce substantial benefits compared to its cost.

VII. Public Participation

This rule was proposed under the authority of section 307(d) of the Clean Air Act. We request comment on all aspects of this proposal. This section describes how you can participate in this process.

A. How Do I Submit Comments?

We are opening a formal comment period by publishing this document. We will accept comments for the period indicated under **DATES** above. If you have an interest in the program described in this document, we encourage you to comment on any aspect of this rulemaking. We request comment on various topics throughout this proposal.

We attempted to incorporate all the comments received in response to the Advance Notice of Proposed Rulemaking, though not all comments are addressed directly in this document. Anyone who has submitted comments on the Advance Notice, or any previous publications related to this proposal, and feels that those comments have not been adequately addressed is encouraged to resubmit comments as appropriate.

Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. If you disagree with parts of the proposed program, we encourage you to suggest and analyze alternate approaches to meeting the air quality goals described in this proposal. You should send all comments, except those containing proprietary information, to our Air Docket (see **ADDRESSES**) before the end of the comment period.

If you submit proprietary information for our consideration, you should clearly separate it from other comments by labeling it "Confidential Business Information." You should also send it directly to the contact person listed under **FOR FURTHER INFORMATION CONTACT** instead of the public docket. This will help ensure that no one inadvertently places proprietary information in the docket. If you want us to use your confidential information as part of the basis for the final rule, you should send a nonconfidential version of the document summarizing the key data or information. We will disclose information covered by a claim of confidentiality only through the application of procedures described in 40 CFR part 2. If you don't identify information as confidential when we receive it, we may make it available to the public without notifying you.

B. Will There Be a Public Hearing?

We will hold a public hearing for issues related to highway motorcycles on July 16 in Dulles, VA. We will hold a public hearing for issues related to marine vessels on July 18 in Ann Arbor, MI. The hearings will start at 9:30 a.m. and continue until testimony is complete. See **ADDRESSES** above for location and phone information.

If you would like to present testimony at a public hearing, we ask that you notify the contact person listed above at least ten days before the hearing. You should estimate the time you need for your presentation and identify any needed audio/visual equipment. We suggest that you bring copies of your statement or other material for the EPA panel and the audience. It would also be helpful if you send us a copy of your statement or other materials before the hearing.

We will make a tentative schedule for the order of testimony based on the notification we receive. This schedule will be available on the morning of each hearing. In addition, we will reserve a block of time for anyone else in the audience who wants to give testimony.

We will conduct the hearing informally, and technical rules of evidence won't apply. We will arrange for a written transcript of the hearing and keep the official record of the hearing open for 30 days to allow you to submit supplementary information. You may make arrangements for copies of the transcript directly with the court reporter.

VII. Administrative Requirements

A. Administrative Designation and Regulatory Analysis (Executive Order 12866)

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of this Executive Order. The Executive Order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or Tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A Draft Regulatory Support Document has been prepared and is available in the docket for this rulemaking and at the internet address listed under **ADDRESSES** above. Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

1. Overview

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business that meet the definition for business based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The following table provides an overview of the primary SBA small business categories potentially affected by this regulation.

TABLE VIII.B–1.—PRIMARY SBA SMALL BUSINESS CATEGORIES POTENTIALLY AFFECTED BY THIS PROPOSED REGULATION

Industry	NAICS [1] codes	Defined by SBA as a small business if: [2]
Motorcycles and motorcycle parts manufacturers	336991	<500 employees.
Independent Commercial Importers of Vehicles and parts	421110	<100 employees.
Boat Building and Repairing	336612	< 500 employees.
Fuel Tank Manufacturers	336211	<1000 employees.

[1] North American Industry Classification System.
[2] According to SBA's regulations (13 CFR part 121), businesses with no more than the listed number of employees or dollars in annual receipts are considered "small entities" for purposes of a regulatory flexibility analysis.

2. Background

In accordance with Section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) that examines the impact of the proposed rule on small entities along with regulatory alternatives that could reduce that impact. In preparing this IRFA, we looked at both the effect of this proposal and the October 5, 2001 proposal for other nonroad categories (66 FR 51098). The IRFA is available for review in the docket and is summarized below.

The process of establishing standards for nonroad engines began in 1991 with a study to determine whether emissions of carbon monoxide (CO), oxides of nitrogen (NO_X), and volatile organic compounds (VOCs) from new and existing nonroad engines, equipment, and vehicles are significant contributors to ozone and CO concentrations in more than one area that has failed to attain the national ambient air quality standards for ozone and CO.[47] In 1994, EPA finalized its finding that nonroad engines as a whole "are significant contributors to ozone or carbon monoxide concentrations" in more than one ozone or carbon monoxide nonattainment area.[48]

Upon this finding, the Clean Air Act (CAA or the Act) requires EPA to establish standards for all classes or categories of new nonroad engines that cause or contribute to air quality nonattainment in more than one ozone or carbon monoxide (CO) nonattainment area. Since the finding in 1994, EPA has been engaged in the process of establishing programs to control emissions from nonroad engines used in many different applications. Nonroad categories already regulated include:

- Land-based compression ignition (CI) engines (*e.g.*, farm and construction equipment),
- Small land-based spark-ignition (SI) engines (*e.g.*, lawn and garden equipment, string trimmers),
- Marine engines (outboards, personal watercraft, CI commercial, CI engines <37kW), and
- Locomotive engines.

On December 7, 2000, EPA issued an Advance Notice of Proposed Rulemaking (ANPRM) for the control of emissions from nonroad large SI engines, recreational vehicles (marine and land-based), and highway motorcycles. As discussed in the ANPRM, the proposal under development will be a continuation of the process of establishing standards for nonroad engines and vehicles, as required by CAA section 213(a)(3). If, as expected, standards for these engines and vehicles are established, essentially all new nonroad engines will be required to meet emissions control requirements.

This proposal is the second part of an effort to control emissions from nonroad engines that are currently unregulated and for updating Federal emissions standards for highway motorcycles. The first part of this effort was a proposal published on October 5, 2001 for emission control from large spark-ignition engines such as those used in forklifts and airport tugs; recreational vehicles using spark-ignition engines such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines.

EPA found that the nonroad engines described above cause or contribute to air quality nonattainment in more than one ozone or carbon monoxide (CO) nonattainment area.[49] CAA section 213 (a)(3) requires EPA to establish standards that achieve the greatest degree of emissions reductions achievable taking cost and other factors into account. EPA plans to propose emissions standards and related programs consistent with the requirements of the Act.

In addition to proposing standards for the nonroad vehicles and engines noted above, this proposal reviews EPA requirements for highway motorcycles. The emissions standards for highway motorcycles were established twenty-three years ago. These standards allow motorcycles to emit about 100 times as much per mile as new cars and light trucks. California recently adopted new emissions standards for highway motorcycles, and new standards and testing cycles are being considered internationally. There may be opportunities to reduce emissions in a cost-effective way.

The program under consideration will cover engines and vehicles that vary in design and use, and many readers may only be interested in one or two of the applications. There are various ways EPA could group the engines and present information. For purposes of the proposed rule EPA has chosen to group engines by common applications (*e.g.*, recreational land-based engines, marine

[47] "Nonroad Engine and Vehicle Emission Study—Report and Appendices," EPA–21A–201, November 1991 (available in Air docket A–91–24). It is also available through the National Technical Information Service, referenced as document PB 92–126960.

[48] 59 FR 31306 (July 17, 1994).

[49] See Final Finding, "Control of Emissions from New Nonroad Spark-Ignition Engines Rated above 19 Kilowatts and New Land-Based Recreational Spark-Ignition Engines" for EPA's finding for Large SI engines and recreational vehicles (65 FR 76790, December 7, 2000). EPA's findings for marine engines are contained in 61 FR 52088 (October 4, 1996) for gasoline engines and 64 FR 73299 (December 29, 1999) for diesel engines.

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engines, large spark ignition engines used in commercial applications).

3. Summary of Regulated Small Entities

The small entities directly regulated by this proposed rule are the following:

a. Highway Motorcycles. Of the numerous manufacturers supplying the U.S. market for highway motorcycles, Honda, Harley Davidson, Yamaha, Kawasaki, Suzuki, and BMW are the largest, accounting for 95 percent or more of the total U.S. sales. All of these companies except Harley-Davidson and BMW also manufacture off-road motorcycles and ATVs for the U.S. market. Harley-Davidson is the only company manufacturing highway motorcycles exclusively in the U.S. for the U.S. market.

Since highway motorcycles have had to meet emission standards for the last twenty years, EPA has good information on the number of companies that manufacture or market highway motorcycles for the U.S. market in each model year. In addition to the big six manufacturers noted above, EPA finds as many as several dozen more companies that have operated in the U.S. market in the last couple of model years. Most of these are U.S. companies that are either manufacturing or importing motorcycles, although a few are U.S. affiliates of larger companies in Europe or Asia. Some of the U.S. manufacturers employ only a few people and produce only a handful of custom motorcycles per year, while others may employ several hundred and produce up to several thousand motorcycles per year.

The proposed emission standards impose no new development or certification costs for any company producing compliant engines in California. If fact, implementing the California standards with a two-year delay also allows manufacturers to streamline their production to further reduce the cost of compliance. The estimated hardware costs are less than one percent of the cost of producing a highway motorcycle, so none of these companies should have a compliance burden greater than one percent of revenues. We expect that a small number of companies affected by EPA emission standards will not already be certifying products in California. For these companies, the modest effort associated with applying established technology will add compliance costs representing between 1 and 3 percent of revenues. The flexible approach we are proposing to limit testing, reporting, and recordkeeping burden prevent excessive costs for all these companies.

b. Marine Vessels. Marine vessels include the boat, engine, and fuel system. The evaporative emission controls discussed above may affect the boat builders and/or the fuel tank manufacturers. Exhaust emission controls including NTE requirements, as addressed in the August 29, 1999 SBAR Panel Report, would affect the engine manufacturers and may affect boat builders.

EPA has less precise information about recreational boat builders than is available about engine manufacturers. EPA has utilized several sources, including trade associations and Internet sites when identifying entities that build and/or sell recreational boats. EPA has also worked with an independent contractor to assist in the characterization of this segment of the industry. Finally, EPA has obtained a list of nearly 1,700 boat builders known to the U.S. Coast Guard to produce boats using engines for propulsion. At least 1,200 of these companies install engines that use gasoline fueled engines and would therefore be subject to the evaporative emission control program discussed above. More than 90% of the companies identified so far would be considered small businesses as defined by SBA. EPA continues to develop a more complete picture of this segment of the industry and will provide additional information as it becomes available.

Based on information supplied by a variety of recreational boat builders, fuel tanks for boats using SI marine engines are usually purchased from fuel tank manufacturers. However, some boat builders construct their own fuel tanks. The boat builder provides the specifications to the fuel tank manufacturer who helps match the fuel tank for a particular application. It is the boat builder's responsibility to install the fuel tank and connections into their vessel design. For vessels designed to be used with small outboard engines, the boat builder may not install a fuel tank; therefore, the end user would use a portable fuel tank with a connection to the engine.

EPA has determined that total sales of tanks for gasoline marine applications is approximately 550,000 units per year. The market is broken into manufacturers that produce plastic tanks and manufacturers that produce aluminum tanks. EPA has determined that there are at least seven companies that make plastic fuel tanks with total sales of approximately 440,000 units per year. EPA has determined that there at least four companies that make aluminum fuel tanks with total sales of approximately 110,000 units per year. All but one of these plastic and aluminum fuel tank manufacturers is a small business as defined under SBA.

EPA has determined that there are at least 16 companies that manufacture CI diesel engines for recreational vessels. Nearly 75 percent of diesel engines sales for recreational vessels in 2000 can be attributed to three large companies. Six of the 16 identified companies are considered small businesses as defined by SBA. Based on sales estimates for 2000, these six companies represent approximately 4 percent of recreational marine diesel engine sales. The remaining companies each comprise between two and seven percent of sales for 2000.

EPA has determined that there are at least 24 companies that manufacture SD/I gasoline engines (including airboats and jet boats) for recreational vessels. Seventeen of the identified companies are considered small businesses as defined by SBA. These 17 companies represent approximately 6 percent of recreational gasoline marine engines sales for 2000. Approximately 70–80 percent of gasoline SD/I engines manufactured in 2000 can be attributed to one company. The next largest company is responsible for about 10–20 percent of 2000 sales.

For any boat builders that would certify to the proposed requirements, the costs of compliance would be much less than one percent of their revenues. Incremental costs of fuel tanks are dwarfed by the capital and variable costs associated with manufacturing power boats. Of the six known small businesses producing plastic fuel tanks for gasoline-powered marine vessels, these companies would have costs approaching 10 percent of revenues. While this is a large percentage, it comes predominantly from increasing variable costs to upgrade the fuel tanks. Capital expenses to upgrade to compliant products are relatively small. Also, to the extent that tank manufacturers certify their products, they will be increasing the value of their product for their customers, who would otherwise need to assume certification responsibilities. As a result, we believe that these companies will be able to largely recover their compliance costs over time. The net cost absorbed by tank manufacturers will be much less than one percent.

For this proposal as a whole, there are hundreds of small businesses that will have total compliance costs less than 1 percent of their annual revenues. We estimate that three companies will have compliance costs between 1 and 3 percent of revenues and six companies will have compliance costs exceeding 3 percent of revenues.

4. Potential Reporting, Recordkeeping, and Compliance

For any emission control program, EPA must have assurances that the regulated engines will meet the standards. Historically, EPA programs have included provisions placing manufacturers responsible for providing these assurances. The program that EPA is considering for manufacturers subject to this proposal may include testing, reporting, and record keeping requirements. Testing requirements for some manufacturers may include certification (including deterioration testing), and production line testing. Reporting requirements would likely include test data and technical data on the engines including defect reporting. Manufacturers would likely have to keep records of this information.

5. Related Federal Rules

The Panel is aware of several other current Federal rules that relate to the proposed rule under development. During the Panel's outreach meeting, SERs specifically pointed to Consumer Product Safety Commission (CPSC) regulations covering ATVs, and noted that they may be relevant to crafting an appropriate definition for a competition exclusion in this category. The Panel recommends that EPA continue to consult with the CPSC in developing a proposed and final rule in order to better understand the scope of the Commission's regulations as they may relate to the competition exclusion.

Other SERs, representing manufacturers of marine engines, noted that the U.S. Coast Guard regulates vessel tanks, most notably tank pressure and anti-siphoning requirements for carburetted engines. Tank manufacturers would have to take these requirements into account in designing evaporative control systems. The Panel recommends that EPA continue to work with the Coast Guard to evaluate the safety implications of any proposed evaporative emissions standards and to avoid interference with Coast Guard safety regulations.

The Panel is also aware of other Federal rules that relate to the categories that EPA would address with the proposed rule, but are not likely to affect policy considerations in the rule development process. For example, there are now EPA noise standards covering off-road motorcycles; however, EPA expects that most emission control devices are likely to reduce, rather than increase, noise, and that therefore the noise standards are not likely to be important in developing a proposed rule.

OTAQ is currently developing a proposal that would revise the rule assigning fees to be paid by parties required to certify engines in return for continuing Government oversight and testing. Among other options, EPA could propose to extend the fee structure to several classes of non-road engines for which requirements are being established for the first time under the Recreation Rule. The Panel understands that EPA will carefully examine the potential impacts of the Fees Rule on small businesses. The Panel also notes that EPA's Office of Air Quality, Planning, and Standards (OAQPS) is preparing a Maximum Achievable Control Technology (MACT) standard for Engine Testing Facilities, which is a related matter.

6. Significant Panel Findings

The Panel considered a wide range of options and regulatory alternatives for providing small businesses with flexibility in complying with the proposed emissions standards and related requirements. As part of the process, the Panel requested and received comment on several ideas for flexibility that were suggested by SERs and Panel members. The major options recommended by the Panel are summarized below. The complete set of recommendations can be found in Section 9 of the Panel's full Report.

The panel recommendations for motorcycles described below were developed for the exhaust emission standards. Potential controls for permeation emissions from motorcycles were not part of the panel process, because review of the need for such controls resulted from comments received on the related recreational vehicles proposal and further investigation by EPA following the end of the panel process. However, EPA believes that the potential permeation emission controls on motorcycles would not, if promulgated, have a significant effect on the burdens of this rule on regulated entities, or on small entities in particular, due to the relatively low cost and the availability of materials and treatment support by outside vendors. Low permeation fuel hoses are available from vendors today, and we would expect that surface treatment for tanks would be applied through an outside company. We request comment on the need for flexibilities for the potential permeation standards, if they are adopted. If the comments or other information the Agency receives indicate that flexibilities similar to (or the same as) those for the motorcycle exhaust standards are appropriate for the motorcycle permeation standards, then we will adopt such flexibilities as part of our final rule if we adopt such permeation standards.

Many of the flexible approaches recommended by the Panel can be applied to either marine vessels or highway motorcycles. These approaches are listed below:

1. Additional lead time for compliance.
2. Hardship provisions.
3. Certification flexibility.
4. Broadly defined product certification families.
5. Averaging, banking, and trading.

Based on consultations with SERs, the Panel believes that the first two provisions listed above are likely to provide the greatest flexibility for many small entities. These provisions are likely to be most valuable because they either provide more time for compliance (*e.g.*, additional lead time and hardship provisions). The remaining three approaches have the potential to reduce near-term and even long-term costs once a small entity has a product it is preparing to certify. These are important in that the reducing costs of testing several emission families and/or developing deterioration factors. Small businesses could also meet an emission standard on average or generate credits for producing engines which emit at levels below the standard; these credits could then be sold to other manufacturers for compliance or banked for use in future model years.

During the consultation process, it became evident that, in a few situations, it could be helpful to small entities if unique provisions were available. Two such provisions are described below.

a. Marine Vessel Tanks. Most of this sector involves small fuel tank manufacturers and small boat builders. The Panel recommends that the program be structured with longer lead times and an early credit generation program to enable the fuel tank manufacturers to implement controls on tanks on a schedule consistent with their normal turnover of fuel tank molds. Also, the panel recommends that the program allow small businesses have the option of certifying to the evaporative emission performance standards based on fuel tank design characteristics designed to reduce emissions.

b. Highway Motorcycles. The California Air Resources Board (CARB) has found that California's Tier 2 standard is potentially infeasible for small manufacturers. Therefore, the Panel recommends that EPA delay making decisions on the applicability to small businesses of Tier 2 or other such

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revisions to the federal regulations until California's 2006 review is complete.

7. Summary of SBREFA Process and Panel Outreach

As required by section 609(b) of the RFA, as amended by SBREFA, EPA also conducted outreach to small entities and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the rule's requirements.

On May 3, 2001, EPA's Small Business Advocacy Chairperson convened this Panel under Section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). In addition to the Chair, the Panel consisted of the Director of the Assessment and Standards Division (ASD) within EPA's Office of Transportation and Air Quality, the Chief Counsel for Advocacy of the Small Business Administration, and the Deputy Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget. As part of the SBAR process, the Panel met with small entity representatives (SERs) to discuss the potential emission standards and, in addition to the oral comments from SERs, the Panel solicited written input. In the months preceding the Panel process, EPA conducted outreach with small entities from each of the five sectors as described above. On May 18, 2001, the Panel distributed an outreach package to the SERs. On May 30 and 31, 2001, the Panel met with SERs to hear their comments on preliminary alternatives for regulatory flexibility and related information. The Panel also received written comments from the SERs in response to the discussions at this meeting and the outreach materials. The Panel asked SERs to evaluate how they would be affected under a variety of regulatory approaches, and to provide advice and recommendations regarding early ideas for alternatives that would provide flexibility to address their compliance burden.

SERs representing companies in each of the sectors addressed by the Panel raised concerns about the potential costs of complying with the rules under development. For the most part, their concerns were focused on two issues: (1) The difficulty (and added cost) that they would face in complying with certification requirements associated with the standards EPA is developing, and (2) the cost of meeting the standards themselves. SERs observed that these costs would include the opportunity cost of deploying resources for research and development, expenditures for tooling/retooling, and the added cost of new engine designs or other parts that would need to be added to equipment in order to meet EPA emission standards. In addition, in each category, the SERs noted that small manufacturers (and in the case of one category, small importers) have fewer resources and are therefore less well equipped to undertake these new activities and expenditures. Furthermore, because their product lines tend to be smaller, any additional fixed costs must be recovered over a smaller number of units. Thus, absent any provisions to address these issues, new emission standards are likely to impose much more significant adverse effects on small entities than on their larger competitors.

The Panel discussed each of the issues raised in the outreach meetings and in written comments by the SERs. The Panel agreed that EPA should consider the issues raised by the SERs and that it would be appropriate for EPA to propose and/or request comment on various alternative approaches to address these concerns. The Panel's key discussions centered around the need for and most appropriate types of regulatory compliance alternatives for small businesses. The Panel considered a variety of provisions to reduce the burden of complying with new emission standards and related requirements. Some of these provisions would apply to all companies (*e.g.*, averaging, banking, and trading), while others would be targeted at the unique circumstances faced by small businesses. A complete discussion of the regulatory alternatives recommended by the Panel can be found in the Final Panel Report. Copies of the Final Report can be found in the docket for this rulemaking or at *http://www.epa.gov/sbrefa*. Summaries of the Panel's recommended alternatives for each of the sectors subject to this action can be found in the respective sections of the preamble.

As required by section 609(b) of the RFA, as amended by SBREFA, EPA also conducted outreach to small entities and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the rule's requirements. EPA's Small Business Advocacy Chairperson convened this on May 3, 2001. In addition to the Chair, the Panel consisted of the Director of the Assessment and Standards Division (ASD) within EPA's Office of Transportation and Air Quality, the Chief Counsel for Advocacy of the Small Business Administration, and the Deputy Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget.

The proposal being developed includes marine sterndrive and inboard (SD/I) engines and boats powered by SI marine engines. In addition, EPA also intends to update EPA requirements for highway motorcycles. Finally, the proposal being developed included evaporative emission control requirements for gasoline fuel tanks and systems used on marine vessels.

The Panel met with Small Entity Representatives (SERs) to discuss the potential emissions standards and, in addition to the oral comments from SERs, the Panel solicited written input. In the months preceding the Panel process, EPA conducted outreach with small entities from each of the five sectors as described above. On May 18, 2001, the Panel distributed an outreach package to the SERs. On May 30 and 31, 2001, the Panel met with SERs to hear their comments on preliminary options for regulatory flexibility and related information. The Panel also received written comments from the SERs in response to the discussions at this meeting and the outreach materials. The Panel asked SERs to evaluate how they would be affected under a variety of regulatory approaches, and to provide advice and recommendations regarding early ideas to provide flexibility. See Section 8 of the Panel Report for a complete discussion of SER comments, and Appendices A and B for summaries of SER oral comments and SER written comments.

Consistent with the RFA/SBREFA requirements, the Panel evaluated the assembled materials and small-entity comments on issues related to the elements of the IRFA. A copy of the Panel report is included in the docket for this proposed rule. The following are Panel recommendations adopted by the Agency. Please note *all* Panel recommendations were adopted for this proposal.

a. Related Federal Rules. The Panel recommends that EPA continue to consult with the CPSC in developing a proposed and final rule in order to better understand the scope of the Commission's regulations as they may relate to the competition exclusion. In addition, the Panel recommends that EPA continue to work with the Coast Guard to evaluate the safety implications of any proposed evaporative emissions standards and to avoid interference with Coast Guard safety regulations.

b. Regulatory Flexibility Alternatives. The Panel recommends that EPA consider and seek comments on a wide range of alternatives, including the flexibility options described below.

(i) Marine Vessels.

(*A*) Smooth Transition to Proposed Standards.

The Panel recommends that EPA propose an approach that would implement any evaporative standards five years after a regulation for marine engines takes effect. The Panel also recommends that EPA seek comment on this five year period and on whether there are small entities whose product line is dominated by tanks that turn over at a time rate slower time than five years.

(*B*) Design-Based Certification.

The Panel recommends that EPA propose to grant small businesses the option of certifying to the evaporative emission performance requirements based on fuel tank design characteristics that reduce emissions. The Panel also recommends that EPA seek comment on and consider proposing an approach that would allow manufacturers to use this averaging approach with designs other than those listed in the final rule.

(*C*) ABT of Emission Credits with Design-Based Certification.

The Panel recommends that EPA allow manufacturers using design-based certification to generate credits. The Panel also recommends that EPA provide adequately detailed design specifications and associated emission levels for several technology options that could be used to certify.

(*D*) Broadly Defined Product Certification Families.

The Panel recommends that EPA take comment on the need for broadly defined emission families and how these families should be defined.

(*E*) Hardship Provisions.

The Panel recommends that EPA propose two types of hardship programs for marine engine manufacturers, boat builders and fuel tank manufacturers: (1) Allow small businesses to petition EPA for additional lead time to comply with the standards; and (2) allow small businesses to apply for hardship relief if circumstances outside their control cause the failure to comply (*i.e.* supply contract broken by parts supplier) and if the failure to sell the subject fuel tanks or boats would have a major impact on the company's solvency. The Panel also recommends that EPA work with small manufacturers to develop these criteria and how they would be used.

(ii) Highway Motorcycles.

The Panel recommends that EPA include the flexibilities described below for small entities with highway motorcycle annual sales of less than 3,000 units per model year (combined Class I, II, and III motorcycles) and fewer than 500 employees.

(*A*) Delay of Proposed Standards.

The Panel recommends that EPA propose to delay compliance with the Tier 1 standard of 1.4 g/km $HC+NO_x$ until the 2008 model year for small volume manufacturers. The Panel also recommends that EPA seek comment on whether additional time is needed for small businesses to comply with the Federal program. The Panel recommends that EPA participate with CARB in the 2006 progress review as these provisions are revisited, and delay making decisions on the applicability to small businesses of Tier 2 or other revisions to the federal regulations that are appropriate following the review. The Panel also recommends that any potential Tier 2 requirements for small manufacturer motorcycles consider potential test procedure changes arising from the ongoing World Motorcycle Test Cycle work described in the Panel Report.

(*B*) Broader Engine Families.

The Panel recommends that EPA keep the current existing regulations for small volume highway motorcycle manufacturers.

(*C*) Exemption from Production Line Testing.

The Panel recommends that EPA keep the current provisions for no mandatory production line testing requirement for highway motorcycles and allow the EPA to request production vehicles from any certifying manufacturer for testing.

(*D*) Averaging, Banking, and Trading (ABT).

The Panel recommends that EPA propose an ABT program for highway motorcycles.

(*E*) Hardship Provisions.

The Panel recommends that EPA propose two types of hardship programs for highway motorcycles: (1) Allow small businesses to petition EPA for additional lead time to comply with the standards; and (2) allow small businesses to apply for hardship relief if circumstances outside their control cause the failure to comply (*i.e.* supply contract broken by parts supplier) and if failure to sell the subject engines or vehicles would have a major impact on the company's solvency. The Panel also recommends that EPA request comment on the California requirements, which do not include hardship provisions.

(*F*) Reduced Certification Data Submittal and Testing Requirements.

The Panel recommends that EPA keep current EPA regulations allow significant flexibility for certification by manufacturers who project fewer than 10,000 unit sales of combined Class I, II, and III motorcycles.

We invite comments on all aspects of the proposal and its impacts on small entities.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Information Collection Requests (ICR No. 1897.03 for marine vessels and 0783.43 for highway motorcycles) have been prepared by EPA, and a copy may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *auby.susan@epamail.epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov.icr*.

The information being collected is to be used by EPA to ensure that new marine vessels and fuel systems and new highway motorcycles comply with applicable emissions standards through certification requirements and various subsequent compliance provisions.

For marine vessels, the annual public reporting and recordkeeping burden for this collection of information is estimated to average 6 hours per response, with collection required annually. The estimated number of respondents is 810. The total annual cost for the first 3 years of the program is estimated to be $230,438 year and includes no annualized capital costs, $14,000 in operating and maintenance costs, at a total of 4,838 hours per year.

For highway motorcycles, the annual public reporting and recordkeeping burden for this collection of information is estimated to average 228 hours per response, with collection required annually. The estimated number of respondents is 73. The total annual cost for the first 3 years of the program is estimated to be $3,430,908 per year and includes no annualized capital costs, $2,728,000 in operating and maintenance costs, at a total of 16,647 hours per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjusting the

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existing ways to comply with any previously applicable instructions and requirements; train personnel to be able respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 14, 2002, a comment to OMB is best ensured of having its full effect if OMB receives it by September 13, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Intergovernmental Relations

1. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments.

EPA has determined that this rule contains federal mandates that may result in expenditures of less than $100 million to the private sector in any single year. EPA believes that the proposal represents the least costly, most cost-effective approach to achieve the air quality goals of the rule. The costs and benefits associated with the proposal are discussed in Section VI and in the Draft Regulatory Support Document.

2. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule contains no federal mandates for tribal governments. Thus, Executive Order 13175 does not apply to this rule. However, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, we specifically solicit additional comment on this proposed rule from tribal officials.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule involves technical standards. The following paragraphs describe how we specify testing procedures for engines subject to this proposal.

We are proposing to test highway motorcycles with the Federal Test Procedure, a chassis-based transient test. There is no voluntary consensus standard that would adequately address engine or vehicle operation for suitable emission measurement.

For marine vessels, we are proposing to use an evaporative emission test procedure based on the highway Federal Test Procedure. There is no voluntary consensus standard for testing evaporative emission from marine vessels. In addition, we are proposing the option of using design-based certification.

F. Protection of Children (Executive Order 13045)

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that

(1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

The effects of ozone and PM on children's health were addressed in detail in EPA's rulemaking to establish the NAAQS for these pollutants, and EPA is not revisiting those issues here. EPA believes, however, that the emission reductions from the strategies proposed in this rulemaking will further reduce air toxics and the related adverse impacts on children's health.

G. Federalism (Executive Order 13132)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (*i.e.*, the rules will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

Although Section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of various State and local governments in developing this rule. EPA has also consulted representatives from STAPPA/ALAPCO, which represents state and local air pollution officials.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

H. Energy Effects (Executive Order 13211)

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The proposed standards have for their aim the reduction of emission from certain nonroad engines, and have no effect on fuel formulation, distribution, or use. Generally, the proposed program leads to reduced fuel usage due to the reduction of wasted fuel through evaporation.

I. Plain Language

This document follows the guidelines of the June 1, 1998 Executive Memorandum on Plain Language in Government Writing. To read the text of the regulations, it is also important to understand the organization of the Code of Federal Regulations (CFR). The CFR uses the following organizational names and conventions.

Title 40—Protection of the Environment
Chapter I—Environmental Protection Agency
Subchapter C—Air Programs. This contains parts 50 to 99, where the Office of Air and Radiation has usually placed emission standards for motor vehicle and nonroad engines.
Subchapter U—Air Programs Supplement. This contains parts 1000 to 1299, where we intend to place regulations for air programs in future rulemakings.
Part 1045—Control of Emissions from Marine Spark-ignition Engines and Vessels
Part 1068—General Compliance Provisions for Engine Programs. Provisions of this part apply to everyone.

Each part in the CFR has several subparts, sections, and paragraphs. The following illustration shows how these fit together.

Part 1045
Subpart A
Section 1045.1
(a)
(b)
(1)
(2)
(i)
(ii)
(A)
(B)

A cross reference to § 1045.1(b) in this illustration would refer to the parent paragraph (b) and all its subordinate paragraphs. A reference to "§ 1045.1(b) introductory text" would refer only to the single, parent paragraph (b).

List of Subjects

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements

40 CFR Part 90

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Reporting and recordkeeping requirements, Research, Warranties

40 CFR Part 1045

Environmental protection, Administrative practice and procedure,

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Air pollution control, Confidential business information, Imports, Labeling, Penalties, Reporting and recordkeeping requirements, Research, Warranties

40 CFR Part 1051

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

40 CFR Part 1068

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Motor vehicle pollution, Reporting and recordkeeping requirements, Warranties.

Dated: July 25, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7521(l) and 7521(m)–7671q.

Subpart E—[Amended]

2. A new § 86.401–2006 is added to subpart E to read as follows:

§ 86.401–2006 General applicability.

This subpart applies to 1978 and later model year, new, gasoline-fueled motorcycles built after December 31, 1977, and to 1990 and later model year, new methanol-fueled motorcycles built after December 31, 1989, and to 1997 and later model year, new natural gas-fueled and liquefied petroleum gas-fueled motorcycles built after December 31, 1996, and to 2006 and later model year new motorcycles, regardless of fuel.

3. Section 86.402–78(a) is amended by adding a definition for "Motor vehicle" in alphabetical order to read as follows:

§ 86.402–78 Definitions.

(a) * * *

Motor vehicle has the meaning we give in 40 CFR 85.1703.

* * * * *

4. A new § 86.410–2006 is added to subpart E to read as follows:

§ 86.410–2006 Emission standards for 2006 and later model year motorcycles.

(a)(1) Exhaust emissions from Class I and Class II motorcycles shall not exceed the standards listed in the following table:

TABLE E.—2006.1 CLASS I AND II MOTORCYCLE EMISSION STANDARDS

Model year	Emission standards (g/km)	
	HC	CO
2006 and later	1.0	12.0

(2) Exhaust emissions from Class III motorcycles shall not exceed the standards listed in the following table:

TABLE E.—2006.2 CLASS III MOTORCYCLE EMISSION STANDARDS

Tier	Model year	Emission standards (g/km)	
		$HC+NO_x$	CO
1	2006–2009	1.4	12.0
2	2010 and later.	0.8	12.0

(b) The standards set forth in paragraphs (a) (1) and (2) of this section refer to the exhaust emitted over the driving schedule as set forth in subpart F and measured and calculated in accordance with those procedures.

(c) Compliance with the $HC+NO_x$ standards set forth in paragraph (a)(2) of this section may be demonstrated using the averaging provisions of § 86.449.

(d) No crankcase emissions shall be discharged into the ambient atmosphere from any new motorcycle subject to this subpart.

(e) Manufacturers with fewer than 500 employees and producing fewer than 3000 motorcycles per year are considered small-volume manufacturers for the purposes of this section. The following provisions apply for these small-volume manufacturers:

(1) Small-volume manufacturers are not required to comply with the Tier 1 standards until model year 2008.

(2) Small-volume manufacturers are not required to comply with the Tier 2 standards.

5. A new § 86.419–2006 is added to subpart E to read as follows:

§ 86.419–2006 Engine displacement, motorcycle classes.

(a)(1) Engine displacement shall be calculated using nominal engine values and rounded to the nearest whole cubic centimeter, in accordance with ASTM E 29–67 (incorporated by reference in § 86.1).

(2) For rotary engines, displacement means the maximum volume of a combustion chamber between two rotor tip seals, minus the minimum volume of the combustion chamber between those two rotor tip seals, times three times the number of rotors, according to the following formula:

cc = (max. chamber volume − min. chamber volume) × 3 × no. of rotors

(b) Motorcycles will be divided into classes based on engine displacement.

(1) Class I—0 to 169 cc (0 to 10.4 cu. in.).

(2) Class II—170 to 279 cc (10.4 to 17.1 cu. in.).

(3) Class III—280 cc and over (17.1 cu. in. and over).

(c) At the manufacturer's option, a vehicle described in an application for certification may be placed in a higher class (larger displacement). All procedures for the higher class must then be complied with, compliance withemission standards will be determined on the basis of engine displacement.

6. A new § 86.445–2006 is added to subpart E to read as follows:

§ 86.445–2006 What temporary provisions address hardship due to unusual circumstances?

(a) After considering the circumstances, we may permit you to introduce into commerce highway motorcycles that do not comply with emission standards if all the following conditions and requirements apply:

(1) Unusual circumstances that are clearly outside your control and that could not have been avoided with reasonable discretion prevent you from meeting requirements from this chapter.

(2) You exercised prudent planning and were not able to avoid the violation; you have taken all reasonable steps to minimize the extent of the nonconformity.

(3) Not having the exemption will jeopardize the solvency of your company.

(4) No other allowances are available under the regulations to avoid the impending violation.

(b) To apply for an exemption, you must send the Designated Officer a written request as soon as possible before you are in violation. In your request, show that you meet all the conditions and requirements in paragraph (a) of this section.

(c) Include in your request a plan showing how you will meet all the applicable requirements as quickly as possible.

(d) You must give us other relevant information if we ask for it.

(e) We may include reasonable additional conditions on an approval granted under this section, including provisions to recover or otherwise address the lost environmental benefit or

paying fees to offset any economic gain resulting from the exemption. For example, we may require that you meet standards less stringent than those that currently apply.

7. A new § 86.446–2006 is added to subpart E to read as follows:

§ 86.446–2006 What are the provisions for extending compliance deadlines for small-volume manufacturers under hardship?

(a) After considering the circumstances, we may extend the compliance deadline for you to meet new or revised emission standards, as long as you meet all the conditions and requirements in this section.

(b) To be eligible for this exemption, you must qualify as a small-volume manufacturer under § 86.410–2006(e).

(c) To apply for an extension, you must send the Designated Officer a written request. In your request, show that all the following conditionsand requirements apply:

(1) You have taken all possible business, technical, and economic steps to comply.

(i) In the case of importers, show that you are unable to find a manufacturer capable of supplying complying products.

(ii) For all other manufacturers, show that the burden of compliance costs prevents you from meeting the requirements of this chapter.

(2) Not having the exemption will jeopardize the solvency of your company.

(3) No other allowances are available under the regulations to avoidthe impending violation.

(d) In describing the steps you have taken to comply under paragraph (c)(1) of this section, include at least the following information:

(1) Describe your business plan, showing the range of projects active or under consideration.

(2) Describe your current and projected financial standing, with and without the burden of complying with regulations.

(3) Describe your efforts to raise capital to comply with regulations.

(4) Identify the engineering and technical steps you have taken or planto take to comply with regulations.

(5) Identify the level of compliance you can achieve. For example, you may be able to produce engines that meet a somewhat less stringent emission standard than the regulations require.

(e) Include in your request a plan showing how you will meet all the applicable requirements as quickly as possible.

(f) You must give us other relevant information if we ask for it.

(g) An authorized representative of your company must sign the request andinclude the statement: "All the information in this request is true andaccurate, to the best of my knowledge."

(h) Send your request for this extension at least nine months before new standards apply. Do not send your request before the regulations in question apply to other manufacturers.

(i) We may include reasonable requirements on an approval granted underthis section, including provisions to recover or otherwise address the lostenvironmental benefit. For example, we may require that you meet a less stringent emission standard or buy and use available emission credits.

(j) We will approve extensions of up to one year. We may review and revisean extension as reasonable under the circumstances.

8. A new § 86.447–2006 is added to subpart E to read as follows:

§ 86.447–2006 What are the provisions for exempting motorcycles under 50 cc from the requirements of this part if they use engines you certify under other programs?

(a) This section applies to you if you manufacture engines under 50 cc for installation in a highway motorcycle. See § 86.448–2006 if you are not the engine manufacturer.

(b) The only requirements or prohibitions from this part that apply to a motorcycle that is exempt under this section are in this section and § 86.448–2006.

(c) If you meet all the following criteria regarding your new engine, itis exempt under this section:

(1) You must produce it under a valid certificate of conformity for one of the following types of engines or vehicles:

(i) Class II engines under 40 CFR part 90.

(ii) Recreational vehicles under 40 CFR part 1051.

(2) You must not make any changes to the certified engine that we could reasonably expect to increase its exhaust emissions. For example, if you make any of the following changes to one of these engines, you do not qualify for this exemption:

(i) Change any fuel system parameters from the certified configuration.

(ii) Change any other emission-related components.

(iii) Modify or design the engine cooling system so that temperatures or heat rejection rates are outside the original engine's specified ranges.

(3) You must make sure the engine has the emission label we require under 40 CFR part 90 or part 1051.

(4) You must make sure that fewer than 50 percent of the engine model'stotal sales, from all companies, are used in highway motorcycles.

(d) If you produce only the engine, give motorcycle manufacturers anynecessary instructions regarding what they may or may not change under paragraph (c)(2) of this section.

(e) If you produce both the engine and motorcycle under this exemption, you must do all of the following to keep the exemption valid:

(1) Make sure the original emission label is intact.

(2) Add a permanent supplemental label to the engine in a position where it will remain clearly visible after installation in the vehicle. In your engine's emission label, do the following:

(i) Include the heading: "Highway Motorcycle Emission ControlInformation".

(ii) Include your full corporate name and trademark.

(iii) State: "THIS ENGINE WAS ADAPTED FOR HIGHWAY USE WITHOUT AFFECTING ITS EMISSION CONTROLS.".

(iv) State the date you finished installation (month and year).

(3) Send the Designated Officer a signed letter by the end of each calendar year (or less often if we tell you) with all the following information:

(i) Identify your full corporate name, address, and telephone number.

(ii) List the models you expect to produce under this exemption in the coming year.

(iii) State: "We produce each listed model as a highway motorcycle without making any changes that could increase its certified emission levels, as described in 40 CFR 86.447.".

(f) If your vehicles do not meet the criteria listed in paragraph (c) of this section, they will be subject to the standards and prohibitions of this part. Producing these vehicles without a valid exemption or certificate of conformity would violate the prohibitions in Clean Air Act section 203 (42 U.S.C. 7522).

(g) If we request it, you must send us emission test data on the duty cycle for Class I motorcycles. You may include the data in your application for certification or in your letter requesting the exemption.

(h) Vehicles exempted under this section are subject to all the requirements affecting engines and vehicles under 40 CFR part 90 or part 1051, as applicable. The requirements and restrictions of 40 CFR part 90 or 1051 apply to anyone manufacturing these engines, anyone manufacturing vehicles that use these engines, and all other persons in the same manner as if

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these engines were used in a nonroad application.

9. A new § 86.448–2006 is added to subpart E to read as follows:

§ 86.448–2006 What are the provisions for producing motorcycles under 50 cc with engines already certified under other programs?

(a) You may produce a highway motorcycle under 50 cc using a nonroad engine if you meet three criteria:

(1) The engine or vehicle is certified to 40 CFR part 90 or part 1051.

(2) The engine is not adjusted outside the manufacturer's specifications, as described in § 86.447–2006(c)(2) and (d).

(3) The engine or vehicle is not modified in any way that may affect its emission control.

(b) This section does not apply if you manufacture the engine yourself; see § 86.447–2006.

10. A new § 86.449 is added to subpart E to read as follows:

§ 86.449 Averaging provisions.

(a) Compliance with the $HC+NO_X$ standards set forth in § 86.410–2006(a)(2) may be demonstrated using the averaging provisions of this section. To do this you must show that your average emission levels are at or below the applicable standards in § 86.410–2006. Family emission limits (FELs) may not exceed 5.0 g/km.

(b) Do not include any exported vehicles in the certification averaging program. Include only motorcycles certified under this subpart.

(c) To use the averaging program, do the following things:

(1) Certify each vehicle to a family emission limit.

(2) Calculate a preliminary average emission level according to paragraph (d) of this section using projected production volumes for your application for certification.

(3) After the end of your model year, calculate a final average emission level according to paragraph (d) of this section for each type of recreational vehicle or engine you manufacture or import. Use actual production volumes.

(d) Calculate your average emission level for each type of recreational vehicle or engine for each model year according to the following equation and round it to the nearest tenth of a g/km. Use consistent units throughout the calculation.

(1) Calculate the average emission level as:

$$\text{Emission level} = \left[\sum_i (\text{FEL})_i \times (\text{UL})_i \times (\text{Production})_i\right] \Big/ \left[\sum_i (\text{Production})_i \times (\text{UL})_i\right]$$

Where:

FEL_i = The FEL to which the engine family is certified.

UL_i = The useful life of the engine family.

$Production_i$ = The number of vehicles in the engine family.

(2) Use production projections for initial certification, and actual production volumes to determine compliance at the end of the model year.

(e)(1) Maintain and keep five types of properly organized and indexed records for each group and for each emission family:

(i) Model year and EPA emission family.

(ii) FEL.

(iii) Useful life.

(iv) Projected production volume for the model year.

(v) Actual production volume for the model year.

(2) Keep paper records of this information for three years from the due date for the end-of-year report. You may use any additional storage formats or media if you like.

(3) Follow paragraphs (f) through (i) of this section to send us the information you must keep.

(4) We may ask you to keep or send other information necessary to implement this subpart.

(f) Include the following information in your applications for certification:

(1) A statement that, to the best of your belief, you will not have a negative credit balance for any type of recreational vehicle or engine when all credits are calculated. This means that if you believe that your average emission level will be above the standard (*i.e.*, that you will have a deficit for the model year), you must have banked credits pursuant to paragraph (j) of this section to offset the deficit.

(2) Detailed calculations of projected emission credits (zero, positive, or negative) based on production projections. If you project a credit deficit, state the source of credits needed to offset the credit deficit.

(g) At the end of each model year, send an end-of-year report.

(1) Make sure your report includes three things:

(i) Calculate in detail your average emission level and any emission credits based on actual production volumes.

(ii) If your average emission level is above the allowable average standard, state the source of credits needed to offset the credit deficit.

(2) Base your production volumes on the point of first retail sale. This point is called the final product-purchase location.

(3) Send end-of-year reports to the Designated Officer within 120 days of the end of the model year. If you send reports later, you are violating the Clean Air Act.

(4) If you generate credits for banking pursuant to paragraph (j) of this section and you do not send your end-of-year reports within 120 days after the end of the model year, you may not use or trade the credits until we receive and review your reports. You may not use projected credits pending our review.

(5) You may correct errors discovered in your end-of-year report, including errors in calculating credits according to the following table:

If. . .	And if. . .	Then we . . .
(i) Our review discovers an error in your end-of-year report that increases your credit balance.	the discovery occurs within 180 days of receipt.	restore the credits for your use.
(ii) You discover an error in your report that increases your credit balance.	the discovery occurs within 180 days of receipt.	restore the credits for your use.
(iii) We or you discover an error in your report that increases your credit balance.	the discovery occurs more than 180 days after receipt.	do not restore the credits for your use.
(iv) We discover an error in your report that reduces your credit balance.	at any time after receipt	reduce your credit balance.

(h) Include in each report a statement certifying the accuracy and authenticity of its contents.

(i) We may void a certificate of conformity for any emission family if you do not keep the records this section requires or give us the information when we ask for it.

(j) You may include motorcycles that you certify with $HC+NO_X$ emissions below 0.8 g/km in the following optional early banking program:

(1) To include a motorcycle in the early banking program, assign it an emission rate of 0.8 g/km when calculating your average emission level for compliance with the Tier 1 standards.

(2)(i) Calculate bankable credits from the following equation:

Bonus credit = Y x [(0.8 g/km—Certfied emission level)]x [(Production volume of engine family) x (Useful life)]

(ii) The value of Y is defined by the model year and emission level, as shown in the following table:

Model year	Multiplier (Y) for use in MY 2010 or later corporate averaging	
	If your certified emission level is less than 0.8 g/km, but greater than 0.4 g/km, then Y = . . .	If your certified emission level is less than 0.4 g/km, then Y = . . .
2003 through 2006	1.5	3.0
2007	1.375	2.5
2008	1.250	2.0
2009	1.125	1.5

(3) Credits banked under this paragraph (j) may be used for compliance with any 2010 or later model year standards as follows:

(i) If your average emission level is above the average standard, calculate your credit deficit according to the following equation, rounding to the nearest tenth of a gram:

Deficit = (Emission Level − Average Standard) x (Total Annual Production)

(ii) Credits deficits may be offset using banked credits.

Subpart F—[Amended]

11. A new § 86.513–2004 is added to subpart F to read as follows:

§ 86.513–2004 Fuel and engine lubricant specifications.

Section 86.513–2004 includes text that specifies requirements that differ from § 86.513–94. Where a paragraph in § 86.513–94 is identical and applicable to § 86.513–2004, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.513–94." Where a corresponding paragraph of § 86.513–94 is not applicable, this is indicated by the statement "[Reserved]."

(a) *Gasoline.* (1) Gasoline having the following specifications will be used by the Administrator in exhaust emission testing of gasoline-fueled motorcycles. Gasoline having the following specifications or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer for emission testing except that the octane specifications do not apply.

TABLE 1 OF § 86.513–2004.—GASOLINE TEST FUEL SPECIFICATIONS

Item	Procedure	Value
Distillation Range:		
1. Initial boiling point, °C	ASTM D 86–97	23.9—35.0.[1]
2. 10% point, °C	ASTM D 86–97	48.9—57.2
3. 50% point, °C	ASTM D 86–97	93.3—110.0.
4. 90% point, °C	ASTM D 86–97	148.9—162.8.
5. End point, °C	ASTM D 86–97	212.8.
Hydrocarbon composition:		
1. Olefins, volume %	ASTM D 1319–98	10 maximum.
2. Aromatics, volume %	ASTM D 1319–98	35 minimum.
3. Saturates	ASTM D 1319–98	Remainder.
Lead (organic), g/liter	ASTM D 3237	0.013 maximum.
Phosphorous, g/liter	ASTM D 3231	0.005 maximum.
Sulfur, weight %	ASTM D 1266	0.08 maximum.
Volatility (Reid Vapor Pressure), kPa	ASTM D 3231	55.2 to 63.4.[1]

[1] For testing at altitudes above 1 219 m, the specified volatility range is 52 to 55 kPa and the specified initial boiling point range is 23.9° to 40.6° C.

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(2) Unleaded gasoline and engine lubricants representative of commercial fuels and engine lubricants which will be generally available though retail outlets shall be used in service accumulation.

(3) The octane rating of the gasoline used shall be no higher than 4.0. Research octane numbers above the minimum recommended by the manufacturer.

(4) The Reid Vapor Pressure of the gasoline used shall be characteristic of commercial gasoline fuel during the season in which the service accumulation takes place.

(b) through (d) [Reserved]. For guidance see § 86.513–94.

12. Section 86.544–90 is amended by revising the text preceding the formula to read as follows:

§ 86.544–90 Calculations; exhaust emissions.

The final reported text results, with oxides of nitrogen being optional for model years prior to 2006 and required for 2006 and later model years, shall be computed by use of the following formula (The results of all emission tests shall be rounded, in accordance with ASTM E29–90 (incorporated by reference in § 86.1), to the number of places to the right of the decimal point indicated by expressing the applicable standard to three significant figures.):

* * * * *

Subpart I [Amended]

13. Section 86.884–14 is amended by revising the equation in paragraph (a) to read as follows:

§ 86.884–14 Calculations.

(a) * * *

* * * * *

$$N_s = 100 \times \left(1 - \left(1 - N_m/100\right)^{L_s/L_m}\right)$$

PART 90—CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES

14. The authority for part 90 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a).

Subpart A—[Amended]

15. Section 90.1 as proposed at 66 FR 51181 is amended by adding a new paragraph (f) to read as follows:

§ 90.1 Applicability.

* * * * *

(f) This part also applies to engines under 50 cc used in highway motorcycles if the manufacturer uses the provisions of 40 CFR 86.447–2006 to meet the emission standards in this part instead of the requirements of 40 CFR part 86. Compliance with the provisions of this part is a required condition of that exemption.

Subchapter U—Air Pollution Controls

16. Part 1045 is added to subchapter U as proposed at 66 FR 51189 to read as follows:

PART 1045—CONTROL OF EMISSIONS FROM SPARK-IGNITION MARINE VESSELS

Subpart A—Determining How to Follow This Part

Sec.

1045.1 Does this part apply to me?
1045.5 Are any of my vessels excluded from the requirements of this part?
1045.10 What main steps must I take to comply with this part?
1045.15 Do any other regulation parts affect me?
1045.20 Can I certify just the fuel system instead of the entire vessel?

Subpart B—Emission Standards and Related Requirements

1045.105 What evaporative emission standards must my vessels meet?
1045.115 What other requirements must my vessels meet?
1045.120 What warranty requirements apply to me?
1045.125 What maintenance instructions must I give to buyers?
1045.130 What installation instructions must I give to vessel manufacturers?
1045.135 How must I label and identify the vessels and fuel systems I produce?
1045.140 What interim provisions apply only for a limited time?
1045.145 What provisions apply to non-certifying manufacturers?

Subpart C—Certifying Emission Families

1045.201 What are the general requirements for submitting a certification application?
1045.205 How must I prepare my application?
1045.215 What happens after I complete my application?
1045.225 How do I amend my application to include a new or modified product?
1045.230 How do I select emission families?
1045.235 How does testing fit with my application for a certificate of conformity?
1045.240 How do I determine if my emission family complies with emission standards?
1045.245 What records must I keep and make available to EPA?
1045.250 When may EPA deny, revoke, or void my certificate of conformity?

Subpart D—[Reserved]

Subpart E—Testing In-use Engines

1045.401 What provisions apply for in-use testing of vessels?

Subpart F—Test Procedures

1045.501 What equipment and general procedures must I use to test my vessels?
1045.505 How do I test for diurnal evaporative emissions?
1045.506 How do I test my fuel tank for permeation emissions?

Subpart G—Compliance Provisions

1045.601 What compliance provisions apply to these vessels?

Subpart H—Averaging, Banking, and Trading for Certification

1045.701 General provisions.
1045.705 How do I average emission levels?
1045.710 How do I generate and bank emission credits?
1045.715 How do I trade or transfer emission credits?
1045.720 How do I calculate my average emission level or emission credits?
1045.725 What information must I keep?
1045.730 What information must I report?

Subpart I—Definitions and Other Reference Information

1045.801 What definitions apply to this part?
1045.805 What symbols, acronyms, and abbreviations does this part use?
1045.810 What materials does this part reference?
1045.815 How should I request EPA to keep my information confidential?
1045.820 How do I request a public hearing?

Authority: 42 U.S.C. 7401–7671(q).

Subpart A—Determining How To Follow This Part

§ 1045.1 Does this part apply to me?

(a) This part applies to you if you manufacture or import new spark-ignition marine vessels (defined in § 1045.801) or part of a fuel system for such vessels (defined in § 1045.801), unless we exclude the vessels under § 1045.5. You should read § 1045.145 to determine whether we require all manufacturers to meet a specific requirement.

(b) See 40 CFR part 90 to meet exhaust-emission requirements for spark-ignition marine engines. Note that 40 CFR part 90 does not apply to all spark-ignition marine engines.

(c) Note in subpart G of this part that 40 CFR part 1068 applies to everyone, including anyone who manufactures, owns, operates, or repairs any of the vessels this part covers.

(d) You need not follow this part for vessels produced before the 2008 model year, unless you certify voluntarily. See § 1045.105, § 1045.145, and the definition of model year in § 1045.801 for more information about the timing of new requirements.

(e) See §§ 1045.801 and 1045.805 for definitions and acronyms that apply to this part.

(f) For now, ignore references to engines, which will apply when we establish exhaust emission standards in this part for spark-ignition marine engines.

§ 1045.5 Are any of my vessels excluded from the requirements of this part?

(a) The requirements of this part do not apply to either of two types of marine vessels:

(1) *Hobby vessels.*

(2) Vessels fueled with diesel fuel, LPG, natural gas, or other fuel that is not a volatile liquid fuel.

(b) See part 1068, subpart C, of this chapter for exemptions of specific vessels.

(c) We may require you to label a vessel if this section excludes it and other requirements in this chapter do not apply (for example, hobby vessels).

(d) Send the Designated Officer a written request with supporting documentation if you want us to determine whether this part covers or excludes certain vessels. Excluding engines from this part's requirements does not affect other requirements that may apply to them.

§ 1045.10 What main steps must I take to comply with this part?

(a) Every new vessel subject to the standards in this part must be covered by a certificate of conformity before it is sold, offered for sale, introduced into commerce, distributed or delivered for introduction into commerce, or imported into the United States. For evaporative emissions, either the vessel manufacturer or the fuel system manufacturer must apply for a certificate of conformity for each new model year.

(b) To get a certificate of conformity and comply with its terms, you must do three things:

(1) Show that each vessel will meet one of the individual emission standards and other requirements in subpart B of this part. You may also need to meet a corporate-average emission standard (see § 1045.105).

(2) Apply for certification (see subpart C of this part).

(3) Follow our instructions throughout this part.

(c) Subpart F of this part and 40 CFR part 86 describe the procedures you must follow to test your vessels. Subpart F of this part and § 1045.20 describe cases for which you may test the fuel system alone instead of testing the entire vessel.

(d) Subpart G of this part and 40 CFR part 1068 of this chapter describe requirements and prohibitions that apply to manufacturers, owners, operators, repairers, and all others associated with spark-ignition marine vessels.

§ 1045.15 Do any other regulation parts affect me?

(a) Part 86 of this chapter describes how to measure evaporative emissions. Subpart F of this part describes how to apply part 86 of this chapter to show you meet this part's emission standards.

(b) Part 1068 of this chapter describes general provisions, including these seven areas:

(1) Prohibited acts and penalties for manufacturers and others.

(2) Rebuilding and other aftermarket changes.

(3) Exemptions for certain vessels.

(4) Importing vessels.

(5) Selective enforcement audits of your production.

(6) Defect reporting and recall.

(7) Procedures for public hearing.

(c) Other parts of this chapter affect you if referenced in this part.

§ 1045.20 Can I certify just the fuel system instead of the entire vessel?

(a) You may certify only the fuel system if you manufacture part or all of the system for a vessel. Vessels using certified fuel systems do not need to be certified separately.

(b) If you certify a fuel system, you must do two things:

(1) Use good engineering judgment to ensure the engine will comply with emission standards after it is installed in a vessel.

(2) Comply with § 1045.130.

(c) Do not use the provisions of this section to circumvent emission standards or other requirements of this part.

Subpart B—Emission Standards and Related Requirements

§ 1045.105 What evaporative emission standards must my vessels meet?

Beginning January 1, 2008, each new vessel and new portable fuel tank must be certified to the emission standards of paragraphs (a) and (b) of this section (except as allowed by paragraph (c) of this section). Vessel manufacturers may certify vessels directly or use fuel systems certified by fuel-system manufacturers.

(a) *Diurnal Emissions.* Diurnal emissions from your vessel may not exceed 1.1 grams per gallon per day as measured according to the diurnal evaporative test procedures in subpart F of this part. You may use the averaging provisions in Subpart H of this part to show you meet the standards of this paragraph (a). Emission standards described in this paragraph apply to marine vessels with installed fuel tanks; they do not apply to portable fuel tanks, which are addressed in paragraph (c) of this section.

(b) *Permeation emissions.* Permeation emissions may not exceed the following standards:

(1) Permeation emissions from your vessel's fuel tank(s) may not exceed 0.08 grams per gallon per day as measured according to the tank permeation test procedures in subpart F of this part.

(2) Permeation emissions from your vessel's fuel lines may not exceed 5 grams per square-meter per day as measured according to the fuel line permeation test procedures in subpart F of this part. Use the inside diameter of the hose to determine the surface area of the hose.

(c) You may certify portable fuel tanks to the diurnal emission standards in paragraph (a) of this section by meeting the following design criteria:

(1) The tank may include no more than two vents, which must be readily sealable for pressures up 3 psig.

(2) All vents and the fuel-line connection to the engine must seal automatically when disconnected.

(d) You may certify vessels and fuel systems using the control technologies shown in the following tables "by design." This means the design of these technologies certifies them to the standards specified in paragraph (a) of this section:

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TABLE 1 OF § 1045.105.—DIURNAL LEVELS FOR DESIGN CERTIFICATION

If the diurnal control technology is . . .	Then you may design-certify with a diurnal emission level of . . .
1. Open-vented fuel tank	1.5 g/gal/test.
2. A sealed fuel tank with a pressure-relief valve that would open at a pressure of 0.5 psi	1.3 g/gal/test.
3. A sealed insulated fuel tank (R-value of 15 or better) with a limited flow orifice with a maximum cross-sectional area defined by the following equation: Area in mm^2 = 0.04 × fuel tank capacity in gallons (Example: A 20 gallon tank with an orifice no more than 1.0 mm in diameter.)	1.3 g/gal/test.
4. A sealed fuel tank with a pressure-relief valve that would open at a pressure of 1.0 psi	1.1 g/gal/test.
5. A sealed fuel tank with a pressure-relief valve that would open at a pressure of 1.5 psi	0.9 g/gal/test.
6. A sealed fuel tank with a pressure-relief valve that would open at a pressure of 2.0 psi	0.7 g/gal/test.
7. A sealed fuel tank with a pressure-relief valve that would open at a pressure of 0.5 psi, and with a volume-compensating bag made from a low-permeability material[1] with a bag volume equal to at least 25 percent of the volume of the fuel tank.	0.5 g/gal/test.
8. A sealed bladder fuel tank made from a low-permeability	0.1 g/gal/test.

[1] Permeability of 5 g/m^2/day or less.

TABLE 2 OF § 1045.105.—TANK PERMEATION LEVELS FOR DESIGN CERTIFICATION

If the tank permeability control technology is . . .	Then you may design-certify with a tank emission level of . . .
1. A metal fuel tank with no non-metal gaskets or with gaskets made from a low-permeability material[1]	0.08 g/gal/test-day.
2. A metal fuel tank with non-metal gaskets with an exposed surface area of 1000 mm^2 or less	0.08 g/gal/test-day.

[1] Permeability of 10 g/m^2/day or less.

TABLE 3 OF § 1045.105.—FUEL AND VENT-LINE PERMEATION LEVELS FOR DESIGN CERTIFICATION

If the fuel-line and vent-line permeability control technology is . . .	Then you may design-certify with a fuel line permeation emission level of . . .
Hose meeting SAE 2260 Category 1 permeation level[1]	5 g/m^2/test-day.

[1] Hose must also meet U.S. Coast Guard Regulations.

(e) We may establish additional design certification options based on test data.

§ 1045.115 What other requirements must my vessels meet?

(a) through (d) [Reserved]

(e) *Prohibited controls.* You may not do either of the following things:

(1) You may not design engines or vessels with an emission-control system that emits any noxious or toxic substance that the engine would not emit during operation in the absence of such a system, except as specifically permitted by regulation.

(2) You may not design engines or vessels with an emission-control system that is unsafe. For example, emission controls must comply with all applicable U.S. Coast Guard regulations.

(f) *Defeat devices.* You may not equip your vessels with a defeat device. A defeat device is an auxiliary emission-control device or other control feature that degrades emission controls under conditions you may reasonably expect the vessel to encounter during normal operation and use.

(g) *Evaporative technology.* Make sure (by testing or engineering analysis) that technologies used to meet evaporative emission standards keep working for at least 30 days while the boat or engine is not used. Design them to last for the full *useful life.* The useful life for evaporative controls is ten years.

(h) *Fuel-tank location.* The test procedures in subpart F of this part do not represent the experience of a vessel with the fuel tank exposed to direct sunlight (sun exposure can cause much greater fuel-temperature swings, which would increase evaporative emissions). If you design your vessel this way, you must show that you meet emission standards by measuring emissions with a test that incorporates the effect of the sun's radiant heat. Note: This requirement does not apply to portable fuel tanks.

§ 1045.120 What warranty requirements apply to me?

(a) You must warrant to the ultimate buyer that the new vessel meets two conditions:

(1) You have designed, built, and equipped it to meet the requirements of this part.

(2) It is free from defects in materials and workmanship that may keep it from meeting these requirements.

(b) Your emission-related warranty for evaporative controls must be valid for at least 50 percent of the useful life in years. You may offer a warranty more generous than we require. This warranty may not be shorter than any published or negotiated warranty you offer for the vessel or any of its components.

§ 1045.125 What maintenance instructions must I give to buyers?

Give the ultimate buyer of each new vessel written instructions for properly maintaining and using the vessel, including the emission-control system.

§ 1045.130 What installation instructions must I give to vessel manufacturers?

(a) If you sell a certified fuel system for someone else to install in a spark-ignition marine vessel, give the buyer of the fuel system written instructions for installing it consistent with the requirements of this part. Make sure these instructions have the following information:

(1) Include the heading: "Emission-related installation instructions."

(2) State: "Failing to follow these instructions when installing a certified fuel system in a spark-ignition marine vessel violates federal law (40 CFR 1068.105(b)), subject to fines or other penalties as described in the Clean Air Act.".

(3) Describe any other instructions to make sure the installed fuel system will operate according to design specifications in your application for certification.

(4) State: "If you obscure the fuel system's emission label, you must attach a duplicate label to your vessel, as described in 40 CFR 1068.105.".

(b) You do not need installation instructions for fuel systems you install in your own vessel.

§ 1045.135 How must I label and identify the vessels and fuel systems I produce?

(a) [Reserved]

(b) At the time of manufacture, add a permanent label identifying each tank. To meet labeling requirements, do three things:

(1) Attach the label in one piece so it is not removable without being destroyed or defaced.

(2) Design and produce it to be durable and readable for the vessel's entire life.

(3) Write it in block letters in English.

(c) On your fuel tank label, do ten things:

(1) Include the heading "EMISSION CONTROL INFORMATION."

(2) Include your full corporate name and trademark.

(3) State: "THIS VESSEL IS CERTIFIED TO OPERATE ON [specify operating fuel or fuels].".

(4) State the date of manufacture [DAY (optional), MONTH, and YEAR].

(5) State: "THIS VESSEL MEETS U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS FOR [MODEL YEAR] VESSELS].".

(6) Include EPA's standardized designation for the emission family.

(7) Include the model number (or part number) of the fuel tank.

(8) Include the part number(s) of the fuel lines.

(9) Include the fuel tank capacity in U.S. gallons.

(10) Describe other information on proper maintenance and use.

(11) Identify any other emission standards to which you have certified the vessel.

(d) You may combine the EPA emission control label with the label required by the U.S. Coast Guard. If you are unable to meet the exact labeling requirements described in paragraph (c) of this section for your combined label, you may ask us to modify the requirements consistent with the intent of this section.

(e) Some vessels may not have enough space for a label with all the required information. In this case, we may allow you to omit some of the information required if you print it in the owner's manual instead.

(f) If you are unable to meet these labeling requirements, you may ask us to modify them consistent with the intent of this section.

(g) If you obscure the fuel-tank label while installing the tank in the vessel, you must place a duplicate label on the vessel. If someone else installs the fuel tank in a vessel, give them duplicate labels if they ask for them (see 40 CFR 1068.105).

(h) Non-metallic fuel lines must be labeled with the name of the fuel line manufacturer and with a permeability classification.

§ 1045.140 What interim provisions apply only for a limited time?

From 2004 to 2007, if you certify to an FEL below the average standard in § 1045.105(a), you may generate early credits. Calculate credits according to § 1045.720(b) by replacing "Average Standard" with 1.1 g/gallon and "Emission Level" with the FEL to which the emission family is certified.

§ 1045.145 What provisions apply to non-certifying manufacturers?

(a) *General requirements.* The following general requirements apply to non-certifying manufacturers:

(1) Every manufacturer is responsible for compliance with the requirements of this part that apply to manufacturers. However, if one manufacturer complies with a requirement, then we will consider all manufacturers to have complied with that specific requirement.

(2) Where more than one entity meets the definition of manufacturer for a particular vessel and any one of the manufacturers obtains a certificate of conformity covering the whole vessel, the requirements of subparts C and H of this part and subparts E and F of part 1068 of this chapter apply to the manufacturer that holds the certificate of conformity. Other manufacturers must meet the requirements of subparts C and H of this part and subparts E and F of part 1068 of this chapter only if we say so. In this case, we will allow a reasonable time to meet the requirements that apply.

(b) *Requirements for permeability treatment.* If you treat fuel tanks or fuel lines to reduce permeability but do not hold the certificate, you must keep records of the treatment process for three years after the treatment occurs. You must make these records available to us if we request them.

(c) *Requirements for fuel system or emission control components.* If you manufacture a fuel system component or an emission control component or fuel lines used to reduce permeability but do not hold the certificate, we may require you to keep records of your manufacturing process for three years after the component is manufactured. You must make these records available to us if we request them.

(d) *Requirements for emission test data.* If a certifying manufacturer uses your emission test data to certify, we may require you to give us a signed statement verifying that your tests were conducted using the test procedures in this part.

Subpart C—Certifying Emission Families

§ 1045.201 What are the general requirements for submitting a certification application?

(a) Send us an application for a certificate of conformity for each emission family. Each application is valid for only one model year.

(b) The application must not include false or incomplete statements or information (see § 1045.250). We may choose to ask you to send us less information than we specify in this subpart, but this would not change your recordkeeping requirements.

(c) Use good engineering judgment for all decisions related to your application (see § 1068.005 of this chapter).

(d) An authorized representative of your company must approve and sign the application.

§ 1045.205 How must I prepare my application?

In your application, you must do all the following things:

(a) Describe the emission family's specifications and other basic

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parameters of the design. List the types of fuel you intend to use to certify the emission family (for example, gasoline or methanol).

(b) Explain how the emission-control system operates. Describe in detail all the system's components, auxiliary emission-control devices, and all fuel-system components you will install on any production or test system. Explain how you determined that the emission-control system comply with the requirements of § 1045.115, including why any auxiliary emission-control devices are not defeat devices (see § 1045.115(f)). Do not include detailed calibrations for components unless we ask for them.

(c) Describe the vessels, engines, tanks, and/or hoses you selected for testing and the reasons for selecting them.

(d) Describe any special or alternate test procedures you used (see § 1045.501).

(e) [Reserved]

(f) List the specifications of the test fuel to show that it falls within the required ranges we specify in 40 CFR part 1065, subpart C.

(g) Identify the emission family's useful life.

(h) Propose maintenance and use instructions for the ultimate buyer (see § 1045.125).

(i) Propose emission-related installation instructions if you sell fuel systems for someone else to install in a vessel (see § 1045.130).

(j) Propose an emission-control label.

(k) Present emission data for HC to show you meet the emission standards we specify in § 1045.105.

(l) Report all test results, including those from invalid tests or from any nonstandard tests.

(m) [Reserved]

(n) Describe all adjustable operating parameters.

(o) If you conducted testing, state that you conducted your emission tests according to the specified procedures and test parameters using the fuels described in the application to show you meet the requirements of this part.

(p) If you did not conduct testing, state how your emission family meets the requirements for design certification.

(q) State unconditionally that all the vessels in the emission family comply with the requirements of this part, other referenced parts, and the Clean Air Act (42 U.S.C. 7401 *et seq.*).

(r) Include estimates of vessel (or fuel system) production.

(s) Add other information to help us evaluate your application if we ask for it.

§ 1045.215 What happens after I complete my application?

(a) If any of the information in your application changes after you submit it, amend it as described in § 1045.225.

(b) We may decide that we cannot approve your application unless you revise it.

(1) If you inappropriately use the provisions of § 1045.230(c) or (d) to define a broader or narrower emission family, we will require you to redefine your emission family.

(2) If your proposed label is inconsistent with § 1045.135, we will require you to change it (and tell you how, if possible).

(3) If you require or recommend maintenance and use instructions inconsistent with § 1045.125, we will require you to change them.

(4) If we find any other problem with your application, we will tell you how to correct it.

(c) If we determine your application is complete and shows you meet all the requirements, we will issue a certificate of conformity for your emission family for that model year. If we deny the application, we will explain why in writing. You may then ask us to hold a hearing to reconsider our decision (see § 1045.820).

§ 1045.225 How do I amend my application to include a new or modified product?

(a) You must amend your application for certification before you take either of the following actions:

(1) Add a vessel, engine, or fuel system to a certificate of conformity.

(2) Make a design change for a certified emission family that may affect emissions or an emission-related part over the lifetime of the vessel, engine, or fuel system.

(b) Send the Designated Officer a request to amend the application for certification for an emission family. In your request, do all of the following:

(1) Describe the model or configuration you are adding or changing.

(2) Include engineering evaluations or reasons why the original testing is or is not still appropriate.

(3) If the original testing for the emission family is not appropriate to show compliance for the new or modified vessel, include new test data showing that the new or modified product meets the requirements of this part.

(c) You may start producing the new or modified product anytime after you send us your request.

(d) You must give us test data within 30 days if we ask for more testing, or stop production if you are not able do this.

(e) If we determine that the certificate of conformity would not cover your new or modified product, we will send you a written explanation of our decision. In this case, you may no longer produce these vessels, engines, or fuel systems, though you may ask for a hearing for us to reconsider our decision (see § 1045.820).

§ 1045.230 How do I select emission families?

(a) Divide your product line into groups of vessels (or fuel systems) that you expect to have similar emission characteristics. These groups are call emission families. (b) You need a separate emission family for each model year.

§ 1045.235 How does testing fit with my application for a certificate of conformity?

This section describes how to do testing in your effort to apply for a certificate of conformity.

(a) Test your vessels using the procedures and equipment specified in subpart F of this part.

(1) For evaporative testing, you may test the fuel system without the vessel.

(2) For exhaust testing, test the engine without the vessel.

(b) Select from each emission family a test vessel for each fuel type with a configuration you believe is most likely to exceed an applicable standard (e.g., the diurnal evaporative standard). Using good engineering judgment, consider the emission levels of all regulated constituents over the full useful life of the vessel.

(c) You may submit emission data for equivalent emission families from previous years instead of doing new tests, but only if the data shows that the test vessel would meet all the requirements for the latest models. We may require you to do new emission testing if we believe the latest models could be substantially different from the previously tested vessel.

(d) We may choose to measure emissions from any of your test vessels.

(1) If we do this, you must provide the test vessel at the location we select. We may decide to do the testing at your plant or any other facility. If we choose to do the testing at your plant, you must schedule it as soon as possible and make available the instruments and equipment we need. This provision does not apply for evaporative emission testing for manufacturers that use the design certification provisions for all of the products under § 1045.105(d).

(2) If we measure emissions on one of your test vessels, the results of that testing become the official data for the vessel. Unless we later invalidate this data, we may decide not to consider your data in determining if your emission family meets the emission standards.

(e) We may allow you to certify vessels using existing data from vessels with similarly-designed fuel systems that you did not manufacture. In those cases, you are not required to emission-test your vessels or fuel systems.

(f) For fuel tanks that are design-certified based on permeability treatments for plastic fuel tanks, you do not need to test each emission family. However, you must use good engineering judgment to determine permeation rates for the tanks. Good engineering judgment requires that at least one fuel tank be tested for each set of treatment conditions. For example, if you treat tanks made from the same material using the identical tretament process, but that are in different emission families, then you would only need to test one tank.

§ 1045.240 How do I determine if my emission family complies with emission standards?

(a) Your emission family complies with the applicable numerical emission standards in § 1045.105 if all emission-data vessels representing that family have test results showing emission levels at or below all applicable standards, provided you also comply with the average emission standard for your total production.

(b) Your emission family does not comply if any emission-data vessel representing that family has test results showing emission levels above the applicable standards from § 1045.105.

(c) If your average emission level is above an applicable standard, then all of emission families with emission levels above the average standard are noncompliant.

§ 1045.245 What records must I keep and make available to EPA?

(a) Organize and maintain the following records to keep them readily available; we may review these records at any time:

(1) A copy of all applications and any summary information you sent us.

(2) Any of the information we specify in § 1045.205 that you did not include in your application.

(3) A detailed history of each emission-data vessel. In each history, describe the test vessel's construction, including its origin and buildup, steps you took to ensure that it represents production vessels, any components you built specially for it, and all emission-related components.

(b) Keep data from routine emission tests for one year after we issue the associated certificate of conformity. Keep all other information specified in paragraph (a) of this section for eight years after we issue your certificate.

(c) Store these records in any format and on any media, as long as you can promptly send us organized, written records in English if we ask for them.

(d) Send us copies of any vessel maintenance instructions or explanations if we ask for them.

§ 1045.250 When may EPA deny, revoke, or void my certificate of conformity?

(a) We may deny your application for certification if your emission-data vessels fail to comply with emission standards or other requirements. Our decision may be based on any information available to us. If we deny your application, we will explain why in writing.

(b) In addition, we may deny your application or revoke your certificate if you do any of the following:

(1) Refuse to comply with any testing or reporting requirements.

(2) Submit false or incomplete information (paragraph (d) of this section applies if this is fraudulent).

(3) Render inaccurate any test data.

(4) Deny us from completing authorized activities despite our presenting a warrant or court order (see § 1068.020 of this chapter).

(5) Produce vessels for importation into the United States at a location where local law prohibits us from carrying out authorized activities.

(c) We may void your certificate if you do not keep the records we require or do not give us information when we ask for it.

(d) We may void your certificate if we find that you committed fraud to get it. This means intentionally submitting false or incomplete information.

(e) If we deny your application or revoke or void your certificate, you may ask for a hearing (see § 1045.820). Any such hearing will be limited to substantial and factual issues.

Subpart D—[Reserved]

Subpart E—Testing In-use Engines

§ 1045.401 What provisions apply for in-use testing of vessels?

We may conduct in-use testing of any vessel (or part of a vessel) subject to the standards of this part. If we determine that a substantial number of vessels do not comply with the regulations of this part, we may order the manufacturer to conduct a recall as specified in 40 CFR part 1068.

Subpart F—Test Procedures

§ 1045.501 What equipment and general procedures must I use to test my vessels?

(a) *Diurnal testing.* Use the equipment specified in 40 CFR part 86 subpart B (*i.e.*, the procedures used to measure diurnal evaporative emissions for gasoline-fueled highway vehicles). Use the procedures specified in § 1045.505 to measure diurnal emissions.

(1) These provisions require placing your vessel or fuel system within a sealed, temperature-controlled enclosure called a SHED (Sealed Housing for Evaporative Determination).

(2) You must include a fan to maintain a minimum wind speed of 5 miles per hour across the tank.

(b) *Permeation testing.* Use the following equipment and procedures for measuring permeation emissions:

(1) For fuel tank permeation, see § 1045.506.

(2) For fuel line permeation, see SAE J1527 (incorporated by reference in § 1045.810). Alternatively, you may use the equipment and procedures specified in SAE J1737 (incorporated by reference in § 1045.810), except that all tests must be conducted at 23°C ± 2°C.

(c) *Special or alternate procedures.* You may use special or alternate procedures, as described in § 1065.010 of this chapter.

§ 1045.505 How do I test for diurnal evaporative emissions?

Measure evaporative emissions by placing the preconditioned vessel or fuel system within a sealed, temperature-controlled SHED and recording the concentration of fuel vapors within the SHED as the temperature cycles between 22.2°C and 35.6°C.

(a) *Preconditioning and test preparation.* To prepare your vessel or fuel system, follow these seven steps:

(1) To precondition the tank, fill it to its nominal capacity and allow it to soak at 30°C ± 5°C for one month. Note: You may omit this step; however, if you omit this step, you may not correct measured emissions for permeation that occurs during the test.

(2) Determine the tank's fuel capacity in gallons as configured in the vessel (using at least three significant figures).

(3) Fill the fuel tank with the test fuel to its capacity. If you fill the tank within the SHED, do not spill any fuel.

(4) Allow the tank and its contents to equilibrate to 22.2°C ± 1°C within the SHED.

(5) Connect a fuel siphon to the tank outlet and drain 60 percent of the fuel. You may vent the tank before draining it. Do not spill any fuel.

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(6) Close the SHED and set the temperature control to 22.2° F. Allow the SHED to equilibrate for two hours.

(7) If the fuel tank vent will have an attached vent hose when installed in the vessel, attach a vent hose representative of the shortest length of vent hose that will be used when the tank is installed in the vessel. You may attach the hose at any time before you start the test run (§ 1045.505(b)).

(b) *Test run.* To measure emissions from your vessel or fuel system, follow these six steps:

(1) Ensure that the measured temperature within the SHED is 22.2 ± 0.2°C.

(2) Ventilate the SHED.

(3) Seal the SHED and record the hydrocarbon concentration within the SHED. This is the zero-hour value.

(4) Begin the temperature cycle in Table 1 of § 1045.505. Run the temperature cycle three times.

(5) Record the hydrocarbon concentration at the end of each temperature cycle.

(6) Use the calculation procedures of 40 CFR 86.143–96 to calculate the mass emissions for each of the three 24-hour temperature cycles. The highest of the these three is the official test result. If you precondition the tank as specified in § 1045.505(a)(1), you may correct these results by subtracting the permeation emissions from the total, consistent with good engineering judgment.

TABLE 1 OF § 1045.505—24-HOUR TEMPERATURE CYCLE FOR EMISSION TESTING

Time (hours)	Temperature (°C)
0	22.2
1	22.5
2	23.6
3	26.6
4	29.5
5	31.8
6	34.0
7	34.8
8	35.5
9	35.6
10	35.3
11	34.4
12	33.5
13	31.8
14	30.0
15	28.6
16	27.1
17	26.1
18	25.0
19	24.3
20	23.7
21	23.3
22	22.8
23	22.5
24	22.2

§ 1045.506 How do I test my fuel tank for permeation emissions?

Measure permeation emissions by weighing a sealed fuel tank before and after a temperature controlled soak.

(a) *Preconditioning.* To precondition your fuel tank, follow these six steps:

(1) Fill the tank and allow it to soak at 30°C ±10° C for 60 days.

(2) Determine the tank's fuel capacity as configured in the vessel to the nearest tenth of a gallon.

(3) Fill the fuel tank with the test fuel to its capacity. If you fill the tank within the SHED, do not spill any fuel.

(4) Allow the tank and its contents to equilibrate to 40°C ±2° C.

(5) Seal the fuel tank using nonpermeable fittings, such as metal or Teflon™.

(b) *Test run.* To measure emissions from your fuel tank, follow these nine steps:

(1) Weigh the sealed fuel tank, and record the weight to the nearest 0.1 grams. (You may use less precise weights, provided that the difference in mass from the start of the test to the end of the test has at least three significant figures.)

(2) Carefully place the tank within the temperature controlled container or SHED. Do not spill any fuel.

(3) Close the container or SHED and record the time.

(4) Ensure that the measured temperature within the container or SHED is 40°C ±2° C.

(5) Leave the tank in the container or SHED for 10 to 30 days, consistent with good engineering judgment (based on the expected permeation rate).

(6) Hold the temperature of the container or SHED to 40°C ±2° C and record at least daily.

(7) At the end of the soak period, weigh the sealed fuel tank and record the weight to the nearest 0.1 grams. (You may use less precise weights, provided that the difference in mass from the start of the test to the end of the test has at least three significant figures.)

(8) Subtract the weight of the tank at the end of the test from the weight of the tank at the beginning of the test, and divide the difference by the capacity of the fuel tank. Divide this gram/gallon value by the number of test days to calculate the gram/gallon/test-day emission rate. Example: If a 20.4-gallon tank weighed 31782.3 grams at the beginning of the test, weighed 31760.2 grams after soaking for 25.03 days, then the gram/gallon/test-day emission rate would be:

(31882.3 g—31760.2 g) / 20.4 gal / 25.03 test days = 0.239 g/gal/test-day

(9) Round your result to the same number of decimal places as the standard.

Subpart G—Compliance Provisions

§ 1045.601 What compliance provisions apply to these vessels?

Vessel manufacturers, as well as owners, operators, and rebuilders of these vessels, and all other persons, must observe the requirements and prohibitions in part 1068 of this chapter.

Subpart H—Averaging, Banking, and Trading for Certification

§ 1045.701 General provisions.

(a) You may average, bank, and trade emission credits for certification as described in this subpart to meet the average standards of this part. You must comply with the averaging requirements if you certify with an emission level higher than the applicable average standard. Participation in banking and trading is voluntary. Note: Some standards, such as the tank permeation standard, do not allow you to comply on average.

(b) The definitions of Subpart I of this part apply to this subpart. The following definitions also apply:

(1) *Average standard* means the standard that applies on average to all your vessels, engines, or fuel systems that are subject to this part (except portable fuel tanks).

(2) *Broker* means any entity that facilitates a trade between a buyer and seller.

(3) *Buyer* means the entity that receives credits as a result of trade or transfer.

(4) *FEL* means the familiy emission limit to which an emission family is certified

(5) *Group* means a group of vessels having the same evaporative control technology, model year, and fuel-tank capacity.

(6) *Reserved credits* means credits generated but not yet verified by EPA in the end of year report review.

(7) *Seller* means the entity that provides credits during a trade or transfer.

(8) *Transfer* means to convey control of credits an individual tank generates—

(i) From a certifying tank manufacturer to a vessel manufacturer that buys the tank; or

(ii) To a certifying tank manufacturer from a vessel manufacturer that buys the tank.

(c) Do not include any exported vessel, engine, or tank in the certification averaging, banking, and trading program. Include only vessels, engines, or fuel tanks certified under this part.

§ 1045.705 How do I average emission levels?

(a) As specified in subpart B of this part, certify each emission family that you are including the averaging program to an FEL.

(b) Calculate a preliminary average emission level according to § 1045.720 using projected production volumes for your application for certification.

(c) After the end of your model year, calculate a final average emission level according to § 1045.720 using actual production volumes.

(d) If your preliminary average emission level is below the allowable average standard, see § 1045.710 for information about generating and banking emission credits. These credits will be considered reserved until verified by EPA during the end of year report review.

§ 1045.710 How do I generate and bank emission credits?

(a) If your average emission level is below the average standard, you may calculate credits according to § 1045.720.

(b) You may generate credits if you are a certifying manufacturer. You may hold them if you are a fuel tank or vessel manufacturer

(c) You may bank unused emission credits, but only after the end of the calendar year and after we have reviewed your end-of-year reports.

(d) During the calendar year and before you send in your end-of-year report, you may consider reserved any credits you originally designate for banking during certification. You may redesignate these credits for trading or transfer in your end-of-year report, but they are not valid to demonstrate compliance until verified.

(e) You may use for averaging or trading any credits you declared for banking from the previous calendar year that we have not reviewed. But, we may revoke these credits later—following our review of your end-of-year report or audit actions. For example, this could occur if we find that credits are based on erroneous calculations; or that emission levels are misrepresented, unsubstantiated, or derived incorrectly in the certification process.

§ 1045.715 How do I trade or transfer emission credits?

(a) You may trade only banked credits, not reserved credits.

(b) Whether or not you hold a certificate, you may transfer unbanked credits to a manufacturer that is supplying a fuel tank to you or a vessel manufacturer that is buying a fuel tank from you.

(c) How you handle unused transferred credits at the end of a model year depends on whether or not you hold a certificate.

(1) If you hold a certificate, you may bank these credits.

(2) If you do not hold a certificate, you may not bank these credits; you may only transfer them to a certificate holder.

(d) If a negative credit balance results from a credit trade or transfer, both buyers and sellers are liable, except in cases involving fraud. We may void the certificates of all emission families participating in a negative trade.

(1) If you buy credits but have not caused the negative credit balance, you must only supply more credits equivalent to the amount of invalid credits you used.

(2) If you caused the credit shortfall, you may be subject to the requirements of § 1045.730(b)(6).

§ 1045.720 How do I calculate my average emission level or emission credits?

(a) Calculate your average emission level for each model year according to the following equation and round it to the nearest tenth of a gram per gallon. Use consistent units throughout the calculation.

(1) Calculate the average emission level as:

$$\text{Emission level} = \left[\sum_i (\text{FEL})_i \times (\text{Capacity})_i \times (\text{Production})_i\right] \Big/ \left[\sum_i (\text{Production})_i \times (\text{Capacity})_i\right]$$

Where:

FEL_i = The FEL to which the engine family is certified.

$Capacity_i$ = The capacity of the fuel tanks.

$Production_i$ = The number of fuel tanks produced in that model year with a capacity of $Capacity_i$.

(2) Sum the emissions for each unique combination of emission family and fuel tank capacity.

(3) Use production projections for initial certification, and actual production volumes to determine compliance at the end of the model year.

(b) If your average emission level is below the average standard, calculate credits available for banking according to the following equation and round them to the nearest tenth of a gram:

$$\text{Credit} = \left[(\text{Average standard-Emission level})\right] \times \left[\sum_i (\text{Production})_i \times (\text{Capacity})_i\right]$$

(c) If your average emission level is above the average standard, calculate your preliminary credit deficit according to the following equation, rounding to the nearest tenth of a gram:

$$\text{Deficit} = \left[(\text{Emission level-Average standard})\right] \times \left[\sum_i (\text{Production})_i \times (\text{Capacity})_i\right]$$

§ 1045.725 What information must I keep?

(a) Maintain and keep five types of properly organized and indexed records for each group and for each emission family:

(1) Model year and EPA emission family.

(2) Bin standard.

(3) Fuel tank capacity.

(4) Projected production volume for the model year.

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(5) Actual production volume for the model year.

(b) Keep paper records of this information for three years from the due date for the end-of-year report. You may use any additional storage formats or media if you like.

(c) Follow § 1045.730 to send us the information you must keep.

(d) We may ask you to keep or send other information necessary to implement this subpart.

§ 1045.730 What information must I report?

(a) Include the following information in your applications for certification:

(1) A statement that, to the best of your belief, you will not have a negative credit balance when all credits are calculated. This means that if you believe that your average emission level will be above the standard (*i.e.*, that you will have a deficit for the model year), you must have banked credits (or project to have traded credits) to offset the deficit.

(2) Detailed calculations of projected emission credits (zero, positive, or negative) based on production projections.

(i) If you project a credit deficit, state the source of credits needed to offset the credit deficit.

(ii) If you project credits, state whether you will reserve them for banking or transfer them.

(b) At the end of each model year, send an end-of-year report.

(1) Make sure your report includes three things:

(i) Calculate in detail your average emission level and any emission credits (zero, positive, or negative) based on actual production volumes.

(ii) If your average emission level is above the allowable average standard, state the source of credits needed to offset the credit deficit.

(iii) If your average emission level is below the allowable average standard, state whether you will reserve the credits for banking or transfer them.

(2) Base your production volumes on the point of first retail sale. This point is called the final product-purchase location.

(3) Send end-of-year reports to the Designated Officer within 120 days of the end of the model year. If you send reports later, you are violating the Clean Air Act.

(4) If you generate credits for banking and you do not send your end-of-year reports within 120 days after the end of the model year, you may not use or trade the credits until we receive and review your reports. You may not use projected credits pending our review.

(5) You may correct errors discovered in your end-of-year report, including errors in calculating credits according to the following table:

If. . .	And if. . .	Then we. . .
(i) Our review discovers an error in your end-of-year report that increases your credit balance.	the discovery occurs within 180 days of receipt.	restore the credits for your use.
(ii) You discover an error in your report that increases your credit balance.	the discovery occurs within 180 days of receipt.	restore the credits for your use.
(iii) We or you discover an error in your report that increases your credit balance.	the discovery occurs more than 180 days after receipt.	do not restore the credits for your use.
(iv) We discover an error in your report that reduces your credit balance.	at any time after receipt	reduce your credit balance.

(6) If our review of your end-of-year-report shows a negative balance, you may buy credits to bring your credit balance to zero. But you must buy 1.1 credits for each 1.0 credit needed. If enough credits are not available to bring your credit balance to zero, we may void the certificates for all families certified to standards above the allowable average.

(c) Within 90 days of any credit trade or transfer, you must send the Designated Officer a report of the trade or transfer that includes three types of information:

(1) The corporate names of the buyer, seller, and any brokers.

(2) Information about the credits that depends on whether you trade or transfer them.

(i) For trades, describe the banked credits being traded.

(ii) For transfers, calculate the credits in detail and identify the source or use of the credits.

(3) Copies of contracts related to credit trading or transfer from the buyer, seller, and broker, as applicable.

(d) Include in each report a statement certifying the accuracy and authenticity of its contents.

(e) We may void a certificate of conformity for any emission family if you do not keep the records this section requires or give us the information when we ask for it.

Subpart I—Definitions and Other Reference Information

§ 1045.801 What definitions apply to this part?

The definitions in this section apply to this part. The definitions apply to all subparts unless we note otherwise. All undefined terms have the meaning the Act gives to them. The definitions follow:

Act means the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

Adjustable parameter means any device, system, or element of design that someone can adjust (including those which are difficult to access) and that, if adjusted, may affect emissions or vessel performance during emission testing or normal in-use operation.

Aftertreatment means relating to any system, component, or technology mounted downstream of the exhaust valve or exhaust port whose design function is to reduce exhaust emissions.

Auxiliary emission-control device means any element of design that senses temperature, engine rpm, boat speed, transmission gear, atmospheric pressure, manifold pressure or vacuum, or any other parameter to activate, modulate, delay, or deactivate the operation of any part of the emission-control system. This also includes any other feature that causes in-use emissions to be higher than those measured under test conditions, except as we allow under this part.

Broker means any entity that facilitates a trade of emission credits between a buyer and seller.

Calibration means the set of specifications and tolerances specific to a particular design, version, or application of a component or assembly capable of functionally describing its operation over its working range.

Capacity means the maximum volume of liquid fuel that a fuel tank can hold when installed in a vessel.

Certification means obtaining a certificate of conformity for an emission family that complies with the emission standards and requirements in this part.

Compression-ignition means relating to a type of reciprocating, internal-combustion vessel that is not a *spark-ignition* vessel.

Crankcase emissions means airborne substances emitted to the atmosphere from any part of the vessel crankcase's ventilation or lubrication systems. The crankcase is the housing for the crankshaft and other related internal parts.

Designated Officer means the Manager, Engine Compliance Programs Group (6403–J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

Emission-control system means any device, system, or element of design that controls or reduces the regulated emissions from an vessel.

Emission-data vessel means a vessel, engine, or fuel system that is tested for certification.

Emission family means a group of vessels, engines or fuel systems with similar emission characteristics, as specified in § 1045.230.

Emission-related maintenance means maintenance that substantially affects emissions or is likely to substantially affect emissions deterioration.

Fuel system means any or all of the components involved in transporting, metering, and mixing the fuel from the fuel tank to the combustion chamber(s), including the fuel tank, fuel tank cap, fuel pump, fuel filters, fuel lines, carburetor or fuel-injection components, and all fuel-system vents.

Good engineering judgment has the meaning we give it in § 1068.005 of this chapter.

Hobby vessel means a recreational vessel that is a reduced-scale model vessel that is not capable of transporting a person.

Hydrocarbon (HC) means the hydrocarbon group on which the emission standards are based for each fuel type. For gasoline- and LPG-fueled vessels, HC means total hydrocarbon (THC). For natural gas-fueled vessels, HC means nonmethane hydrocarbon (NMHC). For alcohol-fueled vessels, HC means total hydrocarbon equivalent (THCE).

Identification number means a unique specification (for example, model number/serial number combination) that allows someone to distinguish a particular vessel from other similar vessels.

Manufacturer has the meaning given in section 216(1) of the Act. In general, this term includes any person who manufactures a vessel, engine, or fuel system component for sale in the United States or otherwise introduces a new vessel, engine, or fuel system component into commerce in the United States. This includes importers and entities that treat fuel system components to reduce permeability.

Maximum test power means the power output observed with the maximum fueling rate possible at the maximum test speed.

Maximum test speed means the speed specified by 40 CFR 1065.515.

Model year means one of the following things:

(1) For freshly manufactured vessels (see definition of "new vessel," paragraph (1), of this section), model year means one of the following:

(i) Calendar year.

(ii) Your annual new model production period if it is different than the calendar year. This must include January 1 of the calendar year for which the model year is named. It may not begin before January 2 of the previous calendar year and it must end by December 31 of the named calendar year.

(2) For a vessel modified by an importer (not the original vessel manufacturer) who has a certificate of conformity for the imported vessel (see definition of "new vessel," paragraph (2), of this section), model year means one of the following:

(i) The calendar year in which the importer finishes modifying and labeling the vessel.

(ii) Your annual production period for producing vessels if it is different than the calendar year; follow the guidelines in paragraph (1)(ii) of this definition.

(3) For a vessel you import that does not meet the criteria in paragraphs (1) or (2) of the definition of "new vessel" in this section, model year means the calendar year in which the manufacturer completed the original assembly of the vessel. In general, this applies to used vessels that you import without conversion or major modification.

New vessel means any of the following things:

(1) A freshly manufactured vessel for which the ultimate buyer has never received the equitable or legal title. The vessel is no longer new when the ultimate buyer receives this title or the product is placed into service, whichever comes first.

(2) An imported vessel covered by a certificate of conformity issued under this part, where someone other than the original manufacturer modifies the vessel after its initial assembly and holds the certificate. The vessel is no longer new when it is placed into service.

(3) An imported nonroad vessel that is not covered by a certificate of conformity issued under this part at the time of importation.

Noncompliant vessel means a vessel, engine, or fuel system that was originally covered by a certificate of conformity, but is not in the certified configuration or otherwise does not comply with the conditions of the certificate.

Nonconforming vessel means a vessel, engine, or fuel system not covered by a certificate of conformity that would otherwise be subject to emission standards.

Nonroad means relating to nonroad engines or nonroad vehicles.

Nonroad engine has the meaning given in § 1068.025 of this chapter.

Oxides of nitrogen means nitric oxide (NO) and nitrogen dioxide (NO_2). Oxides of nitrogen are expressed quantitatively as if the NO were in the form of NO_2 (assume a molecular weight for oxides of nitrogen equivalent to that of NO_2).

Physically adjustable range means the entire range over which a vessel parameter can be adjusted, except as modified by § 1045.115(c).

Placed into service means used for its intended purpose.

Portable fuel tank means a fuel tank that has a permanently affixed handle, has a fuel capacity no greater than 12 gallons, and is not permanently mounted to a marine vessel.

Propulsion marine engine means a marine engine that moves a vessel through the water or directs the vessel's movement.

Revoke means to discontinue the certificate for an emission family. If we revoke a certificate, you must apply for a new certificate before continuing to produce the affected vessels. This does not apply to vessels you no longer possess.

Round means to round numbers according to ASTM E29–93a, which is incorporated by reference (see § 1045.810), unless otherwise specified.

Scheduled maintenance means adjusting, repairing, removing, disassembling, cleaning, or replacing components or systems that is periodically needed to keep a part from failing or malfunctioning. It also may mean actions you expect are necessary to correct an overt indication of failure or malfunction for which periodic maintenance is not appropriate.

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Spark-ignition means relating to a type of engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark-ignition engines usually use a throttle to regulate intake air flow to control power during normal operation.

Spark-ignition marine vessel means marine vessel that is powered by a spark-ignition engine.

Stoichiometry means the proportion of a mixture of air and fuel such that the fuel is fully oxidized with no remaining oxygen. For example, stoichiometric combustion in gasoline vessels typically occurs at an air-fuel mass ratio of about 14.7.

Suspend means to temporarily discontinue the certificate for an emission family. If we suspend a certificate, you may not sell vessels from that emission family unless we reinstate the certificate or approve a new one.

Test sample means the collection of vessels selected from the population of an emission family for emission testing.

Test vessel means a vessel, engine, or fuel system in a test sample.

Total Hydrocarbon Equivalent means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as petroleum-fueled vessel hydrocarbons. The hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1.

Ultimate buyer means ultimate purchaser.

Ultimate purchaser means, with respect to any new nonroad equipment or new nonroad vessel, the first person who in good faith purchases such new nonroad equipment or new nonroad vessel for purposes other than resale.

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

U.S.-directed production volume means the number of vessel units, subject to the requirements of this part, produced by a manufacturer for which the manufacturer has a reasonable assurance that sale was or will be made to ultimate buyers in the Unites States.

Useful life means the period during which the vessel or engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as a number of hours of operation or calendar years. It is the period during which a new vessel or new engine is required to comply with all applicable emission standards.

Vessel means marine vessel as defined in the General Provisions of the United States Code, 1 U.S.C. 3.

Void means to invalidate a certificate or an exemption. If we void a certificate, all the vessels produced under that emission family for that model year are considered noncompliant, and you are liable for each vessel produced under the certificate and may face civil or criminal penalties or both. If we void an exemption, all the vessels produced under that exemption are considered uncertified (or nonconforming), and you are liable for each vessel produced under the exemption and may face civil or criminal penalties or both. You may not produce any additional vessels using the voided exemption.

Volatile liquid fuel means any fuel other than diesel or biodiesel that is a liquid at atmospheric pressure.

§ 1045.805 What symbols, acronyms, and abbreviations does this part use?

The following symbols, acronyms, and abbreviations apply to this part:

°C	degrees Celsius.
ASTM	American Society for Testing and Materials.
ATV	all-terrain vessel.
cc	cubic centimeters.
CO	carbon monoxide.
CO_2	carbon dioxide.
EPA	Environmental Protection Agency.
FEL	Family emission limit.
g/kW-hr	grams per kilowatt-hour.
LPG	liquefied petroleum gas.
m	meters.
mm Hg	millimeters of mercury.
NMHC	nonmethane hydrocarbon.
NMHCE	nonmethane hydrocarbon equivalent.
NO_x	oxides of nitrogen (NO and NO_2).
psig	pounds per square inch of gauge pressure.
rpm	revolutions per minute.
SAE	Society of Automotive Engineers.
SHED	Sealed Housing for Evaporative Determination.
SI	spark-ignition.
THC	total hydrocarbon.
THCE	total hydrocarbon equivalent.
U.S.	United States
U.S.C.	United States Code.

§ 1045.810 What materials does this part reference?

We have incorporated by reference the documents listed in this section. The Director of the **Federal Register** approved the incorporation by reference as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at U.S. EPA, OAR, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460; or Office of the Federal Register, 800 N. Capitol St., NW., 7th Floor, Suite 700, Washington, DC.

(a) *ASTM material.* Table 1 of § 1045.810 lists material from the American Society for Testing and Materials that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. The second column is for information only and may not include all locations. Anyone may receive copies of these materials from American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103. Table 1 follows:

TABLE 1 OF § 1045.810.—ASTM MATERIALS

Document number and name	Part 1045 reference
ASTM E29–93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications.	1045.240, 1045.315, 1045.345, 1045.410, 1045.415.

(b) *ISO material.* [Reserved]

(c) *SAE material.* [Reserved]

§ 1045.815 How should I request EPA to keep my information confidential?

(a) Clearly show what you consider confidential by marking, circling, bracketing, stamping, or some other method. We will store your confidential information as described in 40 CFR part 2. Also, we will disclose it only as specified in 40 CFR part 2.

(b) If you send us a second copy without the confidential information, we will assume it contains nothing confidential whenever we need to release information from it.

(c) If you send us information without claiming it is confidential, we may make it available to the public without further notice to you, as described in 40 CFR 2.204.

§ 1045.820 How do I request a public hearing?

(a) File a request for a hearing with the Designated Officer within 15 days of a decision to deny, suspend, revoke, or void your certificate. If you ask later, we may give you a hearing for good cause, but we do not have to.

(b) Include the following in your request for a public hearing:

(1) State which emission family is involved.

(2) State the issues you intend to raise. We may limit these issues, as described elsewhere in this part.

(3) Summarize the evidence supporting your position and state why you believe this evidence justifies granting or reinstating the certificate.

(c) We will hold the hearing as described in 40 CFR part 1068, subpart F.

PART 1051—CONTROL OF EMISSIONS FROM RECREATIONAL ENGINES AND VEHICLES

17. The authority citation for part 1051 as proposed at 66 FR 51219 continues to read as follows:

Authority: 42 U.S.C. 7401–7671(q).

Subpart A—[Amended]

18. Section 1051.1 as proposed at 66 FR 51220 is amended by adding a new paragraph (e) to read as follows:

§ 1051.1 Does this part apply to me?

* * * * *

(e) This part also applies to engines under 50 cc used in highway motorcycles if the manufacturer uses the provisions of 40 CFR 86.447–2006 to meet the emission standards in this part instead of the requirements of 40 CFR part 86. Compliance with the provisions of this part is a required condition of that exemption.

PART 1068—GENERAL COMPLIANCE PROVISIONS FOR NONROAD PROGRAMS

19. The authority citation for part 1068 as proposed at 66 FR 51252 continues to read as follows:

Authority: 42 U.S.C. 7401–7671(q).

Subpart A—[Amended]

20. Section 1068.1 as proposed at 66 FR 51253 is amended by revising paragraph (a) to read as follows:

§ 1068.1 Does this part apply to me?

(a) The provisions of this part apply to everyone with respect to the following engines or to equipment using the following engines:

(1) Marine vessels powered by spark-ignition engines we regulate under 40 CFR 1045.

(2) Large nonroad spark-ignition engines we regulate under 40 CFR part 1048.

(3) Snowmobiles, all-terrain vehicles, and off-highway motorcycles we regulate under 40 CFR part 1051.

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[FR Doc. 02–19437 Filed 8–13–02; 8:45 am]

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Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171 et. al.

Hazardous Materials: Revision to Standards for Infectious Substances; Final Rule

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 177, and 178

[Docket No. RSPA–98–3971 (HM–226)]

RIN 2137–AD13

Hazardous Materials: Revision to Standards for Infectious Substances

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is revising transportation requirements for infectious substances, including regulated medical waste, to: adopt defining criteria and packaging requirements consistent with international standards; revise the current broad exceptions for diagnostic specimens and biological products; and authorize bulk packaging options for regulated medical waste consistent with requirements in international standards and DOT exemptions. These revisions will assure an acceptable level of safety for the transportation of infectious substances, and facilitate domestic and international transportation.

DATES: *Effective Date:* This final rule is effective October 1, 2002.

Voluntary Compliance Date: Voluntary compliance is authorized 30 days following publication of this final rule.

Incorporation by Reference Date: The incorporation by reference of publications listed in this final rule has been approved by the Director of the Federal Register as of October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Susan Gorsky (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

List of Topics

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I. Background

On January 22, 2001, the Research and Special Programs Administration (RSPA, we) published a notice of proposed rulemaking (NPRM; 66 FR 6941) to revise the current requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) applicable to the transportation of infectious substances, including regulated medical waste. The NPRM also proposed new requirements applicable to the transportation of genetically modified micro-organisms. The NPRM proposed the following changes to the HMR:

- Adoption of new classification criteria for infectious substances based on defining criteria developed by the World Health Organization (WHO) and consistent with standards contained in the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) and the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions).
- Revision of current packaging requirements for Division 6.2 materials for consistency with international performance standards.
- Elimination of the current exception from requirements in the HMR for diagnostic specimens. We proposed certain packaging and hazard communication requirements. Diagnostic specimens transported in dedicated motor vehicles by private or contract carriers would continue to be excepted from most requirements in the HMR.
- Modification of the current exception from requirements in the HMR for biological products, limiting the exception to biological products licensed for use under current Food and Drug Administration (FDA) or U.S. Department of Agriculture (USDA) regulations.
- New transportation requirements for the transportation of genetically modified micro-organisms consistent with the UN Recommendations.
- New bulk packaging options for the transportation of regulated medical waste (RMW), based on current exemption provisions.
- New hazard communication requirements for shipments of Division 6.2 materials.

II. Comment Summary

We received 46 comments on the NPRM from industry associations, laboratories, medical waste transporters, state departments of transportation and public health, a blood bank, and private citizens. Most were supportive of our effort to harmonize the HMR requirements applicable to the transportation of infectious substances with international requirements, and of proposals to enhance the safe transportation of diagnostic specimens and biological products. Based on comments received and our discussions with other Federal agencies responsible for regulating infectious substances and genetically modified micro-organisms, this final rule incorporates the following changes to the HMR:

- New classification criteria for infectious substances based on defining criteria developed by WHO and consistent with standards contained in the UN Recommendations and the ICAO Technical Instructions.
- Revised packaging requirements for Division 6.2 materials consistent with international performance standards.
- Revised materials of trade exceptions to include certain diagnostic specimens, biological products, and RMW. This final rule includes more specific packaging requirements for such materials of trade than were proposed in the NPRM.
- New packaging and hazard communication requirements for shipments of diagnostic specimens consistent with international requirements. Diagnostic specimens transported in dedicated motor vehicles by private or contract carriers are excepted from most requirements of the HMR. This final rule also clarifies that diagnostic specimens that contain a Risk Group 1 pathogen, do not contain a pathogen, or in which the pathogen is neutralized or inactive, are not subject to HMR requirements.
- Modification of the current exception from requirements in the HMR for biological products. This final rule revises the proposal in the NPRM to specify that the exception is limited to biological products, including experimental products, subject to Federal approval, permit, or licensing requirements, such as those required by FDA or USDA.

- New bulk packaging options for the transportation of RMW, based on current exemption provisions. The packaging options proposed in the NPRM are modified in this final rule to reflect commenters' concerns about specifications for the packagings.
- New hazard communication requirements for bulk shipments of RMW to assist emergency responders to identify such shipments.

In discussions during development of this final rule, several federal agencies involved in the regulation of genetically modified organisms (*i.e.*, the Environmental Protection Agency (EPA) and the Department of Agriculture (USDA)) commented that the process of genetically modifying an organism does not *a priori* make that organism a hazard. Rather, the product of the modification must be evaluated for potential risk. As several federal agencies currently regulate genetically modified organisms, the proposals in the NPRM concerning genetically modified organisms are not adopted in this final rule.

Comments we received in response to the NPRM are discussed in detail below.

A. Pending Revisions to the UN Recommendations

Most commenters support our proposal to harmonize the HMR requirements for infectious substances with the international standards. Two commenters note the United Nations may be developing a complete revision to its current recommendations for the transportation of infectious substances. According to these commenters, the UN may change the WHO risk group system as applied to transportation and may "radically" simplify current transportation requirements. These commenters advise us to postpone revising the HMR until the United Nations completes its work.

The commenters are correct. The UN Committee of Experts on the Transport of Dangerous Goods is considering revisions to the requirements in the UN Recommendations applicable to the transport of infectious substances and genetically modified micro-organisms. However, it is not certain whether any amendment will be adopted during the 2001–2002 biennium. Indeed, as yet the UN Committee of Experts has not received a formal proposal. Given this uncertainty, we do not agree with delaying action to harmonize the HMR requirements for infectious substances with current international standards. If the UN Committee of Experts adopts revisions to the UN Recommendations for transporting infectious substances, we will consider such revisions in a future rulemaking.

One commenter notes the proposal as it relates to diagnostic specimens is not consistent with current requirements for transporting diagnostic specimens in the ICAO Technical Instructions. This is true; as we noted in the January 2001 NPRM, the proposal for shipping diagnostic specimens is consistent with a proposal for the UN Recommendations, since adopted. Since publication of the NPRM, the ICAO Dangerous Goods Panel has also adopted these amendments. As a result, the 2003–2004 edition of the ICAO Technical Instructions will be consistent with the UN Recommendations and this final rule.

B. Infectious Substance Definition

In the NPRM, consistent with current requirements in the UN Recommendations, we proposed to define infectious substances, or Division 6.2 materials, to mean materials known to contain or suspected to contain a pathogen with the potential to cause disease upon exposure. We further proposed to require Division 6.2 materials to be assigned to risk groups using defining criteria developed by WHO. WHO defines four risk groups for infectious substances based on pathogenicity, mode and ease of transmission, degree of risk to individuals and communities, and reversibility of the disease through known and effective preventative agents and treatment. Risk Group 1 includes micro-organisms unlikely to cause human or animal disease. In the NPRM, we proposed that Risk Group 1 materials not be subject to regulation under the HMR.

Several commenters oppose using the WHO risk group criteria for infectious substances regulated under the HMR. They note that the WHO system was intended for assessing and addressing risks to researchers and health care workers in laboratory environments, not for transportation. We do not agree. While it is true the WHO risk groups were not originally intended for transportation environments, they do provide a relatively simple way to delineate and differentiate risks associated with specific pathogens. As such, the WHO risk groups are a useful tool for assessing the degree to which specific pathogens should be regulated in transportation, based on the potential risk to transportation workers and the general public. Other risk systems (for example, the biosafety level guidelines in the Centers for Disease Control and Prevention/National Institutes of Health (CDC/NIH) publication *Biosafety in Microbiological and Biomedical Laboratories)* were also developed for use in laboratories rather than in transportation. These systems can be more difficult to apply for transportation purposes than the WHO risk groups.

Some commenters opposed to the use of the WHO risk groups recommend we create an advisory group to assign risk group classifications for infectious substances in transportation. We do not believe this is a practical or feasible approach because of the length of time that would be involved in establishing the advisory group and awaiting the results of its deliberations. Other commenters opposed to use of the WHO risk groups suggest we adopt government or industry consensus standards for risk group assignments, such as those developed by NIH. The NIH and WHO lists are very similar; NIH has published specific names of micro-organisms assigned to each risk group in a table. Although not complete, the NIH list is a useful reference source for identifying the appropriate risk group for a given pathogen. (The NIH guidelines can be found at *http://www4.od.nih.gov/oba/rac/guidelines/guidelines.html*). There are other risk group listings that also provide useful guidance for assigning a specific pathogen to a risk group, including a list developed by the American Biological Safety Association (available on line at *http://www.absa.org/riskgroups/index.htm*) and the list of agents in the CDC/NIH publication *Biosafety in Microbiological and Biomedical Laboratories* (available on line at *http://www.cdc.gov/od/ohs/biosfty/biosfty.htm*). We do not agree the HMR should incorporate one or more of these lists by reference into the HMR. However, in this final rule we are including these lists in the table of informational materials in § 171.7(b).

Instead of the WHO risk groups, one commenter suggests we utilize the existing Packing Group system in the HMR to address differing risks associated with the transportation of specific infectious substances. Thus, the commenter suggests Packing Group I would contain virulent pathogens that have a high risk of airborne infection, readily penetrate unbroken skin, are extremely persistent in the environment, and for which effective preventative or treatment measures are not readily available. Packing Group II would contain pathogens with a significantly lower risk of airborne infection, the primary exposure risk of which is entry through broken skin or contact with mucous membranes, and for which effective preventative or

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treatment measures are readily available. Packing Group III would contain pathogens classed as WHO Risk Group 2 materials.

We do not agree the existing Packing Group system provides a viable alternative to the WHO risk groups. As set forth in the NPRM, the WHO risk groups are used to identify pathogens not subject to regulation (Risk Group 1) or to identify certain pathogens (Risk Group 2 and 3) that may be shipped under certain exceptions, such as materials of trade. Unless an exception is authorized, all Risk Group 2, 3, and 4 infectious substances must be transported in specification triple packagings authorized under the HMR. In addition, they must be marked and labeled in accordance with applicable requirements, and accompanied by appropriate shipping and emergency response documentation. The packing group system suggested by the commenter would require shippers to distinguish between Risk Group 2 and 3 infectious substances when making packaging decisions, and would be more difficult, confusing, and burdensome to implement than the system proposed in the NPRM.

The NPRM proposed to assign infectious substances to risk groups based on the known medical history of the patient or animal, endemic local conditions, symptoms of the patient or animal, or professional judgement concerning the individual circumstances of the patient or animal. One commenter suggests this provision could endanger patient confidentiality and violate medical privacy regulations. We disagree. The proposal does not require health care professionals to disclose medical histories or patient symptoms. Rather, the proposal suggests these factors should be considered as the health care professional assigns an infectious substance to a risk group for purposes of transportation. Disclosure of the factors contributing to this determination or the name of the patient is not required. Further, the requirement for inclusion of an itemized list of contents within a package containing Division 6.2 materials requires a shipper only to identify the material. There is no requirement to include a patient name on the itemized list.

One commenter suggests we modify the list of factors used to determine risk group assignments to include the type of test ordered on the specimen. We do not believe it is necessary to specify this information as a factor in making risk group determinations. Shippers should make risk group assignments based, in part, on professional judgement concerning the individual circumstances of the patient or animal. Such professional judgement should include the types of tests ordered or other factors.

One commenter recommends we regulate infectious substances meeting the defining criteria for a Risk Group 1 material for transportation purposes We disagree. By definition, Risk Group 1 infectious substances are micro-organisms unlikely to cause human or animal disease. Risk Group 1 infectious substances in transportation pose little or no risk to transportation workers or to the general public. Risk Group 1 infectious substances are not subject to regulation under international transportation requirements because the risk posed by such materials is very low. There is no compelling safety rationale for regulating such materials under the HMR.

A number of commenters suggest specific revisions to the proposed definition of infectious substances. For example, several recommend including prions in the definition. Prions are not micro-organisms, but are proteinaceous infectious particles consisting of an abnormal isoform of a normal cellular protein. Prions are implicated as a cause for neuro-degenerative diseases such as kuru and Creutzfeldt-Jacob disease in humans, and bovine spongiform encephalopathy and scrapie in animals. We agree with commenters that a strict reading of the proposed definition in the NPRM would appear to exclude prions; therefore, we have modified the definition to specifically include them. We further revised the definition for clarity and to remove superfluous or inaccurate terminology.

One commenter suggests limiting regulation of infectious substances in transportation to those capable of infecting "immunocompetent humans and animals." For purposes of the HMR, "immunocompetent" would mean the human or animal possesses an effective body immune mechanism with no reduced immunity to infection by any known cause. We disagree. The WHO risk group system assigns infectious substances to risk groups based on their ability to infect immunocompetent humans and animals. Thus, it is not necessary to make this explicit in the HMR.

Accordingly, in this final rule we are defining Division 6.2 materials using the WHO risk group criteria. Division 6.2 materials must be assigned to risk groups based on the degree to which they cause injury through disease, with Risk Group 1 presenting the lowest risk and Risk Group 4 presenting the highest risk. Assignments to risk groups are based on the known medical history of the patient or animal, endemic local conditions, symptoms of the patient or animal, or professional judgement concerning the individual circumstances of the patient or animal. Division 6.2 materials assigned to Risk Group 1 are excepted from all HMR requirements, unless they meet the definition of another hazard class.

C. Packaging Requirements for Infectious Substances

In the NPRM, we proposed to incorporate several changes to the infectious substances regulations applicable to packaging requirements and performance tests. The changes were intended to make the HMR requirements consistent with the UN Recommendations and ICAO Technical Instructions For example, we proposed to require manufacturers to meet UN marking requirements for packagings represented as conforming to the specifications for infectious substances packagings in the HMR. In addition, we proposed to require manufacturers to retain packaging design qualification records and to retest packagings every 24 months. Further, we proposed to replace the current requirement for a water immersion test with a water-spray test to simulate exposure to rainfall, as required by the ICAO Technical Instructions. Similarly, we proposed to incorporate the selective testing provisions in the UN Recommendations and ICAO Technical Instructions. These provisions allow variations in the primary receptacles within the secondary packaging, without further testing of the completed package, if an equivalent level of performance is maintained. Commenters endorse these proposals. We are adopting them in this final rule without change.

One commenter suggests a more stringent packaging requirement for infectious substances. The commenter recommends we replace the current triple packaging requirement (water-tight primary receptacle, water-tight secondary packaging, and outer packaging) with a quintuple packaging. In the quintuple packaging, the primary receptacle is enclosed in a sealed plastic bag with absorbent material inside a watertight primary container inside a watertight secondary container inside a tertiary container or overpack. We disagree. The accident record demonstrates a triple packaging meeting the performance standard established in the HMR is sufficient to contain the material under normal conditions of transportation.

D. Exceptions for Domestic Shipments of Infectious Substances

In the NPRM, we proposed to expand the materials of trade (MOTS) exceptions currently permitted under § 173.6 of the HMR. The proposal expanded the MOTS exception to include certain biological products, diagnostic specimens, and RMW, including cultures and stocks. MOTS include hazardous materials carried by private motor carriers engaged in a principal business other than transportation, such as lawn care, plumbing, welding, and door-to-door sale of consumer goods. The MOTS exception limits the maximum gross weight of MOTS that may be carried on a motor vehicle and includes minimum packaging and hazard communication requirements. As proposed in the NPRM, the MOTS exception for infectious substances specified combination packagings, with limitations on capacity.

A number of commenters address the proposed MOTS exception for infectious substances. Several commenters oppose the exception, suggesting it is too broad and does not provide adequate packaging or hazard communication. Other commenters support the exception, but recommend we incorporate minimal acceptable standards for packaging. These commenters note that most items shipped under the MOTS exception must be shipped in their original packaging or the equivalent. However, biological products, diagnostic specimens, and RMW are packaged for the first time when they are collected at the site from which they will be shipped. Thus, these commenters suggest the inner packaging should be puncture- and leak-resistant and there should be sufficient absorbent material for the contents of the inner packaging.

We agree with commenters that the MOTS exception for Division 6.2 materials should include general packaging standards. Therefore, in this final rule, we are adding performance requirements for combination packagings authorized under the MOTS exception for transportation of Division 6.2 materials. The inner packaging of the combination packaging must be leak tight for liquids, and the outer packaging must contain absorbent material sufficient to absorb the entire contents of the inner packagings. For sharps, which are objects that can pierce certain types of packaging, the inner packaging of the combination packaging must be constructed of a rigid, puncture-resistant material. For all Division 6.2 materials, the outer packaging must be a strong, tight packaging that is securely sealed. Note that Division 6.2 materials shipped in conformance with the MOTS exception are subject to all applicable requirements in § 173.6. This includes requirements to mark packages with a common name or proper shipping name, and to inform the motor vehicle operator of the presence of a hazardous material and the requirements of § 173.6.

A commenter asks us to clarify the MOTS exception for RMW, with respect to home health care providers. Specifically, this commenter believes the NPRM was confusing in its treatment of waste generated from households. The commenter states the NPRM proposed the MOTS exception in § 173.6 as appropriate for home health care providers. At the same time, the NPRM provided a complete exception in § 173.134 from HMR requirements for medical waste generated from households and transported in accordance with applicable state or local requirements. The exception for medical waste generated from households applies to waste collected by local sanitation workers along with trash, garbage, and other non-medical household waste. The MOTS exception applies to RMW generated through home treatment of medical conditions by professional health care providers. These health care providers remove such waste and transport it elsewhere for disposal.

One commenter recommends the HMR include an exception from all transportation regulatory requirements, except for minimal packaging standards, for Risk Group 2 materials transported by highway. The commenter did not provide a reason for this recommendation. We disagree. Risk Group 2 infectious substances can pose risks to transportation workers and the general public. We believe they should be regulated in the same manner as Risk Group 3 infectious substances.

One commenter suggests the final rule should include an exception for environmental microbiological samples collected in the field to evaluate occupational and residential exposure risks. An example is a piece of moldy wallboard. The organisms in such samples are predominantly from the environment rather than humans, and therefore pose a limited risk of infection to the individual or the community. We agree and so modified the list of materials excepted from the HMR to include environmental microbiological samples being transported for analysis and/or testing. Note, however, that a material or object known or suspected to be contaminated with an infectious substance must be transported in accordance with all applicable HMR requirements.

The same commenter also expresses a concern about the effect of the proposals in the NPRM on samples shipped to laboratories to evaluate their proficiency in analyzing and identifying pathogens and other materials. The commenter is concerned the NPRM would require such samples to be identified in shipping documentation or on labels. In fact, this is not the case. The HMR requires the technical name of an infectious substances to be shown in parentheses as part of the basic shipping description on shipping papers and package markings. However, the definition of "technical name" in § 171.8 of the HMR permits use of a generic description in place of the technical name for proficiency testing. Thus, an infectious substance sample sent to a laboratory for proficiency testing may show a generic microbiological description, such as bacteria, myobacteria, fungus, or viral sample, as part of the shipping description. Packaging, marking, and labeling the proficiency testing sample as an infectious substance and using a generic technical name should not compromise proficiency testing programs.

E. Diagnostic Specimens

In the NPRM, we proposed regulations applicable to the transportation of diagnostic specimens consistent with the UN Recommendations. Diagnostic specimens are human or animal material being transported for diagnostic or investigational purposes. We proposed a new entry in the Hazardous Materials Table—"Diagnostic Specimen." We did not propose a UN number, warning label, or packing group assignment.

As proposed in the NPRM, diagnostic specimens meeting the definition of a Risk Group 4 material would be classed and required to be transported as Division 6.2 materials, UN 2814 or UN 2900. All other diagnostic specimens would be packaged in non-specification packagings meeting minimum performance criteria. Under the proposal, packages containing diagnostic specimens would be required to be marked "Diagnostic Specimens." Diagnostic specimens shipped in accordance with these provisions would be excepted from all other HMR requirements, except for incident reporting for diagnostic specimens transported by aircraft.

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Several commenters oppose the NPRM proposal for diagnostic specimens. These commenters suggest that requirements for the shipment of diagnostic specimens should be applied based on whether a specimen could reasonably be suspected of being infectious. According to these commenters, any shipments other than routine screening samples or samples transported to investigate non-communicable diseases or conditions should be fully regulated as Division 6.2 materials. As we noted in the NPRM (66 FR 6944), we issued an ANPRM under this docket (63 FR 46844; September 2, 1998) proposing a regulatory regime for diagnostic specimens similar to this commenter's suggestion. Commenters to the ANPRM almost unanimously opposed this approach, stating it would be difficult and costly to implement. Commenters to the ANPRM also stated such a requirement could result in shipment delays. This would make early detection and treatment of disease difficult, and could significantly increase health care costs. We agreed. The NPRM proposal specifies a more practical, cost-effective, and easy-to-understand regulatory system for diagnostic specimens, consistent with requirements established in the UN Recommendations.

A number of commenters suggest the table entry for diagnostic specimens is ambiguous and may cause confusion. The table entry indicates that diagnostic specimens are regulated as hazardous materials. However, the specific provisions proposed for transportation of diagnostic specimens except such shipments from most requirements applicable to hazardous materials. Several commenters recommend we remove the entry from the table, to clarify that diagnostic specimens are not regulated as hazardous materials.

We disagree. In fact, the NPRM proposed a table entry for diagnostic specimens precisely to indicate diagnostic specimens would be regulated as hazardous materials under the HMR. There are a number of materials listed in the table as hazardous materials that are excepted from most HMR requirements, as we proposed to do for diagnostic specimens. For example, lithium batteries are regulated for transportation purposes as a hazardous material and are listed in the table, but are excepted from many requirements of the HMR when shipped in accordance with the provisions in § 173.185.

One commenter notes that diagnostic specimens are usually shipped with a transport media. The transport media preserves the specimen, prevents overgrowth, and facilitates isolation and analysis. This transport media may inactivate or disable any pathogens contained in the specimen. The commenter states that the NPRM overlooks this aspect of diagnostic specimens shipments, exaggerating the risk associated with transportation. Other commenters agree and suggest the final rule should clarify that if no pathogen is present in the diagnostic specimen or if the pathogen is neutralized, then the specimen is not regulated under the HMR. We agree. In this final rule, we added diagnostic specimens in which no pathogen is present or the pathogen is neutralized to the list of materials not subject to regulation as infectious substances under the HMR. Note, however, that a transport media used in the shipment of infectious substances may itself be a hazardous material—i.e., it meets the definition of one of the defined hazard classes based on flammability, corrosivity, toxicity, or other hazard characteristic. If so, the shipment must be transported in accordance with HMR requirements for the specific hazard class. Note, also, that a diagnostic specimen shipped in a packaging with a neutralizing agent designed to function only if the inside packaging containing the diagnostic specimen ruptures or breaks, must be shipped in accordance with the requirements applicable to diagnostic specimens in § 173.199.

Several commenters suggest the regulations should take into account the physical nature of a diagnostic specimen when prescribing packaging requirements. For example, commenters state certain diagnostic samples, such as dried blood spots, fecal smears, and skin punches, do not present the same risks in transportation as liquid or semi-solid diagnostic samples. Similarly, commenters state urine and oral tissues are incapable of transmitting disease in the same manner as blood. These commenters recommend modification of the regulations to distinguish between diagnostic specimens that pose a threat of infection to transport workers and the general public, and those that do not. We disagree. Solid-form diagnostic specimens potentially containing infectious substances do present a risk of infection, as do urine and oral tissues. Although this risk may be less than for blood, we believe the minimal packaging standards for the transportation of diagnostic specimens should apply consistently to all materials meeting the definition of a diagnostic specimen in this final rule. Moreover, the packaging standards established in this final rule do distinguish between solid- and liquid-form diagnostic specimens. For example, the capacity limits for liquid diagnostic specimens are less. Further, liquid diagnostic specimen packagings transported by aircraft must be capable of withstanding, without leakage, an internal pressure producing a pressure differential of not less than 95 kPa.

Several commenters address the specific packaging requirements proposed for the transportation of diagnostic specimens. The NPRM proposed to require diagnostic specimens to be packaged in primary receptacles packed inside secondary packaging, secured in an outer packaging with suitable cushioning material. One commenter states there is no need to secure the secondary packaging inside the outer packaging, because the specimen is twice contained in leak-proof, watertight packaging with absorbent material in between. This commenter asserts the proposal adds to overall packaging costs with no transportation safety benefit. We disagree. The requirement to secure secondary packaging inside the outer packaging helps assure the integrity of the entire packaging, by preventing damage to the secondary packaging resulting from handling during transportation. Moreover, the requirement is consistent with international standards. Further, secondary packaging can be secured inside an outer packaging in several ways that do not necessarily involve tying or fastening the secondary packaging to the outer packaging. For example, if the secondary packaging fits snugly within the outer packaging, the secondary packaging would be considered to be secured within the outer packaging.

In addition, several commenters state the proposed capacity limits on packages of diagnostic specimens should be more flexible to accommodate dry ice for preservation of specimens. The NPRM proposed an outer packaging capacity limit of 4L (1 gallon) for liquid diagnostic specimens, and 4 kg (8.8 pounds) for solid diagnostic specimens. These capacity limits apply to the diagnostic specimen only; packagings may be larger to accommodate dry ice used for preservation of specimens. Note, however, that shipments using dry ice are subject to applicable requirements in § 173.217.

Another commenter suggests the packaging requirements for diagnostic specimens should be more stringent than in the NPRM. This commenter recommends a quintuple packaging, consisting of a primary receptacle enclosed in a sealed plastic bag contained in a primary container, inside a secondary container, inside a tertiary container. We disagree. The packaging for diagnostic specimens proposed in the NPRM is consistent with packaging requirements in the UN Recommendations. Further, the packaging suggested by the commenter would add significantly to the cost of shipping diagnostic specimens.

One commenter addresses the "diagnostic specimen" marking requirement proposed in the NPRM. This commenter states the proposed marking requirement is redundant and provides no transportation benefit. We disagree. Under the proposal in the NPRM, packages containing diagnostic specimens must be marked "Diagnostic Specimen." No other marking or labeling is required, nor are shipping papers required; thus, it is difficult to see how the proposed marking could be "redundant." The marking is intended to communicate a potential hazard to transportation workers. Diagnostic specimens shipped in accordance with the provisions in the NPRM could contain infectious material, and the marking indicates transportation workers should take appropriate precautions if the package is damaged or leaking.

Another commenter suggests we adopt and modify the "Excepted Quantities Label" authorized by International Air Transport Association (IATA) standards, to indicate a shipment contains a diagnostic specimen. We believe the marking requirement in this final rule accomplishes the same goal without the additional regulatory burden that would result from a new labeling requirement. However, this final rule does not prohibit shippers from voluntarily applying the "Excepted Quantities Label" to such packages in addition to the "Diagnostic Specimen" marking.

In addition to the MOTS exception previously discussed, the NPRM also proposed a complete exception from the HMR for diagnostic specimens transported by private or contract motor carriers. One commenter opposes this exception, out of concern that inadequate packaging would expose untrained emergency response personnel to potentially infectious materials. However, most commenters generally are supportive of this proposal, agreeing the packaging and procedures used for courier shipments of diagnostic specimens are sufficient to assure the safety of such shipments in transportation. Further, couriers are familiar with the materials they transport, and are trained in the application of the Occupational Safety and Health Administration (OSHA) standards for Universal Precautions for handling materials potentially containing infectious substances. Therefore, this exception is adopted as proposed in this final rule.

The NPRM proposed to except diagnostic specimens prepared in accordance with proposed § 173.199 from training requirements in Subpart H of Part 172 of the HMR. In lieu of training, the NPRM proposed to require offerors and transporters of diagnostic specimens to be informed of the diagnostic specimen packaging requirements. Commenters did not specifically address this aspect of the proposed requirements for diagnostic specimens in the NPRM. One commenter asked us to clarify the meaning of "must be informed" as used in proposed § 173.199.

As used in new § 173.199 of this final rule, "must be informed" means persons who offer or transport diagnostic specimens for transportation in accordance with § 173.199 must know about and be able to apply the requirements of § 173.199 to specific shipments. There are no record-keeping or certification requirements associated with this provision, which distinguishes this requirement as a less formal type of training requirement than would otherwise be required by subpart H of part 172. In this final rule, we modified the NPRM proposal to indicate persons who ship or transport diagnostic specimens must know about the provisions in § 173.199.

The NPRM proposed to subject diagnostic specimens transported by aircraft to incident reporting requirements. Several commenters oppose this proposal. They suggest an incident-reporting requirement may cause air carriers to refuse shipments of diagnostic specimens, which could lead to serious delays in the testing process and adversely affect the provision of quality health care to patients. We disagree that the incident reporting requirement should be removed from this final rule. Commenters' suggestion that air carriers may refuse shipments as a result of this requirement is speculative; no air carriers indicated they would refuse shipments as a result of this provision. Further, we believe the benefits of incident reporting will be significant. Since diagnostic specimens are currently excepted from all regulatory requirements in the HMR, we currently have only anecdotal information concerning incidents involving diagnostic specimens. Information provided through incident reports will allow us to more fully evaluate the risks posed by these materials in transportation and to assess the efficacy of the packaging requirements imposed by this final rule.

One commenter suggests air carriers may not be able to identify a leak as coming from a package containing a diagnostic specimen. Since the package must be marked with the words "Diagnostic Specimen," we do not believe such identification will be difficult.

Two commenters suggest the proposed requirements for transporting diagnostic specimens will be "prohibitively expensive" for the industry. However, these commenters do not provide supporting evidence for this assertion. We disagree. The provisions for air shipment of diagnostic specimens are consistent with the UN Recommendations and will be consistent with the 2003–2004 Edition of the ICAO Technical Instructions, which most air carriers follow for both domestic and international transportation. Further, the final rule includes several exceptions for ground transportation of diagnostic specimens, thus minimizing new costs for health care providers.

Accordingly, this final rule adopts the provisions applicable to the transportation of diagnostic specimens proposed in the NPRM. Diagnostic specimens meeting the definition of a Risk Group 4 material must be classed and transported as Division 6.2 materials, UN 2814 or UN 2900. Diagnostic specimens known or suspected to contain a Risk Group 2 or 3 infectious substance must be packaged in primary receptacles packed inside secondary packaging to preclude breakage, punctures, or leakage. For liquids, there must be sufficient absorbent material to absorb the entire contents of the primary receptacle. The secondary packaging must be secured in outer packagings with suitable cushioning material. For liquids transported by aircraft, either the primary receptacle or the secondary packaging must be capable of withstanding an internal pressure producing a pressure differential of at least 95kPa (0.95 bar, 14 psi). The completed package must be capable of passing a drop test from a height of at least 1.2 meters (3.9 feet). The package must be marked with the words "Diagnostic Specimen." Diagnostic specimens shipped in conformance with these provisions are excepted from all other requirements in the HMR, with one exception. Diagnostic specimens transported on board aircraft are subject to the incident reporting requirements in §§ 171.15 and 171.16. Under this

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final rule, offerors and transporters of diagnostic specimens must know about the diagnostic specimen packaging requirements. A commenter asked if diagnostic specimens shipped in conformance with these provisions would be subject to HMR requirements for notification-of-pilot-in-command. The answer is no.

We note that waste diagnostic specimens—diagnostic specimens meeting the definition for RMW in this final rule—may not be transported under the exceptions established in this final rule for the transportation of diagnostic specimens. Waste diagnostic specimens lose their identity as diagnostic specimens for purposes of the HMR, and must be transported in accordance with the HMR requirements applicable to RMW.

F. Biological Products

Commenters to the NPRM generally support its proposals concerning transportation of biological products. Currently, biological products are excepted from the HMR provided they meet FDA or USDA regulations governing the transfer of biological products. In the January 2001 NPRM, we proposed to limit this exception to biological products meeting the definition of a Risk Group 1 material or licensed for use under current FDA or USDA regulations. We proposed to require unlicenced biological products meeting the definition of a Risk Group 2, 3, or 4 infectious substance to be classed as infectious substances, Division 6.2, and packaged in specification packagings authorized for the transportation of infectious substances.

In addition, we proposed to add a special provision in § 172.102 relating to the transportation of blood and blood products. For consistency with ICAO Technical Instruction Special Provision A81, this special provision would except blood and blood products from current quantity limits for shipments by air when the materials are packaged in primary receptacles not exceeding 500 mL (17 ounces) and contained in outer packagings not exceeding 4 L (1 gallon).

We also proposed to except from all HMR requirements the following: blood collected for blood transfusions; blood collected for the preparation of blood products; blood products intended for transplant; and tissues and organs intended for transplant.

A number of commenters note that veterinary biological products are regulated by USDA, regardless of their licensing status. Such veterinary biological products are subject to comprehensive regulation (9 CFR Parts 101 through 124). For example, veterinary biological products in pre-license status are regulated by USDA under 9 CFR 103.3 and are shipped only after USDA review and approval. The USDA requirements are designed to assure that the biological materials are not contaminated during shipment and pose no threat to agriculture or livestock. Similarly, under the Virus-Serum-Toxic Act of 1913 (21 U.S.C. 151 *et seq.*), imported veterinary biological products are subject to permit rather than licensing requirements. USDA regulations assure that imported veterinary biological products meet the same high standards for distribution and sale in the United States as domestically produced biological products. Based on USDA's comprehensive regulatory scheme, commenters recommend that imported veterinary biological products subject to USDA permitting procedures be excepted from HMR requirements. We agree biological products subject to USDA regulation should be excepted from HMR requirements, and have modified the list of exceptions in this final rule accordingly.

A commenter recommends we expand the exception from regulation for biological products subject to Federal approval and licensing requirements, to include products manufactured by facilities licensed by or registered with a Federal agency. We disagree. The current exception is product-specific because Federal requirements for approval and licensing of biological products assure their safety. Products manufactured by licensed or registered facilities may or may not be subject to Federal approval processes and so may or may not have a record demonstrating their safety.

One commenter disagrees with the proposed exception in the NPRM for blood collected for transfusions. The commenter states all human blood should be treated as infectious material. If not, transport workers would be subject to less stringent protective requirements than laboratory and hospital workers. We disagree. Blood collection facilities are subject to the OSHA regulations for handling potentially infectious blood and blood products (29 1910.1030). The OSHA regulations include requirements for handling, packaging, and shipping blood. Because blood collection facilities are subject to OSHA regulations, we believe an exception from the HMR for blood collected for transfusion is justified.

One commenter suggests the exception for blood collected for transfusion and blood products should be expanded to include blood and plasma transported for testing as part of the donor process. We agree that blood sent for testing as part of the donor process should be excepted from regulation under the HMR. Therefore, we modified the proposal in the NPRM to except from the HMR blood sent for testing as part of the donor process, unless the person collecting the blood has reason to believe the sample contains an infectious substance. In such instances, the blood sent for testing must be packaged and shipped as a diagnostic specimen. Note also that blood and blood products transported for testing as part of the donor process is subject to OSHA requirements for handling and shipping.

Several commenters suggest the proposed exception from HMR requirements for blood collected for transfusion and blood products, organs, and tissues intended for transplant, should be expanded to include plasma derivatives. Plasma derivatives are derived from the same units of pre-screened blood used for transfusion. However, plasma derivatives are not "transfused." They are "infused." These commenters request clarifying the final rule to specify plasma derivatives are covered by the same exception as blood collected for transfusion. Plasma derivatives are covered under the exception for biological products in § 173.34(b) of this final rule. Therefore, no additional clarifying language is necessary.

A number of commenters note the proposed addition of Special Provision A81 does not reflect the most recent amendments to the UN Recommendations and the ICAO Technical Instructions. Effective June 20, 2001, the UN Recommendations and ICAO Technical Instructions include a Special Provision to except from aircraft quantity limits, body fluids packed in primary receptacles not exceeding 1,000 mL in outer packagings not exceeding 4 L. In this final rule, we revised Special Provision A81 for consistency with the most recent editions of the UN Recommendations and ICAO Technical Instructions. Thus, under this final rule, Special Provision A81 applies to shipments of any body fluid (*e.g.*, blood, plasma, urine, semen, saliva, spinal fluid, amniotic fluid, and the like).

One commenter recommends we expand the exception from HMR requirements for blood collected for transfusions or blood products, to include waste generated from the collection and testing of blood and blood products. We disagree. Waste is not packaged and transported with the same care as blood and blood products intended for transfusion, even under the exception granted in this final rule. Further, waste generated from the collection of blood may include sharps and similar objects.

We note that all waste biological products—biological products meeting the definition for RMW in this final rule—may not be transported under the exceptions in this final rule for the transportation of biological products. Waste biological products lose their identity as biological products for purposes of the HMR and, if they contain infectious substances, must be transported in accordance with the HMR requirements applicable to RMW.

G. Genetically Modified Micro-Organisms

In the NPRM, we proposed adding "Genetically modified micro-organism" to the Hazardous Materials Table as a Class 9 material. We proposed to require these materials to be packaged in conformance with the requirements for packaging infectious substances, except that the packagings need not be marked or tested in accordance with part 178 requirements.

The NPRM also proposed two exceptions applicable to the transportation of genetically modified micro-organisms. First, we proposed to except genetically modified micro-organisms from all requirements in the HMR if a Federal government agency authorizes their final distribution and use. Second, we proposed to except genetically modified micro-organisms from HMR requirements when transported in a non-passenger-carrying transport vehicle operated by a private or contract motor carrier.

A number of commenters address the proposals for genetically modified micro-organisms. Of major concern to the commenters is that the proposed requirements are not risk-based, but instead assume genetically modified micro-organisms pose a threat during transportation merely because of the fact that they are genetically modified. One commenter asserts the proposed Class 9 definition for genetically modified micro-organisms is scientifically meaningless, burdensome, and likely to impede essential research and development involving these materials. Other commenters are concerned that, as defined in the NPRM, genetically modified micro-organisms could include products enhanced through biotechnology. They fear that the requirement to transport genetically modified micro-organisms as Class 9 materials could be interpreted to apply to bulk shipments of biotechnology-enhanced agricultural commodities or products. Most commenters recommend we regulate genetically modified micro-organisms only when they also meet the definition of an infectious substance.

We agree the NPRM proposals applicable to genetically modified micro-organisms may be unnecessarily broad, confusing, and difficult to apply and interpret. Further, there are a host of other stringent Federal requirements applicable to research, licensing, permitting, movement, and use of genetically modified micro-organisms. These regulatory systems were initially described in the policy statement referred to as "The Coordinated Framework" (51 FR 23302, June 26, 1986). For more specific details, please see the appropriate agency websites—for example, the EPA Biopesticides and Pollution Prevention Division at *http://www.epa.gov/pesticides/biopesticides/*; the EPA Office of Pollution Prevention and Toxics at *http://www.epa.gov/opptintr/biotech/index.html*; the Animal and Plant Health Inspection Service at *http://www.aphis.usda.gov*; and the FDA Center for Food Safety and Applied Nutrition at *http://vm.cfsan.fda.gov/list.html*.

Because a number of Federal regulatory agencies have rigorous programs in place to regulate the safety and distribution of genetically modified micro-organisms, and because the United States is engaged in ongoing international negotiations concerning global regulation of these materials, the proposals in the NPRM applicable to genetically modified micro-organisms are not adopted in this final rule. Note, however, that genetically modified micro-organisms meeting the definition of a Division 6.2 material are subject to regulation under the HMR.

H. Regulated Medical Waste

Commenters generally support the proposals in the NPRM to permit transportation of RMW in certain non-specification bulk packagings. However, commenters suggest several modifications to the proposals in the NPRM.

The NPRM defines "regulated medical waste" to mean waste or reusable material containing or suspected of containing an infectious substance in Risk Groups 2 or 3. RMW is generated in the diagnosis, treatment, or immunization of human beings or animals; research on the diagnosis, treatment, or immunization of human beings or animals; or the production or testing of biological products. RMW containing an infectious substance in Risk Group 4 must be classed as Division 6.2, described as an infectious substance, and assigned to UN 2814 or UN 2900, as appropriate. One commenter states the RMW definition is impossible to implement because generators of RMW will not know the specific materials contained in the waste. We disagree. Generators of RMW know the nature of the waste because of the materials they handle during the course of their operations. Further, Risk Group 4 materials are very closely regulated by the CDC, so a generator of RMW should know whether the waste contains a Risk Group 4 material.

One commenter recommends we require RMW containing Risk Group 1 infectious material to meet "minor" regulatory requirements. We disagree. As stated above, Risk Group 1 infectious substances are unlikely to cause human or animal disease, and so pose little or no risk to transportation workers or to the general public. There is no compelling safety rationale for regulating RMW containing only Risk Group 1 infectious material.

The NPRM proposed to authorize certain non-specification bulk containers for use as outer packagings for the transportation of RMW. Two commenters oppose this proposal out of concern that it represents a relaxation of current requirements for authorized RMW packagings to meet Packing Group II performance standards. We disagree. This final rule retains the Packing Group II performance requirements for non-bulk packagings. For bulk packagings, which are currently authorized under the terms of 29 exemptions, this final rule permits RMW to be transported in certain non-specification packagings with proven safety records gained through exemptions experience. These packagings have a demonstrated safety record. In addition, this final rule establishes performance standards for the authorized bulk packagings, including a requirement for certain packagings to be capable of passing a drop test at the Packing Group II performance level.

One commenter suggests the proposal would permit regulated medical waste to be transported in large, open-top, roll-off bulk containers. This is not the case. The non-specification bulk packagings authorized for the transportation of RMW must be closed with a lid or closure, to prevent intrusion of water into the packaging or release of contents from the packaging.

Several commenters suggest the provisions applicable to authorized bulk packagings are needlessly detailed. For example, commenters question the necessity of the proposed requirement for a wheeled cart (Cart) to be mounted on a minimum of four wheels and to have a gasketed lid. We agree. In this

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final rule, we modified the bulk packaging provisions to provide for more flexibility in their design.

Other commenters suggest we should permit more flexibility for inner packagings inside bulk outer packagings. For example, one commenter notes that the 10-gallon limit on the size of sharps containers used as inner packagings, could preclude shipment of such items as specialized single-use drills, skin staple guns, and heart/lung machine and cell saver canisters, as RMW. We agree and modified this final rule accordingly. For sharps containers, this final rule requires a container with a capacity greater than 20 gallons to be capable of passing the performance tests in § 178.601 of the HMR at the Packing Group II performance level. A sharps container with a capacity of 20 gallons or less must be puncture resistant, but need not be capable of passing the Part 178 performance tests.

Commenters do not address our proposal to allow RMW to be transported in "Large Packagings," which are intermediate bulk packagings containing one or more inner packagings consistent with the requirements of the UN Recommendations. We adopted a definition for these packagings in a final rule issued under Docket HM–215D, published June 21, 2001 (66 FR 33316). The International Maritime Dangerous Goods Code also incorporates this definition. As defined under HM–215D, a Large Packaging consists of an outer packaging containing articles or inner packagings and designed for mechanical handling. A Large Packaging has a capacity greater than 400 kg (882 lbs) or 450 liters (119 gallons), but does not exceed 3 cubic meters (7,000 liters, 793 gallons, or 106 cubic feet) in volume. The proposals in the NPRM concerning Large Packagings are adopted without change in this final rule.

One commenter raises concerns about the "certification" process for RMW packagings. The commenter suggests the "certification" standards are vague and assume manufacturing uniformity, which may or may not be present, according to the commenter. The commenter asserts "only the most sophisticated parties, that is, the larger transporters, have had containers certified" and this limits generators' flexibility in selecting the most appropriate, cost-effective packaging for transporting RMW. We disagree. Currently, the packaging standards in § 173.197 specify that non-bulk packagings for RMW must conform to the requirements of Part 178 at the Packing Group II performance level. This means each packaging must be marked to certify the packaging conforms to all applicable requirements. The packaging design and manufacturing requirements apply to any manufacturer of a specification packaging, not just "the most sophisticated parties." Further, bulk packagings for transportation of RMW are currently authorized only under the terms of exemptions. The proposals in the NPRM in fact increase flexibility, and thus reduce costs for offerors and transporters of RMW by providing a range of bulk packaging options. These options include non-specification packaging options, not currently authorized under the HMR. We are adopting the NPRM proposals in this final rule.

The NPRM proposed to require inner packagings authorized for Large Packagings, Carts, and bulk outer packagings (BOP) to be marked or tagged with the name and location of the offeror. The proposal included an exception from these marking requirements when the entire contents of the Large Packaging, Cart, or BOP originate at a single facility and are delivered to a single location. One commenter opposes this exception. The commenter describes two incidents involving RMW found along public highways, presumably fallen from a transport vehicle. The bags within which the RMW was contained were not marked with the name and location of either the offeror or the consignee, and so could not be traced. The commenter suggests a lack of identification on inner packagings may exacerbate problems related to illegal dumping of RMW or poor package handling. We disagree. This exception is consistent with the current exception from marking for all hazardous materials shipments transported by highway without transfer from one motor carrier to another. This exception is also consistent with the current marking exception for shipments where the entire contents of a transport vehicle or freight container are shipped from one consignor to one consignee.

In response to a petition for rulemaking, the NPRM proposed to revise the HMR to permit transportation of Risk Group 2 or 3 waste cultures or stocks in non-specification packagings when transported by common or contract carriers in dedicated vehicles. Commenters did not specifically address this proposal. It is adopted as proposed in this final rule.

One commenter opposes the proposal in the NPRM to revise the quantity limitations applicable to shipments of RMW on aircraft. Currently, such shipments are forbidden. We proposed to revise the quantity limitations for non-bulk shipments of RMW on board aircraft to read "No limit" for consistency with the ICAO Technical Instructions applicable to quantity limitations for RMW on airplanes. We proposed to continue to prohibit bulk shipments of RMW on board aircraft. The commenter suggests RMW shipments are not time critical, and thus do not need to be transported by air, except in the rare instances already authorized by Special Provision A14. (Special Provision A14 permits air shipments of small quantities of RMW when other means of transportation are impracticable or unavailable.) We disagree. The proposals for transporting RMW on board aircraft are adopted in this final rule for consistency with the UN Recommendations and ICAO Technical Instructions. When properly packaged, non-bulk shipments of RMW may be safely transported by air.

One commenter notes many RMW generators depend on the entity transporting the RMW for many services related to the management of the waste. The commenter suggests the proposals applicable to RMW in the NPRM would require both generators and carriers to perform the same functions, greatly increasing the costs of compliance for generators. We disagree. A health care facility may contract with a waste hauler to perform all offeror functions associated with the transportation of its RMW. In this case, the waste hauler becomes the offeror of the RMW and is responsible for classifying the RMW, selecting appropriate packagings, assuring packagings are not overfilled, securing the closures on packagings, marking and labeling the packagings as appropriate, and generating shipping papers in accordance with the HMR. Workers in the health care facility who perform no offeror functions affecting the transportation safety of the shipment, but merely deposit medical waste in containers provided by the waste hauler, are not subject to HMR requirements. However, workers at a health care facility who perform offeror functions are subject to applicable requirements of the HMR. If a health care facility and a waste hauler split the performance of offeror functions, both the facility and the waste hauler are subject to the HMR as offerors.

In the NPRM, we noted in the preamble that waste diagnostic specimens and waste biological products—diagnostic specimens and biological products meeting the definition for RMW—could not be transported under the exceptions proposed in the NPRM for these

materials. One commenter opposes this distinction, stating that excepted products should continue to be excepted from HMR requirements when their status changes to waste. The commenter states regulating a material differently at various stages places an undue and unrealistic burden on medical staff in the field. We disagree. By definition, RMW is a waste or reusable material containing or suspected of containing a Risk Group 2 or 3 infectious substance. If a diagnostic specimen is found not to contain a pathogen, then it is not subject to regulation as RMW. Similarly, if an excepted biological product is not contaminated during use or handling with an infectious material, then it is not subject to regulation as RMW. Laboratory workers, health care providers, and medical staff should have no problem identifying those diagnostic specimens or biological products meeting the RMW definition, and transporting them with other RMW generated by the facility.

I. Used Health Care Products

In the NPRM we proposed to except from the HMR used health care products returned to the manufacturer, provided the products are shipped in a triple packaging conforming to certain manufacturing and marking requirements. The proposal required the primary and secondary containers to be marked with the OSHA BIOHAZARD symbol. In addition, we proposed to require the secondary container to be a watertight metal or plastic packaging designed and constructed in a manner to assure the used health care product and primary container remain intact during transportation. The NPRM proposed to require offerors and transporters of used health care products potentially contaminated with an infectious substance to be informed about the used health care product packaging requirements.

Several commenters address this proposal. Most suggest that the proposal is too broad. Further, commenters suggest that, for purposes of the HMR, the definition of used health care products should be limited to used products contaminated with potentially infectious body fluids or materials. Transportation requirements should apply only to products where the infectious hazards cannot be removed or mitigated prior to transportation. We agree and modified this final rule accordingly.

Commenters also suggest the packaging requirements for shipment of used health care products should be risk-based performance standards rather than triple-pack specification standards, as proposed in the NPRM. We agree. Therefore, in this final rule we are revising the packaging requirements proposed in the NPRM to provide more flexibility for shippers.

Note that the person offering a used health care product for transportation under the HMR, not the original manufacturer of the product, is responsible for assuring compliance with the transportation requirements.

J. Hazard Communication

In the NPRM, we proposed to require bulk packagings containing RMW to be marked with the appropriate UN identification number and with a BIOHAZARD marking. The BIOHAZARD marking would have to conform to OSHA specifications for the BIOHAZARD marking in 29 CFR 1910.1030(g)(1)(i) to communicate to emergency response personnel the nature of the material being transported. We proposed to require the size of the BIOHAZARD marking to measure at least 273 mm (10.8 inches) on each side. Two commenters note many states require a 152.4 mm (6 inches) size marking, and ask us to consider changing our proposed size requirement. We agree and modified this final rule accordingly. In addition, the final rule includes a graphic representation of the BIOHAZARD symbol.

One commenter requests we allow a transition period for the new BIOHAZARD marking for bulk shipments of RMW, and for the marking requirements on inner packagings authorized for use inside bulk packagings authorized for the transportation of RMW. We agree. In this final rule we are specifying the effective date for both marking requirements as one year after the effective date of this final rule.

One commenter suggests all unique marking requirements for infectious substances, including regulated medical wastes, should be consolidated into one section in subpart D of part 172, rather than located in sections authorizing exceptions from certain requirements or in packaging authorization sections. We disagree. Placing some marking requirements with authorized exceptions or with packaging authorization requirements helps shippers easily identify all requirements with which they must comply when preparing packages for transportation.

Several commenters note certain packages of infectious substances may be subject to labeling requirements under both the HMR and the OSHA BIOHAZARD labeling requirements in 29 CFR 1910.1030. These commenters suggest we adopt a single labeling requirement, or we work cooperatively with OSHA to clarify that the OSHA BIOHAZARD label should not be used for transportation. While we agree with commenters that a dual labeling requirement for certain packages of infectious substances may be confusing, we determined that the OSHA BIOHAZARD label is not prohibited under § 172.401 of the HMR. We do permit use of the BIOHAZARD label in place of the INFECTIOUS SUBSTANCE label under certain conditions. However, substituting the BIOHAZARD label for the INFECTIOUS SUBSTANCE label in all cases is not feasible. The INFECTIOUS SUBSTANCE label is consistent with labels authorized by the UN Recommendations and the ICAO Technical Instructions for international shipments of infectious substances. We do work with OSHA to minimize regulatory duplications and inconsistencies and will continue to do so.

State, local, and tribal governments should be aware the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) contains an express preemption provision preempting state, local, and Indian tribe requirements on certain covered subjects (49 U.S.C. 5125(b)). The covered subject areas are:

(a) The designation, description, and classification of hazardous material.

(b) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(c) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(d) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(e) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

The marking of a hazardous material for purposes of transportation in commerce is a covered subject for purposes of preemption. Thus, unless authorized by another Federal law or a waiver of preemption from the Secretary of Transportation, a non-Federal marking requirement applicable to transportation in commerce is preempted when it is not "substantively the same" as Federal hazmat law or a regulation issued under it. 49 U.S.C.

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5125(b)(1). After August 14, 2003, non-Federal marking requirements applicable to hazardous materials transportation not substantively the same as the marking requirements for RMW included in this final rule are preempted, unless authorized by another Federal law or a waiver of preemption.

K. Training

Several commenters addressed training requirements associated with the regulation of infectious substances under the HMR. Currently, Subpart H of Part 172 requires a hazmat employer to assure each of its hazmat employees is trained, including general awareness/familiarization training, function-specific training, and safety training. A hazmat employee may not perform any function regulated under the HMR unless he or she is trained. One commenter states this level of training is infeasible and unnecessary for health care professionals, and suggests training should be more abbreviated and targeted to specific functions. This commenter further suggests we consider increasing the packaging integrity for shipments of infectious substances, in lieu of applying the hazmat employee training requirements to health care professionals.

We disagree that application of the training requirements to health care professionals is "infeasible" and "unnecessary." Training is essential to successful compliance with the HMR. Most health care professionals are already familiar with and trained in requirements that can be used to satisfy some training obligations under the HMR, such as the OSHA Universal Precautions procedures. Further, increased packaging integrity cannot be a substitute for training. Health care professionals need training to properly use any packaging authorized for the transportation of infectious substances, or the regulatory requirements would be meaningless. Moreover, for shipments conforming to requirements for materials of trade or diagnostic specimens in this final rule, the associated training requirements are minimal. They do not include the certification and record keeping provisions in subpart H of part 172.

Another commenter recommends we specify the level of training required for health care professionals, and other offerors and transporters of infectious substances. We disagree. Flexibility is built into the HMR training requirements, allowing hazmat employers to determine the method of training and the level to which each employee must be trained. This flexibility helps to minimize the training burden on both hazmat employers and hazmat employees. This commenter also recommends we delay enforcement of the new requirements in this final rule to allow an appropriate period for retraining. Again, we disagree. This final rule is effective October 2, 2002; this should provide ample time to assure hazmat employees are trained in the new requirements.

L. Contaminated Food and Food Products

One commenter states that the definition of "infectious substance" in § 173.134, as proposed, could be read to require food and food ingredients tainted with salmonella to be shipped in accordance with requirements for transportation of infectious substances. Salmonella is listed in 42 CFR 72.3 as an infectious substance. This commenter notes salmonella-tainted food does not pose a significant, acute threat to transport workers or to the general public since it must normally be ingested to cause disease. This commenter suggests the final rule incorporate an exception from regulation for food and food ingredients tainted with salmonella or other bacteria. We agree. Indeed, there is no significant threat to life or property from the transportation of food, food ingredients, or food products contaminated with bacteria or other types of pathogens, particularly when such food is being transported as a result of a recall by the original processor. We modified the list of exceptions from HMR requirements in the final rule accordingly.

III. Section-by-Section Review

Part 171

Section 171.7

We are revising the table of material incorporated by reference to add two new references to test methods developed by the American Society for Testing and Materials. These tests are required for plastic inner packagings used to transport RMW inside Large Packagings and non-specification bulk packagings. We are also revising the table of informational material not requiring incorporation by reference. This revision will add three resources for shippers to use to assign a risk group to a specific infectious substance.

Section 171.8

We are adding definitions for "biological product," "cultures and stocks," "diagnostic specimen," "risk group," "sharps," and "toxin." These definitions refer readers to the definitions in § 173.134 of the HMR.

Section 171.14

We are allowing a two-year transition period for the revised Division 6.2 labels adopted in this final rule.

Section 171.15

We are removing the term "etiologic agents" from paragraphs (a)(3) and (b) and replacing it with "infectious substances." In addition, in paragraph (b) we are adding wording to emphasize that a written report of an incident involving infectious substances must be submitted to RSPA.

Part 172

Section 172.101

For the entry "Regulated medical waste," we are removing the letter "D" in column (1). In column (7), we are removing the reference to Special Provision A14 and revising columns (9A) and (9B) to replace "Forbidden" with "No Limit" for quantity limitations on board aircraft. These changes harmonize requirements in the HMR with those in the ICAO Technical Instructions, and facilitate the transportation of RMW in non-bulk packagings by aircraft. In addition, column 8C is revised to replace "none" with "197", to indicate bulk packagings authorized for the transportation of RMW can be found in § 173.197 of the HMR. Finally, we are revising Special Provision A13 to prohibit the transportation of bulk packagings of RMW by aircraft.

For the entries "Infectious substances, affecting animals only" and "Infectious substances, affecting humans," we are adding new special provisions in column (7). Special Provision A81 provides relief from quantity limits for the transport of body fluids containing infectious substances, when in primary receptacles not exceeding 1,000 mL (34 ounces) and in outer packagings not exceeding 4L (1 gallon) and packaged in accordance with § 173.196. Special Provision A82 provides relief from UN standard packaging for transporting body parts, whole organs, and whole bodies.

In addition, we are adding a new entry, "Diagnostic specimen", to the Table as a Division 6.2 material. There is no UN number, hazard warning label, or packing group assignment.

We are also adding two new entries for "Toxins, extracted from living sources, liquid, n.o.s., UN 3172" and "Toxins, extracted from living sources, solid, n.o.s., UN 3172." For both entries, a "G" in column (1) indicates that the shipping description on shipping papers must include the technical names for the materials. Both entries indicate the materials are Division 6.1 materials, UN 3172, PG I, II, or III. We are adding Special Provision 141 to state that toxins containing infectious substances or contained in infectious substances must be classed as Division 6.2 materials and assigned to UN 2814 or UN 2900, as appropriate.

Section 172.102

We are revising this section by removing Special Provision A14, revising Special Provision A13, and adding Special Provisions 141, A81, and A82, as above detailed.

Section 172.323

We are adding this section to require bulk packagings containing RMW to be marked with a BIOHAZARD marking conforming to OSHA regulations at 29 CFR 1910.1030. In response to comments, this final rule requires the size of the marking to be at least 152.4 mm (6 inches) on each side. In this final rule, we are adding new paragraph (c) to require the BIOHAZARD marking to be displayed on a background of contrasting color. In addition, this final rule includes a graphic representation of the BIOHAZARD symbol.

Section 172.432

We are revising the INFECTIOUS SUBSTANCE label to incorporate the new toll-free telephone number (1–800–232–0124) for reporting incidents to the CDC.

Section 172.502

We are revising paragraph (b) to indicate the restrictions on placarding in paragraph (a) of this section do not apply to the display of a BIOHAZARD marking on a white square-on-point background.

Part 173

Section 173.6

We are adding a MOTS exception for diagnostic specimens, biological products, and RMW, other than Risk Group 4 materials. The exception includes packaging requirements and quantity limitations. As suggested by commenters, this section incorporates minimum performance packaging standards for MOTS that are diagnostic specimens, biological products, or RMW.

Section 173.28

We are adding a requirement for Division 6.2 packagings to be disinfected prior to reuse. As suggested by a commenter, this requirement is modified from the NPRM proposal to substitute the term "disinfect" for "decontaminate."

Section 173.134

In paragraph (a), we are revising the definitions and classification criteria for "infectious substance," "biological product," "diagnostic specimen," and "regulated medical waste;" and adding definitions for "cultures and stocks," "risk group," "sharps," "toxin," and "used health care product."

We are revising the definition of "infectious substance" for consistency with international standards, and to require materials meeting the definition of an infectious substance to be assigned to risk groups based on the degree to which they cause injury through disease. Infectious substances assigned to Risk Group 1 are not subject to regulation under the HMR. In response to comments, we revised the definition proposed in the NPRM for clarity and specificity.

We are revising the definition of "biological product" to require biological products known to contain or suspected to contain a pathogen in Risk Groups 2, 3, or 4, to be classed as Division 6.2 materials, unless otherwise excepted.

We are defining "cultures and stocks" to mean a material prepared and maintained for growth and storage, and containing a Risk Group 2, 3, or 4 infectious substance.

We are revising the definition of "diagnostic specimen" to require a diagnostic specimen known to contain or suspected to contain a Risk Group 4 pathogen to be classed as a Division 6.2 material and described by the proper shipping name "Infectious Substance". This determination is based on the known medical history and condition of the patient or animal, endemic local conditions, symptoms of the source patient or animal, or professional judgement concerning the individual circumstances of the patient or animal.

We are revising the definition for "regulated medical waste" to indicate regulated medical waste is a waste or reusable material containing or suspected to contain a Risk Group 2 or 3 infectious substance. Regulated medical waste containing a Risk Group 4 infectious substance must be classed and transported as a Division 6.2 material, UN 2900 or UN 2814.

We are adding a definition for "risk group" to mean a ranking of a micro-organism's ability to cause injury through disease. For consistency with terminology used by other entities that use risk group definitions, in this final rule the definition is modified to substitute "the severity of the disease caused by the organism" for "the pathogenicity of the organism" as proposed in the NPRM. Thus, risk group assignment criteria include: the severity of the disease caused by the organism; the mode and relative ease of transmission; the degree of risk to both an individual and a community; and the reversibility of the disease through the availability of effective preventive agents and treatments.

We are defining "sharps" to mean any object that may be contaminated with an infectious substance, and is able to cut or penetrate the skin or packaging material. The term includes needles, syringes, scalpels, broken glass, culture slides, culture dishes, broken capillary tubes, broken rigid plastic, and exposed ends of dental wires. In response to comments, we have the definition proposed in the NPRM to include uncontaminated objects that may become contaminated during handling and transportation.

We are defining "toxin" to mean a Division 6.1 material obtained from a plant, animal, or bacterial source. The definition notes toxins containing an infectious substance or contained in an infectious substance, must be classed as Division 6.2 materials.

In paragraph (b), we are listing exceptions from the HMR requirements applicable to Division 6.2 materials. These exceptions include:

1. Biological products subject to Federal approval, permit, or licensing requirements.
2. Blood collected for transfusions or the preparation of blood products; and blood products, tissues, and organs intended for transplant.
3. Diagnostic specimens or biological products transported by private or contract motor carriers in dedicated motor vehicles.
4. Material treated so that it no longer contains an infectious substance, including diagnostic specimens that do not contain a pathogen or in which the pathogen is inactivated or neutralized.
5. Sanitary waste and sewage.
6. Sewage sludge and compost.
7. Animal waste generated in animal husbandry or food production.
8. Corpses and anatomical parts intended for interment, cremation, or research.
9. Environmental microbiological samples collected to evaluate occupational and residential exposure risks.
10. Agricultural and food products.

In the NPRM, we proposed an exception from most HMR requirements for forensic material transported on behalf of the Federal government or a

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state, local government, or tribal government agency, provided the material was shipped in a packaging conforming to the provisions of § 173.24. After the NPRM was published, we discussed this exception with officials from the Federal Bureau of Investigation (FBI). We were particularly concerned with shipments of forensic material associated with bio-terrorism incidents. Based on our discussions with the FBI, this final rule modifies the exception proposed in the NPRM. This final rule requires forensic material known or suspected to contain a Risk Group 4 infectious substance or an infectious substance listed as a select agent in 42 CFR part 72 to be transported in packaging capable of meeting the HMR performance test standards for infectious substance packaging. In addition, the secondary packaging must be marked with a BIOHAZARD symbol conforming to specifications in 29 CFR 1910.1030(g)(1)(i). An itemized list of contents must be enclosed between the secondary packaging and the outer packaging.

We are also modifying the exception for medical waste generated from households, to indicate such medical waste must be transported in accordance with applicable state, local, or tribal government requirements.

In addition, we are revising the exception for laundry or medical equipment conforming to OSHA regulations in 29 CFR 1910.1030. This final rule clarifies that this exception applies to medical equipment intended for reuse and equipment used for testing. The revised definition further clarifies that the exception does not apply to medical equipment transported for disposal.

In this final rule, we modified the exception for blood and blood products to add human cell, tissues, and cellular and tissue-based products regulated under authority of the Public Health Service Act and/or the Food, Drug, and Cosmetic Act.

In paragraph (c), we are modifying the exception for RMW transported by contract or private carriers, to include waste cultures and stocks containing Risk Group 2 or 3 infectious substances.

Finally, we are adding paragraph (d) to clarify that if an item listed in paragraphs (b) or (c) of this section meets the definition of another hazard class, it must be offered for transportation and transported in accordance with applicable requirements of the HMR. Similarly, if an item listed in paragraphs (b) or (c) of this section is a hazardous substance, hazardous waste, or marine pollutant, it must be offered for transportation and transported in accordance with applicable requirements of the HMR.

Section 173.196

We are revising this section for clarity and consistency with the UN Recommendations and ICAO Technical Instructions. These revisions include packaging requirements to ensure the integrity of the packagings during air transport, including circumstances where the refrigerant is dissipated or lost. We are adding new paragraph (d) to prescribe non-specification packaging provisions for body parts.

Section 173.197

We are revising this section to authorize certain bulk packagings for the transportation of RMW. Paragraph (a) includes general requirements for non-bulk and bulk packagings. Paragraph (b) requires non-bulk packagings to conform to the requirements of part 178 at the Packing Group II performance level. Paragraphs (c) and (d) authorize Large Packagings and non-specification bulk containers for the transportation of RMW. Paragraph (c) sets forth conditions governing the use of Large Packagings. Paragraph (d) sets forth the conditions governing the use of non-specification carts and bulk outer packagings. Paragraph (e) specifies the inner packagings authorized for use with bulk outer packagings.

Section 173.199

We are adding § 173.199 to address packaging requirements for diagnostic specimens and used health care products. Diagnostic specimens meeting the definition of a Risk Group 4 material must be classed and transported as infectious substances, UN 2814 or UN 2900, as appropriate. Generally, all other diagnostic specimens may be shipped in triple packagings capable of passing a 1.2 meter (3.9 feet) drop test.

Liquid diagnostic specimens must be packaged in leakproof primary receptacles with a volumetric capacity of not more than 500 mL (17 ounces). For shipments by aircraft, the primary receptacle or secondary packaging must be able to withstand, without leakage, an internal pressure producing a pressure differential of not less than 95 kPa (0.95 bar, 14 psi). The secondary packaging must be leakproof. The volumetric capacity of the outer packaging may not exceed 4 L (1 gallon).

Solid diagnostic specimens must be packaged in a siftproof primary receptacle with a capacity of not more than 500 g (1.1 pounds). The secondary packaging must be leakproof. The capacity of the outer packaging may not exceed 4 kg (8.8 pounds).

Shipments of used health care products contaminated with an infectious substance and being returned to the manufacturer, must be transported in triple packagings and must be marked with the OSHA BIOHAZARD symbol. A used health care product that can cut or penetrate skin or packaging material must be transported in a puncture-resistant primary container. In response to comments, we revised this section to provide more packaging flexibility.

Diagnostic specimens and used health care products shipped in accordance with these provisions are not subject to most other requirements in the HMR. However, these shipments are subject to minimal training requirements. Further, diagnostic specimens are subject to incident reporting for shipments offered for transportation or transported by aircraft.

Part 177

Section 177.834

We are revising paragraphs (a) and (g) to indicate packages containing Division 6.2 materials must be properly secured in a transport vehicle.

Section 177.843

We are adding paragraph (d) to require a transport vehicle to be disinfected prior to reuse if a Division 6.2 material is released from its packaging inside the vehicle. As suggested by a commenter, we modified this requirement to substitute the term "disinfect" for "decontaminate."

Part 178

Section 178.503

We are adding paragraph (f) to incorporate markings for infectious substances packagings consistent with those in the ICAO Technical Instructions and the UN Recommendations.

Section 178.601

We are adding a sentence to paragraph (c)(1) of this section to include the tests for infectious substance packaging in the definition of design qualification testing. As a result, manufacturers of infectious substances packagings are required to retain design qualification records in accordance with § 178.601(c)(l). In addition, we are adding a sentence to paragraph (c)(2) to indicate, for infectious substances packagings, periodic retesting is the performance of tests specified in § 178.609 at the frequency specified in § 178.601(e). Finally, we are adding a sentence to paragraph (e) to require packagings used for transporting infectious substances to pass periodic retests.

Section 178.609

We are revising the section heading to remove the wording "(etiologic agents)." We are revising paragraph (c) to permit the use of expanded plastics for inner packagings and require the packaging tests to be determined by the most fragile inner packaging. Paragraphs (d)(1)(i), (d)(1)(iii), and (d)(1)(iv) are revised for clarity. We are revising paragraph (e) to replace the current water immersion test with a water spray test to simulate exposure to rainfall consistent with the ICAO Technical Instructions. We are revising paragraphs (h)(1) and (h)(2) to clearly indicate that, during the penetration test, penetration of the primary receptacle is not acceptable. We are deleting current paragraph (i). We are adding new paragraph (i) to incorporate the selective testing provisions in the UN Recommendations and ICAO Technical Instructions. These provisions allow variations in the primary receptacles within the secondary packaging without further testing of the completed packaging, if an equivalent level of performance is maintained.

IV. Coordination with Other Federal Agencies

In addition to RSPA, several Federal agencies have responsibility for regulating infectious substances. We provided CDC, USDA, FDA, EPA, and OSHA with copies of this final rule in advance of publication in the **Federal Register** for their information and comment. We asked them specifically to identify potential areas of conflict between their regulations and the provisions of this final rule. None of these agencies identified any potentially conflicting regulatory requirements.

V. Security Issues

As a result of the terrorist attacks of September 11, 2001, and subsequent threats related to biological materials, we are reviewing the HMR to determine if additional requirements are necessary to assure the security of hazardous materials in transportation. Certain infectious substances, including *Bacillus anthracis* (anthrax) and other materials listed as select agents by the CDC (42 CFR part 72), are materials that may pose a potential security risk. We initiated a project to address security issues related to infectious substances and other hazardous materials to determine if rulemaking action is necessary.

VI. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under Executive Order 12866, and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation is available for review in the public docket.

The costs identified in the regulatory evaluation are minimal. They are primarily attributed to the regulation of shipments of diagnostic specimens containing a Risk Group 2, 3 or 4 pathogen and of new specification packaging requirements for infectious substances. Our estimate of costs is for a one-time initial cost of $33,332, and a subsequent annual cost of $28,351.

Because of a lack of reliable information concerning deaths, injuries, property damage, and other costs attributable to incidents involving the release of an infectious substance, we are unable to quantify potential savings that may result from this final rule. Reported incidents to RSPA between 1990 and the present resulted in 2 minor injuries and $3,281 in property damage. However, we believe that incidents are significantly under-reported.

Benefits resulting from implementation of this final rule include the following:

1. *International harmonization.* Harmonization of requirements in the HMR with standards specified in the UN Recommendations, ICAO Technical Instructions, and IMDG Code will remove current inconsistencies among the regulations. This action will facilitate efficient transportation of infectious substances across national borders. More importantly, harmonized regulations reduce the potential for misunderstanding and confusion, enhancing safety.

2. *Conversion of exemptions to regulations of general applicability.* Conversion of 29 exemptions applicable to the bulk transportation of RMW to regulations of general applicability, will result in a slight cost savings to the 29 exemptions holders and 65 parties-to-the-exemption holders. In addition, the entire industry will be able to take advantage of the added flexibility provided by the increased number of packaging options for transporting RMW.

3. *Modification of current exceptions for diagnostic specimens and biological products.* We believe potentially infectious diagnostic specimens and biological products should be transported in authorized packaging. Further, such shipments should include communication of hazard to those who may come into contact with them. The HMIS data base and anecdotal information indicate packages of these currently excepted materials are sometimes damaged during transportation. This damage can result in delays and possible risk to cargo handlers, flight crews, emergency responders, and the general public. The requirements in this final rule for more stringent packaging for these materials, combined with the exceptions for transportation of these materials as MOTS or by private or contract carriers in dedicated vehicles will assure swift and efficient transportation. This final rule will also reduce the risks to transportation workers and the general public. Enhancements to packaging also reduce the risk of exposure for laboratory workers opening and handling packages at the point of receipt. The minimal level of regulation proposed for these materials enhances overall safety while imposing insignificant costs on the regulated industry.

Although we cannot assign definitive dollar amounts to these potential benefits, we believe the final rule adopts the least costly alternatives available for ensuring an acceptable level of transportation safety, and the potential benefits to society exceed the potential costs associated with this final rule.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule preempts state, local, and Indian tribe requirements, but does not propose any regulation with substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision that preempts state, local, and Indian tribe requirements on certain covered subjects (49 U.S.C. 5125(b)). Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements

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related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items 1–5 above and preempts state, local, and Indian tribe requirements not meeting the "substantively the same" standard. This final rule is necessary to assure an acceptable level of safety for the transportation of infectious substances and facilitate international transportation of these materials.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if we issue a regulation concerning any of the covered subjects, we must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption is one year from publication of this final rule in the **Federal Register**.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). This final rule does not have tribal implications, does not impose substantial direct compliance costs, and is not required by statute. Consequently, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines a rule is not expected to have a significant impact on a substantial number of small entities. Based on the assessment in the regulatory evaluation, I hereby certify that while this final rule applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. This certification is based upon a consideration that the identified costs are randomly distributed to the more than 441,000 establishments (offices and clinics of doctors of medicine, dentists, doctors of osteopathy, chiropractors, optometrists, podiatrists, and health practitioners; nursing and personal care facilities; hospitals; and medical and dental laboratories) that comprise Standard Industrial Classification (SIC) Major Group 80 (Health Services). The annual costs attributed to this final rule are minimal, especially when compared to the $300 billion in receipts reported by the health services industry. We believe none of those costs will be disproportionately borne by any of the identified groups of small businesses.

E. Paperwork Reduction Act

RSPA has current information collection approvals under OMB No. 2137–0039, Hazardous Materials Incident Reports, which expires May 31, 2004, with 34,441 burden hours and $825,621.66 annual costs; and OMB No. 2137–0557, Approvals for Hazardous Materials, which expires May 31, 2004, with 18,405 burden hours and $415,237.40 annual costs. This final rule will result in small increases in annual burden hours and costs.

Section 1320.8(d), Title 5, Code of Federal Regulations requires RSPA to provide interested members of the public and affected agencies an opportunity to comment on information collection and record keeping requests. The NPRM identified and requested comment on revised information collections submitted to OMB for approval. We estimated the total information collection and record keeping burden as proposed in the NPRM would be revised as follows:

OMB No. 2137–0039:
Number of Respondents: 1,536.
Total Annual Responses: 22,900.
Total Annual Burden Hours: 34,441.
Total Annual Burden Cost: $825,621.66.

OMB No. 2137–0557:
Number of Respondents: 3,523.
Total Annual Responses: 3,875.
Total Annual Burden Hours: 18,405.
Total Annual Burden Cost: $415,237.40.

We received no comments on these revised information collections. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. OMB approved the revised information collections proposed in the NPRM on May 4, 2001, and May 9, 2001.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final rule imposes no mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

H. Environmental Assessment

We find there are no significant environmental impacts associated with this final rule. An environmental assessment is in the public docket for this rulemaking.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, we are amending 49 CFR parts 171, 172, 173, 177, and 178 as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR part 1.

2. In § 171.7, in the table in paragraph (a)(3), two new entries are added in alphanumeric sequence under the American Society for Testing and Materials, and three new entries are added in alphabetical order to the table in paragraph (b), to read as follows:

§ 171.7— Reference material.

(a) * * *

(3) *Table of material incorporated by reference.*

Source and name of material	49 CFR reference
American Society for Testing and Materials * * *	
ASTM D 1709–01 Standard Test Methods for Impact Resistance of Plastic Film by the Free-Falling Dart Method	173.197
ASTM D 1922–00a Standard Test Method for Propagation Tear Resistance of Plastic Film and Thin Sheeting by Pendulum Method	173.197

(b) *List of informational materials not requiring incorporation by reference.* * * *

Source and name of material	49 CFR reference
American Biological Safety Association 1202 Allanson Road, Mundelein, IL 60060 Risk Group Classification for Infectious Agents, 1998	173.134
Centers for Disease Control and Prevention 1600 Clifton Road, Atlanta, GA 30333 Biosafety in Microbiological and Biomedical Laboratories, Fourth Edition, April 1999	173.134
National Institutes of Health Bethesda, MD 20892 NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines), January 2001, Appendix B	173.134

3. Section 171.8 is amended by adding the following definitions in alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Biological product. See § 173.134 of this subchapter.

* * * * *

Cultures and stocks. See § 173.134 of this subchapter.

* * * * *

Diagnostic specimen. See § 173.134 of this subchapter.

* * * * *

Risk group. See § 173.134 of this subchapter.

* * * * *

Sharps. See § 173.134 of this subchapter.

* * * * *

Toxin. See § 173.134 of this subchapter.

* * * * *

4. Section 171.14 is amended by adding paragraph (e) to read as follows:

§ 171.14 Transitional provisions for implementing certain requirements.

* * * * *

(e) A Division 6.2 label conforming to specifications in § 172.432 of this subchapter in effect on September 30, 2002, may be used until October 1, 2005.

§ 171.15 [Amended]

5. In § 171.15, the following changes are made:

a. Paragraph (a)(3) is amended by removing the term "(etiologic agents)".

b. Paragraph (b) introductory text is amended by removing the term "etiologic agents" and in its place adding the term "infectious substances", and by adding the wording "; however, a written report is still required as stated in paragraph (c) of this section" immediately after the number "202–267–2675".

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

6. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

7. In § 172.101, the following proper shipping names are added, in alphabetical order, or revised in the Hazardous Materials Table to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

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§ 172.101.—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.***) Exceptions	(8) Packaging (§ 173.***) Non-bulk	(8) Packaging (§ 173.***) Bulk	(9) Quantity limitations Passenger aircraft/rail	(9) Quantity limitations Cargo aircraft only	(10) Vessel stowage Location	(10) Vessel stowage Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[Add].												
	Diagnostic specimen	6.2				A82	134	199	None	4 L or 4kg.	4L or 4 kg.	A	40
G	Toxins, from living sources, liquid, n.o.s.	6.1	UN3172	I	6.1	141	None	201	243	1 L	30 L	B	40
				II		141	None	202	243	5 L	60 L	B	40
				III		141	153	203	241	60 L	220L	A	40
G	Toxins, from living sources, solid, n.o.s.	6.1	UN3172	I	6.1	141	None	211	243	5 kg	50 kg	B	
				II		141	None	212	243	25 kg	100 kg	B	
				III		141	153	213	241	100 kg	200 kg	A	
	[Revise].												
G	Infectious substances, affecting animals *only*.	6.2	UN2900		6.2	A81, 82	134	196	None	50 mL or 50 g.	4 L or 4 kg.	B	40
G	Infectious substances, affecting humans.	6.2	UN2814		6.2	A81, 82	134	196	None	50 mL or 50 g.	4 L or 4 kg.	B	40
	Regulated medical waste	6.2	UN3291	II	6.2	A13	134, 197.	197	197	No Limit	No Limit	A	40

8. In § 172.102, in paragraph (c)(1), Special provision 141 is added, and in paragraph (c)(2), Special Provision A13 is revised, Special provision A14 is removed, and Special Provisions A81 and A82 are added in alphanumeric order to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

141 A toxin obtained from a plant, animal, or bacterial source containing an infectious substance, or a toxin contained in an infectious substance, must be classed as Division 6.2, described as an infectious substance, and assigned to UN 2814 or UN 2900, as appropriate.

* * * * *

(2) * * *

Code/Special Provisions

* * * * *

A13 Bulk packagings are not authorized for transportation by aircraft.

* * * * *

A81 The quantity limits in columns (9A) and (9B) do not apply to body fluids known to contain or suspected of containing an infectious substance when transported in primary receptacles not exceeding 1,000 mL (34 ounces) and in outer packagings not exceeding 4 L (1 gallon) and packaged in accordance with § 173.196 of this subchapter.

A82 The quantity limits in columns (9A) and (9B) do not apply to human or animal body parts, whole organs or whole bodies known to contain or suspected of containing an infectious substance.

* * * * *

9. Section 172.323 is added to read as follows:

§ 172.323 Infectious substances.

(a) In addition to other requirements of this subpart, after September 30, 2003, a bulk packaging containing a regulated medical waste, as defined in § 173.134(a)(5) of this subchapter, must be marked with a BIOHAZARD marking conforming to 29 CFR 1910.1030(g)(1)(i)—

(1) On two opposing sides or two ends other than the bottom if the packaging has a capacity of less than 3,785 L (1,000 gallons). The BIOHAZARD marking must measure at least 152.4 mm (6 inches) on each side and must be visible from the direction it faces.

(2) On each end and each side if the packaging has a capacity of 3,785 L (1,000 gallons) or more. The BIOHAZARD marking must measure at least 152.4 mm (6 inches) on each side and must be visible from the direction it faces.

(b) For a bulk packaging contained in or on a transport vehicle or freight container, if the BIOHAZARD marking on the bulk packaging is not visible, the transport vehicle or freight container must be marked as required by paragraph (a) of this section on each side and each end.

(c) The background color for the BIOHAZARD marking required by paragraph (a) of this section must be orange and the symbol and letters must be black. Except for size the BIOHAZARD marking must appear as follows:

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(d) The BIOHAZARD marking required by paragraph (a) of this section must be displayed on a background of contrasting color. It may be displayed on a plain white square-on-point configuration having the same outside dimensions as a placard, as specified in § 172.519(c) of this part.

10. In § 172.432, the illustration in paragraph (a) is revised to read as follows:

§ 172.432 INFECTIOUS SUBSTANCE label.

(a) * * *



* * * * *

11. In § 172.502, paragraph (b)(2) is revised to read as follows:

§ 172.502 Prohibited and permissive placarding.

* * * * *

(b) * * *

(2) The restrictions of paragraph (a) of this section do not apply to the display of a BIOHHAZARD marking, a "HOT" marking, or an identification number on a white square-on-point configuration in accordance with §§ 172.323(c), 172.325(c), or 172.336(b) of this part, respectively.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

12. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

13. In § 173.6, paragraph (a)(4) is redesignated as paragraph (a)(5), and a new paragraph (a)(4) is added to read as follows:

§ 173.6 Materials of trade exceptions.

* * * * *

(a) * * *

(4) A Division 6.2 material, other than a Risk Group 4 material, that is a diagnostic specimen, biological product, or regulated medical waste. The material must be contained in a combination packaging. For liquids, the inner packaging must be leak tight, and the outer packaging must contain sufficient absorbent material to absorb the entire contents of the inner packaging. For sharps, the inner packaging must be constructed of a rigid material resistant to punctures and leaks. For all Division 6.2 materials, the outer packaging must be a strong, tight packaging securely closed and secured against movement.

(i) For a diagnostic specimen or biological product, combination packagings must conform to the following capacity limitations:

(A) One or more inner packagings where the gross mass or capacity of each inner packaging does not exceed 0.5 kg (1.1 pound), or 0.5 L (17 ounces), and an outer packaging having a gross mass or capacity not exceeding 4 kg (8.8 pounds) or 4 L (1 gallon); or

(B) A single inner packaging with a gross mass or capacity not exceeding 16 kg (35.2 pounds) or 16 L (4.2 gallons) in a single outer packaging.

(ii) For a regulated medical waste, a combination packaging must consist of one or more inner packagings having a gross mass or capacity not exceeding 4 kg (8.8 pounds) or 4 L (1 gallon), and an

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outer packaging having a gross mass or capacity not exceeding 16 kg (35.2 pounds) or 16 L (4.2 gallons).

* * * * *

14. Section 173.28 is amended by adding paragraph (f) to read as follows:

§ 173.28 Reuse, reconditioning and remanufacture of packagings.

* * * * *

(f) A Division 6.2 packaging to be reused must be disinfected prior to reuse by any means effective for neutralizing the infectious substance the packaging previously contained. A secondary packaging or outer packaging conforming to the requirements of § 173.196 or § 173.199 need not be disinfected prior to reuse if no leakage from the primary receptacle has occurred.

15. Section 173.134 is revised to read as follows:

§ 173.134 Class 6, Division 6.2—Definitions and exceptions.

(a) *Definitions and classification criteria.* For purposes of this subchapter, the following definitions and classification criteria apply:

(1) *Division 6.2 (infectious substance)* means a material known to contain or suspected of containing a pathogen. A pathogen is a virus or micro-organism (including its viruses, plasmids, or other genetic elements, if any) or a proteinaceous infectious particle (prion) that has the potential to cause disease in humans or animals. A Division 6.2 material must be assigned to a risk group in accordance with this paragraph (a). Assignment to a risk group is based on known medical condition and history of the source patient or animal, endemic local conditions, symptoms of the source patient or animal, or professional judgement concerning individual circumstances of the source patient or animal. Infectious substances are subject to applicable requirements in 42 CFR Part 72—Interstate Shipment of Etiologic Agents.

(2) *Biological product* means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product used in the prevention, diagnosis, treatment, or cure of diseases in humans or animals. A *biological product* includes a material manufactured and distributed in accordance with one of the following provisions: 9 CFR part 102 (Licenses for Biological Products); 9 CFR part 103 (Experimental Products, Distribution, and Evaluation of Biological Products Prior to Licensing); 9 CFR part 104 (Permits for Biological Products); 21 CFR part 312 (Investigational New Drug Application); 21 CFR part 314 (Applications for FDA Approval to Market a New Drug); 21 CFR parts 600 to 680 (Biologics); or 21 CFR part 812 (Investigational Device Exemptions). A *biological product* known to contain or suspected of containing a pathogen in Risk Group 2, 3, or 4 must be classed as Division 6.2, described as an infectious substance, and assigned to UN 2814 or UN 2900, as appropriate, unless otherwise excepted.

(3) *Cultures and stocks* means a material prepared and maintained for growth and storage and containing a Risk Group 2, 3 or 4 infectious substance.

(4) *Diagnostic specimen* means any human or animal material, including excreta, secreta, blood and its components, tissue, and tissue fluids being transported for diagnostic or investigational purposes, but excluding live infected humans or animals. A *diagnostic specimen* is not assigned a UN identification number unless the source patient or animal has or may have a serious human or animal disease from a Risk Group 4 pathogen, in which case it must be classed as Division 6.2, described as an infectious substance, and assigned to UN 2814 or UN 2900, as appropriate. Assignment to UN 2814 or UN 2900 is based on known medical condition and history of the patient or animal, endemic local conditions, symptoms of the source patient or animal, or professional judgement concerning individual circumstances of the source patient or animal.

(5) *Regulated medical waste* means a waste or reusable material known to contain or suspected of containing an infectious substance in Risk Group 2 or 3 and generated in the diagnosis, treatment, or immunization of human beings or animals; research on the diagnosis, treatment or immunization of human beings or animals; or the production or testing of biological products. *Regulated medical waste* containing an infectious substance in Risk Group 4 must be classed as Division 6.2, described as an infectious substance, and assigned to UN 2814 or UN 2900, as appropriate.

(6) *Risk group* means a ranking of a micro-organism's ability to cause injury through disease. A *risk group* is defined by criteria developed by the World Health Organization (WHO) based on the severity of the disease caused by the organism, the mode and relative ease of transmission, the degree of risk to both an individual and a community, and the reversibility of the disease through the availability of known and effective preventative agents and treatment. There is no relationship between a *risk group* and a packing group. The criteria for each *risk group* according to the level of risk are as follows:

RISK GROUP TABLE

Risk group	Pathogen	Risk to individuals	Risk to the community
4	A pathogen that usually causes serious human or animal disease and that can be readily transmitted from one individual to another, directly or indirectly, and for which effective treatments and preventive measures are not usually available.	High	High.
3	A pathogen that usually causes serious human or animal disease but does not ordinarily spread from one infected individual to another, and for which effective treatments and preventive measures are available.	High	Low.
2	A pathogen that can cause human or animal disease but is unlikely to be a serious hazard, and, while capable of causing serious infection on exposure, for which there are effective treatments and preventive measures available and the risk of spread of infection is limited.	Moderate	Low.
1	A micro-organism that is unlikely to cause human or animal disease. A material containing only such micro-organisms is not subject to the requirements of this subchapter.	None or very low	None or very low.

(7) *Sharps* means any object contaminated with a pathogen or that may become contaminated with a pathogen through handling or during transportation and also capable of cutting or penetrating skin or a packaging material. *Sharps* includes needles, syringes, scalpels, broken glass, culture slides, culture dishes, broken capillary tubes, broken rigid plastic, and exposed ends of dental wires.

(8) *Toxin* means a Division 6.1 material from a plant, animal, or bacterial source. A *toxin* containing an infectious substance or a *toxin* contained in an infectious substance must be classed as Division 6.2, described as an infectious substance, and assigned to UN 2814 or UN 2900, as appropriate.

(9) *Used health care product* means a medical, diagnostic, or research device or piece of equipment, or a personal care product used by consumers, medical professionals, or pharmaceutical providers that does not meet the definition of a diagnostic specimen, biological product, or regulated medical waste, is contaminated with potentially infectious body fluids or materials, and is not decontaminated or disinfected to remove or mitigate the infectious hazard prior to transportation.

(b) *Exceptions.* The following are not subject to the requirements of this subchapter as Division 6.2 materials:

(1) A biological product known to contain or suspected of containing a micro-organism in Risk Group 1, or that does not contain a pathogen.

(2) A diagnostic specimen known to contain or suspected of containing a micro-organism in Risk Group 1, or that does not contain a pathogen, or a diagnostic specimen in which the pathogen has been neutralized or inactivated so it cannot cause disease when exposure to it occurs.

(3) A biological product, including an experimental product or component of a product, subject to Federal approval, permit, or licensing requirements, such as those required by the Food and Drug Administration of the Department of Health and Human Services or the U.S. Department of Agriculture.

(4) Blood collected for the purpose of blood transfusion or the preparation of blood products; blood products; tissues or organs intended for use in transplant operations; and human cell, tissues, and cellular and tissue-based products regulated under authority of the Public Health Service Act and/or the Food, Drug, and Cosmetic Act.

(5) Blood collected for the purpose of blood transfusion or the preparation of blood products and sent for testing as part of the collection process, except where the person collecting the blood has reason to believe it contains an infectious substance, in which case the test sample must be shipped in accordance with § 173.199.

(6) A diagnostic specimen or biological product when transported by a private or contract carrier in a motor vehicle used exclusively to transport diagnostic specimens or biological products. Medical or clinical equipment and laboratory products may be transported aboard the same vehicle provided they are properly packaged and secured against exposure or contamination. If a diagnostic specimen or biological product meets the definition of regulated medical waste in paragraph (a)(5) of this section, it must be offered for transportation and transported in conformance with the appropriate requirements for regulated medical waste.

(7) Laundry or medical equipment conforming to the regulations of the Occupational Safety and Health Administration of the Department of Labor in 29 CFR 1910.1030. This exception includes medical equipment intended for use, cleaning, or refurbishment, such as reusable surgical equipment, or equipment used for testing where the components within which the equipment is contained essentially function as packaging. This exception does not apply to medical equipment being transported for disposal.

(8) A material, including waste, that previously contained an infectious substance that has been treated by steam sterilization, chemical disinfection, or other appropriate method, so it no longer meets the definition of an infectious substance.

(9) A living person.

(10) Any waste or recyclable material, other than regulated medical waste, including—

(i) Garbage and trash derived from hotels, motels, and households, including but not limited to single and multiple residences;

(ii) Sanitary waste or sewage;

(iii) Sewage sludge or compost;

(iv) Animal waste generated in animal husbandry or food production; or

(v) Medical waste generated from households and transported in accordance with applicable state, local, or tribal requirements.

(11) Corpses, remains, and anatomical parts intended for interment, cremation, or medical research at a college, hospital, or laboratory.

(12) Forensic material transported on behalf of a U.S. Government, state, local or Indian tribal government agency, except that—

(i) Forensic material known or suspected to contain a Risk Group 2 or 3 infectious substance must be shipped in a packaging conforming to the provisions of § 173.24.

(ii) Forensic material known or suspected to contain a Risk Group 4 infectious substance or an infectious substance listed as a select agent in 42 CFR Part 72 must be transported in packaging capable of meeting the test standards in § 178.609 of this subchapter. The secondary packaging must be marked with a BIOHAZARD symbol conforming to specifications in 29 CFR 1910.1030(g)(1)(i). An itemized list of contents must be enclosed between the secondary packaging and the outer packaging.

(13) Environmental microbiological samples, such as a sample of dust from a ventilation system or mold from a wallboard, collected to evaluate occupational and residential exposure risks.

(14) Agricultural products and food as defined in the Federal Food, Drug, and Cosmetics Act.

(c) *Exceptions for regulated medical waste.* The following provisions apply to the transportation of regulated medical waste:

(1) A regulated medical waste transported by a private or contract carrier is excepted from—

(i) The requirement for an "INFECTIOUS SUBSTANCE" label if the outer packaging is marked with a "BIOHAZARD" marking in accordance with 29 CFR 1910.1030; and

(ii) For other than a waste culture or stock of an infectious substance, the specific packaging requirements of this section if packaged in a rigid non-bulk packaging conforming to the general packaging requirements of §§ 173.24 and 173.24a and packaging requirements specified in 29 CFR 1910.1030.

(2) A waste culture or stock of a Risk Group 2 or 3 infectious substance may be offered for transportation and transported as a regulated medical waste when it is packaged in a rigid non-bulk packaging conforming to the general packaging requirements of §§ 173.24 and 173.24a and packaging requirements specified in 29 CFR 1910.1030 and transported by a private or contract carrier using a vehicle dedicated to the transportation of regulated medical waste. Medical or clinical equipment and laboratory products may be transported aboard the same vehicle provided they are properly packaged and secured against exposure or contamination.

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(d) If an item listed in paragraph (b) or (c) of this section meets the definition of another hazard class or if it is a hazardous substance, hazardous waste, or marine pollutant, it must be offered for transportation and transported in accordance with applicable requirements of this subchapter.

16. Section 173.196 is revised to read as follows:

§ 173.196 Infectious substances.

(a) *Division 6.2 packaging.* A Division 6.2 packaging must meet the test standards of § 178.609 of this subchapter and must be marked in conformance with § 178.503(f) of this subchapter. Division 6.2 packaging is a triple packaging consisting of the following components:

(1) A watertight primary receptacle.

(2) A watertight secondary packaging. If multiple fragile primary receptacles are placed in a single secondary packaging, they must be wrapped individually to prevent contact between them.

(3) An outer packaging of adequate strength for its capacity, mass and intended use. The outer packaging must measure at least 100 mm (3.9 inches) at its smallest overall external dimension.

(4) For a liquid infectious substance, an absorbent material placed between the primary receptacle and the secondary packaging. The absorbent material must be sufficient to absorb the entire contents of all primary receptacles.

(5) An itemized list of contents enclosed between the secondary packaging and the outer packaging.

(6) The primary receptacle or secondary packaging used for infectious substances must be capable of withstanding, without leakage, an internal pressure producing a pressure differential of not less than 95 kPa (0.95 bar, 14 psi).

(7) The primary receptacle or secondary packaging used for infectious substances must be capable of withstanding without leakage temperatures in the range of −40°C to +55°C (−40°F to +131°F).

(b) *Additional requirements for packaging infectious substances.* Infectious substances must be packaged according to the following requirements depending on the physical state and other characteristics of the material:

(1) *Infectious lyophilized (freeze-dried) substances.* Primary receptacles must be flame-sealed glass ampules or rubber-stopped glass vials fitted with metal seals.

(2) *Liquid or solid infectious substances—*

(i) *Infectious substances shipped at ambient temperatures or higher.* Authorized primary receptacles are those of glass, metal, or plastic. Positive means of ensuring a leakproof seal must be provided, such as heat seal, skirted stopper, or metal crimp seal. If screw caps are used, they must be secured by positive means, such as with adhesive tape.

(ii) *Infectious substances shipped refrigerated or frozen (ice, pre-frozen packs, dry ice).* Ice or dry ice must be placed outside the secondary packagings or in an overpack with one or more complete packages marked in accordance with § 178.503 of this subchapter. Interior supports must be provided to secure the secondary packagings in the original position after the ice or dry ice has dissipated. If ice is used, the outside packaging must be leakproof. If dry ice is used, the outside packaging must permit the release of carbon dioxide gas and otherwise meet the provisions in § 173.217. The primary receptacle and the secondary packaging must maintain their integrity at the temperature of the refrigerant used as well as the temperatures and pressures of air transport to which they could be subjected if refrigeration were lost.

(iii) *Infectious substances shipped in liquid nitrogen.* Primary receptacles capable of withstanding very low temperatures must be used. Secondary packaging must withstand very low temperatures and in most cases will need to be fitted over individual primary receptacles. The primary receptacle and the secondary packaging must maintain their integrity at the temperature of the liquid nitrogen as well as the temperatures and pressures of air transport to which they could be subjected if refrigeration were to be lost. Refrigerated liquid nitrogen packagings must be metal vacuum insulated vessels or flasks (also called "dry shippers") vented to the atmosphere to prevent any increase in pressure within the packaging. The use of safety relief valves, check valves, frangible discs, or similar devices in the vent lines is prohibited. Fill and discharge openings must be protected against the entry of foreign materials that might cause an increase in the internal pressure. The package orientation markings specified in § 172.312(a) of this subchapter must be marked on the packaging. The packaging must be designed to prevent the release of any refrigerated liquid nitrogen irrespective of the packaging orientation.

(c) Live animals may not be used to transport infectious substances unless such substances cannot be sent by any other means. An animal containing or contaminated with an infectious substance must be transported under terms and conditions approved by the Associate Administrator for Hazardous Materials Safety.

(d) Body parts, organs or whole bodies meeting the definition of Division 6.2 material must be packaged as follows:

(1) In Division 6.2 packaging, as specified in paragraphs (a) and (b) of this section; or

(2) In packaging meeting the requirements of § 173.197.

17. Section 173.197 is revised to read as follows:

§ 173.197 Regulated medical waste.

(a) *General provisions.* Non-bulk packagings, large packagings, and bulk outer packagings used for the transportation of regulated medical waste must be rigid containers meeting the provisions of subpart B of this part.

(b) *Non-bulk packagings.* Except as otherwise provided in § 173.134 of this subpart, non-bulk packagings for regulated medical waste must be DOT specification packagings conforming to the requirements of Part 178 of this subchapter at the Packing Group II performance level. A non-bulk packaging must be puncture-resistant for sharps and sharps with residual fluid as demonstrated by conducting the performance tests in Part 178, Subpart M, of this subchapter on packagings containing materials representative of the sharps and fluids (such as sterile sharps) intended to be transported in the packagings.

(c) *Large Packagings.* Large Packagings constructed, tested, and marked in accordance with the requirements of the UN Recommendations and conforming to other requirements of this paragraph (c) may be used for the transportation of regulated medical waste, provided the waste is contained in inner packagings conforming to the requirements of paragraph (e) of this section. Each Large Packaging design must be capable of meeting the vibration test specified in § 178.819 of this subchapter. Each Large Packaging is subject to the periodic design requalification requirements for intermediate bulk containers in § 178.801(e) of this subchapter and to the proof of compliance requirements of § 178.801(j) and record retention requirements of § 178.801(l) of this subchapter. Inner packagings used for liquids must be rigid.

(1) *Authorized packagings.* Only the following Large Packagings are authorized for the transportation of liquid or solid regulated medical waste:

(i) Metal: 50A, 50B, or 50N.

(ii) Rigid plastic: 50H.

(2) *Additional requirements.* Each Large Packaging used to transport liquid regulated medical waste must contain absorbent material in sufficient quantity and appropriate location to absorb the entire amount of liquid present in the event of an unintentional release of contents. Each Large Packaging design intended for the transportation of sharps containers must be puncture resistant and capable of retaining liquids. The design must also be tested and certified as meeting the performance tests specified for intermediate bulk containers intended for the transportation of liquids in subpart O of part 178 of this subchapter.

(d) *Non-specification bulk packaging.* A wheeled cart (Cart) or bulk outer packaging (BOP) is authorized as an outer packaging for the transportation of regulated medical waste in accordance with the provisions of this paragraph (d).

(1) *General requirements.* The following requirements apply to the transportation of regulated medical waste in Carts or BOPs:

(i) Regulated medical waste in each Cart or BOP must be contained in non-bulk inner packagings conforming to paragraph (e) of this section.

(ii) Each Cart or BOP must have smooth, non-porous interior surfaces free of cracks, crevices, and other defects that could damage plastic film inner packagings or impede disinfection operations.

(iii) Except as otherwise provided in this paragraph (d), each Cart or BOP must be used exclusively for the transportation of regulated medical waste. Prior to reuse, each Cart or BOP must be disinfected by any means effective for neutralizing the infectious substance the packaging previously contained.

(iv) Untreated cultures and stocks of infectious substances containing Risk Group 4 materials may not be transported in a Cart or BOP.

(v) Division 6.1 toxic waste or Class 7 radioactive waste, with the exception of chemotherapeutic waste, may not be transported in a Cart or BOP.

(vi) Division 6.1 or Class 7 chemotherapeutic waste; untreated stocks and cultures of infectious substances containing Risk Group 2 or 3 pathogenic organisms; unabsorbed liquids; and sharps containers may be transported in a Cart or BOP only if packaged in rigid non-bulk packagings conforming to paragraph (a) of this section.

(2) *Wheeled cart (Cart).* A Cart is authorized as an outer packaging for the transportation of regulated medical waste if it conforms to the following requirements:

(i) Each Cart must consist of a solid, one-piece body with a nominal volume not exceeding 1,655 L (437 gallons).

(ii) Each Cart must be constructed of metal, rigid plastic, or fiberglass fitted with a lid to prevent leakage during transport.

(iii) Each Cart must be capable of meeting the requirements of § 178.603 (drop test), as specified for solids at the Packing Group II performance level.

(iv) Inner packagings must be placed into a Cart and restrained in such a manner as to minimize the risk of breakage.

(3) *Bulk outer packaging (BOP).* A BOP is authorized as an outer packaging for regulated medical waste if it conforms to the following requirements:

(i) Each BOP must be constructed of metal or fiberglass and have a capacity of at least 3.5 cubic meters (123.6 cubic feet) and not more than 45 cubic meters (1,590 cubic feet).

(ii) Each BOP must have bottom and side joints of fully welded or seamless construction and a rigid, weatherproof top to prevent the intrusion of water (*e.g.*, rain or snow).

(iii) Each opening in a BOP must be fitted with a closure to prevent the intrusion of water or the release of any liquid during all loading, unloading, and transportation operations.

(iv) In the upright position, each BOP must be leakproof and able to contain a liquid quantity of at least 300 liters (79.2 gallons) with closures open.

(v) Inner packagings must be placed in a BOP in such a manner as to minimize the risk of breakage. Rigid inner packagings may not be placed in the same BOP with plastic film bag inner packagings unless separated from each other by rigid barriers or dividers to prevent damage to the packagings caused by load shifting during normal conditions of transportation.

(vi) Division 6.1 or Class 7 chemotherapeutic waste, untreated cultures and stocks of infectious substances containing Risk Group 2 or 3 pathogenic organisms, unabsorbed liquids, and sharps may be transported in a BOP only if separated and secured as provided by paragraph (d)(3)(v) of this section.

(e) *Inner packagings authorized for Large Packagings, Carts, and BOPs.* After September 30, 2003, inner packagings must be durably marked or tagged with the name and location (city and state) of the offeror, except when the entire contents of the Large Packaging, Cart, or BOP originates at a single location and is delivered to a single location.

(1) *Solids.* A plastic film bag is authorized as an inner packaging for solid regulated medical waste transported in a Cart, Large Packaging, or BOP. Waste material containing absorbed liquid may be packaged as a solid in a plastic film bag if the bag contains sufficient absorbent material to absorb and retain all liquid during transportation.

(i) The film bag may not exceed a volume of 175 L (46 gallons). The film bag must be marked and certified by its manufacturer as having passed the tests prescribed for tear resistance in ASTM D 1709–01, *Standard Test Methods for Impact Resistance of Plastic Film by the Free-Falling Dart Method* (see § 171.7 of this subchapter), and for impact resistance in ASTM D 1922–00a, *Standard Test Method for Propagation Tear Resistance of Plastic Film and Thin Sheeting by Pendulum Method* (see § 171.7 of this subchapter). The film bag must meet an impact resistance of 165 grams and a tearing resistance of 480 grams in both the parallel and perpendicular planes with respect to the length of the bag.

(ii) The plastic film bag must be closed with a minimum of entrapped air to prevent leakage in transportation. The bag must be capable of being held in an inverted position with the closed end at the bottom for a period of 5 minutes without leakage.

(iii) When used as an inner packaging for Carts or BOPs, a plastic film bag may not weigh more than 10 kg (22 lbs.) when filled.

(2) *Liquids.* Liquid regulated medical waste transported in a Large Packaging, Cart, or BOP must be packaged in a rigid inner packaging conforming to the requirements of paragraph (a) of this section. Liquid materials are not authorized for transportation in inner packagings having a capacity greater than 19 L (5 gallons).

(3) *Sharps.* Sharps transported in a Large Packaging, Cart, or BOP must be packaged in a puncture-resistant inner packaging (sharps container). Each sharps container exceeding 76 L (20 gallons) in volume must be capable of passing the performance tests in § 178.601 of this subchapter at the Packing Group II performance level. A sharps container may be reused only if it conforms to the following criteria:

(i) The sharps container is specifically approved and certified by the U.S. Food and Drug Administration as a medical device for reuse.

(ii) The sharps container must be permanently marked for reuse.

(iii) The sharps container must be disinfected prior to reuse by any means

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effective for the infectious substance the container previously contained.

(iv) The sharps container must have a capacity greater than 7.57 L (2 gallons) and not greater than 151.42 L (40 gallons) in volume.

18. A new § 173.199 is added to read as follows:

§ 173.199 Diagnostic specimens and used health care products.

(a) *Diagnostic specimens.* Except as provided in this paragraph (a), diagnostic specimens are excepted from all other requirements of this subchapter when offered for transportation or transported in accordance with this section. Diagnostic specimens offered for transportation or transported by aircraft under the provisions of this section are subject to the incident reporting requirements in §§ 171.15 and 171.16 of this subchapter. A diagnostic specimen meeting the definition of a hazard class other than Division 6.2 must be offered for transportation or transported in accordance with applicable requirements of this subchapter.

(1) Diagnostic specimens must be packaged in a triple packaging, consisting of a primary receptacle, a secondary packaging, and an outer packaging.

(2) Primary receptacles must be packed in secondary packaging in such a way that, under normal conditions of transport, they cannot break, be punctured, or leak their contents into the secondary packaging.

(3) Secondary packagings must be secured in outer packagings with suitable cushioning material such that any leakage of the contents will not impair the protective properties of the cushioning material or the outer packaging.

(4) The completed package must be capable of successfully passing the drop test in § 178.603 of this subchapter at a drop height of at least 1.2 meters (3.9 feet). The outer packaging must be clearly and durably marked with the words "Diagnostic Specimen."

(b) *Liquid diagnostic specimens.* Liquid diagnostic specimens must be packaged in conformance with the following provisions:

(1) The primary receptacle must be leakproof with a volumetric capacity of not more than 500 mL (16.9 ounces).

(2) Absorbent material must be placed between the primary receptacle and secondary packaging. If several fragile primary receptacles are placed in a single secondary packaging, they must be individually wrapped or separated so as to prevent contact between them. The absorbent material must be of sufficient quantity to absorb the entire contents of the primary receptacles.

(3) The secondary packaging must be leakproof.

(4) For shipments by aircraft, the primary receptacle or the secondary packaging must be capable of withstanding without leakage an internal pressure producing a pressure differential of not less than 95 kPa (0.95 bar, 14 psi).

(5) The outer packaging may not exceed 4 L (1 gallon) capacity.

(c) *Solid diagnostic specimens.* Solid diagnostic specimens must be packaged in a triple packaging, consisting of a primary receptacle, secondary packaging, and outer packaging, conforming to the following provisions:

(1) The primary receptacle must be siftproof with a capacity of not more than 500 g (1.1 pounds).

(2) If several fragile primary receptacles are placed in a single secondary packaging, they must be individually wrapped or separated so as to prevent contact between them.

(3) The secondary packaging must be leakproof.

(4) The outer packaging may not exceed 4 kg (8.8 pounds) capacity.

(d) *Used health care products.* A used health care product being returned to the manufacturer or the manufacturer's designee is excepted from the requirements of this subchapter when offered for transportation or transported in accordance with this section. For purposes of this section, a health care product is used when it has been removed from its original inner packaging. Used health care products contaminated with or suspected of contamination with a Risk Group 4 infectious substance may not be transported under the provisions of this section.

(1) Each used health care product must be drained of free liquid to the extent practicable and placed in a watertight primary container designed and constructed to assure that it remains intact under conditions normally incident to transportation. For a used health care product capable of cutting or penetrating skin or packaging material, the primary container must be capable of retaining the product without puncture of the packaging under normal conditions of transport. Each primary container must be marked with a BIOHAZARD marking conforming to 29 CFR 1910.1030(g)(1)(i).

(2) Each primary container must be placed inside a watertight secondary container designed and constructed to assure that it remains intact under conditions normally incident to transportation. The secondary container must be marked with a BIOHAZARD marking conforming to 29 CFR 1910.1030(g)(1)(i).

(3) The secondary container must be placed inside an outer packaging with sufficient cushioning material to prevent movement between the secondary container and the outer packaging. An itemized list of the contents of the primary container and information concerning possible contamination with a Division 6.2 material, including its possible location on the product, must be placed between the secondary container and the outside packaging.

(e) *Training.* Each person who offers or transports a diagnostic specimen or used health care product under the provisions of this section must know about the requirements of this section.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

19. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

20. In § 177.834, paragraphs (a) and (g) are revised to read as follows:

§ 177.834 General requirements.

(a) *Packages secured in a vehicle.* Any tank, barrel, drum, cylinder, or other packaging not permanently attached to a motor vehicle and containing any Class 2 (gases), Class 3 (flammable liquid), Division 6.1 (poisonous), Division 6.2 (infectious substance), Class 7 (radioactive), or Class 8 (corrosive) material must be secured against movement within the vehicle on which it is being transported, under conditions normally incident to transportation.

* * * * *

(g) *Prevent relative motion between containers.* Containers of Class 1 (explosive), Class 2 (gases), Class 3 (flammable liquid), Class 4 (flammable solid), Class 5 (oxidizing), Division 6.1 (poisonous), Division 6.2 (infectious substance), or Class 8 (corrosive) materials must be so braced as to prevent motion thereof relative to the vehicle while in transit. Containers having valves or other fittings must be loaded to minimize the likelihood of damage thereto during transportation.

* * * * *

21. In § 177.843, paragraph (d) is added to read as follows:

§ 177.843 Contamination of vehicles.

* * * * *

(d) Each transport vehicle used to transport Division 6.2 materials must be disinfected prior to reuse if a Division 6.2 material is released from its packaging during transportation. Disinfection may be by any means effective for neutralizing the material released.

PART 178—SPECIFICATIONS FOR PACKAGINGS

22. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

23. In § 178.503, paragraph (f) is added to read as follows:

§ 178.503 Marking of packagings.

* * * * *

(f) A manufacturer must mark every UN specification package represented as manufactured to meet the requirements of § 178.609 for packaging of infectious substances with the marks specified in this section. The markings must be durable, legible, and must be readily visible, as specified in § 178.3(a). An infectious substance packaging that successfully passes the tests conforming to the UN standard must be marked as follows:

(1) The United Nations symbol as illustrated in paragraph (e) of this section.

(2) The code designating the type of packaging and material of construction according to the identification codes for packagings specified in § 178.502.

(3) The text "CLASS 6.2".

(4) The last two digits of the year of manufacture of the packaging.

(5) The country authorizing the allocation of the mark. The letters "USA" indicate the packaging is manufactured and marked in the United States in compliance with the provisions of this subchapter.

(6) The name and address or symbol of the manufacturer or the approval agency certifying compliance with subparts L and M of this part. Symbols, if used, must be registered with the Associate Administrator for Hazardous Materials Safety.

(7) For packagings meeting the requirements of § 178.609(i)(3), the letter "U" must be inserted immediately following the marking designating the type of packaging and material required in paragraph (f)(2) of this section.

24. In § 178.601, paragraphs (c)(1), (c)(2), and (e) are revised to read as follows:

§ 178.601 General requirements.

* * * * *

(c) * * *

(1) *Design qualification testing* is the performance of the tests prescribed in § 178.603, § 178.604, § 178.605, § 178.606, § 178.607, § 178.608, or § 178.609, as applicable, for each new or different packaging, at the start of production of that packaging.

(2) *Periodic retesting* is the performance of the drop, leakproofness, hydrostatic pressure, and stacking tests, as applicable, as prescribed in § 178.603, § 178.604, § 178.605, or § 178.606, respectively, at the frequency specified in paragraph (e) of this section. For infectious substances packagings required to meet the requirements of § 178.609, periodic retesting is the performance of the tests specified in § 178.609 at the frequency specified in paragraph (e) of this section.

* * * * *

(e) *Periodic retesting.* The packaging manufacturer must achieve successful test results for the periodic retesting at intervals established by the manufacturer of sufficient frequency to ensure that each packaging produced by the manufacturer is capable of passing the design qualification tests. Changes in retest frequency are subject to the approval of the Associate Administrator for Hazardous Materials Safety. For single or composite packagings, the periodic retests must be conducted at least once every 12 months. For combination packagings, the periodic retests must be conducted at least once every 24 months. For infectious substances packagings, the periodic retests must be conducted at least once every 24 months.

* * * * *

25. In § 178.609, the section heading, the text of paragraph (c) preceding the table, the introductory text of paragraph (d)(1), paragraphs (d)(1)(i), (d)(1)(iii), (d)(1)(iv), (e), (h)(1), (h)(2), and (i) are revised to read as follows:

§ 178.609 Test requirements for packagings for infectious substances.

* * * * *

(c) Packagings prepared as for transport must be subjected to the tests in Table I of this paragraph (c), which, for test purposes, categorizes packagings according to their material characteristics. For outer packagings, the headings in Table I relate to fiberboard or similar materials whose performance may be rapidly affected by moisture; plastics that may embrittle at low temperature; and other materials, such as metal, for which performance is not significantly affected by moisture or temperature. Where a primary receptacle and a secondary packaging of an inner packaging are made of different materials, the material of the primary receptacle determines the appropriate test. In instances where a primary receptacle is made of more than one material, the material most likely to be damaged determines the appropriate test.

* * * * *

(d) * * *

(1) Where the samples are in the shape of a box, five must be dropped in sequence:

(i) Flat on the base;

* * * * *

(iii) Flat on the longest side;

(iv) Flat on the shortest side; and

* * * * *

(e) The samples must be subjected to a water spray to simulate exposure to rainfall of approximately 50 mm (2 inches) per hour for at least one hour. They must then be subjected to the test described in paragraph (d) of this section.

* * * * *

(h) * * *

(1) Samples must be placed on a level, hard surface. A cylindrical steel rod with a mass of at least 7 kg (15 pounds), a diameter not exceeding 38 mm (1.5 inches), and, at the impact end edges, a radius not exceeding 6 mm (0.2 inches), must be dropped in a vertical free fall from a height of 1 m (3 feet), measured from the impact end of the sample's impact surface. One sample must be placed on its base. A second sample must be placed in an orientation perpendicular to that used for the first. In each instance, the steel rod must be aimed to impact the primary receptacle(s). For a successful test, there must be no leakage from the primary receptacle(s) following each impact.

(2) Samples must be dropped onto the end of a cylindrical steel rod. The rod must be set vertically in a level, hard surface. It must have a diameter of 38 mm (1.5 inches) and a radius not exceeding 6 mm (0.2 inches) at the edges of the upper end. The rod must protrude from the surface a distance at least equal to that between the primary receptacle(s) and the outer surface of the outer packaging with a minimum of 200 mm (7.9 inches). One sample must be dropped in a vertical free fall from a height of 1 m (3 feet), measured from the top of the steel rod. A second sample must be dropped from the same height in an orientation perpendicular to that used for the first. In each instance, the packaging must be oriented so the steel rod will impact the primary receptacle(s). For a successful test, there must be no leakage from the primary receptacle(s) following each impact.

(i) *Variations.* The following variations in the primary receptacles placed within the secondary packaging

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are allowed without additional testing of the completed package. An equivalent level of performance must be maintained.

(1) *Variation 1.* Primary receptacles of equivalent or smaller size as compared to the tested primary receptacles may be used provided they meet all of the following conditions:

(i) The primary receptacles are of similar design to the tested primary receptacle (*e.g.*, shape: round, rectangular, *etc.*).

(ii) The material of construction of the primary receptacle (glass, plastics, metal, *etc.*) offers resistance to impact and a stacking force equal to or greater than that of the originally tested primary receptacle.

(iii) The primary receptacles have the same or smaller openings and the closure is of similar design (*e.g.*, screw cap, friction lid, *etc.*).

(iv) Sufficient additional cushioning material is used to fill void spaces and to prevent significant movement of the primary receptacles.

(v) Primary receptacles are oriented within the intermediate packaging in the same manner as in the tested package.

(2) *Variation 2.* A lesser number of the tested primary receptacles, or of the alternative types of primary receptacles identified in paragraph (i)(1) of this section, may be used provided sufficient cushioning is added to fill the void space(s) and to prevent significant movement of the primary receptacles.

(3) *Variation 3.* Primary receptacles of any type may be placed within a secondary packaging and shipped without testing in the outer packaging provided all of the following conditions are met:

(i) The secondary and outer packaging combination must be successfully tested in accordance with paragraphs (a) through (h) of this section with fragile (*e.g.*, glass) inner receptacles.

(ii) The total combined gross weight of inner receptacles may not exceed one-half the gross weight of inner receptacles used for the drop test in paragraph (d) of this section.

(iii) The thickness of cushioning material between inner receptacles and between inner receptacles and the outside of the secondary packaging may not be reduced below the corresponding thicknesses in the originally tested packaging. If a single inner receptacle was used in the original test, the thickness of cushioning between the inner receptacles must be no less than the thickness of cushioning between the outside of the secondary packaging and the inner receptacle in the original test. When either fewer or smaller inner receptacles are used (as compared to the inner receptacles used in the drop test), sufficient additional cushioning material must be used to fill the void.

(iv) The outer packaging must pass the stacking test in § 178.606 while empty. The total weight of identical packages must be based on the combined mass of inner receptacles used in the drop test in paragraph (d) of this section.

(v) For inner receptacles containing liquids, an adequate quantity of absorbent material must be present to absorb the entire liquid contents of the inner receptacles.

(vi) If the outer packaging is intended to contain inner receptacles for liquids and is not leakproof, or is intended to contain inner receptacles for solids and is not sift proof, a means of containing any liquid or solid contents in the event of leakage must be provided. This can be a leakproof liner, plastic bag, or other equally effective means of containment.

(vii) In addition, the marking required in § 178.503(f) of this subchapter must be followed by the letter "U".

Issued in Washington, DC, on August 2, 2002, under authority delegated in 49 CFR part 106.

Ellen G. Engleman,

Administrator, Research and Special Programs Administration.

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Part IV

Commodity Futures Trading Commission

17 CFR Part 41

Securities and Exchange Commission

17 CFR Part 242

Customer Margin Rules Relating to Security Futures; Joint Final Rules

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 41

RIN 3038–AB71

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–46292; File No. S7–16–01]

RIN 3235–AI22

Customer Margin Rules Relating to Security Futures

AGENCIES: Commodity Futures Trading Commission and Securities and Exchange Commission.

ACTION: Joint final rules.

SUMMARY: The Commodity Futures Trading Commission ("CFTC") and the Securities and Exchange Commission ("SEC") (collectively, "Commissions") are adopting rules to establish margin requirements for security futures. The final rules preserve the financial integrity of markets trading security futures, prevent systemic risk, and require that the margin requirements for security futures be consistent with the margin requirements for comparable exchange-traded option contracts.

EFFECTIVE DATE: September 13, 2002.

FOR FURTHER INFORMATION CONTACT:

CFTC: Phyllis P. Dietz, Special Counsel; or Michael A. Piracci, Attorney, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5000. E-mail: (*PDietz@cftc.gov*); or (*MPiracci@cftc.gov*).

SEC: Onnig Dombalagian, Attorney Fellow, at (202) 942–0737; Theodore R. Lazo, Senior Special Counsel, at (202) 942–0745; Hong-anh Tran, Special Counsel, at (202) 942–0088; and Lisa Jones, Attorney, at (202) 942–0063, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: The CFTC is adopting Rules 41.42 through 41.49, 17 CFR 41.42 through 41.49, and the SEC is adopting Rules 400 through 406, 17 CFR 242.400 through 242.406, (the "Final Rules") under authority delegated by the Federal Reserve Board pursuant to the Securities Exchange Act of 1934 ("Exchange Act").

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I. Background

A. Statutory Provisions

The Commodity Futures Modernization Act of 2000 ("CFMA"),[1] which became law on December 21, 2000, lifted the ban on single stock and narrow-based stock index futures ("security futures"). In addition, the CFMA established a framework for the joint regulation of security futures by the CFTC and the SEC.

As part of the statutory scheme for the regulation of security futures, the CFMA provided for the issuance of rules governing customer margin for transactions in security futures. Specifically, the CFMA added a new subsection (2) to section 7(c) of the Exchange Act,[2] which directs the Board of Governors of the Federal Reserve System ("Federal Reserve Board") to prescribe rules establishing initial and maintenance customer margin requirements imposed by brokers, dealers, and members of national securities exchanges for security futures products. In addition, section 7(c)(2)(B) provides that the Federal Reserve Board may delegate this rulemaking authority jointly to the Commissions. On March 6, 2001, the Federal Reserve Board delegated its authority under Section 7(c)(2)(B) to the Commissions.[3] Pursuant to that authority, the SEC and the CFTC have adopted customer margin requirements for security futures.[4]

Section 7(c)(2) provides that the customer margin requirements for security futures must satisfy four requirements. First, they must preserve the financial integrity of markets trading security futures products. Second, they must prevent systemic risk. Third, they must (a) be consistent with the margin requirements for comparable option contracts traded on any exchange registered pursuant to section 6(a) of the Exchange Act; and (b) provide for initial and maintenance margin levels that are not lower than the lowest level of margin, exclusive of premium, required for comparable exchange-traded options. Fourth, they must be and remain consistent with the margin requirements established by the Federal Reserve Board under Regulation T.[5]

B. Proposed Rules

On September 26, 2001, the CFTC and the SEC issued for public comment proposed rules (the "Proposed Rules") relating to customer margin requirements for security futures.[6] In response to a joint request from the Futures Industry Association ("FIA") and the Securities Industry Association ("SIA") for an extension of the public comment period, the Commissions granted a 30-day extension until December 5, 2001.[7]

C. Overview of the Comment Letters

The Commissions received a total of 19 comment letters from securities and futures industry associations,[8] exchanges,[9] a clearing organization,[10] financial services firms,[11] systems vendors,[12] a member of the academic community,[13] and two members of the public.[14] In general, the comment letters focused on three major issues raised by the Proposed Rules: the applicability of Regulation T and the desirability of an account-specific margin regime; the appropriateness of the proposed 20% margin level; and the permissibility of portfolio margining.

The majority of commenters expressed the view that Regulation T should not be applied to futures accounts. They stated their concern that application of Regulation T to security futures carried in futures accounts would impose heavy costs on carrying firms in the form of reprogramming of systems and training of staff. Some believed that it would discourage futures commission merchants ("FCMs") from trading security futures. One commenter, however, supported the application of Regulation T to security futures, regardless of the type of account in which they are carried. Several commenters identified specific provisions of Regulation T that would have to be addressed in order to accommodate carrying security futures in a securities account, *e.g.*, rules for variation margin payments.

Ten of the commenters specifically endorsed the concept that the margin rules should build on the existing regulatory infrastructure and that, to the extent possible, the rules applicable to security futures should be determined by the type of account in which the security futures are carried. Under this "account-specific" approach, for example, rules relating to acceptable collateral, collateral haircuts, timing for collection of margin, and calculations of current market value would be determined in accordance with the rules otherwise applicable to a securities account or futures account, respectively. Several commenters observed that this would be consistent with the Commissions' proposed customer funds rules[15] and would be the most prudent and cost effective approach.

Most commenters found the proposed 20% minimum margin level to be acceptable, although some thought the minimum should instead be 25%. The SIA/FIA Letter noted that "members of the Associations are divided" as to whether the minimum level of initial and maintenance margin should be 20% or 25%. Another commenter expressed the view that the 20% level could be either too high or too low depending on the circumstances, and that for certain positions 50% initial margin would be appropriate.

Eleven commenters supported the implementation of full portfolio margining for security futures, as soon as possible. Two other commenters emphasized the need for experience with a proposed pilot program.[16] One commenter supported portfolio margining only for sophisticated customers, with another commenter joining in the view that portfolio margining might not be appropriate for all customers.

After carefully considering the public comments, the Commissions have adopted Final Rules that reflect modifications to the Proposed Rules in response to the views and concerns expressed by the commenters. The Commissions believe that the Final Rules fulfill the statutory requirements and that the changes made to the

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[1] Appendix E of Pub. L. No. 106–554, 114 Stat. 2763 (2000).

[2] 15 U.S.C. 78g(c)(2).

[3] Letter from Jennifer J. Johnson, Secretary of the Board, Federal Reserve Board, to James E. Newsome, Acting Chairman, CFTC, and Laura S. Unger, Acting Chairman, SEC (March 6, 2001) ("FRB Letter").

[4] Because section 6(h)(6) of the Exchange Act (15 U.S.C. 78f(h)(6)) provides that options on security futures may not be traded for at least three years after the enactment of the CFMA, the margin requirements do not address options on security futures.

[5] 12 CFR 220 *et seq.*

[6] Securities Exchange Act Release No. 44853 (September 26, 2001), 66 FR 50720 (October 4, 2001). The FRB Letter was attached as Appendix B. *See id.* at 50741.

[7] *See* Securities Exchange Act Release No. 44996 (October 29, 2001), 66 FR 55608 (November 2, 2001).

[8] *See* letters from Mark E. Lackritz, President, SIA, and John M. Damgard, President, FIA, dated December 5, 2001 ("SIA/FIA Letter"); George Ruth, Chairman, Rules and Regulations Committee, Securities Industry Association Credit Division, dated December 4, 2001 ("SIA Credit Division Letter"); Thomas W. Sexton, Vice President and General Counsel, National Futures Association, dated December 5, 2001 ("NFA Letter"); and John G. Gaine, President, Managed Funds Association, dated January 11, 2002 ("Manager Funds Letter").

[9] *See* letters from James J. McNulty, Chicago Mercantile Exchange Inc., and David J. Vitale, Board of Trade of the City of Chicago, Inc., dated December 4, 2001 ("CME/CBOT Letter"); the American Stock Exchange, Chicago Board Options Exchange, The Options Clearing Corporation, International Securities Exchange, Pacific Exchange, and Philadelphia Stock Exchange, dated December 5, 2001 ("Options Exchanges Letter"); Kathleen M. Hamm, Director of Market Regulation, Senior Vice President Regulation and Compliance, Nasdaq Liffe Markets, LLC, dated December 5, 2001 ("Nasdaq Liffe Letter"); Kenneth M. Rosenzweig, on behalf of OneChicago, LLC, dated December 6, 2001 ("OneChicago Letter"); Michael J. Ryan, Jr., Executive Vice President and General Counsel, American Stock Exchange, dated December 7, 2001 ("Amex Letter"); and William J. Brodsky, Chairman and Chief Executive Officer, Chicago Board Options Exchange, dated December 7, 2001 ("CBOE Letter"). The CBOE also joined in the Options Exchanges Letter.

[10] *See* letter from Susan Milligan, The Options Clearing Corporation, dated December 14, 2001 ("OCC Letter"). The OCC also joined in the Options Exchanges Letter.

[11] *See* letters from John P. Davidson III, Managing Director, Morgan Stanley, dated December 5, 2001 ("Morgan Stanley Letter"); James A. Gary, Executive Vice President, ABN AMRO Incorporated, dated December 5, 2001 ("ABN AMRO Letter"); and Russell R. Wasendorf, Sr., Chairman and Chief Executive Officer, Peregrine Financial Group, Inc., dated December 5, 2001 ("Peregrine Letter").

[12] *See* letters from John Munro, Senior Vice President, Product Design, Rolfe and Nolan Systems Inc ("Rolfe and Nolan Letter"); and Stephen P. Auerbech, Chief Operating Officer, SunGard Futures Systems, dated December 5, 2001 ("SunGard Letter").

[13] *See* letter from Frank Partnoy, Professor of Law, University of San Diego School of Law, dated October 29, 2001 ("Partnoy Letter").

[14] *See* letter from Robert Drinkard, dated September 28, 2001 ("Drinkard Letter"); and letter from Bernard E. Klein, dated December 18, 2001 ("Klein Letter").

[15] *See* Securities Exchange Act Release No. 44854 (September 26, 2001), 66 FR 50768 (October 4, 2001).

[16] *See* Securities Exchange Act Release No. 45630 (March 22, 2002), 67 FR 15263 (March 29, 2002) (notice of rules proposed by the CBOE related to customer portfolio and cross-margining requirements).

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Proposed Rules will more effectively promote market efficiency and liquidity.

D. Overview of the Final Rules

The Commissions have carefully considered the commenters' views, and have modified the Proposed Rules in various respects. The Final Rules, among other things:

- Establish stand-alone requirements that are consistent with Regulation T, but do not apply Regulation T in its entirety to futures accounts.
- Establish minimum initial and maintenance margin levels for unhedged positions in security futures at 20% of their "current market value."
- Permit self-regulatory authorities to set margin levels lower than 20% of current market value for customers with certain strategy-based offset positions involving security futures and one or more related securities or futures.
- Identify the types of collateral acceptable as margin deposits and establish standards for the valuation of such collateral and other components of equity.
- Establish standards for the withdrawal of margin by customers and security futures intermediaries.
- Set forth procedures applicable to undermargined accounts.
- Set forth procedures for filing proposed rule changes with the CFTC.

II. Discussion of the Final Rules

A. Who Is Covered by the Final Rules

The Commissions are adopting the Final Rules under the authority delegated to them by the Federal Reserve Board under section 7(c)(2) of the Exchange Act, which applies to brokers, dealers, and members of national securities exchanges extending credit to or for customers, or collecting margin from customers, in connection with security futures. In the Proposed Rules, the Commissions used the term "creditor," as defined in Regulation T, to delineate those persons who would be subject to the margin rules.[17] Because FCMs that effect transactions in security future products are broker-dealers,[18] they were included in the definition of "creditor" under the Proposed Rules.

To avoid characterizing the collection of margin for a security futures contract as involving an extension of credit, the Final Rules use the term "security futures intermediary" instead of the term "creditor." [19] The term "security futures intermediary" is intended to include the same persons as are included in the Regulation T definition of "creditor," but solely with respect to their financial relations involving security futures. SEC Rule 401(a)(29) defines security futures intermediary by reference to the term creditor. For the sole purpose of clarifying the scope of the Final Rules for market participants that are not subject to Regulation T, the definition of security futures intermediary in CFTC Rule 41.43(a)(29) specifies that the term includes FCMs and enumerated affiliated persons.[20]

The Commissions believe that the term security futures intermediary is defined identically for all substantive purposes, and emphasize that the difference in the language used in the two rules to define a security futures intermediary is not intended to mean that the scope of the two rules is different.

In addition, the term "customer" is defined under the Final Rules as any person or persons acting jointly on whose behalf a security futures intermediary effects a security futures transaction or carries a security futures position, or who would be considered a customer of the security futures intermediary according to the ordinary usage of the trade.[21] The definition of customer further includes (i) any partner in a security futures intermediary that is organized as a partnership who would be considered a customer of the security futures intermediary absent the partnership relationship, and (ii) any joint venture in which a security futures intermediary participates and which would be considered a customer of the security futures intermediary if the security futures intermediary were not a participant.[22] This definition is derived from the Regulation T definition of customer.[23]

B. Exclusions From Coverage

The Final Rules include specific exclusions for certain categories of financial relations, substantially as proposed. The exclusions are described below.

[17] Under Section 220.2 of Regulation T (17 CFR 220.2), the term "creditor" means any broker or dealer, member of a national securities exchange, or any person associated with a broker or dealer other than business entities controlling or under common control with the broker-dealer.

[18] *See* sections 3(a)(4) and 3(a)(5) of the Exchange Act, 15 U.S.C. 78c(a)(4) and 78c(a)(5).

[19] For the same reason, the Final Rules do not use the term "borrower" to refer to persons who deposit margin in connection with security futures transactions.

[20] *See* CFTC Rule 41.43(a)(29); SEC Rule 401(a)(29).

[21] *See* CFTC Rule 41.43(a)(5)(i); SEC Rule 401(a)(5)(i).

[22] *See* CFTC Rule 41.43(a)(5)(ii) and (iii); SEC Rule 401(a)(5)(ii) and (iii).

[23] *See* 12 CFR 220.2.

1. Financial Relations between a Customer and a Security Futures Intermediary Under a Portfolio Margining System

The Proposed Rules provided an exclusion for margin calculated by a portfolio margining system that has been approved by the SEC and, as applicable, the CFTC.[24] The Commissions are adopting this exclusion substantially as proposed.[25] The Final Rules add a provision requiring that the portfolio margining system meet the criteria set forth in section 7(c)(2)(B) of the Exchange Act.[26] This addition is intended to clarify that the portfolio margining system must be consistent with a risk-based system used for comparable exchange-traded options. This requirement does not preclude the use of an existing portfolio margining system that interfaces with an FCM's bookkeeping system, so long as the portfolio margining system is modified to produce results that comply with the Final Rules.[27]

Portfolio margining establishes margin levels by assessing the market risk of a "portfolio" of positions in securities or commodities. Under a portfolio margining system, the amount of required margin is determined by analyzing the risk of each component position in a customer account (*e.g.*, a class of option with the same expiration date) and by recognizing any risk offsets in an overall portfolio of positions (*e.g.*, across options and futures on the same underlying instrument). So that adequate margin is deposited to cover extraordinary market events, one or more additional adjustments may be applied in calculating a customer's required margin. A portfolio margining system may also be used in conjunction with a risk-based margining system,

[24] *See* Proposed CFTC Rule 41.43(b)(3)(i); Proposed SEC Rule 400(b)(3)(i).

[25] *See* CFTC Rule 41.42(c)(2)(i); SEC Rule 400(c)(2)(i).

[26] *See* CFTC Rule 41.42(c)(2)(i); SEC Rule 400(c)(2)(i). Section 7(c)(2)(B) requires that the margin requirements for security futures (i) be consistent with the margin requirements for comparable exchange-traded security options (and that margin levels for security futures not be lower than the levels of margin required for comparable exchange-traded options), and (ii) be and remain consistent with Regulation T of the Federal Reserve Board. 15 U.S.C. 78g(c)(2)(B).

[27] Under the Final Rules, a portfolio margining system can be used to compute required initial or maintenance margin that results in margin levels that are equal to or higher than the margin levels required by the Final Rules. In this regard, for example, the minimum margin requirement for unhedged security futures positions must be 20%, and the system cannot recognize any offset for combination positions that is not permitted under self-regulatory authority rules, as provided in CFTC Rule 41.45(b)(2) and SEC Rule 403(b)(2). See discussion of margin offsets, Section II.G.3. below.

which assesses margin based on the historical performance of individual instruments, rather than as a fixed percentage of current market value. Depending upon the risks attributable to one or more positions, the amount of required margin in a portfolio margining system may be greater than or less than the margin levels currently required for securities positions in a fixed-percentage, strategy-based margining system.

The Commissions received 14 comment letters that addressed the issue of portfolio margining, all of which supported the concept of portfolio margining for security futures.[28] Ten of the commenters strongly supported the implementation of full portfolio margining for security futures as soon as possible.[29]

Five commenters observed that portfolio margining recognizes the market risk associated with a specific position more accurately than a fixed-percentage margin scheme.[30] One commenter criticized the Proposed Rules for limiting customers to an "archaic strategy-based system." [31]

One commenter stated its opinion that portfolio margining should be allowed immediately for security futures, and that the higher margin levels collected under a strategy-based approach would make it difficult for U.S. markets to attract liquidity in security futures.[32] This commenter raised concerns that strategy-based margining would disadvantage U.S. markets and would encourage investors to seek foreign markets.[33] Another commenter supported portfolio margining for security futures, securities, and securities options to promote global competitiveness.[34] It observed that portfolio margining has become the international standard for major futures markets and without it, the U.S. markets will be at a disadvantage.[35]

One commenter expressed the view that portfolio margining should not be approved for security futures before it is approved for options, and stated that it was critical that any portfolio margining system applicable to security futures apply to all related products, including options and the underlying securities.[36] Another commenter supported implementation of a portfolio margining framework under which the margin requirements for portfolios comprised of securities and security futures would be determined through a risk-based analysis.[37]

Two other commenters, while strongly supporting the concept of portfolio margining, expressed the opinion that portfolio margining was not necessarily appropriate for all investors, and that it might be appropriate to limit the use of portfolio margining for security futures to sophisticated investors.[38]

The SEC and the CFTC have approved the use of portfolio margining systems for certain purposes. The CFTC has approved portfolio margining using the SPAN system for all currently traded futures contracts, at both the clearing level and the customer level.[39] The SEC has approved portfolio margining using The Options Clearing Corporation's ("The OCC") Theoretical Intermarket Margin System ("TIMS") for margin collected by The OCC for the options positions of its clearing members.[40] The SEC and CFTC also have approved self-regulatory organization ("SRO") rules that permit the use of SPAN and TIMS in connection with certain cross-margining arrangements involving futures and securities.[41] In addition, as noted previously, on March 22, 2002, the SEC published notice of a proposed rule change filed by the CBOE to implement a portfolio margining system on a pilot basis for certain customers.[42]

Section 7(c)(2)(B)(iii) of the Exchange Act[43] provides that the margin requirements for security futures must be consistent with the margin requirements for comparable exchange-traded options, and that the initial and maintenance margin levels for security futures may not be lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option. After considerable deliberation about the application of this standard to security futures margin, the Commissions have determined that risk-based portfolio margining for security futures will not be permitted until a similar methodology is introduced for comparable exchange-traded options.

Three commenters expressed opinions regarding the future selection and use of SPAN or TIMS as a portfolio margining system.[44] The Commissions will consider issues related to the use of any particular portfolio margining system at such time as the Commissions consider the actual implementation of portfolio margining for security futures.

The Commissions strongly encourage the efforts of market participants to develop a portfolio margining proposal for security futures, and are committed to working with these participants to resolve any outstanding issues as quickly as feasible. Such a portfolio margining system would be in keeping with current practices in the futures industry and would be responsive to the Federal Reserve Board's desire to encourage the development of more risk-sensitive, portfolio-based approaches to margining security futures products.[45]

[28] *See* SIA Credit Division Letter; Options Exchanges Letter; CME/CBOT Letter; SunGard Letter; SIA/FIA Letter; OCC Letter; Peregrine Letter; Nasdaq Liffe Letter; NFA Letter; Morgan Stanley Letter; OneChicago Letter; ABN AMRO Letter; Rolfe and Nolan Letter; and Managed Funds Letter.

[29] *See* CME/CBOT Letter; SunGard Letter; SIA/FIA Letter; Peregrine Letter; Nasdaq Liffe Letter; NFA Letter; OneChicago Letter; ABN AMRO Letter; Rolfe and Nolan Letter; and Managed Funds Letter.

[30] *See* SIA/FIA Letter at 2; Morgan Stanley Letter at 3; OneChicago Letter at 7–8; NFA Letter at 4–5; and Nasdaq Liffe Letter at 4.

[31] CME/CBOT Letter at 5.

[32] SunGard Letter at 2.

[33] *Id.*

[34] Nasdaq Liffe Letter at 5–6.

[35] *Id.*

[36] Options Exchanges Letter at 4.

[37] SIA/FIA Letter at 11. This commenter also recommended that the Commissions permit FCMs to use the Standard Portfolio Analysis of Risk ("SPAN") system for establishing the initial and maintenance margin requirements for security futures maintained in a futures account as long as the resulting margin levels are consistent with the margin requirements for security futures held in a securities account. *Id.* at 12.

[38] *See* SIA Credit Division Letter at 2; Morgan Stanley Letter at 4.

[39] The CFTC also has approved SPAN margining for all options on futures contracts.

[40] *See* Securities Exchange Act Release No. 28928 (March 1, 1991), 56 FR 9995 (March 8, 1991); Securities Exchange Act Release No. 23167 (April 22, 1986), 51 FR 16127 (April 30, 1986).

[41] To date, the Commissions have approved cross-margining programs between The OCC and the following futures clearing organizations: The Intermarket Clearing Corporation (1988); Chicago Mercantile Exchange ("CME") (1989); Board of Trade Clearing Corporation ("BOTCC") (1991); Kansas City Board of Trade Clearing Corporation (1992); and Comex Clearing Association (1992). The Commissions also have approved cross-margining programs between the Government Securities Clearing Corporation and the following futures clearing organizations: the New York Clearing Corporation (1999); BOTCC (2001); and CME (2001).

[42] *See supra* note 16 and accompanying text.

[43] 15 U.S.C. 78g(c)(2)(B)(iii).

[44] *See* CME/CBOT Letter at 5; SIA/FIA Letter at 12–13 and Appendix I, Q 15; OCC Letter.

[45] In its delegation letter, the Federal Reserve Board requested that "the Commissions provide an assessment of progress toward adopting more risk-sensitive, portfolio-based approaches to margining security futures products." The Federal Reserve Board further stated that "[t]he Board has encouraged the development of such approaches by, for example, amending its Regulation T so that portfolio margining systems approved by the [SEC] can be used in lieu of the strategy-based system embodied in the Board's regulation. The Board anticipates that the creation of security future products will provide another opportunity to develop more risk-sensitive, portfolio based approaches for all securities, including security options and security futures products." FRB Letter at 2.

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2. Financial Relations Between a Security Futures Intermediary and a Foreign Person

The Proposed Rules provided an exclusion from the margin requirements for financial relations between a foreign branch of a creditor and a foreign person involving foreign security futures.[46] This exclusion was intended to be consistent with the way Regulation T treats financial relations between a foreign branch of a creditor and a foreign person involving foreign securities.[47] The Commissions are adopting this exclusion with two modifications.[48]

First, in response to concerns raised by a commenter,[49] the scope of the exclusion is being expanded so that it applies to the U.S. offices as well as foreign branch offices of a security futures intermediary. This commenter expressed the view that the exclusion, as proposed, would create a competitive disadvantage for U.S. firms whose existing foreign futures customers would likely migrate to foreign offices or competing foreign firms to obtain the margin levels available on the foreign exchange. After considering the commenter's view, the Commissions have concluded that expanding the exclusion is appropriate and, in light of the potential competitive issues, is not inconsistent with Regulation T.

The second modification clarifies the scope of this exclusion. Because the Proposed Rules did not define the term "foreign security future," the Final Rules provide that the exclusion applies to financial relations between a security futures intermediary and a foreign person involving "security futures traded on or subject to the rules of a foreign board of trade." Thus, the exclusion applies regardless of whether the underlying security is issued in the United States or a foreign country.[50]

3. Margin Requirements Imposed by Clearing Agencies or Derivatives Clearing Organizations

The Proposed Rules provided an exclusion from the margin requirements for margin collected by registered clearing agencies from their members.[51] The Commissions received no comments relating to this provision. The text of the proposed exclusion has been revised to specify that the Final Rules exclude clearing agencies registered under section 17A of the Exchange Act and derivatives clearing organizations registered under Section 5b of the CEA.[52] These textual changes do not affect the meaning of the provision and, therefore, the Commissions have effectively adopted the provision as proposed.

Section 7(c)(2) of the Exchange Act directs the Federal Reserve Board to prescribe rules regarding customer margin for security futures products, but it does not confer authority over margin requirements for clearing agencies and derivatives clearing organizations. Accordingly, the Federal Reserve Board stated in its delegation letter that "[t]he authority delegated by the Board is limited to customer margin requirements imposed by brokers, dealers, and members of national securities exchanges. It does not cover margin requirements imposed by clearing agencies on their members." The margin rules of clearing agencies registered with the SEC are approved by the SEC pursuant to section 19(b)(2) of the Exchange Act.[53] The CFTC has authority to ensure compliance with core principles for derivatives clearing organizations registered with the CFTC under Sections 5b and 5c of the CEA.[54] This exclusion clarifies that margin requirements that clearing agencies registered with the SEC or derivatives clearing organizations registered with the CFTC impose on their members are not subject to the Final Rules.

4. Financial Relations Between Security Futures Intermediaries and Broker-Dealers, and Certain Members of National Securities Exchanges

a. *Financial Relations with an Exempted Person.* The Proposed Rules provided an exclusion from the margin requirements for credit arrangements between a creditor and a borrower that is a member of a national securities exchange or is a registered broker-dealer (including an FCM registered as a broker-dealer under section 15(b)(11) of the Exchange Act) if the creditor made a good faith determination that the borrower was an "exempted borrower" under Regulation T.[55] The Regulation T criteria for an "exempted borrower" establish standards for the exception from federal margin regulation for exchange members and registered brokers and dealers, a substantial portion of whose business consists of transactions with persons other than brokers or dealers.[56] In addition, the Proposed Rules provided that a person that ceased to qualify for the exempted borrower exclusion would be required to notify the creditor of this fact before establishing any new security futures positions.[57] Any security futures positions subsequently established by that person would be subject to the Commissions' customer margin requirements.

One commenter addressed the exclusion, asserting that an FCM or floor broker whose only securities business consists of trading security futures would not likely qualify as an exempted borrower under Regulation T.[58] The commenter asked the Commissions to clarify that the scope of the exclusion includes FCMs or floor brokers that do not have a substantial securities or security futures business, as long as they have a substantial customer futures business.

After considering the commenter's view, the Commissions have adopted the exclusion with several modifications to clarify the application of the exclusion.[59] As a preliminary matter, the Commissions are replacing the term "exempted borrower" with the new term, "exempted person," to avoid characterizing the collection of margin for a security futures contract as involving an extension of credit.

Consequently, the Commissions are also adding to the Final Rules a definition of "exempted person." The Commissions believe that the definition of exempted person is consistent with

[46] *See* Proposed CFTC Rule 41.43(b)(3)(ii); Proposed SEC Rule 400(b)(3)(ii).

[47] *See* 12 CFR 220.1(b)(3)(iv).

[48] *See* CFTC Rule 41.42(c)(2)(ii); SEC Rule 400(c)(2)(ii).

[49] Meeting between SEC and CFTC staff and representatives of SIA/FIA (February 6, 2000).

[50] This exclusion does not address the application of Section 6(h)(1) of the Exchange Act (15 U.S.C. 78f(h)(1)) to transactions in security futures that are traded on or subject to the rules of a foreign board of trade.

[51] *See* Proposed CFTC Rule 41.43(b)(3)(iii); Proposed SEC Rule 400(b)(3)(iii).

[52] *See* CFTC Rule 41.42(c)(2)(iii); SEC Rule 400(c)(2)(iii).

[53] 15 U.S.C. 78s(b)(2).

[54] 7 U.S.C. 7a–1; 7 U.S.C. 7a–2.

[55] *See* Proposed CFTC Rule 41.43(b)(3)(iv)(A); Proposed SEC Rule 400(b)(3)(iv)(A).

[56] The term "exempted borrower" is defined in Section 220.2 of Regulation T as a member of a national securities exchange or a registered broker or dealer, a substantial portion of whose business consists of transactions with persons other than brokers or dealers, and includes a borrower who: (1) Maintains at least 1,000 active accounts on an annual basis for persons other than brokers, dealers, and persons associated with a broker or dealer; (2) earns at least $10 million in gross revenues on an annual basis from transactions with persons other than brokers, dealers, and persons associated with a broker or dealer; or (3) earns at least 10% of its gross revenues on an annual basis from transactions with persons other than brokers, dealers, and persons associated with a broker or dealer. 12 CFR 220.2. section 7(c)(3)(A) of the Exchange Act (15 U.S.C. 78g(c)(3)(A)) provides an exception from federal margin regulation for members of national securities exchanges and registered broker-dealers, "a substantial portion of whose business consists of transactions with persons other than brokers or dealers."

[57] *See* Proposed CFTC Rule 41.45(e); Proposed SEC Rule 402(e).

[58] OneChicago Letter at 8–9.

[59] *See* CFTC Rule 41.42(c)(2)(iv); SEC Rule 400(c)(2)(iv).

the definition of exempted borrower in Regulation T. More specifically, the Final Rules define an exempted person as a member of a national securities exchange, a registered broker or dealer, or a registered futures commission merchant, a substantial portion of whose business consists of transactions in securities, commodity futures, or commodity options with persons other than brokers, dealers, futures commission merchants, floor brokers, or floor traders, including a person who:

- Maintains at least 1000 active accounts on an annual basis for persons other than brokers, dealers, persons associated with a broker or dealer, futures commission merchants, floor brokers, floor traders, and persons affiliated with a futures commission merchant, floor broker, or floor trader that are effecting transactions in securities, commodity futures, or commodity options;
- Earns at least $10 million in gross revenues on an annual basis from transactions in securities, commodity futures, or commodity options with persons other than brokers, dealers, persons associated with a broker or dealer, futures commission merchants, floor brokers, floor traders, and persons affiliated with a futures commission merchant, floor broker, or floor trader; or
- Earns at least 10 percent of its gross revenues on an annual basis from transactions in securities, commodity futures, or commodity options with persons other than brokers, dealers, persons associated with a broker or dealer, futures commission merchants, floor brokers, floor traders, and persons affiliated with a futures commission merchant, floor broker, or floor trader.[60]

Although the commenter recommended that floor brokers as well as FCMs be permitted to qualify as exempted borrowers, the Commissions have not included floor brokers in the definition of exempted person. This is because the exemption cannot readily be applied to floor brokers given that they do not carry the type of customer accounts contemplated by the Regulation T exempted borrower provision. The Commissions note that, although floor brokers are not included in the definition of exempted person, they may still qualify for an exclusion from the security futures margin requirements if they meet the criteria for a market maker under the Final Rules, as discussed below.[61]

The Final Rules also set forth an express definition of "persons affiliated with" a futures commission merchant, floor broker, or floor trader,[62] which parallels the definition in the Exchange Act of "person associated with a broker or dealer."[63] The purpose of this definition is to establish consistency with the Regulation T definition of exempted borrower, which excludes transactions with "persons associated with a broker or dealer," as that term is defined in section 3(a)(18) of the Exchange Act.[64] The phrase "persons affiliated with" has been used in the definition with respect to transactions with FCMs, floor brokers and floor traders, and the phrase "persons associated with" has been used with respect to transactions with brokers and dealers. This is not intended to create a substantive difference in the provisions applicable to the securities and futures industries. Rather, it is intended to avoid confusion insofar as the CFTC's definition of "affiliated person" (which includes corporate affiliates)[65] more closely matches the Exchange Act definition of "persons associated with a broker or dealer," than does the CFTC definition of "associated person," which is a registration category.[66]

The Final Rules clarify that a person may qualify as an exempted person based on transactions in commodity futures and commodity options, as well as securities. For purposes of the "1000 active accounts" threshold, an FCM or broker or dealer that clears a bona fide customer omnibus account for another FCM or broker or dealer may treat that account as a single customer account. For purposes of the $10 million and 10% thresholds, the gross revenues from transactions for bona fide customer omnibus accounts may be included in the computation. An omnibus account will not be considered a bona fide customer account if it is used to clear transactions for market professionals that would otherwise be excluded from the exempted person computation. A fully disclosed customer account will be considered a single customer account of the clearing firm, as well as the introducing firm.

The exempted person provision further states that a member of a national securities exchange or a registered broker, dealer, or futures commission merchant that has been in existence for less than one year may meet the definition of exempted person based on a six-month period.[67] This incorporates the standard set forth in Regulation T.[68]

In response to one commenter's suggestion,[69] the Commissions are also defining the term "good faith," consistent with the definition of that term in Regulation T,[70] for the purposes of determining what steps a security futures intermediary must take to assure itself that a person is an exempted person.[71] The Final Rules further provide that a person who ceases to qualify as an exempted person must notify the security futures intermediary of that fact, and become subject to the provisions of the Final Rules, but only before entering into any new security futures transaction or related transaction that would require additional margin to be deposited.[72] This would permit a person to enter into new offsetting transactions that reduce the required margin in an account without triggering higher margin requirements.

b. *Margin Arrangements with a Borrower Otherwise Excluded Pursuant to section 7(c)(3) of the Exchange Act.* The Proposed Rules included an exclusion for credit extended, maintained, or arranged by a creditor to or for a registered broker-dealer, or member of a national securities exchange (including an FCM registered as a broker-dealer under section 15(b)(11) of the Exchange Act) that is otherwise excluded under section 7(c)(3) of the Exchange Act.[73] The Commissions have decided not to adopt this exclusion.

Under section 7(c)(3)(B) of the Exchange Act,[74] the financing of the market making or underwriting activities of a member of a national securities exchange or a registered broker-dealer is excluded from the scope of federal margin regulation. The Federal Reserve Board has expressed the view that floor traders on open-outcry futures exchanges act as market makers and therefore would be excluded from the margin requirements for security futures pursuant to Section 7(c)(3)(B).[75]

[60] *See* CFTC Rule 41.43(a)(9); SEC Rule 401(a)(9).

[61] *See* CFTC Rule 41.42(c)(2)(v); SEC Rule 400(c)(2)(v).

[62] *See* CFTC Rule 41.43(a)(9)(ii); SEC Rule 401(a)(9)(ii).

[63] *See* CFTC Rule 41.43(a)(23); SEC Rule 401(a)(23).

[64] 15 U.S.C. 78c(a)(18).

[65] *See* 17 CFR 155.1; Section 4f(c)(1)(i) of the CEA, 7 U.S.C. 6f(c)(1)(i).

[66] *See* 17 CFR 1.3(aa).

[67] *See* CFTC Rule 41.43(a)(9)(iii); SEC Rule 401(a)(9)(iii).

[68] *See* 12 CFR 220.3(j)(1).

[69] Meeting between SEC and CFTC staff and representatives of SIA/FIA (February 6, 2002).

[70] *See* 12 CFR 220.2.

[71] *See* CFTC Rule 41.43(a)(15); SEC Rule 401(a)(15).

[72] *See* CFTC Rule 41.44(f); SEC Rule 402(f).

[73] *See* Proposed CFTC Rule 41.43(b)(3)(iv)(B); Proposed SEC Rule 400(b)(3)(iv)(B).

[74] 15 U.S.C. 78g(c)(3)(B).

[75] In its delegation letter, the Federal Reserve Board stated that "[i]n the current open-outcry

Continued

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The proposed exclusion was intended to codify this view.

One commenter addressed this exclusion and maintained that the exclusion was confusing because the Commissions did not provide any guidance as to the factors under which a broker-dealer would qualify for the exclusion.[76] The commenter asked the Commissions to clarify the circumstances under which a floor trader on an open outcry exchange qualifies for the market maker exclusion.

The Commissions have not adopted the proposed exclusion. As noted above, the Federal Reserve Board has taken the position that floor traders on open-outcry futures exchanges qualify for the statutory market maker exception. However, any further interpretation of section 7(c)(3) of the Exchange Act is within the purview of the Federal Reserve Board. As a result, the Commissions would not be able to provide specific guidance as requested by the commenter as to the circumstances under which Section 7(c)(3) applies to floor traders on an open-outcry futures exchange. The Commissions emphasize that any person excluded from federal margin regulation under section 7(c)(3) of the Exchange Act is not subject to the rules adopted by the Commissions today. The Commissions encourage market participants to seek interpretive guidance from the Federal Reserve Board regarding the circumstances in which the exception under section 7(c)(3) of the Exchange Act applies.

c. *Financial Relations between a Security Futures Intermediary and a Member of a National Securities Exchange or Association in Connection with Market Making Activities.* The Commissions proposed to exclude from the scope of the margin requirements credit extended, maintained, or arranged to or for members of a national securities exchange or a national securities association in connection with market making activities.[77] As proposed, the exclusion had two conditions. First, the borrower could not directly or indirectly accept or solicit customer orders or provide advice to any customer in connection with the trading of security futures. Second, the borrower had to be registered with the exchange or association as a security futures dealer, pursuant to regulatory authority rules that require the borrower: (a) To be registered as a floor trader or floor broker with the CFTC, or as a dealer with the SEC; (b) to comply with applicable SEC or CFTC net capital requirements; (c) to maintain records sufficient to demonstrate compliance with the exclusion and the rules of the exchange or association; (d) to hold itself out as willing to buy and sell security futures for its own account on a regular or continuous basis; and (e) to be subject to disciplinary action if it failed to comply with the Commissions' margin rules or the rules of the exchange or association.[78] The Commissions are adopting this exclusion with modifications in light of commenters' views.[79]

The Commissions received four comments on the exclusion.[80] These comments generally supported the proposed exclusion, but suggested that the Commissions clarify certain aspects of the conditions.

One commenter expressed the view that a person is a market maker in security futures if it provides liquidity on a regular basis, even if it is not under an affirmative obligation to do so.[81] Based on that view, the commenter suggested two alternatives to the Commissions' proposal to determine whether a trader is a liquidity provider. First, the commenter recommended that the Commissions consider a person to be a liquidity provider solely because that person is registered with either the SEC or the CFTC as a trading professional (*e.g.*, as a broker-dealer or FCM) and is a member of an exchange. In the alternative, the commenter recommended that the Commissions consider a trader to be a liquidity provider if that person can demonstrate through its business activity that it is a professional liquidity provider, regardless of its regulatory status or membership in an exchange.[82] This commenter further stated that the net capital requirements for persons acting as market makers in security futures should be uniform in order to prevent security futures market makers subject to CFTC financial responsibility rules from obtaining an unfair competitive advantage over security futures market makers (or security options market makers) subject to SEC financial responsibility rules.[83]

Another commenter asked the Commissions to modify the condition to the exclusion for exchange members that requires that the member "hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis."[84] The commenter maintained that market makers on a screen-based trading system either should have an enforceable obligation to provide liquidity or should meet an objective standard for supplying liquidity.[85] Specifically, the commenter suggested that the condition be narrowed further with respect to members of screen-based trading systems so that it would apply only to members of such systems that: (1) have a continuous, affirmative obligation to quote a two-sided market; or (2) effect more than two-thirds of their security futures trades on that exchange with persons other than registered market makers on that exchange.[86]

A third commenter asked the Commissions to eliminate the condition to the exclusion for exchange members that requires that the member not "directly or indirectly accept or solicit orders from any customer or provide advice to any customer in connection with the trading of security futures."[87] The commenter maintained that a broker-dealer acting as a market maker should not be precluded from also carrying out a customer securities business.

The fourth commenter asked the Commissions to confirm that registered floor brokers and floor traders would qualify for the exclusion even if they are not subject to a net capital requirement under CFTC rules.[88] In support of this request, the commenter stated that market makers in options are exempt from the SEC's net capital rule.[89]

After considering the commenters' views, the Commissions have adopted the exclusion with certain modifications. First, the Commissions are clarifying that the provision relating

environment, the Board believes that floor traders act as market makers and therefore would be exempt [under section 7(c)(3) of the Exchange Act]." FRB Letter at 2.

[76] CBOE Letter.

[77] *See* Proposed CFTC Rule 41.43(b)(3)(iv)(C); Proposed SEC Rule 400(b)(3)(iv)(C).

[78] *Id.*

[79] *See* CFTC Rule 41.42(c)(2)(v); SEC Rule 400(c)(2)(v). The Commissions note that the Final Rules include a definition of the term "member," which clarifies the applicability of that term to persons with trading privileges on an exchange, even if that exchange does not have a "membership" structure. More specifically, the term "member" has the meaning provided in section 3(a)(3) of the Exchange Act and includes persons registered under section 15(b)(11) of the Exchange Act that are permitted to effect transactions on a national securities exchange without the services of another person acting as executing broker. *See* CFTC Rule 41.43(a)(21); SEC Rule 401(a)(21).

[80] *See* Amex Letter; CBOE Letter; OneChicago Letter; SIA/FIA Letter. In addition, the ABN AMRO Letter endorsed the comments in the SIA/FIA Letter.

[81] CBOE Letter at 2–3.

[82] *Id.* at 4.

[83] *Id.* at 5–6.

[84] Amex Letter.

[85] *Id.* at 2, 4.

[86] *Id.* at 4.

[87] SIA/FIA Letter at 14, n.25; Appendix I, Q 17(a).

[88] OneChicago Letter at 9.

[89] *Id.*

to accepting or soliciting customer orders was not intended to bar a member from engaging in such activities. That provision was intended to limit the exclusion from the margin requirements to circumstances where the member was trading for its own account, not for the account of others. Accordingly, the rule has been modified to make clear that the exclusion is available to a member only with respect to trading activity for its own account.[90] Thus, the member may conduct a customer business and still qualify for the exclusion from the Commissions' margin requirements for security futures with regard to its market making activity.

The Commissions have also decided that it is unnecessary to restate the applicability of existing net capital requirements under CFTC and SEC rules, or to impose additional net capital requirements, as a condition of the exclusion for persons acting as market makers. Firms will continue to be subject to applicable CFTC or SEC net capital requirements. Further, even if a member is not subject to net capital requirements, the member's carrying firm will be subject to the treatment provided in existing SEC or CFTC net capital rules, whichever are applicable, with respect to the member's security futures transactions.

As noted above, the Commissions received several comments regarding the circumstances under which an exchange member should be considered a market maker for purposes of the margin rules, other than in circumstances that fall within the exception in Section 7(c)(3) of the Exchange Act. These comments largely refer to the requirement that the exchange member "hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis' in order to qualify for the exclusion. The Commissions do not believe that registration with the SEC or CFTC is, by itself, sufficient to show that a market participant is holding itself out as willing to buy and sell security futures. However, the Commissions believe that there are a number of different ways that an exchange member could satisfy this condition. For example, an exchange's or association's rules could require the member to effect a certain percentage of its security futures trades on that exchange or association with persons other than registered market makers on that exchange or association.[91]

Alternatively, such rules could require that a large majority of such exchange member's revenue is derived from business activities or occupations from trading listed financial-based derivatives (*i.e.*, security futures, stock index futures, stock and index options, foreign currency futures and options, and interest rate futures and options) on any exchange in the capacity of a member. As another alternative, the exchange member could be subject to rules that impose on it an affirmative obligation to quote on a regular or continuous basis in security futures.

C. Interpretations of, and Exemptions From, the Final Rules

The Commissions are adopting two provisions in the Final Rules to clarify the Commissions' authority to respond to issues that arise in connection with the implementation of the Final Rules. First, the Commissions are adding a provision regarding the interpretation of the security futures margin rules. The Final Rules provide that the Commissions shall jointly interpret the margin rules, consistent with the criteria set forth in clauses (i) through (iv) of section 7(c)(2)(B) of the Exchange Act and Regulation T.[92]

Second, the Final Rules add a provision providing that each Commission may issue an exemption from any provision of the Final Rules.[93] CFTC Rule 41.42(d) provides that the CFTC may grant an exemption with respect to any provision of CFTC Rules 41.42 through 41.49, provided that the CFTC finds that the exemption is consistent with the public interest and the protection of customers. Similarly, SEC Rule 400(d) provides that the SEC may grant an exemption with respect to any provision of SEC Rules 400 through 406, provided that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors. Because financial relations involving security futures are subject to the Final Rules as adopted by both the CFTC and the SEC, any person seeking an exemption under these rules must request and obtain the same exemption from both the CFTC and SEC. The Commissions intend to work together on exemption requests to establish uniform policies for security futures trading.

D. Definitions

The definition section of the Proposed Rules has been expanded to include all applicable defined terms. Under the Proposed Rules, many of these definitions and provisions would have been incorporated through the application of Regulation T.

The terms "contract multiplier," "daily settlement price," and "Regulation T" are defined in the Final Rules as proposed.[94] The Proposed Rules defined the terms "examining authority," "initial margin," and "maintenance margin."[95] These terms are not, however, included in the Final Rules because modifications made to the Proposed Rules make them unnecessary. The Final Rules also define the term "self-regulatory authority,"[96] instead of the term "regulatory authority" as proposed,[97] and its definition has been revised to include a reference to registration under the CEA. In addition, the Final Rules define the term "current market value" with respect to a security other than a security future consistently with the Regulation T definition.[98] Some of the defined terms incorporate by reference definitions from the CEA, the Exchange Act, or CFTC or SEC rules.[99]

[90] *See* CFTC Rule 41.42(c)(2)(v); SEC Rule 400(c)(2)(v).

[91] National securities exchanges registered under section 6(a) of the Exchange Act require their options market makers to conduct at least 50% of their total contract volume in option classes to which they have been appointed. *See* Amex Rule 958; Philadelphia Stock Exchange ("Phlx") Rule 1014. In some cases, market makers are required to conduct at least 75 percent of their total contract volume in option classes to which they have been appointed. *See* CBOE Rule 8.7.03; International Securities Exchange Rule 805; Pacific Exchange ("PCX") Rule 6.37.

[92] *See* CFTC Rule 41.42(b); SEC Rule 400(b).

[93] *See* CFTC Rule 41.42(d); SEC Rule 400(d). The SEC and CFTC exemption standards contained in the Final Rules are the same as those set forth in the recently adopted rules relating to cash settlement and regulatory halt requirements for security futures products. *See* Securities Exchange Act Release No. 45956 (May 17, 2002), 67 FR 36740 (May 24, 2002). As noted in connection with those rules, the SEC version of the exemption provision refers to the protection of "investors," and the CFTC version of the provision refers to the protection of "customers." *Id.* at 36745, n.64. The difference in terminology is not intended to have any substantive significance. Rather, the terms are used for purposes of conformity with terminology used in the Exchange Act and CEA.

[94] *See* CFTC Rules 41.43(a)(3), (a)(6), and (a)(24); SEC Rules 401(a)(3), (a)(6), and (a)(24).

[95] *See* Proposed CFTC Rules 41.44(a)(3), (a)(4), and (a)(5); Proposed SEC Rules 401(a)(3), (a)(4), and (a)(5).

[96] *See* CFTC Rule 41.43(a)(30); SEC Rule 401(a)(30). The terminology was modified to eliminate confusion as to a "regulatory authority" being a governmental regulator rather than an SRO.

[97] *See* Proposed CFTC Rule 41.44(a)(7); Proposed SEC Rule 401(a)(7).

[98] *See* CFTC Rule 41.43(a)(4); SEC Rule 401(a)(4); see also 12 CFR 220.2.

[99] *See, e.g.*, definitions of "broker," CFTC Rule 41.43(a)(2) and SEC Rule 401(a)(2); "dealer," CFTC Rule 41.43(a)(7) and SEC Rule 401(a)(7); "exempted security," CFTC Rule 41.43(a)(10) and SEC Rule 401(a)(10); "futures account," CFTC Rule 41.43(a)(13) and SEC Rule 401(a)(13); "futures

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Terms that are not otherwise defined in the definition section of the Final Rules will have the meaning set forth in the margin rules applicable to the account.[100] Terms that are neither defined in the definition section nor in the margin rules applicable to the account will have the meaning set forth in the Exchange Act and the CEA.[101] If the definitions of a term in the Exchange Act and the CEA are inconsistent as applied in particular circumstances, such term shall have the meaning set forth in rules, regulations, or interpretations jointly promulgated by the SEC and the CFTC.

E. Application of Regulation T to Security Futures

Section 7(c)(2)(B)(iv) of the Exchange Act requires that the margin requirements for security futures (other than levels of margin), including the type, form, and use of collateral, must be consistent with the requirements of Regulation T.[102] To carry out that statutory mandate, the Commissions proposed that Regulation T would apply to all transactions in security futures, to the extent consistent with the Proposed Rules. Thus, under the Proposed Rules, Regulation T would have applied both to securities accounts (which are already subject to Regulation T) and to futures accounts (which are not otherwise subject to Regulation T) that carry security futures.[103] This approach also would have applied existing and future Federal Reserve Board interpretations of Regulation T to the margin requirements for security futures and kept the margin requirements consistent with Regulation T without the need for amendments to the Final Rules.

The Commissions, however, also recognized that there could be more than one approach to prescribing rules that are "consistent" with Regulation T. Accordingly, the Commissions specifically requested commenters' views on alternative approaches to establishing consistency with Regulation T. In particular, the Commissions solicited comment on the approach of issuing comprehensive "stand-alone" margin rules that would parallel Regulation T requirements for securities to the extent that such requirements are relevant to security futures. Under that approach, the stand-alone rules would apply to security futures and any related securities or futures contracts that are used to offset positions in such security futures. However, the stand-alone rules would not apply to any other securities or futures transactions.

The Commissions received a total of 12 comment letters on the application of Regulation T to security futures transactions.[104] One commenter supported the Commissions' proposed approach regarding Regulation T.[105] Nine commenters opposed general application of Regulation T to security futures carried in futures accounts,[106] and two other commenters specifically opposed applying the Regulation T account structure to FCMs.[107]

The commenter that supported application of Regulation T to all security futures transactions believed that the alternative approach of stand-alone rules would not satisfy the statutory requirement that the margin requirements for security futures (other than levels of margin) be "consistent" with those imposed on securities.[108] The commenter expressed the view that the term "consistent" should mean that there is no appreciable difference between rules applicable to exchange-traded options and rules applicable to security futures. In addition, the commenter noted that if the Commissions adopt stand-alone margin rules there is a risk that over time such rules will vary materially from Regulation T because of the difficulty of promptly incorporating the Federal Reserve Board's future interpretations of Regulation T into stand-alone rules.

Commenters opposing the general application of Regulation T to security futures did not believe that the CFMA required such application. One commenter contended that application of Regulation T to futures accounts "is impractical and unnecessary" and "not required," and that the CFMA's "consistent" standard did not necessarily require rules "identical" or "equivalent" to the rules applicable to exchange-traded options.[109] Rather, this commenter argued, Regulation T permits commodity futures to be recorded in an account other than a margin account (a "good faith" account) and, as a result, permitting security futures to be carried in a futures account (not a margin account) is "consistent" with Regulation T.[110] Another commenter observed that while "consistency requires reasonable comparability * * * [, i]f Congress had meant 'consistent' to mean 'identical,' however, it would have used that word" or would have clearly directed that Regulation T be applied to security futures.[111] Similarly, another commenter pointed out that "the CFMA did not mandate the application of Reg[ulation] T to security futures maintained in a futures account" and that the "imposition of Reg[ulation] T with respect to security futures is inconsistent with Congress's goal of facilitating trading in security futures."[112]

Commenters that disagreed with the Commissions' proposed approach generally urged the Commissions to adopt "stand-alone" margin rules for security futures.[113] All of these commenters maintained that the programming changes necessary to enable FCMs to comply with Regulation T would be overly costly.[114] Generally, those commenters believed that it would be operationally difficult or impossible to carry security futures in a standard futures account without costly and time-consuming reprogramming.[115] Commenters were concerned that this would place FCMs at a considerable disadvantage in comparison to broker-dealers and would discourage them from trading security futures. One commenter pointed out that a broker-dealer "would need to do little, relative to an FCM, to bring itself into compliance with the Proposed Rules."[116] Another commenter expressed concern that FCMs would have to undertake a substantial development project requiring 'the

commission merchant," CFTC Rule 41.43(a)(14) and SEC Rule 401(a)(14); and "securities account," CFTC Rule 41.43(a)(28) and SEC Rule 401(a)(28).

[100] *See* CFTC Rule 41.43(b); SEC Rule 401(b). *See also infra* notes 125–126 and accompanying text.

[101] *See* CFTC Rule 41.43(c); SEC Rule 401(c).

[102] 15 U.S.C. 78g(c)(2)(B)(iv).

[103] *See* Proposed CFTC Rule 41.43(b)(1); Proposed SEC Rule 400(b)(1).

[104] *See* NFA Letter; SIA/FIA Letter; Nasdaq Liffe Letter; ABN AMRO Letter; CME/CBOT Letter; OneChicago Letter; Morgan Stanley Letter; Peregrine Letter; SunGard Letter; Options Exchanges Letter; Managed Funds Letter; and Rolfe and Nolan Letter.

[105] Options Exchanges Letter at 3.

[106] NFA Letter at 2–3; SIA/FIA Letter at 2, 4–7; ABN AMRO Letter at 1; CME/CBOT Letter at 2–3; OneChicago Letter at 3–7; Morgan Stanley Letter at 2, 5–6; Peregrine Letter at 2; Managed Funds Letter at 1; and Rolfe and Nolan Letter at 1–2.

[107] Nasdaq Liffe Letter at 6–7; and SunGard Letter at 2–3.

[108] Options Exchanges Letter at 3.

[109] OneChicago Letter at 3.

[110] *Id.* at 3–4.

[111] NFA Letter at 2.

[112] SIA/FIA Letter at 5.

[113] *See* NFA Letter at 2; SIA/FIA Letter at 5; Nasdaq Liffe Letter at 7; ABN AMRO Letter at 1; CME/CBOT Letter at 10; OneChicago Letter at 7; SunGard Letter at 3; and Peregrine Letter at 2.

[114] *See* NFA Letter at 3; SIA/FIA Letter at 4; Nasdaq Liffe Letter at 6; ABN AMRO Letter at 1; CME/CBOT Letter at 3; OneChicago Letter at 5; SunGard Letter at 1; and Peregrine Letter at 2.

[115] *See* NFA Letter at 2; SIA/FIA Letter at 4–5; Nasdaq Liffe Letter at 6; ABN AMRO Letter at 1; CME/CBOT Letter at 3; OneChicago Letter at 4; SunGard Letter at 1; Peregrine Letter at 2.

[116] OneChicago Letter at 5.

restructuring of FCMs' accounts and related systems changes."[117] The commenter estimated that this would result in the expenditure of "several thousands of personnel hours,"[118] while another commenter believed that costs would "run well into six figures."[119]

Eight commenters recommended the adoption of an account-specific margin regime for purposes of account administration.[120] The adoption of an account-specific margin regime was effectively endorsed by two other commenters that advocated retention of specific existing practices[121] and one other that believed the imposition of Regulation T on FCMs would be highly burdensome.[122] One commenter argued against the adoption of an account-specific margin regime, stating that FCMs will have to revise a number of their operating procedures and there is no compelling reason to make an exception for margin procedures.[123]

After considering the commenters' suggestions, the Commissions have determined that it is not necessary to apply Regulation T in its entirety to security futures transactions to satisfy the requirements under section 7(c)(2) of the Exchange Act.[124] Given the relative infrequency of the Federal Reserve Board adopting amendments to Regulation T and issuing formal regulatory guidance, the Commissions do not believe that it will be unduly burdensome or impractical to amend these rules to maintain consistency with Regulation T. Accordingly, the Commissions have adopted stand-alone margin rules that include certain requirements of Regulation T. The Commissions believe that the inclusion of these requirements in the Final Rules satisfies the statutory requirement that margin requirements for security futures be and remain consistent with Regulation T.

The Commissions believe that many of the rules governing margin for positions carried in securities accounts are similar enough to the rules governing margin for positions carried in futures accounts that the differences do not, by themselves, create an incentive for customers either to trade security futures instead of options, or to hold security futures in a futures account rather than a securities account. Accordingly, the Commissions are adopting an "account-specific" approach for those aspects of account administration that need not be conformed to satisfy the requirement that the margin rules for security futures be consistent with Regulation T. Thus, the Final Rules provide that security futures held in a securities account are subject to the Final Rules, Regulation T, and to the margin requirements of the self-regulatory authorities of which the security futures intermediary is a member.[125] Security futures held in a futures account, on the other hand, will be subject to the Final Rules and the margin requirements of the self-regulatory authorities of which the security futures intermediary is a member.[126]

Notwithstanding the Commissions' determination not to apply Regulation T in its entirety to security futures, the Final Rules include certain uniform provisions that govern account administration, type, form, and use of collateral, calculation of equity, withdrawals from accounts, and treatment of undermargined accounts. The Commissions believe that the inclusion of these provisions in the Final Rules satisfies the statutory requirement that the margin rules for security futures be consistent with Regulation T.

F. Account Administration Rules

1. Separation and Consolidation of Accounts

Regulation T establishes specific types of accounts for recording different types of customer transactions (*e.g.*, a margin account, a cash account, a good faith account).[127] Regulation T generally provides that a customer can have only one margin account.[128] While a margin account may be divided into separate parts for bookkeeping purposes, as authorized by the customer, all parts must be considered as one unit in determining whether or not any transaction is permissible under Regulation T.[129] The determination as to whether an account satisfies the requirements of Regulation T, moreover, may not take into consideration items in any other account; bookkeeping entries must be made whenever cash or securities in one account are used for purposes of meeting requirements in another account.[130] Consistent with Regulation T, the Final Rules provide that the margin requirements for one account may not be met by considering items in another account, except where excess margin is transferred using appropriate bookkeeping entries.[131] To facilitate the enforcement of this general prohibition, this provision also requires that if withdrawals of cash, securities, or other assets deposited as margin are permitted under the Final Rules, a security futures intermediary must make and keep accurate bookkeeping entries when those assets are used to meet requirements in another account.[132] This provision parallels Section 220.3(b)(1) of Regulation T, and is intended to be consistent with existing futures account practices under Section 4d of the CEA,[133] CFTC Rules 1.20 and 1.22, and applicable futures exchange rules.

Currently, futures exchange rules or practices similarly recognize accounts of different types for different customer transactions (*e.g.*, customer segregated, customer secured, nonsegregated). Customers may maintain multiple accounts of the same regulatory classification or account type, although futures exchange rules provide that identically owned accounts within the same regulatory classification or account type should be combined for margin purposes.[134] Moreover, an FCM may not apply free funds in an account under identical ownership but of a different regulatory classification or account type to an account's margin deficiency.[135] As is the case under Regulation T, however, the Final Rules require the FCM to actually document through bookkeeping entries the transfer of funds from one account to satisfy the margin deficiency in another account. The Commissions do not believe that this provision will create any substantial operational burdens for FCMs carrying security futures in futures accounts.

The Final Rules provide that all futures accounts of the same regulatory

[117] SIA/FIA Letter at 4.

[118] *Id.*

[119] Rolfe and Nolan Letter at 1.

[120] *See* NFA Letter at 1–2; SIA/FIA Letter at 3–4; Nasdaq Liffe Letter at 6–7; ABN AMRO Letter at 1; OneChicago Letter at 6–7; Peregrine Letter at 2; Morgan Stanley Letter at 1; and Managed Funds Letter at 2.

[121] *See* Rolfe and Nolan Letter at 2; and CME/CBOT Letter at 10.

[122] SunGard Letter at 2.

[123] Options Exchanges Letter at 3–4.

[124] 15. U.S.C. 78g(c)(2).

[125] *See* CFTC Rule 41.44(a)(1); SEC Rule 402(a)(1).

[126] *See* CFTC Rule 41.44(a)(2); SEC Rule 402(a)(2).

[127] *See* 12 CFR 220.4(a)(1).

[128] *See* 12 CFR 220.4(a)(2).

[129] Fed. Res. Reg. Serv. § 5–634.11 (Staff Op. May 15, 1978).

[130] *See* 12 CFR 220.3(b)(1).

[131] *See* CFTC Rule 41.44(b)(1); SEC Rule 402(b)(1).

[132] *See* CFTC Rule 41.44(b)(1); SEC Rule 402(b)(1); *see also* section 17(a) of the Exchange Act (15 U.S.C. 78q–1(a)), and the rules thereunder; Section 4g of the CEA (7 U.S.C. 6g), and the rules thereunder; National Association of Securities Dealers ("NASD") Rule 3110; and NFA Rule 2–10.

[133] 7 U.S.C. 6d.

[134] *See* Joint Audit Committee Handbook, Chapter 9 (June 1999), available at <*http://www.nfa.futures.org/compliance/publications/Margins/MarginsHandbook.pdf*>.

[135] *See* id.

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type or classification that carry security futures shall be considered a single account for purposes of the Regulation.[136] The Final Rules also permit a securities futures intermediary to further consolidate all futures accounts of the same regulatory classification or account type, regardless of whether they carry security futures, for purposes of determining whether the required margin for all of a customer's futures positions (including security futures) is satisfied.[137]

2. Accounts of Partners

The Final Rules provide that if a partner of a security futures intermediary (organized as a partnership) has an account with the security futures intermediary in which security futures or related positions are held, the security futures intermediary must disregard the partner's financial relations with the firm (as shown in the partner's capital and ordinary drawing accounts) in calculating the margin or equity of any such account.[138] This provision parallels Section 220.4(b)(5) of Regulation T,[139] and is consistent with current futures exchange practices. The provision is intended to reinforce the principle of "separation of accounts" with respect to partners in a security futures intermediary organized as a partnership, when a partner maintains a trading account with the firm.

3. Contribution to a Joint Venture

Under the Final Rules, if an account in which security futures or related positions are held is the account of a joint venture in which the security futures intermediary participates, any interest of the security futures intermediary in the joint account in excess of the interest which the security futures intermediary would have on the basis of its right to share in the profits must be margined in accordance with the Final Rules.[140] This provision parallels Section 220.4(b)(6) of Regulation T,[141] which is intended to prevent firms from indirectly extending credit to customers in circumstances where the customer does not deposit equity in the account corresponding to its share of the profits in the account (*e.g.*, if the customer is entitled to 90% of the profits in an account, but only deposits 40% of the equity at the outset, the broker-dealer is effectively extending credit to the customer in the amount of 50% of the equity in the account).

4. Extensions of Credit

The Final Rules prohibit any extension of credit with respect to security futures, if the extension of credit is designed to evade or circumvent the security futures margin requirements.[142] Among other things, this provision is intended to prevent security futures intermediaries from extending unsecured credit to customers, or extending credit secured by securities or other assets in excess of the value such assets would have under the Final Rules,[143] to satisfy or maintain the required margin for security futures carried in the customer's account.[144] For example, a security futures intermediary may not lend a customer $100 in cash secured by less than $200 in margin equity securities to meet a margin call for a security future. This provision does not, however, preclude a security futures intermediary from advancing funds to a customer to meet variation settlement calls on behalf of an undermargined customer account, in the ordinary course of business, provided that the security futures intermediary issues a margin call for the funds advanced.

The Final Rules permit a security futures intermediary to arrange for an extension of credit to or for a customer by a person, provided that the extension of credit would not constitute a violation of Regulations T, U, or X by such person.[145] In this connection, the Commissions believe that credit extended for the purpose of satisfying or maintaining the required margin for a security future is "purpose credit" for purposes of the Federal Reserve Board's credit regulations. For example, a security futures intermediary may not arrange for a Regulation T creditor to extend credit to a customer against securities or other assets in a nonpurpose or nonsecurities credit account to enable the customer to meet a margin requirement with respect to a security future. Likewise, a security futures intermediary may not arrange for a bank or other Regulation U lender to extend credit secured directly or indirectly by margin stock in excess of the maximum loan value of the collateral (*i.e.*, 50% of current market value) securing the credit for the purpose of purchasing or carrying a security future. Similarly, a security futures intermediary may not arrange for a Regulation X borrower to obtain an extension of credit within or from outside the United States for the purpose of effecting or carrying a security futures transaction unless the credit conforms to the Federal Reserve Board's margin regulations, as provided in Regulation X.

G. Customer Margin Levels for Security Futures

The Commissions proposed to require both the seller and the buyer of a security future to provide and maintain, on a daily basis, cash or other acceptable assets equal to a percentage of the "current market value" of the security future. The Commissions are adopting those requirements substantially as proposed.

1. Definition of Current Market Value

The Commissions proposed to define the term "current market value" of a security future as the product of the daily settlement price of the security future (as shown by any regularly published reporting or quotation service) and either the applicable number of shares per contract (when the underlying instrument is a single stock), or the applicable contract multiplier (when the underlying instrument is a narrow-based security index).[146] The Commissions also proposed to define the term "current market value" with respect to a narrow-based security index future to mean the product of the daily settlement price of such security future, as shown by any regularly published reporting or quotation service, and the applicable contract multiplier.[147]

The Commissions received one comment on these definitions, which suggested that the pricing convention for determining current market value need not be the same for security futures held in a security account and for security futures held in a futures account.[148] The Commissions, however, believe that a uniform definition of current market value is necessary to ensure that identical contracts are not subject to different margin requirements based on the type of account in which they are carried.

As noted above, section 7(c)(2)(B)(3)(I) of the Exchange Act[149] requires that the margin requirements for security futures be consistent with the margin requirements for comparable exchange-traded options. The Commissions believe that using the daily settlement price[150] at the end of each trading day to calculate margin requirements for security futures on that day is consistent with the use of the closing price of the option and the underlying security for determining maintenance margin for equity options.[151] In addition, the Commissions continue to believe that using the daily settlement price of a security future on the day of a transaction to calculate the initial margin (rather than the daily settlement price on the day preceding the transaction) is consistent with using the underlying stock's closing price on the preceding business day. The daily settlement price of a security future on the preceding business day, for example, may not exist if such security future were not available for trading on the preceding business day. Accordingly, the Commissions are adopting the definition of "current market value" as proposed.

2. Margin Levels for Unhedged Positions

The Commissions proposed that the minimum initial and maintenance margin levels required of customers for each security future carried in a long or short position be 20% of the current market value of such security future.[152] This proposed level was based on the requirement under section 7(c)(2) of the Exchange Act that the initial and maintenance margin levels for a security future not be lower than the lowest level of margin, exclusive of premium, required for any comparable option contracts traded on any exchange registered pursuant to section 6(a) of the Exchange Act.[153]

Twelve commenters commented on this aspect of the Proposed Rules.[154] Six commenters found 20% to be an acceptable level.[155] Two commenters advocated a 25% margin level,[156] and one commenter, joined by a second, stated that its members could not reach a consensus as between 20% and 25%.[157] One commenter expressed the view 20% could be either too high or low, and suggested that for certain positions, 50% initial margin would be appropriate.[158]

One commenter considered the 20% level to be consistent with the margin requirements for exchange-traded options, but "more than adequate" in terms of preserving the financial integrity of the market and preventing systemic risk.[159] Another commenter stated that it "does not oppose" the 20% level, but favors portfolio margining.[160]

One commenter said that its members were split between recommending 20% and 25%.[161] Those supporting the 20% level believed that it was consistent with the levels applicable to exchange-traded options and consistent with the intent of the CFMA. This margin level in combination with a T+1 settlement period and the fact that the Proposed Rules permit higher margin levels, made some members conclude that 20% is a prudent minimum level.[162] Other members thought that 20% is too low, failing to take into account the varying volatility/share price profiles of equity securities and the credit risk implications of those differences. Those members favored a 25% minimum, finding this to be "consistent" with margin levels for options.[163] They further noted that a comparable option position consists of a long (short) call/short (long) put option pair struck at the forward price of the underlying security.[164]

Finally, one commenter urged the Commissions to adopt a 25% margin level, citing historical data and stating that this level is consistent with the minimum margin level applied under SRO rules to long equity positions.[165] It argued that the 20% level would create an advantage for security futures as compared to listed option put/call pairs, noting margin levels in excess of 30% for combinations based on relatively high volatility stocks, and margin levels in excess of 20% for combinations based on relatively low volatility stocks.[166]

After considering the commenters' views, the Commissions have adopted the margin levels as proposed. The Commissions believe that a security future is comparable to a short, at-the-money option, as discussed in the release accompanying the Proposed Rules ("Proposing Release").[167] Currently, the margin requirement for a short, at-the-money option, where the underlying instrument is either an equity security (such as a stock or an instrument immediately convertible into a stock) or an index, is 100% of the option proceeds plus 20% of the value of the underlying security or index.[168]

Unlike an options contract, however, a futures contract involves obligations of both parties to perform in the future: The buyer (long) to purchase the asset underlying the future, and the seller (short) to deliver the asset. As a result, both the buyer and the seller of a futures contract must post and maintain margin on a daily basis to assure contract performance and the integrity of the marketplace. In addition, all market participants pay or receive daily variation settlement as a result of all open futures positions being marked to current market value. Accordingly, the margin levels apply equally for both buyers and sellers of security futures.

The Commissions have considered the comments, and have determined that a minimum margin level of 20% satisfies the comparability standard of section 7(c)(2) of the Exchange Act.[169] In addition, the Commissions note that the Final Rules permit self-regulatory

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[136] *See* CFTC Rule 41.44(b)(2); SEC Rule 402(b)(2).

[137] *Id.*

[138] *See* CFTC Rule 41.44(c); SEC Rule 402(c).

[139] 12 CFR 220.4(b)(5).

[140] *See* CFTC Rule 41.44(d); SEC Rule 402(d).

[141] 12 CFR 220.4(b)(6).

[142] *See* CFTC Rule 41.44(e); SEC Rule 402(e). CFTC Rule 1.30 permits FCMs to lend their own funds to customers on pledged securities; the proceeds of such loans are treated as customer funds for purposes of the CEA. 17 CFR 1.30. Extensions of credit by brokers and dealers with respect to securities are governed by Regulation T and the margin rules of the national securities exchanges and securities associations.

[143] *See* CFTC Rule 41.46(c); SEC Rule 404(c).

[144] Futures exchange rules also impose certain restrictions on the financing of futures positions. *See, e.g.*, CME Rule 930.G ("Clearing members may not extend loans to account holders for performance bond purposes unless such loans are secured as defined in [17 CFR] 1.17(c)(3)"); New York Mercantile Exchange ("NYMEX") Rule 4.03 ("Clearing Members shall not be permitted to make loans to any customers for the purpose of financing margins on NYMEX Division contracts unless such loans are secured, as such term is defined in [17 CFR] 1.17").

[145] *See* CFTC Rule 41.44(e)(2); SEC Rule 402(e)(2).

[146] *See* Proposed CFTC Rule 41.44(a)(2)(i); Proposed SEC Rule 401(a)(2)(i).

[147] *See* Proposed CFTC Rule 41.44(a)(2)(ii); Proposed SEC Rule 401(a)(2)(ii).

[148] SIA/FIA Letter at Appendix I, Q 18.

[149] 15 U.S.C. 78g(c)(2)(B)(3)(I).

[150] Under the Final Rules, the term "daily settlement price" means, with respect to a security future, the settlement price of such security future determined at the close of trading each day, as determined by the rules of the applicable exchange, clearing agency or derivatives clearing organization. *See* CFTC Rule 41.43(a)(6); SEC Rule 401(a)(6).

[151] Currently, the computation of the margin required on the sale of an uncovered option is based on the value of the security underlying the option. The initial margin on the sale of an uncovered option is based on the price at which the underlying security closed at the end of the business day before the day on which the option is sold. The maintenance margin on an uncovered short option is based on the closing price of the underlying security at the end of each business day.

[152] *See* Proposed CFTC Rule 41.45(b); Proposed SEC Rule 402(b).

[153] 15 U.S.C. 78g(c)(2)(B)(iii)(II).

[154] *See* SIA Credit Division Letter; Morgan Stanley Letter; Drinkard Letter; Partnoy Letter; Klein Letter; SIA/FIA Letter; One Chicago Letter; NFA Letter; Peregrine Letter; Options Exchanges Letter; Nasdaq Liffe Letter; and Managed Funds Letter.

[155] *See* NFA Letter at 4; Nasdaq Liffe Letter at 5; Options Exchanges Letter at 5; OneChicago Letter at 2; Peregrine Letter at 2; Managed Funds Letter at 3.

[156] *See* Morgan Stanley Letter at 6; SIA Credit Division Letter at 1.

[157] *See* SIA/FIA Letter at 2–3, 10–11; ABN AMRO Letter at 1.

[158] Partnoy Letter at 10–14.

[159] NFA Letter at 4.

[160] Nasdaq Liffe Letter at 5.

[161] SIA/FIA Letter at 2.

[162] *Id.* at 10.

[163] *Id.*

[164] *Id.*

[165] Morgan Stanley Letter at 6–8.

[166] *Id.* at 7.

[167] *See* Securities Exchange Act Release No. 44853 (September 26, 2001), 66 FR at 50776 (October 4, 2001).

[168] *See, e.g.*, Amex Rule 462; CBOE Rule 12.3; NASD Rule 2520; New York Stock Exchange ("NYSE") Rule 431; PCX Rule 2.16; and Phlx Rule 722.

[169] *See* 15 U.S.C. 78g(c)(2).

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authorities and security futures intermediaries to establish higher margin levels or to take appropriate action to preserve their own financial integrity.[170] As a result, the Commissions are adopting the minimum initial and maintenance margin levels for unhedged positions, as proposed.

3. Margin Offsets

The Proposed Rules included a provision to allow national securities exchanges and national securities associations to adopt rules that reduce the margin levels below 20% of current market value for customers with certain positions in securities or futures that offset the risk of their positions in security futures.[171] The Proposed Rules provided further that the resulting margin levels could not be lower than the lowest customer margin levels required for comparable offset positions involving exchange-traded options.[172] In addition, the Commissions published a table that included offsets for security futures that the Commissions had preliminarily identified as consistent with those permitted for comparable offset positions involving options and that would qualify for reduced margin levels.[173]

The Commissions received three comments with respect to the proposed offsets.[174] One of the commenters stated that offsets involving security futures and options should be recognized only if the risk from the security future is completely offset by the option.[175] Another commenter expressed concern that the offsets would produce margin levels that did not accurately reflect the risk of the positions and suggested that the Commissions adopt general provisions regarding margin levels for offsetting positions instead of providing specific examples.[176] Finally, one commenter suggested modifying the existing strategy-based rules to put security futures on a par with cash equities in connection with offsetting strategies involving listed options and to reduce the margin requirements for certain calendar and basket spreads involving security futures.[177] This commenter also suggested that the Commissions address the treatment of spreads involving non-fungible security futures.[178]

After considering the commenters' views, the Commissions have adopted, substantially as proposed, rules that permit self-regulatory authorities to establish margin levels for offset positions involving security futures that are lower than the required margin levels for unhedged positions.[179] Under the Final Rules, a self-regulatory authority may set the required initial or maintenance margin level for an offsetting position involving security futures and related positions at a level lower than the level that would be required if the positions were margined separately. Such rules must meet the criteria set forth in section 7(c)(2)(B) of the Exchange Act[180] and must be effective in accordance with section 19(b)(2) of the Exchange Act[181] and, as applicable, Section 5c(c) of the CEA.[182]

The Commissions have retained, with certain revisions, the table of offsets that they deem to be consistent with offsets recognized for comparable exchange-traded options. In particular, the revised table of offsets reflects an adjustment in the level of margin required for certain calendar and basket spreads involving security futures to more accurately reflect the risk of such positions relative to comparable spreads involving exchange-traded options. An offset position for spreads involving non-fungible security futures also has been added to the table.

When it approved strategy-based offsets for options, the SEC found that it was appropriate for the SROs to recognize the hedged nature of certain combined options strategies and prescribe margin requirements that better reflect the risk of those strategies.[183] The SEC also found that the SROs' proposals relating to strategy-based offsets involving options contracts were carefully crafted as they were based on the SROs' experiences in monitoring the credit exposures of options strategies. In particular, the SEC noted that the SROs regularly examine the coverage of options margin as it relates to price movements in the underlying securities and index components. Moreover, the SROs' proposals were thoroughly reviewed by the NYSE Rule 431 Review Committee, which is comprised of securities industry participants who have extensive experience in margin and credit matters. As a result of these factors, the SEC was confident that the SROs' proposed margin requirements were consistent with investor protection and properly reflected the risks of the underlying options positions.

The table of offsets reflects a reduction in the minimum initial and maintenance margin requirement for calendar spreads[184] and basket spreads,[185] in response to the comment that the risk posed by certain spreads involving security futures is lower than the risk posed by comparable spreads involving exchange-traded options.[186] In light of the observation that security futures are not subject to early exercise and therefore do not exhibit the same price volatility as options, the minimum initial and maintenance margin requirement recognized for calendar spreads and basket spreads has been reduced to 5% of the current market value of the long or short position.[187] The Commissions deliberated as to whether risk-based margin computations using SPAN could be applied to these strategies, so long as the offsetting positions were the only positions included in the margin computation. The Commissions have decided not to permit risk-based margin computations for these offsets at this time.

The table of offsets, likewise, reflects a reduction in the required margin recognized for spreads involving a long or short security future and a short or long position in the same security underlying the security future, given that these spreads are economically analogous to calendar spreads.[188] The Commissions intend to review the margin levels for the offsets discussed above after six months of security futures trading to determine whether the margin levels have resulted in regulatory arbitrage with comparable positions involving exchange-traded options, and may jointly undertake appropriate action.

Based on the same commenter's suggestion, the Commissions believe that an additional offset should be recognized for spreads involving identical, non-fungible security futures.[189] Because there is a possibility that certain security futures may not be fungible across markets, a customer may simultaneously hold a long security future and a short security future on the same underlying security even when those security futures have identical contract terms. As a result, the customer will be economically neutral but will be required to hold both positions to expiration and meet daily variation settlement calls with respect to each contract. The commenter expressed the view that a minimum margin level of 1% would be appropriate.[190] The Commissions recognize that the rules of a clearing agency or derivatives clearing organization may effectively net the two contracts at final settlement. However, due to potential differences in daily settlement prices across markets or other market-specific events, the Commissions have determined that such offset positions will be subject to a minimum margin requirement of 3%.

The Commissions believe that the offsets identified in the following table are consistent with the strategy-based offsets permitted for comparable offset positions involving exchange-traded options. The Commissions expect that self-regulatory authorities seeking to permit trading in security futures will submit to the Commissions proposed rules that impose levels of required margin for offsetting positions involving security futures in accordance with the minimum margin requirements identified in the following table of offsets.

Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
1. Long security future or short security future.	Individual stock or narrow-based security index.	20% of the current market value of the security future.	20% of the current market value of the security future.
2. Long security future (or basket of security futures representing each component of a narrow-based securities index[1]) and long put option[2] on the same underlying security (or index).	Individual stock or narrow-based security index.	20% of the current market value of the long security future, plus pay for the long put in full.	The lower of: (1) 10% of the aggregate exercise price[3] of the put plus the aggregate put out-of-the-money[4] amount, if any; or (2) 20% of the current market value of the long security future.
3. Short security future (or basket of security futures representing each component of a narrow-based securities index[1]) and short put option on the same underlying security (or index).	Individual stock or narrow-based security index.	20% of the current market value of the short security future, plus the aggregate put in-the-money amount, if any. Proceeds from the put. Proceeds from the put sale may be applied.	20% of the current market value of the short security future, plus the aggregate put in-the-money amount, if any.[5]
4. Long security future and short position in the same security (or securities basket[1]) underlying the security future.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the short stock or stocks.	5% of the current market value as defined in Regulation T of the stock or stocks underlying the security future.
5. Long security future (or basket of security futures representing each component of a narrow-based securities index[1]) and Short call option on the same underlying security (or index).	Individual stock or narrow-based security index.	20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any. Proceeds from the call sale may be applied.	20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any.
6. Long a basket of narrow-based security futures that together tracks a broad based index[1] and short a broad-based security index call option contract on the same index.	Narrow-based security index	20% of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any. Proceeds from the call sale may be applied.	20% of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any.
7. Short a basket of narrow-based security futures that together tracks a broad-based security index[1] and short a broad-based security index put option contract on the same index.	Narrow-based security index	20% of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any. Proceeds from the put sale may be applied.	20% of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any.
8. Long security a basket a narrow-based securities futures that together tracks a broad-based security index[1] and long a broad-based security index put option contract on the same index.	Narrow-based security index	20% of the current market value of the long basket of narrow-based security futures, plus pay for the long put in full.	The lower of: (1) 10% of the aggregate exercise price of the put, plus the aggregate put out-of-the-money amount, if any; or (2) 20% of the current market value of the long basket of security futures.

[170] *See* CFTC Rule 41.42(c)(1); SEC Rule 400(c)(1).

[171] *See* Proposed CFTC Rule 41.45(d); Proposed SEC Rule 402(d).

[172] *Id.*

[173] *See* Securities Exchange Act Release No. 44853 (September 26, 2001), 66 FR at 50727–29 (October 4, 2001).

[174] *See* Options Exchanges Letter; Partnoy Letter; SIA/FIA Letter.

[175] Options Exchanges Letter at 6.

[176] Partnoy Letter at 14.

[177] SIA/FIA Letter at Appendix I, Q 19.

[178] Meeting between SEC and CFTC staff and representatives of SIA/FIA (February 6, 2002).

[179] *See* CFTC Rule 41.45(b)(2); SEC Rule 403(b)(2).

[180] 15 U.S.C. 78g(c)(2)(B).

[181] 15 U.S.C. 78s(b)(2).

[182] 7 U.S.C. 7a–2(c).

[183] *See* Securities Exchange Act Release Nos. 41658 (July 27, 1999), 64 FR 42736 (August 5, 1999) (order approving SR–CBOE–97–67 amending CBOE Rule 12.3); 42011 (October 14, 1999), 64 FR 57172 (October 22, 1999) (order approving SR–NYSE–99–03 amending NYSE Rule 431); 43582 (November 17, 2000), 65 FR 70854 (November 28, 2000) (order approving SR–Amex–99–27 amending Amex Rule 462); and 43581 (November 17, 2000), 65 FR 71151 (November 29, 2000) (order approving SR–NASD–00–15 amending NASD Rule 2520).

[184] A calendar spread is an offset position consisting of a long security future and short security future on the same underlying security, each contract expiring in a different month. *See* table of offsets, item 10.

[185] A basket spread is an offset consisting of a security future based on an index and a basket of security futures that replicates the index, *i.e.*, a basket that contains the same securities, and in the same proportion, as the index. *See* table of offsets, items 17 and 18.

[186] Meeting between SEC and CFTC staff and representatives of SIA/FIA (February 6, 2002).

[187] By way of comparison, the minimum margin required for offsetting long and short positions in the same security under the rules of the national securities exchanges is 5% of the current market value of the long position. *See, e.g.*, NYSE Rule 431(e)(1).

[188] *See* table of offsets, items 4 and 13.

[189] *See* table of offsets, item 19.

[190] Meeting between SEC and CFTC staff and representatives of SIA/FIA (February 6, 2002).

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Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
9. Short a basket of narrow-based security futures that together tracks a broad-based security index[1] and long a broad-based security index call option contract on the same index.	Narrow-based security index	20% of the current market value of the short basket of narrow-based security futures, plus pay for the long call in full.	The lower of: (1) 10% of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 20% of the current market value of the short basket of security futures
10. Long security future and short security future on the same underlying security (or index).	Individual stock or narrow-based security index.	The greater of: 5% of the current market value of the long security future; or 2) 5% of the current market value of the short security future.	The greater of: 5% of the current market value of the long security future; or (2) 5% of the current market value of the short security future.
11. Long security future, long put option and short call option. The long security future, long put and short call must be on the same underlying security and the put and call must have the same exercise price. (Conversion).	Individual stock or narrow-based security index.	20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from the call sale may be applied.	10% of the aggregate exercise price, plus the aggregate call in-the-money amount, if any.
12. Long security future, long put option and short call option. The long security future, long put and short call must be on the same underlying security and the put exercise price must be below the call exercise price. (Collar).	Individual stock or narrow-based security index.	20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from call sale may be applied.	The lower of: (1) 10% of the aggregate exercise price of the put plus the aggregate put out-of-the-money amount, if any; or (2) 20% of the aggregate exercise price of the call, plus the aggregate call in-the-money amount, if any.
13. Short security future and long position in the same security (or securities basket[1]) underlying the security future.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the long stock or stocks.	5% of the current market value, as defined in Regulation T, of the long stock or stocks.
14. Short security future and long position in a security immediately convertible into the same security underlying the security future, without restriction, including the payment of money.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the long security.	10% of the current market value, as defined in Regulation T, of the long security
15. Short security future (or basket of security futures representing each component of a narrow-based securities index[1]) and long call option or warrant on the same underlying security (or index).	Individual stock or narrow-based security index.	20% of the current market value of the short security future, plus pay for the call in full.	The lower of: (1) 10% of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 20% of the current market value of the short security future.
16. Short security future, Short put option and long call option. The short security future, short put and long call must be on the same underlying security and the put and call must have the same exercise price. (Reverse Conversion).	Individual stock of narrow-based security index.	20% of the current market value of the short security future, plus the aggregate put in-the-money amount, if any, plus pay for the call in full. Proceeds from put sale may be applied.	10% of the aggregate exercise price, plus the aggregate put in-the-money amount, if any.
17. Long (short) a basket of security futures, each based on a narrow-based security index that together tracks the broad-based index[1] and short (long) a broad based-index future.	Narrow-based security index	5% of the current market value of the long (short) basket of security futures.	5% of the current market value of the long (short) basket of security futures.
18. Long (short) a basket of security futures that together tracks a narrow-based index[1] and short (long) a narrow based index future.	Individual stock and narrow-based security index.	The greater of: (1) 5% of the current market value of the long security future(s); or (2) 5% of the current market value of the short security future(s).	The greater of: (1) 5% of the current market value of the long security future(s); or (2) 5% of the current market value of the short security future(s).
19. Long (short) a security future and short (long) an identical security future traded on a different market.[6]	Individual stock and narrow-based security index.	The greater of: (1) 3% of the current market value of the long security future(s); or (2) 3% of the current market value of the short security future(s).	The greater of: (1) 3% of the current market value of the long security future(s); or (2) 3% of the current market value of market value of the short security future(s).

[1] Baskets of securities or security futures contracts must replicate the securities that comprise the index, and in the same proportion.
[2] Generally, for the purposes of these rules, unless otherwise specified, stock index warrants shall be treated as if they were index options.

[3] "Aggregate exercise price," with respect to an option or warrant based on an underlying security, means the exercise price of an option or warrant contract multiplied by the numbers of units of the underlying security covered by the option contract or warrant. "Aggregate exercise price" with respect to an index option means the exercise price multiplied by the index multiplier. *See, e.g.*, Amex Rules 900 and 900C; CBOE Rule 12.3; and NASD Rule 2522.

[4] "Out-of-the-money" amounts must be determined as follows:
(1) For stock call options and warrants, any excess of the aggregate exercise price of the option or warrant over the current market value of the equivalent number of shares of the underlying security;
(2) for stock put options or warrants, any excess of the current market value of the equivalent number of shares of the underlying security over the aggregate exercise price of the option or warrant;
(3) for stock index call options and warrants, any excess of the aggregate exercise price of the option or warrant over the product of the current index value and the applicable index multiplier; and
(4) for stock index put options and warrants, any excess of the product of the current index value and the applicable index multiplier over the aggregate exercise price of the option or warrant. *See, e.g.*, NYSE Rule 431 (Exchange Act Release No. 42011 (October 14, 1999), 64 FR 57172 (October 22, 1999) (order approving SR–NYSE–99–03)); Amex Rule 462 (Exchange Act Release No. 43582 (November 17, 2000), 65 FR 71151 (November 29, 2000) (order approving SR–Amex–99–27)); CBOE Rule 12.3 (Exchange Act Release No. 41658 (July 27, 1999), 64 FR 42736 (August 5, 1999) (order approving SR–CBOE–97–67)); or NASD Rule 2520 (Exchange Act Release No. 43581 (November 17, 2000), 65 FR 70854 (November 28, 2000) (order approving SR–NASD–00–15)).

[5] "In the-money" amounts must be determined as follows:
(1) for stock call options and warrants, any excess of the current market value of the equivalent number of shares of the underlying security over the aggregate exercise price of the option or warrant;
(2) for stock put options or warrants, any excess of the aggregate exercise price of the option or warrant over the current market value of the equivalent number of shares of the underlying security;
(3) for stock index call options and warrants, any excess of the product of the current index value and the applicable index multiplier over the aggregate exercise price of the option or warrant; and
(4) for stock index put options and warrants, any excess of the aggregate exercise price of the option or warrant over the product of the current index value and the applicable index multiplier.

[6] Two security futures will be considered "identical" for this purpose if they are issued by the same clearing agency or cleared and guaranteed by the same derivatives clearing organization, have identical contract specifications, and would offset each other at the clearing level.

The Commissions note that positions in a securities account may not be cross-margined with positions in a futures account except in accordance with the rules of a self-regulatory authority that have become effective under section 19(b)(2) of the Exchange Act and, as applicable, section 5c(c) of the CEA. At present, the Commissions have not approved the use of a cross-margining methodology for customer securities and futures accounts. Accordingly, security futures or other positions carried in a futures account may not currently be offset against security futures or other positions carried in a securities account to reduce a customer's total margin requirement.

4. Higher Margin Levels

The Proposed Rules expressly provided that self-regulatory authorities could impose on their members initial and maintenance margin levels that are higher than the minimum levels otherwise specified in the rules.[191] The Proposed Rules also provided that self-regulatory authorities could permit their members to use a method for computing required margin that could result in margin levels that are higher than the minimum levels specified in the rules.[192]

The Commissions have decided that it is not necessary to adopt these provisions of the Proposed Rules because other provisions of the Final Rules make clear the ability of a self-regulatory authority to establish higher margin levels. The Final Rules establish minimum levels and do not set any limitations as to maximum levels. Moreover, the Final Rules expressly do not preclude a self-regulatory authority or a security futures intermediary from imposing additional margin requirements, including higher initial and maintenance margin levels, consistent with the Final Rules.[193]

As noted previously, a portfolio margining system such as SPAN may be used to compute required margin based on the parameters established in accordance with the Final Rules. Each security futures intermediary remains responsible for collecting margin in compliance with the Final Rules.

5. Procedures for Certain Margin Level Adjustments

The Commissions proposed to allow national securities exchanges registered under section 6(g) of the Exchange Act[194] and national securities associations registered under section 15A(k) of the Exchange Act[195] to raise or lower margin levels in accordance with section 19(b)(7) of the Exchange Act,[196] as long as the resulting levels satisfy the minimum level requirements.[197] The Commissions received no comments on this aspect of the proposal, and are adopting it as proposed.[198]

H. Satisfaction of Required Margin

Section 7(c)(2)(B)(iv) of the Exchange Act[199] requires that the type, form and use of collateral for security futures products be and remain consistent with the requirements of Regulation T. To fulfill this statutory requirement, the Commissions proposed to permit security futures intermediaries to accept as margin for security futures any of the types of collateral permitted under Regulation T to satisfy a margin deficiency in a margin account.[200] The Commissions also proposed to allow self-regulatory authorities to establish their own margin collateral requirements as long as those requirements were consistent with the requirements of Regulation T.[201]

The Final Rules continue to limit the type, form, and use of collateral deposits that security futures intermediaries may accept to satisfy the required margin for security futures to those permitted under Regulation T.[202] The Commissions are, however, permitting security futures intermediaries to include the net value of certain additional items—specifically, long options[203] and open trade equity[204]—in computing the equity in an account. Moreover, for purposes of determining whether the required margin in an account is satisfied, the final rules

[191] *See* Proposed CFTC Rule 41.45(b)(2)(i); Proposed SEC Rule 402(b)(2)(i).
[192] *See* Proposed CFTC Rule 41.45(b)(2)(ii); Proposed SEC Rule 402(b)(2)(ii).
[193] *See* CFTC Rule 41.42(c)(1); SEC Rule 400(c)(1).
[194] 15 U.S.C. 78f(g).
[195] 15 U.S.C. 78*o*–3(k).
[196] 15 U.S.C. 78s(b)(7).
[197] *See* Proposed CFTC Rule 41.45(c); Proposed SEC Rule 402(c).
[198] *See* CFTC Rule 41.45(c); SEC Rule 403(c).
[199] 15 U.S.C. 78g(c)(2)(B)(iv).
[200] *See* Proposed CFTC Rule 41.47(a)(4); Proposed SEC Rule 404(a)(4).
[201] *See* Proposed CFTC Rule 41.47(b); Proposed SEC Rule 404(b).
[202] *See* CFTC Rule 41.46(a); SEC Rule 404(a).
[203] *See* CFTC Rule 41.46(c)(1)(iv); SEC Rule 404(c)(1)(ii).
[204] *See* CFTC Rule 41.46(c)(1)(vi) and (c)(2)(iii); SEC Rule 404(c)(1)(vi) and (c)(2)(iii).

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permit security futures intermediaries to compute equity in accordance with applicable self-regulatory authority rules, subject to certain adjustments to ensure consistency with Regulation T.[205]

1. Type, Form and Use of Collateral

a. *Acceptable Collateral Deposits.* The Commissions proposed to permit security futures intermediaries to accept as margin for security futures a deposit of any combination of cash, margin securities as defined in Regulation T,[206] exempted securities as defined in section 3(a)(12) of the Exchange Act,[207] and other collateral permitted under Regulation T to satisfy a margin deficiency in the margin account.[208]

The Commissions received four comments on this issue.[209] One commenter supported the Commissions' proposal with respect to permissible collateral.[210] The other three commenters suggested that the Commissions should permit security futures intermediaries to accept other forms of collateral in addition to those permitted by Regulation T.[211]

Two of these commenters suggested that the type of collateral permitted should be determined based on the type of account. Under an account-specific approach, for security futures held in futures accounts, the types of permissible collateral would be determined by SRO rules; and for security futures held in securities accounts, the types of permissible collateral would be governed by Regulation T.[212] The other commenter maintained that, unless the Commissions recognize other instruments that are commonly accepted as collateral within a futures account (*e.g.*, letters of credit), the margin requirements would disadvantage the futures community and would make it unlikely that customers would carry security futures products in a futures account.[213]

The Commissions have considered the commenters' views, and have adopted the provisions regarding acceptable collateral deposits substantially as proposed. In particular, the Commissions do not believe that it would be consistent with the requirements regarding type, form, and use of collateral under Regulation T to permit customers to satisfy the required margin for security futures in a futures account using letters of credit or other types of collateral not currently permitted under Regulation T. Any types of collateral the Federal Reserve Board may subsequently permit in a Regulation T margin account, however, may also be used to satisfy the required margin for security futures under the Final Rules.[214]

b. *Use of Money Market Mutual Funds.* The definition of "margin security" under Regulation T includes, among other securities, money market mutual funds. A number of futures exchanges currently accept money market mutual fund shares as performance bond deposits for futures and options on futures, subject to certain conditions imposed under CFTC Rule 1.25.[215] Regulation T also permits creditors to extend good faith loan value to shares in money market mutual funds and other mutual funds carried in a securities account, although the limitations on extensions of credit in connection with new issues of securities under section 11(d)(1) of the Exchange Act have limited the practicability of their use.[216]

The Final Rules permit the use of money market mutual fund shares[217] to satisfy the required margin for security futures and related positions carried in a securities account or futures account, subject to certain conditions.[218] These conditions are intended to facilitate a security futures intermediary's hypothecation or liquidation of money market mutual fund shares deposited as margin for security futures, as necessary to meet a customer's clearing obligations.

Specifically, a security futures intermediary may accept money market mutual fund shares as margin if the following conditions are met (*e.g.*, under the rules of a self-regulatory authority or pursuant to a three-way agreement among the security futures intermediary, the customer, and the money market mutual fund or its transfer agent):

(1) The customer waives any right to redeem the fund shares without the consent of the security futures intermediary and instructs the fund or its transfer agent accordingly;

(2) The security futures intermediary (or clearing agency or derivatives clearing organization with which the security is deposited as margin) obtains the right to redeem the shares in cash, promptly upon request; and

(3) The fund agrees to satisfy any conditions necessary or appropriate to ensure that the shares may be redeemed in cash, promptly upon request.

2. Computation of Equity

The Proposed Rules would have required security futures intermediaries to compute the equity in an account in accordance with Regulation T for purposes of determining whether the required margin for security futures is satisfied.[219] The Commissions received one comment on this issue.[220] The commenter expressed the opinion that the rules governing collateral haircuts in securities and futures accounts need not be identical, as long as the relevant standards do not create a material incentive for customers to carry security futures positions in a futures account rather than a securities account.[221]

The Commissions have considered this commenter's views and have determined not to require security futures intermediaries to compute equity in accordance with Regulation T. The Final Rules provide that, for purposes of determining whether the required margin for security futures carried in an account is satisfied, the equity in an account shall be computed in accordance with the margin rules applicable to the account.[222] However, so that that collateral and other components of equity are valued consistently in securities and futures accounts, the Final Rules require security futures intermediaries to make certain adjustments to equity when determining whether the required margin for security futures carried in an account is satisfied.[223] Each of these components of equity is discussed in turn below.

a. *Security Futures.* The Proposed Rules provided that security futures would not be "margin securities" for purposes of the margin requirements and therefore would not have loan value for margin purposes.[224] One commenter addressed this provision and supported the view that security futures should not have loan value for margin purposes.[225]

The Commissions have considered the commenter's views and have adopted Final Rules that provide that security futures will have no value for purposes of determining whether the required margin in a securities or futures account is satisfied.[226] This is consistent with the treatment of other futures contracts carried in futures accounts.

To avoid confusion as to whether extensions of credit in connection with security futures are considered "purpose credit" for purposes of the Federal Reserve Board's credit regulations,[227] however, the Commissions have revised the Final Rules to eliminate the statement that security futures are not margin securities.

b. *Option Value.* The Proposed Rules did not address the question of whether the net value of options in a securities or futures account could be applied to satisfy the required margin for security futures.[228] The rules of the futures exchanges generally permit FCMs to include the value of listed options on contracts for future delivery in computing the equity in a futures account. The rules of the national securities exchanges and the NASD, however, generally deny value to options carried for a customer for the purpose of computing the equity in the customer's account.[229]

One commenter expressed concern that the exclusion of net option value from the calculation of equity in a futures account would create significant operational difficulties for security futures intermediaries that carry security futures in futures accounts.[230] Two other commenters noted, however, that recognition of option value for purposes of determining whether the required margin for security futures is satisfied in a futures account would create a significant regulatory disparity with exchange-traded options carried in securities accounts.[231]

The Commissions, having considered the commenters' concerns, are adopting Final Rules that provide that a net long or short position in a listed put or call option carried in a futures account shall be valued in accordance with the margin rules applicable to the account for purposes of determining whether the required margin for a security future in the account is satisfied.[232] For these purposes, the term "listed option" is defined to mean any put or call option that is (i) issued by a clearing agency that is registered under section 17A of the Exchange Act[233] or cleared and guaranteed by a derivatives clearing organization that is registered under Section 5b of the CEA; [234] and (ii) traded on or subject to the rules of a self-regulatory authority.[235]

The SEC is willing to entertain proposed rule changes by the national securities exchanges and the NASD to grant value to listed options in a securities account under appropriate circumstances. In addition, the Commissions intend to review their determination to grant value to long options carried in futures accounts after six months of security futures trading to determine whether it has created a material disparity between the margin requirements for security futures and the margin requirements for comparable exchange-traded options, and may jointly undertake appropriate action.

c. *Open Trade Equity.* The Proposed Rules did not address in detail how "open trade equity" (*i.e.*, the daily marked-to-market gain or loss in value of futures or other exchange-traded contracts) would be included in the equity in an account for purposes of determining whether the required margin for security futures is satisfied. However, eight commenters raised the issue and requested clarification from the Commissions.[236] Those commenters generally requested that the Commissions clarify that broker-dealers and FCMs could treat open trade equity on security futures positions as cash for purposes of margin and collateral.

One of those commenters maintained that disallowing the use of open trade equity to satisfy margin on trades and position in other markets could dampen customers' interest in security futures.[237] Another of the commenters suggested that FCMs would have to make costly systems changes if they were not allowed to recognize open trade equity for security futures as they are permitted to do for other futures positions.[238]

In light of commenters' views on this issue, the Final Rules clarify that "open trade equity" may be applied to satisfy the required margin for security futures and related positions. Specifically, the Final Rules define a new term, "variation settlement," to mean any credit or debit to a customer account, made on a daily or intraday basis, for the purpose of marking to market a security future or any other contract that is: (i) issued by a clearing agency that is registered under section 17A of the

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[205] *See* CFTC Rule 41.46; SEC Rule 404.

[206] Under Section 202.2 of Regulation T (12 CFR 220.2), margin securities include: (1) Any security registered or having unlisted trading privileges on a national securities exchange; (2) any security listed on the Nasdaq Stock Market; (3) any nonequity security; (4) any security issued by either an open-end investment company or unit investment trust which is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8); (5) any foreign margin stock; and (6) any debt security convertible into a margin security.

[207] 15 U.S.C. 78c(a)(12).

[208] *See* Proposed CFTC Rule 41.47(a)(4); Proposed SEC Rule 404(a)(4).

[209] *See* Options Exchanges Letter; NFA Letter; CME/CBOT Letter; SIA/FIA Letter.

[210] Options Exchanges Letter at 6–7.

[211] *See* NFA Letter at 6–7; CME/CBOT Letter at 3–4; and SIA/FIA Letter 6–8.

[212] *See* NFA Letter at 7; SIA/FIA Letter at 6.

[213] CME/CBOT Letter at 4.

[214] CFTC Rule 41.46(b)(1); SEC Rule 404(b)(1).

[215] *See, e.g.*, CME Rule 930.C.

[216] In a recent interpretive release providing guidance on the application of certain provisions of the federal securities laws to trading in security futures products, the SEC expressed the view that a security future is not an extension of credit under section 11(d)(1) of the Exchange Act (15 U.S.C. 78k(d)(1)), and that margin collected in connection with a security futures transaction represents a good faith deposit against performance and not "partial payment" for the security. Securities Exchange Act Release No. 46101 (June 21, 2002), 67 FR 43234, 43245 (June 27, 2002). Accordingly, a deposit of money market mutual fund shares by a customer to satisfy the required margin for a security future does not, in the SEC's view, constitute a direct or indirect extension or maintenance of credit to or for the customer on such shares for purposes of Section 11(d)(1) (15 U.S.C. 78k(d)(1)).

[217] *See* CFTC Rule 41.43(a)(22); SEC Rule 401(a)(22).

[218] *See* CFTC Rule 41.46(b)(2); SEC Rule 404(b)(2).

[219] *See* Proposed CFTC Rule 41.43(b); Proposed SEC Rule 400(b).

[220] SIA/FIA Letter.

[221] *Id.*, at 6.

[222] *See* CFTC Rule 41.46(c); SEC Rule 404(c). For purposes of determining whether the required margin for security futures and related positions is satisfied under the Final Rules, the equity in a futures account is defined to include the account's net liquidating equity plus the collateral value of margin securities, exempted securities, and other acceptable margin deposits. *See* Joint Audit Committee, Margins Handbook, Chapter 1 (June 1999) (definition of "margin equity"). Securities may not be combined with security futures carried in a futures account to create an offset position except pursuant to a cross-margining arrangement, as described in Section II.G.3 of this release.

[223] *See* CFTC Rule 41.46(c), (d), and (e); SEC Rule 404(c), (d), and (e).

[224] *See* Proposed CFTC Rule 41.47(c); Proposed SEC Rule 404(c).

[225] Options Exchanges Letter at 6–7.

[226] *See* CFTC Rule 41.46(c)(1)(i) and (c)(2)(i); SEC Rule 404(c)(1)(i) and (c)(2)(i). As discussed below, open trade equity resulting from the daily settlement of security futures can be used to satisfy the required margin.

[227] *See* discussion of extensions of credit in Section II.F.4. of this release.

[228] Regulation T generally delegates the authority to specify the amount or other position to satisfy the required margin for put or call options on a security, certificate of deposit, securities index or foreign currency, or a warrant on a securities index or currency carried in a securities account to the registered securities exchange or association authorized to trade the option (in the case of exchange-listed options) and to the creditor's examining authority (in the case of all other options), subject in each case to approval by the SEC. *See* 12 CFR 220.12(f).

[229] The rules of the national securities exchanges and the NASD recognize an exception for long listed or OTC options and warrants with a remaining period to expiration exceeding 9 months. Such contracts are valued at their current market value (as defined in Section 220.2 of Regulation T (12 CFR 220.2)), subject to a 75% margin requirement. *See, e.g.*, NYSE Rule 431(f)(2)(C).

[230] Meeting between SEC and CFTC staff and representatives of SIA/FIA (February 6, 2002).

[231] Telephone conversations between SEC staff and The OCC staff (February 20, 2002) and between SEC staff and CBOE staff (February 5, 2002).

[232] *See* CFTC Rule 41.46(c)(1)(ii); SEC Rule 404(c)(1)(ii).

[233] 15 U.S.C. 78q–1.

[234] 7 U.S.C. 7a–1.

[235] *See* CFTC Rule 41.43(a)(16); SEC Rule 401(a)(16).

[236] *See* Peregrine Letter; OneChicago Letter; NFA Letter; CME Letter; SIA/FIA Letter; Nasdaq Liffe Letter; SunGard Letter; and Morgan Stanley Letter.

[237] OneChicago Letter at 6.

[238] SunGard Letter at 2.

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Exchange Act[230] or cleared and guaranteed by a derivatives clearing organization that is registered under Section 5b of the CEA,[240] and (ii) traded on or subject to the rules of a self-regulatory authority.[241] The Final Rules provide that variation settlement receivable (or payable) by an account at the close of trading on any day shall be treated as a credit (or debit) to the account on that day.[242]

d. *Margin Equity Securities.* The Final Rules generally limit the value of a margin equity security deposited as margin for security futures in a futures account to the security's "Regulation T collateral value," *i.e.*, the current market value of the security (based on its most recent closing price) less the percentage of required margin for a position in the security held in a margin account under Regulation T.[243] This amount, which is currently set at 50% of current market value, represents the amount of the value of a fully-paid margin equity security deposited into a securities margin account that would be available to satisfy the required margin for other positions in the account under Regulation T, *e.g.*, stock options. Margin equity securities deposited as collateral for security futures in a securities account remain subject to Regulation T margin requirements as well as the margin requirements of applicable self-regulatory authority rules.

By requiring FCMs to value margin equity securities as collateral for security futures at the levels established under Regulation T,[244] the Commissions intend to provide that margin equity securities used to satisfy margin requirements for security futures are valued in a consistent manner, regardless of the type of account in which a security future is carried. The Commissions recognize, however, that the Regulation T margin requirement applies only to new transactions that create or increase a margin deficiency in an account.[245] As a result, a uniform 50% haircut on margin equity securities in a futures account may result in the collection of more margin for security futures carried in a futures account than would be required for comparable positions carried in a securities account.

Accordingly, the Final Rules provide an alternative method for valuing margin equity securities used as collateral for security futures in a futures account based on the same initial and maintenance computations required under Regulation T and securities SRO rules with respect to transactions in the account.[246] Under this alternative method, the haircut for margin equity securities is equal to the lowest percentage of margin required for a margin equity security under the rules of a national securities exchange (currently, 25%). On any day when security futures transactions or related transactions[247] are effected in the account, however, a customer must satisfy a special margin requirement equal to the amount of any margin deficiency created or increased in the account if the margin equity securities were valued at their Regulation T collateral value (*i.e.*, 50% of current market value).

The Final Rules provide further that, if this alternative method for valuing margin equity securities is used in an account in which security futures or related positions are carried and such account is transferred from one security futures intermediary to another, the account may be treated as if it had been maintained by the transferee security futures intermediary from the date of its origin if the transferee accepts, in good faith, a signed statement of the transferor security futures intermediary (or, if that is not practicable, of the customer), that any margin call issued under the Final Rules has been satisfied.[248] This provision parallels Section 220.4(b)(7) of Regulation T, and is consistent with futures industry practices under Section 4d of the CEA.[249] It is intended to prevent one security futures intermediary from transferring an undermargined account to another security futures intermediary.

e. *Other Securities.* The Final Rules impose a haircut on exempt securities and nonequity securities deposited as margin for security futures carried in a futures account equal to the haircut established under the SEC's net capital rule.[250] This provision is intended to codify the haircut currently imposed on Treasury securities and other debt securities deposited as collateral for futures and options on futures under the rules of the designated contract markets. Exempt securities and nonequity securities deposited as collateral for security futures in a securities account will remain subject to the higher margin requirements applicable to such securities under Regulation T and self-regulatory authority rules.

f. *Foreign Currency.* The Final Rules provide that freely convertible foreign currency may be valued at an amount no greater than its daily marked-to-market U.S. dollar equivalent for purposes of determining whether the required margin for security futures carried in a securities or futures account is satisfied.[251] This provision reflects the maximum value assigned to foreign currencies under Regulation T.[252]

g. *Other Components of Equity.* The Final Rules provide that each other acceptable margin deposit or component of equity in a securities or futures account shall be valued at an amount no greater than its value in a Regulation T securities margin account.[253] This provision is intended to provide that any additional forms of collateral permitted under Regulation T in the future or other items in an account are valued under the Final Rules in accordance with Regulation T.

h. *Guarantees.* The Final Rules provide that no guarantee of a customer's account shall be given any effect for purposes of determining whether the required margin in an account is satisfied, except as permitted under the margin rules applicable to the account.[254] This provision is consistent with both the requirements currently applicable to securities accounts under Regulation T[255] and the requirements currently applicable to futures accounts under CFTC Rule 1.10.[256] Thus, the account-specific practices related to guarantees that are currently followed in securities accounts and futures accounts, respectively, would remain effective under this provision.

3. Satisfaction of the Required Margin for Positions Other than Security Futures

Because the scope of the Final Rules is limited to security futures and related positions, the rules require additional margin to be deposited in an account only when the required margin for security futures is not satisfied by the equity in the account. The required margin for all other positions carried in an account, and acceptable collateral for such positions, shall be determined in accordance with the margin rules applicable to the account.

The Final Rules do not prohibit security futures intermediaries from accepting different collateral or assigning greater collateral value to assets deposited as collateral with respect to other positions carried in an account, if permitted under applicable self-regulatory authority rules. For example, security futures intermediaries may use letters of credit to satisfy the required margin for commodity futures and commodity options (other than security futures) in a futures account, even if a security future is carried in the account, as long as the collateral or other equity allocated to the security future is sufficient to satisfy the requirement established under the Final Rules. Likewise, security futures intermediaries may value margin equity securities deposited to satisfy the required margin for commodity futures or commodity options (other than security futures) according to the rules of the applicable board of trade.

Moreover, security futures intermediaries may allocate collateral or other components of equity among security futures and such other positions as they consider appropriate. For example, a security futures intermediary may elect to allocate cash, open trade equity, option value, and nonequity securities to satisfy the required margin for security futures and related positions in a futures account, and allocate margin equity securities to satisfy the required margin for commodity futures and commodity options (other than security futures). This allocation would allow the security futures intermediary to value the margin equity securities as permitted by the applicable margin rules, rather than at the security's Regulation T collateral value, provided that the security futures in the account are adequately margined by the other collateral in the account.

To prevent assets used to satisfy the required margin for security futures from being counted twice for margin purposes, the Final Rules provide that transactions, positions or deposits used to satisfy the required margin for security futures or related positions shall be unavailable to satisfy the required margin for any other position or transaction or any other requirement.[257] In particular, a related position used to reduce the required margin for a security future may not be used in a strategy-based offset with another item in the account. This provision is consistent with the satisfaction restriction in Section 220.4(c)(4) of Regulation T.[258] For example:

- A deposit of $1000 in margin equity securities used to satisfy the required margin for a $500 margin call on a security future cannot also be used to satisfy a $350 margin call on a broad-based index future in a futures account, even if, under the margin rules applicable to the account, equity securities used as collateral for the broad-based index future may be valued at 85% of current market value (*i.e.* $850).
- A 100-share XYZ put option contract in a securities account may not be used to cover both a 100-share long XYZ security future contract as well as 100 shares of XYZ common stock.

The collateral used to satisfy the margin requirement with respect to a security future may of course be used to satisfy the margin requirement with respect to the same position under self-regulatory authority rules.

I. When Margin May Be Withdrawn

The Final Rules include provisions that specify when margin may be withdrawn from an account that contains security futures. Under the Proposed Rules, these provisions would have been incorporated into the Commissions' margin requirements through the application of Regulation T. Because the Final Rules do not expressly apply Regulation T, the Commissions have identified the circumstances in which a customer or a security futures intermediary may withdraw cash, securities or other collateral deposited as margin for security futures and related positions.[259]

1. Withdrawal of Margin by the Customer

The Final Rules provide that a customer may withdraw cash, securities, or other assets deposited as margin for security futures or related positions, provided that the equity in the account after such withdrawal is sufficient to satisfy the required margin for the security futures and related positions in the account under the Final Rules.[260]

Customers that use the alternative collateral valuation method for equity securities, pursuant to CFTC Rule 41.46(e) and SEC Rule 404(e), are subject to an additional restriction on withdrawals that parallels the withdrawal restrictions of Regulation T.[261] Specifically, cash, securities or other assets may not be withdrawn with respect to an account that uses the alternative method if:

(i) Additional cash, securities, or other assets are required to be deposited as margin for a transaction in the account on the same or a previous day pursuant to a special margin requirement; or

(ii) The withdrawal, together with other transactions, deposits, and withdrawals on the same day, would create or increase a margin deficiency if the margin equity securities were valued at their Regulation T collateral value.[262]

This restriction is intended to prevent a customer from withdrawing margin

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[230] 15 U.S.C. 78q–1.

[240] 7 U.S.C. 7a–1.

[241] *See* CFTC Rule 41.43(a)(32); SEC Rule 401(a)(32).

[242] *See* CFTC Rule 41.46(c)(1)(vi) and (c)(2)(iii); SEC Rule 404(c)(1)(vi) and (c)(2)(iii).

[243] *See* CFTC Rule 41.43(a)(25); SEC Rule 401(a)(25). The Final Rules define the "current market value" of a security other than a security future to mean the most recent closing sale price of the security, as shown by any regularly published reporting or quotation service. CFTC Rule 41.43(a)(4); SEC Rule 401(a)(4). If there is no recent closing sale price, the security futures intermediary may use any reasonable estimate of the market value of the security as of the most recent close of business. *Id.*

[244] *See* CFTC Rule 41.46(c)(1)(iii); SEC Rule 404(c)(1)(iii).

[245] The initial margin required for the purchase of a margin equity security in a securities account under Regulation T is 50% of its current market value. However, the maintenance margin required for a position in a margin equity security under the rules of the securities self-regulatory organizations is 25% of current market value. *See, e.g.*, NYSE Rule 431(c)(1). Accordingly, a customer that seeks to use a fully paid equity security to satisfy the required margin for a new short option transaction may apply no more than 50% of the current market value of the security for that purpose. On subsequent days, the customer will not be required to deposit additional margin, regardless of changes in the price of the short option or equity security, unless the required margin for the short option exceeds 75% of the current market value of the equity security.

[246] *See* CFTC Rule 41.46(e); SEC Rule 404(e).

[247] A "related transaction" is defined to include any transaction in a related position that creates, eliminates, increases or reduces an offsetting position involving a security future, or any deposit or withdrawal of collateral (other than the deduction of variation settlement and other periodic deductions by a security futures intermediary from a customer account). CFTC Rule 41.43(a)(27); SEC Rule 401(a)(27). For example, if a customer unwinds an offsetting position in a futures account, such as by liquidating a long broad-based index future offsetting a basket of security futures, any margin equity securities used to satisfy the additional margin in the account required as a result of the transaction would have to be valued at their Regulation T value.

[248] *See* CFTC Rule 41.46(e)(3); SEC Rule 404(e)(3).

[249] 12 CFR 220.4(b)(7) and 7 U.S.C. 6d. *See* also NASD Rule 11870(d) and NFA Rule 2–27.

[250] *See* CFTC Rule 41.46(c)(1)(iv); SEC Rule 404(c)(1)(iv).

[251] *See* CFTC Rule 41.46(c)(1)(v) and (c)(2)(ii); SEC Rule 404(c)(1)(v) and (c)(2)(ii).

[252] Many foreign currencies already are subject to significant additional haircuts or margin requirements in securities and futures accounts under self-regulatory authority rules. As discussed above, security futures intermediaries and their customers would also have to observe limitations under applicable margin rules.

[253] *See* CFTC Rule 41.46(c)(1)(vii); SEC Rule 404(c)(1)(vii).

[254] *See* CFTC Rule 41.46(f); SEC Rule 404(f).

[255] *See* 12 CFR 220.3(d). The Regulation T prohibition governs initial margin. The use of guarantees for purposes of maintenance margin is otherwise treated under applicable margin rules.

[256] 17 CFR 1.10. CFTC Rule 1.10(d) requires that an FCM's financial report be completed in accordance with the CFTC's Form 1–FR–FCM Instructions for reporting an FCM's net capital position. These instructions provide further that "an FCM may not consider a guarantee agreement as a substitute for margin" in customers' accounts. Thus, margin deficits are only satisfied with the actual transfer of free funds from the guaranteeing account.

[257] *See* CFTC Rule 41.46(d); SEC Rule 404(d).

[258] 12 CFR 220.4(c)(4).

[259] *See* CFTC Rule 41.47; SEC Rule 405.

[260] *See* CFTC Rule 41.47(a); SEC Rule 405(a).

[261] *See* 12 CFR 220.4(e).

[262] *See* CFTC Rule 41.46(e); SEC Rule 404(e).

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deposited to satisfy a special margin requirement unless the customer's equity exceeds the required margin in the account or the customer substitutes securities of equivalent value.

2. Withdrawal of Margin by the Security Futures Intermediary

The Final Rules provide that a security futures intermediary may deduct certain payments and charges from a customer account to meet the customer's obligations to the security futures intermediary and third parties.[263] Specifically, without regard to the other provisions of the rule, the security futures intermediary may deduct the following items from an account:

(i) Variation settlement payable, directly or indirectly,[264] to a clearing agency or derivatives clearing organization to settle the customer's obligations under a security futures contract or other contracts cleared through the clearing agency or derivatives clearing organization;

(ii) Interest charged on credit maintained in the account;

(iii) Communication or shipping charges with respect to transactions in the account;

(iv) Payment of commissions, brokerage, taxes, storage and other charges lawfully accruing in connection with the positions and transactions in the account; and

(v) Any service charges that the security futures intermediary may impose. These items reflect the permissible withdrawals from a securities account and a futures account under Regulation T [265] and Section 4d of the CEA,[266] respectively. The Final Rules also permit a security futures intermediary to deduct any other items that may be deducted under Regulation T (*e.g.*, premiums on securities borrowed, dividends, interest, or other distributions due on borrowed securities), to the extent permitted under applicable margin rules.

J. Consequences of Failure To Collect Required Margin

The Commissions proposed that the amount of initial or maintenance margin required would be obtained as promptly as possible and in any event within three business days or within such shorter time period as may be imposed by applicable regulatory authority rules.[267] The Commissions also proposed that the time limits for collection of initial margin could be extended upon application by the creditor to its examining authority, as defined in Proposed CFTC Rule 41.44(a)(3) and Proposed SEC Rule 401(a)(3), to the extent permitted by applicable regulatory authority rules.[268] Failure to collect additional margin within the established period would have required the creditor to liquidate the account, as required by Regulation T.[269]

The Commissions received six comments on the issue of timing for collection of margin.[270] One commenter supported the proposed time limit for collection of margin, stating that a time limit of three business days or shorter, with the opportunity for extensions upon application, would be a reasonable time frame for initial and maintenance margin calls.[271]

One commenter disagreed with the proposed time limits and recommended that the Commissions adopt the time limits provided in Regulation T, which requires the collection of margin within five business days after the position is established (T+5), and the collection of maintenance margin as promptly as possible and in any event within fifteen business days.[272] Another commenter supported a T+1 margin settlement cycle and a T+5 collection period.[273] The same commenter observed that "[g]iven that the initial margin collection period for securities and listed securities options is T+5, and that, as a result of required capital charges, futures have an effective collection period of T+5, the Associations' members feel strongly that a T+5 collection period should also apply to security futures." [274]

Two other commenters urged the Commissions to recognize the existing time limits in both the securities and futures industries.[275] Specifically, these commenters believed that although the provisions governing the time of collection in Regulation T are different from those set forth by the CFTC and the futures exchange rules, the outcome is substantially similar.

Finally, another commenter recommended that the period for collecting initial and maintenance margin be extended to four days (T+4) in order to be consistent with existing requirements in the futures and securities industries.[276] That commenter also expressed concern regarding the procedures that must be followed if margin is not received in the time prescribed, noting that the Proposed Rules would require liquidation of positions in accordance with Regulation T. The commenter believed that requiring a firm to liquidate positions if a margin call is not met, or providing that the time period for collection could be extended by the firm's examining authority, could create significant burdens for both an FCM and its examining authority because these are not the current practices in the futures industry.

The Commissions have considered the commenters views and have decided not to adopt uniform time periods for collection of margin. The Commissions have determined that deference to account-specific rules in this instance will avoid operational costs that would be incurred in modifying existing practices, and will not provide an incentive for customers to select one type of account (securities or futures) over another.

In addition, the Commissions have decided not to require immediate liquidation of the positions in a customer account if the customer fails to deposit additional required margin within a prescribed number of days. The Commissions believe that, in general, a security futures intermediary should be adequately protected against potential adverse movements in customers' positions if it takes a capital charge for the amount by which the customer's account is undermargined. Accordingly, the Final Rules provide that if any margin call required by this Regulation (§§ 242.400 through 242.406) is not met in full, the security futures intermediary shall take the deduction required under CFTC or SEC rules,[277] as applicable, in computing its net capital.[278]

The Commissions have decided, however, to require that a security futures intermediary liquidate positions in an account if the account would liquidate to a deficit.[279] To provide

[263] *See* CFTC Rule 41.47(b); SEC Rule 405(b).

[264] The phrase "directly or indirectly" is intended to encompass payments either directly to a clearing agency or derivatives clearing organization, or payments made through a clearing broker.

[265] 12 CFR 220.4(f).

[266] 7 U.S.C. 6d.

[267] *See* Proposed CFTC Rule 41.46(a) and (b); Proposed SEC Rule 403(a) and (b).

[268] *See* Proposed CFTC Rule 41.46(c); Proposed SEC Rule 403(c).

[269] 12 CFR 220.4(d).

[270] *See* Peregrine Letter; SIA Credit Division Letter; SIA/FIA Letter; Morgan Stanley Letter; CME/CBOT Letter; and NFA Letter.

[271] Peregrine Letter at 2.

[272] SIA Credit Division Letter at 2.

[273] SIA/FIA Letter at 11.

[274] *Id.*

[275] *See* Morgan Stanley Letter at 10; CME/CBOT Letter at 5.

[276] NFA Letter at 5.

[277] 17 CFR 1.17(c)(5)(viii) or (ix); 17 CFR 240.15c3–1(c)(2)(xii).

[278] CFTC Rule 41.48(a); SEC Rule 406(a).

[279] CFTC Rule 41.48(b); SEC Rule 406(b). This is the same standard that applies to options specialists

firms with the flexibility to control liquidation of positions during adverse market conditions, the Final Rules provide that firms shall liquidate such positions promptly and in an orderly manner. This is consistent with futures industry practices in which FCMs, pursuant to customer agreements, exercise discretion in making liquidation decisions. In this regard, the Commissions believe that it is prudent business practice for security futures intermediaries to take steps to liquidate customer accounts well before they are in a deficit condition. The uniform liquidation requirement adopted under the Final Rules differs from the liquidation requirements imposed under Regulation T and securities SRO rules with respect to undermargined accounts.[280] The Final Rules clarify that this Regulation T liquidation requirement does not apply to security futures held in a securities account.[281]

K. CFTC Procedures for Notification of Proposed Rule Changes Related to Margin

In general, a designated contract market, including a "notice-designated" contract market,[282] or registered derivatives transaction execution facility ("DTF") that proposes to make a rule change regarding its security futures margin requirements (other than proposed rule changes that result in higher margin levels) must submit the proposed rule change to the SEC for approval in accordance with section 19(b) of the Exchange Act.[283] In addition, contract markets designated pursuant to Section 5 of the CEA and registered DTFs are also required under Section 5c(c) of the CEA to make certain filings with the CFTC regarding rule changes, including those for security futures products.[284] Because ATSs are not SROs under the Exchange Act, notice-designated contract markets that are ATSs are not required to submit proposed rule changes to the SEC for approval in accordance with section 19(b) of the Exchange Act.

Section 5c(c) of the CEA provides for two alternative procedures by which such a designated contract market or registered DTF may implement a proposed rule change.[285] First, in accordance with Section 5c(c)(1) of the CEA, a proposed rule change may be implemented by providing the CFTC with a written certification that the proposed rule change complies with the CEA.[286] Second, Section 5c(c)(2) of the CEA provides that, before the implementation of a proposed rule change, an entity may request that the CFTC grant prior approval of the rule change.[287]

Proposed CFTC Rule 41.48(a) required any notice-designated contract market that files a proposed rule change regarding customer margin for security futures with the SEC for approval in accordance with section 19(b)(2) of the Exchange Act [288] to concurrently provide to the CFTC a copy of such a proposed rule change and any accompanying documentation filed with the SEC.[289] Such notice-designated contract market was not required to provide any supplemental information, even if such information were subsequently provided to the SEC in the course of the SEC's review of the proposed rule change. The purpose of this Proposed Rule was to provide the CFTC, as a joint regulator of markets offering security futures products, with timely notification of a proposed rule change.

Proposed CFTC Rule 41.48(b) established the notification process for contract markets designated pursuant to Section 5 of the CEA [290] and registered DTFs. The process by which such an entity would notify the CFTC of having filed a proposed rule change with the SEC would depend on which procedure under Section 5c(c) of the CEA [291] the entity elected to follow.

Proposed CFTC Rule 41.48(b)(1) applied to any designated contract market registered under section 5 of the CEA or registered DTF that elects to seek the prior approval of the CFTC for a proposed rule change, in accordance with Section 5c(c)(2) of the CEA.[292] In such case, the contract market or DTF would file its requests with the SEC and CFTC concurrently.

Under Proposed CFTC Rule 41.48(b)(2), an entity that elects to implement a proposed rule change by filing a written certification with the CFTC in accordance with Section 5c(c)(1) of the CEA [293] would be required to provide a copy of the proposed rule change and any accompanying documentation that was filed with the SEC, concurrent with the SEC filing. Promptly after the SEC approves the proposed rule change, the designated contract market or registered DTF would file the written certification with the CFTC.

The CFTC requested comments on an alternative procedure under which an entity would file its written certification with the CFTC at the same time as it files the proposed rule change with the SEC, rather than after the SEC approves the proposed rule change.

The CFTC did not receive any comments relating to this issue, and it is therefore adopting the notification provisions as proposed, in all material respects.

III. Paperwork Reduction Act

A. CFTC

The Paperwork Reduction Act of 1995 ("PRA") [294] imposes certain requirements on federal agencies (including the CFTC and the SEC) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Final Rules that have been adopted do not require a new collection of information on the part of any entities subject to these rules. Accordingly, the requirements imposed by the PRA are not applicable to these rules.

B. SEC

The Paperwork Reduction Act does not apply because the rules do not impose recordkeeping or information collection requirements, or other collections of information that require

under the SEC's net capital rule. Exchange Act Rule 15c3–1(c)(2)(x)(D) (17 CFR 240.15c3–1(c)(2)(x)(D)).

[280] Under Regulation T, if any initial margin call is not met in full within one payment period after a margin deficiency is created or increased, a creditor must liquidate securities sufficient to meet the margin call or to eliminate any margin deficiency existing on the day such liquidation is required, whichever is less (unless the margin deficiency created or increased is $1000 or less). 12 CFR 220.4(d). The Regulation T payment period is currently five business days, although it may be extended for one or more limited periods upon application by the creditor to its examining authority. *Id.* at 12 CFR 220.2, 220.4(c)(3). NYSE Rule 431 requires the amount of maintenance margin or mark to market required by any provision of the NYSE Rule 431 to be obtained within fifteen business days from the date such deficiency occurred, unless the Exchange has specifically granted the member organization additional time. NYSE Rule 431(f)(6).

[281] CFTC Rule 41.48(c); SEC Rule 406(c).

[282] A notice-designated contract market is a national securities exchange registered pursuant to section 6(a) of the Exchange Act (15 U.S.C. 78f(a)), a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o–3(a)), or an alternative trading system ("ATS") as defined in Section 1a(1) of the CEA (7 U.S.C. 1a(1)) that is designated as a contract market pursuant to Section 5f of the CEA (7 U.S.C. 7b–1).

[283] 15 U.S.C. 78s(b).

[284] 7 U.S.C. 7a–2(c). Notice-designated contract markets are exempt from the requirements of Section 5c of the CEA pursuant to Section 5f(b)(1)(D) of the CEA (7 U.S.C. 7a–2(b)(1)(D)).

[285] *See also* 66 FR 42256 (August 10, 2001) (CFTC rules implementing these procedures, codified in a new Part 40 of Title 17, CFTC Rules 40.5 and 40.6).

[286] 7 U.S.C. 7a–2(c)(1).

[287] 7 U.S.C. 7a–2(c)(2).

[288] 15 U.S.C. 78s(b)(2).

[289] The copy may be submitted to the CFTC electronically, by facsimile, or by delivery of a hard copy.

[290] 7 U.S.C. 7a–2.

[291] 7 U.S.C. 7a–2(c).

[292] 7 U.S.C. 7a–2(c)(2).

[293] 7 U.S.C. 7a–2(c)(1).

[294] 44 U.S.C. 3501 *et seq.*

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the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et. seq.*

IV. Costs and Benefits of the Final Rules

A. CFTC

Section 15(a) of the CEA [295] requires that the CFTC, before promulgating a regulation under the CEA or issuing an order, consider the costs and benefits of its action. By its terms, Section 15(a) does not require the CFTC to quantify the costs and benefits of a new rule or determine whether the benefits of the rule outweigh its costs. Rather, Section 15(a) simply requires the CFTC to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of the following considerations: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the CFTC could, in its discretion, give greater weight to any one of the five considerations and could, in its discretion, determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

This rulemaking constitutes a package of related rule provisions. The Final Rules establish the amount of initial and maintenance customer margin for transactions in security futures. The CFTC believes that the customer margin requirements for security futures are, in accordance with the CFMA, consistent with the margin requirements for comparable option contracts traded on any exchange registered pursuant to section 6(a) of the Exchange Act.[296] The CFTC has evaluated the costs and benefits of these rules in light of the specific considerations identified in Section 15(a) of the CEA:

1. Protection of market participants and the public. In general, the Final Rules should further the protection of market participants and the public.

2. Efficiency and competition. As noted above, the margin requirements are consistent with the margin requirements for comparable option contracts traded on any exchange registered pursuant to section 6(a) of the Exchange Act, as required under the CFMA. To the extent that the Final Rules permit FCMs and futures exchanges to maintain existing operational and business practices, the Final Rules enable market participants to minimize operational costs associated with the introduction of security futures, and preserve meaningful customer choice as to the type of account (securities or futures) in which the customer may elect to carry security futures. In certain respects, the Final Rules promote a level playing field between options exchanges and security futures exchanges, and between broker-dealers/securities accounts and FCMs/futures accounts. Accordingly, the Final Rules are not expected to have a negative impact on competition.

3. Financial integrity of futures markets and price discovery. The Final Rules should have a positive effect on the financial integrity of security futures markets by protecting against systemic risk.

4. Sound risk management practices. The Final Rules are consistent with sound risk management practices.

5. Other public considerations. The Final Rules are expected to preserve the financial integrity of markets trading security futures and prevent systemic risk, thereby benefiting the public. The CFTC believes that the Final Rules give rise to an acceptable level of cost in light of the expected benefits of the rules.

After evaluating these considerations, the CFTC has determined to adopt the Final Rules discussed above. The CFTC invited public comment on its cost-benefit analysis, but did not receive any comments in response to this invitation. Moreover, insofar as the comments received raise any matters that might be deemed to relate to the cost-benefit analysis, the CFTC has addressed such comments in the foregoing discussion and through modifications to the Proposed Rules.

B. SEC

Section 7 of the Exchange Act, which governs the amount of credit that may be initially extended and subsequently maintained on any security (other than an exempted security), was amended by the CFMA to add provisions related to margin for security futures. On March 6, 2001, the Federal Reserve Board delegated its authority under section 7(c)(2) of the Exchange Act to establish margin requirements for security futures to the SEC and CFTC. The Final Rules establish such margin requirements.

Specifically, the CFMA amended section 7(c) of the Exchange Act to require that the rules preserve the financial integrity of markets trading security futures products, prevent systemic risk, and to require that: (1) The margin requirements for a security future be consistent with the margin requirements for comparable option contracts traded on any exchange registered pursuant to section 6(a) of the Exchange Act; [297] and (2) the initial and maintenance margin levels for a security future not be lower than the lowest level of margin, exclusive of premium, required for any comparable option contract traded on any exchange registered pursuant to section 6(a) of the Exchange Act, other than an option on a security future, and to ensure that the margin requirements (other than levels of margin), including the type, form, and use of collateral for security futures, are and remain consistent with the requirements established by the Federal Reserve Board under Regulation T.

The SEC provided an estimate of the costs and benefits of the Proposed Rules, and requested comments on all aspects of its estimate, including identification of any additional costs or benefits of the proposed rules. The SEC encouraged commenters to identify and supply any relevant data, analysis and estimates concerning the costs and benefits of the proposed rules. Several commenters expressed the view that certain aspects of the Proposed Rules would impose costs. However, none of the commenters provided specific data regarding the overall costs and benefits of the Proposed Rules.

The SEC has considered the costs and benefits of the Final Rules. We are sensitive to the costs and benefits that might arise from compliance with our rules and amendments. In response to commenters' concerns about the potential costs related to the application of Regulation T to all transactions in security futures, the Commissions are adopting stand alone margin rules for security futures that apply only certain requirements of Regulation T that are necessary to satisfy the statutory requirement that the margin requirements for security futures be and remain consistent with Regulation T. The SEC understands that some aspects of the Final Rules may impose costs on some persons or entities. However, the Final Rules are being adopted pursuant to statutory directive and are necessary to permit trading in security futures. In addition, the SEC notes that the Final Rules will apply only to those broker-dealers and FCMs that choose to do a business in security futures.

[295] 7 U.S.C. 19(a).

[296] 15 U.S.C. 78f(a).

[297] 15 U.S.C. 78f(a).

1. Costs

The Final Rules will impose administrative costs on security futures intermediaries. Further, security futures intermediaries are responsible for complying with the Final Rules and thus will incur various costs. The SEC has identified below areas where the Final Rules may impose costs.

a. *Compliance with Regulation T.* The Proposed Rules would have applied Regulation T to financial relations between brokers, dealers, and members of national securities exchanges and their customers with respect to transactions in security futures and any related securities or futures contracts that are used to offset positions in such security futures. Accordingly, under the Proposed Rules, Regulation T would have applied to all transactions in security futures, whether they were effected in a securities account or a futures account. Several commenters expressed concern that applying Regulation T to security futures in futures accounts would result in substantial costs to FCMs resulting from the need to reprogram their margin systems to comply with Regulation T.

As noted above, the Final Rules do not apply Regulation T to all security futures transactions. Instead, as noted above, the Final Rules incorporate certain requirements of Regulation T as necessary to satisfy the requirement under section 7(c)(2) of the Exchange Act that the Final Rules be and remain consistent with Regulation T. The SEC believes that this aspect of the Final Rules should only impose minimal administrative costs on security futures intermediaries. For broker-dealers and members of national securities exchanges that trade security futures, there should be little or no cost imposed by this aspect of the Final Rules because they already are subject to Regulation T for other securities transactions. For FCMs, there will be some administrative costs associated with this aspect of the final rules to program their systems to comply with the specific provisions of Regulation T that are included in the Final Rules.

b. *Levels of Margin.* SEC Rule 403(b)(1) sets the level of margin at 20 percent of current market value, which is the same level that would have been set under the Proposed Rules. The 20 percent level is necessary to fulfill the requirement under Section 7(c)(2)(B)(iii) that the margin requirements for security futures be consistent with the margin requirements for comparable exchange-traded options.[298]

When the Proposed Rules were issued for comment, the SEC noted that the 20 percent margin level could appear to be high when compared to margining methodologies currently used for futures other than security futures. As a result, a potential cost of the margin levels is that they may lead to reduced interest in trading security futures and, therefore, foregone hedging opportunities.

However, while margin requirements on futures other than security futures generally range from 2–10 percent,[299] SEC staff estimated that applying traditional futures risk-based margining methods to security futures would require margin of greater than 10 percent.[300] In addition, however, SEC staff estimated that the proposed margin levels would reduce the chances that a margin account would not contain sufficient funds to cover a given day's price movement from approximately 5 percent using traditional risk-based futures margining to 0.3 percent. Further, economic research has thus far not been able to establish a strong relationship between futures margin levels and interest in the product.[301] Therefore, while the margin levels under the Final Rules may impose a cost, the SEC believes that the margin levels should lower chances of customer default and therefore lower systemic risk to the markets. For these reasons, and the statutory mandate that requires comparability between security futures margin and options margin, the SEC believes that the margin levels adopted in the Final Rules are appropriate.

c. *Computation of Margin.* The Final Rules require security futures intermediaries to compute and collect, on a daily basis, required margin for each customer's security future carried or held by such entity. This requirement is designed to assure contract performance and the integrity of the marketplace. In addition, all security futures intermediaries will pay or receive daily variation settlement (*i.e.*, the daily net gain or loss on a security future) as a result of all open futures positions being marked to current market value by the clearing organization.

The SEC believes that the daily required computation of the initial and maintenance margin requirements and the collection and disbursement of daily settlement variation for security futures by security futures intermediaries will require these entities to program or reprogram their computer systems to implement the margin computations and the settlement variation procedures for security futures. These entities may also incur additional data storage costs and resource costs associated with these calculations.

d. *Undermargined Accounts.* SEC Rule 406(a) requires a security futures intermediary to take a deduction in computing its net capital to the extent that any margin call required by the Final Rules is not met in full. In addition, SEC Rule 406(b) requires that a security futures intermediary liquidate positions in a prompt and orderly manner in any account in which security futures are held at any time there is a liquidating deficit in the account. The SEC believes that these aspects of the Final Rules may impose costs on security futures intermediaries by requiring them to evaluate information to determine for each customer's account involving security futures when margin calls required under the Final Rules have not been met. Security futures intermediaries may also incur costs in the form of capital charges with respect to customers that do not meet margin calls. In addition, security futures intermediaries that have customer accounts that fall into a liquidating deficit may incur costs in complying with the mandatory liquidation provisions of the Final Rules.

2. Benefits

The benefits of the Final Rules are related to the benefits that will accrue as a result of the enactment of the CFMA. By repealing the ban on futures

[298] 15 U.S.C. 78g(c)(2)(B)(iii).

[299] Catrath, A., Adrangi, B and Alleder, M. (2001), *The Impact of Margins in Futures Markets: Evidence from the Gold and Silver Markets*, The Quarterly Review of Economics and Finance, 279.

[300] The SEC staff examined all securities with average daily trading volume greater than 50,000, using data from 2000 from the Center for Research in Security Prices ("CRSP"). Based on these data, the SEC staff calculated the daily price returns and the 30-day historical price volatility for each of the securities examined.

Based on the assumption that cash and futures prices typically move together, the SEC staff conducted a simulation, using actual security price movements as estimates for would be futures price movements. Based upon these security futures' price estimates, the staff determined the margin requirements for each of these security futures under both the 20 percent strategy-based approach and the traditional risk-based futures approach. The staff examined how often the funds attributable to margin requirements are insufficient to cover the daily price movements of these security futures. This is relevant to the examination of systemic risk because a necessary condition for customer default to occur is the depletion of the funds attributable to margin requirements (assuming no market risk to close out such position).

[301] For further details on these issues, *see* Fishe, R. P. H., Goldberg, L.G., (1986), *The Effects of Margins on Trading in Futures Markets*, Journal of Futures Markets, 281; Fishe, P.H., Goldberg, L.A., Gosnell, T.F. and Sinha, S. (1990), *Margin Requirement in Futures Markets: Their Relationship to Price Volatility*, The Journal of Futures Markets, 541.

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on single securities and futures on narrow-based security indexes, the CFMA will enable a greater variety of financial products to be traded that potentially could facilitate price discovery and the ability to hedge. Investors will benefit by having a wider choice of financial products to buy and sell, and markets and market participants will benefit by having the ability to trade these products. These rules are a prerequisite to the commencement of trading in the new products, and therefore they are also a prerequisite to any benefits that may derive from the availability of these products.

a. *Benefits to Security Futures Intermediaries.* SEC Rule 403(b)(1) provides that the minimum initial and maintenance margin levels for each security future would be 20 percent of the current market value of such contract. Moreover, SEC Rule 404(b) provides that a security futures intermediary may accept as collateral cash, margin securities, exempted securities, or other collateral permitted under Regulation T, as well as shares in money market mutual funds, to satisfy a margin deficiency. The SEC believes that these aspects of the Final Rules will provide sound protection from customer default by reducing chances of depletion of margin accounts. Accordingly, the Final Rules should reduce systemic risk associated with the trading of these new products.

b. *Benefits to Customers.* SEC Rule 403(b)(2) provides that customers be permitted to offset positions involving security futures with certain related securities or futures. Such offsets would be proposed by regulatory authority rules that would be approved by the SEC pursuant to section 19(h)(2) of the Exchange Act and, as applicable, by the CFTC pursuant to Section 5c(c) of the CEA if such offsets were consistent with the requirements of section 7(c)(2)(B) of the Exchange Act, including the requirement that margin requirements for security futures be no less restrictive than those imposed on options. These offsets will provide benefits to customers because they will recognize the hedged nature of certain specified combined strategies and will permit lower margin requirements that better reflect the true risk of those strategies.

V. Consideration of Burden on Competition, Promotion of Efficiency and Capital Formation

Section 3(f) of the Exchange requires the SEC, when it is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation.[302] Section 23(a)(2) requires the SEC, in adopting rules under the Exchange Act, to consider the impact any rule would have on competition.[303] Section 23(a)(2) further provides that the SEC may not adopt a rule not necessary or appropriate in furtherance of the purposes of the Exchange Act. In the proposing release, the SEC requested comments on these statutory considerations. The SEC received no comments on the issue of competition, efficiency, or capital formation.

The SEC believes that the rules should promote efficiency by setting forth clear guidelines for security futures intermediaries when collecting customer margin related to security futures. Further, the SEC believes that the rules will provide sound protection from customer default by reducing the chances of depletion of margin accounts, thereby reducing systemic risk associated with the trading of these new products.

The SEC also believes that the rules would not impose any significant burden on competition. The Final Rules provide that security futures generally will be governed by the existing margin rules applicable to securities accounts and to futures accounts, which are not identical in all cases. However, the Final Rules also include uniform provisions, applicable to security futures regardless of the type of account in which they are held, which are designed to prevent competitive advantages from arising simply because security futures are held in one type of account rather than the other. The rules serve only to set forth margin requirements for security futures. In addition, the Final Rules satisfy section 7(c)(2)(B)(iii) of the Exchange Act, which, among other things, requires that the margin rules for security futures be consistent with those for comparable exchange-traded options. Accordingly, the Final Rules are designed to prevent competitive advantages from arising solely out of differences between the margin requirements for security futures and those for exchange-traded options. Lastly, the SEC believes that the rules will not have any impact on capital formation because the rules, as adopted, merely establish requirements governing the collection of customer margin. The SEC reiterates that the margin requirements would protect security futures intermediaries from customers' default, thus encouraging participation by these market participants in the trading of futures on both single securities and narrow-based security indexes. Therefore, the SEC believes that there could be an increased demand for the underlying securities, resulting in increased capital formation.

[302] 15 U.S.C. 78c(f).

[303] 15 U.S.C. 78w(a)(2).

VI. Regulatory Flexibility Act

A. CFTC

The Regulatory Flexibility Act ("RFA")[304] requires that federal agencies, in promulgating rules, consider the impact of those rules on small entities. The Final Rules will affect designated contract markets, registered DTFs, and FCMs. The CFTC has previously established certain definitions of "small entities" to be used by the CFTC in evaluating the impact of its rules on small entities in accordance with the RFA.[305]

In its previous determinations, the CFTC has concluded that contract markets are not small entities for purposes of the RFA, based on the vital role contract markets play in the national economy and the significant amount of resources required to operate as SROs.[306] Recently, the CFTC determined that notice-designated contract markets are not small entities for purposes of the RFA.[307] In addition, the CFTC has determined that other trading facilities subject to its jurisdiction, including registered DTFs, are not small entities for purposes of the RFA.[308]

In the Proposing Release, it was observed that the CFTC has previously determined that FCMs are not small entities for purposes of the RFA, based on the fiduciary nature of FCM-customer relationships as well as the requirements that FCMs meet certain minimum financial requirements.[309] The CFTC proposed to determine that notice-registered FCMs,[310] for the reasons applicable to FCMs registered in accordance with Section 4f(a)(1) of the CEA,[311] are not small entities for purposes of the RFA. Brokers or dealers that carry customer accounts and receive or hold funds for those customers, and are notice-registered as FCMs for the purpose of trading security futures, similarly have a fiduciary relationship with their customers and must meet analogous minimum financial requirements.[312]

[304] 5 U.S.C. 601 *et seq.*

[305] 47 FR 18618–21 (April 30, 1982).

[306] *Id.* at 18619.

[307] 66 FR 44960, 44964 (August 27, 2001).

[308] 66 FR 42256, 42268 (August 10, 2001).

[309] 47 FR at 18619.

[310] A broker or dealer that is registered with the SEC and that limits its futures activities to those involving security futures products, may notice register with the CFTC as an FCM in accordance with Section 4f(a)(2) of the CEA (7 U.S.C. 6f(a)(2)).

[311] 7 U.S.C. 6f(a)(1).

The CFTC invited the public to comment on its proposed determination that notice-registered FCMs would not be small entities for purposes of the RFA. The CFTC also invited comments on its finding that there would not be a significant economic impact on a substantial number of small entities. The CFTC notes that no comments were received regarding either of these issues. Additionally, the CFTC notes that Congress mandated that customer margin for security futures be consistent with the margin requirements for comparable option contracts traded on any exchange registered pursuant to section 6(a) of the Exchange Act.[313] In adopting the Final Rules, the Commissions have striven to fulfill this requirement in the least burdensome way possible. The CFTC hereby determines that notice-registered FCMs are not small entities for purposes of the RFA. Further, the CFTC believes that the Final Rules will not have a significant economic impact on a substantial number of small entities.

[312] *See* Exchange Act Rule 15c3–1(a)(2), 17 CFR 240.15c3–1(a)(2).

[313] 15 U.S.C. 78f(a).

B. SEC

Pursuant to section 605(b) of the Regulatory Flexibility Act ("RFA"),[314] the SEC certified that the adopted rule would not have a significant economic impact on a substantial number of small entities. This certification was attached to the Proposing Release No. 34–50720 (October 4, 2001) as Appendix A.[315] The SEC solicited comments concerning the impact on small entities and the RFA certification, but received no comments.

[314] 5 U.S.C. 601 *et seq.*

[315] *See* Proposing Release, *supra* note 6.

VII. Statutory Basis

The SEC is adopting Rules 400 through 406 pursuant to the Exchange Act, particularly Sections, 3(b), 6, 7(c), 15A, and 23(a). Further, these rules are adopted pursuant to the authority delegated jointly to the SEC, together with the CFTC, by the Federal Reserve Board in accordance with Exchange Act Section 7(c)(2)(A).

Text of Rules

List of Subjects

17 CFR Part 41

Brokers, Margin, Reporting and recordkeeping requirements, Security futures products.

17 CFR Part 242

Brokers, Securities.

Commodity Futures Trading Commission

17 CFR Chapter I

In accordance with the foregoing, Title 17, chapter I of the Code of Federal Regulations is amended as follows:

PART 41—SECURITY FUTURES PRODUCTS

1. The authority citation for Part 41 is revised to read as follows:

Authority: Sections 206, 251 and 252, Pub. L. 106–554, 114 Stat. 2763; 7 U.S.C. 1a, 2, 6f, 6j, 7a–2, 12a; 15 U.S.C. 78g(c)(2).

2. The part heading for Part 41 is revised to read as set forth above.

§ 41.41 [Redesignated]

3. In Part 41, § 41.41 is redesignated as § 41.3.

4. Part 41 is amended by adding Subpart E (§§ 41.42 through 41.49) to read as follows:

Subpart E—Customer Accounts and Margin Requirements

Sec.

41.42 Customer margin requirements for security futures—authority, purpose, interpretation, and scope.
41.43 Definitions.
41.44 General provisions.
41.45 Required margin.
41.46 Type, form and use of margin.
41.47 Withdrawal of margin.
41.48 Undermargined accounts.
41.49 Filing proposed margin rule changes with the Commission.

Subpart E—Customer Accounts and Margin Requirements

§ 41.42 Customer margin requirements for security futures—authority, purpose, interpretation, and scope.

(a) *Authority and purpose.* Subpart E, §§ 41.42 through 41.49, and 17 CFR 242.400 through 242.406 ("this Regulation") are issued by the Commodity Futures Trading Commission ("Commission") jointly with the Securities and Exchange Commission ("SEC"), pursuant to authority delegated by the Board of Governors of the Federal Reserve System under section 7(c)(2)(A) of the Securities Exchange Act of 1934 ("Exchange Act"). The principal purpose of this Regulation (Subpart E, §§ 41.42 through 41.49) is to regulate customer margin collected by brokers, dealers, and members of national securities exchanges, including futures commission merchants required to register as brokers or dealers under section 15(b)(11) of the Exchange Act, relating to security futures.

(b) *Interpretation.* This Regulation (Subpart E, §§ 41.42 through 41.49) shall be jointly interpreted by the SEC and the Commission, consistent with the criteria set forth in clauses (i) through (iv) of section 7(c)(2)(B) of the Exchange Act and the provisions of Regulation T (12 CFR part 220).

(c) *Scope.*

(1) This Regulation (Subpart E, §§ 41.42 through 41.49) does not preclude a self-regulatory authority, under rules that are effective in accordance with section 19(b)(2) of the Exchange Act or section 19(b)(7) of the Exchange Act and, as applicable, section 5c(c) of the Commodity Exchange Act ("Act"), or a security futures intermediary from imposing additional margin requirements on security futures, including higher initial or maintenance margin levels, consistent with this Regulation (Subpart E, §§ 41.42 through 41.49), or from taking appropriate action to preserve its financial integrity.

(2) This Regulation (Subpart E, §§ 41.42 through 41.49) does not apply to:

(i) Financial relations between a customer and a security futures intermediary to the extent that they comply with a portfolio margining system under rules that meet the criteria set forth in section 7(c)(2)(B) of the Exchange Act and that are effective in accordance with section 19(b)(2) of the Exchange Act and, as applicable, section 5c(c) of the Act;

(ii) Financial relations between a security futures intermediary and a foreign person involving security futures traded on or subject to the rules of a foreign board of trade;

(iii) Margin requirements that clearing agencies registered under section 17A of the Exchange Act or derivatives clearing organizations registered under section 5b of the Act impose on their members;

(iv) Financial relations between a security futures intermediary and a person based on a good faith determination by the security futures intermediary that such person is an exempted person; and

(v) Financial relations between a security futures intermediary and, or arranged by a security futures intermediary for, a person relating to trading in security futures by such person for its own account, if such person:

(A) Is a member of a national securities exchange or national securities association registered pursuant to section 15A(a) of the Exchange Act; and

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(B) Is registered with such exchange or such association as a security futures dealer pursuant to rules that are effective in accordance with section 19(b)(2) of the Exchange Act and, as applicable, section 5c(c) of the Act, that:

(*1*) Require such member to be registered as a floor trader or a floor broker with the Commission under section 4f(a)(1) of the Act, or as a dealer with the SEC under section 15(b) of the Exchange Act;

(*2*) Require such member to maintain records sufficient to prove compliance with this paragraph (c)(2)(v) and the rules of the exchange or association of which it is a member;

(*3*) Require such member to hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis; and

(*4*) Provide for disciplinary action, including revocation of such member's registration as a security futures dealer, for such member's failure to comply with this Regulation (Subpart E, §§ 41.42 through 41.49) or the rules of the exchange or association.

(d) *Exemption.* The Commission may exempt, either unconditionally or on specified terms and conditions, financial relations involving any security futures intermediary, customer, position, or transaction, or any class of security futures intermediaries, customers, positions, or transactions, from one or more requirements of this Regulation (Subpart E, §§ 41.42 through 41.49), if the Commission determines that such exemption is necessary or appropriate in the public interest and consistent with the protection of customers. An exemption granted pursuant to this paragraph shall not operate as an exemption from any SEC rules. Any exemption that may be required from such rules must be obtained separately from the SEC.

§ 41.43 Definitions.

(a) For purposes of this Regulation (Subpart E, §§ 41.42 through 41.49) only, the following terms shall have the meanings set forth in this section.

(1) *Applicable margin rules* and *margin rules applicable to an account* mean the rules and regulations applicable to financial relations between a security futures intermediary and a customer with respect to security futures and related positions carried in a securities account or futures account as provided in § 41.44(a) of this subpart.

(2) *Broker* shall have the meaning provided in section 3(a)(4) of the Exchange Act.

(3) *Contract multiplier* means the number of units of a narrow-based security index expressed as a dollar amount, in accordance with the terms of the security future contract.

(4) *Current market value* means, on any day:

(i) With respect to a security future:

(A) If the instrument underlying such security future is a stock, the product of the daily settlement price of such security future as shown by any regularly published reporting or quotation service, and the applicable number of shares per contract; or

(B) If the instrument underlying such security future is a narrow-based security index, as defined in section 1a(25)(A) of the Act, the product of the daily settlement price of such security future as shown by any regularly published reporting or quotation service, and the applicable contract multiplier.

(ii) With respect to a security other than a security future, the most recent closing sale price of the security, as shown by any regularly published reporting or quotation service. If there is no recent closing sale price, the security futures intermediary may use any reasonable estimate of the market value of the security as of the most recent close of business.

(5) *Customer* excludes an exempted person and includes:

(i) Any person or persons acting jointly:

(A) On whose behalf a security futures intermediary effects a security futures transaction or carries a security futures position; or

(B) Who would be considered a customer of the security futures intermediary according to the ordinary usage of the trade;

(ii) Any partner in a security futures intermediary that is organized as a partnership who would be considered a customer of the security futures intermediary absent the partnership relationship; and

(iii) Any joint venture in which a security futures intermediary participates and which would be considered a customer of the security futures intermediary if the security futures intermediary were not a participant.

(6) *Daily settlement price* means, with respect to a security future, the settlement price of such security future determined at the close of trading each day, under the rules of the applicable exchange, clearing agency, or derivatives clearing organization.

(7) *Dealer* shall have the meaning provided in section 3(a)(5) of the Exchange Act.

(8) *Equity* means the equity or margin equity in a securities or futures account, as computed in accordance with the margin rules applicable to the account and subject to adjustment under § 41.46(c), (d) and (e) of this subpart.

(9) *Exempted person* means:

(i) A member of a national securities exchange, a registered broker or dealer, or a registered futures commission merchant, a substantial portion of whose business consists of transactions in securities, commodity futures, or commodity options with persons other than brokers, dealers, futures commission merchants, floor brokers, or floor traders, and includes a person who:

(A) Maintains at least 1000 active accounts on an annual basis for persons other than brokers, dealers, persons associated with a broker or dealer, futures commission merchants, floor brokers, floor traders, and persons affiliated with a futures commission merchant, floor broker, or floor trader that are effecting transactions in securities, commodity futures, or commodity options;

(B) Earns at least $10 million in gross revenues on an annual basis from transactions in securities, commodity futures, or commodity options with persons other than brokers, dealers, persons associated with a broker or dealer, futures commission merchants, floor brokers, floor traders, and persons affiliated with a futures commission merchant, floor broker, or floor trader; or

(C) Earns at least 10 percent of its gross revenues on an annual basis from transactions in securities, commodity futures, or commodity options with persons other than brokers, dealers, persons associated with a broker or dealer, futures commission merchants, floor brokers, floor traders, and persons affiliated with a futures commission merchant, floor broker, or floor trader.

(ii) For purposes of paragraph (a)(9)(i) of this section only, *persons affiliated with* a futures commission merchant, floor broker, or floor trader means any partner, officer, director, or branch manager of such futures commission merchant, floor broker, or floor trader (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such futures commission merchant, floor broker, or floor trader, or any employee of such a futures commission merchant, floor broker, or floor trader.

(iii) A member of a national securities exchange, a registered broker or dealer, or a registered futures commission merchant that has been in existence for less than one year may meet the

definition of exempted person based on a six-month period.

(10) *Exempted security* shall have the meaning provided in section 3(a)(12) of the Exchange Act.

(11) *Floor broker* shall have the meaning provided in section 1a(16) of the Act.

(12) *Floor trader* shall have the meaning provided in section 1a(17) of the Act.

(13) *Futures account* shall have the meaning provided in § 1.3(vv) of this chapter.

(14) *Futures commission merchant* shall have the meaning provided in section 1a(20) of the Act.

(15) *Good faith*, with respect to making a determination or accepting a statement concerning financial relations with a person, means that the security futures intermediary is alert to the circumstances surrounding such financial relations, and if in possession of information that would cause a prudent person not to make the determination or accept the notice or certification without inquiry, investigates and is satisfied that it is correct.

(16) *Listed option* means a put or call option that is:

(i) Issued by a clearing agency that is registered under section 17A of the Exchange Act or cleared and guaranteed by a derivatives clearing organization that is registered under section 5b of the Act; and

(ii) Traded on or subject to the rules of a self-regulatory authority.

(17) *Margin call* means a demand by a security futures intermediary to a customer for a deposit of cash, securities or other assets to satisfy the required margin for security futures or related positions or a special margin requirement.

(18) *Margin deficiency* means the amount by which the required margin in an account is not satisfied by the equity in the account, as computed in accordance with § 41.46 of this subpart.

(19) *Margin equity security* shall have the meaning provided in Regulation T.

(20) *Margin security* shall have the meaning provided in Regulation T.

(21) *Member* shall have the meaning provided in section 3(a)(3) of the Exchange Act, and shall include persons registered under section 15(b)(11) of the Exchange Act that are permitted to effect transactions on a national securities exchange without the services of another person acting as executing broker.

(22) *Money market mutual fund* means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 that is considered a money market fund under § 270.2a-7 of this title.

(23) *Persons associated with a broker or dealer* shall have the meaning provided in section 3(a)(18) of the Exchange Act.

(24) *Regulation T* means Regulation T promulgated by the Board of Governors of the Federal Reserve System, 12 CFR part 220, as amended from time to time.

(25) *Regulation T collateral value*, with respect to a security, means the current market value of the security reduced by the percentage of required margin for a position in the security held in a margin account under Regulation T.

(26) *Related position*, with respect to a security future, means any position in an account that is combined with the security future to create an offsetting position as provided in § 41.45(b)(2) of this subpart.

(27) *Related transaction*, with respect to a position or transaction in a security future, means:

(i) Any transaction that creates, eliminates, increases or reduces an offsetting position involving a security future and a related position, as provided in § 41.45(b)(2) of this subpart; or

(ii) Any deposit or withdrawal of margin for the security future or a related position, except as provided in § 41.47(b) of this subpart.

(28) *Securities account* shall have the meaning provided in § 1.3(ww) of this chapter.

(29) *Security futures intermediary* means any creditor as defined in Regulation T with respect to its financial relations with any person involving security futures, including:

(i) Any futures commission merchant;

(ii) Any partner, officer, director, or branch manager (or person occupying a similar status or performing similar functions) of a futures commission merchant;

(iii) Any person directly or indirectly controlling, controlled by, or under common control with (except for business entities controlling or under common control with) a futures commission merchant; and

(iv) Any employee of a futures commission merchant (except an employee whose functions are solely clerical or ministerial).

(30) *Self-regulatory authority* means a national securities exchange registered under section 6 of the Exchange Act, a national securities association registered under section 15A of the Exchange Act, a contract market registered under section 5 of the Act or section 5f of the Act, or a derivatives transaction execution facility registered under section 5a of the Act.

(31) *Special margin requirement* shall have the meaning provided in § 41.46(e)(1)(ii) of this subpart.

(32) *Variation settlement* means any credit or debit to a customer account, made on a daily or intraday basis, for the purpose of marking to market a security future or any other contract that is:

(i) Issued by a clearing agency that is registered under section 17A of the Exchange Act or cleared and guaranteed by a derivatives clearing organization that is registered under section 5b of the Act; and

(ii) Traded on or subject to the rules of a self-regulatory authority.

(b) Terms used in this Regulation (Subpart E, §§ 41.42 through 41.49) and not otherwise defined in this section shall have the meaning set forth in the margin rules applicable to the account.

(c) Terms used in this Regulation (Subpart E, §§ 41.42 through 41.49) and not otherwise defined in this section or in the margin rules applicable to the account shall have the meaning set forth in the Exchange Act and the Act; if the definitions of a term in the Exchange Act and the Act are inconsistent as applied in particular circumstances, such term shall have the meaning set forth in rules, regulations, or interpretations jointly promulgated by the SEC and the Commission.

§ 41.44 General provisions.

(a) *Applicable margin rules.* Except to the extent inconsistent with this Regulation (Subpart E, §§ 41.42 through 41.49):

(1) A security futures intermediary that carries a security future on behalf of a customer in a securities account shall record and conduct all financial relations with respect to such security future and related positions in accordance with Regulation T and the margin rules of the self-regulatory authorities of which the security futures intermediary is a member.

(2) A security futures intermediary that carries a security future on behalf of a customer in a futures account shall record and conduct all financial relations with respect to such security future and related positions in accordance with the margin rules of the self-regulatory authorities of which the security futures intermediary is a member.

(b) *Separation and consolidation of accounts.*

(1) The requirements for security futures and related positions in one account may not be met by considering items in any other account, except as

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permitted or required under paragraph (b)(2) of this section or applicable margin rules. If withdrawals of cash, securities or other assets deposited as margin are permitted under this Regulation (Subpart E, §§ 41.42 through 41.49), bookkeeping entries shall be made when such cash, securities, or assets are used for purposes of meeting requirements in another account.

(2) Notwithstanding paragraph (b)(1) of this section, the security futures intermediary shall consider all futures accounts in which security futures and related positions are held that are within the same regulatory classification or account type and are owned by the same customer to be a single account for purposes of this Regulation (Subpart E, §§ 41.42 through 41.49). The security futures intermediary may combine such accounts with other futures accounts that are within the same regulatory classification or account type and are owned by the same customer for purposes of computing a customer's overall margin requirement, as permitted or required by applicable margin rules.

(c) *Accounts of partners.* If a partner of the security futures intermediary has an account with the security futures intermediary in which security futures or related positions are held, the security futures intermediary shall disregard the partner's financial relations with the firm (as shown in the partner's capital and ordinary drawing accounts) in calculating the margin or equity of any such account.

(d) *Contribution to joint venture.* If an account in which security futures or related positions are held is the account of a joint venture in which the security futures intermediary participates, any interest of the security futures intermediary in the joint account in excess of the interest which the security futures intermediary would have on the basis of its right to share in the profits shall be margined in accordance with this Regulation (Subpart E, §§ 41.42 through 41.49).

(e) *Extensions of credit.* (1) No security futures intermediary may extend or maintain credit to or for any customer for the purpose of evading or circumventing any requirement under this Regulation (Subpart E, §§ 41.42 through 41.49).

(2) A security futures intermediary may arrange for the extension or maintenance of credit to or for any customer by any person, provided that the security futures intermediary does not willfully arrange credit that would constitute a violation of Regulation T, U or X of the Board of Governors of the Federal Reserve System (12 CFR parts 220, 221, and 224) by such person.

(f) *Change in exempted person status.* Once a person ceases to qualify as an exempted person, it shall notify the security futures intermediary of this fact before entering into any new security futures transaction or related transaction that would require additional margin to be deposited under this Regulation (Subpart E, §§ 41.42 through 41.49). Financial relations with respect to any such transactions shall be subject to the provisions of this Regulation (Subpart E, §§ 41.42 through 41.49).

§ 41.45 Required margin.

(a) *Applicability.* Each security futures intermediary shall determine the required margin for the security futures and related positions held on behalf of a customer in a securities account or futures account as set forth in this section.

(b) *Required margin.*—(1) *General rule.* The required margin for each long or short position in a security future shall be twenty (20) percent of the current market value of such security future.

(2) *Offsetting positions.* Notwithstanding the margin levels specified in paragraph (b)(1) of this section, a self-regulatory authority may set the required initial or maintenance margin level for an offsetting position involving security futures and related positions at a level lower than the level that would be required under paragraph (b)(1) of this section if such positions were margined separately, pursuant to rules that meet the criteria set forth in section 7(c)(2)(B) of the Exchange Act and are effective in accordance with section 19(b)(2) of the Exchange Act and, as applicable, section 5c(c) of the Act.

(c) *Procedures for certain margin level adjustments.* An exchange registered under section 6(g) of the Exchange Act, or a national securities association registered under section 15A(k) of the Exchange Act, may raise or lower the required margin level for a security future to a level not lower than that specified in this section, in accordance with section 19(b)(7) of the Exchange Act.

§ 41.46 Type, form and use of margin.

(a) *When margin is required.* Margin is required to be deposited whenever the required margin for security futures and related positions in an account is not satisfied by the equity in the account, subject to adjustment under paragraph (c) of this section.

(b) *Acceptable margin deposits.* (1) The required margin may be satisfied by a deposit of cash, margin securities (subject to paragraph (b)(2) of this section), exempted securities, any other asset permitted under Regulation T to satisfy a margin deficiency in a securities margin account, or any combination thereof, each as valued in accordance with paragraph (c) of this section.

(2) Shares of a money market mutual fund may be accepted as a margin deposit for purposes of this Regulation (Subpart E, §§ 41.42 through 41.49), *Provided that:*

(i) The customer waives any right to redeem the shares without the consent of the security futures intermediary and instructs the fund or its transfer agent accordingly;

(ii) The security futures intermediary (or clearing agency or derivatives clearing organization with which the shares are deposited as margin) obtains the right to redeem the shares in cash, promptly upon request; and

(iii) The fund agrees to satisfy any conditions necessary or appropriate to ensure that the shares may be redeemed in cash, promptly upon request.

(c) *Adjustments.*— (1) *Futures accounts.* For purposes of this section, the equity in a futures account shall be computed in accordance with the margin rules applicable to the account, subject to the following:

(i) A security future shall have no value;

(ii) Each net long or short position in a listed option on a contract for future delivery shall be valued in accordance with the margin rules applicable to the account;

(iii) Except as permitted in paragraph (e) of this section, each margin equity security shall be valued at an amount no greater than its Regulation T collateral value;

(iv) Each other security shall be valued at an amount no greater than its current market value reduced by the percentage specified for such security in § 240.15c3–1(c)(2)(vi) of this title;

(v) Freely convertible foreign currency may be valued at an amount no greater than its daily marked-to-market U.S. dollar equivalent;

(vi) Variation settlement receivable (or payable) by an account at the close of trading on any day shall be treated as a credit (or debit) to the account on that day; and

(vii) Each other acceptable margin deposit or component of equity shall be valued at an amount no greater than its value under Regulation T.

(2) *Securities accounts.* For purposes of this section, the equity in a securities account shall be computed in accordance with the margin rules applicable to the account, subject to the following:

(i) A security future shall have no value;

(ii) Freely convertible foreign currency may be valued at an amount no greater than its daily mark-to-market U.S. dollar equivalent; and

(iii) Variation settlement receivable (or payable) by an account at the close of trading on any day shall be treated as a credit (or debit) to the account on that day.

(d) *Satisfaction restriction.* Any transaction, position or deposit that is used to satisfy the required margin for security futures or related positions under this Regulation (Subpart E, §§ 41.42 through 41.49), including a related position, shall be unavailable to satisfy the required margin for any other position or transaction or any other requirement.

(e) *Alternative collateral valuation for margin equity securities in a futures account.*

(1) Notwithstanding paragraph (c)(1)(iii) of this section, a security futures intermediary need not value a margin equity security at its Regulation T collateral value when determining whether the required margin for the security futures and related positions in a futures account is satisfied, *provided that:*

(i) The margin equity security is valued at an amount no greater than the current market value of the security reduced by the lowest percentage level of margin required for a long position in the security held in a margin account under the rules of a national securities exchange registered pursuant to section 6(a) of the Exchange Act;

(ii) Additional margin is required to be deposited on any day when the day's security futures transactions and related transactions would create or increase a margin deficiency in the account if the margin equity securities were valued at their Regulation T collateral value, and shall be for the amount of the margin deficiency so created or increased (a "special margin requirement"); and

(iii) Cash, securities, or other assets deposited as margin for the positions in an account are not permitted to be withdrawn from the account at any time that:

(A) Additional cash, securities, or other assets are required to be deposited as margin under this section for a transaction in the account on the same or a previous day; or

(B) The withdrawal, together with other transactions, deposits, and withdrawals on the same day, would create or increase a margin deficiency if the margin equity securities were valued at their Regulation T collateral value.

(2) All security futures transactions and related transactions on any day shall be combined to determine the amount of a special margin requirement. Additional margin deposited to satisfy a special margin requirement shall be valued at an amount no greater than its Regulation T collateral value.

(3) If the alternative collateral valuation method set forth in paragraph (e) of this section is used with respect to an account in which security futures or related positions are carried:

(i) An account that is transferred from one security futures intermediary to another may be treated as if it had been maintained by the transferee from the date of its origin, if the transferee accepts, in good faith, a signed statement of the transferor (or, if that is not practicable, of the customer), that any margin call issued under this Regulation (Subpart E, §§ 41.42 through 41.49) has been satisfied; and

(ii) An account that is transferred from one customer to another as part of a transaction, not undertaken to avoid the requirements of this Regulation (Subpart E, §§ 41.42 through 41.49), may be treated as if it had been maintained for the transferee from the date of its origin, if the security futures intermediary accepts in good faith and keeps with the transferee account a signed statement of the transferor describing the circumstances for the transfer.

(f) *Guarantee of accounts.* No guarantee of a customer's account shall be given any effect for purposes of determining whether the required margin in an account is satisfied, except as permitted under applicable margin rules.

§ 41.47 Withdrawal of margin.

(a) *By the customer.* Except as otherwise provided in § 41.46(e)(1)(ii) of this subpart, cash, securities, or other assets deposited as margin for positions in an account may be withdrawn, provided that the equity in the account after such withdrawal is sufficient to satisfy the required margin for the security futures and related positions in the account under this Regulation (Subpart E, §§ 41.42 through 41.49).

(b) *By the security futures intermediary.* Notwithstanding paragraph (a) of this section, the security futures intermediary, in its usual practice, may deduct the following items from an account in which security futures or related positions are held if they are considered in computing the balance of such account:

(1) Variation settlement payable, directly or indirectly, to a clearing agency that is registered under section 17A of the Exchange Act or a derivatives clearing organization that is registered under section 5b of the Act;

(2) Interest charged on credit maintained in the account;

(3) Communication or shipping charges with respect to transactions in the account;

(4) Payment of commissions, brokerage, taxes, storage and other charges lawfully accruing in connection with the positions and transactions in the account;

(5) Any service charges that the security futures intermediary may impose; or

(6) Any other withdrawals that are permitted from a securities margin account under Regulation T, to the extent permitted under applicable margin rules.

§ 41.48 Undermargined accounts.

(a) *Failure to satisfy margin call.* If any margin call required by this Regulation (Subpart E, §§ 41.42 through 41.49) is not met in full, the security futures intermediary shall take the deduction required with respect to an undermargined account in computing its net capital under SEC or Commission rules.

(b) *Accounts that liquidate to a deficit.* If at any time there is a liquidating deficit in an account in which security futures are held, the security futures intermediary shall take steps to liquidate positions in the account promptly and in an orderly manner.

(c) *Liquidation of undermargined accounts not required.* Notwithstanding § 41.44(a)(1) of this subpart, § 220.4(d) of Regulation T (12 CFR 220.4(d)) respecting liquidation of positions in lieu of deposit shall not apply with respect to security futures carried in a securities account.

§ 41.49 Filing proposed margin rule changes with the Commission.

(a) *Notification requirement for notice-designated contract markets.* Any self-regulatory authority that is registered with the Commission as a designated contract market under section 5f of the Act shall, when filing a proposed rule change regarding customer margin for security futures with the SEC for approval in accordance with section 19(b)(2) of the Exchange Act, concurrently provide to the Commission a copy of such proposed rule change and any accompanying documentation filed with the SEC.

(b) *Filing requirements under the Act.* Any self-regulatory authority that is

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registered with the Commission as a designated contract market under section 5 of the Act or a derivatives transaction execution facility under section 5a of the Act shall, when filing a proposed rule change regarding customer margin for security futures with the SEC for approval in accordance with section 19(b)(2) of the Exchange Act, submit such proposed rule change to the Commission as follows:

(1) If the self-regulatory authority elects to request the Commission's prior approval for the proposed rule change pursuant to section 5c(c)(2) of the Act, it shall concurrently file the proposed rule change with the Commission in accordance with § 40.5 of this chapter.

(2) If the self-regulatory authority elects to implement a proposed rule change by written certification pursuant to section 5c(c)(1) of the Act, it shall concurrently provide to the Commission a copy of the proposed rule change and any accompanying documentation filed with the SEC. Promptly after obtaining SEC approval for the proposed rule change, such self-regulatory authority shall file its written certification with the Commission in accordance with § 40.6 of this chapter.

Dated: July 31, 2002.

By the Commodity Futures Trading Commission.

Catherine D. Dixon,

Assistant Secretary.

Securities and Exchange Commission

17 CFR Chapter II

In accordance with the foregoing Title 17, chapter II, part 242 of the Code of Federal Regulations is amended as follows:

PART 242—REGULATIONS M AND ATS

1. The authority citation for part 242 is revised to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78mm, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 80a–23, 80a–29, and 80a–37.

2. Part 242 is amended by adding the undesignated center heading "Regulation M" before § 242.100.

3. An undesignated center heading and §§ 242.400 through 242.406 are added to read as follows:

Customer Margin Requirements for Security Futures

Sec.

242.400 Customer margin requirements for security futures—authority, purpose, interpretation, and scope.
242.401 Definitions.
242.402 General provisions.
242.403 Required margin.
242.404 Type, form and use of margin.
242.405 Withdrawal of margin.
242.406 Undermargined accounts.

Customer Margin Requirements for Security Futures

§ 242.400 Customer margin requirements for security futures—authority, purpose, interpretation, and scope.

(a) *Authority and purpose.* Sections 242.400 through 242.406 and 17 CFR 41.42 through 41.49 ("this Regulation, §§ 242.400 through 242.406") are issued by the Securities and Exchange Commission ("Commission") jointly with the Commodity Futures Trading Commission ("CFTC"), pursuant to authority delegated by the Board of Governors of the Federal Reserve System under section 7(c)(2)(A) of the Securities Exchange Act of 1934 ("Act") (15 U.S.C. 78g(c)(2)(A)). The principal purpose of this Regulation (§§ 242.400 through 242.406) is to regulate customer margin collected by brokers, dealers, and members of national securities exchanges, including futures commission merchants required to register as brokers or dealers under section 15(b)(11) of the Act (15 U.S.C. 78o(b)(11)), relating to security futures.

(b) *Interpretation.* This Regulation (§§ 242.400 through 242.406) shall be jointly interpreted by the Commission and the CFTC, consistent with the criteria set forth in clauses (i) through (iv) of section 7(c)(2)(B) of the Act (15 U.S.C. 78g(c)(2)(B)) and the provisions of Regulation T (12 CFR part 220).

(c) *Scope.* (1) This Regulation (§§ 242.400 through 242.406) does not preclude a self-regulatory authority, under rules that are effective in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) or section 19(b)(7) of the Act (15 U.S.C. 78s(b)(7)) and, as applicable, section 5c(c) of the Commodity Exchange Act ("CEA") (7 U.S.C. 7a–2(c)), or a security futures intermediary from imposing additional margin requirements on security futures, including higher initial or maintenance margin levels, consistent with this Regulation (§§ 242.400 through 242.406), or from taking appropriate action to preserve its financial integrity.

(2) This Regulation (§§ 242.400 through 242.406) does not apply to:

(i) Financial relations between a customer and a security futures intermediary to the extent that they comply with a portfolio margining system under rules that meet the criteria set forth in section 7(c)(2)(B) of the Act (15 U.S.C. 78g(c)(2)(B)) and that are effective in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) and, as applicable, section 5c(c) of the CEA (7 U.S.C. 7a–2(c));

(ii) Financial relations between a security futures intermediary and a foreign person involving security futures traded on or subject to the rules of a foreign board of trade;

(iii) Margin requirements that clearing agencies registered under section 17A of the Exchange Act (15 U.S.C. 78q–1) or derivatives clearing organizations registered under section 5b of the CEA (7 U.S.C. 7a–1) impose on their members;

(iv) Financial relations between a security futures intermediary and a person based on a good faith determination by the security futures intermediary that such person is an exempted person; and

(v) Financial relations between a security futures intermediary and, or arranged by a security futures intermediary for, a person relating to trading in security futures by such person for its own account, if such person:

(A) Is a member of a national securities exchange or national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78o–3(a)); and

(B) Is registered with such exchange or such association as a security futures dealer pursuant to rules that are effective in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) and, as applicable, section 5c(c) of the CEA (7 U.S.C. 7a–2(c)), that:

(*1*) Require such member to be registered as a floor trader or a floor broker with the CFTC under Section 4f(a)(1) of the CEA (7 U.S.C. 6f(a)(1)), or as a dealer with the Commission under section 15(b) of the Act (15 U.S.C. 78o(b));

(*2*) Require such member to maintain records sufficient to prove compliance with this paragraph (c)(2)(v) and the rules of the exchange or association of which it is a member;

(*3*) Require such member to hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis; and

(*4*) Provide for disciplinary action, including revocation of such member's registration as a security futures dealer, for such member's failure to comply with this Regulation (§§ 242.400 through 242.406) or the rules of the exchange or association.

(d) *Exemption.* The Commission may exempt, either unconditionally or on specified terms and conditions, financial relations involving any security futures intermediary, customer, position, or transaction, or any class of security futures intermediaries, customers, positions, or transactions, from one or more requirements of this Regulation (§§ 242.400 through 242.406), if the Commission determines that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors. An exemption granted pursuant to this paragraph shall not operate as an exemption from any CFTC rules. Any exemption that may be required from such rules must be obtained separately from the CFTC.

§ 242.401 Definitions.

(a) For purposes of this Regulation (§§ 242.400 through 242.406) only, the following terms shall have the meanings set forth in this section.

(1) *Applicable margin rules* and *margin rules applicable to an account* mean the rules and regulations applicable to financial relations between a security futures intermediary and a customer with respect to security futures and related positions carried in a securities account or futures account as provided in § 242.402(a) of this Regulation (§§ 242.400 through 242.406).

(2) *Broker* shall have the meaning provided in section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)).

(3) *Contract multiplier* means the number of units of a narrow-based security index expressed as a dollar amount, in accordance with the terms of the security future contract.

(4) *Current market value* means, on any day:

(i) With respect to a security future:

(A) If the instrument underlying such security future is a stock, theproduct of the daily settlement price of such security future as shown by any regularly published reporting or quotation service, and the applicable number of shares per contract; or

(B) If the instrument underlying such security future is a narrow-based security index, as defined in section 3(a)(55)(B) of the Act (15 U.S.C. 78c(a)(55)(B)), the product of the daily settlement price of such security future as shown by any regularly published reporting or quotation service, and the applicable contract multiplier.

(ii) With respect to a security other than a security future, the most recent closing sale price of the security, as shown by any regularly published reporting or quotation service. If there is no recent closing sale price, the security futures intermediary may use any reasonable estimate of the market value of the security as of the most recent close of business.

(5) *Customer* excludes an exempted person and includes:

(i) Any person or persons acting jointly:

(A) On whose behalf a security futures intermediary effects a security futures transaction or carries a security futures position; or

(B) Who would be considered a customer of the security futures intermediary according to the ordinary usage of the trade;

(ii) Any partner in a security futures intermediary that is organized as a partnership who would be considered a customer of the security futures intermediary absent the partnership relationship; and

(iii) Any joint venture in which a security futures intermediary participates and which would be considered a customer of the security futures intermediary if the security futures intermediary were not a participant.

(6) *Daily settlement price* means, with respect to a security future, the settlement price of such security future determined at the close of trading each day, under the rules of the applicable exchange, clearing agency, or derivatives clearing organization.

(7) *Dealer* shall have the meaning provided in section 3(a)(5) of the Act (15 U.S.C. 78c(a)(5)).

(8) *Equity* means the equity or margin equity in a securities or futures account, as computed in accordance with the margin rules applicable to the account and subject to adjustment under § 242.404(c), (d) and (e) of this Regulation (§§ 242.400 through 242.406).

(9) *Exempted person* means:

(i) A member of a national securities exchange, a registered broker or dealer, or a registered futures commission merchant, a substantial portion of whose business consists of transactions in securities, commodity futures, or commodity options with persons other than brokers, dealers, futures commission merchants, floor brokers, or floor traders, and includes a person who:

(A) Maintains at least 1000 active accounts on an annual basis for persons other than brokers, dealers, persons associated with a broker or dealer, futures commission merchants, floor brokers, floor traders, and persons affiliated with a futures commission merchant, floor broker, or floor trader that are effecting transactions in securities, commodity futures, or commodity options;

(B) Earns at least $10 million in gross revenues on an annual basis from transactions in securities, commodity futures, or commodity options with persons other than brokers, dealers, persons associated with a broker or dealer, futures commission merchants, floor brokers, floor traders, and persons affiliated with a futures commission merchant, floor broker, or floor trader; or

(C) Earns at least 10 percent of its gross revenues on an annual basis from transactions in securities, commodity futures, or commodity options with persons other than brokers, dealers, persons associated with a broker or dealer, futures commission merchants, floor brokers, floor traders, and persons affiliated with a futures commission merchant, floor broker, or floor trader.

(ii) For purposes of paragraph (a)(9)(i) of this section only, persons affiliated with a futures commission merchant, floor broker, or floor trader means any partner, officer, director, or branch manager of such futures commission merchant, floor broker, or floor trader (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such futures commission merchant, floor broker, or floor trader, or any employee of such a futures commission merchant, floor broker, or floor trader.

(iii) A member of a national securities exchange, a registered broker or dealer, or a registered futures commission merchant that has been in existence for less than one year may meet the definition of exempted person based on a six-month period.

(10) *Exempted security* shall have the meaning provided in section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)).

(11) *Floor broker* shall have the meaning provided in Section 1a(16) of the CEA (7 U.S.C. 1a(16)).

(12) *Floor trader* shall have the meaning provided in Section 1a(17) of the CEA (7 U.S.C. 1a(17)).

(13) *Futures account* shall have the meaning provided in § 240.15c3–3(a) of this chapter.

(14) *Futures commission merchant* shall have the meaning provided in Section 1a of the CEA (7 U.S.C. 1a).

(15) *Good faith*, with respect to making a determination or accepting a statement concerning financial relations with a person, means that the security futures intermediary is alert to the circumstances surrounding such financial relations, and if in possession of information that would cause a prudent person not to make the determination or accept the notice or certification without inquiry, investigates and is satisfied that it is correct.

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(16) *Listed option* means a put or call option that is:

(i) Issued by a clearing agency that is registered under section 17A of the Act (15 U.S.C. 17q–1) or cleared and guaranteed by a derivatives clearing organization that is registered under Section 5b of the CEA (7 U.S.C. 7a–1); and

(ii) Traded on or subject to the rules of a self-regulatory authority.

(17) *Margin call* means a demand by a security futures intermediary to a customer for a deposit of cash, securities or other assets to satisfy the required margin for security futures or related positions or a special margin requirement.

(18) *Margin deficiency* means the amount by which the required margin in an account is not satisfied by the equity in the account, as computed in accordance with § 242.404 of this Regulation (§§ 242.400 through 242.406).

(19) *Margin equity security* shall have the meaning provided in Regulation T.

(20) *Margin security* shall have the meaning provided in Regulation T.

(21) *Member* shall have the meaning provided in section 3(a)(3) of the Act (15 U.S.C. 78c(a)(3)), and shall include persons registered under section 15(b)(11) of the Act (15 U.S.C. 78o(b)(11)) that are permitted to effect transactions on a national securities exchange without the services of another person acting as executing broker.

(22) *Money market mutual fund* means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8) that is considered a money market fund under § 270.2a–7 of this chapter.

(23) *Persons associated with a broker or dealer* shall have the meaning provided in section 3(a)(18) of the Act (15 U.S.C. 78c(a)(18)).

(24) *Regulation T* means Regulation T promulgated by the Board of Governors of the Federal Reserve System, 12 CFR part 220, as amended from time to time.

(25) *Regulation T collateral value*, with respect to a security, means the current market value of the security reduced by the percentage of required margin for a position in the security held in a margin account under Regulation T.

(26) *Related position*, with respect to a security future, means any position in an account that is combined with the security future to create an offsetting position as provided in § 242.403(b)(2) of this Regulation (§§ 242.400 through 242.406).

(27) *Related transaction*, with respect to a position or transaction in a security future, means:

(i) Any transaction that creates, eliminates, increases or reduces an offsetting position involving a security future and a related position, as provided in § 242.403(b)(2) of this Regulation (§§ 242.400 through 242.406); or

(ii) Any deposit or withdrawal of margin for the security future or a related position, except as provided in § 242.405(b) of this Regulation (§§ 242.400 through 242.406).

(28) *Securities account* shall have the meaning provided in § 240.15c3–3(a) of this chapter.

(29) *Security futures intermediary* means any creditor as defined in Regulation T with respect to its financial relations with any person involving security futures.

(30) *Self-regulatory authority* means a national securities exchange registered under section 6 of the Act (15 U.S.C. 78f), a national securities association registered under section 15A of the Act (15 U.S.C. 78o–3), a contract market registered under Section 5 of the CEA (7 U.S.C. 7) or Section 5f of the CEA (7 U.S.C. 7b–1), or a derivatives transaction execution facility registered under Section 5a of the CEA (7 U.S.C. 7a).

(31) *Special margin requirement* shall have the meaning provided in § 242.404(e)(1)(ii) of this Regulation (§§ 242.400 through 242.406).

(32) *Variation settlement* means any credit or debit to a customer account, made on a daily or intraday basis, for the purpose of marking to market a security future or any other contract that is:

(i) Issued by a clearing agency that is registered under section 17A of the Act (15 U.S.C. 78q–1) or cleared and guaranteed by a derivatives clearing organization that is registered under Section 5b of the CEA (7 U.S.C. 7a–1); and

(ii) Traded on or subject to the rules of a self-regulatory authority.

(b) Terms used in this Regulation (§§ 242.400 through 242.406) and not otherwise defined in this section shall have the meaning set forth in the margin rules applicable to the account.

(c) Terms used in this Regulation (§§ 242.400 through 242.406) and not otherwise defined in this section or in the margin rules applicable to the account shall have the meaning set forth in the Act and the CEA; if the definitions of a term in the Act and the CEA are inconsistent as applied in particular circumstances, such term shall have the meaning set forth in rules, regulations, or interpretations jointly promulgated by the Commission and the CFTC.

§ 242.402 General provisions.

(a) *Applicable margin rules.* Except to the extent inconsistent with this Regulation (§§ 242.400 through 242.406):

(1) A security futures intermediary that carries a security future on behalf of a customer in a securities account shall record and conduct all financial relations with respect to such security future and related positions in accordance with Regulation T and the margin rules of the self-regulatory authorities of which the security futures intermediary is a member.

(2) A security futures intermediary that carries a security future on behalf of a customer in a futures account shall record and conduct all financial relations with respect to such security future and related positions in accordance with the margin rules of the self-regulatory authorities of which the security futures intermediary is a member.

(b) *Separation and consolidation of accounts.*

(1) The requirements for security futures and related positions in one account may not be met by considering items in any other account, except as permitted or required under paragraph (b)(2) of this section or applicable margin rules. If withdrawals of cash, securities or other assets deposited as margin are permitted under this Regulation (§§ 242.400 through 242.406), bookkeeping entries shall be made when such cash, securities, or assets are used for purposes of meeting requirements in another account.

(2) Notwithstanding paragraph (b)(1) of this section, the security futures intermediary shall consider all futures accounts in which security futures and related positions are held that are within the same regulatory classification or account type and are owned by the same customer to be a single account for purposes of this Regulation (§§ 242.400 through 242.406). The security futures intermediary may combine such accounts with other futures accounts that are within the same regulatory classification or account type and are owned by the same customer for purposes of computing a customer's overall margin requirement, as permitted or required by applicable margin rules.

(c) *Accounts of partners.* If a partner of the security futures intermediary has an account with the security futures intermediary in which security futures or related positions are held, the security futures intermediary shall disregard the partner's financial relations with the firm (as shown in the partner's capital and ordinary drawing accounts) in calculating the margin or equity of any such account.

(d) *Contribution to joint venture.* If an account in which security futures or related positions are held is the account of a joint venture in which the security futures intermediary participates, any interest of the security futures intermediary in the joint account in excess of the interest which the security futures intermediary would have on the basis of its right to share in the profits shall be margined in accordance with this Regulation (§§ 242.400 through 242.406).

(e) *Extensions of credit.* (1) No security futures intermediary may extend or maintain credit to or for any customer for the purpose of evading or circumventing any requirement under this Regulation (§§ 242.400 through 242.406).

(2) A security futures intermediary may arrange for the extension or maintenance of credit to or for any customer by any person, provided that the security futures intermediary does not willfully arrange credit that would constitute a violation of Regulation T, U or X of the Board of Governors of the Federal Reserve System (12 CFR parts 220, 221, and 224) by such person.

(f) *Change in exempted person status.* Once a person ceases to qualify as an exempted person, it shall notify the security futures intermediary of this fact before entering into any new security futures transaction or related transaction that would require additional margin to be deposited under this Regulation (§§ 242.400 through 242.406). Financial relations with respect to any such transactions shall be subject to the provisions of this Regulation (§§ 242.400 through 242.406).

§ 242.403 Required margin.

(a) *Applicability.* Each security futures intermediary shall determine the required margin for the security futures and related positions held on behalf of a customer in a securities account or futures account as set forth in this section.

(b) *Required margin.*—(1) *General rule.* The required margin for each long or short position n a security future shall be twenty (20) percent of the current market value of such security future.

(2) *Offsetting positions.* Notwithstanding the margin levels specified in paragraph (b)(1) of this section, a self-regulatory authority may set the required initial or maintenance margin level for an offsetting position involving security futures and related positions at a level lower than the level that would be required under paragraph (b)(1) of this section if such positions were margined separately, pursuant to rules that meet the criteria set forth in section 7(c)(2)(B) of the Act (15 U.S.C. 78g(c)(2)(B)) and are effective in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) and, as applicable, Section 5c(c) of the CEA (7 U.S.C. 7a–2(c)).

(c) *Procedures for certain margin level adjustments.* An exchange registered under section 6(g) of the Act (15 U.S.C. 78f(g)), or a national securities association registered under section 15A(k) of the Act (15 U.S.C. 78o–3(k)), may raise or lower the required margin level for a security future to a level not lower than that specified in this section, in accordance with section 19(b)(7) of the Act (15 U.S.C. 78s(b)(7)).

§ 242.404 Type, form and use of margin.

(a) *When margin is required.* Margin is required to be deposited whenever the required margin for security futures and related positions in an account is not satisfied by the equity in the account, subject to adjustment under paragraph (c) of this section.

(b) *Acceptable margin deposits.* (1) The required margin may be satisfied by a deposit of cash, margin securities (subject to paragraph (b)(2) of this section), exempted securities, any other asset permitted under Regulation T to satisfy a margin deficiency in a securities margin account, or any combination thereof, each as valued in accordance with paragraph (c) of this section.

(2) Shares of a money market mutual fund may be accepted as a margin deposit for purposes of this Regulation (§§ 242.400 through 242.406), *provided that:*

(i) The customer waives any right to redeem the shares without the consent of the security futures intermediary and instructs the fund or its transfer agent accordingly;

(ii) The security futures intermediary (or clearing agency or derivatives clearing organization with which the shares are deposited as margin) obtains the right to redeem the shares in cash, promptly upon request; and

(iii) The fund agrees to satisfy any conditions necessary or appropriate to ensure that the shares may be redeemed in cash, promptly upon request.

(c) *Adjustments.*

(1) *Futures accounts.* For purposes of this section, the equity in a futures account shall be computed in accordance with the margin rules applicable to the account, subject to the following:

(i) A security future shall have no value;

(ii) Each net long or short position in a listed option on a contract for future delivery shall be valued in accordance with the margin rules applicable to the account;

(iii) Except as permitted in paragraph (e) of this section, each margin equity security shall be valued at an amount no greater than its Regulation T collateral value;

(iv) Each other security shall be valued at an amount no greater than its current market value reduced by the percentage specified for such security in § 240.15c3–1(c)(2)(vi) of this chapter;

(v) Freely convertible foreign currency may be valued at an amount no greater than its daily marked-to-market U.S. dollar equivalent;

(vi) Variation settlement receivable (or payable) by an account at the close of trading on any day shall be treated as a credit (or debit) to the account on that day; and

(vii) Each other acceptable margin deposit or component of equity shall be valued at an amount no greater than its value under Regulation T.

(2) *Securities accounts.* For purposes of this section, the equity in a securities account shall be computed in accordance with the margin rules applicable to the account, subject to the following:

(i) A security future shall have no value;

(ii) Freely convertible foreign currency may be valued at an amount no greater than its daily mark-to-market U.S. dollar equivalent; and

(iii) Variation settlement receivable (or payable) to an account at the close of trading on any day shall be treated as a credit (or debit) by the account on that day.

(d) *Satisfaction restriction.* Any transaction, position or deposit that is used to satisfy the required margin for security futures or related positions under this Regulation (§§ 242.400 through 242.406), including a related position, shall be unavailable to satisfy the required margin for any other position or transaction or any other requirement.

(e) *Alternative collateral valuation for margin equity securities in a futures account.*

(1) Notwithstanding paragraph (c)(1)(iii) of this section, a security futures intermediary need not value a margin equity security at its Regulation T collateral value when determining whether the required margin for the security futures and related positions in

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a futures account is satisfied, *provided that:*

(i) The margin equity security is valued at an amount no greater than the current market value of the security reduced by the lowest percentage level of margin required for a long position in the security held in a margin account under the rules of a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a));

(ii) Additional margin is required to be deposited on any day when the day's security futures transactions and related transactions would create or increase a margin deficiency in the account if the margin equity securities were valued at their Regulation T collateral value, and shall be for the amount of the margin deficiency so created or increased (a "special margin requirement"); and

(iii) Cash, securities, or other assets deposited as margin for the positions in an account are not permitted to be withdrawn from the account at any time that:

(A) Additional cash, securities, or other assets are required to be deposited as margin under this section for a transaction in the account on the same or a previous day; or

(B) The withdrawal, together with other transactions, deposits, and withdrawals on the same day, would create or increase a margin deficiency if the margin equity securities were valued at their Regulation T collateral value.

(2) All security futures transactions and related transactions on any day shall be combined to determine the amount of a special margin requirement. Additional margin deposited to satisfy a special margin requirement shall be valued at an amount no greater than its Regulation T collateral value.

(3) If the alternative collateral valuation method set forth in paragraph (e) of this section is used with respect to an account in which security futures or related positions are carried:

(i) An account that is transferred from one security futures intermediary to another may be treated as if it had been maintained by the transferee from the date of its origin, if the transferee accepts, in good faith, a signed statement of the transferor (or, if that is not practicable, of the customer), that any margin call issued under this Regulation (§§ 242.400 through 242.406) has been satisfied; and

(ii) An account that is transferred from one customer to another as part of a transaction, not undertaken to avoid the requirements of this Regulation (§§ 242.400 through 242.406), may be treated as if it had been maintained for the transferee from the date of its origin, if the security futures intermediary accepts in good faith and keeps with the transferee account a signed statement of the transferor describing the circumstances for the transfer.

(f) *Guarantee of accounts.* No guarantee of a customer's account shall be given any effect for purposes of determining whether the required margin in an account is satisfied, except as permitted under applicable margin rules.

§ 242.405 Withdrawal of margin.

(a) *By the customer.* Except as otherwise provided in § 242.404(e)(1)(ii) of this Regulation (§§ 242.400 through 242.406), cash, securities, or other assets deposited as margin for positions in an account may be withdrawn, provided that the equity in the account after such withdrawal is sufficient to satisfy the required margin for the security futures and related positions in the account under this Regulation (§§ 242.400 through 242.406).

(b) *By the security futures intermediary.* Notwithstanding paragraph (a) of this section, the security futures intermediary, in its usual practice, may deduct the following items from an account in which security futures or related positions are held if they are considered in computing the balance of such account:

(1) Variation settlement payable, directly or indirectly, to a clearing agency that is registered under section 17A of the Act (15 U.S.C. 78q–1) or a derivatives clearing organization that is registered under section 5b of the CEA (7 U.S.C. 7a–1);

(2) Interest charged on credit maintained in the account;

(3) Communication or shipping charges with respect to transactions in the account;

(4) Payment of commissions, brokerage, taxes, storage and other charges lawfully accruing in connection with the positions and transactions in the account;

(5) Any service charges that the security futures intermediary may impose; or

(6) Any other withdrawals that are permitted from a securities margin account under Regulation T, to the extent permitted under applicable margin rules.

§ 242.406 Undermargined accounts.

(a) *Failure to satisfy margin call.* If any margin call required by this Regulation (§§ 242.400 through 242.406) is not met in full, the security futures intermediary shall take the deduction required with respect to an undermargined account in computing its net capital under Commission or CFTC rules.

(b) *Accounts that liquidate to a deficit.* If at any time there is a liquidating deficit in an account in which security futures are held, the security futures intermediary shall take steps to liquidate positions in the account promptly and in an orderly manner.

(c) *Liquidation of undermargined accounts not required.* Notwithstanding Section 402(a) of this Regulation (§§ 242.400 through 242.406), section 220.4(d) of Regulation T (12 CFR 220.4(d)) respecting liquidation of positions in lieu of deposit shall not apply with respect to security futures carried in a securities account.

Dated: August 1, 2002.

By the Securities and Exchange Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19892 Filed 8–13–02; 8:45 am]

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Part V

Department of Health and Human Services

Office of the Secretary

45 CFR Parts 160 and 164

Standards for Privacy of Individually Identifiable Health Information; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 160 and 164

RIN 0991–AB14

Standards for Privacy of Individually Identifiable Health Information

AGENCY: Office for Civil Rights, HHS.
ACTION: Final rule.

SUMMARY: The Department of Health and Human Services ("HHS" or "Department") modifies certain standards in the Rule entitled "Standards for Privacy of Individually Identifiable Health Information" ("Privacy Rule"). The Privacy Rule implements the privacy requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996.

The purpose of these modifications is to maintain strong protections for the privacy of individually identifiable health information while clarifying certain of the Privacy Rule's provisions, addressing the unintended negative effects of the Privacy Rule on health care quality or access to health care, and relieving unintended administrative burdens created by the Privacy Rule.

DATES: This final rule is effective on October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Felicia Farmer, 1–866–OCR–PRIV (1–866–627–7748) or TTY 1–866–788–4989.

SUPPLEMENTARY INFORMATION: Availability of copies, and electronic access.

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I. Background

A. Statutory Background

Congress recognized the importance of protecting the privacy of health information given the rapid evolution of health information systems in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, which became law on August 21, 1996. HIPAA's Administrative Simplification provisions, sections 261 through 264 of the statute, were designed to improve the efficiency and effectiveness of the health care system by facilitating the electronic exchange of information with respect to certain financial and administrative transactions carried out by health plans, health care clearinghouses, and health care providers who transmit information electronically in connection with such transactions. To implement these provisions, the statute directed HHS to adopt a suite of uniform, national standards for transactions, unique health identifiers, code sets for the data elements of the transactions, security of health information, and electronic signature.

At the same time, Congress recognized the challenges to the confidentiality of health information presented by the increasing complexity of the health care industry, and by advances in the health information systems technology and communications. Thus, the Administrative Simplification provisions of HIPAA authorized the Secretary to promulgate standards for the privacy of individually identifiable health information if Congress did not enact health care privacy legislation by August 21, 1999. HIPAA also required the Secretary of HHS to provide Congress with recommendations for legislating to protect the confidentiality of health care information. The Secretary submitted such recommendations to Congress on September 11, 1997, but Congress did not pass such legislation within its self-imposed deadline.

With respect to these regulations, HIPAA provided that the standards, implementation specifications, and requirements established by the Secretary not supersede any contrary State law that imposes more stringent privacy protections. Additionally, Congress required that HHS consult with the National Committee on Vital and Health Statistics, a Federal advisory committee established pursuant to section 306(k) of the Public Health Service Act (42 U.S.C. 242k(k)), and the Attorney General in the development of HIPAA privacy standards.

After a set of HIPAA Administrative Simplification standards is adopted by the Department, HIPAA provides HHS with authority to modify the standards as deemed appropriate, but not more frequently than once every 12 months. However, modifications are permitted during the first year after adoption of the standards if the changes are necessary to permit compliance with the standards. HIPAA also provides that compliance with modifications to standards or implementation specifications must be accomplished by a date designated by the Secretary, which may not be earlier than 180 days after the adoption of the modification.

B. Regulatory and Other Actions to Date

HHS published a proposed Rule setting forth privacy standards for individually identifiable health information on November 3, 1999 (64 FR 59918). The Department received more than 52,000 public comments in response to the proposal. After reviewing and considering the public comments, HHS issued a final Rule (65 FR 82462) on December 28, 2000, establishing "Standards for Privacy of Individually Identifiable Health Information" ("Privacy Rule").

In an era where consumers are increasingly concerned about the privacy of their personal information, the Privacy Rule creates, for the first time, a floor of national protections for the privacy of their most sensitive information—health information. Congress has passed other laws to protect consumers' personal information contained in bank, credit card, other financial records, and even video rentals. These health privacy protections are intended to provide consumers with similar assurances that their health information, including genetic information, will be properly protected. Under the Privacy Rule, health plans, health care clearinghouses, and certain health care providers must guard against misuse of individuals' identifiable health information and limit the sharing of such information, and consumers are afforded significant new rights to enable them to understand and control how their health information is used and disclosed.

After publication of the Privacy Rule, HHS received many inquiries and unsolicited comments through

telephone calls, e-mails, letters, and other contacts about the impact and operation of the Privacy Rule on numerous sectors of the health care industry. Many of these commenters exhibited substantial confusion and misunderstanding about how the Privacy Rule will operate; others expressed great concern over the complexity of the Privacy Rule. In response to these communications and to ensure that the provisions of the Privacy Rule would protect patients' privacy without creating unanticipated consequences that might harm patients' access to health care or quality of health care, the Secretary of HHS opened the Privacy Rule for additional public comment in March 2001 (66 FR 12738).

After an expedited review of the comments by the Department, the Secretary decided that it was appropriate for the Privacy Rule to become effective on April 14, 2001, as scheduled (65 FR 12433). At the same time, the Secretary directed the Department immediately to begin the process of developing guidelines on how the Privacy Rule should be implemented and to clarify the impact of the Privacy Rule on health care activities. In addition, the Secretary charged the Department with proposing appropriate changes to the Privacy Rule during the next year to clarify the requirements and correct potential problems that could threaten access to, or quality of, health care. The comments received during the comment period, as well as other communications from the public and all sectors of the health care industry, including letters, testimony at public hearings, and meetings requested by these parties, have helped to inform the Department's efforts to develop proposed modifications and guidance on the Privacy Rule.

On July 6, 2001, the Department issued its first guidance to answer common questions and clarify certain of the Privacy Rule's provisions. In the guidance, the Department also committed to proposing modifications to the Privacy Rule to address problems arising from unintended effects of the Privacy Rule on health care delivery and access. The guidance will soon be updated to reflect the modifications adopted in this final Rule. The revised guidance will be available on the HHS Office for Civil Rights (OCR) Privacy Web site at *http://www.hhs.gov/ocr/hipaa/*.

In addition, the National Committee for Vital and Health Statistics (NCVHS), Subcommittee on Privacy and Confidentiality, held public hearings on the implementation of the Privacy Rule on August 21–23, 2001, and January 24–25, 2002, and provided recommendations to the Department based on these hearings. The NCVHS serves as the statutory advisory body to the Secretary of HHS with respect to the development and implementation of the Rules required by the Administrative Simplification provisions of HIPAA, including the privacy standards. Through the hearings, the NCVHS specifically solicited public input on issues related to certain key standards in the Privacy Rule: consent, minimum necessary, marketing, fundraising, and research. The resultant public testimony and subsequent recommendations submitted to the Department by the NCVHS also served to inform the development of these proposed modifications.

II. Overview of the March 2002 Notice of Proposed Rulemaking (NPRM)

As described above, through public comments, testimony at public hearings, meetings at the request of industry and other stakeholders, as well as other communications, the Department learned of a number of concerns about the potential unintended effects certain provisions would have on health care quality and access. On March 27, 2002, in response to these concerns, and pursuant to HIPAA's provisions for modifications to the standards, the Department proposed modifications to the Privacy Rule (67 FR 14776).

The Department proposed to modify the following areas or provisions of the Privacy Rule: consent; uses and disclosures for treatment, payment, and health care operations; notice of privacy practices; minimum necessary uses and disclosures, and oral communications; business associates; uses and disclosures for marketing; parents as the personal representatives of unemancipated minors; uses and disclosures for research purposes; uses and disclosures for which authorizations are required; and de-identification. In addition to these key areas, the proposal included changes to other provisions where necessary to clarify the Privacy Rule. The Department also included in the proposed Rule a list of technical corrections intended as editorial or typographical corrections to the Privacy Rule.

The proposed modifications collectively were designed to ensure that protections for patient privacy are implemented in a manner that maximizes the effectiveness of such protections while not compromising either the availability or the quality of medical care. They reflected a continuing commitment on the part of the Department to strong privacy protections for medical records and the belief that privacy is most effectively protected by requirements that are not exceptionally difficult to implement. The Department welcomed comments and suggestions for alternative ways effectively to protect patient privacy without adversely affecting access to, or the quality of, health care.

Given that the compliance date of the Privacy Rule for most covered entities is April 14, 2003, and the Department's interest in having the compliance date for these revisions also be no later than April 14, 2003, the Department solicited public comment on the proposed modifications for only 30 days. As stated above, the proposed modifications addressed public concerns already communicated to the Department through a wide variety of sources since publication of the Privacy Rule in December 2000. For these reasons, the Department believed that 30 days should be sufficient for the public to state its views fully to the Department on the proposed modifications to the Privacy Rule. During the 30-day comment period, the Department received in excess of 11,400 comments.

III. Section-by-Section Description of Final Modifications and Response to Comments

A. Section 164.501—Definitions

1. Marketing

December 2000 Privacy Rule

The Privacy Rule defined "marketing" at § 164.501 as a communication about a product or service, a purpose of which is to encourage recipients of the communication to purchase or use the product or service, subject to certain limited exceptions. To avoid interfering with, or unnecessarily burdening communications about, treatment or about the benefits and services of health plans and health care providers, the Privacy Rule explicitly excluded two types of communications from the definition of "marketing:" (1) communications made by a covered entity for the purpose of describing the participating providers and health plans in a network, or describing the services offered by a provider or the benefits covered by a health plan; and (2) communications made by a health care provider as part of the treatment of a patient and for the purpose of furthering that treatment, or made by a provider or health plan in the course of managing an individual's treatment or recommending an alternative treatment. Thus, a health plan could send its

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enrollees a listing of network providers, and a health care provider could refer a patient to a specialist without either an authorization under § 164.508 or having to meet the other special requirements in § 164.514(e) that attach to marketing communications. However, these communications qualified for the exception to the definition of "marketing" only if they were made orally or, if in writing, were made without remuneration from a third party. For example, it would not have been marketing for a pharmacy to call a patient about the need to refill a prescription, even if that refill reminder was subsidized by a third party; but it would have been marketing for that same, subsidized refill reminder to be sent to the patient in the mail.

Generally, if a communication was marketing, the Privacy Rule required the covered entity to obtain the individual's authorization to use or disclose protected health information to make the communication. However, the Privacy Rule, at § 164.514(e), permitted the covered entity to make health-related marketing communications without such authorization, provided it complied with certain conditions on the manner in which the communications were made. Specifically, the Privacy Rule permitted a covered entity to use or disclose protected health information to communicate to individuals about the health-related products or services of the covered entity or of a third party, without first obtaining an authorization for that use or disclosure of protected health information, if the communication: (1) Identified the covered entity as the party making the communication; (2) identified, if applicable, that the covered entity received direct or indirect remuneration from a third party for making the communication; (3) with the exception of general circulation materials, contained instructions describing how the individual could opt-out of receiving future marketing communications; and (4) where protected health information was used to target the communication about a product or service to individuals based on their health status or health condition, explained why the individual had been targeted and how the product or service related to the health of the individual.

For certain permissible marketing communications, however, the Department did not believe these conditions to be practicable. Therefore, § 164.514(e) also permitted a covered entity to make a marketing communication that occurred in a face-to-face encounter with the individual, or that involved products or services of only nominal value, without meeting the above conditions or requiring an authorization. These provisions, for example, permitted a covered entity to provide sample products during a face-to-face communication, or to distribute calendars, pens, and the like, that displayed the name of a product or provider.

March 2002 NPRM

The Department received many complaints concerning the complexity and unworkability of the Privacy Rule's marketing requirements. Many entities expressed confusion over the Privacy Rule's distinction between health care communications that are excepted from the definition of "marketing" versus those that are marketing but permitted subject to the special conditions in § 164.514(e). For example, questions were raised as to whether disease management communications or refill reminders were "marketing" communications subject to the special disclosure and opt-out conditions in § 164.514(e). Others stated that it was unclear whether various health care operations activities, such as general health-related educational and wellness promotional activities, were to be treated as marketing under the Privacy Rule.

The Department also learned that consumers were generally dissatisfied with the conditions required by § 164.514(e). Many questioned the general effectiveness of the conditions and whether the conditions would properly protect consumers from unwanted disclosure of protected health information to commercial entities, and from the intrusion of unwanted solicitations. They expressed specific dissatisfaction with the provision at § 164.514(e)(3)(iii) for individuals to opt-out of future marketing communications. Many argued for the opportunity to opt-out of marketing communications before any marketing occurred. Others requested that the Department limit marketing communications to only those consumers who affirmatively chose to receive such communications.

In response to these concerns, the Department proposed to modify the Privacy Rule to make the marketing provisions clearer and simpler. First, the Department proposed to simplify the Privacy Rule by eliminating the special provisions for marketing health-related products and services at § 164.514(e). Instead, any use or disclosure of protected health information for a communication defined as "marketing" in § 164.501 would require an authorization by the individual. Thus, covered entities would no longer be able to make any type of marketing communications that involved the use or disclosure of protected health information without authorization simply by meeting the disclosure and opt-out conditions in the Privacy Rule. The Department intended to effectuate greater consumer privacy protection by requiring authorization for all uses or disclosures of protected health information for marketing communications, as compared to the disclosure and opt-out conditions of § 164.514(e).

Second, the Department proposed minor clarifications to the Privacy Rule's definition of "marketing" at § 164.501. Specifically, the Department proposed to define "marketing" as "to make a communication about a product or service to encourage recipients of the communication to purchase or use the product or service." The proposed modification retained the substance of the "marketing" definition, but changed the language slightly to avoid the implication that in order for a communication to be marketing, the purpose or intent of the covered entity in making such a communication would have to be determined. The simplified language permits the Department to make the determination based on the communication itself.

Third, with respect to the exclusions from the definition of "marketing" in § 164.501, the Department proposed to simplify the language to avoid confusion and better conform to other sections of the regulation, particularly in the area of treatment communications. The proposal retained the exclusions for communications about a covered entity's own products and services and about the treatment of the individual. With respect to the exclusion for a communication made "in the course of managing the treatment of that individual," the Department proposed to modify the language to use the terms "case management" and "care coordination" for that individual. These terms are more consistent with the terms used in the definition of "health care operations," and were intended to clarify the Department's intent.

One substantive change to the definition proposed by the Department was to eliminate the condition on the above exclusions from the definition of "marketing" that the covered entity could not receive remuneration from a third party for any written communication. This limitation was not well understood and treated similar communications differently. For example, a prescription refill reminder was marketing if it was in writing and paid for by a third party, while a refill reminder that was not subsidized, or was made orally, was not marketing. With the proposed elimination of the health-related marketing requirements in § 164.514(e) and the proposed requirement that any marketing communication require an individual's prior written authorization, retention of this condition would have adversely affected a health care provider's ability to make many common health-related communications. Therefore, the Department proposed to eliminate the remuneration prohibition to the exceptions to the definition so as not to interfere with necessary and important treatment and health-related communications between a health care provider and patient.

To reinforce the policy requiring an authorization for most marketing communications, the Department proposed to add a new marketing provision at § 164.508(a)(3) explicitly requiring an authorization for a use or disclosure of protected health information for marketing purposes. Additionally, if the marketing was expected to result in direct or indirect remuneration to the covered entity from a third party, the Department proposed that the authorization state this fact. As noted above, because a use or disclosure of protected health information for marketing communications required an authorization, the disclosure and opt-out provisions in § 164.514(e) no longer would be necessary and the Department proposed to eliminate them. As in the December 2000 Privacy Rule at § 164.514(e)(2), the proposed modifications at § 164.508(a)(3) excluded from the marketing authorization requirements face-to-face communications made by a covered entity to an individual. The Department proposed to retain this exception so that the marketing provisions would not interfere with the relationship and dialogue between health care providers and individuals. Similarly, the Department proposed to retain the exception to the authorization requirement for a marketing communication that involved products or services of nominal value, but proposed to replace the language with the common business term "promotional gift of nominal value."

As noted above, because some of the proposed simplifications were a substitute for § 164.514(e), the Department proposed to eliminate that section, and to make conforming changes to remove references to § 164.514(e) at § 164.502(a)(1)(vi) and in paragraph (6)(v) of the definition of "health care operations" in § 164.501.

Overview of Public Comments

The following discussion provides an overview of the public comment received on this proposal. Additional comments received on this issue are discussed below in the section entitled, "Response to Other Public Comments."

The Department received generally favorable comment on its proposal to simplify the marketing provisions by requiring authorizations for uses or disclosures of protected health information for marketing communications, instead of the special provisions for health-related products and services at § 164.514(e). Many also supported the requirement that authorizations notify the individual of marketing that results in direct or indirect remuneration to the covered entity from a third party. They argued that for patients to make informed decisions, they must be notified of potential financial conflicts of interest. However, some commenters opposed the authorization requirement for marketing, arguing instead for the disclosure and opt-out requirements at § 164.514(e) or for a one-time, blanket authorization from an individual for their marketing activities.

Commenters were sharply divided on whether the Department had properly defined what is and what is not marketing. Most of those opposed to the Department's proposed definitions objected to the elimination of health-related communications for which the covered entity received remuneration from the definition of "marketing." They argued that these communications would have been subject to the consumer protections in § 164.514(e) but, under the proposal, could be made without any protections at all. The mere presence of remuneration raised conflict of interest concerns for these commenters, who feared patients would be misled into thinking the covered entity was acting solely in the patients' best interest when recommending an alternative medication or treatment. Of particular concern to these commenters was the possibility of a third party, such as a pharmaceutical company, obtaining a health care provider's patient list to market its own products or services directly to the patients under the guise of recommending an "alternative treatment" on behalf of the provider. Commenters argued that, even if the parties attempted to cloak the transaction in the trappings of a business associate relationship, when the remuneration flowed from the third party to the covered entity, the transaction was tantamount to selling the patient lists and ought to be considered marketing.

On the other hand, many commenters urged the Department to broaden the categories of communications that are not marketing. Several expressed concern that, under the proposal, they would be unable to send newsletters and other general circulation materials with information about health-promoting activities (*e.g.*, screenings for certain diseases) to their patients or members without an authorization. Health plans were concerned that they would be unable to send information regarding enhancements to health insurance coverage to their members and beneficiaries. They argued, among other things, that they should be excluded from the definition of "marketing" because these communications would be based on limited, non-clinical protected health information, and because policyholders benefit and use such information to fully evaluate the mix of coverage most appropriate to their needs. They stated that providing such information is especially important given that individual and market-wide needs, as well as benefit offerings, change over time and by statute. For example, commenters informed the Department that some States now require long-term care insurers to offer new products to existing policyholders as they are brought to market and to allow policyholders to purchase the new benefits through a formal upgrade process. These health plans were concerned that an authorization requirement for routine communications about options and enhancements would take significant time and expense. Some insurers also urged that they be allowed to market other lines of insurance to their health plan enrollees.

A number of commenters urged the Department to exclude any activity that met the definitions of "treatment," "payment," or "health care operations" from the definition of "marketing" so that they could freely inform customers about prescription discount card and price subsidy programs. Still others wanted the Department to broaden the treatment exception to include all health-related communications between providers and patients.

Final Modifications. The Department adopts the modifications to marketing substantially as proposed in the NPRM, but makes changes to the proposed definition of "marketing" and further clarifies one of the exclusions from the definition of "marketing" in response to comments on the proposal. The

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definition of "marketing" is modified to close what commenters characterized as a loophole, that is, the possibility that covered entities, for remuneration, could disclose protected health information to a third party that would then be able to market its own products and services directly to individuals. Also, in response to comments, the Department clarifies the language in the marketing exclusion for communications about a covered entity's own products and services.

As it proposed to do, the Department eliminates the special provisions for marketing health-related products and services at § 164.514(e). Except as provided for at § 164.508(a)(3), a covered entity must have the individual's prior written authorization to use or disclose protected health information for marketing communications and will no longer be able to do so simply by meeting the disclosure and opt-out provisions, previously set forth in § 164.514(e). The Department agrees with commenters that the authorization provides individuals with more control over whether they receive marketing communications and better privacy protections for such uses and disclosures of their health information. In response to commenters who opposed this proposal, the Department does not believe that an opt-out requirement for marketing communications would provide a sufficient level of control for patients regarding their health information. Nor does the Department believe that a blanket authorization provides sufficient privacy protections for individuals. Section 164.508(c) sets forth the core elements of an authorization necessary to give individuals control of their protected health information. Those requirements give individuals sufficient information and notice regarding the type of use or disclosure of their protected health information that they are authorizing. Without such specificity, an authorization would not have meaning. Indeed, blanket marketing authorizations would be considered defective under § 164.508(b)(2).

The Department adopts the general definition of "marketing" with one clarification. Thus, "marketing" means "to make a communication about a product or service that encourages the recipients of the communication to purchase or use the product or service." In removing the language referencing the purpose of the communication and substituting the term "that encourages" for the term "to encourage", the Department intends to simplify the determination of whether a communication is marketing. If, on its face, the communication encourages recipients of the communication to purchase or use the product or service, the communication is marketing. A few commenters argued for retaining the purpose of the communication as part of the definition of "marketing" based on their belief that the intent of the communication was a clearer and more definitive standard than the effect of the communication. The Department disagrees with these commenters. Tying the definition of "marketing" to the purpose of the communication creates a subjective standard that would be difficult to enforce because the intent of the communicator rarely would be documented in advance. The definition adopted by the Secretary allows the communication to speak for itself.

The Department further adopts the three categories of communications that were proposed as exclusions from the definition of "marketing." Thus, the covered entity is not engaged in marketing when it communicates to individuals about: (1) The participating providers and health plans in a network, the services offered by a provider, or the benefits covered by a health plan; (2) the individual's treatment; or (3) case management or care coordination for that individual, or directions or recommendations for alternative treatments, therapies, health care providers, or settings of care to that individual. For example, a doctor that writes a prescription or refers an individual to a specialist for follow-up tests is engaging in a treatment communication and is not marketing a product or service. The Department continues to exempt from the "marketing" definition the same types of communications that were not marketing under the Privacy Rule as published in December 2000, but has modified some of the language to better track the terminology used in the definition of "health care operations." The commenters generally supported this clarification of the language.

The Department, however, does not agree with commenters that sought to expand the exceptions from marketing for all communications that fall within the definitions of "treatment," "payment," or "health care operations." The purpose of the exclusions from the definition of marketing is to facilitate those communications that enhance the individual's access to quality health care. Beyond these important communications, the public strongly objected to any commercial use of protected health information to attempt to sell products or services, even when the product or service is arguably health related. In light of these strong public objections, ease of administration is an insufficient justification to categorically exempt all communications about payment and health care operations from the definition of "marketing."

However, in response to comments, the Department is clarifying the language that excludes from the definition of "marketing" those communications that describe network participants and the services or benefits of the covered entity. Several commenters, particularly insurers, were concerned that the reference to a "plan of benefits" was too limiting and would prevent them from sending information to their enrollees regarding enhancements or upgrades to their health insurance coverage. They inquired whether the following types of communications would be permissible: enhancements to existing products; changes in deductibles/copays and types of coverage (e.g., prescription drug); continuation products for students reaching the age of majority on parental policies; special programs such as guaranteed issue products and other conversion policies; and prescription drug card programs. Some health plans also inquired if they could communicate with beneficiaries about "one-stop shopping" with their companies to obtain long-term care, property, casualty, and life insurance products.

The Department understands the need for covered health care providers and health plans to be able to communicate freely to their patients or enrollees about their own products, services, or benefits. The Department also understands that some of these communications are required by State or other law. To ensure that such communications may continue, the Department is broadening its policy, both of the December 2000 Privacy Rule as well as proposed in the March 2002 NPRM, to allow covered entities to use protected health information to convey information to beneficiaries and members about health insurance products offered by the covered entity that could enhance or substitute for existing health plan coverage. Specifically, the Department modifies the relevant exemption from the definition of "marketing" to include communications that describe "a health-related product or service (or payment for such product or service) that is provided by, or included in a plan of benefits of, the covered entity making the communication, including communications about: the entities participating in a health care provider network or health plan network; replacement of, or enhancements to, a

health plan; and health-related products or services available only to a health plan enrollee that add value to, but are not part of, a plan of benefits." Thus, under this exemption, a health plan is not engaging in marketing when it advises its enrollees about other available health plan coverages that could enhance or substitute for existing health plan coverage. For example, if a child is about to age out of coverage under a family's policy, this provision will allow the plan to send the family information about continuation coverage for the child. This exception, however, does not extend to excepted benefits (described in section 2791(c)(1) of the Public Health Service Act, 42 U.S.C. 300gg–91(c)(1)), such as accident-only policies), nor to other lines of insurance (*e.g.*, it is marketing for a multi-line insurer to promote its life insurance policies using protected health information).

Moreover, the expanded language makes clear that it is not marketing when a health plan communicates about health-related products and services available only to plan enrollees or members that add value to, but are not part of, a plan of benefits. The provision of value-added items or services (VAIS) is a common practice, particularly for managed care organizations. Communications about VAIS may qualify as a communication that is about a health plan's own products or services, even if VAIS are not considered plan benefits for the Adjusted Community Rate purposes. To qualify for this exclusion, however, the VAIS must meet two conditions. First, they must be health-related. Therefore, discounts offered by Medicare+Choice or other managed care organizations for eyeglasses may be considered part of the plan's benefits, whereas discounts to attend movie theaters will not. Second, such items and services must demonstrably "add value" to the plan's membership and not merely be a pass-through of a discount or item available to the public at large. Therefore, a Medicare+Choice or other managed care organization could, for example, offer its members a special discount opportunity for a health/fitness club without obtaining authorizations, but could not pass along to its members discounts to a health fitness club that the members would be able to obtain directly from the health/fitness clubs.

In further response to comments, the Department has added new language to the definition of "marketing" to close what commenters perceived as a loophole that a covered entity could sell protected health information to another company for the marketing of that company's products or services. For example, many were concerned that a pharmaceutical company could pay a provider for a list of patients with a particular condition or taking a particular medication and then use that list to market its own drug products directly to those patients. The commenters believed the proposal would permit this to happen under the guise of the pharmaceutical company acting as a business associate of the covered entity for the purpose of recommending an alternative treatment or therapy to the individual. The Department agrees with commenters that the potential for manipulating the business associate relationship in this fashion should be expressly prohibited. Therefore, the Department is adding language that would make clear that business associate transactions of this nature are marketing. Marketing is defined expressly to include "an arrangement between a covered entity and any other entity whereby the covered entity discloses protected health information to the other entity, in exchange for direct or indirect remuneration, for the other entity or its affiliate to make a communication about its own product or service that encourages recipients of the communication to purchase or use that product or service." These communications are marketing and can only occur if the covered entity obtains the individual's authorization pursuant to § 164.508. The Department believes that this provision will make express the fundamental prohibition against covered entities selling lists of patients or enrollees to third parties, or from disclosing protected health information to a third party for the marketing activities of the third party, without the written authorization of the individual. The Department further notes that manufacturers that receive identifiable health information and misuse it may be subject to action taken under other consumer protection statutes by other Federal agencies, such as the Federal Trade Commission.

The Department does not, however, agree with commenters who argued for retention of the provisions that would condition the exclusions from the "marketing" definition on the absence of remuneration. Except for the arrangements that are now expressly defined as "marketing," the Department eliminates the conditions that communications are excluded from the definition of "marketing" only if they are made orally, or, if in writing, are made without any direct or indirect remuneration. The Department does not agree that the simple receipt of remuneration should transform a treatment communication into a commercial promotion of a product or service. For example, health care providers should be able to, and can, send patients prescription refill reminders regardless of whether a third party pays or subsidizes the communication. The covered entity also is able to engage a legitimate business associate to assist it in making these permissible communications. It is only in situations where, in the guise of a business associate, an entity other than the covered entity is promoting its own products using protected health information it has received from, and for which it has paid, the covered entity, that the remuneration will place the activity within the definition of "marketing."

In addition, the Department adopts the proposed marketing authorization provision at § 164.508(a)(3), with minor language changes to conform to the revised "marketing" definition. The Rule expressly requires an authorization for uses or disclosures of protected health information for marketing communications, except in two circumstances: (1) When the communication occurs in a face-to-face encounter between the covered entity and the individual; or (2) the communication involves a promotional gift of nominal value. A marketing authorization must include a statement about remuneration, if any. For ease of administration, the Department has changed the regulatory provision to require a statement on the authorization whenever the marketing "involves" direct or indirect remuneration to the covered entity from a third party, rather than requiring the covered entity to identify those situations where "the marketing is expected to result in" remuneration.

Finally, the Department clarifies that nothing in the marketing provisions of the Privacy Rule are to be construed as amending, modifying, or changing any rule or requirement related to any other Federal or State statutes or regulations, including specifically anti-kickback, fraud and abuse, or self-referral statutes or regulations, or to authorize or permit any activity or transaction currently proscribed by such statutes and regulations. Examples of such laws include the anti-kickback statute (section 1128B(b) of the Social Security Act), safe harbor regulations (42 CFR part 1001), Stark law (section 1877 of the Social Security Act) and regulations (42 CFR parts 411 and 424), and HIPAA statute on self-referral (section 1128C of the Social Security Act). The definition

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of "marketing" is solely applicable to the Privacy Rule and the permissions granted by the Rule are only for a covered entity's use or disclosure of protected health information. In particular, although this regulation defines the term "marketing" to exclude communications to an individual to recommend, purchase, or use a product or service as part of the treatment of the individual or for case management or care coordination of that individual, such communication by a "white coat" health care professional may violate the anti-kickback statute. Similar examples for pharmacist communications with patients relating to the marketing of products on behalf of pharmaceutical companies were identified by the OIG as problematic in a 1994 Special Fraud Alert (December 19, 1994, 59 FR 65372). Other violations have involved home health nurses and physical therapists acting as marketers for durable medical equipment companies. Although a particular communication under the Privacy Rule may not require patient authorization because it is not marketing, or may require patient authorization because it is "marketing" as the Rule defines it, the arrangement may nevertheless violate other statutes and regulations administered by HHS, the Department of Justice, or other Federal or State agency.

Response to Other Public Comments

Comment: Some commenters recommended that the definition of "marketing" be broadened to read as follows: "any communication about a product or service to encourage recipients of the communication to purchase or use the product or service or that will make the recipient aware of the product or service available for purchase or use by the recipient." According to these commenters, the additional language would capture marketing campaign activities to establish "brand recognition."

Response: The Department believes that marketing campaigns to establish brand name recognition of products is already encompassed within the general definition of "marketing" and that it is not necessary to add language to accomplish this purpose.

Comment: Some commenters opposed the proposed deletion of references to the covered entity as the source of the communications, in the definition of those communications that were excluded from the "marketing" definition. They objected to these non-marketing communications being made by unrelated third parties based on protected health information disclosed to these third parties by the covered entity, without the individual's knowledge or authorization.

Response: These commenters appear to have misinterpreted the proposal as allowing third parties to obtain protected health information from covered entities for marketing or other purposes for which the Rule requires an individual's authorization. The deletion of the specific reference to the covered entity does not permit disclosures to a third party beyond the disclosures already permitted by the Rule. The change is intended to be purely editorial: since the Rule applies only to covered entities, the only entities whose communications can be governed by the Rule are covered entities, and thus the reference to covered entities there was redundant. Covered entities may not disclose protected health information to third parties for marketing purposes without authorization from the individual, even if the third party is acting as the business associate of the disclosing covered entity. Covered entities may, however, use protected health information to communicate with individuals about the covered entity's own health-related products or services, the individual's treatment, or case management or care coordination for the individual. The covered entity does not need an authorization for these types of communications and may make the communication itself or use a business associate to do so.

Comment: Some commenters advocated for reversion to the provision in § 164.514(e) that the marketing communication identify the covered entity responsible for the communication, and argued that the covered entity should be required to identify itself as the source of the protected health information.

Response: As modified, the Privacy Rule requires the individual's written authorization for the covered entity to use or disclose protected health information for marketing purposes, with limited exceptions. The Department believes that the authorization process itself will put the individual sufficiently on notice that the covered entity is the source of the protected health information. To the extent that the commenter suggests that these disclosures are necessary for communications that are not "marketing" as defined by the Rule, the Department disagrees because such a requirement would place an undue burden on necessary health-related communications.

Comment: Many commenters opposed the proposed elimination of the provision that would have transformed a communication exempted from marketing into a marketing communication if it was in writing and paid for by a third party. They argued that marketing should include any activity in which a covered entity receives compensation, directly or indirectly, through such things as discounts from another provider, manufacturer, or service provider in exchange for providing information about the manufacturer or service provider's products to consumers, and that consumers should be advised whenever such remuneration is involved and allowed to opt-out of future communications.

Response: The Department considered whether remuneration should determine whether a given activity is marketing, but ultimately concluded that remuneration should not define whether a given activity is marketing or falls under an exception to marketing. In fact, the Department believes that the provision in the December 2000 Rule that transformed a treatment communication into a marketing communication if it was in writing and paid for by a third party blurred the line between treatment and marketing in ways that would have made the Privacy Rule difficult to implement. The Department believes that certain health care communications, such as refill reminders or informing patients about existing or new health care products or services, are appropriate, whether or not the covered entity receives remuneration from third parties to pay for them. The fact that remuneration is received for a marketing communication does not mean the communication is biased or inaccurate. For the same reasons, the Department does not believe that the communications that are exempt from the definition of "marketing" require any special conditions, based solely on direct or indirect remuneration received by the covered entity. Requiring disclosure and opt-out conditions on these communications, as § 164.514(e) had formerly imposed on health-related marketing communications, would add a layer of complexity to the Privacy Rule that the Department intended to eliminate. Individuals, of course, are free to negotiate with covered entities for limitations on such uses and disclosures, to which the entity may, but is not required to, agree.

The Department does agree with commenters that, in limited circumstances, abuses can occur. The Privacy Rule, both as published in December 2000 and as proposed to be modified in March 2002, has always prohibited covered entities from selling protected health information to a third party for the marketing activities of the third party, without authorization. Nonetheless, in response to continued public concern, the Department has added a new provision to the definition of "marketing" to prevent situations in which a covered entity could take advantage of the business associate relationship to sell protected health information to another entity for that entity's commercial marketing purposes. The Department intends this prohibition to address the potential financial conflict of interest that would lead a covered entity to disclose protected health information to another entity under the guise of a treatment exemption.

Comment: Commenters argued that written authorizations (opt-ins) should be required for the use of clinical information in marketing. They stated that many consumers do not want covered entities to use information about specific clinical conditions that an individual has, such as AIDS or diabetes, to target them for marketing of services for such conditions.

Response: The Department does not intend to interfere with the ability of health care providers or health plans to deliver quality health care to individuals. The "marketing" definition excludes communications for the individual's treatment and for case management, care coordination or the recommendation of alternative therapies. Clinical information is critical for these communications and, hence, cannot be used to distinguish between communications that are or are not marketing. The covered entity needs the individual's authorization to use or disclose protected health information for marketing communications, regardless of whether clinical information is to be used.

Comment: The proposed modification eliminated the § 164.514 requirements that permitted the use of protected health information to market health-related products and services without an authorization. In response to that proposed modification, many commenters asked whether covered entities would be allowed to make communications about "health education" or "health promoting" materials or services without an authorization under the modified Rule. Examples included communications about health improvement or disease prevention, new developments in the diagnosis or treatment of disease, health fairs, health/wellness-oriented classes or support groups.

Response: The Department clarifies that a communication that merely promotes health in a general manner and does not promote a specific product or service from a particular provider does not meet the general definition of "marketing." Such communications may include population-based activities to improve health or reduce health care costs as set forth in the definition of "health care operations" at § 164.501. Therefore, communications, such as mailings reminding women to get an annual mammogram, and mailings providing information about how to lower cholesterol, about new developments in health care (e.g., new diagnostic tools), about health or "wellness" classes, about support groups, and about health fairs are permitted, and are not considered marketing.

Comment: Some commenters asked whether they could communicate with beneficiaries about government programs or government-sponsored programs such as information about SCHIP; eligibility for Medicare/Medigap (e.g., eligibility for limited, six-month open enrollment period for Medicare supplemental benefits).

Response: The Department clarifies that communications about government and government-sponsored programs do not fall within the definition of "marketing." There is no commercial component to communications about benefits available through public programs. Therefore, a covered entity is permitted to use and disclose protected health information to communicate about eligibility for Medicare supplemental benefits, or SCHIP. As in our response above, these communications may reflect population-based activities to improve health or reduce health care costs as set forth in the definition of "health care operations" at § 164.501.

Comment: The proposed modification eliminated the § 164.514 requirements that allowed protected health information to be used and disclosed without authorization or the opportunity to opt-out, for communications contained in newsletters or similar general communication devices widely distributed to patients, enrollees, or other broad groups of individuals. Many commenters requested clarification as to whether various types of general circulation materials would be permitted under the proposed modification. Commenters argued that newsletters or similar general communication devices widely distributed to patients, enrollees, or other broad groups of individuals should be permitted without authorizations because they are "common" and "serve appropriate information distribution purposes" and, based on their general circulation, are less intrusive than other forms of communication.

Response: Covered entities may make communications in newsletter format without authorization so long as the content of such communications is not "marketing," as defined by the Rule. The Department is not creating any special exemption for newsletters.

Comment: One commenter suggested that, even when authorizations are granted to disclose protected health information for a particular marketing purpose to a non-covered entity, there should also be an agreement by the third party not to re-disclose the protected health information. This same commenter also recommended that the Privacy Rule place restrictions on non-secure modes of making communications pursuant to an authorization. This commenter argued that protected health information should not be disclosed on the outside of mailings or through voice mail, unattended FAX, or other modes of communication that are not secure.

Response: Under the final Rule, a covered entity must obtain an individual's authorization to use or disclose protected health information for a marketing communication, with some exceptions. If an individual wanted an authorization to limit the use of the information by the covered entity, the individual could negotiate with the covered entity to make that clear in the authorization. Similarly, individuals can request confidential forms of communication, even with respect to authorized disclosures. See § 164.522(b).

Comment: Commenters requested that HHS provide clear guidance on what types of activities constitute a use or disclosure for marketing, and, therefore, require an authorization.

Response: The Department has modified the "marketing" definition to clarify the types of uses or disclosures of protected health information that are marketing, and, therefore, require prior authorization and those that are not marketing. The Department intends to update its guidance on this topic and address specific examples raised by commenters at that time.

Comment: A number of commenters wanted the Department to amend the face-to-face authorization exception. Some urged that it be broadened to include telephone, mail and other common carriers, fax machines, or the Internet so that the exception would cover communications between providers and patients that are not in person. For example, it was pointed out that some providers, such as home

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delivery pharmacies, may have a direct treatment relationship, but communicate with patients through other channels. Some raised specific concerns about communicating with "shut-ins" and "persons living in rural areas." Other commenters asked the Department to make the exception more narrow to cover only those marketing communications made by a health care provider, as opposed to by a business associate, or to cover only those marketing communications of a provider that arise from a treatment or other essential health care communication.

Response: The Department believes that expanding the face-to-face authorization exception to include telephone, mail, and other common carriers, fax machines or the Internet would create an exception essentially for all types of marketing communications. All providers potentially use a variety of means to communicate with their patients. The authorization exclusion, however, is narrowly crafted to permit only face-to-face encounters between the covered entity and the individual.

The Department believes that further narrowing the exception to place conditions on such communications, other than that it be face-to-face, would neither be practical nor better serve the privacy interests of the individual. The Department does not intend to police communications between doctors and patients that take place in the doctor's office. Further limiting the exception would add a layer of complexity to the Rule, encumbering physicians and potentially causing them to second-guess themselves when making treatment or other essential health care communications. In this context, the individual can readily stop any unwanted communications, including any communications that may otherwise meet the definition of "marketing."

2. Health Care Operations: Changes of Legal Ownership

December 2000 Privacy Rule. The Rule's definition of "health care operations" included the disclosure of protected health information for the purposes of due diligence with respect to the contemplated sale or transfer of all or part of a covered entity's assets to a potential successor in interest who is a covered entity, or would become a covered entity as a result of the transaction.

The Department indicated in the December 2000 preamble of the Privacy Rule its intent to include in the definition of health care operations the actual transfer of protected health information to a successor in interest upon a sale or transfer of its assets. (65 FR 82609.) However, the regulation itself did not expressly provide for the transfer of protected health information upon the sale or transfer of assets to a successor in interest. Instead, the definition of "health care operations" included uses or disclosures of protected health information only for due diligence purposes when a sale or transfer to a successor in interest is contemplated.

March 2002 NPRM. A number of entities expressed concern about the discrepancy between the intent as expressed in the preamble to the December 2000 Privacy Rule and the actual regulatory language. To address these concerns, the Department proposed to add language to paragraph (6) of the definition of "health care operations" to clarify its intent to permit the transfer of records to a covered entity upon a sale, transfer, merger, or consolidation. This proposed change would prevent the Privacy Rule from interfering with necessary treatment or payment activities upon the sale of a covered entity or its assets.

The Department also proposed to use the terms "sale, transfer, consolidation or merger" and to eliminate the term "successor in interest" from this paragraph. The Department intended this provision to apply to any sale, transfer, merger or consolidation and believed the current language may not accomplish this goal.

The Department proposed to retain the limitation that such disclosures are health care operations only to the extent the entity receiving the protected health information is a covered entity or would become a covered entity as a result of the transaction. The Department clarified that the proposed modification would not affect a covered entity's other legal or ethical obligation to notify individuals of a sale, transfer, merger, or consolidation.

Overview of Public Comments. The following discussion provides an overview of the public comment received on this proposal. Additional comments received on this issue are discussed below in the section entitled, "Response to Other Public Comments."

Numerous commenters supported the proposed modifications. Generally, these commenters claimed the modifications would prevent inconvenience to consumers, and facilitate timely access to health care. Specifically, these commenters indicated that health care would be delayed and consumers would be inconvenienced if covered entities were required to obtain individual consent or authorization before they could access health records that are newly acquired assets resulting from the sale, transfer, merger, or consolidation of all or part of a covered entity. Commenters further claimed that the administrative burden of acquiring individual permission and culling records of consumers who do not give consent would be too great, and would cause some entities to simply store or destroy the records instead. Consequently, health information would be inaccessible, causing consumers to be inconvenienced and health care to be delayed. Some commenters noted that the proposed modifications recognize the realities of business without compromising the availability or quality of health care or diminishing privacy protections one would expect in the handling of protected health information during the course of such business transactions.

Opposition to the proposed modifications was limited, with commenters generally asserting that the transfer of records in such circumstances would not be in the best interests of individuals.

Final Modifications. The Department agrees with the commenters that supported the proposed modifications and, therefore, adopts the modifications to the definition of health care operations. Thus, "health care operations" includes the sale, transfer, merger, or consolidation of all or part of the covered entity to or with another covered entity, or an entity that will become a covered entity as a result of the transaction, as well as the due diligence activities in connection with such transaction. In response to a comment, the final Rule modifies the phrase "all or part of a covered entity" to read "all or part of the covered entity" to clarify that any disclosure for such activity must be by the covered entity that is a party to the transaction.

Under the final definition of "health care operations," a covered entity may use or disclose protected health information in connection with a sale or transfer of assets to, or a consolidation or merger with, an entity that is or will be a covered entity upon completion of the transaction; and to conduct due diligence in connection with such transaction. The modification makes clear it is also a health care operation to transfer records containing protected health information as part of the transaction. For example, if a pharmacy which is a covered entity buys another pharmacy which is also a covered entity, protected health information can be exchanged between the two entities for purposes of conducting due diligence, and the selling entity may transfer any records containing protected health information to the new owner upon completion of the transaction. The new owner may then immediately use and disclose those records to provide health care services to the individuals, as well as for payment and health care operations purposes. Since the information would continue to be protected by the Privacy Rule, any other use or disclosure of the information would require an authorization unless otherwise permitted without authorization by the Rule, and the new owner would be obligated to observe the individual's rights of access, amendment, and accounting. The Privacy Rule would not interfere with other legal or ethical obligations of an entity that may arise out of the nature of its business or relationship with its customers or patients to provide such persons with notice of the transaction or an opportunity to agree to the transfer of records containing personal information to the new owner.

Response to Other Public Comments

Comment: One commenter was concerned about what obligations the parties to a transaction have regarding protected health information that was exchanged as part of a transaction if the transaction does not go through.

Response: The Department believes that other laws and standard business practices are adequate to address these situations and accordingly does not impose additional requirements of this type. It is standard practice for parties contemplating such transactions to enter into confidentiality agreements. In addition to exchanging protected health information, the parties to such transactions commonly exchange confidential proprietary information. It is a standard practice for the parties to these transaction to agree that the handling of all confidential information, such as proprietary information, will include ensuring that, in the event that the proposed transaction is not consummated, the information is either returned to its original owner or destroyed as appropriate. They may include protected health information in any such agreement, as they determine appropriate to the circumstances and applicable law.

3. Protected Health Information: Exclusion for Employment Records

December 2000 Privacy Rule. The Privacy Rule broadly defines "protected health information" as individually identifiable health information maintained or transmitted by a covered entity in any form or medium. The December 2000 Privacy Rule expressly excluded from the definition of "protected health information" only educational and other records that are covered by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C. 1232g. In addition, throughout the December 2000 preamble to the Privacy Rule, the Department repeatedly stated that the Privacy Rule does not apply to employers, nor does it apply to the employment functions of covered entities, that is, when they are acting in their role as employers. For example, the Department stated:

> Covered entities must comply with this regulation in their health care capacity, not in their capacity as employers. For example, information in hospital personnel files about a nurses' (sic) sick leave is not protected health information under this rule.

65 FR 82612. However, the definition of protected health information did not expressly exclude personnel or employment records of covered entities.

March 2002 NPRM. The Department understands that covered entities are also employers, and that this creates two potential sources of confusion about the status of health information. First, some employers are required or elect to obtain health information about their employees, as part of their routine employment activities [e.g., hiring, compliance with the Occupational Safety and Health Administration (OSHA) requirements]. Second, employees of covered health care providers or health plans sometimes seek treatment or reimbursement from that provider or health plan, unrelated to the employment relationship.

To avoid any confusion on the part of covered entities as to application of the Privacy Rule to the records they maintain as employers, the Department proposed to modify the definition of "protected health information" in § 164.501 to expressly exclude employment records held by a covered entity in its role as employer. The proposed modification also would alleviate the situation where a covered entity would feel compelled to elect to designate itself as a hybrid entity solely to carve out its employment functions. Individually identifiable health information maintained or transmitted by a covered entity in its health care capacity would, under the proposed modification, continue to be treated as protected health information.

The Department specifically solicited comments on whether the term "employment records" is clear and what types of records would be covered by the term.

In addition, as discussed in section III.C.1. below, the Department proposed to modify the definition of a hybrid entity to permit any covered entity that engaged in both covered and non-covered functions to elect to operate as a hybrid entity. Under the proposed modification, a covered entity that primarily engaged in covered functions, such as a hospital, would be allowed to elect hybrid entity status even if its only non-covered functions were those related to its capacity as an employer. Indeed, because of the absence of an express exclusion for employment records in the definition of protected health information, some covered entities may have elected hybrid entity status under the misconception that this was the only way to prevent their personnel information from being treated as protected health information under the Rule.

Overview of Public Comments. The following discussion provides an overview of the public comment received on this proposal. Additional comments received on this issue are discussed below in the section entitled, "Response to Other Public Comments."

The Department received comments both supporting and opposing the proposal to add an exemption for employment records to the definition of protected health information. Support for the proposal was based primarily on the need for clarity and certainty in this important area. Moreover, commenters supported the proposed exemption for employment records because it reinforced and clarified that the Privacy Rule does not conflict with an employer's obligation under numerous other laws, including OSHA, Family and Medical Leave Act (FMLA), workers' compensation, and alcohol and drug free workplace laws.

Those opposed to the modification were concerned that a covered entity may abuse its access to the individually identifiable health information in its employment records by using that information for discriminatory purposes. Many commenters expressed concern that an employee's health information created, maintained, or transmitted by the covered entity in its health care capacity would be considered an employment record and, therefore, would not be considered protected health information. Some of these commenters argued for the inclusion of special provisions, similar to the "adequate separation" requirements for disclosure of protected health information from group health plan to plan sponsor functions (§ 164.504(f)), to heighten the protection for an employee's individually identifiable health information when moving between a covered entity's

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health care functions and its employer functions.

A number of commenters also suggested types of records that the Department should consider to be "employment records" and, therefore, excluded from the definition of "protected health information." The suggested records included records maintained under the FMLA or the Americans with Disabilities Act (ADA), as well as records relating to occupational injury, disability insurance eligibility, sick leave requests and justifications, drug screening results, workplace medical surveillance, and fitness-for-duty test results. One commenter suggested that health information related to professional athletes should qualify as an employment record.

Final Modifications. The Department adopts as final the proposed language excluding employment records maintained by a covered entity in its capacity as an employer from the definition of "protected health information." The Department agrees with commenters that the regulation should be explicit that it does not apply to a covered entity's employer functions and that the most effective means of accomplishing this is through the definition of "protected health information."

The Department is sensitive to the concerns of commenters that a covered entity not abuse its access to an employee's individually identifiable health information which it has created or maintains in its health care, not its employer, capacity. In responding to these concerns, the Department must remain within the boundaries set by the statute, which does not include employers per se as covered entities. Thus, we cannot regulate employers, even when it is a covered entity acting as an employer.

To address these concerns, the Department clarifies that a covered entity must remain cognizant of its dual roles as an employer and as a health care provider, health plan, or health care clearinghouse. Individually identifiable health information created, received, or maintained by a covered entity in its health care capacity is protected health information. It does not matter if the individual is a member of the covered entity's workforce or not. Thus, the medical record of a hospital employee who is receiving treatment at the hospital is protected health information and is covered by the Rule, just as the medical record of any other patient of that hospital is protected health information and covered by the Rule. The hospital may use that information only as permitted by the Privacy Rule, and in most cases will need the employee's authorization to access or use the medical information for employment purposes. When the individual gives his or her medical information to the covered entity as the employer, such as when submitting a doctor's statement to document sick leave, or when the covered entity as employer obtains the employee's written authorization for disclosure of protected health information, such as an authorization to disclose the results of a fitness for duty examination, that medical information becomes part of the employment record, and, as such, is no longer protected health information. The covered entity as employer, however, may be subject to other laws and regulations applicable to the use or disclosure of information in an employee's employment record.

The Department has decided not to add a definition of the term "employment records" to the Rule. The comments indicate that the same individually identifiable health information about an individual may be maintained by the covered entity in both its employment records and the medical records it maintains as a health care provider or enrollment or claims records it maintains as a health plan. The Department therefore is concerned that a definition of "employment record" may lead to the misconception that certain types of information are never protected health information, and will put the focus incorrectly on the nature of the information rather than the reasons for which the covered entity obtained the information. For example, drug screening test results will be protected health information when the provider administers the test to the employee, but will not be protected health information when, pursuant to the employee's authorization, the test results are provided to the provider acting as employer and placed in the employee's employment record. Similarly, the results of a fitness for duty exam will be protected health information when the provider administers the test to one of its employees, but will not be protected health information when the results of the fitness for duty exam are turned over to the provider as employer pursuant to the employee's authorization.

Furthermore, while the examples provided by commenters represent typical files or records that may be maintained by employers, the Department does not believe that it has sufficient information to provide a complete definition of employment record. Therefore, the Department does not adopt as part of this rulemaking a definition of employment record, but does clarify that medical information needed for an employer to carry out its obligations under FMLA, ADA, and similar laws, as well as files or records related to occupational injury, disability insurance eligibility, sick leave requests and justifications, drug screening results, workplace medical surveillance, and fitness-for-duty tests of employees, may be part of the employment records maintained by the covered entity in its role as an employer.

Response to Other Public Comments

Comment: One commenter requested clarification as to whether the term "employment record" included the following information that is either maintained or transmitted by a fully insured group health plan to an insurer or HMO for enrollment and/or disenrollment purposes: (a) the identity of an individual including name, address, birth date, marital status, dependent information and SSN; (b) the individual's choice of plan; (c) the amount of premiums/contributions for coverage of the individual; (d) whether the individual is an active employee or retired; (e) whether the individual is enrolled in Medicare.

Response: All of this information is protected health information when held by a fully insured group health plan and transmitted to an issuer or HMO, and the Privacy Rule applies when the group health plan discloses such information to any entity, including the plan sponsor. There are special rules in § 164.504(f) which describe the conditions for disclosure of protected health information to the plan sponsor. If the group health plan received the information from the plan sponsor, it becomes protected health information when received by the group health plan. The plan sponsor is not the covered entity, so this information will not be protected when held by a plan sponsor, whether or not it is part of the plan sponsor's "employment record."

Comment: One commenter asked for clarification as to how the Department would characterize the following items that a covered entity may have: (1) medical file kept separate from the rest of an employment record containing (a) doctor's notes; (b) leave requests; (c) physician certifications; and (d) positive hepatitis test results; (2) FMLA documentation including: (a) physician certification form; and (b) leave requests; (3) occupational injury files containing (a) drug screening; (b) exposure test results; (c) doctor's notes; and (d) medical director's notes.

Response: As explained above, the nature of the information does not determine whether it is an employment record. Rather, it depends on whether the covered entity obtains or creates the information in its capacity as employer or in its capacity as covered entity. An employment record may well contain some or all of the items mentioned by the commenter; but so too might a treatment record. The Department also recognizes that the employer may be required by law or sound business practice to treat such medical information as confidential and maintain it separate from other employment records. It is the function being performed by the covered entity and the purpose for which the covered entity has the medical information, not its record keeping practices, that determines whether the health information is part of an employment record or whether it is protected health information.

Comment: One commenter suggested that the health records of professional athletes should qualify as "employment records." As such, the records would not be subject to the protections of the Privacy Rule.

Response: Professional sports teams are unlikely to be covered entities. Even if a sports team were to be a covered entity, employment records of a covered entity are not covered by this Rule. If this comment is suggesting that the records of professional athletes should be deemed "employment records" even when created or maintained by health care providers and health plans, the Department disagrees. No class of individuals should be singled out for reduced privacy protections. As noted in the preamble to the December 2000 Rule, nothing in this Rule prevents an employer, such as a professional sports team, from making an employee's agreement to disclose health records a condition of employment. A covered entity, therefore, could disclose this information to an employer pursuant to an authorization.

B. Section 164.502—Uses and Disclosures of Protected Health Information: General Rules

1. Incidental Uses and Disclosures

December 2000 Privacy Rule. The December 2000 Rule did not explicitly address incidental uses and disclosures of protected health information. Rather, the Privacy Rule generally requires covered entities to make reasonable efforts to limit the use or disclosure of, and requests for, protected health information to the minimum necessary to accomplish the intended purpose. *See* § 164.502(b). Additionally, § 164.530(c) of the Privacy Rule requires covered entities to implement appropriate administrative, technical, and physical safeguards to reasonably safeguard protected health information from any intentional or unintentional use or disclosure that violates the Rule.

Protected health information includes individually identifiable health information (with limited exceptions) in any form, including information transmitted orally, or in written or electronic form. See the definition of "protected health information" at § 164.501.

March 2002 NPRM. After publication of the Privacy Rule, the Department received a number of concerns and questions as to whether the Privacy Rule's restrictions on uses and disclosures will prohibit covered entities from engaging in certain common and essential health care communications and practices in use today. In particular, concern was expressed that the Privacy Rule establishes absolute, strict standards that would not allow for the incidental or unintentional disclosures that could occur as a by-product of engaging in these health care communications and practices. It was argued that the Privacy Rule would, in effect, prohibit such practices and, therefore, impede many activities and communications essential to effective and timely treatment of patients.

For example, some expressed concern that health care providers could no longer engage in confidential conversations with other providers or with patients, if there is a possibility that they could be overheard. Similarly, others questioned whether they would be prohibited from using sign-in sheets in waiting rooms or maintaining patient charts at bedside, or whether they would need to isolate X-ray lightboards or destroy empty prescription vials. These concerns seemed to stem from a perception that covered entities are required to prevent any incidental disclosure such as those that may occur when a visiting family member or other person not authorized to access protected health information happens to walk by medical equipment or other material containing individually identifiable health information, or when individuals in a waiting room sign their name on a log sheet and glimpse the names of other patients.

The Department, in its July 6 guidance, clarified that the Privacy Rule is not intended to impede customary and necessary health care communications or practices, nor to require that all risk of incidental use or disclosure be eliminated to satisfy its standards. The guidance promised that the Department would propose modifications to the Privacy Rule to clarify that such communications and practices may continue, if reasonable safeguards are taken to minimize the chance of incidental disclosure to others.

Accordingly, the Department proposed to modify the Privacy Rule to add a new provision at § 164.502(a)(1)(iii) which would explicitly permit certain incidental uses and disclosures that occur as a result of a use or disclosure otherwise permitted by the Privacy Rule. The proposal described an incidental use or disclosure as a secondary use or disclosure that cannot reasonably be prevented, is limited in nature, and that occurs as a by-product of an otherwise permitted use or disclosure. The Department proposed that an incidental use or disclosure be permissible only to the extent that the covered entity had applied reasonable safeguards as required by § 164.530(c), and implemented the minimum necessary standard, where applicable, as required by §§ 164.502(b) and 164.514(d).

Overview of Public Comments. The following discussion provides an overview of the public comment received on this proposal. Additional comments received on this issue are discussed below in the section entitled, "Response to Other Public Comments."

The Department received many comments on its proposal to permit certain incidental uses and disclosures, the majority of which expressed strong support for the proposal. Many of these commenters indicated that such a policy would help to ensure that essential health care communications and practices are not chilled by the Privacy Rule. A few commenters opposed the Department's proposal to permit certain incidental uses and disclosures, one of whom asserted that the burden on medical staff to take precautions not to be overheard is minimal compared to the potential harm to patients if incidental disclosures were to be considered permissible.

Final Modifications. In response to the overwhelming support of commenters on this proposal, the Department adopts the proposed provision at § 164.502(a)(1)(iii), explicitly permitting certain incidental uses and disclosures that occur as a by-product of a use or disclosure otherwise permitted under the Privacy Rule. As in the proposal, an incidental use or disclosure is permissible only to the extent that the covered entity has applied reasonable safeguards as

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required by § 164.530(c), and implemented the minimum necessary standard, where applicable, as required by §§ 164.502(b) and 164.514(d). The Department continues to believe, as was stated in the proposed Rule, that so long as reasonable safeguards are employed, the burden of impeding such communications is not outweighed by any benefits that may accrue to individuals' privacy interests.

However, an incidental use or disclosure that occurs as a result of a failure to apply reasonable safeguards or the minimum necessary standard, where required, is not a permissible use or disclosure and, therefore, is a violation of the Privacy Rule. For example, a hospital that permits an employee to have unimpeded access to patients' medical records, where such access is not necessary for the employee to do her job, is not applying the minimum necessary standard and, therefore, any incidental use or disclosure that results from this practice would be an unlawful use or disclosure under the Privacy Rule.

In response to the few comments that opposed the proposal to permit certain incidental uses and disclosures, the Department reiterates that the Privacy Rule must not impede essential health care communications and practices. Prohibiting all incidental uses and disclosures would have a chilling effect on normal and important communications among providers, and between providers and their patients, and, therefore, would negatively affect individuals' access to quality health care. The Department does not intend with this provision to obviate the need for medical staff to take precautions to avoid being overheard, but rather, will only allow incidental uses and disclosures where appropriate precautions have been taken.

The Department clarifies, in response to a comment, that this provision applies, subject to reasonable safeguards and the minimum necessary standard, to an incidental use or disclosure that occurs as a result of any permissible use or disclosure under the Privacy Rule made to any person, and not just to incidental uses and disclosures resulting from treatment communications or only to communications among health care providers or other medical staff. For example, a provider may instruct an administrative staff member to bill a patient for a particular procedure, and may be overheard by one or more persons in the waiting room. Assuming that the provider made reasonable efforts to avoid being overheard and reasonably limited the information shared, an incidental disclosure resulting from such conversation is permissible under the Rule.

In the proposal, the Department did not address whether or not incidental disclosures would need to be included in the accounting of disclosures required by § 164.528. However, one commenter urged the Department to exclude incidental disclosures from the accounting. The Department agrees with this commenter and clarifies that covered entities are not required to include incidental disclosures in an accounting of disclosures provided to the individual pursuant to § 164.528. The Department does not believe such a requirement would be practicable; in many instances, the covered entity may not know that an incidental disclosure occurred. To make this policy clear, the Department includes an explicit exception for such disclosures to the accounting standard at § 164.528(a)(1).

Response to Other Public Comments

Comment: One commenter expressed concern that the requirement reasonably to safeguard protected health information would be problematic because any unintended use or disclosure could arguably demonstrate a failure to "reasonably safeguard." This commenter requested that the Department either delete the language in § 164.530(c)(2)(ii) or modify the language to make clear that the fact that an incidental use or disclosure occurs does not imply that safeguards were not reasonable.

Response: The Department clarifies that the fact that an incidental use or disclosure occurs does not by itself imply that safeguards were not reasonable. However, the Department does not believe that a modification to the proposed language is necessary to express this intent. The language proposed and now adopted at § 164.530(c)(2)(ii) requires only that the covered entity reasonably safeguard protected health information to limit incidental uses or disclosures, not that the covered entity prevent all incidental uses and disclosures. Thus, the Department expects that incidental uses and disclosures will occur and permits such uses and disclosures to the extent the covered entity has in place reasonable safeguards and has applied the minimum necessary standard, where applicable.

Comment: Another commenter requested that the Department clarify its proposal to assure that unintended disclosures will not result in civil penalties.

Response: The Department's authority to impose civil monetary penalties on violations of the Privacy Rule is defined in HIPAA. Specifically, HIPAA added section 1176 to the Social Security Act, which prescribes the Secretary's authority to impose civil monetary penalties. Therefore, in the case of a violation of a disclosure provision in the Privacy Rule, a penalty may not be imposed, among other things, if the person liable for the penalty did not know and, by exercising reasonable diligence would not have known, that such person violated the provision. HIPAA also provides for criminal penalties under certain circumstances, but the Department of Justice, not this Department, has authority for criminal penalties.

Comment: One commenter requested that the Department clarify how covered entities should implement technical and physical safeguards when they do not yet know what safeguards the final Security Rule will require.

Response: Each covered entity should assess the nature of the protected health information it holds, and the nature and scope of its business, and implement safeguards that are reasonable for its particular circumstances. There should be no potential for conflict between the safeguards required by the Privacy Rule and the final Security Rule standards, for several reasons. First, while the Privacy Rule applies to protected health information in all forms, the Security Rule will apply only to electronic health information systems that maintain or transmit individually identifiable health information. Thus, all safeguards for protected health information in oral, written, or other non-electronic forms will be unaffected by the Security Rule. Second, in preparing the final Security Rule, the Department is working to ensure the Security Rule requirements for electronic information systems work "hand in glove" with any relevant requirements in the Privacy Rule, including § 164.530.

Comment: One commenter argued that while this new provision is helpful, it does not alleviate covered entities' concerns that routine practices, often beneficial for treatment, will be prohibited by the Privacy Rule. This commenter stated that, for example, specialists provide certain types of therapy to patients in a group setting, and, in some cases, where family members are also present.

Response: The Department reiterates that the Privacy Rule is not intended to impede common health care communications and practices that are essential in providing health care to the individual. Further, the Privacy Rule's new provision permitting certain incidental uses and disclosures is intended to increase covered entities' confidence that such practices can continue even where an incidental use or disclosure may occur, provided that the covered entity has taken reasonable precautions to safeguard and limit the protected health information disclosed. For example, this provision should alleviate concerns that common practices, such as the use of sign-in sheets and calling out names in waiting rooms will not violate the Rule, so long as the information disclosed is appropriately limited. With regard to the commenters' specific example, disclosure of protected health information in a group therapy setting would be a treatment disclosure, and thus permissible without individual authorization. Further, § 164.510(b) generally permits a covered entity to disclose protected health information to a family member or other person involved in the individual's care. In fact, this section specifically provides that, where the individual is present during a disclosure, the covered entity may disclose protected health information if it is reasonable to infer from the circumstances that the individual does not object to the disclosure. Absent countervailing circumstances, the individual's agreement to participate in group therapy or family discussions is a good basis for such a reasonable inference. As such disclosures are permissible disclosures in and of themselves, they would not be incidental disclosures.

Comment: Some commenters, while in support of permitting incidental uses and disclosures, requested that the Department provide additional guidance in this area by providing additional examples of permitted incidental uses and disclosures and/or clarifying what would constitute "reasonable safeguards."

Response: The reasonable safeguards and minimum necessary standards are flexible and adaptable to the specific business needs and circumstances of the covered entity. Given the discretion covered entities have in implementing these standards, it is difficult for the Department to provide specific guidance in this area that is generally applicable to many covered entities. However, the Department intends to provide future guidance through frequently asked questions or other materials in response to specific scenarios that are raised by industry.

2. Minimum Necessary Standard

December 2000 Privacy Rule. The Privacy Rule generally requires covered entities to make reasonable efforts to limit the use or disclosure of, and requests for, protected health information to the minimum necessary to accomplish the intended purpose. See § 164.502(b). Protected health information includes individually identifiable health information (with limited exceptions) in any form, including information transmitted orally, or in written or electronic form. See the definition of "protected health information" at § 164.501. The minimum necessary standard is intended to make covered entities evaluate their practices and enhance protections as needed to limit unnecessary or inappropriate access to, and disclosures of, protected health information.

The Privacy Rule contains some exceptions to the minimum necessary standard. The minimum necessary requirements do not apply to uses or disclosures that are required by law, disclosures made to the individual or pursuant to an authorization initiated by the individual, disclosures to or requests by a health care provider for treatment purposes, uses or disclosures that are required for compliance with the regulations implementing the other administrative simplification provisions of HIPAA, or disclosures to the Secretary of HHS for purposes of enforcing this Rule. See § 164.502(b)(2).

The Privacy Rule sets forth requirements for implementing the minimum necessary standard with regard to a covered entity's uses, disclosures, and requests at § 164.514(d). A covered entity is required to develop and implement policies and procedures appropriate to the entity's business practices and workforce that reasonably minimize the amount of protected health information used, disclosed, and requested. For uses of protected health information, the policies and procedures must identify the persons or classes of persons within the covered entity who need access to the information to carry out their job duties, the categories or types of protected health information needed, and the conditions appropriate to such access. For routine or recurring requests and disclosures, the policies and procedures may be standard protocols. Non-routine requests for, and disclosures of, protected health information must be reviewed individually.

With regard to disclosures, the Privacy Rule permits a covered entity to rely on the judgment of certain parties requesting the disclosure as to the minimum amount of information that is needed. For example, a covered entity is permitted reasonably to rely on representations from a public official, such as a State workers' compensation official, that the information requested is the minimum necessary for the intended purpose. Similarly, a covered entity is permitted reasonably to rely on the judgment of another covered entity that the information requested is the minimum amount of information reasonably necessary to fulfill the purpose for which the request has been made. See § 164.514(d)(3)(iii).

March 2002 NPRM. The Department proposed a number of minor modifications to the minimum necessary standard to clarify the Department's intent or otherwise conform these provisions to other proposed modifications. First, the Department proposed to separate § 164.502(b)(2)(ii) into two subparagraphs (§ 164.502(b)(2)(ii) and (iii)) to eliminate confusion regarding the exception to the minimum necessary standard for uses or disclosures made pursuant to an authorization under § 164.508, and the separate exception for disclosures made to the individual. Second, to conform to the proposal to eliminate the special authorizations required by the Privacy Rule at § 164.508(d), (e), and (f), the Department proposed to exempt from the minimum necessary standard any uses or disclosures for which the covered entity had received an authorization that meets the requirements of § 164.508, rather than just those authorizations initiated by the individual.

Third, the Department proposed to modify § 164.514(d)(1) to delete the term "reasonably ensure" in response to concerns that the term connotes an absolute, strict standard and, therefore, is inconsistent with the Department's intent that the minimum necessary requirements be reasonable and flexible to the unique circumstances of the covered entity. In addition, the Department proposed to generally revise the language in § 164.514(d)(1) to be more consistent with the description of standards elsewhere in the Privacy Rule.

Fourth, so that the minimum necessary standard would be applied consistently to requests for, and disclosures of, protected health information, the Department proposed to add a provision to § 164.514(d)(4) to make the implementation specifications for applying the minimum necessary standard to requests for protected health information by a covered entity more consistent with the corresponding implementation specifications for disclosures. Specifically, for requests not made on a routine and recurring basis, the Department proposed to add the requirement that a covered entity must implement the minimum

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necessary standard by developing and implementing criteria designed to limit its request for protected health information to the minimum necessary to accomplish the intended purpose.

Overview of Public Comments. The following discussion provides an overview of the public comment received on this proposal. Additional comments received on this issue are discussed below in the section entitled, "Response to Other Public Comments."

The Department received a number of comments on its proposal to exempt from the minimum necessary standard any use or disclosure of protected health information for which the covered entity has received an authorization that meets the requirements of § 164.508. Many commenters supported this proposal. A few commenters generally urged that the minimum necessary standard be applied to uses and disclosures pursuant to an authorization. A few other commenters appeared to misinterpret the policy in the December 2000 Rule and urged that the Department retain the minimum necessary standard for disclosures "pursuant to an authorization other than disclosures to an individual." Some commenters raised specific concerns about authorizations for psychotherapy notes and the particular need for minimum necessary to be applied in these cases.

A number of commenters expressed support for the Department's statements in the preamble to the proposed Rule reinforcing that the minimum necessary standard is intended to be flexible to account for the characteristics of the entity's business and workforce, and not intended to override the professional judgment of the covered entity. Similarly, some commenters expressed support for the Department's proposal to remove the term "reasonably ensure" from § 164.514(d)(1). However, a few commenters expressed concerns that the proposed alternative language actually would implement a stricter standard than that included in the December 2000 Privacy Rule.

Final Modifications. In this final Rule, the Department adopts the proposed policy to exempt from the minimum necessary standard any uses or disclosures for which the covered entity has received an authorization that meets the requirements of § 164.508. The final modification adopts the proposal to eliminate the special authorizations that were required by the December 2000 Privacy Rule at § 164.508(d), (e), and (f). (*See* section III.E.1. of the preamble for a detailed discussion of the modifications to the authorization requirements of the Privacy Rule.) Since the only authorizations to which the minimum necessary standard applied are being eliminated in favor of a single consolidated authorization, the final Rule correspondingly eliminates the minimum necessary provisions that applied to the now-eliminated special authorizations. All uses and disclosures made pursuant to any authorization are exempt from the minimum necessary standard.

In response to commenters who opposed this proposal as a potential weakening of privacy protections or who wanted the minimum necessary requirements to apply to authorizations other than disclosures to the individual, the Department notes that nothing in the final Rule eliminates an individual's control over his or her protected health information with respect to an authorization. All authorizations must include a description of the information to be used and disclosed that identifies the information in a specific and meaningful fashion as required by § 164.508(c)(1)(i). If the individual does not wish to release the information requested, the individual has the right to not sign the authorization or to negotiate a narrower authorization with the requestor.

Additionally, in response to those commenters who raised specific concerns with respect to authorizations which request release of psychotherapy notes, the Department clarifies that the final Rule does not require a covered entity to use and disclose protected health information pursuant to an authorization. Rather, as with most other uses and disclosures under the Privacy Rule, this is only a permissible use or disclosure. If a covered health care provider is concerned that a request for an individual's psychotherapy notes is not warranted or is excessive, the provider may consult with the individual to determine whether or not the authorization is consistent with the individual's wishes.

Further, the Privacy Rule does not permit a health plan to condition enrollment, eligibility for benefits, or payment of a claim on obtaining the individual's authorization to use or disclose psychotherapy notes. Nor may a health care provider condition treatment on an authorization for the use or disclosure of psychotherapy notes. Thus, the Department believes that these additional protections appropriately and effectively protect an individual's privacy with respect to psychotherapy notes.

The final Rule also retains for clarity the proposal to separate § 164.502(b)(2)(ii) into two subparagraphs (§ 164.502(b)(2)(ii) and (iii)); commenters did not explicitly address or raise issues with this proposed clarification.

In response to concerns that the proposed language at § 164.514(d)(1) would implement a stricter standard, the Department disagrees and, therefore, adopts the proposed language. The language in § 164.514(d)(1) describes the standard: covered entities are required to meet the requirements in the implementation specifications of § 164.514(d)(2) through (d)(5). The implementation specifications describe what covered entities must do reasonably to limit uses, disclosures, and requests to the minimum necessary. Thus, the Department believes that the language in the implementation specifications is adequate to reflect the Department's intent that the minimum necessary standard is reasonable and flexible to accommodate the unique circumstances of the covered entity.

Commenters also generally did not address the Department's proposed clarification to make the implementation specifications for requests of protected health information consistent with those for disclosures of protected health information. Consequently, as commenters did not raise concerns with the proposal, this final Rule adopts the proposed provision at § 164.514(d)(4). For requests of protected health information not made on a routine and recurring basis, a covered entity must implement the minimum necessary standard by developing and implementing criteria designed to limit its request for protected health information to the minimum necessary to accomplish the intended purpose.

Response to Other Public Comments

Comment: Many commenters recommended changes to the minimum necessary standard unrelated to the proposed modifications. For example, some commenters urged that the Department exempt from the minimum necessary standard all uses of protected health information, or at least uses of protected health information for treatment purposes. Alternatively, one commenter urged that the minimum necessary standard be applied to disclosures for treatment purposes. Others requested that the Department exempt uses and disclosures for payment and health care operations from the standard, or exempt disclosures to another covered entity for such purposes. A few commenters argued that the minimum necessary standard should not apply to disclosures to another covered entity. Some urged that the minimum necessary standard be eliminated entirely.

Response: The Department did not propose modifications relevant to these comments, nor did it seek comment on these issues. The proposed modifications generally were intended to address those problems or issues that presented workability problems for covered entities or otherwise had the potential to impede an individual's timely access to quality health care. Moreover, the proposed modifications to the minimum necessary standard were either minor clarifications of the Department's intent with respect to the standard or would conform the standard to other proposed modifications. The Department has, in previous guidance as well as in the preamble to the December 2000 Privacy Rule, explained its position with respect to the above concerns. The minimum necessary standard is derived from confidentiality codes and practices in common use today. We continue to believe that it is sound practice not to use or disclose private medical information that is not necessary to satisfy a request or effectively carry out a function. The privacy benefits of retaining the minimum necessary standard outweigh the burden involved with implementing the standard. The Department reiterates that position here.

Further, the Department designed the minimum necessary standard to be sufficiently flexible to accommodate the various circumstances of any covered entity. Covered entities will develop their own policies and procedures to meet this standard. A covered entity's policies and procedures may and should allow the appropriate individuals within an entity to have access to protected health information as necessary to perform their jobs with respect to the entity's covered functions. The Department is not aware of any workability issues with this standard.

With respect to disclosures to another covered entity, the Privacy Rule permits a covered entity reasonably to rely on another covered entity's request for protected health information as the minimum necessary for the intended disclosure. See § 164.514(d)(3)(iii). The Department does not believe, therefore, that a blanket exception for such disclosures is justified. The covered entity who holds the information always retains discretion to make its own minimum necessary determination.

Lastly, the Department continues to believe that the exception for disclosures to or requests by health care providers for treatment purposes is appropriate to ensure that access to timely and quality treatment is not impeded.

As the Privacy Rule is implemented, the Department will monitor the workability of the minimum necessary standard and consider proposing revisions, where appropriate, to ensure that the Privacy Rule does not hinder timely access to quality health care.

Comment: One commenter requested that the Department state in the preamble that the minimum necessary standard may not be used to interfere with or obstruct essential health plan payment and health care operations activities, including quality assurance, disease management, and other activities. Another commenter asked that the final Rule's preamble acknowledge that, in some cases, the minimum protected health information necessary for payment or health care operations will be the entire record. One commenter urged that the Rule be modified to presume that disclosure of a patient's entire record is justified, and that such disclosure does not require individual review, when requested for disease management purposes.

Response: The minimum necessary standard is not intended to impede essential treatment, payment, or health care operations activities of covered entities. Nor is the Rule intended to change the way covered entities handle their differences with respect to disclosures of protected health information. The Department recognizes that, in some cases, an individual's entire medical record may be necessary for payment or health care operations purposes, including disease management purposes. However, the Department does not believe that disclosure of a patient's entire medical record is always justified for such purposes. The Privacy Rule does not prohibit the request for, or release of, entire medical records in such circumstances, provided that the covered entity has documented the specific justification for the request or disclosure of the entire record.

Comment: A few commenters requested that the Department add to the regulatory text some of the statements included in the preamble to the proposed modifications. For example, commenters asked that the final Rule state that the minimum necessary standard is "intended to be consistent with, and not override, professional judgement and standards." Similarly, others requested that the regulation specify that "covered entities must implement policies and procedures based on their own assessment of what protected health information is reasonably necessary for a particular purpose, given the characteristics of their business and their workforce, and using their own professional judgment."

Response: It is the Department's policy that the minimum necessary standard is intended to be consistent with, and not override, professional judgment and standards, and that covered entities must implement policies and procedures based on their own assessment of what protected health information is reasonably necessary for a particular purpose, given the characteristics of their business and their workforce. However, the Department does not believe a regulatory modification is necessary because the Department has made its policy clear not only in the preamble to the proposed modifications but also in previous guidance and in this preamble.

Comment: A commenter argued that the Department should exempt disclosures for any of the standard transactions as required by the Transactions Rule, when information is requested by a health plan or its business associate.

Response: The Department disagrees. The Privacy Rule already exempts from the minimum necessary standard data elements that are required or situationally required in any of the standard transactions (§ 164.502(b)(2)(v)). If, however, a standard transaction permits the use of optional data elements, the minimum necessary standard applies. For example, the standard transactions adopted for the outpatient pharmacy sector use optional data elements. The payer currently specifies which of the optional data elements are needed for payment of its particular pharmacy claims. The minimum necessary standard applies to the payer's request for such information. A pharmacist is permitted to rely on the payer's request for information, if reasonable to do so, as the minimum necessary for the intended disclosure.

Comment: A few commenters expressed concerns with respect to a covered entity's disclosures for research purposes. Specifically, one commenter was concerned that a covered entity will not accept documentation of an external IRB's waiver of authorization for purposes of reasonably relying on the request as the minimum necessary. It was suggested that the Department deem that a disclosure to a researcher based on appropriate documentation from an IRB or Privacy Board meets the minimum necessary standard.

Response: The Department understands commenters' concerns that covered entities may decline to

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participate in research studies, but believes that the Rule already addresses this concern. The Privacy Rule explicitly permits a covered entity reasonably to rely on a researcher's documentation or the representations of an IRB or Privacy Board pursuant to § 164.512(i) that the information requested is the minimum necessary for the research purpose. This is true regardless of whether the documentation is obtained from an external IRB or Privacy Board or one that is associated with the covered entity. The preamble to the March 2002 NPRM further reinforced this policy by stating that reasonable reliance on an IRB's documentation of approval of the waiver criteria and a description of the data needed for the research as required by § 164.512(i) would satisfy a covered entity's obligations with respect to limiting the disclosure to the minimum necessary. The Department reiterates this policy here and believes that this should give covered entities sufficient confidence in accepting IRB waivers of authorization.

Comment: A number of commenters requested that the Department limit the amount of information that pharmacy benefits managers (PBM) may demand from pharmacies as part of their claims payment activities.

Response: The health plan, as a covered entity, is obligated to instruct the PBM, as its business associate acting through the business associate contract, to request only the minimum amount of information necessary to pay a claim. The pharmacist may rely on this determination if reasonable to do so, and then does not need to engage in a separate minimum necessary assessment. If a pharmacist does not agree that the amount of information requested is reasonably necessary for the PBM to fulfill its obligations, it is up to the pharmacist and PBM to negotiate a resolution of the dispute as to the amount of information needed by the PBM to carry out its obligations and that the pharmacist is willing to provide, recognizing that the PBM is not required to pay claims if it has not received the information it believes is necessary to process the claim in accordance with its procedures, including fraud prevention procedures.

The standard for electronic pharmacy claims, adopted by the Secretary in the Transactions Rule, includes optional data elements and relies on each payer to specify the data elements required for payment of its claims. Understandably, the majority of health plans require some patient identification elements in order to adjudicate claims. As the National Council for Prescription Drug Programs (NCPDP) moves from optional to required and situational data elements, the question of whether the specific element of "patient name" should be required or situational will be debated by the NCPDP, by the Designated Standards Maintenance Organizations, by the National Committee on Vital and Health Statistics, and ultimately will be decided in rulemaking by the Secretary.

Comment: One commenter requested that the minimum necessary standard be made an administrative requirement rather than a standard for uses and disclosures, to ease liability concerns with implementing the standard. The commenter stated that this change would mean that covered entities would be required to implement reasonable minimum necessary policies and procedures and would be liable if: (1) They fail to implement minimum necessary policies and procedures; (2) their policies and procedures are not reasonable; or (3) they fail to enforce their policies and procedures. The commenter further explained that health plans would be liable if their policies and procedures for requesting health information were unreasonable, but the burden of liability for the request shifts largely to the entity best suited to determine whether the amount of information requested is the minimum necessary.

Response: The Privacy Rule already requires covered entities to implement reasonable minimum necessary policies and procedures and to limit any use, disclosure, or request for protected health information in a manner consistent with its policies and procedures. The minimum necessary standard is an appropriate standard for uses and disclosures, and is not merely an administrative requirement. The Privacy Rule provides adequate flexibility to adopt minimum necessary policies and procedures that are workable for the covered entity, thereby minimizing a covered entity's liability concerns.

Comment: A number of commenters expressed concerns about application of the minimum necessary standard to disclosures for workers' compensation purposes. Commenters argued that the standard will prevent workers' compensation insurers and State administrators, as well as employers, from obtaining the information needed to pay injured workers the benefits guaranteed under the State workers' compensation system. They also argued that the minimum necessary standard could lead to fraudulent claims and unnecessary legal action in order to obtain information needed for workers' compensation purposes.

Response: The Privacy Rule is not intended to disrupt existing workers' compensation systems as established by State law. In particular, the Rule is not intended to impede the flow of health information that is needed by employers, workers' compensation carriers, or State officials in order to process or adjudicate claims and/or coordinate care under the workers' compensation system. To this end, the Privacy Rule at § 164.512(l) explicitly permits a covered entity to disclose protected health information as authorized by, and to the extent necessary to comply with, workers' compensation or other similar programs established by law that provide benefits for work-related injuries or illnesses without regard to fault. The minimum necessary standard permits covered entities to disclose any protected health information under § 164.512(l) that is reasonably necessary for workers' compensation purposes and is intended to operate so as to permit information to be shared for such purposes to the full extent permitted by State or other law.

Additionally, where a State or other law requires a disclosure of protected health information for workers' compensation purposes, such disclosure is permitted under § 164.512(a). A covered entity also is permitted to disclose protected health information to a workers' compensation insurer where the insurer has obtained the individual's authorization pursuant to § 164.508 for the release of such information. The minimum necessary provisions do not apply to disclosures required by law or made pursuant to authorizations. See § 164.502(b), as modified herein.

Further, the Department notes that a covered entity is permitted to disclose information to any person or entity as necessary to obtain payment for health care services. The minimum necessary provisions apply to such disclosures but permit the covered entity to disclose the amount and types of information that are necessary to obtain payment.

The Department also notes that because the disclosures described above are permitted by the Privacy Rule, there is no potential for conflict with State workers' compensation laws, and, thus, no possibility of preemption of such laws by the Privacy Rule.

The Department's review of certain States workers' compensation laws demonstrates that many of these laws address the issue of the scope of information that is available to carriers and employers. The Privacy Rule's minimum necessary standard will not create an obstacle to the type and amount of information that currently is provided to employers, workers' compensation carriers, and State administrative agencies under these State laws. In many cases, the minimum necessary standard will not apply to disclosures made pursuant to such laws. In other cases, the minimum necessary standard applies, but permits disclosures to the full extent authorized by the workers' compensation laws. For example, Texas workers' compensation law requires a health care provider, upon the request of the injured employee or insurance carrier, to furnish records relating to the treatment or hospitalization for which compensation is being sought. Since such disclosure is required by law, it also is permissible under the Privacy Rule at § 164.512(a) and exempt from the minimum necessary standard. The Texas law further provides that a health care provider is permitted to disclose to the insurance carrier records relating to the diagnosis or treatment of the injured employee without the authorization of the injured employee to determine the amount of payment or the entitlement to payment. Since the disclosure only is permitted and not required by Texas law, the provisions at § 164.512(l) would govern to permit such disclosure. In this case, the minimum necessary standard would apply to the disclosure but would allow for information to be disclosed as authorized by the statute, that is, as necessary to "determine the amount of payment or the entitlement to payment."

As another example, under Louisiana workers' compensation law, a health care provider who has treated an employee related to a workers' compensation claim is required to release any requested medical information and records relative to the employee's injury to the employer or the workers' compensation insurer. Again, since such disclosure is required by law, it is permissible under the Privacy Rule at § 164.512(a) and exempt from the minimum necessary standard. The Louisiana law further provides that any information relative to any other treatment or condition shall be available to the employer or workers' compensation insurer through a written release by the claimant. Such disclosure also would be permissible and exempt from the minimum necessary standard under the Privacy Rule if the individual's written authorization is obtained consistent with the requirements of § 164.508.

The Department understands concerns about the potential chilling effect of the Privacy Rule on the workers' compensation system. Therefore, as the Privacy Rule is implemented, the Department will actively monitor the effects of the Rule on this industry to assure that the Privacy Rule does not have any unintended negative effects that disturb the existing workers' compensation systems. If the Department finds that, despite the above clarification of intent, the Privacy Rule is being misused and misapplied to interfere with the smooth operation of the workers' compensation systems, it will consider proposing modifications to the Rule to clarify the application of the minimum necessary standard to disclosures for workers' compensation purposes.

Comment: Another commenter urged the Department to clarify that a covered entity can reasonably rely on a determination made by a financial institution or credit card payment system regarding the minimum necessary information needed by that financial institution or payment system to complete a contemplated payment transaction.

Response: Except to the extent information is required or situationally required for a standard payment transaction (*see* 45 CFR 162.1601, 162.1602), the minimum necessary standard applies to a covered entity's disclosure of protected health information to a financial institution in order to process a payment transaction. With limited exceptions, the Privacy Rule does not allow a covered entity to substitute the judgment of a private, third party for its own assessment of the minimum necessary information for a disclosure. Under the exceptions in § 164.514(d)(3)(iii), a covered entity is permitted reasonably to rely on the request of another covered entity because, in this case, the requesting covered entity is itself subject to the minimum necessary standard and, therefore, required to limit its request to only that information that is reasonably necessary for the purpose. Thus, the Department does not agree that a covered entity should generally be permitted reasonably to rely on the request of a financial institution as the minimum necessary. However, the Department notes that where, for example, a financial institution is acting as a business associate of a covered entity, the disclosing covered entity may reasonably rely on a request from such financial institution, because in this situation, both the requesting and disclosing entity are subject to the minimum necessary standard.

Comment: A number of commenters continued to request additional guidance with respect to implementing this discretionary standard. Many expressed support for the statement in the NPRM that HHS intends to issue further guidance to clarify issues causing confusion and concern in industry, as well as provide additional technical assistance materials to help covered entities implement the provisions.

Response: The Department is aware of the need for additional guidance in this area and intends to provide technical assistance and further clarifications as necessary to address these concerns and questions.

3. Parents as Personal Representatives of Unemancipated Minors [1]

December 2000 Privacy Rule. The Privacy Rule is intended to assure that parents have appropriate access to health information about their children. By creating new Federal protections and individual rights with respect to individually identifiable health information, parents will generally have new rights with respect to the health information about their minor children. In addition, the Department intended that the disclosure of health information about a minor child to a parent should be governed by State or other applicable law.

Under the Privacy Rule, parents are granted new rights as the personal representatives of their minor children. (*See* § 164.502(g).) Generally, parents will be able to access and control the health information about their minor children. (*See* § 164.502(g)(3).)

The Privacy Rule recognizes a limited number of exceptions to this general rule. These exceptions generally track the ability under State or other applicable laws of certain minors to obtain specified health care without parental consent. For example, every State has a law that permits adolescents to be tested for HIV without the consent of a parent. These laws are created to assure that adolescents will seek health care that is essential to their own health, as well as the public health. In these exceptional cases, where a minor can obtain a particular health care service without the consent of a parent under State or other applicable law, it is the minor, and not the parent, who may exercise the privacy rights afforded to individuals under the December 2000 Privacy Rule. (*See* § 164.502(g)(3)(i) and (ii), redesignated as § 164.502(g)(3)(i)(A) and (B)).

The December 2000 Privacy Rule also allows the minor to exercise control of

[1] Throughout this section of the preamble, "minor" refers to an unemancipated minor and "parent" refers to a parent, guardian, or other person acting *in loco parentis*.

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protected health information when the parent has agreed to the minor obtaining confidential treatment (*see* § 164.502(g)(3)(iii), redesignated as § 164.502(g)(3)(i)(C) in this final Rule), and allows a covered health care provider to choose not to treat a parent as a personal representative of the minor when the provider is concerned about abuse or harm to the child. (*See* § 164.502(g)(5).)

Of course, a covered provider may disclose health information about a minor to a parent in the most critical situations, even if one of the limited exceptions discussed above apply. Disclosure of such information is always permitted as necessary to avert a serious and imminent threat to the health or safety of the minor. (*See* § 164.512(j).) The Privacy Rule adopted in December 2000 also states that disclosure of health information about a minor to a parent is permitted if State law authorizes disclosure to a parent, thereby allowing such disclosure where State law determines it is appropriate. (*See* § 160.202, definition of "more stringent.") Finally, health information about the minor may be disclosed to the parent if the minor involves the parent in his or her health care and does not object to such disclosure. (*See* § 164.502(g)(3)(i), redesignated as § 164.502(g)(3)(i)(A), and § 164.510(b)). The parent will retain all rights concerning any other health information about his or her minor child that does not meet one of the few exceptions listed above.

March 2002 NPRM. After reassessing the parents and minors provisions in the Privacy Rule, the Department identified two areas in which there were unintended consequences of the Rule. First, the language regarding deference to State law, which authorizes or prohibits disclosure of health information about a minor to a parent, fails to assure that State or other law governs when the law grants a provider discretion in certain circumstances to disclose protected health information to a parent. Second, the Privacy Rule may have prohibited parental access in certain situations in which State or other law may have permitted such access.

The Department proposed changes to these standards where they did not operate as intended and did not adequately defer to State or other applicable law with respect to parents and minors. First, in order to assure that State and other applicable laws that address disclosure of health information about a minor to his or her parent govern in all cases, the Department proposed to move the relevant language about the disclosure of health information from the definition of "more stringent" (*see* § 160.202) to the standards regarding parents and minors (*see* § 164.502(g)(3)). This change would make it clear that State and other applicable law governs not only when a State explicitly addresses disclosure of protected health information to a parent but also when such law provides discretion to a provider. The language itself is also changed in the proposal to adapt it to the new section.

Second, the Department proposed to add a new paragraph (iii) to § 164.502(g)(3) to establish a neutral policy regarding the right of access of a parent to health information about his or her minor child under § 164.524, in the rare circumstance in which the parent is technically not the personal representative of his or her minor child under the Privacy Rule. This policy would apply particularly where State or other law is silent or unclear.

Overview of Public Comments. The following discussion provides an overview of the public comment received on this proposal. Additional comments received on this issue are discussed below in the section entitled, "Response to Other Public Comments."

The Department received a number of comments on the proposed changes to the parents and minors provisions of the Privacy Rule. Many commenters, particularly health care providers involved in provision of health care to minors, requested that the Department return to the approach under the Privacy Rule published in December 2000, because they believed that the proposed approach would discourage minors from seeking necessary health care. At a minimum, these commenters suggested that the Department clarify that discretion to grant a parent access under the proposal is limited to the covered health care provider that is providing treatment to the minor.

Supporters of the proposal asserted that the Department was moving in the right direction, but many also advocated for more parental rights. They asserted that parents have protected rights to act for their children and that the Privacy Rule interferes with these rights.

There were also some commenters that were confused by the new proposal and others that requested a Federal standard that would preempt all State laws.

Final Modifications. The Department will continue to defer to State or other applicable law and to remain neutral to the extent possible. However, the Department is adopting changes to the standards in the December 2000 Privacy Rule, where they do not operate as intended and are inconsistent with the Department's underlying goals. These modifications are similar in approach to the NPRM and the rationale for these changes remains the same as was stated in the NPRM. However, the Department makes some changes from the language that was proposed, in order to simplify the provisions and clarify the Department's intent.

There are three goals with respect to the parents and minors provisions in the Privacy Rule. First, the Department wants to assure that parents have appropriate access to the health information about their minor children to make important health care decisions about them, while also making sure that the Privacy Rule does not interfere with a minor's ability to consent to and obtain health care under State or other applicable law. Second, the Department does not want to interfere with State or other applicable laws related to competency or parental rights, in general, or the role of parents in making health care decisions about their minor children, in particular. Third, the Department does not want to interfere with the professional requirements of State medical boards or other ethical codes of health care providers with respect to confidentiality of health information or with the health care practices of such providers with respect to adolescent health care.

In order to honor these differing goals, the Department has and continues to take the approach of deferring to State or other applicable law and professional practice with respect to parents and minors. Where State and other applicable law is silent or unclear, the Department has attempted to create standards, implementation specifications, and requirements that are consistent with such laws and that permit States the discretion to continue to define the rights of parents and minors with respect to health information without interference from the Federal Privacy Rule.

The Department adopts two changes to the provisions regarding parents and minors in order to address unintended consequences from the December 2000 Privacy Rule and to defer to State and other law. The first change is about disclosure of protected health information to a parent and the second is about access to the health information by the parent. Disclosure is about a covered entity providing individually identifiable information to persons outside the entity, either the individual or a third party. Access is a particular type of disclosure that is the right of an individual (directly or through a personal representative) to review or obtain a copy of his or her health information under § 164.524. This modification treats both activities similarly by deferring to State or other applicable law.

The first change, regarding disclosure of protected health information to a parent, is the same as the change proposed in the NPRM. In order to assure that State and other applicable laws that address disclosure of health information about a minor to his or her parent govern in all cases, the language in the definition of "more stringent" (*see* § 160.202) that addresses the disclosure of protected health information about a minor to a parent has been moved to the standards regarding parents and minors (*see* § 164.502(g)(3)). The addition of paragraphs (g)(3)(ii)(A) and (B) of § 164.502, clarify that State and other applicable law governs when such law explicitly requires, permits, or prohibits disclosure of protected health information to a parent.

In connection with moving the language, the language is changed from the December 2000 Privacy Rule in order to adapt it to the new section. Section 164.502(g)(3)(ii)(A) states that a covered entity may disclose protected health information about a minor to a parent if an applicable provision of State or other law permits or requires such disclosure. By adopting this provision, the Department makes clear that nothing in the regulation prohibits disclosure of health information to a parent if, and to the extent that, State or other law permits or requires such disclosure. The Privacy Rule defers to such State or other law and permits covered entities to act in accordance to such law. Section 164.502(g)(3)(ii)(B) states that a covered entity may not disclose protected health information about a minor to a parent if an applicable provision of State or other law prohibits such disclosure. Again, regardless of how the Privacy Rule would operate in the absence of explicit State or other law, if such law prohibits the disclosure of protected health information about a minor to a parent, so does the Privacy Rule. The revision also clarifies that deference to State or other applicable law includes deference to established case law as well as explicit provisions in statutes or regulations that permit, require, or prohibit particular disclosures.

The second change, regarding access to protected health information, also reflects the same policy as proposed in the NPRM. There are two provisions that refer to access, in order to clarify the Department's intent in this area. The first is where there is an explicit State or other law regarding parental access, and the second is where State or other law is silent or unclear, which is often the case with access.

Like the provisions regarding disclosure of protected health information to a parent, the final Rule defers to State or other applicable law regarding a parent's access to health information about a minor. The change assures that State or other applicable law governs when the law explicitly requires, permits, or prohibits access to protected health information about a minor to a parent. This includes deference to established case law as well as an explicit provision in a statute or regulation. This issue is addressed in paragraphs (g)(3)(ii)(A) and (B) of § 164.502 with the disclosure provisions discussed above.

In addition to the provision regarding explicit State access laws, the Department recognizes that the Privacy Rule creates a right of access that previously did not exist in most States. Most States do not have explicit laws in this area. In order to address the limited number of cases in which the parent is not the personal representative of the minor because one of the exceptions in the parents and minors provisions are met (*see* § 164.502(g)(3)(i)(A), (B), or (C)), the Department adds a provision, § 164.502(g)(3)(ii)(C), similar to a provision proposed in the NPRM, that addresses those situations in which State and other law about parental access is not explicit. Under this provision, a covered entity may provide or deny access to a parent provided that such discretion is permitted by State or other law. This new paragraph would assure that the Privacy Rule would not prevent a covered entity from providing access to a parent if the covered entity would have been able to provide this access under State or other applicable law. The new paragraph would also prohibit access by a parent if providing such access would violate State or other applicable law.

It is important to note that this provision regarding access to health information about a minor in cases in which State and other laws are silent or unclear will not apply in the majority of cases because, typically, the parent will be the personal representative of his or her minor child and will have a right of access to the medical records of his or her minor children under the Privacy Rule. This provision only applies in cases in which the parent is not the personal representative under the Privacy Rule.

In response to comments by health care providers, the final modifications also clarify that, the discretion to provide or deny access to a parent under § 164.502(g)(3)(ii)(C) only may be exercised by a licensed health care professional, in the exercise of professional judgment. This is consistent with the policy described in the preamble to the NPRM, is similar to the approach in the access provisions in § 164.524(a)(3), and furthers the Department's interest in balancing the goals of providing appropriate information to parents and of assuring that minors obtain appropriate access to health care. This decision should be made by a health care professional, who is accustomed to exercising professional judgment. A health plan may also exercise such discretion if the decision is made by a licensed health care provider.

The Department takes no position on the ability of a minor to consent to treatment and no position on how State or other law affects privacy between the minor and parent. Where State or other law is unclear, covered entities should continue to conduct the same analysis of such law as they do now to determine if access is permissible or not. Because the Privacy Rule defers to State and other law in the area of parents and minors, the Department assumes that the current practices of health care providers with respect to access by parents and confidentiality of minor's records are consistent with State and other applicable law, and, therefore, can continue under the Privacy Rule.

Parental access under this section would continue to be subject to any limitations on activities of a personal representative in § 164.502(g)(5) and § 164.524(a)(2) and (3). In cases in which the parent is not the personal representative of the minor and State or other law does not require parental access, this provision does not provide a parent a right to demand access and does not require a covered entity to provide access to a parent. Furthermore, nothing in these modifications shall affect whether or not a minor would have a right to access his or her records. That is, a covered entity's exercise of discretion to not grant a parent access does not affect the right of access the minor may have under the Privacy Rule. A covered entity may deny a parent access in accordance with State or other law and may be required to provide access to the minor under the Privacy Rule.

These changes also do not affect the general provisions, explained in the section "December 2000 Privacy Rule" above, regarding parents as personal representatives of their minor children or the exceptions to this general rule, where parents would not be the

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personal representatives of their minor children.

These changes adopted in this Rule provide States with the option of clarifying the interaction between their laws regarding consent to health care and the ability of parents to have access to the health information about the care received by their minor children in accordance with such laws. As such, this change should more accurately reflect current State and other laws and modifications to such laws.

Response to Other Public Comments

Comment: Some commenters urged the Department to retain the approach to parents and minors that was adopted in December 2000. They claimed that the NPRM approach would seriously undermine minors' willingness to seek necessary medical care. Other commenters advocated full parental access to health information about their minor children, claiming that the Privacy Rule interferes with parents' rights.

Response: We believe the approach adopted in the final Rule strikes the right balance between these concerns. It defers to State law or other applicable law and preserves the status quo to the greatest extent possible.

Comment: Health care providers generally opposed the changes to the parents and minors provisions claiming that they would eliminate protection of a minor's privacy, and therefore, would decrease the willingness of adolescents to obtain necessary health care for sensitive types of health care services. They also argued that the NPRM approach is inconsistent with State laws that give minors the right to consent to certain health care because the purpose of these laws is to provide minors with confidential health care.

Response: Issues related to parents' and minors' rights with respect to health care are best left for the States to decide. The standards regarding parents and minors are designed to defer to State law in this area. While we believe that there is a correlation between State laws that grant minors the authority to consent to treatment and confidentiality of the information related to such treatment, our research has not established that these laws bar parental access to such health information under all circumstances. Therefore, to act in a manner consistent with State law, the approach adopted in this Final Rule is more flexible than the standards adopted in December 2000, in order to assure that the Privacy Rule does not preclude a provider from granting access to a parent if this is permissible under State law. However, this new standard would not permit activity that would be impermissible under State law.

Some State or other laws may state clearly that a covered entity must provide a parent access to the medical records of his or her minor child, even when the minor consents to the treatment without the parent. In this case, the covered entity must provide a parent access, subject to the access limitations in the Privacy Rule at § 164.524(a)(2) and (3). Other laws may state clearly that a covered entity must not provide a parent access to their minor child's medical records when the minor consents to the treatment without the parent. In this case, the covered entity would be precluded from granting access to the parent. If the State or other law clearly provides a covered entity with discretion to grant a parent access, then the covered entity may exercise such discretion, to the extent permitted under such other law.

If State law is silent or unclear on its face, then a covered entity would have to go through the same analysis as it would today to determine if such law permitted, required, or prohibited providing a parent with access to a minor's records. That analysis may involve review of case law, attorney general opinions, legislative history, etc. If such analysis showed that the State would permit an entity to provide a parent access to health information about a minor child, and under the Privacy Rule, the parent would not be the personal representative of the minor because of one of the limited exceptions in § 164.502(g)(3)(i), then the covered entity may exercise such discretion, based on the professional judgment of a licensed health care provider, to choose whether or not to provide the parent access to the medical records of his or her minor child. If, as the commenters suggest, a State consent law were interpreted to prohibit such access, then such access is prohibited under the Privacy Rule as well.

Comment: One commenter asserted that the Privacy Rule inappropriately erects barriers between parents and children. Specifically, the commenter stated that § 164.502(g)(5) delegates to private entities government power to decide whether a child may be subjected to abuse or could be endangered. The commenter also stated that the access provisions in § 164.502(g)(3) would erect barriers where State law is silent or unclear.

Response: The Department does not agree that the Privacy Rule erects barriers between a parent and a minor child because the relevant standards are intended to defer to State law. Health care providers have responsibilities under other laws and professional standards to report child abuse to the appropriate authorities and to use professional discretion to protect the child's welfare in abuse situations. Similarly the Privacy Rule permits (but does not require) the provider to use professional discretion to act to protect a child she believes is being abused. If the Privacy Rule were to mandate that a provider grant a parent access to a medical record in abuse situations, as the commenter suggests, this would be a change from current law. In addition, the Privacy Rule does not allow a denial of parental access to medical records if State or other law would require such access.

Comment: Commenters continue to raise preemption issues. A few commenters called for preemption of all State law in this area. Others stated that there should be one standard, not 50 standards, controlling disclosure of protected health information about a minor to a parent and that the NPRM approach would burden regional and national health care providers. Others urged preemption of State laws that are less protective of a minor's privacy, consistent with the general preemption provisions.

Response: The Department does not want to interfere with a State's role in determining the appropriate rights of parents and their minor children. The claim that the Privacy Rule introduces 50 standards is inaccurate. These State standards exist today and are not created by the Privacy Rule. Our approach has been, and continues to be, to defer to State and other applicable law in this area.

Comment: One commenter requested the Privacy Rule state that good faith compliance with the Privacy Rule is an affirmative defense to enforcement of contrary laws ultimately determined to be more stringent than the Rule, or that it provide specific guidance on which State laws conflict with or are more stringent than the Privacy Rule.

Response: The Privacy Rule cannot dictate how States enforce their own privacy laws. Furthermore, guidance on whether or not a State law is preempted would not be binding on a State interpreting its own law.

Comment: Some commenters remain concerned that a parent will not get information about a child who receives care in an emergency without the consent of the parent and that the provisions in § 164.510(b) are not sufficient.

Response: As we have stated in previous guidance, a provider generally can discuss all the health information about a minor child with his parent, because the parent usually will be the personal representative of the child. This is true, under the Privacy Rule, even if the parent did not provide consent to the treatment because of the emergency nature of the health care. A parent may be unable to obtain such information in limited circumstances, such as when the minor provided consent for the treatment in accordance with State law or the treating physician suspects abuse or neglect or reasonably believes that releasing the information to the parent will endanger the child.

Comment: A couple of commenters were concerned that the provisions regarding confidential communications conflict with the Fair Debt Collection Practices Act (FDCPA), which allows collection agencies to contact the party responsible for payment of the debt, be it the spouse or parent (of a minor) of the individual that incurred the debt, and share information that supports the incurrence and amount of the debt. They feared that the Privacy Rule would no longer allow collection agencies to continue this practice.

Response: Our analysis of the relevant provisions of the Privacy Rule and the FDCPA does not indicate any conflicts between the two laws. An entity that is subject to the FDCPA and the Privacy Rule (or that must act consistent with the Privacy Rule as a business associate of the covered entity) should be able to comply with both laws, because the FDCPA permits an entity to exercise discretion to disclose information about one individual to another.

The FDCPA allows debt collectors to communicate with the debtor's spouse or parent if the debtor is a minor. The provisions of the FDCPA are permissive rather than required.

Generally, the Privacy Rule permits covered entities to use the services of debt collectors as the use of such services to obtain payment for the provision of health care comes within the definition of "payment." The Privacy Rule generally does not identify to whom information can be disclosed when a covered entity is engaged in its own payment activities. Therefore, if a covered entity or a debt collector, as a business associate of a covered entity, needs to disclose protected health information to a spouse or a parent, the Privacy Rule generally would not prevent such disclosure. In these cases where the Privacy Rule would permit disclosure to a parent or spouse, there should be no concern with the interaction with the FDCPA.

However, there are some circumstances in which the Privacy Rule may prohibit a disclosure to a parent or a spouse for payment purposes. For example, under § 164.522(a), an individual has the right to request restrictions to the disclosure of health information for payment. A provider or health plan may choose whether or not to agree to the request. If the covered entity agreed to a restriction, the covered entity would be bound by that restriction and would not be permitted to disclose the individual's health information in violation of that agreement. Also, § 164.522(b) generally requires covered entities to accommodate reasonable requests by individuals to receive communications of protected health information by alternative means or at alternative locations. However, the covered entity may condition the accommodation on the individual providing information on how payment will be handled. In both of these cases, the covered entity has means for permitting disclosures as permitted by the FDCPA. Therefore, these provisions of the Privacy Rule need not limit options available under the FDCPA. However, if the agreed-to restrictions or accommodation for confidential communications prohibit disclosure to a parent or spouse of an individual, the covered entity, and the debt collector as a business associate of the covered entity, would be prohibited from disclosing such information under the Privacy Rule. In such case, because the FDCPA would provide discretion to make a disclosure, but the Privacy Rule would prohibit the disclosure, a covered entity or the debt collector as a business associate of a covered entity would have to exercise discretion granted under the FDCPA in a way that complies with the Privacy Rule. This means not making the disclosure.

C. Section 164.504—Uses and Disclosures: Organizational Requirements

1. Hybrid Entities

December 2000 Privacy Rule. The Privacy Rule, as published in December 2000, defined covered entities that primarily engage in activities that are not "covered functions," that is, functions that relate to the entity's operation as a health plan, health care provider, or health care clearinghouse, as hybrid entities. *See* 45 CFR 164.504(a). Examples of hybrid entities were: (1) corporations that are not in the health care industry, but that operate on-site health clinics that conduct the HIPAA standard transactions electronically; and (2) insurance carriers that have multiple lines of business that include both health insurance and other insurance lines, such as general liability or property and casualty insurance.

Under the December 2000 Privacy Rule, a hybrid entity was required to define and designate those parts of the entity that engage in covered functions as one or more health care component(s). A hybrid entity also was required to include in the health care component(s) any other components of the entity that support the covered functions in the same way such support may be provided by a business associate (e.g., an auditing component). The health care component was to include such "business associate" functions for two reasons: (1) It is impracticable for the entity to contract with itself; and (2) having to obtain an authorization for disclosures to such support components would limit the ability of the hybrid entity to engage in necessary health care operations functions. In order to limit the burden on hybrid entities, most of the requirements of the Privacy Rule only applied to the health care component(s) of the entity and not to the parts of the entity that do not engage in covered functions.

The hybrid entity was required to create adequate separation, in the form of firewalls, between the health care component(s) and other components of the entity. Transfer of protected health information held by the health care component to other components of the hybrid entity was a disclosure under the Privacy Rule and was allowed only to the same extent such a disclosure was permitted to a separate entity.

In the preamble to the December 2000 Privacy Rule, the Department explained that the use of the term "primary" in the definition of a "hybrid entity" was not intended to operate with mathematical precision. The Department further explained that it intended a common sense evaluation of whether the covered entity mostly operates as a health plan, health care provider, or health care clearinghouse. If an entity's primary activity was a covered function, then the whole entity would have been a covered entity and the hybrid entity provisions would not have applied. However, if the covered entity primarily conducted non-health activities, it would have qualified as a hybrid entity and would have been required to comply with the Privacy Rule with respect to its health care component(s). *See* 65 FR 82502.

March 2002 NPRM. Since the publication of the final Rule, concerns were raised that the policy guidance in the preamble was insufficient so long as the Privacy Rule itself limited the hybrid entity provisions to entities that primarily conducted non-health related activities. In particular, concerns were

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raised about whether entities, which have the health plan line of business as the primary business and an excepted benefits line, such as workers' compensation insurance, as a small portion of the business, qualified as hybrid entities. There were also concerns about how "primary" was to be defined, if it was not a mathematical calculation, and how an entity would know whether or not it was a hybrid entity based on the guidance in the preamble.

As a result of these comments, the Department proposed to delete the term "primary" from the definition of "hybrid entity" in § 164.504(a) and permit any covered entity that is a single legal entity and that performs both covered and non-covered functions to choose whether or not to be a hybrid entity for purposes of the Privacy Rule. Under the proposal, any covered entity could be a hybrid entity regardless of whether the non-covered functions represent the entity's primary functions, a substantial function, or even a small portion of the entity's activities. In order to be a hybrid entity under the proposal, a covered entity would have to designate its health care component(s). If the covered entity did not designate any health care component(s), the entire entity would be a covered entity and, therefore, subject to the Privacy Rule. Since the entire entity would be the covered entity, § 164.504(c)(2) requiring firewalls between covered and non-covered portions of hybrid entities would not apply.

The Department explained in the preamble to the proposal that there are advantages and disadvantages to being a hybrid entity. Whether or not the advantages outweigh the disadvantages would be a decision for each covered entity that qualified as a hybrid entity, taking into account factors such as how the entity was organized and the proportion of the entity that must be included in the health care component.

The Department also proposed to simplify the definition of "health care component" in § 164.504(a) to make clear that a health care component is whatever the covered entity designates as the health care component, consistent with the provisions regarding designation in proposed § 164.504(c)(3)(iii). The Department proposed to move the specific language regarding which components make up a health care component to the implementation specification that addresses designation of health care components at § 164.504(c)(3)(iii). At § 164.504(c)(3)(iii), the Department proposed that a health care component could include: (1) Components of the covered entity that engage in covered functions, and (2) any component that engages in activities that would make such component a business associate of a component that performs covered functions, if the two components were separate legal entities. In addition, the Department proposed to make clear at § 164.504(c)(3)(iii) that a hybrid entity must designate as a health care component(s) any component that would meet the definition of "covered entity" if it were a separate legal entity.

There was some ambiguity in the December 2000 Privacy Rule as to whether a health care provider that does not conduct electronic transactions for which the Secretary has adopted standards (*i.e.*, a non-covered health care provider) and which is part of a larger covered entity was required to be included in the health care component. To clarify this issue, the proposal also would allow a hybrid entity the discretion to include in its health care component a non-covered health care provider component. Including a non-covered health care provider in the health care component would subject the non-covered provider to the Privacy Rule. Accordingly, the Department proposed a conforming change in § 164.504(c)(1)(ii) to make clear that a reference to a "covered health care provider" in the Privacy Rule could include the functions of a health care provider who does not engage in electronic transactions, if the covered entity chooses to include such functions in the health care component.

The proposal also would permit a hybrid entity to designate otherwise non-covered portions of its operations that provide services to the covered functions, such as parts of the legal or accounting divisions of the entity, as part of the health care component, so that protected health information could be shared with such functions of the entity without business associate agreements or individual authorizations. The proposal would not require that the covered entity designate entire divisions as in or out of the covered component. Rather, it would permit the covered entity to designate functions within such divisions, such as the functions of the accounting division that support health insurance activities, without including those functions that support life insurance activities. The Department proposed to delete as unnecessary and redundant the related language in paragraph (2)(ii) of the definition of "health care component" in the Privacy Rule that requires the "business associate" functions include the use of protected health information.

Overview of Public Comments. The following discussion provides an overview of the public comment received on this proposal. Additional comments received on this issue are discussed below in the section entitled, "Response to Other Public Comments."

The Department received relatively few comments on its proposal regarding hybrid entities. A number of comments supported the proposal, appreciative of the added flexibility it would afford covered entities in their compliance efforts. For example, some drug stores stated that the proposal would provide them with the flexibility to designate health care components, whereas under the December 2000 Rule, these entities would have been required to subject their entire business, including the "front end" of the store which is not associated with dispensing prescription drugs, to the Privacy Rule's requirements.

Some health plans and other insurers also expressed strong support for the proposal. These comments, however, seemed to be based on a misinterpretation of the uses and disclosures the proposal actually would permit. These commenters appear to assume that the proposal would allow information to flow freely between non-covered and covered functions in the same entity, if that entity chose not to be a hybrid entity. For example, commenters explained that they interpreted the proposal to mean that a multi-line insurer which does not elect hybrid entity status would be permitted to share protected health information between its covered lines and its otherwise non-covered lines. It was stated that such latitude would greatly enhance multi-line insurers' ability to detect and prevent fraudulent activities and eliminate barriers to sharing claims information between covered and non-covered lines of insurance where necessary to process a claim.

Some commenters opposed the Department's hybrid entity proposal, stating that the proposal would reduce the protections afforded under the Privacy Rule and would be subject to abuse. Commenters expressed concerns that the proposal would allow a covered entity with only a small health care component to avoid the extra protections of creating firewalls between the health care component and the rest of the organization. Moreover, one of the commenters stated that the proposal could allow a covered entity that is primarily performing health care functions to circumvent the requirements of the Rule for a large part of its operations by designating itself a hybrid and excluding from the health care component a non-covered health care provider function, such as a free nurse advice line that does not bill electronically. In addition, it was stated that the ambiguous language in the proposal could potentially be construed as allowing a hybrid entity to designate only the business associate-like functions as the health care component, and exclude covered functions. The commenter urged the Department to clarify that a hybrid entity must, at a minimum, designate a component that performs covered functions as a health care component, and that a health care provider cannot avoid having its treatment component considered a health care component by relying on a billing department to conduct its standard electronic transactions. These commenters urged the Department to retain the existing policy by requiring those organizations whose primary functions are not health care to be hybrid entities and to institute firewall protections between their health care and other components.

Final Modifications. After consideration of the comments, the Department adopts in the final Rule the proposed approach to provide covered entities that otherwise qualify the discretion to decide whether to be a hybrid entity. To do so, the Department eliminates the term "primary" from the definition of "hybrid entity" at § 164.504(a). Any covered entity that otherwise qualifies (*i.e.*, is a single legal entity that performs both covered and non-covered functions) and that designates health care component(s) in accordance with § 164.504(c)(3)(iii) is a hybrid entity. A hybrid entity is required to create adequate separation, in the form of firewalls, between the health care component(s) and other components of the entity. Transfer of protected health information held by the health care component to other components of the hybrid entity continues to be a disclosure under the Privacy Rule, and, thus, allowed only to the same extent such a disclosure is permitted to a separate entity.

Most of the requirements of the Privacy Rule continue to apply only to the health care component(s) of a hybrid entity. Covered entities that choose not to designate health care component(s) are subject to the Privacy Rule in their entirety.

The final Rule regarding hybrid entities is intended to provide a covered entity with the flexibility to apply the Privacy Rule as best suited to the structure of its organization, while maintaining privacy protections for protected health information within the organization. In addition, the policy in the final Rule simplifies the Privacy Rule and makes moot any questions about what "primary" means for purposes of determining whether an entity is a hybrid entity.

The final Rule adopts the proposal's simplified definition of "health care component," which makes clear that a health care component is what the covered entity designates as the health care component. The Department makes a conforming change in § 164.504(c)(2)(ii) to reflect the changes to the definition of "health care component." The final Rule at § 164.504(c)(3)(iii) requires a health care component to include a component that would meet the definition of a "covered entity" if it were a separate legal entity. The Department also modifies the language of the final Rule at § 164.504(c)(3)(iii) to clarify that only a component that performs covered functions, and a component to the extent that it performs covered functions or activities that would make such component a business associate of a component that performs covered functions if the two components were separate legal entities, may be included in the health care component. "Covered functions" are defined at § 164.501 as "those functions of a covered entity the performance of which makes the entity a health plan, health care provider, or health care clearinghouse."

As in the proposal, the Department provides a hybrid entity with some discretion as to what functions may be included in the health care component in two ways. First, the final Rule clarifies that a hybrid entity may include in its health care component a non-covered health care provider component. Accordingly, the Department adopts the proposed conforming change to § 164.504(c)(1)(ii) to make clear that a reference to a "covered health care provider" in the Privacy Rule may include the functions of a health care provider who does not engage in electronic transactions for which the Secretary has adopted standards, if the covered entity chooses to include such functions in the health care component. A hybrid entity that chooses to include a non-covered health care provider in its health care component is required to ensure that the non-covered health care provider, as well as the rest of the health care component, is in compliance with the Privacy Rule.

Second, the final Rule retains the proposed policy to provide hybrid entities with discretion as to whether or not to include business associate-like divisions within the health care component. It is not a violation of the Privacy Rule to exclude such divisions from the health care component. However, a disclosure of protected health information from the health care component to such other division that is not part of the health care component is the same as a disclosure outside the covered entity. Because an entity cannot have a business associate contract with itself, such a disclosure likely will require individual authorization.

The Department clarifies, in response to comments, that a health care provider cannot avoid being a covered entity and, therefore, part of a health care component of a hybrid entity just by relying on a billing department to conduct standard transactions on its behalf. A health care provider is a covered entity if standard transactions are conducted on his behalf, regardless of whether the provider or a business associate (or billing department within a hybrid entity) actually conducts the transactions. In such a situation, however, designating relevant parts of the business associate division as part of the health care component would facilitate the conduct of health care operations and payment.

Also in response to comments, the Department clarifies that even if a covered entity does not choose to be a hybrid entity, and therefore is not required to erect firewalls around its health care functions, the entity still only is allowed to use protected health information as permitted by the Privacy Rule, for example, for treatment, payment, and health care operations. Additionally, the covered entity is still subject to minimum necessary restrictions under §§ 164.502 and 164.514(d), and, thus, must have policies and procedures that describe who within the entity may have access to the protected health information. Under these provisions, workforce members may be permitted access to protected health information only as necessary to carry out their duties with respect to the entity's covered functions. For example, the health insurance line of a multi-line insurer is not permitted to share protected health information with the life insurance line for purposes of determining eligibility for life insurance benefits or any other life insurance purposes absent an individual's written authorization. However, the health insurance line of a multi-line insurer may share protected health information with another line of business pursuant to § 164.512(a), if, for example, State law requires an insurer that receives a claim under one policy to share that information with other lines of insurance to determine if the event also may be payable under

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another insurance policy. Furthermore, the health plan may share information with another line of business if necessary for the health plan's coordination of benefits activities, which would be a payment activity of the health plan.

Given the above restrictions on information flows within the covered entity, the Department disagrees with those commenters who raised concerns that the proposed policy would weaken the Rule by eliminating the formal requirement for "firewalls." Even if a covered entity does not designate health care component(s) and, therefore, does not have to establish firewalls to separate its health care function(s) from the non-covered functions, the Privacy Rule continues to restrict how protected health information may be used and shared within the entity and who gets access to the information.

Further, the Department does not believe that allowing a covered entity to exclude a non-covered health care provider component from its health care component will be subject to abuse. Excluding health care functions from the health care component has significant implications under the Rule. Specifically, the Privacy Rule treats the sharing of protected health information from a health care component to a non-covered component as a disclosure, subject to the same restrictions as a disclosure between two legally separate entities. For example, if a covered entity decides to exclude from its health care component a non-covered provider, the health care component is then restricted from disclosing protected health information to that provider for any of the non-covered provider's health care operations, absent an individual's authorization. *See* § 164.506(c). If, however, the non-covered health care provider function is not excluded, it would be part of the health care component and that information could be used for its operations without the individual's authorization.

Response to Other Public Comments

Comment: A number of academic medical centers expressed concern that the Privacy Rule prevents them from organizing for compliance in a manner that reflects the integration of operations between the medical school and affiliated faculty practice plans and teaching hospitals. These commenters stated that neither the proposal nor the existing Rule would permit many academic medical centers to designate themselves as either a hybrid or affiliated entity, since the components of each must belong to a single legal entity or share common ownership or control. These commenters also explained that a typical medical school would not appear to qualify as an organized health care arrangement (OHCA) because it does not engage in any of the requisite joint activities, for example, quality assessment and improvement activities, on behalf of the covered entity. It was stated that it is essential that there not be impediments to the flow of information within an academic medical center. These commenters, therefore, urged that the Department add a definition of "academic medical center" to the Privacy Rule and modify the definition of "common control" to explicitly apply to the components of an academic medical center, so as to ensure that academic medical centers qualify as affiliated entities for purposes of the Rule.

Response: The Department does not believe that a modification to include a special rule for academic medical centers is warranted. The Privacy Rule's organizational requirements at § 164.504 for hybrid entities and affiliated entities, as well as the definition of "organized health care arrangement" in § 164.501, provide covered entities with much flexibility to apply the Rule's requirements as best suited to the structure of their businesses. However, in order to maintain privacy protections, the Privacy Rule places appropriate conditions on who may qualify for such organizational options, as well as how information may flow within such constructs. Additionally, if the commenter is suggesting that information should flow freely between the covered and non-covered functions within an academic medical center, the Department clarifies that the Privacy Rule restricts the sharing of protected health information between covered and non-covered functions, regardless of whether the information is shared within a single covered entity or a hybrid entity, or among affiliated covered entities or covered entities participating in an OHCA. Such uses and disclosures may only be made as permitted by the Rule.

Comment: A few commenters expressed concern with respect to governmental hybrid entities having to include business associate-like divisions within the health care component or else being required to obtain an individual's authorization for disclosures to such division. It was stated that this concept does not take into account the organizational structures of local governments and effectively forces such governmental hybrid entities to bring those components that perform business associate type functions into their covered component. Additionally, a commenter stated that this places an undue burden on local government by essentially requiring that functions, such as auditor/controller or county counsel, be treated as fully covered by the Privacy Rule in order to minimize otherwise considerable risk. Commenters, therefore, urged that the Department allow a health care component to enter into a memorandum of understanding (MOU) or other agreement with the business associate division within the hybrid entity. Alternatively, it was suggested that a governmental hybrid entity be permitted to include in its notice of privacy practices the possibility that information may be shared with other divisions within the same government entity for specific purposes.

Response: The Department clarifies that a covered entity which chooses to include its business associate division within the health care component may only do so to the extent such division performs activities on behalf of, or provides services to, the health care component. That same division's activities with respect to non-covered activities may not be included. To clarify this point, the Department modified the proposed language in § 164.504(c)(3)(iii) to provide that a health care component may only include a component to the extent that it performs covered functions or activities that would make such component a business associate of a component that performs covered functions if the two components were separate legal entities. For example, employees within an accounting division may be included within the health care component to the extent that they provide services to such component. However, where these same employees also provide services to non-covered components of the entity, their activities with respect to the health care component must be adequately separated from their other non-covered functions.

While the Department does not believe that a MOU between governmental divisions within a hybrid entity may be necessary given the above clarification, the Department notes that a governmental hybrid entity may elect to have its health care component enter into a MOU with its business associate division, provided that such agreement is legally binding and meets the relevant requirements of § 164.504(e)(3) and (e)(4). Such agreement would eliminate the need for the health care component to include the business associate division or for obtaining the individual's authorization to disclose to such division.

Additionally, the Department encourages covered entities to develop a notice of privacy practices that is as specific as possible, which may include, for a government hybrid entity, a statement that information may be shared with other divisions within the government entity as permitted by the Rule. However, the notice of privacy practices is not an adequate substitute for, as appropriate, a memorandum of understanding; designation of business associate functions as part of a health care component; or alternatively, conditioning disclosures to such business associate functions on individuals' authorizations.

Comment: One commenter requested a clarification that a pharmacy-convenience store, where the pharmacy itself is a separate enclosure under supervision of a licensed pharmacist, is not a hybrid entity.

Response: The Department clarifies that a pharmacy-convenience store, if a single legal entity, is permitted, but not required, to be a hybrid entity and designate the pharmacy as the health care component. Alternatively, such an entity may choose to be a covered entity in its entirety. However, if the pharmacy and the convenience store are separate legal entities, the convenience store is not a covered entity simply by virtue of sharing retail space with the covered pharmacy.

Comment: Another commenter stated that the Rule implies that individual providers, once covered, are covered for all circumstances even if they are employed by more than one entity—one sending transactions electronically but not the other—or if the individual provider changes functions or employment and no longer electronically transmits standard transactions. This commenter asked that either the Rule permit an individual provider to be a hybrid entity (recognizing that there are times when an individual provider may be engaging in standard transactions, and other times when he is not), or that the definition of a "covered entity" should be modified so that individual providers are themselves classified as covered entities only when they are working as individuals.

Response: A health care provider is not a covered entity based on his being a workforce member of a health care provider that conducts the standard transactions. Thus, a health care provider may maintain a separate uncovered practice (if he does not engage in standard transactions electronically in connection with that practice), even though the provider may also practice at a hospital which may be a covered entity. However, the Rule does not permit an individual provider to use hybrid entity status to eliminate protections on information when he is not conducting standard transactions. If a health care provider conducts standard transactions electronically on his own behalf, then the protected health information maintained or transmitted by that provider is covered, regardless of whether the information is actually used in such transactions.

Comment: One commenter requested a clarification that employers are not hybrid entities simply because they may be the plan sponsor of a group health plan.

Response: The Department clarifies that an employer is not a hybrid entity simply because it is the plan sponsor of a group health plan. The employer/plan sponsor and group health plan are separate legal entities and, therefore, do not qualify as a hybrid entity. Further, disclosures from the group health plan to the plan sponsor are governed specifically by the requirements of § 164.504(f).

Comment: A few commenters asked the Department to permit a covered entity with multiple types of health care components to tailor notices to address the specific privacy practices within a component, rather than have just one generic notice for the entire covered entity.

Response: Covered entities are allowed to provide a separate notice for each separate health care component, and are encouraged to provide individuals with the most specific notice possible.

2. Group Health Plan Disclosures of Enrollment and Disenrollment Information to Plan Sponsors

December 2000 Privacy Rule. The Department recognized the legitimate need of plan sponsors and employers to access health information held by group health plans in order to carry out essential functions related to the group health plan. Therefore, the Privacy Rule at § 164.504(f) permits a group health plan, and health insurance issuers or HMOs with respect to the group health plan, to disclose protected health information to a plan sponsor provided that, among other requirements, the plan documents are amended appropriately to reflect and restrict the plan sponsor's uses and disclosures of such information. The Department further determined that there were two situations in which protected health information could be shared between the group health plan and the plan sponsor without individual authorization or an amendment to the plan documents. First, § 164.504(f) permits the group health plan to share summary health information (as defined in § 164.504(a)) with the plan sponsor. Second, a group health plan is allowed to share enrollment or disenrollment information with the plan sponsor without amending the plan documents as required by § 164.504(f). As explained in the preamble to the December 2000 Privacy Rule, a plan sponsor is permitted to perform enrollment functions on behalf of its employees without meeting the requirements of § 164.504(f), as such functions are considered outside of the plan administration functions. However, the second exception was not stated in the regulation text.

March 2002 NPRM. The ability of group health plans to disclose enrollment or disenrollment information without amending the plan documents was addressed only in the preamble to the Privacy Rule. The absence of a specific provision in the regulation text caused many entities to conclude that plan documents would need to be amended for enrollment and disenrollment information to be exchanged between plans and plan sponsors. To remedy this misunderstanding and make its policy clear, the Department proposed to add an explicit exception at § 164.504(f)(1)(iii) to clarify that group health plans (or health insurance issuers or HMOs with respect to group health plans, as appropriate) are permitted to disclose enrollment or disenrollment information to a plan sponsor without meeting the plan document amendment and other related requirements.

Overview of Public Comments. The following discussion provides an overview of the public comment received on this proposal. Additional comments received on this issue are discussed below in the section entitled, "Response to Other Public Comments."

Commenters in general supported the proposed modification. Some supported the proposal because it was limited to information about whether an individual is participating or enrolled in a group health plan and would not permit the disclosure of any other protected health information. Others asserted that the modification is a reasonable approach because enrollment and disenrollment information is needed by plan sponsors for payroll and other employment reasons.

Final Modifications. The Department adopts the modification to § 164.504(f)(1)(iii) essentially as proposed. Thus, a group health plan, or

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a health insurance issuer or HMO acting for a group health plan, may disclose to a plan sponsor information on whether the individual is participating in the group health plan, or is enrolled in or has disenrolled from a health insurance issuer or HMO offered by the plan. This disclosure can be made without amending the plan documents. In adopting the modification as a final Rule, the Department deletes the phrase "to the plan sponsor" that appeared at the end of the proposed new provision, as mere surplusage.

As a result of the modification, summary health information and enrollment and disenrollment information are treated consistently. Under § 164.504(f), as modified, group health plans can share summary health information and enrollment or disenrollment information with plan sponsors without having to amend the plan documents. Section 164.520(a) provides that a fully insured group health plan does not need to comply with the Privacy Rule's notice requirements if the only protected health information it creates or receives is summary health information and/or information about individuals' enrollment in, or disenrollment from, a health insurer or HMO offered by the group health plan. Similarly, in § 164.530(k), the Department exempts fully insured group health plans from many of the administrative requirements in that section if the only protected health information held by the group health plan is summary health information and/or information about individuals' enrollment in, or disenrollment from, a health insurer or HMO offered by the group health plan. Such consistency will simplify compliance with the Privacy Rule.

Response to Other Public Comments

Comment: One commenter stated that there needs to be protection for health information given to group health plans on enrollment forms. In particular, this commenter suggested that the Department include a definition of "enrollment" or "disenrollment" information that specifies that medical information, such as past or present medical conditions and doctor or hospital visits, is not enrollment information, but rather is individually identifiable health information, and therefore, subject to the Privacy Rule's protections.

Response: Individually identifiable health information received or created by the group health plan for enrollment purposes is protected health information under the Privacy Rule. The modification to § 164.504(f) being adopted in this rulemaking does not affect this policy. The Privacy Rule does not define the information that may be transmitted for enrollment and disenrollment purposes. Rather, the Department in the Transactions Rule has adopted a standard transaction for enrollment and disenrollment in a health plan. That standard (ASC X12N 834, Benefit Enrollment and Maintenance, Version 4010, May 2000, Washington Publishing Company) specifies the required and situationally required data elements to be transmitted as part of such a transaction. While the standard enrollment and disenrollment transaction does not include any substantial clinical information, the information provided as part of the transaction may indicate whether or not tobacco use, substance abuse, or short, long-term, permanent, or total disability is relevant, when such information is available. However, the Department clarifies that, in disclosing or maintaining information about an individual's enrollment in, or disenrollment from, a health insurer or HMO offered by the group health plan, the group health plan may not include medical information about the individual above and beyond that which is required or situationally required by the standard transaction and still qualify for the exceptions for enrollment and disenrollment information allowed under the Rule.

Comment: Several commenters recommended that enrollment and disenrollment information specifically be excluded from the definition of "protected health information." They argued that this change would be warranted because enrollment and disenrollment information do not include health information. They further argued that such a change would help alleviate confusion surrounding the application of the Privacy Rule to employers.

Response: We disagree that enrollment and disenrollment information should be excluded from the definition of "protected health information." Enrollment and disenrollment information fall under the statutory definition of "individually identifiable health information," since it is received or created by a health plan, identifies an individual, and relates to the past, present, or future payment for the provision of health care to an individual. As such, the Department believes there is no statutory basis to exclude such information from the definition of "protected health information." The Department believes that the exception to the requirement for group health plans to amend plan documents that has been added to the Privacy Rule for enrollment and disenrollment information balances the legitimate need that plan sponsors have for enrollment and disenrollment information against the individual's right to have such information kept private and confidential.

Comment: Given that, under § 164.504(f)(2), plan sponsors agree not to use or further disclose protected health information other than as permitted or required by plan documents or "required by law," one commenter requested that the definition of "required by law" set forth at § 164.501 should be revised to reflect that it applies not only to covered entities, but also to plan sponsors who are required to report under OSHA or similar laws.

Response: The Department agrees and has made a technical correction to the definition of "required by law" in § 164.501 to reflect that the definition applies to a requirement under law that compels any entity, not just a covered entity, to make a use or disclosure of protected health information.

D. Section 164.506—Uses and Disclosures for Treatment, Payment, and Health Care Operations

1. Consent

December 2000 Privacy Rule. Treatment and payment for health care are core functions of the health care industry, and uses and disclosures of individually identifiable health information for such purposes are critical to the effective operation of the health care system. Health care providers and health plans must also use individually identifiable health information for certain health care operations, such as administrative, financial, and legal activities, to run their businesses and to support the essential health care functions of treatment and payment. Equally important are health care operations designed to maintain and improve the quality of health care. In developing the Privacy Rule, the Department balanced the privacy implications of uses and disclosures for treatment, payment, and health care operations and the need for these core activities to continue. The Department considered the fact that many individuals expect that their health information will be used and disclosed as necessary to treat them, bill for treatment, and, to some extent, operate the covered entity's health care business. Given public expectations with respect to the use or disclosure of information for such activities and so as not to interfere with an individual's access to quality health care or the efficient payment for such health care, the Department's goal is, and has always been, to permit these activities to occur with little or no restriction.

Consistent with this goal, the Privacy Rule published in December 2000 generally provided covered entities with permission to use and disclose protected health information as necessary for treatment, payment, and health care operations. For certain health care providers that have direct treatment relationships with individuals, such as many physicians, hospitals, and pharmacies, the December 2000 Privacy Rule required such providers to obtain an individual's written consent prior to using or disclosing protected health information for these purposes. The Department designed consent as a one-time, general permission from the individual, which the individual would have had the right to revoke. A health care provider could have conditioned treatment on the receipt of consent. Other covered entities also could have chosen to obtain consent but would have been required to follow the consent standards if they opted to do so.

The consent requirement for health care providers with direct treatment relationships was a significant change from the Department's initial proposal published in November 1999. At that time, the Department proposed to permit all covered entities to use and disclose protected health information to carry out treatment, payment, and health care operations without any requirement that the covered entities obtain an individual's consent for such uses and disclosures, subject to a few limited exceptions. Further, the Department proposed to prohibit covered entities from obtaining an individual's consent for uses and disclosures of protected health information for these purposes, unless required by other applicable law.

The transition provisions of the Privacy Rule permit covered health care providers that were required to obtain consent to use and disclose protected health information they created or received prior to the compliance date of the Privacy Rule for treatment, payment, or health care operations if they had obtained consent, authorization, or other express legal permission to use or disclose such information for any of these purposes, even if such permission did not meet the consent requirements of the Privacy Rule.

March 2002 NPRM. The Department heard concerns about significant practical problems that resulted from the consent requirements in the Privacy Rule. Covered entities and others provided numerous examples of obstacles that the consent provisions would pose to timely access to health care. These examples extended to various types of providers and various settings. The most troubling, pervasive problem was that health care providers would not have been able to use or disclose protected health information for treatment, payment, or health care operations purposes prior to their initial face-to-face contact with the patient, something which is routinely done today to provide patients with timely access to quality health care. A list of some of the more significant examples and concerns are as follows:

- Pharmacists would not have been able to fill a prescription, search for potential drug interactions, determine eligibility, or verify coverage before the individual arrived at the pharmacy to pick up the prescription if the individual had not already provided consent under the Privacy Rule.
- Hospitals would not have been able to use information from a referring physician to schedule and prepare for procedures before the individual presented at the hospital for such procedure, or the patient would have had to make a special trip to the hospital to sign the consent form.
- Providers who do not provide treatment in person may have been unable to provide care because they would have had difficulty obtaining prior written consent to use protected health information at the first service delivery.
- Emergency medical providers were concerned that, if a situation was urgent, they would have had to try to obtain consent to comply with the Privacy Rule, even if that would be inconsistent with appropriate practice of emergency medicine.
- Emergency medical providers were also concerned that the requirement that they attempt to obtain consent as soon as reasonably practicable after an emergency would have required significant efforts and administrative burden which might have been viewed as harassing by individuals, because these providers typically do not have ongoing relationships with individuals.
- Providers who did not meet one of the consent exceptions were concerned that they could have been put in the untenable position of having to decide whether to withhold treatment when an individual did not provide consent or proceed to use information to treat the individual in violation of the consent requirements.
- The right to revoke a consent would have required tracking consents, which could have hampered treatment and resulted in large institutional providers deciding that it would be necessary to obtain consent at each patient encounter instead.
- The transition provisions would have resulted in significant operational problems, and the inability to access health records would have had an adverse effect on quality activities, because many providers currently are not required to obtain consent for treatment, payment, or health care operations.
- Providers that are required by law to treat were concerned about the mixed messages to patients and interference with the physician-patient relationship that would have resulted because they would have had to ask for consent to use or disclose protected health information for treatment, payment, or health care operations, but could have used or disclosed the information for such purposes even if the patient said "no."

As a result of the large number of treatment-related obstacles raised by various types of health care providers that would have been required to obtain consent, the Department became concerned that individual fixes would be too complex and could possibly overlook important problems. Instead, the Department proposed an approach designed to protect privacy interests by affording patients the opportunity to engage in important discussions regarding the use and disclosure of their health information through the strengthened notice requirement, while allowing activities that are essential to quality health care to occur unimpeded (see section III.H. of the preamble for a discussion of the strengthened notice requirements).

Specifically, the Department proposed to make the obtaining of consent to use and disclose protected health information for treatment, payment, or health care operations more flexible for all covered entities, including providers with direct treatment relationships. Under this proposal, health care providers with direct treatment relationships with individuals would no longer be required to obtain an individual's consent prior to using and disclosing information about him or her for treatment, payment, and health care operations. They, like other covered entities, would have regulatory permission for such uses and disclosures.

The NPRM included provisions to permit covered entities to obtain consent for uses and disclosures of protected health information for treatment, payment, or health care

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operations, if they wished to do so. These provisions would grant providers complete discretion in designing this process. These proposed changes were partnered, however, by the proposal to strengthen the notice provisions to require direct treatment providers to make good faith efforts to obtain a written acknowledgment of receipt of the notice. The intent was to preserve the opportunity to raise questions about the entity's privacy policies that the consent requirements previously provided.

Overview of Public Comments. The following discussion provides an overview of the public comment received on this proposal. Additional comments received on this issue are discussed below in the section entitled, "Response to Other Public Comments."

The vast majority of commenters addressed the consent proposal. Most comments fell into three basic categories: (1) Many comments supported the NPRM approach to eliminate the consent requirement; (2) many comments urged the Department to require consent, but make targeted fixes to address workability issues; and (3) some comments urged the Department to strengthen the consent requirement.

The proposed approach of eliminating required consent and making obtaining of consent permissible, at the entity's discretion, was supported by many covered entities that asserted that it would provide the appropriate balance among access to quality health care, administrative burden, and patient privacy. Many argued that the appropriate privacy protections were preserved by strengthening the notice requirement. This approach was also supported by the NCVHS.

The comments received in response to the NPRM continued to raise the issues and obstacles described above, and others. For example, in addition to providing health care services to patients, hospices often provide psychological and emotional support to family members. These consultations often take place long distance and would likely be considered treatment. The consent requirement would make it difficult, or impossible in some circumstances, for hospices to provide these important services to grieving family members on a timely basis. Comments explained that the consent provisions in the Rule pose significant obstacles to oncologists as well. Cancer treatment is referral-based. Oncologists often obtain information from other doctors, hospital, labs, etc., speak with patients by telephone, identify treatment options, and develop preliminary treatment plans, all before the initial patient visit. The prior consent requirement would prevent all of these important preliminary activities before the first patient visit, which would delay treatment in cases in which such delay cannot be tolerated.

Other commenters continued to strongly support a consent requirement, consistent with their views expressed during the comment period in March 2001. Some argued that the NPRM approach would eliminate an important consumer protection and that such a "radical" approach to fixing the workability issues was not required. They recommended a targeted approach to fixing each problem, and suggested ways to fix each unintended consequence of the consent requirement, in lieu of removing the requirement to obtain consent.

A few commenters argued for reinstating a consent requirement, but making it similar to the proposal for acknowledgment of notice by permitting flexibility and including a "good faith" standard. They also urged the Department to narrow the definition of health care operations and require that de-identified information be used where possible for health care operations.

Finally, a few commenters continued to assert that consent should be strengthened by applying it to more covered entities, requiring it to be obtained more frequently, or prohibiting the conditioning of treatment on the obtaining of consent.

Final Modifications. The Department continues to be concerned by the multitude of comments and examples demonstrating that the consent requirements would result in unintended consequences that would impede the provision of health care in many critical circumstances. We are also concerned that other such unintended consequences may exist which have yet to be brought to our attention. The Department would not have been able to address consent issues arising after publication of this Rule until at least a year had passed from this Rule's publication date due to statutory limitations on the timing of modifications. The Department believes in strong privacy protections for individually identifiable health information, but does not want to compromise timely access to quality health care. The Department also understands that the opportunity to discuss privacy practices and concerns is an important component of privacy, and that the confidential relationship between a patient and a health care provider includes the patient's ability to be involved in discussions and decisions related to the use and disclosure of protected health information about him or her.

A review of the comments showed that almost all of the commenters that discussed consent acknowledged that there are unintended consequences of the consent requirement that would interfere with treatment. These comments point toward two potential approaches to fixing these problems. The Department could address these problems by adopting a single solution that would address most or all of the concerns, or could address these problems by adopting changes targeted to each specific problem that was brought to the attention of the Department. One of the goals in making changes to the Privacy Rule is to simplify, rather than add complexity to, the Rule. Another goal is to assure that the Privacy Rule does not hamper necessary treatment. For both of these reasons, the Department is concerned about adopting different changes for different issues related to consent and regulating to address specific examples that have been brought to its attention. Therefore, the options that the Department most seriously considered were those that would provide a global fix to the consent problems. Some commenters provided global options other than the proposed approach. However, none of these would have resolved the operational problems created by a mandatory consent.

The Department also reviewed State laws to understand how they approached uses and disclosures of health information for treatment, payment, or health care operations purposes. Of note was the California Confidentiality of Medical Information Act. Cal. Civ. Code § 56. This law permits health care providers and health plans to disclose health information for treatment, payment, and certain types of health care operations purposes without obtaining consent of the individual. The California HealthCare Foundation conducted a medical privacy and confidentiality survey in January 1999 that addressed consumer views on confidentiality of medical records. The results showed that, despite the California law that permitted disclosures of health information without an individual's consent, consumers in California did not have greater concerns about confidentiality than other health care consumers. This is true with respect to trust of providers and health plans to keep health information private and confidential and the level of access to health information that providers and health plans have.

The Department adopts the approach that was proposed in the NPRM, because it is the only one that resolves the operational problems that have been identified in a simple and uniform manner. First, this Rule strengthens the notice requirements to preserve the opportunity for individuals to discuss privacy practices and concerns with providers. (See section III.H. of the preamble for the related discussion of modifications to strengthen the notice requirements.) Second, the final Rule makes the obtaining of consent to use and disclose protected health information for treatment, payment, or health care operations optional on the part of all covered entities, including providers with direct treatment relationships. A health care provider that has a direct treatment relationship with an individual is not required by the Privacy Rule to obtain an individual's consent prior to using and disclosing information about him or her for treatment, payment, and health care operations. They, like other covered entities, have regulatory permission for such uses and disclosures. The fact that there is a State law that has been using a similar model for years provides us confidence that this is a workable approach.

Other rights provided by the Rule are not affected by this modification. Although covered entities will not be required to obtain an individual's consent, any uses or disclosures of protected health information for treatment, payment, or health care operations must still be consistent with the covered entity's notice of privacy practices. Also, the removal of the consent requirement applies only to consent for treatment, payment, and health care operations; it does not alter the requirement to obtain an authorization under § 164.508 for uses and disclosures of protected health information not otherwise permitted by the Privacy Rule or any other requirements for the use or disclosure of protected health information. The Department intends to enforce strictly the requirement for obtaining an individual's authorization, in accordance with § 164.508, for uses and disclosure of protected health information for purposes not otherwise permitted or required by the Privacy Rule. Furthermore, individuals retain the right to request restrictions, in accordance with § 164.522(a). This allows individuals and covered entities to enter into agreements to restrict uses and disclosures of protected health information for treatment, payment, and health care operations that are enforceable under the Privacy Rule.

Although consent for use and disclosure of protected health information for treatment, payment, and health care operations is no longer mandated, this Final Rule allows covered entities to have a consent process if they wish to do so. The Department heard from many commenters that obtaining consent was an integral part of the ethical and other practice standards for many health care professionals. It, therefore, does not prohibit covered entities from obtaining consent.

This final Rule allows covered entities that choose to have a consent process complete discretion in designing that process. Prior comments have informed the Department that one consent process and one set of principles will likely be unworkable. Covered entities that choose to obtain consent may rely on industry practices to design a voluntary consent process that works best for their practice area and consumers, but they are not required to do so.

This final Rule effectuates these changes in the same manner as proposed by the NPRM. The consent provisions in § 164.506 are replaced with a new provision at § 164.506(a) that provides regulatory permission for covered entities to use or disclose protected health information for treatment, payment, and health care operations. A new provision is added at § 164.506(b) that permits covered entities to obtain consent if they choose to, and makes clear any such consent process does not override or alter the authorization requirements in § 164.508. Section 164.506(b) includes a small change from the proposed version to make it clearer that authorizations are still required by referring directly to authorizations under § 164.508.

Additionally, this final Rule includes a number of conforming modifications, identical to those proposed in the NPRM, to accommodate the new approach. The most substantive corresponding changes are at §§ 164.502 and 164.532. Section 164.502(a)(1) provides a list of the permissible uses and disclosures of protected health information, and refers to the corresponding section of the Privacy Rule for the detailed requirements. The provisions at §§ 164.502(a)(1)(ii) and (iii) that address uses and disclosures of protected health information for treatment, payment, and health care operations are collapsed into a single provision, and the language is modified to eliminate the consent requirement.

The references in § 164.532 to § 164.506 and to consent, authorization, or other express legal permission obtained for uses and disclosures of protected health information for treatment, payment, and health care operations prior to the compliance date of the Privacy Rule are deleted. The proposal to permit a covered entity to use or disclose protected health information for these purposes without consent or authorization would apply to any protected health information held by a covered entity whether created or received before or after the compliance date. Therefore, transition provisions are not necessary.

This final Rule also includes conforming changes to the definition of "more stringent" in § 160.202; the text of § 164.500(b)(1)(v), §§ 164.508(a)(2)(i) and (b)(3)(i), and § 164.520(b)(1)(ii)(B); the introductory text of §§ 164.510 and 164.512, and the title of § 164.512 to eliminate references to required consent.

Response to Other Public Comments

Comment: There were three categories of commenters with respect to the Rule's general approach to consent-those that supported the changes proposed in the NPRM provisions, those that requested targeted changes to the consent requirement, and those that requested that the consent requirement be strengthened.

Many commenters supported the NPRM approach to consent, making consent to use or disclose protected health information for treatment, payment, and health care operations voluntary for all covered entities. These commenters said that this approach provided flexibility for covered entities to address consent in a way that is consistent with their practices. These commenters also stated that the NPRM approach assured that the Privacy Rule would not interfere with or delay necessary treatment.

Those that advocated retaining a consent requirement stated that the NPRM approach would undermine trust in the health care system and that requiring consent before using or disclosing protected health information shows respect for the patient's autonomy, underscores the need to inform the patient of the risks and benefits of sharing protected health information, and makes it possible for the patient to make an informed decision. Many of these commenters suggested that the consent requirement be retained and that the problems raised by consent be addressed through targeted changes or guidance for each issue.

Some suggestions targeted to specific problems were: (1) Fix the problems

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related to filling prescriptions by treating pharmacists as providers with indirect treatment relationships or by deeming a prescription to serve as an implied consent; and (2) allow certain uses and disclosures prior to first patient encounter. Some of these commenters argued that certain issues could be addressed through guidance on other provisions in the Rule, rather than a change in the regulation. For example, they suggested that guidance could explain that physicians who take phone calls for one another are part of an organized health care arrangement, or could provide technical assistance about revocations on consent by identifying when a covered entity has taken action in reliance on a consent.

Other suggestions were more general. They included suggestions that the Department: (1) Substitute a good faith effort requirement for the current provisions; (2) provide regulatory permission for certain uses and disclosures of protected heath information prior to first service delivery; (3) permit oral consent with documentation; (4) retain a consent requirement for disclosures, but not uses; (5) retain a consent requirement for payment and operations, but not treatment uses and disclosures; (6) allow individuals to opt out of the consent requirement; (7) allow the consent to apply to activities of referred-to providers, and (8) retain the consent requirement but add flexibility, not exceptions.

The third group of commenters requested that the consent requirement be strengthened. Some requested that the Privacy Rule not permit conditioning of treatment or enrollment on consent for multiple uses and disclosures. Others requested that the consent requirement be extended to covered entities other than providers with direct treatment relationships, such as health plans. Some commenters also asked that the consent be time-limited or be required more frequently, such as at each service delivery.

Response: The Department recognizes that there are some benefits to the consent requirement and has considered all options to preserve the consent requirement while fixing the problems it raises. After examining each of these options, we do not believe that any would address all of the issues that were brought to the Department's attention during the comment process or would be the best approach for regulating this area. For example, the suggestion to treat pharmacists as indirect treatment providers would not be consistent with the current regulatory definition of that term and would not have addressed other referral situations. This approach was also rejected by some pharmacists who view themselves as providing treatment directly to individuals. The suggestion to allow certain uses and disclosures prior to first patient encounter would not address concerns of tracking consents, use of historical data for quality purposes, or the concerns of emergency treatment providers.

The Department desired a global approach to resolving the problems raised by the prior consent requirement, so as not to add additional complexity to the Privacy Rule or apply different standards to different types of direct treatment providers. This approach is consistent with the basic goal of the Rule to provide flexibility as necessary for the standards to work for all sectors of the health care industry.

More global approaches suggested were carefully considered, but each had some flaw or failed to address all of the treatment-related concerns brought to our attention. For example, those who suggested that the Rule be modified to require a good faith effort to obtain consent at first service delivery failed to explain how that approach would provide additional protection than the approach we proposed. The Department also decided against eliminating the consent requirement only for uses and disclosures for treatment, or only for uses of protected health information but not for disclosures, because these options fall short of addressing all of the problems raised. Scheduling appointments and surgeries, and conducting many pre-admission activities, are health care operations activities, not treatment. Retaining the consent requirement for payment would be problematic because, in cases where a provider, such as a pharmacist or hospital, engages in a payment activity prior to face-to-face contact with the individual, it would prohibit the provider from contacting insurance companies to obtain pre-certification or to verify coverage.

Similarly, the suggestion to limit the prior consent requirement to disclosures and not to uses would not have addressed all of the problems raised by the consent requirements. Many of the basic activities that occur before the initial face-to-face meeting between a provider and an individual involve disclosures as well as uses. Like the previous approach, this approach also would prohibit pharmacists and hospitals from contacting insurance companies to obtain pre-certification or verify coverage if they did not have the individual's prior consent to disclose the protected health information for payment. It also would prohibit a provider from contacting another provider to ask questions about the medical record and discuss the patient's condition, because this would be a disclosure and would require consent.

There was a substantial amount of support from commenters for the approach taken in the NPRM. The Department continues to believe that this approach makes the most sense and meets the goals of not interfering with access to quality health care and of providing a single standard that works for the entire health care industry. Therefore, the Department has adopted the approach proposed in the NPRM.

Comment: Some commenters asserted that eliminating the consent requirement would be a departure from current medical ethical standards that protect patient confidentiality and common law and State law remedies for breach of confidentiality that generally require or support patient consent prior to disclosing patient information for any reason. Another commenter was concerned that the removal of the consent requirement from the Privacy Rule will become the de facto industry standard and supplant professional ethical duties to obtain consent for the use of protected health information.

Response: The Privacy Rule provides a floor of privacy protection. State laws that are more stringent remain in force. In order not to interfere with such laws and ethical standards, this Rule permits covered entities to obtain consent. Nor is the Privacy Rule intended to serve as a "best practices" standard. Thus, professional standards that are more protective of privacy retain their vitality.

Comment: Some commenters requested that, if the Department adopts the NPRM approach to eliminate the consent requirement for uses and disclosures of protected health information for treatment, payment, or health care operations, the definition of "health care operations" should also be narrowed to protect individual expectations of privacy.

Response: We disagree. As stated in the preamble to the December 2000 Privacy Rule, the Department believes that narrowing the definition of "health care operations" will place serious burdens on covered entities and impair their ability to conduct legitimate business and management functions.

Comment: Some commenters requested that the regulation text state more specifically that a voluntary consent cannot substitute for an authorization is otherwise required under the Privacy Rule.

Response: The Department agrees and modifies the regulation text, at § 164.506(b)(2), to make this clear. As stated in the preamble to the NPRM, the Department intends to enforce strictly the requirement for obtaining an individual's authorization, in accordance with § 164.508, for uses and disclosures of protected health information for purposes not otherwise permitted or required by the Privacy Rule. A consent obtained voluntarily would not be sufficient to permit a use or disclosure which, under the Privacy Rule, requires an authorization or is otherwise expressly conditioned under the Rule. For example, a consent under § 164.506 could not be obtained in lieu of an authorization required by § 164.508 or a waiver of authorization by an IRB or Privacy Board under § 164.512(i) to disclose protected health information for research purposes.

Comment: Some commenters requested that, if the Department decides to allow consent on a voluntary basis, the Privacy Rule include requirements for those covered entities that voluntarily choose to obtain consents.

Response: The goal of the NPRM approach was to enhance flexibility for covered entities by allowing them to design a consent process that best matches their needs. The Department learned over the past year that no single consent process works for all covered entities. In addition, the Department wants to encourage covered entities to adopt a consent process, and is concerned that by prescribing particular rules, it would discourage some covered entities from doing so.

Comment: Some commenters asserted that the consent requirement provides individuals with control because providers may not opt to withhold treatment if a patient refuses consent only for the use or disclosure of protected health information for health care operations.

Response: These commenters may not fully understand the consent requirements in the December 2000 Rule. That requirement did not allow separate consents for use of protected health information for treatment, payment, and health care operations. The only way to allow use of protected health information for treatment but not for health care operations purposes would have been to invoke the right to request restrictions (§ 164.522(a)); the provider could agree or not agree to restrict use and disclosure of protected health information for health care operations. That is also how the Rule will work with these modifications. The Department is not modifying the right to request restrictions.

Comment: Some commenters were confused about the relationship between the proposed changes to the consent provisions and State law. Some were concerned that the Privacy Rule would override State consent laws which provide stronger protections for medical and psychotherapeutic privacy.

Response: The Privacy Rule does not weaken the operation of State laws that require consent to use or disclose health information. The Privacy Rule permits a covered entity to obtain consent to use or disclose health information, and, therefore, presents no barrier to the entity's ability to comply with State law requirements.

Comment: One commenter suggested that the consent requirement be retained to protect victims of domestic violence.

Response: The Department understands the concerns that the Privacy Rule not endanger victims of domestic violence, but we do not believe that eliminating the consent requirement will do so. The Department believes that the provisions that provide real protections to victims of domestic violence in how information is used or disclosed for treatment, payment, and health care operations, are provisions that allow an individual to object to disclosure of directory information and of protected health information to family members or friends involved in the individual's care (*see* § 164.510), that provide an individual the right to request restrictions (*see* § 164.522(a)), and that grant an individual the right to request confidential communications (*see* § 164.522(b)). These provisions are not affected by the changes in this final Rule.

Comment: One commenter asserted that written consent represents a signed agreement between the provider and patient regarding the manner in which covered entities will use and disclose health information in the future, and that the removal of this requirement would shift "ownership" of records from patients to doctors and corporate entities.

Response: The Department disagrees with this position. Our research indicates that a signed consent form is most typically treated as a waiver of rights by a patient and not as a binding agreement between a provider and a patient. Further, many States have laws assigning the ownership of records, apart from any consent requirements. The Privacy Rule does not address, and is not intended to affect, existing laws governing the ownership of health records.

Comment: A few commenters claimed that the signed notice of a provider's privacy policy is meaningless if the individual has no right to withhold consent and the NPRM approach would reinforce the fact that individuals have no say in how their health information is used or disclosed.

Response: The Department disagrees. The individual's options under the consent requirement established by the Privacy Rule published in December 2000 and the voluntary consent and strengthened notice provisions adopted by this Rule are the same. Under the previous Rule, a patient who disagreed with the covered entity's information practices as stated in the notice could withhold consent and not receive treatment, or could sign the consent form and obtain treatment despite concerns about the information practices. The patient could request that the provider restrict the use and/or disclosure of the information. Under the Rule as modified, a patient who disagrees with the covered entity's information practices as stated in the notice, can choose not to receive treatment from that provider, or can obtain treatment despite concerns about the information practices. The patient can request that the provider restrict the use and/or disclosure of the information. The result, for the patient, is the same.

Comment: One commenter requested clarification with respect to the effect of a revocation of voluntary consent and whether agreed-to restrictions must be honored.

Response: The final Rule is silent as to how a covered entity handles the revocation of a voluntary consent under § 164.506(b)(1). The Rule provides the covered entity that chooses to adopt a consent process discretion to design the process that works for that entity.

The change to the consent provision in the Privacy Rule does not affect the right of an individual under § 164.522(a) to request restrictions to a use or disclosure of protected health information. While a covered entity is not required to agree to such restrictions, it must act in accordance with any restriction it does agree to. Failure of a covered entity to act in accordance with an agreed-to restriction is a violation of the Rule.

Comment: Commenters asked the Department to rename consent to "consent for information use" to reduce confusion with consent for treatment.

Response: In order to clear up confusion between informed consent for treatment, which is addressed by State law, and consent to use or disclose protected health information under the

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Privacy Rule, we changed the title of § 164.506(b) from "Consent permitted" to "Consent for uses and disclosures of information permitted." The Privacy Rule does not affect informed consent for treatment.

Comment: A few commenters requested that the Department modify the regulation to state that de-identified information should be used for health care operations where possible.

Response: The Department continues to encourage covered entities to use de-identified information wherever possible. As the Department has made this position clear in the preambles to both the December 2000 Privacy Rule and the March 2002 NPRM, as well as in this preamble, we do not believe that it is necessary to modify the regulation to include such language. Further, the minimum necessary requirements, under §§ 164.502(b)(2) and 164.514(d), already require a covered entity to make reasonable efforts to limit protected health information used for health care operations and other purposes to the minimum necessary to accomplish the intended purpose, which may, in some cases, be de-identified information.

Comment: One commenter requested that the Privacy Rule state that consent is not required for provider-to-provider communications.

Response: Prior to these final modifications, the consent requirements of the Privacy Rule would have required a provider to obtain written consent to disclose protected health information to another provider for treatment purposes—which could have interfered with an individual's ability to obtain timely access to quality care. This is one reason the Department has eliminated the consent requirement for treatment, payment, and health care operations. Providers will not need a patient's consent to consult with other providers about the treatment of a patient. However, if a provider is disclosing protected health information to another provider for purposes other than treatment, payment, or health care operations, an authorization may be required under § 164.508 (*e.g.*, generally, disclosures for clinical trials would require an authorization).

Comment: One commenter asserted that, without a consent requirement, nothing will stop a health plan from demanding a patient's mental health records as a condition of payment for physical therapy.

Response: The Department does not agree that the former consent requirement is the relevant standard with respect to the activities of the health plan that concern the commenter. Rather, the Transactions Rule and the minimum necessary standard of the Privacy Rule prescribe and limit the health information that may be disclosed as part of payment transactions between health plans and health care providers. Although a health plan may request additional information to process a specific claim, in addition to the required and situational elements under the Transactions Rule, the request must comply with the Privacy Rule's minimum necessary requirements. In this example, the health plan can only request mental health records if they are reasonably necessary for the plan to process the physical therapy claim.

2. Disclosures for Treatment, Payment, or Health Care Operations of Another Entity

December 2000 Privacy Rule. The Privacy Rule permits a covered entity to use and disclose protected health information for treatment, payment, or health care operations. For treatment purposes, the Rule generally allows protected health information to be shared without restriction. The definition of "treatment" incorporates the necessary interaction of more than one entity. In particular, the definition of "treatment" includes the coordination and management of health care among health care providers or by a health care provider with a third party, consultations between health care providers, and referrals of a patient for health care from one health care provider to another. As a result, covered entities are permitted to disclose protected health information for treatment purposes regardless of to whom the disclosure is made, as well as to disclose protected health information for the treatment activities of another health care provider.

However, for payment and health care operations, the Privacy Rule, as published in December 2000, generally limited a covered entity's uses and disclosures of protected health information to those that were necessary for its own payment and health care operations activities. This limitation was explicitly stated in the December 2000 preamble discussions of the definitions of "payment" and "health care operations." 65 FR 82490, 82495. The Privacy Rule also provided that a covered entity must obtain authorization to disclose protected health information for the payment or health care operations of another entity. The Department intended these requirements to be consistent with individuals' privacy expectations. *See* 45 CFR 164.506(a)(5) and 164.508(e).

March 2002 NPRM. Since the publication of the December 2000 Rule, a number of commenters raised specific concerns with the restriction that a covered entity may not disclose protected health information for another entity's payment and health care operations activities, absent an authorization. These commenters presented a number of examples where such a restriction would impede the ability of certain entities to obtain reimbursement for health care, to conduct certain quality assurance or improvement activities, such as accreditation, or to monitor fraud and abuse.

With regard to payment, for example, the Department heard concerns of ambulance service providers who explained that they normally receive the information they need to obtain payment for their treatment services from the hospital emergency departments to which they transport their patients. They explained that it is usually not possible for the ambulance service provider to obtain such information directly from the individual, nor is it always practicable or feasible for the hospital to obtain the individual's authorization to provide payment information to the ambulance service provider. This disclosure of protected health information from the hospital to the ambulance service provider was not permitted under the December 2000 Privacy Rule without an authorization from the patient, because it was a disclosure by the hospital for the payment activities of the ambulance service provider.

Commenters also were concerned about situations in which covered entities outsource their billing, claims, and reimbursement functions to accounts receivable management companies. These collectors often attempt to recover payments from a patient on behalf of multiple health care providers. Commenters were concerned that the Privacy Rule would prevent these collectors, as business associates of multiple providers, from using a patient's demographic information received from one provider to facilitate collection for another provider's payment.

With regard to health care operations, the Department also received comments about the difficulty that the Privacy Rule would place on health plans trying to obtain information needed for quality assessment activities. Health plans informed the Department that they need to obtain individually identifiable health information from health care providers for the plans' quality-related activities, accreditation, and performance measures, such as Health Plan Employer Data and Information Set (HEDIS). Commenters explained that the information provided to plans for payment purposes (*e.g.*, claims or encounter information) may not be sufficient for quality assessment or accreditation purposes.

The NCVHS, in response to public testimony on this issue at its August 2001 hearing, also recommended that the Department amend the Privacy Rule to allow for uses and disclosures for quality-related activities among covered entities, without the individual's written authorization.

Based on these concerns, the Department proposed to modify § 164.506 to permit a covered entity to disclose protected health information for the payment activities of another covered entity or any health care provider, and also for certain types of health care operations of another covered entity. The proposal would broaden the uses and disclosures that are permitted without authorization as part of treatment, payment, and health care operations so as not to interfere inappropriately with access to quality and effective health care, while limiting this expansion in order to continue to protect the privacy expectations of the individual.

Specifically, the Department proposed the following. First, the Department proposed to add to § 164.506(c)(1) language stating that a covered entity may use or disclose protected health information for its own treatment, payment, or health care operations without prior permission.

Second, the Department proposed to include language in § 164.506(c)(2) to clarify its intent that a covered entity may share protected health information for the treatment activities of another health care provider. For example, a primary care provider who is a covered entity under the Privacy Rule may send a copy of an individual's medical record to a specialist who needs the information to treat the same individual, whether or not that specialist is also a covered entity. No authorization would be required.

Third, the Department proposed to include language in § 164.506(c)(3) to permit a covered entity to disclose protected health information to another covered entity or any health care provider for the payment activities of that entity. The Department recognized that not all health care providers who need protected health information to obtain payment are covered entities, and, therefore, proposed to allow disclosures of protected health information to both covered and non-covered health care providers. In addition, the Department proposed a conforming change to delete the word "covered" in paragraph (1)(ii) of the definition of "payment," to permit disclosures to non-covered providers for their payment activities.

The Department also proposed to limit disclosures under this provision to those health plans that are covered by the Privacy Rule. However, the Department solicited comment on whether plans that are not covered by the Privacy Rule would be able to obtain the protected health information that they need for payment purposes.

Fourth, in § 164.506(c)(4), the Department proposed to permit a covered entity to disclose protected health information about an individual to another covered entity for specified health care operations purposes of the covered entity that receives the information, provided that both entities have a relationship with the individual. This proposed expansion was limited in a number of ways. The proposal would permit such disclosures only for the activities described in paragraphs (1) and (2) of the definition of "health care operations," as well as for health care fraud and abuse detection and compliance programs (as provided for in paragraph (4) of the definition of "health care operations"). The activities that fall into paragraphs (1) and (2) of the definition of "health care operations" include quality assessment and improvement activities, population-based activities relating to improving health or reducing health care costs, case management, conducting training programs, and accreditation, certification, licensing, or credentialing activities. The Department proposed this limitation because it recognized that "health care operations" is a broad term and that individuals are less aware of the business-related activities that are part of health care operations than they are of treatment- or payment-related activities. In addition, many commenters and the NCVHS focused their comments on covered entities' needs to share protected health information for quality-related health care operations activities. The proposed provision was intended to allow information to flow from one covered entity to another for activities important to providing quality and effective health care.

The proposal would have applied only to disclosures of protected health information to other covered entities. By limiting such disclosures to those entities that are required to comply with the Privacy Rule, the Department intended to ensure that the protected health information remained protected. The Department believed that this would create the appropriate balance between meeting an individual's privacy expectations and meeting a covered entity's need for information for quality-related health care operations.

Further, such disclosures would be permitted only to the extent that each entity has, or had, a relationship with the individual who is the subject of the information being disclosed. Where the relationship between the individual and the covered entity has ended, a disclosure of protected health information about the individual would be allowed only if related to the past relationship. The Department believed that this limitation would be necessary in order to further protect the privacy expectations of the individual.

The proposal made clear that these provisions would not eliminate a covered entity's responsibility to apply the Privacy Rule's minimum necessary provisions to both the disclosure of and request for protected health information for payment and health care operations purposes. In addition, the proposal strongly encouraged the use of de-identified information, wherever feasible.

While the Department stated that it believed it had struck the right balance with respect to the proposed modification for disclosures for health care operations, the Department was aware that the proposal could pose barriers to disclosures for quality-related health care operations to health plans and health care providers that are not covered entities, or to entities that do not have a relationship with the individual. Therefore, the preamble referred commenters to the Department's request for comment on an approach that would permit for any health care operations purposes the disclosure of protected health information that does not contain direct identifiers, subject to a data use or similar agreement.

In addition, related to the above modifications and in response to comments evidencing confusion on this matter, the Department also proposed to clarify that covered entities participating in an organized health care arrangement (OHCA) may share protected health information for the health care operations of the OHCA (§ 164.506(c)(5)). The Department also proposed to remove the language regarding OHCAs from the definition of "health care operations" as unnecessary because such language now would appear in § 164.506(c)(5).

Overview of Public Comments. The following discussion provides an overview of the public comment received on this proposal. Additional

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comments received on this issue are discussed below in the section entitled, "Response to Other Public Comments."

The Department received a number of comments on its proposal to permit a covered entity to disclose protected health information for the payment and health care operations activities of other entities.

Most of the commenters who addressed the Department's proposed clarification regarding treatment expressed support for the clarification. Also, the majority of commenters supported, either wholly or in part, the Department's proposal to expand the payment and health care operations disclosures that would be permitted.

Most commenters generally were supportive of the Department's proposed approach regarding disclosures for payment. A number of commenters stated that the proposed expansion is important to facilitate coordination of benefits for many patients who have multiple sources of payment for prescription drugs. One commenter, however, requested that the Department narrow its proposed language to address only those problems specifically described in the preamble, that is, payment issues faced by ambulance providers and collection agencies that are business associates of multiple health care providers. This commenter stated that, at the very least, covered entities should be required to obtain assurances from non-covered providers, prior to disclosure of protected health information, that the recipient will not use protected health information for any other purpose or disclose it to others. Another commenter remarked that the proposal to limit disclosures only to another covered entity or any health care provider may impede disclosures to reinsurers that are not covered entities.

While most commenters supported expanding disclosures for health care operations, many requested that the Department modify the proposal in a number of ways. For example, a number of health plans and others requested that the Department eliminate the condition that both covered entities have a relationship with the individual. Some of these commenters explained that such a restriction would impede some fraud and abuse activities, credentialing investigations, and quality assurance research and outcome studies. Some commenters asked that the Department clarify that the condition that both covered entities have a relationship with the individual would not be limited to a current relationship, but also would include a past relationship with the individual.

In addition, many commenters requested that the Department expand the proposed provision to allow for disclosures for any type of health care operation of another covered entity, or at least additional activities beyond those specified in the proposal. Some health plans commented that they may need information from a health care provider in order for the health plan to resolve member or internal grievances, provide customer service, arrange for legal services, or conduct medical review or auditing activities. A number of commenters requested that the proposal be expanded to allow for disclosures for another covered entity's underwriting or premium rating.

Some commenters also requested that the Department expand the provision to allow for disclosures to non-covered entities. In particular, a number of these commenters urged that the Department allow disclosures to non-covered insurers for fraud and abuse purposes. Some of these commenters specifically requested that the Department allow for disclosures to affiliated entities or non-health care components of the covered entity for purposes of investigating fraud and abuse. A few commenters requested that the Rule allow for disclosures to a non-covered health care provider for that provider's operations. For example, it was explained that an independent emergency services provider, who is not a covered entity and who often asks for outcome information on patients it has treated and transported to a facility because it wants to improve care, would be unable to obtain such information absent the individual's authorization.

Some commenters were generally opposed to the proposed expansion of the disclosures permitted under the Rule for health care operations purposes, viewing the proposal as a weakening of the Privacy Rule. One of these commenters urged the Department to implement a targeted solution allowing disclosures for only those activities specifically identified as problematic in the preamble, instead of allowing disclosures for all activities that fall within certain paragraphs within the definition of "health care operations."

Final Modifications. In this final Rule, the Department adopts its proposal to allow covered entities to disclose protected health information for the treatment, payment, and certain health care operations purposes of another entity. Specifically, the final Rule at § 164.506(c):

(1) States that a covered entity may use or disclose protected health information for its own treatment, payment, or health care operations.

(2) Clarifies that a covered entity may use or disclose protected health information for the treatment activities of any health care provider.

(3) Permits a covered entity to disclose protected health information to another covered entity or any health care provider for the payment activities of the entity that receives the information.

(4) Permits a covered entity to disclose protected health information to another covered entity for the health care operations activities of the entity that receives the information, if each entity either has or had a relationship with the individual who is the subject of the information, the protected health information pertains to such relationship, and the disclosure is:

(i) For a purpose listed in paragraphs (1) or (2) of the definition of "health care operations," which includes quality assessment and improvement activities, population-based activities relating to improving health or reducing health care costs, case management and care coordination, conducting training programs, and accreditation, licensing, or credentialing activities; or

(ii) For the purpose of health care fraud and abuse detection or compliance.

(5) Clarifies that a covered entity that participates in an organized health care arrangement may disclose protected health information about an individual to another covered entity that participates in the organized health care arrangement for any health care operations activities of the organized health care arrangement.

Based on the comments received, the Department believes that the above provisions strike the appropriate balance between meeting an individual's privacy expectations and meeting a covered entity's need for information for reimbursement and quality purposes. The Department also clarifies that disclosures pursuant to the above provisions may be made to or by a business associate of a covered entity.

In § 164.506(c)(2), in response to a comment, the Department deletes the word "another" before "health care provider" to eliminate any implication that the disclosing entity must also be a health care provider.

With respect to payment, the majority of commenters were supportive of the Department's proposal. In response to those commenters who expressed support for the proposal because it would facilitate coordination of benefits, the Department clarifies that the definition of "payment" in the Privacy Rule allows for uses and disclosures necessary for coordination of benefits. The new language may, however, reinforce that uses and disclosures for such purposes are permitted under the Rule.

The Department does not believe, as suggested by one commenter, that a targeted approach, one that would address only the problems raised by the ambulance providers and collection agencies, is a practical solution to these problems. The Department believes that these problems may apply in other situations. For example, an indirect treatment provider, such as a pathologist, may need to obtain health coverage information about an individual for billing purposes from the hospital to which the pathologist provided services. If the Department addressed only these discrete scenarios in this final modification, each additional similar problem that arises would require another rulemaking, which would, in and of itself, create a problem because the Department can change a standard only once per year. In addition, by creating special rules to address multiple, distinct circumstances, the Department would have created a substantially more complicated policy for covered entities to follow and implement.

The suggestion that the Department require a covered entity to obtain assurances from non-covered providers, prior to disclosure of protected health information for payment purposes, that the recipient will not use protected health information for any other purpose or disclose it to others, similarly would add a layer of complexity to payment disclosures. Such a requirement would encumber these communications and may interfere with the ability of non-covered health care providers to be paid for treatment they have provided. Moreover, the Privacy Rule requires a covered entity to apply the minimum necessary standard to disclosures for a non-covered provider's payment purposes. Thus, a non-covered provider will receive only the minimum information reasonably necessary for such purposes. Accordingly, the Department believes the final Rule appropriately and practically addresses the issue.

In response to the comment that the proposal may impede disclosures to reinsurers who are not covered entities, the Department clarifies that disclosures to obtain payment under a contract for reinsurance explicitly are permitted as part of the definition of "payment," regardless of whether the reinsurer is a covered entity. Similarly, disclosures for the purposes of ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care are explicitly permitted as part of the definition of "health care operations," also without regard to whether the reinsurer is a covered entity. *See* the definitions of "payment" and "health care operations" in § 164.501.

With respect to disclosures for the health care operations of another covered entity, the Department continues to believe that the condition that both entities have a relationship with the individual is appropriate to balance an individual's privacy expectations with a covered entity's need for the information. The Department clarifies that a covered entity, prior to making a disclosure allowed under this requirement, is permitted to communicate with another covered entity as necessary to determine if this condition has been met. Additionally, in response to comments, the Department adds language to § 164.506(c)(4) to make clear that the condition that both covered entities have a relationship with the individual is not limited to a current relationship. Where the relationship between the covered entity and the individual has ended, a disclosure of protected health information about the individual is permitted to the extent the disclosure is related to the past relationship. For example, the final Rule would permit a health care provider to disclose protected health information to a health plan for HEDIS purposes, even if the individual no longer was covered by the health plan, provided that the period for which information is needed overlaps with the period for which the individual was enrolled in the health plan.

In response to commenters who were concerned that this condition would impede certain health care operations activities where the covered entity may not have a relationship with the individual, the Department notes that the new limited data set provisions in § 164.514(e) are intended to provide a mechanism for disclosures of protected health information for quality and other health care operations where the covered entity requesting the information does not have a relationship with the individual. Under those provisions, the final modifications permit a covered entity to disclose protected health information, with direct identifiers removed, for any health care operations activities of the entity requesting the information, subject to a data use agreement. Additionally, as clarified by § 164.506(c)(5), covered entities that participate in an OHCA may share protected health information for the health care operations of the OHCA, without the condition that each covered entity have a relationship with the individual who is the subject of the information. The Department believes that such provisions provide adequate avenues for covered entities to obtain the information they need for health care operations activities, without eliminating appropriate privacy protections and conditions on such disclosures.

The Department also was not persuaded by the comments that the proposal should be broadened to allow disclosures for other types of health care operations activities, such as resolution of internal grievances, customer service, or medical review or auditing activities. The Department believes that the provisions at § 164.506(c)(5), which permit covered entities that participate in an OHCA to share information for any health care operations activities of the OHCA, adequately provides for such disclosures. For example, a health plan and the health care providers in its network that participate as part of the same OHCA are permitted to share information for any of the activities listed in the definition of "health care operations." The Department understands the need for entities participating in these joint arrangements to have shared access to information for health care operations purposes and intended the OHCA provisions to provide for such access. Where such a joint arrangement does not exist and fully identifiable health information is needed, one covered entity may disclose protected health information for another covered entity's health care operations pursuant to an individual's authorization as required by § 164.508. In addition, as described above, a covered entity also may disclose protected health information as part of a limited data set, with direct identifiers removed, for such purposes, as permitted by § 164.514(e).

With respect to underwriting and premium rating, a few commenters raised similar concerns that the Department's proposal to expand the disclosures permitted under health care operations would not allow for the disclosures between a health insurance issuer and a group health plan, or the agent or broker as a business associate of the plan, needed to perform functions related to supplementing or replacing insurance coverage, such as to solicit bids from prospective issuers. The Department clarifies that, if more than summary health information is needed for this purpose, paragraphs (3), (4), and (5) of the definition of "organized health

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care arrangement" may permit the disclosure. These provisions define the arrangements between group health plans and their health insurance issuers or HMOs as OHCAs, which are permitted to share information for each other's health care operations. Such disclosures also may be made to a broker or agent that is a business associate of the health plan. The Department clarifies that the OHCA provisions also permit the sharing of protected health information between such entities even when they no longer have a current relationship, that is, when a group health plan needs protected health information from a former issuer. The Department, therefore, does not believe that a broadening of the provisions under § 164.506(c)(4), to allow disclosures of protected health information for other types of health care operations activities, is warranted.

The final Rule also adopts the condition proposed in the NPRM that disclosures for these health care operations may be made only to another covered entity. The Department continues to consider such a condition necessary to appropriately balance an individual's privacy interests with entities' needs for the information. The Department was not convinced by the commenters who urged that this condition needed to be eliminated to allow for disclosures to non-covered health care providers or third parties. The Department believes that permitting disclosures of protected health information to a non-covered provider for that provider's treatment and payment purposes is warranted and appropriate so as not to impede such core activities. However, given that an individual's health information will no longer be protected when it is disclosed to a non-covered provider, the Department does not consider disclosures for a non-covered provider's health care operations to warrant similar consideration under the Rule. Moreover, this final Rule at § 164.514(e) permits a covered entity to disclose a limited data set, with direct identifiers removed, to a non-covered provider for any of the provider's health care operations purposes, without individual authorization.

Also, the Department believes that expanding the provision to allow disclosures to a third party for any of the third party's business operations would severely weaken the Privacy Rule and essentially negate the need for individual authorization. With respect to those commenters who urged the Department to permit disclosures to non-health care components of a hybrid entity or to an affiliated entity for the purposes of investigating fraud and abuse, the Department's position is that disclosures to a non-health care component within a hybrid entity or to a non-covered affiliated entity present the same privacy risks as do disclosures to a non-covered entity. The Privacy Rule, therefore, permits such disclosures only to the same extent the disclosures are permitted to a separate entity. This policy is further explained in section III.C.1. regarding hybrid entities.

Lastly, the Department believes that the final Rule does in fact implement a targeted solution to the problems previously identified by commenters, by allowing disclosures for only quality-related and fraud and abuse activities. The Department does not believe further limiting such disclosures to only certain activities within paragraphs (1) and (2) of the definition of "health care operations" is practical or appropriate. The Department is aware of the important role that these quality-related activities play in ensuring that individuals have access to quality health care. Covered entities have a legitimate need for protected health information in order to conduct these quality activities, regardless of whether such information is used for HEDIS purposes or for training. Moreover, as described above, the final Rule retains a number of conditions on such disclosures that serve to protect an individual's privacy interests and expectations. In addition, the Privacy Rule requires that the minimum necessary standard be applied to both covered entities' requests for and disclosures of protected health information for such purposes.

Response to Other Public Comments

Comment: One commenter urged that the Department permit disclosures among participants in an OHCA only when their privacy notices (or any joint notice they issue) informs individuals of this possibility.

Response: The Privacy Rule requires the joint notice of an OHCA to reflect the fact that the notice covers more than one covered entity and that, if applicable, the covered entities participating in the OHCA will share protected health information with each other, as necessary to carry out treatment, payment, or health care operations relating to the OHCA. *See* § 164.520(d). Where the participants of an OHCA choose to have separate notices, such notices must reflect and describe in sufficient detail the particular uses and disclosures that each covered entity may make to place the individual on notice. This detail should include disclosures to other members of an OHCA, where appropriate.

Comment: Another commenter requested clarification as to whether a covered entity (such as an HMO) is permitted to disclose protected health information for payment and health care operations both to the group health plan and to the plan's third party administrator or plan sponsor. The commenter stated that it was not clear from the proposal whether a covered entity could share protected health information directly with another covered entity's business associate.

Response: The Department clarifies that, if the Rule permits a covered entity to share protected health information with another covered entity, the covered entity is permitted to disclose protected health information directly to a business associate acting on behalf of that other covered entity. This is true with respect to all of the Rule's provisions. Also, an HMO may disclose protected health information to a group health plan, or a third party administrator that is a business associate of the plan, because the relationship between the HMO and the group health plan is defined as an OHCA for purposes of the Rule. See § 164.501, definition of "organized health care arrangement." The group health plan (or the HMO with respect to the group health plan) may disclose protected health information to a plan sponsor in accordance with § 164.504(f).

Comment: Several commenters requested that the Department expand the definition of "payment" to include disclosures to a responsible party. Additionally, these commenters urged that the Department permit covered entities (and their business associates) to use and disclose protected health information as permitted by other law, rather than only as required by law. These commenters were concerned that the Privacy Rule would impede the ability of first-party billing companies, collection agencies, and accounts receivable management companies to continue to bill and communicate, on behalf of a health care provider, with the responsible party on an account when that person is different from the individual to whom health care services were provided; report outstanding receivables owed by the responsible party on an account to a credit reporting agency; and perform collection litigation services.

Response: The Department does not believe a modification to the definition of "payment" is necessary. The Privacy Rule permits a covered entity, or a business associate acting on behalf of a covered entity (*e.g.*, a collection agency), to disclose protected health information as necessary to obtain payment for health care, and does not limit to whom such a disclosure may be made. See the definition of "payment" in § 164.501. Therefore, a collection agency, as a business associate of a covered entity, is permitted to contact persons other than the individual to whom health care is provided as necessary to obtain payment for such services.

Regarding the commenters' concerns about collection or payment activities otherwise permitted by law, the Department clarifies that the Privacy Rule permits covered entities to use and disclose protected health information as required by other law, or as permitted by other law provided that such use or disclosure does not conflict with the Privacy Rule. For example, the Privacy Rule permits a collection agency, as a business associate of a covered health care provider, to use and disclose protected health information as necessary to obtain reimbursement for health care services, which could include disclosures of certain protected health information to a credit reporting agency, or as part of collection litigation. See the definition of "payment" in § 164.501.

The Department notes, however, that a covered entity, and its business associate through its contract, is required to reasonably limit the amount of information disclosed for such purposes to the minimum necessary, where applicable, as well as abide by any reasonable requests for confidential communications and any agreed-to restrictions as required by the Privacy Rule.

Comment: One commenter asked that the Department clarify that disclosure by an eye doctor to confirm a contact prescription received by a mail-order contact company is treatment.

Response: The Department agrees that disclosure of protected health information by an eye doctor to a distributor of contact lenses for the purpose of confirming a contact lens prescription is treatment and is permissible under § 164.506. In relevant part, treatment is defined by the Privacy Rule as "the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party * * *" Health care is defined, in part, as "care, services, or supplies related to the health of an individual. Health care includes * * * Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription." Therefore, the dispensing of contact lenses based on a prescription is health care and the disclosure of protected health information by a provider to confirm a prescription falls within the provision, coordination, or management of health care and related services and is a treatment activity.

E. Uses and Disclosures for Which Authorization Is Required

1. Restructuring Authorization

December 2000 Privacy Rule. The Privacy Rule requires individual authorization for uses and disclosures of protected health information for purposes that are not otherwise permitted or required under the Rule. To ensure that authorizations are informed and voluntary, the Rule prohibits, with limited exceptions, covered entities from conditioning treatment, payment, or eligibility for benefits or enrollment in a health plan, on obtaining an authorization. The Rule also permits, with limited exceptions, individuals to revoke an authorization at any time. Additionally, the Rule sets out core elements that must be included in any authorization. These elements are intended to provide individuals with the information they need to make an informed decision about giving their authorization. This information includes specific details about the use or disclosure, and provides the individual fair notice about his or her rights with respect to the authorization and the potential for the information to be redisclosed. Additionally, the authorization must be written in plain language so individuals can read and understand its contents. The Privacy Rule required that authorizations provide individuals with additional information for specific circumstances under the following three sets of implementation specifications: In § 164.508(d), for authorizations requested by a covered entity for its own uses and disclosures; in § 164.508(e), for authorizations requested by a covered entity for another entity to disclose protected health information to the covered entity requesting the authorization to carry out treatment, payment, or health care operations; and in § 164.508(f), for authorizations requested by a covered entity for research that includes treatment of the individual.

March 2002 NPRM. Various issues were raised regarding the authorization requirements. Commenters claimed the authorization provisions were too complex and confusing. They alleged that the different sets of implementation specifications were not discrete, creating the potential for the implementation specifications for specific circumstances to conflict with the required core elements. Some covered entities were confused about which authorization requirements they should implement in any given circumstance. Also, although the Department intended to permit insurers to obtain necessary protected health information during contestability periods under State law, the Rule did not provide an exception to the revocation provision when other law provides an insurer the right to contest an insurance policy.

To address these issues, the Department proposed to simplify the authorization provisions by consolidating the implementation specifications into a single set of criteria under § 164.508(c), thus eliminating paragraphs (d), (e), and (f) which contained separate implementation specifications. Under the proposal, paragraph (c)(1) would require all authorizations to contain the following core elements: (1) A description of the information to be used or disclosed, (2) the identification of the persons or class of persons authorized to make the use or disclosure of the protected health information, (3) the identification of the persons or class of persons to whom the covered entity is authorized to make the use or disclosure, (4) a description of each purpose of the use or disclosure, (5) an expiration date or event, (6) the individual's signature and date, and (7) if signed by a personal representative, a description of his or her authority to act for the individual. The proposal also included new language to clarify that when individuals initiate an authorization for their own purposes, the purpose may be described as "at the request of the individual."

In the NPRM, the Department proposed that § 164.508(c)(2) require authorizations to contain the following required notifications: (1) A statement that the individual may revoke the authorization in writing, and either a statement regarding the right to revoke and instructions on how to exercise such right or, to the extent this information is included in the covered entity's notice, a reference to the notice, (2) a statement that treatment, payment, enrollment, or eligibility for benefits may not be conditioned on obtaining the authorization if such conditioning is prohibited by the Privacy Rule, or, if conditioning is permitted by the Privacy Rule a statement about the consequences of refusing to sign the authorization, and (3) a statement about the potential for the protected health information to be redisclosed by the recipient.

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Also under the proposal, covered entities would be required to obtain an authorization to use or disclose protected health information for marketing purposes, and to disclose in such authorizations any direct or indirect remuneration the covered entity would receive from a third party as a result of obtaining or disclosing the protected health information. The other proposed changes regarding marketing are discussed in section III.A.1. of the preamble.

The NPRM proposed a new exception to the revocation provision at § 164.508(b)(5)(ii) for authorizations obtained as a condition of obtaining insurance coverage when other law gives the insurer the right to contest the policy. Additionally, the Department proposed that the exception to permit conditioning payment of a claim on obtaining an authorization be deleted, since the proposed provision to permit the sharing of protected health information for the payment activities of another covered entity or a health care provider would eliminate the need for an authorization in such situations.

Finally, the Department proposed modifications at § 164.508(a)(2)(i)(A), (B), and (C), to clarify its intent that the proposed provisions for sharing protected health information for the treatment, payment, or health care operations of another entity would not apply to psychotherapy notes.

There were a number of proposed modifications concerning authorizations for research purposes. Those modifications are discussed in section III.E.2. of the preamble.

Overview of Public Comments. The following discussion provides an overview of the public comment received on this proposal. Additional comments received on this issue are discussed below in the section entitled, "Response to Other Public Comments."

There was overwhelming support for the proposed modifications. Overall, supporters were of the opinion that the consolidation and simplification would promote efficiency, simplify compliance, and reduce confusion. Many commenters claimed the changes would eliminate barriers to quality health care. Some commenters claimed the proposed modifications would make the authorization process easier for both providers and individuals, and one commenter said they would make authorizations easier to read and understand. A number of commenters stated the changes would not have adverse consequences for individuals, and one commenter noted the proposal would preserve the opportunity for individuals to give a meaningful authorization.

However, some of the proponents suggested the Department go further to ease the administrative burden of obtaining authorizations. Some urged the Department to eliminate some of the required elements which they perceived as unnecessary to protect privacy, while others suggested that covered entities should decide which elements were relevant in a given situation. Some commenters urged the Department to retain the exception to the prohibition on conditioning payment of a claim on obtaining an authorization. These commenters expressed fear that the voluntary consent process and/or the right to request restrictions on uses and disclosures for treatment, payment, or health care operations might prevent covered entities from disclosing protected health information needed for payment purposes, or providers may be reluctant to cooperate in disclosures for payment purposes based on inadequately drafted notices.

Comments were divided on the proposed requirement to disclose remuneration in marketing authorizations. Recommendations ranged from requiring the disclosure of remuneration on all authorizations, to eliminating the requirement altogether.

Final Modifications. In the final modifications, the Department adopts the changes proposed in the NPRM. Since the modifications to the authorization provision are comprehensive, the Department is publishing this section in its entirety so that it will be easier to use and understand. Therefore, the preamble addresses all authorization requirements, and not just those that were modified.

In § 164.508(a), covered entities are required to obtain an authorization for uses and disclosures of protected health information, unless the use or disclosure is required or otherwise permitted by the Rule. Covered entities may use only authorizations that meet the requirements of § 164.508(b), and any such use or disclosure will be lawful only to the extent it is consistent with the terms of such authorization. Thus, a voluntary consent document will not constitute a valid permission to use or disclose protected health information for a purpose that requires an authorization under the Rule.

Although the requirements regarding uses and disclosures of psychotherapy notes are not changed substantively, the Department made minor changes to the language in paragraph (a)(2) to clarify that a covered entity may not use or disclose psychotherapy notes for purposes of another covered entity's treatment, payment, or health care operations without obtaining the individual's authorization. However, covered entities may use and disclose psychotherapy notes, without obtaining individual authorization, to carry out its own limited treatment, payment, or health care operations as follows: (1) Use by the originator of the notes for treatment, (2) use or disclosure for the covered entity's own training programs for its mental health professionals, students, and trainees, and (3) use or disclosure by the covered entity to defend itself in a legal action or other proceeding brought by the individual.

Section 164.508(a)(3) requires covered entities to obtain an authorization to use or disclose protected health information for marketing purposes, with two exceptions. The authorization requirements for marketing and the comments received on these provisions are discussed in detail in section III.A.1. of the preamble.

If the marketing involves any direct or indirect remuneration to the covered entity from a third party, the authorization must state that fact. The comments on this requirement also are discussed in section III.A.1. of the preamble. However, a statement concerning remuneration is not a required notification for other authorizations. Such a statement was never required for all authorizations and the Department believes it would be most meaningful for consumers on authorizations for uses and disclosures of protected health information for marketing purposes. Some commenters urged the Department to require remuneration statements on research authorizations. The Department has not done so because the complexity of such arrangements would make it difficult to define what constitutes remuneration in the research context. Moreover, to require covered entities to disclose remuneration by a third party on authorizations for research would go beyond the requirements imposed in the December 2000 Rule, which did not require such a disclosure on authorizations obtained for the research of a third party. The Department believes that concerns regarding financial conflicts of interest that arise in research are not limited to privacy concerns, but also are important to the objectivity of research and to protecting human subjects from harm. Therefore, in the near future, the Department plans to issue guidance for the research community on this important topic.

Pursuant to § 164.508(b)(1), an authorization is not valid under the Rule unless it contains all of the required core elements and notification statements, which are discussed below. Covered entities may include additional, non-required elements so long as they are not inconsistent with the required elements and statements. The language regarding defective authorizations in § 164.508(b)(2) is not changed substantively. However, some changes are made to conform this paragraph to modifications to other parts of the authorization provision, as well as other sections of the Rule. An authorization is not valid if it contains any of the following defects: (1) The expiration date has passed or the expiration event has occurred, and the covered entity is aware of the fact, (2) any of the required core elements or notification statements are omitted or incomplete, (3) the authorization violates the specifications regarding compounding or conditioning authorizations, or (4) the covered entity knows that material information in the authorization is false.

In § 164.508(b)(3) regarding compound authorizations, the requirements for authorizations for purposes other than research are not changed. That is, authorizations for use or disclosure of psychotherapy notes may be combined only with another authorization for the use or disclosure of psychotherapy notes. Other authorizations may be combined, unless a covered entity has conditioned the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits on one of the authorizations. A covered entity generally may not combine an authorization with any other type of document, such as a notice of privacy practices or a written voluntary consent. However, there are exceptions for research authorizations, which are discussed in section III.E.2. of the preamble.

Section 164.508(b)(4) prohibits the conditioning of treatment, payment, enrollment in a health plan, or eligibility for benefits on obtaining an authorization, with a few exceptions. The exceptions to this requirement for research-related treatment, eligibility for benefits and enrollment in a health plan, and health care solely for creating protected health information for disclosure to a third party are not changed. Moreover, the Department eliminates the exception to the prohibition on conditioning payment of a claim on obtaining an authorization. Although some insurers urged that this conditioning authority be retained to provide them with more collection options, the Department believes this authorization is no longer necessary because we are adding a new provision in § 164.506 that permits covered entities to disclose protected health information for the payment purposes of another covered entity or health care provider. Therefore, that exception has been eliminated.

Section 164.508(b)(5) provides individuals the right to revoke an authorization at any time in writing. The two exceptions to this right are retained, but with some modification. An individual may not revoke an authorization if the covered entity has acted in reliance on the authorization, or if the authorization was obtained as a condition of obtaining insurance coverage and other law gives the insurer the right to contest the claim or the policy itself. The Department adopts the proposed modification to the latter exception so that insurers can exercise the right to contest an insurance policy under other law. Public comment was generally supportive of this proposed modification.

Section 164.508(b)(6) requires covered entities to document and retain authorizations as required under § 164.530(j). This requirement is not changed.

The different sets of implementation criteria are consolidated into one set of criteria under § 164.508(c), thus eliminating the confusion and uncertainty associated with different requirements for specific circumstances. Covered entities may use one authorization form for all purposes. The Department adopts in paragraph (c)(1), the following core elements for a valid authorization: (1) A description of the information to be used or disclosed, (2) the identification of the persons or class of persons authorized to make the use or disclosure of the protected health information, (3) the identification of the persons or class of persons to whom the covered entity is authorized to make the use or disclosure, (4) a description of each purpose of the use or disclosure, (5) an expiration date or event, (6) the individual's signature and date, and (7) if signed by a personal representative, a description of his or her authority to act for the individual. An authorization that does not contain all of the core elements does not meet the requirements for a valid authorization. The Department intends for the authorization process to provide individuals with the opportunity to know and understand the circumstances surrounding a requested authorization.

To further protect the privacy interests of individuals, when individuals initiate an authorization for their own purposes, the purpose may be stated as "at the request of the individual." Other changes to the core elements pertain to authorizations for research, and are discussed in section III.E.2. of the preamble.

Also, under § 164.508(c)(2), an authorization is not valid unless it contains all of the following: (1) A statement that the individual may revoke the authorization in writing, and either a statement regarding the right to revoke, and instructions on how to exercise such right or, to the extent this information is included in the covered entity's notice, a reference to the notice, (2) a statement that treatment, payment, enrollment, or eligibility for benefits may not be conditioned on obtaining the authorization if such conditioning is prohibited by the Privacy Rule or, if conditioning is permitted, a statement about the consequences of refusing to sign the authorization, and (3) a statement about the potential for the protected health information to be redisclosed by the recipient. Although the notification statements are not included in the paragraph on core elements an authorization is not valid unless it contains both the required core elements, and all of the required statements. This is the minimum information the Department believes is needed to ensure individuals are fully informed of their rights with respect to an authorization and to understand the consequences of authorizing the use or disclosure. The required statements must be written in a manner that is adequate to place the individual on notice of the substance of the statements.

In response to comments, the Department clarifies that the statement regarding the potential for redisclosure does not require an analysis of the risk for redisclosure, but may be a general statement that the health information may no longer be protected by the Privacy Rule once it is disclosed by the covered entity. Others objected to this statement because individuals might be hesitant to sign an authorization if they knew their protected health information could be redisclosed and no longer protected by the Rule. In response, the Department believes that individuals need to know about the consequences of authorizing the disclosure of their protected health information. As the commenter recognized, the potential for redisclosure may, indeed, be an important factor in an individual's decision to give or deny a requested authorization.

Others suggested that the statement regarding redisclosure should be omitted when an authorization is obtained only for a use, since such a statement would be confusing and

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inappropriate when the covered entity maintains the information. Similarly, some commenters were concerned that the statement may be misleading where the recipient of the information, although not a covered entity, will keep the information confidential. In response, the Department clarifies that, while a general statement would suffice, a covered entity has the discretion to provide a more definitive statement where appropriate. Thus, the covered entity requesting an authorization for its own use of protected health information may provide assurances that the information will remain subject to the Privacy Rule. Similarly, if a third party, such as a researcher, is seeking an authorization for research, the statement may refer to the privacy protections that the researcher will provide for the data.

Under § 164.508(c)(3), authorizations must be written in plain language so that individuals can understand the information contained in the form, and thus be able to make an informed decision about whether to give the authorization. A few commenters urged the Department to keep the plain language requirement as a core element of a valid authorization. Under the December 2000 Rule, the plain language requirement was not a requisite for a valid authorization. Nevertheless, under both the December 2000 Rule and the final modifications, authorizations must be written in plain language. The fact that the plain language requirement is not a core element does not diminish its importance or effect, and the failure to meet this requirement is a violation of the Rule.

Finally, under § 164.508(c)(4), covered entities who seek an authorization are required to provide the individual with a copy of the signed authorization form.

Response to Other Public Comments

Comment: A number of commenters specifically expressed support of the proposed authorization requirement for marketing, and urged the Department to adopt the requirement. However, one commenter claimed that requiring authorizations for marketing would reduce hospitals' ability to market their programs and services effectively in order to compete in the marketplace, and that obtaining, storing, and maintaining marketing authorizations would be too burdensome.

Response: In light of the support in the comments, the Department has adopted the proposed requirement for an authorization before a covered entity may use or disclose protected health information for marketing. However, the commenter is mistaken that this requirement will interfere with a hospital's ability to promote its own program and services within the community. First, such broad-based marketing is likely taking place without resort to protected health information, through dissemination of information about the hospital through community-wide mailing lists. Second, under the Privacy Rule, a communication is not marketing if a covered entity is describing its own products and services. Therefore, nothing in the Rule will inhibit a hospital from competing in the marketplace by communicating about its programs and services.

Comment: One commenter suggested that authorizations for marketing should clearly indicate that they are comprehensive and may contain sensitive protected health information.

Response: The Department treats all individually identifiable health information as sensitive and equally deserving of protections under the Privacy Rule. The Rule requires all authorizations to contain the specified core elements to ensure individuals are given the information they need to make an informed decision. One of the core elements for all authorizations is a clear description of the information that is authorized to be used or disclosed in specific and meaningful terms. The authorization process provides the individual with the opportunity to ask questions, negotiate how their information will be used and disclosed, and ultimately to control whether these uses and disclosures will be made.

Comment: Several commenters urged the Department to retain the existing structure of the implementation specifications, whereby the notification statements about the individual's right to revoke and the potential for redisclosure are "core elements." It was argued that this information is essential to an informed decision. One of the commenters claimed that moving them out of the core elements and only requiring a statement adequate to put the person on notice of the information would increase uncertainty, and that these two elements are too important to risk inadequate explanation.

Response: The Department agrees that the required notification statements are essential information that a person needs in order to make an informed decision about authorizing the use or disclosure of protected health information. Individuals need to know what rights they have with respect to an authorization, and how they can exercise those rights. However, separating the core elements and notification statements into two different subparagraphs does not diminish the importance or effect of the notification statements. The Department clarifies that both the core elements and the notification statements are required, and both must be included for an authorization to be valid.

Comment: Several commenters urged the Department to eliminate unnecessary authorization contents. They argued the test should be whether the person needs the information to protect his or her privacy, and cited the disclosure of remuneration by a third party as an example of unnecessary content, alleging that the disclosure of remuneration is not relevant to protecting privacy. One commenter suggested that covered entities should be given the flexibility to decide which contents are applicable in a given situation.

Response: The Department believes the core elements are all essential information. Individuals need to know this information to make an informed decision about giving the authorization to use or disclose their protected health information. Therefore, the Department believes all of the core elements are necessary content in all situations. The Department does not agree that the remuneration statement required on an authorization for uses and disclosures of an individual's protected health information for marketing purposes is not relevant to protecting privacy. Individuals exercise control over the privacy of their protected health information by either giving or denying an authorization, and remuneration from a third party to the covered entity for obtaining an authorization for marketing is an important factor in making that choice.

Comment: One commenter suggested that covered entities should not be required to state on an authorization a person's authority to act on an individual's behalf, and they should be trusted to require such identification or proof of legal authority when the authorization is signed. The commenter stated that this requirement only increases administrative burden for covered entities.

Response: The Department does not agree. The authorization requirement is intended to give individuals some control over uses and disclosures of protected health information that are not otherwise permitted or required by the Rule. Therefore, the Rule requires that covered entities verify and document a person's authority to sign an authorization on an individual's behalf, since that person is exercising the individual's control of the information. Furthermore, the Department understands that it is a current industry standard to verify and document a person's authority to sign any legal permission on another person's behalf. Thus, the requirement should not result in any undue administrative burden for covered entities.

Comment: One commenter suggested that the Department should require authorizations to include a complete list of entities that will use and share the information, and that the individual should be notified periodically of any changes to the list so that the individual can provide written authorization for the changes.

Response: It may not always be feasible or practical for covered entities to include a comprehensive list of persons authorized to use and share the information disclosed pursuant to an authorization. However, individuals may discuss this option with covered entities, and they may refuse to sign an authorization that does not meet their expectations. Also, subject to certain limitations, individuals may revoke an authorization at any time.

Comment: One commenter asked for clarification that a health plan may not condition a provider's participation in the health plan on seeking authorization for the disclosure of psychotherapy notes, arguing that this practice would coerce providers to request, and patients to provide, an authorization to disclose psychotherapy notes.

Response: The Privacy Rule does not permit a health plan to condition enrollment, eligibility for benefits, or payment of a claim on obtaining the individual's authorization to use or disclose psychotherapy notes. Nor may a health care provider condition treatment on an authorization for the use or disclosure of psychotherapy notes. In a situation such as the one described by the commenter, the Department would look closely at whether the health plan was attempting to accomplish indirectly that which the Rule prohibits. These prohibitions are to ensure that the individual's permission is wholly voluntary and informed with regard to such an authorization. To meet these standards, in the circumstances set forth in the comment, the Department would expect the provider subject to such a requirement by the health plan to explain to the individual in very clear terms that, while the provider is required to ask, the individual remains free to refuse to authorize the disclosure and that such refusal will have no effect on either the provision of treatment or the individual's coverage under, and payment of claims by, the health plan.

Comment: A few commenters suggested the Department should allow covered entities to combine an authorization with other documents, such as the notice acknowledgment, claiming it would reduce administrative burden and paperwork, as well as reduce patient confusion and waiting times, without compromising privacy protections.

Response: The Department disagrees that combining an authorization with other documents, such as the notice acknowledgment, would be less confusing for individuals. To the contrary, the Department believes that combining unrelated documents would be more confusing. However, the Rule does permit an authorization to be combined with other authorizations so long as the provision of treatment, payment, enrollment in a health plan or eligibility for benefits is not conditioned on obtaining any of the authorizations, and the authorization is not for the use or disclosure of psychotherapy notes.

Also, authorizations must contain the same information, whether it is a separate document or combined with another document; and the individual must be given the opportunity to read and discuss that information. Combining an authorization with routine paperwork diminishes individuals' ability to make a considered and informed judgment to permit the use or disclosure of their medical information for some other purpose.

Comment: One commenter stated that the requirement for covered entities to use only authorizations that are valid under the Rule must be an unintended result of the Rule, because covered entities would have to use only valid authorizations when requesting information from non-covered entities. The commenter did not believe the Department intended this requirement to apply with respect to non-covered entities, and gave the example of dental health plans obtaining protected health information in connection with paper claims submitted by dental offices. The commenter requested clarification that health plans may continue to use authorization forms currently in use for all claims submitted by non-covered entities.

Response: The commenter misapprehends the Rule's requirements. The requirements apply to uses and disclosure of protected health information by covered entities. In the example provided, where a health plan is requesting additional information in support of a claim for payment by a non-covered health care provider, the health plan is not required to use an authorization. The plan does not need the individual's authorization to use protected health information for payment purposes, and the non-covered health care provider is not subject to any of the Rule's requirements. Therefore, the exchange of information may occur as it does today. The Department notes that, based on the modifications regarding consent adopted in this rulemaking, neither a consent nor an authorization would be required in this example even if the health care provider was also a covered entity.

Comment: Several commenters urged the Department to add a transition provision to permit hospitals to use protected health information in already existing databases for marketing and outreach to the communities they serve. Commenters claimed that these databases are important assets that would take many years to rebuild, and hospitals may not have an already existing authorization or other express legal permission for such use of the information. They contended that, without a transition provision, these databases would become useless under the Rule. Commenters suggested the Department should adopt an "opt out" provision that would allow continued use of these databases to initially communicate with the persons listed in the database; at that time, they could obtain authorization for future communications, thus providing a smooth transition.

Response: Covered entities are provided a two-year period in which to come into compliance with the Privacy Rule. One of the purposes of the compliance period is to allow covered entities sufficient time to undertake actions such as those described in the comment (obtaining the legal permissions that would permit databases to continue to operate after the compliance date). An additional transition period for these activities has not been justified by the commenters. However, the Department notes that a covered entity is permitted to use the information in a database for communications that are either excepted from or that do not meet the definition of "marketing" in § 164.501, without individual authorization. For example, a hospital may use protected health information in an existing database to distribute information about the services it provides, or to distribute a newsletter with general health or wellness information that does not promote a particular product or service.

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2. Research Authorizations

December 2000 Privacy Rule. The Privacy Rule requires covered entities to obtain an individual's voluntary and informed authorization before using or disclosing protected health information for any purpose that is not otherwise permitted or required under the Rule. Uses and disclosures of protected health information for research purposes are subject to the same authorization requirements as uses and disclosures for other purposes. However, for research that includes treatment of the individual, the December 2000 Privacy Rule prescribed special authorization requirements at § 164.508(f). The December 2000 Privacy Rule, at § 164.508(b)(5), also permitted individuals to revoke their authorization at any time, with limited exceptions. Further, the December 2000 Privacy Rule prohibited the combining of the authorization for the use or disclosure of existing protected health information with any other legal permission related to the research study.

March 2002 NPRM. Several of those who commented on the December 2000 Privacy Rule argued that certain authorization requirements in § 164.508 were unduly complex and burdensome as applied to research uses and disclosures. In particular, several commenters favored eliminating the Rule's specific provisions at § 164.508(f) for authorizations for uses and disclosures of protected health information for research that includes treatment of the individual. The Department also heard from several provider groups who argued in favor of permitting covered entities to combine all of the research authorizations required by the Privacy Rule with the informed consent to participate in the research. Commenters also noted that the Rule's requirement for an "expiration date or event that relates to the individual or the purpose of the use or disclosure" runs counter to the needs of research databases and repositories that are often retained indefinitely.

In response to these concerns, the Department proposed to a number of modifications to simplify the authorization requirements both generally, and in certain circumstances, as they specifically applied to uses and disclosures of protected health information for research. In particular, the Department proposed a single set of authorization requirements for all uses and disclosures, including those for research purposes. This proposal would eliminate the additional authorization requirements for the use and disclosure of protected health information created for research that includes treatment of the individual. Consistent with this proposed change, the Department further proposed to modify the requirements prohibiting the conditioning of authorizations at § 164.508(b)(4)(i) to remove the reference to § 164.508(f).

In addition, the Department proposed that the Privacy Rule permit an authorization for the use or disclosure of protected health information to be combined with any other legal permission related to the research study, including another authorization or consent to participate in the research.

Finally, the Department proposed to provide explicitly that the statement, "end of a research study," or similar language be sufficient to meet the requirement for an expiration date in § 164.508(c)(1)(v). Additionally, the Department proposed that the statement "none" or similar language be sufficient to meet this provision if the authorization was for a covered entity to use or disclose protected health information for the creation or maintenance of a research database or repository.

Overview of Public Comments. The following discussion provides an overview of the public comment received on this proposal. Additional comments received on this issue are discussed below in the section entitled, "Response to Other Public Comments."

The vast majority of commenters were very supportive of the proposed revisions to the Rule's provisions for research authorizations. However, the Department did hear from several commenters that the Privacy Rule's requirement for an expiration date or event should be eliminated for all research uses and disclosures of protected health information, not just for uses and disclosures for the creation or maintenance of a research database or repository, as was proposed in the NPRM. These commenters were concerned that the Privacy Rule would prohibit important uses and disclosures of protected health information after the termination of a research project, such as the reporting of research results to the Food and Drug Administration (FDA) for an FDA investigational new drug application, unless the covered entity obtained another patient authorization. In addition, several of these commenters cited confusion in defining repositories and databases. Some of these commenters stated that an individual who authorizes information to be used for an indeterminate time most likely expects and intends for the information to be used and disclosed if needed well into the future, regardless of whether or not the research involves the use or disclosure of protected health information for the creation or maintenance of a database or repository.

Several commenters responded to the Department's request for comments on how to appropriately limit uses and disclosures following revocation of an authorization, while preserving the integrity of the research. The NPRM attempted to clarify that "even though a revocation will prevent a covered entity from further disclosing protected health information for research purposes, the exception to this requirement is intended to allow for certain continued uses of information as appropriate to preserve the integrity of the research study." However, the NPRM further stated that "if covered entities were permitted to continue using or disclosing protected health information for the research project even after an individual had revoked his or her authorization, this would undermine the primary objective of the authorization requirements to be a voluntary, informed choice of the individual." Several commenters were concerned and confused by the NPRM's statements. In particular, the Department received comments urging that the regulation permit covered entities to use and disclose research data already obtained, even after an individual has withdrawn his or her authorization. These commenters suggested that once a subject has authorized the use and disclosure of protected health information for research and the covered entity has relied on the authorization, the covered entity must retain the ability to use or disclose the subject's pre-withdrawal information for purposes consistent with the overall research. One commenter argued that it would be inadequate for the reliance exception at § 164.508(b)(5) to be interpreted to permit continued uses of the individual's information as appropriate only to account for an individual's withdrawal from the study. In this commenter's opinion, most research would call for the continued use of protected health information obtained prior to an individual's revocation of their authorization to safeguard statistical validity and truly to preserve the integrity of human research.

Final Modifications. The Department agrees with the commenters that supported the NPRM's proposed simplification of authorizations for research uses and disclosures of protected health information and, therefore, adopts the modifications to these provisions as proposed in the NPRM. The final Rule requires a single set of authorization requirements for all uses and disclosures, including those for research purposes, and permits an authorization for the use or disclosure of protected health information to be combined with any other legal permission related to the research study, including another authorization or consent to participate in the research.

In addition, in response to commenters' concerns that the Rule would prohibit important uses and disclosures of protected health information after the termination of a research project, the final Rule eliminates the requirement for an expiration date for all uses and disclosures of protected health information for research purposes, not only for the creation and maintenance of a research database or repository. The Department agrees that the line between research repositories and databases in particular, and research data collection in general, is sometimes arbitrary and unclear. If the authorization for research uses and disclosures of protected health information does not have an expiration date, the final Rule at § 164.508(c)(1)(v), requires that this fact be stated on the authorization form. Patients continue to control whether protected health information about them may be used or disclosed for research, since the authorization must include an expiration date or event, or a statement that the authorization will have no expiration date. In addition, patients will be permitted to revoke their authorization at any time during the research project, except as specified under § 164.508(b)(5). However, the Department notes that researchers may choose to include, and covered entities may choose to require, an expiration date when appropriate.

Although the final Rule does not modify the revocation provision at § 164.508(b)(5), in response to commenters' concerns, the Department clarifies that this provision permits covered entities to continue using and disclosing protected health information that was obtained prior to the time the individual revoked his or her authorization, as necessary to maintain the integrity of the research study. An individual may not revoke an authorization to the extent the covered entity has acted in reliance on the authorization. For research uses and disclosures, this reliance exception at § 164.508(b)(5)(i) permits the continued use and disclosure of protected health information already obtained pursuant to a valid authorization to the extent necessary to preserve the integrity of the research study. For example, the reliance exception would permit the continued use and disclosure of protected health information to account for a subject's withdrawal from the research study, as necessary to incorporate the information as part of a marketing application submitted to the FDA, to conduct investigations of scientific misconduct, or to report adverse events. However, the reliance exception would not permit a covered entity to continue disclosing additional protected health information to a researcher or to use for its own research purposes information not already gathered at the time an individual withdraws his or her authorization. The Department believes that this clarification of the Rule will minimize the negative effects on research caused by participant withdrawal and will allow for important continued uses and disclosures to occur, while maintaining privacy protections for research subjects.

Response to Other Public Comments

Comment: In opposition to the March 2002 NPRM, one commenter suggested prohibiting the combining of authorization forms with an informed consent when the covered entity disclosing the protected health information is not otherwise participating in research. The commenter argued that the NPRM would allow covered entities to receive more information than necessary to fulfill a patient's authorization request, such as information about the particular type or purpose of the study itself, and could, thereby, violate the patient's privacy.

Response: The Department acknowledges the concern raised by these commenters; however, prohibiting the combination of authorization forms with an informed consent reduces the flexibility proposed in the March 2002 NPRM. Since the final modifications permit—but do not require—such combining of forms, the Department has decided to leave it to the discretion of researchers or the IRBs to determine whether the combining of authorization forms and consent forms for research would be appropriate for a particular research study.

Comment: Some commenters supported retaining the December 2000 Privacy Rule requirement that a description of the extent to which protected health information will be used or disclosed for treatment, payment, or health care operations be included in an authorization to use or disclose protected health information for a research study that includes treatment of individuals. These commenters argued that an individual's ability to make informed decisions requires that he or she know how research information will and will not be used and disclosed.

Response: The Department agrees with the majority of the commenters who were in support of the March 2002 NPRM proposal to eliminate the additional authorization requirements for research that includes treatment, and has adopted these proposed modifications in the final Rule. Retaining the distinction between research that involves treatment and research that does not would require overly subjective decisions without providing commensurate privacy protections for individuals. However, the Department notes that it may sometimes be advisable for authorization forms to include a statement regarding how protected health information obtained for a research study will be used and disclosed for treatment, payment, and health care operations, if such information would assist individuals in making informed decisions about whether or not to provide their authorization for a research study.

Comment: One commenter argued that expiration dates should be included on authorizations and that extensions should be required for all research uses and disclosures made after the expiration date or event has passed.

Response: The Department disagrees. We have determined that an expiration date or event would not always be feasible or desirable for some research uses and disclosures of protected health information. By allowing for no expiration date, the final Rule permits without separate patient authorization important disclosures even after the "termination of the research project" that might otherwise be prohibited. However, the final Rule contains the requirement that the patient authorization specify if the authorization would not have an expiration date or event. Therefore, patients will have this information to make an informed decision about whether to sign the authorization.

Comment: Another commenter suggested permitting covered entities/researchers to continue using or disclosing protected health information even after a revocation of the initial authorization but only if an IRB or Privacy Board approved the continuation. This commenter argued that such review by an IRB or Privacy Board would protect privacy, while permitting continued uses and disclosures of protected health information for important purposes.

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Response: As stated above, the Department agrees that it may sometimes be necessary to continue using and disclosing protected health information even after an individual has revoked his or her authorization in order to preserve the integrity of a research study. Therefore, the Department has clarified that the reliance exception at § 164.508(b)(5)(i) would permit the continued use and disclosure of protected health information already obtained pursuant to a valid authorization to the extent necessary to preserve the integrity of the research study. A requirement for documentation of IRB or Privacy Board review and approval of the continued use or disclosure of protected health information after an individual's authorization had been revoked could protect patient privacy. However, the Department believes that the additional burden on the IRB or Privacy Board could be substantial, and is not warranted at this time.

Comment: A commenter requested clarification that the "reliance exception" does not permit covered entities as researchers to continue analyzing data once an individual has revoked his or her authorization.

Response: As discussed above, the Department disagrees with this comment. Patient privacy must be balanced against other public goods, such as research and the risk of compromising such research projects if researchers could not continue to use such data. The Department determined that permitting continued uses and disclosures of protected health information already obtained to protect the integrity of research, even after an individual's authorization has been revoked, would pose minimal privacy risk to individuals without compromising research.

Comment: Several commenters suggested permitting the proposed authorization requirement for a "description of each purpose of the requested use or disclosure" at § 164.508 to be sufficiently broad to encompass future unspecified research. These commenters argued that this option would reduce the burden for covered entities and researchers by permitting covered entities to use or disclose protected health information for re-analysis without having to obtain an additional authorization from the individual. Some discussed the possibility that burden for patients would also be reduced because they would not have to provide additional authorizations. These commenters also argued that such a provision would more directly align the Rule with the Common Rule, which permits broad informed consent for secondary studies if the IRB deems the original informed consent to be adequate.

Response: The Department disagrees with broadening the required "description of the purpose of the use or disclosure" because of the concern that patients would lack necessary information to make an informed decision. In addition, unlike the Common Rule, the Privacy Rule does not require IRB or Privacy Board review of research uses and disclosures made with individual authorization. Therefore, instead of IRBs or Privacy Boards reviewing the adequacy of existing patient authorizations, covered entities would be left to decide whether or not the initial authorization was broad enough to cover subsequent research analyses. Furthermore, it should be noted that patient authorization would not be required for such re-analysis if, with respect to the re-analysis, the covered entity obtains IRB or Privacy Board waiver of such authorization as required by § 164.512(i). For these reasons, the Department has decided to retain the requirement that each purpose of the requested use or disclosure described in the authorization form be research study specific. However, the Department understands that, in the past, some express legal permissions and informed consents have not been study-specific and sometimes authorize the use or disclosure of information for future unspecified research. Furthermore, some IRB-approved waivers of informed consent have been for future unspecified research. Therefore, the final Rule at § 164.532 permits covered entities to rely on an express legal permission, informed consent, or IRB-approved waiver of informed consent for future unspecified research, provided the legal permission, informed consent or IRB-approved waiver was obtained prior to the compliance date.

Comment: Several commenters suggested retaining the authorization element requiring a statement regarding "the potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer protected by this Rule" but with one addition. This addition would state that "researchers could only use or disclose the protected health information for purposes approved by the IRB or as required by law or regulation." These commenters argued that this would be clearer to participants and would prevent the misconception that their information would not be protected by any confidentiality standards.

Response: The Department recognizes the concern of the commenters seeking to supplement the requirement, but points out that, although the final Rule will not require this addition, it is permissible to include such a statement in the authorization. In addition, since the Privacy Rule does not require IRB or Privacy Board review of research uses and disclosures made with patient authorization, the Department determined that adding the commenters' suggestion to the final Rule would be inappropriate. Section III.E.1. above provides further discussion of this provision.

F. Section 164.512—Uses and Disclosures for Which Authorization or Opportunity To Agree or Object Is Not Required

1. Uses and Disclosures Regarding FDA-Regulated Products and Activities

December 2000 Privacy Rule. The Privacy Rule permits covered entities to disclose protected health information without consent or authorization for public health purposes. Generally, these disclosures may be made to public health authorities, as well as to contractors and agents of public health authorities. However, in recognition of the essential role of drug and medical device manufacturers and other private persons in carrying out the Food and Drug Administration's (FDA) public health mission, the December 2000 Privacy Rule permitted covered entities to make such disclosures to a person who is subject to the jurisdiction of the FDA, but only for the following specified purposes: (1) To report adverse events, defects or problems, or biological product deviations with respect to products regulated by the FDA (if the disclosure is made to the person required or directed to report such information to the FDA); (2) to track products (if the disclosure is made to the person required or directed to report such information to the FDA); (3) for product recalls, repairs, or replacement; and (4) for conducting post-marketing surveillance to comply with FDA requirements or at the direction of the FDA.

March 2002 NPRM. The Department heard a number of concerns about the scope of the disclosures permitted for FDA-regulated products and activities and the failure of the Privacy Rule to reflect the breadth of the public health activities currently conducted by private sector entities subject to the jurisdiction of the FDA on a voluntary basis. These commenters claimed the Rule would constrain important public health surveillance and reporting activities by impeding the flow of needed information to those subject to the jurisdiction of the FDA. For instance, there were concerns that the Rule would have a chilling effect on current voluntary reporting practices. The FDA gets the vast majority of information concerning problems with FDA-regulated products, including drugs, medical devices, biological products, and food indirectly through voluntary reports made by health care providers to the manufacturers. These reports are critically important to public health and safety. The December 2000 Rule permitted such disclosures only when made to a person "required or directed" to report the information to the FDA or to track the product. The manufacturer may or may not be required to report such problems to the FDA, and the covered entities who make these reports are not in a position to know whether the recipient of the information is so obligated. Consequently, many feared that this uncertainty would cause covered entities to discontinue their practices of voluntary reporting of adverse events related to FDA-regulated products or entities.

Some covered entities also expressed fears of the risk of liability should they inadvertently report the information to a person who is not subject to the jurisdiction of the FDA or to the wrong manufacturer. Hence, they urged the Department to provide a "good-faith" safe harbor to protect covered entities from enforcement actions arising from unintentional violations of the Privacy Rule.

A number of commenters, including some subject to the jurisdiction of the FDA, suggested that it is not necessary to disclose identifiable health information for some or all of these public health purposes, that identifiable health information is not reported to the FDA, and that information without direct identifiers (such as name, mailing address, phone number, social security number, and email address) is sufficient for post-marketing surveillance purposes.

The Rule is not intended to discourage or prevent adverse event reporting or otherwise disrupt the flow of essential information that the FDA and persons subject to the jurisdiction of the FDA need in order to carry out their important public health activities. Therefore, the Department proposed some modifications to the Rule to address these issues in the NPRM. Specifically, the Department proposed to remove from §§ 164.512(b)(1)(iii)(A) and (B) the phrase "if the disclosure is made to a person required or directed to report such information to the Food and Drug Administration" and to remove from subparagraph (D) the phrase "to comply with requirements or at the direction of the Food and Drug Administration." In lieu of this language, the Department proposed to describe at the outset the public health purposes for which disclosures may be made. The proposed language read: "A person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity."

The proposal retained the specific activities identified in paragraphs (A), (B), (C), and (D) as examples of common FDA purposes for which disclosures would be permitted, but eliminated the language that would have made this listing the only activities for which such disclosures would be allowed. These activities include reporting of adverse events and other product defects, the tracking of FDA-regulated products, enabling product recalls, repairs, or replacement, and conducting post-marketing surveillance. Additionally, the Department proposed to include "lookback" activities in paragraph (C), which are necessary for tracking blood and plasma products, as well as quarantining tainted blood or plasma and notifying recipients of such tainted products.

In addition to these specific changes, the Department solicited comments on whether a limited data set should be required or permitted for some or all public health purposes, or if a special rule should be developed for public health reporting. The Department also requested comments as to whether the proposed modifications would be sufficient, or if additional measures, such as a good-faith safe harbor, would be needed for covered entities to continue to report vital information concerning FDA-regulated products or activities on a voluntary basis.

Overview of Public Comments. The following discussion provides an overview of the public comment received on this proposal. Additional comments received on this issue are discussed below in the section entitled, "Response to Other Public Comments."

The proposed changes received wide support. The overwhelming majority of commenters urged the Department to adopt the proposed changes, claiming it would reduce the chilling effect that the Rule would otherwise have on current voluntary reporting practices, which are an important means of identifying adverse events, defects, and other problems regarding FDA-regulated products. Several commenters further urged the Department to provide a good-faith safe harbor to allay providers' fears of inadvertently violating the Rule, stating that covered entities would otherwise be reluctant to risk liability to make these important public health disclosures.

A few commenters opposed the proposed changes, expressing concern that the scope of the proposal was too broad. They were particularly concerned that including activities related to "quality" or "effectiveness" would create a loophole for manufacturers to obtain and use protected health information for purposes the average person would consider unrelated to public health or safety, such as using information to market products to individuals. Some of these commenters said the Department should retain the exclusive list of purposes and activities for which such disclosures may be made, and some urged the Department to retain the "required or directed" language, as it creates an essential nexus to a government authority or requirement. It was also suggested that the chilling effect on reporting of adverse events could be counteracted by a more targeted approach. Commenters were also concerned that the proposal would permit disclosure of much more protected health information to non-covered entities that are not obligated by the Rule to protect the privacy of the information. Comments regarding use of a limited data set for public health disclosures are discussed in section III.G.1. of the preamble.

Final Modifications. In the final modifications, the Department adopts the language proposed in the NPRM. Section 164.512(b)(1)(iii), as modified, permits covered entities to disclose protected health information, without authorization, to a person subject to the jurisdiction of the FDA with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety, or effectiveness of such FDA-regulated product or activity. Such purposes include, but are not limited to, the following activities and purposes listed in subparagraphs (A) through (D): (1) To collect or report adverse events (or similar activities regarding food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations, (2) to track FDA-regulated products, (3) to enable product recalls, repairs, or replacement, or for lookback (including locating and notifying persons who have

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received products that have been withdrawn, recalled, or are the subject of lookback), and (4) to conduct post-marketing surveillance.

The Department believes these modifications are necessary to remove barriers that could prevent or chill the continued flow of vital information between health care providers and manufacturers of food, drugs, medical and other devices, and biological products. Health care providers have been making these disclosures to manufacturers for many years, and commenters opposed to the proposal did not cite any examples of abuses of information disclosed for such purposes. Furthermore, both the individuals who are the subjects of the information and the general public benefit from these disclosures, which are an important means of identifying and dealing with FDA-regulated products on the market that potentially pose a health or safety threat. For example, FDA learns a great deal about the safety of a drug after it is marketed as a result of voluntary adverse event reports made by covered entities to the product's manufacturer. The manufacturer is required to submit these safety reports to FDA, which uses the information to help make the product safer by, among other things, adding warnings or changing the product's directions for use. The modifications provide the necessary assurances to covered entities that such voluntary reporting may continue.

Although the list of permissible disclosures is no longer exclusive, the Department disagrees with commenters that asserted the modifications permit virtually unlimited disclosures for FDA purposes. As modified, such disclosures must still be made to a person subject to the jurisdiction of the FDA. The disclosure also must relate to FDA-regulated products or activities for which the person using or receiving the information has responsibility, and be made only for activities related to the safety, effectiveness, or quality of such FDA-regulated product or activity. These terms are terms of art with commonly accepted and understood meanings in the FDA context, meanings of which providers making such reports are aware. This limits the possibility that FDA-regulated manufacturers and entities will able to abuse this provision to obtain information to which they would otherwise not be entitled.

Moreover, § 164.512(b)(1) specifically limits permissible disclosures to those made for public health activities and purposes. While a disclosure related to the safety, quality or effectiveness of an FDA-regulated product is a permissible disclosure, the disclosure also must be for a "public health" activity or purpose. For example, it is not permissible under § 164.512(b)(1)(iii) for a covered entity to disclose protected health information to a manufacturer to allow the manufacturer to evaluate the effectiveness of a marketing campaign for a prescription drug. In this example, although the disclosure may be related to the effectiveness of an FDA-regulated activity (the advertising of a prescription drug), the disclosure is made for the commercial purposes of the manufacturer rather than for a public health purpose.

A disclosure related to a "quality" defect of an FDA-regulated product is also permitted. For instance, the public health exception permits a covered entity to contact the manufacturer of a product to report drug packaging quality defects. However, this section does not permit all possible reports from a covered entity to a person subject to FDA jurisdiction about product quality. It would not be permissible for a provider to furnish a manufacturer with a list of patients who prefer a different flavored cough syrup over the flavor of the manufacturer's product. Such a disclosure generally would not be for a public health purpose. However, a disclosure related to the flavor of a product would be permitted under this section if the covered entity believed that a difference in the product's flavor indicated, for example, a possible manufacturing problem or suggested that the product had been tampered with in a way that could affect the product's safety.

The Department clarifies that the types of disclosures that covered entities are permitted to make to persons subject to FDA jurisdiction are those of the type that have been traditionally made over the years. These reports include, but are not limited to, those made for the purposes identified in paragraphs (A)–(D) of § 164.512(b)(1)(iii) of this final Rule.

Also, the minimum necessary standard applies to public health disclosures, including those made to persons subject to the jurisdiction of the FDA. There are many instances where a report about the quality, safety, or effectiveness of an FDA-regulated product can be made without disclosing protected health information. Such may be the case with many adverse drug events where it is important to know what happened but it may not be important to know to whom. However, in other circumstances, such as device tracking or blood lookback, it is essential for the manufacturer to have identifying patient information in order to carry out its responsibilities under the Food, Drug, and Cosmetic Act. Therefore, identifiable health information can be disclosed for these purposes, consistent with the minimum necessary standard.

As the Department stated in the preamble of the NPRM, "a person" subject to the jurisdiction of the FDA does not mean that the disclosure must be made to a specific individual. The Food, Drug, and Cosmetic Act defines "person" to include an individual, partnership, corporation, and association. Therefore, covered entities may continue to disclose protected health information to the companies subject to FDA's jurisdiction that have responsibility for the product or activity. Covered entities may identify responsible companies by using information obtained from product labels or product labeling (written material about the product that accompanies the product) including sources of labeling, such as the Physician's Desk Reference.

The Department believes these modifications effectively balance the privacy interests of individuals with the interests of public health and safety. Since the vast majority of commenters were silent on the question of the potential need for a "good faith" exception, the Department believes that these modifications will be sufficient to preserve the current public health activities of persons subject to the jurisdiction of the FDA, without such a safe harbor. However, the Department will continue to evaluate the effect of the Rule to determine whether there is need for further modifications or guidance.

Response to Other Public Comments

Comment: A few commenters urged the Department to include foreign public health authorities in the Rule's definition of "public health authority." These commenters claimed that medical products are often distributed in multiple countries, and the associated public health issues are experienced globally. They further claimed that requiring covered entities to obtain the permission of a United States-based public health authority before disclosing protected health information to a foreign government public health authority will impede important communications.

Response: The Department notes that covered entities are permitted to disclose protected health information for public health purposes, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority. The Department does not have sufficient information at this time as to any potential impacts or workability issues that could arise from this language and, therefore, does not modify the Rule in this regard.

Comment: Some commenters, who opposed the proposal as a weakening of the Privacy Rule, suggested that the Department implement a more targeted approach to address only those issues raised in the preamble to the NPRM, such as voluntary adverse event reporting activities, rather than broadening the provision generally.

Response: The NPRM was intended to address a number of issues in addition to the concern that the December 2000 Privacy Rule would chill reporting of adverse events to entities from whom the FDA receives much of its adverse event information. For instance, the text of the December 2000 Privacy Rule did not expressly permit disclosure of protected health information to FDA-regulated entities for the purpose of enabling "lookback," which is an activity performed by the blood and plasma industry to identify and quarantine blood and blood products that may be at increased risk of transmitting certain blood-borne diseases, and which includes the notification of individuals who received possibly tainted products, permitting them to seek medical attention and counseling. The NPRM also was intended to simplify the public health reporting provision and to make it more readily understandable. Finally, the approach proposed in the NPRM, and adopted in this final Rule, is intended to add flexibility to the public health reporting provision of the December 2000 Rule, whose exclusive list of permissible disclosures was insufficiently flexible to assure that § 164.512(b)(1)(iii) will allow legitimate public health reporting activities that might arise in the future.

In addition, the Department clarifies that the reporting of adverse events is not restricted to the FDA or persons subject to the jurisdiction of the FDA. A covered entity may, under § 164.512(b), disclose protected health information to a public health authority that is authorized to receive or collect a report on an adverse event. In addition, to the extent an adverse event is required to be reported by law, the disclosure of protected health information for this purpose is also permitted under § 164.512(a). For example, a Federally funded researcher who is a covered health care provider under the Privacy Rule may disclose protected health information related to an adverse event to the National Institutes of Health (NIH) if required to do so by NIH regulations. Even if not required to do so, the researcher may also disclose adverse events directly to NIH as a public health authority. To the extent that NIH has public health matters as part of its official mandate it qualifies as a public health authority under the Privacy Rule, and to the extent it is authorized by law to collect or receive reports about injury and other adverse events such collection would qualify as a public health activity.

2. Institutional Review Board (IRB) or Privacy Board Approval of a Waiver of Authorization

December 2000 Privacy Rule. The Privacy Rule builds upon existing Federal regulations governing the conduct of human subjects research. In particular, the Rule at § 164.512(i) establishes conditions under which covered entities can use and disclose protected health information for research purposes without individual authorization if the covered entity first obtains either of the following:

- Documentation of approval of a waiver of authorization from an Institutional Review Board (IRB) or a Privacy Board. The Privacy Rule specifies requirements that must be documented, including the Board's determination that eight defined waiver criteria had been met.
- Where a review of protected health information is conducted preparatory to research or where research is conducted solely on decedents' information, certain representations from the researcher, including that the use or disclosure is sought solely for such a purpose and that the protected health information is necessary for the purpose.

March 2002 NPRM. A number of commenters informed the Department that the eight waiver criteria in the December 2000 Privacy Rule were confusing, redundant, and internally inconsistent. These commenters urged the Department to simplify these provisions, noting that they would be especially burdensome and duplicative for research that was currently governed by the Common Rule. In response to these comments, the Department proposed the following modifications to the waiver criteria for all research uses and disclosures of protected health information, regardless of whether or not the research is subject to the Common Rule:

- The Department proposed to delete the criterion that "the alteration or waiver will not adversely affect the privacy rights and the welfare of the individuals," because it may conflict with the criterion regarding the assessment of minimal privacy risk.
- In response to commenters' concerns about the overlap and potential inconsistency among several of the Privacy Rule's criteria, the Department proposed to turn the following three criteria into factors that must be considered as part of the IRB's or Privacy Board's assessment of minimal risk to privacy:
- There is an adequate plan to protect the identifiers from improper use and disclosure;
- There is an adequate plan to destroy the identifiers at the earliest opportunity consistent with the conduct of the research, unless there is a health or research justification for retaining the identifiers, or such retention is otherwise required by law; and
- There are adequate written assurances that the protected health information will not be reused or disclosed to any other person or entity, except as required by law, for authorized oversight of the research project, or for other research for which the use or disclosure of protected health information would be permitted by this subpart.
- In response to concerns that the following waiver criterion was unnecessarily duplicative of other provisions to protect patients' confidentiality interests, the Department proposed to eliminate the criterion that: "the privacy risks to individuals whose protected health information is to be used or disclosed are reasonable in relation to the anticipated benefits, if any, to the individual, and the importance of the knowledge that may reasonably be expected to result from the research."

In sum, the NPRM proposed that the following waiver criteria replace the waiver criteria in the December 2000 Privacy Rule at § 164.512(i)(2)(ii):

(1) The use or disclosure of protected health information involves no more than a minimal risk to the privacy of individuals, based on, at least, the presence of the following elements:

(a) An adequate plan to protect the identifiers from improper use and disclosure;

(b) An adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or research justification for retaining the identifiers or such retention is otherwise required by law; and

(c) Adequate written assurances that the protected health information will not be reused or disclosed to any other person or entity, except as required by law, for authorized oversight of the

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research project, or for other research for which the use or disclosure of protected health information would be permitted by this subpart;

(2) The research could not practicably be conducted without the waiver or alteration; and

(3) The research could not practicably be conducted without access to and use of the protected health information.

Overview of Public Comments. The following discussion provides an overview of the public comment received on this proposal. Additional comments received on this issue are discussed below in the section entitled, "Response to Other Public Comments."

The overwhelming majority of commenters were supportive of the Department's proposed modifications to the Privacy Rule's waiver criteria. These commenters found that the proposed revisions adequately addressed earlier concerns that the waiver criteria in the December 2000 Rule were confusing, redundant, and internally inconsistent. However, a few commenters argued that some of the proposed criteria continued to be too subjective and urged that they be eliminated.

Final Modifications. The Department agrees with the majority of commenters that supported the proposed waiver criteria, and adopts the modifications as proposed in the NPRM. The criteria safeguard patient privacy, require attention to issues sometimes currently overlooked by IRBs, and are compatible with the Common Rule. Though IRBs and Privacy Boards may initially struggle to interpret the criteria, as a few commenters mentioned, the Department intends to issue guidance documents to address this concern. Furthermore, the Department notes that experience and guidance have enabled IRBs to successfully implement the Common Rule's waiver criteria, which also require subjective determinations.

This final Rule also contains a conforming modification in § 164.512(i)(2)(iii) to replace "(i)(2)(ii)(D)" with "(i)(2)(ii)(C)."

Response to Other Public Comments

Comment: It was suggested that the Department eliminate the March 2002 NPRM waiver criterion that requires IRBs or Privacy Boards to determine if there is an "adequate plan to protect identifiers from improper use and disclosure," in order to avoid the IRB having to make subjective decisions.

Response: The Department disagrees with the commenter that the waiver criterion adopted in this final Rule is too subjective for an IRB or a Privacy Board to use. First, the consideration of whether there is an adequate plan to protect identifiers from improper use and disclosure is one of three factors that an IRB or Privacy Board must weigh in determining that the use or disclosure of protected health information for the research proposal involves no more than a minimal risk to the privacy of the individual. The Department does not believe that the minimal risk determination, which is based upon a similar waiver criterion in the Common Rule, is made unduly subjective by requiring the IRB to take into account the researcher's plans for maintaining the confidentiality of the information.

Second, as noted in the discussion of these provisions in the proposal, the Privacy Rule is intended to supplement and build upon the human subject protections already afforded by the Common Rule and the Food and Drug Administration's human subject protection regulations. One provision already in effect under these authorities is that, to approve a study, an IRB must determine that "when appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data." (Common Rule § __.111(a)(7), 21 CFR 56.111(a)(7).) The Department, therefore, believes that IRBs and Privacy Boards are accustomed to making the type of determinations required under the Privacy Rule.

Nonetheless, as stated above, the Department is prepared to respond to actual issues that may arise during the implementation of these provisions and to provide the guidance necessary to address concerns of IRBs, Privacy Boards, and researchers in this area.

Comment: A few commenters requested elimination of the waiver element at § 164.512(i)(2)(ii)(A)(2) that would require the IRB or Privacy Board to determine that "there is an adequate plan to destroy identifiers at the earliest opportunity consistent with the conduct of the research, unless there is a health or research justification for their retention or such retention is required by law." These commenters argued that this requirement may lead to premature destruction of the data, which may hinder investigations of defective data analysis or research misconduct.

Response: The waiver element at § 164.512(i)(2)(ii)(A)(2) accounts for these concerns by permitting the retention of identifiers if there is a health or research justification, or if such retention is required by law. It is expected that IRBs and Privacy Boards will consider the need for continued analysis of the data, research, and possible investigations of research misconduct when considering whether this waiver element has been met. In addition, destroying identifiers at the earliest opportunity helps to ensure that the use or disclosure of protected health information will indeed pose no more than "minimal risk to the privacy of individuals." Requiring the researcher to justify the need to retain patient identifiers provides needed flexibility for research, while maintaining the goal of protecting individuals' privacy interests. If additional issues arise after implementation, the Department can most appropriately address them through guidance.

Comment: Commenters also requested clarification of the proposed waiver element at § 164.512(i)(2)(ii)(A)(3), that will require an IRB or Privacy Board to determine that there are "adequate written assurances that the protected health information would not be reused or disclosed to any other person or entity, except as required by law, for authorized oversight of the research project, or for other research for which the use or disclosure of protected health information would be permitted by this subpart." Specifically, the commenter's concern centered on what effect this criterion could have on retrospective studies involving data re-analysis.

Response: The Department clarifies that the Privacy Rule permits the use or disclosure of protected health information for retrospective research studies involving data re-analysis only if such use or disclosure is made either with patient authorization or a waiver of patient authorization as permitted by § 164.508 or § 164.512(i), respectively. If issues develop in the course of implementation, the Department intends to provide the guidance necessary to address these questions.

Comment: A few commenters suggested clarifying that recruitment for clinical trials by a covered entity using protected health information in the covered entity's possession is a health care operation function, not a marketing function. These commenters argued that a partial IRB or Privacy Board waiver of authorization for recruitment purposes would be too burdensome for the covered entity, and would prevent covered health care providers from communicating with their patients about the availability of clinical trials.

Response: Research recruitment is neither a marketing nor a health care operations activity. Under the Rule, a covered entity is permitted to disclose protected health information to the individual who is the subject of the information, regardless of the purpose of the disclosure. *See* § 164.502(a)(1)(i). Therefore, covered health care providers and patients may continue to discuss the option of enrolling in a clinical trial without patient authorization, and without an IRB or Privacy Board waiver of patient authorization. However, where a covered entity wants to disclose an individual's information to a third party for purposes of recruitment in a research study, the covered entity first must obtain either authorization from that individual as required at § 164.508, or a waiver of authorization as permitted at § 164.512(i).

Comment: It was suggested that the Rule should permit covered health care providers to obtain an authorization allowing the use of protected health information for recruitment into clinical trials without specifying the person to whom the information would be disclosed and the exact information to be disclosed, but retaining the authorization requirements of specified duration and purpose, and adding a requirement for the minimum necessary use or disclosure.

Response: The Department understands that the Privacy Rule will alter some research recruitment but disagrees with the commenter's proposal to permit broad authorizations for recruitment into clinical trials. The Department decided not to adopt this suggestion because such a blanket authorization would not provide individuals with sufficient information to make an informed choice about whether to sign the authorization. In addition, adopting this change also would be inconsistent with Department's decision to eliminate the distinction in the Rule between research that includes treatment and research that does not.

Comment: It was suggested that the Department exempt from the Privacy Rule research that is already covered by the Common Rule and/or FDA's human subject protection regulations. Commenters stated that this would reduce the burden of complying with the Rule for covered entities and researchers already governed by human subject protection regulations, while requiring those not previously subject to compliance with human subject protection regulations to protect individuals' privacy.

Response: Many who commented on the December 2000 Privacy Rule argued for this option as well. The Department had previously considered, but chose not to adopt, this approach. Since the Common Rule and the FDA's human subject protection regulations contain only two requirements that specifically address confidentiality protections, the Privacy Rule will strengthen existing human subject privacy protections for research. More importantly, the Privacy Rule creates equal standards of privacy protection for research governed by the existing regulations and research that is not.

Comment: It was argued that the waiver provision should be eliminated. The commenter argued that IRBs or Privacy Boards should not have the right to waive a person's privacy rights, and that individuals should have the right to authorize all uses and disclosures of protected health information about themselves.

Response: The Department disagrees that safeguarding individuals' privacy interests requires that individuals be permitted to authorize all uses and disclosures of protected health information about themselves. In developing the Privacy Rule, the Department carefully weighed individuals' privacy interests with the need for identifiable health information for certain public policy and national priority purposes. The Department believes that the Privacy Rule reflects an appropriate balance. For example, the Rule appropriately allows for the reporting of information necessary to ensure public health, such as information about a contagious disease that may be indicative of a bioterrorism event, without individual authorization. With respect to research, the Department strongly believes that continued improvements in our nation's health require that researchers be permitted access to protected health information without individual authorization in certain limited circumstances. However, we do believe that researchers' ability to use protected health information without a patient's authorization is a privilege that requires strong confidentiality protections to ensure that the information is not misused. The Department believes that the safeguards required by the final Rule achieve the appropriate balance between protecting individuals' privacy interests, while permitting researchers to access protected health information for important, and potentially life-saving, studies.

Comment: A few commenters stated that, if the Rule permits covered entities to release protected health information to sponsor-initiated registries related to quality, safety, or effectiveness of FDA-regulated products, then this permission should apply to academic institutes and non-profit organizations as well. Otherwise, the commenters argued, the Rule establishes a double standard for research registries created by FDA-regulated entities versus registries created by academic or non-profit sponsored entities.

Response: The provisions under §.164.512(b)(iii) are intended to allow the disclosure of information to FDA-regulated entities for the limited purpose of conducting public health activities to ensure the qualify, safety, or effectiveness of FDA-regulated products, including drugs, medical devices, biological products, and food. Thus, the Department does not believe a modification to the research provisions is appropriate. The Privacy Rule permits covered entities to disclose protected health information to a registry for research purposes, including those sponsored by academic and non-profit organizations, if such disclosure: is required by law under § 164.512(a), is made pursuant to an IRB or Privacy Board waiver of authorization under § 164.512(i), is made pursuant to the individual's authorization as provided by § 164.508, or consists only of a limited data set as provided by § 164.514(e).

Comment: It was suggested that the Department modify the Rule's definition of "research" or the provision for preparatory research to explicitly permit the building and maintenance of research databases and repositories. The commenter further asserted that, under the Common Rule, "research" signifies an actual research protocol, and would not include a data or tissue compilation that is undertaken to facilitate future protocols. Therefore, since the Privacy Rule and the Common Rule have the same definition of "research," this commenter was concerned that the Privacy Rule would not permit a pre-research practice in which a covered entity compiles protected health information in a systematic way to either assist researchers in their reviews that are preparatory to research, or to conduct future research.

Response: The Department does not believe such a modification is necessary. Under the Common Rule, the Office for Human Research Protections (OHRP) has interpreted the definition of "research" to include the development of a repository or database for future research purposes. In fact, OHRP has issued guidance on this issue, which can be found at the following URL: *http://ohrp.osophs.dhhs.gov/humansubjects/guidance/reposit.htm.* The Department interprets the definition of "research" in the Privacy Rule to be consistent with what is considered research under the Common Rule. Thus, the development of research repositories and databases for future research are considered research for the purposes of the Privacy Rule.

Comment: A commenter suggested eliminating the minimum necessary requirement for uses and disclosures made pursuant to a waiver of authorization by an IRB or Privacy

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Board. The commenter argued that this proposal would lessen covered entities' concern that they would be held responsible for an IRB or Privacy Board's inappropriate determination and would, thus, increase the likelihood that covered entities would rely on the requesting researcher's IRB or Privacy Board documentation that patient authorization could be waived as permitted at § 164.512(i). This commenter further argued that this proposal would discourage covered entities from imposing duplicate review by the covered entities' own IRB or Privacy Board, thereby decreasing burden for covered entities, researchers, IRBs, and Privacy Boards.

Response: Although the Secretary acknowledges the concern of these commenters, the Rule at § 164.514(d)(3)(iii)(D) already permits covered entities to reasonably rely on documentation from an external IRB or Privacy Board as meeting the minimum necessary requirement, provided the documentation complies with the applicable requirements of § 164.512(i). The Department understands that covered entities may elect to require duplicate IRB or Privacy Board reviews before disclosing protected health information to requesting researchers, but has determined that eliminating the minimum necessary requirement would pose inappropriate and unnecessary risk to individuals' privacy. For example, if the covered entity has knowledge that the documentation of IRB or Privacy Board approval was fraudulent with respect to the protected health information needed for a research study, the covered entity should not be permitted to rely on the IRB or Privacy Board's documentation as fulfilling the minimum necessary requirement. Therefore, in the revised Final Rule, the Department has retained the minimum necessary requirement for research uses and disclosures made pursuant to § 164.512(i).

G. Section 164.514—Other Requirements Relating to Uses and Disclosures of Protected Health Information

1. De-Identification of Protected Health Information

December 2000 Privacy Rule. At § 164.514(a)–(c), the Privacy Rule permits a covered entity to de-identify protected health information so that such information may be used and disclosed freely, without being subject to the Privacy Rule's protections. Health information is de-identified, or not individually identifiable, under the Privacy Rule, if it does not identify an individual and if the covered entity has no reasonable basis to believe that the information can be used to identify an individual. In order to meet this standard, the Privacy Rule provides two alternative methods for covered entities to de-identify protected health information.

First, a covered entity may demonstrate that it has met the standard if a person with appropriate knowledge and experience applying generally acceptable statistical and scientific principles and methods for rendering information not individually identifiable makes and documents a determination that there is a very small risk that the information could be used by others to identify a subject of the information. The preamble to the Privacy Rule refers to two government reports that provide guidance for applying these principles and methods, including describing types of techniques intended to reduce the risk of disclosure that should be considered by a professional when de-identifying health information. These techniques include removing all direct identifiers, reducing the number of variables on which a match might be made, and limiting the distribution of records through a "data use agreement" or "restricted access agreement" in which the recipient agrees to limits on who can use or receive the data.

Alternatively, covered entities may choose to use the Privacy Rule's safe harbor method for de-identification. Under the safe harbor method, covered entities must remove all of a list of 18 enumerated identifiers and have no actual knowledge that the information remaining could be used, alone or in combination, to identify a subject of the information. The identifiers that must be removed include direct identifiers, such as name, street address, social security number, as well as other identifiers, such as birth date, admission and discharge dates, and five-digit zip code. The safe harbor requires removal of geographic subdivisions smaller than a State, except for the initial three digits of a zip code if the geographic unit formed by combining all zip codes with the same initial three digits contains more than 20,000 people. In addition, age, if less than 90, gender, ethnicity, and other demographic information not listed may remain in the information. The safe harbor is intended to provide covered entities with a simple, definitive method that does not require much judgment by the covered entity to determine if the information is adequately de-identified.

The Privacy Rule also allows for the covered entity to assign a code or other means of record identification to allow de-identified information to be re-identified by the covered entity, if the code is not derived from, or related to, information about the subject of the information. For example, the code cannot be a derivation of the individual's social security number, nor can it be otherwise capable of being translated so as to identify the individual. The covered entity also may not use or disclose the code for any other purpose, and may not disclose the mechanism (*e.g.*, algorithm or other tool) for re-identification.

The Department is cognizant of the increasing capabilities and sophistication of electronic data matching used to link data elements from various sources and from which, therefore, individuals may be identified. Given this increasing risk to individuals' privacy, the Department included in the Privacy Rule the above stringent standards for determining when information may flow unprotected. The Department also wanted the standards to be flexible enough so the Privacy Rule would not be a disincentive for covered entities to use or disclose de-identified information wherever possible. The Privacy Rule, therefore, strives to balance the need to protect individuals' identities with the need to allow de-identified databases to be useful.

March 2002 NPRM. The Department heard a number of concerns regarding the de-identification standard in the Privacy Rule. These concerns generally were raised in the context of using and disclosing information for research, public health purposes, or for certain health care operations. In particular, concerns were expressed that the safe harbor method for de-identifying protected health information was so stringent that it required removal of many of the data elements that were essential to analyses for research and these other purposes. The comments, however, demonstrated little consensus as to which data elements were needed for such analyses and were largely silent regarding the feasibility of using the Privacy Rule's alternative statistical method to de-identify information.

Based on the comments received, the Department was not convinced of the need to modify the safe harbor standard for de-identified information. However, the Department was aware that a number of entities were confused by potentially conflicting provisions within the de-identification standard. These entities argued that, on the one hand, the Privacy Rule treats information as de-identified if all listed identifiers on the information are stripped, including any unique, identifying number, characteristic, or code. Yet, the Privacy Rule permits a covered entity to assign a code or other record identification to the information so that it may be re-identified by the covered entity at some later date.

The Department did not intend such a re-identification code to be considered one of the unique, identifying numbers or codes that prevented the information from being de-identified. Therefore, the Department proposed a technical modification to the safe harbor provisions explicitly to except the re-identification code or other means of record identification permitted by § 164.514(c) from the listed identifiers (§ 164.514(b)(2)(i)(R)).

Overview of Public Comments. The following provides an overview of the public comment received on this proposal. Additional comments received on this issue are discussed below in the section entitled, "Response to Other Public Comments."

All commenters on our clarification of the safe harbor re-identification code not being an enumerated identifier supported our proposed regulatory clarification.

Final Modifications. Based on the Department's intent that the re-identification code not be considered one of the enumerated identifiers that must be excluded under the safe harbor for de-identification, and the public comment supporting this clarification, the Department adopts the provision as proposed. The re-identification code or other means of record identification permitted by § 164.514(c) is expressly excepted from the listed safe harbor identifiers at § 164.514(b)(2)(i)(R).

Response to Other Public Comments

Comment: One commenter asked if data can be linked inside the covered entity and a dummy identifier substituted for the actual identifier when the data is disclosed to the external researcher, with control of the dummy identifier remaining with the covered entity.

Response: The Privacy Rule does not restrict linkage of protected health information inside a covered entity. The model that the commenter describes for the dummy identifier is consistent with the re-identification code allowed under the Rule's safe harbor so long as the covered entity does not generate the dummy identifier using any individually identifiable information. For example, the dummy identifier cannot be derived from the individual's social security number, birth date, or hospital record number.

Comment: Several commenters who supported the creation of de-identified data for research based on removal of facial identifiers asked if a keyed-hash message authentication code (HMAC) can be used as a re-identification code even though it is derived from patient information, because it is not intended to re-identify the patient and it is not possible to identify the patient from the code. The commenters stated that use of the keyed-hash message authentication code would be valuable for research, public health and bio-terrorism detection purposes where there is a need to link clinical events on the same person occurring in different health care settings (*e.g.* to avoid double counting of cases or to observe long-term outcomes).

These commenters referenced Federal Information Processing Standard (FIPS) 198: "The Keyed-Hash Message Authentication Code." This standard describes a keyed-hash message authentication code (HMAC) as a mechanism for message authentication using cryptographic hash functions. The HMAC can be used with any iterative approved cryptographic hash function, in combination with a shared secret key. A hash function is an approved mathematical function that maps a string of arbitrary length (up to a pre-determined maximum size) to a fixed length string. It may be used to produce a checksum, called a hash value or message digest, for a potentially long string or message.

According to the commenters, the HMAC can only be breached when the key and the identifier from which the HMAC is derived and the de-identified information attached to this code are known to the public. It is common practice that the key is limited in time and scope (*e.g.* only for the purpose of a single research query) and that data not be accumulated with such codes (with the code needed for joining records being discarded after the de-identified data has been joined).

Response: The HMAC does not meet the conditions for use as a re-identification code for de-identified information. It is derived from individually identified information and it appears the key is shared with or provided by the recipient of the data in order for that recipient to be able to link information about the individual from multiple entities or over time. Since the HMAC allows identification of individuals by the recipient, disclosure of the HMAC violates the Rule. It is not solely the public's access to the key that matters for these purposes; the covered entity may not share the key to the re-identification code with anyone, including the recipient of the data, regardless of whether the intent is to facilitate re-identification or not.

The HMAC methodology, however, may be used in the context of the limited data set, discussed below. The limited data set contains individually identifiable health information and is not a de-identified data set. Creation of a limited data set for research with a data use agreement, as specified in § 164.514(e), would not preclude inclusion of the keyed-hash message authentication code in the limited data set. The Department encourages inclusion of the additional safeguards mentioned by the commenters as part of the data use agreement whenever the HMAC is used.

Comment: One commenter requested that HHS update the safe harbor de-identification standard with prohibited 3-digit zip codes based on 2000 Census data.

Response: The Department stated in the preamble to the December 2000 Privacy Rule that it would monitor such data and the associated re-identification risks and adjust the safe harbor as necessary. Accordingly, the Department provides such updated information in response to the above comment. The Department notes that these three-digit zip codes are based on the five-digit zip Code Tabulation Areas created by the Census Bureau for the 2000 Census. This new methodology also is briefly described below, as it will likely be of interest to all users of data tabulated by zip code.

The Census Bureau will not be producing data files containing U.S. Postal Service zip codes either as part of the Census 2000 product series or as a post Census 2000 product. However, due to the public's interest in having statistics tabulated by zip code, the Census Bureau has created a new statistical area called the Zip Code Tabulation Area (ZCTA) for Census 2000. The ZCTAs were designed to overcome the operational difficulties of creating a well-defined zip code area by using Census blocks (and the addresses found in them) as the basis for the ZCTAs. In the past, there has been no correlation between zip codes and Census Bureau geography. Zip codes can cross State, place, county, census tract, block group and census block boundaries. The geographic entities the Census Bureau uses to tabulate data are relatively stable over time. For instance, census tracts are only defined every ten years. In contrast, zip codes can change more frequently. Because of the ill-defined nature of zip code boundaries, the Census Bureau has no file (crosswalk) showing the relationship

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between US Census Bureau geography and US Postal Service zip codes.

ZCTAs are generalized area representations of U.S. Postal Service (USPS) zip code service areas. Simply put, each one is built by aggregating the Census 2000 blocks, whose addresses use a given zip code, into a ZCTA which gets that zip code assigned as its ZCTA code. They represent the majority USPS five-digit zip code found in a given area. For those areas where it is difficult to determine the prevailing five-digit zip code, the higher-level three-digit zip code is used for the ZCTA code. For further information, go to: *http://www.census.gov/geo/www/gazetteer/places2k.html*.

Utilizing 2000 Census data, the following three-digit ZCTAs have a population of 20,000 or fewer persons. To produce a de-identified data set utilizing the safe harbor method, all records with three-digit zip codes corresponding to these three-digit ZCTAs must have the zip code changed to 000. The 17 restricted zip codes are: 036, 059, 063, 102, 203, 556, 692, 790, 821, 823, 830, 831, 878, 879, 884, 890, and 893.

2. Limited Data Sets

March 2002 NPRM. As noted above, the Department heard many concerns that the de-identification standard in the Privacy Rule could curtail important research, public health, and health care operations activities. Specific concerns were raised by State hospital associations regarding their current role in using patient information from area hospitals to conduct and disseminate analyses that are useful for hospitals in making decisions about quality and efficiency improvements. Similarly, researchers raised concerns that the impracticality of using de-identified data would significantly increase the workload of IRBs because waivers of individual authorization would need to be sought more frequently for research studies even though no direct identifiers were needed for the studies. Many of these activities and studies were also being pursued for public health purposes. Some commenters urged the Department to permit covered entities to disclose protected health information for research if the protected health information is facially de-identified, that is, stripped of direct identifiers, so long as the research entity provides assurances that it will not use or disclose the information for purposes other than research and will not identify or contact the individuals who are the subjects of the information.

In response to these concerns, the Department, in the NPRM, requested comments on an alternative approach that would permit uses and disclosures of a limited data set which would not include direct identifiers but in which certain potentially identifying information would remain. The Department proposed limiting the use or disclosure of any such limited data set to research, public health, and health care operations purposes only.

From the de-identification safe harbor list of identifiers, we proposed the following as direct identifiers that would have to be removed from any limited data set: name, street address, telephone and fax numbers, e-mail address, social security number, certificate/license number, vehicle identifiers and serial numbers, URLs and IP addresses, and full face photos and any other comparable images. The proposed limited data set could include the following identifiable information: admission, discharge, and service dates; date of death; age (including age 90 or over); and five-digit zip code.

The Department solicited comment on whether one or more other geographic units smaller than State, such as city, county, precinct, neighborhood or other unit, would be needed in addition to, or be preferable to, the five-digit zip code. In addition, to address concerns raised by commenters regarding access to birth date for research or other studies relating to young children or infants, the Department clarified that the Privacy Rule de-identification safe harbor allows disclosure of the age of an individual, including age expressed in months, days, or hours. Given that the limited data set could include all ages, including age in months, days, or hours (if preferable), the Department requested comment on whether date of birth would be needed and, if so, whether the entire date would be needed, or just the month and year.

In addition, to further protect privacy, the Department proposed to condition the disclosure of the limited data set on covered entities obtaining from the recipients a data use or similar agreement, in which the recipient would agree to limit the use of the limited data set to the purposes specified in the Privacy Rule, to limit who can use or receive the data, and agree not to re-identify the data or contact the individuals.

Overview of Public Comments. The following discussion provides an overview of the public comment received on this proposal. Additional comments received on this issue are discussed below in the section entitled, "Response to Other Public Comments."

Almost all those who commented on this issue supported the basic premise of the limited data set for research, public health, and health care operations. Many of these commenters used the opportunity to reiterate their opposition to the safe harbor and statistical de-identification methods, and some misinterpreted the limited data set proposal as creating another safe-harbor form of de-identified data. In general, commenters agreed with the list of direct identifiers proposed in the preamble of the NPRM; some recommended changes. The requirement of a data use agreement was similarly widely supported, although a few commenters viewed it as unnecessary and others offered additional terms which they argued would make the data use agreement more effective. Others questioned the enforceability of the data use agreements.

A few commenters argued that the limited data set would present a significant risk of identification of individuals because of the increased ability to use the other demographic variables (*e.g.*, race, gender) in such data sets to link to other publicly available data. Some of these commenters also argued that the development of computer-based solutions to support the statistical method of de-identification is advancing rapidly and can support, in some cases better than the limited data set, many of the needs for research, public health and health care operations. These commenters asserted that authorization of the limited data set approach would undermine incentives to further develop statistical techniques for de-identification that may be more protective of privacy.

Most commenters who supported the limited data set concept favored including the five-digit zip code, but also wanted other geographic units smaller than a State to be included in the limited data set. Examples of other geographic units that commenters argued are needed for research, public health or health care operational purposes were county, city, full zip code, census tract, and neighborhood. Various analytical needs were cited to support these positions, such as tracking the occurrence of a particular disease to the neighborhood level or using county level data for a needs assessment of physician specialties. A few commenters opposed inclusion of the 5-digit zip code in the limited data set, recommending that the current Rule, which requires data aggregation at the 3-digit zip code level, remain the standard.

Similarly, the majority of commenters addressing the issue supported inclusion of the full birth date in the limited data set. These commenters asserted that the full birth date was needed for longitudinal studies, and similar research, to assure accuracy of data. Others stated that while they preferred access to the full birth date, their data needs would be satisfied by inclusion of at least the month and year of birth in the limited data set. A number of commenters also opposed inclusion of the date of birth in the limited data as unduly increasing the risk of identification of individuals.

Final Modifications. In view of the support in the public comments for the concept of a limited data set, the Department determines that adoption of standards for the use and disclosure of protected health information for this purpose is warranted. Therefore, the Department adds at § 164.514(e) a new standard and implementation specifications for a limited data set for research, public health, or health care operations purposes if the covered entity (1) uses or discloses only a "limited data set" as defined at § 164.514(e)(2), and (2) obtains from the recipient of the limited data set a "data use agreement" as defined at § 164.514(e)(4). In addition, the Department adds to the permissible uses and disclosures in § 164.502(a) express reference to the limited data set standards.

The implementation specifications do not delineate the data that can be released through a limited data set. Rather, the Rule specifies the direct identifiers that must be removed for a data set to qualify as a limited data set. As with the de-identification safe harbor provisions, the direct identifiers listed apply to protected health information about the individual or about relatives, employers, or household members of the individual. The direct identifiers include all of the facial identifiers proposed in the preamble to the NPRM: (1) Name; (2) street address (renamed postal address information, other than city, State and zip code); (3) telephone and fax numbers; (4) e-mail address; (5) social security number; (6) certificate/license numbers; (7) vehicle identifiers and serial numbers; (8) URLs and IP addresses; and (9) full face photos and any other comparable images. The public comment generally supported the removal of this facially identifying information.

In addition to these direct identifiers, the Department designates the following information as direct identifiers that must be removed before protected health information will be considered a limited data set: (1) Medical record numbers, health plan beneficiary numbers, and other account numbers; (2) device identifiers and serial numbers; and (3) biometric identifiers, including finger and voice prints. Only a few commenters specifically stated a need for some or all of these identifiers as part of the limited data set. For example, one commenter wanted an (encrypted) medical record number to be included in the limited data set to support disease management planning and program development to meet community needs and quality management. Another commenter wanted the health plan beneficiary number included in the limited data set to permit researchers to ensure that results indicating sex, gender or ethnic differences were not influenced by the participant's health plan. And a few commenters wanted device identifiers and serial numbers included in the limited data set, to facilitate product recalls and patient safety initiatives. However, the Department has not been persuaded that the need for these identifiers outweighs the potential privacy risks to the individual by their release as part of a limited data set, particularly when the Rule makes other avenues available for the release of information that may directly identify an individual.

The Department does not include in the list of direct identifiers the "catch-all" category from the de-identification safe harbor of "any other unique identifying number, characteristic or code." While this requirement is essential to assure that the de-identification safe harbor does in fact produce a de-identified data set, it is difficult to define in advance in the context of a limited data set. Since our goal in establishing a limited data set is not to create de-identified information and since the data use agreement constrains further disclosure of the information, we determined that it would only add complexity to implementation of the limited data set with little added protection.

In response to wide public support, the Department does not designate as a direct identifier any dates related to the individual or any geographic subdivision other than street address. Therefore, as part of a limited data set, researchers and others involved in public health studies will have access to dates of admission and discharge, as well as dates of birth and death for the individual. We agree with commenters who asserted that birth date is critical for certain research, such as longitudinal studies where there is a need to track individuals across time and for certain infant-related research. Rather than adding complexity to the Rule by trying to carve out an exception for these specific situations, and other justifiable uses, we rely on the minimum necessary requirement to keep the Rule simple while avoiding abuse. Birth date should only be disclosed where the researcher and covered entity agree that it is needed for the purpose of the research. Further, even though birth date may be included with a limited data set, the Department clarifies, as it did in the preamble to the proposed rulemaking, that the Privacy Rule allows the age of an individual to be expressed in years or in months, days, or hours as appropriate.

Moreover, the limited data set may include the five-digit zip code or any other geographic subdivision, such as State, county, city, precinct and their equivalent geocodes, except for street address. We substitute for street address the term postal address information, other than city, State and zip code in order to make clear that individual elements of postal address such as street name by itself are also direct identifiers. Commenters identified a variety of needs for various geographical codes (county, city, neighborhood, census tract, precinct) to support a range of essential research, public health and health care operations activities. Some of the examples provided included the need to analyze local geographic variations in disease burdens or in the provision of health services, conducting research looking at pathogens or patterns of health risks which may need to compare areas within a single zip code, or studies to examine data by county or neighborhood when looking for external causes of disease, as would be the case for illnesses and diseases such as bladder cancer that may have environmental links. The Department agrees with these commenters that a variety of geographical designations other than five-digit zip code are needed to permit useful and significant studies and other research to go forward unimpeded. So long as an appropriate data use agreement is in place, the Department does not believe that there is any greater privacy risk in including in the limited data set such geographic codes than in releasing the five-digit zip code.

Finally, the implementation specifications adopted at § 164.514(e) require a data use agreement between the covered entity and the recipient of the limited data set. The need for a data use agreement and the core elements of such an agreement were widely supported in the public comment.

In the NPRM, we asked whether additional conditions should be added to the data use agreement. In response, a few commenters made specific

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suggestions. These included prohibiting further disclosure of the limited data set except as required by law, prohibiting further disclosure without the written consent of the covered entity, requiring that the recipient safeguard the information received in the limited data set, prohibiting further disclosure unless the data has been de-identified utilizing the statistical or safe harbor methods of the Privacy Rule, and limiting use of the data to the purpose for which it was received.

In response to these comments, in the final Rule we specify that the covered entity must enter into a data use agreement with the intended recipient which establishes the permitted uses and disclosures of such information by the recipient, consistent with the purposes of research, public health, or health care operations, limits who can use or receive the data, and requires the recipient to agree not to re-identify the data or contact the individuals. In addition, the data use agreement must contain adequate assurances that the recipient use appropriate safeguards to prevent use or disclosure of the limited data set other than as permitted by the Rule and the data use agreement, or as required by law. These adequate assurances are similar to the existing requirements for business associate agreements.

Since the data use agreement already requires the recipient to limit who can use or receive the data, and to prevent uses and disclosures beyond those stated in the agreement, and since we could not anticipate all the possible scenarios under which a limited data set with a data use agreement would be created, the Department concluded that adding any of the other suggested restrictions would bring only marginal additional protection while potentially impeding some of the purposes intended for the limited data set. The Department believes the provisions of the data use agreement provide a firm foundation for protection of the information in the limited data set, but encourages and expects covered entities and data recipients to further strengthen their agreements to conform to current practices.

We do not specify the form of the data use agreement. Thus, private parties might choose to enter into a formal contract, while two government agencies might use a memorandum of understanding to specify the terms of the agreement. In the case of a covered entity that wants to create and use a limited data set for its own research purposes, the requirements of the data use agreement could be met by having affected workforce members sign an agreement with the covered entity, comparable to confidentiality agreements that employees handling sensitive information frequently sign.

A few commenters questioned the enforceability of the data use agreements. The Department clarifies that, if the recipient breaches a data use agreement, HHS cannot take enforcement action directly against that recipient unless the recipient is a covered entity. Where the recipient is a covered entity, the final modifications provide that such covered entity is in noncompliance with the Rule if it violates a data use agreement. See § 164.514(e)(4)(iii)(B). Additionally, the Department clarifies that the disclosing covered entity is not liable for breaches of the data use agreement by the recipient of the limited data set. However, similar to business associate agreements, if a covered entity knows of a pattern of activity or practice of the data recipient that constitutes a material breach or violation of the data recipient's obligation under the data use agreement, then it must take reasonable steps to cure the breach or end the violation, as applicable, and, if unsuccessful, discontinue disclosure of protected health information to the recipient and report the problem to the Secretary. And the recipient is required to report to the covered entity any improper uses or disclosures of limited data set information of which it becomes aware. We also clarify that the data use agreement requirements apply to disclosures of the limited data set to agents and subcontractors of the original limited data set recipient.

In sum, we have created the limited data set option because we believe that this mechanism provides a way to allow important research, public health and health care operations activities to continue in a manner consistent with the privacy protections of the Rule. We agree with those commenters who stated that the limited data set is not de-identified information, as retention of geographical and date identifiers measurably increases the risk of identification of the individual through matching of data with other public (or private) data sets. However, we believe that the limitations on the specific uses of the limited data set, coupled with the requirements of the data use agreement, will provide sufficient protections for privacy and confidentiality of the data. The December 2000 Privacy Rule preamble on the statistical method for de-identification discussed the data use agreement as one of the techniques identified that can be used to reduce the risk of disclosure. A number of Federal agencies that distribute data sets for research or other uses routinely employ data use agreements successfully to protect and otherwise restrict further use of the information.

We note that, while disclosures of protected health information for certain public health purposes is already allowed under § 164.512(b), the limited data set provision may permit disclosures for some public health activities not allowed under that section. These might include disease registries maintained by private organizations or universities or other types of studies undertaken by the private sector or non-profit organizations for public health purposes.

In response to comments, the Department clarifies that, when a covered entity discloses protected health information in a limited data set to a researcher who has entered into an appropriate data use agreement, the covered entity does not also need to have documentation from an IRB or a Privacy Board that individual authorization has been waived for the purposes of the research. However, the covered entity may not disclose any of the direct identifiers listed in § 164.514(e) without either the individual's authorization or documentation of an IRB or Privacy Board waiver of that authorization.

The Department further clarifies that there are other requirements in the Privacy Rule that apply to disclosure of a limited data set, just as they do to other disclosures. For example, any use, disclosure, or request for a limited data set must also adhere to the minimum necessary requirements of the Rule. The covered entity could accomplish this by, for example, requiring the data requestor, in the data use agreement, to specify not only the purposes of the limited data set, but also the particular data elements, or categories of data elements, requested. The covered entity may reasonably rely on a requested disclosure as the minimum necessary, consistent with the provisions of § 164.514(d)(3)(iii). As an example of the use of the minimum necessary standard, a covered entity who believes that another covered entity's request to include date of birth in the limited data set is not warranted is free to negotiate with the recipient about that requirement. If the entity requesting a limited data set including date of birth is not one on whose request a covered entity may reasonably rely under § 164.514(d)(3)(iii), and the covered entity believes inclusion of date of birth is not warranted, the covered entity must either negotiate a reasonably necessary limited data set or not make a disclosure.

The Department amends § 164.514(e)(3)(ii) to make clear that a covered entity may engage a business associate to create a limited data set, in the same way it can use a business associate to create de-identified data. As with de-identified data, a business associate relationship arises even if the limited data set is not being created for the covered entity's own use. For instance, if a researcher needs county data, but the covered entity's data contains only the postal address of the individual, a business associate may be used to convert the covered entity's geographical information into that needed by the researcher. The covered entity may hire the intended recipient of the limited data set as a business associate for this purpose. That is, the covered entity may provide protected health information, including direct identifiers, to a business associate who is also the intended data recipient, to create a limited data set of the information responsive to the business associate's request.

Finally, the Department amends § 164.528 to make clear that the covered entity does not need to include disclosures of protected health information in limited data sets in any accounting of disclosures provided to the individual. Although the Department does not consider the limited data set to constitute de-identified information, all direct identifiers are removed from the limited data set and the recipient of the data agrees not to identify or contact the individual. The burden of accounting for these disclosures in these circumstances is not warranted, given that the data may not be used in any way to gain knowledge about a specific individual or to take action in relation to that individual.

Response to Other Public Comments

Comment: A small number of commenters argued that the development of computer-based solutions to support the statistical method of de-identification is advancing rapidly and can support, in some cases better than the limited data set, many of the needs for research, public health and health care operations. They also asserted that authorization of the limited data set approach will undermine incentives to further develop statistical techniques that will be more protective of privacy than the limited data set. They proposed imposing a sunset clause on the limited data set provision in order to promote use of de-identification tools.

Response: We agree that progress is being made in the development of electronic tools to de-identify protected health information. However, the information presented by commenters did not convince us that current techniques meet all the needs identified or are easy enough to use that they can have the broad application needed to support key research, public health and health care operations needs. Where de-identification can provide better outcomes than a limited data set, purveyors of such de-identification tools will have to demonstrate to covered entities the applicability and ease of use of their products. We do not believe a sunset provision on the limited data set authority is appropriate. Rather, as part of its ongoing review of the Privacy Rule in general, and the de-identification provisions in particular, the Office for Civil Rights will periodically assess the need for these provisions.

Comment: Some commenters said that if HHS clearly defines direct identifiers and facially identifiable information, there is no need for a data use agreement.

Response: We disagree. As previously noted, the resulting limited data set is not de-identified; it still contains individually identifiable health information. As a means to assure continued protection of the information once it leaves the control of the covered entity, we believe a data use agreement is essential.

Comment: Several commenters wanted to be able to have a single coordinated data use agreement between a State hospital association and its member hospitals where data collection is coordinated through the hospital association. In addition, there was concern that requiring a data use agreement and a business associate agreement in this circumstance would create an excessive and unnecessary burden.

Response: Nothing in the requirement for a data use agreement prevents a State hospital association and its member hospitals from being parties to a common data use agreement. Furthermore, that data use agreement can be combined with a business associate agreement into a single agreement that meets the requirements of both Privacy Rule provisions.

Comment: A few commenters argued that a data use agreement should not be required for data users getting a limited data set and performing data analysis as part of the Medicaid rebate validation process under which third-party data vendors, working for pharmaceutical companies, collect prescription claims data from State agencies and analyze the results for errors and discrepancies. They argued that State agencies often find entering into such contracts difficult and time consuming. Consequently, if States have to establish data use or similar agreements, then the Medicaid rebate validation process could be adversely impacted.

Response: We are not persuaded that there is a compelling reason to exempt this category of limited data set use from the requirements for a data use agreement, as compared to other important uses. The data use agreement is key to ensuring the integrity of the limited data set process and avoiding inappropriate further uses and disclosures.

Comment: One commenter stated that allowing disclosure of the limited data set without IRB or Privacy Board review would create a loophole in the Privacy Rule, with Federally funded research continuing to undergo IRB review while private research would not.

Response: The Rule continues to make no distinction between disclosure of protected health information to Federally and privately funded researchers. To obtain a limited data set from a covered entity, both Federally-funded and privately-funded researchers must enter into a data use agreement with the covered entity. One of the reasons for establishing the limited data set provisions is that the concept of "personally identifiable information" that triggers IRB review of research that is subject to the Common Rule does not coincide with the definition of "individually identifiable health information" in the Privacy Rule. The Department believes that the limited data set comes closer to the type of information not requiring IRB approval under the Common Rule than does the de-identified data set of the Privacy Rule. However, there is no uniform definition of "personally identifiable information" under the Common Rule; rather, as a matter of practice, it is currently set by each individual IRB.

Comment: A few commenters suggested expanding the allowable purposes for the limited data set. One commenter proposed including payment as an allowable purpose, in order to facilitate comparison of premiums charged to insured versus uninsured patients. A few commenters wanted to allow disclosures to journalists if the individual's name and social security number have been removed and if, in the context of the record or file, the identity of the patient has not been revealed. A few commenters suggested that there was no need to restrict the purpose at all as long

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as there is a data use agreement. A couple of commenters wanted to extend the purpose to include creation or maintenance of research databases and repositories.

Response: If the comparison of premiums charged to different classes of patients is being performed as a health care operation of another entity, then a limited data set could be used for this purpose. It seems unlikely that this activity would occur in relation to a payment activity, so a change to include payment as a permissible purpose is not warranted. A "payment" activity must relate to payment for an individual and, thus, will need direct identifiers, and uses and disclosures of protected health information for such purposes is permitted under § 164.506.

With respect to disclosures to journalists, while recognizing the important role performed by newspapers and other media in reporting on public health issues and the health care system, we disagree that the purposes of the limited data set should be expanded to include journalists. A key element of the limited data set is that the recipient enter into a data use agreement that would limit access to the limited data set, prohibit any attempt to identify or contact any individual, and limit further use or disclosure of the limited data set. These limitations are inherently at odds with journalists' asserted need for access to patient information.

The suggestion to allow disclosure of a limited data set for any purpose if there is a data use agreement would undermine the purpose of the Privacy Rule to protect individually identifiable health information from unauthorized disclosures and would conflict with the requirement in the data use agreement to restrict further use to research, public health, health care operations purposes. The Department clarifies that research encompasses the establishment of research databases and repositories. Therefore, no change to the proposal is necessary.

Comment: One commenter said that HHS should not create a list of excluded direct identifiers; rather it should enunciate principles and leave it to researchers to apply the principles.

Response: The statistical method of de-identification is based on scientific principles and methods and leaves the application to the researcher and the covered entity. Unfortunately, many have viewed this approach as too complex or imprecise for broad use. To allow broad discretion in selection of variables in the creation of a limited data set would trigger the same concerns as the statistical method, because some measure of reasonableness would have to be established. Commenters have consistently asked for precision so that they would not have to worry as to whether they were in compliance with the requirements of the Privacy Rule. The commenter's proposal runs counter to this desire for precision.

Comment: One commenter wanted prescription numbers allowed in a limited data set because they do not include any "facially identifiable information."

Response: Prescription numbers are medical record numbers in that they are used to track an individual's encounter with a health care provider and are uniquely associated with that individual. The fact that an individual receives a new prescription number for each prescription, even if it is randomly generated, is analogous to an individual receiving a separate medical record number for different hospital visits. Thus, a prescription number is an excluded direct identifier under the medical record number exclusion for the limited data set (and also must be excluded in the creation of de-identified data).

Comment: One commenter wanted clarification that a sponsor of a multi-employer group health plan could utilize the limited data set approach for the purpose of resolving claim appeals. That commenter also suggested that if the only information that a plan sponsor received was the limited data set, the group health plan should be able to give that information to the plan sponsor without amending plan documents. In lieu of the limited data set, this commenter wanted clarification that redacted information, as delineated in their comment, is a reasonable way to meet the minimum necessary standard if the plan sponsor has certified that the plan documents have been amended pursuant to the requirements of the Privacy Rule.

Response: Uses and disclosures of a limited data set is authorized only for public health, research, and health care operations purposes. A claims appeal is more likely to be a payment function, rather than a health care operation. It is also likely to require use of protected health information that includes direct identifiers. The Department disagrees with the commenter's suggestions that the Rule should allow group health plans to disclose a limited data set to a plan sponsor without amending the plan documents to describe such disclosures. Limited data sets are not de-identified information, and thus warrant this degree of protection. Therefore, only summary health information and the enrollment status of the individual can be disclosed by the group health plan to the plan sponsor without amending the plan documents. The Privacy Rule does not specify what particular data elements constitute the minimum necessary for any particular purpose.

H. Section 164.520—Notice of Privacy Practices for Protected Health Information

December 2000 Privacy Rule. The Privacy Rule at § 164.520 requires most covered entities to provide individuals with adequate notice of the uses and disclosures of protected health information that may be made by the covered entity, and of the individual's rights and the covered entity's responsibilities with respect to protected health information. The Rule delineates specific requirements for the content of the notice, as well as for provision of the notice. The requirements for providing notice to individuals vary based on type of covered entity and method of service delivery. For example, a covered health care provider that has a direct treatment relationship with an individual must provide the notice no later than the date of first service delivery and, if the provider maintains a physical service delivery site, must post the notice in a clear and prominent location and have it available upon request for individuals to take with them. If the first service delivery to an individual is electronic, the covered provider must furnish electronic notice automatically and contemporaneously in response to the individual's first request for service. In addition, if a covered entity maintains a website, the notice must be available electronically through the web site.

March 2002 NPRM. The Department proposed to modify the notice requirements at § 164.520(c)(2) to require that a covered health care provider with a direct treatment relationship make a good faith effort to obtain an individual's written acknowledgment of receipt of the provider's notice of privacy practices. Other covered entities, such as health plans, would not be required to obtain this acknowledgment from individuals, but could do so if they chose.

The Department proposed to strengthen the notice requirements in order to preserve a valuable aspect of the consent process. The notice acknowledgment proposal was intended to create the "initial moment" between a covered health care provider and an individual, formerly a result of the consent requirement, when individuals may focus on information practices and privacy rights and discuss with the provider any concerns related to the privacy of their protected health information. This "initial moment" also would provide an opportunity for an individual to make a request for additional restrictions on the use or disclosure of his or her protected health information or for additional confidential treatment of communications, as permitted under § 164.522.

With one exception for emergency treatment situations, the proposal would require that the good faith effort to obtain the written acknowledgment be made no later than the date of first service delivery, including service delivered electronically. To address potential operational difficulties with implementing these notice requirements in emergency treatment situations, the Department proposed in § 164.520(c)(2) to delay the requirement for provision of notice until reasonably practicable after the emergency treatment situation, and exempt health care providers with a direct treatment relationship with the individual from having to make a good faith effort to obtain the acknowledgment altogether in such situations.

Other than requiring that the acknowledgment be in writing, the proposal would not prescribe other details of the form of the acknowledgment or limit the manner in which a covered health care provider could obtain the acknowledgment.

The proposal also provided that, if the individual's acknowledgment of receipt of the notice could not be obtained, the covered health care provider would be required to document its good faith efforts to obtain the acknowledgment and the reason why the acknowledgment was not obtained. Failure by a covered entity to obtain an individual's acknowledgment, assuming it otherwise documented its good faith effort, would not be considered a violation of the Privacy Rule.

Overview of Public Comments. The following discussion provides an overview of the public comment received on this proposal. Additional comments received on this issue are discussed below in the section entitled, "Response to Other Public Comments."

In general, many commenters expressed support for the proposal to require that certain health care providers, as an alternative to obtaining prior consent, make a good faith effort to obtain a written acknowledgment from the individual of receipt of the notice. Commenters stated that even though the requirement would place some burden on certain health care providers, the proposed policy was a reasonable and workable alternative to the Rule's prior consent requirement. A number of these commenters conveyed support for the proposed flexibility of the requirement that would allow covered entities to implement the requirement in accordance with their own practices. Commenters urged that the Department not prescribe (other than that the acknowledgment be in writing) the form or content of the acknowledgment, or other requirements that would further burden the acknowledgment process. In addition, commenters viewed the proposed exception for emergency treatment situations as a practical policy.

A number of other commenters, while supportive of the Department's proposal to make the obtaining of consent optional for all covered entities, expressed concern over the administrative burden the proposed notice acknowledgment requirements would impose on certain health care providers. Some of these commenters viewed the notice acknowledgment as an unnecessary burden on providers that would not afford individuals with any additional privacy rights or protections. Thus, some commenters urged that the good faith acknowledgment not be adopted in the final Rule. As an alternative, it was suggested by some that covered entities instead be required to make a good faith effort to make the notice available to consumers.

Several commenters expressed concerns that the notice acknowledgment process would reestablish some of the same operational problems associated with the prior consent requirement. For example, commenters questioned how the requirement should be implemented when the provider's first contact with the patient is over the phone, electronically, or otherwise not face-to-face, such as with telemedecine. Accordingly, it was suggested that the good faith acknowledgment of the notice be required no later than the date of first face-to-face encounter with the patient rather than first service delivery to eliminate these perceived problems.

A few others urged that the proposed notice acknowledgment requirement be modified to allow for an individual's oral acknowledgment of the notice, so long as the provider maintained a record that the individual's acknowledgment was obtained.

Some commenters did not support the proposal's written notice acknowledgment as a suitable alternative to the consent requirement, stating that such a requirement would not provide individuals with comparable privacy protections or rights. It was stated that there are a number of fundamental differences between a consent and an acknowledgment of the notice. For example, one commenter argued that asking individuals to acknowledge receipt of the notice does not provide a comparable "initial moment" between the provider and the individual, especially when the individual is only asked to acknowledge receipt of the notice, and not whether they have read or understood it, or have questions. Further, commenters argued that the notice acknowledgment process would not be the same as seeking the individual's permission through a consent process. Some of these commenters urged that the Department retain the consent requirements and make appropriate modifications to fix the known operational problems associated with the requirement.

A few commenters urged that the Department strengthen the notice acknowledgment process. Some commenters suggested that the Department do so by eliminating the "good faith" aspect of the standard and simply requiring certain health care providers to obtain the written acknowledgment, with appropriate exceptions for emergencies and other situations where it may not be practical to do so. It was also suggested that the Department require providers to ensure that the consumer has an understanding of the information provided in the notice. One commenter suggested that this may be achieved by having individuals not only indicate whether they have received the notice, but also be asked on separate lines after each section of the notice whether they have read that section. Another commenter argued that consumers should be asked to sign something more meaningful than a notice acknowledgment, such as a "Summary of Consumer Rights," which clearly and briefly summarizes the ways in which their information may be used by covered entities, as well as the key rights consumers have under the Privacy Rule.

Final Modifications. After consideration of the public comment, the Department adopts in this final Rule at § 164.520(c)(2)(ii), the proposed requirement that a covered health care provider with a direct treatment relationship with an individual make a good faith effort to obtain the individual's written acknowledgment of receipt of the notice. Other covered entities, such as health plans, are not required to obtain this acknowledgment from individuals, but may do so if they choose. The Department agrees with

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those commenters who stated that the notice acknowledgment process is a workable alternative to the prior consent process, retaining the beneficial aspects of the consent without impeding timely access to quality health care. The Department continues to believe strongly that promoting individuals' understanding of privacy practices is an essential component of providing notice to individuals. Through this requirement, the Department facilitates achieving this goal by retaining the opportunity for individuals to discuss privacy practices and concerns with their health care providers. Additionally, the requirement provides individuals with an opportunity to request any additional restrictions on uses and disclosures of their health information or confidential communications, as permitted by § 164.522.

As proposed in the NPRM, the final Rule requires, with one exception, that a covered direct treatment provider make a good faith effort to obtain the written acknowledgment no later than the date of first service delivery, including service delivered electronically, that is, at the time the notice is required to be provided. During emergency treatment situations, the final Rule at § 164.520(c)(2)(i)(B) delays the requirement for provision of the notice until reasonably practicable after the emergency situation, and at § 164.520(c)(2)(ii) exempts health care providers from having to make a good faith effort to obtain an individual's acknowledgment in such emergency situations. The Department agrees with commenters that such exceptions are practical and necessary to ensure that the notice and acknowledgment requirements do not impede an individual's timely access to quality health care.

The Department also agrees with commenters that the notice acknowledgment process must be flexible and provide covered entities with discretion in order to be workable. Therefore, the final modification adopts the flexibility proposed in the NPRM for the acknowledgment requirement. The Rule requires only that the acknowledgment be in writing, and does not prescribe other details such as the form that the acknowledgment must take or the process for obtaining the acknowledgment. For example, the final Rule does not require an individual's signature to be on the notice. Instead, a covered health provider is permitted, for example, to have the individual sign a separate sheet or list, or to simply initial a cover sheet of the notice to be retained by the provider. Alternatively, a pharmacist is permitted to have the individual sign or initial an acknowledgment within the log book that patients already sign when they pick up prescriptions, so long as the individual is clearly informed on the log book of what they are acknowledging and the acknowledgment is not also used as a waiver or permission for something else (such as a waiver to consult with the pharmacist). For notice that is delivered electronically as part of first service delivery, the Department believes the provider's system should be capable of capturing the individual's acknowledgment of receipt electronically. In addition, those covered health care providers that choose to obtain consent from an individual may design one form that includes both a consent and the acknowledgment of receipt of the notice. Covered health care providers are provided discretion to design the acknowledgment process best suited to their practices.

While the Department believes that the notice acknowledgment process must remain flexible, the Department does not consider oral acknowledgment by the individual to be either a meaningful or appropriate manner by which a covered health care provider may implement these provisions. The notice acknowledgment process is intended to provide a formal opportunity for the individual to engage in a discussion with a health care provider about privacy. At the very least, the process is intended to draw the individual's attention to the importance of the notice. The Department believes these goals are better accomplished by requiring a written acknowledgment and, therefore, adopts such provision in this final modification.

Under the final modification, if an individual refuses to sign or otherwise fails to provide an acknowledgment, a covered health care provider is required to document its good faith efforts to obtain the acknowledgment and the reason why the acknowledgment was not obtained. Failure by a covered entity to obtain an individual's acknowledgment, assuming it otherwise documented its good faith effort, is not a violation of this Rule. Such reason for failure simply may be, for example, that the individual refused to sign the acknowledgment after being requested to do so. This provision also is intended to allow covered health care providers flexibility to deal with a variety of circumstances in which obtaining an acknowledgment is problematic. In response to commenters requests for examples of good faith efforts, the Department intends to provide future guidance on this and other modifications.

A covered entity is required by § 164.530(j) to document compliance with these provisions by retaining copies of any written acknowledgments of receipt of the notice or, if not obtained, documentation of its good faith efforts to obtain such written acknowledgment.

The Department was not persuaded by those commenters who urged that the Department eliminate the proposed notice acknowledgment requirements because of concerns about burden. The Department believes that the final modification is simple and flexible enough so as not to impose a significant burden on covered health care providers. Covered entities are provided much discretion to design the notice acknowledgment process that works best for their business. Further, as described above, the Department believes that the notice acknowledgment requirements are important in that they retain the important aspects of the prior consent process that otherwise would be lost in the final modifications.

In response to commenters' operational concerns about the proposed notice acknowledgment requirements, the Department clarifies that the modification as proposed and now adopted as final is intended to be flexible enough to address the various types of relationships that covered health care providers may have with the individuals to whom they provide treatment, including those treatment situations that are not face-to-face. For example, a health care provider whose first treatment encounter with a patient is over the phone satisfies the notice provision requirements of the Rule by mailing the notice to the individual no later than the day of that service delivery. To satisfy the requirement that the provider also make a good faith effort to obtain the individual's acknowledgment of the notice, the provider may include a tear-off sheet or other document with the notice that requests such acknowledgment be mailed back to the provider. The Department would not consider the health care provider in violation of the Rule if the individual chooses not to mail back an acknowledgment. The Department clarifies, however, that where a health care provider's initial contact with the patient is simply to schedule an appointment, the notice provision and acknowledgment requirements may be satisfied at the time the individual arrives at the provider's facility for his or her

appointment. For service provided electronically, the Department believes that, just as a notice may be delivered electronically, a provider should be capable of capturing the individual's acknowledgment of receipt electronically in response to that transmission.

Finally, the Department does not agree with those commenters who argued that the proposed notice acknowledgment requirements are not an adequate alternative to the prior consent requirements, nor with those who argued that the proposed acknowledgment process should be strengthened if an individual's consent is no longer required. The Department believes that the notice acknowledgment process retains the important aspects of the consent process, such as creating an opportunity for a discussion between the individual and the provider of privacy issues, including the opportunity for the individual to request restrictions on how her information may be used and disclosed as permitted by § 164.522.

Additionally, the Department believes that requiring certain health care providers to obtain the individual's acknowledgment of receipt of the notice, rather than make a good faith effort to do so, would remove the flexibility of the standard and increase the burden substantially on covered entities. Such a modification, therefore, would have the potential to cause workability and operational problems similar to those caused by the prior consent requirements. Prescribing the form or content of the acknowledgment could have the same effect. The Department believes that the notice acknowledgment process must not negatively impact timely access to quality health care.

Also, the Department agrees that it will not be easy for every individual to understand fully the information in the notice, and acknowledges that the onus of ensuring that individuals have an understanding of the notice should not be placed solely on health care providers. The Rule ensures that individuals are provided with a notice in plain language but leaves it to each individual's discretion to review the notice and to initiate a discussion with the covered entity about the use and disclosure of his or her health information or the individual's rights. However, the Department continues to believe strongly that promoting individuals' understanding of privacy practices is an essential component of providing notice to individuals. The Department anticipates that many stakeholders, including the Department, covered entities, consumer organizations, health educators, the mass media and journalists, and a host of other organizations and individuals, will be involved in educating individuals about privacy notices and practices.

Response to Other Public Comments

Comment: Several commenters requested clarification as to whether a health care provider is required to obtain from individuals a new acknowledgment of receipt of the notice if the facility changes its privacy policy.

Response: The Department clarifies that this is not required. To minimize burden on the covered direct treatment provider, the final modification intends the obtaining of the individual's acknowledgment to be consistent with the timing for provision of the notice to the individual, that is, no later than the date of first service delivery. Upon revision of the notice, the Privacy Rule requires only that the direct treatment provider make the notice available upon request on or after the effective date of the revision, and, if he maintains a physical service delivery site, to post the revised notice in a clear and prominent location in his facility: *See* § 164.520(c)(2)(iii). As the Rule does not require a health care provider to provide the revised notice directly to the individual, unless requested by the individual, a new written acknowledgment is not required at the time of revision of the notice.

Comment: A few commenters requested clarification as to how the Department intended the notice acknowledgment process to be implemented within an affiliated covered entity or an organized health care arrangement (OHCA).

Response: The requirement for an individual's written acknowledgment of the notice corresponds with the requirement that the notice be provided to the individual by certain health care providers at first service delivery, regardless of whether the notice itself is the joint notice of an OHCA, the notice of an affiliated covered entity, or the notice of one entity. With respect to an OHCA, the Privacy Rule permits covered entities that participate in an OHCA to satisfy the notice requirements through the use of a joint notice, provided that the relevant conditions of § 164.520(d) are met. Section 164.520(d)(3) further provides that provision of a joint notice to an individual by any one of the covered entities included in the joint notice satisfies the notice provision requirements at § 164.520(c) with respect to all others covered by the joint notice. Thus, a health care provider with a direct treatment relationship with an individual that is participating in an OHCA only need make a good faith effort to obtain the individual's acknowledgment of the joint notice if that provider is the covered entity within the OHCA that is providing the joint notice to the individual. Where the joint notice is provided to the individual by a participating covered entity other than a provider with a direct treatment relationship with the individual, no acknowledgment need be obtained. However, covered entities that participate in an OHCA are not required to utilize a joint notice and may maintain separate notices. In such case, each covered health care provider with a direct treatment relationship within the OHCA must make a good faith effort to obtain the individual's acknowledgment of the notice he or she provides.

Similarly, an affiliated covered entity may have one single notice that covers all of its affiliates. Thus, if the affiliated covered entity's notice is provided to the individual by a health care provider with which the individual has a direct treatment relationship, the health care provider must make a good faith effort to obtain the individual's acknowledgment of receipt of the notice. Alternatively, where the affiliated entity's notice is provided to the individual by a participating entity other than a provider with a direct treatment relationship with the individual, no acknowledgment need be obtained. However, as with the OHCA, the Department clarifies that covered entities that are part of an affiliated covered entity may maintain separate notices if they choose to do so; if they do so, each provider with a direct treatment relationship with the individual must make a good faith effort to obtain the individual's acknowledgment of the notice he or she provides.

Comment: It was suggested that if a provider chooses to obtain consent, the provider should not also be required to obtain the individual's acknowledgment of the notice.

Response: For those covered entities that choose to obtain consent, the Rule does not prescribe any details of the form or manner in which the consent must be obtained. Given this discretion, the Department does not believe that all consents will provide the same benefits to the individual as those afforded by the notice acknowledgment process. The Rule, therefore, does not relieve a covered health care provider of his obligations with respect to obtaining an individual's acknowledgment of the

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notice if that provider also obtains the individual's consent. However, the Rule provides those covered health care providers that choose to obtain consent from an individual the discretion to design one form that includes both a consent and the acknowledgment of receipt of the notice.

Comment: Some commenters asked that the Privacy Rule allow the written acknowledgment of the notice to be obtained electronically without regard to channel of delivery (electronically or on paper) of the notice.

Response: Generally, the Privacy Rule allows for electronic documents to qualify as written documents for purposes of meeting the Rule's requirements. This also applies with respect to the notice acknowledgment. For notice delivered electronically, the Department intends a return receipt or other transmission from the individual to suffice as the notice acknowledgment.

For notice delivered on paper in a face-to-face encounter with the provider, although it is unclear to the Department how exactly the provider may do so, the Rule does not preclude providers from obtaining the individual's written acknowledgment electronically. The Department cautions, however, that the notice acknowledgment process is intended to alert individuals to the importance of the notice and provide them the opportunity to discuss privacy issues with their providers. To ensure that individuals are aware of the importance of the notice, the Rule requires that the individual's acknowledgment be in writing. Thus, the Department would not consider a receptionist's notation in a computer system to be an individual's written acknowledgment.

Comment: One commenter expressed concern that the Rule did not define "emergency" as it applies to ambulance services given the Rule's exceptions to the notice requirements for such situations. This commenter also urged that the Rule's notice provisions at § 164.520(c)(2) with respect to emergency treatment situations be expanded also to apply to non-emergency trips of ambulance providers. The commenter explained that even in non-emergency circumstances, patients, especially the elderly, often suffer from incapacitating or stressful conditions when they need to be transferred by ambulance, at which time it may not be effective or appropriate to provide the notice and obtain the individual's acknowledgment of receipt of the notice.

Response: During emergency treatment situations, the final Rule at § 164.520(c)(2)(i)(B) delays the requirement for provision of the notice until reasonably practicable after the emergency situation, and exempts health care providers from having to make a good faith effort to obtain an individual's acknowledgment. As the provisions are not intended to apply only to ambulance providers, the Department does not believe that defining emergency with respect to such providers is appropriate or necessary. Nor does the Department believe that expanding these provisions to cover non-emergency trips of ambulance providers is appropriate. The provisions are intended to provide exceptions for those situations where providing the notice and obtaining an individual's acknowledgment may not be feasible or practicable. Where such extenuating circumstances do not exist, the Department expects that covered health care providers are able to provide individuals with a notice and make a good faith effort to obtain their acknowledgment of receipt. Where an individual does not provide an acknowledgment, the Rule requires only that the provider document his good faith effort to obtain the acknowledgment.

Comment: A number of commenters requested clarification on how to implement the "good faith" standard and urged the Department to provide more specific guidance and examples. Some commenters expressed concern over the perceived liability that would arise from such a discretionary standard.

Response: Covered entities are provided much discretion to implement the notice acknowledgment process as best suited to their specific business practices. The standard is designed as a "good faith effort" standard because the Department understands that obtaining an individual's acknowledgment of the notice may not always be feasible or practical, in spite of a covered entity's efforts. Thus, the standard is intended to account for those difficult situations, including where an individual simply refuses to provide the written acknowledgment. Given the discretion covered health care providers have in implementing these standards and the various ways such providers interact with their patients, it is difficult for the Department to provide specific guidance in this area that is generally applicable to many covered health care providers. However, the Department intends to provide future guidance through frequently asked questions or other materials in response to specific scenarios that are raised by industry.

With respect to commenters' concerns regarding potential liability, the Department's position is that a failure by a covered entity to obtain an individual's acknowledgment, assuming it otherwise documented its good faith effort (as required by § 164.520(c)(2)(ii)), will not be considered a violation of this Rule.

Comment: Many commenters generally urged that the Department modify the Rule to allow for a simpler, shorter, and, therefore, more readable notice. Some of the commenters explained that a shorter notice would assure that more individuals would take the time to read and be able to understand the information. Others suggested that a shorter notice would help to alleviate burden on the covered entity. A number of these commenters suggested that the Department allow for a shorter summary or 1-page notice to replace the prescriptive notice required by the Privacy Rule. It was recommended that such a notice could refer individuals to a more detailed notice, available on request, or to an HHS web site, for additional information about an individual's rights under the Privacy Rule. Others recommended that the Department allow for a layered notice that contains: (1) A short notice that briefly describes, for example, the entity's principal uses and disclosures of an individual's health information, as well as the individual's rights with respect to that information; and (2) a longer notice, layered beneath the short notice, that contains all the elements required by the Rule.

Certain other commenters urged that one way to make the notice shorter, as well as to alleviate burden on the covered entity, would be to eliminate the requirement that the notice explain the more stringent State privacy laws. Commenters stated that companies that operate in multiple States will have to develop and print up to 50 different notices, and then update and reissue those notices whenever a material change is made to the State law. These commenters recommended instead that the notice simply state that State law may provide additional protections.

A few commenters urged that the Department provide a model notice that covered entities could use in their implementation efforts.

Response: The Department does not modify the notice content provisions at § 164.520(b). The Department believes that the elements required by § 164.520(b) are important to fully inform the individual of the covered entity's privacy practices, as well as his or her rights. However, the Department agrees that such information must be provided in a clear, concise, and easy to understand manner. Therefore, the Department clarifies that covered entities may utilize a "layered notice" to implement the Rule's provisions, so long as the elements required by § 164.520(b) are included in the document that is provided to the individual. For example, a covered entity may satisfy the notice provisions by providing the individual with both a short notice that briefly summarizes the individual's rights, as well as other information; and a longer notice, layered beneath the short notice, that contains all the elements required by the Privacy Rule. Covered entities, however, while encouraged to use a layered notice, are not required to do so. Nothing in the final modifications relieve a covered entity of its duty to provide the entire notice in plain language so the average reader can understand it. *See* § 164.520(b)(1).

In response to comments regarding a model notice, it would be difficult for the Department to develop a document that would be generally useful to many different types of covered entities. A covered entity's notice must reflect in sufficient detail the particular uses and disclosures that entity may make. Such uses and disclosures likely will be very different for each type of covered entity. Thus, a uniform, model notice could not capture the wide variation in information practices across covered entities. The Department intends, however, to issue further general guidance to help covered entities implement the notice provisions of the Rule.

Comment: A number of commenters also requested that the Department lessen the burden associated with distributing the notice. For example, some commenters asked that covered entities be permitted to satisfy the notice provision requirements by posting the notice at the facility or on a web site and by providing a copy only to those consumers who request one, or by placing copies on display where an interested consumer may take one.

Response: The Department's position that making the notice available to individuals, either on request, by posting it at a facility or on a web site, or by placing copies on display, does not substitute for physically providing the notice directly to individuals. Adequate notice of privacy practices is a fundamental right afforded individuals by the Rule. As such, the Department does not believe that the burden of obtaining such information should be placed on the individual. Covered entities are required to distribute the notice in the manner described under § 164.520(c).

Comment: A few commenters requested that the Department make clear that no special mailings are required to provide individuals with a covered entity's notice; rather, that the notice may be distributed as part of other mailings or distributions by the covered entity. For example, one commenter argued that the Rule should be flexible enough to allow for notices to be included in a health plan's Summary Plan Descriptions, Booklets, or an Enrollment Application. It was argued that the notice would receive greater attention, be more carefully reviewed and, thus, better understood if it were published in materials known to be widely read by members.

Response: The Department clarifies that no special or separate mailings are required to satisfy the notice distribution requirements. The Privacy Rule provides covered entities with discretion in this area. A health plan distributing its notice through the mail, in accordance with § 164.520(c)(1), may do so as part of another mailing to the individual. In addition, a covered entity that provides its notice to an individual by e-mail, in accordance with § 164.520(c)(3), may include additional materials in the e-mail. No separate e-mail is required. However, the Privacy Rule at § 164.508(b)(3) continues to prohibit a covered entity from combining the notice in a single document with an authorization.

Comment: Commenters also urged that the Rule permit, for group products, a health plan to send its notice to the administrator of the group product or the plan sponsor, who would then be responsible for distributing the notice to each enrollee/employee. One commenter claimed this distribution method is especially appropriate where there is no regular communication with the covered individuals, as in an employer-pay-all group medical or dental plan. According to the commenter, providing the notice to the employer makes sense because the employer picks the plan and should be aware of the plan's privacy practices when doing so.

Response: The Privacy Rule requires a health plan to distribute its notice to each individual covered by the plan. Health plans may arrange to have another entity, or person, for example, a group administrator or a plan sponsor, distribute the notice on their behalf. However, the Department cautions that if such other entity or person fails to distribute the notice to individuals, the health plan would be in violation of the Rule.

Comment: Another commenter asked that the Department eliminate the requirement that a covered entity must provide the notice to every dependent, rather than just the head of the household. This commenter argued that while it makes sense to provide the notice to an emancipated minor or to a minor who pursuant to State law has consented to treatment, it does not make sense to send the notice to a 2-year old child.

Response: The Privacy Rule provides that a health plan may satisfy the notice provision requirements by distributing the notice to the named insured of a policy under which coverage is provided to the named insured and one or more dependents. A health plan is not required to distribute the notice to each dependent. *See* § 164.520(c)(1)(iii).

Further, a covered health care provider with a direct treatment relationship with the individual is required only to provide the notice to the individual receiving treatment at first service delivery. Where a parent brings a 2-year old child in for treatment, the provider satisfies the notice distribution requirements by providing the notice only to the child's parent.

I. Section 164.528—Accounting of Disclosures of Protected Health Information

December 2000 Privacy Rule. Under the Privacy Rule at § 164.528, individuals have the right to receive an accounting of disclosures of protected health information made by the covered entity, with certain exceptions. These exceptions, or instances where a covered entity is not required to account for disclosures, include disclosures made by the covered entity to carry out treatment, payment, or health care operations, as well as disclosures to individuals of protected health information about them. The individual must request an accounting of disclosures.

The accounting is required to include the following: (1) Disclosures of protected health information that occurred during the six years prior to the date of the request for an accounting; and (2) for each disclosure: the date of the disclosure; the name of the entity or person who received the protected health information, and, if known, the address of such entity or person; a brief description of the protected health information disclosed; and a brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or in lieu of such a statement, a copy of the individual's written authorization pursuant to § 164.508 or a copy of a written request

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for a disclosure under §§ 164.502(a)(2)(ii) or 164.512. For multiple disclosures of protected health information to the same person, the Privacy Rule allows covered entities to provide individuals with an accounting that contains only the following information: (1) For the first disclosure, a full accounting, with the elements described above; (2) the frequency, periodicity, or number of disclosures made during the accounting period; and (3) the date of the last such disclosure made during the accounting period.

March 2002 NPRM. In response to concerns about the high costs and administrative burdens associated with the requirement to account to individuals for the covered entity's disclosure of protected health information, the Department proposed to expand the exceptions to the standard at § 164.528(a)(1) to include disclosures made pursuant to an authorization as provided in § 164.508. Covered entities would no longer be required to account for any disclosures authorized by the individual in accordance with § 164.508. The Department proposed to alleviate burden in this way because, like disclosures of protected health information made directly to the individual—which are already excluded from the accounting provisions in § 164.528(a)(1)—disclosures made pursuant to an authorization are also known by the individual, in as much as the individual was required to sign the forms authorizing the disclosures.

In addition to the exception language at § 164.528(a)(1), the Department proposed two conforming amendments at §§ 164.528(b)(2)(iv) and (b)(3) to delete references in the accounting content requirements to disclosures made pursuant to an authorization.

Overview of Public Comments. The following discussion provides an overview of the public comment received on this proposal. Additional comments received on this issue are discussed below in the section entitled, "Response to Other Public Comments."

The majority of comments on the accounting proposal supported the elimination of the accounting for authorized disclosures. The commenters agreed that, on balance, since the individual had elected to authorize the disclosure in the first instance, and that election was fully informed and voluntary, subsequently accounting for the disclosure made pursuant to that authorization was not necessary.

Many of the commenters went on to suggest other ways in which the accounting requirement could be made less burdensome. For example, several commenters wanted some or all of the disclosures which are permitted at § 164.512 without individual consent or authorization to also be exempt from the accounting requirements. Others proposed alternative means of accounting for disclosures for research, particularly when such disclosures involve large numbers of records. These commenters argued that accounting for each individual record disclosed for a large research project would be burdensome and may deter covered entities from participating in such research. Rather than an individual accounting, the commenters suggested that the covered entity be required only to disclose a listing of all relevant protocols under which an individual's information may have been released during the accounting period, the timeframes during which disclosures were made under a protocol, and the name of the institution and researcher or investigator responsible for the protocol, together with contact information for the researcher. The National Committee on Vital Health Statistics, while not endorsing a protocol listing directly, recommended the Department consider alternatives to minimize the burden of the accounting requirements on research.

Finally, several commenters objected to the elimination of the accounting requirement for authorized disclosures. Some of these commenters expressed concern that the proposal would eliminate the requirement to account for the authorized disclosure of psychotherapy notes. Others were primarily concerned that the proposal would weaken the accounting rights of individuals. According to these commenters, informing the individual of disclosures was only part of the purpose of an accounting. Even with regard to authorized disclosures, an accounting could be important to verify that disclosures were in accord with the scope and purpose as stated in the authorization and to detect potentially fraudulent, altered, or otherwise improperly accepted authorizations. Since authorizations had to be maintained in any event, accounting for these disclosures represented minimal work for the covered entity.

Final Modifications. Based on the general support in the public comment, the Department adopts the modification to eliminate the accounting requirement for authorized disclosures. The authorization process itself adequately protects individual privacy by assuring that the individual's permission is given both knowingly and voluntarily. The Department agrees with the majority of commenters that felt accounting for authorized disclosures did not serve to add to the individual's knowledge about disclosures of protected health information. The Department does recognize the role of accounting requirements in the detection of altered or fraudulent authorizations. However, the Department considers the incidence of these types of abuses, and the likelihood of their detection through a request for an accounting, to be too remote to warrant the burden on all covered entities of including authorized disclosures in an accounting. As noted by some commenters, the covered entity must retain a copy of the authorization to document their disclosure of protected health information and that documentation would be available to help resolve an individual's complaint to either the covered entity or the Secretary.

Specific concern about the elimination of the accounting requirement for authorized disclosures was expressed by mental health professionals, who believed their patients should always have the right to monitor access to their personal information. The Department appreciates theses commenters' concern about the need for heightened protections and accountability with regard to psychotherapy notes. It is because of these concerns that the Rule requires, with limited exceptions, individual authorization for even routine uses and disclosures of psychotherapy notes by anyone other than the originator of the notes. The Department clarifies that nothing in modifications adopted in this rulemaking prevents a mental health professional from including authorized disclosures of psychotherapy notes in an accounting requested by their patients. Indeed, any covered entity may account to the individual for disclosures based on the individual's authorization. The modification adopted by the Department simply no longer requires such an accounting.

In response to comment on this proposal, as well as on the proposals to permit incidental disclosures and disclosures of protected health information, other than direct identifiers, as part of a limited data set, the Department has added two additional exclusions to the accounting requirements. Disclosures that are part of a limited data set and disclosures that are merely incidental to another permissible use or disclosure will not require an accounting. The limited data set does not contain any protected health information that directly identifies the individual and the individual is further protected from identification by the required data use agreement. The Department believes that accounting for these disclosures would be too burdensome. Similarly, the Department believes that it is impracticable to account for incidental disclosures, which by their very nature, may be uncertain or unknown to the covered entity at the time they occur. Incidental disclosures are permitted as long as reasonable safeguards and minimum necessary standards have been observed for the underlying communication. Moreover, incidental disclosures may most often happen in the context of a communication that relates to treatment or health care operations. In that case, the underlying disclosure is not subject to an accounting and it would be arbitrary to require an accounting for a disclosure that was merely incidental to such a communication.

The Department however disagrees with commenters who requested that other public purpose disclosures not be subject to the accounting requirement. Although the Rule permits disclosure for a variety of public purposes, they are not routine disclosures of the individual's information. The accounting requirement was designed as a means for the individual to find out the non-routine purposes for which his or her protected health information was disclosed by the covered entity, so as to increase the individual's awareness of persons or entities other than the individual's health care provider or health plan in possession of this information. To eliminate some or all of these public purposes would defeat the core purpose of the accounting requirement.

The Department disagrees with commenters' proposal to exempt all research disclosures made pursuant to a waiver of authorization from the accounting requirement. Individuals have a right to know what information about them has been disclosed without their authorization, and for what purpose(s). However, the Department agrees that the Rule's accounting requirements could have the undesired effect of causing covered entities to halt disclosures of protected health information for research. Therefore, the Department adopts commenters' proposal to revise the accounting requirement at § 164.528 to permit covered entities to meet the requirement for research disclosures if they provide individuals with a list of all protocols for which the patient's protected health information may have been disclosed for research pursuant to a waiver of authorization under § 164.512(i), as well as the researcher's name and contact information. The Department agrees with commenters that this option struck the appropriate balance between affirming individuals' right to know how information about them is disclosed, and ensuring that important research is not halted.

The Department considered and rejected a similar proposal by commenters when it adopted the Privacy Rule in December 2000. While recognizing the potential burden for research, the Department determined that the individual was entitled to the same level of specificity in an accounting for research disclosures as any other disclosure. At that time, however, the Department added the summary accounting procedures at § 164.528(b)(3) to address the burden issues of researchers and others in accounting for multiple disclosures to the same entity. In response to the Department's most recent request for comments, researchers and others explained that the summary accounting procedures do not address the burden of having to account for disclosures for research permitted by § 164.512(i). These research projects usually involve many records. It is the volume of records for each disclosure, not the repeated nature of the disclosures, that presents an administrative obstacle for research if each record must be individually tracked for the accounting. Similarly, the summary accounting procedures do not relieve the burden for covered entities that participate in many different studies on a routine basis. The Department, therefore, reconsidered the proposal to account for large research projects by providing a list of protocols in light of these comments.

Specifically, the Department adds a paragraph (4) to § 164.528(b) to provide for simplified accounting for research disclosures as follows:

(1) The research disclosure must be pursuant to § 164.512(i) and involve at least 50 records. Thus, the simplified accounting procedures may be used for research disclosures based on an IRB or Privacy Board waiver of individual authorization, the provision of access to the researcher to protected health information for purposes preparatory to research, or for research using only records of deceased individuals. The large number of records likely to be disclosed for these research purposes justifies the need for the simplified accounting procedures. The Department has determined that a research request for 50 or more records warrants use of these special procedures.

(2) For research protocols for which the individual's protected health information may have been disclosed during the accounting period, the accounting must include the name of the study or protocol, a description of the purpose of the study and the type of protected health information sought, and the timeframe of disclosures in response to the request.

(3) When requested by the individual, the covered entity must provide assistance in contacting those researchers to whom it is likely that the individual's protected health information was actually disclosed.

Support for streamlining accounting for research disclosures came in comments and from NCVHS. The Department wants to encourage research and believes protections afforded information in hands of researcher, particularly research overseen by IRB or Privacy Board, provides assurance of continued confidentiality of information. The Department does not agree that the individual has no need to know that his or her information has been disclosed for a research purpose. Covered entities, of course, may account for research disclosures in the same manner as all other disclosures. Even when the covered entity elects to use the alternative of a protocol listing, the Department encourages covered entities to provide individuals with disclosure of the specific research study or protocol for which their protected health information was disclosed, and other specific information relating to such actual disclosures if they so choose. If the covered entity lists all protocols for which the individual's information may have been disclosed, the Department would further encourage that the covered entity list under separate headings, or on separate lists, all protocols relating to particular health issues or conditions, so that individuals may more readily identify the specific studies for which their protected health information is more likely to have been disclosed.

The Department intends to monitor the simplified accounting procedures for certain research disclosures to determine if they are effective in providing meaningful information to individuals about how their protected health information is disclosed for research purposes, while still reducing the administrative burden on covered entities participating in such research efforts. The Department may make adjustments to the accounting procedures for research in the future as necessary to ensure both goals are fully met.

Response to Other Public Comments

Comment: A few commenters opposed the proposal to eliminate the accounting requirement for all

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authorized disclosures arguing that, absent a full accounting, the individual cannot meaningfully exercise the right to amend or to revoke the authorization. Others also felt that a comprehensive right to an accounting, with no exceptions, was better from an oversight and enforcement standpoint as it encouraged consistent documentation of disclosures. One commenter also pointed to an example of the potential for fraudulent authorizations by citing press accounts of a chain drug store that allegedly took customers signatures from a log that waived their right to consult with the pharmacist and attached those signatures to a form authorizing the receipt of marketing materials. Under the proposal, the commenter asserted, the chain drug store would not have to include such fraudulent authorizations as part of an accounting to the individual.

Response: The Department does not agree that the individual's right to amendment is materially affected by the accounting requirements for authorized disclosures. The covered entity that created the protected health information contained in a designated record set has the primary obligation to the individual to amend any erroneous or incomplete information. The individual does not necessarily have a right to amend information that is maintained by other entities that the individual has authorized to have his or her protected health information. Furthermore, the covered entity that has amended its own designated record set at the request of the individual is obligated to make reasonable efforts to notify other persons, including business associates, that are known to have the protected health information that was the subject of the amendment and that may rely on such information to the detriment of the individual. This obligation would arise with regard to persons to whom protected health information was disclosed with the individual's authorization. Therefore, the individual's amendment rights are not adversely affected by the modifications to the accounting requirements. Furthermore, nothing in the modification adversely affects the individual's right to revoke the authorization.

The Department agrees that oversight is facilitated by consistent documentation of disclosures. However, the Department must balance its oversight functions with the burden on entities to track all disclosures regardless of purpose. Based on this balancing, the Department has exempted routine disclosures, such as those for treatment, payment, and health care operations, and others for security reasons. The addition of authorized disclosures to the exemption from the accounting does not materially affect the Department's oversight function. Compliance with the Rule's authorization requirements can still be effectively monitored because covered entities are required to maintain signed authorizations as documentation of disclosures. Therefore, the Department believes that effective oversight, not the happenstance of discovery by an individual through the accounting requirement, is the best means to detect and prevent serious misdeeds such as those alleged in fraudulent authorizations.

Comment: A number of commenters recommended other types of disclosures for exemption from the accounting requirement. Many recommended elimination of the accounting requirement for public health disclosures arguing that the burden of the requirement may deter entities from making such disclosures and that because many are made directly to public health authorities by doctors and nurses, rather than from a central records component of the entity, public health disclosures are particularly difficult to track and document. Others suggested exempting from an accounting requirement any disclosure required by another law on the grounds that neither the individual nor the entity has any choice about such required disclosures. Still others wanted all disclosures to a governmental entity exempted as many such disclosures are required and often reports are routine or require lots of data. Some wanted disclosures to law enforcement or to insurers for claims investigations exempted from the accounting requirement to prevent interference with such investigatory efforts. Finally, a few commenters suggested that all of the disclosures permitted or required by the Privacy Rule should be excluded from the accounting requirement.

Response: Elimination of an accounting requirement for authorized disclosures is justified in large part by the individual's knowledge of and voluntary agreement to such disclosures. None of the above suggestions for exemption of other permitted disclosures can be similarly justified. The right to an accounting of disclosures serves an important function in informing the individual as to which information was sent to which recipients. While it is possible that informing individuals about the disclosures of their health information may on occasion discourage some worthwhile activity, the Department believes that the individual's right to know who is using their information and for what purposes takes precedence.

Comment: One commenter sought an exemption from the accounting requirement for disclosures to adult protective services when referrals are made for abuse, neglect, or domestic violence victims. For the same reasons that the Rule permits waiver of notification to the victim at the time of the referral based on considerations of the victim's safety, the regulation should not make such disclosures known after the fact through the accounting requirement.

Response: The Department appreciates the concerns expressed by the commenter for the safety and welfare of the victims of abuse, neglect, or domestic violence. In recognition of these concerns, the Department does give the covered entity discretion in notifying the victim and/or the individual's personal representative at the time of the disclosure. These concerns become more attenuated in the context of an accounting for disclosures, which must be requested by the individual and for which the covered entity has a longer timeframe to respond. Concern for the safety of victims of abuse or domestic violence should not result in stripping these individuals of the rights granted to others. If the individual is requesting the accounting, even after being warned of the potential dangers, the covered entity should honor that request. However, if the request is by the individual's personal representative and the covered entity has a reasonable belief that such person is the abuser or that providing the accounting to such person could endanger the individual, the covered entity continues to have the discretion in § 164.502(g)(5) to decline such a request.

Comment: One commenter suggested elimination of the accounting requirement in its entirety. The commenter argued that HIPAA does not require an accounting as the individual's right and the accounting does not provide any additional privacy protections to the individual's information.

Response: The Department disagrees with the commenter. HIPAA authorized the Secretary to identify rights of the individual with respect to protected health information and how those rights should be exercised. In absence of regulation, HIPAA also authorized the Secretary to effectuate these rights by regulation. As stated in the preamble to the December 2000 Privacy Rule, the standard adopted by the Secretary that provides individuals with a right to an accounting of disclosures, is consistent with well-established privacy principles in other law and with industry standards and ethical guidelines, such as the Federal Privacy Act (5 U.S.C. 552a), the July 1977 Report of the Privacy Protection Study Commission, and NAIC Health Information Privacy Model Act. (*See* 65 FR 82739.)

Comment: A few commenters requested that the accounting period be shortened from six years to two years or three years.

Response: The Department selected six years as the time period for an accounting to be consistent with documentation retention requirements in the Rule. We note that the Rule exempts from the accounting disclosures made prior to the compliance date for Rule, or April 14, 2003. Therefore, it will not be until April 2009 that a full six year accounting period will occur. Also, the Rule permits individuals to request and the covered entity to provide for an accounting for less than full six year period. For example, an individual may be interested only in disclosures that occurred in the prior year or in a particular month. The Department will monitor the use of the accounting requirements after the compliance date and will evaluate the need for changes in the future if the six year period for the accounting proves to be unduly burdensome.

Comment: Commenters requested clarification of the need to account for disclosures to business associates, noting that while the regulation states that disclosures to and by a business associate are subject to an accounting, most such disclosures are for health care operations for which no accounting is required.

Response: The Department clarifies that the implementation specification in § 164.528(b)(1), that expressly includes in the content of an accounting disclosures to or by a business associate, must be read in conjunction with the basic standard for an accounting for disclosures in § 164.528(a). Indeed, the implementation specification expressly references the standard. Read together, the Rule does not require an accounting of any disclosure to or by a business associate that is for any exempt purpose, including disclosures for treatment, payment, and health care operations.

Comment: One commenter wanted health care providers to be able to charge reasonable fees to cover the retrieval and preparation costs of an accounting for disclosures.

Response: In granting individuals the right to an accounting, the Department had to balance the individual's right to know how and to whom protected health information is being disclosed and the financial and administrative burden on covered entities in responding to such requests. The balance struck by the Department with regard to cost was to grant the individual a right to an accounting once a year without charge. The covered entity may impose reasonable, cost-based fees for any subsequent requests during the one year period. The Department clarifies that the covered entity may recoup its reasonable retrieval and report preparation costs, as well as any mailing costs, incurred in responding to subsequent requests. The Rule requires that individuals be notified in advance of these fees and provided an opportunity to withdraw or amend its request for a subsequent accounting to avoid incurring excessive fees.

Comment: One commenter wanted clarification of the covered entity's responsibility to account for the disclosures of others. For example, the commenter wanted to know if the covered entity was responsible only for its own disclosures or did it also need to account for disclosures by every person that may subsequently handle the information.

Response: The Department clarifies in response to this comment that a covered entity is responsible to account to the individual for certain disclosures that it makes and for disclosures by its business associates. The covered entity is not responsible to account to the individual for any subsequent disclosures of the information by others that receive the information from the covered entity or its business associate.

J. Section 164.532—Transition Provisions

1. Research Transition

December 2000 Privacy Rule. The December 2000 Privacy Rule at § 164.532 contained different transition requirements for research being conducted with an individual's legal permission that included treatment, and for research being conducted with an individual's legal permission that did not include treatment. However, the Rule did not explicitly address transition provisions for research studies ongoing after the compliance date where the legal permission of the individual had not been sought.

March 2002 NPRM. Several commenters found the transition provisions for research to be confusing, and further noted that December 2000 Privacy Rule did not address research ongoing after the compliance date where the legal permission of the individual had not been sought. To address these concerns, the Department proposed several revisions to the Privacy Rule's transition provisions. In particular, the Department proposed that there be no distinction in the transition provisions between research that includes treatment and research that does not, and no distinction between the requirements for research conducted with a patient's legal permission and research conducted with an IRB-approved waiver of a patient's informed consent. In sum, the NPRM proposed that covered entities be permitted to use or disclose protected health information created or received for a specific research study before the compliance date (if there was no agreed-to restriction in accordance with § 164.522(a)), if the covered entity has obtained, prior to the compliance date, any one of the following: (1) An authorization or other express legal permission from an individual to use or disclose protected health information for the research study; (2) the informed consent of the individual to participate in the research study; or (3) a waiver, by an IRB of informed consent for the research study in accordance with the Common Rule or FDA's human subject protection regulations. However, even if the researcher obtained, from an IRB, a waiver of informed consent, an authorization would be required if informed consent is later obtained. This may occur if there is a temporary waiver of informed consent for emergency research under the Food and Drug Administration human subject protection regulations.

Overview of Public Comments. The following discussion provides an overview of the public comment received on this proposal. Additional comments received on this issue are discussed below in the section entitled, "Response to Other Public Comments."

Most commenters supported the proposed revisions to the Privacy Rule's transition provisions for research. However, a few commenters requested that the transition provisions be broadened to permit covered entities to rely on an express legal permission or informed consent approved by an IRB before the compliance date, even if the permission or consent had not been signed by the individual prior to the compliance date. Consequently, a researcher could use the same forms throughout their study, decreasing the chance of introducing error into the research through the use of multiple recruitment procedures, disruption to the research, and the burden for the IRBs and researchers. A few other

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commenters suggested that covered entities be permitted to use and disclose protected health information with consent forms approved by an IRB prior to the compliance date until the next review by the IRB, as required by the Common Rule. They argued that this would result in all informed consent forms being in compliance with the Privacy Rule's authorization regulations within a one-year period, and it would avoid disruption to ongoing research, as well as a flood of consent form revision requests to the IRBs.

Final Modifications. The Department agrees with the majority of comments that supported the modifications to the transition provisions, and has therefore adopted the research transition modifications as proposed in the NPRM. The Department disagrees with the comments that suggest broadening the transition provisions to permit covered entities to rely on an express legal permission or informed consent that had not been signed by the individual before the compliance date. The Department understands that this provision may disrupt some ongoing research; however, the recruitment periods for some studies may continue long after the compliance date, and it would be unreasonable to grandfather-in existing informed consent documents indefinitely. While the commenter's suggestion to only grandfather-in such informed consent documents until the next review by the IRB would address this concern, the Privacy Rule does not require initial or continuing IRB or Privacy Board review of authorization forms or informed consent documents. Therefore, the Department does not adopt this change to its proposal.

However, the Department understands that some existing express legal permissions, informed consents, or IRB-approved waivers of informed consents are not study specific. Therefore, the final Rule permits covered entities to rely on an express legal permission, informed consent, or IRB-approved waiver of informed consent for future unspecified research, provided the legal permission, informed consent or IRB-approved waiver was obtained prior to the compliance date.

Response to Other Public Comments

Comment: A commenter requested that the transition provision be narrowed by requiring research that received a waiver of informed consent from an IRB prior to the compliance date but that begins after the compliance date be re-evaluated under the Privacy Rule's waiver criteria.

Response: The Department disagrees. Given that the Privacy Rule's waiver criteria for an individual's authorization generally are consistent with the same types of considerations currently applied to a waiver of an individual's informed consent, this suggestion would impose unnecessary burdens on researchers, IRBs, and Privacy Boards, with respect to the few research studies that would fall in this category.

2. Business Associates

December 2000 Privacy Rule. The Privacy Rule at § 164.502(e) permits a covered entity to disclose protected health information to a business associate who performs a function or activity on behalf of, or provides a service to, the covered entity that involves the creation, use, or disclosure of, protected health information, provided that the covered entity obtains satisfactory assurances that the business associate will appropriately safeguard the information. The Department recognizes that most covered entities do not perform or carry out all of their health care activities and functions by themselves, but rather use the services of, or receive assistance from, a variety of other persons or entities. Given this framework, the Department intended these provisions to allow such business relationships to continue while ensuring that identifiable health information created or shared in the course of the relationships was protected.

The Privacy Rule requires that the satisfactory assurances obtained from the business associate be in the form of a written contract (or other written arrangement, as between governmental entities) between the covered entity and the business associate that contains the elements specified at § 164.504(e). For example, the agreement must identify the uses and disclosures of protected health information the business associate is permitted or required to make, as well as require the business associate to put in place appropriate safeguards to protect against a use or disclosure not permitted by the contract or agreement.

The Privacy Rule also provides that, where a covered entity knows of a material breach or violation by the business associate of the contract or agreement, the covered entity is required to take reasonable steps to cure the breach or end the violation, and if such steps are unsuccessful, to terminate the contract or arrangement. If termination of the contract or arrangement is not feasible, a covered entity is required to report the problem to the Secretary of HHS. A covered entity that violates the satisfactory assurances it provided as a business associate of another covered entity is in noncompliance with the Privacy Rule.

The Privacy Rule's definition of "business associate" at § 160.103 includes the types of functions or activities, and list of services, that make a person or entity who engages in them a business associate, if such activity or service involves protected health information. For example, a third party administrator (TPA) is a business associate of a health plan to the extent the TPA assists the health plan with claims processing or another covered function. Similarly, accounting services performed by an outside consultant give rise to a business associate relationship when provision of the service entails access to the protected health information held by a covered entity.

The Privacy Rule excepts from the business associate standard certain uses or disclosures of protected health information. That is, in certain situations, a covered entity is not required to have a contract or other written agreement in place before disclosing protected health information to a business associate or allowing protected health information to be created by the business associate on its behalf. Specifically, the standard does not apply to: disclosures by a covered entity to a health care provider for treatment purposes; disclosures to the plan sponsor by a group health plan, or a health insurance issuer or HMO with respect to a group health plan, to the extent that the requirements of § 164.504(f) apply and are met; or to the collection and sharing of protected health information by a health plan that is a public benefits program and an agency other than the agency administering the health plan, where the other agency collects protected health information for, or determines eligibility or enrollment with respect to, the government program, and where such activity is authorized by law. See § 164.502(e)(1)(ii).

March 2002 NPRM. The Department heard concerns from many covered entities and others about the business associate provisions of the Privacy Rule. The majority expressed some concern over the anticipated administrative burden and cost to implement the business associate provisions. Some stated that many covered entities have existing contracts that are not set to terminate or expire until after the compliance date of the Privacy Rule. Others expressed specific concern that the two-year compliance period does not provide enough time to reopen and renegotiate what could be hundreds or more contracts for large covered entities. These entities went on to urge the

Department to grandfather in existing contracts until such contracts come up for renewal instead of requiring that all contracts be in compliance with the business associate provisions by the compliance date of the Privacy Rule.

In response to these concerns, the Department proposed to relieve some of the burden on covered entities in complying with the business associate provisions by both adding a transition provision to grandfather certain existing contracts for a specified period of time, as well as publishing sample contract language in the proposed Rule. The following discussion addresses the issue of the business associate transition provisions. A discussion of the business associate sample contract language is included in Part X of the preamble.

The Department proposed new transition provisions at § 164.532(d) and (e) to allow covered entities, other than small health plans, to continue to operate under certain existing contracts with business associates for up to one year beyond the April 14, 2003, compliance date of the Privacy Rule. The additional transition period would be available to a covered entity, other than a small health plan, if, prior to the effective date of the transition provision, the covered entity had an existing contract or other written arrangement with a business associate, and such contract or arrangement was not renewed or modified between the effective date of this provision and the Privacy Rule's compliance date of April 14, 2003. The proposed provisions were intended to allow those covered entities with contracts that qualified as described above to continue to disclose protected health information to the business associate, or allow the business associate to create or receive protected health information on its behalf, for up to one year beyond the Privacy Rule's compliance date, regardless of whether the contract meets the applicable contract requirements in the Privacy Rule. The Department proposed to deem such contracts to be compliant with the Privacy Rule until either the covered entity had renewed or modified the contract following the compliance date of the Privacy Rule (April 14, 2003), or April 14, 2004, whichever was sooner. In cases where a contract simply renewed automatically without any change in terms or other action by the parties (also known as "evergreen contracts"), the Department intended that such evergreen contracts would be eligible for the extension and that deemed compliance would not terminate when these contracts automatically rolled over.

These transition provisions would apply to covered entities only with respect to written contracts or other written arrangements as specified above, and not to oral contracts or other arrangements. In addition, the proposed transition provisions would not apply to small health plans, as defined in the Privacy Rule. Small health plans would be required to have all business associate contracts be in compliance with the Privacy Rule's applicable provisions, by the compliance deadline of April 14, 2004, for such covered entities.

In proposed § 164.532(e)(2), the Department provided that the new transition provisions would not relieve a covered entity of its responsibilities with respect to making protected health information available to the Secretary, including information held by a business associate, as necessary for the Secretary to determine compliance. Similarly, these provisions would not relieve a covered entity of its responsibilities with respect to an individual's rights to access or amend his or her protected health information held by a business associate, or receive an accounting of disclosures by a business associate, as provided for by the Privacy Rule's requirements at §§ 164.524, 164.526, and 164.528. Covered entities still would be required to fulfill individuals' rights with respect to their protected health information, including information held by a business associate of the covered entity. Covered entities would have to ensure, in whatever manner effective, the appropriate cooperation by their business associates in meeting these requirements.

The Department did not propose modifications to the standards and implementation specifications that apply to business associate relationships as set forth at §§ 164.502(e) and 164.504(e), respectively, of the Privacy Rule.

Overview of Public Comments. The following discussion provides an overview of the public comment received on this proposal. Additional comments received on this issue are discussed below in the section entitled, "Response to Other Public Comments."

Most commenters on this issue expressed general support for a transition period for business associate contracts. Of these commenters, however, many requested that the Department modify the proposal in a number of different ways. For example, a number of commenters urged the Department to modify which contracts qualify for the transition period, such as by making the transition period available to contracts existing as of the compliance date of the Privacy Rule, rather than as of the effective date of the transition modification. Others requested that the Department apply the transition period to all business associate arrangements, even those arrangements for which there was no existing written contract.

Some commenters urged the Department to modify the end date of the transition period. A few of these commenters requested that the transition period apply to existing business associate contracts until they expired or were renewed, with no specified end date in the regulation. It was also suggested that the Department simply provide one extra year, until April 14, 2004, for compliance with the business associate contract provisions, without the provision that a renewal or modification of the contract would trigger an earlier transition period end date. A few commenters requested further guidance as to the types of actions the Department would or would not consider to be a "renewal or modification" of the contract.

Additionally, numerous commenters requested that the Department further clarify a covered entity's responsibilities with regard to their business associates during the transition period. Commenters expressed concerns with the proposal's requirement that the transition provisions would not have relieved a covered entity of its responsibilities with respect to an individual's rights to access or amend his or her protected health information held by business associates, or receive an accounting of disclosures by a business associate. Similarly, commenters raised concerns that the transition provisions would not have relieved a covered entity of its responsibilities to make information available to the Secretary, including information held by a business associate, as necessary for the Secretary to determine compliance. Commenters also expressed concerns about the fact that it appeared that covered entities still would have been required to obtain satisfactory assurances from a business associate that protected health information not be used improperly by the business associate, or that the covered entity still would have been required to mitigate any known harmful effects of a business associate's improper use or disclosure of protected health information during the transition period. It was stated that cooperation by a business associate with respect to the covered entity's obligations under the Rule would be difficult, if not

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impossible, to secure without a formal agreement.

A few commenters opposed the proposal, one of whom raised concerns that the proposed transition period would encourage covered entities to enter into "stop gap" contracts instead of compliant business associate contracts. This commenter urged that the Department maintain the original compliance date for business associate contracts.

Final Modifications. In the final Rule, the Department adopts the transition period for certain business associate contracts as proposed in the NPRM. The final Rule's transition provisions at § 164.532(d) and (e) permit covered entities, other than small health plans, to continue to operate under certain existing contracts with business associates for up to one year beyond the April 14, 2003, compliance date of the Privacy Rule. The transition period is available to covered entities who have an existing contract (or other written arrangement) with a business associate prior to the effective date of this modification, provided that the contract is not renewed or modified prior to the April 14, 2003, compliance date of the Privacy Rule. (See the "Dates" section above for the effective date of this modification.) Covered entities with contracts that qualify are permitted to continue to operate under those contracts with their business associates until April 14, 2004, or until the contract is renewed or modified, whichever is sooner. During the transition period, such contracts are deemed to be compliant with the Privacy Rule regardless of whether the contract meets the Rule's applicable contract requirements at §§ 164.502(e) and 164.504(e).

The transition provisions are intended to address the concerns of covered entities that the two-year period between the effective date and compliance date of the Privacy Rule is insufficient to reopen and renegotiate all existing contracts for the purposes of bringing them into compliance with the Rule. These provisions also provide covered entities with added flexibility to incorporate the business associate contract requirements at the time they would otherwise modify or renew the existing contract.

Given the intended purpose of these provisions, the Department is not persuaded by the comments that it is necessary to modify the provision to make the transition period available to those contracts existing prior to the Rule's compliance date of April 14, 2003, rather than the effective date of the modification, or, even less so, to any business associate arrangement regardless of whether a written contract currently exists.

A covered entity that does not have a written contract with a business associate prior to the effective date of this modification does not encounter the same burdens described by other commenters associated with having to reopen and renegotiate many existing contracts at once. The Department believes that such a covered entity should be able to enter into a compliant business associate contract by the compliance date of the Rule. Further, those covered entities whose business associate contracts come up for renewal or modification prior to the compliance date have the opportunity to bring such contracts into compliance by April 14, 2003. Thus, a covered entity that enters into a business associate contract after the effective date of this modification, or that has a contract that is renewed or modified prior to the compliance date of the Rule, is not eligible for the transition period and is required to have a business associate contract in place that meets the applicable requirements of §§ 164.502(e) and 164.504(e) by the Privacy Rule's compliance date of April 14, 2003. Further, as in the proposed Rule, the transition provisions apply only to written contracts or other written arrangements. Oral contracts or other arrangements are not eligible for the transition period. The Department clarifies, however, that nothing in these provisions requires a covered entity to come into compliance with the business associate contract provisions prior to April 14, 2003.

Similarly, in response to those commenters who requested that the Department permit existing contracts to be transitioned until April 14, 2004, regardless of whether such contracts are renewed or modified prior to that date, the Department considers a renewal or modification of the contract to be an appropriate, less burdensome opportunity to bring such contracts into compliance with the Privacy Rule. The Department, therefore, does not modify the proposal in such a way. Further, in response to commenters who requested that the Rule grandfather in existing business associate contracts until they expire or are renewed, with no specified end date in the regulation, the Department believes that limiting the transition period to one year beyond the Rule's compliance date is the proper balance between individuals' privacy interests and alleviating burden on the covered entity. All existing business associate contracts must be compliant with the Rule's business associate contract provisions by April 14, 2004.

As in the proposal, evergreen or other contracts that renew automatically without any change in terms or other action by the parties and that exist by the effective date of this modification are eligible for the transition period. The automatic renewal of such contracts itself does not terminate qualification for, or deemed compliance during, the transition period. Renewal or modification for the purposes of these transition provisions requires action by the parties involved. For example, the Department does not consider an automatic inflation adjustment to the price of a contract to be a renewal or modification for purposes of these provisions. Such an adjustment will not trigger the end of the transition period, nor make the contract ineligible for the transition period if the adjustment occurs before the compliance date of the Rule.

The transition provisions do not apply to "small health plans," as defined at § 160.103. Small health plans are required to have business associate contracts that are compliant with §§ 164.502(e) and 164.504(e) by the April 14, 2004, compliance date for such entities. As explained in the proposal, the Department believes that the additional year provided by the statute for these entities to comply with the Privacy Rule provides sufficient time for compliance with the Rule's business associate provisions. In addition, the sample contract provisions provided in the Appendix to the preamble will assist small health plans and other covered entities in their implementation of the Privacy Rule's business associate provisions by April 14, 2004.

Like the proposal, the final Rule at § 164.532(e)(2) provides that, during the transition period, covered entities are not relieved of their responsibilities to make information available to the Secretary, including information held by a business associate, as necessary for the Secretary to determine compliance by the covered entity. Similarly, the transition period does not relieve a covered entity of its responsibilities with respect to an individual's rights to access or amend his or her protected health information held by a business associate, or receive an accounting of disclosures by a business associate, as provided for by the Privacy Rule's requirements at §§ 164.524, 164.526, and 164.528. In addition, unlike the proposed Rule, the final Rule at § 164.532(e)(3) explicitly provides that with respect to those business associate contracts that qualify for the transition period as described above, a covered entity is not relieved of its obligation

under § 164.530(f) to mitigate, to the extent practicable, any harmful effect that is known to the covered entity of a use or disclosure of protected health information by its business associate in violation of the covered entity's policies and procedures or the requirements of this subpart, as required by § 164.530(f).

The Department does not believe that a covered entity should be relieved during the transition period of its responsibilities with respect to cooperating with the Secretary or fulfilling an individual's rights with respect to protected health information held by the business associate, or mitigating any harmful effects of an inappropriate use or disclosure by the business associate. The transition period is intended to alleviate some of the burden on covered entities, but not at the expense of individuals' privacy rights. Eliminating these privacy protections and rights would severely weaken the Rule with respect to those covered entities with contracts that qualify for the transition period.

Further, the Rule provides covered entities some discretion in implementing these requirements with respect to their business associates. For example, a covered entity does not need to provide an individual with access to protected health information held by a business associate if the only information the business associate holds is a duplicate of what the covered entity maintains and to which it has provided the individual access. Covered entities are required to ensure, in whatever manner deemed effective by the covered entity, the appropriate cooperation by their business associates in meeting these requirements.

In response to other concerns from commenters, the Department clarifies that a covered entity is not required to obtain satisfactory assurances (in any form), as required by § 164.502(e)(1), from a business associate to which the transition period applies. The transition period effectively deems such qualified contracts to fulfill the requirement for satisfactory assurances from the business associate.

The Department is aware that the transition provisions may encourage some covered entities to enter into contracts before the effective date of the modification solely to take advantage of the transition period, rather than encourage such entities to execute fully compliant business associate contracts. However, the Department believes that the provision appropriately limits the potential for such misuse by requiring that qualified contracts exist prior to the modification effective date rather than the Privacy Rule's compliance date. Further, the transition provisions do not relieve the covered entity of its obligations with respect to protected health information held by the business associate and, therefore, ensures that an individual's rights, as provided for by the Rule, remain intact during the transition period.

Response to Other Public Comments

Comment: One commenter requested that the transition period also be applied to the requirement that a group health plan amend plan documents pursuant to § 164.504(f) before protected health information may be disclosed to the plan sponsor.

Response: The Department does not make such a modification. The intent of the business associate transition provisions is to alleviate burden on those covered entities with many existing contracts, where as a result, the two-year period between the effective date and compliance date of the Privacy Rule may be insufficient to reopen and renegotiate all such contracts for the purposes of bringing them into compliance with the Rule. The Privacy Rule does not require a business associate contract for disclosure of protected health information from a group health plan to a plan sponsor. Rather, the Rule permits a group health plan to disclose protected health information to a plan sponsor if, among other requirements, the plan documents are amended to appropriately reflect and restrict the plan sponsor's uses and disclosures of such information. As the group health plan should only have one set of plan documents that must be amended, the same burdens described above do not exist with respect to this activity. Thus, the Department expects that group health plans will be able to modify plan documents in accordance with the Rule by the Rule's compliance date.

Comment: Many commenters continued to recommend various modifications to the business associate standard, unrelated to the proposed modifications. For example, some commenters urged that the Department eliminate the business associate requirements entirely. Several commenters urged that the Department exempt covered entities from having to enter into contracts with business associates who are also covered entities under the Privacy Rule. Alternatively, one commenter suggested that the Department simplify the requirements by requiring a covered entity that is a business associate to specify in writing the uses and disclosures the covered entity is permitted to make as a business associate.

Other commenters requested that the Department allow business associates to self-certify or be certified by a third party or HHS as compliant with the Privacy Rule, as an alternative to the business associate contract requirement.

Certain commenters urged the Department to modify the Rule to eliminate the need for a contract with accreditation organizations. Some commenters suggested that the Department do so by reclassifying private accreditation organizations acting under authority from a government agency as health oversight organizations, rather than as business associates.

Response: The proposed modifications regarding business associates were intended to address the concerns of commenters with respect to having insufficient time to reopen and renegotiate what could be thousands of contracts for some covered entities by the compliance date of the Privacy Rule. The proposed modifications did not address changes to the definition of, or requirements for, business associates generally. The Department has, in previous guidance, as well as in the preamble to the December 2000 Privacy Rule, explained its position with respect to most of the above concerns. However, the Department summarizes its position in response to such comments briefly below.

The Department recognizes that most covered entities acquire the services of a variety of other persons or entities to assist in carrying covered entities' health care activities. The business associate provisions are necessary to ensure that individually identifiable health information created or shared in the course of these relationships is protected. Further, without the business associate provisions, covered entities would be able to circumvent the requirements of the Privacy Rule simply by contracting out certain of its functions.

With respect to a contract between a covered entity and a business associate who is also a covered entity, the Department restates its position that a covered entity that is a business associate should be restricted from using or disclosing the protected health information it creates or receives as a business associate for any purposes other than those explicitly provided for in its contract. Further, to modify the provisions to require or permit a type of written assurance, other than a contract, by a covered entity would add unnecessary complexity to the Rule.

Additionally, the Department at this time does not believe that a business associate certification process would

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provide the same kind of protections and guarantees with respect to a business associate's actions that are available to a covered entity through a contract under State law. With respect to certification by a third party, it is unclear whether such a process would allow for any meaningful enforcement (such as termination of a contract) for the actions of a business associate. Further, the Department could not require that a business associate be certified by a third party. Thus, the Privacy Rule still would have to allow for a contract between a covered entity and a business associate.

The Privacy Rule explicitly defines organizations that accredit covered entities as business associates. See the definition of "business associate" at § 160.103. The Department defined such organizations as business associates because, like other business associates, they provide a service to the covered entity during which much protected health information is shared. The Privacy Rule treats all organizations that provide accreditation services to covered entities alike. The Department has not been persuaded by the comments that those accreditation organizations acting under grant of authority from a government agency should be treated differently under the Rule and relieved of the conditions placed on other such relationships. However, the Department understands concerns regarding the burdens associated with the business associate contract requirements. The Department clarifies that the business associate provisions may be satisfied by standard or model contract forms which could require little or no modification for each covered entity. As an alternative to the business associate contract, these final modifications permit a covered entity to disclose a limited data set of protected health information, not including direct identifiers, for accreditation and other health care operations purposes subject to a data use agreement. *See* § 164.514(e).

Comment: A number of commenters continued to express concern over a covered entity's perceived liability with respect to the actions of its business associate. Some commenters requested further clarification that a covered entity is not responsible for or required to monitor the actions of its business associates. It also was suggested that such language expressly be included in the Rule's regulatory text. One commenter recommended that the Rule provide that business associates are directly liable for their own failure to comply with the Privacy Rule. Another commenter urged that the Department eliminate a covered entity's obligation to mitigate any harmful effects caused by a business associate's improper use or disclosure of protected health information.

Response: The Privacy Rule does not require a covered entity to actively monitor the actions of its business associates nor is the covered entity responsible or liable for the actions of its business associates. Rather, the Rule only requires that, where a covered entity knows of a pattern of activity or practice that constitutes a material breach or violation of the business associate's obligations under the contract, the covered entity take steps to cure the breach or end the violation. *See* § 164.504(e)(1). The Department does not believe a regulatory modification is necessary in this area. The Department does not have the statutory authority to hold business associates, that are not also covered entities, liable under the Privacy Rule.

With respect to mitigation, the Department does not accept the commenter's suggestion. When protected health information is used or disclosed inappropriately, the harm to the individual is the same, regardless of whether the violation was caused by the covered entity or a by business associate. Further, this provision is not an absolute standard intended to require active monitoring of the business associate or mitigation of all harm caused by the business associate. Rather, the provision applies only if the covered entity has actual knowledge of the harm, and requires mitigation only "to the extent practicable" by the covered entity. *See* § 164.530(f).

Comment: Several commenters asked the Department to provide additional clarification as to who is and is not a business associate for purposes of the Rule. For example, commenters questioned whether researchers were business associates. Other commenters requested further clarification as to when a health care provider would be the business associate of another health care provider. One commenter asked the Department to clarify whether covered entities that engage in joint activities under an organized health care arrangement (OHCA) are required to have a business associate contract. Several commenters asked the Department to clarify that a business associate agreement is not required with organizations or persons where contact with protected health information would result inadvertently (if at all), for example, janitorial services.

Response: The Department provides the following guidance in response to commenters. Disclosures from a covered entity to a researcher for research purposes as permitted by the Rule do not require a business associate contract. This remains true even in those instances where the covered entity has hired the researcher to perform research on the covered entity's own behalf because research is not a covered function or activity. However, the Rule does not prohibit a covered entity from entering into a business associate contract with a researcher if the covered entity wishes to do so. Notwithstanding the above, a covered entity must enter into a data use agreement, as required by § 164.514(e), prior to disclosing a limited data set for research purposes to a researcher.

With respect to business associate contracts between health care providers, the Privacy Rule explicitly excepts from the business associate requirements disclosures by a covered entity to a health care provider for treatment purposes. *See* § 164.502(e)(1). Therefore, any covered health care provider (or other covered entity) may share protected health information with a health care provider for treatment purposes without a business associate contract. The Department does not intend the Rule to interfere with the sharing of information among health care providers for treatment. However, this exception does not preclude one health care provider from establishing a business associate relationship with another health care provider for some other purpose. For example, a hospital may enlist the services of another health care provider to assist in the hospital's training of medical students. In this case, a business associate contract would be required before the hospital could allow the health care provider access to patient health information.

As to disclosures among covered entities who participate in an organized health care arrangement, the Department clarifies that no business associate contract is needed to the extent the disclosure relates to the joint activities of the OHCA.

The Department also clarifies that a business associate contract is not required with persons or organizations whose functions, activities, or services do not involve the use or disclosure of protected health information, and where any access to protected health information by such persons would be de minimus, if at all. For example, a health care provider is not required to enter into a business associate contract with its janitorial service because the performance of such service does not involve the use or disclosure of protected health information. In this case, where a janitor has contact with

protected health information incidentally, such disclosure is permissible under § 164.502(a)(1)(iii) provided reasonable safeguards are in place.

The Department is aware that similar questions still remain with respect to the business associate provisions of the Privacy Rule and intends to provide technical assistance and further clarifications as necessary to address these questions.

Comment: A few commenters urged that the Department modify the Privacy Rule's requirement for a covered entity to take reasonable steps to cure a breach or end a violation of its business associate contract by a business associate. One commenter recommended that the requirement be modified instead to require a covered entity who has knowledge of a breach to ask its business associate to cure the breach or end the violation. Another commenter argued that a covered entity only should be required to take reasonable steps to cure a breach or end a violation if the business associate or a patient reports to the privacy officer or other responsible employee of the covered entity that a misuse of protected health information has occurred.

Response: It is expected that a covered entity with evidence of a violation will ask its business associate, where appropriate, to cure the breach or end the violation. Further, the Department intends that whether a covered entity "knew" of a pattern or practice of the business associate in breach or violation of the contract will be consistent with common principles of law that dictate when knowledge can be attributed to a corporate entity. Regardless, a covered entity's training of its workforce, as required by § 164.530(b), should address the recognition and reporting of violations to the appropriate responsible persons with the entity.

Comment: Several commenters requested clarification as to whether a business associate is required to provide individuals with access to their protected health information as provided by § 164.524 or an accounting of disclosures as provided by § 164.528, or amend protected health information as required by § 164.526. Some commenters wanted clarification that the access and amendment provisions apply to the business associate only if the business associate maintains the original designated record set of the protected health information.

Response: Under the Rule, the covered entity is responsible for fulfilling all of an individual's rights, including the rights of access, amendment, and accounting, as provided for by §§ 164.524, 164.526, and 164.528. With limited exceptions, a covered entity is required to provide an individual access to his or her protected health information in a designated record set. This includes information in a designated record set of a business associate, unless the information held by the business associate merely duplicates the information maintained by the covered entity. However, the Privacy Rule does not prevent the parties from agreeing through the business associate contract that the business associate will provide access to individuals, as may be appropriate where the business associate is the only holder of the, or part of the, designated record set.

As governed by § 164.526, a covered entity must amend protected health information about an individual in a designated record set, including any designated record sets (or copies thereof) held by a business associate. Therefore, the Rule requires covered entities to specify in the business associate contract that the business associate will make protected health information available for amendment and will incorporate amendments accordingly. The covered entity itself is responsible for addressing requests from individuals for amendment and coordinating such requests with its business associate. However, the Privacy Rule also does not prevent the parties from agreeing through the contract that the business associate will receive and address requests for amendment on behalf of the covered entity.

With respect to accounting, § 164.528 requires a covered entity to provide an accounting of certain disclosures, including certain disclosures by its business associate, to the individual upon request. The business associate contract must provide that the business associate will make such information available to the covered entity in order for the covered entity to fulfill its obligation to the individual. As with access and amendment, the parties can agree through the business associate contract that the business associate will provide the accounting to individuals, as may be appropriate given the protected health information held by, and the functions of, the business associate.

Comment: One commenter asked whether a business associate agreement in electronic form, with an electronic signature, would satisfy the Privacy Rule's business associate requirements.

Response: The Privacy Rule generally allows for electronic documents to qualify as written documents for purposes of meeting the Rule's requirements. This also applies with respect to business associate agreements. However, currently, no standards exist under HIPAA for electronic signatures. Thus, in the absence of specific standards, covered entities should ensure any electronic signature used will result in a legally binding contract under applicable State or other law.

Comment: Certain commenters raised concerns with the Rule's classification of attorneys as business associates. A few of these commenters urged the Department to clarify that the Rule's requirement at § 164.504(e)(2)(ii)(H), which requires a contract to state the business associate must make information relating to the use or disclosure of protected health information available to the Secretary for purposes of determining the covered entity's compliance with the Rule, not apply to protected health information in possession of a covered entity's lawyer. Commenters argued that such a requirement threatens to impact attorney-client privilege. Others expressed concern over the requirement that the attorney, as a business associate, must return or destroy protected health information at termination of the contract. It was argued that such a requirement is inconsistent with many current obligations of legal counsel and is neither warranted nor useful.

Response: The Department does not modify the Rule in this regard. The Privacy Rule is not intended to interfere with attorney-client privilege. Nor does the Department anticipate that it will be necessary for the Secretary to have access to privileged material in order to resolve a complaint or investigate a violation of the Privacy Rule. However, the Department does not believe that it is appropriate to exempt attorneys from the business associate requirements.

With respect to the requirement for the return or destruction of protected health information, the Rule requires the return or destruction of all protected health information at termination of the contract only where feasible or permitted by law. Where such action is not feasible, the contract must state that the information will remain protected after the contract ends for as long as the information is maintained by the business associate, and that further uses and disclosures of the information will be limited to those purposes that make the return or destruction infeasible.

Comment: One commenter was concerned that the business associate provisions regarding the return or

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destruction of protected health information upon termination of the business associate agreement conflict with various provisions of the Bank Secrecy Act, which require financial institutions to retain certain records for up to five years. The commenter further noted that there are many State banking regulations that require financial institutions to retain certain records for up to ten years. The commenter recommended that the Department clarify, in instances of conflict with the Privacy Rule, that financial institutions comply with Federal and State banking regulations.

Response: The Department does not believe there is a conflict between the Privacy Rule and the Bank Secrecy Act retention requirements or that the Privacy Rule would prevent a financial institution that is a business associate of a covered entity from complying with the Bank Secrecy Act. The Privacy Rule generally requires a business associate contract to provide that the business associate will return or destroy protected health information upon the termination of the contract; however, it does not require this if the return or destruction of protected health information is infeasible. Return or destruction would be considered "infeasible" if other law, such as the Bank Secrecy Act, requires the business associate to retain protected health information for a period of time beyond the termination of the business associate contract. The Privacy Rule would require that the business associate contract extend the protections of the contract and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. In this case, the business associate would have to limit the use or disclosure of the protected health information to purposes of the Bank Secrecy Act or State banking regulations.

Comment: A commenter requested clarification concerning the economic impact on business associates of the cost-based copying fees allowed to be charged to individuals who request a copy of their medical record under the right of access provided by the Privacy Rule. See § 164.524. According to the commenter, many hospitals and other covered entities currently outsource their records reproduction function for fees that often include administrative costs over and above the costs of copying. In some cases, the fees may be set in accordance with State law. The Privacy Rule, at § 164.524(c)(4), however, permits only reasonable, cost-based copying fees to be charged to individuals seeking to obtain a copy of their medical record under their right of access. The commenter was concerned that others seeking copies of all or part of the medical record, such as payers, attorneys, or entities that have the individual's authorization, would try to claim the limited copying fees provided in § 164.524(c)(4). The commenter asserted that such a result would drastically alter the economics of the outsourcing industry, driving outsourcing companies out of business, and raising costs for the health industry as a whole. A clarification that the fee structure in § 164.524(c)(4) applies only to individuals exercising their right of access was sought.

Response: The Department clarifies that the Rule, at § 164.524(c)(4), limits only the fees that may be charged to individuals, or to their personal representatives in accordance with § 164.502(g), when the request is to obtain a copy of protected health information about the individual in accordance with the right of access. The fee limitations in § 164.524(c)(4) do not apply to any other permissible disclosures by the covered entity, including disclosures that are permitted for treatment, payment or health care operations, disclosures that are based on an individual's authorization that is valid under § 164.508, or other disclosures permitted without the individual's authorization as specified in § 164.512.

The fee limitation in § 164.524(c)(4) is intended to assure that the right of access provided by the Privacy Rule is available to all individuals, and not just to those who can afford to do so. Based on the clarification provided, the Department does not anticipate that this provision will cause any significant disruption in the way that covered entities do business today. To the extent hospitals and other entities outsource this function because it is less expensive than doing it themselves, the fee limitation for individuals seeking access under § 164.524 will affect only a portion of this business; and, in these cases, hospitals should still find it economical to outsource these activities, even if they can only pass on a portion of the costs to the individual.

K. Technical Corrections and Other Clarifications

1. Definition of "Individually Identifiable Health Information"

Part 160 contains the definitions that are relevant to all of the Administrative Simplification provisions at Parts 160 through 164. Although the term "individually identifiable health information" is relevant to Parts 160 through 164, it is defined in § 164.501 of the Privacy Rule. To correct this technical error, the Department proposed to move the definition of individually identifiable health information from § 164.501 to § 160.103.

The limited comment on this proposal supported moving the definition into § 160.103, for the same reasons cited by the Department. Therefore, the Department in this final Rule deletes the definition of "individually identifiable health information" from § 164.501 of the Privacy Rule, and adds the definition to § 160.103.

2. Technical Corrections

The Privacy Rule contained some technical and typographical errors. Therefore, the Department is making the following corrections:

a. In § 160.102(b), beginning in the second line, "section 201(a)(5) of the Health Insurance Portability Act of 1996, (Pub. L. 104–191)," is replaced with "42 U.S.C. 1320a–7c(a)(5)."

b. In § 160.203(b), in the second line, "health information" is replaced with "individually identifiable health information."

c. In § 164.102, "implementation standards" is corrected to read "implementation specifications."

d. In § 164.501, in the definition of "protected health information", "Family Educational Right and Privacy Act" is corrected to read "Family Educational Rights and Privacy Act."

e. In § 164.508(b)(1)(ii), in the fifth line, the word "be" is deleted.

f. In § 164.508(b)(3)(iii), a comma is added after the words "psychotherapy notes."

g. In § 164.510(b)(3), in the third line, the word "for" is deleted.

h. In § 164.512(b)(1)(v)(A), in the fourth line, the word "a" is deleted.

i. In § 164.512(b)(1)(v)(C), in the eighth line, the word "and" is added after the semicolon.

j. In § 164.512(f)(3), paragraphs (ii) and (iii) are redesignated as (i) and (ii), respectively.

k. In § 164.512(g)(2), in the seventh line, the word "to" is added after the word "directors."

l. In § 164.512(i)(1)(iii)(A), in the second line, the word "is" after the word "sought" is deleted.

m. In § 164.514(d)(5), the word "discloses" is corrected to read "disclose."

n. In § 164.520(c), in the introductory text, "(c)(4)" is corrected to read "(c)(3)."

o. In § 164.522(a)(1)(v), in the sixth line, "§§ 164.502(a)(2)(i)" is corrected to read "§§ 164.502(a)(2)(ii)."

p. In § 164.530(i)(4)(ii)(A), in the second line, "the requirements" is replaced with the word "specifications."

IV. Final Regulatory Impact Analysis

Federal law (5 U.S.C. 804(2), as added by section 251 of Pub. L. No. 104–21), specifies that a "major rule" is any rule that the Office of Management and Budget finds is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects in competition, employment, investment productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic and export markets.

The impact of the modifications adopted in this rulemaking will have an annual effect on the economy of at least $100 million. Therefore, this Rule is a major rule as defined in 5 U.S.C. 804(2).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or more, adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. The purpose of the regulatory impact analysis is to assist decision-makers in understanding the potential ramifications of a regulation as it is being developed. The analysis is also intended to assist the public in understanding the general economic ramifications of the regulatory changes.

The December 2000 preamble to the Privacy Rule included a regulatory impact analysis (RIA), which estimated the cost of the Privacy Rule at $17.6 billion over ten years. 65 FR 82462, 82758. The modifications to the Privacy Rule adopted by this rulemaking are a result of comment by the industry and the public at large identifying a number of unintended consequences of the Privacy Rule that could adversely affect access to, or the quality of, health care delivery. These modifications should facilitate implementation and compliance with the Privacy Rule, and lower the costs and burdens associated with the Privacy Rule while maintaining the confidentiality of protected health information. The Department estimates the impact of the modifications adopted in this rulemaking will be a net reduction of costs associated with the Privacy Rule of at least $100 million over ten years.

The modifications affect five areas of the Privacy Rule that will have an economic impact: (1) consent; (2) notice; (3) marketing; (4) research; and (5) business associates. In addition, this rulemaking contains a number of changes that, though important, can be categorized as clarifications of intended policy. For example, the modifications permit certain uses and disclosures of protected health information that are incidental to an otherwise permitted use or disclosure. This change recognizes such practices as the need for physicians to talk to patients in semi-private hospital rooms or nurses to communicate with others in public areas, and avoids the costs covered entities might have incurred to reconfigure facilities as necessary to ensure absolute privacy for these common treatment-related communications. This and other modifications adopted in this rulemaking (other than those described below) clarify the intent of the standards in the Privacy Rule and, as such, do not change or alter the associated costs that were estimated for the Privacy Rule. Public comments have indicated that these provisions would be interpreted in a way that could significantly increase costs. However, because that was not the intent of the December 2000 Privacy Rule, the Department is not ascribing cost savings to the clarification of these provisions.

A. Summary of Costs and Benefits in the December 2000 Regulatory Impact Statement

The Privacy Rule was estimated to produce net costs of $17.6 billion, with net present value costs of $11.8 billion (2003 dollars) over ten years (2003–2012). The Department estimates the modifications in this proposal would lower the net cost of the Privacy Rule by approximately $100 million over ten years.

Measuring both the economic costs and benefits of health information privacy was recognized as a difficult task. The paucity of data and incomplete information on current industry privacy and information system practices made cost estimation a challenge. Benefits were difficult to measure because they are, for the most part, inherently intangible. Therefore, the regulatory impact analysis in the Privacy Rule focused on the key policy areas addressed by the privacy standards, some of which are affected by the modifications adopted in this rulemaking.

B. Proposed Modifications To Prevent Barriers to Access to or Quality of Health Care

The modifications adopted in this rulemaking are intended to address the possible adverse effects of the final privacy standards on an individual's access to, or the quality of, health care. The modifications touch on five of the key policy areas addressed by the final regulatory impact analysis, including consent, research, marketing, notice, and business associates.

The Department received few comments on this section of the March 2002 proposal. Most of the comments on the cost implications of the modifications indicated a general belief that the costs would be higher than the Department estimated. None of commenters, however, provided sufficient specific information concerning costs to permit the Department to adjust its estimates. The public comment on each of the key policy areas is summarized in the following sections. However, the estimated cost impact of each area has not changed.

1. Consent

Under the December 2000 Privacy Rule, a covered health care provider with a direct treatment relationship with an individual must have obtained the individual's prior written consent for use or disclosure of protected health information for treatment, payment, or health care operations, subject to a limited number of exceptions. Other covered health care providers and health plans may have obtained such a consent if they so chose. The initial cost of the consent requirement was estimated in December 2000 to be $42 million. Based on assumptions for growth in the number of patients, the total costs for ten years was estimated to be $103 million. See 65 FR 82771 (December 28, 2000).[2]

The modifications eliminate the consent requirement. The consent requirement posed many difficulties for an individual's access to health care, and was problematic for operations essential for the quality of the health

[2] The total cost for consent in the regulatory impact analysis showed an initial cost of $166 million and $227 million over ten years. Included in these total numbers is the cost of tracking patient requests to restrict the disclosure of their health information. This right is not changed in these modifications. The numbers here represent the costs associated with the consent functions that are proposed to be repealed.

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care delivery system. However, any health care provider or health plan may choose to obtain an individual's consent for treatment, payment, and health care operations. The elimination of the consent requirement reduces the initial cost of the privacy standards by $42 million in the first year and by $103 million over ten years.

As explained in detail in section III.D.1. above, the Department received many comments supporting the proposed elimination of the consent requirement on the ground that it created unintended barriers to timely provision of care, particularly with respect to use and disclosure of health information prior to a health care provider's first face-to-face contact with the individual. These and other barriers discussed above would have entailed costs not anticipated in the economic analyses in the Privacy Rule. These comments also revealed that the consent requirements create administrative burdens, for example, with respect to tracking the status and revocation of consents, that were not foreseen and thus not included in that economic analysis. Therefore, while the estimated costs of the consent provisions over a ten-year period were $103 million, the comments suggest that the costs would likely be much higher. If these comments are accurate, the cost savings associated with retracting the consent provisions would, therefore, also be significantly higher than $103 million over a ten-year period.

Response to Public Comments

Comment: As discussed in section III.H. above, many commenters expressed support for the proposed requirement that certain health care providers make a good faith effort to obtain a written acknowledgment of receipt of the notice, as a workable alternative to the Rule's prior consent requirement. Many of these commenters conveyed support for the flexibility of the requirement, and most commenters agreed that eliminating the consent requirement would mean considerable savings.

Response: The Department received no public comment containing empirical, direct evidence on the estimates of financial impact that either supported or contradicted the Department's calculations. Therefore, our estimates remain unchanged.

Comment: Many other commenters confused the net savings associated with the Administrative Simplification provisions with cost savings associated with the Privacy Rule, and relied on this misinformation to argue in favor of retaining the consent provisions for treatment, payment, and health care operations.

Response: These commenters were essentially propounding a policy choice and not making a comment on the validity of the estimates for cost savings associated with the elimination of the consent requirement. The comments did not include any reliable estimation that would cause the Department to reevaluate its savings estimate.

2. Notice

In eliminating the consent requirement, the Department preserves the opportunity for a covered health care provider with a direct treatment relationship with an individual to engage in a meaningful communication about the provider's privacy practices and the individual's rights by strengthening the notice requirements. Under the Privacy Rule, these health care providers are required to distribute to individuals their notice of privacy practices no later than the date of the first service delivery after the compliance date. The modifications do not change this distribution requirement, but add a new documentation requirement. A covered health care provider with a direct treatment relationship is required to make a good faith effort to obtain the individual's acknowledgment of receipt of the notice provided at the first service delivery. The form of the acknowledgment is not prescribed and can be as unintrusive as retaining a copy of the notice initialed by the individual. If the provider's good faith effort fails, documentation of the attempt is all that is required. Since the modification does not require any change in the form of the notice or its distribution, the ten-year cost estimate of $391 million for these areas in the Privacy Rule's impact analysis remains the same. *See* 65 FR 82770.

However, the additional effort by direct treatment providers in obtaining and documenting the individual's acknowledgment of receipt of the notice adds costs. This new requirement attaches only to the initial provision of notice by a direct treatment provider to an individual after the compliance date. Under the modification, providers have considerable flexibility on how to achieve this. Some providers could choose to obtain the required written acknowledgment on a separate piece of paper, while others could take different approaches, such as an initialed check-off sheet or a signature line on the notice itself with the provider keeping a copy.

In its December 2000 analysis, the Department estimated that the consent cost would be $0.05 per page based on the fact that the consent had to be a stand alone document requiring a signature. This modification to the notice requirement provides greater flexibility and, therefore, greater opportunity to reduce costs compared to the consent requirement. Without knowing exactly how direct treatment providers will decide to exercise the flexibility provided, the Department cannot, with any precision, estimate the cost to implement this provision. In the NPRM, the Department estimated that the flexibility of the notice acknowledgment requirement would mean that the cost of the notice acknowledgment would be 20 percent less than the cost of the signed consent. The Department did not receive any comments on this estimate and, therefore, does not change it's estimate that the additional cost of the signature requirement, on average, is $0.03 per notice. Based on data obtained from the Medical Expenditure Panel Survey (MEPS), which estimate the number of patient visits in a year, the Department estimates that in the first year there would be 816 million notices distributed to which the new good faith acknowledgment requirement will attach. Over the next nine years, the Department estimates, again based on MEPS data, that there would be 5.3 billion visits to health care providers by new patients (established patients will not need to receive another copy of the notice). At $0.03 per document, the first year cost will be $24 million and the total cost over ten years will be $184 million.

Response to Public Comments

Comment: As discussed in section III.H. above, a number of other commenters expressed concern over the administrative and financial burden the requirement to obtain a good faith acknowledgment of the notice would impose.

Response: The Department received no public comment containing empirical, direct evidence on the estimates of financial impact that either supported or contradicted the Department's calculations. Therefore, our estimates remain unchanged.

Comment: One commenter requested that model language for the notice be developed as a means of reducing the costs associated with Privacy Rule compliance.

Response: As stated in section III.H. above, in the final Rule, the Department sought to retain the maximum flexibility by requiring only that the acknowledgment be in writing and does not prescribe other details of the form that the acknowledgment must take or the process for obtaining the acknowledgment. This permits covered health care providers the discretion to design the acknowledgment process as best suited to their practices, including the option of obtaining an electronic acknowledgment regardless of whether the notice is provided electronically or on paper. Furthermore, there is no change to the substance of the notice and the commenter provided no empirical, direct benefit/cost data in support of their proposal.

Comment: The Department received comments expressing opposition to obtaining written acknowledgment of the receipt of the notice because it is too costly. Others commented that the acknowledgment increases the administrative burden as it would not replace a signed consent for uses and disclosures of health information when State law requires providers to obtain consent.

Response: The Department received no public comment containing empirical, direct evidence on the estimates of financial impact that either supported or contradicted the Department's calculations. Therefore, our estimates remain unchanged.

Comment: A number of commenters expressed concern over the perceived increase in liability that would arise from the discretionary standard of "good faith" efforts (i.e., risk of tort-based litigation for private right of action under State laws).

Response: The Department received no estimate of the impact of this perceived risk of liability. As no empirical, direct evidence on the estimates of financial impact that either supported or contradicted the Department's calculations was supplied, our estimates remain unchanged.

3. Business Associates

The Privacy Rule requires a covered entity to have a written contract, or other arrangement, that documents satisfactory assurances that a business associates will appropriately safeguard protected health information in order to disclose protected health information to the business associate. The regulatory impact analysis for the Privacy Rule provided cost estimates for two aspects of this requirement. In the Privacy Rule, $103 million in first-year costs was estimated for development of a standard business associate contract language. (There were additional costs associated with these requirements related to the technical implementation of new data transfer protocols, but these are not affected by the modification adopted here.) In addition, $197 million in first-year costs and $697 million in total costs over ten years were estimated in the Privacy Rule for the review and oversight of existing business associate contracts.

The modifications do not change the standards for business associate contracts or the implementation specifications with respect to the covered entity's responsibilities for managing the contracts. However, the Department includes sample business associate contract language as part of the preamble to this rulemaking. This sample language is only suggested language and is not a complete contract. The sample language is designed to be adapted to the business arrangement between the covered entity and the business associate and to be incorporated into a contract drafted by the parties. Certain provisions of the sample language have been revised, as described in more detail below, based on the public comment received on the proposal. The December 2000 regulatory impact analysis assumed the development of such standard language by trade and professional associations. While this has occurred to some degree, the Department received strong public comment supporting the for sample contract language. The Department expects that trade and professional associations will continue to provide assistance to their members. However, the sample contract language in this rulemaking will simplify their efforts by providing a base from which they can develop language. The Department had estimated $103 million in initial year costs for this activity based on the assumption it would require one hour per non-hospital provider and two hours for hospitals and health plans to develop contract language and to tailor the language to the particular needs of the covered entity. The additional time for hospitals and health plans reflected the likelihood that these covered entities would have a more extensive number of business associate relationships. Because there will be less effort expended than originally estimated in the Privacy Rule, the Department estimates a reduction in contract development time by one-third because of the availability of the model language. Thus, the Department now estimates that this activity will take 40 minutes for non-hospital providers and 80 minutes for hospitals and health plans. The Department estimates that the savings from the proposed business associate contract language would be approximately $35 million in the first year. The changes being adopted to the sample contract language do not affect these cost estimates.

The Department, in this rulemaking, also gives most covered entities additional time to conform written contracts to the privacy standards. Under the modification, a covered entity's written business associate contracts, existing at the time the modifications become effective, are deemed to comply with the privacy standards until such time as the contracts are renewed or modified, or until April 14, 2004, whichever is earlier. The effect of this proposal is to spread first-year costs over an additional year, with a corresponding postponement of the costs estimated for the out years. However, the Department has no reliable information as to the number of contracts potentially affected by the modification or the average delay that will occur. Therefore, the Department is uncertain about the extent of the cost savings attributable to this modification.

Response to Public Comments

Comment: While many commenters supported the business associate transition provisions as helpful to reducing the administrative burden and cost of compliance, commenters argued that the business associate provisions would still be very burdensome and costly to implement, especially for small and solo businesses.

Response: The Department acknowledges that there are compliance costs associated with the business associate standards. However, no commenters supplied empirical, direct evidence in support of or contradictory to the Department's estimates of the cost savings associated with the business associate transition provisions. Therefore, our estimates remain unchanged.

Comment: Some commenters disputed the estimated costs of complying with the business associate requirements based on the quantity of contracts (with suppliers, physicians, local agencies and national concerns), and the number of hours necessary to individually tailor and renegotiate all of these contracts.

Response: These comments address the underlying costs of the business associate requirements and do not address the reduction in costs afforded through the sample business associate agreement language. Moreover, no empirical, direct evidence, based on accomplished workload rather than extrapolations of singular events, were provided to contradict the Department's calculations. Therefore, our estimates remain unchanged.

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4. Marketing

Under § 164.514(e) of the December 2000 Privacy Rule, certain health-related communications were subject to special conditions on marketing communications, if they also served to promote the use or sale of a product or service. These marketing conditions required that particular disclosures be made as part of the marketing materials sent to individuals. Absent these disclosures, protected health information could only be used or disclosed in connection with such marketing communications with the individual's authorization. The Department is aware that the Privacy Rule's § 164.514(e) conditions for health-related communications created a potential burden on covered entities to make difficult assessments regarding many of their communications. The modifications to the marketing provisions relieve the burden on covered entities by making most marketing subject to an authorization requirement (*see* § 164.508(a)(3)), making clear that necessary treatment and health care operations activities were not marketing, and eliminating the § 164.514(e) conditions on marketing communications.

In developing the December 2000 impact analysis for the Privacy Rule, the Department was unable to estimate the cost of the marketing provisions. There was too little data and too much variation in current practice to estimate how the Privacy Rule might affect marketing. The same remains true today. However, the modifications relieve burden on the covered entities in making communications for treatment and certain health care operations relative to the requirements in the Privacy Rule. Although the Department cannot provide a quantifiable estimate, the effect of these modifications is to lower the costs associated with the Privacy Rule.

Response to Public Comment

Comment: Many providers, especially mental health providers, opposed the changes to marketing and consent as they fear increased access to individually identifiable health information would cause patients to refrain from seeking treatment. By not seeking timely treatment, the medical conditions could worsen, and result in increased or additional costs to society.

Response: The commenters did not attempt to segment out the cost attributed to marketing alone. In fact, no empirical, direct evidence on the estimates of financial impact that either supported or contradicted the Department's calculations was provided. Therefore, our estimates remain unchanged.

5. Research

In the final impact analysis of the December 2000 Privacy Rule, the Department estimated the total cost of the provisions requiring documentation of an Institutional Review Board (IRB) or Privacy Board waiver of individual authorization for the use or disclosure of protected health information for a research purpose as $40 million for the first year and $585 million for the ten-year period. The costs were estimated based on the time that an IRB or Privacy Board would need to consider a request for a waiver under the criteria provided in the Privacy Rule. *See* 65 FR 82770–82771 (December 28, 2000).

The modifications simplify and reduce the number of criteria required for an IRB or Privacy Board to approve a waiver of authorization to better conform to the Common Rule's waiver criteria for informed consent to participate in the research study. The Department estimates that the net effect of these modifications is to reduce the time necessary to assemble the waivers and for an IRB or Privacy Board to consider and act on waiver requests by one quarter. The Department estimates these simplifications would reduce the expected costs first year costs by $10 million and the ten year costs by $146 million, relative to the December 2000 Privacy Rule. Although the Department requested information to better assess this cost savings, the public comment period failed to produce any sound data. Therefore, the Department's estimates have not changed.

The Department adopts three other modifications to simplify the Privacy Rule requirements to relieve the potential administrative burden on research. First, the modifications permit a covered entity to use and disclose protected health information in the form of a limited data set for research, public health, and health care operations. A limited data set does not contain any direct identifiers of individuals, but may contain any other demographic or health information needed for research, public health or health care operations purposes. The covered entity must obtain a data use agreement from the recipient of a limited data set pursuant to which the recipient agrees to restrict use and disclosure of the limited data set and not to identify or contact any individual. With a data use agreement, a researcher may access a limited data set without obtaining individual authorization or having to go through an IRB or a Privacy Board for a waiver of the authorization. (*See* discussion at III.G.2.) Second, the modifications simplify the accounting procedures for research disclosures by the covered entity by eliminating the need to account for disclosures which the individual has authorized or which are part of a limited data set, and by providing a simplified basis to account for a research disclosure involving 50 or more records. (*See* discussion at III.F.2.) Third, the modifications simplify the authorization process for research to facilitate the combining of the informed consent for participation in the research itself with an authorization required under the Privacy Rule. (*See* discussion at III.E.2.) Any cost savings attributed to the later two modifications would accrue primarily to the covered entity disclosing protected health information for research purposes and, therefore, would not affect the costs estimated here for the impact of the Privacy Rule on IRBs.

With regard to limited data sets, the Department anticipates that the modification will avoid IRBs having to review and approve researchers' requests for waiver of authorization for numerous studies that are undertaken today without IRB review and approval. For example, a researcher may not need IRB approval or waiver of informed consent to collect health information that is linked to the individual only by inclusion of the individual's zip code as this may not be personally identifying information under the Common Rule. However, this information would not be considered de-identified information under the Privacy Rule and it could not be disclosed to the researcher without the individual's authorization or an IRB waiver of that authorization. With the limited data set, research that does not require direct identifiers can continue to go on expeditiously without adding burden to IRBs and Privacy Boards. Similarly, limited data sets, similar to the Hospital Discharge Abstract data, will permit much useful information to be available for research, public health, and health care operations purposes.

Although there was broad support for limited data sets in the comments received by the Department, we do not have sufficient information to estimate the amount of research that currently occurs without IRB review or approval and which, but for the provision on limited data sets, would have had to involved the IRB to meet the use and disclosure requirements of the Privacy Rule. Nor did the comments supply information upon which the Department could reasonably rely in making a estimate of the cost savings. Therefore, the Department does not increase its estimated savings for research to reflect this modification, although we are confident that the overall impact of the Privacy Rule on research will be much lower based on the modifications adopted in this rulemaking.

Response to Public Comments

Comment: The Department received a number of comments that argued that the Privacy Rule would increase costs and workloads for researchers and research institutions. One commenter delineated these issues as: (1) An increased difficulty in recruiting research participants; (2) the need for increased IRB scrutiny (and the associated resource costs); and (3) the additional paperwork and documentation required.

Response: The Department recognized the impact of the final Privacy Rule on researchers and research institutions and provided a cost estimate for this impact as part of the Final Rule. Likewise, the NPRM offered modifications, such as more closely aligning the Privacy and Common Rule criteria, to ease the burden and, correspondingly, estimated cost savings of these proposed modifications. The specific comments appear to dispute the research cost estimates in the final Rule, as their delineated issues are not reflective of the modifications and cost savings specified in the NPRM. In any event, no reliable empirical, direct information on the estimates of financial impact that either supported or contradicted the Department's calculations was provided. Therefore, our estimates remain unchanged.

PRIVACY RULE MODIFICATIONS—TEN-YEAR COST ESTIMATES

Policy	Original cost	Modification	Change due to modification
Consent	$103 million	Provision removed	−$103 million.[1]
Notice	$391 million	Good faith effort to obtain acknowledgment of receipt.	+$184 million.
Marketing	Not scored due to lack of data	Fewer activities constitute marketing	Reduction in cost but magnitude cannot be estimated.
Business Associates	$103 million for contract modifications.	Model language provided	−$35 million.
Research	$585 million	Waiver requirements simplified	−$146 million.
Net Change			−$100 million.

[1] As noted above in the discussion on consent, while the estimated costs of the consent provisions were $103 million, comments have suggested that the costs were likely to be much higher. If these comments are accurate, the cost savings associated with retracting the consent provisions would, therefore, also be significantly higher than $103 million.

C. Costs to the Federal Government

The modifications adopted in this Rule will result in small savings to the Federal government relative to the costs that would have occurred under the Privacy Rule. Although there will be some increase in costs for the new requirements for obtaining acknowledgment for receipt of the notice, these costs are at least partially offset by the savings in the elimination of the consent. As discussed above, to the extent concerns are accurate that the costs for the consent provisions are much higher than estimated, the cost savings associated with the retraction of these provisions would, therefore, be significantly higher. The Department does not believe the Federal government engages in significant marketing as defined in the Privacy Rule. The Federal government will have business associates under the Privacy Rule, and, therefore, the sample language proposed in this rulemaking will be of benefit to Federal departments and agencies. The Department has not estimated the Federal government's portion of the $35 million savings it estimated for this change. Similarly, the Federal government, which conducts and sponsors a significant amount of research that is subject to IRBs, will realize some savings as a result of the research modifications in this rulemaking. The Department does not have sufficient information, however, to estimate the Federal government's portion of the total $146 million savings with respect to research modifications.

D. Costs to State and Local Government

The modifications also may affect the costs to State and local governments. However, these effects likely will be small. As with the Federal government, State and local governments will have any costs of the additional notice requirement offset by the savings realized by the elimination of the consent requirement. As discussed above, to the extent concerns are accurate that the costs for the consent provisions are much higher than estimated, the cost savings associated with the retraction of these provisions would, therefore, be significantly higher. State and local governments could realize savings from the sample language for business associates and the changes in research, but the savings are likely to be small. The Department does not have sufficient information to estimate the State and local government's share of the net savings from the modifications.

E. Benefits

The benefits of various provisions of these modifications will be strong privacy protections for individuals coupled with increased access to quality health care, and ease of compliance with privacy protections by covered entities. The changes will have the benefit of eliminating obstacles that could interfere with patient access to timely and high quality health care. The modifications will also improve quality health care by removing obstacles that may have interfered with research activities that form the basis of advancements in medical technology and provide greater understanding of disease. It is extremely difficult to quantify the benefits of enhanced privacy of medical records and elimination of obstacles to research and quality activities. This section provides examples of the qualitative benefits of these Privacy Rule modifications.

1. Strengthened Notice, Flexible Consent

The new requirement that a covered entity make a good faith attempt to obtain written acknowledgment of the notice of privacy practices will increase privacy protections to patients. The strengthened notice requirement will focus individuals on uses and disclosures of their health information, and assure that individuals have the opportunity to discuss privacy concerns with the health care providers with whom they have direct treatment relationships. Awareness of privacy practices should provide patients with a greater degree of comfort in discussing sensitive personal information with

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their doctors. The strengthened notice standard was adopted in tandem with changes to make consent more flexible. The changes to the consent requirement have the benefit of removing significant barriers to health care. In many circumstances, the consent requirement would have resulted in delayed treatment and, in other circumstances, would have required patients to be greatly inconvenienced at a time when they needed care, by forcing additional trips simply to sign consent forms. These modifications have the benefit of removing barriers to access to health care that would have resulted from the consent requirement while preserving important privacy protections in the notice standard.

2. Research

Research is key to the continued availability of high quality health care. The modifications remove potential barriers to research. For example, the modifications streamline the criteria to be used by IRBs or Privacy Boards in approving a waiver of individual authorization for research that could not otherwise be done and ensure the criteria are compatible with similar waiver determinations under the Common Rule. Thus, administrative burdens on IRBs and Privacy Boards are eased, without diminishing the health information privacy and confidentiality standards for research. In addition, the research transition provisions have been modified to ensure that the Privacy Rule does not interfere with ongoing or future research for which an individual has granted permission to use his information. By permitting this research to continue, these modifications make sure that vast research resources continue to be usable for important research that result in development of new medical technology and increased quality of health care.

3. Sharing Information for Quality Activities and Public Health

Health plans and health care providers play a valuable role in assessing the quality of health care and improving health care outcomes. The modifications ensure access to health information needed by covered entities and others involved in quality activities. The increased sharing of information will help to limit medical error rates and to determine appropriate, high quality treatment for specific conditions by encouraging these issues to be studied and allowing benchmarking against similar entities. The modifications, in creating a limited data set, also encourages private entities to continue studies and research in support of public health activities. These activities help reduce the spread and occurrence of diseases.

4. Availability of Information About Treatment Alternatives

Understanding treatment alternatives is an important factor in increasing an individual's involvement in his or her own treatment and making informed health care decisions. By streamlining the marketing requirements, the modifications make it easier for a covered entity to understand that they may share valuable information about treatment alternatives with their patients or enrollees, and the conditions for doing so. These modifications make sure that covered entities will be permitted to continue to share important treatment alternative information that gives patients knowledge about newer, less expensive, and/or more appropriate health care options.

F. Alternatives

In July 2001, the Department clarified the Privacy Rule in guidance, where feasible, to resolve some of the issues raised by commenters. Issues that could not adequately be addressed through guidance because of the need for a regulatory change are addressed in this rulemaking. The Department examined a number of alternatives to these modifications. One alternative was to not make any changes to the Privacy Rule, but this option was rejected for the reasons explained throughout the preamble. The Department also considered various alternatives to specific provisions in the development of this final Rule. These alternatives are generally discussed above, where appropriate.

V. Preliminary Regulatory Flexibility Analysis

The Department also examined the impact of this proposed Rule as required by the Small Business Regulatory Enforcement and Fairness Act (SBREFA) (5 U.S.C. 601, *et seq.*). SBREFA requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities.

The law does not define the thresholds to use in implementing the law and the Small Business Administration discourages establishing quantitative criteria. However, the Department has long used two criteria—the number of entities affected and the impact on revenue and costs—for assessing whether a regulatory flexibility analysis is necessary. Department guidelines state that an impact of three to five percent should be considered a significant economic impact. Based on these criteria, the Department has determined that a regulatory flexibility analysis is not required.

As described in the December 2000 Regulatory Flexibility Analysis for the Privacy Rule, most covered entities are small businesses—approximately 465,000. *See* Table A, 65 FR 82780 (December 28, 2000). Lessening the burden for small entities, consistent with the intent of protecting privacy, was an important consideration in developing these modifications. However, as discussed in the Final Regulatory Impact Analysis, above, the net affect of the modifications is an overall savings of approximately $100 million over ten years. Even if all of this savings were to accrue to small entities (an over estimation), the impact per small entity would be *de minimis*.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, the Department is required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that the Department solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of the agency;
- The accuracy of the estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Section A below summarizes the proposed information collection requirements on which we explicitly seek, and will consider, public comment for 30 days. Due to the complexity of this regulation, and to avoid redundancy of effort, we are referring readers to Section V (Final Regulatory Impact Analysis published in the **Federal Register** on December 28, 2000), to review the detailed cost assumptions associated with these PRA requirements.

Section B below references the HIPAA Privacy Rule regulation sections published for 60-day public comment on November 3, 1999, and for 30-day public comment on December 28, 2000,

in compliance with the PRA public comment process. These earlier publications contained the information collection requirements for these sections as required by the PRA. The portions of the Privacy Rule, included by reference only in Section B, have not changed subsequent to the two public comment periods. Thus, the Department has fulfilled its statutory obligation to solicit public comment on the information collection requirements for these provisions. The information in Section B is pending OMB PRA approval, but is not reopened for comment. However, for clarity purposes, we will upon this publication submit to OMB for PRA review and approval the entire set of information collection requirements required referenced in §§ 160.204, 160.306, 160.310, 164.502, 164.504, 164.506, 164.508, 164.510, 164.512, 164.514, 164.520, 164.522, 164.524, 164.526, 164.528, and 164.530.

Section A

1. Section 164.506—Consent for Treatment, Payment, and Health Care Operations

Under the Privacy Rule, as issued in December 2000, a covered health care provider that has a direct treatment relationship with individuals would have had, except in certain circumstances, to obtain an individual's consent to use or disclose protected health information to carry out treatment, payment, and health care operations. The amended final Rule eliminates this requirement.

2. Section 164.520—Notice of Privacy Practices for Protected Health Information

The amended final Privacy Rule imposes a good faith effort on direct treatment providers to obtain an individual's acknowledgment of receipt of the entity's notice of privacy practices for protected health information, and to document such acknowledgment or, in the absence of such acknowledgment, the entity's good faith efforts to obtain it.

The underlying requirements for notice of privacy practices for protected health information are not changed. These requirements provide that, except in certain circumstances set forth in this section of the Rule, individuals have a right to adequate notice of the uses and disclosures of protected health information that may be made by the covered entity, and of the individual's rights and the covered entity's legal duties with respect to protected health information. To comply with this requirement a covered entity must provide a notice, written in plain language, that includes the elements set forth at § 164.520(b). For health plans, there will be an average of 160.2 million notices each year. We assume that the most efficient means of distribution for health plans will be to send them out annually as part of the materials they send to current and potential enrollees, even though it is not required by the regulation. The number of notices per health plan per year would be about 10,570. We further estimate that it will require each health plan, on average, only 10 seconds to disseminate each notice. The total annual burden associated with this requirement is calculated to be 267,000 hours.

Health care providers with direct treatment relationships would:

- Provide a copy of the notice to an individual at the time of first service delivery to the individual;
- Make the notice available at the service delivery site for individuals to request and take with them;
- Whenever the content of the notice is revised, make it available upon request and post it, if required by this section, in a location where it is reasonable to expect individuals seeking services from the provider to be able to read the notice.

The annual number of notices disseminated by all providers is 613 million. We further estimate that it will require each health care provider, on average, 10 seconds to disseminate each notice. This estimate is based upon the assumption that the required notice will be incorporated into and disseminated with other patient materials. The total annual burden associated with this requirement is calculated to be 1 million hours. However, the amended final Privacy Rule also imposes a good faith effort on direct treatment providers to obtain an individual's acknowledgment of receipt of the provider's notice, and to document such acknowledgment or, in the absence of such acknowledgment, the provider's good faith efforts to obtain it. The estimated burden for the acknowledgment of receipt of the notice is 10 seconds for each notice. This is based on the fact that the provider does not need to take elaborate steps to receive acknowledgment. Initialing a box on an existing form or some other simple means will suffice. With the annual estimate of 613,000,000 acknowledgment forms it is estimated that the acknowledgment burden is 1,000,000 hours.

A covered entity is also required to document compliance with the notice requirements by retaining copies of the versions of the notice issued by the covered entity, and a direct treatment provider is required to retain a copy of each individual's acknowledgment or documentation of the good faith effort as required by § 164.530(j).

3. Appendix to Preamble—Sample Business Associate Contract Provisions

The Department also solicits public comments on the collection of information requirements associated with the model business associate contract language displayed in the Appendix to this preamble Rule. The language displayed has been changed in response to comments on the language that was published with the Notice of Proposed Rulemaking on March 27, 2002. The Department provided the model business associate contract provisions in response to numerous requests for guidance. These provisions were designed to help covered entities more easily comply with the business associate contract requirements of the Privacy Rule. However, use of these model provisions is not required for compliance with the Privacy Rule. Nor is the model language a complete contract. Rather, the model language is designed to be adapted to the business arrangement between the covered entity and the business associate and to be incorporated into a contract drafted by the parties.

Section B

As referenced above, the Department has complied with the public comment process as it relates to the information collection requirements contained in the sections of regulation referenced below. The Department is referencing this information solely for the purposes of providing an overview of the regulation sections containing information collection requirements established by the final Privacy Rule.

Section 160.204—Process for Requesting Exception Determinations
Section 160.306—Complaints to the Secretary
Section 160.310—Responsibilities of Covered Entities
Section 164.502—Uses and Disclosures of Protected Health Information: General Rules
Section 164.504—Uses and Disclosures—Organizational Requirements
Section 164.508—Uses and Disclosures for Which Individual Authorization Is Required
Section 164.510—Uses and Disclosures Requiring an Opportunity for the Individual to Agree or to Object
Section 164.512—Uses and Disclosures for Which Consent, an Authorization, or Opportunity to Agree or Object is Not Required
Section 164.514—Other Procedural Requirements Relating to Uses and

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Disclosures of Protected Health Information
Section 164.522—Rights to Request Privacy Protection for Protected Health Information
Section 164.524—Access of Individuals to Protected Health Information
Section 164.526—Amendment of Protected Health Information
Section 164.528—Accounting for Disclosures of Protected Health Information
Section 164.530—Administrative Requirements

C. Comments on Information Collection Requirements in Section A

The Department has submitted a copy of these modifications to the Privacy Rule to OMB for its review and approval of the information collection requirements summarized in Section A above. If you comment on any of the modifications to the information collection and record keeping requirements in §§ 164.506, 164.520, and/or the model business associate contract language please mail copies directly to the following:

Center for Medicaid and Medicare Services, Information Technology Investment Management Group, Division of CMS Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850, ATTN: John Burke, HIPAA Privacy,
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, ATTN: Brenda Aguilar, CMS Desk Officer.

VII. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million in a single year. A final cost-benefit analysis was published in the Privacy Rule of December 28, 2000 (65 FR 82462, 82794). In developing the final Privacy Rule, the Department adopted the least burdensome alternatives, consistent with achieving the Rule's goals. The Department does not believe that the amendments to the Privacy Rule would qualify as an unfunded mandate under the statute.

VIII. Environmental Impact

The Department has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Executive Order 13132: Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. The Federalism implications of the Privacy Rule were assessed as required by Executive Order 13132 and published in the Privacy Rule of December 28, 2000 (65 FR 82462, 82797). The amendments with the most direct effect on Federalism principles concerns the clarifications regarding the rights of parents and minors under State law.

The amendments make clear the intent of the Department to defer to State law with respect to such rights. Therefore, the Department believes that the amended Privacy Rule would not significantly affect the rights, roles and responsibilities of States.

X. Sample Business Associate Contract Provisions—Appendix

March 2002 NPRM. In response to requests for guidance, the Department provided sample language for business associate contracts. The provisions were provided as an appendix to the preamble and were intended to serve as guidance for covered entities to assist in compliance with the business associate provisions of the Privacy Rule. The proposal was not a model contract, but rather was sample language that could be included in a contract.

Overview of Public Comment. The Department received a small number of comments addressing the sample business associate contract provisions. The comments fell into four general categories. Most commenters were pleased with the Department's guidance for business associate contracts and expressed appreciation for such guidance. There were some commenters that thought the language was insufficient and requested the Department create a complete model contract not just sample provisions. The third category of commenters thought the provisions went further than the requirements in the regulation and requested specific changes to the sample language. In addition, a few commenters requested that the Department withdraw the sample provisions asserting that they will eliminate the potential of negotiating or establishing a business associate contract that is tailored to the precise requirements of the particular relationship.

Final Modifications. This Rule continues to include sample business associate contract provisions as an appendix to the preamble, because the majority of commenters that addressed this subject found these provisions to be helpful guidance in their compliance efforts with the business associate contract requirements in the Privacy Rule.

The Department has made several changes to the language originally proposed in response to comment. Although these are only sample provisions, the changes, which are described below, should help to clear up some confusion.

First, the Department has changed the name from "model language" to "sample language" to clarify that the provisions are merely sample clauses, and that none are required to be in a business associate contract so long as the contract meets the requirements of the regulation. The sample language continues to indicate, using square brackets, those instances in which a provision or phrase in a provision applies only in certain circumstances or is optional.

The Department has made three modifications in the Obligations and Activities of the Business Associate provisions. First, there are modifications to clarify that the parties can negotiate appropriate terms regarding the time and manner of providing access to protected health information in a designated record set, providing information to account for disclosures of protected health information, and for making amendments to protected health information in a designated record set. Although the language clarifies that the terms are to be negotiated by the Parties, the agreement must permit the covered entity to comply with its obligations under the Privacy Rule.

Second, the Department has amended the sample language regarding review of business associate practices, books, and records to clarify that the contract must permit the Secretary, not the covered entity, to have access to such records, including protected health information, for purposes of determining the covered entity's compliance with the Privacy Rule. The sample language continues to include the option that parties additionally agree that the business associate shall disclose this information to the covered entity for compliance purposes to indicate that this is still an appropriate approach for this purpose. The modifications also clarify that parties can negotiate the time and manner of providing the covered entity with access to the business associate's internal practices, books, and records.

Finally, the Department has modified the sample language to clarify that business associates are only required to notify the covered entity of uses and disclosures of protected health information not provided for by the agreement of which it becomes aware in order to more closely align the sample contract provisions with the regulation text. The Department did not intend to imply a different standard than that included in the regulation.

The Department has modified the General Use and Disclosure sample language to clarify that there are two possible approaches, and that in each approach the use or disclosure of protected health information by a business associate shall be consistent with the minimum necessary policies and procedures of the covered entity.

The Department has adopted one change to the sample language under Specific Use and Disclosure that clarifies that a permitted specific use of protected health information by the business associate includes reporting violations of law to appropriate Federal and State authorities. This would permit a business associate to use or disclose protected health information in accordance with the standards in § 164.502(j)(1). We indicate that this is optional text, not required by the Privacy Rule. Because we have included this language as sample language, we have deleted discussion of this issue in the statement preceding the sample business associate contract provisions.

Under Obligations of Covered Entity, the Department has clarified that covered entities need only notify business associates of a restriction to the use or disclosure of protected health information in its notice of privacy practices to the extent that such restriction may affect the business associates' use or disclosure of protected health information. The other provisions requiring the covered entity to notify the business associate of restrictions to the use or disclosure of protected health information remain and have been modified to include similar limiting language.

In the Term and Termination provisions, the Department has added clarifying language that indicates that if neither termination nor cure are feasible, the covered entity shall report the violation to the Secretary. We have also clarified that the parties should negotiate how they will determine whether the return or destruction of protected health information is infeasible.

Finally, the Department has clarified the miscellaneous provision regarding interpretation to clarify that ambiguities shall be resolved to permit the covered entity's compliance with the Privacy Rule.

Each entity should carefully analyze each of the sample provisions to ensure that it is appropriate given the specific business associate relationship. Some of the modifications are intended to address some commenters concerns that the sample language is weighted too heavily in favor of the covered entity. Individual parties are reminded that all contract provisions are subject to negotiation, provided that they are consistent with the requirements in the Privacy Rule. The sample language is not intended to, and cannot, substitute for responsible legal advice.

Response to Other Public Comments

Comment: Several commenters noted that the sample language was missing certain required contractual elements, such as an effective date, insurance and indemnification clauses, procedures for amending the contract, as well as other provisions that may be implicated by the Privacy Rule, such as the Electronic Transactions Standards. Some of these commenters requested that the guidance be a complete model contract rather than sample contract provisions so that the covered entity would not need legal assistance.

Response: The Department intentionally did not make this guidance a complete model contract, but rather provided only those provisions specifically tied to requirements of the Privacy Rule. As stated above, this guidance does not substitute for legal advice. Other contract provisions may be dictated by State or other law or by the relationship between the parties. It is not feasible to provide sample contracts that would accommodate each situation. Parties are free to negotiate additional terms, including those that may be required by other laws or regulations.

Comment: Some commenters requested that use of the sample business associate contract language create a safe harbor for an entity that adopts them.

Response: The sample business associate contract provisions are not a safe harbor. Rather, the sample language is intended to provide guidance and assist covered entities in the effort required to enter into a business associate agreement. Use of the sample provisions or similar provisions, where appropriate, would be considered strong evidence of compliance with the business associate contract provisions of the Privacy Rule. However, contracts will necessarily vary based on State law and the relationship between the covered entity and the business associate.

Comment: Some commenters were concerned that the sample provision permitting a covered entity to have access to the practices, books, and records of the business associate would impose an audit requirement on the covered entity.

Response: The sample business associate contract provisions do not impose any additional requirements on covered entities. Only the regulation imposes requirements. Therefore, the inclusion of the provision that the business associate shall allow the covered entity access to the business associate practices, books, and records does not indicate that the Privacy Rule imposes an audit requirement on the covered entity. We have stated numerous times that the Privacy Rule does not require covered entities to monitor the activities of their business associates.

Comment: One commenter noted that the business associate should not be required, under the contract, to mitigate damages resulting from a violation.

Response: We disagree. In order for a covered entity to be able to act as it is required to under the Privacy Rule when a business associate is holding protected health information, the covered entity must require the same activities of the business associate through the contract.

Comment: One commenter noted that the Privacy Rule does not explicitly direct that a covered entity provide its notice of privacy practices to its business associates.

Response: We agree and have modified the language in the sample provision accordingly. However, in order for the business associate to act consistently with the privacy practices of the covered entity, which is required by the Privacy Rule, the parties may find it necessary to require disclosure of these policies. To the extent that parties can craft an alternate approach, they are free to do so.

Comment: One commenter indicated that traditional contract terms such as "term" and "termination" should not be included in the sample language if the Department's intention is to address only those terms required by the Rule.

Response: Because termination of the business associate agreement is specifically addressed in the Privacy Rule, we have retained these provisions in the sample language. As with all other provisions, parties are free to negotiate alternative Term and Termination provisions that meet their unique situations and concerns,

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provided that they meet the requirements of the Privacy Rule.

Comment: Another commenter indicated that the sample language should not require the return or destruction of protected health information in the possession of subcontractors or agents of the business associate.

Response: We have retained this language as this is consistent with the Privacy Rule. Section 164.504(e)(2)(ii)(D) requires that the business associate contract include a provision that the business associate ensures that any agents, including subcontractors, agree to the same restrictions and conditions as the business associate. Generally, the contract must require the business associate to return or destroy protected health information; therefore, the contract also must require the business associate to have agents and subcontractors to do the same. This is reflected in the sample contract language.

Comment: One commenter requested that the sample language include a provision that the covered entity may impose monetary damages on a business associate for violation of its privacy policies.

Response: We have not included such a provision because the Privacy Rule does not address this issue. The Privacy Rule would not prohibit a monetary damages provision from being included in the contract. This, again, is a matter to be negotiated between covered entities and their business associates.

Comment: One commenter suggested that specific references to sections in the Rule be deleted and either replaced by a general statement that the contract shall be interpreted in a manner consistent with the Rule or supplemented with clarifying language with examples.

Response: We believe that using section reference is a valid and expeditious approach as it incorporates changes as modifications are made to the Privacy Rule. A business associate contract may take a different approach than using section references to the Privacy Rule.

Comment: One commenter asked that the sample business associate contract provisions be included in the Rule rather than published as an appendix to the preamble so that it will be in the Code of Federal Regulations.

Response: We have published the sample business associate contract provisions as an appendix to the preamble because they are meant as guidance. The sample language shall be available on the Office for Civil Rights web site at *www.hhs.gov/ocr/hipaa;* and may be updated or revised as necessary.

Appendix to the Preamble—Sample Business Associate Contract Provisions

Statement of Intent

The Department provides these sample business associate contract provisions in response to numerous requests for guidance. This is only sample language. These provisions are designed to help covered entities more easily comply with the business associate contract requirements of the Privacy Rule. However, use of these sample provisions is not required for compliance with the Privacy Rule. The language may be amended to more accurately reflect business arrangements between the covered entity and the business associate.

These or similar provisions may be incorporated into an agreement for the provision of services between the entities or they may be incorporated into a separate business associate agreement. These provisions only address concepts and requirements set forth in the Privacy Rule and alone are not sufficient to result in a binding contract under State law. They do not include many formalities and substantive provisions that are required or typically included in a valid contract. Reliance on this sample is not sufficient for compliance with State law and does not replace consultation with a lawyer or negotiations between the parties to the contract.

Furthermore, a covered entity may want to include other provisions that are related to the Privacy Rule but that are not required by the Privacy Rule. For example, a covered entity may want to add provisions in a business associate contract in order for the covered entity to be able to rely on the business associate to help the covered entity meet its obligations under the Privacy Rule. In addition, there may be permissible uses or disclosures by a business associate that are not specifically addressed in these sample provisions, for example having a business associate create a limited data set. These and other types of issues will need to be worked out between the parties.

Sample Business Associate Contract Provisions[3]

Definitions (Alternative Approaches)

Catch-all definition:

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.

Examples of specific definitions:

(a) *Business Associate.* "Business Associate" shall mean [Insert Name of Business Associate].

(b) *Covered Entity.* "Covered Entity" shall mean [Insert Name of Covered Entity].

(c) *Individual.* "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

(d) *Privacy Rule.* "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

(e) *Protected Health Information.* "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(f) *Required By Law.* "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.

(g) *Secretary.* "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

Obligations and Activities of Business Associate

(a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement. [This provision may be included if it is appropriate for the Covered Entity to pass on its duty to mitigate damages to a Business Associate.]

(d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

(e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(f) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner [Insert negotiated terms], to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524. [Not necessary if business associate does not have protected health information in a designated record set.]

(g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner [Insert negotiated terms]. [Not necessary if business associate does not have protected health information in a designated record set.]

(h) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available [to the Covered Entity, or] to the Secretary, in a time and manner [Insert negotiated terms] or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

(i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(j) Business Associate agrees to provide to Covered Entity or an Individual, in time and manner [Insert negotiated terms], information collected in accordance with Section [Insert Section Number in Contract Where Provision (i) Appears] of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

Permitted Uses and Disclosures by Business Associate

General Use and Disclosure Provisions [(a) and (b) are alternative approaches]

(a) *Specify purposes:*

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, Covered Entity for the following purposes, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity: [List Purposes].

(b) *Refer to underlying services agreement:*

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in [Insert Name of Services Agreement], provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

Specific Use and Disclosure Provisions [only necessary if parties wish to allow Business Associate to engage in such activities]

(a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).

(d) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

Obligations of Covered Entity

Provisions for Covered Entity To Inform Business Associate of Privacy Practices and Restrictions [provisions dependent on business arrangement]

(a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. [Include an exception if the Business Associate will use or disclose protected health information for, and the contract includes provisions for, data aggregation or management and administrative activities of Business Associate].

Term and Termination

(a) *Term.* The Term of this Agreement shall be effective as of [Insert Effective Date], and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section. [Term may differ.]

(b) *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

(1) Provide an opportunity for Business Associate to cure the breach or

[3] Words or phrases contained in brackets are intended as either optional language or as instructions to the users of these sample provisions and are not intended to be included in the contractual provisions.

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end the violation and terminate this Agreement [and the ___ Agreement/ sections __ of the ___ Agreement] if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

(2) Immediately terminate this Agreement [and the ___ Agreement/ sections __ of the ___ Agreement] if Business Associate has breached a material term of this Agreement and cure is not possible; or

(3) If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary. [Bracketed language in this provision may be necessary if there is an underlying services agreement. Also, opportunity to cure is permitted, but not required by the Privacy Rule.]

(c) *Effect of Termination.*

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon [Insert negotiated terms] that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

Miscellaneous

(a) *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

(b) *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104–191.

(c) *Survival.* The respective rights and obligations of Business Associate under Section [Insert Section Number Related to "Effect of Termination"] of this Agreement shall survive the termination of this Agreement.

(d) *Interpretation.* Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

List of Subjects

45 CFR Part 160

Electronic transactions, Employer benefit plan, Health, Health care, Health facilities, Health insurance, Health records, Medicaid, Medical research, Medicare, Privacy, Reporting and record keeping requirements.

45 CFR Part 164

Electronic transactions, Employer benefit plan, Health, Health care, Health facilities, Health insurance, Health records, Medicaid, Medical research, Medicare, Privacy, Reporting and record keeping requirements.

Dated: August 6, 2002.

Tommy G. Thompson,

Secretary.

For the reasons set forth in the preamble, the Department amends 45 CFR subtitle A, subchapter C, as follows:

PART 160—GENERAL ADMINISTRATIVE REQUIREMENTS

1. The authority citation for part 160 continues to read as follows:

Authority: Sec. 1171 through 1179 of the Social Security Act (42 U.S.C. 1320d–1329d–8), as added by sec. 262 of Pub. L. No. 104–191, 110 Stat. 2021–2031 and sec. 264 of Pub. L. No. 104–191 (42 U.S.C. 1320d–2(note)).

2. Amend § 160.102(b), by removing the phrase "section 201(a)(5) of the Health Insurance Portability Act of 1996, (Pub. L. No. 104–191)" and adding in its place the phrase "the Social Security Act, 42 U.S.C. 1320a–7c(a)(5)".

3. In § 160.103 add the definition of "individually identifiable health information" in alphabetical order to read as follows:

§ 160.103 Definitions.

* * * * *

Individually identifiable health information is information that is a subset of health information, including demographic information collected from an individual, and:

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i) That identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

* * * * *

4. In § 160.202 revise paragraphs (2) and (4) of the definition of "more stringent" to read as follows:

§ 160.202 Definitions.

* * * * *

More stringent means * * *

(2) With respect to the rights of an individual, who is the subject of the individually identifiable health information, regarding access to or amendment of individually identifiable health information, permits greater rights of access or amendment, as applicable.

* * * * *

(4) With respect to the form, substance, or the need for express legal permission from an individual, who is the subject of the individually identifiable health information, for use or disclosure of individually identifiable health information, provides requirements that narrow the scope or duration, increase the privacy protections afforded (such as by expanding the criteria for), or reduce the coercive effect of the circumstances surrounding the express legal permission, as applicable.

* * * * *

5. Amend § 160.203(b) by adding the words "individually identifiable" before the word "health".

PART 164—SECURITY AND PRIVACY

Subpart E—Privacy of Individually Identifiable Health Information

1. The authority citation for part 164 continues to read as follows:

Authority: 42 U.S.C. 1320d–2 and 1320d–4, sec. 264 of Pub. L. No. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2(note)).

2. Amend § 164.102 by removing the words "implementation standards" and adding in its place the words "implementation specifications."

3. In § 164.500, remove "consent," from paragraph (b)(1)(v).

4. Amend § 164.501 as follows:

a. In the definition of "health care operations" remove from the introductory text of the definition ", and any of the following activities of an organized health care arrangement in which the covered entity participates" and revise paragraphs (6)(iv) and (v).

b. Remove the definition of "individually identifiable health information".

c. Revise the definition of "marketing".

d. In paragraph (1)(ii) of the definition of "payment," remove the word "covered".

e. Revise paragraph (2) of the definition of "protected health information".

f. Remove the words "a covered" and replace them with "an" in the definition of "required by law".

The revisions read as follows:

§ 164.501 Definitions.

* * * * *

Health care operations means * * *

(6) * * *

(iv) The sale, transfer, merger, or consolidation of all or part of the covered entity with another covered entity, or an entity that following such activity will become a covered entity and due diligence related to such activity; and

(v) Consistent with the applicable requirements of § 164.514, creating de-identified health information or a limited data set, and fundraising for the benefit of the covered entity.

* * * * *

Marketing means:

(1) To make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service, unless the communication is made:

(i) To describe a health-related product or service (or payment for such product or service) that is provided by, or included in a plan of benefits of, the covered entity making the communication, including communications about: the entities participating in a health care provider network or health plan network; replacement of, or enhancements to, a health plan; and health-related products or services available only to a health plan enrollee that add value to, but are not part of, a plan of benefits.

(ii) For treatment of the individual; or

(iii) For case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual.

(2) An arrangement between a covered entity and any other entity whereby the covered entity discloses protected health information to the other entity, in exchange for direct or indirect remuneration, for the other entity or its affiliate to make a communication about its own product or service that encourages recipients of the communication to purchase or use that product or service.

* * * * *

Protected health information means * * *

(2) *Protected health information* excludes individually identifiable health information in:

(i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g;

(ii) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and

(iii) Employment records held by a covered entity in its role as employer.

* * * * *

5. Amend § 164.502 as follows:

a. Revise paragraphs (a)(1)(ii), (iii), and (vi).

b. Revise paragraph (b)(2)(ii).

c. Redesignate paragraphs (b)(2)(iii) through (v) as paragraphs (b)(2)(iv) through (vi).

d. Add a new paragraph (b)(2)(iii).

e. Redesignate paragraphs (g)(3)(i) through (iii) as (g)(3)(i)(A) through (C) and redesignate paragraph (g)(3) as (g)(3)(i).

f. Add a new paragraph (g)(3)(ii).

The revisions and additions read as follows:

§ 164.502 Uses and disclosures of protected health information: general rules.

(a) Standard. * * *

(1) *Permitted uses and disclosures.*

* * *

(ii) For treatment, payment, or health care operations, as permitted by and in compliance with § 164.506;

(iii) Incident to a use or disclosure otherwise permitted or required by this subpart, provided that the covered entity has complied with the applicable requirements of § 164.502(b), § 164.514(d), and § 164.530(c) with respect to such otherwise permitted or required use or disclosure;

* * * * *

(vi) As permitted by and in compliance with this section, § 164.512, or § 164.514(e), (f), or (g).

* * * * *

(b) *Standard: Minimum necessary.*

* * *

(2) *Minimum necessary does not apply.* * * *

(ii) Uses or disclosures made to the individual, as permitted under paragraph (a)(1)(i) of this section or as required by paragraph (a)(2)(i) of this section;

(iii) Uses or disclosures made pursuant to an authorization under § 164.508;

* * * * *

(g)(1) *Standard: Personal representatives.* * * *

(3) *Implementation specification: unemancipated minors.* * * *

(i) * * *

(ii) Notwithstanding the provisions of paragraph (g)(3)(i) of this section:

(A) If, and to the extent, permitted or required by an applicable provision of State or other law, including applicable case law, a covered entity may disclose, or provide access in accordance with § 164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting *in loco parentis*;

(B) If, and to the extent, prohibited by an applicable provision of State or other law, including applicable case law, a covered entity may not disclose, or provide access in accordance with § 164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting *in loco parentis*; and

(C) Where the parent, guardian, or other person acting *in loco parentis*, is not the personal representative under paragraphs (g)(3)(i)(A), (B), or (C) of this section and where there is no applicable access provision under State or other law, including case law, a covered entity may provide or deny access under § 164.524 to a parent, guardian, or other person acting *in loco parentis*, if such action is consistent with State or other applicable law, provided that such decision must be made by a licensed health care professional, in the exercise of professional judgment.

* * * * *

6. Amend § 164.504 as follows:

a. In paragraph (a), revise the definitions of "health care component" and "hybrid entity".

b. Revise paragraph (c)(1)(ii).

c. Revise paragraph (c)(2)(ii).

d. Revise paragraph (c)(3)(iii).

e. Revise paragraph (f)(1)(i).

f. Add paragraph (f)(1)(iii).

The revisions and addition read as follows:

§ 164.504 Uses and disclosures: Organizational requirements.

(a) *Definitions.* * * *

Health care component means a component or combination of components of a hybrid entity designated by the hybrid entity in accordance with paragraph (c)(3)(iii) of this section.

Hybrid entity means a single legal entity:

(1) That is a covered entity;

(2) Whose business activities include both covered and non-covered functions; and

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(3) That designates health care components in accordance with paragraph (c)(3)(iii) of this section.

* * * * *

(c)(1) *Implementation specification: Application of other provisions.* * * *

(ii) A reference in such provision to a "health plan," "covered health care provider," or "health care clearinghouse" refers to a health care component of the covered entity if such health care component performs the functions of a health plan, health care provider, or health care clearinghouse, as applicable; and

* * * * *

(2) *Implementation specifications: Safeguard requirements.* * * *

(ii) A component that is described by paragraph (c)(3)(iii)(B) of this section does not use or disclose protected health information that it creates or receives from or on behalf of the health care component in a way prohibited by this subpart; and

* * * * *

(3) *Implementation specifications: Responsibilities of the covered entity.* * * *

(iii) The covered entity is responsible for designating the components that are part of one or more health care components of the covered entity and documenting the designation as required by § 164.530(j), provided that, if the covered entity designates a health care component or components, it must include any component that would meet the definition of covered entity if it were a separate legal entity. Health care component(s) also may include a component only to the extent that it performs:

(A) Covered functions; or

(B) Activities that would make such component a business associate of a component that performs covered functions if the two components were separate legal entities.

* * * * *

(f)(1) *Standard: Requirements for group health plans.* (i) Except as provided under paragraph (f)(1)(ii) or (iii) of this section or as otherwise authorized under § 164.508, a group health plan, in order to disclose protected health information to the plan sponsor or to provide for or permit the disclosure of protected health information to the plan sponsor by a health insurance issuer or HMO with respect to the group health plan, must ensure that the plan documents restrict uses and disclosures of such information by the plan sponsor consistent with the requirements of this subpart.

* * * * *

(iii) The group health plan, or a health insurance issuer or HMO with respect to the group health plan, may disclose to the plan sponsor information on whether the individual is participating in the group health plan, or is enrolled in or has disenrolled from a health insurance issuer or HMO offered by the plan.

* * * * *

7. Revise § 164.506 to read as follows:

§ 164.506 Uses and disclosures to carry out treatment, payment, or health care operations.

(a) *Standard: Permitted uses and disclosures.* Except with respect to uses or disclosures that require an authorization under § 164.508(a)(2) and (3), a covered entity may use or disclose protected health information for treatment, payment, or health care operations as set forth in paragraph (c) of this section, provided that such use or disclosure is consistent with other applicable requirements of this subpart.

(b) *Standard: Consent for uses and disclosures permitted.* (1) A covered entity may obtain consent of the individual to use or disclose protected health information to carry out treatment, payment, or health care operations.

(2) Consent, under paragraph (b) of this section, shall not be effective to permit a use or disclosure of protected health information when an authorization, under § 164.508, is required or when another condition must be met for such use or disclosure to be permissible under this subpart.

(c) *Implementation specifications: Treatment, payment, or health care operations.*

(1) A covered entity may use or disclose protected health information for its own treatment, payment, or health care operations.

(2) A covered entity may disclose protected health information for treatment activities of a health care provider.

(3) A covered entity may disclose protected health information to another covered entity or a health care provider for the payment activities of the entity that receives the information.

(4) A covered entity may disclose protected health information to another covered entity for health care operations activities of the entity that receives the information, if each entity either has or had a relationship with the individual who is the subject of the protected health information being requested, the protected health information pertains to such relationship, and the disclosure is:

(i) For a purpose listed in paragraph (1) or (2) of the definition of health care operations; or

(ii) For the purpose of health care fraud and abuse detection or compliance.

(5) A covered entity that participates in an organized health care arrangement may disclose protected health information about an individual to another covered entity that participates in the organized health care arrangement for any health care operations activities of the organized health care arrangement.

8. Revise § 164.508 to read as follows:

§ 164.508 Uses and disclosures for which an authorization is required.

(a) *Standard: authorizations for uses and disclosures.*—(1) *Authorization required: general rule.* Except as otherwise permitted or required by this subchapter, a covered entity may not use or disclose protected health information without an authorization that is valid under this section. When a covered entity obtains or receives a valid authorization for its use or disclosure of protected health information, such use or disclosure must be consistent with such authorization.

(2) *Authorization required: psychotherapy notes.* Notwithstanding any provision of this subpart, other than the transition provisions in § 164.532, a covered entity must obtain an authorization for any use or disclosure of psychotherapy notes, except:

(i) To carry out the following treatment, payment, or health care operations:

(A) Use by the originator of the psychotherapy notes for treatment;

(B) Use or disclosure by the covered entity for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling; or

(C) Use or disclosure by the covered entity to defend itself in a legal action or other proceeding brought by the individual; and

(ii) A use or disclosure that is required by § 164.502(a)(2)(ii) or permitted by § 164.512(a); § 164.512(d) with respect to the oversight of the originator of the psychotherapy notes; § 164.512(g)(1); or § 164.512(j)(1)(i).

(3) *Authorization required: Marketing.* (i) Notwithstanding any provision of this subpart, other than the transition provisions in § 164.532, a covered entity must obtain an authorization for any use or disclosure of protected health information for marketing, except if the communication is in the form of:

(A) A face-to-face communication made by a covered entity to an individual; or

(B) A promotional gift of nominal value provided by the covered entity.

(ii) If the marketing involves direct or indirect remuneration to the covered entity from a third party, the authorization must state that such remuneration is involved.

(b) *Implementation specifications: general requirements.*—(1) *Valid authorizations.* (i) A valid authorization is a document that meets the requirements in paragraphs (a)(3)(ii), (c)(1), and (c)(2) of this section, as applicable.

(ii) A valid authorization may contain elements or information in addition to the elements required by this section, provided that such additional elements or information are not inconsistent with the elements required by this section.

(2) *Defective authorizations.* An authorization is not valid, if the document submitted has any of the following defects:

(i) The expiration date has passed or the expiration event is known by the covered entity to have occurred;

(ii) The authorization has not been filled out completely, with respect to an element described by paragraph (c) of this section, if applicable;

(iii) The authorization is known by the covered entity to have been revoked;

(iv) The authorization violates paragraph (b)(3) or (4) of this section, if applicable;

(v) Any material information in the authorization is known by the covered entity to be false.

(3) *Compound authorizations.* An authorization for use or disclosure of protected health information may not be combined with any other document to create a compound authorization, except as follows:

(i) An authorization for the use or disclosure of protected health information for a research study may be combined with any other type of written permission for the same research study, including another authorization for the use or disclosure of protected health information for such research or a consent to participate in such research;

(ii) An authorization for a use or disclosure of psychotherapy notes may only be combined with another authorization for a use or disclosure of psychotherapy notes;

(iii) An authorization under this section, other than an authorization for a use or disclosure of psychotherapy notes, may be combined with any other such authorization under this section, except when a covered entity has conditioned the provision of treatment, payment, enrollment in the health plan, or eligibility for benefits under paragraph (b)(4) of this section on the provision of one of the authorizations.

(4) *Prohibition on conditioning of authorizations.* A covered entity may not condition the provision to an individual of treatment, payment, enrollment in the health plan, or eligibility for benefits on the provision of an authorization, except:

(i) A covered health care provider may condition the provision of research-related treatment on provision of an authorization for the use or disclosure of protected health information for such research under this section;

(ii) A health plan may condition enrollment in the health plan or eligibility for benefits on provision of an authorization requested by the health plan prior to an individual's enrollment in the health plan, if:

(A) The authorization sought is for the health plan's eligibility or enrollment determinations relating to the individual or for its underwriting or risk rating determinations; and

(B) The authorization is not for a use or disclosure of psychotherapy notes under paragraph (a)(2) of this section; and

(iii) A covered entity may condition the provision of health care that is solely for the purpose of creating protected health information for disclosure to a third party on provision of an authorization for the disclosure of the protected health information to such third party.

(5) *Revocation of authorizations.* An individual may revoke an authorization provided under this section at any time, provided that the revocation is in writing, except to the extent that:

(i) The covered entity has taken action in reliance thereon; or

(ii) If the authorization was obtained as a condition of obtaining insurance coverage, other law provides the insurer with the right to contest a claim under the policy or the policy itself.

(6) *Documentation.* A covered entity must document and retain any signed authorization under this section as required by § 164.530(j).

(c) *Implementation specifications: Core elements and requirements.—(1) Core elements.* A valid authorization under this section must contain at least the following elements:

(i) A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.

(ii) The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure.

(iii) The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure.

(iv) A description of each purpose of the requested use or disclosure. The statement "at the request of the individual" is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose.

(v) An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. The statement "end of the research study," "none," or similar language is sufficient if the authorization is for a use or disclosure of protected health information for research, including for the creation and maintenance of a research database or research repository.

(vi) Signature of the individual and date. If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual must also be provided.

(2) *Required statements.* In addition to the core elements, the authorization must contain statements adequate to place the individual on notice of all of the following:

(i) The individual's right to revoke the authorization in writing, and either:

(A) The exceptions to the right to revoke and a description of how the individual may revoke the authorization; or

(B) To the extent that the information in paragraph (c)(2)(i)(A) of this section is included in the notice required by § 164.520, a reference to the covered entity's notice.

(ii) The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization, by stating either:

(A) The covered entity may not condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization when the prohibition on conditioning of authorizations in paragraph (b)(4) of this section applies; or

(B) The consequences to the individual of a refusal to sign the authorization when, in accordance with paragraph (b)(4) of this section, the covered entity can condition treatment, enrollment in the health plan, or eligibility for benefits on failure to obtain such authorization.

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(iii) The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer be protected by this subpart.

(3) *Plain language requirement.* The authorization must be written in plain language.

(4) *Copy to the individual.* If a covered entity seeks an authorization from an individual for a use or disclosure of protected health information, the covered entity must provide the individual with a copy of the signed authorization.

9. Amend § 164.510 as follows:

a. Revise the first sentence of the introductory text.

b. Remove the word "for" from paragraph (b)(3).

The revision reads as follows:

§ 164.510 Uses and disclosures requiring an opportunity for the individual to agree or to object.

A covered entity may use or disclose protected health information, provided that the individual is informed in advance of the use or disclosure and has the opportunity to agree to or prohibit or restrict the use or disclosure, in accordance with the applicable requirements of this section. * * *

* * * * *

10. Amend § 164.512 as follows:

a. Revise the section heading and the first sentence of the introductory text.

b. Revise paragraph (b)(1)(iii).

c. In paragraph (b)(1)(v)(A) remove the word "a" before the word "health."

d. Add the word "and" after the semicolon at the end of paragraph (b)(1)(v)(C).

e. Redesignate paragraphs (f)(3)(ii) and (iii) as (f)(3)(i) and (ii).

f. In the second sentence of paragraph (g)(2) add the word "to" after the word "directors."

g. In paragraph (i)(1)(iii)(A) remove the word "is" after the word "disclosure."

h. Revise paragraph (i)(2)(ii).

i. In paragraph (i)(2)(iii) remove "(i)(2)(ii)(D)" and add in its place "(i)(2)(ii)(C)".

The revisions read as follows:

§ 164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required.

A covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section. * * *

* * * * *

(b) *Standard: uses and disclosures for public health activities.*

(1) *Permitted disclosures.* * * *

(iii) A person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity. Such purposes include:

(A) To collect or report adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations;

(B) To track FDA-regulated products;

(C) To enable product recalls, repairs, or replacement, or lookback (including locating and notifying individuals who have received products that have been recalled, withdrawn, or are the subject of lookback); or

(D) To conduct post marketing surveillance;

* * * * *

(i) *Standard: Uses and disclosures for research purposes.* * * *

(2) *Documentation of waiver approval.* * * *

(ii) *Waiver criteria.* A statement that the IRB or privacy board has determined that the alteration or waiver, in whole or in part, of authorization satisfies the following criteria:

(A) The use or disclosure of protected health information involves no more than a minimal risk to the privacy of individuals, based on, at least, the presence of the following elements;

(*1*) An adequate plan to protect the identifiers from improper use and disclosure;

(*2*) An adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or research justification for retaining the identifiers or such retention is otherwise required by law; and

(*3*) Adequate written assurances that the protected health information will not be reused or disclosed to any other person or entity, except as required by law, for authorized oversight of the research study, or for other research for which the use or disclosure of protected health information would be permitted by this subpart;

(B) The research could not practicably be conducted without the waiver or alteration; and

(C) The research could not practicably be conducted without access to and use of the protected health information.

* * * * *

11. Amend § 164.514 as follows:

a. Revise paragraph (b)(2)(i)(R).

b. Revise paragraph (d)(1).

c. Revise paragraph (d)(4)(iii).

d. In paragraph (d)(5), remove the word "discloses" and add in its place the word "disclose".

e. Revise paragraph (e).

The revisions read as follows:

§ 164.514 Other requirements relating to uses and disclosures of protected health information.

* * * * * *

(b) *Implementation specifications: Requirements for de-identification of protected health information.* * * *

(2)(i) * * *

(R) Any other unique identifying number, characteristic, or code, except as permitted by paragraph (c) of this section; and

* * * * *

(d)(1) *Standard: minimum necessary requirements.* In order to comply with § 164.502(b) and this section, a covered entity must meet the requirements of paragraphs (d)(2) through (d)(5) of this section with respect to a request for, or the use and disclosure of, protected health information.

* * * * *

(4) *Implementation specifications: Minimum necessary requests for protected health information.* * * *

(iii) For all other requests, a covered entity must:

(A) Develop criteria designed to limit the request for protected health information to the information reasonably necessary to accomplish the purpose for which the request is made; and

(B) Review requests for disclosure on an individual basis in accordance with such criteria.

* * * * *

(e) (1) *Standard: Limited data set.* A covered entity may use or disclose a limited data set that meets the requirements of paragraphs (e)(2) and (e)(3) of this section, if the covered entity enters into a data use agreement with the limited data set recipient, in accordance with paragraph (e)(4) of this section.

(2) *Implementation specification: Limited data set:* A limited data set is protected health information that excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual:

(i) Names;

(ii) Postal address information, other than town or city, State, and zip code;

(iii) Telephone numbers;

(iv) Fax numbers;

(v) Electronic mail addresses;

(vi) Social security numbers;

(vii) Medical record numbers;

(viii) Health plan beneficiary numbers;

(ix) Account numbers;

(x) Certificate/license numbers;

(xi) Vehicle identifiers and serial numbers, including license plate numbers;

(xii) Device identifiers and serial numbers;

(xiii) Web Universal Resource Locators (URLs);

(xiv) Internet Protocol (IP) address numbers;

(xv) Biometric identifiers, including finger and voice prints; and

(xvi) Full face photographic images and any comparable images.

(3) *Implementation specification: Permitted purposes for uses and disclosures.* (i) A covered entity may use or disclose a limited data set under paragraph (e)(1) of this section only for the purposes of research, public health, or health care operations.

(ii) A covered entity may use protected health information to create a limited data set that meets the requirements of paragraph (e)(2) of this section, or disclose protected health information only to a business associate for such purpose, whether or not the limited data set is to be used by the covered entity.

(4) *Implementation specifications: Data use agreement.*—(i) *Agreement required.* A covered entity may use or disclose a limited data set under paragraph (e)(1) of this section only if the covered entity obtains satisfactory assurance, in the form of a data use agreement that meets the requirements of this section, that the limited data set recipient will only use or disclose the protected health information for limited purposes.

(ii) *Contents.* A data use agreement between the covered entity and the limited data set recipient must:

(A) Establish the permitted uses and disclosures of such information by the limited data set recipient, consistent with paragraph (e)(3) of this section. The data use agreement may not authorize the limited data set recipient to use or further disclose the information in a manner that would violate the requirements of this subpart, if done by the covered entity;

(B) Establish who is permitted to use or receive the limited data set; and

(C) Provide that the limited data set recipient will:

(*1*) Not use or further disclose the information other than as permitted by the data use agreement or as otherwise required by law;

(*2*) Use appropriate safeguards to prevent use or disclosure of the information other than as provided for by the data use agreement;

(*3*) Report to the covered entity any use or disclosure of the information not provided for by its data use agreement of which it becomes aware;

(*4*) Ensure that any agents, including a subcontractor, to whom it provides the limited data set agrees to the same restrictions and conditions that apply to the limited data set recipient with respect to such information; and

(*5*) Not identify the information or contact the individuals.

(iii) *Compliance.* (A) A covered entity is not in compliance with the standards in paragraph (e) of this section if the covered entity knew of a pattern of activity or practice of the limited data set recipient that constituted a material breach or violation of the data use agreement, unless the covered entity took reasonable steps to cure the breach or end the violation, as applicable, and, if such steps were unsuccessful:

(1) Discontinued disclosure of protected health information to the recipient; and

(2) Reported the problem to the Secretary.

(B) A covered entity that is a limited data set recipient and violates a data use agreement will be in noncompliance with the standards, implementation specifications, and requirements of paragraph (e) of this section.

* * * * *

12. Amend § 164.520 as follows:

a. Remove the words "consent or" from paragraph (b)(1)(ii)(B).

b. In paragraph (c), introductory text, remove "(c)(4)" and add in its place "(c)(3)".

c. Revise paragraph (c)(2)(i).

d. Redesignate paragraphs (c)(2)(ii) and (iii) as (c)(2)(iii) and (iv).

e. Add new paragraph (c)(2)(ii).

f. Amend redesignated paragraph (c)(2)(iv) by removing "(c)(2)(ii)" and adding in its place "(c)(2)(iii)".

g. Amend paragraph (c)(3)(iii) by adding a sentence at the end.

h. Revise paragraph (e).

The revisions and addition read as follows:

§ 164.520 Notice of privacy practices for protected health information.

* * * * *

(c) *Implementation specifications: provision of notice.* * * *

(2) *Specific requirements for certain covered health care providers.* * * *

(i) Provide the notice:

(A) No later than the date of the first service delivery, including service delivered electronically, to such individual after the compliance date for the covered health care provider; or

(B) In an emergency treatment situation, as soon as reasonably practicable after the emergency treatment situation.

(ii) Except in an emergency treatment situation, make a good faith effort to obtain a written acknowledgment of receipt of the notice provided in accordance with paragraph (c)(2)(i) of this section, and if not obtained, document its good faith efforts to obtain such acknowledgment and the reason why the acknowledgment was not obtained;

* * * * *

(3) *Specific requirements for electronic notice.* * * *

(iii) * * * The requirements in paragraph (c)(2)(ii) of this section apply to electronic notice.

* * * * *

(e) *Implementation specifications: Documentation.* A covered entity must document compliance with the notice requirements, as required by § 164.530(j), by retaining copies of the notices issued by the covered entity and, if applicable, any written acknowledgments of receipt of the notice or documentation of good faith efforts to obtain such written acknowledgment, in accordance with paragraph (c)(2)(ii) of this section.

13. Amend § 164.522 by removing the reference to "164.502(a)(2)(i)" in paragraph (a)(1)(v), and adding in its place "164.502(a)(2)(ii)".

14. Amend § 164.528 as follows:

a. In paragraph (a)(1)(i), remove "§ 164.502" and add in its place "§ 164.506".

b. Remove the word "or" from paragraph (a)(1)(v).

c. Redesignate paragraph (a)(1)(vi) as (a)(1)(ix) and redesignate paragraphs (a)(1)(iii) through (v) as (a)(1)(v) through (vii).

d. Add paragraphs (a)(1)(iii), (iv), and (a)(1)(viii).

e. Revise paragraph (b)(2), introductory text.

f. Revise paragraph (b)(2)(iv).

g. Remove "or pursuant to a single authorization under § 164.508," from paragraph (b)(3), introductory text.

h. Add paragraph (b)(4).

The additions and revisions read as follows:

§ 164.528 Accounting of disclosures of protected health information.

(a) *Standard: Right to an accounting of disclosures of protected health information.*

(1) * * *

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(iii) Incident to a use or disclosure otherwise permitted or required by this subpart, as provided in § 164.502;

(iv) Pursuant to an authorization as provided in § 164.508;

* * * * *

(viii) As part of a limited data set in accordance with § 164.514(e); or

* * * * *

(b) *Implementation specifications: Content of the accounting.* * * *

(2) Except as otherwise provided by paragraphs (b)(3) or (b)(4) of this section, the accounting must include for each disclosure:

* * * * *

(iv) A brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure or, in lieu of such statement, a copy of a written request for a disclosure under §§ 164.502(a)(2)(ii) or 164.512, if any.

* * * * *

(4)(i) If, during the period covered by the accounting, the covered entity has made disclosures of protected health information for a particular research purpose in accordance with § 164.512(i) for 50 or more individuals, the accounting may, with respect to such disclosures for which the protected health information about the individual may have been included, provide:

(A) The name of the protocol or other research activity;

(B) A description, in plain language, of the research protocol or other research activity, including the purpose of the research and the criteria for selecting particular records;

(C) A brief description of the type of protected health information that was disclosed;

(D) The date or period of time during which such disclosures occurred, or may have occurred, including the date of the last such disclosure during the accounting period;

(E) The name, address, and telephone number of the entity that sponsored the research and of the researcher to whom the information was disclosed; and

(F) A statement that the protected health information of the individual may or may not have been disclosed for a particular protocol or other research activity.

(ii) If the covered entity provides an accounting for research disclosures, in accordance with paragraph (b)(4) of this section, and if it is reasonably likely that the protected health information of the individual was disclosed for such research protocol or activity, the covered entity shall, at the request of the individual, assist in contacting the entity that sponsored the research and the researcher.

* * * * *

15. Amend § 164.530 as follows:

a. Redesignate paragraph (c)(2) as (c)(2)(i).

b. Add paragraph (c)(2)(ii).

c. Remove the words "the requirements" from paragraph (i)(4)(ii)(A) and add in their place the word "specifications."

The addition reads as follows:

§ 164.530 Administrative requirements.

* * * * *

(c) *Standard: Safeguards.* * * *

(2) *Implementation specifications: Safeguards.* (i) * * *

(ii) A covered entity must reasonably safeguard protected health information to limit incidental uses or disclosures made pursuant to an otherwise permitted or required use or disclosure.

* * * * *

16. Revise § 164.532 to read as follows:

§ 164.532 Transition provisions.

(a) *Standard: Effect of prior authorizations.* Notwithstanding §§ 164.508 and 164.512(i), a covered entity may use or disclose protected health information, consistent with paragraphs (b) and (c) of this section, pursuant to an authorization or other express legal permission obtained from an individual permitting the use or disclosure of protected health information, informed consent of the individual to participate in research, or a waiver of informed consent by an IRB.

(b) *Implementation specification: Effect of prior authorization for purposes other than research.* Notwithstanding any provisions in §.164.508, a covered entity may use or disclose protected health information that it created or received prior to the applicable compliance date of this subpart pursuant to an authorization or other express legal permission obtained from an individual prior to the applicable compliance date of this subpart, provided that the authorization or other express legal permission specifically permits such use or disclosure and there is no agreed-to restriction in accordance with § 164.522(a).

(c) *Implementation specification: Effect of prior permission for research.* Notwithstanding any provisions in §§ 164.508 and 164.512(i), a covered entity may, to the extent allowed by one of the following permissions, use or disclose, for research, protected health information that it created or received either before or after the applicable compliance date of this subpart, provided that there is no agreed-to restriction in accordance with § 164.522(a), and the covered entity has obtained, prior to the applicable compliance date, either:

(1) An authorization or other express legal permission from an individual to use or disclose protected health information for the research;

(2) The informed consent of the individual to participate in the research; or

(3) A waiver, by an IRB, of informed consent for the research, in accordance with 7 CFR 1c.116(d), 10 CFR 745.116(d), 14 CFR 1230.116(d), 15 CFR 27.116(d), 16 CFR 1028.116(d), 21 CFR 50.24, 22 CFR 225.116(d), 24 CFR 60.116(d), 28 CFR 46.116(d), 32 CFR 219.116(d), 34 CFR 97.116(d), 38 CFR 16.116(d), 40 CFR 26.116(d), 45 CFR 46.116(d), 45 CFR 690.116(d), or 49 CFR 11.116(d), provided that a covered entity must obtain authorization in accordance with § 164.508 if, after the compliance date, informed consent is sought from an individual participating in the research.

(d) *Standard: Effect of prior contracts or other arrangements with business associates.* Notwithstanding any other provisions of this subpart, a covered entity, other than a small health plan, may disclose protected health information to a business associate and may allow a business associate to create, receive, or use protected health information on its behalf pursuant to a written contract or other written arrangement with such business associate that does not comply with §§ 164.502(e) and 164.504(e) consistent with the requirements, and only for such time, set forth in paragraph (e) of this section.

(e) *Implementation specification: Deemed compliance.*— (1) *Qualification.* Notwithstanding other sections of this subpart, a covered entity, other than a small health plan, is deemed to be in compliance with the documentation and contract requirements of §§ 164.502(e) and 164.504(e), with respect to a particular business associate relationship, for the time period set forth in paragraph (e)(2) of this section, if:

(i) Prior to October 15, 2002, such covered entity has entered into and is operating pursuant to a written contract or other written arrangement with a business associate for such business associate to perform functions or activities or provide services that make the entity a business associate; and

(ii) The contract or other arrangement is not renewed or modified from October 15, 2002, until the compliance date set forth in § 164.534.

(2) *Limited deemed compliance period.* A prior contract or other arrangement that meets the qualification requirements in paragraph (e) of this section, shall be deemed compliant until the earlier of:

(i) The date such contract or other arrangement is renewed or modified on or after the compliance date set forth in § 164.534; or

(ii) April 14, 2004.

(3) *Covered entity responsibilities.* Nothing in this section shall alter the requirements of a covered entity to comply with part 160, subpart C of this subchapter and §§ 164.524, 164.526, 164.528, and 164.530(f) with respect to protected health information held by a business associate.

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Part VI

Department of Housing and Urban Development

24 CFR Parts 902 et al.
Deregulation for Small Public Housing Agencies; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 902, 903 and 985

[Docket No. FR–4753–P–01]

RIN 2577–AC34

Deregulation for Small Public Housing Agencies

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would simplify and streamline HUD's regulatory requirements for small public housing agencies (PHAs) that administer the public housing and voucher assistance programs under the United States Housing Act of 1937. Specifically, the proposed rule would further streamline the PHA Annual Plan requirements for certain small PHAs. HUD also proposes to deregulate the assessment and scoring of small PHAs under the Public Housing Assessment System (PHAS) and the Section 8 Management Assessment Program (SEMAP), consistent with its basic regulatory responsibilities. HUD believes that these changes will alleviate administrative burden, and better enable small PHAs to focus on their core mission of providing decent, safe, and affordable housing for the neediest American families. In addition to the changes that solely concern small PHAs, this proposed rule would also streamline HUD's review of the Annual Plans submitted by all PHAs (large and small).

DATES: *Comments Due Date:* September 13, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Rod Solomon, Deputy Assistant Secretary for Policy, Program and Legislative Initiatives, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4116, Washington, DC 20410; telephone (202) 708–0713 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule would simplify and streamline HUD's regulatory requirements for small public housing agencies (PHAs) that administer the public housing and voucher assistance programs under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (the "1937 Act"). HUD has an obligation to monitor and regulate the use of Federal housing funds in order to ensure that taxpayer dollars are well spent. HUD is also mindful that compliance with its regulatory requirements may impose administrative burdens on PHAs and divert scarce resources. The cost of excessive regulation is especially problematic for small PHAs, because they often possess the fewest staff and technical resources.

This proposed rule would make several deregulatory changes to alleviate the administrative burden imposed on small PHAs, while still requiring basic accountability. The proposed rule would further streamline the PHA Annual Plan requirements for small PHAs. HUD also proposes to deregulate the assessment and scoring of small PHAs under the Public Housing Assessment System (PHAS) and the Section 8 Management Assessment Program (SEMAP) consistent with its basic regulatory responsibilities. HUD believes that deregulating small PHAs will better enable them to focus on their core mission of providing safe, decent, and affordable housing to the neediest American families.

The specific deregulatory changes that would be made by this proposed rule are as follows:

A. Further Streamlining PHA Annual Plan Requirements (24 CFR Part 903)

The PHA Plan process provides an easily identifiable source by which public housing residents, participants in the tenant-based assistance programs, and other members of the public may locate basic PHA policies rules and requirements concerning the PHA's operations, programs, and services. Through these plans—a 5-Year Plan and an annual plan—a PHA advises HUD, its residents, and members of the public of the PHA's mission for serving low-income and very low-income families, and the PHA's strategy for addressing those needs. HUD's regulations for the PHA Plans are located at 24 CFR part 903. This proposed rule would simplify PHA Annual Plan requirements.

1. Further Streamlining Annual Plan Submission Requirements for Small PHAs

In accordance with section 5A of the 1937 Act (which established the PHA Plan process), HUD's PHA Plan regulations at § 903.11(a)(2) and (c)(2) currently provide for the submission of streamlined Annual Plans by small PHAs (those with less than 250 public housing units) that are not designated as troubled or that are not at risk of being designated as troubled under section 6(j)(2) of the 1937 Act (see the PHAS regulations at § 902.67 for how a PHA is designated as troubled or determined to be "at risk" of being designated as troubled). On September 18, 2000, HUD issued Public and Indian Housing (PIH) Notice 2000–43, which implemented a new streamlining initiative for small PHAs: the "Small PHA Plan Update." The Small PHA Plan Update reduces the amount of information contained in a streamlined plan by requiring that—for certain plan elements—PHAs need only describe the changes made since submission of their last Annual Plan. A copy of PIH Notice 2000–43 may be obtained via the HUD Internet homepage at *http://www.hud.gov*.

HUD proposes to further streamline the PHA Annual Plan submission requirements for small PHAs. Specifically, the proposed rule would require that the Annual Plan submitted by a small PHA only address policies concerning capital improvements (see § 903.7(g)) and the civil rights certification (see § 903.7(o)). For the other policies and programs that § 903.11(c)(2) currently requires must be addressed in a PHA's streamlined plan (such as deconcentration, demolition and disposition, housing needs, and financial resources), the PHA would only be required to submit a certification listing those policies it has revised since submission of its last Annual Plan. In addition, the small PHA would also be required to certify that: (i) The Resident Advisory Board had an opportunity to review and comment on the changes prior to implementation; (ii) the changes were duly approved by the PHA board of directors (or similar governing body); and (iii) the revised policies and programs are available for review and inspection at the principal office of the PHA during normal business hours.

Every fifth fiscal year, in the same year the PHA submits its 5-Year Plan, the small PHA would be required to submit a more detailed Annual Plan that more fully addresses the elements

required under § 903.11(c)(2). However, PHAs would not be required to provide information concerning pet ownership policies (see § 903.7(n)) and fiscal year audit findings (see § 903.7(p)), since the PHA is already required to maintain these supporting documents and make them available to the public. Further, the information concerning housing needs (see § 903.7(a)) need only be provided to the extent that it pertains to the housing needs of families on the PHA's public housing and tenant-based assistance waiting lists. The PHA already provides the other housing needs information required under § 903.7(a) through the Consolidated Plan process under 24 CFR part 91.

In order to facilitate HUD review of small PHA 5-Year and streamlined Annual Plans, the proposed rule also provides that HUD may require that half of all PHAs with less than 250 public housing units submit their 5-Year Plan one fiscal year in advance (in the fourth PHA fiscal year, rather than the fifth PHA fiscal year). This change will split the workload for HUD offices reviewing small PHA plans among two years, thus expediting HUD review and approval of the PHA plans.

In addition to the substantive changes discussed above, this proposed rule would also consolidate Annual Plan submission requirements for small PHAs in a separate regulatory section (§ 903.12). This non-substantive, organizational revision is designed to improve the clarity of the plan submission requirements and the deregulatory changes being proposed by HUD.

2. Streamlining the Scope of HUD Review for All PHAs

The proposed rule would also streamline HUD's review of Annual Plans submitted by all PHAs (large and small), by implementing the statutory authority provided by section 5A(i)(2) of the 1937 Act to exempt certain plan elements from HUD review and approval. Specifically, the proposed rule provides that HUD's review of Annual Plans will generally be limited to the PHA policies concerning deconcentration (see § 903.7(b)), capital improvements (see § 903.7(g)), demolition and disposition (see § 903.7(h)), and the civil rights certification (see § 903.7(o)). As required by section 5A(i)(2), HUD will also review any other plan element that has been challenged.

B. Biannual PHAS Assessments for Small PHAs With Less Than 250 Public Housing Units (24 CFR part 902).

HUD's regulations at 24 CFR part 902 describe the policies and procedures governing the PHAS. The PHAS provides a management tool for effectively and fairly measuring the performance of a PHA. The goals of the PHAS are to improve the delivery of services in public housing and enhance trust in the public housing system among PHAs, public housing residents, HUD, and the general public. This proposed rule would streamline and simplify the assessment and scoring of small PHAs under the PHAS.

The proposed rule would provide for the assessment and scoring of a small PHA with less than 250 public housing units once every other PHA fiscal year (as opposed to the current annual PHAS rating) unless the PHA elects to have its performance assessed on an annual basis or is designated as troubled. Given the limited number of public housing units managed by small PHAs, it is unlikely that there will be significant variations in performance from year to year and the risk of going to biannual scoring is minimal. Accordingly, HUD has determined that, unless the PHA has a history of poor performance and is designated as troubled, a biannual PHAS assessment is sufficient to monitor its performance.

C. Deregulating SEMAP for Small PHAs (24 CFR part 985).

HUD's regulations at 24 CFR part 985 describe the policies and procedures governing the SEMAP. SEMAP provides for objective measurement of the performance of a PHA in key areas of the tenant-based assistance program. SEMAP enables HUD to ensure program integrity and accountability by identifying PHA management capabilities and deficiencies and by improving risk assessment to effectively target monitoring and program assistance. PHAs can use the SEMAP performance analysis to assess their own program operations. The proposed rule would make three deregulatory changes to SEMAP concerning small PHAs.

1. Exemption for Small PHAs Not Subject to Single Audit Act Requirements

The proposed rule would exempt PHAs that expend less than $300,000 in Federal awards in any PHA fiscal year from SEMAP assessment and scoring. The current SEMAP regulations exempt these small PHAs from assessment under 7 (out of the 16) SEMAP indicators (see § 985.3). The exemption is due to the fact that PHAs with such limited Federal funding are not subject to the requirements of the Single Audit Act. Since HUD uses the annual independent audit to verify the information provided by PHAs for these indicators, there is no effective method for HUD to assess performance under these factors for PHAs not subject to the Single Audit Act. Given the relatively small amount of Federal funds expended by these PHAs, and the already limited scope of their SEMAP assessments, conducting SEMAP reviews for these small PHAs is not beneficial enough to justify the administrative burden. Accordingly, HUD proposes to exempt these small PHAs from the requirements of 24 CFR part 985.

2. Biannual SEMAP Assessments for Small PHAs

The proposed rule would also provide for the biannual SEMAP assessment of small PHAs with less than 250 assisted units (as opposed to the current annual SEMAP rating), unless the PHA elects to have its performance assessed on an annual basis or is designated as troubled. As was noted above in the discussion of the proposed changes to the PHAS, the limited number of units serviced by small PHAs makes it unlikely that there will be significant variations in performance from year to year and the risk of conducting SEMAP assessments once every other fiscal year is minimal. Accordingly, HUD has determined that, unless the PHA has a history of poor performance and is designated as troubled, a biannual assessment is sufficient to monitor its performance under SEMAP.

3. Streamlined On-Site Review Requirements for Small PHAs

The proposed rule would also streamline the on-site review requirements for small PHAs designated as troubled. Under the current SEMAP regulations HUD must conduct an on-site review of any PHA that receives an overall performance rating of troubled (see § 985.107(a)). Since SEMAP ratings are generally calculated based on the percentage of the PHA's leased housing units that meet the specified criteria, a difference of one or two units can have a disproportionate impact on a small PHA's SEMAP score. Accordingly, there may be small PHAs designated as troubled for which an on-site review is unnecessary to diagnose problems and potential remedies. The proposed rule would address this concern by providing that HUD may elect not to conduct an on-site review if the PHA has less than 250 assisted units and

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HUD determines that an on-site review is unnecessary to determine the needs of the PHA and the actions required to address the program deficiencies. HUD will monitor the performance of a small PHA that is designated as troubled, but for which no on-site review is conducted, by using available data, such as independent public accountant (IPA) audit reports, information derived from the HUD form 50058, and PHA year-end statements.

II. Justification for Reduced Comment Period

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. The Department, however, is reducing its usual 60-day public comment period to 30 days for this proposed rule. In an effort to have an effective rule in place as close as possible to the beginning of Fiscal Year 2003, and given that the proposed changes are deregulatory in nature and remove administrative burdens thus better enabling small PHAs to focus on their core mission of providing decent, safe, and affordable housing, the Department believes that a 30-day public comment period is justified under these circumstances. All public comments will be considered in the development of the final rule.

III. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in the PHA Plan process (24 CFR part 903) and the PHAS (24 CFR part 902) have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Numbers 2535–0106, 2535–0107, 2507–0001, and 2577–0226, respectively. The regulatory amendments contained in §§ 902.9, 903.5, 903.11, and 903.12 of this proposed rule merely modify the scope and frequency of these currently approved information collection requirements to streamline and reduce the paperwork burden imposed on small PHAs. HUD invites public comment on the information collection requirements contained in this proposed rule. All public comments will be considered in the development of the final rule and may result in revisions to the information collection requirements at the final rule stage. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this proposed rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although the proposed rule is exclusively concerned with small PHAs with less than 250 public housing or leased housing units, the proposed amendments are deregulatory in nature. Specifically, the proposed rule would eliminate, simplify and streamline regulatory requirements for these small PHAs regarding the PHA Annual Plan process and assessments conducted under the PHAS and SEMAP. Further, the proposed deregulatory amendments would not change the amount of funding available to these PHAs. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

List of Subjects

24 CFR Part 902

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 903

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 985

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 902, 903 and 985 as follows:

PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

1. The authority citation for 24 CFR part 902 continues to read as follows:

Authority: 42 U.S.C. 1437d(j), 42 U.S.C. 3525(d).

2. Add § 902.9 to read as follows:

§ 902.9 Frequency of PHAS scoring for small PHAs.

REAC will assess and score the performance of a PHA with less than 250 public housing units every other PHA fiscal year, unless the small PHA:

(a) Elects to have its performance assessed on an annual basis; or

(b) Is designated as troubled, in accordance with § 902.67.

3. Revise the introductory text of paragraph § 902.33(a) to read as follows:

§ 902.33 Financial reporting requirements.

(a) *Annual financial report.* All PHAs must submit their unaudited and audited financial data to HUD on an annual basis. The financial information must be:

* * * * *

4. Revise the first sentence of § 902.60(d) to read as follows:

§ 902.60 Data collection.

* * * * *

(d) *Management operations and resident service and satisfaction information.* A PHA shall provide certification to HUD as to data required under subpart D, Management Operations, of this part and subpart E, Resident Service and Satisfaction, of this part not later than two months after the end of the PHA's fiscal year that is being assessed and scored, with no penalty applying, however, until the 16th day of the third month after the PHA fiscal year end. ***

* * * * *

PART 903—PUBLIC HOUSING AGENCY PLANS

5. The authority citation for 24 CFR part 903 continues to read as follows:

Authority: 42 U.S.C. 1437c; 42 U.S.C. 3535(d).

6. Amend § 903.5(a)(3) by adding a sentence at the end to read as follows:

§ 903.5 When must a PHA submit the plans to HUD?

(a) * * *

(3) * * * However, HUD may require that half of all PHAs with less than 250 public housing units submit their 5-Year Plan one fiscal year in advance (in the fourth PHA fiscal year rather than the fifth PHA fiscal year).

* * * * *

7. Revise § 903.11(c)(2) to read as follows:

§ 903.11 Are certain PHAs eligible to submit a streamlined Annual Plan?

* * * * *

(c) * * *

(2) For small PHAs that are not designated as troubled (see § 902.67(c)) or that are not at risk of being designated as troubled (see § 902.67(b)(4)) under section 6(j)(2) of the 1937 Act, the requirements for streamlined Annual Plans are described in § 903.12.

* * * * *

8. Add § 903.12 to read as follows:

§ 903.12 What are the streamlined Annual Plan requirements for small PHAs?

(a) *General.* PHAs with less than 250 public housing units (small PHAs) and that have not been designated as troubled (see § 902.67(c)) or that are not at risk of being designated as troubled (see § 902.67(b)(4)) under section 6(j) of the 1937 Act may submit streamlined Annual Plans in accordance with this section.

(b) *Streamlined Annual Plan requirements for fiscal years in which 5-Year Plan is also due.* For the fiscal year in which its 5-Year Plan is also due, the streamlined Annual Plan of the small PHA shall consist of the information required by § 903.7 (a), (b), (c), (d), (g), (h), (k), (o) and (r). The information required by § 903.7(a) must be included only to the extent it pertains to the housing needs of families that are on the PHA's public housing and Section 8 tenant-based assistance waiting lists. The information required by § 903.7(k) must be included only to the extent that the PHA participates in homeownership programs under section 8(y) of the 1937 Act.

(c) *Streamlined Annual Plan requirements for all other fiscal years.* For all other fiscal years, the streamlined Annual Plan must include the information required by § 903.7(g) and (o) and a certification from the PHA that:

(1) Lists the policies and programs covered by § 903.7(a), (b), (c), (d), (h), (k) and (r) that the PHA has revised since submission of its last Annual Plan; and

(2) Provides assurance by the PHA that:

(i) The Resident Advisory Board had an opportunity to review and comment on the changes to the policies and programs before implementation by the PHA;

(ii) The changes were duly approved by the PHA board of directors (or similar governing body); and

(iii) The revised policies and programs are available for review and inspection, at the principal office of the PHA during normal business hours.

9. Amend § 903.23 by redesignating paragraphs (b) through (d) as paragraphs (c) through (e), respectively and adding new paragraph (b) to read as follows:

§ 903.23 What is the process by which HUD reviews, approve, or disapproves an Annual Plan?

* * * * *

(b) *Scope of HUD review.* HUD's review of the Annual Plan (and any significant amendments or modifications to the plan) will be limited to the information required by § 903.7(b), (g), (h), and (o), and any other element of the PHA's Annual Plan that is challenged.

* * * * *

PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

10. The authority citation for 24 CFR part 985 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

11. Add § 985.1(c) to read as follows:

§ 985.1 Purpose and applicability.

* * * * *

(c) *Small PHAs exempt from Single Audit Act requirements.* A PHA that expends less than $300,000 in Federal awards in any PHA fiscal year is not subject to this part.

12. In § 985.3, remove the second undesignated introductory paragraph.

13. Revise § 985.105(a) to read as follows:

§ 985.105 HUD SEMAP responsibilities.

(a) *Frequency of SEMAP assessments.* (1) *Annual review.* Except as provided in paragraph (a)(2) of this section, HUD shall assess each PHA's performance under SEMAP annually and shall assign each PHA a SEMAP score and overall performance rating.

(2) *Biannual review for small PHAs.* HUD shall assess and score the performance of a PHA with less than 250 assisted units once every other PHA fiscal year, unless the PHA:

(i) Elects to have its performance assessed on an annual basis; or

(ii) Is designated as troubled, in accordance with § 985.103.

* * * * *

14. Revise § 985.107(a) to read as follows:

§ 985.107 Required actions for PHA with troubled performance rating.

(a) *On-site reviews.* (1) *Required reviews for troubled PHAs.* Except as provided in paragraph (a)(2) of this section, HUD will conduct an on-site review of PHA program management for any PHA assigned an overall performance rating of troubled to assess the magnitude and seriousness of the PHA's noncompliance with performance requirements.

(2) *On-site reviews for small PHAs.* Notwithstanding paragraph (a)(1) of this section, HUD may elect not to conduct an on-site review of a troubled PHA, if:

(i) The PHA has less than 250 assisted units; and

(ii) HUD determines that an on-site review is unnecessary to determine the

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needs of the PHA and the actions required to address the program deficiencies.

* * * * *

Dated: July 18, 2002.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

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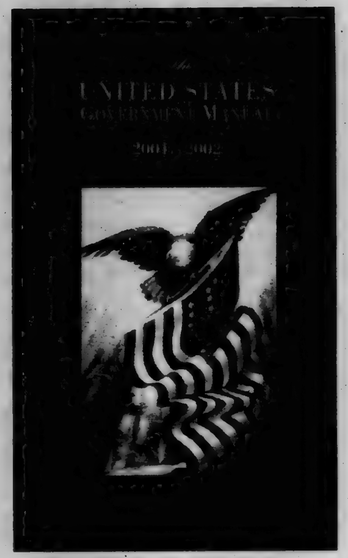
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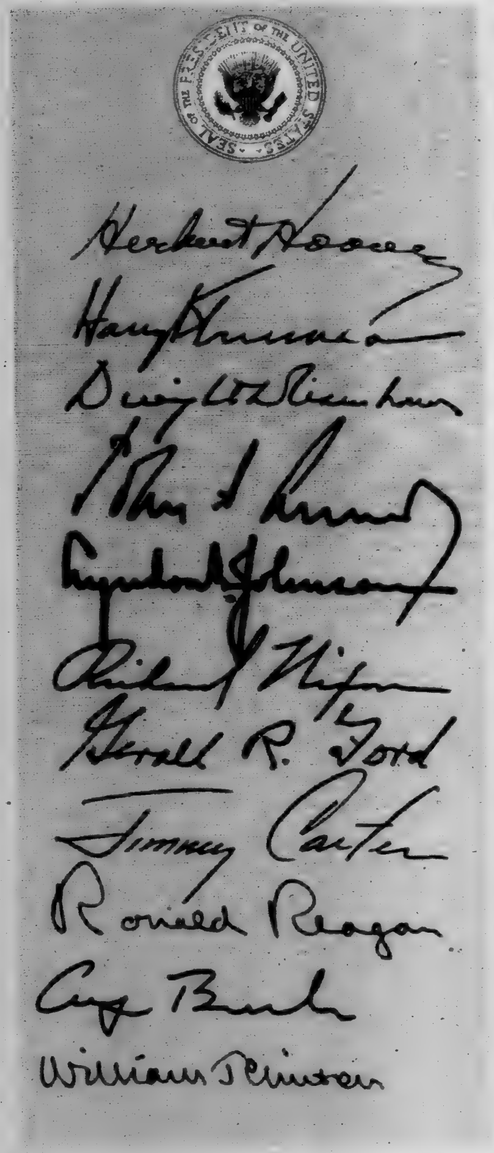
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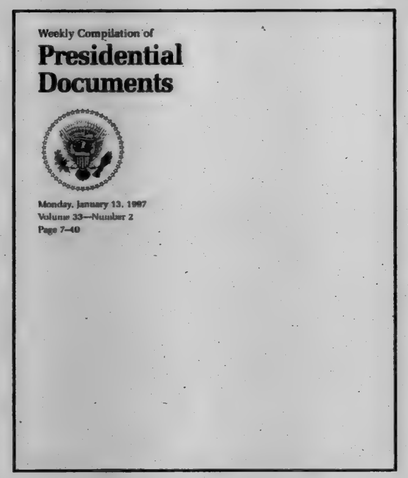
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Rules and Regulations

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Thursday, August 15, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV02–916–1 FIR]

Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is adopting, with changes, an interim final rule which revised the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, container, container marking, and pack requirements for fresh shipments of these fruits, beginning with 2002 season shipments. This rule also continues in effect a modification of the requirements for placement of Federal-State Inspection Service lot stamps for the 2002 season only, a new standard container, and weight-count standards for Peento type peaches. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). This rule enables handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interests of producers, handlers, and consumers of these fruits.

EFFECTIVE DATE: September 16, 2002.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Under the orders, lot stamping, grade, size, maturity, container, container marking, and pack requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC), which are responsible for local administration of the orders, met on November 29, 2001, and unanimously recommended that these handling requirements be revised for the 2002 season, which began on April 15. The changes: (1) Continue the lot stamping requirements which were in effect for the 2000 and 2001 seasons; (2) authorize shipments of "CA Utility" quality fruit to continue during the 2002 season; (3) establish weight-count standards for the Peento type peaches; (4) require shippers' names and addresses on all containers; (5) add the Euro five-down returnable plastic container as a standard container, establish a net weight for the container, and exempt the container from the "well-filled" requirement; and (6) revise varietal maturity, quality, and size requirements to reflect changes in growing and marketing practices. These changes continue in effect.

The committees meet prior to and during each season to review the rules and regulations effective on a continuing basis for California nectarines and peaches under the orders. Committee meetings are open to the public and interested persons are encouraged to express their views at these meetings. USDA reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

No official crop estimate was available at the time of the committees' meetings because the nectarine and peach trees were dormant. The committees adopted crop estimates at their May 1, 2002, meetings. They estimated that 2002 production would total about 23,248,000 containers of nectarines and 23,121,000 containers of peaches. Containers are equivalent to 25 pounds of fruit. This is similar in size to the 2001 crop, which totaled

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20,951,000 containers of nectarines, and 21,408,000 containers of peaches.

Lot Stamping Requirements

Sections 916.55 and 917.45 of the orders require inspection and certification of nectarines and peaches, respectively, handled by handlers. Sections 916.115 and 917.150 of the nectarine and peach orders' rules and regulations, respectively, require that all exposed or outside containers of nectarines and peaches, and at least 75 percent of the total containers on a pallet, be stamped with the Federal-State Inspection Service (inspection service) lot stamp number after inspection and before shipment to show that the fruit has been inspected. These requirements apply except for containers that are loaded directly onto railway cars, exempted, or mailed directly to consumers in consumer packages.

Lot stamp numbers are assigned to each handler by the inspection service, and are used to identify the handler and the date on which the container was packed. The lot stamp number is also used by the inspection service to identify and locate the inspector's corresponding working papers or field notes. Working papers are the documents each inspector completes while performing an inspection on a lot of nectarines or peaches. Information contained in the working papers supports the grade levels certified to by the inspector at the time of the inspection.

The lot stamp number has value for the industries, as well. The committees utilize the lot stamp number and date codes to trace fruit in the container back to the orchard where it was harvested. This information is essential in providing quick information for a crisis management program instituted by the industries. Without the lot stamp information on each container, the "trace back" effort, as it is called, would be jeopardized.

Over the last few years, several new containers have been introduced for use by nectarine and peach handlers. These containers are returnable plastic containers (RPCs). Use of RPCs may represent substantial savings to retailers for storage and disposal, as well as for handlers who do not have to pay for traditional, single-use, containers. Fruit is packed in the containers by the handler, delivered to the retailer, emptied, and returned to a central clearinghouse for cleaning and redistribution to the handler. However, because these containers are designed for reuse, RPCs do not support markings that are permanently affixed to the container. All markings must be printed on cards that slip into tabs on the front or sides of the containers. The cards are easily inserted and removed, and further contribute to the efficient reuse of RPCs.

The cards are a concern for the inspection service and the industries because of their unique portability. There is some concern that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers, thus permitting a handler to avoid inspection on a lot or lots of nectarines or peaches. This would also jeopardize the use of the lot stamp numbers for the industries' "trace back" program.

To address this concern for the 2000 and 2001 seasons, the committees recommended that pallets of inspected fruit in RPCs be identified with a USDA-approved pallet tag containing the lot stamp number, in addition to the lot stamp number printed on the card on the container. In this way, noted the committees, an audit trail would be created, confirming that the lot stamp number on each container on the pallet corresponds to the lot stamp number on the pallet tag.

The committees and the inspection service presented their concerns to the manufacturers of these types of containers prior to the 2000 season. At that time, one manufacturer indicated a willingness to address the problem by offering an area on the principal display panel where the container markings would adhere to the container. Another possible improvement discussed was for an adhesive for the current style of containers which would securely hold the cards with the lot stamp numbers, yet would be easy for the clearinghouse to remove when the containers are washed. However, the changes were not in effect for the 2000 and 2001 seasons, but were anticipated to be in effect for the 2002 season.

In a meeting of the Returnable Plastic Container Task Force on November 15, 2001, it was determined that given the different styles and configurations of RPCs available, having a standardized display panel or a satisfactory adhesive for placement of the cards may not be realistic.

For those reasons, the task force recommended to the committees that the regulation in effect for the 2000 and 2001 seasons requiring lot stamp numbers on USDA-approved pallet tags, as well as on individual containers on a pallet, be again required for the 2002 season. The committees, in turn, recommended unanimously that such requirement be extended for the 2002 season, as well.

Thus, §§ 916.115 and 917.150, as amended, continue in effect the requirement that the lot stamp number be printed on a USDA-approved pallet tag, in addition to the requirement that the lot stamp number be applied to cards on all exposed or outside containers, and not less than 75 percent of the total containers on a pallet, during the 2002 season.

Container and Pack Requirements

Sections 916.52 and 917.41 of the orders authorize establishment of container, pack, and marking requirements for shipments of nectarines and peaches, respectively. Under this rule, the revisions of the well-filled requirements, container marking requirements, and list of standard containers continue in effect in accordance with the recommendations of the NAC and PCC.

Well-Filled Requirements

Under paragraphs (a)(1) of §§ 916.350 and 917.442, all containers of nectarines and peaches, respectively, are required to conform to the requirements of standard pack, and volume-filled containers are further required to be "well-filled." "Well-filled" means that nectarines and peaches in any volume-filled container must be filled to within one inch of the top of the container.

With the addition of the RPCs, handlers are frequently unable to well fill those containers without either damaging the fruit inside or making the container too heavy. For this reason, applying the requirements of "well-filled" to this container is impractical.

The Returnable Plastic Container Task Force discussed this issue at their meeting on November 15, 2001, and unanimously agreed that the requirement for the Euro five down box to meet the well-filled requirement was difficult for handlers utilizing that RPC, and such requirement should not be applied to that container.

For those reasons, the revisions to paragraphs (a)(1) of §§ 916.350 and 917.442 continue in effect the specification that the Euro five down box is not required to meet the well-filled requirement.

Container Marking Requirements

Sections 916.350 and 917.442 establish certain requirements for marking containers of nectarines and peaches, respectively. This rule continues in effect provisions requiring all containers of nectarines and peaches to be marked with the name and address of the shipper. Previously, all containers had to be marked with this information, except for consumer containers mailed directly to consumers.

Requiring the handler to print his or her name and address on each container will ensure that all boxes are properly identified for handler responsibility. Such proper identification will also assist the industry's trace back program by providing additional information for beginning the trace.

The Returnable Plastic Container Task Force discussed this issue at its meeting on November 15, 2001, and unanimously voted to recommend to the NAC and PCC that the requirement for the name and address of the shipper be extended to all types of containers. When the committees met on November 29, 2001, they unanimously voted to do so.

Addition of a New Standard Container

In the rules and regulations for nectarines at § 916.350, paragraphs (a)(6), (a)(7) and (a)(8), and for peaches at § 917.442, paragraphs (a)(7), (a)(8), and (a)(9), standard containers, such as the Nos. 22D, 22E, 22G, and 32, are required to be marked with the net weight. Under paragraph (b) in §§ 916.350 and 917.442, such standard containers are defined. Once the use of a container has become common in the industry, such containers are determined to be standard containers. Standard containers represent container types that are recognized by the industry and adopted by the retail trade. As such, it is a practice of the committees to recommend that such containers be added to the list of standard containers together with container marking requirements.

At the November 29, 2001 meeting, the NAC and PCC, acting upon a recommendation from the Returnable Plastic Container Task Force, unanimously recommended that the Euro five down RPC be added to the list of standard containers and have a net weight of 31 pounds, which is to be printed on the end of the container.

Nectarines: For the reasons stated above, the redesignation of paragraph (a)(4) of § 916.350 as paragraph (a)(5), and the addition of a new paragraph (a)(4) of § 916.350 continues in effect to require all containers of nectarines to be marked with the name and address of the shipper. The markings shall be placed on one outside end of the container in plain sight and in plain letters. The redesignation of paragraphs (a)(5) and (a)(6) as paragraphs (a)(6) and (a)(7), and the addition of a new paragraph (a)(8) continues in effect the establishment of a 31-pound net weight for the Euro five down RPC. The net weight shall be marked on one outside end in plain sight and plain letters. The redesignation of paragraphs (a)(7), (a)(8), and (a)(9) as paragraphs (a)(9), (a)(10) and (a)(11) also continues in effect. In a conforming change, the redesignation of paragraph (a)(4) to paragraph (a)(5) continues in effect the correction of the reference to paragraph (a)(4)(i) in former paragraph (a)(4)(ii), which currently reads "(a)(5)(i)."

Peaches: For the reasons stated above, the redesignation of paragraph (a)(4) of § 917.442 as paragraph (a)(5) continues in effect, and the addition of a new paragraph (a)(4) of § 917.442 continues in effect to require all containers of peaches to be marked with the name and address of the shipper. The markings shall appear on one outside end of the container in plain sight and plain letters. The redesignation of paragraphs (a)(5), (a)(6), and (a)(7) as paragraphs (a)(6), (a)(7), and (a)(8) also continues in effect. New paragraph (a)(9) continues in effect the establishment of a net weight of 31-pounds for the Euro five down RPC. The net weight shall appear on one outside end of the container in plain sight and plain letters. The redesignation of paragraphs (a)(8), (a)(9), and (a)(10) as paragraphs (a)(10), (a)(11), and (a)(12) similarly continue in effect. In a conforming change, the redesignation of paragraph (a)(4) to paragraph (a)(5) continues in effect the correction of the reference to paragraph (a)(4)(i) in former paragraph (a)(4)(ii), which currently reads "(a)(5)(i)."

In addition, the revision of paragraph (b) of §§ 916.350 and 917.442 continues in effect to add the Euro five down container to the list of standard containers. The California Department of Food and Agriculture is expected to assign this container a number, like the 22D or 32 nectarine and peach containers, once the container is added to the California Agricultural Code. At that time, the common name currently used, Euro five down, will be replaced by the assigned number.

Weight-Count Standards for Peaches

Under the requirements of § 917.41 of the order, containers of peaches are required to meet weight-count standards for a maximum number of peaches in a 16-pound sample when such peaches, which may be packed in tray-packed containers, are converted to volume-filled containers. Under § 917.442 of the order's rules and regulations, weight-count standards are established for all varieties of peaches as TABLES 1 and 2 of paragraph (a)(5)(iv).

According to the PCC, the Peento varieties of peaches have traditionally been packed in trays because they have been marketed as a premium variety, which justified the added packing costs.

However, as the volume has increased, the value of the variety has diminished in the marketplace, and some handlers converted their tray-packed containers of Peento varieties to volume-filled containers. Originally, weight-count standards were established for round peaches and nectarines. Peento type peaches are shaped like donuts, and those weight-count standards are inappropriate. In an effort to standardize the conversion from tray-packing to volume-filling for Peento type peaches, the committee staff conducted weigh-count surveys during the 2001 season to determine the most optimum weight-counts for the varieties at varying fruit sizes.

As a result, the staff prepared a new weight-count table applicable to only the Peento varieties. The Grade and Size Subcommittee reviewed the weight-counts at their November 15, 2001, meeting and recommended to the PCC that they be implemented for the 2002 season.

The committee staff will continue to conduct further weight-count surveys to ensure that the Peento varieties, which are packed in volume-filled containers, meet the weight-count standards established for tray-packed fruit.

For those reasons, the addition of a new Table 3 to paragraph (a)(5)(iv) of § 917.442, following Tables 1 and 2 continues in effect. The revised titles of the Tables 1 and 2 continue in effect by adding the words "(except Peento variety peaches)" between the words "peaches" and "packed."

In addition, a correction was published in the **Federal Register** on May 29, 2002 (67 FR 37319), to exempt Peento type peaches from the weight-count standards for round varieties of peaches, given that such weight counts are not applicable to Peento type peaches. This language ensures that the newly-developed standards outlined in Table 3 of paragraph (a)(5)(iv) are the sole basis for the weight-count sampling of Peento type peaches. This rule also continues in effect that correction.

Grade and Quality Requirements

Sections 916.52 and 917.41 of the orders authorize the establishment of grade and quality requirements for nectarines and peaches, respectively. Prior to the 1996 season, § 916.356 required nectarines to meet a modified U.S. No. 1 grade. Specifically, nectarines were required to meet U.S. No. 1 grade requirements, except for a slightly tighter requirement for scarring and a more liberal allowance for misshapen fruit. Prior to the 1996

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season, § 917.459 required peaches to meet the requirements of a U.S. No. 1 grade, except for a more liberal allowance for open sutures that were not "serious damage."

This rule continues in effect the revisions to §§ 916.350, 916.356, 917.442, and 917.459 to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 2002 season. ("CA Utility" fruit is lower in quality than that meeting the modified U.S. No. 1 grade requirements.) Shipments of nectarines and peaches meeting "CA Utility" quality requirements have been permitted each season since 1996.

Studies conducted by the NAC and PCC in 1996 indicated that some consumers, retailers, and foreign importers found the lower-quality fruit acceptable in some markets. When shipments of "CA Utility" nectarines were first permitted in 1996, they represented 1.1 percent of all nectarine shipments, or approximately 210,000 containers. Shipments of "CA Utility" nectarines reached a high of 5 percent (1,131,000 containers) during the 2001 season, but usually represent approximately 4 percent of total nectarine shipments. Shipments of "CA Utility" peaches totaled 1.9 percent of all peach shipments, or approximately 366,000 containers, during the 1996 season. Shipments of "CA Utility" peaches reached a high of 5 percent of all peach shipments (1,031,000 containers) during the 2001 season, but usually represent approximately 4 percent of total peach shipments.

Handlers have also commented that the availability of "CA Utility" lends flexibility to their packing operations. They have noted that they now have the opportunity to remove marginal nectarines and peaches from their U.S. No. 1 containers and place this fruit in containers of "CA Utility." This flexibility, the handlers note, results in better quality U.S. No. 1 packs without sacrificing fruit.

The Grade and Size Subcommittee met on November 15 and did not make a recommendation to the NAC and PCC to continue shipments of "CA Utility" quality nectarines and peaches. Several subcommittee members raised a number of concerns about "CA Utility" quality fruit, including that the fruit is not reaching its intended low income consumer markets and that there are reduced returns to growers on "CA Utility" quality fruit. The authorized tolerance of 40 percent U.S. No. 1 fruit in each container of "CA Utility" quality was raised, and a suggestion was made that the tolerance should be eliminated so that no U.S. No. 1 fruit would be in a box.

At the full committee meeting, committee staff discussed the benefits of having a "CA Utility" quality for nectarines and peaches. Such benefits included improved quality of packed fruit, improved compliance of marketing order requirements, and increased assessments. Further, elimination of the tolerances for U.S. No. 1 fruit in each container of "CA Utility" quality fruit was discussed. It was noted that this would likely result in higher inspection costs to handlers.

Accordingly, based upon the recommendations, the revisions to paragraph (d) of §§ 916.350 and 917.442, and paragraph (a)(1) of §§ 916.356 and 917.459 continue in effect to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 2002 season, on the same basis as the 2000 and 2001 seasons.

Maturity Requirements

In §§ 916.52 and 917.41, authority is provided to establish maturity requirements for nectarines and peaches, respectively. The minimum maturity level currently specified for nectarines and peaches is "mature" as defined in the standards. For most varieties, "well-matured" determinations for nectarines and peaches are made using maturity guides (*e.g.*, color chips). These maturity guides are reviewed each year by the Shipping Point Inspection Service (SPI) to determine whether they need to be changed, based upon the most-recent information available on the individual characteristics of each nectarine and peach variety.

These maturity guides established under the handling regulations of the California tree fruit marketing orders have been codified in the Code of Federal Regulations as TABLE 1 in §§ 916.356 and 917.459, for nectarines and peaches, respectively.

The requirements in the 2002 handling regulations are the same as those that appeared in the 2001 handling regulations with a few exceptions. Those exceptions are explained in this rule.

Nectarines: Requirements for "well-matured" nectarines are specified in § 916.356 of the order's rules and regulations. This rule continues in effect the revision to TABLE 1 of paragraph (a)(1)(iv) of § 916.356 to add maturity guides for ten varieties of nectarines. Specifically, SPI recommended adding maturity guides for the Fire Sweet, Honey Blaze, Ruby Sweet, September Free, and Spring Sweet varieties to be regulated at the J maturity guide; and the Flame Glo, Gran Sun, Prima Diamond XIII, Red Jewel, and Spring Ray to be regulated at the L maturity guide.

The NAC recommended these maturity guide requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the "well-matured" level of maturity for nectarine varieties in production.

Peaches: Requirements for "well-matured" peaches are specified in § 917.459 of the order's rules and regulations. This rule continues in effect the revision of TABLE 1 of paragraph (a)(1)(iv) of § 917.459 to add maturity guides for eleven varieties of peaches. Specifically, SPI recommended adding maturity guides for the Spring Delight variety to be regulated at the G maturity guide; the Super Rich variety to be regulated at the H maturity guide; the 60EF32 variety to be regulated at the I maturity guide; the Brittney Lane, Joanna Sweet, Madonna Sun, Morning Lord, Sweet Dream, Sweet Gem, and Sweet Mick varieties to be regulated at the J maturity guide; and the Sprague Last Chance variety to be regulated at the L maturity guide.

In addition, SPI requested that the Sugar Lady variety of peaches be removed from the maturity guide listing in TABLE 1 of paragraph (a)(1)(iv) of § 917.459. This rule continues in effect that removal. According to SPI, white-fleshed peaches and nectarines would be more accurately assessed by other criteria, including cutting the fruit. The committees unanimously recommended such a change at their meetings.

The Joanna Sweet peach variety was also recommended to have a one hundred percent surface color requirement for meeting the assigned color chip rather than the current ninety percent. This recommendation is based upon SPI's experience with the maturity characteristics of this variety.

Thus, the revision of paragraph (a)(1)(iv) of § 917.459 to reflect this requirement continues in effect.

The PCC recommended these maturity guide requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the "well-matured" level of maturity for peach varieties in production.

Size Requirements: Both orders provide (in §§ 916.52 and 917.41) authority to establish size requirements. Size regulations encourage producers to leave fruit on the tree longer, which improves both size and maturity of the fruit. Acceptable fruit size provides greater consumer satisfaction and promotes repeat purchases; and, therefore, increases returns to producers and handlers. In addition, increased fruit size results in increased numbers of packed containers of nectarines and peaches per acre, also a benefit to producers and handlers.

Varieties recommended for specific size regulations have been reviewed and such recommendations are based on the specific characteristics of each variety. The NAC and PCC conduct studies each season on the range of sizes attained by the regulated varieties and those varieties with the potential to become regulated, and determine whether revisions and additions to the size requirements are appropriate.

Nectarines: Section 916.356 of the order's rules and regulations specifies minimum size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule continues in effect the revision to § 916.356 establishing variety-specific minimum size requirements for 13 varieties of nectarines, which were produced in commercially-significant quantities of more than 10,000 containers for the first time during the 2001 season. This rule also continues in effect the removal of the variety-specific minimum size requirements for 3 varieties of nectarines whose shipments fell below 5,000 containers during the 2001 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Arctic Ice variety of nectarines, recommended for regulation at a minimum size 80. Studies of the size ranges attained by the Arctic Ice variety revealed that 100 percent of the containers met the minimum size of 80 during the 2001 season. Sizes ranged from size 30 to size 80, with 3 percent of the packages in the 30 sizes, 47 percent of the packages in the 40 sizes, 41 percent of the packages in the 50 sizes, 5.4 percent in the 60 sizes, 3.5 percent in the 70 sizes, and .2 percent at size 80. Due to rounding, these numbers add up to slightly more than 100 percent.

A review of other varieties with the same harvesting period indicated that the Arctic Ice variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to handle the variety confirm this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Arctic Ice variety in the variety-specific minimum size regulation at a minimum size 80 is appropriate.

Historical data such as this provides the NAC with the information necessary to recommend the appropriate sizes at which to regulate various nectarine varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both NAC and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, the revision of the introductory text of paragraph (a)(4) of § 916.356 to include the Prima Diamond VI and the Prince Jim 1 nectarine varieties continues in effect; and the revision of the introductory text of paragraph (a)(6) of § 916.356 to include the Arctic Ice, Bright Sweet, Grand Sweet, June Lion, Kay Pearl, Prima Diamond XXVIII, Regal Red, September Bright (26P–490), Summer Jewel, Sun Valley Sweet, and Sweet White nectarine varieties continues in effect.

This rule also continues in effect the revision of the introductory text of paragraphs (a)(4) and (a)(6) of § 916.356 to remove 3 varieties from the variety-specific minimum size requirements specified in these paragraphs because less than 5,000 containers of each of these varieties were produced during the 2001 season. Specifically, the revision of the introductory text of paragraph (a)(4) of § 916.356 to remove the Arctic Glo nectarine variety continues in effect; and the revision of the introductory text of paragraph (a)(6) of § 916.356 to remove the Cole Red and Mid Glo nectarine varieties continues in effect.

Nectarine varieties removed from the nectarine variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

Peaches: Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule continues in effect the revision of § 917.459 establishing variety-specific minimum size requirements for 19 peach varieties that were produced in commercially-significant quantities of more than 10,000 containers for the first time during the 2001 season. This rule also continues in effect the removal of the variety-specific minimum size requirements for 1 variety of peaches whose shipments fell below 5,000 containers during the 2001 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Bev's Red variety of peaches, which was recommended for regulation at a minimum size 80. Studies of the size ranges attained by the Bev's Red variety revealed that 100 percent of the containers met the minimum size of 80 during the 2001 season. The sizes ranged from the 30 sizes to the 80 sizes, with 3.4 percent of the containers meeting the 30 sizes, 15.9 meeting the 40 sizes, 53.8 percent meeting the 50 sizes, 20.4 percent meeting the 60 sizes, 5.5 percent meeting the 70 sizes, and 1.1 percent meeting the size 80.

A review of other varieties with the same harvesting period indicated that the Bev's Red variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to handle the variety confirm this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Bev's Red variety in the variety-specific minimum size regulation at a minimum size 80 is appropriate.

Historical data such as this provides the PCC with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both PCC and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, the revision of the introductory text of paragraph (a)(2) of § 917.459 to include the 91002 peach variety continues in effect; the revision of the introductory text of paragraph (a)(3) of § 917.459 to include the Snow Kist peach variety continues in effect; the revision of the introductory text of paragraph (a)(5) of § 917.459 to include the Bev's Red, May Sweet, and Sunlit Snow (172LE81) peach varieties continues in effect; and the revision of the introductory text of paragraph (a)(6) of § 917.459 to include the Flaming Dragon, Jillie White, Joanna Sweet, July Flame, Prima Peach XXV, Prima Peach XXVII, Princess Gayle, Red Sun, September Flame, Snow Fall, Snow Gem, Spring Gem, Sweet Gem, and 24-SB peach varieties continues in effect.

This rule also continues in effect the revision of the introductory text of

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paragraph (a)(6) of § 917.459 removing the Carnival peach variety from the variety-specific minimum size requirements specified in the section because less than 5,000 containers of this variety were produced during the 2001 season.

Peach varieties removed from the peach variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) § 917.459.

This rule also continues in effect the correction of the spelling of the peach variety "Brittney Lane," incorrectly spelled as "Brittany Lane" in paragraph (a)(5) of § 917.459.

The NAC and PCC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine and peach varieties, and the consumer acceptance levels for various fruit sizes. This rule continues in effect the established minimum size requirements for fresh nectarines and peaches consistent with expected crop and market conditions.

This rule reflects the committees' and USDA's appraisal of the need to revise the handling requirements for California nectarines and peaches, as specified. USDA believes that this rule will have a beneficial impact on producers, handlers, and consumers of fresh California nectarines and peaches.

This rule continues in effect the establishment of handling requirements for fresh California nectarines and peaches consistent with expected crop and market conditions, and will help ensure that all shipments of these fruits made each season will meet acceptable handling requirements established under each of these orders. This rule will also help the California nectarine and peach industries provide fruit desired by consumers. This rule continues in effect the establishment and maintenance of orderly marketing conditions for these fruits in the interests of producers, handlers, and consumers.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration [13 CFR 121.201] as those whose annual receipts are less than $5,000,000. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff has estimated that there are less than 20 handlers in the industry who could be defined as other than small entities. In the 2001 season, the average handler price received was $9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 556,000 containers to have annual receipts of $5,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2001 season, the committees' staff estimates that small handlers represent approximately 94 percent of all the handlers within the industry.

The committees' staff has also estimated that more than 80 percent of the producers in the industry could be defined as small entities. In the 2001 season, the average producer price received was $5.50 per container or container equivalent for nectarines, and $5.25 per container or container equivalent for peaches. A producer would have to produce at least 136,364 containers of nectarines and 142,858 containers of peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2001 season, the committees' staff estimates that small producers represent more than 80 percent of the producers within the industry.

Under §§ 916.52 and 917.41 of the orders, grade, size, maturity, container, container marking, and pack requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. The NAC and PCC met on November 29, 2001, and unanimously recommended that these handling requirements be revised for the 2002 season. These recommendations had been presented to the committees by various subcommittees, each charged with review and discussion of the changes. The changes: (1) Continue the lot stamping requirements which were in effect for the 2000 and 2001 seasons; (2) authorize shipments of "CA Utility" quality fruit to continue during the 2002 season; (3) establish weight-count standards for Peento type peaches; (4) require shippers' names and addresses on all containers; (5) add the Euro five-down returnable plastic container as a standard container, establish a net weight for that container, and exempt that container from the "well-filled" requirement; and (6) revise varietal maturity, quality, and size requirements to reflect changes in growing and marketing practices. These changes continue in effect.

This rule continues in effect the authority for the continuation of the lot stamping requirements for returnable plastic containers under the marketing orders' rules and regulations that were in effect for such containers during the 2001 season for nectarine and peach shipments. The modified requirements of §§ 916.115 and 917.150 mandated that the lot stamp numbers be printed on a USDA-approved pallet tag, in addition to the requirement that the lot stamp number be applied to cards on all exposed or outside containers, and not less than 75 percent of the total containers on a pallet. Continuation of such requirements for the 2002 season would help the inspection service safeguard the identity of inspected and certified containers of nectarines and peaches, and would help the industry by keeping in place the information necessary to facilitate their "trace-back" program.

The Returnable Plastic Container Task Force and Grade and Size Subcommittee met on November 15, 2001, and considered possible alternatives to this action. Other alternatives were rejected because it was determined that given the different styles and configurations of RPCs available, having a standardized display panel or a satisfactory adhesive for placement of the cards may not be realistic, at least for the time being.

For those reasons, the task force recommended to the committees, and the committees voted unanimously, to extend the requirement for the lot stamp number to be printed on the cards on each container and for each pallet to be marked with a USDA-approved pallet tag, also containing the lot stamp number. Such safeguards were put in place to ensure that all the containers on each pallet had been inspected and certified in the event a card on an individual container or containers was removed, misplaced, or lost.

The Returnable Plastic Container Task Force met on November 15 to discuss issues relating to RPCs. At that time, they discussed volume filling of RPCs and its ramifications, specifically of the Euro five down container. They noted that RPCs are favored by many retailers and demanded by others, and that this particular container has become a standard container within the industry. In an effort to meet the demands and preferences for their customers, the Euro five down container has been used in increasing numbers in recent years. However, they noted, to maintain efficient packing operations, some container requirements needed to be reviewed, especially the requirement that all volume-filled RPC containers must be well filled. While the well-filled requirement may work for traditional boxes, the requirement may increase the amount of damage to fruit in RPCs or make the containers unwieldy and heavy. The task force considered leaving the requirement in place. However, given the potential for increased utilization of RPCs, and this container in particular, and the need to provide a quality product to customers, the alternative was rejected.

The Grade and Size Subcommittee met on November 15, 2001, to discuss container-marking requirements, among other things. At that time, it was noted by staff that not all containers are required to have the shipper's name and address printed on them. The subcommittee voted unanimously to recommend to the NAC and PCC that marking requirements be changed to require the shipper's name and address be placed on all containers.

Sections 916.350 and 917.442 establish certain requirements for marking containers of nectarines and peaches, respectively. This rule continues in effect provisions requiring all containers of nectarines and peaches to be marked with the name and address of the shipper. Previously, consumer packages of these fruits mailed directly to consumers did not have to be marked with that information.

Requiring the handler to print his or her name and address on each container will ensure that all boxes are properly identified for handler responsibility. Such proper identification will also assist the industry's trace back program by providing additional information for beginning the trace.

In addition, the Returnable Plastic Container Task Force also deliberated the issue of making the Euro five down container a standard container and recommending a net weight for that container. It has been the practice of the committees to study the trends in containers used by the industry. Traditionally, corrugated containers have been the shippers' container of choice. However, in recent years, the growth of RPCs has increased dramatically. In keeping with that practice, the Task Force determined that the Euro five down container has become an industry standard and may continue to be used by greater numbers of shippers. As such, any other alternative would not be viable.

Coupled with the recommendation to add the Euro five down container to the list of standard containers is the need to recommend an applicable net weight for the container. Assigning an appropriate net weight would foreclose other alternatives.

In 1996, §§ 916.350 and 917.442 were revised to permit shipments of "CA Utility" quality nectarines and peaches as an experiment during the 1996 season only. Such shipments have subsequently been permitted each season. Since 1996, shipments of "CA Utility" have ranged from 1 to 5 percent of total nectarine and peach shipments. This rule continues in effect the authority for continued shipments of "CA Utility" quality nectarines and peaches during the 2002 season.

The Grade and Size Subcommittee met on November 15, 2001, and considered one alternative to this action. They considered not authorizing continued shipments of "CA Utility" quality nectarines and peaches. The subcommittee, ultimately, did not make a recommendation to the NAC and PCC on continued shipments of "CA Utility" quality nectarines and peaches.

However, the NAC and PCC unanimously recommended implementation of the authority for continued shipments of "CA Utility" quality nectarines and peaches at their November 29, 2001, meeting. The committees voted to continue all requirements that were in effect at that time, and then individually discussed any proposed changes, such as grade and size changes. There was discussion regarding shipments of "CA Utility" quality nectarines and peaches, based upon information from the Grade and Size Subcommittee, but the committees voted to continue such shipments along with all other requirements in effect at that time.

Sections 916.350 and 917.442 establish container, pack, and marking requirements for shipments of nectarines and peaches, respectively. This rule continues in effect the changes to the pack and container marking requirements of the order's rules and regulations to exempt RPCs from the well-filled requirement and add the requirement that all types of containers be marked with the shipper's name and address.

Section 917.442 also establishes minimum weight-count standards for containers of peaches. Under these requirements, containers of peaches are required to meet weight-count standards for a maximum number of peaches in a 16-pound sample when such peaches are packed in a tray-packed container. That same maximum number of peaches is also applicable to volume-filled containers, based upon the tray-packed standard. In other words, the weight-count standard is developed so handlers may convert tray-packed peaches to volume-filled containers and be assured that the fruit in the volume-filled container will meet the maximum number of peaches in the 16-pound sample.

When the Grade and Size Subcommittee met on November 15, 2001, they discussed the recent changes in the packing and marketing of Peento type peaches. When these varieties were first introduced and marketed, they were generally tray-packed because they were a novel and premium product. As production has increased, the value of the varieties has diminished in the marketplace, and some handlers have converted their tray-packed containers of Peento varieties to volume-filled containers.

The staff conducted weight-count studies during the 2001 season so that weight-count standards could be developed, thus ensuring that all handlers are packing a standard maximum number of peaches in a 16-pound sample. Since weight-count standards provide a basis for volume filling of containers of other varieties of peaches, the subcommittee recommended that the NAC and PCC establish such standards for these unique varieties.

Sections 916.356 and 917.459 establish minimum maturity levels. This rule continues in effect the annual adjustments to the maturity requirements for several varieties of nectarines and peaches. Maturity requirements are based on maturity measurements generally using maturity guides (*e.g.*, color chips), as recommended by Shipping Point Inspection. Such maturity guides are reviewed annually by SPI to determine the appropriate guide for each nectarine and peach variety. These annual adjustments reflect changes in the maturity characteristics of nectarines

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and peaches as experienced over the previous season's inspections. Adjustments in the guides ensure that fruit has met an acceptable level of maturity, ensuring consumer satisfaction while benefiting nectarine and peach producers and handlers.

In § 916.356 of the nectarine order's rules and regulations, and in § 917.459 of the peach order's rules and regulations, minimum sizes for various varieties of nectarines and peaches, respectively, are established. This rule continues in effect the adjustments to the minimum sizes authorized for various varieties of nectarines and peaches for the 2002 season. Minimum size regulations are put in place to encourage producers to leave fruit on the trees for a longer period of time. This increased growing time not only improves maturity, but also increases fruit size. Increased fruit size increases the number of packed containers per acre; and coupled with heightened maturity levels, also provides greater consumer satisfaction, fostering repeat purchases. Such improved consumer satisfaction and repeat purchases benefit both producers and handlers alike. Annual adjustments to minimum sizes of nectarines and peaches, such as these, are recommended by the NAC and PCC based upon historical data, producer and handler information regarding sizes attained by different varieties, and trends in consumer purchases.

An alternative to such action would include not establishing minimum size regulations for these new varieties. Such an action, however, would be a significant departure from the committees' practices and represent a significant change in the regulations as they currently exist, would ultimately increase the amount of less acceptable fruit being marketed to consumers, and, thus, would be contrary to the long-term interests of producers, handlers, and consumers. For these reasons, this alternative was not recommended.

The committees made recommendations regarding all the revisions in handling and lot stamping requirements after considering all available information, including comments of persons at several subcommittee meetings and comments received by committee staff. Such subcommittees include the Grade and Size Subcommittee, the Inspection and Compliance Subcommittee, the Returnable Plastic Container Task Force, and the Management Services Committee.

At the meetings, the impact of and alternatives to these recommendations were deliberated. These subcommittees and the task force, like the committees themselves, frequently consist of individual producers (and handlers, where authorized) with many years' experience in the industry who are familiar with industry practices. Like all committee meetings, subcommittee meetings are open to the public and comments are widely solicited. In the case of the Returnable Plastic Container Task Force, RPC manufacturers also were invited, as well as those handlers currently using such boxes. Information from these sources assists the committees, subcommittees, and the task force in thoroughly examining and deliberating the issues that affect the entire industry in a public setting.

This rule does not impose any additional reporting and recordkeeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, as noted in the final regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, nectarines and peaches under the orders have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 CFR 1621 *et seq.*). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

Further, the committees' meetings are widely publicized through the nectarine and peach industries and all interested parties are encouraged to attend and participate in committee deliberations on all issues. These meetings are held annually during the last week of November or first week of December. Like all committee meetings, the November 29, 2001, meetings were public meetings, and all entities, large and small, were encouraged to express views on these issues.

Also, various subcommittee meetings were held on November 15, 2001, and these regulations were reviewed and discussed publicly at that time.

An interim final rule concerning this action was published in the **Federal Register** on April 5, 2002 (67 FR 16286), and a correction was published in the **Federal Register** on May 29, 2002 (67 FR 37319). Copies of a summary of the rules were provided to all handlers upon publication of the interim final rule. In addition, the rules were made available through the Internet by the Office of the Federal Register and USDA and interested persons were invited to submit information on the regulatory and informational impacts of these actions on small businesses. The interim final rule provided a 60-day comment period, which ended on June 4, 2002. Twelve comments were received; eleven opposed the continuation of "CA Utility" quality nectarines and peaches, and one requested clarification of the regulations regarding "Peento type peaches."

One commenter contended that continuation of the authority to ship "CA Utility" quality nectarines and peaches in its current form would be costly to growers. The commenter believes that allowing up to 40 percent U.S. No. 1 fruit in a box of "CA Utility" quality nectarines and peaches reduces returns to growers because the higher quality U.S. No. 1 fruit is sold for lower "CA Utility" prices. He favored allowing only 8 percent U.S. No. 1 fruit in "CA Utility" packages. However, the committees have discussed changing the percentage of U.S. No. 1 nectarines and peaches required in "CA Utility" quality containers, and have consistently recommended allowing 40 percent U.S. No. 1 fruit in each container, because a smaller tolerance, such as 8 percent, is more difficult for the handler to pack, given all the other available tolerances already affecting individual lots and packages.

Several commenters noted, too, that a survey of growers conducted by the committees indicated that 42 percent of the growers favored continuing the authority for "CA Utility" shipments, while 58 percent did not favor continuation. However, as several growers and handlers explained at the Grade and Size Subcommittee meeting, each handler chooses whether to pack and ship "CA Utility" quality nectarines and peaches. Also, growers can choose to request that "CA Utility" quality nectarines and peaches from their own orchards not be packed. Handlers, too, base their decisions on whether or not to pack and ship "CA Utility" quality fruit on market conditions and prices.

Even some growers who opposed continued authority to ship "CA Utility" quality fruit suggested in the survey that it should be available on an emergency or temporary basis, such as in a hail year or a year of short production. In fact, in late May 2002, hail damaged crops in the production area.

Several commenters suggested that "CA Utility" quality nectarines and peaches are merely cull fruit. However, as stated earlier, "CA Utility" quality nectarines and peaches are a modified U.S. No. 1 grade, not culls.

Commenters also contended that since the inception of "CA Utility" quality regulations, the financial condition of growers has worsened. Additionally, some growers at industry meetings have indicated that they have profited by selling their "CA Utility" quality fruit.

In addition, another commenter stated that regulations for "CA Utility" quality fruit have created a large market for uninspected cull fruit through sales to cash buyers and fruit peddlers. However, staff advised the committees at the NAC and PCC meetings in November that the existence of "CA Utility" has actually decreased compliance problems at terminal markets by reducing the need for vendors to sell cull fruit. The availability of the higher-quality "CA Utility" fruit at more favorable prices appears to provide an incentive for vendors in those markets to comply with marketing order requirements. Also, since such sales may displace cull fruit sales, the availability of "CA Utility" quality fruit may actually increase total fruit sales because buyers are not dissatisfied as they might be after purchasing low-quality cull fruit.

In addition, the staff advised that no assessments are collected on cull fruit, while "CA Utility" quality fruit is assessed at the same rate as U.S. No. 1 nectarines and peaches. Also, shipments of "CA Utility" are subject to the "trace-back" program discussed earlier, while cull fruit no longer maintains an identity.

Another commenter suggested that shipments of "CA Utility" quality nectarines and peaches represent four percent of all tree fruit shipments or nearly three million containers. However, only about 2.1 million containers of nectarines and peaches were shipped during 2001 as "CA Utility" and those shipments represented approximately five percent of total nectarine and peach shipments.

An additional commenter suggested that "CA Utility" requirements were created to benefit the handler at the expense of the grower since the handler gets his costs for pre-cooling, packaging, palletizing, etc., before the grower gets a return for each container sold. In 1996, "CA Utility" quality requirements were implemented to provide an outlet for nectarines and peaches that would be acceptable in lower-income markets. As noted earlier, "CA Utility" quality nectarines and peaches are acceptable in some domestic and foreign markets. In fact, a May 17, 2002, newsletter published by the committees recounting marketing activities in international markets quotes a supportive South American marketing representative. The representative noted that due to initial high prices of California nectarines and peaches, the first arrivals in Colombia and Venezuela are "CA Utility" quality fruit.

Another commenter echoed previous concerns about the percentage of U.S. No. 1 grade fruit required in containers of "CA Utility" quality nectarines and peaches. The commenter suggested that if a market exists for lower-quality fruit, U.S. No. 1 fruit should not be packed with the lower-quality fruit. However, it is not practical to completely separate U.S. No. 1 fruit from "CA Utility" quality fruit.

Yet another commenter suggested that the committees are composed of handlers or their employees who do not care about the plight of the growers. However, § 916.20 requires nectarine committee members to be growers or employees of growers. In the case of peaches, growers are similarly situated in terms of committee membership.

Accordingly, no changes to the "CA Utility" quality requirements will be made based upon the comments received.

A final commenter noted that references to "Peento (Donut) peaches" should be corrected to read "Peento type peaches" since the term "Donut" has been patented by a broker. He also suggested exempting all Peento type peaches from the weight-count standards applicable to round varieties of peaches. In the correction published in the **Federal Register** on May 29, 2002 (67 FR 37319), the exemption from weight counts was applied to size 72 peaches regulated under § 917.459(a)(6)(iii) only. However, Peento type peaches regulated under sizes 96, 88, 84, and 80 should be similarly exempt from the weight counts applicable to round varieties of peaches. This is consistent with the committees' intent to provide a separate weight-count table applicable only to Peento type peaches, which continues in effect as a result of the interim final rule.

The commenter also noted that references to the "Earli Rich" peach variety should be corrected to read "Earlirich," consistent with the patented name recently acquired by the nursery that handles the rootstock for the variety.

Accordingly, changes will be made to the interim final rule, based on this comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, the comments received, including the committees' recommendation and other information, it is found that finalizing the interim final rule, with changes, as published in the **Federal Register** (67 FR 16286, April 5, 2002), and the correction, as published in the **Federal Register** (67 FR 37319, May 29, 2002) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR parts 916 and 917, which was published at 67 FR 16286 on April 5, 2002, is adopted as a final rule with the following changes:

PART 917—PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 917.442 [Amended]

2. In § 917.442, paragraph (a)(5)(iv), the table headings for Tables 1 and 2 are amended by removing the words "(Donut) Varieties" and adding the words "Type Peaches" in their place;

3. In § 917.442, paragraph (a)(5)(iv), the heading for Table 3 is amended by removing the words "(Donut) Varieties of" and adding the word "Type" in their place;

§ 917.459 [Amended]

4. In § 917.459, Table 1 of paragraph (a)(1)(iv) is amended by revising the words "Earli Rich" to read "Earlirich"

5. In § 917.459, paragraph (a)(2)(ii) is amended by adding the words "except for Peento type peaches" after the words "96 peaches"

6. In § 917.459, paragraph (a)(3)(ii) is amended by adding the words "except for Peento type peaches" after the words "92 peaches"

7. In § 917.459, paragraph (a)(4)(iii) is amended by adding the words "except for Peento type peaches" after the words "83 peaches"

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8. In § 917.459, paragraph (a)(5)(iii) is amended by adding the words "except for Peento type peaches" after the words "76 peaches"

9. In § 917.459, paragraph (a)(6) is amended by revising the words "Earli Rich" to read "Earlirich;" and

10. In § 917.459, paragraph (a)(6)(iii) is amended by removing the words "(Donut) Varieties of" and adding the word "Type" in their place.

Dated: August 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–20684 Filed 8–14–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 967

[Docket No. FV98–967–1 FR]

Celery Grown in Florida; Termination of Marketing Order No. 967

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule terminates the Federal marketing order regulating the handling of celery grown in Florida (order) and the rules and regulations issued thereunder. The Florida celery industry has not operated under the order since its provisions were suspended January 12, 1995. The celery industry has experienced a loss of market share; a significant reduction in the number of producers and handlers has diminished the need for regulating Florida celery; and there is no industry support for reactivating the order. Therefore, there is no need to continue this order.

EFFECTIVE DATE: September 16, 2002.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884; telephone (863) 324–3375, Fax: (863) 325–8793; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW-STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under the provisions of section 8(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule terminates the order covering celery grown in Florida.

The order was initially established in 1965 to help the Florida celery industry solve specific marketing problems and maintain orderly marketing conditions. It was the responsibility of the Florida Celery Committee (committee), the agency established for local administration of the marketing order, to periodically investigate and assemble data on the growing, harvesting, shipping, and marketing conditions of Florida celery. The committee tried to achieve orderly marketing and improve acceptance of Florida celery through the establishment of volume regulations and promotion activities.

The Florida celery industry has not operated under the marketing order for a number of years. The order and all of its accompanying rules and regulations were suspended on January 12, 1995 (60 FR 2873). Regulations have not been applied under the order since that time, and no committee has been appointed since then.

In 1965, when the marketing order was issued, there were over 40 producers of Florida celery. The earliest handling figures available indicate that in 1983 there were 11 handlers. As of the date of suspension of the order (January 12, 1995), there were six handlers of Florida celery who were subject to regulation under the marketing order and five celery producers within the production area. Currently, there is one producer who is also a handler.

When the order was suspended, all of the committee members and their alternates were named as trustees to oversee the administrative affairs of the order. USDA contacted as many of these trustees as it could with respect to the need for reinstating the marketing order. All of the individuals contacted (10 of the 18 trustees) were in favor of terminating the order.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There is one handler of Florida celery who would be subject to regulation under the marketing order. This handler is also a producer within the production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. The Florida celery producer-handler may be classified as a small entity.

This final rule terminates the order regulating the handling of celery grown in Florida. The order and its accompanying rules and regulations were suspended on January 12, 1995. No regulations have been implemented since then, and there is no indication that such regulations will again be needed.

The industry has been operating without a marketing order since its suspension. Reestablishing the order would mean additional cost to the industry stemming from assessments to maintain the order (the last assessment was $0.01 per crate) and any associated costs generated by regulation. By not reinstating the marketing order, the industry benefits from avoiding these costs. Regulatory authorities that will be terminated include authority to implement grade, size, container, and inspection requirements and provisions for research and development and volume regulation. Because the industry has been operating without an order, termination of the order would have no noticeable effect on either small or large operations.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements under the order were approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0145. When the order was suspended on January 12, 1995, these information collection requirements were also suspended. Now that the order is being terminated, these requirements are eliminated.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

A proposed rule concerning this action was published in the October 9, 1998, issue of the **Federal Register** (63 FR 54382) giving interested persons until December 8, 1998, to file written comments. No comments were received.

Therefore, pursuant to section 8c(16)(A) of the Act, USDA has determined that Marketing Order No. 967, covering celery grown in Florida, and the rules and regulations issued thereunder, no long tend to effectuate the declared policy of the Act, and are hereby terminated.

Section 8c(16)(A) of the Act requires USDA to notify Congress 60 days in advance of the termination of a Federal marketing order. Congress was so notified.

List of Subjects in 7 CFR Part 967

Celery, Marketing agreements, Reporting and recordkeeping requirements.

PART 967—[REMOVED]

For the reasons set forth in the preamble, and under authority of 7 U.S.C. 601–674, 7 CFR part 967 is removed.

Dated: August 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–20685 Filed 8–14–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. FV02–987–1 FR]

Domestic Dates Produced or Packed in Riverside County, California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the California Date Administrative Committee (Committee) for the 2002–03 and subsequent crop years from $0.25 to $0.90 per hundredweight of dates handled. The Committee locally administers the marketing order that regulates the handling of dates produced or packed in Riverside County, California. Authorization to assess date handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The crop year begins October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey St., suite 102B, Fresno, CA 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California date handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate issued herein will be applicable to all assessable dates beginning on October 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2002–03 and subsequent crop years from $0.25 to $0.90 per hundredweight of assessable dates handled.

The California date marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and

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producer-handlers of California dates. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–02 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on April 8, 2002, and unanimously recommended 2002–03 expenditures of $273,450 and an assessment rate of $0.90 per hundredweight of dates handled. In comparison, last year's budgeted expenditures were $90,800. The recommended assessment rate of $0.90 is $0.65 higher than the rate currently in effect. The higher assessment rate is needed to fund the industry's marketing and promotion programs under the Committee budget. These programs have been implemented under a State marketing order. However, the date industry concluded that it was in its best interest to implement the programs under the Federal marketing order because recent court actions have been filed against several California State marketing orders under which similar programs have been implemented.

Proceeds from the sales of cull dates are usually deposited in a surplus account for subsequent use by the Committee in covering the surplus pool share of the Committee's expenses. Handlers may also dispose of cull dates of their own production within their own livestock-feeding operation; otherwise, such cull dates must be shipped or delivered to the Committee for sale to non-human food product outlets.

Last year, the Committee applied $5,000 of surplus account monies to cover surplus pool expenses. Based on a recent trend of declining sales of cull dates over the past few years and reduced surplus pool costs, the Committee decided not to apply any of the surplus pool funds toward the 2002–03 Committee budget. The Committee, instead, recommended assessing handlers for the full amount of the increased budget that includes marketing and promotion programs.

The budgeted administrative expenses for the 2002–03 year include $123,450 for labor and office expenses. This compares to $90,800 in budgeted expenses in 2000–01. In addition, $150,000 has been budgeted for marketing and promotion under the program for the 2002–03 crop year.

The assessment rate of $0.90 per hundredweight of assessable dates was derived by applying the following formula where:

A = Administrative Reserve ($39,450 of the anticipated $50,000 Administrative Reserve)
B = 2002–03 expected shipments (260,000 hundredweight in pounds)
C = 2002–03 expenses ($273,450);
(C − A) ÷ B = $0.90 per hundredweight.

Estimated shipments should provide $234,000 in assessment income. Income derived from handler assessments and the administrative reserves would be adequate to cover budgeted expenses. Funds in the reserve are expected to total about $10,550 by September 30, 2003, and therefore would be less than the maximum permitted by the order (not to exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years; § 987.72(c)).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 producers of dates in the production area and approximately 9 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts are less than $5,000,000. Five of the 9 handlers (55 percent) shipped over $5,000,000 of dates and could be considered large handlers by the Small Business Administration. Four of the 9 handlers (45 percent) shipped under $5,000,000 of dates and could be considered small handlers. The majority of California date producers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent crop years from $0.25 to $0.90 per hundredweight of assessable dates handled. The Committee unanimously recommended 2002–03 expenditures of $273,450 and the $0.90 per hundredweight assessment rate. The recommended assessment rate is $0.65 higher than the rate currently in effect. The quantity of assessable dates for the 2002–03–crop year is estimated at 260,000 hundredweight. Thus, the $0.90 per hundredweight rate should provide $234,000 in assessment income and, together with the administrative reserve funds available to the Committee, be adequate to meet this year's expenses.

The higher assessment rate is needed to fund marketing and promotion programs under the Committee budget. The programs have been implemented under a State marketing order for several years. However, because of legal challenges recently brought against several State marketing order programs implementing marketing and promotion programs, the date industry has decided to implement these programs under the Federal marketing order.

In addition, proceeds from the sales of cull dates are usually deposited in a surplus account for subsequent use by the Committee in covering the surplus pool share of the Committee's expenses. Handlers may also dispose of cull dates of their own production within their own livestock-feeding operation; otherwise, such cull dates must be shipped or delivered to the Committee for sale to non-human food product outlets. The Committee anticipates a reduction in surplus funds available to the Committee from the sale of cull dates. As a consequence, it decided to fund all of the Committee's expenses with assessment funds during 2002–03.

The budgeted administrative expenses for the 2002–03 year include $123,450 for labor and office expenses. This compares to $90,800 in budgeted expenses in 2000–01. In addition, $150,000 has been budgeted for marketing and promotion under the marketing order for the 2002–03 crop year.

The Committee reviewed and unanimously recommended 2002–03 expenditures of $273,450, which include marketing and promotion programs. Prior to arriving at this budget, the Committee considered alternative expenditure levels, including a proposal to not have a budget. The assessment rate of $0.90 per hundredweight of assessable dates was then determined by applying the following formula where:

A = Administrative Reserve ($39,450 of the anticipated $50,000 Administrative Reserve)
B = 2002–03 expected shipments (260,000 hundredweight in pounds)
C = 2002–03 expenses ($273,450);
(C − A) ÷ B = $0.90 per hundredweight.

Estimated shipments should provide $234,000 in assessment income. Income derived from handler assessments and the administrative reserves would be adequate to cover budgeted expenses. Funds in the administrative reserve are expected to total about $10,550 by September 30, 2003, and therefore would be less than the maximum permitted by the order (not to exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years; § 987.72(c)).

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2002–03 season could range between $30 and $75 per hundredweight of dates. Therefore, the estimated assessment revenue for the 2002–03 crop year as a percentage of total grower revenue could range between 1 and 3 percent.

This action increases the assessment obligation imposed on handlers under the Federal marketing order. While assessments impose some additional costs on handlers under the Federal marketing order, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California date industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the April 8, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in **Federal Register** on June 14, 2002 (67 FR 40876). Copies of the proposed rule were also mailed or sent via facsimile to date handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending July 15, 2002, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http//www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 987.339 is revised to read as follows:

§ 987.339 Assessment rate.

On and after October 1, 2002, an assessment rate of $0.90 per hundredweight is established for California dates.

Dated: August 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–20686 Filed 8–14–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV02–993–4 IFR]

Dried Prunes Produced in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 2002–03 and subsequent crop years from $2.80 to $2.60 per ton of salable dried prunes. The Committee locally administers the marketing order which regulates the handling of dried prunes grown in California. Authorization to assess dried prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The crop year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: August 16, 2002. Comments received by October 15, 2002, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202)

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720–8938; or e-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Program Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dried prunes beginning on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA'S ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2002–03 and subsequent crop years from $2.80 per ton to $2.60 per ton of salable dried prunes.

The California dried prune marketing order provides authority for the Committee, with the approval of the USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California dried prunes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–02 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 27, 2002, and unanimously recommended 2002–03 expenditures of $386,880 and an assessment rate of $2.60 per ton of salable dried prunes. In comparison, last year's budgeted expenditures were $384,370. The recommended assessment rate of $2.60 per ton is $0.20 lower than the rate currently in effect. The $0.20 per ton decrease in the assessment rate would allow the Committee to meet its 2002–03 expenses. The Committee was able to recommend a lower assessment rate this year because salable prune production this year is expected to be 148,800 tons, 16,750 tons higher than production last year. Although 2002–03 recommended expenses are slightly higher than 2001–02 expenses, an assessment rate of $2.60 per ton will provide sufficient funds for Committee operations this year.

The following table compares major budget expenditures recommended by the Committee on June 27, 2002, and major budget expenditures in the revised 2001–02 budget.

Budget expense categories	2001–02 (Revised)	2002–03
Total Personnel Salaries	$226,315	$232,575
Total Operating Expenses	123,700	136,850
Reserve for Contingencies	34,355	17,455

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by the estimated salable tons of California dried prunes. Production of dried prunes for the year is estimated at 148,800 salable tons, which should provide $386,880 in assessment income. Income derived from handler assessments would be adequate to cover budgeted expenses. Interest income also would be available if assessment income is reduced for some reason. The Committee is authorized to use excess assessment funds from the 2001–02 crop year (currently estimated at $76,878) for up to 5 months beyond the end of the crop year to meet 2001–02 crop year expenses. At the end of the 5 months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,205 producers of dried prunes in the production area and approximately 24 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated prune industry profile shows that 9 of the 24 handlers (37.5%) shipped over $5,000,000 of dried prunes and could be considered large handlers by the Small Business Administration. Fifteen of the 24 handlers (62.5%) shipped under $5,000,000 of dried prunes and could be considered small handlers. An estimated 32 producers, or less than 3% of the 1,205 total producers, would be considered large growers with annual income over $500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent crop years from $2.80 per ton to $2.60 per ton of salable dried prunes. The Committee unanimously recommended 2002–03 expenditures of $386,880 and an assessment rate of $2.60 per ton of salable dried prunes. The recommended assessment rate is $0.20 lower than the current rate. The quantity of assessable dried prunes for the 2002–03 crop year is now estimated at 148,800 salable tons. Thus, the $2.60 rate should provide $386,880 in assessment income and be adequate to meet this year's expenses. Interest income also would be available to cover budgeted expenses if the 2002–03 expected assessment income falls short.

The following table compares major budget expenditures recommended by the Committee on June 27, 2002, and major budget expenditures in the revised 2001–02 budget.

Major budget expense categories	2001–02 (Revised)	2002–03
Total Personnel Salaries	$226,315	$232,575
Total Operating Expenses	123,700	136,850
Reserve for Contingencies	34,355	17,455

The Committee reviewed and unanimously recommended 2002–03 expenditures of $386,880. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee. An alternative to this action would be to continue with the $2.80 per ton assessment rate, but the anticipated larger crop, with an assessment rate of $2.80 per ton, would generate monies in excess of that needed to fund all the budget items. The assessment rate of $2.60 per ton of salable dried prunes was determined by dividing the total recommended budget by the estimated salable dried prunes. The Committee is authorized to use excess assessment funds from the 2001–02 crop year (currently estimated at $76,878) for up to 5 months beyond the end of the crop year to fund 2002–03 crop year expenses. At the end of the 5 months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)). Anticipated assessment income and interest income during 2002–03 would be adequate to cover authorized expenses.

The grower price for the 2002–03 season is expected to average above the estimated 2001–02 average grower price of about $750 per salable ton of dried prunes. Based on estimated shipments of 148,800 salable tons, assessment revenue during the 2002–03 crop year is expected to be less than 1 percent of the total expected grower revenue.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California dried prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 27, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab/html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the

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information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2002–03 crop year begins on August 1, 2002, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dried prunes handled during such crop year; (2) the rule would decrease the assessment rate for assessable prunes beginning with the 2002–03 crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and Recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 993.347 is revised to read as follows:

§ 993.347 Assessment rate.

On and after August 1, 2002, an assessment rate of $2.60 per ton is established for California dried prunes.

Dated: August 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–20687 Filed 8–14–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–08–AD; Amendment 39–12865; AD 2002–16–26]

RIN 2120–AA64

Airworthiness Directives; Bombardier-Rotax GmbH Type 912 F and 914 F Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain serial numbers (SN's) of Bombardier-Rotax GmbH type 912 F and 914 F series reciprocating engines. This action requires initial and repetitive visual inspections of the engine crankcase for cracks. This amendment is prompted by reports of several instances of engine crankcases found cracked in service. The actions specified in this AD are intended to prevent oil loss caused by cracks in the engine crankcase, which could lead to in-flight failure of the engine and forced landing.

DATES: Effective September 16, 2002:

Comments for inclusion in the Rules Docket must be received on or before October 15, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–08–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *"9-ane-adcomment@faa.gov"*. Comments sent via the Internet must contain the docket number in the subject line. Information regarding this action may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: Austro Control, which is the airworthiness authority for Austria, recently notified the FAA that an unsafe condition may exist on certain SN's of Bombardier-Rotax GmbH type 912 F and 914 F series reciprocating engines. Austro Control advises that reports have been received of three engine crankcases found cracked in service. To date, there have been no engine failures due to cracks in the crankcase. However, Austro Control has determined that an engine could fail due to oil loss from a cracked crankcase. This condition, if not corrected, could result in an inflight failure of the engine and forced landing.

Bilateral Airworthiness Agreement

Bombardier-Rotax GmbH type 912 F and 914 F series reciprocating engines are manufactured in Austria and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Austro Control has kept the FAA informed of the situation described above. The FAA has examined the findings of Austro Control, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Bombardier-Rotax GmbH type 912 F and 914 F series reciprocating engines of the same type design, this AD is being issued to prevent oil loss caused by cracks in the engine crankcase, which could lead to in-flight failure of the engine and forced landing. This AD requires initial visual inspection for cracks of the engine crankcase of certain SN engines, within 50 hours time-in-service (TIS) after the effective date of this AD, and repetitive visual inspections at each 100-hour, annual, or progressive inspection, or within 110 hours TIS since last inspection, whichever occurs first. If any cracks are found the engine must be replaced with a serviceable engine. The SN's affected are, for 912 F series engines, SN's 4,412.796 or lower, and for 914 F series engines, SN's 4,420.313 or lower. Examples of lower SN's are 4,412.795, 4,412.794, and 4,412.793, and 4,420.312, 4,420.311, and 4,420.310.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–08–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–26 Bombardier-Rotax GmbH: Amendment 39–12865. Docket No. 2002–NE–08–AD.

Applicability

This airworthiness directive (AD) is applicable to Bombardier-Rotax GmbH type 912 F series reciprocating engines serial number (SN) 4,412.796, or lower, and 914 F series reciprocating engines SN 4,420.313, or lower. These engines are installed on, but not limited to, Aeromot-Industria Mecanico Metalurgica ltda. model AMT–300, Diamond Aircraft Industries DA20–A1, Diamond Aircraft Industries GmbH Model HK 36 TTS, Iniziative Industriali Italiane S.p.A. Sky Arrow 650 series, and Stemme S10–VT aircraft.

Note 1: Examples of lower SN's are 4,412.795, 4,412.794, and 4,412.793, and 4,420.312, 4,420.311, and 4,420.310.

Note 2: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent oil loss caused by cracks in the engine crankcase, which could lead to in-flight failure of the engine and forced landing, do the following:

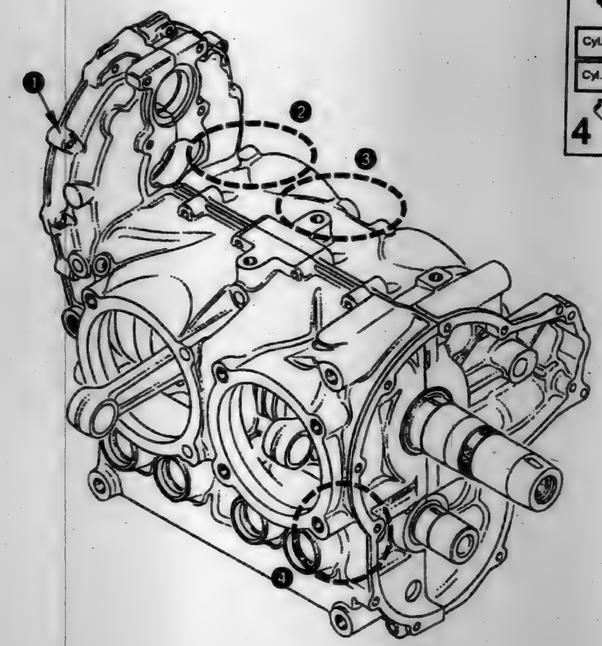
Initial Inspection

(a) Within 50 hours time-in-service (TIS) from the effective date of this AD, perform a visual inspection as follows:

(1) Inspect the engine crankcase (item 1, Figure 1 of this AD) for cracks especially in the area of cylinder 1 upper side (item 2), between cylinder 1 and 3 upper side (item 3), and cylinder 4 lower side (item 4).

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1. Engine Crankcase
2. Cylinder 1 Upper Side
3. Cylinder 3 Upper Side
4. Cylinder 4 Lower Side

Figure 1. Engine Crankcase Inspection Areas

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(2) Cracks in crankcases of engines with a ROTAX cooling air baffle may not be easily visible, and oil leaks may be an indication of cracks. Visually inspect for oil leaks in areas of (item 2) and (item 3).

(3) If oil leaks are found, determine the source by either using a borescope or removing the object blocking the view such as the air baffle or accessory, and perform the inspection.

(4) If the engine crankcase is cracked, replace engine before further flight. Repair oil leaks from any other cause.

Note 3: Information concerning this inspection can be found in Bombardier-Rotax mandatory service bulletins No's. SB–912–029, dated May 2001/SB–914–018, Revision 1, dated December 2001.

Repetitive Inspections

(b) Visually inspect the engine crankcase (item 1, Figure 1 of this AD) for cracks at each 100-hour, annual, or progressive inspection, or within 110 hours TIS since last inspection, whichever occurs first, in accordance with paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Note 5: The subject of this AD is addressed in Austro Control airworthiness directive No. 107 R1, dated December 1, 2001.

Effective Date

(e) This amendment becomes effective on August 30, 2002.

Issued in Burlington, Massachusetts, on August 7, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–20679 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2001–9813; Airspace Docket No. 00–AWA–7]

RIN 2120–AA66

Modification of the Memphis International Airport Class B Airspace Area; TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Memphis International Airport (MEM) Class B airspace area. Specifically, this action reconfigures existing sub-area boundaries, adds one new sub-area, and lowers the floor of Class B airspace in certain segments of the Memphis Class B airspace area. In addition, this modification redescribes the boundaries of the Memphis Class B airspace area using the Memphis Very High Frequency Omnidirectional Range Tactical Air Navigation (VORTAC) facility as the reference point. The FAA is taking this action to more efficiently align the Memphis Class B airspace area to accommodate simultaneous parallel instrument landing system (ILS) approach procedures and simultaneous intersecting runway operations. This change will enhance safety, reduce the potential for midair collisions, and improve the management of air traffic operations in the Memphis terminal area. Further, this effort supports the FAA's National Airspace Redesign project goal of optimizing terminal and enroute airspace areas to reduce aircraft delays and improve system capacity.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search)*.

(2) On the search page, type in the last four digits of the Docket Number shown at the beginning of this rule. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

Also an electronic copy of this document can be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339) or the **Federal Register's** electronic bulletin board service (telephone: (202) 512–1661) using a modem and suitable communications software.

Internet users may reach the FAA's web page at *http://www.faa.gov* or the **Federal Register** Web page at *http://www.access.gpo.gov/nara* for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, Attention: Airspace and Rules Division, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783.

Communications must identify the docket number of this final rule. Persons interested in being placed on a mailing list for future NPRM's or final rules should contact the Federal Aviation Administration, Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Related Rulemaking Actions

On May 20, 1970, the FAA published the Designation of Federal Airways, Controlled Airspace, and Reporting Points Final Rule in the **Federal Register** (35 FR 7782). This rule provided for the establishment of Terminal Control Airspace (TCA) areas (now known as Class B airspace areas).

On June 21, 1988, the FAA published the Transponder With Automatic Altitude Reporting Capability Requirement Final Rule in the **Federal Register** (53 FR 23356). This rule requires all aircraft to have an altitude encoding transponder when operating within 30 nautical miles (NM) of any designated Class B airspace area primary airport from the surface up to 10,000 feet MSL. This rule excluded those aircraft that were not originally certificated with an engine-driven electrical system (or those that have not subsequently been certified with such a system), balloons, or gliders operating outside of the Class B airspace area, but within 30 NM of the primary airport.

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On October 14, 1988, the FAA published the Terminal Control Area Classification and Terminal Control Area Pilot and Navigation Equipment Requirements Final Rule in the **Federal Register** (53 FR 40318). This rule, in part, requires the pilot-in-command of a civil aircraft operating within a Class B airspace area to hold at least a private pilot certificate, except for a student pilot who has received certain documented training.

On December 17, 1991, the FAA published the Airspace Reclassification Final Rule in the **Federal Register** (56 FR 65638). This rule discontinued the use of the term "Terminal Control Area" and replaced it with the designation "Class B airspace area." This change in terminology is reflected in this final rule.

Background

The Class B airspace area program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic operations by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements. The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions.

In 1970, a study of terminal airspace areas found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, or military aircraft, or another GA aircraft. The basic causal factor common to these conflicts was the mix of aircraft operating under visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). The establishment of Class B airspace areas provides a method to accommodate increasing numbers of IFR and VFR operations. The regulatory requirements of Class B airspace areas afford the greatest protection for the greatest number of people by giving air traffic control (ATC) the increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

The standard configuration of Class B airspace areas normally contains three concentric circles centered on the primary airport extending to 10, 20, and 30 NM, respectively. The standard vertical limit of these airspace areas normally should not exceed 10,000 feet mean sea level (MSL), with the floor established at the surface in the inner area, and at levels appropriate to the containment of operations in the outer areas. Variations of these configurations may be utilized contingent on the terrain, adjacent regulatory airspace, and factors unique to a specific terminal area.

Public Input

On November 7, 2001, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (Airspace Docket No. 00–AWA–7; 66 FR 56251) proposing to modify the Memphis International Airport Class B airspace area. The comment period for this NPRM closed on January 7, 2002.

In response to the notice, the FAA received nine written comments. All comments received were considered before making a determination on this final rule. An analysis of the comments received and the FAA's response are summarized below.

Discussion of Comments

The Aircraft Owners and Pilots Association and the Air Line Pilots Association submitted comments in support of the proposed modifications. The Experimental Aircraft Association (EAA) concurred with the shift of the airspace reference point to the Memphis VORTAC, but questioned the need for size of the Class B airspace area at Memphis. EAA submitted an alternative Class B airspace design intended to better utilize Class B airspace and make the entire area more accommodating to GA. EAA recommended that the FAA change the MEM Class B airspace proposal to retain the present Class B airspace configuration within 20 NM, and extend the Class B airspace area outward to the 30 NM ring only in four separate sectors (one each to the north, south, east, and west of the airport) based on the instrument approach paths for Runways 36/18 and 9/27. EAA termed these extensions "key holes." EAA also suggested that the remaining Class B airspace beyond the 20–NM ring, and in between the "key hole" extensions, be eliminated. EAA further recommended that the floor of Class B airspace in Area E extend no lower than 5,000 feet MSL, rather than the 4,000-foot floor implemented in this rule.

The FAA carefully considered the changes suggested by EAA and determined that the recommended configuration would not provide sufficient Class B airspace to ensure the containment of air carrier operations, and would not facilitate the efficient management of air traffic operations in the Memphis terminal area. The modifications to Areas A, B, and C are required to contain aircraft operations during the use of simultaneous ILS approaches to the north/south parallel runways and simultaneous intersecting runway operations. The modifications provide the additional Class B airspace needed by ATC to ensure the required 1,000 feet vertical separation is maintained while vectoring multiple aircraft for simultaneous ILS approaches, and to permit ATC to employ proper intercept angles during these simultaneous operations. Currently, the initial approach fix (COVIM) for Runway 27 lies within Area C which has a floor of 3,000 feet MSL. Therefore, an aircraft flying the approach and crossing COVIM at the published altitude of 1,900 feet MSL is well below the floor of the present Class B airspace area. The expanded Area B will encompass COVIM within Class B airspace thereby providing appropriate protection for aircraft flying the ILS Runway 27 approach. These modifications will not only enable increased use of simultaneous ILS approaches and simultaneous intersecting runway operations, but will also enhance the efficiency of operations in the Memphis terminal area.

The FAA concluded that EAA's suggested "key hole" design will eliminate Class B airspace that currently encompasses all four standard terminal arrival route (STAR) fixes serving the Memphis International Airport. Over 90 per cent of the traffic at Memphis International is air carrier/air taxi aircraft which routinely enter the Memphis terminal area via one of the four STARs. The deletion of these Class B airspace segments will also affect airspace used by ATC to vector and to separate aircraft that are being sequenced for simultaneous parallel approaches and simultaneous intersecting runway operations, as mentioned above. Regarding the floor of Class B airspace in Area E, EAA questioned the need for a base altitude of 4,000 feet MSL extending as far to the north and south of the Runway 27 instrument approach corridor as is encompassed by the new Area E. Area E was designed to meet an increasing traffic demand and to maximize airport capacity at Memphis. The 4,000-foot-base altitude provides the procedural capability to more efficiently utilize Runway 27 as an arrival runway. When Runway 27 arrivals are in progress, the final approach for Runway 27 often extends out to at least 20 NM. The new Area E provides airspace to more efficiently accommodate the increasing use of Runway 27 for arrivals.

Another commenter agreed with use of the Memphis VORTAC as the Class B airspace area reference point, but questioned both the present size of the Memphis Class B airspace area when compared to other Class B airspace locations, as well as the modifications proposed in the NPRM. The commenter endorsed the proposed design as submitted by EAA. The FAA finds that the determination of a Class B airspace area's configuration must be airport-specific and is based on the particular circumstances of the primary airport. A variety of factors are considered such as the volume of traffic, runway configuration, arrival and departure routings, adjacent airspace considerations, etc. The primary purpose of Class B airspace is to reduce the potential for midair collisions near airports with high density air traffic operations, and to contribute to the efficiency and safety of operations in the area. Due to these factors, one cannot necessarily compare the design of one Class B airspace location against another. The FAA believes that the modified Memphis Class B airspace area affords the appropriate Class B airspace protection between participating and nonparticipating aircraft in the Memphis terminal area, while considering the needs of all aviation users. The design EAA recommended was discussed above.

Two comments cited concerns that the proposed modifications would affect emergency medical service (EMS) helicopter access to and from various hospitals in and around the Memphis Class B airspace area. The commenter suggested the use of cutouts or a VFR corridor to accommodate EMS helicopter operations. The FAA will resolve these concerns by developing a Letter of Agreement with the operators to accommodate EMS operations.

One GA pilot wrote that the proposed modifications are unwarranted. The commenter stated that the modifications would compress existing traffic and increase the probability of collisions with aircraft trying to remain clear of Class B airspace. Additionally, the commenter said that the proposal would cause problems for pilots entering and leaving the traffic pattern at the Olive Branch Airport (OLV) in Mississippi, and that egress from OLV to the west is blocked by Class B airspace. The FAA does not agree with the commenter. The primary purpose of Class B airspace is to reduce the potential for midair collisions in the airspace surrounding airports with high-density air traffic operations. The dimensions of the Memphis Class B airspace area were designed based on the specific needs of the primary airport and to enhance the management of air traffic operations in the terminal area. The Area B modifications were designed to accommodate both simultaneous ILS approaches to the North/South parallel runways, and instrument approaches to Runways 9/27 at Memphis. The FAA acknowledges that the close proximity of OLV to the Memphis International Airport can be a factor for pilots operating to or from OLV. However, the volume of traffic and the number of enplaned passengers served by Memphis dictate the need for this Class B airspace configuration. By designing the expanded Area B boundaries to exclude OLV, the FAA sought to minimize possible impact on nonparticipating aircraft operating to and from that airport. Further, the existing Area B boundary lies in close proximity to the OLV traffic pattern to the west of the airport. The OLV traffic pattern altitude is 1,200 feet MSL, while the floor of Area B is 1,800 feet MSL. This allows for continued nonparticipating aircraft operations to, from, and within the OLV traffic pattern beneath the Class B airspace floor. Regarding the comment that egress to the west from OLV is blocked by Class B airspace, the FAA responds that departing OLV to the west is currently affected by the location of the existing Area B boundary as well as the Class B airspace surface area further to the west of OLV. However, since the floor of the modified Area B remains unchanged at 1,800 feet MSL, egress to the west of OLV for nonparticipating aircraft is basically the same as exists under the current Class B airspace configuration.

The remaining two comments were duplicate submissions to the docket.

The Rule

This amendment to 14 CFR part 71 modifies the Memphis Class B airspace area. Specifically, this action expands the lateral limits of Areas A, B, and C, reduces the size of Area D, and establishes a new Area E. In addition, this modification revises the description of the Memphis Class B airspace area by using radials and mileages from the Memphis VORTAC as the reference point instead of the current point-in-space latitude/longitude positions. Area A is modified to more efficiently align the lateral dimensions of the surface area and to provide the additional Class B airspace needed for simultaneous ILS approach procedures, while accommodating secondary airport operations. The lateral dimensions of Area B are expanded slightly to ensure the containment of instrument procedures using a 300-foot-per-mile gradient, to provide additional airspace for vectoring aircraft for simultaneous parallel ILS approaches, and to accommodate simultaneous intersecting runway operations. To the east of the airport, the expanded Area B boundary is adjusted to exclude the Olive Branch Airport (OLV). Area C is modified by extending the boundaries of Area C outward to the Memphis VORTAC 30-mile arc in the segments to the north and south of the Memphis Airport, thereby incorporating into Area C, portions of airspace formerly in Area D. The effect of this modification is the lowering of the floor of Class B airspace from the current 5,000 feet MSL to 3,000 feet MSL in the airspace incorporated by the new Area C extensions. This change to Area C is needed to ensure the efficient use of and containment of simultaneous parallel approach procedures. As a result of the Area C modification, Area D is reduced in size. The revised Area D consists only of that airspace generally between the 20-mile and 30-mile arcs of the Memphis VORTAC, and within the area bounded by the 199° radial clockwise to the 332° radial. The remaining portion of the current Area D airspace to the north and south of the airport is incorporated into the revised Area C. That portion of the current Area D located to the east of the airport is incorporated into the new Area E. A new Area E is established to the east of the airport consisting of airspace that is currently part of Area D. Area E consists of that airspace generally between the 20-mile and 30-mile arcs of the Memphis VORTAC, and bounded by the MEM 019° radial, clockwise to the 151° radial. This change lowers the floor of Class B airspace in that area from the current 5,000 feet MSL to 4,000 feet MSL. This lower Class B airspace floor, combined with the lateral extent of Area E is required to contain Runway 27 instrument approaches and to provide the procedural capability to more efficiently utilize Runway 27 as an arrival runway.

These modifications to the Memphis Class B airspace area enhance safety by improving the containment of turbojet aircraft within Class B airspace and by simplifying navigation in the Memphis terminal area for aircraft that are not global positioning system-equipped. The modifications improve flow of traffic and the management of air traffic operations in the Memphis terminal area. Finally, this action supports the FAA's National Airspace Redesign project goal of optimizing terminal and enroute airspace areas to reduce aircraft delays and improve system capacity.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9J, Airspace Designations and Reporting Points, dated August 31,

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2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document will be published subsequently in the Order.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) Will generate benefits that justify its minimal costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) will not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

This final rule will modify the Memphis, TN, Class B airspace by reconfiguring the sub-area boundaries, adding one new sub-area and lowering the altitude floor in certain segments of that airspace. In addition, the FAA will describe the boundaries of the Memphis Class B airspace area using the Memphis VORTAC as the reference point.

The final rule will generate benefits for system users and the FAA in the form of enhanced operational efficiency and simplified navigation in the Memphis terminal area for aircraft that are not global positioning system-equipped. Since Class B airspace is already in place at Memphis, and the modifications in this rule are not major expansions of Class B airspace, minimal costs will be incurred by aircraft operators. Thus, the FAA has determined that this final rule will be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule may impose some minimal circumnavigation costs on some individuals operating in the Memphis area; but the final rule will not impose any costs on small business entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Conclusion

In view of the minimal cost of compliance of this final rule and the enhancements to aviation safety and operational efficiency, the FAA has determined that this final rule will be cost-beneficial.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 3000—Subpart B Class B Airspace

* * * * *

ASO TN B Memphis, TN [Revised]

Memphis International Airport (Primary Airport)
(Lat. 35°02′33″ N., long. 89°58′36″ W.)
Memphis VORTAC (MEM)
(Lat. 35°00′54″ N., long. 89°59′00″ W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of the MEM 090° radial and the MEM 5-mile arc; thence clockwise along the 5-mile arc to the MEM 270° radial; thence west along the 270° radial to the 8-mile arc; thence clockwise along the 8-mile arc to the MEM 090° radial; thence west along the 090° radial to the point of beginning.

Area B. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of the MEM 090° radial and the MEM 12-mile arc; thence west along the 090° radial to the MEM 9-mile arc; thence clockwise along the 9-mile arc to the MEM 111° radial; thence southeast along the 111° radial to the MEM 12-mile arc; thence clockwise along the 12-mile arc to the MEM 134° radial; thence southeast along the 134° radial to the MEM 16-mile arc; thence clockwise along the 16-mile arc to the MEM 217° radial; thence northeast along the 217° radial to the MEM 12-mile arc thence clockwise along the 12-mile arc to the MEM 313° radial; thence northwest along the 313° radial to the MEM 16-mile arc; thence clockwise along the 16-mile arc to the MEM 038° radial; thence southwest along the 038° radial to the MEM 12-mile arc; thence clockwise along the 12-mile arc to the point of beginning.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of the MEM 019° radial and the MEM 30-mile arc; thence southwest along the 019° radial to the MEM 20-mile arc; thence clockwise along the 20-mile arc to the MEM 151° radial; thence southeast along the 151° radial to the 151° radial at 27 miles; thence via a line drawn southwestward to the intersection of the MEM 163° radial and the MEM 30-mile arc; thence clockwise along the 30-mile arc to the MEM 199° radial; thence northeast along the 199° radial to the MEM 20-mile arc; thence clockwise along the 20-mile arc to the MEM 332° radial; thence northwest along the 332° radial to the 332° radial at 29 miles; thence via a line drawn northeastward to the intersection of the MEM 338° radial and the MEM 30-mile arc; thence clockwise along the 30-mile arc to the point of beginning.

Area D. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of the MEM 199° radial and the MEM 20-mile arc; thence southwest along the 199° radial to the MEM 30-mile arc; thence clockwise along the 30-mile arc to the MEM 302° radial; thence via a line drawn northeastward to the MEM 332° radial at 29 miles; thence southeast along the MEM 332° radial to the MEM 20-mile arc; thence counterclockwise along the 20-mile arc to the point of beginning.

Area E. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of the MEM 019° radial and the MEM 30-mile arc; thence clockwise along the 30-mile arc to the MEM 103° radial; thence via a line drawn southwestward to the MEM 151° radial at 27 miles; thence northwest along the 151° radial to the MEM 20-mile arc; thence counterclockwise along the 20-mile arc to the MEM 019° radial; thence northeast along the 019° radial to the point of beginning.

* * * * *

Issued in Washington, DC, on August 7, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

BILLING CODE 4910–13–C

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[FR Doc. 02–20764 Filed 8–14–02; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 5 and 16

[Docket No. 02N–0251]

Presiding Officers at Regulatory Hearings

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its administrative regulations governing who may act as a presiding officer at a regulatory hearing. This action amends the regulations to permit an administrative law judge (ALJ) to act as a presiding officer and provide the appropriate delegations of authority. FDA is taking this action to increase the pool of qualified personnel available as presiding officers, thereby increasing the efficiency with which the agency conducts regulatory hearings, beginning with responding to hearing requests and continuing through issuance of written hearing reports. Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule, under FDA's usual procedure for notice-and-comment rulemaking, to provide a procedural framework to finalize the rule in the event the agency receives any significant adverse comments and withdraws this direct final rule.

DATES: This rule is effective December 30, 2002. Submit written or electronic comments on or before October 29, 2002. If FDA receives no significant adverse comments within the specified comment period, the agency will publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends. If timely significant adverse comments are received, the agency will publish a document in the **Federal Register** withdrawing this direct final rule before its effective date.

ADDRESSES: Submit written comments on the direct final rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Peter C. Beckerman, Office of the Chief Counsel (GCF–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7144.

SUPPLEMENTARY INFORMATION:

I. Discussion

FDA's procedures for a regulatory hearing are set forth in part 16 (21 CFR part 16) of the agency's regulations. "Part 16 hearings" are offered under numerous statutory and regulatory provisions. Section 16.1 provides a list of statutes and regulations in which part 16 hearings are available.

Currently § 16.42(a) provides that an FDA employee to whom the Commissioner of Food and Drugs (the Commissioner) delegates the authority, or any other FDA employee to whom such authority is redelegated, can serve as the presiding officer at a regulatory hearing. In turn, § 5.30(c) (21 CFR 5.30(c)) delegates authority to preside at and conduct a regulatory hearing to the Chief Mediator and Ombudsman for the Agency; the Directors and Deputy Directors of the Center for Food Safety and Applied Nutrition, the Center for Drug Evaluation and Research, the Center for Devices and Radiological Health, and the Center for Biologics Evaluation Research; Regional Directors; District Directors; the Director of the St. Louis Branch; and such other FDA official as the Commissioner may designate by memorandum in the proceeding.

FDA believes that the addition of the ALJ to the list of those delegated to conduct regulatory hearings would increase the pool of qualified personnel available to preside at regulatory hearings. In addition, by virtue of the nature of an ALJ's training and experience adjudicating disputes, FDA believes that an ALJ would be appropriately suited to conduct regulatory hearings. Therefore, the agency is amending §§ 5.30(c) and 16.42(a) to permit an ALJ to preside at and conduct regulatory hearings before the agency.

The regulations pertaining to ALJs issued by the Office of Personnel Management (OPM) (5 CFR 930.209(b)), provide that an agency may assign an ALJ, by detail or otherwise, to perform duties that are not the duties of an ALJ without prior approval by OPM when the duties are not inconsistent with the duties and responsibilities of an ALJ, the assignment is not to last longer than 120 days; and the ALJ has not had an aggregate of more than 120 days of such assignments or details in the preceding year. However, OPM's regulations under 5 CFR 930.209(c) also state that on a showing that it is in the public interest, OPM may authorize a waiver from the 120-day limitation.

For the reasons already discussed, FDA believes it would be in the public interest to permit an ALJ to preside at and conduct part 16 hearings.

II. Direct Final Rulemaking

FDA has determined that the subject of this rulemaking is suitable for a direct final rule. This direct final rule revises §§ 5.30(c) and 16.42(a) to permit an ALJ to preside at and conduct regulatory hearings before the agency. The action taken should be noncontroversial, and the agency does not anticipate receiving any significant adverse comment on this rule.

If FDA does not receive significant adverse comment by October 29, 2002, the agency will publish a document in the **Federal Register** before November 28, 2002, confirming the effective date of the final rule. The agency intends to make the direct final rule effective 30 days after publication of the confirmation document in the **Federal Register**. A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment recommending a rule change in addition to this rule will not be considered a significant adverse comment unless the comment also states why this rule would be ineffective without the additional change. If timely significant adverse comments are received, the agency will publish a document in the **Federal Register** withdrawing this direct final rule before November 28, 2002.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule, identical to the direct final rule, that provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of significant adverse comment. The comment period for the direct final rule runs concurrently with that of the companion proposed rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. FDA will not provide additional opportunity for comment on the companion proposed rule. A full description of FDA's policy on direct final rule procedures may be found in a guidance document published in the **Federal Register** of November 21, 1997 (62 FR 62466).

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III. Legal Authority

The broad rulemaking authority conferred on FDA by the U.S. Congress under the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 201 *et seq.*) permits the agency to amend its regulations as contemplated by this direct final rule. Section 701(a) of the act (21 U.S.C. 371(a)) gives FDA general rulemaking authority to issue regulations for efficient enforcement of the act.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this rule is consistent with the regulatory philosophy and principles identified in the Executive order and in the other two statutes. This rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. The agency has considered the effect that this rule would have on small entities. Because the rule will amend only internal agency procedures, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore under the Regulatory Flexibility Act, no further analysis is required.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) requires that agencies prepare a written statement of anticipated costs and benefits before issuing any proposed or final rule "that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year * * *." This final rule imposes no Federal mandate that will result in such an expenditure. Therefore, FDA is not required to prepare a cost/benefit statement.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

This direct final rule does not require information collection. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Request for Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written comments regarding this rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

21 CFR Part 16

Administrative practice and procedure.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 5 and 16 are amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATIONS

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2 605; 7 U.S.C. 138a, 2217; 15 U.S.C. 638, 1261–1282, 1451–1461, 3701–3711a; 21 U.S.C. 61–63, 141–149, 301–394, 467f, 679(b), 801–886, 1031–1309, 1401–1403; 35 U.S.C. 156; 42 U.S.C. 238, 241, 242, 242a, 242l, 242n, 242o, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1, 300ar–25–28, 300cc, 300ff, 1395y, 4332, 4831(a), 10007–10008; E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124–131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220–223.

2. In § 5.28 revise paragraph (c)(1), redesignate paragraph (c)(10) as paragraph (c)(11), and add new paragraph (c)(10) to read as follows:

§ 5.28 Hearings.

* * * * *

(c) * * *

(1) The Director, Office of the Ombudsman, Office of External Relations, Office of the Commissioner.

* * * * *

(10) An Administrative Law Judge.

* * * * *

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

3. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

4. Amend § 16.42 by revising paragraph (a) to read as follows:

§ 16.42 Presiding officer.

(a) An FDA employee to whom the Commissioner delegates such authority, or any other agency employee designated by an employee to whom such authority is delegated, or, consistent with 5 CFR 930.209(b) or (c), an administrative law judge to whom such authority is delegated, may serve as the presiding officer and conduct a regulatory hearing under this part.

* * * * *

Dated: August 7, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–20701 Filed 8–14–02; 8:45 am]

BILLING CODE 4160–01–S

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in September 2002. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: September 1, 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to part 4022).

Accordingly, this amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during September 2002, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during September 2002, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during September 2002.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.40 percent for the first 25 years following the valuation date and 4.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for August 2002) of 0.10 percent for the first 25 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 4.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for August 2002.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during September 2002, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 107, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
107	9–1–02	10–1–02	4.25	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 107, as set forth below, is added to the table. (The introductory text of the table is omitted.)

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Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
107	9–1–02	10–1–02	4.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
September 2002	.0540	1–25	.0425	25 N/A		N/A

Issued in Washington, DC, on this 8th day of August 2002.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 02–20702 Filed 8–14–02; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–052]

RIN 2115–AE46

Special Local Regulations for Marine Events; Atlantic Ocean, Point Pleasant Beach to Bay Head, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the "OPA–SBI–NJOPRA National Grand Prix", a marine event to be held on the waters of the Atlantic Ocean between Point Pleasant Beach and Bay Head, New Jersey. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the regulated area during the event.

DATES: This rule is effective from 10:30 a.m. to 4:30 p.m. (local time) on August 16, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–052 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The event will be held on August 16, 2002. There is not sufficient time to allow for an appropriate notice and comment period, prior to the event. Because of the danger inherent in high-speed boat races, special local regulations are necessary to provide for the safety of participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. In addition, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

Background and Purpose

On August 16, 2002, the Offshore Performance Association will sponsor the OPA–SBI–NJOPRA National Grand Prix. The event will consist of 40 to 45 offshore power boats racing along an oval course on the waters of the Atlantic Ocean. A fleet of spectator vessels is expected to gather near the event site to view the competition. To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the races.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the Atlantic Ocean and the Manasquan River. The temporary special local regulations will be enforced from 10:30 a.m. to 4:30 p.m. (local time) on August 16, 2002. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. The Patrol Commander will allow non-participating vessels to transit the regulated area between races. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Although this rule prevents traffic from transiting portions of the Atlantic Ocean and Manasquan River during the event, the effect of this rule will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly. Additionally, vessel traffic will be allowed to transit through the regulated area between races.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Atlantic Ocean and Manasquan River during the event.

Although this rule prevents traffic from transiting portions of the Atlantic Ocean and Manasquan River during the event, the effect of this rule will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, vessel traffic will be allowed to transit through the regulated area between races.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect

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on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(h), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are specifically excluded from further analysis and documentation under that section. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. From 10:30 a.m. to 4:30 p.m. (local time) on August 16, 2002, add temporary section, § 100.35–T05–052 to read as follows:

§ 100.35–T05–052 Atlantic Ocean, Point Pleasant Beach to Bay Head, New Jersey

(a) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Atlantic City.

(b) *Regulated area.* The regulated area is defined as all waters of the Manasquan River from the New York and Long Branch Railroad to Manasquan Inlet, together with all waters of the Atlantic Ocean bounded by a line drawn from the end of the South Manasquan Inlet Jetty, easterly to Manasquan Inlet Lighted Buoy "2M", then southerly to a position at latitude 40° 04′ 26″N, longitude 074° 01′ 30″W, then westerly to the shoreline. All coordinates reference Datum NAD 1983.

(c) *Special local regulations* (1) The regulated area shall be closed intermittently to general navigation during the effective period. No person or vessel may enter or remain in the regulated area while it is closed unless participating in the event or authorized by the sponsor or regatta patrol personnel. Notice of the closure times will be given via Marine Safety Radio Broadcast on VHF–FM marine band radio, Channel 22 (157.1 MHz).

(2) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators.

(3) The spectator fleet shall be held in a spectator anchorage area north of the regulated area, which shall be marked by patrol vessels flying pennants to aid in their identification.

(4) No vessel shall proceed at a speed greater than six (6) knots while in Manasquan Inlet during the effective period.

(5) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. The operator of a vessel in the regulated area shall stop the vessel immediately when instructed to do so by U.S. Coast Guard patrol personnel and then proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard.

(d) *Effective period.* This section is effective from 10:30 a.m. to 4:30 p.m. (local time) on August 16, 2002.

Dated: August 6, 2002.

James D. Hull,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 02–20754 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–181]

RIN 2115–AE84 and 2115–AA97

Regulated Navigation Area and Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is extending the effective period of the Regulated Navigation Area (RNA) and Safety and Security Zones published October 10, 2001. This change will extend the effective period of the temporary final rule until December 31, 2002 to allow additional time to develop a permanent rule. This rule will continue to prohibit vessels from entering certain areas of the port and impose restrictions on vessel operations in other areas.

DATES: §§ 165.T01–165 and 165.T01–166 are amended effective August 15, 2002, and remain in effect through December 31, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection and copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander E. Morton, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 10, 2001, we published a temporary final rule (TFR) entitled "Regulated Navigation Area and Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone" in the **Federal Register** (66 FR 51558–51562). The effective period for this rule was from September 28, 2001, through April 8, 2002. Although the rule was published without advance notice of proposed rulemaking, an opportunity for public comment was provided. The comment period closed on December 10, 2001. The Coast Guard received no letters commenting on the temporary rule. No public hearing was requested, and none was held.

Subsequently, the effective period of the rule was extended to August 15, 2002 (67 FR 16016–16018, April 4, 2002). We anticipated that the extension would provide sufficient time to develop permanent security zones within the port by informal rulemaking. Agency development of a permanent rule required more time than had been estimated and prevented informal notice and comment rulemaking within the period originally forecast.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. The original TFR was urgently required to facilitate emergency services responding to terrorist attacks upon the World Trade Center in Manhattan, NY, and to prevent future terrorist strikes within and adjacent to the Port of New York/New Jersey. Those security considerations persist. We have determined that the public interest necessitates continued security regulations within the port while the Coast Guard engages in informal rulemaking.

We consider additional notice and comment unnecessary for the extension of this temporary rule. The regulation imposes minimal, if any, burden on the maritime public as evidenced by the lack of response to the previous solicitation for comments. It does not interfere with the needs of navigation within the port; rather, it simply prevents vessels from entering relatively small areas of water adjacent to sensitive facilities. Moreover, as part of an ongoing assessment of the port security environment, the Captain of the Port relaxes or suspends enforcement of some of the restrictions permitted by the regulation. Any mitigation in the enforcement posture is broadcast to ensure widest dissemination to the maritime public.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This revision preserves the status quo within the Port while permanent rules are developed. The present TFR has not been burdensome on the maritime public. The public was invited to comment upon or suggest modifications to the scope of the existing TFR by submitting written comments within 60 days of its publication in the **Federal Register**. None were received. Any delay in the effective date of this regulation is unnecessary and contrary to the public interest.

Background and Purpose

Terrorist attacks against the World Trade Center in Manhattan, New York on September 11, 2001 inflicted catastrophic human casualties and property damage. Federal, state and local personnel are engaged in ongoing efforts to secure other potential terrorist targets from attack. The Coast Guard established RNAs and safety and security zones within defined areas of water in order to facilitate emergency response and rescue activities, protect human life, and safeguard vessels and waterfront facilities from sabotage or terrorist attacks.

These regulations were designed to provide the Captain of the Port of New York with maximum flexibility to respond to emergent threats and dangerous conditions. When less stringent security measures are required, the Captain of the Port communicates relaxed enforcement policies to the public. As a result, the full scope of these regulations is rarely imposed. Nevertheless, the flexibility to utilize those measures permitted by the TFR and required by the circumstances is vital to ensure port security in the present security environment.

The temporary rule is only effective until August 15, 2002. The Coast Guard is extending the effective date of this rule until December 31, 2002, to allow the establishment of permanent safety and security zones by notice and comment rulemaking.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12886, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the sizes of the zones are the minimum necessary to provide adequate protection for the public, vessels, and vessel crews. Any vessels seeking entry into or movement within the safety and security zones must request permission from the Captain of the Port or his authorized patrol representative. Any hardships experienced by persons or vessels are considered minimal compared to the national interest protecting the public, vessels, and vessel crews from the further devastating consequences of the aforementioned acts of terrorism, and from potential future sabotage or other subversive acts, accidents, or other causes of a similar nature.

The Coast Guard will be publishing a NPRM to establish permanent safety and security zones that are temporarily effective under this rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this final rule will not have a significant economic impact on a substantial number of small entities. Maritime advisories will be initiated by normal methods and means and will be widely available to users of the area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander E. Morton, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

Small Businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of

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$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Revise temporary § 165.T01–165(c) to read as follows:

§ 165.T01–165 Regulated Navigation Area: New York Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(c) *Effective dates.* This section is effective from September 28, 2001 through December 31, 2002.

* * * * *

3. Revise temporary § 165.T01–166(b) to read as follows:

§ 165.T01–166 Safety and Security Zones: New York Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(b) *Effective dates.* This section is effective from September 28, 2001 through December 31, 2002.

* * * * *

Dated: August 8, 2002.

V.S. Crea,

Rear Admiral, Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–20625 Filed 8–12–02; 3:42 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY 125–200233(a); FRL–7259–7]

Approval and Promulgation of Implementation Plans for Kentucky: Regulatory Limit on Potential To Emit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency is conditionally approving a revision to the State Implementation Plan (SIP) of the Commonwealth of Kentucky incorporating Kentucky rule 401 KAR 50:080. This rule affects sources whose actual emissions are 50 percent or less of the major source threshold whereas the sources' potential to emit (PTE) exceeds the major source threshold.

DATES: This direct final rule is effective October 15, 2002, without further notice, unless EPA receives adverse comment by September 16, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Michele Notarianni, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail)).

Copies of the Commonwealth's submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (Michele Notarianni, 404/562–9031, *notarianni.michele@epa.gov*)

Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. (502/573–3382)

FOR FURTHER INFORMATION CONTACT: Michele Notarianni at address listed above or 404–562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

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II. Background
III. Future Rule Clarifications
IV. Effects of This Action
V. Final Action
VI. Administrative Requirements

I. Today's Action

The EPA is conditionally approving into the Kentucky SIP rule 401 KAR 52:080, "Regulatory Limit on Potential to Emit", based upon the Agency's understanding of Kentucky's interpretation of this regulation and Kentucky's commitment to clarify sections 2(3) and 4 of the rule within one year. In a letter to EPA dated April 18, 2002, the Commonwealth outlined its interpretation of the rule and provided a promulgation schedule for clarifying these two sections by March 1, 2003.

II. Background

Kentucky adopted 401 KAR 50:031 (later amended and recodified to 401 KAR 50:080) in February 1996. This regulation was developed under EPA's title V Transition Policy, which allows states to defer the permitting of sources whose actual emissions are 50 percent or less of the major source threshold. EPA received a letter on July 10, 2001, from Kentucky requesting approval of 401 KAR 52:080 (and four other rules) into the Kentucky SIP.

EPA is conditionally approving this revision to 401 KAR 52:080 based on the Agency's understanding of the Commonwealth of Kentucky's interpretation of this regulation, documented in a letter dated April 18, 2002. In this letter, the Commonwealth noted Section 1(a) does *not* allow a source currently covered under this regulation to increase its actual emissions above 50 percent of a major source threshold under title V of the Clean Air Act by increasing its throughput or hours of operation. If a covered source increased its actual emissions above 50 percent, the source would be immediately subject to title V permitting requirements and violating 401 KAR 52:080 and the applicable permit regulation (*i.e.*, either 401 KAR 51:020 or 401 KAR 52:030).

III. Future Rule Clarifications

The Commonwealth also committed in the April 18, 2002, letter to clarify language in sections 2(3) and (4) during a regulatory amendment according to a projected promulgation schedule included with the letter.

Clarifications to section 2(3) will address the criteria for a source to receive a notice of violation (NOV) for noncompliance with the rule. Because issuance of NOVs is discretionary, a source's actual emissions could potentially exceed 50 percent of a major source threshold, but the source may not necessarily receive an NOV if the exceedance is considered temporary and not repeatable. Thus, the requirement to submit an application for a title V permit may not be triggered. This issue will be addressed.

Clarifications to section 2(3) will also address an issue of enforceability. The Commonwealth has a law prohibiting it from being more stringent than federal rules. If a source receives a NOV for actual emissions exceeding 50 percent of a major source threshold, section 2(3) sets a six month limit for a source to submit a title V application, rather than 12 months as required under part 70.

Sections 2(3) and 4 will be clarified to address reporting exceedances of the 50 percent limit. The rule currently does not require such exceedances to be reported. While section 11 requires covered sources to annually certify and submit an emissions inventory report, a source could potentially violate the rule within the first month after the required annual certification report is submitted, allowing 11 months to pass without the permitting authority knowing the source violated the rule. Further, clarifications to section 4 will address the possibility of a source increasing its actual emissions over the 50 percent threshold without a modification or reconstruction. A source may, for example, increase emissions through better ways to estimate emissions or conduct a stack test. However, no requirement exists to report an increase over the 50 percent threshold. The reporting requirement in section 4(2) to notify the permitting authority and submit a permit application is triggered only if a source is making a modification or reconstruction.

IV. Effects of This Action

Approximately 60–70 sources in Kentucky meet the requirements of and are complying with 401 KAR 52:080. These sources will not have to apply for and receive a title V permit should this rule be approved into the Kentucky SIP. Section 1(a) of 401 KAR 52:080 states that the rule applies only to sources "whose actual emissions during any consecutive twelve (12) month period of operation after January 1, 1996, are less than fifty (50) percent of the major source threshold for Title V."

V. Final Action

The EPA is conditionally approving Kentucky regulation 401 KAR 50:080 into the Kentucky SIP. If clarifications to the rule are not completed one year from the effective date of this notice, the EPA will publish a disapproval notice for this regulation.

EPA is approving the aforementioned changes to the SIP. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective October 15, 2002, without further notice unless the Agency receives adverse comments by September 16, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 15, 2002, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

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responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart S—Kentucky

2. A new § 52.919 is added to read as follows:

§ 52.919 Identification of plan-conditional approval.

EPA is conditionally approving Rule 401 KAR 50:080, "Regulatory Limit on Potential to Emit," effective January 15, 2001, into the Kentucky SIP contingent on the Commonwealth clarifying language in sections 2(3) and (4) according to a projected promulgation schedule committed to in a letter dated April 18, 2002, from the Commonwealth of Kentucky to EPA Region 4.

[FR Doc. 02–20747 Filed 8–14–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–85–1–200107a; FRL–7259–6]

Approval and Promulgation of Implementation Plans; Florida: Approval of Revisions to the Florida State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Florida State Implementation Plan (SIP) submitted on August 29, 2000, by the State of Florida through the Florida Department of Environmental Protection (FDEP). This submittal consists of revisions to the ozone air quality maintenance plan for the Tampa area (Hillsborough and Pinellas Counties) to remove the emission reduction credits attributable to the Motor Vehicle Inspection Program (MVIP) from the future year emission projections contained in those plans. This revision updates the control strategy for the Tampa maintenance area by removing emissions credit for the MVIP, and as such, transportation conformity must be redetermined by the Metropolitan Planning Organizations (MPOs) within 18 months of the final approval of this document.

DATES: This direct final rule is effective October 15, 2002, without further notice, unless EPA receives relevant adverse comment by September 16, 2002. If relevant adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to Joey LeVasseur at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035 (e-mail: *levasseur.joey@epa.gov*).

SUPPLEMENTARY INFORMATION: The following sections: Background, Analysis of the State's Submittal, and Final action, provide additional information concerning the revision to the ozone air quality maintenance plan for the Tampa area to remove the emission reduction credits attributable to the MVIP from the future year emission projections contained in that plan.

I. Background

Upon enactment of the Clean Air Act Amendments of 1990, the Tampa, Florida area was designated as nonattainment for the one-hour ozone national ambient air quality standard (NAAQS) and classified as marginal. On November 16, 1992, the State of Florida submitted comprehensive inventories for volatile organic compound (VOC), oxides of nitrogen (NO_X), and carbon monoxide emissions from the Tampa area. The inventories include biogenic, area, stationary, and mobile source emissions using 1990 as the base year for calculations to demonstrate NAAQS attainment and maintenance. The 1990 inventory is considered representative of attainment conditions because the one-hour ozone NAAQS was not violated during 1990. By 1993, the Tampa area was able to demonstrate attainment of the one-hour ozone NAAQS and was able to show compliance with other requirements of the Clean Air Act as amended in 1990 (CAA) for redesignation.

On February 7, 1995, the State of Florida through the FDEP requested that the Tampa area be redesignated from a marginal ozone nonattainment area to attainment. The approval of the ozone maintenance plan into the SIP, in conjunction with EPA's redesignation of the area to attainment with respect to the 1-hour ozone NAAQS, was published on December 7, 1995 (60 FR 62748), and became effective on February 5, 1996 (40 CFR 81.310).

The ozone maintenance plan for the area, developed pursuant to section 175A of the CAA and approved in the SIP, accounted for the MVIP in the mobile source emissions projections. The MVIP was a centralized basic inspection and maintenance program. The program utilized an idle emissions test to monitor vehicles' emission compliance. Due to the fact that the Tampa area was marginal, the MVIP was a voluntary program and was not required by the CAA.

II. Analysis of State's Submittal

On August 29, 2000, the FDEP submitted a revision to the SIP for the ozone air quality maintenance plan for the Tampa, Florida, area to remove the emission reduction credits attributable to the MVIP from the future year emission projections contained in that plan. Specifically this action involves a recalculation of the motor vehicle emissions budgets (budgets) for the area using the MOBILE5b model and eliminating the credit for the MVIP. The FDEP is requesting approval of amendments to the Tampa Bay maintenance plan to provide explicit transportation conformity budgets for Hillsborough and Pinellas counties. In the current maintenance plan, no budgets are specified; hence, the original year 2005 mobile source emissions projections that were made by each county are being used as transportation conformity budgets by default. The conformity process will be clarified by the establishment of specific budgets for each county in this revised maintenance plan.

The Transportation Conformity regulations, promulgated on November 24, 1993, established the criteria and procedures for determining conformity of transportation activities to the SIP. Under these provisions and Title I of the CAA, states may revise their emissions budgets at any time through the standard SIP revision process, provided that the revised emissions budgets will not adversely affect attainment and maintenance of the ozone NAAQS for any milestone year in the required time frame. The conformity rule provides states with the option to revise the emissions budgets to reallocate emissions among sources or between pollutants and their precursors so long as this budget maintains total emissions for the area below the attainment inventory levels.

In addition, the SIP revision must not have an adverse impact on maintenance of the NAAQS for any criteria pollutant. Guidance on this issue is contained in a memorandum dated September 17, 1993, from Michael Shapiro, Acting Assistant Administrator for Air and Radiation entitled, "State Implementation Plan Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide National Ambient Air Quality Standards on or after November 15, 1992." This memo states:

As a general policy, a State may not relax the adopted and implemented SIP upon the area's redesignation to attainment. States should continue to implement existing control strategies in order to maintain the standard. However, section 175A recognizes that States may be able to move SIP measures to the contingency plan upon redesignation if the State can adequately demonstrate that such action will not interfere with maintenance of the standard.

The following table contains the projected emission levels taking into account the removal of the MVIP.

TOTAL 2.—COUNTY (HILLSBOROUGH AND PINELLAS COUNTIES) EMISSIONS INVENTORY SUMMARY

[Tons per day]

Category	VOC			NO_X		
	1990	2000	2005	1990	2000	2005
Stationary Point	17.69	21.49	21.49	319.74	190.17	107.25
Stationary Area	100.19	114.34	120.13	9.99	11.48	12.08
On-Road Mobile	158.50	86.30	85.10	121.50	101.00	95.70
Non-Road Mobile	51.14	46.64	39.07	58.53	71.55	71.35
Biogenic	194.70	194.70	194.70	1.80	1.80	1.80
Total	522.22	463.47	460.49	511.56	376.00	288.18

The next table shows the projected 2005 VOC and NO_X emissions with and without the MVIP.

TAMPA FLORIDA AREA—PROJECTED 2005 MOBILE SOURCE EMISSIONS

[Tons per day]

County	With MVIP		Without MVIP	
	VOC	NO_X	VOC	NO_X
Hillsborough County	42.3	55.8	47.4	56.8
Pinellas County	33.5	38.2	37.7	38.9
Total	75.8	93.9	85.1	95.7

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The projected emissions for on road mobile sources continue to be less than the level of emissions in 1990, a year for which the area was in attainment. Therefore Florida has demonstrated that the area can maintain the one-hour ozone NAAQS without the implementation of the MVIP. The EPA has reviewed the State's emissions inventory and modeling analyses and finds that they meet applicable guidance and requirements. Therefore, the State has made the necessary demonstration that the MVIP is not necessary to maintain the one-hour ozone NAAQS and that attainment of the NAAQS for any other pollutant will not be affected by removing the MVIP from the SIP. In accordance with EPA's November 15, 1992, policy, the State must include the MVIP as a contingency measure in the maintenance plan for the redesignated area, which it has done.

The following table lists the revised budgets for each county. The motor vehicle emission budgets are derived as a percentage of the 1990 on road emissions inventories. Upon final EPA approval, these budgets are to be used by the local metropolitan planning organizations and transportation authorities to assure that transportation plans, programs, and projects are consistent with, and conform to, the long-term maintenance of the NAAQS in the Tampa area.

The State is allowed to allocate up to 100 percent of the 1990 on-road emissions inventory for use as the motor vehicle emissions budget. Pursuant to 40 CFR part 51, subpart T, the Transportation Conformity rule, § 51.456(b), a specific emissions budget is here defined for the on-road mobile sources portion of the emissions inventory. These budgets are to be used by the local MPOs and transportation authorities to assure that transportation plans, programs, and projects are consistent with, and conform to, the long-term maintenance of acceptable air quality in the Tampa Bay area. Specific emissions budgets are set for VOC and NO_X in the following table.

TAMPA FLORIDA AREA—MOTOR VEHICLE EMISSIONS BUDGET

[Tons per day]

County	VOC	NO_X
Hillsborough County	54.05	71.24
Pinellas County	33.38	42.01
Total	87.43	113.25

The local MPOs must redetermine conformity within 18 months of the effective date for this SIP revision. This is required because the existing conformity determinations considered emission reduction credits from the MVIP control strategy.

Final Action

EPA is approving the aforementioned changes to the SIP. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective October 15, 2002, without further notice unless the Agency receives adverse comments by September 16, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 15, 2002, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

J.I. Palmer, Jr.,
Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations* is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart K—Florida

2. Section 52.520 paragraph (e) is amended by adding a new entry at the end of the table to read as follows:

§ 52.520 Identification of plan.

* * * * *

(e) EPA-approved Florida non-regulatory provisions.

Provision	State effective date	EPA approval date	Federal Register notice	Explanation
Revision to Maintenance Plan for the Tampa, Florida Area.	July 9, 2000	August 15, 2002	[Insert cite of publication].	

[FR Doc. 02–20745 Filed 8–14–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7258–6]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of Operable Unit (OU) No. 2 of the Tex Tin Corporation Superfund site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a direct final notice of deletion of OU No. 2 of the Tex Tin Superfund site, located in Texas City, Galveston County, Texas, from the National Priorities List (NPL).

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA with the concurrence of the State of Texas, through the Texas Natural Resource Conservation Commission (TNRCC), because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective October 15, 2002, unless EPA receives adverse comments by September 16, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Donn Walters, Community Relations Coordinator U.S. EPA (6SF–P), 1445 Ross Avenue, Dallas, Texas, 75202–2733. Comments can also be sent by e-mail to: *walters.donn@epa.gov.*

Information Repositories: Comprehensive information about the Tex Tin Superfund site is available for viewing and copying at the information repositories located at: U.S. Environmental Protection Agency Region 6, 12th Floor Library, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6427, Monday through Friday 7:30 am to 4:30 pm; Moore Memorial Public Library, 1701 Ninth Avenue North, Texas City, Texas 77590, (409) 643–5979, Monday through Wednesday 9 am to 9 pm, Thursday and Friday 9 am to 6 pm, Saturday 10 am to 4 pm; Texas Natural Resource Conservation Commission, Building D, Record Management, Room 190, 12100 North Interstate Highway 35, Austin, Texas 78753, (512) 239–2920, Monday through Friday 8 a.m to 5 pm.

FOR FURTHER INFORMATION CONTACT: Carlos A. Sanchez, Remedial Project Manager (RPM) (6SF–A), EPA Region 6, 1445 Ross Avenue—Suite 1200, Dallas, Texas, 75202–2733, (214) 665–8507 or by e-mail, *sanchez.carlos@epa.gov.*

SUPPLEMENTARY INFORMATION:

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II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

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I. Introduction

EPA Region 6 is publishing this direct final notice of deletion of OU No. 2 of the Tex Tin Superfund site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective October 15, 2002, unless EPA receives adverse comments by September 16, 2002, on this notice or the parallel notice of intent to delete published in the Proposed Rules section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period on this notice or the notice of intent to delete EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses OU No. 2 of the Tex Tin Superfund site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete OU No. 2 from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of OU No. 2:

(1) The EPA consulted with the State of Texas through the Texas Natural Resource Conservation Commission (TNRCC) on the deletion of the Tex Tin OU No. 2 site from the NPL prior to developing this direct final notice of deletion.

(2) The State of Texas through the TNRCC concurred with deletion of OU No. 2 from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the "Proposed Rules" section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Tex Tin OU No. 2 site and is being distributed to appropriate federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete OU No. 2 from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Tex Tin site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this notice or the companion notice of intent to delete also published in today's **Federal Register**, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions. Additionally, deletion of the Tex Tin OU No. 2 site from the NPL will not alter BP Amoco's requirements under the Texas Voluntary Cleanup Program (Texas VCP).

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Tex Tin OU No. 2 site from the NPL:

Site Location

Operable Unit No. 2 of the Tex Tin Corporation Superfund site is located in Texas City, Galveston County, Texas, CERCLIS ID # TXD062113329. The former Tex Tin Corporation smelter facility, which at one time consisted of OU No. 1 and OU No. 2, is located in the southeast quadrant of the intersection of State Highway (SH) 146 and Farm-to-Market (FM) Road 519. The area north and east of the former smelter facility is dominated by large petrochemical facilities. There is a densely populated residential neighborhood approximately 2,000 feet west-northwest of the former facility in the city of La Marque, Texas. More than 10,000 people reside within a 1 mile radius of the former smelter facility. A municipal golf course, an industrial waste disposal facility, and marsh areas are located less than 0.5 mile to the south and southwest of the former facility.

Site History

The Tex Tin smelter was constructed by a corporation under contract to the United States government as an emergency tin supply plant for World War II, and operated under a government contract from 1941 to 1956 as the Tin Processing Corporation. The smelting operations were conducted in the areas currently referred to as OU No. 1 and OU No. 2. The facility was sold to private industry in 1957 and was operated by a succession of companies until it ceased operations in 1991.

From 1941 through 1989, the facility primarily produced tin. A secondary copper smelting process replaced the tin smelting operations in 1989 and continued through 1991. In 1969, Amoco Chemical Company purchased approximately 27 acres of land (OU No. 2) from Wah Chang Corporation, owner of the smelter at that time.

EPA first proposed the Tex Tin site for inclusion on the NPL in 1988. The Court of Appeals for the D.C. Circuit ordered the site removed from the NPL in 1993. On June 17, 1996, EPA again proposed to add the Tex Tin Corporation site to the NPL of Superfund sites. 61 FR 30575 (June 17, 1996). The Tex Tin NPL listing became final on September 18, 1998. 63 FR 49855.

The Tex Tin Superfund site consists of four operable units. Primary and secondary tin and copper smelting operations were conducted in the area currently referred to as OU No. 1, which encompasses approximately 140 acres and includes ponds outside the fenced area. OU No. 3 is the La Marque residential area located approximately 2,000 feet west-northwest from the former smelter facility. OU No. 4 includes the Swan Lake ecosystem located between the hurricane levee and the shell barrier islands separating Swan Lake from Galveston Bay and portions of Swan Lake, its associated salt marsh habitats, and the Wah Chang ditch east of Loop 197. OU No. 2, the focus of this proposed direct deletion, encompasses approximately 27 acres, where unlined pits created for storage of waste acid solution from smelter operations were historically located. In April of 1996, Amoco applied to the Texas VCP to perform response activities on its property, OU No. 2. After consultation between EPA and TNRCC, Amoco was accepted into the VCP. EPA provided technical assistance to TNRCC in overseeing the Amoco response action.

Remedial Investigation and Feasibility Study (RI/FS)

Tex Tin OU No. 2 includes an area of approximately 27 acres that was part of the Tex Tin smelter facility until 1969, when the property was purchased by Amoco (now BP Amoco). OU No. 2 is referred to in the RI and other early reports as Area H. Area H included six (6) ponds (Ponds 9 through 14) that at one time were used to dispose of acidic ferrous-chloride waste solution from the tin smelting process. Beginning in 1969, when Amoco bought the property, the ponds were no longer used for disposal of smelter waste. In 1988 they were drained and backfilled by Amoco. OU No. 2 is currently part of Amoco's Plant C property, a total of approximately 71 undeveloped acres situated across FM 519 from the Amoco Refinery and the Amoco Chemical Plant in Texas City.

The RI conducted in 1992 for the Tex Tin site included OU No. 2. The RI found metal concentrations in the surface soils, near-surface soils, and fill material in the OU No. 2 area that exceeded health based levels. Arsenic and lead are the metals that were found at the highest concentrations and which contributed the highest health risk at OU No. 2. Lead as high as 3,505 mg/kg was detected in Pond 13 and arsenic as high as 2,537 mg/kg was detected in Pond 14.

Additional investigations for OU No. 2 were conducted in 1996 by KMA Environmental (now Meridian Alliance Group) for Amoco. Results of the investigations conducted by KMA are presented in the Surface Soils Response Action Work Plan and the Groundwater Response Action Work Plan which are included in the Response Action Work Plan dated October 1996. Test results found lead concentrations at 3,120 mg/kg, arsenic at 1,550 mg/kg, and chromium at 25.8 mg/kg.

Findings from KMA investigations and the RI indicated that contaminants were present at OU No. 2 that may pose a risk to human health and the environment. Because the extensive RI conducted in 1992 for the former smelter facility included both OU No. 1 and OU No. 2, the selection of contaminants of concern (COCs) and the preliminary remediation goals (PRGs) identified for OU No. 1 are applicable for OU No. 2. Likewise, soil and ground water remedies selected in the ROD for OU No. 1, for an industrial setting, are applicable to OU No. 2.

Record of Decision Findings

The United States Environmental Protection Agency (EPA) Region 6 signed a No Further Action Record of Decision (ROD) on September 27, 2001, for Operable Unit (OU) No. 2 (Amoco Property) of the Tex Tin Corporation Superfund site which is located in Texas City, Texas. The EPA based its decision on the results of the remedial investigation and human health risk assessment conducted for the Tex Tin site and the successful completion of a Response Action by Amoco Chemical Company (Amoco) (now known as BP Amoco Chemical Company) under the Texas Voluntary Cleanup Program (VCP) from November 1997 through June 1998. The EPA determined that the Amoco Response Action had eliminated the need to conduct further remedial action at OU No. 2 by addressing the human health risk associated with the high concentrations of arsenic and lead. The State of Texas concurred with the Record of Decision of No Further Action necessary under CERCLA.

Characterization of Risk

A human health risk assessment for OU No. 2 was conducted by KMA in 1996. The risk assessment results indicated that the risk associated with arsenic, lead, and chromium contamination in the surface soils exceeded allowable risks for industrial workers. The model identified the baseline (prior to response action) risk to site workers associated with contaminants found in OU No. 2 surface soils. The model indicated that the cancer risk was exceeded for industrial workers at the site. The calculated cancer risk for industrial workers was 2.04E–4 which exceeds EPA's acceptable risk range of one in ten thousand to one in one million (expressed as 1×10^{-4} to 1×10^{-6}) lifetime excess cancer incidents which is the remedial goal for Superfund sites.

The Remedial Action Objectives (RAOs) formulated for OU No. 1 contaminants that are also applicable to OU No. 2 consist of:

- Preventing direct contact, ingestion, and inhalation of contaminants that exceed PRGs.
- Preventing further degradation of the ground water outside the site boundaries in the shallow and medium transmissive zones.
- Preventing migration of contaminated ground water outside the site boundaries to the deep transmissive zone by addressing the site source materials and preventing further degradation of the shallow and medium transmissive zones.

Response Action

The Tex Tin OU No. 2 response action, conducted under the authority of the Texas Voluntary Cleanup Program, met EPA's CERCLA standards and the RAOs for OU No. 1 which are also applicable to OU No. 2. The implemented remedy for OU No. 2 included the following elements:

- Placement of a minimum 2-foot soil/vegetative cover over the entire OU No. 2 area (to prevent exposure to surface soil contaminants above health-based action levels found on portions of the property);
- Construction of a bentonite/soil (slurry) cutoff wall along the Amoco (OU No. 2) and Tex Tin (OU No. 1) property boundary to prevent further movement of the contaminated shallow ground water from OU No. 1 to OU No. 2;
- Initiation of a long-term ground water monitoring program and placing deed restrictions on the property to

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prevent use of the ground water for purposes other than monitoring and remediation; and

• Filing deed restrictions to restrict site use for industrial purposes only and to notify potential users of the remaining site contaminants.

The response action taken at OU No. 2 by Amoco has eliminated the exposure pathway between human or environmental receptors and surface or subsurface contaminants by creating a permanent clean cover over the entire OU No. 2 property. Unacceptable levels of risk to industrial workers caused by exposure to hazardous substances at OU No. 2 have been abated by the VCP response action.

A comparison of the selected remedy for OU No. 1, which met the nine evaluation criteria used in selecting remedies for Superfund sites, with the remedy implemented for OU No. 2 under the Texas VCP indicates that the remedy for OU No. 2 is consistent with the remedy selected for OU No. 1.

Cleanup Standards

The cleanup standards or preliminary remedial goals (PRGs) identified for the former smelter facility (OU No. 1) are applicable for OU No. 2. The human health risk-based industrial PRG for arsenic was calculated at 194 mg/kg. The PRG for arsenic meets EPA's acceptable risk range of 1E–4 to 1E–6 and meets TNRCC's arsenic cleanup level of 200 mg/kg for an industrial site. The lead PRG of 2,000 mg/kg was based on Bower's model for adult lead exposure at an industrial setting. For the OU No. 2 contaminants of concern, only arsenic at 2,537 mg/kg and lead at 3,505 mg/kg exceeded the PRGs.

To determine the leaching potential of site contaminants to the site ground water, the Synthetic Precipitation Leaching Procedure (SPLP) test was conducted by Amoco for OU No. 2. The SPLP tests indicated that lead levels in surface soil as high as 3,120 mg/kg and arsenic levels in surface soils as high as 1,550 mg/kg would pass the SPLP test. The selected PRGs levels for arsenic and lead do not exceed the SPLP levels tested and would therefore be protective of the site ground water.

Operation and Maintenance

The long-term ground water monitoring program consists of:

• Sampling twenty-four (24) shallow and seven medium transmissive zone wells on a quarterly basis for the first two years, semi-annually for the next three years, and yearly thereafter;

• Establishing a compliance monitoring program at the limit of the contaminant plume boundary to ensure that no further migration of the contaminated shallow ground water is occurring. Samples will be collected from nine (9) shallow ground water wells quarterly for a minimum of two years. If no migration is indicated during the first two years, sampling will be conducted semi-annually for the next three years, and annually thereafter. If migration of the contaminated shallow ground water is indicated at the compliance monitoring locations, a proposed response action will be submitted to TNRCC and EPA in a Groundwater Monitoring Response Action Report.

Five-Year Review

Because the response action resulted in hazardous substances, pollutants, or contaminants remaining on-site above health-based levels, a review will be conducted to ensure that the remedy continues to provide adequate protection of human health and the environment within five years after commencement of the response action for OU No. 2 of the Tex Tin site. The response action began in October 1997; therefore, the first five year review for OU No. 2 will be scheduled for October 2002. Moreover, Amoco will continue the ground water monitoring program to verify that contaminants in the shallow transmissive zone are not migrating to the deep transmissive ground water zone that can potentially be used as a drinking water source. In addition, the Texas VCP will review site conditions on a semiannual basis to ensure compliance with the Conditional Certificate of Completion.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the Administrative Record for the Tex Tin Superfund site which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories which can be found at the Moore Memorial Library located in Texas City, Texas, the EPA Region 6 library in Dallas, Texas, and the TNRCC library in Austin, Texas.

V. Deletion Action

The EPA, with concurrence of the State of Texas through the TNRCC, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting OU No. 2 of the Tex Tin Superfund site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective October 15, 2002, unless EPA receives adverse comments by September 16, 2002, on a parallel notice of intent to delete published in the Proposed Rule section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period on the proposal, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect and, EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 29, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended under the State of Texas ("TX") by revising the entry for the "Tex-Tin Corp." Superfund site and the city "Texas City" Texas to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes (a)
TX	Tex Tin Superfund	Texas City, Galveston	P

P = Sites with partial deletion(s).

(a) * * *

[FR Doc. 02–20446 Filed 8–14–02; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010914227–2063–02; I.D. 080201E]

RIN 0648–AM40

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the regulatory text of the final rule published on April 15, 2002. The final rule implemented Amendment 67 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Effective August 14, 2002.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION: As published, the April 15, 2002 (67 FR 18129) final rule, which implements Amendment 67 to the FMP, contains a paragraph designation error and must be corrected.

Classification

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment under the authority set forth at 5 U.S.C. 553(b)(3)(B). The rationale for this finding is that prior notice and comment are unnecessary under the Administrative Procedure Act because the correction of a paragraph designation will have no substantive effect on the regulated public. Prior notice and comment would be contrary to the public interest because it would prolong the inaccurate paragraph designation that currently exists in the regulations. Therefore, the Assistant Administrator for Fisheries, NOAA, waives the 30–day delay in effective date under 5 U.S.C. 553(d).

Correction

Accordingly, the publication on April 15, 2002 (67 FR 18129, FR Doc. 02–8961), is corrected as follows:

On page 18138, column 3, in § 679.4, paragraph (k)(9)(iii)(G), correct the paragraph designation "679.4(k)(iii)(D)" to read "679.4(k)(9)(iii)(D)".

Dated: August 9, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–20735 Filed 8–14–02; 8:45 am]
BILLING CODE 3510–22–S

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Proposed Rules

Federal Register
Vol. 67, No. 158
Thursday, August 15, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV02–920–4 PR]

Kiwifruit Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Kiwifruit Administrative Committee (Committee) for the 2002–03 and subsequent fiscal periods from $0.03 to $0.045 per 22-pound volume fill container or equivalent of kiwifruit. Expenses for 2002–03 are higher than last fiscal period and the current assessment rate would not generate enough funds to cover the expenses. The Committee locally administers the marketing order which regulates the handling of kiwifruit grown in California. Authorization to assess kiwifruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by September 16, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, e-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California kiwifruit handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable kiwifruit beginning on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2002–03 and subsequent fiscal periods from $0.03 to $0.045 per 22-pound volume fill container or equivalent of kiwifruit.

The California kiwifruit marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of California kiwifruit. They are familiar with the Committee's needs and the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–01 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on July 10, 2002, and unanimously recommended 2002–03 expenditures of $80,760 and an assessment rate of $0.045 per 22-pound volume fill container or equivalent of kiwifruit. In comparison, last year's budgeted expenditures were $78,000. The assessment rate of $0.045 is $0.015 higher than the rate currently in effect. The higher assessment rate is needed to offset the 2002–03 increase in salaries and vehicle expenses, and to keep the operating reserve at an adequate level.

The following table compares major budget expenditures recommended by the Committee for the 2002–03 and 2001–02 fiscal periods:

Budget expense categories	2002–03	2001–02
Administrative Staff & Field Salaries	$55,500	$50,000
Travel	5,000	9,500
Office Costs/Annual Audit	14,500	14,500
Vehicle Expense Account	5,760	4,000

The assessment rate recommended by the Committee was derived by the following formula: Anticipated expenses ($80,760), plus the desired 2003 ending reserve ($36,287), minus the 2002 beginning reserve ($23,979), divided by the total estimated 2002–03 shipments (2,068,182 22-pound volume fill containers). This calculation resulted in the $0.045 assessment rate. This rate would provide sufficient funds to meet the anticipated expenses of $80,760 and result in a July 2003 ending reserve of $36,287, which is acceptable to the Committee. The July 2003 ending reserve funds (estimated to be $36,287) would be kept within the maximum permitted by the order, approximately one fiscal period's expenses (§ 920.41).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 326 producers of kiwifruit in the production area and approximately 52 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

None of the 52 handlers subject to regulation have annual kiwifruit sales of at least $5,000,000. Two of the 326 producers subject to regulation have annual sales of at least $750,000. Thus, the majority of handlers and producers of kiwifruit may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent fiscal periods from $0.03 to $0.045 per 22-pound volume fill container or equivalent of kiwifruit. The Committee unanimously recommended 2002–03 expenditures of $80,760 and an assessment rate of $0.045 per 22-pound volume fill container or equivalent of kiwifruit. The proposed assessment rate of $0.045 is $0.015 higher than the 2001–02 rate. The quantity of assessable kiwifruit for the 2002–03 fiscal period is estimated at 2,068,182 22-pound volume fill container or equivalent of kiwifruit. Thus, the $0.045 rate should provide $93,068 in assessment income and be adequate to meet this year's expenses.

The following table compares major budget expenditures recommended by the Committee for the 2002–03 and 2001–02 fiscal years:

Budget expense categories	2002–03	2001–02
Administrative Staff & Field Salaries	$55,500	$50,000
Travel	5,000	9,500
Office Costs/Annual Audit	14,500	14,500
Vehicle Expense Account	5,760	4,000

The Committee reviewed and unanimously recommended 2002–03 expenditures of $80,760, which included increases in administrative salaries and vehicle expenses. Prior to arriving at this budget, the Committee considered alternative expenditure levels, but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate recommended by the Committee was derived by the following formula: Anticipated expenses ($80,760), plus the desired 2003 ending reserve ($36,287), minus the 2002 beginning reserve ($23,979), divided by the total estimated 2002–03 shipments (2,068,182 22-pound volume fill containers). This calculation resulted in the $0.045 assessment rate. This rate would provide sufficient funds to meet the anticipated expenses of $80,760 and result in a July 2003 ending reserve of $36,287, which is acceptable to the Committee. The July 2003 ending reserve funds (estimated to be $36,287) would be kept within the maximum permitted by the order, approximately one fiscal period's expenses (§ 920.41).

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2002–03 season could range between $9.50 and $13.00 per 22-pound volume fill container or equivalent of kiwifruit. Therefore, the estimated assessment revenue for the 2002–03 fiscal period as a percentage of total grower revenue could range between 0.5 and 0.3 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 10, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally,

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interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2002–03 fiscal period begins on August 1, 2002, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable kiwifruit handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis and; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is proposed to be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The Authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 920.213 is revised to read as follows:

§ 920.213 Assessment rate.

On and after August 1, 2002, an assessment rate of $0.045 per 22-pound volume fill container or equivalent of kiwifruit is established for kiwifruit grown in California.

Dated: August 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–20688 Filed 8–14–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 5 and 16

[Docket No. 02N–0251]

Presiding Officers at Regulatory Hearings

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its administrative regulations governing who may act as a presiding officer at a regulatory hearing. This action would amend the regulations to permit an administrative law judge (ALJ) to act as a presiding officer and provide the appropriate delegations of authority. It is intended to increase the pool of qualified personnel available as presiding officers, thereby increasing the efficiency with which the agency conducts regulatory hearings, beginning with responding to hearing requests and continuing through issuance of written hearing reports. This proposed rule is a companion document to the direct final rule published elsewhere in this issue of the **Federal Register**.

DATES: Submit written or electronic comments on the proposed rule on or before October 29, 2002. If FDA receives any significant adverse comments, the agency will publish a document withdrawing the direct final rule within 30 days after the comment period ends. FDA will then proceed to respond to comments under this proposed rule using the usual notice-and-comment procedures.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Peter C. Beckerman, Office of the Chief Counsel (GCF–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7144.

SUPPLEMENTARY INFORMATION:

I. Discussion

As described in the related direct final rule, FDA's procedures for a regulatory hearing are set forth in part 16 (21 CFR part 16) of the agency's regulations. "Part 16 hearings" are offered under numerous statutory and regulatory provisions. Section 16.1 provides a list of statutes and regulations in which part 16 hearings are available.

Currently, § 16.42(a) provides that an FDA employee to whom the Commissioner of Food and Drugs (the Commissioner) delegates the authority, or any other FDA employee to whom such authority is redelegated, can serve as the presiding officer at a regulatory hearing. In turn, § 5.30(c) (21 CFR 5.30(c)) delegates authority to preside at and conduct a regulatory hearing to the Director of the Office of the Ombudsman for the agency; the Directors and Deputy Directors of the Center for Food Safety and Applied Nutrition, the Center for Drug Evaluation and Research, the Center for Devices and Radiological Health, and the Center for Biologics Evaluation and Reasearch; Regional Directors; District Directors; the Director of the St. Louis Branch; and such other FDA official as the Commissioner may designate by memorandum in the proceeding.

FDA believes that the addition of the ALJ to the list of those delegated to conduct regulatory hearings would increase the pool of qualified personnel available to preside at regulatory hearings. In addition, by virtue of the nature of an ALJ's training and experience adjudicating disputes, FDA believes that an ALJ would be appropriately suited to conduct regulatory hearings. Therefore, the agency is proposing to amend §§ 5.30(c) and 16.42(a) to permit an ALJ to preside at and conduct regulatory hearings before the agency.

The regulations pertaining to ALJs issued by the Office of Personnel Management (OPM) (5 CFR 930.209(b)) provide that an agency may assign an ALJ, by detail or otherwise, to perform duties that are not the duties of an ALJ without prior approval by OPM when the duties are not inconsistent with the duties and responsibilities of an ALJ, the assignment is not to last longer than 120 days; and the ALJ has not had an aggregate of more than 120 days of such assignments or details in the preceding year. However, OPM's regulations under 5 CFR 930.209(c) also state that on a showing that it is in the public interest, OPM may authorize a waiver from the 120-day limitation.

For the reasons already discussed, FDA believes it would be in the public interest to permit an ALJ to preside at and conduct part 16 hearings.

II. Additional Information

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. This companion proposed rule and the direct final rule are identical. This companion proposed rule will provide the procedural framework to finalize the rule in the event the direct final rule receives significant adverse comments and is withdrawn. The comment period for this companion proposed rule runs concurrently with the comment period of the direct final rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish a confirmation document within 30 days after the comment period ends, and FDA intends the direct final rule to become effective 30 days after publication of the confirmation document. If FDA receives significant adverse comments, the agency will withdraw the direct final rule. FDA will proceed to respond to all the comments received regarding the rule, and if appropriate, the rule will be finalized under this companion proposed rule using usual notice-and-comment procedures.

For additional information, see the corresponding direct final rule published in the final rules section of this issue of the **Federal Register**. FDA will not provide additional opportunity for comment. A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment recommending a rule change in addition to this rule will not be considered a significant adverse comment, unless the comment states why this rule would be ineffective without the additional change.

III. Legal Authority

The broad rulemaking authority conferred on FDA by the U.S. Congress under the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 201 *et seq.*) permits the agency to amend its regulations as contemplated by this proposed rule. Section 701(a) of the act (21 U.S.C. 371 (a)) gives FDA general rulemaking authority to issue regulations for efficient enforcement of the act.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order and in the other two statutes. This proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. The agency has considered the effect that this proposed rule would have on small entities. Because the proposed rule will amend only internal agency procedures, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore under the Regulatory Flexibility Act, no further analysis is required.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) requires that agencies prepare a written statement of anticipated costs and benefits before issuing any proposed or final rule "that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year * * *." This proposed rule imposes no Federal mandate that will result in such an expenditure. Therefore, FDA is not required to prepare a cost/benefit statement.

VI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Request for Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. In the event the direct final rule is withdrawn, all comments will be considered comments on this proposed rule.

List of Subjects

21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

21 CFR Part 16

Administrative practice and procedure.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 5 and 16 are amended as follows:

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PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2 605; 7 U.S.C. 138a, 2217; 15 U.S.C. 638, 1261–1282, 1451–1461, 3701–3711a; 21 U.S.C. 61–63, 141–149, 301–394, 467f, 679(b), 801–886, 1031–1309, 1401–1403; 35 U.S.C. 156; 42 U.S.C. 238, 241, 242, 242a, 242l, 242n, 242o, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1, 300ar–25–28, 300cc, 300ff, 1395y, 4332, 4831(a), 10007–10008; E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124–131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220–223.

2. In § 5.28 revise paragraph (c)(1), redesignate paragraph (c)(10) as paragraph (c)(11), and add new paragraph (c)(10) to read as follows:

§ 5.28 Hearings.

* * * * *

(c) * * *

(1) The Director, Office of the Ombudsman, Office of External Relations, Office of the Commissioner.

* * * * *

(10) An Administrative Law Judge.

* * * * *

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

3. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

4. Amend § 16.42 by revising paragraph (a) to read as follows:

§ 16.42 Presiding officer.

(a) An FDA employee to whom the Commissioner delegates such authority, or any other agency employee designated by an employee to whom such authority is delegated, or, consistent with 5 CFR 930.209(b) or (c), an administrative law judge to whom such authority is delegated, may serve as the presiding officer and conduct a regulatory hearing under this part.

* * * * *

Dated: August 7, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–20700 Filed 8–14–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

23 CFR Part 450

[FHWA Docket No. FHWA–99–5933]

FHWA RIN 2125–AE95; FTA RIN 2132–AA75

Statewide Transportation Planning; Metropolitan Transportation Planning

AGENCY: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice; extension of comment period.

SUMMARY: The FHWA and FTA propose to extend the comment period for a supplemental notice of proposed rulemaking, which was published June 19, 2002, at 67 FR 41648. The original comment period is set to close on August 19, 2002. The proposed extension stems from concern expressed jointly by the American Association of Highway and Transportation Officials (AASHTO), the National Association of Counties (NACO), and the National Association of Development Organizations (NADO) that the August 19 closing date does not provide sufficient time for response to the supplemental notice of proposed rulemaking. The FHWA and FTA recognize that others interested in commenting may have similar time constraints and agree that the comment period should be extended. Therefore, the closing date for comments is changed to September 19, 2002, which will provide the AASHTO, NACO, NADO and others interested in commenting additional time to evaluate the supplemental notice of proposed rulemaking and to submit responses.

DATES: Submit comments on or before September 19, 2002.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mr. Dee Spann, Statewide Planning Team (HEPS), (202) 366–4086 or Mr. Reid Alsop, Office of the Chief Counsel (HCC–31), (202) 366–1371. For the FTA: Mr. Paul Verchinski, Statewide Planning Divison (TPL–11) or Mr. Scott Biehl, Office of the Chief Counsel (TCC–30), (202) 366–0952. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Docket Facility, Room PL–401, by using the universal resource locator (URL) *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http:// www.nara.gov/fedreg* and the Government Printing Office's Web site at *http://www.access.gpo.gov*.

Background

Section 1025 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914, (December 18, 1991), amended title 23, United States Code (U.S.C.), section 135 and established a requirement for Statewide Transportation Planning and stated, "[t]he transportation needs of non-metropolitan areas should be considered through a process that includes consultation with local elected officials with jurisdiction over transportation." The ISTEA further stated "[p]rojects undertaken in areas of less than 50,000 population (excluding projects undertaken on the National Highway System and pursuant to the bridge and Interstate maintenance programs) shall be selected by the State in cooperation with the affected local officials. Projects undertaken in such areas on the National Highway System or pursuant to the bridge and Interstate maintenance programs shall be selected by the State in consultation with the affected local officials."

Section 1204 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107 (June 9, 1998), further amended 23 U.S.C. 135, while preserving the statewide planning requirement for a continuing, comprehensive, and cooperative planning process. Although the TEA–21 did not significantly alter the current decisionmaking relationship among governmental units, it does demonstrate the Congress' continued emphasis on States consultation with non-metropolitan local officials in transportation planning and programming. Consultation with non-metropolitan local officials in transportation planning and programming is the specific subject of the SNPRM, which the FHWA and the FTA published June 19, 2002, at 67 FR 41648.

The SNPRM provided an alternative proposal regarding consultation with non-metropolitan local officials which is different from that contained in the FHWA and the FTA notice of proposed rulemaking (NPRM) published on May 25, 2000 (65 FR 33922), which detailed proposed revisions to the existing planning regulations issued on October 28, 1993, at 58 FR 58040. Comments were solicited until August 23, 2000 (later extended to September 23, 2000, by a July 7, 2000, **Federal Register** notice at 65 FR 41891). The docket is still open.

The House report (H.R. Rep. No. 107–108, at 80 (2001)) that accompanied the U.S. DOT Appropriations Act for fiscal year (FY) 2002 (Pub. L. 107–87), and the conference report (H.R. Rep. No. 107–350 (2001)) for the Department of Defense FY 02 Appropriations Act (Pub. L. 107–117), contained several transportation provisions. They include language directing the U.S. DOT to promulgate a final rule, no later than February 1, 2002, to amend the FHWA and FTA planning regulations to ensure transportation officials from rural areas are consulted in long range transportation planning and programming.

The original comment period for the SNPRM is set to close on August 19, 2002. The AASHTO, NACO, and NADO are working together to develop joint comments on the SNPRM, and they jointly expressed concern that this closing date does not provide sufficient time to review the proposed changes, consolidate comments, and submit them. To allow time for these organizations and others to prepare and submit appropriate comments, the closing date for comments is changed from August 19, 2002, to September 19, 2002.

Authority: 23 U.S.C. 134, 135, and 315; and 49 U.S.C. 5303–5306.

Issued on: August 8, 2002.

Mary E. Peters,

Federal Highway Administrator.

Jennifer L. Dorn,

Federal Transit Administrator.

[FR Doc. 02–20626 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106359–02]

RIN 1545–BA57

Compensatory Stock Options Under Section 482; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing published in the **Federal Register** on Monday, July 29, 2002 (67 FR 48997) that provides guidance regarding the application of the rules of section 482 governing qualified cost sharing arrangements.

FOR FURTHER INFORMATION CONTACT: Douglas Giblen, (202) 874–1490 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these corrections are under section 355(e) of the Internal Revenue Code.

Need for Correction

As published, REG–106359–02 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the (REG–106359–02), which is the subject of FR Doc. 02–19126 is corrected as follows:

1. On page 49001, column 2, in the preamble under the paragraph heading "Comments and Public Hearing", first full paragraph, line 2, the language "for October 21, 2002, at 10 a.m., in" is corrected to read "for November 20, 2002, at 10 a.m., in".

2. On page 49001, column 2, in the preamble under the paragraph heading "Comments and Public Hearing", second paragraph, third line from the bottom, the language "September 30, 2002. A period of 10" is corrected to read "October 30, 2002. A period of 10".

Cynthia Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–20758 Filed 8–14–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–248110–96]

RIN 1545–AY48

Guidance Under Section 817A Regarding Modified Guaranteed Contracts; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels the public hearing on proposed regulations that affects insurance companies that define the interest rate to be used with respect to certain insurance contracts that guarantee higher returns for an initial, temporary period.

DATES: The public hearing originally scheduled for Tuesday, August 27, 2002, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: LaNita Van Dyke of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Monday, June 03, 2002 (67 FR 38214), announced that a public hearing was scheduled for Tuesday, August 27, 2002, at 10 a.m., in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 817 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Tuesday, August 6, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Monday, August 12, 2002, no one has requested to speak. Therefore, the public hearing scheduled

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for Tuesday, August 27, 2002, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–20759 Filed 8–14–02; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 111

Firm Pieces in Presorted Bound Printed Matter Mailings

AGENCY: Postal Service.

ACTION: Clarification.

SUMMARY: This document clarifies and responds to comments on the mail preparation standards for Presorted Bound Printed Matter (BPM) mailings that include individually addressed firm pieces. The term "firm piece" is generally used to describe a mailpiece that consists of more than one component (all destined for the same delivery address) composited into a single addressed mailpiece.

FOR FURTHER INFORMATION CONTACT: Tom DeVaughan, 703–292–3640; or Marc McCrery, 202–268–2704.

SUPPLEMENTARY INFORMATION: On April 24, 2002, the Postal Service published in the **Federal Register** (67 FR 20074) a request for comment on the Domestic Mail Manual (DMM) eligibility and mail preparation standards for firm pieces in Presorted BPM mailings. The notice sought comment on the application of the existing rules; it did not propose any change to the DMM.

The Postal Service received comments from four printers, two mail owners, and two presort software vendors. Several of the comments received were outside the scope of the notice. Four commenters included a statement that they were opposed to the change or "proposal." However, the notice was clarifying and not proposing to change any DMM eligibility or mail preparation standards.

Two commenters stated that they are in agreement with the current standards and that no changes are necessary, as long as all BPM mailers are required to meet the standards for both mail preparation (based on the characteristics of the mailpiece) and destination entry rate eligibility (based on the entry of the mailpiece).

BPM irregular parcels weighing less than 10 pounds have essentially the same preparation standards as flats: they must first be prepared into presort destination packages (e.g., secure multiple addressed pieces destined for the same 3-digit ZIP Code together in a 3-digit package), as appropriate, prior to sacking and palletization. Several commenters insisted that the Postal Service granted exceptions to this preparation in the past.

BPM standards were completely rewritten with industry participation for R2001–1 implementation on January 7, 2001. The USPS pointed to how the new standards would reduce postal processing costs, help mitigate future postage rate increases, and make it easier to determine when BPM mailings are not prepared properly for the rates claimed. For BPM to be eligible for Presorted rates, pieces must be presorted into destination packages to the finest extent possible, with each presort destination package containing a minimum of two addressed pieces. BPM mailings not prepared in accordance with these standards are not eligible for Presorted rates and, thus, are also not eligible for destination entry rates (like Standard Mail preparation). The exception is that BPM irregular parcels placed directly in 5-digit scheme or 5-digit sacks or on 5-digit scheme or 5-digit pallets are not required to be first be secured together in 5-digit presort destination packages. Machinable parcels placed on 5-digit scheme or 5-digit pallets and BMC pallets also do not require presort (destination) package preparation.

One commenter stated that the Postal Service could use small parcel and bundle sorters (SPBSs) to sort single individually addressed firm pieces to 5-digit destinations. This scenario is not possible in all cases because not all SCFs have SPBSs. The most efficient way for the Postal Service to process parcels to the 5-digit level is to sort machinable parcels on bulk mail center (BMC) parcel sorting machines (PSMs). Irregular parcels, such as BPM firm pieces, that do not meet the machinable criteria for processing on PSMs are more costly to sort as individual pieces and are therefore required to be placed in presort destination packages to minimize piece distribution costs. Parcels placed on 5-digit scheme, 5-digit, and optional 5-digit metro pallets do not have to meet machinability criteria for PSMs because they would by-pass that operation and avoid the piece distribution costs.

One commenter stated that pieces of Standard Mail flats may, at the mailer's option, be grouped together to create a BPM irregular parcel, thus allowing them to be mailed at BPM rates, which are less than if each component were mailed individually at Standard Mail rates. The Postal Service agrees with this option, provided the mailer then secures these BPM pieces together in accordance with the required mail preparation standards for the BPM rates claimed (i.e., presort destination packages are required).

A majority of BPM firm piece preparation results in the creation of irregular parcels weighing less than 10 pounds each (as described in DMM M722.1.1). Although BPM irregular parcels are flat in shape, they generally exceed the flat sorting machine maximums for flat-size piece processing in thickness (3/4 inch) as defined in DMM C050. Processing of individual machinable BPM parcels is performed at BMCs and, in limited situations, at auxiliary service facilities (ASFs), but not in sectional center facilities (SCFs). Four commenters stated that because the Postal Service permits Periodicals mailers to prepare firm pieces and to use a "firm" optional endorsement line to identify them, it should also be permitted in BPM mailings. Unlike the rates for Periodicals mail, BPM presorted rates are not structured to accommodate firm piece preparation and the costs associated with processing single addressed pieces (except for machinable parcels) claimed at a Presorted rate. Periodicals rates place greater emphasis on the pound rate portions (advertising and nonadvertising), whereas BPM rates place greater emphasis on the addressed piece rate portion.

Use of a firm optional endorsement line (OEL) is practical only with Periodicals mailings, since those firm pieces are not permitted to be physically secured with other pieces within a presort destination package. Including firm pieces within presort destination packages of BPM when mailers rely solely on OELs for labeling of presort destination packages does not accommodate two possible destinations within a presort destination package (e.g., firm and 5-digit). If the firm piece were the top piece in a presort destination package, it is likely that the entire package would be delivered to the address on that firm piece. One commenter stated that requiring the use of facing slips in lieu of OELs is counterproductive. The Postal Service simply suggested facing slips as means of overcoming the above scenario.

One commenter asked if the increase in maximum weight for a BPM piece was considered. The increase in weight limits for BPM mailpieces occurred October 5, 1997, more than three years before R2000–1 implementation on January 7, 2001.

Three commenters stated that they run a "pre-pass" to determine the number of addresses receiving multiple components. Upon completion, the mailing job is then split into two mailings: one consisting of the multiple component pieces prepared as a machinable parcel mailing, and a second (separate) mailing of single component pieces prepared and mailed as flats or irregular parcels. As confirmed by one presort software vendor, firm piece preparation (if prepared as flats or irregular parcels requiring further packaging) creates a problem since it would be necessary to put a package (firm piece) into another package (presort destination), followed by the sacking or palletization. Additionally, the commenter stated that this preparation contributes to presort documentation and Mail.dat/PostalOne issues. These concerns have been brought to the attention of Business Mail Acceptance and Business Customer Support Systems.

One commenter said that the Postal Service has allowed single firm pieces in BPM mailings since January 7, 2001 (either through exception or unknowingly), and, therefore, the Postal Service should continue to do so. For the reasons stated here and in the April 24, 2002, **Federal Register** notice, the Postal Service cannot support this request.

Based on the comments, many mailers seem to believe that any BPM on SCF or finer pallets is eligible for DSCF entry. To clarify, BPM flats and BPM irregular parcels weighing less than 10 pounds are eligible for DSCF entry only as follows:

Pieces in 5-digit and 3-digit presort destination packages placed in 5-digit, 3-digit, and optional SCF sacks (DMM M722.2). Presort destination packages placed in 5-digit, 3-digit, and optional SCF sacks, then placed onto 5-digit, optional 3-digit, SCF, and ASF pallets (DMM M045.3.3). Pieces in 5-digit and 3-digit presort destination packages only placed directly onto 5-digit scheme, 5-digit, optional 5-digit metro, optional 3-digit, SCF, and ASF pallets (DMM M045.3.3). Mail on ASF pallets (DMM L602) outside of the plant's SCF service area (DMM L005) is eligible for DBMC rates.

Any further consideration of allowing firm piece preparation in Presorted BPM mailings of flats and irregular parcels can be given due consideration only as part of a future rate case.

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–20665 Filed 8–14–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY 125–200233(b); FRL–7259–8]

Approval and Promulgation of Implementation Plans for Kentucky: Regulatory Limit on Potential To Emit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is conditionally approving a revision to the State Implementation Plan (SIP) of the Commonwealth of Kentucky incorporating Kentucky rule 401 KAR 50:080. This rule affects sources whose actual emissions are 50 percent or less of the major source threshold whereas the sources' potential to emit (PTE) exceeds the major source threshold. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before September 16, 2002.

ADDRESSES: All comments should be addressed to: Michele Notarianni, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. (404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail))

Copies of the Commonwealth's submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. (Michele Notarianni, 404/562–9031, *notarianni.michele@epa.gov*)

Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. (502/573–3382)

FOR FURTHER INFORMATION CONTACT: Michele Notarianni at address listed above or 404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).

SUPPLEMENTARY INFORMATION: For additional information, *see* the direct final rule which is published in the Rules section of this **Federal Register**.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 02–20746 Filed 8–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–85–1–200107b; FRL–7259–5]

Approval and Promulgation of Implementation Plans; Florida: Approval of Revisions to the Florida State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is approving revisions to the Florida State Implementation Plan (SIP) submitted on August 29, 2000, by the State of Florida through the Florida Department of Environmental Protection (FDEP). This submittal consists of revisions to the ozone air quality maintenance plan for the Tampa area (Hillsborough and Pinellas Counties) to remove the emission reduction credits attributable to the Motor Vehicle Inspection Program (MVIP) from the future year emission projections contained in those plans. This revision updates the control strategy for the Tampa maintenance area by removing emissions credit for the MVIP, and as such, transportation conformity must be redetermined by the Metropolitan Planning Organizations (MPOs) within 18 months of the final approval of this document. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the

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approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before September 16, 2002.

ADDRESSES: All comments should be addressed to Joey LeVasseur at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035 (e-mail: *levasseur.joey@epa.gov*).

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 02–20744 Filed 8–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–7260–3]

Central Characterization Project Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Argonne National Laboratory-East Site Proposed for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA, or "we") is announcing an inspection for the week of September 9, 2002, at the Argonne National Laboratory-East (ANL–E). With this document, we also announce availability of Department of Energy (DOE) documents in the EPA Docket, and solicit public comments on the documents available in the docket for a period of 30 days. The following DOE documents, entitled "CCP–PO–001—Revision 4, 5/31/02—CCP Transuranic Waste Characterization Quality Assurance Project Plan" and "CCP–PO–002—Revision 4, 5/17/02—CCP Transuranic Waste Certification Plan," are available for review in the public dockets listed in **ADDRESSES.** We will consider public comments received on or before the due date mentioned in **DATES.** In accordance with EPA's WIPP Compliance Criteria, we will conduct an inspection at ANL–E to verify that, using the systems and processes developed as part of the DOE Carlsbad Office's central characterization project (CCP), DOE can characterize TRU waste at ANL–E properly, consistent with the Compliance Criteria.

DATES: EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before September 16, 2002.

ADDRESSES: Comments should be submitted to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Docket No. A–98–49, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The DOE documents are available for review in the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 am–9 pm, Friday–Saturday, 10 am–6 pm, and Sunday 1 pm–5 pm; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 am–5 pm.

As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying. Air Docket A–98–49 in Washington, DC, accepts comments sent electronically or by fax (fax: 202–260–4400; e-mail: *a-and-r-docket@epa.gov).*

FOR FURTHER INFORMATION CONTACT: Ms. Rajani D. Joglekar, Office of Radiation and Indoor Air, (202) 564–7734. You can also call EPA's toll-free WIPP Information Line, 1–800–331–WIPP or visit our Website at *http://www.epa/gov/radiation/wipp.*

SUPPLEMENTARY INFORMATION:

Background

DOE is operating the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Public Law 102–579), as amended (Public Law 104–201), transuranic (TRU) waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratory (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of appendix A to 40 CFR part 194); and (2) prohibit shipment of TRU waste for disposal at WIPP from any site other than LANL until the EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision-making process, the DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, DC, and informational dockets in the State of New Mexico for public review and comment.

EPA will perform an inspection of the TRU waste characterization activities performed by the DOE's Central Characterization Project (CCP) staff at the Argonne National Laboratory-East (ANL–E) in accordance with Condition 3 of the WIPP certification. We will evaluate the adequacy, implementation, and effectiveness of the CCP technical activities contracted by the ANL–E for characterization of the disposal of retrievably-stored debris waste at the WIPP. The overall program adequacy and effectiveness of CCP/ANL–E documents will be based on the following DOE-provided documents: (1) CCP–PO–001—Revision 4, 5/31/02—CCP Transuranic Waste Characterization Quality Assurance Project Plan and (2) CCP–PO–002—Revision 4, 5/17/02—CCP Transuranic Waste Certification Plan. EPA has placed these DOE-provided documents pertinent to the ANL–E inspection in the public docket described in **ADDRESSES.** The documents are included in item II–A2–40 in Docket A–98–49. In accordance with 40 CFR 194.8, EPA is providing the public 30 days to comment on these documents. The inspection is scheduled to take place the week of September 9, 2002.

EPA will inspect the following technical elements for characterizing retrievably-stored TRU debris and solid waste: data validation and verification, acceptable knowledge, nondestructive assay (NDA–WIT and APNEA), Digital Radiography/Computed Tomography, visual examination, and data tracking and reporting via the WIPP Waste Information System.

If EPA determines as a result of the inspection that the proposed CCP waste characterization processes and programs used at ANL–E adequately control the characterization of transuranic waste, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to ship transuranic waste from ANL–E to the WIPP. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: August 9, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–20864 Filed 8–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–7260–4]

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Los Alamos National Laboratory for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents applicable to characterization of transuranic (TRU) radioactive waste at the Los Alamos National Laboratory (LANL) proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents (Item II–A2–41, Docket A–98–49) are available for review in the public dockets listed in **ADDRESSES.** EPA will conduct an inspection of waste characterization systems and processes at LANL to verify that the site can characterize transuranic waste in accordance with EPA's WIPP compliance criteria. EPA will perform this inspection the week of August 26, 2002.

DATES: EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before September 16, 2002.

ADDRESSES: Comments should be submitted to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Docket No. A–98–49, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The DOE documents are available for review in the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday-Thursday, 10 am-9 pm, Friday-Saturday, 10 am-6 pm, and Sunday 1 pm-5 pm; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday-Friday, 9 am-5 pm.

As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying. Air Docket A–98–49 in Washington, DC, accepts comments sent electronically or by fax (fax: 202–566–1741; e-mail: *a-and-r-docket@epa.gov).*

FOR FURTHER INFORMATION CONTACT: Mr. Ed Feltcorn, Office of Radiation and Indoor Air, (202) 564–9422. You can also call EPA's toll-free WIPP Information Line, 1–800–331–WIPP or visit our Website at *http://www.epa/gov/radiation/wipp.*

SUPPLEMENTARY INFORMATION:

Background

DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Public Law 102–579), as amended (Public Law 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratory (LANL), or of additional waste streams at LANL other than those approved by the certification, until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of appendix A to 40 CFR part 194); and (2) prohibit shipment of TRU waste for disposal at WIPP from any site other than LANL, or of additional waste streams at LANL other than those approved by the certification, until the EPA has approved the procedures developed to

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comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision-making process, the DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, DC, and informational dockets in the State of New Mexico for public review and comment.

EPA will perform an inspection of LANL's technical program for waste characterization in accordance with Condition 3 of the WIPP certification. Specifically, we will be examining a new piece of Non-Destructive Assay (NDA) equipment, the Portable Tomographic Gamma Scanner (P–TGS), for characterizing debris and homogeneous solid waste. In addition, we will inspect two new Visual Examination (VE) techniques applied to newly generated debris waste and packaging of sealed sources. The inspection is scheduled to take place the week of August 26, 2002.

EPA has placed a number of DOE-submitted documents pertinent to the inspection in the public docket described in **ADDRESSES.** These documents describe the specific requirements for the new equipment, systems, and processes that are being proposed for the LANL inspection. The documents are listed as Item II–A2–41 in Docket A–98–49. In accordance with 40 CFR 194.8, as amended by the final certification decision, EPA is providing the public 30 days to comment on these documents.

If EPA determines as a result of the inspection that the proposed processes and programs at LANL adequately control the characterization of transuranic waste, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to ship transuranic waste from LANL to the WIPP. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: August 9, 2002.

Robert Brenner,

Assistant Administrator for Air and Radiation.

[FR Doc. 02–20865 Filed 8–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7258–5]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Operable Unit (OU) No. 2 of the Tex Tin Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is issuing a notice of intent to delete OU No. 2 of the Tex Tin Superfund Site located in Texas City, Galveston County, Texas from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at appendix B of 40 CFR part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Texas, through the Texas Natural Resource Conservation Commission (TNRCC), have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund, nor does it preclude future actions under the Texas Voluntary Cleanup Program (VCP) for OU No. 2. In the "Rules and Regulations" Section of today's **Federal Register**, we are publishing a direct final notice of deletion of OU No. 2 of the Tex Tin Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment.

We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by September 16, 2002.

ADDRESSES: Written comments should be addressed to: Donn Walters, Community Involvement Coordinator, U.S. EPA (6SF–PO), 1445 Ross Avenue—Suite 1200, Dallas, Texas, 75202–2733, (214) 665–6483 or 1–800–533–3508 (toll free).

FOR FURTHER INFORMATION CONTACT: Carlos A. Sanchez, Remedial Project Manager, U.S. EPA (6SF–A), 1445 Ross Avenue—Suite 1200, Dallas, Texas, 75202–2733, (214) 665–8507.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following address: Region 6, 12th Floor Library, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6427, Monday through Friday 7:30 am to 4:30 pm; Moore Memorial Public Library, 1701 Ninth Avenue North, Texas City, Texas 77590, (409) 643–5979, Monday through Wednesday 9 a.m. to 9 p.m., Thursday and Friday 9 a.m. to 6 p.m., Saturday 10 a.m. to 4 p.m.; Texas Natural Resource Conservation Commission, Building D, Record Management, Room 190, 12100 North Interstate Highway 35, Austin, Texas 78753, (512) 239–2920, Monday through Friday 8 a.m. to 5 p.m.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: July 29, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–20447 Filed 8–14–02; 8:45 am]

BILLING CODE 6560–50–P

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Notices

Federal Register
Vol. 67, No. 158
Thursday, August 15, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses for the 2003 Tariff-Rate Import Quota Year

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the fee to be charged for the 2003 tariff-rate quota (TRQ) year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles which are subject to tariff-rate quotas set forth in the Harmonized Tariff Schedule of the United States (HTS) will be $170.00 per license.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Hankin, Dairy Import Quota Manager, Import Policies and Programs Division, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1021 or telephone at (202) 720–9439 or e-mail at *Michael.Hankin@fas.usda.gov*.

SUPPLEMENTARY INFORMATION: The Dairy Tariff-Rate Import Quota Licensing Regulation promulgated by the Department of Agriculture and codified at 7 CFR 6.20–6.37 provides for the issuance of licenses to import certain dairy articles which are subject to TRQs set forth in the HTS. Those dairy articles may only be entered into the United States at the in-quota TRQ tariff rates by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The use of licenses by the license holder to import dairy articles is monitored by the Dairy Import Quota Manager, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, and the U.S. Customs Service.

The regulation at 7 CFR 6.33(a) provides that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this regulation.

The regulation at 7 CFR 6.33(a) also provides that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be published in the **Federal Register**. Accordingly, this notice sets out the fee for the licenses to be issued for the 2003 calendar year.

Notice

The total cost to the Department of Agriculture of administering the licensing system during 2002 has been determined to be $441,700 and the estimated number of licenses expected to be issued is 2,600. Of the total cost, $214,000 represents staff and supervisory costs directly related to administering the licensing system for 2002; $50,500 represents the total computer costs to monitor and issue import licenses for 2002; and $177,200 represents other miscellaneous costs, including travel, postage, publications, forms, and ADP system contractors.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 2003 calendar year, in accordance with 7 CFR 6.33, will be $170.00 per license.

Issued at Washington, DC the 8th day of August, 2002.

Michael Hankin,

Licensing Authority.

[FR Doc. 02–20726 Filed 8–14–02; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF INTERIOR

Bureau of Land Management

Notice of Intent; Northern Rockies Lynx Amendments

AGENCY: Forest Service, USDA, lead agency; Bureau of Land Management, USDI, cooperating agency.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service and Bureau of Land Management (BLM) have decided to prepare an Environmental Impact Statement (EIS) on a proposal to amend land use/land management plans to incorporate management direction for the Canada lynx for national forests and BLM units within the northern Rocky Mountain area.

A scoping notice for the preparation of an Environmental Assessment was published in the **Federal Register**, September 11, 2001, Vol. 66, No. 176, page 47161. Based on the level of interest expressed during scoping, the Responsible Officials have decided to prepare an EIS. The comments received during the scoping process for the Environmental Assessment will be used in preparation of the EIS; therefore scoping will not be reinitiated.

DATES: The Forest Service and BLM expect the Draft EIS to be released for public, agency, and tribal government comment in the late summer/early fall of 2002, with a Final EIS and associated decision documents expected early in 2003. Information regarding public meetings on the Draft EIS will be posted on the Internet at *http://www.fs.fed.us/r1/planning/lynx.html* and sent to people who commented during scoping or asked to be on the mailing list.

ADDRESSES: Send written comments to Northern Rockies Lynx Amendment, Attn: Jon Haber, Project Manager, Northern Region Headquarters, PO BOX 7669, Missoula, MT 59807.

FOR FURTHER INFORMATION CONTACT: Marcia Hogan, Public Affairs Officer, (406) 329–3300. Information regarding lynx and the planning process can also be found at *http://www.fs.fed.us/r1/planning/lynx.html*.

SUPPLEMENTARY INFORMATION: A scoping notice for the preparation of an Environmental Assessment was published in the **Federal Register**, on-September 11, 2001, Vol. 66, No. 176, page 47161. The notice described the land areas involved, background information, purpose and need, proposed action, decision framework, responsible officials, public involvement, preliminary issues, and estimated dates for filing the environmental document, as well as the reviewer's obligation to comment.

The notice stated that the scoping process would be used to evaluate whether or not an EIS is warranted. It further stated, "If an EIS is warranted then written comments resulting from this notice will be used to determine the scope of alternatives and effects in the EIS."

Based on the level of interest expressed during scoping, the Responsible Officials have decided to prepare an EIS. The comments received during the scoping process for the Environmental Assessment will be used in preparation of the EIS; therefore scoping will not be reinitiated. Several alternatives will be considered in the EIS, including the no action alternative. The action alternatives are designed to accomplish the purpose and need as stated in the September 11, 2002, **Federal Register** scoping notice: "To establish management direction that conserves and promotes recovery of the Canada lynx by reducing or eliminating adverse effects from land management activities on these national forests and BLM lands, while preserving the overall multiple-use direction in existing plans," and "to achieve the stated purpose, the selected amendment must provide a level of lynx conservation and recovery comparable to the Lynx Conservation Assessment Strategy." The primary issues include: the agencies' ability to adapt management to new information; scale to which some standards apply; limits on precommercial thinning; limit of salvage less than five acres; effect on winter recreation special use permits and agreements from requiring no-net-increase of groomed or designated routes; and the effect of road guidelines on upgrading of the transportation system. Written comments on the range of alternatives and their effects will be requested and considered when the Draft EIS is released.

The national forests and BLM units and their associated plans included in this amendment are shown below. The **Federal Register** notice prepared for scoping said that 18 land and resource management plans for national forests in Idaho, Montana, Utah and Wyoming, and 18 BLM land use plans in Idaho and Utah would be amended. This notice corrects that information. There are 20 land and resource management plans that would be amended on 18 National Forests and 9 BLM land use plans that would be amended on 9 BLM Field Offices. Some of the forests have been consolidated, but retain the plans for the original forest. The number of BLM plans has been modified based on additional review of lynx habitat on BLM lands.

NATIONAL FORESTS AND ASSOCIATED LAND MANAGEMENT PLANS

Region 1:	
Bitterroot	Bitterroot Forest Plan
Beaverhead-Deerlodge.	Beaverhead Forest Plan, Deerlodge Forest Plan
Clearwater	Clearwater Forest Plan
Custer	Custer Forest Plan
Flathead	Flathead Forest Plan
Gallatin	Gallatin Forest Plan
Helena	Helena Forest Plan
Idaho Panhandle.	Idaho Panhandle Forest Plan
Kootenai	Kootenai Forest Plan
Lewis and Clark.	Lewis and Clark Forest Plan
Lolo	Lolo Forest Plan
Nez Perce	Nez Perce Forest Plan
Region 2:	
Bighorn	Bighorn Forest Plan
Shoshone	Shoshone Forest Plan
Region 4:	
Ashley	Ashley Forest Plan
Bridger-Teton	Bridger-Teton Forest Plan
Salmon-Challis	Salmon Forest Plan, Challis Forest Plan
Caribou-Targhee.	Targhee Forest Plan

BUREAU OF LAND MANAGEMENT OFFICES AND ASSOCIATED LAND USE PLANS

Idaho	
Upper Columbia-Salmon/Clearwater District:	
Salmon Field Office.	Lemhi Resource Management Plan (RMP)
Challis Field Office.	Challis RMP
Coeur d'Alene Field Office.	Emerald Empire Management Framework Plan (MFP)
Cottonwood Field Office.	Chief Joseph MFP
Upper Snake River District:	
Idaho Falls Field Office.	Medicine Lodge RMP
Pocatello Field Office.	Pocatello RMP*
Shoshone Field Office.	Sun Valley MFP
Lower Snake River District:	
Four Rivers Field Office.	Cascade RMP
Utah	
Salt Lake City Field Office.	Randolph MFP

*Only the linkage area direction would apply.

Dated: June 17, 2002.

Kathleen A. McAllister,

Deputy Regional Forester.

Dated: June 19, 2002.

Fritz Rennebaum,

Acting Associate Idaho State Director.

[FR Doc. 02–20719 Filed 8–14–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–605]

Frozen Concentrated Orange Juice from Brazil; Rescission of Antidumping DutyAdministrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of the Antidumping Duty Administrative Review for the Period May 1, 2001, through April 30, 2002.

EFFECTIVE DATE: August 15, 2002.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–0656 or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department)'s regulations are to 19 CFR part 351 (2002).

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Background

On May 6, 2002, the Department published in the **Federal Register** (67 FR 30356) a notice of opportunity to request an administrative review of the antidumping duty order regarding frozen concentrated orange juice from Brazil for the period May 1, 2001, through April 30, 2002.

In accordance with 19 CFR 351.213(b)(1), on May 31, 2002, the domestic interested parties of Florida Citrus Mutual, Citrus Belle, Citrus World, Inc., Orange-Co of Florida, Inc., Peace River Citrus Products, Inc., and Southern Gardens Citrus Processors Corp. requested a review of the antidumping duty order on frozen concentrated orange juice from Brazil with respect to the following producers/exporters: Citrovita Agro Industrial Ltda. and its affiliated parties Cambuhy MC Industrial Ltda. and Cambuhy Citrus Comercial e Exportadora (collectively "Citrovita"), Branco Peres Citrus S.A. (Branco Peres), CTM Citrus S.A. (CTM), and Sucorrico S.A. (Sucorrico).

In June 2002, the Department initiated an administrative review for Citrovita, Branco Peres, CTM, and Sucorrico (67 FR 42753 (June 25, 2002)) and issued questionnaires to them.

In July and August 2002, Branco Peres, CTM, Citrovita, and Sucorrico notified the Department that neither they nor any of their affiliates had any sales or exports of subject merchandise during the period of review (POR). The Department has been able to confirm with the Customs Service that Branco Peres, CTM, Citrovita, and Sucorrico had no shipments of subject merchandise during the POR. *See* the August 5, 2002, memorandum from Elizabeth Eastwood to the file entitled "Intent to Rescind the Antidumping Duty Administrative Review on Frozen Concentrated Orange Juice from Brazil."

Rescission of Review

As Branco Peres, CTM, Citrovita, and Sucorrico had no sales or exports of subject merchandise for this POR, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding this review of the antidumping duty order on frozen concentrated orange juice from Brazil for the period of May 1, 2001, through April 30, 2002. This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: August 8, 2002.

Richard W. Moreland,

Deputy Assistant Secretary Import Administration.

[FR Doc. 02–20772 Filed 8–14–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

EFFECTIVE DATE: August 15, 2002.

FOR FURTHER INFORMATION CONTACT: Ryan Langan or Cole Kyle, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–2613 or (202) 482–1503, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("the Department") regulations are to 19 CFR part 351 (April 2000).

Scope of Review

Imports covered by this review are shipments of stainless steel bar ("SSB"). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Amended Final Results

On July 5, 2002, the Department determined that stainless steel bar from India is not being sold in the United States at less than fair value, as provided in section 735(a) of the Act. *See Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review* ("*Final Results*"), 67 FR 45956 (July 11, 2002). On July 15, 2002, we received ministerial error allegations, timely filed pursuant to 19 CFR 351.224(c)(2), from the petitioners regarding the Department's final margin calculations. Viraj did not submit any ministerial error allegations. However, on July 18, 2002, Viraj submitted comments, timely filed pursuant to 19 CFR 351.224(c)(3), responding to petitioners' ministerial error allegations.

The petitioners contend that the Department inadvertently omitted certain expenses and overstated indirect selling expense deductions when calculating the general and administrative expense ratio in our final results. The petitioners also allege that we incorrectly calculated entered value. The petitioners requested that we correct the errors and publish a notice of amended final results in the **Federal Register**, pursuant to 19 CFR 351.224(e). Viraj counters that the Department calculated the general and administrative expense ratio correctly and that petitioners' allegation concerning the indirect selling expense deduction is, in fact, a methodological argument and not a ministerial error. Viraj did not comment on the entered value allegation.

In accordance with section 735(e) of the Act, we have determined that certain ministerial errors were made in our final margin calculations. We corrected the general and administrative expense ratio to include certain additional expenses that we inadvertently omitted in the final results. We also corrected the entered value calculation. For a detailed discussion of these ministerial error allegations and the Department's analysis, see Memorandum to Richard W. Moreland, "Antidumping Duty Administrative Review of Stainless Steel Bar from India; Allegations of Ministerial Errors" dated August 8, 2002, which is on file in the Central Records Unit ("CRU"), room B–099 of the main Department building.

In accordance with 19 CFR 351.224(e), we are amending the final results of the antidumping duty administrative review of stainless steel bar from India to correct these ministerial errors. However, the amended weighted-average margin is identical to the weighted-average margin in the final results (*see Final Results*). The weighted-average dumping margin for Viraj is listed below:

Producer/manufacturer/exporter	Original weighted-average margin percentage	Amended results weighted-average margin percentage
Viraj Group, Ltd.	0.47	0.47

Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of stainless steel bar from India entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of the amended final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) For Viraj, no antidumping duty deposit will be required; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 12.45 percent, the "all others" rate established in the less-than-fair-value investigation (*see Stainless Steel Bar from India; Final Determination of Sales at Less Than Fair Value*, 59 FR 66915 (December 28, 1994)).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–20773 Filed 8–14–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Withdrawal of Request for Panel Review of the amended final antidumping duty administrative review made by the International Trade Administration, respecting Greenhouse Tomatoes from Canada (Secretariat File No. USA–CDA–2002–1904–06).

SUMMARY: Pursuant to the Notice of Withdrawal of the Request for Panel Review by the complainants, the panel review is terminated as of May 20, 2002. A panel has not been appointed to this panel review. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review*, this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: July 19, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–20722 Filed 8–14–02; 8:45 am]

BILLING CODE 3510–GT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Secretarial Business Development Mission to Ghana and South Africa

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice to Announce Secretary Evans-Business Development Mission to Ghana and South Africa, November 12–15, 2002.

SUMMARY: Secretary of Commerce Donald L. Evans will lead a senior-level business development mission to Accra, Ghana and Johannesburg, South Africa November 12–15, 2002. The delegation will include approximately 15 U.S.-based senior executives of small, medium, and large U.S. firms representing a variety of business sectors but not limited to leading sectors for each country as listed below in Section II. These key sectors reflect Africa's infrastructure needs, the growth of consumer society, and the increase in manufacturing created by the Africa Growth and Opportunity Act (AGOA).

DATES: Applications should be submitted to the Office of Business Liaison by September 20, 2002. Applications received after that date will be considered only if space and scheduling constraints permit.

FOR FURTHER INFORMATION CONTACT: Office of Business Liaison; Room 5062; Department of Commerce; Washington, DC 20230; Tel: (202) 482–1360; Fax: (202) 482–4054.

SUPPLEMENTARY INFORMATION:

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Secretarial Business Development Mission to Ghana and South Africa

November 12–15, 2002

Mission Statement

I. Description of the Mission

Secretary of Commerce Donald L. Evans will lead a senior-level business development trade mission to Accra, Ghana and Johannesburg, South Africa November 12–15, 2002. The delegation will include approximately 15 U.S.-based senior executives of small, medium, and large U.S. firms representing a variety of business sectors but not limited to leading sectors for each country as listed below in Section II. These key sectors reflect Africa's infrastructure needs, the growth of a consumer society, and the increase in manufacturing created by the Africa Growth and Opportunity Act (AGOA).

The overall focus of the trip will be commercial opportunities for U.S. companies, including joint ventures, presented by the continuing market liberalization and privatization underway in these countries. In both Ghana and South Africa, briefings and one-on-one business appointments will be arranged for members of the business delegation. The participation fee for the trade mission will be between $6,000—$8,000 per company.

II. Commercial Setting for the Mission

Ghana: With the inauguration of the administration of President John Kufuor in December 2000, Ghana has become a West African leader in promoting economic reforms and establishing democratic institutions. President Kufuor has improved Ghana's economic situation through pragmatic policies aimed at political and economic stability, low inflation, and smaller fiscal deficits.

Often referred to as the "Gateway to Africa", Ghana is moving towards becoming a hub for commercial activity in West Africa. The country should become a middle income country by 2020 with President Kufuor aiming to institute a "Golden Age of Business" in Ghana. With $200 million of U.S. merchandise exports in 2001, Ghana is one of America's largest markets in Sub-Saharan Africa, and the bilateral commercial relationship between the United States and Ghana is one of the most diverse in the region. Ghana is a beneficiary country under the African Growth and Opportunity Act (AGOA) and its AGOA apparel eligibility provides a firm foundation for increased investment and stronger trade with the United States.

The leading sectors for exports to Ghana include telecommunications equipment, computers and peripherals, pharmaceuticals, electrical power systems, construction and earth moving equipment, mining industry equipment, food processing and packaging equipment, and hotel/restaurant equipment.

Standard and Poor's, a reflection of the country's sound economic fundamentals and stable macroeconomic policy.

South Africa: South Africa's pivotal, post-apartheid economic transformation remains sharply focused and widely respected internationally. Globalization is bringing with it new opportunities for expanded trade and investment. South Africa has been among Africa's leading beneficiaries under AGOA. The primary attraction for doing business in South Africa is the size and sophistication of the economy. South Africa accounts for more than 45% of Sub-Saharan Africa's Gross Domestic Product, and it is by far the United States' largest export market in Sub-Saharan Africa. U.S. exports to South Africa totaled $2.9 billion last year, accounting for approximately 40% of total U.S. exports to the region. In 2001, real GDP growth was 2.2%. South Africa's single greatest challenge is to accelerate growth and transform the economy so prosperity may be shared widely. Across the country, there are about 900 U.S. firms doing business in South Africa, up from approximately 250 in the mid-1990s. The United States is the largest foreign investor in South Africa since 1994.

The best sectors for exports to South Africa include telecommunications, information technology, transportation, energy and power generation, environmental technologies, security and safety equipment, health care products, earth moving equipment, mining industry equipment, food processing, packaging equipment, and cosmetics/hair care products.

III. Goals for the Mission

The mission will further both U.S. commercial policy objectives and advance specific business interests. It is aimed at:

- Introducing American companies to Ghana and South Africa and promoting expanded commercial opportunities in these countries;
- Enhancing the dialogue between government and industry on issues affecting the development of U.S.-African commercial relations;
- Removing impediments to market access encountered by U.S. firms in Ghana and South Africa;
- Advocating for U.S. firms;
- Emphasizing the benefits of international trade for improving the standard of living and quality of life; and
- Highlighting examples of the corporate citizenship and active involvement by U.S. businesses in the communities where they operate in the United States and abroad.

IV. Scenario for the Mission

The mission will provide participants with exposure to high-level business and government contacts and an understanding of market trends and the commercial environment. American Embassy officials will provide a detailed briefing on the economic, commercial and political climate, and participants will receive individual counseling on their specific interests from U.S. Commercial Service industry specialists. Meetings will be arranged as appropriate with senior government officials and potential business partners. Representational events also will be organized to provide mission participants with opportunities to meet Ghana and South Africa's business and government representatives, as well as U.S. business people living and working in Africa.

The tentative trip itinerary will be as follows:

November 12—Accra, Ghana
November 13—Accra, Ghana
November 14—Johannesburg, South Africa
November 15—Johannesburg, South Africa

The Commerce Department's U.S. and Foreign Commercial Service will provide logistical support for these activities at each stop.

V. Criteria for Participant Selection

The recruitment and selection of private sector participants for this mission will be conducted according to the "Statement of Policy Governing Department of Commerce-Overseas Trade Missions" established in March 1997 (*http://www.ita.doc.gov/doctm/tmpol.html*). Promotion and recruitment will include, but not be limited to, posting on appropriate Department of Commerce web pages, notification in the **Federal Register**, and distribution of the trade mission statement and further information to national and other trade associations and trade publications. Approximately 15 companies will be selected for the mission. Companies will be selected according to the criteria set out below.

Eligibility

Participating companies must be incorporated in the United States. A company is eligible to participate only if the products and/or services that it will promote (a) are manufactured or produced in the United States; or (b) if manufactured or produced outside the United States, are marketed under the name of a U.S. firm and have U.S. content representing at least 51 percent of the value of the finished good or service.

Selection Criteria

Companies will be selected for participation in the mission on the basis of:

- Consistency of company's goals with the scope and desired outcome of the mission as described herein;
- Relevance of a company's business and product line to market opportunities in Ghana and South Africa;
- Seniority of the representative of the designated company;
- Past, present, or prospective international business activity;
- Diversity of company size, type, location, demographics, and traditional under-representation in business;
- Degree of company's commitment to corporate citizenship.

An applicant's partisan political activities (including political contributions) are irrelevant to the selection process.

VI. Time Frame for Applications

Applications for the trade mission to Ghana and South Africa will be made available beginning on Wednesday, August 7, 2002. The fee to participate in the mission will be between $6,000–$8,000 per company and will not cover travel or lodging expenses. Please note that this fee is subject to change due to the in-country travel requirements. Expenses for travel, lodging, and some meals will be the responsibility of each participant. As noted above, each participant must fund his/her own travel to Accra, Ghana, the starting point for the mission. For additional information on the trade mission or to obtain an application, contact the Department of Commerce Office of Business Liaison at 202–482–1360. Applications should be submitted to the Office of Business Liaison by September 20, 2002, in order to ensure sufficient time to obtain in-country appointments for applicants selected to participate in the mission. Applications received after that date will be considered only if space and scheduling constraints permit.

Contact: Office of Business Liaison, Room 5062, Department of Commerce, Washington, DC 20230, Tel: (202) 482–1360, Fax: (202) 482–4054, Mission Web Site: *http://www.doc.gov/africatrademission.*

Dated: August 9, 2002.

Maria Cino,

Assistant Secretary and Director General.

[FR Doc. 02–20697 Filed 8–14–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Request for public comment pursuant to section 123(g)(1)(C) of the Uruguay Round Agreements Act, Requirements for Agency Action.

SUMMARY: The Department of Commerce is requesting comments on the proposed modification of its practice concerning the determination of whether sales to affiliated parties are made in the ordinary course of trade and thus may be considered for use in calculating normal value in antidumping proceedings.

DATES: To be assured of consideration, written comments must be received no later than August 30, 2002. Rebuttal comments must be received no later than September 6, 2002.

ADDRESSES: Submit comments to Faryar Shirzad, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230; Attention: Affiliated Party Sales.

FOR FURTHER INFORMATION CONTACT: Kris Campbell (202) 482–1032, Linda Chang (202) 482–0835, or Mimi Steward (202) 482–1439.

SUPPLEMENTARY INFORMATION:

Background

In July 2001, the World Trade Organization ("WTO") Appellate Body issued a report in a dispute involving U.S. antidumping measures on certain hot-rolled steel products from Japan ("Japan Hot-Rolled"),[1] concerning the Department's determination of whether sales made to affiliated parties in the comparison market were made in the ordinary course of trade and thus may be considered for use in calculating normal value.

Section 773(a)(1) of the Tariff Act of 1930, as amended ("the Act"), requires that the Department first attempt to calculate normal value using sales of the foreign like product which are, among other criteria, made "in the ordinary course of trade." This provision implements Article 2.1 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "AD Agreement"), which requires that investigating authorities exclude sales not made in the "ordinary course of trade" from calculations of normal value.[2]

Under current Department practice, comparison market sales by an exporter or producer to an affiliated customer are treated as having been made at arm's length, and may be considered to be within the ordinary course of trade [3], if prices to that affiliated customer are, on average, at least 99.5 percent of the prices charged by that exporter or producer to unaffiliated comparison market customers. Under this 99.5 percent test, the Department determines the weighted-average selling price for each product for sales by the exporter or producer to each affiliated party. The Department also determines the weighted-average selling price for each product to the group of nonaffiliated comparison market customers. For each affiliated customer, the Department compares the weighted-average price to that affiliate for each product to the weighted-average price of the same product to all unaffiliated customers. The Department then weight averages the ratios found for all products sold to the affiliated customer. If the result shows sales prices to an individual affiliated party are, on average, at least 99.5 percent of the sales prices to all unaffiliated comparison market customers (*i.e.*, the overall ratio is at least 99.5 percent), all of the sales to that affiliated party may be treated as being made in the ordinary course of trade and may be used in calculating normal value. Otherwise, if the prices to the affiliate are, on average, less than 99.5 percent of prices to nonaffiliates, it is the Department's practice to disregard

[1] Dispute Panel Report on Japan Complaint Concerning U.S. Anti-dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/R (Feb. 28, 2001) (the "Panel Report"). Appellate Body Report on Japan Complaint Concerning U.S. Anti-dumping Measures on Certain Hot-Rolled Steel products from Japan, WT/DS184/AB/R (July 24, 2001) (the "AB Report").

[2] Article 2.1 states: "For the purpose of this Agreement, a product is to be considered as being dumped, i.e., introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country."

[3] Such sales may be outside the ordinary course of trade for other reasons, e.g., they are below cost.

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them. Additionally, for affiliates that pass this test (*i.e.*, those whose weighted-average prices are above 99.5 percent), the exporter or producer may request the exclusion of individual sales to such an affiliate upon a showing that such sales are for other reasons outside the ordinary course of trade, *e.g.*, the prices are "aberrationally" or "artificially" high.

In its report in Japan Hot-Rolled, the WTO Appellate Body found that the Department's "99.5%" arm's-length test is inconsistent with the obligations of the United States under Article 2.1 of the AD Agreement. In the view of the Appellate Body, "[i]f a Member elects to adopt general rules to prevent distortion of normal value through sales between affiliates, those rules must reflect, even-handedly, the fact that both high and low-priced sales between affiliates might not be 'in the ordinary course of trade.'" *United States—Antidumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/AB/R, adopted August 23, 2001 ("AB Report"), para. 148. Furthermore, "the duties of investigating authorities, under Article 2.1 of the Anti-Dumping Agreement, are precisely the same, whether the sales price is higher or lower than the 'ordinary course' price, and irrespective of the reason why the transaction is not in the ordinary course of trade. Investigating authorities must exclude, from the calculation of normal value, all sales which are not made in the ordinary course of trade." *AB Report, para.* 145. However, investigating authorities do not need to utilize identical rules to scrutinize each category of sales that is potentially not in the ordinary course of trade. *AB Report, para.* 146. WTO Members are afforded discretion in this determination, but such discretion must be exercised in an "even-handed" manner. *AB Report, para.* 148.

The United States and Japan entered into arbitration over the period of time in which to implement the Appellate Body's findings in the Japan Hot-Rolled dispute. The arbitrator found that the United States has until November 23, 2002, for implementation.

Pursuant to section 123(g)(1) of the Uruguay Round Agreements Act ("the URAA"), the Department must meet certain requirements before modifying or rescinding a practice that is found to be inconsistent with any of the Uruguay Round Agreements. Section 123(g)(1)(C) requires that the Department provide opportunity for public comment by publishing the proposed modifications in the **Federal Register**. The Department is soliciting comments pertaining to the following proposed modifications to the current policy for determining whether comparison market sales to affiliated parties are made at "arm's length," and thus in the ordinary course of trade absent other factors such as below-cost sales, in light of the Appellate Body's report in the Japan Hot-Rolled dispute.

Proposed Arm's-Length Methodology

The Department proposes to alter its current test by requiring that, in order for sales by the exporter or producer to an affiliate to be included in the normal value calculation, those sales prices must fall, on average, within a defined range, or band, around sales prices of the same merchandise sold by that exporter or producer to all unaffiliated customers. The new test would require that the overall ratio calculated for an affiliate (as currently calculated) be between 98 percent and 102 percent, inclusive, in order for sales to that affiliate to be considered "in the ordinary course of trade" and used in the normal value calculation. Therefore, this new test is consistent with the view, expressed by the WTO Appellate Body, that rules aimed at preventing the distortion of normal value through sales between affiliates should reflect, "even-handedly", that "both high and low-priced sales between affiliates might not be "in the ordinary course of trade."'

We will continue our present practices with regard to the use of so-called "downstream" sales (sales made by an affiliated buyer to that buyer's subsequent customer). Specifically:

1. If sales to all affiliates account for less than five percent of all comparison market sales, we normally will disregard downstream sales.

2. If sales to an affiliate fail the arm's-length test, and (1) does not apply, we normally will request the affiliate's downstream sales and use these instead of the sales which failed that test.

3. If a respondent has cooperated to the best of its ability and is unable to obtain downstream sales, we will not use adverse facts available.

Discussion

This test would require no change in the mathematical calculations the Department performs to determine which sales are made at arm's length. It only alters the standard applied to the numerical outcome of those calculations. Instead of using sales to an affiliate for normal value purposes when the prices to the affiliate are, on average, at or above a *threshold* of 99.5 percent of prices to unaffiliated parties, the Department would normally use sales to an affiliate when that overall ratio is within a *band* ranging from 98 percent to 102 percent, inclusive, of the prices for sales to unaffiliated parties. Because this band is symmetrical in its treatment of higher and lower priced sales, it meets the concern of the Appellate Body that any arm's-length test be "even-handed."

Because it adds a price ceiling to our current definition of "normal" sales, this test would likely result in using sales to affiliates less frequently than under the current methodology. Moreover, the narrower the band, the fewer sales to affiliates would be used, potentially resulting in fewer price-to-price comparisons and more use of constructed value in determining normal value. These considerations have influenced the choice of the size of the band used for this test.

Narrowing the band significantly (such as using a 99.5 percent—100.5 percent test) would reduce the utility of such a test, as few affiliates would pass. Thus the test would serve little purpose. For this reason, the Department is concerned that the band not be overly narrow. Yet the Department must balance these concerns against the fact that widening the band significantly could increase the potential for manipulating normal value through clustering of sales prices to affiliates at the lower end of the band.

Finally, we note that, in reaching this proposal, the Department examined a wide range of approaches. The more prominent among these are listed below, together with a brief indication of the primary reasons why we have not selected these options.

• Automatic exclusion of all affiliated party sales in determining normal value.

This would constitute a much more drastic change in policy than is necessary to implement the AB Report. Such a practice would not accord with the assumptions of 19 CFR 351.403(c) that sales to an affiliated party could be used under certain circumstances. Second, the automatic elimination of sales to affiliated parties from use in determining normal value would likely lead to significantly fewer instances where dumping is determined on the preferred basis: comparison of pricing in the home market with pricing in the U.S. market.

• Statistical testing (*e.g.*, standard deviation, difference in means, nonparametric tests).

The primary problems with such tests are that they do not adequately screen sales for antidumping purposes and would be difficult to apply in many situations we encounter. Such tests, properly applied, would allow certain affiliated party sales to be deemed to be in the ordinary course of trade, including affiliated party sales with prices below unaffiliated sales prices, that we believe would distort dumping calculations. This is because such tests typically are much more conservative about what constitutes an outlier than is appropriate in an antidumping context. While we might use more restrictive versions of such tests than are normally applied in other contexts, this would likely reduce the statistical credibility of the tests. In addition, applying such tests in situations involving multiple products would significantly complicate the Department's analysis.

• Broader-band test with an additional requirement for overall affiliated party sales.

This test would allow for a broader band of sales to individual affiliates to pass the arm's-length test *provided* the Department finds that, in the aggregate, the respondent sells to affiliated and unaffiliated parties at comparable price levels. Under this two-part test, sales to an individual affiliate priced on average at, for instance, 95 percent of prices to unaffiliated parties might be found to be within the ordinary course of trade if we determine that the company's overall sales to affiliates are not systematically lower than prices to nonaffiliates. This would address manipulation concerns regarding companies that price to affiliates generally at the low end of the band. In essence, a company that sells to some affiliates at 95 percent of unaffiliated prices would have to sell to other affiliates at prices higher than unaffiliated prices in order to demonstrate that its overall sales prices to affiliated and unaffiliated parties are comparable. In order to adhere to the WTO's "even-handedness" requirement, the test would include higher-priced sales to an individual affiliate (*e.g.*, prices at 105 percent of unaffiliated prices) only if it is found that the company does not systematically price to affiliates at levels higher than nonaffiliates.

Problems with such an approach would include determining how the second part of the test should be structured to demonstrate whether overall sales to affiliates were "comparable" to those to unaffiliated parties. This would likely involve a second, narrower-band test applied to affiliated party sales in the aggregate.

• "Quantity-cushion" test.

Unlike the previous tests, this one would include or exclude sales to affiliates on the basis of a comparison of the quantity of merchandise sold to an affiliate to the quantity sold to unaffiliated customers at prices *at or below* the price to the affiliate and to the quantity sold to unaffiliated customers at prices *at or above* the price to the affiliate. Thus, sales to an affiliate could be considered "in the ordinary course of trade" and used in the normal value calculation only if there were a sufficient "cushion" of sales to unaffiliated parties priced *below* the average price to the affiliate, and a similar "cushion" of sales to unaffiliated parties priced *above* the average price to the affiliate. The primary concerns with this test were its complexity, calibrating the appropriate "cushion" size, determining how to apply the test by affiliate and whether it would be better applied to all affiliates combined by product, and questions as to whether this might not be an overly narrow definition of the "normal" price range of sales to affiliated parties.

Timetable

After considering all comments received, the Department intends to publish in the **Federal Register** a final notice of the new arm's-length methodology. *See* section 123(g)(1)(F) of the URAA (19 U.S.C. 3533(g)(1)(F)). This new methodology will address the objectives described above. In accordance with section 129(b) of the URAA (19 U.S.C. 3538(b)), this methodology will be utilized to prepare an amended final determination in the Japan Hot-Rolled investigation. In accordance with section 129(c)(1) of the URAA (19 U.S.C. 3538(c)(1)), this amended final determination will establish new cash deposit rates for all producers for whom the investigation rates are still applicable and will apply with respect to unliquidated entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date on which the United States Trade Representative directs the Department to implement the amended final determination. With respect to other proceedings and other segments of the Japan hot-rolled proceeding, the new methodology will be applied in all reviews initiated on the basis of requests received on or after the first day of the month following the date of publication of the Department's final notice of the new arm's-length methodology, all investigations and other segments of proceedings initiated on the basis of petitions filed or requests made on or after such publication date, and all segments of proceedings self-initiated on or after such publication date.

Comments—Format

Parties wishing to comment should submit a signed original and six copies of each set of comments, including reasons for any recommendations, along with a cover letter identifying the commenter's name and address. To help simplify the processing and distribution of comments and rebuttals, the Department requests that a submission in electronic form accompany the required paper copies. Comments filed in electronic form should be on a DOS formatted 3.5" diskette in either WordPerfect format or a format that the WordPerfect program can convert into WordPerfect.

Comments received on diskette will be made available to the public on the Web at the following address: *http://ia.ita.doc.gov/*. In addition, upon request, the Department will make comments filed in electronic form available to the public on 3.5" diskettes (at cost) with specific instructions for accessing compressed data (if necessary). Any questions concerning file formatting, document conversion, access on the Web, or other electronic filing issues should be addressed to Andrew Lee Beller, IA Webmaster, at (202) 482–0866 or via e-mail at *andrew_lee_beller@ita.doc.gov*.

Dated: August 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–20771 Filed 8–14–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080602C]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a joint meeting of its Shrimp Advisory Panel (AP) and Shrimp Bycatch Reduction Device (BRD) Advisory Panel in Charleston, SC.

DATES: The Shrimp AP and Shrimp BRD AP will meet jointly September 3, 2002 from 1:30 p.m. until 5 p.m. and September 4, 2002 from 8:30 a.m. until 5 p.m.

ADDRESSES: These meetings will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: 843–571–1000.

Council address: South Atlantic Fishery Managment Council, One

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Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366; fax: (843) 769–4520; email: kim.iverson@noaa.gov.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to further develop the options paper for Amendment 6 to the South Atlantic Shrimp Fishery Management Plan by including the advisory panels' input and recommendations. Management actions to be considered in Amendment 6 will include the required Sustainable Fisheries Act (SFA) criteria for all shrimp species, options to modify or remove the BRD Protocol from the Shrimp Fishery Management Plan and measures to reduce the level of turtle mortality. In relation to the increased number of turtle strandings observed, the Council is considering night time closures in the shrimp fishery as one of the options to remedy this situation.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (*see* **ADDRESSES**) by August 26, 2002.

Dated: August 9, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20737 Filed 8–14–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071802A]

Marine Mammals; File No. 1013–1648

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Patricia E. Mascarelli, Carribean Center for Marine Studies, P.O. Box 3197, Lajas, PR 00667, has been issued a permit to take humpback whales (*Megaptera novaeangliae*), spinner dolphins (*Stenella longirostris*), and bottlenose dolphins (*Tursiops truncatus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On November 14, 2001, notice was published in the **Federal Register** (66 FR 57040) that a request for a scientific research permit to take humpback whales, spinner dolphins, and bottlenose dolphins had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 1013–1648 authorizes takes of up to 50 humpback whales per year for 5 years by harassment from close approach for photo-identification, collection of sloughed skin, and behavioral observations for the purpose of estimating abundance, habitat use, and behavior. The permit also authorizes inadvertent harassment of up to 200 humpback whales per year and unlimited annual takes of spinner and bottlenose dolphins by inadvertent harassment during these activities.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 6, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–20736 Filed 8–14–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Rules for Patent Maintenance Fees

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the revision of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 15, 2002.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231; by telephone at (703) 308–7400; or by electronic mail at *susan.brown@uspto.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Robert J. Spar, Director, Office of Patent Legal Administration, USPTO, Washington, DC 20231; by telephone at (703) 308–5107; or by electronic mail at *bob.spar@uspto.gov*.

SUPPLEMENTARY INFORMATION

I. Abstract

Under 35 U.S.C. 41(b) and 37 CFR 1.20(e)–(g) and 1.362, the United States Patent and Trademark Office (USPTO) charges fees for maintaining in force all utility patents based on applications filed on or after December 12, 1980. Payment of these maintenance fees is required at 3½, 7½, and 11½ years after the date the patent was granted. If the payment of the appropriate maintenance fee is not received within a grace period of six months following each of the above intervals (at 4, 8, or 12 years after the date of grant), the patent will expire at that time as set forth in 37 CFR 1.362(g). If a patent has expired due to nonpayment of a maintenance fee, the patentee may petition the USPTO to accept a delayed payment of the maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378 by showing that the delayed payment was unavoidable or unintentional. Additionally, if the USPTO refuses to accept and record a maintenance fee that was filed prior to the expiration of a patent, the patentee may petition the Commissioner under 37 CFR 1.377 to accept and record the maintenance fee payment.

Payments of maintenance fees that are submitted during the six-month grace period or after the expiration of the patent must also include the appropriate surcharge as indicated by 37 CFR 1.20(h)–(i). Maintenance fees are not required for design or plant patents, or for reissue patents if the patent being reissued did not require maintenance fees. Submissions of maintenance fees and surcharges must include the relevant patent number and the United States application number in order to identify the patent for which the fee is being paid.

The rules of practice (37 CFR 1.33(d) and 1.363) permit applicants, patentees, assignees, or their representatives of record to specify a "fee address" for correspondence related to maintenance fees that is separate from the correspondence address associated with a patent or application. Only an address associated with a customer number can be established as a fee address. Customer numbers can be requested by using the Request for Customer Number form (PTO/SB/125), which is covered under OMB Control Number 0651–0035 "Representative and Address Provisions." Maintaining a correct and updated address is necessary so that fee-related correspondence from the USPTO will be properly received by the applicant, patentee, assignee, or authorized representative. If a separate fee address is not specified for a patent or application, the USPTO will direct fee-related correspondence to the correspondence address of record.

The USPTO offers forms to assist the public with providing the information covered by this collection, including the information necessary to submit a patent maintenance fee payment, to file a petition to accept an unavoidably or unintentionally delayed maintenance fee payment, and to designate or change a fee address. Instead of submitting maintenance fee payments using the paper Maintenance Fee Transmittal Form (PTO/SB/45), customers may pay maintenance fees electronically over the Internet by using the Electronic Maintenance Fee Form, which is accessible through the USPTO Web site. Customers may use the Electronic Maintenance Fee Form to submit maintenance fee payments as well as surcharges incurred during the six-month grace period before patent expiration. However, to pay a maintenance fee after patent expiration, the maintenance fee payment and the appropriate delayed payment surcharge must be filed together with a Petition to Accept Unavoidably Delayed Payment under 37 CFR 1.378(b) or a Petition to Accept Unintentionally Delayed Payment under 37 CFR 1.378(c). These delayed payment submissions cannot be filed electronically over the Internet. In addition to accepting electronic payments by credit card or electronic funds transfer (EFT) through the USPTO Web site, the USPTO has also recently begun accepting online payments by USPTO deposit account. Otherwise, non-electronic payments may be made by check, credit card, or USPTO deposit account.

The USPTO is adding the Petition to Accept Payment of Maintenance Fees Prior to Expiration of Patent (37 CFR 1.377) to this collection. The public may use this petition to request that the Commissioner review a decision to refuse to accept the payment of a maintenance fee that was filed prior to the expiration of a patent. This petition is not a new requirement but was overlooked when this information collection was previously submitted for OMB approval. No forms are provided for this petition under 37 CFR 1.377.

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO. Maintenance fees and surcharges for fee payments made during the six-month grace period following each maintenance fee interval may also be submitted electronically over the Internet.

III. Data

OMB Number: 0651–0016.

Form Number(s): PTO/SB/45/47/65/66.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions; and the Federal Government.

Estimated Number of Respondents: 348,110 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public approximately 5 minutes (0.08 hours) to 8 hours to complete this information, depending on the form or petition. This includes time to gather the necessary information, prepare the form or petition, and submit the completed request. The USPTO estimates that it will take the public approximately 20 seconds (0.006 hours) to submit the Electronic Maintenance Fee Form.

Estimated Total Annual Respondent Burden Hours: 30,495 hours per year.

Estimated Total Annual Respondent Cost Burden: $1,705,170 per year. The USPTO expects that the Petition to Accept Unavoidably Delayed Payment of Maintenance Fees in an Expired Patent (37 CFR 1.378(b)) and the Petition to Accept Payment of Maintenance Fees Prior to Expiration of Patent (37 CFR 1.377) will be prepared by attorneys. Using the professional rate of $252 per hour for associate attorneys in private firms, the USPTO estimates that the respondent cost burden for submitting these petitions will be $897,120 per year. The USPTO expects that the other items in this collection will be prepared by paraprofessionals. Using the paraprofessional rate of $30 per hour, the USPTO estimates that the respondent cost burden for submitting the other items in this collection will be $808,050 per year, for a total annual respondent cost burden of $1,705,170 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Maintenance Fee Transmittal Transactions	5 minutes	227,690	18,215
Electronic Maintenance Fee Transactions	20 seconds	31,050	186
Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)).	8 hours	370	2,960
Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c)).	1 hour	1,550	1,550
Petition to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377).	4 hours	A150	600

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Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
"Fee Address" Indication Form	5 minutes	87,300	6,984
Total		348,110	30,495

Estimated Total Annual Non-hour Respondent Cost Burden: $369,755,939. There are no capital start-up costs or maintenance costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of recordkeeping costs, postage costs, and filing fees. The recordkeeping costs for this collection are associated with using the Electronic Maintenance Fee Form to submit maintenance fee payments over the Internet. It is recommended that users of the Electronic Maintenance Fee Form print and retain a copy of the updated payment statement that appears on the screen after the transaction has been completed as a receipt and proof of timely payment. The USPTO estimates that it will take 5 seconds (0.001 hours) to print a copy of the payment statement and that approximately 31,050 submissions per year will use the Electronic Maintenance Fee Form, for a total of 31 hours per year for printing this receipt. Using the paraprofessional rate of $30 per hour, the USPTO estimates that the recordkeeping cost associated with this collection will be $930 per year.

The public may submit the paper forms and petitions in this collection to the USPTO by mail through the United States Postal Service. If the submission is sent by first-class mail, the public may also include a signed certification of the date of mailing in order to receive credit for timely filing. The USPTO estimates that the average first-class postage cost for a mailed submission will be 49 cents, and that customers filing a Maintenance Fee Transmittal Form, a Petition to Accept Unavoidably Delayed Payment, a Petition to Accept Unintentionally Delayed Payment, a Petition to Accept Payment of Maintenance Fee Prior to Expiration of Patent, or a "Fee Address" Indication Form may choose to mail their submissions to the USPTO. Therefore, the USPTO estimates that up to 317,060 submissions per year may be mailed to the USPTO, for a total postage cost of $155,359 per year.

This collection also has filing costs in the form of patent maintenance fees as well as surcharges for late payment of maintenance fees. The filing costs for this submission are calculated using the proposed fees for FY 2003 that would be effective on October 1, 2002. Under 37 CFR 1.20(e)–(g), the patent maintenance fees due at 3½ years, 7½ years, and 11½ years after the date of grant would be $900, $2,070, and $3,170 respectively (or $450, $1,035, and $1,585 for small entities). The surcharge under 37 CFR 1.20(h) for paying a maintenance fee during the six-month grace period following the above intervals is $130 (or $65 for small entities). The surcharge under 37 CFR 1.20(i) for a petition to accept a maintenance fee after the six-month grace period for these intervals has expired is $700 where the delayed payment is shown to be unavoidable and $1,640 where the delayed payment is shown to be unintentional. The filing fee listed in 37 CFR 1.17(h) for a petition to accept the payment of a maintenance fee filed prior to the expiration of a patent is $130. The total estimated annual filing costs for this collection are calculated in the accompanying chart.

Fee or surcharge	Amount of fee or surcharge	Estimated annual responses	Estimated annual filing costs
Patent maintenance fee at 3½ years	$900	98,460	$88,614,000
Patent maintenance fee at 3½ years (small entity)	450	31,200	14,040,000
Patent maintenance fee at 7½ years	2,070	59,550	123,268,500
Patent maintenance fee at 7½ years (small entity)	1,035	15,040	15,566,400
Patent maintenance fee at 11½ years	3,170	35,350	112,059,500
Patent maintenance fee at 11½ years (small entity)	1,585	7,670	12,156,950
Surcharge for paying maintenance fee during the six-month grace period	130	5,050	656,500
Surcharge for paying maintenance fee during the six-month grace period (small entity)	65	6,420	417,300
Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b))	700	370	259,000
Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c))	1,640	1,550	2,542,000
Petition to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377)	130	150	19,500
"Fee Address" Indication Form	0	87,300	0
Total		348,110	369,599,650

The USPTO estimates that the total filing costs associated with this collection will be $369,599,650 per year. The total non-hour respondent cost burden for this collection in the form of recordkeeping costs, postage costs, and filing fees is $369,755,939 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 6, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 02–20671 Filed 8–14–02; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Community College of the Air Force

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: The Community College of the Air Force (CCAF) Board of Visitors will hold a meeting to review and discuss academic policies and issues relative to the operation of the college. Agenda items include a review of the operations of the CCAF and an update on the activities of the CCAF Policy Council. Members of the public who wish to make oral or written statements at the meeting should contact Second Lieutenant Richard W. Randolph, Designated Federal Officer for the Board, at the address below no later than 4 p.m. on 11 October 2002. Please mail or electronically mail all requests. Telephone requests will not be honored. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of the presentation materials must be given to Second Lieutenant Richard Randolph no later than three days prior to the time of the board meeting for distribution. Visual aids must be submitted to Second Lieutenant Richard Randolph on a 3 ½" computer disc in Microsoft PowerPoint format no later than 4 p.m. on 11 October 2002 to allow sufficient time for virus scanning and formatting of the slides.

DATES: October 29, 2002.

ADDRESSES: Tyndall Conference Center Conference Room, Tyndall Air Force Base, Panama City, Florida 32403.

FOR FURTHER INFORMATION CONTACT: Second Lieutenant Richard Randolph, (334) 953–7322, Community College of the Air Force, 130 West Maxwell Boulevard, Maxwell Air Force Base, Alabama 36112–6613, or via electronic mail at *Richard.Randolph@maxwell.af.mil.*

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–20698 Filed 8–14–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting

AGENCY: Department of Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of the forthcoming meeting of the Federal Interagency Coordinating Council (FICC). Notice of this meeting is intended to inform members of the general public of their opportunity to attend the meeting. The FICC will engage in ongoing policy discussions related to young children with disabilities and their families. The meeting will be open and accessible to the general public.

FICC committee meetings will be held on September 18, 2002 in the Switzer Building, 330 C Street, SW., Washington, DC 20202.

DATE AND TIME: FICC Meeting: Thursday, September 19, 2002 from 9 a.m. to 4:30 p.m.

ADDRESSES: Hubert Humphrey Building, 200 Independence Avenue, SW., Room 505A, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Bobbi Stettner-Eaton or Obral Vance, U.S. Department of Education, 330 C Street, SW., Room 3080, Switzer Building, Washington, DC 20202. Telephone: (202) 205–5507 (press 3). Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5637.

SUPPLEMENTARY INFORMATION: The FICC is established under section 644 of the Individuals with Disabilities Education Act (20 U.S.C. 1444). The FICC is established to: (1) Minimize duplication across Federal, State, and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and perschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by Dr. Robert H. Pasternack, Assistant Secretary for Special Education and Rehabilitative Services.

Individuals who need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, material in alternative format) should notify Obral Vance at (202) 205–5507 (press 3) or (202) 205–5637 (TDD) ten days in advance of the meeting. The meeting location is accessible to individuals with disabilities.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW., Room 3080, Switzer Building, Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–20669 Filed 8–14–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.007, 84.032, 84.033, 84.038, 84.063, 84.069, and 84.268]

Student Assistance General Provisions, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, Leveraging Educational Assistance Partnership, and William D. Ford Federal Direct Loan Programs; Notice of Deadline and Submission Dates for Receipt of Applications, Reports, and Other Documents for the 2002–2003 Award Year

SUMMARY: The Secretary announces deadline submission dates for receiving documents from institutions and applicants for assistance under the Federal student aid programs authorized under Title IV of the Higher Education Act of 1965, as amended for the 2002–2003 award year. The Federal student aid programs include the Federal Perkins Loan, Federal Work-Study,

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Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, William D. Ford Federal Direct Loan, Federal Pell Grant, and Leveraging Educational Assistance Partnership programs.

These programs, administered by the U.S. Department of Education (Department), provide assistance to students attending eligible institutions of higher education to help them pay their educational costs.

Deadline and Submission Dates: See Tables A and B at the end of this notice.

Table A—Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs) by Institutions

Table A provides deadline dates for application processing, including corrections, and, for purposes of the Federal Pell Grant Program, receipt by institutions of valid Student Aid Reports (SARs) or valid Institutional Student Information Records (ISIRs).

Table B—Federal Pell Grant Program Submission Dates for Disbursement Information by Institutions

Beginning with the 2002–2003 award year, the Common Origination and Disbursement (COD) system replaces the Recipient Financial Management System (RFMS) for purposes of the Federal Pell Grant Program. There are two categories of institutions participating in COD: full-participant institutions and phase-in institutions. Full-participant institutions are institutions that interface directly with COD by using the COD common record. Phase-in institutions are institutions that send records to COD using the RFMS legacy record formats.

Table B provides the earliest submission and deadline dates for both full-participant institutions and phase-in institutions to submit Federal Pell Grant disbursement information.

In general, an institution must submit disbursement information no later than 30 days after disbursing or becoming aware of the need to adjust a student's Federal Pell Grant. The Secretary considers a disbursement of Federal Pell Grant funds to occur on the earlier of the date that the institution: (a) Credits those funds to a student's account in the institution's general ledger or any subledger of the general ledger, or (b) pays those funds to a student directly. The Secretary considers a disbursement to have occurred even if institutional funds are used in advance of receiving program funds from the Department (34 CFR 668.164(a)). An institution's failure to submit disbursement information within the required 30-day timeframe may result in an audit or program review finding for an institution. In addition, the Secretary may initiate an adverse action, such as a fine or other penalty for such failure.

Table B also provides the latest date an institution may request Year-To-Date records and administrative relief.

Proof of Delivery

If the documents are submitted by mail, the Secretary accepts as proof of delivery one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly-dated U.S. Postal Service postmark.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method of proof of mailing, check with the post office at which the submission was mailed. The Secretary strongly encourages the use of First Class Mail.

(3) Other proof of mailing or delivery acceptable to the Secretary.

Other Sources for Detailed Information

The Department publishes a more detailed discussion of the Federal student aid application process in the following publications:

- 2002–2003 Student Guide.
- Funding Your Education.
- 2002–2003 High School Counselor's Handbook.
- A Guide to 2002–2003 SARs and ISIRs.
- 2002–2003 Federal Student Aid Handbook.

Additional information on the institutional reporting requirements for the Federal Pell Grant Program is also contained in the *Federal Student Aid Handbook*. These materials may be found at the Information for Financial Aid Professionals Web site at: *http://www.ifap.ed.gov*.

Applicable Regulations: The following regulations apply: (1) Student Assistance General Provisions, 34 CFR part 668 and (2) Federal Pell Grant Program, 34 CFR part 690.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Butler, Program Specialist, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., Union Center Plaza, room 93I1, Washington, DC 20202–5345. Telephone: (202) 377–4013.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in text or PDF at the following site: *http://www.ifap.ed.gov*.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 421–429, 1070a, 1070b–1070b–3, 1070c–1070c–4, 1071–1087–2, 1087a, and 1087aa–1087ii; 42 U.S.C. 2751–2756b.

Dated: August 12, 2002.

Candace M. Kane,

Acting, Chief Operating Officer, Federal Student Aid.

BILLING CODE 4000-01-P

Table A. Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs) by Institutions

Who Submits?	What is Submitted?	Where is it Submitted?	What is the Deadline Date for Receipt?
Student	Free Application for Federal Student Aid (FAFSA) on the Web, Renewal FAFSA on the Web, or FAFSA Express electronic application	Electronically to the Department's Central Processing System (CPS)	June 30, 2003*
	Signature Page (if required)	The address printed on the signature page	August 21, 2003
Student through an Institution	An electronic original or renewal application	Electronically to the Department's CPS	June 30, 2003*
Student	A paper original Free Application for Federal Student Aid (FAFSA) or paper Renewal FAFSA	The address printed on the FAFSA, Renewal FAFSA, or envelope provided with the form	June 30, 2003
Student	Correction on the Web	Electronically to the Department's CPS	August 15, 2003*
Student	Signature Page (if required)	The address printed on the signature page	August 21, 2003
Student through an Institution	Electronic corrections and requests for a duplicate SAR	Electronically to the Department's CPS	August 27, 2003*
Student	Corrections submitted using Part 2 of an SAR	The address printed on Part 2 of the SAR	August 15, 2003
Student	Change of address, change of institutions, and requests for a duplicate SAR	The address printed on Part 2 of the SAR The Federal Student Aid Information Center by calling 1-800-433-3243	August 15, 2003 August 27, 2003
Student	Verification documents	Institution	The earlier of:** - 90 days after the student's last date of enrollment; or - September 2, 2003
Student	Valid SAR (For Pell Only)	Institution	The earlier of: - the student's last date of enrollment; or - September 2, 2003
Student through the Department's CPS	Valid ISIR**** (For Pell Only)	Institution receives ISIR from the Department's CPS	The earlier of:*** - 90 days after the student's last date of enrollment; or - September 2, 2003
Student	Valid SAR after verification (For Pell Only)	Institution	
Student through the Department's CPS	Valid ISIR after verification**** (For Pell Only)	Institution receives ISIR from the Department's CPS	

* The deadline for electronic transactions is 11:59 p.m. (Central Time) on the deadline date. Transmissions must be completed and accepted by 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions will not meet the deadline. In addition, any transmission picked up on or just prior to the deadline date that gets rejected may not be able to be reprocessed because the deadline will have passed by the time the user gets the information notifying him/her of the reject.

** Although the Secretary has set this deadline date for the submission of paper or electronic corrections most still be met.

*** The institution must have already received a SAR or ISIR with an eligible EFC while the student was enrolled and eligible for payment. Students completing verification while no longer enrolled will be paid based on the higher of the two EFCs.

**** For this purpose, the date the ISIR transaction was processed by CPS is considered to be the date the institution received the ISIR. The CPS process date is on the 2002-2003 ISIR record layout, field 163. It is also printed on the first page of the SAR and ISIR.

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Table B. Federal Pell Grant Submission Dates for Disbursement Information by Institutions

Who Submits?	What is Submitted?	Where is it Submitted?	What is the Earliest Submission and Deadline Date for Receipt?
Institutions	At least one acceptable disbursement must be submitted for each Federal Pell Grant recipient at the institution	To the Common Origination and Disbursement (COD) System: Full-participant Institutions http://cod.ed.gov or Student Aid Internet Gateway (SAIG) Phase-in Institutions Student Aid Internet Gateway (SAIG)	An institution may submit disbursement information as early as June 21, 2002, but no earlier than: (a) 30 calendar days prior to the disbursement date under the advance payment method; (b) 7 calendar days prior to the disbursement date under the just-in-time payment method; or (c) the date of disbursement under the reimbursement or cash monitoring payment methods. An institution is required to submit disbursement information no later than the earlier of: (a) 30 calendar days after the institution - makes a disbursement; or - becomes aware of the need to make an adjustment to previously reported disbursement data; or (b) September 30, 2003.* After September 30, 2003, an institution may submit disbursement information only: (a) for a downward adjustment of a previously reported award; or (b) based upon a program review or initial audit finding per 34 CFR 690.83.
	Requests for Year-To-Date Records	1. COD School Relations Center: 1-800-474-7268 2. SAIG	August 15, 2003**
	Request for administrative relief based on a natural disaster or other unusual circumstances, or an administrative error made by the Department or Departmental contractors	1. http://cod.ed.gov 2. by email: sfa.administrative.relief@ed.gov	February 2, 2004

* The deadline for electronic transactions is 11:59 p.m. on September 30, 2003. Transmissions must be completed and accepted by 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, these transmissions will not meet the deadline. In addition, any transmission picked up on or just prior to the deadline date that gets rejected may not be able to be reprocessed because the deadline will have passed by the time the user gets the information notifying him/her of the reject.

** Year-To-Date records may be requested after this date, however, there may not be sufficient time for institutions to receive the file, create a record batch to report disbursement information, and submit the disbursement information to the Secretary by the September 30, 2003 deadline date for receipt of all 2002-2003 requests for payment.

NOTE: The COD System must accept origination data for a student from an institution before it accepts disbursement information from the institution for that student. Institutions may submit origination and disbursement data for a student in the same transmission. However, if the origination data is rejected, the disbursement data is rejected.

[FR Doc. 02–20725 Filed 8–14–02; 8:45 am]
BILLING CODE 4000–01–C

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–27: Research and Development for the Rare Isotope Accelerator; Correction

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications; correction.

SUMMARY: The Department of Energy published a document in the **Federal Register** of August 8, 2002, announcing interest in receiving applications for Research and Development (R&D) projects directed at the proposed Rare Isotope Accelerator (RIA). The document contained incorrect addresses.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene A. Henry, (301) 903–6093.

Correction

In the **Federal Register** of August 8, 2002, in FR Doc. 02–20064, on page 51550, please make the following corrections:

On page 51550, under the heading **ADDRESSES**, in the second paragraph, the addresses to be used are:

If you are unable to submit the application through the IIPS, formal applications may be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64/ Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290, ATTN: Program Notice 02–27.

When submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant, the following address must be used: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–27.

Also on page 51550, under the heading **FOR FURTHER INFORMATION CONTACT**, the address to be used is:

Dr. Eugene A. Henry, Nuclear Physics Division, Office of High Energy and Nuclear Physics, SC–23/Germantown Building, Office of Science, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290; telephone: (301) 903–6093; facsimile: (301) 903–3833; e-mail: *gene.henry@science.doe.gov*. The full text of the Program Notice 02–27 is available via the World Wide Web using the following Web site address: *http://www.sc.doe.gov/production/grants/grants.html*.

Issued in Washington, DC, on August 9, 2002.

Ralph H. De Lorenzo,

Acting Associate Director of Science for Resource Management.

[FR Doc. 02–20706 Filed 8–14–02; 8:45 am]
BILLING CODE 6450–02–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2188–064]

PPL Montana, LLC; Notice Rejecting Request for Rehearing

August 9, 2002.

By order issued June 11, 2002, the Commission approved a Comprehensive Recreation Plan filed by the licensee for the Missouri-Madision Project No. 2188, consisting of nine developments located on the Madison and Missouri Rivers in Gallatin, Madison, Lewis and Clark, and Cascade Counties, in southwestern Montana. A timely request for rehearing was filed by Stephen M. Ryberg.

Under section 313(a) of the Federal Power Act, 16 USC 825l(a), a request for rehearing may be filed only by a party to the proceeding. In order for Stephen M. Ryberg, to be a party to this proceeding, he must have filed a motion to intervene pursuant to Rule 214 of the Rules of Practice and Procedure, 18 CFR 385.214. Because Mr. Ryberg did not file a motion to intervene, he is not a party, and the rehearing request must be rejected.

This notice constitutes final agency action. Requests for rehearing by the Commission of this rejection notice must be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20732 Filed 8–14–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–851–000]

Southern Company Services, Inc.; Notice of Comment Due Dates

August 9, 2002.

Take notice that, subsequent to the technical conference of August 7, 2002, the parties in this proceeding may file initial comments on or before August 29, 2002 and reply comments on or before September 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20734 Filed 8–14–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Projects Nos. 10461–002 and 10462–002, New York]

Erie Boulevard Hydropower L.P.; Notice of Availability of Final Environmental Assessment

August 8, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the applications for original licenses for Erie Boulevard Hydropower L.P.'s (Erie's) Parishville Hydroelectric Project and Allens Falls Hydroelectric Project, both located on the West Branch St. Regis River in St. Lawrence County, New York, and has prepared a Final Environmental Assessment (FEA) for the projects. Neither project occupies any lands of the United States.

The FEA contains the Commission staff's analysis of the potential environmental impacts of the projects and has concluded that licensing the projects, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is on file with the Commission and is available for public inspection. Additional information about the project is available from the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at (202) 502–8222, TTY (202) 208–1659. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

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For further information, contact Peter Leitzke at (202) 502–6059.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–20733 Filed 8–14–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL02–6–000]

Notice of Inquiry Concerning Natural Gas Pipeline Negotiated Rate Policies and Practices; Notice of Extension of Time

August 8, 2002.

On July 26, 2002, the National Association of State Utility Consumer Advocates (NASUCA) filed a motion for an extension of time to file comments in response to the Commission's Notice of Inquiry (NOI) issued July 17, 2002, in the above-docketed proceeding. In its motion, the NASUCA states that because the issues presented in the NOI are of such significant importance to the natural gas industry and because of the press of other business, additional time is needed for the preparation of responsive comments. The motion further states that the Process Gas Consumers Group, the Interstate Natural Gas Association of America, the Natural Gas Supply Association and the American Gas Industry support the motion for additional time.

Upon consideration, notice is hereby given that an extension of time for filing comments on the NOI is granted to and including September 25, 2002. Reply comments shall be filed on or before October 25, 2002.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–20738 Filed 8–14–02; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7260–1]

Food Safety Risk Analysis Clearinghouse; Public Meeting and Poster Presentations

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a public meeting cosponsored by the interagency Risk Assessment Consortium (RAC). This meeting will be hosted by Federal research scientists who deal with a broad array of food safety issues, and will be an open house poster session on the afternoon of September 18, 2002. The purpose of this public meeting is to provide an opportunity for the public to observe the breadth of food safety risk assessment expertise that is utilized by Federal agencies.

DATES: The public meeting will be held on September 18, 2002, 1 p.m. to 5 p.m.

ADDRESSES: The public meeting will be held at the Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, Room 1A001, College Park, Maryland 20740.

FOR FURTHER INFORMATION CONTACT: Jacqueline McQueen, Office of Research and Development (8104R), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, 202–564–6639, FAX 202–565–2916, e:mail: *mcqueen.jacqueline@epamail.epa.gov* or Tomeikah Williams, Center for Food Safety and Applied Nutrition (HFS–6), Food and Drug Administration, 5100 Paint Branch Parkway, College Park, Maryland 20740, 301–436–1675, FAX 301–436–2630, e-mail: *tomeikah.williams@cfsan.fda.gov*.

Registration: None required.

SUPPLEMENTARY INFORMATION: The Risk Assessment Consortium (RAC), which includes members from Federal agencies that have responsibilities for food safety risk analysis, was established under the President's Food Safety Initiative to advance the science of food safety risk assessment and to assist agencies in fulfilling their specific food safety regulatory mandates. Through the RAC, the agencies collectively work to enhance communication and coordination among the member agencies and promote the conduct of scientific research that will facilitate risk assessments.

The focus of this public meeting will be to demonstrate how the process of risk assessment is applied to many types of food safety issues, including bacterial contamination, food additives, pesticides, and antibiotic resistance. Scientists who work within the Food and Drug Administration (FDA), the U.S. Department of Agriculture (USDA), the Centers for Disease Control (CDC), and the Environmental Protection Agency (EPA), and other agencies will be presenting posters on how the scientific process applies to these many potential problems. Examples of topics that will be presented in the posters include pesticides, food additives, biotech-derived plant materials, natural contaminants such as mycotoxins, antibiotic resistance, and microbial hazards. A computer demonstration will also be available to show how changing certain assumptions in microbial risk assessments can greatly influence the results of many assessments and how the best available data are used to provide accurate predictions. A complete list of poster topics will be posted at: *http://www.foodriskclearinghouse.umd.edu/Risk_Assessment_Consortium.htm*.

Dated: August 9, 2002.

Kevin Y. Teichman,
Acting Director, Office of Science Policy, Office of Research and Development.
[FR Doc. 02–20743 Filed 8–14–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0136; FRL–7192–3]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, in the **Federal Register** of July 17, 2002 (67 FR 46976), EPA issued a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request on the **Federal Register**. In the DATES portion of the notice of receipt, EPA inadvertenly left the effective date for the Lindane registration off. This notice corrects the DATES portion of the July 17, 2002 notice of receipt to read as follows:

DATES: The deletions are effective on January 13, 2003,unless indicated otherwise. The deletions for Lindane registrations shown in Table 1 are effective August 17, 2002. The Agency will consider withdrawal requests postmarked on or before January 13, 2003.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before, unless indicated otherwise, February 11, 2003.

ADDRESSES: Withdrawal requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0136 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5761; e-mail address: *hollins.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov*. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listing at *http://www.epa.gov/fedrgstr/*.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0136. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of this official record, which includes printed, paper versions of any electronic comments submitted during as applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Room 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 A.M. to 4:00 P.M., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Withdrawal Requests?

You may submit withdrawal requests through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0136 in the subject line on the first page of your response.

1. *By mail.* Submit your withdrawal request to: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your withdrawal request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your withdrawal request electronically by e-mail to: *opp-docket@epa.gov*, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All withdrawal requests in electronic form must be identified by docket ID number OPP–2002–0136. Electronic withdrawal requests may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the withdrawal request that includes any information claimed as CBI, a copy of the withdrawal request that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. What Action is the Agency Taking?

This notice announces the Agency is correcting the DATES unit of this document to show that the deletions for Lindane registrations in Table 1 are effective on August 17, 2002.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 7, 2002.

Linda Vlier Moos,
Acting Director, Information Resources and Services Division.
[FR Doc. 02–20749 Filed 8–14–02; 8:45 am]
BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–1956]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document advises interested persons of a meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Washington, DC. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the seventeenth meeting of the Public Safety National Coordination Committee.

DATES: September 20, 2002 at 9:30 a.m.–12:30 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Michael J. Wilhelm, (202) 418–0680, e-mail *mwilhelm@fcc.gov*. Press Contact, Meribeth McCarrick, Wireless

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Telecommunications Bureau, 202–418–0600, or e-mail *mmocarri@fcc.gov*.

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: This Public Notice advises interested persons of the seventeenth meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Washington, DC. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC.

Dates: September 20, 2002.

Meeting Time: General Membership Meeting—9:30 a.m.-12:30 p.m.

The NCC Subcommittees will meet from 9 a.m. to 5:30 p.m. the previous day. The NCC General Membership Meeting will commence at 9:30 a.m. and continue until 12:30 p.m. The agenda for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks.
2. Administrative Matters.
3. Report from the Interoperability Subcommittee.
4. Report from the Technology Subcommittee.
5. Report from the Implementation Subcommittee.
6. Public Discussion.
7. Action on Subcommittee Recommendations.
8. Other Business.
9. Upcoming Meeting Dates and Locations.
10. Closing Remarks.

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98–191, 14 FCC Rcd 152 (1998), 63 FR 58645 (11–2–98).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the seventeenth meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418–0680, by faxing (202) 418–2643, or by E-mailing at *jalford@fcc.gov*. Please provide your name, the organization you represent, your phone number, fax number and e-mail address. This RSVP is for the purpose of determining the number of people who will attend this seventeeth meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. Persons requesting accommodations for hearing disabilities should contact Joy Alford immediately at (202) 418–7233 (TTY). Persons requesting accommodations for other physical disabilities should contact Joy Alford immediately at (202) 418–0694 or via e-mail at *jalford@fcc.gov*. The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC website located at: *http://wireless.fcc.gov/publicsafety/ncc*.

Federal Communications Commission.

Jeanne Kowalski,

Deputy Division Chief for Public Safety, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 02–20560 Filed 8–14–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

Date and Time: Tuesday, August 20, 2002 at 10 A.M.

Place: 999 E Street, NW., Washington, DC.

Status: This meeting will be closed to the public.

Items to be Discussed:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

Date and Time: Thursday, August 22 at 10 A.M.

Place: 999 E Street, NW., Washington, DC (ninth floor).

Status: This meeting will be open to the public.

Items to be Discussed:

Correction and Approval of Minutes.

Draft Advisory Opinion 2002–09: Target Wireless by counsel, Diana Hartstein.

Notice of Proposed Rulemaking on Fraudulent Solicitations, Disclaimers, Personal Use of Campaign Funds, Increased Civil Penalties, and Inaugural Committees.

Routine Administrative Matters.

Person to Contact for Information: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–20819 Filed 8–13–02; 11:11 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 02–12]

Bernard & Weldcraft Welding Equipment v. Supertrans International, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint was filed by Bernard & Weldcraft Welding Equipment ("Complainant"), against Supertrans International Inc. ("Respondent"). The complaint was served on August 9, 2002. Complainant alleges that Respondent violated sections 10(b)(2)(A) and 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. app. sections 1709(b)(2)(A) and (d)(4), by refusing to release certain cargo it committed to deliver in accordance with the terms of a bill of lading it issued, unless the consignee remits charges in excess of those set forth in Supertrans' tariff. Complainant seeks reparations and certain other relief set forth in its complaint.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by August 11, 2003, and the final decision of the Commission shall be issued by December 12, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–20714 Filed 8–14–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 02–10]

All Flags Forwarding Inc.—Possible Violations of Sections 10(a)(1) and 19(d) of the Shipping Act of 1984, as Well as Section 19(c) of the Shipping Act of 1984 as Amended by the Ocean Shipping Reform Act of 1998; Order of Investigation and Hearing

Notice is given that on August 1, 2002, the Federal Maritime Commission served an Order of Investigation and Hearing on All Flags Forwarding, Inc. ("All Flags"). All Flags is a previously licensed ocean transportation intermediary ("OTI") operating as a freight forwarder and a non-vessel-operating common carrier. Until May 12, 2002, All Flags maintained an ocean freight forwarder bond and an NVOCC bond. Subsequent to the termination of All Flags' financial responsibility on May 12, 2002, its OTI license was automatically revoked on the same date pursuant to the Commission's regulations at 46 CFR 515.26.

It appears that between April 2, 1997 and August 17, 1999, All Flags and its principals knowingly and willfully collected freight forwarder compensation from at least three ocean common carriers on thousands of shipments without performing any of the required functions. This activity appears to have resulted from another NVOCC consistently listing All Flags and the name of its President in the freight forwarder box on oceans bills of lading for shipments processed entirely by that NVOCC's employees. Furthermore, between April 18, 1997 and December 15, 1998, it appears that on at least twenty-one occasions All Flags and its principals knowingly and willfully shared a portion of the compensation with the NVOCC.

This proceeding therefore seeks to determine (1) whether All Flags violated section 10(a)(1) of the Shipping Act of 1984 ("1984 Act") and 46 CFR 510.22(a) by directly allowing another NVOCC to obtain ocean transportation at less than the rates and charges otherwise applicable by knowingly and willfully sharing a portion of its unwarranted freight forwarder compensation with that NVOCC; (2) whether All Flags violated section 19(d) of the 1984 Act and 19(e) of the 1984 Act as amended, as well as 46 CFR parts 510 and 515 as amended, by knowingly and willfully obtaining freight forwarder compensation without performing the services required for the receipt of such compensation; (3) whether, in the event violations of sections 10(a)(1), 19(d), and 19(e) of the 1984 Act and/or 46 CFR parts 510 and 515 are found, civil penalties should be assessed and, if so the amount, and (4) whether, in the event violations are found, an appropriate cease and desist order should be issued.

The full text of the Order may be viewed on the Commission's home page at *http//www.fmc.gov/* or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW., Washington, DC. Any person may file a petition for leave to intervene in accordance with 46 CFR 502.72.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–20672 Filed 8–14–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 02–11]

Empire United Lines Co., Inc.—Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984, and Section 10(b)(2)(A) of the Shipping Act of 1984 as Amended by the Ocean Shipping Reform Act of 1998, as Well as the Commission's Regulations at 46 CFR 515.31(e) as Amended; Order of Investigation and Hearing

Notice is given that on August 1, 2002, the Federal Maritime Commission served an Order of Investigation and Hearing on Empire United Lines Co., Inc. ("Empire") an ocean transportation intermediary ("OTI") operating as a non-vessel-operating common carrier. It appears that, with respect to thousands of shipments between April 2, 1997 and October 5, 1999, Empire knowingly and willfully provided false information by listing a freight forwarder on numerous bills of lading for Empire's shipments thereby allowing the freight forwarder to collect unwarranted compensation from several ocean common carriers. Also, between April 18, 1997 and December 15, 1998, it appears that on at least twenty-one occasions Empire collected a portion of the unwarranted compensation from the freight forwarder through invoices for various alleged services and products. It further appears that during the same approximate time period, Empire processed twenty shipments documented by invoices that indicate that the rates assessed and collected differ from those set forth in Empire's ATFI tariff.

This proceeding therefore seeks to determine (1) whether Empire violated section 10(a)(1) of the Shipping Act of 1984 ("1984 Act") by knowingly and willfully obtaining transportation at less than the rates and charges otherwise applicable by the receipt of an unlawful rebate resulting from Empire's collection of a portion of unwarranted freight forwarder compensation from another OTI; whether Empire violated section 10(b)(1) of the 1984 Act and 10(b)(2)(A) of the 1984 Act as amended, by charging different compensation for the transportation of property than the rates set forth in its published tariff; whether Empire violated the Commission's regulations at 46 CFR 515.31(e) as amended, by knowingly and willfully providing false information to several ocean common carriers on documents concerning Empire's shipments; whether, in the event violations of sections 10(a)(1), 10(b), and 10(b)(2)(A) of the 1984 Act and/or 46 CFR 515.31(e) are found, civil penalties should be assessed against Empire and, if so, the amount of the penalties to be assessed; whether, in the event violations of sections 10(a)(1) and 10(b)(1) of the 1984 Act are found, the tariff of Empire should be suspended; whether the OTI license of Empire should be suspended or revoked; and whether, in the event violations are found, an appropriate cease and desist order should be issued.

The full text of the Order may be viewed on the Commission's home page at *http//www.fmc.gov/* or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW., Washington, DC. Any person may file a petition for leave

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to intervene in accordance with 46 CFR 502.72.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–20673 Filed 8–14–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 9, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. First Citizens Bancorporation of South Carolina, Inc., Columbia, South Carolina; to merge with C B Financial Corp., Warrenton, Georgia, and thereby indirectly acquire Citizens Bank, Warrenton, Georgia.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. MCB Financial Group, Inc., Carrollton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of McIntosh Commercial Bank (in organization), Carrollton, Georgia.

2. GB&T Bancshares, Inc., Gainesville, Georgia; to acquire 100 percent of the voting shares of Hometown Bank of Villa Rica, Villa Rica, Georgia.

3. NW Services Corporation, Ringgold, Georgia; to acquire 100 percent of the voting shares of The Bank of Sharon, Sharon, Tennessee.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. State Capital Corporation, and State Bank & Trust Company Employee Stock Ownership Plan, both of Greenwood Mississippi; to acquire up to 100 percent of the voting shares of Mississippi Southern Bank, Port Gibson, Mississippi.

2. State Bank & Trust Company Employee Stock Ownership Plan, Greenwood, Mississippi; to become a bank holding company by acquiring 25.08 percent of the voting shares of State Capital Corporation, Greenwood, Mississippi, and thereby indirectly acquire State Bank & Trust Company, Cleveland, Mississippi

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. New Corporation, Oakland, California; to become a bank holding company by acquiring 100 percent of the voting shares of Met Financial Corporation, Oakland, California, and thereby indirectly acquire Metropolitan Bank, Oakland, California.

Board of Governors of the Federal Reserve System, August 9, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–20680 Filed 8–14–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02083]

Cooperative Agreement for the Development of International Surveillance Systems, Enhancement of Epidemiologic Practice, and the Development of Epidemiologic Training Programs, Workshops, and Conferences for Ministries of Health (MOH) and Other International Health Organizations; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for the development of international surveillance systems, enhancement of epidemiologic practice, and the development of epidemiologic training programs, workshops, and conferences for Ministries of Health (MOH) and international health organizations.

The purpose of this program is to provide leadership and technical assistance activities to assure that international health organizations have the infrastructure to support effective epidemiologic activities that are essential in providing public health services.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals encourage Ministries of Healths to develop efficient and comprehensive public health information and surveillance systems by promoting the use of the internet and by focusing on development of standards for communications and data elements and Efficiently respond to the needs of our Ministries of Health partners through the provision of epidemiologic assistance.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 307 of the Public Health Service Act, [42 U.S.C. sections 241 and 242l, as amended]. The Catalog of Federal Domestic Assistance number is 93.283

C. Eligible Applicants

Assistance will be limited to organizations that have at least one year proven scientific and technical experience to carry out international programs in public health, especially epidemiology and surveillance.

First priority will be given to organizations that can show established relationships with governmental institutions such as Ministries of Health, national disease prevention and control programs, academic institutions and international organizations.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Availability of Funds

Approximately $200,000 is available in FY 2002 to fund one award. Funds will be allocated to individually described and budgeted projects or activities which will comprise the overall cooperative agreement. Individual projects are expected to range from $1,000 to $200,000. It is expected that the award will begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Matching funds is not a requirement for this program announcement.

Continuation award within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

1. All requests for funds contained in the budget, shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through issuance of supplemental awards.

2. By making this statement all requests, not only the initial budget but any subsequent request such as redirection, requests for supplemental funds, carry-overs, *etc.* are included. This is Health and Human Services (HHS) policy.

3. Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives, however, prior approval by CDC officials must be requested in writing.

4. The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: Indirect costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

5. The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).

6. Limitations and/or prohibitions on the use of funds are as follows:

a. Alterations and renovations are not allowable.

b. Customs and import duties, including consular fees, customs surtax, value-added taxes and other related charges.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Develop new and enhance existing collaborations with field research.

b. Provide scientists to work abroad and to train other health workers abroad.

c. Conduct assessments to identify minimum standards of various public health epidemiology practices, capacities and staffing.

d. Identify, develop and monitor the types of information, technical assistance, technical capacity and training needed to implement an Integrated Disease Surveillance System.

e. Ensure mechanisms for the evaluation and/or quality assurance of existing and pre-accreditation of new training programs.

f. Assure participation in CDC outbreak investigation teams to strengthen global epidemic preparedness and response capacity.

g. Build partnerships to enhance global and regional public health capacity.

h. Support travel to meetings, collaborative investigations, training, *etc.*

i. Conduct assessments of epidemiologic training, resources and technology needs of local health organizations.

j. Provide and support training workshops, seminars, and conferences (attendance).

k. Provide aid with program planning and program surveillance.

l. Collect and analyze data to evaluate epidemiology's contribution to public health and increase the infrastructure for surveillance and epidemiologic capacity.

m. Develop and maintain an officially recognized forum for the regional, national and international exchange of epidemiologic and other public health information (*e.g.*, conduct annual meeting to discuss policy issues and recommendations).

n. Provide leadership and technical assistance activities to ensure that local, regional, national, and international health departments/ministries of health have the infrastructure to provide essential public health services effectively.

o. Identify and propose projects or activities in response to findings above.

2. CDC Activities

a. Provide consultation and assistance in planning and implementing program activities when needed.

b. Assist in establishing partnerships that will build global public health capacity and increase laboratory support.

c. Assist in the preparation and implementation of trainings and conferences.

d. Provide technical assistance from several Centers, Institutes, and Offices (CIOs) within the CDC.

e. Assist in the development of field-based (competency based) training programs.

f. Engage the collective strength of all field-based training programs to chart the directions, scope and priorities for public health initiatives.

g. Provide science-based collaboration and technical assistance in developing and implementing evaluation strategies for the program.

h. Assist in supporting an annual forum for local, regional, national, and international exchange of epidemiologic and other public health information.

F. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. Provide a detailed budget and justification for each individual project or major activity. In the applications to CDC for funding, include projects or activities which: (a) Provide benefit to multiple regions/countries or (b) promote epidemiologic practice and public health surveillance of regional/national/international significance to assure that infrastructures are in place to provide essential public health services.

The narrative should be no more than twenty double-spaced pages, printed on

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one side, with one-inch margins, and unreduced fonts. Narrative should include: Understanding the Need or Problem, Technical Approach, Ability to Carry Out the Project, Personnel, Management Plan, and Budget.

G. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address:

http://www.cdc.gov/od/pgo/forminfo.htm. Forms may also be obtained by contacting the Grants Management Specialist in the "where to Obtain Additional Information" section of this announcement. Forms may not be submitted electronically.

Forms must be submitted in the following order:

Cover Letter

Table of Contents

Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
Human Subject Certification
Narrative

On or before September 16, 2002, submit the application to the: Technical Information Management Section, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341.

Deadline: Applications must shall be considered as meeting the deadline if they are: Received on or before the deadline date.

Late Applications: Applications which do not meet the criteria above will be returned to the applicant.

H. Evaluation Criteria

Application

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of Effectiveness must relate to the performance goal (or goals) as stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

The application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Technical Approach (30 points)

The extent to which the application addresses:

a. An overall design strategy, including measurable time lines.

b. The relationship between activities and objectives.

c. Description of the management and analysis of data collected for meeting objectives.

2. Ability to carry out the project (30 points)

The extent to which the applicant provides evidence of its ability to carry out the proposed activity or project and the extent to which the applicant documents the demonstrated capability to achieve the purpose of this project.

3. Understanding of the need or problem (20 points)

The extent to which the applicant demonstrates a clear, concise understanding of the nature of the need or problem to be addressed.

a. Extent to which the applicant specifically includes a description of the public health importance of the planned activities to be undertaken.

b. Extent to which the applicant provides a realistic presentation of the proposed project.

4. Personnel (10 points)

The extent to which professional personnel involved in this activity or project are qualified, including evidence of prior experience similar to this activity or project. (Complete Curricula vitae should be provided for professional and senior administrative staff; relevant training and experience should be highlighted). If a position is vacant, a position description and complete description of required qualifications for that position are to be included in the application along with a specific plan (including time line) for hiring.

5. Management plan (10 points)

The extent to which the applicant provides a description of the systems and procedures which will be used to manage the progress, budget and operations of the activity or project.

6. Budget (Not Scored)

Extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

I. Other Requirements

Technical Reporting Requirements

An original and two copies of an annual progress report is required to be submitted each year with the continuation application. A financial status report (FSR) is due 90 days after the end of each budget period. An original and two copies of a final performance report and FSR are due no later than 90 days after the end of the project period.

Progress Reporting Requirements

1. A comparison of actual accomplishments to the goals established for the period.

2. The reasons for which established goals were not met.

3. Other pertinent information including, when appropriate, analysis and explanation of any unexpectedly high costs for performance.

4. Provide measures of effectiveness to evaluate the accomplishment of the various identified objectives of the cooperative agreement. These measures must be objective and must measure the intended outcome. The submission of these measures shall be a data element to be submitted with, or incorporated, into the semiannual progress reports.

Fiscal Reporting Requirements

1. Awardee is required to obtain annual audit of these CDC funds (program-specific audit) by a U.S. based audit firm with International branches and current licensure/authority in country, and in accordance with International Accounting Standards, or equivalent standard(s) approved in writing by CDC.

2. A fiscal Recipient Capability Assessment may be required, for pre award or post award, with the potential awardee in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Terrie Brown, Grants Management Specialist, International & Territories Acquisition & Assistance Branch Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone number (770) 488–2638. E-mail address *aie9@cdc.gov.*

For program technical assistance, contact:

Dr. Ed Maes, Associate Director for Science Division of International Health, Epidemiology Program Office, Centers for Disease Control and Prevention, 4770 Buford Highway, MS—K72, Atlanta, GA 30341. Telephone Number (770) 488–8163. E-mail address *efm1@cdc.gov*;

or

Dianne Wylie, Public Health Advisor, Division of International Health, Epidemiology Program Office, Centers for Disease Control and Prevention, 4770 Buford Highway, MS—K72, Atlanta, GA 30341. Telephone Number (770) 488–8325 or 8322. E-mail address *mdw1@cdc.gov.*

Dated: August 9, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–20704 Filed 8–14–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Tobacco Use Supplement to the Current Population Survey: 2003 Tobacco Use Special Cessation Supplement to CPS

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Tobacco Use Supplement to the Current Population Survey: 2003 Tobacco Use Special Cessation Supplement to CPS.

Type of information request: Revision of OMB #0925–0368, Expiration 02/28/2003.

Need and Use of Information Collection: The 2003 Tobacco Use Special Cessation Supplement to the Current Population Survey conducted by the Census Bureau will collect data from the civilian non-institutionalized population on tobacco use and smoking prevalence, cessation behavior (*i.e.*, quit attempts, successful quitting), use of cessation products and methods, measure level of addiction and plans to quit, workplace smoking policies, health professional advice to stop smoking, and use of different types of cigarettes and potential harm reduction products. This survey will provide invaluable information to government agencies, other scientists and the general public necessary for tobacco control research, as well as measure progress toward tobacco control as part of the National Cancer Institute's Extraordinary Opportunities in Tobacco Research. This survey is part of a continuing series of surveys that were sponsored by NCI and fielded periodically over the 1990's by the Census Bureau as part of the American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) project and made available for general public use. The Tobacco Use Supplements will be continuing over the next decade alternating between a standard or core tobacco use survey (such as the 2001–2002 survey) and a special topic survey focusing on emerging adult tobacco control issues (such as this 2003 Tobacco Use Special Cessation Supplement). The survey will allow state specific estimates to be made. Data will be collected in February 2003, June 2003 and November 2003 from approximately 265,000 respondents. The National Cancer Institute is co-sponsoring this survey with the Centers for Disease Control and Prevention.

Frequency of Response: One-time study.

Affected Public: Individuals or households.

Type of respondents: Person 15 years of age or older. The total reporting burden is as follows:

Estimated Number of Respondents: 265,000;

Estimated Number of Responses per Respondent: 1;

Average Burden Hours per Response: 0.1169; and

Estimated Total Burden Hours Requested: 30,980. The total cost to respondents is estimated at $309,800. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Anne Hartman, Health Statistician, National Cancer Institute, Executive Plaza North, Suite 4005, Bethesda, Maryland 20892–7344, or call non-toll free (301) 496–4970, or FAX your request, to (301) 435–3710, or e-mail your request, including your address, to *ah42t@nih.gov* or *Anne_Hartman@nih.gov.*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: August 5, 2002.

Reesa Nichols,

OMB Project Liaison Officer.

[FR Doc. 02–20692 Filed 8–14–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; an Evaluation of the National Cancer Institute Science Enrichment Program

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and

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approval of the information collection listed below. The purpose of this notice is to allow 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: An Evaluation of the NCI Science Enrichment Program (SEP).

Type of Information Collection Request: New.

Need and Use of Information Collection: This evaluation will assess the effectiveness of the NCI SEP in making progress toward its goals of: (1) encouraging under-represented minority and under-served students who have just completed ninth grade to select careers in science, mathematics, and/or research, and (2) broadening and enriching students' science, research, and sociocultural backgrounds. The program is a 5 to 6-week residential program taking place on two university campuses—University of Kentucky, Lexington and San Diego State University. The 5-year evaluation is designed as a controlled, longitudinal study, consisting of the five SEP cohorts and three cohorts of control group students who do not attend the program. The evaluation will provide NCI with valuable information regarding specific components that promote or limit the program's effectiveness, the extent to which the program has been implemented as planned, how much the two regional programs vary, and how the program can be improved or made more effective. NCI will use this information to make decisions regarding continuation and expansion of the program.

Frequency of Response: Semi-annually.

Affected Public: Individuals or households and Federal Government.

Type of Respondents: High School and College students and parents. There is no estimated cost to respondents. The annual reporting burden is as follows:

Type of respondents	Average number of respond-ents/year	Frequency of response	Average time per response	Average annual hour burden
Estimates of Hour Burden: Burden Not Previously Approved (1998–2002)				
SEP Participants	200	1	0.5	100
Control Group Students	200	1	0.5	100
Control Group Students	100	(1)	1.00	100
Total	500			300
Estimates of Hour Burden: Burden Requested (2003)				
SEP Participants	500	(2)	0.5	250
Control Group Students	300	(2)	0.5	150
Total	800			400

[1] 2 (pre and post). [2] 1 (follow up).

There are no Capitol Costs, Operating costs, and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in the notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Mr. Frank Jackson, Office of Special Populations Research, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 602, Rockville, MD 20852, or call non-toll-free number (301) 496–8589, or e-mail your request, including your address to: *fj12i@nih.gov.*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30 days of this publication.

Dated: August 8, 2002.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 02–20693 Filed 8–14–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 13, 2002.

Time: 1 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892. (301) 435–1258. *micklinm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, "Maternal Cigarette Smoking and Toddler Self-Regulation."

Date: August 14, 2002.

Time: 2 pm to 3:15 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892. (301) 435–1258. *micklinm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Anti-Emetics.

Date: August 20, 2002.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892. (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20694 Filed 8–14–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act; as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clinical Center.

Date: September 20, 2002.

Time: 9 to 12.

Agenda: Updates on organizational planning and budget issues.

Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Maureen E Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Information is also available on the Institute's/Center's home page: *http://www.cc.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

Dated: August 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20695 Filed 8–14–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey.

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey.

ACTION: Notice of Proposed Cooperative Research & Development Agreement (CRADA) Negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with Advanced Data Mining, LLC to develop advanced data mining and data visualization capabilities for complex hyrological modeling.

Inquiries: If any other parties are interested in similar activities with the USGS, please contact Paul Conrads, USGS South Carolina Water District, Stephenson Center, Suite 129, 720 Gracern Road, Columbia, SC 29210, phone: (803) 750–6140.

SUPPLEMENTARY INFORMATION: This Notice is submitted to meet the USGS policy requirements stipulated in Survey Manual Chapter 500.20.

Dated: July 30, 2002.

Robert M. Hirsch,

Associate Director for Water.

[FR Doc. 02–20723 Filed 8–14–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Patent Trademark & Copyright Act

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of prospective intent to award partially exclusive licenses.

SUMMARY: The United States Geological Survey (USGS) is contemplating the award of partially exclusive licenses to: Columbia Analytic Services, Inc. of Kelso, WA and EON Products Inc. of Snellville, GA on U.S. Patent No. 5 804 743, a Downhole Passive Water Sampler and Method of Sampling.

Inquiries: If any other parties are interested in similar activities, or have comments relating to the award please contact Julia M. Giller, 12201 Sunrise Valley Drive, MS 500, Reston, VA 21092, phone: (703) 648–4403.

SUPPLEMENTARY INFORMATION: This notice is submitted to meet the requirements of 35 U.S.C. 208.

Dated: July 30, 2002.

Robert M. Hirsch,

Associate Director for Water.

[FR Doc. 02–20724 Filed 8–14–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1920–ET–4138; NVN–50250]

Public Land Order No. 7534; Extension of Public Land Order No. 6802; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order extends Public Land Order No. 6802 until January 31, 2010. This extension is necessary in order for the Department of Energy to maintain the physical integrity of the subsurface environment to ensure that scientific studies for site

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characterization at Yucca Mountain are not invalidated or otherwise adversely impacted.

EFFECTIVE DATE: September 25, 2002.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, PO Box 12000, Reno, Nevada 89520–0006, 775–861–6532.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 6802 (55 FR 39152, September 25, 1990), which withdrew 4,255.50 acres of public land in order to maintain the physical integrity of the subsurface environment to ensure that scientific studies for site characterization by the Department of Energy at Yucca Mountain are not invalidated or otherwise adversely impacted, is hereby extended until January 31, 2010.

2. Public Land Order No. 6802 will expire on January 31, 2010, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: July 31, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–20720 Filed 8–14–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1430–EU; WYW 153358]

Termination of Segregative Effect of Mineral Conveyance Application and Opening of Land; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the temporary segregative effect as to 2,920.00 acres of public land which was originally included in an application for conveyance of Federally owned mineral interests in Carbon County, Wyoming.

EFFECTIVE DATE: August 15, 2002.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, 5353 Yellowstone Rd., P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6115.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2091.2–2(2), at 9 a.m. on August 15, 2002, the following described lands will be relieved of the temporary segregative effect of mineral conveyance application WYW 153358:

Sixth Principal Meridian, Wyoming

T. 16 N., R. 82 W.,
- sec. 13, SE¼, E½SW¼, NW¼SW¼, SW¼NW¼;
- sec. 14, S½SW¼;
- sec. 22, S½SE¼;
- sec. 23, E½, E½W½, SW¼SW¼;
- sec. 24, all;
- sec. 25, N½;
- sec. 26, N½, N½S½, SW¼SW¼;
- sec. 27, E½, E½SW¼, SW¼SW½.

The above described lands contains 2,920 acres in Carbon County.

Dated: January 16, 2002.

Melvin Schlagel,

Realty Officer, Branch of Fluid Minerals, Lands & Appraisal.

Editorial note: This document was received at the Office of the Federal Register August 9, 2002.

[FR Doc. 02–20566 Filed 8–14–02; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

Proposed Agency Information Collection; Comment Request

AGENCY: International Trade Commission.

ACTION: Notice of proposed information collection and request for comment.

EFFECTIVE DATE: August 9, 2002.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995, the U.S. International Trade Commission intends to seek approval from the Office of Management and Budget (OMB) for renewal of a currently approved collection (OMB No.: 3117–0188) for the purpose of obtaining feedback from readers of Commission reports to help meet regular program assessment requirements. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number (5 CFR 1320.8(b)(3)(vi)). Under Pub. L. 103–62, the Government Performance and Results Act of 1993, the U.S. International Trade Commission is seeking a long-term, continuing means for conducting program evaluations by using the proposed one-page collection, *USITC Reader Satisfaction Survey*, to help determine the extent to which USITC reports effectively meet the needs of customers. Comments concerning the proposed information collection are requested in accordance with 5 CFR 1320.8(d).

DATES: To be assured of consideration, written comments must be received at the Commission no later than 5:15 p.m. on October 9, 2002.

ADDRESSES: A signed original and eight copies of each set of comments on this proposed information collection, along with a cover letter, should be submitted by mail or by hand delivery to Marilyn R. Abbott, Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Karl Tsuji, Office of Industries, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436 (telephone No. 202–205–3434). The proposed information collection, for which the Commission intends to request approval from OMB for renewal, follows this notice. Copies of the draft Supporting Statement to be submitted to the OMB will be posted on the Commission's World Wide Web site at *http://www.usitc.gov* or may be obtained from Karl Tsuji, at the above address or telephone number. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal (telephone No. 202–205–1810).

SUPPLEMENTARY INFORMATION:

Request for Comments

Comments are solicited as to: (1) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) minimization of the burden of the proposed information collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Summary of the Proposed Information Collection

Pub. L. 103–62, the Government Performance and Results Act of 1993, enacted on August 3, 1993, sets forth objectives for Federal agencies to, among other things, initiate measures to improve information on program performance and, specifically, to focus on evaluating results, quality, and customer satisfaction. The one-page survey asks for voluntary input from respondents by circling responses that indicate an assessment of reader satisfaction regarding the value and quality of Commission reports. The "tear-out" survey is being placed inside the cover of certain reports (and is included with the PDF format placed on the USITC Internet site) issued by the Commission (excluding Title VII reports for which a separate survey is being designed), including all public studies requested by the Congress and the United States Trade Representative, or reports conducted by the USITC on its own motion, pursuant to section 332 of the Tariff Act of 1930 (19 U.S.C. 1332(g)), and other public reports that meet agency program requirements for a research program set forth in its Strategic Plan (available on the agency's World Wide Web site at *http://www.usitc.gov*). Following are highlights of the proposed information collection:

(1) *Number of forms to be submitted:* One single-page form.

(2) *Title of form:* USITC Reader Satisfaction Survey.

(3) *Type of request:* Proposed renewal of a currently approved collection.

(4) *Frequency of use:* Annual or on occasion information gathering.

(5) *Description of Respondents:* Interested parties receiving most public reports issued by the USITC, with the exception of Title VII reports.

(6) *Estimated number of respondents:* 600 annually.

(7) *Estimated total number of hours to complete the forms:* 100 hours annually.

(8) *Recordkeeping burden:* There is no retention period for recordkeeping required.

(9) *Response burden:* Less than 10 minutes for each individual respondent.

(10) *Summary of the collection of information:* Single-page survey requests readers' comments about value and quality of USITC reports.

(11) Information requested on a voluntary basis is not proprietary in nature, but rather for program evaluation purposes and is not intended to be published. Commission treatment of questionnaire responses will be followed; responses will be aggregated and will not be presented in a manner that will reveal the individual parties that supplied the information.

Although the *USITC Reader Satisfaction Survey* will be made available on the Commission's Web site, comments on the survey must be in paper form.

By order of the Commission.

Issued: August 9, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

USITC Reader Satisfaction Survey

[Title of Report]

The U.S. International Trade Commission (USITC) is interested in your voluntary comments (burden less than 10 minutes) to help assess the value and quality of our reports, and to assist in improving future products. Please return survey by facsimile (202–205–3161) or by mail to the USITC, or visit the USITC Internet home page (*www.usitc.gov*) to electronically submit a Web version of the survey.

(Please print—*responses below not for attribution*)

Your name and title: _____
Organization (if applicable): _____
Which format is most useful to you? ☐ CD–ROM ☐ Hardcopy ☐ USITC Internet site
Circle your assessment of each factor below: SA = strongly agree, A = agree, N = no opinion, D = disagree, or SD = strongly disagree.

Value of this report:					
Statistical data are useful	SA	A	N	D	SD
Other non-numerical facts are useful	SA	A	N	D	SD
Analysis augments statistical data/other facts	SA	A	N	D	SD
Relevant topic(s)/subject matter	SA	A	N	D	SD
Primary or leading source of information on this subject	SA	A	N	D	SD
Quality of this report:					
Clearly written	SA	A	N	D	SD
Key issues are addressed	SA	A	N	D	SD
Charts and graphs aid understanding	SA	A	N	D	SD
References cite pertinent sources	SA	A	N	D	SD

Other preferred source of information on this subject: _____
Specify chapters, sections, or topics in report that are most useful:
Identify any type of additional information that should have been included in report:
Suggestions for improving report:
Please update your mailing and electronic addresses below (voluntary)_
Mailing address: _____
City, state, and zip code: _____
E-mail address: _____

[FR Doc. 02–20670 Filed 8–14–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–747 (Review)]

Fresh Tomatoes From Mexico

AGENCY: International Trade Commission.

ACTION: Termination of review.

SUMMARY: On July 30, 2002, the Department of Commerce terminated its review of the suspended investigation on fresh tomatoes from Mexico (67 FR 50858, August 6, 2002). The basis for the termination is the withdrawal from the suspension agreement by Mexican tomato growers which account for a significant percentage of all fresh tomatoes imported into the United States from Mexico. Because the suspension agreement no longer covers substantially all imports of fresh tomatoes from Mexico, the Department of Commerce terminated the suspension agreement, terminated the review, and resumed the antidumping investigation. Accordingly, the U.S. International Trade Commission gives notice of the termination of its review involving imports from Mexico of fresh tomatoes, provided for in subheadings 0702.00 and 9906.07.01 through 9906.07.09 of the Harmonized Tariff Schedule of the United States.

EFFECTIVE DATE: July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that

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information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.40 of the Commission's rules (19 CFR 207.40).

Issued: August 12, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–20728 Filed 8–14–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1012 (Preliminary)]

Certain Frozen Fish Fillets From Vietnam

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Vietnam of certain frozen fish fillets, provided for in subheading 0304.20.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On June 28, 2002, a petition was filed with the Commission and Commerce by the Catfish Farmers of America and by individual U.S. catfish processors alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports certain frozen fish fillets from Vietnam. Accordingly, effective June 28, 2002, the Commission instituted antidumping duty investigation No. 731–TA–1012 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 8, 2002 (67 FR 45147). The conference was held in Washington, DC, on July 19, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 12, 2002. The views of the Commission are contained in USITC Publication 3533 (August 2002), entitled *Certain Frozen Fish Fillets from Vietnam: Investigation No. 731–TA–1012 (Preliminary).*

Issued: August 12, 2002

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–20750 Filed 8–14–02; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Office Management Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Extension of currently approved collection, Department of Justice Federal Coal Lease Review Information.

The Department of Justice (DOJ), Justice Management Division (JMD) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** on June 10, 2002, Volume 67, Number 111, Pages 39743–39744 allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until [Insert]. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–5806. Written comments or suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technical collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Department of Justice Federal Coal Lease Review Information.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number(s): ATR–139; ATR–140. Antitrust Division, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: *Primary:* Business or other for profit. *Other:* None. *Abstract:* the Department of Justice evaluates the competitive impact of issuances, transfers and exchanges of Federal coal leases. These forms seek information regarding a prospective coal lessee's coal reserves subject to the Federal lease. The Department uses this information to determine whether the coal lease transfer is consistent with the antitrust laws.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20 responses per year at two hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40 annual burden hours.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 12, 2002.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–20718 Filed 8–14–02; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Clean Air Act section 113(g), 42 U.S.C. 7413(g) and 28 CFR 50.7, notice is hereby given that a proposed Third Supplemental Consent Decree in *Concerned Citizens for Nuclear Safety, Inc.* v. *United States Department of Energy*, Case No. 94–1039 M (D.N.M.), was lodged with the United States District Court for the District of New Mexico on July 2, 2002. This proposed Third Supplemental Consent Decree resolves plaintiffs' claims for the costs of monitoring the audit conducted in 2002, pursuant to the Consent Decree entered by the Court on March 25, 1997.

The Department of Justice will accept written comments relating to this proposed Third Supplemental Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Eileen McDonough, Environmental Defense Section, United States Department of Justice, P.O. Box 23986, Washington, DC 20026–3986 and reference DJ# 90–5–2–1–1749A.

The proposed Third Supplemental Consent Decree may be examined at the Clerk's Office, United States District Court for the District of New Mexico, South Federal Plaza, Santa Fe, New Mexico 87501.

Mary Edgar,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 02–20690 Filed 8–14–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with the Departmental Policy, 28 CFR 50.7, and section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), notice is hereby given on August 7, 2002, a proposed Consent Decree in *United States* v. *Dutton-Lainson Company*, Civil Action No. 8:02CV366, was lodged with the United States District Court for the District of Nebraska.

This Consent Decree resolves claims of the United States' against Dutton-Lainson Company ("Dutton Lainson") under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), for recovery of response cost incurred and to be incurred by the United States Environmental Protection Agency ("EPA") at the Well #3 Subsite ("Subsite"), one of seven subsites of the Hastings Ground Water Contamination Superfund Site located in Hastings, Nebraska. The Consent Decree requires Dutton-Lainson Company to implement EPA's selected remedial action for the Subsite, pay $333,119.76 in reimbursement of response costs, and pay EPA's future oversight costs at the Subsite.

The Department of Justice will receive written comments on the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Dutton-Lainson Company*, D.J. Ref. 90–11–2–1112/1.

The Consent Decree may be examined at the Office of the United States Attorney, District of Nebraska, 1620 Dodge Street, Suite 1400, Omaha, Nebraska, and at EPA Region VII, 901 North 5th Street, Kansas City, Kansas. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. When requesting a copy, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the "U.S. Treasury" in the amount of $15.25 (for Decree without appendices) or $33.50 (for Decree with appendices), and please reference *United States* v. *Dutton-Lainson Company*, D.J. Ref. 90–11–2–1112/1.

Catherine R. McCabe,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–20691 Filed 8–14–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), notice is hereby given that on August 6, 2002 a proposed Remedial Design/Remedial Action Consent Decree ("Decree") in *United States* v. *Union Pacific Railroad Company*, Civil Action No. 8:02–CV–368 (D. Nebraska) was lodged with the United States District Court for the District of Nebraska.

The Decree resolves claims of the United States against Union Pacific Railroad Company ("Union Pacific")

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under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), for injunctive relief and recovery of response costs incurred and to be incurred by the United States Environmental Protection Agency ("EPA") at Operable Unit Number 5 ("OU5") of the Cleburn Street Well Superfund Site located in Grand Island, Nebraska ("Site"). The Decree requires Union Pacific to implement EPA's selected remedial action for OU5 of the Site, pay $68,493.72 in reimbursement of past response costs, and pay EPA's future oversight costs at OU5.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Union Pacific Railroad Company*, Civil Action No. 8:02–CV–368 (D. Nebraska), D.J. Ref. 90–11–2–07597.

The Decree may be examined at the Office of the United States Attorney for the District of Nebraska, 1620 Dodge Street, Suite 1400, Omaha, Nebraska 68102–1506, and at U.S. EPA Region VII, 901 N. 5th Street, Kansas City, Kansas 66101. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $25.75 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy without the appendices, please enclose a check in the amount of $11.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–20689 Filed 8–14–02; 8:45 am]

BILLING CODE 4410–15–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services; Amended Notice: Proposed Collection, Comment Request, Recruiting and Educating Librarians for the 21st Century Application Form

AGENCY: Institute of Museum and Library Services.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Section 3508(2)(A)). This program helps to ensure that requested data can be provided in the desired format, the reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Institute of Museum and Library Services is soliciting comments on an application and guidelines for a grant opportunity focusing on "Recruiting and Educating Librarians for the 21st Century." This Notice amends an earlier Notice published in 67 FR 51601.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before [insert date 45 days from time of publication] from the date of this publication.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Public Law 104–208. IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their options and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs.

The President's FY 2003 Budget Request submitted to Congress in early February, 2002, proposes a $10 million initiative to educate and train librarians. Anticipating the loss of as many as 68% of the current cohort of professional librarians by 2019, the initiative will be designed to "help recruit a new generation of librarians.

The President's proposed initiative recognizes the key role of libraries and librarians in maintaining the flow of information that is critical to support formal education; to guide intellectual, scientific, and commercial enterprise; to strengthen individual decisions; and to create the informed populace that lies at the core of democracy."

Draft applications and guidelines are prepared contingent upon availability of funding.

II. Scope of Information Requested

IMLS is particularly interested in comments that helps the agency to (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Institute of Museum and Library Services.

Title: Recruiting and Educating Librarians for the 21st Century.

OMB Number: N/A.

Agency Number: 3137.

Frequency: One time.

Affected Public: Libraries and schools of library information science.

Number of Respondents: 120.

Estimated Time Per Respondent: 40 hours.

Total Burden Hours: 4800.

Total Annualized capital/startup costs: 0.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Director, Office of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. e-mail: *mbittner@imls.gov*. Fax: (202) 606–8591. e-mail or fax preferred.

Dated: August 9, 2002.

Nancy E. Weiss,

Federal Register Officer, National Foundation on the Arts and Humanities, Institute of Museum and Library Services.

[FR Doc. 02–20731 Filed 8–14–02; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 396, "Certification of Medical Examination by Facility Licensee".

2. *Current OMB approval number:* 3150–0024.

3. *How often the collection is required:* Upon application for an initial operator license, every six years for the renewal of operator or senior operator license, and upon notices of disability.

4. *Who is required or asked to report:* Facility licensees who are tasked with certifying the medical fitness of an applicant or licensee.

5. *The number of annual respondents:* 140.

6. *The number of hours needed annually to complete the requirement or request:* 751 (275 hours for reporting [.25 hours per response) and 476 hours for recordkeeping [3.4 hours per recordkeeper]).

7. *Abstract:* NRC Form 396 is used to transmit information to the NRC regarding the medical condition of applicants for initial operator licenses or renewal of operator licenses and for the maintenance of medical records for all licensed operators. The information is used to determine whether the physical condition and general health of applicants for operator licensees is such that the applicant would not be expected to cause operational errors and endanger public health and safety.

Submit, by October 15, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 7th day of August 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–20727 Filed 8–14–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Reactor Pressure Vessel Head and Vessel Head Penetration Nozzle Inspection Programs; Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Bulletin (BL) 2002–02 to all holders of operating licenses for pressurized-water reactors (PWRs), except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, and all holders of operating licenses for boiling-water reactors for information. It concerns the recent discoveries of cracked and leaking Alloy 600 vessel head penetration (VHP) nozzles at several PWRs and the reactor pressure vessel (RPV) head degradation at Davis-Besse Nuclear Power Station. These discoveries have raised concerns about the adequacy of current inspection programs that rely on visual examinations as the primary inspection method to ensure RPV head and VHP structural integrity. Specifically, the staff is concerned that the inspection methods and frequencies (*i.e.*, inspection intervals) of current inspection programs may not be sufficient. Based on experience and information currently available, it may be necessary for inspection programs that rely on visual examinations to be supplemented with additional measures (*e.g.*, volumetric and surface examinations) to demonstrate compliance with applicable regulations.

The issuance of this bulletin is the first step in a multi-step approach to address concerns about the adequacy of inspection requirements and programs for RPV heads and VHP nozzles. The other steps are: review the bulletin responses and determine what further regulatory actions are needed (*e.g.*, revision to 10 CFR 50.55a), review the Electric Power Research Institute's Material Reliability Program's (MRP's) proposed inspection program once an applicable technical basis is provided, encourage the revision of American Society of Mechanical Engineers (ASME) Code inspection requirements, and, if acceptable, incorporate the revised ASME Code requirements into NRC regulations.

The purpose of the bulletin is to (1) advise PWR addressees that visual examinations, as a primary inspection method for the RPV head and VHP nozzles, may need to be supplemented with additional measures (*e.g.*, volumetric and surface examinations) to demonstrate compliance with applicable regulations, (2) advise PWR addressees that inspection methods and frequencies to demonstrate compliance with applicable regulations should be demonstrated to be reliable and effective, (3) request information from all PWR addressees concerning their RPV head and VHP nozzle inspection programs to ensure compliance with applicable regulatory requirements, and (4) require all addressees to provide written responses to the bulletin related to their inspection program plans.

DATES: The bulletin was issued on August 9, 2002.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Allen L. Hiser, at 301–415–1034, Timothy K. Steingass, at 301–415–3312, Michael L. Marshall, at 301–415–2734, or Steven D. Bloom, at 301–415–1313.

SUPPLEMENTARY INFORMATION: Bulletin 2002–02 may be examined and/or copied for a fee at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and is accessible electronically from the Agencywide Documents Access and

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Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. The ADAMS Accession No. for the bulletin is ML022200494.

If you do not have access to ADAMS or if there are problems in accessing documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 301–415–4737 or 1–800–397–4209, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 9th day of August 2002.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–20729 Filed 8–14–02; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in August 2002. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in September 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is the "applicable percentage" (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.)

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in August 2002 is 5.39 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between September 2001 and August 2002.

For premium payment years beginning in:	The required interest rate is:
September 2001	4.66
October 2001	4.66
November 2001	4.52
December 2001	4.35
January 2002	5.48
February 2002	5.45
March 2002	5.40
April 2002	5.71
May 2002	5.68
June 2002	5.65
July 2002	5.52
August 2002	5.39

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in September 2002 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 8th day of August, 2002.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 02–20703 Filed 8–14–02; 8:45 am]

BILLING CODE 7708–01–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

Summary: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Evidence of Martial Relationship, Living with Requirements; OMB 3220–0021.

To support an application for a spouse or widow(er)'s annuity under Sections 2(c) or 2(d) of the Railroad Retirement Act, an applicant must submit proof of a valid marriage to a railroad employee. In some cases, the existence of a marital relationship is not formalized by a civil or religious ceremony. In other cases, questions may arise about the legal termination of a prior marriage of an employee, spouse, or widow(er). In these instances, the RRB must secure additional information to resolve questionable marital relationships. The circumstances requiring an applicant to submit documentary evidence of marriage are prescribed in 20 CFR 219.30.

In the absence of documentary evidence to support the existence of a valid marriage between a spouse or widow(er) annuity applicant and a railroad employee, the RRB needs to obtain information to determine if a valid marriage existed. The RRB utilizes Forms G–124, Statement of Marital Relationship; G–124a, Statement Regarding Marriage; G–237, Statement Regarding Marital Status; G–238, Statement of Residence; and G–238a, Statement Regarding Divorce or Annulment to secure the needed information. One response is requested of each respondent. Completion is required to obtain benefits. The RRB proposes minor non-burden impacting cosmetic, editorial and formatting changes to all the forms in the collection.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form #(s)	Annual responses	Time (Min)	Burden (Hrs)
G–124 (In person)	125	15	31
G–124 (By mail)	75	20	25
G–124a	300	10	50
G–237 (In person)	75	15	19
G–237 (By mail)	75	20	25
G–238 (In person)	150	3	8
G–238 (By mail)	150	5	13
G–238a	150	10	25
Total	1,100		196

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–20676 Filed 8–14–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 15c1–5, SEC File No. 270–422, OMB Control No. 3235–0471

Rule 15c1–6, SEC File No. 270–423, OMB Control No. 3235–0472

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of extension on the following:

Rule 15c1–5 ((17 CFR 240.15c1–5) states that any broker-dealer controlled by, controlling, or under common control with the issuer of a security that the broker-dealer is trying to sell to or buy from a customer must give the customer written notification disclosing the control relationship at or before completion of the transaction. The Commission estimates that 360 respondents collect information annually under Rule 15c1–5 and that approximately 3,600 hours would be required annually for these collections.

There is no retention period requirement under Rule 15c1–5. This Rule does not involve the collection of confidential information.

Rule 15c1–6 (17 CFR 240.15c1–6) states that any broker-dealer trying to sell to or buy from a customer a security in a primary or secondary distribution in which the broker-dealer is participating or is otherwise financially interested must give the customer written notification of the broker-dealer's participation or interest at or before completion of the transaction. The Commission estimates that 725 respondents collect information annually under Rule 15c1–6 and that approximately 7,250 hours would be required annually for these collections.

There is no retention period requirement under Rule 15c1–6. This Rule does not involve the collection of confidential information.

Please note that an agency may not conduct or sponsor, and a person is not required to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10202, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 9, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20768 Filed 8–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration on the American Stock Exchange LLC (Northeast Pennsylvania Financial Corp., Common Stock, $.01 par value) File No. 1–13793

August 9, 2002.

Northeast Pennsylvania Financial Corp., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value ("Security"), from listing and

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

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registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and from registration under section 12(b) of the Act,[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on April 30, 2002 to withdraw the Issuer's Security from listing on the Amex and trade its Security on the Nasdaq National Market. In making the decision to withdraw its Security from the Amex, the Board states that trading on the Nasdaq National Market will provide increased exposure among its investors and improve the liquidity of its Security. The Board also believes it is in the best interest of the Company's stockholders.

Any interested person may, on or before August 30, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–20770 Filed 8–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 19, 2002:

Closed Meetings will be held on Tuesday, August 20, 2002 at 10 a.m., and Thursday, August 22, 2002 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (8), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, August 20, 2002, will be:

Formal orders of investigation;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

The subject matter of the Closed Meeting scheduled for Thursday, August 22, 2002, will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Regulatory matter regarding a financial institution; and Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: August 13, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20934 Filed 8–13–02; 4:00 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46331; File No. SR–Amex–2002–67]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange LLC Relating to Fees for Transactions in Nasdaq Securities Traded on an Unlisted Basis

August 9, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to suspend Exchange transaction charges in Nasdaq securities admitted to dealings on an unlisted basis for trades effected on the Amex through September 30, 2002.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is suspending all transaction charges for Amex trades in Nasdaq listed securities admitted to dealings on an unlisted basis through September 30, 2002. The Exchange believes that a suspension of transaction charges at the inception of the Exchange's program to trade Nasdaq securities is appropriate to enhance the competitiveness of Amex executions.[3]

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act[4] in general and furthers the objectives of Section 6(b)[5] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its member, issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed fee change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing date, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–67 and should be submitted by September 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20769 Filed 8–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46321; File No. SR–CHX–2001–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the Chicago Stock Exchange, Inc., To Amend CHX Article XX, Rule 37 Governing Automatic Execution of Market and Marketable Limit Orders

August 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 26, 2001, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 19, 2002, the CHX amended the proposal.[3] The CHX again amended the proposed rule change on July 26, 2002.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CHX Article XX, Rule 37, which governs, among other things, automatic execution of market and marketable limit orders. The text of the proposed rule change is available at the Commission and at the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend CHX Article XX, Rule 37, which governs, among other things, automatic execution of market and marketable limit orders. The proposed rule change is intended to provide CHX order-sending firms with greater flexibility relating to automatic execution of orders by CHX specialists. The principal components of the proposed rule change are: (a) In the case of Dual Trading System issues, commonly referred to as listed issues, permitting immediate execution (or execution in 15 seconds or less) of orders if there is no expression of market interest by a person physically present at the specialist's post; and (b) refinement of existing CHX algorithms relating to automatic execution of partial orders and price improvement of such orders.

Addition of Variable AutoEx to MAX Trading System for Dual Trading System Issues. The CHX proposes to amend CHX Article XX, Rule 37(b)(6), which governs automatic execution of orders for Dual Trading System issues. The CHX filed the proposed rule change to respond to the needs of order-sending firms that have guaranteed their

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[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amex issued a circular (02–0610 dated August 6, 2002) stating that these fees will be waived through September 30, 2002.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* June 18, 2002 letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original filing.

[4] *See* July 25, 2002 letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, and attachments ("Amendment No. 2"). Amendment No. 2 completely replaced and superseded Amendment No. 1. Thus, the CHX is soliciting comment on Amendment No. 2.

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customers that customer orders will be filled within 10 seconds or less. These customers represent a significant portion of the orders that are routed to the CHX, and their respective business models dictate such execution time guarantees.

Under the existing Rule, an order for a Dual Trading System issue generally is not eligible for immediate automatic execution given the requirement that 15 seconds elapse before execution, in order to permit exposure of the order to the market. Under the proposed rule, specialists trading Dual Trading System issues would be permitted to reduce this 15-second period to zero seconds (*i.e.*, permit an immediate execution), so long as there was no person physically present at the specialist's post expressing market interest.

It is anticipated that the proposed rule change would satisfy the concerns of order-sending firms that require immediate executions, while still preserving the fundamental protections of an auction market environment.

Refinement of Automatic Execution Sequences and Price Improvement Algorithms for Partial Orders. Following implementation of a proposed rule change previously approved by the Commission relating to automatic execution of partial orders and price improvement of portions of orders,[5] Exchange staff has worked extensively with specialist firm management and order-sending firm representatives to further refine applicable automatic execution sequences and price improvement algorithms.

Simply stated, the proposed refinements would continue to provide for automatic execution of partial orders if an order-sending firm elects partial executions, with potentially varying price improvement consequences based on the size of the order. An order-sending firm that declines partial executions would remain eligible for price improvement if its order is automatically executed, and the specialist would be precluded from providing multiple price improvement treatments for portions of the order.

Finally, the proposed rule change corrects previous typographical errors and notations, and deletes rule provisions that have been rendered obsolete by subsequent rule changes and interpretations.

2. Statutory Basis

The Exchange believes that the proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and with the requirements of section 6(b).[6] In particular, the Exchange believes the proposed rule is consistent with section 6(b)(5) of the Act[7] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CHX consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2001–32 and should be submitted by August 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20683 Filed 8–14–02; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Securities Exchange Act Release No. 44778 (September 7, 2001), 66 FR 48075 (September 17, 2001)(SR–CHX–2001–11).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46324; File No. SR–MSRB–2002–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Electronic Mail Contacts, Operative on September 8, 2002

August 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 7, 2002, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–2002–08). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a proposed rule change relating to a technical amendment to its Rule G–40 and Form G–40, on electronic mail contacts. The proposed rule change will become operative on September 8, 2002. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Rule G–40. Electronic Mail Contacts.

(a)*(i)* Each broker, dealer or municipal securities dealer shall appoint a[n] *Primary* Electronic Mail Contact to serve as the official contact person for purposes of electronic mail communication between the broker, dealer or municipal securities dealer and the MSRB. Each *Primary* Electronic Mail Contact shall be a registered municipal securities principal of the broker, dealer or municipal securities dealer.

(ii) Each broker, dealer or municipal securities dealer may appoint an Optional Electronic Mail Contact for purposes of electronic mail communication between the broker, dealer or municipal securities dealer and the MSRB.

(b)(i) Upon completion of its Rule A–12 submissions and assignment of an MSRB Registration Number, each broker, dealer or municipal securities dealer shall submit to the MSRB by mail a completed Form G–40 setting forth, in the prescribed format, the following information:

(A) The name of the broker, dealer or municipal securities dealer, and the date.

(B) The MSRB Registration Number of the broker, dealer or municipal securities dealer.

(C) The name of the *Primary* Electronic Mail Contact, and his/her electronic mail address, telephone number and Individual Central Registration Depository (CRD) Number.

(D) The name of the Optional Electronic Mail Contact, if any, and his/her electronic mail address and telephone number.

(E) The name, title, signature and telephone number of the person who prepared the form.

(ii) A broker, dealer or municipal securities dealer may change the name of its Electronic Mail Contacts or other information previously provided by electronically submitting to the MSRB an amended Form G–40.

(c) Each broker, dealer or municipal securities dealer shall update information on its Electronic Mail Contacts periodically as requested and prescribed by the MSRB and shall submit such information electronically to the MSRB.

BILLING CODE 8010–01–P

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Form G-40
ELECTRONIC MAIL CONTACTS

MSRB Registration Number
_____

Name of Dealer: _____

Date: _____

The dealer named above designates (name) _____ as its Primary Electronic Mail Contact for purposes of electronic communications with the MSRB. This Primary Contact person is a registered municipal securities principal with the dealer.

E-Mail Address of Primary Contact: _____
Phone Number of Primary Contact: _____
Individual CRD Number of Primary Contact (NASD member firms only): _____

(Optional): The dealer named above designates (name) _____ as its [second] Optional Electronic Mail Contact. [This contact person is a registered municipal securities principal with the dealer.]
E-mail Address of [Second Designee] Optional Contact: _____
Phone Number of [Second Designee] Optional Contact: _____
[Individual CRD Number of Second Designee (NASD member firms only): _____]

Name and title of person preparing this Form: _____
Signature: _____
Telephone number: _____

NEW FORMS MUST BE MAILED TO:

MSRB
1900 Duke Street, Suite 600
Alexandria, VA 22314

[TO SUBMIT AMENDED FORMS &] UPDATES *TO THE FORM SHALL BE SUBMITTED* ELECTRONICALLY *VIA THE G-40 LOG-IN ON THE MSRB'S WEB SITE (www.msrb.org)* [TO MSRB, PLEASE CALL (703) 797-6600].

* * * * *

BILLING CODE 8010-01-C

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On June 6, 2002, the Commission approved new MSRB Rule G–40, on electronic mail ("e-mail") contacts, and new Form G–40, as well as related amendments to Rule G–8, on books and records, and Rule G–9, on preservation of records.[3] The new Rule requires each broker, dealer and municipal securities dealer (collectively referred to as "dealers") to use new Form G–40 to appoint an e-mail contact to serve as the official contact person for purposes of electronic communication between the dealer and the MSRB. This E-mail contact must be a registered municipal securities principal with the dealer. Dealers have the option of appointing a second contact who, under the rule as originally adopted, also must be a municipal securities principal with the dealer.

The MSRB recently sent letters to its current list of dealers requesting that they complete new Form G–40. In response to this mailing, the MSRB received numerous phone calls from dealers that have only one municipal securities principal and wish to appoint a second (optional) e-mail contact who is not a principal. Accordingly, the MSRB has determined to amend Rule G–40 and Form G–40 to accommodate these dealers by eliminating the requirement that the second contact must be a municipal securities principal. The amendment also distinguishes between the two e-mail contacts by referring to the official contact person as the "Primary Contact" and the secondary person as the "Optional Contact."[4]

(b) The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(I) of the Act, which authorizes the MSRB to adopt rules that provide for the operation and administration of the MSRB. The MSRB also believes that the proposed rule change will facilitate effective electronic communications between dealers and the MSRB.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) was provided to the SEC for its review at least five business days prior to the filing date; and (iv) does not become operative until September 8, 2002, which is more than thirty (30) days after the date of its filing, the MSRB has submitted this proposed rule change to become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[5] In particular, the MSRB believes the proposed rule change qualifies as a "non-controversial filing" in that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate this rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's offices. All submissions should refer to File No. SR–MSRB–2002–08 and should be submitted by September 5, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated Authority.[6]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02–20766 Filed 8–14–02; 8:45 am]

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[3] Release No. 34–46043 (June 6, 2002) 67 FR 40762. The effective date of the Rule is September 4, 2002. The MSRB requested a 90-day delayed effective date in order to give current dealers the time necessary to comply with the new requirements.

[4] Paragraph (a) of Rule G–40 requires that each dealer appoint an "Electronic Mail Contact" to serve as its official contact person for purposes of communicating with the MSRB, and that such person be a registered municipal securities principal of the dealer. Paragraph (b) requires that each dealer, upon completion of its Rule A–12 submissions and assignment of an MSRB Registration Number, submit by mail to the MSRB a completed Form G–40 setting forth the dealer's name, date, MSRB Registration Number, name of its E-mail contact and his/her e-mail address, telephone number and Individual Central Registration Depository (CRD) Number, and the name, title, signature and telephone number of the person who prepared the Form. Paragraph (b) also provides that the dealer may change its E-mail contact or other information previously submitted by amending its Form G–40 electronically. Paragraph (c) requires each dealer to update information on its E-mail contacts as periodically requested and prescribed by the MSRB and to submit such information electronically to the MSRB.

[5] 15 U.S.C. 78s(b)(3)(A); 17 CFR 240.19b–4(f)(6).

[6] 17 CFR 200.30–3(a)(12).

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46323; File No. SR–Phlx–2002–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Provide Automatic Executions for Eligible Orders at the Exchange's Disseminated Size, Subject to a Minimum and Maximum Eligible Size Range

August 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 3, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)[3] to provide automatic executions for eligible orders at the Exchange's disseminated size, subject to a minimum and maximum eligible size range to be determined by the specialist, on an issue-by-issue basis. The Exchange also proposes to delete references to public customer orders from the description of AUTO–X set forth in Exchange Rule 1080(c) in order to reflect that, in certain issues, orders for the proprietary account(s) of broker-dealers may be eligible for automatic execution via AUTO–X.

The text of the proposed rule change is set forth below. Deletions are in brackets; additions are in italics.

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

Rule 1080. (a)–(b) No change.

(c) AUTO–X is a feature of AUTOM that automatically executes eligible [public customer] market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee determines otherwise. AUTO–X automatically executes eligible orders using the Exchange disseminated quotation (except if executed pursuant to the NBBO Feature in sub-paragraph (i) below) and then automatically routes execution reports to the originating member organization. AUTOM orders not eligible for AUTO–X are executed manually in accordance with Exchange rules. Manual execution may also occur when AUTO–X is not engaged, such as pursuant to sub-paragraph (iv) below. An order may also be executed partially by AUTO–X and partially manually. The Options Committee may for any period restrict the use of AUTO–X on the Exchange in any option or series provided that the effectiveness of any such restriction shall be conditioned upon its having been approved by the Securities and Exchange Commission pursuant to Section 19(b) of the Securities Exchange Act of 1934 and the rules and regulations thereunder. Any such restriction on the use of AUTO–X approved by the Options Committee will be clearly communicated to Exchange membership and AUTOM users through an electronic message sent via AUTOM and through an Exchange information circular. Such restriction would not take effect until after such communication has been made. [Currently, orders up to 250 contracts, subject to the approval of the Options Committee, are eligible for AUTO–X.]

Currently, the Exchange's maximum allowable AUTO–X guarantee is 250 contracts. For each option, there shall be a minimum guaranteed AUTO–X size and a maximum guaranteed AUTO–X size. Such minimum and maximum sizes may be for a different number of contracts for customer orders than for broker-dealer orders, as determined by the specialist and subject to the approval of the Options Committee.

The Exchange shall provide automatic executions for eligible orders up to the Exchange's disseminated size as defined in Exchange Rule 1082, subject to a minimum guaranteed AUTO–X size and a maximum guaranteed AUTO–X size (up to a size of 250 contracts).

- *If the Exchange's disseminated size is greater than the minimum guaranteed AUTO–X size, and less than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to Exchange's disseminated size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.*
- *If the Exchange's disseminated size is less than the minimum guaranteed AUTO–X size for that option, inbound eligible orders shall be automatically executed up to such minimum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.*
- *If the Exchange's disseminated size is greater than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to such maximum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist.*

The minimum and maximum guaranteed AUTO–X size applicable to each option shall be posted on the Exchange's web site.

The Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO–X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Securities and Exchange Commission pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934.

(i)–(v) No change.

(d)–(j) No change.

Commentary: No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to codify a change in the Exchange's AUTOM and Auto-Quote[4] system that would allow the Exchange to automatically execute eligible orders[5] at the Exchange's disseminated size, as defined in proposed Exchange Rule 1082(a)(ii).[6]

Currently, the Exchange automatically executes eligible orders at a size equal to the AUTO–X guarantee for a given option, regardless of the Exchange's disseminated size. The proposed rule change would allow the Exchange to provide automatic executions for eligible orders in a size equal to the Exchange's disseminated size, subject to a minimum guaranteed AUTO–X size and a maximum guaranteed AUTO–X size (which cannot exceed the Exchange's floor-wide allowable maximum guaranteed AUTO–X size for an option, which is currently 250 contracts), to be determined by the specialist and subject to the approval of the Options Committee.[7]

The proposed amended rule would include the following provisions:

1. If the Exchange's disseminated size is greater than the minimum guaranteed AUTO–X size, and less than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to the Exchange's disseminated size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.

Example 1:
Minimum Guaranteed AUTO-X Size = 10
Maximum Guaranteed AUTO-X Size = 50
Disseminated Size = 35
Inbound Order Size = 90

In this example, the Exchange would automatically execute 35 contracts (the disseminated size). The specialist would be responsible to execute the remaining 55 contracts manually or, in the case of a limit order, to place the remaining 55 contracts on the limit order book, if the automatic execution has exhausted the size at that price.

2. If the Exchange's disseminated size is less than the minimum guaranteed AUTO–X size for that option, inbound eligible orders delivered via AUTOM shall be automatically executed up to such minimum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.

Example 2:
Minimum Guaranteed AUTO–X Size = 10
Maximum Guaranteed AUTO–X Size = 50
Disseminated Size = 6
Inbound Order Size = 20

In this example, the Exchange would automatically execute 10 contracts (the minimum guaranteed AUTO–X size) even though its disseminated size is for 6 contracts. The specialist would be responsible to execute the remaining 10 contracts manually at that price or the next best price or, in the case of a limit order, to place the remaining 10 contracts on the limit order book, if the automatic execution has exhausted the size at that price.

3. If the Exchange's disseminated size is greater than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to such maximum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist at the disseminated price.

Example 3:
Minimum Guaranteed AUTO–X Size = 10
Maximum Guaranteed AUTO–X Size = 50
Disseminated Size = 100
Inbound Order Size = 90

In this example, the Exchange would automatically execute 50 contracts (the maximum guaranteed AUTO–X size). The specialist would be responsible to execute the remaining 40 contracts manually at that same price because the Exchange's rules concerning firm quotations[8] require the Exchange to be firm at that price up to the disseminated size of 100 contracts.

The proposed rule would provide that the minimum guaranteed AUTO–X size and maximum guaranteed AUTO–X size for a given option is to be determined on an issue-by-issue basis by the specialist and subject to the approval of the Options Committee.[9] In determining whether to approve the minimum and maximum guaranteed AUTO–X size for each option, the Options Committee may consider, without limitation, the number of series and open interest in the option; the volatility of the option; the liquidity of the option; historical and projected volume of trading in the option; and the projected share of total trading in the option that is likely to occur at the Exchange, as well as other relevant factors.

The proposed rule reflects recent technological advancements and changes to the Exchange's Auto-Quote system designed to enable the Exchange to eventually disseminate options quotations with actual size. The instant proposal is intended to codify the interaction of the new Auto-Quote system with AUTO–X, specifically addressing the capability of AUTO–X to provide automatic executions for eligible orders at the Exchange's actual disseminated size. The Exchange believes that providing automatic executions at the Exchange's disseminated size should enhance the ability of investors to ascertain the true number of contracts available for automatic execution of eligible orders, thus contributing to transparency in the markets.

The Exchange also proposes to delete references to public customer orders from the description of AUTO–X set forth in Exchange Rule 1080(c) in order to reflect that, in certain issues, orders for the proprietary account(s) of broker-dealers may be eligible for automatic execution via AUTO–X.[10] Minimum and maximum sizes could be for a different number of contracts for broker-dealer orders than for customer orders.[11]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)[13] in particular, in that it is designed to perfect the mechanisms of a free and

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or automatically if the order is eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. An order may also be executed partially by AUTO–X and partially manually when the size of an eligible inbound market or marketable limit order exceeds the guaranteed AUTO–X size.

[4] Auto-Quote is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations. *See* Exchange Rule 1080, Commentary .01(a).

[5] AUTO–X eligible order are orders that do not otherwise bypass AUTO–X for manual handling by the specialist in accordance with Exchange Rule 1080(c)(iv).

[6] *See* SR–Phlx–2002–15.

[7] The Exchange notes that the Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO–X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Commission pursuant to section 19(b)(3)(A) of the Act. *See* Exchange Rule 1080(c).

[8] *See* Exchange Rule 1082, Firm Quotations.

[9] The Exchange has stated that the maximum guaranteed AUTO–X size for a given option generally would not be changed intra-day. Telephone call between Sonia Patton, Division of Market Regulation ("Division"), Commission, and Richard Rudolph, Director and Counsel, Phlx (August 5, 2002).

[10] *See* Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (SR–Phlx–2001–40).

[11] Currently, the Exchange is operating an AUTO–X pilot program that disengages AUTO–X in an option for 30 seconds when the number of contracts executed automatically for the option meets the AUTO–X guarantee within a 15 second time frame. *See* Securities Exchange Act Release No. 45862 (May 1, 2002), 67 FR 30990 (May 8, 2002). The Exchange has stated that this pilot will continue to operate and that if there is a different size for customers and broker-dealers, the larger of the two will constitute the AUTO–X guarantee for purposes of the pilot. Telephone call between Sonia Patton, Division, Commission, and Richard Rudolph, Director and Counsel, Phlx (August 5, 2002).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

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open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade, by establishing the capability of the Exchange to provide automatic executions for eligible orders at the disseminated size, subject to minimum and maximum guaranteed AUTO–X sizes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–39 and should be submitted by September 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20682 Filed 8–14–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46325; File No. SR–Phlx–2002–15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change, and Amendment Nos. 1, 2, 3, 4, and 5 Thereto by the Philadelphia Stock Exchange, Inc. To Redefine the Exchange's Disseminated Size for Options Quotations

August 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 5, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On April 15, 2002, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] On June 12, 2002, the Phlx submitted Amendment No. 2 to the proposed rule change.[4] On June 17, 2002, the Phlx submitted Amendment No. 3 to the proposed rule change.[5] On July 31, 2002, the Phlx submitted Amendment No. 4 to the proposed rule change.[6] On August 5, 2002, the Phlx submitted Amendment No. 5 to the proposed rule change.[7] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as amended.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 12, 2002 ("Amendment No. 1"). In Amendment No. 1, the Phlx: (1) Amended Phlx Rule 1082, Firm Quotations, and Option Floor Procedure Advice ("Advice") F–7, Bids and Offers, to specify that the term "disseminated size" means either (a) the AUTO–X guarantee for the quoted option, except that the disseminated size of bids and offers on the book shall be ten contracts, or (b) the sum of certain limit orders on the limit order book, subject to specific qualifying sizes for inclusion in the Exchange's disseminated size; (2) made a technical clarification concerning a previously filed Phlx proposal to disseminate options quotations with size; (3) added a paragraph specifying that specialists may supply their own bids and offers, including the size of such bids and offers, through proprietary systems called Specialized Quote Feeds ("SQFs"), and explained that the disseminated size of any such bid or offer shall be firm; and (4) explained that during the roll out period of the new quotes with size system, the Exchange will have two systems operating, the new Auto-Quote system and the current Auto-Quote system. Once the new Auto-Quote system roll out is complete, the Phlx committed to deleting references to the current Auto-Quote system.

[4] *See* letter and accompanying Form 19b–4 from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 11, 2002 ("Amendment No. 2"). In Amendment No. 2, the Phlx amended the rule text to reflect that, once the Exchange's new Auto-Quote system is deployed, the Exchange's disseminated size would be equal to the sum of limit orders at the Exchange's disseminated price, or, if there are no limit orders at the Exchange's disseminated price, the AUTO–X guarantee for the particular option, but such size may be increased to reflect the specialist's and trading crowd's sizes. The Exchange represented that during the time that the new Auto-Quote system is deployed, some options series will continue to reflect the current disseminated size of either the AUTO–X guarantee for that option or, respecting limit orders on the book at the Exchange's disseminated price, a size of 10 contracts. Amendment No. 2 also included a proposal to increase the minimum AUTOM order delivery size for broker-dealer orders from one contract to ten contracts. Finally, the Phlx represented that the proposed rule change would not change the functionality of AUTO–X.

[5] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 14, 2002 ("Amendment No. 3"). In Amendment No. 3, the Phlx: (1) deleted the word "customer" from the relevant amended portion of Advice F–7(a); (2) deleted the phrase "the AUTO–X guarantee for the particular option, but may be for a greater size, reflecting" from Advice F–7(b)(2); (3) clarified that in the another order cited in the proposed rule change the Commission approved the delivery of off-floor broker-dealer orders via AUTOM, and the availability of automatic execution for certain off-floor broker-dealer orders via AUTO–X, on a six-month pilot basis; (4) clarified that the Exchange's disseminated size would be at least the sum of limit orders, and the specialist and crowd would be able to determine to disseminate a size greater than the sum of limit orders, and made conforming changes to the rule text; and (5) represented that, with respect to booked limit orders at the Exchange's best/bid offer, the new Auto-Quote system will decrement the disseminated size automatically, and that the specialist would be responsible to manually decrement the size of limit orders represented in the crowd at the Exchange's best/bid offer.

[6] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Kelly Riley, Senior Special Counsel, Division, Commission, dated July 29, 2002 ("Amendment No. 4"). In Amendment No. 4, the Phlx: (1) Amended Phlx Rule 1082(a)(ii)(A) and Advice F–7(a) to reflect that the current Auto-Quote technology would be scheduled to be phased-out by September 2002; and (2) deleted its previous proposal to amend Commentary .05 to Phlx 1080 regarding the minimum size of off-floor broker-dealer orders delivered via AUTOM.

[7] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Kelly Riley, Senior Special Counsel, Division, Commission, dated August 2, 2002 ("Amendment No. 5"). In Amendment No. 5, the Phlx made technical amendments to the text of the proposal in response to comments received from Commission staff.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its Rule 1082, Firm Quotations, and Advice F–7, Bids and Offers, to re-define the Exchange's disseminated size of option quotations.

Currently, the term "disseminated size" is defined in Phlx Rule 1082 and Advice F–7 to mean the AUTO–X guarantee for the quoted option, except that the disseminated size of limit orders on the book is ten contracts, regardless of the actual size of such a limit order. The proposal provides that, during the deployment of the technology necessary for the new disseminated size program, the size of some quotations in options series on the Exchange will continue to be disseminated with the current disseminated size definition, and the size of some options quotations will be disseminated with the newly defined disseminated size. The options that will have the size of their quotations determined using the current Phlx definition will continue to use the Auto-Quote technology that was operating on the Exchange as of May 2002 ("current Auto-Quote"). The Phlx anticipates that the current Auto-Quote technology will be phased-out by September 2002.

Under the proposal, respecting options subject to the Auto-Quote technology implemented after the effective date of this provision ("new Auto-Quote"), the new "disseminated size" would be at least the sum of limit orders; however, the proposal would permit the specialist and crowd to disseminate a size greater than the sum of the limit orders.

The text of the proposed rule change, as amended, appears below. New text is in italics; deletions are in brackets.

* * * * *

Firm Quotations

Rule 1082(a) Definitions

(i) The term "disseminated price" shall mean the bid (or offer) price for an options series that is made available by the Exchange and displayed by a quotation vendor on a terminal or other display device.

(ii) The term "disseminated size" shall mean, with respect to the disseminated price for any quoted options series[,]:

(A) Respecting options subject to the Auto-Quote technology operating as of May, 2002 ("current Auto-Quote") and scheduled to be phased-out by September 2002: the AUTO–X guarantee for the quoted option, except that the disseminated size of [bids and offers of] limit orders on the book shall be ten (10) contracts[.]; *or*

(B) Respecting options subject to the Auto-Quote technology implemented after the effective date of this provision ("new Auto-Quote") and options subject to a proprietary quoting system provided for in Rule 1080.02 ("Specialized Quote Feed"), at least the sum of limit orders. The specialist and crowd may determine to disseminate a size greater than the sum of limit orders.

(iii)–(iv) No change.

(b)–(e) No change.

F–7 Bids and Offers

All bid and offer prices shall be general ones and shall not be specified for acceptance by particular members.

In the absence of a stated size to any bid or offer voiced or displayed on the Options Floor, the person responsible for such bid and offer is deemed to be quoting for one contract, except in those instances where predetermined volume guarantees are provided for the facilitation of specific account types. Floor traders may, however, be required to trade more than one contract in connection with provisions under Advice A–11.

The size of any disseminated bid or offer by the Exchange shall be, *with respect to the disseminated price for any quoted options series,* equal to:

(a) Respecting options subject to the Auto-Quote technology operating as of May, 2002 ("current Auto-Quote") and scheduled to be phased-out by September 2002: the AUTO–X guarantee for the quoted option, except that the disseminated size of [bids and offers of] limit orders on the book shall be ten (10) contracts[.]; *or*

(b) respecting options subject to the Auto-Quote technology implemented after the effective date of this provision ("new Auto-Quote") and options subject to a proprietary quoting system provided for in Rule 1080.02 ("Specialized Quote Feed") at least the sum of limit orders. The specialist and crowd may determine to disseminate a size greater than the sum of limit orders.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to add a new definition of "disseminated size" with respect to options subject to the new Auto-Quote technology and options subject to an SQF. For these options, the Phlx proposes to define "disseminated size" as, with respect to the disseminated price, at least the sum of the size(s) of limit orders. The proposal would also allow the specialist and crowd to determine to disseminate a size greater than the sum of the limit orders. Under this proposal, if there are no limit orders at the disseminated price, the specialist has the ability to establish a specific size for each series quoted by the new Auto-Quote or SQF.[8]

This differs from the current Exchange disseminated quote size definition, which is the AUTO–X guarantee for quotes generated by the current Auto-Quote or SQF, or ten contracts for quotes that represent booked limit orders, regardless of the actual size of such booked limit orders. The Phlx proposes to continue to use the current "disseminated size" definition for options that are subject to the current Auto-Quote technology.

The Exchange has represented that a quote disseminated by the Exchange's new Auto-Quote (or by SQF) is deemed to be the quote of the specialist and all Registered Options Traders ("ROTs") in the crowd unless the ROT has vocalized a different quote in a clear and audible manner with sufficient time for the specialist to take action to update the quote, if necessary.[9] Thus, a specialist disseminating a quote through the new Auto-Quote or SQF could not cause an ROT to be firm for a size greater than a size for which such ROT is willing to be firm. In situations in which the Auto-

[8] Phlx Rule 1080, Commentary .01(b), provides that the specialist may provide its own quotations, based on its own quote calculation technology, by separately establishing a specialized connection (an SQF) bypassing the Exchange's Auto-Quote system. The SQF user provides such quotes in lieu of the Exchange's Auto-Quote system.

[9] *See* Securities Exchange Act Release No. 44543 (July 12, 2001), 66 FR 37511 (July 18, 2001)(SR–Phlx–2001–26).

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Quote or SQF size is greater than the trading interest in the crowd, the specialist would be responsible to fill any orders in excess of such crowd trading interest.

As proposed, for options using the new Auto-Quote technology or SQF, the disseminated size of booked limit orders at the disseminated price would be automatically decremented as executions of inbound orders or cancellations of limit orders at the disseminated price occur.[10] As inbound orders are executed, customer limit orders at the disseminated price would be executed first, in the order in which they were received pursuant to existing Exchange rules. The Exchange's disseminated size would be decremented by the size of the inbound order to be filled. After customer orders at the best bid or offer have been executed, if booked broker-dealer limit orders remain to be executed at the disseminated price, such orders would be executed and decremented in the order in which they were received. The Exchange represents that the specialist would be responsible to manually decrement limit orders represented in the crowd at the disseminated price.[11]

When there are no limit orders at the Exchange's disseminated price, the Exchange proposes that its disseminated size would be the specialist and crowd quotation size established via the new Auto-Quote or SQF. In such a situation, the quotation size would not be decremented automatically. The specialist would, however, have the ability to provide a size for which he and the crowd is firm (unless, as set forth above, a particular crowd participant has vocalized a different quote) each time such specialist revises the quote.

The Phlx represents that it is not proposing to change the functionality of AUTO–X in the instant proposal. The Exchange's disseminated size for options subject to the new Auto-Quote or SQF may differ from the AUTO–X guarantee for the quoted option. Regardless of the disseminated size, the AUTO–X guarantee for a specific option would remain the same. For example, when the Exchange disseminates a quote with a size of 200 contracts, and the AUTO–X guarantee for that option is 100 contracts, and an inbound market or marketable limit order for 200 contracts is received, 100 contracts would be executed automatically via AUTO–X, and 100 contracts would be due for manual execution at the disseminated price by the specialist under the Exchange's rules regarding firm quotations.[12]

Further, the Phlx represents that the proposal would not change the method of allocation of contracts in the crowd. Trades executed manually would continue to be allocated in accordance with Exchange rules. Trades executed automatically via AUTO–X would be allocated by the "Wheel" in accordance with Advice F–24, as such trades are allocated today.

Once the Exchange begins to deploy the new Auto-Quote, it will be rolled out over a period of approximately four to six weeks. The instant proposal includes clarifying amendments that reflect the timing of the rollout period. Specifically, the amended proposal would provide that for options that remain subject to the current Auto-Quote technology, the Exchange's disseminated size would continue to be equal to the AUTO–X guarantee for the quoted option or ten contracts if the disseminated quote represents limit orders on the book. The Exchange's disseminated size for options that are subject to the new Auto-Quote technology and options that are subject to an SQF provided for in Phlx Rule 1080.02 would be at least the sum of limit orders at the disseminated price. The specialist and crowd may determine to disseminate a size greater than the sum of the limit orders. If there are no limit orders on the book, the Exchange's disseminated size would be the specialist and crowd's size at the disseminated price. Upon completion of the rollout period, the Exchange represents that it will revisit the rule to delete all references to the current Auto-Quote.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and to promote just and equitable principles of trade, by expanding and further defining the Exchange's disseminated size in its rules.

[10] *See* Amendment No. 3.

[11] *Id.*

[12] *See* Phlx Rule 1082, Firm Quotations, and Advice F–7, Bids and Offers.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change would impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–Phlx–2002–15 and should be submitted by September 5, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission believes the proposed rule change is consistent with the section 6(b)(5) of the Act [16] requirement that the rules of an exchange be designed to facilitate transactions in securities, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

[15] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

The Commission notes that the proposal, which would establish two methods by which disseminated size is calculated for options traded on the Phlx, is consistent with Rule 11Ac1–1(d) under the Act.[17] The Phlx proposes to maintain its current disseminated size definition for options that are subject to the current Auto-Quote technology and to establish a new disseminated size definition for options that are subject to the new Auto-Quote technology or an SQF. Specifically, for options that utilize the new Auto-Quote technology or which are subject to an SQF, the disseminated size would be at least the sum of the limit orders, unless the specialist and crowd determine to increase such size. The Commission believes that the Exchange's proposal to begin to disseminate the actual size of the limit orders when such orders represent the Exchange's disseminated price should increase transparency by providing more accurate quotation information, which is consistent with Section 11A of the Act.[18]

The Commission believes that the proposal is a positive step toward deployment of the Exchange's new quotes with size system that will disseminate quotations with actual size in all options traded on the Phlx in the future.[19] The Commission believes that disseminating the actual size of quotations should enhance the quality of Phlx's quotation information that is disseminated to the public by more accurately reflecting trading interest on the Phlx.

The Commission finds good cause, consistent with Section 19(b)(2) of the Act,[20] to approve the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that the Phlx has represented that it is technologically capable of implementing the proposal immediately upon approval from the Commission.[21] The Commission believes that accelerated approval of this proposal should permit the Phlx to promptly implement the proposed changes, which should enhance Phlx's quotation information. Accordingly, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act,[22] to approve the proposal on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–Phlx–2002–15) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20767 Filed 8–14–02; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 240.11Ac1–1(d).

[18] 15 U.S.C. 78k–1. The Commission notes that in Section 11A(a)(1)(C)(iii) of the Act, Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability of information with respect to quotations for securities. 15 U.S.C. 78k–1(a)(1)(C)(iii).

[19] Telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Frank N. Genco, Attorney, Division, Commission, on July 2, 2002.

[20] 15 U.S.C. 78s(b)(2).

[21] Telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Frank N. Genco, Attorney, Division, Commission, on July 2, 2002.

[22] 15 U.S.C. 78s(b)(2).

[23] *Id.*

[24] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3424, Amdt. 2]

State of Colorado

In accordance with a notices received from the Federal Emergency Management Agency, dated August 1 and August 6, 2002, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on April 23, 2002 and continuing through August 6, 2002. This declaration is also amended to extend the deadline for filing applications for physical damages as a result of this disaster to September 9, 2002.

All other information remains the same, i.e., the deadline for filing applications for economic injury is March 19, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 8, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–20716 Filed 8–14–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4097]

Office of Counterterrorism; Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to New People's Army/Communist Party of the Philippines and Jose Maria Sison

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, and in consultation with the Secretary of the Treasury and the Attorney General, the Secretary of State hereby determines that the New People's Army/Communist Party of the Philippines and Jose Maria Sison have committed, or pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, the Secretary of State determines that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Timothy Egert,

Federal Register Liaison, Department of State.

[FR Doc. 02–20774 Filed 8–14–02; 8:45 am]

BILLING CODE 4710–10–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Benefits for Andean Countries: Notice of Request for Public Comment Regarding the Designation of Eligible Countries as Andean Trade Promotion and Drug Eradication Act (ATPDEA) Beneficiary Countries

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) is requesting the views of interested parties on whether countries named in the Andean Trade Preference Act (ATPA) (19 U.S.C. 3201), as amended by the Andean Trade Promotion and Drug Eradication Act

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(ATPDEA), meet the eligibility criteria provided for in section 204(b)(6)(B) to qualify for enhanced trade benefits under the ATPDEA. This notice addresses the eligibility criteria that must be considered under the ATPDEA, the countries that may be considered for designation as ATPDEA beneficiary countries, and the deadline for written comments. Furthermore, this notice explains how to make written comments on the eligibility criteria elaborated in the ATPDEA. The TPSC, chaired by USTR, will consider comments received in developing recommendations on country eligibility for the President.

DATES: Public comments are due at USTR no later than 5 p.m., September 16, 2002.

ADDRESSES: Submissions by mail or express delivery: Public Reading Room, ATTN: ATPDEA Eligibility, Office of the United States Trade Representative, 1724 F Street, Room F1P1, NW., Washington, DC 20508. Submissions by electronic mail: *FR0030@ustr.gov*. See requirements for submissions below.

FOR FURTHER INFORMATION CONTACT: For procedural questions, please contact: Gloria Blue, Office of the United States Trade Representative, 600 17th Street, NW., Room F516, Washington, DC 20508. The telephone number is (202) 395–3475. For substantive questions, contact Bennett Harman, Office of the Americas, Office of the United States Trade Representative, 600 17th Street, NW., Room 523, Washington, DC 20508. The telephone number is (202) 395–5190.

SUPPLEMENTARY INFORMATION: Signed into law on August 6, 2002, the Trade Act of 2002 contains, in Title XXXI, provisions for enhanced trade benefits for eligible Andean countries. Titled the "Andean Trade Promotion and Drug Eradication Act" (ATPDEA), the ATPDEA renews the Andean Trade Preference Act (ATPA), and amends the ATPA to provide preferential treatment for certain products previously excluded from such treatment.

Eligibility Criteria: The enhanced trade benefits under the ATPDEA are available only to countries that the President designates as "ATPDEA beneficiary countries." The criteria that the President must consider in designating countries as ATPDEA beneficiary countries include the criteria in sections 203(c) and (d) that applied to country eligibility under the ATPA, as well as several new criteria added by the ATPDEA.

Section 203(c) provides that the President shall not designate any eligible country as an ATPDEA beneficiary country:

1. If such country is a Communist country;

2. If such country:

a. Has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

b. Has taken steps to repudiate or nullify any existing contract or agreement with, or any patent, trademark, or other intellectual property of, a United States citizen or a corporation, partnership, or association, which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or

c. Has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that:

i. Prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

ii. Good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

iii. A dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and promptly furnishes a copy of such determination to the Senate and House of Representatives;

3. If such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

4. If such country affords preferential treatment to the products of a developed country, other than the United States, and if such preferential treatment has, or is likely to have, a significant adverse effect on United States commerce, unless the President:

a. Has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and

b. Reports those assurances to the Congress;

5. If a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent or such country fails to work towards the provision of adequate and effective protection of intellectual property rights;

6. Unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and

7. If such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section 507(4) of the Trade Act of 1974) to workers in the country (including any designated zone in that country).

Paragraphs 1, 2, 3, 5, and 7 shall not prevent the designation of any country as a beneficiary country under this title if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

Section 203(d) provides that, in determining whether to designate any country as an ATPDEA beneficiary country, the President shall take into account:

1. An expression by such country of its desire to be so designated;

2. The economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

3. The extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;

4. The degree to which such country follows the accepted rules of international trade provided for under the WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (9) and (4), respectively, of section 2 of the Uruguay Round Agreements Act);

5. The degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;

6. The degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;

7. The degree to which such country is undertaking self-help measures to protect its own economic development;

8. Whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights;

9. The extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

10. The extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent;

11. Whether such country has met the narcotics cooperation certification criteria set forth in section 481(h)(2)(A) [deemed to be a reference to section 490 of the Foreign Assistance Act of 1991 by section 6(a) of Public Law 102–583] of the Foreign Assistance Act of 1961 for eligibility for United States assistance; and

12. The extent to which such country is prepared to cooperate with the United States in the administration of the provisions of this Act.

The new criteria, which are set out at new section 204(b)(6)(B), include the following:

1. Whether the beneficiary country has demonstrated a commitment to undertake its obligations under the WTO, including those agreements listed in section 101(d) of the Uruguay Round Agreements Act, on or ahead of schedule, and participate in negotiations toward the completion of the FTAA or another free trade agreement.

2. The extent to which the country provides protection of intellectual property rights consistent with or greater than the protection afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights described in section 101(d)(15) of the Uruguay Round Agreements Act.

3. The extent to which the country provides internationally recognized worker rights, including:

a. The right of association;

b. The right to organize and bargain collectively;

c. A prohibition on the use of any form of forced or compulsory labor;

d. A minimum age for the employment of children; and

e. Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

4. Whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974.

5. The extent to which the country has met the counternarcotics certification criteria set forth in section 4590 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j) for eligibility for United States assistance.

6. The extent to which the country has taken steps to become a party to and implements the Inter-American Convention Against Corruption.

7. The extent to which the country applies transparent, nondiscriminatory, and competitive procedures in government procurement equivalent to those contained in the Agreement on Government Procurement described in section 101(d)(17) of the Uruguay Round Agreements Act, and contributes to efforts in international fora to develop and implement rules on transparency in government procurement.

8. The extent to which the country has taken steps to support the efforts of the United States to combat terrorism.

Countries Considered To Be Andean Beneficiary Countries: The following countries may be considered for designation as ATPDEA beneficiary countries:

Bolivia
Colombia
Ecuador
Peru

Submitting Comments: Comments may be submitted by mail, express delivery service, or e-mail (to *FR0030@ustr.gov*). It is strongly recommended that comments submitted by mail or express delivery service also be sent by e-mail. Persons making submissions by e-mail should use the following subject line: "ATPDEA Eligibility." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Persons submitting written comments by mail or express delivery service should provide 20 copies, in English.

Written comments, notices of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186. Appointments must be scheduled at least 48 hours in advance.

Christopher S. Wilson,

Acting Assistant United States Trade Representative for the Americas.

[FR Doc. 02–20715 Filed 8–14–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–13028]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) will meet to discuss various issues relating to the marine transportation of hazardous materials in bulk. These meetings will be open to the public.

DATES: CTAC will meet on Tuesday, October 8, 2002, from 1 p.m. to 4 p.m. and on Wednesday, October 9, 2002, from 9 a.m. to 3:30 p.m. These meetings may close early if all business is finished. Written material and requests

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to make oral presentations should reach the Coast Guard on or before September 25, 2002. Requests to have a copy of your material distributed to each member of the Committee should reach the Coast Guard on or before September 25, 2002.

ADDRESSES: Meetings will be held in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. Send written material and requests to make oral presentations to Commander James M. Michalowski, Executive Director of CTAC, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Commander James M. Michalowski, Executive Director of CTAC, or Ms. Sara Ju, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting on Tuesday, October 8, 2002

(1) Introduction of Committee members and attendees.

(2) Discussion of ways that CTAC can improve work distribution and outreach to the public.

(3) Discussion of steps that can be taken to increase public interest in Committee and subcommittee work.

(4) Discussion of future subcommittee initiatives.

Agenda of Meeting on Wednesday, October 9, 2002

(1) Introduction of Committee members and attendees.

(2) Final reports from the Prevention Through People, Hazardous Substances Response Standards, and Vessel Cargo Tank Overpressurization Subcommittees.

(3) Discussion and vote to establish a new subcommittee on hazardous material marine transportation security.

(4) A presentation by the Coast Guard Research and Development Center on the use of fuel cells in the marine environment.

(5) A presentation by Shell Chemical Company on vessel vetting systems and quality assurance issues.

(6) Update of Coast Guard Regulatory Projects and IMO Activities.

Procedural

These meetings are open to the public. Please note that the meetings may close early if all business is finished. At the discretion of the Chair, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director and submit written material on or before September 25, 2002. If you would like a copy of your material distributed to each member of the Committee in advance of a meeting, please submit 25 copies to the Executive Director (*see* **ADDRESSES**) no later than September 25, 2002.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, telephone the Executive Director at 202–267–0087 as soon as possible.

Dated: August 7, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 02–20752 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–13074]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Liftboat Subcommittee of the National Offshore Safety Advisory Committee (NOSAC) will meet to discuss various issues as outlined in the agenda. The meeting will be open to the public.

DATES: The Liftboat Subcommittee will meet on Thursday, September 5, 2002, from 9 a.m. to 12 noon. The meeting may close early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before August 29, 2002.

ADDRESSES: The Subcommittee will meet in the main conference room, of the Superior Energy Services Bldg, 1209 Peters Rood, Harvey, Louisiana. Send written material and requests to make oral presentations to James M. Magill, Assistant Executive Director of NOSAC, Commandant (G–MSO–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: James M. Magill, Assistant Executive Director of NOSAC, telephone 202–267–1082, fax 202–267–4570, or e-mail at: jmagill@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

(1) Welcoming remarks
(2) Discussion on Task Statement
(3) Presentations
(4) Questions, general discussion and roundtable
(5) Questions from public attendees
(6) Adjourn

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentation during the meeting. If you would like to make an oral presentation at the meeting, please notify the Assistant Executive Director no later than August 29, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: August 8, 2002.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 02–20751 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–13057]

Carriage of Navigation Equipment for Ships on International Voyages

AGENCY: Coast Guard, DOT.

ACTION: Notice of policy.

SUMMARY: The Coast Guard is announcing its policy for resolving conflicts between its own regulations on navigation equipment on ships and the recent amendments to the International Convention for the Safety of Life at Sea, 1974, (SOLAS). The amendments to SOLAS entered into force on July 1, 2002. Until the Coast Guard can align its regulations with these amendments, this policy should benefit ship owners and operators by relieving them of the need to meet existing Coast Guard regulations that are incompatible with or duplicitous of the new SOLAS requirements.

DATES: This policy is effective August 15, 2002.

ADDRESSES: Documents mentioned in this notice are part of docket USCG–2002–13057 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact LT Alan Blume, Office of Vessel Traffic Management, U.S. Coast Guard Headquarters, telephone 202–267–0550; e-mail ablume@comdt.uscg.mil. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Background

In December 2000, the International Maritime Organization amended chapter V of the International Convention for the Safety of Life at Sea, 1974, (SOLAS) at the 73rd Session of the Maritime Safety Committee. The amendments were accepted by the Contracting Governments to SOLAS on January 1, 2002, and entered into force on July 1, 2002. These amendments, in part, added requirements for the carriage of voyage data recorders (VDR) and automatic identification systems (AIS), changed the existing tonnage thresholds used to establish carriage requirements for some navigation equipment, and allowed an electronic chart display and information systems (ECDIS) to be accepted as meeting the chart carriage requirements of chapter V. Because of these amendments, the Coast Guard will need to align its regulations in titles 33 and 46 of the Code of Federal Regulations, especially those in 33 CFR part 164, with these amendments. Until this alignment occurs, problems may result due to the inconsistencies between chapter V and Coast Guard regulations. For example, if a ship owner elects to install ECDIS, the ship may still be required under 33 CFR 164.33 to carry paper nautical charts.

Policy Statement

Until the Coast Guard aligns its regulations with the amendments to SOLAS chapter V, the following policy applies:

For ships to which this policy applies, when an amendment to chapter V and a provision in Coast Guard regulations address the same navigational safety concern and when applying both would result in an unnecessary duplication, the Coast Guard will accept the provision under chapter V as meeting the corresponding Coast Guard regulation. In other words, if a ship has an approved ECDIS installed according to chapter V, the ECDIS will be considered by the Coast Guard as meeting its nautical chart regulation in 33 CFR 164.33(a)(1), since the ECDIS meets the same navigational safety concerns as do paper nautical charts. This policy benefits the ship owner and operator by relieving them of the need to unnecessarily duplicate equipment.

Under SOLAS, chapter I, regulation 12, the Coast Guard will not issue SOLAS certificates to U.S.-flag ships that are not in full compliance with the applicable requirements of the new SOLAS, chapter V. The Coast Guard will continue to exercise port state control authority under SOLAS, chapter I, regulation 19, for foreign-flag ships that are not in compliance with the applicable requirements of SOLAS, chapter V.

What Ships Are Affected?

This policy applies to the following ships, which are subject to the amendments to chapter V:

1. U.S.-flag ships of 150 or more gross tons that engage on international voyages.

2. U.S.-flag ships certificated solely for service on the Great Lakes and the St. Lawrence River as far east as a straight line drawn from Cap de Rosiers to West Point, Anticosti Island, and, on the north side of Anticosti Island, the 63rd Meridian.

3. Foreign-flag ships to which SOLAS, chapter V, applies that are operating on the navigable waters of the United States.

Note that U.S.-flag ships without mechanical means of propulsion are exempt from certain requirements of SOLAS under SOLAS, chapter V, regulation 3.1.

This policy is not applicable to U.S.-flag ships engaged only on domestic voyages. These ships must continue to comply with the existing navigation equipment requirements in titles 33 and 46 CFR until they are amended.

How Long Will This Policy Remain in Effect?

This policy will remain in effect until titles 33 and 46 CFR are aligned with SOLAS, chapter V, or until August 16, 2004, whichever is earlier. The Coast Guard will publish a second notice to extend this policy if the necessary regulations are not in place within two years.

Dated: August 9, 2002.

Joseph J. Angelo,

Acting Assistant Commandant Marine Safety, Security and Environmental Protection.

[FR Doc. 02–20753 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–05–C–00–PNS To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Pensacola Regional Airport, Pensacola, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Pensacola Regional Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 16, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, Suite 400, 5950 Hazeltine National Drive, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Frank Miller, Airport Director of the City of Pensacola at the following address: Pensacola Regional Airport, 2430 Airport Blvd., Suite 225, Pensacola, Florida 32504. Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Pensacola under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Farris, Program Manager, Orlando Airports District Office, Suite 400, 5950 Hazeltine National Drive, Orlando, Florida 32822, (407) 812–6331 Ext. 25. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at

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Pensacola Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 9, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Pensacola was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 12, 2002.

The following is a brief overview of the application.

Proposed charge effective date: September 1, 2007.

Proposed charge expiration date: December 1, 2007.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $350,000.

Brief description of proposed project(s): Impose and Use: FY02 Heightened Security Costs Class or classes of air carriers which the public agency has requested not be required to collect PFCs: air taxi/commercial operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration Southern Region Headquarters/ASO–600, 1701 Columbia Ave., College Park, Georgia 30337.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Pensacola.

Issued in Orlando, Florida on August 9, 2002.

John W. Reynolds, Jr.,

Assistant Manager, Airports Division, Southern Region.

[FR Doc. 02–20765 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Livingston County, MI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier 2 Environmental Impact Statement (EIS) will be prepared for construction impacts of the widening of M–59 from I–96 to US–23 in Livingston County, Michigan. A Record of Decision (ROD) for the Tier 1 EIS right-of-way preservation was signed on May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Abdelmoez Abdalla, Environmental Program Manager, Federal Highway Administration, 315 W. Allegan Street, Room 207, Lansing, Michigan 48933, Telephone (517) 702–1820 or Mr. Paul W. McAllister, Project Coordination Unit, Bureau of Transportation Planning, PO Box 30050, Lansing, Michigan 48909, Telephone (517) 335–2622.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Michigan Department of Transportation (MDOT) will prepare a Tier 2 EIS for the widening of M–59 from I–96 to US–23 in Livingston County, Michigan. The corridor is approximately 12.8 miles long. The area long M–59 is currently experiencing intense development pressure and traffic congestion problems. The proposed project will accommodate the projected year 2025 traffic volume and improve motorist safety. The current facility is two lanes. The project alternatives include: (1) The no build, (2) widening from two to five lanes, and (3) widening from two lanes to a four-lane boulevard, with some five-lane areas. The widening will occur within a 300-foot right-of-way corridor preserved by a Tier 1 EIS along the existing route of M–59. Scoping documents describing the proposed action and soliciting comments will be sent to appropriate Federal, state, local agencies, private organizations, and citizens who have previously expressed or are known to have interest in this proposal. A public information meeting was held on November 7, 2001, to provide the public the opportunity to discuss the proposed action. A public hearing will also be held. Public notice will be given of the time and place of the public hearing. The Tier 2 Draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is scheduled at this time. Comments and suggestions are invited from all interested parties to insure that the full range of issues related to this proposed action are addressed and all significant issues are identified. Questions or comments concerning this proposed action and the EIS should be directed to the FHWA address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 5, 2002.

James J. Steele,

Division Administrator, Lansing, Michigan.

[FR Doc. 02–20721 Filed 8–14–02; 8:45 am]

BILLING CODE 4410–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13079]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ARGONAUT.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13079. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* ARGONAUT. *Owner:* Windships America Inc.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "This vessel is 50.3 feet in length, 15.5 feet in breadth, and the net tonnage is 31 NRT."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "The intended use is day charter in the waters off New York and New England, based in Greenport, LI, NY."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1965. *Place of construction:* Muiden, the Netherlands.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "The granting of this waiver should have no adverse effect on current commercial passenger vessel operators. Restricting the number of passengers to twelve will not interfere with the current charter business aboard the Mary E, the only other working charter vessel in Greenport. My previous experience in Greenport was in 2000, as Captain of the Malabar, a charter vessel that has since been sold for charter operations in Florida."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The granting of this waiver will have no adverse effect on US shipyards. Maintenance work on this vessel has been performed at Greenport Yacht & Shipbuilding Co., Greenport, NY."

Dated: August 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20780 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13080]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ARGONAUT II.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13080. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* ARGONAUT II. *Owner:* David J. Walker.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "size of Vessel: Seventy-three feet (73'), *Capacity:* 51.77 Gross Tonnage, 23.76 Net Tonnage."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "Small Charter vessel for the purpose of taking out passengers of no more than twelve (12) for the purpose of scattering the ash remains of a beloved one upon the sea using a traditional group ritual, whereby providing a unique, elegant and affordable alternative to beloved ones and their families." "Near coastal waters of Washington, including Puget Sound, Inland Waterways, Strait of Juan de Fuca and S.E. Alaska."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* June 21, 1922. *Place of construction:* Meuchions Shipyard in Vancouver, Canada.

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(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "There will be little impact if any on other vessel operators, as there is no one, to my knowledge, providing this service in this area. We will be using a vintage mission and church vessel that has a documented history of community service."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "The adverse impact of this waiver will have on U.S. shipyards will be minimal. As a matter of fact this eighty-year-old wooden vessel will require much more upkeep in the coming years. This should give the smaller local yards much needed shipwright work. At the present time the owner is seeking the assistance of local shipyards for maintenance and moorage for the vessel."

Dated: August 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20779 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13084]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel AVALANCHE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13084. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* AVALANCHE. *Owner:* Dutch Harbor Fisheries.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "Gross: 49, Net: 44, Length: 60.0 ft., Breadth: 16.3 ft., Depth: 10.2 ft."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "We would like to charter along the northeast coast of the U.S. to include the coasts of Maine, New Hampshire, Massachusetts, Rhode Island, Gonnecticut, New York, New Jersey, Delaware, Maryland and Virginia (from Maine to the Chesapeake Bay)."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1986. *Place of construction:* Trehard yard in Antibes, France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "We do so little chartering in New England, just one week in the last two years that this waiver will not have any material impact on other American made charter sailboats."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "In summary, we cannot anticipate anything except our spending even more money in American shipyards as a result of this waiver with little or no impact on existing US built charter fleet."

Dated: August 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20778 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13078]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DREAM SEEKER.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13078. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* DREAM SEEKER. *Owner:* Atkinson Management, LLC.

(2) Size, capacity and tonnage of vessel. *According to the applicant:*

"Length 66.8 ft., Beam 20.0 ft., Draft 9.0 ft., Gross Tonnage 92 ITC, Net Tonnage 27 ITC."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "Occasional charters along the West Coast of the U.S.; we are expecting to do this approximately twelve (12) times a year. The charters will be for up to six (6) passengers on overnight trips lasting one (1) week or two (2) in duration. Additionally, we may entertain up to twelve (12) passengers on occasion for day sails or executive luncheons. Intended operations will be the West Coast of the United States, from the Canadian border to the Mexican border, more specifically from the Seattle area and the San Juan Islands south to San Diego Bay. Therefore we are requesting a waiver that would be valid in the western coastal U.S. waters."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1998. *Place of construction:* Kaohsiung, Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "Given that we are expecting to charter the vessel only twelve or so times a year, for six (6) or less passengers, interested in longer duration coastal cruises, the approval of this application will not have an adverse effect on existing passenger operators."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "This waiver will have no adverse effect on U.S. Shipyards; it in fact has a very positive fiscal impact. In the last full calendar year approximately $10,000.00 has been spent on maintaining and upgrading the vessel all of which was done in U.S. Shipyards. All maintenance and additional work on the vessel will be carried out in U.S. Shipyards and it is estimated that expenditures for this calendar year should also approach the $10,000.00 mark."

Dated: August 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20781 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13087]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GERDA III.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13087. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build

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requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* GERDA III. *Owner:* Museum of Jewish Heritage.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "GERDA III's principle dimensions are: Length 39'9", Beam 14', Draft 5'10". The vessel measures 14 Net tons."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:*

"We are seeking an Administrative Waiver of Coastwise Trade Laws of the United States in order for GERDA III to be considered an Uninspected Passenger Vessel carrying six or fewer passengers. While the vessel is primarily a static exhibit, we wish to occasionally carry persons other than crew on short day voyages. In strict interpretation of Coastwise Laws these persons other than crew would be construed as passengers—"consideration" possibly being a condition of their carriage. This consideration could be in the form of past, present or future donations of money, goods or services to the owner of the vessel. The purposes of these occasional daysails would be fundraising and development. Limits of navigation would be between New York Harbor and Mystic, Connecticut."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1928. *Place of construction:* Denmark. "Later rebuilt in 1992 by the Ring Anderson Shipyard in Copenhagen."

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "We expect no direct impact on other commercial passenger vessel operations as a result of the granting this waiver. The vessel will remain principally a static exhibit and only operate as a six passenger Uninspected Passenger Vessel occasionally to attend events and festivals in within the geographical limits described above. It is anticipated the vessels will operate as a UPV fewer than twenty days per year. This operation will not be competitive with other operations and will not be widely promoted. It is anticipated operation will be limited to Museum members and other 'inside' supporters. However this waiver will allow more flexible use of the vessel as a fundraising asset of the Museum and insure complete compliance with Coastwise Navigation Laws of the U.S."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "The granting of this waiver will have no negative impact on U.S. shipyards. Annual maintenance of GERDA III will continue as it has since the vessel arrived in the U.S. Daily caretaking responsibilities are performed by Mystic Seaport staff and volunteers at the duPont Preservation Shipyard at Mystic Seaport, with seasonal haulout performed by local boatyards and independent maintenance and repair contractors in southeastern Connecticut, adding to the maritime economy of this region."

Dated: August 9, 2002.
By Order of the Maritime Administrator.
Joel C. Richard,
Secretary, Maritime Administration.
[FR Doc. 02–20775 Filed 8–14–02; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13081]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LA PANTHERE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13081. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: LA PANTHERE. Owner: Peter C. Gentry and Kathy Rae Longworth-Gentry.

(2) Size, capacity and tonnage of vessel. According to the applicant: "52.5 feet on deck, breadth 15 feet, depth 7 feet Tonnage: 20 GRT and 18 NRT."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant:

"Occasional and seasonal charter use for small groups (12 or less) interested in learning sail handling and sailing properties of a square rigged, iron hulled Brigantine schooner. This use will be limited to the Atlantic Coast and Caribbean waters off the continental United States."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1930. Place of construction: Baasrode Shipyards and Ironworks, Baasrode, Belgium.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "We do not anticipate any adverse impact on current passenger operations as most all the operators in the region are larger, 50 passengers and up. Smaller vessel are not impacted as we have decidedly different vessel whose handling and sail characteristics differ markedly from those more modern, appealing to another sector of the interested public."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "We do not anticipate any detrimental impact on US Shipyards, in fact our restoration of this vessel, due to her older style riveted iron hull may provide opportunities for US Shipyards to maintain skill sets that are being lost due to the predominance of welding and forging techniques over the last 50 years."

Dated: August 9, 2002.
By Order of the Maritime Administrator.
Joel C. Richard,
Secretary, Maritime Administration.
[FR Doc. 02–20784 Filed 8–14–02; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13082]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LEVITY.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13082. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, D.C. 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: LEVITY. Owner: Stephen Perry.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Length: 35.2 ft., Hull Breadth: 10.4 ft., Hull depth: 5.5 ft., Gross Tonnage: 10, Net tonnage: 9."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: Sailboat chartering trips for up to six people. U.S. East Coast (Maine to Florida) and the U.S. Virgin Islands."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1973. Place of construction: Gosport, Hampshire, England.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "I do not believe this waiver will impact commercial vessels in any way from such a small operation of one boat."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "None, to my knowledge."

Dated: August 9, 2002.
By Order of the Maritime Administrator.
Joel C. Richard,
Secretary, Maritime Administration.
[FR Doc. 02–20783 Filed 8–14–02; 8:45 am]
BILLING CODE 4910–81–P

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13086]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MERCEDES.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13086. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* MERCEDES. *Owner:* Krystal Charters.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "Vessel Length: 83 Feet, Capacity: 6 persons plus 4 crew, Tonnage: 111 GRT, 88 NRT."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "We run a very exclusive Charter operation to VIP's who visit Newport Beach. We only take out 6 people for a minimum of three day trips so that we can give the best possible service. We are the only yacht in this area that can give this level of service." "Geographic Region: U.S. West Coast-Alaska to Mexico."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1987. *Place of construction:* Viaregio, Italy.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "MERCEDES caters to a very exclusive clientele. We are one of just a few on the entire West Coast and the only one in Orange County that offers this service. Therefore, we are not a threat to the other vessels in our area which are generally harbor excursion vessels carrying up to 300 passengers."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "This waiver will have no impact on U.S. Shipyards as it is for vessels over 3 years old."

Dated: August 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20777 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13077]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PASSAGE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13077. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime

Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: PASSAGE. Owner: Walter Wright.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Length 64.3 ft., Beam 19.0 ft., Draft 9.5 ft., Gross Tonnage 58, Net Tonnage 52."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: Occasional charters along the west coast of the U.S. The charters will be for six (6) passengers to twelve (12) passengers on occasion for day sails or private charters. Intended operations will be the west coast of the United States, from the Canadian border to the Mexican border, more specifically from the Seattle area and the San Juan Islands south to San Diego Bay. Therefore we are requesting a waiver that would be valid in the western coastal U.S. waters."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1966. Place of construction: Muiden, Holland, Netherlands.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "There are very few operators that provide for sailing charters along the west coast, even less offer vessels that are in size range of Passage, which comfortably accommodates six (6) to twelve (12) passengers. Therefore the approval of this application will not have an adverse effect on existing operators."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "This waiver will have no adverse effect on U.S. Shipyards; it in fact will have a positive fiscal impact. In the last calendar year approximately $4,000.00 has been spent on maintenance and upgrading the vessel all of which was done in U.S. Shipyards. The vessel has a steel hull that requires extensive maintenance yearly, all of which will be carried out in U.S. Shipyards."

Dated: August 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20782 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13085]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SONG & DANCE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13085. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* SONG & DANCE. *Owner:* Kemmerer, LLC.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "Length: 52.1–Breadth: 15.2–Depth: 8.2; 32 GRT–29 NRT."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "Personal and charter—eastern coast of the U.S."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1991. *Place of construction:* Tam Shui, Taipei, Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "None."

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(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "None."

Dated: August 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20776 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13083]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SOUTHERN BELLE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13083. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: SOUTHERN BELLE. Owner: James E. Bulluck.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Size: 35.9' GRT 23."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Coastal Cruising in Georgia. If possible I would like to include lower SC as it is just across the Savannah River."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1981. Place of construction: Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "I am the only operator of this vessel, and am not aware of but one other commercial vessel in my immediate area. I currently operate the vessel for my family vacations and weekends."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "There is only one yard in my area, Palmer Johnson in Savannah which is far as I know do not charter."

Dated: August 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20785 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Third-Party Disclosure in IRS Regulations; Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing regulations, Third-Party Disclosure Requirements in IRS Regulations.

DATES: Written comments should be received on or before October 15, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622–3945, or through the Internet *(CAROL.A.SAVAGE@irs.gov.)*, Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Third-Party Disclosure Requirements in IRS Regulations.

OMB Number: 1545–1466.

Abstract: These existing regulations contain third-party disclosure requirements that are subject to the Paperwork Reduction Act of 1995.

Current Actions: There are no changes being made to these regulations at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 245,824,890.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 69,927,555.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 8, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20760 Filed 8–14–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 99–32

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 99–32, Conforming Adjustments Subsequent to Section 482 Allocations.

DATES: Written comments should be received on or before October 15, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the internet *(CAROL.A.SAVAGE@irs.gov.)*, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Conforming Adjustments Subsequent to Section 482 Allocations.

OMB Number: 1545–1657.

Revenue Procedure Number: Revenue Procedure 99–32.

Abstract: Revenue Procedure 98–32 provides guidance for conforming a taxpayer's accounts to reflect a primary adjustment under Internal Revenue Code section 482. The revenue procedure prescribes the applicable procedures for the repatriation of cash by a United States taxpayer via an interest-bearing account receivable or payable in an amount corresponding to the amount allocated under Code section 482 from, or to, a related person with respect to a controlled transaction.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 180.

Estimated Time Per Respondent: 9 hours.

Estimated Total Annual Burden Hours: 1,620.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 8, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20761 Filed 8–14–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209827–96 and REG–111672–99]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209827–96 and REG–111672–99 (TD 8834), Treatment of Distributions to Foreign Persons Under Sections 367(e)(1) and

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367(e)(2) (§§ 1.367(e)–1, 1.367(e)–2, and 1.6038B–1).

DATES: Written comments should be received on or before October 15, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the internet *(CAROL.A.SAVAGE@irs.gov.)*, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Treatment of Distributions to Foreign Persons Under Sections 367(e)(1) and 367(e)(2).

OMB Number: 1545–1487.

Regulation Project Number: REG–209827–96 and REG–111672–99.

Abstract: Sections 367(e)(1) and 367(e)(2) provide for gain recognition on certain transfers to foreign persons under sections 355 and 332. Section 6038B(a) requires U.S. persons transferring property to foreign persons in exchanges described in sections 332 and 355 to furnish information regarding such transfers. This information is used by the Internal Revenue Service to verify whether a taxpayer is entitled to an exemption from income tax.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 217.

Estimated Time Per Respondent: 11 hours, 23 minutes.

Estimated Total Annual Burden Hours: 2,471.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 8, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20762 Filed 8–14–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2120

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2120, Multiple Support Declaration.

DATES: Written comments should be received on or before October 15, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet *(CAROL.A.SAVAGE@irs.gov.)*, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Multiple Support Declaration.

OMB Number: 1545–0071.

Form Number: A taxpayer who pays more than 10%, but less than 50%, of the support for an individual may claim that individual as a dependent for tax purposes provided the taxpayer attaches declarations from anyone else providing at least 10% support stating that they will not claim the dependent. This form is used to show that the other contributors have agreed not to claim the individual as a dependent.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 11,000.

Estimated Time Per Respondent: 32 minutes.

Estimated Total Annual Burden Hours: 5,830.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 7, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20763 Filed 8–14–02; 8:45 am]

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Corrections

Federal Register
Vol. 67, No. 158
Thursday, August 15, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Chimeric Filovirus Glycoprotein

Correction

In notice document 02–19714 appearing on page 50651 in the issue of Monday, August 5, 2002 make the following corrections:

1. On page 50651, in the second column, the subject line is corrected to read as set forth above.

2. On the same page, in the same column, in the second line from the bottom, "submit" should read "subunit".

[FR Doc. C2–19714 Filed 8–14–02; 10:22 am]
BILLING CODE 1505–01–D

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

Correction

In notice document 02–20210 appearing on page 51583 in the issue of Thursday, August 8, 2002, make the following correction:

On page 51583, in the first column, under **STATUS**, in the first line, "closed" should read "open".

[FR Doc. C2–20210 Filed 8–14–02; 10:22 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

1018–AH08

Endangered and Threatened Wildlife and Plants; Designating Critical Habitat for Plant Species from the Island of Molokai, HI

Correction

Proposed rule document 02-20340 was inadvertently published in the Rules and Regulations section in the issue of Monday August 12, 2002, beginning on page 52419. It should have appeared in the Proposed Rules section.

[FR Doc. C2–20340 Filed 8–14–02; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday,
August 15, 2002

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 39
Airworthiness Directives: Boeing Model 727 Series Airplanes; Final Rules

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–232–AD; Amendment 39–12858; AD 2002–16–19]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance With Supplemental Type Certificate SA1767SO or SA1768SO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger- to a cargo-carrying ("freighter") configuration, that requires, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g crash barrier. This amendment is prompted by the FAA's determination that the main deck cargo door hinge is not fail-safe; that certain main deck cargo door control systems do not provide an adequate level of safety; and that the main deck cargo barrier is not structurally adequate during an emergency landing. The actions specified by this AD are intended to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.

DATES: Effective September 19, 2002.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Paul Sconyers, Associate Manager, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6076; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger- to a cargo-carrying ("freighter") configuration was published in the **Federal Register** on November 12, 1999 (64 FR 61554). That action proposed to require, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g crash barrier.

Background

For the convenience of the reader, certain excerpts and information, below, from the following sections of the preamble of the notice of proposed rulemaking (NPRM) are provided in this final rule: Discussion, Main Deck Cargo Door Hinge, Main Deck Cargo Door Systems, and Cargo Restraint Barrier.

Discussion

Supplemental Type Certificate (STC) SA1767SO (held by FedEx) specifies a design for a main deck cargo door, associated cargo door cutout, and door systems. STC SA1768SO (held by FedEx) specifies a design for a Class "E" cargo interior with a cargo restraint barrier net. As discussed in NPRM, Rules Docket No. 97–NM–09–AD (the final rule, AD 98–26–18, amendment 39–10961, was published in the **Federal Register** on January 12, 1999 (64 FR 1994)), which is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger- to a cargo-carrying ("freighter") configuration, the FAA has conducted a design review of Boeing Model 727 series airplanes modified in accordance with STCs SA1767SO and SA1768SO and has identified several potential unsafe conditions. (Results of this design review are contained in "FAA Freighter Conversion STC Review, Report Number 2, dated October 16–18, 1996," hereinafter referred to as "the Design Review Report," which is included in the Rules Docket 97–NM–232–AD.) This NPRM proposes corrective action for three of those potential unsafe conditions that relate to the following three areas: main deck cargo door hinge, main deck cargo door systems, and main deck cargo barrier.

Main Deck Cargo Door Hinge

In order to avoid catastrophic structural failure, it has been a typical industry approach to design outward opening cargo doors and their attaching structure to be fail-safe (*i.e.*, designed so that if a single structural element fails, other structural elements are able to carry resulting loads). Another potential design approach is safe-life, where the critical structure is shown by analyses and/or tests to be capable of withstanding the repeated loads of variable magnitude expected in service for a specific service life. Safe-life is usually not used on critical structure because it is difficult to account for manufacturing or in-service accidental damage. For this reason, plus the fact that none of the STC holders have provided data in support of this approach, the safe-life approach will not be discussed further regarding the design and construction of the main deck cargo door hinge.

Structural elements such as the main deck cargo door hinge are subject to severe in-service operating conditions that could result in corrosion, binding, or seizure of the hinge. These conditions, in addition to the normal operational loads, can lead to early and unpredictable fatigue cracking. If a main deck cargo door hinge is not a fail-safe design, a fatigue crack could initiate and propagate longitudinally undetected, which could lead to a complete hinge failure. A possible consequence of this undetected failure is the opening of the main deck cargo door while the airplane is in flight. Service experience indicates that the opening of a cargo door while the airplane is in flight can be extremely hazardous in a variety of ways including possible loss of flight control, severe structural damage, or rapid decompression, any of which could lead to loss of the airplane.

The design of the main deck cargo door hinge must be in compliance with Civil Air Regulations (CAR) part 4b, including CAR § 4b.270, which requires, in part, that catastrophic failure or excessive structural deformation, which could adversely affect the flight characteristics of the airplane, is not probable after fatigue failure or obvious partial failure of a single principal structural element. One common feature of a fail-safe hinge design is a division of the hinge into multiple segments such that, following failure of any one segment, the remaining segments would support the redistributed load.

The main deck cargo door installed in accordance with STC SA1767SO is supported by latches along the bottom of the door and one continuous hinge along the top. This single-piece hinge is considered a critical structural element for this STC. A crack that initiates and propagates longitudinally along the hinge line of the continuous hinge will eventually result in failure of the entire hinge, because there is no segmenting of the hinge to interrupt the crack propagation and support the redistributed loads. Failure of the entire hinge can result in the opening of the main deck cargo door while the airplane is in flight.

As discussed in the Design Review Report, an inspection of one Boeing Model 727 series airplane modified in accordance with STCs SA1767SO and SA1768SO revealed a number of fasteners with both short edge margins and short spacing in the cargo door cutout external doublers. Some edge margins were as small as one fastener diameter. Fasteners that are placed too close to the edge of a structural member or spaced too close to an adjacent fastener can result in inadequate joint strength and stress concentrations, which may result in fatigue cracking of the skin. If such defects were to exist in the structure of the door or the fuselage to which the main deck cargo door hinge is attached, the attachment of the hinge could fail, and consequently cause the door to open while the airplane is in flight.

Main Deck Cargo Door Systems

In early 1989, two transport airplane accidents were attributed to cargo doors coming open during flight. The first accident involved a Boeing 747 series airplane in which the cargo door separated from the airplane, and damaged the fuselage structure, engines, and passenger cabin. The second accident involved a McDonnell Douglas DC–9 series airplane in which the cargo door opened but did not separate from its hinge. The open door disturbed the airflow over the empennage, which resulted in loss of flight control and consequent loss of the airplane. Although cargo doors have opened occasionally without mishap during takeoff, these two accidents serve to highlight the extreme potential dangers associated with the opening of a cargo door while the airplane is in flight.

As a result of these cargo door opening accidents, the Air Transport Association (ATA) of America formed a task force, including representatives of the FAA, to review the design, manufacture, maintenance, and operation of airplanes fitted with outward opening cargo doors, and to make recommendations to prevent inadvertent cargo door openings while the airplane is in flight. A design working group was tasked with reviewing 14 CFR 25.783 (and its accompanying Advisory Circular (AC) 25.783–1, dated December 10, 1986) with the intent of clarifying its contents and recommending revisions to enhance future cargo door designs. This design group also was tasked with providing specific recommendations regarding design criteria to be applied to existing outward opening cargo doors to ensure that inadvertent openings would not occur in the current transport category fleet of airplanes.

The ATA task force made its recommendations in the "ATA Cargo Door Task Force Final Report," dated May 15, 1991 (hereinafter referred to as "the ATA Final Report"). On March 20, 1992, the FAA issued a memorandum to the Director-Airworthiness and Technical Standards of ATA (hereinafter referred to as "the FAA Memorandum"), acknowledging ATA's recommendations and providing additional guidance for purposes of assessing the continuing airworthiness of existing designs of outward opening doors. The FAA Memorandum was not intended to upgrade the certification basis of the various airplanes, but rather to identify criteria to evaluate potential unsafe conditions demonstrated on in-service airplanes. Appendix 1 of this AD contains the specific paragraphs from the FAA Memorandum that set forth the criteria to which the outward opening doors should be shown to comply.

Applying the applicable requirements of CAR part 4b and design criteria provided by the FAA Memorandum, the FAA has reviewed the original type design of major transport airplanes, including Boeing 727 airplanes equipped with outward opening doors, for any design deficiency or service difficulty. Based on that review, the FAA identified unsafe conditions and issued, among others, the following ADs:

- For certain McDonnell Douglas Model DC–9 series airplanes: AD 89–11–02, amendment 39–6216 (54 FR 21416, May 18, 1989);
- For all Boeing Model 747 series airplanes: AD 90–09–06, amendment 39–6581 (55 FR 15217, April 23, 1990);
- For certain McDonnell Douglas Model DC–8 series airplanes: AD 93–20–02, amendment 39–8709 (58 FR 471545, October 18, 1993);
- For certain Boeing Model 747–100 and –200 series airplanes: AD 96–01–51, amendment 39–9492 (61 FR 1703, January 23, 1996); and
- For certain Boeing Model 727–100 and –200 series airplanes: AD 96–16–08, amendment 39–9708 (61 FR 41733, August 12, 1996).

Using the criteria specified in the ATA Final Report and the FAA Memorandum as evaluation guides, the FAA conducted an engineering design review and inspection of an airplane modified in accordance with STCs SA1767SO and SA1768SO (held by FedEx). The FAA identified a number of unsafe conditions with the main deck cargo door systems of these STCs. The FAA design review team determined that the design data of these STCs did not include a safety analysis of the main deck cargo door systems.

As specified in the criteria contained in Appendix 1 of this AD, for powered lock systems on the main deck cargo door, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched, and locked is extremely improbable. However, the FAA is aware of two events in which the main deck cargo door open during flight. These events occurred on FedEx passenger/freighter conversion STCs in December 9, 1994, and March 1995. These events are referenced in the Design Review Report.

For airplanes modified in accordance with STC SA1767SO or SA1768SO, the FAA considers the following four specific design deficiencies of the main deck cargo door systems to be unsafe:

1. Indication System

The main deck cargo door indication system for STCs SA1767SO and SA1768SO uses a warning light at the door operator's control panel and a light at the flight engineer's panel. Both of these lights indicate directly the status of the cargo door latch and lock positions and indicate indirectly the cargo door open or closed status, if the down-sequence switch of the cargo door is operating correctly. All three conditions (*i.e.*, door closed, latched, and locked) must be monitored directly so that the door indication system cannot display either "latched" before the door is closed or "locked" before the door is latched. If a sequencing error caused the door to latch and lock without being fully closed, the subject indication system, as designed, would not alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with the main deck cargo door unsecured, which could lead to the cargo door opening while the airplane is in flight and possible loss of the airplane.

The light on the flight engineer's panel is labeled "MAIN CARGO" and is displayed in red since it indicates an event that requires immediate pilot action. However, if the flight engineer is temporarily away from his station, a door unsafe warning indication could be missed by the pilots. In addition, the flight engineer could miss such an indication by not scanning the panel. As a result, the pilots and flight engineer could be unaware of, or misinterpret, an unsafe condition and could fail to respond in the correct manner.

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Therefore, an indicator light must be located in front of and in plain view of both pilots since one of the pilot's stations is always occupied during flight operations.

The main deck cargo door indication system of STCs SA1767SO and SA1768SO does not have a level of reliability that is considered adequate for safe operation. Many components are exposed to the environment during cargo loading operations and may be contaminated by precipitation, dirt, and grease, or damaged by foreign objects or cargo loading equipment. As a result, wires, switches, and relays can fail, jam, or short circuit and cause a loss of indication or a false indication to the door operator and flight crew. The design logic of the indication system (*i.e.*, lights which extinguish when the door is locked) will, in the event of a single point failure that would extinguish the light, result in an erroneous "safe" indication regardless of actual door status.

The design of STCs SA1767SO and SA1768SO has a "Press-to-Test" red warning light on the control panel of the main deck cargo door located near the L–1 door. The design of the monitoring system of the main deck cargo door does not include separate lights to provide the door operator with door close, latch, and lock status. The electrical wiring design of the close, latch, and lock sensors of the door monitoring system are wired in parallel instead of in series. In parallel, two sensors could be sensing "unsafe" and the third sensor could be sensing "safe." If this situation were to occur, the sensors would not illuminate the red warning light on the door control panel or at the flight engineer's panel. Therefore, the "Press-to-Test" feature is adequate to check the light bulb functionality, but is not adequate to check the cargo door closed, latched, and locked functions and status without annunciator lights for those three functions.

2. Means To Visually Inspect the Locking Mechanism

The single view port of the main deck cargo door installed in accordance with STC SA1767SO is intended to allow the flight crew to conduct a visual inspection of the door locking mechanism. This view port is used in conjunction with the door warning system and should provide a suitable "back-up" in the event that the main deck cargo door warning system malfunctions.

The door locking mechanism is an assembly comprised of multiple lock pins (one for each of the door latches) connected by linkages to a common lock shaft. Although an indicator flag attached to the lock shaft can be seen through the view port when the shaft is in the "locked" position, a failure between the shaft and the pins could go undetected, because this flag is attached to the lock shaft and not the actual lock pins. If such a failure goes undetected, the airplane may be dispatched with the main deck cargo door warning system inoperative and the door not fully closed, latched, and locked, which could lead to a main deck cargo door opening while the airplane is in flight and possible loss of the airplane. Therefore, the FAA finds that the subject view port is not a suitable back-up when the cargo door warning system malfunctions.

As discussed in the ATA Final Report and the FAA Memorandum, there must be a means of directly inspecting each lock or, at a minimum, the locks at each end of the lock shaft of certain designs, such that a failure condition in the lock shaft would be detectable.

3. Means to Prevent Pressurization to an Unsafe Level

Boeing 727–100 and –200 airplanes modified in accordance with STC SA1767SO are configured to utilize the existing fuselage pressurization outflow valve for the purpose of preventing pressurization of the airplane to an unsafe level in the event that the main deck cargo door is not closed, latched, and locked. The FAA design review of these modified Boeing 727–100 and –200 airplanes (documented in the Design Review Report) identified single point failures in the door control/outflow valve interface that could result in the valve not sensing and responding to an unsafe door condition. In addition, the FAA found no data to substantiate that the outflow valve location and size could prevent pressurization to an unsafe level.

With the current design, it is possible that the outflow valve or associated controllers may not perform their intended function when utilized for the purpose of preventing pressurization of the airplane in the event of an unsecured door. This condition could result in cabin pressurization forcing an unsecured door open while the airplane is in flight and possible loss of the airplane.

4. Powered Lock Systems

The main deck cargo door control system for STC SA1767SO that utilizes electrical interlock switches is designed to remove door control power (electrical and hydraulic) prior to flight and to prevent inadvertent door openings. The occurrence of an in-flight door opening event on airplanes modified in accordance with STC SA1767SO, as identified in the Design Review Report, indicates the likelihood that there may be latent and/or single point failures that can restore or continue to allow power to the door controls and cause inadvertent door openings. The failure modes may be found in the electrical portion of the door control panel, which, in turn, activates the door control hydraulics. The potential for the occurrence of these failure conditions is increased by the harsh operating environment of freighter airplanes. Door system components are routinely exposed to precipitation, dirt, grease, and foreign object intrusion, all of which increase the likelihood of damage. As a result, wires, switches, and relays have a greater potential to fail or short circuit in such a way as to allow the cargo door to be powered open without an operator's command and regardless of electrical interlock positions.

A systems safety analysis would normally evaluate and resolve the potential for these types of unsafe conditions. However, the design data for STC SA1767SO do not include a systems safety analysis to specifically identify these failure modes and do not show that an inadvertent opening is extremely improbable. The need for a system safety analysis is identified in the ATA Final Report and the FAA Memorandum.

Cargo Restraint Barrier

In order to ensure the safety of occupants during emergency landing conditions, the FAA first established in 1934, a set of inertia load factors used to design the structure for restraining items of mass in the fuselage. Because the airplane landing speeds have increased over the years as the fleet has transitioned from propeller to jet design, inertia load factors were changed as specified in CAR § 4b.260. Experience has shown that an airplane designed to this regulation has a reasonable probability of protecting its occupants from serious injury in an emergency landing. The 727 passenger airplane was designed to these criteria which specified an ultimate inertia load requirement of 9g in the forward direction. These criteria were applied to the seats and structure restraining the occupants, including the flight crew, as well as other items of mass in the fuselage.

When the 727 passenger airplane is converted to carry cargo on the main deck, a cargo barrier is required, since most cargo containers and the container-to-floor attaching devices are not designed to withstand emergency landing loads. In fact, the FAA estimates that the container-to-floor attaching devices will only support approximately 1.5g's to 3g's in the forward direction. Without a 9g cargo barrier, it is probable that the loads associated with an emergency landing would cause the cargo to be unrestrained and impact the occupants of the airplane, which could result in serious injury or death.

The structural inadequacy of the cargo barrier was evident to the FAA during its review in October 1997 of a Boeing 727 modified in accordance with STC SA1767SO. The observations revealed that the design of the net restraint barrier floor attachment and circumferential supporting structure does not provide adequate strength to withstand the 9g forward inertia load generated by the main deck cargo mass, nor does it provide a load path to effectively transfer the loads from the restraint barrier to the fuselage structure of the airplane. These observations are supported by data contained in "ER 2785, Structural Substantiation of the 50k 9g Bulkhead Restraint System in Support of STC SA1543SO PN 53–1292–401 for the 9g Bulkhead 53–1980–300 Assembly with Upper Attachment Structure, Lower Attachment Structure, Floor Shear Web Structure, Seat Track Splice Fittings, Seat Tracks, and Seat Track Splices," dated September 29, 1996, by M. F. Daniel. Although this report was specific to STC SA1543SO, the FAA has determined that the data are applicable to airplanes modified in accordance with STC SA1767SO because the design principles for attachment of the barriers in both STCs are the same. The report reveals that structural deficiencies were found in the net attach plates and floor attachment structure of the cargo barrier. The data show large negative margins of safety, which indicate that the inertia load capability of the cargo barrier is closer to 2g than the required 9g in the forward direction. From these analyses, it is evident that the cargo restraint barrier would not be capable of preventing serious injury to the occupants during an emergency landing event with the full allowable cargo load.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The FAA has received comments in response to the four NPRM actions (*i.e.*, Rules Dockets 97–NM–232–AD, 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD) that address the same subjects described above for four different sets of cargo modification STCs. Some of these comments addressed only one NPRM, while others addressed all four. Because in most cases the issues raised by the commenters are generally relevant to all four NPRMs, each final rule includes a discussion of all comments received.

Definition of Detailed Visual Inspection

One commenter provided Boeing's definition of a detailed visual inspection. The commenter requests that the FAA approve Boeing's definition as meeting the "detailed visual inspection" definition specified in Note 2 of the NPRM. The commenter states that it has incorporated Boeing's definition into its General Maintenance Manual (GMM), and that it is performing the detailed visual inspection of the main deck cargo door hinge in accordance with the GMM. The commenter also states that acceptance of the existing Boeing's definition will allow for work standardization and consistency.

The FAA partially concurs. The FAA concurs that, for the purpose of this AD, the definition provided by the commenter satisfies the intent of the definition contained in Note 2 of this AD. The detailed inspection definition specified in Note 2 of this AD is a standard definition that is used in all ADs that require a detailed inspection. Therefore, the FAA finds that no change to Note 2 of the final rule is necessary. However, for clarification purposes, the FAA has revised all references to a "detailed visual inspection" in the NPRM to "detailed inspection" in the final rule.

Main Deck Cargo Door Hinge

Two commenters request that the compliance time for accomplishing the detailed visual inspection required by paragraph (a) of the NPRM be revised. One commenter states that the compliance time should include a threshold of "prior to the accumulation of five years since accomplishment of the original conversion." The commenter states that operators of newly modified airplanes should not have to accomplish the detailed visual inspection required by paragraph (a) of the NPRM because it would be unlikely that brand new hinges would develop cracks within 250 flight cycles after being installed. The other commenter states that the compliance time should be revised to "at the next scheduled 'B' check, or 350 cycles after the effective date of the NPRM, whichever occurs first." The commenter states that such an extension would allow the inspection to be accomplished during a regularly scheduled "B" check and would not be disruptive of normal maintenance inspection scheduling.

The FAA partially concurs. The FAA does not concur that the compliance time should be extended from 250 flight cycles to 350 flight cycles. In developing an appropriate compliance time for the detailed inspection required by paragraph (a) of this AD, the FAA considered the degree of urgency associated with addressing the subject unsafe condition; the results from an FAA report, "Damage Tolerance Analysis of 727 Cargo Door Hinge," dated October 10, 1997; and the practical aspect of accomplishing the required inspection within an interval of time that parallels the typical "A" check scheduled maintenance interval for the majority of affected operators.

However, the FAA concurs with the commenter about the unlikelihood of a newly modified airplane developing cracks within 250 flight cycles since installation. Based on the referenced FAA damage tolerance report, the FAA finds that it is unlikely that a significant crack would occur in the hinge within 4,000 flight cycles since installation. Therefore, the FAA finds that operators must accomplish the detailed inspection "prior to accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later." The FAA has revised paragraph (a) of the final rule accordingly.

One commenter requests that a high frequency eddy current (HFEC) inspection be required in paragraph (a) of the NPRM in lieu of the detailed visual inspection. The commenter states that an HFEC inspection should be used because there are no proposed repetitive inspections and a detailed visual inspection can only detect limited crack size.

The FAA does not concur. The FAA finds that accomplishment of the detailed inspection required by paragraph (a) of this AD, in conjunction with the detailed inspection required by paragraph (b)(1) of this AD and the modification required by paragraph (b)(2) of this AD, will ensure the integrity of the door and fuselage structure to which the hinge is attached. Therefore, no change to the final rule is necessary in this regard.

Two commenters request that the FAA revise paragraph (a) of the NPRM to specify that operators will be given "credit" for having previously accomplished the proposed detailed visual inspection of the main deck cargo

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door hinge in accordance with a method approved by the appropriate Aircraft Certification Office (ACO) prior to the effective date of the final rule. One commenter states that operators who accomplished the subject inspection before the effective date of this AD should not be penalized by being forced to reinspect after the effective date of this AD.

The FAA does not consider that a change to the final rule is necessary to give operators such credit. Operators are given credit for work previously performed by means of the phrase in the "Compliance" section of the AD that states, "Required as indicated, unless accomplished previously." Therefore, in the case of this AD, if the required detailed inspection has been accomplished prior to the effective date of this AD in accordance with a method approved by the FAA, this AD does not require that it be repeated.

One commenter requests that the detailed visual inspection required by paragraph (b)(1) of the NPRM be accomplished at the next "C" check after five years have elapsed since the airplane was converted from a passenger- to a cargo-carrying ("freighter") configuration. The commenter also states that a "C" check would allow operators to accomplish the inspection during a heavy maintenance visit.

The FAA does not concur. The FAA finds that accomplishment of the detailed inspection required by paragraph (b)(1) of this AD prior to or concurrently with requirements of paragraph (b)(2) of this AD (*i.e.*, installation of a main deck cargo door hinge) will ensure the structural integrity of mating surfaces of the hinge. However, paragraph (g) of this AD does provide affected operators the opportunity to apply for an adjustment of the compliance time if data are presented to justify such an adjustment.

One commenter requests that the detailed visual inspection required by paragraph (b)(1) of the NPRM apply only to airplanes that have been in service for five or more years since installation of the cargo door, because the likelihood of damage increases with time in service. The commenter states that the compliance time specified in paragraph (b) of the NPRM should start from the date that the modification was installed on the airplane.

The FAA does not concur. The FAA finds that the potential for cracks in the hinge is primarily related to flight cycles (*i.e.*, number of fuselage pressure cycles) and, to a lesser extent, calendar time. Therefore, the FAA has determined that the compliance time specified in paragraph (b) of this AD should be related to flight cycles, not calendar time. No change to the final rule is necessary in this regard.

One commenter requests that the NPRM, Rules Docket 97–NM–234–AD, be revised to reference Kitty Hawk Service Bulletin KHA 727–004, Revision A, as an appropriate source of service information for accomplishing the detailed visual inspection required by paragraphs (a) and (b)(1) of the NPRM and the modification required by paragraph (b)(2) of that NPRM. The commenter states that this service bulletin has been submitted to the FAA for approval and should be approved by the FAA prior to the issuance of the NPRM.

Another commenter states that it has developed and submitted to the FAA for approval a modification that segments the hinge on existing cargo converted airplanes and installs a segmented hinge on the new conversion. From this comment, the FAA infers that the commenter is requesting that the NPRM, Rules Docket 97–NM–233–AD, be revised to reference this modification as a terminating action for the requirements of paragraphs (b) and (c) of that NPRM.

The FAA concurs with the commenters' requests to reference service bulletins that constitute compliance with the requirements of paragraphs (b) and (c) of ADs, Rules Dockets 97–NM–233–AD and 97–NM–234–AD. The FAA has reviewed and approved Kitty Hawk Service Bulletin KHA 727–004, Revision B, dated March 3, 1999, as opposed to the Revision A mentioned by one of the commenters. The FAA also has reviewed and approved Aeronautical Engineers Incorporated (AEI) Service Bulletin AEI01–01, Revision B, dated October 26, 2001. These service bulletins describe the following procedures:

1. Visual inspection of all areas of the hinge for cracks or other signs of damage;
2. Inspection of the mating surfaces of the main deck cargo door hinge and the external doubler for discrepancies (*i.e.*, scratches, gouges, or corrosion);
3. Repair of any crack, damage, or discrepancy, if necessary; and
4. Installation of a main deck cargo door hinge that complies with the applicable requirements of CAR part 4b, including fail-safe requirements.

In addition, the FAA has reviewed and approved Federal Express E.O. Revision Record 7–5230–7–5000, Revision B, release date December 18, 2001, and Pemco Service Bulletin 727–53–0006, Revision 1, dated December 4, 2001. The procedures in these service bulletins are similar to those described in AEI Service Bulletin AEI01–01, Revision B, and Kitty Hawk Service Bulletin KHA 727–004, Revision B.

The FAA finds that accomplishment of the actions specified in the four service bulletins described previously constitutes compliance with the requirements of paragraphs (b) and (c) of final rules, Rules Dockets 97–NM–232–AD, 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD; as applicable. Therefore, the FAA has revised those final rules to include a new note that references the subject service bulletins as a source of service information for accomplishing the actions required by paragraphs (b) and (c) of those final rules; as applicable.

One commenter requests that a subparagraph be added to paragraph (b) of the NPRM to require that the detailed visual inspection required by paragraph (b)(1) of the NPRM be accomplished just prior to final hinge installation during the process of converting an airplane from a passenger- to cargo-carrying ("freighter") configuration. The commenter states that this revision would eliminate its concerns about the installation defects that could cause future problems.

The FAA does not concur. The FAA finds that any FAA-approved corrective action that satisfies the requirements of paragraph (b)(2) of this AD will also address the installation of a hinge during the process of converting a Boeing Model 727 series airplane from a passenger- to a cargo-carrying ("freighter") configuration. Normally, good manufacturing procedures during production should preclude the necessity for the inspection. No change to the final rule is necessary in this regard.

One commenter notes that paragraph (b)(2) of the NPRM references CAR part 4b. The commenter asks, "If the FAA, as evidenced by the awarding of an STC, certified the cargo door hinge, how can the current hinge not meet CAR requirements?" The commenter also asks, "Wasn't the original STC determined to be in compliance with those requirements? If so, what specifically needs to be done to eliminate the FAA safety concerns about hinges that do not appear to have a problem?" The commenter suggests that paragraph (b)(2) of the NPRM be revised to require STC holders to design and make available an acceptable replacement hinge. The commenter states that this suggestion should be a condition for STC holders to continue to hold their STC approval.

From the commenter's questions, the FAA infers that the commenter believes

a main deck cargo door hinge with an approved STC is compliant with the requirements of CAR part 4b. The FAA finds that clarification is necessary. Generally, there is a presumption by operators that demonstrations of compliance with the requirements of CAR part 4b is a prerequisite for granting an STC. However, the applicant for any design approval is responsible for compliance with all applicable FAA regulations. The FAA has the discretion to review or otherwise evaluate the applicant's compliance to the degree the FAA considers appropriate in the interest of safety. The normal certification process allows for the review and approval of data by FAA designees. Consequently, the FAA office responsible for the certification of an airplane or modification to an airplane or an aeronautical appliance may not review all details regarding compliance with the appropriate regulations. As explained in the NPRM, the FAA has conducted design reviews and airplane inspections and has identified a potential unsafe condition that relates to the main deck cargo door hinge.

In addition, the FAA does not concur with the commenter's request to revise paragraph (b)(2) of the AD to require STC holders to design and make available an acceptable replacement hinge. The FAA finds that such a requirement is unnecessary, because as previously discussed, the FAA has revised this final rule to include a new note that references the applicable STC holder's service bulletin as a source of service information for accomplishing the actions required by paragraphs (b) and (c) of this final rule.

Main Deck Cargo Door Systems

One commenter requests that the compliance time for accomplishing the Airplane Flight Manual (AFM) revisions required by paragraph (d) of the NPRM be revised from "within 60 days after the effective date of this AD" to "within 60 days after submission of the procedures to the FAA." The commenter states that operators should be able to design revisions to the AFM within the proposed 60 days. However, the commenter believes that the Atlanta ACO will not be able to approve every one of those AFM Supplements within that time period.

The FAA does not concur. Since the release of the NPRM, some of the affected STC holders and operators have already developed AFM procedures acceptable to the FAA. The FAA finds that a 60-day compliance time is sufficient to allow the remaining operators and STC holders to develop revisions to the applicable AFMs and their supplements and for the Atlanta ACO to review and approve those AFM revisions.

One commenter submitted procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 97–NM–232–AD. The commenter requests that the FAA approve those procedures prior to issuance of the final rule and include those procedures in the final rule. The commenter states that it has completed a Safety Assessment Report for each of the door configurations currently operating in its fleet. The commenter believes the results of the report demonstrate that it is "extremely improbable" that the door will inadvertently open in flight for any reason. Although the analysis does not demonstrate compliance with the "extremely improbable" standard, the commenter states that for a limited time of 36 months the door system, as installed, provides a sufficient level of safety to be considered acceptable with no modification or change in operational procedures.

The FAA partially concurs. In order to gain a better understanding of the referenced Safety Assessment Report, the FAA had a telecon with the commenter on February 19, 2000, to discuss a series of questions, which were provided to the commenter prior to the telecon, about the report. (The minutes of this telecon are included in Rules Docket 97–NM–232–AD.) In addition to the information that it provided at the telecon, the commenter also provided an analysis of the Safety Assessment Report in a letter, dated February 16, 2000, and a revised table of the Safety Assessment Report in a letter, dated March 6, 2000. The analysis in these letters provided, for a variety of failure modes, the probability of the main deck cargo door not being in the closed, latched, and locked condition prior to dispatch. The analysis showed that the warning systems of the main deck cargo door and the means to prevent pressurization if the door is not closed, latched, and locked, only meet some of the requirements of CAR § 4b.606 and criteria specified in FAA memorandum, dated March 20, 1992 (referenced in the preamble of the NPRM). The commenter also provided Revision 16 of its Boeing B–727 Flight Manual, which further clarifies a change in the procedures for verifying that the main deck cargo door is closed, latched, and locked.

In light of the clarification provided by the commenter, the FAA concurs that the procedures submitted by the commenter provide an adequate level of safety until the requirements of paragraph (e) of this AD have been accomplished, considering the level of probability of occurrence of certain failures of the warning systems of the main deck cargo door and strict adherence to the door checking procedures and associated training requirements. Since issuance of the NPRM, the FAA has reviewed and approved Federal Express Service Bulletin FX727–2001–5230–01, dated July 30, 2001, which describes procedures for ensuring that the main deck cargo door is closed, latched, and locked prior to dispatch. Accomplishment of these actions constitutes compliance with the requirements of paragraph (d) of final rule, Rules Docket 97–NM–232–AD. Therefore, the FAA has revised the final rule, Rules Docket 97–NM–232–AD, to include a new note that references the subject service bulletin as a source of service information for accomplishing the actions required by paragraph (d) of that final rule.

One commenter provided procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 97–NM–233–AD, on airplanes modified in accordance with STC SA1368SO, on which a vent door has not been installed, and on airplanes modified in accordance with STC SA1797SO, on which a vent door has been installed. The commenter states that its procedures will ensure that the main deck cargo door is properly closed, latched, and locked prior to flight.

From this comment, the FAA infers that the commenter is requesting that the FAA approve its procedures as an acceptable means of compliance to the requirements of paragraph (d) of the final rule, Rules Docket 97–NM–233–AD. The FAA does not concur. The FAA finds that any proposed operating procedure must have sufficient validation and verification that the procedures are realistic and designed to minimize possible human error. The procedure also must provide for adequate checks and balances in the event the procedure is not strictly followed. In addition, the commenter did not provide any validation of the operating procedure or results of a safety analysis. However, the FAA may approve requests for an alternative method of compliance (AMOC) under the provisions of paragraph (g) of AD, Rules Docket 97–NM–233–AD, if sufficient data are submitted to substantiate that such a operating procedure would provide an acceptable level of safety.

One commenter provided procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 99–NM–234–AD. In support of its

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procedures, the commenter states, among other items, that an internal direct visual inspection of the latching and locking system is not possible on Model 727 series airplanes affected by that NPRM because the latching and locking systems are covered by a protective guard/cover that prevents direct viewing of these systems. Removing these covers would expose the latching and locking systems to possible foreign object damage (FOD) or damage from shifting freight. The commenter states that this condition is far more dangerous than a failure of the latching and locking systems. The commenter also states that most of the affected airplanes are equipped with flip up sill protectors, which further block the visibility of the bottom of the cargo door area (latch and lock area). The commenter concludes that a visual inspection of the latching and locking mechanisms is not appropriate for the airplane type and would create severe operational disruption with no benefit.

The FAA concurs with the commenter's conclusion that a visual inspection of the latching and locking mechanisms is not appropriate for accomplishing the requirements of paragraph (d) of final rule, Rules Docket 97–NM–234–AD. The FAA notes that paragraph (d) of that final rule does not specifically require a visual inspection of the locking mechanisms of the main deck cargo door after the door is closed, as suggested by the commenter. Since issuance of the NPRM, the FAA has reviewed and approved Kitty Hawk Service Bulletin KHA 727–008, dated January 7, 2000, which describes procedures for ensuring that the main deck cargo door is closed, latched, and locked prior to dispatch. These procedures are identical to those procedures provided by the commenter. Accomplishment of these actions constitutes compliance with the requirements of paragraph (d) of final rule, Rules Docket 97–NM–234–AD. Therefore, the FAA has revised final rule, Rules Docket 97–NM–234–AD, to include a new note to reference the subject service bulletin as a source of service information for accomplishing the actions required by paragraph (d) of that final rule.

One commenter states that the requirements for "a means to prevent pressurization to an unsafe level" and "direct visual examination of all locks" are not included in the certification basis of Model 727 series airplanes and should not be required for the interim action.

From this comment, the FAA infers that the commenter is referring to the interim actions required by paragraph (d) of the NPRM and to extracts from Appendix 1 of this AD, which sets forth the industry-accepted criteria to which the outward opening doors must be shown to comply per paragraph (e) of the NPRM. The FAA does not concur. The commenter has misinterpreted the requirements of paragraph (d) of this AD. Paragraph (d) of this AD requires procedures to ensure that all power is removed from the main deck cargo door prior to dispatch and to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane. This paragraph does not specify or limit what means or actions would be acceptable to the FAA. Operators could submit a means to prevent pressurization to an unsafe level and direct visual inspection of the locks as possible ways to ensure that the main deck cargo door is secure, in accordance with paragraph (d) of this AD. In addition, to comply with paragraph (e) of this AD, the criteria specified in Appendix 1 of this AD must be applied, irrespective of the certification basis of the airplane. Therefore, no change to the final rule is necessary in this regard.

One commenter requests that the proposed compliance time specified in paragraph (e) of the NPRM be revised from "within 36 months after the effective date of this AD" to "at the next 'C' check after the modifications are approved by the Manager, Atlanta ACO." The commenter states that such a compliance time would make everybody (*i.e.*, designer, operator, and FAA) share responsibility for time delays encountered during the modification design and approval process.

The FAA does not concur. Since issuance of the NPRM, the FAA has reviewed and approved two modifications (*i.e.*, National Aircraft Service, Inc. (NASI), STC ST01438CH and Pemco STC ST01270CH) as acceptable means for compliance with the requirements of paragraph (e) of final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD; as applicable. Therefore, the FAA has revised the final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD, to include a new note to reference the applicable STC as a source of service information for accomplishing the requirements of paragraph (e) of those final rules. The FAA finds that a 36-month compliance time for accomplishing the action specified in paragraph (e) of those final rules is not only sufficient for the design of the corrective actions, but also provides adequate time for operators to schedule the installation within an interval of time that parallels a heavy maintenance visit. However, under the provisions of paragraph (g) of final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD, the FAA may approve requests for an adjustment of compliance times if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Main Deck Cargo Barrier

One commenter requests that, before issuance of the final rule, industry and the FAA form a review team to find a way of lowering the costs associated with accomplishing the proposed installation of a 9g crash barrier. The commenter suggests that lower costs could be achieved by fixing the existing barrier (*e.g.*, the loads could be spread by the addition of structural reinforcement attachment angles) or designing a new barrier. The commenter states that the Ventura Aerospace, Inc., cargo barrier STC ST00848LA, which is an approved means of compliance with the requirements of paragraph (f) of NPRMs, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD, is an adequate barrier; however, the parts and installation cost estimates for the installation in those NPRMs are too low. The commenter gave examples of various actions and associated work hours that would be necessary to accomplish the proposed installation of the Ventura 9g crash barrier.

The FAA does not concur with the commenter that a review team is necessary, and that the cost estimates of NPRM's, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD, for accomplishing the installation of a main deck cargo barrier are too low. The FAA acknowledges that installation of a Ventura Aerospace, Inc., cargo barrier STC ST00848LA is an approved means of compliance with the requirements of paragraph (f) of final rules, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD. However, the cost estimates in the subject NPRMs were not specifically for installation of the subject Ventura 9g crash barrier, but were for installation of a 9g crash barrier that complies with the applicable requirements of CAR part 4b. The installation cost estimate of the NPRMs was provided to the FAA by Pemco based on the best data available to date.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. Furthermore, because the FAA generally attempts to impose compliance times that coincide with operators' scheduled maintenance, the FAA considers it inappropriate to attribute the costs associated with aircraft "downtime" to the cost of the AD, because, normally, compliance with the AD will not necessitate any additional downtime beyond that of a regularly scheduled maintenance visit.

Public Meeting

Several commenters request that the FAA hold a public meeting prior to the issuance of the final rule in the event that the FAA does not find their procedures acceptable for compliance with the requirements of paragraph (d) of the NPRM. The commenters state that such a meeting would provide a forum for productive face-to-face discussions similar to the process used by industry's B–727 Working Group.

The FAA does not concur. As discussed previously, the FAA has accepted some of the procedures submitted by the commenters. Also, in consideration of the differing configurations of the main deck cargo door systems between the various affected STCs, a public meeting to discuss the AD may be significantly restricted in some cases because of the proprietary design and data issues. However, the FAA is available to discuss any particular proposal for procedures specific to the airplane configuration with each of the affected STC holders or operators. Further, the FAA may approve requests for an AMOC under the provisions of paragraph (g) of this AD if sufficient data are submitted to substantiate that such a procedure would provide an acceptable level of safety. Therefore, the FAA finds that no public meeting is necessary.

Issue Separate ADs

One commenter requests that the NPRM be split into separate ADs for each issue—main deck cargo door hinge, main deck cargo door systems, and 9g crash barrier. The commenter states that multiple actions addressed by a single AD make managing the actions very unwieldy and complicated.

The FAA does not concur. The FAA is not convinced that separate ADs for each issue would resolve the complexity of this AD. The FAA has determined that a less burdensome approach is to issue only one AD for each STC holder that addresses the potential unsafe conditions that relate to the main deck cargo door hinge, main deck cargo door systems, and main deck cargo barrier. In addition, operators have already initiated actions to accomplish the requirements of this AD without apparent complications.

ACO Approval

One commenter requests that the actions required by the NPRM that must be accomplished in accordance with a method approved by the Manager, Atlanta ACO, be approved by the Manager, Transport Airplane Directorate. The commenter states that the affected Boeing Model 727 series airplanes are not small airplanes, and that the approving authority should be someone in an ACO from the Transport Airplane Directorate who understands structural repairs of transport category airplanes.

The FAA does not concur. Since the subject STCs were issued by the Atlanta ACO, that office has certificate responsibility for the airplanes affected by this AD. The Atlanta ACO is most cognizant of the design details of the subject STCs and, therefore, is more able to address each operator's specific issues for complying with paragraph (d) of this AD. The Manager of the Atlanta ACO will coordinate the review of the submittals with the Transport Airplane Directorate, which has established a team consisting of members from several ACOs to review all requests in accordance with paragraphs (b)(1), (b)(2), (c), (d), (e), and (f) of this AD.

Principal Maintenance Inspector (PMI) or Principal Operations Inspector (POI) Approval

One commenter requests that the FAA allow the individual operator's local PMI or POI to approve the AFM procedures for ensuring that the main deck cargo door is closed, latched, and locked required by the NPRM, or provide an option in the NPRM that allows the procedures to be added to the airplane operator manual (AOM), if applicable. The commenter states that such approval would ensure that the approval process is accomplished quickly.

The FAA does not concur. Paragraph (d) of this AD requires comprehensive engineering evaluation in consideration of the applicable requirements of CAR part 4b and the criteria specified in Appendix 1 of this AD. Consequently, the evaluation must be conducted by the Manager, Atlanta ACO, to determine an acceptable level of safety. The PMI or POI for the air carrier is normally not familiar with all the design considerations provided by the requirements of CAR part 4b and Appendix 1 of this AD.

Cost

One commenter requests that an industry/FAA team determine a less costly method to fix the existing barriers to satisfy the FAA's concerns. For example, the loads could be spread by the addition of structural reinforcement attachment angles. The commenter states that replacing the barrier is an extreme measure, and that there must be some kind of structural additions that could be made to the existing barrier to make it acceptable at a much lower cost.

The FAA partially concurs. The STC holders and operators are certainly free to form an industry team to find common solutions. However, the FAA's reason for participation would not be for the purpose of developing a less costly design, but rather to ensure that the final design is compliant with the applicable regulations.

One commenter requests that the FAA require STC holders to design the correction for the NPRM as a warranty issue. The commenter states that small operators, who do not have in-house engineering capability, will be at a great disadvantage when attempting to design remedies for this NPRM. The commenter also states that this NPRM places a substantial financial and operational burden on "small entities" just from the standpoint of not having a remedy already designed and approved.

The FAA does not concur. Any warranty agreements between the operator and an STC holder are not the responsibility of the FAA. The burden on small entities is addressed in the Regulatory Evaluation Summary and Regulatory Flexibility Analysis Section of this AD.

Descriptive Language of Preamble

One commenter states that it found the following four factual inaccuracies in the NPRM, Rules Docket 97–NM–232–AD, and requests that the FAA correct them.

1. The commenter notes that paragraph six under the heading "Main Deck Cargo Door System" reads, "* * * However, the FAA is aware of two events in which the main deck cargo door opened during flight. These events occurred on FedEx passenger/freighter conversion STC's in October 1996, and March 1995." The commenter states that it does not have any information or records indicating that the main deck cargo door opened in flight in October 1996 or March 1995. In the March 1995 incident, the commenter contends that the door,

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upon landing, was found to be closed and locked, and that the lock bar was found to be in the unlocked position. The commenter states that it found a control valve electrical connection of the main deck cargo door to be disconnected, and that the door operated normally once it was reconnected.

2. The commenter disagrees with the sentence under the heading "1. Indication System" in the preamble of the NPRM that reads, "Both of these lights indicate the status of the cargo door latch and lock positions, but do not indicate either the door open or closed status." The commenter states that its system does monitor and indicate the door closed status. If the door closed switch is not depressed, the light will stay illuminated, even if the door lock latches have rolled and the lock bar has moved into place.

3. The commenter notes that paragraph two under the heading "2. Means to Visually Inspect the Locking Mechanism" reads, "* * * Although an indicator flag attached to the lock shaft can be seen through the view port when the shaft is in the 'locked' position, a failure between the shaft and the pins could go undetected, because this flag is attached to the lock shaft and not the actual lock pins."

The commenter states that the flag is attached to the lock bar on Model 727–100 series airplanes. The lock plates are also bolted directly to the lock bar (no linkages). Therefore, the commenter contends that both the flag and lock plates become integrated parts of the lock bar.

In addition, the commenter states that the flag is attached to a lock pin on Model 727–200 series airplanes, and that the lock pin linkage does not have springs or an actuator attached to it. The commenter also contends that movement would have to be transmitted through the lock bar. The commenter further states that the stress analysis for Model 727–200 series airplanes shows high margins of safety in yield, bending, and shear for the locking hinges and fasteners.

4. The commenter notes that paragraph three under the heading "3. Means to Prevent Pressurization to an Unsafe Level" in the preamble of the NPRM reads, "Boeing 727–100 airplanes modified in accordance with the subject STC's have no means of preventing pressurization in the event that the main deck cargo door is not closed, latched, and locked, and therefore, have a higher risk of a cargo door opening while the airplane is in flight and possible loss of the airplane." The commenter states that the system used on Model 727–100 series airplanes has a relay that drives the ground venturi system, which in turns opens the outflow valve when the main deck cargo door is not closed and locked, hence pressurization is not possible.

For item 1 above, the FAA partially agrees with the commenter. In the preamble of the NPRM, the FAA incorrectly referenced October 1996 as a date of a door opening event. The correct date is December 9, 1994. The pilots' report (which is included in Rules Docket 97–NM–232–AD) on this event states that shortly after takeoff the warning light for the main deck cargo door illuminated. Following the open in-flight procedures for the main deck cargo door, the flight crew safely returned the airplane to the departure airport. The post-flight inspection revealed that the main deck cargo door opened approximately two feet. Also, in reference to the March event where the commenter states that the door did not open in flight, a verbal report (i.e., "FAA Freighter Conversion STC Review Report Number 2, dated October 16–18, 1996," which is included in Rules Docket 97–NM–232–AD) from the organization of the commenter's company states that the main deck cargo door was unlocked, and that the door was flush with the exterior of the airplane. The report on this latter event states that, following departure and at 17,000 feet, the warning light of the main deck cargo door came on followed by cabin altitude climbing. While it is not clear to the FAA whether or not the main deck cargo door opened while the airplane was in flight, the condition for possible door opening (*i.e.*, rotation of the lock bar to the unlocked position inflight) did occur, which could have led to a door opening while the airplane is in flight. Therefore, the FAA has revised the "Background" ("Main Deck Cargo Door Systems" subsection) Section in the preamble of final rule, Rules Docket 97–NM–232–AD, to correct the date of the subject event.

For items 2. and 4. above, the FAA agrees with the commenter's correction to items 2. and 4. above and has revised the "Background" Section ("Indication System" and "Means to Prevent Pressurization to an Unsafe Level" subsections) in the preamble of final rule, Rules Docket 97–NM–232–AD, accordingly. However, we find that the correction to item 2. does not alleviate the unsafe design features that were single point failures in the door control/outflow valve interface, which could result in the valve not sensing and responding to an unsafe door condition. With the current design, it is possible that the outflow valve or associated controllers may not perform their intended function when utilized for the purpose of preventing pressurization of the airplane in the event of an unsecured door. This condition could result in cabin pressurization forcing an unsecured door open while the airplane is in flight and possible loss of the airplane.

Further, we find that the correction to item 4. does not alleviate the safety concern regarding the design feature where ALL three conditions (i.e., door closed, latched, and locked) are not directly monitored. If a sequencing error caused the door to latch and lock without being fully closed, the subject indication system, as designed, would not directly alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with an unsecured main deck cargo door, which could lead to the cargo door opening while the airplane is in flight and possible loss of the airplane.

For item 3. above, the FAA does not concur that the attachment of the "flag" to the lock bar on Model 727–100 series airplanes is sufficient to indicate the position of the lock pins, even though the lock pins are bolted to the lock bar. The FAA has determined that any failure condition of a lock pin would not be detected when observing the position of the flag through the view port.

Explanation of Change to Unsafe Condition

To more accurately reflect the identified unsafe condition of this AD, the FAA has revised the final rule where applicable to read, "to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants."

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Regulatory Evaluation Summary

This analysis estimates the costs of AD, Rules Docket 97–NM–232–AD, that requires installation of a fail-safe hinge; redesigned warning and power control systems of the main deck cargo door; and a 9g crash barrier on Boeing Model 727 series airplanes that have been modified in accordance with certain STCs held by FedEx. As discussed above, the FAA has determined that:

1. The main deck cargo door hinge is not fail-safe;
2. Certain control systems of the main deck cargo door do not provide an adequate level of safety; and
3. The 9g crash barrier is not structurally adequate during a minor crash landing.

The AD will affect 120 U.S.-registered Boeing Model 727 series airplanes operated by FedEx. The following discussion addresses, in sequence, the actions in this rulemaking and the estimated cost associated with each of these actions. An analysis of the cost is also available in Rules Docket No. 97–NM–232–AD.

1. Main Deck Cargo Door Hinge

Since unsafe conditions have been identified that are likely to exist or develop on other modified Boeing Model 727 series airplanes, paragraph (a) of this AD requires, prior to the accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later, a detailed inspection of the external surface of the main deck cargo door hinge to detect cracks. FedEx estimates that this inspection will take about 14 work hours per airplane. At a mechanic's burdened labor rate of $60 per work hour, the cost per airplane will be $840, or $100,800 for FedEx's fleet of 120 affected Boeing Model 727 series airplanes.

Paragraph (b)(1) of the AD requires, within 36 months or 4,000 cycles after the effective date of this AD, whichever occurs first, a detailed inspection of the mating surfaces of both the hinge and the door skin, and the hinge and external fuselage doubler underlying the hinge. The FAA estimates that compliance with this inspection will take 200 work hours per airplane, and that the average labor rate is $60 per work hour. The estimated cost will be $12,000 per airplane, or $1.4 million for the 120 affected Boeing Model 727 series airplanes.

Paragraph (b)(2) of the AD requires installation of a fail-safe door hinge. The compliance time for this installation is also within 36 months or 4,000 cycles after the effective date of the AD, whichever occurs first. The estimated cost to design and certificate such a hinge is $45,000. FedEx estimates that parts for a fail-safe door hinge will cost $2,600 per airplane, while installation will cost $11,520 per airplane, for 192 work hours of labor. Cost for parts and labor for 120 affected Boeing Model 727 series airplanes is estimated to be $1.7 million.

Paragraph (c) of the AD requires that, if any crack or discrepancy is detected during the inspection required by paragraph (a) or (b)(1) of the AD, a repair must be made prior to further flight. The cost of this repair is not attributable to this AD.

For purposes of analysis, the FAA assumes an effective date some time in the fourth quarter of 2002. The cost to comply with paragraphs (a) through (c) is $3.3 million, undiscounted, or $2.9 million discounted to present value. The FAA assumes that the installation of the main deck cargo door hinge (paragraph (b)(2) of this AD) will be accomplished at the same time as the detailed inspection of fastener holes (paragraph (b)(1) of this AD). The FAA also assumes that FedEx will perform these two activities uniformly throughout the 36-month compliance time. Finally, the certification cost for the main deck cargo door hinge is expected to be incurred within the first 6 months after the effective date of this AD.

2. Main Deck Cargo Door Systems

Work on the door systems relates to paragraphs (d) and (e) of the AD. Paragraph (d) of the AD requires, within 60 days after the effective date of this AD, the revising of the Limitations Section of the FAA-approved AFM Supplement to provide the flight crew with procedures for ensuring that all power is removed from the main deck cargo door prior to dispatch of the airplane, and that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane. In addition, paragraph (d) of the AD requires the installation of any associated placards.

FedEx assumes that an external inspection of the flushness of the main deck cargo door, combined with an "enhanced B-check," will be an acceptable interim means to ensure that the cargo door is secured prior to dispatch. Concerning the external inspection, before redesigned door systems are installed (see paragraph (f) of this AD) FedEx estimates that it will take a mechanic 30 minutes to inspect for flushness of the main deck cargo door prior to dispatch. FedEx also estimates that there are 64 flights per day among the 120 affected Boeing Model 727 series airplanes, and that these airplanes fly 260 days per year. Consequently, the estimated cost per inspection, until the door systems are changed, is $30 or $4,133 per airplane, per year. In addition, FedEx estimates that the setup costs for the daily inspection (i.e., procedure materials for the cadre of mechanics to perform the inspection, and for training requirements) will be $50,000.

The occurrence of the "enhanced B-checks" on the affected Boeing Model 727 series airplanes is anticipated to occur twice a year. FedEx estimates that the incremental cost for maintenance during these "enhanced B-checks" is $11,700 per airplane, per year, until door systems are changed.

Consequently, based on the two activities described above, the FAA estimates the cost for satisfying the requirements of paragraph (d) of this AD at $5.8 million undiscounted, over 36 months, or $5.0 million discounted. These activities will occur until the incorporation of redesigned door systems. Again, the FAA assumes that these activities will occur uniformly over the 36-month compliance time.

Paragraph (e) of this AD requires, within 36 months after the effective date of the AD, incorporation of redesigned main deck cargo door systems. FedEx estimates that the development and certification of the systems will cost $212,000. FedEx estimates that modification parts will cost $110,000 per airplane, and that labor costs will be $34,560 per airplane. FedEx also estimates that 40 percent of the fleet will be modified during a scheduled maintenance visit. The remainder of the fleet will be out of service for an additional 4 days. Based on a lease rate of $6,100 per day, the FAA estimates that the cost of downtime for the fleet will be $1.8 million over the 36-month compliance time. Consequently, the estimated cost for incorporating redesigned door systems for the fleet of 120 affected Boeing Model 727 series airplanes (paragraph (d) of this AD) is $19.3 million. This includes $212,000 for design and certification costs, and $1.8 million for additional downtime.

The total cost to comply with the requirements for incorporating redesigned main deck cargo door systems is $25.1 million, undiscounted, or $21.9 million, discounted.

3. 9g Crash Barrier

Paragraph (f) of this AD requires, within 36 months or 4,000 flight cycles after the effective date of the AD, whichever occurs first, installation of a

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main deck cargo barrier that complies with the applicable requirements of CAR part 4b. FedEx estimates that the development and certification of a 9g crash barrier will cost $94,500, that parts will cost $30,000 per airplane, and that labor will cost $23,040 per airplane.

The FAA assumes that FedEx will install 9g crash barriers in their affected fleet uniformly over the 36-month compliance time. Consequently, the total non-discounted cost for this item is estimated to be $6.4 million, or $5.6 million, discounted to present value.

4. AMOC and Special Flight Permits

Paragraph (g) of the AD allows an AMOC or adjustment of compliance time that provides an acceptable level of safety if approved by the Manager of the Atlanta ACO. The FAA is unable to determine the cost of an AMOC, but assumes that it will be less than the cost of complying with the provisions in paragraphs (a) through (f) of the AD.

Paragraph (h) of the AD allows special flight permits in accordance with the regulations to operate an affected airplane to a location where the requirements of the AD could be accomplished.

5. Total Cost of the AD

The FAA estimates that the total compliance cost of the AD will be $34.8 million, undiscounted, or $30.4 million, discounted to present value.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 establishes as "a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA of 1980 requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA of 1980 covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform an assessment of all rules to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that the rule will have such an impact, the agency must prepare a regulatory flexibility analysis as described in the RFA of 1980. However, if after an assessment of a proposed or final rule, an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, Section 605(b) of the RFA of 1980 provides that the head of the agency may so certify. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required assessment of this rule, and determined that it will not have a significant impact on a substantial number of small entities. Only one operator, FedEx, is affected by this AD; and FedEx is not a small entity (it employs more than 1,500 people). Consequently, the FAA certifies that this AD will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Such a mandate is deemed to be a "significant regulatory action."

This AD does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

Federalism Assessment

The regulations of this AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this AD will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–19 Boeing: Amendment 39–12858. Docket 97–NM–232–AD.

Applicability: Model 727 series airplanes that have been converted from a passenger-to a cargo-carrying ("freighter") configuration in accordance with Supplemental Type Certificate (STC) SA1767SO or SA1768SO; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants; accomplish the following:

Actions Addressing the Main Deck Cargo Door Hinge

(a) Prior to the accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed inspection of the external surface of the main deck cargo door hinge (both fuselage and door side hinge elements) to detect cracks.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Perform a detailed inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge to detect cracks or other discrepancies (e.g., double or closely drilled holes, corrosion, chips, scratches, or gouges). The detailed inspection shall be accomplished in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. The requirements of this paragraph may be accomplished prior to or concurrently with the requirements of paragraph (b)(2) of this AD.

(2) Install a main deck cargo door hinge that complies with the applicable requirements of Civil Air Regulations (CAR) part 4b, including fail-safe requirements, in accordance with a method approved by the Manager, Atlanta ACO.

(c) If any crack or discrepancy is detected during the detailed inspection required by either paragraph (a) or (b)(1) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta ACO.

Note 3: Accomplishment of the actions in accordance with Federal Express E.O. Revision Record 7–5230–7–5000, Revision B, release date December 18, 2001, constitutes compliance with the requirements of paragraphs (b) and (c) of this AD.

Actions Addressing the Main Deck Cargo Door Systems

(d) Within 60 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) Supplement by inserting therein the procedures specified in paragraphs (d)(1) and (d)(2) of this AD, and install any associated placards. The AFM revision procedures and installation of any associated placards shall be accomplished in accordance with a method approved by the Manager, Atlanta ACO.

(1) Procedures to ensure that all power is removed from the main deck cargo door prior to dispatch of the airplane.

(2) Procedures to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane.

Note 4: Accomplishment of the procedures for ensuring that the main deck cargo door is closed, latched, and locked prior to dispatch, in accordance with Federal Express Service Bulletin FX727–2001–5230–01, dated July 30, 2001, constitutes compliance with the requirements of paragraph (d) of this AD.

(e) Within 36 months after the effective date of this AD, incorporate redesigned main deck cargo door systems (*e.g.*, warning/monitoring, power control, view ports, and means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked), including any associated procedures and placards, that comply with the applicable requirements of CAR part 4b and criteria specified in Appendix 1 of this AD; in accordance with a method approved by the Manager, Atlanta ACO.

Note 5: The design data submitted for approval should include a Systems Safety Analysis and Instructions for Continued Airworthiness that are acceptable to the Manager, Atlanta ACO.

Note 6: Installation of National Aircraft Service, Inc. (NASI), Vent Door System STC ST01438CH, is an acceptable means of compliance with the requirements of paragraph (e) of this AD.

Actions Addressing the Main Deck Cargo Barrier

(f) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, install a main deck cargo barrier that complies with the applicable requirements of CAR part 4b, in accordance with a method approved by the Manager, Atlanta ACO.

Note 7: The maximum main deck total payload that can be carried is limited to the lesser of the approved cargo barrier weight limit, weight permitted by the approved maximum zero fuel weight, weight permitted by the approved main deck position weights, weight permitted by the approved main deck running load or distributed load limitations, or approved cumulative zone or fuselage monocoque structural loading limitations (including lower hold cargo).

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(i) This amendment becomes effective on September 19, 2002.

Appendix 1

Excerpt from an FAA Memorandum to the Director-Airworthiness and Technical Standards of ATA, dated March 20, 1992

"(1) *Indication System:*

(a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be *amber* unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be *red* and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

(2) *Means to Visually Inspect the Locking Mechanism:*

There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

(3) *Means to Prevent Pressurization:*

All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) *Lock Strength:*

Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) *Power Availability:*

All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) *Powered Lock Systems:*

For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable."

Issued in Renton, Washington, on August 6, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20506 Filed 8–14–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–233–AD; Amendment 39–12859; AD 2002–16–20]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance With Supplemental Type Certificate SA1368SO, SA1797SO, or SA1798SO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger- to a cargo-carrying ("freighter") configuration, that requires require, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g cargo barrier. This amendment is prompted by the FAA's determination that the main deck cargo door hinge is not fail-safe; that certain main deck cargo door control systems do not provide an adequate level of safety; and that the main deck cargo barrier is not structurally adequate during an emergency landing. The actions specified by this AD are intended to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.

DATES: Effective September 19, 2002.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Paul Sconyers, Associate Manager, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6076; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration was published in the **Federal Register** on November 12, 1999 (64 FR 61547). That action proposed to require, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g crash barrier.

Background

For the convenience of the reader, certain excerpts and information, below, from the following sections of the preamble of the notice of proposed rulemaking (NPRM) are provided in this final rule: Discussion, Main Deck Cargo Door Hinge, Main Deck Cargo Door Systems, and Cargo Restraint Barrier.

Discussion

Supplemental Type Certificates (STC) SA1797SO and SA1368SO (held by Aeronautical Engineers, Inc.) specify a design for a main deck cargo door, associated cargo door cutout, and door systems. STC SA1798SO (held by Aeronautical Engineers, Inc.) specifies a design for a Class "E" cargo interior with a cargo barrier. As discussed in NPRM, Rules Docket No. 97–NM–79–AD (the final rule, AD 98–26–19, amendment 39–10962, was published in the **Federal Register** on January 12, 1999 (64 FR 2016)), which is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration, the FAA has conducted a design review of Boeing Model 727 series airplanes modified in accordance with STCs SA1797SO and SA1798SO and has identified several potential unsafe conditions. [Results of this design review are contained in "FAA Freighter Conversion STC Review, Report Number 3, dated January 27, 1997," hereinafter referred to as "the Design Review Report," which is included in the Rules Docket for 97–NM–233–AD.] This NPRM proposes corrective action for three of those potential unsafe conditions that relate to the following three areas: main deck cargo door hinge, main deck cargo door systems, and main deck cargo barrier.

Main Deck Cargo Door Hinge

In order to avoid catastrophic structural failure, it has been a typical industry approach to design outward opening cargo doors and their attaching structure to be fail-safe (*i.e.*, designed so that if a single structural element fails, other structural elements are able to carry resulting loads). Another potential design approach is safe-life, where the critical structure is shown by analyses and/or tests to be capable of withstanding the repeated loads of variable magnitude expected in service for a specific service life. Safe-life is usually not used on critical structure because it is difficult to account for manufacturing or in-service accidental damage. For this reason, plus the fact that none of the STC holders have provided data in support of this approach, the safe-life approach will not be discussed further regarding the design and construction of the main deck cargo door hinge.

Structural elements such as the main deck cargo door hinge are subject to severe in-service operating conditions that could result in corrosion, binding, or seizure of the hinge. These conditions, in addition to the normal operational loads, can lead to early and unpredictable fatigue cracking. If a main deck cargo door hinge is not a fail-safe design, a fatigue crack could initiate and propagate longitudinally undetected, which could lead to a complete hinge failure. A possible consequence of this undetected failure is the opening of the main deck cargo door while the airplane is in flight. Service experience indicates that the opening of a cargo door while the airplane is in flight can be extremely hazardous in a variety of ways including possible loss of flight control, severe structural damage, or rapid decompression, any of which could lead to loss of the airplane.

The design of the main deck cargo door hinge must be in compliance with Civil Air Regulations (CAR) part 4b, including CAR § 4b.270, which requires, in part, that catastrophic failure or excessive structural deformation, which could adversely affect the flight characteristics of the airplane, is not probable after fatigue failure or obvious partial failure of a single principal structural element. One common feature of a fail-safe hinge design is a division of the hinge into multiple segments such that, following failure of any one segment, the remaining segments would support the redistributed load.

The main deck cargo door installed in accordance with STCs SA1797SO and SA1368SO is supported by latches along the bottom of the door and a two-segment hinge along the top. This two-segment hinge is considered a critical structural element for these STCs. A crack that initiates and propagates longitudinally along either segment of the hinge will eventually result in failure of the entire hinge, because the remaining segment of the hinge is unable to support the redistributed loads. Failure of the entire hinge can result in the opening of the main deck cargo door while the airplane is in flight.

As discussed in the Design Review Report, an inspection of one Boeing Model 727 series airplane modified in accordance with STCs SA1797SO and SA1798SO revealed a number of fasteners with both short edge margins and short spacing in the cargo door cutout external doublers. Some edge margins were as small as one fastener diameter. Fasteners that are placed too close to the edge of a structural member or spaced too close to an adjacent fastener can result in inadequate joint strength and stress concentrations, which may result in fatigue cracking of the skin. If such defects were to exist in the structure of the door or the fuselage to which the main deck cargo door hinge is attached, the attachment of the hinge could fail, and consequently cause the door to open while the airplane is in flight.

Main Deck Cargo Door Systems

In early 1989, two transport airplane accidents were attributed to cargo doors coming open during flight. The first accident involved a Boeing 747 series airplane in which the cargo door separated from the airplane, and damaged the fuselage structure, engines, and passenger cabin. The second accident involved a McDonnell Douglas DC–9 series airplane in which the cargo door opened but did not separate from its hinge. The open door disturbed the airflow over the empennage, which resulted in loss of flight control and consequent loss of the airplane. Although cargo doors have opened occasionally without mishap during takeoff, these two accidents serve to highlight the extreme potential dangers associated with the opening of a cargo door while the airplane is in flight.

As a result of these cargo door opening accidents, the Air Transport Association (ATA) of America formed a task force, including representatives of the FAA, to review the design, manufacture, maintenance, and operation of airplanes fitted with outward opening cargo doors, and to make recommendations to prevent inadvertent cargo door openings while the airplane is in flight. A design working group was tasked with reviewing 14 CFR part 25.783 (and its accompanying Advisory Circular (AC) 25.783–1, dated December 10, 1986) with the intent of clarifying its contents and recommending revisions to enhance future cargo door designs. This design group also was tasked with providing specific recommendations regarding design criteria to be applied to existing outward opening cargo doors to ensure that inadvertent openings would not occur in the current transport category fleet of airplanes.

The ATA task force made its recommendations in the "ATA Cargo Door Task Force Final Report," dated May 15, 1991 (hereinafter referred to as "the ATA Final Report"). On March 20, 1992, the FAA issued a memorandum to the Director-Airworthiness and Technical Standards of ATA (hereinafter referred to as "the FAA Memorandum"), acknowledging ATA's recommendations and providing additional guidance for purposes of assessing the continuing airworthiness of existing designs of outward opening doors. The FAA Memorandum was not intended to upgrade the certification basis of the various airplanes, but rather to identify criteria to evaluate potential unsafe conditions demonstrated on in-service airplanes. Appendix 1 of this AD contains the specific paragraphs from the FAA Memorandum that set forth the criteria to which the outward opening doors should be shown to comply.

Applying the applicable requirements of CAR part 4b and design criteria provided by the FAA Memorandum, the FAA has reviewed the original type design of major transport airplanes, including Boeing 727 airplanes equipped with outward opening doors, for any design deficiency or service difficulty. Based on that review, the FAA identified unsafe conditions and issued, among others, the following ADs:

- For certain McDonnell Douglas Model DC–9 series airplanes: AD 89–11–02, amendment 39–6216 (54 FR 21416, May 18, 1989);
- For all Boeing Model 747 series airplanes: AD 90–09–06, amendment 39–6581 (55 FR 15217, April 23, 1990);
- For certain McDonnell Douglas Model DC–8 series airplanes: AD 93–20–02, amendment 39–8709 (58 FR 471545, October 18, 1993);
- For certain Boeing Model 747–100 and –200 series airplanes: AD 96–01–51, amendment 39–9492 (61 FR 1703, January 23, 1996); and
- For certain Boeing Model 727–100 and –200 series airplanes: AD 96–16–08, amendment 39–9708 (61 FR 41733, August 12, 1996).

Using the criteria specified in the ATA Final Report and the FAA Memorandum as evaluation guides, the FAA conducted an engineering design review and inspection of an airplane modified in accordance with STCs SA1797SO and SA1798SO (held by Aeronautical Engineers, Inc.). The FAA identified a number of unsafe conditions with the main deck cargo door systems of these STCs. The FAA design review team determined that the design data of these STCs did not include a safety analysis of the main deck cargo door systems.

For airplanes modified in accordance with STC SA1797SO, SA1798SO, or SA1368SO, the FAA considers the following four specific design deficiencies of the main deck cargo door systems to be unsafe:

1. Indication System

The main deck cargo door indication system for STCs SA1368SO and SA1797SO uses warning lights at the door operator's control panel and a light at the flight engineer's panel. These lights indicate the status of the cargo door closed, latched and locked configurations. All three conditions (*i.e.*, door closed, latched, and locked) should be monitored directly so that the door indication system cannot display either "latched" before the door is closed or "locked" before the door is latched. The latch and lock sensors are wired in parallel and are tied to a single indicator light. This design can illuminate the "locked light" on the control panel of the main deck cargo door even if the latches are latched but not locked. If a sequencing error causes the door to latch and lock without being fully closed, the subject indication system, as designed, may not alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with the main deck cargo door unsecured, which could lead to the cargo door opening while the airplane is in flight and possible loss of the airplane.

The light on the flight engineer's panel is labeled "DOOR CARGO" and is displayed in red since it indicates an event that requires immediate pilot action. However, if the flight engineer is temporarily away from his station, a door unsafe warning indication could be missed by the pilots. In addition, the flight engineer could miss such an indication by not scanning the panel. As a result, the pilots and flight engineer could be unaware of, or misinterpret, an unsafe condition and could fail to respond in the correct manner. Therefore, an indicator light should be located in front of and in plain view of

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both pilots since one of the pilot's stations is always occupied during flight operations.

Based on the review of the electrical drawings of the door control and door monitering/annunciation systems and observations from an inspection of an airplane modified in accordance with the subject STCs, the FAA concludes that latent failures (*i.e.*, failures of system components that are not monitored and would go undetected) in the closed, latched, and locked functions may occur and lead to the main deck cargo door opening during flight of the airplane.

The FAA has determined that the main deck cargo door indication system of STCs SA1368SO and SA1797SO also does not meet the improbable level of reliability regarding false indication that is considered adequate for safe operation. Many components are exposed to the environment during cargo loading operations and may be contaminated by precipitation, dirt, and grease, or damaged by foreign objects or cargo loading equipment. As a result, wires, switches, and relays can fail, jam, or short circuit and cause a loss of indication or a false indication to the door operator and flight crew. The design logic of the indication system (*i.e.*, lights which extinguish when the door is locked) could, in the event of latent failures that would extinguish the light, result in an erroneous "safe" indication regardless of actual door status.

STCs SA1368SO and SA1797SO lack a safety analysis of the main deck cargo door systems. As a result, even though the light at the door operator's control panel and the light at the flight engineer's panel annunciate the status of closed, latched, and locked, a safety analysis must be developed to show whether the design of the wiring of the main deck cargo door monitoring system meets all FAA requirements.

2. Means To Visually Inspect the Locking Mechanism

The two view ports installed in accordance with STCs SA1797SO and SA1368SO are located externally on the door for the purpose of viewing locking pins at the No. 2 and No. 7 latch positions of the main deck cargo door. These view ports are intended to allow the flight crew to conduct a visual inspection of the cargo door locking mechanism to determine whether the cargo door is closed, latched, and locked. The view ports are used in conjunction with the door warning system and is intended to provide a suitable back-up in the event that the main deck cargo door warning system malfunctions.

However, because of the location of these view ports on the main deck cargo door, a visual inspection may not result in the detection of certain failures (*e.g.*, bending or shearing of locking pins), and consequently the airplane could be dispatched with the main deck cargo door unsecured. Therefore, the FAA finds that these view ports are not a suitable back-up when the cargo door warning system malfunctions.

As discussed in the ATA Final Report and the FAA Memorandum, there must be a means of directly inspecting each lock or, at a minimum, the locks at each end of the lock shaft of certain designs, such that a failure condition in the lock shaft would be detectable.

3. Means To Prevent Pressurization to an Unsafe Level

Boeing 727–200 airplanes modified to install a cargo door in accordance with STC SA1797SO are configured to utilize a mechanical vent door for the purpose of preventing pressurization of the airplane to an unsafe level in the event the main deck cargo door is not closed, latched, and locked. However, Boeing 727–100 airplanes that have been modified in accordance with STC SA1368SO do not have a vent door design to prevent pressurization as part of the STC.

The results of an FAA inspection of the vent door linkage revealed that the linkage design could exhibit single failures that could cause the vent door to malfunction. A complete safety analysis of the vent door mechanical design is necessary to identify and correct all such malfunctions. No single failure of the mechanisms can defeat the intended function of the vent door system.

4. Powered Lock Systems

The main deck cargo door control system for STCs SA1368SO and SA1797SO that utilizes electrical interlock switches is designed to remove door control power (electrical and hydraulic) prior to flight and to prevent inadvertent door openings. Failure modes have been found in the electrical portion of the door control panel, which, in turn, activates the door control hydraulics. The potential for the occurrence of these failure conditions is increased by the harsh operating environment of freighter airplanes. Door system components are routinely exposed to precipitation, dirt, grease, and foreign object intrusion, all of which increase the likelihood of damage. As a result, wires, switches, and relays have a greater potential to fail or short circuit in such a way as to allow the cargo door to be powered open without an operator's command and regardless of electrical interlock positions.

A systems safety analysis would normally evaluate and resolve the potential for these types of unsafe conditions. However, the FAA has reviewed the design data for STCs SA1368SO and SA1797SO. The FAA finds that the powered lock systems of the main deck cargo door do not comply with criteria specified in Appendix 1 of this AD and considers the design of these systems to be unsafe. The need for a system safety analysis is identified in the ATA Final Report and the FAA Memorandum.

Cargo Barrier

In order to ensure the safety of occupants during emergency landing conditions, the FAA first established in 1934, a set of inertia load factors used to design the structure for restraining items of mass in the fuselage. Because the airplane landing speeds have increased over the years as the fleet has transitioned from propeller to jet design, inertia load factors were changed as specified in CAR part 4b.260. Experience has shown that an airplane designed to this regulation has a reasonable probability of protecting its occupants from serious injury in an emergency landing. The 727 passenger airplane was designed to these criteria which specified an ultimate inertia load requirement of 9g in the forward direction. These criteria were applied to the seats and structure restraining the occupants, including the flight crew, as well as other items of mass in the fuselage.

When the 727 passenger airplane is converted to carry cargo on the main deck, a cargo barrier is required, since most cargo containers and the container-to-floor attaching devices are not designed to withstand emergency landing loads. In fact, the FAA estimates that the container-to-floor attaching devices will only support approximately 1.5g's to 3g's in the forward direction. Without a 9g cargo barrier, it is probable that the loads associated with an emergency landing would cause the cargo to be unrestrained and impact the occupants of the airplane, which could result in serious injury or death.

The structural inadequacy of the cargo barrier was evident to the FAA during its review in October 1997 of a Boeing 727 modified in accordance with STC SA1798SO. The observations revealed that the design of the cargo barrier floor attachment and circumferential supporting structure does not provide adequate strength to withstand the 9g forward inertia load generated by the main deck cargo mass, nor does it provide a load path to effectively transfer the loads from the cargo barrier to the fuselage structure of the airplane. These observations are supported by data contained in "ER 2785, Structural Substantiation of the 50k 9g Bulkhead Restraint System in Support of STC SA1543SO PN 53–1292–401 for the 9g Bulkhead 53–1980–300 Assembly with Upper Attachment Structure, Lower Attachment Structure, Floor Shear Web Structure, Seat Track Splice Fittings, Seat Tracks, and Seat Track Splices," dated September 29, 1996, by M. F. Daniel. Although this report was specific to STC SA1543SO, the FAA has determined that the data are applicable to airplanes modified in accordance with STC SA1798SO because the design principles for attachment of the barriers in both STCs are the same. The report reveals that structural deficiencies were found in the net attach plates and floor attachment structure of the cargo barrier. The data show large negative margins of safety, which indicate that the inertia load capability of the cargo barrier is closer to 2g than the required 9g in the forward direction. From these analyses, it is evident that the cargo barrier would not be capable of preventing serious injury to the occupants during an emergency landing event with the full allowable cargo load.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The FAA has received comments in response to the four NPRM actions (i.e., Rules Dockets 97–NM–232–AD, 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD) that address the same subjects described above for four different sets of cargo modification STCs. Some of these comments addressed only one NPRM, while others addressed all four. Because in most cases the issues raised by the commenters are generally relevant to all four NPRMs, each final rule includes a discussion of all comments received.

Definition of Detailed Visual Inspection

One commenter provided Boeing's definition of a detailed visual inspection. The commenter requests that the FAA approve Boeing's definition as meeting the "detailed visual inspection" definition specified in Note 2 of the NPRM. The commenter states that it has incorporated Boeing's definition into its General Maintenance Manual (GMM), and that it is performing the detailed visual inspection of the main deck cargo door hinge in accordance with the GMM. The commenter also states that acceptance of the existing Boeing's definition will allow for work standardization and consistency.

The FAA partially concurs. The FAA concurs that, for the purpose of this AD, the definition provided by the commenter satisfies the intent of the definition contained in Note 2 of this AD. The detailed inspection definition specified in Note 2 of this AD is a standard definition that is used in all ADs that require a detailed inspection. Therefore, the FAA finds that no change to Note 2 of the final rule is necessary. However, for clarification purposes, the FAA has revised all references to a "detailed visual inspection" in the NPRM to "detailed inspection" in the final rule.

Main Deck Cargo Door Hinge

Two commenters request that the compliance time for accomplishing the detailed visual inspection required by paragraph (a) of the NPRM be revised. One commenter states that the compliance time should include a threshold of "prior to the accumulation of five years since accomplishment of the original conversion." The commenter states that operators of newly modified airplanes should not have to accomplish the detailed visual inspection required by paragraph (a) of the NPRM because it would be unlikely that brand new hinges would develop cracks within 250 flight cycles after being installed. The other commenter states that the compliance time should be revised to "at the next scheduled 'B' check, or 350 cycles after the effective date of the NPRM, whichever occurs first." The commenter states that such an extension would allow the inspection to be accomplished during a regularly scheduled "B" check and would not be disruptive of normal maintenance inspection scheduling.

The FAA partially concurs. The FAA does not concur that the compliance time should be extended from 250 flight cycles to 350 flight cycles. In developing an appropriate compliance time for the detailed inspection required by paragraph (a) of this AD, the FAA considered the degree of urgency associated with addressing the subject unsafe condition; the results from an FAA report, "Damage Tolerance Analysis of 727 Cargo Door Hinge," dated October 10, 1997; and the practical aspect of accomplishing the required inspection within an interval of time that parallels the typical "A" check scheduled maintenance interval for the majority of affected operators.

However, the FAA concurs with the commenter about the unlikelihood of a newly modified airplane developing cracks within 250 flight cycles since installation. Based on the referenced FAA damage tolerance report, the FAA finds that it is unlikely that a significant crack would occur in the hinge within 4,000 flight cycles since installation. Therefore, the FAA finds that operators must accomplish the detailed inspection "prior to accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later." The FAA has revised paragraph (a) of the final rule accordingly.

One commenter requests that a high frequency eddy current (HFEC) inspection be required in paragraph (a) of the NPRM in lieu of the detailed visual inspection. The commenter states that an HFEC inspection should be used because there are no proposed repetitive inspections and a detailed visual inspection can only detect limited crack size.

The FAA does not concur. The FAA finds that accomplishment of the detailed inspection required by paragraph (a) of this AD, in conjunction with the detailed inspection required by paragraph (b)(1) of this AD and the modification required by paragraph (b)(2) of this AD, will ensure the integrity of the door and fuselage structure to which the hinge is attached. Therefore, no change to the final rule is necessary in this regard.

Two commenters request that the FAA revise paragraph (a) of the NPRM to specify that operators will be given "credit" for having previously accomplished the proposed detailed visual inspection of the main deck cargo door hinge in accordance with a method approved by the appropriate Aircraft Certification Office (ACO) prior to the effective date of the final rule. One commenter states that operators who accomplished the subject inspection before the effective date of this AD should not be penalized by being forced to reinspect after the effective date of this AD.

The FAA does not consider that a change to the final rule is necessary to give operators such credit. Operators are given credit for work previously performed by means of the phrase in the "Compliance" section of the AD that states, "Required as indicated, unless accomplished previously." Therefore, in the case of this AD, if the required detailed inspection has been

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accomplished prior to the effective date of this AD in accordance with a method approved by the FAA, this AD does not require that it be repeated.

One commenter requests that the detailed visual inspection required by paragraph (b)(1) of the NPRM be accomplished at the next "C" check after five years have elapsed since the airplane was converted from a passenger- to a cargo-carrying ("freighter") configuration. The commenter also states that a "C" check would allow operators to accomplish the inspection during a heavy maintenance visit.

The FAA does not concur. The FAA finds that accomplishment of the detailed inspection required by paragraph (b)(1) of this AD prior to or concurrently with requirements of paragraph (b)(2) of this AD (*i.e.*, installation of a main deck cargo door hinge) will ensure the structural integrity of mating surfaces of the hinge. However, paragraph (g) of this AD does provide affected operators the opportunity to apply for an adjustment of the compliance time if data are presented to justify such an adjustment.

One commenter requests that the detailed visual inspection required by paragraph (b)(1) of the NPRM apply only to airplanes that have been in service for five or more years since installation of the cargo door, because the likelihood of damage increases with time in service. The commenter states that the compliance time specified in paragraph (b) of the NPRM should start from the date that the modification was installed on the airplane.

The FAA does not concur. The FAA finds that the potential for cracks in the hinge is primarily related to flight cycles (*i.e.*, number of fuselage pressure cycles) and, to a lesser extent, calendar time. Therefore, the FAA has determined that the compliance time specified in paragraph (b) of this AD should be related to flight cycles, not calendar time. No change to the final rule is necessary is this regard.

One commenter requests that the NPRM, Rules Docket 97–NM–234–AD, be revised to reference Kitty Hawk Service Bulletin KHA 727–004, Revision A, as an appropriate source of service information for accomplishing the detailed visual inspection required by paragraphs (a) and (b)(1) of the NPRM and the modification required by paragraph (b)(2) of that NPRM. The commenter states that this service bulletin has been submitted to the FAA for approval and should be approved by the FAA prior to the issuance of the NPRM.

Another commenter states that it has developed and submitted to the FAA for approval a modification that segments the hinge on existing cargo converted airplanes and installs a segmented hinge on the new conversion. From this comment, the FAA infers that the commenter is requesting that the NPRM, Rules Docket 97–NM–233–AD, be revised to reference this modification as a terminating action for the requirements of paragraphs (b) and (c) of that NPRM.

The FAA concurs with the commenters' requests to reference service bulletins that constitute compliance with the requirements of paragraphs (b) and (c) of ADs, Rules Dockets 97–NM–233–AD and 97–NM–234–AD. The FAA has reviewed and approved Kitty Hawk Service Bulletin KHA 727–004, Revision B, dated March 3, 1999, as opposed to the Revision A mentioned by one of the commenters. The FAA also has reviewed and approved Aeronautical Engineers Incorporated (AEI) Service Bulletin AEI01–01, Revision B, dated October 26, 2001. These service bulletins describe the following procedures:

1. Visual inspection of all areas of the hinge for cracks or other signs of damage;
2. Inspection of the mating surfaces of the main deck cargo door hinge and the external doubler for discrepancies (*i.e.*, scratches, gouges, or corrosion);
3. Repair of any crack, damage, or discrepancy, if necessary; and
4. Installation of a main deck cargo door hinge that complies with the applicable requirements of CAR part 4b, including fail-safe requirements.

In addition, the FAA has reviewed and approved Federal Express E.O. Revision Record 7–5230–7–5000, Revision B, release date December 18, 2001, and Pemco Service Bulletin 727–53–0006, Revision 1, dated December 4, 2001. The procedures in these service bulletins are similar to those described in AEI Service Bulletin AEI01–01, Revision B, and Kitty Hawk Service Bulletin KHA 727–004, Revision B.

The FAA finds that accomplishment of the actions specified in the four service bulletins described previously constitutes compliance with the requirements of paragraphs (b) and (c) of final rules, Rules Dockets 97–NM–232–AD, 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD; as applicable. Therefore, the FAA has revised those final rules to include a new note that references the subject service bulletins as a source of service information for accomplishing the actions required by paragraphs (b) and (c) of those final rules; as applicable.

One commenter requests that a subparagraph be added to paragraph (b) of the NPRM to require that the detailed visual inspection required by paragraph (b)(1) of the NPRM be accomplished just prior to final hinge installation during the process of converting an airplane from a passenger- to cargo-carrying ("freighter") configuration. The commenter states that this revision would eliminate its concerns about the installation defects that could cause future problems.

The FAA does not concur. The FAA finds that any FAA-approved corrective action that satisfies the requirements of paragraph (b)(2) of this AD will also address the installation of a hinge during the process of converting a Boeing Model 727 series airplane from a passenger- to a cargo-carrying ("freighter") configuration. Normally, good manufacturing procedures during production should preclude the necessity for the inspection. No change to the final rule is necessary in this regard.

One commenter notes that paragraph (b)(2) of the NPRM references CAR part 4b. The commenter asks, "If the FAA, as evidenced by the awarding of an STC, certified the cargo door hinge, how can the current hinge not meet CAR requirements?" The commenter also asks, "Wasn't the original STC determined to be in compliance with those requirements? If so, what specifically needs to be done to eliminate the FAA safety concerns about hinges that do not appear to have a problem?" The commenter suggests that paragraph (b)(2) of the NPRM be revised to require STC holders to design and make available an acceptable replacement hinge. The commenter states that this suggestion should be a condition for STC holders to continue to hold their STC approval.

From the commenter's questions, the FAA infers that the commenter believes a main deck cargo door hinge with an approved STC is compliant with the requirements of CAR part 4b. The FAA finds that clarification is necessary. Generally, there is a presumption by operators that demonstrations of compliance with the requirements of CAR part 4b is a prerequisite for granting an STC. However, the applicant for any design approval is responsible for compliance with all applicable FAA regulations. The FAA has the discretion to review or otherwise evaluate the applicant's compliance to the degree the FAA considers appropriate in the interest of safety. The normal certification process allows for the review and approval of data by FAA designees. Consequently, the FAA office responsible for the certification of an airplane or modification to an airplane or an aeronautical appliance may not review all details regarding compliance with the appropriate regulations. As explained in the NPRM, the FAA has conducted design reviews and airplane inspections and has identified a potential unsafe condition that relates to the main deck cargo door hinge.

In addition, the FAA does not concur with the commenter's request to revise paragraph (b)(2) of the AD to require STC holders to design and make available an acceptable replacement hinge. The FAA finds that such a requirement is unnecessary, because as previously discussed, the FAA has revised this final rule to include a new note that references the applicable STC holder's service bulletin as a source of service information for accomplishing the actions required by paragraphs (b) and (c) of this final rule.

Main Deck Cargo Door Systems

One commenter requests that the compliance time for accomplishing the Airplane Flight Manual (AFM) revisions required by paragraph (d) of the NPRM be revised from "within 60 days after the effective date of this AD" to "within 60 days after submission of the procedures to the FAA." The commenter states that operators should be able to design revisions to the AFM within the proposed 60 days. However, the commenter believes that the Atlanta ACO will not be able to approve every one of those AFM Supplements within that time period.

The FAA does not concur. Since the release of the NPRM, some of the affected STC holders and operators have already developed AFM procedures acceptable to the FAA. The FAA finds that a 60-day compliance time is sufficient to allow the remaining operators and STC holders to develop revisions to the applicable AFMs and their supplements and for the Atlanta ACO to review and approve those AFM revisions.

One commenter submitted procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 97NM–232AD. The commenter requests that the FAA approve those procedures prior to issuance of the final rule and include those procedures in the final rule. The commenter states that it has completed a Safety Assessment Report for each of the door configurations currently operating in its fleet. The commenter believes the results of the report demonstrate that it is "extremely improbable" that the door will inadvertently open in flight for any reason. Although the analysis does not demonstrate compliance with the "extremely improbable" standard, the commenter states that for a limited time of 36 months the door system, as installed, provides a sufficient level of safety to be considered acceptable with no modification or change in operational procedures.

The FAA partially concurs. In order to gain a better understanding of the referenced Safety Assessment Report, the FAA had a telecon with the commenter on February 19, 2000, to discuss a series of questions, which were provided to the commenter prior to the telecon, about the report. (The minutes of this telecon are included in Rules Docket 97NM–232AD.) In addition to the information that it provided at the telecon, the commenter also provided an analysis of the Safety Assessment Report in a letter, dated February 16, 2000, and a revised table of the Safety Assessment Report in a letter, dated March 6, 2000. The analysis in these letters provided, for a variety of failure modes, the probability of the main deck cargo door not being in the closed, latched, and locked condition prior to dispatch. The analysis showed that the warning systems of the main deck cargo door and the means to prevent pressurization if the door is not closed, latched, and locked, only meet some of the requirements of CAR § 4b.606 and criteria specified in FAA memorandum, dated March 20, 1992 (referenced in the preamble of the NPRM). The commenter also provided Revision 16 of its Boeing B–727 Flight Manual, which further clarifies a change in the procedures for verifying that the main deck cargo door is closed, latched, and locked.

In light of the clarification provided by the commenter, the FAA concurs that the procedures submitted by the commenter provide an adequate level of safety until the requirements of paragraph (e) of this AD have been accomplished, considering the level of probability of occurrence of certain failures of the warning systems of the main deck cargo door and strict adherence to the door checking procedures and associated training requirements. Since issuance of the NPRM, the FAA has reviewed and approved Federal Express Service Bulletin FX727–2001–5230–01, dated July 30, 2001, which describes procedures for ensuring that the main deck cargo door is closed, latched, and locked prior to dispatch. Accomplishment of these actions constitutes compliance with the requirements of paragraph (d) of final rule, Rules Docket 97–NM–232–AD. Therefore, the FAA has revised the final rule, Rules Docket 97–NM–232–AD, to include a new note that references the subject service bulletin as a source of service information for accomplishing the actions required by paragraph (d) of that final rule.

One commenter provided procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 97–NM–233–AD, on airplanes modified in accordance with STC SA1368SO, on which a vent door has not been installed, and on airplanes modified in accordance with STC SA1797SO, on which a vent door has been installed. The commenter states that its procedures will ensure that the main deck cargo door is properly closed, latched, and locked prior to flight.

From this comment, the FAA infers that the commenter is requesting that the FAA approve its procedures as an acceptable means of compliance to the requirements of paragraph (d) of the final rule, Rules Docket 97–NM–233–AD. The FAA does not concur. The FAA finds that any proposed operating procedure must have sufficient validation and verification that the procedures are realistic and designed to minimize possible human error. The procedure also must provide for adequate checks and balances in the event the procedure is not strictly followed. In addition, the commenter did not provide any validation of the operating procedure or results of a safety analysis. However, the FAA may approve requests for an alternative method of compliance (AMOC) under the provisions of paragraph (g) of AD, Rules Docket 97–NM–233–AD, if sufficient data are submitted to substantiate that such a operating procedure would provide an acceptable level of safety.

One commenter provided procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 97–NM–234–AD. In support of its procedures, the commenter states, among other items, that an internal direct visual inspection of the latching and locking system is not possible on Model 727 series airplanes affected by that NPRM because the latching and locking systems are covered by a protective guard/cover that prevents direct viewing of these systems. Removing these covers would expose the latching and locking systems to possible foreign object damage (FOD) or damage from shifting freight. The commenter states that this condition is far more dangerous than a failure of the latching and locking systems. The commenter also states that most of the affected airplanes are equipped with flip up sill protectors, which further block

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the visibility of the bottom of the cargo door area (latch and lock area). The commenter concludes that a visual inspection of the latching and locking mechanisms is not appropriate for the airplane type and would create severe operational disruption with no benefit.

The FAA concurs with the commenter's conclusion that a visual inspection of the latching and locking mechanisms is not appropriate for accomplishing the requirements of paragraph (d) of final rule, Rules Docket 97–NM–234–AD. The FAA notes that paragraph (d) of that final rule does not specifically require a visual inspection of the locking mechanisms of the main deck cargo door after the door is closed, as suggested by the commenter. Since issuance of the NPRM, the FAA has reviewed and approved Kitty Hawk Service Bulletin KHA 727–008, dated January 7, 2000, which describes procedures for ensuring that the main deck cargo door is closed, latched, and locked prior to dispatch. These procedures are identical to those procedures provided by the commenter. Accomplishment of these actions constitutes compliance with the requirements of paragraph (d) of final rule, Rules Docket 97–NM–234–AD. Therefore, the FAA has revised final rule, Rules Docket 97–NM–234–AD, to include a new note to reference the subject service bulletin as a source of service information for accomplishing the actions required by paragraph (d) of that final rule.

One commenter states that the requirements for "a means to prevent pressurization to an unsafe level" and "direct visual examination of all locks" are not included in the certification basis of Model 727 series airplanes and should not be required for the interim action.

From this comment, the FAA infers that the commenter is referring to the interim actions required by paragraph (d) of the NPRM and to extracts from Appendix 1 of this AD, which sets forth the industry-accepted criteria to which the outward opening doors must be shown to comply per paragraph (e) of the NPRM. The FAA does not concur. The commenter has misinterpreted the requirements of paragraph (d) of this AD. Paragraph (d) of this AD requires procedures to ensure that all power is removed from the main deck cargo door prior to dispatch and to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane. This paragraph does not specify or limit what means or actions would be acceptable to the FAA. Operators could submit a means to prevent pressurization to an unsafe level and direct visual inspection of the locks as possible ways to ensure that the main deck cargo door is secure, in accordance with paragraph (d) of this AD. In addition, to comply with paragraph (e) of this AD, the criteria specified in Appendix 1 of this AD must be applied, irrespective of the certification basis of the airplane. Therefore, no change to the final rule is necessary in this regard.

One commenter requests that the proposed compliance time specified in paragraph (e) of the NPRM be revised from "within 36 months after the effective date of this AD" to "at the next 'C' check after the modifications are approved by the Manager, Atlanta ACO." The commenter states that such a compliance time would make everybody (*i.e.*, designer, operator, and FAA) share responsibility for time delays encountered during the modification design and approval process.

The FAA does not concur. Since issuance of the NPRM, the FAA has reviewed and approved two modifications (*i.e.*, National Aircraft Service, Inc. (NASI) STC ST01438CH and Pemco STC ST01270CH) as acceptable means for compliance with the requirements of paragraph (e) of final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD; as applicable. Therefore, the FAA has revised the final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD, to include a new note to reference the applicable STC as a source of service information for accomplishing the requirements of paragraph (e) of those final rules. The FAA finds that a 36-month compliance time for accomplishing the action specified in paragraph (e) of those final rules is not only sufficient for the design of the corrective actions, but also provides adequate time for operators to schedule the installation within an interval of time that parallels a heavy maintenance visit. However, under the provisions of paragraph (g) of final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD, the FAA may approve requests for an adjustment of compliance times if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Main Deck Cargo Barrier

One commenter requests that, before issuance of the final rule, industry and the FAA form a review team to find a way of lowering the costs associated with accomplishing the proposed installation of a 9g crash barrier. The commenter suggests that lower costs could be achieved by fixing the existing barrier (*e.g.*, the loads could be spread by the addition of structural reinforcement attachment angles) or designing a new barrier. The commenter states that the Ventura Aerospace, Inc., cargo barrier STC ST00848LA, which is an approved means of compliance with the requirements of paragraph (f) of NPRMs, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD, is an adequate barrier; however, the parts and installation cost estimates for the installation in those NPRMs are too low. The commenter gave examples of various actions and associated work hours that would be necessary to accomplish the proposed installation of the Ventura 9g crash barrier.

The FAA does not concur with the commenter that a review team is necessary, and that the cost estimates of NPRMs, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD, for accomplishing the installation of a main deck cargo barrier are too low. The FAA acknowledges that installation of a Ventura Aerospace, Inc., cargo barrier STC ST00848LA is an approved means of compliance with the requirements of paragraph (f) of final rules, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD. However, the cost estimates in the subject NPRMs were not specifically for installation of the subject Ventura 9g crash barrier, but were for installation of a 9g crash barrier that complies with the applicable requirements of CAR part 4b. The installation cost estimate of the NPRMs was provided to the FAA by Pemco based on the best data available to date.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. Furthermore, because the FAA generally attempts to impose compliance times that coincide with operators' scheduled maintenance, the FAA considers it inappropriate to attribute the costs associated with aircraft "downtime" to the cost of the AD, because, normally, compliance with the AD will not necessitate any additional downtime beyond that of a regularly scheduled maintenance visit.

Public Meeting

Several commenters request that the FAA hold a public meeting prior to the issuance of the final rule in the event that the FAA does not find their procedures acceptable for compliance with the requirements of paragraph (d) of the NPRM. The commenters state that such a meeting would provide a forum for productive face-to-face discussions similar to the process used by industry's B–727 Working Group.

The FAA does not concur. As discussed previously, the FAA has accepted some of the procedures submitted by the commenters. Also, in consideration of the differing configurations of the main deck cargo door systems between the various affected STCs, a public meeting to discuss the AD may be significantly restricted in some cases because of the proprietary design and data issues. However, the FAA is available to discuss any particular proposal for procedures specific to the airplane configuration with each of the affected STC holders or operators. Further, the FAA may approve requests for an AMOC under the provisions of paragraph (g) of this AD if sufficient data are submitted to substantiate that such a procedure would provide an acceptable level of safety. Therefore, the FAA finds that no public meeting is necessary.

Issue Separate ADs

One commenter requests that the NPRM be split into separate ADs for each issue—main deck cargo door hinge, main deck cargo door systems, and 9g crash barrier. The commenter states that multiple actions addressed by a single AD make managing the actions very unwieldy and complicated.

The FAA does not concur. The FAA is not convinced that separate ADs for each issue would resolve the complexity of this AD. The FAA has determined that a less burdensome approach is to issue only one AD for each STC holder that addresses the potential unsafe conditions that relate to the main deck cargo door hinge, main deck cargo door systems, and main deck cargo barrier. In addition, operators have already initiated actions to accomplish the requirements of this AD without apparent complications.

ACO Approval

One commenter requests that the actions required by the NPRM that must be accomplished in accordance with a method approved by the Manager, Atlanta ACO, be approved by the Manager, Transport Airplane Directorate. The commenter states that the affected Boeing Model 727 series airplanes are not small airplanes, and that the approving authority should be someone in an ACO from the Transport Airplane Directorate who understands structural repairs of transport category airplanes.

The FAA does not concur. Since the subject STCs were issued by the Atlanta ACO, that office has certificate responsibility for the airplanes affected by this AD. The Atlanta ACO is most cognizant of the design details of the subject STCs and, therefore is more able to address each operator's specific issues for complying with paragraph (d) of this AD. The Manager of the Atlanta ACO will coordinate the review of the submittals with the Transport Airplane Directorate, which has established a team consisting of members from several ACOs to review all requests in accordance with paragraphs (b)(1), (b)(2), (c), (d), (e), and (f) of this AD.

Principal Maintenance Inspector (PMI) or Principal Operations Inspector (POI) Approval

One commenter requests that the FAA allow the individual operator's local PMI or POI to approve the AFM procedures for ensuring that the main deck cargo door is closed, latched, and locked required by the NPRM, or provide an option in the NPRM that allows the procedures to be added to the airplane operator manual (AOM), if applicable. The commenter states that such approval would ensure that the approval process is accomplished quickly.

The FAA does not concur. Paragraph (d) of this AD requires comprehensive engineering evaluation in consideration of the applicable requirements of CAR part 4b and the criteria specified in Appendix 1 of this AD. Consequently, the evaluation must be conducted by the Manager, Atlanta ACO, to determine an acceptable level of safety. The PMI or POI for the air carrier is normally not familiar with all the design considerations provided by the requirements of CAR part 4b and Appendix 1 of this AD.

Cost

One commenter requests that an industry/FAA team determine a less costly method to fix the existing barriers to satisfy the FAA's concerns. For example, the loads could be spread by the addition of structural reinforcement attachment angles. The commenter states that replacing the barrier is an extreme measure, and that there must be some kind of structural additions that could be made to the existing barrier to make it acceptable at a much lower cost.

The FAA partially concurs. The STC holders and operators are certainly free to form an industry team to find common solutions. However, the FAA's reason for participation would not be for the purpose of developing a less costly design, but rather to ensure that the final design is compliant with the applicable regulations.

One commenter requests that the FAA require STC holders to design the correction for the NPRM as a warranty issue. The commenter states that small operators, who do not have in-house engineering capability, will be at a great disadvantage when attempting to design remedies for this NPRM. The commenter also states that this NPRM places a substantial financial and operational burden on "small entities" just from the standpoint of not having a remedy already designed and approved.

The FAA does not concur. Any warranty agreements between the operator and an STC holder are not the responsibility of the FAA. The burden on small entities is addressed in the Regulatory Flexibility Analysis and Summary and Regulatory Sections of this AD.

Descriptive Language of Preamble

One commenter states that it found the following four factual inaccuracies in the NPRM, Rules Docket 97–NM–232–AD, and requests that the FAA correct them.

1. The commenter notes that paragraph six under the heading "Main Deck Cargo Door System" reads, "* * *" However, the FAA is aware of two events in which the main deck cargo door opened during flight. These events occurred on FedEx passenger/freighter conversion STC's in October 1996, and March 1995." The commenter states that it does not have any information or records indicating that the main deck cargo door opened in flight in October 1996 or March 1995. In the March 1995 incident, the commenter contends that the door, upon landing, was found to be closed and locked, and that the lock bar was found to be in the unlocked position. The commenter states that it found a control valve electrical connection of the main deck cargo door to be disconnected, and that the door operated normally once it was reconnected.

2. The commenter disagrees with the sentence under the heading "1. Indication System" in the preamble of the NPRM that reads, "Both of these lights indicate the status of the cargo door latch and lock positions, but do not indicate either the door open or closed status." The commenter states that its system does monitor and indicate the door closed status. If the door closed switch is not depressed, the light will stay illuminated, even if the door lock

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latches have rolled and the lock bar has moved into place.

3. The commenter notes that paragraph two under the heading "2. Means to Visually Inspect the Locking Mechanism" reads, "* * * Although an indicator flag attached to the lock shaft can be seen through the view port when the shaft is in the 'locked' position, a failure between the shaft and the pins could go undetected, because this flag is attached to the lock shaft and not the actual lock pins."

The commenter states that the flag is attached to the lock bar on Model 727–100 series airplanes. The lock plates are also bolted directly to the lock bar (no linkages). Therefore, the commenter contends that both the flag and lock plates become integrated parts of the lock bar.

In addition, the commenter states that the flag is attached to a lock pin on Model 727–200 series airplanes, and that the lock pin linkage does not have springs or an actuator attached to it. The commenter also contends that movement would have to be transmitted through the lock bar. The commenter further states that the stress analysis for Model 727–200 series airplanes shows high margins of safety in yield, bending, and shear for the locking hinges and fasteners.

4. The commenter notes that paragraph three under the heading "3. Means to Prevent Pressurization to an Unsafe Level" in the preamble of the NPRM reads, "Boeing 727–100 airplanes modified in accordance with the subject STC's have no means of preventing pressurization in the event that the main deck cargo door is not closed, latched, and locked, and therefore, have a higher risk of a cargo door opening while the airplane is in flight and possible loss of the airplane." The commenter states that the system used on Model 727–100 series airplanes has a relay that drives the ground venturi system, which in turns opens the outflow valve when the main deck cargo door is not closed and locked, hence pressurization is not possible.

For item 1 above, the FAA partially agrees with the commenter. In the preamble of the NPRM, the FAA incorrectly referenced October 1996 as a date of a door opening event. The correct date is December 9, 1994. The pilots' report (which is included in Rules Docket 97–NM–232–AD) on this event states that shortly after takeoff the warning light for the main deck cargo door illuminated. Following the open in-flight procedures for the main deck cargo door, the flight crew safely returned the airplane to the departure airport. The post-flight inspection revealed that the main deck cargo door opened approximately two feet. Also, in reference to the March event where the commenter states that the door did not open in flight, a verbal report (*i.e.*, "FAA Freighter Conversion STC Review Report Number 2, dated October 16–18, 1996," which is included in Rules Docket 97–NM–232–AD) from the maintenance organization of the commenter's company states that the main deck cargo door was unlocked, and that the door was flush with the exterior of the airplane. The report on this latter event states that, following departure and at 17,000 feet, the warning light of the main deck cargo door came on followed by cabin altitude climbing. While it is not clear to the FAA whether or not the main deck cargo door opened while the airplane was in flight, the condition for possible door opening (*i.e.*, rotation of the lock bar to the unlocked position in flight) did occur, which could have led to a door opening while the airplane is in flight. Therefore, the FAA has revised the "Background" Section ("Main Deck Cargo Door Systems" subsection) in the preamble of final rule, Rules Docket 97–NM–232–AD, to correct the date of the subject event.

For items 2. and 4. above, the FAA agrees with the commenter's correction to items 2. and 4. above and has revised the "Background" Section ("Indication System" and "Means to Prevent Pressurization to an Unsafe Level" subsections) in the preamble of final rule, Rules Docket 97–NM–232–AD, accordingly. However, we find that the correction to item 2. does not alleviate the unsafe design features that were single point failures in the door control/outflow valve interface, which could result in the valve not sensing and responding to an unsafe door condition. With the current design, it is possible that the outflow valve or associated controllers may not perform their intended function when utilized for the purpose of preventing pressurization of the airplane in the event of an unsecured door. This condition could result in cabin pressurization forcing an unsecured door open while the airplane is in flight and possible loss of the airplane.

Further, we find that the correction to item 4. does not alleviate the safety concern regarding the design feature where ALL three conditions (*i.e.*, door closed, latched, and locked) are not directly monitored. If a sequencing error caused the door to latch and lock without being fully closed, the subject indication system, as designed, would not directly alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with an unsecured main deck cargo door, which could lead to the cargo door opening while the airplane is in flight and possible loss of the airplane.

For item 3. above, the FAA does not concur that the attachment of the "flag" to the lock bar on Model 727–100 series airplanes is sufficient to indicate the position of the lock pins, even though the lock pins are bolted to the lock bar. The FAA has determined that any failure condition of a lock pin would not be detected when observing the position of the flag through the view port.

Explanation of Change to Unsafe Condition

To more accurately reflect the identified unsafe condition of this AD, the FAA has revised the final rule where applicable to read, "to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants."

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Regulatory Evaluation Summary

This analysis estimates the costs of AD, Rules Docket 97–NM–233–AD, which requires installation of a fail-safe hinge; redesigned warning and power control systems of the main deck cargo door; and a 9g crash barrier on Boeing Model 727 series airplanes that have been modified in accordance with certain STCs held by AEI. As discussed above, the FAA has determined that:

1. The main deck cargo door hinge is not fail-safe;
2. Certain control systems of the main deck cargo door do not provide an adequate level of safety; and
3. The 9g crash barrier is not structurally adequate during a minor crash landing.

It is estimated that 78 U.S.-registered Boeing Model 727 series airplanes will

be affected by this AD. The following discussion addresses, in sequence, the actions in this rulemaking and the estimated cost associated with each of these actions. An analysis of the costs is also available in Rules Docket 97–NM–233–AD.

1. Main Deck Cargo Door Hinge

Since unsafe conditions have been identified that are likely to exist or develop on other modified Boeing Model 727 series airplanes, paragraph (a) of this AD requires, prior to the accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later, a detailed inspection of the external surface of the main deck cargo door hinge to detect cracks. AEI estimates that this inspection will take 2 work hours per airplane. At a mechanic's burdened labor rate of $60 per work hour, the cost per airplane will be $120 or $9,360 for the 78 affected Boeing Model 727 series airplanes.

Paragraph (b)(1) of this AD requires, within 36 months or 4,000 cycles after the effective date of the AD, whichever occurs first, a detailed inspection of the mating surfaces of both the hinge and the door skin, and the hinge and the external fuselage doubler underlying the hinge. The FAA estimates that compliance with this inspection will take 200 work hours per airplane, and that the average labor rate is $60 per work hour. The estimated cost per airplane will be $12,000, or $936,000 for the affected fleet of 78 Boeing Model 727 series airplanes.

Paragraph (b)(2) of the AD requires the installation of a fail-safe door hinge. The compliance time for this installation is also within 36 months or 4,000 cycles after the effective date of this AD, whichever occurs first. AEI estimates that the cost to design and certificate such a hinge will be $25,000, and that the modification work for the hinge will take 50 hours of work per airplane. The modification will include the cutting of the existing hinge into an acceptable number of sections, so that it results in a fail-safe door hinge. Total compliance cost for this provision for the affected fleet of 78 airplanes is estimated to be $259,000.

Paragraph (c) of the AD requires that, if any crack or discrepancy is detected during the inspection required by paragraph (a) or (b)(1) of the AD, a repair must be made prior to further flight. The cost of this repair is not attributable to this AD.

For purposes of analysis, the FAA assumes an effective date of some time in the fourth quarter of 2002. The FAA also assumes that the installation of the main deck cargo door hinge (paragraph (b)(2) of this AD) will be accomplished at the same time as the detailed inspection of fastener holes (paragraph (b)(1) of this AD). The FAA also assumes that the affected carriers will perform these two activities uniformly throughout the 36-month compliance time. Finally, the certification cost for the main deck cargo door hinge is expected to be incurred within the first 6 months after the effective date of the AD. Consequently, the cost to comply with paragraphs (a) through (c) of this AD is estimated to be $1.2 million, in undiscounted values, or $1.1 million, discounted to present value (at 7 percent).

2. Main Deck Cargo Door Systems

Work on the main deck cargo door systems relates to paragraphs (d) and (e) of the AD. Paragraph (d) of this AD requires, within 60 days after the effective date of this AD, revising the Limitations Section of the FAA-approved AFM Supplement to provide the flight crew with procedures to ensure that all power is removed from the main deck cargo door prior to dispatch of the airplane, and that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane. These procedures are expected to include an inspection (until the incorporation of the redesigned main deck cargo door systems), described in the next paragraph. In addition, paragraph (d) of the AD requires the installation of any associated placards.

The FAA assumes that Boeing Model 727 series airplanes, converted under an AEI STC, will have an acceptable pressurization vent door installed, which operators could use to visually determine whether the vent is in the proper position prior to dispatch, indicating that the door is closed, latched, and locked. The FAA estimates that this activity will take no more than 30 minutes. Assuming that each affected airplane flies one flight per day and 260 days per year, the cost per inspection is estimated to be $30 (for 30 minutes), or $7,800 per airplane per year, until the door system is changed. This results in a total cost of $1,825,200 undiscounted, for the affected fleet, over 36 months.

Paragraph (e) of the AD requires, within 36 months after the effective date of the AD, incorporation of redesigned main deck cargo door systems. The FAA estimates that the development and certification of the system will cost $25,000. Modification parts will cost $5,000 per airplane, and that labor costs will be $6,000 per airplane for 100 hours of work. The FAA assumes that the operators will incorporate redesigned main deck cargo door systems during regularly scheduled maintenance. The total costs of installing redesigned main deck cargo door systems, including certification, parts, and labor are estimated to be $883,000 for the affected fleet over the 36-month compliance time.

The total estimated cost to comply with the requirements for incorporating main deck cargo door systems is $2.7 million, undiscounted, or $2.4 million, discounted to present value.

3. 9g Crash Barrier

Paragraph (f) of the AD requires, within 36 months or 4,000 flight cycles after the effective date of the AD, whichever occurs first, installation of a main deck cargo barrier that complies with the applicable requirements of CAR part 4b. Ventura Aerospace holds an STC for an approved 9g crash barrier, and the FAA expects that operators whose airplanes have been modified in accordance with AEI STCs will purchase 9g crash barrier kits from Ventura Aerospace. In response to one public comment and based on new data, there was an increase in the cost estimate for the Ventura 9g barrier in this final regulatory evaluation from that shown in the NPRM. The cost of a barrier kit is $67,000, while labor cost (to install the 9g crash barrier) is estimated at $33,000 per airplane (for 550 hours of work). Also, while the 9g crash barrier is installed, an affected airplane is expected to be out of service for 7 additional days, at an estimated out-of-service cost of $15,000 per day. The commenter estimated the cost per airplane, for the Ventura 9g crash barrier, at $193,500. With the new data, the FAA estimated the cost per airplane (for the Ventura 9g barrier) at $205,000.

The FAA assumes that operators will install 9g crash barriers uniformly over the 36-month compliance time. The total cost for the 78 airplanes to comply with paragraph (f) of the AD is estimated to be $16.0 million, undiscounted, or $14.0 million discounted to present value.

4. AMOC and Special Flight Permits

Paragraph (g) of the AD allows an AMOC or adjustment of compliance time that provides an acceptable level of safety if approved by the Manager of the Atlanta ACO. The FAA is unable to determine the cost of an AMOC, but assumes that it will be less than the cost of complying with the provisions in paragraphs (a) through (f) of the AD.

Paragraph (h) of the AD allows special flight permits in accordance with the

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regulations to operate an affected airplane to a location where the requirements of the AD could be accomplished.

5. Total Cost of the AD

The FAA estimates that the total compliance cost of the AD will be $19.9 million, undiscounted, or $17.4 million discounted to present value.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA of 1980 requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA of 1980 covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform an assessment of all rules to determine whether the rule will have a significant economic impact on a substantial number of small entities. If the determination is that the rule will have such an impact, the agency must prepare a regulatory flexibility analysis as described in the RFA of 1980. However, if after an assessment of a proposed or final rule, an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA of 1980 provides that the head of the agency may so certify. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Issues To Be Addressed in a Final Regulatory Flexibility Analysis (FRFA)

The central focus of the FRFA, like the initial Regulatory Flexibility Analysis, is the requirement that agencies evaluate the impact of a rule on small entities and analyze regulatory alternatives that minimize the impact when there will be a significant economics impact on a substantial number of small entities.

The requirements, outlined in section 604(a)(1–5) are listed and discussed below:

1. A succinct statement of the need for, and objectives of, the rule:

The FAA has determined that the main deck cargo door hinge is not fail-safe; certain main deck cargo door control systems do not provide an adequate level of safety; and the main deck cargo barrier is not structurally adequate during a minor crash landing. The actions specified in the AD are intended to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.

Under the United States Code (U.S.C.), the FAA Administrator is required to consider the following matter, among others, as being in the public interest: assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce (*see* 49 U.S.C. 44101(d)). Forty-nine U.S.C. 44701(a) provides broad rulemaking authority to "promote safe flight of civil aircraft in air commerce." Accordingly, this AD will amend Title 14 of the CFRs to require operators of Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying configuration to correct the identified unsafe condition.

2. A summary of the significant issues raised by the public comments in response to the initial Regulatory Flexibility Analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments:

There was one public comment that related to small entities/operators. That comment indicated that the designing of remedies to address the items required by the AD would create a burden for those small operators who do not have in-house engineering capability to design such remedies.

In response, the FAA states that the STC holders, including AEI, have developed solutions for the items required by the AD, which will be available to small operators.

3. A description of, and an estimate of the number of, small entities to which the rule will apply or an explanation of why no such estimate is available:

The entities affected by the rule are those operating U.S.-registered converted Boeing Model 727 series airplanes. The FAA estimates that 24 carriers operate airplanes that will be affected by this AD. Six of these operators are foreign entities. Of the U.S. operators, 5 entities are large (they employ more than 1,500 people). The estimated discounted cost of the AD, for the 78 affected airplanes, is $17.4 million ($19.9 million, undiscounted). This translates into a discounted cost per affected airplane of about $223,000, or about $85,000 in (average) annualized cost per affected airplane (over the 36-month compliance time).

The annualized cost of the AD for each affected small operator was estimated by multiplying the number of affected airplanes per operator by the annualized cost per airplane. This cost was then compared to (divided by) the annual revenues (mostly for 1998) of the affected small operators. With regard to revenue data, these data were not easily available for all carriers. In some cases, the annual revenue estimate was the midpoint of a range (provided in a public source).

The resulting ratio, for each affected small operator, showed that in five cases, this ratio was either equal to, or exceeded, one percent. In two cases, the ratio exceeded three percent. Based on these estimates, the FAA has determined that the rule will have a significant impact on a substantial number of small entities.

4. A description of the projected reporting, record-keeping, and other compliance requirements of the rule, including an estimate of the classes of small entities, which will be subject to the requirement, and the type of professional skills necessary for preparation of the report or record:

With two minor exceptions, the rule will not mandate additional reporting or record-keeping. The rule will not overlap, duplicate, or conflict with existing Federal rules.

The AD will require operators to report results of the visual inspection of the main deck cargo door hinge and the visual inspection of the fastener holes common to the main deck cargo door hinge and underlying door and fuselage structure. The cost of these reports is negligible.

5. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected:

The FAA acknowledges that the rule will impose a financial requirement on small entities. Therefore, the agency considered alternatives to the rule. These alternatives are:

- Exclude small entities; and
- Extend the compliance date for small entities.

The FAA has determined that the option to exclude small entities from the requirements of the rule is not justified. The unsafe condition that exists on an affected Boeing Model 727 series airplane operated by a small entity is as potentially catastrophic as that on an affected Model 727 series airplane operated by a large entity.

The FAA also considered options to extend the compliance period for small operators. The Boeing 727 Freighter Industry Working Group, which includes all affected U.S. operators (including small entities), provided input on the incorporation of corrective actions for the door hinge, door systems, and 9g crash barrier issues. The FAA initially proposed a compliance time of 28 months, consistent with a related AD dealing with the cargo floor structure on the same airplanes. The working group requested an extension to 36 months. Following review of the working group's request, the FAA finds 36 months to be an acceptable compliance time. Therefore, the FAA has, in fact, considered and accepted this alternative and has accommodated small entity concerns about compliance time.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Such a mandate is deemed to be a "significant regulatory action."

This AD does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

Federalism Implications

The regulations of this AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this AD will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–20 Boeing: Amendment 39–12859. Docket 97–NM–233–AD.

Applicability: Model 727 series airplanes that have been converted from a passenger-to a cargo-carrying ("freighter") configuration in accordance with Supplemental Type Certificate (STC) SA1368SO, SA1797SO, or SA1798SO; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants; accomplish the following:

Actions Addressing the Main Deck Cargo Door Hinge

(a) Prior to the accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed inspection of the external surface of the main deck cargo door hinge (both fuselage and door side hinge elements) to detect cracks.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Perform a detailed inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge to detect cracks or other discrepancies (*e.g.*, double or closely drilled holes, corrosion, chips, scratches, or gouges). The detailed inspection shall be accomplished in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. The requirements of this paragraph may be accomplished prior to or concurrently with the requirements of paragraph (b)(2) of this AD.

(2) Install a main deck cargo door hinge that complies with the applicable requirements of Civil Air Regulations (CAR) part 4b, including fail-safe requirements, in accordance with a method approved by the Manager, Atlanta ACO.

(c) If any crack or discrepancy is detected during the detailed inspection required by either paragraph (a) or (b)(1) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta ACO.

Note 3: Accomplishment of the actions in accordance with Aeronautical Engineers Incorporated (AEI) Service Bulletin AEI01–01, Revision B, dated October 26, 2001, constitutes compliance with the requirements of paragraphs (b) and (c) of this AD.

Actions Addressing the Main Deck Cargo Door Systems

(d) Within 60 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) Supplement by inserting therein procedures to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane, and install any associated placards. The AFM revision procedures and installation of any associated placards shall be accomplished in accordance with a method approved by the Manager, Atlanta ACO.

(e) Within 36 months after the effective date of this AD, incorporate redesigned main deck cargo door systems (*e.g.*, warning/monitoring, power control, view ports, and means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked), including any associated procedures and placards, that comply with the applicable requirements of CAR part 4b and criteria specified in Appendix 1 of this AD; in accordance with

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a method approved by the Manager, Atlanta ACO.

Note 4: The design data submitted for approval should include a Systems Safety Analysis and Instructions for Continued Airworthiness that are acceptable to the Manager, Atlanta ACO.

Actions Addressing the Main Deck Cargo Barrier

(f) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, install a main deck cargo barrier that complies with the applicable requirements of CAR part 4b, in accordance with a method approved by the Manager, Atlanta ACO.

Note 5: The maximum main deck total payload that can be carried is limited to the lesser of the approved cargo barrier weight limit, weight permitted by the approved maximum zero fuel weight, weight permitted by the approved main deck position weights, weight permitted by the approved main deck running load or distributed load limitations, or approved cumulative zone or fuselage monocoque structural loading limitations (including lower hold cargo).

Note 6: Installation of a Ventura Aerospace Inc. cargo barrier STC ST00848LA is an approved means of compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(i) This amendment becomes effective on September 19, 2002.

Appendix 1

Excerpt From an FAA Memorandum to the Director-Airworthiness and Technical Standards of ATA, Dated March 20, 1992

"(1) *Indication System:* (a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be amber unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be red and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

(2) *Means to Visually Inspect the Locking Mechanism:* There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

(3) *Means to Prevent Pressurization:* All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) *Lock Strength:* Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) *Power Availability:* All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) *Powered Lock Systems:* For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable."

Issued in Renton, Washington, on August 6, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20507 Filed 8–14–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–234–AD; Amendment 39–12860; AD 2002–16–21]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance with Supplemental Type Certificate ST00015AT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger- to a cargo-carrying ("freighter") configuration, that requires, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g crash barrier. This amendment is prompted by the FAA's determination that the main deck cargo door hinge is not fail-safe; that certain main deck cargo door control systems do not provide an adequate level of safety; and that the main deck cargo barrier is not structurally adequate during an emergency landing. The actions specified by this AD are intended to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.

DATES: Effective September 19, 2002.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Michael O'Neil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5320; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration was published in the **Federal Register** on November 12, 1999 (64 FR 61540). That action proposed to require, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g crash barrier.

Background

For the convenience of the reader, certain excerpts and information, below, from the following sections of the preamble of the notice of proposed rulemaking (NPRM) are provided in this final rule: Discussion, Main Deck Cargo Door Hinge, Main Deck Cargo Door Systems, and Cargo Restraint Barrier.

Supplemental Type Certificate (STC) ST00015AT (held by Stambaugh Aviation Services) specifies a design for a main deck cargo door, associated cargo door cutout, door systems, and Class "E" cargo interior with a cargo barrier. As discussed in NPRM, Rules Docket No. 97–NM–80–AD (the final rule, AD 98–26–20, amendment 39–10963, was published in the **Federal Register** on January 12, 1999 (64 FR 2038)), which is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration, the FAA has conducted a design review of Boeing Model 727 series airplanes modified in accordance with STC ST00015AT and has identified several potential unsafe conditions. (Results of this design review are contained in "FAA Freighter Conversion STC Review, Report Number 4, dated February 6, 1997," hereinafter referred to as "the Design Review Report," which is included in the Rules Docket 97–NM–234–AD.) This NPRM proposes corrective action for three of those potential unsafe conditions that relate to the following three areas: main deck cargo door hinge, main deck cargo door systems, and main deck cargo barrier.

Main Deck Cargo Door Hinge

In order to avoid catastrophic structural failure, it has been a typical industry approach to design outward opening cargo doors and their attaching structure to be fail-safe (*i.e.*, designed so that if a single structural element fails, other structural elements are able to carry the redistributed load). Another potential design approach is safe-life, where the critical structure is shown by analyses and/or tests to be capable of withstanding the repeated loads of variable magnitude expected in service for a specific service life. Safe-life is usually not used on critical structure because it is difficult to account for manufacturing or in-service accidental damage. For this reason, plus the fact that none of the STC holders have provided data in support of this approach, the safe-life approach will not be discussed further regarding the design and construction of the main deck cargo door hinge.

Structural elements such as the main deck cargo door hinge are subject to severe in-service operating conditions that could result in corrosion, binding, or seizure of the hinge. These conditions, in addition to the normal operational loads, can lead to early and unpredictable fatigue cracking. If a main deck cargo door hinge is not a fail-safe design, a fatigue crack could initiate and propagate longitudinally undetected, which could lead to a complete hinge failure. A possible consequence of this undetected failure is the opening of the main deck cargo door while the airplane is in flight. Service experience indicates that the opening of a cargo door while the airplane is in flight can be extremely hazardous in a variety of ways including possible loss of flight control, severe structural damage, or rapid decompression, any of which could lead to loss of the airplane.

The design of the main deck cargo door hinge must be in compliance with Civil Air Regulations (CAR) part 4b, including CAR section 4b.270, which requires, in part, that catastrophic failure or excessive structural deformation, which could adversely affect the flight characteristics of the airplane, is not probable after fatigue failure or obvious partial failure of a single principal structural element. One common feature of a fail-safe hinge design is a division of the hinge into multiple segments such that, following failure of any one segment, the remaining segments would support the redistributed load.

The main deck cargo door installed in accordance with STC ST00015AT is supported by latches along the bottom of the door and a two-segment hinge along the top. This two-segment hinge is considered a critical structural element for this STC. A crack that initiates and propagates longitudinally along either segment of the hinge will eventually result in failure of the entire hinge, because the remaining segment of the hinge is unable to support the redistributed loads. Failure of the entire hinge can result in the opening of the main deck cargo door while the airplane is in flight.

On other Boeing Model 727 series airplanes modified in accordance with similar STCs, inspections revealed a number of fasteners with both short edge margins and short spacing in the cargo door cutout external doublers. Some edge margins were as small as one fastener diameter. Fasteners that are placed too close to the edge of a structural member or spaced too close to an adjacent fastener can result in inadequate joint strength and stress concentrations, which may result in fatigue cracking of the skin. If such defects were to exist in the structure of the door or the fuselage to which the main deck cargo door hinge is attached, the attachment of the hinge could fail, and consequently cause the door to open while the airplane is in flight.

Main Deck Cargo Door Systems

In early 1989, two transport airplane accidents were attributed to cargo doors coming open during flight. The first accident involved a Boeing 747 series airplane in which the cargo door separated from the airplane, and damaged the fuselage structure, engines, and passenger cabin. The second accident involved a McDonnell Douglas DC–9 series airplane in which the cargo door opened but did not separate from its hinge. The open door disturbed the airflow over the empennage, which resulted in loss of flight control and consequent loss of the airplane. Although cargo doors have opened occasionally without mishap during takeoff, these two accidents serve to highlight the extreme potential dangers associated with the opening of a cargo door while the airplane is in flight.

As a result of these cargo door opening accidents, the Air Transport Association (ATA) of America formed a task force, including representatives of the FAA, to review the design, manufacture, maintenance, and operation of airplanes fitted with outward opening cargo doors, and to make recommendations to prevent inadvertent cargo door openings while the airplane is in flight. A design working group was tasked with reviewing 14 CFR part 25.783 (and its accompanying Advisory Circular (AC) 25.783–1, dated December 10, 1986) with the intent of clarifying its contents and recommending revisions to enhance future cargo door designs. This design group also was tasked with providing specific recommendations regarding design criteria to be applied to existing outward opening cargo doors to ensure that inadvertent openings would not occur in the current transport category fleet of airplanes.

The ATA task force made its recommendations in the "ATA Cargo Door Task Force Final Report," dated May 15, 1991 (hereinafter referred to as "the ATA Final Report"). On March 20, 1992, the FAA issued a memorandum to the Director-Airworthiness and Technical Standards of ATA (hereinafter referred to as "the FAA Memorandum"), acknowledging ATA's recommendations and providing additional guidance for purposes of assessing the continuing airworthiness of existing designs of outward opening

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doors. The FAA Memorandum was not intended to upgrade the certification basis of the various airplanes, but rather to identify criteria to evaluate potential unsafe conditions identified on in-service airplanes. Appendix 1 of this AD contains the specific paragraphs from the FAA Memorandum that set forth the criteria to which the outward opening doors should be shown to comply.

Applying the applicable requirements of CAR part 4b and design criteria provided by the FAA Memorandum, the FAA has reviewed the original type design of major transport airplanes, including Boeing 727 airplanes equipped with outward opening doors, for any design deficiency or service difficulty. Based on that review, the FAA identified unsafe conditions and issued, among others, the following ADs:

- For certain McDonnell Douglas Model DC–9 series airplanes: AD 89–11–02, amendment 39–6216 (54 FR 21416, May 18, 1989);
- For all Boeing Model 747 series airplanes: AD 90–09–06, amendment 39–6581 (55 FR 15217, April 23, 1990);
- For certain McDonnell Douglas Model DC–8 series airplanes: AD 93–20–02, amendment 39–8709 (58 FR 471545, October 18, 1993);
- For certain Boeing Model 747–100 and –200 series airplanes: AD 96–01–51, amendment 39–9492 (61 FR 1703, January 23, 1996); and
- For certain Boeing Model 727–100 and –200 series airplanes: AD 96–16–08, amendment 39–9708 (61 FR 41733, August 12, 1996).

Using the criteria specified in the ATA Final Report and the FAA Memorandum as evaluation guides, the FAA conducted an engineering design review and inspection of an airplane modified in accordance with STC ST00015AT (held by Stambaugh Aviation Services). The FAA identified a number of design features of the main deck cargo door systems of this STC that are unsafe and do not meet the criteria specified in the ATA Final Report and the FAA Memorandum. The FAA design review team determined that the design data of this STC did not include an adequate safety analysis of the main deck cargo door systems.

For airplanes modified in accordance with STC ST00015AT, the FAA considers the following three specific design deficiencies of the main deck cargo door systems to be unsafe:

1. Means To Visually Inspect the Locking Mechanism

The three view ports installed in accordance with STC ST00015AT are located for viewing locking pins at the No. 2, No. 4, and No. 6 latch positions of the main deck cargo door. These view ports are intended to allow the flight crew to conduct a visual inspection of the cargo door locking mechanism to determine whether or not the cargo door is closed, latched, and locked. The view ports are used in conjunction with the door warning system and should provide a suitable back-up for confirming that the door is closed, latched and locked in the event that the main deck cargo door warning system malfunctions.

However, during the FAA design review, it was determined that these view ports are installed at an angle; therefore, a visual inspection of the locking pins is not possible. Therefore, the FAA finds that these view ports cannot be used to confirm that the door is closed, latched, and locked when the cargo door warning system malfunctions.

As discussed in the ATA Final Report and the FAA Memorandum, there must be a means of directly inspecting each lock or, at a minimum, the locks at each end of the lock shaft of certain designs, such that a failure condition in the lock shaft would be detectable.

2. Means To Prevent Pressurization to an Unsafe Level

Boeing 727–200 airplanes modified in accordance with STC ST00015AT are configured to utilize two outward opening vent doors for the purpose of preventing pressurization of the airplane to an unsafe level in the event the main deck cargo door is not closed, latched, and locked. Because the vent door openings are approximately six inches in diameter, the opening area may be insufficient to prevent pressurization of the airplane to an unsafe level in the event the main deck cargo door is not closed, latched, and locked. Paragraph (1)(d) of Appendix 1 describes the requirement that a warning indication be provided to the door operators station to monitor the door condition. Another function of the vent doors, if properly designed, would be to provide such a visual warning indication. If the vent door is open, the door operator will know the door is not closed, locked, and latched. The vent doors in this design are not spring loaded to the fully open position. As a result, they may appear to be closed when in fact they are not. Rather than provide a positive indication of a safe door, they can create a false indication of the door status. Therefore, the position of these vent doors cannot be used to indicate that the main cargo door is closed, latched, and locked, nor that there is a malfunction in the vent door system.

- "Failure Mode and Effects Analysis (FMEA) for B727–200 Cargo Door Modifications," dated November 20, 1991, was prepared by the STC holder as a qualitative safety analysis for the vent door system of this STC. The FMEA indicates that the system has single point failures of the vent door systems that can result in a false indication that the door is safe. The presence of single point failures reflects that the system does not meet the standard established in the ATA Final Report and FAA memorandum that a false indication of a closed, latched, and locked condition is improbable.

3. Powered Lock Systems

The main deck cargo door actuation control system for STC ST00015AT utilizes a powered lock system. The main deck cargo door control system for STC ST00015AT that utilizes electrical interlock switches is designed to remove door control power (electrical and hydraulic) prior to flight and to prevent inadvertent door openings. The design shows the likelihood that latent and/or single point failures can restore or continue to allow power to the door controls and cause inadvertent door openings. The failure modes may be found in the electrical portion of the door control panel, which, in turn, activates the door control hydraulics. The potential for the occurrence of these failure conditions is increased by the harsh operating environment of freighter airplanes. Door system components are routinely exposed to precipitation, dirt, grease, and foreign object intrusion, all of which increase the likelihood of damage. As a result, wires, switches, and relays have a greater potential to fail or short circuit in such a way as to allow the cargo door to be powered open without an operator's command and regardless of electrical interlock positions.

A systems safety analysis would normally evaluate and resolve the potential for these types of unsafe conditions. However, the design data for STC ST00015AT includes a systems safety analysis that is insufficient to show that an inadvertent opening of the main deck cargo door after it is fully closed, latched, and locked is extremely improbable. The need for a system safety analysis is identified in the ATA Final Report and the FAA Memorandum.

Cargo Barrier

In order to ensure the safety of occupants during emergency landing conditions, the FAA first established in 1934, a set of inertia load factors used to design the structure for restraining items of mass in the fuselage. Because the airplane landing speeds have increased over the years as the fleet has transitioned from propeller to jet design, inertia load factors were changed as specified in CAR part 4b.260. Experience has shown that an airplane designed to this regulation has a reasonable probability of protecting its occupants from serious injury in an emergency landing. The 727 passenger airplane was designed to these criteria which specified an ultimate inertia load requirement of 9g in the forward direction. This criteria was applied to the seats and structure restraining the occupants, including the flight crew, as well as other items of mass in the fuselage.

When the 727 passenger airplane is converted to carry cargo on the main deck, a cargo barrier is required, since most cargo containers and the container-to-floor attaching devices are not designed to withstand emergency landing loads. In fact, the FAA estimates that the container-to-floor attaching devices will only support approximately 1.5g's to 3g's in the forward direction. Without a 9g cargo barrier, it is probable that the loads associated with an emergency landing would cause the cargo to become unrestrained and impact the occupants of the airplane, which could result in serious injury or death.

The structural inadequacy of the cargo barrier was evident to the FAA during its review in October 1996 of a Boeing 727 modified in accordance with STC ST00015AT. The observations revealed that the design of the cargo barrier floor attachment and circumferential supporting structure does not provide adequate strength to withstand the 9g forward inertia load generated by the main deck cargo mass, nor does it provide a load path to effectively transfer the loads from the cargo barrier to the fuselage structure of the airplane. These observations are supported by data contained in "ER 2785, Structural Substantiation of the 50k 9g Bulkhead Restraint System in Support of STC SA1543SO PN 53–1292–401 for the 9g Bulkhead 53–1980–300 Assembly with Upper Attachment Structure, Lower Attachment Structure, Floor Shear Web Structure, Seat Track Splice Fittings, Seat Tracks, and Seat Track Splices," dated September 29, 1996, by M.F. Daniel. Although this report was specific to STC SA1543SO, the FAA has determined that the data are applicable to airplane modified in accordance with STC ST00015AT because the design principles for attachment of the barriers in both STCs are the same. The report reveals that structural deficiencies were found in the net attach plates and floor attachment structure of the cargo barrier. The data show large negative margins of safety, which indicate that the inertia load capability of the cargo barrier is closer to 2g than the required 9g in the forward direction. From these analyses, it is evident that the cargo barrier would not be capable of preventing serious injury to the occupants during an emergency landing event with the full allowable cargo load.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The FAA has received comments in response to the four NPRM actions (*i.e.*, Rules Dockets 97–NM–232–AD, 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD) that address the same subjects described above for four different sets of cargo modification STCs. Some of these comments addressed only one NPRM, while others addressed all four. Because in most cases the issues raised by the commenters are generally relevant to all four NPRMs, each final rule includes a discussion of all comments received.

Definition of Detailed Visual Inspection

One commenter provided Boeing's definition of a detailed visual inspection. The commenter requests that the FAA approve Boeing's definition as meeting the "detailed visual inspection" definition specified in Note 2 of the NPRM. The commenter states that it has incorporated Boeing's definition into its General Maintenance Manual (GMM), and that it is performing the detailed visual inspection of the main deck cargo door hinge in accordance with the GMM. The commenter also states that acceptance of the existing Boeing's definition will allow for work standardization and consistency.

The FAA partially concurs. The FAA concurs that, for the purpose of this AD, the definition provided by the commenter satisfies the intent of the definition contained in Note 2 of this AD. The detailed inspection definition specified in Note 2 of this AD is a standard definition that is used in all ADs that require a detailed inspection. Therefore, the FAA finds that no change to Note 2 of the final rule is necessary. However, for clarification purposes, the FAA has revised all references to a "detailed visual inspection" in the NPRM to "detailed inspection" in the final rule.

Main Deck Cargo Door Hinge

Two commenters request that the compliance time for accomplishing the detailed visual inspection required by paragraph (a) of the NPRM be revised. One commenter states that the compliance time should include a threshold of "prior to the accumulation of five years since accomplishment of the original conversion." The commenter states that operators of newly modified airplanes should not have to accomplish the detailed visual inspection required by paragraph (a) of the NPRM because it would be unlikely that brand new hinges would develop cracks within 250 flight cycles after being installed. The other commenter states that the compliance time should be revised to "at the next scheduled 'B' check, or 350 cycles after the effective date of the NPRM, whichever occurs first." The commenter states that such an extension would allow the inspection to be accomplished during a regularly scheduled "B" check and would not be disruptive of normal maintenance inspection scheduling.

The FAA partially concurs. The FAA does not concur that the compliance time should be extended from 250 flight cycles to 350 flight cycles. In developing an appropriate compliance time for the detailed inspection required by paragraph (a) of this AD, the FAA considered the degree of urgency associated with addressing the subject unsafe condition; the results from an FAA report, "Damage Tolerance Analysis of 727 Cargo Door Hinge," dated October 10, 1997; and the practical aspect of accomplishing the required inspection within an interval of time that parallels the typical "A" check scheduled maintenance interval for the majority of affected operators.

However, the FAA concurs with the commenter about the unlikelihood of a newly modified airplane developing cracks within 250 flight cycles since installation. Based on the referenced FAA damage tolerance report, the FAA finds that it is unlikely that a significant crack would occur in the hinge within 4,000 flight cycles since installation. Therefore, the FAA finds that operators must accomplish the detailed inspection "prior to accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later." The FAA has revised paragraph (a) of the final rule accordingly.

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One commenter requests that a high frequency eddy current (HFEC) inspection be required in paragraph (a) of the NPRM in lieu of the detailed visual inspection. The commenter states that an HFEC inspection should be used because there are no proposed repetitive inspections and a detailed visual inspection can only detect limited crack size.

The FAA does not concur. The FAA finds that accomplishment of the detailed inspection required by paragraph (a) of this AD, in conjunction with the detailed inspection required by paragraph (b)(1) of this AD and the modification required by paragraph (b)(2) of this AD, will ensure the integrity of the door and fuselage structure to which the hinge is attached. Therefore, no change to the final rule is necessary in this regard.

Two commenters request that the FAA revise paragraph (a) of the NPRM to specify that operators will be given "credit" for having previously accomplished the proposed detailed visual inspection of the main deck cargo door hinge in accordance with a method approved by the appropriate Aircraft Certification Office (ACO) prior to the effective date of the final rule. One commenter states that operators who accomplished the subject inspection before the effective date of this AD should not be penalized by being forced to reinspect after the effective date of this AD.

The FAA does not consider that a change to the final rule is necessary to give operators such credit. Operators are given credit for work previously performed by means of the phrase in the "Compliance" section of the AD that states, "Required as indicated, unless accomplished previously." Therefore, in the case of this AD, if the required detailed inspection has been accomplished prior to the effective date of this AD in accordance with a method approved by the FAA, this AD does not require that it be repeated.

One commenter requests that the detailed visual inspection required by paragraph (b)(1) of the NPRM be accomplished at the next "C" check after five years have elapsed since the airplane was converted from a passenger-to a cargo-carrying ("freighter") configuration. The commenter also states that a "C" check would allow operators to accomplish the inspection during a heavy maintenance visit.

The FAA does not concur. The FAA finds that accomplishment of the detailed inspection required by paragraph (b)(1) of this AD prior to or concurrently with requirements of paragraph (b)(2) of this AD (*i.e.*, installation of a main deck cargo door hinge) will ensure the structural integrity of mating surfaces of the hinge. However, paragraph (g) of this AD does provide affected operators the opportunity to apply for an adjustment of the compliance time if data are presented to justify such an adjustment.

One commenter requests that the detailed visual inspection required by paragraph (b)(1) of the NPRM apply only to airplanes that have been in service for five or more years since installation of the cargo door, because the likelihood of damage increases with time in service. The commenter states that the compliance time specified in paragraph (b) of the NPRM should start from the date that the modification was installed on the airplane.

The FAA does not concur. The FAA finds that the potential for cracks in the hinge is primarily related to flight cycles (*i.e.*, number of fuselage pressure cycles) and, to a lesser extent, calendar time. Therefore, the FAA has determined that the compliance time specified in paragraph (b) of this AD should be related to flight cycles, not calendar time. No change to the final rule is necessary in this regard.

One commenter requests that the NPRM, Rules Docket 97–NM–234–AD, be revised to reference Kitty Hawk Service Bulletin KHA 727–004, Revision A, as an appropriate source of service information for accomplishing the detailed visual inspection required by paragraphs (a) and (b)(1) of the NPRM and the modification required by paragraph (b)(2) of that NPRM. The commenter states that this service bulletin has been submitted to the FAA for approval and should be approved by the FAA prior to the issuance of the NPRM.

Another commenter states that it has developed and submitted to the FAA for approval a modification that segments the hinge on existing cargo converted airplanes and installs a segmented hinge on the new conversion. From this comment, the FAA infers that the commenter is requesting that the NPRM, Rules Docket 97–NM–233–AD, be revised to reference this modification as a terminating action for the requirements of paragraphs (b) and (c) of that NPRM.

The FAA concurs with the commenters' requests to reference service bulletins that constitute compliance with the requirements of paragraphs (b) and (c) of ADs, Rules Dockets 97–NM–233–AD and 97–NM–234–AD. The FAA has reviewed and approved Kitty Hawk Service Bulletin KHA 727–004, Revision B, dated March 3, 1999, as opposed to the Revision A mentioned by one of the commenters. The FAA also has reviewed and approved Aeronautical Engineers Incorporated (AEI) Service Bulletin AEI01–01, Revision B, dated October 26, 2001. These service bulletins describe the following procedures:

1. Visual inspection of all areas of the hinge for cracks or other signs of damage;
2. Inspection of the mating surfaces of the main deck cargo door hinge and the external doubler for discrepancies (*i.e.*, scratches, gouges, or corrosion);
3. Repair of any crack, damage, or discrepancy, if necessary; and
4. Installation of a main deck cargo door hinge that complies with the applicable requirements of CAR part 4b, including fail-safe requirements.

In addition, the FAA has reviewed and approved Federal Express E.O. Revision Record 7–5230–7–5000, Revision B, release date December 18, 2001, and Pemco Service Bulletin 727–53–0006, Revision 1, dated December 4, 2001. The procedures in these service bulletins are similar to those described in AEI Service Bulletin AEI01–01, Revision B, and Kitty Hawk Service Bulletin KHA 727–004, Revision B.

The FAA finds that accomplishment of the actions specified in the four service bulletins described previously constitutes compliance with the requirements of paragraphs (b) and (c) of final rules, Rules Dockets 97–NM–232–AD, 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD; as applicable. Therefore, the FAA has revised those final rules to include a new note that references the subject service bulletins as a source of service information for accomplishing the actions required by paragraphs (b) and (c) of those final rules; as applicable.

One commenter requests that a subparagraph be added to paragraph (b) of the NPRM to require that the detailed visual inspection required by paragraph (b)(1) of the NPRM be accomplished just prior to final hinge installation during the process of converting an airplane from a passenger- to cargo-carrying ("freighter") configuration. The commenter states that this revision would eliminate its concerns about the installation defects that could cause future problems.

The FAA does not concur. The FAA finds that any FAA-approved corrective action that satisfies the requirements of paragraph (b)(2) of this AD will also address the installation of a hinge during the process of converting a Boeing Model 727 series airplane from a passenger- to a cargo-carrying ("freighter") configuration. Normally, good manufacturing procedures during production should preclude the necessity for the inspection. No change to the final rule is necessary in this regard.

One commenter notes that paragraph (b)(2) of the NPRM references CAR part 4b. The commenter asks, "If the FAA, as evidenced by the awarding of an STC, certified the cargo door hinge, how can the current hinge not meet CAR requirements?" The commenter also asks, "Wasn't the original STC determined to be in compliance with those requirements? If so, what specifically needs to be done to eliminate the FAA safety concerns about hinges that do not appear to have a problem?" The commenter suggests that paragraph (b)(2) of the NPRM be revised to require STC holders to design and make available an acceptable replacement hinge. The commenter states that this suggestion should be a condition for STC holders to continue to hold their STC approval.

From the commenter's questions, the FAA infers that the commenter believes a main deck cargo door hinge with an approved STC is compliant with the requirements of CAR part 4b. The FAA finds that clarification is necessary. Generally, there is a presumption by operators that demonstrations of compliance with the requirements of CAR part 4b is a prerequisite for granting an STC. However, the applicant for any design approval is responsible for compliance with all applicable FAA regulations. The FAA has the discretion to review or otherwise evaluate the applicant's compliance to the degree the FAA considers appropriate in the interest of safety. The normal certification process allows for the review and approval of data by FAA designees. Consequently, the FAA office responsible for the certification of an airplane or modification to an airplane or an aeronautical appliance may not review all details regarding compliance with the appropriate regulations. As explained in the NPRM, the FAA has conducted design reviews and airplane inspections and has identified a potential unsafe condition that relates to the main deck cargo door hinge.

In addition, the FAA does not concur with the commenter's request to revise paragraph (b)(2) of the AD to require STC holders to design and make available an acceptable replacement hinge. The FAA finds that such a requirement is unnecessary, because as previously discussed, the FAA has revised this final rule to include a new note that references the applicable STC holder's service bulletin as a source of service information for accomplishing the actions required by paragraphs (b) and (c) of this final rule.

Main Deck Cargo Door Systems

One commenter requests that the compliance time for accomplishing the Airplane Flight Manual (AFM) revisions required by paragraph (d) of the NPRM be revised from "within 60 days after the effective date of this AD" to "within 60 days after submission of the procedures to the FAA." The commenter states that operators should be able to design revisions to the AFM within the proposed 60 days. However, the commenter believes that the Atlanta ACO will not be able to approve every one of those AFM Supplements within that time period.

The FAA does not concur. Since the release of the NPRM, some of the affected STC holders and operators have already developed AFM procedures acceptable to the FAA. The FAA finds that a 60-day compliance time is sufficient to allow the remaining operators and STC holders to develop revisions to the applicable AFMs and their supplements and for the Atlanta ACO to review and approve those AFM revisions.

One commenter submitted procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 97–NM–232–AD. The commenter requests that the FAA approve those procedures prior to issuance of the final rule and include those procedures in the final rule. The commenter states that it has completed a Safety Assessment Report for each of the door configurations currently operating in its fleet. The commenter believes the results of the report demonstrate that it is "extremely improbable" that the door will inadvertently open in flight for any reason. Although the analysis does not demonstrate compliance with the "extremely improbable" standard, the commenter states that for a limited time of 36 months the door system, as installed, provides a sufficient level of safety to be considered acceptable with no modification or change in operational procedures.

The FAA partially concurs. In order to gain a better understanding of the referenced Safety Assessment Report, the FAA had a telecon with the commenter on February 19, 2000, to discuss a series of questions, which were provided to the commenter prior to the telecon, about the report. (The minutes of this telecon are included in Rules Docket 97–NM–232–AD.) In addition to the information that it provided at the telecon, the commenter also provided an analysis of the Safety Assessment Report in a letter, dated February 16, 2000, and a revised table of the Safety Assessment Report in a letter, dated March 6, 2000. The analysis in these letters provided, for a variety of failure modes, the probability of the main deck cargo door not being in the closed, latched, and locked condition prior to dispatch. The analysis showed that the warning systems of the main deck cargo door and the means to prevent pressurization if the door is not closed, latched, and locked, only meet some of the requirements of CAR § 4b.606 and criteria specified in FAA memorandum, dated March 20, 1992 (referenced in the preamble of the NPRM). The commenter also provided Revision 16 of its Boeing B–727 Flight Manual, which further clarifies a change in the procedures for verifying that the main deck cargo door is closed, latched, and locked.

In light of the clarification provided by the commenter, the FAA concurs that the procedures submitted by the commenter provide an adequate level of safety until the requirements of paragraph (e) of this AD have been accomplished, considering the level of probability of occurrence of certain failures of the warning systems of the main deck cargo door and strict adherence to the door checking procedures and associated training requirements. Since issuance of the NPRM, the FAA has reviewed and approved Federal Express Service Bulletin FX727–2001–5230–01, dated July 30, 2001, which describes procedures for ensuring that the main deck cargo door is closed, latched, and locked prior to dispatch. Accomplishment of these actions constitutes compliance with the requirements of paragraph (d) of final rule, Rules Docket 97–NM–232–AD. Therefore, the FAA has revised the final rule, Rules Docket 97–NM–232–AD, to include a new note that references the subject service bulletin as a source of service information for accomplishing the actions required by paragraph (d) of that final rule.

One commenter provided procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 97–NM–233–AD, on airplanes modified in accordance with STC SA1368SO, on which a vent door has not been installed, and on airplanes modified in accordance with STC SA1797SO, on which a vent door has been installed. The commenter states that its procedures will ensure that the main deck cargo door is properly closed, latched, and locked prior to flight.

From this comment, the FAA infers that the commenter is requesting that the FAA approve its procedures as an

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acceptable means of compliance to the requirements of paragraph (d) of the final rule, Rules Docket 97–NM–233–AD. The FAA does not concur. The FAA finds that any proposed operating procedure must have sufficient validation and verification that the procedures are realistic and designed to minimize possible human error. The procedure also must provide for adequate checks and balances in the event the procedure is not strictly followed. In addition, the commenter did not provide any validation of the operating procedure or results of a safety analysis. However, the FAA may approve requests for an alternative method of compliance (AMOC) under the provisions of paragraph (g) of AD, Rules Docket 97–NM–233–AD, if sufficient data are submitted to substantiate that such a operating procedure would provide an acceptable level of safety.

One commenter provided procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 97–NM–234–AD. In support of its procedures, the commenter states, among other items, that an internal direct visual inspection of the latching and locking system is not possible on Model 727 series airplanes affected by that NPRM because the latching and locking systems are covered by a protective guard/cover that prevents direct viewing of these systems. Removing these covers would expose the latching and locking systems to possible foreign object damage (FOD) or damage from shifting freight. The commenter states that this condition is far more dangerous than a failure of the latching and locking systems. The commenter also states that most of the affected airplanes are equipped with flip up sill protectors, which further block the visibility of the bottom of the cargo door area (latch and lock area). The commenter concludes that a visual inspection of the latching and locking mechanisms is not appropriate for the airplane type and would create severe operational disruption with no benefit.

The FAA concurs with the commenter's conclusion that a visual inspection of the latching and locking mechanisms is not appropriate for accomplishing the requirements of paragraph (d) of final rule, Rules Docket 97–NM–234–AD. The FAA notes that paragraph (d) of that final rule does not specifically require a visual inspection of the locking mechanisms of the main deck cargo door after the door is closed, as suggested by the commenter. Since issuance of the NPRM, the FAA has reviewed and approved Kitty Hawk Service Bulletin KHA 727–008, dated January 7, 2000, which describes procedures for ensuring that the main deck cargo door is closed, latched, and locked prior to dispatch. These procedures are identical to those procedures provided by the commenter. Accomplishment of these actions constitutes compliance with the requirements of paragraph (d) of final rule, Rules Docket 97–NM–234–AD. Therefore, the FAA has revised final rule, Rules Docket 97–NM–234–AD, to include a new note to reference the subject service bulletin as a source of service information for accomplishing the actions required by paragraph (d) of that final rule.

One commenter states that the requirements for "a means to prevent pressurization to an unsafe level" and "direct visual examination of all locks" are not included in the certification basis of Model 727 series airplanes and should not be required for the interim action.

From this comment, the FAA infers that the commenter is referring to the interim actions required by paragraph (d) of the NPRM and to extracts from Appendix 1 of this AD, which sets forth the industry-accepted criteria to which the outward opening doors must be shown to comply per paragraph (e) of the NPRM. The FAA does not concur. The commenter has misinterpreted the requirements of paragraph (d) of this AD. Paragraph (d) of this AD requires procedures to ensure that all power is removed from the main deck cargo door prior to dispatch and to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane. This paragraph does not specify or limit what means or actions would be acceptable to the FAA. Operators could submit a means to prevent pressurization to an unsafe level and direct visual inspection of the locks as possible ways to ensure that the main deck cargo door is secure, in accordance with paragraph (d) of this AD. In addition, to comply with paragraph (e) of this AD, the criteria specified in Appendix 1 of this AD must be applied, irrespective of the certification basis of the airplane. Therefore, no change to the final rule is necessary in this regard.

One commenter requests that the proposed compliance time specified in paragraph (e) of the NPRM be revised from "within 36 months after the effective date of this AD" to "at the next 'C' check after the modifications are approved by the Manager, Atlanta ACO." The commenter states that such a compliance time would make everybody (*i.e.*, designer, operator, and FAA) share responsibility for time delays encountered during the modification design and approval process.

The FAA does not concur. Since issuance of the NPRM, the FAA has reviewed and approved two modifications (*i.e.*, National Aircraft Services, Inc., (NASI) STC ST01438CH and Pemco STC ST01270CH) as acceptable means for compliance with the requirements of paragraph (e) of final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD; as applicable. Therefore, the FAA has revised the final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD, to include a new note to reference the applicable STC as a source of service information for accomplishing the requirements of paragraph (e) of those final rules. The FAA finds that a 36-month compliance time for accomplishing the action specified in paragraph (e) of those final rules is not only sufficient for the design of the corrective actions, but also provides adequate time for operators to schedule the installation within an interval of time that parallels a heavy maintenance visit. However, under the provisions of paragraph (g) of final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD, the FAA may approve requests for an adjustment of compliance times if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Main Deck Cargo Barrier

One commenter requests that, before issuance of the final rule, industry and the FAA form a review team to find a way of lowering the costs associated with accomplishing the proposed installation of a 9g crash barrier. The commenter suggests that lower costs could be achieved by fixing the existing barrier (*e.g.*, the loads could be spread by the addition of structural reinforcement attachment angles) or designing a new barrier. The commenter states that the Ventura Aerospace, Inc., cargo barrier STC ST00848LA, which is an approved means of compliance with the requirements of paragraph (f) of NPRMs, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD, is an adequate barrier; however, the parts and installation cost estimates for the installation in those NPRMs are too low. The commenter gave examples of various actions and associated work hours that would be necessary to accomplish the proposed installation of the Ventura 9g crash barrier.

The FAA does not concur with the commenter that a review team is necessary, and that the cost estimates of NPRMs, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD, for accomplishing the installation of a main deck cargo barrier are too low. The FAA acknowledges that installation of a Ventura Aerospace, Inc., cargo barrier STC ST00848LA is an approved means of compliance with the requirements of paragraph (f) of final rules, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD. However, the cost estimates in the subject NPRMs were not specifically for installation of the subject Ventura 9g crash barrier, but were for installation of a 9g crash barrier that complies with the applicable requirements of CAR part 4b. The installation cost estimate of the NPRMs was provided to the FAA by Pemco based on the best data available to date.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. Furthermore, because the FAA generally attempts to impose compliance times that coincide with operators' scheduled maintenance, the FAA considers it inappropriate to attribute the costs associated with aircraft "downtime" to the cost of the AD, because, normally, compliance with the AD will not necessitate any additional downtime beyond that of a regularly scheduled maintenance visit.

Public Meeting

Several commenters request that the FAA hold a public meeting prior to the issuance of the final rule in the event that the FAA does not find their procedures acceptable for compliance with the requirements of paragraph (d) of the NPRM. The commenters state that such a meeting would provide a forum for productive face-to-face discussions similar to the process used by industry's B–727 Working Group.

The FAA does not concur. As discussed previously, the FAA has accepted some of the procedures submitted by the commenters. Also, in consideration of the differing configurations of the main deck cargo door systems between the various affected STCs, a public meeting to discuss the AD may be significantly restricted in some cases because of the proprietary design and data issues. However, the FAA is available to discuss any particular proposal for procedures specific to the airplane configuration with each of the affected STC holders or operators. Further, the FAA may approve requests for an AMOC under the provisions of paragraph (g) of this AD if sufficient data are submitted to substantiate that such a procedure would provide an acceptable level of safety. Therefore, the FAA finds that no public meeting is necessary.

Issue Separate ADs

One commenter requests that the NPRM be split into separate ADs for each issue—main deck cargo door hinge, main deck cargo door systems, and 9g crash barrier. The commenter states that multiple actions addressed by a single AD make managing the actions very unwieldy and complicated.

The FAA does not concur. The FAA is not convinced that separate ADs for each issue would resolve the complexity of this AD. The FAA has determined that a less burdensome approach is to issue only one AD for each STC holder that addresses the potential unsafe conditions that relate to the main deck cargo door hinge, main deck cargo door systems, and main deck cargo barrier. In addition, operators have already initiated actions to accomplish the requirements of this AD without apparent complications.

ACO Approval

One commenter requests that the actions required by the NPRM that must be accomplished in accordance with a method approved by the Manager, Atlanta ACO, be approved by the Manager, Transport Airplane Directorate. The commenter states that the affected Boeing Model 727 series airplanes are not small airplanes, and that the approving authority should be someone in an ACO from the Transport Airplane Directorate who understands structural repairs of transport category airplanes.

The FAA does not concur. Since the subject STCs were issued by the Atlanta ACO, that office has certificate responsibility for the airplanes affected by this AD. The Atlanta ACO is most cognizant of the design details of the subject STCs, and therefore, more able to address each operator's specific issues for complying with paragraph (d) of this AD. The Manager of the Atlanta ACO will coordinate the review of the submittals with the Transport Airplane Directorate, which has established a team consisting of members from several ACOs to review all requests in accordance with paragraphs (b)(1), (b)(2), (c), (d), (e), and (f) of this AD.

Principal Maintenance Inspector (PMI) or Principal Operations Inspector (POI) Approval

One commenter requests that the FAA allow the individual operator's local PMI or POI to approve the AFM procedures for ensuring that the main deck cargo door is closed, latched, and locked required by the NPRM, or provide an option in the NPRM that allows the procedures to be added to the airplane operator manual (AOM), if applicable. The commenter states that such approval would ensure that the approval process is accomplished quickly.

The FAA does not concur. Paragraph (d) of this AD requires comprehensive engineering evaluation in consideration of the applicable requirements of CAR part 4b and the criteria specified in Appendix 1 of this AD. Consequently, the evaluation must be conducted by the Manager, Atlanta ACO, to determine an acceptable level of safety. The PMI or POI for the air carrier is normally not familiar with all the design considerations provided by the requirements of CAR part 4b and Appendix 1 of this AD.

Cost

One commenter requests that an industry/FAA team determine a less costly method to fix the existing barriers to satisfy the FAA's concerns. For example, the loads could be spread by the addition of structural reinforcement attachment angles. The commenter states that replacing the barrier is an extreme measure, and that there must be some kind of structural additions that could be made to the existing barrier to make it acceptable at a much lower cost.

The FAA partially concurs. The STC holders and operators are certainly free to form an industry team to find common solutions. However, the FAA's reason for participation would not be for the purpose of developing a less costly design, but rather to ensure that the final design is compliant with the applicable regulations.

One commenter requests that the FAA require STC holders to design the correction for the NPRM as a warranty issue. The commenter states that small operators, who do not have in-house engineering capability, will be at a great disadvantage when attempting to design remedies for this NPRM. The commenter also states that this NPRM places a substantial financial and operational burden on "small entities" just from the standpoint of not having a remedy already designed and approved.

The FAA does not concur. Any warranty agreements between the

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operator and an STC holder are not the responsibility of the FAA. The burden on small entities is addressed in the Regulatory Flexibility Analysis and Summary and Regulatory Sections of this AD.

Descriptive Language of Preamble

One commenter states that it found the following four factual inaccuracies in the NPRM, Rules Docket 97–NM–232–AD, and requests that the FAA correct them.

1. The commenter notes that paragraph six under the heading "Main Deck Cargo Door System" reads, "* * * However, the FAA is aware of two events in which the main deck cargo door opened during flight. These events occurred on FedEx passenger/freighter conversion STC's in October 1996, and March 1995." The commenter states that it does not have any information or records indicating that the main deck cargo door opened in flight in October 1996 or March 1995. In the March 1995 incident, the commenter contends that the door, upon landing, was found to be closed and locked, and that the lock bar was found to be in the unlocked position. The commenter states that it found a control valve electrical connection of the main deck cargo door to be disconnected, and that the door operated normally once it was reconnected.

2. The commenter disagrees with the sentence under the heading "1. Indication System" in the preamble of the NPRM that reads, "Both of these lights indicate the status of the cargo door latch and lock positions, but do not indicate either the door open or closed status." The commenter states that its system does monitor and indicate the door closed status. If the door closed switch is not depressed, the light will stay illuminated, even if the door lock latches have rolled and the lock bar has moved into place.

3. The commenter notes that paragraph two under the heading "2. Means to Visually Inspect the Locking Mechanism" reads, "* * * Although an indicator flag attached to the lock shaft can be seen through the view port when the shaft is in the "locked" position, a failure between the shaft and the pins could go undetected, because this flag is attached to the lock shaft and not the actual lock pins."

The commenter states that the flag is attached to the lock bar on Model 727–100 series airplanes. The lock plates are also bolted directly to the lock bar (no linkages). Therefore, the commenter contends that both the flag and lock plates become integrated parts of the lock bar.

In addition, the commenter states that the flag is attached to a lock pin on Model 727–200 series airplanes, and that the lock pin linkage does not have springs or an actuator attached to it. The commenter also contends that movement would have to be transmitted through the lock bar. The commenter further states that the stress analysis for Model 727–200 series airplanes shows high margins of safety in yield, bending, and shear for the locking hinges and fasteners.

4. The commenter notes that paragraph three under the heading "3. Means to Prevent Pressurization to an Unsafe Level" in the preamble of the NPRM reads, "Boeing 727–100 airplanes modified in accordance with the subject STC's have no means of preventing pressurization in the event that the main deck cargo door is not closed, latched, and locked, and therefore, have a higher risk of a cargo door opening while the airplane is in flight and possible loss of the airplane." The commenter states that the system used on Model 727–100 series airplanes has a relay that drives the ground venturi system, which in turns opens the outflow valve when the main deck cargo door is not closed and locked, hence pressurization is not possible.

For item 1 above, the FAA partially agrees with the commenter. In the preamble of the NPRM, Rules Docket 97–NM–232–AD, the FAA incorrectly referenced October 1996 as a date of a door opening event. The correct date is December 9, 1994. The pilots' report (which is included in Rules Docket 97–NM–232–AD) on this event states that shortly after takeoff the warning light for the main deck cargo door illuminated. Following the open in-flight procedures for the main deck cargo door, the flight crew safely returned the airplane to the departure airport. The post-flight inspection revealed that the main deck cargo door opened approximately two feet. Also, in reference to the March event where the commenter states that the door did not open in flight, a verbal report (*i.e.*, "FAA Freighter Conversion STC Review Report Number 2, dated October 16–18, 1996," which is included in Rules Docket 97–NM–232–AD) from the maintenance organization of the commenter's company states that the main deck cargo door was unlocked, and that the door was flush with the exterior of the airplane. The report on this latter event states that, following departure and at 17,000 feet, the warning light of the main deck cargo door came on followed by cabin altitude climbing. While it is not clear to the FAA whether or not the main deck cargo door opened while the airplane was in flight, the condition for possible door opening (*i.e.*, rotation of the lock bar to the unlocked position in flight) did occur, which could have led to a door opening while the airplane is in flight. Therefore, the FAA has revised the "Background" Section ("Main Deck Cargo Door Systems" subsection) in the preamble of final rule, Rules Docket 97–NM–232–AD, to correct the date of the subject event.

For items 2. and 4. above, the FAA agrees with the commenter's correction to items 2. and 4. above and has revised the "Background" Section ("Indication Systems" and "Means to Prevent Pressurization to an Unsafe Level" subsections) in the preamble of final rule, Rules Docket 97–NM–232–AD, accordingly. However, we find that the correction to item 2. does not alleviate the unsafe design features that were single point failures in the door control/outflow valve interface, which could result in the valve not sensing and responding to an unsafe door condition. With the current design, it is possible that the outflow valve or associated controllers may not perform their intended function when utilized for the purpose of preventing pressurization of the airplane in the event of an unsecured door. This condition could result in cabin pressurization forcing an unsecured door open while the airplane is in flight and possible loss of the airplane.

Further, we find that the correction to item 4. does not alleviate the safety concern regarding the design feature where ALL three conditions (*i.e.*, door closed, latched, and locked) are not directly monitored. If a sequencing error caused the door to latch and lock without being fully closed, the subject indication system, as designed, would not directly alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with an unsecured main deck cargo door, which could lead to the cargo door opening while the airplane is in flight and possible loss of the airplane.

For item 3. above, the FAA does not concur that the attachment of the "flag" to the lock bar on Model 727–100 series airplanes is sufficient to indicate the position of the lock pins, even though the lock pins are bolted to the lock bar. The FAA has determined that any failure condition of a lock pin would not be detected when observing the position of the flag through the view port.

Explanation of Change to Unsafe Condition

To more accurately reflect the identified unsafe condition of this AD, the FAA has revised the final rule where applicable to read, "to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants."

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Regulatory Evaluation Summary

This analysis estimates the costs of AD, Rules Docket 97–NM–234–AD, that requires installation of a fail-safe hinge; redesigned warning and power control systems of the main deck cargo door; and a 9g crash barrier on Boeing Model 727 series airplanes that have been modified in accordance with certain STCs held by Kitty Hawk Air Cargo. Since the publication of the NPRM, Kitty Hawk has been purchased by Stambaugh Aviation Services. As discussed above, the FAA has determined that:

1. The main deck cargo door hinge is not fail-safe;
2. Certain control systems of the main deck cargo door do not provide an adequate level of safety; and
3. The 9g crash barrier is not structurally adequate during a minor crash landing.

It is estimated that four U.S.-registered Boeing Model 727 series airplanes will be affected by this AD. The four airplanes are all operated by one entity, American International Airways. The following discussion addresses, in sequence, the actions in the Rules Docket 97–NM–234–AD and the estimated cost associated with each of these actions. An analysis of the estimated cost is also available in the Rules Docket 97–NM–234–AD.

1. Main Deck Cargo Door Hinge

Since unsafe conditions have been identified that are likely to exist or develop on other modified Boeing Model 727 series airplanes, paragraph (a) of this AD requires, prior to the accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later, a detailed inspection of the external surface of the main deck cargo door hinge to detect cracks. Based on data provided by other STC holders, the FAA estimates that this inspection will take 2 hours. At an hourly wage rate of $60, the cost of per airplane is $120 and the estimated cost for the fleet of 4 airplanes is $480.

Paragraph (b)(1) of the AD requires, within 36 months or 4,000 cycles after the effective date of this AD, whichever occurs first, a detailed inspection of the mating surfaces of both the hinge and the door skin, and the hinge and external fuselage doubler underlying the hinge. The FAA estimates that compliance with this inspection will take 200 work hours, at a cost of $12,000 per airplane, or $48,000 for the affected fleet.

Paragraph (b)(2) of the AD requires installation of a fail-safe door hinge. The compliance time for this installation is also 36 months or 4,000 cycles after the effective date of this AD, whichever occurs first. Kitty Hawk estimated that the cost to design and certificate such a hinge will be $50,000; no parts for a fail-safe door hinge will be required; and the (labor) cost of the modification will be $15,000. Total compliance cost for this provision for the affected fleet of 4 airplanes is estimated to be $110,000, undiscounted.

Paragraph (c) of the AD requires that, if any crack or discrepancy is detected during the inspection required by paragraph (a) or (b)(1) of the AD, a repair must be made prior to further flight. The cost of this repair is not attributable to this AD.

The FAA assumes that installation of the main deck cargo door hinge (paragraph (b)(2) of this AD) will be accomplished at the same time as the detailed inspection of fastener holes (paragraph (b)(1) of this AD). It is also assumed that the affected operator will perform these two activities uniformly throughout the 36-month compliance time. Finally, it is assumed that the certification cost for the main deck cargo door hinge will be incurred within the first 6 months after the effective date of this AD. Consequently, the cost to comply with paragraphs (a) through (c) of this AD, over the 36-month compliance time, is estimated at $158,000, undiscounted, or $145,000 discounted to present value.

2. Main Deck Cargo Door Systems

Work on the door systems relates to paragraphs (d) and (e) of the AD. Paragraph (d) of the AD requires, within 60 days after the effective date of this AD, the revising of the Limitations Section of the FAA-approved AFM Supplement to provide the flight crew with procedures for ensuring that all power is removed from the main deck cargo door prior to dispatch of the airplane, and that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane. In addition, paragraph (d) of the AD requires the installation of any associated placards.

The FAA assumes that Boeing Model 727 series airplanes, converted under a Kitty Hawk STC, will have an acceptable pressurization vent door installed, which could be used by operators to visually determine whether the vent is in the proper position prior to dispatch, indicating that the door is closed, latched, and locked. The FAA estimates that this activity will take no more than 30 minutes. Assuming that each affected airplane flies one flight per day, 260 days per year, the estimated cost per inspection is $30, or $7,800 per airplane, per year, until the door system is changed. This results in an estimated total cost of $94,000 for the affected airplanes, over the 36-month compliance time.

Paragraph (e) of this AD requires, within 36 months after the effective date of the AD, incorporation of redesigned main deck cargo door systems. Kitty Hawk estimates that the development and certification of the system will cost $175,000. Modification parts are estimated to cost $38,000 per airplane, and labor costs are estimated to be $23,500 per airplane. The FAA assumes that operators will incorporate redesigned main deck cargo door systems during regularly scheduled maintenance. (Kitty Hawk indicated that any lost revenue due to additional down time should be attributed to the installation of the 9g crash barrier, discussed below.) The total cost of incorporating redesigned main deck cargo door systems, including certification, parts, and labor is estimated to be $421,000 over the 36-month compliance time.

The total estimated cost to comply with the requirements for the main deck cargo door systems is estimated to be $514,600 undiscounted, or $472,000, discounted to present value.

3. 9g Crash Barrier

Paragraph (f) of this AD requires, within 36 months or 4,000 flight cycles after the effective date of the AD,

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whichever occurs first, installation of a main deck cargo barrier that complies with the applicable requirements of CAR part 4b. Ventura Aerospace holds a STC for an approved 9g crash barrier, and the FAA expects that operators whose airplanes have been modified in accordance with the KittyHawk STC will purchase 9g crash barrier kits from Ventura Aerospace. In response to the one public comment on the economic analysis of the NPRM, and based on new data, there was an increase in the cost estimate for the Ventura 9g crash barrier in this final regulatory evaluation from that provided in the NPRM. The cost of a Ventura barrier kit is $67,000, while labor costs (to install the barrier) are estimated at $33,000 per airplane (for 550 hours of work). Also, while the barrier is installed, an affected airplane is expected to be out of service for 7 additional days, at an estimated (out-of-service) cost of $15,000 per day. The commenter estimated the cost per airplane, for the Ventura 9g barrier, at $193,500. With the new data, the FAA estimates the cost per airplane, for the Ventura barrier, at $205,000.

The FAA assumes that operators will install 9g crash barriers uniformly over the 36-month compliance time. The total undiscounted cost of this requirement is estimated to be $820,000, or $716,000 discounted to present value.

4. AMOC and Special Flight Permits

Paragraph (g) of the AD allows an AMOC or adjustment of compliance time that provides an acceptable level of safety if approved by the Manager of the Atlanta ACO. The FAA is unable to determine the cost of an AMOC, but assumes that it will be less than the cost of complying with the provisions in paragraphs (a) through (f) of the AD.

Paragraph (h) of the AD allows special flight permits in accordance with the regulations to operate an affected airplane to a location where the requirements of the AD could be accomplished.

5. Total Cost of the AD

The FAA estimates the total compliance cost of this AD to be $1.5 million, undiscounted, or $1.3 million discounted to present value.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA of 1980 requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA of 1980 covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that the rule will have such an impact, the agency must prepare a regulatory flexibility analysis as described in the RFA in 1980. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, Section 605(b) of the RFA of 1980 provides that the head of the agency may so certify. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the relevant assessment of this AD, and determined that it will not have a significant impact on a substantial number of small entities. Only one operator, American International Airways, will be affected by this AD; and that operator is not a small entity (it employees more than 1,500 people). Consequently, the FAA certifies that this AD will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Analysis

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Such a mandate is deemed to be a "significant regulatory action."

This AD does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

Federalism Implications

The regulations of this AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this AD will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–21 Boeing: Amendment 39–12860. Docket 97–NM–234–AD.

Applicability: Model 727 series airplanes that have been converted from a passenger-to a cargo-carrying ("freighter") configuration in accordance with Supplemental Type Certificate (STC) ST00015AT; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants; accomplish the following:

Actions Addressing the Main Deck Cargo Door Hinge

(a) Prior to accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed inspection of the external surface of the main deck cargo door hinge (both fuselage and door side hinge elements) to detect cracks.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Perform a detailed inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge to detect cracks or other discrepancies (e.g., double or closely drilled holes, corrosion, chips, scratches, or gouges). The detailed inspection shall be accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. The requirements of this paragraph may be accomplished prior to or concurrently with the requirements of paragraph (b)(2) of this AD.

(2) Install a main deck cargo door hinge that complies with the applicable requirements of Civil Air Regulations (CAR) part 4b, including fail-safe requirements, in accordance with a method approved by the Manager, Los Angeles ACO.

(c) If any crack or discrepancy is detected during the detailed inspection required by either paragraph (a) or (b)(1) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO.

Note 3: Accomplishment of the actions in accordance with Kitty Hawk Service Bulletin KHA 727–004, Revision B, dated March 3, 1999, constitutes compliance with the requirements of paragraphs (b) and (c) of this AD.

Actions Addressing the Main Deck Cargo Door Systems

(d) Within 60 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) Supplement by inserting therein procedures to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane, and install any associated placards. The AFM revision procedures and installation of any associated placards shall be accomplished in accordance with a method approved by the Manager, Los Angeles ACO.

Note 4: Accomplishment of the actions in accordance with Kitty Hawk Service Bulletin 727–008, dated January 7, 2000, constitutes compliance with the requirements of paragraph (d) of this AD.

(e) Within 36 months after the effective date of this AD, incorporate redesigned main deck cargo door systems (e.g., power control, view ports, and means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked), including any associated procedures and placards, that comply with the applicable requirements of CAR part 4b and criteria specified in Appendix 1 of this AD; in accordance with a method approved by the Manager, Los Angeles ACO.

Note 5: The design data submitted for approval should include a Systems Safety Analysis and Instructions for Continued Airworthiness that are acceptable to the Manager, Los Angeles ACO.

Actions Addressing the Main Deck Cargo Barrier

(f) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, install a main deck cargo barrier that complies with the applicable requirements of CAR part 4b, in accordance with a method approved by the Manager, Los Angeles ACO.

Note 6: The maximum main deck total payload that can be carried is limited to the lesser of the approved cargo barrier weight limit, weight permitted by the approved maximum zero fuel weight, weight permitted by the approved main deck position weights, weight permitted by the approved main deck running load or distributed load limitations, or approved cumulative zone or fuselage monocoque structural loading limitations (including lower hold cargo).

Note 7: Installation of a Ventura Aerospace Inc. cargo barrier STC ST00848LA is an approved means of compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(i) This amendment becomes effective on September 19, 2002.

Appendix 1

Excerpt from an FAA Memorandum to Director-Airworthiness and Technical Standards of ATA, dated March 20, 1992.

"(1) *Indication System:*

(a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be *amber* unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be *red* and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

(2) *Means to Visually Inspect the Locking Mechanism:*

There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

(3) *Means to Prevent Pressurization:*

All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) *Lock Strength:*

Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) *Power Availability:*

All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) *Powered Lock Systems:*

For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable."

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Issued in Renton, Washington, on August 6, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20508 Filed 8–14–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–235–AD; Amendment 39–12861; AD 2002–16–22]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance With Supplemental Type Certificate SA1444SO, SA1509SO, SA1543SO, or SA1896SO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger-to a cargo-carrying ("freighter") configuration, that requires, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g crash barrier. This amendment is prompted by the FAA's determination that the main deck cargo door hinge is not fail-safe; that certain main deck cargo door control systems do not provide an adequate level of safety; and that the main deck cargo barrier is not structurally adequate during an emergency landing. The actions specified by this AD are intended to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.

DATES: Effective September 19, 2002.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Paul Sconyers, Associate Manager, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6076; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration was published in the **Federal Register** on November 12, 1999 (64 FR 61533). That action proposed to require, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g crash barrier.

Background

For the convenience of the reader, certain excerpts and information, below, from the following sections of the preamble of the notice of proposed rulemaking (NPRM) are provided in this final rule: Discussion, Main Deck Cargo Door Hinge, Main Deck Cargo Door Systems, and Cargo Restraint Barrier.

Discussion

Supplemental Type Certificate (STC) SA1509SO specifies a design for a cargo door, associated cargo door cutout, and door systems. STC SA1543SO specifies a design for a Class "E" cargo interior with a cargo restraint barrier net. STCs SA1444SO and SA1896SO specify a design for both of these subject areas. (All of these STCs are held by Pemco.) As discussed in NPRMs, Rules Docket No. 97-NM–81-AD (the final rule, AD 98–26–21, amendment 39–10964, was published in the **Federal Register** on January 12, 1999 (64 FR 2061)), which is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration, the FAA has conducted a design review of Boeing Model 727 series airplanes modified in accordance with STCs SA1590SO and SA1543SO and has identified several potential unsafe conditions. (Results of this design review are contained in "FAA Freighter Conversion STC Review, Report Number 1, dated September 23–26, 1996," (hereinafter referred to as "the Design Review Report"), which is included in the Rules Docket, 97-NM–235-AD.) This NPRM proposes corrective action for three of those potential unsafe conditions that relate to the following three areas: main deck cargo door hinge, main deck cargo door systems, and main deck cargo barrier.

Main Deck Cargo Door Hinge

In order to avoid catastrophic structural failure, it has been a typical industry approach to design outward opening cargo doors and their attaching structure to be fail-safe (i.e., designed so that if a single structural element fails, other structural elements are able to carry resulting loads). Another potential design approach is safe-life, where the critical structure is shown by analyses and/or tests to be capable of withstanding the repeated loads of variable magnitude expected in service for a specific service life. Safe-life is usually not used on critical structure because it is difficult to account for manufacturing or in-service accidental damage. For this reason, plus the fact that none of the STC holders have provided data in support of this approach, the safe-life approach will not be discussed further regarding the design and construction of the main deck cargo door hinge.

Structural elements such as the main deck cargo door hinge are subject to severe in-service operating conditions that could result in corrosion, binding, or seizure of the hinge. These conditions, in addition to the normal operational loads, can lead to early and unpredictable fatigue cracking. If a main deck cargo door hinge is not a fail-safe design, a fatigue crack could initiate and propagate longitudinally undetected, which could lead to a complete hinge failure. A possible consequence of this undetected failure is the opening of the main deck cargo door while the airplane is in flight. Service experience indicates that the opening of a cargo door while the airplane is in flight can be extremely hazardous in a variety of ways including possible loss of flight control, severe structural damage, or rapid decompression, any of which could lead to loss of the airplane.

The design of the main deck cargo door hinge must be in compliance with Civil Air Regulations (CAR) part 4b, including CAR section 4b.270, which requires, in part, that catastrophic failure or excessive structural deformation, which could adversely affect the flight characteristics of the airplane, is not probable after fatigue failure or obvious partial failure of a single principal structural element. One common feature of a fail-safe hinge design is a division of the hinge into multiple segments such that, following failure of any one segment, the remaining segments would support the redistributed load.

The main deck cargo door installed in accordance with STC SA1509SO, SA1444SO, or SA1896SO is supported by latches along the bottom of the door and one continuous hinge along the top. This single-piece hinge is considered a critical structural element for this STC. A crack that initiates and propagates longitudinally along the hinge line of the continuous hinge will eventually result in failure of the entire hinge, because there is no segmenting of the hinge to interrupt the crack propagation and support the redistributed loads. Failure of the entire hinge can result in the opening of the main deck cargo door while the airplane is in flight.

As discussed in the Design Review Report, an inspection of one Boeing Model 727 series airplane modified in accordance with STCs SA1509SO and SA1543SO revealed a number of fasteners with both short edge margins and short spacing in the cargo door cutout external doublers. Some edge margins were as small as one fastener diameter. Fasteners that are placed too close to the edge of a structural member or spaced too close to an adjacent fastener can result in inadequate joint strength and stress concentrations, which may result in fatigue cracking of the skin. If such defects were to exist in the structure of the door or the fuselage to which the main deck cargo door hinge is attached, the attachment of the hinge could fail, and consequently cause the door to open while the airplane is in flight.

Main Deck Cargo Door Systems

In early 1989, two transport airplane accidents were attributed to cargo doors coming open during flight. The first accident involved a Boeing 747 series airplane in which the cargo door separated from the airplane, and damaged the fuselage structure, engines, and passenger cabin. The second accident involved a McDonnell Douglas DC–9 series airplane in which the cargo door opened but did not separate from its hinge. The open door disturbed the airflow over the empennage, which resulted in loss of flight control and consequent loss of the airplane. Although cargo doors have opened occasionally without mishap during takeoff, these two accidents serve to highlight the extreme potential dangers associated with the opening of a cargo door while the airplane is in flight.

As a result of these cargo door opening accidents, the Air Transport Association (ATA) of America formed a task force, including representatives of the FAA, to review the design, manufacture, maintenance, and operation of airplanes fitted with outward opening cargo doors, and to make recommendations to prevent inadvertent cargo door openings while the airplane is in flight. A design working group was tasked with reviewing 14 CFR 25.783 (and its accompanying Advisory Circular (AC) 25.783–1, dated December 10, 1986) with the intent of clarifying its contents and recommending revisions to enhance future cargo door designs. This design group also was tasked with providing specific recommendations regarding design criteria to be applied to existing outward opening cargo doors to ensure that inadvertent openings would not occur in the current transport category fleet of airplanes.

The ATA task force made its recommendations in the "ATA Cargo Door Task Force Final Report," dated May 15, 1991 (hereinafter referred to as "the ATA Final Report"). On March 20, 1992, the FAA issued a memorandum to the Director-Airworthiness and Technical Standards of ATA (hereinafter referred to as "the FAA Memorandum"), acknowledging ATA's recommendations and providing additional guidance for purposes of assessing the continuing airworthiness of existing designs of outward opening doors. The FAA Memorandum was not intended to upgrade the certification basis of the various airplanes, but rather to identify criteria to evaluate potential unsafe conditions demonstrated on in-service airplanes. Appendix 1 of this AD contains the specific paragraphs from the FAA Memorandum that set forth the criteria to which the outward opening doors should be shown to comply.

Applying the applicable requirements of CAR part 4b and design criteria provided by the FAA Memorandum, the FAA has reviewed the original type design of major transport airplanes, including Boeing 727 airplanes equipped with outward opening doors, for any design deficiency or service difficulty. Based on that review, the FAA identified unsafe condition and issued, among others, the following ADs:

- For certain McDonnell Douglas Model DC–9 series airplanes: AD 89–02, amendment 39–6216 (54 FR 21416, May 18, 1989);
- For all Boeing Model 747 series airplanes: AD 90–09–06, amendment 39–6581 (55 FR 15217, April 23, 1990);
- For certain McDonnell Douglas Model DC–8 series airplanes: AD 93–20–02, amendment 39–8709 (58 FR 471545, October 18, 1993);
- For certain Boeing Model 747–100 and –200 series airplanes: AD 96–01–51, amendment 39–9492 (61 FR 1703, January 23, 1996); and
- For certain Boeing Model 727–100 and –200 series airplanes: AD 96–16–08, amendment 39–9708 (61 FR 41733, August 12, 1996).

Using the criteria specified in the ATA Final Report and the FAA Memorandum as evaluation guides, the FAA conducted an engineering design review and inspection of an airplane modified in accordance with STCs SA1509SO and SA1543SO (held by Pemco). The FAA identified a number of unsafe conditions with the main deck cargo door systems of these STCs. The FAA design review team determined that the design data of these STCs design data did not include a safety analysis of the main deck cargo door systems.

As specified in the criteria contained in Appendix 1 of this AD, for powered lock systems on the main deck cargo door, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched, and locked is extremely improbable. However, the FAA is aware of two events in which the main deck cargo door open during flight. These events occurred on FedEx passenger/freighter conversion STCs in December 9, 1994, and March 1995. These events are referenced in the Design Review Report.

The FAA has reviewed the design drawings of the main deck cargo door systems installed on Boeing Model 727 series airplanes modified in accordance with STCs SA1444SO, SA1509SO, and SA1896SO, and has determined that the design of the door systems is nearly identical to that installed on the subject FedEx passenger/freighter conversion STCs. Therefore, the door opening events disclosed by FedEx are likely to occur on airplanes modified in accordance with STC SA1444SO, SA1509SO, or SA1896SO.

For airplanes modified in accordance with STC SA1444SO, SA1509SO, SA1543SO, or SA1896SO, the FAA considers the following four specific design deficiencies of the main deck cargo door systems to be unsafe:

1. Indication System

The main deck cargo door indication system for the STCs SA1509SO, SA1444SO, and SA1896SO uses a warning light at the door operator's control panel and a light at the flight engineer's panel. Both of these lights indicate the status of the cargo door latch and lock positions, but do not indicate either the door open or closed status. All three conditions (*i.e.*, door

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closed, latched, and locked) must be monitored directly so that the door indication system cannot display either "latched" before the door is closed or "locked" before the door is latched. If a sequencing error caused the door to latch and lock without being fully closed, the subject indication system, as designed, would not alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with the main deck cargo door unsecured, which could lead to the cargo door opening while the airplane is in flight and possible loss of the airplane.

The light on the flight engineer's panel is labeled "MAIN CARGO" and is displayed in red since it indicates an event that requires immediate pilot action. However, if the flight engineer is temporarily away from his station, a door unsafe warning indication could be missed by the pilots. In addition, the flight engineer could miss such an indication by not scanning the panel. As a result, the pilots and flight engineer could be unaware of, or misinterpret, an unsafe condition and could fail to respond in the correct manner. Therefore, an indicator light must be located in front of and in plain view of both pilots since one of the pilot's stations is always occupied during flight operations.

The main deck cargo door indication system of STCs SA1509SO, SA1444SO, and SA1896SO does not have a level of reliability that is considered adequate for safe operation. Many components are exposed to the environment during cargo loading operations and may be contaminated by precipitation, dirt, and grease, or damaged by foreign objects or cargo loading equipment. As a result, wires, switches, and relays can fail, jam, or short circuit and cause a loss of indication or a false indication to the door operator and flight crew. The design logic of the indication system (*i.e.*, lights which extinguish when the door is locked) will, in the event of a single point failure that would extinguish the light, result in an erroneous "safe" indication regardless of actual door status.

The design of STCs SA1509SO, SA1444S0, and SA1896S0 has a "Press-to-Test" red warning light on the main deck cargo door control panel located near the L–1 door. The design of the monitoring system of the main deck cargo door does not include separate lights to provide the door operator with door close, latch, and lock status. The electrical wiring design of the close, latch, and lock sensors of the door monitoring system are wired in parallel instead of in series. In parallel, two sensors could be sensing "unsafe" and the third sensor could be sensing "safe." If this situation were to occur, the sensors would not illuminate the red warning light on the door control panel or at the flight engineer's panel. Therefore, the "Press-to-Test" feature is adequate to check the light bulb functionality, but is not adequate to check the cargo door close, latch, and lock functions and status without annunciator lights for those three functions.

2. Means to Visually Inspect the Locking Mechanism

The single view port of the main deck cargo door installed in accordance with STCs SA1444SO, SA1509SO, and SA1896SO is included to allow the flight crew to conduct a visual inspection of the door locking mechanism. This view port is used in conjunction with the door warning system and should provide a suitable "back-up" in the event that the main deck cargo door warning system malfunctions.

The door locking mechanism is an assembly comprised of multiple lock pins (one for each of the door latches) connected by linkages to a common lock shaft. Although an indicator flag attached to the lock shaft can be seen through the view port when the shaft is in the "locked" position, a failure between the shaft and the pins could go undetected, because this flag is attached to the lock shaft and not the actual lock pins. If such a failure goes undetected, the airplane may be dispatched with the main deck cargo door warning system inoperative and the door not fully closed, latched, and locked, which could lead to a main deck cargo door opening while the airplane is in flight and possible loss of the airplane. Therefore, the FAA finds that the subject view port is not a suitable back-up when the cargo door warning system malfunctions.

As discussed in the ATA Final Report and the FAA Memorandum, there must be a means of directly inspecting each lock or, at a minimum, the locks at each end of the lock shaft of certain designs, such that a failure condition in the lock shaft would be detectable.

3. Means to Prevent Pressurization to an Unsafe Level

Boeing 727–100 and –200 airplanes modified in accordance with STC SA1444SO, SA1509SO, or SA1896SO are configured to utilize the existing pressurization outflow valve for the purpose of preventing fuselage pressurization of the airplane to an unsafe level in the event that the main deck cargo door is not closed, latched, and locked. The FAA design review of these modified Boeing 727–200 airplanes (documented in the Design Review Report) identified single point failures in the door control/outflow valve interface that could result in the valve not sensing and responding to an unsafe door condition. In addition, the FAA found no data to substantiate that the outflow valve location and size could prevent pressurization to an unsafe level. With the current design, it is possible that the outflow valve may not perform its intended function when utilized for the purpose of preventing pressurization of the airplane in the event of an unsecured door. This condition could result in cabin pressurization forcing an unsecured door open while the airplane is in flight and possible loss of the airplane.

In some cases, neither Boeing 727–100 airplanes nor Boeing 727–200 airplanes modified in accordance with the STC SA1444SO or SA1509SO have any means of preventing pressurization in the event that the main deck cargo door is not closed, latched, and locked, and therefore, have a higher risk of a cargo door opening while the airplane is in flight and possible loss of the airplane.

4. Powered Lock Systems

The main deck cargo door control system for STCs SA1444SO, SA1509SO, and SA1896SO that utilizes electrical interlock switches is designed to remove door control power (electrical and hydraulic) prior to flight and to prevent inadvertent door openings. As discussed previously, the door system design of the subject STCs is nearly identical to the FedEx design. The FedEx door opening events, discussed previously, indicate the likelihood that there may be latent and/or single point failures that can restore or continue to allow power to the door controls and cause inadvertent door openings. The failure modes may be found in the electrical portion of the door control panel, which, in turn, activates the door control hydraulics. The potential for the occurrence of these failure conditions is increased by the harsh operating environment of freighter airplanes. Door system components are routinely exposed to precipitation, dirt, grease, and foreign object intrusion, all of which increase the likelihood of damage. As a result, wires, switches, and relays have a greater potential to fail or short circuit in such a-way as to allow the cargo door to be powered open without an operator's command and regardless of electrical interlock positions.

A systems safety analysis would normally evaluate and resolve the potential for these types of unsafe conditions. However, the design data for STCs SA1444SO, SA1509SO, and SA1896SO do not include a systems safety analysis to specifically identify these failure modes and do not show that an inadvertent opening is extremely improbable. The need for a system safety analysis is identified in the ATA Final Report and the FAA Memorandum.

Cargo Restraint Barrier

In order to ensure the safety of occupants during emergency landing conditions, the FAA first established in 1934, a set of inertia load factors used to design the structure for restraining items of mass in the fuselage. Because the airplane landing speeds have increased over the years as the fleet has transitioned from propeller to jet design, inertia load factors were changed as specified in CAR part 4b.260. Experience has shown that an airplane designed to this regulation has a reasonable probability of protecting its occupants from serious injury in an emergency landing. The 727 passenger airplane was designed to these criteria which specified an ultimate inertia load requirement of 9g in the forward direction. These criteria were applied to the seats and structure restraining the occupants; including the flight crew, as well as other items of mass in the fuselage.

When the 727 passenger airplane is converted to carry cargo on the main deck, a cargo barrier is required, since most cargo containers and the container-to-floor attaching devices are not designed to withstand emergency landing loads. In fact, the FAA estimates that the container-to-floor attaching devices will only support approximately 1.5g's to 3g's in the forward direction. Without a 9g cargo barrier, it is probable that the loads associated with an emergency landing would cause the cargo to be unrestrained and impact the occupants of the airplane, which could result in serious injury or death.

The structural inadequacy of the cargo barrier was evident to the FAA during its review in October 1996 of a Boeing 727 modified in accordance with STC SA1543SO. The observations revealed that the design of the net restraint barrier floor attachment and circumferential supporting structure does not provide adequate strength to withstand the 9g forward inertia load generated by the main deck cargo mass, nor does it provide a load path to effectively transfer the loads from the restraint barrier to the fuselage structure of the airplane. These observations are supported by data contained in "ER 2785, Structural Substantiation of the 50k 9g Bulkhead Restraint System in Support of STC SA1543SO PN 53–1292–401 for the 9g Bulkhead 53–1980–300 Assembly with Upper Attachment Structure, Lower Attachment Structure, Floor Shear Web Structure, Seat Track Splice Fittings, Seat Tracks, and Seat Track Splices," dated September 29, 1996, by M. F. Daniel. Although this report was specific to STC SA1543SO, the FAA has determined that the data are applicable to airplanes modified in accordance with STCs SA1444SO, SA1543SO, and SA1896SO because the design principles for attachment of the barriers in both STC's are similar. The report reveals that the structural deficiencies were found in the net attach plates and floor attachment structure of the cargo barrier. The data show large negative margins of safety, which indicate that the inertia load capability of the cargo barrier is closer to 2g than the required 9g in the forward direction. From these analyses, it is evident that the cargo restraint barrier would not be capable of preventing serious injury to the occupants during an emergency landing event with the full allowable cargo load.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The FAA has received comments in response to the four NPRM actions (i.e., Rules Dockets 97–NM–232–AD, 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD) that address the same subjects described above for four different sets of cargo modification STCs. Some of these comments addressed only one NPRM, while others addressed all four. Because in most cases the issues raised by the commenters are generally relevant to all four NPRMs, each final rule includes a discussion of all comments received.

Definition of Detailed Visual Inspection

One commenter provided Boeing's definition of a detailed visual inspection. The commenter requests that the FAA approve Boeing's definition as meeting the "detailed visual inspection" definition specified in Note 2 of the NPRM. The commenter states that it has incorporated Boeing's definition into its General Maintenance Manual (GMM), and that it is performing the detailed visual inspection of the main deck cargo door hinge in accordance with the GMM. The commenter also states that acceptance of the existing Boeing's definition will allow for work standardization and consistency.

The FAA partially concurs. The FAA concurs that, for the purpose of this AD, the definition provided by the commenter satisfies the intent of the definition contained in Note 2 of this AD. The detailed inspection definition specified in Note 2 of this AD is a standard definition that is used in all ADs that require a detailed inspection. Therefore, the FAA finds that no change to Note 2 of the final rule is necessary. However, for clarification purposes, the FAA has revised all references to a "detailed visual inspection" in the NPRM to "detailed inspection" in the final rule.

Main Deck Cargo Door Hinge

Two commenters request that the compliance time for accomplishing the detailed visual inspection required by paragraph (a) of the NPRM be revised. One commenter states that the compliance time should include a threshold of "prior to the accumulation of five years since accomplishment of the original conversion." The commenter states that operators of newly modified airplanes should not have to accomplish the detailed visual inspection required by paragraph (a) of the NPRM because it would be unlikely that brand new hinges would develop cracks within 250 flight cycles after being installed. The other commenter states that the compliance time should be revised to "at the next scheduled 'B' check, or 350 cycles after the effective date of the NPRM, whichever occurs first." The commenter states that such an extension would allow the inspection to be accomplished during a regularly scheduled "B" check and would not be disruptive of normal maintenance inspection scheduling.

The FAA partially concurs. The FAA does not concur that the compliance time should be extended from 250 flight cycles to 350 flight cycles. In developing an appropriate compliance time for the detailed inspection required by paragraph (a) of this AD, the FAA considered the degree of urgency associated with addressing the subject unsafe condition; the results from an FAA report, "Damage Tolerance Analysis of 727 Cargo Door Hinge," dated October 10, 1997; and the practical aspect of accomplishing the required inspection within an interval of time that parallels the typical "A" check scheduled maintenance interval for the majority of affected operators.

However, the FAA concurs with the commenter about the unlikelihood of a

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newly modified airplane developing cracks within 250 flight cycles since installation. Based on the referenced FAA damage tolerance report, the FAA finds that it is unlikely that a significant crack would occur in the hinge within 4,000 flight cycles since installation. Therefore, the FAA finds that operators must accomplish the detailed inspection "prior to accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later." The FAA has revised paragraph (a) of the final rule accordingly.

One commenter requests that a high frequency eddy current (HFEC) inspection be required in paragraph (a) of the NPRM in lieu of the detailed visual inspection. The commenter states that an HFEC inspection should be used because there are no proposed repetitive inspections and a detailed visual inspection can only detect limited crack size.

The FAA does not concur. The FAA finds that accomplishment of the detailed inspection required by paragraph (a) of this AD, in conjunction with the detailed inspection required by paragraph (b)(1) of this AD and the modification required by paragraph (b)(2) of this AD, will ensure the integrity of the door and fuselage structure to which the hinge is attached. Therefore, no change to the final rule is necessary in this regard.

Two commenters request that the FAA revise paragraph (a) of the NPRM to specify that operators will be given "credit" for having previously accomplished the proposed detailed visual inspection of the main deck cargo door hinge in accordance with a method approved by the appropriate Aircraft Certification Office (ACO) prior to the effective date of the final rule. One commenter states that operators who accomplished the subject inspection before the effective date of this AD should not be penalized by being forced to reinspect after the effective date of this AD.

The FAA does not consider that a change to the final rule is necessary to give operators such credit. Operators are given credit for work previously performed by means of the phrase in the "Compliance" section of the AD that states, "Required as indicated, unless accomplished previously." Therefore, in the case of this AD, if the required detailed inspection has been accomplished prior to the effective date of this AD in accordance with a method approved by the FAA, this AD does not require that it be repeated.

One commenter requests that the detailed visual inspection required by paragraph (b)(1) of the NPRM be accomplished at the next "C" check after five years have elapsed since the airplane was converted from a passenger-to a cargo-carrying ("freighter") configuration. The commenter also states that a "C" check would allow operators to accomplish the inspection during a heavy maintenance visit.

The FAA does not concur. The FAA finds that accomplishment of the detailed inspection required by paragraph (b)(1) of this AD prior to or concurrently with requirements of paragraph (b)(2) of this AD (i.e., installation of a main deck cargo door hinge) will ensure the structural integrity of mating surfaces of the hinge. However, paragraph (g) of this AD does provide affected operators the opportunity to apply for an adjustment of the compliance time if data are presented to justify such an adjustment.

One commenter requests that the detailed visual inspection required by paragraph (b)(1) of the NPRM apply only to airplanes that have been in service for five or more years since installation of the cargo door, because the likelihood of damage increases with time in service. The commenter states that the compliance time specified in paragraph (b) of the NPRM should start from the date that the modification was installed on the airplane.

The FAA does not concur. The FAA finds that the potential for cracks in the hinge is primarily related to flight cycles (i.e., number of fuselage pressure cycles) and, to a lesser extent, calendar time. Therefore, the FAA has determined that the compliance time specified in paragraph (b) of this AD should be related to flight cycles, not calendar time. No change to the final rule is necessary in this regard.

One commenter requests that the NPRM, Rules Docket 97–NM–234–AD, be revised to reference Kitty Hawk Service Bulletin KHA 727–004, Revision A, as an appropriate source of service information for accomplishing the detailed visual inspection required by paragraphs (a) and (b)(1) of the NPRM and the modification required by paragraph (b)(2) of that NPRM. The commenter states that this service bulletin has been submitted to the FAA for approval and should be approved by the FAA prior to the issuance of the NPRM.

Another commenter states that it has developed and submitted to the FAA for approval a modification that segments the hinge on existing cargo converted airplanes and installs a segmented hinge on the new conversion. From this comment, the FAA infers that the commenter is requesting that the NPRM, Rules Docket 97–NM–233–AD, be revised to reference this modification as a terminating action for the requirements of paragraphs (b) and (c) of that NPRM.

The FAA concurs with the commenters' requests to reference service bulletins that constitute compliance with the requirements of paragraphs (b) and (c) of ADs, Rules Dockets 97–NM–233–AD and 97–NM–234–AD. The FAA has reviewed and approved Kitty Hawk Service Bulletin KHA 727–004, Revision B, dated March 3, 1999, as opposed to the Revision A mentioned by one of the commenters. The FAA also has reviewed and approved Aeronautical Engineers Incorporated (AEI) Service Bulletin AEI01–01, Revision B, dated October 26, 2001. These service bulletins describe the following procedures:

1. Visual inspection of all areas of the hinge for cracks or other signs of damage;
2. Inspection of the mating surfaces of the main deck cargo door hinge and the external doubler for discrepancies (*i.e.*, scratches, gouges, or corrosion);
3. Repair of any crack, damage, or discrepancy, if necessary; and
4. Installation of a main deck cargo door hinge that complies with the applicable requirements of CAR part 4b, including fail-safe requirements.

In addition, the FAA has reviewed and approved Federal Express E.O. Revision Record 7–5230–7–5000, Revision B, release date December 18, 2001, and Pemco Service Bulletin 727–53–0006, Revision 1, dated December 4, 2001. The procedures in these service bulletins are similar to those described in AEI Service Bulletin AEI01–01, Revision B, and Kitty Hawk Service Bulletin KHA 727–004, Revision B.

The FAA finds that accomplishment of the actions specified in the four service bulletins described previously constitutes compliance with the requirements of paragraphs (b) and (c) of final rules, Rules Dockets 97–NM–232–AD, 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD; as applicable. Therefore, the FAA has revised those final rules to include a new note that references the subject service bulletins as a source of service information for accomplishing the actions required by paragraphs (b) and (c) of those final rules; as applicable.

One commenter requests that a subparagraph be added to paragraph (b) of the NPRM to require that the detailed visual inspection required by paragraph (b)(1) of the NPRM be accomplished just prior to final hinge installation during the process of converting an airplane from a passenger-to cargo-carrying ("freighter") configuration. The commenter states that this revision would eliminate its concerns about the installation defects that could cause future problems.

The FAA does not concur. The FAA finds that any FAA-approved corrective action that satisfies the requirements of paragraph (b)(2) of this AD will also address the installation of a hinge during the process of converting a Boeing Model 727 series airplane from a passenger-to a cargo-carrying ("freighter") configuration. Normally, good manufacturing procedures during production should preclude the necessity for the inspection. No change to the final rule is necessary in this regard.

One commenter notes that paragraph (b)(2) of the NPRM references CAR part 4b. The commenter asks, "If the FAA, as evidenced by the awarding of an STC, certified the cargo door hinge, how can the current hinge not meet CAR requirements?" The commenter also asks, "Wasn't the original STC determined to be in compliance with those requirements? If so, what specifically needs to be done to eliminate the FAA safety concerns about hinges that do not appear to have a problem?" The commenter suggests that paragraph (b)(2) of the NPRM be revised to require STC holders to design and make available an acceptable replacement hinge. The commenter states that this suggestion should be a condition for STC holders to continue to hold their STC approval.

From the commenter's questions, the FAA infers that the commenter believes a main deck cargo door hinge with an approved STC is compliant with the requirements of CAR part 4b. The FAA finds that clarification is necessary. Generally, there is a presumption by operators that demonstrations of compliance with the requirements of CAR part 4b is a prerequisite for granting an STC. However, the applicant for any design approval is responsible for compliance with all applicable FAA regulations. The FAA has the discretion to review or otherwise evaluate the applicant's compliance to the degree the FAA considers appropriate in the interest of safety. The normal certification process allows for the review and approval of data by FAA designees. Consequently, the FAA office responsible for the certification of an airplane or modification to an airplane or an aeronautical appliance may not review all details regarding compliance with the appropriate regulations. As explained in the NPRM, the FAA has conducted design reviews and airplane inspections and has identified a potential unsafe condition that relates to the main deck cargo door hinge.

In addition, the FAA does not concur with the commenter's request to revise paragraph (b)(2) of the AD to require STC holders to design and make available an acceptable replacement hinge. The FAA finds that such a requirement is unnecessary, because as previously discussed, the FAA has revised this final rule to include a new note that references the applicable STC holder's service bulletin as a source of service information for accomplishing the actions required by paragraphs (b) and (c) of this final rule.

Main Deck Cargo Door Systems

One commenter requests that the compliance time for accomplishing the Airplane Flight Manual (AFM) revisions required by paragraph (d) of the NPRM be revised from "within 60 days after the effective date of this AD" to "within 60 days after submission of the procedures to the FAA." The commenter states that operators should be able to design revisions to the AFM within the proposed 60 days. However, the commenter believes that the Atlanta ACO will not be able to approve every one of those AFM Supplements within that time period.

The FAA does not concur. Since the release of the NPRM, some of the affected STC holders and operators have already developed AFM procedures acceptable to the FAA. The FAA finds that a 60-day compliance time is sufficient to allow the remaining operators and STC holders to develop revisions to the applicable AFMs and their supplements and for the Atlanta ACO to review and approve those AFM revisions.

One commenter submitted procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 97–NM–232–AD. The commenter requests that the FAA approve those procedures prior to issuance of the final rule and include those procedures in the final rule. The commenter states that it has completed a Safety Assessment Report for each of the door configurations currently operating in its fleet. The commenter believes the results of the report demonstrate that it is "extremely improbable" that the door will inadvertently open in flight for any reason. Although the analysis does not demonstrate compliance with the "extremely improbable" standard, the commenter states that for a limited time of 36 months the door system, as installed, provides a sufficient level of safety to be considered acceptable with no modification or change in operational procedures.

The FAA partially concurs. In order to gain a better understanding of the referenced Safety Assessment Report, the FAA had a telecon with the commenter on February 19, 2000, to discuss a series of questions, which were provided to the commenter prior to the telecon, about the report. (The minutes of this telecon are included in Rules Docket 97–NM–232–AD.) In addition to the information that it provided at the telecon, the commenter also provided an analysis of the Safety Assessment Report in a letter, dated February 16, 2000, and a revised table of the Safety Assessment Report in a letter, dated March 6, 2000. The analysis in these letters provided, for a variety of failure modes, the probability of the main deck cargo door not being in the closed, latched, and locked condition prior to dispatch. The analysis showed that the warning systems of the main deck cargo door and the means to prevent pressurization if the door is not closed, latched, and locked, only meet some of the requirements of CAR § 4b.606 and criteria specified in FAA memorandum, dated March 20, 1992 (referenced in the preamble of the NPRM). The commenter also provided Revision 16 of its Boeing B–727 Flight Manual, which further clarifies a change in the procedures for verifying that the main deck cargo door is closed, latched, and locked.

In light of the clarification provided by the commenter, the FAA concurs that the procedures submitted by the commenter provide an adequate level of safety until the requirements of paragraph (e) of this AD have been accomplished; considering the level of probability of occurrence of certain failures of the warning systems of the main deck cargo door and strict adherence to the door checking procedures and associated training requirements. Since issuance of the NPRM, the FAA has reviewed and approved Federal Express Service Bulletin FX727–2001–5230–01, dated July 30, 2001, which describes procedures for ensuring that the main deck cargo door is closed, latched, and locked prior to dispatch. Accomplishment of these actions constitutes compliance with the requirements of paragraph (d) of final rule, Rules Docket 97–NM–232–AD. Therefore, the FAA has revised the final rule, Rules Docket 97–NM–232–AD, to include a new note that references the subject service bulletin as a source of service information for accomplishing

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the actions required by paragraph (d) of that final rule.

One commenter provided procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 97–NM–233–AD, on airplanes modified in accordance with STC SA1368SO, on which a vent door has not been installed, and on airplanes modified in accordance with STC SA1797SO, on which a vent door has been installed. The commenter states that its procedures will ensure that the main deck cargo door is properly closed, latched, and locked prior to flight.

From this comment, the FAA infers that the commenter is requesting that the FAA approve its procedures as an acceptable means of compliance to the requirements of paragraph (d) of the final rule, Rules Docket 97–NM–233–AD. The FAA does not concur. The FAA finds that any proposed operating procedure must have sufficient validation and verification that the procedures are realistic and designed to minimize possible human error. The procedure also must provide for adequate checks and balances in the event the procedure is not strictly followed. In addition, the commenter did not provide any validation of the operating procedure or results of a safety analysis. However, the FAA may approve requests for an alternative method of compliance (AMOC) under the provisions of paragraph (g) of AD, Rules Docket 97–NM–233–AD, if sufficient data are submitted to substantiate that such a operating procedure would provide an acceptable level of safety.

One commenter provided procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 99–NM–234–AD. In support of its procedures, the commenter states, among other items, that an internal direct visual inspection of the latching and locking system is not possible on Model 727 series airplanes affected by that NPRM because the latching and locking systems are covered by a protective guard/cover that prevents direct viewing of these systems. Removing these covers would expose the latching and locking systems to possible foreign object damage (FOD) or damage from shifting freight. The commenter states that this condition is far more dangerous than a failure of the latching and locking systems. The commenter also states that most of the affected airplanes are equipped with flip up sill protectors, which further block the visibility of the bottom of the cargo door area (latch and lock area). The commenter concludes that a visual inspection of the latching and locking mechanisms is not appropriate for the airplane type and would create severe operational disruption with no benefit.

The FAA concurs with the commenter's conclusion that a visual inspection of the latching and locking mechanisms is not appropriate for accomplishing the requirements of paragraph (d) of final rule, Rules Docket 97–NM–234–AD. The FAA notes that paragraph (d) of that final rule does not specifically require a visual inspection of the locking mechanisms of the main deck cargo door after the door is closed, as suggested by the commenter. Since issuance of the NPRM, the FAA has reviewed and approved Kitty Hawk Service Bulletin KHA 727–008, dated January 7, 2000, which describes procedures for ensuring that the main deck cargo door is closed, latched, and locked prior to dispatch. These procedures are identical to those procedures provided by the commenter. Accomplishment of these actions constitutes compliance with the requirements of paragraph (d) of final rule, Rules Docket 97–NM–234–AD. Therefore, the FAA has revised final rule, Rules Docket 97–NM–234–AD, to include a new note to reference the subject service bulletin as a source of service information for accomplishing the actions required by paragraph (d) of that final rule.

One commenter states that the requirements for "a means to prevent pressurization to an unsafe level" and "direct visual examination of all locks" are not included in the certification basis of Model 727 series airplanes and should not be required for the interim action.

From this comment, the FAA infers that the commenter is referring to the interim actions required by paragraph (d) of the NPRM and to extracts from Appendix 1 of this AD, which sets forth the industry-accepted criteria to which the outward opening doors must be shown to comply per paragraph (e) of the NPRM. The FAA does not concur. The commenter has misinterpreted the requirements of paragraph (d) of this AD. Paragraph (d) of this AD requires procedures to ensure that all power is removed from the main deck cargo door prior to dispatch and to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane. This paragraph does not specify or limit what means or actions would be acceptable to the FAA. Operators could submit a means to prevent pressurization to an unsafe level and direct visual inspection of the locks as possible ways to ensure that the main deck cargo door is secure, in accordance with paragraph (d) of this AD. In addition, to comply with paragraph (e) of this AD, the criteria specified in Appendix 1 of this AD must be applied, irrespective of the certification basis of the airplane. Therefore, no change to the final rule is necessary in this regard.

One commenter requests that the proposed compliance time specified in paragraph (e) of the NPRM be revised from "within 36 months after the effective date of this AD" to "at the next C check after the modifications are approved by the Manager, Atlanta ACO." The commenter states that such a compliance time would make everybody (i.e., designer, operator, and FAA) share responsibility for time delays encountered during the modification design and approval process.

The FAA does not concur. Since issuance of the NPRM, the FAA has reviewed and approved two modifications (i.e., National Aircraft Service, Inc. (NASI), STC ST01438CH and Pemco STC ST01270CH) as acceptable means for compliance with the requirements of paragraph (e) of final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD; as applicable. Therefore, the FAA has revised the final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD, to include a new note to reference the applicable STC as a source of service information for accomplishing the requirements of paragraph (e) of those final rules. The FAA finds that a 36-month compliance time for accomplishing the action specified in paragraph (e) of those final rules is not only sufficient for the design of the corrective actions, but also provides adequate time for operators to schedule the installation within an interval of time that parallels a heavy maintenance visit. However, under the provisions of paragraph (g) of final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD, the FAA may approve requests for an adjustment of compliance times if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Main Deck Cargo Barrier

One commenter requests that, before issuance of the final rule, industry and the FAA form a review team to find a way of lowering the costs associated with accomplishing the proposed installation of a 9g crash barrier. The commenter suggests that lower costs could be achieved by fixing the existing barrier (e.g., the loads could be spread by the addition of structural reinforcement attachment angles) or designing a new barrier. The commenter states that the Ventura Aerospace, Inc., cargo barrier STC ST00848LA, which is an approved means of compliance with the requirements of paragraph (f) of NPRMs, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD, is an adequate barrier; however, the parts and installation cost estimates for the installation in those NPRMs are too low. The commenter gave examples of various actions and associated work hours that would be necessary to accomplish the proposed installation of the Ventura 9g crash barrier.

The FAA does not concur with the commenter that a review team is necessary, and that the cost estimates of NPRMs, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD, for accomplishing the installation of a main deck cargo barrier are too low. The FAA acknowledges that installation of a Ventura Aerospace, Inc., cargo barrier STC ST00848LA is an approved means of compliance with the requirements of paragraph (f) of final rules, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD. However, the cost estimates in the subject NPRMs were not specifically for installation of the subject Ventura 9g crash barrier, but were for installation of a 9g crash barrier that complies with the applicable requirements of CAR part 4b. The installation cost estimate of the NPRMs was provided to the FAA by Pemco based on the best data available to date.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. Furthermore, because the FAA generally attempts to impose compliance times that coincide with operators' scheduled maintenance, the FAA considers it inappropriate to attribute the costs associated with aircraft "downtime" to the cost of the AD, because, normally, compliance with the AD will not necessitate any additional downtime beyond that of a regularly scheduled maintenance visit.

Public Meeting

Several commenters request that the FAA hold a public meeting prior to the issuance of the final rule in the event that the FAA does not find their procedures acceptable for compliance with the requirements of paragraph (d) of the NPRM. The commenters state that such a meeting would provide a forum for productive face-to-face discussions similar to the process used by industry's B–727 Working Group.

The FAA does not concur. As discussed previously, the FAA has accepted some of the procedures submitted by the commenters. Also, in consideration of the differing configurations of the main deck cargo door systems between the various affected STCs, a public meeting to discuss the AD may be significantly restricted in some cases because of the proprietary design and data issues. However, the FAA is available to discuss any particular proposal for procedures specific to the airplane configuration with each of the affected STC holders or operators. Further, the FAA may approve requests for an AMOC under the provisions of paragraph (g) of this AD if sufficient data are submitted to substantiate that such a procedure would provide an acceptable level of safety. Therefore, the FAA finds that no public meeting is necessary.

Issue Separate ADs

One commenter requests that the NPRM be split into separate ADs for each issue—main deck cargo door hinge, main deck cargo door systems, and 9g crash barrier. The commenter states that multiple actions addressed by a single AD make managing the actions very unwieldy and complicated.

The FAA does not concur. The FAA is not convinced that separate ADs for each issue would resolve the complexity of this AD. The FAA has determined that a less burdensome approach is to issue only one AD for each STC holder that addresses the potential unsafe conditions that relate to the main deck cargo door hinge, main deck cargo door systems, and main deck cargo barrier. In addition, operators have already initiated actions to accomplish the requirements of this AD without apparent complications.

ACO Approval

One commenter requests that the actions required by the NPRM that must be accomplished in accordance with a method approved by the Manager, Atlanta ACO, be approved by the Manager, Transport Airplane Directorate. The commenter states that the affected Boeing Model 727 series airplanes are not small airplanes, and that the approving authority should be someone in an ACO from the Transport Airplane Directorate who understands structural repairs of transport category airplanes.

The FAA does not concur. Since the subject STCs were issued by the Atlanta ACO, that office has certificate responsibility for the airplanes affected by this AD. The Atlanta ACO is most cognizant of the design details of the subject STCs and, therefore, is more able to address each operator's specific issues for complying with paragraph (d) of this AD. The Manager of the Atlanta ACO will coordinate the review of the submittals with the Transport Airplane Directorate, which has established a team consisting of members from several ACOs to review all requests in accordance with paragraphs (b)(1), (b)(2), (c), (d), (e), and (f) of this AD.

Principal Maintenance Inspector (PMI) or Principal Operations Inspector (POI) Approval

One commenter requests that the FAA allow the individual operator's local PMI or POI to approve the AFM procedures for ensuring that the main deck cargo door is closed, latched, and locked required by the NPRM, or provide an option in the NPRM that allows the procedures to be added to the airplane operator manual (AOM), if applicable. The commenter states that such approval would ensure that the approval process is accomplished quickly.

The FAA does not concur. Paragraph (d) of this AD requires comprehensive engineering evaluation in consideration of the applicable requirements of CAR part 4b and the criteria specified in Appendix 1 of this AD. Consequently, the evaluation must be conducted by the Manager, Atlanta ACO, to determine an acceptable level of safety. The PMI or POI for the air carrier is normally not familiar with all the design considerations provided by the requirements of CAR part 4b and Appendix 1 of this AD.

Cost

One commenter requests that an industry/FAA team determine a less costly method to fix the existing barriers to satisfy the FAA's concerns. For example, the loads could be spread by the addition of structural reinforcement attachment angles. The commenter states that replacing the barrier is an extreme measure, and that there must be some kind of structural additions that could be made to the existing barrier to make it acceptable at a much lower cost.

The FAA partially concurs. The STC holders and operators are certainly free to form an industry team to find common solutions. However, the FAA's reason for participation would not be for the purpose of developing a less costly design, but rather to ensure that the

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final design is compliant with the applicable regulations.

One commenter requests that the FAA require STC holders to design the correction for the NPRM as a warranty issue. The commenter states that small operators, who do not have in-house engineering capability, will be at a great disadvantage when attempting to design remedies for this NPRM. The commenter also states that this NPRM places a substantial financial and operational burden on "small entities" just from the standpoint of not having a remedy already designed and approved.

The FAA does not concur. Any warranty agreements between the operator and an STC holder are not the responsibility of the FAA. The burden on small entities is addressed in the Regulatory Evaluation Summary and Regulatory Flexibility Analysis Section of this AD.

Descriptive Language of Preamble

One commenter states that it found the following four factual inaccuracies in the NPRM, Rules Docket 97–NM–232–AD, and requests that the FAA correct them.

1. The commenter notes that paragraph six under the heading "Main Deck Cargo Door System" reads, ". . . However, the FAA is aware of two events in which the main deck cargo door opened during flight. These events occurred on FedEx passenger/freighter conversion STCs in October 1996, and March 1995." The commenter states that it does not have any information or records indicating that the main deck cargo door opened in flight in October 1996 or March 1995. In the March 1995 incident, the commenter contends that the door, upon landing, was found to be closed and locked, and that the lock bar was found to be in the unlocked position. The commenter states that it found a control valve electrical connection of the main deck cargo door to be disconnected, and that the door operated normally once it was reconnected.

2. The commenter disagrees with the sentence under the heading "1. Indication System" in the preamble of the NPRM that reads, "Both of these lights indicate the status of the cargo door latch and lock positions, but do not indicate either the door open or closed status." The commenter states that its system does monitor and indicate the door closed status. If the door closed switch is not depressed, the light will stay illuminated, even if the door lock latches have rolled and the lock bar has moved into place.

3. The commenter notes that paragraph two under the heading "2. Means to Visually Inspect the Locking Mechanism" reads, "* * * Although an indicator flag attached to the lock shaft can be seen through the view port when the shaft is in the 'locked' position, a failure between the shaft and the pins could go undetected, because this flag is attached to the lock shaft and not the actual lock pins."

The commenter states that the flag is attached to the lock bar on Model 727–100 series airplanes. The lock plates are also bolted directly to the lock bar (no linkages). Therefore, the commenter contends that both the flag and lock plates become integrated parts of the lock bar.

In addition, the commenter states that the flag is attached to a lock pin on Model 727–200 series airplanes, and that the lock pin linkage does not have springs or an actuator attached to it. The commenter also contends that movement would have to be transmitted through the lock bar. The commenter further states that the stress analysis for Model 727–200 series airplanes shows high margins of safety in yield, bending, and shear for the locking hinges and fasteners.

4. The commenter notes that paragraph three under the heading "3. Means to Prevent Pressurization to an Unsafe Level" in the preamble of the NPRM reads, "Boeing 727–100 airplanes modified in accordance with the subject STCs have no means of preventing pressurization in the event that the main deck cargo door is not closed, latched, and locked, and therefore, have a higher risk of a cargo door opening while the airplane is in flight and possible loss of the airplane." The commenter states that the system used on Model 727–100 series airplanes has a relay that drives the ground venturi system, which in turns opens the outflow valve when the main deck cargo door is not closed and locked, hence pressurization is not possible.

For item 1 above, the FAA partially agrees with the commenter. In the preamble of the NPRM, the FAA incorrectly referenced October 1996 as a date of a door opening event. The correct date is December 9, 1994. The pilots' report (which is included in Rules Docket 97–NM–232–AD) on this event states that shortly after takeoff the warning light for the main deck cargo door illuminated. Following the open in-flight procedures for the main deck cargo door, the flight crew safely returned the airplane to the departure airport. The post-flight inspection revealed that the main deck cargo door opened approximately two feet. Also, in reference to the March event where the commenter states that the door did not open in flight, a verbal report (i.e., "FAA Freighter Conversion STC Review Report Number 2, dated October 16–18, 1996," which is included in Rules Docket 97–NM–232–AD) from the organization of the commenter's company states that the main deck cargo door was unlocked, and that the door was flush with the exterior of the airplane. The report on this latter event states that, following departure and at 17,000 feet, the warning light of the main deck cargo door came on followed by cabin altitude climbing. While it is not clear to the FAA whether or not the main deck cargo door opened while the airplane was in flight, the condition for possible door opening (i.e., rotation of the lock bar to the unlocked position in flight) did occur, which could have led to a door opening while the airplane is in flight. Therefore, the FAA has revised the "Background" ("Main Deck Cargo Door Systems" subsection) Section in the preamble of final rule, Rules Docket 97–NM–232–AD, to correct the date of the subject event.

For items 2. and 4. above, the FAA agrees with the commenter's correction to items 2. and 4. above and has revised the "Background" Section ("Indication System" and "Means to Prevent Pressurization to an Unsafe Level" subsections) in the preamble of final rule, Rules Docket 97–NM–232–AD, accordingly. However, we find that the correction to item 2. does not alleviate the unsafe design features that were single point failures in the door control/outflow valve interface, which could result in the valve not sensing and responding to an unsafe door condition. With the current design, it is possible that the outflow valve or associated controllers may not perform their intended function when utilized for the purpose of preventing pressurization of the airplane in the event of an unsecured door. This condition could result in cabin pressurization forcing an unsecured door open while the airplane is in flight and possible loss of the airplane.

Further, we find that the correction to item 4. does not alleviate the safety concern regarding the design feature where ALL three conditions (i.e., door closed, latched, and locked) are not directly monitored. If a sequencing error caused the door to latch and lock without being fully closed, the subject indication system, as designed, would not directly alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with an unsecured main deck cargo door, which could lead to the cargo door opening while the airplane is in flight and possible loss of the airplane.

For item 3. above, the FAA does not concur that the attachment of the "flag" to the lock bar on Model 727–100 series airplanes is sufficient to indicate the position of the lock pins, even though the lock pins are bolted to the lock bar. The FAA has determined that any failure condition of a lock pin would not be detected when observing the position of the flag through the view port.

Explanation of Change to Unsafe Condition

To more accurately reflect the identified unsafe condition of this AD, the FAA has revised the final rule where applicable to read, "to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants."

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Regulatory Evaluation Summary

This evaluation estimates the costs of an AD, Rules Docket 97–NM–235–AD, which requires installation of a fail-safe hinge; redesigned warning and power control systems of the main deck cargo door; and a 9g crash barrier on Boeing Model 727 series airplanes that have been modified in accordance with certain STC's held by Pemco. As discussed above, the FAA has determined that:

1. The main deck cargo door hinge is not fail-safe;
2. Certain control systems of the main deck cargo door do not provide an adequate level of safety; and
3. The 9g crash barrier is not structurally adequate during a minor crash landing.

It is estimated that 54 U.S.-registered Boeing Model 727 series airplanes will be affected by this AD. The following discussion addresses, in sequence, the actions in this AD and the estimated cost associated with each of these actions. An analysis of the costs is also available in Rules Docket 97–NM–235–AD.

1. Main Deck Cargo Door Hinge

Since unsafe conditions have been identified that are likely to exist or develop on other modified Boeing Model 727 series airplanes, paragraph (a) of this AD requires, within 250 flight cycles after the effective date of this AD, a detailed inspection of the external surface of the main deck cargo door hinge (both fuselage and door side hinge elements) to detect cracks. Pemco estimates that this inspection will take 1.5 work hours per airplane. At a mechanic's burdened labor rate of $60 per work hour, the estimated cost per airplane is $90, or $4,860 for the fleet of 54 affected Boeing Model 727 series airplanes.

Paragraph (b)(1) of this AD requires, within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, a detailed inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge to detect cracks or other discrepancies (e.g., double or closely drilled holes, corrosion, chips, scratches, or gouges). The FAA estimates that compliance with this inspection will take 200 work hours, and that the average labor rate is $60 per hour. Consequently, the estimated cost per airplane is $12,000, or $648,000 for the affected fleet of airplanes.

Paragraph (b)(2) of this AD requires the installation of a fail-safe door hinge. The compliance time for this installation is also 36 months or 4,000 cycles, after the effective date of the AD, whichever occurs first. Pemco estimates that the cost to design and certificate such a hinge is $20,000; that the parts for a fail-safe door hinge will cost $8,000; and that the installation will take 300 hours of labor. Total compliance cost for this provision for the affected fleet of 54 airplanes is estimated to be $1.4 million.

Paragraph (c) of the AD requires that that, if any crack or discrepancy is detected during the inspection required by paragraph (a) or (b)(1) of the AD, a repair must be made prior to further flight. The cost of these repairs is not attributable to this AD.

For purposes of analysis, the FAA assumes an effective date of some time in the fourth quarter of 2002. The FAA also assumes that the installation of the main deck cargo door hinge (paragraph (b)(2) of this AD) will be accomplished at the same time as the detailed inspection of fastener holes (paragraph (b)(1) of this AD). It is also assumed that the operators of airplanes modified per Pemco STCs will perform these two activities uniformly throughout the 36-month compliance time. Finally, it is assumed that the certification cost for the main deck cargo door hinge will be incurred within the first 6 months after the effective date of this AD. Consequently, the cost to comply with paragraphs (a) through (c) of this AD, over the 36-month compliance time, is estimated at $2.1 million, undiscounted, or $1.8 million discounted to present value (at 7 percent).

2. Main Deck Cargo Door Systems

Work on the main deck cargo door systems relates to paragraphs (d) and (e) of the AD. Paragraph (d) of this AD requires, within 60 days after the effective date of this AD, revising the Limitations Section of the FAA-approved AFM Supplement to provide the flight crew with procedures to ensure that all power is removed from the main deck cargo door prior to dispatch of the airplane, and that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane. These procedures are expected to include an inspection (until the incorporation of the redesigned main deck cargo door systems), described in the next paragraph. In addition, paragraph (d) of the AD requires the installation of any associated placards.

The Pemco door system design, as provided by STCs SA1444SO, SA1896SO, and SA1509SO, is nearly identical to that of FedEx. Therefore, the cost associated with the inspection of the door can be estimated by using FedEx's assumptions. FedEx assumes that an external inspection of the flushness of the main deck cargo door, combined with an "enhanced B-check," will be an acceptable interim means to ensure that the cargo door is secured prior to dispatch. With regard to the external inspection, FedEx estimates, before a redesigned door system is installed (*see* paragraph (f) of this AD), that it will take a mechanic 30 minutes to inspect for flushness of the main deck cargo door, prior to dispatch of an airplane. By using these estimates for compliance by airplanes with Pemco STCs, and assuming that each affected airplane flies one flight per day for 260 days per year, the estimated cost per inspection is $30, or $7,800 per airplane, per year, until the door system is changed. This results in an estimated total cost of about $1.3 million for inspections of the 54 affected airplanes over the 36-month compliance time.

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The B-check occurs on these Boeing Model 727 series airplanes approximately twice a year. FedEx estimates that the incremental cost for maintenance during this "enhanced B-check" is $11,700 per airplane, per year, until the door system is changed. In addition, Pemco estimates that the setup costs for the daily inspection (i.e., procedure materials for the mechanics to perform the inspection and training requirements) will be $50,000. Assuming that the incorporation of the redesigned door system occurs uniformly over the 36-month compliance time, the total cost for this task to the operators of Pemco-modified Boeing Model 727 series airplanes is estimated to be $1.9 million. Consequently, the total cost to meet the requirements of paragraph (d) of this AD is estimated to be $3.2 million.

Paragraph (e) of the AD requires, within 36 months after the effective date of the AD, incorporation of redesigned main deck cargo door systems. Pemco estimates that the development and certification of the systems will cost $138,800. Modification parts are estimated to cost $10,000 per airplane, and labor costs are estimated to be $18,000 per airplane. The FAA expects that operators will incorporate the redesigned main deck cargo door systems during regularly scheduled maintenance, and that this work will require three additional days, on average. The affected airplanes will be out of service during this time, at an estimated cost of $18,300. Consequently, the total costs of installing a redesigned main deck cargo door system, including certification, parts, labor, and down time are estimated at $2.6 million for the affected airplane fleet over the 36-month compliance time.

The total estimated cost to comply with the requirements for the main deck cargo door systems is $5.8 million, undiscounted, or $5.1 million, discounted to present value.

3. 9g Crash Barrier

Paragraph (f) of the AD requires, within 36 months or 4,000 flight cycles after the effective date of the AD, whichever occurs first, installation of a main deck cargo barrier that complies with the applicable requirements of CAR part 4b. Pemco estimates that the development and certification of a 9g crash barrier will cost $126,500; while parts per airplane will cost $25,000, and labor services will cost $18,000 per airplane (for 300 hours of work at a burdened rate of $60 per hour).

The FAA assumes that operators will install a 9g crash barrier uniformly over the 36-month compliance time. The total cost for the 54 airplanes to comply with paragraph (f) of the AD is estimated to be $2.4 million, undiscounted, or $2.0 million discounted to present value.

4. AMOC and Special Flight Permits

Paragraph (g) of the AD allows an AMOC or adjustment of compliance time that provides an acceptable level of safety if approved by the Manager of the Atlanta ACO. The FAA is unable to determine the cost of an AMOC, but assumes that it will be less than the cost of complying with the provisions in paragraphs (a) through (f) of the AD.

Paragraph (h) of the AD allows special flight permits in accordance with the regulations to operate an affected airplane to a location where the requirements of the AD could be accomplished.

5. Total Cost of the AD

The FAA estimates that the total compliance cost of this AD will be $10.4 million, undiscounted, or $9.0 million discounted to present value.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA of 1980 requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA of 1980 covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform an assessment of all rules to determine whether the rule will have a significant economic impact on a substantial number of small entities. If the determination is that the rule will have such an impact, the agency must prepare a regulatory flexibility analysis as described in the RFA of 1980. However, if after an assessment of a proposed or final rule, an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA of 1980 provides that the head of the agency may so certify. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Issues To Be Addressed in a Final Regulatory Flexibility Analysis (FRFA)

The central focus of the FRFA, like the initial Regulatory Flexibility Analysis, is the requirement that agencies evaluate the impact of a rule on small entities and analyze regulatory alternatives that minimize the impact when there will be a significant economics impact on a substantial number of small entities.

The requirements, outlined in section 604(a)(1–5) are listed and discussed below:

1. A succinct statement of the need for, and objectives of, the rule:

The FAA has determined that the main deck cargo door hinge is not fail-safe; certain main deck cargo door control systems do not provide an adequate level of safety; and the main deck cargo barrier is not structurally adequate during a minor crash landing. The actions specified in the AD are intended to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.

Under the United States Code (U.S.C.), the FAA Administrator is required to consider the following matter, among others, as being in the public interest: assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce (see 49 U.S.C. 44101(d)). Forty-nine U.S.C. 44701(a) provides broad rulemaking authority to "promote safe flight of civil aircraft in air commerce." Accordingly, this AD will amend Title 14 of the CFRs to require operators of Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying configuration to correct the identified unsafe condition.

2. A summary of the significant issues raised by the public comments in response to the initial Regulatory Flexibility Analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments:

There was one public comment that related to small entities/operators. That comment indicated that the designing of remedies to address the items required by the AD would create a burden for those small operators who do not have

in-house engineering capability to design such remedies.

In response, the FAA states that the STC holders, including Pemco, have developed solutions for the items required by the AD, which will be available to small operators.

3. A description of, and an estimate of the number of, small entities to which the rule will apply or an explanation of why no such estimate is available:

The entities affected by the rule are those operating U.S.-registered converted Boeing Model 727 series airplanes. The FAA estimates that 11 carriers operate airplanes that will be affected by this AD. One of these operators is a foreign entity. Of the 10 U.S. operators, five entities are small (they employ 1,500 people or less). The estimated discounted total cost of this AD, for the 54 affected airplanes, is $15.7 million. This translates into an average annualized cost per affected airplane of about $63,000 (over the 3-year period).

By using the average annualized cost per airplane, the annualized cost of the AD was calculated for the affected fleet of each small operator. This cost was then divided by the annual revenue of the operator (mostly for 1998).

The resulting ratios showed that for two (of the five) small operators, this ratio exceeded 1 percent. In one case, the ratio was approximately 4 percent. For a third small operator, the ratio was slightly less than 1 percent. Based on these calculations, the FAA has determined that the rule will have a significant impact on a substantial number of small entities.

4. A description of the projected reporting, record-keeping, and other compliance requirements of the rule, including an estimate of the classes of small entities, which will be subject to the requirement, and the type of professional skills necessary for preparation of the report or record.

With two minor exceptions, the rule will not mandate additional reporting or record-keeping. The rule will not overlap, duplicate, or conflict with existing Federal rules.

The AD will require operators to report results of the detailed inspection of the main deck cargo door hinge and the detailed inspection of the fastener holes common to the main deck cargo door hinge and underlying door and fuselage structure. The cost of these reports is negligible.

5. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected:

The FAA acknowledges that the rule will impose a financial requirement on small entities. Therefore, the agency considered alternatives to the rule. These alternatives are:

- Exclude small entities; and
- Extend the compliance date for small entities.

The FAA has determined that the option to exclude small entities from the requirements of the rule is not justified. The unsafe condition that exists on an affected Boeing Model 727 series airplane operated by a small entity is as potentially catastrophic as that on an affected Model 727 series airplane operated by a large entity.

The FAA also considered options to extend the compliance period for small operators. The Boeing 727 Freighter Industry Working Group, which includes all affected U.S. operators (including small entities), provided input on the incorporation of corrective actions for the door hinge, door systems, and 9g crash barrier issues. The FAA initially proposed a compliance time of 28 months, consistent with a related AD dealing with the cargo floor structure on the same airplanes. The working group requested an extension to 36 months. Following review of the working group's request, the FAA finds 36 months to be an acceptable compliance time. Therefore, the FAA has, in fact, considered and accepted this alternative and has accommodated small entity concerns about compliance time.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Such a mandate is deemed to be a "significant regulatory action."

This AD does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

Federalism Implications

The regulations of this AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this AD will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–22 Boeing: Amendment 39–12861. Docket 97–NM–235–AD.

Applicability: Model 727 series airplanes that have been converted from a passenger- to a cargo-carrying ("freighter") configuration in accordance with Supplemental Type Certificate (STC) SA1444SO, SA1509SO, SA1543SO, or SA1896SO; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane, including

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possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants; accomplish the following:

Actions Addressing the Main Deck Cargo Door Hinge

(a) Prior to the accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed inspection of the external surface of the main deck cargo door hinge (both fuselage and door side hinge elements) to detect cracks.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Perform a detailed inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge to detect cracks or other discrepancies (*e.g.*, double or closely drilled holes, corrosion, chips, scratches, or gouges). The detailed visual inspection shall be accomplished in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. The requirements of this paragraph may be accomplished prior to or concurrently with the requirements of paragraph (b)(2) of this AD.

(2) Install a main deck cargo door hinge that complies with the applicable requirements of Civil Air Regulations (CAR) part 4b, including fail-safe requirements, in accordance with a method approved by the Manager, Atlanta ACO.

(c) If any crack or discrepancy is detected during the detailed inspection required by either paragraph (a) or (b)(1) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta ACO.

Note 3: Accomplishment of the actions in accordance with Pemco Service Bulletin 727–53–0006, Revision 1, dated December 4, 2001, constitutes compliance with the requirements of paragraphs (b) and (c) of this AD.

Actions Addressing the Main Deck Cargo Door Systems

(d) Within 60 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) Supplement by inserting therein the procedures specified in paragraphs (d)(1) and (d)(2) of this AD, and install any associated placards. The AFM revision procedures and installation of any associated placards shall be accomplished in accordance with a method approved by the Manager, Atlanta ACO.

(1) Procedures to ensure that all power is removed from the main deck cargo door prior to dispatch of the airplane.

(2) Procedures to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane.

(e) Within 36 months after the effective date of this AD, incorporate redesigned main deck cargo door systems (*e.g.*, warning/monitoring, power control, view ports, and means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked), including any associated procedures and placards, that comply with the applicable requirements of CAR part 4b and criteria specified in Appendix 1 of this AD; in accordance with a method approved by the Manager, Atlanta ACO.

Note 4: The design data submitted for approval should include a Systems Safety Analysis and Instructions for Continued Airworthiness that are acceptable to the Manager, Atlanta ACO.

Note 5: Installation of National Aircraft Service, Inc. (NASI), Vent Door System STC ST01438CH, is an acceptable means of compliance with the requirements of paragraph (e) of this AD.

Actions Addressing the Main Deck Cargo Barrier

(f) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, install a main deck cargo barrier that complies with the applicable requirements of CAR part 4b, in accordance with a method approved by the Manager, Atlanta ACO.

Note 6: The maximum main deck total payload that can be carried is limited to the lesser of the approved cargo barrier weight limit, weight permitted by the approved maximum zero fuel weight, weight permitted by the approved main deck position weights, weight permitted by the approved main deck running load or distributed load limitations, or approved cumulative zone or fuselage monocoque structural loading limitations (including lower hold cargo).

Note 7: Installation of a Ventura Aerospace Inc. cargo barrier STC ST00848LA is an approved means of compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(i) This amendment becomes effective on September 19, 2002.

Appendix 1

Excerpt from an FAA Memorandum to the Director-Airworthiness and Technical Standards of ATA, dated March 20, 1992

"(1) *Indication System:*

(a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be *amber* unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be *red* and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

(2) *Means to Visually Inspect the Locking Mechanism:*

There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

(3) *Means to Prevent Pressurization:*

All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) *Lock Strength:*

Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) *Power Availability:*

All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) *Powered Lock Systems:*

For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable."

Issued in Renton, Washington, on August 6, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20509 Filed 8–14–02; 8:45 am]

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Part III

Department of Housing and Urban Development

12 CFR Parts 5 and 202
Uniform Financial Reporting Standards for HUD Housing Programs, Additional Entity Filing Requirements; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 202

[Docket No. FR–4681–F–03]

RIN 2501–AC80

Uniform Financial Reporting Standards for HUD Housing Programs, Additional Entity Filing Requirements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulation on Uniform Financial Reporting Standards by adding HUD-approved Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and nonsupervised loan correspondents to the covered entities required to electronically submit annual financial information to HUD prepared in accordance with Generally Accepted Accounting Principles (GAAP). Under long-standing regulatory and contractual requirements, these entities already submit financial information to HUD on an annual basis. This final rule follows publication of a November 30, 2001, proposed rule. HUD is adopting the proposed regulatory amendments without change, except that the fiscal year effective dates are being delayed to accommodate the later than expected publication of the final rule.

EFFECTIVE DATE: September 16, 2002.

FOR FURTHER INFORMATION CONTACT: For further information about the entities covered by this rule, you may contact Lynn Herbert, Office of Lender Activities and Program Compliance, Office of Housing, U.S. Department of Housing and Urban Development, 490 L'Enfant Plaza East, SW., Suite 3214, Washington, DC 20024, telephone 202–708–3976 (this is not a toll-free number). For general information about this rule, contact Stacey Shindelar, Office of Lender Activities and Program Compliance, Office of Housing, U.S. Department of Housing and Urban Development, 490 L'Enfant Plaza East, SW., Suite 3214, Washington, DC 20024; telephone 202–708–1515 (this is not a toll-free number). Persons with hearing- or speech-impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD's Uniform Financial Reporting Standards (UFRS) regulations, codified at 24 CFR part 5, subpart H, establish uniform annual financial reporting standards for the following entities: public housing agencies (PHAs) administering traditional public housing; PHAs administering section 8 project-based housing assistance payments programs and section 8 project-based certificate programs; owners of housing assisted under any section 8 project-based program (except for the Moderate Rehabilitation and project-based certificates programs, for which the reporting requirement applies to the administering PHAs); and multifamily housing programs receiving assistance or mortgage insurance from HUD. The regulations provide that the financial information required to be submitted to HUD on an annual basis under these programs generally must be submitted electronically and must be prepared in accordance with GAAP.

On November 30, 2001, HUD published a proposed rule (66 FR 60133) to add participants under another program to the programs covered under the UFRS rule. HUD also published a correction amending a portion of the rule preamble, on December 18, 2001 (66 FR 65162). The new covered participants are the Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and nonsupervised loan correspondents, who are approved by HUD under 24 CFR part 202 to originate, purchase, hold, service, and/or sell loans. In addition to the revisions to 24 CFR 5.801 to add these participants, the proposed rule made conforming changes to 24 CFR 202.5, 202.7, and 202.8.

II. This Final Rule

This final rule adopts the proposed change made to 24 CFR 5.801 and the conforming changes to 24 CFR 202.5, 202.7, and 202.8. The public comment period for the proposed rule closed on January 29, 2002. By close of business on that date, HUD had not received any public comments on the proposed rule. One comment addressed to the estimate of paperwork burden was received; however, HUD believes that its estimate of paperwork was accurate and made no changes. The only change made to the proposed rule is that the fiscal year-end effective date in 24 CFR 5.801(d)(3) is changed to accommodate the actual publication date of this final rule. This final rule is effective for the covered Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and loan correspondents with fiscal years ending on or after September 30, 2002. Audited financial statements submitted by lenders with fiscal years ending on or after September 30, 2002, must be submitted electronically. Audited financial statements submitted by lenders with fiscal years ending before September 30, 2002, may either be submitted in paper or electronically at the lenders' option.

Findings and Certifications

Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2507–0004. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This final rule would not impose any Federal mandates on any State, local, or tribal governments, or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (24 U.S.C. 4321).

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and by approving it certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. This rule does not create a new reporting requirement. The annual reporting of certain financial information is a preexisting HUD program requirement. This rule adds HUD approved Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and loan correspondents to the covered entities that must submit financial data electronically. The rule standardizes, to the extent possible, the content of the information and the preparation of the information (in accordance with GAAP). HUD anticipates that these changes will bring consistency, simplicity, and reduced administrative burden to the reporting process. With respect to costs, the audit costs paid by Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and loan correspondents are a recognized part of operating and administrative expenses. HUD anticipates no or very little monetary impact. The Federal Housing Commissioner has required GAAP-based accounting for a number of years and the majority of these lenders already adhere to its tenets.

Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers applicable to 24 CFR part 202 are:

14.110 Manufactured Home Loan Insurance—Financing Purchase of Manufactured Homes as Principal Residences of Borrowers;

14.142 Structures and Building of New Nonresidential Structures; and

14.162 Mortgage Insurance—Combination and Manufactured Home Lot Loans.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends title 24 of the Code of Federal Regulations to read as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENT; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. Amend § 5.801 by adding paragraphs (a)(5), (c)(3), and (d)(3) to read as follows:

§ 5.801 Uniform financial reporting standards.

(a) * * *

(5) HUD-approved Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and loan correspondents.

* * * * *

(c) * * *

(3) For those entities listed in paragraph (a)(5) of this section, the financial information to be submitted to HUD in accordance with paragraph (b) of this section must be submitted to HUD annually, no later than 90 days after the end of the fiscal year (or within an extended time if an extension is granted at the sole discretion of the Secretary). An extension request must be received no earlier than 45 days and no later than 15 days prior to the submission deadline.

(d) * * *

(3) The requirements of this section apply to the entities listed in paragraph (a)(5) of this section with fiscal years ending on or after September 30, 2002. Audited financial statements submitted by lenders with fiscal years ending before September 30, 2002, may either be submitted in paper or electronically at the lenders' option. Audited financial statements submitted by lenders with fiscal years ending on or after September 30, 2002, must be submitted electronically.

* * * * *

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

3. The authority citation for 24 CFR part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

4. In § 202.5, revise paragraph (n)(1) introductory text to read as follows:

§ 202.5 General approval standards.

* * * * *

(n) *Net Worth.* (1) Each supervised or nonsupervised lender or mortgagee approved under §§ 202.6 and 202.7 shall have a net worth of not less than $250,000 in assets acceptable to the Secretary. Each Title II supervised or nonsupervised mortgagee, except a multifamily mortgagee, shall have additional net worth in excess of $250,000 of not less than one percent of the mortgage volume exceeding $25,000,000 in value, but total net worth is not required to exceed $1,000,000. Mortgage volume is calculated as of the end of the fiscal year being audited and equals the sum of:

* * * * *

5. In § 202.7, revise paragraphs (b)(4)(i) introductory text and (b)(4)(i)(A) to read as follows:

§ 202.7 Nonsupervised lenders and mortgagees.

* * * * *

(b) * * *

(4) *Audit report.* (i) A lender or mortgagee must comply with the financial reporting requirements in 24 CFR part 5, subpart H. Audit reports shall be based on audits performed by a certified public accountant, or by an independent public accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, and shall include:

(A) A financial statement in a form acceptable to the Secretary, including a balance sheet and a statement of operations and retained earnings, a statement of cash flows, an analysis of the mortgagee's net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds; and

* * * * *

6. In § 202.8, revise paragraphs (b)(3) introductory text and (b)(3)(i) to read as follows:

§ 202.8 Loan correspondent lenders and mortgagees.

* * * * *

(b) * * *

(3) *Audit report.* A loan correspondent lender or mortgagee must comply with the financial reporting requirements in 24 CFR part 5, subpart H except that a loan correspondent mortgagee meeting the definition of a supervised lender or mortgagee in § 202.6(a) need not file annual audit reports. Audit reports shall be based on audits performed by a certified public accountant, or by an independent public accountant licensed by a regulatory authority of a State or

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other political subdivision of the United States on or before December 31, 1970, and shall include:

(i) A financial statement in a form acceptable to the Secretary, including a balance sheet, statement of operations and retained earnings, a statement of cash flows, an analysis of the net worth adjusted to reflect only assets acceptable to the Secretary and an analysis of escrow funds; and

* * * * *

Dated: August 7, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–20678 Filed 8–14–02; 8:45 am]

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Thursday,
August 15, 2002

Part IV

Postal Service

39 CFR Part 111

Changes To the Domestic Mail Manual To Implement Confirm® Service; Final Rule

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POSTAL SERVICE

39 CFR Part 111

[Docket No. MC 2002–1]

Changes to the Domestic Mail Manual To Implement Confirm® Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth the Domestic Mail Manual (DMM) standards adopted by the Postal Service to implement the classification and fees for Confirm® service as established by the decision of the Governors of the United States Postal Service on the recommended decision of the Postal Rate Commission approving stipulation and agreement for Confirm, Docket No. MC2002–1 (August 5, 2002).

In their decision, the Governors approved the Commission's recommendations, adopting an unopposed settlement agreement concluded by all but one party in Docket No. MC2002–1. The settlement substantially incorporated the classification and fees for Confirm, as proposed by the Postal Service in its request for a recommended decision, filed on April 24, 2002.

Confirm represents a new service offering subscribers access to data and information concerning the processing of their specially prepared and barcoded automation-compatible letter-size and flat-size mail. The service combines barcode technology with the electronic infrastructure of automated Postal Service processing equipment to record and transmit data pertaining to mail prepared according to Confirm specifications.

Through the use of a unique mailer-applied barcode, called PLANET Code®, along with the appropriate delivery address POSTNET barcode, Confirm enables a mailer subscribing to the service to identify where and when barcodes printed on mail are scanned in various postal operations. Confirm can be used to provide this information for outgoing automation-compatible mail and for incoming automation-compatible reply mail.

EFFECTIVE DATE: This final rule is effective at 12:01 a.m. on September 22, 2002.

FOR FURTHER INFORMATION CONTACT: Neil Berger at (703) 292–3645 or Paul Bakshi at (703) 292–3671.

SUPPLEMENTARY INFORMATION: On April 24, 2002, the United States Postal Service, in conformance with sections 3622 and 3623 of the Postal Reorganization Act (39 U.S.C. 101 *et seq.*), filed a Request for a recommended decision by the Postal Rate Commission (PRC) on the proposed classification and fees for Confirm, a new service using a uniquely identifying mailer-applied barcode called PLANET Code. Using these barcodes, along with the appropriate delivery address POSTNET barcodes, enables a participating mailer to identify where and when outgoing automation-compatible mail and incoming automation-compatible reply mail are scanned in various postal operations. Confirm combines barcode technology with the electronic infrastructure of automated Postal Service processing equipment to record and transmit data for successfully scanned pieces prepared according to Confirm specifications.

On July 26, 2002, pursuant to 39 U.S.C. 3624, the Postal Rate Commission issued to the Governors of the Postal Service its Opinion and Recommended Decision Approving Stipulation and Agreement, Docket No. MC2002–1. The Commission recommended that the Postal Service proposal for Confirm be established as a permanent special service. With relatively minor modifications to the proposed language for the Domestic Mail Classification Schedule, the Commission approved the Stipulation and Agreement.

On August 5, 2002, the Board of Governors approved the recommended decision and established an implementation date of Sunday, September 22, 2002, on which the approved classification and fees for Confirm service will take effect. This final rule contains the DMM standards adopted by the Postal Service to implement the decision of the Governors.

The Postal Service has determined to issue these standards as final rules, rather than first publishing them as proposed rules seeking comments. Several considerations support this determination.

First, Confirm was developed through the joint efforts of the Postal Service and its customers over a substantial period of time. As described below in the **SUPPLEMENTARY INFORMATION** of this final rule, over the past seven years, more than 300 mailers, representing a wide cross-section of the mailing industry, have participated at various times in testing and evaluating the features of the service. This experience has included an operational pilot test of Confirm since 1998, involving the collection of data pertaining to significant volumes of actual mail submitted by participating mailers. Throughout these activities, mailers have provided invaluable comments and recommendations for improving and expanding Confirm, and for ensuring that the service meets the business needs and the operational requirements of the mailing industry at large. Moreover, the Postal Service has continued to solicit recommendations from the mailing industry for enhancements to the infrastructure supporting this subscriber-based service. The recommendations coming from actual customer use and testing of the whole Confirm system have greatly influenced, not only the operational characteristics incorporated into the service, as proposed in the unopposed settlement agreement and as recommended by the Postal Rate Commission, but also the standards incorporated into the rules published here.

Second, the Postal Rate Commission conducted public hearings to consider the Postal Service proposal for Confirm that were open to any interested party. Several parties participated, including major associations of mailers, the largest union representing postal workers, individuals representing themselves as mailers, and the Director of the Commission's Office of the Consumer Advocate representing the general public. This participation led to the successful negotiation of an agreement substantially incorporating the proposal presented by the Postal Service. Virtually all participants signed the settlement agreement. Only one individual representing himself did not sign, but that same individual did not oppose the settlement. Throughout the Confirm proceedings, furthermore, participants provided comments, formally through submissions for the record, as well as informally through settlement discussions. These comments reinforced the determinations leading to the Postal Service proposal, as incorporated into the settlement agreement. The Commission accepted the settlement with only minor modifications to the language describing Confirm in the Domestic Mail Classification Schedule (DMCS).

Finally, there is a strong interest in expeditious implementation of the service that is shared by mailers currently receiving and using Confirm data and information, by prospective customers, and by the Postal Service. The Board of Governors of the Postal Service has determined to implement Confirm on September 22, 2002. This date represents the earliest time that the service can be made operationally available to the public. It also provides a reasonable time for the Postal Service to process applications adding new subscribers to existing users. If the Postal Service were to delay implementation in order to solicit and receive additional comments, the effective date for Confirm could be delayed considerably, and current users and new subscribers would be denied the benefits of the valuable information that the service can provide. By implementing this new service without undue delays, the Postal Service can ensure that currently participating mailers are able to continue the service without interruption, and that new subscribers will be expeditiously integrated into the system.

Pursuant to these considerations, the Postal Service has concluded that the substantial number of comments and recommendations already received pertaining to Confirm would make further solicitation of comments unnecessary. Considering the broadly based participation in the development of Confirm over several years, and the Commission's acceptance of the unopposed settlement agreement in Docket No. MC2002–1, it is unlikely that the Postal Service would receive additional comments that would materially affect the rules. Furthermore, issuing proposed rules would present an impractical impediment to the timely implementation of the service. Delay would interfere with the public and mailer interests in being able to receive and use Confirm data as early as possible.

A. Service Description

1. Subscription Levels

The Postal Service will offer this service in a three-tiered subscription format rather than a per-transaction rate format. The three subscription levels for this format are designated as Silver, Gold, and Platinum, with the following fees, terms of service, number of identification codes, and number of scans:

- The Silver subscription level, with a $2,000 fee and a term of 3 consecutive months, entitles the subscriber to one identification code and up to 15 million scans during the term of the subscription.
- The Gold subscription level, with a $4,500 fee and a term of 12 consecutive months, entitles the subscriber to one identification code and up to 50 million scans during the term of the subscription.
- The Platinum subscription level, with a $10,000 fee and a term of 12 consecutive months, entitles the subscriber to three identification codes and an unlimited number of scans during the term of the subscription.

2. Additional Identification Codes

Subscribers to the Silver, Gold, and Platinum subscription levels can license additional identification codes for $500 for 3-month intervals or until the expiration of the underlying subscription, whichever occurs first.

The additional identification codes are valid for only 3 months or to the end of the subscription period, whichever occurs first. At the renewal time of the underlying subscription, the same additional identification codes previously licensed may also be renewed at the subscriber's option.

Subscribers may, at their option, also license up to four 3-month periods at one time for the same additional identification codes if those 3-month periods are within the underlying subscription period.

3. Additional Scans

Subscribers to the Silver and Gold subscription levels, which both have specific limits to the numbers of recorded and reported scans as part of the subscription, can also license additional scans at any time before the expiration of the underlying subscription. The blocks of additional scans are usable until the subscription period ends, however long that period. Additional blocks of scans are available as follows:

- Silver subscription level, in blocks of 2 million scans at $500.
- Gold subscription level, in blocks of 6 million scans for $750.

4. Subscription Upgrade

A Gold subscription level can also be upgraded to a Platinum subscription level any time before the expiration of the Gold subscription with the payment of the difference in the subscription fees of $5,500. Upgrading a subscription from the Gold level to the Platinum level does not extend the term of the initial subscription.

B. Service Background and Development

1. Developmental Stages

The concept and initial development of Confirm came about seven years ago and, over the course of those years, progressed through three sequential stages: (1) Initial concept, (2) pilot program, and (3) production system launch.

2. Stage One: Initial Concept

Stage one emerged in 1995 when the concept of Confirm was envisioned as a way to provide mailers with near real-time information about the movement of automation-compatible mailpieces in the Postal Service mailstream. The Postal Service decided to build such a tracking system around PLANET Code barcode technology, which had been developed and refined earlier by the Postal Service Engineering Department.

This barcode technology was considered both an effective and an expedient way to meet mailer and Postal Service requirements for these reasons:

- The technology would require minimal research and testing because it was a fully developed and validated technology.
- The technology would require minimal effort and expense for mailers to implement within the current mailing environment.
- The technology would require minimal effort and disruption for the Postal Service to modify its existing postal processing infrastructure, which already supported the similar POSTNET barcode used for delivery address barcoding.

3. Stage Two: Pilot Program

Stage two came in 1998 when the Postal Service inaugurated a limited pilot program for Confirm that permitted a small number of participating mailers to use the service without charge while it was under development. The Postal Service established a prototype system in Wilkes-Barre, Pennsylvania, to collect Confirm data from major processing facilities and then transmit data files to participating mailers via an automated FTP process. Later that same year, the Postal Service created a Web site that allowed participating mailers to view and download small amounts of data.

By 2000, however, the demand for this Web site outgrew its capacity. In response, the Postal Service moved the system to its data site in Raleigh, North Carolina, and implemented the first major system upgrade. At the same time, the Postal Service expanded customer service at its National Customer Support Center in Memphis, Tennessee.

4. Stage Three: Production System Launch

Stage three came on October 1, 2001, when the Postal Service launched the Confirm Production System with a redesign of the system itself and a transfer of its operations to the postal data site in Eagan, Minnesota. By using the superior technological capabilities at that site, the Postal Service was able to make many new system improvements to Confirm including the following:

- Near real-time access to Confirm data on the Web site.
- Expanded PLANET Code functionality.

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• Verification of mail induction times.

• Dedicated customer support.

Stage three was also extremely important because it demonstrated the commitment of the Postal Service to develop activity-based costs for the program. Such a costing methodology helps determine the level of ongoing infrastructure maintenance and long-term customer support for Confirm.

C. Product Uses

1. Strategic Alignment of Business Processes

Confirm represents part of an overall integrated strategy of the Postal Service to provide greater added value to postal services and products for mailers and their customers. In keeping with this strategy, information from Confirm can give participating mailers—whether actual subscribers or mailers contracting with third-party vendors that are subscribers—new opportunities to manage and, in some cases, improve their mailing operations. Moreover, information from Confirm can help participating mailers modernize business practices, enhance decision-making, and improve related activities such as inventory control, invoicing, and remittance processing.

With information obtained from Confirm, mailers participating in the service can align various internal business functions with the appropriate resources based on the actual processing and expected delivery or return of mail. At the same time, information from Confirm allows participating mailers to strengthen and enhance current long-term customer relationships as well as to initiate and build new ones.

The potential for participating mailers and the Postal Service to manage business practices is built on straightforward information technology that can report to participating mailers when their outgoing mail has neared delivery to their customers or, in reverse, when incoming customer-mailed reply pieces have entered the mailstream for return to the participating Confirm mailers.

2. Service Applications

As a result of this possible two-way flow of outgoing mail and incoming reply mail, Confirm has been developed with two distinct service applications:

• Destination Confirm for outgoing mail such as invoices, solicitations, credit cards, and statements of account.

• Origin Confirm for incoming reply mail such as payments, orders, and responses to solicitations.

Because of these two service applications, Confirm can meet the needs of a variety of mailers, including large-volume mailers that are direct subscribers to the service as well as small-volume mailers that are not direct subscribers but can benefit from presort houses and other third-party providers that do subscribe to the service.

D. Product Technology

1. Barcoding

To generate optimal Confirm information, two distinct barcodes are needed. One is a POSTNET barcode that identifies the ZIP Code, ZIP+4 code, or delivery point code corresponding to the delivery address; the other, a PLANET Code barcode that contains specific data relating to the participating subscriber and type of mailpiece.

This resulting combination of POSTNET and PLANET Code barcodes can, in certain cases, be used to identify and distinguish specific letter-size and flat-size automation-compatible mailpieces processed and scanned on Postal Service automation equipment.

In some cases, however, a PLANET Code barcode alone can provide some useful information to the subscriber. Because Postal Service letter-sorting and flat-sorting machines can read both POSTNET and PLANET barcodes in one pass, there is no adverse impact on mail processing throughput.

2. Confirm Data

Confirm scan-data generated from a mailpiece at a given mail processing operation will consist of a five-digit ZIP Code representing the facility processing the piece, a Postal Service operation number, processing date and time, and the numeric equivalents of the POSTNET barcode and the PLANET Code barcode.

Captured and recorded data are transmitted to a central Postal Service computer server and provided to the mailer electronically in near real-time, either through the Confirm Web site or directly to the mailer's computer.

Not every scan on automated processing equipment, however, necessarily equates into a Confirm data record. Other conditions must be satisfied such as the validity or readability of identification codes in the PLANET Code barcodes.

3. PLANET Code Structure

The structure of the PLANET Code is similar to the POSTNET delivery point code. Subscribers can, however, choose whether to use a 12-digit or a 14-digit version of the PLANET Code. In terms of structure, the PLANET Code barcode currently consists of 12 or 14 digits, each represented by a combination of tall and short bars. The PLANET Code barcode symbology for each digit is therefore the inverse of each corresponding POSTNET Code digit.

For the POSTNET barcode, each of the ten digits from 0 to 9 contains a unique combination of two tall and three short bars. For the PLANET Code barcode, on the other hand, the same ten digits from 0 to 9 contain three tall and two short bars that form a reverse image of each POSTNET digit. For example, the POSTNET barcode representation for the digit zero is, from left to right, two tall bars followed by three short bars. The PLANET Code barcode for the same digit is two short bars followed by three tall bars.

The structure for the PLANET Code provides information that is unique to the participating subscriber and the mailpiece as follows:

• Digits 1 and 2. Starting from the left, the first digit of the PLANET Code represents Confirm service type—either Destination Confirm or Origin Confirm—and the second digit represents the class and shape of mail (for example, ID 40 signifies Destination Confirm for First-Class Mail letters).

• Digits 3 through 11 (or 3 through 13). The current structure of the next nine digits (or eleven digits for the expanded 14-digit PLANET Code) differs for Destination Confirm and Origin Confirm. For Destination Confirm, these digits include a five-digit ID Code assigned by the Postal Service plus four additional digits (or six for the 14-digit PLANET Code) for the mailer's use. For Origin Confirm, mailers use all nine of the remaining digits to identify either the mailpiece or the reply customer (the sender of the reply piece) or a combination of both the specific mailpiece and the reply customer. The specific POSTNET Code on the Origin Confirm piece enables the Postal Service to identify the Confirm subscriber.

• Digit 12 (or 14). For both the Destination Confirm and Origin Confirm service applications, the last digit (the twelfth digit or, if the longer 14-digit PLANET Code, the fourteenth digit) is always a check-sum digit to help mail processing equipment detect possible coding errors.

4. Data Records

The data records for each properly scanned mailpiece are compiled for importing into common database software. Depending on the subscriber's request, the Postal Service can automatically transmit the file containing the data records to the subscriber via File Transfer Protocol (FTP) at times designated by the subscriber.

The Postal Service offers an alternative to automatic transmission by posting the data records to the Postal Service Confirm Web site. A subscriber can then view and download the data records for up to 15 days.

E. Advance Shipping Notice

Destination Confirm mail requires the electronic submission of an Advance Shipping Notice (ASN) in a specific file format prior to or at the time of the mailing. ASN data include specific mailer-generated information about each Destination Confirm mailing, such as drop location, drop date, and volume.

That data can be used to link Confirm scan data captured during mail processing with the ASN mailing data. This linkage can, in turn, serve as an objective means to track the movement of specific mail at its entry point into the mailstream and at other subsequent points before delivery.

In addition to providing an electronic ASN file for each mailing, the mailer must print an associated ASN Shipment ID barcode on the documentation accompanying the mailing. This barcode is configured as a Uniform Symbology Specification (USS) Code 128 barcode, similar to the Postal Service Delivery Confirmation barcode. This ASN Shipment ID barcode ties the data contained in the uploaded ASN file with possibly thousands of properly prepared Confirm pieces in the associated mailing.

Postal Service personnel scan the ASN Shipment ID barcode using Delivery Confirmation scanners at the time of induction. This entry scan "starts the clock" for the Destination Confirm mailing and provides a base point for tracking the processing throughput used for the mail. At the same time, the participating subscriber receives an automatic electronic notification of where and when the subscriber's mail was inducted into the Postal Service.

F. Application Steps for Using Confirm

A mailer seeking to become a subscriber of Confirm must complete and submit an online or hardcopy application form. New subscribers entering the program must first demonstrate the capability of generating compliant PLANET Code barcodes by producing and submitting sample mailpieces to the Postal Service.

Subscribers must also submit samples of the Advance Shipping Notice (ASN) Shipment ID barcode that would be scanned by the Postal Service at the time the corresponding mail is entered into the mailstream. After approving the mailpieces and barcodes and receiving the applicable subscription payment, the Postal Service establishes the subscriber's Confirm account so that the subscriber can begin receiving Confirm data files either from the special Confirm Web site or directly by FTP.

After processing the application, the Postal Service assigns the new subscriber a unique identification code. To assist new subscribers in the application process and to resolve technical issues, the Postal Service provides ongoing customer support.

G. Goals of Confirm

Confirm has two major goals. First, information from the service can help mailers improve their business processes and enhance customer relationships. Second, the same information can help the Postal Service improve customer service and operational efficiency. As such, this new service will support the strategic goal of the Postal Service to add greater value to current postal products and services and to expand the combinations of options that can meet the evolving business requirements of mailers and their customers.

List of Subjects in 39 CFR Part 111

Administrative Practice and Procedure, Postal Service.

The Postal Service, which is exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), adopts, for the reasons discussed above, the following amendments to the Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations (CFR). See 39 CFR part 111.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend Domestic Mail Manual (DMM) as set forth below:

Domestic Mail Manual (DMM)

R Rates and Fees

* * * * *

R900 Services

* * * * *

[Amend R900 by redesignating current 9.0 through 26.0 as 10.0 through 27.0, respectively, and adding new 9.0 to read as follows:]

9.0 CONFIRM (S941)

Fee, in addition to postage and other fees:

Subscription level	Subscription fee and term	Additional ID code fee and term	Additional scans fee and number
Silver	$ 2,000, 3 months	$500 each, 3 months	$500, block of 2 million scans.
Gold	4,500, 12 months	500 each, 3 months	750, block of 6 million scans.
Platinum	10,000, 12 months	500 each, 3 months	N/A

* * * * *

S Special Postal Services

* * * * *

[Amend module S by adding new S940 and S941 to read as follows:]

S940 Mailpiece Information

S941 Confirm

1.0 BASIC INFORMATION

1.1 Description

Confirm is a service that provides an authorized subscriber with data electronically collected from the optical scanning of specially barcoded mailpieces as they pass through certain automated mail processing operations. Scanned data can include the postal facility where such pieces are processed, the postal operation used to process the pieces, the date and time when the pieces are processed, and the numeric equivalent of two barcodes that help to identify the specific pieces. Any piece intended to generate scanned data must meet the appropriate physical characteristics and standards in S941, although not every properly prepared piece is guaranteed such data or complete data.

1.2 Available Service and Handling

Confirm is available only to authorized subscribers as described in 1.3. The service is associated with the service applications described in 1.6 and subscription levels described in 1.7. Confirm may be used for one or more pieces in a mailing. Mail prepared for Confirm is dispatched and handled in transit as ordinary mail unless

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combined with a service available for the class of mail and rate claimed that requires different handling.

1.3 Authorization

Confirm requires USPS authorization after applicable fees are paid and technical requirements for certification are met. For certification, a mailer must submit for evaluation and approval mailpieces bearing both PLANET Code barcodes and POSTNET barcodes to the National Customer Support Center (see G043 for address). Certification also includes, if applicable, evaluation and approval of the electronic format and uploading of the Advance Shipping Notice (ASN) file and the associated shipment identification barcode printed on required documentation accompanying mailings. Confirm may be used only after authorization is received, and information generated from the use of the service is provided only if the standards for participation are met.

1.4 Availability

Confirm is available to authorized subscribers for tracking automation-compatible letter-size or flat-size mail in applicable categories of the following classes of mail:

a. First-Class Mail (including Priority Mail).
b. Periodicals.
c. Standard Mail.
d. Package Services.

1.5 Additional Services

Confirm does not preclude or require the use of any special service available for the class of mail and rate claimed.

1.6 Service Applications

The following two service applications are available:

a. Origin Confirm for incoming mail. This use notifies the subscribing mailer of various movements of individual reply pieces, such as courtesy reply or business reply mail being returned by customers, before delivery to the Confirm subscriber.

b. Destination Confirm for outgoing mail. This use notifies the subscribing mailer of various movements of individual pieces, such as letter-size or flat-size pieces in a specific mailing, from the entry of the mailing to final automated processing steps of the pieces before delivery to the destination address.

1.7 Subscription Levels

Confirm is available in three distinct subscription levels as defined below, and a mailer may subscribe to one or more of these levels at the same time, at different times, or at overlapping times:

a. *Silver Subscription.* The Silver subscription level has a term of 3 consecutive months, includes one five-digit identification code assigned by the USPS, and provides up to 15 million scans. A mailer subscribing to this level may also:

(1) License additional identification codes for a term of 3 consecutive months or until the expiration of the underlying subscription, whichever occurs first.

(2) License additional scans in blocks of 2 million scans at any time before the underlying subscription expires. Unused scans expire at the end of the subscription term.

b. *Gold Subscription.* The Gold subscription level has a term of 12 consecutive months, includes one five-digit identification code assigned by the USPS, and provides up to 50 million scans. A mailer subscribing to this level may also:

(1) License additional identification codes for a term of 3 consecutive months or until the expiration of the underlying subscription, whichever occurs first.

(2) License additional scans in blocks of 6 million scans at any time before the underlying subscription expires. Unused scans expire at the end of the subscription term.

(3) Raise the subscription level to a Platinum subscription level at any time before the expiration of the Gold subscription by paying the difference of the respective subscription fees. This change in service level does not extend the term of the underlying initial subscription.

c. *Platinum Subscription.* The Platinum subscription level has a term of 12 consecutive months, includes three five-digit identification numbers assigned by the USPS, and provides an unlimited number of scans. A mailer subscribing to this level may also license additional identification codes for a term of 3 consecutive months or until the expiration of the underlying subscription, whichever occurs first.

1.8 Fees and Postage

The applicable Confirm® subscription fees as defined in 1.7 and shown in R900 must be paid in advance. These subscription fees are separate from the postage and any other applicable fees required for the piece being scanned under this service.

1.9 Deposit

The class of mail and rate claimed and the postage payment method used determine the point of deposit or entry.

2.0 BARCODES

2.1 General Barcode Requirement

At the time of mailing, each piece in a mailing that is intended to generate Confirm information must bear a PLANET Code® barcode. The USPS does not apply subscriber PLANET Code barcodes to mail after deposit by the subscriber. The use of POSTNET barcodes, which must meet the applicable specifications in C840, is as follows:

a. Origin Confirm pieces must bear both a PLANET Code barcode and a POSTNET barcode at the time of mailing. For business reply mail, the POSTNET barcode must correspond to the subscriber's business reply mail ZIP+4 codes assigned by the USPS under S922. For all other reply mail, the POSTNET barcode must correspond to the appropriate 5-digit ZIP Code, ZIP+4 code, or delivery point code for the delivery address.

b. Destination Confirm pieces must bear a PLANET Code barcode and, if required by the rate claimed at the time of mailing, an appropriate POSTNET barcode that corresponds to the delivery address. If a POSTNET barcode is not required by the rate claimed, the mailer has the option to apply the POSTNET barcode to such pieces for optimal Confirm information if the barcode correctly corresponds to the delivery address.

2.2 POSTNET Barcode

The type of POSTNET barcode (e.g., ZIP+4 barcode or delivery point barcode) and the placement of the barcode on a Confirm piece must meet the standards for the rate claimed. If two POSTNET barcodes are applied to the same piece, they must meet these standards:

a. Only one POSTNET barcode may be used in the address block as provided in 2.6.

b. The second POSTNET barcode must be placed outside the address block in a position meeting the applicable standards in C840 for letter-size mail or flat-size mail.

2.3 PLANET Code Barcode Use

Only one PLANET Code barcode may appear on a Confirm piece. For letter-size mail, the PLANET Code barcode may be placed in any position permitted in C840 for a POSTNET barcode except the lower right corner barcode clear zone. For flat-size mail, the PLANET Code barcode may appear in any position of the piece permitted for a POSTNET barcode in C840. Any PLANET Code barcode printed on mail for Confirm information must:

a. Be generated by the method used to receive USPS barcode certification during the application process in 1.3.

b. Meet the barcode specifications in 2.4.

c. Meet the format specifications in 2.5.

2.4 PLANET Code Barcode Specifications

The PLANET Code barcode symbology, which is the inverse of the POSTNET barcode symbology, uses a unique combination of three tall and two short bars to define each digit from 0 to 9. PLANET Code barcodes must meet the same dimensional specifications (including pitch, tilt, and baseline positioning) and print specifications (including reflectance) as required in C840 for POSTNET barcodes and in USPS Publication 197, *Customer Guide to Confirm Service.* Publication 197 is available from the National Customer Support Center (*see* G043 for address).

2.5 PLANET Code Barcode Format

PLANET Code barcodes must meet the following format standards required in USPS Publication 197 for service type:

a. Origin Confirm mailpieces (incoming reply mail) require these data fields in the following order from left to right:

(1) Mailpiece type identification: two digits; identifies type of reply mail (courtesy reply mail, business reply mail (BRM), or Qualified BRM) and physical characteristic of piece (letter, card, or flat); defined by USPS.

(2) Customer identification: nine or eleven digits; identifies mailpiece; defined by subscriber.

(3) Check digit: one digit; defined as the number which, when added to the sum of the other digits in the barcode, results in a total that is a multiple of 10.

b. Destination Confirm mailpieces (outgoing mail) require these data fields in the following order from left to right:

(1) Mailpiece type identification: two digits; identifies class of mail and physical characteristic of piece (letter, card, or flat); defined by USPS.

(2) Identification code: five digits; identifies mailer; assigned by USPS.

(3) Mailing: four (or six) digits; identifies specific mailing; defined by subscriber.

(4) Check digit: one digit; defined as the number which, when added to the sum of the other digits in the barcode, results in a total that is a multiple of 10.

2.6 Address Block Barcoding

If both a PLANET Code barcode and a POSTNET barcode are used as part of the delivery address block, the following standards must be met:

a. One barcode must placed in the upper part of the address block in one of two positions:

(1) Between the top address line (the first line of the delivery address block usually containing the recipient's name or attention line) and any keyline, optional endorsement line, or carrier route information line directly above the top address line.

(2) Directly above any keyline, optional endorsement line, or carrier route information line that is directly above the top address line.

b. The other barcode must always be placed directly below the bottom address line (the city, state, and ZIP Code line).

c. Both barcodes must maintain a minimum clearance of 1/25 inch directly above and below the barcodes.

d. The entire address block must be placed on the piece under the applicable standards in C840. The barcodes and address block, along with any keyline, optional endorsement line, or carrier route information line, must maintain the other applicable minimum clearances under C840, including clearances for inserts in window envelopes.

2.7 Reply Mail Barcodes

Reply pieces prepared for the Origin Confirm® service application under 1.6 must meet any applicable format and barcode standards as follows:

a. For business reply mail (BRM), S922.

b. For Qualified BRM, S922.

c. For courtesy reply mail (CRM), C100.

3.0 ADVANCE SHIPPING NOTICE

3.1 Purpose

Every mailing for which Destination Confirm information is desired requires the electronic submission of an Advanced Shipping Notice (ASN), in a specific file format, before or at the time of the mailing. This electronic notice enables the USPS to match mailing data provided by the mailer with actual scans taken on Confirm pieces in the mailing and to generate various reports for analysis from the matched data. A test file transmission must be uploaded and approved before Confirm mailings may be made as provided in 1.3.

3.2 Data Format

The ASN data file is a single data file in comma delimited flat file format. Each record is made up of a single row of data consisting of 16 data elements (fields) as defined in Publication 197. ASN data include specific mailer-generated information about each Destination Confirm mailing, such as drop location, drop date, mailer identification, volume, presort level, and number of pieces bearing PLANET Code® barcodes.

3.3 Shipment ID Barcode

In addition to an electronic ASN transmission for each mailing, an ASN Shipment ID barcode (used as a shipment identification) must be printed on the documentation accompanying the mailing. This documentation is either Form 8125 for mail prepared as a plant-verified drop shipment or Form 3152–A for mail entered and verified at a business mail entry unit. The USPS scans the ASN Shipment ID barcode to "start the clock" for the Destination Confirm mailing and to provide the base point for recording the actual processing time used for the mail. ASN Shipment ID barcode symbology is USS Code 128 Subset B and must meet the technical specifications in Publication 197.

4.0 DELIVERY

Any mailpiece prepared for Confirm is delivered as ordinary mail unless combined with any available service subject to D042.

* * * * *

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

Neva Watson,
Attorney, Legislative.

[FR Doc. 02–20730 Filed 8–14–02; 8:45 am]
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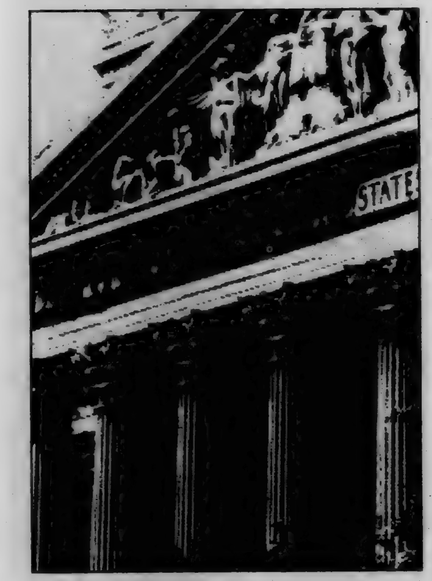
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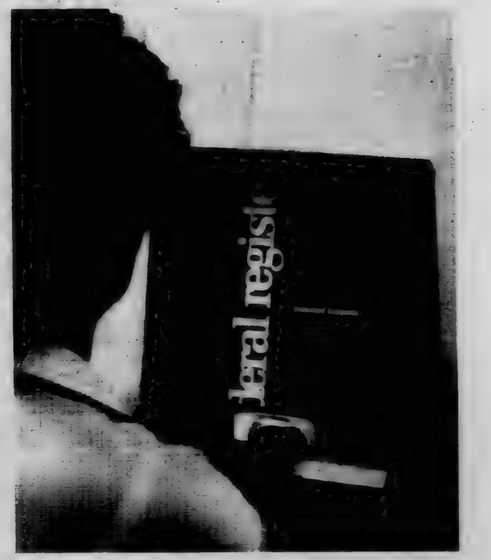
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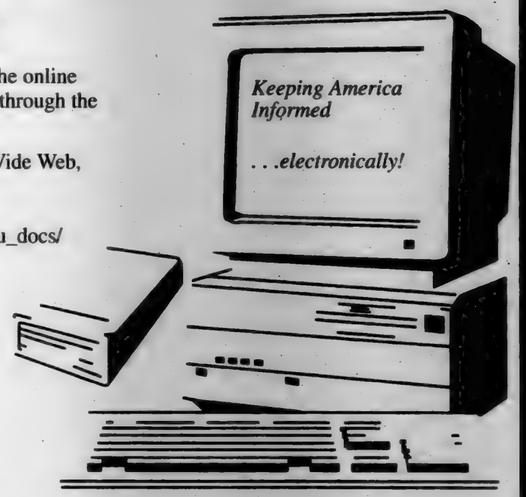
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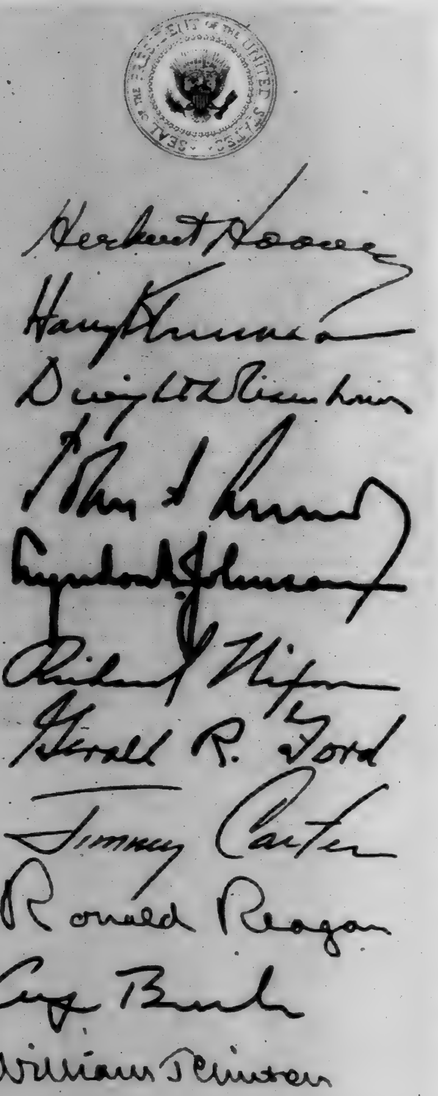
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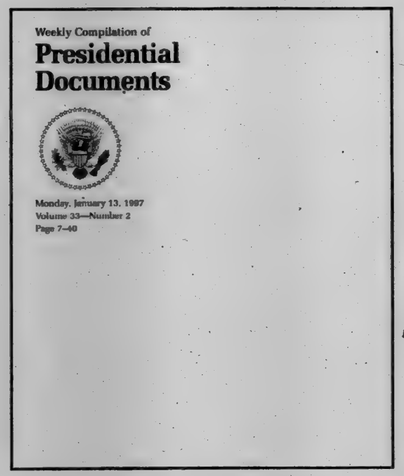
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Presidential Documents

Title 3—

The President

Executive Order 13272 of August 13, 2002

Proper Consideration of Small Entities in Agency Rulemaking

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *General Requirements.* Each agency shall establish procedures and policies to promote compliance with the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*) (the "Act"). Agencies shall thoroughly review draft rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the Act. The Chief Counsel for Advocacy of the Small Business Administration (Advocacy) shall remain available to advise agencies in performing that review consistent with the provisions of the Act.

Sec. 2. *Responsibilities of Advocacy.* Consistent with the requirements of the Act, other applicable law, and Executive Order 12866 of September 30, 1993, as amended, Advocacy:

(a) shall notify agency heads from time to time of the requirements of the Act, including by issuing notifications with respect to the basic requirements of the Act within 90 days of the date of this order;

(b) shall provide training to agencies on compliance with the Act; and

(c) may provide comment on draft rules to the agency that has proposed or intends to propose the rules and to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OIRA).

Sec. 3. *Responsibilities of Federal Agencies.* Consistent with the requirements of the Act and applicable law, agencies shall:

(a) Within 180 days of the date of this order, issue written procedures and policies, consistent with the Act, to ensure that the potential impacts of agencies' draft rules on small businesses, small governmental jurisdictions, and small organizations are properly considered during the rulemaking process. Agency heads shall submit, no later than 90 days from the date of this order, their written procedures and policies to Advocacy for comment. Prior to issuing final procedures and policies, agencies shall consider any such comments received within 60 days from the date of the submission of the agencies' procedures and policies to Advocacy. Except to the extent otherwise specifically provided by statute or Executive Order, agencies shall make the final procedures and policies available to the public through the Internet or other easily accessible means;

(b) Notify Advocacy of any draft rules that may have a significant economic impact on a substantial number of small entities under the Act. Such notifications shall be made (i) when the agency submits a draft rule to OIRA under Executive Order 12866 if that order requires such submission, or (ii) if no submission to OIRA is so required, at a reasonable time prior to publication of the rule by the agency; and

(c) Give every appropriate consideration to any comments provided by Advocacy regarding a draft rule. Consistent with applicable law and appropriate protection of executive deliberations and legal privileges, an agency shall include, in any explanation or discussion accompanying publication in the **Federal Register** of a final rule, the agency's response to any written comments submitted by Advocacy on the proposed rule that preceded the

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final rule; provided, however, that such inclusion is not required if the head of the agency certifies that the public interest is not served thereby. Agencies and Advocacy may, to the extent permitted by law, engage in an exchange of data and research, as appropriate, to foster the purposes of the Act.

Sec. 4. *Definitions.* Terms defined in section 601 of title 5, United States Code, including the term "agency," shall have the same meaning in this order.

Sec. 5. *Preservation of Authority.* Nothing in this order shall be construed to impair or affect the authority of the Administrator of the Small Business Administration to supervise the Small Business Administration as provided in the first sentence of section 2(b)(1) of Public Law 85–09536 (15 U.S.C. 633(b)(1)).

Sec. 6. *Reporting.* For the purpose of promoting compliance with this order, Advocacy shall submit a report not less than annually to the Director of the Office of Management and Budget on the extent of compliance with this order by agencies.

Sec. 7. *Confidentiality.* Consistent with existing law, Advocacy may publicly disclose information that it receives from the agencies in the course of carrying out this order only to the extent that such information already has been lawfully and publicly disclosed by OIRA or the relevant rulemaking agency.

Sec. 8. *Judicial Review.* This order is intended only to improve the internal management of the Federal Government. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

THE WHITE HOUSE,
August 13, 2002.

[FR Doc. 02–21056
Filed 08–15–02; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM227; Special Conditions No. 25–208–SC]

Special Conditions: Dassault Aviation Mystere Falcon 50; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Dassault Aviation Mystere Falcon 50 airplanes modified by Haycock & Associates LLC. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of Universal Avionics Systems Corporation EFI–640 Electronic Flight Instruments that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is July 29, 2002. Comments must be received on or before September 16, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM227, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM227. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2138; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On June 5, 2002, Haycock & Associates LLC, 2558 Rittenour Court, Blacklick, Ohio, applied for a Supplemental Type Certificate (STC) to modify Dassault Aviation Mystere Falcon 50 (Falcon 50) aircraft. The Falcon 50 is a small transport category airplane. The Falcon 50 airplanes are powered by three Honeywell (Garrett) TFE–731–3–1C turbofans, and have a maximum takeoff weight of 38,800 pounds (40,780 pounds with Service Bulletin F50–191). This airplane operates with a 2-pilot crew and can hold up to 19 passengers. The modification incorporates the installation of Universal Avionics Systems Corporation EFI–640 Electronic Flight Instruments. The EFI–640 displays are replacements for the mechanical heading (HSI) and attitude (ADI) instruments. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Amendment 21–69, effective September 16, 1991, Haycock & Associates LLC must show that the Falcon 50 as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A46EU, or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations included in the certification basis for the Falcon 50 airplanes include 14 CFR 21.29; 14 CFR part 25 effective February 1, 1965, as amended by amendments 25–1 through 25–34; § 25.255, as amended by amendment 25–42;

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§§ 25.979(d) and (e), as amended by amendment 25–38; § 25.1013(b)(1), as amended by amendment 25–36; § 25.1351(d), as amended by amendment 25–41; and § 25.1353, as amended by amendment 25–42. In addition, the certification basis includes Special Conditions 25–86-EU–24, and additional requirements listed in the type certificate data sheet that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Dassault Aviation Mystere Falcon 50 airplanes modified by Haycock & Associates LLC because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, these Falcon 50 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should Haycock & Associates LLC apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

As noted earlier, the Dassault Aviation Mystere Falcon 50 airplanes modified by Haycock & Associates LLC will incorporate dual Electronic Primary Flight Displays that will perform critical functions. This system may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Dassault Aviation Mystere Falcon 50 airplanes modified by Haycock & Associates LLC. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown in accordance with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 kHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Dassault Aviation Mystere Falcon 50 modified by Haycock & Associates LLC. Should Haycock & Associates LLC apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate A46EU to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain features on Dassault Aviation Mystere Falcon 50 airplanes modified by Haycock & Associates LLC. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Dassault Aviation Mystere Falcon 50 airplanes modified by Haycock & Associates LLC.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and of electronic system that performs critical functions must be designed and installed to ensure that the operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on July 29, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 02–20883 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–147–AD; Amendment 39–12848; AD 2002–16–09]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model 717–200 airplanes. This action requires repetitive tests to detect failure of the solenoid operated shut-off valve (SOV) of the inboard and outboard spoiler actuator assemblies, and corrective action if necessary. This action is necessary to detect and correct conditions associated with high electrical resistance in the solenoid, which, in combination with the failure of a spoiler actuator, could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 3, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 3, 2002.

Comments for inclusion in the Rules Docket must be received on or before October 15, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–147–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–147–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Thomas Phan, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5342; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: The FAA has recently been advised of failed tests of spoiler actuator assemblies due to failure of the solenoid-operated shut-off valve (SOV) on McDonnell Douglas Model 717–200 airplanes in service and

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during final assembly. Analysis by the manufacturer indicates that these solenoids contain high electrical resistance, which can be detected only during a spoiler return-to-service (RTS) test. The cause of the high resistance is under investigation. The presence of high electrical resistance in the solenoid is considered a latent failure. The combined failure of the solenoid-operated SOV and the spoiler actuator will cause a single spoiler panel hardover, and could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 717–27A0025, dated June 11, 2002, which describes procedures for repetitive tests to determine the electrical resistance within the solenoid of the inboard and outboard spoiler actuator assemblies. Operators may choose to perform either a spoiler actuator RTS test or a spoiler system RTS test. Corrective actions for any failed test include replacing the spoiler actuator assembly with a new spoiler actuator assembly, and correcting all faults in the centralized fault display system (CFDS).

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct conditions associated with high electrical resistance in the solenoid of the spoiler actuator assembly, which, in combination with the failure of a spoiler actuator, could result in reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the alert service bulletin described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–147–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–09 McDonnell Douglas: Amendment 39–12848. Docket 2002–NM–147–AD.

Applicability: All Model 717–200 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct conditions associated with high electrical resistance in the solenoid of the spoiler actuator assembly, which, in combination with the failure of a spoiler actuator, could result in reduced controllability of the airplane, accomplish the following:

Repetitive Tests

(a) Within 60 days after the effective date of this AD, determine the electrical resistance within the solenoid of the inboard and outboard spoiler actuator assemblies by doing either a spoiler actuator return-to-service (RTS) test or a spoiler system RTS test, in accordance with Boeing Alert Service Bulletin 717–27A0025, dated June 11, 2002. Repeat either test thereafter at least every 550 flight hours.

Corrective Action

(b) If any failure is noted during any test required by paragraph (a) of this AD: Before further flight, perform applicable corrective actions (including replacing the spoiler actuator assembly with a new spoiler actuator assembly and correcting all faults in the centralized fault display system (CFDS)), in accordance with Boeing Alert Service Bulletin 717–27A0025, dated June 11, 2002, and repeat the test until a successful complete RTS test has been achieved.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions must be done in accordance with Boeing Alert Service Bulletin 717–27A0025, dated June 11, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on September 3, 2002.

Issued in Renton, Washington, on August 7, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20514 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–159–AD; Amendment 39–12862; AD 2002–16–23]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, –700, –700C, –800, and "900 series airplanes. This action requires repetitive tests of the rudder pedal force or repetitive inspections of the rudder feel and centering unit to determine the condition of the inner spring; corrective action if necessary; and eventual replacement of the spring assembly on the rudder feel and centering unit with a new assembly, which would terminate the repetitive requirements. This action is necessary to prevent reduced rudder pedal feel and centering force, which, combined with failure of the outer spring of the spring assembly, could result in pilot-induced oscillation and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 3, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 3, 2002.

Comments for inclusion in the Rules Docket must be received on or before October 15, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–159–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov* . Comments sent via fax or the Internet must contain "Docket No. 2002–NM–159–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information* : Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1506; fax (425) 227–1181.

Other Information : Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: The FAA has received reports of low rudder pedal forces caused by a broken inner spring in the rudder feel and centering unit on some Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. The rudder feel and centering unit has two springs—an inner spring and an outer spring. Investigation of the broken springs revealed an incorrect manufacturing process used on a specific batch of inner springs. The outer springs were processed in separate lots, and no outer spring failures have been reported. Further investigation revealed broken inner springs on three delivered and four undelivered airplanes. In each case, the reduced rudder pedal centering force was caused by a failed inner spring. A preflight controls check conducted by the flight crew will detect reduced pedal force, which would indicate the failure of either spring. In the event that both the inner and outer springs fail, the pedal feel and centering forces will be lost. This condition, if not corrected, could

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result in pilot-induced oscillation and consequent loss of control of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–27A1259, dated May 30, 2002. The alert service bulletin describes procedures for repetitive rudder pedal force tests to measure the pedal force, and repetitive inspections of the rudder feel and centering unit to determine if an inner spring is loose or broken. Operators may choose to do either the test or the inspection. The alert service bulletin also describes procedures for replacing the spring assembly on the rudder feel and centering unit with a new assembly, and adding the suffix "R" to the serial number to indicate that the spring assembly was replaced. Replacing the spring assembly is considered corrective action for incorrect pedal force or a loose/broken inner spring, and eliminates the need for the repetitive tests/inspections. The alert service bulletin also specifies that operators submit replaced spring assemblies and identifying information to the manufacturer. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent reduced rudder pedal feel and centering force, which, combined with failure of the outer spring of the spring assembly, could result in pilot-induced oscillation and consequent loss of control of the airplane. This AD requires accomplishment of the actions specified in the alert service bulletin described previously, except as discussed in the following section.

This AD also requires that operators send replaced spring assemblies to Boeing. According to the alert service bulletin, receipt of all replaced spring assemblies will ensure that discrepant springs have been removed from service. However, since the alert service bulletin was issued, Boeing has advised that the replaced spring assemblies submitted by operators will be examined for the type and level of damage sustained, so that further action based on the findings may be developed if appropriate.

Differences Between AD and Alert Service Bulletin

This AD includes Model 737–600 series airplanes. In the alert service bulletin, this model was identified in the Summary ("EFFECTIVITY"), but apparently inadvertently omitted in paragraph 1.A.1.

In addition, the applicability of this AD includes airplanes having line numbers 948 through 1108. The effectivity of the alert service bulletin includes those same airplane line numbers—but "with some exceptions." Those exceptions include four airplanes that Boeing has since advised should be included in the service bulletin effectivity. Those four airplanes have line numbers between 948 and 1108 and are therefore subject to the requirements of this AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–159–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–23 Boeing: Amendment 39–12862. Docket 2002–NM–159–AD.

Applicability: Model 737–600, –700, –700C, –800, and –900 series airplanes; certificated in any category; line numbers 948 through 1108 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced rudder pedal feel and centering force, which, combined with failure of the outer spring of the spring assembly, could result in pilot-induced oscillation and consequent loss of control of the airplane, accomplish the following:

Test or Inspection

(a) Within 10 days after the effective date of this AD, do the actions specified in either paragraph (a)(1) or (a)(2) of this AD, in accordance with Part A of paragraph 3.B. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1259, dated May 30, 2002. Repeat either action at least every 20 days until the terminating action required by paragraph (b) of this AD has been done.

(1) Test the force of the rudder pedal. If the pedal force is outside the limits specified in the alert service bulletin: Before further flight, do the terminating action specified by paragraph (b) of this AD.

(2) Perform a detailed inspection of the rudder feel and centering unit to determine the condition of the inner spring. If the inner spring is loose or broken: Before further flight, do the terminating action specified by paragraph (b) of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Terminating Action

(b) Except as required by paragraphs (a)(1) and (a)(2) of this AD: Within 90 days after the effective date of this AD, replace the spring assembly on the rudder feel and centering unit with a new spring assembly, and ensure that the letter "R" is marked after the serial number; in accordance with Part B of paragraph 3.B. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1259, dated May 30, 2002.

Reporting Requirement

(c) At the applicable time specified in paragraph (c)(1) or (c)(2) of this AD: Submit the replaced spring assembly P/N 69–57900–5, if applicable, along with a report that includes identifying information to Richard Ranhofer, The Boeing Company, Spares Distribution Center, Repair and Overhaul Area SSA111, Building 2201, Door W10, 2201 South 142nd Street, SeaTac, Washington 98168; reference SB 737–27A1259. The report must include the airplane identification (line number, serial number, omni number, or registry number), and the serial number of the rudder feel and centering unit. This may be accomplished by submitting a completed Appendix B of Boeing Alert Service Bulletin 737–27A1259, dated May 30, 2002. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Send the spring assembly and the report within 30 days after replacing the spring assembly, as required by paragraph (a) or (b), as applicable, of this AD.

(2) For airplanes on which the spring assembly has been replaced prior to the effective date of this AD: Send the spring assembly and the report within 30 days after the effective date of this AD.

Spare Parts

(d) As of the effective date of this AD, no person may install on any airplane a rudder feel and centering unit with a spring assembly that has a part number 69–57900–5 and a serial number in the range 2900 through 3101 inclusive—unless the feel and centering unit's serial number includes the suffix "R" to indicate that the spring assembly has been replaced.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits: Prohibited

(f) Special flight permits, in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are prohibited for the operation of the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions must be done in accordance with Boeing Alert Service Bulletin 737–27A1259, dated May 30, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on September 3, 2002.

Issued in Renton, Washington, on August 7, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20513 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–313–AD; Amendment 39–12852; AD 2002–16–13]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 and 328–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 and 328–300 series airplanes, that requires replacement of the bolts with new bolts with wirelocking on the Support One of the rudder spring tab. This action is necessary to ensure replacement of improper bolts installed on the rudder spring tab that could back out over time, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 20, 2002.

The incorporation by reference of certain publications listed in the

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regulations is approved by the Director of the Federal Register as of September 20, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, PO Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 and 328–300 series airplanes was published in the **Federal Register** on April 5, 2002 (67 FR 16331). That action proposed to require replacement of the bolts with new bolts with wirelocking on the Support One of the rudder spring tab.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 53 Model 328–100 series airplanes and 20 Model 328–300 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,380, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–13 Dornier Luftfahrt GMBH: Amendment 39–12852. Docket 2001–NM–313–AD.

Applicability: Model 328–100 series airplanes having serial numbers 3005 through 3119 inclusive, and Model 328–300 series airplanes having serial numbers 3105 through 3167 inclusive, excluding serial number 3164; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure replacement of improper bolts installed on the rudder spring tab that could back out over time, which could result in reduced structural integrity of the airplane, accomplish the following:

Bolt Replacement

(a) Within 90 days after the effective date of this AD, replace the bolts with new bolts with wirelocking on the Support One of the rudder spring tab (including torquing the bolts to the proper setting), per the Accomplishment Instructions of Dornier Service Bulletin SB–328–55–351 (for Model 328–100 series airplanes); or SB–328J–55–058, Revision 1 (for Model 328–300 series airplanes); both dated April 10, 2001; as applicable.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The replacement shall be done in accordance with Dornier Service Bulletin SB–328–55–351, dated April 10, 2001; or Dornier Service Bulletin SB–328J–55–058, Revision 1, dated April 10, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, PO Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German airworthiness directives 2001–260 and 2001–261, both dated September 6, 2001.

Effective Date

(e) This amendment becomes effective on September 20, 2002.

Issued in Renton, Washington, on August 7, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20511 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–333–AD; Amendment 39–12850; AD 2002–16–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777 series airplanes, that requires inspection of certain aft axle pivot pins of the main landing gear (MLG) for heat damage and either reworking of damaged pins or replacement of damaged pins with new or serviceable pins. This action is necessary to prevent breakage of the aft axle pivot pin of the MLG, which could overload the center axle, causing the tires to blow out upon landing, and could disengage the aft axle so that it jams the gear in the wheel well, preventing proper extension of the MLG. This action is intended to address the identified unsafe condition.

DATES: Effective September 20, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 20, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes was published in the **Federal Register** on January 4, 2002 (67 FR 541). That action proposed to require inspection of certain aft axle pivot pins of the main landing gear (MLG) for heat damage and either reworking of damaged pins or replacement of damaged pins with new pins.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Clarify Inspection Method

One commenter requests that the FAA revise paragraph (a)(2) of the proposed AD because the description of one of the appropriate inspection methods as a "magnetic particle inspection" is incomplete. The commenter states that the term should be changed to "metallurgical inspection."

We partially concur with the commenter's request. We acknowledge that the magnetic particle inspection is only one part of the inspection procedures described in Figure 2 of Boeing Special Attention Service Bulletin 777–32–0029, dated May 18, 2000. However, we find that the term "metallurgical inspection" is also not fully descriptive or inclusive of all of the steps in the inspection process. For clarification of the acceptable inspection methods, we have revised the wording of paragraph (a)(2) of this final rule to state that the required inspection "must be done either by the Barkhausen Noise Inspection method for chromium-plated parts, or by following all of the procedures in Figure 2 of the service bulletin (including nital etching and a magnetic particle inspection), in accordance with the service bulletin."

Allow Installation of Serviceable Pins

One commenter requests that we revise paragraph (a)(2)(ii) of the proposed AD to allow installation of a serviceable aft axle pivot pin. The commenter states that this paragraph is confusing because it may be interpreted to allow installation only of the same aft axle pivot pin removed from the MLG or a new pin. The commenter would like to be allowed to remove the existing pin, and install either a new pin or a pin that has been inspected in accordance with the proposed AD.

We concur that both paragraphs (a)(2)(i) and (a)(2)(ii) of this AD need to be clarified as the commenter describes. It is not our intention to prohibit installation of a serviceable pin that has been inspected. Therefore, we have revised paragraphs (a)(2)(i) and (a)(2)(ii) of this final rule to allow installation of a new or serviceable aft axle pivot pin in the MLG. We have also revised the Summary section of this AD accordingly.

Extend Compliance Time for Follow-on Inspection of Pivot Pin

One commenter requests that we extend the compliance time for the follow-on inspection for heat damage of any aft axle pivot pin with an EGL prefix, which would be required by paragraph (a)(1)(ii) of the proposed AD. The commenter states that operators should be allowed to remove and inspect the pins at the next maintenance opportunity, rather than "prior to further flight," as long as the action is done within the 18-month compliance time.

We concur that we need to clarify the compliance time for the follow-on removal and inspection of the aft axle pivot pin described in paragraph (a)(1)(ii) of this AD. Inspecting an affected aft axle pivot pin for heat damage within 18 months after the effective date of this AD is acceptable for compliance with this AD. We have revised paragraph (a)(1)(ii) of this AD to clarify our intent.

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Clarify Paragraph (a)(1)

One commenter suggests that we revise paragraph (a)(1) for clarification. The commenter states that an operator was confused by the applicability of that paragraph, "For airplanes which have line numbers 1 through 68 inclusive (designated as Group 1 airplanes in the service bulletin) and on which the aft axle pivot pin of the MLG has been replaced prior to the effective date of this AD." The operator interpreted this as meaning that the paragraph applies to airplanes with line numbers (L/Ns) 1 through 68 and higher. The commenter suggests a comma after the parenthetical phrase. We concur and have revised paragraph (a)(1) accordingly.

Credit for Actions Accomplished Previously

One commenter requests that we revise the proposed AD to provide credit for airplanes on which the actions in Boeing Special Attention Service Bulletin 777–32–0029 were accomplished before the effective date of the AD. The commenter notes that, in the service bulletin, the manufacturer recommends compliance within 18 months after service bulletin release. Thus, many operators have already done the inspections in the service bulletin. The commenter states that the wording of the proposed AD would require operators that have already complied with the proposed requirements to request an alternative method of compliance (AMOC).

For similar reasons, the same commenter requests that we remove the airplane with L/N 1 from the applicability of this AD. The commenter points out that the "Group 1" inspection described in the service bulletin was accomplished on this airplane before it was delivered, and no subject aft axle pivot pin was found.

We do not concur that any change is necessary. We give credit for actions accomplished before the effective date of an AD by means of the phrase "Compliance: Required as indicated, unless accomplished previously," which appears in every AD. If an operator's maintenance records show conclusively that the aft axle pivot pin installed on an airplane has been inspected per the referenced service bulletin and found to be acceptable, no further action is required.

Specifically with regard to the airplane with L/N 1, though that airplane may have been delivered with a pin that is not subject to this AD, it is possible that a subject pin could be installed on that airplane after delivery. Therefore, L/N 1 must be included in the applicability of this AD, so that it is subject to paragraph (b) of this AD, the "Spares" paragraph, which prohibits installation of a subject aft axle pivot pin unless it has been inspected per this AD.

We have made no change to the final rule related to these requests.

Eliminate Inspection in Spares Provision

One commenter requests that we eliminate the inspection specified in paragraph (b), the "Spares" paragraph, of the proposed AD. The commenter states that the proposed requirement would impose an unnecessary inspection on all aft axle pivot pins with an "EGL" prefix, rather than only the suspect pins. The commenter notes that Boeing Special Attention Service Bulletin 777–32–0029, dated May 18, 2000, was issued to address a finite number of pins, which were manufactured between November 1996 and October 1999. The commenter states that the root cause of the defect in this set of pins was identified and the supplier has corrected its process accordingly. The commenter is concerned about forcing operators to inspect pins produced after the process was corrected in October 1999.

Similarly, a second commenter requests that we revise paragraph (b) of this AD to exempt aft axle pivot pins purchased from the manufacturer after the release date of Boeing Special Attention Service Bulletin 777–32–0029. The commenter notes that pins purchased from the manufacturer after the release of the service bulletin should not be subject to the identified unsafe condition. The commenter indicates that the manufacturer has advised that it is not necessary to inspect such pins.

We do not concur with these requests. While we have learned that the manufacturer is working to develop a method of tracking the subject pins, no such system is currently in place, so it is possible that some of the subject pins may have been procured as spares. Thus, we find it necessary to require inspection of any aft axle pivot pin having a serial number with the prefix "EGL." If a system is in place to track the pins, operators may request approval of an alternative method of compliance in accordance with paragraph (c) of this AD. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes previously described. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 263 Model 777 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 73 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $17,520, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–11 Boeing: Amendment 39–12850. Docket 2000–NM–333–AD.

Applicability: Model 777 series airplanes, line numbers 1 through 263 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent breakage of the aft axle pivot pin of the main landing gear (MLG), which could overload the center axle, causing the tires to blow out upon landing, and could disengage the aft axle so that it jams the gear in the wheel well, preventing proper extension of the MLG, accomplish the following:

Inspection

(a) Within 18 months after the effective date of this AD: Perform the actions specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Boeing Special Attention Service Bulletin 777–32–0029, dated May 18, 2000.

(1) For airplanes which have line numbers 1 through 68 inclusive (designated as Group 1 airplanes in the service bulletin), and on which the aft axle pivot pin of the MLG has been replaced prior to the effective date of this AD: Inspect the serial number of the pivot pin.

(i) If the serial number of the pivot pin does not have the prefix of EGL, no further action is required.

(ii) If the serial number of the pivot pin does have the prefix of EGL, within 18 months after the effective date of this AD, perform the actions required by paragraph (a)(2) of this AD.

(2) For airplanes which have line numbers 69 through 263 inclusive (designated as Group 2 airplanes in the service bulletin): Remove the aft axle pivot pin, remove the lube insert from the aft axle pivot pin, and inspect the aft axle pivot pin for heat damage. The inspection must be done either by the Barkhausen Noise Inspection method for chromium-plated parts, or by following all of the procedures in Figure 2 of the service bulletin (including nital etching and a magnetic particle inspection), in accordance with the service bulletin.

(i) If heat damage is found by the inspection required by paragraph (a)(2) of this AD: Prior to further flight, re-work the existing aft axle pivot pin, re-install the existing lube insert, and re-install the re-worked aft axle pivot pin or install a new or serviceable aft axle pivot pin in the MLG, in accordance with the service bulletin.

(ii) If no heat damage is found by the inspection required by paragraph (a)(2) of this AD: Prior to further flight, re-install the existing lube insert and re-install the existing aft axle pivot pin or install a new or serviceable aft axle pivot pin in the MLG, in accordance with the service bulletin.

Spares

(b) After the effective date of this AD, no person shall install an aft axle pivot pin having a serial number with the prefix "EGL" in the MLG, unless the pivot pin has been inspected as required by paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Special Attention Service Bulletin 777–32–0029, dated May 18, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on September 20, 2002.

Issued in Renton, Washington, on August 7, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20510 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–17–AD; Amendment 39–12846; AD 2002–16–07]

RIN 2120–AA64

Airworthiness Directives; Bombardier-Rotax GmbH Type 912 F, 912 S, and 914 F Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain serial numbers (SN's) of Bombardier-Rotax GmbH type 912 F, 912 S and 914 F series reciprocating engines. This action requires replacement of the valve spring retainers, part number (P/N) 854.182, with the new-reinforced valve spring retainers, P/N 854.184. This amendment is prompted by reports of several cracked valve spring retainers discovered in-service. The actions

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specified in this AD are intended to prevent cracking of the valve spring retainers resulting in possible engine failure while in-flight.

DATES: Effective September 3, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 3, 2002.

Comments for inclusion in the Rules Docket must be received on or before October 15, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–17–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *"9-ane-adcomment@faa.gov"*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Bombardier-Rotax GmbH, Welser Strasse 32, A–4623 Gunskirchen, Austria; telephone 7246–601–232; fax 7246–601–370. Information regarding this action may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803–5299; telephone 781 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: Austro Control, which is the airworthiness authority for Austria, notified the FAA that an unsafe condition may exist on certain SN's of Bombardier-Rotax GmbH type 912 F, 912 S, and 914 F series reciprocating engines, that have been converted to a single valve spring arrangement. Austro Control advises that they have received reports of several cracks on valve spring retainers in-service. It has been discovered that during the starting procedure a delayed purging of the lubrication system could occur, which may result in cracking of the valve spring retainer. This condition can occur if one or more hydraulic valve tappets lose their oil prime and fill with air. This is possible at first engine run or at oil change. This condition can be caused by improper purging of the lubrication system, non-compliance of starting and warming up instructions, unsuitable motor oil, or lack of maintenance. A detailed crack detection of the affected valve spring retainers is very difficult and would have to be performed repeatedly. Due to this fact, all affected engines must be equipped with reinforced valve spring retainers that are more resistant to cracking.

Manufacturer's Service Information

Bombardier-Rotax GmbH has issued Mandatory Service Bulletin (MSB) No. SB–912–022/SB–914–011, dated March, 2001, that specifies procedures for replacement of valve spring retainers P/N 854.182. The Austro Control classified this service bulletin as mandatory and issued AD No. 108, in order to assure the airworthiness of these Bombardier-Rotax GmbH engines in Austria.

Bilateral Airworthiness Agreement

This engine model is manufactured in Austria and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Austro Control has kept the FAA informed of the situation described above. The FAA has examined the findings of the Austro Control, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Bombardier-Rotax GmbH 912 F, 912 S, and 914 F series reciprocating engines of the same type design, this AD is being issued to prevent cracking of the valve spring retainers resulting in possible engine failure while in-flight. This AD requires replacement of valve spring retainers, P/N 854.182, on engines with the single valve spring configuration, with new-reinforced valve spring retainers, P/N 854.184. The actions must be done in accordance with the service bulletin described previously.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–17–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–07 Bombardier-Rotax GmbH: Amendment 39–12846. Docket No. 2002–NE–17–AD.

Applicability

This airworthiness directive (AD) is applicable to Bombardier-Rotax GmbH type 912 F, 912 S, and 914 F series reciprocating engines with the serial numbers (SN's) in Table 1 of this AD, and all engines that have been converted to a single valve spring arrangement at engine repair or general overhaul. Table 1 follows:

TABLE 1.—ENGINE SERIES BY SN

Engine model	Engine SN
912 F	4,412.757 to 4,412.794 4,412.796 to 4,412.807
912 S	4,922.501 to 4,922.534 4,922.536 to 4,922.552 4,922.554 to 4,922.577 4,922.579 to 4,922.636
914 F	4,420.039 to 4,420.048 4,420.050 to 4,420.067 4,420.069 to 4,420.082 4,420.084 to 4,420.097 4,420.099 to 4,420.114 4,420.116 to 4,420.155 4,420.157 to 4,420.253

These engines are installed on, but not limited to, Diamond Aircraft Industries, DA20–A1, Diamond Aircraft Industries GmbH Model HK 36 TTS, Model HK 36TTC, and Model HK 36 TTC–ECO, Iniziative Industriali Italiane S.p.A. Sky Arrow 650 TC and Sky Arrow 650 TCN, Aeromot-Industria Mecanico Metalurgica ltda., Models AMT–300 and AMT–200S, and Stemme S10–VT aircraft.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent cracking of the valve spring retainers resulting in possible engine failure while in-flight, do the following:

Replacement Procedure

(a) Replace valve spring retainers part number (P/N) 854.182, of single valve spring configuration, with valve spring retainers P/N 854.184, in accordance with 3.1.1 of the Accomplishment Instructions of Mandatory Service Bulletin (MSB) SB–912–022/SB–914–011, dated March, 2001, using the compliance times in the following Table 2:

TABLE 2.—COMPLIANCE SCHEDULE

Engine flight hours (FH) on the effective date of this AD	Replace
(1) 0 FH (new engine)	Before installing on aircraft.
(2) 10 hours or less ..	Within 10 FH after the effective date of this AD.
(3) More than 10 but less than or equal to 25 FH.	Within 25 FH after the effective date of this AD.
(4) More than 25 FH	Before exceeding 100 FH.

(b) For engines that have had the oil system accessed during repair or maintenance, replace the valve spring retainers in accordance with 3.1.1 of the Accomplishment Instructions of Mandatory Service Bulletin (MSB) SB–912–022/SB–914–011, dated March, 2001, within 10 FH after the effective date of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(e) The replacements must be done in accordance with Bombardier-Rotax GmbH Mandatory Service Bulletin (MSB) SB–912–022/SB–914–011, dated March, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier-Rotax GmbH, Welser Strasse 32, A–4623 Gunskirchen, Austria; telephone 7246–601–232; fax 7246–601–370. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Austro Control airworthiness directive No. 108.

Effective Date

(f) This amendment becomes effective on September 3, 2002.

Issued in Burlington, Massachusetts, on August 2, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–20266 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–30–AD; Amendment 39–12856; AD 2002–16–17]

RIN 2120–AA64

Airworthiness Directives; Barry Aviation, LLC Model PZL-Krosno KR–03A "Peregrine" (Puchatek) Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Barry Aviation, LLC

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Model PZL-Krosno KR–03A "Peregrine" (Puchatek) sailplanes. This AD requires you to inspect to ensure that the correct horizontal stabilizer attachment fittings are installed, install the correct fittings if necessary, and incorporate a "NO LIFT" placard to the vertical stabilizer. This AD is the result of reports of cracks in the horizontal stabilizer attachment fittings on the affected sailplanes. Analysis of these incidents reveals that incorrect fittings were installed. The actions specified by this AD are intended to prevent such cracks in the horizontal stabilizer attachment fittings, which could result in the horizontal stabilizer separating from the sailplane with consequent loss of control of the sailplane.

DATES: This AD becomes effective on August 30, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of August 30, 2002.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before September 27, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–30–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–30–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in this AD from Barry Aviation, LLC, 11600 Aviation Boulevard, suite 16, West Palm Beach, Florida 33412. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–30–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 303499; telephone: (770) 703–6082; facsimile: (770) 703–6097; e-mail: *william.o.herderich@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received several reports of cracked horizontal stabilizer attachment fittings on certain Barry Aviation, LLC Model PZL-Krosno KR–03A "Peregrine" (Puchatek) sailplanes. Polish manufacturer PZL-Krosno previously held the type certificate for these sailplanes.

Metallurgical analysis of one fitting indicated fatigue as the cause of the incidents. In 1993, PZL-Krosno issued a design note to specify the installation of horizontal stabilizer attachment fittings that had a flange of 3 millimeters (mm) thick instead of 1.5 mm thick.

All reports of cracked horizontal stabilizer attachment fittings incorporated horizontal stabilizer attachment fittings with a flange of 1.5 mm thick.

What Are the Consequences if the Condition Is Not Corrected?

Cracked horizontal stabilizer attachment fittings, if not prevented, could result in the horizontal stabilizer separating from the sailplane with consequent loss of control of the sailplane.

Is There Service Information That Applies to This Subject?

The following service information relates to this subject:

—Barry Aviation "Krosno KR–03A Glider" Service Bulletin No. 1–02, dated June 10, 2002: This document includes procedures for inspecting the stabilizer attachment fittings to ensure that the increased thickness flange fittings are installed and specifies replacement if necessary; and

—WSK "PZL–Krosno" Service Bulletin No. BE–29/KR–03A/93, dated November 16, 1993: This document includes procedures for replacing the stabilizer attachment fittings with fittings that have increased thickness flanges and incorporating a "NO LIFT" placard to the vertical stabilizer.

The FAA's Determination and an Explanation of the Provisions of This AD

What Has FAA Decided?

The FAA has reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Barry Aviation, LLC Model PZL-Krosno KR–03A "Peregrine" (Puchatek) sailplanes of the same type design;

—The actions specified in the previously-referenced service information (as specified in this AD) should be accomplished on the affected sailplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Does This AD Require?

This AD requires you to inspect to ensure that the correct horizontal stabilizer attachment fittings are installed, install the correct fittings if necessary, and incorporate a "NO LIFT" placard to the vertical stabilizer.

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

Because the unsafe condition described in this document could result in the horizontal stabilizer separating from the sailplane with consequent loss of control of the sailplane, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the AD I Should Pay Attention to?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your written comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–30–AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

Does This AD Impact Various Entities?

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2002–16–17 Barry Aviation, LLC: Amendment 39–12856; Docket No. 2002–CE–30–AD.

(a) *What sailplanes are affected by this AD?* This AD applies to Model PZL-Krosno KR–03A "Peregrine" (Puchatek) sailplanes, serial numbers 03–01 through 03–24 and 04–01 through 04–20, that are certificated in any category.

Note 1: PZL-Krosno previously held the type certificate for these sailplanes.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the sailplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent cracking in the horizontal stabilizer attachment fittings, which could result in the horizontal stabilizer separating from the sailplane with consequent loss of control of the sailplane.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance	Procedures
(1) Inspect the horizontal stabilizer attachment fittings to ensure that the correct fittings are installed:. (i) If part number (P/N) NS–03/08/93–01L/P attachment fittings (or FAA-approved equivalent part numbers) are installed, no further action is required by this paragraph. (ii) If the attachment fittings are P/Ns other than NS–03/08/93–01L/P (or FAA-approved equivalent part numbers), replace the fittings with the P/N NS–03/08/93–01L/P attachment fittings (or FAA-approved equivalent part numbers).	Inspect within 10 hours time-in-service (TIS) after August 30, 2002 (the effective date of this AD). Replace prior to further flight after the inspection.	Inspect in accordance with Barry Aviation "KROSNO KR–03A Glider" Service Bulletin No. 1–02, dated June 10, 2002. Replace in accordance with WSK "PZL–KROSNO" Service Bulletin No. BE–29/KR–03A/93, dated November 16, 1993.
(2) Incorporate a "NO LIFT" placard to the vertical stabilizer.	Within 10 hours TIS after August 30, 2002 (the effective date of this AD).	Use paint or a permanent placard and add the words "NO LIFT" to both sides of the vertical stabilizer near the top and leading edge. Use letters that are at least .5 inch and a color that contrasts with the color of the airplane, e.g., use red on a blue airplane.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Atlanta Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: This AD applies to each sailplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6082; facsimile: (770) 703–6097; e-mail: *william.o.herderich@faa.gov*.

(g) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with WSK "PZL–KROSNO" Service Bulletin No. BE–29/KR–03A/93, dated November 16, 1993; and Barry Aviation "KROSNO KR–03A

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Glider" Service Bulletin No. 1–02, dated June 10, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Barry Aviation, LLC, 11600 Aviation Boulevard, suite 16, West Palm Beach, Florida 33412. You may view this information at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) *When does this amendment become effective?* This amendment becomes effective on August 30, 2002.

Issued in Kansas City, Missouri, on August 6, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20400 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–398–AD; Amendment 39–12851; AD 2002–16–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, that requires revising the Limitations Section of the FAA-approved Airplane Flight Manual to ensure the flightcrew is advised of the proper procedures in the event of uncommanded movement of a spoiler during flight. Such uncommanded movement could result in reduced controllability of the airplane, and consequent significant increased fuel consumption during flight, which could necessitate an in-flight turn-back or diversion to an unscheduled airport destination. This action is intended to address the identified unsafe condition.

DATES: Effective September 20, 2002.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes was published in the **Federal Register** on May 23, 2002 (67 FR 36119). That action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to ensure the flightcrew is advised of the proper procedures in the event of uncommanded movement of a spoiler during flight.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required AFM revision, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $300, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–12 Airbus: Amendment 39–12851. Docket 2001–NM–398–AD.

Applicability: Model A330 and A340 series airplanes, certificated in any category; equipped with any spoiler servo control having part number (P/N)1386A0000–01 or 1386B0000–01, or P/N 1387A0000–01 or 1387B0000–01.

Compliance: Required as indicated, unless accomplished previously.

To ensure the flightcrew is advised of the proper procedures in the event of uncommanded movement of a spoiler during flight, which could result in reduced controllability of the airplane and consequent significant increased fuel consumption during flight, and could result in an in-flight turn-back or diversion to an unscheduled airport destination, accomplish the following:

Revision to Airplane Flight Manual (AFM)

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved AFM by including the procedures listed in Figure 1 of this AD. This revision may be done by inserting a copy of the following Figure 1 into the AFM:

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Figure 1

"PROCEDURE:

- **If "F/CTL SPLR FAULT" is triggered**
  - F/CTL S/D page.....CHECK
- **If the affected spoiler is not indicated extended amber:**
  The spoiler is faulty in the retracted position. In such a case, the specific OEB procedure does not apply.

  - LDG DIST PROC.....APPLY
  Multiply the landing distance by 1.1 for 3 or 4 spoilers lost per wing.
  Multiply the landing distance by 1.2 for 5 or 6 spoilers lost per wing.
- **If the affected spoiler is indicated extended amber, apply the following procedure:**

IN CRUISE

CAUTION

Disregard FMGC fuel predictions, as they do not take the increase in fuel consumption into account.

- FUEL CONSUMPTION INCREASE.....APPLY
Apply 18.5% increase in the fuel consumption.

- IN-FLIGHT TURN BACK/DIVERSION.....CONSIDER
In-flight turn back or diversion may have to be considered due to this fuel penalty.

- MAX ACHIEVABLE ALTITUDE DECREASE.....CONSIDER
With the maximum spoiler deflection, the maximum altitude in ISA conditions may decrease by 4,500 feet.

FOR LANDING

- FOR LDG.....USE FLAP 3
Use CONF 3 for landing to avoid possible buffeting, which, however, may be high depending on the failed spoiler.

-VAPP.....NORM

- LDG DIST.....x 1.1"

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Note 1: When the statement in paragraph (a) of this AD has been incorporated into the FAA-approved general revisions of the AFM, the general revisions may be incorporated into the AFM, provided the statement in this AD and the general revisions is identical. This AD may then be removed from the AFM.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager International Branch, ANM–116, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directives 2001–608(B) and 2001–609(B), both dated December 12, 2001.

Effective Date

(d) This amendment becomes effective on September 20, 2002.

Issued in Renton, Washington, on August 7, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20512 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–32–AD; Amendment 39–12847; AD 2002–16–08]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Models JT8D–209, –217, –217A, –217C and –219 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), that is applicable to Pratt & Whitney (PW) JT8D models –209, –217, –217A, –217C and –219 turbofan engines. That AD currently requires initial and repetitive fluorescent magnetic particle inspections or fluorescent penetrant inspections of the combustion chamber outer case (CCOC) for cracks, and, if necessary, replacement with serviceable parts. Also that AD requires a one-time material verification of drain and Ps4 bosses, and, if necessary, replacement with serviceable parts. Finally, that AD requires replacement of CCOC's with welded-on bosses with improved, one-piece CCOC's. This amendment requires lower initial inspection thresholds for all CCOC's installed in any JT8D model –209, –217, –217A, –217C or –219 turbofan engine. This amendment is prompted by reports of cracked CCOC's that had accumulated fewer cycles in service than the initial inspection thresholds required by the current AD. Also, a CCOC part number was discovered with incorrect material not identified by serial number in JT8D Alert Service Bulletin (ASB) A6359, Revision 2, dated July 31, 2000. The actions specified by this AD are intended to prevent uncontained failure of the CCOC, which could cause release of debris, damage to the airplane, or fire.

DATES: Effective September 20, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 20, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–26–06, Amendment 39–11465 (64 FR 71280, December 21, 1999), which is applicable to Pratt & Whitney JT8D models –209, –217, –217A, –217C and –219 turbofan engines was published in the **Federal Register** on February 14, 2002 (67 FR 6890). That action proposed to require lower initial inspection thresholds for CCOC's part numbers (P/N's) 500023801, 797707, 807684, and 815830 installed in any JT8D model –209, –217, –217A, –217C, or –219 turbofan engines in accordance with PW JT8D Alert Service Bulletin (ASB) No. A6359, Revision 2, dated July 31, 2000 or PW JT8D ASB A6359, Revision 3, dated August 31, 2001.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Understated Financial Impact

One commenter states the FAA understates the economic impact to the operators by not accounting for ancillary costs realized when an engine is disassembled to remove a part, and that there are concurrent service bulletin requirements when adopting the one-piece CCOC.

The FAA partially agrees. The indirect costs associated with this AD are not directly related to this rule, and, therefore, are not addressed in the economic analysis for this rule. A full cost analysis for each AD, including such indirect costs, is not necessary since the FAA has already performed a cost benefit analysis when adopting the airworthiness requirements to which these engines were originally certificated. A finding that an AD is warranted means that the original design no longer achieves the level of safety specified by those airworthiness requirements, and that other required actions are necessary, such as inspections of existing CCOC's and replacement with a one-piece CCOC. Because the original level of safety was already determined to be cost-beneficial, these additional requirements are needed to return the engine to that level of safety and do not add any additional regulatory burden. Therefore, a full cost analysis would be redundant and unnecessary. However, the incorporation of the one-piece case does require additional modifications that were not incorporated in the original proposal economic analysis. That is, 15 additional work hours are required to install the one-piece case which adds an additional $1,152,000 to the cost of the AD making the estimated total $61,388,800.

Tables 3 and 3A

One commenter requests acknowledgement or exclusion of Tables 3 and 3A of PW JT8D ASB No. A6359 as containing all of the serial numbered CCOC's with part number 797707. This would avoid possible confusion regarding the use of the tables.

The FAA agrees and since the tables are not inclusive of all part numbers, a Note 2 is added to the final rule to exclude Tables 3 and 3A.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

New Revision to Service Bulletin (SB)

Since publication of the proposal, PW has issued PW JT8D SB No. 6291, Revision 4, dated May 30, 2002. The only change in PW JT8D SB No. 6291, Revision 4, is an address revision for PW receipt of the JT8D combustion chamber outer case (CCOC).

Economic Analysis

There are approximately 2,624 Pratt & Whitney JT8D models –209, –217, –217A, –217C and –219 turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 1,280 engines installed on airplanes of U.S. registry will be affected by this AD, that it will take approximately 2.5 work hours per engine to perform the required inspections, and 15 additional work hours to install the one-piece case, and that the average labor rate is $60 per work hour. Required parts will cost approximately $46, 910 per engine. The 15 additional work hours do change the estimated total cost of the AD to the US operators. Based on these figures, the total cost of the AD on U.S. operators is estimated to be $61,388,800.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11465 (64 FR 71280, December 21, 1999) and by adding a new airworthiness directive, Amendment 39–12847, to read as follows:

2002–16–08 Pratt & Whitney: Amendment 39–12847. Docket No. 99–NE–32–AD. Supersedes AD 99–26–06, Amendment 39–11465.

Applicability. This airworthiness directive (AD) is applicable to Pratt & Whitney JT8D models –209, –217, –217A, –217C and –219 turbofan engines with combustion chamber outer case (CCOC), part numbers (P/N's) 500023801, 797707, 807684, and 815830 installed. These engines are installed on, but not limited to, McDonnell Douglas MD–80 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance. Compliance with this AD is required as indicated, unless already done. To prevent uncontained failure of the CCOC, which could cause release of debris, damage to the airplane, or fire, do the following:

Inspections

(a) Perform initial and repetitive fluorescent magnetic particle inspections (FMPI) or fluorescent penetrant inspections (FPI) of drain bosses and Ps4 bosses of the CCOC's for cracks, and, if necessary, replace with serviceable parts before further flight, in accordance with the procedures and intervals specified in paragraph 1.A. of the Accomplishment Instructions of PW JT8D Alert Service Bulletin (ASB) A6359, Revision 3, dated August 31, 2001.

(b) For all CCOC's P/N 797707 inspect for proper Ps4 and drain boss material, and, if necessary, replace with serviceable parts before further flight, in accordance with the procedures and intervals specified in paragraph 1.B. of the Accomplishment Instructions of PW JT8D ASB A6359, Revision 3, dated August 31, 2001.

Note 2: Tables 3 and 3A of PW JT8D ASB No. A6359 list associated serial numbers (S/N's) of part number (P/N) 797707, however, these tables should only be used as a reference as they are not a complete list of all parts. Operators, therefore, should verify the part numbers of their CCOC's in determining compliance with this AD.

Effective Date for Computing Compliance Intervals

(c) Use the effective date of this AD for computing compliance intervals whenever PW JT8D ASB A6359, Revision 3, dated August 31, 2001, refers to the publication date of the ASB.

Terminating Action

(d) At the next part accessibility after the effective date of this AD when the CCOC has accumulated cycles-in-service greater than the initial inspection threshold specified in Table 1 of PW JT8D ASB A6359, Revision 3, dated August 31, 2001, replace the CCOC with a one-piece machined CCOC assembly, P/N 815556, in accordance with PW JT8D Service Bulletin (SB) 6291, dated May 20, 1997; or Revision 1 dated July 9, 1997; or Revision 2, dated August 27,1999; or Revision 3, dated August 31, 2001; or Revision 4, dated May 30, 2002. Installation of an improved, one-piece CCOC, P/N 815556, constitutes terminating action to the inspections required by this AD.

Definition

(e) For the purpose of this AD, part accessibility is defined as an engine disassembly in which the CCOC is removed from the engine.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 3: Information concerning the existence of approved alternative methods of

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compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(h) The inspections or replacements of the combustion chamber outer case (CCOC) must be done in accordance with the following Pratt & Whitney service bulletins:

Document No.	Pages	Revision	Date
ASB JT8D A6359	1–3	3	August 31, 2001.
	4–5	2	July 31, 2000.
	6	3	August 31, 2001.
	7	2	July 31, 2000.
	8	1	July 30, 1999.
	9	2	July 31, 2000.
	10	1	July 30, 1999.
	11	2	July 31, 2000.
	12	1	July 30, 1999.
	13–16	2	July 31, 2000.
	17–19	1	July 30, 1999.
	20–27	2	July 31, 2000.
Total pages: 27.			
SB JT8D 6291	1–2	3	August 31, 2001.
	3	2	August 27, 1999.
	4–5	3	August 31, 2001.
	6	2	August 27, 1999.
	7–8	3	August 31, 2001.
	9–12	2	August 27, 1999.
Total pages: 12.			
SB JT8D 6291	1–10	4	May 30, 2002.
Total pages: 10.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on September 20, 2002.

Issued in Burlington, Massachusetts, on August 2, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–20267 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AGL–06]

Modification of Class E Airspace; St. Ignace, MI; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; correction.

SUMMARY: This action corrects an error contained in a direct final rule that was published in the **Federal Register** on Thursday, June 13, 2002 (67 FR 40592). The direct final rule modified Class E Airspace at St. Ignace, MI.

EFFECTIVE DATE: 0901 UTC, August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 02–14980 published on Thursday, June 13, 2002 (67 FR 40592), modified Class E Airspace at St. Ignace, MI. The document should have "established" Class E airspace at St. Ignace, MI. This action corrects that error.

Accordingly, pursuant to the authority delegated to me, the modification of the Class E airspace area as published in the **Federal Register** Thursday, June 13, 2002 (67 FR 40592), (FR Doc. 02–14980), is corrected as follows:

1. On page 40592, Column 3;

a. Under the heading, correct "Modification of Class E Airspace; St. Ignace, MI" to read "Establishment of Class E Airspace; St. Ignace, MI".

b. Under summary, line 1, correct "modifies" to read "establishes".

c. Under summary, starting on line 10, correct "modifies existing controlled airspace" to read "establishes controlled airspace".

2. On page 40593;

a. Column 1, under supplementary information, line 2, correct "modifies" to read "establishes", and starting on line 5, eliminate the words "by modifying existing controlled airspace".

§ 71.1 [Corrected]

b. Column 3, under the legal description, correct "AGL MI E5 St. Ignace, MI [Revised]" to read "AGL MI E5 St. Ignace, MI [New]".

Issued in Des Plaines, Illinois on July 22, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–20894 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–18]

Establishment of Class E Airspace; Flint, MI; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; correction.

SUMMARY: This action corrects an error in the summary and legal description of a Direct final rule that was published in the **Federal Register** on Monday, March 11, 2002 (67 FR 10841), Airspace Docket No. 01–AGL–18. The direct final rule established Class E Airspace at Flint, MI.

EFFECTIVE DATE: 0901 UTC, August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 02–5627, Airspace Docket No. 01–AGL–18, published on Monday, March 11, 2002 (67 FR 10841), established Class E Airspace at Flint, MI. An error in the summary and legal description for the Class E airspace for Flint, MI, was published. An incorrect radius was printed. The action corrects that error.

Accordingly, pursuant to the authority delegated to me, the errors in the summary and legal description for the Class E airspace, Flint, MI, as published in the **Federal Register** Monday, March 11, 2002 (67 FR 10841), (FR Doc. 02–5627), are corrected as follows:

1. On page 10841, Column 3, in the summary, correct "4.4-mile radius" to read "5.0-mile radius".

§ 71.1 [Corrected]

2. On page 10842, Column 3, under AGL MI E2 Flint, MI [NEW] in the legal description, correct "4.4 = mile radius" to read "5.0 = mile radius"

Issued in Des Plaines, Illinois on July 22, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–20893 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

[T.D. 02–49]

RIN 1515–AC56

Administrative Rulings

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule..

SUMMARY: This document adopts as a final rule, with some changes, proposed amendments to those provisions of the Customs Regulations that concern the issuance of administrative rulings and related written determinations and decisions on prospective and current transactions arising under the Customs and related laws. The regulatory changes involve primarily procedures regarding the modification or revocation of rulings on prospective transactions, internal advice decisions, protest review decisions, and treatment previously accorded by Customs to substantially identical transactions. The amendments are in response to statutory changes made to the administrative ruling process by section 623 of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act.

EFFECTIVE DATE: September 16, 2002.

FOR FURTHER INFORMATION CONTACT: John Elkins, Textiles Branch, Office of Regulations and Rulings (202–572–8790).

SUPPLEMENTARY INFORMATION:

Background

Statutory and Regulatory Background

This document concerns amendments to part 177 of the Customs Regulations (19 CFR part 177) regarding the issuance of binding administrative rulings to importers and other interested persons with regard to prospective and current transactions arising under the Customs and related laws. Rulings, determinations, or decisions under specific statutory authorities provided for in the Customs Regulations other than in part 177 (for example, in part 133 for enforcement actions regarding intellectual property rights, in part 174 for protests, and in part 181 for advance rulings under the North American Free Trade Agreement) are not affected by this document.

On December 8, 1993, the President signed into law the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057). Title VI of that Act contained provisions pertaining to Customs Modernization and thus is commonly referred to as the Customs Modernization Act or "Mod Act." The Mod Act included, in section 623, an extensive amendment of section 625 of the Tariff Act of 1930 (19 U.S.C. 1625) which, prior to that amendment, simply required that the Secretary of the Treasury publish in the Customs Bulletin, or otherwise make available to the public, any precedential decision with respect to any Customs transaction within 120 days of issuance of the decision. The regulations in part 177 currently incorporate the terms of 19 U.S.C. 1625 as they existed prior to enactment of the Mod Act.

The Mod Act amendment of section 1625 involved the following specific changes: (1) The existing text was designated as subsection (a), and in new subsection (a) the "120 days" publication time limit was changed to "90 days" and the text was modified to refer to "any interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision;" (2) a new subsection (b) was added to provide for administrative appeals of an adverse interpretive ruling and interpretations of regulations prescribed to implement rulings; (3) a new subsection (c) was added to set forth specific procedures for the modification or revocation of interpretive rulings or decisions or previous treatments by Customs; (4) a new subsection (d) was added to provide that a decision that proposes to limit the application of a court decision must be published in the *Customs Bulletin* together with notice of opportunity for public comment prior to a final decision; and (5) a new subsection (e) was added to provide that the Secretary of the Treasury may make available in writing or through electronic media all information which contains instructions, requirements, methods or advice necessary for importers and exporters to comply with the Customs laws and regulations.

The new subsection (c) provisions require publication, in the *Customs Bulletin* and with opportunity for public comment, of any proposal to modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days or which would have the effect of modifying the treatment previously accorded by Customs to substantially identical transactions, require that interested parties be given not less than 30 days after the date of publication to submit comments on the proposed ruling or decision, and require that, after consideration of any comments received, a final ruling or decision be published in the *Customs Bulletin* within 30 days after the closing of the comment period, with the final ruling or decision to become effective 60 days after the date of its publication.

Publication of Proposed Regulatory Changes

On July 17, 2001, Customs published in the **Federal Register** (66 FR 37370) a notice of proposed rulemaking setting forth proposed amendments to part 177 of the Customs Regulations which

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included amendments to Customs procedures in response to the changes made by section 623 of the Mod Act as well as organizational and substantive changes to clarify current administrative practice and otherwise improve the layout and readability of the present regulatory texts. The proposed changes involved principally the following areas: (1) The issuance of rulings and other written advice on prospective transactions; (2) the appeal of such rulings after issuance; (3) the modification or revocation of rulings on prospective transactions or of protest review decisions or of treatment previously accorded by Customs to substantially identical transactions; (4) the limitation of court decisions; (5) the issuance, appeal, and modification or revocation of internal advice decisions on current transactions; and (6) the treatment of requests for confidential treatment of business information submitted to Customs in connection with a request for written advice. Included in these proposed changes was a restructuring of part 177 under which new subpart A would consist of an overview section and a definitions section, new subpart B would concern prospective rulings, new subpart C would concern the internal advice procedure, new subpart D would deal with the disclosure of confidential business information, and present subpart B would be redesignated as subpart E.

The July 17, 2001 notice of proposed rulemaking prescribed a 60-day period for the submission of public comments on the proposed regulatory changes. On August 28, 2001, Customs published a notice in the **Federal Register** (66 FR 45235) extending the public comment period for an additional 30 days, that is, until October 17, 2001. A total of 18 commenters responded to the solicitation of comments in the notice of proposed rulemaking.

The comments received by Customs were almost uniformly opposed to the organizational and substantive changes set forth in the notice of proposed rulemaking. Based on this overwhelmingly negative response, and because most of the changes proposed by Customs were discretionary in nature, that is, they were developed by Customs to address internal administrative concerns of Customs rather than statutory mandates, Customs has decided, with one exception, to withdraw those proposed changes rather than proceed with a final rule. This means that any future action taken by Customs in regard to those withdrawn proposals will be in the form of a new notice of proposed rulemaking that will provide an opportunity for public comment before final action is taken on the proposals.

The one exception to withdrawal of the proposed changes concerns proposed § 177.21, which would implement the 19 U.S.C. 1625(c) provisions regarding the modification or revocation of prospective rulings, internal advice decisions, protest review decisions, and previous treatment of substantially identical transactions. For the reasons explained below, Customs has determined that it is essential to proceed with implementation of the terms of 19 U.S.C. 1625(c) through appropriate regulatory standards.

Under the framework set forth by the Supreme Court in *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council Inc.*, 467 U.S. 837 (1984), which was applied by the Court to Customs Regulations in *United States* v. *Haggar Apparel Co.*, 526 U.S. 380 (1999), a regulation promulgated by an administrative agency, if it represents the agency s statutory interpretation that fills a gap or defines a term in a way that is reasonable in light of the legislature's revealed design, must be given controlling weight and thus will receive judicial deference. The need for regulatory standards is particularly acute regarding the modification and revocation provisions of 19 U.S.C. 1625(c) in order to (1) Provide an appropriate regulatory basis for administrative procedures that Customs applies under the statute following passage of the Mod Act provisions, (2) provide guidance regarding the meaning of the statutory terms, in particular, the meaning of the term "treatment," (3) clarify the relationship between the procedures under 19 U.S.C. 1625(c) and other legislative, judicial or administrative actions that have the same effect as a modification or revocation under that statutory provision, and (4) prescribe standards for the application of the statutory modification or revocation effective date provisions to Customs transactions.

As explained in detail in the preamble to the July 17, 2001, notice of proposed rulemaking, proposed § 177.21 was drafted in order to set forth the Customs interpretation and application of the statutory modification and revocation provisions. That proposed text engendered a significant number of comments, which are discussed below. In addition, Customs performed an internal review of the proposed text after the close of the comment period (1) To determine whether additional clarification of the Customs position regarding the modification or revocation of treatments was necessary beyond any changes suggested by the commenters and (2) as a consequence of the decision not to proceed with the proposed restructuring of part 177, to assess the manner in which the proposed § 177.21 text could best be included within the existing part 177 regulatory framework. The decisions taken as a result of that internal review are reflected in the discussion of the additional changes to the regulatory texts which follows the comment discussion.

Discussion of Comments

Of the 18 commenters who responded to the solicitation of comments on the proposed part 177 changes, 14 provided one or more specific comments on the proposed § 177.21 text. The comments are discussed below.

Comment: Five commenters took issue with the statement in the first sentence of proposed § 177.21(a) that a prospective ruling or an internal advice decision or a holding or principle covered by a protest review decision may be modified or revoked if found to be in error or not in accord with the current views of Customs. Three of these commenters argued that the regulations need more specific criteria (rather than only "if found to be in error or not in accord with the current views of Customs") in order for Customs to modify or revoke current rulings: Modification or revocation should be limited to situations where there has been a change in the law, or where the previous interpretation of Customs is construed to be erroneous as a matter of law, and not merely because Customs changes its mind. Another commenter stated that modification or revocation of rulings or decisions found to be "not in accord with the current views of Customs" should be limited to purely administrative positions and should not include derogation of a court ruling or other higher authority, because Customs cannot take a "current view" contrary to a higher authority, and the commenter suggested that this point should be clarified in the final regulations. One commenter stated that the words "not in accord with the current views of Customs" are too vague and should be replaced by a statement that the authority of Customs to modify or revoke is limited to situations where there are two or more inconsistent rulings, because this is how the words in question have historically been applied. Finally, one commenter pointed out that, even under the level of deference adopted in *United States* v. *Mead Corp.*, 121 S. Ct. 2164 (2001), Customs is entitled to deference only if it has provided a well-thought-out

position, and this standard is not reflected in this proposed provision.

Customs response: Customs first notes that the phraseology in question, that is, "in error or not in accord with the current views of Customs," does not constitute a new regulatory standard but rather merely reflects a standard that has existed in the regulations for many years under 19 CFR 177.9(d)(1). Moreover, while the proposed § 177.21 text was intended to carry out the terms of 19 U.S.C. 1625(c) as added by section 623 of the Mod Act, it is noted that the statutory amendment did not create new substantive standards that Customs must apply in deciding whether to modify or revoke a ruling, etc., but rather merely imposed certain procedural safeguards regarding modification or revocation actions. Therefore, Customs believes that the submitted comments are directed primarily to historical Customs practices rather than to new statutory standards imposed by the Mod Act changes. This being said, Customs in part agrees and in part disagrees with the points made by these commenters.

Customs agrees that, as a basic principle, a ruling, *etc.*, should be modified or revoked if it is "erroneous as a matter of law," and, for that reason, the regulatory text in question continues to provide that, "if [a ruling is] found to be in error," modification/revocation authority will be exercised. The suggestion that Customs might modify or revoke a ruling for other than legal reasons is incorrect. All proposed modifications/revocations issued under 19 U.S.C. 1625(c) will be based upon the current views of Customs regarding the proper interpretation of the law.

The modification or revocation of a ruling or decision has always involved a purely administrative position, and nothing in the proposed regulatory texts purported to change that fact or to otherwise suggest that a modification or revocation might be in derogation of an applicable court decision or other higher authority. However, Customs believes that inclusion in the regulations of a statement on this point is unnecessary.

Customs does not agree that the words "not in accord with the current views of Customs" have historically been applied in modification or revocation cases only where there are two or more inconsistent rulings. The phrase in question has been applied by Customs in a variety of different circumstances not involving inconsistent rulings, including circumstances in which all extant rulings on a particular issue are consistent but legally incorrect. Therefore, the statement suggested by the commenter should not be included in the regulatory text.

Finally, Customs does not believe that the issue of deference under the *Mead* case is appropriate for treatment in this regulatory context. The *Mead* case concerned the degree to which the courts may give deference to rulings issued by Customs, which is a function of the ruling itself and not the regulations under which the ruling is promulgated. The granting of deference is a matter for the courts to decide and is not a proper subject for these regulations.

Comment: Two commenters questioned whether the intent of referring to "prospective" rulings, as opposed to "interpretive" rulings as used in the statute, is intended to give greater breadth to the notice and comment regulation. If only related to prospective rulings, these commenters questioned how it can apply to internal advice rulings, which are considered current transactions, or to protest review decisions, which involve entries already liquidated. As to the reference to coverage of the regulation to protest review decisions, these commenters expressed uncertainty regarding how Customs intends to implement 19 U.S.C. 1625(c). They stated that they suspect that the new regulation is nothing more than an embodiment of existing practice whereby Customs Headquarters issues a section 1625 notice and comment when a holding or principle reflected in a previous protest review decision is modified or revoked, either by the issuance of a prospective ruling, or internal advice or protest review decision. The commenters felt that the interaction between the administrative rulings regulations, 19 CFR part 177, and the protest regulations, 19 CFR part 174, is highlighted by the comments here and, because of this, they expressed the belief that it would be appropriate for Customs simultaneously to revise part 174 as well.

Customs response: In the preamble portion of the July 17, 2001, notice of proposed rulemaking Customs gave two reasons for referring to prospective rulings in the proposed § 177.21 text (*see* 66 FR 37374). First, the chosen terminology reflects a decision Customs has taken to use a prospective ruling as the means for carrying out a modification or revocation referred to in the statute or in the present regulatory text. Second, as regards what may be the subject of a modification or revocation, the reference to "prospective" (rather than "interpretive") rulings was intended to ensure coverage of all rulings issued under new Subpart B. Thus, under the proposed text, only a prospective ruling issued under Subpart B (and not, for example, an internal advice decision issued under proposed Subpart C) could effect a modification or revocation. In light of the decision not to proceed with the organizational changes set forth in the proposed rulemaking, Customs has reconsidered the use of the word "prospective." Accordingly, the regulatory text will follow the statutory language and refers to "interpretive" rulings, which includes internal advice decisions.

As regards the commenters' concerns regarding the relationship between part 174 and part 177, they are correct that the proposed regulatory text in effect embodies present administrative practice except for the fact that, as explained above, Customs uses an interpretive ruling (but not an internal advice decision and not a protest review decision) as the modifying or revoking vehicle. With regard to the suggestion that parts 174 and 177 be revised simultaneously, Customs does not believe that this would be appropriate given the separate statutory bases for the two parts and the narrowed focus of this final rule document. However, the current administrative procedure will continue as regards the modification or revocation of a holding or principle contained in a protest review decision, and Customs at an appropriate future date will propose conforming changes to the part 174 texts to refer to the procedures embodied in the part 177 texts.

Comment: Customs should not modify or revoke any ruling in a manner that is adverse to an interested party unless the original ruling is clearly wrong, such as where a new law is passed, a provision in the HTSUS has been enacted, or a new court decision has been issued.

Customs response: Customs does not disagree with the suggestion that a ruling that is "clearly wrong" should be modified or revoked, and, for that reason, Customs retains in the regulatory text the authority to propose a modification/revocation if a ruling is found to be in error. Moreover, the commenter appears to entirely misconstrue the scope of both the statute and the proposed regulatory text. The Mod Act changes reflected in the 19 U.S.C. 1625(c) procedures were directed to discretionary decisions taken by Customs on its own initiative under its administrative authority and were not intended to affect legislative, judicial or other actions over which Customs has no control. It was for this reason that Customs included paragraph (d) of proposed § 177.21 which lists exceptions to application of the notice

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requirements of paragraphs (b) and (c). The "clearly wrong" standard as suggested by the commenter would be too restrictive and contrary to the legislative intent.

Comment: It should be more difficult for Customs to revoke an existing ruling, because importers need to be able to rely on rulings in order to plan their business. While the fact that a hardship can result from a sudden revocation of a ruling is not a new issue, it was recently raised in *Heartland By-Products, Inc.* v. *United States of America and United States Beet Sugar Association,* Slip Op. 99–110 (CIT 1999). Based on a ruling obtained from Customs that classified a sugar syrup in a tariff provision to which the tariff rate quota system of the U.S. sugar program did not apply, Heartland in 1997 invested $10 million in a syrup importing and refining operation. Subsequently, domestic sugar manufacturers sought a reclassification of Heartland's syrup and Customs in 1999 published a notice of its intent to revoke the Heartland ruling, the effect of which would have been to raise the tariffs Heartland would have to pay by more than 7000 percent, thereby effectively forcing Heartland to shut down its operation. The Court of International Trade in its decision determined that Customs reclassification of the sugar syrup was arbitrary, capricious and an abuse of discretion.

Although *Heartland* is an extreme example, the sudden revocation of a ruling may raise important reliance issues. Due to the similarity between Internal Revenue Service private letter rulings and Customs rulings (in particular as regards their applicability only to the persons who requested them and as regards their validity only to the extent that the facts are correct), the sense of fair play that applies to IRS rulings (that is, that once issued, a ruling can be acted on with reliance and thus should not be disturbed) should also apply to Customs rulings. Moreover, based on a basic notion of fairness, the doctrine of equitable or regulatory estoppel should apply to, and thus should be a bar to, the revocation of rulings, particularly where a party has relied on a ruling to its detriment. Another possible solution to the detrimental reliance issue would be to adopt a binding declaratory ruling procedure similar to the declaratory judgment used by the courts, with the declaratory ruling being binding on Customs so that Customs could not change its position once the recipient has acted in reliance on the ruling. Another solution to detrimental reliance might be to apply administrative equity principles involving hardship exceptions (when a substantial hardship on the petitioner would result), fairness exceptions (when a rule is unreasonable when applied to the petitioner) and policy exceptions (when the goal or purpose of the rule can be achieved by other means).

Customs response: Customs does not believe that the decision of the Court of International Trade in the *Heartland* case cited by this commenter serves as a proper example for the various points made by the commenter, because that decision was reversed by the United States Court of Appeals for the Federal Circuit in *Heartland By-Products, Inc.* v. *United States and United States Beet Sugar Association,* 264 F.3d 1126 (2001) and because that litigation remains pending as Heartland filed a petition for Supreme Court review on April 3, 2002.

While Customs would agree with the general proposition that importers need to be able to rely on rulings issued under part 177 in order to plan their business, that reliance has never been an absolute right. Section 177.9(a) of the Customs Regulations (19 CFR 177.9(a)), which predated the statutory changes made by the Mod Act, provides, among other things, that a ruling letter issued by Customs under part 177 is binding on all Customs personnel in accordance with the provisions of that section until modified or revoked and, in the absence of a modification or revocation which affects the principle of the ruling, may be cited as authority in the disposition of transactions involving the same circumstances. Thus, even before the Mod Act changes to 19 U.S.C. 1625, reliance on rulings was a qualified right.

With regard to the suggestions that it should be more difficult for Customs to revoke an existing ruling, that a hardship results from a "sudden" revocation of a ruling, and that principles of detrimental reliance, fair play, equitable or regulatory estoppel, binding declaratory rulings, and administrative equity should be applied, Customs believes that the public notice and comment and delayed effective date provisions of 19 U.S.C. 1625(c) reflect the full extent to which Congress believes that these principles should apply to Customs rulings. Accordingly, it would be inappropriate for Customs to adopt additional regulatory standards that might be inconsistent with the limited procedural safeguards established by Congress in the statute.

Comment: Three commenters argued that, as a matter of fairness and due process, Customs should publish a notice and allow public comment also in cases in which 60 days have not passed since issuance of the ruling. Another commenter, after referring to the 60-day period during which no notice or comment period is contemplated, stated that the regulations should be clarified so that no notice or comment period will apply only in cases involving clerical errors because a change to the substance or logic of a decision should be subject to public notice and comments.

Customs response: The proposed regulatory text follows the statute in providing for public notice and comment procedures only in the case of a modification or revocation of a ruling that has been in effect for 60 or more days. That 60-day period was included in the Mod Act changes to section 1625 and, in Customs view, represents an implicit statement by Congress on the issue of fairness and due process when there is a change to the substance or logic of a ruling.

With regard to clerical errors, proposed § 177.21(d)(2)(i) follows the statute in providing that no publication (and thus no public notice and comment) is required if the modifying ruling corrects a clerical error.

Comment: One commenter suggested that, although the concept of distinguishing between rulings that have been in effect for less than 60 calendar days and those in effect for 60 or more calendar days is appropriate, proposed § 177.21(e)(1), which addresses rulings or decisions in effect for less than 60 days, should be modified to address a situation in which a person obtains a prospective ruling and orders goods in reliance on it, because that person should not have the ground rules changed with respect to goods that are covered by bona fide long-term contracts or are already ordered and/or en route to the United States on the date of issuance of the modification or revocation but that are actually imported on or after the date of issuance of the modification or revocation. Along a similar line, another commenter stated that proposed § 177.21(e)(1) fails to take into account the situation where an importer orders goods in reliance upon a ruling or decision only to have it modified or revoked without notice and opportunity to comment: the regulations should address this type of situation because to not do so could potentially result in a great hardship to an importer who dutifully followed a reasonable course of action.

Customs response: Customs believes that the issues of good faith reliance and potential hardship have been addressed by Congress in the changes to section 1625 made by the Mod Act. Congress

expressly chose to make a distinction between rulings in effect for less than 60 days (for which public notice and comment and delayed effective date requirements do not apply in the case of a modification or revocation) and rulings in effect for 60 days or more (in which case modification or revocation is subject to public notice and comment and delayed effective date requirements). The provisions of proposed § 177.21(e)(1) merely reflect this distinction as regards the effective date for a modification or revocation of a ruling that has been in effect for less than 60 days.

In the preamble portion of the July 17, 2001, notice of proposed rulemaking Customs stated that it was proposing "to eliminate the principle of detrimental reliance (which was a purely regulatory creation) from the Part 177 texts because the Mod Act statutory amendments regarding the modification or revocation of rulings and previous treatment (including the provision for a delayed effective date) accomplish essentially the same purpose and therefore should be viewed as replacing it." In view of this stated position, Customs does not believe that it would be appropriate to reinsert the concept of detrimental reliance in response to these comments. Furthermore, introduction of a detrimental reliance standard would be contrary to the regime created by Congress in the statute.

In particular with regard to prospective rulings issued under Part 177, the terms of section 1625(c) implicitly encourage members of the trade community to exercise prudence in signing contracts before receipt of a needed ruling or during the 60-day period after issuance of the ruling, because there is always a possibility that the issued ruling will conflict with the expectations under the contract or will be modified or revoked to the recipient's detriment without advance notice during the 60-day period after issuance. The same need for prudence would apply in the case of a long-term contract signed more than 60 days after the issuance of a ruling because of the possibility that a later modification or revocation of the ruling could compromise the terms of the ongoing contract, and in this case the fact that the public notice and comment and delayed effective date provisions under section 1625(c) were followed might afford minimal benefit to the ruling recipient as regards his contractual obligations. Moreover, Customs would suggest that ruling recipients could mitigate the negative effect of a modification or revocation both during and after the 60-day period by including escape clauses in their contracts which would provide a way out if Customs modified or revokes a ruling.

Finally, the commenters observations appear to be directed to situations in which a modification or revocation has a negative impact on the interests of the ruling recipient. However, there could be circumstances in which the modification or revocation militates in the favor of the ruling recipient.

Comment: Four commenters stated that reliance on publication of a proposed modification or revocation only in the Customs Bulletin creates a potential problem because there have been significant delays in distributing the Customs Bulletin beyond the normal 2-week delay and thus there is not sufficient time to respond to the proposed change. Therefore, these commenters suggested that Customs should commit to posting all proposed modifications or revocations at an Internet-accessible location, and two of these commenters suggested as an alternative that Customs should allow more time to comment. Two other commenters opined that the 30-day period for commenting is too short, and one of these commenters argued that a period of at least 60 days should be allowed for submitting comments on a proposed modification or revocation.

Customs response: Publication in the Customs Bulletin must remain the publication standard for legal purposes, including for purposes of establishing the start of the comment period, because that is the procedure prescribed in the statute. However, in recognition of the delays associated with Customs Bulletin publication and distribution, Customs has adopted two additional "heads up" procedures to alert interested parties to the impending modification or revocation action. One of these procedures involves posting the notice of the proposed modification or revocation on the Customs Internet web site. The other procedure involves writing to all parties identified in the notice of proposed action as recipients of the ruling or decision or treatment that is the subject of the proposed modification or revocation.

With regard to the 30-day comment period, which represents the minimum standard required by the statute, Customs did not opt for a longer period for several reasons. First, a longer comment period would only serve to delay the adoption of a final modification or revocation and thus would interfere with another important mission of Customs which is to ensure proper application of the law at the earliest practicable date. Second, the additional "heads up" procedures mentioned above typically take place several days before Customs Bulletin publication and thus have the practical effect of extending the comment period by providing advance notice of the proposed action. Third, Customs does not believe that a longer period is needed, particularly in view of the fact that the affected parties already are generally knowledgeable regarding the issue raised in the proposed modification or revocation and therefore should not require an extended period of time in which to prepare a response to the proposed action.

Comment: Four commenters argued that the notice and comment provisions should not apply in the case of a ruling that is the subject of an appeal under proposed § 177.20 if transactions covered by the ruling have been held in abeyance pending a favorable decision on the appeal, because the ruling has not been applied to an actual transaction and thus should not be considered to be in effect for purposes of the 60-day period after which the notice and comment procedure is required.

Customs response: Customs does not agree with the premise that underlies the position of these commenters, that is, that a ruling is not considered to be in effect if it has not been applied to an actual transaction. On the contrary, as stated in present § 177.9(a) and as repeated in proposed § 177.19(a), a ruling is generally effective on the date of issuance (a principal exception to this general rule would be a modifying or revoking ruling to which the statutory 60-day delayed effective date applies). Thus, the fact that an appeal of a ruling is pending does not delay the effective date of the ruling and therefore does not delay the running of the 60-day period after which a ruling may be modified or revoked only after the statutory public notice and comment procedures have been completed. Moreover, the position of Customs regarding the application to current transactions of a ruling undergoing an appeal was made clear in proposed § 177.20(e) which provided that the filing of an appeal "will not result in a suspension of liquidation in the case of current transactions" (while Customs might decide to delay liquidation pending a decision on the appeal, the decision to do so would be made based on operational considerations that are not a function of the part 177 texts).

Comment: Two commenters complained that Customs appears to be requiring that people come forward and advise Customs that they have a ruling when they are not specifically identified in the published notice, but the statute

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did not intend that such a burden be imposed on the public.

Customs response: Customs believes that these commenters have misread the proposed regulatory text. Proposed § 177.21(b)(1), which concerns publication of the proposed action, provides in this regard that the notice will refer to all previously issued rulings that Customs has identified as being the subject of the proposed action and will "invite" any member of the public who has received another ruling involving the issue that is the subject of the proposed action to advise Customs of that fact. Nowhere does the regulatory text require a member of the public to respond to the notice. Moreover, proposed § 177.21(b)(2), which concerns the notice of final action, specifically provides that publication of a final modifying or revoking notice will have the effect of modifying or revoking "any" ruling that involves merchandise or an issue that is substantially identical in all material respects to the merchandise or issue that is the subject of the modification or revocation, including a ruling "that is not specifically identified in the final modifying or revoking notice." Therefore, an unidentified ruling recipient does not have to respond to the notice in order for the modification or revocation to apply to his ruling.

Customs further notes that even though a response to the notice of proposed modification or revocation is not required, there may be circumstances in which an affected ruling recipient not identified in the notice would prefer to respond to the notice. A response to the notice would mean that the ruling recipient would receive a final written decision on the proposed modification or revocation directly from Customs. Moreover, this would facilitate the exercise of the ruling recipient's option under proposed § 177.21(e)(2)(ii) to have the position reflected in the modification or revocation applied to his transactions upon publication of the final notice in the Customs Bulletin rather than 60 days thereafter.

Comment: Three commenters noted that the statute imposes a responsibility on Customs to publish notice and allow for comment when it contemplates modification or revocation of rulings. Thus, these commenters argued that it is incumbent upon Customs to identify the relevant rulings, either those directly involved or those affecting substantially identical merchandise or issues. The commenters believe that imposition of this burden on the importing community is antithetical to the role of Customs in the partnership created by "informed compliance," and it imposes an impossible burden on the importing community which must speculate as to which rulings are covered. The commenters further complained that reference in current modification or revocation notices imposing an obligation on importers to come forward and speculate whether their rulings are "substantially similar" or risk being found not to have exercised "reasonable care" is again antithetical to the concept of "informed compliance," whereby Customs must clearly state its position so that the public knows what is expected of it.

Another commenter similarly argued that requiring the public to report to Customs rulings that are potentially affected by a proposed modification represents an onerous burden and puts importers in an impossible situation because proposed modifications do not specify the practice or position that is being altered: typically, there is a clear change in classification but there is no clear identification of the practice or policy being changed, and thus it requires gross speculation on the part of importers.

Customs response: As pointed out in the preceding comment response, there is no requirement that a ruling recipient come forward in response to a notice of proposed modification or revocation. Therefore, Customs does not agree with the commenters that the proposed regulatory text imposes an onerous or impossible burden on the importing community. When Customs determines that a proposed modification or revocation action is appropriate, Customs first endeavors to identify all rulings that would be affected by the proposed action so that they may be identified in the notice of the proposed action. It must be recognized, however, that a review of the available records may not disclose all existing affected rulings—hence the invitation in the proposed regulatory text for other ruling recipients to come forward.

Customs also disagrees with the suggestions that the notices of proposed modification or revocation do not clearly state the position of Customs and do not clearly identify the practice or policy that is being changed. Customs believes that the published notices of proposed modification or revocation are, by-and-large, clear and complete on these points. What may not be clear is the extent to which the proposed action would affect rulings not identified in the notice that appear to be similar or related to the identified ones but that involve varying degrees of differences in the factual patterns or issues identified in the proposal. It is not possible for the notice of proposed modification or revocation to be definitive in this area because what is involved is essentially a judgment call requiring a determination on a case-by-case basis. Moreover, it should be noted that while Customs issues thousands of rulings each year, the average importer receives only a handful of rulings during a given year; therefore, the importer is in a far better position to assess the impact of a proposed modification or revocation on the handful of its rulings than is Customs which is required to employ a much wider frame of reference. The invitation to the public to participate at the proposal stage, which also includes an opportunity to comment on the proposed action, can also serve as a mechanism for obtaining clarification on this type of issue.

As concerns the comments regarding reasonable care, Customs notes that the exercise of reasonable care by importers at the time of entry is a requirement under section 484(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1484(a)), and therefore is not a direct function of the ruling modification or revocation process under 19 U.S.C. 1625(c) and the proposed part 177 regulatory texts. Nevertheless, there is a connection between the exercise of reasonable care at the time of entry and the ruling modification or revocation process in that an importer who has a ruling that has been modified or revoked could be liable for a penalty under section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592), for failure to exercise reasonable care if he continues to enter his merchandise in accordance with the modified or revoked ruling after the modification or revocation has taken effect. This is the basic point of publishing modification or revocation proposal notices. Of course, the determination of whether an importer has failed to exercise reasonable care must be made on a case-by-case basis based on an assessment of all relevant factors, and it is for this reason that the proposed modification or revocation notice refers to "the rebuttable presumption of lack of reasonable care on the part of the importer or its agents" for failure to follow the result reflected in the notice.

Comment: One commenter claimed that the relationship between proposed § 177.21(c) and 19 U.S.C. 1315(d) is not clear because the notice provisions of the regulation are inconsistent with those of the statute, because the statute speaks of an established and uniform practice, and because, even though proposed § 177.21(d)(1)(viii) suggests that the provisions of proposed § 177.21 are inapplicable, there is an element

reminiscent of a "simultaneous equation" associated with the two provisions (the commenter asked in this regard whether, for example, Customs is attempting to state that a two-year period immediately prior to publication is insufficient to establish a uniform practice). This commenter argued that, therefore, the purpose of § 177.21(c) is unclear.

Customs response: Customs believes that the purpose of proposed § 177.21(c) is clear: it implements the terms of 19 U.S.C. 1625(c) as regards the modification of treatment previously accorded by Customs to substantially identical transactions, which is subject to the same public notice and comment and delayed effective date requirements that apply in the case of a modification or revocation of a ruling or decision that has been in effect for 60 or more days. It does not implement or otherwise affect established and uniform practices referred to in 19 U.S.C. 1315(d) which were the subject of proposed new § 177.22.

The relationship between proposed § 177.21(c) and 19 U.S.C. 1315(d) involves separate statutory and regulatory contexts (the 19 U.S.C. 1315(d) provisions are presently dealt with in the Customs Regulations in 19 CFR 177.10(c)), and therefore they operate independently of each other. The notice and delayed effective date provisions are different in the two statutes (one provides for publication in the **Federal Register** and specifies a 30-day delayed effective date and the other prescribes publication in the Customs Bulletin and a 60-day delayed effective date). Therefore, the two provisions cannot operate simultaneously, and it was for this reason (as well as for purposes of administrative efficiency) that Customs provided in proposed § 177.21(d)(1)(viii) that the publication and issuance requirements set forth in paragraphs (b) and (c) of proposed § 177.21 do not apply if a modification or revocation in effect results from publication of a final ruling regarding a change of established and uniform practice under 19 U.S.C. 1315(d). The 2-year period for a treatment prescribed in proposed § 177.21(c) has no bearing on whether an established and uniform practice exists within the meaning of 19 U.S.C. 1315(d), and, furthermore, the standards for determining whether a treatment exists differ from those that apply in determining whether there is an established and uniform practice in that in the latter case the uniformity must be nationwide for all Customs transactions involving the issue in question. Accordingly, there is no "simultaneous equation" as regards the statutory or regulatory provisions of these two programs.

Comment: Five commenters argued that "treatment" should not be restricted to the classification of merchandise, because other areas (for example, valuation, country of origin marking, entry, and carriers) also involve treatments. Along the same line, another commenter suggested that the definition of "treatment" as relating to the "classification of imported merchandise" should be changed to refer to "a consistent pattern involving imported merchandise" because not including other issues is unwarranted and is not a reasonable interpretation of 19 U.S.C. 1315(d).

Customs response: For the reasons stated in the preceding comment response, Customs does not agree with the suggested connection between "treatments previously accorded" under proposed § 177.21(c) which implements 19 U.S.C. 1625(c) and "established and uniform practices" under 19 U.S.C. 1315(d). However, Customs agrees with the main point made by these commenters that "treatment" should not be limited to decisions involving the classification of imported merchandise. The regulatory text set forth in this final rule document has been modified accordingly.

Comment: Five commenters objected to the statement in proposed § 177.21(c)(1)(ii) that a person may not claim as a treatment the treatment that Customs accorded to transactions of another person. These commenters made the following specific points in support of the proposition that a person should be able to claim as a treatment the treatment accorded to transactions of another person:

1. In light of the official doctrine of uniformity, it is unacceptable that treatment accorded to transactions of another importer should not be considered at all: so long as sufficient data of the importations of other importers is provided, those importations should be relevant in determining whether a treatment exists.

2. Customs should abandon the notion that treatment is personal and should retain the standard in the current regulation, § 177.9(e), which describes "modifying the treatment previously accorded by the Customs Service to substantially identical transactions of either the recipient of the ruling letter or other parties," because, as Customs noted in the notice of proposed rulemaking, Congress modeled section 1625(c) on that current regulation.

3. The proposed limitation of treatment to those who received the treatment will render section 1625(c)(2) virtually meaningless since Customs has no means to identify specific parties who may have received a prior treatment and thus would not be required to publish a decision which modifies a prior treatment.

4. If this definition of treatment is retained, the effect will be negative for both Customs and the import community because it will increase the burden on both since it will serve to reinforce the requirement that importers seek their own binding rulings and not take the risk of relying on a ruling issued to another party.

Customs response: Customs remains of the view that, for purposes of 19 U.S.C. 1625(c)(2) and the regulatory provisions thereunder, "treatment" must have reference only to the transactions of the person who is claiming the existence of the treatment and therefore cannot be claimed by a person who has had no transactions that have been the subject of the treatment under consideration.

Customs recalls that the Mod Act changes reflected in the text of 19 U.S.C. 1625(c) were included at the insistence of the trade community to ensure that there would be a statutory protection against abrupt changes made by Customs without adequate prior notice, particularly where the change is to a ruling or decision issued by Customs, or to a pattern of actions taken by Customs on import transactions, on which a party has reasonably relied in pursuing its Customs transactions. Implicit in the Mod Act statutory changes was the idea that reasonable expectations created by the actions of Customs were entitled to some protection from subsequent actions taken by Customs. Thus, 19 U.S.C. 1625(c)(1) refers to the modification or revocation of "a prior interpretive ruling or decision which has been in effect for at least 60 days" and 19 U.S.C. 1625(c)(2) refers to the modification of "the treatment previously accorded by the Customs Service to substantially identical transactions."

For reasons of practicality, Customs disagrees with the suggestion of one of the commenters that importations of other importers should be relevant in determining whether a treatment exists so long as sufficient data regarding those importations is provided. In this regard, Customs notes that the proposed regulatory text in § 177.21(c)(1)(iii) set forth detailed requirements regarding the information that must be provided to Customs in connection with a claim that a treatment exists (for example, entry numbers and quantities and values of the imported merchandise) so that Customs may make an appropriate

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determination on the claim. This type of entry information is treated by Customs as confidential business information that is not disclosed to the public, and therefore it would not be available to parties who are not privy to the transactions in question. Accordingly, persons attempting to rely on a treatment accorded to another person's transactions would be unable to meet the requisite burden of proof set forth in the proposed regulatory text. In fact, in many cases a person would not even know of the other person's transactions or would not be able to determine with certainty that the other person's transactions are substantially identical to his own.

With regard to the comment that Customs should abandon the notion that treatment is personal and rather retain the standard in present § 177.9(e), Customs believes that the commenter has misread the present text. That regulatory provision, which the commenter correctly notes was in part the genesis of the statutory "treatment" provision added by the Mod Act, refers to "treatment previously accorded * * * to substantially identical transactions of * * * other parties." The words "other parties" clearly relate only to parties who had transactions that received the treatment in question and not to parties who did not have transactions that received the treatment. Therefore, Customs believes that the proposed text is entirely consistent with the present § 177.9(e) text in making a clear connection between the person whose transactions received the treatment and the person who is claiming the treatment. Further, to grant a ruling or treatment universal applicability, as the commenter is proposing, would elevate each ruling or treatment to the level of an established and uniform practice and thus would render the provisions of 19 U.S.C. 1315(d) redundant and a nullity.

Customs disagrees with the commenter who alleged that the limitation of treatment to those who received the treatment will render the statutory provision meaningless because Customs will not be able to identify specific parties who received a treatment and thus will not be required to publish a decision modifying the treatment. Customs did recognize that there would be instances in which Customs is not aware, prior to issuance of a contemplated prospective ruling, that the ruling would have the effect of modifying or revoking a previous treatment, and this type of scenario was directly addressed in proposed § 177.21(c)(2)(ii). Under the proposed text, an unidentified treatment recipient would have the opportunity to write to Customs after the issuance of the ruling and obtain the protections afforded by the public notice and comment and delayed effective date provisions if an adequate case regarding the existence of the treatment is made.

The argument regarding the potential increased burden on Customs and the import community is not persuasive, for two reasons. First, even if the commenter's assumption were correct, the possibility of an increased burden on the government and on the private sector is not a sufficient basis for reaching a regulatory result that is not in accord with the underlying statutory text. Second, the decision of an importer whether to seek its own binding ruling or rely on a ruling issued to another party is a private business decision that has no effect on the issue of what constitutes a treatment.

For the above reasons, Customs believes that treatments under 19 U.S.C. 1625(c)(2) must relate to expectations created on the basis of a track record involving transactions of the person claiming the existence of the treatment.

Comment: The proposed regulatory provisions regarding the modification or revocation of previous treatments are at variance with the decision of the U.S. Court of International Trade in *Precision Specialty Metals, Inc* v. *United States,* 116 F.Supp. 2d 1350 (2000), in particular as regards what constitutes a "treatment". In this regard, the *Precision* case simply states that a treatment may pertain to any "decision" made by Customs and, therefore, the provisions for a 2-year treatment period and for according diminished weight in the case of merchandise of smaller quantities or value and no weight in the case of informal entries are contrary to the judicially created standard. Moreover, as regards the 2-year treatment period, this requirement is unnecessary because importers who create the 2-year schedule will simply request the information from the Office of Strategic Trade in Customs under the Freedom of Information Act and, upon receipt of the information in Microsoft Access format, the importer would simply send the information back to Customs.

Customs response: The *Precision Specialty Metals* case involved a review of a denial by Customs of a protest against a decision of Customs to deny drawback on 38 entries of stainless steel trim and scrap. One of the issues addressed by the court was whether the payment of drawback on 69 previous entries of stainless steel scrap was a "treatment" under 19 U.S.C. 1625(c) which, if so, would mean that the decision on the protest was invalid if Customs had not first published a proposed and final modification or revocation of that treatment as required by the statute. However, Customs notes that the decision cited by the commenter (referred to in this comment discussion as *Precision I*) did not involve a substantive ruling on the treatment issue because the court concluded that the importer had not presented the court with sufficient record evidence to conclude that all required elements of section 1625(c) were satisfied: the Court of International Trade addressed the merits of the treatment issue in a subsequent decision involving the same parties and the same 38 entries, *Precision Specialty Metals, Inc* v. *United States,* Slip Op. 01–148, decided December 14, 2001 (referred to in this comment discussion as *Precision II*). Nevertheless, the court in *Precision I,* in reciting the criteria that the court would use in analyzing the importer's claim for relief under section 1625(c), stated that "[t]he term 'treatment' looks to the *actions* of Customs, rather than its 'position' or policy," and that the term "treatment" is "distinct from the terms 'ruling' and 'decision' " which are covered elsewhere in section 1625(c). The *Precision I* court then stated: "This construction would recognize that importers may order their actions based not only on Customs' formal policy, 'position,' 'ruling' or 'decision', but on its prior actions. This construction furthers the stated legislative intent underlying § 1625(c)."

In *Precision II,* the court specifically found that, in connection with "pre-liquidation reviews" of three of the earlier 69 drawback entries that were eventually liquidated for the full amount of drawback claimed, Customs had asked the importer for additional information and documentation on the exports involved. In response, the importer furnished Customs with additional information and documentation which showed that the exported material was stainless steel scrap. The court further found that the facts set forth in a stipulation of facts agreed to by the parties were sufficient to resolve the factual issues outlined in *Precision I* so that the court could resolve the "treatment" issue on a motion for summary judgment. The court, in concluding that the actions of Customs gave rise to a treatment under section 1625(c), specifically noted "the consistent trail of correspondence and submissions in which Precision and its agents describe the entries on which drawback was granted as 'scrap" and reiterated its holding in *Precision I* that "treatment" looks to the *actions* of Customs rather than a "position" or "policy" of Customs.

Based on the facts that were under review in *Precision I* and *Precision II,* Customs does not agree with the commenter's assertion that the proposed regulatory text is contrary to the standard set forth by the court. On the contrary, it is the position of Customs that the proposed regulatory standard is consistent with the court cases because it requires an actual action on the part of Customs (as distinguished from non-action on the part of Customs, for example, when an entry is liquidated automatically without Customs review or when an entry is liquidated by operation of law under 19 U.S.C. 1504). Moreover, as in the case of the three entries for which Customs purposely requested, received, and reviewed additional information bearing on the issue at hand in *Precision II,* the proposed regulatory text requires that Customs actually do something of significance in order to create a treatment (as distinguished from cases in which Customs gives at most cursory attention, such as informal entries and entries of small value or quantity). Therefore, the proposed regulatory text stands for the proposition that, in order for a person to be eligible for the protection afforded under 19 U.S.C. 1625(c)(2), that person must be able to make a showing that Customs took a conscious, intentional and knowledgeable action that created an impression that could give rise to an expectation as regards future action by Customs. Customs believes that this is entirely consistent with the facts involved in *Precision II.*

Customs remains of the view that the principle reflected in the proposed text is necessary because it reflects the reality in which Customs operates. With over 18 million formal entries filed each year, almost all of which are filed electronically and the majority of which are not accompanied by invoices, Customs simply does not have the resources to review every transaction and at the same time facilitate the movement of goods in international trade. In the absence of a reasonable limitation on the circumstances in which a treatment may arise for section 1625(c) purposes as set forth in the proposed regulatory text, Customs believes that a number of potential negative consequences could result either separately or together: Customs would have to monitor all Customs transactions of whatever type arising over the preceding two years before issuing a ruling or decision to determine if section 1625(c) procedures are necessary; the number of times in which Customs must initiate section 1625(c) procedures would increase drastically; the entry and liquidation process would suffer significant delays; and/or the prospective ruling and internal advice procedures would be scaled back or eliminated in their entirety. All of the foregoing results would be inconsistent with the objectives of the Mod Act and importers' responsibilities under 19 U.S.C. 1484(a).

As regards the 2-year period prescribed in the proposed regulatory text, Customs pointed out in the preamble portion of the July 17, 2001, notice of proposed rulemaking that the proposed definition of "treatment" was drawn in part from the text of present § 177.9(e) which concerns the use of delayed effective dates in the case of ruling letters covering transactions or issues not previously the subject of ruling letters and which have the effect of modifying the treatment previously accorded by Customs to substantially identical transactions. Customs expressed in this regard the belief that use of the present regulatory standards in this new regulatory text was appropriate because, given the similarity in language, it seemed clear that the present regulation served as the model for the subsequently enacted statutory text except that application of a delayed effective date was now mandated. Customs also in that preamble stated the view that all provisions regarding detrimental reliance should be removed from the Part 177 texts because they were superseded by the section 1625(c) provisions. These remain the views of Customs. Consequently, the 2-year period set forth in the proposed text, which reflects the period prescribed in the detrimental reliance provision for treatments in present § 177.9(e) is appropriate and should be retained. Finally, as regards the commenter's assertion regarding the use of the Freedom of Information Act to obtain the information to provide to Customs covering the 2-year period, Customs does not believe that importers will effectively be able to do this because Customs does not retain the necessary information in such a way that it would on its face demonstrate the existence of a treatment.

Comment: One commenter argued that Customs should adopt a reasonable standard for determining whether a "treatment accorded substantially similar transactions" exists. Customs should not follow through with its attempt to limit the standard for determining whether there has been such treatment. This commenter also asserted that the requirement that only entries actually reviewed by Customs (as opposed to entries liquidated by operation of law, through bypass or other automatic liquidation procedure) will count is irrational. Another commenter claimed that the limitation of treatment to instances in which Customs made a deliberative decision, usually requiring a physical examination of goods, is not adequately justified by Customs and is as objectionable as the suggestion that, where there is a no change liquidation, there is no Customs decision to protest.

Customs response: For the reasons stated in the preceding comment response, Customs believes that the proposed text set forth a reasonable standard for determining whether a "treatment" exists, and Customs further suggests that the rationality of that approach is supported by the holding in *Precision I* that "treatment" looks to the *actions* of Customs. Similarly, Customs believes that the preceding comment response adequately justifies the deliberative decision standard reflected in the proposed text. Finally, the comment regarding no change liquidations and protest decisions involves a separate statutory and regulatory context and therefore is inapposite.

Comment: Based on the regulations as proposed, importers and other interested parties have little or no ability to require Customs to examine specific transactions. The review of transactions is the responsibility of Customs. Accordingly, the term "treatment" should include all importations, not just those which Customs has actually examined.

Customs response: While Customs generally agrees with the first two statements of this commenter, Customs disagrees with the commenter's conclusion. As indicated earlier in this comment discussion, Customs must deal with a very large number of import transactions each year and must at the same time facilitate international trade. It is simply impossible for Customs to facilitate trade and at the same time review all import transactions. Accordingly, Customs has adopted procedures, such as selectivity and bypass, which are intended to strike a workable balance between these two competing goals. As a result, the vast majority of import transactions do not receive Customs review. Since those unreviewed transactions receive no action on the part of Customs, they should not be considered to constitute a "treatment" within the meaning of 19 U.S.C. 1625(c).

Comment: Three commenters complained that the burden of proof to

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show a treatment (a listing by entry number, quantity and value, port of entry, and date of final action by Customs) is too great. Moreover, these commenters suggested that if Customs is not totally uniform in its treatment, the proposed regulations would appear to excuse Customs from a finding that there is a treatment triggering rights to the public.

Customs response: Customs disagrees with the comment regarding the alleged burden, for two reasons. First, the regulatory standard reflected in the proposed text follows the text of present § 177.9(e)(2) in this regard, and Customs is not aware that importers have had particular difficulty in meeting the burden of showing reliance on previous treatment under that provision. Second, the proposed regulatory standard appears to be consistent with the evidence of treatment on substantially identical transactions that the court in *Precision I* deemed appropriate for section 1625(c) purposes. The court noted in this regard that the plaintiff did not meet the necessary burden when it failed to provide information regarding the dates, ports and nature of the earlier transactions and a clear description of the merchandise at issue.

With regard to the issue of uniformity, several points should be noted. First, reference in the regulatory text to a "consistent pattern" in the definition of "treatment" was intended to apply only to the person claiming the treatment and not to actions of Customs involving substantially identical transactions of other persons. Moreover, there is nothing in the proposed text that requires 100 percent consistency. Customs avoided imposing a strict 100 percent requirement in recognition of the fact that a finding of reliance on a previous treatment could be reasonable even if the pattern of treatment was not entirely consistent, for example, where the actions of Customs were consistent over the entire 2-year period in all ports for a significant number of entries except for a relatively small number of isolated exceptions. On the other hand, Customs does not believe that a person should be able to claim the existence of a treatment for section 1625(c) purposes when there is no consistency in the pattern of actions by Customs, that is, when the general pattern is that different results have been reached in different ports, because the different actions of Customs can give rise to no expectation on the part of the importer regarding the specific treatment that his transactions will receive from Customs. Further, it should be noted that, in actual practice, Customs has never denied a claim of treatment based solely on an importer not having had 100 percent consistent treatment: each determination has been based on consideration of all the relevant facts involved.

Comment: Three commenters argued that, in determining whether a treatment exists, Customs should not disregard outright informal entries or other entries where there is less scrutiny. These commenters noted that informal entries are allowed for low value shipments but that there are certain informational requirements for these low value shipments which allow Customs to use selectivity criteria to review those shipments, and they therefore suggested that informal entries should not be disregarded. Similarly, these commenters asserted that just because Customs does not choose to examine certain merchandise does not mean that the action of Customs in liquidating entries is entitled to no weight. With regard to the statement that little weight will be given for treatment purposes to transactions that have small quantities or values, another commenter noted that test transactions are legitimate importations and that for some kinds of merchandise, such as machines, small quantities are the norm.

Customs response: As already pointed out in this comment discussion, the key issue in determining whether a treatment exists is whether, and if so the manner in which, Customs has taken action on past transactions. The reference in the proposed text to informal entries was made in a context in which there is no examination or review, and therefore the regulatory text would not preclude the consideration of informal entries on which Customs took specific action such as an examination of the merchandise or a detailed review of the supporting entry documentation. Moreover, the mere fact that Customs does not examine the merchandise does not mean that an action leading to a treatment cannot occur, because other actions by Customs, such as a review of the entry documentation or a request for additional information from the importer, can constitute adequate evidence of the existence of a treatment. Similarly, there is nothing in the proposed text that would preclude the consideration of "test transactions," and Customs further notes that transactions involving low quantity merchandise such as machines may be appropriate for consideration under the proposed text because their value probably would be significant and thus might warrant the specific attention of Customs. Finally, it should be noted that Customs has cooperated with importers and their counsel on "test transactions" or "test shipments" in resolving Customs transaction issues. It would be disingenuous of importers to "blind-side" Customs by using these test shipments as a basis for claiming that a "treatment" exists rather than advising Customs that a valid Customs transaction issue exists which warrants examination.

Comment: Customs should delete from § 177.21 paragraph (d)(1) which sets forth exceptions to the notice requirements.

Customs response: Customs is firmly of the opinion that paragraph (d)(1) of the proposed text should be retained in its entirety for the reasons stated in the preamble portion of the July 17, 2001, notice of proposed rulemaking, and Customs notes that the commenter provided no justification for its suggested change. The paragraph (d)(1) provisions are intended to avoid redundancy and to provide exceptions in the case of changes not occasioned by actions taken by Customs. The proposed text thus implicitly recognizes the true purpose of the section 1625(c) provisions which was only to protect importers and others from sudden actions taken by Customs. This intent was recognized in *Precision II* where the court, in discussing the relevant legislative history, noted the statement in Senate Report No. 103–189 that "importers have a right * * * to expect certainty that the Customs Service will not unilaterally change the rules without providing importers proper notice and opportunity for comment." There is nothing in the statute or its legislative history that would suggest that Congress intended that the procedural safeguards set forth in section 1625(c) would apply in the case of rulings, decisions or treatments of Customs that are affected by subsequent laws passed by Congress or by subsequent actions taken by the President or other Executive Branch agencies or by subsequent decisions by the courts or by collateral public notice and comment procedures pursued by Customs under other authority. Rather, Customs believes that the opposite conclusion must be reached, and in this regard Customs notes that in *Sea-Land Service, Inc.* v. *United States*, 239 F.3d 1366 (Fed. Cir. 2001), the United States Court of Appeals for the Federal Circuit upheld the conclusion of the Court of International Trade that, where Customs made decisions as a result of a court decision that established a statutory interpretation that in effect modified or revoked previous Customs decisions, the notice and comment requirements of section 1625(c) did not apply and would serve no purpose because Customs was

bound by the court decision and had no discretion to modify the court decision and thus would be unable to respond to any comments it received.

Comment: Proposed § 177.21(d) appears to be inclusive. However, proposed § 177.21(d)(1)(iv) should be amended by adding the words "overturns or" after "which."

Customs response: Customs believes that the suggested change would result in a redundancy and therefore would not improve the text. The proposed text refers to a judicial decision "which has the effect of overturning the Customs position" in order to cover not only Customs positions that are directly affected by the judicial decision (for example, where a specific Customs ruling or decision is subjected to judicial review) but also cases in which the issue decided by the court has a substantive effect on rulings, decisions or treatments of Customs that are not directly at issue in the litigation. The suggested change in wording would appear to set forth a distinction without a difference (in other words, a judicial decision that "overturns" something equally has the "effect of overturning" that thing). Accordingly, no change should be made in this regard. This conclusion would comport with the facts and result under the *Sea-Land* case referred to in the preceding comment response.

Comment: Customs should not adopt the position that petitions filed under 19 U.S.C. 1516 can be decided using the procedures of 19 U.S.C. 1625(c) if the petition is filed by a domestic party, Customs agrees with the position of the domestic party, and there is an outstanding ruling in conflict with this position. If a domestic party files under section 1516, Customs is obligated to decide the issue under that statute and to provide all involved parties with the procedural safeguards dictated in that statute. Customs should not subvert the provisions of section 1516 by substituting procedures established by section 1625.

Customs response: The comment relates to paragraph (d)(1)(v) of proposed § 177.21 which provides that the publication and issuance requirements of paragraphs (b) and (c) will not apply in circumstances in which a decision is published in the **Federal Register** as a result of a petition by a domestic interested party pursuant to 19 U.S.C. 1516. Customs explained in the preamble to the July 17, 2001, notice of proposed rulemaking that this provision was included because Customs did not believe that sound administrative practice would be well served by repeating in a 19 U.S.C. 1625(c) procedure what was already accomplished in a 19 U.S.C. 1516 context. Since the proposed regulatory text refers to, and therefore does not preclude, use of the 19 U.S.C. 1516 procedure, the commenter's stated concern does not relate to the wording of the regulatory text.

Rather, the commenter s concern appears to be directed to the related discussion in the preamble to the July 17, 2001, notice of proposed rulemaking regarding the procedures Customs would follow in those infrequent cases that could potentially give rise to both statutory procedures. Customs stated in this regard that the following internal approach had been developed to avoid any possible conflict between the two procedures: (1) If Customs agrees with the position presented by a domestic interested party under 19 U.S.C. 1516, Customs will then attempt to determine whether there is an extant ruling, internal advice decision, protest review decision or treatment that is in conflict with that position and, if it is determined that a conflict exists, then Customs will initiate the 19 U.S.C. 1625(c) modification or revocation procedure; or (2) if the position of Customs differs from the position of the domestic interested party and that party contests the Customs position, the matter will be resolved in accordance with the 19 U.S.C. 1516 publication procedures. The commenter appears to take issue with the first alternative procedure to the extent that it indicates that Customs would pursue a modification or revocation under section 1625(c) in lieu of an action under section 1516.

Customs believes that the alternative procedures outlined in the preamble to the July 17, 2001, notice of proposed rulemaking promote needed administrative flexibility and efficiency. Accordingly, Customs believes that the procedures outlined in the preamble to the July 17, 2001, notice of proposed rulemaking are appropriate and therefore should be retained.

Additional Changes to the Regulatory Texts

A. Additional Modifications to the Proposed § 177.21 Text

In view of the significant number of comments submitted on the issue of treatments under the proposed § 177.21(c) text, and based on further review of this issue, Customs has determined that some other changes, in addition to those mentioned in the above comment discussion, should be incorporated in the regulatory text adopted in this final rule document. These additional changes, which Customs believes are necessary to address issues raised by the commenters or to otherwise clarify the intent behind the proposed text, involve the following:

1. The second sentence of paragraph (c)(1) has been revised to read "[t]he following rules will apply for purposes of determining under this section whether a treatment was previously accorded by Customs to substantially identical transactions of a person." This change results in the removal of the definition of "treatment" in favor of a sequence of subparagraphs ((i) through (iv)) that set forth all operative standards for determining whether paragraph (c) applies. The reference at the end to identical transactions "of a person" is intended to reflect the necessary connection between the transactions and the person claiming the treatment.

2. Subparagraph (i)(A), which has no direct counterpart in the proposed text, provides that there must be evidence to establish that there was "an actual determination by a Customs officer" regarding the facts and issues involved in the claimed treatment. This is intended to clarify the point made in the above comment discussion that, as supported by the conclusion reached by the court in *Precision II*, there must be some review or other action on the part of Customs. The words "actual determination" are intended to clarify that there must be a conscious, intentional, purposeful act by a Customs officer, as distinguished from a result that arises out of an involuntary event such as an automatic liquidation or a liquidation by operation of law.

3. Subparagraph (i)(B), which also has no direct counterpart in the proposed text, provides that there must be evidence to establish that the Customs officer making the actual determination "was responsible for the subject matter" on which the determination was made. This provision is a corollary to the subparagraph (i)(A) requirement and is necessary to ensure that actions taken by Customs officers that create treatments for section 1625(c) purposes involve the exercise of proper authority and supervisory control and thus accurately represent the policy of Customs. In other words, Customs believes that it would not be appropriate for a person to rely on the advice of a Customs officer for treatment purposes if that Customs officer has no official responsibility for, and therefore no particular competence in, the issue at hand (for example, a drawback liquidator should not be relied upon for advice regarding country of origin marking requirements). This position is

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consistent with the facts involved in *Precision I* and *Precision II* and with the result reached by the court in *Precision II* in that the action taken by Customs that resulted in the creation of the treatment was taken by Customs officers assigned to a Customs office, that is, a drawback unit/office, specifically designated for the purpose of liquidating drawback entries.

4. Subparagraph (i)(C) follows the 2-year period provision contained in the proposed text but incorporates a number of changes. The new text provides that there must be evidence to establish that over a 2-year period "preceding the claim of treatment" (rather than "prior to publication of the notice") Customs "consistently applied that determination on a national basis" (rather than requiring "a consistent pattern of decisions") as reflected in liquidations of entries or reconciliations "or other Customs actions" with respect to "all or substantially all of that person's Customs transactions involving materially identical facts and issues." The "preceding * * *" language merely reflects that the time the claim is made (which, under paragraph (c)(2)(ii) could occur after publication of the notice of proposed modification or revocation), rather than the date of publication of the notice by Customs, is more relevant in identifying the 2-year period for purposes of protecting the treatment rights of a person. The language that replaced the reference to a "consistent pattern of decisions" is intended (1) to avoid any uncertainty as regards what a "pattern" is, (2) to reflect the principle that, as pointed out in the comment discussion above and as reflected in the action taken by Customs on the 69 entries discussed by the court in *Precision II*, more is needed than merely a determination, that is, Customs must do something beyond making the determination, such as apply the determination in the liquidation of entries, and (3) to ensure that a treatment does not result from a geographically narrow application of a determination that is different from the action taken by Customs on that person's substantially identical transactions at other locations. The addition of the reference to "other Customs actions" is intended to clarify that Customs actions that can give rise to a treatment are not limited to liquidations. The words "all or substantially all" are intended to reflect the point made in connection with the above comment discussion that 100 percent consistency is not required for purposes of finding that a treatment exists with regard to a person's Customs transactions. Finally, the words "materially identical facts and issues" were included to clarify what is meant by the words "substantially identical" when used with reference to transactions in the introductory text of paragraph (c)(1).

5. At the end of subparagraph (ii), which repeats much of proposed paragraph (c)(1)(i), the words "import specialist review" have been replaced by "Customs officer review" to reflect the fact that review actions that can create treatments are not limited to actions of Customs import specialists.

6. Subparagraph (iii)(A) provides that Customs will not find that a treatment was accorded to a person's transactions if the person's own transactions were not accorded the treatment in question over the prescribed 2-year period. This provision represents a restatement, without substantive change, of the principle reflected in proposed paragraph (c)(1)(ii) that treatment is personal.

7. Subparagraph (iii)(B) provides that Customs will not find that a treatment was accorded to a person's transactions if the issue in question involves the admissibility of merchandise. This provision has no direct counterpart in the proposed text and has been added to clarify the existence of the essential rule that the admissibility of merchandise is always determined at the time of importation and therefore cannot be the subject of a treatment for purposes of section 1625(c). The reason for this should be clear: in the case of merchandise that is not admissible (for example, because the merchandise has been found to exceed an applicable quantitative limit or has been found to constitute prohibited merchandise), an importer should not be allowed to continue to enter the merchandise in the United States in contravention of the applicable law regarding its non-admissibility merely because Customs has failed to follow the publication procedures under section 1625(c).

8. Subparagraph (iii)(C) provides that Customs will not find that a treatment was accorded to a person's transactions if the person made a material false statement or material omission in connection with a Customs transaction or in connection with the review of a Customs transaction and that statement or omission affected the determination on which the treatment claim is based. This provision has no direct counterpart in the proposed text and has been added to ensure that a person cannot profit from the section 1625(c) treatment provisions in circumstances in which the claimed treatment rests on a false premise resulting from an act or omission on the part of the person claiming the treatment. Customs believes that this rule is an appropriate expression of principles of equity and fair play.

9. Subparagraph (iii)(D) provides that Customs will not find that a treatment was accorded to a person's transactions if Customs advised the person regarding the manner in which the transactions should be presented to Customs and the person failed to follow that advice. This provision has no direct counterpart in the proposed text. It has been added because Customs believes that it would be inconsistent with the reliance and consistency principles that underlie the treatment provisions for a person to claim a treatment that is inconsistent with specific advice provided by Customs. Moreover, even if Customs officers have taken determinative action on the person's individual transactions that is inconsistent with the advice provided elsewhere by Customs, the person should have no expectation that Customs will continue to take those inconsistent actions in the future.

10. Subparagraph (iv) repeats the text of proposed paragraph (c)(1)(iii) regarding the burden of proof as regards the existence of the previous treatment but with the following changes: (1) In the first sentence, the words "burden of proof" have been replaced by "evidentiary burden" to avoid an overly strict standard; (2) in the second sentence, reference is made to "materially" (rather than "substantially") identical transactions to align on the language used in subparagraph (i)(C) as discussed above; and (3) at the end of the second sentence, the words "and, if known, the name and location of the Customs officer who made the determination on which the claimed treatment is based" have been added to specify other information, if available, that a person may use to convince Customs that the claimed treatment exists. In addition a third sentence has been added to the proposed text to provide that, in cases in which an entry is liquidated without any Customs review, the person claiming a previous treatment must be prepared to submit to Customs written or other appropriate evidence of the earlier actual determination of a Customs officer that the person relied on in preparing the entry and that is consistent with the liquidation of the entry. Customs believes that this provision, which is related to the standard under subparagraph (i) that there must be a determination of Customs that has been applied to transactions, is necessary in order to enable persons to demonstrate the existence of a treatment when no specific determination was made on the person's individual transactions (an example would be where Customs issued a prospective ruling to another person and the person claiming the treatment followed that ruling in entering his identical merchandise and Customs liquidated those entries as entered and without review-presentation of the ruling to Customs would satisfy the regulatory standard).

11. Finally, at the end of the notice procedures in paragraph (c)(2)(i), the text regarding written confirmation has been simplified by referring to confirmation sent to each person identified as having had substantially identical transactions.* * *" This change conforms the text to current administrative practice.

B. Modification of Present Part 177 To Accommodate the Final Modification/Revocation Text

In light of the decision discussed earlier in this document to proceed with a final rule only as regards those proposed Part 177 regulatory changes that relate to the modification/revocation provisions of 19 U.S.C. 1625(c), the proposed § 177.21 text must have a new section designation in order to appear properly within the existing Part 177 structure. Accordingly, Customs in this final rule document has designated the new modification/revocation section as § 177.12 (with a consequential redesignation of present § 177.12 as § 177.13) so that it will appear after both the provision that deals with the issuance of prospective rulings (§ 177.8) and the provision that concerns the issuance of internal advice decisions (§ 177.11), because issued prospective rulings and internal advice decisions may be the subject of a modification or revocation under the new section. In addition, some minor conforming changes have been made to the wording of paragraph (a) of new § 177.12 to reflect the fact that the other structural changes to Part 177 contained in the July 17, 2001, notice of proposed rulemaking are not being adopted in this final rule document.

In addition, this final rule document makes a number of conforming changes to other existing sections within part 177 as a consequence of the addition of new § 177.12. These changes are as follows:

1. In the second sentence of paragraph (b)(2)(ii)(B) of "§ 177.2, the reference to "§ 177.12" has been changed to read "177.13."

2. The heading of § 177.9 has been revised to remove the reference to modification or revocation which will no longer be "treated" in that section.

3. The last sentence of paragraph (a) of § 177.9 has been revised to reflect the proper reference to the new modification and revocation provisions and to refer to the **Federal Register** (rather than the Customs Bulletin) which is the publication medium mentioned in the referenced § 177.10(e).

4. The first sentence of paragraph (c) of § 177.9 has been revised to include exception language when the public notice and comment provisions of new § 177.12 apply.

5. Paragraph (d) of § 177.9 has been removed because it concerns the modification or revocation of ruling letters and therefore is entirely superseded by the provisions of 19 U.S.C. 1625(c) and new § 177.12.

6. Paragraph (e) of § 177.9, which concerns ruling letters modifying past Customs treatment of transactions not covered by ruling letters, has been removed because it also is entirely superseded by the provisions of 19 U.S.C. 1625(c) and new § 177.12. It remains the position of Customs that these paragraph (e) provisions formed the basis for the statutory treatment provision, and in this regard the following was stated in the July 17, 2001, notice of proposed rulemaking (at 66 FR 37375) in discussing the definition of "treatment" in proposed § 177.21(c)(1):

> In setting forth these regulatory standards, Customs has relied in part on the text of present § 177.9(e) which concerns the use of delayed effective dates in the case of ruling letters covering transactions or issues not previously the subject of ruling letters and which have the effect of modifying the treatment previously accorded by Customs to substantially identical transactions. Customs believes that use of the present regulatory standards in this new regulatory text is appropriate because, given the similarity in language, it seems clear that the present regulation served as the model for the subsequently enacted statutory text except that application of a delayed effective date is now mandated.

7. Within § 177.10, which concerns the publication of decisions, the following changes have been made: (1) Paragraph (b), which concerns the establishment of a uniform practice by publication of a ruling in the Customs Bulletin, has been removed; (2) paragraph (c) has been revised: in order to remove the reference to a change of position in the paragraph heading; in order to remove the second sentence of paragraph (c)(1) which concerns **Federal Register** publication and public comment regarding a ruling that contemplates a change of practice resulting in the assessment of a lower rate of duty; in order to remove the third sentence of paragraph (c)(1) which concerns rulings resulting in a change of practice but no change in the rate of duty; and in order to remove paragraph (c)(2) which concerns **Federal Register** publication and public comment regarding a contemplated ruling that has the effect of changing a position of Customs; and (3) the first sentence of paragraph (e), which concerns effective dates, has been revised to include exception language regarding modifications and revocations under new § 177.12. The changes to paragraphs (b) and (c) are substantively similar to changes reflected in the proposed revised Part 177 texts contained in the July 17, 2001, notice of proposed rulemaking. Customs explained in the preamble to that document in regard to those changes that, except in the case of an established and uniform practice where the proposed regulatory text was directly based on 19 U.S.C. 1315(d), it was proposed to remove all references to "uniform practice" or "practice" from the Part 177 texts. The principal reason for this was that the statutory and regulatory modification/revocation standards of 19 U.S.C. 1625(c) and proposed § 177.21 had rendered these provisions redundant or otherwise unnecessary. Customs would further add that a failure to make these changes in § 177.10(b) and (c) in this final rule document will give rise to conflicts with the new § 177.12 procedures, not only in regard to the vehicle for publication (**Federal Register** versus Customs Bulletin) but also with regard to the circumstances in which publication of the contemplated ruling is required and when it would take effect. Since the new § 177.12 provisions devolve from a direct statutory mandate, Customs believes that they must take precedence.

Finally, although not directly related to 19 U.S.C. 1625(c) and new § 177.12, Customs notes that paragraph (a) of present § 177.10 and paragraph (b)(7) of present § 177.11 refer to publication or other availability within "120" days, whereas 19 U.S.C. 1625(a), which applies equally to prospective rulings and to internal advice decisions, requires publication or other availability within "90" days. In addition, paragraph (a) of present § 177.10 in two places refers to a precedential decision whereas 19 U.S.C. 1625(a) and new § 177.12 use the word interpretive. The regulatory texts in question have been amended in this final rule document to align on the statute and new regulatory text.

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Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, and after further review of this matter, Customs believes that the proposed regulatory amendments regarding the modification and revocation of rulings, decisions, and treatments and regarding the publication of decisions should be adopted as a final rule with certain changes as discussed above and as set forth below. This document also includes an appropriate update of the list of information collection approvals (see the Paperwork Reduction Act portion of this document below) contained in § 178.2 of the Customs Regulations (19 CFR 178.2).

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that these amendments will not have a significant economic impact on a substantial number of small entities. The regulatory amendments primarily represent a clarification of existing statutory and regulatory requirements. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1515–0228. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in part 177 of the Customs Regulations is required in connection with the consideration of requests for, and issuance of, rulings or other written advice from Customs regarding the application of the Customs and related laws to current or future transactions, in connection with modifications or revocations of prior Customs rulings or treatments, or in connection with the issuance of country-of-origin advisory rulings and final determinations relating to Government procurement. Failure to provide the required information may preclude issuance of the requested advice by Customs or may preclude the application of the requested relief or other action by Customs. The likely respondents are individuals and business or other for-profit institutions, including partnerships, associations, and corporations, and their authorized agents.

The estimated average annual burden associated with the collection of information under part 177 is 10 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 177

Administrative practice and procedure, Customs duties and inspection, Government procurement, Reporting and recordkeeping requirements, Rulings.

19 CFR Part 178

Administrative practice and procedure, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, for the reasons stated in the preamble, parts 177 and 178 of the Customs Regulations (19 CFR parts 177 and 178) are amended as set forth below.

PART 177—ADMINISTRATIVE RULINGS

1. The authority citation for Part 177 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1502, 1624, 1625.

2. In § 177.2, the second sentence of paragraph (b)(2)(ii)(B) is amended by removing the reference § 177.12" and adding, in its place, the reference § 177.13".

3. In § 177.9:

a. The section heading is revised;

b. The last sentence of paragraph (a) is revised;

c. The first sentence of paragraph (c) is revised; and

d. Paragraphs (d) and (e) are removed and reserved.

The revisions read as follows:

§ 177.9 Effect of ruling letters.

(a) * * * See, however, § 177.10(e) (changes of practice published in the **Federal Register**) and § 177.12 (rulings which modify or revoke previous rulings, decisions, or treatments).

* * * * *

(c) *Reliance on ruling letters by others.* Except when public notice and comment procedures apply under § 177.12, a ruling letter is subject to modification or revocation by Customs without notice to any person other than the person to whom the ruling letter was addressed. * * *

* * * * *

4. In § 177.10:

a. In paragraph (a), the first sentence is amended by removing the number "120" and adding, in its place, the number "90" and removing the word "precedential" and adding, in its place, the word "interpretive", and the second sentence is amended by removing the words "a precedential" and adding, in their place, the words "an interpretive";

b. Paragraph (b) is removed and reserved; and

c. Paragraph (c) and the first sentence of paragraph (e) are revised to read as follows:

§ 177.10 Publication of decisions.

* * * * *

(c) *Changes of practice.* Before the publication of a ruling which has the effect of changing an established and uniform practice and which results in the assessment of a higher rate of duty within the meaning of 19 U.S.C. 1315(d), notice that the practice (or prior ruling on which that practice was based) is under review will be published in the **Federal Register** and interested parties will be given an opportunity to make written submissions with respect to the correctness of the contemplated change.

* * * * *

(e) *Effective dates.* Except as otherwise provided in § 177.12(e) or in the ruling itself, all rulings published under the provisions of this part will be applied immediately.

* * *

5. In § 177.11, the first sentence of paragraph (b)(7) is amended by removing the number "120" and adding, in its place, the number "90".

§ 177.12 [Redesignated as § 177.13]

6. Section 177.12 is redesignated as § 177.13 and a new § 177.12 is added to read as follows:

§ 177.12 Modification or revocation of interpretive rulings, protest review decisions, and previous treatment of substantially identical transactions.

(a) *General.* An interpretive ruling, which includes an internal advice decision, issued under this part, or a holding or principle covered by a protest review decision issued under part 174 of this chapter, if found to be in error or not in accord with the current views of Customs, may be modified or revoked by an interpretive ruling issued under this section. In addition, an interpretive ruling issued under this section may have the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions. A modification or revocation under this section must be carried out in accordance with the notice procedures set forth in paragraph (b) or paragraph (c) of this section except as otherwise provided in paragraph (d) of this section, and the modification or revocation will take effect as provided in paragraph (e) of this section.

(b) *Interpretive rulings or protest review decisions.* Customs may modify or revoke an interpretive ruling or holding or principle covered by a protest review decision that has been in effect for less than 60 calendar days by simply giving written notice of the modification or revocation to the person to whom the original ruling was issued or whose current transaction was the subject of the internal advice decision or, in the case of a protest review decision, to the person identified on the Customs Form 19 as the protestant or to any other person designated to receive notice of denial of a protest under § 174.30(b) of this chapter. However, when Customs contemplates the issuance of an interpretive ruling that would modify or revoke an interpretive ruling or holding or principle covered by a protest review decision which has been in effect for 60 or more calendar days, the following procedures will apply:

(1) *Publication of proposed action.* A notice proposing the modification or revocation and inviting public comment on the proposal will be published in the *Customs Bulletin*. The notice will refer to all previously issued interpretive rulings or protest review decisions that Customs has identified as being the subject of the proposed action and will invite any member of the public who has received another interpretive ruling or protest review decision involving the issue that is the subject of the proposed action to advise Customs of that fact. Interested parties will have 30 calendar days from the date of publication of the notice to submit written comments on the proposed modification or revocation and to advise Customs in writing that they are recipients of an affected interpretive ruling or protest review decision that was not identified in the notice.

(2) *Notice of final action.* In the absence of extraordinary circumstances, within 30 calendar days after the close of the public comment period, any submitted comments will be considered and a final modifying or revoking notice or notice of other appropriate final action on the proposed modification or revocation will be published in the *Customs Bulletin*. In addition, a written decision will be issued to the person to whom, or on whose transaction, the original interpretive ruling was issued or, in the case of a protest review decision, to the person identified on the Customs Form 19 as the protestant or to any other person designated to receive notice of denial of a protest under § 174.30(b) of this chapter. Publication of a final modifying or revoking notice in the *Customs Bulletin* will have the effect of modifying or revoking any interpretive ruling or holding or principle covered by a protest review decision that involves merchandise or an issue that is substantially identical in all material respects to the merchandise or issue that is the subject of the modification or revocation, including an interpretive ruling or holding or principle covered by a protest review decision that is not specifically identified in the final modifying or revoking notice.

(c) *Treatment previously accorded to substantially identical transactions*—(1) *General.* The issuance of an interpretive ruling that has the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions must be in accordance with the procedures set forth in paragraph (c)(2) of this section. The following rules will apply for purposes of determining under this section whether a treatment was previously accorded by Customs to substantially identical transactions of a person:

(i) There must be evidence to establish that:

(A) There was an actual determination by a Customs officer regarding the facts and issues involved in the claimed treatment;

(B) The Customs officer making the actual determination was responsible for the subject matter on which the determination was made; and

(C) Over a 2-year period immediately preceding the claim of treatment, Customs consistently applied that determination on a national basis as reflected in liquidations of entries or reconciliations or other Customs actions with respect to all or substantially all of that person's Customs transactions involving materially identical facts and issues;

(ii) The determination of whether the requisite treatment occurred will be made by Customs on a case-by-case basis and will involve an assessment of all relevant factors. In particular, Customs will focus on the past transactions to determine whether there was an examination of the merchandise (where applicable) by Customs or the extent to which those transactions were otherwise reviewed by Customs to determine the proper application of the Customs laws and regulations. For purposes of establishing whether the requisite treatment occurred, Customs will give diminished weight to transactions involving small quantities or values, and Customs will give no weight whatsoever to informal entries and to other entries or transactions which Customs, in the interest of commercial facilitation and accommodation, processes expeditiously and without examination or Customs officer review;

(iii) Customs will not find that a treatment was accorded to a person's transactions if:

(A) The person's own transactions were not accorded the treatment in question over the 2-year period immediately preceding the claim of treatment;

(B) The issue in question involves the admissibility of merchandise;

(C) The person made a material false statement or material omission in connection with a Customs transaction or in connection with the review of a Customs transaction and that statement or omission affected the determination on which the treatment claim is based; or

(D) Customs advised the person regarding the manner in which the transactions should be presented to Customs and the person failed to follow that advice; and

(iv) The evidentiary burden as regards the existence of the previous treatment is on the person claiming that treatment. The evidence of previous treatment by Customs must include a list of all materially identical transactions by entry number (or other Customs assigned number), the quantity and value of merchandise covered by each

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transaction (where applicable), the ports of entry, the dates of final action by Customs, and, if known, the name and location of the Customs officer who made the determination on which the claimed treatment is based. In addition, in cases in which an entry is liquidated without any Customs review (for example, the entry is liquidated automatically as entered), the person claiming a previous treatment must be prepared to submit to Customs written or other appropriate evidence of the earlier actual determination of a Customs officer that the person relied on in preparing the entry and that is consistent with the liquidation of the entry.

(2) *Notice procedures*—(i) When Customs has reason to believe that a contemplated interpretive ruling would have the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions, notice of the intent to modify or revoke that treatment will be published in the *Customs Bulletin* either as a separate action or in connection with a proposed modification or revocation of an interpretive ruling or holding or principle covered by a protest review decision under paragraph (b)(1) of this section. The notice will give interested parties 30 calendar days from the date of publication of the notice to submit written comments on the proposed modification or revocation and will invite any member of the public whose substantially identical transactions have been accorded the same treatment to advise Customs in writing of that fact, supported by appropriate details regarding those transactions, within that 30-day period. Within 30 calendar days after the close of the public comment period, any submitted comments will be considered, notice of the final interpretive ruling or other final action on the proposed modification or revocation will be published in the *Customs Bulletin*. Written confirmation of the applicability of a final modification or revocation will be sent to each person identified as having had substantially identical transactions that were accorded the same treatment.

(ii) If Customs is not aware prior to issuance that a contemplated interpretive ruling would have the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions, the interpretive ruling will be issued and generally will be effective as provided in § 177.19. However, Customs will, upon written application by a person claiming that the interpretive ruling has the effect of modifying or revoking the treatment previously accorded by Customs to his substantially identical transactions, consider delaying the effective date of the interpretive ruling with respect to that person, and continue the treatment previously accorded the substantially identical transactions, pending completion of the procedures set forth in paragraph (c)(2)(i) of this section.

(d) *Exceptions to notice requirements*—(1) *Publication and issuance not required.* The publication and issuance requirements set forth in paragraphs (b) and (c) of this section are inapplicable in circumstances in which a Customs position is modified, revoked or otherwise materially affected by operation of law or by publication pursuant to other legal authority or by other appropriate action taken by Customs in furtherance of an order, instruction or other policy decision of another governmental agency or entity pursuant to statutory or delegated authority. Such circumstances include, but are not limited to, the following:

(i) Adoption or amendment of a statutory provision, including any change to the Harmonized Tariff Schedule of the United States;

(ii) Promulgation of a treaty or other international agreement under the foreign affairs function of the United States;

(iii) Issuance of a Presidential Proclamation or Executive Order, or issuance of a decision or policy determination pursuant to authority delegated by the President;

(iv) Subject to the provisions of § 152.16 of this chapter, the rendering of a judicial decision which has the effect of overturning the Customs position;

(v) Publication of a decision in the **Federal Register** as a result of a petition by a domestic interested party pursuant to 19 U.S.C. 1516 (see part 175 of this chapter);

(vi) Publication of an interim or final rule in the **Federal Register** in accordance with 5 U.S.C. 553;

(vii) Publication of a final interpretative rule in the **Federal Register** in accordance with 5 U.S.C. 553 following public notice and comment procedures; and

(viii) Publication of a final ruling in the **Federal Register** in accordance with 19 U.S.C. 1315(d) and § 177.22 of this part relating to change of established and uniform practice.

(2) *Publication not required.* In the following circumstances a final modifying or revoking ruling will be issued to the person entitled to it under paragraph (b) or (c) of this section but *Customs Bulletin* publication under paragraph (b) or (c) of this section is not required:

(i) The modifying ruling corrects a clerical error; or

(ii) The modifying or revoking ruling is directed to a ruling issued under subpart I of part 181 of this chapter relating to advance rulings under the North American Free Trade Agreement.

(e) *Effective date and application to transactions*—(1) *Rulings or decisions in effect for less than 60 days.* If an interpretive ruling or holding or principle covered by a protest review decision that is modified or revoked under this section had been in effect for less than 60 calendar days, the modifying or revoking interpretive ruling:

(i) Will be effective on its date of issuance with respect to the specific transaction covered by the modifying or revoking interpretive ruling: and

(ii) Will be applicable to merchandise entered, or withdrawn from warehouse for consumption, on and after its date of issuance.

(2) *Rulings or decisions in effect for 60 or more days.* If an interpretive ruling or holding or principle covered by a protest review decision that is modified or revoked under this section had been in effect for 60 or more calendar days, the modifying or revoking notice will, provided that liquidation of the entry in question has not become final, apply to merchandise entered, or withdrawn from warehouse for consumption:

(i) Sixty calendar days after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) or paragraph (c)(2)(i) of this section; or

(ii) At the option of any person with regard to that person's transaction, on and after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) of this section.

(3) *Previous treatment accorded to substantially identical transactions.* A final notice that modifies or revokes the treatment previously accorded by Customs to substantially identical transactions:

(i) Will be effective with respect to transactions that are substantially identical to the transaction described in the modifying or revoking notice 60 calendar days after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) or paragraph (c)(2)(i) of this section; and

(ii) Provided that liquidation of the entry in question has not become final, will apply to merchandise entered, or withdrawn from warehouse for consumption:

(A) Sixty calendar days after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) or paragraph (c)(2)(i) of this section; or

(B) At the option of a person who makes a valid claim regarding previous treatment, on and after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) or paragraph (c)(2)(i) of this section.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. In § 178.2, the table is amended by removing the listings for §§ 177.2, 177.5, 177.11, and 177.12 and adding, in their place, a listing for Part 177 to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
. . . . .		
Part 177	Issuance of administrative rulings on prospective and current customs transactions.	1515–0228
. . . . .		

* * * * *

Robert C. Bonner,
Commissioner of Customs.
Approved: August 12, 2002.
Timothy E. Skud,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 02–20757 Filed 8–15–02; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–005]

RIN 2115–AA97

Security Zones; Captain of the Port Buffalo Zone

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing four permanent security zones on the navigable waters of Lake Ontario and the St. Lawrence River in the Captain of the Port Buffalo Zone. These security zones are necessary to protect the Nuclear Power Plants and the St. Lawrence Seaway system from possible acts of terrorism. These security zones are intended to restrict vessel traffic from a portion of the St. Lawrence River and Lake Ontario.

DATES: This rule is effective August 16, 2002.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD09–02–005) and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd, Buffalo, New York 14203 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: LCDR David Flaherty, U.S. Coast Guard Marine Safety Office Buffalo, (716) 843–9574.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 30, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; Captain of the Port Buffalo Zone" in the **Federal Register** (67 FR 37748). We did not receive any letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permanent security zones being established by this rulemaking are smaller in size than the temporary security zones currently in effect. By immediately implementing the smaller zone size, we will be relieving some of the burden placed on the public by a larger security zone.

Background and Purpose

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists resulting in catastrophic loss of life, the destruction of the World Trade Center, and significant damage to the Pentagon. National security and intelligence officials warn that future terrorists attacks are likely.

This regulation proposes to establish four permanent security zones: (1) Nine Mile Point and Fitzpatrick Nuclear Power Plants; (2) Ginna Nuclear Power Plant; (3) Moses-Saunders Power Dam; and, (4) Long Sault Spillway Dam.

These security zones are necessary to protect the public, facilities, and the surrounding area from possible sabotage or other subversive acts. All persons other than those approved by the Captain of the Port Buffalo, or his designated representative, are prohibited from entering or moving within this zone. The Captain of the Port Buffalo, or his on scene representative, may be contacted via VHF Channel 16 for further instructions before transiting through the restricted area. In addition to publication in the **Federal Register**, the public will be made aware of the existence of these security zones, exact locations, and the restrictions involved via Local Notice to Mariners and Broadcast Notice to Mariners.

Discussion of Comments and Changes

No comments were received and no changes are being made from the proposed rule in this final rule.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will not

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obstruct the regular flow of commercial traffic and will allow vessel traffic to pass around the security zone. In addition, in the event that is may be necessary, prior to transiting commercial vessels can request permission from the Captain of the Port Buffalo to transit through the zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No comments or questions were received from any small businesses.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action, therefore it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

§§ 165.T09–999, 165.T09–101, and 165.T09–103 [Removed]

2. Add § 165.911 to read as follows:

§ 165.911 Security Zones; Captain of the Port Buffalo Zone.

(a) *Location.* The following are security zones:

(1) *Nine Mile Point and Fitzpatrick Nuclear Power Plants.* The navigable waters of Lake Ontario bounded by the following coordinates: commencing at 43°30.8′ N, 076°25.7′ W; then north to 43°31.2′ N, 076°25.7′ W; then east-northeast to 43°31.6′ N, 076°24.9′ W; then east to 43°31.8′ N, 076°23.2′ W; then south to 43°31.5′ N, 076°23.2′ W; and then following the shoreline back to the point of origin (NAD 83).

(2) *Ginna Nuclear Power Plant.* The waters of Lake Ontario bounded by the following area, starting at 43°16.9′ N, 077°18.9′ W; then north to 43°17.3′ N, 077°18.9′ W; then east to 43°17.3′ N, 077°18.3′ W; then south to 43°16.7′ N, 077°18.3′ W; then following the shoreline back to starting point (NAD 83).

(3) *Moses-Saunders Power Dam.* The waters of the St. Lawrence River bounded by the following area, starting at 45°00.73′ N, 074°47.85′ W; southeast following the international border to 45°00.25′ N, 074°47.56′ W; then southwest to 45°00.16′ N, 074°47.76′ W; then east to the shoreline at 45°00.16′ N, 074°47.93′ W; then northwest to 45°00.36′ N, 074°48.16′ W; then northeast back to the starting point (NAD 83).

(4) *Long Sault Spillway Dam.* The waters of the St. Lawrence River bounded by the following area, starting at 44°59.5′ N, 074°52.0′ W; north to 45°00.0′ N, 074°52.0′ W; east to 45°00.0′ N, 074°51.6′ W, then south to 44°59.5′ N, 074°51.6′ W; then west back to the starting point (NAD 83).

(b) *Regulations.* (1) In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo.

(2) Persons or vessels desiring to transit the area of the Nine Mile Point and Fitzpatrick Nuclear Power Plants or Ginna Nuclear Power Plant security zones must contact the Captain of the Port Buffalo at telephone number (716) 843–9570, or on VHF/FM channel 16 to seek permission to transit the area. Persons desiring to transit the area of Moses-Saunders Power Dam or Long Sault Spillway Dam security zones must contact the Supervisor, Marine Safety Detachment Massena at telephone number (315) 764–3284, or on VHF/FM channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: July 19, 2002.

P.M. Gugg,

Commander, Coast Guard, Captain of the Port Buffalo.

[FR Doc. 02–20756 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–001]

RIN 2115–AA97

Security Zones; Captain of the Port Chicago Zone, Lake Michigan

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent security zones on the navigable waters of the Des Plaines River, the Kankakee River, the Rock River, and Lake Michigan in the Captain of the Port Zone Chicago. These security zones are necessary to protect the nuclear power plants, and water intake cribs, from possible sabotage or other subversive acts, accidents, or possible acts of terrorism. These zones are intended to restrict vessel traffic from portions of the Des Plaines River, the Kankakee River, the Rock River, and Lake Michigan.

DATES: This rule is effective on August 16, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–02–001 and are available for inspection or copying at Coast Guard Marine Safety Office Chicago, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST3 Kathryn Varela, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986–2175.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 22, 2002, we published a notice of proposed rulemaking (NPRM) entitled Security Zones; Captain of the Port Chicago Zone, Lake Michigan, in the **Federal Register** (67 FR 35939). We received six letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. In response to the terrorist attacks on September 11, 2001, the Coast Guard implemented temporary security zones around critical facilities throughout the U.S. Some of those facilities included nuclear power plants, water intake cribs, and Navy Pier. Security zones around these facilities helps protect against the subversive type of activity that resulted in the World Trade Center and Pentagon attacks. Since the temporary security zone will expire on August 1, 2002, in order to continue ensuring security at these nuclear power plants, water intake cribs, and Navy Pier, this final rule must be implemented prior to the August 1, 2002 expiration. As such, it is necessary to make this rule effective less than 30 days after publication.

Background and Purpose

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists resulting in catastrophic loss of life, the destruction of the World Trade Center, and significant damage to the Pentagon. National security and intelligence officials warn that future terrorist attacks are likely. To protect from such, this regulation will establish permanent security zones on the navigable waters of the Des Plaines River, the Kankakee River, the Rock River, and Lake Michigan.

These security zones are necessary to protect the public, facilities, and the surrounding area from possible sabotage or other subversive acts. All persons other than those approved by the Captain of the Port Chicago, or his authorized representative, are prohibited from entering or moving within the zones. The Captain of the Port Chicago may be contacted via VHF Channel 16 for further instructions before transiting through the restricted area. The Captain of the Port Chicago's on-scene representative will be the patrol commander. In addition to publication in the **Federal Register**, the public will be made aware of the existence of these security zones, exact locations and the restrictions involved via Local Notice to Mariners and the Broadcast Notice to Mariners.

Discussion of Comments and Changes

During the public comment period, the Coast Guard received 6 comments on the proposed rulemaking. Three comments were concerned that the Donald C. Cook Nuclear Power Plants security zone would exclude fishermen from a good fishing area. Nuclear power plants are critical infrastructures throughout the country, providing electricity to millions of homes and cities. In addition, the plants pose a significant radiological hazard should their structural integrity be compromised. The Captain of the Port Chicago has determined that the best practice to ensure the safety of these facilities is to provide a clear area in which no vessels or persons are allowed access without specific permission from the Captain of the Port Chicago.

One comment stated concern that the security zones around Navy Pier and the Jardine Water Filtration Plant did not include the northside of the plant. Commenter concerned for the Commonwealth Edison vault that supplies electrical power to the Jardine Water Filtration Plant being directly above the waters edge. The Captain of the Port Chicago has taken under advisement and after review has determined that the present security zone boundaries are adequate for the current threat condition.

One comment received from the Palisades Nuclear Power Plant requesting changes to the security zone coordinates to match their northern and southern shoreline boundaries. The commenter noted that the current security zone for the Palisades Nuclear Power Plant did not match where their security barriers are placed, and for enforcement purposes recommended the change. The Coast Guard concurs with this comment and has identified the new northern and southern coordinates as 42°19′31″ N, 086°18′50″ W (northern shoreline), 42°19′07″ N, 086°19′05″ W (southern shoreline).

One comment recommended that the Navy Pier Southside Security zone be changed to only 150 feet from the Southern side to allow recreational

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boaters a place to turn around, helping to alleviate congestion southeast of Navy Pier due to heavy vessel traffic waiting for the Chicago Lock. The Captain of the Port Chicago has determined that the present risk levels justify total elimination of the Navy Pier Southside security zone.

Regulatory Evaluation

This Final Rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this final rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this final rule would not have a significant economic impact on a substantial number of small entities.

These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will not obstruct the regular flow of commercial traffic and will allow vessel traffic to pass around the security zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking process. No comments or questions were received from any small businesses. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This final rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this final rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this final rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This final rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

Environment

We have considered the environmental impact of this final rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.908 to read as follows:

§ 165.908 Security Zones; Captain of the Port Chicago, Zone, Lake Michigan.

(a) *Security zones.* The following areas, defined by coordinates based upon North American Datum 1983, are security zones:

(1) *Navy Pier Northside.* (i) *Location.* All waters between the Navy Pier and the Jardine Water Filtration Plant shoreward of a line drawn from the southeast corner of the Jardine Water Filtration Plant at 41°53′36″ N, 87°36′10″ W, to the northeast corner of the Navy Pier at 41°53′32″ N, 87°35′55″ W; then following the Navy Pier, seawall, and Jardine Water Filtration Plant back to the beginning.

(ii) *Regulations.* The Captain of the Port Chicago will normally permit those U.S. Coast Guard certificated passenger vessels that normally load and unload passengers at Navy Pier to operate in the zone. However, should the Captain of the Port Chicago determine it is appropriate, he will require even those U.S. Coast Guard certificated passenger vessels which normally load and unload passengers at Navy Pier to request permission before leaving or entering the security zones. The Captain of the Port Chicago will notify these vessels via Broadcast Notice to Mariners if they must notify the Coast Guard before entering or transiting the security zone. As such, vessels that regularly operate within this zone are responsible for monitoring Broadcasts Notice to Mariners for the Chicago area. These broadcasts will be made by U.S. Coast Guard Group Milwaukee.

(2) *Dresden Nuclear Power Plant.* All waters of the Illinois River in the vicinity of Dresden Nuclear Power Plant encompassed by a line starting on the shoreline at 41°23′45″ N, 88°16′18″ W; then east to the shoreline at 41°23′39″ N, 88°16′09″ W; then following along the shoreline back to the beginning.

(3) *Donald C. Cook Nuclear Power Plant.* All waters of Lake Michigan around the Donald C. Cook Nuclear Power Plant encompassed by a line starting on the shoreline at 41°58.656′ N, 86°33.972′ W; then northwest to 41°58.769′ N, 86°34.525′ W; then southwest to 41°58.589′ N, 86°34.591′ W; then southeast to the shoreline at 41°58.476′ N, 86°34.038′ W; and following along the shoreline back to the beginning.

(4) *Palisades Nuclear Power Plant.* All waters of Lake Michigan around the Palisades Nuclear Power Plant within a line starting on the shoreline at 42°19′07″ N, 86°19′05″ W; then northwest to 42°19′22″ N, 86°19′54″ W; then north to 42°19′44″ N, 86°19′43″ W; then southeast back to the shoreline at 42°19′31″ N, 86°18′50″ W; then following along the shoreline back to the beginning.

(5) *Byron Nuclear Power Plant.* All waters of the Rock River encompassed by the arc of a circle with a 100-yard radius with its center in approximate position 42°05′01″ N, 89°19′27″ W.

(6) *Zion Nuclear Power Plant.* All waters of Lake Michigan encompassed by a line starting on the shoreline at 42°26′36″ N, 87°48′03″ W; then southeast to 42°26′20″ N, 87°47′35″ W; then northeast to 42°26′53″ N, 87°47′22″ W; then northwest to the shoreline at 42°27′06″ N, 87°48′00″ W; then following along the shoreline back to the beginning.

(7) *68th Street Water Intake Crib.* All waters of Lake Michigan within the arc of a circle with a 100-yard radius of the 68th Street Crib with its center in approximate position 41°47′10″ N, 87°31′51″ W.

(8) *Dever Water Intake Crib.* All waters of Lake Michigan within the arc of a circle with a 100-yard radius of the Dever Crib with its center in approximate position 41°54′55″ N, 87°33′20″ W.

(9) *79th Street Water Intake Crib.* All waters of Lake Michigan within the arc of a circle with a 100-yard radius of the 79th Street Water Filtration Plant with its center in the approximate position 41°45′30″ N, 87°32′32″ W.

(b) *Regulations.* (1) Under § 165.33, entry into these zones is prohibited unless authorized by the Coast Guard Captain of the Port Chicago. Section 165.33 also contains other general requirements.

(2) All persons and vessels shall comply with the instruction of the Captain of the Port Chicago or the designated on-scene U.S. Coast Guard patrol personnel. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Emergency response vessels are authorized to move within the zone but must abide by the restrictions imposed by the Captain of the Port.

(3) Persons who would like to transit through a security zone in this section must contact the Captain of the Port at telephone number (630) 986–2175 or on VHF channel 16 (121.5 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: July 29, 2002.

R.E. Seebald,

Captain, Coast Guard, Captain of the Port, Chicago.

[FR Doc. 02–20755 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72 and 75

[FRL–7259–9]

RIN 2060–AJ43

Revisions to the Definitions and the Continuous Emission Monitoring Provisions of the Acid Rain Program and the NO_x Budget Trading Program; Correction

AGENCY: Environmental Protection Agency.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations (FRL–7207–4), which were published in the **Federal Register** of Wednesday, June 12, 2002 (67 FR 40394). The regulations relate to Revisions to the Definitions and the Continuous Emission Monitoring Provisions of the Acid Rain Program and the NO_x Budget Trading Program. The corrections are necessary to correct certain typographical errors and other minor issues.

DATES: Effective on August 16, 2002.

FOR FURTHER INFORMATION CONTACT: Gabrielle Stevens, Clean Air Markets Division (6204N), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone number (202) 564–2681 or the Acid Rain Hotline at (202) 564–9620.

SUPPLEMENTARY INFORMATION:

Background

On June 12, 2002, EPA published final revisions to various provisions in 40 CFR parts 72 and 75 (67 FR 40394). Based on a review of the final published package, EPA has identified certain technical errors in those revisions that are corrected through this notice.

Need for Correction

As published, the final revisions to particular provisions in 40 CFR part 75 contain errors or omissions that may prove to be misleading and need to be clarified. The reason for these changes are as follows:

1. The appendices to 40 CFR part 60 provisions that contain test methods and specifications referenced in part 75 were reformatted, with significant section renumbering, on October 17, 2000 (65 FR 61743). In the June 13, 2001 proposed revisions to Part 75, EPA proposed to remove a requirement to use only the versions of certain test methods in appendices to 40 CFR part 60 that were effective as of 1995, 1996 or 1997, *i.e.* the revisions would remove

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the restriction on the use of the most current, reformatted version of these Part 60 provisions (*see* 66 FR 31995–96, June 13, 2001). The June 12, 2002 final rule promulgated the revisions as proposed. However, the final revisions failed to make necessary conforming changes to the part 60 cross references that appear in part 75. The corrections in this notice update the part 60 cross references in part 75 to be consistent with the part 60 revisions. These corrections affect §§ 72.2 and 75.22, Appendix A, sections 1.1, 1.2, 6.5.6, 6.5.6.2, and 6.5.6.3, and Appendix E, section 2.1.2.1.

2. In § 75.16(e)(1), this notice corrects an omission in the amendatory language to add the word "rate" after "heat input." This correction is consistent with the proposed rule changes and changes to other subparagraphs in § 75.16(e).

3. In § 75.19(c)(1)(iv)(H), EPA revised the introductory text to clarify that the provisions apply only to units with "add-on" controls or dry-low NO_x technology. EPA had intended to repeat the words "add-on" in subparagraph (H)(*3*) for consistency and clarity, and adds those words as part of this correction notice.

4. In § 75.19(c)(3)(ii)(G), there was a mistake in the amendatory language which suggested that the entire paragraph was being amended when in fact the reproduced text for that paragraph made clear that only a new sentence was being added. This correction notice reproduces the full section with the new sentence added at the end of the previously existing text. This correction also is consistent with the proposed rule revisions for this paragraph.

5. In § 75.19(c)(3)(ii)(H), a phrase used in various places in § 75.19 was mistakenly worded, and is corrected in this notice.

6. In § 75.21(a)(7), the amendatory language specifies that certain text is to be added after certain words in the paragraph, but those words appear twice in the paragraph. To clarify the amendatory language, this correction reproduces the applicable sentence in its entirety.

7. In § 75.33(c)(7), this notice corrects a typographical error that occurred (a regulatory cross reference and the concluding period were left off the end of the paragraph).

8. In § 75.71, EPA had intended to revise the section title, consistent with the proposed rule revisions, but the amendatory language did not specify a change in the title to the section, and thus the title published in the June 12, 2002 **Federal Register** was not modified as intended (and as shown in the proposed rule revisions). This notice specifies the changes to the section title.

9. In Appendix B, section 2.3.2, paragraphs (d) and (f), EPA added language to account for units that are based on operating levels rather than load levels. However, amendatory language was dropped inadvertently that would have added the words "(or operating level)" after each occurrence of the words "load level" in Appendix B, section 2.3.2, paragraphs (d) and (f). The words "load level" do appear in the current text of these paragraphs, so this correction adds the applicable parenthetical phrase. This correction also is consistent with the proposed rule changes to these paragraphs.

10. In Appendix D, section 2.1.6.4, paragraph (a)(1), the revisions added a new second sentence but the amendatory language mistakenly failed to direct that the punctuation at the end of the existing text in the paragraph be changed from a semicolon to a period. This correction fixes that grammatical error.

11. In Appendix D, section 2.3.3.2, third sentence, this notice corrects an omission (the words "or default SO_2 emission rate" should be inserted as applicable to the use of Equation D–5).

12. In Appendix D, the preamble to the final revisions indicates that compliance with certain provisions is not required until July 1, 2003 (*see* 67 FR 40417). However, the rule text discussed in the final preamble was mistakenly omitted. This notice corrects that error by adding an asterisk after "Gas Total Sulfur Content" in the first column of Table D–6, and adding the following footnote to the Table: "*Required no later than July 1, 2003."

13. In Appendix F, section 2.3, this notice corrects a typographical error (the label for Equation F–3 was mistakenly omitted). This correction is consistent with the proposed rule changes.

List of Subjects

40 CFR Part 72

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Continuous emission monitoring, Electric utilities, Nitrogen oxides, NO_X Budget Trading Program, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 75

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Carbon dioxide, Continuous emission monitoring (CEM), Electric generating units (EGUs), Electric utilities, Nitrogen oxides, Non-electric generating units (Non-EGUs), Non-load based units, NO_X Budget Trading Program, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 8, 2002.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 72—PERMITS REGULATION

1. The authority citation for part 72 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 72.2 [Corrected]

2. In § 72.2, definition of "Equivalent diameter", revise the words "equation in paragraph 2.1" to read "Equation 1–1 in section 12.2".

PART 75—CONTINUOUS EMISSION MONITORING

3. The authority citation for Part 75 continues to read as follows:

Authority: 42 U.S.C. 7601, 7651k, and 7651k note.

§ 75.16 [Corrected]

4. In § 75.16, paragraph (e)(1), insert the word "rate" after all but the last occurrence of the phrase "heat input".

5. Section 75.19 is corrected by:

a. In paragraph (c)(1)(iv)(H)(*3*), adding the word "add-on" after the words "other types of";

b. Revising paragraph (c)(3)(ii)(G); and

c. In paragraph (c)(3)(ii)(H), in the first sentence, removing the phrase "in an identical group of units" and adding, in its place, "in a group of identical units".

The corrections read as follows:

§ 75.19 Optional SO_2, NO_X, and CO_2 emissions calculation for low mass emissions (LME) units.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(G) The year-to-date cumulative heat input (mmBtu) for all fuels shall be the sum of all quarterly total heat input ($HI_{qtr-total}$) values for all calendar quarters in the year to date. For a unit subject to the provisions of subpart H of this part, which is not required to report emission data on a year-round basis and elects to report only during the ozone season, the cumulative ozone season heat input shall be the sum of the quarterly heat input values for the second and third calendar quarters of the year.

* * * * *

6. Section 75.21 is corrected by revising the first sentence of paragraph (a)(7) to read as follows:

§ 75.21 Quality assurance and quality control requirements.

(a) * * *

(7) If the designated representative certifies that a particular unit with an SO_2 monitoring system combusts primarily fuel(s) that are very low sulfur fuel(s) (as defined in § 72.2 of this chapter) and combusts higher sulfur fuel(s) only for infrequent, non-routine operations (*e.g.*, only as emergency backup fuel(s) or for short-term testing), the SO_2 monitoring system shall be exempted from the RATA requirements of appendices A and B to this part in any calendar year that the unit combusts the higher sulfur fuel(s) for no more than 480 hours. * * *

* * * * *

§ 75.22 [Corrected]

7. In § 75.22, paragraph (a)(4), remove the phrases "section 2", "section 3", "section 1.2", and "sections 2 and 3" and add, in their place, respectively, "section 8.1", "section 8.2", "section 2.2", and "sections 8.1 and 8.2".

§ 75.33 [Corrected]

8. In § 75.33, paragraph (c)(7), in the last sentence, add the words "§ 75.53" to the end of the sentence.

§ 75.71 [Corrected]

9. In § 75.71, remove the words "emission rate" from the section title.

Appendix A [Corrected]

10. In section 1.1, remove the phrase "section 3.1" and add, in its place, "section 8.1.1".

11. In section 1.2, remove the phrases "section 2.5 or 2.4" and "section 2.5" and add, in their place, respectively, "sections 11.5 or 11.4" and "section 11.5".

12. In section 6.5.6, introductory paragraph and paragraphs (b)(2) and (b)(3), and in paragraph (a) of sections 6.5.6.2 and 6.5.6.3, remove each occurrence of the phrase "section 3.2" and add, in its place, "section 8.1.3".

Appendix B [Corrected]

13. In section 2.3.2, paragraphs (d) and (f), add the phrase "(or operating level)" after each occurrence of the phrase "load level".

Appendix D [Corrected]

14. In section 2.1.6.4, paragraph (a)(1), remove the phrase "under § 75.6);" and add, in its place, "under § 75.6)."

15. In section 2.3.3.2, in the third sentence remove the phrase "content, in" and add, in its place, "content or default SO_2 emission rate in".

16. In section 2.4.1, Table D–6, remove the phrase "Gas Total Sulfur Content" and add, in its place, "Gas Total Sulfur Content*" and add, as a footnote to the table, "*Required no later than July 1, 2003."

Appendix E [Corrected]

17. In section 2.1.2.1, remove the phrase "section 5.1" and add, in its place, "section 8.3.1".

Appendix F [Corrected]

18. In section 2.3, add "(Eq. F–3)" as a descriptive label next to Equation F–3.

[FR Doc. 02–20742 Filed 8–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0057; FRL–7193–6]

Objections to Tolerances Established for Certain Pesticide Chemicals; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of final rule objections; extension of comment period.

SUMMARY: On June 19, the Agency announced the availability of, and sought public comment on objections submitted to EPA by the Natural Resources Defense Council (NRDC) on certain pesticide tolerances. Due to the number and complexity of the issues raised in NRDC's objections, EPA is extending the comment period for 30 days, from August 19 to September 17, 2002.

DATES: Comments, identified by the docket control number OPP–2002–0057, must be received on or before September 17, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–2002–0057 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Peter Caulkins, Registration Division, (MC7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6550; fax number: (703) 305–6920; e-mail address: caulkins.peter@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–2002–0057. The official record

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consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit your comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–2002–0057 in the subject line of the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6, Suite 8, or ASCII file format. All comments in electronic form must be identified by docket control number OPP–2002–0057. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the final rule or collection activity.
7. Make sure to submit your comments by the deadline in this final rule extension.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is EPA Taking?

On Feburary 25, 2002, March 19, 2002, and May 7, 2002, NRDC filed objections with EPA regarding final rules establishing certain tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for the following seven pesticides:

(1) Imidacloprid;
(2) Mepiquat;
(3) Bifenazate;
(4) Zeta-cypermethrin;
(5) Diflubenzuron;
(6) Halosulfuron methyl; and
(7) Pymetrozine.

NRDC's objections concern a number of issues under section 408 of the FFDCA including the additional 10x safety factor for the protection of infants and children and aggregate exposure to pesticide chemical residues. In the **Federal Register** of June 19, 2002, 67 FR 41628 (FRL–7167–7), the Agency announced the availability of, and sought public comment on these objections. EPA has received a request to extend the comment period. An extension was requested due to the broad nature of the NRDC objections documents and the large number of issues raised. The requestor felt that an extension to the comment period would give all interested parties the opportunity to develop detailed and comprehensive comments on these issues. The objections are available on EPA's website at http://www.epa.gov/fedrgstr/EPA-PEST/2002/June/Day-19/p15465.htm

The Agency provided a 60-day comment period, which was scheduled to end August 19, 2002. In response to the request for an extension, the Agency is extending the comment period on the NRDC tolerance objections to September 17, 2002.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Tolerances.

Authority: 21 U.S.C. 346(a).

Dated: August 8, 2002.

James Jones,

Acting Director, Office of Pesticide Programs.

[FR Doc. 02–20748 Filed 8–15–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7259–4]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion for a portion of the Joslyn Manufacturing and Supply Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of a portion of the Joslyn Manufacturing and Supply Superfund Site in Brooklyn Center, Minnesota from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action is being taken by EPA because it has been determined that Responsible Parties have implemented all appropriate response actions required for this portion of the Site. Moreover, EPA has determined that remedial actions conducted at this portion of the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: August 19, 2002.

FOR FURTHER INFORMATION CONTACT: Gladys Beard at (312) 886–7253, State NPL Deletion Process Manager, Superfund Division, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: the Minnesota Pollution Control Agency, 520 Lafayette Rd. North, St. Paul, Minnesota 55155–4194, (651) 296–6300, Monday through Friday 8:00 a.m. to 4:30. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The contact for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

SUPPLEMENTARY INFORMATION: The site to be partially deleted from the NPL is: Joslyn Manufacturing and Supply Superfund Site located in Brooklyn Center, Minnesota. A Notice of Intent to Delete for this site was published February 19, 2002 (67 FR 7326). The closing date for comments on the Notice of Intent to Delete was March 21, 2002. EPA received comments and therefore a Responsiveness Summary was prepared. The Responsiveness Summary was placed in the repository and with the Regional Docket Office.

A direct final notice of deletion was published on February 19, 2002 (67 FR 7279) which included the details of the partial deletion. While the direct final notice amendment is being removed in today's **Federal Register**, the details contained in the February 19, 2002 direct final deletion amendment describe the portion of the site being deleted by this notice.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental Protection, Air pollution control, Chemicals, Hazardous substances, Hazardous Waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 6, 2002.

Bharat Mathur,

Acting Regional Administrator, U.S. EPA, Region V.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B [AMENDED]

2. Table 1 of Appendix B to part 300 is amended by revising the entry for "Joslyn Manufacturing and Supply Co, Brooklyn Center, Minnesota" to read as follows:

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes [1]
MN	Joslyn Manufacturing and Supply Co	Brooklyn Center	P

[1] P=Sites with partial deletion(s).

* * * * *

[FR Doc. 02–20741 Filed 8–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7259–3]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Removal of direct final notice of deletion amendment.

SUMMARY: On February 19, 2002, EPA published a notice of intent to delete (67 FR 7326) and a direct final notice of deletion (67 FR 7279) for a portion of the Joslyn Manufacturing and Supply Superfund Site from the National Priorities List. The EPA is removing the direct final notice of deletion amendment due to adverse comments that were received during the public comment period. After consideration of the comments received, EPA is publishing today a notice of deletion in the **Federal Register** based on the parallel notice of intent to delete. EPA will place a copy of the final deletion package, including a response to the comments (Responsiveness Summary) in the Site repositories.

EFFECTIVE DATE: This removal of the direct final notice of deletion amendment is effective as of August 16, 2002.

ADDRESSES: Comprehensive information on the Site, as well as the comments that were received during the comment period can be obtain from Dave Novak, Community Involvement Coordinator, U.S. EPA , P19J, 77 W. Jackson, Chicago, IL, (312) 886–7478 or 1–800–621–8431.

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FOR FURTHER INFORMATION CONTACT: Gladys Beard, NPL Deletion Process Manager, U.S. EPA (SR–6J), 77 W. Jackson, Chicago, IL 60604, (312) 886–7253 or 1–800–621–8431.

SUPPLEMENTARY INFORMATION:

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following address: U.S. EPA Region V Library, 77 W. Jackson, Chicago, IL 60604, (312) 353–5821, Monday through Friday 8 a.m. to 4 p.m.; Minnesota Pollution Control Agency 520 Lafayette, Saint Paul, Minnesota, Monday Through Friday, 8:00 to 4:30 p.m., (651) 296–6300.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous Waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water Supply.

Dated: August 6, 2002.

Bharat Mathur,

Acting Regional Administrator, EPA Region V.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B to Part 300—National Priorities List

2. Table 1 of Appendix B to Part 300 is amended under Minnesota "MN" by revising the entry for "Joslyn Manufacturing and Supply Co" to read as follows:

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes
MN	Joslyn Manufacturing MN and Supply Co	Brooklyn Center	

[FR Doc. 02–20740 Filed 8–15–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 25

[IB Docket 01–96; FCC 02–123]

Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ku-Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission has adopted licensing and service rules for entities to provide Fixed Satellite Service in the Ku-Band frequencies, specifically the 10.7–11.7 GHz, 11.7–12.2 GHz, 12.2–12.7 GHz, 12.75–13.25 GHz, 13.75–14.0 GHz, and 14.0–14.5 GHz frequency bands. System proponents currently on file are required to amend their proposals to comply with the adopted rules. Following a public comment period on the amendments, qualified systems will be authorized to operate. Upon launch, these new systems will provide a variety of data, video and telephony services in Ku-Band frequencies to U.S. consumers, for communications in the United States and around the world.

DATES: Effective August 16, 2002. Written comments by the public on the new information collections are due October 15, 2002.

FOR FURTHER INFORMATION CONTACT: J. Mark Young, Attorney Advisor, Satellite Division, International Bureau, telephone (202) 418–0762 or via the Internet at *myoung@fcc.gov*. For additional information concerning the information collections contained in this document, contact Judith B. Herman at (202) 418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in IB Docket No. 01–96, FCC 02–123, adopted April 18, 2002 and released April 26, 2002. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW. Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898 or via e-mail *qualexint@aol.com*. It is also available on the Commission's Web site at *http://www.fcc.gov*.

Summary of the Report and Order

1. The Federal Communications Commission has adopted sharing and service rules for the non-geostationary satellite orbit, fixed satellite service (NGSO FSS) in the Ku-Band frequencies. These systems will provide a variety of data, video and telephone services to U.S. consumers, for communications in the United States and around the world.

2. The Commission adopted an innovative sharing technique that can accommodate all seven pending applications for this service in the available frequency bands. The Commission calls this technique avoidance of in-line interference events. Under this technique, each applicant, once licensed, will be authorized to operate its system in the entire available service spectrum, so long as it avoids causing harmful interference to other NGSO FSS systems.

3. The Commission anticipates that there will be predictable instances when the space station of one NGSO FSS system and the earth station of another system are arranged in a perfect line of communication, an occurrence called an in-line interference event. The sharing technique allows and encourages the two system operators to exchange space station orbit data in order to predict and avoid these events by any mitigation means preferred. In the event the systems cannot agree on a preferred avoidance method, the Commission requires that they split the available NGSO FSS service spectrum in the Ku-Band equally between the systems involved in the event, for the duration of the event. The *Report and Order* allows the first launched NGSO FSS system to choose its preferred equal portion of the spectrum to which its space station will resort when an in-line interference event arises.

4. The *Report and Order* adopts a technical definition of an in-line interference event so that systems can coordinate their orbits in advance. The Commission adopted an Earth-surface based (topocentric) angular separation standard, with a 10-degree-avoidance angle between satellites of different networks.

5. The *Report and Order* adopted blanket licensing procedures for NGSO FSS user Earth stations in the 11.7–12.2 GHz and 12.2–12.7 GHz downlink bands, and the 14.0–14.5 GHz uplink bands.

6. The *Report and Order* adopted service rules for the NGSO FSS service, including required coverage latitudes on Earth and an implementation milestones schedule. Licensees will be required to file an annual report describing the status of satellite construction and launch dates and a description of the use made of each satellite in obit. The *Report and Order* also requires that applicants disclose orbital debris mitigation plans before licensing.

7. Applicants for NGSO FSS in the Ku-Band are required to amend their applications to comply with the rules adopted, on or before September 16, 2002. Following a public comment period, qualified systems will be authorized to operate.

Paperwork Reduction Act

8. This *Report and Order* contains new information collections. The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this *Report and Order*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. This *Report and Order* has been submitted to OMB for review under the emergency clearance provisions of the PRA. The Commission, under the normal provisions of the PRA, invites the general public, and other Federal agencies to comment on the information collections contained in this proceeding prior to submitting it to OMB for review. Public and agency comments are due October 15, 2002. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–1014 (New Collection).

Title: Ku-Band NGSO FSS Satellite Service.

Form No.: Not applicable.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 6.

Estimated Time Per Response: 1–4 hours.

Frequency of Response: On occasion.

Total Annual Burden: 84 hours.

Total Annual Costs: $87,395.

Needs and Uses: The information collected will be used by the Federal Communications Commission and interested members of the public to ensure compliance with the rules adopted for the NGSO FSS in the Ku-Band. Specifically, applicants for this new service will be required to file amendments to their applications to conform to the newly-adopted service rules. Without the required conforming amendments, the pending applications would not meet the NGSO FSS rules. The applicants will also be required to file applications for blanket Earth station authorization for multiple, technically identical Earth stations. These applications will allow the Commission and concerned co-frequency services to ensure that NGSO FSS Earth stations do not exceed power limits that protect other services. Licensees authorized in the NGSO FSS will be required to filed certifications that they meet scheduled milestones for constructing and launching their space stations. This information is required to ensure that licensees who do not build their licensed systems do not waste valuable public frequency resources. Finally, licensees will be required to file annual reports, which are also needed to ensure that valuable public frequencies resources are not wasted.

Final Regulatory Flexibility Certification

9. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (a) Is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the Small Business Administration (SBA).

10. The objective of the *Report and Order* and of this proceeding is to assign the NGSO FSS spectrum to satellite systems operators who can implement their proposals in a manner that serves the public interest. The final rules in the *Report and Order* will reduce regulatory burdens and, with minimal disruption to existing FCC permittees and licensees, result in the continued development of NGSO FSS and other satellite services to the public.

11. Neither the Commission nor the U.S. Small Business Administration has developed a small business size standard specifically for NGSO FSS licensees. The appropriate size standard is therefore the SBA standard for Satellite Telecommunications, which provides that such entities are small if they have $12.5 million or less in annual revenues.

12. The rules adopted in this *Report and Order* apply only to entities providing NGSO FSS. Small businesses will not have the financial ability to become NGSO FSS system operators because of the high implementation costs, including construction of satellite space stations and rocket launch, associated with satellite systems and services. Since the spectrum and orbital resources available for assignment are not open to new entrants, we estimate that only the seven applicants whose applications are pending will be authorized by the Commission to provide these services. None of the seven applicants is a small business because each has revenues in excess of $11 million annually or has parent companies or investors that have revenues in excess of $11 million annually.

13. Therefore, we certify that the rules adopted in this *Report and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this *Report and Order*, including this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the *Report and Order* and this final certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.

Ordering Clauses

14. Pursuant to sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r), this

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Report and Order is adopted, and part 25 of the Commission's Rules is amended.

15. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order,* including the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A); and shall also send a copy of this *Report and Order,* including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 605(b).

List of Subjects 47 CFR Part 25

Satellites.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303; 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

2. Section 25.114 is amended by adding paragraph (c) (22) to read as follows:

§ 25.114 Applications for space station authorizations.

* * * * *

(c) * * *

(22) Applications for authorizations in the non-geostationary satellite orbit fixed-satellite service (NGSO FSS) in the bands 10.7 GHz to 14.5 GHz shall also provide all information specified in § 25.146.

3. Section 25.115 is amended by adding paragraph (f) to read as follows:

§ 25.115 Application for earth station authorizations.

* * * * *

(f) User transceivers in the non-geostationary satellite orbit fixed-satellite service in the 11.7–12.2 GHz, 12.2–12.7 GHz and 14.0–14.5 GHz bands need not be individually licensed. Service vendors may file blanket applications for transceiver units using FCC Form 312, Main Form and Schedule B, and shall specify the number of terminals to be covered by the blanket license. Each application for a blanket license under this section shall include the information described in § 25.146. Any earth stations that are not user transceivers, and which transmit in the non-geostationary satellite orbit fixed-satellite service in the 10.7–11.7 GHz, 12.75–13.15 GHz, 13.2125–13.25 GHz, and 13.75–14.0 GHz bands must be individually licensed, pursuant to paragraph (a) of this section.

4. Section 25.146 is amended by adding paragraphs (g) through (m) to read as follows:

§ 25.146 Licensing and operating authorization provisions for the non-geostationary satellite orbit fixed-satellite service (NGSO FSS) in the bands 10.7 GHz to 14.5 GHz.

* * * * *

(g) *System License.* Applicants authorized to construct and launch a system of technically identical non-geostationary satellite orbit fixed satellite service satellites will be awarded a single "blanket" license covering a specified number of space stations to operate in a specified number of orbital planes.

(h) In addition to providing the information specified in § 25.114 above, each NGSO FSS applicant shall provide the following:

(1) A demonstration that the proposed system is capable of providing fixed-satellite services on a continuous basis throughout the fifty states, Puerto Rico and the U.S. Virgin Islands, U.S.; and

(2) A demonstration that the proposed system be capable of providing fixed-satellite services to all locations as far north as 70 deg. latitude and as far south as 55 deg. latitude for at least 75 percent of every 24-hour period; and

(3) Sufficient information on the NGSO FSS system characteristics to properly model the system in computer sharing simulations, including, at a minimum, NGSO hand-over and satellite switching strategies, NGSO satellite beam patterns, NGSO satellite antenna patterns and NGSO earth station antenna patterns. In particular, each NGSO FSS applicant must explain the switching protocols it uses to avoid transmitting while passing through the geostationary satellite orbit arc, or provide an explanation as to how the power-flux density limits in § 25.208 are met without using geostationary satellite orbit arc avoidance. In addition, each NGSO FSS applicant must provide the orbital parameters contained in Section A.3 of Annex 1 to Resolution 46. Further, each NGSO FSS applicant must provide a sufficient technical showing to demonstrate that the proposed non-geostationary satellite orbit system meets the power-flux density limits contained in § 25.208, as applicable, and

(4) A description of the design and operational strategies that it will use, if any, to mitigate orbital debris. Each applicant must submit a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry of the spacecraft.

(i) Considerations involving transfer or assignment applications.

(1) "Trafficking" in bare licenses issued pursuant to paragraph (g) of this section is prohibited.

(2) The Commission will review a proposed transaction to determine if the circumstances indicate trafficking in licenses whenever applications (except those involving *pro forma* assignment or transfer of control) for consent to assignment of a license, or for transfer of control of a licensee, involve facilities licensed pursuant to paragraph (g) of this section. At its discretion, the Commission may require the submission of an affirmative, factual showing (supported by affidavits of a person or persons with personal knowledge thereof) to demonstrate that no trafficking has occurred.

(j) Implementation Milestone Schedule. Each NGSO FSS licensee in the 10.7–12.7 GHz, 12.75–13.25 GHz and 13.75–14.5 GHz frequency bands will be required to enter into a non-contingent satellite manufacturing contract for the system within one year of authorization, to complete critical design review within two years of authorization, to begin physical construction of all satellites in the system within two and a half years of authorization, to complete construction and launch of the first two satellites within three and a half years of grant, and to launch and operate its entire authorized system within six years of authorization. Each NGSO FSS licensee in the 10.7–12.7 GHz, 12.75–13.25 GHz and 13.75–14.5 GHz frequency bands must submit certifications of milestone compliance within 10 days following a milestone specified in its authorization.

(k) *Reporting Requirements.* All NGSO FSS licensees in the 10.7–12.7 GHz, 12.75–13.25 GHz and 13.75–14.5 GHz frequency bands shall, on June 30th of the first year following launch of the first two space stations in their system, and annually thereafter, file a report with the International Bureau and the Commission's Laurel, Maryland field office containing the following information:

(1) Status of space station construction and anticipated launch date, including any major problems or delay encountered;

(2) Identification of any space station(s) not available for service or otherwise not performing to specifications, the cause(s) of these difficulties, and the date any space station was taken out of service or the malfunction identified.

(l) Replacement of Space Stations within the System License Term. Licensees of NGSO FSS systems in the 10.7–12.7 GHz, 12.75–13.25 GHz and 13.75–14.5 GHz frequency bands authorized through a blanket license pursuant to paragraph (g) of this section need not file separate applications to launch and operate technically identical replacement satellites within the term of the system authorization. However, the licensee shall certify to the Commission, at least thirty days prior to launch of such replacement(s) that:

(1) The licensee intends to launch a space station into the previously-authorized orbit that is technically identical to those authorized in its system authorization and

(2) Launch of this space station will not cause the licensee to exceed the total number of operating space stations authorized by the Commission.

(m) In-Orbit Spares. Licensees need not file separate applications to operate technically identical in-orbit spares authorized as part of the blanket license pursuant to paragraph (g) of this section. However, the licensee shall certify to the Commission, within 10 days of bringing the in-orbit spare into operation, that operation of this space station did not cause the licensee to exceed the total number of operating space stations authorized by the Commission.

[FR Doc. 02–20817 Filed 8–15–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

RIN 1018–AH88

Procedures for Establishing Spring/Summer Subsistence Harvest Regulations for Migratory Birds in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) adopts regulations establishing procedures for implementing a spring/summer migratory bird subsistence harvest in Alaska. The 1916 Convention for the Protection of Migratory Birds Between the United States and Great Britain (for Canada) established a closed season for the taking of migratory birds between March 10 and September 1. Residents of northern Alaska and Canada traditionally harvested migratory birds for nutritional purposes during the spring and summer months. The governments of Canada, Mexico, and the United States recently amended the 1916 Convention and the subsequent 1936 Mexico Convention for the Protection of Migratory Birds and Game Mammals. The amended treaties provide for the legal subsistence harvest of migratory birds and their eggs in Alaska and Canada during the closed season. This rule establishes procedures for implementing that change and for incorporating subsistence management into the continental migratory bird management program.

DATES: This rule is effective August 16, 2002.

ADDRESSES: The administrative record for this rule may be viewed at the office of the Regional Director, Alaska Region, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska, 99503.

FOR FURTHER INFORMATION CONTACT: Fred Armstrong, (907) 786–3887 or Bill Ostrand, (907) 786–3849, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, Alaska 99503.

SUPPLEMENTARY INFORMATION:

What Events Led to This Action?

By the beginning of the twentieth century, this nation began to witness the depletion of many species of migratory birds. Commercial or "market" hunting took a significant toll as restaurant owners paid top dollar for wild birds and the millinery industry demanded large numbers of feathers for hats. Individual States did not establish regulations or other management programs to adequately protect the migratory bird resources.

In 1916, the United States and Great Britain (on behalf of Canada) signed the Convention for the Protection of Migratory Birds in Canada and the United States. The treaty prohibited market hunting and specified a closed season on taking migratory game birds between March 10 and September 1 of each year. In 1936, the United States and Mexico signed the Convention for the Protection of Migratory Birds and Game Mammals. The Mexico treaty prohibited the taking of wild ducks between March 10 and September 1. Neither treaty, however, took into account and allowed for the traditional harvest of migratory birds by northern indigenous people during the spring and summer months. This harvest, which had occurred for centuries, was necessary to the subsistence lifestyle of the northern people and thus continued despite the closed season.

The Canada treaty and the Mexico treaty, as well as the other migratory bird treaties with Japan (1972) and Russia (1976), have been implemented in the United States through the Migratory Bird Treaty Act (MBTA). The courts have construed the MBTA as prohibiting the Federal Government from permitting any harvest of migratory birds that is inconsistent with the terms of any of the migratory bird treaties. The restrictive terms of the Canada and Mexico treaties thus prevented the Federal Government from permitting the traditional subsistence harvest of migratory birds during spring and summer in Alaska. To remedy this situation, the United States negotiated Protocols amending both the Canada and Mexico treaties to allow for spring/summer subsistence harvest of migratory birds by indigenous inhabitants of identified subsistence harvest areas in Alaska. The U.S. Senate approved the amendments to both treaties in 1997.

What Will the Amended Treaty Accomplish?

The major goals of the amended treaty with Canada are to allow for traditional subsistence harvest and to improve conservation of migratory birds by allowing effective regulation of this harvest. The amended treaty with Canada allows permanent residents of villages within subsistence harvest areas, regardless of race, to continue harvesting migratory birds between March 10 and September 1 as they have done for thousands of years. The Letter of Submittal from the Department of State to the White House states that lands north and west of the Alaska Range and within the Alaska Peninsula, Kodiak Archipelago, and the Aleutian Islands generally qualify as subsistence harvest areas. Treaty language provides for further refinement of this determination by management bodies.

The amendments, however, are not intended to cause significant increases in the take of migratory birds relative to their continental population sizes. Therefore, the Letter of Submittal places limitations on who is eligible to harvest and where they can harvest migratory birds. Anchorage, the Matanuska-Susitna and Fairbanks North Star Boroughs, the Kenai Peninsula roaded

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area, the Gulf of Alaska roaded area, and Southeast Alaska generally do not qualify as subsistence harvest areas. Limited exceptions may be made so that some individual communities within these excluded areas could qualify for designation as subsistence harvest areas for specific purposes. For example, future regulations could allow some villages in Southeast Alaska to collect gull eggs.

The amended treaty with Canada calls for creation of management bodies to ensure an effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds. According to the Letter of Submittal, management bodies are to include Alaska Native, Federal, and State of Alaska representatives as equals. They will develop recommendations for, among other things: seasons and bag limits, methods and means of take, law enforcement policies, population and harvest monitoring, education programs, research and use of traditional knowledge, and habitat protection. The management bodies will involve village councils to the maximum extent possible in all aspects of management.

Relevant recommendations developed by the management bodies will be submitted to the Service and to the Flyway Councils. Restrictions in harvest levels for the purpose of conservation will be shared equitably by users in Alaska and users in other States, taking into account nutritional needs of subsistence users in Alaska. The treaty amendments are not intended to create a preference in favor of any group of users in the United States or to modify any preference that may exist. Neither do they create any private rights of action under U.S. law.

What Has the Service Accomplished Since Ratification of the Amended Treaty?

In 1998, we began a public involvement process to determine how to structure management bodies in order to provide the most effective and efficient involvement for subsistence users. We began by publishing a notice in the **Federal Register** stating that we intended to establish management bodies to implement the spring and summer subsistence harvest (63 FR 49707, September 17, 1998). Public forums attended by the Service, the Alaska Department of Fish and Game, and the Native Migratory Bird Working Group were held to provide information regarding the amended treaties and to listen to the needs of subsistence users. The Native Migratory Bird Working Group was a consortium of Alaska Natives formed by the Rural Alaska Community Action Program to represent Alaska Native subsistence hunters of migratory birds during the treaty negotiations. We held forums in Nome, Kotzebue, Fort Yukon, Allakaket, Naknek, Bethel, Dillingham, Barrow, and Copper Center. We led additional briefings and discussions at the annual meeting of the Association of Village Council Presidents in Hooper Bay and for the Central Council of Tlingit & Haida Indian Tribes in Juneau. Staff members from Alaska national wildlife refuges conducted public meetings in the villages within their refuge areas and discussed the amended treaties at those meetings.

On July 1, 1999, we published in the **Federal Register** (64 FR 35674) a notice of availability of an options document, entitled "Forming management bodies to implement legal spring and summer migratory bird subsistence hunting in Alaska." This document described four possible models for establishing management bodies and was released to the public for review and comment. We mailed copies of the document to approximately 1,350 individuals and organizations, including all tribal councils and municipal governments in Alaska, Native regional corporations and their associated nonprofit organizations, the Alaska Department of Fish and Game, Federal land management agencies, representatives of the four Flyway Councils, conservation and other affected organizations, and interested businesses and individuals. We distributed an additional 600 copies at public meetings held in Alaska to discuss the four models. We also made the document available on the U.S. Fish and Wildlife Service web page.

During the public comment period, we received 60 written comments addressing the formation of management bodies. Of those 60 comments, 26 were from tribal governments, 20 from individuals, 10 from non-government organizations, 2 from the Federal Government, 1 from the State of Alaska, and 1 from the Native Migratory Bird Working Group. In addition to the 60 written comments, 9 of the 10 Federal Subsistence Regional Advisory Councils passed resolutions regarding the four models presented.

On March 28, 2000, we published in the **Federal Register** (65 FR 16405) the Notice of Decision, "Establishment of Management Bodies in Alaska To Develop Recommendations Related to the Spring/Summer Subsistence Harvest of Migratory Birds." This notice described the way in which management bodies would be established and organized.

Based on the wide range of views expressed on the options document, the decision incorporated key aspects of two of the models. The decision established one statewide management body consisting of 1 Federal member, 1 State member, and 7–12 Alaska Native members, with each component serving as equals. Decisions and recommendations of the Council will be by consensus wherever possible; however, if a vote becomes necessary, each component, Federal, State, and Native, will have one vote. This body will set a framework for annual regulations for spring and summer subsistence harvest of migratory birds. Seven regional bodies, consisting of local subsistence users working within the framework, will forward their recommendations to the statewide management body. That body will act on those recommendations and forward its recommendations to the Service and to the Flyway Councils.

In April 2000, we met with the Alaska Department of Fish and Game and the Native Migratory Bird Working Group to discuss bylaws for the statewide management body. At that meeting, we decided to name the statewide management body the "Alaska Migratory Bird Co-management Council." On October 30, 2000, the Co-management Council convened for the first time and began preparation for the development of recommendations for regulations to be implemented in spring of 2003. The regulations in this document will: (1) Provide the authority for the Co-management Council to operate; (2) establish the procedures by which the Co-management Council will conduct its business; (3) provide authority to the Co-management Council to make recommendations regarding applicability and scope of subsistence harvest and who is eligible to participate in subsistence harvest; (4) give the Co-management Council the authority to set up a process by which migratory birds can be used and possessed under subsistence harvest regulations; (5) define Regional management areas; (6) describe the relationship the rule has to the process for developing national hunting regulations for migratory birds, and (7) allow for future development of regulations pertaining to methods and means of harvest traditionally used for subsistence purposes. At future meetings, the Co-management Council will continue to develop recommendations on harvest and methods and means of harvest as necessary to protect the migratory bird resource.

Summary of Public Involvement

This rule places into regulation many of the decisions that were published in the March 28, 2000, **Federal Register** Notice (65 FR 16405). Prior to that Decision Notice being published, we conducted an extensive public involvement process consisting of public meetings in many regions of Alaska. On April 8, 2002, we published in the **Federal Register** (67 FR 16709) a proposed rule to establish procedures for implementing a spring/summer migratory bird subsistence harvest in Alaska. The proposed rule provided for a public comment period of 46 days. We mailed copies of the proposed rule to more than 1,200 individuals and organizations that were on the project mailing list. We conducted two public meetings in Anchorage where people could ask questions or provide formal comment.

By the close of the public comment period on May 24, 2002, we had received written responses from 11 entities. Four of the responses were from individuals, five from organizations, one from the Alaska Legislature, and one from the Alaska Department of Fish and Game. Several of the comments were of an editorial nature or suggesting alternative wording for clarification. We completed those changes when appropriate. Many comments requested or suggested changes to statements that came directly from the Protocol, the Senate Report, or the Letter of Submittal from the State Department to the White House. We declined to alter what we believed to be the intent of the Protocol. The following analysis addresses those comments that directly address the content of the proposed rule, and that do not conflict with the Protocol language.

Response to Public Comments

Most sections of the proposed rule were addressed by commenters. This discussion addresses comments section by section beginning with those of a general nature.

General Comments

A respondent requested that the regulations require research and monitoring and publication of an annual report on the findings. The ability to monitor the harvest is a major advantage of legalizing spring and summer subsistence harvesting of migratory birds and their eggs. Harvest monitoring will be expanded. The regulations state that the Alaska Migratory Bird Co-management Council (AMBCC) will make recommendations concerning research and use of traditional knowledge. Such recommendations will supplement research efforts currently being conducted. Research results will be published upon completion. Subsistence harvest data are published annually in the Service's Pacific Flyway Data Book. Accomplishing such activities continues to be a matter of policy. Regulating them appears unnecessary and restrictive.

An individual requested that the word "Native" be replaced throughout the regulations with the term "indigenous inhabitant." The Letter of Submittal differentiates between the two terms and, therefore, we chose to be consistent with the use of those terms as they are applied in the Letter. In order to be consistent with the Letter of Submittal, the term "Native" is used to identify the composition of the management bodies. The term "indigenous inhabitants" refers to the eligibility of residents in a designated harvest area as defined in the Letter of Submittal. The elimination of one term or use of one term over another would misconstrue the explicit intent of Congress when they ratified the Treaty amendments. The same commenter also requested that the definition of "Native" be removed from the definitions in § 92.4. Because the term "Native" will remain in the final rule, we will not delete the definition.

A respondent stated that the heading of subpart C, Methods and Means, was too limiting in scope, because other types of regulations not needing to be published annually would be in this subpart. We agree and have changed the heading in the final rule to read "General Regulations Governing Subsistence Harvest."

Supplementary Information

A commenter noted that the Supplementary Information referenced sources other than the Protocol language. A Letter of Submittal prepared by the State Department accompanied the Protocol to the White House. Some of the language in this section referencing the Protocol actually is in the Letter of Submittal. Referencing in the final rule is clarified.

A commenter stated that the scope of these regulations would be clearer if they used the term "spring and summer hunting" rather than the word "subsistence." We believe that the language in the proposed rule clearly stated that these regulations apply only to the spring and summer subsistence harvest of migratory birds between the dates of March 10 and September 1. We have made the change, however, in those situations where it seemed to add clarification.

In the Supplementary Information we stated that the treaty amendments are not intended to create a preference in favor of any group of users in the United States. A commenter noted that the amendments do not create any rights to harvest birds. Both these points are stated in the Letter of Submittal. In the final rule, we have, therefore, added a statement that no private rights of action under U.S. law are created by the amended treaty.

In the section titled, "What Events Led to This Action?" we referred to subsistence zones. The Alaska Department of Fish and Game correctly noted that the term "zones" has a specific regulatory definition in part 20. To avoid confusion, we have referred to "subsistence harvest areas" in the final rule, and no longer use the term "zones."

In the paragraph addressing the Unfunded Mandates Reform Act, we stated that the cost to the partner organizations for coordinating the regional programs would be approximately $300,000 for travel and associated costs for regional meetings. One comment stated that the cost would exceed that amount and requested that the figure be increased. As stated in this section, the Service has entered into grant agreements to help offset those costs. During the first year of this project, the regional partners charged less than $150,000 to those grant agreements. No evidence exists at this time that the cost estimate quoted should be increased.

In the paragraph addressing Regulatory Planning and Review, we certified that this rule will not have an annual economic effect of $100 million. Using figures from a published report, we estimated that the maximum economic value derived from the consumption of harvested migratory birds in the spring and summer would be approximately $6 million. The Alaska Department of Fish and Game commented that we made assumptions in the calculations that led to an elevated value. We agree. The point of this paragraph is to demonstrate that the value is less than $100 million. Therefore, we attempted to demonstrate that the highest estimate would be substantially less than $100 million. Because of variations in data quality and quantity, and in species harvested throughout the State, statewide economic value estimates are not reliable. We therefore have added wording to the paragraph making clear that these figures are of little value for any purpose other than demonstrating a high-end economic impact for this project.

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Section 92.3 Applicability and Scope

One commenter said this section would allow the State of Alaska to regulate the spring and summer subsistence hunt without regard for the provisions of the Treaties and regulations. We do not agree. In section 92.3(e), the regulations clearly state that any laws and regulations enacted by the State under its other authorities must be consistent with the applicable international conventions, including the Protocol, the Migratory Bird Treaty Act, and the regulations adopted under this part. The State could not implement subsistence hunting regulations that would conflict with this Federal rule.

Another commenter noted an error in the dates of the open season regulated by part 20. We stated that the open season is between September 1 through March 10. It has been corrected in the final rule to reflect that the open season is from September 1 through March 10 and, therefore, includes both dates.

Section 92.4 Definitions

Two commenters requested changes to the definition of "immediate family." One noted that the definition included grandparents, but did not include grandchildren. "Immediate family" as described in the Letter of Submittal includes grandparents but not grandchildren. We agree that this is an oversight and have made the change to the definition in the final rule. The second commenter stated that the definition should include aunts, uncles, and cousins because extended family is important and is a part of Native traditions. Although the extended family may be important in traditional activities, the Letter of Submittal emphasizes the need to include immediate family members in the traditional migratory bird harvest, while meeting the purpose of the Protocol that states "* * * it is not the intent of this Protocol to cause significant increases in the take of species of migratory birds relative to their continental population sizes." Expanding the definition of immediate family to include extended family would not be consistent with that intent.

A commenter stated that a definition of "permanent resident" would be helpful to the understanding of eligibility under § 92.5. This is a term that was not defined in the Protocol language or in the accompanying documents. Since the writing of the proposed rule, the term has been defined by the AMBCC in a public meeting. We are, therefore, including that definition in the final rule. The same commenter stated that the regulation should be clear that the local tribal government is the entity that is responsible for identifying the permanent residents in their respective communities. No entity has yet been given the responsibility for determining who qualifies as a permanent resident. Each individual is expected to apply the definition to his or her own situation. If questioned by an enforcement officer, proof of residency must be available.

A commenter requested that the term "tribal" be eliminated from the definition of "partner organization or regional partner." The commenter referenced a dispute regarding tribal status of Alaska Natives other than for certain statutory purposes. The commenter stated that there is no purpose for specifying tribal involvement in this rule and that "federally recognized tribes" will be included within the purview of the phrase "regional or local organization, or local government." Although "federally recognized tribes" or "tribal organizations" are not specifically identified in the Protocol language or the accompanying language, it is not clear that those terms would be considered included within the purview of the phrase "regional or local organization, or a local government." It is our intention that tribes and tribal organizations have the same opportunity as local governments and regional and local organizations to be partner organizations. It should be clear, however, that none of these entities has preference in being so designated.

One commenter felt that the definition of "non-wasteful taking" was not adequate because the definition had no requirement for preserving harvested birds that were not immediately consumed. The definition has been changed to read, "* * * consumed or preserved for food."

A commenter stated a concern that the term, "for their own" in the definition of "subsistence" did not allow for traditional sharing and exchanging of birds among eligible subsistence users. Article II4(b)(i) of the amended Treaty states that harvesting "* * * shall be consistent with customary and traditional uses by such indigenous inhabitants for their own nutritional and other essential needs." The use of this term is essential for understanding that harvest is to be for certain subsistence needs only. The term, however, is intended to apply to eligible indigenous inhabitants collectively and not solely to individual users. The use of the term, therefore, does not restrict traditional sharing among eligible users. For further clarification we have changed "traditional harvest and use" to "traditional harvest or use."

At the request of a commenter, and for the purpose of clarification, we have added the words "during the spring and summer" to the end of the definition of the term "eligible person".

Section 92.5 Who is Eligible to Participate?

One commenter suggested additional wording in paragraph (a). The proposed rule states that any person may submit a petition to exclude a previously included community. Although the proposed rule states that the AMBCC will make recommendations regarding the petition, it is not clearly stated who is to receive the petition. Wording has been added to the final rule stating that petitions will first be considered by the appropriate regional management body before being acted on by the AMBCC.

The suggestion was made that in paragraph (b) we add the words "spring and summer" before the words "subsistence harvest area." The sentence now reads "* * * may petition the Co-management Council through their designated regional management body for designation as a spring and summer subsistence harvest area."

We received several comments regarding paragraph (c). Several of those comments indicated that the paragraph was vague and that it did not adequately address the requirements of the amended Treaty, that we are to accommodate traditional spring and summer harvests without creating new traditions or increasing harvests. We have re-written the entire paragraph to accommodate those concerns. We also responded to a request for clarity by adding the words "spring and summer" to the heading of paragraph (c).

Numerous other comments addressed the five criteria in paragraph (c). Comments expressed concern that the 1916 date used in criterion (1) was too far back for data to be available when determining traditional use patterns. Also, some communities have moved and been renamed, and have developed a traditional use of migratory birds since 1916. They would be unable to successfully petition for inclusion. We agree that the earlier date, which was based upon the signing of the original migratory bird treaty with Canada, was too restrictive. The argument could certainly be made that communities with a demonstrated use pattern prior to the effective date of the amended treaty should be able to petition for inclusion. We have, therefore, changed the date from 1916 to 1999.

Several commenters stated that those criteria used to establish a traditional subsistence harvest should not be limited to migratory birds, and that a subsistence use of other fish and wildlife species should be sufficient to qualify for a future subsistence harvest of migratory birds. We believe that eligibility for future subsistence harvest of migratory birds should be dependent upon past reliance on that same resource. One of the purposes of the amended treaty is to allow for the regulated continuation of past practices within designated subsistence harvest areas. We, therefore, will not add other fish and wildlife species to the list of criteria.

A request was made to change criterion (3) by adding the words "through oral traditions, family training, and cultural community activities or events." The purpose of the recommended change would be to better tailor the criteria to define the cultures and traditions of Alaska Native people. We believe, however, that the additional wording unnecessarily limits the manner in which such knowledge could be handed down through the generations. Criterion (3) remains unchanged in the final rule.

A commenter stated that paragraph (d) does not clearly identify where invited family members may participate. We feel the paragraph is clear on that point, but did need to state that participation requires the permission of the Village Council. Wording has been added accordingly.

Section 92.6 Use and Possession of Migratory Birds

A commenter stated that this rule should allow for the purchase of feathers for dance regalia, because that is part of the tradition of some Native cultures. Because the purchase and sale of migratory birds and their parts is a violation of the Migratory Bird Treaty Act, it is not in the purview of this rule to allow for the purchase of feathers.

Section 92.10 Alaska Migratory Bird Co-management Council

A respondent asked that we add to the list of AMBCC roles and responsibilities the facilitation of the development of inter-regional conservation plans, harvest strategies, and management programs for shared populations of migratory birds. We believe this function is adequately stated in paragraph (c)(7).

Paragraph (c)(8) has been re-worded as suggested by a commenter in order to make it less awkward and to be clear that we are referring to the AMBCC regional representatives.

A commenter wanted more specific language in paragraph (d)(3) that all AMBCC meetings are open to the public. Language has been added to the final rule to accommodate that request.

Section 92.11 Regional Management Areas

A commenter stated that identified partner organizations must be willing and able to coordinate the regional programs on behalf of all subsistence hunters within the region. We have added the word "all" to accommodate that request.

Section 92.12 Relationship to the Process for Developing National Hunting Regulations for Migratory Game Birds

A commenter stated that paragraph (b) was not clear in the intention that the annual regulations in subpart D would be published separately and apart from part 20 of title 50 of the Code of Federal Regulations (CFR). Wording has been added to this paragraph to help clarify the issue. We intend that annual regulations published pursuant to part 20 and those published pursuant to part 92 will be subject to the same review process and submitted to the **Federal Register** at approximately the same time. They will be published, however, within their respective parts in the CFR. Section 92.30, paragraph (d), states that §§ 92.31–92.39 provide for the annual harvest of migratory birds and their eggs during spring and summer for subsistence users in Alaska. Text for those sections will be published in the **Federal Register** this fall, to be in place for the spring and summer of 2003.

Statutory Authority

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 *et seq.*), which implements the 1916 Convention, as amended, between the United States and Great Britain (for Canada) for the protection of migratory birds.

Specifically, these regulations are issued pursuant to 16 U.S.C. 712(1), which authorizes the Secretary of the Interior to "issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds."

Effective Date

Under the Administrative Procedure Act, our normal practice is to publish rules with a 30-day delay in effective date. But in this case, we are using the "good cause" exemption under 5 U.S.C. 553(d)(3) to make this rule effective upon publication in order to ensure conservation of the resource for the upcoming spring/summer subsistence harvest. The rule needs to be made effective immediately for the following reasons: (1) The AMBCC has spent a considerable amount of time developing recommendations to the SRC to legalize the spring/summer harvest of migratory birds in Alaska. The last meeting of the SRC for the 2002–03 season is scheduled to meet on July 31 and August 1, 2002, to consider these and other recommendations. These procedural regulations give the AMBCC the authority to provide recommendations. If this rule is not in effect when the SRC meets, a question of whether or not the recommendations are legal will arise and leave the AMBCC vulnerable to legal challenges; and (2) although it is very difficult to get three different and distinct groups of people together (state, federal and Alaska Native) with a common goal and be able to move forward as they have, all three parties to the AMBCC have a commitment to develop a management system that will provide conservation measures for the spring/summer harvest of migratory birds in Alaska. That commitment to conservation is the foundation for the AMBCC and success will be measured by the harmony that has been created. Anything to jeopardize it at this early stage of development could impact the structure of the AMBCC. The expediency of the publication of the procedural regulations will ensure that the AMBCC recommendations are heard and acted upon by the Service.

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this document is not a significant rule subject to OMB review under E.O. 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. This rule is administrative, technical, and procedural in nature, establishing the procedures for implementing spring and summer harvest of migratory birds as provided for in the amended Convention with Canada. The rule does not provide for new or additional hunting opportunities and therefore will have minimal economic or environmental impact.

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This rule benefits those participants who engage in the subsistence harvest of migratory birds in Alaska in two identifiable ways: first, participants receive the consumptive value of the birds harvested and second, participants get the cultural benefit associated with the maintenance of a subsistence economy and way of life. The Service can estimate the consumptive value for birds harvested under this rule but does not have a dollar value for the cultural benefit of maintaining a subsistence economy and way of life.

The economic value derived from the consumption of the harvested migratory birds has been estimated using the results of a paper by Robert J. Wolfe titled "Subsistence Food Harvests in Rural Alaska, and Food Safety Issues," August 13, 1996." Using data from Wolfe's paper and applying it to the areas that will be included in this process, a maximum economic value of $6 million is determined. This is the estimated economic benefit of the consumptive part of this rule for participants in subsistence hunting. The cultural benefits of maintaining a subsistence economy and way of life can be of considerable value to the participants, and is not included in this figure.

b. This rule will not create inconsistencies with other agencies' actions. We are the Federal agency responsible for the management of migratory birds, coordinating with the Alaska Department of Fish and Game on management programs within the State of Alaska. The State of Alaska is a member of the AMBCC.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The rule does not affect entitlement programs.

d. This rule will not raise novel legal or policy issues. The annual subsistence harvest regulations will go through the same National regulatory process as the existing annual migratory bird hunting regulations in 50 CFR part 20.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The rule legalizes a pre-existing subsistence activity, and the resources harvested will be consumed by the harvesters or persons within their local community.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, as discussed in the Regulatory Planning and Review section above.

a. This rule does not have an annual effect on the economy of $100 million or more. It will legalize and regulate a traditional subsistence activity. It will not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns.

The commodities being regulated under this rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this rule derives from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska would qualify as small businesses. The Service has no reason to believe that this rule will lead to a disproportionate distribution of benefits.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

c. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule deals with the harvesting of wildlife for personal consumption. It does not regulate the marketplace in any way to generate effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certify pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities. A statement containing the information required by this Act is therefore not necessary.

Participation on regional management bodies and the Co-management Council will require travel expenses for some Alaska Native organizations and local governments. In addition they will assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than $300,000 per year. In the Notice of Decision, 65 FR 16405, March 28, 2000, we identified 12 partner organizations to be responsible for administering the regional programs. When possible, we will make annual grant agreements available to the partner organizations to help offset their expenses. The Alaska Department of Fish and Game will incur expenses for travel to the Co-management Council meetings and to meetings of the regional management bodies. In addition, the State will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed $100,000 per year, but should not exceed $150,000 per year.

Paperwork Reduction Act

This rule has been examined under the Paperwork Reduction Act of 1995, and has been found to contain no information collection requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Federalism Effects

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 13132. We worked with the State of Alaska on development of these regulations.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of Section 3 of the Order.

Takings Implication Assessment

This rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. Therefore, in accordance with Executive Order 12630, this rule does not have significant takings implications.

Government-to-Government Relations With Native American Tribal Governments

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), and Executive Order 13175, 65 FR 67249 (November 6, 2000), concerning consultation and coordination with Indian Tribal Governments, we have consulted with Alaska tribes, evaluated the rule for possible effects on them and have determined that there are no significant effects. This rule establishes procedures by which the individual tribes in Alaska will be able to become significantly involved in the annual regulatory process for spring and summer subsistence harvesting of migratory birds and their eggs. The rule will legalize the subsistence harvest for tribal members, as well as for other indigenous inhabitants.

Endangered Species Act Consideration

Prior to issuance of annual spring and summer subsistence regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that harvesting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy their critical habitats, and that it is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change recommendations for annual regulations.

National Environmental Policy Act Consideration

We determined that establishing the procedures for future development of subsistence harvest regulations does not require an environmental assessment because the impacts to the environment are negligible. We therefore filed a categorical exclusion dated April 30, 1999. Copies of the categorical exclusion are available at the address shown in the section of this document entitled, **ADDRESSES**. An environmental assessment will be prepared for the annual subsistence take regulations due to be published later as a proposed rule in the summer of 2002.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only allows for traditional subsistence harvest and improves conservation of migratory birds by allowing effective regulation of this harvest, it is not a significant regulatory action under Executive Order 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 92

Hunting, Reporting and recordkeeping requirements, Subsistence, Treaties, Wildlife.

For the reasons identified in the preamble, the U.S. Fish and Wildlife Service adds part 92 to subchapter G of chapter 1, title 50 of the Code of Federal Regulations, to read as follows:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

Subpart A—General Provisions

Sec.
92.1 Purpose of regulations.
92.2 Authority.
92.3 Applicability and scope.
92.4 Definitions.
92.5 Who is eligible to participate?
92.6 Use and possession of migratory birds.
92.7–92.9 [Reserved]

Subpart B—Program Structure

92.10 Alaska Migratory Bird Co-management Council.
92.11 Regional management areas.
92.12 Relationship to the process for developing national hunting regulations for migratory game birds.
92.13–92.19 [Reserved]

Subpart C—General Regulations Governing Subsistence Harvest

92.20—92.29 [Reserved]

Subpart D—Annual Regulations Governing Subsistence Harvest

92.30 General overview of regulations.
92.31–92.39 [Reserved]

Authority: 16 U.S.C. 703–712.

Subpart A—General Provisions

§ 92.1 Purpose of regulations.

The regulations in this part implement the Alaska migratory bird subsistence program as provided for in Article II(4)(b) of the 1916 Convention for the Protection of Migratory Birds in Canada and the United States (the "Canada Treaty"), as amended.

§ 92.2 Authority.

The Secretary of the Interior issues the regulations in this part under the authority granted to the Secretary by the Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703–712.

§ 92.3 Applicability and scope.

(a) *In general.* The regulations in this part apply to all eligible persons harvesting migratory birds and their eggs for subsistence purposes in Alaska between the dates of March 10 and September 1. The provisions in this part do not replace or alter the regulations set forth in part 20 of this chapter, which relate to the hunting of migratory game birds and crows during the regular open season from September 1 through March 10. The provisions set forth in this part implement the exception to the closed season, which authorizes the taking of migratory birds in Alaska for subsistence purposes between March 10 and September 1.

(b) *Land ownership:* This part does not alter the legal authorities of Federal and State land managing agencies or the legal rights of private land owners to close their respective lands to the taking of migratory birds.

(c) *Federal public lands.* The provisions of this part are in addition to, and do not supersede, any other provision of law or regulation pertaining to national wildlife refuges or other federally managed lands.

(d) *Migratory bird permits.* The provisions of this part do not alter the terms of any permit or other authorization issued pursuant to part 21 of this chapter.

(e) *State laws for the protection of migratory birds.* No statute or regulation of the State of Alaska relieves a person from the restrictions, conditions, and requirements contained in this part. Nothing in this part, however, prevents the State of Alaska from making and enforcing laws or regulations that are consistent with the regulations in this part, the conventions between the United States and any foreign country for the protection of migratory birds, and the Migratory Bird Treaty Act, and that give further protection to migratory birds.

§ 92.4 Definitions.

The following definitions apply to all regulations contained in this part:

Alaska Native means the same as "Native," defined in section 3(b) of the Alaska Native Claims Settlement Act, 16 U.S.C. 1602(b).

Co-management Council means the Alaska Migratory Bird Co-management Council, consisting of Alaska Native, Federal, and State of Alaska representatives as equals.

Eligible person means an individual within the State of Alaska who qualifies to harvest migratory birds and their eggs for subsistence purposes during the spring and summer.

Excluded areas are defined in § 92.5.

Flyway Council means the Atlantic, Mississippi, Central, or Pacific Flyway Council.

Immediate family means spouse, children, parents, grandchildren, grandparents, and siblings.

Included areas are defined in § 92.5.

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Indigenous inhabitant means a permanent resident of a village within a subsistence harvest area, regardless of race.

Migratory bird, for the purposes of this part, means the same as defined in § 10.12 of this chapter. Species are listed in § 10.13 of this chapter.

Native means the same as "Alaska Native" as defined in this section.

Nonwasteful taking means making a reasonable effort to retrieve all birds killed or wounded, and retaining such birds in possession between the place where taken and the hunter's permanent or temporary place of residence, or to the location where the birds will be consumed or preserved for food.

Partner organization or regional partner means a regional or local organization, or a local or tribal government that has entered into a formal agreement with the U.S. Fish and Wildlife Service for the purpose of coordinating the regional programs necessary to involve subsistence hunters in the regulatory process described in this part.

Permanent resident means any person whose primary, permanent home for the previous 12 months was within a subsistence harvest area in Alaska. Whenever absent from this primary, permanent home, the person has the intention of returning to it. Factors demonstrating a person's primary, permanent home may include: an address listed on an Alaska Permanent Fund dividend application; an Alaska license to drive, hunt, fish, or engage in an activity regulated by a government entity; voter registration; location of residences owned, rented, or leased; location of stored household goods; the residence of the person's spouse, minor children, or dependents; tax documents; whether the person claims residence in another location for any purpose; or status as a tribal member of a tribe in a subsistence harvest area.

Service Regulations Committee means the Migratory Bird Regulations Committee of the U.S. Fish and Wildlife Service.

State means State of Alaska.

Subsistence means the customary and traditional harvest or use of migratory birds and their eggs by eligible indigenous inhabitants for their own nutritional and other essential needs.

Subsistence harvest areas encompass customary and traditional hunting areas of villages in Alaska that qualify for a spring or summer subsistence harvest of migratory birds under this part.

Village is defined as a permanent settlement with one or more year-round residents.

§ 92.5 Who is eligible to participate?

If you are a permanent resident of a village within a subsistence harvest area, you will be eligible to harvest migratory birds and their eggs for subsistence purposes in the spring and summer.

(a) *Included areas.* Village areas located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, or in areas north and west of the Alaska Range are subsistence harvest areas, except that villages within these areas not meeting the criteria for a subsistence harvest area as identified in paragraph (c) of this section will be excluded from the spring and summer subsistence harvest. Any person may request the Co-management Council to recommend that an otherwise included area be excluded by submitting a petition stating how the area does not meet the criteria identified in paragraph (c) of this section. The Co-management Council will forward petitions to the appropriate regional management body for review and recommendation. The Co-management Council will then consider each petition and will submit to the U.S. Fish and Wildlife Service any recommendations to exclude areas from the spring and summer subsistence harvest. The U.S. Fish and Wildlife Service will publish any approved recommendations to exclude areas in subpart D of this part.

(b) *Excluded areas.* Village areas located in Anchorage, the Matanuska-Susitna or Fairbanks North Star Boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, or Southeast Alaska generally do not qualify for a spring or summer harvest. Communities located within one of these areas may petition the Co-management Council through their designated regional management body for designation as a spring and summer subsistence harvest area. The petition must state how the community meets the criteria identified in paragraph (c) of this section. The Co-management Council will consider each petition and will submit to the U.S. Fish and Wildlife Service any recommendations to designate a community as a spring and summer subsistence harvest area. The U.S. Fish and Wildlife Service will publish any approved recommendations to designate a community as a spring and summer subsistence harvest area in subpart D of this part.

(c) *Criteria for determining designation as a spring and summer subsistence harvest area.* A previously excluded community may be included in the spring/summer harvest regulations if recommended by the Alaska Migratory Bird Co-management Council. The Alaska Migratory Bird Co-management Council will recommend designation of subsistence harvest areas based on a deliberative process using the best available information on nutritional and cultural needs and customary and traditional use. The Alaska Migratory Bird Co-management Council recommendations will accommodate traditional spring and summer harvests without creating new traditions or increasing harvest of migratory birds. Recommendations will be made based on the majority of factors and the weight of the evidence using the following criteria:

(1) A pattern of use recurring in the spring and summer of each year prior to 1999, excluding interruptions by circumstances beyond the user's control;

(2) The consistent harvest and use of migratory birds on or near the user's permanent residence;

(3) A use pattern that includes the handing down of knowledge of hunting skills and values from generation to generation;

(4) A use pattern in which migratory birds are shared or distributed among others within a definable community of persons; a community for purposes of subsistence uses may include specific villages or towns, with a historical pattern of subsistence use; and

(5) A use pattern that includes reliance for subsistence purposes upon migratory birds or their eggs and that meets nutritional and other essential needs including, but not limited to, cultural, social, and economic elements of the subsistence way of life.

(d) *Participation by residents in excluded areas.* In cases where it is appropriate to assist indigenous inhabitants in meeting their nutritional and other essential needs, or for the teaching of cultural knowledge to or by their immediate family members, residents of excluded areas may participate in the customary spring and summer subsistence harvest in a village's subsistence harvest area with the permission of the village council. Eligibility for participation will be developed and recommended by the Co-management Council and adopted or amended by regulations published in subpart D of this part.

§ 92.6 Use and possession of migratory birds.

Harvest and possession of migratory birds must be done using nonwasteful taking. You may not take birds for purposes other than human consumption. You may not sell, offer for sale, purchase, or offer to purchase migratory birds, their parts, or their eggs taken under this part. Nonedible by-products of migratory birds taken for food may be used for other purposes only by individuals qualified to possess those birds. You may possess migratory birds, their parts, and their eggs, taken under this part, only if you are an eligible participant as determined in § 92.5.

§§ 92.7—92.9 [Reserved]

Subpart B—Program Structure

§ 92.10 Alaska Migratory Bird Co-management Council.

(a) *Establishment.* The U.S. Fish and Wildlife Service hereby establishes, as authorized by the Protocol amending the Canada Treaty, a statewide management body to be known as the Alaska Migratory Bird Co-management Council.

(b) *Membership.* The Co-management Council must include Alaska Native, Federal, and State of Alaska representatives, as equals.

(1) The Federal and State governments will each seat one representative. The Federal representative will be appointed by the Alaska Regional Director of the U.S. Fish and Wildlife Service, and the State representative will be appointed by the Commissioner of the Alaska Department of Fish and Game. Regional partner organizations will seat 1 representative from each of the 7 regions identified in § 92.11(a), except that a region having more than 1 partner organization may send a representative from each partner organization for a maximum of 12 regional representatives.

(2) The Federal and State representatives and the collective Native representatives will each have one vote, for a total of three votes for the entire council.

(c) *Roles and responsibilities.* The Co-management Council is authorized to:

(1) Hold public meetings for the purpose of conducting business related to spring and summer subsistence harvest of migratory birds;

(2) Develop recommendations for regulations governing the spring and summer subsistence harvest of migratory birds and their eggs;

(3) Develop recommendations for, among other things, law enforcement policies, population and harvest monitoring, education programs, research and use of traditional knowledge, and habitat protection;

(4) Develop procedures and criteria by which areas and communities can be determined to be eligible or ineligible for a spring/summer subsistence harvest;

(5) Provide guidelines to the regional management bodies each year for formulation of annual regulations;

(6) Consolidate regional recommendations and resolve interregional differences in order to prepare statewide recommendations;

(7) Establish committees to gather or review data, develop plans for Co-management Council actions, and coordinate programs with regional management bodies;

(8) Send regional representatives from the Co-management Council to meetings of the Pacific Flyway Council and to meetings of the other Flyway Councils as needed, and to meetings of the Service Regulations Committee;

(9) Elect officers; and

(10) Conduct other business as the Council may determine is necessary to accomplish its purpose.

(d) *Meetings.* Meetings of the Co-management Council will be open to the public. The Co-management Council will:

(1) Hold meetings at least twice annually;

(2) Conduct meetings in accordance with bylaws approved by the Co-management Council;

(3) Provide an opportunity at each meeting for public comment;

(4) Establish the dates, times, and locations of meetings; and

(5) Maintain a written record of all meetings.

(e) *Staff support.* Administrative support for the Co-management Council will be provided by the U.S. Fish and Wildlife Service and will include, but not be limited to:

(1) Making arrangements for the meeting rooms and associated logistics related to Co-management Council meetings;

(2) Preparing public notices announcing Co-management Council meetings;

(3) Maintaining records of discussions and actions taken by the Co-management Council;

(4) Coordinating with the Alaska Department of Fish and Game to provide technical information needed by the Co-management Council for its deliberations;

(5) Preparing documents and gathering information needed by the Co-management Council for its meetings; and

(6) Preparing the annual subpart D regulations package recommended by the Co-management Council for submission to the flyway councils and the Service Regulations Committee.

§ 92.11 Regional management areas.

(a) *Regions identified.* The Alaska Regional Director of the U.S. Fish and Wildlife Service hereby establishes seven geographic regions based on common subsistence resource use patterns. You may obtain maps delineating the boundaries of the seven regions from the U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503. The regions are identified as follows:

(1) Southeast, Gulf of Alaska and Cook Inlet;

(2) Aleutian/Pribilof Islands and Kodiak Archipelago;

(3) Bristol Bay;

(4) Yukon-Kuskokwim Delta;

(5) Bering Straits;

(6) Northwest Arctic and Arctic Slope; and

(7) Interior.

(b) *Regional partnerships.* The U.S. Fish and Wildlife Service will establish partner agreements with at least one partner organization in each of the seven regions. The partner organization identified must be willing and able to coordinate the regional program on behalf of all subsistence hunters within that region. A regional partner will:

(1) Organize or identify one or more management bodies within the region in which it is located.

(2) Determine how the management body for the region should be organized, the manner in which it should function, its size, who serves on it, the length of terms, methods of involving subsistence users, and other related matters.

(3) Coordinate regional meetings and the solicitation of proposals.

(4) Ensure appointment of a person to represent the region by serving on the Co-management Council. If a region consists of more than one partner organization, each partner organization may appoint a member to sit on the Co-management Council.

(5) Keep the residents of villages within the region informed of issues related to the subsistence harvest of migratory birds.

(6) Work cooperatively with the U.S. Fish and Wildlife Service and the Alaska Department of Fish and Game to gather harvest data, numbers of subsistence users, and other management data and traditional knowledge for the benefit of the management bodies.

(c) *Regional management bodies.* (1) Regional management bodies must provide a forum for the collection and expression of opinions and recommendations regarding spring and summer subsistence harvesting of migratory birds. They must develop requests and recommendations from the region to be presented to the Co-management Council for deliberation. They must provide for public

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participation in the meetings at which recommendations and requests are formulated.

(2) Requests and recommendations to the Co-management Council may involve seasons and bag limits, methods and means, law enforcement policies, population and harvest monitoring, education programs, research and use of traditional knowledge, habitat protection, and other concerns related to migratory bird subsistence programs.

(3) Regional management bodies may be established specifically for the purpose of carrying out the responsibilities identified in this part, or they may be existing entities that can add these responsibilities to their existing duties.

§ 92.12 Relationship to the process for developing national hunting regulations for migratory game birds.

(a) *Flyway councils.* (1) Proposed annual regulations recommended by the Co-management Council will be submitted to all flyway councils for review and comment. The Council's recommendations must be submitted prior to the SRC's last regular meeting of the calendar year in order to be approved for spring/summer harvest beginning March 11 of the following calendar year.

(2) Alaska Native representatives may be appointed by the Co-management Council to attend meetings of one or more of the four flyway councils to discuss recommended regulations or other proposed management actions.

(b) *Service regulations committee.* Proposed annual regulations recommended by the Co-management Council will be submitted to the Service Regulations Committee for their review and recommendation to the Service Director. Following the Service Director's review and recommendation, the proposals will be forwarded to the Department of Interior for approval. Proposed annual regulations will then be published in the **Federal Register** for public review and comment, similar to the annual migratory game bird hunting regulations (found in part 20 of this chapter). Final spring/summer regulations for Alaska will be published in the **Federal Register** in the preceding Fall.

§§ 92.13—92.19 [Reserved]

Subpart C—General Regulations Governing Subsistence Harvest

§§ 92.20—92.29 [Reserved]

Subpart D—Annual Regulations Governing Subsistence Harvest

§ 92.30 General overview of regulations.

(a) The taking, possession, transportation, and other uses of migratory birds are generally prohibited unless specifically authorized by regulation developed in accordance with the Migratory Bird Treaty Act. Therefore, harvesting migratory birds is prohibited unless regulations are established ensuring the protection of the various populations of migratory birds. Migratory bird population levels, production, and habitat conditions vary annually. These conditions differ within Alaska and throughout North America. Therefore, the regulations governing migratory bird hunting may include annual adjustments to keep harvests within acceptable levels.

(b) The development of the regulations in this part, like the development of the annual migratory game bird hunting regulations in part 20 of this chapter, involves annual data gathering programs to determine migratory bird population status and trends, evaluate habitat conditions, determine harvests, and consider other factors having an impact on the anticipated size of annual populations.

(c) The Service proposes annual migratory game bird hunting regulations in the **Federal Register** in the spring for seasons beginning September 1 of that year. Following consideration of additional biological information and public comment, the Service publishes supplemental proposals throughout the summer. These are also open to public comment.

(d) Sections 92.31 through 92.39 provide for the annual harvest of migratory birds and their eggs during spring and summer for subsistence users in Alaska.

§§ 92.31—92.39 [Reserved]

Dated: August 8, 2002.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–20717 Filed 8–15–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011005244–2011–02; I.D. 081202C]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of Fishery for *Loligo* Squid

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS announces that the directed fishery for *Loligo* squid in the exclusive economic zone (EEZ) will be closed effective 0001 hrs local time, August 16, 2002. Vessels issued a Federal permit to harvest *Loligo* squid may not retain or land more than 2,500 lb (1.13 mt) of *Loligo* squid per trip for the remainder of the quarter. This action is necessary to prevent the fishery from exceeding its Quarter III quota and allow for effective management of this stock.

DATES: Effective 0001 hours, August 16, 2002, through 0001 hours, October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail paul.h.jones@noaa.gov.0

SUPPLEMENTARY INFORMATION: Regulations governing the *Loligo* squid fishery are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described in § 648.21.

The 2002 specification of DAH for *Loligo* squid was set at 16,898 mt (67 FR 3623, January 25, 2002). This amount is allocated by quarter, as shown below.

TABLE. 1 *Loligo* QUARTERLY ALLOCATIONS.

Quarter	Percent	Metric Tons
I (Jan–Mar)	33.23	5,615
II (Apr–Jun)	17.61	2,976

TABLE. 1 *Loligo* QUARTERLY ALLOCATIONS.—Continued

Quarter	Percent	Metric Tons
III (Jul–Sep)	17.30	2,923
IV (Oct–Dec)	31.86	5,384
Total	100.00	16,898

Section 648.22 requires NMFS to close the directed *Loligo* squid fishery in the EEZ when 80 percent of the quarterly allocation is harvested in Quarters I, II and III, and when 95 percent of the total annual DAH has been harvested. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of *Loligo* squid permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**. The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, has determined that 80 percent of the DAH for *Loligo* squid in Quarter III, will be harvested. Therefore, effective 0001 hours, August 16, 2002, the directed fishery for *Loligo* squid is closed and vessels issued Federal permits for *Loligo* squid may not retain or land more than 2,500 lb (1.13 mt) of *Loligo*. Such vessels may not land more than 2,500 lb (1.13 mt) of *Loligo* during a calendar day. The directed fishery will reopen effective 0001 hours, October 1, 2002, when the Quarter IV quota becomes available.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 12, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20866 Filed 8–13–02; 3:15 pm]

BILLING CODE 3510–22–S

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Proposed Rules

Federal Register
Vol. 67, No. 159
Friday, August 16, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1001

[Docket No. AO–14–A70; DA–02–01]

Milk in the Northeast Marketing Area; Supplemental Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Supplemental notice of public hearing on proposed rulemaking.

SUMMARY: This document contains an additional proposal to be considered at a previously scheduled hearing to consider proposals that would amend certain pooling and related provisions of the Northeast Federal milk marketing order. The additional proposal seeks to amend the unit pooling provision by specifying that a secondary unit-pooled plant must be located within the marketing area and process at least 60 percent of total producer milk receipts as Class I or Class II products.

DATES: The hearing will convene at 8:30 a.m. on Tuesday, September 10, 2002.

ADDRESSES: The hearing will be held at the Embassy Suites Hotel Alexandria, 1900 Diagonal Road, Alexandria, VA 22314 Telephone: 703–236–5900.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Programs, Room 2968, 1400 Independence Avenue, SW., STOP 0231, Washington, DC 20250–0231, (202) 690–1366, e-mail *gino.tosi@usda.gov*.

Persons requiring a sign language interpreter or other special accommodations should contact Erik F. Rasmussen, Market Administrator, at 617–542–8966; e-mail: *maboston@fedmilk1.com* prior to the hearing.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12866.

This notice is supplemental to the notice of hearing which was issued on July 26, 2002, and published in the **Federal Register** on August 1, 2002 (67 FR 49887).

Notice is hereby given that the aforesaid hearing will be held as scheduled at the Embassy Suites Hotel Alexandria, beginning at 8:30 a.m., on September 10, 2002, with respect to proposed amendments previously announced and to the additional proposed amendment to the tentative marketing agreement and to the order regulating the handling of milk in the Northeast marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the previously announced proposed amendments, and to the additional proposed amendment hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to Proposals 1 through 14.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The previously proposed amendments and the additional amendment to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the previously proposed amendments and the additional amendment would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing a petition with the Department stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with (4) copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Part 1001

Milk marketing orders.

PART 1001—[Amended]

The authority citation for 7 CFR part 1001 continues to read as follows:

Authority: 7 U.S.C. 601–674.

The additional proposed amendment, as set forth below, has not received the approval of the Department.

Submitted by New York State Dairy Foods, Inc.:

Proposal No. 14:

1. Amend § 1001.7 by revising paragraphs (e)(1) and (e)(2), to read as follows:

§ 1001.7 Pool Plant.

* * * * *

(e) * * *

(1) At least one of the plants in the unit qualifies as a pool distributing plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process at least 60 percent of monthly receipts of producer milk, including Cooperative 9(c) milk, only as Class I or Class II products and must be located in the Northeast marketing area, as defined in § 1001.2, in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant(s) included in the unit; and

* * * * *

Copies of this supplemental notice of hearing and the order may be procured from the Market Administrator for the Northeast Marketing Area, or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Programs, Agricultural Marketing Service (Washington office) and the Office of the Northeast Market Administrator

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: August 14, 2002.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–20955 Filed 8–14–02; 11:38 am]
BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–67–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, that currently requires an inspection of the parking brake operated valve (PBOV) of the main landing gear to identify the part and serial numbers, and follow-on actions if necessary. That AD also provides for optional terminating action for the requirements of the AD. This action would require accomplishment of the previously optional terminating action. The actions specified by the proposed AD are intended to prevent leakage of the PBOV and consequent failure of the "blue" hydraulic system and alternate parking brake and emergency braking systems, which could affect elements of the hydraulics for flaps, stabilizer, certain spoilers, elevator, rudder, and aileron. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 16, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–67–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–67–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–67–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–67–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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Discussion

On April 12, 2002, the FAA issued AD 2002–08–12, amendment 39–12720 (67 FR 19650, April 23, 2002), applicable to certain Airbus Model A330 and A340 series airplanes, to require an inspection of the parking brake operated valve (PBOV) of the main landing gear to identify the part and serial numbers, and follow-on actions if necessary. AD 2002–08–12 also provides for optional terminating action (modification of affected PBOVs or their replacement with new PBOVs) for the requirements of the AD. That action was prompted by reports of PBOV leakage on certain Airbus Model A320 series airplanes. That same PBOV is installed on Airbus Model A330 and A340 series airplanes. The requirements of that AD are intended to prevent PBOV leakage, which could result in failure of the "blue" hydraulic system and consequent failure of alternate parking brake and emergency braking systems. In addition, loss of the "blue" hydraulic system could affect elements of the hydraulics for flaps, stabilizer, certain spoilers, elevator, rudder, and aileron.

Actions Since Issuance of Previous Rule

In the preamble to AD 2002–08–12, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2002–08–12 to continue to require an inspection of the main landing gear PBOV to identify the part and serial numbers, and follow-on actions if necessary. The proposed AD would also require the previously optional terminating action (modification of affected PBOVs or their replacement with new PBOVs), which would terminate the requirements of this proposed AD. The actions would be required to be accomplished in accordance with the service bulletins described previously (Airbus Service Bulletins A330–32A3139 and A340–32A4176, both Revision 01, dated November 23, 2001), except as discussed below.

Cost Impact

There are approximately 9 airplanes of U.S. registry that would be affected by this proposed AD.

The inspection that is currently required by AD 2002–08–12, and retained in this AD, takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $120 per airplane.

The new modification/replacement that would be required by this proposed AD would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $2,160, or $240 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12720 (67 FR 19650, April 23, 2002), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2002–NM–67–AD. Supersedes AD 2002–08–12, Amendment 39–12720.

Applicability: Model A330 and A340 series airplanes as listed in Airbus Service Bulletin A330–32A3139 or A340–32A4176, both Revision 01, dated November 23, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of the parking brake operated valve (PBOV) and consequent failure of the "blue" hydraulic system and alternate parking brake and emergency braking systems, which could affect elements of the hydraulics for flaps, stabilizer, certain spoilers, elevator, rudder, and aileron, accomplish the following:

Restatement of Requirements of AD 2002–08–12, Amendment 39–12720

Inspections/Follow-On Actions

(a) Within 7 days after May 8, 2002 (the effective date of AD 2002–08–12): Do a one-time detailed inspection to determine the part number (P/N) and serial number (S/N) of the PBOV of the main landing gear, according to Airbus Service Bulletin A330–32A3139 (for Model A330 series airplanes) or A340–32A4176 (for Model A340 series airplanes), both Revision 01, dated November 23, 2001; as applicable.

(1) If no P/N or S/N is identified as affected equipment according to the applicable service bulletin, no further action is required by this AD.

(2) If any P/N or S/N is identified as affected equipment according to the applicable service bulletin: Before further flight, perform the follow-on actions (which may include a visual inspection for hydraulic fluid leakage at the PBOV, repair or replacement of the PBOV with a new or serviceable part if leakage is found, and an operational test) according to the applicable service bulletin. If the affected PBOV is not replaced, or if the PBOV is replaced with a part having the same P/N or S/N, repeat the inspection thereafter at the time specified by and according to the service bulletin, as applicable, until the part is replaced.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

New Requirements of this AD

PBOV Modification/Replacement

(b) Within 10 months after the effective date of this AD: Modify affected PBOVs, or replace them with new PBOVs, according to Airbus Service Bulletin A330–32A3139 (for Model A330 series airplanes) or A340–32A4176 (for Model A340 series airplanes), both Revision 01, dated November 23, 2001, as applicable. This modification terminates the requirements of this AD.

(c) Accomplishment of the actions before the effective date of this AD according to Airbus Service Bulletin A330–32A3139 or A340–32A4176, dated September 14, 2001, as applicable, is acceptable for compliance with the requirements of paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directives 2001–516(B) R1 and 2001–517(B) R1, both dated February 6, 2002.

Issued in Renton, Washington, on August 9, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20712 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–250–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 series airplanes, that would have required replacement of the existing smoke detectors in the cargo compartment with new, improved smoke detectors. That proposal was prompted by mandatory continuing airworthiness information from a civil airworthiness authority. This new action revises the proposed rule by including spare part information. The actions specified by this new proposed AD are intended to prevent false smoke warnings from the smoke detectors in the cargo compartment. A false smoke warning prompts the flightcrew to discharge fire extinguisher bottles, leaving those bottles depleted in the event of an actual fire. Repeated false smoke warnings create uncertainty as to whether an emergency landing and emergency evacuation of passengers and flightcrew is warranted.

DATES: Comments must be received by September 10, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–250–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2001–NM–250–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, PO Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained

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in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–250–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–250–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 series airplanes was published as a first supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on April 3, 2002 (67 FR 15760). That action proposed to require replacement of the existing smoke detectors in the cargo compartment with new, improved smoke detectors.

Actions Since Issuance of Previous Proposal

Since the issuance of the first supplemental NPRM, the FAA has determined that, as of the effective date of this AD, no person shall install Walter Kidde Aerospace smoke detectors having part number (P/N) 473052 on any airplane. Therefore, we have added this requirement to the second supplemental NPRM.

Conclusion

Since this change expands the scope of the first supplemental NPRM, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 281 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 work hours per airplane to accomplish the proposed replacement of the existing smoke detectors in the cargo compartment with new, improved smoke detectors, and that the average labor rate is $60 per work hour. The cost of required parts is approximately $4,136 ($876 for one smoke detector kit and $1,630 each for two smoke detectors). Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,195,936, or $4,256 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly Canadair): Docket 2001–NM–250–AD.

Applicability: Model CL–600–2B19 series airplanes, serial numbers 7003 through 7480 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent false smoke warnings from the smoke detectors in the cargo compartment, which prompt the flightcrew to discharge fire extinguisher bottles, leaving those bottles depleted in the event of an actual fire, or which create uncertainty as to whether an emergency landing and emergency evacuation of passengers and flightcrew is warranted, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD: Replace the existing smoke detectors having part number (P/N) 473052, which are located in the cargo compartment, with new, improved smoke detectors having P/N 473597–19, in accordance with Bombardier Service Bulletin 601R–26–016, Revision "B," dated August 10, 2001, or Revision "C," dated August 17, 2001.

Spares

(b) As of the effective date of this AD, no person shall install Walter Kidde Aerospace smoke detectors having P/N 473052 on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–21, dated May 23, 2001.

Issued in Renton, Washington, on August 9, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20711 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–53–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 Series Airplanes; and Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes; and Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. This proposal would require replacement of the emergency power switch knob on the overhead switch panel in the flight compartment with a new, improved knob made of non-conductive material. This action is necessary to prevent the knob from conducting electricity, which could result in delivery of an electrical shock and consequent injury to flightcrew or maintenance personnel. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 30, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–53–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–53–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–53–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–53–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report that a mechanic received an electrical shock during maintenance on the overhead switch panel on a McDonnell Douglas Model DC–9–82 (MD–82) airplane. The mechanic was rotating the emergency power switch when he received the

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electrical shock. Investigation revealed that terminals within the switch had shorted to the switch shaft. Due to the design of the emergency power system, this switch is not grounded. The capacity of the emergency power switch knob to conduct electricity, if not corrected, could result in delivery of an electrical shock and consequent injury to flightcrew or maintenance personnel.

The subject knob on certain McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes; and Model DC–9–81 (MD–81), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; is identical to that on the affected Model DC–9–82 (MD–82) airplanes. Therefore, all of these models are subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC9–24A189, dated December 12, 2001, which describes procedures for replacement of the emergency power switch knob on the overhead switch panel in the flight compartment with a new, improved knob made of non-conductive material. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 1,904 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,079 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $250 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $334,490, or $310 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2002–NM–53–AD.

Applicability: Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; as listed in Boeing Alert Service Bulletin DC9–24A189, dated December 12, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the emergency power switch knob from conducting electricity, which could result in delivery of an electrical shock and consequent injury to flightcrew or maintenance personnel, accomplish the following:

Replacement

(a) Within 6 months after the effective date of this AD, replace the emergency power switch knob on the overhead switch panel in the flight compartment with a new, improved knob, having part number 4957249–9, made of non-conductive material, according to the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–24A189, dated December 12, 2001.

Spares

(b) As of the effective date of this AD, no person shall install an emergency power switch knob having part number 4957249–1, 4957249–501, or 4957249–503, on the overhead switch panel in the flight compartment of any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 9, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20710 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–10–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767–200 and –300 series airplanes, that currently requires repetitive inspections to find discrepancies of the barrel nuts that attach the vertical fin to body section 48, and follow-on actions. For certain airplanes, the existing AD requires replacement of certain bolts with new bolts. The existing AD also provides for optional terminating actions for the repetitive inspections. This new action would reduce the compliance time for the inspections; change the torque specification; and mandate eventual replacement of all H–11 steel alloy barrel nuts and bolts with Inconel nuts and bolts, which would end the repetitive inspections. The actions specified by the proposed AD are intended to find and fix corroded, cracked, or broken barrel nuts that attach the vertical fin to body section 48, which could result in reduced structural integrity of the vertical fin attachment joint, loss of the vertical fin, and consequent loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 30, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–10–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–10–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4243, fax (425) 687–4248. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–10–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–10–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 14, 2001, the FAA issued AD 2001–19–04, amendment 39–12444 (66 FR 48538, September 21, 2001), applicable to certain Boeing Model 767–200 and –300 series airplanes, to require repetitive inspections to find discrepancies of the barrel nuts that attach the vertical fin to body section 48, and follow-on actions. For certain airplanes, that action requires replacement of certain bolts with new bolts. That action also provides for optional terminating actions for the repetitive inspections. The requirements of that AD are necessary to find and fix corroded, cracked, or broken barrel nuts that attach the vertical fin to body section 48, which could result in reduced structural integrity of the vertical fin attachment joint, loss of the vertical fin, and consequent loss of controllability of the airplane.

Actions Since Issuance of Previous Rule

In the preamble to AD 2001–19–04, we specified that the actions required by that AD were considered "interim action" until final action was identified, at which time we may consider further rulemaking. We have now determined that it is necessary to mandate the optional terminating actions, and this proposed AD follows from that determination.

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Since the issuance of AD 2001–19–04, we have received information indicating that the torque specification of 2,000 inch-pounds specified in Boeing Service Bulletin 767–53–0085, dated May 14, 1998; and Boeing Alert Service Bulletin 767–53A0085, Revision 1, dated July 1, 1999 (referenced in the existing AD as the sources of service information for accomplishment of the actions), is not sufficient to accurately detect corrosion of the barrel nuts and bolts. Therefore, the revised service information (below) increases the torque specification to between 3,700 and 4,100 inch-pounds, and recommends eventual replacement of all 16 H–11 steel alloy barrel nuts and bolts that attach the vertical fin with Inconel nuts and bolts, for all airplanes.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Service Bulletin 767–53A0085, Revision 2, dated May 2, 2002. The procedures in the service bulletin specify reducing the compliance time for the inspections specified in the existing service information (above); and modifying all airplanes to ensure that H–11 steel alloy barrel nuts and bolts that attach the vertical fin to body section 48 are replaced with Inconel nuts and bolts (in the existing service information, replacement of the bolts was recommended for Group 1 airplanes only). The procedures also specify that the torque check is now between 3,700 and 4,100 inch-pounds applied to each bolt, instead of the 2,000 inch-pounds specified in the existing service information. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2001–19–04 to continue to require repetitive inspections to find discrepancies of the barrel nuts that attach the vertical fin to body section 48, and follow-on actions. For certain airplanes, the proposed AD would continue to require replacement of certain bolts with new bolts. This new action would reduce the compliance time for the inspections; change the torque specification applied to affected bolts; and mandate the previously optional terminating action by eventual replacement of all H–11 steel alloy barrel nuts and bolts with Inconel nuts and bolts, which would end the repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Explanation of Change Made to Existing Requirements

We have changed all references to a "detailed visual inspection" in the existing AD to "detailed inspection" in this proposed action.

Cost Impact

There are approximately 549 airplanes of the affected design in the worldwide fleet. The FAA estimates that 221 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 2001–19–04 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $120 per airplane.

The inspections that are proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspections on U.S. operators is estimated to be $13,260, or $60 per airplane.

The replacement that is proposed in this AD action would take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $6,528 per airplane. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $1,548,768, or $7,008 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12444 (66 FR 48538, September 21, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2002–NM–10–AD. Supersedes AD 2001–19–04, Amendment 39–12444.

Applicability: Model 767–200 and –300 series airplanes, line numbers 1 through 574 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix corroded, cracked, or broken barrel nuts that attach the vertical fin to body section 48, which could result in reduced structural integrity of the vertical fin attachment joint, loss of the vertical fin, and consequent loss of controllability of the airplane; accomplish the following:

Restatement of Requirements of AD 2001–19–04

Internal/External Detailed Inspections

(a) Do internal and external detailed inspections of the barrel nuts at the 16 locations that attach the vertical fin to body section 48 to find discrepancies (i.e., cracked or damaged sealant, signs of corrosion damage, cracked or broken barrel nuts). Do the inspections at the times specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable; per Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 767–53–0085, dated May 14, 1998; or Boeing Alert Service Bulletin 767–53A0085, Revision 1, dated July 1, 1999; or Revision 2, dated May 2, 2002.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) For airplanes on which the inspections specified in paragraph (a) of this AD have been done within the last 3 years per Boeing 767 Maintenance Planning Document (MPD) D622T001, Items 5380–311–021 and 5380–312–021: Do the inspections at the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Within 3 years or 6,000 flight cycles after doing the most recent inspection per the MPD, whichever comes first.

(ii) Within 45 days after October 9, 2001 (the effective date AD 2001–19–04, amendment 39–12444).

(2) For airplanes on which the inspections specified in paragraph (a) of this AD have NOT been done within the last 3 years per Boeing 767 MPD D622T001, Items 5380–311–021 and 5380–312–021: Do the inspections within 45 days after October 9, 2001.

Follow-On Actions

(b) If no discrepancy is found during any inspection specified in paragraph (a) of this AD: Before further flight, do a torque check of each of the 16 bolts in the barrel nuts that attach the vertical fin to body section 48 to determine if any bolt turns, per Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 767–53–0085, dated May 14, 1998; or Boeing Alert Service Bulletin 767–53A0085, Revision 1, dated July 1, 1999; or Revision 2, dated May 2, 2002.

(1) If no bolt turns: Repeat the inspections required by paragraph (a) of this AD (and applicable follow-on actions) every 3 years or 6,000 flight cycles, whichever comes first; until paragraphs (d) and (e) of this AD are done.

(2) If any bolt turns: Before further flight, do the actions specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this AD, as applicable. Then repeat the inspections required by paragraph (a) of this AD (and applicable follow-on actions) every 3 years or 6,000 flight cycles, whichever comes first; until paragraphs (d) and (e) of this AD are done.

(i) For all airplanes: Replace the barrel nut at that bolt with a new, Inconel barrel nut per Part 3 of the Accomplishment Instructions of the service bulletin. No further action is required for that barrel nut only.

(ii) For Group 1 airplanes: If an H–11 steel alloy bolt is installed with the affected barrel nut, replace the bolt with a new, Inconel bolt per Figure 5 of the Accomplishment Instructions of the service bulletin. No further action is required for that bolt only.

(c) If any discrepancy of any barrel nut is found during any inspection specified in paragraph (a) or (d) of this AD: Before further flight, do the actions specified in paragraphs (c)(1) and (c)(2) of this AD, as applicable.

(1) For all airplanes: Replace the affected barrel nut with a new, Inconel barrel nut per Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 767–53–0085, dated May 14, 1998; or Boeing Alert Service Bulletin 767–53A0085, Revision 1, dated July 1, 1999; or Revision 2, dated May 2, 2002. No further action is required for that barrel nut only.

(2) For Group 1 airplanes: If an H–11 steel alloy bolt is installed with the affected barrel nut, replace the bolt with a new, Inconel bolt per Figure 5 of the Accomplishment Instructions of the service bulletin. No further action is required for that bolt only.

New Requirements of this AD

Detailed Inspection/Torque Check

(d) Within 18 months after doing the initial inspections required by paragraph (a) of this AD, or within 90 days after the effective date of this AD, whichever is later: Do internal and external detailed inspections and a torque check (between 3,700 and 4,100 inch-pounds of torque) of the barrel nuts at the 16 locations that attach the vertical fin to body section 48 to find discrepancies (i.e., cracked or damaged sealant, signs of corrosion damage, cracked or broken barrel nuts) per Boeing Service Bulletin 767–53A0085, Revision 2, dated May 2, 2002. Repeat the inspections and check after that every 18 months until paragraph (e) of this AD is done. As of the effective date of this AD, only Revision 2 of the service bulletin may be used.

Note 3: Accomplishment of the inspections and replacements before the effective date of this AD per Boeing Service Bulletin 767–53–0085, dated May 14, 1998; or Boeing Alert Service Bulletin 767–53A0085, Revision 1, dated July 1, 1999; is considered acceptable for compliance with the applicable actions specified in paragraphs (a), (b), and (c) of this AD.

Terminating Action

(e) Within 36 months after the effective date of this AD: Replace all 16 H–11 steel alloy barrel nuts and bolts that attach the vertical fin to body section 48, with Inconel barrel nuts and bolts, per Boeing Service Bulletin 767–53A0085, Revision 2, dated May 2, 2002. Such replacement ends the repetitive inspections required by this AD.

Spares

(f) As of the effective date of this AD: No person shall install, on any airplane, an Inconel vertical fin attach bolt, unless an Inconel barrel nut is installed at the same location; nor shall any person install an H–11 steel alloy attachment nut or bolt on the vertical fin on any airplane.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2001–19–04, amendment 39–12444, are approved as alternative methods of compliance with paragraph (a)(1) of this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 9, 2002.

Vi Lipski,

Manager Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20709 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AGL–09]

Proposed Modification of Class E Airspace; Indianapolis, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Document proposes to modify Class E airspace at Indianapolis, IN. Area Navigation (RNAV) Standard Instrument Approach Procedures

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(SIAPS) to several Runways (RWYS) have been developed for Indianapolis International airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the area of the existing controlled airspace at Indianapolis International Airport.

DATES: Comments must be received on or before October 4, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 02–AGL–09, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–AGL–09." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Indianapolis, IN, increasing the radius of controlled airspace around the Indianapolis International Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subject in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Indianapolis, IN [Revised]

Indianapolis, Indianapolis International Airport, IN
(Lat. 39°43'02" N., long. 86°17'40" W.)
Indianapolis, Greenwood Municipal, IN
(Lat. 39°37'42" N., long. 86°05'16" W.)
Indianapolis, Eagle Creek Airpark, IN
(Lat. 39°49'51" N., long. 86°17'40" W.)
Indianapolis, Helicopter VOR/DME 287° Approach Point in Space
(Lat. 39°42'12" N., long. 86°06'28" W.)
Brickyard VORTAC
(Lat. 39°48'53" N., long. 86°22'03" W.)

That airspace extending upward from 700 feet above the surface within a 7.9-mile radius of the Indianapolis International Airport, within a 7-mile radius of the Greenwood Municipal Airport, within a 6.3-mile radius of Eagle Creek Airpark, and within 2.6 miles each side of the Brickyard VORTAC 257° radial, extending from the 6.3-mile radius of the Eagle Creek Airpark and the 7.4-mile radius of the Indianapolis International Airport to 7-miles west of the VORTAC, and within a 6-mile radius of the Point in space serving the helicopter VOR/DME 287° approach.

* * * * *

Issued in Des Plaines, Illinois on July 22, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–20897 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AGL–10]

Proposed Establishment of Class E Airspace; Milbank, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Document proposes to establish Class E airspace at Milbank, SD. An area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 31 has been developed for Milbank Municipal Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing this approach. This action would establish an area of controlled airspace at Milbank Municipal Airport.

DATES: Comments must be received on or before October 4, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 02–AGL–10, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–AGL–10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Milbank, SD, by adding an area of controlled airspace around the Milbank Municipal Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2002, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103. 40113. 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 26, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL SD E5 Milbank, SD [New]

Milbank, Milbank Municipal Airport, SD
(Lat. 45° 13' 50" N., long. 96° 33' 57" W.)

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Watertown VORTAC
(Lat. 44° 58' 47" N., long. 97° 08' 30" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Milbank Municipal Airport, and that airspace extending upward from 1200 feet above the surface within an area bounded on the north by lat. 45° 34' 00" N., on the west by long. 97° 30' 00" W., on the south by 44° 38' 00" N., and on the east by the South Dakota/Minnesota border excluding that airspace within Watertown, SD, Class E airspace area, that airspace within the Ortonville, MN, Class E airspace area and that airspace area within the state of Minnesota.

* * * * *

Issued in Des Plaines, Illinois on July 22, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–20896 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AGL–11]

Proposed Modification of Class E Airspace; Flint, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Document proposes to modify Class E airspace at Flint, MI. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPS) to several Runways (RWYS) have been developed for Prices Airport, Linden, MI. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing controlled airspace at Bishop International Airport.

DATES: Comments must be received on or before October 4, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 02–AGL–11, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–AGL–11." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Flint, MI, by increasing the radius of controlled airspace around the Prices Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 399.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Flint, MI [Revised]

Flint, Bishop International Airport, MI
(Lat. 42°57'56" N., long. 83°44'36" W.)
Owosso Community Airport, MI
(Lat. 42°59'35" N., long. 84°08'20" W.)
Davison, Athelone Williams Memorial Airport, MI
(Lat. 43°01'45" N., long. 83°31'47" W.)
Linden, Prices Airport, MI
(Lat. 42°48'27" N., long. 83°46'25" W.)
PETLI LOM
(Lat. 42°58'05" N., long. 83°53'25" W.)
Grand Blanc, Genesys Regional Medical Center, MI Point in Space Coordinates
(Lat. 42°52'59" N., long. 83°39'05" W.)

That airspace extending upward from 700 feet above the surface within a 10.5-mile radius of the Bishop International Airport, and within 4.4 miles north and 7 miles south of the Flint ILS localizer west course, extending from the 10.5-mile radius area to 10.5 miles west of the PETLI LOM, and within a 6.4-mile radius of the Owosso Community Airport, and within a 6.4-mile radius of the Prices Airport, and within a 6.3-mile radius of the Athelone Williams Memorial Airport, and within a 6-mile radius of the Point in Space serving the Genesys Regional Medical Center, excluding that airspace within the Detroit, MI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on July 22, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–20892 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 02–AGL–12]

Modification of Class E Airspace; Zanesville, OH; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This action corrects the assigned docket number and two errors under "addresses" "comments invited", contained in a NPRM that was published in the **Federal Register** on Thursday, June 13, 2002 (67 FR 40627). The NPRM proposed to modify Class E Airspace at Zanesville, OH.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 02–14985 published on Thursday, June 13, 2002 (67 FR 40627), proposed to modify Class E Airspace at Zanesville, OH. An incorrect docket number was assigned, and an incorrect docket number was referred to under "addresses" and "comments invited". This action corrects these errors.

Accordingly, pursuant to the authority delegated to me, the assigned docket number, and the errors under "addresses" and "comments invited" for the Class E airspace Zanesville, OH, as published in the **Federal Register** Thursday, June 13, 2002 (67 FR 40627), (FR Doc. 02–14985), are corrected as follows:

1. on page 40627, Column 1, in the heading under "4 CFR Part 71", correct "[Airspace Docket No. 01–AGL–21]" to read "[Airspace Docket No. 02–AGL–12]".

2. On page 40627, Column 1, under "addresses", correct "Rules Docket No. 02–AGL–04" to read "Rules Docket No. 02–AGL–12". § 71.1 [Corrected]

3. On page 40628, Column 2, Line 16, correct "01–AGL–21" to read "02–AGL–12"

Issued in Des Plaines, Illinois on July 22, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–20895 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–13]

Proposed Establishment of Class E5 Airspace; Marion, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace at Marion, NC. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for McDowell Hospital, Marion, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before September 16, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–13, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–ASO–13". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive

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public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Marion, NC. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows: Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Marion, NC [NEW]

McDowell Hospital
Point In Space Coordinates
(Lat. 35°39′45″ N, long. 82°02′49″ W)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 35°39′45″ N, long. 82°02′49″ W) serving McDowell Hospital; excluding that airspace within the Rutherfordton, NC, Class E airspace area.

* * * * *

Issued in College Park, Georgia on August 1, 2002.

Richard J. McClelland,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–20891 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–12]

Proposed Establishment of Class E5 Airspace; Highlands, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace at Highlands, NC. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Highlands—Cashiers Hospital, Highlands, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before September 16, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–12, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–ASO–12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Highlands, NC. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Highlands, NC [NEW]

Highlands—Cashiers Hospital, Point in Space Coordinates
(Lat. 35°03′18″ N, long. 83°12′30″ W)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 35°03′18″ N, long. 83°12′30″ W) serving Highlands—Cashiers Hospital.

* * * * *

Issued in College Park, Georgia on August 1, 2002.

Richard J. McClelland,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–20890 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–11]

Proposed Amendment of Class E5 Airspace; Asheville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E5 airspace at Asheville, NC. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for St. Josephs-Mission Hospital, Asheville, NC. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) northeast of Asheville, NC is needed to contain the SIAP.

DATES: Comments must be received on or before September 16, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–11, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–ASO–11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

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Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E5 airspace at Asheville, NC. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Asheville, NC [Revised]

Asheville Regional Airport, NC
(Lat. 35°26′10″ N., long. 82°32′30″ W.
St. Josephs—Mission Hospital, Asheville, NC, Point in Space Coordinates
Lat. 35°33′53″ N., long. 82°33′06″ W.

That airspace extending upward from 700 feet above the surface within 6 miles each side of Runway 16/34 centerline, extending 17 miles north and 21 miles south of the Asheville Regional Airport and that airspace within a 6-mile radius of the point in space (lat. 35°33′53″ N., long. 82°33′06″ W) serving St. Josephs—Mission Hospital.

* * * * *

Issued in College Park, Georgia, on August 1, 2002.

Richard J. McClelland,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–20889 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–10]

Proposed Establishment of Class E5 Airspace; Franklin, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace at Franklin, NC. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Angel Medical Center, Franklin, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before September 16, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–10, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–ASO–10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Franklin, NC. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows: Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Franklin, NC [NEW]

Angel Medical Center, Franklin, NC
Point In Space Coordinates
(Lat 35°10′37″ N, long. 83°22′04″ W)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (Lat. 35°10′37″ N, long. 83°22′04″ W) serving Angel Medical Center.

* * * * *

Issued in College Park, Georgia on August 1, 2002.

Richard J. McClelland,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–20888 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 41, 48, and 145

[REG–103829–99]

RIN 1545–AX10

Excise Taxes; Definition of Highway Vehicle

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Extension of time for comments and requests for a public hearing.

SUMMARY: This document provides notice of an extension of time for submitting comments and requests for a public hearing concerning the notice of proposed rulemaking relating to the definition of a highway vehicle. This document extends the period for the submission of comments and requests for a public hearing to December 4, 2002.

DATES: Written or electronic comments and requests for a public hearing must be received by December 4, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–103829–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–103829–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *http://www.irs.gov/regs.*

SUPPLEMENTARY INFORMATION: On June 6, 2002, a notice of proposed rulemaking (REG–103829–99) was published in the **Federal Register** (67 FR 38913) relating to the definition of highway vehicle requesting submissions of comments and requests for a public hearing on September 4, 2002. The deadline for submitting comments and requests for a public hearing is extended to December 4, 2002.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).

[FR Doc. 02–20908 Filed 8–15–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–241–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Kentucky regulatory program (the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky proposes additions to its rules about sedimentation ponds and intends to revise its program to be consistent with the corresponding Federal regulations. This document gives the times and locations that the Kentucky program and proposed amendment to that

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program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., e.s.t. September 16, 2002. If requested, we will hold a public hearing on the amendment on September 10, 2002. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on September 3, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to William J. Kovacic at the address listed below.

You may review copies of the Kentucky program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859) 260–8400. E-mail: *bkovacic@osmre.gov*.

Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859) 260–8400. Internet: *bkovacic@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated June 25, 2002 (Administrative Record No. KY–1544), Kentucky sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky sent the amendment in response to our request for additional information in a letter dated February 23, 2001 (Administrative Record No. KY–1503). Kentucky added a new section to its sedimentation pond regulations at 405 Kentucky Administrative Regulations (KAR) 16:090 and 18:090 to establish performance standards for "other treatment facilities." New section 6 follows in its entirety:

"(1)(a) This section applies to "other treatment facilities" as defined in 405 KAR 16:001 (or 18:001).

(b) Other treatment facilities may be used in conjunction with sedimentation ponds.

(c) Other treatment facilities may be used in place of sedimentation ponds, if specifically approved by the cabinet for that purpose on a case by case basis.

(2) Other treatment facilities shall be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the cabinet based on terrain, climate, other site-specific conditions and a demonstration by the permittee that the effluent limitations of 405 KAR 16:070 (or 18:070) section 1(1)(g) will be met.

(3) Other treatment facilities shall meet all requirements for sedimentation ponds, if the requirements can be appropriately applied to other treatment facilities. The cabinet shall determine the applicable requirements on a case by case basis depending upon the type of other treatment facilities. In every case, the other treatment facilities shall be designed, constructed, and maintained to: (a) Be located as near as possible to the disturbed area and out of perennial streams unless approved by the cabinet; (b) provide adequate sediment storage volume, as approved on a case by case basis by the cabinet based upon the anticipated volume of sediment to be collected during the design precipitation event and a feasible plan for clean-out operations; (c) provide adequate detention time so that the discharges shall meet the requirements of 405 KAR 16:070 (or 18:070) section 1 (1)(g); (d) minimize short circuiting to the extent possible; and (e) provide periodic sediment removal sufficient to maintain adequate volume for the design event. The proposed plan for clean-out operations shall be included in the design and shall be approved if the cabinet determines it is feasible. The plan shall include a time schedule or clean-out elevations, or an appropriate combination thereof, sufficient to maintain adequate volume for the sediment to be collected during the design precipitation event."

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Lexington Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. KY–241–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Lexington Field Office at (859)260–8400.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. September 3, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

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Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 15, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 02–20820 Filed 8–15–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–096–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM) are reopening the public comment period on an amendment to the West Virginia surface mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the Code of State Regulations as contained in House Bill 4163. We are reopening the comment period to provide an opportunity to review and comment on additional amendments provided by the State and provisions that we inadvertently omitted identifying as being part of the State's original submittal of this amendment. The amendment is intended to improve the effectiveness of the West Virginia program.

This document gives the times and locations that the West Virginia program and the proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m. (local time); September 16, 2002. If requested, we will hold a public hearing on the amendment on September 10, 2002. We will accept requests to speak at a hearing until 4 p.m. (local time), on September 3, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Mr. Roger W. Calhoun at the address listed below.

You may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0515.

The proposed amendment will be posted at the West Virginia Department of Environmental Protection's Internet page: *http://www.dep.state.wv.us.*

In addition, you may review copies of the proposed amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004 (By appointment only).

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, Telephone: (304) 347–7158. Internet address: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act" * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981 **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description of the Proposed Amendment

By letter dated April 9, 2002 (Administrative Record Number WV–1296), the West Virginia Department of Environmental Protection (WVDEP) sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The proposed amendment consists of several changes to the Code of State Regulations (CSR) at 38–2, and the addition of new CSR 38–4, the Coal Related Dam Safety Rule, as contained in House Bill 4163.

We announced the receipt and provided an opportunity to comment on the amendment in the June 6, 2002, **Federal Register** (67 FR 38919) (Administrative Record Number WV–1311). In that announcement, we inadvertently omitted identifying some of the changes submitted by the State, including the new Coal Related Dam Safety Rule at CSR 38–4. Therefore, we are taking this opportunity to identify and provide an opportunity to comment on those amendments.

By letter and electronic mail dated June 19, 2002, WVDEP sent us additional amendments to its program that are contained in Senate Bill 2002 concerning changes to CSR 38–2 (Administrative Record Number WV–1316). Senate Bill 2002 was signed by the governor on June 21, 2002. Two of these amendments are intended to satisfy the required program amendments codified at 30 CFR 948.16(ssss) and (mmmmm). The new amendments are summarized below.

New Proposed Amendments

CSR 38–2–3. Permit Application Requirements and Contents

Subdivision 3.25.a.4., concerning transfer, reinstatement, assignment, or sale of permit rights, is amended by adding the word "reinstatement" to the sentence: "Such findings will be based on information set forth in the application for transfer, assignment, or sale and any other information made available to the Secretary." As amended, the sentence reads, "Such findings will be based on information set forth in the application for transfer, reinstatement, assignment, or sale and any other information made available to the Secretary."

Subdivision 3.25.a.4 has also been amended by inserting the phrase "Except for reinstatement" at the beginning of the sentence that states "Such approval may be granted in advance of the close of the public comment period Provided * * *." As amended, the sentence reads, "Except for reinstatement, such approval may be granted in advance of the close of the public comment period Provided * * *." These changes are intended to satisfy the required program amendment codified at 30 CFR 948.16(ssss).

CSR 38–2–7. Premining and Postmining Land Use

Subdivision 38–2–7.5.j.6.A., concerning ground cover vegetation, is amended by deletion of the word "excessive" from the sentence, "The ground cover vegetation shall be capable of stabilizing the soil from excessive erosion." This revision is intended to satisfy the required program amendment codified at 30 CFR 948.16(mmmmm).

CSR 38–2–14.15 Performance Standards/Contemporaneous Reclamation

Subdivision 14.15.c.4., concerning areas that have been cleared and grubbed that exceed 30 acres, has been deleted.

Subdivision 14.15.g.5, concerning a detailed economic analysis for requests for variances, has been deleted.

Amendments Not Previously Identified for Public Comment

In general, and to be consistent with the West Virginia Code (W. Va. Code), the word "performance" has been deleted where it appeared before the word "bond."

CSR 38–2–2.108. The definition of "Secretary" was added to mean the Secretary of the Department of Environmental Protection or his authorized agent.

CSR 38–2–7. Premining and Postmining Land Use

Subdivision 7.4.a.1, has been amended to add that "Commercial forestry shall be established on areas receiving a variance from AOC." As amended, this subdivision provides in part that "Commercial forestry shall be established on areas receiving a variance from AOC and either commercial forestry or forestry shall be established on all portions of the permit area."

Subdivision 7.4.b.1.D.1 has been amended. We previously and incorrectly identified this revision as being an amendment to subdivision 7.4.b.1.C.7. Subdivision 7.4.b.1.D.1 was amended by adding the following language to the existing definition of soil:

O horizon means the top-most horizon or layer of soil dominated by organic material derived from dead plants and animals at various stages of decomposition; it is sometimes referred to as the duff or litter layer or the forest floor. Cr horizon means the horizon or layer below the C horizon, consisting of weathered or soft bedrock including saprolite or partly consolidated soft sandstone, siltstone, or shale.

CSR 38–2–14. Performance Standards

Subdivision 14.15.a.2 is new, concerns the general contemporaneous reclamation standards, and provides as follows:

All permit applications shall incorporate into the required mining and reclamation plan a detailed site specific description of the timing, sequence, and areal extent of each progressive phase of the mining and reclamation operation which reflects how the mining operations and the reclamation operations will be coordinated so as to minimize the amount of disturbed, unreclaimed area, and to quickly establish and maintain a specified ratio of disturbed versus reclaimed area throughout the life of the operation.

Subdivision 14.15.b.5 pertaining to time, distance and acreage limits for multiple seam mining, was amended by adding the following sentence: "Regardless of the allowable limits contained in this section, any disturbed area other than those specified in subdivision 14.15.c of this rule must complete backfilling and rough grading within 180 days of final mineral removal."

Subdivision 14.15.b.6.A pertaining to disturbed acreage, including excess spoil disposal sites, was amended by adding the following language to the end of the first paragraph:

Where operations contemplated under this section are approved with incidental contour mining, which may include augering or highwall mining, the acreage must be calculated in the allowable disturbance authorized in this paragraph. The incidental contour pit length cannot exceed 3000 feet and backfilling/grading shall follow mineral removal within 180 days. Regardless of the allowable limits contained in the section fourteen of this rule, any disturbed area other than those specified in subdivision 14.15.c. of this rule must complete backfilling and rough grading with 180 days of final mineral removal. Operations required to comply with AOC+ guidelines or approved specific post-mining land use requirements must complete backfilling and rough grading within 270 days of final mineral removal unless a waiver is otherwise granted by the Secretary pursuant to this section.

Subdivision 14.15.c. was amended to define reclaimed acreage, for purposes of this subsection, to also mean that portion of the permit area that "meets Phase I [bond release] standards."

Subdivision 14.15.c.1 which delineates certain portions of an operation that are not included in the calculation of disturbed area for purposes of contemporaneous reclamation, was amended by adding the following language at the end of the paragraph:

Provided, That with the exception of permanent haulroads, drainage control systems and material handling facilities (including but are not limited to such facilities as preparation plants, fixed coal stockpiles/transfer areas and commercial forestry topsoil areas) the total acreage of all other semi-permanent ancillary facilities cannot exceed ten percent of the total permit acreage.

Subdivision 14.15.c.3, also pertaining to exceptions to disturbed area, was amended by adding the following sentence to the end of the paragraph: "The Secretary may consider larger acreage for clearing operations where it can be demonstrated that it is necessary to comply with applicable National Environmental Policy Act requirements."

Subdivision 14.15.d.1, concerning excess spoil disposal fills, is new and provides as follows:

All fills must be planned for continuous material placement until designed capacity is reached and cannot have a period of inactivity that exceeds 180 days unless otherwise approved by the secretary on a permit specific basis to accommodate AOC+, post-mining land use or special material handling situations.

Subdivision 14.15.d.2, also concerning excess spoil disposal fills, is new and provides that "[t]he areas

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where contour mining is proposed within the confines of the fill are not eligible for the exemption contained in 14.15.c.2."

New subdivision 14.15.d.3 was added to provide as follows: "Operations that propose fills that are designed to use single lift top-down construction shall bond the proposed fill areas based upon the maximum amount per acre specified in WV Code § 22–3–12(c)(1)."

New subdivision 14.15.e was added to provide as follows:

14.15.e Applicability. Permit applications pending approval on the first day of January, two thousand three, shall within 120 days of permit approval have a mining and reclamation plan which is consistent with the criteria set forth in this subdivision. Permit applications which are submitted after the first day of January, two thousand three shall not be issued a permit without a mining and reclamation plan which is consistent with the criteria set forth in this subdivision.

14.15.e.1 After the first day of January, two thousand three, the mining and reclamation plan for all active mining operations must be consistent with the applicable time criteria set forth in this paragraph. Where permit revisions are necessary to satisfy this requirement, the revisions shall be prepared and submitted to the Secretary for approval within 180 days. Full compliance with the revised mining and reclamation plan shall be accomplished within twelve (12) months from the date of the Secretary's approval.

14.15.e.2 After the first day of January, two thousand three, the mining and reclamation plan for mining operations which have approved inactive status or when permits have been issued but the operation has not started must be consistent with the applicable time criteria of this paragraph. Where the permit revisions are necessary to satisfy this requirement, the revisions shall be prepared and submitted to the Secretary for approval within 180 days. Full compliance with the revised mining and reclamation plan shall be accomplished within twelve (12) months from the date of the Secretary's approval.

14.15.e.3 The Secretary may consider contemporaneous reclamation plans on multiple permitted areas with contiguous areas of disturbance to ensure that contemporaneous reclamation is practiced on a total operational basis. In order to establish a method of orderly transition between operations, plans submitted on multiple permitted areas cannot add allowable disturbed areas in such a manner as to result in increased disturbed areas on a single operation unless a variance is obtained pursuant to subdivision 14.15.g.

Subdivision 14.15.g.2 pertaining to required elements of a permit applications seeking a variance from contemporaneous reclamation standards, was amended by adding the words "including a discussion and feasibility analysis of alternatives that were considered" to the end of the paragraph.

New subdivision 14.15.g.5 was added to require the following additional element to a permit application for a variance from contemporaneous reclamation standards:

A detailed economic analysis including a discussion and feasibility analysis of possible alternatives that were considered must be submitted for variance requests that use economics as the basis for the request.

New subdivision 14.15.i was added to provide as follows:

Notwithstanding any provision of this rule to the contrary, revision of the mining and reclamation plan contained in a permit is required prior to any change in mining methods which would substantially affect the standards contained in this section.

CSR 38–4 Coal Related Dam Safety Rules

These rules are new, and establish general and specific rules for design, placement, construction, enlargement, repair, removal, or abandonment of dams in West Virginia that are also regulated under West Virginia Surface Coal Mining and Reclamation Act 22–3 and West Virginia Surface Mining Reclamation Regulations CSR 38–2 by the WVDEP. The new Coal Related Dam Safety Rules were issued under the authority of W.Va. Code 22–14. The new rules consist of the following sections.

38–4–1 General.
38–4–2 Definitions.
38–4–3 Classification of dams.
38–4–4 Certificate of approval.
38–4–5 Application procedures.
38–4–6 Plans and specifications.
38–4–7 Design requirements
38–4–8 Subsidence evaluation.
38–4–9 Breakthrough potential evaluation.
38–4–10 Geotechnical considerations.
38–4–11 Structural considerations.
38–4–12 Construction or modification of dam.
38–4–13 Blasting.
38–4–14 Storm water discharge.
38–4–15 Erosion and sediment control.
38–4–16 Disposal of construction wastes.
38–4–17 Dust control.
38–4–18 Construction quality control.
38–4–19 Breaching of a dam.
38–4–20 Removal of a dam.
38–4–21 Abandonment of a dam.
38–4–22 Reduction of dam height to less than jurisdiction.
38–4–23 Enlargement of a structure to jurisdiction.
38–4–24 Sale or transfer of a dam.
38–4–25 Operation and maintenance.
38–4–26 Inspection, reporting and certification requirements.
38–4–27 Completion of construction.
38–4–28 Inspection of completed dam.
38–4–29 Inspection of dams with serious problems.
38–4–30 Reporting requirements.
38–4–31 Inspection and certification requirements.
38–4–32 Monitoring plans.
38–4–33 Emergency warning plans.
38–4–34 Emergency procedures.
38–4–35 Inspection and enforcement.
38–4–36 Application fee for certificate of approval of a dam.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electric comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Charleston Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. WV–096–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field Office at (304) 347–7158.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on September 3, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a .

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determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 11, 2002.

Tim L. Dieringer,

Acting Regional Director Appalachian Regional Coordinating Center.

[FR Doc. 02–20821 Filed 8–15–02; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–7260–6]

Outer Continental Shelf Air Regulations; Consistency Update for California

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Proposed rule—consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 ("the Act"). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the South Coast Air Quality Management District (South Coast AQMD) and Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The intended effect of approving the OCS requirements for the above Districts is to regulate emissions from OCS sources in accordance with the requirements onshore. The changes to the existing requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Comments on the proposed update must be received on or before September 16, 2002.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (Air-4), Attn: Docket No. A–93–16 Section XXVI, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the rule and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 Section XXVI. This docket is available for public inspection and copying Monday-Friday during regular business hours at the following locations:

EPA Air Docket (Air-4), Attn: Docket No. A–93–16 Section XXVI, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn: Air Docket No. A–93–16 Section XXVI, Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington D.C. 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air Division (Air-4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4125.

I. Background Information

A. Why Is EPA Taking This Action?

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of rules by three local air pollution control agencies. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA's Evaluation

A. What Criteria Were Used To Evaluate Rules Submitted To Update 40 CFR Part 55?

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14 (c)(4).

B. What Rule Revisions Were Submitted To Update 40 CFR Part 55?

1. After review of the rules submitted by South Coast AQMD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following new rule applicable to OCS sources for which the South Coast AQMD is designated as the COA (note: no requirements that are not related to the attainment and maintenance of federal and state ambient air quality standards will be incorporated to regulate toxics):

Rule #	Rule names	Adoption date
1137	PM10 Emission Reductions from Woodworking Operations	02/01/02

2. After review of the rule submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rule revisions applicable to OCS sources for which the Ventura County APCD is designated as the COA:

Rule #	Rule name	Adoption date
10	Permits Required	5/14/02
26.1	New Source Review—Definitions	5/14/02
26.2	New Source Review—Requirements	5/14/02
26.3	New Source Review—Exemptions	5/14/02
26.6	New Source Review—Calculations	5/14/02
42	Permit Fees	5/14/02
74.6	Solvent Cleaning and Degreasing	1/08/02
74.23	Stationary Gas Turbines	1/08/02
74.24.1	Pleasure Craft Coating & Commercial Boatyard Operations	1/08/02

The following new rule was submitted and will be incorporated:

Rule #	Rule name	Adoption date
26.11	New Source Review—ERC Evaluation At Time of Use	5/14/02

The following rule was submitted but will not be incorporated because it is Administrative:

Rule #	Rule name	Adoption date
26.4	New Source Review—Emissions Banking	5/14/02

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not

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issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because consistency updates do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the consistency update approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

H. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (Mary 22, 2001)) because it is not a significant action under Executive Order 12866.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Continental shelf, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 5, 2002.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii)(G) and (H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources.*

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

3. Appendix A to 40 CFR part 55 is proposed to be amended by revising paragraph (b)(7) and (8) under the heading "California" to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State.

* * * * *

CALIFORNIA

* * * * *

(b) Local requirements.

* * * * *

(7) *The following requirements are contained in South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I, II and III):

Rule 102 Definition of Terms (Adopted 10/19/01)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 8/18/00)
Rule 112 Definition of Minor Violation and Guidelines for Issuance of Notice to Comply (Adopted 11/13/98)
Rule 118 Emergencies (Adopted 12/7/95)
Rule 201 Permit to Construct (Adopted 1/5/90)

Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 3/6/92)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit and Burn Authorization for Open Burning (12/21/01)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications and Regulation II—List and Criteria Identifying Information required of Applicants Seeking a Permit to Construct from the SCAQMD (Adopted 4/10/98)
Rule 212 Standards for Approving Permits (Adopted 12/7/95) except (c)(3) and (e)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Continuous Emission Monitoring (Adopted 5/14/99)
Rule 218.1 Continuous Emission Monitoring Performance Specifications (Adopted 5/14/99)
Rule 218.1 Attachment A—Supplemental and Alternative CEMS Performance Requirements (Adopted 5/14/99)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 11/17/00)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 5/11/01) except (e)(7)and Table IV
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 5/11/01)
Rule 304.1 Analyses Fees (Adopted 5/11/01)
Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
Rule 306 Plan Fees (Adopted 5/11/01)
Rule 309 Fees for Regulation XVI Plans (Adopted 5/11/01)
Rule 401 Visible Emissions (Adopted 11/9/01)
Rule 403 Fugitive Dust (Adopted 12/11/98)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only (Adopted 7/12/96)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 6/12/98)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 9/15/00)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 12/15/00)
Rule 444 Open Burning (Adopted 12/21/01)
Rule 463 Organic Liquid Storage (Adopted 3/11/94)
Rule 465 Vacuum Producing Devices or Systems (Adopted 8/13/99)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77) Addendum to Regulation IV (Effective 1977)
Rule 518 Variance Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.1 Permit Appeal Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.2 Federal Alternative Operating Conditions (Adopted12/21/01)
Rule 701 Air Pollution Emergency Contingency Actions (Adopted 6/13/97)
Rule 702 Definitions (Adopted 7/11/80)
Rule 708 Plans (Rescinded 9/8/95)
Regulation IX—New Source Performance Standards (Adopted 5/11/01)
Reg. X National Emission Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 5/11/01)
Rule 1106 Marine Coatings Operations (Adopted 1/13/95)
Rule 1107 Coating of Metal Parts and Products (Adopted 11/9/01)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/14/97)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous- and Liquid Fueled Internal Combustion Engines (Adopted 11/14/97)
Rule 1113 Architectural Coatings (Adopted 7/20/01)
Rule 1116.1 Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 12/10/99)
Rule 1122 Solvent Degreasers (Adopted 9/21/01)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1125 Metal Containers, Closure, and Coil Coating Operations (adopted 1/13/95)
Rule 1132 Further Control of VOC Emissions from High-Emitting Spray Booth Facilitites (Adopted 1/19/01)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/8/97)
Rule 1136 Wood Products Coatings (Adopted 6/14/96)
Rule 1137 PM10 Emission Reductions from Woodworking Operations (Adopted 2/01/02)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 11/17/00)
Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1146.2 Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 1/9/98)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 7/14/95)
Rule 1168 Adhesive and Sealant Applications (Adopted 9/15/00)
Rule 1171 Solvent Cleaning Operations (Adopted 10/8/99)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 5/13/94)
Rule 1176 VOC Emissions from Wastewater Systems (Adopted 9/13/96)
Rule 1178 Further Reductions of VOC Emissions from Storage Tanks at Petroleum Facilities (Adopted 12/21/01)
Rule 1301 General (Adopted 12/7/95)
Rule 1302 Definitions (Adopted 10/20/00)
Rule 1303 Requirements (Adopted 4/20/01)
Rule 1304 Exemptions (Adopted 6/14/96)
Rule 1306 Emission Calculations (Adopted 10/20/00)
Rule 1313 Permits to Operate (Adopted 12/7/95)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
Rule 1605 Credits for the Voluntary Repair of On-Road Vehicles Identified Through Remote Sensing Devices (Adopted 10/11/96)
Rule 1610 Old-Vehicle Scrapping (Adopted 2/12/99)
Rule 1612 Credits for Clean On-Road Vehicles (Adopted 7/10/98)
Rule 1612.1 Mobile Source Credit Generation Pilot Program (Adopted 3/16/01)
Rule 1620 Credits for Clean Off-Road Mobile Equipment (Adopted 7/10/98)
Rule 1701 General (Adopted 8/13/99)
Rule 1702 Definitions (Adopted 8/13/99)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 8/13/99)
Rule 1706 Emission Calculations (Adopted 8/13/99)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII—Appendix (effective 1977)
Rule 1901 General Conformity (Adopted 9/9/94)
Rule 2000 General (Adopted 5/11/01)
Rule 2001 Applicability (Adopted 2/14/97)
Rule 2002 Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X) Emissions (Adopted 5/11/01)
Rule 2004 Requirements (Adopted 5/11/01) except (l)
Rule 2005 New Source Review for RECLAIM (Adopted 4/20/01) except (i)

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Rule 2006 Permits (Adopted 5/11/01)
Rule 2007 Trading Requirements (Adopted 5/11/01)
Rule 2008 Mobile Source Credits (Adopted 10/15/93)
Rule 2010 Administrative Remedies and Sanctions (Adopted 5/11/01)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions (Adopted 5/11/01)
Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 3/10/95)
Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions (Adopted 5/11/01)
Appendix A Volume V—(Protocol for oxides of nitrogen) (Adopted 3/10/95)
Rule 2015 Backstop Provisions (Adopted 5/11/01) except (b)(1)(G) and (b)(3)(B)
Rule 2020 RECLAIM Reserve (Adopted 5/11/01)
Rule 2100 Registration of Portable Equipment (Adopted 7/11/97)
Rule 2506 Area Source Credits for NO_X and SO_X (Adopted 12/10/99)
XXX Title V Permits
Rule 3000 General (Adopted 11/14/97)
Rule 3001 Applicability (Adopted 11/14/97)
Rule 3002 Requirements (Adopted 11/14/97)
Rule 3003 Applications (Adopted 3/16/01)
Rule 3004 Permit Types and Content (Adopted 12/12/97)
Rule 3005 Permit Revisions (Adopted 3/16/01)
Rule 3006 Public Participation (Adopted 11/14/97)
Rule 3007 Effect of Permit (Adopted 10/8/93)
Rule 3008 Potential To Emit Limitations (3/16/01)
XXXI Acid Rain Permit Program (Adopted 2/10/95)

(B) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 2 Definitions (Adopted 11/10/98)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 5/14/02)
Rule 11 Definition for Regulation II (Adopted 6/13/95)
Rule 12 Application for Permits (Adopted 6/13/95)
Rule 13 Action on Applications for an Authority to Construct (Adopted 6/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 6/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 6/13/95)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 23 Exemptions from Permits (Adopted 7/9/96)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 5/14/02)
Rule 26.2 New Source Review—Requirements (Adopted 5/14/02)
Rule 26.3 New Source Review—Exemptions (Adopted 5/14/02)
Rule 26.6 New Source Review—Calculations (Adopted 5/14/02)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 1/13/98)
Rule 26.11 New Source Review—ERC Evaluation At Time of Use (Adopted 5/14/02)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 4/10/01)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 4/10/01)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 4/10/01)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 4/10/01)
Rule 33.5 Part 70 Permits—Time frames for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 4/10/01)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 4/10/01)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 3/14/95)
Rule 35 Elective Emission Limits (Adopted 11/12/96)
Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/6/98)
Rule 42 Permit Fees (Adopted 5/14/02)
Rule 44 Exemption Evaluation Fee (Adopted 9/10/96)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 47 Source Test, Emission Monitor, and Call-Back Fees (Adopted 6/22/99)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Fires (Adopted 3/29/94)
Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 4/13/99)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 4/10/01)
Rule 73 National Emission Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 04/10/01)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 11/13/01)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 1/08/02)
Rule 74.6.1 Cold Cleaning Operations (Adopted 7/9/96)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 7/9/96)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 3/10/95)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO_X (Adopted 4/9/85)
Rule 74.11.1 Large Water Heaters and Small Boilers (Adopted 9/14/99)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 9/10/96)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 11/8/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (Adopted 6/13/00)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 1/14/97)
Rule 74.23 Stationary Gas Turbines (Adopted 1/08/02)
Rule 74.24 Marine Coating Operations (Adopted 9/10/96)
Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 1/08/02)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)
Rule 74.30 Wood Products Coatings (Adopted 9/10/96)
Rule 75 Circumvention (Adopted 11/27/78)
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Continuous Monitoring Systems (Adopted 2/9/99)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)
Rule 220 General Conformity (Adopted 5/9/95)
Rule 230 Notice to Comply (Adopted 11/9/99)

* * * * *

[FR Doc. 02–20867 Filed 8–15–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket 01–96; FCC 02–123]

Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the KU-Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission has adopted licensing and service rules for entities to provide Non-Geostationary Satellite Orbit, Fixed Satellite Service (NGSO FSS) in the Ku-Band frequencies, specifically the 10.7–11.7 GHz, 11.7–12.2 GHz, 12.2–12.7 GHz, 12.75–13.25 GHz, 13.75–14.0 GHz, and 14.0–14.5 GHz frequency bands. The Commission proposes adopting a methodology by which NGSO FSS applicants will demonstrate that they meet limits on their interference into geostationary-satellite orbit systems operating in shared frequencies. The Commission seeks comment on the means and timing for implementing that methodology. The Commission also request comment on a refinement of the definition of an in-line interference event adopted in the Report and Order for the NGSO FSS.

DATES: Comments are due on or before September 30, 2002 and reply comments are due on or before October 15, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. For filing instructions, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For more information regarding the proposed rule, contact J. Mark Young, Attorney Advisor, Satellite Division, International Bureau, telephone (202) 418–0762 or via the Internet at *myoung@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rulemaking* in IB Docket No. 01–96, FCC 02–123, adopted April 18, 2002 and released April 26, 2002. The complete text of this *Further Notice of Proposed Rulemaking* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898 or via e-mail *qualexint@aol.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Summary of the Further Notice of Proposed Rulemaking

1. The rules proposed in the *Further Notice of Proposed Rulemaking* will not slow system development or deployment. The Commission's consideration of these additional issues will not excuse licensees' noncompliance with Commission milestones or otherwise justify any extension of time to meet those milestones.

2. The Commission's review of the record in this docket suggests that the Commission could optimize spectrum efficiency in this service by refining the angular separation definition of an in-line interference event. The *Further Notice of Proposed Rulemaking* requests comment on whether the definition should be changed for this reason. The record developed in the docket also informs the Commission of a significant amount of progress in International Telecommunications Union Radiocommunication (ITU–R) studies on the power flux density criteria that sets the bounds of NGSO and geostationary satellite orbit sharing in these Ku-Band frequencies. The Commission has consistently stated that all NGSO FSS licensees will be required to demonstrate that they collectively meet a limit on aggregate power flux density, although the means for making that demonstration had not yet been developed. In the *Further Notice of Proposed Rulemaking,* the Commission proposes to adopt the newly developed ITU–R methodology for NGSO FSS licensees, and seek comment on issues related to this new methodology.

Comment Filing Instructions

3. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before September 30, 2002 and reply comments on or before October 15, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), *http://www.fcc.gov/e-file/ecfs.html,* or by filing paper copies.See Electronic Filing of Documents in Rule Making Proceedings, 63 FR 24,121 (1998).

4. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rule making numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rule making number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an E-mail to *ecfs@fcc.gov,* and should including the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

5. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rule making number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rule making number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners.

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Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to: 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room TW–A306, 445 12th Street, SW., Washington, DC 20554.

6. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Commission's Secretary, Marlene Dortch, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, SW., Room TW–A325, Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, the docket number of this proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Initial Regulatory Flexibility Certification

7. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**. A small business concern is one which: (a) Is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the Small Business Administration (SBA).

8. This Further Notice of Proposed Rulemaking ("Further NPRM") seeks comment on two proposals. One proposal is to adopt a methodology by which non-geostationary satellite orbit, fixed satellite service ("NGSO FSS") applicants will demonstrate that they meet a limit on their interference into geostationary-satellite orbit systems operating in shared frequencies. The second proposal is to refine the definition of an in-line interference event to accommodate high-powered NGSO FSS systems. If commenters believe that the proposed rules discussed in the *Further NPRM* require additional RFA analysis, they should include a discussion of this in their comments.

9. Neither the Commission nor the U.S. Small Business Administration has developed a small business size standard specifically for NGSO FSS licensees. The appropriate size standard is therefore the SBA standard for Satellite Telecommunications, which provides that such entities are small if they have $12.5 million or less in annual revenues.

10. Therefore, we certify that the proposals in this *Further NPRM*, if adopted, will not have a significant economic impact on a substantial number of small entities.

Ordering Clauses

11. Pursuant to sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r), this *Further Notice of Proposed Rulemaking* is adopted.

12. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A); and shall also send a copy of this *Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 605(b). This initial certification will also be published in the **Federal Register**.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–20818 Filed 8–15–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. NHTSA 2002–12939; Notice 1]

RIN 2127–AI77

Schedule of Fees Authorized by 49 U.S.C. 30141

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes fees for Fiscal Year (FY) 2003 and until further notice, as authorized by 49 U.S.C. 30141, relating to the registration of importers and the importation of motor vehicles not certified as conforming to the Federal motor vehicle safety standards (FMVSS). These fees are needed to maintain the registered importer (RI) program.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than September 13, 2002.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) website at *http://dms.dot.gov*. Click on "Help & Information" of "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket and notice number of this document. You can find the number at the beginning of this document.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Luke Loy, Office of Vehicle Safety Compliance, Office of Safety Assurance, NHTSA (202–366–5308).

For legal issues, you may call Mr. Coleman Sachs, Office of Chief Counsel, NHTSA (202–366–5238).

You may call Docket Management at 202–366–9324. You may visit the Docket from 9 a.m. to 5 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

Introduction

On June 24, 1996, we published a notice in the **Federal Register** at 61 FR 32411 that discussed the rulemaking history of 49 CFR part 594 and the fees authorized by the Imported Vehicle Safety Compliance Act of 1988, Pub. L. 100–562, since recodified as 49 U.S.C. 30141–30147. The reader is referred to that notice for background information relating to this rulemaking action. Certain fees became effective on January 31, 1990, and have been in effect and occasionally modified since then.

The fees applicable in any fiscal year are to be established before the beginning of such year. We are proposing fees that would become effective on October 1, 2002, the beginning of FY 2003. The statute authorizes fees to cover the costs of the importer registration program, to cover the cost of making import eligibility determinations, and to cover the cost of processing the bonds furnished to the Customs Service. We last amended the fee schedule in 2000. See final rule published on September 19, 2000 at 65 FR 56497. Those amendments have applied in Fiscal Years 2001–2002.

The fees are based on actual time and costs associated with the tasks for which the fees are assessed, and reflect the slight increase in hourly costs in the past two fiscal years attributable to the 3.57 and 4.52 percent raise (including the locality adjustment for Washington, DC) in salaries of employees on the General Schedule that became effective, respectively, on January 1, 2001 and January 1, 2002.

Requirements of the Fee Regulation

Section 594.6—Annual Fee for Administration of the Importer Registration Program

Section 30141(a)(3) of Title 49 U.S.C. provides that RIs must pay "the annual fee the Secretary of Transportation establishes * * * to pay for the costs of carrying out the registration program for importers * * * ." This fee is payable both by new applicants and by existing RIs. For an RI to maintain its registration, it must file a statement at the time it submits its annual fee affirming that the information it previously furnished in its registration application (or in later amendments) remains correct (49 CFR 592.5(e)).

In compliance with the statutory directive, we reviewed the existing fees and their bases for the purpose of establishing fees that would be sufficient to recover the costs of carrying out the registration program for importers for at least the next two fiscal years. The initial component of the Registration Program Fee is the fee attributable to processing and acting upon registration applications. We have tentatively determined that this fee should be increased from $345 to $395 for new applications. We have also tentatively determined that the fee representing the review of the annual statement should be increased from $177 to $195. The adjustments proposed reflect our recent experience in time spent reviewing both new applications and annual statements with accompanying documentation, as well as the inflation factor attributable to Federal salary increases and locality adjustments in the past two years since the regulation was last amended.

We must also recover costs attributable to maintenance of the registration program that arise from our need to review a registrant's annual statement and to verify the continuing validity of information already submitted. These costs also include anticipated costs attributable to possible revocation or suspension of registrations.

Based upon our review of the costs associated with this program, the portion of the fee attributable to the maintenance of the registration program is approximately $260 for each RI, an increase of $21. When this $260 is added to the $395 representing the registration application component, the cost to an applicant equals $655, which is the fee we propose. This represents an increase of $71 from the existing fee. When the $260 is added to the $195 representing the annual statement component, the total cost to the RI is $455, which represents an increase of $39.

Sec. 594.6(h) recounts indirect costs that were previously estimated at $13.90 per man-hour. This should be raised $0.95, to $14.85, based on the agency costs discussed above.

Sections 594.7, 594.8—Fees To Cover Agency Costs in Making Importation Eligibility Determinations

Section 30141(a)(3) also requires registered importers to pay "other fees the Secretary of Transportation establishes to pay for the costs of * * * (B) making the decisions under this subchapter." This includes decisions on whether the vehicle sought to be imported is substantially similar to a motor vehicle originally manufactured for import into and sale in the United States, and certified as meeting the FMVSS, and whether it is capable of being readily altered to meet those standards. Alternatively, where there is no substantial similar U.S.-certified motor vehicle, the decision is whether the safety features of the vehicle comply with or are capable of being altered to comply with the FMVSS. These decisions are made in response to petitions submitted by RIs or manufacturers, or pursuant to the Administrator's initiative.

The fee for a vehicle imported under an eligibility decision made pursuant to a petition is payable in part by the petitioner and in part by other importers. The fee to be charged for each vehicle is the estimated pro rata share of the costs in making all the eligibility determinations in a fiscal year.

Inflation and the small raises under the General Schedule also must be taken into account in the computation of costs. However, we have been able to reduce our processing costs through combining several decisions in a single **Federal Register** notice as well as achieving efficiencies through improved word processing techniques. Accordingly, we propose to maintain the fee of $175 presently required to accompany a "substantially similar" petition at the same level, and to also maintain at the same level the $800 fee that accompanies petitions for vehicles that are not substantially similar and that have no U.S.-certified counterpart. In the event that a petitioner requests an inspection of a vehicle, the fee will remain at $550 for each of those types of petitions.

The importer of each vehicle determined to be eligible for importation pursuant to a petition currently must pay $125 upon its importation, the same fee applicable to those whose vehicles are covered by an eligibility determination on the agency's initiative (other than vehicles imported from Canada that are covered by vehicle eligibility numbers VSA–80 through VSA–83, for which no eligibility determination fee is assessed). The importation fee varies depending upon the basis on which the agency made the import eligibility decision. For vehicles covered by eligibility decisions resulting from petitions under 49 CFR 593.6(b), based on the safety features of the vehicle complying with, or being capable of being modified to comply with all applicable FMVSS, the fee would remain at $125. For vehicles

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covered by eligibility decisions resulting from petitions under 49 CFR 593.6(a), based on the substantial similarity of the vehicle to a vehicle that was originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with all applicable FMVSS, the fee would remain at $105. Costs associated with previous eligibility decisions on the agency's own initiative will have been recovered by October 1, 2002. We would apply the fee of $125 per vehicle only to vehicles covered by decisions made by the agency on its own initiative on and after October 1, 2002.

Section 594.9—Fee To Recover the Costs of Processing the Bond

Section 30141(a)(3) also requires a registered importer to pay "any other fees the Secretary of Transportation establishes * * * to pay for the costs of—(A) processing bonds provided to the Secretary of the Treasury" upon the importation of a nonconforming vehicle to ensure that the vehicle will be brought into compliance within a reasonable time or if the vehicle is not brought into compliance within such time, that it is exported, without cost to the United States, or abandoned to the United States.

The statute contemplates that we will make a reasonable determination of the cost to the United States Customs Service of processing the bond. In essence, the cost to Customs is based upon an estimate of the time that a GS–9, Step 5 employee spends on each entry, which Customs has judged to be 20 minutes.

Because of the modest salary and locality raises in the General Schedule that were effective at the beginning of 2001 and 2002, we propose that the current processing fee be increased by $0.45, from $5.75 per bond to $6.20.

Section 594.10—Fee for Review and Processing of Conformity Certificate

This fee requires each RI to pay $16 per vehicle to cover the cost of the agency's review of any certificate of conformity furnished to the Administrator. However, if a RI enters a vehicle with the U.S. Customs Service through the Automated Broker Interface (ABS), has an e-mail address to receive communications from NHTSA, and pays the fee by credit card, the fee is $6. Based upon an analysis of the direct and indirect costs for the review and processing of these certificates, we find that the costs for processing non-automated entries have increased on the average of $2 per vehicle. We are therefore proposing to increase the fee for recovering these costs to $18. Since there has been no change in the cost to the agency for processing automated entries, we propose to maintain the fee for recovering these costs at the current $6 level. However, if an ABS entry contains one or more errors, the timesaving advantages of electronic entry are not realized. Accordingly, we are proposing to assess the full $18 fee for processing certificates based on ABS entries with one or more errors. However, if an acceptable electronic correction of the erroneous entry is sent to NHTSA, we are proposing to assess a $12 fee for processing the certificate.

Comment Period

Section 30141(e) provides that the Secretary shall review and make appropriate adjustments at least every 2 years to the fees, before the beginning of the fiscal year in which they are to become effective. In order to satisfy this statutory requirement of making adjustments before the fiscal year, we are reducing the ordinary 30 day comment period. Receipt of comments by September 13, 2002 will enable us to meet the deadline.

Effective Date

The proposed effective date of the final rule is October 1, 2002.

Rulemaking Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under Executive Order 12866, "Regulatory Planning and Review." Further, NHTSA has determined that the action is not significant under Department of Transportation regulatory policies and procedures. Based on the level of the fees and the volume of affected vehicles, NHTSA currently anticipates that the costs of the final rule will be so minimal as not to warrant preparation of a full regulatory evaluation. The action does not involve any substantial public interest or controversy. There will be no substantial effect upon State and local governments. There will be no substantial impact upon a major transportation safety program. Both the number of registered importers and determinations are estimated to be comparatively small. A regulatory evaluation analyzing the economic impact of the final rule adopted on September 29, 1989, was prepared, and is available for review in the NHTSA docket.

B. Regulatory Flexibility Act

The agency has also considered the effects of this action in relation to the Regulatory Flexibility Act (5 U.S.C. Sec. 601 *et seq.*). I certify that this action will not have a substantial economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. Sec. 605(b)). The proposed amendment would primarily affect entities that currently modify nonconforming vehicles and that are small businesses within the meaning of the Regulatory Flexibility Act; however, the agency has no reason to believe that a substantial number of these companies cannot pay the fees proposed by this action, which are either unchanged or only modestly increased from those now being paid by these entities, and which can be recouped through their customers. Costs to owners or purchasers for the alteration of nonconforming vehicles to conform with the FMVSS may be expected to increase (or decrease) to the extent necessary to reimburse the registered importer for the fees payable to the agency for the cost of carrying out the registration program and making eligibility decisions, and to compensate Customs for its bond processing costs.

Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on "Federalism" requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." Executive Order 13132 defines the term "Policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implication, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

The proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking action.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers will not vary significantly from that existing before promulgation of the rule.

E. Civil Justice Reform

This proposed rule does not have a retroactive or preemptive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because a final rule based on this proposal would not have an effect of this magnitude, no Unfunded Mandates assessment has been prepared.

G. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language include consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the proposed rule clearly stated?
—Does the proposed rule contain technical language or jargon that is unclear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

Request for Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given at the beginning of this document, under **ADDRESSES.**

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given at the beginning of this document under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation, 49 CFR part 512.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address and times given at the beginning of this document under **ADDRESSES.** You may also read the comments on the internet. To read the comments on the internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on "search."

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the heading of this document. Example: if the docket number were "NHTSA–2000–1234," you would type "1234."

(4) After typing the docket number, click on "search."

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see.

You may download the comments. Although the comments are imaged documents, instead of the word processing documents, the "pdf" versions of the documents are word searchable. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

List of Subjects in 49 CFR part 594

Imports, Motor vehicle safety, Motor vehicles.

PART 594—SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141

In consideration of the foregoing, 49 CFR part 594 would be amended as follows:

1. The authority citation for part 594 would continue to read as follows:

Authority: 49 U.S.C. 30141, 30166; delegation of authority at 49 CFR 1.50.

2. Section 594.6 would be amended by:

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A. revising the introductory text of paragraph (a),

B. revising paragraph (b),

C. changing the year "2000" in paragraph (d) to read "2002,"

D. revising paragraph (h); and

E. revising paragraph (i).

The revised text reads as follows:

§ 594.6 Annual fee for administration of the registration program.

(a) Each person filing an application to be granted the status of a Registered Importer pursuant to part 592 of this chapter on or after October 1, 2002, must pay an annual fee of $655, as calculated below, based upon the direct and indirect costs attributable to: * * *

* * * * *

(b) That portion of the initial annual fee attributable to the processing of the application for applications filed on and after October 1, 2002, is $395. The sum of $395, representing this portion, shall not be refundable if the application is denied or withdrawn.

* * * * *

(h) * * * This cost is $14.85 per man-hour for the period beginning October 1, 2002.

(i) Based upon the elements, and indirect costs of paragraphs (f), (g), and (h) of this section, the component of the initial annual fee attributable to administration of the registration program, covering the period beginning October 1, 2002, is $260. When added to the costs of registration of $395, as set forth in paragraph (b) of this section, the costs per applicant to be recovered through the annual fee are $655. The annual renewal registration fee for the period beginning October 1, 2002, is $455.

3. Section 594.7 would be amended by revising paragraph (e) to read as follows:

§ 594.7 Fee for filing petitions for a determination whether a vehicle is eligible for importation.

* * * * *

(e) For petitions filed on and after October 1, 2002, the fee payable for seeking a determination under paragraph (a)(1) of this section is $175. The fee payable for a petition seeking a determination under paragraph (a)(2) of this section is $800. If the petitioner requests an inspection of a vehicle, the sum of $550 shall be added to such fee. No portion of this fee is refundable if the petition is withdrawn or denied.

* * * * *

4. Section 594.8 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 594.8 Fee for importing a vehicle pursuant to a determination by the Administrator.

* * * * *

(c) If a determination has been made on or after October 1, 2002, pursuant to the Administrator's initiative, the fee for each vehicle is $125. * * *

5. Section 594.9 would be amended by reviving paragraph (c) to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs.

* * * * *

(c) The bond processing fee for each vehicle imported on and after October 1, 2002, for which a certificate of conformity is furnished, is $6.20.

6. Section 594.10 would be amended by revising paragraph (d) to read as follows:

§ 594.10 Fee for review and processing of conformity certificate.

* * * * *

(d) The review and processing fee for each certificate of conformity submitted on and after October 1, 2002 is $18. However, if the vehicle covered by the certificate has been entered electronically with the U.S. Customs Service through the Automated Broker Interface and the registered importer submitting the certificate has an e-mail address, the fee for the certificate is $6, provided that the fee is paid by a credit card issued to the registered importer. If NHTSA finds that the information in the entry or the certificate is incorrect, requiring further processing, the processing fee shall be $18. If the importer electronically corrects the incorrect information, the processing fee shall be $12.

Issued on: August 13, 2002.

L. Robert Shelton,

Executive Director.

[FR Doc. 02–20913 Filed 8–13–02; 3:15 pm]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 67, No. 159

Friday, August 16, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Seek Public Comment

AGENCY: National Agricultural Library, Agricultural Research Service, USDA.

ACTION: Notice of issuance of a report for public comment.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Agricultural Library, Agricultural Research Service, USDA has issued the task force "Report on the National Agricultural Library 2001" for public comment. Comments received will be reviewed by the National Agricultural Research, Education, Extension and Economics Advisory Board and considered in the development of specific recommendations to the Department for the future management of the National Agricultural Library.

DATES: Submit comments September 16, 2002. Comments received after this date will be considered if it is practical to do so, but the USDA is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Address all comments concerning this notice to Dr. Susan McCarthy, Technical Information Specialist, USDA, ARS, National Agricultural Library, 10301 Baltimore Avenue, Room 203, Beltsville, MD 20705–2351. Submit electronic comments to *comments@nal.usda.gov*. Copies of the Report can be obtained through the NAL Home Page address: *http://www.nal.usda.gov/brp/* and are also available for on-site review in the Reading Room of the National Agricultural Library, Beltsville, MD.

FOR FURTHER INFORMATION CONTACT: Susan McCarthy, Phone: 301–504–5510, or FAX: 301–504–6951, or by E-mail: *smccarth@nal.usda.gov*, please reference this Notice in the subject line.

SUPPLEMENTARY INFORMATION: The task force "Report on the National Agricultural Library 2001" is being issued for a 30-day public comment period. The report represents the work of a task force to assess the National Agricultural Library (NAL) in pursuit of its legislated mandate to serve as the chief agricultural information resource of the United States ("Food, Agriculture, Conservation and Trade Act of 1990" codified at 7 USCS 3125a). The task force conducted an extensive study of the mission, management, programs and operations of the NAL. The study included stakeholder surveys, comparisons with other national library operations, and internal reviews. Through this report the task force laid the foundation for substantiative recommendations to the Department for the long-term management of NAL, an important information resource for the food, fiber, and agriculture enterprise. Information received through the public comment process will assist the National Agricultural Research, Education, Extension, and Economics Advisory Board (NAREEE Advisory Board) to develop recommendations for the Department of Agriculture to guide the future management of the NAL. The NAREEE Advisory Board is the official advisory board for USDA's Research, Extension, and Economics Mission Area and is able to provide consensus recommendations to the Department based on public input.

Specifically, USDA is seeking information through comments on the "Report of the National Agricultural Library 2001" regarding the preliminary recommendations issued in the Report. The recommendations relate to issues of: innovation in information services; organizational structure; planning and evaluation processes; and leadership. In addition, comments are sought on behalf of the comprehensive information support system needed for an efficient and robust food, fiber, and agriculture enterprise. Comments are sought on the need to create critical information services and programs not currently provided; or to cease redundant or nonessential services and programs. All responses to this notice will be summarized and provided to the NAREEE Advisory Board for consideration in the development of recommendations to the Department of Agriculture. All comments will become a matter of public record.

Authority: 41 CFR Parts 101–6 and 102–3 Federal Advisory Committee Management; Final Rule.

Dated: August 8, 2002.

Caird E. Rexroad,

Acting Associate Administrator.

[FR Doc. 02–20881 Filed 8–15–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Request for Public Hearing on 2002—Crop Cane Sugar Marketing Allotments and Allocations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of opportunity to request a public hearing.

The Commodity Credit Corporation (CCC) is issuing this notice to advise sugarcane processors and growers that they may request a public hearing regarding 2002-crop cane State sugar marketing allotments and the allocation of cane State sugar marketing allotments to sugarcane processors under the Sugar Program. Sections 359c and 359d of the Agricultural Adjustment Act of 1938, as amended by section 1403 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), require that the Secretary shall make cane State sugar marketing allotments and the allocation of cane State sugar marketing allotments to sugarcane processors after a hearing, if requested by the affected sugarcane processors or growers. If such request is made by affected parties by August 20, 2002, CCC will conduct a hearing on August 29, 2002, at 10 a.m., in the Jefferson Auditorium of the U.S. Department of Agriculture South Building, 1400 Independence Ave, Washington, DC. CCC will publicly announce the hearing if one is requested. Sugarcane growers, processors, and refiners, sugar beet growers and processors, sugar users, and all other interested parties would be welcome to attend if such hearing is held. State cane sugar marketing allotments and their allocation to sugarcane processors and sugar beet processor allocations will be announced before October 1, 2002.

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ADDRESSES: Please send hearing requests to Thomas Bickerton, Economic and Policy Analysis Staff, United States Department of Agriculture (USDA), Stop 0516, 1400 Independence Ave., SW, Washington, DC 20250–0504. Phone: (202) 720–6733. Fax: (202) 690–1480. E-mail: *Thomas.Bickerton@usda.gov.*

Signed in Washington, DC, on August 13, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–20928 Filed 8–13–02; 4:48 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss projects to fund this fiscal year. Agenda topics will include Project selection feedback, future project development and a public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on August 27, 2002, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Jeanne Higgins, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *jmhiggins@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: August 9, 2002.

Lesley Thompson,

Acting Forest Supervisor.

[FR Doc. 02–20809 Filed 8–15–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on the following information collections for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by October 15, 2002.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036, South Building, Washington, DC 20250–1522. Telephone: (202)720–9550. Fax: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. Fax: (202) 720–4120.

- *Title:* 7 CFR Part 1789, Use of Consultants Funded by Borrowers.
- *OMB Control Number:* 0572–0115.
- *Type of Request:* Extension of a currently approved collection.
- *Abstract:* Section 18(c) of the Rural Electrification Act of 1936 (RE Act), as amended (7 U.S.C. 901 *et seq.*) authorizes RUS to use consultants voluntarily funded by borrowers for financial, legal, engineering, and other technical services. Consultants may be used to facilitate timely action on loan applications by borrowers for financial assistance and for approvals required by RUS, pursuant to the terms of outstanding loans, or otherwise. RUS may not require borrowers to fund consultants. The provisions of section 18(c) may be utilized only at the borrower's request.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Not for profit institutions; business or other for-profit.

Estimated Number of Respondents: 6.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12 hours.

- *Title:* Prospective Large Power Service.
- *OMB Control Number:* 0572–0001.
- *Type of Request:* Extension of a currently approved collection.
- *Abstract:* The RUS makes mortgage loans and loan guarantees to electric systems to provide and improve electric service in rural areas pursuant to the RE Act of 1936, as amended (7 U.S.C. 901 *et seq.*). RUS electric borrowers often enter into special contracts with commercial and industrial consumers for the retail sale of electricity. These contracts typically require extensions to the borrower's electric system which may be financed with RUS loan funds, debt financing from another source, the borrower's own funds, sometimes called general funds, and/or funds provided by the consumer.

RUS review of these contracts is intended to protect the interests of the government as a secured lender and to foster the purposes of the RE Act. RUS Form 170, Prospective Large Power Service, provides RUS with information needed for this review.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4 hours per response.

Respondents: Not-for-profit institutions; business or other for-profit.

Estimated Number of Respondents: 5.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 20 hours.

- *Title:* Request for Approval to Sell Capital Assets.
- *OMB Control Number:* 0572–0020.
- *Type of Request:* Extension of a currently approved collection.
- *Abstract:* A borrower s assets provide the security for a Government loan. The selling of assets reduces the security and increases the risk to the Government. RUS Form 369 allows the borrower to seek agency permission to sell some of its assets. The form collects detailed information regarding the proposed sale of a portion of the borrower's systems. RUS electric utility borrowers complete this form to request RUS approval in order to sell capital assets when the fair market value exceeds 10 percent of the borrower's net utility plant.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: Not-for-profit institutions; business or other for-profit.

Estimated Number of Respondents: 5.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 15 hours.

- *Title:* Review Rating Summary, RUS Form 300.
- *OMB Control Number:* 0572–0025.
- *Type of Request:* Extension of a currently approved collection.
- *Abstract:* The RUS manages loan programs in accordance with the RE Act of 1936, as amended (7 U.S.C. 901 *et seq.*). An important part of safeguarding loan security is to see that RUS financed facilities are being responsibly used, adequately operated, and adequately maintained. Future needs have to be anticipated to ensure that facilities will continue to produce revenue and that loans will be repaid as required by the RUS mortgage. A periodic operations and maintenance (O&M) review, using the RUS Form 300, in accordance with 7 CFR part 1730, is an effective means for RUS to determine whether the borrowers systems are being properly operated and maintained, thereby protecting the loan collateral. An O&M review is also used to rate facilities and can be used for appraisals of collateral as prescribed by OMB Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4 hours per response.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 253.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,012 hours.

- *Title:* Lien Accommodations and Subordinations, 7 CFR Part 1717, Subparts R and S.
- *OMB Control Number:* 0572–0100.
- *Type of Request:* Extension of a currently approved collection.
- *Abstract:* The RE Act of 1936, as amended (7 U.S.C. 901 *et seq.*), authorizes and empowers the Administrator of RUS to make loans in the several States and Territories of the United States for rural electrification and the furnishing of electric energy to persons in rural areas who are not receiving central station service. The RE Act also authorizes and empowers the Administrator of RUS to provide financial assistance to borrowers for purposes provided in the RE Act by accommodating or subordinating loans made by the National Rural Utilities Cooperative Finance Corporation, the Federal Financing Bank, and other lending agencies. 7 CFR part 1717, subparts R and S, sets forth policy and procedures to facilitate and support borrowers' efforts to obtain private sector financing of their capital needs, to allow borrowers greater flexibility in the management of their business affairs without compromising RUS loan security, and to reduce the cost to borrowers, in terms of time, expense and paperwork, of obtaining lien accommodations and subordinations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.64 hours per response.

Respondents: Not-for-profit institutions; Business or other for-profit.

Estimated Number of Respondents: 22.

Estimated Number of Responses per Respondent: 1.91.

Estimated Total Annual Burden on Respondents: 69 hours.

- *Title:* Mergers and Consolidations of Electric Borrowers, 7 CFR 1717, subpart D.
- *OMB Control Number:* 0572–0114.
- *Type of Request:* Extension of a currently approved collection.
- *Abstract:* The RE Act of 1936, as amended (7 U.S.C. 901 *et seq.*), authorizes the RUS to make and guarantee loans for rural electrification. Due to deregulation and restructuring activities in the electric industry, RUS borrowers find it advantageous to merge or consolidate to meet the challenges of industry change. This information collection addresses the requirements of RUS policies and procedures for mergers and consolidations of electric program borrowers.

Estimate of Burden: Public reporting burden for this collection is estimated to average 1.3 hours per response.

Respondents: Not-for-profit institution; business or other for-profit.

Estimated Number of Respondents: 18.

Estimated Number of Responses per Respondent: 7.9.

Estimated Total Annual Burden on Respondents: 184 hours.

- *Title:* Financial and Statistical Report for Telecommunications Borrowers, RUS Form 479.
- *OMB Control Number:* 0572–0031.
- *Type of Request:* Extension of a currently approved collection.
- *Abstract:* Each RUS telecommunications borrower signs a mortgage agreement that specifically requires the submission of annual audited financial statements. The information is provided on RUS Form 479.

Estimate of Burden: Public reporting burden for this collection is estimated to average 4 hours per response.

Respondents: Business or other for-profit; not-for-profit institutions.

Estimated Number of Respondents: 800.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3,200 hours.

- *Title:* 7 CFR 1744–E, Borrower Investments Telecommunications Loan Program.
- *OMB Control Number:* 0572–0098.
- *Type of Request:* Extension of a currently approved collection.
- *Abstract:* The Rural Economic Development Act of 1990, Title XXIII of the Farm Bill, Public Law 101–624, authorized qualified RUS borrowers to make investments in rural development projects without the prior approval of the RUS Administrator, provided, however, that such investments do not cause the borrower to exceed its allowable qualified investment level as determined in accordance with the procedures set forth in 7 CFR part 1744, subpart E. When a borrower exceeds these limits, the security for the Government's loans could be in jeopardy. However, in the interest of encouraging rural development, RUS will consider approving such investments that exceed a borrower's qualified investment level. This information collection covers those items that a borrower would need to submit to RUS for consideration of the

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borrower's request to make a rural development investment.

Estimate of Burden: Public reporting burden for this collection is estimated to average 9.5 hours per response.

Respondents: Business or other for-profits; not-for-profit institutions.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 238 hours.

Title: 7 CFR 1773, Policy on Audits of RUS Borrowers.

OMB Control Number: 0572–0095.

Type of Request: Extension of a currently approved collection.

Abstract: RUS, in representing the Federal Government as Mortgagee and in furthering the objectives of the RE Act of 1936, as amended (7 U.S.C. 901 *et seq.*), relies on the information provided by the borrowers in their financial statements to make lending decisions as to borrower's credit worthiness and to assure that loan funds are approved, advanced, and disbursed for proper RE Act purposes. These financial statements are audited by a certified public accountant to provide independent assurance that the data being reported are properly measured and fairly presented. Title 7 CFR part 1773 requires borrowers to furnish a full and complete report of their financial condition, operations and cash flows, in form and substance satisfactory to RUS, audited and certified by an independent certified public accountant, satisfactory to RUS, and accompanied by a report of such audit, in form and substance satisfactory to RUS.

Estimate of Burden: Public reporting burden for this collection is estimated to average 5.27 hours per response.

Respondents: Not-for-profit institutions; business or other for-profit.

Estimated Number of Respondents: 1,800.

Estimated Number of Responses per Respondent: 2.16.

Estimated Total Annual Burden on Respondents: 20,374 hours.

Copies of these information collections can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078. Fax: (202) 720–4120.

All responses to this notice will be summarized and included in the requests for OMB approval. All comments will also become a matter of public record.

Dated: August 9, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–20803 Filed 8–15–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by October 15, 2002.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036, South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. Fax: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on : (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. Fax: (202) 720–4120.

This Notice covers two information collection packages which RUS proposes to combine into one collection. The collection will then be revised to include additional items that have been identified as burden on the public. The two collections are summarized as follows:

Title: Financial Requirements and Expenditure Statement, Electric.

OMB Control Number: 0572–0015.

Type of Request: Revision of a currently approved collection.

Abstract: This collection is necessary to comply with the applicable provisions of the RUS loan contract. Borrowers submit requisitions to RUS for funds for project costs incurred. Insured loan funds will be advanced only for projects which are included in the RUS approved borrower's construction workplan or approved amendment and in an approved loan, as amended. The process of loan advances establishes the beginning of the audit trail of the use of loan funds which is required for subsequent RUS compliance audits.

The RUS Form 595 is used as a requisition for advances of funds. The form helps to assure that loan funds are advanced only for the budget purposes and amount approved by RUS. According to the applicable provisions of the RUS loan contract, borrowers must certify with each request for funds to be approved for advance, that such funds are for projects previously approved.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 11 hours per response.

Respondents: Not-for-profit institutions; business or other for profit.

Estimated Number of Respondents: 880.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 29,040 hours.

Title: Inventory of Work Orders.

OMB Control Number: 0572–0019.

Type of Request: Revision of a currently approved collection.

Abstract: When a prospective borrower requests and is granted an RUS loan, a loan contract is established between the Federal government, acting through the RUS Administrator, and the borrower. At the time this contract is entered into, the borrower must provide RUS with a list of projects for which loan funds will be spent, along with an itemized list of the estimated costs of these projects. Thus, the borrower receives a loan based upon estimated cost figures. RUS Form 219, Inventory of Work Orders, is one of the documents

the borrower submits to RUS to support actual expenditures and an advance of loan funds. The form also serves as a connecting link and provides an audit trail that originates with the advance of funds and terminates with evidence supporting the propriety of expenditures for construction or retirement projects.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.5 hours per response.

Respondents: Not-for-profit institutions; business or other for profit.

Estimated Number of Respondents: 758.

Estimated Number of Responses per Respondent: 9.

Estimated Total Annual Burden on Respondents: 11,233 hours.

As previously discussed, the Agency intends to combine these two information collections into one collection as follows:

Title: Advance of Loan Funds and Budgetary Control and Other Related Burdens.

OMB Control Number: 0572–0015.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4 hours per response.

Respondents: Not-for-profit institutions; business or other for profit.

Estimated Number of Respondents: 700.

Estimated Number of Responses per Respondent: 11.

Estimated Total Annual Burden on Respondents: 32,550 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078. Fax: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 9, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–20804 Filed 8–15–02; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: September 15, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, the entities of the Federal Government identified in the notice for each service will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service

Service Type/Location: Grounds Maintenance, Fort Douglas Cemetery, Salt Lake City, Utah.

NPA: Community Foundation for the Disabled, Inc., Salt Lake City, Utah.

Contract Activity: U.S. Army, 96th Regional Support Command, Salt Lake City, Utah.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–20860 Filed 8–15–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 15, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On May 31, June 14, and June 21, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 38065, 40909 and 42235) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-

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O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Administrative Services, USDA, Animal and Plant Health Inspection Service, Raleigh, North Carolina.
NPA: Employment Source, Inc., Fayetteville, North Carolina.
Contract Activity: USDA Animal and Plant Health Inspection Service, Riverdale, Maryland.
Service Type/Location: Base Supply Center, U.S. Army Garrison, Fort Lee, Virginia.
NPA: Virginia Industries for the Blind, Charlottesville, Virginia.
Contract Activity: U.S. Army Garrison, Fort Lee, Virginia.
Service Type/Location: Embroidery of USAF Service Name Tapes, Emboss of Plastic Name Tags, Lackland AFB, Texas.
NPA: Delaware Division for the Visually Impaired, New Castle, Delaware.
NPA: Lions Industries for the Blind, Inc., Kinston, North Carolina.
Contract Activity: Lackland Air Force Base Contracting (AETC), Lackland AFB, Texas.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 02–20861 Filed 8–15–02; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1238]

Termination of Foreign-Trade Subzones 84D and 84G; Houston, TX

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board has adopted the following order:

Whereas, on May 6, 1991 and December 20, 1991, the Foreign-Trade Zones Board issued grants of authority to the Port of Houston Authority, authorizing the establishment of Foreign-Trade Subzone 84D at the United General Supply Co., Inc. plant in Houston, Texas (Board Order 519, 56 FR 22150, 5/14/91) and Subzone 84G at the Goodman Manufacturing Company, LP, plant in Houston, Texas (Board Order 553, 56 FR 67058, 12/27/91), respectively;

Whereas, the Port advised the Board on March 20, 2001 (FTZ Docket 48–2001), that zone procedures were no longer needed at these facilities and requested voluntary termination of Subzones 84D and 84G;

Whereas, the request has been reviewed by the FTZ Staff and the Customs Service, and approval has been recommended;

Now, therefore, the Foreign-Trade Zones Board terminates the subzone status of Subzone Nos. 84D and 84G respectively, effective this date.

Signed at Washington, DC, this 8th day of August 2002.

Faryar Shirzad,
Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.
[FR Doc. 02–20906 Filed 8–15–02; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1243]

Approval for Expansion of Subzone 165A Phillips Petroleum Company (Oil Refinery); Borger, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, Phillips Petroleum Company (Phillips), Subzone 165A, has requested authority to add capacity and to expand the scope of authority under zone procedures within the Phillips refinery in Borger, Texas (FTZ Docket 6–2002, filed 1/22/2002);

Whereas, notice inviting public comment has been given in the **Federal Register** (67 FR 4392, 1/30/02);

Whereas, pursuant to Section 400.32(b)(1) of the FTZ Board regulations (15 CFR part 400), the Secretary of Commerce's delegate on the FTZ Board has the authority to act for the Board in making decisions regarding manufacturing activity within existing zones when the proposed activity is the same, in terms of products involved, to activity recently approved by the Board and similar in circumstances (15 CFR 400.32(b)(1)(i)); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby orders:

The application to add capacity and to expand the scope of authority under zone procedures within Subzone 165A, is approved, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the petrochemical complex shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.10, #2709.00.20, #2710.11.25, #2710.11.45, #2710.19.05, #2710.19.10, #2710.19.45, #2710.91.00, #2710.99.05, #2710.99.10, #2710.99.21, #2710.99.45, and which are used in the production of:

—Petrochemical feedstocks (examiner's report, Appendix "C");
—Products for export; and
—Products eligible for entry under HTSUS #9808.00.30 and #9808.00.40 (U.S. Government purchases).

Signed at Washington, DC this 8th day of August 2002.

Faryar Shirzad,
Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.
[FR Doc. 02–20907 Filed 8–15–02; 8:45 am]
BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–503]

Iron Construction Castings from Canada: Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 9, 2002, the Department of Commerce (the Department) published a notice of initiation and preliminary results of its changed circumstances review of the antidumping duty order on iron construction castings from Canada. *See Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review: Iron Construction Castings from Canada*, 67 FR 45461 (July 9, 2002) (*Preliminary Results*). We have now completed that review. For these final results, as in the *Preliminary Results*, we determine that during the period covered by the Department's 99–00 antidumping duty administrative review of the order on iron construction castings from Canada (March 1, 1999 through February 29, 2000), the Laperle, Grand Mere, and Bibby Ste-Croix foundries, which had been owned by various legal entities named as respondents in prior segments of this proceeding, were all unincorporated foundries owned by the same company, Canada Pipe Company Ltd.

EFFECTIVE DATE: August 16, 2002.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan or Howard Smith, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4081 and (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (April 2002).

Background

On April 12, 2001, the Department published in the Federal Register (66 FR 18900) the final results of the antidumping duty administrative review on iron construction castings from Canada covering the period March 1, 1999 through February 29, 2000. Canada Pipe Company Ltd. (or Canada Pipe) was the sole respondent in the 99–00 administrative review. On May 10, 2002, Canada Pipe submitted a written request that the Department clarify for the U.S. Customs Service (possibly in the context of a changed circumstances review) that the weighted-average margin calculated in the 99–00 administrative review applies to Canada Pipe's unincorporated plants (or foundries) that have "Bibby Ste-Croix," "Laperle," "Grand Mere," or simply "Bibby" in their names.

On July 9, 2002, the Department published a notice of initiation and preliminary results of its changed circumstances antidumping administrative review of the antidumping duty order on iron construction castings from Canada. *See Preliminary Results*. Interested parties were invited to comment on the preliminary results. On July 22, 2002, Canada Pipe submitted comments. See the "Comments" section below. No other parties submitted comments.

Scope of Review

The merchandise covered by this review consists of certain iron construction castings from Canada, limited to manhole covers, rings, and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable as heavy castings under Harmonized Tariff Schedule (HTS) item numbers 7325.10.0010, 7325.10.0020, and 7325.10.0025[1]. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

Final Results of Review

Based on our analysis in the *Preliminary Results*, we find that during the 99–00 review period, the Laperle, Grand Mere, and Bibby Ste-Croix foundries, which had been owned by various legal entities named as respondents in prior segments of this proceeding, were unincorporated foundries in the Bibby Ste-Croix Division of Canada Pipe Company Ltd. Moreover, we note that during the 99–00 antidumping duty administrative review of the order on iron construction castings from Canada, the Department reviewed sales of Canada Pipe Company Ltd., including its Bibby Ste-Croix Division. Thus, the antidumping duty deposit and assessment rates calculated in the 99–00 antidumping duty administrative review of Canada Pipe Company Ltd. should be applied to Canada Pipe Company Ltd, including its unincorporated foundries, Laperle, Grand Mere, and Bibby Ste-Croix.

Comment

Canada Pipe notes that the June 24, 2002 memorandum from Holly A. Kuga to Bernard T. Carreau states that the Laperle foundry, Grand Mere foundry and the Bibby Ste-Croix foundry should receive the same cash deposit and assessment rates as Canada Pipe Company Ltd., however the *Preliminary Results* published in the **Federal Register** only address the cash deposit rate. Canada Pipe assumes that this omission was unintentional and urges the Department to clearly specify in the final results of this review that its finding applies both to cash deposit and assessment rates.

Department's Position

We agree with Canada Pipe and will instruct the U.S. Customs Service that any assessment rate calculated for Canada Pipe Company Ltd. also applies to Canada Pipe Company Ltd.'s sales of subject merchandise produced by its Laperle, Grand Mere and Bibby Ste-Croix foundries.

Cash Deposit

Because the Department reviewed sales of Canada Pipe, including its Bibby Ste-Croix Division, in the 99–00 administrative review, the cash deposit rate for Canada Pipe from that review will apply to all entries of subject merchandise (including Canada Pipe's sales of subject merchandise produced by its Laperle, Grand Mere, and Bibby Ste-Croix foundries) entered, or withdrawn from warehouse, for consumption on or after April 12, 2001, the date of publication of the final results in the 99–00 administrative review. This deposit rate, 3.89 percent,[2] shall remain in effect until publication of the final results of the 2000–2001 administrative review which is being published concurrently with this notice.

Assessment

As noted above, the assessment rate calculated in the 99–00 antidumping duty administrative review of Canada Pipe Company Ltd. should be applied to Canada Pipe Company Ltd. as well as its unincorporated foundries, Laperle, Grand Mere and Bibby St. Croix.

Notification

This notice also serves as a final reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 352.305(a)(3). Timely notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results and notice are issued and published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.216 of the Department's regulations.

[1] The scope reflects the HTS item numbers currently in effect.

[2] In the preliminary results of the changed circumstances review, we incorrectly stated that the cash deposit rate is 3.84 percent.

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Dated: August 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–20903 Filed 8–15–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–503]

Iron Construction Castings from Canada: Notice of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 10, 2002, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on iron construction castings (ICC) from Canada (67 FR 17358). This review covers one manufacturer/exporter of the subject merchandise, Canada Pipe Company, Ltd. The period of review (POR) is March 1, 2000, through February 28, 2001.

Based on our analysis of the comments received, we have made no changes in the margin calculation. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled, "Final Results of Review."

EFFECTIVE DATE: August 16, 2002.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan or Howard Smith, Office of AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4081 and (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 2002).

Background

On April 10, 2002, the Department published in the Federal Register the preliminary results of the administrative review of the antidumping duty order on ICC from Canada. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Iron Construction Castings from Canada*, 67 FR 17358 (April 10, 2002).

In response to the Department's invitation to comment on the preliminary results of this review, Canada Pipe Company, Ltd. (Canada Pipe or respondent) filed its case brief on May 10, 2002. No other interested parties filed case or rebuttal briefs.

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The merchandise covered by this review consists of certain iron construction castings from Canada, limited to manhole covers, rings, and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable as heavy castings under Harmonized Tariff Schedule (HTS) item numbers 7325.10.0010, 7325.10.0020, and 7325.10.0025[1]. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

Period of Review

The POR is March 1, 2000, to February 28, 2001.

Analysis of Comments Received

All issues raised in the case briefs filed by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (*Decision Memorandum*) from Bernard T. Carreau, Deputy Assistant Secretary for Import Administration, Group II, to Faryar Shirzad, Assistant Secretary for Import Administration, dated August 8, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made no changes in the margin calculation.

Final Results of Review

We determine that the following weighted-average percentage margin exists for the period March 1, 2000, through February 28, 2001:

Manufacturer/Exporter	Percent Margin
Canada Pipe Company, Ltd.	1.43 percent

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of ICC from Canada entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Canada Pipe Company, Ltd.[2] will be the rate shown above; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if merchandise is exported by a firm other than the manufacturer and the exporter is not a firm covered in this review, prior reviews, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 7.5 percent, the "all-others" rate established in the LTFV investigation[3]. These deposit requirements, when imposed, shall remain in effect until publication of the final results of administrative review for a subsequent review period.

Assessment

The Department shall determine, and the U.S. Customs Service (Customs) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the importer-specific sales to the total entered value of the same sales. Where the assessment rate is above de minimis, we will instruct Customs to assess duties on all entries of subject merchandise by that importer. The Department will issue appraisement instructions directly to Customs.[4]

[1] The scope reflects the HTS item numbers currently in effect.

[2] As noted in the accompanying *Decision Memorandum*, the cash deposit rate calculated for Canada Pipe Company, Ltd. in this administrative review applies to Canada Pipe Company, Ltd., including its unincorporated foundries, Laperle, Grand Mere, and Bibby Ste-Croix.

[3] The "all others" rate was incorrectly identified as 14.67 percent in both the preliminary results of this review (67 FR 17358) and the preliminary results of the review covering the period March 1, 1999 through February 29, 2000 (65 FR 76609).

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: August 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix Issues in Decision Memorandum

Comments

1. Negative Dumping Margins
2. Application of Cash Deposit and Assessment Rates

[FR Doc. 02–20904 Filed 8–15–02; 8:45 am]

BILLING CODE 3510–DS–S

[4] These assessment instructions apply to Canada Pipe Company, Ltd. including its unincorporated foundries, Laperle, Grand Mere, and Bibby Ste-Croix.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813, A–560–802, A–570–851]

Certain Preserved Mushrooms From India, Indonesia, and the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 16, 2002.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger at (202) 482–4136, or Brian Smith at (202) 482–1766, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative reviews of the antidumping duty order on certain preserved mushrooms from India, Indonesia, and the People's Republic of China, which cover the period February 1, 2001, through January 31, 2002.

SUPPLEMENTARY INFORMATION:

APPLICABLE STATUTE:

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to 19 C.F.R. Part 351 (April 2001).

Pursuant to section 751(a)(3)(A) of the Act, the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245–day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. The preliminary results are currently scheduled to be completed on October 31, 2002. However, the Department finds that it is not practicable to complete the preliminary results in these administrative reviews of certain preserved mushrooms from India, Indonesia, and the People's Republic of China within this time limit because additional time is needed to conduct verifications in all of these administrative reviews.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time for completion of the preliminary results of these reviews until February 28, 2003.

Dated: August 12, 2002.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–20905 Filed 8–15–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–857]

Certain Welded Large Diameter Line Pipe From Japan: Preliminary Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Preliminary results of changed circumstances review and notice of intent to revoke in part the antidumping duty order.

SUMMARY: On June 10, 2002, the Department of Commerce ("the Department") published a notice of initiation of a changed circumstances review and consideration of revocation, in part, of the antidumping duty order on welded large diameter line pipe from Japan with respect to certain welded large diameter line pipe as described below. See Certain Welded Large Diameter Line Pipe from Japan: Notice of Initiation of Changed Circumstances Review of the Antidumping Order, 67 FR 39682 (June 10, 2002) ("Initiation Notice"). We now preliminarily revoke this order, in part, with respect to future entries of certain welded large diameter line pipe as describe below, based on the fact that domestic parties have expressed no interest in the continuation of the order with respect to these welded large diameter line pipes.

EFFECTIVE DATE: August 16, 2002.

FOR FURTHER INFORMATION CONTACT: Shireen Pasha, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0193.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to

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the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended ("the Act"), by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR part 351 (2002).

SUPPLEMENTARY INFORMATION:

Background

On December 6, 2001, the Department published in the **Federal Register** the antidumping duty order on certain welded large diameter line pipe from Japan. See Notice of Antidumping Duty Order: Certain Welded Large Diameter Line Pipe from Japan, 66 FR 63368 (December 6, 2001) ("LDLP Order"). On April 17, 2002, BP America, Inc. ("BP America"), a U.S. importer, requested that the Department revoke in part the antidumping duty order on certain welded large diameter line pipe from Japan. Specifically, the U.S. importer requested that the Department revoke the order with respect to imports meeting the following specifications and sizes: In API grades X80 or above, having an outside diameter of 48 inches to and including 52 inches, and with a wall thickness of 0.90 inch or more; and, in API grades X100 or above, having an outside diameter of 48 inches to and including 52 inches, and with a wall thickness of 0.54 inch or more. BP America indicated that, based on its consultations with domestic producers, the domestic producers lack interest in producing these sizes.

American Cast Iron Pipe Co., American Steel Pipe Division; Berg Steel Pipe Corp.; and Stupp Corp., the petitioners in the underlying sales at less-than-fair-value investigation ("the petitioners") (See LDLP Order), filed a letter on May 7, 2002, partially consenting to BP America's request. However, on May 21, 2002, the petitioners filed another letter rescinding their initial response and fully consenting to exclusion of these products from the order, i.e. in API grades X80 or above, having an outside diameter of 48 inches to and including 52 inches, and with a wall thickness of 0.90 inch or more; and, in API grades X100 or above, having an outside diameter of 48 inches to and including 52 inches, and with a wall thickness of 0.54 inch or more. On June 10, 2002, the Department published a notice of initiation of a changed circumstances review of the antidumping duty order on certain welded large diameter line pipe from Japan, meeting the specifications mentioned above. See Initiation Notice.

Scope of Review

The product covered by this antidumping order is certain welded carbon and alloy line pipe, of circular cross section and with an outside diameter greater than 16 inches, but less than 64 inches, in diameter, whether or not stencilled. This product is normally produced according to American Petroleum Institute (API) specifications, including Grades A25, A, B, and X grades ranging from X42 to X80, but can also be produced to other specifications. The product currently is classified under U.S. Harmonized Tariff Schedule (HTSUS) item numbers 7305.11.10.30, 7305.11.10.60, 7305.11.50.00, 7305.12.10.30, 7305.12.10.60, 7305.12.50.00, 7305.19.10.30, 7305.19.10.60, and 7305.19.50.00. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope is dispositive. Specifically not included within the scope of this investigation is American Water Works Association (AWWA) specification water and sewage pipe and the following size/grade combinations; of line pipe:

—Having an outside diameter greater than or equal to 18 inches and less than or equal to 22 inches, with a wall thickness measuring 0.750 inch or greater, regardless of grade.
—Having an outside diameter greater than or equal to 24 inches and less than 30 inches, with wall thickness measuring greater than 0.875 inches in grades A, B, and X42, with wall thickness measuring greater than 0.750 inches in grades X52 through X56, and with wall thickness measuring greater than 0.688 inches in grades X60 or greater.
—Having an outside diameter greater than or equal to 30 inches and less than 36 inches, with wall thickness measuring greater than 1.250 inches in grades A, B, and X42, with wall thickness measuring greater than 1.000 inches in grades X52 through X56, and with wall thickness measuring greater than 0.875 inches in grades X60 or greater.
—Having an outside diameter greater than or equal to 36 inches and less than 42 inches, with wall thickness measuring greater than 1.375 inches in grades A, B, and X42, with wall thickness measuring greater than 1.250 inches in grades X52 through X56, and with wall thickness measuring greater than 1.125 inches in grades X60 or greater.
—Having an outside diameter greater than or equal to 42 inches and less than 64 inches, with a wall thickness measuring greater than 1.500 inches in grades A, B, and X42, with wall thickness measuring greater than 1.375 inches in grades X52 through X56, and with wall thickness measuring greater than 1.250 inches in grades X60 or greater.
—Having an outside diameter equal to 48 inches, with a wall thickness measuring 1.0 inch or greater, in grades X–80 or greater.

Preliminary Results of Review and Intent To Revoke in Part the Antidumping Duty Order

Pursuant to sections 751(d)(1) of the Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request, which shows changed circumstances sufficient to warrant a review. Section 351.222(g)(1) of the Department's regulations provides that the Department may revoke an order (in whole or in part) based on changed circumstances, if it determines that: (i) Producers accounting for substantially all of the production of the domestic like product to which the order (or part of the order to be revoked) pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) if other changed circumstances sufficient to warrant revocation exist.

The Department preliminarily determines that it is appropriate to revoke the order, in part, on certain welded large diameter line pipe from Japan with respect to the specifications and sizes mentioned above, because (1) the petitioners have uniformly expressed that they do not want relief with respect to this particular sub-product, and (2) there have been no contrary expressions from the remainder of the known LDLP producers.

Interested parties wishing to comment on these results may submit briefs to the Department no later than 30 days after the publication of this notice in the **Federal Register**. Parties will have five days subsequent to this due date to submit rebuttal comments, limited to the issues raised in those comments. Parties who submit comments or rebuttal comments in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument (no longer than five pages, including

footnotes). Any requests for a hearing must be filed within 30 days of the publication of this notice in the **Federal Register**.

All written comments must be submitted in accordance with 19 CFR 351.303, and must be served on all interested parties on the Department's service list. The Department will also issue its final results of review within 270 days after the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e), and will publish these results in the **Federal Register**. While the changed circumstances review is underway, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise, including the merchandise that is the subject of this changed circumstances review, will continue unless and until it is modified pursuant to the final results of this changed circumstances review or an administrative review.

This notice is in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: August 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–20902 Filed 8–15–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 052102B]

Availability of the Simpson Resource Company Aquatic Habitat Conservation Plan/Candidate Conservation Agreement with Assurances and Draft Environmental Impact Statement, Del Norte and Humboldt Counties, California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of availability.

SUMMARY: Simpson Resource Company (Simpson), has submitted applications to NMFS and FWS (together, the Services) for an incidental take permit and an enhancement of survival permit (together, Permits) pursuant to the Endangered Species Act of 1973, as amended (ESA).Simpson has also prepared an Aquatic Habitat Conservation Plan/Candidate Conservation Agreement with Assurances (Plan) and a proposed Implementation Agreement.The Services also announce the availability of a draft Environmental Impact Statement (Draft EIS) for the Permit applications.The Permit applications are related to forest management and timber harvest in Del Norte and Humboldt Counties, CA, where Simpson owns lands or harvesting rights.The duration of the proposed Permits and Plan is 50 years.

The Services are furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on these documents.All comments received will become part of the public record and will be available for review pursuant to section 10(c) of the ESA.

DATES: Public meetings will be held on September 4, 2002, from 1 p.m. to 3 p.m.and 5 p.m. to 7 p.m. in Eureka, CA.Written comments on the Permit application, Draft EIS, Plan, and Implementation Agreement must be received on or before November 14, 2002.

ADDRESSES: The public meetings will be held at the Red Lion Inn, 1929 4th Street, Eureka, CA 95501.Oral and written comments will be received at the meetings.Written comments may also be directed to Ms. Amedee Brickey (FWS) or Mr. James F. Bond (NMFS), both located at 1655 Heindon Road, Arcata, CA 95521 or sent by facsimile to (707) 822–8411.Requests for documents should be made by calling FWS at (707) 822–7201.Hardbound copies are also available for viewing, or partial or complete duplication, at the following libraries:(1) Eureka Main Library, 1313. 3rd Street, Eureka, CA; Telephone:(707) 269–1900; (2) Fortuna Branch, Humboldt County Library, 775 14th Street, Fortuna, CA; Telephone:(707) 725–3460; (3) Arcata Branch, Humboldt County Library, 500 7th Street, Arcata, CA; Telephone:(707) 822–5924; and (4) Crescent City Library, 190 Price Mall, Crescent City, CA; Telephone:(707) 464–9793.The documents are also available electronically on the Internet at http://swr.nmfs.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Amedee Brickey (FWS) at 707–822–7201 or Mr. James F. Bond (NMFS), at (707) 825–5176.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the ESA and Federal regulations prohibit the taking of an animal species listed as endangered or threatened.The term take is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.Harm has been defined by FWS to include "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering."Consistent with FWS, NMFS has defined harm as an act which actually kills or injures fish or wildlife, and emphasizes that such acts may include "significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering."

The Services may issue two types of permits under section 10(a) of the ESA to non-federal landowners to take listed species, under certain terms and conditions.FWS's regulations governing permits for threatened and endangered species are promulgated in 50 CFR 17.32. and 50 CFR 17.22; NMFS' regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.The first of these two types of permits is the Incidental Take Permit, which is authorized under section 10(a)(1)(B) of the ESA.A proposed Incidental Take Permit must be accompanied by a Habitat Conservation Plan (HCP) that shows: (1) the taking will be incidental; (2) the applicants will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (3) the applicants will ensure that adequate funding for the conservation plan will be provided; (4) the taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild; (5) such other measures the Services may require as necessary or appropriate for the purposes of the HCP.HCPs can address both listed and currently unlisted species.

The second of these two types of permits is the Enhancement of Survival Permit, which is authorized under section 10 (a)(1)(A) of the ESA.To implement this provision of the ESA, the Services issued a joint policy for developing Candidate Conservation Agreements with Assurances (CCAA) for unlisted species on June 17, 1999 (64 FR 32726).The FWS simultaneously issued regulations for implementing CCAAs on June 17, 1999 (64 FR 32706).A correction to the FWS final rule was announced on September 30, 1999 (64 FR 52676).CCAAs are intended

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to help conserve proposed and candidate species, and species likely to become candidates, by giving non-federal landowners incentives to implement conservation measures for declining species.The primary incentive for CCAAs is an assurance that no further land, water, or resource use restrictions would be imposed should the species later become listed under the ESA.Prior to the Services entering into the CCAA and issuing a permit, the Services must determine that the benefits of the conservation measures to be implemented, when combined with the benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude any need to list the covered species.

Though the names of these two permitting tools are different, the goals are similar, and the strategies for achieving those goals can overlap.Conservation strategies can, therefore, be developed to fulfill CCAA and HCP requirements in a single conservation plan.

Current Proposal

Simpson owns and manages approximately 457,000 acres of commercial timberland in Del Norte, Humboldt, and Trinity counties, CA.Approximately 413,000 acres of this property occurs in watersheds with habitat important to the conservation of salmonid species in the North Coast region of California, including, but not limited to, the Winchuck River, Smith River, Klamath River and its tributaries, Redwood Creek, Little River, Mad River, tributaries to Humboldt Bay, Eel River, the Van Duzen River and others.Some forest management and timber harvest activities have the potential to impact species subject to protection under the ESA.

Simpson has developed a Plan, with technical assistance from the Services, to obtain Permits for their activities on approximately 413,000 acres of their commerical timberlands.Activities proposed for Permit coverage include the following: all aspects of timber harvest; forest product transportation; road and landing construction, use, maintenance and abandonment; site preparation; tree planting; silvicultural thinning; controlled burns; rock quarries and borrow pit operations; aquatic habitat restoration; and the management, harvest, and sale of minor forest products.The Permits and Plan would also cover certain monitoring activities and related scientific experiments in the Plan area.The duration of the proposed Permits and Plan is 50 years.

The proposed Incidental Take Permit would authorize the take of fish in three Evolutionarily Significant Units (ESUs) that are listed as threatened, incidental to otherwise lawful management activities: California Coastal chinook salmon (*Oncorhynchus tshawytscha*) ESU, Southern Oregon/Northern California Coast coho salmon (*O. kisutch*) ESU, and Northern California steelhead (*O. mykiss*) ESU.Simpson is also seeking coverage of fish in three other unlisted ESUs (Klamath Mountains Province steelhead ESU, Upper Klamath/Trinity Rivers chinook salmon ESU , Southern Oregon and Northern California Coastal chinook salmon ESU) under specific provisions of the Permit, should these species be listed in the future.

The proposed Enhancement of Survival Permit would address coastal cutthroat trout (*O. clarki clarki*), rainbow trout (*O. mykiss*), southern torrent salamander (*Rhyacotriton variegatus*), and tailed frog (*Ascaphus truei*) under specific provisions of the Permit, should these species be listed in the future.

The Services formally initiated an environmental review of the project through a Notice of Intent to prepare an EIS in the **Federal Register** on July 11, 2000 (65 FR 42674).The project proponent was Simpson Timber Company.In October of 2001, Simpson Timber Company announced that it planned to establish a separate company called Simpson Resource Company that would include all of the company's timberlands and directly related operations.The timberlands were transferred to Simpson Resource Company in December of 2001, and Simpson Resource Company is now the project proponent.The Notice of Intent also announced a 30–day public scoping period, during which other agencies, tribes, and the public were invited to provide comments and suggestions regarding issues and alternatives to be included in the EIS.Following this scoping period a Draft EIS was prepared which considers the No Action Alternative, the Proposed Action, and three additional action alternatives.

Under the No Action Alternative, Permits would not be issued and Simpson would remain subject to the prohibition on unauthorized taking of listed species.Under the Proposed Action, the Services would issue the Permits and Simpson would implement their proposed Plan on 413,000 acres of Simpson's California timberlands.Under a Listed Species Only Alternative (Alternative A), the Services would issue Permits only for currently listed species.The Simplified Prescriptions Alternative (Alternative B) would provide coverage for the same species as the Proposed Action, with modified management obligations.The Expanded Species/Geographic Area Alternative (Alternative C) would expand the area of coverage and the number of species covered under the Permits.The No Action, Proposed Action, and other action alternatives are analyzed in detail in the Draft EIS.

Other alternatives were considered by the Services but not carried forward for detailed analysis during preparation of this EIS.The alternatives considered but not carried forward were:(1) broad application of generic management prescriptions; (2) extensive permit coverage for terrestrial species (in addition to those considered in Alternative C above); and (3) alternative permit terms.These alternatives were not selected for detailed analysis because they do not meet the Services' purposes and needs or the applicant's objectives, or they are beyond the scope of the EIS.

The Services invite the public to comment on the Plan and Draft EIS during a 90–day public comment period.This notice is provided pursuant to section 10(c) of the ESA and the Services' regulations for implementing the National Environmental Policy Act (NEPA) of 1969 (40 CFR 1506.6).The Services are furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on these documents.All comments received will become part of the public record and will be available for review pursuant to section 10(c) of the ESA.

Dated: July 30, 2002.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: July 30, 2002.

D. Kenneth McDermond,

Deputy Manager, California/Nevada Operations Office, Fish and Wildlife Service, Region 1, Portland, Oregon

[FR Doc. 02–20739 Filed 8–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081302A]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Vessel Monitoring Systems (VMS) Committee will meet.

DATES: The meeting will be held on August 30, 2002, from 10:30 a.m. until 5 p.m.

ADDRESSES: The meeting will be held at the Federal Building, 709 W. 9th Avenue, Room 445, Juneau, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council Staff: 907–271–2809.

SUPPLEMENTARY INFORMATION: On Friday, August 30th, 2002 at 10:30 a.m., the Committee will meet to review the current VMS system and potential new systems and discuss current and future uses of technology for monitoring fisheries and enhancing vessel safety in a cost-effective manner.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 13, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20901 Filed 8–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–054]

ANR Pipeline Company; Notice of Negotiated Rate Filing

August 12, 2002.

Take notice that on August 6, 2002, ANR Pipeline Company (ANR), tendered for filing and approval thirty-two (32) negotiated rate agreements along with related agreements, including a Precedent Agreement (the "Agreements") between ANR and two utility subsidiaries of WE Energies, Wisconsin Electric Power Company and Wisconsin Gas Company. ANR tenders the Agreements pursuant to its authority to enter into negotiated rate agreements. ANR requests that the Commission accept and approve the Agreements by September 6, 2002, to be effective in accordance with the Precedent Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene.This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20830 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–115–000]

Avista Corporation, Avista Energy, Inc., Enron Power Marketing, Inc., Portland General Electric Corporation; Notice of Initiation of Proceeding and Refund Effective Date

August 13, 2002.

Take notice that on August 13, 2002, the Commission issued an order in the above-indicated docket initiating a proceeding in Docket No. EL02–115–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL02–115–000 will be 60 days after publication of this notice in the **Federal Register**.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20985 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–475–001, RP00–609–002 and RP96–129–016 (Not Consolidated)]

CMS Trunkline Gas Company, LLC; Notice of Compliance Filing

August 12, 2002.

Take notice that on August 5, 2002, CMS Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the pro forma tariff sheets listed on Appendix A attached to the filing.

Trunkline asserts that the purpose of this filing is to comply with the Commission's Order on Order No. 637 Settlement issued July 5, 2002 in Docket No. RP00–475–000, *et al.* 100 FERC ¶61,048 (2002).

Trunkline states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the

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appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20836 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–405–000]

CMS Trunkline Gas Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

August 12, 2002.

Take notice that on August 1, 2002, CMS Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, revised tariff sheets as listed on Appendix A attached to the filing, to be effective September 1, 2002.

Trunkline states that this filing is being made to remove the currently effective surcharge pursuant to Section 23 (Miscellaneous Revenue Flowthrough Surcharge Adjustment) of the General Terms and Conditions in Trunkline's FERC Gas Tariff, First Revised Volume No. 1. The currently effective Section 23 surcharge adjustment was approved by the Commission on August 31, 2001 in Docket No. RP01–449–000 (96 FERC ¶61,244) to be effective September 1, 2001. The currently effective Section 23 surcharge adjustment terminates August 31, 2002, and is not being renewed because in Trunkline's settlement filed on February 21, 2002 in Docket Nos. RP00–475–000, RP00–609–000 and RP96–129–000 (Not Consolidated), Trunkline agreed to revise Section 23 to provide for flow through of cash out revenues and penalties in excess of costs to non-offending shippers by means of a billing adjustment credit instead of a surcharge adjustment. The settlement was approved by the Commission's Order on Order Nos. 637, 587–G and 587–L Settlement issued July 5, 2002 (100 FERC ¶61,048). Accordingly, it is necessary to eliminate the currently effective surchargers.

Trunkline states that copies of this filing are being served on all jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20839 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–333–003]

Crossroads Pipeline Company; Notice of Compliance Filing

August 12, 2002.

Take notice that on August 2, 2002, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendix A, to the filing.

Crossroads states that this filing is being submitted in compliance with the Commission's July 3, 2002 Order (July 3 Order) in Docket No. RP00–333. In the July 3 Order, the Commission held that Crossroads' August 9, 2001 filing in this docket generally complied with the requirements of Order No. 637. However, the Commission required that Crossroads make certain compliance changes by filing actual tariff sheets within 30 days of the date of issuance of the July 3 Order. The instant filing reflects the required compliance changes.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 19, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourage electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20832 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–346–001 and RP01–16–001]

Dauphin Island Gathering Partners; Notice of Compliance Filing

August 12, 2002.

Take notice that on August 2, 2002, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets identified at Appendix A to the filing.

Dauphin Island states that the revised tariff sheets are being filed to comply with the Commission's July 3, 2002 Order in the referenced proceeding, which relates to Dauphin Island's previous filings to comply with Order Nos. 637, 637–A, and 637–B.

Dauphin Island states that copies of the filing are being served contemporaneously on all participants listed on the service list in this proceeding and on all persons who are required by the Commission's regulations to be served with the application initiating these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 19, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourage electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20833 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

Dauphin Island states that copies of the filing are being served contemporaneously on Dauphin Island's firm and interruptible customers and on all persons who are required by the Commission's regulations to be served with the application initiating these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20840 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–423–001]

Dauphin Island Gathering Partners; Notice of Tariff Filing

August 12, 2002.

Take notice that on August 2, 2002, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute First Revised Sheet No. 160, with an effective date of October 1 2002.

Dauphin Island states that this filing is submitted to replace First Revised First Revised Sheet No. 160 which was submitted on August 1, 2002 in error.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–113–000]

El Paso Electric Company, Enron Power Marketing, Inc., Enron Capital and Trade Resources Corporation; Notice of Initiation of Proceeding and Refund Effective Date

August 13, 2002.

Take notice that on August 13, 2002, the Commission issued an order in the above-indicated docket initiating a proceeding in Docket No. EL02–113–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL02–113–000 will be 60 days after publication of this notice in the **Federal Register**.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20983 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–6–006]

Gulfstream Natural Gas System, L.L.C.; Notice of Compliance Filing

August 12, 2002.

Take notice that on June 19, 2002, Gulfstream Natural Gas Company, L.L.C. tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on the filing, with an effective date of May 28, 2002.

Gulfstream states that the filing is being made in compliance with the Commission's May 20, 2002 order accepting original tariff sheets filed by Gulfstream in this proceeding on March 27, 2002, as modified on April 29, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 19, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourage electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20822 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–6–008]

Gulfstream Natural Gas System, L.L.C.; Notice of Compliance Filing

August 12, 2002.

Take notice that on August 1, 2002, Gulfstream Natural Gas System, L.L.C. (Gulfstream), tendered for filing as part of its FERC Gas Tariff, Original Volume No.1, the revised tariff sheets listed in Appendix A to the filing.

Gulfstream states that the purpose of this filing is to comply with the Commission's July 2, 2002 Order on Compliance Filing.

Gulfstream states that copies of its filing have been mailed to all parties on the official service lists compiled by the Secretary of the Commission in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 19, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourage electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20823 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–768–000]

Idaho Power Company and IDACORP Energy, Inc.; Notice of Filing

August 12, 2002.

Take notice that on July 15, 2002, Idaho Power Company and IDACORP Energy, Inc.; tendered for filing a Notice of Withdrawal.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 508–8222. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. *Comment Date*: August 22, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20824 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–274–007]

Kern River Gas Transmission Company; Notice of Annual Threshold Report

August 12, 2002.

Take notice that on July 31, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing its Annual Threshold Report.

Kern River states that the purpose of this filing is to comply with the terms of its Settlement in this proceeding and with its tariff requirement to file an Annual Threshold Report, identifying the eligible firm shippers receiving credits and the amounts received.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 19, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourage electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20829 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–474–002, RP01–17–005]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

August 12, 2002.

Take notice that on August 2, 2002, Maritimes & Northeast Pipeline, L.L.C. (Maritimes), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing.

Maritimes states that the purpose of this filing is to comply with the Commission's July 3, 2002 Order on Compliance Filing in the captioned proceeding.

Maritimes states that copies of its filing have been mailed to all parties on the official service lists compiled by the Secretary of the Commission in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 19, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourage electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20835 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–368–001]

Midwestern Gas Transmission Company; Notice of Compliance Tariff Filing

August 12, 2002.

Take notice that on August 6, 2002, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of Midwestern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective August 1, 2002:

Substitute Second Revised Sheet No. 5
Substitute First Revised Sheet No. 64
Substitute First Revised Sheet No. 410
Substitute First Revised Sheet No. 54
Substitute First Revised Sheet No. 73
Substitute First Revised Sheet No. 416A

Midwestern states that the purpose of this filing is comply with the Commission's order dated July 31, 2002, 100 FERC ¶ 61,134, wherein the Commission directed Midwestern to file revised tariff sheets in accordance with its directives contained in the July 31 Order in this proceeding.

Midwestern states that copies of this filing have been sent to all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourage electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20838 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–305–010]

Mississippi River Transmission Corporation; Notice of Negotiated Rates

August 12, 2002.

Take notice that on August 1, 2002, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to be effective August 1, 2002:

Original Sheet No. 10G

MRT states that the purpose of this filing is to reflect the implementation of a new negotiated rate contract.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20831 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–453–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 12, 2002.

Take notice that on August 1, 2002, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in its filing, to be effective October 1, 2002.

Northwest states that the purpose of this filing is to add a new rate schedule, Rate Schedule PAL, and related tariff provisions to Northwest's tariff to establish an interruptible park and loan service that will provide its customers with an additional option to help manage their transportation and balancing needs on the southern half of Northwest's system.

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Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene.This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20841 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–114–000]

Portland General Electric Company, Enron Power Marketing, Inc.; Notice of Initiation of Proceeding and Refund Effective Date

August 13, 2002,

Take notice that on August 13, 2002, the Commission issued an order in the above-indicated docket initiating a proceeding in Docket No. EL02–114–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL02–114–000 will be 60 days after publication of this notice in the **Federal Register**.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20984 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–459–002, RP01–32–002, RP01–477–005 and RP02–5–003]

TransColorado Gas Transmission Company; Notice of Compliance Filing

August 12, 2002.

Take notice that on August 5, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the proposed tariff sheets listed on Appendix A to the filing.

TransColorado states that the filing is being made in compliance with the Commission's Order on Compliance with Order Nos. 637, 587-G and 587-L issued on July 5, 2002, (the July 5th order) in Docket Nos. RP00–459–000, RP01–32–000, RP01–477–000 and RP02–5–000,

The July 5th order approved, in part, TransColorado's pro forma tariff sheets filed August 15, 2000, and directed TransColorado to make further modifications. TransColorado tendered for filing, proposed actual tariff sheets that include the language in TransColorado's August 15, 2000, pro forma compliance filing as well as language that comports with the Commission's directives. These modifications are included in Original Volume No. 1 of TransColorado's FERC Gas Tariff proposed to be effective four months after issuance of a final order approving the tariff sheets in all of the Kinder Morgan Pipeline group to allow the modification of computer software and hardware in tandem.

This filing complies with the Commission's directives, subject to the outcome of TransColorado's Request for Rehearing and Clarification to be filed on August 2, 2002, regarding several issues of compliance in this proceeding.

TransColorado states that a copy of this filing has been served upon its customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20834 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–288–025 and RP02–507–001]

Transwestern Pipeline Company; Notice of Compliance Filing

August 12, 2002.

Take notice that on August 6, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective September 6, 2002:

1st Revised Nineteenth Revised Sheet No. 48
Fourth Revised Sheet No. 83
Second Revised Sheet No. 85–91A
1st Revised Eighth Revised Sheet No. 72
Fourth Revised Sheet No. 84

Transwestern states that on March 12, 1997, in Docket No. RP97–288–000, Transwestern filed tariff sheets to give it the ability to negotiate rates in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines. Transwestern also states that the Commission accepted the tariff sheets in an order issued April 11, 1997. On October 24, 2001, the Presiding Administrative Law Judge (ALJ) in Docket RP97–288–009, *et.al.*, issued an initial decision is this proceeding. The initial decision found that Transwestern had complied with its current tariff in advertising and awarding of the capacity; however, the ALJ ordered Transwestern to "* * * modify its tariff so that all posting, bidding, and award procedures are set forth in a separate provision with an appropriate caption." On July 17, 2002, the Commission issued an Order on Initial Decision and Compliance Filing which, Transwestern states, affirmed the ALJ's initial decision on modifying Transwestern's tariff, and in addition, required Transwestern to add language describing the availability and applicability of the recourse rate. Transwestern further states that the instant filing is made in compliance with the Commission's Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20828 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–489–002]

Young Gas Storage Company, Ltd.; Notice of Compliance Filing

August 12, 2002.

Take notice that on August 5, 2002, Young Gas Storage Company, Ltd. (Young) tendered for filing to its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective August 1, 2002:

Substitute Second Revised Sheet No. 46
Substitute First Revised Sheet No. 106A

The tendered tariff sheets remove the incidental sales provision from Young's Tariff.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 19, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourage electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20837 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

August 12, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 233–081.

c. *Date filed:* October 19, 2001.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Pit 3, 4, 5 Project.

f. *Location:* On the Pit River, in Shasta County, near the community of Burney and the Intermountain towns of Fall River Mills and McArthur, California. The project includes 746 acres of lands of the United States, which are administered by the Forest Supervisor of the Shasta Trinity National Forest and the Forest Supervisor of the Lassen National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Randal Livingston, Lead Director, Hydro Generation Department, Pacific Gas and Electric Company, P.O. Box 770000, N11C, San Francisco, CA 94177, (415) 973–6950.

i. *Commission Contact:* Any questions concerning this notice should be addressed to John Mudre, e-mail address *john.mudre@ferc.gov*, or telephone (202) 502–8902.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing project consists of the following existing facilities: three hydraulically-connected developments, with a total of four dams, four reservoirs, three powerhouses, associated tunnels, surge chambers, and penstocks. The powerhouses contain nine generating units with a combined operating capacity of about 325 MW. No new construction is proposed.

The Pit 3 development consists of: (1) The 1,293-acre Lake Britton, with a gross storage capacity of 41,877 acre feet; (2) The Pit 3 Dam, with a crest length of 494 feet and a maximum

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height of 130 feet; (3) A concrete tunnel in two sections, 19 feet in diameter with a total length of about 21,000 feet; (4) A surge tank; (5) Three penstocks about 10 feet in diameter and 600 feet in length; (6) A 47-foot by 194-foot reinforced concrete multilevel powerhouse; (7) Three generating units, driven by three vertical Francis turbines, with a combined normal operating capacity of 70 MW; and (8) Appurtenant facilities.

The Pit 4 development consists of: (1) The 105-acre Pit 4 Reservoir, with a gross storage capacity of 1,970 acre feet; (2) The Pit 4 Dam, consisting of a gravity type overflow section 203 feet in length with a maximum height of 108 feet and a slab-and-buttress type section 212 feet in length with a maximum height of 78 feet; (3) A 19-foot-diameter pressure tunnel with a total length of about 21,500 feet; (4) Two 12-foot-diameter penstocks about 800 feet in length; (5) A four-level 58-foot by 155-foot reinforced concrete powerhouse; (6) Two generating units, driven by two vertical Francis turbines, with a combined normal operating capacity of 95 MW; and (7) Appurtenant facilities.

The Pit 5 development consists of: (1) The 32-acre Pit 5 Reservoir, with a gross storage capacity of 314 acre feet; (2) The Pit 5 Dam, with a concrete gravity overflow structure 340 feet in length and a maximum height of 67 feet; (3) The 19-foot-diameter Tunnel No. 1; (4) The 48-acre Pit 5 Tunnel Reservoir, with a gross storage capacity of 1,044 acre feet; (5) The Pit 5 Tunnel Reservoir Dam, approximately 3,100 feet long and 66 feet high; (6) The 19-foot-diameter Pit 5 Tunnel No. 2; (7) Four steel penstocks about 8 feet in diameter and 1,400 feet in length; (8) A 56-foot by 266.5-foot reinforced concrete multilevel powerhouse; (9) four generating units, driven by four vertical Francis turbines, with a combined normal operating capacity of 160 MW; and (10) Appurtenant facilities.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

o. Procedural schedule: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Notice of application ready for environmental analysis—August 12, 2002;

Terms and Conditions in response to REA Notice due October—11, 2002;

Reply comment due date—November 25, 2002;

Notice of the availability of the draft EA—January 15, 2003;

DEA comments due—March 3, 2003;

Notice of the availability of the final EA—April 15, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20825 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

August 12, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Amendment of License Application.

b. *Project No.:* 2030–036.

c. *Date Filed:* June 29, 2001.

d. *Applicants:* Portland General Electric Company (PGE) and the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWS).

e. *Name of Project:* Pelton Round Butte Hydroelectric Project.

f. *Location:* The project is located on the Deschutes River in Jefferson, Marion, and Wasco Counties, Oregon. The project occupies lands of the Deschutes National Forest; Mt. Hood National Forest; Willamette National Forest; Crooked River National Grassland; Bureau of Land Management; and tribal lands of the Warm Springs Reservation of Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Ms. Julie Keil, Director, Hydro Licensing, Portland General Electric Company, 121 SW Salmon Street, Portland, OR 97204, (503) 464–8864; and Mr. James Manion, General Manager, Warm Springs Power Enterprises, P.O. Box 690,Warm Springs, OR 97761, (541) 553–1046.

i. *FERC Contact:* Any questions on this notice should be addressed to Nan Allen at (202) 502–6128. E-mail address: *nan.allen@ferc.gov*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 90 days from the issuance of this notice. The 90-day comment period is in response to the U.S. Department of Agriculture's (USDA) and U.S. Department of the Interior's (DOI) request due to fire emergencies in the vicinity of the project.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project.

Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The Round Butte development works consisting of: (1) the 440-foot-high, 1,382-foot-long Round Butte dam; (2) a 535,000-acre-foot reservoir with a normal pool elevation at 1,945.0 feet mean sea level; (3) a spillway intake structure topped with a 30-foot-high, 36-foot-wide radial gate, and a 1,800-foot-long, 21-foot-diameter spillway tunnel; (4) an 85-foot-long, varying in height and width, powerhouse intake structure; (5) a 1,425-foot-long, 23-foot-diameter power tunnel; (6) a powerhouse containing three turbine generating units with a total installed capacity of 247 megawatts (MW); (7) one unconstructed 70-kilowatt (kW) turbine generating unit with a 30-inch-diameter pipe and support structure, a 10-foot square platform, and a turbine discharge pipe; (8) a 12.5-kilovolt (kV), 10.5-mile-long transmission line extending to the Reregulation dam, and a 230-kV, 100-mile-long transmission line extending to Portland General's Bethel substation; and (9) appurtenant facilities.

The Pelton development consists of: (1) the 204-foot-high, 636-foot-long thin-arch variable-radius reinforced concrete Pelton dam with a crest elevation 1,585 feet msl; (2) a reinforced concrete spillway on the left bank with a crest elevation of 1,558 feet msl; (3) Lake Simtustus with a gross storage capacity of 31,000 acre-feet and a normal maximum surface area of 540 acres at normal maximum water surface elevation of 1,580 feet msl; (4) an intake structure at the dam; (5) three 16-foot-diameter penstocks, 107 feet long, 116 feet long, and 108 feet long, respectively; (6) a powerhouse with three turbine/generator units with a total installed capacity of 108 MW; (7) a tailrace channel; (8) a 7.9-mile-long, 230-kV transmission line from the powerhouse to the Round Butte switchyard; and (9) other appurtenances.

The Reregulating development consists of: (1) the 88-foot-high, 1,067-foot-long concrete gravity and impervious core rockfilled Reregulating dam with a spillway crest elevation of 1,402 feet msl; (2) a reservoir with a gross storage capacity of 3,500 acre-feet and a normal maximum water surface area of 190 acres at normal maximum water surface elevation of 1,435 feet msl; (3) a powerhouse at the dam containing a 18.9-MW turbine/generator unit; (4) a tailrace channel; and (5) other appurtenances.

The project is estimated to generate an average of 1.613 billion kilowatthours annually.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008. This 90-day notice includes a 30-day extension in response to the request filed by the USDA and DOI on August 5, 2002. All reply comments must be filed with the Commission within 135 days from the date of this notice.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

o. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Notice of the availability of the draft EIS—May 2003;

Initiate 10(j) process—July 2003;

Notice of the availability of the final EIS—November 2003; and

Ready for Commission decision on the application—April 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis."

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20826 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing with the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

August 12, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2720–036.

c. *Date Filed:* July 29, 2002.

d. *Applicant:* City of Norway, Michigan.

e. *Name of Project:* Sturgeon Falls Hydroelectric Project.

f. *Location:* On the Menominee River in Dickinson County, Michigan and Marinette County, Wisconsin. The project does not utilize lands of the United States.

g. *Filed Pursuant To:* Federal Power Act 16 U.S.C. Sections 791(a)—825(r).

h. *Applicant Contact:* Ray Anderson, City Manager, City of Norway, City Hall, 915 Main Street, Norway, Michigan 49870, (906) 563–8015.

i. *FERC Contact:* Patti Leppert (202) 502–6034, or *patricia.leppert@ferc.gov*.

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j. *Cooperating Agencies:* We are asking Federal, State, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for complete analysis of the application on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Commission not later than 60 days from the date of this notice and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: September 30, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link.

m. This application is not ready for environmental analysis at this time.

n. *Description of Project:* The existing project consists of: (1) a 270-foot-long concrete dam with spillway equipped with a 16.7-foot-high by 24-foot-wide Taintor gate and a 16.7-foot-high by 16-foot-wide Taintor gate; (2) a 126.5-foot-long concrete head-works structure; (3) a 400-acre impoundment with a normal pool elevation of 829.8 feet NGVD; (4) a 300-foot-long, 60-foot-wide power canal leading to; (5) a powerhouse containing four generating units with a total installed capacity of 5,136 kilowatts; (6) a 300-foot-long, 7.2-kV transmission line; and (7) appurtenant facilities.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY (202) 208–1659. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the Wisconsin and Michigan State Historic Preservation Officers (SHPO), as required by Section 106 of the National Preservation Act and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Note: The above paragraph initiating consultation with the SHPOs may be unnecessary if that language was included in the pre-filing notice requesting preliminary terms and conditions.

q. *Procedural schedule and final amendments:* The application should be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. Because the issues in this relicensing have been resolved prior to the final license application being filed, the staff does not anticipate issuing a draft environmental assessment (EA). Rather, comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA issued in the fall of 2003.

Issue Deficiency Letter—October 2002
Issue Acceptance letter—January 2003
Issue Scoping Document 1 for comments—February 2003
Request Additional Information—April 2003
Issue Scoping Document 2, if necessary—May 2003
Notice of application is ready for environmental analysis—May 2003
Notice of the availability of the EA—November 2003
Ready for Commission's decision on the application—November 2003

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linwood A. Watson, jr.,

Deputy Secretary.

[FR Doc. 02–20827 Filed 8–15–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7260–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, NESHAP for Inorganic Arsenic Emissions From Glass Manufacturing Plants (Part 61, Subpart N)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NESHAP for Inorganic Arsenic Emissions from Glass Manufacturing Plants (Part 61, Subpart N), OMB Control Number 2060–0043, expiration date August 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 16, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1081.07 and OMB Control No. 2060–0043, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by e-mail at *auby.susan@epamail.epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1081.07. For technical questions about the ICR contact Gregory Fried, OECA, by telephone on 202–564–7016.

SUPPLEMENTARY INFORMATION:

Title: NESHAP for Inorganic Arsenic Emissions from Glass Manufacturing Plants (Part 61, Subpart N), OMB Control Number 2060–0043, EPA ICR Number 1081.07, expiration date August 31, 2002. This is a request for extension of a currently approved collection.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Inorganic Arsenic Emissions from Glass Manufacturing Plants (40 CFR part 61, subpart N) were proposed on July 20, 1983, and promulgated on August 4, 1986. The standards were amended on May 31, 1990, to add an alternative test method. These standards apply to each glass melting furnace that uses commercial arsenic as a raw material. These standards do not apply to pot furnaces. Also, rebricking is not considered construction or modification for the purposes of 40 CFR 61.05. This information is being collected to assure compliance with 40 CFR part 61, subpart N. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NESHAP. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the United States Environmental Protection Agency (EPA) Regional Office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 29, 2001 (66 FR 54514). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 141 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Glass manufacturing plants that use commercial arsenic as a raw material.

Estimated Number of Respondents: 28.

Frequency of Response: Semi-annually.

Estimated Total Annual Hour Burden: 4,524 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $98,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1081.07 and OMB Control No. 2060–0043 in any correspondence.

Dated: August 2, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–20868 Filed 8–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7260–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Risk Management Program Requirements and Petitions To Modify the List of Regulated Substances Under Section 112(r) of the Clean Air Act (CAA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Risk Management Program Requirements and Petitions to Modify the List of Regulated Substances under section 112(r) of the Clean Air Act (CAA), OMB Control No. 2050–0144, expiring September 30, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 16, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1656.09 and OMB Control No. 2050–0144, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by e-mail at *auby.susan@epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1656.09. For technical questions about the ICR contact Sicy Jacob at EPA by phone at (202) 564–8019, by e-mail at *jacob.sicy@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: Risk Management Program Requirements and Petitions to Modify the List of Regulated Substances under section 112(r) of the Clean Air Act (CAA); EPA ICR No. 1656.09, expiring September 30, 2002. This is a request for extension of a currently approved collection.

Abstract: The 1990 CAA Amendments added section 112(r) to provide for the prevention and mitigation of accidental releases. Section 112(r) mandates that EPA promulgate a list of "regulated substances," with threshold quantities and establish procedures for the addition and deletion of substances from the list of "regulated substances." Processes at stationary sources that contain a threshold quantity of a regulated substance are subject to accidental release prevention regulations promulgated under CAA section 112(r)(7). These two rules are codified as 40 CFR part 68.

This information collection request addresses the following information requirements: (1) Documenting sources' risk management programs and submitting a source risk management plan (RMP) under CAA section 112(r)(7). The regulations include requirements for covered sources to implement and maintain documentation for a risk management program and submit an RMP (including information on a source's hazard assessment, prevention program, and emergency response program) to EPA. (2) Collecting and submitting information to support

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petitions to modify the list of regulated substances under CAA section 112(r)(3). The regulations include requirements for a petitioner to submit sufficient information in support of a petition to scientifically support the request to add or delete a chemical from the list of regulated substances. The Agency will use this information in making the decision to grant or deny a petition.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 16, 2002 (67 FR 18603). EPA did not receive any comments.

Burden Statement: The annual public reporting burden will depend on the regulatory program tier into which sources are categorized. In this ICR, EPA estimates that only certain entities will be newly subject to the RMP during the three years covered by this ICR. For these newly affected sources, the public reporting burden for rule familiarization, is estimated to be 35 hours per source and 11 hours for other initial compliance. The respondent burden to prepare and submit an RMP is estimated to take 5.0 hours for retailers to 28 hours for complex chemical manufacturers. The respondent burden to maintain on-site documentation is estimated to range from 4.5 hours for retailers to 355 hours for complex chemical manufacturers. The reporting burden for CBI claims is estimated to be 9.5 hours for certain chemical manufacturing sources. The total respondent burden to become familiar with the rule, complete and submit (or revise) the risk management plan, maintain on-site documentation, and substantiate claims for confidential business information is estimated to be about 273,000 hours over three years, or an annual burden of 91,000 hours. The three-year burden estimated for 15 states that may be implementing part 68 program is 18,480 hours, or an annual burden of 6,160 hours. Therefore, the total burden for all sources and states is estimated to be 291,480 hours for three years, or an annual burden of 97,160 hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State, Local or Tribal Government, business or other for-profit.

Estimated Number of Respondents: 16,635.

Frequency of Response: Every 5 years.

Estimated Total Annual Hour Burden: 97,160.

Estimated Total Annualized Capital, Operating/ Maintenance Cost Burden: $6,700.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1656.09 and OMB Control No. 2050–0144 in any correspondence.

Dated: August 6, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–20869 Filed 8–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7260–8]

Agency Information Collection Activities: Submission for OMB Review; NSPS for Sulfuric Acid Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Sulfuric Acid Plants (40 CFR part 60, subpart H); OMB Control Number 2060–0041; expiration date August 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 16, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1057.09 and OMB Control No. 2060–0041, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Susan Auby at EPA by phone at (202) 566–1672, by e-mail at *Auby.Susan@epamail.epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR Number 1057.09. For technical questions about the ICR contact Marcia Mia at EPA by phone at (202–564–7042), by e-mail at *Mia.Marcia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: NSPS for Sulfuric Acid Plants (40 CFR part 60, subpart H); OMB Control No. 2060–0041; EPA ICR Number 1057.09; expiration date August 31, 2002. This is a request for extension of a currently approved collection.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR 60.80, subpart H, New Source Performance Standards for Sulfuric Acid Plants. This information notifies the Agency when a source becomes subject to the regulations, and informs the Agency that the source is in compliance when it begins operation. The Agency is informed of the sources' compliance status by semiannual reports. The calibration and maintenance requirements aid in a source remaining in compliance.

In the Administrator's judgement, sulfuric dioxide and acid mist emissions from the manufacture of sulfuric acid cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, New Source Performance Standards have been promulgated for this source category as required under section 111 of the Clean Air Act.

The control of sulfur dioxide (SO_2) and acid mist requires not only the installation of properly designed equipment, but also the proper operation and maintenance of that equipment. Sulfur dioxide and acid mist emissions from sulfuric acid plants result from the burning of sulfur or sulfur-bearing feedstocks to form SO_2, catalytic oxidation of SO_2 to sulfur trioxide, and absorption of SO_2 in a strong acid stream. These standards rely on the capture of SO_2 and acid mist by venting to a control device.

Owners or operators of sulfuric acid plants subject to NSPS are required to make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of demonstration of the continuous emissions monitoring system (CEMS); notification of the date of the initial performance test; and the results of the initial performance test. After the initial recordkeeping and reporting requirements, semiannual reports are required if there has been an exceedance of control device operating parameters.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports and records are required, in general, of all sources subject to NSPS. No new facilities are estimated to become subject to the standard during the next three years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 29, 2001 (66 FR 54514); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to be 220 hours per facility. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Sulfuric Acid Plants.

Estimated Number of Respondents: 106.

Frequency of Response: Semiannually and on-occasion.

Estimated Total Annual Hour Burden: 23,320 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $477,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR Number 1057.09 and OMB Control Number 2060–0041 in any correspondence.

Dated: August 2, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–20870 Filed 8–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6632–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *www.epa.gov/compliance/nepa* Weekly receipt of Environmental Impact Statements Filed August 5, 2002 Through August 9, 2002 Pursuant to 40 CFR 1506.9.

EIS No. 020339, DRAFT EIS, AFS, MN, Holmes/Chipmunk Timber Sale Project, Implementation, Superior National Forest, LaCroix Ranger District, Saint Louis County, MN, *Comment Period Ends:* September 30, 2002, *Contact:* John Galazen (218) 666–0020.

EIS No. 020340, DRAFT EIS, AFS, AZ, Kachina Village Forest Health Project, Implementation, Improving Forest Health and Reducing Wildfire Potential on National Forest System Land in the Coconino National Forest, Mormon Lake Ranger District, Coconino County, AZ, *Comment Period Ends:* September 30, 2002, *Contact:* Tammy Randall-Parker (928) 774–1147.

This document is available on the Internet at: *http://www.fs.fed.us/r3/coconino/nepa.*

EIS No. 020341, FINAL EIS, DOE, WA, OR, Wallula Power Project and Wallula-McNary Transmission Line Project, Construction and Operation, 1300 megawatt(MW) Natural Gas Fired Combustion Gas Turbine Facility and a new 500-kilovolt(kV) Transmission Line and Upgrade of the McNary Substation, US COE Section 10 and 404 Permits, Walla-Walla Co., WA and Umatilla Co., OR, *Wait Period Ends:* September 16, 2002, *Contact:* Donald L. Rose (503) 230–3796.

This document is available on the Internet at: *http://www.efsec.wa.gov.*

EIS No. 020342, FINAL EIS, FRC, ID, Four Mid-Snake River Hydroelectric Projects, Applications for New License for the Existing Projects: Shoshane Falls-FERC No. 2778, Upper Salmon Falls-FERC No. 2777, Lower Salmon Falls-FERC No. 2061 and Bliss-FERC No. 1975, Snake River, ID, *Wait Period Ends:* September 16, 2002, *Contact:* John Blair (202) 219–2845.

This document is available on the Internet at: *http://www.rimsweb1.ferc.gov.*

EIS No. 020343, DRAFT EIS, SFW, CA, Natomas Basin Habitat Conservation Plan, Issuance of Incidental Take Permit and the Adoption of an Implementing Agreement or Agreements, Natomas Basin, Sacramento and Sutter Counties, CA, *Comment Period Ends:* September 30, 2002, *Contact:* Vicki Campbell (916) 414–6600.

EIS No. 020344, FINAL EIS, AFS, NM, Viveash Fire Timber Salvage Project, Proposal to Harvest a Portion of the Fire-Killed Trees, Pecos/Las Vegas Ranger District, Santa Fe National Forest, NM, *Wait Period Ends:* September 16, 2002, *Contact:* Chris Napp (505) 757–6121.

This document is available on the Internet at: *http://www.fs.fed.us/r3/sfe/.*

EIS No. 020345, DRAFT EIS, COE, KS, Kansas Highway 10 (commonly known as South Lawrence Trafficway) Relocation, Issuance or Denial of Section 404 Permit Request, Lawrence City, Douglas County, KS, *Comment Period Ends:* September 30, 2002, *Contact:* Robert J. Smith (816) 983–3656.

EIS No. 020346, DRAFT EIS, EPA, LA, Marrero-Lafitte Waterline Modification of the Memorandum of Agreement (MOA) between USEPA and Jefferson Parrish, LA, Approval or Denial, Jefferson Parrish, LA, *Comment Period Ends:* September 30, 2002, *Contact:* Robert D. Lawrence (215) 655–8150.

EIS No. 020347, DRAFT EIS, SFW, CA, Aquatic Habitat Conservation Plan and Candidate Conservation Agreement with Assurances to Conserve Habitat for and Mitigate Impacts on Six Aquatic Species, USFWS Enhancement of Survival Permit and an USMFS

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Incidental Take Permit Issuance, Humboldt and Del Norte Counties, CA, *Comment Period Ends:* November 19, 2002, *Contact:* Amedee Brickey (707) 822–8136.

This document is available on the Internet at: *http://www.swr.nmfs.noaa.gov/.*

Amended Notices

EIS No. 020248, DRAFT EIS, COE, CA, Bolinas Lagoon Ecosystem Restoration, Proposal to Removal up to 1.5 Million Cubic Yard of Sediment from the bottom of Lagoon to Allow Restoration of Tidal Movement and Eventual Restoration of Tidal Habitat, Marin County, CA, *Comment Period Ends:* October 1, 2002, *Contact:* Roger Golden (415) 977–8703. Revision of FR Notice Published on 7/19/2002: CEQ Comment Period Ending 8/15/2002 has been extended to 10/1/2002.

EIS No. 020304, FINAL EIS, NOA, CA, San Francisco Bay National Estuarine Research Reserve, Proposes to Designate Three Sites: China Camp State Park, Brown's Island Regional Parks District, and Rush Ranch Open Space Preserve, Contra Costa, Marin and Solano Counties, CA, *Wait Period Ends:* August 26, 2002, *Contact:* Laurie McGilvray—ext 15 (301) 713–3132.

Revision of FR Notice Published on 7/19/2002: CEQ Wait Period Ending on 8/19/2002 has been Extended to 8/26/2002.

Dated: August 13, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–20862 filed 8–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6632–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–J65363–MT Rating EC2, Post Fire Vegetation and Fuels Management Project, Fuel Reduction, Bark Beetle Sanitation and Maintenance, and/or Restoration of Vegetative Communities, Beaverhead Deerlodge National Forest, Wisdom and Pintler Ranger Districts, Beaverhead and Deerlodge Counties, MT.

Summary: EPA expressed environmental concerns about proposed harvests in the Tie and Trail Creek drainages based on impacts to wetlands and the riparian areas. Monitoring to measure the effectiveness of harvesting for the prevention of spruce beetle epidemics should be included as well as additional seeding and revegetation and coordination with Montana Department of Environmental Quality.

ERP No. D–BLM–J02039–MT Rating 3, Montana Statewide Conventional Oil and Gas and Coal Bed Methane Gas Exploration and Development Management Plan within the Bureau of Land Powder River and Billings Resources Management Plan Areas and the State of Montana, Implementation, MT.

Summary: EPA concluded that the Draft EIS is inadequate based on the deficiencies in the water quality analysis; specifically by not addressing water management practices needed to assure attainment of water quality standards under the Clean Water Act. In addition, impacts to air quality, Tribal communities and their natural resources, and wildlife have not been adequately analyzed. EPA recommended: (1) Adopting the scientific analyses of water quality criteria being prepared by the Montana Department of Environmental Quality and the Northern Cheyenne Tribe, (2) prepare a Watershed Management Framework for each watershed and (3) include all additional key information in a Revised or Supplemental Draft EIS.

ERP No. D–BLM–J65358–WY Rating EU3, Powder River Basin Oil and Gas Project, Extraction, Transportation and Oil and Natural Gas Resources Sale, Application for a Permit to Drill (APD), Special Use Permit and Right-of-Way Grants, Campbell, Converse, Johnson and Sheridan Counties, WY.

Summary: EPA found the potential environmental impacts of the preferred alternative Environmentally Unsatisfactory based on degradation of water quality and subsequent impacts to irrigated agriculture. In addition, the Draft EIS did not adequately consider an alternative that would meet state water quality standards. EPA recommended: (1) Adopting the scientific analyses of water quality criteria being prepared by the Montana Department of Environmental Quality and the Northern Cheyenne Tribe, (2) prepare a Watershed Management Framework for each watershed and (3) include all additional key information in a Revised or Supplemental Draft EIS.

ERP No. D–COE–K30031–CA Rating EC2, Imperial Beach Shore Protection Project, Shore Protection and Prevention of Damage to Adjacent Beachfront Structures, Silver Strand Shoreline, City of Imperial Beach, San Diego County, CA.

Summary: EPA expressed environmental concerns and requested additional information on alternative sources of sand for beach nourishment and water quality survey and monitoring efforts for the project.

ERP No. D–FHW–K40251–CA Rating EC2, Butte 70/149/99/191 Highway Improvement Project, Update State Route 149 to Four-Lane Expressway from 70 north of Oroville to Route 99 south of Chico, Funding, Right-of-Way Acquisition, and US Army Section 404 Permit Issuance, Butte County, CA.

Summary: EPA expressed environmental concerns that cumulative impacts and induced growth impacts are not thoroughly analyzed. Impacts to resources such as habitat, water and air quality should be analyzed in further detail.

ERP No. DA–NOA–G64002–00 Rating LO, Reef Fish Fishery Management Plan, Secretarial Amendment 1, 10-Year Rebuilding Plan for Red Grouper, with Associated Impacts on Gag and Other Groupers, Gulf of Mexico.

Summary: While EPA has no objection to the action as proposed, it did request clarification information on protective measures on threatened and endangered species, especially sea turtles, that may become entangled in the fishing gear.

Final EISs

ERP No. F–AFS–L65343–ID

Whiskey Campo Resource Management Project, Implementation, Elmore County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–K65235–AZ

Las Cienegas Resource Management Plan, Implementation, Las Cienegas National Conservation Area (NCA) and Sonoita Valley Acquisition Planning District, AZ.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–H40171–NE

Lincoln South and East Beltways Project, Circumferential Transportation System Completion linking I–80 on the north and US 77 on the west, Funding and US Army COE Section 404 Permit and NPDES Permit Issuance, Lancaster County, NE.

Summary: EPA's environmental concerns were adequately addressed in the FEIS, therefore EPA has no objections to the proposed action.

ERP No. F–FRC–J03014–00

Kern River 2003 Gas Transmission Project, Expansion of the existing (KRGT) Interstate Pipeline System from southwestern Wyoming to southern California, Right-of-Way Grant, NPDES and US Army COE Section 404 Permits Issuance, (FERC Docket NO. CP01–422–000), WY, UT, NV and CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–GSA–E80003–GA

Chamblee Campus Centers for Disease Control and Prevention (CDC) Expansion, Atlanta Metro Area, City of Chamblee, Dekalb County, GA.

Summary: While EPA has no objection to the action as proposed, it did request that our previous comments on the draft EIS be further addressed during the final project design and implementation phase.

ERP No. F–HUD–C85043–NY

1105–1135 Warburton Avenue, River Club Apartment Complex Development and Operation, Funding, City of Yonkers, Westchester County, NY.

Summary: EPA has no objection to the action proposed as our previous issues haye been adequately addressed.

ERP No. F–NOA–A91067–00

Deep-sea Red Crab (*Chaconne quinqueedens*) Fisheries, Fishery Management Plan, Development and Implementation, Norfolk Canyon in the south to the Haque Line in the north, Continental United States and Exclusive Economic Zone (EEZ).

Summary: EPA has no objection to the action as proposed.

Dated: August 13, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–20863 Filed 8–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7260–2]

ISCMEM Interagency Steering Committee on Multimedia Environmental Modeling; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The annual public meeting of the Federal Interagency Steering Committee on Multimedia Environmental Modeling (ISCMEM) will convene to review progress by the working groups and to discuss initiatives for FY 2003.

DATES: September 12, 2002, 9:30 a.m. to 4 p.m.

ADDRESSES: U.S. Department of Agriculture (USDA) (Thomas Jefferson Auditorium), 1400 Independence Avenue SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Designated Federal Official: Gary J. Foley, 919–541–2106; General Information: Dave Brown, 706–355–8300.

SUPPLEMENTARY INFORMATION:

Background

On July 5, 2001, six Federal agencies entered into a Memorandum of Understanding (MOU) on research and development of multimedia environmental models. The MOU establishes a framework for facilitating cooperation and coordination among the following agencies (the specific research organization within the agency is in parenthesis): U.S. Army Corps of Engineers (Engineer Research and Development Center); U.S. Department of Agriculture (Agricultural Research Service); U.S. Department of Energy (Office of Science and Technology); U.S. Environmental Protection Agency (Office of Research and Development); U.S. Geological Survey; and U.S. Nuclear Regulatory Commission (Office of Nuclear Regulatory Research) in research and development (R&D) of multimedia environmental models, software and related databases, including development, enhancements, applications and assessments of site-specific, generic, and process-oriented multimedia environmental models as they pertain to human and environmental health risk assessment. Specifically, the MOU supports the exchange of technical information through data bases, information systems, clearinghouses, conferences, workshops, activities for developing a common model-data framework, collaboration on scientific projects supporting the modeling framework, and other means pertaining to multimedia model development, enhancements and applications focusing on environmental risk assessments.

Goals of the MOU

Provide a mechanism for the cooperating Federal Agencies to pursue a common technology in multimedia environmental modeling with a shared scientific basis; Reduce redundancies and improve the common technology through exchange and comparisons of multimedia environmental models, software and related databases; Seek mutual benefit from their respective R&D programs related to multimedia environmental model development and enhancement activities, and to ensure effective exchange of information between their technical staff and contractors; Facilitate the establishment of working partnerships among the cooperating Federal Agencies' technical staff and designated contractors in order to enhance productivity and mutual benefit through collaboration on mutually-defined research studies such as the development of a common model-data framework; Develop high-quality research and modeling products and commit to following established quality assurance (QA) and quality control (QC) procedures.

Focus of the MOU

Exchange of information related to multimedia environmental modeling tools and supporting scientific information for environmental risk assessments, protocols for establishing linkages between disparate databases and models, and development and use of a common model-data framework; Research and development programs include development and field applications of a wide variety of software modules, data processing tools, and uncertainty assessment approaches for understanding and predicting contaminant transport processes including the impact of chemical and non-chemical stressors on human and ecological health.

Public Meeting Purpose

The annual public meeting provides an opportunity for the scientific community, other Federal and State agencies, and the public to be briefed on the progress of the MOU working groups and their initiatives for the upcoming year, and to discuss technological advancements in multimedia environmental modeling. Copies of the

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agenda are available upon request to Dr. Dave Brown, U.S. Environmental Protection Agency, National Exposure Research Laboratory, Ecosystems Research Division, 960 College Station Road, Athens, Georgia 30605–2720; telephone number: (706) 355–8300; fax number: (706) 355–8302; e-mail address: *brown.dave@epa.gov*.

Meeting Synopsis

The tentative agenda is for the ISCMEM Chair to report on two initiatives: progress on establishing Web sites for technology transfer; and new participating Federal agencies. The four MOU working groups: Software System Design and Implementation; Uncertainty and Parameter Estimation; Modeling Reactive Transport; and Watershed Modeling will report on their progress during the year. A series of three technical presentations will focus on: "Modeling Frameworks—G.I.S. Integration" be presented by Olaf David, PhD., Research Scientist, Colorado State University/Agricultural Research Service, USDA, Fort Collins, CO; "Multi-Objective Parameter Estimation and Uncertainty Analysis for Watershed Modeling" to be presented by Steve Markstrom, U.S. Geological Survey in Denver, CO; and "Object Modeling System [1] (OMS) Implementation Implications for Technology Transfer and E-Government" to be presented by Jack Carlson, Director, Information Technology Center, Natural Resources Conservation Service, USDA, Fort Collins, CO.

Access

The USDA Jefferson Auditorium is located on the first floor of the South Agriculture Building at 1400 Independence Avenue SW, Washington, DC between the fourth and fifth wings. To access the Jefferson Auditorium, please use the fourth wing entrance on Independence Avenue. The most convenient transportation to the meeting venue is via Metro. Please take Metro to the Smithsonian stop on the Blue or Orange Lines, exit via the Independence Avenue escalator, proceed west on Independence Avenue to the South Agriculture Building and enter through the wing 4 which is the visitors entrance. Please inform the security personnel that you are attending the public meeting on multimedia modeling in the Jefferson Auditorium.

[1] Object Modeling System information can be viewed at: *http://xml.gov/efforts/oms.htm.*

Dated: August 9, 2002.

David S. Brown,

Chief, Regulatory Support Branch.

[FR Doc. 02–20871 Filed 8–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7260–5]

EPA Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Metals Assessment Panel of the US EPA Science Advisory Board (SAB) will meet on the dates and times noted below. All times noted are Eastern Daylight Time. All meetings are open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

Metals Assessment Panel (MAP)—Meeting Dates

The Metals Assessment Panel of the EPA Science Advisory Board (SAB), will meet September 10–12, 2002 in the Dewey room on the plaza level of the Hilton Crystal City at Ronald Reagan National Airport, 2399 Jefferson Davis Highway, Arlington, VA 22202 (Tel. 703–418–6800). The meeting will begin by 9 a.m. on Tuesday September 10 and adjourn no later than 5 p.m. on Thursday September 12.

Purpose of the Meeting—The EPA Science Advisory Board (SAB, Board) announced in 67 FR 38957–38959, June 6, 2002 that it had been asked to undertake a review of EPA's draft Action Plan for the "Framework for Metals Assessment and Cross-Agency Guidance for Assessing Metals-Related Hazard and Risk." The background, charge, and description of the review documents appear in the above referenced **Federal Register** notice and are also available at the SAB Web site (www.epa.gov/sab).

Charge to the Subcommittee—The charge for this review was published in 67 FR 38957–38959, June 6, 2002.

Availability of Review Materials: The review documents and their availability was published in 67 FR 46505–46506, July 15, 2002.

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Kathleen White, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4559; FAX (202) 501–0582; or via e-mail at *white.kathleen@epa.gov*. Requests for oral comments must be in writing (e-mail, fax or mail) and received by Kathleen White no later than noon Eastern Daylight Time on Tuesday, September 3.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Web site (*http://www.epa.gov/sab*) and in *The FY2001 Annual Report of the Staff Director* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our Web site.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: August 12, 2002.

A. Robert Flaak,

Acting Deputy Staff Director, EPA Science Advisory Board.

[FR Doc. 02–20872 Filed 8–15–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 8, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork, burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 15, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman or Leslie Smith, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov* or *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0207.

Title: Part 11 " Emergency Alert System (EAS).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not for-profit institutions.

Number of Respondents: 22,000 respondents; 1,144,000 responses.

Estimated Time Per Response: .017—40 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 38,585 hours.

Total Annual Cost: $8,250,000.

Needs and Uses: On February 22, 2002, the Commission adopted a *Report and Order* in EB Docket No. 01–66 (67 FR 18502). This *Report and Order* amended Part 11 rules to revise the technical and operational requirements for the Emergency Alert System (EAS). Many of these amendments were intended to enhance the capabilities and performance of the EAS during state and local emergencies, which will promote public safety. This *Report and Order* amended the EAS rules to make compliance with the EAS requirements less burdensome for broadcast stations, cable systems and wireless cable systems. The *Report and Order* also eliminated rules that were obsolete or no longer needed.

Part 11 contains rules and regulations providing for an EAS. The EAS provides the President with the capability to provide immediate communications and information to the general public at the national, state and local area level during periods of national emergency. The EAS also provides state and local government and the National Weather Service with the capability to provide immediate communications and information to the general public concerning emergency situations posing a threat to life and property.

Part 11 describes the required technical standards and operational procedures of the EAS for AM, FM and TV broadcast stations, cable systems, wireless cable systems and other participating entities and includes recordkeeping and reporting requirements.

The information will be used by FCC staff as part of routine inspections of broadcast stations. Accurate recordkeeping of this data is vital in determining the location and nature of possible equipment failure on the part of the transmitting or receiving entity. Furthermore, since the national level EAS is solely for the President's use, its proper operation must be assured.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–20793 Filed 8–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1421–DR]

Colorado; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Colorado (FEMA–1421–DR), dated June 19, 2002, and related determinations.

EFFECTIVE DATE: August 6, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 6, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–20815 Filed 8–15–02; 8:45 am]

BILLING CODE 6718–02–P

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FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–1425–DR), dated July 4, 2002, and related determinations.

EFFECTIVE DATE: July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 31, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–20816 Filed 8–15–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 6, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. First Centralia Bancshares, Inc., Centralia, Kansas; to acquire up to 11.8 percent of the voting shares of Morrill Bancshares, Inc., Sabetha, Kansas, and thereby indirectly acquire Morrill State Bank & Trust Co., Sabetha, Kansas; Morrill & Janes Bancshares, Inc., Hiawatha, Kansas; Morrill & Janes Bank & Trust Co., Hiawatha, Kansas; Onaga Bancshares, Inc., Merriam, Kansas; The First National Bank of Onaga, Onaga, Kansas; Century Capital Financial, Inc., Kilgore, Texas; Century Capital Financial - Delaware, Inc., Wilmington, Delaware; and City National Bank, Kilgore, Texas.

In connection with this application, Applicant also has applied to acquire voting shares of FBC Financial Corporation, Claremore, Oklahoma, the parent of 1st Bank o Oklahoma, Claremore, Oklahoma. and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

In addition, Applicant also has applied to engage *de novo* through First Trust Company of Onaga, Onaga, Oklahoma, in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, August 12, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–20792 Filed 8–15–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 30, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Gary A. Gerber, Rick H. Gerber, Jim E. Gerber, all of Exeland, Wisconsin; and Mahala A. Earnhart, Hewitt, Wisconsin; to acquire voting shares of Chippewa Valley Agency, Ltd., Winter, Wisconsin, and thereby indirectly acquire voting shares of Chippewa Valley Bank, Winter, Wisconsin.

Board of Governors of the Federal Reserve System, August 12, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–20791 Filed 8–15–02; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Transportation Management

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) is proposing to develop several instructional chapters to supplement 41 CFR part 102–117 and incorporate the information into the U.S. Government Freight Transportation Handbook. The chapters will be published one at a time. This publication is not intended to change, or open for comment, 41 CFR part 102–117 and 41 CFR part 102–118, as previously published. This chapter will discuss the transportation process without using a Government Bill of Lading for domestic shipments and emphasize the use of electronic commerce. This chapter is available for review at *www.gsa.gov/transportationpolicy*. A paper copy may be obtained by contacting Elizabeth Allison on 202–219–1729 or *elizabeth.allison@gsa.gov.*

DATES: Comments should be received by August 30, 2002.

ADDRESSES: Written comments may be addressed to Elizabeth Allison, Office of Governmentwide Policy (MTL), General Services Administration, 1800 F Street, NW., Room 1221, Washington, DC 20405. Send e-mail comments to: *elizabeth.allison@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Allison, Program Analyst, Transportation Management Policy Program, Office of Governmentwide Policy, General Services Administration, at 202–219–1729 or Internet e-mail at *elizabeth.allison@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The General Services Administration (GSA) published Federal Management Regulation (FMR) part 102–117 (41 CFR part 102–117), Transportation Management, at 65 FR 60059, October 6, 2000, and FMR part 102–118 (41 CFR part 102–118), Transportation Payment and Audit, at 65 FR 24568, April 26, 2000. The final rules included the retirement of the Optional Forms 1103 and 1203, the Government Bill of Lading (GBL) for domestic use and encouraged the use of electronic commerce.

For nearly 100 years, the Government Bill of Lading (GBL) was the primary document used to acquire transportation or transportation services in the Government. The mechanics of business transactions without a GBL must be fully understood to ensure a smooth transition to standard business practices; to move toward electronic commerce; to ensure transportation bills are auditable in the future and continue to protect the Government interest.

The purpose of this chapter is to provide information, promote industry understanding and heighten the knowledge base of the Government transportation manager. The chapter will assist the managers in fulfilling their roles and responsibilities related to the transportation management program and provide instructive information to complement the Federal Management Regulation (FMR) parts 102–117 and 102–118 (41 CFR parts 102–117 and 102–118). This chapter does not include directives or procedures that are specific to the mission of an agency.

A. Request for Comments

The General Services Administration (GSA) is seeking comments on this handbook chapter that covers the process of acquiring transportation. Comments will not be accepted on the underlying regulations. Transportation service providers and other interested parties are urged to participate by returning comments. Federal agencies are asked to help solidify the roles and responsibilities of the transportation manager and the transportation service provider moving Government freight and household goods.

Dated: August 12, 2002.

Ted J. Bembenek, Jr.,

Director, Transportation Management Policy Division (MTL).

[FR Doc. 02–20788 Filed 8–15–02; 8:45 am]

BILLING CODE 6820–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02079]

Alaska Anemia Intervention and Treatment Program; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a grant program for Alaska Anemia Intervention and Treatment.

The purpose of the program is to reduce iron deficiency anemia rates of Alaska Native children in the Yukon-Kuskokwim Delta and Bristol Bay regions of Southwest Alaska, focusing on the potential relationship between *Helicobacter pylori* infection and iron deficiency anemia. This program addresses the "Healthy People 2010" focus areas Maternal, Infant, and Child Health and Immunization and Infectious Diseases.

B. Eligible Applicants

Assistance is provided only to the Alaska Department of Health and Social Services. No other applications were solicited. The House of Representatives Conference Report accompanying the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Bill ending September 30, 2002, and For Other Purposes (H.R. 3061, 107th Congress), recognized the unique qualifications of the Alaska Department of Health and Social Services for carrying out the activities specified in this grant (H.R. Rep. 107–342).

A. Funds

Approximately $494,494 is being awarded in FY 2002. It is expected that the award will begin on or about August 1, 2002, and will be made for a 12-month budget period within a one year project period.

D. Where To Obtain Additional Information

Business management technical assistance may be obtained from: Sharon Robertson, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: 770–488–2748, Email address: *sqr2@cdc.gov.*

For program technical assistance, contact: Michael Klatt, Associate Director for Management & Operations, Arctic Investigations Program, National Center For Infectious Diseases, Centers for Disease Control and Prevention, 4055 Tudor Centre Drive, Anchorage, AK 99508, Telephone number: 907–729–3406, Email address: *mlk2@cdc.gov.*

Dated: August 8, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–20811 Filed 8–15–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02049]

Johns Hopkins Center for Civilian Biodefense Strategies; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a grant program for Johns Hopkins Center for Civilian Biodefense Strategies.

The purpose of the program is to continue support for the Johns Hopkins Center for Civilian Biodefense Strategies (JHCCBS) in development of national medical and public health policies and structures to protect the civilian population from bioterrorism. This program addresses the "Healthy People 2010" focus area Immunization and Infectious Diseases.

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B. Eligible Applicant

Assistance is provided only to the JHCCBS. No other applications were solicited. The House of Representatives Conference Report accompanying the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Bill Ending September 30, 2002, and For Other Purposes (H.R. 3061, 107th Congress), recognized the Johns Hopkins Center for Civilian Biodefense Strategies unique qualifications for carrying out the activities specified in this grant (H.R. Rep. 107–342).

C. Funds

Approximately $988,987 is being awarded in FY 2002. The award will begin on or about September 1, 2002, and will be made for a 12-month budget period within a project period of one year.

D. Where To Obtain Additional Information

Business management technical assistance may be obtained from: Sharon Robertson, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number 770–488–2748, e-mail address *sqr2@cdc.gov*.

For program technical assistance, contact: Cyndi Shaffer, Bioterrorism Preparedness and Response, Centers for Disease Control and Prevention, 1600 Clifton Road, Atlanta, GA 30333, Telephone number 404–639–0131, e-mail address *csw3@cdc.gov*.

Dated: August 6, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–20810 Filed 8–15–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02204]

University of Louisville Center for Deterrence of Biowarfare and Bioterrorism; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a cooperative agreement program for the University of Louisville (UoL), Center for Deterrence of Biowarfare and Bioterrorism (CDBB).

The purpose of the program is to develop communication and epidemiological capabilities that will facilitate detection and response to bioterrorism in protection of public health, provide effective education for health care providers in defense against bioterrorism, and conduct research to deter bioterrorism through enhanced medical and public health response capabilities. This program addresses the "Healthy People 2010" focus areas of Public Health Infrastructure and eliminating health disparities.

B. Eligible Applicant

Assistance is provided only to the University of Louisville, Center for Deterrence of Biowarfare and Bioterrorism. No other applications were solicited. The House of Representatives Conference Report accompanying the Departments of Labor, Health, and Human Services, and Education and Related Agencies Appropriation Bill ending September 30, 2002, and For Other Purposes (H.R. 3061, 107th Congress), recognized the University of Louisville's unique qualifications for carrying out the activities specified in this grant (H.R. Rep. 107–342).

C. Funds

Approximately $1,483,481 is being awarded in FY 2002. It is expected that the award will begin on or about August 1, 2002 and will be made for a 12-month budget period.

D. Where To Obtain Additional Information

To obtain business management technical assistance, contact: Sharon H. Robertson, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Mailstop K–75, Atlanta, GA 30341–4146, Email address: *sqr2@cdc.gov*.

For program technical assistance, contact: Gail Williams, MPH, CHES, Public Health Practice Program Office, Centers for Disease Control and Prevention, 4770 Buford Hwy. NE, Mailstop K–38, Atlanta, GA 30341–3717, Telephone number: 770–488–8166.

Dated: August 6, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–20813 Filed 8–15–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02111]

Fetal Alcohol Syndrome (FAS) Surveillance and Prevention Project in the Republic of South Africa (RSA); Notice of Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of $150,000 in fiscal year (FY) 2002 for a cooperative agreement program for Fetal Alcohol Syndrome (FAS) Surveillance and Prevention Project in the Republic of South Africa (RSA) with the Foundation for Alcohol Related Research (FARR) Project in collaboration with the National Health Laboratory Services (NHLS) and the University of Witwatersrand. The award is anticipated to begin in August 2002, with a 12-month budget period within a project period of up to three years.

The purpose of the program is to: (1) Develop an ongoing surveillance system for FAS; (2) estimate the prevalence of FAS in South African Provinces; (3) investigate and implement strategies for prevention; (4) complete needs assessments detailing the availability of and gaps in alcohol prevention and treatment services for women and intervention services for children; and (5) develop local epidemiology capacity through training of key study staff.

The Foundation for Alcohol Related Research (FARR) Project in collaboration with the National Health Laboratory Services (NHLS) and the University of Witwatersrand is the most appropriate and qualified agency to conduct activities under this Cooperative Agreement because:

1. FARR is the only organization in South Africa that can perform this activity. They are recognized by the South African National Department of Health as the only organization doing FAS epidemiologic research.

2. FARR was established in 1996 as a non-government (#97/00190/08) organization (NGO) whose mission is the prevention of FAS through surveillance, training, clinical diagnostic services, and epidemiological research.

3. The FARR leadership was the first to identify children with FAS in South Africa and bring international attention to the extent of the problem there.

4. FARR's goals and objectives are to prevent FAS through the exchange of information, enabling collaborative research, consultation and assistance to health care providers in the nine provinces. They have trained health care providers in all provinces and continue to develop surveillance systems to monitor trends and evaluate prevention efforts. FARR has five specific aims in its charter: (1) To evaluate the pathogenesis of FAS in at-risk South African communities; (2) to investigate the prevalence, psychosocial factors and disabilities associated with FAS; (3) evaluate the costs of FAS to exchequer of South Africa; (4) to set up prevention/intervention programmes in order to lessen the frequency of FAS, reduce the prevalence of alcohol abuse, prevent secondary disabilities, and educate the public on the dangers of alcohol-abuse during pregnancy; and (5) to increase capacity, expertise and knowledge of FAS in health professionals and the general public.

B. Where To Obtain Additional Information

To obtain business management technical assistance, contact: Cynthia Collins, Contracts and Grants Management Specialist, International & Territories Acquisition & Assistance Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2757, E-mail address: *coc9@cdc.gov*.

Program technical assistance may be obtained from: Karen Hymbaugh, Telephone: (770) 488–7373, E-mail address: *kxh5@cdc.gov* or Connie Granoff, Telephone: (770) 488–7513, E-mail address: *clg4@cdc.gov*, National Center on Birth Defects & Developmental Disabilities, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway NE., Atlanta, GA 30341–3724.

Dated: August 7, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–20812 Filed 8–15–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–191]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Granting and Withdrawal of Deeming Authority to National Accreditation Organizations and Supporting Regulations at 42 CFR 488.4 to 488.9 and 400.201; *Form No.:* CMS–R–191 (OMB# 0938–0690); *Use:* The information required is necessary to determine whether a private accreditation organization is equal to or more stringent than those of the conditions of participation or coverage for a fee-for-service provider or supplier, excluding clinical laboratories; *Frequency:* Quarterly, On occasion; *Affected Public:* Not-for-profit institutions, businesses or other for-profit; *Number of Respondents:* 5; *Total Annual Responses:* 28; *Total Annual Hours:* 451.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Home Health Services Under Hospital Insurance, Manual Instructions and Supporting Regulations in 42 CFR 409.40–.50, 410.36, 410.170, 411.41–.15, 421.100, 424.22, 484.18 and 489.21; *Form No.:* HCFA–485 (OMB# 0938–0357); *Use:* The "Home Health Services Under Hospital Insurance" is a certification and plan of care used by the Regional Home Health Intermediaries to ensure reimbursement is made to Home Health agencies only for services that are covered and medically necessary under Part A and Part B. The attending physician must sign the HCFA–485 (OMB 0938–0357) authorizing the home

Dated: August 6, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–20794 Filed 8–15–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–485]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Home Health Services Under Hospital Insurance, Manual Instructions and Supporting Regulations in 42 CFR 409.40–.50, 410.36, 410.170, 411.41–.15, 421.100, 424.22, 484.18 and 489.21; *Form No.:* HCFA–485 (OMB# 0938–0357); *Use:* The "Home Health Services Under Hospital Insurance" is a certification and plan of care used by the Regional Home Health Intermediaries to ensure reimbursement is made to Home Health agencies only for services that are covered and medically necessary under Part A and Part B. The attending physician must sign the HCFA–485 (OMB 0938–0357) authorizing the home

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services for a period not to exceed 60 days; *Frequency:* Other: Every 60 days; *Affected Public:* Business or other for-profit; *Number of Respondents:* 6,892; *Total Annual Responses:* 4,750,000; *Total Annual Hours:* 1,583,333.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: August 6, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–20795 Filed 8–15–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10049]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Assessing the CMS Fall Campaign; *Form No.* : CMS–10049 (OMB# 0938–0851); *Use:* CMS will collect information 3 times during its fall media campaigns to assess the campaign. CMS will conduct the survey via telephone, visits to our Web site, and by monitoring of our 1–800–MEDICARE number.; *Frequency:* Once; *Affected Public:* Individuals or households; *Number of Respondents:* 10,800; *Total Annual Responses:* 10,800; *Total Annual Hours:* 2,700.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: August 6, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–20856 Filed 8–15–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10065]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Making Good Choices Survey; *Form No.:* CMS–10065 (OMB# 0938–NEW); *Use* This is a request for clearance for a survey "Making Good Choices about Medicare Health Plan Survey". As part of the continuous quality improvement effort for the National Medicare Education Program (NMEP), this survey will be used to assess the impact of new educational materials developed for individuals who are turning 65 and entering the Medicare program. The measures and educational materials are based on the Transtheoretical Model of Change (TTM, the "stage model"), which has been applied and proven effective in facilitating behavior change in a wide range of health behaviors including smoking cessation, exercise acquisition and mammography screening. The materials are designed to increase new enrollees' readiness to compare their health plan options and make an informed choice. The use of an investigational design in the present study (one group will receive the materials, another will not) will allow CMS to determine whether the materials increase readiness to make an informed choice, self-efficacy, knowledge about the Medicare program, information seeking, and satisfaction with health plan choice. It will assist CMS with its national educational campaign to inform beneficiaries about their health plan choices. *Frequency:* Once with follow-up; *Affected Public:* Individuals or Households; *Number of Respondents:* 1350; *Total Annual Responses:* 1350; Total Annual Hours: 1012.5 hours.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: August 6, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–20857 Filed 8–15–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Impact Study.

OMB No.: New collection.

Description: The Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) of the Department of Health and Human Services (DHHS), is requesting comments on plans to conduct the Head Start Impact Study. This study is being conducted under contract with Westat, Inc. (with the Urban Institute, American Institutes for Research, and Decision Information Resources as their subcontractors) (#282–00–0022) to collect information for determining, on a national basis, how Head Start affects the school readiness of children participating in the program, as compared to children not enrolled in Head Start, and to determine under which conditions Head Start works best and for which children. The Head Start Impact Study involves 10 waves of data collection.

The first two waves occurred during the field test in fall 2001 and spring 2002. The field test involved approximately 500 first time enrolled three- and four-year-old preschool children across eight grantee/delegate agencies representing different community contexts. The children participating were randomly assigned to either a Head Start group (that receives Head Start program services) or a comparison group (that does not receive Head Start services but may enroll in other available services selected by their parents or be cared for at home). Waves three through 10 will involve data collection for the full-scale study. The Head Start Impact Study is a longitudinal study that will involve approximately 5,000–6,000 first time enrolled three- and four-year-old preschool children across an estimated 75 nationally representative grantee/delegate agencies (in communities where there are more eligible children and families than can be served by the program). Data collection for the full-scale study will begin in fall 2002 and extend through spring 2006 with child assessments, conducted in the fall and spring of the Head Start years and in the spring of the kindergarten and first grade years, and parent interviews conducted in the fall and spring of each year. Interviews/surveys with program staff/care providers, and quality of care assessments will be conducted in the spring of each year. This schedule of data collection is necessitated by the mandate in Head Start's 1998 reauthorization (Coats Human Services Amendments of 1998, Pub. L. 05–285) that DHHS conduct research to determine, on a national level, the impact of Head Start on the children it serves.

Respondents: Individuals or households, Head Start Agencies, school districts, and other child care providers.

Annual Burden Estimates: Estimated Response Burden for Respondents to the Head Start Impact Study—fall 2002, spring 2003, fall 2003, spring 2004, fall 2004, spring 2005, fall 2005, and spring 2006.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 1 (fall 2002):				
Parent Interviews	5,111	1	1.00	5,111
Child Assessment	5,111	1	0.9166	4,685
Teacher Ratings	613	5	0.0833	255
Center Directors/Principals	307	1	1.00	307
Classroom Teachers	613	1	0.50	307
Year 1 (spring 2003):				
Parent Interviews	4,599	1	1.00	4,599
Father Questionnaire	4,599	1	0.50	2,300
Child Assessments	4,599	1	0.9166	4,216
Teacher Ratings	966	5	0.0833	403
Family Service Workers	368	1	0.50	184
Education Coordinators	368	1	0.50	184
Center Directors/Principals	368	1	1.00	368
Classroom Teachers	736	1	0.50	368
Other Care Providers	230	1	0.50	115
Year 2 (fall 2003):				
Parent Interviews	4,139	1	1.00	4,139
Child Assessments	2,287	1	0.9166	2,096
Year 2 (spring 2004):				
Parent Interviews	3,910	1	1.00	3,910
Child Assessments	3,910	1	0.0833	3,584
Teacher Ratings	803	5	0.0833	335
Family Service Workers	165	1	0.50	83
Education Coordinators	165	1	0.50	83
Center Directors/Principals	350	1	1.00	350
Classroom Teachers	700	1	0.50	350
Other Care Providers	103	1	0.50	52
Year 3 (fall 2004): Parent Interviews	3,519	1	1.00	3,519

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Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 3 (spring 2005):				
Parent Interviews	3,519	1	1.00	3,519
Child Assessments	3,519	1	0.9166	3,226
Teacher Ratings	704	5	0.0833	293
Principals	352	1	1.00	352
Classroom Teachers	704	1	0.50	352
Year 4 (fall 2005): Parent Interviews	1,667	1	1.00	1,667
Year 4 (spring 2006):				
Parent Interviews	1,667	1	1.00	1,667
Child Assessments	1,667	1	0.9166	1,528
Teacher Ratings	333	5	0.0833	139
Principals	167	1	1.00	167
Classroom Teachers	333	1	0.50	167
Estimated Total Annual Burden Hours:				13,745

Note: The 13,745 Total Annual Burden Hours is based on an average of 200203, 200304, 200405, and 200506 estimated burden hours.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: August 12, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–20786 Filed 8–15–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Adivsory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: September 5, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To discuss reports of the working groups, determine agenda for October meeting.

Place: 6115 Executive Blvd, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Elaine Lee, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 300 C, Bethesda, MD 20892, 301/594–3194.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/dclg/dclg.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control National Institutes of Health, HHS)

Dated: August 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20847 Filed 8–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, N01–CN–25005–20 Recompetition: Surveillance, Epidemiology and End Results (SEER) Program.

Date: September 5–6, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, 6001 Executive Blvd., Conference Room B, Rockville, MD 20852.

Contact Person: C. Michael Kerwin, PhD., Scientific Review Administrator, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8057, Msc 8329, Bethesda, MD 20892–8329, 301–496–7421, *kerwinm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20851 Filed 8–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee G—Education.

Date: October 22–24, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Harvey P. Stein, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8107, Bethesda, MD 20892. (301) 496–7841.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20852 Filed 8–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Mentored Patient Oriented Research Career Development Award.

Date: September 26–27, 2002.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Robert B. Moore, PhD, Scientific Review Administrator, Review Branch, Room 7192, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892. 301–435–3541. *mooreb@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20849 Filed 8–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, October 1, 2002, 7:30 p.m. to October 2, 2002, 5 p.m. Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814 which was published in the **Federal Register** on July 26, 2002, FR 67 48929.

The meeting date will change to November 12, 2002, 7:30 p.m. to November 13, 2002, 5 p.m., and the meeting location will change to the Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, Maryland, 20817. The meeting is closed to the public.

Dated: August 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20850 Filed 8–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would

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constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council.

Date: September 9–10, 2002.

Open: September 9, 2002, 8:30 a.m. to 5 p.m.

Agenda: Discussion of program policies and issues.

Place: NIEHS, Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triangle Park, NC 27709.

Open: September 10, 2002, 8:30 a.m. to 10 a.m.

Agenda: Discussion of program policies and issues.

Place: NIEHS, Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triangle Park, NC 27709.

Closed: September 10, 2002, 10:15 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: NIEHS, Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Anne P. Sassaman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health, Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, NC 27709, 919/541–7723.

Information is also available on the Institute's/Center's home page: *www.niehs.nih.gov/dert/c-agenda.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: August 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20846 Filed 8–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Children's Study of Environmental Effects on Health Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Children's Study of Environmental Effects on Health Advisory Committee.

Date: September 12–13, 2002.

Time: 9 a.m. to 3 p.m.

Agenda: Presentations and discussion of proposed hypotheses for the NCS, study design issues, and the structure and function of ongoing workgroups. Opportunity may be provided for public comments at the discretion of the Chair. Those interested in attending, contact *ncs@mail.nih.gov* by September 5th. Those allocated a seat will be notified on September 9th via phone or e-mail.

Place: Environmental Protection Agency, Crystal Station Building, Conference Room A, Second Floor, 2800 Crystal Drive, Arlington, VA 22202.

Contact Person: Peter M. Scheidt, MD, Medical Officer, Division of Epidemiology, Statistics and Prevention Research, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 7B03, Bethesda, MD 20892. (301) 451–6421. *ncs@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: August 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20848 Filed 8–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4736–N–10]

Notice of Proposed Information Collection for Public Comment—Public Housing Homeownership Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 15, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3.5, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Homeownership Program.

OMB Control Number: 2577–0233.

Description of the need for the information and proposed use: Under the Public Housing Homeownership Program, Public Housing Agencies (PHAs) make available public housing dwelling units; public housing projects, and other housing projects available for purchase by low-income families for use as principal residences by such families. Families who are interested in purchasing a unit must submit applications to the PHA or purchase and resale entities (PREs). A PRE must prepare and submit to the PHA and HUD a homeownership program before the PRE may purchase any public housing units or projects. The PRE must demonstrate legal and practical capability to carry out the program, provide a written agreement that specifies the respective rights and obligations of the PRE and the PRE. The PHA must develop a homeownership program and obtain HUD approval before it can be implemented, provide supporting documentation and additional supporting documentation for acquisition of nonpublic housing for homeownership. PHA applications can be submitted electronically via the Internet. PHAs will be required to maintain report annually on the public homeownership program.

Agency form numbers, if applicable: None.

Members of affected public: Local and State Governments, individuals and households.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours or response: 50 respondents (PHAs); annual submission per PHA; average hours for PHA response is 40 hours; the total reporting burden is 27,367 hours.

Status of the proposed information collection: Extension, with changes, additional documentation Required.

Authority: Section 3506 of the paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 9, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 02–20798 Filed 8–15–02; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4736 N–11]

Notice of Proposed Information Collection for Public Comment for Public and Indian Housing Information Center (PIC) Survey

AGENCY: Office of the Assistant for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

DATES: *Comments Due Date:* October 15, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128. (This is not a toll-free number). For hearing- and speech-impaired persons, this telephone number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (toll-free).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of the appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

This Notice also Lists the Following Information:

Title of Proposal: Public and Indian Housing Information Center (PIC) Survey.

OMB Control Number: 2577–.

Description of the Need for the Information and Proposed Use: The Department of Housing and Urban Development's Office of Public and Indian Housing will conduct a survey designed to collect feedback from the PHA Staff on the Public Housing Information Center (PIC) and to use the feedback as a tool to improve PIC. To better assist the users of PIC the survey will provide the much-needed information to make the system more effective.

Agency form numbers: None.

Members of the Affected Public: Approximately 10,000 Pubic Housing Agency staff and approximately 600 Native American and Alaskan Tribal staff will be invited to participate in the Public and Indian Housing Information Center (PIC) survey.

Estimation of the Total Number of Hours Needed to Prepare the Information Collection including the Number of Respondents, Frequency of response, and hours of response: The survey will take its participants approximately 20 minutes to complete the survey. Approximately 30% of those invited to take the survey will voluntarily take it on an annual basis. In total, the Department expects this survey will have a total annual reporting burden of 1,060 hours.

Status of the Proposed Information Collection: New.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: August 9, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

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Department of Housing and Urban Development
Office of Public and Indian Housing

Public and Indian Housing Information Center (PIC)
FIELD OFFICE SURVEY 2002

Organization:

☐ Housing Authority Staff ☐ HUD Field office Staff
☐ HUD Headquarters staff ☐ HUD TARC Staff

I am a ___Director ___Sr. Management Staff ___Staff _____Other (Specify)_____.

Total number of years in affordable housing field_____

My office location is:

State_____City_____

Zip code _____

1.0 Please rate your frequency of usage of usage of the following PIC sub-modules.

1.1 User Profile

Daily __ 2-3 times a week ___ 4- 5 times a week ___ Monthly ___Never___

1.2 Systems Administration

Daily __ 2-3 times a week ___ 4- 5 times a week ___ Monthly ___Never___

1.3 Event Tracking System (ETS)

Daily __ 2-3 times a week ___ 4- 5 times a week ___ Monthly ___Never___

1.4 Risk Assessment System

Daily __ 2-3 times a week ___ 4- 5 times a week ___ Monthly ___Never___

1.5 Housing Authority

Daily __ 2-3 times a week ___ 4- 5 times a week ___ Monthly ___Never___

1.6 Development

Daily __ 2-3 times a week ___ 4- 5 times a week ___ Monthly ___Never___

1.7 Executive summary

Daily __ 2-3 times a week ___ 4- 5 times a week ___ Monthly ___Never___

1.8 Form 50058 Submission

Daily __ 2-3 times a week ___ 4- 5 times a week ___ Monthly ___Never___

1.9 Form 50058 Viewer

Daily __ 2-3 times a week ___ 4- 5 time a week ___ Monthly ___Never___

1.10 Form 50058 Reports

Daily __ 2-3 times a week ___ 4- 5 time a week ___ Monthly ___Never___

1.11 Ad-hoc MTCS

Daily __ 2-3 times a week ___ 4- 5 time a week ___ Monthly ___Never___

2. Please rate your degree of satisfaction with following PIC sub-modules

2.1 The user profile sub-module is working to my satisfaction.
High ___ Medium ___ Low ___ N/A ___

2.2 The system administration sub- module is working to my satisfaction.
High ___ Medium ___ Low ___ N/A ___

2.3 The Event Tracking System (ETS) sub-module is working to my satisfaction.
High ___ Medium ___ Low ___ N/A ___

2.4 The Risk Assessment System sub-module is working to my satisfaction.
High ___ Medium ___ Low ___ N/A ___

2.5 The Housing Authority sub-module in PIC is working to my satisfaction.
High ___ Medium ___ Low ___ N/A ___

2.6 The Development sub-module in PIC is working to my satisfaction.
High ___ Medium ___ Low ___ N/A ___

2.7 The Executive summary sub-module is working to my satisfaction.
High ___ Medium ___ Low ___ N/A ___

2.8 The Form 50058 Submission sub-module is working to my satisfaction.
High ___ Medium ___ Low ___ N/A ___

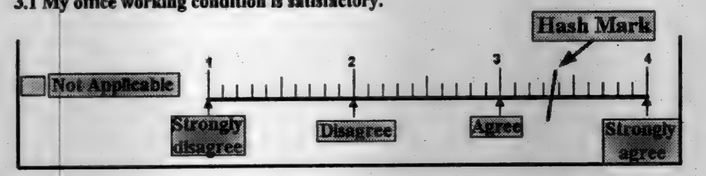
2.9 The Form 50058 Viewer sub-module is working to my satisfaction.
High ___ Medium ___ Low ___ N/A ___

2.10 The Form 50058 Reports sub-module is working to my satisfaction.
High ___ Medium ___ Low ___ N/A ___

2.11 The Ad-hoc MTCS sub-module is working to my satisfaction.
High ___ Medium ___ Low ___ N/A ___

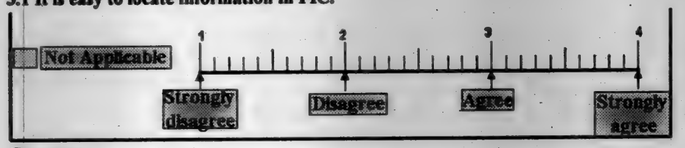
Note: For Questions 3.1 through 12.3 please indicate you're level of agreement with the statements by making a hash mark indicating your response. In cases where a question not is applicable to you please indicate so by checking the square box next to "Not Applicable". The area marked "For office use only" should be left blank for training staff use. Below is an example for your ready reference:

3.1 My office working condition is satisfactory.



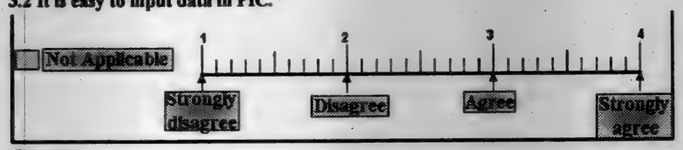
3. Ease of Use

3.1 It is easy to locate information in PIC.



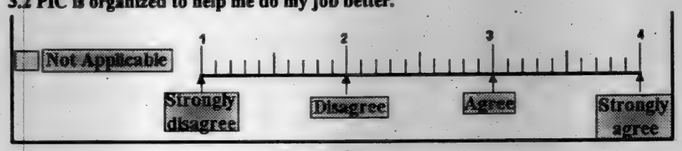
Comments:

3.2 It is easy to input data in PIC.



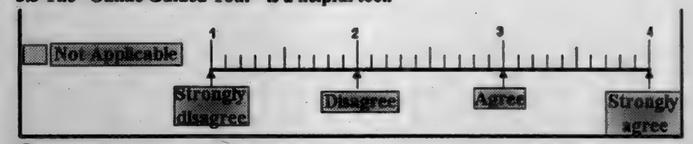
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3.2 PIC is organized to help me do my job better.



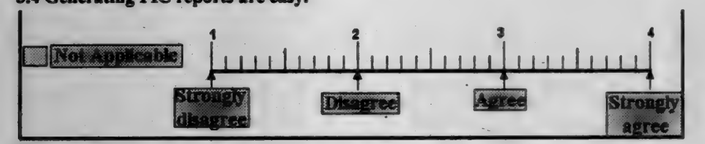
Comments:

3.3 The "Online Guided Tour" is a helpful tool.



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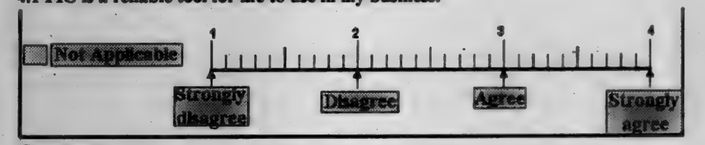
3.4 Generating PIC reports are easy.



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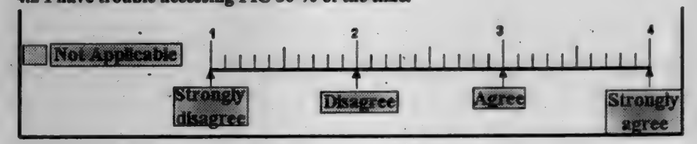
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4.1 PIC is a reliable tool for me to use in my business.



Comments:

4.2 I have trouble accessing PIC 50 % of the time.

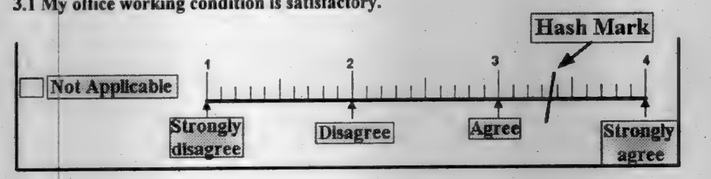


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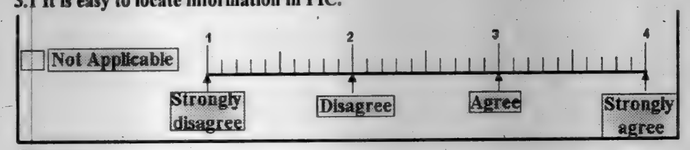
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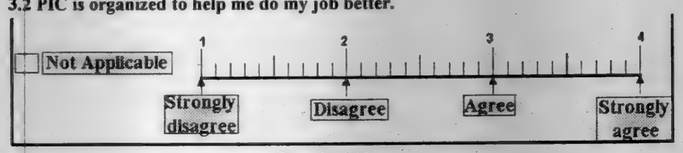
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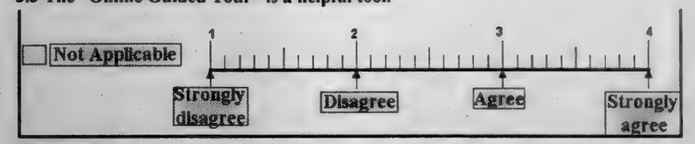
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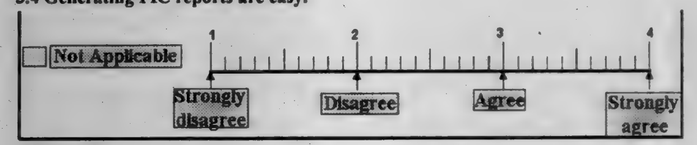
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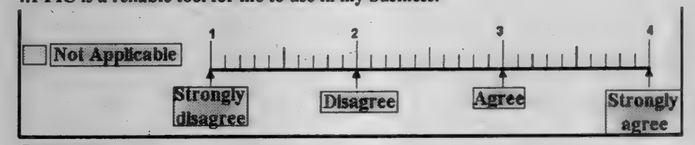
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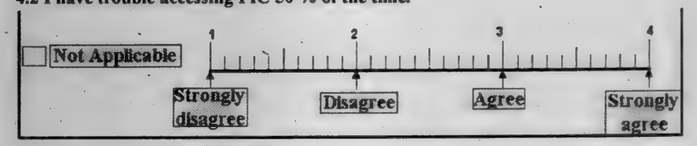
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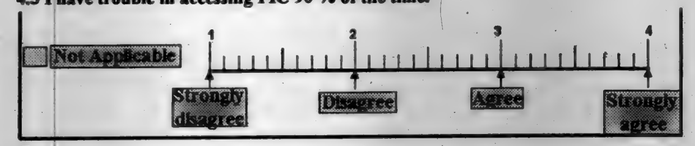
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Comments:

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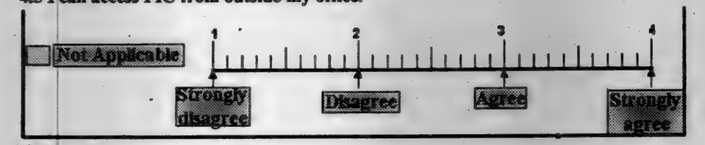
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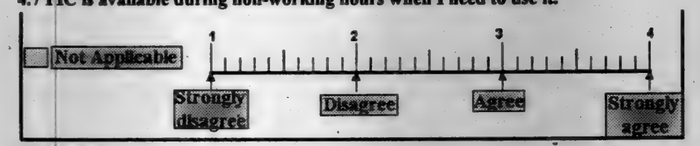
Comments:

4.5 I can access PIC from outside my office.



Comments:

4.7 PIC is available during non-working hours when I need to use it.



Comments:

5. Functionality

5.1 The SEMAP sub-module in PIC allows me to reliably measure the performance of Section 8 Housing Authorities.



Comments:

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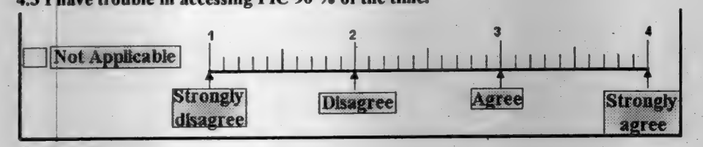
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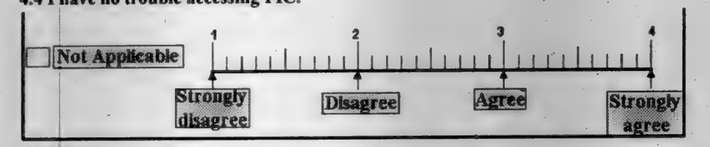
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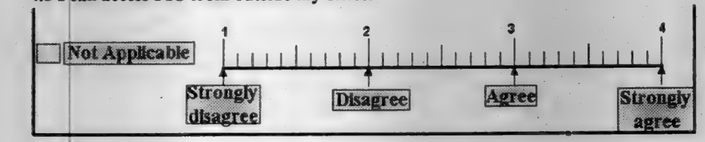
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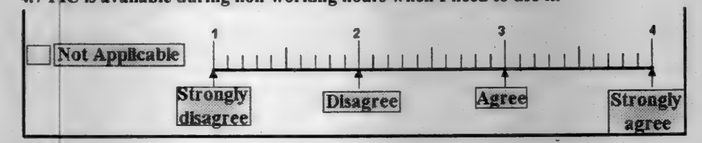
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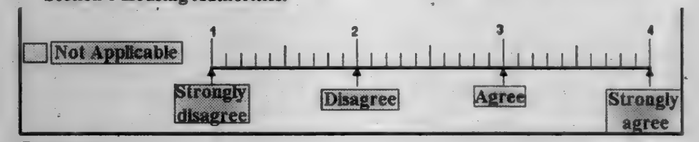
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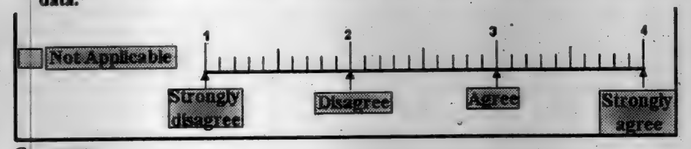
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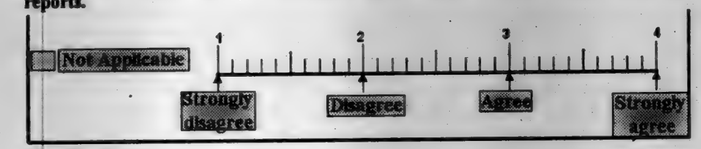
Comments:

5.5 The Form 50058 Submission sub-module in PIC allows me to reliably update tenant data.



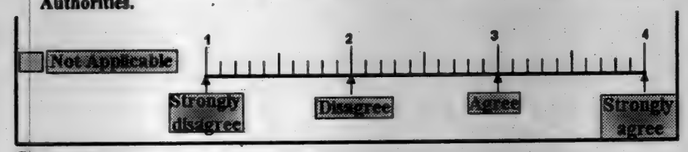
Comments:

5.6 The Form 50058 Reports sub-module in PIC provides me with useful management reports.



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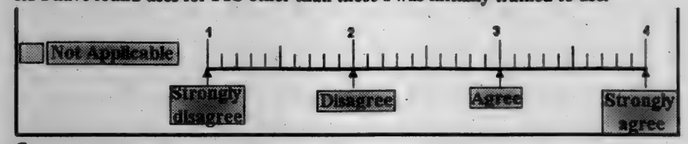
5.7 The Executive summary page provides me with useful information on Housing Authorities.



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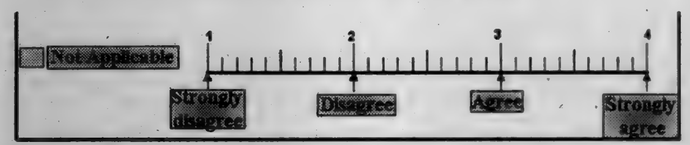
6. Flexibility

6.1 I have found uses for PIC other than those I was initially trained to use.



Comments:

6.2 PIC allows me to extract data in a format that I find useful.



Comments:

6.3 PIC allows me to use variety of data from other HUD computer systems (i.e. HUDCAPS and REAC subsystems).



Comments:

7. Support/Services

7.1 I am satisfied with the quality of help that I get from the PIC on-line help text and guided tours.



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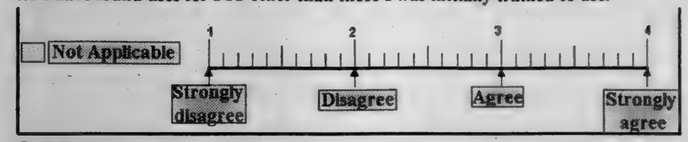
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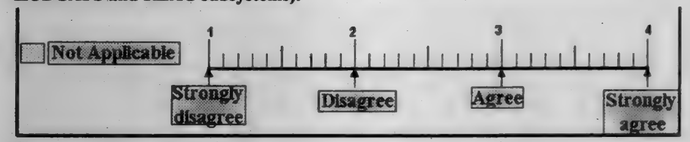
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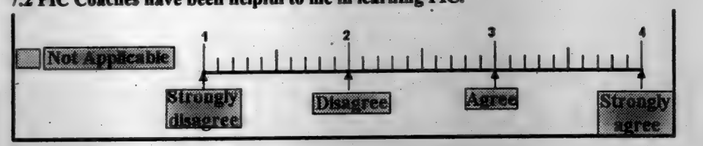
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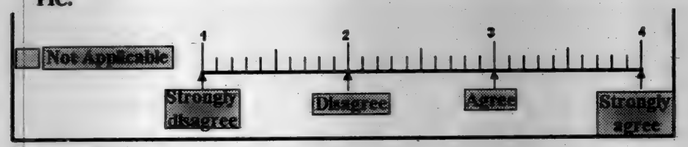
7.2 PIC Coaches have been helpful to me in learning PIC.



Comments:

8. Business linkage

8.1 A strong relationship exists between my work activities and the capabilities provided in PIC.



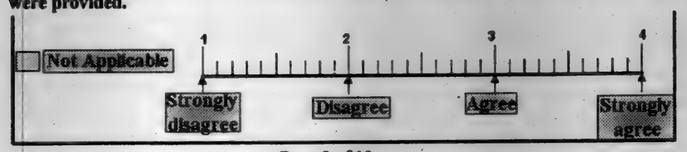
Comments:

8.2 My job consists of many activities that can be done with the PIC system.



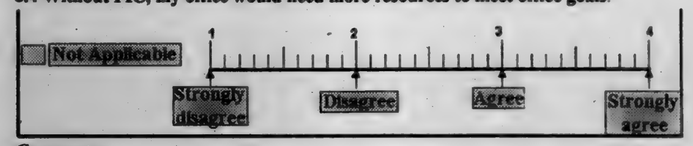
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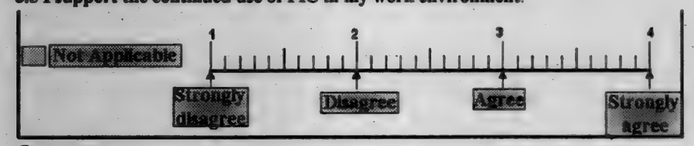
Comments:

8.4 Without PIC, my office would need more resources to meet office goals.



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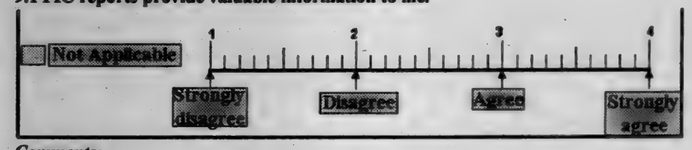
8.5 I support the continued use of PIC in my work environment.



Comments:

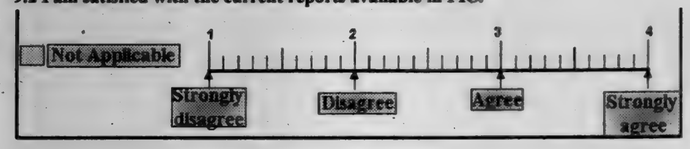
9. Report Writing

9.1 PIC reports provide valuable information to me.



Comments:

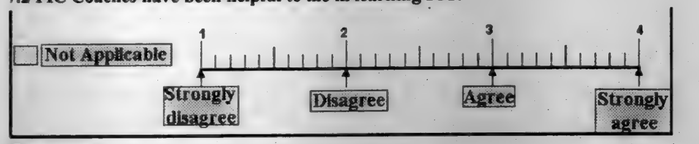
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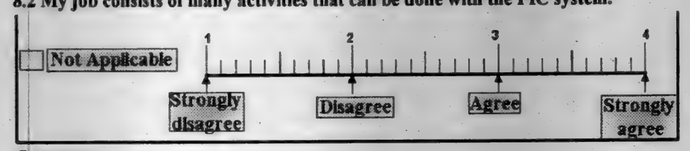
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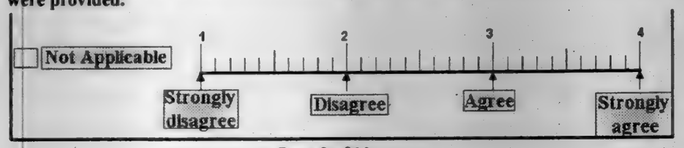
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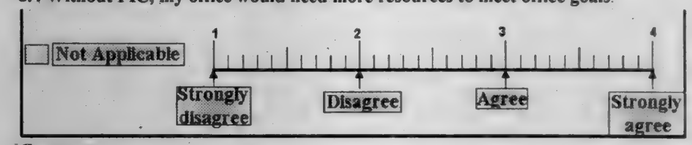
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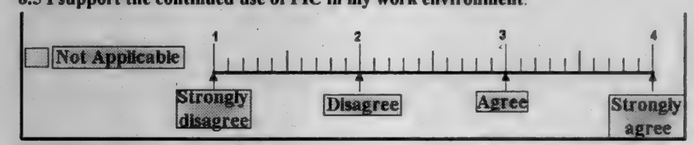
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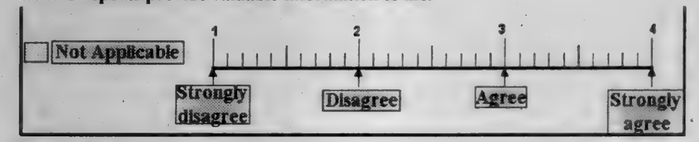
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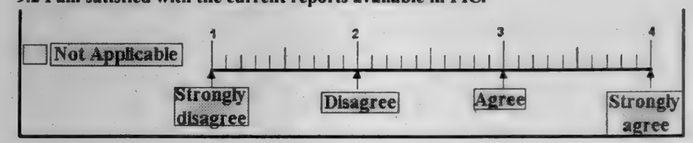
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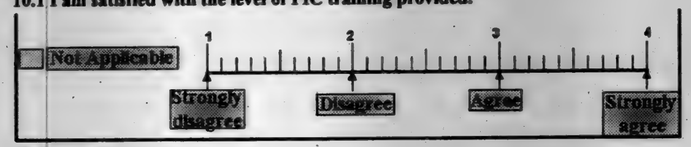
9.3 I would like to expand the reporting capabilities in PIC.



Comments:

10. Training

10.1 I am satisfied with the level of PIC training provided.



Comments:

10.2 More training is necessary for me to become an effective user of PIC.



Comments:

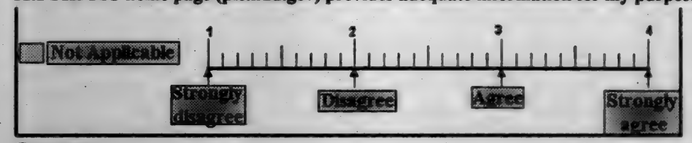
11. Communication

11.1 I receive reliable information about PIC.



Comments:

11.2 PIH PIC home page (pic.hud.gov) provides adequate information for my purposes.



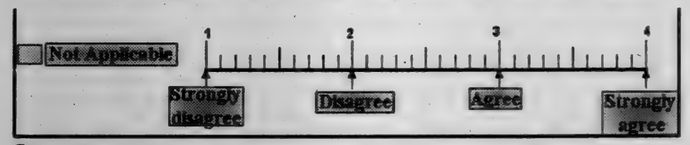
Comments:

11.3 Adequate channels exist for me to provide feedback about my experiences with PIC.



Comments:

11.4 Feedback that I provide about PIC is usually acted upon in a timely manner.



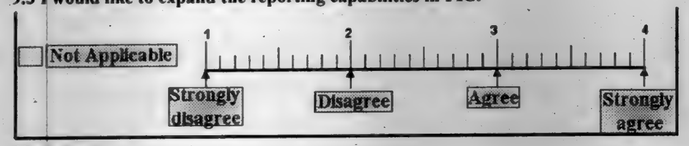
Comments:

12. Information Security

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Comments:

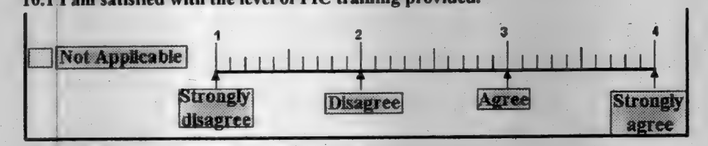
9.3 I would like to expand the reporting capabilities in PIC.



Comments:

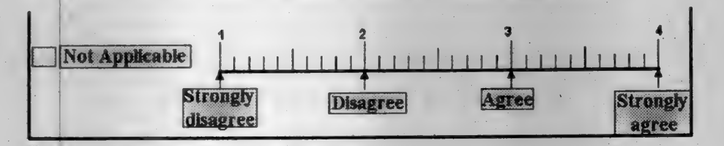
10. Training

10.1 I am satisfied with the level of PIC training provided.



Comments:

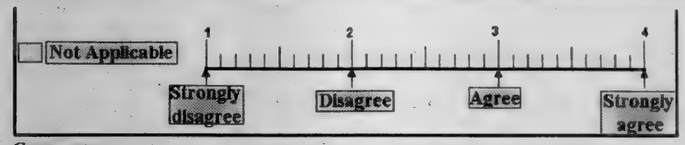
10.2 More training is necessary for me to become an effective user of PIC.



Comments:

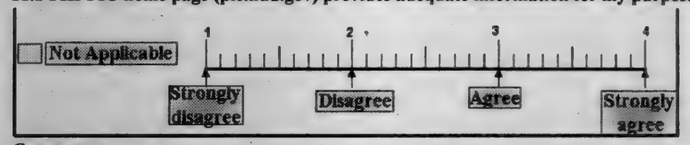
11. Communication

11.1 I receive reliable information about PIC.



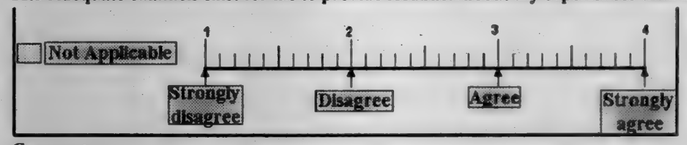
Comments:

11.2 PIH PIC home page (pic.hud.gov) provides adequate information for my purposes.



Comments:

11.3 Adequate channels exist for me to provide feedback about my experiences with PIC.



Comments:

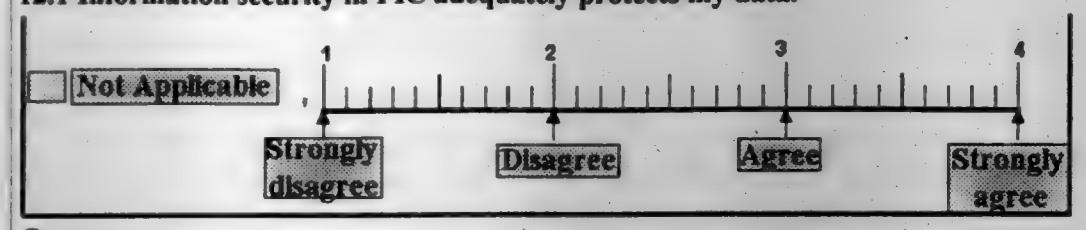
11.4 Feedback that I provide about PIC is usually acted upon in a timely manner.



Comments:

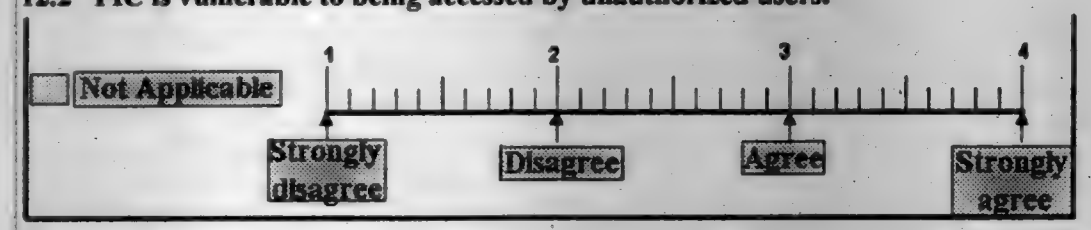
12. Information Security

12.1 Information security in PIC adequately protects my data.



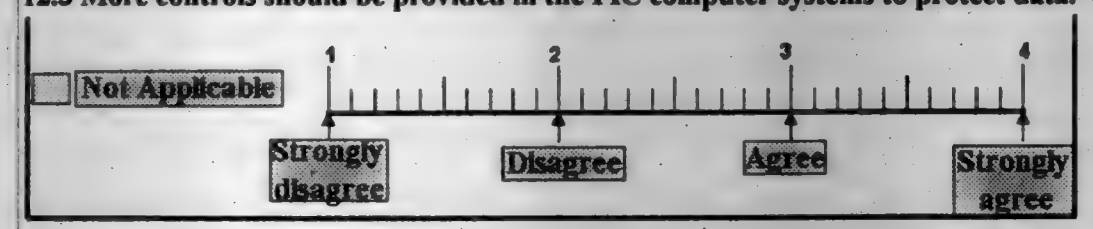
Comments:

12.2 PIC is vulnerable to being accessed by unauthorized users.



Comments:

12.3 More controls should be provided in the PIC computer systems to protect data.



Comments:

13. Additional Comments

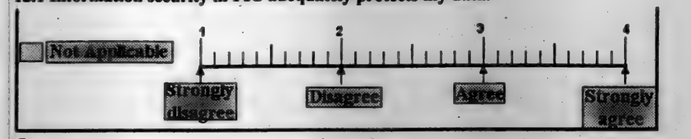
Thank you for completing this survey. You responses will be kept confidential. Please remember to forward your completed survey to Louis J. Blazy, 451 7th Street SW, Room # 4234, Washington, DC 20410 by pouch mail.

[FR Doc. 02–20799 Filed 8–15–02; 8:45 am]
BILLING CODE 4210–33–C

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12.1 Information security in PIC adequately protects my data.



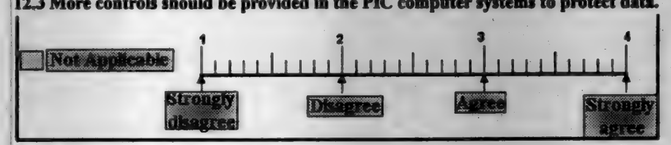
Comments:

12.2 PIC is vulnerable to being accessed by unauthorized users.



Comments:

12.3 More controls should be provided in the PIC computer systems to protect data.



Comments:

13. Additional Comments

Thank you for completing this survey. You responses will be kept confidential. Please remember to forward your completed survey to Louis J. Blazy, 451 7th Street SW, Room # 4234, Washington, DC 20410 by pouch mail.

[FR Doc. 02–20799 Filed 8–15–02; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4736–N–09]

Announcement of OMB Approval Number for Application for Designation of State or Locally Developed Public Housing as "Covered Units" Eligible for Inclusion in the Federal Public Housing Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of OMB approval number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for applications for the designation of State or Locally Developed Housing as "Covered Units" eligible for inclusion in the Federal Public Housing Program. In response to recent court decisions issued by the U.S. District Court for the Southern District of New York and U.S. Court of Appeals for the Second Circuit directing HUD to implement the federalization mandate of section 519, HUD will notify all eligible Public Housing Agencies (PHAs) in the state of New York that they may request the Department federalize their State and locally developed public housing units. Eligible PHAs will submit to HUD information for those units to be included under the Federal public housing program.

FOR FURTHER INFORMATION CONTACT: Sherry Fobear-McCown, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0614, extension 7651. This is not a toll-free number. For hearing- and speech-impaired persons, this telephone number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (toll-free).

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 235, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collection for application for designation of State or locally developed public housing as "Covered Units" eligible for inclusion in the Federal Public Housing Program. The OMB approval number for this information collection is 2577–0239 which expires 10/30/2002.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

Dated: August 9, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 02–20797 Filed 8–15–02; 8:45 am]
BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Law and Order on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice—Intent to reassume judicial jurisdiction.

SUMMARY: This is a notice of the Bureau of Indian Affairs' intent to reassume judicial jurisdiction for the Otoe-Missouria Tribe of Oklahoma and administer court cases under the Court of Indian Offenses for the Southern Plains Region.

EFFECTIVE DATE: August 21, 2002.

FOR FURTHER INFORMATION CONTACT: Terry Bruner, Tribal Government Officer, Southern Plains Regional Office, Bureau of Indian Affairs, P.O. Box 368, WCD Office Complex, Anadarko, Oklahoma 73005, (405) 247–6673 ext 209, Fax 405–247–9240; or Ralph Gonzales, Branch of Judicial Services, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW., MS 4660 MIB, Washington, DC 20240, (202) 208–4401.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs under part 209, Chapter 8, of the Departmental Manual (209 DM 8).

On May 29, 2002, the Otoe-Missouria Tribal Council, on behalf of the Otoe-Missouria Tribe of Oklahoma, adopted Resolution No. OMTC #05–29–02 FY2002, pursuant to 25 CFR 900.240–242. This resolution retrocedes the tribe's Public Law 93–638 contract for court funds to the Bureau of Indian Affairs and transfers all pending cases, except those limited under 25 CFR 11.104, to the Court of Indian Offenses for the Southern Plains Region. The Court of Indian Offenses for the Indian tribes located in western Oklahoma (now serviced by the Southern Plains Region) was established in response to the decisions of *United States* v. *Littlechief*, No. CR–76–207–D, and *State of Oklahoma* v. *Littlechief*, 573 P.2d 263 (Okla. Crim. App. 1976), which held that the State of Oklahoma lacked jurisdiction over matters occurring on trust or restricted lands (44 FR 37502). This Court of Indian Offenses continues to serve those tribes located in western Oklahoma that have not established tribal courts. Due to the Otoe-Missouria Tribe of Oklahoma's retrocession and closing of its tribal court, a jurisdictional vacuum has been created, which necessitates the Bureau of Indian Affairs immediately reassuming jurisdiction within the Indian country of the Otoe-Missouria Tribe of Oklahoma in order to protect lives, persons, and property of people residing within that jurisdiction until such time as the tribe reestablishes its tribal court consistent with 25 CFR 11.100(c). For this reason, effective August 21, 2002, the Bureau of Indian Affairs reassumes judicial jurisdiction for the Otoe-Missouria Tribe of Oklahoma.

Dated: August 2, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–20853 Filed 8–15–02; 8:45 am]
BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension and revision of information collection forms.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB for review and approval the revised forms MMS–123 and MMS–123S, and the revised and renamed forms MMS–124, MMS–125, and MMS–133. The modifications are an integral part of the new "E-Forms Permit Process" that we are developing to provide an electronic option for drilling and well permitting and information submission.

DATE: Submit written comments by September 16, 2002.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (reference appropriate OMB control number for the form you are commenting on), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–

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4817. If you wish to E-mail comments to MMS, the address is: *rules.comments@MMS.gov*. Reference the appropriate OMB control number in your subject line. Include your name and return address in your message and mark it for return receipt.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, Engineering and Operations Division, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Titles—OMB Control Numbers: For the renamed forms, the new titles are listed and the current titles are shown in parenthesis.

Form MMS–123, Application for Permit to Drill (APD)—1010–0044.

Form MMS–123S, Supplemental APD Information Sheet—1010–0131.

Form MMS–124, Application for Permit to Modify (APM) (replaces Sundry Notices and Reports on Wells)—1010–0045.

Form MMS–125, End of Operations Report (replaces Well Summary Report)—1010–0046.

Form MMS–133, Well Activity Report (replaces Weekly Activity Report)—1010–0132.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

This notice pertains to the previously listed MMS forms that are used to submit information required under 30 CFR part 250, subpart D, Drilling Operations; subpart E, Well-Completion Operations; subpart F, Well-Workover Operations; subpart P, Sulphur Operations; and the new subpart Q, Decommissioning Activities. Responses are mandatory. No questions of a "sensitive" nature are asked. MMS will protect proprietary information according to 30 CFR 250.196 (Data and information to be made available to the public), 30 CFR part 252 (OCS Oil and Gas Information Program), and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2).

On May 1, 2002, we published a **Federal Register** notice (67 FR 21718) announcing that we were renaming and revising the forms. As required by the PRA, the notice explained why we collect and how we use the information on each form. The notice provided the required 60-day comment period, detailed the changes to the forms, and published the draft forms as appendices.

We explained that to implement the Government Paperwork Elimination Act and to streamline data collection, MMS must develop systems to provide electronic options for lessees and operators to use in submitting information and requesting approvals. This year, we expect to begin pilot testing the electronic submission of drilling and well information in a new "E-Forms Permit Process." In developing this system, we have determined that some revisions are needed to the drilling and well information forms discussed in this notice. The new names on three of the forms and changes to the paper forms are intended to acquaint the users with, and duplicate as closely as possible, the E-Forms Permit Process, which we anticipate will be fully implemented in FY 2003. Although initially the E-Forms Permit Process will be an alternative to submitting the paper forms, we expect that eventually it will eliminate the paper forms.

In response to the May 1 **Federal Register** notice, we received comments from the Offshore Operators Committee (OOC) which represents 107 member companies, both large and small, involved in the exploration, drilling, and production of oil and gas on the OCS. In addition, to resolve some of the issues and address concerns, we held discussions with the OOC committee members who reviewed the forms and who will most likely be involved in pilot testing the E-Forms Permit Process. We received no comments from individual oil and gas companies. We did receive comments from three service companies that do business with the offshore oil and gas companies: Energy Graphics, Inc., IHS Energy Group Information Services, and E & P Datasmith. Energy Graphics and IHS Energy had minimal comments. E & P Datasmith provided several comments and suggestions but also requested clarification of some data elements or posed questions. We have sent a separate response to this company to provide clarification and respond to the questions. The following discusses the general comments and our responses.

Many of the comments from the OOC and E & P Datasmith were more in the form of requesting clarification on some of the data elements. It was suggested that definitions be supplied on the forms or in instructions for completing the forms. Based on the comments, where appropriate, we did clarify data elements on the forms. To accommodate other clarifications that did not lend themselves to making changes to the forms, MMS is revising the "Field Operations Reporters Handbook," which is the instructional guide to filling out the current forms. It will be updated to reflect the changes to these forms and available concurrent with issuing the new forms.

Both OOC and E & P Datasmith commented on the proposed change to reporting in North American Datum (NAD) 83 versus NAD 27 values. The OOC commented that reporting in NAD 83 format for well location coordinates should be optional in order to maintain consistency between well permitting forms and other required documents that reference NAD 27 coordinates. E & P Datasmith was not opposed to reporting in NAD 83 reference values but suggested some guidance to avoid potential database problems and misrepresentations. MMS will require NAD 83 information only in the case of drilling a new well or sidetrack. For any drilling operation, directional information is normally provided and the respondent should be able to provide that information in NAD 83 format with little difficulty. Information in NAD 27 format will be required on the location plat submitted with the form MMS–123. The MMS will do the conversion internally and verify the location. To accommodate the comments and further eliminate duplicate data elements among the forms, we eliminated directional information data elements on form MMS–124 and provided the option for reporting in either NAD 27 or NAD 83 on form MMS–125.

Energy Graphics and IHS Energy commented that certain data elements that were eliminated from the form MMS–123 as duplicative with form MMS–123S, previously contained information available to the general public. They were concerned that the information would no longer be available. To accommodate this concern, a "public information" copy of the form MMS–123S will be available the same as with form MMS–123.

IHS Energy wanted MMS to retain the eliminated data element for "field name" on the forms so that they can tell whether or not the well is a "wildcat" and what the new field name will be if

there is a new discovery. We did not retain this data element as it is not used in the permit approval process. However, the information is available to the public. MMS assigns field names and enters the results into a data base. The list is updated monthly and the public can access the data base from the MMS internet site or from the MMS regional Public Information Office.

Based on our review of the comments, we have finalized the forms for submission to OMB for approval. The changes between the final versions and the proposed versions published for comment are minimal. Both the proposed versions and the final forms include changes to renumber the data fields on all forms, eliminate some data fields that were either duplicative or no longer needed, rename some sections and data fields, relocate data fields from one form to another, and add some data fields. The final forms are attached as appendices 1–5 to this notice.

Frequency: Forms MMS–123, MMS–123S, MMS–124, and MMS–125 are on occasion; form MMS–133 is daily or weekly by region.

Form No.	Hour burden per form	Estimated annual No. of forms	Total annual burden
MMS–123	2½	1,315	3,288
MMS–123S	1½	1,315	1,973
MMS–124	1¼	13,570	16,963
MMS–125	1	3,230	3,230
MMS–133	1	10,000	10,000

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas lessees.

Estimated Reporting and Recordkeeping "Hour" Burden: We estimate the following burdens for submitting the paper copies of these revised forms. It should be recognized that when the new E-Forms Permit Process is fully implemented, we expect it will reduce burden hours. However, these anticipated burden reductions are not yet determined, as they will depend on the upcoming pilot testing.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no "non-hour cost" burdens associated with the subject forms.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

In addition to publishing the required **Federal Register** notice previously discussed to comply with the public consultation process, the PRA statement on the current forms and at 30 CFR 250.199 explain that MMS will accept comments at any time on the information collection burden of our regulations and associated forms. We display the OMB control number and provide the address for sending comments to MMS.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by September 16, 2002.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: August 8, 2002.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

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APPENDIX 1 – FORM MMS-123

U.S. Department of the Interior
Minerals Management Service (MMS)

OMB Control Number 1010-0044
OMB Approval Expires XX/XX/2005

Application for Permit to Drill (APD)

1. PROPOSAL TO DRILL ☐ NEW WELL ☐ SIDETRACK ☐ BYPASS ☐ DEEPEN		2. MMS OPERATOR NO.	3. OPERATOR NAME and ADDRESS
4. WELL NAME (CURRENT)	5. SIDETRACK NO. (CURRENT)	6. BYPASS NO. (CURRENT)	
7. PROPOSED START DATE	8. PLAN CONTROL NO. (NEW WELL ONLY)		
9. API WELL NO. (CURRENT SIDETRACK / BYPASS) (12 DIGITS)			

WELL AT TOTAL DEPTH (PROPOSED)		WELL AT SURFACE	
10. LEASE NO.		15. LEASE NO.	
11. AREA NAME		16. AREA NAME	
12. BLOCK NO.		17. BLOCK NO.	
13. LATITUDE (NAD 83)	14. LONGITUDE (NAD 83)	18. LATITUDE (NAD 83)	19. LONGITUDE (NAD 83)

LIST OF SIGNIFICANT MARKERS ANTICIPATED			
20. NAME	21. TOP (MD)	20. NAME	21. TOP (MD)

22. LIST ALL ATTACHMENTS *(Attach complete well prognosis and attachments required by 30 CFR 250.414(b) through (g) or 30 CFR 250.1617(c) and (d), as appropriate.)*

23. AUTHORIZING OFFICIAL	24. TITLE
25. AUTHORIZING SIGNATURE	26. DATE

THIS SPACE FOR MMS USE ONLY	
APPROVED BY ☐ With Attached Conditions ☐ Without Conditions	TITLE
API WELL NO. ASSIGNED TO THIS WELL	DATE

PAPERWORK REDUCTION ACT OF 1995 (PRA) STATEMENT: The PRA (44 U.S.C. 3501 et seq.) requires us to inform you that we collect this information to obtain knowledge of equipment and procedures to be used in drilling operations. MMS uses the information to evaluate and approve or disapprove the adequacy of the equipment and/or procedures to safely perform the proposed drilling operation. Responses are mandatory (43 U.S.C. 1334). Proprietary data are covered under 30 CFR 250.196. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for this form is estimated to average 2½ hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, Mail Stop 4230, Minerals Management Service, 1849 C Street, N.W., Washington, DC 20240.

MMS FORM MMS-123 (September 2002 - Supersedes all previous versions of form MMS-123 which may not be used.) Page 1 of 1

APPENDIX 2 – FORM MMS-1238

Submit ORIGINAL plus TWO copies with ONE copy marked "Public Information"

OMB Control Number 1010-0151
OMB Approval Expires XX/XX/2005

U.S. Department of the Interior
Minerals Management Service (MMS)

Supplemental APD Information Sheet

1. OPERATOR NAME		5. WELL NAME (PROPOSED)	6. TYPE OF WELL ☐ EXPLORATORY ☐ DEVELOPMENT
2. API WELL NO. (PROPOSED) (12 digits)	3. BOTTOM LEASE NO. (PROPOSED)	7. SIDETRACK NO. (PROPOSED)	8. BYPASS NO. (PROPOSED)
4. TOTAL DEPTH (PROPOSED) MD _____ TVD		9. RIG NAME	10. RIG TYPE

11. WATER DEPTH | 12. ELEVATION AT KB

13. H2S DESIGNATION ☐ KNOWN ☐ UNKNOWN ☐ ABSENT

14. H2S ACTIVATION PLAN DEPTH FT (TVD)

15. ENGINEERING DATA

Hole Size (in.)	Casing (Tubing, Liner)	Casing Design (in.)	Weight (ppf)	Grade	Burst Rating (psi)	Collapse Rating (psi)	Type of Connection	MASP (psi)	Safety Factors B	Safety Factors C	Safety Factors T	Top of Liner MD	Test Pressure Shoe Integrity Test (ppg)	Test Pressure Casing Test (psi)	Test Pressure BOP/Diverter Equipment Test (psi)	Cement (ft³)	Cement Top (Estimated) (Measured) (feet)
	Conductor	Driven/ Structural															
	Surface																

16. CONTACT NAME | 17. CONTACT PHONE NO | 18. CONTACT E-MAIL ADDRESS

19. Will you maintain quantities of mud and mud material (including weight materials and additives) sufficient to raise the entire system mud weight ½ ppg or more? ☐ YES ☐ NO

20. REMARKS:

PAPERWORK REDUCTION ACT OF 1995 (PRA) STATEMENT: The PRA (44 U.S.C. 3501 et seq.) requires us to inform you that we collect this information to obtain knowledge of equipment and procedures to be used in drilling operations. MMS uses the information to evaluate and approve or disapprove the adequacy of the equipment and/or procedures to safely perform the proposed drilling operation. Responses are mandatory (43 U.S.C. 1334). Proprietary data are covered under 30 CFR 250.196. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for this form is estimated to average 2½ hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, Mail Stop 4230, Minerals Management Service, 1849 C Street, N.W., Washington, DC 20240.

MMS FORM MMS-1238 (September 2002 - Supersedes all previous versions of form MMS-1238 which may not be used.) Page 1 of 1

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APPENDIX 3 – FORM MMS-124

U.S. Department of the Interior
Minerals Management Service (MMS)

Submit ORIGINAL plus THREE copies with ONE copy marked "Public Information"

OMB Control Number 1010-0045
OMB Approval Expires XX/XX/2005

APPLICATION FOR PERMIT TO MODIFY (APM)

(Replaces Sundry Notices and Reports on Well)

1. TYPE OF SUBMITTAL ☐ REQUEST ☐ SUBSEQUENT ☐ CORRECTION APPROVAL REPORT		2. MMS OPERATOR NO.	3. OPERATOR NAME and ADDRESS (Submitting Office)
4. WELL NAME	5. SIDETRACK NO.	6. BYPASS NO.	

7. API WELL NO. (12 digits)	8. START DATE (Proposed)	9. PRODUCING INTERVAL CODE	10. WELL STATUS	11. WATER DEPTH (Surveyed)	12. ELEVATION AT KB (Surveyed)

WELL AT TOTAL DEPTH	WELL AT SURFACE
13. LEASE NO.	16. LEASE NO.
14. AREA NAME	17. AREA NAME
15. BLOCK NO.	18. BLOCK NO.

19. PROPOSED OR COMPLETED WORK

☐ INITIAL COMPLETION ☐ MULTI-COMPLETION ☐ RECOMPLETION ☐ MODIFY PERFORATIONS ☐ CHANGE ZONE

☐ PERMANENT PLUGGING ☐ TEMPORARY ABANDONMENT ☐ PLUG BACK TO SIDETRACK / BYPASS ☐ OTHER _____

☐ ACIDIZE WITH COIL TUBING ☐ ARTIFICIAL LIFT (INITIAL) ☐ WORKOVER ☐ CHANGE IN APPROVED PROCEDURE (Describe in Item 22)

20. RIG NAME OR PRIMARY UNIT (e.g., wireline unit, coil tubing unit, etc.)	21. RIG TYPE

22. DESCRIBE PROPOSED OR COMPLETED OPERATIONS (Attach prognosis or summary of completed work, as appropriate.)

23. CONTACT NAME	24. CONTACT TELEPHONE NO.	25. CONTACT E-MAIL ADDRESS

26. AUTHORIZING OFFICIAL (Type or print name)	27. TITLE
28. AUTHORIZING SIGNATURE	29. DATE

THIS SPACE FOR MMS USE ONLY

APPROVED BY	TITLE	DATE

PAPERWORK REDUCTION ACT OF 1995 (PRA) STATEMENT: The PRA (44 U.S.C. 3501 et seq.) requires us to inform you that we collect this information to obtain knowledge of equipment and procedures to be used in drilling well-completion, workover, and production operations. MMS uses the information to evaluate and approve or disapprove the adequacy of the equipment and/or procedures to safely perform the proposed operation. Responses are mandatory (43 U.S.C. 1334). Proprietary data are covered under 30 CFR 250.196. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for this form is estimated to average 1¾ hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, Mail Stop 4230, Minerals Management Service, 1849 C Street, N.W., Washington, DC 20240.

MMS FORM MMS-124 (September 2002 - Supersedes all previous versions of form MMS-124 which may not be used.) Page 1 of 1

APPENDIX 4 – FORM MMS-125

U.S. Department of the Interior
Minerals Management Service (MMS)

Submit ORIGINAL plus TWO copies with ONE copy marked "Public Information"

OMB Control Number 1010-0046
OMB Approval Expires XX/XX/2005

END OF OPERATIONS REPORT (Replaces Well Summary Report)

1 ☐ COMPLETION ☐ WORKOVER ☐ ABANDONMENT ☐ CORRECTION ☐ OTHER _____	2. API WELL NO. (12 digits)	3. PRODUCING INTERVAL CODE	4. OPERATOR NAME and ADDRESS (Submitting Office)

5. WELL NAME	6. SIDETRACK NO.	7. BYPASS NO.	8. MMS OPERATOR NO.

WELL AT TOTAL DEPTH	WELL AT PRODUCING ZONE
9. LEASE NO.	14. LEASE NO.
10. AREA NAME	15. AREA NAME
11. BLOCK NO.	16. BLOCK NO.

12. LATITUDE (☐ NAD 83 / ☐ NAD 27)	13. LONGITUDE (☐ NAD 83 / ☐ NAD 27)	17. LATITUDE (☐ NAD 83 / ☐ NAD 27)	18. LONGITUDE (☐ NAD 83 / ☐ NAD 27)

WELL STATUS INFORMATION

19. WELL STATUS	20. TYPE CODE	21. WELL STATUS DATE	22. KOP (MD) ST / BP	23. TOTAL DEPTH (Surveyed)
				MD _____ TVD _____

PERFORATED INTERVAL(S) THIS COMPLETION

24. TOP (MD)	25. BOTTOM (MD)	26. TOP (TVD)	27. BOTTOM (TVD)

28. RESERVOIR NAME	29. NAME(S) OF PRODUCING FORMATION(S) THIS COMPLETION

SUBSEA COMPLETION

30. PROTECTION PROVIDED ☐ YES ☐ NO	31. BUOY INSTALLED ☐ YES ☐ NO	32. TREE HEIGHT ABOVE MUDLINE

HYDROCARBON BEARING INTERVALS

33. INTERVAL NAME	34. TOP (MD)	35. BOTTOM (MD)	36. TYPE OF HYDROCARBON

MMS FORM MMS-125 (September 2002 - Supersedes all previous versions of form MMS-125 which may not be used.) Page 1 of 2

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END OF OPERATIONS REPORT (Continued)

LIST OF SIGNIFICANT MARKERS PENETRATED

37. NAME	38. TOP (MD)	37. NAME	38. TOP (MD)

ABANDONMENT HISTORY OF WELL

39. CASING SIZE	40. CASING CUT DATE	41. CASING CUT METHOD	42. CASING CUT DEPTH

43. TYPE OF OBSTRUCTION	44. PROTECTION PROVIDED ☐ YES ☐ NO	45. BUOY INSTALLED ☐ YES ☐ NO	46. OBSTRUCTION HEIGHT ABOVE MUDLINE

47. CONTACT NAME	48. CONTACT TELEPHONE NO.	49. CONTACT E-MAIL ADDRESS

50. AUTHORIZING OFFICIAL (Type or print name)	51. TITLE

52. AUTHORIZING SIGNATURE	53. DATE

PAPERWORK REDUCTION ACT OF 1995 (PRA) STATEMENT: The PRA (44 U.S.C. 3501 et seq.) requires us to inform you that we collect this information to obtain knowledge of equipment and procedures to be used in drilling operations. MMS uses this information to evaluate and approve or disapprove the adequacy of the equipment and/or procedures to safely perform the proposed drilling operation. Responses are mandatory (43 U.S.C. 1334). Proprietary data are covered under 30 CFR 250.196. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for this form is estimated to average 1 hour per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, Mail Stop 4230, Minerals Management Service, 1849 C Street, N.W., Washington, DC 20240.

APPENDIX 5 – FORM MMS-133

U.S. Department of the Interior
Minerals Management Service (MMS)

Submit ORIGINAL

OMB Control Number 1010-0132
OMB Approval Expires XX/XX/2005

WELL ACTIVITY REPORT (Replaces Weekly Activity Report)

BEGINNING DATE: _____ ENDING DATE: _____
REPORT IS NOT TO EXCEED 7 DAYS (1 WEEK) IN DURATION

☐ CORRECTION ☐ CHECK IF THIS IS THE LAST WELL ACTIVITY REPORT

GENERAL INFORMATION

1. API WELL NO. (10 digits)			2. OPERATOR NAME
3. WELL NAME	4. SIDETRACK NO.	5. BYPASS NO.	6. CONTACT NAME / CONTACT TELEPHONE NUMBER

7. RIG NAME OR PRIMARY UNIT (e.g., wireline unit, coil tubing unit, etc.)	8. WATER DEPTH	9. ELEVATION AT KB

10. CURRENT WELLBORE INFORMATION

SURFACE			BOTTOM		
LEASE NO.	AREA NAME	BLOCK NO.	LEASE NO.	AREA NAME	BLOCK NO.

WELLBORE	START DATE	TD DATE	STATUS	END DATE	MD	TVD	MW PPG	LAST BOP TEST DATE	LAST BOP TEST PRESSURE	
									LOW	HIGH

11. WELLBORE HISTORICAL INFORMATION

WELLBORE	BOTTOM LEASE	START DATE	TD DATE	PA DATE	FINAL MD	FINAL TVD

12. CASING / LINER / TUBING RECORD

TUBULAR TYPE	HOLE SIZE (IN)	SIZE (IN)	WEIGHT (#/FT)	GRADE	TEST PRESSURE (psi)	SHOE TEST (EMW)	SETTING DEPTH (MD)		CEMENT QUANTITY (cubic ft.)
							TOP	BOTTOM	

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WELL ACTIVITY REPORT (Continued)

13. OPEN HOLE TOOLS, MUDLOGS, AND DIRECTIONAL SURVEYS

SERVICE COMPANY	DATE OPERATIONS COMPLETED	TOOL LOGGING METHOD	LOG TOOL CODE	INTERVAL DEPTH (MD) TOP	BOTTOM

14. IDENTIFY OTHER OPEN HOLE DATA COLLECTED

	YES	NO		YES	NO		YES	NO
VELOCITY SURVEYS			PALEO SAMPLES			SIDEWALL SAMPLES		
CONVENTIONAL CORES			LITHO SAMPLES			GEOCHEM SAMPLES		

15. WELL ACTIVITY SUMMARY

Provide a daily summary of well activities.

PAPERWORK REDUCTION ACT OF 1995 (PRA) STATEMENT: The PRA (44 U.S.C. 3501 et seq.) requires us to inform you that we collect this information to obtain knowledge of equipment and procedures to be used in drilling operations. MMS uses the information to evaluate and approve or disapprove the adequacy of the equipment and/or procedures to safely perform the proposed drilling operation. Responses are mandatory (43 U.S.C. 1334). Proprietary data are covered under 30 CFR 250.196. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for this form is estimated to average 1 hour per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, Mail Stop 4230, Minerals Management Service, 1849 C Street, N.W., Washington, DC 20240.

MMS FORM MMS-133 Page 2 of 2

[FR Doc. 02–20787 Filed 8–15–02; 8:45 am]

BILLING CODE 4310–MR–C

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–025]

Sunshine Act Meeting

TIME AND DATE: August 27, 2002 at 9:30 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20463, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–965, 971–972, 979, and 981 (Final) (Certain Cold-Rolled Steel Products from Australia, India, Japan, Sweden, and Thailand)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before September 6, 2002.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: August 13, 2002.

By order of the Commission:

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–20959 Filed 8–14–02; 11:32 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 282–2002]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes to modify the following system of records entitled "National Automated Immigration Lookout System (NAILS) last published April 4, 2001 (65 FR 17928)." The INS has modified this system of records to include two new routine use disclosures (i.e., K and L).

Routine use K allows officials and employees of federal agencies or entities to have access to necessary INS information to assist them with their operations. Routine use L allows disclosure to assist in conducting national intelligence and security investigations. In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on the system of records. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comment by September 16, 2002. The public OMB and the Congress are invited to submit any comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a the Department has provided a report to OMB and the Congress.

Dated: August 9, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

Justice/INS–032

SYSTEM NAME:

National Automated Immigration Lookout System (NAILS).

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

K. To officials and employees of a federal agency or entity which has a need for information relevant to a decision concerning the hiring, appointment, or retention or an employee, the issuance or retention of a security clearance; the execution of a security or suitability investigation; the classification of a job; or the issuance of a contract, grant, or benefit.

L. To other federal agencies for the purpose of conducting national intelligence and security investigations.

* * * * *

[FR Doc. 02–20859 Filed 8–15–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Digital Subscriber Line Forum

Notice is hereby given that, on July 16, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Digital Subscriber Line Forum ("DSL") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Carrier Access Corporation, Boulder, CO; Chaos Telecom, San Diego, CA; Consultronics, Concord, Ontario, Canada; Delta Networks Taipei, Taiwan; Inventel, Paris, France; Ki Consulting & Solutions, Rudsjoterassen, Sweden; LSI Logic, San Jose, CA; Pulsent Corporation, Milpitas, CA; Telefonica CTC Chile, Santiago, Chile; Tenovis GmbH & Co. KG, Frankfurt, Germany; and Uniden America Corporation, Fort Worth, TX have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DSL intends to file additional written notifications disclosing all changes in membership.

On May 15, 1995, DSL filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 25, 1995 (60 FR 38058).

The last notification was filed with the Department on April 24, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 19, 2002 (67 FR 47571).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20796 Filed 8–15–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities; Proposed Collection; Comment Requested

ACTION: 30-day notice of information collection under review; Extension of a currently approved collection; Application for Registration (DEA Form 224); Application for Registration Renewal (DEA Form 224a); and Affidavit for Chain Renewal (DEA Form 224B).

The Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** on

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June 10, 2002, Volume 67, Number 111, Pages 39744–39745, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until September 16, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Application for Registration (DEA Form 224); Application for Registration Renewal (DEA Form 224a); and Affidavit for Chain Renewal (DEA Form 224B).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form No.: DEA Forms 224, 224a, and 224B.

Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Not-for-profit institutions; State, Local or Tribal Government.

Abstract: All firms and individuals who distribute or dispense controlled substances must register with the DEA under the Controlled Substances Act. Registration is needed for control measures over the legal handlers of controlled substances and is used to monitor their activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:*

DEA–224: 67,451 responses × .20 hours (12 minutes per response) = 13,490 hours.

DEA–224a: 357,410 responses × .20 hours (12 minutes per response) = 71,502 hours.

DEA–224B: 48 responses × 5 hours per response = 240 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: 85,232 annual burden hours.

If additional information is required contact: Robert B. Briggs, Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 12, 2002.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 02–20802 Filed 8–15–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review; Extension of a currently approved collection; Application for Registration (DEA Form 225); Application for Registration Renewal (DEA Form 225a); Affidavit for Chain Renewal (DEA Form 225B)

The Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** on June 10, 2002, Volume 67, Number 111, Page 39746), allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until September 16, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Application for Registration (DEA Form 225); Application for Registration Renewal (DEA Form 225a); Affidavit for Chain Renewal (DEA Form 225B).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form No.: DEA forms 225, 225a, 225B.

Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: The Controlled Substances Act requires all persons who manufacture, distribute, import, export, conduct research or dispense controlled substances to register with DEA. Registration provides a closed system of distribution to control the flow of controlled substances through the distribution chain.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:*

DEA–225: 1,353 responses × 0.5 hours (30 minutes per response) = 676.5 hours.

DEA–225a: 10,019 responses × 0.5 hours (30 minutes) per response = 5,009.5 hours.

DEA–225B: 7 responses × 1 hour per response = 7 hours.

Total Annual Burden Hours: 5,693 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,693 annual burden hours.

If additional information is required contact: Robert B. Briggs, Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 12, 2002.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 02–20800 Filed 8–15–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Requested

ACTION: 30-day notice of information collection under review; Extension of a currently approved collection; Application for Registration (DEA Form 363) and Application for Registration Renewal (DEA Form 363a).

The Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** on June 10, 2002, Volume 67, Number 111, Pages 39745–39746 allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until September 16, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Application for Registration (DEA Form 363) and Application for Registration Renewal (DEA Form 363a).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form No.: DEA—Forms 363, 363a.

Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Not-for-profit institutions.

Abstract: Practitioners who dispense narcotic drugs to individuals for maintenance or detoxification treatment must register with the DEA under the Narcotic Addiction Treatment Act of 1974. Registration is needed for control measures and is used to prevent diversion.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:*

DEA 363: 100 responses × .5 hours = 50 hours.

DEA 373a: 1,151 responses × .5 hours = 575.5 hours.

Total Annual Burden Hours: 625.5 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: 625.5 annual burden hours.

If additional information is required contact: Robert B. Briggs, Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 12, 2002.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 02–20801 Filed 8–15–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: 60-day notice of information collection under review; Affidavit of Financial Support and Intent to Petition for Legal Custody for Pubic Law 97–359 Amerasian; Form I–361.

The Department of Justice, Immigration and Naturalization Service

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has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until October 15, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97–359 Amerasian.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–361. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. The information on this form is used in support of Form I–360 (Petition for Amerasian, Widow(er), or Special Immigrant) to assure financial support for Public Law 97–359 Amerasian. The affidavit is used only to sponsor individuals eligible for immigration under Public Law 97–359.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 30 minutes (.5) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: August 9, 2002.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–20806 Filed 8–15–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: 60-day notice of information collection under review; Petition for Approval of School for Attendance by Nonimmigrant; Forms I–17.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until October 15, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Petition for Approval of School for Attendance by Nonimmigrant.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms I–17, I–17A and I–17B. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Businesses or other for-profit. The information is used by learning institutions to determine acceptance of nonimmigrant students, as well as INS to establish a list of names and locations of schools or campuses within school systems or districts with multiple locations, which schools are bona fide institutions of learning.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 322 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 322 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: August 9, 2002.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–20807 Filed 8–15–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: 60-day notice of information collection under review; Request for Verification of Naturalization; N–25.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until October 15, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Request for Verification of Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–25. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form is used to obtain information from the records of a clerk of court which may be needed by a person applying for benefits under various provisions of the I & N Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 250 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D. Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: August 9, 2002.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–20808 Filed 8–15–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classification Under Executive Orders 12073 and 10582

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of addition to the Labor Surplus Area List.

SUMMARY: The purpose of this notice is to announce an addition to the labor surplus area list for Fiscal Year (FY) 2002. Decatur City, Illinois is added to the list under the exceptional circumstance criteria effective August 1, 2002.

DATES: August 1, 2002.

FOR FURTHER INFORMATION CONTACT: Gay Gilbert, Division Chief, U.S. Employment Service, Employment and Training Administration, 200 Constitution Avenue, NW., Room C 4512, Washington, DC 20210. Telephone: (202) 693–3046.

SUPPLEMENTARY INFORMATION: The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. These regulations require the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. These regulations also provide for designation as a labor surplus area under exceptional circumstances criteria. Pursuant to those regulations, the Assistant Secretary of Labor is hereby publishing an addition to the annual list of labor surplus areas for FY 2002.

Eligible labor surplus area	Civil jurisdictions included
Illinois	
Decatur City	Decatur City.

For the convenience of the public, the Labor Surplus Area list is posted on the Internet at *www.doleta.gov.*

Dated: August 1, 2002.

Emily Stover DeRocco,

Assistant Secretary of Labor.

[FR Doc. 02–20911 Filed 8–15–02; 8:45 am]

BILLING CODE 4510–30–M

VOL 67 ISS 159 AG 16 2002 UMI

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good case is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification of General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
- CT020001 (Mar. 01, 2002)
- CT020002 (Mar. 01, 2002)
- CT020003 (Mar. 01, 2002)
- CT020004 (Mar. 01, 2002)
- CT020005 (Mar. 01, 2002)

Volume II

Maryland
- MD020034 (Mar. 01, 2002)

Virginia
- VA020052 (Mar. 01, 2002)
- VA020099 (Mar. 01, 2002)

Volume III

Kentucky
- KY020001 (Mar. 01, 2002)
- KY020002 (Mar. 01, 2002)
- KY020003 (Mar. 01, 2002)
- KY020004 (Mar. 01, 2002)
- KY020007 (Mar. 01, 2002)
- KY020025 (Mar. 01, 2002)
- KY020027 (Mar. 01, 2002)
- KY020028 (Mar. 01, 2002)
- KY020029 (Mar. 01, 2002)

Volume IV

Illinois
- IL020001 (Mar. 01, 2002)
- IL020002 (Mar. 01, 2002)
- IL020003 (Mar. 01, 2002)
- IL020004 (Mar. 01, 2002)
- IL020006 (Mar. 01, 2002)
- IL020008 (Mar. 01, 2002)
- IL020009 (Mar. 01, 2002)
- IL020011 (Mar. 01, 2002)
- IL020012 (Mar. 01, 2002)
- IL020013 (Mar. 01, 2002)
- IL020014 (Mar. 01, 2002)
- IL020015 (Mar. 01, 2002)
- IL020016 (Mar. 01, 2002)
- IL020023 (Mar. 01, 2002)
- IL020040 (Mar. 01, 2002)
- IL020042 (Mar. 01, 2002)
- IL020046 (Mar. 01, 2002)

Michigan
- MI020001 (Mar. 01, 2002)
- MI020002 (Mar. 01, 2002)
- MI020007 (Mar. 01, 2002)

Minnesota
- MN020001 (Mar. 01, 2002)
- MN020003 (Mar. 01, 2002)
- MN020004 (Mar. 01, 2002)
- MN020005 (Mar. 01, 2002)
- MN020007 (Mar. 01, 2002)
- MN020008 (Mar. 01, 2002)
- MN020009 (Mar. 01, 2002)
- MN020010 (Mar. 01, 2002)
- MN020012 (Mar. 01, 2002)
- MN020014 (Mar. 01, 2002)
- MN020015 (Mar. 01, 2002)
- MN020017 (Mar. 01, 2002)
- MN020027 (Mar. 01, 2002)
- MN020031 (Mar. 01, 2002)
- MN020039 (Mar. 01, 2002)
- MN020043 (Mar. 01, 2002)
- MN020045 (Mar. 01, 2002)
- MN020047 (Mar. 01, 2002)
- MN020048 (Mar. 01, 2002)
- MN020051 (Mar. 01, 2002)
- MN020052 (Mar. 01, 2002)
- MN020053 (Mar. 01, 2002)
- MN020054 (Mar. 01, 2002)
- MN020055 (Mar. 01, 2002)
- MN020056 (Mar. 01, 2002)
- MN020057 (Mar. 01, 2002)
- MN020060 (Mar. 01, 2002)
- MN020061 (Mar. 01, 2002)

Volume V

Louisiana
- LA020012 (Mar. 01, 2002)
- LA020047 (Mar. 01, 2002)

New Mexico
- NM020001 (Mar. 01, 2002)

Volume VI

Colorado
- CO020001 (Mar. 01, 2002)
- CO020002 (Mar. 01, 2002)
- CO020003 (Mar. 01, 2002)
- CO020004 (Mar. 01, 2002)
- CO020005 (Mar. 01, 2002)
- CO020006 (Mar. 01, 2002)
- CO020007 (Mar. 01, 2002)
- CO020008 (Mar. 01, 2002)
- CO020009 (Mar. 01, 2002)
- CO020010 (Mar. 01, 2002)
- CO020011 (Mar. 01, 2002)
- CO020012 (Mar. 01, 2002)
- CO020013 (Mar. 01, 2002)
- CO020016 (Mar. 01, 2002)

Wyoming
- WY020004 (Mar. 01, 2002)
- WY020008 (Mar. 01, 2002)
- WY020009 (Mar. 01, 2002)
- WY020013 (Mar. 01, 2002)
- WY020023 (Mar. 01, 2002)

Volume VII

California
- CA020028 (Mar. 01, 2002)
- CA020035 (Mar. 01, 2002)

Hawaii
- HI020001 (Mar. 01, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determination Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be puchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the State covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Dated: Signed at Washington, DC this 8th day of August 2002.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–20567 Filed 8–15–02; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (02 –096)]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). This information collection provides data used in the Agency's accrual accounting and cost-based budgeting systems, maintained as required under Federal law.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms. Shelley Meredith, Code BFZ, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: NASA Contractor Financial Management Reports.

OMB Number: 2700–0003.

Type of review: Extension.

Need and Uses: The NASA Contractor Financial Management Reporting System is the basic financial medium for contractor reporting of estimated and incurred costs, providing essential data for projecting costs and hours to ensure that contractor performance is realistically planned and supported by dollar and labor resources. The data provided by these reports is an integral part of the Agency's accrual accounting and cost-based budgeting systems required under 31 U.S.C. 3512.

Affected Public: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 850.

Responses Per Respondent: 12.

Annual Responses: 10,200.

Hours Per Request: 9 hrs.

Annual Burden Hours: 91,500.

Frequency of Report: Quarterly; Monthly.

Patricia Dunnington,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 02–20909 Filed 8–15–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services; Solicitation of Public Comments on Guidelines for Ensuring and Maximizing the Quality Objectivity, Utility, and Integrity of Information Disseminated by the Institute of Museum and Library Services

AGENCY: Institute of Museum and Library Services.

ACTION: Notice and request for public comment.

SUMMARY: The Institute of Museum and Library Services (IMLS) announces that its draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Institute of Museum and Library Services have been posted on its Web site, *www.imls.gov*. IMLS invites public comments on its draft Guidelines and will consider the comments received in developing its final Guidelines.

DATES: Comments are due on or before September 15, 2002. Final Guidelines are to be published by October 1, 2002.

ADDRESSES: Submit comments to the Office of General Counsel, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, *nweiss@imls.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, General Counsel, telephone 202–606–5414, *nweiss@imls.gov*. Hearing-impaired individuals may contact IMLS by TDD/TTY at 202–8636.

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Pub. L. 106–554) requires each Federal agency to publish guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of the information it disseminates. Agency guidelines must be based on government-wide guidelines issued by the Office of Management and Budget (OMB) (*see* 67 FR 8451–8460). In compliance with this statutory requirement and OMB instructions, IMLS has posted its draft Information

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Quality Guidelines on its Web site (*www.imls.gov*).

The Guidelines describe the agency's procedures for ensuring the quality of information that it disseminates and the procedures by which an affected person may obtain correction of information disseminated by IMLS that does not comply with the Guidelines. IMLS invites public comments on its draft Guidelines and will consider the comments received in developing its proposed final Guidelines, which must be submitted to OMB for review. The agency's final Guidelines are to be published by October 1, 2002. Persons who cannot access the draft Guidelines through the Internet may request a paper or electronic copy by contacting the Office of the General Counsel.

Dated: August 12, 2002.

Nancy E. Weiss,

Federal Register Officer, National Foundation on the Arts and the Humanities, Institute of Museum and Library Services.

[FR Doc. 02–20790 Filed 8–15–02; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light (CP&L), H.B. Robinson Steam Electric Plant, Unit No. 2; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for a Hearing Regarding Renewal of License for an Additional 20-Year Period, Facility Operating License No. DPR–23

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering an application for the renewal of Facility Operating License No. DPR–23, which authorizes the Carolina Power & Light (CP&L) Company to operate the H.B. Robinson Steam Electric Plant (HBRSEP), Unit 2, at 2300 megawatts thermal. In this application, HBRSEP, Unit No. 2, is referred to as the Robinson Nuclear Plant (RNP). The renewed license would authorize the applicant to operate RNP for an additional 20 years beyond the period specified in the current license. The current operating license for RNP expires on July 31, 2010.

CP&L submitted an application to renew the operating license for RNP, on June 17, 2002. A Notice of Receipt of Application, "Carolina Power & Light (CP&L), H.B. Robinson Steam Electric Plant, Unit No. 2; Notice of Receipt of Application for Renewal of Facility Operating License No. DPR–23 for an Additional 20-Year Period," was published in the **Federal Register** on July 18, 2002 (67 FR 47410).

The NRC staff has determined that CP&L has submitted information, in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, and 51.53(c), that is complete and acceptable for docketing. The current Docket No. 50–261 for Operating License No. DPR–23, will be retained. The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application.

Before issuance of the requested renewed license, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's rules and regulations. In accordance with 10 CFR 54.29, the NRC will issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review, and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB) and that any changes made to the plant's CLB comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement that is a supplement to the Commission's NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants' (May 1996). Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice. The Commission also intends to hold public meetings to discuss the license renewal process and the schedule for conducting the review. The Commission will provide prior notice of these meetings. As discussed further herein, in the event that a hearing is held, issues that may be litigated will be confined to those pertinent to the foregoing.

Within 30 days from the date of publication of this **Federal Register** notice, the applicant may file a request for a hearing, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the licenses in accordance with the provisions of 10 CFR 2.714.

The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things: (i) The nature of the petitioner's right under the Act to be made a party to the proceeding. (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding. (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if: (i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or (ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief."

Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor) Rockville, Maryland, and on the NRC Web site at *http://www.nrc.gov* (the Public Electronic Reading Room). If a request for a hearing or a petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request(s) and/or petition(s), and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. In the event that no request for a hearing or petition for leave to intervene is filed by the above date, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR parts 51 and 54, renew the licenses without further notice.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth, with particularity, the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of

matters that may be considered pursuant to 10 CFR parts 51 and 54. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition must also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the board up to 15 days before the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days before the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene that must include a list of the contentions that the petitioner seeks to have litigated in the hearing. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Requests for a hearing and petitions for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. John Moyer, Vice President, H. B. Robinson Steam Electric Plant, Carolina Power and Light Company, 3581 West Entrance Road, Hartsville, SC 29550.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Detailed information about the license renewal process can be found under the nuclear reactors' icon of the NRC's Web page at *http://www.nrc.gov*.

A copy of the application is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or on the NRC Web site from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. The staff has verified that a copy of the license renewal application for the RNP is also available to local residents at the Hartsville Memorial Library, in Hartsville, SC.

Dated at Rockville, Maryland, this 12th day of August, 2002.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–20845 Filed 8–15–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request To Amend a License to Export Highly-Enriched Uranium

Pursuant to 10 CFR 110.70(b)(2) "Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission has received the following request to amend an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link <*http://www.nrc.gov/NRC/ADAMS/index.html*> at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the request to amend a license to export special nuclear material noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this amendment request follows.

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NRC EXPORT LICENSE APPLICATION

	Description of material		End use	Country of destination
	Material type	Total qty		
Name of Applicant Date Application: Transnuclear, Inc., July 18, 2002 Date Received, Application Number, Docket Number: July 18, 2002, XSNM03060/02, 11005070	Highly-Enriched Uranium (93.60%).	Total quantity of HEU authorized for export remains unchanged.	To revise schedule & quantity of HEU authorized for export each calendar year for the MAPLE Reactors and to extend expiration date to 12/31/07. HEU used to produce medical radioisotopes.	Canada.

For the Nuclear Regulatory Commission.

Dated: Dated this 9th day of August 2002 at Rockville, Maryland.

Edward T. Baker,

Deputy Director, Office of International Programs.

[FR Doc. 02–20842 Filed 8–15–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a draft regulatory guide for public comment. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

This draft guide, temporarily identified by its task number, DG–1117 (which should be mentioned in all correspondence concerning this draft guide), is Draft Regulatory Guide DG–1117, "Control of Combustible Gas Concentrations in Containment." This draft guide is being developed to propose guidance acceptable to the NRC staff on meeting the requirements of a proposed amendment to 10 CFR 50.44. The Proposed Section 50.44 would provide requirements for the mitigation of combustible gas generated by a beyond-design-basis accident.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by October 16, 2002.

Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page. This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV*. For information about the draft guide and the related documents, contact Mr. D.C. Cullison at (301) 415–1212; e-mail *DGC@NRC.GOV*.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; email *PDR@NRC.GOV*. Regulatory guides are posted on NRC's web page, *<http://WWW.NRC.GOV>* in the Electronic Reading Room. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to *<DISTRIBUTION@NRC.GOV>*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 8th day of August 2002.

For the Nuclear Regulatory Commission

Mabel F. Lee,

Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 02–20844 Filed 8–15–02; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies

AGENCY: Overseas Private Investment Corporation ("OPIC").

ACTION: Publication of, "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies on OPIC's Web site."

SUMMARY: The Overseas Private Investment Corporation (OPIC or agency) in accordance with section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) as implemented by the final guidelines published by the Office of Management and Budget, Executive Office of the President, on September 28, 2001 (66 FR 49718) and on January 3, 2002 (67 FR 369) (and reprinted in their entirety on February 22, 2002, 67 FR 8452), "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies," has posted its draft guidelines on the OPIC Web Site, *http://www.opic.gov/generalopic/GuidelinesIntro.htm*.

This agency's information quality guidelines explain how such guidelines will ensure and maximize the quality, objectivity, utility, and integrity of information, including disseminated by OPIC. The guidelines also detail the administrative mechanisms that will allow affected persons to seek and obtain appropriate correction of information maintained and dissemianted by OPIC that does not comply with the OMB or agency guidelines.

DATES: Comments on the draft guidelines should be received by September 6, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Dev Jagadesan, Department of Legal Affair, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527, e-mail: *information quality@opic.gov*, (202) 336–8428.

Dated: August 12, 2002.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 02–20805 Filed 8–15–02; 8:45 am]

BILLING CODE 3210–01–M

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With Respect to the Railroad Retirement Account; Notice of Public Meeting

Notice is hereby given in accordance with Public Law 92–463 that the Actuarial Advisory Committee will hold a meeting on August 23, 2002, at 10 a.m. at the office of the Chief Actuary of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, on the conduct of the 22nd Actuarial Valuation of the Railroad Retirement System. The agenda for this meeting will include a discussion of the assumptions to be used in the 22nd Actuarial Valuation. A report containing recommended assumptions and the experience on which the recommendations are based will have been sent by the Chief Actuary to the Committee before the meeting.

The meeting will be open to the public. Persons wishing to submit written statements or make oral presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

Dated: August 12, 2002.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 02–20814 Filed 8–15–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25696; File No. 812–12835]

The Equitable Life Assurance Society of the United States, *et al.*; Notice of Application

August 12, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order of approval pursuant to section 26(c) of the Investment Company Act of 1940 (the "1940 Act") and an order of exemption pursuant to section 17(b) of the 1940 Act from section 17(a) of the 1940 Act.

Applicants: For purposes of the order requested pursuant to Section 26(c), The Equitable Life Assurance Society of the United States ("Equitable"), Separate Account A of Equitable ("Separate Account A"), Separate Account FP of Equitable ("Separate Account FP"), Separate Account No. 45 of Equitable ("Separate Account 45") and Separate Account No. 301 of Equitable ("Separate Account 301") (collectively, the "Section 26 Applicants"). For purposes of the order pursuant to Section 17(b), Equitable, Separate Account A, Separate Account FP, Separate Account 45, Separate Account 301, Separate Account No. 66 of Equitable ("Separate Account 66") (the separate accounts are collectively referred to herein as the "Separate Accounts" and individually as a "Separate Account") and EQ Advisors Trust (the "Trust") (collectively with Equitable and the Separate Accounts, the "Section 17 Applicants;" together with the Section 26 Applicants, "Applicants").

Summary of Application: Applicants request an order (a) approving the proposed substitution by certain insurance company separate accounts of Class IA shares of the EQ/Balanced Portfolio for Class IA shares of the EQ/Alliance Growth Investors Portfolio and Class IB shares of the EQ/Balanced Portfolio for Class IB shares of the EQ/Alliance Growth Investors Portfolio (the "Substitution") and (b) to permit certain in-kind transactions in connection with the proposed Substitution. (The EQ/Balanced Portfolio is referred to herein as the "Replacement Portfolio." The EQ/Alliance Growth Investors Portfolio is referred to herein as the "Removed Portfolio.")

Filing Date: The application was filed on May 30, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 5, 2002 and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants: c/o Peter D. Noris, Executive Vice President and Chief Investment Officer, The Equitable Life Assurance Society of the United States, 1290 Avenue of the Americas, New York, New York 10104, and Mark C. Amorosi, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Equitable is a New York stock life insurance company that has been in business since 1859. Equitable is a wholly owned subsidiary of AXA Financial, Inc., which is a wholly owned subsidiary of the AXA Group, the holding company for an international group of insurance and related financial services companies.

2. Equitable serves as sponsor and depositor for each of the Separate Accounts. Separate Account A, Separate Account 45 and Separate Account 301 fund certain variable annuity contracts. Separate Account FP funds certain variable life insurance policies. Separate Account 66 funds group pension and profit-sharing plans under group

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annuity contracts issued by Equitable. (The variable annuity contracts and variable life insurance policies funded by the Separate Accounts are collectively referred to herein as the "Contracts.")

3. Each Separate Account is a segregated asset account of Equitable and, with the exception of Separate Account 66, is registered with the Commission as a unit investment trust under the 1940 Act. Separate Account 66 is excluded from registration under the 1940 Act pursuant to Section 3(c)(11) of the 1940 Act. Separate Account 66 is not a Section 26 Applicant.

4. The Trust is organized as a Delaware business trust and registered as an open-end management investment company under the 1940 Act. The Trust is a series investment company and currently has 39 separate series (each a "Portfolio" and collectively, the "Portfolios"). Equitable currently serves as investment manager ("Manager") of each of the Portfolios. Both the Removed and Replacement Portfolios are series of the Trust. The Trust currently offers two classes of shares, Class IA and Class IB shares, which differ only in that Class IB shares are subject to a distribution plan adopted and administered pursuant to Rule 12b–1 under the 1940 Act. Under that distribution plan, up to 0.50% of the average daily net assets attributable to the Class IB shares of each Portfolio may be used to pay for distribution and shareholder services. The distributors for the Class IA and Class IB shares of each Portfolio are AXA Advisors, LLC ("AXA Advisors") and AXA Distributors, LLC ("AXA Distributors"). Under the Distribution Agreements with respect to the promotion, sale and servicing of shares of each Portfolio, payments to AXA Advisors and AXA Distributors, with respect to activities under the distribution plan, are currently limited to payments at an annual rate equal to 0.25% of the average daily net assets of each Portfolio (including the Removed and Replacement Portfolios) attributable to its Class IB shares.

5. The Manager has retained investment sub-advisers ("Advisers") to provide day-to-day investment advisory services for each of the 39 current Portfolios. The Trust has received an exemptive order from the Commission that permits the Manager, or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the 1940 Act) with the Manager, subject to certain conditions, including approval of the Board of Trustees of the Trust, and without the approval of shareholders to: (a) Select new or additional Advisers for each Portfolio; (b) enter into new investment advisory agreements with Advisers ("Advisory Agreements") and/or materially modify the terms of any existing Advisory Agreement; (c) terminate any existing Adviser and replace the Adviser; and (d) continue the employment of an existing Adviser on the same contract terms where the Advisory Agreement has been assigned because of a change of control of the Adviser.

6. Equitable, on its own behalf and on behalf of the Separate Accounts, proposes to exercise its contractual right to substitute a different eligible investment fund for any of the current Portfolios offered as funding options under the Contracts. In particular, the Section 26 Applicants propose to substitute Class IA and Class IB shares of the Replacement Portfolio for Class IA and Class IB shares of the Removed Portfolio, respectively.

7. The Section 26 Applicants propose the Substitution as part of a continued and overall business plan by Equitable to make its Contracts more competitive and thus more attractive to existing Contract owners, and to prospective purchasers. The Substitution is also intended to simplify the prospectuses and related materials with respect to the Contracts and the investment options available through the Separate Accounts. Additionally, the Substitution will substitute shares of the Replacement Portfolio for shares of the Removed Portfolio, which has substantially similar investment objectives, policies and risks as the Replacement Portfolio. Furthermore, Equitable believes that the Substitution ultimately may enable it to reduce certain of the costs that it incurs in administering the Contracts by consolidating overlapping and duplicative Portfolios. Finally, the Substitution is designed to provide Contract owners with an opportunity to continue their investment in a substantially similar Portfolio without interruption and without any cost to them. In this regard, Equitable will bear all expenses incurred in connection with the Substitution and related filings and notices, including legal, accounting, brokerage and other fees and expenses. On the effective date of the Substitution ("Substitution Date"), the amount of any Contract owner's or participant's Contract value or the dollar value of a Contract owner's or participant's investment in the relevant Contract will not change as a result of the Substitution.

8. The Replacement Portfolio has substantially similar investment objectives, policies and risks as the Removed Portfolio. The investment objective of the Replacement Portfolio is to seek to achieve a high return through both appreciation of capital and current income. The investment objective of the Removed Portfolio is to seek to achieve the highest total return consistent with the Adviser's determination of reasonable risk. The Replacement Portfolio invests primarily in publicly-traded equity and debt securities and money market instruments depending on economic conditions, the general level of common stock prices, interest rates and other relevant considerations, including the risks associated with each investment medium. The Removed Portfolio, like the Replacement Portfolio, allocates varying portions of its assets to a number of asset classes. Each Portfolio's equity investments consist primarily of common stocks of large U.S. companies. The Replacement Portfolio's debt investments consist principally of investment grade bonds, notes and debentures. The Removed Portfolio's fixed income investments may include long and short-term debt securities, preferred stocks and dividend-paying common stocks. Each Portfolio may invest up to 20% of its assets in foreign securities.

9. The Replacement Portfolio's holdings, over time, are expected to average approximately 50% in fixed income securities and approximately 50% in equity securities. The Removed Portfolio's holdings, on average, are expected to be allocated 70% to equity securities and 30% to debt securities. However, actual asset mixes for each Portfolio are adjusted in response to economic and credit market cycles. The Replacement Portfolio employs multiple Advisers (including Alliance Capital Management, L.P. ("Alliance"), which is also the Adviser to the Removed Portfolio), each of whom is responsible for investing its Allocated Portion. Equitable expects that, in connection with the proposed Substitution, it will allocate the assets of the Removed Portfolio to the portions of the Replacement Portfolio that are advised by Alliance.

10. The principal risks of investing in the Replacement and Removed Portfolios are substantially similar in that the equity investments of each Portfolio consist primarily of securities of large capitalization U.S. companies, and the fixed income investments consist primarily of investment grade corporate securities. The primary risks associated with an investment in the Replacement Portfolio are asset allocation risk, derivatives risk, equity risk, fixed income risk, foreign securities risk, leveraging risk, liquidity risk, multiple adviser risk, portfolio turnover risk, securities lending risk, small-cap and mid-cap company risk, and value investing risk. The primary risks associated with an investment in the Removed Portfolio are the same, with the minor differences that the Removed Portfolio also lists convertible securities risk and growth investing risk and does not list multiple adviser risk or small-cap and mid-cap company risk. Applicants believe that these do not represent significant differences between these Portfolios since, for example, the equity investments of each of these Portfolios consist primarily of securities of large capitalization U.S. companies and each has some small-cap and mid-cap company risk. Thus, Applicants believe that, after the proposed Substitution, a Contract owner or participant who allocated value to the Removed Portfolio would continue to have value allocated to a Replacement Portfolio with substantially similar investment objectives and policies, and would have assumed a substantially similar level of risk.

11. The charts below compare the advisory fees, total expenses and asset sizes of the Class IA and Class IB shares of the Replacement Portfolio and the Removed Portfolio for the one year periods ended December 31, 2000 and 2001. The charts also show the *pro forma* expenses of the Replacement Portfolio assuming that the Substitution had been in effect for the year ended December 31, 2001. The management fee schedule for the Replacement Portfolio is identical to that of the Removed Portfolio. In addition, the management fee, as a percentage of net assets, of the Replacement Portfolio was identical to that of the Removed Portfolio for the year ended December 31, 2001, and was lower than that of the Removed Portfolio for the year ended December 31, 2000. The net total expense ratio of each class of shares of the Replacement Portfolio was slightly higher than that of the corresponding class of shares of the Removed Portfolio for the one year period ended December 31, 2001, but was lower for the year ended December 31, 2000. As discussed below, it is expected that each class of shares of the Replacement Portfolio will have a lower total expense ratio than the corresponding class of shares of the Removed Portfolio as a result of the Substitution. This is due to the increased size of the Replacement Portfolio and a corresponding decrease in its management fee as a result of the Portfolio's assets exceeding higher breakpoints in its management fee schedule.

12. Applicants note that, as further set forth below, the Replacement Portfolio's assets have increased over the last two years, while the Removed Portfolio's assets have either remained stable (Class IB) or declined (Class IA) over that same time period. Applicants state that the proposed Substitution would replace the Removed Portfolio with the Replacement Portfolio, which will have a much larger asset size after the Substitution. Generally speaking, larger funds tend to have lower expenses than comparable funds that are smaller. This is because, with a larger asset size, fixed fund expenses are spread over a larger base, lowering the expense ratios. Also, larger funds may have lower trading expenses, potentially resulting in higher returns. Applicants anticipate that the total expense ratio of each class of shares of the Replacement Portfolio will be lower than that of the corresponding class of shares of the Removed Portfolio as a result of the Substitution, as set forth in the following charts.

	Replacement portfolio EQ/balanced portfolio (Class IA)		Removed portfolio EQ/growth investors portfolio (Class IA)		Combined portfolio (Pro forma)—
	One year period ended 12/31/2000	One year period ended 12/31/2001	One year period ended 12/31/2001	One year period ended 12/31/2001	One year period ended 12/31/2001
Net assets (in billions)	$1.9	$2.1	$2.3	$1.8	$3.9
Management fee[1] (in percent)	0.52	0.57	0.54	0.57	0.55
Rule 12b–1 fee (in percent)	NA	NA	NA	NA	NA
Other expenses (in percent)	0.07	0.08	0.06	0.06	0.06
Total expenses (in percent)	0.59	0.65	0.60	0.63	0.61

[1] The management fee for the Replacement Portfolio on an annual basis is equal to 0.600% of the first $1 billion; 0.550% of the next $1 billion; 0.525% of the next $3 billion; 0.500% of the next $5 billion; and 0.475% thereafter. The management fee schedule for the Removed Portfolio is the same.

	Replacement portfolio EQ/balanced portfolio (Class IB)		Removed portfolio EQ/growth investors portfolio (Class IB)		Combined portfolio (Pro forma)—
	One year period ended 12/31/2000	One year period ended 12/31/2001	One year period ended 12/31/2001	One year period ended 12/31/2001	One year period ended 12/31/2001
Net assets (in millions)	$41	$359	$326	$325	$684
Management fee (in percent)	0.52	0.57	0.54	0.57	0.55
Rule 12b–1 fee (in percent)	0.25	0.25	0.25	0.25	0.25
Other expenses (in percent)	0.07	0.08	0.06	0.06	0.06
Total expenses (in percent)	0.84	0.90	0.85	0.88	0.86

13. In connection with the Substitution, the Section 26 Applicants will file with the Commission prospectuses and prospectus supplements that notify Contract owners and participants of Equitable's intention to substitute the Replacement Portfolio for the Removed Portfolio. The prospectuses and prospectus supplements, as appropriate, also will describe the Substitution, the Replacement and Removed Portfolio and the impact of the Substitution on fees and expenses at the underlying fund level. The Section 26 Applicants will send the appropriate prospectus or prospectus supplement, as appropriate, containing this disclosure to all existing

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and new Contract owners and participants.

14. At or after the time the Commission approves the Application, the Section 26 Applicants will send to existing Contract owners and participants a supplement to the relevant Contract prospectus that discloses to such Contract owners and participants that the Application has been approved. Together with this disclosure, the Section 26 Applicants will send to any of those existing Contract owners and participants who have not previously received a prospectus for the Replacement Portfolio a prospectus and/or prospectus supplement for the Replacement Portfolio. New purchasers of Contracts will be provided with a Contract prospectus and/or supplement containing disclosure that the Commission has issued an order approving the Substitution, as well as a prospectus for the Replacement Portfolio. The Contract prospectus and/or supplement and the prospectus and/or prospectus supplement for the Trust, including the Replacement Portfolio, will be delivered to purchasers of new Contracts in accordance with all applicable legal requirements.

15. Contract owners and participants will be sent a notice of the Substitution before the Substitution Date. The notice will inform Contract owners and participants that the Substitution will be effected on the Substitution Date and that they may transfer assets from the Removed Portfolio (or from the Replacement Portfolio following the Substitution Date) to another investment option available under their Contract without the imposition of any applicable transfer charges, limitations, fees, or other penalties that might otherwise be imposed for a period beginning thirty (30) days before the Substitution Date and ending no earlier than thirty (30) days following the Substitution Date and such transfers will not count against the limit, if any, on the number of free transfers permitted under the Contracts. Within five days after the Substitution Date, Equitable will mail: (a) A written notice to all Contract owners and participants affected by the Substitution informing them that the Substitution was completed and restating that they may transfer assets from the Replacement Portfolio to another investment option available under their Contract free of any applicable transfer charges, limitations, fees, or other penalties that might otherwise be imposed through a date at least thirty (30) days following the Substitution Date and such transfers will not count against the limit, if any, on the number of free transfers permitted under the Contracts; and (b) a confirmation of the transactions.

16. The Substitution will be effected by redeeming shares of the Removed Portfolio in-kind on the Substitution Date at their net asset value and using the proceeds of those in-kind redemptions to purchase shares of the Replacement Portfolio at their net asset value on the same date ("In-Kind Transactions"). The In-Kind Transactions will be done in a manner consistent with the investment objectives, policies and diversification requirements of the Replacement Portfolio and the Removed Portfolio. Equitable, in consultation with the Replacement Portfolio's Adviser, will review the In-Kind Transactions to ensure that the assets are suitable for the Replacement Portfolio. All assets and liabilities will be valued based on the normal valuation procedures of the Removed Portfolio and the Replacement Portfolio, as set forth in the Trust's registration statement.

17. No transfer or similar charges will be imposed by the Section 26 Applicants and, on the Substitution Date, all Contract values will remain unchanged and fully invested. Contract owners and participants will not incur any fees or charges as a result of the proposed Substitution, nor will their rights or Equitable's obligations under the Contracts be altered in any way. All expenses in connection with the proposed Substitution, including any brokerage, legal, accounting, and other fees and expenses will be paid by Equitable. The proposed Substitution will not impose any tax liability on Contract owners or participants or cause the Contract charges currently being paid by Contract owners and participants to be greater after the proposed Substitution than before the proposed Substitution. All Contract-level fees will remain the same after the proposed Substitution. The proposed Substitution will not alter in any way the benefits, including tax benefits to Contract owners and participants, or Equitable's obligations under the Contracts. In addition, the proposed Substitution will not be treated as a transfer for purposes of assessing transfer charges or computing the number of permissible transfers under the Contracts.

18. The Section 26 Applicants request that the Commission issue an order pursuant to Section 26(c) of the 1940 Act approving the substitution of: (i) Class IA shares of the EQ/Balanced Portfolio for Class IA shares of the EQ/Alliance Growth Investors Portfolio; and (ii) Class IB shares of the EQ/Balanced Portfolio for Class IB shares of the EQ/Alliance Growth Investors Portfolio. The Section 17 Applicants request that the Commission issue an order pursuant to Section 17(b) of the 1940 Act granting an exemption from Section 17(b) to the extent necessary to permit the In-Kind Transactions.

Applicable Law

Section 26(c) of the 1940 Act

1. Section 26(c) of the 1940 Act prohibits the depositor of a registered unit investment trust that invests in the securities of a single issuer from substituting the securities of another issuer without Commission approval. Section 26(c) provides that "[t]he Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title."

2. Applicants represent that the proposed Substitution involves a substitution of securities within the meaning of Section 26(c) of the 1940 Act. The Applicants, therefore, request an order from the Commission pursuant to Section 26(c) approving the proposed Substitution.

3. Applicants state that Equitable has reserved the right under the Contracts to substitute shares of another eligible investment fund for any of the current Portfolios offered as funding options under the Contracts. Applicants represent that the prospectuses for the Contracts and the Separate Accounts contain appropriate disclosure of this right. The Section 26 Applicants have reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed or disadvantaged by events affecting the issuer of the securities held by a Separate Account and to preserve the opportunity to replace such shares in situations where a substitution could benefit Equitable and its Contract owners.

4. Applicants state that the Replacement Portfolio and the Removed Portfolio have substantially similar investment objectives, policies and risks. In addition, Applicants maintain that the proposed Substitution retains for Contract owners the investment flexibility that is a central feature of the Contracts, and any impact on the investment programs of affected Contract owners, including the appropriateness of the available investment options, should therefore be negligible.

5. Applicants also maintain that the ultimate effect of the Substitution would be to consolidate overlapping and duplicative investment options in a single Portfolio. This consolidation will permit Equitable to present information to its Contract owners and participants in a simpler and more concise manner. The anticipated streamlining of the disclosure documents should provide Contract owners and participants with a simpler presentation of the available investment options under their Contracts and related financial information.

6. Thus, Applicants state that the Substitution protects the Contract owners and participants who have allocated Contract value to the Removed Portfolio by: (a) Providing an underlying investment option for sub-accounts invested in the Removed Portfolio that is substantially similar to the Removed Portfolio; (b) providing such Contract owners and participants with simpler and more focused disclosure documents; and (c) providing such Contract owners and participants with an investment option with an identical management fee and total expense ratio as the current investment option.

7. Applicants assert that the proposed Substitution is not of the type that Section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute investment securities in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner and participant with the right to exercise his or her own judgment, and transfer Contract values and cash values into and among other investment options available to Contract owners and participants under their Contracts. Additionally, the Substitution will not, in any manner, reduce the nature or quality of the available investment options. Moreover, the Section 26 Applicants will offer Contract owners and participants the opportunity to transfer amounts out of the affected sub-accounts without any cost or other penalty that may otherwise have been imposed for a period beginning thirty (30) days before the Substitution Date and ending no earlier than thirty (30) days after the Substitution Date. Applicants conclude that the Substitution will not result in the type of costly forced redemption that Section 26(c) was designed to prevent.

8. Applicants assert that the proposed Substitution is also unlike the type of substitution that Section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners and participants select much more than a particular underlying fund in which to invest their Contract values. They also select the specific type of insurance coverage offered by the Section 26 Applicants under the applicable Contract, as well as numerous other rights and privileges set forth in the Contract. Contract owners also may have considered Equitable's size, financial condition, and its reputation for service in selecting their Contract. These factors will not change as a result of the proposed Substitution.

9. Applicants state that the significant terms of the proposed substitution are as follows:

a. The Replacement Portfolio has substantially similar investment objectives, policies and risks as the Removed Portfolio, providing Contract owners and participants with a means to continue their investment goals and risk expectations;

b. The total expense ratio for the Class IA and Class IB shares of the Replacement Portfolio will be equal to or less than that of the corresponding Class IA and Class IB shares of the Removed Portfolio, assuming that the assets of the Replacement Portfolio do not decrease significantly from the present asset level. In this regard, Equitable will waive its management fee with respect to the Replacement Portfolio and/or reimburse expenses incurred by the Replacement Portfolio during the twenty-four months following the Substitution to the extent necessary to ensure that the total expense ratios for any period (not to exceed a fiscal quarter) of the Class IA and Class IB shares of the Replacement Portfolio do not exceed 0.63% and 0.88%, respectively, of the Replacement Portfolio's average daily net assets (on an annualized basis);

c. Investments in the Replacement Portfolio may be temporary investments for Contract owners and participants as each Contract owner and participant may exercise his or her own judgment as to the most appropriate investment alternative available. In this regard, the proposed Substitution retains for Contract owners and participants the investment flexibility which is a central feature of the Contracts. Additionally, for a period beginning thirty (30) days before the Substitution Date, and ending no earlier than thirty (30) days after the Substitution, Contract owners and participants directly affected by the Substitution will be permitted to transfer value from the Replacement Portfolio or the Removed Portfolio to another investment option available under their Contract free of any otherwise applicable transfer charges, limitations, fees, or other penalties that might otherwise be imposed and such transfers will not count against the limit, if any, on the number of free transfers permitted under the Contracts;

d. The Substitution will be effected at the relative net asset values of the shares of the Removed Portfolio and the Replacement Portfolio, without the imposition of any transfer or similar charge by the Section 26 Applicants, and with no change in the amount of any Contract owner's or participant's Contract value or in the dollar value of his or her investment in such Contract;

e. Contract owners and participants will not incur directly or indirectly related fees or charges as a result of the Substitution. Equitable will bear all expenses incurred in connection with the Substitution and related filings and notices, including legal, accounting, brokerage and other fees and expenses. The Substitution will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the Substitution than before the Substitution;

f. The Substitution will not be counted as a new investment selection in determining the limit, if any, on the total number of Portfolios that Contract owners and participants can select during the life of a Contract;

g. The Substitution will not alter or affect the insurance benefits or rights of Contract owners or participants or the terms and obligations of the Contracts;

h. Contract owners and participants would not incur any adverse tax consequences as a result of the Substitution;

i. Contract owners and participants affected by the Substitution will be sent written confirmation of the Substitution that identifies the Substitution made on behalf of the Contract owner or participant within five days following the Substitution;

j. For those Contract owners or participants who were Contract owners or participants on the date of the Substitution, Equitable will not increase sub-account or Contract expenses for a period of twenty-four months following the Substitution Date; and

k. Contract owners and participants may withdraw amounts under the Contract or terminate their interest in a Contract, under the conditions that currently exist, including payment of any applicable withdrawal or surrender charge.

Section 17(a) of the 1940 Act

1. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the 1940

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Act generally prohibits the same persons, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

2. Section 17(b) of the 1940 Act provides that the Commission may, upon application, issue an order exempting any proposed transaction from Section 17(a) if: (a) The terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transactions are consistent with the policy of each registered investment company concerned; and (c) the proposed transactions are consistent with the general purposes of the 1940 Act.

3. The Section 17 Applicants request an order pursuant to Section 17(b) of the 1940 Act exempting them from the provisions of Section 17(a) to the extent necessary to permit them to carry out the In-Kind Transactions.

4. The Section 17 Applicants submit that the terms of the proposed In-Kind Transactions, including the consideration to be paid and received are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants state that the In-Kind Transactions will be effected at the respective net asset values of the Removed Portfolio and the Replacement Portfolio, as determined in accordance with the procedures disclosed in the registration statement for the Trust and as required by Rule 22c–1 under the 1940 Act. Applicants further state that the In-Kind Transactions will not change the dollar value of any Contract owner's or participant's investment in any of the Separate Accounts, the value of any Contract, the accumulation value or other value credited to any Contract, or the death benefit payable under any Contract. After the proposed In-Kind Transactions, the value of a Separate Account's investment in the Replacement Portfolio will equal the value of its investments in the Removed Portfolio (together with the value of any pre-existing investments in the Replacement Portfolio) before the In-Kind Transactions.

5. Applicants state that the Section 17 Applicants will assure themselves that the In-Kind Transactions will be in substantial compliance with the conditions of Rule 17a–7. To the extent that the In-Kind Transactions do not comply fully with the provisions of paragraphs (a) and (b) of Rule 17a–7, the Section 17 Applicants assert that the terms of the In-Kind Transactions provide the same degree of protection to the participating companies and their shareholders as if the In-Kind Transactions satisfied all of the conditions enumerated in Rule 17a–7. The Section 17 Applicants also assert that the proposed In-Kind Transactions by the Section 17 Applicants do not involve overreaching on the part of any person concerned. Furthermore, the Section 17 Applicants represent that the proposed Substitution will be consistent with the policies of the Removed Portfolio and the Replacement Portfolio, as recited in the Trust's current registration statement.

6. Applicants also assert that the proposed In-Kind Transactions are consistent with the general purposes of the 1940 Act and that the proposed In-Kind Transactions do not present any conditions or abuses that the 1940 Act was designed to prevent.

Conclusion

For the reasons set forth in the Application, the Section 26 Applicants and the Section 17 Applicants each respectively state that the proposed Substitution and the related In-Kind Transactions meet the standards of Section 26(c) of the 1940 Act and Section 17(b) of the 1940 Act, respectively, and respectfully request that the Commission issue an order of approval pursuant to Section 26(c) of the 1940 Act and Section 17(b) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20854 Filed 8–15–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46335; File No. SR–OCC–2002–07]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating To Clearing Security Futures Transactions and Arrangements With Associated Clearinghouses

August 9, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 9, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission"), and on August 9, 2002, amended, the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC Rule 1303 to provide that OCC may agree with an associate clearinghouse to open one or more omnibus accounts to enable its clearing members to clear trades in futures, which include security futures, and futures options, through the facilities of OCC. In addition, the proposed rule change requests approval of OCC's agreements with OneChicago, LLC ("OCX") and the Chicago Mercantile Exchange ("CME") with respect to clearing security futures transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under OCC's Rule 1303, OCC may open one or more omnibus accounts with an associate clearinghouse ("ACH") for the purposes of enabling the ACH's clearing members that are not OCC clearing members to clear transactions in security futures through the ACH rather than directly through OCC. Affiliates of OCC clearing members are permitted to clear transactions in security futures through the ACH through January 1, 2003. The principal purpose of the proposed rule change is to extend this same accommodation to OCC clearing members and to provide that the initial period during which either OCC clearing members or their affiliates may clear through an ACH will end one year from the date when general trading in security futures commences rather than on a specified date. OCC also seeks

[2] The Commission has modified parts of these statements.

Commission approval of the Agreement for Clearing and Settlement Services between OCC and OCX ("OCX Clearing Agreement") and the ACH Agreement between OCC and CME.

1. Background

OCC is preparing to clear security futures for a number of markets, including certain national securities exchanges that presently clear options through OCC and certain futures exchanges that are notice-registered as national securities exchanges under Section 6(g) of the Act. In SR–OCC–2001–07, OCC filed detailed rules for the clearance of security futures, including Rule 1303, which provides that OCC may agree with an ACH to carry omnibus accounts for the ACH in which the ACH may clear security futures transactions for certain of its clearing members.[3] In SR–OCC–2001–07, the Commission also approved the Agreement for Clearing and Settlement Services between OCC and Nasdaq Liffe Markets, LLC[4] ("NqLX Clearing Agreement").[5]

2. Amendments to Rule 1303

Under current Rule 1303(a), an OCC clearing member that is also an ACH clearing member may not clear its security futures transactions through the ACH. Additionally, Rule 1303(b) currently provides that affiliates of OCC clearing members that are eligible to become OCC clearing members may not continue to clear security futures through an ACH past January 1, 2003.[6]

OCC has learned that some OCC clearing members may initially have difficulty clearing security futures through OCC because the systems that they use to clear futures contracts are configured to interface with the clearing systems of commodity clearing organizations and not with OCC's systems. To accommodate these clearing members, OCC is proposing in this filing to amend Rule 1303(a) to allow OCC clearing members that are members of an ACH to clear security futures through the ACH for a period of time while systems issues are resolved.

As in the case of affiliates of OCC clearing members, an OCC clearing member that elects to clear through an ACH would be permitted to do so only for the period specified in Rule 1303(b). That period was initially set to end on June 1, 2002, and was later extended to January 1, 2003.[7] Because the commencement of trading in security futures has repeatedly been postponed, OCC is proposing in this rule filing to set the grace period at "one year after the commencement of general trading in security futures." OCC believes that this is a reasonable period of time for OCC clearing members and their affiliates to make the necessary arrangements to clear security futures directly through OCC. OCC nevertheless retains the ability under Rule 1303(b) to consent to a longer grace period if the circumstances of individual firms so require. As amended, Rule 1303 would continue to permit a clearing member of an ACH that is neither an OCC clearing member nor an affiliate of an OCC clearing member to clear through the ACH indefinitely.

3. OCX Clearing Agreement

OCX is a joint venture among CME, the Chicago Board Options Exchange, and the Chicago Board of Trade. OCX and OCC have entered into the OCX Clearing Agreement so that OCC may clear and settle security futures transactions that take place on OCX.[8] OCC seeks Commission approval of the OCX Clearing Agreement because it varies in several material respects from the NqLX Clearing Agreement approved by the Commission last year.[9] Significant differences are discussed below.

New Section 6(b), "Clearing Members and Associate Clearinghouses," of the OCX Clearing Agreement requires OCC to designate CME as an ACH for OCX, subject to the terms of the ACH Agreement between OCC and CME (which terms are summarized below). The NqLX Clearing Agreement contains no similar provision. Section 6(b) of the OCX Clearing Agreement also provides that all present OCC clearing members and their successors may clear trades executed on OCX. However, future OCC clearing members will not be allowed to clear OCX trades without prior approval from OCX. OCX may require that future OCC clearing members become members of OCX as a condition to being allowed to clear trades on OCX. The NqLX Clearing Agreement contains no similar provision.

Section 10(b), "Risk Margin Offsets," of the OCX Clearing Agreement states that OCC will not make OCX products fungible with products traded on other markets, exchanges, or electronic trading platforms unless OCC is required to do so by law or has received prior written approval from OCX. The NqLX Clearing Agreement contains no similar provision.

Section 13, "Financial Arrangements," of the OCX Clearing Agreement states that OCC will charge clearing fees for trades executed on OCX to OCX rather than to clearing members. However, OCX will be required to pass OCC's fees through to OCC clearing member(s) on sides of OCX trades that are cleared directly through OCC.[10] OCX negotiated a discount to the fees OCC normally charges for clearing services in exchange for giving up the right to participate in any year-end fee reductions or rebates. OCX may, however, opt into OCC's regular rebate-eligible fee structure on a prospective basis at any time. The discount is greater for trade sides cleared through CME as an ACH reflecting the fact that CME is sharing the clearing function and the associated risk. OCC will charge no clearing fees when both sides are cleared through CME.

Paragraph (b) of Section 14, "CME as Associate Clearinghouse," of the OCX Clearing Agreement prohibits OCX from soliciting or providing incentives for CME members to clear OCX trades through CME rather than OCC. The reason for this restriction is discussed below in connection with related provisions of the ACH Agreement.

4. ACH Agreement

OCC and CME have entered into the ACH Agreement[11] so that CME may act as an ACH for purposes of clearing and settling transactions of certain CME clearing members on OCX. The ACH Agreement provides that CME generally will be treated as an OCC clearing member but with important exceptions. First, Section 2, "CME an Associate

[3] Securities Exchange Act Release No. 44727 (August 20, 2001), 66 FR 45351 (order approving rules for clearance of security futures.) SR–OCC–2001–07 also amended Article I of OCC's By-Laws to include within the definition of "associate clearinghouse" a "derivatives clearing organization regulated as such under the Commodity Exchange Act."

[4] Previously Nasdaq LIFFE, LLC.

[5] Securities Exchange Act Release No. 44727 (August 20, 2001), 66 FR 45351.

[6] For purposes of Rule 1303, an entity shall be deemed to be an affiliated entity of a clearing member if the clearing member owns, directly or indirectly, at least 50% of the equity in such entity or if at least 50% of the equity of the clearing member and in such entity is, directly or indirectly, under common ownership.

[7] Securities Exchange Act Release No. 45946 (May 22, 2002), 67 FR 36056 (File No. SR–OCC–2001–16).

[8] The OCX Clearing Agreement is attached as Exhibit A to OCC's filing.

[9] A blackline version showing the differences between the NqLX Clearing Agreement and the OCX Clearing Agreement is attached as Exhibit A–1 to OCC's filing. OCC has filed with the Commission an amended and restated version of the NqLX Clearing Agreement, which has been amended to provide that OCC will clear and settle commodity futures (specifically, broad-based index options) traded on NqLX.

[10] This requirement enables OCC to police "the equitable allocation of reasonable dues, fees, and other charges among its participants" required under Section 17A(b)(3)(D) of the Act.

[11] Attached as Exhibit B to OCC's filing.

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Clearinghouse," states that CME may clear through its accounts at OCC only security futures traded on OCX. Second, Section 3, "Applicability of the Rules," makes clear that CME is bound only by certain OCC rules, which generally speaking are those that apply to OCC's clearance and settlement of security futures contracts and to OCC's right to suspend clearing members including an ACH with certain modifications set forth in the ACH Agreement. CME is not subject to OCC's by-laws and rules requiring deposits to OCC's clearing fund and requiring risk margin deposits. Likewise, under Section 6, "Risk Margin; Clearing Fund Contributions; Security Deposits," OCC is not required to contribute to CME's clearing fund or to post margin with CME.

Given that each clearing organization has credit exposure to the other, OCC and CME have determined that the cost of a mutual posting of collateral by each with the other would outweigh any benefits to be obtained. Although OCC is exposed to some uncollateralized credit risk with respect to CME (and vice versa), that risk is considered minimal because CME's clearinghouse division is a registered derivatives clearing organization subject to regulation and oversight by the Commodity Futures Trading Commission ("CFTC") and is believed by OCC to be well run and highly creditworthy. Sections 3(c), "Applicability of the Rules," and 10, "Application of Chapter XI of the Rules," of the ACH Agreement provide that if CME fails to deliver securities or funds to OCC, breaches certain of its obligations under the Commodity Exchange Act ("CEA") or the ACH Agreement, or is in such financial or operational difficulty that OCC believes suspension of CME as an ACH is required, OCC may without notice liquidate all positions in the CME ACH omnibus accounts regardless of whether any CME clearing member is in default to CME. OCC may then apply the proceeds from the CME Proprietary Account (described below) against all obligations of CME under the ACH Agreement and the proceeds from the CME Customer Account (described below) against all obligations in that account.

Where both sides of a matched trade are submitted to OCC for the accounts of regular OCC clearing members, CME will have no role in the transaction. Where one side of a matched trade is submitted for the account of a regular OCC clearing member and the other is submitted for the account of a CME clearing member, the CME member's transaction will clear in the ACH account and CME as ACH will be the OCC clearing member on the trade. If both sides of a matched trade are cleared through CME, there will be no effect on the open interest on OCC's books, and OCC will have no obligation on the trade except to the limited extent described below in the case of delivery obligations on physically-settled stock futures. The rights and obligations of CME members with respect to security futures cleared through CME be determined under the rules of CME, but Section 4(a) of the ACH Agreement requires that CME's rules provide that the terms of security futures cleared by CME will be identical to the terms of security futures cleared by OCC and that any adjustments to the terms of outstanding contracts must be identical and take effect at the same time to ensure fungibility and maintain a balanced open interest at both clearing organizations.

Section 8, "Allocation of Clearing Responsibilities," of the ACH Agreement is consistent with the terms of OCC Rule 1303 as proposed to be amended in this filing. It is intended to permit the use of the ACH arrangements by CME members only to the extent that clearing through OCC directly might reasonably impose a hardship. An OCC clearing member that is or that has an affiliate that is a CME clearing member may clear through CME until one year after the commencement of security futures trading, at which point all trades of such entity must be cleared through OCC unless OCC consents to an extension of time. However, where a futures affiliate of an OCC clearing member is substantially larger than the clearing member, OCC has agreed to permit the affiliate to clear through CME indefinitely on the ground that where the principal business of the consolidated entities is a futures business it is inappropriate to compel all security futures clearing to be directed through the securities affiliate.[12] A CME clearing member that is not an OCC clearing member and is not an affiliate of an OCC clearing member may clear its security futures trades through CME indefinitely. By generally requiring firms that are OCC clearing members or that have affiliates that are OCC clearing members to take the necessary steps to clear their security futures activity directly through the OCC clearing member, the ACH Agreement limits the mutual uncollateralized exposure between OCC and CME and minimizes the number of transactions that require coordinated clearance and settlement by two clearing organizations.[13] For the same purpose of minimizing unnecessary use of the ACH arrangement, the OCX Clearing Agreement as noted above prohibits the ACH from soliciting its members to clear transactions through the ACH rather than through OCC.

In order to comply with the customer segregation rules under the CEA, Section 9(a), "Maintenance of CME Accounts," of the ACH Agreement requires CME to have two accounts at OCC, one for proprietary positions and one for customer positions. Each will function as an omnibus account containing the positions and margin carried by CME members for whom CME acts as an ACH. The "CME Proprietary Account" will carry only transactions of persons whose accounts on the books of the carrying CME clearing member are "proprietary accounts" as defined in CFTC Regulation 1.3(y). The "CME Customer Account" will carry only transactions of customers of CME clearing members and will be subject to the customer protection provisions of the CFTC. In accordance with those provisions, Section 9(b) of the ACH Agreement provides that OCC will have a lien on the positions in the CME Customer Account as security for CME's obligations to OCC only with respect to positions and transactions in that account. In contrast, OCC will have a lien on and security interest in the positions in the CME Proprietary Account as security for all obligations of CME to OCC under the ACH Agreement.

As noted above, OCC has agreed in Section 4 of the ACH Agreement to perform a limited role in connection with delivery obligations of CME clearing members arising from physically-settled security futures in CME member accounts. CME will require each of its clearing members that trades physically-settled security futures to enter into arrangements satisfactory to OCC through which an OCC stock clearing member will agree to act on the CME clearing member's behalf for the purpose of settling through the facilities of National Securities Clearing Corporation ("NSCC") or otherwise delivery obligations arising from maturing security futures contracts in its accounts at CME. Promptly following the close of trading on the last trading day prior to maturity of any series of physically-settled security futures, CME will notify OCC of the identity of each OCC clearing member that will be obligated to receive or to deliver stock on behalf of CME members and the quantity of each underlying stock to be received or delivered. OCC will include these receive and deliver obligations with the other receive and deliver obligations of its clearing members in its reports to NSCC in accordance with OCC Rule 913. In the event that settlement is rejected by NSCC for any reason, settlement will be completed between the delivering and receiving OCC clearing members in accordance with OCC's rules, but CME will be responsible to OCC for any loss reasonably determined by OCC to have been incurred by it as a result of an OCC clearing member default in connection with settlements arising from security futures contracts in CME clearing member accounts. OCC will not require the delivering OCC clearing member or receiving OCC clearing member to deposit margin with OCC with respect to settlements attributable to security futures in CME clearing member accounts but will instead look to the credit of CME.

OCC believes that the proposed rule change, OCX Clearing Agreement, and ACH Agreement are consistent with the requirements of Section 17A of the Act because they promote the prompt and accurate clearance and settlement of securities transactions, foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and in general, protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

[12] Proposed Interpretations and Policies .01 to Rule 1303.

[13] In approving OCC's previous ACH arrangement with the Associate Clearing House Amsterdam, the Commission stated, "As a general matter, the Commission believes that OCC-issued options should be cleared through full OCC clearing members and not through intermediaries created only for clearing purposes." Securities Exchange Act Release No. 24832 (August 21, 1987), 52 FR 32377, n.16 (File No. SR–OCC–87–9).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2002–07 and should be submitted by September 6, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20855 Filed 8–15–02; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4096]

Bureau of Educational and Cultural Affairs; Notice: Grants/Grantsmanship Workshop

SUMMARY: The State Department's Bureau of Educational and Cultural Affairs sponsors and administers a wide range of academic, professional and cultural exchange programs and activities promoting ties between the people of the United States and people from 140 countries around the world. In an effort to broaden the base of participation in its different programs and activities, the Bureau announces that it will be holding a grants/grantsmanship workshop, inviting representatives from nongovernmental organizations and institutions to learn about the Bureau's different international exchange grant program opportunities. The Bureau is particularly interested in meeting representatives of organizations that have not previously participated in Bureau programs. The workshop will take place on September 26, 2002, from 1:30 pm to 4:30 pm in the Discovery Ballroom of the Holiday Inn, 550 C St., SW., Washington, DC.

Additional Information

Interested organizations and institutions should contact David Levin at (202) 619–5386 or by e-mail at *dlevin@pd.state.gov* by September 23, 2002 to complete registration and reserve a place at the workshop.

Dated: August 12, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–20858 Filed 8–15–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program: Lake Charles Regional Airport, Lake Charles, LA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Airport Authority Board of Calcasieu Parish (AABCP) under the provisions of Title 49, U.S.C., Chapter 475 and 14 CFR part 150. These findings are made in

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recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On February 5, 2002, the FAA determined that the noise exposure maps submitted by the AABCP under Part 150 were in compliance with applicable requirements. On August 2, 2002, the Administrator approved the noise compatibility program. All of the recommendations of the program were approved.

EFFECTIVE DATES: The effective date of the FAA's approval of the Lake Charles Regional Airport noise compatibility program is August 2, 2002.

FOR FURTHER INFORMATION CONTACT: Mike Saupp, Department of Transportation, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas, 76137, (817) 222–5645. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Lake Charles Regional Airport, effective August 2, 2002.

Under Title 49 U.S.C., section 47504 (hereinafter referred to as "Title 49"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses within the area covered by the noise exposure maps. Title 49 requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and Title 49 is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce,, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Fort Worth, Texas.

The AABCP submitted to the FAA on September 10, 2001, the noise exposure maps, descriptions, and other determination produced during the noise compatibility planning study conducted from August 17, 1999 through September 10, 2001. The Lake Charles Regional Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on February 5, 2002. Notice of this determination was published in the **Federal Register** on March 5, 2002.

The Lake Charles Regional Airport study contains a proposed noise compatibility program comprised of actions designed for implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2006. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Title 49. The FAA began its review of the program on February 5, 2002 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained six proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of Title 49 and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective August 2, 2002.

Outright approval was granted for all of the specific program elements. Approved elements development of a voluntary runway use procedure, continuation of noise abatement flight procedures, and zoning actions and requirements.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on August 2, 2002. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available at the FAA office listed above and at the administrative offices of the AABCP.

Issued in Fort Worth, Texas, August 6, 2002.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 02–20900 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice: Denver International Airport, Denver, CO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Denver International Airport (DEN) under the provisions of 49 U.S.C. 47503(a) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATES: The effective date of the FAA's determination on the Denver International Airport noise exposure maps is August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, FAA, Airports Division, ANM–611, 1601 Lind Avenue, SW., Renton. Washington, 98055–4056.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps for Denver International Airport are in compliance with applicable requirements of part 150, effective August 5, 2002.

Under 49 U.S.C. 47503(a), an airport operator may submit to the FAA a noise exposure map that meets applicable regulations and which depicts non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. 49 U.S.C. 47503(a)(1) requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that has been found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) part 150, promulgated pursuant to 49 U.S.C. 47503(a), may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses. The FAA has completed its review of the noise exposure maps and related descriptions submitted by DEN. The specific maps under consideration are Figures 5–1 and 5–2 in the submission. The FAA has determined that these maps for Denver International Airport are in compliance with applicable requirements. This determination is effective on August 5, 2002. FAA's determination on an airport operator's noise exposure maps is limited to the determination that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under 49 U.S.C. 47503, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of 49 U.S.C. 47507. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under 49 U.S.C. 47503(a)(1). The FAA has relied on the certification by the airport operator, under section 150.21 of the FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Independence Avenue, SW., Room 615, Washington, DC.

Federal Aviation Administration, Airports Division, ANM–600, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056.

Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, CO 80249–6361.

Denver International Airport, Airport Office Building, 8500 Pena Boulevard, Denver, Colorado.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, August 5, 2002.

Lowell H. Johnson,

Manager, Airports Division, ANM–600, Northwest Mountain Region.

[FR Doc. 02–20899 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Planned Modification of the Houston Class B Airspace Area; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This notice announces the rescheduling of three fact-finding informal airspace meetings to solicit information from airspace users, and others, concerning a plan to modify the Class B airspace area at the George Bush Intercontinental Airport/Houston, TX. The purpose of these meetings is to provide interested parties an opportunity to present views, recommendations, and comments on the plan to modify the Houston, TX, Class B airspace area. All comments received during these meetings will be considered prior to any revision or issuance of a notice of proposed rulemaking.

TIMES AND DATES: Meetings. These informal airspace meetings will be rescheduled to Tuesday, October 15, 2002, at 6 pm–9 pm; Wednesday, October 16, 2002, at 6 pm–9 pm; and Tuesday, October 22, 2002, at 6 pm–9 p.m. Comments must be received on or before November 26, 2002.

ADDRESSES: On October 15, 2002, the meeting will be held at Fletcher Aviation, at the William P. Hobby Airport, 9000 Randolph, Houston, TX 77061. The October 16, 2002, meeting will be held at the Academic Room 126 at the North Harris College, 2700 W.W. Thorne Drive, Houston, TX 77073. The October 22, 2002, meeting will be held in the Terminal Building at the West Houston Airport, 18000 Groschke, Houston, TX 77094.

COMMENTS: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Federal Aviation Administration, Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137–4298.

FOR FURTHER INFORMATION CONTACT: Caroline Carey, Houston ATCT, George Bush Intercontinental Airport/Houston, 2700 West Terminal Rd., Houston, TX 77032; telephone (281) 209–8603.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) These meetings will be informal in nature and will be conducted by one or more representatives of the FAA Southwest Region. A representative from the FAA will present a formal briefing on the planned Class B airspace area modification. Each participant will be given an opportunity to deliver comments or make a presentation at the meetings. Only comments concerning the proposal to modify the Class B airspace area will be accepted.

(b) These meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter.

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(d) These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel.

(e) Position papers or other handout material relating to the substance of these meetings will be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(f) These meetings will not be formally recorded.

Agenda for the Meetings

—Opening Remarks and Presentation of Meeting Procedures.
—Briefing on Background for the Planned Modification of the Class B Airspace Area at the George Bush Intercontinental Airport/Houston, TX.
—Public Presentations and Discussions.
—Closing Comments.

Issued in Washington, DC, on August 12, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–20884 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–50]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 5, 2002.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–12894 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Susan Boylon (425–227–1152), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on August 13, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–12894.
Petitioner: Lockheed Martin.
Section of 14 CFR Affected: SFAR 88.
Description of Relief Sought: To permit five Lockheed Model DC–9–30 (C9–B) military airplanes to operate until June 2003 without meeting the requirements of SFAR–88.

[FR Doc. 02–20885 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–51]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 5, 2002.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–12904 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Annette Kovite (425–227–1262), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave. SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Dated: Issued in Washington, D.C., on August 13, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–12904.
Petitioner: Gulfstream Aerospace Corporation.
Section of 14 CFR Affected: 14 CFR 25.813(e).
Description of Relief Sought: To permit the installation of pocket doors between passenger compartments in the Gulfstream Aerospace Model GV–SP airplane.

[FR Doc. 02–20886 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement No. ANM–02–115–15; Certification of Passenger Seat Armrests

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy that clarifies current FAA policy with respect to certification of passenger seat armrests.

DATES: Send your comments on or before September 16, 2002.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Jayson Claar, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2194; fax (425) 227–1320; e-mail: *jayson.claar@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/devpaper.cfm*. If you do not have access to the Internet, you can obtain a copy of the policy statement by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The FAA invites your comments on this proposed policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT.** Mark your comments, "Comments to Policy Statement ANM–02–115–15."

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

The proposed policy provides additional guidance with respect to compliance with § 25.785(d), Amendment, 25–88, for transport category airplane passenger seat armrests, and is specifically aimed at documenting an alternative to current policy and guidance for demonstrating compliance with that section for seat armrests which may be struck by persons seated behind them.

Issued in Renton, Washington, on July 29, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20898 Filed 8–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreement To Advance Occupant Protection Technology in Passenger Vehicles

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of Discretionary Cooperative Agreement to Advance Occupant Protection Technology in Passenger Vehicles.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement to advance occupant protection technology in passenger vehicles. NHTSA solicits applications from for-profit organizations (small or large), non-profit organization and educational institutions. One of NHTSA's objectives is to develop and evaluate new technologies and methodologies, which have the potential for improving the crashworthiness of passenger vehicles and protecting their occupants. NHTSA seeks to establish a collaborative research effort with a qualified research organization to meet the above objective.

DATES: Applications must be received at the office designated below by 3 p.m. on or before September 16, 2002.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN.: Henrietta R. Mosley, 400 Seventh Street SW., Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Number DTNH22–R–01–2–07292.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Henrietta R. Mosley, Office of Contracts and Procurement. All questions and requests for copies may be directed by e-mail at *hmosley@nhtsa.dot.gov* or by telephone at (202) 366–9570. Programmatic questions should be directed to Mr. Ron Pack, Crashworthiness Research, NHTSA, Room 6226 (NRD–11), 400 Seventh Street SW., Washington, DC 20590, (202) 366–4697. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Statement of Work

Background

Each year in the United States, more than 40,000 deaths and millions of injuries occur as the direct result of motor vehicle traffic crashes. As part of its mission to alleviate this toll, the National Highway Traffic Safety Administration vigorously conducts an extensive research program to develop and evaluate new technologies and methodologies, which have the potential for improving the crashworthiness of passenger vehicles and protecting their occupants. NHTSA is conducting crashworthiness research to develop new or enhanced injury countermeasures.

Objective and Purpose

The proposed cooperative research agreement program seeks to establish collaborative research efforts between NHTSA and a qualified research organization to study advanced methodologies for occupant protection in passenger vehicle crashes. The collaboration will include problem definition, sharing of scientific and technical data, joint research and the development of new methodologies and technologies for occupant crash protection. Research areas could include, but are not limited to, the following:

—Advanced frontal occupant restraints.
—Advanced air bag inflator and/or air bag inflation methodologies.
—Adaptive air bag systems to tailor bag deployment over the expected range of crash severities, occupant sizes,

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occupant ages, occupant positioning, etc.
—Advanced occupant seating systems.
—Ejection mitigation technologies.
—Intrusion resistance countermeasures.
—Coupling of air bag inflation with anticipatory crash sensing technologies.
—Improved vehicle crash sensing methodologies.
—Integration of the above in production/near production vehicles to show feasibility and evaluate performance.

The above list of potential programs constitutes only a sampling of the potential research areas. Applicants are also encouraged to suggest other areas that are believed to provide the potential for practical improvement over current occupant crash protection and are most amenable to the special skills and experience of the applicant.

The program shall include a maximum of three phases including the following: (1) Preliminary studies identifying the system performance improvement desired, an estimate of additional production costs related to the improvement, the benefits to be appreciated from such improvement, and the approximate magnitude of national injuries and fatalities now occurring due to the absence of the improvement. (2) Prototype development and establishment of reliable production costs. (3) Prototype demonstration. The duration of each phase will vary according to current state-of-the-art, and in some instances, may be overlapped.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide one professional staff person to be designated as the Contracting Officer's Technical Representative (COTR), to participate in the planning and management of the cooperative agreement and coordinate activities between the cooperative agreement participant organization and the NHTSA.
2. Make available information and technical assistance from government sources, within available resources and as determined appropriate by the COTR.
3. Provide liaison with other government agencies and organizations, as appropriate.
4. Stimulate the exchange of ideas, problems, and solutions among cooperative agreement recipients who agree to such sharing, and if appropriate, NHTSA contractors and other interested parties; and
5. Share nonproprietary information developed at Government expense with the scientific and industrial community.

Number of Cooperative Agreements, Award Amounts and Period of Support

Depending on the merits of the applications received, NHTSA anticipates awarding multiple cooperative agreements for a base period of twelve (12) months with three (3) one (1) year option periods. Offerors should clearly identify the timeline for their proposed effort. It is anticipated that individual award amounts shall range from $25,000 to $150,00 (not to exceed $150,000) per twelve (12) month period. Upon completion of the base period, NHTSA may choose to extend the period of performance under this agreement for the three (3) additional twelve (12) month periods, subject to availability of funds and satisfactory progress. Funds allocated for these cooperative agreements are not intended to cover all of the costs that will be incurred in completing the project. Applicants should demonstrate a commitment of financial or in-kind resources to support the proposed project.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement program, an applicant must be a for-profit organization (small or large), a non-profit organization, or an educational institution. Consortiums of organizations from any of the above categories may apply. Regardless of the type of organization applying for Federal assistance, no fee or profit will be allowed.

Application Procedure

Each applicant must submit one original and three copies of its application package to: DOT/National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Henrietta R. Mosley, 400 Seventh Street, SW., Room 5301, Washington, DC 20590. An additional three copies will facilitate the review process, but are not required. Applications are due no later than 30 days after the appearance of the announcement in the **Federal Register**. The applicant shall specifically identify any information in the application, which is to be treated as proprietary, in accordance with the procedures of 49 CFR 512, Confidential Business Information. Applications must include a reference to NHTSA Cooperative Agreement Number DTNH22–02–R–07292. The proposal shall not exceed 35 pages, not including budget proposal, letters of endorsement or support, and resumes. Only complete application packages received on or before 4 p.m. on September 16, 2002 will be considered.

Application Contents

1. The application package must be submitted with OMB Standard Form 424 (REV. 7–97), including 424A and 424B), Application for Federal Assistance, with the required information filled in and assurances signed (SF 424B). The OMB Standard Forms SF–424, SF–424A, and SF424B may be downloaded directly from the OMB Internet Web site: *http://www.whitehouse.gov/OMB/grants/index.html*. While the Form 424–A deals with budget information, and Section B identifies Budget Categories, the available space does not permit a level of detail, which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed breakdown of the proposed costs (direct labor, including labor categories, level of effort and rate; direct material, including itemized equipment; travel and transportation, including projected trips and number of people traveling; subcontracts with similar cost detail, if known; and overhead costs) as well as any costs which the applicant proposes to contribute in support of this effort. The budget should detail costs for each year of the proposed project. Applicants shall assume that awards will be made by September 30, 2002 and shall prepare their applications accordingly.

2. The application shall include a program narrative statement, which addresses the following:

a. A description of the research to be pursued which addresses:

a. The objectives, goals, and anticipated outcomes of the proposed research effort;

b. The method or methods that will be used;

c. The source of crash and injury statistics to be used;

d. The vehicle occupant protection population and crash modes to be addressed;

b. Organizational plan detailing a plan of action on how the proposed work will be accomplished. The plan should include a time line of projected activities and milestones. The proposed program director and other key personnel should be identified, including a description of their qualifications and their organizational responsibilities.

c. A description of the facilities and equipment currently available or to be obtained for use in the conduct of the proposed research and development effort.

d. A description of the applicant's previous experience or on-going research program that is related to this proposed research effort.

e. A detailed schedule and budget for the proposed research effort, including any cost-sharing contribution proposed by the applicant as well as any additional financial commitments made by other sources.

f. A statement of any technical assistance, which the applicant may require of NHTSA in order to successfully complete the proposed program.

Application Review Process and Evaluation Criteria

Initially, all applications will be screened to ensure that they meet the eligibility requirements and to ensure that applications contain all information required by the Application Contents Section of this Notice. An Evaluation committee will then evaluate each complete application from an eligible recipient. The applications will be evaluated using the following criteria:

1. *Understanding the Problem (30%).* The applicant's understanding of the purpose and unique problems represented by the research objectives of this cooperative agreement program as evidenced in the description of their proposed research and development effort. Specific attention shall be placed upon the applicant's stated proposed development and demonstration effort.

2. *Technical Merit (30%).* The potential of the proposed research effort accomplishments to make a timely and an innovative and/or significant contribution to occupant protection technology knowledge as it may be applied to saving lives and reducing injuries resulting from motor vehicle crashes. The technical merit of the proposed research effort will include the feasibility of the approach, practicability, planned methodology, and anticipated results.

3. *Financial Merit (20%).* Financial merit will be estimated by the cost of the cooperative agreement to be borne by NHTSA and the in-kind contribution provided by the applicant as compared to the anticipated benefits to vehicle crash occupants.

4. *Facilities and Equipment (10%).* The adequacy of facilities and equipment identified to accomplish the proposed research.

5. *Program Staff (10%).* The adequacy of the organizational plan for accomplishing the proposed research effort, including the qualifications and experience of the research team, the various disciplines represented, and the relative level of effort proposed for professional, technical, and support staff.

Terms and Conditions of the Award

1. Prior to award, the recipient must comply with the certification requirements of 49 CFR part 29—Department of Transportation Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants). The protection of the rights and welfare of human subjects in NHTSA-sponsored experiments is governed by 49 CFR part 11. Any recipient proposing the use of human subjects must satisfy the requirements of 49 CFR part 11 prior to award of the cooperative agreement. The cooperative agreements will include the provisions of Federal Acquisition Regulation (FAR) part 52 contract clause 52.227–11 Patent Rights Retention by the Contractor (short form).

2. Reporting Requirements

a. Written Research Reports

The recipient shall submit research reports every two months suitable for public dissemination which shall be due 15 days after the reporting period, and a final research report within 45 days after completion of the research effort. An original and three copies of each of these research reports shall be submitted to the COTR.

b. Oral Briefings

The recipient shall conduct semiannual oral presentations of research results for the COTR and other interested NHTSA personnel. These presentations will be conducted at the NHTSA Office of Vehicle Safety Research, Washington DC. An original and three copies shall be submitted to the COTR.

c. Data Reports

Dynamic and other data measured in research, development, and prototype evaluation and demonstration tests will be provided by the recipient within 3 weeks after the data is obtained, in the format of a data package as described below. The recipient may be relieved of the data package report requirement for certain activities by agreement from the COTR.

A data package consists of high speed film, paper test report, and magnetic tape complying with NHTSA Data Tape Reference Guide. The NHTSA's Crashworthiness Division maintains a Vehicle Crash Test and a Component Data Base, which it provides upon request to the public, including educational institutions and other research organizations.

To facilitate the input of data as well as the exchange of information, the recipient must provide the magnetic tape in the format specified in the "NHTSA Data Tape Reference Guide". A copy of this document may be obtained from the programmatic information contact or on the NHTSA Web site: *http://www.nhtsa.dot.gov*.

3. During the effective performance period of the Cooperative Agreements awarded as a result of this announcement, the agreements shall be subject to NHTSA's General Provisions for Assistance Agreements; the cost principles of OMB Circular A–21, A–122, or FAR 31.2, as applicable to the recipient, and the requirements of 49 CFR part 29. Each agreement with a non-profit organization or an educational institution shall also be subject to the general administrative requirements of 49 CFR part 19.

An electronic copy of this document may be downloaded by accessing the **Federal Register** home page at *http://www.nara.gov/nara/fedreg* and the Government Printing Office database at *http://www.acess.gpo.gov/su_docs*.

Issued on: August 9, 2002.

Joseph N. Kanianthra,

Director of Office of Vehicle Safety Research.

[FR Doc. 02–20882 Filed 8–15–02; 8:45 am]

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Corrections

Federal Register
Vol. 67, No. 159
Friday, August 16, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 410 and 419

[CMS–1208–P]

RIN 0938–AL19

Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates; and Changes to Payment Suspension for Unfiled Cost Reports

Correction

In proposed rule document 02–20146 beginning on page 52092 in the issue of Friday, August 9, 2002, make the following correction:

On page 52092, in the first column, under the **DATES** section, in the fourth line, "October 8, 2002" should read "October 7, 2002".

[FR Doc. C2–20146 Filed 8–15–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. H–011G]

RIN No. 1218–AB89

Hearing Conservation Program for Construction Workers

Correction

In proposed rule document 02–19691 beginning on page 50610 in the issue of Monday, August 5, 2002 make the following corrections:

1. On page 50612, in the second column, in Table 1., in the third column, the heading "Excess organization Risk (%) [3]" should read " Excess Risk (%) [3]".

2. On page 50613, in the second column, in footnote 1, in the seventh line, "dBa" should read "dBA".

[FR Doc. C2–19691 Filed 8–15–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124256–02]

RIN 1545–BA82

Earnings Calculation for Returned or Recharacterized IRA Contributions

Correction

In proposed rule document 02–18452 beginning on page 48067 in the issue of Tuesday, July 23, 2002, make the following correction:

§1.408 A–5 [Corrected]

On page 48070, in § 1.408A–5, A–2(c)(6), in the second column, in *Example 1*, in the second paragraph, in the fifth line, "($225,000+$240,000)" should read "($225,000 − $240,000)".

[FR Doc. C2–18452 Filed 8–15–02; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
August 16, 2002

Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–33]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Ms. Julie Jones-Conte, Headquarters, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–MD, Room 1E677, 600 Army Pentagon, Washington, DC 20310–0600; (703) 692–9223; (These are not toll-free numbers).

Dated: August 8, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 8/16/02

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. 60113
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 21199520156
Status: Unutilized
Comment: 4000 sq. ft., 1-story, most recent use—admin., off-site use only.

Alaska

Bldgs. 09100, 09104–09106
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020158
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only.

5 Bldgs.
Fort Richardson 09108, 09110–09112, 09114
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020159
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only.

Bldgs. 09128, 09129
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020160
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only.

Bldgs. 09151, 09155, 09156
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020161
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only.

Bldg. 09158
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020162
Status: Unutilized
Comment: 672 sq. ft., most recent use—storage shed, off-site use only.

Bldgs. 09160–09162
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020163
Status: Unutilized
Comment: 11,520 sq. ft., concrete, most recent use—NCO-ENL FH, off-site use only.

Bldgs. 09164, 09165
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020164
Status: Unutilized
Comment: 2304 & 2880 sq. ft., most recent use—storage, off-site use only.

Bldg. 10100
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020165
Status: Unutilized
Comment: 4688 sq. ft., concrete, most recent use—hazard bldg., off-site use only.

Bldg. 00390
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030067
Status: Excess
Comment: 13,632 sq. ft., off-site use only.

Bldgs. 01200, 01202
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030068
Status: Excess
Comment: 4508 & 6366 sq. ft., most recent use—hazard bldg., off-site use only.

Bldg. 01204
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030069
Status: Excess
Comment: 5578 sq. ft., most recent use—VOQ transient, off-site use only.

Bldgs. 01205–01207
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030070
Status: Excess
Comment: various sq. ft., most recent use—hazard bldg., off-site use only.

Bldgs. 01208, 01210, 01212
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030071
Status: Excess
Comment: various sq ft., most recent use—hazard bldg., off-site use only.

Bldgs. 01213, 01214
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030072
Status: Excess
Comment: 11,964 & 13,740 sq. ft., most recent use—transient UPH, off-site use only.

Bldgs. 01218, 01230
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030073
Status: Excess
Comment: 480 & 188 sq. ft., most recent use—hazard bldgs., off-site use only.

Bldgs. 01231, 01232
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030074
Status: Excess
Comment: 458 & 4260 sq. ft., most recent use—hazard bldgs., off-site use only.

Bldg. 01234
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030075
Status: Excess
Comment: 615 sq. ft., most recent use—admin., off-site use only.

Bldg. 01237
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030076
Status: Excess
Comment: 408 sq. ft., most recent use—fuel/pol bldg., off-site use only.

Bldg. 01272
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030077
Status: Excess
Comment: 308 sq. ft., most recent use—storage, off-site use only.

Bldg. 08109
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030080
Status: Excess
Comment: 1920 sq. ft., most recent use—storage, off-site use only.

Bldg. 21001
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030081
Status: Excess
Comment: 3200 sq. ft., most recent use—family housing, off-site use only.

Bldg. 22001
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030082
Status: Excess
Comment: 1448 sq. ft., most recent use—family housing, off-site use only.

Bldg. 22002
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030083
Status: Excess
Comment: 1508 sq. ft., most recent use—family housing, off-site use only.

Armory
NG Noorvik
Noorvik Co: AK 99763–
Landholding Agency: Army
Property Number: 21200110075
Status: Unutilized
Comment: 1200 sq. ft., most recent use—armory, off-site use only.

Bldg. 00229
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200120085
Status: Excess
Comment: 13,056 sq. ft., off-site use only.

Arizona

Bldg. 30012, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21199310298
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage

Bldg. S–306
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Landholding Agency: Army
Property Number: 21199420346
Status: Unutilized
Comment: 4103 sq. ft., 2-story, needs major rehab, off-site use only.

Bldg. 503, Yuma Proving Ground
Yuma Co: Yuma AZ 85365–9104
Landholding Agency: Army
Property Number: 21199520073
Status: Underutilized
Comment: 3789 sq. ft., 2-story, major structural changes required to meet floor loading & fire code requirements, presence of asbestos, off-site use only.

2 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 15542, 15546
Landholding Agency: Army
Property Number: 21200010082
Status: Unutilized
Comment: 552 & 400 sq. ft., presence of asbestos/lead paint, most recent use—restrooms, off-site use only.

2 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 15544, 15552
Landholding Agency: Army
Property Number: 21200010083
Status: Unutilized
Comment: 9713 & 2895 sq. ft., presence of asbestos/lead paint, most recent use—classrooms, off-site use only.

Bldg. 15543
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21200010084
Status: Unutilized
Comment: 416 sq. ft., presence of asbestos/lead paint, most recent use—rec. shelter, off-site use only.

Bldg. 76910
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21200110077
Status: Excess
Comment: 2001 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only.

California

Bldg. 341
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910094
Status: Unutilized

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Comment: 371 sq ft., presence of asbestos/lead paint, most recent use—office, off-site use only.
Bldgs. 204–207, 517
Presidio of Monterey
Monterey Co: CA 93944–5006
Landholding Agency: Army
Property Number: 21200020167
Status: Unutilized
Comment: 4780 & 10950 sq. ft., presence of asbestos/lead paint, most recent use—classroom/admin/storage, off-site use only.
Bldgs. 18026, 18028
Camp Roberts
Monterey Co: CA 93451–5000
Landholding Agency: Army
Property Number: 21200130081
Status: Excess
Comment: 2024 sq. ft. & 487 sq. ft., concrete, poor condition, off-site use only.

Colorado

Bldg. F–107
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130082
Status: Unutilized
Comment: 10,126 sq. ft., poor condition, possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. T–108
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130083
Status: Unutilized
Comment: 9000 sq. ft., poor condition, possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. T–209
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130084
Status: Unutilized
Comment:
400 sq. ft., poor condition, possible asbestos/lead paint, most recent use—maint. shop, off-site use only.
Bldg. T–217
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130085
Status: Unutilized
Comment: 9000 sq. ft., poor condition, possible asbestos/lead paint, most recent use—maint., off-site use only.
Bldg. T–218
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130086
Status: Unutilized
Comment: 9000 sq. ft., poor condition, possible asbestos/lead paint, most recent use—maint., off-site use only.
Bldg. T–220
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130087
Status: Unutilized
Comment: 690 sq. ft., poor condition, possible asbestos/lead paint, most recent use—heat plant, off-site use only.
Bldg. T–6001
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130088
Status: Unutilized
Comment: 4372 sq. ft., poor condition, possible asbestos/lead paint, most recent use—vet clinic, off-site use only.

Georgia

Bldg. 2285
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199011704
Status: Unutilized
Comment: 4574 sq. ft.; most recent use—clinic; needs substantial rehabilitation; 1 floor.
Bldg. 1252, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220694
Status: Unutilized
Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.
Bldg. 4881, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220707
Status: Unutilized
Comment: 2449 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only.
Bldg. 4963, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220710
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only.
Bldg. 2396, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220712
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.
Bldg. 4882, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220727
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only.
Bldg. 4967, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220728
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only.
Bldg. 4977, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220736
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—offices, need repairs, off-site removal only.
Bldg. 4944, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220747
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need repairs, off-site removal only.
Bldg. 4960, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220752
Status: Unutilized
Comment: 3335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.
Bldg. 4969, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220753
Status: Unutilized
Comment: 8416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.
Bldg. 4884, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220762
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.
Bldg. 4964, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220763
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.
Bldg. 4966, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220764
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.
Bldg. 4965, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220769
Status: Unutilized
Comment: 7713 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only.
Bldg. 4945, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220779
Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only.
Bldg. 4979, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220780
Status: Unutilized
Comment: 400 sq. ft., 1 story, most recent use—oil house, need repairs, off-site removal only.
Bldg. 4023, Fort Benning

Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199310461
Status: Unutilized
Comment: 2269 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.
Bldg. 4024, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199310462
Status: Unutilized
Comment: 3281 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.
Bldg. 11813
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410269
Status: Unutilized
Comment: 70 sq. ft.; 1 story; metal; needs rehab.; most recent use—storage; off-site use only.
Bldg. 21314
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410270
Status: Unutilized
Comment: 85 sq. ft.; 1 story; needs rehab.; most recent use—storage; off-site use only.
Bldg. 12809
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410272
Status: Unutilized
Comment: 2788 sq. ft.; 1 story; wood; needs rehab.; most recent use—maintenance shop; off-site use only.
Bldg. 10306
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410273
Status: Unutilized
Comment: 195 sq. ft.; 1 story; wood; most recent use—oil storage shed; off-site use only.
Bldg 4051, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199520175
Status: Unutilized
Comment: 967 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.
Bldg. 322
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720156
Status: Unutilized
Comment: 9600 sq. ft., needs rehab, most recent use—admin., off-site use only.
Bldg. 1737
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720161
Status: Unutilized
Comment: 1500 sq. ft., needs rehab, most recent use—storage, off-site use only.
Bldg. 2593
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720167
Status: Unutilized
Comment: 13644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only.
Bldg. 2595
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720168
Status: Unutilized
Comment: 3356 sq. ft., needs rehab, most recent use—chapel, off-site use only.
Bldgs. 2865, 2869, 2872
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720169
Status: Unutilized
Comment: approx. 1100 sq. ft. each, needs rehab, most recent use—shower fac., off-site use only.
Bldg. 4476
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720184
Status: Unutilized
Comment: 3148 sq. ft., needs rehab, most recent use—vehicle maint. shop, off-site use only.
8 Bldgs.
Fort Benning 4700–4701, 4704–4707, 4710–4711
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720189
Status: Unutilized
Comment: 6433 sq. ft. each, needs rehab, most recent use—unaccompanied personnel housing, off-site use only.
Bldg. 4714
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720191
Status: Unutilized
Comment: 1983 sq. ft., needs rehab, most recent use—battalion headquarters bldg., off-site use only.
Bldg. 4702
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720192
Status: Unutilized
Comment: 3690 sq. ft., needs rehab, most recent use—dining facility off-site use only.
Bldgs. 4712–4713
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720193
Status: Unutilized
Comment: 1983 sq. ft. and 10270 sq. ft., needs rehab, most recent use—company headquarters bldg., off-site use only.
Bldg. 305
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810268
Status: Unutilized
Comment: 4083 sq. ft., most recent use—recreation center, off-site use only.
Bldg. 318
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810269
Status: Unutilized
Comment: 374 sq. ft., poor condition, most recent use—maint. shop, off-site use only.
Bldg. 1792
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810274
Status: Unutilized
Comment: 10,200 sq. ft., most recent use—storage, off-site use only.
Bldg. 1836
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810276
Status: Unutilized
Comment: 2998 sq. ft., most recent use—admin., off-site use only.
Bldg. 4373
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810286
Status: Unutilized
Comment: 409 sq. ft., poor condition, most recent use—station bldg. off-site use only.
Bldg. 4628
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810287
Status: Unutilized
Comment: 5483 sq. ft., most recent use—admin., off-site use only.
Bldg. 92
Fort Benning
Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830278
Status: Unutilized
Comment: 637 sq. ft., needs rehab, most recent use—admin., off-site use only.
Bldg. 2445
Fort Benning
Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830279
Status: Unutilized
Comment: 2385 sq. ft., needs rehab, most recent use—fire station, off-site use only.
Bldg. 4232
Fort Benning
Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830291
Status: Unutilized
Comment: 3720 sq. ft., needs rehab, most recent use—maint. bay, off-site use only.
Bldg. 39720
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199930119
Status: Unutilized
Comment: 1520 sq. ft., concrete block, possible asbestos/lead paint, most recent use—office, off-site use only.
Bldg. 492

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Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930120
Status: Unutilized
Comment: 720 sq. ft., most recent use—admin/maint, off-site use only.
Bldg. 880
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930121
Status: Unutilized
Comment: 57,110 sq. ft., most recent use—instruction, off-site use only.
Bldg. 1370
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930122
Status: Unutilized
Comment: 5204 sq. ft., most recent use—hdqts. bldg., off-site use only.
Bldg. 2288
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930123
Status: Unutilized
Comment: 2481 sq. ft., most recent use—admin., off-site use only.
Bldg. 2290
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930124
Status: Unutilized
Comment: 455 sq. ft., most recent use—storage, off-site use only.
Bldg. 2293
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930125
Status: Unutilized
Comment: 2600 sq. ft., most recent use—hdqts. bldg., off-site use only.
Bldg. 2297
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930126
Status: Unutilized
Comment: 5156 sq. ft., most recent use—admin.
Bldg. 2505
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930127
Status: Unutilized
Comment: 10,257 sq. ft., most recent use—repair shop, off-site use only.
Bldg. 2508
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930128
Status: Unutilized
Comment: 2434 sq. ft., most recent use—storage, off-site use only.
Bldg. 2815
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930129
Status: Unutilized
Comment: 2578 sq. ft., most recent use—hdqts. bldg., off-site use only.
Bldg. 3815
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930130
Status: Unutilized
Comment: 7575 sq. ft., most recent use—storage, off-site use only.
Bldg. 3816
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930131
Status: Unutilized
Comment: 7514 sq. ft., most recent use—storage, off-site use only.
Bldg. 5886
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930134
Status: Unutilized
Comment: 67 sq. ft., most recent use—maint/storage, off-site use only.
Bldgs. 5974–5978
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930135
Status: Unutilized
Comment: 400 sq. ft., most recent use—storage, off-site use only.
Bldg. 5993
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930136
Status: Unutilized
Comment: 960 sq. ft., most recent use—storage, off-site use only.
Bldg. 5994
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930137
Status: Unutilized
Comment: 2016 sq. ft., most recent use—storage, off-site use only.
Bldg. T–1003
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030085
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—admin., off-site use only.
Bldgs. T–1005, T–1006, T–1007
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030086
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—storage, off-site use only.
Bldgs. T–1015, T–1016, T–1017
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030087
Status: Excess
Comment: 7496 sq ft., poor condition, most recent use—storage, off-site use only.
Bldgs. T–1018, T–1019
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030088
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—storage, off-site use only.
Bldgs. T–1020, T–1021
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030089
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—storage, off-site use only.
Bldg. T–1022
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030090
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—supply center, off-site use only.
Bldg. T–1027
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030091
Status: Excess
Comment: 9024 sq ft., poor condition, most recent use—storage, off-site use only.
Bldg. T–1028
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030092
Status: Excess
Comment: 7496 sq. ft., poor condition, most recent use—storage, off-site use only.
Bldgs. T–1035, T–1036, T–1037
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030093
Status: Excess
Comment: 1626 sq ft., poor condition, most recent use—storage, off-site use only.
Bldgs. T–1038, T–1039
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030094
Status: Excess
Comment: 1626 sq. ft., poor condition, most recent use—storage, off-site use only.
Bldgs. T–1040, T–1042
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030095
Status: Excess
Comment: 1626 sq. ft., poor condition, most recent use—storage, off-site use only.
Bldgs. T–1086, T–1087, T–1088
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030096
Status: Excess

Comment: 7680 sq. ft., poor condition, most recent use—storage, off-site use only.
Bldg. 223
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040044
Status: Unutilized
Comment: 21,556 sq. ft., most recent use—gen. purpose
Bldg. 228
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040045
Status: Unutilized
Comment: 20,220 sq. ft., most recent use—gen. purpose
Bldg. 2051
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040046
Status: Unutilized
Comment: 6077 sq. ft., most recent use—storage
Bldg. 2053
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040047
Status: Unutilized
Comment: 14,520 sq. ft., most recent use—storage
Bldg. 2677
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040048
Status: Unutilized
Comment: 19,326 sq. ft., most recent use—maint. shop
Bldg. 02301
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200140075
Status: Unutilized
Comment: 8484 sq. ft., needs major rehab, potential asbestos/lead paint, most recent use—storage, off-site use only.

Hawaii

P–88
Aliamanu Military Reservation
Honolulu Co: Honolulu HI 96818–
Location: Approximately 600 feet from Main Gate on Aliamanu Drive.
Landholding Agency: Army
Property Number: 21199030324
Status: Unutilized
Comment: 45,216 sq. ft. underground tunnel complex, pres. of asbestos clean-up required of contamination, use of respirator required by those entering property, use limitations
Bldg. T–337
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 21199640203
Status: Unutilized
Comment: 132 sq. ft., most recent use—storage, off-site use only.
Bldg. 01227
Schofield Barracks
Wahiawa Co: HI 96786–
Landholding Agency: Army
Property Number: 21200220104
Status: Unutilized
Comment: 525 sq. ft., poor condition, most recent use—storage, off-site use only.
Bldg. 4334
Schofield Barracks
Wahiawa Co: HI 96786–
Landholding Agency: Army
Property Number: 21200220105
Status: Unutilized
Comment: 7402 sq. ft., concrete, needs repair, most recent use—housing, off-site use only.
Bldg. 06508
Schofield Barracks
Wahiawa Co: HI 96786–
Landholding Agency: Army
Property Number: 21200220106
Status: Unutilized
Comment: 1140 sq. ft., most recent use—office, off-site use only.

Illinois

Bldg. 54
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–
Landholding Agency: Army
Property Number: 21199620666
Status: Unutilized
Comment: 2000 sq. ft., most recent use—oil storage, needs repair, off-site use only.
Bldg. AR112
Sheridan Reserve
Arlington Heights Co: IL 60052–2475
Landholding Agency: Army
Property Number: 21200110081
Status: Unutilized
Comment: 1000 sq. ft., off-site use only.
Bldg. 124
Rock Island Arsenal
Rock Island Co: IL 61299–5000
Landholding Agency: Army
Property Number: 21200220107
Status: Unutilized
Comment: 107 sq. ft., off-site use only.

Kansas

Bldg. P–390
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199740295
Status: Unutilized
Comment: 4713 sq. ft., presence of lead based paint, most recent use—swine house, off-site use only.
Bldg. P–68
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820153
Status: Unutilized
Comment: 2236 sq. ft., most recent use—vehicle storage, off-site use only.
Bldg. P–321
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820157
Status: Unutilized
Comment: 600 sq. ft., most recent use—picnic shelter, off-site use only.
Bldg. S–809
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820160
Status: Unutilized
Comment: 39 sq. ft., most recent use—access control, off-site use only.
Bldg. S–830
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820161
Status: Unutilized
Comment: 5789 sq. ft., most recent use—underground storage, off-site use only.
Bldg. S–831
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820162
Status: Unutilized
Comment: 5789 sq. ft., most recent use—underground storage, off-site use only.
Bldg. P–243
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830321
Status: Unutilized
Comment: 242 sq. ft., most recent use—industrial, off-site use only.
Bldg. P–242
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199920202
Status: Unutilized
Comment: 4680 sq. ft., most recent use—storage, off-site use only.
Bldg. P–223
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930146
Status: Unutilized
Comment: 7,174 sq. ft., most recent use—storage, off-site use only.
Bldg. T–236
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930147
Status: Unutilized
Comment: 4563 sq. ft., most recent use—storage, off-site use only.
Bldg. P–241
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930148
Status: Unutilized
Comment: 5920 sq. ft., most recent use—storage, off-site use only.
Bldg. T–257
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930149
Status: Unutilized
Comment: 5920 sq. ft., most recent use—storage, off-site use only.

Kentucky

Bldg. 02813
Fort Knox
Ft. Knox Co: Hardin KY 40121–

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Landholding Agency: Army
Property Number: 21200030102
Status: Unutilized
Comment: 60 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—shed, off-site use only.

Louisiana

Bldg. 8423, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640528
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8449, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640539
Status: Underutilized
Comment: 2093 sq. ft., most recent use—office

Maryland

Bldg. 907
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200120092
Status: Unutilized
Comment: 2306 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 908
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200120093
Status: Unutilized
Comment: 3663 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 918
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200120095
Status: Unutilized
Comment: 2331 sq. ft., presence of asbestos/lead paint, most recent use—admin/classroom, off-site use only.
Bldg. 930
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200120097
Status: Unutilized
Comment: 3108 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 938
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200120098
Status: Unutilized
Comment: 1676 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 2837
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200120101
Status: Unutilized
Comment: 7670 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 0310A
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120103
Status: Unutilized
Comment: 120 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 00313
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120104
Status: Unutilized
Comment: 983 sq. ft., most recent use—storage, off-site use only.
Bldg. 00340
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120105
Status: Unutilized
Comment: 384 sq. ft., most recent use—storage, off-site use only.
Bldg. 0459B
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120106
Status: Unutilized
Comment: 225 sq. ft., poor condition, most recent use—equipment bldg., off-site use only.
Bldg. 00785
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120107
Status: Unutilized
Comment: 160 sq. ft., poor condition, most recent use—shelter, off-site use only.
Bldg. E3728
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120109
Status: Unutilized
Comment: 2596 sq. ft., presence of asbestos/lead paint, most recent use—testing facility, off-site use only.
Bldg. 05213
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120112
Status: Unutilized
Comment: 200 sq .ft., poor condition, most recent use—storage, off-site use only.
Bldg. E5239
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120113
Status: Unutilized
Comment: 230 sq. ft., most recent use—storage, off-site use only.
Bldg. E5317
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120114
Status: Unutilized
Comment: 3158 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only.
Bldg. E5637
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120115
Status: Unutilized
Comment: 312 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only.
Bldg. 503
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200130092
Status: Unutilized
Comment: 14,244 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—training, off-site use only.
Bldg. 2478
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200130097
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—medical clinic, off-site use only.
Bldg. 8481
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200130098
Status: Unutilized
Comment: 7718 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—heat plant, off-site use only.
Bldg. 219
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140078
Status: Unutilized
Comment: 8142 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 229
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140079
Status: Unutilized
Comment: 2250 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 287
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140080
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—storehouse, off-site use only.
Bldg. 294
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140081
Status: Unutilized

Comment: 3148 sq. ft., presence of asbestos/lead paint, most recent use—entomology facility, off-site use only.
Bldg. 942
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140082
Status: Unutilized
Comment: 3557 sq. ft., presence of asbestos/lead paint, most recent use—chapel, off-site use only.
Bldg. 949
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140083
Status: Unutilized
Comment: 2441 sq. ft., presence of asbestos/lead paint, most recent use—storehouse, off-site use only.
Bldg. 979
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 21200140084
Status: Unutilized
Comment: 2331 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 1007
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 21200140085
Status: Unutilized
Comment: 3108 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 2212
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 21200140086
Status: Unutilized
Comment: 9092 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 3000
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 21200140087
Status: Unutilized
Comment: 10,663 sq. ft., presence of asbestos/lead paint, most recent use—storehouse, off-site use only.
Bldg. 00546
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 21200220109
Status: Unutilized
Comment: 5659 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 00939
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 21200220110
Status: Unutilized
Comment: 8185 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 02206
Fort Meade
Ft. Meade Co: Anne Arundel MD 29755
Landholding Agency: Army
Property Number: 21200220111
Status: Unutilized
Comment: 3075 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 02207
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 21200220112
Status: Unutilized
Comment: 6855 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 02266
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 21200220113
Status: Unutilized
Comment: 10,080 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 02271
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 21200220114
Status: Unutilized
Comment: 10,080 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 04675
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 21200220115
Status: Unutilized
Comment: 1710 sq. ft., possible asbestos/lead paint, most recent use—rental store, off-site use only.

Massachusetts

Bldg. 76
Army Soldier Systems Center
Natick Co: Middlesex MA 01760
Landholding Agency: Army
Property Number: 21200210037
Status: Unutilized
Comment: 1000 sq. ft., most recent use—storage, off-site use only.

Missouri

Bldg. T599
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199230260
Status: Underutilized
Comment: 18270 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only.
Bldg. T2171
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199340212
Status: Unutilized
Comment: 1296 sq. ft., 1-story wood frame, most recent use—administrative, no handicap fixtures, lead base paint, off-site use only.
Bldg. T6822
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199340219
Status: Underutilized
Comment: 4000 sq. ft., 1-story wood frame, most recent use—storage, no handicap fixtures, off-site use only.
Bldg. T1497
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420441
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T2139
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420446
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T–2191
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199440334
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only., to be vacated 8/95, lead based paint, most recent use—barracks.
Bldg. T–2197
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199440335
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.
Bldg. T590
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 21199510110
Status: Excess
Comment: 3263 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.
Bldg. T2385
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 21199510115
Status: Excess
Comment: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.
Bldgs. T–2340 thru T2343
Fort Leonard Wood

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Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199710138
Status: Underutilized
Comment: 9267 sq. ft. each, most recent use—storage/general purpose
Bldg. 1226
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730275
Status: Unutilized
Comment: 1600 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 1271
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730276
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 1280
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730277
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.
Bldg. 1281
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730278
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.
Bldg. 1282
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730279
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.
Bldg. 1283
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730280
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 1284
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730281
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 1285
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730282
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.
Bldg. 1286
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730283
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 1287
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730284
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.
Bldg. 1288
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730285
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—dining facility, off-site use only.
Bldg. 1289
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730286
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.
Bldg. 430
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810305
Status: Unutilized
Comment: 4100 sq. ft., presence of asbestos/lead paint, most recent use—Red Cross facility, off-site use only.
Bldg. 758
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810306
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.
Bldg. 759
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810307
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.
Bldg. 760
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810308
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, off-site use only.
Bldgs. 761–766
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810309
Status: Unutilized
Comment: 2400 sq. ft. each, presence of asbestos/lead paint, most recent use—classroom, off-site use only.
Bldg. 1650
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810311
Status: Unutilized
Comment: 1676 sq. ft., presence of asbestos/lead paint, most recent use—union hall, off-site use only.
Bldg. 2170
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810313
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 2204
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810315
Status: Unutilized
Comment: 3525 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 2225
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810316
Status: Unutilized
Comment: 820 sq. ft., presence of lead paint, most recent use—storage, off-site use only.
Bldg. 2271
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding AGENCY: Army
Property Number: 21199810317
Status: Unutilized

Comment: 256 sq. ft., presence of lead paint, most recent use—storage, off-site use only.
Bldg. 2275
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810318
Status: Unutilized
Comment: 225 sq. ft., presence of lead paint, most recent use—storage, off-site use only.
Bldg. 2318
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810322
Status: Unutilized
Comment: 9267 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 4199
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810327
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 401
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agrncy: Army
Property Number: 21199820164
Status: Unutilized
Comment: 9567 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 856
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820166
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 859
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820167
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 1242
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820168
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 1265
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820169
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 1267
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820170
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 1277
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820171
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 1277
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820172
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldgs. 2142, 2145, 2151–2153
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820174
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.
Bldg. 2165
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820178
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only.
Bldg. 2167
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820179
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldgs. 2169, 2181, 2182, 2183
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820180
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.
Bldg. 2186
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820181
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. 2187
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820182
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only.
Bldgs. 2192, 2196, 2198
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820183
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.
Bldgs. 2304, 2306
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820184
Status: Unutilized
Comment: 1625 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 12651
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820186
Status: Unutilized
Comment: 240 sq. ft., presence of lead paint, off-site use only.
Bldg. 1448
Fort Leonard Wood
Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199830327
Status: Unutilized
Comment: 8450 sq. ft., presence of asbestos/lead paint, most recent use—training, off-site use only.
Bldg. 2210
Fort Leonard Wood
Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199830328
Status: Unutilized
Comment: 808 sq. ft., concrete, presence of asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. 2270
Fort Leonard Wood
Co: Pulaski MO 65473–5000
Landholding Agency: Army

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Property Number: 21199830329
Status: Unutilized
Comment: 256 sq. ft., concrete, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 6036
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910101
Status: Underutilized
Comment: 240 sq. ft., off-site use only.

Bldg. 9110
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910108
Status: Underutilized
Comment: 6498 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldgs. 9113, 9115, 9117
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910109
Status: Underutilized
Comment: 4332 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldg. 493
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473-
Landholding Agency: Army
Property Number: 21199930158
Status: Unutilized
Comment: 26,936 sq. ft., concrete, presence of asbestos/lead paint, most recent use—store, off-site use only.

Montana

Bldg. 00405
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636–
Landholding Agency: Army
Property Number: 21200130099
Status: Unutilized
Comment: 3467 sq. ft., most recent use—storage, security limitations

Bldg. T0066
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636–
Landholding Agency: Army
Property Number: 21200130100
Status: Unutilized
Comment: 528 sq. ft., needs rehab, presence of asbestos, security limitations

New Hampshire

Bldg. KG001
Grenier Field USARC
Manchester Co: Rockingham NH 03103–7474
Landholding Agency: Army
Property Number: 21200030104
Status: Excess
Comment: 18,994 sq ft., presence of asbestos, most recent use—classroom, off-site use only.

Bldg. KG002
Grenier Field USARC
Manchester Co: Rockingham NH 03103–7474
Landholding Agency: Army
Property Number: 21200030105
Status: Excess
Comment: 20,014 sq. ft., presence of asbestos, most recent use—storage/store, off-site use only.

Bldg. KG003
Grenier Field USARC
Manchester Co: Rockingham NH 03103–7474
Landholding Agency: Army
Property Number: 21200030106
Status: Excess
Comment: 3458 sq. ft., presence of asbestos, most recent use—veh. maint., off-site use only.

New Jersey

Bldg. 178
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740312
Status: Unutilized
Comment: 2067 sq. ft., most recent use—research, off-site use only.

Bldg. 732
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740315
Status: Unutilized
Comment: 9077 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 3219
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740326
Status: Unutilized
Comment: 288 sq. ft., most recent use—snack bar, off-site use only.

Bldg. 816C
Armament R, D, & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21200130103
Status: Unutilized
Comment: 144 sq. ft., most recent use—storage, off-site use only.

New Mexico

Bldg. 00304
White Sands Missile Range
Dona Ana Co: NM 88002
Landholding Agency: Army
Property Number: 21200220116
Status: Excess
Comment: 594 sq. ft., poor condition, presence of asbestos, most recent use—equipment bldg., off-site use only.

Bldg. 01711
White Sands Missile Range
Dona Ana Co: NM 88002
Landholding Agency: Army
Property Number: 21200220117
Status: Excess
Comment: 80 sq. ft., poor condition, presence of asbestos, most recent use—car wash bldg., off-site use only.

Bldg. 01716
White Sands Missile Range
Dona Ana Co: NM 88002
Landholding Agency: Army
Property Number: 21200220118
Status: Excess
Comment: 208 sq. ft., poor condition, presence of asbestos, most recent use—car wash and shed, off-site use only.

Bldg. 01758
White Sands Missile Range
Dona Ana Co: NM 88002
Landholding Agency: Army
Property Number: 21200220119
Status: Excess
Comment: 2160 sq. ft., poor condition, presence of asbestos, most recent use—contractor bldg., off-site use only.

Bldg. 01796
White Sands Missile Range
Dona Ana Co: NM 88002
Landholding Agency: Army
Property Number: 21200220120
Status: Excess
Comment: 1200 sq. ft., poor condition, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 21238
White Sands Missile Range
Dona Ana Co: NM 88002
Landholding Agency: Army
Property Number: 21200220121
Status: Excess
Comment: 675 sq. ft., poor condition, presence of asbestos, most recent use—sentry station, off-site use only.

Bldg. 30724
White Sands Missile Range
Dona Ana Co: NM 88002
Landholding Agency: Army
Property Number: 21200220122
Status: Excess
Comment: 255 sq. ft., poor condition, presence of asbestos, most recent use—rote bldg., off-site use only.

Bldg. 30740
White Sands Missile Range
Dona Ana Co: NM 88002
Landholding Agency: Army
Property Number: 21200220123
Status: Excess
Comment: 466 sq. ft., poor condition, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 30775
White Sands Missile Range
Dona Ana Co: NM 88002
Landholding Agency: Army
Property Number: 21200220124
Status: Excess
Comment: 864 sq. ft., poor condition, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 30779
White Sands Missile Range
Dona Ana Co: NM 88002
Landholding Agency: Army
Property Number: 21200220125
Status: Excess
Comment: 188 sq. ft., poor condition, presence of asbestos, off-site use only.

Bldg. 30780
White Sands Missile Range
Dona Ana Co: NM 88002
Landholding Agency: Army
Property Number: 21200220126
Status: Excess
Comment: 960 sq. ft., poor condition, presence of asbestos, most recent use—maint. shop, off-site use only.

Bldg. 31725
White Sands Missile Range
Dona Ana Co: NM 88002

Landholding Agency: Army
Property Number: 21200220127
Status: Excess
Comment: 4640 sq. ft., poor condition, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 31741
White Sands Missile Range
Dona Ana Co: NM 88002
Landholding Agency: Army
Property Number: 21200220128
Status: Excess
Comment: 1920 sq. ft., poor condition, presence of asbestos, most recent use—maint. shop, off-site use only.

Bldg. 31754
White Sands Missile Range
Dona Ana Co: NM 88002
Landholding Agency: Army
Property Number: 21200220129
Status: Excess
Comment: 2400 sq. ft., poor condition, presence of asbestos, most recent use—warehouse, off-site use only.

Bldg. 31765
White Sands Missile Range
Dona Ana Co: NM 88002
Landholding Agency: Army
Property Number: 21200220130
Status: Excess
Comment: 107 sq. ft., poor condition, presence of asbestos, most recent use—water plant bldg., off-site use only.

New York

Bldg. 801
US Military Academy
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 21200030108
Status: Unutilized
Comment: 27,726 sq. ft., needs repair, possible lead paint, most recent use—warehouse, off-site use only.

Bldg. T–181
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130129
Status: Unutilized
Comment: 3151 sq. ft., needs rehab, most recent use—housing mnt., off-site use only.

Bldg. T–201
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130131
Status: Unutilized
Comment: 2305 sq. ft., needs rehab, most recent use—admin., off-site use only.

Bldg. T–203
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130132
Status: Unutilized
Comment: 2284 sq. ft., needs rehab, most recent use—admin., off-site use only.

Bldg. T–252
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130133
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only.

Bldgs. T–253, T–256, T–257
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130134
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only.

Bldgs. T–271, T–272, T–273
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130135
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only.

Bldg. T–274
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130136
Status: Unutilized
Comment: 2750 sq. ft., needs rehab, most recent use—BN HQ, off-site use only.

Bldgs. T–276, T–277, T–278
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130137
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only.

Bldgs. T–744, T–745
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130138
Status: Unutilized
Comment: 5310 sq. ft., needs rehab, most recent use—barracks, off-site use only.

Bldg. T–1030
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130139
Status: Unutilized
Comment: 15606 sq. ft., needs rehab, most recent use—simulator bldg., off-site use only.

Bldg. P–2159
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130140
Status: Unutilized
Comment: 1948 sq. ft., needs rehab, most recent use—waste/water treatment, off-site use only.

Bldg. T–2442
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130141
Status: Unutilized
Comment: 4340 sq. ft., needs rehab, most recent use—vet facility, off-site use only.

Bldg. T–2443
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130142
Status: Unutilized
Comment: 793 sq. ft., needs rehab, most recent use—vet facility, off-site use only.

Quarters 372
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 21200130143
Status: Unutilized
Comment: 1248 sq. ft., needs repair, presence of asbestos, most recent use—quarters

Quarters 1000
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 21200130144
Status: Unutilized
Comment: 2800 sq. ft., needs repair, presence of asbestos, most recent use—quarters

Bldg. 691
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 21200130145
Status: Unutilized
Comment: 2561 sq. ft., needs repair, possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 709
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 21200130146
Status: Unutilized
Comment: 1666 sq. ft., needs repair, possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 759
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 21200130147
Status: Unutilized
Comment: 11,942 sq. ft., needs repair, possible asbestos/lead paint, most recent use—community center, off-site use only.

Bldg. 1280
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 21200130148
Status: Unutilized
Comment: 2760 sq. ft., needs repair, presence of asbestos, most recent use—quarters

Bldg. 1664
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 21200130149
Status: Unutilized
Comment: 800 sq. ft., needs repair, possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–401, T–403
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210042
Status: Unutilized
Comment: 2305/2284 sq. ft., needs repair, most recent use—battalion hq bldg., off-site use only.

Bldgs. T–404, T–406, T–407
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army

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Property Number: 21200210043
Status: Unutilized
Comment: 2000/1144 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only.

Bldg. T–430
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210044
Status: Unutilized
Comment: 2731 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only.

4 Bldgs.
Fort Drum
T–431, T–432, T–433, T–434
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210045
Status: Unutilized
Comment: 1144 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only.

Bldg. T–435
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210046
Status: Unutilized
Comment: 2731 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only.

Bldgs. T–437, T–438
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210047
Status: Unutilized
Comment: 1144 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only.

Bldgs. T–439, T–460
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210048
Status: Unutilized
Comment: 2588/2734 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only.

4 Bldgs.
Fort Drum
T–461, T–462, T–463, T–464
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210049
Status: Unutilized
Comment: 1144 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only.

Bldg. T–465
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210050
Status: Unutilized
Comment: 2734 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only.

Bldgs. T–405, T–408
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210051
Status: Unutilized
Comment: 1296 sq. ft., needs repair, most recent use—storage, off-site use only.

6 Bldgs.
Fort Drum
T–410, T–411, T–412, T–416, T–417, T–418
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210052
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only.

Bldgs. T–421, T–422
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210053
Status: Unutilized
Comment: 2510 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only.

Bldgs. T–423, T–424
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210054
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only.

7 Bldgs.
Fort Drum
T–441, T–442, T–443, T–444, T–446-T–448
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210055
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only.

6 Bldgs.
Fort Drum
T–451, T–452, T–453, T–454, T–456, T–458
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210056
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only.

5 Bldgs.
Fort Drum
T–471, T–472, T–473, T–474, T–477
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210057
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only.

Bldgs. T–420, T–445, T–470
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210058
Status: Unutilized
Comment: 2510 sq. ft., needs repair, most recent use—dining facility, off-site use only.

Bldgs. T–440, T–450
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210059
Status: Unutilized
Comment: 2360 sq. ft., needs repair, most recent use—dining facility, off-site use only.

Bldg. T–478
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210060
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—classroom, off-site use only.

North Carolina

Bldg. C5536
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–5000
Landholding Agency: Army
Property Number: 21200130150
Status: Unutilized
Comment: 600 sq. ft., single wide trailer w/ metal storage shed, needs major repair, presence of asbestos/lead paint, off-site use only.

Ohio

Quarters 120
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200140089
Status: Unutilized
Comment: 5670 sq. ft., needs repair, presence of lead paint, most recent use—residence, off-site use only.

Oklahoma

Bldg. T–838, Fort Sill 838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199220609
Status: Unutilized
Comment: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).

Bldg. T–954, Fort Sill
954 Quinette Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240659
Status: Unutilized
Comment: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop.

Bldg. T–3325, Fort Sill
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240681
Status: Unutilized
Comment: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse.

Bldg. T1652, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199330380
Status: Unutilized
Comment: 1505 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T5637 Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199330419
Status: Unutilized
Comment: 1606 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T–4226
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 21199440384
Status: Unutilized
Comment: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only.

Bldg. P–1015, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 21199520197
Status: Unutilized
Comment: 15402 sq. ft., 1-story, most recent use—storage, off-site use only.

Bldg. P–366, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 21199610740
Status: Unutilized
Comment: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only.

Building T–2952
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710047
Status: Unutilized
Comment: 4,327 sq. ft., possible asbestos and leadpaint, most recent use—motor repair shop, off-site use only.

Building P–5042
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710066
Status: Unutilized
Comment: 119 sq. ft., possible asbestos and leadpaint, most recent use—heatplant, off-site use only.

4 Buildings
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: T–6465, T–6466, T–6467, T–6468
Landholding Agency: Army
Property Number: 21199710086
Status: Unutilized
Comment: various sq. ft., possible asbestos and leadpaint, most recent use—range support, off site use only.

Bldg. T–208
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730344
Status: Unutilized
Comment: 20525 sq. ft., possible asbestos/ lead paint, most recent use—training center, off-site use only.

Bldg. T–214
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730346
Status: Unutilized
Comment: 6332 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only.

Bldg. T–810
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730350
Status: Unutilized
Comment: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only.

Bldgs. T–837, T–839
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730351
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. P–934
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730353
Status: Unutilized
Comment: 402 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–1177
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730356
Status: Unutilized
Comment: 183 sq. ft., possible asbestos/lead paint, most recent use—snack bar, off-site use only.

Bldgs. T–1468, T–1469
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730357
Status: Unutilized
Comment: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–1470
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730358
Status: Unutilized
Comment: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–1940
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730360
Status: Unutilized
Comment: 1400 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–1954, T–2022
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730362
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–2184
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730364
Status: Unutilized
Comment: 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–2185
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730365
Status: Unutilized
Comment: 151 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only.

Bldgs. T–2186, T–2188, T–2189
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730366
Status: Unutilized
Comment: 1656—3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only.

Bldg. T–2187
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730367
Status: Unutilized
Comment: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–2209
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730368
Status: Unutilized
Comment: 1257 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–2240, T–2241
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730369
Status: Unutilized
Comment: approx. 9500 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–2262, T–2263
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730370
Status: Unutilized
Comment: approx. 3100 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only.

Bldgs. T–2291 thru T–2296
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730372
Status: Unutilized
Comment: 400 sq. ft. each, possible asbestos/ lead paint, most recent use—storage, off-site use only.

Bldgs. T–3001, T–3006
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730383
Status: Unutilized
Comment: approx. 9300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–3314
Fort Sill

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Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730385
Status: Unutilized
Comment: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldg. T–3323
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730387
Status: Unutilized
Comment: 8832 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldg. T–4281
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730392
Status: Unutilized
Comment: 9405 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldgs. T–4401, T–4402
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730393
Status: Unutilized
Comment: 2260 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldg. T–4407
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730395
Status: Unutilized
Comment: 3070 sq. ft., possible asbestos/lead paint, most recent use—dining facility, off-site use only.
4 Bldgs.
Fort Sill #T–4410, T–4414, T–4415, T–4418
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730396
Status: Unutilized
Comment: 1311 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
5 Bldgs.
Fort Sill #T–4411 thru T–4413, T–4416 thru T–4417
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730397
Status: Unutilized
Comment: 1244 sq. ft., possible asbestos/lead paint, most recent use—showers, off-site use only.
Bldg. T–4421
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730398
Status: Unutilized
Comment: 3070 sq. ft., possible asbestos/lead paint, most recent use—dining, off-site use only.
10 Bldgs.
Fort Sill #T–4422 thru T–4427, T–4431 thru T–4434
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730399
Status: Unutilized
Comment: 2263 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only.
6 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4436, T–4440, T–4444, T–4445, T–4448, T–4449
Landholding Agency: Army
Property Number: 21199730400
Status: Unutilized
Comment: 1311—2263 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
5 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4441, T–4442, T–4443, T–4446, T–4447
Landholding Agency: Army
Property Number: 21199730401
Status: Unutilized
Comment: 1244 sq. ft., possible asbestos/lead paint, most recent use—showers, off-site use only.
Bldg. T–5041
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730409
Status: Unutilized
Comment: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldgs. T–5044, T–5045
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730410
Status: Unutilized
Comment: 1798/1806 sq. ft., possible asbestos/lead paint, most recent use—class rooms, off-site use only.
Bldg. T–5420
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730414
Status: Unutilized
Comment: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only.
Bldgs. T–7290, T–7291
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730417
Status: Unutilized
Comment: 224/840 sq. ft., possible asbestos/lead paint, most recent use—kennel, off-site use only.
Bldg. T–7775
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730419
Status: Unutilized
Comment: 1452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only.
Bldg. P–599
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910132
Status: Unutilized
Comment: 1400 sq. ft., possible asbestos/lead paint, most recent use—clubhouse, off-site use only.
4 Bldgs.
Fort Sill
P–617, P–1114, P–1386, P–1608
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910133
Status: Unutilized
Comment: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only.
Bldg. P–746
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910135
Status: Unutilized
Comment: 6299 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.
Bldgs. P–2581, P–2773
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910140
Status: Unutilized
Comment: 4093 and 4129 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldg. P–2582
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910141
Status: Unutilized
Comment: 3672 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.
Bldgs. P–2912, P–2921, P–2944
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910144
Status: Unutilized
Comment: 1390 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldg. P–2914
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910146
Status: Unutilized
Comment: 1236 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. P–3469
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910147
Status: Unutilized
Comment: 3930 sq. ft., possible asbestos/lead paint, most recent use—car wash, off-site use only.
Bldg. S–4064
Fort Sill

Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910149
Status: Unutilized
Comment: 1389 sq. ft., possible asbestos/lead paint, off-site use only.
Bldg. S–5086
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910152
Status: Unutilized
Comment: 6453 sq. ft., possible asbestos/lead paint, most recent use—maintenance shop, off-site use only.
Bldg. P–5101
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910153
Status: Unutilized
Comment: 82 sq. ft., possible asbestos/lead paint, most recent use—gas station, off-site use only.
Bldg. S–6430
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910156
Status: Unutilized
Comment: 2080 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only.
Bldg. T–6461
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910157
Status: Unutilized
Comment: 200 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only.
Bldg. T–6462
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910158
Status: Unutilized
Comment: 64 sq. ft., possible asbestos/lead paint, most recent use—control tower, off-site use only.
Bldg. P–7230
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910159
Status: Unutilized
Comment: 160 sq. ft., possible asbestos/lead paint, most recent use—transmitter bldg., off-site use only.
Bldg. S–4023
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200010128
Status: Unutilized
Comment: 1200 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. P–706
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120119
Status: Unutilized
Comment: 103 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. P–747
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120120
Status: Unutilized
Comment: 9232 sq. ft., possible asbestos/lead paint, most recent use—lab, off-site use only.
Bldg. P–842
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120123
Status: Unutilized
Comment: 192 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. T–911
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120124
Status: Unutilized
Comment: 3080 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.
Bldg. P–1390
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120125
Status: Unutilized
Comment: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only.
Bldg. P–1672
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120126
Status: Unutilized
Comment: 1056 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. S–2362
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120127
Status: Unutilized
Comment: 64 sq. ft., possible asbestos/lead paint, most recent use—gatehouse, off-site use only.
Bldg. P–2589
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120129
Status: Unutilized
Comment: 3672 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. T–3043
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120130
Status: Unutilized
Comment: 80 sq. ft., possible asbestos/lead paint, most recent use—guard shack, off-site use only.
Bldg. S–4749
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200130152
Status: Unutilized
Comment: 1438 sq. ft., possible asbestos/lead paint, most recent use—weather station, off-site use only.

South Carolina

Bldg. 3499
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199730310
Status: Unutilized
Comment: 3724 sq. ft., needs repair, most recent use—admin.
Bldg. 2441
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199820187
Status: Unutilized
Comment: 2160 sq. ft., needs repair, most recent use—admin.
Bldg. 3605
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199820188
Status: Unutilized
Comment: 711 sq. ft., needs repair, most recent use—storage
Bldg. 1765
Fort Jackson
Ft. Jackson Co: Richland SC 29207-
Landholding Agency: Army
Property Number: 21200030109
Status: Unutilized
Comment: 1700 sq. ft., need repairs, presence of asbestos/lead paint, most recent use—training bldg., off-site use only.

Texas

Bldg. P–6615
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199440454
Status: Excess
Comment: 400 sq. ft., 1 story concrete frame, off-site removal only., most recent use—detached garage
Bldg. 7137, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 21199640564
Status: Unutilized
Comment: 35,736 sq. ft., 3-story, most recent use—housing, off-site use only.
Bldgs. P–605A & P–606A
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730316
Status: Unutilized
Comment: 2418 sq. ft., poor condition, presence of asbestos/lead paint, historical category, most recent use—indoor firing range, off-site use only.
Bldg. T–5122

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Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730331
Status: Unutilized
Comment: 3602 sq. ft., presence of asbestos/lead paint, historical category, most recent use—instruction bldg., off-site use only.

Bldg. P–1382
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199810365
Status: Unutilized
Comment: 30,082 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only.

Bldg. T–5123
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830350
Status: Unutilized
Comment: 2596 sq. ft., fair, hazard abatement required, most recent use—instruction, off-site use only, historical significance.

Bldg. P–6150
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830351
Status: Unutilized
Comment: 48 sq. ft., fair, hazard abatement required, most recent use—pumphouse, off-site use only.

Bldgs. P–6331, P–6335, P–6495
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830353
Status: Unutilized
Comment: 36 sq. ft., fair, hazard abatement required, most recent use—pumping station, off-site use only.

Bldg. P–8000
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830354
Status: Unutilized
Comment: 1766 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

9 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8001, P8008, 8014, 8027, 8033, 8035, 8127, 8229, 8265
Landholding Agency: Army
Property Number: 21199830355
Status: Unutilized
Comment: 2456 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

11 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8003, P8011, 8012, 8019, 8043, 8202, 8204, 8216, 8235, 8241, 8261
Landholding Agency: Army
Property Number: 21199830356
Status: Unutilized
Comment: 2358 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P–8003C, P–8220C
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830357
Status: Unutilized
Comment: 1174 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

Bldg. P–8004
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830358
Status: Unutilized
Comment: 2243 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

7 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8005, 8101, 8107, 8141, 8143, 8146, 8150
Landholding Agency: Army
Property Number: 21199830359
Status: Unutilized
Comment: 1804 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

7 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8009, 8024, 8207, 8214, 8217, 8226, 8256
Landholding Agency: Army
Property Number: 21199830361
Status: Unutilized
Comment: 2253 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

4 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8009C, 8027C, 8248C, 8256C
Landholding Agency: Army
Property Number: 21199830362
Status: Unutilized
Comment: 681 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8012C, 8039C, 8224C
Landholding Agency: Army
Property Number: 21199830363
Status: Unutilized
Comment: 1185 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

Bldg. P8016
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830364
Status: Unutilized
Comment: 2347 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

8 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8021, 8211, 8244, 8270, 8213, 8223, 8243, 8266
Landholding Agency: Army
Property Number: 21199830365
Status: Unutilized
Comment: 249 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P–8022
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830366
Status: Unutilized
Comment: 1849 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

5 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #8022C, 8023C, 8106C, 8127C, 8206C
Landholding Agency: Army
Property Number: 21199830367
Status: Unutilized
Comment: 513 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8028C, P8143C, P8150C
Landholding Agency: Army
Property Number: 21199830370
Status: Unutilized
Comment: 838 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8035C, P8104C, 8236C
Landholding Agency: Army
Property Number: 21199830372
Status: Unutilized
Comment: 1017 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8102, 8106, 8108
Landholding Agency: Army
Property Number: 21199830375
Status: Unutilized
Comment: approx. 2700 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8109, P8137
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830376
Status: Unutilized
Comment: 1540 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8112, P8228
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830378
Status: Unutilized
Comment: 1807 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

3 Bldgs.

Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: P8116, 8151, 8158
Landholding Agency: Army
Property Number: 21199830380
Status: Unutilized
Comment: 1691 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8117
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830381
Status: Unutilized
Comment: 1581 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

8 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8118, 8121, 8125, 8153, 8119, 8120, 8124, 8168
Landholding Agency: Army
Property Number: 21199830382
Status: Unutilized
Comment: various sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8122, P8123
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830383
Status: Unutilized
Comment: approx. 1400 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8126
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830384
Status: Unutilized
Comment: 1331 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

8 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: P8131C, 8139C, 8203C, 8211C, 8231C, 8243C, 8249C, 8261C
Landholding Agency: Army
Property Number: 21199830386
Status: Unutilized
Comment: 849 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

Bldgs. P8133, P8134
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830387
Status: Unutilized
Comment: approx. 2000 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8135, P8136
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830388
Status: Unutilized
Comment: approx. 1500 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

4 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8144, 8267, 8148, 8149
Landholding Agency: Army
Property Number: 21199830389
Status: Unutilized
Comment: approx. 2200 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8171
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830392
Status: Unutilized
Comment: 1289 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8172
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830393
Status: Unutilized
Comment: 1597 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8173, P8174
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830394
Status: Unutilized
Comment: approx. 2200 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8174C
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830395
Status: Unutilized
Comment: 670 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

Bldg. P8175
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830396
Status: Unutilized
Comment: 2220 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8200
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830397
Status: Unutilized
Comment: 892 sq. ft., fair, hazard abatement required, most recent use—officers quarters, off-site use only.

Bldg. P8205
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830399
Status: Unutilized
Comment: 1745 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8206, 8232, 8233
Landholding Agency: Army
Property Number: 21199830400
Status: Unutilized
Comment: approx. 2400 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8245
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830401
Status: Unutilized
Comment: 2876 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8262C, 8271C
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830403
Status: Unutilized
Comment: 1006 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

Bldg. P8269
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830404
Status: Unutilized
Comment: 2396 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

20 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8271, 8002, 8018, 8025, 8037, 8100, 8130, 8132, 8138, 8140, 8142, 8145, 8147, 8210, 8212, 8221, 8242, 8247, 8264, 8257
Landholding Agency: Army
Property Number: 21199830405
Status: Unutilized
Comment: 2777 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. 919
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920212
Status: Unutilized
Comment: 11,800 sq. ft., needs repair, most recent use—Bde. Hq. Bldg., off-site use only.

Bldg. 3959
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920224
Status: Unutilized
Comment: 3373 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldgs. 3967–3969
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army

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Property Number: 21199920228
Status: Unutilized
Comment: 5310 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldgs. 3970–3971
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920229
Status: Unutilized
Comment: 3241 sq. ft., needs repair, most recent use—admin., off-site use only.

Bldg. P–2375A
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21200020202
Status: Unutilized
Comment: 108 sq. ft., presence of lead paint, most recent use—storage, off-site use only.

Bldg. 92043
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200020206
Status: Unutilized
Comment: 450 sq. ft., most recent use—storage, off-site use only.

Bldg. 92044
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200020207
Status: Unutilized
Comment: 1920 sq. ft., most recent use—admin., off-site use only.

Bldg. 92045
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200020208
Status: Unutilized
Comment: 2108 sq. ft., most recent use—maint., off-site use only.

Bldg. P–8219
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21200030110
Status: Excess
Comment: 2456 sq. ft., presence of asbestos/lead paint, most recent use—family house, off-site use only.

Bldg. 4469
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200030116
Status: Unutilized
Comment: 5310 sq. ft., most recent use—barracks, off-site use only.

Bldg. 1281
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110091
Status: Unutilized
Comment: 25,027 sq. ft., most recent use—cold storage, off-site use only.

Bldg. 3656
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110093
Status: Unutilized
Comment: 1806 sq. ft., most recent use—igloo str. inst., off-site use only.

Bldg. 7113
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110094
Status: Unutilized
Comment: 14,807 sq. ft., most recent use—nursery school, off-site use only.

Bldg. 7133
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110095
Status: Unutilized
Comment: 11,650 sq. ft., most recent use—storage, off-site use only.

Bldg. 7136
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110096
Status: Unutilized
Comment: 11,755 sq. ft., most recent use—vet facility, off-site use only.

Bldg. 7146
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110097
Status: Unutilized
Comment: most recent use—oil storage, off-site use only.

Bldg. 7147
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110098
Status: Unutilized
Comment: most recent use—oil storage, off-site use only.

Bldg. 7153
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110099
Status: Unutilized
Comment: 11924 sq. ft., most recent use—bowling center, off-site use only.

Bldg. 7162
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110100
Status: Unutilized
Comment: 3956 sq. ft., most recent use—development center, off-site use only.

Bldg. 11116
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110101
Status: Unutilized
Comment: 20,100 sq. ft., most recent use—storage, off-site use only.

Bldg. 7113
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200220132
Status: Unutilized
Comment: 8855 sq. ft., presence of asbestos/lead paint, most recent use—child development center, off-site use only.

Bldg. T5900
Camp Bullis
San Antonio Co: Bexar TX 78257–
Landholding Agency: Army
Property Number: 21200220133
Status: Excess
Comment: 9876 sq. ft., possible lead paint, most recent use—theater/training bldg., off-site use only.

Bldg. T6111
Camp Bullis
San Antonio Co: Bexar TX 78257–
Landholding Agency: Army
Property Number: 21200220134
Status: Excess
Comment: 521 sq. ft., possible lead paint, most recent use—gas station, off-site use only.

Bldg. T5002
Camp Bullis
San Antonio Co: Bexar TX 78257–
Landholding Agency: Army
Property Number: 21200220135
Status: Excess
Comment: 370 sq. ft., presence of lead paint, off-site use only.

Bldgs. 107, 108
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220136
Status: Unutilized
Comment: 13,319 & 28,051 sq. ft., most recent use—admin., off-site use only.

Bldg. 120
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220137
Status: Unutilized
Comment: 1450 sq. ft., most recent use—dental clinic, off-site use only.

Bldg. 134
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220138
Status: Unutilized
Comment: 16,114 sq. ft., most recent use—auditorium, off-site use only.

Bldg. 56305
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220143
Status: Unutilized
Comment: 2160 sq. ft., most recent use—admin., off-site use only.

Bldg. 56402
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220144
Status: Unutilized
Comment: 2680 sq. ft., most recent use—recreation center, off-site use only.

Bldgs. 56403, 56405
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220145
Status: Unutilized
Comment: 480 sq. ft., most recent use—shower, off-site use only.

Bldgs. 56620, 56621
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220146
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only.

Bldgs. 56626, 56627
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220147
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only.

Bldg. 56628
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220148
Status: Unutilized
Comment: 1133 sq. ft., most recent use—shower, off-site use only.

Bldgs. 56630, 56631
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220149
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only.

Bldgs. 56636, 56637
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220150
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only.

Bldg. 56638
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220151
Status: Unutilized
Comment: 1133 sq. ft., most recent use—shower, off-site use only.

Bldgs. 56703, 56708
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220152
Status: Unutilized
Comment: 1306 sq. ft., most recent use—shower, off-site use only.

Bldgs. 56750, 56751
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220153
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only.

Bldg. 56758
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220154
Status: Unutilized
Comment: 1133 sq. ft., most recent use—shower, off-site use only.

Bldg. P2789
Fort Sam Houston
San Antonio Co: Bexar TX 78234–
Landholding Agency: Army
Property Number: 21200220155
Status: Excess
Comment: 25,784 sq. ft., presence of asbestos/lead paint, provider responsible for hazard abatement, most recent use—dining, Historic Preservation requirement, off-site use only.

Bldg. P6202
Fort Sam Houston
San Antonio Co: Bexar TX 78234–
Landholding Agency: Army
Property Number: 21200220156
Status: Excess
Comment: 1479 sq. ft., presence of asbestos/lead paint, provider responsible for hazard abatement, most recent use—officer's family quarters, off-site use only.

Bldg. P6203
Fort Sam Houston
San Antonio Co: Bexar TX 78234–
Landholding Agency: Army
Property Number: 21200220157
Status: Excess
Comment: 1381 sq. ft., presence of asbestos/lead paint, provider responsible for hazard abatement, most recent use—military family quarters, off-site use only.

Bldg. P6204
Fort Sam Houston
San Antonio Co: Bexar TX 78234–
Landholding Agency: Army
Property Number: 21200220158
Status: Excess
Comment: 1454 sq. ft., presence of asbestos/lead paint, provider responsible for hazard abatement, most recent use—military family quarters, off-site use only.

Virginia

Bldg. 178
Fort Monroe
Ft. Monroe Co: VA 23651–
Landholding Agency: Army
Property Number: 21199940046
Status: Unutilized
Comment: 1180 sq. ft., needs repair, most recent use—storage, off-site use only.

Bldg. T246
Fort Monroe
Ft. Monroe Co: VA 23651–
Landholding Agency: Army
Property Number: 21199940047
Status: Unutilized
Comment: 756 sq. ft., needs repair, possible lead paint, most recent use—scout meetings, off-site use only.

Bldgs. 1516, 1517, 1552, 1567
Fort Eustis
Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21200130154
Status: Unutilized
Comment: 2892 & 4720 sq. ft., most recent use—dining/barracks/admin, off-site use only.

Bldg. 1559
Fort Eustis
Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21200130156
Status: Unutilized
Comment: 2892 sq. ft., most recent use—storage, off-site use only.

Bldg. P00151
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200130157
Status: Unutilized
Comment: 1098 sq. ft., most recent use—housing maint., off-site use only.

Bldg. TT0135
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200130158
Status: Unutilized
Comment: 2144 sq. ft., needs major rehab, most recent use—thrift shop, off-site use only.

Washington

13 Bldgs., Fort Lewis
A0402,CO723, CO726,CO727,CO902, CO903,CO906,
CO907,CO922,CO923, CO926,CO927,C1250
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630199
Status: Unutilized
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only.

7 Bldgs., Fort Lewis
AO438, AO439, CO901, CO910, CO911, CO918, CO919
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630200
Status: Unutilized
Comment: 1144 sq. ft., possible asbestos/lead paint, most recent use—dayroom bldgs., off-site use only.

6 Bldgs., Fort Lewis
CO908, CO728, CO921, CO928, C1008, C1108
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630204
Status: Unutilized
Comment: 2207 sq. ft., possible asbestos/lead paint, most recent use—dining, off-site use only.

Bldg. CO909, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630205
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. CO920, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630206
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. C1249, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630207
Status: Unutilized

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Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1164, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630213
Status: Unutilized
Comment: 230 sq. ft., possible asbestos/lead paint, most recent use—storehouse, off-site use only.

Bldg. 1307, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630216
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1309, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630217
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 2167, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630218
Status: Unutilized
Comment: 288 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. 4078, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630219
Status: Unutilized
Comment: 10200 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. 9599, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630220
Status: Unutilized
Comment: 12366 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. A1404, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199640570
Status: Unutilized
Comment: 557 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. A1419, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199640571
Status: Unutilized
Comment: 1307 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. EO202
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710149
Status: Unutilized
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. EO347
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710156
Status: Unutilized
Comment: 1800 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. B1008, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199720216
Status: Unutilized
Comment: 7387 sq. ft., 2-story, needs rehab, possible asbestos/lead paint, most recent use—medical clinic, off-site use only.

Bldgs. B1011–B1012, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199720217
Status: Unutilized
Comment: 992 sq. ft. and 1144 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only.

Bldgs. CO509, CO709, CO720
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199810372
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—storage, off-site use only.

4 Bldgs.
Fort Lewis
CO511, CO710, CO711, CO719
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199810373
Status: Unutilized
Comment: 1,144 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—dayrooms, off-site use only.

11 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: CO528, CO701, CO708, CO721, CO526, CO527, CO702, CO703, CO706, CO707, CO722
Landholding Agency: Army
Property Number: 21199810374
Status: Unutilized
Comment: 2207 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—dining, off-site use only.

Bldg. 5162
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830419
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. A0631
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830422
Status: Unutilized
Comment: 2207 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldg. B0813
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830427
Status: Unutilized
Comment: 1144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. B0812
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830428
Status: Unutilized
Comment: 1144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldg. 5224
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830433
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—educ. fac., off-site use only.

Bldg. U001B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920237
Status: Excess
Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. U001C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920238
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only.

10 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U002B, U002C, U005C, U015J, U016E, U019C, U022A, U028B, 0091A, U093C
Landholding Agency: Army
Property Number: 21199920239
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U003A, U004B, U006C, U015B, U016B, U019B
Landholding Agency: Army
Property Number: 21199920240
Status: Unutilized
Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. U004D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–

Landholding Agency: Army
Property Number: 21199920241
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only.

Bldg. U005A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920242
Status: Unutilized
Comment: 360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldgs. U006A, U024A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920243
Status: Excess
Comment: 1440 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only.

Bldgs. U007A, U021A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920244
Status: Excess
Comment: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U014A, U022B, U023A, U043B, U059B, U060A, U101A
Landholding Agency: Army
Property Number: 21199920245
Status: Excess
Comment: needs repair, presence of asbestos/lead paint, most recent use—ofc/tower/support, off-site use only.

Bldg. U015J
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920246
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only.

Bldg. U018B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920247
Status: Unutilized
Comment: 121 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

Bldg. U018C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920248
Status: Unutilized
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only.

Bldg. U024B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920249
Status: Unutilized
Comment: 168 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. U024D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920250
Status: Unutilized
Comment: 120 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—ammo bldg., off-site use only.

Bldg. U027A
Fort Lewis
Ft. Lewis Co: Pierce WA –
Landholding Agency: Army
Property Number: 21199920251
Status: Excess
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tire house, off-site use only.

Bldgs. U028A–U032A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920252
Status: Unutilized
Comment: 72 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. U031A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920253
Status: Excess
Comment: 3456 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only.

Bldg. U031C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920254
Status: Unutilized
Comment: 32 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only.

Bldg. U040D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920255
Status: Excess
Comment: 800 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

Bldgs. U052C, U052H
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920256
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

Bldgs. U035A, U035B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920257
Status: Excess
Comment: 192 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only.

Bldg. U035C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920258
Status: Excess
Comment: 242 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

Bldg. U039A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920259
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. U039B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920260
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—grandstand/bleachers, off-site use only.

Bldg. U039C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920261
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only.

Bldg. U043A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920262
Status: Excess
Comment: 132 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

Bldg. U052A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920263
Status: Excess
Comment: 69 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only.

Bldg. U052E
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920264
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. U052G
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920265
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only.

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3 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U056A, U103A, U018A
Landholding Agency: Army
Property Number: 21199920266
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. U059A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920267
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only.

Bldg. U093B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920268
Status: Excess
Comment: 680 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

4 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U101B, U101C, U507B, U557A
Landholding Agency: Army
Property Number: 21199920269
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only.

Bldg. U110B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920272
Status: Excess
Comment: 138 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only.

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U111A, U015A, U024E, U052F, U109A, U110A
Landholding Agency: Army
Property Number: 21199920273
Status: Excess
Comment: 1000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support/shelter/mess, off-site use only.

Bldg. U112A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920274
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use-shelter, off-site use only.

Bldg. U115A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920275
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only.

Bldg. U507A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920276
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only.

Bldg. U516B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920277
Status: Excess
Comment: 5000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only.

Bldg. F0022B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920280
Status: Excess
Comment: 3100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. C0120
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920281
Status: Excess
Comment: 384 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—scale house, off-site use only.

Bldg. A0220
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920282
Status: Excess
Comment: 2284 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—club facility, off-site use only.

Bldg. A0334
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920284
Status: Excess
Comment: 1092 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only.

12 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: C1002, C1003, C1006, C1007, C1022, C1023, C1026, C1027, C1207, C1301, C13333, C1334
Landholding Agency: Army
Property Number: 21199920287
Status: Excess
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. D1154
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920289
Status: Excess
Comment: 1165 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—day room, off-site use only.

Bldg. 01205
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920290
Status: Excess
Comment: 87 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only.

Bldg. 01259
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920291
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 01266
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920292
Status: Excess
Comment: 45 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only.

Bldg. 1445
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920294
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—generator bldg., off-site use only.

Bldg. 02082
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920295
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. 03091, 03099
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920296
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only.

Bldgs. 03100, 3101
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920297
Status: Excess
Comment: various sq .ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 4040
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920298
Status: Excess
Comment: 8326 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only.

Bldgs. 4072, 5104

Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920299
Status: Excess
Comment: 24/36 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only.

Bldg. 4295
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920300
Status: Excess
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 5170
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920301
Status: Excess
Comment: 19,411 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—store, off-site use only.

Bldg. 6191
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920303
Status: Excess
Comment: 3663 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—exchange branch, off-site use only.

Bldgs. 08076, 08080
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920304
Status: Excess
Comment: 3660/412 sq .ft., needs repair, presence of asbestos/lead paint, off-site use only.

Bldg. 08093
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920305
Status: Excess
Comment: 289 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—boat storage, off-site use only.

Bldg. 8279
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920306
Status: Excess
Comment: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—fuel disp. fac., off-site use only.

Bldgs. 8280, 8291
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920307
Status: Excess
Comment: 800/464 sq. ft., needs repair, presence of asbestos/lead paint, most recent uso—storage, off-site use only.

Bldg. 8956
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920308
Status: Excess
Comment: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 9530
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920309
Status: Excess
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only.

Bldg. 9574
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920310
Status: Excess
Comment: 6005 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. shop., off-site use only.

Bldg. 9596
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920311
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only.

Bldg. 9939
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding AGENCY: Army
Property Number: 21199920313
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—recreation, off-site use only.

Land (by State)

Georgia

Land (Railbed)
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199440440
Status: Unutilized
Comment: 17.3 acres extending 1.24 miles, no known utilities potential.

New York

300 acres
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 21200040070
Status: Unutilized
Comment: Approx. 300 acres, contains wetlands and rare flora.

South Carolina

One Acre
Fort Jackson
Columbia Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21200110089
Status: Underutilized
Comment: Approx. 1 acre.

Texas

Old Camp Bullis Road
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199420461
Status: Unutilized
Comment: 7.16 acres, rural gravel road.

Suitable/Unavailable Properties

Buildings (by State)

Alabama

Bldgs. 1001–1006, 1106–1107
Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 21200210027
Status: Unutilized
Comment: Approx. 9000 sq. ft., poor condition, lead paint present, most recent use—warehouses, off-site use only.

7 Bldgs.
Fort Rucker 116, 512, 3721, 3903, 1114, 1405A, 1423
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 21200210028
Status: Unutilized
Comment: Various sq. ft., poor condition, presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldgs. 1102, 1104, 6021
Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 21200210029
Status: Unutilized
Comment: Various sq. ft., need rehab, presence of asbestos/lead paint, most recent use—heat plant bldgs., off-site use only.

Bldg. 01433
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 21200220098
Status: Excess
Comment: 800 sq. ft., most recent use—office, off-site use only.

Georgia

Bldg. 4090
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199630007
Status: Underutilized
Comment: 3530 sq. ft., most recent use—chapel, off-site use only.

Bldg. 2410
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200140076
Status: Unutilized
Comment: 8480 sq. ft., needs rehab, potential asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 20802
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200210078
Status: Unutilized
Comment: 740 sq. ft., needs repair, possible asbestos/lead paint, most recent use—storage, off-site use only.

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Kansas

Bldg. P–295
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199810296
Status: Unutilized
Comment: 3480 sq. ft., concrete, most recent use—underground storage, off-site use only.

Bldg. P–469
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21200210031
Status: Unutilized
Comment: 625 sq. ft., most recent use—storage, off-site use only.

Bldg. S–471
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21200210032
Status: Unutilized
Comment: 4535 sq. ft., most recent use—repair shop, off-site use only.

Bldg. P–485
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21200210033
Status: Unutilized
Comment: 2006 sq. ft., most recent use—instructional, off-site use only.

Bldg. S–486
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21200210034
Status: Unutilized
Comment: 960 sq. ft., most recent use—instructional, off-site use only.

Bldg. S–496
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21200210035
Status: Unutilized
Comment: 7134 sq. ft., most recent use—vocational, off-site use only.

Missouri

Bldg. 2172
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–8994
Landholding Agency: Army
Property Number: 21200040059
Status: Unutilized
Comment: 2892 sq. ft., most recent use—operations, off-site use only.

Texas

Bldgs. 4219, 4227
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220139
Status: Unutilized
Comment: 8056 & 10,500 sq. ft., most recent use—admin., off-site use only.

Bldgs. 4229, 4230, 4231
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220140
Status: Unutilized
Comment: 9000 sq. ft., most recent use—hq. bldg., off-site use only.

Bldgs. 4244, 4246
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220141
Status: Unutilized
Comment: 9000 sq. ft., most recent use—; storage, off-site use only.

Bldgs. 4260, 4261, 4262
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220142
Status: Unutilized
Comment: 7680 sq. ft., most recent use—storage, off-site use only.

Washington

Bldg. 03272
Fort Lewis
Tacoma Co: Pierce WA 98335–
Landholding Agency: Army
Property Number: 21200220160
Status: Unutilized
Comment: 21,373 sq. ft., most recent use—hangar, off-site use only.

Land (by State)

North Carolina

.92 Acre—Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199610728
Status: Underutilized
Comment: municipal drinking waterwell, restricted by explosive safety regs., New Hanover County Buffer Zone.

10 Acre—Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199610729
Status: Underutilized
Comment: municipal park, restricted by explosive safety regs., New Hanover County Buffer Zone.

257 Acre—Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199610730
Status: Underutilized
Comment: state park, restricted by explosive safety regs., New Hanover County Buffer Zone.

24.83 acres—Tract of Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199620685
Status: Underutilized
Comment: 24.83 acres, municipal park, most recent use—New Hanover County explosive buffer zone.

Unsuitable Properties

Buildings (by State)

Alabama

16 Bldgs.
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200040001–21200040012, 21200120018, 21200220002–21200220004
Status: Unutilized
Reason: Secured Area Extensive deterioration.

23 Bldgs., Fort Rucker
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219330003, 219520058, 219740004, 219740006, 219830002, 21200010010, 21200040013, 21200130001, 21200220001, 21200230001
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 25203, 25205–25207, 25209
Fort Rucker
Stagefield Areas
Ft. Rucker Co: Dale AL 36362–5136
Landholding Agency: Army
Property Number: 219410020
Status: Unutilized
Reason: Secured area.

Bldg. T00401
Fort McClellan
Ft. McClellan Co: Calhoun AL 36201–
Landholding Agency: Army
Property Number: 21200140001
Status: Underutilized
Reason: Gas chamber.

Bldg. 28152
Rucker
Hartford Co: Geneva AL 36344–
Landholding Agency: Army
Property Number: 21200230002
Status: Unutilized
Reason: Extensive deterioration.

Alaska

8 Bldgs., Fort Wainwright
Ft. Wainwright AK 99703–
Landholding Agency: Army
Property Number: 219710090, 219710195–219710198, 219810002, 219810007, 21199920001
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured area Floodway (Some are extensively deteriorated).

Arizona

32 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Number: 219014560–219014591
Status: Underutilized
Reason: Secured Area.

10 properties: 753 earth covered igloos; above ground standard magazines
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40.
Landholding Agency: Army
Property Number: 219014592–219014601
Status: Underutilized
Reason: Secured Area.

7 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–5000

Location: 12 miles west of Flagstaff on I–40
Landholding Agency: Army
Property Number: 219030273–219030274, 219120177–219120181
Status: Unutilized
Reason: Secured Area.

9 Bldgs.
Camp Navajo
Bellemont Co: AZ 86015
Landholding Agency: Army
Property Number: 21200140002–21200140010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area.

Bldgs. 14471, 15373
Fort Huachuca
Ft. Huachuca Co: Cochise AZ 85613
Landholding Agency: Army
Property Number: 21200220005–21200220006
Status: Excess
Reason: Extensive deterioration.

Arkansas

102 Bldgs., Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219630019, 219630021, 219630029, 219640462–219640477, 21200140011–21200140014
Status: Unutilized
Reason: Extensive deterioration.

94 Bldgs.
Ft. Chaffee Maneuver Training Center
Ft. Chaffee Co: Sebastian AR 72905–1370
Landholding Agency: Army
Property Number: 21200110001–21200110017, 21200140011–21200140014
Status: Unutilized
Reason: Extensive deterioration.

California

Bldg. 18
Riverbank Army Ammunition Plant 5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219012554
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

11 Bldgs., Nos. 2–8, 156, 1, 120, 181
Riverbank Army Ammunition Plant
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219013582–219013588, 219013590, 219240444–219240446
Status: Underutilized
Reason: Secured Area.

Bldgs. 13, 171, 178 Riverbank Ammun Plant 5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219120162–219120164
Status: Underutilized
Reason: Secured Area.

27 Bldgs.
DDDRW Sharpe Facility
Tracy Co: San Joaquin CA 95331–
Landholding Agency: Army
Property Number: 219610289, 21199930021, 21200030005–21200030015, 21200040015, 21200120029–21200120039, 21200130004
Status: Unutilized
Reason: Secured Area.

Bldgs. 29, 39, 73, 154, 155, 193, 204, 257
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219520040
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 1103, 1131, 1120, 341, 1160
Parks Reserve Forces Training Area
Dublin Co: Alameda CA 94568–5201
Landholding Agency: Army
Property Number: 219520056, 219830010, 21200110021–21200110022
Status: Unutilized
Reason: Extensive deterioration.

10 Bldgs.
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 21199840015, 21199920033–21199920036, 21199940052–21199940056
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

449 Bldgs.
Camp Roberts
Camp Roberts Co: San Obispo CA
Landholding Agency: Army
Property Number: 21199730014, 219820192–219820235
Status: Excess
Reason: Secured Area, Extensive deterioration.

27 Bldgs.
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944–
Landholding Agency: Army
Property Number: 21199940051, 21200130005
Status: Unutilized
Reason: Extensive deterioration.

41 Bldgs.
Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310–
Landholding Agency: Army
Property Number: 21199920037–21199920038, 21200030016–21200030018, 21200040014, 21200110018–21200110020, 21200130002–21200130003, 21200140015, 21200210001–21200210005
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Colorado

Bldgs. T–317, T–412, 431, 433
Rocky Mountain Arsenal
Commerce Co: Adams CO 80022–2180
Landholding Agency: Army
Property Number: 219320013–219320016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

40 Bldgs. Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219830020–219830030, 21199910008, 21199930022,21199930025, 21200130006–21200130011
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 00087, 00088, 00096
Pueblo Chemical Depot
Pueblo CO 81006–9330
Landholding Agency: Army
Property Number: 21200030019–21200030021
Status: Unutilized
Reason: Extensive deterioration.

Flatiron Facility
Colorado Army Natl Guard
Longmont Co: Weld CO 80504–9404
Landholding Agency: Army
Property Number: 21200230003
Status: Unutilized
Reason: Extensive deterioration.

Georgia

Fort Stewart
Sewage Treatment Plant
Ft. Stewart Co: Hinesville GA 31314–
Landholding Agency: Army
Property Number: 219013922
Status: Unutilized
Reason: Sewage treatment.

Facility 12304
Fort Gordon
Augusta Co: Richmond GA 30905–
Location: Located off Lane Avenue
Landholding Agency: Army
Property Number: 219014787
Status: Unutilized
Reason: Wheeled vehicle grease/inspection rack.

174 Bldgs.
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219220269, 219410050–219410060, 219410071–219410072, 219410100, 219410109, 219630044–219630063, 219640011–219640035, 219830038–219830067, 21199910012, 21200210061–21200210073, 21200220007–21200220010, 21200230007–21200230015
Status: Unutilized
Reason: Extensive deterioration.

3 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220335–219220337
Status: Unutilized
Reason: Detached lavatory.

16 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219520150, 219610320, 219720017–219720019, 219810028, 219810030, 219810035, 219830073, 219830076, 21199930031–21199930037, 21200030023–21200030027
Status: Unutilized
Reason: Extensive deterioration.

22 Bldgs.
Fort Gillem
Forest Park Co: Clayton GA 30050–
Landholding Agency: Army
Property Number: 219620815, 21199920044–21199920050, 21199930026, 21200040020, 21200140016–21200140017, 21200220011–21200220012, 21200230005–21200230006
Status: Unutilized
Reason: Extensive deterioration, Secured Area.

Bldg. P8121, Fort Stewart
Hinesville Co: Liberty GA 31314

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Landholding Agency: Army
Property Number: 21199940060
Status: Unutilized
Reason: Extensive Deterioration.

3 Bldgs., Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219630034, 219830068, 21200120042
Status: Unutilized
Reason: Extensive deterioration.

4 Bldgs., Fort McPherson
Ft. McPherson Co: Fulton GA 30330–5000
Landholding Agency: Army
Property Number: 21200040016–21200040018, 21200230004
Status: Unutilized
Reason: Secured Area.

Hawaii

14 Bldgs.
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219014836–219014837, 219030361, 21200220013, 21200230018
Status: Unutilized
Reason: Secured Area (Most are extensively deteriorated).

Bldg. T–1305
Wheeler Army Airfield
Wahiawa HI 96857–
Landholding Agency: Army
Property Number: 219610348
Status: Unutilized
Reason: Extensive deterioration.

5 Bldgs.
Fort Shafter
Honolulu Co: HI 96819–
Landholding Agency: Army
Property Number: 21200030029–21200030031, 21200230016–21200230017
Status: Unutilized
Reason: Extensive deterioration.

7 Bldgs.
Kahuku Training Area
Kahuku Co: HI 96731
Landholding Agency: Army
Property Number: 21200140023–21200140027
Status: Unutilized
Reason: Extensive deterioration.

7 Bldgs.
Dillingham Military Rsv
Waialua Co: HI 96791
Landholding Agency: Army
Property Number: 21200220014–21200220020
Status: Unutilized
Reason: Extensive deterioration.

Illinois

13 Bldgs.
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219110104–219110108, 219210100, 219620427, 219620428, 21200140043–21200140046
Status: Unutilized
Reason: Some are in a secured area, Some are extensively deteriorated, Some are within 2000 ft. of flammable or explosive material.

15 Bldgs.
Charles Melvin Price Support Center
Granite City Co: Madison IL 62040–
Landholding Agency: Army
Property Number: 219820027, 21199930043–21199930053
Status: Unutilized
Reason: Secured Area, Extensive deterioration, Floodway.

Indiana

181 Bldgs.
Newport Army Ammunition Plant
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219011584, 219011586–219011587, 219011589–219011590, 219011592–219011627, 219011629–219011636, 219011638–219011641, 219210149–219210151, 219220220, 219230032–219230033, 219430336–219430338, 219520033, 219520042, 219530075–219530097, 219740021–219740026, 219820031–219820032, 21199920063
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated.)

2 Bldgs.
Atterbury Reserve Forces Training Area
Edinburgh Co: Johnson IN 46124–1096
Landholding Agency: Army
Property Number: 219230030–219230031
Status: Unutilized
Reason: Extensive deterioration.

Iowa

103 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219012605–219012607, 219012609, 219012611, 219012613, 219012615, 219012620, 219012622, 219012624, 219013706–219013738, 219120172–219120174, 219440112–219440158, 219520002, 219520070, 219610414, 219740027, 21200220022, 21200230019–21200230023
Status: Unutilized
Reason: (Many are in a Secured Area) (Most are within 2000 ft. of flammable or explosive material.)

27 Bldgs., Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638
Landholding Agency: Army
Property Number: 219230005–219230029, 219310017, 219340091
Status: Unutilized
Reason: Extensive deterioration.

Kansas

37 Bldgs.
Kansas Army Ammunition Plant
Production Area
Parsons Co: Labette KS 67357–
Landholding Agency: Army
Property Number: 219011909–219011945
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material).

121 Bldgs.
Kansas Army Ammunition Plant
Parsons Co: Labette KS 67357–
Landholding Agency: Army
Property Number: 219620518–219620638
Status: Unutilized
Reason: Secured Area.

Bldg. P–417
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219740029
Status: Unutilized
Reason: Extensive deterioration, Sewage pump station.

Kentucky

Bldg. 126
Lexington-Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles Northeast of Lexington, Kentucky.
Landholding Agency: Army
Property Number: 219011661
Status: Unutilized
Reason: Secured Area, Sewage treatment facility.

Bldg. 12
Lexington-Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles Northeast of Lexington Kentucky.
Landholding Agency: Army
Property Number: 219011663
Status: Unutilized
Reason: Industrial waste treatment plant.

291 Bldgs., Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 21200110028, 21200130026–21200130029, 21200220030–21200220055, 21200230024
Status: Unutilized
Reason: Extensive deterioration.

29 Bldgs., Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 21200110030–21200110049, 21200140048, 21200140053, 21200220029, 21200230029–21200230030
Status: Unutilized
Reason: Extensive deterioration.

Louisiana

528 Bldgs.
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219011714–219011716, 219011735–219011737, 219012112, 219013863–219013869, 219110131, 219240138–219240147, 219420332, 219610049–219610263, 219620002–219620200, 219620749–219620801, 219820047–219820078
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated).

41 Bldgs., Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 21199920070, 21199920078, 21199940074, 21199940075, 21200110050–21200110051, 21200120058, 21200130030–21200130043, 21200140054
Status: Unutilized
Reason: Extensive deterioration (Some are in Floodway.)

Maryland

45 Bldgs.
Aberdeen Proving Ground
Aberdeen City Co: Harford MD 21005–5001

Landholding Agency: Army
Property Number: 219011417, 219012610, 219012637–219012642, 219012658–219012662, 219013773, 219014711, 219610480, 219610489–219610490, 219730077–219730078, 219810070–219810121, 219820090–219820096, 21200120059–21200120060, 21200140055
Status: Unutilized
Reason: Most are in a secured area. (Some are within 2000 ft. of flammable or explosive material) (Some are in a floodway) (Some are extensively deteriorated).

21 Bldgs.
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219710186,219740068–219740076, 219810065,21199910019, 21199940084, 21199940086, 21200140056–21200140060
Status: Unutilized
Reason: Extensive deterioration.

12 Bldgs.
Woodstock Military Rsv
Granite Co: Baltimore MD 22163–
Landholding Agency: Army
Property Number: 21200130044–21200130052
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 00602, 00605
Adelphi Lab Center
Adelphi Co: MD 20783
Landholding Agency: Army
Property Number: 21200220056–21200220057
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Massachusetts

Bldg. 3462, Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 024620–5003
Landholding Agency: Army
Property Number: 219230095
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 1211 Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 02462–5003
Landholding Agency: Army
Property Number: 219310020
Status: Unutilized
Reason: Secured Area.

Facility No. 0G001
LTA Granby
Granby Co: Hampshire MA
Landholding Agency: Army
Property Number: 219810062
Status: Unutilized
Reason: Extensive deterioration.

Michigan

Bldgs. 5755–5756
Newport Weekend Training Site
Carleton Co: Monroe MI 48166–
Landholding Agency: Army
Property Number: 219310060–219310061
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

13 Bldgs.
Fort Custer Training Center 2501 26th Street
Augusta Co: Kalamazoo MI 49102–9205
Landholding Agency: Army
Property Number: 21200220058–21200220062
Status: Unutilized
Reason: Extensive deterioration.

10 Bldgs.
Selfridge ANG Base
Selfridge Co: MI 48045–
Landholding Agency: Army
Property Number: 21199930059, 21199940089–21199940093, 21200110052–21200110055
Status: Unutilized
Reason: Secured Area.

Minnesota

160 Bldgs.
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120166, 219210014–219210015, 219220227–219220235, 219240328, 219310056, 219320152–219320156, 219330096–219330106, 219340015, 219410159–219410189, 219420198– 219420283, 219430060–219430064, 21200130053–21200130054
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material.) (Some are extensively deteriorated).

Missouri

83 Bldgs.
Lake City Army Ammo. Plant
Independence Co: Jackson MO 64050–
Landholding Agency: Army
Property Number: 219013666–219013669, 219530134–219530138, 21199910023–21199910035, 21199920082, 21200030049
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material).

9 Bldgs.
St. Louis Army Ammunition Plant 4800 Goodfellow Blvd.
St. Louis Co: St. Louis MO 63120–1798
Landholding Agency: Army
Property Number: 219120067–219120068, 219610469–219610475
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated.)

8 Bldgs.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219430070–219430075, 219830116, 21199910020–21199910021
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material (Some are extensively deteriorated.)

Nevada

Bldg. 292
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219013614
Status: Unutilized
Reason: Secured Area.

Bldg. 396
Hawthorne Army Ammunition Plant
Bachelor Enlisted Qtrs W/Dining Facilities
Hawthorne Co: Mineral NV 89415–
Location: East side of Decatur Street—North of Maine Avenue
Landholding Agency: Army
Property Number: 219011997
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area.

39 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219012013, 219013615–219013643,
Status: Underutilized
Reason: Secured Area (Some within airport runway clear zone; many within 2000 ft. of flammable or explosive material).

Group 101, 34 Bldgs.
Hawthorne Army Ammunition Plant Co: Mineral NV 89415–0015
Landholding Agency: Army
Property Number: 219830132
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

New Jersey

129 Bldgs.
Armament Res. Dev. & Eng. Ctr.
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219010442–219010474, 219010476, 219010639–219010664, 219010680–219010715, 219012428, 219012430, 219012433–219012466, 219012469, 219012475, 219012763–219012765, 219014306–219014307, 219014311, 219014313–219014321, 219140617, 219230123, 219420006, 219530147, 219540005, 219540007, 219740110–219740127, 21200130057–21200130063
Status: Excess
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material.) (Some are extensively deteriorated) (Some are in a floodway).

9 Bldgs.
Armament Research
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199940094–21199940099
Status: Unutilized
Reasons: Unexploded ordnance, Extensive deterioration.

Bldg. 432
Ft. Monmouth
Ft. Monmouth Co: NJ 07703–
Landholding Agency: Army
Property Number: 21200110056
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1222F
Picatinny Arsenal
Dover Co: NJ 07806–5000
Landholding Agency: Army
Property Number: 21200220063
Status: Unutilized
Reason: Extensive deterioration.

New Mexico

Bldgs. 01885, 21536
White Sands Missile Range

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White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 21200230025–21200230026
Status: Unutilized
Reason: Extensive deterioration.

New York

Bldgs. 110, 143, 2084, 2105, 2110
Seneca Army Depot
Romulus Co: Seneca NY 14541–5001
Landholding Agency: Army
Property Number: 219240439, 219240440–219240443
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Parcel 19
Stewart Army Subpost, U.S. Military Academy
New Windsor Co: Orange NY 12553–
Landholding Agency: Army
Property Number: 219730098
Status: Unutilized
Reason: Within airport runway clear zone.

Bldg. 12
Watervliet Arsenal
Watervliet NY
Landholding Agency: Army
Property Number: 219730099
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 134
Watervliet Arsenal Co: Albany NY 12189–4050
Landholding Agency: Army
Property Number: 21199840068
Status: Unutilized
Reason: Secured Area.

Bldgs. 4056, 4275
Stewart Army Subpost
New Windsor Co: Orange NY 12553–
Landholding Agency: Army
Property Number: 21199930061
Status: Unutilized
Reason: Sewage pump station.

Bldgs. 201–205, 231, 219, 217
Orangeburg USARC
Orangeburg Co: Rockland NY 10962–2209
Landholding Agency: Army
Property Number: 21200140063
Status: Unutilized
Reason: Secured Area.

13 Bldgs.
Youngstown Training Site
Youngstown Co: Niagara NY 14131–
Landholding Agency: Army
Property Number: 21200220064–21200220069
Status: Unutilized
Reason: Extensive deterioration.

North Carolina

85 Bldgs. Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219620478, 219620480, 219640074,219710102–219710111, 219710224, 219810167, 219830117, 21199930062–21199930067, 21200040032–21200040037, 21200140064
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 16, 139, 261, 273
Military Ocean Terminal
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219530155, 219810158–219810160
Status: Unutilized
Reason: Secured Area.

North Dakota

Bldgs. 440, 455, 456, 3101, 3110
Stanley R. Mickelsen
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 21199940103–21199940107
Status: Unutilized
Reason: Extensive deterioration.

Ohio

190 Bldgs.
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219012476–219012507, 219012509–219012513, 219012515, 219012517–219012518, 219012520, 219012522–219012523, 219012525–219012528, 219012530–219012532, 219012534–219012535, 219012537, 219013670–219013677, 219013781, 219210148, 21199840069–21199840104, 21199930070–21199930072
Status: Unutilized
Reason: Secured Area.

7 Bldgs.
Lima Army Tank Plant
Lima OH 45804–1898
Landholding Agency: Army
Property Number: 219730104–219730110
Status: Unutilized
Reason: Secured Area.

Bldgs. T–423, 37
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200220070, 21200230027
Status: Unutilized
Reason: Extensive deterioration.

Oklahoma

548 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–5000
Landholding Agency: Army
Property Number: 219011674, 219011680, 219011684, 219011687, 219012113, 219013981–219013991, 219013994, 219014081–219014102, 219014104, 219014107–219014137, 219014141–219014159, 219014162, 219014165–219014216, 219014218–219014274, 219014336–219014559, 219030007–219030127, 219040004, 21199910039–21199910040
Status: Underutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material).

2 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219510023, 219730342
Status: Unutilized
Reason: Extensive deterioration

34 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–
Landholding Agency: Army
Property Number: 219310050–219310052, 219320170–219320171, 219330149–219330160, 219430123–219430125, 219620485–219620490, 219630110–219630111, 219810174, 21200210023
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated).

Oregon

11 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012174–219012176, 219012178–219012179, 219012190–219012191, 219012197–219012198, 219012217, 219012229
Status: Underutilized
Reason: Secured Area.

34 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012177, 219012185–219012186, 219012189, 219012195–219012196, 219012199–219012205, 219012207–219012208, 219012225, 219012279, 219014304–219014305, 219014782, 219030362–219030363, 219120032, 21199840107–21199840110, 21199920084–21199920090
Status: Unutilized
Reason: Secured Area.

Pennsylvania

59 Bldgs.
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5011
Landholding Agency: Army
Property Number: 219640337, 219730122–219730128, 219740137, 219810178–219810193
Status: Unutilized
Reason: Extensive deterioration.

31 Bldgs.
Defense Distribution Depot
New Cumberland Co: York PA 17070–5001
Landholding Agency: Army
Property Number: 219830135, 21199940108–21199940112, 21200030060, 21200110058–21200110063, 21200130070–21200130072, 21200140071, 21200220071–21200220073, 21200230028
Status: Unutilized
Reason: Secured Area.

Rhode Island

Bldg. 104
Army Aviation
North Kingstown Co: Washington RI 02852
Landholding Agency: Army
Property Number: 21200120064
Status: Unutilized
Reason: Extensive deterioration.

South Carolina

40 Bldgs., Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219440237, 219440239, 219620312, 219620317, 219620348,

219620351, 219640138–219640139, 21199640148–21199640149, 219720095, 219720097, 219730130, 219730132, 219730145–219730157, 219740138, 219820102–219820111, 219830139–219830157
Status: Unutilized
Reason: Extensive deterioration.

Tennessee

35 Bldgs.
Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012304–219012309, 219012311–219012312, 219012314, 219012316–219012317, 219012319, 219012325, 219012328, 219012330, 219012332, 219012334–219012335, 219012337, 219013789–219013790, 219030266, 219140613, 219330178, 219440212–219440216, 219510025–219510028, 21200040038, 21200230035–21200230036
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material).

10 Bldgs.
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358–
Landholding Agency: Army
Property Number: 219240447–219240449, 219320182–219320184, 219330176–219330177, 219520034, 219740139
Status: Unutilized
Reason: Secured Area.

Bldg. Z–183A
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358–
Landholding Agency: Army
Property Number: 219240783
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

9 Bldgs.
Fort Campbell
Ft. Campbell Co: Montgomery TN 42223–
Landholding Agency: Army
Property Number: 21200220023–21200220025, 21200230031–21200230034
Status: Unutilized
Reason: Extensive deterioration.

Texas

20 Bldgs.
Lone Star Army Ammunition Plant
Highway 82 West
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219012524, 219012529, 219012533, 219012536, 219012539–219012540, 219012542, 219012544–219012545, 219030337–219030345
Status: Unutilized
Reason: Within 2000 ft. of flammable of explosive material. Secured Area.

225 Bldgs.
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661–
Location: State highway 43 north
Landholding Agency: Army
Property Number: 219012546, 219012548, 219610555–219610584, 219610635, 219620244–219620287, 219620827–219620837, 21200020054–21200020070
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material).

16 Bldgs., Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219420314–219420327, 219430094–219430097
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated).

3 Bldgs., Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219640172, 219640177, 219640182,
Status: Unutilized
Reason: Extensive Deterioration.

Bldgs. T–2916, T–3180, T–3192, T–3398, T–2915
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330476–219330479, 219640181
Status: Unutilized
Reason: Detached latrines.

80 Bldgs., Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219730160–219730186, 219830161–219830197
Status: Unutilized
Reason: Extensive deterioration.

Starr Ranch, Bldg. 703B
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 219640186, 219640494
Status: Unutilized
Reason: Floodway.

Utah

Bldgs. 4555, 4554
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012166, 219030366,
Status: Unutilized
Reason: Secured Area.

Bldg. S–4301
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012751
Status: Underutilized
Reason: Secured Area.

4 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219013997, 219130012, 219130015, 21200120065
Status: Underutilized
Reason: Secured Area.

51 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219330181–219330182, 219330185, 219420328–219420329, 21199920091–21199920101
Status: Unutilized
Reason: Secured Area.

Bldgs. 3102, 5145, 8030
Deseret Chemical Depot
Tooele UT 84074–
Landholding Agency: Army
Property Number: 219820119–219820121
Status: Unutilized
Reason: Secured Area. Extensive deterioration.

Virginia

324 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Landholding Agency: Army
Property Number: 219010833, 219010836, 219010839, 219010842, 219010844, 219010847–219010890, 219010892–219010912, 219011521–219011577, 219011581–219011583, 219011585, 219011588, 219011591, 219013559–219013570, 219110142–219110143, 219120071, 219140618–219140633, 219440219–219440225, 219510031–219510033, 219610607–219610608, 219830223–219830267, 21200020079–21200020081, 21200230038
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area

13 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Landholding Agency: Army
Property Number: 219010834–219010835, 219010837–219010838, 219010840–219010841, 219010843, 219010845–219010846, 219010891, 219011578–219011580
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area. Latrine, detached structure.

35 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219240107, 219330210, 2129330219–219330220, 219330225–219330228, 219520062, 219610597, 219620497, 219620866–219620876, 219630115, 219740156, 219830208–219830210, 21199940129–21199940131, 21200030062, 21200040040, 21200110064, 21200120067, 21200230037
Status: Unutilized
Reason: Extensive deterioration (Some are in a secured area.)

16 Bldgs.
Radford Army Ammunition Plant
Radford VA 24141–
Landholding Agency: Army
Property Number: 219220210–219220218, 219230100–219230103, 219520037
Status: Unutilized
Reason: Secured Area.

Bldg. B7103–01, Motor House
Radford Army Ammunition Plant
Radford VA 24141–
Landholding Agency: Army
Property Number: 219240324
Status: Unutilized
Reason: Secured Area. Within 2000 ft. of flammable or explosive material. Extensive deterioration.

56 Bldgs.
Red Water Field Office

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Radford Army Ammunition Plant
Radford VA 24141–
Landholding Agency: Army
Property Number: 219430341–219430396
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.
17 Bldgs.
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 219510030, 219610588, 21199930079, 21200040041–21200040042, 21200110067–21200110069, 21200120066, 21200210024, 21200220074
Status: Unutilized
Reason: Secured Area. Extensive deterioration.
Bldgs. 2013–00, B2013–00, A1601–00
Radford Army Ammunition Plant
Radford VA 24141–
Landholding Agency: Army
Property Number: 219520052, 219530194
Status: Unutilized
Reason: Extensive deterioration.
11 Bldgs.
Fort Belvoir
Ft. Belvoir Co: Fairfax VA 22060–5116
Landholding Agency: Army
Property Number: 21199910050–21199910051, 21199920107, 21199940117–21199940120, 21200030063–21200030064, 21200130075–21200130077
Status: Unutilized
Reason: Extensive deterioration.
6 Bldgs., Fort Eustis
Ft. Eustis Co. VA 23604–
Landholding Agency: Army
Property Number: 21200210025–21200210026
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 448, Fort Myer
Ft. Myer Co: Arlington VA 22211–1199
Landholding Agency: Army
Property Number: 21200010069
Status: Underutilized
Reason: Extensive deterioration.
7 Bldgs.
Fort Monroe
Ft. Monroe Co: VA 23651–
Landholding Agency: Army
Property Number: 21200220076–21200220079
Status: Excess
Reason: Extensive deterioration.
26 Bldgs.
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 21200220080–21200220092
Status: Unutilized
Reason: Extensive deterioration.

Washington

660 Bldgs., Fort Lewis
Ft. Lewis Co: Pierce WA 98433–5000
Landholding Agency: Army
Property Number: 219610006–219610007, 219610009–219610010, 219610012, 219610042–219610046, 219620512–219620517, 219640193, 219720142–219720151, 219810205–219810242, 219820130–219820132, 21199910063–21199910080, 21199920125–21199920181, 21199930080–21199930105, 21199940134, 21200120068, 21200130080, 21200140072–21200140073, 21200210075, 21200220097
Status: Unutilized
Reason: Secured Area, Extensive deterioration.
10 Bldgs., Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740162–219740171
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 415, Fort Worden
Port Angeles Co: Clallam WA 98362–
Landholding Agency: Army
Property Number: 21199910062
Status: Excess
Reason: Extensive deterioration.
Bldg. U515A, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920124
Status: Excess
Reason: Gas chamber.
13 Bldgs.
Yakima Training Center
Yakima Co: WA 98901–
Landholding Agency: Army
Property Number: 21200010074, 21200120069–21200120076, 21200120084, 21200210074
Status: Unutilized
Reason: Extensive deterioration.

Wisconsin

6 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011094, 219011209–219011212, 219011217
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Friable asbestos, Secured Area.
153 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011104, 219011106, 219011108–219011113, 219011115–219011117, 219011119–219011120, 219011122–219011139, 219011141–219011142, 219011144, 219011148–219011208, 219011213–219011216, 219011218–219011234, 219011236, 219011238, 219011240, 219011242, 219011244, 219011247, 219011249, 219011251, 219011256, 219011259, 219011263, 219011265, 219011268, 219011270, 219011275, 219011277, 219011280, 219011282, 219011284, 219011286, 219011290, 219011293, 219011295, 219011297, 219011300, 219011302, 219011304–219011311, 219011317, 219011319–219011321, 219011323
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Friable asbestos, Secured Area.
4 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013871–219013873, 219013875
Status: Underutilized
Reason: Secured Area.
22 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013876–219013878, 219220295–219220311, 219510065, 219510067
Status: Unutilized
Reason: Secured Area.
743 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219210097–219210099,219740184–219740271, 21200020083–21200020155
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.
124 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219510069–219510077
Status: Unutilized
Reason: Secured Area, Extensive deterioration.
Bldgs. 2153, 2158
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–5136
Landholding Agency: Army
Property Number: 21200230039
Status: Unutilized
Reason: Extensive deterioration.

Land (by State)

Alabama

23 acres and 2284 acres
Alabama Army Ammunition Plant
110 Hwy. 235
Childersburg Co: Talladega AL 35044–
Landholding Agency: Army
Property Number: 219210095–219210096
Status: Excess
Reason: Secured Area.

Indiana

Newport Army Ammunition Plant
East of 14th St. & North of S. Blvd.
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219012360
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Maryland

Carroll Island, Graces Quarters
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012630, 219012632
Status: Underutilized
Reason: Floodway, Secured Area.

Minnesota

Portion of R.R. Spur
Twin Cities Army Ammunition Plant

New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219620472
Status: Unutilized
Reason: Landlocked.

New Jersey

Land
Armament Research Development & Eng. Center
Route 15 North
Picatinny Arsenal Co: Morris NJ 07806–
Landholding Agency: Army
Property Number: 219013788
Status: Unutilized
Reason: Secured Area.
Spur Line/Right of Way
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219530143
Status: Unutilized
Reason: Floodway.
2.0 Acres, Berkshire Trail
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910036
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Ohio

0.4051 acres, Lot 40 & 41
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219630109
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Oklahoma

McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–
Landholding Agency: Army
Property Number: 219014603
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material.

Texas

Land—Approx. 50 acres
Lone Star Army Ammunition Plant
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219420308
Status: Unutilized
Reason: Secured Area.
Training Land (3.764 acres)
Camp Swift Military Rsv.
Bastrop Co: TX
Landholding Agency: Army
Property Number: 21200130073
Status: Unutilized
Reason: Secured Area.

Wisconsin

Land
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Location: Vacant land within plant boundaries.
Landholding Agency: Army
Property Number: 219013783
Status: Unutilized
Reason: Secured Area.

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Part III

Department of Education

34 CFR Part 222
Impact Aid Programs; Final Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 222

RIN 1810–AA94

Impact Aid Programs

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues these final regulations to implement a new Impact Aid discretionary construction grant program, which is authorized under section 8007(b) of the Elementary and Secondary Education Act (the Act), as amended by the No Child Left Behind Act of 2001. The program provides competitive grants for emergency repairs and modernization of school facilities to certain eligible school districts that receive Impact Aid funds. These final regulations incorporate statutory requirements and provide requirements for applying and qualifying for, as well as spending, the Federal funds provided under this program. These final regulations apply only to the fiscal year (FY) 2002 grant competition.

DATES: These regulations are effective September 16, 2002.

FOR FURTHER INFORMATION CONTACT: Catherine Schagh, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6244. Telephone: (202) 260–3858 or via Internet, at: *Impact.Aid@ed.gov.*

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SUPPLEMENTARY INFORMATION: These final regulations implement the new discretionary Impact Aid construction grant program, which is authorized under section 8007(b) of the Act, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110, enacted January 8, 2002).

The purpose of the program is to assist eligible Impact Aid school districts in meeting the emergency or modernization needs of their school facilities.

The following is a summary of the regulatory provisions, such as interpretations of statutory text, or standards and procedures for the operation of the program, that the Secretary believes are necessary for implementing the statute. We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address regulatory provisions that are technical or otherwise minor in effect.

Section 222.172 What Activities May an LEA Conduct With Funds Under This Program?

The regulations detail the types of construction activities that recipients of emergency and modernization grants may conduct with grant funds. These provisions also clarify that both emergency and modernization grants may only be used for new construction when an LEA holds title to an existing facility and when the proposed construction meets the standards detailed in the regulations for determining that improving a current facility is more costly than replacing it.

Section 222.173 What Activities Are Prohibited?

Section 222.173 specifies the various types of activities that may not be supported with grant funds under this program. The statute prohibits using grant funds for acquiring real property but allows for the new construction of a building in limited circumstances. Since a building is also typically considered to be real property, the provision clarifies, consistent with the authorizing statute, that grant funds cannot be used to acquire an interest in real property except when the Secretary determines under § 222.173 that construction of a new building will be permitted.

Section 222.176 What Definitions Apply to This Program?

The regulations define the term "emergency" to include health and safety conditions that present an immediate threat to the building's occupants, as well as those conditions that will present health and safety hazards in the very near future. The definition also provides examples of some of the types of health and safety conditions that the Secretary anticipates the emergency grants will address.

The provisions clarify that "modernization" grants must be used to repair, renovate, alter, or extend facilities in order to support a contemporary educational program that is consistent with the laws, standards, or common practices in the LEA's State. Since the Secretary anticipates that the need for these grants will exceed the amount of available funds, this provision clarifies that the Secretary does not intend that these grants be used to fund facility modernization projects that exceed a State's standards.

Eligibility

The statutory eligibility criteria for emergency and modernization grants are complex and further complicated by funding provisions that specify, in descending priority order, two emergency grant and two modernization grant eligibility categories. These regulations provide details on each of the four eligibility categories so that applicants can determine under which funding priority their application will be considered. This will be particularly important for applicants to consider because the statute mandates that the Secretary must first use available funds for applications in the first priority. After all eligible applications in the first priority have been funded, the Secretary considers applications in the second priority, followed by the third and fourth priorities in descending order.

How To Apply for a Grant

The statute does not specify a complete application process; the regulations provide for an application that requests objective and subjective information that will be used to rank applicants. An applicant will also be required to agree to certain assurances that are contained in the application package. In addition, the Secretary, before making final award decisions, will request detailed data on the funds that the highest-ranked applicants have available to contribute to their proposed projects. The regulations specify that the applications will be based on student and fiscal data from the preceding fiscal year, unless satisfactory fiscal data from that year are not available.

How Grants Are Made

The Department will review applications separately among the four funding priorities. Panel reviewers will rank the applications by category based on the selection criteria and any other applicable factors that will be detailed in an application closing notice published in the **Federal Register**.

Prior to making final funding decisions and determining final grant amounts, the Secretary may verify certain data with applicants' States and will also assess available resources for all highly ranked grantees, limitations on the grant awards for certain grantee categories, and the availability of in-kind contributions.

As detailed in the "Eligibility" portion of the regulations, the Secretary will generally fund all eligible applications in the first application priority group before funding applications in each of the next three groups. This will vary if the remaining funds are insufficient to fund another project in the highest-priority group but adequate to fund a project in the next priority group. The next-ranked applicants in the higher-priority group will be offered the opportunity to accept funds for a portion of their projects before lower-priority projects are funded. If they accept the lower grant amount, they would forfeit the right to have their applications carried over and considered for funding in the next year's competition. However, they could submit new applications for the next year for the remainder of their projects.

Executive Order 12866

Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action. The potential costs associated with the regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits justify the costs. We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The Secretary believes that these regulations are necessary to clarify complex statutory provisions. The costs associated with these provisions are not only minimal but also justified in terms of the benefits.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, in order to make timely grant awards for FY 2002, the Secretary has decided to issue these final regulations without first publishing proposed regulations for public comment. These regulations will apply to the FY 2002 grant competition only. The Secretary takes this action under section 437(d)(1) of the General Education Provisions Act.

At a later date the Assistant Secretary plans to publish a notice of proposed rulemaking for this program and offer interested parties the opportunity to comment. The proposed regulations would apply to grant competitions under the program beginning in FY 2003.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are small LEAs receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations will not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal paperwork burden requirements for applicants and minimal requirements with which the grant recipients must comply.

Paperwork Reduction Act of 1995

Sections 222.183, 222.184, 222.185, and 222.186 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education submitted a copy of the information collection "Impact Aid Discretionary Construction Grant Program" to the Office of Management and Budget (OMB) for its review and approval. OMB has granted provisional clearance on the information collection requirements associated with this grant application. The Department nevertheless continues to seek public comment on these information collection requirements.

The Department will use the information collected in the application to determine whether applicants meet the basic eligibility requirements of section 8007(b) of the Act, to determine whether the applicant is requesting an emergency or modernization grant, and to determine which of the four priorities described in the statute applies to the individual application. In addition, information on the application will be used to evaluate applications within each of the four priorities. Among the criteria the Secretary is required to consider are the applicant's total assessed value of real property that may be taxed for school purposes, its use of bonding capacity, and the nature and severity of its need for funds.

Since the statute requires applicants to apply for funds, the Department would not be able to award these funds without the application to collect the required information.

We collect information only once for each school for which the applicant seeks funds. We estimate annual reporting and recordkeeping burden for this collection of information to average 3.3 hours for each respondent for 250 applicants, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, we estimate the total annual reporting and recordkeeping burden for this collection to be 1,453.5 hours.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **FOR FURTHER INFORMATION** section of this preamble.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

Your comments will be considered for the FY 2003 competition. To ensure that OMB gives your comments full consideration, we ask that you send comments concerning the collection of information contained in these regulations between 30 and 60 days after publication of this document in the **Federal Register**.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34

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CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in PDF at the following site: *http://www.ed.gov/offices/OESE/ImpactAid/.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.041C Impact Aid Discretionary Construction Grants.)

List of Subjects in 34 CFR Part 222

Education, Education of children with disabilities, Educational facilities, Elementary and secondary education, Federally affected areas, Grant programs—education, Indians—education, Public housing, Reporting and recordkeeping requirements, School construction, Schools.

Dated: August 8, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by adding a new subpart L to part 222 to read as follows:

PART 222—IMPACT AID PROGRAMS

1. The authority citation for part 222 continues to read as follows:

Authority: 20 U.S.C. 7701–7714, unless otherwise noted.

2. Add subpart L to part 222 to read as follows:

Subpart L—Impact Aid Discretionary Construction Grant Program Under Section 8007(b) of the Act

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Sec.
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222.173 What activities are prohibited?
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Authority: 20 U.S.C. 7701–7714, unless otherwise noted.

General

§ 222.170 What is the purpose of the Impact Aid Discretionary Construction grant program (Section 8007(b) of the Act)?

The Impact Aid Discretionary Construction grant program provides competitive grants for emergency repairs and modernization of school facilities to certain eligible local educational agencies (LEAs) that receive Impact Aid funds.

(Authority: 20 U.S.C. 7707(b))

§ 222.171 In general, what LEAs may be eligible for Discretionary Construction grants?

(a) Applications for these grants are considered in four funding priority categories. Complete information about the specific requirements for each priority is detailed in §§ 222.177 through 222.182.

(b)(1) Generally, to be eligible for an emergency construction grant, an LEA must—

(i) Enroll a high proportion (at least 40 percent) of federally connected children in average daily attendance (ADA) who reside on Indian lands or who reside on Federal property and have a parent on active duty in the U.S. uniformed services;

(ii) Have a school that enrolls a high proportion of one of these types of students;

(iii) Be eligible for funding for heavily impacted LEAs under section 8003(b)(2) of the Act; or

(iv) Meet specific numeric requirements regarding bonding capacity.

(2) The Secretary must also consider such factors as an LEA's total assessed value of real property that may be taxed for school purposes, its availability and use of bonding capacity, and the nature and severity of the emergency.

(c)(1) Generally, to be eligible for a modernization construction grant, an LEA must—

(i) Be eligible for Impact Aid funding under either section 8002 or 8003 of the Act;

(ii) Be eligible for funding for heavily impacted LEAs under section 8003(b)(2) of the Act;

(iii) Enroll a high proportion (at least 40 percent) of federally connected children in ADA who reside on Indian lands or who reside on Federal property and have a parent on active duty in the U.S. uniformed services;

(iv) Have a school that enrolls a high proportion of one of these types of students;

(v) Meet specific numeric requirements regarding bonding capacity; or

(vi) Be eligible for funding under section 8002 of the Act (payments for Federal property).

(2) The Secretary must also consider such factors as an LEA's total assessed value of real property that may be taxed for school purposes, its availability and use of bonding capacity, and the nature and severity of its need for modernization funds.

(Authority: 20 U.S.C. 7707(b))

§ 222.172 What activities may an LEA conduct with funds received under this program?

(a) Except as provided in paragraph (c) of this section, an LEA may use emergency grant funds received under this program only to repair, renovate, or alter a public elementary or secondary school facility used for free public education to ensure the health, safety, and well-being of students and personnel.

(b) Except as provided in paragraph (c) of this section, an LEA may use modernization grant funds received under this program only to repair, renovate, alter, or extend a public elementary or secondary school facility used for free public education to provide school facilities that support a contemporary educational program for the LEA's students at normal capacity, and in accordance with the laws, standards, or common practices in the LEA's State.

(c)(1) An emergency or modernization grant under this program may be used for the construction of a new school facility but only if the Secretary determines—

(i) That the LEA holds title to the existing facility for which funding is requested; and

(ii) In consultation with a grantee, that partial or complete replacement of the facility would be less expensive or more cost-effective than improving the existing facility.

(2) When construction of school facilities is permitted, emergency and modernization funds may be used for new school facilities that are used for free public education. This may include the—

(i) Construction of instructional, resource, food service, and general or administrative support areas, so long as they are a part of the instructional facility; and

(ii) Purchase of initial equipment, machinery, and initial utility connections.

(Authority: 20 U.S.C. 7707(b))

§ 222.173 What activities are prohibited?

The Secretary does not fund the following activities under this grant:

(a) Improvements on facilities for which the LEA does not have full title or other interest.

(b) Repair, renovation, alteration or construction for stadiums or other facilities that are primarily used for athletic contests, exhibitions, and other events for which admission is charged to the general public.

(c) Except in the limited circumstances as provided in § 222.172(c), when new construction is permissible, acquisition of any interest in real property.

(d) Maintenance costs associated with any of an LEA's school facilities.

(Authority: 20 U.S.C. 7707(b))

§ 222.174 What other prohibitions apply to these funds?

Grant funds under this program may not be used to supplant or replace other available non-Federal construction money. These grant funds may be used for emergency or modernization activities only to the extent that they supplement the amount of construction funds that would, in the absence of these grant funds, be available to a grantee from non-Federal funds for these purposes. Examples follow:

Example 1. "Supplanting": An LEA signs a contract for a $300,000 roof replacement and plans to use its capital expenditure fund to pay for the renovation. Since the LEA already has non-Federal funds available for the roof project, it may not now use a grant from this program to pay for the project or replace its own funds in order to conserve its capital fund.

Example 2. "Non-supplanting": The LEA above that has the $300,000 roof commitment has also received a $400,000 estimate for the replacement of its facility's heating, ventilation, and air conditioning (HVAC) system. The LEA has not made any commitments for the HVAC system because it has no remaining funds available to pay for that work. Since other funds are not available, it would not be supplanting if the LEA received an emergency grant under this program to pay for the HVAC system.

(Authority: 20 U.S.C. 7707(b))

§ 222.175 What regulations apply to recipients of funds under this program?

The following regulations apply to the Impact Aid Discretionary Construction program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 75 (Direct Grant Programs) except for 34 CFR 75.600 through 75.617.

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in 34 CFR part 222, including subpart L.

(Authority: 20 U.S.C. 1221e–3)

§ 222.176 What definitions apply to this program?

(a) In addition to the terms referenced in 34 CFR § 222.2, the following definitions apply to this subpart:

Bond limit means the cap or limit that a State may impose on an LEA's capacity for bonded indebtedness. For applicants in States that place no limit on an LEA's capacity for bonded indebtedness, the Secretary shall consider the LEA's bond limit to be ten percent of its total assessed valuation.

Construction means:

(1) Preparing drawings and specifications for school facilities;

(2) Repairing, renovating, or altering school facilities;

(3) Extending school facilities as described in § 222.172(b);

(4) Erecting or building school facilities, as described in 222.172(c); and

(5) Inspections or supervision related to school facilities projects.

Emergency means a school facility condition that is so injurious or hazardous that it either poses an immediate threat to the health and safety of the facility's students and staff or can be reasonably expected to pose such a threat in the near future. These conditions can include the need to repair, replace, or install: a roof; electrical wiring; a plumbing or sewage system; or heating, ventilation, or air conditioning; or to bring a school facility into compliance with fire and safety codes.

Level of bonded indebtedness means the amount of long-term debt issued by an LEA divided by the LEA's bonding capacity.

Minimal capacity to issue bonds means that the total assessed value of

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real property in an LEA that may be taxed for school purposes is at least $25,000,000 but not more than $50,000,000.

Modernization means the repair, renovation, alteration, or extension of a public elementary or secondary school facility in order to support a contemporary educational program for an LEA's students in normal capacity, and in accordance with the laws, standards or common practices in the LEA's State.

No practical capacity to issue bonds means that the total assessed value of real property in an LEA that may be taxed for school purposes is less than $25,000,000.

Total assessed value per student means the assessed valuation of real property per pupil (AVPP), unless otherwise defined by an LEA's State.

(Authority: 20 U.S.C. 7707(b))

(b) *Definitions in EDGAR.* The following terms used in this subpart are defined or referenced in 34 CFR 77.1:

Applicant
Application
Award
Contract
Department
EDGAR
Equipment
Facilities
Fiscal year
Grant
Grantee
Project
Public
Real property
Recipient

(Authority: 20 U.S.C. 7707(b) and 1221e–3)

Eligibility

§ 222.177 What eligibility requirements must an LEA meet to apply for an emergency grant under the first priority?

An LEA is eligible to apply for an emergency grant under the first priority of section 8007(b) of the Act if it—

(a) Is eligible to receive formula construction funds for the fiscal year under section 8007(a) of the Act;

(b)(1) Has no practical capacity to issue bonds;

(2) Has minimal capacity to issue bonds and has used at least seventy-five percent of its bond limit; or

(3) Is eligible to receive funds for the fiscal year for heavily impacted districts under section 8003(b)(2) of the Act; and

(c) Has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel.

(Authority: 20 U.S.C. 7707(b))

§ 222.178 What eligibility requirements must an LEA meet to apply for an emergency grant under the second priority?

Except as provided in § 222.179, an LEA is eligible to apply for an emergency grant under the second priority of section 8007(b) of the Act if it—

(a) Is eligible to receive funds for the fiscal year under section 8003(b) of the Act;

(b)(1) Has federally connected children living on Indian lands equal to at least 40 percent of the total number of children in average daily attendance (ADA) in its schools; or

(2) Has federally connected children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA in its schools;

(c) Has used at least seventy-five percent of its bond limit;

(d) Has an average per student assessed value of real property taxable for school purposes that is below its State average; and

(e) Has a school facility emergency that the Secretary has determined is a health or safety hazard to students and school personnel.

(Authority: 20 U.S.C. 7707(b))

§ 222.179 Under what circumstances may an ineligible LEA apply on behalf of a school for an emergency grant under the second priority?

An LEA that is eligible to receive section 8003(b) assistance for the fiscal year but that does not meet the other eligibility criteria described in § 222.178(a) or (b) may apply on behalf of a school located within its geographic boundaries for an emergency grant under the second priority of section 8007(b) of the Act if—

(a) The school—

(1) Has children living on Indian lands equal to at least 40 percent of the total number of children in ADA; or

(2) Has children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA;

(b) The school has a school facility emergency that the Secretary has determined is a health or safety hazard to students and school personnel;

(c) The LEA has used at least 75 percent of its bond limit; and

(d) The LEA has an average per-student assessed value of real property that may be taxed for school purposes that is below its State average.

(Authority: 20 U.S.C. 7707(b))

§ 222.180 What eligibility requirements must an LEA meet to apply for a modernization grant under the third priority?

An LEA is eligible to apply for a modernization grant under the third priority of section 8007(b) of the Act if it—

(a) Is eligible to receive funds for the fiscal year under section 8002 or 8003(b) of the Act;

(b)(1) Has no practical capacity to issue bonds;

(2) Has minimal capacity to issue bonds and has used at least 75 percent of its bond limit; or

(3) Is eligible to receive funds for the fiscal year for heavily impacted districts under section 8003(b)(2) of the Act, and

(c) Has facility needs resulting from the presence of the Federal Government, such as the enrollment of federally connected children, the presence of Federal property, or an increase in enrollment due to expanded Federal activities, housing privatization, or the acquisition of Federal property.

(Authority: 20 U.S.C. 7707(b))

§ 222.181 What eligibility requirements must an LEA meet to apply for a modernization grant under the fourth priority?

An LEA is eligible to apply for a modernization grant under the fourth priority of section 8007(b) of the Act if it—

(a)(1) Is eligible to receive funds for the fiscal year under section 8003(b) of the Act; and

(i) Has children living on Indian lands equal to at least 40 percent of the total number of children in ADA in its schools; or

(ii) Has children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA in its schools; or

(2) Is eligible to receive assistance for the fiscal year under section 8002 of the Act;

(b) Has used at least 75 percent of its bond limit;

(c) Has an average per-student assessed value of real property that may be taxed for school purposes that is below its State average; and

(d) Has facility needs resulting from the presence of the Federal Government, such as the enrollment of federally connected children, the presence of Federal property, or an increase in enrollment due to expanded Federal activities, housing privatization, or the acquisition of Federal property.

(Authority: 20 U.S.C. 7707(b))

§ 222.182 Under what circumstances may an ineligible LEA apply on behalf of a school for a modernization grant under the fourth priority?

An LEA that is eligible to receive a payment under Title VIII for the fiscal year but that does not meet the other eligibility criteria described in § 222.181 may apply on behalf of a school located within its geographic boundaries for a modernization grant under the fourth priority of section 8007(b) of the Act if—

(a) The school—

(1)Has children living on Indian lands equal to at least 40 percent of the total number of children in ADA; or

(2) Has children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA;

(b) The LEA has used at least 75 percent of its bond limit;

(c) The LEA has an average per-student assessed value of real property taxable for school purposes that is below its State average; and

(d) The school has facility needs resulting from the presence of the Federal Government, such as the enrollment of federally connected children, the presence of Federal property, or an increase in enrollment due to expanded Federal activities, housing privatization, or the acquisition of Federal property.

(Authority: 20 U.S.C. 7707(b))

How To Apply for a Grant

§ 222.183 How does an LEA apply for a grant?

(a) To apply for funds under this program, an LEA may submit more than one application in a fiscal year. Examples follow:

Example 1: An LEA would submit two applications if it wants to receive both an emergency and a modernization grant for one particular school facility.

Example 2: If an LEA has five schools and seeks emergency grants to replace a roof and a boiler in one school and to replace windows in a second school, it should submit two applications'one for each of the two school facilities that the LEA wants to renovate.

(b) An application must—

(1) Contain the information required in §§ 222.184 through 222.186, as applicable, and in a **Federal Register** closing date notice that the Secretary will publish; and

(2) Be timely filed in accordance with the provisions of the Secretary's published closing date notice.

(Approved by the Office of Management and Budget under control number 1810–0657)

(Authority: 20 U.S.C. 7707(b))

§ 222.184 What information must an application contain?

An application for an emergency or modernization grant must contain the following:

(a) The name of the school facility the LEA is proposing to repair, construct, or modernize.

(b)(1) For an applicant under section 8003(b) of the Act, the number of federally connected children described in section 8003(a)(1) enrolled in the school facility for which the LEA is seeking a grant; or

(2) For an applicant under section 8002 of the Act, the total enrollment (based on the fall State count date) for the preceding year in the LEA and in the school facility for which the LEA is seeking a grant.

(c) An identification of the LEA's interest in, or authority over, the school facility involved, such as an ownership interest or a lease arrangement.

(d) The original construction date of the school facility that the LEA proposes to renovate or modernize.

(e) The dates of any major renovations of that school facility and the areas of the school covered by the renovations.

(f) The proportion of Federal acreage within the LEA.

(g) Fiscal data including the LEA's—

(1) Maximum bonding capacity;

(2) Amount of bonded debt;

(3) Total assessed value of real property for school purposes;

(4) State average assessed value per-pupil of real property that was taxed for school purposes;

(5) Local real property tax levy, in mills or dollars, that was used for capital expenditures; and

(6) Sources of funds available for the proposed project.

(h) A description of the need for funds and the proposed project for which a grant under this subpart would be used, including a cost estimate for the project.

(i) Applicable assurances and certifications identified in the approved grant application package.

(Approved by the Office of Management and Budget under control number 1810–0657)

(Authority: 20 U.S.C. 7707(b))

§ 222.185 What additional information must be included in an emergency grant application?

In addition to the information specified in § 222.184, an application for an emergency grant must contain the following:

(a)A description of the deficiency that poses a health or safety hazard to occupants of the facility.

(b) A description of how the deficiency adversely affects the occupants and how it will be repaired.

(c)(1) A statement signed by an appropriate local official, as defined below, that the deficiency threatens the health and safety of occupants of the facility or prevents the use of the facility.

(2) An appropriate local official may include a fire marshal, city zoning official, State building inspector, military installation official, Indian Health Service official, contractor, or other individual who is responsible for inspecting school facilities and identifying the health and safety deficiencies. An appropriate local official may not include a staff person or other individual associated with an applicant LEA.

(Approved by the Office of Management and Budget under control number 1810–0657)

(Authority: 20 U.S.C. 7707(b))

§ 222.186 What additional information must be included in a modernization grant application?

In addition to the information specified in § 222.184, an application for a modernization grant must contain a description of—

(a) The need for modernization; and

(b) How the applicant will use funds received under this program to address it.

(Approved by the Office of Management and Budget under control number 1810–0657)

(Authority: 20 U.S.C. 7707(b))

§ 222.187 Which year's data must an SEA or LEA provide?

(a) Except as provided in paragraph (b) of this section, the Secretary will determine eligibility under this discretionary grant program based on student and fiscal data for each local educational agency from the fiscal year preceding the fiscal year for which the applicant is applying for funds.

(b) If satisfactory fiscal data are not available from the preceding fiscal year, the Secretary will use data from the most recent fiscal year for which data that are satisfactory to the Secretary are available.

How Grants Are Made

§ 222.188 What priority may the Secretary establish?

In any given year, the Secretary may assign extra weight for certain systems or emergency and modernization conditions by identifying the systems or conditions and their assigned weights in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 7707(b))

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§ 222.189 What funding priority does the Secretary give to applications?

(a) Except as provided in paragraph (b) of this section, the Secretary gives funding priority to applications in the following order:

(1) First priority is given to applications described under § 222.177 and, among those applicants for emergency grants, priority is given to applications based on a rank order of the application quality factors referenced in § 222.190, including the severity of the emergency.

(2) After all eligible first-priority applications are funded, second priority is given to applications described under §§ 222.178 and 222.179 and, among those applicants for emergency grants, priority is given to applications based on a rank order of the application quality factors referenced in § 222.190, including the severity of the emergency.

(3) Third priority is given to applications described under § 222.180 and, among those applicants for modernization grants, priority is given to applications based on a rank order of the application quality factors referenced in § 222.190, including the severity of the need for modernization.

(4) Fourth priority is given to applications described under §§ 222.181 and 222.182 and, among those applicants for modernization grants, priority is given to applications based on a rank order of the application quality factors referenced in § 222.190, including the severity of the need for modernization.

(b)(1) The Secretary makes awards in each priority described above until the Secretary is unable to make an approvable award in that priority.

(2) If the Secretary is unable to fund a full project or a viable portion of a project, the Secretary may continue to fund down the list of high-ranking applicants within a priority.

(3) The Secretary applies any remaining funds to awards in the next priority.

(4) If an applicant does not receive an emergency or modernization grant in a fiscal year, the Secretary will, subject to the availability of funds and to the priority and award criteria, consider that application in the following year along with the next fiscal year's pool of applications. An example follows:

Example: The first five applicants in priority one have been funded. Three hundred thousand dollars remain available. Three unfunded applications remain in that priority. Application #6 requires a minimum of $500,000, application #7 requires $400,000, and application #8 requires $300,000 for a new roof and $150,000 for related wall and ceiling repairs. Applicant #8 agrees to accept the remaining $300,000 since the roof upgrade can be separated into a viable portion of applicant #8's total project. Applications #6 and #7 will be retained for consideration in the next fiscal year and will compete again with that fiscal year's pool of applicants. Applicant #8 will have to submit a new application if it wishes to be considered for the unfunded portion of the current year's application.

(Authority: 20 U.S.C. 7707(b))

§ 222.190 How does the Secretary rank and select applicants?

(a) To the extent consistent with these regulations and section 8007(b) of the Act, the Secretary will follow grant selection procedures that are specified in 34 CFR §§ 75.215 through 75.222. In general these procedures are based on the authorizing statute, the selection criteria, and any priorities or other applicable requirements that have been published in the **Federal Register**.

(b) In the event of ties in numeric ranking, the Secretary may consider as tie-breaking factors: the severity of the emergency or the need for modernization; for applicants under section 8003 of the Act, the numbers of federally connected children who will benefit from the project; or for applicants under section 8002 of the Act, the numbers of children who will benefit from the project; the assessed valuation of real property per student compared to the LEA's State average; and available resources or non-Federal funds available for the grant project.

(Authority: 20 U.S.C. 7707(b))

§ 222.191 What is the maximum award amount?

(a) Subject to any applicable contribution requirements as described in §§ 222.192 and 222.193, the procedures in §§ 75.231 through 75.236, and the provisions in paragraph (b) of this section, the Secretary may fund up to 100 percent of the allowable costs in an approved grantee's proposed project.

(b) An award amount may not exceed the difference between—

(1) The cost of the proposed project; and

(2) The amount the grantee has available or will have available for this purpose from other sources, including local, state, and other Federal funds.

(Authority: 20 U.S.C. 7707(b))

§ 222.192 What local funds may be considered as available for this project?

To determine the amount of local funds that an LEA has available under § 222.191(b)(2) for a project under this program, the Secretary will consider as available all LEA funds that may be used for capital expenditures except $100,000 or ten percent of the average annual capital expenditures of the applicant for three previous fiscal years, whichever is greater.

(Authority: 20 U.S.C. 7707(b))

§ 222.193 What other limitations on grant amounts apply?

(a) Except as provided in paragraph (b) of this section and § 222.191, the amount of funds provided under an emergency grant or a modernization grant awarded under this subsection to an eligible LEA is subject to the following limitations:

(1) The award amount may not be more than 50 percent of the total cost of an approved project.

(2) The total amount of grant funds may not exceed four million dollars during any four-year period. An example follows:

Example: An LEA that is awarded $4 million dollars in the first year may not receive any additional funds for the following three years.

(b) Emergency or modernization grants to LEAs with no practical capacity to issue bonds as defined in § 222.176 are not subject to the award limitations described in paragraph (a) of this section.

(Authority: 20 U.S.C. 7707(b))

§ 222.194 Are "in-kind" contributions permissible?

(a) LEAs that are subject to the applicable matching requirement described in § 222.193(a) may use allowable third party in-kind contributions as defined below to meet the requirements.

(b) Third party in-kind contributions mean property or services that benefit this grant program and are contributed by non-Federal third parties without charge to the grantee or a cost-type contractor under the grant agreement.

(c) The provisions of 34 CFR 80.24 govern the allowability and valuation of in-kind contributions, except that it is permissible for a third party to contribute real property to a grantee for a project under this program, so long as no Federal funds are spent for the acquisition of real property.

(Authority: 20 U.S.C. 7707(b))

Conditions and Requirements Grantees Must Meet

§ 222.195 How does the Secretary make funds available to grantees?

The Secretary makes funds available to a grantee during a project period using the following procedure:

(a) Upon final approval of the grant proposal, the Secretary makes available 10 percent of the total award amount to the grantee.

(b) After the grantee submits a copy of the emergency or modernization contract approved by the grantee's governing board, the Secretary makes available 80 percent of the total award amount to a grantee.

(c) The Secretary makes available up to the remaining 10 percent of the total award amount to the grantee after the grantee submits a statement that—

(1) Details any earnings, savings, or interest;

(2) Certifies that—

(i) The project is fully completed; and

(ii) All the awarded funds have been spent for grant purposes; and

(3) Is signed by the—

(i) Chairperson of the governing board;

(ii) Superintendent of schools; and

(iii) Architect of the project.

(Authority: 20 U.S.C. 7707(b))

§ 222.196 What additional construction requirements apply?

(a) Except as provided in paragraph (b) of this section, a grantee under this program must comply with—

(1) The general construction legal requirements identified in the grant application assurances;

(2) The prevailing wage standards in the grantee's locality that are established by the Secretary of Labor in accordance with the Davis-Bacon Act (40 USCA 276a, *et seq.*); and

(3) All relevant Federal, state, and local environmental laws and regulations.

(b) A grantee that qualifies for a grant because it enrolls a high proportion of federally connected children who reside on Indian lands is considered to receive a grant award primarily for the benefit of Indians and must therefore comply with the Indian preference requirements of section 7(b) of the Indian Self-Determination Act.

(Authority: 20 U.S.C. 7707(b) and 1221e–3)

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Part IV

Department of the Interior

Fish and Wildlife

50 CFR Part 20
Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI30

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 2002–03 late-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

DATES: You must submit comments on the proposed migratory bird hunting late-season frameworks by August 30, 2002.

ADDRESSES: Send your comments on these proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634-Arlington Square, 1849 C Street, NW, Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Acting Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2002

On March 19, 2002, we published in the **Federal Register** (67 FR 12501) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2002–03 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 11, 2002, we published in the **Federal Register** (67 FR 40128) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 2002–03 duck hunting season. The June 11 supplement also provided detailed information on the 2002–03 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

On June 19–20, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2002–03 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2002–03 regular waterfowl seasons. On July 17, we published in the **Federal Register** (67 FR 47224) a third document specifically dealing with the proposed frameworks for early-season regulations and the final regulatory alternatives for the 2002–03 duck hunting season. We will publish a rulemaking establishing final frameworks for early-season migratory bird hunting regulations for the 2002–03 season in late August.

On July 31 and August 1, 2002, we held open meetings with the Flyway Council Consultants at which the participants reviewed the status of waterfowl and developed recommendations for the 2002–03 regulations for these species. This document deals specifically with proposed frameworks for the late-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours, areas, and limits.

We have considered all pertinent comments received through August 1, 2002, in developing this document. In addition, new proposals for certain late-season regulations are provided for public comment. Comment periods are specified above under **DATES**. We will publish final regulatory frameworks for late-season migratory game bird hunting in the **Federal Register** on or about September 16, 2002.

Population Status and Harvest

The following paragraphs provide a brief summary of information on the status and harvest of waterfowl excerpted from various reports. For more detailed information on methodologies and results, complete copies of the various reports are available at the address indicated under the caption **ADDRESSES** or from our website at *http://migratorybirds.fws.gov*.

Status of Ducks

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft and encompass principal breeding areas of North America, and cover over 2.0 million square miles. The Traditional survey area is comprised of Alaska, Canada, and the northcentral U.S., and includes approximately 1.3 million square miles. The Eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Breeding Ground Conditions

In summary, below average winter and spring precipitation in the prairies and parklands and cold spring temperatures in eastern North America resulted in generally poorer habitat conditions for breeding waterfowl this year than in 2001. Dry conditions were reflected in the number of ponds counted this year. Total May ponds (U.S. prairies and Canadian prairies and parkland combined) were 2.7 ± 0.1 million, which is the second lowest count recorded since this estimate was first calculated in 1974, when this estimate was first recorded, 41% below last year's estimate of 4.6 ± 0.1 million, and 45% below the long-term average. This value was 41% below last year's estimate of 4.6 ± 0.1 million, and 45% below the long-term average (4.9 ± 0.1 million). May ponds in Canada (1.4 ± 0.1 million) and the U.S. (1.3 ± 0.1 million) were below 2001 estimates (−48% in Canada and −32% in the U.S) and their long-term averages (−58% in Canada and −16% in the U.S). Canadian May ponds were the lowest recorded since surveys began in 1961.

In both the traditional (northcentral United States, western Ontario, prairie Provinces and States, Yukon, Northwest Territories, and Alaska) and eastern survey areas (the northeastern United States, eastern Ontario, Quebec, and the Canadian Maritimes), most regions entered into the spring of 2002 with a water deficit remaining from winter.

Spring rains helped recharge wetlands in most of the Northeast, but conditions remained very dry in the West. Western Montana, southern Saskatchewan, and much of southern Manitoba and southern and central Alberta were hardest hit by drought. Fewer ponds available to nesting birds caused crowding on remaining ponds. Relative to other parts of the prairies, the Dakotas were fair. Permanent wetlands remained in good condition following the wet period of 1993–2001. However survey results suggest that many prairie-nesting species such as mallards, shovelers, pintails, and blue-winged teal, flew over the prairies and parklands to the boreal forest, where wetland conditions are more stable. Cold spring temperatures also negatively affected nesting waterfowl this year. Winter-like conditions hit the entire surveyed area in early May, when snowstorms and cold temperatures caused birds to halt migration for several weeks. Snow and cold may have caused some nest loss in the prairies and parklands. Spring ice break-up was several weeks late over many of the northern survey areas. Break-up was so late in parts of the Northeast that biologists predicted little nesting activity in these areas. Conditions in northern Canada were generally good, but cold temperatures likely had a negative impact on early nesting species such as mallards, green-winged teal, and pintails.

The only region where habitat conditions for breeding waterfowl improved over last year was Alaska, due to warmer post-thaw temperatures than last year. However, rapid ice melt may have caused flooding of nests in parts of Alaska as well as Labrador.

Weather and habitat conditions during the summer months can influence waterfowl production. Good wetland conditions increase renesting and brood survival. During late May and early June, many parts of the prairies, including Montana, the western Dakotas, and southern Saskatchewan and Alberta received substantial precipitation. Though this late rain and snow may have encouraged good reproductive effort by late-nesting species such as gadwall, many of the earlier nesting ducks likely bypassed the prairies altogether. For those ducks that did nest, this late water should improve brood-rearing conditions, as brood and duckling survival tends to increase with higher wetland densities. Results of the July Production Survey indicate that the number of ponds in Prairie Canada and the north-central U.S. combined was 1.8 ± 0.1 million ponds. This was 36% below last year's estimate of 2.9 ± 0.1 million ponds, and 33% below the long-term average. July ponds in Prairie Canada were at 1.0 ± 0.1 million. This was 46% below last year's estimate of 1.8 ± 0.07 million and 43% below the long-term average. July ponds in the north-central U.S. were estimated at 0.84 ± 0.04 million. This was 19% below last year's estimate of 1.0 ± 0.06 million, but similar to the long-term average.

Breeding waterfowl habitat conditions in the eastern survey area were highly variable, but all areas experienced a warm, dry winter. In the New York, Eastern Ontario and Southern Quebec survey area the winter of 2001–2002 was warm and dry, and drought conditions persisted throughout much of this region. Waterfowl returned early to this region, but early spring habitat conditions were poor. However, several weeks before and during surveys, cooler temperatures and increased precipitation were the rule, and wetland habitat conditions greatly improved. A similar weather pattern was reported for western Ontario. Maine and the southern Maritimes experienced a warm, dry winter, and above normal temperatures and precipitation in early spring that produced good to excellent conditions for breeding ducks. By contrast, Newfoundland and Labrador experienced a late, cool spring. In Newfoundland, temperatures moderated and good waterfowl production was expected, but extended cold, stormy weather in Labrador made for poor nesting conditions.

Breeding Population Status

In the traditional survey area, total duck abundance was 31.2 ± 0.5 million birds. This was 14% below last year's estimate of 36.1 ± 0.6 million birds, and 6% below the long-term (1955–2001) average. Mallard abundance was 7.5 ± 0.2 million, similar to the 2001 estimate of 7.9 ± 0.2 million, and essentially identical to the long-term average. Blue-winged teal abundance was 4.2 ± 0.2 million, which was 27% below last year's estimate of 5.8 ± 0.3 million, but similar to the long-term average. Gadwall (2.2 ± 0.1 million, −17%), shovelers (2.3 ± 0.1 million, −30%), and pintails (1.8 ± 0.1 million, −46%) were below 2001 estimates. Wigeon (2.3 ± 0.1 million), green-winged teal (2.3 ± 0.1 million), redheads (0.6 ± 0.1 million), canvasbacks (0.5 ± 0.1 million), and scaup (3.5 ± 0.2 million) were unchanged from 2001 estimates. Gadwall (+37%), green-winged teal (+28%), and shovelers (+10%) all remained above their long-term averages, whereas wigeon (−12%), pintail (−58%), canvasback (−14%), and scaup numbers (−34%) were below long-term averages. Northern pintails and scaup were the lowest and second lowest counts on record, respectively. The redhead estimate was similar to the long-term average.

In the eastern survey area, the 2002 total duck population estimate for this area was 4.4 ± 0.3 million birds, 32% higher than last year's (3.3 ± 0.3 million), and 41% higher than the 1996–2001 average. Numbers of most individual species were similar to those of last year, with the exception of mergansers (0.8 ± 0.1 million, +90%) and green-winged teal (0.7 ± 0.1 million, +174%), which increased compared to last year. Mergansers (+68%) and green-winged teal (+102%) were also above their 1996–2001 averages, as were scoters (0.3 ± 0.1 million, +178%). Estimates for all other species were similar to last year's estimates and to long-term averages.

Breeding Activity and Production

The number of broods in the north-central U.S. and Prairie Canada combined was 352,600, 35% lower than last year's estimate, and 25% below the long-term average. The number of broods in Prairie Canada and the North-central U.S. were 54% and 37% below last year's estimates, respectively. Brood indices in Prairie Canada were 69% below the long-term average, while brood counts were 12% above the long-term average in the north-central U.S. The brood index in the Canadian boreal forest was 21% higher than last year's, but 16% below the long-term average. The late-nesting index, the number of pairs and lone drakes without broods seen during July surveys, was 9% higher than last year, but 43% lower than the long-term average, for all areas combined. The late-nesting index was down 12% and 33% relative to last year in boreal Canada and the north-central U.S., respectively, but up 32% in Prairie Canada, perhaps reflecting late rains there. However, the late nesting index was below the long-term average by more than 60% in boreal Canada and the north-central U.S., and by 24% in prairie Canada.

Fall Flight Estimate

The size of the mid-continent mallard population, which is comprised of mallards from the traditional survey area, plus Michigan, Minnesota, and Wisconsin, was 8.5 million birds. This is similar to that of 2001 (8.7 million). The 2002 mid-continent mallard fall-flight estimate is 8.9 million birds, statistically similar to the 2001 estimate of 9.7 million birds. These estimates were based on revised mid-continent mallard population models, and

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therefore, differ from those previously published.

See section 1.B. Regulatory Alternatives for further discussion on the implications of this information for this year's selection of the appropriate hunting regulations.

Status of Geese and Swans

We annually assess the population status and productivity of 30 populations of North American Canada geese (*Branta canadensis*), brant (*B. bernicla*), snow geese (*Chen caerulescens*), Ross's geese (*C. rossii*), emperor geese (*C. canagicus*), white-fronted geese (*Anser albifrons*) and tundra swans (*Cygnus columbianus*). Reproductive performance of several goose populations likely were impacted by colder and dryer than average conditions during spring migration in 2002. The timing of snowmelt in most areas of the Arctic was near average, but arrival to nesting areas and initiation of nesting for many goose populations were delayed by adverse migration conditions. In the Hudson Bay Lowlands and northern Quebec, a cold and snowy May delayed nesting and reduced production for several populations. Throughout most of Alaska, Wrangel Island, and the northwestern Canadian mainland the timing of snowmelt was early and conditions for nesting geese and swans were very favorable. Of the 25 populations for which current primary population indices were available, 11 populations (Atlantic Population, Aleutian, and 4 resident populations of Canada geese; greater snow geese; Pacific and Mid-continent White-fronted Goose Populations; Atlantic brant; and Eastern Population tundra swans) displayed positive trends, and only Short Grass Prairie Population Canada geese displayed a significant negative trend over the most recent 10-year period. Forecasts for production of young across the Arctic and subarctic in 2002 varied regionally, but generally will be improved in western areas and reduced in eastern areas compared to 2001.

Waterfowl Harvest and Hunter Activity

During the 2001–02 hunting season, duck stamp sales in 2001 were slightly below sales in 2000. United States waterfowl hunters hunted about 8% more days and bagged about 9% fewer ducks, 5% more geese and 27% fewer coots than in 2000. Duck stamp sales totaled 1,659,485 (slight decrease) and 13,933,700 ducks (−9%), 3,225,300 geese (+5%), and 142,700 coots (−27%) were harvested during 14,999,000 hunter-days (+8%). Persons buying duck stamps for hunting averaged 8.8 days afield (+8%) and bagged an average of 8.4 ducks (−9%) and 2.0 geese (+6%) each. The five most commonly harvested duck species were mallard (37%), gadwall (11%), green-winged teal (10%), blue-winged/cinnamon teal (9%), and wood duck (8%).

In the Atlantic Flyway, duck stamp sales totaled 310,092 (+1% from 2000), and 1,626,300 ducks (−13%), 612,100 geese (+40%), and 12,100 coots (−37%) were harvested during 2,269,600 hunter-days (+9%). Persons buying duck stamps for hunting averaged 7.5 days afield (+6%) and bagged an average of 6.0 ducks (−14%) and 2.1 geese (+34%) each. The three most commonly harvested duck species in 2001 were mallard (25%), wood duck (22%), and green-winged teal (9%).

In the Mississippi Flyway, duck stamp sales totaled 739,387 (−1%), and 6,630,900 ducks (−16%), 1,060,000 geese (−13%), and 103,700 coots (−21%) were harvested during 7,647,300 hunter-days (+8%). Persons buying duck stamps for hunting averaged 10.0 days afield (+8%) and bagged an average of 9.4 ducks (−15%) and 1.6 geese (−10%) each. The three most commonly harvested duck species were mallard (38%), gadwall (13%), and blue-winged teal (12%).

In the Central Flyway, duck stamp sales totaled 364,538 (+2%), and 3,446,500 ducks (+6%), 1,189,800 geese (+19%), and 15,100 coots (−42%) were harvested during 3,043,000 hunter-days (+15%). Persons buying duck stamps for hunting averaged 8.0 days afield (+12) and bagged an average of 7.7 ducks (+6%) and 3.1 geese (+22%) each. The three most commonly harvested duck species were mallard (38%), gadwall (16%), and green-winged teal (10%).

In the Pacific Flyway, duck stamp sales totaled 287,138 (+2%), and 2,168,200 ducks (−5%), 354,900 geese (−11%), and 11,800 coots (−35%) were harvested during 1,984,400 hunter-days (no change). Persons buying duck stamps for hunting averaged 8.1 days afield (+3%) and bagged an average of 9.3 ducks (−2%) and 1.5 geese (−9%) each. The three most commonly harvested duck species were mallard (44%), green-winged teal (14%) and wigeon (13%).

In Alaska, duck stamp sales totaled 10,068 (−1%), and 61,900 ducks (−12%) and 8,600 geese (+30%) were taken during 54,700 hunter-days (+3%). Persons buying duck stamps for hunting averaged 5.0 days afield (+3%) and bagged an average of 6.3 ducks (−8%) and 0.9 geese (+35%) each. The three most commonly harvested duck species were mallard (38%), wigeon (23%), and northern pintail (15%).

Review of Public Comments and Flyway Council Recommendations

The preliminary proposed rulemaking, which appeared in the March 19 **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the June 11 **Federal Register**, defined the public comment period for the proposed regulatory alternatives for the 2002–03 duck hunting season. The public comment period for the proposed regulatory alternatives ended June 21, 2002. Late-season comments and comments pertaining to the proposed alternatives are summarized below and numbered in the order used in the March 19 **Federal Register** document. We have included only the numbered items pertaining to late-season issues and the proposed regulatory alternatives for which we received written comments. Consequently, the issues do not follow in direct numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the March 19, 2002, **Federal Register** document.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

B. Regulatory Alternatives

Council Recommendations: The Atlantic Flyway Council and the Lower-Region Regulations Committee of the Mississippi Flyway Council recommended adoption of the "liberal" regulations package for duck hunting seasons in 2002–03.

The Upper-Region Regulations Committee of the Mississippi Flyway Council and the Pacific Flyway Council recommended adoption of the "moderate" regulations package for duck hunting seasons in 2002–03.

The Central Flyway Council recommended the adoption of the "liberal" regulatory package with the exception of the framework closing date. The Council recommended a framework closing date of the Sunday nearest January 20.

Service Response: Developing duck hunting regulations that are biologically sound and broadly supported by conservation professionals and the public is always a challenge. This year is especially challenging for a number of reasons:

(1) Water conditions in the important prairie nesting area of mid-continent North America have deteriorated dramatically from last year, and pond numbers in May in southern Canada were the lowest on record. However, duck breeding population estimates this spring declined only slightly, and remained near their long-term average.

(2) Some important revisions have been made this year to the Adaptive Harvest Management (AHM) protocols that are used to suggest the appropriate regulatory alternative. Most importantly, empirical corrections have been made for the positive bias in estimated growth rates of mid-continent and eastern mallards (for more details about these corrections, refer to the reports available on the AHM website at *http://migratorybirds.fws.gov*). Although there were initial indications of the bias in estimated growth rates of mid-continent mallards as early as the late 1970s, predictive population models were not used to help set hunting regulations. With the advent of AHM and the expanded use of population dynamic models to help recommend regulations, it has become necessary to correct these models for any source of bias. The bias-correction resulted in a slightly more conservative regulatory strategy (*i.e.*, the regulations prescribed for a range of population and pond levels) than used in the past for mid-continent mallards. However, correction for the bias would not have changed the selection of hunting regulations since 1995 because population and pond numbers were so high. The bias correction has had little effect on the outlook for regulations in the Atlantic Flyway, which are based on the status of eastern mallards. The source of the bias in mallard growth rates remains unknown, but monitoring programs used to estimate survival and reproductive rates are being carefully scrutinized.

(3) Earlier this year, we considered a number of possible changes to the set of regulatory alternatives (very restrictive, restrictive, moderate, and liberal) (see the July 17, 2002, **Federal Register**). The only change we adopted was an extension of opening and closing framework dates in the "moderate" and "liberal" regulatory alternatives. The initial prediction is that these extensions will cause harvest rates of mid-continent and eastern mallards to increase by 15% and 5%, respectively.

Drought conditions in key breeding areas, the correction for the positive bias in estimated growth rates of mallards, and framework-date extensions all tend to lead to more conservatism in hunting regulations through the AHM process. To assist the Service and Flyway Councils in developing a regulatory proposal for the 2002–03 season, the AHM Working Group derived an optimal AHM regulatory strategy for the three western Flyways (Mississippi, Central and Pacific Flyways). The strategy used the revised population models and associated model weights for mid-continent mallards, harvest and population objectives, and the 2002 regulatory alternatives specified in the July 17, 2002, **Federal Register**. Based on a mid-continent population size of 8.5 million mallards (traditional surveyed area plus the States of Minnesota, Michigan, and Wisconsin) and 1.44 million ponds in Prairie Canada, the AHM prescription for the Pacific, Central, and Mississippi Flyways in 2002 is the "liberal" alternative.

Similarly, the AHM Working Group calculated an optimal regulatory strategy for the Atlantic Flyway based on the revised population models and associated weights for eastern mallards, harvest objectives, and the regulatory alternatives specified in the July 17, 2002, **Federal Register**. Based on a breeding population size of 1.0 million eastern mallards, the AHM prescription for the Atlantic Flyway in 2002 is the "liberal" alternative.

Considering the low numbers of ponds in May, these results were somewhat unexpected. However, the weight of biological evidence suggests that mallards can support harvest rates associated with the 2002 "liberal" regulatory alternative (the observed harvest rate on adult male mid-continent mallards during the 2001–02 "liberal" season was 11%, and with framework-date extensions it is expected to be 14%). We are comfortable that most other duck species can also support the hunting opportunity afforded by the "liberal" regulatory alternative. Generally, harvest rates of most duck species are lower than those for mallards. Therefore, we are proposing the "liberal" regulatory alternative for all four Flyways (the details of Flyway-specific season lengths, bag limits, and framework dates are provided later in this document).

Nonetheless, it is increasingly apparent that the long-term success of AHM will depend heavily on our collective ability to account more rigorously for the harvest potentials of duck species other than mallards. This need is particularly evident in a year like this, when some species remain below objective levels and when production of most duck species is expected to be poor. Therefore, we believe that a general solution to this problem must be the highest priority of the AHM Working Group. In the meantime, we will not hesitate to take regulatory action to restrict hunting opportunities on species whose population status is of concern (*e.g.*, pintails, canvasbacks, black ducks, scaup). Such restrictive actions are being proposed this year for some duck species (see section D. Special Seasons/Species Management below for details).

With regard to the Central Flyway's recommendation to limit the framework-date extension to the earliest opening date, we note that the specifics of the regulatory alternatives were finalized in the July 17, 2002, **Federal Register**. One of the primary goals of AHM has been to establish these alternatives early in the year, so that debate in the late-season process can be focused solely on selection of an alternative.

D. Special Seasons/Species Management

iii. Black Ducks

Council Recommendations: The Atlantic Flyway Council recommended allowing States to increase the daily bag limit on black ducks to 2 per day for up to 30 consecutive hunting days, provided the black duck season is closed for an equivalent number of days. During the remainder of the season, the black duck bag daily bag limit would be 1 bird per day. Both two-bird bag days and closed days could be split into no more than two segments.

Service Response: We remain concerned about the status of black duck populations and believe the International Harvest strategy should be

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completed before other regulatory alternatives are implemented. Further, we do not support allowing regulatory options because of the difficulty in assessing whether or not these options are in fact harvest-neutral. This proposal would allow States, or portions of States, several different combinations of bag limits from 2 to 1 bird daily, and include a period of season closure. We believe this option would add considerable complexity (zones within States, combinations of days and bags, etc.) and greater uncertainty during a time in which framework dates have been extended. The effects of framework-date extensions are expected to result in some additional harvest. We do not have the necessary harvest monitoring in place to assess all aspects of this proposal, including possible changes in the harvest distribution of black ducks within the Atlantic Flyway. We suggest that the Atlantic Flyway work within the guidelines being developed by the International Harvest Strategy Working Group.

iv. Canvasbacks

Council Recommendations: All four Flyway Councils recommended that the Canvasback Harvest Management Strategy be changed so that hunting seasons would be open if the population model predicts a subsequent-year breeding population of 400,000 or more. The objectives from the 1994 strategy would be modified as follows:

1. the goal for the size of the breeding population should be 540,000 birds, consistent with the North American Waterfowl Management Plan,

2. the strategy should permit a greater possibility for a sustained sport harvest than has occurred recently using a closure threshold of 500,000, and

3. the amount of harvest in any one year should not result in a predicted spring population lower than 400,000, allowing harvest opportunity on this prairie nesting species at reasonable levels above and below long-term population levels.

4. full-length canvasback seasons with 1-bird limits should be offered to all flyways when the breeding population is predicted to be above the closure threshold; however, the option of abbreviated canvasback seasons within basic duck seasons should be considered when harvest reduction is likely to sustain the breeding population above 400,000 birds.

With the above changes in mind, the Atlantic Flyway Council recommended a limited canvasback hunting season of 20 days in the Atlantic Flyway, the Mississippi Flyway Council recommended a limited canvasback hunting season of 20 days in the Mississippi Flyway, the Central Flyway Council recommended a limited canvasback hunting season of 25 days in the Central Flyway, and the Pacific Flyway Council recommended a limited canvasback hunting season of 38 days in the Pacific Flyway during the 2002–03 season, with a daily bag limit of one bird per day.

Service Response: For canvasbacks, we continue to support the harvest strategy adopted by the Service in 1994, and believe that it should be used to guide seasons this year. The 2002 spring breeding population estimate was 487,000, which was lower than the objective level of 500,000. The number of ponds in prairie Canada was 1.44 million, the lowest recorded in the history of the survey. Because predicted production is directly proportional to the abundance of ponds in Canada in May, we expect recruitment to be among the lowest ever experienced. Even with no harvest during the 2002–03 season, the canvasback model predicts the spring population will be below 500,000 in 2003. Thus, we believe that the season on canvasbacks should be closed.

In review of canvasback management, it is clear that this species has some unique biological attributes that have resulted in a long history of special harvest-management considerations necessary to maintain the population at the desired level. Canvasbacks have low recruitment potential and are very sensitive to drought conditions.

Further, the current population objective of 500,000 has a long history. This level was first established in a 1976 Environmental Assessment. This objective was then used in the National Species of Special Emphasis document, the National Waterfowl Management Plan, and the most recent 1983 Environmental Assessment. We believe that the current goal of 500,000 has served us well in managing this population over the past three decades.

Last year, our objective was to allow some hunting opportunity while maintaining the 2002 spring population level above the 500,000 objective level. That objective was not achieved with a breeding population already below 500,000 and with a very poor production outlook, we believe a season closure this year is warranted.

v. Pintails

Council Recommendations: The Atlantic Flyway Council recommended that the pintail season be limited to 20 days with a bag limit of one bird per day in the states of Georgia, Florida, North Carolina and South Carolina. States could select these days during any time period within their regular duck season.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended a 45-day season, while the Lower-Region Regulations Committee a 30-day season.

The Central Flyway Council recommended a 1-bird daily bag limit for pintails for the entire duck season.

The Pacific Flyway Council recommends the Service adopt the "restrictive" package season length (60 days) and allow States to split those seasons, consistent with existing zone and split regulations, for pintails in the Pacific Flyway in 2002–03.

Service Response: We appreciate the time and careful attention by the Flyway Councils to the situation we currently face regarding appropriate pintail harvest regulations this year. The record low numbers, combined with the poor production forecast, have convinced us that a departure from the pintail harvest strategy is justified, as was evidenced by the majority of Council recommendations we received this year. Therefore, we propose that the restrictive season length be used for pintails in all four Flyways. Further, we support the recommendation that the restrictive pintail season may be split according to applicable zone/split configurations approved for each State during the last open season.

vi. Scaup

Council Recommendations: The Atlantic, Mississippi, and Central Flyway Councils recommended a daily bag limit of three scaup for the 2002–03 hunting season.

The Pacific Flyway Council recommended a daily bag limit of four scaup in the Pacific Flyway for the 2002–03 hunting season.

Service Response: In 1999, the Service restricted the bag limit of scaup to 3 in the Atlantic, Mississippi, and Central Flyways and 4 in the Pacific Flyway. During the past 3 seasons, harvest has been 210,700, 300,700, and 388,900, respectively. In addition, age ratios in the harvest over the last few years have suggested reduced productivity for scaup (the lowest on record in 2000).

For the 2002–03 season, we recommend that these restrictions be maintained. We remain concerned about the status of this species, and will continue to support ongoing research efforts that are attempting to clarify those factors responsible for the decline in numbers and work with the technical committees of the Flyway Councils to improve our collective abilities to guide the harvest management of this species.

3. Mergansers

Council Recommendations: The Central Flyway Council recommends that the season on mergansers run concurrently with the duck season, with a daily bag/possession limit of 5, of which no more than 1 may be a hooded merganser. The possession limit will be twice the daily bag limit. Shooting hours for mergansers will be one-half hour before sunrise to sunset.

Service Response: We concur with the recommendation.

4. Canada Geese

B. Regular Seasons

Council Recommendations: The Atlantic Flyway Council had several recommendations concerning Canada goose populations in the Atlantic Flyway. For the North Atlantic Population (NAP), the Council recommended the establishment of high and low harvest areas within the existing NAP goose zone. They recommended the NAP season frameworks would be October 1 to January 31 with a 60-day season and a 2-bird daily bag limit in high harvest zones, and a 70-day, 3-bird daily bag limit in low harvest zones.

For Atlantic Population (AP) hunting regulations, the Council recommended liberalization of season frameworks in 2002–03 to include a 45-day season with a daily bag limit of 2 geese in the New England and Mid-Atlantic regions, with a framework opening date of the last Saturday in October and a closing date of January 31. In the Chesapeake region, the season length would be 45 days with a daily bag limit of 1 goose and a framework opening date of November 15 and a closing date of January 31. Remaining AP harvest areas (Northeast Hunt Unit in North Carolina and Back Bay, Virginia) would remain closed.

The Atlantic Flyway Council also recommended allowing regular seasons designed to maximize harvest of Resident Population (RP) Canada geese in designated areas of the Atlantic Flyway beginning in 2002. Regular seasons in designated RP harvest areas of Maryland, Pennsylvania, New York, Connecticut, North Carolina, and Virginia, should be 70 days with a 5-bird daily bag limit. In Maryland, Pennsylvania, and Virginia, the framework opening and closing dates would be November 15 to February 15. In New York and Connecticut, the framework dates would be the last Saturday in October to February 15. In North Carolina, the framework dates would be October 1 to February 15. The season would be subject to annual evaluation of band-recovery and harvest data.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the opening date for regular goose seasons in all States, except Michigan and Wisconsin, be as early as the Saturday nearest September 24 (September 21, 2002) if the duck hunting season framework dates are extended to the Saturday nearest September 24 (September 21, 2002). The Committees also recommended a number of changes in season lengths, bag limits, zones, and quotas for Canada geese. All of these changes are based on improved population status and current management plans.

The Central Flyway Council recommended that the regular seasons for all species of geese in all Central Flyway States be as early as the Saturday nearest September 24 (September 21, 2002) if the duck hunting season framework dates are extended to that date.

The Pacific Flyway Council recommended extension of the late goose season framework closing date for the Pacific Flyway to the last Sunday in January. In Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming, the Council also recommended extension of the late goose season framework opening date to the Saturday nearest September 24, and an increase of the season-length to 107 days. In addition, the Council proposed several minor area and/or season length changes. The specific changes are summarized as follow:

1. For all States, extend the regular goose season framework ending date to the last Sunday in January;

2. For Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming, extend the regular goose season framework opening date to the Saturday nearest September 24, and increase the length of goose seasons to 107 days;

3. In California's Northeastern Zone, increase the white-fronted and cackling Canada goose season length from 44 days to 100 days;

4. In California's Southern California Zone, establish the Imperial County Special Management Area and extend the white goose season ending date to the first Sunday in February in this area;.

5. In California's Balance-of-State Zone, increase the goose season length from 79 to 86 days;

6. In California's Balance-of-State Zone, allow a 9-day Canada goose season in Del Norte and Humboldt counties;

7. In southeast Oregon, clarify wording of the Harney, Klamath, Lake, and Malheur goose zone (no change in regulations); and

8. In western Oregon, modify closed zones in Lincoln and Coos Counties to allow general fall goose hunting, and modify the zone description for the Northwest Permit Goose Zone.

Service Response: We concur with the above recommendations.

C. Special Late Seasons

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that Minnesota be allowed to continue their special December experimental Canada goose season in 2002 to gather additional information. The Committees also recommended that Ohio's special late Canada goose season be granted operational status in 8 counties beginning the first Saturday after January 10th, for a maximum of 22 days, with a daily bag of 2 Canada geese.

Service Response: We concur with the recommendations.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommended that the 2002–03 season for Atlantic brant be 60 days in length with a 3 bird daily bag limit and with a framework opening date of the Saturday closest to September 24, and a closing date of January 31.

Service Response: We concur with the recommended change.

8. Swans

Council Recommendations: The Atlantic Flyway Council recommended the Service propose a season, or some other measure, to allow hunters participating in tundra swan seasons to substitute mute swan for tundra swan in the seasonal bag limit.

For the 2002–03 season, the Pacific Flyway Council accepts the swan frameworks outlined in the Service's Environmental Assessment (dated June 15, 2001) entitled "Proposal to establish operational/experimental general swan hunting seasons in the Pacific Flyway."

Service Response: Given the action of the Court of Appeals for the District of Columbia Circuit in December 2001, the provisions of the Migratory Bird Treaty Act now apply to mute swans. Management of this species could involve a number of options, including hunting (others include issuance of depredation permits, establishment of a depredation order, etc.). Consideration of hunting, however, will require the development of proper NEPA

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documentation, including the development of an Environmental Assessment, and Section 7 (endangered species) consultations.

This is comparable with those steps we follow for all other hunted species. We recognize the efforts of the Atlantic Flyway to prepare a Flyway management plan for mute swans and encourage the development of other Flyway plans that would help the Service and the Councils to establish effective hunting season frameworks.

10. Coots

Council Recommendations: The Central Flyway Council recommends that the season on coots run concurrently with the duck season, with daily bag/possession limits of 15 and 30, respectively. Shooting hours for coots will be one-half hour before sunrise to sunset.

The Pacific Flyway Council recommended outside dates, season length, and zones be the same as duck season frameworks.

Service Response: We concur with the recommendations.

Public Comment Invited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, seek the comments and suggestions of the public, other concerned governmental agencies, nongovernmental organizations, and other private interests on these proposals. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations to the address indicated under the caption **ADDRESSES.**

Special circumstances involved in the establishment of these regulations limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified is contrary to the public interest.

Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. However, as in the past, we will summarize all comments received during the comment period and respond to them in the final rule.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under the caption **ADDRESSES.**

Additionally, issues pertaining to swan hunting in the Pacific Flyway were covered under a separate NEPA document, "Swan Hunting in the Pacific Flyway," issued June 14, 2001, with a Finding of No Significant Impact issued June 14, 2001. Copies are available from the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

Prior to issuance of the 2002–03 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and that the proposed action is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemakings.

Executive Order 12866

While this individual supplemental rule was not reviewed by the Office of Management and Budget (OMB), the migratory bird hunting regulations are economically significant and are annually reviewed by OMB under Executive Order 12866.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any written comments about how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also email comments to: *Exsec@ios.doi.gov.*

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small businesses in 1998. Copies of the Analysis are available upon request from the address indicated under the caption **ADDRESSES.**

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned control number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not "significantly or uniquely" affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this proposed rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued an Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this supplemental proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this proposed action is not a significant energy action and no Statement of Energy Effects is required.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges, and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2002–03 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: August 8, 2002.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 2002–03 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 2002, and March 10, 2003.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

High Plains Mallard Management Unit—roughly defined as that portion of the Central Flyway which lies west of the 100th meridian.

Definitions: For the purpose of hunting regulations listed below, the

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collective terms "dark" and "light" geese include the following species:

Dark geese—Canada geese, white-fronted geese, brant, and all other goose species except light geese.

Light geese—snow (including blue) geese and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Atlantic Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 21) and the last Sunday in January (January 26).

Hunting Seasons and Duck Limits: 60 days, except pintails which may not exceed 30 days, and daily bag limit of 6 ducks, including no more than 4 mallards (2 hens), 3 scaup, 1 black duck, 1 pintail, 1 mottled duck, 1 fulvous whistling duck, 2 wood ducks, 2 redheads, and 4 scoters.

Closures: The season on canvasbacks and harlequin ducks is closed.

Sea Ducks: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Connecticut River Zone, Vermont: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Inland Zone of New Hampshire.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: Specific regulations for Canada geese are shown below by State. Unless specified otherwise, seasons may be split into two segments. In areas within States where the framework closing date for Atlantic Population (AP) goose seasons overlaps with special late season frameworks for resident geese, the framework closing date for AP goose seasons is January 14.

Connecticut:

North Atlantic Population (NAP) Zone: Between October 1 and January 31, a 60-day season may be held with a 2-bird daily bag limit in the H Unit and a 70-day season with a 3-bird daily bag in the L Unit.

Atlantic Population (AP) Zone: A 45-day season may be held between the last Saturday in October (October 26) and January 31 with a 2-bird daily bag limit.

South Zone: A special experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit.

Delaware: A 45-day season may be held between November 15 and January 31 with a 1-bird daily bag limit.

Florida: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Georgia: In specific areas, a 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Maine: A 60-day season may be held Statewide between October 1 and January 31 with a 2-bird daily bag limit.

Maryland:

Resident Population (RP) Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit. The season may be split 3-ways.

AP Zone: A 45-day season may be held between November 15 and January 31 with a 1-bird daily bag limit.

Massachusetts:

NAP Zone: A 60-day season may be held between October 1 and January 31 with a 2-bird daily bag limit. Additionally, a special season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between last Saturday in October (October 26) and January 31 with a 2-bird daily bag limit.

New Hampshire: A 60-day season may be held statewide between October 1 and January 31 with a 2-bird daily bag limit.

New Jersey:

Statewide: A 45-day season may be held between the last Saturday in October (October 26) and January 31 with a 2-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held in designated areas of North and South New Jersey from January 15 to February 15, with a 5-bird daily bag limit.

New York:

Southern James Bay Population (SJBP) Zone: A 70-day season may be held between the last Saturday in October (October 26) and January 31, with a 2-bird daily bag limit.

NAP Zone: Between October 1 and January 31, a 60-day season may be held with a 2-bird daily bag limit in the High Harvest areas and a 70-day season with a 3-bird daily bag limit in the Low Harvest areas.

Special Late Goose Season Area: An experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit in designated areas of Chemung, Delaware, Tioga, Broome, Sullivan, Westchester, Nassau, Suffolk, Orange, Dutchess, Putnam, and Rockland Counties.

AP Zone: A 45-day season may be held between the last Saturday in October (October 26) and January 31 with a 2-bird daily bag limit.

RP Zone: A 70-day season may be held between the last Saturday in October (October 26) and January 31 with a 5-bird daily bag limit.

North Carolina: SJBP Zone: A 70-day season may be held between October 1 and December 31, with a 2-bird daily bag limit, except for the Northeast Hunt Unit and Northampton County, which is closed.

RP Zone: A 70-day season may be held between October 1 and February 15 with a 5-bird daily bag limit.

Pennsylvania:

SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 2-bird daily bag limit.

Pymatuning Zone: A 35-day season may be held between October 1 and January 31, with a 1-bird daily bag limit.

RP Zone: A 70-day season may be held between November 15 and January 31, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between the last Saturday in October (October 26) and January 31 with a 2-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held from

January 15 to February 15 with a 5-bird daily bag limit.

Rhode Island: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. An experimental season may be held in designated areas from January 15 to February 15, with a 5-bird daily bag limit.

South Carolina: In designated areas, a 70-day season may be held during November 15 to February 15, with a 5-bird daily bag limit.

Vermont: A 45-day season may be held between the last Saturday in October (October 26) and January 31 with a 2-bird daily bag limit.

Virginia:

SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 2-bird daily bag limit. Additionally, an experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between November 15 and January 31 with a 1-bird daily bag limit.

RP Zone: A 70-day season may be held between November 15 and February 15 with a 5-bird daily bag limit.

Back Bay Area: Season is closed.

West Virginia: A 70-day season may be held between October 1 and January 31, with a 3-bird daily bag limit.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with a 15-bird daily bag limit and no possession limit. States may split their seasons into three segments, except in Delaware and Maryland, where, following the completion of their duck season, and until March 10, Delaware and Maryland may split the remaining portion of the season to hunt on Mondays, Wednesdays, Fridays, and Saturdays only.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 60-day season between the Saturday nearest September 24 (September 21) and January 31, with a 3-bird daily bag limit. States may split their seasons into two segments.

Mississippi Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 21) and the last Sunday in January 20 (January 26).

Hunting Seasons and Duck Limits: 60 days, except that the season for pintails may not exceed 30 days and the season for canvasbacks is closed. The daily bag limit is 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 3 scaup, 1 black duck, 1 pintail, 2 wood ducks, and 2 redheads.

Merganser Limits: The daily bag limit is 5, only 1 of which may be a hooded merganser. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Arkansas, Minnesota, and Mississippi, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Mississippi Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Season Lengths, Outside Dates, and Limits: States may select seasons for light geese not to exceed 107 days with 20 geese daily between the Saturday nearest September 24 (September 21) and March 10; for white-fronted geese not to exceed 86 days with 2 geese daily or 107 days with 1 goose daily between the Saturday nearest September 24 (September 21) and the Sunday nearest February 15 (February 16); and for brant not to exceed 70 days with 2 brant daily or 107 days with 1 brant daily between the Saturday nearest September 24 (September 21) and January 31. There is no possession limit for light geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State. Except as noted below, the outside dates for Canada geese are the Saturday nearest September 24 (September 21) and January 31.

Alabama: In the SJBP Goose Zone, the season for Canada geese may not exceed 50 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: In the Northwest Zone, the season for Canada geese may extend for 33 days, provided that one segment of at least nine days occurs prior to October 15. In the remainder of the State, the season may not exceed 23 days. The season may extend to February 15, and may be split into two segments. The daily bag limit is 2 Canada geese.

Illinois: The total harvest of Canada geese in the State will be limited to 64,100 birds. The daily bag limit is 2 Canada geese. The possession limit is 10 Canada geese.

(a) North Zone—The season for Canada geese will close after 80 days or when 9,300 birds have been harvested in the Northern Illinois Quota Zone, whichever occurs first.

(a) Central Zone—The season for Canada geese will close after 80 days or when 12,800 birds have been harvested in the Central Illinois Quota Zone, whichever occurs first.

(c) South Zone—The season for Canada geese will close after 80 days or when 16,100 birds have been harvested in the Southern Illinois Quota Zone, whichever occurs first.

Indiana: The season for Canada geese may extend for 60 days, except in the SJBP Zone, where the season may not exceed 50 days. The daily bag limit is 2 Canada geese.

Iowa: The season may extend for 70 days. The daily bag limit is 2 Canada geese.

Kentucky: (a) Western Zone—The season for Canada geese may extend for 56 days (71 days in Fulton County), and the harvest will be limited to 10,300 birds. Of the 10,300-bird quota, 6,700 birds will be allocated to the Ballard Reporting Area and 2,575 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 56-day season, the season in that reporting area will be closed. If the quotas in both the Ballard and Henderson/Union reporting areas are reached prior to completion of the 56-day season, the season in the counties and portions of counties that comprise the Western Goose Zone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 56 days (71 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State—The season may extend for 70 days. The daily bag limit is 2 Canada geese.

Louisiana: The season for Canada geese may extend for 9 days. During the season, the daily bag limit is 1 Canada goose and 2 white-fronted geese with an

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86-day white-fronted goose season or 1 white-fronted goose with a 107-day season. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan: (a) Mississippi Valley Population (MVP) Zone—The total harvest of Canada geese will be limited to 46,400 birds. The framework opening date for all geese is September 16 and the season for Canada geese may extend for 21 days. The daily bag limit is 2 Canada geese.

(1) Allegan County GMU—The Canada goose season will close after 25 days or when 1,400 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Muskegon Wastewater GMU—The Canada goose season will close after 25 days or when 450 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) SJBP Zone—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 30 days. The daily bag limit is 2 Canada geese.

(1) Saginaw County GMU—The Canada goose season will close after 50 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Tuscola/Huron GMU—The Canada goose season will close after 50 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(c) Southern Michigan GMU—A special Canada goose season may be held between January 4 and February 2. The daily bag limit is 5 Canada geese.

(d) Central Michigan GMU—A special Canada goose season may be held between January 4 and February 2. The daily bag limit is 5 Canada geese.

Minnesota: (a) West Zone—(1) West Central Zone—The season for Canada geese may extend for 40 days. In the Lac Qui Parle Zone, the season will close after 40 days or when 12,000 birds have been harvested, whichever occurs first. Throughout the West Central Zone, the daily bag limit is 1 Canada goose.

(2) Remainder of West Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(c) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

(d) Special Late Canada Goose Season—An experimental special Canada goose season of up to 10 days may be held in December, except in the West Central and Lac qui Parle Goose zones. During the special season, the daily bag limit is 5 Canada geese, except in the Southeast Goose Zone, where the daily bag limit is 2.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri: (a) Swan Lake Zone—The season for Canada geese may extend for 77 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments. The daily bag limit is 2 Canada geese.

(b) Southeast Zone—The season for Canada geese may extend for 77 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(c) Remainder of the State—

(1) North Zone—The season for Canada geese may extend for 77 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior to October 15. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(2) Middle Zone—The season for Canada geese may extend for 77 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior to October 15. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(3) South Zone—The season for Canada geese may extend for 77 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

Ohio: The season for Canada geese may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 35 days and the daily bag limit is 1 Canada goose. A special Canada goose season of up to 22 days, beginning the first Saturday after January 10, may be held in the following counties: Allen (north of U.S. Highway 30), Fulton, Geauga (north of Route 6), Henry, Huron, Lucas (Lake Erie Zone closed), Seneca, and Summit (Lake Erie Zone closed). During the special season, the daily bag limit is 2 Canada geese.

Tennessee:

(a) Northwest Zone—The season for Canada geese may not exceed 71 days, and may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Southwest Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The total harvest of Canada geese in the State will be limited to 48,500 birds.

(a) Horicon Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 18,000 birds. The season may not exceed 94 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese, and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 600 birds. The season may not exceed 68 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese, and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone—The framework opening date for all geese is September 21. The harvest of Canada geese is limited to 25,400 birds, with 500 birds allocated to the Mississippi River Subzone. The season may not exceed 94 days, except in the Mississippi River Subzone, where the season may not exceed 71 days. The daily bag limit is 1 Canada goose. In that portion of the Exterior Zone outside the Mississippi River Subzone, the progress of the harvest must be monitored, and the season closed, if necessary, to ensure that the harvest does not exceed 25,400 birds.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, and Southern Illinois Quota Zones in Illinois; the Ballard and Henderson-Union Subzones in Kentucky; the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan; the Lac Qui Parle Zone in Minnesota; and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective zone (and associated area, if applicable) will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Central Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 21) and the last Sunday in January (January 26).

Hunting Seasons and Duck Limits:

(1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 97 days, except pintails which may not exceed 39 days, and a daily bag limit of 6 ducks, including no more than 5 mallards (no more than 2 of which may be hens), 1 mottled duck, 1 pintail, 2 redheads, 3 scaup, and 2 wood ducks. The last 23 days may start no earlier than the Saturday nearest December 10 (December 7). The season on canvasbacks is closed.

(2) Remainder of the Central Flyway: 74 days, except pintails which may not exceed 39 consecutive days, and a daily bag limit of 6 ducks, including no more than 5 mallards (no more than 2 of which may be hens), 1 mottled duck, 1 pintail, 2 redheads, 3 scaup, and 2 wood ducks. The season on canvasbacks is closed.

Merganser Limits: The daily bag limit is 5 mergansers, only 1 of which may be a hooded merganser. In States that include mergansers in the duck daily bag limit, the daily limit may be the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Kansas (Low Plains portion), Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

In Colorado, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

Outside Dates: For dark geese, seasons may be selected between the outside dates of the Saturday nearest September 24 (September 21) and the Sunday nearest February 15 (February 17). For light geese, outside dates for seasons may be selected between the Saturday nearest September 24 (September 21) and March 10. In the Rainwater Basin Light Goose Area (East and West) of Nebraska, temporal and spatial restrictions consistent with the experimental late-winter snow goose hunting strategy endorsed by the Central Flyway Council in July 1999, are required.

Season Lengths and Limits:

Light Geese: States may select a light goose season not to exceed 107 days. The daily bag limit for light geese is 20 with no possession limit.

Dark Geese: In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas, States may select a season for Canada geese (or any other dark goose species except white-fronted geese) not to exceed 95 days with a daily bag limit of 3. Additionally, in the Eastern Goose Zone of Texas, an alternative season of 107 days with a daily bag limit of 1 Canada goose may be selected. For white-fronted geese, these States may select either a season of 86 days with a bag limit of 2 or a 107-day season with a bag limit of 1.

In South Dakota, for Canada geese in the Big Stone Power Plant Area of Canada Goose Unit 3, the daily bag limit is 3 until November 30 and 2 thereafter.

In Colorado, Montana, New Mexico and Wyoming, States may select seasons not to exceed 107 days. The daily bag limit for dark geese is 5 in the aggregate.

In the Western Goose Zone of Texas, the season may not exceed 107 days. The daily bag limit for Canada geese (or any other dark goose species except white-fronted geese) is 5. The daily bag limit for white-fronted geese is 1.

Pacific Flyway

Ducks, Mergansers, Coots, Common Moorhens, and Purple Gallinules

Hunting Seasons and Duck Limits: Concurrent 107 days and daily bag limit of 7 ducks and mergansers, including no more than 2 female mallards, 1 pintail, 4 scaup, 2 redheads. The season on pintails is closed, except one pintail may be included in the daily bag limit for 60 days within the Pacific Flyway duck season. A single pintail may also be included in the 7-bird daily bag limit for designated youth-hunt days. The season on canvasbacks is closed.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot, Common Moorhen, and Purple Gallinule Limits: The daily bag and possession limits of coots, common moorhens, and purple gallinules are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest September 24 (September 21) and the last Sunday in January (January 26).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments.

Colorado, Montana, New Mexico, and Wyoming may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits: California, Oregon, and Washington: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (September 28), and the last Sunday in January (January 26). Basic daily bag limits are 3 light geese and 4 dark geese, except in California, Oregon, and Washington, where the dark goose bag limit does not include brant.

Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 21), and the last Sunday in January (January 26). Basic daily bag limits are 3 light geese and 4 dark geese.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Brant Season—A 16-consecutive-day season may be selected in Oregon. A 16-day season may be selected in Washington, and this season may be split into 2-segments. A 30-consecutive-day season may be selected in California. In these States, the daily bag

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limit is 2 brant and is in addition to dark goose limits.

Arizona: The daily bag limit for dark geese is 3.

California:

Northeastern—The daily bag limit is 3 geese and may include no more than 2 dark geese; including not more than 1 cackling Canada goose or 1 Aleutian Canada goose.

Southern California Zone—In the Imperial County Special Management Area, light geese only may be taken from the end of the general goose hunting season through the first Sunday in February (February 2).

Balance-of-the-State Zone—An 86-day season may be selected. Limits may not include more than 3 geese per day, of which not more than 2 may be white-fronted geese and not more than 1 may be a cackling Canada goose or Aleutian Canada goose. Three areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Counties of Del Norte and Humboldt, the open season for Canada geese may be 9 days. The daily bag limit shall contain no more than 1 Canada goose, cackling Canada goose or Aleutian Canada goose.

(2) In the Sacramento Valley Special Management Area (West), the season on white-fronted geese must end on or before December 14, and, in the Sacramento Valley Special Management Area (East), there will be no open season for Canada geese.

(3) In the San Joaquin Valley Special Management Area, there will be no open season for Canada geese.

Oregon: Except as subsequently noted, the dark goose daily bag limit is 4, including not more than 1 cackling Canada goose or Aleutian Canada goose.

Harney, Klamath, Lake, and Malheur County Zone—For Lake County only, the daily dark goose bag limit may not include more than 2 white-fronted geese.

Western Zone—Special Canada Goose Management Area, except for designated areas, there will be no open season on Canada geese. In the designated areas, individual quotas will be established that collectively will not exceed 165 dusky Canada geese. See section on quota zones. In those designated areas, the daily bag limit of dark geese is 4 and may include no more than 1 Aleutian Canada goose.

Closed Zone: Those portions of Coos and Curry Counties south of Bandon and west of US 101 and all of Tillamook County.

Washington: The daily bag limit is 4 geese, including 4 dark geese but not more than 3 light geese.

Southwest Quota Zone—In the Special Goose Management Area, except for designated areas, there will be no open season on Canada geese. In the designated areas, individual quotas will be established that collectively will not exceed 85 dusky Canada geese. See section on quota zones. In this area, the daily bag limit of dark geese is 4 and may include 4 cackling Canada geese. In Southwest Quota Zone Area 2B (Pacific and Grays Harbor Counties) the dark goose bag limit may include 1 Aleutian Canada goose.

Colorado: The daily bag limit for dark geese is 3 geese.

Idaho: Northern Unit—The daily bag limit is 4 geese, including 4 dark geese, but not more than 3 light geese.

Southwest Unit and Southeastern Unit—The daily bag limit on dark geese is 4.

Montana:

West of Divide Zone and East of Divide Zone—The daily bag limit of dark geese is 4.

Nevada: The daily bag limit for dark geese is 3 except in the Lincoln and Clark County Zone, where the daily bag limit of dark geese is 2.

New Mexico: The daily bag limit for dark geese is 3.

Utah: The daily bag limit for dark geese is 3.

Wyoming: The daily bag limit for dark geese is 4.

Quota Zones: Seasons on dark geese must end upon attainment of individual quotas of dusky Canada geese allotted to the designated areas of Oregon and Washington. The September Canada goose season, the regular goose season, any special late dark goose season, and any extended falconry season, combined, must not exceed 107 days, and the established quota of dusky Canada geese must not be exceeded. Hunting of dark geese in those designated areas will only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese. If the monitoring program cannot be conducted, for any reason, the season must immediately close. In the designated areas of the Washington Quota Zone, a special late dark goose season may be held between the Saturday following the close of the general goose season and March 10. In the Special Canada Goose Management Area of Oregon, the framework closing date is extended to the Sunday closest to March 1 (March 3). Regular dark goose seasons may be split into 3 segments within the Oregon and Washington quota zones.

Swans

In designated areas of Utah, Nevada, and the Pacific Flyway portion of Montana, an open season for taking a limited number of swans may be selected. Permits will be issued by States and will authorize each permittee to take no more than 1 swan per season. The season may open no earlier than the Saturday nearest October 1 (September 28). The States must implement a harvest-monitoring program to measure the species composition of the swan harvest. In Utah and Nevada, the harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. All States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination or, in the case of Montana, reporting bill-measurement and color information. All States must achieve at least an 80-percent compliance rate, or subsequent permits will be reduced by 10 percent. All States must provide to the Service by June 30, 2003, a report covering harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas. These seasons will be subject to the following conditions:

In Utah, no more than 2,000 permits may be issued. The season must end no later than the second Sunday in December (December 8) or upon attainment of 10 trumpeter swans in the harvest, whichever occurs earliest. Utah must enter into a Memorandum of Agreement with the Service regarding harvest monitoring, season closure procedures, and education requirements for swan seasons in Utah.

In Nevada, no more than 650 permits may be issued. The season must end no later than the Sunday following January 1 (January 5) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In Montana, no more than 500 permits may be issued. The season must end no later than December 1.

Tundra Swans

In the Central Flyway portion of Montana, and in North Carolina, North Dakota, South Dakota (east of the Missouri River), and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by States that authorize the take of no more than 1 tundra swan per permit. A second permit may be issued to hunters from unused permits

remaining after the first drawing. The States must obtain harvest and hunter participation data. These seasons will be subject to the following conditions:

In the Atlantic Flyway

—The season will be experimental.
—The season may be 90 days, from October 1 to January 31.
—In North Carolina, no more than 5,000 permits may be issued.
—In Virginia, no more than 600 permits may be issued.

In the Central Flyway

—The season may be 107 days, from the Saturday nearest October 1 (September 28) to January 31.
—In the Central Flyway portion of Montana, no more than 500 permits may be issued.
—In North Dakota, no more than 2,000 permits may be issued.
—In South Dakota, no more than 1,500 permits may be issued.

Area, Unit, and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut:

North Zone: That portion of the State north of I–95.

South Zone: Remainder of the State.

Maine:

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire and Maine border to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I–95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

South Zone: Remainder of the State.

Massachusetts:

Western Zone: That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire:

Coastal Zone: That portion of the State east of a line extending west from the Maine border in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I–95 (New Hampshire Turnpike) in Hampton, and south along I–95 to the Massachusetts border.

Inland Zone: That portion of the State north and west of the above boundary and along the Massachusetts border crossing the Connecticut River to Interstate 91 and northward in Vermont to Route 2, east to 102, northward to the Canadian border.

New Jersey:

Coastal Zone: That portion of the State seaward of a line beginning at the New York border in Raritan Bay and extending west along the New York border to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware border in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania border in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York:

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81 to NY 31, east along NY 31 to NY 13, north along NY 13 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania:

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont:

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

West Virginia:

Zone 1: That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I–64; I–64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I–79, I–79 north to I–68; I–68 east to the Maryland

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border; and along the border to the point of beginning.

Mississippi Flyway

Alabama:

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois:

North Zone: That portion of the State north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana border.

South Zone: The remainder of Illinois.

Indiana:

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State Road 56, east along State Road 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa:

North Zone: That portion of the State north of a line extending east from the Nebraska border along State *Highway* 175 to State *Highway* 37, southeast along *State* Highway 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Kentucky:

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana:

West Zone: That portion of the State west and south of a line extending south from the Arkansas border along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to the Mississippi State line.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

Michigan:

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

South Zone: The remainder of Michigan.

Missouri:

North Zone: That portion of Missouri north of a line running west from the Illinois border (Lock and Dam 25) on Lincoln County Highway N to Missouri Highway 79; south on Missouri Highway 79 to Missouri Highway 47; west on Missouri Highway 47 to Interstate 70; west on Interstate 70 to U.S. Highway 54; south on U.S. Highway 54 to U.S. Highway 50; west on U.S. Highway 50 to the Kansas border.

South Zone: That portion of Missouri south of a line running west from the Illinois border on Missouri Highway 34 to Interstate 55; south on Interstate 55 to U.S. Highway 62; west on U.S. Highway 62 to Missouri Highway 53; north on Missouri Highway 53 to Missouri Highway 51; north on Missouri Highway 51 to U.S. Highway 60; west on U.S. Highway 60 to Missouri Highway 21; north on Missouri Highway 21 to Missouri Highway 72; west on Missouri Highway 72 to Missouri Highway 32; west on Missouri Highway 32 to U.S. Highway 65; north on U.S. Highway 65 to U.S. Highway 54; west on U.S. Highway 54 to the Kansas border.

Middle Zone: The remainder of Missouri.

Ohio:

North Zone: That portion of the State north of a line extending east from the Indiana border along U.S. Highway 30 to State Route 37, south along SR 37 to SR 95, east along SR 95 to LaRue-Prospect Road, east along LaRue-Prospect Road to SR 203, south along SR 203 to SR 739, east along SR 739 to SR 4, north along SR 4 to SR 309, east along SR 309 to U.S. 23, north along U.S. 23 to SR 231, north along SR 231 to U.S. 30, east along U.S. 30 to SR 42, north along SR 42 to SR 603, south along SR 603 to U.S. 30, east along U.S. 30 to SR 60, south along SR 60 to SR 39/60, east along SR 39/60 to SR 39, east along SR 39 to SR 241, east along SR 241 to U.S. 30, then east along U.S. 30 to the West Virginia border.

South Zone: The remainder of Ohio.

Tennessee:

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin:

North Zone: That portion of the State north of a line extending east from the Minnesota border along State Highway 77 to State 27, south along State 27 and 77 to U.S. Highway 63, and continuing south along State 27 to Sawyer County Road B, south and east along County B to State 70, southwest along State 70 to State 27, south along State 27 to State 64, west along State 64/27 and south along State 27 to U.S. 12, south and east on State 27/U.S. 12 to U.S. 10, east on U.S. 10 to State 310, east along State 310 to State 42, north along State 42 to State 147, north along State 147 to State 163, north along State 163 to Kewaunee County Trunk A, north along County Trunk A to State 57, north along State 57 to the Kewaunee/Door County Line, west along the Kewaunee/Door County Line to the Door/Brown County Line, west along the Door/Brown County Line to the Door/Oconto/Brown County Line, northeast along the Door/Oconto County Line to the Marinette/Door County Line, northeast along the Marinette/Door County Line to the Michigan border.

South Zone: The remainder of Wisconsin.

Central Flyway

Kansas:

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That area of Kansas east of U.S. 283, and generally west of a line beginning at the Junction of the Nebraska border and KS 28; south on KS 28 to U.S. 36; east on U.S. 36 to KS 199; south on KS 199 to Republic Co. Road 563; south on Republic Co. Road 563 to KS 148; east on KS 148 to Republic Co. Road 138; south on Republic Co. Road 138 to Cloud Co. Road 765; south on Cloud Co. Road 765 to KS 9; west on KS 9 to U.S. 24; west on U.S. 24 to U.S. 281; north on U.S. 281 to U.S. 36; west on U.S. 36 to U.S. 183; south on U.S. 183 to U.S. 24; west on U.S. 24 to KS 18; southeast on KS 18 to U.S. 183; south on U.S. 183 to KS 4; east on KS 4 to I–135; south on I–135 to KS 61; southwest on KS 61 to KS 96; northwest on KS 96 to U.S. 56; west on U.S. 56 to U.S. 281; south on U.S. 281 to U.S. 54; and west on U.S. 54 to U.S. 183; north on U.S. 183 to U.S. 56; southwest on U.S. 56 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Montana (Central Flyway Portion):

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

Nebraska:

High Plains Zone: That portion of the State west of highways U.S. 183 and U.S. 20 from the South Dakota border to Ainsworth, NE 7 and NE 91 to Dunning, NE 2 to Merna, NE 92 to Arnold, NE 40 and NE 47 through Gothenburg to NE 23, NE 23 to Elwood, and U.S. 283 to the Kansas border.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north and west of a line extending from the South Dakota border along NE 26E Spur to NE 12, west on NE 12 to the Knox/Boyd County line, south along the county line to the Niobrara River and along the Niobrara River to U.S. 183 (the High Plains Zone line). Where the Niobrara River forms the boundary, both banks will be in Zone 1.

Low Plains Zone 2: Area bounded by designated Federal and State highway's and political boundaries beginning at the Kansas-Nebraska border on U.S. Hwy. 73; north to NE Hwy. 67 north to U.S. Hwy 136; east to the Steamboat Trace (Trace); north to Federal Levee R–562; north and west to the Trace/Burlington Northern Railroad right-of-way; north to NE Hwy 2; west to U.S. Hwy 75; north to NE Hwy. 2; west to NE Hwy. 43; north to U.S. Hwy. 34; east to NE Hwy. 63; north and west to U.S. Hwy. 77; north to NE Hwy. 92; west to U.S. Hwy. 81; south to NE Hwy. 66; west to NE Hwy. 14; south to U.S. Hwy 34; west to NE Hwy. 2; south to U.S. Hwy. I–80; west to Gunbarrel Rd. (Hall/Hamilton county line); south to Giltner Rd.; west to U.S. Hwy. 281; south to U.S. Hwy. 34; west to NE Hwy 10; north to County Road "R" (Kearney County) and County Road #742 (Phelps County); west to County Road #438 (Gosper County line); south along County Road #438 (Gosper County line) to County Road #726 (Furnas County Line); east to County Road #438 (Harlan County Line); south to U. S. Hwy 34; south and west to U.S. Hwy. 136; east to NE Hwy. 10; south to the Kansas-Nebraska border.

Low Plains Zone 3: The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

Low Plains Zone 4: The area east of the High Plains Zone and south of Zone 2.

New Mexico (Central Flyway Portion):

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota:

High Plains Unit: That portion of the State south and west of a line from the South Dakota border along U.S. 83 and I–94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains: The remainder of North Dakota.

Oklahoma:

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas border along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I–40, east along I–40 to U.S. 177, north along U.S. 177 to OK 33, west along OK 33 to I–35, north along I–35 to U.S. 412, west along U.S. 412 to OK 132, then north along OK 132 to the Kansas border.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota:

High Plains Unit: That portion of the State west of a line beginning at the North Dakota border and extending south along U.S. 83 to U.S. 14, east along U.S. 14 to Blunt-Canning Road in Blunt, south along Blunt-Canning Road to SD 34, east to SD 47, south to I–90, east to SD 47, south to SD 49, south to Colome and then continuing south on U.S. 183 to the Nebraska border.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along US 212 to the Minnesota border.

South Zone: That portion of Gregory County east of SD 47, Charles Mix County south of SD 44 to the Douglas County line, south on SD 50 to Geddes, east on the Geddes Hwy. to U.S. 281, south on U.S. 281 and U.S. 18 to SD 50, south and east on SD 50 to Bon Homme County line, the Counties of Bon Homme, Yankton, and Clay south of SD 50, and Union County south and west of SD 50 and I–29.

Middle Zone: The remainder of South Dakota.

Texas:

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma border along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I–10 to the Louisiana border at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway portion):

Zone 1: The Counties of Converse, Goshen, Hot Springs, Natrona, Platte, and Washakie Counties; and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary meets Park County Road 8VC, east along Park County Road 8VC to Park County Road 1AB, continuing east along Park County Road 1AB to Wyoming Highway 120, north along WY Highway 120 to WY Highway 294, south along WY Highway 294 to Lane 9, east along Lane 9 to Powel and WY Highway 14A, and finally east along WY Highway 14A to the Park County and Big Horn County line.

Zone 2: The reminder of Wyoming.

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Pacific Flyway

Arizona—Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California:

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada state line; north along the California-Nevada state line to the junction of the California-Nevada-Oregon state lines west along the California-Oregon state line to the point of origin

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho:

Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following Counties or portions of Counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of ID 75, south and east of U.S. 93, and between ID 75 and U.S. 93 north of U.S. 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Includes the following Counties or portions of Counties: Ada; Blaine between ID 75 and U.S. 93 south of U.S. 20 and that additional area between ID 75 and U.S. 93 north of U.S. 20 within the Silver Creek drainage; Boise; Canyon; Cassia except within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada:

Lincoln and Clark County Zone: All of Clark and Lincoln Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon:

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah:

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties and that part of Toole County north of I–80.

Zone 2: The remainder of Utah.

Washington:

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Geese

Atlantic Flyway

Connecticut:

NAP L-Unit: That portion of Fairfield County north of Interstate 95 and that portion of New Haven County: starting at I–95 bridge on Housatonic River; north of Interstate 95; west of Route 10 to the intersection of Interstate 691; west along Interstate 691 to Interstate 84; west and south on Interstate 84 to Route 67; north along Route 67 to the Litchfield County line, then extending west along the Litchfield County line to the Shepaug River, then south to the intersection of the Litchfield and Fairfield County lines.

NAP H-Unit: All of the rest of the State not included in the AP or NAP-L descriptions.

AP Unit: Litchfield County and the portion of Hartford County, west of a line beginning at the Massachusetts border in Suffield and extending south along Route 159 to its intersection with Route 91 in Hartford, and then extending south along Route 91 to its intersection with the Hartford/Middlesex County line.

South Zone: Same as for ducks.

North Zone: Same as for ducks.

Maryland:

SJBP Zone: Allegheny, Carroll, Frederick, Garrett, Washington counties and the portion of Montgomery County

south of Interstate 270 and west of Interstate 495 to the Potomac River.

AP Zone: Remainder of the State.

Massachusetts:

NAP Zone: Central Zone (same as for ducks) and that portion of the Coastal Zone that lies north of route 139 from Green Harbor.

AP Zone: Remainder of the State.

Special Late Season Area: That portion of the Coastal Zone (see duck zones) that lies north of Route 14, east of St. George Road, and east of the Powder Point Bridge.

New Hampshire:

Same zones as for ducks.

New Jersey:

North—that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94; then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South—that portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to Route 70; then west along Route 70 to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to Route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then east along Route 49 to Route 555; then south along Route 555 to Route 553; then east along Route 553 to Route 649; then north along Route 649 to Route 670; then east along Route 670 to Route 47; then north along Route 47 to Route 548; then east along Route 548 to Route 49; then east along Route 49 to Route 50; then south along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York:

Special Late Season Area for Canada Geese: All of Tioga and Broome Counties; and that area of Chemung County lying east of a continuous line extending southeast along Route 224 from the Schuyler County line to Route 34, then south along Route 34 to the New York-Pennsylvania boundary; and that area of Delaware, Sullivan, and Orange Counties lying southwest of a continuous line extending east along State Route 17 from the Broome County line to U.S. Route 209 at Wurtsboro and then south along Route 209 to the New York-Pennsylvania boundary at Port Jervis, excluding areas on or within 50 yards of the Delaware River between the confluence of the West Branch and East Branch below Hancock and the mouth of the Shingle Kill (3 miles upstream from Port Jervis); and that area of Orange, Rockland, Dutchess, Putnam and Westchester Counties lying southeast of a continuous line extending north along State Route 17 from the New York-New Jersey boundary at Suffern to Interstate Route 87, then north along Route 87 to Interstate Route 84, then east along Route 84 to the northern boundary of Putnam County, then east along that boundary to the New York-Connecticut boundary; and that area of Nassau and Suffolk Counties lying north of State Route 25A and west of a continuous line extending northward from State Route 25A along Randall Road (near Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York-Connecticut boundary.

Long Island (NAP) Zone: Same as Long Island Duck Zone.

Southwest (SJBP) Zone: All of Allegany, Cattaraugus, and Chautauqua Counties; and that area of Niagara, Erie, Genesee, Wyoming, Livingston, Yates, Steuben, Schuyler, Chemung and Tioga Counties lying south and west of a continuous line extending from the New York-Ontario boundary near Lewiston east along Interstate Route 190 to Route 31, then east along Route 31 to Route 78 in Lockport, then south along Route 78 to the Niagara-Erie County boundary (Tonawanda Creek), then east along the Niagara-Erie County boundary to Route 93, then south along Route 93 to Route 5, then east along Route 5 to Crittenden-Murrays Corners Road, then south along Crittenden-Murrays Corners Road to the NY State Thruway, then east along the Thruway to Route 98 at Batavia, then south along Route 98 to Route 20, then east along Route 20 to Route 19, then south along Route 19 to Route 63, then southeast along Route 63 to Route 246, then south along Route 246 to Route 39, then southwest along Route 39 to Route 19A, then south and east along Route 19A to Route 436, then east along Route 436 to Route 36 in Dansville, then south along Route 36 to Route 17, then east along Route 17 to Belfast Street in Bath, then east along Belfast Street to Route 415 (Washington Street), then east along Route 415 to Route 54, then northeast along Route 54 to Steuben County Route 87, then east along Route 87 to Steuben County Route 96, then east along Route 96 to Steuben County Route 114, then east along Route 114 to Schuyler County Route 23, then east along Route 23 to Schuyler County Route 28, then southeast along Route 28 to Route 409 at Watkins Glen, then southeast along Route 409 to Route 14, then south along Route 14 to Route 224, then southeast along Route 224 to Route 34 at Van Etten, then south along Route 34 to the New York-Pennsylvania boundary.

AP Zone: Remainder of the State.

North Carolina:

SJBP Hunt Zone: Includes the following counties or portions of counties: Anson, Cabarrus, Chatham, Davidson, Durham, Halifax (that portion east of NC 903), Iredell (that portion south of Interstate 40), Montgomery (that portion west of NC 109), Northampton (all of the county with the exception of that portion that is both north of US 158 and east of NC 35), Richmond (that portion south of NC 73 and west of US 220 and north of US 74), Rowan, Stanly, Union, and Wake.

RP Hunt Zone: Includes the following counties or portions of counties: Alamance, Alleghany, Alexander, Ashe, Avery, Beaufort, Bertie (that portion south and west of a line formed by NC 45 at the Washington Co. line to US 17 in Midway, US 17 in Midway to US 13 in Windsor, US 13 in Windsor to the Hertford Co. line), Bladen, Brunswick, Buncombe, Burke, Caldwell, Carteret, Caswell, Catawba, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Guilford, Halifax (that portion west of NC 903), Harnett, Haywood, Henderson, Hertford, Hoke, Iredell (that portion north of Interstate 40), Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mecklenburg, Mitchell, Montgomery (that portion that is east of NC 109), Moore, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Person, Pitt, Polk, Randolph, Richmond (all of the county with exception of that portion that is south of NC 73 and west of US 220 and north of US 74), Robeson, Rockingham, Rutherford, Sampson, Scotland, Stokes, Surry, Swain, Transylvania, Vance, Warren, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey.

Northeast Hunt Unit: Includes the following counties or portions of counties: Bertie (that portion north and east of a line formed by NC 45 at the Washington Co. line to US 17 in

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Midway, US 17 in Midway to US 13 in Windsor, US 13 in Windsor to the Hertford Co. line), Camden, Chowan, Currituck, Dare, Hyde, Northampton (that portion that is both north of US 158 and east of NC 35), Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania:

Resident Canada Goose Zone: All of Pennsylvania except for Crawford, Erie, and Mercer counties and the area east of I–83 from the Maryland state line to the intersection of US Route 30 to the intersection of SR 441 to intersection of I–283, east of I–283 to I–83, east of I–83 to intersection of I–81, east of I–81 to the intersection of US Route 322, east of US Route 322 to intersection of SR 147, east of SR 147 to intersection of I–180, east of I–180 to intersection of US Route 220, east of US Route 220 to the New York state line.

SJBP Zone: Erie, Mercer and Crawford Counties except for the Pymatuning Zone (the area south of SR 198 from the Ohio state line to intersection of SR 18 to intersection of US Route 322/SR 18, to intersection of SR 3013, south to the Crawford/Mercer County line).

Pymatuning Zone: The area south of SR 198 from the Ohio state line to intersection of SR 18 to intersection of US Route 322/SR 18, to intersection of SR 3013, south to the Crawford/Mercer County line.

AP Zone: The area east of I–83 from the Maryland state line to the intersection of US Route 30 to the intersection of SR 441 to intersection of I–283, east of I–283 to I–83, east of I–83 to intersection of I–81, east of I–81 to the intersection of US Route 322, east of US Route 322 to intersection of SR 147, east of SR 147 to intersection of I–180, east of I–180 to intersection of US Route 220, east of US Route 220 to the New York state line.

Special Late Canada Goose Season Area: The SJBP zone (excluding the Pymatuning zone) and the northern portion of the AP zone defined as east of US Route 220 from the New York state line, east of US Route 220 to intersection of I–180, east of I–180 to intersection of SR 147, east of SR 147 to intersection of US Route 322, east of US Route 322 to intersection of I–81, north of I–81 to intersection of I–80, and north of I–80 to the New Jersey state line.

Rhode Island:

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina:

Canada Goose Area: Statewide except for Clarendon County and that portion of Lake Marion in Orangeburg County and Berkeley County.

Vermont:

Same zones as for ducks.

Virginia:

AP Zone: The area east and south of the following line—the Stafford County line from the Potomac River west to Interstate 95 at Fredericksburg, then south along Interstate 95 to Petersburg, then Route 460 (SE) to City of Suffolk, then south along Route 32 to the North Carolina line.

SJBP Zone: The area to the west of the AP Zone boundary *and* east of the following line: the "Blue Ridge" (mountain spine) at the West Virginia-Virginia Border (Loudoun County—Clarke County line) south to Interstate 64 (the Blue Ridge line follows county borders along the western edge of Loudoun-Fauquier-Rappahannock-Madison-Greene-Albemarle and into Nelson Counties), then east along Interstate Rt. 64 to Route 15, then south along Rt. 15 to the North Carolina line.

RP Zone: The remainder of the State west of the SJBP Zone.

Back Bay Area: The waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia:

Same zones as for ducks.

Mississippi Flyway

Alabama:

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas:

Northwest Zone: Benton, Carroll, Baxter, Washington, Madison, Newton, Crawford, Van Buren, Searcy, Sebastion, Scott, Franklin, Logan, Johnson, Pope, Yell, Conway, Perry, Faulkner, Pulaski, Boone, and Marion Counties.

Illinois:

Same zones as for ducks, but in addition:

North Zone: Northern Illinois Quota Zone: The Counties of McHenry, Lake, Kane, DuPage, and those portions of LaSalle and Will Counties north of Interstate Highway 80.

Central Zone: Central Illinois Quota Zone: The Counties of Grundy, Woodford, Peoria, Knox, Fulton, Tazewell, Mason, Cass, Morgan, Pike, Calhoun, and Jersey, and those portions of LaSalle and Will Counties south of Interstate Highway 80.

South Zone: Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

Indiana:

Same zones as for ducks, but in addition:

SJBP Zone: Jasper, LaGrange, LaPorte, Starke, and Steuben Counties, and that portion of the Jasper-Pulaski Fish and Wildlife Area in Pulaski County.

Iowa:

Same zones as for ducks.

Kentucky:

Western Zone: That portion of the State west of a line beginning at the Tennessee border at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana border.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Michigan:

MVP Zone: The MVP Zone consists of an area north and west of the point beginning at the southwest corner of Branch county, north continuing along the western border of Branch and Calhoun counties to the northwest corner of Calhoun county, then easterly to the southwest corner of Eaton county, then northerly to the southern border of Ionia county, then easterly to the southwest corner of Clinton county, then northerly along the western border of Clinton County continuing northerly along the county border of Gratiot and Montcalm counties to the southern border of Isabella county, then easterly to the southwest corner of Midland county, then northerly along the west Midland county border to Highway M–20, then easterly to U.S. Highway 10, then easterly to U.S. Interstate 75/U.S. Highway 23, then northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, then easterly on U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

SJBP Zone is the rest of the state, that area south and east of the boundary described above.

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly ½ mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons: Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I–69, westerly along I–69 to Michigan Highway 21, westerly along Michigan 21 to I–96, northerly along I–96 to I–196, westerly along I–196 to Lake Michigan Drive (M–45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin border.

Central Michigan GMU: That portion of the Lower Peninsula north of the Southern Michigan GMU but south of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, easterly along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border, excluding the Tuscola/Huron GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

Minnesota:

West Zone: That portion of the state encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Lac qui Parle Zone: That area encompassed by a line beginning at the intersection of U.S. Highway 212 and County State Aid Highway (CSAH) 27 in Lac qui Parle County and extending north along CSAH 27 to CSAH 20 in Lac qui Parle County, west along CSAH 20 to State Trunk Highway (STH) 40, north along STH 40 to STH 119, north along STH 119 to CSAH 34 in Lac qui Parle County, west along CSAH 34 to CSAH 19 in Lac qui Parle County, north and west along CSAH 19 to CSAH 38 in Lac qui Parle County, west and north along CSAH 38 to U.S. 75, north along U.S. 75 to STH 7, east along STH 7 to CSAH 6 in Swift County, east along CSAH 6 to County Road 65 in Swift County, south along County 65 to County 34 in Chippewa County, south along County 34 to CSAH 12 in Chippewa County, east along CSAH 12 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 7, southeast along STH 7 to Montevideo and along the municipal boundary of Montevideo to U.S. 212; then west along U.S. 212 to the point of beginning.

Northwest Zone: That portion of the state encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Special Canada Goose Seasons:

Southeast Zone: That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along

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CSAH 13 to STH 30; thence along STH 30 to U.S. Highway 63; thence along U.S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Missouri: Same zones as for ducks but in addition:

North Zone: Swan Lake Zone: That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, and U.S. 65 on the west.

Middle Zone: *Southeast Zone:* That portion of the State encompassed by a line beginning at the intersection of Missouri Highway (MO) 34 and Interstate 55 and extending south along I–55 to U.S. Highway 62, west along U.S. 62 to MO 53, north along MO 53 to MO 51, north along MO 51 to U.S. 60, west along U.S. 60 to MO 21, north along MO 21 to MO 72, east along MO 72 to MO 34, then east along MO 34 to I–55.

Ohio: Same zones as for ducks but in addition:

North Zone: Lake Erie SJBP Zone: That portion of the State encompassed by a line beginning in Lucas County at the Michigan State line on I–75, and extending south along I–75 to I–280, south along I–280 to I–80, east along I–80 to the Pennsylvania State line in Trumbull County, north along the Pennsylvania State line to SR 6 in Ashtabula County, west along SR 6 to the Lake/Cuyahoga County line, north along the Lake/Cuyahoga County line to the shore of Lake Erie.

Tennessee:

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama border to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky border.

Wisconsin:

Same zones as for ducks but in addition:

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to Interstate Highway 39, southerly along Interstate Highway 39 to Interstate Highway 90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly and southerly along Poplar Grove Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois border in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota border.

Rock Prairie Subzone: That area encompassed by a line beginning at the intersection of the Illinois border and Interstate Highway 90 and extending north along I–90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois border.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

Central Flyway

Colorado (Central Flyway Portion):

Northern Front Range Area: All lands in Adams, Boulder, Clear Creek, Denver, Gilpin, Jefferson, Larimer, and Weld Counties west of I–25 from the Wyoming border south to I–70; west on I–70 to the Continental Divide; north along the Continental Divide to the Jackson-Larimer County Line to the Wyoming border.

South Park/San Luis Valley Area: Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Teller, and Rio Grande Counties and those portions of Hinsdale, Mineral, and Saguache Counties east of the Continental Divide.

North Park Area: Jackson County.

Arkansas Valley Area: Baca, Bent, Crowley, Kiowa, Otero, and Prowers Counties.

Pueblo County Area: Pueblo County.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: that portion of the State east of Interstate Highway 25.

Nebraska:

Dark Geese—

North Unit: Keya Paha County east of U.S. 183 and all of Boyd County, including the boundary waters of the Niobrara River, all of Knox County and that portion of Cedar County west of U.S. 81. Where the Niobrara River forms the boundary, both banks will be in the north Unit.

Platte River Unit: That area south and west of U.S. 281 at the Kansas/Nebraska border, north to Giltner Road (near Doniphan), east to NE 14, north to NE 91, west to U.S. 183, south to NE 92, west to NE 61, north to U.S. 2, west to the intersection of Garden, Grant, and Sheridan counties, then west along the northern border of Garden, Morrill, and Scotts Bluff Counties to the Wyoming border.

Northcentral Unit: That area north of the Platte River Unit and west of U.S. 183.

East Unit: The remainder of Nebraska.

Light Geese—

Rainwater Basin Light Goose Area (West): The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and U.S. 30 at Grand Island, north and east on U.S. 30 to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion):

Dark Geese—

Middle Rio Grande Valley Unit: Sierra, Socorro, and Valencia counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

South Dakota:

Canada Geese—

Unit 1: Statewide except for Units 2, 3 and 4.

Big Stone Power Plant Area: That portion of Grant and Roberts Counties east of SD 15 and north of SD 20.

Unit 2: Brule, Buffalo, Charles Mix, Gregory, Hughes, Hyde, Lyman, Potter, Stanley, and Sully Counties and that portion of Dewey County south of U.S. 212.

Unit 3: Clark, Codington, Day, Deuel, Grant, Hamlin, Marshall, and Roberts Counties.

Unit 4: Bennett County.

Texas:

West Unit: That portion of the State laying west of a line from the international toll bridge at Laredo; north along I–35 and I–35W to Fort Worth; northwest along U.S. 81 and U.S. 287 to Bowie; and north along U.S. 81 to the Oklahoma border.

East Unit: Remainder of State.

Wyoming (Central Flyway Portion):

Dark Geese—

Area 1: Hot Springs, Natrona, and Washakie Counties, and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 2: Converse County.

Area 3: Albany, Big Horn, Campbell, Crook, Fremont, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties, and that portion of Carbon County east of the Continental Divide; that portion of Park County west of the Shoshone National Forest boundary, and that Portion of Park County north of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 4: Goshen and Platte Counties.

Pacific Flyway

Arizona:

GMU 1 and 27 Game Management Units 1 and 27.

GMU 22 and 23: Game Management Units 22 and 23.

Remainder of State: The remainder of Arizona.

California:

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada state line; north along the California-Nevada state line to the junction of the California-Nevada-Oregon state lines west along the California-Oregon state line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Imperial County Special Management Area: The area bounded by a line beginning at Highway 86 and the Navy Test Base Road; south on Highway 86 to the town of Westmoreland; continue through the town of Westmoreland to Route S26; east on Route S26 to Highway 115; north on highway 115 to Weist Rd.; north on Weist Rd. to Flowing Wells Rd.; northeast on Flowing Wells Rd. to the Coachella Canal; northwest on the Coachella Canal to Drop 18; a straight line from Drop 18 to Frink Rd.; south on Frink Rd. to Highway 111; north on Highway 111 to Niland Marina Rd.; southwest on Niland Marina Rd. to the old Imperial County boat ramp and the water line of the Salton Sea; from the water line of the Salton Sea, a straight line across the Salton Sea to the Salinity Control Research Facility and the Navy Test Base Road; southwest on the Navy Test Base Road to the point of beginning.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Special Management Area (East): That area bounded by a line beginning at the junction of the Gridley-Colusa Highway and the Cherokee Canal; west on the Gridley-Colusa Highway to Gould Road; west on Gould Road and due west 0.75 miles directly to Highway 45; south on Highway 45 to Highway 20; east on Highway 20 to West Butte Road; north on West Butte Road to Pass Road; west on Pass Road to West Butte Road; north on West Butte Road to North Butte Road; west on North Butte Road and due west 0.5 miles directly to the

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Cherokee Canal; north on the Cherokee Canal to the point of beginning.

Sacramento Valley Special Management Area (West): That area bounded by a line beginning at Willows south on I–5 to Hahn Road; easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes; northerly on CA 45 to the junction with CA 162; northerly on CA 45/162 to Glenn; and westerly on CA 162 to the point of beginning in Willows.

San Joaquin Valley Special Management Area: That area bounded by a line beginning at the intersection of Highway 5 and Highway 120; south on Highway 5 to Highway 33; southeast on Highway 33 to Crows Landing Road; north on Crows Landing Road to Highway 99; north on Highway 99 to Highway 120; west on Highway 120 to the point of beginning.

Western Canada Goose Hunt Area: That portion of the above described Sacramento Valley Area lying east of a line formed by Butte Creek from the Gridley-Colusa Highway south to the Cherokee Canal; easterly along the Cherokee Canal and North Butte Road to West Butte Road; southerly on West Butte Road to Pass Road; easterly on Pass Road to West Butte Road; southerly on West Butte Road to CA 20; and westerly along CA 20 to the Sacramento River.

Colorado (Pacific Flyway Portion):

West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral, and Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho:

Zone 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; those portions of Elmore north and east of I–84, and south and west of I–84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Blaine; Camas; Cassia; those portions of Elmore south of I–84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; Power within the Minidoka National Wildlife Refuge; and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; Power west of ID 37 and ID 39 except the Minidoka National Wildlife Refuge; and Teton.

Zone 5: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

In addition, goose frameworks are set by the following geographical areas:

Northern Unit: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Southwestern Unit: That area west of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border (except the Northern Unit and except Custer and Lemhi Counties).

Southeastern Unit: That area east of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border, including all of Custer and Lemhi Counties.

Montana (Pacific Flyway Portion):

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada:

Lincoln Clark County Zone: All of Lincoln and Clark Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion):

North Zone: The Pacific Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific Flyway portion of New Mexico located south of I–40.

Oregon:

Southwest Zone: Douglas, Coos, Curry, Josephine, and Jackson Counties.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I–5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I–5; then south on I–5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on OR 126 to OR 36; then north on OR 36 to Forest Road 5070 at Brickerville; then west and south on Forest Road 5070 to OR 126; then west on OR 126 to Milepost 19, north to the intersection of the Benton and Lincoln County line, north along the western boundary of Benton and Polk counties to the southern boundary of Tillamook County, west along the Tillamook County boundary to the Pacific Coast.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone and all of Lincoln County.

Closed Zone: Those portions of Coos and Curry Counties south of Bandon and west of U.S. 101 and all of Tilamook and Lincoln Counties.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Harney, Klamath, Lake, and Malheur County Zone: All of Harney, Klamath, Lake, and Malheur Counties.

Utah:

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Washington:

Area 1: Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone): Clark County, except portions south of the Washougal River; Cowlitz, and Wahkiakum Counties.

Area 2B (SW Quota Zone): Pacific and Grays Harbor Counties.

Area 3: All areas west of the Pacific Crest Trail and west of the Big White Salmon River which are not included in Areas 1, 2A and 2B.

Area 4: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5: All areas east of the Pacific Crest Trail and east of the Big White Salmon River which are not included in Area 4.

Wyoming (Pacific Flyway Portion):

See State Regulations.

Bear River Area: That portion of Lincoln County described in State regulations.

Salt River Area: That portion of Lincoln County described in State regulations.

Eden-Farson Area: Those portions of Sweetwater and Sublette Counties described in State regulations.

Swans

Central Flyway

South Dakota:

Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion):

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada:

Open Area: Churchill, Lyon, and Pershing Counties.

Utah:

Open Area: Those portions of Box Elder, Weber, Davis, Salt Lake, and Toole Counties lying west of I–15, north of I–80 and south of a line beginning from the Forest Street exit to the Bear River National Wildlife Refuge boundary, then north and west along the Bear River National Wildlife Refuge boundary to the farthest west boundary of the Refuge, then west along a line to Promontory Road, then north on Promontory Road to the intersection of SR 83, then north on SR 83 to I–84, then north and west on I–84 to State Hwy 30, then west on State Hwy 30 to the Nevada-Utah state line, then south on the Nevada-Utah state line to I–80.

[FR Doc. 02–20713 Filed 8–15–02; 8:45 am]

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Federal Register

Friday,
August 16, 2002

Part V

Department of Education

Office of Special Education Services; National Institute on Disability and Rehabilitation Research—Research Fellowships Program; Inviting Applications for New Awards for Fiscal Year (FY) 2003; Notice

VOL 67 ISS 159 AG 16 2002 UMI

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133F]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research—Research Fellowships Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of the Program: The purpose of the Fellowships Program is to build research capacity by providing support to highly qualified individuals, including those who are individuals with disabilities, to conduct research about the rehabilitation of individuals with disabilities. Fellows may conduct original research in any area authorized by section 204 of the Rehabilitation Act of 1973, as amended. Fellows must address problems encountered by individuals in their daily lives that are due to the presence of a disabling condition, problems associated with the provision of rehabilitation services to individuals with disabilities, and problems connected with the conduct of disability research.

The program provides two categories of fellowships: Merit Fellowships and Distinguished Fellowships.

(a) To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications.

(b) To be eligible for a Merit Fellowship, an individual must have either advanced professional training or independent study experience in an area that is directly pertinent to disability and rehabilitation.

Applicants are not required to submit a budget with their proposal. These are one Full Time Equivalent (FTE) awards. The applicant must work principally on the fellowship during the year. We define one FTE as equal to 40 hours per week. The applicant cannot receive support through any other Federal Government grants during this period.

Eligible Applicants: Only individuals who have training and experience that indicate a potential for engaging in scientific research related to the solution of rehabilitation problems of individuals with disabilities are eligible.

Note: Institutions are not eligible to be recipients of Fellowships.

Deadline for Transmittal of Applications: October 15, 2002.

Applications Available: August 16, 2002.

Maximum Award Amount: Merit: $45,000; Distinguished: $55,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 months.

Page Limitation: The application must be limited to no more than 24 pages double spaced.

Note: The Secretary will reject without consideration or evaluation any application for a Research Fellowship that does not adhere to the 24 pages double spaced limit.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 81, 82, 85, 86, and 97; and 34 CFR part 356, Disability and Rehabilitation Research Fellowships.

Note: Applicants need to put their Social Security Number in Block #2 on the 424 form in place of the DUNS Number.

SUPPLEMENTARY INFORMATION: This priority reflects issues discussed in the New Freedom Initiative (NFI) and NIDRR's Long-Range Plan (the Plan). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominiative.html.* The Plan can be accessed on the Internet at: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Selection Criteria

In evaluating an application for a new grant under this competition, we use selection criteria chosen from the selection criteria in 34 CFR part 356. The selection criteria to be used for this competition will be provided in the application package for this competition.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Instructions for transmitting applications will be provided in the application package.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Research Fellowships Program—CFDA 84.133F is one of the programs included in the pilot project. If you are an applicant under the Research Fellowships Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- Do not wait until the deadline date for the transmittal of applications to submit your application electronically. If you wait until the deadline date to submit your application electronically and you are unable to access the e-APPLICATION system, you must contact the Help Desk by 4:30 p.m. Washington DC time on the deadline date.
- Keep in mind that e-APPLICATION is not operational 24 hours a day every day of the week. Click on Hours of Web Site Operation for specific hours of access during the week.
- You will have access to the e-APPLICATION Help Desk for technical support: 1–888–336–8930 (TTY: 1–866–697–2696, local 202–401–8363). The Help Desk hours of operation are limited to: 8 a.m.-6 p.m. Washington DC time Monday-Friday.
- If you submit your application electronically by the transmittal date but also wish to submit a paper copy of your application, then you must mail the paper copy of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA # 84.133F, 7th and D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424 Standard Face Sheet), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424 Standard Face Sheet) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that you sign the form as the institution's Authorizing Representative.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Research Fellowships Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (*see* Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications Contact

Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs via its Web site: *http://www.ed.gov/pubs/edpubs.html* or its e-mail address (*edpubs@inet.ed.gov*). If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133F.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Services (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via Internet: *Donna.Nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

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Program Authority: 29 U.S.C. 762(e).

Dated: August 13, 2002.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

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Part VI

The President

Notice of August 14, 2002—Continuation of Emergency Regarding Export Control Regulations

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Presidential Documents

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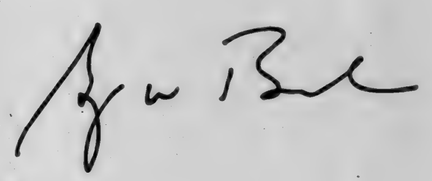
The President

Notice of August 14, 2002

Continuation of Emergency Regarding Export Control Regulations

On August 17, 2001, consistent with the authority provided me under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), I issued Executive Order 13222. In that order, I declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States in light of the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*). Because the Export Administration Act has not been renewed by the Congress, the national emergency declared on August 17, 2001, must continue in effect beyond August 17, 2002. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13222.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
August 14, 2002.

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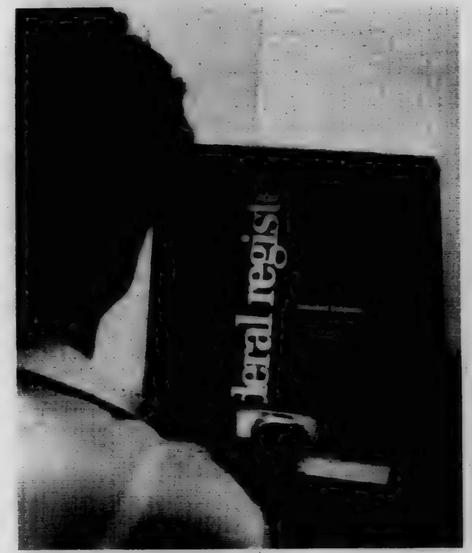
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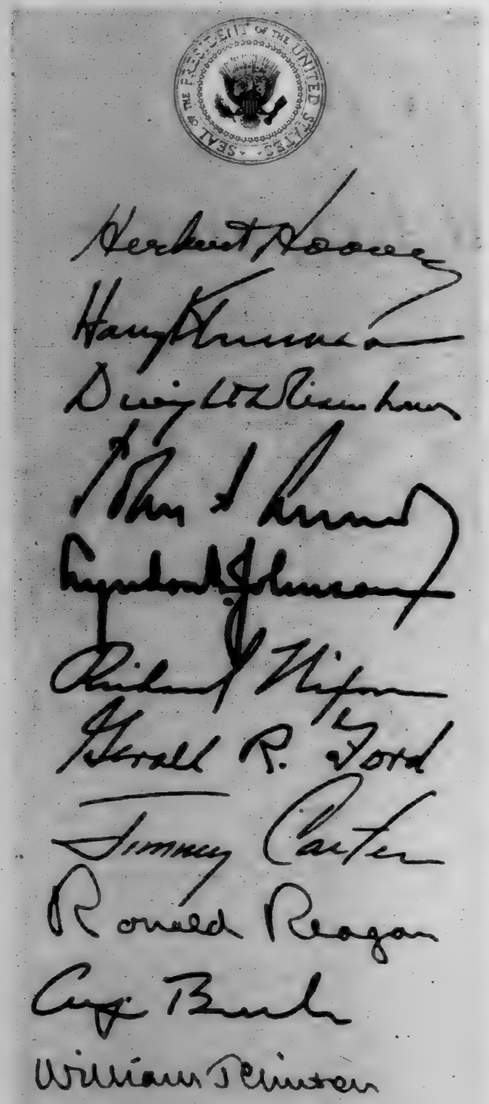
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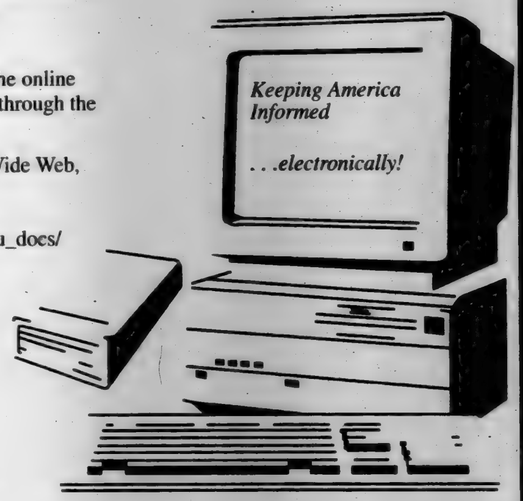
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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Presidential Documents

Title 3—

The President

Proclamation 7582 of August 14, 2002

National Airborne Day, 2002

By the President of the United States of America

A Proclamation

The history of Airborne forces began after World War I, when Brigadier General William Mitchell first conceived the idea of parachuting troops into combat. Eventually, under the leadership of Major William Lee at Fort Benning, Georgia, members of the Parachute Test Platoon pioneered methods of combat jumping in 1940. In November 1942, members of the 2nd Battalion, 503rd Parachute Infantry Regiment, conducted America's first combat jump, leaping from a C–47 aircraft behind enemy lines in North Africa. This strategy revolutionized combat and established Airborne forces as a key component of our military.

During World War II, Airborne tactics were critical to the success of important missions, including the D-Day invasion at Normandy, the Battle of the Bulge, the invasion of Southern France, and many others. In Korea and Vietnam, Airborne soldiers played a critical combat role, as well as in later conflicts and peacekeeping operations, including Panama, Grenada, Desert Storm, Haiti, Somalia, and the Balkans. Most recently, Airborne forces were vital to liberating the people of Afghanistan from the repressive and violent Taliban regime; and these soldiers continue to serve proudly around the world in the global coalition against terrorism.

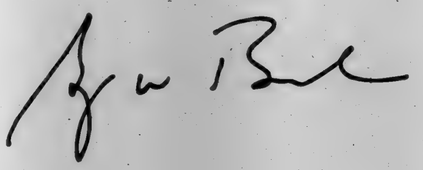
The elite Airborne ranks include prestigious groups such as the 82nd Airborne Division, "America's Guard of Honor," and the "Screaming Eagles" of the 101st Airborne Division (Air Assault). Airborne forces have also been represented in the former 11th, 13th, and 17th Airborne Divisions and numerous other Airborne, glider and air assault units and regiments. Paratroopers in the Army's XVIII Airborne Corps, the 75th Infantry (Ranger) Regiment and other Special Forces units conduct swift and effective operations in defense of peace and freedom.

Airborne combat continues to be driven by the bravery and daring spirit of sky soldiers. Often called into action with little notice, these forces have earned an enduring reputation for dedication, excellence, and honor. As we face the challenges of a new era, I encourage all people to recognize the contributions of these courageous soldiers to our Nation and the world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 16, 2002, as National Airborne Day. As we commemorate the first official Army parachute jump on August 16, 1940, I encourage all Americans to join me in honoring the thousands of soldiers, past and present, who have served in an Airborne capacity. I call upon all citizens to observe this day with appropriate programs, ceremonies, and activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of August, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 02–21212
Filed 8–16–02; 8:45 am]
Billing code 3195–01–P

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Title 3—

The President

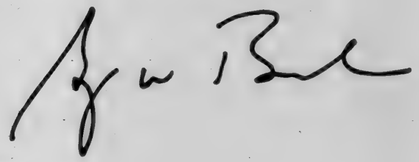
Presidential Determination No. 2002–27 of August 7, 2002

Presidential Determination on Waiver of Restrictions on Assistance to Russia under the Cooperative Threat Reduction Act of 1993 and Title V of the FREEDOM Support Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 302 of the 2002 Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States (Public Law 107–206), I hereby certify that waiving the restrictions contained in subsection (d) of 22 U.S.C. 5952 and in section 502 of the FREEDOM Support Act (Public Law 102–511) with respect to the Russian Federation is important to the national security interests of the United States.

You are authorized and directed to transmit this certification to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, August 7, 2002.

[FR Doc. 02–21192
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 00–042–2]

Importation of Artificially Dwarfed Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations for importing plants and plant products by requiring artificially dwarfed plants that are imported into the United States to have been grown under certain conditions in greenhouses or screenhouses within nurseries registered with the government of the country where the plants were grown. This action is necessary to protect against the introduction of longhorned beetles into the United States.

EFFECTIVE DATE: September 18, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests. The regulations contained in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products," §§ 319.37 through 319.37–14 (referred to below as the regulations), restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

Under § 319.37–2(b)(2) of the regulations, the importation from all foreign places except Canada of any naturally dwarf or miniature form of tree or shrub exceeding 305 mm (approximately 12 inches) in length from the soil line is prohibited, unless the plants are imported by the U.S. Department of Agriculture for experimental or scientific purposes in accordance with § 319.37–2(c). Because the regulations do not explicitly prohibit the importation of naturally dwarf plants under 305 mm in length or artificially dwarfed plants, and because the regulations do not contain restrictions particular to their importation, such plants may be imported into the United States if they are accompanied by a phytosanitary certificate of inspection. Such plants are also subject to inspection and, if necessary, treatment for plant pests, at the port of first arrival in the United States, and under § 319.37–8, such plants must be free of sand, soil, earth, or other growing media.

On April 20, 2001, we published in the **Federal Register** (66 FR 20208–20211, Docket No. 00–042–1) a proposal to amend the regulations by requiring artificially dwarfed plants that are imported into the United States to have been grown under certain conditions in nurseries registered with the government of the country where the plants were grown. We proposed this action in order to protect against the introduction of longhorned beetles and other plant pests into the United States.

We solicited comments concerning our proposal for 60 days ending June 19, 2001. We received four comments by that date. They were from State agricultural officials, agricultural trade organizations, and an environmental advocacy group. The comments are discussed below.

Comment: The relationship between the proposed rule and another proposed rule involving penjing from China is not clear.

Response: This rule is worldwide in scope and is intended to increase and clarify the Animal and Plant Health Inspection Service's (APHIS's) requirements regarding the importation of all artificially dwarfed plants eligible for importation under current regulations. Current regulations allow the importation of artificially dwarfed plants only if they are bare-rooted and accompanied by a phytosanitary certificate. The requirements contained in this rule are intended to clarify what type of plant may be considered an artificially dwarfed plant for the purposes of the regulations, so as to eliminate the possibility that field-grown plants could be imported into the United States under the requirements for artificially dwarfed plants.

In our proposed rule regarding the importation of penjing from China (See 65 FR 56803–56806, Docket No. 98–103–1), we proposed to allow, under certain conditions, the importation in growing media of five genera of artificially dwarfed plants from China.

Comment: Several experts have questioned whether annual inspection by an exporting country's plant protection agency is sufficient to ensure greenhouses are pest-free. Inspections should take place once every 6 months rather than once every 12 months.

Response: We proposed to require that artificially dwarfed plants be grown in a registered nursery for at least 2 years, and that the nursery where they were grown be inspected for any evidence of pests and found free of pests of quarantine significance to the United States at least once every 12 months by the plant protection service of the country where the plants were grown. Several comments that we received indicated that the commenters assumed that we had proposed to require that the plants be grown in a greenhouse at the nursery. Rather, we had simply proposed to require that the plants be grown in a nursery. Based on the apparent support among commenters for a requirement that plants be grown in a greenhouse for 2 years, we have added a requirement in this final rule based on the comments we received. We believe that requiring artificially dwarfed plants to be grown in a greenhouse or screenhouse, in conjunction with the other requirements described in the proposed rule, will reduce the risk that imported artificially dwarfed plants could become infested with quarantine pests.

Under this change, in addition to the requirements described in the proposed rule, imported artificially dwarfed plants must be grown in a greenhouse or screenhouse. The greenhouse or screenhouse must have screening with openings of not more than 1.6 mm on all vents and openings, and all

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entryways must be equipped with automatic closing doors. These screening and entryway requirements will help ensure that pests of concern are excluded from the structures in which the artificially dwarfed plants are grown. The phytosanitary certificate accompanying imported artificially dwarfed plants must state that the above requirements have been met. We are making this change to provide added assurance that longhorned beetles are not able to access and infest foreign-grown artificially dwarfed plants that are intended for export to the United States.

Regarding the timing of inspections, we believe that annual inspections are sufficient to ensure that nurseries are practicing appropriate phytosanitary measures, and to ensure that nurseries meet the conditions described in this document and the proposed rule.

Comment: Why did the proposed rule not address naturally dwarf or miniature forms of tree or shrubs smaller than 305 mm? The pest risk posed by naturally dwarf plants does not differ greatly from risk posed by artificially dwarfed plants, and the scientific rationale for different regulatory treatment of each is not clear.

Response: The current regulations in § 319.37(b)(2) prohibit the importation of naturally dwarf plants that are larger than 305 mm. Naturally dwarf or miniature forms of tree or shrubs smaller than 305 mm are subject to inspection as a condition of entry into the United States, and must be bare-rooted and accompanied by a phytosanitary certificate.

The proposed rule was intended to address the apparently increased pest risk posed by imported plants labeled or manifested as artificially dwarfed plants. As stated in our proposed rule, we believe that many plants that have recently been imported into the United States that have been labeled or manifested as artificially dwarfed plants may in fact be field-collected plants that are produced quickly in their country of origin for mass export. These plants include species that, historically, have not been imported as artificially dwarfed plants and that may not be given the same meticulous care and safeguards as traditional artificially dwarfed plants such as bonsai and penjing.

Essentially, the proposed rule was intended to clarify what type of plant could be considered an artificially dwarfed plant for the purposes of the regulations, so as to eliminate the possibility that field-grown plants could be imported into the United States under the requirements for artificially dwarfed plants. We have not proposed to amend the requirements for naturally dwarf plants because there is no evidence to suggest that the pest risk associated with imported naturally dwarf plants has increased in a manner corresponding to the risk associated with plants following the artificially dwarfed plant pathway. Because naturally dwarf plants must be 305 mm or less in height to be eligible for importation, and since such plants do not have large woody stems into which longhorned beetles could bore, we do not believe such plants serve as suitable hosts for longhorned beetles.

Comment: What height limitation is applied to imported artificially dwarfed plants? It appears that a 305 mm height limitation currently applies to artificially dwarfed plants, and that the proposal would not change that limitation. If under existing regulations there is no height restriction for artificially dwarfed plants, a reasonable height restriction should be considered to facilitate more effective inspection.

Response: The 305 mm height restriction contained in § 319.37(b)(2) applies only to naturally dwarf plants. At present, no height restrictions apply to imported artificially dwarfed plants. Further, the regulations in § 319.37(b)(6) prohibit the importation of any plants (other than stem cuttings, cactus cuttings, artificially dwarfed plants, palms, and plants whose growth habits simulate palms) that are larger than 460 mm.

We agree that there is a need to consider adopting a height restriction to facilitate the effective inspection of artificially dwarfed plants. We intend to address this issue in a subsequent rulemaking.

Comment: Is there any track record for pest interceptions associated with naturally dwarf plants?

Response: APHIS's pest interception records do not distinguish between naturally dwarf and artificially dwarfed plants. However, inspection personnel have not reported detections of the pests addressed by this rule (longhorned beetles, specifically) on naturally dwarf plants. Further, as stated earlier in this document, we do not believe naturally dwarf plants serve as suitable hosts for longhorned beetles.

Comment: How were the mitigation measures selected? There is no discussion of pests under consideration, except to identify them as longhorned beetles and other dangerous plant pests. Will these measures provide adequate assurance that risks are being reduced to an acceptable level? Can an acceptable level of risk be more clearly defined and communicated?

Response: As stated earlier in this document, the proposed mitigation measures were intended to clarify what type of plant could be considered an artificially dwarfed plant for the purposes of the regulations, so as to eliminate the possibility that field-grown plants could be imported into the United States under the requirements for artificially dwarfed plants. We believe these measures are necessary because field-grown plants that are labeled or manifested as artificially dwarfed plants appear to present a higher risk of introducing longhorned beetles into the United States than do traditionally grown artificially dwarfed plants. We believe that the requirements contained in the rule will significantly reduce the risk that imported artificially dwarfed plants could be infested with these longhorned beetles.

Comment: The list of pests considered in the pest risk assessment is not complete and the mitigation measures in the proposed rule are not adequate to exclude pests of economic significance.

Response: Again, the proposed rule was intended to address the risk posed by field-grown plants that are labeled or manifested as artificially dwarfed plants and that have served as pathways for the introduction of longhorned beetles into the United States. We are confident that the mitigation measures contained in this rule will accomplish that goal. We are not aware of any pests of quarantine significance associated with genuine artificially dwarfed plants that pose risks to U.S. agriculture that are not mitigated by existing phytosanitary measures (*i.e.*, that the plants be accompanied by a phytosanitary certificate, that they are bare-rooted upon importation, and that they are subject to inspection upon arrival in the United States).

Comment: Due to the pest risk associated with artificially dwarfed plants, APHIS should not allow imports of field-grown artificially dwarfed plants even when bare-rooted. Furthermore, APHIS should not allow greenhouse-grown plants to be rooted in the field.

Response: As stated in our proposed rule, in the last 3 years, APHIS has detected increasing numbers of longhorned beetles associated with imported plants following the artificially dwarfed plant pathway. We would like to clarify that the requirements contained in this final rule for importing artificially dwarfed plants are designed to address the risk posed by these longhorned beetles, which are wood-boring pests that are difficult to detect by visual inspection. We believe that the proposed regulations address the increased pest risk posed by longhorned beetles and other wood-boring pests. Further, we are confident that our inspectors are capable of identifying other pests on bare-rooted artificially dwarfed plants by visual inspection at the port of entry.

Also, as stated above, we proposed to require artificially dwarfed plants to be grown in a nursery, but did not specify that the artificially plants be grown in a greenhouse at the nursery. However, in this document, based on public comments, we are requiring imported artificially dwarfed plants to be accompanied by a phytosanitary certificate stating, among other requirements, that the plants have been grown for at least 2 years in a greenhouse or screenhouse in approved nurseries that are inspected annually. We have not prohibited artificially dwarfed plants from being grown in fields prior to their 2-year greenhouse/screenhouse growth period because we believe that the requirements of this rule are sufficient to ensure that plants eligible for importation into the United States are protected against infestation by longhorned beetles.

Comment: The proposed rule is flawed because it allows propagative material that may be infested with pests to be placed in sterile media in a pest-free greenhouse setting. At the instant a field-grown plant is placed in sterile growing media, the media is no longer sterile, and such a requirement does not mitigate the risk posed by soil-borne pests and pathogens. It is absolutely essential to start with clean propagative material. Nematode testing should be included as part of the import requirements for artificially dwarfed plants due to the risk for root nematodes associated with field-grown plants that are moved into greenhouses under the regulations. All field-grown plants should be washed completely free of soil using clean, pressurized water from a known nematode-free source prior to potting in sterile media and containers.

Response: As stated earlier in this document, this rule was intended to address the risk posed by wood-boring pests such as longhorned beetles. If, in the future, we determine that imported artificially dwarfed plants pose a significant risk of introducing soil-borne pests and pathogens into the United States, we will address the issue at that time. At present, we are confident that the requirement that imported artificially dwarfed plants be bare-rooted, coupled with the inspection procedures we use, will enable us to detect nematodes if they are indeed present on imported artificially dwarfed plants.

Comment: APHIS should require that imported plants be defoliated as well as bare-rooted. Such a provision would ensure that additional pests do not hitchhike on the plants.

Response: Pests are capable of hitchhiking on a wide variety of imported plants. To address the risk posed by hitchhiking pests, imported plants are subject to inspection at the port of entry. We are confident that our inspection procedures are adequate to detect such pests on imported commodities, and do not believe that defoliating plants would substantively improve inspections of imported plants.

Comment: Given that the regulations contain an exception for plants from Canada, what safeguards are in place, or could be put in place, to address the risk of transshipment through Canada of plants that would no longer be directly enterable into the United States if the proposed rule is adopted?

Response: Propagative material, whether grown in, or transhipped through Canada must either (1) be accompanied by a phytosanitary certificate of inspection, or (2) in the case of greenhouse-grown plants that meet the applicable conditions of § 319.37–4(c), be accompanied by a certificate of inspection in lieu of a phytosanitary certificate. Both types of certificate include a declaration of the plants' origin.

Comment: Does APHIS have sufficient resources to ensure that imported plants are grown under the conditions specified in the proposed rule? The proposed rule puts an extreme reliance on the infrastructure of foreign regulatory agencies. Many countries simply do not have the infrastructure or resources to provide the kind of regulatory oversight that was envisioned by the proposed rule.

Response: This rule requires the plant protection organization of the exporting country to certify on the phytosanitary certificate accompanying plants imported into the United States that imported artificially dwarfed plants have been grown and inspected according to APHIS requirements. When plants are presented for importation into the United States, we verify that the phytosanitary certificate accompanying the plants contains all the required declarations.

The certification requirements contained in the regulations are in addition to our port of entry inspections, not in lieu of them. Because the United States is a signatory party of international agreements such as the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures and the International Plant Protection Convention, we are obligated to consider foreign certifications as equivalent to our own unless there are documented reasons to consider them otherwise. Under these circumstances, APHIS believes that the proposed requirements will provide adequate protection against the introduction of plant pests into the United States.

One commenter requested additional plant quarantine action to control the spread of *Phythophthora ramorum*, the fungus that causes what has commonly been referred to as Sudden Oak Death. This matter is outside the scope of this rulemaking action, but we have restricted the interstate movement of Sudden Oak Death host articles in an interim rule published in the **Federal Register** on February 14, 2002 (67 FR 6827–6837, Docket No. 01–054–1), and intend to address the importation of Sudden Oak Death host articles from foreign countries in an upcoming rulemaking.

Finally, we have made several nonsubstantive editorial changes for the sake of clarity.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In this document, we are amending the regulations for importing plants and plant products by requiring artificially dwarfed plants that are imported into the United States to have been grown under certain conditions in greenhouses or screenhouses within nurseries registered with the government of the country where the plants were grown. This action is necessary to protect against the introduction of longhorned beetles into the United States.

The requirements of this rule are intended to prevent the introduction of longhorned beetles into the United States. A recent APHIS study on the importation of solid wood packing material from China has shown that production losses resulting from a widespread Asian longhorned beetle infestation in the United States could total in excess of $27.4 billion.

The art of miniature (or artificially dwarfed) plant gardening is a recent phenomenon in the United States. Because it is a highly time consuming

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and very labor intensive activity, it is practiced by a relatively small number of U.S. nurseries and households. The size of these artificially dwarfed plants range from 4 inches to 60 inches in height, with prices ranging from $10 to more than $10,000. The median price of an artificially dwarfed plant is close to $100, and its value increases with age, regardless of size.

Plants that have been imported from Asia represent approximately 80 percent of the value of the entire artificially dwarfed plant market. Such imports come predominantly from Japan, the People's Republic of China, and the Republic of Korea. The remaining 20 percent of value corresponds to plants that have been domestically produced. With respect to volume, 20 percent of the artificially dwarfed plants available in the U.S. market are imported from Asia, and the rest are domestically produced. Domestically produced artificially dwarfed plants are the smallest, simplest, and most inexpensive ones. Plants produced in and imported from Asian countries are the largest, most elaborate, and most expensive.

In 1997, the U.S. National Arboretum in Washington, DC, surveyed U.S. nurseries that sell artificially dwarfed plants, as well as other businesses related to the growing of artificially dwarfed plants. A summary of the results of the survey was published in the American Nurseryman Magazine in April 1999. According to that survey, in 1997, there were at least 366 artificially dwarfed plant-related businesses in the United States. Based on that survey, artificially dwarfed plant businesses can be divided into two categories: Full-service nurseries and specialty companies focusing on one product.

Full-service nurseries may carry a wide range of artificially dwarfed plants in varying sizes, including some that they have developed themselves and others they have purchased or have imported from Asia. Many of these businesses also sell pots for these plants, as well as related tools and books. On the other hand, specialty companies may produce one product, such as plants, pots, or tools, or may be limited to teaching or publishing.

The survey identified 97 full service artificially dwarfed plant nurseries (see table below). These entities ranged from relatively small family owned and operated enterprises to a few large companies.

Type of company	Number of companies
Full service artificially dwarfed plant nurseries	97
Specialty artificially dwarfed plant related companies:	
Plants (including seeds)	82
Tools, supplies, stands	81
Containers and pots	46
Magazines, books, and newsletters	32
Consultants and teachers	28
Total	366

The 1997 survey found that artificially dwarfed plant-related businesses were fairly well distributed throughout the United States. However, the largest concentrations were in the Southeast (107) and the Southwest (102), including California. The Northeast had 84 artificially dwarfed plant-related businesses. The Midwest had 37 related businesses, and the Northwest had 26.

Effect on Small Entities

According to Small Business Administration (SBA) guidelines, a small business involved in the sale or importation of artificially dwarfed plants or related products is one having less than $6 million of annual receipts from sales (see NAICS codes 444220, "Nursery and Garden Centers," and 453110, "Florists").

There are between 20 to 50 importers of artificially dwarfed plants in the United States, with the number varying each year. However, on average, this number is closer to 20. All of them can be considered small entities according to the SBA definition. We do not expect that this final rule will significantly affect the price of imported artificially dwarfed plants or have a significant effect on importers of artificially dwarfed plants.

Most of the businesses engaged in the production and distribution of artificially dwarfed plants and related materials are family owned and operated. Approximately 99 percent of these firms are considered small according to SBA criteria. There is no reason to believe that these entities would be significantly affected by implementation of this rule because the price of imported artificially dwarfed plants is not expected to change significantly.

The requirements that imported artificially dwarfed plants be grown in greenhouses or screenhouses in registered nurseries—and not collected from open fields—could affect the number of artificially dwarfed plants imported during the short term. Plants imported from Asia are predominantly higher valued and nursery-grown, and comprise only 20 percent of U.S. sales by quantity, but 80 percent of sales by value. This rule will not likely have a significant effect on the number of higher-valued plants imported from Asia. However, since artificially dwarfed plants that are not grown in accordance with the conditions in this rule are prohibited importation into the United States, it is possible that some U.S. producers could benefit from decreased competition. Nevertheless, the effect of this final rule on those nurseries is expected to be insignificant, given the small number of affected imports.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0176.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 166, 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.37–2 [Amended]

2. Section 319.37–2 is amended as follows:

a. In paragraph (a), in the text before the table, by removing the words "§ 319.37–2(c) of this subpart" and adding in their place the words "paragraph (c) of this section".

b. In paragraph (b), introductory text, by removing the words "§ 319.37–2(c) of this subpart" and adding in their place the words "paragraph (c) of this section".

c. In paragraph (b)(1), introductory text, by removing the words "trees or shrubs" and adding in their place the words "plants meeting the conditions in § 319.37–5(q)".

d. In paragraph (b)(6)(i), by removing the words "such as bonsai" and adding in their place the words "meeting the conditions in § 319.37–5(q)".

e. In paragraph (b)(7), introductory text, by removing the words "tree or shrub" the second time they appear and adding in their place the words "plant meeting the conditions in § 319.37–5(q)".

§ 319.37–5 [Amended]

3. Section 319.37–5 is amended as follows:

a. By adding a new paragraph (q) to read as follows.

b. At the end of the section, by revising the OMB control number citation to read as follows.

§ 319.37–5 Special foreign inspection and certification requirements.

* * * * *

(q) Any artificially dwarfed plant imported into the United States must have been grown and handled in accordance with the requirements of this paragraph and must be accompanied by a phytosanitary certificate of inspection that was issued by the government of the country where the plants were grown.

(1) Any growing media, including soil, must be removed from the artificially dwarfed plants prior to shipment to the United States unless the plants are to be imported in accordance with § 319.37–8.

(2) The artificially dwarfed plants must be grown in accordance with the following requirements and the phytosanitary certificate required by this paragraph must contain declarations that those requirements have been met:

(i) The artificially dwarfed plants must be grown for at least 2 years in a greenhouse or screenhouse in a nursery registered with the government of the country where the plants were grown;

(ii) The greenhouse or screenhouse in which the artificially dwarfed plants are grown must have screening with openings of not more than 1.6 mm on all vents and openings, and all entryways must be equipped with automatic closing doors;

(iii) The artificially dwarfed plants must be grown in pots containing only sterile growing media during the 2-year period when they are grown in a greenhouse or screenhouse in a registered nursery;

(iv) The artificially dwarfed plants must be grown on benches at least 50 cm above the ground during the 2-year period when they are grown in a greenhouse or screenhouse in a registered nursery; and

(v) The plants and the greenhouse or screenhouse and nursery where they are grown must be inspected for any evidence of pests and found free of pests of quarantine significance to the United States at least once every 12 months by the plant protection service of the country where the plants are grown.

(Approved by the Office of Management and Budget under control number 0579–0176)

Done in Washington, DC this 14th day of August 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–20940 Filed 8–16–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–318–AD; Amendment 39–12855; AD 2002–16–16]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 and –300 series airplanes, that requires inspecting the identification plate on the fire extinguisher bottle of the auxiliary power unit (APU), and replacing the existing actuating cartridge of the fire extinguisher bottle with a correct actuating cartridge, if necessary. This AD also requires removing the fire extinguisher bottle equipped with the actuating cartridge from the APU, and reinstalling the fire extinguisher bottle equipped with the correct actuating cartridge into the APU. The actions specified by this AD are intended to prevent failure of the actuating cartridge on the APU fire extinguisher, which could result in the inability to extinguish an APU fire in-flight, and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 23, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 23, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, PO Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriquez; Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 and –300 series airplanes was published in the **Federal Register** on April 18, 2002 (67 FR 19132). That action proposed to require inspecting the identification plate on the fire extinguisher bottle in the auxiliary power unit (APU) to verify if the correct actuating cartridge has been installed, and replacing the existing actuating cartridge of the fire extinguisher bottle with the correct actuating cartridge, if necessary. That action also proposed to require removing the fire extinguisher bottle equipped with the actuating cartridge from the APU, and reinstalling the fire extinguisher bottle equipped with the correct actuating cartridge into the APU.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal.

Explanation of Change to Final Rule

Since the language in Note 3 of the proposed AD is regulatory in nature, that note has been redesignated as paragraph (b) of this final rule. Additionally, the new paragraph clarifies that the referenced service

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bulletin affects Model 328–300 series airplanes.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 88 Model 328–100 and –300 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $5,280, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–16 Dornier Luftfahrt GmbH: Amendment 39–12855. Docket 2001–NM–318–AD.

Applicability: Model 328–100 series airplanes, as listed in Dornier Service Bulletin SB–328–26–342, dated November 2, 2000; and Model 328–300 series airplanes, as listed in Dornier Service Bulletin SB–328J–26–049, Revision 1, dated June 11, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the actuating cartridge on the auxiliary power unit (APU) fire extinguisher, which could result in the inability to extinguish an APU fire in-flight, and consequent reduced structural integrity of the airplane, accomplish the following:

Removal, Inspection, Corrective Actions, and Reinstallation

(a) Within 45 days after the effective date of this AD, do the actions specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, per Dornier Service Bulletin SB–328–26–342, dated November 2, 2000 (for Model 328–100 series airplanes); or Dornier Service Bulletin SB–328J–26–049, Revision 1, dated June 11, 2001 (for Model 328–300 series airplanes); as applicable.

(1) Remove the fire extinguisher bottle equipped with the actuating cartridge from the APU.

(2) Inspect the identification plate on the fire extinguisher bottle to verify if the correct actuating cartridge (part number (P/N) 30903964) has been installed. If the correct actuating cartridge has not been installed, before further flight, replace the existing actuating cartridge with a correct actuating cartridge, P/N 30903964, and vibra etch the identification plate to indicate the new P/N, per the service bulletin.

(3) Reinstall the fire extinguisher bottle equipped with the correct actuating cartridge into the APU.

Note 2: Dornier Service Bulletin SB–328–26–342, dated November 2, 2000; and Dornier Service Bulletin SB–328J–26–049, Revision 1, dated June 11, 2001; both reference Pacific Scientific Service Bulletin 33100016–26–1, dated November 15, 2000, as an additional source of service information for accomplishing the inspection and replacement.

(b) Accomplishment of the actions specified in Dornier Service Bulletin SB–328J–26–049, dated November 2, 2000 (for Model 328–300 series airplanes), is acceptable for compliance with the actions required by paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done per Dornier Service Bulletin SB–328–26–342, dated November 2, 2000; or Dornier Service Bulletin SB–328J–26–049, Revision 1, dated June 11, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, PO Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in German airworthiness directives 2001–291 and 2001–292, both dated October 18, 2001.

Effective Date

(f) This amendment becomes effective on Sepetmber 23, 2002.

Issued in Renton, Washington, on August 9, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20707 Filed 8–16–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–348–AD; Amendment 39–12863; AD 2002–16–24]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes; and Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300–600 and A310 series airplanes, that requires replacement of certain symbol generator units (SGUs) in the electronic flight instrument system with new, improved SGUs, and modification of associated equipment and wiring. This action is necessary to ensure that the flightcrew has adequate flight information by preventing temporary loss of data from the primary flight and navigation displays. Inadequate flight information could result in reduced situational awareness for the flightcrew, which could contribute to loss of control or impact with obstacles or terrain. This action is intended to address the identified unsafe condition.

DATES: Effective September 23, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 23, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 and A310 series airplanes was published in the **Federal Register** on April 3, 2002 (67 FR 15762). That action proposed to require replacement of certain symbol generator units (SGUs) in the electronic flight instrument system with new, improved SGUs, and modification of associated equipment and wiring.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Revise Cost Estimate

The Air Transport Association (ATA) of America, on behalf of its members, generally supports the intent of the proposed AD. However, one commenter has suggested revising the cost estimate specified in the proposed AD. These comments and FAA responses are as follows:

- The commenter states that, although the proposed AD specifies a labor rate of $60 per hour, the commenter's labor rate is $98 per hour.

We point out that our estimate of $60 per work hour is the current burdened labor rate established for use by the Office of Aviation Policy, Plans, and Management Analysis. (The burdened labor rate includes the actual labor cost, overhead, administrative expenses, etc.) Because the labor rate used in our calculations accounts for the variations in costs among those in the airline industry, we consider that $60 per work hour is appropriate. No change to the final rule is necessary in this regard.

- The commenter considers that 7 instead of the 4 work hours cited in the proposed AD is needed to accomplish the actions specified in Airbus Service Bulletin A300–34–6132, dated May 17, 2001 (which is referenced in the proposed AD as an appropriate source of service information). The commenter also considers that the cost estimate in the proposed AD of $710 per airplane for labor and parts is significantly underestimated. The commenter also states that Airbus Service Bulletin A300–34–6132 references Thompson-CSF Sextant (also referred to as Thales) Service Bulletin 961266–34–038, which specifies 8 work hours for shop labor per each SGU, or $2,352 per airplane; and shop materials at $2,126 per each SGU, or $6,380 for three SGUs per airplane.

We partially concur with these comments. First, we point out that our estimate of 4 work hours, as specified in the proposed AD, is based on the estimate specified in Airbus Service Bulletin A300–34–6132. However, we agree that it is necessary to include additional costs for the bench modification. Those costs are included in the Thompson-CSF Sextant service bulletin, which specifies 1 work hour per SGU to perform the bench modification, for a total of 3 work hours for each airplane. We do not agree with the commenter's estimate of 8 work hours per SGU for the bench modification because no substantiation was provided for such a figure. The cost analysis in AD rulemaking actions typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate.

Second, we agree that the cost estimate of $710 per airplane should be increased, based on additional costs for the bench modification. Although we inadvertently failed to include the costs for the bench modification in the proposed AD, that action was part of the modification action required by the proposed AD. We note that the Thompson-CSF Sextant service bulletin is referenced in Airbus Service Bulletins A310–34–2157 (which is referenced in the proposed AD as an appropriate source of service information) and A300–34–6132 as an additional source of service information.

Based on this information, we have revised the cost estimate in the final rule to specify 7 instead of 4 work hours and to include an additional $6,810 for shop materials. In addition, we have added a new Note 2 to the final rule to specify the Thompson-CSF Sextant service bulletin as an additional source of service information, and have renumbered the succeeding notes accordingly.

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Request To Revise Paragraph (a) of Proposed AD

One commenter states that the "Replacement and Modification section," paragraph (a) of the proposed AD, is obsolete. The commenter adds that, although paragraph (a) of the proposed AD requires installing SGU part number (P/N) 9612660321, that P/N was recently removed from the Illustrated Parts Catalog and replaced by P/N 9612660420.

We do not agree that the replacement and modification action is obsolete for the airplanes cited in the applicability of the proposed AD. We point out that the airplanes operated by the commenter, United Parcel Service (UPS) Airlines, incorporate Airbus Industrie Modification 12100. As noted in the applicability of the NPRM, airplanes incorporating Airbus Industrie Modification 12100 are not included in the applicability. We also point out that (P/N) 9612660420 is unique to the UPS Airlines airplanes that have incorporated Airbus Modification 12100, and that P/N 9612660420 is specified in their customized Illustrated Parts Catalog. In light of this, no change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 142 airplanes of U.S. registry will be affected by this AD. We estimate that it will take approximately 7 work hours per airplane to accomplish the required SGU replacement and modification of associated equipment and wiring (including the bench modification), and that the average labor rate is $60 per work hour. Required parts will cost approximately $7,280 per airplane (including the kit modification). Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,093,400, or $7,700 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–24 Airbus Industrie: Amendment 39–12863. Docket 2001–NM–348–AD.

Applicability: Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes; certificated in any category; except those on which Airbus Service Bulletin A300–34–6132 or A310–34–2157, both dated May 17, 2001 (Airbus Industrie Modification 12100 or 12291), has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew has adequate flight information by preventing temporary loss of data from the primary flight and navigation displays, accomplish the following:

Replacement and Modification

(a) Within 3 years after the effective date of this AD, replace all symbol generator units (SGUs), part number (P/N) 9612660319, in the electronic flight instrument system, with new, improved SGUs, P/N 9612660321, and modify associated equipment and wiring, according to Airbus Service Bulletin A300–34–6132 (for Model A300–600 series airplanes) or A310–34–2157 (for Model A310 series airplanes), both dated May 17, 2001, as applicable.

Note 2: Airbus Service Bulletin A300–34–6132 or A310–34–2157, both dated May 17, 2001, references Thompson-CSF Sextant Service Bulletin 961266–34–038 as an additional source of service information for accomplishment of the modification.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus Service Bulletin A300–34–6132, dated May 17, 2001; or Airbus Service Bulletin A310–34–2157, dated May 17, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 2001–467(B), dated October 3, 2001.

Effective Date

(e) This amendment becomes effective on September 23, 2002.

Issued in Renton, Washington, on August 9, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20708 Filed 8–16–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11–02–004]

RIN 2115–AE46

Special Local Regulations; San Diego Thunderboat Regatta

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing special local regulations for the Thunderboat Regatta, one of the Southern California annual marine events. The name of this event has formally changed to San Diego Thunderboat Regatta. This action is necessary to control vessel traffic in the regulated areas during the event to ensure the safety of participants and spectators.

EFFECTIVE DATES: The special local regulations for the Thunderboat Regatta (§ 100.1101) will be enforced from 7:30 a.m. on September 20, 2002 until 5:30 p.m. September 22, 2002.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, U.S. Coast Guard Marine Safety Office San Diego, San Diego, California; Telephone: (619) 683–6495.

SUPPLEMENTARY INFORMATION: The Coast Guard is implementing a permanent special local regulation in 33 CFR 100.1101, for a marine event. The following special local regulation will be enforced in the month of September:

Thunderboat Regatta. This special local regulation will be enforced from 7:30 a.m. on September 20, 2002 until 5:30 p.m. on September 22, 2002.

These special local regulations permit Coast Guard control of vessel traffic in order to ensure the safety of spectator and participant vessels. In accordance with the regulations in 33 CFR 100.1101, all persons and/or vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state or local law enforcement and sponsor-provided vessels assigned or approved, by Commander, Eleventh Coast Guard District to patrol each event. No spectators shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for such entry by or through an official patrol vessel. When hailed or signaled by an official patrol vessel, a spectator must come to an immediate stop. Vessels must comply with all directions given, failure to do so may result in a citation.

Dated: July 31, 2002.

T.S. Sullivan,

Captain, U. S. Coast Guard, Acting Commander, Eleventh Coast, Guard District.

[FR Doc. 02–20953 Filed 8–16–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–058]

Special Local Regulations for Marine Events; Patapsco River, Baltimore, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.515 during the Defender's Day fireworks display to be held September 14, 2002, over the waters of the Patapsco River at Baltimore, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the fireworks display. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

EFFECTIVE DATES: 33 CFR 100.515 is effective from 5:30 p.m. to 11 p.m. on September 14, 2002.

FOR FURTHER INFORMATION CONTACT: Ronald Houck, Marine Information Specialist, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, at (410) 576–2674.

SUPPLEMENTARY INFORMATION: The City of Baltimore will sponsor the Defender's Day fireworks display on September 14, 2002 over the waters of the Patapsco River, Baltimore, Maryland. The fireworks display will be launched from a barge positioned within the regulated area. A fleet of spectator vessels is expected to gather nearby to view the aerial display. In order to ensure the safety of spectators and transiting vessels, 33 CFR 100.515 will be in effect for the duration of the event. Under provisions of 33 CFR 100.515, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: August 8, 2002.

A.E. Brooks,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 02–21026 Filed 8–16–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 160

[USCG–2001–8659]

RIN 2115–AG06

Notification of Arrival: Addition of Charterer to Required Information

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends its advance notification requirements in the Notification of Arrival regulations for vessels bound for ports or places in the United States. In addition to the

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information already required by these regulations, this rule will require the owner, master, operator, agent, or person in charge of the vessel to identify the charterer of their vessel. The addition of the charterer information will allow us to better identify charterers associated with substandard vessels.

DATES: This final rule is effective September 18, 2002, except for §§ 160.T208(c)(15)(iv) and (c)(16) and 160.T212(b)(20), which are effective September 18, 2002, through September 30, 2002.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2001–8659 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Project Manager Michael Jendrossek, U.S. Coast Guard, Office of Vessel and Facility, Operating and Environmental Standards Division (G-MSO), telephone 202–267–0836. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 18, 2000, we published a notice of request for comment entitled "Notification of Arrival: Addition of Charterer or Cargo Owner to Required Information" (65 FR 50481). The notice sought to enhance the Coast Guard's understanding of the role of charterers and cargo owners in influencing the quality of shipping. We received 16 comments, which were summarized in a notice of proposed rulemaking (NPRM) (66 FR 21710, May 1, 2001). The NPRM proposed including the charterer information, but not the cargo owner information. After publication of the NPRM, we received 10 letters containing 21 comments on the proposed rule. No public hearing was requested and none was held.

Background and Purpose

The Coast Guard initiated the Port State Control program in April 1994 because of concerns raised over the steady increase in the number of substandard non-U.S. flagged vessels visiting U.S. waters. The program's goal is the elimination of substandard vessels from U.S. waters. To meet this goal, we developed a risk-based targeting matrix that evaluated a foreign vessel's Flag State, owner, operator, classification society, vessel type, and its compliance history. The matrix allowed limited Coast Guard resources to be directed to those vessels that posed the greatest risk to safety and the environment. The matrix's basis is derived from information obtained as part of a vessel's notification of arrival, required by 33 CFR part 160, subpart C. The Captain of the Port (COTP) uses the matrix as a tool to score each arriving foreign vessel. The COTP then prioritizes boardings based on each vessel's score. If a vessel is determined to be substandard, it is detained until the deficiencies are corrected. Although the number of detentions of substandard vessels fell from 547 in 1997 to 193 in 2000, there are still too many substandard vessels calling on U.S. ports.

The Coast Guard knows that many companies chartering vessels to move their cargo go to great lengths to ensure that the vessels they charter are sound and pose minimal risks. In other cases, individuals or corporations select a vessel based solely on the cost of chartering the vessel, foregoing any examination of the vessel's condition, safety, and casualty history. It is the Coast Guard's opinion these two scenarios demonstrate the value of collecting the arriving vessel's charterer as one more factor in the Port State Control matrix.

Discussion of Comments and Changes

We received 10 comment letters containing 21 comments in response to the NPRM (66 FR 21710, May 1, 2001) and our proposed amendments to the advance notification requirements in 33 CFR part 160, subpart C.

We received four comments supporting the rule. Of those, two commenters stated publishing a list of substandard vessels could enhance vessel compliance with safety and pollution standards by deterring the chartering of substandard vessels. One indicated the rule would improve the Port State Control initiative by bringing greater transparency to the Coast Guard's ability to target specific vessels for inspections. One stated the rule would allow the Coast Guard to build a database to properly assess if some companies are frequently associated with chartering substandard vessels.

We received four comments addressing ownership differences. One asked if the rule would regulate time charterers, voyage charterers, or both. The commenter said charterers are not normally responsible for, and have no direct control over the condition of vessels that they charter. According to the commenter, changing the regulation will not help the Coast Guard ensure vessels are operated safely. We disagree. The rule will apply to all charterers that are responsible for chartering the majority of a vessel's cargo carrying capacity. When a charterer is contracting for the services of a vessel to carry goods, that individual or organization has the greatest amount of control in selecting a vessel in suitable condition to make a voyage to the United States. For example, if the vessel is substandard, the charterer can opt to not enter into a charterer agreement.

We received three comments addressing the definition of "charterer", with two asking for a clarification in defining the term. Of those, one stated the definition could create confusion and uncertainty in determining the type of charterer. One comment said only the "head charterer" should be listed because that would identify the most important "charterer" and reduce the complication of listing every "charterer". We agree with the comment's intent. We have modified the language to alleviate any confusion as to whose identity we are seeking. The Coast Guard is requiring only the identity of the individual or organization that contracts for the majority of a vessel's cargo carrying capacity. The person or organization that contracts for this amount of space has control over vessel selection and, therefore, the condition of the vessel they choose to hire. It is not our intent to capture minor space charterers who are not involved in vessel selection. We also added explicit reference to the "types" of charters that are subject to this change.

We received two comments in support of not collecting information on cargo owners, which were included in our August 2000 request for comments. Both agreed that the frequent changes in ownership of given cargo would overly complicate the reporting effort. In response to our request for comments, we received numerous negative comments opposed to the collection of cargo owner information. Based on these responses, we elected not to propose collecting cargo owner information in the NPRM, or in this final rule.

We received two comments that stated the charterer of a vessel is generally considered confidential and commercial proprietary information. Of those, one stated publishing a list of charterers associated with detentions would not improve compliance, but instead hurt sensitive marketplaces such as the Great Lakes and that the marketplace will detract a charterer from substandard vessel usage instead of forcing better compliance. The Coast Guard disagrees. Anyone involved in the selection and chartering of a vessel to carry cargo to the United States is subject to analysis to determine if their business practices pose an environmental threat. Additionally, the charterer information is being provided to the government, not to the public. Any subsequent release to the public, under the Freedom of Information Act (FOIA), for example, would be analyzed to ensure no actual proprietary information is released.

One commenter addressed applicability involving certain vessel operations. The commenter stated vessels conducting operations, such as drilling or construction on the Outer Continental Shelf (OCS), do not have a "charterer" under the rule's definition. The commenter also said each vessel arriving at an OCS facility is contracted for its crew and services by a "lessee" or "permitee", not for its capacity to transport cargo to a port. In cases involving vessels that do not have charterers in accordance with the definition of this subpart, a vessel need only provide all other pre-arrival notification information.

One commenter asked that bareboat chartering agreements not fall under the definition of "charterer" because it is already included in the existing Notification of Arrival requirements. The commenter stated under bareboat agreements, the charterer is the "legal and de facto operator." We agree. Bareboat, or demise charterer agreements are not part of the "charterer" definition in this subpart. Bareboat and demise charterers are further discussed in 46 CFR 169.107, amended by final rule, published in the **Federal Register** on May 15, 2002 (67 FR 34756).

One commenter indicated that time and voyage charterers should be considered "charterers" as part of the Notification of Arrival requirements because those agreements are comparable to "single charterer—single vessel—single cargo" scenarios. We agree with the comment's intent. The purpose of this rulemaking is to identify the single entity responsible for selecting a vessel for a particular voyage. Thus, we are looking to capture charterer information for the type of agreement described by the commenter.

One commenter said the definition is too broad and would create multiple "charterers" among liner carriers who are sharing space on the same voyage. The commenter stated the Coast Guard should only be interested in "the carrier directly responsible for the mechanical operation of the specific vessel arriving in a U.S. port." We agree. Our definition of charterer, provided in § 160.203, captures the individual (or corporation) who charters for the majority of a vessel's cargo capacity. Thus, anyone chartering less than the majority would not be included in this rule. If, however, one individual contracts for a majority of the vessel and then subcharters the vessel's available cargo space, the original contractor is the charterer we want to identify.

One commenter indicated adding the charterer's name would be a potential problem and could do more harm than good, but did not go into specifics. Without more information regarding the problem mentioned by the commenter, we are unable to give a specific response. The Coast Guard reiterates its belief that collecting charterer information will increase the effectiveness of the Port State Control matrix.

One commenter asked the Coast Guard to look into the duplication of reporting requirements in regard to mobile offshore drilling units (MODUs). The commenter recommended we add language to the rule to this effect: if your vessel meets the requirements of 33 CFR 146.202, you are also in compliance with 33 CFR part 160. We disagree. The reporting requirements contained in 33 CFR 146.202 are specifically for operations on the Outer Continental Shelf and do not apply to arrival and departure from ports within the United States.

One commenter stated the Coast Guard is seeking information on the majority of a vessel's cargo capacity instead of the individual goods being delivered to a port. The commenter said the rule would not stop charterers from seeking substandard vessels to reduce their transportation cost. We disagree. We are seeking information on the individual or organization that contracts for the majority of a vessel's cargo carrying capacity. It is our contention that this individual or organization has the power of vessel selection in the process and, therefore, can exercise the option of choosing a vessel that is not substandard.

One commenter said the Coast Guard's Port State Control matrix has been successful in identifying substandard vessels and has reduced accidents and pollution, but identifying the charterer for every vessel is unnecessary. We disagree. Collecting charterer information will enhance our ability to utilize limited resources to enforce our Port State Control program more effectively.

One commenter supports the temporary collection of charterer information stating the collection should be for at least one year and only for internal use by the Coast Guard. The commenter stated there should be a clear connection between the requirement and the desired result. The commenter also said that the rule would not help the Coast Guard in identifying substandard vessels. We disagree. The object of the program is to identify charterers that continually use substandard vessels to carry cargo. When scored according to their history, charterers that fit into the high-risk category will have their vessels targeted for boarding.

One commenter asked that the Great Lakes be considered separately in regard to this rule. According to the commenter, more than 80 percent of the vessels using the Great Lakes Waterway system are already known by the Marine Safety Office Buffalo and the Saint Lawrence Seaway agencies, who would know what vessels throw up a "red flag" because of the vessels' regular use of the Lakes. We disagree. This rule seeks information on charterers, not vessels. The Coast Guard is adding an important element, the charterer, to the targeting matrix. This additional information will allow the Coast Guard to further utilize its limited resources in the most judicious manner.

One commenter stated a charterer should not be responsible or liable for the conditions over which they have no control. The commenter added that voyage charterers, in particular, have little or no role in a vessel's compliance with the international standards. With the Great Lakes being a small system, the commenter indicates enhancing the PSC matrix would be unnecessary. We disagree. When an individual or organization seeks to charter a vessel for the purpose of carrying cargo to the United States, they have the option of ensuring that the vessel they charter is in suitable condition to be in compliance with all U.S. laws and international accords.

Discussion of Final Rule

In our August, 2000, NPRM for this rulemaking, we proposed amending the permanent requirements in 33 CFR part 160. On October 4, 2001, however, the Coast Guard published a temporary final

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rule entitled, "Temporary Requirements for Notification of Arrival in U.S. Ports" (66 FR 50565). That temporary rule suspended the majority of the sections we had proposed amending and added temporary sections in their place. That temporary rule was amended on November 19, 2001, and January 18, 2002 (66 FR 57877; 67 FR 2571) and on May 30, 2002, was extended until September 30, 2002 (67 FR 37682). On June 19, 2002, the Coast Guard published an NPRM (67 FR 41659) proposing to make permanent changes to the notice of arrival requirements. Then on July 23, 2002, we proposed an additional extension of the temporary rule (67 FR 48073). The temporary rule, therefore, could be effective until the permanent changes are published, perhaps until March 31, 2003. We have decided, therefore, to make the changes to the currently effective "temporary" sections in 33 CFR part 160 instead of to the suspended permanent sections, as proposed in our NPRM. The changes made by this rule will then be incorporated into the permanent sections in 33 CFR part 160 when those revisions are completed.

With this final rule allowing the Coast Guard to enforce the new requirement for charterer information, we also recognize that the various names used for different charterer scenarios adds to some of the confusion regarding this requirement. In order to clarify this rulemaking, we added definitions for time and voyage charters into the regulations, and we offer the following explanations of various types of charterers:

- *Time Charterer.* The party who hires a vessel for a specific amount of time. The owner and his crew manage the vessel, but the charterer selects the ports of destination.
- *Voyage Charterer.* The party who hires a vessel for a single voyage. The owner and his crew manage the vessel, but the charterer selects the ports of destination.
- *Demise Charterer.* A legally binding document for a term of one year or more under which, for the period of the charter, the party who leases or charters the vessel, known as the bareboat or demise charterer, assumes legal responsibility for all of the levels of ownership, including insuring, manning, supplying, repairing, fueling, maintaining, and operating the vessel. The term "bareboat or demise charterer" is synonymous with "owner pro hac vice". This information is captured through the submission of the owner/operator information for the Advance Notice of Arrival.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040, February 26, 1979).

The regulatory baseline for this final rule is the existing requirements in 33 CFR part 160. On October 4, 2001, the Coast Guard published a temporary final rule entitled, "Temporary Requirements for Notification of Arrival in U.S. Ports" (66 FR 50565). The temporary final rule suspended the sections of which this rulemaking amends until September 30, 2002. Also, on May 30, 2002, the Coast Guard published an NPRM (67 FR 37682) proposing to amend the suspended sections by making permanent the provisions of the temporary final rule.

The population of vessels affected by the final rule will also be modified by a notice of proposed rulemaking (NPRM) entitled "Notification of Arrival in U.S. Ports" published in the **Federal Register** on June 19, 2002 (67 FR 41659), which proposes to further amend requirements for the Notification of Arrival. The proposed rule removed reporting exemptions for vessels under the Automated Mutual Assistance Vessel Rescue System (AMVER), certain vessels operating solely on the Great Lakes, and vessels operating on a regularly scheduled route. The evaluation for this final rule considers the cost for submitting the charterer information for this new population of vessels.

The cost of the final rule to industry is presented in Table 1. The estimate of the number of arrivals is based on average annual arrivals for 1998 and 1999. The "Non-AMVER/Non-Great Lakes" number of arrivals is for those non-exempt vessels covered by existing Notification of Arrival requirements in 33 CFR part 160 and were included in the evaluation of the proposed rule for charterers. The AMVER and Great Lakes number of arrivals is the new population of vessels that would be required to submit Notifications of Arrival under the proposed rule published on June 19, 2002. These vessels would also be required to complete the information on vessel charterer under this final rule. We estimate that including the information for the charterer will require 1 minute (0.017 hours) to complete on the Notification of Arrival form, at a cost of $43 per hour.

TABLE 1.—ANNUAL COST AND BENEFIT OF THE PROPOSED RULE (2002 DOLLARS)

NOA report	Arrivals	Cost per arrival	Annual cost
Non-AMVER/Non-Great Lakes	63,286	$0.72	$45,566
AMVER	4,040	0.72	2,909
Great Lakes	813	0.72	585
Totals	68,139		$49,060

Detail may not calculate to total due to independent rounding.

As shown, this rule is estimated to cost approximately $50,000 annually. Under the proposed rule for "Notification of Arrival in U.S. Ports" published June 19, 2002, vessel owners and operators could now consolidate multiple arrivals in U.S. ports in a single Notification of Arrival (where previously they could not). Consequently, the number of arrivals presented in Table 1 may overstate the actual number of annual arrivals in U.S. ports that will have individual reports. The arrivals in Table 1, therefore, represent the "worst-case" scenario and the costs of the final rule are conservative estimates.

Over the next 10 years, the Present Value (PV) cost of the final rule is $367,697 (2002–2011, 7 percent discount rate, 2002 dollars).

The potential benefits of the final rule are not quantifiable, but include the following: (1) U.S. waters will experience increased safety; (2) U.S. waters will experience a decrease in damage to property and the environment; (3) the Coast Guard will target substandard vessels traveling U.S. waters that pose safety and environmental risks; (4) the Coast Guard will spend less effort on compliant vessels; (5) the Coast Guard will spend more effort examining previously unboarded vessels; (6) the Coast Guard will have more information on foreign vessels traveling U.S. waters; (7) the Coast Guard and vessel owners will have better understanding of the risks posed by foreign vessels; and (8) the degrees of liability would be clarified.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The final rule does not include any special provisions for small entities. However, the burden required by this rule is so minimal (only 1 minute per Notification of Arrival) that the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Notification of Arrival: Addition of Charterer to Required Information.

Summary of the Collection of Information: This rule amends 33 CFR 160.203, 160.T208, and 160.T212 to include the name of the vessel's charterer as part of the information required for vessels bound for ports or places in the United States. This collection of information will add minimal burden to the information collection described in OMB 2115–0557, Advance Notice of Vessel Arrival and Departure. The new collection of information estimate is based on the current collection, which is accounted for in the temporary rule published October 4, 2001, and the NPRM published June 19, 2002.

Use of Information: The Coast Guard will use the information collected to identify those vessels that pose the highest risks to U.S. waterways and ports, and target those vessels for inspection.

Description of the Respondents: The respondents are vessel crews traveling U.S. waterways and hailing U.S. ports that must report an Advance Notification of Arrival.

Number of Respondents: The existing OMB-approved collection number of respondents is 10,367 (respondents are owners/operators of the vessels calling on U.S. ports annually). This final rule will not increase the number of respondents.

Frequency of Response: Owners/operators of vessels making calls in U.S. ports will submit Notification of Arrival reports as necessary. The existing OMB-approved collection number of responses is 68,139. This final rule will not increase the frequency of response.

Burden of Response: The existing OMB-approved collection burden of response is 74 minutes (1.233 hours) (burden of response is the time required to complete the paperwork requirements of the rule for a single response). This final rule will increase the burden of response by 1 minute (0.017 hours) for a net total of 75 minutes (1.250 hours).

Estimate of Total Annual Burden: The existing OMB-approved collection total annual burden is 174,179 hours (total annual burden is the time required to complete the paperwork requirements of the rule for all responses). This final rule will increase the total annual burden by 1,136 hours for a net total of 175,315 hours.

As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information.

Federalism

We analyzed this rule under Executive Order 13132, Federalism. The existing advance notice of arrival regulation in 33 CFR 160.213, which is issued under Title I of the Ports and Waterways Safety Act, is preemptive of any State rule that would also require the vessel to provide the State, or one of its political subdivisions, advance notice of arrival. (*See, U.S.* v. *Locke*, 529 U.S. 89, 120 S.CT 1135 (2000)). However, the Coast Guard has, in numerous instances, through Memoranda of Agreement with an interested State, cooperated with the States and agreed to provide the information contained in the advance notice of arrival to the States. It will continue to do so.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not

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an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(d), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule is a procedural regulation that does not have any environmental impact. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 160, subpart C as follows:

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

Subpart C—Notifications of Arrivals, Departures, Hazardous Conditions, and Certain Dangerous Cargoes

1. The authority citation for Part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 49 CFR 1.46.

2. In § 160.203, add in alphabetical order the definitions for "Charterer", "Time Charterer" and "Voyage Charterer" to read as follows:

§ 160.203 Definitions.

* * * * *

Charterer means the person or organization that contracts for the majority of the carrying capacity of a ship for the transportation of cargo to a stated port for a specified period. This includes "time charterers" and "voyage charterers".

* * * * *

Time charterer means the party who hires a vessel for a specific amount of time. The owner and his crew manage the vessel, but the charterer selects the ports of destination.

Voyage charterer means the party who hires a vessel for a single voyage. The owner and his crew manage the vessel, but the charterer selects the ports of destination.

3. In § 160.T208, which was added at 66 FR 50565, October 4, 2001, effective October 4, 2001, until June 15, 2002, and amended by 66 FR 57877, November 19, 2001, and by 67 FR 2571, January 18, 2002, and extended in effect until September 30, 2002, by 67 FR 37682, May 30, 2002, revise paragraph (c)(15)(iv) and add new paragraph (c)(16) to read as follows:

§ 160.T208 Notice of arrival: Vessels bound for ports or places in the United States.

* * * * *

(c) * * *

(15) * * *

(iv) Passport number; and

(16) Name of the vessel's charterer.

* * * * *

4. In § 160.T212, which was added at 66 FR 50565, October 4, 2001, effective October 4, 2001, until June 15, 2002, amended by 66 FR 57877, November 19, 2001, and extended in effect until September 30, 2002, by 67 FR 37682, May 30, 2002, add new paragraph (b)(20) to read as follows:

§ 160.T212 Notice of arrival: Vessels carrying certain dangerous cargo.

* * * * *

(b) * * *

(20) Name of the vessel's charterer;

* * * * *

Dated: August 13, 2002.

J.P. Brusseau,

Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–20954 Filed 8–16–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 161 and 167

[USCG–2001–10254]

RIN 2115–AG20

Traffic Separation Scheme: In Prince William Sound, AK

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the existing Traffic Separation Scheme (TSS) in Prince William Sound, Alaska. The amendments were adopted by the International Maritime Organization and validated by a recent Port Access Route Study (PARS). These amendments provide straight traffic lanes between the Bligh Reef Pilot Station and Cape Hinchinbrook and reduce risk for vessels operating in the area.

DATES: This final rule is effective September 18, 2002.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2001–10254 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call LT Keith Ropella, U.S. Coast Guard Marine Safety Office, Valdez, AK, telephone 907–835–7209, e-mail KRopella@cgalaska.uscg.mil; or George Detweiler, Coast Guard, Office of Vessel Traffic Management (G–MWV), telephone 202–267–0574, e-mail *GDetweiler@comdt.uscg.mil.* If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 6, 2001, we published a notice of proposed rulemaking (NPRM) entitled "Traffic Separation Scheme: In Prince William Sound, Alaska" in the **Federal Register** (67 FR 5538). We received no letters commenting on the proposed rule. No public hearing was requested and none was held.

Background and Purpose

The Prince William Sound (Alaska) Traffic Separation Scheme (TSS) is an internationally recognized routing measure used to minimize the risk of collision by separating vessels, through traffic lanes, into opposing streams of traffic. The original TSS in Prince William Sound ran from the vicinity of Cape Hinchinbrook through Prince William Sound and into the Valdez Arm (the entrance to Port Valdez). The International Maritime Organization (IMO) adopted this TSS in 1992. It is reflected on National Oceanic and Atmospheric Administration (NOAA) nautical chart 16700 and in "Ships Routeing," Seventh Edition 1999, International Maritime Organization.

On August 26, 1999, we published the results of a study in the **Federal Register** (64 FR 4662), which concluded that modifications to the original TSS were needed to improve vessel traffic management and safety and to reduce the risk of drift groundings.

Discussion of the Rule

This rule amends the original TSS in Prince William Sound by adopting the following amendments, as implemented by IMO on June 1, 2001:

1. Establishing a precautionary area southeast of Cape Hinchinbrook at the entrance to Prince William Sound.

2. Straightening the Prince William Sound portion of the TSS to eliminate a course change.

3. Establishing a precautionary area at the Bligh Reef Pilot Station. This precautionary area divides the present TSS into two separate traffic separation schemes—a Prince William Sound traffic separation scheme and a Valdez Arm traffic separation scheme. The new Valdez Arm TSS is slightly wider than the Valdez Arm portion of the original TSS.

Since IMO has already adopted and implemented the proposed traffic separation schemes and precautionary areas in its "Ships" Routeing Guide," this rule aligns title 33, part 167, of the Code of Federal Regulations (CFR) with that guide.

Discussion of Changes Since the NPRM

We have made one change, a minor one, to the proposed regulatory text presented in the NPRM. This change should have no impact on the mariner, other than to avoid confusion, and is explained as follows.

In § 160.60(b) of the NPRM, we proposed to enlarge the Valdez Narrows Vessel Traffic Service (VTS) Special Area to include the portion of the TSS located in the Valdez Arm. This would have given the Commanding Officer of the VTS the authority to direct vessels into the separation zone if, for example, the traffic lanes became partially blocked by ice from the Columbia Glacier. Enlarging the Valdez Narrows VTS Special Area as proposed also meant that the existing regulations for the current special area would apply to the newly included geographic area. We re-analyzed this proposal and determined that the regulations for the Valdez Narrows VTS Special Area are not appropriate for the new, enlarged special area. Were we to make the regulations applicable to this new, enlarged area, we might confuse the mariner transiting to and from the Port of Valdez. Therefore, instead of enlarging the existing Valdez Narrows VTS Special Area, we have decided to create a separate Valdez Arm VTS Special Area. (*See* new § 161.60(b) in this final rule.) The geographic area encompassed by the two separate VTS Special Areas is identical to that of the enlarged Valdez Narrows VTS Special Area originally proposed in the NPRM. Mariners who transit to and from the Port of Valdez are very familiar with the Valdez Narrows VTS Special Area as it exists today. Leaving it as it is and creating a new Valdez Arm VTS Special Area will have no substantive effect on the mariner, other than to avoid confusion. In fact, the new regulation will be transparent to the mariners as they transit to and from the Port of Valdez.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The costs and benefits of this rule are summarized below:

Costs

Vessel operators would incur the minimal cost of plotting new coordinates on their existing charts or purchasing updated charts when available.

Benefits

The amendments to the TSS in Prince William Sound, Alaska, will increase the margin of safety for all vessels accessing the Port of Valdez. The new Precautionary Areas and amended traffic lanes will decrease the chance of collisions, allisions, and drift groundings were a vessel to become disabled. Vessels transiting the Prince William Sound TSS should experience cost savings through decreased operational costs, because the new transit lanes in the Sound are shorter.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule will have a reduced economic impact on vessels operated by small entities. The rule amends an existing TSS. This action improves safety for commercial vessels using the TSS by reducing the risk of collisions, allisions, and drift groundings. Vessels that tend to use the TSS's are commercial vessels, such as tankers. These vessels are usually large and capable of operating in an offshore environment. Vessels voluntarily transiting the TSS will transit 1.5 to 2.5 nautical miles fewer per trip. The reduced transit distance results in decreased vessel operating costs, which would positively affect the overall cost of the complete voyage.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. If this rule affects your small business, organization, or governmental

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jurisdiction and you have questions concerning its provisions or options for compliance, please consult George Detweiler, Coast Guard, Marine Transportation Specialist, at 202–267–0574.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Title I of the Ports and Waterways Safety Act (33 U.S.C. 1221 *et. seq.*) (PWSA) authorizes the Secretary to promulgate regulations to designate and amend traffic separation schemes (TSS's) to protect the marine environment. In enacting PWSA in 1972, Congress found that advance planning and consultation with the affected States and other stakeholders was necessary in the development and implementation of a TSS. Throughout the development of the TSS in Prince William Sound, we consulted with the Valdez Marine Operators Committee (VMOC), the affected State and Federal pilot's associations, vessel operators, users, and all affected stakeholders. The VMOC includes individuals who represent the interests of local commercial shipping and industry, as well as members from the Regional Citizens Advisory Council, and the State of Alaska. The VMOC was an active participant in various meetings with the Coast Guard and has contributed to this rulemaking.

Presently, there are no Alaska State laws or regulations concerning the same subjects as are contained in this proposed rule. We understand that the State does not contemplate issuing any such rules. However, it should be noted, that by virtue of the PWSA authority, the TSS in this rule will preempt any state rule on the same subject.

In order to be applicable to foreign flag vessels on the high seas, TSS's must be submitted to, approved by, and implemented by IMO. The Coast Guard is the principal United States agency responsible for advancing the interests of the United States at IMO. In this role, we work with all interested parties to advance the goals of this TSS to make Prince William Sound more safe and environmentally secure.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(i), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This rule adjusts an existing traffic separation scheme. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 161

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, and Waterways.

33 CFR Part 167

Harbors, Marine safety, Navigation (water), and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 161 and 167 as follows:

PART 161—VESSEL TRAFFIC MANAGEMENT

1. The authority citation for part 161 continues to read as follows:

Authority: 33 U.S.C. 1221; 33 U.S.C. 1223; 49 CFR 1.46.

2. In § 161.60, redesignate paragraphs (b) through (d) as paragraphs (c) through (e), respectively, and add a new paragraph (b) to read as follows:

§ 161.60 Vessel Traffic Service Prince William Sound.

* * * * *

(b) The Valdez Arm VTS Special Area consists of the waters of the Valdez Arm Traffic Separation Scheme (described in § 167.1703 of this chapter); the waters northeast of a line drawn from shoreline to shoreline through the points 60°58.04′N, 146°46.52′W and 60°58.93′N, 146°48.86′W; and southwest of a line bearing 307° True from Tongue Point at 61°02.10′N, 146°40.00′W.

* * * * *

PART 167—OFFSHORE TRAFFIC SEPARATION SCHEMES

3. The authority citation for part 167 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46.

4. Add §§ 167.1700 through 167.1703 to read as follows:

§ 167.1700 In Prince William Sound: General.

The Prince William Sound Traffic Separation Scheme consists of four parts: Prince William Sound Traffic Separation Scheme, Valdez Arm Traffic Separation Scheme, and two precautionary areas. These parts are described in §§ 167.1701 through 167.1703. The geographic coordinates in §§ 167.1701 through 167.1703 are defined using North American Datum 1983 (NAD 83).

§ 167.1701 In Prince William Sound: Precautionary areas.

(a) *Cape Hinchinbrook.* A precautionary area is established and is bounded by a line connecting the following geographical positions:

Latitude	Longitude
60°20.59′N	146°48.18′W
60°12.67′N	146°40.43′W
60°11.01′N	146°28.65′W
60°05.47′N	146°00.01′W
60°00.81′N	146°03.53′W
60°05.44′N	146°27.58′W
59°51.80′N	146°37.51′W
59°53.52′N	146°46.84′W
60°07.76′N	146°36.24′W
60°11.51′N	146°46.64′W
60°20.60′N	146°54.31′W

(b) *Bligh Reef.* A precautionary area is established of radius 1.5 miles centered at geographical position 60°49.63′N, 147°01.33′W.

(c) *Pilot boarding area.* A pilot boarding area located near the center of the Bligh Reef precautionary area is established. Regulations for vessels operating in these areas are in § 165.1109(d) of this chapter.

§ 167.1702 In Prince William Sound: Prince William Sound Traffic Separation Scheme.

The Prince William Sound Traffic Separation Scheme consists of the following:

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
60°20.77′N	146°52.31′W
60°48.12′N	147°01.78′W
60°48.29′N	146°59.77′W
60°20.93′N	146°50.32′W

(b) A traffic lane for northbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
60°20.59′N	146°48.18′W
60°49.49′N	146°58.19′W

(c) A traffic lane for southbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
60°49.10′N	147°04.19′W
60°20.60′N	146°54.31′W

§ 167.1703 In Prince William Sound: Valdez Arm Traffic Separation Scheme.

The Valdez Arm Traffic Separation Scheme consists of the following:

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
60°51.08′N	147°00.33′W
60°58.60′N	146°48.10′W
60°58.30′N	146°47.10′W
60°50.45′N	146°58.75′W

(b) A traffic lane for northbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
60°49.39′N	146°58.19′W
60°58.04′N	146°46.52′W

(c) A traffic lane for southbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
60°58.93′N	146°48.86′W
60°50.61′N	147°03.60′W

Dated: July 26, 2002.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–21031 Filed 8–16–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 19 and 27

[FRL–7261–5]

Civil Monetary Penalty Inflation Adjustment Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because EPA received adverse comment, we are withdrawing the direct final rule amending the final Civil Monetary Penalty Inflation Adjustment Rule, which was mandated by the Debt Collection Improvement Act of 1996. That legislation required federal agencies to adjust civil monetary penalties for inflation on a periodic basis. EPA published the direct final rule on June 18, 2002 (67 FR 41343). We stated in the direct final rule that if we received adverse comment by July 18, 2002, we would publish a timely notice of withdrawal in the **Federal Register**. We subsequently received one adverse comment on the direct final rule. We will address that comment in a subsequent final action based on the parallel proposal also published on June 18, 2002 (67 FR 41363). As stated in the parallel proposal, we will not institute a second comment period on this action.

DATES: As of August 19, 2002, EPA withdraws the direct final rule published at 67 FR 41343, on June 18, 2002.

FOR FURTHER INFORMATION CONTACT: David Abdalla, Office of Regulatory Enforcement, Multimedia Enforcement Division, Mail Code 2248A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2413.

Dated: August 13, 2002.

John Peter Suarez,

Assistant Administrator, Office of Enforcement and Compliance Assurance, Environmental Protection Agency.

[FR Doc. 02–20986 Filed 8–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY (EPA)

40 CFR Part 281

[FRL–7261–9]

Nebraska; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

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ACTION: Final rule; final determination on application of State of Nebraska for final approval.

SUMMARY: The State of Nebraska has applied for final approval of its underground storage tank (UST) program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Nebraska's application and has reached a final determination that Nebraska's underground storage tank program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the State of Nebraska to operate its program.

EFFECTIVE DATE: Final approval for Nebraska shall be effective September 18, 2002.

FOR FURTHER INFORMATION CONTACT: Linda Garwood, EPA Region 7, ARTD/USTB, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7268.

SUPPLEMENTARY INFORMATION:

A. Background

Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, requires that the EPA develop standards for Underground Storage Tanks (UST) systems as may be necessary to protect human health and the environment, and procedures for approving State programs in lieu of the Federal program. EPA promulgated State program approval procedures at 40 CFR part 281. Program approval may be granted by EPA pursuant to RCRA section 9004(b), if the Agency finds that the State program: is "no less stringent" than the Federal program for the seven elements set forth at RCRA section 9004(a)(1) through (7); includes the notification requirements of RCRA section 9004(a)(8); and provides for adequate enforcement of compliance with UST standards of RCRA section 9004(a). Note that RCRA sections 9005 (information-gathering) and 9006 (Federal enforcement) by their terms apply even in states with programs approved by EPA under RCRA section 9004. Thus, the Agency retains its authority under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the state authorized analogues to these provisions.

B. State of Nebraska

The UST program in Nebraska is implemented jointly by the Nebraska Department of Environmental Quality (NDEQ) and the Nebraska State Fire Marshal (NSFM). Section 81–15, 118 of the Nebraska Revised Statutes (N.R.S.) designates NDEQ as the lead agency for the UST program, but specifies that NSFM will conduct preventative activities under an interagency agreement with NDEQ.

The State of Nebraska initially submitted a state program approval application to EPA by letter dated December 15, 2000. Additional information was provided by Nebraska on March 21, 2001. EPA evaluated that information as well as other issues and determined the application package met all requirements for a complete program application. On December 5, 2001, EPA notified Nebraska that the application package was complete.

The Nebraska program provides for regulation of both petroleum and hazardous substance tanks. Nebraska also regulates UST systems used to store fuel solely for use by emergency power generators, regulates certain USTs used to store heating oil, regulates any tank used for consumptive on-site purposes and not for resale, requires registration of permanently abandoned systems, regulates above ground storage tanks for those tanks to be eligible for reimbursement from the state cleanup fund, imposes licensing and certification requirements on tank installation and removal contractors, licenses and imposes a remedial action fee on certain refiners and suppliers, and requires any person who deposits regulated substances in a tank to make certain notifications to owners and operators of UST systems, and subjects UST systems previously closed between December 22, 1988 and January 1, 1989 to being directed to close in accordance with the state closure requirements. However, these parts of the Nebraska program are broader in scope than the Federal program and are not included in this final approval. Additionally, the Nebraska program is not as broad as the federal program because Nebraska does not regulate tank systems installed between December 22, 1988 and January 1, 1989 as new tank systems. However, for tank systems installed within this 9-day window, through the Nebraska and EPA Memorandum of Agreement included in the State Program Approval application, EPA has agreed to assume all related enforcement responsibilities.

On March 7, 2002, EPA published a tentative decision announcing its intent to grant Nebraska final approval. Further background on the tentative decision to grant approval is available by contacting Linda Garwood, EPA Region 7, ARTD/USTB, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7268.

Along with the tentative determination, EPA announced the opportunity for public comment. Also, EPA provided notice that a public hearing would be provided but only if significant public interest on substantive issues was shown. EPA did not receive any significant comments and no public hearing was held.

C. Decision

I conclude that the State of Nebraska's application for final approval meets all the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Nebraska is granted final approval to operate its UST program. The State of Nebraska now has the responsibility for managing all regulated UST facilities within its borders and carrying out all aspects of the UST program, except with regard to Indian lands, where EPA will retain and otherwise exercise regulatory authority. Nebraska also has primary enforcement responsibility, for the UST's it regulates, although EPA retains the right to conduct inspections under Section 9005 of RCRA, 42 U.S.C. 6991d, and to take enforcement actions under Section 9006 of RCRA, 42 U.S.C. 6991e.

Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 9004 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). It does not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State underground storage tank program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 9004, EPA grants approval of a State's program as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State program application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This notice is issued under the authority of Section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 25, 2002.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 02–20987 Filed 8–16–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–P–7614]

Changes In Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1-percent-annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator for Federal Insurance and Mitigation Administration reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator for Federal Insurance and Mitigation

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Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and record keeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Pulaski (01–06–1835P).	City of Little Rock.	July 10, 2002; July 17, 2002; *Little Rock Free Press.*	The Honorable Jim Dailey, Mayor, City of Little Rock, 500 West Markham Street, Room 203, Little Rock, Arkansas 72201.	October 16, 2002	050181
Illinois:					
McHenry (01–05–3762P).	Village of Lake In The Hills.	July 2, 2002; July 9, 2002; *The Northwest Herald.*	Mr. Ed Plaza, Village President, 1115 Crystal Lake Road, Lake In The Hills, Illinois 60156.	October 8, 2002	170481
McHenry (01–05–3762P).	Unincorporated Areas.	July 2, 2002; July 9, 2002 *The Northwest Herald.*	Mr. Mike Tryon, Chairperson, McHenry County Board, McHenry County Government Center, 2200 North Seminary Avenue, Woodstock, Illinois 60098.	October 8, 2002	170732
Cook (02–05–2333P).	Village of Palos Park.	July 9, 2002; July 16, 2002; *Daily Southtown.*	The Honorable Jean A. Moran, Mayor, Village of Palos Park, 8999 West 123rd Street, Palos Park, Illinois 60464.	October 15, 2002	170144
Kansas: Sedgwick (00–07–493P).	City of Wichita ...	May 24, 2001; May 31, 2001; *Wichita Eagle.*	The Honorable Bob Knight, Mayor, City of Wichita, 455 North Main Street, 5th Floor, Wichita, Kansas 67202.	August 31, 2001	200328
Ohio:					
Lorain (02–05–0982P).	City of Avon	July 9, 2002; July 16, 2002; *The Morning Journal.*	The Honorable James A. Smith, Mayor, City of Avon. 36080 Chester Road, Avon, Ohio 44011.	June 21, 2002	390348
Franklin (01–05–1827P).	City of Columbus	July 8, 2002; July 15, 2002; *Columbus Dispatch.*	The Honorable Michael B. Coleman, Mayor, City of Columbus, 90 West Broad Street, Columbus, Ohio 43215.	October 14, 2002	390170
Franklin (01–05–1827P).	Unincorporated Areas.	July 8, 2002; July 15, 2002; *Columbus Dispatch.*	The Honorable Arlene Shoemaker, President, Franklin County Board of Commissioners, 373 South High Street, 26th Floor, Columbus, Ohio 43215.	October 14, 2002	390167
Franklin (01–05–1827P).	Village of Groveport.	July 8, 2002; July 15, 2002; *Southwest Messenger.*	Mr. Anthony Bales, Village Administrator, Village of Groveport, Groveport Municipal Building, 655 Blacklick Street, Groveport, Ohio 43125.	October 14, 2002	390174
Butler and Warren (01–05–1645P).	Village of Monroe.	July 3, 2002; July 10, 2002; *Middletown Journal.*	The Honorable Michael P. Morris, Major, Village of Monroe, 233 South Main Street, Monroe, Ohio 45050.	October 9, 2002	390042
Montgomery (02–05–0845P).	Unincorporated Areas.	July 9, 2002; July 16, 2002; *Dayton Daily News.*	Mr. Charles J. Curran, Commissioner, Montgomery County, 451 West Third Street, Dayton, Ohio 45422.	October 15, 2002	390775

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Warren (01–05–1645P).	Unincorporated Areas.	July 3, 2002; July 10, 2002; *The Western Star.*	Mr. C. Michael Kilburn, President, Warren County Board of Commissioners, 406 Justice Drive, Lebanon, Ohio 45036.	October 9, 2002	390757
Oklahoma:					
Oklahoma (02–06–281P).	City of Edmond	July 16, 2002; July 23, 2002; *The Edmond Sun.*	The Honorable Saundra Naifeh, Mayor, City of Edmond, P.O. Box 2970, Edmond, OK 73083.	July 2, 2002	400252
McClain, Oklahoma, Canadian, Cleveland, and Pottawatomie (01–06–1912P).	City of Oklahoma City.	July 24, 2002; July 31, 2002; *The Daily Oklahoman.*	The Honorable Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	October 30, 2002	405378
Texas:					
Denton (02–06–525P).	Town of Corinth	July 16, 2002; July 23, 2002; *Denton Record Chronicle.*	The Honorable J.B. Troutman, Mayor, Town of Corinth, 2002 South Corinth Street, Corinth, Texas 76210.	October 22, 2002	481143
Tarrant (02–06–453P).	City of Fort Worth.	July 19, 2002; July 26, 2002; *Fort Worth Star-Telegram.*	The Honorable Kenneth Barr, Mayor, City of Fort Worth, City Hall, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	October 25, 2002	480596
Dallas (02–06–1535P).	City of Garland ..	July 18, 2002; July 25, 2002; *Garland Morning News.*	The Honorable Jim Spence, Mayor, City of Garland, P.O. Box 469002, Garland, Texas 75046.	June 28, 2002	458471
Harrison and Gregg (02–06–1946P).	City of Longview	July 11, 2002; July 18, 2002; *Longview News Journal.*	The Honorable Earl Roberts, Mayor, City of Longview, P.O. Box 1952, Longview, Texas 75606–1952.	October 17, 2002	480264
Bexar (02–06–1320P).	City of San Antonio.	July 11, 2002; July 18, 2002; *San Antonino Express-News.*	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78282–3966.	October 17, 2002	480045
Bexar (02–06–252P).	City of San Antonio.	July 19, 2002; July 26, 2002; *San Antonio Express-News.*	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	October 25, 2002	480045
Tarrant (02–06–453P).	Unincorporated Areas.	July 19, 2002; July 26, 2002; *Fort Worth Star Telegram.*	The Honorable Tom Vandergriff, Judge, Tarrant County, 100 East Weatherford Street, Fort Worth, Texas 76196–0101.	October 25, 2002	480582
Bexar (01–06–1218P).	City of Universal City.	July 11, 2002; July 18, 2002; *Primetime Newspapers.*	The Honorable Wesley D. Becken, Mayor, City of Universal City, P.O. Box 3008, Universal City, Texas 78148.	October 17, 2002	480049

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: August 9, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–20963 Filed 8–16–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–B–7429]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1-percent-annual-chance) Flood Elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified Base Flood Elevations for new buildings and their contents.

DATES: These modified Base Flood Elevations are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Director, Federal Insurance and Mitigation Administration, reconsider the changes. The modified elevations

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may be changed during the 90-day period.

ADDRESSES: The modified Base Flood Elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: The modified Base Flood Elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified Base Flood Elevation determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified Base Flood Elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in Base Flood Elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified Base Flood Elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Cochise	Cochise County (01–09–019P).	April 25, 2001; May 2, 2001; *Arizona Range News.*	The Honorable Mike Palmer, Chairman, Cochise County, Board of Supervisors, 1415 West Melody Lane, Bisbee, Arizona 85603.	July 31, 2001	040012
Cochise	City of Sierra Vista (01–09–019P).	April 25, 2001; May 2, 2001; *Arizona Range News.*	The Honorable Tom Hessler, Mayor, City of Sierra Vista, 1011 North Coronda Drive, Sierra Vista, Arizona 85635.	July 31, 2001	040017
Cochise	City of Sierra Vista (01–09–492P).	April 18, 2002; April 25, 2002; *Sierra Vista Herald.*	The Honorable Thomas J. Hessler, Mayor, City of Sierra Vista, 1011 North Coronado Drive, Sierra Vista, Arizona 85635.	August 1, 2002	040017
Maricopa	City of Mesa (02–09–260P).	June 13, 2002; June 20, 2002; *Arizona Business Gazette.*	The Honorable Keno Hawker, Mayor, City of Mesa, P.O. Box 1466, Mesa, Arizona 85221–1466.	September 19, 2002	040048
Maricopa	City of Scottsdale (02–09–1084X).	July 18, 2002; July 25, 2002; *Arizona Republic.*	The Honorable Mary Manross, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, Arizona 85251.	October 24, 2002	045012
Pima	Unincorporated Areas (01–09–685P), (02–09–746X).	April 18, 2002; April 25, 2002; *Tucson Citizen.*	The Honorable Raul Grijalva, Chairman, Pima County, Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701.	July 25, 2002	040073

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Pinal	Town of Kearney (01–09–283P).	June 5, 2002; June 12, 2002; *Copper Basin News.*	The Honorable Debra Sommers, Mayor, Town of Kearny, P.O. Box 639, Kearny, Arizona 85237.	September 11, 2002	040085
Pinal	Unincorporated Areas (01–09–283P).	June 5, 2002; June 12, 2002; *Copper Basin News.*	The Honorable Jimmie B. Kerr, Chairman, Pinal County, Board of Supervisors, P.O. Box 827, Florence, Arizona 85232–0627.	September 11, 2002	040077
California:					
Kern	Unincorporated Areas (01–09–764P).	May 22, 2002; May 29, 2002; *News Review.*	The Honorable Steve Perez, Chairman, Kern County, Board of Supervisors, 1115 Truxton Avenue, Fifth Floor, Bakersfield, California 93301.	August 28, 2002	060075
Los Angeles	Unincorporated Areas (01–09–559P).	July 18, 2002; July 25, 2002; *Los Angeles Times.*	The Honorable Zev Yaroslavsky, Chairperson, Los Angeles County, Board of Supervisors, 821 Kenneth Hahn Hall of Administration, 500 West Temple Street, Los Angeles, California 90012.	October 24, 2002	065043
Orange	City of Orange (01–09–975P).	June 6, 2002; June 13, 2002; *Orange County Register.*	The Honorable Mark Murphy, Mayor, City of Orange, 300 East Chapman Avenue, Orange, California 92866.	September 12, 2002	060228
Placer	Town of Loomis (02–09–862P).	June 20, 2002; June 27, 2002; *Loomis News.*	The Honorable Rhonda Morillas, Mayor, Town of Loomis, Town Hall, 6140 Horseshoe Bar Road, Suite K, Loomis, California 95650.	September 26, 2002	060721
Riverside	City of Murrieta (01–09–849P).	April 4, 2002; April 11, 2002; *Press-Enterprise.*	The Honorable Dick Ostling, Mayor, City of Murrieta, 26442 Beckman Court, Murrieta, California 92562.	March 18, 2002	060751
Riverside	City of Perris (01–09–524P).	April 25, 2002; May 2, 2002; *Press-Enterprise.*	The Honorable Daryl Busch, Mayor, City of Perris, 101 North D Street, Perris, California 92570.	April 1, 2002	060258
Riverside	Unincorporated Areas (01–09–849P).	April 4, 2002; April 11, 2002; *Press-Enterprise.*	The Honorable Jim Venable, Chairman, Riverside County, Board of Supervisors, 4080 Lemon Street, 14th Floor, Riverside, California 92501.	March 18, 2002	060245
San Diego	City of Carlsbad (02–09–594P).	May 23, 2002; May 30, 2002; *North County Times.*	The Honorable Claude A. Lewis, Mayor, City of Carlsbad, 1200 Carlsbad Village Drive, Carlsbad, California 92008.	August 29, 2002	060285
Santa Clara	City of San Jose (01–09–488P), (02–09–798X).	April 25, 2002; May 2, 2002; *San Jose Mercury News.*	The Honorable Ron Gonzales, Mayor, City of San Jose, 801 North First Street, Room 600, San Jose, California 95110.	August 1, 2002	060349
Santa Clara	Unincorporated Areas (01–09–488P), (02–09–798X).	April 25, 2002; May 2, 2002; *San Jose Mercury News.*	The Honorable Donald P. Gage, Chairman, Santa Clara County, Board of Supervisors, East Wing, 10th Floor, 70 West Hedding Street, San Jose, California 95110.	August 1, 2002	060337
Colorado:					
Arapahoe	City of Cherry Hills Village (02–08–052P).	May 2, 2002; May 9, 2002; *Denver Post.*	The Honorable John Welborn, Mayor, City of Cherry Hills Village, 2450 East Quincy Avenue, Cherry Hills Village, Colorado 80110.	April 12, 2002	080013
Boulder	City of Lafayette (02–08–331P).	May 20, 2002; May 24, 2002; *Daily Camera.*	The Honorable Dale Avery, Mayor, City of Lafayette, 1290 South Public Road, Lafayette, Colorado 80026.	August 23, 2002	080026
Boulder	City of Longmont (02–08–082P).	April 4, 2002; April 11, 2002; *Daily Times Call.*	The Honorable Julia Pirnack, Mayor, City of Longmont, 350 Kimbark Street, Longmont, Colorado 80501.	March 25, 2002	080027

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State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Boulder	Unincorporated Areas (02–08–082P).	April 4, 2002; April 11, 2002; *Daily Camera.*	The Honorable Jana L. Mendez, Chairperson, Boulder County, Board of Commissioners, P.O. Box 471, Boulder, Colorado 80306–0471.	March 25, 2002	080023
Hawaii: Hawaii	Hawaii County (02–09–633P).	May 23, 2002; May 30, 2002; *Hawaii Tribune Herald.*	The Honorable Harry Kim, Mayor, Hawaii County, 25 Aupuni Street, Hilo, Hawaii 96720.	May 3, 2002	155166
Idaho:					
Bonner	City of Clark Fork (01–10–475P).	May 30, 2002; June 6, 2002; *Bonner County Daily Bee.*	The Honorable Tom Shields, Mayor, City of Clark Fork, P.O. Box 10, Clark Ford, Idaho 83811.	September 5, 2002 ...	160132
Bonner	Unincorporated Areas (01–10–457P).	May 30, 2002; June 6, 2002; *Bonner County Daily Bee.*	The Honorable Tom Suttmeier, Chairman, Bonner County, Board of Commissioners, 215 South First Avenue, Sandpoint, Idaho 83864.	September 5, 2002 ...	160206
North Dakota: Stark.	City of Dickinson (02–08–057P).	May 9, 2002; May 16, 2002; *Dickinson Press.*	The Honorable Dennis W. Johnson, Mayor, City of Dickinson, 99 Second Street East, Dickinson, North Dakota 58601.	August 15, 2002	380117
Utah: Salt Lake ...	City of Draper (02–08–198P).	June 26, 2002; July 3, 2002; *Salt Lake Tribune.*	The Honorable Darrell H. Smith, Mayor, City of Draper, 12441 South 900 East, Draper, Utah 84020.	October 2, 2002	490244
Wyoming: Teton	Unincorporated Areas (02–08–268P).	July 17, 2002; July 24, 2002; *Jackson Hole News.*	The Honorable Bill Paddleford, Chairperson, Teton County, Board of Commissioners, County Courthouse, P.O. Box 3594, Jackson, Wyoming 83001.	July 8, 2002	560094

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: August 9, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–20962 Filed 8–16–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1-percent-annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: FEMA makes final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEse were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator of the Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD) modified	Communities affected
Greenbrier Creek:		
Approximately 200 feet downstream of the confluence of Little Greenbrier Creek.	*288	FEMA Docket No. 7607, Town of Wooster, Faulkner County.
Approximately 7,100 feet upstream of the Town of Wooster corporate limits.	*295	
Greenbrier Creek Tributary No. 2:		
At the mouth of Greenbrier Creek, Tributary No. 2	*288	Town of Wooster, Faulkner County.
Approximately 1,350 feet upstream, of Green Valley Road	*319	
Greenbrier Creek Tributary No. 3:		
At the mouth of Greenbrier Creek Tributary No. 3	*288	FEMA Docket No. 7607, Town of Wooster.
Approximately 50 feet upstream of a private drive about 1,600 feet upstream of Reed Road.	*325	
Skyline Creek:		
At the mouth of Skyline Creek	*292	Town of Wooster, Faulkner County.
Approximately 725 feet upstream of Green Valley Road	*312	
Maps are available for inspection at the City Hall, Town of Wooster, 7 Reed Road, Wooster, Arkansas.		
Maps are available for inspection at the Faulkner County Community Map Repository, 801 Locust Street, Conway, Arkansas.		
Peruque Creek:		
Approximately 260 feet upstream of State Highway 79	*452	FEMA Docket No. 7607, St. Charles County, City of O'Fallon, City of St. Paul, City of Lake St. Louis.
Just downstream of Church Street	*533	
*National Geodetic Vertical Datum		
Maps are available for inspection at the St. Charles County Administration Building, 201 North Second Street, Room 420, St. Charles, Missouri.		
Maps are available for inspection at City Hall, City of O'Fallon, 138 South Main Street, O'Fallon, Missouri.		
Maps are available for inspection at City Hall, City of St. Paul, St. Paul, Missouri.		
Maps are available for inspection at City Hall, City of Lake St. Louis, 1000 Lake St. Louis Boulevard, Lake St. Louis, Missouri.		
Cottonwood Creek:		
Just upstream of SE 14th Street	*467	FEMA Docket No. 7607, City of Dallas, City of Grand Prairie.
Approximately 700 feet upstream of Great Southwest Parkway	*531	
Duck Creek:		
Approximately 600 feet downstream of Collins Road	*458	FEMA Docket No. 7607, City of Dallas, City of Garland, City of Mesquite, Town of Sunnyvale, Dallas County.
Just downstream of Belt-line Road	*592	
South Fork Cottonwood Creek:		
Approximately 150 feet downstream of Carrier Parkway	*486	City of Garland.
Just downstream of Great Southeast Parkway	*547	
Stream 2C2:		
At the mouth of Stream 2C2	*494	City of Grand Prairie.
Approximately 630 feet upstream of Glenbrook Drive	*495	
Stream 8D1:		
At the mouth of Stream 8D1	*467	City of Dallas, City of Grand Prairie.
Approximately 50 feet downstream of Belt Line Road	*489	
Stream 8D3:		
Approximately 300 feet downstream of Southeast 4th Street	*474	City of Grand Prairie.
Approximately 75 feet downstream of South Center Street	*488	
Stream 8D6:		
At the mouth of Stream 8D6	*505	FEMA Docket No. 7607, City of Grand Prairie.
Approximately 2,350 feet upstream of Arkansas Lane	*544	
Stream 8D7:		
Approximately 2,000 feet downstream of Sherman Street	*496	City of Grand Prairie.

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Source of flooding and location of referenced elevation	*Elevation in feet (NGVD) modified	Communities affected
Approximately 50 feet downstream of Sherman Street	*512	

Maps are available for inspection at the Dallas County Administration Building, 411 Elm Street, 4th Floor, Dallas, Texas.
Maps are available for inspection at the City of Dallas, 320 East Jefferson Boulevard, Dallas, Texas.
Maps are available for inspection at the City of Garland, 200 North 5th Street, Garland, Texas.
Maps are available for inspection at the City of Grand Prairie, City Development Center, 206 West Church Street, Grand Prairie, Texas.
Maps are available for inspection at the City of Mesquite, 320 East Jefferson Boulevard, Dallas, Texas.
Maps are available for inspection at the Town of Sunnyvale, 537 Long Creek Road, Sunnyvale, Texas.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: August 9, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–20966 Filed 8–16–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1762; MM Docket No.01–297; RM–10297]

Radio Broadcasting Services; Paragould, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 257A to Paragould, Arkansas, in response to a petition filed by Charles Crawford. *See* 66 FR 54191, October 26, 2001. The coordinates for Channel 257A at Paragould are 36–06–55 and 90–26–53. There is a site restriction 7.9 kilometers (4.9 miles) northeast of the community. With this action, this proceeding is terminated. A filing window for Channel 257A at Paragould will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective September 16, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–297, adopted July 17, 2002, and released August 2, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Channel 257A at Paragould.

Federal Communications Commisssion.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–20925 Filed 8–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1876; MM Docket No. 01–198, RM–10213; MM Docket No. 01–200, RM–10215; MM Docket No. 01–202, RM–10217; MM Docket No 01–203, RM–10218; MM Docket No. 01–204; RM–10219; MM Docket No. 01–236, RM–10242; MM Docket No. 01–237, RM–10243; MM Docket No. 01–238, RM–10244; MM Docket No. 01–239, RM–10245; MM Docket No. 01–240, RM–10246; MM Docket No. 01–270, RM–10277; MM Docket No. 01–272, RM–10279; and MM Docket No. 01–274, RM–10286]

Radio Broadcasting Services; Arnett, OK; Bruni, TX; Dilley, TX; Goree, TX; Hebbronville, TX; Junction, TX; Leakey, TX; Matador, TX; Richland Springs, TX; Rison, AR; Sayre, OK; Sweetwater, TX; and Turkey, TX;

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants 13 proposals that allot new channels to Arnett, OK; Bruni, TX; Dilley, TX; Goree, TX; Hebbronville, TX; Junction, TX; Leakey, TX; Matador, TX; Richland Springs, TX, Rison, AR; Sayre, OK; Sweetwater, TX; and Turkey, TX. The Commission, at the request of Katherine Pyeatt, allots Channel 277C3 at Junction, Texas, as the community's second local FM transmission service. *See* 16 FCC Rcd 15801 (2001). Channel 277C3 can be allotted at Junction in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.3 kilometers (7.6 miles) south to avoid short-spacings to the licensed sites of Station KKCN(FM), Channel 276C1, Ballinger, Texas, and Station KEEP(FM), Channel 276A, Bandera, Texas. The coordinates for Channel 277C3 at Junction are 30–22–51 North Latitude and 99–47–59 West Longitude. Although concurrence has been requested for Channel 277C3 at Junction, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified for Junction herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement." *See* **SUPPLEMENTARY INFORMATION**, *infra*.

DATES: Effective September 16, 2002. The window period for filing applications for these allotments will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–198, MM Docket No. 01–200, MM Docket No. 01–203; MM Docket No. 01–204, MM Docket No. 01–236, MM Docket No. 01–237, MM Docket No. 01–238, and MM Docket No. 01–239, MM Docket No. 01–240, MM Docket No. 01–270, MM Docket No. 01–272, and MM Docket No. 01–274, adopted July 24, 2002, and released August 2, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

The Commission, at the request of Jeraldine Anderson, allots Channel 264A at Dilley, Texas, as the community's second local FM transmission service. *See* 16 FCC Rcd 15801 (2001). Channel 264A can be allotted at Dilley in compliance with the Commission's minimum distance separation requirements a city reference coordinates. The coordinates for Channel 264A at Dilley are 28–40–02 North Latitude and 99–10–13 West Longitude. Although concurrence has been requested for Channel 264A at Dilley, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified for Dilley herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement."

The Commission, at the request of Jeraldine Anderson, allots Channel 275A at Goree, Texas, as the community's first local aural transmission service. *See* 16 FCC Rcd 15801 (2001). Channel 275A can be allotted at Goree in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.3 kilometers (2.7 miles) northeast to avoid a short-spacing to the licensed and construction permit sites of Station KHXS(FM), Channel 274C1, Merkel, Texas. The coordinates for Channel 275A at Goree are 33–30–00 North Latitude and 99–30–00 West Longitude.

The Commission, at the request of Jeraldine Anderson, allots Channel 299A at Leakey, Texas, as the community's third local FM transmission service. *See* 16 FCC Rcd 15801 (2001). Channel 299A can be allotted at Leakey in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.3 kilometers (8.3 miles) west to avoid short-spacings to the licensed sites of Station KXTN–FM, Channel 298C, San Antonio, Texas, and to the licensed site of Station XHPC–FM, Channel 300B, Piedras, Mexico. The coordinates for Channel 299A at Leakey are 29–41–58 North Latitude and 99–53–41 West Longitude. Although concurrence has been requested for Channel 299A at Leakey, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified for Leakey herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement."

The Commission, at the request of Jeraldine Anderson, allots Channel 221C3 at Sweetwater, Texas, as the community's second local FM transmission service. *See* 16 FCC Rcd 15801 (2001). Channel 221C3 can be allotted at Sweetwater in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 221C3 at Sweetwater are 32–28–15 North Latitude and 100–24–20 West Longitude. Although concurrence has been requested for Channel 221C3 at Sweetwater, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified for Sweetwater herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement."

The Commission, at the request of Katherine Pyeatt, allots Channel 285C2 at Arnett, Oklahoma, as the community's first local aural transmission service. *See* 16 FCC Rcd 16470 (2001). Channel 285C2 can be allotted at Arnett in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.6 (11.1 miles) southwest to avoid a short-spacing to the vacant allotment site for Channel 283C1 at Mooreland, Oklahoma. The coordinates for Channel 285C2 at Arnett are 36–02–45 North Latitude and 99–56–22 West Longitude.

The Commission, at the request of Jeraldine Anderson, allots Channel 269C2 at Sayre, Oklahoma, as the community's first local aural transmission service. *See* 16 FCC Rcd 16470 (2001). Channel 269C2 can be allotted at Sayre in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 269C2 at Sayre are 35–17–28 North Latitude and 99–38–23 West Longitude.

The Commission, at the request of Jeraldine Anderson, allots Channel 254A at Hebbronville, Texas, as the community's second local FM transmission service. *See* 16 FCC Rcd 16470 (2001). Channel 254A can be allotted at Hebbronville in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.6 kilometers (6.6 miles) west to avoid a short-spacing to the licensed site of Station KGBT–FM, Channel 253C, McAllen, Texas. The coordinates for Channel 254A at Hebrronvillle are 27–20–15 North Latitude and 98–46–45 West Longitude. Although concurrence has been requested for Channel 254A at Hebbronville, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Operation with the facilities

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specified for Hebbronville herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement."

The Commission, at the request of Jeraldiné Anderson, allots Channel 293A at Bruni, Texas, as the community's first local aural transmission service. *See* 16 FCC Rcd 16470 (2001). Channel 293A can be allotted at Bruni in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.8 kilometers (4.2 miles) north to avoid a short-spacing to the licensed site of Station KPSO–FM, Channel 292A, Falfurrias, Texas, the construction permit site of Station KTKY(FM), Channel 293C2, Taft, Texas, and the allotment site for Channel 294A at El Lobo, Mexico. The coordinates for Channel 293A at Bruni are 27–29–12 North Latitude and 98–51–00 West Longitude. Although concurrence has been requested for Channel 293A at Bruni, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified for Bruni herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement."

The Commission, at the request of Charles Crawford, allots Channel 255A at Rison, Arkansas, as the community's first local aural transmission service. *See* 16 FCC Rcd 16470 (2001). Channel 255A can be allotted at Rison in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.2 kilometers (1.4 miles) southwest to avoid a short-spacing to the licensed site of Station KZYP(FM), Channel 257A, Pine Bluff, Arkansas. The coordinates for Channel 255A at Rison are 33–56–30 North Latitude and 92–12–14 West Longitude.

The Commission, at the request of Katherine Pyeatt, allots Channel 221C2 at Matador, Texas, as the community's first local aural transmission service. *See* 16 FCC Rcd 17210 (2001). Channel 221C2 at can be allotted at Matador in compliance with the Commission's minimum distance separation requirements with a site restriction of .3 kilometers (12.6 miles) east to avoid a short-spacing to the application site for Channel 220C1 at Morton, Texas. The coordinates for Channel 221C2 at Matador are 34–03–56 North Latitude and 100–36–43 West Longitude.

The Commission, at the request of Katherine Pyeatt, allots Channel 244C2 at Turkey, Texas, as the community's first local aural transmission service. *See* 16 FCC Rcd 17210 (2001). Channel 244C2 can be allotted at Turkey in compliance with the Commission's minimum distance separation requirements with a site restriction of 27.1 kilometers (16.9 miles) southeast to avoid a short-spacing to the licensed site of Station KMML–FM, Channel 245C1, Amarillo, Texas. The coordinates for Channel 244C2 at Turkey are 34–10–06 North Latitude and 100–46–46 West Longitude.

The Commission, at the request of Linda Crawford, allots Channel 252A at Richland Springs, Texas, as the community's second local FM transmission service. *See* 16 FCC Rcd 17210 (2001). Channel 252A can be allotted at Richland Springs in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 252A at Richland Springs are 31–16–10 North Latitude and 98–56–41 West Longitude. Although concurrence has been requested for Channel 252A at Richland Springs, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified for Richland Springs herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement."

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Rison, Channel 255A.

3. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Arnett, Channel 285C2; and by adding Sayre, Channel 269C2.

4. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Bruni, Channel 293A; by adding Channel 264A at Dilley; by adding Goree, Channel 275A; by adding Channel 254A at Hebbronville; by adding Channel 277C3 at Junction; by adding Channel 299A at Leakey; by adding Matador, Channel 221C2; by adding Richland Springs, Channel 252A; by adding Channel 221C3 at Sweetwater; and by adding Turkey, Channel 244C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–20924 Filed 8–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 74 and 78

[ET Docket No. 95–18; FCC 02–221]

2 GHz Suspension

AGENCY: Federal Communications Commission.

ACTION: Final rule; suspension order.

SUMMARY: This document suspends for one year until September 6, 2003, the expiration date for the initial two-year mandatory negotiation period for Phase I of the 2 GHz band relocation plan between Mobile-Satellite Service and Broadcast Auxiliary Service. The provisions of this initial Phase 1 mandatory negotiation period will remain in effect for the duration of this suspension. The suspension period may be subsequently lengthened or shortened by the Commission as circumstances warrant.

DATES: Effective August 2, 2002.

FOR FURTHER INFORMATION CONTACT: Gary Thayer, Office of Engineering and Technology, (202) 418–2290.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, ET Docket No. 95–18, FCC 02–221, adopted July 31, 2002, and released August 2, 2002. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to

persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Summary of the Order

1. This Order immediately suspends for one year, until September 6, 2003, the expiration date for the initial two-year mandatory negotiation period for Phase 1 of the 2 GHz band relocation plan between Mobile-Satellite Service (MSS) and Broadcast Auxiliary Service (BAS), adopted in the *Second Report and Order and Second Memorandum Opinion and Order (Second Report and Order)*, 65 FR 48174, August 7, 2000. The provisions of the initial Phase 1 mandatory negotiation period will remain in effect for the duration of this suspension. We retain the option to shorten or lengthen this suspension as circumstances warrant.

2. In the *Memorandum Opinion and Order and Third Notice of Proposed Rule Making and Order*, 63 FR 69606, December 17, 1998, we allocated 70 megahertz of spectrum for MSS in the 2 GHz band. In the *Second Report and Order*, we adopted relocation procedures for incumbent BAS facilities at 1990–2025 MHz and incumbent Fixed Service (FS) facilities at 2165–2200 MHz. This relocation plan was modeled after the Commission's earlier *Emerging Technologies* policies in ET Docket No. 92–9, and requires MSS entrants to provide comparable facilities to BAS and FS incumbents that are relocated prior to the sunset dates specified in the *Second Report and Order*. The BAS relocation plan calls for a two-phase relocation, each phase beginning with a two-year mandatory negotiation period that will clear the lowest BAS channel then in use in the top 30 Nielsen Designated Market Areas. In the event that an agreement for relocation is not reached by the end of a particular negotiation period, the MSS licensee(s) have the option of relocating BAS incumbents involuntarily. The initial, two-year mandatory negotiation period for Phase 1 commenced upon **Federal Register** publication of the *Second Report and Order* on September 6, 2000, and is due to expire on September 6, 2002. As stated in the *Second Report and Order*, it remains a primary goal to ensure that the transition causes the minimum possible disruption to BAS operations.

3. Subsequent to adoption of the *Second Report and Order*, we initiated several major rule makings that propose, or seek comment on, alternative uses and new allocations in portions of the 2 GHz band now allocated for MSS. For example, in IB Docket No. 01–185, 66 FR 47621, September 13, 2001, we are seeking comment on proposals that would allow MSS licensees to provide ancillary terrestrial component ("ATC") operations in the 2 GHz MSS band. In ET Docket No. 00–258, 66 FR 47618, September 13, 2001, we are seeking comment on proposals to support the introduction of new advanced wireless services, including Third Generation ("3–G") wireless systems in spectrum below 3 GHz, including some of the MSS spectrum in the 2 GHz band. In WT Docket No. 02–55, 67 FR 16351, April 5, 2002, we are exploring various options to improve public safety communications in the 800 MHz band that could include relocating incumbent 800 MHz services to the current MSS allocation in the 2 GHz band. In each of these dockets, we have sought comment on what changes might be needed to the BAS relocation procedures adopted in the *Second Report and Order* should the proposals affecting the 2 GHz MSS bands be adopted.

4. In the *Second Report and Order*, we concluded that the adopted negotiation period structure would serve our twin goals of maintaining the integrity of the BAS system operation while providing for early access to the spectrum for MSS providers. We found that the BAS and MSS industries had been aware of this proceeding and closely followed its progress since 1995. In addition, we noted that the spectrum became available for MSS on January 1, 2000, and that ICO had represented that it expected to be ready to begin providing service in 2002. Based upon these factors, among others, we decided that the initial BAS negotiation period should commence immediately upon **Federal Register** publication of the *Second Report and Order*, and that a two-year duration for the initial mandatory negotiation period was appropriate.

5. As noted above, subsequent to our establishing the 2 GHz MSS band relocation plans, we specifically sought comment in the *MSS Flexibility, Advanced Wireless/3–G, and 800 MHz Public Safety* rule making notices on whether to revise the *Second Report and Order* relocation plan based on the outcome of the proposals in those rulemakings. Because it does not appear that we will be able to act on the respective issues prior to the Phase 1 BAS mandatory negotiation deadline of September 6, 2002, we find it to be in the public interest to continue the negotiating period until we are able to fully address these relocation issues based on the extensive record that these other proceedings have generated. We further find that it is prudent and in the public interest to suspend the expiration of the initial negotiation period under the present circumstances, rather than prejudice our consideration of the relocation issues presented in the pending proceedings. Therefore, we find that the expiration date for the initial Phase 1, two-year mandatory BAS negotiation period should be suspended, effective immediately upon release of this order, for one year until September 6, 2003. We retain the option, however, to shorten or lengthen this suspension as circumstances warrant while we consider further action on this matter in pending proceedings. We also emphasize that the action taken herein is an interim measure and does not prejudice further action in other proceedings. For the duration of this suspension, all other aspects of the initial mandatory BAS negotiation period will continue in force and, as a consequence, BAS incumbents will not be subject to involuntary relocation by MSS licensees in the interim. We will require MSS and BAS licensees to comply with all negotiation requirements and procedures adopted in the *Second Report and Order* that are applicable to the initial BAS mandatory negotiation period. Because we are not suspending or modifying any other aspect of the BAS or FS relocation plan, MSS and FS licensees in the 2165–2200 MHz band remain free to enter into relocation negotiations under the provisions adopted in the *Second Report and Order*.

6. On October 22, 2001, the National Association of Broadcasters (NAB) and the Association for Maximum Service Television, Inc. (MSTV) filed a pleading styled "Motion for Stay of Mandatory Negotiation Period." The Motion was supported in separate pleadings by the Society of Broadcast Engineers and by Cox Broadcasting, Inc. (jointly with Cosmos Broadcasting Corporation and Media General, Inc.), and was opposed by New ICO Global Communications Ltd., and the Boeing Company.

While NAB's pleading appears to seek a stay of the entire negotiation process delineated in the *Second Report and Order*, a subsequent *ex parte* submission by NAB appears to indicate that NAB is not opposed to the requirement for negotiation. Rather, NAB effectively requests an indefinite suspension of the timetables in the negotiation/relocation process. To the extent that NAB's motion would challenge the imposition of the negotiation/relocation process delineated in the *Second Report and Order*, it must be dismissed as a late-filed Petition for Reconsideration. To the extent that it requests a suspension of the timetables in the negotiation/relocation process, we dismiss it as

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moot in light of our action. We note that opponents' substantive arguments in opposing NAB's Motion are considered and disposed of in our determination.

Ordering Clauses

7. Authority for issuance of this Order is contained in sections 4(i), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), and 303(r), and section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d).

8. Pursuant to sections 4(i), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), and 303(r), and section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), the expiration date of September 6, 2002, for the initial two-year mandatory BAS negotiation period for Phase 1 set forth in the *Second Report and Order* in ET Docket No. 95–18 *is hereby suspended*, effective August 2, 2002, for one year until September 6, 2003.

9. Pursuant to sections 4(i), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), and 303(r), the Motion for Stay of Mandatory Negotiation Period filed by the National Association of Broadcasters (NAB) and the Association for Maximum Service Television, Inc. (MSTV), is hereby *dismissed*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

List of Subjects in 47 CFR Parts 74 and 78

Communications equipment, Radio.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 74 and 78 to read as follows:

PART 74—[AMENDED]

1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, and 554.

2. Section 74.690 is amended by adding the following note to paragraph (e):

§ 74.690 Transition of the 1990–2025 MHz band from the Broadcast Auxiliary Service to emerging technologies.

* * * * *

(e) * * *

Note to paragraph (e): FCC suspends for one year, until September 6, 2003, the expiration date for the initial two-year mandatory negotiation period in paragraph (e)(1) and the beginning of the involuntary relocation period in paragraph (e)(4).

PART 78—[AMENDED]

3. The authority citation for part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

4. Section 78.40 is amended by adding the following note to paragraph (f):

§ 78.40 Transition of the 1990–2025 MHz band from the Cable Television Relay Service to emerging technologies.

* * * * *

(f) * * *

Note to paragraph (f): FCC suspends for one year, until September 6, 2003, the expiration date for the initial two-year mandatory negotiation period in paragraph (e)(1) and the beginning of the involuntary relocation period in paragraph (f)(4).

[FR Doc. 02–20185 Filed 8–16–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–2002–11443; Notice 02]

RIN 2127–AI73

Final Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of final theft data.

SUMMARY: This document publishes the final data on thefts of model year (MY) 2000 passenger motor vehicles that occurred in calendar year (CY) 2000. The final 2000 theft data indicate that the vehicle theft rate for CY/MY 2000 vehicles (2.89 thefts per thousand vehicles) did not change from the theft rate for CY/MY 1999 (2.89 thefts per thousand vehicles) when compared to the theft rate experienced in CY/MY 1999. Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data and publish the information for review and comment.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541. The standard specifies performance requirements for inscribing and affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data and publish the data for review and comment. To fulfill this statutory mandate, NHTSA has published theft data annually beginning with MYs 1983/84. Continuing to fulfill the "33104(b)(4) mandate, this document reports the final theft data for CY 2000, the most recent calendar year for which data are available.

In calculating the 2000 theft rates, NHTSA followed the same procedures it used in calculating the MY 1999 theft rates. (For 1999 theft data calculations, see 66 FR 39554, July 31, 2001.) As in all previous reports, NHTSA's data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a government system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The 2000 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 2000 vehicles of that line stolen during calendar year 2000 by the total number of vehicles in that line manufactured for MY 2000, as reported to the Environmental Protection Agency (EPA).

The final 2000 theft data show no change in the vehicle theft rate when compared to the theft rate experienced in CY/MY 1999. The final theft rate for MY 2000 passenger vehicles stolen in calendar year 2000 of 2.89 thefts per thousand vehicles produced, did not change from the rate of 2.89 thefts per thousand vehicles experienced by MY 1999 vehicles in CY 1999. For MY 2000 vehicles, out of a total of 206 vehicle lines, 51 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991. (*See* 59 FR 12400, March 16, 1994.) Of the 51 vehicle lines with a theft rate higher than 3.5826, 43 are passenger car lines, eight are multipurpose passenger vehicle lines, and none are light-duty truck lines.

On Tuesday, March 12, 2002, NHTSA published the preliminary theft rates for CY 2000 passenger motor vehicles in the **Federal Register** (67 FR 11161). The agency tentatively ranked each of the MY 2000 vehicle lines in descending order of theft rate. The public was requested to comment on the accuracy of the data and to provide final production figures for individual vehicle lines. The agency did not receive any written comments from the public. As a result, the final theft rates and rankings of vehicle lines did not change from those published in the March 2002 notice.

Further reanalysis of the theft rate data revealed that the number of vehicle lines reported with a theft rate higher than 3.5826 was incorrect. Preliminary theft data for CY 2000 inadvertently reported that there were 45 passenger car lines with theft rates higher than 3.5826. However, NHTSA is correcting the final theft data to report 43 passenger car lines with a theft rate higher than 3.5826 and eight multipurpose passenger car lines with a theft rate higher than 3.5826.

The following list represents NHTSA's final calculation of theft rates for all 2000 passenger motor vehicle lines. This list is intended to inform the public of calendar year 2000 motor vehicle thefts of model year 2000 vehicles and does not have any effect on the obligations of regulated parties under 49 U.S.C. Chapter 331, Theft Prevention.

THEFT RATES OF MODEL YEAR 2000 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2000

	Manufacturer	Make/model (line)	Thefts 2000	Production (Mfr's) 2000	2000 theft rate (per 1,000 vehicles produced)
1	DAIMLERCHRYSLER	PLYMOUTH BREEZE	173	15,723	11.0030
2	MITSUBISHI	MONTERO SPORT/NATIVA[1]	509	46,272	11.0002
3	MITSUBISHI	MONTERO	22	2,147	10.2469
4	BMW	X5	12	1,312	9.1463
5	DAIMLERCHRYSLER	CHRYSLER INTREPID[2]	4	449	8.9087
6	DAIMLERCHRYSLER	DODGE STRATUS	1,040	118,845	8.7509
7	DAIMLERCHRYSLER	DODGE INTREPID	1,400	162,279	8.6271
8	MITSUBISHI	MIRAGE	502	61,957	8.1024
9	DAIMLERCHRYSLER	PLYMOUTH NEON	626	89,142	7.0225
10	DAIMLERCHRYSLER	DODGE NEON	1,191	170,098	7.0018
11	GENERAL MOTORS	CHEVROLET METRO	210	30,521	6.8805
12	DAIMLERCHRYSLER	JEEP CHEROKEE	1,040	153,816	6.7613
13	HONDA	ACURA NSX	2	305	6.5574
14	DAIMLERCHRYSLER	CHRYSLER LHS	139	22,944	6.0582
15	ASTON MARTIN	VANTAGE COUPE	1	175	5.7143
16	DAIMLERCHRYSLER	CHRYSLER CIRRUS	267	46,849	5.6992
17	FORD MOTOR CO	FORD CONTOUR	350	61,603	5.6815
18	DAIMLERCHRYSLER	CHRYSLER SEBRING CONVERTIBLE	287	50,940	5.6341
19	GENERAL MOTORS	OLDSMOBILE BRAVADA	186	33,179	5.6060
20	MITSUBISHI	GALANT	520	94,773	5.4868
21	HONDA	CIVIC	1,807	339,223	5.3269
22	GENERAL MOTORS	PONTIAC GRAND AM	1,194	225,321	5.2991
23	GENERAL MOTORS	OLDSMOBILE ALERO	586	118,421	4.9484
24	DAEWOO	LEGANZA	128	25,960	4.9307
25	HONDA	ACURA INTEGRA	136	28,095	4.8407
26	DAEWOO	LANOS	116	24,049	4.8235
27	KIA MOTORS	SEPHIA/SPECTRA	467	101,027	4.8205
28	GENERAL MOTORS	OLDSMOBILE INTRIGUE	352	73,399	4.7957
29	FORD MOTOR CO	MERCURY MYSTIQUE	98	20,839	4.7027
30	DAIMLERCHRYSLER	CHRYSLER CONCORDE	268	59,453	4.5078
31	TOYOTA	COROLLA	839	187,986	4.4629
32	SUZUKI	VITARA/GRAND VITARA	197	46,188	4.2652
33	AUDI	S4	23	5,396	4.2624
34	GENERAL MOTORS	CADILLAC DEVILLE/LIMOUSINE	380	92,619	4.1028
35	FORD MOTOR CO	FORD MUSTANG	832	202,972	4.0991
36	KIA MOTORS	SPORTAGE	271	66,519	4.0740
37	HYUNDAI	ACCENT	232	57,111	4.0623
38	MITSUBISHI	ECLIPSE	185	45,850	4.0349
39	GENERAL MOTORS	CHEVROLET CAMARO	177	43,990	4.0236
40	GENERAL MOTORS	PONTIAC SUNFIRE	368	91,198	4.0132
41	SUZUKI	ESTEEM	78	19,520	3.9959
42	ISUZU	TROOPER	75	19,100	3.9267
43	GENERAL MOTORS	CHEVROLET CAVALIER	975	256,972	3.7942
44	GENERAL MOTORS	CHEVROLET MALIBU	817	215,601	3.7894
45	TOYOTA	LEXUS GS	102	26,952	3.7845
46	GENERAL MOTORS	CHEVROLET LUMINA/MONTE CARLO	368	98,556	3.7339
47	GENERAL MOTORS	PONTIAC FIREBIRD/TRANS AM/FORMULA	115	31,093	3.6986
48	HYUNDAI	SONATA	182	49,340	3.6867
49	FORD MOTOR CO	FORD FOCUS	1,112	304,049	3.6573
50	AUDI	A6	94	26,000	3.6154
51	GENERAL MOTORS	BUICK REGAL	224	62,502	3.5839
52	JAGUAR	S–TYPE	117	32,818	3.5651
53	NISSAN	MAXIMA	604	175,111	3.4492

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THEFT RATES OF MODEL YEAR 2000 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2000—Continued

	Manufacturer	Make/model (line)	Thefts 2000	Production (Mfr's) 2000	2000 theft rate (per 1,000 vehicles produced)
54	FORD MOTOR CO	LINCOLN TOWN CAR	296	89,164	3.3197
55	NISSAN	ALTIMA	484	147,978	3.2708
56	VOLVO	C70	17	5,293	3.2118
57	GENERAL MOTORS	CHEVROLET BLAZER S10/T10	800	249,486	3.2066
58	SUZUKI	SWIFT	9	2,860	3.1469
59	DAIMLERCHRYSLER	CHRYSLER NEON[2]	4	1,303	3.0698
60	NISSAN	PATHFINDER	88	28,983	3.0363
61	GENERAL MOTORS	CHEVROLET PRIZM	116	38,920	2.9805
62	AUDI	TT	21	7,215	2.9106
63	MERCEDES BENZ	220 (S-CLASS)	118	40,612	2.9055
64	HYUNDAI	ELANTRA	354	122,625	2.8869
65	ISUZU	RODEO	155	54,169	2.8614
66	GENERAL MOTORS	GMC JIMMY S–15	251	87,839	2.8575
67	HONDA	PRELUDE	29	10,165	2.8529
68	GENERAL MOTORS	CADILLAC SEVILLE	89	31,414	2.8331
69	MAZDA	MILLENIA	49	17,334	2.8268
70	DAEWOO	NUBIRA	67	23,985	2.7934
71	GENERAL MOTORS	PONTIAC GRAND PRIX	431	156,496	2.7541
72	FORD MOTOR CO	FORD TAURUS	945	350,145	2.6989
73	FORD MOTOR CO	MERCURY MOUNTAINEER	134	50,023	2.6788
74	DAIMLERCHRYSLER	DODGE AVENGER	17	6,376	2.6662
75	MERCEDES BENZ	208 (CLK-CLASS)	47	17,796	2.6410
76	FORD MOTOR CO	FORD EXPLORER	1,001	383,386	2.6109
77	GENERAL MOTORS	CHEVROLET IMPALA	519	199,319	2.6039
78	GENERAL MOTORS	CHEVROLET CORVETTE	81	31,189	2.5971
79	DAIMLERCHRYSLER	CHRYSLER 300 M	138	53,353	2.5865
80	FORD MOTOR CO	MERCURY SABLE	239	93,301	2.5616
81	TOYOTA	CELICA	154	60,368	2.5510
82	MAZDA	626	192	76,444	2.5116
83	ISUZU	VEHICROSS	2	808	2.4752
84	NISSAN	INFINITI Q45	10	4,045	2.4722
85	DAIMLERCHRYSLER	JEEP GRAND CHEROKEE	741	299,988	2.4701
86	BMW	Z3	24	9,857	2.4348
87	TOYOTA	CAMRY/CAMRY SOLARA	1,097	451,343	2.4305
88	FORD MOTOR CO	LINCOLN LS	164	68,527	2.3932
89	JAGUAR	XK8/XK8 CONVERTIBLE	11	4,698	2.3414
90	TOYOTA	RAV4	103	44,645	2.3071
91	TOYOTA	4-RUNNER	302	132,248	2.2836
92	DAIMLERCHRYSLER	DODGE CARAVAN/GRAND	727	333,712	2.1785
93	FORD MOTOR CO	FORD RANGER PICKUP TRUCK	747	346,291	2.1571
94	FORD MOTOR CO	FORD F–150 PICKUP TRUCK	318	151,791	2.0950
95	GENERAL MOTORS	CHEVROLET S–10 PICKUP TRUCK	514	246,662	2.0838
96	DAIMLERCHRYSLER	PLYMOUTH VOYAGER/GRAND	258	123,906	2.0822
97	FORD MOTOR CO	FORD ESCORT	200	96,287	2.0771
98	MAZDA	PROTEGE	166	80,346	2.0661
99	GENERAL MOTORS	SATURN SC	33	16,009	2.0613
100	BMW	7	35	17,141	2.0419
101	TOYOTA	ECHO	114	56,699	2.0106
102	HYUNDAI	TIBURON	32	15,958	2.0053
103	MITSUBISHI	DIAMANTE	17	8,629	1.9701
104	GENERAL MOTORS	SATURN SL	255	130,551	1.9533
105	FORD MOTOR CO	MERCURY COUGAR	87	44,911	1.9372
106	DAIMLERCHRYSLER	CHRYSLER SEBRING COUPE	21	10,910	1.9248
107	DAIMLERCHRYSLER	JEEP WRANGLER	178	92,672	1.9208
108	GENERAL MOTORS	BUICK CENTURY	272	144,495	1.8824
109	NISSAN	XTERRA	200	108,434	1.8444
110	GENERAL MOTORS	GMC SAFARI VAN	54	30,093	1.7944
111	DAIMLERCHRYSLER	DODGE DAKOTA PICKUP TRUCK	322	181,011	1.7789
112	VOLVO	S40/V40	63	35,817	1.7589
113	NISSAN	SENTRA	120	68,587	1.7496
114	BMW	5	80	45,769	1.7479
115	BMW	3	155	89,026	1.7411
116	FORD MOTOR CO	LINCOLN CONTINENTAL	42	24,210	1.7348
117	GENERAL MOTORS	CHEVROLET ASTRO VAN	155	89,660	1.7288
118	GENERAL MOTORS	CHEVROLET TRACKER	77	45,063	1.7087
119	HONDA	PASSPORT	35	20,493	1.7079
120	VOLVO	S70/V70	69	40,581	1.7003
121	NISSAN	INFINITI G20	23	13,635	1.6868
122	MAZDA	B SERIES PICKUP TRUCK	53	31,627	1.6758

THEFT RATES OF MODEL YEAR 2000 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2000—Continued

	Manufacturer	Make/model (line)	Thefts 2000	Production (Mfr's) 2000	2000 theft rate (per 1,000 vehicles produced)
123	MERCEDES BENZ	203 (C-CLASS)	44	26,439	1.6642
124	VOLVO	XC	24	14,489	1.6564
125	TOYOTA	TACOMA PICKUP TRUCK	236	142,518	1.6559
126	VOLKSWAGEN	JETTA	224	137,940	1.6239
127	GENERAL MOTORS	CADILLAC ELDORADO	22	13,845	1.5890
128	GENERAL MOTORS	PONTIAC BONNEVILLE	94	59,334	1.5843
129	ISUZU	HOMBRE PICKUP TRUCK	7	4,449	1.5734
130	JAGUAR	XJR	2	1,290	1.5504
131	NISSAN	FRONTIER PICKUP TRUCK	217	143,358	1.5137
132	MERCEDES BENZ	215 (CL-CLASS)	2	1,338	1.4948
133	FORD MOTOR CO	MERCURY GRAND MARQUIS	200	135,282	1.4784
134	HONDA	ACCORD	627	430,595	1.4561
135	PORSCHE	911	11	7,578	1.4516
136	GENERAL MOTORS	GMC SONOMA PICKUP TRUCK	86	60,124	1.4304
137	JAGUAR	XJ8	10	7,086	1.4112
138	VOLKSWAGEN	GOLF/GTI	37	26,862	1.3774
139	AUDI	A8	3	2,189	1.3705
140	MERCEDES BENZ	210 (E-CLASS)	64	46,709	1.3702
141	TOYOTA	LEXUS LS	15	11,179	1.3418
142	DAIMLERCHRYSLER	DODGE VIPER	2	1,559	1.2829
143	GENERAL MOTORS	SATURN LS	105	82,956	1.2657
144	TOYOTA	LEXUS RX	113	89,410	1.2638
145	GENERAL MOTORS	BUICK LESABRE	240	190,269	1.2614
146	FORD MOTOR CO	FORD WINDSTAR VAN	291	232,403	1.2521
147	AUDI	A4	24	19,304	1.2433
148	VOLVO	S80	44	35,864	1.2269
149	SUBARU	IMPREZA	21	17,353	1.2102
150	GENERAL MOTORS	PONTIAC MONTANA VAN	75	62,640	1.1973
151	MERCEDES BENZ	170 (SLK-CLASS)	7	5,891	1.1883
152	TOYOTA	LEXUS ES	54	45,885	1.1769
153	DAIMLERCHRYSLER	PLYMOUTH PROWLER	3	2,576	1.1646
154	GENERAL MOTORS	BUICK PARK AVENUE	59	51,365	1.1486
155	VOLKSWAGEN	CABRIO	10	8,836	1.1317
156	NISSAN	INFINITI I30	45	39,815	1.1302
157	JAGUAR	VANDEN PLAS	4	3,596	1.1123
158	NISSAN	QUEST	52	46,834	1.1103
159	HONDA	ACURA TL	74	67,287	1.0998
160	GENERAL MOTORS	CADILLAC CATERA	17	15,629	1.0877
161	GENERAL MOTORS	CHEVROLET VENTURE VAN	107	100,041	1.0696
162	HONDA	CR–V	121	114,387	1.0578
163	TOYOTA	TUNDRA PICKUP TRUCK	11	10,527	1.0449
164	HONDA	ACURA RL	17	16,470	1.0322
165	MERCEDES BENZ	129 (SL–CLASS)	5	4,845	1.0320
166	SUBARU	FORESTER	29	28,950	1.0017
167	DAIMLERCHRYSLER	CHRYSLER TOWN & COUNTRY	93	96,298	0.9658
168	ISUZU	AMIGO	3	3,199	0.9378
169	MAZDA	MPV	47	50,565	0.9295
170	FORD MOTOR CO	MERCURY VILLAGER MPV	29	31,495	0.9208
171	GENERAL MOTORS	CADILLAC FUNERAL COACH	1	1,100	0.9091
172	TOYOTA	AVALON	98	108,025	0.9072
173	VOLKSWAGEN	NEW BEETLE	81	89,819	0.9018
174	NISSAN	INFINITI QX4	25	28,258	0.8847
175	VOLKSWAGEN	PASSAT	59	67,216	0.8778
176	GENERAL MOTORS	OLDSMOBILE SILHOUETTE VAN	34	41,705	0.8152
177	SAAB	9–3	14	17,929	0.7809
178	GENERAL MOTORS	SATURN LW	11	14,418	0.7629
179	SAAB	9–5	13	17,182	0.7575
180	TOYOTA	SIENNA VAN	96	131,405	0.7306
181	TOYOTA	MR2	4	5,597	0.7147
182	SUBARU	LEGACY	65	97,215	0.6686
183	JAGUAR	XKR	1	1,508	0.6631
184	GENERAL MOTORS	SATURN SW	6	9,113	0.6584
185	PORSCHE	BOXSTER/BOXSTER S	8	13,563	0.5898
186	HONDA	S2000	5	9,206	0.5431
187	MAZDA	MX–5 MIATA	8	16,107	0.4967
188	FORD MOTOR CO	FORD CROWN VICTORIA	50	103,784	0.4818
189	HONDA	INSIGHT	2	5,603	0.3570
190	HONDA	ODYSSEY	33	122,131	0.2702
191	ASTON MARTIN	VANTAGE VOLANTE	0	573	0.0000

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THEFT RATES OF MODEL YEAR 2000 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2000—Continued

	Manufacturer	Make/model (line)	Thefts 2000	Production (Mfr's) 2000	2000 theft rate (per 1,000 vehicles produced)
192	BMW	Z8	0	2,936	0.0000
193	DAIMLERCHRYSLER	CHRYSLER STRATUS[2]	0	131	0.0000
194	FIAT	FERRARI 360	0	452	0.0000
195	FIAT	FERRARI 456	0	82	0.0000
196	FIAT	FERRARI 550	0	256	0.0000
197	LOTUS	ESPRIT	0	200	0.0000
198	ROLLS-ROYCE	BENTLEY ARNAGE	0	422	0.0000
199	ROLLS-ROYCE	BENTLEY AZURE	0	93	0.0000
200	ROLLS-ROYCE	BENTLEY CONTINENTAL R	0	23	0.0000
201	ROLLS-ROYCE	BENTLEY CONTINENTAL SC	0	3	0.0000
202	ROLLS-ROYCE	BENTLEY CONTINENTAL T	0	2	0.0000
203	ROLLS-ROYCE	BENTLEY CORNICHE	0	97	0.0000
204	ROLLS-ROYCE	SILVER SERAPH	0	154	0.0000
205	TOYOTA	LEXUS SC	0	823	0.0000
206	VOLKSWAGEN	EUROVAN	0	2,791	0.0000

[1] Nativa is the name applied to Montero Sport vehicles that are manufactured for sale only in Puerto Rico.
[2] These vehicles were manufactured for sale in the U.S. territories under the Chrysler nameplate.

Issued on: August 14, 2002.

Roger A. Saul,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 02–21027 Filed 8–16–02; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 67, No. 160
Monday, August 19, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–08–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–6 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. (Pilatus) Model PC–6 airplanes. This proposed AD would require you to inspect the aileron assembly for correct configuration and modify as necessary. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this proposed AD are intended to correct improper aileron assembly configuration, which could result in failure of the aileron mass balance weight. Such failure could lead to loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 13, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–08–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–08–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives my Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–08–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Model PC–6 airplanes. The FOCA reported an instance where unapproved mass balance weights and an improper aileron configuration were found on a Model PC–6 airplane. The FOCA determined the cause as improper configuration control and tracking.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not corrected, could result in failure of the aileron mass balance weights. Such failure could lead to loss of control of the airplane.

Is There Service Information That Applies to This Subject?

Pilatus has issued Service Bulletin No. 62B, dated May 1967, and Pilatus PC–6 Service Bulletin No. 57–001, dated December 20, 2001.

What Are the Provisions of This Service Information?

These service bulletins include procedures for inspecting the aileron assembly for correct configuration and modifying the aileron assembly if necessary.

What Action Did the FOCA Take?

The FOCA classified these service bulletins as mandatory and issued Swiss AD HB 2002–001, dated February 8, 2002, in order to ensure the continued airworthiness of these airplanes in Switzerland.

Was This in Accordance With the Bilateral Airworthiness Agreement?

This airplane model is manufactured in Switzerland and is type certificated for operation in the United States under the provisions of section 21.29 of the

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Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the FOCA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Pilatus Model PC–6 airplanes of the same type design that are on the U.S. registry;

—the actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service information.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affected 35 airplanes in the U.S. registry.

What Would be the Cost of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour×$60 per hour=$60	No parts required	$60	$60×35=$2,100.

We estimate the following costs to accomplish any necessary modifications that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such modification:

Labor cost	Parts cost	Total cost per airplane
16 workhours×$60 = $960	$419	$419+$960 = $1,379.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is "within the next 30 days after the effective date of this AD."

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

This unsafe condition is not a result of the number of times the airplane is operated. The chance of this situation occurring is the same for an airplane with 10 hours time-in-service (TIS) as it would be for a airplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft Ltd.: Docket No. 2002–CE–08–AD

(a) *What airplanes are affected by this AD?* This AD affects Model PC–6 airplanes, all manufacturer serial numbers (MSN) up to and including 939, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct improper aileron assembly configuration, which could result in failure of the aileron mass balance weight. Such failure could lead to loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the aileron assembly for proper configuration	Within the next 30 days after the effective date of this AD.	In accordance with Pilatus Service Bulletin No. 62B, dated May 1967, as specified in Pilatus PC–6 Service Bulletin No. 57–001, dated December 20, 2001.
(2) If the aileron assembly configuration incorporates aileron part number (P/N) 6106.10.xxx or P/N 6106.0010.xxx, modify the assembly in accordance with Pilatus Service Bulletin No. 62B, dated May 1967, and install a placard.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	Modify in accordance with Pilatus Service Bulletin No. 62B, dated paragraph May 1967. Install the placard in accordance with Pilatus PC–6 Service Bulletin No. 57–001, dated December 20, 2001.
(3) If the aileron assembly configuration differs from that specified in Pilatus Service Bulletin No. 62B, dated May 1967, or if the part numbers are missing and cannot be verified: (i) obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD; and (ii) incorporate this repair scheme.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	In accordance with Pilatus PC–6 Service Bulletin No. 57–001, dated December 20, 2001.
(4) Do not install any aileron assembly unless the inspection, modification, placard, and repair requirements (as applicable) of paragraphs (d)(1), (d)(2), (d)(3), (d)(3)(i), and (d)(3)(ii) of this AD are accomplished.	As of the effective date of this AD.	In accordance with Pilatus PC–6 Service Bulletin No. 57–001, dated December 20, 2001.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in Swiss AD HB 2002–001, dated February 8, 2002.

Issued in Kansas City, Missouri, on August 2, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20933 Filed 8–16–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–90–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM); reopening of the comment period.

SUMMARY: This document extends the period for public comment on the above-referenced NPRM that would apply to certain McDonnell Douglas Model DC–9 airplanes and Model MD–88 airplanes. The NPRM proposes to require replacement of certain power relays, and subsequent repetitive cleaning, inspecting, repairing, and testing of certain replaced power relays. The NPRM is prompted by reports indicating that the alternating current (AC) cross-tie relay shorted out internally, which caused severe smoke and burn damage to the relay, aircraft wiring, and adjacent panels. This extension of the comment period is necessary to assure that all interested persons have ample opportunity to present their views on the proposed requirements of the NPRM.

DATES: Comments must be received by August 26, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–90–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 99–NM–90–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

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Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–90–AD." The postcard will be date stamped and returned to the commenter.

Events Leading to This Extension of the Comment Period

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain McDonnell Douglas Model DC–9 airplanes and Model MD–88 airplanes was published as a second supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on July 1, 2002 (67 FR 44119). The second supplemental NPRM proposed to require replacement of certain power relays, and subsequent repetitive cleaning, inspecting, repairing, and testing of certain replaced power relays.

The FAA has received a request from the National Transportation Safety Board (NTSB) to extend the comment period of the second supplemental NPRM by three weeks to allow additional time to prepare comments. The FAA has considered this request and finds it appropriate to extend the comment period to give all interested persons more time to examine the proposed requirements of the second supplemental NPRM and to submit comments. In light of the fact that some of the additional time requested to prepare comments has passed, we have determined that extending the comment period by 7 days after date of publication in the **Federal Register** is appropriate, and that such an extension will not compromise the safety of these airplanes.

The Extension

The comment period for Docket No. 99–NM–90–AD is hereby extended to August 26, 2002.

Since no portion of the second supplemental NPRM or other regulatory information has been changed, that entire NPRM is not being republished.

Issued in Renton, Washington, on August 12, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20932 Filed 8–16–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 148, 149, and 150

[USCG–1998–3884]

RIN 2115–AF63

Deepwater Ports; Reopening of Comment Period

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: In response to public requests, the Coast Guard is reopening the comment period on its notice of proposed rulemaking on deepwater ports published in the **Federal Register** on May 30, 2002, (67 FR 37920). Reopening the comment period gives the public more time to submit comments and recommendations on the issues raised in the proposed rule. This rulemaking is necessary to update the regulations with current technology and industry standards. It will also align them with certain regulations for other fixed offshore facilities.

DATES: Comments on the proposed rule and related material must reach the Docket Management Facility on or before September 18, 2002. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before September 18, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–1998–3884), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for the rulemaking. Comments and material received from the public, as well as documents mentioned in the preamble to the proposed rule as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Commander Mark Prescott, Vessel and Facility Operating Standards Division (G–MSO–2), Coast Guard, telephone 202–267–0225. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in the rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for the rulemaking (USCG–1998–3884), indicate the specific section of the proposed rule to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments received during the comment period. We may change the proposed rule in view of them.

Dated: August 12, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 02–20952 Filed 8–16–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NO. MT–001–0043; FRL–7261–4]

Approval and Promulgation of Air Quality Implementation Plans for the State of Montana; Revision to the Administrative Rules of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Governor of Montana on April 30, 2001. The April 30, 2001 submittal revises the State's Administrative Rules of Montana (ARM) by adding a Credible Evidence Rule. The intended effect of this action is to make the Credible Evidence Rule Federally enforceable. Finally, the Governor's April 30, 2001 submittal contains other SIP revisions which will be addressed separately. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 18, 2002.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA, Region 8, (303) 312–6144.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we" or "our" is used means EPA.

I. Analysis of the State Submittal

A. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan admitted by a State must be adopted after reasonable notice and public hearing. Section 110(1) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (*see* section 110(k)(1) and 57 FR 13565). EPA's completeness criteria are set out at 40 CFR part 51, appendix V. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of submission.

To entertain public comment, the State of Montana, after providing adequate public notice, held several public hearings to address the revisions to the SIP. Following the public hearings and public comment period, the Montana Board of Environmental Review adopted the revisions. Revisions to ARM 17.8.132 were adopted on November 17, 2000.

The Governor of Montana submitted the revisions to the SIP with a letter dated April 30, 2001. The SIP revisions were reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. In a June 29, 2001 letter, the EPA informed the State that the submittal was found to be complete.

B. Summary of SIP Revisions

ARM 17.8.132—Credible Evidence

Montana has adopted a credible evidence rule (ARM 17.8.132) to comply with the EPA's final rule concerning credible evidence. On February 24, 1997, EPA promulgated regulations under section 113(a) and 113(e)(1) of the CAA that gave EPA authority to use all available data to prove CAA violations (*see* 62 FR 8314–8328). The final rule requires states to include provisions in their SIPs to allow for the use of credible evidence for the purposes of submitting compliance certifications and for establishing whether or not a person has violated a standard in a SIP.

In accordance with section 110(k)(5) of the CAAA SIP Call was issued to the State of Montana on July 7, 1994 which was later superceded by another SIP Call on October 20, 1999. In a letter from William P. Yellowtail, EPA Regional Administrator, to Marc Racicot, Governor of Montana, EPA notified the State of Montana that their SIP was inadequate to comply with sections 110(a)(2)(A) and (C) of the CAA because the SIP could be interpreted to limit the types of credible evidence or information that may be used for determining compliance and establishing violations. In response to the SIP Call, the State of Montana adopted and submitted a new credible evidence rule, ARM 17.8.132. EPA believes the State's new credible evidence rule meets the requirements of 40 CFR 51.212(c) and is proposing approval of it into the SIP.

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. The Montana SIP revisions that are the subject of this document do not interfere with the maintenance of the NAAQS or any other applicable requirement of the Act because the State of Montana's new credible evidence rule meets the federal requirements in 40 CFR 51.212(c) and this rule will enhance the State's efforts in implementing the Clean Air Act. Therefore, section 110(l) requirements are satisfied.

II. Proposed Action

EPA is proposing to approve Montana's Credible Evidence Rule

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(ARM 17.8.132) submitted on April 30, 2001. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 13, 2002.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 02–20988 Filed 8–16–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–P–7613]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator for Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and record keeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD) Existing	*(NAVD) Modified
Illinois	Bradley, Village of (Kankakee County).	Kankakee River	The southwest corner of the Village of Bradley.	None	*599
		North Branch Soldier Creek.	Just upstream of Conrail bridge	*627	*628
		Soldier Creek	At the confluence of North Branch Soldier Creek.	*624	*627
			Approximately 400 feet upstream of North Street.	*634	*634
Maps are available for inspection at the Department of Building Standards, Village of Bradley, 147 S. Michigan Avenue, Bradley, Illinois. Send comments to The Honorable Jerry Balthazor, Village President, Village of Bradley, 147 S. Michigan Avenue, Bradley, Illinois 60915.					
Illinois	Kankakee, City of (Kankakee County).	Kankakee River	Approximately 7,600 feet downstream of Conrail.	*597	*598
			Approximately 3,600 feet upstream of I–57.	*612	*606
		Soldier Creek	Just upstream of Illinois Central Railroad	*628	*627
			Approximately 4,300 feet upstream of State Route 50 (Kinzie Avenue).	*632	*631
Maps are available for inspection at the City of Kankakee Planning Department, 165 N. Schuyler Avenue, Kankakee, Illinois. Send comments to The Honorable Donald E. Green, Mayor, City of Kankakee, 385 E. Oak Street, Kankakee, Illinois 60901.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: August 8, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–20965 Filed 8–16–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–P–7611]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact

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stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator for Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD) Existing	Modified	Communities affected
Big Cabin Creek:			
Just upstream of the confluence with Neosho River	None	*639	Mayes County (Unincorporated Areas).
Approximately 550 feet upstream of Abandoned County Road	None	*642	
*National Geodetic Vertical Datum			
Lake Hudson: Entire shoreline	None	*637	Mayes County, Town of Salina.
Neosho River:			
Approximately 2,500 feet downstream of Strang Road	None	*637	Mayes County, Town of Langley, Town of Disney.
Just downstream of Pensacola Dam	None	*649	
Summerfield Creek:			
At the confluence with Neosho River	None	*648	Mayes County, Town of Disney.
Approximately 6,200 feet upstream of N4475 Road	None	*658	
Salt Branch Creek:			
Just upstream of Maple Street	None	*611	Mayes County, City of Pryor Creek.
Approximately 100 feet downstream of N4330 Road	None	*633	

*National Geodetic Vertical Datum

Maps are available for inspection at the Mayes County Courthouse, Pryor Creek, Oklahoma.
Send comments to Mr. Jim Montgomery, County Commissioner, Mayes County Courthouse, PO Box 9, Pryor Creek, Oklahoma 74362.
Maps are available for inspection at City Hall, City of Pryor, 6 North Adair Street, Pryor Creek, Oklahoma.
Send comments to The Honorable H. W. Jordan, Mayor, City of Pryor Creek, PO Box 1167, Pryor Creek, Oklahoma 74362.
Maps are available for inspection at the Town Hall, Town of Disney, 101 Main Street, Disney, Oklahoma.
Send comments to The Honorable Lewis Perrault, Mayor, Town of Disney, PO Box 318, Disney, Oklahoma 74340.
Maps are available for inspection at City Hall, Town of Langley, 3rd Street and Osage Avenue, Langley, Oklahoma.
Send comments to The Honorable Dick Lay, Mayor, Town of Langley, PO Box 760, Langley, Oklahoma 74350.
Maps are available for inspection at the Town Hall, Town of Salina, Salina Oklahoma.
Send comments to The Honorable Darrell Blaylock, Mayor, Town of Salina, PO Box 276, Salina, Oklahoma 74365.
For further information please contact the Map Assistance Center toll free at 1–877–FEMA–MAP (1–877–336–2627).

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: August 12, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–20964 Filed 8–16–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1612; MB Docket Nos. 02–198, 02–199; RM–10513, RM–10514]

Radio Broadcasting Services; Magnolia, AR and Oil City, LA; Hilton Head Island, Hollywood and Port Royal, SC.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission seeks comment on proposals in two separate docketed proceedings in a multiple docket *Notice of Proposed Rule Making*. The first, jointly filed by Apex Broadcasting, Inc., and Monterey Licenses, LLC, proposes to reallot Channel 259C from Port Royal to Hollywood, South Carolina, as the community's first local aural transmission service and modify the license of Station WJZX(FM) to reflect the new community, and reallot Channel 300C2 from Hilton Head Island to Port Royal to retain Port Royal's sole local aural transmission service and modify the license of Station WLOW(FM) to reflect the new community. Channel 259C can be reallotted from Port Royal to Hollywood at Station WJZX(FM)'s current transmitter site 41.2 km (25.6 miles) southwest of the community at coordinates 32–25–10 NL and 80–28–30 WL. Channel 300C2 can be reallotted from Hilton Head Island to Port Royal at Station WLOW(FM)'s current transmitter site 22.3 km (13.9 miles) southwest of the community at coordinates 32–13–36 NL and 80–50–53 WL. The second, filed by Columbia Broadcasting Company, Inc., Substitute Channel 300C2 for 300C1 at Magnolia, Arkansas and reallot Channel 300C2 from Magnolia to Oil City, Louisiana, as the community's first local transmission service, and modify Station KVMA's authorization to specify Oil City as the community of license. Channel 300C2 can be reallotted from Magnolia to Oil City at petitioner's proposed site 27.6 kilometers (17.1 miles) northeast of the community at coordinates 32–54–06 NL and 93–44–01 WL. *See Supplementary Information.*

DATES: Comments must be filed on or before September 23, 2002, and reply comments must be filed on or before October 8, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Columbia Broadcasting Company, Inc. c/o Mark N. Lipp, J. Thomas Nolan, Shook, Hardy & Bacon, 600 14th Street, NW., Suite 800, Washington, DC 20005; Apex Broadcasting, Inc., c/o Erwin G. Krasnow, Mark N. Lipp, J. Thomas Nolan, Shook, Hardy & Bacon, 600 14th Street, NW., Suite 800, Washington, DC 20005; and Monterey Licenses, LLC, David D. Oxenford, Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 02–198, and 02–199, adopted July 17, 2002, and released August 2, 2002. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Magnolia, Channel 300C1.

3. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Oil City, Channel 300C2.

4. Section 73.202(b), the Table of FM Allotments under South Carolina is amended by adding Hollywood, Channel 259C, by removing Channel 300C2 at Hilton Head Island, and by removing Channel 259C and adding Channel 300C2 at Port Royal.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–20923 Filed 8–16–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 080502E]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Proposed Amendment 13 to the Fishery Management Plan (FMP) for the Shrimp Fishery of the Gulf of Mexico; Scoping Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a draft supplemental environmental impact statement (DSEIS) and notice of scoping meetings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) intends to prepare a DSEIS to describe and analyze management alternatives associated with proposed Amendment 13 to the FMP for the Shrimp Fishery of the Gulf of Mexico.

Amendment 13 would establish stock status determination criteria for managed shrimp stocks in the Gulf. The Amendment may also include, but would not be limited to, alternatives

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related to adding rock shrimp to the management unit of the shrimp FMP, requiring endorsements for vessels harvesting rock shrimp and royal red shrimp in the exclusive economic zone (EEZ) of the Gulf of Mexico, requiring vessel monitoring systems (VMS) aboard shrimp trawl vessels fishing in or transiting all or some portions of the Gulf of Mexico EEZ, improving bycatch reporting, and further reducing bycatch in the shrimp fishery.

The purpose of this notice of intent is to solicit public comments on the scope of issues to be addressed in the DSEIS, which will be submitted to NMFS for filing with the Environmental Protection Agency (EPA) for publication of a notice of availability for public comment.

DATES: Written comments on the scope of issues to be addressed in the DSEIS must be received by the Council by September 18, 2002. A series of scoping meetings will be held late August through early October 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Written comments on the scope of the DSEIS and requests for additional information on proposed Amendment 13 should be sent to the Gulf of Mexico Fishery Management Council, The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite 1000, Tampa, Florida 33619; telephone: 813–228–2815; fax: 813–225–7015. Comments may also be sent by e-mail to *Rick.Leard@gulfcouncil.org*.

Eight scoping meetings will be held throughout the Gulf, in the states of Texas, Louisiana, Mississippi, Alabama and Florida. See **SUPPLEMENTARY INFORMATION** for the specific locations, dates, and times of those meetings.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard; phone: 813–228–2815; fax: 813–225–7015; e-mail: *Rick.Leard@gulfcouncil.org* or Dr. Steve Branstetter; phone: 727–570–5305; fax: 727–570–5583; e-mail: *Steve.Branstetter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires the Council to establish stock status determination criteria for all managed stocks. The Council submitted proxy definitions for these parameters as part of its Generic Sustainable Fisheries Act Amendment in 1999. However, NMFS approved only the definitions of the overfished conditions. Consequently, through proposed Amendment 13, the Council would revise the remaining stock status determination criteria for managed shrimp stocks in the Gulf of Mexico.

The Council has established some relatively large permanently and seasonally closed areas to shrimp trawling, namely the Tortugas Shrimp Sanctuary and the cooperative Texas Closure. To enhance enforcement of these closures and with the intent to collect better effort data from the shrimp fishery, the Council may also consider through Amendment 13, requiring the use of VMS on shrimp vessels in at least some portion of the EEZ during some closure period.

Section 303 (a)(11) of the Magnuson-Stevens Act requires the Council to establish a standardized bycatch reporting methodology to determine the type and amount of bycatch occurring in the shrimp fishery. The Council has proposed such a methodology under Amendment 10 to the FMP for the Shrimp Fishery of the Gulf of Mexico. However, through Amendment 13, the Council may consider ways to improve that reporting methodology. Amendment 13 may also consider additional measures to reduce bycatch in the shrimp fishery to the extent practicable and to reduce the mortality of bycatch that cannot be avoided, as required by Section 303 (a)(11) of the Magnuson-Stevens Act.

Other management alternatives that may be considered in Amendment 13 include adding rock shrimp to the management unit of the shrimp FMP, and requiring endorsements for vessels harvesting rock shrimp and royal red shrimp in the EEZ of the Gulf of Mexico.

The Council will develop a DSEIS to describe and analyze management alternatives considered in proposed Amendment 13. In addition to the management measures described above, the DSEIS will evaluate, as needed, additional management measures to address problems or issues that are identified during the scoping process.

Written comments on the range of alternatives and scope of issues to be addressed in the DSEIS may be sent to the Council (see **ADDRESSES**). The Council has scheduled the following eight scoping meetings to provide the opportunity for additional public input:

1. Monday, August 26, 2002: Four Points Sheraton, 3777 North Expressway, Brownsville, TX; telephone: 956–547–1500;

2. Tuesday, August 27, 2002: Palacios Recreation Center, 2401 Perryman, Palacios, TX; telephone: 361–972–2387;

3. Wednesday, August 28, 2002: San Luis Resort, 5222 Seawall Boulevard, Galveston Island, TX; telephone: 409–744–1500;

4. Monday, September 23, 2002: New Orleans Airport Hilton, 901 Airline Highway, Kenner, LA; telephone: 504–469–5000;

5. Tuesday, September 24, 2002: Isle of Capri Casino Hotel, 151 Beach Boulevard, Biloxi, MS; telephone: 228–436–8720;

6. Wednesday, September 25, 2002: Adams Mark Hotel, 64 South Water Street, Mobile, AL; telephone: 251–438–4000;

7. Tuesday, October 1, 2002: Franklin County Courthouse, 33 Market Street, Apalachicola, FL; telephone: 850–653–8861; and

8. Wednesday, October 2, 2002: Tampa Airport Hilton, 2225 Lois Avenue, Tampa, FL; telephone: 813–877–6688.

All scoping meetings will begin at 6 pm. The first portion of each meeting will be allocated to taking public comments on proposed Amendment 13. Immediately following the conclusion of public comments on Amendment 13, the Council will take public comments on the DSEIS being developed to support the Draft Red Snapper Rebuilding Amendment. The notice of intent for that action can be found at Notice I.D. 080502D published in the Notices section of this issue of the **Federal Register**, and contains information on the scope of issues and alternatives that will be considered in the Draft Red Snapper Rebuilding Amendment, which will establish a red snapper rebuilding plan based on biomass-based stock rebuilding targets and thresholds.

All meetings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dr. Richard Leard at the Council (see **ADDRESSES**).

Once the Council completes the DSEIS associated with Amendment 13, it will submit the document to NMFS for filing with the EPA. The EPA will publish a notice of availability of the DSEIS for public comment in the **Federal Register**. The DSEIS will have a 45–day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

The Council will consider public comments received on the DSEIS in developing the final supplemental environmental impact statement (FSEIS) and before adopting final management measures for Amendment 13. The Council will submit both the final Amendment and the supporting FSEIS to NMFS for Secretarial review, approval, and implementation under the Magnuson-Stevens Act.

NMFS will announce, through a notice published in the **Federal Register**, the availability of the final Amendment 13 for public review during the Secretarial review period. During Secretarial review, the NMFS will also file the FSEIS with the EPA for a final 30–day public comment period. This comment period will be concurrent with the Secretarial review period and will end prior to final agency action to approve, disapprove, or partially approve Amendment 13.

NMFS will announce, through a notice published in the **Federal Register**, all public comment periods on the final Amendment 13, its proposed implementing regulations, and its associated FSEIS. NMFS will consider all public comments received during the Secretarial review period, whether they are on the final Amendment, the proposed regulations, or the FSEIS, prior to final agency action.

Dated: August 14, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–21023 Filed 8–16–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 080502D]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Draft Amendment to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico to Establish a Red Snapper Rebuilding Plan (Draft Red Snapper Rebuilding Amendment); Scoping Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a draft supplemental environmental impact statement (DSEIS); notice of scoping meetings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) intends to prepare a DSEIS to describe and analyze management alternatives associated with establishing a red snapper rebuilding plan based on biomass-based stock rebuilding targets and thresholds. The red snapper rebuilding plan will be implemented through an amendment to the FMP for the Reef Fish Resources of the Gulf of Mexico. The purpose of this notice of intent is to solicit public comments on the scope of issues to be addressed in the DSEIS, which will be submitted to NMFS for filing with the Environmental Protection Agency (EPA) for publication of a notice of availability for public comment.

DATES: Written comments on the scope of issues to be addressed in the DSEIS must be received by the Council by September 18, 2002. A series of scoping meetings will be held late August through early October 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Written comments on the scope of the DSEIS and requests for additional information on the Draft Red Snapper Rebuilding Amendment should be sent to the Gulf of Mexico Fishery Management Council, The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815; fax: 813–225–7015. Comments may also be sent by e-mail to *Peter.Hood@gulfcouncil.org*.

Eight scoping meetings will be held throughout the Gulf, in the states of Texas, Louisiana, Mississippi, Alabama and Florida. See **SUPPLEMENTARY INFORMATION** for the specific locations, dates, and times of those meetings.

FOR FURTHER INFORMATION CONTACT: Peter Hood; phone: 813–228–2815; fax: 813–225–7015; e-mail: *Peter.Hood@gulfcouncil.org* or Phil Steele; phone: 727–570–5305; fax: 727–570–5583; e-mail: *Phil.Steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Council is preparing to amend the FMP for the Reef Fish Resources of the Gulf of Mexico to establish a red snapper rebuilding plan that is based on biomass-based stock rebuilding targets and thresholds. The Council will develop a DSEIS to describe and analyze management alternatives considered in the Draft Red Snapper Rebuilding Amendment.

The DSEIS will evaluate biomass-based stock rebuilding targets and thresholds, and will consider various rebuilding schedules, consistent with the legal mandate provided by Section 304(e)(4) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to rebuild overfished stocks in as short a time period as possible, taking into account other factors, including the status and biology of the overfished stock and the needs of fishing communities. The DSEIS will also consider various alternatives to achieve the rebuilding goal based on a constant catch scenario and/or a constant fishing mortality rate scenario.

In an earlier version of the Draft Red Snapper Rebuilding Amendment (Draft Regulatory Amendment to the Reef Fish FMP to Set a Red Snapper Rebuilding Plan through 2032), the Council proposed a 31–year stepwise rebuilding strategy based on a combination of the constant catch and constant fishing mortality rate scenarios. That rebuilding strategy would maintain the current total allowable catch (TAC) quota set at 9.12 million lb (4.14 kg) under a constant catch scenario for years 2001–2005, with a minimum 40–percent bycatch reduction requirement. Thereafter, the rebuilding plan would shift to a constant fishing mortality rate strategy. In addition to annual monitoring to ensure quota compliance, the status of the stock would be reviewed every 5 years to evaluate the need for additional management measures. That strategy will be considered in the Draft Red Snapper Rebuilding Amendment, as will other strategies that may require immediate adjustments to existing management measures.

Management alternatives considered by the Council could include, but would not be limited to, adjustments to red snapper TAC quotas, minimum size limits, and bag limits, and changes to existing bycatch reduction requirements in the Gulf of Mexico shrimp fishery.

Written comments on the range of alternatives and scope of issues to be addressed in the DSEIS may be sent to the Council (see **ADDRESSES**). The Council has scheduled the following eight scoping meetings to provide the opportunity for additional public input:

1. Monday, August 26, 2002: Four Points Sheraton, 3777 North Expressway, Brownsville, TX (956–547–1500);

2. Tuesday, August 27, 2002: Palacios Recreation Center, 2401 Perryman, Palacios, TX (361–972–2387);

3. Wednesday, August 28, 2002: San Luis Resort, 5222 Seawall Boulevard, Galveston Island, TX (409–744–1500);

4. Monday, September 23, 2002: New Orleans Airport Hilton, 901 Airline Highway, Kenner, LA (504–469–5000);

5. Tuesday, September 24, 2002: Isle of Capri Casino Hotel, 151 Beach Boulevard, Biloxi, MS (228–436–8720);

6. Wednesday, September 25, 2002: Adams Mark Hotel, 64 South Water Street, Mobile, AL (251–438–4000);

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7. Tuesday, October 1, 2002: Franklin County Courthouse, 33 Market Street, Apalachicola, FL (850–653–8861); and

8. Wednesday, October 2, 2002: Tampa Airport Hilton, 2225 Lois Avenue, Tampa, FL (813–877–6688).

At these scoping meetings, the Council will also take public comments on the DSEIS being developed to support proposed Amendment 13 to the FMP for the Shrimp Fishery of the Gulf of Mexico (Amendment 13). The notice of intent for that action can be found at Notice I.D. 080502E published in the Notices section of this issue of the **Federal Register**, and contains more information on the purpose and scope of Amendment 13, which would establish stock status determination criteria for managed shrimp stocks in the Gulf. Amendment 13 may also include, but would not be limited to, alternatives related to: (1) adding rock shrimp to the management unit of the shrimp FMP, (2) requiring endorsements for vessels harvesting rock shrimp and royal red shrimp in the exclusive economic zone (EEZ) of the Gulf of Mexico, (3) requiring vessel monitoring systems aboard shrimp trawl vessels fishing in or transiting all or some portions of the Gulf of Mexico EEZ, (4) improving bycatch reporting, and (5) further reducing bycatch in the shrimp fishery.

All scoping meetings will begin at 6 p.m. The first portion of each meeting will be allocated to taking public comments on proposed Amendment 13. Scoping for the Draft Red Snapper Rebuilding Amendment will commence immediately following the conclusion of public comments on Amendment 13. The meetings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Peter Hood at the Council (see **ADDRESSES**).

Once the Council completes the DSEIS associated with the Draft Red Snapper Rebuilding Amendment, it will submit the document to NMFS for filing with the EPA. The EPA will publish a notice of availability of the DSEIS for public comment in the **Federal Register**. The DSEIS will have a 45–day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

The Council will consider public comments received on the DSEIS in developing the final supplemental environmental impact statement (FSEIS) and before adopting final management measures for the Red Snapper Rebuilding Amendment. The Council will submit both the final Amendment and the supporting FSEIS to NMFS for Secretary of Commerce review, approval, and implementation under the Magnuson-Stevens Act.

NMFS will announce, through a notice published in the **Federal Register**, the availability of the final Red Snapper Rebuilding Amendment for public review during the Secretarial review period. During Secretarial review, NMFS will also file the FSEIS with the EPA for a final 30–day public comment period. This comment period will be concurrent with the Secretarial review period and will end prior to final agency action to approve, disapprove, or partially approve the final Red Snapper Rebuilding Amendment.

NMFS will announce, through a notice published in the **Federal Register**, all public comment periods on the final Red Snapper Rebuilding Amendment, its proposed implementing regulations, and its associated FSEIS. NMFS will consider all public comments received during the public comment periods, whether they are on the final Amendment, the proposed regulations, or the FSEIS, prior to final agency action.

Dated: August 14, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, NationalMarine Fisheries Service.

[FR Doc. 02–21024 Filed 8–16–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 160
Monday, August 19, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Middle Fork John Day Range Planning on the Blue Mountain and Prairie City Ranger Districts; Malheur National Forest; Grant Count, OR

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: On February 25, 1999, the USDA Forest Service published a Notice of Intent (NOI) in the **Federal Register** (64 FR 9305) to prepare an environmental impact statement (EIS) to update range management planning on 8 livestock grazing allotments which will result in the development of new Allotment Management Plans (AMPs). The Forest Service is revising the name of the analysis, the proposed action, the dates the EIS is expected to be available for public review and comment, and the release of the final EIS.

The revised NOI changes the name of this project to reflect an official change in Ranger District names. The new project name replaces Long Creek/Bear Valley Ranger District with Blue Mountain Ranger District. The revised proposed action includes constructing or reconstructing 12 additional water developments and 31 additional miles of fence across the project area. It also added repairing an irrigation ditch and relocating unit fences in Camp Creek allotment. The revised proposed action would adjust three allotments in the following ways—the number of units in the Lower Middle Fork allotment would be increased from five to seven units; the Austin allotment would be incorporated into the Upper Middle Fork Allotment and used as a holding/gathering pasture (rather than eliminated and fences removed); in addition, 80 acres of the Austin Allotment within the Middle Fork John Day River riparian zone would be excluded from livestock grazing (to reduce potential effects to aquatic species). The revised proposed action no longer involves eradication of noxious weeds. This activity will be analyzed in a Region 6 EIS and has been analyzed in a Malheur National Forest Environmental Assessment. Additionally, 5,m000 acres of prescribed burning to improve forage production and some fence and cattleguard construction has already been completed and will no longer be included in the revised proposed action.

Management actions are planned to be implemented beginning in the year 2004. The revised date of filing the draft EIS is January 2003, and the revised date of filing the final EIS is June 2003.

DATES: Comments concerning the scope of this revised analysis should be received in writing by September 16, 2002.

ADDRESSES: Send written comments to the Forest Supervisor, Malheur National Forest, 431 Patterson Bridge Road, PO Box 909, John Day, Oregon 97845.

FOR FURTHER INFORMATION CONTACT: Ken Scheutz, Interdisciplinary Team Leader, Malheur National Forest, 431 Patterson Bridge Road, PO Box 909, John Day, Oregon 97845, phone: (541) 575–3000, or TTD: (541) 575–3089.

Dated: August 12, 2002.

Robert W. Williams,

Acting Forest Supervisor.

[FR Doc. 02–20946 Filed 8–16–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Chalk Creek Timber Sales, Willamette National Forest, Lane County, OR

AGENCY: Forest Service, USDA.

ACTION: Cancellation notice.

SUMMARY: On July 28, 1999, a Notice of Intent (NOI) to prepare an environmental impact statement for the Chalk Creek Timber Sales on the Middle Fork Ranger District of the Willamette National Forest, was published in the **Federal Register** (64 FR 40813). The 1999 NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Kristie Miller, Planning Resource Management Assistant, Middle Fork Ranger District, PO Box 1410, Oakridge, Oregon 97463, phone 541–782–2283.

Dated: July 26, 2002.

Rick Scott,

District Ranger.

[FR Doc. 02–20943 Filed 8–16–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

TwoBee Landscape Management Project, Willamette National Forest, Linn County, OR

AGENCY: Forest Service, USDA.

ACTION: Cancellation notice.

SUMMARY: June 29, 1999, a Notice of Intent (NOI) to prepare an environmental impact statement for the TwoBee Landscape Management Project on the McKenzie River Ranger District of the Willamette National Forest was published in the **Federal Register** (64 FR 34769). The 1999 NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Al Brown, TwoBee Project Leader, McKenzie River Ranger District, 57600 McKenzie Highway, McKenzie Bridge, Oregon 97413, phone 541–822–3381.

Dated: July 29, 2002.

John Allen,

District Ranger.

[FR Doc. 02–20944 Filed 8–16–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Wolfmann Projects, Willamette National Forest, Lane County, OR

AGENCY: Forest Service, USDA.

ACTION: Cancellation notice.

SUMMARY: October 14, 1998, a Notice of Intent (NOI) to prepare an environmental impact statement for the Wolfmann Projects on the Blue River Ranger District of the Willamette National Forest, was published in the **Federal Register** (63 FR 55085). The 1998 NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Cheryl Friesen, Project Leader, McKenzie River Ranger District (formerly Blue River Ranger District),

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McKenzie Bridge, Oregon 97413, phone 541–822–3381.

Dated: July 29, 2002.

John Allen,

District Ranger, McKenzie River Ranger District.

[FR Doc. 02–20945 Filed 8–16–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes and Ochoco National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes and Ochoco National Forests Resource Advisory Committee will meet on Monday, September 23, 2002 at the Central Oregon Intergovernmental Council building, main conference room, 2363 SW Glacier Place, Redmond, Oregon. The meeting will begin at 9 a.m. and continue until 5 p.m. Committee members will review projects proposed and make recommendations under Resource Advisory Committee consideration under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000. All Deschutes and Ochoco National Forests Resource Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Leslie Weldon, Designated Federal Official, USDA, Deschutes National Forest, 1645 Highway 20 East, Bend, Oregon 97701, 541–383–5512.

Dated: August 13, 2002.

Leslie A.C. Weldon,

Forest Supervisor, Deschutes National Forest.

[FR Doc. 02–20942 Filed 8–16–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Housing Vacancy Survey.

Form Number(s): CPS–263, HVS–600.

Agency Approval Number: 0607–0179.

Type of Request: Revision of a currently approved collection.

Burden: 3,456 hours.

Number of Respondents: 69,120.

Avg Hours Per Response: 3 minutes.

Needs and Uses: The purpose of this request for review is to obtain clearance for the collection of demographic information in the Housing Vacancy Survey (HVS) beginning in December 2002. The current clearance expires November 30, 2002.

We collect the HVS data for a sample of vacant housing units identified in the monthly Current Population Survey (CPS) sample and provide the only quarterly and annual statistics on rental vacancy rates, home ownership rates for the United States, the four census regions, inside vs. outside metropolitan areas (MAs), the 50 States, the District of Columbia, and the 75 largest Mas. Information is collected from homeowners, realtors, landlords, rental agents, neighbors or other knowledgeable persons. Private and public sector organizations use these rates extensively to gauge and analyze the housing market with regard to supply, cost, and afford ability at various points in time. In addition, the rental vacancy rate is a component of the leading economic indicators, published by the Department of Commerce.

Affected Public: Individuals or households.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 13, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–20927 Filed 8–16–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools from the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 19, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Martin at (202) 482–3936, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

TIME LIMITS:

Background

On March 16, 2001, the Department published a notice of initiation of administrative reviews of the antidumping duty orders on heavy forged hand tools from the People's Republic of China, covering the period February 1, 2000 through January 31, 2001 (66 FR 16037). The preliminary results were published on March 6, 2002, and in those preliminary results we extended the time limit for the final results until no later than August 27, 2002, 174 days after the date of publication of the preliminary results.

Extension of Time Limit for Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete its final results within 120 days after the date on which the preliminary results were published. However, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. Section 751(a)(3)(A) of the Act allows the Department to extend the deadline for completion of the final results to 180 days from the date of publication of the preliminary results. As a result of the complex issues involved, it is not practicable to complete these reviews by August 27, 2002, and we are extending the time limit to 180 days after the publication of the preliminary results. *See* Decision Memorandum from Holly Kuga to Bernard T. Carreau, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the main Commerce building.

Dated: August 13, 2002.

Holly A. Kuga,

Acting Deputy Assistant Secretary Import Administration, Group II.

[FR Doc. 02–21013 Filed 8–16–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar from India: Preliminary Results of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of New Shipper Antidumping Duty Administrative Review: Stainless Steel Bar from India.

SUMMARY: In response to a request from Uday Engineering Works, the Department of Commerce is conducting a new shipper administrative review of the antidumping duty order on stainless steel bar from India. This review covers sales of the subject merchandise to the United States during the period February 1 through July 31, 2001.

In these preliminary results, we find that Uday Engineering Works made sales of subject merchandise below normal value. The dumping margin is shown in the "Preliminary Results of Review" section of this notice. If these preliminary results are adopted in our final results, we will instruct the Customs Service to assess antidumping duties.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 19, 2002.

FOR FURTHER INFORMATION CONTACT: Cole Kyle, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–1503.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, all references to the Department of Commerce's ("the Department's") regulations are to 19 CFR Part 351 (April 2001).

Background

On July 25, 2001, the Department received a request from Uday Engineering Works ("Uday") to conduct a new shipper administrative review of the antidumping duty order on stainless steel bar from India. On August 13, 2001, the Department requested that Uday remedy certain deficiencies in its request for a new shipper review. On August 21, 2001, Uday submitted a revised request for a new shipper review. On August 31, 2001, the Department rejected Uday's new shipper request because of certain remaining deficiencies. Uday appropriately amended its request for a new shipper review on September 20, 2001. The Department published in the **Federal Register**, on October 23, 2001, a notice of initiation of a new shipper administrative review of Uday covering the period February 1 through July 31, 2001 (66 FR 53585). *See* 19 CFR 351.214(g)(1)(A).

On November 5, 2001, the Department issued an antidumping questionnaire to Uday. We received a response on January 9, 2002. On February 5, 2002, the petitioners submitted an allegation that Uday made sales below the cost of production ("COP").

On April 2, 2002, the Department found that because of the complexity of the issues involved in this case it was not practicable to complete the review in the time allotted, and we published an extension of time limit for the completion of the preliminary results of this review to no later than August 13, 2002, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(h)(2). *See Stainless Steel Bar from India; Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review*, 67 FR 16717 (April 8, 2002).

We found that the petitioners' allegation provided a reasonable basis to believe or suspect that sales by Uday in the home market had been made at prices below the cost of production and initiated a sales below cost investigation accordingly on April 16, 2002 (*see* memorandum from Team to Susan Kuhbach, Director, AD/CVD Enforcement Office 1, "Allegation of Sales Below the Cost of Production for Uday Engineering Works," dated April 16, 2002 ("*Sales Below Cost Memorandum*")). Also, on April 16, 2002, we requested that Uday respond to the Section D cost of production section of the Department's original questionnaire. Uday filed its response to Section D on May 1, 2002.

We issued supplemental questionnaires to Uday and received responses in June and July 2002.

Scope of Review

Imports covered by this review are shipments of stainless steel bar ("SSB"). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to these orders is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Export Price

In calculating the price to the United States, we used export price ("EP"), in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation into the United States. We calculated EP based on the C&F price to the United States. In accordance with section 772(c)(2) of the Act, we made deductions, as appropriate, for foreign inland freight and international freight.

In calculating the export price, we relied upon the data submitted by Uday, except as noted below:

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a. We revised the reported gross unit price to reflect the currency in which the sale was made.

b. We recalculated entered value based on the revised gross unit price.

c. We made an adjustment for bank charges not reported by Uday.

d. We revised Uday's reported credit expenses to include a portion of the credit period that was unaccounted for in Uday's calculation.

e. We did not grant the duty drawback adjustment claimed by Uday. The Department grants a duty drawback adjustment when the respondent can demonstrate that there is "(1) a sufficient link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product" (*see Certain Welded Carbon Standard Steel Pipes and Tubes from India*, (62 FR 47632 at 47635) (September 10, 1997). In this instance, Uday has failed to demonstrate that it meets the criteria for a duty drawback adjustment.

For further discussion of the above-mentioned changes, see Memorandum to Case File "Uday Engineering Works Preliminary Results Calculation Memorandum" ("Calculation Memorandum") dated August 13, 2002, which is on file in the Central Records Unit ("CRU") in room B–099 of the main Department building.

Normal Value:

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Uday's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with 773(a)(1)(C) of the Act. Because Uday's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable.

2. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Uday's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A), and interest expenses, where appropriate. We relied on the COP information provided by Uday in its questionnaire and supplemental responses except that we revised Uday's G&A and financial expense rates to exclude packing and selling expenses from the cost of goods sold denominator (see Memorandum to Neal M. Halper "Cost of Production and Constructed Value Adjustments for Preliminary Determination" dated August 13, 2002).

3. Test of Home Market Prices

On a product-specific basis, we compared the weighted-average COPs to home market sales of the foreign like product during the period of review ("POR"), as required under section 773(b) of the Act, in order to determine whether sales had been made at prices below the COP. The prices were exclusive of commissions and indirect selling expenses, where appropriate. In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which did not permit the recovery of costs within a reasonable period of time.

4. Results of the COP Test

Pursuant to section 773(b)(1) of the Act, where less than 20 percent of a respondent's sales of a given product are made at prices below the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we determine that in such instances the below-cost sales represent "substantial quantities" within an extended period of time in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales are made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act. If so, we disregard the below-cost sales.

We found that, for certain specific products, more than 20 percent of Uday's home market sales within an extended period of time were at prices less than the COP and did not provide for the recovery of costs. We therefore excluded these sales and used the remaining above-cost sales, if any, as the basis for determining NV, in accordance with section 773(b)(1).

For Uday's sales of subject merchandise for which there were no comparable home market sales in the ordinary course of trade (*e.g.*, sales that passed the cost test), we compared those sales to constructed value ("CV"), in accordance with section 773(a)(4) of the Act.

5. Calculation of Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on home market sales, NV may be based on CV. Accordingly, for Uday, when sales of comparison products could not be found, either because there were no sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on CV.

In accordance with section 773(e)(1) and (e)(2)(A) of the Act, we calculated CV based on the sum of the cost of materials and fabrication for the subject merchandise, plus amounts for selling expenses, G&A, including interest, profit and U.S. packing costs. We made the same adjustments to CV as described in the "Calculation of COP" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based selling expenses, G&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country.

6. Calculation of Normal Value Based on Home Market Prices

We calculated NV based on ex-factory prices to unaffiliated customers in the home market. We made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We also deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act for differences in circumstances of sale for imputed credit expenses, where appropriate. We calculated imputed credit expenses where Uday did not report them based on the time from when the merchandise was shipped to the receipt of payment (*see Calculation Memorandum*).

7. Calculation of Normal Value Based on Constructed Value

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We made adjustments to CV for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. In addition, we added U.S. packing costs.

Preliminary Results of Review

We preliminarily find the following weighted-average dumping margin:

Manufacturer/Exporter	Period of Review	Margin
Uday Engineering Works	2/1/01 - 7/31/01	20.36 %

Upon completion of this new shipper administrative review, the Department will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, 0.50 percent or greater). Accordingly, we have calculated importer-specific duty assessment rates for the merchandise in question. The assessment rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue assesment instructions directly to the Customs Service within 15 calendar days of the publication of the final results of review in the **Federal Register**.

Cash Deposit Rates

The following deposit requirements will be effective upon publication of the final results of this new shipper administrative review for all shipments of stainless steel bar from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less than fair value ("LTFV") investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers and/or exporters of this merchandise, shall be 12.45 percent, the "all others" rate established in the LTFV investigation. (*See* 59 FR 66915, December 28, 1994).

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

Interested parties may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs (*see* below). Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs. Parties who submit briefs in these proceedings should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f)(3).

The Department will issue the final results of this administrative review within 90 days from the issuance of these preliminary results.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This new shipper review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 13, 2002.

Richard Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–21014 Filed 8–16–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–702]

Notice of Rescission of Changed Circumstances Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Changed Circumstances Antidumping Duty Administrative Review.

DATES: EFFECTIVE DATE: August 19, 2002.

FOR FURTHER INFORMATION CONTACT: Jack K. Dulberger or Tom F. Futtner, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5505 or (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (2002).

Background

On March 25, 1988, the Department published in the **Federal Register** an antidumping order on Certain Stainless Steel Butt-Weld Pipe and Tube Fittings (SSPF) from Japan. *See Antidumping Duty Order of Sales at Less Than Fair Value: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Japan*, 53 FR 9787. On April 19, 2002, Benex submitted a letter requesting that the Department conduct an expedited changed circumstances review, pursuant to 19 CFR 351.216(e). On June 3, 2002, the Department initiated a

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changed circumstances review on Certain Stainless Steel Butt-Weld Pipe and Tube Fittings (SSPF) from Japan. *See Notice of Initiation of Changed Circumstances Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Japan*, 67 FR 39676. On July 24, 2002, Benex requested the Department's permission to withdraw without prejudice its request for a changed circumstances review.

Rescission of Changed Circumstances Review

19 CFR 351.213(d)(1) of the Department's regulations provides that the Department will rescind an administrative review if a party that requested a review withdraws the request within ninety days of the date of publication of the notice of initiation of the requested review. The Department's rules regarding review withdrawals do not specifically reference changed circumstances administrative reviews. In this case, Benex requested withdrawal of its changed circumstances review within ninety days of the review being initiated, the time period the Department generally considers reasonable for requesting the withdrawal of administrative reviews. Therefore, the Department has accepted Benex's withdrawal request in this case as timely.

The Department is now rescinding this changed circumstances antidumping duty administrative review. The U.S. Customs Service will continue to suspend entries of subject merchandise at the appropriate cash deposit rate for all entries of certain stainless steel butt-weld pipe and tube fittings from Japan.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: August 13, 2002.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–21015 Filed 8–16–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Certain Steel Concrete Reinforcing Bars from Turkey; Notice of Extension of Time Limits for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limits for the final results in the antidumping duty administrative review of certain steel concrete reinforcing bars from Turkey. The review covers three producers/exporters of the subject merchandise to the United States. The period of review is April 1, 2000, through March 31, 2001.

EFFECTIVE DATE: August 19, 2002.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0656 and (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) requires the Department of Commerce (the Department) to make a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Postponement of Final Results of Administrative Review

The Department issued the preliminary results of this administrative review of the antidumping duty order on certain steel concrete reinforcing bars from Turkey on May 1, 2002 (67 FR 21634). The current deadline for the final results in this review is August 29, 2002. In accordance with section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h)(2), the Department finds that it is not practicable to complete the review within the original time frame due to the complexity of certain issues raised in the case briefs.

Because it is not practicable to complete this administrative review within the time limits mandated by section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is extending the time limits for completion of the final results of this administrative review until October 28, 2002.

Dated: August 13, 2002.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–21016 Filed 8–16–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

Date: September 20, 2002.
Time: 9 a.m. to 3:30 p.m.
Place: U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 3407.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) will hold a plenary meeting on September 20, 2002 at the U.S. Department of Commerce.

The ETTAC will discuss administrative and trade issues and subcommittee work plans. Also, the ETTAC will be briefed by the Department's Office of General Counsel on ethics issues. Time will be permitted for public comment. The meeting is open to the public.

Written comments concerning ETTAC affairs are welcome anytime before or after the meeting. Minutes will be available within 30 days of this meeting.

The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the interagency Environmental Trade Working Group (ETWG) of the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently rechartered until May 30, 2004.

For further information phone Corey Wright, Office of Environmental Technologies Industries (ETI), International Trade Administration, U.S. Department of Commerce at (202) 482–5225. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to ETI.

Dated: July 26, 2002.

Carlos F. Montoulieu,

Director, Office of Environmental Technologies Industries.

[FR Doc. 02–20958 Filed 8–16–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description of each trade mission, obtain a copy of the mission statement from the Project Officer indicated for each mission below. Recruitment and selection of private sector participants for these missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

Automation and Energy Management Trade Mission to Belgium and Germany

October 21–25, 2002.
Recruitment closes on October 1, 2002.
For further information contact: Mr. Tony von der Muhll, U.S. Department of Commerce, telephone 202–482–2390, e-mail *Tony_von-der-Muhll@ita.doc.gov*.

Automotive Parts and Services Trade Mission to Poland, Hungary and Slovakia

March 17–21, 2003.
Recruitment closes on January 31, 2003.
For further information contact: Ms. Monica McFarlane, U.S. Department of Commerce, telephone 202–482–3364, e-mail *Monica.McFarlane@mail.doc.gov*.

Health Care Technologies Trade Mission to Sweden, Denmark and Norway

March 17–21, 2003.
Recruitment closes on January 31, 2003.
For further information contact: Mr. Bill Kutson, U.S. Department of Commerce, telephone 202–482–2839, e-mail *William.Kutson@mail.doc.gov*.

Automotive Parts and Service Equipment Mission to Costa Rica, Guatemala and Panama

June 1–7, 2003.
Recruitment closes on April 18, 2003.
For further information contact: Ms. Jayne Woodward, U.S. Department of Commerce, telephone 803–253–3612, e-mail *Jayne.Woodward@mail.doc.gov*.
For further information contact: Mr. Thomas Nisbet, U.S. Department of Commerce, telephone 202–482–5657, or e-mail *Tom_Nisbet@ita.doc.gov*.

Dated: August 13, 2002.

Thomas H. Nisbet,

Director, Export Promotion Coordination, Office of Planning, Coordination and Management.

[FR Doc. 02–20922 Filed 8–16–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, September 10, 2002, from 8:25 a.m. to 5:15 p.m. and Wednesday, September 11, 2002, from 8:25 a.m. to Noon. The Visiting Committee on Advanced Technology is composed of twelve members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include a NIST Update, an Overview of NRC Board on Assessment FY 2002 Evaluation of NIST Labs, an Overview of JILA and Tours of NIST technical programs at JILA. Discussions scheduled to begin at 10:45 a.m. and to end at 11:45 a.m. and to begin at 2:30 p.m. and end at 4 p.m., on September 10, 2002, and to begin at 8:25 a.m. and to end at Noon on September 11, 2002, on strategic implications of near-term budget, programmatic issues and facilities, responses to near-term strategic environment for NIST, near-term strategic environment for peoples issues, and feedback sessions will be closed. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Carolyn Peters no later than Thursday, September 5, 2002, and she will provide you with instructions for admittance. Ms. Peter's e-mail address is *carolyn.peters@nist.gov* and her phone number is 301/975–5607.

DATES: The meeting will convene September 10, 2002 at 8:25 a.m. and will adjourn at Noon on September 11, 2002.

ADDRESSES: The meeting will be held in the Radio Building, Room 1107 (seating capacity 60, includes 35 participants), at NIST, Boulder, Colorado. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Peters, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1004, telephone number (301) 975–5607.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 16, 2002, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding levels of the Advanced Technology Program and the Manufacturing Extension Partnership Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of

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management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: August 13, 2002.

Arden L. Bement, Jr.,

Director.

[FR Doc. 02–21020 Filed 8–16–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080602F]

Marine Mammals; File No. 1021–1658

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Jenifer A. Hurley, Ph.D., Moss Landing Marine Laboratories, 8272 Moss Landing Road, Moss Landing, CA 95039, has been issued a permit to take California sea lions (Zalophus californianus) and harbor seals (Phoca vitulina) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On February 27, 2002, notice was published in the **Federal Register** (67 FR 8941) that a request for a scientific research permit to take California sea lions and harbor seals had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The permit authorizes the Holder to obtain up to ten sea lions and five seals, and maintain up to eight animals at Moss Landing Marine Laboratories for purposes of scientific research. Animals may be obtained from rehabilitation centers, Naval facilities, or aquaria. All research occurs through the cooperative assistance of trained animals. Physiology studies will be performed in captivity and free release settings in the open ocean, off the California coast. Aspects of diving, swimming, and resting physiology will be studied, including metabolism, heart rate, respiratory rate, body temperature, and substrate utilization. Veterinary medicine studies will investigate if marine mammals have *Helicobacter* present in stomach mucous and explore possible antibiotic treatments.

Dated: August 13, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–21021 Filed 8–16–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070202A]

Marine Mammals; File No. 455–1445

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the Waikiki Aquarium (Dr. Cindy Hunter, PI) has been issued an amendment to scientific research and enhancement Permit No. 455–1445–02.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

Protected Species Coordinator, Pacific Area Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941;

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On August 23, 2001, notice was published in the **Federal Register** (66 FR 44333) that an amendment of Permit No. 455–1445, issued on May 26, 1998 (63 FR 30201), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 455–1445–02, which authorized the Waikiki Aquarium to hold Hawaiian monk seals (*Monachus schauinslandi*) for the purpose of enhancing the survival and recovery of the species, has been amended to extend the scientific research portion of the permit to the expiration date of June 30, 2003. The research involves studies on the efficiency with which the monk seals assimilate and metabolize amino acids and fatty acids from common prey types, and the elucidation and monitoring of how reproductive and metabolic activities are related in male monk seals. Research will involve the following types of takes: feeding a controlled diet; monthly blood sampling; weekly saliva sampling; weekly morphometric measurements; and quarterly deuterium oxide administration with pre- and post-administration blood sampling.

Issuance of this amendment, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 13, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–21022 Filed 8–16–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Ukraine

August 14, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of customs adjusting limits.

EFFECTIVE DATE: August 21, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63225, published on December 5, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 14, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in Ukraine and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on August 21, 2002, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Ukraine:

Category	Adjusted twelve-month limit [1]
435	108,255 dozen.
442	17,860 dozen.
444	77,395 numbers.
448	77,395 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–21012 Filed 8–16–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, September 6, 2002.

PLACE: 1155 21st St., NW., Washington, DC., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–21142 Filed 8–15–02; 12:08 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, September 13, 2002.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–21143 Filed 8–15–02; 12:08 p.m.]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, September 20, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–21144 Filed 8–16–02; 12:08 p.m.]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, September 27, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–21145 Filed 8–15–02; 12:08 pm]

BILLING CODE 6351–01–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday,

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August 28, 2002. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the Commissioners and staff will begin at 9:30 a.m. Topics of discussion include: a presentation on the performance of DRBC investments through Valley Forge Private Asset Management and Mellon Asset Management; a report on the status of the campaign to restore federal funding in the federal fiscal year 2003 budget and the implications for DRBC's budget; an update on the Comprehensive Plan; a report on the PCB Expert Panel Meeting of August 21 and the TAC-Expert Panel Meeting of August 22; a presentation by the Marasco Newton Group on its Convening Report for the TMDL Implementation Advisory Committee; a presentation by the New York City Department of Environmental Protection on the Draft New York City Filtration Avoidance Determination for the Catskill-Delaware Water Supply System; and, time permitting, a preview of the 305(b) (water quality) report on the Main Stem and Delaware Bay.

The subjects of the public hearing to be held during the 1 p.m. business meeting include, in addition to the dockets listed below, a resolution to revise Docket D–96–50 CP, issued to United Water Delaware, by the addition of a new condition "m;" and a resolution amending the Comprehensive Plan and Water Code relating to the operation of Lake Wallenpaupack during drought, drought warning and drought watch conditions. The DRBC meeting and public hearing notice posted on the Commission's Web site, *http://www.drbc.net*, contains a link to the text of the proposed Lake Wallenpaupack resolution.

The dockets scheduled for public hearing are as follows:

1. *Holdover Project: Bidermann Golf Club D–2002–13.* A ground water withdrawal project to supply up to 0.864 million gallons (mg)/30 days of water to the applicant's golf course from new Well No. 5 in the Wissahickon Formation, and to increase the existing withdrawal from all sources to 15.8 mg/30 days. The project is located in the Brandywine Creek Watershed in the City of Wilmington, New Castle County, Delaware.

2. *Mount Laurel Township Municipal Authority D–85–9 CP RENEWAL.* Renewal of a ground water withdrawal project to continue withdrawal of 120 mg/30 days to supply the applicant's public water distribution system from existing Wells Nos. 3, 4, 6 and 7 in the Lower Potomac-Raritan-Magothy Formation. The project is located in Mount Laurel Township, Burlington County, New Jersey.

3. *Coastal Eagle Point Oil Company and Eagle Point Cogeneration Partnership D–86–15 RENEWAL 2.* Renewal of a ground water withdrawal project to continue withdrawal of 232 mg/30 days to supply the applicant's industrial processes from existing Production Wells Nos. 1, 3, 4A, 5 and 6A and Recovery Wells in the Raritan-Magothy Formation. The project is located in West Deptford Township, Gloucester County, New Jersey.

4. *Kimble Glass, Inc. D–99–23.* A ground water withdrawal project to supply up to 50 mg/30 days of water to the applicant's glass manufacturing facility from Wells Nos. 5, 6 and 7 in the Cohansey Aquifer. The project is located in Vineland City, Cumberland County, New Jersey.

5. *Artesian Water Company, Inc. D–2000–47 CP.* A ground water withdrawal project to supply up to 8.0 mg/30 days of water to the applicant's public water distribution system from new Well No. 1 in the Cheswold Aquifer, and new Well No. 2 in the Frederica Aquifer, and to limit the withdrawal from all wells to 8.0 mg/30 days. The project is located in the St. Jones River Watershed near the City of Magnolia, Kent County, Delaware.

6. *Artesian Water Company, Inc. D–2001–25 CP.* A ground water withdrawal project to supply up to 19.44 mg/30 days of water to the applicant's public water supply system from new Wells Nos. 1 and 2 in the Rancocas Formation, and to limit the existing withdrawal from all wells to 19.44 mg/30 days. The project is located in the Smyrna River Watershed outside of Smyrna City, Kent County, Delaware.

7. *The Upper Hanover Authority D–2002–10 CP.* A ground water withdrawal project to supply up to 9.72 mg/30 days of water to the applicant's public water distribution system from new Well No. TUHA–4 in the Brunswick Formation and to increase the existing withdrawal from all wells from 22.4 to 32.12 mg/30 days. The project is located in the Perkiomen Creek Watershed in Upper Hanover Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

8. *Upper Makefield Township D–2002–17 CP.* An upgrade and expansion of a 0.1 million gallons per day (mgd) secondary sewage treatment plant (STP) to provide tertiary treatment of 0.173 mgd. The STP will continue to serve only Upper Makefield Township, Bucks County, Pennsylvania, but a proposed development known as The Arbours at Washington Crossing will be connected. Up to 122,544 gallons per day (gpd) of STP effluent will be discharged to 18 detention/recharge basins and ponds at the proposed development, which is located on a 72-acre tract at the intersection of Taylorsville and Washington Crossing Roads. The remaining STP effluent will be discharged to the Delaware River in Water Quality Zone 1E through the existing outfall. The STP is located west of Taylorsville Road, approximately one-half mile northwest of its intersection with State Route 532.

9. *Delaware Racing Association D–2002–19.* An increase in a surface water withdrawal from White Clay Creek in the Christina River Watershed, from 0.4 mgd to 2.45 mgd. The proposed increase is needed to irrigate a new adjacent golf course, to be owned and operated by Parkside III, LLC. In order to meet existing bypass streamflow requirements of 40.3 cfs (26.4 mgd), two large storage ponds will be provided to contain water skimmed during higher streamflow conditions. During prolonged dry weather periods when the applicant is not permitted to withdraw surface water, pond storage supply may be supplemented under an agreement with a local water purveyor. The proposed total maximum 30-day surface water withdrawal is 22.6 mg and the maximum annual withdrawal is expected to be 71 mg for irrigation, plus 35 mg for pond storage. The project is located one mile west of the intersection of State Route 7 and the Amtrak rail lines in New Castle County, Delaware.

10. *Morgan Hill Golf Club D–2002–24.* A ground water withdrawal project to supply up to 6.8 mg/30 days of water to the applicant's golf course from new Well No. IW–1 in the Leithsville Dolomite Formation. The project is located in the Delaware River Watershed in Williams Township, Northampton County, Pennsylvania.

11. *Village of Andes D–2002–25 CP.* Construction of an STP to replace individual septic systems serving Village of Andes residents in the Town of Andes, Delaware County, New York. The proposed 0.062 mgd STP is designed to provide tertiary treatment via sequencing batch reactor and microfiltration processes. STP effluent will be discharged to Tremper Kill, a tributary of the East Branch Delaware River upstream of the Pepacton Reservoir, within the drainage area to the Delaware River Basin Commission's Special Protection Waters. The STP will be constructed between Cabin Hill and Tremper Kill Roads, just within the village border.

12. *Moyer Packing Company D–2002–26.* A ground water withdrawal project to supply up to 8.29 mg/30 days of water to the applicant's beef processing facility from new Wells Nos. PW–9 and PW–10 in the Brunswick Formation, and to increase the existing withdrawal from all wells to 24.0 mg/30 days. The project is located in the Skippack Creek Watershed in Franconia Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

In addition to the public hearing items, the Commission will address the following at its 1 p.m. business meeting: Minutes of the July 17, 2002 business meeting; announcements; a report on Basin hydrologic conditions; a report by the Executive Director; a report by the Commission's General Counsel, including consideration of a timely request by Exelon Business Services Company (formerly PECO) for a hearing under Article 6 of the Commission's Rules of Practice and Procedure; a resolution extending the drought emergency declared by Resolution No. 2001–32; a resolution authorizing the Executive Director to execute an agreement with the State of New Jersey, through its Marine Sciences Consortium, to receive and expend funds not to exceed $5,000 for sampling in the Delaware Bay, Delaware Estuary and tributaries for the "Coastal 2001–2005" Project; and a resolution authorizing the Executive Director to execute an agreement with the State of New Jersey for a Section 319H Non-Point Source Pollution Control and Management Implementation Program Grant in the amount of $73,000 to provide fluvial geomorphology technical assistance for stream assessment and restoration. The meeting will end with an opportunity for public dialogue.

Documents relating to the dockets and other items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at 609–883–9500 ext. 221 with any docket-related questions. Persons wishing to testify at this hearing are requested to register in advance with the Commission Secretary at 609–883–9500 ext. 203.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the hearing should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the New Jersey Relay Service at 1–800–852–7899 (TTY), to discuss how the Commission may accommodate your needs.

Dated: August 13, 2002.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 02–20951 Filed 8–16–02; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 18, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: August 13, 2002.

John D. Tressler,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Annual Performance Report for the Student Support Services Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 944. *Burden Hours:* 5,664.

Abstract: Student Support Services grantees must submit the report annually. The reports are used to evaluate the performance of grantees and to award prior experience points at the end of each project (budget) period. The Department also aggregates the data to provide descriptive information on the programs and to analyze the impact of the program on the academic progess of participating students.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2057. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at her e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–20949 Filed 8–16–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

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ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a forthcoming meeting of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Mary Grace Lucier at (202) 219–2253 by August 27. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Date: September 6, 2002.

Time: 12:30 (approximately) to 4 p.m.

Location: Room 100, 80 F St., NW., Washington, DC, 20208–7564.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, DC 20208–7564. Tel: (202 219–2353; fax: (202) 219–1528; e-mail: *Mary.Grace.Lucier@ed.gov*, or *nerppb@ed.gov*. The main telephone number for the Board is (202) 208–0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development Dissémination and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement (OERI) to forge a national consensus with respect to along-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. The Board will conduct outstanding business, hear a report from the Assistant Secretary, and review ongoing initiatives in OERI. A find agenda will be available from the Board Office on August 27, and will be posted on the Board's web site, *http://www.ed.gov/offices/OERI/NERPPB/*.

Records are keep of all Board proceedings and are available for public inspection at the office of the National Research Policy and Priorities Board, Suite 100, 80 F ST., NW., Washington, DC 20208–7564.

Dated: August 12, 2002.

Rafael Valdivieso,

Executive Director.

[FR Doc. 02–20929 Filed 8–16–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Savannah River Site High-Level Waste Tank Closure

AGENCY: Department of Energy (DOE).

ACTION: Record of decision.

SUMMARY: In the Savannah River Site (SRS) High-Level Waste Tank Closure Environmental Impact Statement (Tank Closure EIS, DOE/EIS–0303) DOE considered alternatives for closure of 49 high-level radioactive waste (HLW) tanks and associated equipment such as evaporator systems, transfer pipelines, diversion boxes, and pump pits. DOE needs to close these tanks to reduce human health and safety risks at and near the HLW tanks, and to reduce the eventual introduction of contaminants into the environment. Moreover, DOE must comply with the provisions of the Wastewater Systems Operating Permit issued by the South Carolina Department of Health and Environmental Control (SCDHEC) for HLW tank operations, and with the closure schedule and provisions contained in the *Industrial Wastewater Closure Plan for F- and H-Area High-Level Waste Tank Systems* (the General Closure Plan) approved by SCDHEC. DOE evaluated three alternatives for closure of the tank systems: Stabilize Tanks, Clean and Remove Tanks, and No Action. The Stabilize Tanks alternative has three options—Fill with Grout (preferred alternative), Fill with Sand, and Fill with Saltstone.

DOE has selected the preferred alternative identified in the Final EIS, Stabilize Tanks—Fill with Grout, to guide development and implementation of closure of the high-level waste tanks and associated equipment at the SRS. Following bulk waste removal, DOE will clean the tanks if associated equipment at the SRS. Following bulk waste removal, DOE will clean the tanks if necessary to meet the performance objectives contained in the General Closure Plan and the tank-specific Closure Module, and then fill the tanks with grout.

In parallel with tank closures, DOE will evaluate and consult with SCDHEC on closure methods and regulatory compliance revisions that will allow accelerated closure and reduction of risk associated with the HLW tanks. DOE remains committed to closure of the HLW tanks in accordance with the approved General Closure Plan.

ADDRESSES: Copies of the Tank Closure EIS and this Record of Decision may be obtained by calling a toll-free number (800–881–7292), by sending an e-mail request to *nepa@srs.gov*, or by mailing a request to: Andrew Grainger, National Environmental Policy Act (NEPA) Compliance Officer, Savannah River Operations Office, Department of Energy, Building 742A, Room 185, Aiken, SC 29808. This Record of Decision will be available on the Department of Energy NEPA Web site, *tis.eh.doe.gov/nepa/whatsnew.htm*.

FOR FURTHER INFORMATION CONTACT: Questions concerning the SRS tank closure program can be submitted by calling 800–881–7292, mailing them to Mr. Andrew Grainger at the above address, or sending them electronically to the Savannah River Operations Office e-mail address, *nepa@srs.gov*.

For general information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–4600 or leave a message at 800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

Nuclear materials production at the SRS resulted in the generation of large quantities of HLW that is stored onsite in large underground tanks. The HLW resulted from the dissolution of spent reactor fuel and nuclear targets to recover the valuable radioactive isotopes. DOE has stored the HLW in 51 large underground storage tanks located in the F- and H-Area Tank Farms at SRS. DOE has emptied and closed two of those tanks. Approximately 37 million gallons of HLW is stored in the remaining 49 HLW tanks.

The HLW tank systems at SRS are operated under the authority of the Atomic Energy Act of 1954 (AEA) and DOE Orders issued pursuant to the AEA. The HLW tank systems also are operated in accordance with a permit issued by SCDHEC under the authority of the South Carolina Pollution Control Act for industrial wastewater treatment facilities. DOE is required to close the tank systems in accordance with AEA requirements and South Carolina Regulation R.61–82, "Proper Closeout of Wastewater Treatment Facilities." This regulation requires that closures be carried out according to site-specific guidelines established by SCDHEC to prevent health hazards and to promote safety in and around the tank systems.

DOE has adopted a general strategy for HLW tank system closure, set forth in DOE's *Industrial Wastewater Closure Plan for the F- and H-Area High-Level Waste Tank Systems (March 2000)*, known as the General Closure Plan.[1] The General Closure Plan has been approved by SCDHEC and DOE must gain SCDHEC's approval on any revisions to the General Closure Plan. Also, DOE has entered into an agreement, the SRS Federal Facility Agreement, with the U.S. Environmental Protection Agency (EPA) and SCDHEC to remove from service and close 24 HLW tanks that do not meet Resource Conservation and Recovery Act secondary containment requirements. The remaining 27 tanks will also be closed when they are no longer required for service. Closure of the HLW tanks will comply with DOE's responsibilities under the AEA and the General Closure Plan, and be carried out under a schedule agreed to by DOE, EPA, and SCDHEC.

The General Closure Plan identifies the resources (*e.g.*, groundwater, air) potentially affected by contaminants remaining in the tanks after waste removal and closure; describes how the tanks will be cleaned and how the tank systems and residual wastes will be stabilized; and identifies Federal and State regulations and guidance that apply to the closures. The Plan describes the use of fate and transport models to calculate potential environmental exposure concentrations or radiological dose rates from the residual waste left in the tank systems. The General Closure Plan describes the method DOE will use to make sure the impacts of closure of individual tank systems do not exceed the environmental standards that apply to the entire F- and H-Area Tank Farms.

Several issues related to the HLW tank closure program will be resolved as DOE implements this Record of Decision. These issues will be addressed during tank-by-tank closure and include: (1) Performance objectives for each tank that allow the cumulative closure to meet the overall performance standard; (2) the regulatory status of residual waste in the tanks, through a determination whether they are "waste incidental to reprocessing;" and (3) use of cleaning methods such as spray water washing or oxalic acid cleaning, if needed to meet tank-specific performance objectives.

[1] Although the Final Environmental Impact Statement reflected the 2000 Closure Plan, the Statement incorrectly cited the 1996 Closure Plan.

Performance Objectives

In implementing this Record of Decision, DOE will establish performance objectives for closure of each HLW tank. Each performance objective will correspond to an overall performance standard identified in the General Closure Plan and will ensure that the overall performance standard can be met. For example, if the performance standard for drinking water in the receiving stream is 4 millirem per year, the combined contribution from contaminants from all tanks will not exceed the 4 millirem-per-year limit. DOE will evaluate closure for specific tanks to determine whether use of a specific closure option will allow DOE to meet the overall performance standard. Based on this analysis, DOE will develop a Closure Module (a tank-specific closure plan) for each HLW tank such that the performance objectives for the tank can be met. The Closure Module must be approved by SCDHEC before tank closure can begin.

Waste Incidental to Reprocessing

Before bulk waste removal, the content of the tanks is HLW. The goal of the bulk waste removal and, if needed, subsequent cleaning of the tanks, is to meet DOE's criteria for Waste Incidental to Reprocessing. DOE Manual 435.1–1, which implements DOE Order 435.1, *Radioactive Waste Management*, describes two processes, citation and evaluation, for determining that HLW can be considered "waste incidental to reprocessing" and can therefore be managed under DOE's regulatory authority in accordance with requirements for transuranic waste or low-level waste. In implementing this Record of Decision, DOE will perform a waste incidental to reprocessing determination by evaluation on each HLW tank as part of the analysis used to prepare the Closure Module.

HLW Tank Cleaning

Following bulk waste removal, DOE will clean the tanks, if necessary, to meet the performance objectives contained in the General Closure Plan and in the tank-specific Closure Module, which includes DOE's criteria for Waste Incidental to Reprocessing. In accordance with the General Closure Plan, the need for and the extent of any tank cleaning will be determined based on the analysis presented in the tank-specific Closure Module.

If necessary tank cleaning by spray water washing will initially be performed. If performance objectives could not be met using spray water washing, other cleaning techniques would be employed. These techniques include mechanical methods, oxalic acid cleaning, or other chemical cleaning methods. Potential criticality safety concerns and interference with downstream waste processing activities such as Defense Waste Processing Facility glass quality could arise with the use of chemical cleaning methods and would have to be addressed.

Alternatives Considered

In the EIS DOE evaluated three alternatives for tank closure, each of which begins when bulk waste removal from the tank has been completed. Under each alternative except No Action, DOE would close 49 HLW tanks and associated waste handling equipment including evaporators, pumps, diversion boxes, and transfer lines.

Stabilize Tanks Alternative

Following bulk waste removal and any required cleaning, DOE would fill the tanks with a material that would bind up remaining residual waste and prevent future collapse of the tanks. In the EIS DOE considered three options for tank stabilization under this alternative: Fill with Grout (preferred alternative), Fill with Sand, and Fill with Saltstone. Each tank system or group of tank systems would be evaluated to determine the inventory of radiological and nonradiological contaminants remaining after bulk waste removal. This information would be used to conduct a performance evaluation as part of the preparation of a Closure Module. In the evaluation DOE would consider (1) the types of contamination in the tank and the configuration of the tank system, and (2) the hydrogeologic conditions at and near the tank location, such as distance from the water table and distance to nearby streams. The performance evaluation would include modeling the projected contamination pathways for selected closure methods, and comparing the modeling results with the performance objectives developed in the General Closure Plan. If the modeling shows that performance objectives would be met, the Closure Module would be submitted to SCDHEC for approval. If the modeling shows that the performance objectives would not be met, then tank cleaning steps would be taken until sufficient waste had been removed that the objectives could be met. Therefore the closure configuration for each tank or group of tanks would be determined on a case-by-case basis through development of the Closure Module.

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Following approval of a Closure Module by SCDHEC, the tank stabilization process would begin. DOE's preferred option is to use grout, a concrete-like material, as backfill. The fill material would be high enough in pH to be compatible with the carbon steel walls of the tank. The grout would be formulated with chemical properties that would retard the movement of radionuclides in the residual waste in the closed tank. The grout would be poured in three distinct layers. The bottom-most layer would be specially formulated reducing grout to retard the migration of important contaminants. The middle layer would be a low-strength material designed to fill most of the volume of the tank interior. The final layer would be a high-strength grout to deter inadvertent intrusion from drilling. DOE is also considering an all-in-one grout that would provide the same performance as the three separate layers of grout. If this all-in-one grout would provide the same performance and protection at a lesser cost, DOE would use it.

Other fill options that DOE considered in the EIS are sand and saltstone. For these options, all other aspects of the closure process, including the determination that performance objectives could be met and approval of the Closure Module by SCDHEC, would be the same as described for the Fill with Grout option. Sand is readily available and inexpensive. However, it would be more difficult to completely fill void spaces with sand than with grout, and sand could not be formulated to retard the migration of radionuclides. Expected contamination levels in groundwater and surface water resulting from migration of residual contaminants would be higher than the levels for the preferred option. Saltstone, which is the low-radioactivity fraction of HLW mixed with cement, flyash, and slag, could also be used as fill material. Saltstone is normally disposed of as low-level waste in the SRS Saltstone Disposal Facility. This alternative would have the advantage of reducing the amount of Saltstone Disposal Facility area that would be required. Filling the tank with a grout mixture that is contaminated with radionuclides, like saltstone, would considerably complicate the project and increase worker radiation exposure. In addition, the saltstone would contain large quantities of nitrate that would not be present in the tank residual waste. Because nitrates are very mobile in the environment, these large quantities of nitrate would adversely impact the groundwater near the tank farms over the long term.

Following the use of any of the stabilization options, four tanks in F-Area and four tanks in H-Area would require backfill soil to be placed over the top of the tanks to bring the ground surface at these tanks up to the surrounding surface elevation. The action would prevent ponding conditions that could accelerate degradation of the tank structure.

Clean and Remove Tanks Alternative

The Clean and Remove Tanks alternative would involve cleaning the tanks, cutting them up in situ, removing them from the ground, and transporting tank components for disposal in an engineered disposal facility at another location on the SRS. For this alternative DOE would have to clean the tanks until they were clean enough to be safely removed and could meet waste acceptance criteria at SRS low-level waste disposal facilities. Cleaning techniques such as oxalic acid cleaning, mechanical cleaning and additional steps as yet undefined might be required. Worker exposure would have to be As Low As Reasonably Achievable to ensure protection of the individual workers required to perform the tank removal operations.

Following bulk waste removal and tank cleaning, the steel components of the tank would be cut up, removed, placed in radioactive waste transport containers, (approximately 3,900 SRS low-level waste disposal boxes per tank), and transported to SRS radioactive waste disposal facilities for disposal. This alternative would require the construction of approximately 16 new low-activity waste vaults at SRS for disposal of the tank components. With removal of the tanks, backfilling of the excavations left after the removal would be required.

No Action Alternative

The No Action alternative would involve leaving the tank systems in place after bulk waste removal has been accomplished. After bulk waste removal, each tank would contain residual waste, and, in those tanks that reside in the water table, ballast water. The tanks would not be backfilled.

After some period of time (probably hundreds of years), the reinforcing bar in the roof of the tank would rust and the roof would fail, causing the structural integrity of the tank to degrade. Similarly, the floor and walls of the tank would degrade over time. Rainwater would enter the exposed tank, flushing contaminants from the residual waste in the tanks and eventually carrying these contaminants into the groundwater. Contamination of the groundwater would be much greater and occur much more quickly than it would if the tank were backfilled and the residual waste bound with the backfill material.

Environmentally Preferable Alternative

Overall, the Stabilize Tanks—Fill with Grout alternative is the environmentally preferable alternative. Review of the data presented in the Tank Closure EIS shows that in the near term the impacts of the Stabilize Tanks—Fill with Grout alternative are similar to or less than those of the Stabilize Tanks—Fill with Sand and the Stabilize Tanks—Fill with Saltstone alternatives.

Waste removal and, if necessary, cleaning activities would be similar for each of these alternatives, although worker exposures and resultant latent cancer fatalities would be slightly higher for the Stabilize Tanks—Fill with Saltstone alternative due to the radionuclide content of the saltstone. In the short term the Clean and Remove Tanks alternative would have substantially greater impacts than any of the Stabilize Tanks options, as a result of the worker exposures that would be required to clean and remove the tanks and tank systems. The No Action alternative has the least short-term impacts.

In the long term, the impacts of the Clean and Remove Tanks alternative would be the least of all the alternatives, because the groundwater contaminant source term would have been removed. Some small long-term impacts would result from release of contaminants from the disposal facility that would receive the tank systems after removal. Long-term impacts of the preferred alternative, Stabilize Tanks—Fill with Grout, would be greater than those of the Clean and Remove Tanks Alternative, although very small; no latent cancer fatalities would result from implementation of the Stabilize Tanks—Fill with Grout alternative. The No Action alternative has the greatest long-term impacts.

Decision

DOE has selected the preferred alternative identified in the Final EIS, Stabilize Tanks—Fill with Grout, to guide development and implementation of closure of the high-level waste tanks and associated equipment at SRS. Following bulk waste removal, DOE will clean the tanks if necessary to meet the performance objectives contained in the General Closure Plan and the tank-specific Closure Module and then fill the tanks with grout.

In parallel with tank closures, DOE will evaluate and consult with SCDHEC on closure methods and regulatory revisions that will allow accelerated closure and reduction of risk associated with the HLW tanks. DOE remains committed to closure of the HLW tanks in accordance with the approved General Closure Plan.

DOE has selected the Stabilize Tanks—Fill with Grout alternative for several reasons. First, DOE has confidence in the method due to the demonstrated performance of the reducing grout and the successful waste removal and closure process employed for Tanks 17 and 20. On the basis of the analysis in the EIS, the selected alternative is superior to the Fill with Sand and Fill with Saltstone options in terms of binding residual waste in the tanks and thereby preventing future environmental contamination. This alternative would likely require the least tank cleaning of any alternative and would therefore minimize worker exposures and waste management concerns while meeting the performance objectives. In addition, this alternative was found to be the environmentally preferable alternative.

As described in the EIS, bulk waste removal has been demonstrated to remove about 97 percent of the radioactive material content, measured in curies, from a HLW tank. Spray water washing has been shown to remove slightly less than an additional one percent and generates additional wastewater that requires processing. DOE will employ spray water washing or an enhanced cleaning method only if it is necessary to meet the performance objectives.

In accordance with the General Closure Plan, DOE must demonstrate whether residual waste (that is, waste that will remain in the tank following any necessary cleaning, and that will be immobilized in the grout used to stabilize the tank) is low-level or transuranic waste in accordance with the Waste Incidental to Reprocessing provision in DOE Order 435.1. However, because DOE must meet overall performance standards in any case, the regulatory status of the residual waste does not affect the assessment of environmental impacts.

Mitigation

DOE is committed to environmental stewardship and to operating the SRS in compliance with all applicable laws, regulations, DOE Orders, permits, and compliance agreements. In addition to good engineering practice, closure of the HLW tanks will follow the approved Industrial Wastewater Closure Plan for the F- and H-Area High-Level Waste Tank Systems, known as the General Closure Plan, and the individual Tank Closure Modules required by the General Closure Plan. This process will serve to ensure that risks are minimized and the environmental and health and safety impacts of tank closure are within the bounds described in the Final EIS. DOE considers this process to be standard operating procedures that do not require a mitigation action plan under 10 CFR 1021.331(a).

Issued at Washington, DC, August 9th, 2002.

Paul M. Golan,

Acting Assistant Secretary for Environmental Management.

[FR Doc. 02–20968 Filed 8–16–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, September 5, 2002, 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Annual work plan development.
2. End-state discussion, specifically addressing proposal to set suface soil cleanup level at 50 pCi/g.
3. Begin to draft recommendation on proposed end-state strategy.
4. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 8:30 a.m. to 4:30 p.m., Monday-Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC, on August 14, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–20969 Filed 8–16–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, September 11, 2002, 9 a.m. to 6 p.m.; Thursday, September 12, 2002, 9 a.m. to 12 noon.

ADDRESSES: The Marriott Gaithersburg Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878, USA.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, Office of Fusion

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Energy Sciences; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: 301–903–4927.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* The major purpose of this meeting is to finalize the Fusion Energy Sciences Advisory Committee recommendations on a strategy for burning plasma physics experiments.

Tentative Agenda

Wednesday, September 11, 2002

- Office of Science Perspective
- Office of Fusion Energy Sciences Update
- Status Report from Simulation Sub Panel
- Status Report from Non-Electric Applications Sub Panel
- Final Report from the Burning Plasma Sub Panel

Thursday, September 12, 2002

- Discussion of New Charges
- Public Comments

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or *albert.opdenaker@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: We will make the minutes of this meeting available for public review and copying within 30 days at the Freedom of Information Public Reading Room; IE–190; Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August 14, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–20971 Filed 8–16–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Electricity Advisory Board; Notice of Publication of Draft Transmission Grid Solutions Subcommittee Report

AGENCY: Department of Energy.

ACTION: Notice of publication of draft report and request for comments.

SUMMARY: The Office of the Secretary of Energy Advisory Board (AB–1) on behalf of the Electricity Advisory Board (EAB) requests comments on the Electricity Advisory Board's "Draft Report" by the Transmission Grid Solutions Subcommittee. The Draft Report provides a series of recommendations to the Electricity Advisory Board and the Secretary of Energy on ways to improve the physical and financial state of our nation's transmission electric transmission grid infrastructure to ensure the most reliable, economically efficient and environmentally sound delivery of electric power to consumers and businesses at affordable prices. The Draft Report was organized around the EAB Transmission Grid Solutions Subcommittee's independent external review of the Department of Energy's study of the nation's electricity transmission system entitled *National Transmission Grid Study* (May 2002). The views and recommendations offered in this Draft Report reflect the consensus of the Subcommittee members only. As with any consensus product, the views of any individual member of the subcommittee may differ slightly from the specific detailed recommendation contained in the Draft Report. This Draft Report is not a Department of Energy or Administration document and will not be transmitted officially to the Secretary of Energy without the consideration of any public comments received and the approval of the Electricity Advisory Board.

The EAB's Transmission Grid Solutions Subcommittee has posted its Draft Report on its Web site, located at *http://www.eab.energy.gov.*

DATES: To ensure the consideration of your comments by the Department of Energy's Electricity Advisory Board before the Board considers this Draft Report for approval and submission to the Secretary of Energy, comments must be submitted in writing and received by the Office of the Secretary of Energy Advisory Board (AB–1) no later than 5 p.m. Eastern Daylight Savings Time August 30, 2002. The date and location of the next open meeting of the Electricity Advisory Board, where the Transmission Grid Solutions Subcommittee Draft Report will be reviewed, will be announced in a separate **Federal Register** Notice.

ADDRESSES: Comments on this Draft Report should be addressed to: Dr. Craig R. Reed, Designated Federal Official, Electricity Advisory Board, AB–1/ Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

You may also submit comments by facsimile to (202) 586–6279 or by e-mail to *lisa.epifani@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Craig R. Reed, Executive Director, or Ms. Lisa Epifani, EAB Staff Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The Electricity Advisory Board (EAB) was chartered to provide the Secretary of Energy with essential independent advice and recommendations on electricity policy issues of importance to the Department of Energy. The Electricity Advisory Board is to provide timely, balanced, and authoritative advice to the Secretary of Energy on the Department's electricity programs; current and future capacity of the electricity system; issues related to production, reliability and utility restructuring; and coordination between the Department of Energy and state and regional officials and the private sector on matters affecting electricity supply and reliability.

Public Participation

The Electricity Advisory Board welcomes public comment on the Draft Report of the EAB's Transmission Grid Solutions Subcommittee. The Draft Report is being circulated for public review and comment in advance of its final review by the full Board in an effort to provide members of the public and interested parties with an opportunity to submit meaningful comment to the Board in advance of their review of the Draft Report's findings and recommendations. Members of the public and interested parties will also have an opportunity to comment on this Draft Report during the public comment period of the next meeting of the Electricity Advisory Board.

Issued at Washington, DC, on August 14, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–20970 Filed 8–16–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–118–000]

GenPower Anderson, LLC, FPL Energy Anderson, LLC, and Mountain Creek 2001 Trust, Complainants, v. Duke Energy Corporation and Duke Electric Transmission, Respondents; Notice of Complaint

August 13, 2002.

Take notice that on August 12, 2002, Gen Power Anderson, LLC, FPL Energy Anderson, LLC and Mountain Creek 2001 Trust (together, Complainants) submitted a Complaint against Duke Energy Corporation and Duke Electric Transmission (together, Duke) as transmission provider.

In the Complaint, Complainants allege that Duke has violated Section 205 of the Federal Power Act (FPA) by attempting to collect payments under an interconnection Letter Agreement that Duke has not filed with the Federal Energy Regulatory Commission, by continuing to assess new and additional charges under the unfiled Letter Agreement after a stop work request by GenPower Anderson, LLC and expiration of the unfiled Letter Agreement, and by attempting to collect payments greater than the maximum allowed by the unfiled Letter Agreement. Complainants request that the Commission direct Duke to cease and desist attempting to collect payments under the unfiled Letter Agreement and direct Duke to refund payments obtained by Duke that are not authorized by the unfiled Letter Agreement together with time-value refunds.

Copies of the Complaint were served via e-mail, facsimile and overnight mail on Duke and via e-mail and messenger on counsel for Duke.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before August 22, 2002. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20981 Filed 8–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2437–000]

Virginia Electric and Power Company; Notice of Filing

August 13, 2002.

Take notice that on July 29, 2002, Virginia Electric and Power Company d/b/a/ Dominion Virginia Power tendered for filing to revise a job title set forth in Attachment N to Virginia Electric and Power Company's FERC Electric Tariff, Second Revised Volume No. 5 (OATT) addressing Dominion Virginia Power's Generator Interconnection Procedures.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 508–8222. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: August 23, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20982 Filed 8–16–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0036; FRL–7188–2]

Reporting and Recordkeeping Requirements under EPA's Hospitals for a Healthy Environment (H2E) Program; Request for Comment on New Information Collection Activity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), EPA is seeking public comment on the following Information Collection Request (ICR): Reporting and Recordkeeping Requirements under EPA's Hospitals for a Healthy Environment (H2E) Program (EPA ICR No. TBD; OMB Control No. 2070–TBD). This ICR involves a new collection activity not currently approved by OMB. The information collected under this ICR relates to recordkeeping and reporting as part of a voluntary program to help hospitals enhance work place safety, reduce waste and waste disposal costs, and become better environmental stewards and neighbors. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPPT–2002–0036, must be received on or before October 18, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0036 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara

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Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Laura Nazef, Pollution Prevention Division (7409M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–7523; fax number: (202) 564–8899; e-mail address: nazef.laura@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are an establishment or organization engaged in furnishing medical, surgical, or other health services to individuals. Potentially affected categories and entities may include, but are not limited to:

Type of business	NAICS codes
Offices of physicians	6211
Offices of dentists	6212
Outpatient care centers	6214
Medical and diagnostic laboratories	6215
Home health care services	6216
General medical and surgical hospitals	6221
Psychiatric and substance abuse hospitals	6222
Nursing care facilities	6231
Residential mental retardation, mental health, and substance abuse facilities	6232
Community care facilities for the elderly	6233
Grantmaking and giving services	8132
Social advocacy organizations	8133
Civic and social organizations	8134

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 564–3119 and select item 4097 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket ID number OPPT–2002–0036. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0036 on the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPPT–2002–0036. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Reporting and Recordkeeping Requirements under EPA's Hospitals for a Healthy Environment (H2E) Program.

ICR numbers: EPA ICR No. TBD, OMB No. 2070–TBD.

ICR status: This ICR is a new proposed information collection that has not been approved by OMB. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: The Hospitals for a Healthy Environment (H2E) program is a voluntary partnership program jointly administered by EPA and the American Hospital Association (AHA) that helps hospitals enhance work place safety, reduce waste and waste disposal costs, and become better environmental stewards and neighbors. The program is based on a 1998 Memorandum of Understanding signed by AHA and EPA to provide health care professionals with the tools and information necessary to reduce mercury waste, reduce the overall volume of waste, and identify pollution prevention opportunities.

The H2E program has two elements, the Partners for Change Program and the Champions for Change Program. The Partners for Change Program recognizes health care facilities that pledge support to the H2E mission and develop goals for reducing waste and mercury in their own facilities. The Champions for Change Program recognizes organizations that encourage and aid health care facilities to participate as H2E partners, provide on-going promotional or technical assistance information, or make changes that support the goals of the H2E program in their own institutions. An organization's decision to participate in the H2E program is completely voluntary.

This information collection addresses reporting and recordkeeping activities that support the administration of the H2E program. Responses to the collection of information are voluntary. Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to range between 0.5 and 20 hours per response, depending upon the type of information the respondent provides. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 550.

Frequency of response: Annually.

Estimated average number of responses for each respondent: 1.

Estimated total annual burden hours: 10,110.

Estimated total annual burden costs: $343,765.

VI. Are There Changes in the Estimates from the Last Approval?

No. This is a new proposed ICR.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: August 8, 2002.

Susan B. Hazen,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 02–20992 Filed 8–16–02; 8:45 am]

BILLING CODE 6560–50–S

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ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0048; FRL–7192–7]

Notification of Chemical Exports - TSCA Section 12(b); Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), EPA is seeking public comment on the following Information Collection Request (ICR): Notification of Chemical Exports - TSCA Section 12(b) (EPA ICR No. 0795.11, OMB Control No. 2070–0030). This ICR involves a collection activity that is currently approved and scheduled to expire on January 31, 2003. The information collected under this ICR relates to reporting requirements found at 40 CFR part 707, subpart D, with respect to companies exporting certain chemicals from the United States to foreign countries. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPPT–2002–0048, must be received on or before October 18, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0048 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Keith Cronin, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8102; fax number: (202) 564–4775; e-mail address: cronin.keith@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a company that exports or engages in wholesale sales of chemical substances or mixtures. Potentially affected categories and entities may include, but are not limited to:

Type of business	NAICS codes
Chemical manufacturing	325
Petroleum refineries	32411

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 564–3119 and select item 4098 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket ID number OPPT–2002–0048. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0048 on the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPPT–2002–0048. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Notification of Chemical Exports - TSCA Section 12(b).

ICR numbers: EPA ICR No. 0795.11, OMB Control No. 2070–0030.

ICR status: This ICR is currently scheduled to expire on January 31, 2003. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: Section 12(b)(2) of the Toxic Substances Control Act (TSCA) requires that any person who exports or intends to export to a foreign country a chemical substance or mixture that is regulated under TSCA sections 4, 5, 6, and/or 7 submit to EPA notification of such export or intent to export. Upon receipt of notification, EPA will advise the government of the importing country of the United States regulatory action with respect to that substance. EPA uses the information obtained from the submitter via this collection to advise the government of the importing country.

Responses to the collection of information are mandatory (see 40 CFR part 707). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 0.993 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Respondents or affected entities are expected to include companies that export from the United States to foreign countries, or that engage in wholesale sales of, chemical substances or mixtures.

Estimated total number of potential respondents: 500.

Frequency of response: Annually.

Estimated average number of responses for each respondent: 15.

Estimated total annual burden hours: 7,450.

Estimated total annual burden costs: $452,055.

VI. Are There Changes in the Estimates from the Last Approval?

There is a decrease of 2,950 hours (from 10,400 hours to 7,450 hours) in the total estimated respondent burden compared with that identified in the information collection request most recently approved by OMB. This change reflects EPA's experience over the past 3 years, in which there has been an increase in the number of reporting firms but a decrease in the number of notices per firm than anticipated at the time of the last approval of this information collection. The net result is a decrease in burden hours (adjustment).

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any

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questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: August 8, 2002.

Susan B. Hazen,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 02–20993 Filed 8–16–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0050; FRL–7195–6]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from July 8, 2002 to July 22, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The "S" and "G" that precede the chemical names denote whether the chemical idenity is specific or generic.

DATES: Comments identified by the docket ID number OPPT–2002–0050 and the specific PMN number, must be received on or before September 18, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0050 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations"," Regulations and Proposed Rules, and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPPT–2002–0050. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B– 607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0050 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPPT–2002–0050 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from July 8, 2002 to July 22, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The "S" and "G" that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 22 PREMANUFACTURE NOTICES RECEIVED FROM: 07/08/02 TO 07/22/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0822	07/09/02	10/07/02	Reichhold, Inc.	(G) Coating resin	(G) Modified polyester of terephthalic acid, ethylene glycol and neopentyl glycol
P–02–0823	07/09/02	10/07/02	CBI	(S) Urethane foam catalyst	(G) Tertiary amine carboxylic acid salt
P–02–0824	07/09/02	10/07/02	Reichhold, Inc.	(G) Coating resin	(G) Modified polyester of terephthalic acid, ethylene glycol and neopentyl glycol
P–02–0825	07/09/02	10/07/02	CBI	(G) Catalyst	(G) Tertiary amine
P–02–0826	07/12/02	10/10/02	Apex Advanced Technologies, LLC	(G) Lubricant and surface agent for metal forming and injection molding.	(S) Octadecanoic acid, compd. with guanidine (1:1)
P–02–0827	07/12/02	10/10/02	CIBA Specialty Chemicals Corporation	(S) Light stabilizer for coatings and adhesives	(G) Bisacylphosphinoxide
P–02–0828	07/12/02	10/10/02	NA Industries, Inc.	(G) Concrete admixture	(G) Polyether derivative
P–02–0829	07/15/02	10/13/02	Nagase America Corporation	(G) Additive for lubricants	(G) Molybdenum dithio carbamate
P–02–0830	07/16/02	10/14/02	Cognis Corporation	(G) Synthetic fiber additive	(S) Oxirane, methyl-, polymer with oxirane, didodecanoate
P–02–0831	07/16/02	10/14/02	GE silicones	(S) Intermediate	(G) Crosslinked alkyl silicone
P–02–0832	07/16/02	10/14/02	Jowat Corp.	(G) Wood bonding	(G) Polyurethane prepolymers
P–02–0833	07/17/02	10/15/02	CIBA Specialty Chemicals Corporation	(S) Polymerization initiator and regulator for thermoplastics and elastomers	(G) Aromatic ether derivative
P–02–0834	07/17/02	10/15/02	CBI	(G) Open, non-dispersive (resin)	(G) Blocked cycloaliphatic polyisocyanate
P–02–0835	07/17/02	10/15/02	CBI	(S) Resin for spray applied coatings	(G) Polyester modified polyurethane amine salted
P–02–0836	07/17/02	10/15/02	U.S. Paint Corporation	(G) Resin for coating	(G) Polymer of: butyl methacrylate, ethylene glycol dimethacrylate, 2-hydroxypropyl methacrylate, divinylbenzene, ethylvinylbenzene
P–02–0837	07/17/02	10/15/02	U.s. paint corporation	(G) Resin for coating	(G) Polymer of: 2,3-epoxypropyl neodecanoate, cyclohexyl methacrylate, acrylic acid

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I. 22 PREMANUFACTURE NOTICES RECEIVED FROM: 07/08/02 TO 07/22/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0838	07/17/02	10/15/02	CBI	(G) Synthetic industrial lubricant for contained use	(G) Dipentaerythritol ester of branched and linear fatty acids
P–02–0839	07/18/02	10/16/02	CBI	(G) Open non-dispersive	(G) Modified acrylic polymer
P–02–0840	07/19/02	10/17/02	Cook Composites and Polymers Co.	(G) Additive for plastic resins	(G) 2-propenoic acid, 2-methyl-[2-ethyl-2[[2-hydroxy-3-[(2-methyl-1-oxo)propoxy]methyl]-1,3-alkanediyl]bis[oxy(2-hydroxy-3,1-alkanediyl) ester
P–02–0841	07/18/02	10/16/02	CBI	(S) Brominated epoxy resin prereact for making resins for impregnating fiber reinforcement; fabrication processing aid	(G) Brominated epoxy resin
P–02–0842	07/19/02	10/17/02	The Dow Chemical Company	(S) Uv curable binder for coatings	(G) Solid uv-curable resin
P–02–0843	07/19/02	10/17/02	The Dow Chemical Company	(S) Uv curable binder for coatings	(G) Solid uv-curable resin

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 21 NOTICES OF COMMENCEMENT FROM: 07/08/02 TO 07/22/02

Case No.	Received Date	Commencement/ Import Date	Chemical
P–01–0332	07/11/02	06/17/02	(G) Cathodic epoxy dispersion resin
P–01–0333	07/11/02	06/17/02	(G) Cathodic epoxy dispersion resin
P–01–0820	07/12/02	07/05/02	(G) Urethane acrylate
P–02–0124	07/15/02	06/25/02	(G) Aminoacrylic polymer
P–02–0125	07/15/02	06/25/02	(G) Dialkylamine hydrochloride salt
P–02–0247	07/10/02	06/26/02	(G) Modified polyurethane resin
P–02–0248	07/16/02	06/02/02	(S) 1-hexanol, 3-mercapto, 1-acetate
P–02–0250	07/10/02	06/04/02	(G) Acrylic copolymer
P–02–0266	07/09/02	06/19/02	(G) Phenol, 4,4'-(1-methylethylidene)bis, polymer with (chloromethyl)oxirane, reaction products with an epoxy resin and octahydro-4,7-methano-1h-indenedimethanamine
P–02–0329	07/17/02	06/28/02	(G) Fatty acid polyethyleneimine condensate polymer
P–02–0331	07/18/02	06/06/02	(S) 1,3-benzenedicarboxylic acid, polymer with 5-amino-1,3,3-trimethylcyclohexanemethanamine, hexanedioic acid, 1,6-hexanediol, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid and 1,1'-methylenebis [4-isocyanatocyclohexane], compd. with n,n-diethylethanamine
P–02–0334	07/10/02	06/10/02	(G) Modified phenolic resin
P–02–0335	07/17/02	07/08/02	(S) 2-propenoic acid, 2-methyl-, polymer with n-(1,1-dimethyl-3-oxobutyl)-2-propenamide, ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt
P–02–0342	07/10/02	06/04/02	(G) Polyester resin
P–02–0392	07/19/02	06/24/02	(S) Poly[oxy(methyl-1,2-ethanediyl)],alpha-[[[3-(trimethoxysilyl)propyl]amino]carbonyl]-omega-[[[[3-(trimethoxysilyl)propyl]amino]carbonyl]oxy]-
P–02–0412	07/10/02	06/21/02	(G) Epoxy resin ester
P–02–0490	07/17/02	06/23/02	(G) C14-18 fatty acids, calcium salts
P–02–0503	07/18/02	06/26/02	(G) Aromatic urethane
P–02–0504	07/18/02	07/09/02	(G) Aromatic aminoether
P–02–0514	07/05/02	07/05/02	(G) Diethoxybenzenamine derivative, diazotized, coupled with aminonaphthalenesulfonic acid derivative, ammonium salt
P–93–0401	07/16/02	06/26/02	(G) Polyurethane polyacrylate polymethacrylate

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: August 12, 2002.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–20991 Filed 8–16–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2568]

Petitions for Reconsideration of Action in Rulemaking Proceeding

August 9, 2002.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by September 3, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of Amendment of Parts of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency With GSO and Terrestrial Systems in the KU-Band Frequency Range (ET Docket No. 98–206, RM–9147, RM–9245).

Number of Petitions Filed: 7.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–20926 Filed 8–16–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1430–DR]

Northern Mariana Islands; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of the Northern Mariana Islands (FEMA–1430–DR), dated August 6, 2002, and related determinations.

EFFECTIVE DATE: August 6, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 6, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of the Northern Mariana Islands, resulting from Typhoon Chata'an on July 4–5, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of the Northern Mariana Islands.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, and Hazard Mitigation throughout the Commonwealth, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Individual Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs. You are authorized to make adjustments as warranted to the non-Federal cost shares as provided under the Insular Areas Act, 48 U.S.C. 1469a(d).

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William L. Carwile, III of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area within the Commonwealth of the Northern Mariana Islands to have been affected adversely by this declared major disaster: Island of Rota for Public Assistance.

All areas within the Commonwealth of the Northern Mariana Islands are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–20960 Filed 8–16–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice

SUMMARY: Background. On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals. The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be

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submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before October 18, 2002.

ADDRESSES: Comments should be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Mary M. West, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Capria Mitchell (202) 872–4984, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Proposal to Approve Under OMB Delegated Authority the Extension For Three Years, With Revision, the Following Reports:

1. Report title: Reports of Foreign Banking Organizations

Agency form number: FR Y–7 (and proposed FR Y–7N, FR Y–7NS, and FR Y–7Q)

OMB control number: 7100–0125

Frequency: Quarterly and annually

Reporters: Foreign banking organizations (FBO's)

Annual reporting hours: 5,920 hours

Estimated average hours per response:
FR Y–7: 3.25 hours,
FR Y–7N (quarterly): 6 hours,
FR Y–7N (annual): 6 hours,
FR Y–7NS: 1 hour,
FR Y–7Q (annual): 1 hour,
FR Y–7Q (quarterly): 1.25 hours

Number of respondents:
FR Y–7: 327,
FR Y–7N (quarterly): 128,
FR Y–7N (annual): 195,
FR Y–7NS: 184,
FR Y–7Q (annual):301,
FR Y–7Q (quarterly): 26
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. §§ 601–604a, 611–631, 1844(c), 3106, and 3108(a)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act [5 U.S.C. §§ 522(b)(4) and (b)(6)].

Abstract: The FR Y–7 is an annual report filed by all FBO's that engage in banking in the United States, either directly or indirectly, to update their financial and organizational information. The Federal Reserve uses information to assess an FBO's ability to be a continuing source of strength to its U.S. banking operations and to determine compliance with U.S. laws and regulations.

Current actions: The Federal Reserve proposes the following revisions to the FR Y–7:

(1) Remove the risk–based capital reporting, Report Item 1.B., from the FR Y–7 report and require FBO's to report risk–based capital information on the new Capital and Asset Report for FBO's (FR Y–7Q).

(2) Remove the Nonbank Financial Information Summary (NFIS) report, which includes data from U.S. nonbank subsidiaries held directly by a foreign parent (i.e., not through a U.S. bank holding company (BHC) or financial holding company (FHC)), from the FR Y–7 and require these entities to file the new FR Y–7N or FR Y–7NS);

(3) Update the eligibility requirements for qualifying foreign banking organizations (QFBO's) in accordance with recent revisions to Regulation K;

(4) Remove Report Items 6 and 7 from the FR Y–7 pertaining to Financial Statements of Unconsolidated Majority–Owned Related Subsidiaries and Financial Data on Unconsolidated Minority–Owned Related Companies, respectively; and

(5) Provide other technical revisions to the FR Y–7 form and instructions to ensure consistency with other reporting forms, and reorder the sequence of the form to facilitate reporting.

In addition, the Federal Reserve proposes to implement the following information collections:

(1) Capital and Asset Report for Foreign Banking Organizations (FR Y–7Q) – This report would collect consolidated regulatory capital information from all FBO's either quarterly or annually. FBO's that have effectively elected to become financial holding companies (FHC's) will be required to file the FR Y–7Q on a quarterly basis. All other FBO's (those that have not elected to become FHCs) would file the FR Y–7Q annually.

(2) Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations (FR Y–7N) and Abbreviated Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations (FR Y–7NS) – The FR Y–7N report would collect nonbank financial information similar to information currently collected from U.S. BHC's for their nonbank activities. The FR Y–7N would be collected from significant nonbank subsidiaries and would be filed quarterly or annually based on total assets and other reporting criteria. Other, smaller respondents would file the FR Y–7NS, an abbreviated report with only four items.

In a change from current NFIS reporting, consolidation of reporters would not be permitted on the Y–7N and the Y–7NS. In the past, the Federal Reserve has found that the consolidation rules contribute to inaccurate data collection and raise processing issues. However, since a majority of reporters in the current panel would be exempt from reporting altogether, the removal of the consolidation option should not pose a material burden on reporters.

Also, functionally regulated[1] subsidiaries and merchant banking investments would be exempt from reporting on the FR Y–7N and FR Y–7NS. Provisions of the Gramm–Leach–Bliley Act direct that the Federal Reserve must first rely on reports and information provided by the primary functional regulators for functionally regulated subsidiaries.

The proposed implementation date for all of the FR Y–7 changes is December 31, 2002.

2. Report title: Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies

Agency form number: FR Y–11Q and FR Y–11I (proposed FR Y–11, FR Y–11S)

OMB control number: 7100–0244

Frequency: Quarterly and annually

Reporters: Bank holding companies (BHC's)

Annual reporting hours: 23,809 hours

Estimated average hours per response:
FR Y–11 (quarterly): 6 hours,
FR Y–11 (annual): 6 hours,
FR Y–11S (annual): 1 hour

Number of respondents:
FR Y–11 (quarterly): 843,
FR Y–11 (annual): 488,
FR Y–11S (annual): 649
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. §§ 1844(b) and (c) and 12 CFR 225.5(b)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act [5 U.S.C. §§ 522(b)(4) and (b)(6)].

Abstract: The FR Y–11Q is filed quarterly by top–tier bank holding companies for each nonbank subsidiary of a bank holding company with total consolidated assets of $150 million or more in which the nonbank subsidiary has total assets of 5 percent or more of the top–tier bank holding company's consolidated Tier 1 capital, or where the nonbank subsidiary's total operating revenue equals 5 percent or more of the top–tier bank holding company's consolidated total operating revenue. The report consists of a balance sheet, income statement, off–balance–sheet items, information on changes in equity capital, and a memoranda section. The FR Y–11I is filed annually by top–tier bank holding companies for each of their nonbank subsidiaries that are not required to file a quarterly FR Y–11Q. The FR Y–11I report consists of similar balance sheet, income statement, off–balance–sheet, and change in equity capital information that is included on the FR Y–11Q. However, some of the items on the FR Y–11I are collected in a less detailed manner. In addition, the FR Y–11I also includes a loan schedule to be submitted only by respondents engaged in extending credit.

Current actions: The Federal Reserve proposes to revise the FR Y–11Q and retitle the report as the Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies (FR Y–11). The Federal Reserve also proposes to eliminate the Annual Financial Statements of Nonbank Subsidiaries of Bank Holding Companies (FR Y–11I) and replace it with a new abbreviated annual report, the Abbreviated Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies (FR Y–11S).

The Federal Reserve proposes to streamline the existing nonbank subsidiary reporting framework for all non–functionally–regulated[2] nonbank subsidiaries. The revised framework would both provide essential information to supervise and regulate non–functionally–regulated subsidiaries and reduce the burden on the industry. The proposed framework affects U.S. nonbank subsidiaries held by a U.S. bank holding company. Proposed revisions include:

(1) Implementing a uniform reporting form for all nonbank subsidiary filers;

(2) Reducing the burden by increasing or establishing consistent filing thresholds for all nonbank subsidiary filers;

(3) Establishing filing thresholds for reporters, consistent with risk–focused supervision, based on asset size and off–balance–sheet activity (absolute measures), plus operating revenues and equity capital (relative measures); and

(4) Eliminating reporting for the smallest filers.

The FR Y–11Q would be retitled as the Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies (FR Y–11). This proposed form would collect nonbank subsidiary financial information and would be filed by the top–tier BHC for more significant nonbank subsidiaries quarterly or annually based on total assets and other reporting criteria. The new Abbreviated Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies (FR Y–11S) report would comprise only four financial data items: net income, total assets, total equity capital, and total off–balance–sheet items. This report would be filed by the top–tier BHC for smaller nonbank subsidiaries.

The proposed reporting changes would introduce more uniformity to several aspects of reporting requirements for nonbank subsidiaries and reduce regulatory burden. The proposed implementation date for all of the FR Y–11 changes is December 31, 2002.

Also, functionally regulated subsidiaries and merchant banking investments would be exempt from reporting on the FR Y–11 and FR Y–11S. Provisions of the Gramm–Leach–Bliley Act direct that the Federal Reserve must first rely on reports and information provided by the primary functional regulators for functionally regulated subsidiaries.

3. Report title: Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations

Agency form number: FR 2314 a, b, and c (proposed FR 2314 and FR 2314S)

OMB control number: 7100–0073

Frequency: Quarterly and annually

Reporters: Foreign subsidiaries of U.S. state member banks, bank holding companies, and Edge or agreement corporations

Annual reporting hours: 5,087 hours

Estimated average hours per response:
FR Y–2314 (quarterly): 6 hours,
FR Y–2314 (annual): 6 hours,
FR Y–2314S (annual): 1 hour

Number of respondents:
FR Y–2314 (quarterly): 123,
FR Y–2314 (annual): 300,
FR Y–2314S (annual): 335
Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. §§ 324, 602, 625, and 1844). FR 2314 data are exempt from disclosure pursuant to Sections (b)(4) and (b)(8) of the Freedom of Information Act (5 U.S.C. §552(b)(4) and (8)).[3]

Abstract: The FR 2314 reports are collected from U.S. member banks, Edge and agreement corporations, and BHC's for their direct or indirect foreign subsidiaries. Separate reports are

[1] The term "functionally regulated" nonbank subsidiaries are entities where the primary regulator is an organization other than the Federal Reserve, namely the Securities and Exchange Commission, Commodity Futures Trading Commission, state insurance commissioners, or state securities departments.

[2] As distinguished from the term "functionally regulated" nonbank subsidiaries, which are entities in which the primary regulator is an organization other than the Federal Reserve, namely the Securities and Exchange Commission, Commodity Futures Trading Commission, state insurance commissioners, or state securities departments.

[3] Please see the FR 2314 "Current actions" section for the proposed change to confidentiality treatment.

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required for most subsidiaries, although they may consolidate affiliates that are principally engaged in a similar line of business and that are located in the same country. Newly established or acquired foreign subsidiaries are added to the reporting panel on a flow basis. The parent organization files the FR 2314a for their significant foreign subsidiaries (those with at least $2 billion in total assets or $5 billion in off–balance–sheet activity) quarterly and file the FR 2314a, b, or c annually for their other foreign subsidiaries as of December 31. Subsidiaries with total assets exceeding $250 million must be reported on the FR 2314a. Subsidiaries with total assets between $50 million and $250 million must be reported the FR 2314b. Subsidiaries with total assets less than $50 million must be reported on the FR 2314c. For nominee and inactive companies with total assets less than $1 million, the parent must provide only the name, location, and total assets of the company; the FR 2314c may be used for this purpose, or the information may be transmitted in letter format.

The FR 2314a collects information on assets and liabilities and includes several memoranda items on contingent liabilities and twelve supporting schedules. The supporting schedules provide detail on cash and balances due from depository institutions, securities, loans and lease financing receivables, other assets, claims on related organizations, deposits, other liabilities, liabilities to related organizations, changes in capital and reserve accounts, income and expenses, assets held in trading accounts, and past due and nonaccrual loans and leases. The FR 2314b collects somewhat less information on assets and liabilities, off–balance–sheet items, income and expenses, and securities. The FR 2314c is a brief, one–page report that collects information on total assets, equity capital, net income, and off–balance–sheet items.

Current actions: The Federal Reserve proposes to revise and retitle the FR 2314a as the Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations (FR 2314).

The FR 2314c would be revised and retitled as the Abbreviated Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations (FR 2314S). The FR 2314b the Report of Condition for Foreign Subsidiaries of U. S. Banking Organizations would be eliminated.

The Federal Reserve's proposal to streamline the existing nonbank subsidiary reporting framework for all non–functionally–regulated[4] nonbank subsidiaries[5] will also have an effect on existing FR 2314 reporters (not just those that are nonbanks). The revised framework would both provide essential information to supervise and regulate non–functionally–regulated subsidiaries and reduce the burden on the industry. The proposed framework affects foreign subsidiaries held by a U.S. bank holding company or U.S. bank (FR 2314 a, b, and c). Proposed revisions include:

(1) Implementing a reporting form that is consistent with the proposed form for domestic nonbank subsidiary filers;

(2) Reducing the burden by increasing or establishing filing thresholds that are consistent with those proposed for domestic nonbank subsidiary filers;

(3) Establishing filing thresholds for reporters, consistent with risk–focused supervision, based on asset size and off–balance–sheet activity (absolute measures), plus operating revenues and equity capital (relative measures);

(4) Allowing no consolidation among filers; and

(5) Eliminating reporting for the smallest filers.

The FR 2314a would be retitled as the Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations (FR 2314). This proposed form would collect financial information and would be filed by more significant subsidiaries quarterly or annually based on total assets and other reporting criteria. The Abbreviated Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations (FR 2314S) report would comprise only four financial data items: net income, total assets, total equity capital, and total off–balance–sheet items. These are the same four financial data items currently collected as part of the current FR 2314c. This report would be filed by the top–tier BHC or parent organization of smaller subsidiaries.

The proposed reporting changes would introduce more uniformity to several aspects of reporting requirements for subsidiaries and reduce regulatory burden. The proposed implementation date for all of the FR 2314 changes is December 31, 2002.

Also, functionally regulated subsidiaries and merchant banking investments would be exempt from reporting on the FR 2314 and FR 2314S. Provisions of the Gramm–Leach–Bliley Act direct that the Federal Reserve must first rely on reports and information provided by the primary functional regulators for functionally regulated subsidiaries.

In a change from current FR 2314 reporting, consolidation of reporters would not be permitted on the FR 2314 and the FR 2314S. In the past, the Federal Reserve has found that the consolidation rules contribute to inaccurate data collection and raise processing issues. However, since a majority of reporters in the current panel would be exempt from reporting altogether, the removal of the consolidation option should not pose a material burden on reporters.

Also, in accord with the accounting basis for all other regulatory reports filed with the Federal Reserve, the reporting basis for the FR 2314 would be revised to specifically instruct respondents to follow U.S. generally accepted accounting principles (GAAP).

The Federal Reserve proposes that data collected on the FR 2314 reports no longer be given confidential treatment and made available to the public. The Federal Reserve proposes this change in treatment for consistency with public disclosure requirements of other financial reports and believes that the concern of competitive disadvantage relative to their foreign corporate counterparts is no longer a prevalent issue. However, the Federal Reserve may grant confidential treatment for the reporting information, in whole or in part, on a case–by–case basis if justified by the respondent. The Federal Reserve requests specific comment on this proposed change.

Board of Governors of the Federal Reserve System, August 14, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–21017 Filed 8–16–02; 8:45 am]

BILLING CODE 6210–01–S

[4] As distinguished from the term "functionally regulated" nonbank subsidiaries, which are entities in which the primary regulator is an organization other than the Federal Reserve, namely the Securities and Exchange Commission, Commodity Futures Trading Commission, state insurance commissioners, or state securities departments. Provisions of the Gramm–Leach–Bliley Act direct that the Federal Reserve must first rely on reports and information provided by the primary regulator for functionally regulated subsidiaries.

[5] The use of the term nonbank subsidiaries includes foreign bank subsidiaries of U.S. BHC's that file the FR 2314 report.

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 3, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. James Michael McAuley and Charlie Edward Blankenship; both of Norman, Oklahoma, as trustees for the Cynthia Ann Mayes Blankenship QSST; the Catherine Suzanne Mayes McAuley QSST; and the Mava Geraldine Mayes Trust, to retain control of Consolidated Equity Corporation, Purcell, Oklahoma, and thereby indirectly acquire control of First American Bank and Trust Company, Purcell, Oklahoma.

Board of Governors of the Federal Reserve System, August 14, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–21018 Filed 8–16–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Office at (202) 619–2118 or e-mail *Geerie.Jones@HHS.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: 1. Decisions, Choices and Care Management Among an Admissions Cohort of Privately Insured Disabled Elders (Long Term Care)—New—The Department's Office of the Assistant Secretary for Planning and Evaluation proposes to conduct a study to better understand the circumstances or factors that motivate elders who have purchased private long-term care insurance policies to use services and file claims for benefits. The purpose is to obtain a comprehensive demographic, health and attitudinal profile of individuals with private LTC insurance policies.

Respondents: Individual.

Number of Respondents Baseline Surveys: 1,650.

Estimated burden per Response: 1.36 hours.

Burden for Baseline Surveys: 2,251 hours.

Number of Responses for Follow-up Interview: 5,105.

Estimated Burden per Response: 288 minutes.

Burden for Follow-up Interviews: 1,469.

Total Number of Responses: 6,755.

Total Burden: 3,720 hours.

Send comments via e-mail to *Geerie.Jones@HHS.gov* or mail to OS Reports Clearance Office, Room 503H, Huber H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Comments should be received within 60 days of this notice.

Dated: August 9, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 02–20937 Filed 8–16–02; 8:45 am]

BILLING CODE 4154–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Preliminary Measure Set for the National Healthcare Quality Report

Request for Comments

The Agency for Healthcare Research and Quality (AHRQ) announces a request for public comment on the Preliminary Measure Set to be used in preparing the first National Healthcare Quality Report (NHQR). The NHQR is a congressionally mandated report (*see* 42 U.S.C. 299b–2(b)(2)) on national trends with respect to health care quality. The legislation mandated that the Agency for Healthcare Research and Quality (AHRQ) submit this report on an annual basis beginning in 2003. The Preliminary Measure Set for the NHQR was generated through a call for measures to Federal agencies and private organizations. AHRQ issued a call for measures to Federal agencies, through the Quality Interagency Coordination Task Force (QuIC), from October 2000–February 2001. The Institute of Medicine issued the call to private organizations from June–July 2000. An interagency Department of Health and Human Services (DHHS) working group then reviewed and revised the candidate measures. AHRQ and the interagency working group are seeking comments on (1) the extent to which the proposed measures meet the criteria of importance, scientific soundness, and feasibility; (2) the balance, comprehensiveness, and robustness of the overall measure set; and (3) the appropriateness of the data sources.

Comments Deadline

Written comments will be accepted by September 18, 2002. For submission of written comments and additional information: Ed Kelley, Ph.D., Senior Service Fellow, National Healthcare Quality Report, Center for Quality Improvement and Patient Safety, Agency for Healthcare Research and Quality, 6011 Executive Boulevard, Suite 200, Rockville, MD 20852, Fax: (301) 594–2155, E-mail: *ekelley@ahrg.gov*.

Availability of Preliminary Measure Set

Copies of the Preliminary Measure Set are available from the AHRQ Web site at: *http://www.ahrg.gov/qual/measurix.htm*. For organizations without access to the Internet, AHRQ will make a paper version available either through overnight mail or by fax upon written request. Requests for paper versions of the preliminary measure set should be faxed to the above number.

Public Review of Comments

Comments and responses received will be available for public inspection at AHRQ's Information Resource Center (IRC) public reading room between the hours of 8:30 a.m. and 5 p.m. on regular business days at 2101 East Jefferson Street, Suite 500, Rockville, MD 20852. Arrangements for viewing public comments may be made by calling (301) 594–6349. Responses may also be accessed through AHRQ's Electronic Freedom of Information Reading Room

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on AHRQ's Web site at *http://www.ahrq.gov/news/foiaindx.htm.*

Dated: August 9, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–20920 Filed 8–6–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–43–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Evaluation of Worker Notification Program—New—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). The mission of NIOSH is to promote safety and health at work for all people through research and prevention. NIOSH routinely notifies subjects about the results of epidemiologic studies and the implications of the results. The overall purpose of the proposed project is to gain insight into the effectiveness of NIOSH worker notification, in order to improve the quality and usefulness of the Institute's worker notification activities. Researchers from the NIOSH Division of Surveillance, Hazard Evaluations and Field Studies (DSHEFS) propose to provide notified workers with a Reader Response Form as an evaluation instrument for routinely assessing individual letter notification materials sent to them by NIOSH.

The results of this ongoing evaluation activity will be used to refine notification activities by standardizing and streamlining written notification materials, and to develop materials which are more readable, understandable, and informative to notified workers, their families, and other stakeholders. The findings from these evaluations may also allow the NIOSH worker notification program to help alleviate any negative impacts and enhance any positive impacts of risk communications.

The objective of the Reader Response Form, therefore, is to provide a structured reporting form which will capture the recipients' responses concerning the effectiveness of the NIOSH notification efforts and their impact on workers and other stakeholders.

The average number of letter-type notifications is estimated at 8,000 per year. Each form is estimated to take less than 10 minutes to complete. The annual burden for this data collection is 1,333 hours.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden per response (in hours)
Reader Response Form	8000	1	10/60

Dated: August 9, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–20930 Filed 8–16–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02158]

University of Georgia Center for Leadership in Education and Applied Research in Mass Destruction Defense; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a cooperative agreement program for the University of Georgia Center for Leadership in Education and Applied Research in Mass Destruction Defense (CLEARMADD).

The purpose of the program is to facilitate the development of an integrated national system of Centers for Public Health Preparedness focused on improving the capacity of the front-line public health worker to respond to current, new and emerging public health threats. This program addresses the "Healthy People 2010" focus areas of Public Health Infrastructure.

B. Eligible Applicant

Assistance is provided only to the University of Georgia Center for Leadership in Education and Applied Research in Mass Destruction Defense. No other applications were solicited. The House of Representatives Conference Report accompanying the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Bill ending September 30, 2002, and For Other Purposes (H.R. 3061, 107th Congress), recognized the University of Georgia's unique qualifications for carrying out the activities specified in this grant (H.R. Rep. 107–342).

C. Funds

Approximately $642,842 is being awarded in FY 2002. The award will begin on or about August 1, 2002 and will be made for a 12-month budget period within a one year project period.

D. Where To Obtain Additional Information

Business management technical assistance may be obtained from: Sharon Robertson, Grants Management Specialist, Acquisition and Assistance, Branch B, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: 770–488–2748, e-mail address: *SRobertson@cdc.gov.*

For program technical assistance, contact: Gail Williams, MPH, CHES, Public Health Practice Program Office, Centers for Disease Control and Prevention (CDC), 4770 Buford Hwy,, NE., Mailstop K–38, Atlanta, GA 30341–3717, Telephone: (770) 488–8166.

Dated: August 12, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–20947 Filed 8–16–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Proposed Projects

Title: National Survey of Child and Adolescent Well-Being.

OMB No.: 0970–0202.

Description: This longitudinal survey provides national estimates on the characteristics related to children and fami8lies who enter the child welfare system. It has collected data from a cohort of 6,100 children who entered the child welfare system as a result of a CPS investigation between October 1999 and April 2001. Data were collected from the children themselves, their caregivers, their teachers, and their caseworkers at baseline, with follow-ups at 12 and 18 months post-baseline. The current request is to pursue a 36-month follow-up, essentially replicating the measure that were used at baseline and at the 18-month follow-up.

Respondents: Children who are clients of the child welfare system, their primary caregivers, caseworkers, and teachers.

Annual Burden Estimates:

Instrument	Responses	Number of responses per respondent	Average burden hours per respondent	Total burden hours
Child interview	5,491	1	1.63	8,950
Caregiver interview	5,491	1	1.50	8,237
Caseworker Interview	2,366	1	0.80	1,893
Caseworker Interview	2,491	1	0.75	1,868

Estimated Total Annual Burden Hours: 20,948.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 650 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Act, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: August 13, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–20936 Filed 8–16–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0355]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device Recall Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for medical device recall authority.

DATES: Submit written or electronic comments on the collection of information by October 18, 2002.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary

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for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Device Recall Authority—21 CFR Part 810 (OMB Control Number 0910–0432—Extension)

This collection implements medical device recall authority provisions under section 518(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360h) and part 810 (21 CFR part 810). Section 518(e) of the act gives FDA the authority to issue an order requiring the appropriate person, including manufacturers, importers, distributors, and retailers of a device to immediately cease distribution of such device, to immediately notify health professionals and device-user facilities of the order, and to instruct such professionals and facilities to cease use of such device, if FDA finds that there is reasonable probability that the device intended for human use would cause serious adverse health consequences or death.

Section 518(e) of the act sets out a three-step procedure for issuance of a mandatory device recall order. First, if there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, FDA may issue a cease distribution and notification order requiring the appropriate person to immediately: (a) Cease distribution of the device, (b) notify health professionals and device user facilities of the order, and (c) instruct those professionals and facilities to cease use of the device. Second, FDA will provide the person named in the cease distribution and notification order with the opportunity for an informal hearing on whether the order should be modified, vacated, or amended to require a mandatory recall of the device. Third, after providing the opportunity for an informal hearing, FDA may issue a mandatory recall order if the agency determines that such an order is necessary.

The information collected under the recall authority will be used by FDA to ensure that all devices entering the market are safe and effective, to accurately and immediately detect serious problems with medical devices, and to remove dangerous and defective devices from the market.

The respondents to this proposed collection of information are manufacturers, importers, distributors, and retailers of medical devices.

FDA estimates the burden of this collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
810.10(d)	2	1	2	8	16
810.11(a)	1	1	1	8	8
810.12(a) through (b)	1	1	1	8	8
810.14	2	1	2	16	32
810.15(a) through (d)	2	1	2	16	32
810.15(e)	10	1	10	1	10
810.16	2	12	24	40	960
810.17	2	1	2	8	16
Totals					1,082

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Explanation of Report Burden Estimate:

The following estimates are based on FDA's experience with voluntary recalls under 21 CFR part 7. FDA expects no more than two mandatory recalls per year, as most recalls are done voluntary.

21 CFR 810.10(d)—FDA estimates that it will take approximately 8 hours for the person named in a cease distribution and notification order to gather and submit the information required by this section. The total annual burden is 16 hours.

21 CFR 810.11(a)—Based on its experience in similar situations, FDA expects that there will be only one request for a regulatory hearing per year and that it will take approximately one staff day (8 hours) to prepare this request.

21 CFR 810.12(a) through (b)—Based on its experience in similar situations, FDA expects that there will be only one written request for a review of cease distribution and notification order per year and that it will take approximately one staff day (8 hours) to prepare this request.

21 CFR 810.14——Based on its experience with voluntary recalls, FDA estimates that it will take approximately two staff days (16 hours) to develop a strategy for complying with this order.

21 CFR 810.15 (a) through (d)—Based on its experience with voluntary recalls, FDA estimates that it will take approximately 2 staff days (16 hours) to notify each health professional, user facility, or individual of the order.

21 CFR 810.15 (e)—Based on its experience with voluntary recalls, FDA estimates that there will be approximately five consignees per recall (10 per year) who will be required to notify their consignees of the order. FDA estimates it will take them about 1 hour to do so.

21 CFR 810.16—FDA estimates that it would take no more than one staff week (40 hours) to assemble and prepare a written status report required by a recall (§ 810.16). The status reports are prepared by manufacturers 6 to 12 times each year. Therefore, each manufacturer would spend no more than 480 hours each year preparing status reports (40 x 12). If there were two FDA invoked recalls each year, the total burden hours would be estimated at 960 hours each year (480 x 2).

21 CFR 810.17—Based on its experience with similar procedures, FDA estimates it would take one staff day (8 hours) to draft a written request for termination of a cease distribution and notification or mandatory recall order.

Dated: August 13, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–20916 Filed 8–16–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0052]

Agency Information Collection Activities; Announcement of OMB Approval; Temporary Marketing Permit Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Temporary Marketing Permit Applications" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 30, 2002 (67 37835), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0133. The approval expires on July 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: August 13, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–20914 Filed 8–16–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0054]

Agency Information Collection Activities; Announcement of OMB Approval; Labeling Requirements for Color Additives (Other Than Hair Dyes) and Petitions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Labeling Requirements for Color Additives (Other Than Hair Dyes) and Petitions" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 14, 2002 (67 40947), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0185. The approval expires on July 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: August 13, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–20918 Filed 8–16–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0354]

Agency Emergency Processing under OMB Review; The Evaluation of Long-Term Antibiotic Drug Therapy for Persons Involved in Anthrax Remediation Activities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information concerns the evaluation of approximately 1,200 people involved in the decontamination/cleanup ("remediation") of various facilities contaminated with anthrax spores during a terrorist event in the fall of 2001. The 1,200 decontamination workers have been on continuous prophylactic antibiotics for greater than 60 days and FDA wants to evaluate these workers for adverse events that may have occurred in light of this prolonged drug exposure.

DATES: Submit written comments on the collection of information by September 3, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j) and 5 CFR 1320.13). The information is critical to the agency's mission in protecting the public health and is needed prior to the expiration of the normal time periods for OMB clearance under the PRA regulations (5 CFR part 1320). As a result of recent terrorist events, a number of individuals

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were potentially exposed to anthrax at various facilities. The Federal Government contracted to have the subject facilities decontaminated of residual anthrax spores. This cleanup work has been ongoing, at the affected sites, since late 2001. The workers employed in the decontamination effort were placed on long-term prophylactic antibiotics. Although FDA is interested in collecting data regarding adverse events on all 1,200 decontamination workers; there are approximately 400 decontamination workers at the Brentwood Post Office facility in Washington, DC, who continue to receive antibiotics. These 400 workers are scheduled for a final medical examination 10 days after the final antibiotic is taken. FDA needs to have OMB authorization in place in time to administer the survey to these workers when they present for their final medical examination. It is estimated that most of the cleanup work will be completed by the end of September 2002. FDA will also be administering the same survey to the remaining 800 decontamination workers who were not offered final medical examinations. Many of these workers have already left the decontamination site. FDA is requesting that emergency OMB approval to administer the survey be granted because the longer the timespan between a worker's having stopped taking an antibiotic and the time the questionnaire is administered, the less reliable the answers provided become and the more difficult it is to locate a former worker.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

The Evaluation of Long-Term Antibiotic Drug Therapy for Persons Involved in Anthrax Remediation Activities

Due to a terrorist event during the fall of 2001, approximately 1,200 decontamination workers were placed on long-term antibiotic therapy to protect them from environmental anthrax spores. Through the services of a contractor FDA plans to administer a survey to all 1,200 decontamination workers. For those decontamination workers that are still on site at the Brentwood Postal Facility, the contractor shall work with the medical service subcontractor to establish a toll free 800 telephone number that a worker can call as part of their post-antibiotic followup visit. The Government estimates that approximately 400 decontamination workers will place calls to an 800 number. The contractor shall have a qualified interviewer available to administer the assessment tool to these individuals during the telephone calls. Whereas approximately 20 percent of the decontamination workers are Spanish speaking, the contractor shall be able to conduct interviews in both English and Spanish. For those decontamination workers that have left the Brentwood Postal Facility, and for all other sites (about 800 total), the contractor shall administer the same survey via the telephone, but the contractor shall initiate these calls. If the contractor is not able to contact the decontamination worker on the initial telephone call or the worker is nonresponsive, the contractor shall attempt to followup with these workers up to three additional times.

Failure of FDA to adequately followup on these workers will reduce the agency's ability to apply lessons learned from the current situation to provide guidance during future public health emergencies should they occur. This could result, not only, in the loss of time and dollars but also in the loss of human life if patients stop taking their medicines because they think the drug therapy is responsible for a health problem when in fact it is not. Because the stress of exposure from a terrorist act can in itself cause many symptoms that are similar to adverse events that might be caused by various therapies, it is extremely important that FDA obtain information on individuals who took these antibiotics but were not subjected to the anxiety and stress associated with a terrorist event. This type of population is likely to never be available for assessment again until a future terrorist event occurs. It would be unacceptable for FDA not to obtain drug experience information from this group to assist in any future public health response to a terrorist attack.

FDA estimates the burden of this collection of information as follows:

TABLE 1.— ESTIMATED ANNUAL REPORTING BURDEN[1]

Type of Survey	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Telephone	1,200	1	1,200	.25	300
Total					300

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated annual reporting burden is based on CDC's administration, in 2001 and 2002, of a similar questionnaire to individuals who were exposed to anthrax spores dispersed during a terrorist event.

Dated: June 13, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–20915 Filed 8–16–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0116]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Veterinary Feed Directive

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by September 18, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Veterinary Feed Directive—21 CFR Part 558 (OMB Control Number 0910–0363)—Extension

The veterinary feed directive (VFD) drugs section of the Animal Drug Availability Act of 1996 (ADAA) (Public Law 104–250) established a new class of restricted feed use drugs that may be distributed without invoking State pharmacy laws. In order to implement the VFD drugs section of the ADAA, FDA issued regulations (65 FR 76924, December 8, 2000) that impose reporting and recordkeeping requirements on veterinarians, distributors of animal feeds containing VFD drugs, and clients using medicated feeds containing VFD drugs. All distributors of animal feed containing VFD drugs must notify FDA of their intent to distribute animal feed containing a VFD drug, and must maintain records of the distribution of all animal feeds containing VFD drugs (21 CFR 558.6).

In the **Federal Register** of April 30, 2002 (67 FR 21252), the agency requested comments on the proposed collection of information. FDA received one comment.

The comment asked if the proposed collection of information was necessary for the proper performance of FDA functions and whether the information will have practical utility. The answer is yes. As detailed, the VFD regulation ensures protection of public health while enabling animal producers to obtain and use needed drugs as efficiently and cost-effectively as possible.

Respondents to this collection of information are veterinarians, distributors of animal feeds containing VFD drugs, and clients using medicated feeds containing VFD drugs.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
558.6(a)(3) through (a)(5)	15,000	25	375,000	0.25	93,750
558.6(d)(1)(i) through (d)(1)(iii)	1,500	1	500	0.25	125
558.6(d)(1)(iv)	20	1	20	0.25	5
558.6(d)(2)	1,000	5	5,000	0.25	1,250
514.1(b)(9)	1	1	1	3.00	3
Total					95,133

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeper	Total Annual Records	Hours per Record	Total Hours
558.6(c)(1) through (c)(4)	112,500	10	1,125,000	.0167	18,788
558.6(e)(1) through (e)(3)	5,000	75	375,000	.0167	6,263
Total					25,051

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on agency communication with industry. Other information needed to calculate the total burden hours are derived from agency records and experience.

Dated: August 13, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–20917 Filed 8–16–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Notice of a Meeting of the NTP Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors on September 17–18, 2002, at the Radisson Governors Inn, 1–40 at Davis Drive, Exit 280, Research Triangle Park, North Carolina.

The NTP Board of Scientific Counselors (the Board) is composed of scientists from the public and private sector and provides primary scientific oversight to the NTP.

Agenda

The meeting being held on September 17–18, 2002, is open to the public from 8:30 a.m. to adjournment each day with attendance limited only by the space available. Persons needing special assistance should contact the NTP Executive Secretary (contact information below). A draft agenda with tentative schedule is provided below. Primary agenda topics include: (1) A draft format for the NTP brief that will be part of the NTP–CERHR Monograph prepared on each chemical reviewed by the NTP Center for the Evaluation of Risks to Human Reproduction (CERHR); (2) a discussion of the proposed NTP

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strategy for using genetically altered animals in carcinogen identification, (3) an overview of the NIEHS National Center for Toxicogenomics and its links with the NTP, and (4) recommendations of the NTP Interagency Committee for Chemical Evaluation and Coordination (ICCEC) for substances nominated to the NTP for study. There will also be an update about current NTP testing initiatives, the NTP Board of Scientific Counselors Technical Reports Review Subcommittee meeting on the September 5–6, 2002, and the status of the 10th and 11th Editions of the Report on Carcinogens. The Board will review a concept proposal for the continued use of a contract mechanism to investigate potential genetic toxicity of substances under study by the NTP. Time is allotted during the meeting for the public to present comments to the Board and NTP staff on agenda topics.

NTP–CERHR Monograph

The NTP Center for the Evaluation of Risks to Human Reproduction (CERHR) serves as an environmental health resource to the public and to regulatory and health agencies for scientifically based, uniform assessments of the potential for adverse effects on reproduction and development caused by agents to which humans are exposed. Additional information about the CERHR is available at *http://cerhr.niehs.nih.gov.*

As a final step in its evaluation of a chemical, the CERHR will prepare an NTP–CERHR Monograph. The monograph will include an NTP brief, the expert panel's report on the chemical, and all public comments received on the expert panel report. The NTP brief provides the NTP's interpretation of the potential for exposure to the chemical to adversely affect reproduction and/or development in humans. NTP–CERHR monographs will be made publicly available.

As a prototype for the NTP–CERHR Monograph, the CERHR has available the draft NTP–CERHR Monograph on Di-n-butyl Phthalate (DBP) and will request comment from the Board on the proposed format for the NTP brief. The CERHR is interested in obtaining input about the brief's layout and presentation of information, it clarity, and its utility for the public. The draft monograph is available on the NTP–CERHR Web site (*http://cerhr.niehs.nih.gov*) or by contacting the NTP Executive Secretary.

NTP Draft Strategy for Using Genetically Altered Animals in Carcinogen Identification

The NTP has developed a proposed draft strategy for the routine use of genetically altered animals in carcinogen identification. The NTP is seeking broad external input on this strategy and will present it to the Board for review and comment. This meeting also provides an opportunity for the public to offer comment to the Board and NTP staff on the proposed draft strategy. The draft strategy is available on the NTP Web site (*http://ntp-server.niehs.nih.gov,* see What's New, Meeting of the NTP Board of Scientific Counselors) or by contacting the NTP Executive Secretary (contact information below).

Toxicogenomics

With the advent of novel molecular technologies, the NTP is moving into the arena of toxicogenomics, a new scientific field that examines how the entire genome is involved in biological responses of organisms exposed to environmental toxicants. Toxicogenomics studies the effect of toxicants on gene activity and specific proteins produced by genes in response to those toxicants.

In an effort toward centralizing activities in toxicogenomics, the NIEHS/NIH established the National Center for Toxicogenomics (NCT) in September 2000. The NCT's mission is to coordinate a nationwide research effort for the development of a toxicogenomics knowledge base. Additional information about the NCT is available on the NIEHS Web site at *http://www.niehs.nih.gov/nct* or by contacting the NTP Executive Secretary (contact information below). The NTP will describe some of its current efforts to incorporate toxicogenomics into its testing strategies through interactions with the NCT.

NTP Testing Program

Overview of Current Initiatives

The NTP seeks to maintain a balanced research and testing program that provides data addressing a wide variety of issues of importance to public health. Currently the NTP is focusing on several areas that have received inadequate attention in the past: for example, photoactive chemicals, contaminants of finished drinking water, endocrine-disrupting agents, and certain occupational exposures. The NTP is addressing potential safety issues associated with herbal medicines, radiofrequency radiation emissions from cellular telephones, hexavalent chromium, and DNA-based therapies. In general, these initiatives are broad-based and include the investigation of various health-related endpoints. Additional information about some current initiatives is available in the NTP Booklet, Current Directions and Evolving Strategies, available on the NTP Web site (*http://ntp-server.niehs.nih.gov,* select Publications).

ICCEC Recommendations for Substances Nominated for Future NTP Studies

Information about substances nominated to the NTP for toxicology and carcinogenesis studies and the ICCEC's recommendations was published in the **Federal Register** on June 12, 2002 (Vol. 67, No. 113, p. 40329–33). This notice is available on the Web (*http://ntp-server.niehs.nih.gov/htdocs/Liason/ICCECFinal02JuneFR.html*) along with supporting documents for each nomination (*http://ntp-server.niehs.nih.gov/htdocs/liason/BkgrSum02June.html*) or by contacting the NTP Executive Secretary (contact information below). This meeting provides an additional opportunity for the public to provide comment on these nominations and study recommendations to the Board and NTP staff. Comments submitted to the NTP in response to the June 2002 **Federal Register** notice are under consideration and do not need to be resubmitted or readdressed.

Substances recommended for study:

- Abrasive blasting agents—5 different industrial materials used as alternatives to sand.
- 5-Amino-o-cresol—permanent hair dye ingredient.
- tert-Butyl hydroperoxide—high production volume industrial catalyst.
- Chloramine-T and p-Toluenesulfonamide—active ingredient and metabolite of therapeutant used in aquaculture to control bacterial infections.
- Cobalt metal dust—important industrial material linked to lung problems in workers.
- Ephedrine alkaloid dietary supplements—widely used in herbal dietary supplements with numerous reports of adverse effects.
- Ethanone, 1-(1,2,3,4,5,6,7,8-octahydro-2,3,8,8-tetramethyl-2-naphthalenyl)-(Iso-E-Super)—high-production-volume fragrance material.
- Hexafluorosilicic acid and Sodium hexafluorosilicate—primary agents used to fluoridate public drinking water system.
- Ketamine hydrochloride—approved anesthetic drug that causes brain lesions in developing rats.
- Mercury, ((o-carboxyphenyl)thio)ethyl-, sodium salt (Thimerosal)—organomercuryl-based preservative used in vaccines and other biological products.
- Nitrogen trifluoride—cleaning and etching agent in the semiconductor industry.
- Sodium metasilicate—industrial cleaning agent.
- Turpentine—high-production-volume industrial solvent and raw material.
- Welding fumes—variable composition mixture responsible for respiratory and other adverse effects in exposed workers.

Nominations for which no studies are recommended at this time:

- Hexachloro-1,3-butadiene—industrial by-product and persistent environmental contaminant.
- Infrasound—low frequency acoustic energy present at low levels in community and occupational settings.
- Magnesium oxide—high-production-volume chemical with numerous industrial uses.
- Methylolurea—starting material for and impurity in urea-formaldehyde resins.
- 4-Methylquinoline—environmental pollutant structurally related to the rodent carcinogen quinoline.

Public Comment Encouraged

Public input at this meeting is invited and time is set aside for the presentation of public comments on any agenda topic. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes. Persons registering to make oral comments are asked to provide their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any). Each organization is allowed one time slot per agenda topic. To facilitate planning for the meeting, persons interested in providing formal oral comments are asked to notify Dr. Mary Wolfe, NTP Board Executive Secretary, NIEHS, P.O. Box 12233, MD A3–07, Research Triangle Park, NC 27709; telephone: 919–541–0530; and e-mail: (*wolfe@niehs.nih.gov*) by September 10, 2002. Persons registering to make oral comments are asked, if possible, to provide a copy of their statement to the Executive Secretary by September 10th, to enable review by the Board and NTP staff prior to the meeting. Written statements can supplement and may expand the oral presentation. Individuals will also be able to register to give oral public comments on-site at the meeting. However, if registering on-site and reading from written text, please bring 25 copies of the statement for distribution to the Board and NTP staff and to supplement the record.

Persons may also submit written comments in lieu of making oral comments. Written comments should be sent to the Executive Secretary and must be received by September 10th to enable review by the Board and NTP staff prior to the meeting. Persons submitting written comments should include their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any) with the document.

Registration

The NTP Board of Scientific Counselors meeting is open to the public. Attendance at this meeting is limited only by the space available. Due to changes in security policies at the NIEHS, individuals who plan to attend are asked to register with the NTP Executive Secretary (*see* contact information above). The names of those registered will be given to the NIEHS Security Office in order to gain access to the campus. Persons attending who have not pre-registered may be asked to provide pertinent information about the meeting, *i.e.*, title or host of meeting before gaining access to the campus. All visitors (whether or not you are pre-registered) will need to be prepared to show 2 forms of identification (ID), *i.e.*, driver's license and one of the following: company ID, government ID, or university ID. Also, those planning to attend who need special assistance are asked to notify the NTP Executive Secretary in advance of the meeting (*see* contact information above).

Additional Information About Meeting

Prior to the meeting, a copy of the agenda and a roster of the Board's members will be available on the NTP Web site at *http://ntp-server.niehs.nih.gov* and upon request to the Executive Secretary (contact information provided above). Following the meeting, summary minutes will be prepared and available through the NTP Web site and upon request to Central Data Management, NIEHS, P.O. Box 12233, MD E1–02, Research Triangle Park, NC 27709; telephone 919–541–3419; fax 919–541–3687; and email *CDM@niehs.nih.gov.*

NTP Board of Scientific Counselors

The Board is a technical advisory body comprised of scientists from the public and private sectors who provide primary scientific oversight to the overall Program and to the NTP Center for the Evaluation of Risks to Human Reproduction. Specifically, the Board advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the Program for the purposes of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral and neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. The NTP strives for equitable geographic distribution and minority and female representation on the Board. Its members are invited to serve overlapping terms of up to four years and meetings are held once or twice annually for the Board and its two subcommittees (the Report on Carcinogens Subcommittee and the Technical Reports Review Subcommittee).

Dated: August 12, 2002.

Samuel Wilson,

Deputy Director, National Toxicology Program.

Preliminary Agenda—National Toxicology Program (NTP) Board of Scientific Counselors, September 17–18, 2002

Radisson Governors Inn, 1–40 at Davis Drive, Exit 280, Research Triangle Park, North Carolina

September 17, 2002

8:30 a.m. Welcome and Opening Comments

NTP Update

NTP–CERHR Monograph: Format of Draft NTP Brief
- Public Comments

NTP Draft Strategy for Using Genetically Altered Animals in Carcinogen Identification
- Evaluation of Transgenic Models for Use in Carcinogen Identification
- NTP Draft Strategy
- Agency Comments
- Public Comments

11:30 a.m.—Lunch

1 p.m. —NTP Draft Strategy (continued)

Toxicogenomics
- Overview of the National Center for Toxicogenomics (NCT)
- Links between the NCT and NTP
- Public Comments

5 p.m.—Adjourn

September 18, 2002

8:30 a.m.—Welcome and Introductions

NTP Testing Program
- Overview of Current Initiatives
- Testing Recommendations from the Interagency Committee for Chemical Evaluation
- Public Comments

Concept Review

Update on the NTP Technical Reports Review Subcommittee Meeting

Update on the Report on Carcinogens

Public Comments

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Noon—Adjourn

[FR Doc. 02–20921 Filed 8–16–02; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–21]

Privacy Act of 1974, Deletion of a Privacy Act System of Records

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of the deletion of a Privacy Act system of records.

SUMMARY: The Department proposes to delete one system of records from its inventory of records system subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: *Effective Date:* This proposal shall become effective without further notice September 18, 2002, unless comments are received on or before that date which would result in a contrary determination.

Comments Due Date: September 18, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Comments submitted by facsimile (FAX) will not be accepted. A copy of each communication submitted will be available for public inspection and copying between 7:30 and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, Telephone Number (202) 708–2374. (This is not a toll-free number). A telecommunications device for hearing and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services). (This is a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) as amended, notice is given that HUD proposes to delete a system of records identified as Single Family Casualty Damage Files, HUD/DEPT–9. The Department has determined that this system is no longer necessary. Accordingly, HUD/DEPT–9 is deleted from HUD's inventory of records subject to the Privacy Act.

Authority: 5 U.S.C. 552a: 88 Stat. 1896; 342 U.S.C. 3535(d).

Dated: August 13, 2002.

Gloria R. Parker,

Chief Technology Officer.

[FR Doc. 02–20938 Filed 8–16–02; 8:45 am]
BILLING CODE 4210–72–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–1020–PG; G 02–0348]

Meeting Notice for the Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management (BLM), Vale District, Interior.

SUMMARY: The Southeast Oregon Resource Advisory Council (SEORAC) will meet in the conference room at the Comfort Inn, 504 N. Highway 20, Hines, OR 97641, 541–573–3370 from 8 a.m. to 5 p.m., Pacific Time (PT), on Friday, October 18, 2002.

The meeting topics that may be discussed by the Council may include a discussion of issues within southeast Oregon related to Steens Mountain Resource Advisory Council, North Lake Recreation Plan, Burns Steens/Andrews Resource Management Plan, Birch Creek Management Plan, Wildland Fire Board, OHV, Rangeland Assessment, Federal officials' updates, and other matters as may reasonably come before the Council. The entire meeting is open to the public. Information to be distributed to the Council members is requested in written format 10 days prior to the start of the Council meeting. Public comment is scheduled for 11:15 a.m. to 11:45 a.m., Pacific Time on Friday, October 18, 2002.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the SEORAC may be obtained from Peggy Diegan, Management Assistant/Webmaster, Vale District Office, 100 Oregon Street, Vale, OR 97918 (541) 473–3144, or *Peggy_Diegan@or.blm.gov* and/or from the following web site: *<http://www.or.blm.gov/SEOR–RAC>*.

Dated: August 12, 2002.

David R. Henderson,

District Manager.

[FR Doc. 02–20935 Filed 8–16–02; 8:45 am]
BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–PH; GP02–0339]

Notice of Public Meeting, Eastern Washington Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council (RAC), will meet as indicated below.

DATES: The Eastern Washington Resource Advisory Council (EWRAC) will meet on September 17, 2002, at the Spokane District Office, Bureau of Land Management, 1103 North Fancher Road, Spokane, Washington, 99212–1275.

SUPPLEMENTARY INFORMATION: The meeting will start at 9 a.m. and adjourn about 4 p.m.. Topics on the meeting agenda include: Update on Columbia Basin Shrub-Steppe Land Exchange; Development of ground rules for Public Input Process; Review of Proposed Resolution on Energy & Minerals; Status of Incoming RAC members; Future RAC meeting dates.

The entire meeting is open to the public. Information to be distributed to Council members is requested in written format 10 days prior to the Council meeting date. Public comment is scheduled for 11 a.m. to 12 noon.

FOR FURTHER INFORMATION CONTACT: Sandra Gourdin or Kathy Helm, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212, or call (509) 536–1200.

Dated: August 12, 2002.

Gary J. Yeager,

Acting District Manager.

[FR Doc. 02–20948 Filed 8–16–02; 8:45 am]
BILLING CODE 4310–33–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(I)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 to Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 23, 2002, Abbott Laboratories, 1776 North Centennial Drive, McPherson, Kansas 67460–1247, made application by renewal to the Drug Enforcement Administration to be registered as an importer of remifentanil (9739), a basic class of controlled substance listed in Schedule II.

The firm plans to import the remifentanil to manufacture Ultiva for the U.S. market.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 18, 2002.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 F.R. 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 29, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–20999 Filed 8–16–02; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 7, 2002, and published in the **Federal Register** on March 18, 2002, (67 FR 12049), Chemic Laboratories, Inc., 480 Neponset Street, Building 7C, Canton, Massachusetts 02021, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of cocaine (9041), a basic class of controlled substance listed in Schedule II.

The firm plans to bulk manufacture small quantities of cocaine derivative for a customer.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Chemic Laboratories, Inc. to manufacture is consistent with the public interest at this time. DEA has investigated Chemic Laboratories, Inc. to ensure that the company's registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: July 29, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–20995 Filed 8–16–02; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 19, 2002, and published in the **Federal Register** on March 12, 2002, (67 FR 11141), Chiragene, Inc., Technology Center of New Jersey, 661 Highway One, North Brunswick, New Jersey 08902, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N-Ethylamphetamine (1475)	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
4-Methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances to supply their customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Chiragene, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Chiragene, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 29, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–20996 Filed 8–16–02; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 27, 2002, and published in the **Federal Register** on April 10, 2002, (67 FR 17470), Organix Inc., 240 Salem Street, Woburn, Massachusetts 01801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as

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a bulk manufacturer of cocaine (9041), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture a derivative of cocaine in gram quantities for validation of synthetic procedures.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Organix, Inc. to manufacture is consistent with the public interest at this time. DEA has investigated Organix, Inc. to ensure that the company's registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: July 29, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–20998 Filed 8–16–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 29, 2001, and published in the **Federal Register** on April 6, 2001, (66 FR 18309) Ganes Chemicals Inc., which has changed its name to Siegfried (USA), Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2250)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II

The firm plans to manufacture the listed controlled substances for distribution as bulk products to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Siegfried (USA), Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Siegfried (USA), on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 29, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–20997 Filed 8–16–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: reinstatement, with change, of a previously approved collection for which approval has expired, survey of inmates in State and Federal correctional facilities, 2003.

The Department of Justice (DOJ), Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 106, page 38295 on June 3, 2002, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until September 18, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, with Change, of a Previously Approved Collection for which Approval has Expired.

(2) *Title of the Form/Collection:* Survey of Inmates in State and Federal Correctional Facilities, 2003.

(3) *Agency Form Number and the applicable component of the Department sponsoring the collection:* Form: NPS–25 CAPI Instrument; NPS–13 Sampling Questionnaire; and NPS–27, Inmate letter. Corrections Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected Public who will be asked to respond, as well as a brief abstract:* Primary: Individuals. Others: State and Federal governments. The national survey will include an estimated 20,000 personal interviews with inmates held in State and Federal prisons. The survey will be conducted using a CAPI questionnaire, automated data control systems, and sample selection instruments. This is a national survey that will profile State and Federal prison inmates to determine trends in inmate composition, criminal history, drug/alcohol use and treatment, mental health and medical conditions, gun use and crime, and victims of crime. The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics. No other collection series provides these data.

(5) *An estimate of the total number of responses and the amount of time estimated for an average response:* There will be an estimated 295 responses at 1 hour each for the NPS–13; 4,950 hours of prison staff time to escort inmates to/from interview sites; and 20,100 inmate responses at an average of 1 hour each for the NPS–25.

(6) An estimate of the total public burden (in hours) associated with the collection: The estimated total public burden is 25,345 hours.

IF ADDITIONAL INFORMATION IS REQUIRED, CONTACT: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Room 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 12, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–20950 Filed 8–16–02; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–096)]

NASA Advisory Council, Biological and Physical Research Advisory Committee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee.

DATES: Thursday, August 29, 2002, 10 a.m. to 6 p.m.; and Friday, August 30, 2002, 8 a.m. to 12 Noon.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street SW., Washington, DC 20546, Room 9H40.

FOR FURTHER INFORMATION CONTACT: Dr. Bradley Carpenter, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0826.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review Recommendations
—Program Overview
—Division Reports
—Status of International Space Station
—Research Prioritization Task Force
—Education and Outreach Policy
—Review of Committee Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: August 14, 2002.

Sylvia K. Kraemer,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–21011 Filed 8–16–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–097)]

NASA Advisory Council, Biological and Physical Research Advisory Committee Meeting, NASA–NIH Advisory Subcommittee and Life Sciences Advisory Subcommittee; Joint Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee, NASA–NIH Advisory Subcommittee and Life Sciences Advisory Subcommittee; Joint Meeting.

DATES: Wednesday, August 28, 2002, 8 a.m. to 5 p.m.

ADDRESSES: NASA Headquarters, 300 E St., SW., Rm. 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. David Tomko, Code UB, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0220.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Action Status
—NASA Update from the Chief Scientist
—OBPR Associate Administrator Report
—Bioastronautics Research Division Update
—Discussion
—Working Lunch—Science Talk—TBD
—Fundamental Biology Research Division Update
—Flight Programs Report
—STS–107 Science Update
—STS–107 Education and Public Outreach
—Preparation of Committee Findings and Recommendations
—Review of Committee Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: August 14, 2002.

Sylvia K. Kraemer,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–21019 Filed 8–16–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–339]

Virginia Electric and Power Company, North Anna Power Station, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from the requirements of Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Sections 50.44 and 50.46, and Appendix K for Facility Operating License No. NPF–7, issued to Virginia Electric and Power Company (the licensee), for operation of the North Anna Power Station, Unit 2, located in Louisa County, Virginia. As required by 10 CFR 51.21, the NRC is issuing this

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environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would enable the licensee to use one lead test assembly that contains zirconium-based alloys as cladding material for the fuel rods instead of Zircaloy or ZIRLO. This lead test assembly will be used at North Anna, Unit 2 during Cycle 16, subject to the following constraints:

(1) The lead test assembly is not to be irradiated for more than one full operating cycle, and

(1) The lead test assembly shall not exceed the lead rod burnup limit of 75,000 MWD/MTU.

The proposed action is in accordance with the licensee's application for exemption dated February 11, 2002, as supplemented by letter dated May 16, 2002.

The Need for the Proposed Action

The proposed exemption to 10 CFR 50.44, 10 CFR 50.46, and Appendix K to 10 CFR Part 50 is needed because these regulations specifically refer to light-water reactors containing fuel consisting of uranium oxide pellets enclosed in Zircaloy or ZIRLO tubes. Zircaloy and ZIRLO are zirconium-based alloys currently in use as cladding for fuel pellets. The proposed zirconium-based cladding is not the same chemical composition as Zircaloy or ZIRLO, and the licensee wants to test this composition in reactor operation. Since 10 CFR 50.46 and 10 CFR Part 50, Appendix K limit Emergency Core Cooling System (ECCS) calculations to Zircaloy, and 10 CFR 50.44 relates to the generation of hydrogen gas from a metal-water reaction with Zircaloy or ZIRLO, an exemption is required in order to place a lead test assembly in the reactor core.

Environmental Impacts of the Proposed Action

The use of the lead test assembly with the zirconium-based cladding would not affect the ECCS calculations and would have no significant effect on the previous assessment of hydrogen gas generation following a loss-of-coolant accident. The lead test assembly meets the same design bases as the fuel currently used in the reactors. No safety limits would be changed or setpoints altered as a result of the use of these assemblies. The Updated Final Safety Analysis Report analyses are bounding for the lead test assembly as well as the remainder of the core. The advanced zirconium-based cladding alloys have operated at North Anna Power Station through three previous cycles of operation and have performed satisfactorily under these conditions. In addition, the relatively small number of fuel rods involved does not represent a significant increase in the inventory of radioactive material that could be released into the reactor coolant in the event of cladding failure. The only credible consequence of this change would be a failure of the lead test assembly cladding. Even in the case of gross fuel failure, the number of rods involved is less than 1 percent of the core, and thus sufficiently small so that the additional environmental impact would be negligible and bounded by previous assessments. With regard to the potential environmental impacts associated with the transportation of the lead test assembly, the zirconium-based claddings have no impact on previous assessments determined in accordance with the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," published in the **Federal Register** on August 11, 1988 (53 FR 30355), as corrected on August 24, 1988 (53 FR 32322). Thus, the proposed action would not significantly increase the probability or consequences of accidents, no changes would be made in the types or amounts of effluents that may be released off-site, and there would be no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement related to the operation of North Anna Power Station, Unit 2, issued by the Commission in April 1973.

Agencies and Persons Consulted

On July 29, 2002, the staff consulted with Mr. Les Foldesi of the Virginia Department of Radiological Health, regarding the environmental impact of the proposed action. Mr. Foldesi had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 11, 2002, and supplemental letter dated May 16, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 13th day of August 2002.

For the Nuclear Regulatory Commission.

John A. Nakoski,

Chief, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–20972 Filed 8–16–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Solicitation of Comments on Draft NRC Inspection Manual Chapter 2600; Fuel Cycle Facility Operational Safety and Safeguards Inspection Program

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of opportunity for comment.

SUMMARY: The Division of Fuel Cycle Safety and Safeguards of the NRC has issued a draft revision to Inspection Manual Chapter (MC) 2600, "Fuel Cycle Facility Operational Safety and Safeguards Inspection Program" for stakeholder review and comment.

The purpose of the revision is to provide updated program administrative guidance for the staff, incorporate current practices and activities into the oversight program while deleting closed or out-of-date procedures, and increase emphases on risk-significant, performance-based inspection activities.

The availability of this document is the latest step in an NRC effort to improve effectiveness of the fuel cycle oversight program and facilitate open communications with stakeholders.

Opportunity to Comment: To provide NRC with stakeholder views on the proposed changes to the oversight program used to evaluate the safety and safeguards performance of NRC fuel cycle licensees.

DATES: Submit written comments by September 18, 2002. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: In accordance with 10 CFR 2.790 of NRC's "Rules of Practice," a copy of this draft MC 2600 is available electronically (accession number ML022200374) for public inspection in the NRC's Agency-Wide Document Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. A free single copy of the draft revision to MC 2600 may be obtained by writing to the Inspection Section, Special Projects and Inspection Branch (MS T8H9) Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, Maryland 20852. Comments on this document should be sent to the Chief, Rules Review and Directives Branch, ADM, U.S. NRC, Washington, DC 20555, or may be hand delivered to 11545 Rockville Pike, Rockville, Maryland 20852, between 7:45 a.m.–4:15 p.m. on Federal work days. Comments should be legible and reproducible, and include the name, affiliation (if any) and address of the submitter. All comments received by the Commission will be made available for public inspection at the Commission's public document room (PDR). Draft NRC IMC 2600 is available for inspection and copying for a fee at the NRC PDR, room 1 F21 at 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: William M. Troskoski, Inspection Section, Special Projects and Inspection Branch (MS T8H9) Division of Fuel Cycle Safety and Safeguards, (301) 415–8076 or by electronic mail, *WMT@NRC.gov*.

Dated at Rockville, Maryland, this 12th day of August 2002.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Deputy Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–20973 Filed 8–16–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Performance Measurement Advisory Council

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Federal Advisory Committee meeting.

OPEN MEETING NOTICE: The Performance Measurement Advisory Council ("PMAC") will meet on Friday, September 13, 2002 from 9:00 a.m. to 3:00 p.m. Eastern Time. Location for the meeting will be the Truman Room of the White House Conference Center, 726 Jackson Place, Washington, DC. The meeting is open to the public and written statements may be filed with the advisory committee. It is recommended that members of the public wishing to attend bring photo identification. Due to limited availability of seating, members of the public will be admitted on a first-come, first-served basis.

The purpose of the meeting is to provide independent expert advice and recommendations to the Office of Management and Budget regarding measures of program performance and the use of such measures in making management and budget decisions. The agenda and topics to be discussed include a review of options for the presentation of program performance information in the budget, and review of the application of the Program Assessment Ratings Tool. An agenda may be obtained prior to the meeting at *http://www.whitehouse.gov/omb/budintegration/index.html*. Additional information, including information for members of the public with disabilities, may be obtained by calling Mr. Thomas M. Reilly, PMAC Designated Federal Officer, (202) 395–4926.

Dated: August 13, 2002.

Thomas M. Reilly,

PMAC Designated Federal Officer.

[FR Doc. 02–21001 Filed 8–16–02; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25697; File No. 812–12765]

Preferred Life Insurance Company of New York, et al; Notice of Application

August 12, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an order under Section 6(c) of the Investment Company Act of 1940 (the "Act") granting exemptions from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to permit the recapture of a bonus credit made under certain deferred variable annuity contracts.

APPLICANTS: Preferred Life Insurance Company of New York ("Preferred Life" or the "Company"), Preferred Life Variable Account C ("Account"), and USAllianz Investor Services, LLC ("USAZ") (collectively, "Applicants").

SUMMARY OF APPLICATION: Applicants seek an order of the Commission exempting them with respect to the support of the variable annuity contracts issued by the Account described herein ("Contracts"), or and also variable annuity contracts issued in the future ("Future Contracts") that are similar in all material respects to the Contracts and are issued by the Account ("Future Account Contracts"), or by any other separate account of the Company and its successors in interest ("Future Accounts"), and certain National Association of Securities Dealers, Inc. ("NASD") member broker-dealers which may, in the future, act as principal underwriter of such Contracts or Future Contracts from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, pursuant to Section 6(c) of the Act, to

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the extent necessary to permit the recapture of a bonus credit where the owner exercises his or her free look option.

FILING DATE: The application was filed on January 22, 2002 and amended on August 6, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 5, 2002, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Stewart D. Gregg, Esq., Allianz Life Insurance Company of North America, 5701 Golden Hills Drive, Minneapolis, MN 55416.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Counsel, at (202) 942–0552, or Zandra Y. Bailes, Branch Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 ((202) 942–8090).

Applicants' Representations

1. Preferred Life is a stock life insurance company that is principally engaged in the sale of life insurance and annuity products, and is licensed in six states, including the State of New York. Preferred Life is a wholly-owned subsidiary of Allianz Life Insurance Company of North America ("Allianz Life"), a Minnesota stock life insurance company which both issues life insurance and annuity products and acts as a holding company for various financial services companies. All of the stock of Allianz Life is indirectly owned by Allianz Versicherungs-AG Holding, a German holding company.

2. The Account is comprised of subaccounts established to receive and invest net purchase payments under variable annuity contracts issued by the Company and the Account (the "Subaccounts"). The income, gains and losses, realized or unrealized, from the assets allocated to each Subaccount will be credited to or charged against those assets without regard to the income, gains or losses of the Company or the other Subaccounts. Applicants represent that the Account meets the definition of a "separate account" in Rule 0–1(e) under the Act.

3. The Board of Directors of Preferred Life established the Account on February 26, 1988. The Account is registered under the Act as a unit investment trust (File No. 811–05716). The assets of the Account support flexible premium variable annuity contracts issued by the Company and the Account, and interests in the Account offered through such contracts have been registered under the Securities Act of 1933 ("1933 Act") on Form N–4 (File No. 333–19699). In addition, a Form N–4 registration statement has been filed to register the interests in the Account offered through the Contracts (File No. 333–75718).

4. USAZ, an affiliate of the Company, is the principal underwriter and the distributor of the variable annuity contracts issued by the Company and the Account. USAZ is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, as amended, (the "1934 Act"), and is a member of the NASD. USAZ may enter into written sales agreements with various broker-dealers to aid in the distribution of the Contracts for the Account.

5. Each Subaccount will invest exclusively in a designated series of shares, representing an interest in a particular portfolio of one or more designated management investment companies of the series type ("Funds"). Applicants reserve the right to designate the shares of another portfolio of the Funds or of other management investment companies of the series type ("Other Funds") as the exclusive investment vehicle for each new Subaccount that may be created in the future. Subject to Commission approval under Section 26(c) of the Act, Applicants also reserve the right to substitute the shares of another portfolio of the Funds or of Other Funds for the portfolio previously designated as the exclusive investment vehicle for each Subaccount.

6. The Contracts are flexible premium variable annuity contracts issued by the Company through its separate account. The Contracts provide for accumulation of values on a variable basis, fixed basis, or both during the accumulation period, and may provide settlement or annuity payment options on a variable basis, fixed basis, or both. The Contracts may be purchased on a non-qualified tax basis. The Contracts may also be purchased and used in connection with plans qualifying for favorable Federal income tax treatment.

7. The owner determines in the application or transmittal form for a Contract how the net premium payments will be allocated among the Subaccounts and the Fixed Account. The value of a contract ("Contract Value") will vary with the investment performance of the Subaccounts selected, and the owner bears the entire risk for amounts allocated to a Subaccount.

8. An owner may return his or her Contract for a refund during the free look period. An owner will generally have 10 days to return his or her Contract. Preferred Life will generally return the Contract value (minus any bonus credit) to the owner (the "free look right") in the event of the exercise of the free look right.

9. An owner may surrender the Contract or make a partial withdrawal from the Contract value during the Accumulation Period. If an owner surrenders a Contract or takes a partial withdrawal, the Company may deduct a withdrawal charge. An owner generally may be permitted to withdraw certain limited amounts free of withdrawal charge.

10. For each premium payment an owner makes, the Company may add a bonus credit equal to six percent of the premium payment (less prior partial withdrawals) to the owner's Contract value. The Company does not assess a specific charge for the bonus credit. The Company expects to use a portion of the mortality and expense risk charge, and/or the surrender charge to pay for the bonus credit.

11. The owner may surrender the Contract or make a partial withdrawal from the Contract value during the accumulation period. If an owner surrenders a Contract or takes partial withdrawal, the Company may deduct a withdrawal charge to compensate it for expenses relating to sales, including commissions to registered representatives and other promotional expenses. An owner generally may be permitted to withdraw certain limited amounts free of withdrawal charge. The following chart shows the withdrawal charges that apply to the Contracts:

WITHDRAWAL CHARGE

[As a percentage of premium payments]

Completed years since receipt of premium	Withdrawal charge (%)
0–2	8.5
3	8
4	7
5	6
6	5
7	4
8	3
9+	0

12. The Company deducts various fees and charges, which may include a daily mortality and expense risk fee of 1.90% of the average daily Contract Value, which is increased to 2.10% if the Enhanced Death Benefit is selected; an annual contract maintenance charge equal to $30, which is currently waived if the Contract Value of a contract is at least $100,000; premium taxes; and withdrawal charges, which start at 8.5% and decline to 0% for a purchase payment after nine years from the date of receipt of the purchase payment. Asset-based charges are assessed against the entire amounts held in the Account, including the bonus credit amount, during the time the bonus credit has not vested. During such period, the aggregate asset-based charges assessed against an owner's Contract Value will be higher than those that would be charged if the owner's Contract Value did not include the bonus credit.

13. Applicants seek exemption pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extend necessary to permit Preferred Life to issue Contracts that permit recapture of bonus credits when an owner exercises the "free-look" option available under the Contract.

Legal Analysis

1. Section 6(c) authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Because the provisions described below may be inconsistent with a recapture of a bonus credit, Applicant requests exemptions for the Contracts described herein, and for Future Contracts that are substantially similar in all material respects to the Contracts described herein, from Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act, and Rule 22c–1 thereunder, pursuant to Section 6(c), to the extent necessary to recapture the bonus credit applied to a premium payment in the instance described above. Applicants seek exemptions therefrom in order to avoid any questions concerning the Contracts' compliance with the Act and rules thereunder. Applicants assert that the recapture of the bonus credit is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the contract and provisions of the Act.

2. Section 27(i) provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, nor to the sponsoring insurance company and principal underwriter of such account, except as provided for in Section 27(i)(2)(A). Section 27(i)(2)(A) of the Act, in pertinent part, makes it unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract unless such contract is a redeemable security. Section 2(a)(32) of the Act defines "redeemable security" as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

3. To the extent that the bonus credit recapture might be seen as a discount from the net asset value, or might be viewed as resulting in the payment to an owner of less than the proportionate share of the issuer's net assets, the bonus credit recapture would trigger the need for relief absent some exemption from the Act. Rule 6c–8 provides, in relevant part, that a registered separate account and any depositor of such account, shall be exempt from Section 2(a)(32), 22(c), 27(c)(1), 27(c)(2), and 27(d) of the Act and Rule 22c–1 thereunder to the extent necessary to permit them to impose a deferred sales load on any variable annuity contract participating in such account. However, the bonus credit recapture is not a sales load, but a recapture of a bonus credit the Company previously applied to an owner's premium payments.

4. Applicants submit that the recapture of a bonus credit does not violate Section 2(a)(32) of the Act. Applicants submit that the bonus recapture provisions in the Contracts do not deprive the owner of his or her proportionate share of the issuer's current net assets. An owner's right to the bonus credit will vest after the free look period. Until that time, the Company retains the right and interest in the dollar amount of any unvested bonus credit amount. Applicants argue that when the Company recaptures a bonus credit that is not vested, such owner would not be deprived of a proportionate share of the Account's assets (the issuer's current net assets) in violation of Section 2(a)(32). Therefore, according to Applicants, such recapture does not reduce the amount of each Account's current net assets an owner would otherwise be entitled to receive. To avoid uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Sections 2(a)(32) and 27(i)(2)(A) to the extent deemed necessary to permit them to recapture the bonus credit under the Contracts and Future Contracts.

5. Section 22(c) of the Act states that the Commission may make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same ends as contemplated by Section 22(a). Rule 22c–1, promulgated under Section 22(c) of the Act, in pertinent part, prohibits a registered investment company issuing a redeemable security (and a person designated in such issuer's prospectus as authorized to consummate transactions in such security, and a principal underwriter of, or dealer in, any such security) from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security.

6. The Company's addition of the bonus credit might arguably be viewed as resulting in an owner purchasing a redeemable security for a price below the current net asset value. Further, by recapturing the bonus credit, the Company might arguably be redeeming a redeemable security for a price other than one based on the current net asset value of the Account. Applicants contend that these are not correct interpretations or applications of these statutory and regulatory provisions. Applicants contend that the bonus credit does not violate Section 22(c) and Rule 22c–1. In support of this contention, Applicants note that an owner's interest in his or her Contract value or in an Account would always be offered at a price next determined on the basis of net asset value and that the granting of a bonus credit does not reflect a reduction of that price. Instead, the Company will purchase with its own general account assets an interest in an Account equal to the bonus credit. Because the bonus credit will be paid out of Company assets, not Account

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assets, Applicants assert that no dilution will occur as a result of the credit.

7. Applicants contend that the recapture of the bonus credit does not involve either of the problems that the Commission intended to eliminate or reduce with Rule 22c–1. The Commission's stated purpose in adopting Rule 22c–1 was to avoid or minimize (1) dilution of the interests of other security holders and (2) speculative trading practices that are unfair to such holders. Applicants claim that the proposed recapture of the bonus credit does not pose such threat of dilution and that the bonus credit recapture will not alter an owner's net asset value. The Company will determine an owner's net cash surrender value under the Contract in accordance with Rule 22c–1 on a basis next computed after receipt of an owner's request for surrender (likewise, the calculation of death benefits and annuity payment amounts will be in full compliance with the forward pricing requirement of Rule 22c–1). The amount recaptured will equal the amount of the bonus credit that the Company paid out of its general account assets.[1] Although an owner will retain any investment gain attributable to the bonus credit, the Company will determine the amount of such gain on the basis of the current net asset value of the Subaccount. Thus, Applicants argue, no dilution will occur upon the recapture of the bonus credit. In addition, Applicants assert that the credit recapture does not create the opportunity for speculative trading.

8. Applicants contend that Rule 22c–1 and Section 22(c) should have no application to the bonus credit, as neither of the harms that Rule 22c–1 was designed to address are found in the recapture of the bonus credit. However, to avoid uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the bonus credit under the Contracts and Future Contracts.

9. Applicants submit that the Commission should grant the exemptions requested in this Application, even if the bonus credit described herein conflicts with Sections 2(a)(32), 22(c), or 27(i)(2)(A) of the Act or Rule 22c–1 thereunder. According to Applicants, the bonus credit provision is generally very favorable to the owners. While there may be a downside in a declining market where an owner would incur losses attributable to the credit, any earnings on the bonus credit in an appreciating market would vest immediately with an owner. Applicants assert that the bonus credit recapture provisions do not diminish the overall value of the bonus credit.

10. Applicants state that the Company's recapture of the bonus credit is designed to prevent anti-selection against the Company. The risk of anti-selection would be that an owner could make significant premium payments into the Contract solely in order to receive a quick profit from the credit. The Company generally protects itself from this kind of anti-selection, and recovers its costs in situations where an owner withdraws his or her money early in the life of a Contract, by imposing a withdrawal charge of up to 8.5%. However, where an owner withdraws his money pursuant to a "free-look" provision, the Company generally does not apply this charge. Applicants state that the Company seeks to recapture the bonus credit (which is less than the withdrawal charge under the Contract) only in the circumstance where it does not apply the withdrawal charge.

11. The Applicants also contend that it would be inherently unfair to allow an owner exercising the free-look privilege in the Contract to retain the bonus credit when returning the Contract for a refund after a period of only a few days (usually 10 or less). If the Company could not recapture the bonus credit, individuals might purchase a Contract with no intention of retaining it, and simply return it for a quick profit. By recapturing the bonus credit, the Company will prevent such individuals from doing so.

12. The Applicants submit that the bonus credit involves none of the abuses to which provisions of the Act and the rules thereunder are directed. The owner will always retain the investment experience attributable to the bonus credit, and will retain the principal amount in all cases except under the one circumstance described herein. Further, the Company should be able to recapture such bonus credit to protect itself from investors wishing to use the Contract as a vehicle for a quick profit at the Company's expense, and to enable the Company to limit potential losses associated with such bonus credit.

13. Applicants request exemptions from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit the Applicant to recapture the bonus credit applied to a premium payment under the Contracts and Future Contracts in the circumstance described above.

14. Applicants also seek class relief with respect to Future Underwriters, Future Accounts and Future Contracts. Applicants assert that additional requests for exemptive relief would present no issues under the Act not already addressed herein. Applicants state that if the Applicant were to repeatedly seek exemptive relief on behalf of Future Underwriters, Future Accounts and/or Future Contracts with respect to the same issues addressed herein, investors would not receive additional protection or benefit, and investors and the Applicants could be disadvantaged by increased costs from preparing such additional requests for relief. Applicants argue that the requested class relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for the Company or its affiliates to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Elimination of the delay and the expense of repeatedly seeking exemptive relief would, Applicants opine, enhance each Applicant's ability to effectively take advantage of business opportunities as such opportunities arise.

For the reasons set forth above, Applicants believe that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and consistent with and supported by Commission precedent.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20974 Filed 8–16–02; 8:45 am]

BILLING CODE 8010–01–P

[1] As noted above, asset-based charges applicable to the Account will be assessed against the entire amounts held in the Account, including the bonus credit amount. Applicants state that this is because it is not administratively feasible to track the bonus credit in the Account after the Company applies the credit.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46340; File No. SR–DTC–2002–10]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to an Enhancement to the New York Window Service Allowing Participants To Custody Promissory Notes at DTC

August 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 16, 2002, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change provides an enhancement to the New York Window service[2] of DTC, which is part of DTC's Custody service.[3] The enhancement allows DTC participants to custody promissory notes at DTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enhance DTC's New York Window service, which is part of DTC's Custody service. Earlier this year, DTC filed a rule change that permitted the deposit of certain instruments with DTC's Custody service in sealed envelopes ("Sealed Envelope Service").[5]

DTC has been informed by some of its participants that it is customary in the industry to safekeep promissory notes outside of sealed envelopes and that there is a high volume of promissory notes kept in participants' vaults. These participants would like to have the option of depositing promissory notes either in sealed envelopes or outside of sealed envelopes in the New York Window service. This will expand participants' use of the Custody service, which supports the industry's goal of immobilization of instruments. DTC will apply the liability and indemnity standard applicable to the Sealed Envelope Service to promissory notes deposited outside of sealed envelopes.

DTC will apply its current Custody fees to deposits of promissory notes. Those fees are a long position fee of $.56 per month per item, a deposit fee of $4.86 per item, and a withdrawal fee of $16.91 per item.

The proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder because it supports the securities industry goal of immobilization. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because the operation of the New York Window service, which is part of the Custody service as modified by the proposed rule change, will be similar to the current operation of the New York Window and Custody services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from DTC's participants have not been solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(4)[7] promulgated thereunder because the proposal effects a change in an existing service of DTC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the DTC. All submissions should refer to the File No. SR–DTC–2002–10 and should be submitted by September 9, 2002.

[1] 15 U.S.C. 78s(b)(1).

[2] For additional information on DTC's New York Window service, see Securities Exchange Act Release No. 40179 (July 8, 1998), 63 FR 30543 [File No. SR–DTC–98–9].

[3] For additional information on DTC's Custody service, see Securities Exchange Act Release No. 37314 (June 14, 1996), 61 FR 29158 [File No. SR–DTC–96–8].

[4] The Commission has modified parts of these statements.

[5] Securities Exchange Act Release No. 34–46018 (June 3, 2002), 67 FR 39454 [File No. DTC–2002–03]

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(4).

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For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20978 Filed 8–16–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46338; File No. SR–DTC–2002–09]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Revising the Fee Schedule

August 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 1, 2002, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of revisions to the fee schedule of DTC for certain of its existing services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule filing is to revise the fee schedules for some of DTC's services. DTC expects to implement the fee changes described in (1) and (2) below as of July 1, 2002, and the fee changes described in (3) below as of November 1, 2002. Services affected and changes in fees are as follows:

(1) *DTC Custody Service:* This service enables participants of DTC to outsource the safekeeping and processing physical securities not eligible for regular depository services due to transfer restrictions or other factors.

DTC is reducing the Custody Reorganization/Redemption deposit fee from a current fee of $101.50 to $65.00. The Custody Reorganization research fee, used when DTC staff is reviewing the reorganization activity for the first time, is also being lowered from $125.61 to $85.00. Custody Reorganization/Redemption Deposits that are rejected by DTC staff prior to their submission to the transfer agent will now be assessed the standard reject fee of $37.93. Previously, no fee had been assessed.

(2) *Draft Shipment Control List ("SCL") Payments:* These payments represent the fees paid to transfer agents to effect the reregistration of a select number of securities (generally referred to as fee-bearing issues). Historically, participants have paid fixed "blended" rates based upon an actual fee threshold for standard deposit or withdrawal-by-transfer.[3]

DTC is replacing the "blended" rate algorithm with a direct charge back for the actual expense as incurred for standard deposit and withdrawal activity. DTC will also be instituting a new $1.00 transaction fee to fully recover the expense associated with the draft processing, bank charges, and handling costs for all reregistration activities in these securities.

(3) *Government Securities:* This process has been redesigned to accommodate the changes directed by the Federal Reserve Bank of New York ("FRBNY") for fail tracking, repo tracking, and interim accounting. DTC maintains a free-of-payment interface with the Federal Reserve's book-entry system that enables participants to hold securities positions of U.S. government securities in their DTC accounts. Recently DTC has replaced the manual deposit and withdrawal process with an automated securities link with FRBNY via a new Fed Book-Entry Deliver Order process.

To recover the development, implementation, and processing costs, as well as the Fed fees associated with each transaction, DTC is revising these fees. The deliver order fee for government securities will be set at $2.25. In addition to the transaction charge, this fee recovers the $0.70 fee surcharged by the Fed. Present fees for deliver orders are $0.44 to the deliverer and $0.26 to the receiver. Monthly long position fees for government securities will be set at $1.00, helping to offset a $0.45 Fed imposed fee. Present long position fees are $0.35.

DTC believes that the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder because it is consistent with DTC's longstanding policy to set service fees at a level of full cost recovery along its different product lines.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes fees to be imposed by DTC, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[4] and rule 19b–4(f)(2).[5] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–2002–09 and should be submitted by September 9, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20980 Filed 8–16–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46345; File No. SR–NASD–2002–105]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Increase the Term of Office for Members of the Nasdaq Listing and Hearing Review Council From Two to Three Years, and to Increase the Number of Nasdaq Listing and Hearing Review Council Classes

August 13, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 2, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(3) thereunder[4] as being concerned solely with the administration of the self-regulatory organization, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to increase the term of office for members of the Nasdaq Listing and Hearing Review Council ("Listing Council") from two to three years, and to increase the number of Listing Council classes from two to three. The text of the proposed rule change is below. Proposed new language is in italics. Proposed deleted text is in brackets.

BY–LAWS OF THE NASDAQ STOCK MARKET, INC.

* * * * *

ARTICLE V

NASDAQ LISTING AND HEARING REVIEW COUNCIL

* * * * *

Term of Office

Sec. 5.4 (a) *Beginning in January 2003,* [E]except as otherwise provided in this Article, each Nasdaq Listing and Hearing Review Council member shall hold office for a term of *three* [two] years or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason. *Prior to January 2003, the term of office for each Nasdaq Listing and Hearing Review Council member shall be two years.*

(b) The Nasdaq Listing and Hearing Review Council shall be divided into *three* [two] classes. The term of office of those of the first class shall expire in January *2004* [1999], [and] the term of office of those of the second class shall expire *in January 2005,* [one year thereafter] *and the term of office of those of the third class shall expire in January 2006.* Beginning in January *2003* [1999], members shall be appointed for a term of *three* [two] years to replace those whose terms expire.

(c) [Beginning in 1999,] [n]*No* member may serve more than two consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve up to two consecutive terms following the expiration of such member's initial term.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to increase the term of office for members of the Listing Council, and to increase the number of Listing Council classes. The Listing Council, which consists of between eight and 18 members, considers and makes recommendations to the Nasdaq Board on policy and rule changes relating to issuer listings. In addition, the Listing Council, to the extent of its delegated authority, functions as the appellate forum for staff adjudicated determinations related to compliance with applicable listing requirements.

Currently, members of the Listing Council hold office for a term of two years and may serve no more than two consecutive terms. Nasdaq proposes to extend members' terms to three years in order to provide greater continuity to the Listing Council. Specifically, the increase in the length of members' terms will allow the Listing Council to be divided into three classes rather than the current two classes. By dividing the Listing Council into three classes, the number of members that must be selected and trained each time a new class is appointed will be significantly reduced.

Nasdaq proposes to implement the proposed rule change by extending the second term of most current Listing Council members from two to three years. Currently, the Listing Council consists of 18 members. The first class is composed of eight members. Five of these members are currently serving their second consecutive term, which is scheduled to expire in January 2003 ("Group 1"). The remaining three members of the first class are currently

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[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] For deposits, when a transfer agent fee was $20.00 or less, DTC would bill participants $13.00; if the fee was greater than $20.00, DTC would charge the participant $22.00. For withdrawals, when a transfer agent fee was $20.00 or less, DTC would bill $22.00; if the fee was greater than $22.00, DTC would charge the participant $33.00.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(3).

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serving their first term and their second term is scheduled to expire in January 2005 ("Group 2"). The second class is also composed of eight members. All of the members of the second class are serving their second consecutive term, which is scheduled to expire in January 2004 ("Group 3"). The remaining two members of the Listing Council were appointed by the Board of Directors of Nasdaq earlier this year, one in May 2002 and the other in July 2002. Pursuant to Section 5.4(c) of the By-Laws of The Nasdaq Stock Market, these members' initial term will expire in January 2003 and they will then be eligible to serve two consecutive terms.

By extending the second term of most current members to three years, Nasdaq will be able to efficiently divide the Listing Council into three classes. Under this plan, the new first class will be composed of Group 1 and the second term of the members in this class will expire in January 2004. The new second class will be composed of Group 3 and the second term of the members in this class will expire in January 2005. Lastly, the new third class will be composed of Group 2 and the second term of the members in this class will expire in January 2006. The two remaining Listing Council members that were appointed earlier this year will be part of the new third class and they will be eligible to serve two three-year terms. Thus, these members' first term will expire in January 2006 and their second term will expire in January 2009.[5]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[6] in general and with Section 15A(b)(6) of the Act,[7] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Specifically, Nasdaq believes the proposed rule change will provide greater continuity to the Listing Council, thereby allowing it to more efficiently address listing and policy matters that often involve investor protection issues.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(3) of Rule 19b-4 thereunder,[9] because it is concerned solely with the administration of the Association. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–2002–105 and should be submitted by September 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20975 Filed 8–16–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46343; File No. SR–NASD–2002–91]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Voluntary Participation by National Securities Exchanges in the Nasdaq Order Collection Facility, Commonly Known as "SuperMontage"

August 13, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The proposed rule change, which Nasdaq filed pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] would clarify the terms and conditions upon which Nasdaq will grant access to SuperMontage to national securities exchanges that trade Nasdaq-listed securities on an unlisted trading privileges basis ("UTP Exchanges"). Nasdaq will make these rule changes effective upon the launch of SuperMontage.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to NASD Rule 4710 regarding voluntary participation by national securities exchanges in the Nasdaq Order Collection Facility, commonly known as "SuperMontage." The proposed rule change would clarify the terms and conditions upon which Nasdaq will grant access to SuperMontage to UTP Exchanges.

Below is the text of the proposed rule change to the SuperMontage rules. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

4710. Participant Obligations in NNMS

(a) No Change.

(b) Non-Directed Orders.

(1) General Provisions—A Quoting Market Participant in an NNMS Security shall be subject to the following requirements for Non-Directed Orders:

(A) No Change.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant in queue to receive an order is (based on the algorithm selected by the entering participant, as described in subparagraph (b)(B)(i)–(iii) of this rule), and shall deliver an execution to Quoting Market Participants that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system[; provided however, that the system always shall deliver an order (in lieu of an execution) to the Quoting Market Participant next in queue when the participant that entered the Non-Directed Order into the system is a UTP Exchange that does not provide automatic execution against its Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms]. Non-Directed Orders entered into the NNMS system shall be delivered to or automatically executed against Quoting Market Participants' Displayed Quotes/Orders and Reserve Size in strict price/time priority, as described in the algorithm contained in subparagraph (b)(B)(i) of this rule. Alternatively, an NNMS Market Participant can designate that its Non-Directed Orders be executed based on a price/time priority that considers ECN quote-access fees, as described in subparagraphs (b)(B)(ii) of this rule, or executed based on price/size/time priority, as described in subparagraph (b)(B)(iii) of this rule.

(i)–(iv) No Change.

(C) No Change.

(D) No Change.

(2) No Change.

(c)–(e) No Change.

(f) UTP Exchanges.

[Participation in the NNMS by UTP Exchanges is voluntary. If a UTP Exchange elects to participate in the system, Nasdaq shall endeavor to provide fair and equivalent access to the Nasdaq market for UTP Exchanges, as a UTP Exchange provides to its market for Nasdaq Quoting Market Participants and NNMS Order Entry Firms. The following provisions shall apply to UTP Exchanges that choose to participate in the NNMS:]

Participation in the NNMS by UTP Exchanges is voluntary. If a UTP Exchange does not participate in the NNMS System, the UTP Exchange's quote will not be accessed through the NNMS, and the NNMS will not include the UTP Exchange's quotation for order processing and execution purposes.

A UTP Exchange may voluntarily participate in the NNMS System if it executes a Nasdaq Workstation Subscriber Agreement, as amended, for UTP Exchanges, and complies with the terms of this subparagraph (f) of this rule. The terms and conditions of such access and participation, including available functionality and applicable rules and fees, shall be set forth in and governed by the Nasdaq Workstation Subscriber Agreement, as amended for UTP Exchanges. The Nasdaq Workstation Subscriber Agreement, as amended for UTP Exchanges may expand but shall not contract the rights and obligations set forth in these rules. Access to UTP Exchanges may be made available on terms that differ from the terms applicable to members but may not unreasonably discriminate among similarly-situated UTP Exchanges. The following provisions shall apply to UTP Exchanges that choose to participate in the NNMS

(1) Order Entry—UTP Exchanges that elect to participate in the system shall be permitted to enter Directed and Non-Directed Orders into the system subject to the conditions and requirements of Rules 4706. Directed and Non-Directed Orders entered by UTP Exchanges shall be processed (unless otherwise specified) as described subparagraphs (b) and (c) of this rule.

(2) Display of UTP Exchange Quotes/Orders in Nasdaq.

(A) UTP Exchange Principal Orders/Quotes—UTP Exchanges that elect to participate in the system shall [be permitted to] transmit to the NNMS a single bid Quote/Order and a single offer Quote/Order. Upon transmission of the Quote/Order to Nasdaq, the system shall time stamp the Quote/Order, which time stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders. The NNMS shall display the best bid and best offer Quote/Order transmitted to Nasdaq by a UTP Exchange in the Nasdaq Quotation Montage under the MMID for the UTP Exchange, and shall also display such Quote/Order in the Nasdaq Order Display Facility as part of the aggregate trading interest when the UTP Exchange's best bid/best offer Quote/Order falls within the best five price levels in Nasdaq on either side of the market.

(B) UTP Exchange Agency Quotes/Orders.

(i) A UTP Exchange that elects to participate in the system may transmit to the NNMS Quotes/Orders at a single as well as multiple price levels that meet the following requirements: are not for the benefit of a broker and/or dealer that is with respect to the UTP Exchange a registered or designated market maker, dealer or specialist in the security at issue; and are designated as Non-Attributable Quotes/Orders ("UTP Agency Order/Quote").

(ii) Upon transmission of a UTP Agency Quote/Order to Nasdaq, the system shall time stamp the order, which time stamp shall determine the ranking of these Quote/Order for purposes of processing Non-Directed Orders, as described in subparagraph (b) of this rule. A UTP Agency Quote/Order shall not be displayed in the Nasdaq Quotation Montage under the MMID for the UTP Exchange. Rather, UTP Agency Quotes/Orders shall be reflected in the Nasdaq Order Display Facility and Nasdaq Quotation Montage in the same manner in which Non-Attributable Quotes/Orders from Nasdaq Quoting Market Participants are reflected in Nasdaq, as described in Rule 4707(b)(2).

(3) Non-Directed Order Processing—[(a)] UTP Exchanges that elect to participate in the system [and that agree to] *shall be required to* provide automatic execution against their Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms, shall accept an execution of an order up to the size of the UTP Exchange's displayed Quote/Order, and shall have Non-Directed Orders they enter into the system processed as described in subparagraph (b) of this rule.

[(b) UTP Exchanges that elect to participate in the system but that do not provide automatic execution against their Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms, shall accept the delivery of an order up to the size of the UTP Exchange's Displayed Quote/Order, and shall have Non-Directed Orders they enter into the system processed as described in subparagraph (b) of this rule. If such a UTP Exchange declines

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[5] Nasdaq considers these two members to be part of the new third class as their service on the Listing Council will end at the expiration of their first term in January 2006 unless they are reappointed for a second term.

[6] 15 U.S.C. 78o–3.

[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(3).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

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or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Quote/Order that is at a price inferior to the previous price, or if such a UTP Exchange fails to respond in any manner within 30 seconds of order delivery, the NNMS will send the order (or remaining portion thereof) back into the system for delivery to the next Quoting Market Participant in queue. The system will then move the side of such UTP Exchange's Quote/Order to which the declined or partially-filled order was delivered, to the lowest bid or highest offer price in Nasdaq, at a size of 100 shares.)

(4) Directed Order Processing—UTP Exchanges that elect to participate in the system shall participate in the Directed Order processing as described in subparagraph (c) of this rule.

(5) Decrementation—UTP Exchanges shall be subject to the decrementation procedures described in subparagraph (b) of this rule.

(6) Scope of Rules—Nothing in these rules shall apply to UTP Exchanges that elect not to participate in the system.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq currently anticipates that on July 29, 2002 it will begin operating SuperMontage, a proprietary automatic execution and order delivery system that will serve as a single point of entry into the Nasdaq market. As an independent market, Nasdaq is not obligated to provide UTP Exchanges with access to any of Nasdaq's proprietary systems. Therefore, subject to SEC approval where necessary, Nasdaq is entitled to condition the manner in which it will voluntarily make its proprietary systems, including SuperMontage, available to UTP Exchanges that choose to use them. Likewise, participation in SuperMontage by an independent UTP Exchange is a voluntary action by that exchange. Therefore, each UTP Exchange can effectively negotiate at arms-length the terms, if any, according to which it will voluntarily participate in SuperMontage. Based upon these precepts, Nasdaq is modifying three aspects of its approved rules governing UTP Exchanges' voluntary participation in SuperMontage.

1. SuperMontage Will Not Access the Quotations of UTP Exchanges That Choose Not To Participate in SuperMontage

Nasdaq is permanently extending to SuperMontage a pilot rule, which specifies that if a UTP Exchange elects not to participate in SuperSOES,[5] SuperSOES will not include the UTP Exchange's quotation for order processing and execution purposes. The pilot rule first became effective, on October 31, 2001, and the pilot rule was extended on March 1, 2002 and May 31, 2002.[6] The language implementing this restriction is set forth in NASD Rule 4710(f) above, and it is identical to the current rule.

Establishing SuperMontage as the primary platform for trading Nasdaq-listed securities is a critical step in Nasdaq's long-standing goal to improve the quality of its market. Nasdaq believes that SuperMontage will dramatically increase the speed and efficiency of trading in the Nasdaq market, resulting in extremely fast executions and corresponding benefits to investors. If, however, a UTP Exchange chose to access Nasdaq but was not accessible for automatic executions through SuperMontage, there would be a potential for queuing in the system that could disrupt and slow the market. To improve the trading environment for all of Nasdaq's valued market participants, and to avoid potential significant market disruptions, we are amending SuperMontage rules to remove non-participating UTP Exchanges from the SuperMontage execution and order processing function.

UTP Exchanges that choose this option would submit their quotes directly to the securities information processor ("SIP"), not Nasdaq's market systems, and would be accessible by telephone as contemplated in the Nasdaq UTP Plan[7] or via a mutually agreed-upon alternative bilateral link created by the UTP Exchange.[8] Nasdaq welcomes the opportunity to explore the possibility of bilateral linkages, which Nasdaq anticipates could be formed via separate agreement between Nasdaq and the exchange(s).

2. UTP Exchanges That Wish To Participate in SuperMontage Must Do So Via Automatic Execution

Nasdaq will also continue in a SuperMontage environment the requirement that UTP Exchanges that wish to participate in Nasdaq execution systems do so via automatic execution. The Commission approved this requirement with respect to Nasdaq's current execution systems, SuperSOES and the SelectNet Service.[9] This language implementing this requirement is contained in NASD Rule 4710(b)(1)(B) and 4710(f)(3). This language differs from the current rule, but the requirement will operate in SuperMontage precisely as it does today in SuperSOES and SelectNet.

Nasdaq favors this rule for a number of reasons. The volume and speed at which trading occurs in Nasdaq demands that all participants' quotes/orders be available for automated execution. Market participants demand and require the ability to access liquidity at the best prices virtually instantaneously. Nasdaq believes that SuperMontage will be a significant improvement over prior Nasdaq execution systems, and that it will provide market participants faster executions and higher fill rates. Although order delivery (previously offered through SelectNet)—which requires an affirmative response in order to consummate a trade—was adequate as the primary means of UTP Exchange access in the past, Nasdaq can no longer offer this functionality as an option to UTP Exchanges. Indeed, automatic execution has become the primary means of accessing market makers quotes in Nasdaq.

Participation in SuperMontage by UTP Exchanges is a voluntary action by each exchange. Nasdaq is not obligated to provide UTP Exchanges with access to any of Nasdaq's proprietary systems. Therefore, it is entirely appropriate for Nasdaq to limit UTP Exchange access to Nasdaq's most efficient system. Nasdaq's voluntary action, designed to improve efficiency and maintain an orderly market, should not become an opportunity for a Nasdaq competitor to harm the ability of Nasdaq to improve its markets.

3. UTP Exchanges That Choose To Use SuperMontage Must Execute an Agreement Governing the Terms of That Usage

Nasdaq hopes to enter into arms-length agreements with national securities exchanges governing their participation in SuperMontage, including the functionality and pricing involved. Nasdaq believes it is essential that all UTP Exchanges that use Nasdaq proprietary systems execute a contract defining the terms and conditions of such use, which may be different from the terms and conditions imposed on Nasdaq members.[10] It is essential for preserving the integrity of Nasdaq's proprietary systems that those self-regulatory organizations that use those systems agree to ensure that their members (over which Nasdaq typically has no direct authority) use them in a manner that is consistent with Nasdaq's systems requirements.

Similarly, Nasdaq will make SuperMontage available to UTP exchanges on the basis of contractually agreed charges for such use. Such charges may be different than the charges that Nasdaq members pay for SuperMontage, exactly as the Commission permitted Nasdaq to charge UTP exchanges more for access to ACT than Nasdaq charges its members.[11] Nasdaq participants have paid for the maintenance and development of Nasdaq execution systems, such as SuperMontage, over the course of more than two decades. Charging UTP exchanges or other non-members a higher rate than members for these services reflects the fact that the Nasdaq members have already borne the costs to build and enhance those services over time.

The fact that the charges are set through arms-length contract negotiations with UTP exchanges allows for the flexibility to address the myriad ways in which different UTP Exchanges may wish to voluntarily participate in SuperMontage. The ability to enter into separately negotiated contracts gives UTP Exchanges and Nasdaq the ability to tailor contracts to an exchange's specific needs and business model. The rule language, contained in NASD Rule 4710(f), is intended to expand the scope of functionality available to UTP Exchanges beyond that included in the approved rules. NASD Rule 4710(f) also sets out the minimum obligations of a UTP Exchange that wishes to participate in Nasdaq. The Nasdaq Workstation Subscriber Agreement, as amended for UTP Exchanges may expand but shall not contract the rights and obligations set forth in these rules. While Nasdaq may make SuperMontage access available to UTP Exchanges on terms that differ from the terms applicable to members, Nasdaq is aware of its obligation to not unreasonably discriminate among similarly situated national securities exchanges.

2. Statutory Basis

Nasdaq believes that the proposed extension of this pilot is consistent with the provisions of Section 15A of the Act,[12] in general and with Section 15A(b)(6) of the Act,[13] in particular, in that the proposal is designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, Nasdaq believes that modifying the manner in which UTP Exchanges voluntarily participate in SuperMontage is necessary for the fair and orderly operation of Nasdaq.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–91 and should be submitted by September 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

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[5] "SuperSOES" is the commonly used term to describe Nasdaq's current Nasdaq National Market Execution System ("NNMS"). SuperMontage is, in effect, Nasdaq's successor to the NNMS.

[6] *See* Release Nos. 34–45047 (Nov. 8, 2001), 66 FR 57496 (Nov. 15, 2001); 34–45496 (March 1, 2002), 67 FR 10785 (Mar. 8, 2002); and 34–46016 (May 31, 2002), 67 FR 39457 (June 7, 2002).

[7] This is the method that the Cincinnati Stock Exchange uses for trading Nasdaq securities under the Nasdaq UTP Plan.

[8] This proposal would not preclude a UTP Exchange from forming a link with Nasdaq outside Nasdaq's market system or the parameters of a NMS plan.

[9] *See* Release No. 34–45704 (Apr. 8, 2002), 67 FR 18278 (Apr. 15, 2002).

[10] Nasdaq does not impose a monthly fee for access to the UTP Interface. The UTP Interface is installed and maintained by an independent vendor.

[11] *See* Release No. 34–45702 (April 5, 2002); 67 FR 18279 (April 15, 2002) (approving SR–NASD–2002–35).

[12] 15 U.S.C. 78*o*–3.

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 200.30–3(a)(12).

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46341; File No. SR–NASD–2002–76]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Relating to Interpretive Material 4613 and Computer Generated Quoting

August 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 13, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On July 29, 2002, Nasdaq filed an amendment to the proposed rule change.[3] On August 8, 2002, Nasdaq filed another amendment to the proposed rule change.[4] As amended, the proposal is effective upon filing with the Commission, pursuant to section 19(b)(3)(A) of the Act,[5] and Rule 19b–4(f)(1) thereunder.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Interpretive Material 4613 ("IM–4613") to codify an interpretation concerning the extent to which IM–4613 applies to computer generated quoting ("CGQ") that is not designed to update a market maker's quote automatically to keep the market maker away from the inside market. Specifically, Nasdaq proposes to (1) define the term "Computer Generated Quoting," (2) clarify that CGQ is generally prohibited, and (3) provide that market makers can engage in CGQ if such activity is consistent with the intent of IM–4613. Nasdaq has also developed certain standards that a market maker must meet to engage in CGQ. According to Nasdaq, these standards are based on Nasdaq's experience with two market makers that recently began utilizing CGQ systems,[7] and are designed to preserve the integrity of Nasdaq's systems and protect investors and the public interest. Below is the text of the proposed rule change. Proposed new language is in italics.

* * * * *

IM–4613—Autoquote Policy

(a) General Prohibition—The Association has extended a policy banning the automated update of quotations by market makers in Nasdaq. Except as provided below, this policy prohibits systems known as "autoquote" systems from effecting automated quote updates or tracking of inside quotations in Nasdaq. This ban is necessary to offset the negative impact on the capacity and operation of Nasdaq of certain autoquote techniques that track changes to the inside quotation in Nasdaq and automatically react by generating another quote to keep the market maker's quote away from the best market.

(b) Exceptions to the General Prohibition—Automated updating of quotations is permitted when: (1) The update is in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size), and is in compliance with Rule 4613(b)(2); (2) it requires a physical entry (such as a manual entry to the market maker's internal system which then automatically forwards the update to Nasdaq); (3) the update is to reflect the receipt, execution, or cancellation of a customer limit order; or (4) an electronic communications network as defined in SEC Rule 11Ac1–1(a)(8) is required to maintain a two-sided quotation in Nasdaq for the purpose of meeting Nasdaq system design requirements.

(c) Computer Generated Quoting—

(1) Definition—"Computer Generated Quoting" means the practice of effecting, without a physical entry, a quote update that is not designed to keep a market maker's quote away from the Nasdaq and/or national best bid/best offer, but does not include the activity set forth in subparagraph (b) of this interpretive material.

(2) Prohibition—The prohibitions against autoquoting contained in paragraph(a) of this interpretative material, shall also apply to the practice of Computer Generated Quoting, unless the market maker meets the conditions in subparagraph (c)(3) of this interpretive material.

(3) Exception—A market maker may engage in the practice of Computer Generated Quoting if the market maker: Prior to engaging in such activity provides Nasdaq a description of its Computer Generated Quoting system; requests and obtains written interpretive relief from Nasdaq staff stating that the market maker's Computer Generated Quoting system is permissible under Interpretive Material 4613; and complies with terms that are set forth in the interpretive relief. In establishing terms of the interpretive relief, Nasdaq shall consider the applicant's impact on Nasdaq's capacity, in conjunction with the overall impact on Nasdaq's capacity of existing Computer Generated Quoting systems authorized by Nasdaq, as well as the protection of investors and the public interest. If a market maker that engages in Computer Generated Quoting fails to comply with the terms set forth in the interpretive relief, Nasdaq may summarily modify or revoke the interpretive relief and/or summarily suspend such quoting activity if necessary to preserve capacity and to protect investors and the public interest.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq believes that the underlying purpose of IM–4613 is to preserve the integrity of Nasdaq's systems by prohibiting automated quoting activity that does not contribute to the depth and liquidity of the market. However, the language of IM–4613 arguably can be read to prohibit market makers from using *any* automated means to update their quotes, with a few narrow exceptions,[8] even if such systems would contribute to the liquidity of the market. The confusion created by this conflict caused several market makers to request interpretive advice on the applicability of IM–4613 to certain quoting activity.

Specifically, two Nasdaq market makers inquired as to whether the rule applies to situations where a market maker generates quote updates through automated means that do not track away from the inside market.[9] These market makers engage in trading strategies where their quoted prices are based on several factors, such as the last sale, bids, offers and sizes, where available, on stocks, futures and options, and certain statistically derived relationships among these instruments. Another market maker recently requested an interpretation so that it may submit quotes automatically based on the best prices contained in an affiliated electronic communications network.[10]

Nasdaq believes these types of CGQ systems, if carefully monitored, can be utilized without raising the concerns that IM–4613 addresses. In the requests received to date, the market makers do not employ techniques that track changes to the inside market to keep the market maker's prevailing quote away from the inside market, and the systems are designed to result in the market maker regularly participating at or near the best bid and offer. As such, while these systems could produce quote update rates similar to those that track away from the inside market, the CQG systems, in contrast, will contribute to the liquidity of the market.

However, Nasdaq's overall system capacity is not limitless, and Nasdaq has an overarching obligation to protect investors and the public interest. Therefore, Nasdaq cannot permit these systems to be utilized without certain controls, and has taken the position that CGQ is permitted under IM–4613 if the activity will not adversely impact the overall functioning of the Nasdaq market.[11] This requirement is in addition to the requirement that the system does not produce quotes to track away from the inside market, and must be designed to result in the market maker regularly participating at or near the inside market. Prior to issuing the interpretations, Nasdaq carefully analyzed its system capacity demand models, and developed quotation capacity standards that would permit market makers to utilize CGQ systems, but also maintain enough excess capacity so that Nasdaq can meet its peak demand.

These standards will be applied to all market makers utilizing CGQ systems, and Nasdaq will consider such things as quote updates per second, both at the individual security level and firm wide level, and are calibrated to ensure that Nasdaq retains excess capacity during times of peak demand.[12] Market makers also will be required to phase in their CGQ activity in consultation with Nasdaq staff, and comply with the autoquoting restrictions contained in the Nasdaq UTP Plan.[13] In addition, market makers must be able to demonstrate compliance with these standards,[14] and suspend their CGQ activity quickly upon request from Nasdaq.

Nasdaq believes CGQ systems can enhance market quality by contributing liquidity, but it will not allow the use of CGQ systems to compromise the overall high level of performance and reliability of the Nasdaq market. Therefore, on an ongoing basis, Nasdaq will monitor closely overall quoting activity and its system capacity, and adjust the standards if necessary to ensure that Nasdaq can meet capacity demands.[15] In addition, Nasdaq will monitor closely each individual market maker's quoting activity, and, if Nasdaq determines a market maker is not complying with the terms of the interpretive relief, Nasdaq may summarily modify or revoke the interpretive relief and/or summarily suspend the quoting activity of such market maker if necessary to preserve capacity and to protect investors and the public interest.[16] In addition, Nasdaq may refer the matter for disciplinary action.

To summarize, the proposed rule change clarifies that IM–4613 applies to systems that, without physical entry, submit quote updates that are *not* designed to keep a market maker's quote away from the inside. Nasdaq believes that defining the term "Computer Generated Quoting" and specifically stating that such systems are prohibited accomplish this. As discussed above, the general prohibition is necessary to maintain the integrity of Nasdaq's systems, and the exception is the codification of the existing interpretation designed to permit market makers to utilize CGQ systems consistent with Nasdaq's obligations to preserve the integrity of its systems and to protect investors and the public interest.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission ("Amendment No. 1"). Amendment No. 1 clarifies that Nasdaq will summarily suspend a market maker's quoting activity if necessary to preserve capacity and to protect investors and the public interest. For example, Nasdaq will suspend a market maker's quoting activity if the performance of Nasdaq's market was in jeopardy and, after attempting to contact the market maker, the market maker failed to voluntarily suspend its computer generated quoting activity.

[4] *See* letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Lisa Jones, Attorney, Division, Commission ("Amendment No. 2"). Amendment No. 2 clarifies in the purpose section of the proposal that Nasdaq will give market makers advance notice should the standards for using computer generated quoting systems change. Amendment No. 2 also makes a technical amendment to the rule text of the proposal.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(1). For purposes of calculating the 60-day abrogation period, the Commission considers the period to begin as of the date Nasdaq filed Amendment No. 1, July 29, 2002.

[7] Nasdaq staff recently issued two letters indicating that the market makers could utilize CGQ systems that are consistent with IM–4613. *See* letters from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Thomas Peterffy, Chairman, Timber Hill LLC, dated November 14, 2001; and to Richard J. McDonald, Compliance Director, Susquehanna Capital Group, dated April 23, 2002.

[8] The current rule contains certain exceptions, including when the update of quotes is the result of an execution, or the quote, while generated automatically, is entered manually. *See* NASD IM 4613(b).

[9] *See infra* note 10.

[10] *Id.*

[11] Nasdaq staff issued interpretive letters to the two market makers whose CGQ systems generate quotes based on the relationship between the price of the stock and other instruments. Nasdaq will issue a letter to another market maker, and re-issue letters to the first two market makers, contemporaneous with the filing of this proposed rule change. At such time, all three letters will contain uniform quote update limits, which are discussed later. The letters are posted on NASD Regulation's Web site at *http://www.nasdr.com*.

[12] Pursuant to the three interpretive letters issued simultaneously with the filing of this proposed rule change, Nasdaq proposes that the market makers will be subject to the following quote update limitations:

- From 9:30 a.m. to 9:35 a.m. Eastern Time and from 3:55 p.m. to 4 p.m. Eastern Time, a market maker utilizing a CGQ system shall not exceed the following parameters: 30 quotes per second in aggregate for all securities, measured over each 15 second interval; and a maximum of 3 quotes per second for each security; and
- From 9:35:01 a.m. to 3:54:59 p.m. Eastern Time, a market maker utilizing a CGQ system shall not exceed the following parameters: 50 quotes per second in aggregate for all securities, measured over each 15 second interval; and a maximum of 3 quote per second for each security.

[13] *See* Nasdaq UTP Plan, Amendment 12.

[14] To demonstrate compliance with the standards, a market maker's system must measure quote update rates and supply such data to Nasdaq upon request.

[15] Nasdaq notes that Nasdaq technology staff constantly monitors capacity levels to ensure that Nasdaq systems operate effectively. Nasdaq systems capacity is designed to meet peak usage requirements, which normally occur at the opening of the market, the closing, or at other times during the day due to scheduled events. In addition, peak usage can be caused by unexpected events, such as a merger announcement. As Nasdaq staff have gained experience with the two market makers utilizing the CGQ systems, it has modified the standards several times, and it is possible these standards would be modified again as staff gain additional experience with more market makers. In developing current and future CGQ standards, Nasdaq will look first to ensuring the overall integrity of its systems and to protect investors and the public interest. Nasdaq will notify market makers permitted to utilize CGQ systems in advance if the standards for using such systems change. *See* Amendment No. 2, *supra* note 4.

[16] *See* Amendment No. 1, *supra* note 3.

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Statutory Basis

Nasdaq believes that the proposal is consistent with section 15A(b)(6) of the Act.[17] Section 15A(b)(6) requires, among other things, that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Nasdaq believes that permitting market makers to use these systems should have several benefits. Market makers will be able to utilize existing computer models, or develop new models, to automatically generate and update their quotes, which should enhance the price discovery process and allow members to increase the number of stocks in which they are registered as market makers.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(1)[19] thereunder because the proposal is a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–76 and should be submitted by September 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20977 Filed 8–16–02; 8:45 am]

BILLING CODE 8010–01–P

[17] 15 U.S.C. 78*o*–3(b)(6).
[18] 15 U.S.C. 78*s*(b)(3)(A).
[19] 17 CFR 240. 19b–4(f)(1).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46339; File No. SR–OCC–2002–17]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Change in Ancillary Service Fees

August 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 23, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends OCC's schedule of fees to reflect the restructuring of OCC's ancillary services program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In addition to its clearing and settlement services, OCC provides a number of ancillary services to its membership. These services range from on-line systems to report and data files. Hardware and communications lines support these ancillary service offerings. However, the current fee structure for these services and their supporting communications lines does not cover OCC's monthly expenses. Accordingly, OCC has decided to restructure its ancillary services program.

OCC is implementing a four-tiered structure with a different bundle of ancillary services being offered at each tier. The tiers, the associated ancillary services, and the proposed cost for each are set forth in Exhibit A of the proposed rule change filing (OCC's schedule of fees). OCC has also determined to revise its communication line charges. A T1 leased line provides the optimal point-to-point secure communications to OCC's systems. OCC is revising its schedule of fees to charge for T1 leased lines and to increase the current 56.0kb line speed charge. These charges also are reflected in Exhibit A. The ancillary service charges and line offerings that have been eliminated as a result of restructuring the ancillary services program are set forth in Exhibit A.

[1] 15 U.S.C. 78*s*(b)(1).

[2] The Commission has modified parts of these statements.

OCC believes the proposed rule change is consistent with section 17A of the Act because it provides for the reasonable allocation of costs to provide ancillary services to clearing members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change changes fees charged clearing members by OCC, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[3] and rule 19b–4(f)(2)[4] thereunder. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2002–17 and should be submitted by September 9, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20979 Filed 8–16–02; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78*s*(b)(3)(A)(ii).
[4] 17 CFR 240.19b–4(f)(2).

[5] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority, which covers the Social Security Administration (SSA). The notice establishes the Office of the Senior Executive Officer. This notice also removes the functions of the Press Office from the Deputy Commissioner of Communications and establishes the Press Office as an organization in the Office of the Commissioner. The new material and changes are as follows:

Section TE.00 *The Office of Communications*—(Mission)

Delete line

Performs SSA Press Office function to ensure a unified and consistent message to SSA's many publics.

Section SA.10 *The Office of the Commissioner*—(Organization)

Add

G. The Press Office

Add

H. The Office of the Senior Executive Officer

Section SA.20 *The Office of the Commissioner*—(Functions)

Add

G. The Press Office

1. Under the leadership of the Press Officer guides and coordinates all SSA press activities. It prepares and distributes news releases, fact sheets, and other materials for national distribution and for local release through SSA field offices.

2. Initiates and maintains contacts with members of the news media and responds to press inquiries and requests from newspapers, radio and television news departments; news and general print magazines, internet news providers, and other specialized press.

3. Advises Agency executives, Regional Communications Directors, Public Affairs Specialists, and other employees on matters related to news media.

4. Monitors press coverage of Social Security programs and employees, and distributes summaries of media coverage to Agency executives. When appropriate, the Press Office works to correct inaccuracies in coverage.

5. With the Office of Communications, works to craft messages and material for internal and external distribution.

Add

H. The Office of the Senior Executive Officer

1. Under the guidance of the Senior Executive Officer provides oversight and direction to the ongoing operation and activities of the Office of the Commissioner.

2. Plans, manages, and coordinates special projects/initiatives involving Agency administrative, policy, or program issues.

3. Serves as a focal point and represents the interests of the Commissioner to ensure that Agency components are aware of and held accountable for priorities, initiatives, and required actions. Acts as a catalyst and conduit for the exchange of information and direction between the Commissioner, functional Deputy Commissioners, and other executives.

4. Advises the Commissioner on issues concerning Agency operation, program integration, staffing/personnel matters, organizational effectiveness, and cooperation.

5. Directs administrative operations for the Office of the Commissioner including the budget, personnel management, and the development of policies and procedures necessary to secure a correctly and efficiently managed office.

6. Provides oversight and perspective on Agency-wide administrative and programmatic funding.

Dated: August 1, 2002.

Jo Anne B. Barnhart,

Commissioner.

[FR Doc. 02–20919 Filed 8–16–02; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Senior Executive Service Performance Review Board Membership

AGENCY: Social Security Administration.

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ACTION: Notice of Senior Executive Service Performance Review Board membership.

Title 5, U.S. Code, section 4314(c)(4) of the Civil Service Reform Act of 1978, Pub. L. 95–454, requires that the appointment of Performance Review Board members be published in the **Federal Register**.

The following persons will serve on the Performance Review Board which oversees the evaluation of performance appraisals of Senior Executive Service members of the Social Security Administration.

Nicholas M. Blatchford
Philip A. Gambino
Diane B. Garro
Carmen M. Keller
Terris A. King
Nancy A. McCullough
Carolyn L. Simmons
Felicita Sola-Carter
Frederick G. Streckewald
Paul N. Van de Water
Alice H. Wade
John B. Watson
Charles M. Wood

Dated: August 12, 2002.

Reginald F. Wells,

Deputy Commissioner for Human Resources.

[FR Doc. 02–20956 Filed 8–16–02; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice 4099]

Foreign Service Institute; 30-Day Notice of Proposed Information Collection: Form DS–3083, Training Registration (for Non-U.S. Government Persons); OMB Control #1405–XXXX

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: New collection.

Originating Office: Foreign Service Institute (M/FSI).

Title of Information Collection: Training Registration (For Non-U.S. Government Persons).

Frequency: Continuously (as needed for covered individuals to enroll in training courses provided by the Foreign Service Institute, Department of State).

Form Number: DS–3083.

Respondents: Respondents are non-U.S. government persons and/or their eligible family members, authorized by Public Law 105–277 to receive training delivered by the Foreign Service Institute on a reimbursable or advance of funds basis.

Estimated Number of Respondents: Approximately 100 to 200 persons per year.

Average Hours Per Response: 0.5 hours (one-half hour).

Total Estimated Burden: Approximately 50 to 100 hours/year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from the Wayne A. Oshima, Foreign Service Institute, Office of the Executive Director, U.S. Department of State, Washington, DC 20522–4201, (703) 302–6730. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: July 23, 2002.

Catherine J. Russell,

Executive Director, Foreign Service Institute, Department of State.

[FR Doc. 02–21000 Filed 8–16–02; 8:45 am]

BILLING CODE 4710–34–P

DEPARTMENT OF STATE

[Public Notice 4100]

Culturally Significant Objects Imported for Exhibition Determinations: "Sacred Treasures of Mount Koya: The Art of Japanese Shingon Buddhism"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition "Sacred Treasures of Mount Koya: The Art of Japanese Shingon Buddhism," imported from abroad for temporary exhibition within the United States, is of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Honolulu Academy of Arts, Honolulu, Hawaii from on or about August 31, 2002 to on or about November 10, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 14, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs , Department of State.

[FR Doc. 02–21166 Filed 8–16–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 9, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1997–2646.

Date Filed: August 9, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 30, 2002.

Description: Application of Florida West International Airways, Inc. (FWIA), pursuant to 49 U.S.C. 41102 and subpart B, requesting renewal of its certificate of public convenience and necessity, authorizing it to engage in the foreign air transportation of property and mail between the coterminal points Houston, Texas and Miami, Florida, on the one hand, and Lima and Iquitos, Peru, on the other hand, with beyond service to Santiago, Chile. FWIA also requests, that this authority be integrated with all other services it is otherwise authorized to conduct pursuant to its exemption and certificate authorities, consistent with applicable agreements between the U.S. and foreign countries.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–21030 Filed 8–16–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–49]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions for exemption.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Vanessa Wilkins (202) 267–8029, or Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on August 1, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2002–11925.
Petitioner: Helicopters, Inc.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Helicopters to operate certain aircraft under part 135 without a TSO–C112 (Modes S) transponder installed in the aircraft. *Grant/June 3, 2002, Exemption No. 7788*

Docket No.: FAA–2002–12110.
Petitioner: Nassau Helicopter.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Nassau to operate certain aircraft under part 135 without a TSO–C112 (Modes S) transponder installed in the aircraft. *Grant/June 3, 2002, Exemption No. 7787*

Docket No.: FAA–2002–12255.
Petitioner: Rogers Helicopters, Inc.
Section of 14 CFR Affected: 14 CFR 135.152(a).
Description of Relief Sought/Disposition: To permit Rogers to operate 6 Bell 212 helicopters (Registration Nos. N911HW, N911VR, N911KW, N873HL, N811KA, and N212HL; and Serial Nos. 31101, 30998, 30592, 30873, 30656, and 30621, respectively) under part 135 without those helicopters being equipped with an approved digital flight data recorder (DFDR). *Grant/May 31, 2002, Exemption No. 7789*

Docket No.: FAA–2002–12340.
Petitioner: Moody Aviation.
Section of 14 CFR Affected: 14 CFR §§ 135.251, 135.255, and 135.353, and appendices I and J to part 121.
Description of Relief Sought/Disposition: To permit Moody to conduct local sightseeing flights at the Elizabethton Municipal Airport, for sightseeing flights during its annual community event on June 8, 2002, for compensation or hire without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant/June 4, 2002, Exemption No. 7791*

Docket No.: FAA–2002–11572.
Petitioner: Capital City Air Carrier, Inc.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Capital to operate certain aircraft under part 135 without a TSO–C112 (Modes S) transponder installed in the aircraft. *Grant/June 4, 2002, Exemption No. 7792*

Docket No.: FAA–2002–11575.
Petitioner: Rhinelander Flying Service, Inc.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Rhinelander to operate certain aircraft under part 135 without a TSO–C112 (Modes S) transponder installed in the aircraft. *Grant/June 4, 2002, Exemption No. 7793*

Docket No.: FAA–2002–12252.
Petitioner: Biplane Adventures, Inc.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Biplane Adventures Inc to operate certain aircraft under part 135 without a TSO-C112 (Modes S) transponder installed in the aircraft. *Grant/June 4, 2002, Exemption No. 7797*

Docket No.: FAA–2002–11576.
Petitioner: Averitt Air, Inc.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Averitt to operate certain aircraft under part 135 without a TSO–C112 (Modes S) transponder installed in the aircraft. *Grant/June 4, 2002, Exemption No. 7796*

Docket No.: FAA–2002–12336.
Petitioner: Womack Aviation.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Womack to operate certain aircraft under part 135 without a TSO-C112 (Modes S) transponder installed in the aircraft. *Grant/June 4, 2002, Exemption No. 7795*

Docket No.: FAA–2002–12124.
Petitioner: Wright Air Service, Inc.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Wright to operate certain aircraft under part 135 without a TSO-C112 (Modes S) transponder installed in the aircraft. *Grant/June 4, 2002, Exemption No. 7794*

Docket No.: FAA–2002–12254.
Petitioner: North Flight EMS.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/Disposition: To permit North Flight EMS to operate certain aircraft under part 135 without a TSO-C112 (Modes S)

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transponder installed in the aircraft. *Grant/June 6, 2002, Exemption No. 7803*

Docket No.: FAA–2002–11929.
Petitioner: Delta Aviation, LLC.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Delta to operate certain aircraft under part 135 without a TSO-C112 (Modes S) transponder installed in the aircraft. *Grant/June 6, 2002, Exemption No. 7802*

Docket No.: FAA–2000–8141.
Petitioner: Mr. Leon C. Braswell.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Mr. Leon C. Braswell to operate certain aircraft under part 135 without a TSO-C112 (Modes S) transponder installed in the aircraft. *Grant/June 6, 2002, Exemption No. 7398A*

Docket No.: FAA–2001–11059.
Petitioner: Jerrold W. Braswell.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Mr. Jerrold W. Braswell to operate certain aircraft under part 135 without a TSO-C112 (Modes S) transponder installed in the aircraft. *Grant/June 6, 2002, Exemption No. 7674A*

Docket No.: FAA–2002–11949.
Petitioner: Aviation Services Group, Inc.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Aviation Services Group to operate certain aircraft under part 135 without a TSO-C112 (Modes S) transponder installed in the aircraft. *Grant/June 6, 2002, Exemption No. 7807*

Docket No.: FAA–2002–12400.
Petitioner: Kelso Flight Service, Inc.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Kelso to operate certain aircraft under part 135 without a TSO-C112 (Modes S) transponder installed in the aircraft. *Grant/June 6, 2002, Exemption No. 7804*

Docket No.: FAA–2002–12125.
Petitioner: Air Logistics of Alaska, Inc.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Air Logistics to operate certain aircraft under part 135 without a TSO-C112 (Modes S) transponder installed in the aircraft. *Grant/June 6, 2002, Exemption No. 7805*

Docket No.: FAA–2002–12251.
Petitioner: Priority Air, Inc.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Priority to operate certain aircraft under part 135 without a TSO-C112 (Modes S) transponder installed in the aircraft. *Grant/June 6, 2002, Exemption No. 7806*

Docket No.: FAA–2002–11495.
Petitioner: Federal Express Corporation.
Section of 14 CFR Affected: 14 CFR § 121.345(c)(2).
Description of Relief Sought/ Disposition: To permit Mountain Air Cargo to operate certain aircraft under part 135 without a TSO-C112 (Modes S) transponder installed in the aircraft. *Grant/June 6, 2002, Exemption No. 7801*

Docket No.: FAA–2002–11424.
Petitioner: Empire Airlines.
Section of 14 CFR Affected: 14 CFR § 121.345(c)(2).
Description of Relief Sought/ Disposition: To permit Empire to operate certain aircraft under part 121 without a TSO-C112 (Modes S) transponder installed in the aircraft. *Grant/June 6, 2002, Exemption No. 7800*

Docket No.: FAA–2002–11938.
Petitioner: Friends of Allen County Airport.
Section of 14 CFR Affected: 14 CFR §§ 135.251, 135.255, and 135.353, and appendices I and J to part 121.
Description of Relief Sought/ Disposition: To permit Friends of Allen County Airport to conduct local sightseeing flights at Allen County Airport, Iola, Kansas, for a fly-in and open house on June 15, 2002, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant/June 12, 2002, Exemption No. 7808*

Docket No.: FAA–2002–11988.
Petitioner: Alpine Air, Inc.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Alpine to operate certain aircraft under part 135 without a TSO-C112 (Modes S) transponder installed in the aircraft. *Grant/June 12, 2002, Exemption No. 7267A*

Docket No.: FAA–2002–12465.
Petitioner: Air Methods Corporation.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Air Methods Corporation to operate certain aircraft under part 135 without a TSO-C112 (Modes S) transponder installed in the aircraft. *Grant/June 12, 2002, Exemption No. 5720D*

Docket No.: FAA–2002–11595.
Petitioner: American Eagle Airlines, Inc.
Section of 14 CFR Affected: 14 CFR § 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit American Eagle to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command (PIC) while that PIC is performing prescribed duties during at least one flight leg that includes a takeoff and a landing when completing initial or upgrade training as specified in § 121.424. *Grant/June 13, 2002, Exemption No. 7252A*

Docket No.: FAA–2002–12168.
Petitioner: West Bend Air, Inc.
Section of 14 CFR Affected: 14 CFR §§ 135.251, 135.255, 135.353, and appendices I and J to part 121.
Description of Relief Sought/ Disposition: To permit West Bend to conduct local sightseeing flights without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Denial/June 14, 2002, Exemption No. 7786A*

Docket No.: FAA–2002–12455
Petitioner: Air Transport Association of American.
Section of 14 CFR Affected: 14 CFR §§ 61.3(a) and (c), 63.3(a) and 121.383(a)(2) *Description of Relief Sought/Disposition:* To permit an air carrier to issue written confirmation of an FAA-issued crewmember certificate to a flight crewmember employed by that air carrier based on information in the air carrier's approved record system. *Grant/June 13, 2002, Exemption No. 5487E*

Docket No.: FAA–2002–12123.
Petitioner: Bonanza/Baron Pilot Proficiency Programs, Inc.
Section of 14 CFR Affected: 14 CFR § 91.109(a) and (b)(3)
Description of Relief Sought/ Disposition: To permit Bonanza/Baron Pilot Proficiency Programs, Inc. and American Bonanza Society/Air Safety Foundation to conduct certain flight instruction and simulated instrument flights to meet the recent experience requirements in Beechcraft Bonanza, Baron and Travel Air airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. *Grant/June 13, 2002, Exemption No. 7810*

Docket No.: FAA–2002–11578.
Petitioner: Northwest Seaplanes, Inc.
Section of 14 CFR Affected: 14 CFR § 135.203(a)(1).
Description of Relief Sought/ Disposition: To permit Northwest Seaplanes to conduct operations outside

controlled airspace, over water, at an altitude below 500 feet above the surface but not less than 200 feet above the surface. *Grant/June 18, 2002, Exemption No. 6461D*

Docket No.: FAA–2001–10967.
Petitioner: Experimental Aircraft Association.
Section of 14 CFR Affected: 14 CFR §§ 135.251, 135.255, and 135.353, and appendixes I and J to part 121
Description of Relief Sought/ Disposition: To permit EAA members to conduct local sightseeing flights at charity or community events, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention program requirements of part 135. *Grant/June 25, 2002, Exemption No. 7111B*

Docket No.: FAA–2002–12416.
Petitioner: Air Transport Association of America
Section of 14 CFR Affected: 14 CFR 121.309(f)(2).
Description of Relief Sought/ Disposition: To permit ATA-member airlines to located the aft megaphone at door 4-left on their Boeing 747 aircraft. *Grant/June 21, 2002, Exemption No. 7818*

Docket No.: FAA–2002–11851.
Petitioner: IFL Group, Inc.
Section of 14 CFR Affected: 14 CFR § 135.152.
Description of Relief Sought/ Disposition: To permit IFL to operate one General Dynamics Convair 440/580 airplane under part 135 without that airplane being equipped with an 18-parameter digital flight data recorder (DFDR). *Denial/June 21, 2002, Exemption No. 7817*

Docket No.: FAA–2002–12119.
Petitioner: Wadsworth Airport Management Corporation
Section of 14 CFR Affected: 14 CFR §§ 135.251, 135.255, and 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit Wadsworth to conduct local sightseeing flights at the Wadsworth Municipal Airport in Wadsworth, Ohio, for the Wadsworth Balloon Festival on September 20, 21, and 22, 2002, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant/June 26, 2002, Exemption No. 7822*

Docket No.: FAA–2001–9812.
Petitioner: Red Baron Flyers, Inc.
Section of 14 CFR Affected: 14 CFR §§ 135.251, 135.255, and 135.353, and appendices I and J to part 121.
Description of Relief Sought/ Disposition: To permit Red Baron Flyers Inc to conduct local sightseeing flights at Houston County Airport, Caledonia, Minnesota, for it's annual fly-in breakfast on June 30, 2002, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant/June 26, 2002, Exemption No. 7824*

Docket No.: FAA–2002–12431.
Petitioner: Plainwell Pilots Association.
Section of 14 CFR Affected: 14 CFR §§ 135.251, 135.255, and 135.353, and appendices I and J to part 121
Description of Relief Sought/ Disposition: To permit Plainwell Pilots Association to conduct local sightseeing flights in the vicinity of Plainwell, Michigan, for fundraising events on July 4, 27, and 28, 2002, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant/June 26, 2002, Exemption No. 7823*

Docket No.: FAA–2002–11927.
Petitioner: ERA Aviation, Inc.
Section of 14 CFR Affected: 14 CFR § 121.313(f).
Description of Relief Sought/ Disposition: To permit Era to operate two Douglas DC–3 (DC–3) airplanes with the flightdeck door open during all phases of flight. *Denial/June 20, 2002, Exemption No. 7819*

Docket No.: FAA–2001–10622.
Petitioner: Papillon Airways, Inc., dba Papillon Grand Canyon Helicopters.
Section of 14 CFR Affected: 14 CFR § 135.265(d).
Description of Relief Sought/ Disposition: To permit Papillon to schedule its flight crewmembers to work 7 consecutive days then relieve them from all further duty for 7 consecutive days. *Denial/June 20, 2002, Exemption No. 7820*

Docket No.: FAA–2001–9500.
Petitioner: Stephen J. Walsh.
Section of 14 CFR Affected: 14 CFR § 61.159(c)(2)(ii) and (iii).
Description of Relief Sought/ Disposition: To permit Mr. Walsh to use his military flight engineer time toward the 1,500-hour flight time requirement for an airline transport pilot (ATO) certificate. *Denial/June 24, 2002, Exemption No. 7825*

Docket No.: FAA–2002–12590.
Petitioner: United States Hang Gliding Association.
Section of 14 CFR Affected: 14 CFR §§ 91.309 and 103.1(b).
Description of Relief Sought/ Disposition: To permit United States Hang Gliding Association members to tow unpowered ultralight vehicles (hang gliders) using powered ultralight vehicles. *Grant/June 28, 2002, Exemption No. 4144I*

Docket No.: FAA–2002–11756.
Petitioner: Continental Airlines, Inc.
Section of 14 CFR Affected: 14 CFR § 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit Continental to substitute a qualified and authorized check airman in place of a FAA inspector to observe a qualifying pilot in command who is completing the initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing, subject to certain conditions and limitations. *Grant/June 28, 2002, Exemption No. 6783B*

Docket No.: FAA–2002–12343.
Petitioner: Federal Express Corporation.
Section of 14 CFR Affected: 14 CFR § 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit FedEx to substitute a qualified and authorized check airman in place of a FAA inspector to observe a qualifying pilot in command who is completing the initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing, subject to certain conditions and limitations. *Grant/June 28, 2002, Exemption No. 6473C*

Docket No.: FAA–2002–12484.
Petitioner: Dynamic Aviation Group, Inc.
Section of 14 CFR Affected: 14 CFR § 137.53(c)(2).
Description of Relief Sought/ Disposition: To permit pilots employed by Dynamic to conduct aerial applications of insecticides or pheromones from aircraft not equipped with a load jettisoning system. *Grant/July 1, 2002, Exemption No. 7827*

Docket No.: FAA–2002–12474.
Petitioner: Michael T. Kane.
Section of 14 CFR Affected: 14 CFR § 61.153(a).
Description of Relief Sought/ Disposition: To permit Michael T. Kane to obtain an airline transport pilot (ATP) certificate before reaching 23 years of age. *Denial/July 1, 2002, Exemption No. 7828*

Docket No.: FAA–200–12171.
Petitioner: Universal Airlines, Inc.
Section of 14 CFR Affected: 14 CFR § 91.9(a).
Description of Relief Sought/ Disposition: To permit Universal Airlines Inc to operate its DC–6A and DC–6B aircraft, registration Nos. N170UA(45518), N500UA (44597), and N600UA (44894), at a 5 percent increased zero fuel and landing weight for the purpose or operating all cargo aircraft under the terms of part 125. *Grant/July 1, 2002, Exemption No. 7829*

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Docket No.: FAA–2002–12133.
Petitioner: SkyWest Airlines, Inc.
Section of 14 CFR Affected: 14 CFR § 121.463(c)
Description of Relief Sought/Disposition: To permit SkyWest to substitute the Canadair Regional Jet Bombardier CRJ CL–65 airplane (CL–65) in place of the Embraer EMB–120 Brasilia airplane (EMB–120) for the purpose of allowing certain dispatchers to accomplish the operating familiarization during the completion of recurrent training. *Grant/July 11, 2002, Exemption No. 7780A*

Docket No.: FAA–2002–12485.
Petitioner: Joseph Castasus.
Section of 14 CFR Affected: 14 CFR §§ 121.311(b) and 135.128(a).
Description of Relief Sought/Disposition: To permit Joseph to travel in either an Ortho Kinetics Travel Chair Model 6332 or a Meru Travel Chair rather than in an individual seat with a seatbelt about him while traveling on an air carrier certificated under part 119 for part 121 or 135 service. *Grant/July 2, 2002, Exemption No. 7831*

Docket No.: FAA–2002–11986.
Petitioner: Experimental Aircraft Association, Inc.
Section of 14 CFR Affected: 14 CFR §§ 61.101(a)(2) and 61.113(a).
Description of Relief Sought/Disposition: To permit volunteer pilots who hold private or recreational pilot certificates to conduct EAA Young Eagles flights for compensation to include meals for the participants, aircraft operating expenses, aircraft and airport security costs, and logging of flight time as pilot in command (PIC). *Partial Grant/July 2, 2002, Exemption No. 7830*

Docket No.: FAA–2002–12721.
Petitioner: Ashland County Airport.
Section of 14 CFR Affected: 14 CFR §§ 135.251, 135.255, and 135.353, and appendices I and J to part 121.
Description of Relief Sought/Disposition: To permit Ashland and Johnston to conduct local sightseeing flights at Ashland County Airport, Ashland, Ohio, for their annual Open House and Fall Foilage flights on July 14, 2002, and October 12, 2002, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant/July 12, 2002, Exemption No. 7832*

Docket No.: FAA–2001–9237.
Petitioner: Petroleum Helicopters, Inc., & Air Logistics, LLC
Section of 14 CFR Affected: 14 CFR § 135.293(b).
Description of Relief Sought/Disposition: To permit Petroleum Helicopters Inc and Air Logistics to consider the Bell Model 212, 412, and 412EP helicopters as a single type helicopter for pilot testing, training, and checking. *Denial/July 12, 2002, Exemption No. 7834*

Docket No.: FAA–2001–9925.
Petitioner: James I. Hamilton, Jr. and Arctic Air Alaska, Inc.
Section of 14 CFR Affected: 14 CFR § 135.203(a)(1).
Description of Relief Sought/Disposition: To permit James I. Hamilton Jr., and Arctic Air Alaska to conduct operations less than 500 feet above the ground. *Denial/June 13, 2002, Exemption No. 7809*

[FR Doc. 02–19851 Filed 8–16–02; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13137]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ALLANTE.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 18, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13137. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: ALLANTE. Owner: Nield and Linda Montgomery.

(2) Size, capacity and tonnage of vessel. According to the applicant: "LOA 76'6", Beam 18'3", Gross tons 87, Net registered tons 65, Four staterooms each with two berths plus berths for two crew. Sleeping capacity for 8."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "For charters from 1 day to 1 month in length. Base of operation to be San Diego, CA. Area of charter to be from Cabo San Lucas, MX to Vancouver, B.C. with possible excursions to Southern Alaska."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1998. Place of construction: Rayburn Custom Yachts, Vancouver, B.C.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "I have reviewed the following publications as well as all referenced Internet sites within these publications and found nothing shown as available for charter out of San Diego, CA. The Log, Sea Magazine, Power & Motoryacht, ShowBoats Intentional, BI Captain's Log, Dupont Registry A Buyers Guide to Fine Boats. I do not believe the chartering of my vessel will impact any other commercial charter service in my area."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The vessel has been and continues to be serviced by Driscoll Marine and other marine service companies in the San Diego, CA area. Its charter use will only increase the need to marine services in this area."

Dated: August 14, 2002.
By order of the Maritime Administrator.
Joel C. Richard,
Secretary, Maritime Administration.
[FR Doc. 02–21004 Filed 8–16–02; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13136]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ANTARES.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 18, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13136. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* ANTARES. *Owner:* Antares Investment Co.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "The vessel is a "Golden Star" 42' Aft Cabin, Sun Deck, Motor Yacht (#992742) with a 30,000 # displacement. She is authorized to carry no more than 12 passengers."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "The ANTARES will be docked at and available for "Back-Bay" Day Cruises, on the Alabama and Florida Panhandle Gulf Coast, out of SanRoc Cay Marina, in Orange Beach, Alabama. Local, USCG Licensed Captains will pilot the vessel, for charter, a maximum of 72 days per year."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1989. *Place of construction:* Taiwan, ROC.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "It is expected that this waiver will have no impact on other commercial passenger vessel operators; because it is believed that there are no other "motor vessels," in the area, offering this type of charter service. Existing operators offer "offshore" fishing charters or "scheduled" back-bay dolphin and sightseeing cruises. * * * The "enterprise" will provide employment opportunities for local Captains, First Mates and "Service" companies."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "It is also expected that this waiver will have no impact on U.S. shipyards."

Dated: August 14, 2002.
By order of the Maritime Administrator.
Joel C. Richard,
Secretary, Maritime Administration.
[FR Doc. 02–21003 Filed 8–16–02; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13138]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DISCOVERY.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request

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for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 18, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13138. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: DISCOVERY. Owner: John L. Patterson.

(2) Size, capacity and tonnage of vessel. According to the applicant: "The vessel measurements are: length: 50.9', breadth: 16', depth: 11.2'. The tonnages are 60 gross and 48 net."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: This vessel will operate for short periods of time with captain, crew and 12 or less passengers on sportfishing trips, training cruises, burials at sea, and small pleasure cruises. The vessel will be used along the West Coast of the United States, including Alaska, and within the harbors along the West Coast of the United States, including Alaska."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1973. Place of construction: Hong Kong.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "The impact will be negligible as we will address the charter needs of smaller groups than most of the vessels in our area. Most of the commercial passenger vessels have capacities of 50 to 500 passengers."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "There is no negative impact on our U.S. shipyards and we anticipate that all of the repair work to this vessel will be done in U.S. shipyards. A majority of the components, including engines, generators, navigation equipment, propellers, running gear, etc. are all U.S. built."

Dated: August 14, 2002

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–21005 Filed 8–16–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13135]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel EAGLE 3.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 18, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13135. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* EAGLE 3. *Owner:* Four Q, Inc.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "Size: 52'.5 Gross Tonnage—40."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "Geographic Region—Primarily New England & Caribbean." "EAGLE 3 is used for chartering purposes."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1988. *Place of construction:* Tan Shui, Taipei: Republic of China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "Four Q should have no impact on other commercial passenger vessel operators. The operation of this vessel is by operators who have significant experience 20+ years or more by licensed USCG Captains."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "This vessel should have no impact on U.S. Shipyards."

Dated: August 14, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–21002 Filed 8–16–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13140]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel HOT TAMALE II.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 18, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13140. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: HOT TAMALE II. Owner: Eldridge Management Corporation.

(2) Size, capacity and tonnage of vessel. According to the applicant: "50'6" LOA * * *49 gross tons and 39 net tons."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "* * * sportfishing. The intended geographic area would be in the waters off the South and Southeast coasts of Florida and the Florida Keys, from Ft. Lauderdale and all the way around to Key West."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1981. Place of construction: Singapore.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "As far as having a negative impact on the commercial fishing operators in the same areas of operation, I think the day boats that carry large numbers of passengers for fishing are in an entirely different category and fish in an entirely different manner."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "I cannot foresee any negative impact on US Shipyards by the granting of this waiver * * * Perhaps if the general public were not under the impression that owning a charter vessel were strictly for retirees and the privileged few, than we might possibly see an increased demand for construction in smaller type charter vessels."

Dated: August 14, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–21007 Filed 8–16–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13142]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration; Department of Transportation.

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ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TEXAS CREWED.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 18, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13142. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: TEXAS CREWED. Owner: David Michael Wells.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Gross tonnage is 29 Tons, 26 Net Tons, 46 feet in length overall."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Intentions are to charter for hire with not more than 12 passengers. Geographic region to include if authorized, all Florida coastal waters and U.S. Virgin Islands Coastal waters."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1978. Place of construction: Caching, Republic of Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "I believe impact on other passenger vessels within this region to be negligible, as there appears to be more business in the environment than operators can handle. It is difficult to determine the number of existing operators within the applied for regions. Apparently there are not enough based on the regular occurrence of invitations I receive to sail for hire."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "U.S. Shipyards and boatyards will benefit from this venture in the area of TEXAS CREWED's normal haul out schedule of 1 year to 18 months for cleaning and anti fouling renewal. Increased wear and tear from charter operations will undoubtedly result in more extensive and frequent haul outs thus increasing revenue gains to local U.S. shipyard and repair facilities."

Dated: August 14, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–21008 Filed 8–16–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13139]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel VILLOMEE.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 18, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13139. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: VILLOMEE. Owner: Charles W. Collins.

(2) Size, capacity and tonnage of vessel. According to the applicant: "LOA: 51′ Beam: 15′ 4″; Capacity: 12 persons; Gross Tonnage: 35."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Recreational sailing charters and coastwise cruising along the east coast of the U.S."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1990. Place of construction: Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "Minimal impact; While there is a large demand, there are few vessels of this vintage capable of coastal and bluewater cruising along the entire U.S. east coast."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "Positive impact: This vessel has already gone through two major refits at U.S. yards, and its intended use will require constant upgrading and maintenance, all of which will be performed at U.S. shipyards."

Dated: August 14, 2002

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–21006 Filed 8–16–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2002–12908]

Reports, Forms and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before October 18, 2002.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB Control Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Johanna Lowrie, NHTSA, 400 Seventh Street, SW., Room 5311, NPS–10, Washington, DC 20590. Mrs. Lowrie's telephone number is (202) 366–5269. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, in submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Vehicle Information for the General Public.

OMB Control Number: 2127 New.

Affected Public: Manufacturers that sell motor vehicles in the United States under 10,000 lbs.

Abstract: NHTSA currently collects vehicle information through the Office of Vehicle Safety Compliance (OVSC). This information collection is mandatory and is specific to Compliance requirements of certain Federal Motor Vehicle Safety Standards (FMVSS). The information collected by OVSC has been useful to the New Car Assessment Program (NCAP) in selecting vehicles for it's crash testing programs, but more information is needed. At the same time, the public's interest in vehicle information continues to grow. The public is interested not only in crash test results and other vehicle ratings, but is also interested in information on the benefit and availability of safety features. NHTSA also needs safety feature information when it attempts to analyze petitions for rulemaking asking the agency to mandate certain safety features.

An example of the type of information we propose to collect includes: Specific advanced frontal air bags information that would include the number if air bag deployment stages; technologies air bag deployment is dependent upon; air bag on/off switch information; child restraint anchorages system information; seat belt information that would include

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pretensioner, load limiters or other energy management systems for the seat belt, seat belt extenders and adjustable upper belt anchorages; dynamic head restraints; side air bag information that would include where the side air bag is mounted, what type of side bag is mounted and whether the side air bags meet the requirements of the recommendations of the Technical Working Group on Out of Position Occupants (TWG); Automatic Door Lock (ADL) information; crash avoidance information, anti-theft devices, and Static Stability Rating (SSF) information.

NHTSA will use this information on the NHTSA web site, in the "Buying a Safer Car" and "Buying a Safer Car for Child Passengers" brochures, other consumer publications, as well as internally for benefit analysis. NHTSA plans on making this burden easier by sending out electronic files with the original letter requesting information. In the future, NHSTA plans on developing a process for the manufacturers to submit the information on a secure website.

Estimated Annual Burden: 2–5 hours per vehicle model. Therefore, for a small manufacturer with only 6 vehicle models, the estimated burden would be 12–30 hours. For a large vehicle manufacturer with 100 vehicle models, the estimated burden would be 200–500 hours.

Number of Respondents: 45.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: August 14, 2002.

Roger A. Saul,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 02–21028 Filed 8–16–02; 8:45 am]

BILLING CODE 4910–59–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0119]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 18, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0119."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0119" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Report of Treatment in Hospital, VA FL 29–551.

OMB Control Number: 2900–0119.

Type of Review: Extension of a currently approved collection.

Abstract: This form letter is used to collect information from hospitals to determine the insured's eligibility for disability insurance benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 6, 2002, at page 39100.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,055.

Estimated Average Burden Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,277.

Dated: July 31, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–21009 Filed 8–16–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0556]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 18, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0556."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 at (202) 395–7316. Please refer to "OMB Control No. 2900–0556" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: VA Advance Directive: Living Will and Durable Power of Attorney for Health Care, VA Form 10–0137.

OMB Control Number: 2900–0556.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–0137 is used to record a patient's specific instructions about health care decisions in the event the patient no longer has decision-making capacity. The information will be used by health care professionals to make treatment decisions for the patient.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 3, 2002, at page 38319.

Affected Public: Individuals or households.

Estimated Annual Burden: 101,250 hours.

Estimated Average Burden Per Respondent: 25 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 243,000.

Dated: August 5, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–21010 Filed 8–16–02; 8:45 am]

BILLING CODE 8320–01–P

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Corrections

Federal Register
Vol. 67, No. 160
Monday, August 19, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

Correction

The correction to notice document 02-20210 appearing at 67 FR 53396, Thursday, August 15, 2002 was incorrect. It is corrected to read as follows:

In notice document 02-20210 appearing on page 51583, in the issue of August 8, 2002, make the following correction:

In the issue of Thursday, August 8, 2002, on page 51583, in the first column, under the meeting of *"Thursday, August 15, 2002 at 10 A.M."*, under "**STATUS**", "closed" should read "open".

[FR Doc. C2–20210 Filed 8–16–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[DEA–222A]

RIN 1117–AA64

Chemical Mixtures Containing gamma-Butyrolactone

Correction

In proposed rule document 02–17903 beginning on page 47493 in the issue of Friday, July 19, 2002, make the following corrections:

1. On page 47493, in the first column, under the **SUMMARY** section, in the sixteenth line, "21 U.S.C. 804(40))" should read "21 U.S.C. 802(40))".

2. On the same page, in the second column, in the last paragraph, in the the eighth line, the word "be" should read "by".

[FR Doc. C2–17903 Filed 8–16–02; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Monday,
August 19, 2002

Part II

Department of Agriculture

Animal Plant Health Inspection Service

7 CFR Parts 319 and 322
Bees and Related Articles; Notice of Public Hearings; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319 and 322

[Docket No. 98–109–1]

RIN 0579–AB20

Bees and Related Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and notice of public hearings.

SUMMARY: We are proposing to amend the regulations for the importation of honeybees and honeybee semen and the regulations established to prevent the introduction of exotic bee diseases and parasites through the importation of bees other than honeybees, certain beekeeping byproducts, and used beekeeping equipment. Among other things, our proposal would allow honeybees from Australia and honeybees and honeybee germ plasm from New Zealand to be imported into the United States under certain conditions, impose certain conditions on the importation into the United States of bees and related articles from Canada, and prohibit the interstate movement of honeybees into Hawaii. It also would consolidate all of our regulations concerning bees. These changes would make these regulations more consistent with international standards, update them to reflect current research and terminology, and simplify them and make them more useful.

DATES: We will consider all comments that we receive on or before November 18, 2002. We will also consider comments made at public hearings to be held in Kailua-Kona, HI, on October 22, 2002; Fresno, CA, on October 24, 2002; and Beltsville, MD, on October 29, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 98–109–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–109–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 98–109–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

Public hearings regarding this rule will be held at the following locations:

1. Kailua-Kona, HI: Royal Kona Resort, 75–5852 Alii Drive, Kailua-Kona, HI.
2. Fresno, CA: Piccadilly Inn Airport, 5115 E. McKinley, Fresno, CA.
3. Beltsville, MD: United States Department of Agriculture, Beltsville Agricultural Research Center, 10300 Baltimore Avenue (Rte. 1), Circle Drive, Building 003—Basement Auditorium, Beltsville, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Wayne F. Wehling, Entomologist, Permits and Risk Assessments, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–8757.

SUPPLEMENTARY INFORMATION:

Public Hearings

We are advising the public that we are hosting three public hearings on this proposed rule. The first public hearing will be held in Kailua-Kona, HI, on Tuesday, October 22, 2002. The second public hearing will be held in Fresno, CA, on Thursday, October 24, 2002. The third public hearing will be held in Beltsville, MD, on Tuesday, October 29, 2002.

A representative of the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), will preside at the public hearings. Any interested person may appear and be heard in person, by attorney, or by other representative. Written statements may be submitted and will be made part of the hearing record. A transcript of the public hearings will be placed in the rulemaking record and will be available for public inspection.

The purpose of the hearings is to give interested persons an opportunity for presentation of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at the hearings, except to clarify or explain provisions of the proposed rule.

The public hearings will begin at 9 a.m. and are scheduled to end at 5 p.m., local time. The presiding officer may limit the time for each presentation so that all interested persons appearing at each hearing have an opportunity to participate. Each hearing may be terminated at any time if all persons desiring to speak have been heard.

Registration for the hearings may be accomplished by registering with the presiding officer between 8:30 a.m. and 9 a.m. on the day of the hearing. Persons who wish to speak at a hearing will be asked to sign in with their name and organization to establish a record for the hearing. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. Those who wish to form a panel to present their views will be asked to provide the name of each member of the panel and the organizations the panel members represent.

Persons or panels wishing to speak at one or more of the public hearings may register in advance by phone or e-mail. Persons wishing to register by phone should call the Regulatory Analysis and Development voice mail at (301) 734–8138. Callers must leave a message clearly stating (1) the location of the hearing the registrant wishes to speak at, (2) the registrant's name and organization, and, if registering for a panel, (3) the name of each member of the panel and the organization each panel member represents. Persons wishing to register by e-mail must send an e-mail with the same information described above to *regulations@aphis.usda.gov*. Please write "Public Hearing Registration" in the subject line of your e-mail. Advance registration for any hearing must be received by 3 p.m. on Friday, October 18, 2002.

If you require special accommodations, such as a sign language interpreter, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

Under the Honeybee Act (7 U.S.C. 281–286), the Secretary of Agriculture is authorized to prohibit or restrict the importation of honeybees and honeybee semen to prevent the introduction into the United States of diseases and parasites harmful to honeybees and of undesirable species such as the African honeybee. The Secretary has delegated

responsibility for administering the Honeybee Act to the Administrator of APHIS of the USDA. Regulations established under the Honeybee Act are contained in the Code of Federal Regulations (CFR), title 7, part 322 (referred to below as the "honeybee regulations").

The honeybee regulations allow the unrestricted importation into the United States of honeybees and honeybee semen from Canada but place stringent requirements on the importation of these products from other countries. Specifically, the honeybee regulations provide for the importation of honeybees from any country other than Canada only if they are imported by USDA for experimental or scientific purposes. Honeybee semen may be imported only:

- By USDA for experimental or scientific purposes; or
- By a person or group other than USDA only if the semen is imported from Australia, Bermuda, France, Great Britain, or Sweden and meets certain documentation, packaging, inspection, notification, and port of entry requirements.

In addition, the honeybee regulations allow honeybees and honeybee semen from New Zealand to transit the United States en route to another destination in accordance with certain documentation, packaging, handling, notification, and port of entry requirements.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of plant pests and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Secretary has delegated responsibility for administering the Plant Protection Act to the Administrator of APHIS. Regulations authorized by the Plant Protection Act concerning the importation of certain bees, beekeeping byproducts, and used beekeeping equipment are contained in 7 CFR part 319, §§ 319.76 through 319.76–8 (referred to below as the "pollinator regulations").

The pollinator regulations govern the importation of live bees other than honeybees, dead bees of the superfamily *Apoidea*, certain beekeeping byproducts, and beekeeping equipment. These regulations help prevent the introduction of exotic bee diseases and parasites that, if introduced into the United States, could cause substantial reductions in pollination by bees. Reductions in pollination by bees could indirectly cause serious damage to crops and other plants.

The pollinator regulations allow bees other than honeybees; dead bees; used bee boards, hives, nests, and nesting material; used beekeeping equipment; beeswax; pollen for bee feed; and honey for bee feed to be imported into the United States from Canada without restriction but restrict the importation of these articles from other countries. Specifically, the pollinator regulations provide for the importation of these articles from any country other than Canada only if they are imported by USDA for experimental or scientific purposes or if they are imported under permit and meet certain documentation, inspection, treatment, packaging, notification, and port of entry requirements.

We propose to revise the honeybee regulations and the pollinator regulations. Among other things, we propose to allow honeybees from Australia and honeybees and honeybee germ plasm from New Zealand to be imported into the United States under certain conditions, to impose certain conditions on the importation into the United States of bees and related articles from Canada, and to prohibit the interstate movement of honeybees into Hawaii. We also propose to consolidate the honeybee regulations and the pollinator regulations. These changes would make these regulations more consistent with international standards, update them to reflect current research and terminology, and simplify them and make them more useful.

International Trade Agreements

Both the North American Free Trade Agreement (NAFTA) and the General Agreement on Tariffs and Trade (GATT) contain provisions establishing the rights and obligations of signatory countries concerning sanitary and phytosanitary (SPS) regulation. SPS measures are generally defined as governmental measures intended to protect human, animal, or plant life and health. The applicable provisions are, respectively: Articles 709–724 of the NAFTA; and the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (referred to below as "WTO Agreement").

Although the two agreements differ in a few respects, both NAFTA and the WTO Agreement provide that member countries should ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal, or plant life or health; is based on scientific principles; and is not maintained without sufficient scientific evidence. The WTO Agreement requires that any sanitary or phytosanitary measure taken by a member country be based on a risk assessment. Risk assessment involves an evaluation of the likelihood of entry, establishment, and spread of a pest or disease within the territory of an importing member country given the sanitary or phytosanitary measures which may be applied, and an evaluation of the associated potential biological and economic consequences. The WTO Agreement also requires member countries to recognize the concepts of low pest or disease prevalence and ensure that sanitary or phytosanitary measures are adapted to take into account the characteristics of regions from which products originate and to which products are destined. In addition, NAFTA and the WTO Agreement provide that member countries should base their sanitary and phytosanitary measures on international standards, guidelines, or recommendations, where they exist. The Office International des Epizooties, which is the international standard-setting body recognized by the WTO Agreement for animal health, developed the international standards, guidelines, and recommendations that apply to the importation and exportation of bees and bee germ plasm. The WTO Agreement further provides that countries may deviate from international standards, guidelines, and recommendations if a risk assessment demonstrates that additional measures are necessary to provide appropriate sanitary and phytosanitary protection against pest introduction.

Office International des Epizooties (OIE)

In chapter 2.9 of the International Animal Health Code (2001 edition), OIE recommends that importing countries require specific health certifications for importations of bees. OIE recommends that the health certifications address the condition of the bees in relation to the following five diseases: Acariosis of bees (tracheal mite), American foulbrood, European foulbrood, nosemosis of bees (Nosema disease), and Varroosis (Varroa mite).

All five of the bee diseases listed in OIE's International Animal Health Code are established on the Continental United States, although other important bee diseases and parasites of economic and environmental concern are not. Therefore, our proposal incorporates a health inspection, rather than a health certification, for bees imported into the Continental United States. This means that rather than proposing to require a

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health certification that imported bees are free of the diseases listed in OIE's International Animal Health Code, we are proposing to require that the export certificate accompanying bees imported into the Continental United States identify any disease, parasite, or undesirable species or subspecies of honeybee found in the hive from which the shipment was derived during the mandatory preexport inspection. If one, or more, of the five diseases listed in OIE's International Animal Health Code is the only item, or items, identified on the export certificate as occurring in the hive from which the shipment was derived, we would not refuse the shipment's entry into the Continental United States. However, if another important bee disease or parasite of economic and environmental concern to the United States, including, but not limited to, Thai sacbrood virus, *Tropilaelaps clareae*, and *Euvarroa sinhai*, or if an undesirable species or subspecies of honeybee, including, but not limited to, the Cape honeybee (*Apis mellifera capensis*) and the Oriental honeybee (*Apis cerana*), is identified on the export certificate as occurring in the hive from which the shipment was derived, we would refuse the shipment's entry into the United States. This information would help us monitor and document the health status of bees intended for entry into the United States and would provide important information about the health status of imported bees to prospective buyers in the United States. Our proposed provisions for health inspection are discussed in more detail later in this document.

Because of Hawaii's unique pest status, honeybees imported into Hawaii would be required to have a health certification. The certification would have to state, among other things, that the honeybees were found free of Varroa mite, tracheal mite, and African honeybees during the mandatory preexport inspection. Other special requirements for honeybees imported into Hawaii are discussed later in this document.

In appendix 3.4.2 of the International Animal Health Code (2001 edition), OIE recommends, among other things, that member countries establish permanent sanitary surveillance of their apiaries and approve breeding apiaries for export trade. OIE recommends that the sanitary surveillance include periodic visits to apiaries to detect diseases, sampling of bees to diagnose contagious diseases, and other sanitary measures (like treatment of bees and disinfection of equipment) to ensure rapid eradication of any outbreak of a contagious disease. OIE standards for the approval of breeding apiaries for export trade include standards related to the disease status of apiaries, disease reporting by beekeepers, controls on the introduction of bees and beekeeping materials from another apiary, recommendations for special techniques to ensure protection against outside contamination, and periodic collection of samples for examination by an official laboratory.

Our proposal recognizes the value of permanent sanitary surveillance of apiaries and the standards related to approving apiaries for export trade by providing for:

- Evaluation during the risk assessment process of the surveillance system of a region that requests approval to export honeybees, honeybee germ plasm, or bees other than honeybees to the United States; and
- Health inspection, conducted by an official of the appropriate regulatory agency of the national government of the approved exporting region, to identify the disease status of the apiary.

Canada

This proposal would impose specific requirements, including documentation, health inspection, packaging, port of entry inspection, and certain other requirements, on the importation of honeybees, honeybee germ plasm, bees other than honeybees, and certain beekeeping byproducts into the United States from Canada. This proposal would also prohibit the importation of bee pollen for bee feed and restrict the importation of used beekeeping equipment into the United States from Canada. Currently, these commodities may be imported into the United States from Canada without documentation or any other conditions on their importation. The lack of documentation, as well as the lack of other means of monitoring and safeguarding these importations from Canada, increases the pest risk associated with the importation of these commodities from Canada. The most serious pest risk arises from the potential for shipments from foreign regions that are not allowed to import bees and related articles into the United States being transshipped through Canada to the United States. Therefore, we propose to impose specific requirements on the importation of honeybees, honeybee germ plasm, bees other than honeybees, and certain beekeeping byproducts into the United States from Canada to ensure that bees and related articles entering the United States from Canada are of Canadian origin, to discourage transshipment of bees from other foreign countries and regions through Canada to the United States, and to enable traceback of shipments should a bee disease or bee parasite outbreak occur in Canada or in the United States. Further, in accordance with NAFTA and the WTO Agreement, these changes would offer harmonization in the regulations governing the importation of bees and related articles into the United States from all foreign regions. The requirements related to Canada and other foreign regions are discussed in more detail later in this document.

Proposed Format and Title of Revised 7 CFR Part 322

Our proposal includes a new format for 7 CFR part 322. The proposed format combines, into this one part of the CFR, the honeybee regulations and the pollinator regulations. The proposed format divides part 322 into five subparts: A, B, C, D, and E. Subpart A would include definitions and general requirements for the interstate movement within and importation into the United States of bees, beekeeping byproducts, and used beekeeping equipment. Subpart B would cover importation of honeybees, honeybee germ plasm, and bees other than honeybees from approved regions. Subpart C would cover importation of restricted organisms (*i.e.*, honeybee brood in the comb and bees and honeybee germ plasm from regions that do not meet the criteria for importation under subpart B). Subpart D would cover shipments of restricted organisms transiting the United States en route to another destination. Subpart E would cover importation and transit of restricted articles (*i.e.*, dead bees of the superfamily *Apoidea;* beeswax for beekeeping, unless it has been liquefied; and honey for bee feed). We believe this format would make the regulations easier to read and more useful by consolidating all of the requirements related to the importation of bees, beekeeping byproducts, and used beekeeping equipment.

Based on this proposed consolidation of the honeybee and pollinator regulations, we also propose to change the title of part 322 from "Honeybees and Honeybee Semen" to "Bees, Beekeeping Byproducts, and Beekeeping Equipment." The term "bee" would be defined to include bee germ plasm.

Proposed Subpart A—General Provisions

Subpart A would provide: (1) Definitions for the words we use in the part, and (2) general requirements for the interstate movement within and importation into the United States of bees, beekeeping byproducts, and used beekeeping equipment. All bees, beekeeping byproducts, and used beekeeping equipment moved interstate within or imported into the United States would be subject to the applicable general requirements described in the proposed subpart A of the regulations.

Definitions (§ 322.1)

Proposed § 322.1 would define the words we use in the part. The definition for *United States* would remain the same as that currently in the honeybee regulations. The definitions for *bee, beekeeping byproduct,* and *beekeeping equipment* would be added to reflect the consolidation of the honeybee regulations and the pollinator regulations. For clarity and consistency with other regulations in title 7 of the CFR, the definition for *inspector* would be revised, the definition for *Deputy Administrator* would be replaced with a definition for *Administrator,* and the definition for *Plant Protection and Quarantine* would be replaced with a definition for *Animal and Plant Health Inspection Service.* We would also update the definitions for *honeybee* and *undesirable species or subspecies of honeybee.* Further, to explain beekeeping terms we use in the regulations, we would add definitions for *beekeeping establishment, brood, hive, germ plasm, package bees,* and *queen.* To explain the terms we use in accordance with international standards, we would add definitions for *destination State* and *Office International des Epizooties (OIE). See* § 322.1 of the rule portion of this document for the definitions.

General Provisions

The remainder of proposed subpart A—§§ 322.2 and 322.3—would provide the general requirements for the interstate movement and importation of bees, beekeeping byproducts, and used beekeeping equipment and would prohibit the interstate movement of honeybees into Hawaii. These are explained below.

General Requirements for Interstate Movement and Importation (§ 322.2)

Proposed § 322.2 would be divided into two paragraphs: Paragraph (a), interstate movement, and paragraph (b), importation.

Paragraph (a) of § 322.2 would establish a list of areas in the United States that are considered pest-free areas for Varroa mite, tracheal mite, and African honeybee and would prohibit the interstate movement of honeybees, including honeybee germ plasm, to those areas. Currently, Hawaii is the only area in the United States that we propose to list as a pest-free area. Hawaii has demonstrated freedom from Varroa mite, tracheal mite, and African honeybee based on 10 years of export inspection data. Although these pests have been established on the continental United States for nearly a decade, they have not been introduced into Hawaii. We believe this is largely due to Hawaiian State law prohibiting the movement of honeybees into that State, together with the unique biological barriers that prevent the natural spread of these pests from the continental United States to Hawaii. We believe that Federal regulations prohibiting the interstate movement of honeybees to areas considered free from Varroa mite, tracheal mite, and African honeybee would strengthen our ability to prevent the artificial spread of these pests into Hawaii. We would limit this prohibition to the interstate movement of honeybees because other bees do not carry Varroa mite or tracheal mite and, by definition, cannot be African honeybees.

Paragraph (b) of § 322.2 would explain that our regulations are designed to prevent the introduction of bee diseases and parasites, and undesirable species or subspecies of honeybees, into the United States through the importation of bees, beekeeping byproducts, or used beekeeping equipment. Paragraph (b)(1) would require compliance with the regulations for the importation of bees and beekeeping byproducts. This paragraph would also prohibit the importation of bee pollen for bee feed and the importation of used beekeeping equipment unless that equipment either will be used solely for indoor display purposes and will not come into contact with indigenous bees or consists of bee boards that contain a live brood of bees, other than honeybees, from regions listed in § 322.4(c).

In the current pollinator regulations, bee pollen for bee feed and used beekeeping equipment may be imported into the United States only if they have been treated with ethylene oxide. Ethylene oxide is no longer routinely used as a quarantine treatment because it is likely carcinogenic to humans. Because we do not have complete information supporting the adoption of an alternative treatment for bee pollen for bee feed or used beekeeping equipment, we would prohibit their importation into the United States, with two exceptions, to prevent the introduction of bee diseases and parasites on those commodities. The first exception we propose, to allow the importation of used beekeeping equipment if that equipment will be used solely for indoor display purposes and will not come into contact with indigenous bees, would enable museums to import historical beekeeping equipment for educational displays. The second exception we propose, to allow the importation of bee boards that contain a live brood of bees, other than honeybees, from regions listed in § 322.4(c), would facilitate the continued importation of certain species of bees from Canada for pollination of U.S. crops. New beekeeping equipment would continue to be eligible for importation if it complied with all applicable regulations (such as the regulations pertaining to unmanufactured wood in 7 CFR part 319 and the plant pest regulations in 7 CFR part 330).

In addition, paragraph (c) of § 322.2 would set forth the actions APHIS would take to prevent the introduction of diseases, parasites, or undesirable species or subspecies of honeybees into the United States as a result of the arrival in the United States of bees, beekeeping byproducts, or beekeeping equipment that are not in compliance with part 322. Any honeybees, honeybee germ plasm, bees other than honeybees, or used beekeeping equipment not in compliance with part 322 that are imported into the United States would be required to be either immediately exported from the United States by the importer or destroyed at the importer's expense.

Costs and Charges (§ 322.3)

Proposed § 322.3 would clarify and combine information on costs and charges from 7 CFR 322.7 and 319.76–7. We would furnish, without cost, the services of an inspector during normal business hours and at the usual places of duty. The importer would be responsible for all costs and charges arising from inspection outside of normal business hours or away from the usual places of duty. The importer would also be responsible for all costs and charges related to the export, destruction, or treatments required by part 322. Further, if the importer imports bees or germ plasm into a containment facility for research or processing, the importer would be responsible for all additional costs and charges associated with the importation.

Proposed Subpart B—Importation of Adult Honeybees, Honeybee Germ Plasm, and Bees Other Than Honeybees From Approved Regions

Subpart B would list approved regions from which honeybees, honeybee germ plasm, and bees other

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than honeybees may be imported into the United States under subpart B; set forth the requirements for importation from those regions; and establish the process by which regions may be approved.

Approved Regions (§ 322.4)

Proposed § 322.4(a), (b), and (c) would list approved regions from which honeybees, honeybee germ plasm, and bees other than honeybees, respectively, may be imported into the United States under subpart B.

Proposed § 322.4(a) would list Australia, Canada, and New Zealand as approved regions for the importation of adult honeybees. Of these regions, only Canada may currently export honeybees to the United States.

Proposed § 322.4(b) would list Australia, Bermuda, Canada, France, Great Britain, New Zealand, and Sweden as approved regions for the importation of honeybee germ plasm. All of these countries except New Zealand may currently export honeybee germ plasm to the United States.

Proposed § 322.4(c) would list Canada as the only approved region for the importation of bees other than honeybees. This would not be a change to our regulations; Canada currently exports certain species of bees other than honeybees into the United States to pollinate crops. Imports from Australia and New Zealand

Our proposal to allow, under certain conditions, the importation of adult honeybees from Australia and adult honeybees and honeybee germ plasm from New Zealand is based on two pest risk assessments: "Pest Risk Assessment: Importation of Adult Queens, Package Bees, and Germ Plasm of Honeybees (*Apis mellifera* L.) From Australia" (referred to below as the Australian PRA) and "Pest Risk Assessment: Importation of Adult Queens, Package Bees, and Germ Plasm of Honeybees (*Apis mellifera* L.) From New Zealand" (referred to below as the New Zealand PRA). These pest risk assessments conclude that importations of adult honeybees from Australia and adult honeybees and honeybee germ plasm from New Zealand would present a negligible risk of introducing exotic bee diseases or pests or undesirable species or subspecies of honeybees into the United States.

As a courtesy to the domestic beekeeping industry and our trading partners, we made both pest risk assessments available to the public for comment prior to the publication of this proposed rule. On December 9, 1999, we published in the **Federal Register** (64 FR 68984, Docket No. 99–091–1) a notice of availability for the New Zealand PRA. On May 3, 2000, we published in the **Federal Register** (65 FR 25701, Docket No. 00–032–1) a notice of availability for the Australian PRA. We solicited public comment on each pest risk assessment for 60 days. During their respective 60-day comment periods, we received 23 comments on the New Zealand PRA and 6 comments on the Australian PRA. Most of these comments, however, raised issues that are not directly related to the pest risk assessments, such as the quality of honeybees and honeybee germ plasm that may be imported from Australia and New Zealand and possible trade issues and their related economic consequences for U.S. producers arising from those importations. We have responded to all comments received on a particular pest risk assessment, whether relevant to the pest risk assessment or not, in an addendum to that pest risk assessment.

We have also updated the New Zealand PRA because, since its publication, Varroa mite (*Varroa jacobsoni*) was detected on the North Island of New Zealand. In response to the detection of this bee parasite, the New Zealand Ministry of Agriculture and Fisheries (MAF) immediately restricted the movement of bees and bee products from the North Island of New Zealand. Then MAF conducted delimiting surveys to determine the extent of the infestation of Varroa mite in that country. The delimiting surveys show that the infestation is contained to a portion of the North Island of New Zealand and, at present, is extensive enough to prevent the eradication of Varroa mite from that area. Therefore, MAF, in consultation with New Zealand's beekeeping industry, developed a national management plan for Varroa mite. Under the management plan, the movement of bees and bee products within the North Island of New Zealand is monitored and subject to certain restrictions. In addition, the movement of bees and bee products from the North Island of New Zealand to the South Island of New Zealand, which is considered a pest free area for Varroa mite, is subject to permit and restrictions. The management plan also includes surveillance plans for the South Island of New Zealand to ensure early detection if Varroa mite is introduced to that area of the country. Detailed information on New Zealand's Varroa mite management plan is located on the Internet at *http://www.maf.govt.nz/varroa*.

Our updated New Zealand PRA includes a discussion of the recent detection of Varroa mite on the North Island of New Zealand and qualitatively assesses the effect of that parasite on importations from New Zealand. We are accepting comments on the updated New Zealand PRA concurrently with comments on this proposed rule. Please send your comments on the updated New Zealand PRA to the address listed under **ADDRESSES** near the beginning of this document.

Both pest risk assessments, with addenda, are available on the Internet at *http://www.aphis.usda.gov/ppq/pra/honeybees/*, by calling the Plant Protection and Quarantine fax vault and requesting either document 0512 (New Zealand PRA) or document 0029 (Australian PRA), or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT** near the beginning of this document.

General Requirements (§ 322.5)

Proposed § 322.5(a) would require honeybees, honeybee germ plasm, and bees other than honeybees imported from approved regions to be shipped directly from an approved region to the United States. This would ensure that honeybees, honeybee germ plasm, and bees other than honeybees imported from approved regions would not transit any nonapproved regions en route to the United States.

Proposed § 322.5(b) would provide that adult honeybees may only be imported under subpart B from approved regions listed in § 322.4(a) (*i.e.*, Australia, Canada, and New Zealand). It would also state that the honeybees must be package bees or adult queens with attending adult honeybees. Adult bees, and particularly package bees and adult queens with attending adult honeybees, which are generally produced by experienced beekeepers, are less susceptible to diseases and parasites than other honeybee life stages. Other honeybee life stages, as well as adult honeybees from nonapproved regions, would be allowed to be imported into the United States only under subpart C, "Importation of Restricted Organisms."

Proposed § 322.5(c) would provide that honeybee germ plasm may only be imported under subpart B from approved regions listed in § 322.4(b) (*i.e.*, Australia, Bermuda, Canada, France, Great Britain, New Zealand, and Sweden). Honeybee germ plasm from nonapproved regions would be allowed to be imported into the United States only under subpart C, "Importation of Restricted Organisms."

Proposed § 322.5(d) would provide that bees other than honeybees may only be imported under subpart B from approved regions listed in § 322.4(c) (*i.e.*, Canada). It would also state that the bees must be live adults or live brood. Proposed § 322.5(d) would further provide that only bees of the following species may be imported under subpart B: Bumblebees of the species *Bombus impatiens;* bumblebees of the species *Bombus occidentalis;* alfalfa leafcutter bee (*Megachile rotundata*); blue orchard bee (*Osmia lignaria*); and horn-faced bee (*Osmia cornifrons*). These species generally are commercially produced by experienced beekeepers and are not commonly associated with bee disease or parasite outbreaks. Other species of bees other than honeybees, as well as listed species of bees other than honeybees from nonapproved regions, would be allowed to be imported into the United States only under subpart C, "Importation of Restricted Organisms."

Export Certificate (§ 322.6)

Proposed § 322.6 would require that bees and honeybee germ plasm imported under subpart B be accompanied by an export certificate. The export certificate would have to be issued by the appropriate regulatory agency of the national government of the exporting region.

For adult honeybees, the export certificate would have to certify that the hives from which the honeybees in the shipment were derived were individually inspected by an official of the regulatory agency no more than 10 days prior to export. In addition, the export certificate would have to identify all diseases, parasites, and species or subspecies of honeybees found in the hive during that preexport inspection. Inspection of the hive would ensure that any disease, parasite, or undesirable species or subspecies of honeybee that may be present would be detected prior to that shipment's departure from the region of origin. The proposed time limit of 10 days would ensure that even during peak periods of hive activity, when diseases and parasites can move very rapidly through a hive, the preexport inspection would offer an accurate assessment of the hive's health status. The identification on the export certificate of all diseases, parasites, and species or subspecies of honeybees found in the hive during the preexport inspection would offer us, as well as persons purchasing these imported bees, important information on the status of the bees.

The export certificate would also have to certify that the bees in the shipment were produced in the exporting region and are the offspring of queens and drones or semen also produced in the exporting region. This requirement would help ensure that the bees would not be transshipped from a nonapproved region through an approved region to the United States. Honeybees from nonapproved regions would present an unacceptable risk of introducing exotic bee diseases or parasites or undesirable species or subspecies of honeybees into the United States.

If adult honeybees were intended for importation into Hawaii, the export certificate would also have to certify the following:

- The honeybees in the shipment were inspected by an official of the appropriate regulatory agency of the national government of the exporting region on the day of export and showed no sign of Varroa mite, tracheal mite, or African honeybee;
- The hives from which the honeybees in the shipment are derived were individually inspected by an official of the appropriate regulatory agency of the national government of the exporting region no more than 10 days prior to export and showed no sign of the presence of Varroa mite, tracheal mite, or African honeybee;
- The honeybees in the shipment are derived exclusively from an apiary situated in the center of a zone of 50 kilometers (31 miles) in radius, in which special diagnostic tests, as set forth by OIE, did not reveal any sign of the presence of Varroa mite for at least the past 2 years;
- The honeybees in the shipment are derived exclusively from an apiary situated in the center of a zone of 5 kilometers (3.1 miles) in radius, in which no case of tracheal mite has been reported for at least the past 8 months; and
- The honeybees in the shipment were raised in and are derived exclusively from an apiary that meets the standards of OIE for the application of sanitary measures, special breeding techniques, and sanitary surveillance related to Varroa mite and tracheal mite.

These inspections and other requirements would ensure that Varroa mite and tracheal mite are not introduced into Hawaii. The sizes of the zones described above are set by OIE standards.

Lastly, this paragraph would provide that if an important bee disease or parasite of economic and environmental concern to the United States, including, but not limited to, Thai sacbrood virus, *Tropilaelaps clareae,* and *Euvarroa sinhai,* or if an undesirable species or subspecies of honeybee, including, but not limited to, the Cape honeybee (*Apis mellifera capensis*) and the Oriental honeybee (*Apis cerana*), were identified on the export certificate as occurring in the hive from which the shipment was derived, we would refuse the shipment's entry into the United States. This would prevent the introduction of exotic bee diseases and parasites, and undesirable species and subspecies of honeybees, into the United States.

For honeybee germ plasm, the requirements would be similar to the requirements for adult honeybees imported into the continental United States. The export certificate would have to certify that the hives from which the germ plasm in each shipment was derived were individually inspected by an official of the appropriate regulatory agency of the national government of the exporting region no more than 10 days prior to export; would have to identify any diseases, parasites, and undesirable species or subspecies of honeybees found in the hive during that preexport inspection; and would have to certify that the bees in the hives from which the shipment was derived were produced in the exporting region and are the offspring of queens and drones or semen also produced in the exporting region. Lastly, we would provide that if an important bee disease or parasite of economic and environmental concern to the United States, including, but not limited to, Thai sacbrood virus, *Tropilaelaps clareae,* and *Euvarroa sinhai,* or if an undesirable species or subspecies of honeybee, including, but not limited to, the Cape honeybee (*Apis mellifera capensis*) and the Oriental honeybee (*Apis cerana*), were identified on the export certificate as occurring in the hive from which the shipment was derived, we would refuse the shipment's entry into the United States. Our reasons for these requirements are explained above.

For bees other than honeybees, the export certificate would have to certify that the bees in the shipment were produced in the exporting region and are the offspring of queens and drones or semen also produced in the exporting region. This requirement would help ensure that the bees would not be transshipped from a nonapproved region through an approved region to the United States. Although bees other than honeybees from approved regions present little risk of introducing exotic bee diseases or parasites or undesirable species or subspecies of honeybees into the United States, bees other than honeybees from nonapproved regions would present an unacceptable risk of such introductions.

Notice of Arrival (§ 322.7)

Proposed § 322.7 would require that importers notify APHIS at least 10

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business days prior to the arrival in the United States of any shipment of bees or honeybee germ plasm to be imported into the United States under subpart B. This notice would have to include certain information about the importer, producer, and shipment. This information would allow us to notify the U.S. port of arrival and State authorities in the State of destination about the impending shipment and would facilitate traceback of shipments if an outbreak of a disease or parasite were to occur in the exporting region or in the United States.

Packaging of Shipments (§ 322.8)

Proposed § 322.8 would set forth requirements for packaging for honeybees and bees other than honeybees imported under subpart B. We would not require any special packaging for honeybee germ plasm imported under subpart B because honeybee germ plasm does not present a risk of injury to our inspectors at U.S. ports.

For adult honeybees, we would require that packaging prevent the escape of the bees, and we would restrict the materials that may be included in the shipment with the bees. These requirements would ensure that bees are adequately contained during shipping, therefore protecting our inspectors at U.S. ports, and would ensure that restricted articles are not packaged with bees arriving in the United States from approved regions.

For bees other than honeybees, the adult bees would have to be shipped in packages that:

- Are securely closed;
- Do not include any soil; and
- Include only packing materials that were grown or produced in the exporting region and that meet all other applicable requirements of title 7, chapter III (such as the regulations pertaining to unmanufactured wood in 7 CFR part 319 and the plant pest regulations in 7 CFR part 330).

These requirements would help ensure the safety of our inspectors and prevent the introduction of exotic diseases or parasites into the United States through packing materials.

In addition, we would allow live brood of bees, other than honeybees, imported under subpart B to enter the United States in new or used bee boards, as long as those bee boards meet all applicable requirements of the regulations.

Mailed Packages (§ 322.9)

Proposed § 322.9 would provide labeling and additional documentation requirements for bees and honeybee germ plasm that are imported from approved regions through the mail or through commercial express delivery. First, we would require that all sides of the outside of each package be clearly marked with the contents of the shipment and the name of the exporting region. Second, we would require that importers using commercial express delivery to import bees and honeybee germ plasm from approved regions would have to provide an accurate description of the shipment's contents for the shipment's delivery manifest entry. Third, we would require that, in addition to an export certificate, each package be accompanied at the time of arrival in the United States by an invoice or packing list accurately indicating the complete contents of the shipment. These requirements would help facilitate the importation of these products by providing our inspectors with ready access to essential information about the shipment.

Packages That Are Hand-Carried or in Personal Baggage Aboard Aircraft Arriving in the United States (§ 322.10)

Proposed § 322.10 would provide labeling and additional documentation requirements for bees and honeybee germ plasm that are hand-carried or carried in personal baggage from approved regions aboard aircraft. As with mailed packages, we would require that the outside of each package be clearly marked with the contents of the shipment and the name of the exporting region. In addition, we would require that the person carrying the package declare it at the port of entry in the United States by providing a copy of the required export certificate to an inspector at the port. These requirements would also help facilitate the importation of these products by providing our inspectors with ready access to essential information about the shipment. We recommend that individuals who intend to import bees and honeybee germ plasm from approved regions into the United States in this manner contact their airline of choice for any additional requirements the airline may have.

Packages That Are Hand-Carried or in a Personal or Commercial Vehicle Arriving at a Land Border Port in the United States (§ 322.11)

Proposed § 322.11 would provide additional documentation requirements for bees and honeybee germ plasm that are hand-carried or in a personal or commercial vehicle, such as an automobile or truck, from approved regions to a land border port in the United States. Specifically, we would require that the person carrying the bees or honeybee germ plasm or the driver of the vehicle present the export certificate required by § 322.6 and an invoice or packing slip accurately indicating the complete contents of the shipment to the inspector at the land border port in the United States. This requirement would also help facilitate the importation of these products by providing our inspectors with ready access to essential information about the shipment.

Inspection; Refusal of Entry (§ 322.12)

Proposed § 322.12 would set forth provisions for the port-of-entry inspection of bees and honeybee germ plasm imported under subpart B. APHIS inspectors would check to see that importers had provided timely notice of arrival for a shipment and that shipments have the proper packaging and documentation. This inspection would help ensure that shipments have been handled in accordance with the regulations.

Ports of Entry (§ 322.13)

Proposed § 322.13 would require that shipments arrive only at a U.S. port of entry staffed by an APHIS inspector. This would ensure that an APHIS inspector is present to determine whether shipments comply with the regulations.

Risk Assessment Procedures for Approving Countries (§ 322.14)

Proposed § 322.14 would set forth the risk assessment procedures we would follow when we receive a request to approve a region to import honeybees, honeybee germ plasm, or bees other than honeybees into the United States. This information will make our review process more transparent to our trading partners.

We would provide that, when we receive a request to import honeybees, honeybee germ plasm, or bees other than honeybees from a region that is not already approved for such imports, we would perform a risk assessment. The risk assessment would identify bee diseases and parasites of quarantine significance to the United States, as well as undesirable species and subspecies of honeybees, associated with the importation; assess the likelihood of the introduction of these diseases, parasites, and undesirable species and subspecies of honeybees into the United States, as well as the consequences of introduction; and consider the effectiveness of the regulatory system of the exporting region to control and prevent occurrences of diseases, parasites, and undesirable species and subspecies of honeybees. For detailed information about what we would consider in our risk assessments, please refer to the rule portion of this document.

Proposed Subpart C—Importation of Restricted Organisms

Subpart C would provide the conditions for the importation of "restricted organisms." The proposed requirements in subpart C would be similar, with certain exceptions, to our current regulations for importing honeybees and honeybee semen from all countries except Canada.

General Requirements (§ 322.15)

As provided in proposed § 322.15, restricted organisms would be honeybee brood in the comb, all bees and bee germ plasm from nonapproved regions, and species of bees other than honeybees that are not listed in § 322.5(d)(2). This section would also provide that restricted organisms would be allowed to be imported only for research or experimental purposes by Federal, State, and university researchers, only under permit, and only in accordance with strict packaging, handling, inspection, and post-entry requirements.

Documentation; Applying for a Permit To Import a Restricted Organism (§ 322.16)

Proposed § 322.16 would require a restricted organism to be accompanied by a permit and an invoice or packing list accurately indicating the complete contents of the shipment. Under proposed § 322.16(a), to apply for a permit to import a restricted organism, an applicant would need to provide specific information about himself or herself, the organisms he or she would like to import, the method of shipment, the intended U.S. port of entry, the approximate date of the shipment's arrival, the containment facility where the shipment is destined (including whether that facility has been approved by APHIS), and the intended use of the restricted organisms. The application for a permit would also need a certification that all statements on the application are true and accurate, and the applicant would be required to sign the permit application. The information on the permit application would help us determine whether the importation presents a risk of introducing diseases or parasites harmful to bees, or undesirable species and subspecies of honeybees, into the United States. This information also would preclude the need for a notice of arrival, as we propose to require for the importation of bees and bee germ plasm from approved regions.

In addition, if the applicant is not a U.S. resident, he or she would need a sponsor who is a U.S. resident for the permit application. The sponsor would have to provide specific information about himself or herself on the application and would also have to sign the application, certifying that all statements on the application are true and accurate. We propose this requirement to identify the individual in the United States who will be legally responsible for adhering to the conditions provided on the permit, and in subpart C, for the importation of the specified restricted organisms.

Proposed § 322.16(b) would contain the requirement that a restricted organism be accompanied by an invoice or packing list accurately indicating the complete contents of the shipment. The invoice would give essential information to the inspector at the U.S. port of entry.

APHIS Review of Permit Applications; Denial or Cancellation of Permits (§ 322.17)

Proposed § 322.17 would offer information about the review of permit applications, explain why a permit application may be denied or a permit canceled, and provide the procedures for appealing the denial of a permit application or the cancellation of a permit. Under paragraph (a) of this section, the review of each permit application would include, at a minimum, review by APHIS and review by the destination State. We propose that the destination State may make a recommendation about the permit application, but the final decision on the permit application would be made by APHIS. Under § 322.17(b), once a decision is reached, we would notify the applicant of the approval or denial of the permit application. Paragraph (c) of this section would provide the reasons why we would deny an application. Paragraph (d) would provide the reasons why we would cancel a permit and provide the steps that the owner of restricted organisms would have to take if we cancel the owner's permit. Finally, paragraph (e) of this section would set forth the procedures to appeal the denial of a permit application or the cancellation of a permit. Overall, § 322.17 would help make our permit application process, including our criteria for permit application review, more transparent to permit applicants and permit holders.

Packaging of Shipments (§ 322.18)

The packaging requirements for restricted organisms would be contained in proposed § 322.18. These requirements would differ from the packaging requirements for bees and honeybee germ plasm from approved regions because, under our proposal, a restricted organism may be from a nonapproved region and may be any life stage of any number of species of bee. These organisms could present a health risk to indigenous bee populations if they escape. Therefore, to protect domestic bees, we propose to require that restricted organisms be packed in a container or combination of containers that will prevent the escape of the organisms and the leakage of any contained materials and that the container be sufficiently strong and durable enough to prevent it from rupturing or breaking during shipment.

In addition, because some life stages of certain bees are routinely shipped in materials that are subject to other regulations, such as plant material or soil, proposed § 322.18 would list those materials approved for packaging of restricted organisms. The list would consist of the following: Absorbent cotton or processed cotton padding free of cottonseed; cages made of processed wood; cellulose materials; excelsior; felt; ground peat (peat moss); paper or paper products; phenolic resin foam; sawdust; sponge rubber; thread waste, twine, or cord; and vermiculite. We would require advance approval of any packaging materials that do not appear on this list.

Mailed Packages (§ 322.19)

Proposed § 322.19 would provide labeling and additional documentation requirements for restricted organisms that are imported through the mail or through commercial express delivery. Specifically, § 322.19 would require shipments to bear a special label provided with the permit to import a restricted organism and would require each package containing a restricted organism to be addressed only for delivery to the containment facility or apiary identified on the permit. We propose that, if these requirements are not met, an inspector will refuse to allow the restricted organism to enter the United States. These requirements would help ensure that a restricted organism is properly routed to an approved facility for containment, would assist our inspectors by requiring easy access to essential information about the shipment, and would help ensure that the requirements of the regulations are met.

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Restricted Organisms That Are Hand-Carried or in Personal Baggage Aboard Aircraft Arriving in the United States (§ 322.20)

Proposed § 322.20 would provide labeling and additional documentation requirements for restricted organisms that are hand-carried or carried in personal baggage aboard aircraft. First, we would require that the outside of each package be clearly marked with the contents of the shipment and the name of the exporting region. Second, we would require that the person carrying the package declare it at the port of entry in the United States by providing a copy of the required permit and an invoice or packing list accurately indicating the complete contents of the shipment to an inspector at the U.S. port. Third, we would allow only the person to whom the permit was issued, or another person also listed on the permit, to hand-carry or carry in personal baggage a restricted article into the United States. Fourth, we propose that, if these requirements are not met, an inspector will refuse to allow the restricted organism to enter the United States. These requirements would help ensure that a restricted organism is properly routed to an approved facility for containment, would assist our inspectors by requiring easy access to essential information about the shipment, and would help ensure that the requirements of the regulations are met. We recommend that individuals who intend to import restricted organisms into the United States in this manner contact their airline of choice for any additional requirements the airline may have.

Restricted Organisms That Are Hand-Carried or in a Personal or Commercial Vehicle Arriving at a Land Border Port in the United States (§ 322.21)

Proposed § 322.21 would provide additional documentation requirements for restricted organisms that are hand-carried or in a personal or commercial vehicle, such as an automobile or truck, to a land border port in the United States. Specifically, we would require that the person carrying the restricted organisms or the driver of the vehicle present a copy of the required permit and an invoice or packing slip accurately indicating the complete contents of the shipment to the inspector at the land border port in the United States. We would allow only the person to whom the permit was issued, or another person also listed on the permit, to hand-carry or drive a restricted article into the United States. We also propose that, if these requirements are not met, an inspector will refuse to allow the restricted organism to enter the United States. These requirements would ensure that only those restricted organisms that meet the requirements of the regulations are imported into the United States, while helping facilitate the importation of restricted organisms by providing our inspectors with ready access to essential information about the shipment.

Inspection; Refusal of Entry (§ 322.22)

Proposed § 322.22 would provide for the inspection of restricted organisms at the port of entry. This provision would help ensure that shipments have been handled in accordance with the regulations.

Ports of Entry (§ 322.23)

Proposed § 322.23 would require that shipments arrive only at a U.S. port of entry staffed by an APHIS inspector. This would ensure that an APHIS inspector is present to determine whether shipments comply with the regulations.

We also propose that, as soon as a restricted organism is cleared for entry into the United States at the port, the restricted organism must be taken directly to the containment facility or apiary identified on the permit. We would require that packages of restricted organisms may be opened only in the containment facility or apiary identified on the permit. These requirements would prevent contact between restricted organisms and indigenous bees and would, therefore, reduce the potential for the introduction of exotic bee diseases and parasites, and undesirable species and subspecies of honeybees, into the U.S. bee population.

Post-Entry Handling (§ 322.24)

Proposed § 322.24 would provide performance standards that an apiary or facility must meet in order to be approved by APHIS to accept restricted organisms. These requirements would ensure that restricted organisms are adequately separated from indigenous bees and that restricted organisms are observed and determined to be free of diseases and parasites, and, if applicable, determined to be a desirable species or subspecies of honeybee, before release from containment. For the specific performance standards, refer to the rule portion of this document. This section would also provide the conditions under which restricted organisms may be released from containment. The conditions include rearing the restricted organisms through at least 4 months of active reproduction before applying for their release. The application for release would have to include complete information on the observation and inspection of the bees, including, but not limited to, their health and behavior. This would ensure that only bees that do not present a risk of introducing diseases or parasites, and that are not an undesirable species or subspecies of honeybee, would be released from containment.

Proposed Subpart D—Transit of Restricted Organisms Through the United States

Subpart D would provide requirements for transiting restricted organisms through the United States. The proposed provisions in this subpart are based on the current transit requirements for honeybees from New Zealand (*see* current § 322.1(e)).

General Requirements (§ 322.25)

Paragraph (a) of proposed § 322.25 would prohibit the transit of restricted organisms through the United States except in accordance with the proposed subpart. Paragraph (b) of this section would provide that transit shipments may only be shipped aboard aircraft to the United States for transit to another country. Paragraph (c) would limit the number of times a transit shipment may be transloaded from one aircraft to another aircraft. Under paragraph (c), a shipment of restricted organisms may only be transloaded at an airport on the continental United States and, regardless of the number of stops the shipment makes at different airports on the continental United States, the shipment may only be transloaded once during its entire transit through the United States. We would prohibit the transloading of restricted organisms at any port in Hawaii; in Hawaii, the restricted organisms would have to remain on, and depart for another destination from, the same aircraft on which the shipment arrived at the Hawaiian port. Paragraph (d) of this section would provide that if bees from approved regions may not enter Hawaii because of the presence of Varroa mite, tracheal mite, or African honeybee, those bees may transit Hawaii en route to another State or territory of the United States only if the shipment of bees meets the requirements of proposed subpart D, as well as other applicable requirements in the part. These requirements would help facilitate the monitoring and the movement of transit shipments of restricted articles, while protecting against the introduction of exotic bee diseases and parasites, and undesirable species and subspecies of honeybees, into the United States.

Documentation (§ 322.26)

Under proposed § 322.26, each shipment of restricted organisms transiting the United States must be accompanied by a document issued by the appropriate regulatory agency of the national government of the exporting region. The document must state that the packaging requirements of this subpart have been met. This provision would help ensure that the requirements of the regulations have been met.

Packaging of Transit Shipments (§ 322.27)

Proposed § 322.27 would list the packaging requirements for transit shipments of restricted organisms. These requirements are similar to the proposed packaging requirements for restricted organisms for importation into the United States. However, we do not propose to place restrictions on the materials that can be used for packaging restricted organisms transiting the United States because those shipments will not be unpacked in the United States. These requirements would protect our inspectors and indigenous bee populations and would provide essential information to inspectors at the transit port.

Notice of Arrival (§ 322.28)

We would also require a notice of arrival for transit shipments of restricted organisms. In proposed § 322.28, we would require importers to notify APHIS at least 2 business days prior to the arrival in the United States of any transit shipments of restricted organisms. This notice would have to include certain information about the shipper, receiver, airline, shipment, and port(s) of arrival in the United States. This information would allow us to notify the U.S. port(s) where the transit shipment is due to arrive en route to another country.

Inspection and Handling (§ 322.29)

Proposed § 322.29 would provide requirements for inspection and handling of transit shipments. Paragraph (a) of this section would provide that transit shipments would be subject to inspection at the U.S. port and could be destroyed by us if the shipment does not meet the requirements of the regulations. Paragraph (b) would set forth the conditions for transloading transit shipments of restricted organisms from one aircraft to another in the United States. This paragraph would require that the transloading of adult bees and bee germ plasm from one aircraft to another aircraft at the port of arrival in the United States occur under the supervision of an inspector. It would also require that if the adult bees cannot be transloaded immediately to the subsequent flight, the bees must be stored within a completely enclosed building. Lastly, it would prohibit the transloading of adult bees from an aircraft to ground transportation for subsequent movement through the United States. These conditions are designed to ensure the safety of our inspectors and to ensure that restricted organisms transiting the United States do not come into contact with indigenous bees.

Eligible Ports for Transit Shipments (§ 322.30)

Lastly, proposed § 322.30 would require that transit shipments arrive in the United States only at a U.S. port of entry staffed by an APHIS inspector. This would ensure that an APHIS inspector is present to determine whether shipments comply with the regulations and would be consistent with the requirements for the importation of bees in other subparts of the proposed regulations.

Proposed Subpart E—Importation and Transit of Restricted Articles

Subpart E would provide the conditions for the importation and transit of "restricted articles."

General Requirements; Restricted Articles (§ 322.31)

Section 322.31 would list the following as restricted articles: Dead bees, beeswax for beekeeping, and honey for bee feed.[1]

Dead Bees (§ 322.32)

Under § 322.32, dead bees could be imported into the United States without further restriction if they are immersed in a 70 percent alcohol solution or in liquid nitrogen, or if they are pinned and dried in the manner of scientific specimens. This requirement would ensure that exotic bee diseases and parasites are not introduced through the importation of dead bees.

Export Certificate (§ 322.33)

For beeswax for beekeeping and honey for bee feed, we would require an export certificate, in accordance with proposed § 322.33. The export certificate would have to be issued by the appropriate regulatory agency of the national government of the exporting region and would have to state that the restricted articles have been treated in accordance with the regulations. We would require beeswax to be liquefied and honey for bee feed to be heated to 212 °F (100 °C) for 30 minutes. These treatments for beeswax and honey are the same as those currently required by § 319.76–4(c)(2) and (3), respectively, of the pollinator regulations and help prevent the introduction of diseases through the importation of these articles. The export certificate would help ensure that the treatments have been performed in accordance with the regulations.

Because restricted articles must be treated prior to importation into the United States, we are not proposing any specific packaging requirements for restricted articles. We recommend, however, that individuals who intend to import restricted articles into the United States contact their shipper of choice for any requirements the shipper may impose on the packaging of restricted articles.

Notice of Arrival (§ 322.34)

Proposed § 322.34 would require that importers notify APHIS at least 10 business days prior to the arrival in the United States of any shipment of restricted articles. This notice would have to include certain information about the importer, producer, recipient of the articles, and shipment. This information would allow us to notify the U.S. port of arrival about the impending shipment and would facilitate traceback of shipments if an outbreak of a disease or parasite were to occur in the exporting region or in the United States.

Mailed Packages (§ 322.35)

Proposed § 322.35 would provide labeling and additional documentation requirements for restricted articles that are imported through the mail or through commercial express delivery. First, we would require that all sides of the outside of each package be clearly marked with the contents of the shipment and the name of the exporting region. Second, we would require that importers using commercial express delivery to import restricted articles would have to provide an accurate description of the shipment's contents for the shipment's delivery manifest entry. Third, we would require that, in addition to an export certificate, each package be accompanied at the time of arrival in the United States by an invoice or packing list accurately indicating the complete contents of the shipment. These requirements would facilitate the importation of restricted articles by providing our inspectors

[1] Honey for human consumption is regulated by the Food and Drug Administration under 21 CFR part 168.

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with ready access to essential information about the shipment.

Restricted Articles That Are Hand-Carried or in Personal Baggage Aboard Aircraft Arriving in the United States (§ 322.36)

Proposed § 322.36 would provide labeling and additional documentation requirements for restricted articles that are hand-carried or carried in personal baggage aboard aircraft. As with mailed packages, we would require that the outside of each package be clearly marked with the contents of the shipment and the name of the exporting region. In addition, we would require that the person carrying the package declare it at the port of entry in the United States by providing a copy of the required export certificate to an inspector at the port. These requirements would also help facilitate the importation of these products by providing our inspectors with ready access to essential information about the shipment. We recommend that individuals who intend to import restricted articles into the United States in this manner contact their airline of choice for any additional requirements the airline may have.

Restricted Articles That Are Hand-Carried or in a Personal or Commercial Vehicle Arriving at a Land Border Port in the United States (§ 322.37)

Proposed § 322.37 would provide additional documentation requirements for restricted articles that are hand-carried or in a personal or commercial vehicle, such as an automobile or truck, to a land border port in the United States. Specifically, we would require that the person carrying the restricted article or the driver of the vehicle present the export certificate required by § 322.33, if applicable, and an invoice or packing slip accurately indicating the complete contents of the shipment to the inspector at the land border port in the United States. This requirement would also help facilitate the importation of restricted articles by providing our inspectors with ready access to essential information about the shipment.

Inspection; Refusal of Entry (§ 322.38)

Proposed § 322.38 would provide for the inspection of restricted articles. Inspectors would check to see that importers provided notice of arrival for the shipment and that shipments have proper documentation. These provisions would help ensure that shipments have been handled in accordance with the regulations.

Ports of Entry (§ 322.39)

Under § 322.39, we would also require that shipments arrive only at a U.S. port of entry staffed by an APHIS inspector. This would ensure that an APHIS inspector is present to determine whether shipments comply with the regulations.

Review of Existing Regulations

This proposed rule is part of the cyclical review of Part 322—Importation of Honeybees and Honeybee Semen to meet regulatory review requirements. Executive Order 12866 and Department Regulation 1512–1 require that agencies initiate reviews of currently effective rules to reduce regulatory burden and minimize effects on small entities.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We do not have enough data for a comprehensive analysis of the economic effects of this proposed rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis for this proposed rule. This analysis, which is set out below, discusses the economic impact of this proposed rule on small entities. The discussion also serves as our cost-benefit analysis under Executive Order 12866.

We invite comments about this proposed rule as it relates to small entities. In particular, we are interested in determining the number and kinds of small entities that may incur benefits or costs from implementation of this proposed rule and the economic effects of those benefits or costs.

We are proposing to consolidate and amend the regulations for the importation of honeybees and honeybee semen and the regulations established to prevent the introduction of exotic bee diseases and parasites through the importation of bees other than honeybees, certain beekeeping byproducts, and used beekeeping equipment. Among other things, we are proposing to allow, under certain conditions, the importation into the United States of honeybees from Australia and honeybees and honeybee germ plasm from New Zealand. These proposed changes would make these regulations more consistent with international standards, update them to reflect current research and terminology, and simplify them and make them more useful.

Honey Production in the United States

The United States is the second largest honey producer in the world. In 2001, the United States had a registered stock of about 2.5 million honeybee colonies, as shown below in Table 1. These honeybee colonies were owned by beekeepers with five or more colonies and produced nearly 186 million pounds of honey valued at $127 million. Largely due to bee parasite problems (*i.e.*, varroa mite), the number of honey bee colonies in the United States has been in decline, having decreased from 3.4 million in 1994 to 2.5 million colonies in 2001.

TABLE 1.—HONEYBEE COLONIES, HONEY PRODUCTION, AND VALUE IN THE UNITED STATES, 1997–2001

Year	Honeybee colonies	Honeybee production (in pounds)	Value of production (in U.S. Dollars)
1997	2,631,000	196,536,000	$147,795,000
1998	2,633,000	220,316,000	147,254,000
1999	2,688,000	205,250,000	126,075,000
2000	2,620,000	220,339,000	132,742,000
2001	2,513,000	185,926,000	127,060,000

Source: Honey Report (February 28, 2002), National Agricultural Statistics Service (NASS), Agricultural Statistics Board, U.S. Department of Agriculture.

An estimated 125,000 to 150,000 beekeepers in the United States operate the 2.5 million honeybee colonies (NASS, Honey Report, 2002). Less than 2 percent of these beekeepers in the United States are full-time (commercial) operators (*i.e.*, with 300 or more bee colonies). More than 90 percent are hobbyists (*i.e.*, with fewer than 25 bee colonies). The remainder are part-time (*i.e.*, with 25 to 299 bee colonies).

According to the 1997 U.S. Census of Agriculture, there were 7,688 commercial apiaries registered in the United States in that year that sold honey and 910 commercial apiaries that offered their honeybees for pollination services (Table 2). Total annual sales of honey and other bee products amounted to $138.23 million that year. California, Florida, South Dakota, North Dakota, Minnesota, and Texas accounted for more than half of both U.S. bee colonies and honey production. Hawaii, with 38 registered commercial apiaries in 1997, was responsible for 0.5% of the U.S. domestic commercial sales. However, Hawaii is the only U.S. State that is able to export honeybees because of its disease-free status.

TABLE 2.—HONEYBEE COLONIES AND HONEY, INVENTORY AND SALES IN MAJOR STATES AND HAWAII IN 1997

State	Inventory of all U.S. registered apiaries [1]	Commercial sales of bee colonies and honey					
		(a) Colonies of bees		(b) Honey		Value of sales (a + b)	% of U.S. sales
		Apiaries	Number	Apiaries	Pounds		
California	1,021	68	79,239	733	28,305,056	$23,167,000	16.8
Florida	645	35	5,524	482	16,471,427	13,461,000	9.7
S. Dakota	219	16	8,305	132	14,225,757	11,351,000	8.2
N. Dakota	144	11	2,184	120	12,803,245	10,330,000	7.5
Texas	989	57	106,028	360	8,418,792	7,906,000	5.7
Minnesota	428	37	9,813	258	9,311,475	7,744,000	5.6
Sum of 6	3,446	224	211,093	2,085	89,535,752	73,959,000	53.5
Hawaii	75	4	16	34	949,769	735,000	0.5
United States	17,469	910	380,463	7,688	158,943,634	138,228,000	

Source: National Agricultural Statistics Service (NASS), 1997 U.S. Census of Agriculture, USDA.
[1] Both commercial and hobbyists' apiaries.

Bee Pollination in the United States

Honeybees, in addition to producing honey, play a vital role in the pollination of U.S. agricultural crops. In 1987, the annual value of agricultural production dependent upon pollination by honeybees in the United States was $9.6 billion; by 1999, that value had risen to $14.6 billion. More than 40 percent of fruit and nut production in the United States depends upon honeybee pollination ($4.76 billion out of $10.94 billion average annual value), as does more than 70 percent of vegetable and melon production ($2.98 billion out of $3.96 billion), and around 21 percent of field crop production ($6.82 billion out of $32.06 billion).[2]

Other bees besides honeybees also provide important pollination services. The alfalfa leafcutter bee (*Megachile rotundata*), for example, has become the principal alfalfa pollinator in several Western States. Other bee species that are commonly used for pollination purposes are bumblebees (*Bombus occidentalis* and *Bombus impatiens*), blue orchard bees (*Osmia lignaria*), and horn-faced bees (*Osmia cornifrons*). Bumblebees are pollinators of many plants, especially those growing at high elevations and in greenhouses. Blue orchard bees are an alternate pollinator species of orchard crops such as almonds. Apiculture pollination is especially vital to the fruit, nut, and vegetable production of California and Florida. As the demand for these products increases, so too does the corresponding demand for bee pollination services.

International Bee Trade

Reported data on U.S. imports of bees exist only for the alfalfa leafcutter bee, a species used only for crop pollination. The value of U.S. imports of alfalfa leafcutter bees from Canada increased from $6.5 million in 1996, to $11.4 million in 1999, and has since declined to $5 million in 2001 (Table 3). Alfalfa leafcutter bee larvae are generally imported into the United States exclusively from Canada; however, in 1996, small amounts of alfalfa leafcutter bee larvae were imported illegally from Colombia and Ghana.

[2] "The Value of Honey Bees as Pollinators of U.S. Crops in 2000." *Bee Culture Magazine*, March 2000.

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TABLE 3.—U.S. IMPORTS OF LIVE LEAFCUTTER BEE (NON-APIS) LARVAE, 1996–2001

Year	Exporting country	U.S. Customs value (in U.S. dollars)
1996	(1) Canada	$6,526,580
	(2) Ghana	2,100
	World	6,528,680
1997	(1) Canada	9,319,641
	World	9,319,641
1998	(1) Canada	10,382,341
	World	10,382,341
1999	(1) Canada	11,393,247
	World	11,393,247
2000	(1) Canada	7,169,000
	(2) United Kingdom	5,000
	World	1,174,000
2001	(1) Canada	5,033,000
	(2) Belgium	3,000
	World	5,036,000

Source: U.S. Department of Commerce and World Trade Atlas. Commodity code (0106005030), Leaf Cutter Bee Larvae, Live.

There are no data available on traded honeybees and honeybee queens, except for exports from New Zealand (Table 4) and imports into Canada (Tables 5a and 5b). These data provide an indication of the size of trade of honeybees amongst the biggest traders. Canada's largest trading partners are the United States for honeybee queens and New Zealand for honeybee workers.[3] International trade data on honeybees are not readily available, because only when a country requires an import or an export certificate does it report the corresponding data. For example, Canada requires import certificates for honeybees and thus reports only import data. The United States currently does not require import permits for most imports of bees and bee products. Under this proposal, an import permit would be required for restricted organisms (honey brood in the comb, all bees and bee germ plasm from nonapproved regions, and species of honeybees not listed in § 322.5(d)(2)). There is no cost for an import permit.

TABLE 4.—NEW ZEALAND'S EXPORTS OF HONEYBEE QUEENS AND HONEYBEE PACKAGES, 1996–2000

Year	Honeybee queens	Honeybee packages (1.5 kg)
1996	500	55,181
1997	1,300	45,865
1998	10,724	52,704
1999	10,965	15,908
2000	21,120	19,344

Source: Data have been provided by AgriQuality New Zealand and published annually in "New Zealand Beekeeper" magazine, August issues; Web site: *http//www.beekeeping.co.nz/nzbkpg/glance.htm.*

TABLE 5A.—CANADIAN IMPORTS OF LIVE HONEYBEE QUEENS FROM MAJOR SUPPLIERS, 1996–2001

(In Canadian dollars)

Countries	1996	1997	1998	1999	2000	2001
United States	$545,392 (52%)	$708,279 (71%)	$2,241,361 (81%)	$1,616,708 (82%)	$1,758,663 (82%)	$1,805,442 (82%)
New Zealand	$325,864 (31%)	$143,953 (14%)	$225,176 (8%)	$102,849 (5%)	$62,436 (3%)	$27,475 (1%)
Australia	$183,540 (17%)	$150,870 (15%)	$99,915 (4%)	$168,356 (9%)	$77,170 (4%)	$79,436 (4%)
People's Republic of China			$178,886 (7%)	$59,058 (3%)	$85,483 (4%)	$125,815 (6%)

[3] Hawaii is the only U.S. State that may export honeybees.

TABLE 5A.—CANADIAN IMPORTS OF LIVE HONEYBEE QUEENS FROM MAJOR SUPPLIERS, 1996–2001—Continued

(In Canadian dollars)

Countries	1996	1997	1998	1999	2000	2001
Italy			$7,417	$17,065	$7,835	$8,620
Argentina			0	0	$28,219	0
France			0	$187	$6,446	$13,014
Germany			$2,228	$12,104	$800	$3,390
United Kingdom			$1,384	$4,818	$1,033	$3,304
Taiwan			$3,353	$1,114	$2,254	0
Togo			$5,832	0	0	0
Denmark			$274	0	$67	$4,477
Brazil			0	0	0	$2,431
Norway			0	$419	$1,951	0
Netherlands			$413	0	$1,267	0
Malaysia			0	0	$404	0
Japan			0	$145	0	$153
India			0	$93	0	0
Total	$1,054,796	$1,003,102	$2,766,239	$1,982,916	$2,034,020	$2,073,557

Source: Agricultural Canada, Horticulture and Special Crops Division, Commodity HS Code 0106.000030.

TABLE 5B.—CANADIAN IMPORTS OF LIVE HONEYBEES, EXCEPT QUEENS, 1996–2001

[In Canadian dollars]

Countries	1996	1997	1998	1999	2000	2001
New Zealand	$1,240,178 (83%)	$1,931,210 (73%)	$1,659,455 (74%)	$778,019 (56%)	$295,089 (43%)	$304,074 (41%)
United States*	$161,077 (11%)	$346,642 (13%)	$368,430 (16%)	$195,102 (14%)	$166,364 (24%)	$179,974 (24%)
Australia	$93,551 (6%)	$375,476 (14%)	$176,165 (8%)	$423,729 (30%)	$229,089 (43%)	$262,365 (35%)
Netherlands	0	0	$45,490	0	0	0
Total	$1,494,806	$2,653,328	$2,249,540	$1,396,850	$691,398	$746,413

Source: Agricultural Canada, Horticulture and Special Crops Division, Commodity HS Code 0106.0000.
*The State of Hawaii only.

Potential Effects for U.S. Entities

In 1997, California honeybee producers sold $18.4 million worth of honeybee queens, package bees, and nucs (i.e., 3, 4, or 5 frames of bees with brood and a laying queen). Sales from the rest of the United States brought the U.S. total sales of honeybee queens, package bees, and nucs to about $30 million for 1997. Since then, there have been slight increases in prices for honeybee queens and package bees, reflecting increased demand. Domestically produced honeybee queens currently sell for an average of $10 to $12 per queen, but their price may range between $3 and $40, depending on the season. Queens possessing unique or exceptional characteristics are occasionally auctioned off for hundreds of dollars. Domestically produced package bees currently sell for between $30 and $42 for a 3-pound colony.

This rule places U.S. produced queens and package bees, for the first time, in direct competition in the domestic market with imports of these types of bees from Australia and New Zealand. Imported bees are expected to arrive between early spring (end of March/early April) and the end of May. Because of seasonal differences between the United States and Australia and New Zealand, the adoption of this rule is expected to have a small, if any, negative impact on continental U.S. apiarists whose bees are ready to pollinate crops just as Australian and New Zealand bee imports cease with the beginning of winter in the southern hemisphere.

Because of the expected shipping season for honey bees from Australia and New Zealand, the greatest potential impact of the proposed rule would likely be on bee producers in Hawaii

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who produce honey bees year-round. Honey bees, particularly queen bees, from Australia and New Zealand would probably enter the U.S. market during early spring (i.e., the beginning of active reproduction in bee colonies and a critical time for queen introduction). Traditionally, only Hawaii, because of its tropical climate, has been able to provide queens to U.S. beekeepers during this time period. Therefore, imports of queens from Australia and New Zealand may affect the prices of all queens sold during early spring. However, we do not expect this proposed rule to have a significant economic effect on Hawaiian queen producers or other U.S. beekeepers for two reasons. First, data from imports into Canada of queens and package bees demonstrate that Hawaiian queens have a strong marketability; of the queens imported into Canada between 1997 and 2001, Hawaii supplied on average 80 percent, while Australia and New Zealand supplied on average only 7 percent and 6 percent, respectively (Table 5a). Second, there have been reports from U.S. beekeepers of an insufficient supply of queens that are needed to revitalize bee colonies in early spring. California fruit and nut producers, in particular, also experience shortages of pollinators as honey bees from the continental United States are still in winter hibernation and those from Hawaii are not enough to meet demand at that time of the year. Therefore, based on the high demand for pollination services and the uncertainty in the amount of imports to fulfill this demand, the price of Hawaiian early spring honey bees is not expected to fall significantly with the importation of honey bees. In general, expanded supplies of honey bees made possible through this action might reduce their price only slightly if demand is elastic, with greater price decreases possible if demand is inelastic. We request information on demand elasticity for bees for the purpose of estimating impacts on U.S. bee suppliers and purchasers.

While Hawaiian suppliers may witness some price decline, such losses to suppliers would not be expected to exceed gains to purchasers of bees, who in general would benefit by increased availability of honey bees, particularly queens, during early spring. However, we do not have information on the volume of queens or package bees that may be imported into the United States from Australia and New Zealand or on the potential demand for imports of queens and package bees from Australia and New Zealand. Therefore, we cannot quantitatively assess the effects those imports would have on U.S. producers of queen and package bees. We request information on such potential import volumes.

Foreign government inspectors visit their countries' apiaries twice a year and provide their honeybee producers with health certificates for exporting these bees. The price of the export certificate is included in the sale price of these honeybees. The fees that the Australian, New Zealand, and Canadian Governments charge their bee producers for the certificates are small, to help allow their honeybee export prices to be competitive with foreign prices. We request information on potential costs associated with issuing health certificates for bees.

Economic Effect on Small Entities

According to the North American industry classification used by the Small Business Administration, honeybee farms and honey production are included under the "other animal production" category 1129, as sub category 112910 "apiculture." This industry comprises establishments primarily engaged in raising bees; collecting honey; and/or selling queen bees, packages of bees, royal jelly, bees' wax, propolis, venom, or other bee products. Such entities are considered small if they have annual receipts of $750,000 or less. Therefore, most of the apiaries that would be affected by this proposed rule qualify under this definition of a "small entity." Specifically, only 20 to 50 apiaries out of 17,469 total apiaries in 1997 had more than $750,000 of annual sales. We do not expect that U.S. apiarists, or importers and distributors of bees and bee equipment, large or small, would be significantly affected by this rule.

As discussed above, the number of honeybee colonies in the United States has fallen from 3.4 million in 1994, to 2.5 million in 2001, due to Varroa mites, an exotic bee parasite. Meanwhile, the demand for honeybees and other pollinating bees continues to increase, especially during the early spring months when continental U.S. bees are not available to pollinate almonds and plums in California. Therefore, greater access to bee imports from more countries will benefit U.S. agriculture in general.

Alternatives Considered

An alternative to this proposed rule was to make no changes in the regulations. After consideration, we rejected this alternative because there appears to be no disease or parasite risk, or risk of introduction of undesirable species of honeybees, associated with imports of bees from the regions we propose to designate as approved regions. Further, the changes to the regulations proposed in this document would bring the regulations into accord with international standards for the trade of bees and with international trade agreements entered into by the United States.

This proposed rule contains various recordkeeping and reporting requirements. These requirements are described in this document under the heading "Paperwork Reduction Act."

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

APHIS' National Environmental Policy Act implementing procedures (7 CFR part 372) identify actions that normally require environmental assessments, including rulemakings designed to remedy specific animal and plant health risks. The pest risk assessments supporting this proposed rule indicate that no new animal or plant health risks would result from the adoption of the provisions outlined in this proposed rule. Further, the proposed regulations would not irrevocably commit the Agency to allow the movement or environmental release of any organisms or articles for which APHIS has jurisdiction under the Honeybee Act or Plant Protection Act. Consequently, we have determined that an environmental assessment is not necessary for this proposed rule. If APHIS were to consider a permit application to release a regulated organism into the environment under the provisions of this proposed rule, an environmental assessment or environmental impact statement may be prepared as part of APHIS' decisionmaking process.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98–109–1. Please send a copy of your comments to: (1) Docket No. 98–109–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

The implementation of the proposal would require us to engage in certain information collection activities, which in turn would necessitate the use of forms and other information collection and recordkeeping documents. These forms and other documents would include export certificates, notices of arrival, applications for permits to import restricted organisms, transit documentation, labeling of shipments, risk assessments, and records kept by containment facilities. We are asking OMB to approve this information collection.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.1742 hours per response.

Respondents: Importers of bees and related articles, foreign governments, and containment facilities.

Estimated annual number of respondents: 95.

Estimated annual number of responses per respondent: 17.03.

Estimated annual number of responses: 1,618.

Estimated total annual burden on respondents: 282 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

7 CFR Part 322

Bees, Honey, Imports, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 7 CFR chapter III as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 166, 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In part 319, "Subpart Exotic Bee Diseases and Parasites," §§ 319.76 through 319.76–8, would be removed.

3. Part 322 would be revised to read as follows:

PART 322—BEES, BEEKEEPING BYPRODUCTS, AND BEEKEEPING EQUIPMENT

Subpart A—General Provisions

Sec.
322.1 Definitions.
322.2 General requirements for interstate movement and importation.
322.3 Costs and charges.

Subpart B—Importation of Adult Honeybees, Honeybee Germ Plasm, and Bees Other Than Honeybees From Approved Regions

322.4 Approved regions.
322.5 General requirements.
322.6 Export certificate.
322.7 Notice of arrival.
322.8 Packaging of shipments.
322.9 Mailed packages.
322.10 Packages that are hand-carried or in personal baggage aboard aircraft arriving in the United States.
322.11 Packages that are hand-carried or in a personal or commercial vehicle arriving at a land border port in the United States.
322.12 Inspection; refusal of entry.
322.13 Ports of entry.
322.14 Risk assessment procedures for approving countries.

Subpart C—Importation of Restricted Organisms

322.15 General requirements; restricted organisms.
322.16 Documentation; applying for a permit to import a restricted organism.
322.17 APHIS review of permit applications; denial or cancellation of permits.
322.18 Packaging of shipments.
322.19 Mailed packages.
322.20 Restricted organisms that are hand-carried or in personal baggage aboard aircraft arriving in the United States.
322.21 Restricted organisms that are hand-carried or in a personal or commercial vehicle arriving at a land border port in the United States.
322.22 Inspection; refusal of entry.
322.23 Ports of entry.
322.24 Post-entry handling.

Subpart D—Transit of Restricted Organisms Through the United States

322.25 General requirements.
322.26 Documentation.
322.27 Packaging of transit shipments.
322.28 Notice of arrival.
322.29 Inspection and handling.
322.30 Eligible ports for transit shipments.

Subpart E—Importation and Transit of Restricted Articles

322.31 General requirements; restricted articles.
322.32 Dead bees.
322.33 Export certificate.
322.34 Notice of arrival.
322.35 Mailed packages.
322.36 Restricted articles that are hand-carried or in personal baggage aboard aircraft arriving in the United States.
322.37 Restricted articles that are hand-carried or in a personal or commercial vehicle arriving at a land border port in the United States.
322.38 Inspection; refusal of entry.
322.39 Ports of entry.

Authority: 7 U.S.C. 281; 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Subpart A—General Provisions

§ 322.1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or an individual authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Bee. Any member of the superfamily *Apoidea* in any life stage, including germ plasm.

Beekeeping byproduct. Material for use in hives, including, but not limited to, beeswax for beekeeping, pollen for bee feed, or honey for bee feed.

Beekeeping equipment. Equipment used to house and manage bees,

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including, but not limited to, bee boards, hive bodies, bee nests and nesting material, smokers, hive tools, gloves or other clothing, and shipping containers.

Beekeeping establishment. All of the facilities, including apiaries, honey houses, and other facilities, and land that comprise a proprietor's beekeeping business.

Brood. The larvae, pupae, or postovipositional ova (including embryos) of bees.

Destination State. The State, district, or territory of the United States that is the final destination of imported bees, beekeeping byproducts, or beekeeping equipment.

Hive. A box or other shelter containing a colony of bees.

Honeybee. Any live bee of the genus *Apis* in any life stage except germ plasm.

Germ plasm. The semen and preovipositional ova of bees.

Inspector. Any employee of the Animal and Plant Health Inspection Service, or other individual authorized by the Administrator to carry out the provisions of this part.

Office International des Epizooties (OIE). The organization in the Food and Agriculture Organization of the United Nations responsible for the International Animal Health Code, which includes a section regarding bee diseases in international trade.

Package bees. Queen honeybees with attendant adult honeybees placed in a shipping container, such as a tube or cage.

Queen. The actively reproducing adult female in a colony of bees.

Undesirable species or subspecies of honeybees. Honeybee species or subspecies including, but not limited to, *Apis mellifera scutellata*, commonly known as the African honeybee, and its hybrids; and *Apis mellifera capensis*, commonly known as the Cape honeybee.

United States. The States, District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

§ 322.2 General requirements for interstate movement and importation.

(a) *Interstate movement.*

(1) The following regions of the United States are considered pest-free areas for Varroa mite, tracheal mite, and African honeybee: Hawaii.

(2) In order to prevent the introduction of Varroa mite, tracheal mite, and African honeybee into the pest-free areas listed in paragraph (a)(1) of this section, interstate movement of honeybees, including honeybee germ plasm, into those areas is prohibited.

(b) *Importation.* In order to prevent the introduction into the United States of bee diseases and parasites, and undesirable species and subspecies of honeybees:

(1) You may import bees, honeybee germ plasm, and beekeeping byproducts into the United States only in accordance with this part.

(2) You may not import pollen derived from bee colonies and intended for use as bee feed into the United States.

(3)(i) You may not import used beekeeping equipment into the United States, unless that used beekeeping equipment either:

(A) Will be used solely for indoor display purposes and will not come into contact with indigenous bees; or

(B) Consists of bee boards that contain live brood of bees, other than honeybees, from a region listed in § 322.4(c).

(ii) New, unused beekeeping equipment is eligible for importation into the United States if it complies with all applicable regulations in this chapter.

(c) *Movements not in compliance.*

(1) Any honeybees, honeybee germ plasm, bees other than honeybees, beekeeping byproducts, or used beekeeping equipment not in compliance with this part that are imported into the United States will be either:

(i) Immediately exported from the United States by you at your expense; or

(ii) Destroyed by us at your expense.

(2) Pending exportation or destruction, we will immediately apply any necessary safeguards to the bees, beekeeping byproducts, or used beekeeping equipment to prevent the introduction of bee diseases and parasites, and undesirable species and subspecies of honeybees, into the United States.

§ 322.3 Costs and charges.

We will furnish, without cost, the services of an inspector during normal business hours and at the inspector's places of duty. You will be responsible for all costs and charges arising from inspection outside of normal business hours or away from the inspector's places of duty.[1] You are also responsible for all costs and charges related to any exportation or destruction of shipments, in accordance with § 322.2(c)(1) of this part, and treatments required by § 322.32 of this part. Further, if you import bees or germ plasm into a containment facility for research or processing, you will be responsible for all additional costs and charges associated with the importation.

[1] Information on costs for services of an inspector are contained in 7 CFR part 354.

Subpart B—Importation of Adult Honeybees, Honeybee Germ Plasm, and Bees Other Than Honeybees From Approved Regions

§ 322.4 Approved regions.

(a) *Adult honeybees.* The following regions are approved for the importation of adult honeybees into the United States under the conditions of this subpart:

Australia
Canada
New Zealand

(b) *Honeybee germ plasm.* The following regions are approved for the importation of honeybee germ plasm into the United States under the conditions of this subpart:

Australia
Bermuda
Canada
France
Great Britain
New Zealand
Sweden

(c) *Bees other than honeybees.* The following regions are approved for the importation of bees other than honeybees into the United States under the conditions of this subpart:

Canada

(d) If the name of the region from which you want to import adult honeybees, honeybee germ plasm, or bees other than honeybees into the United States does not appear in paragraphs (a), (b), or (c), respectively, of this section, refer to subpart C of this part, "Importation of Restricted Organisms," for requirements.

(e) For information on approving other regions for the importation of adult honeybees, honeybee germ plasm, or bees other than honeybees into the United States, *see* § 322.14 of this subpart.

§ 322.5 General requirements.

(a) All shipments of bees and honeybee germ plasm imported into the United States under this subpart must be shipped directly to the United States from an approved region.

(b) *Adult honeybees.*

(1) You may import adult honeybees under this subpart only from regions listed in § 322.4(a) of this subpart.

(2) The honeybees must be package bees or queens with attending adult bees.

(c) *Honeybee germ plasm.* You may import honeybee germ plasm under this subpart only from regions listed in § 322.4(b) of this subpart.

(d) *Bees other than honeybees.*

(1) You may import live adult bees or live brood under this subpart only from regions listed in § 322.4(c) of this subpart.

(2) The live bees or brood must belong to one of the following species:

(i) Bumblebees of the species *Bombus impatiens;*

(ii) Bumblebees of the species *Bombus occidentalis;*

(iii) Alfalfa leafcutter bee (*Megachile rotundata*);

(iv) Blue orchard bee (*Osmia lignaria*); or

(v) Horn-faced bee (*Osmia cornifrons*).

(3) If you want to import species of bees other than those listed in paragraph (d)(2) of this section, refer to subpart C of this part, "Importation of Restricted Organisms," for requirements.

§ 322.6 Export certificate.

Each shipment of bees and honeybee germ plasm arriving in the United States from an approved region must be accompanied by an export certificate issued by the appropriate regulatory agency of the national government of the exporting region.

(a) *Adult honeybees.*

(1) For adult honeybees, the export certificate must:

(i) Certify that the hives from which the honeybees in the shipment were derived were individually inspected by an official of the regulatory agency no more than 10 days prior to export;

(ii) Identify any diseases, parasites, or undesirable species or subspecies of honeybee found in the hive during that preexport inspection; and

(iii) Certify that the bees in the shipment were produced in the exporting region and are the offspring of queens and drones or semen also produced in the exporting region.

(2) In addition, for the importation of adult honeybees into Hawaii, the export certificate must also certify to the following:

(i) The honeybees in the shipment were inspected by an official of the appropriate regulatory agency of the national government of the exporting region and showed no sign of Varroa mite (*Varroa* spp.), tracheal mite (*Acarapis woodi*), or African honeybee (*Apis mellifera scutellata*) on the day of export;

(ii) The hives from which the honeybees in the shipment are derived were individually inspected by an official of the appropriate regulatory agency of the national government of the exporting region and showed no sign of the presence of Varroa mite, tracheal mite, or African honeybee;

(iii) The honeybees in the shipment are derived exclusively from an apiary situated in the center of a zone of 50 kilometers (31 miles) in radius, in which special diagnostic tests, as set forth by the Office International des Epizooties, did not reveal any sign of the presence of Varroa mite for at least the past 2 years;

(iv) The honeybees in the shipment are derived exclusively from an apiary situated in the center of a zone of 5 kilometers (3.1 miles) in radius, in which no case of tracheal mite has been reported for at least the past 8 months; and

(v) The honeybees in the shipment were raised in and are derived exclusively from an apiary that meets the standards of the Office International des Epizooties for the application of sanitary measures, special breeding techniques, and sanitary surveillance related to Varroa mite and tracheal mite.

(3) If the export certificate identifies an important bee disease or parasite of economic and environmental concern to the United States, including, but not limited to, Thai sacbrood virus, *Tropilaelaps clareae*, and *Euvarroa sinhai*, or an undesirable species or subspecies of honeybee, including, but not limited to, the Cape honeybee (*Apis mellifera capensis*) and the Oriental honeybee (*Apis cerana*), as occurring in the hive from which the shipment was derived, we will refuse the shipment's entry into the United States.

(b) *Honeybee germ plasm.*

(1) For honeybee germ plasm, the export certificate must:

(i) Certify that the hives from which the germ plasm in each shipment was derived were individually inspected by an official of the regulatory agency no more than 10 days prior to export;

(ii) Identify any diseases, parasites, or undesirable species or subspecies of honeybee found in the hive during that preexport inspection; and

(iii) Certify that the bees in the hives from which the shipment was derived were produced in the exporting region and are the offspring of queens and drones or semen also produced in the exporting region.

(2) If the export certificate identifies an important bee disease or parasite of economic and environmental concern to the United States, including, but not limited to, Thai sacbrood virus, *Tropilaelaps clareae*, and *Euvarroa sinhai*, or an undesirable species or subspecies of honeybee, including, but not limited to, the Cape honeybee (*Apis mellifera capensis*) and the Oriental honeybee (*Apis cerana*), as occurring in the hive from which the shipment was derived, we will refuse the shipment's entry into the United States.

(c) *Bees other than honeybees.* For bees other than honeybees, the export certificate must certify that the bees in the shipment were produced in the exporting region and are the offspring of queens and drones or semen also produced in the exporting region.

§ 322.7 Notice of arrival.

(a) At least 10 business days prior to the arrival in the United States of any shipment of bees or honeybee germ plasm imported into the United States under this subpart, you must notify APHIS of the impending arrival. Your notification must include the following information:

(1) Your name, address, and telephone number;

(2) The name and address of the receiving apiary;

(3) The name, address, and telephone number of the producer;

(4) The U.S. port where you expect the shipment to arrive;

(5) The date you expect the shipment to arrive at that U.S. port;

(6) The scientific name(s) of the organisms in the shipment;

(7) A description of the shipment (*i.e.*, package bees, queen bees, nest boxes, etc.); and

(8) The total number of organisms you expect to receive.

(b) You must provide the notification to APHIS through one of the following means:

(1) By mail to the Permit Unit, Scientific Services, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; or

(2) By facsimile at (301) 734–8700; or

(3) By electronic mail to *Notification@usda.gov.*

§ 322.8 Packaging of shipments.

(a) *Adult honeybees.* All shipments of adult honeybees imported into the United States under this subpart:

(1) Must be packaged to prevent the escape of any bees;

(2) Must not include any brood, comb, pollen, or honey; and

(3) May include sugar water or crystallized sugar (*e.g.*, candy) as food during transit.

(b) *Bees other than honeybees.*

(1) Adult bees. All adult bees other than honeybees imported into the United States must be packaged to prevent the escape of any bees.

(2) Live brood. For live brood of bees other than honeybees, packages:

(i) Must be securely closed;

(ii) May not include any soil;

(iii) May include only packing materials that were grown or produced

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in the exporting region and that meet all other applicable requirements of this chapter, such as the regulations pertaining to unmanufactured wood in 7 CFR part 319 and the plant pest regulations in 7 CFR part 330; and

(iv) May consist of brood housed in new or used bee boards, provided the bee boards meet all applicable requirements of this part.

§ 322.9 Mailed packages.

(a) If you import a package of honeybees, honeybee germ plasm, or bees other than honeybees under this subpart through the mail or through commercial express delivery, you must mark all sides of the outside of that package with the contents of the shipment, *i.e.*, "Live Bees," "Bee Germ Plasm," or "Live Bee Brood," and the name of the exporting region. The marking must be clearly visible using black letters at least 1 inch in height on a white background.

(b) If you import a package of honeybees, honeybee germ plasm, or bees other than honeybees under this subpart through commercial express delivery, you must provide an accurate description of the complete contents of the shipment, *i.e.*, "Live Bees," "Bee Germ Plasm," or "Live Bee Brood," for the shipment's delivery manifest entry.

(c) In addition to the export certificate required in § 322.6 of this subpart, a package of honeybees, honeybee germ plasm, or bees other than honeybees imported under this subpart by commercial express delivery must be accompanied at the time of arrival in the United States by an invoice or packing list accurately indicating the complete contents of the shipment.

§ 322.10 Packages that are hand-carried or in personal baggage aboard aircraft arriving in the United States.

If you import a package of honeybees, honeybee germ plasm, or bees other than honeybees under this subpart via an international flight by hand-carrying the package or carrying it in your personal baggage, then:

(a) That package must be clearly marked with the contents of the shipment, *i.e.*, "Live Bees," "Bee Germ Plasm," or "Live Bee Brood," and the name of the exporting region; and

(b) You must declare it at the port of entry in the United States by providing a copy of the export certificate required in § 322.6 to an inspector at the port.

§ 322.11 Packages that are hand-carried or in a personal or commercial vehicle arriving at a land border port in the United States.

If you import a package of honeybees, honeybee germ plasm, or bees other than honeybees under this subpart through a land border port in the United States either by hand-carrying or in a personal or commercial vehicle (*i.e.*, automobile or truck), then the person carrying the package or the driver of the vehicle must present the export certificate required by § 322.6 of this subpart and an invoice or packing slip accurately indicating the complete contents of the shipment to the inspector at the land border port.

§ 322.12 Inspection; refusal of entry.

(a) Shipments of honeybees, honeybee germ plasm, and bees other than honeybees imported into the United States under this subpart will be inspected at the port of entry in the United States for:

(1) Proper documentation (*see* § 322.6 of this subpart);

(2) Timely notice of arrival (*see* § 322.7 of this subpart); and

(3) Adequate packaging (*see* § 322.8 of this subpart).

(b) If, upon inspection, any shipment fails to meet the requirements of this part, that shipment will be refused entry into the United States. In accordance with § 322.2(c) of this part, the inspector will offer you, or in your absence the shipper, the opportunity to immediately export any refused shipments. If you, or in your absence the shipper, decline to immediately export the shipment, we will destroy the shipment at your expense.

§ 322.13 Ports of entry.

Shipments of honeybees, honeybee germ plasm, and bees other than honeybees imported under this subpart may enter the United States only at a port of entry staffed by an APHIS inspector.[2]

§ 322.14 Risk assessment procedures for approving countries.

(a) The national government of the region wishing to export must request that we perform a risk assessment for the importation into the United States of honeybees, honeybee germ plasm, or bees other than honeybees from that region.

(b) When we receive a request, we will evaluate the science-based risks associated with such importation. Our risk assessment will be based on information provided by the exporting region, information from topical scientific literature, and, if applicable, information we gain from a site visit to the exporting region. The risk assessment will include:

(1) Identification of all bee diseases, including fungi, bacteria, viruses, mycoplasmas, and protozoa, that occur in the exporting region but not in the United States or that are listed as significant for international trade by the Office International des Epizooties (OIE);

(2) Identification of all bee parasites, including mites, that occur in the exporting region but not in the United States or that are listed as significant for international trade by the OIE;

(3) Identification of all species and subspecies of honeybees that occur in the exporting region but not in the United States or that are listed as significant for international trade by the OIE, if applicable;

(4) Identification of all pests of bee culture, such as the small hive beetle, that occur in the exporting region but not in the United States or that are listed as significant for international trade by the OIE;

(5) Evaluation of the probability of establishment, including pathway, entry, colonization, and spread potentials, of any diseases, parasites, undesirable species or subspecies of honeybees, or pests identified in accordance with paragraphs (b)(1), (2), (3), or (4) of this section;

(6) Evaluation of the potential consequences of establishment, including economic, environmental, and perceived social and political effects, of each disease, parasite, undesirable species or subspecies of honeybees, or pest identified in accordance with paragraphs (b)(1), (2), (3), or (4) of this section; and

(7) Consideration of the effectiveness of the regulatory system of the exporting region to control bee diseases, parasites, undesirable species and subspecies of honeybees, and pests that occur there and to prevent occurrences of new bee diseases, parasites, undesirable species and subspecies of honeybees, and pests.

(c) Based on the conclusions of the risk assessment, we will either:

(1) Publish in the **Federal Register** a notice of proposed rulemaking to allow honeybees, honeybee germ plasm, or bees other than honeybees to be imported into the United States from that region; or

(2) Deny the request in writing, stating the specific reasons for that action.

(d) We will publish a notice of availability of all completed risk assessments for public comment.

[2] To find out if a specific port is staffed by an APHIS inspector, or for a list of ports staffed by AHPIS inspectors, contact Permit Unit, Scientific Services, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, Maryland 20737–1236; toll-free (877) 770–5990; fax (301) 734–8700.

Subpart C—Importation of Restricted Organisms

§ 322.15 General requirements; restricted organisms.

(a) For the purposes of this part, the following are restricted organisms:

(1) Honeybee brood in the comb;

(2) Adult honeybees from any region other than those listed in § 322.4(a) of this part;

(3) Honeybee germ plasm from any region other than those listed in § 322.4(b) of this part; and

(4) Bees other than honeybees, in any life stage, from any region other than those listed in § 322.4(c) of this part or any species of bee other than those listed in § 322.5(d)(2) of this part.

(b) Restricted organisms may be imported into the United States only by Federal, State, or university researchers for research or experimental purposes and in accordance with this part.

§ 322.16 Documentation; applying for a permit to import a restricted organism.

Any restricted organism imported into the United States must be accompanied by both a permit, in accordance with paragraph (a) of this section, and an invoice or packing list accurately indicating the complete contents of the shipment, in accordance with paragraph (b) of this section.

(a) *Permit.* You must submit a completed application for a permit to import restricted organisms at least 30 days prior to scheduling arrival of those organisms. You may import a restricted organism only if we approve your application and issue you a permit. Our procedures for reviewing permit applications are provided in § 322.17. To apply for a permit, you must supply, either on a completed PPQ Form 526 or in some other written form, the following information:[3]

(1) *Applicant information.* Your name, title, organization, address, telephone number, facsimile number, and electronic mail address (provide all that are applicable). You must also state whether you are a U.S. resident. If you are not a U.S. resident, you must also supply the name, title, organization, address, telephone number, facsimile number, and electronic mail address (provide all that are applicable) of a U.S. resident who will act as a sponsor for the permit application.

(2) *Application type.* New permit, permit renewal, or amendment to existing permit (if a renewal or amendment, provide the current permit number).

(3) *Type of movement.* Select "Import into the United States."

(4) *Scientific name of organism.* Genus, species, subspecies or strain, and author (if known).

(5) *Type of organism.* Select "Bees and/or bee semen."

(6) *Taxonomic classification.* Family of restricted organisms.

(7) *Life stage(s).* Semen, preovipositional eggs, embryos, postovipositional eggs, larvae, pupae, or adults. If adult queens, please specify.

(8) Number of shipments.

(9) Number of specimens per shipment.

(10) Is the organism established in the United States?

(11) Is the organism established in the destination State?

(12) Media or species of host material accompanying the organism (e.g., pollen, honey, wax, nesting material).

(13) *Source of organism (include any that apply, and list region of origin).* Supplier (provide supplier's name and address), wild collected, or reared under controlled conditions.

(14) *Method of shipment.* Airmail, express delivery (list company name), baggage, auto.

(15) Port(s) of entry.

(16) Approximate date(s) of arrival at the port of entry.

(17) *Destination.* Provide the address of the location where the organism will be received and maintained.

(18) *Intended use (include any that apply).* Select "Scientific Study."

(19) Has your facility been inspected by APHIS? If yes, list date(s) of approval. Is your facility approved for the species of bees or bee germ plasm for which you are seeking a permit?

(20) Provide your signature and the date of your signature under the following certification: "I certify that all statements and entries I have made on this document are true and accurate to the best of my knowledge and belief. I understand that any intentional false statement or misrepresentation made on this document is a violation of law and punishable by a fine of not more than $10,000, or imprisonment of not more than 5 years, or both. (18 U.S.C. 1001)." If you are required to have a sponsor for your permit application, your sponsor must also sign and date under the same certification.

(b) *Invoice.* Any restricted organism must be accompanied at the time of arrival in the United States by an invoice or packing list accurately indicating the complete contents of the shipment and the exporting region.

§ 322.17 APHIS review of permit applications; denial or cancellation of permits.

(a) *Review of permit applications to import restricted organisms.*

(1) *Consultation.* During our review of your permit application, we may consult with any Federal officials; appropriate officials of any State, Territory, or other jurisdiction in the United States in charge of research or regulatory programs relative to bees; and any other qualified governmental or private research laboratory, institution, or individual. We will conduct these consultations to gain information on the risks associated with the importation of the restricted organisms.

(2) *Review by destination State.* We will transmit a copy of your permit application, along with our anticipated decision on the application, to the appropriate regulatory official in the destination State for review and recommendation. A State's response, which we will consider before taking final action on the permit application, may take one of the following forms:

(i) The State recommends that we issue the permit;

(ii) The State recommends that we issue the permit with specified additional conditions;

(iii) The State recommends that we deny the permit application and provides scientific, risk-based reasons supporting that recommendation; or

(iv) The State makes no recommendation, thereby concurring with our decision regarding the issuance of the permit.[4]

(b) *Results of review.* After a complete review of your application, we will either:

(1) Issue you a written permit with, if applicable, certain specific conditions listed for the importation of the restricted organisms you applied to import. You must acknowledge acceptance of the permit and, if applicable, the specified conditions by signing the acknowledgment card that you will receive with your permit. The written permit does not become valid until we receive a signed acknowledgment card from you; or

(2) Notify you that your application has been denied and provide reasons for the denial.

(c) *Denial of permit applications.* APHIS will deny an application for a permit to import a restricted organism

[3] Mail your completed application to Permit Unit, Scientific Services, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, Maryland 20737–1236. A PPQ Form 526 may be obtained by writing to the same address, calling toll-free (877) 770–5990, faxing your request to (301) 734–8700, or downloading the form from *http://www.aphis.usda.gov/ppq/ss/permits/pests/*.

[4] If a State regulatory official does not respond within 10 business days, we will conclude that the State has chosen to make no recommendation regarding the issuance of the permit.

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regulated under this subpart when, in its opinion, such movement would involve a danger of dissemination of an exotic bee disease or parasite, or an undesirable species or subspecies of honeybee. Danger of such dissemination may be deemed to exist when:

(1) Existing safeguards against dissemination are inadequate and no adequate safeguards can be arranged; or

(2) The potential for disseminating an exotic bee disease or parasite, or an undesirable species or subspecies of honeybee, with the restricted organism outweighs the probable benefits that could be derived from the proposed movement and use of the restricted organism; or

(3) When you, as a previous permittee, failed to maintain the safeguards or otherwise observe the conditions prescribed in a previous permit and have failed to demonstrate your ability or intent to observe them in the future; or

(4) The proposed movement of the restricted organism is adverse to the conduct of an eradication, suppression, control, or regulatory program of APHIS.

(d) *Cancellation of permits.*

(1) APHIS may cancel any outstanding permit whenever:

(i) We receive information subsequent to the issuance of the permit of circumstances that would constitute cause for the denial of an application for permit under paragraph (c) of this section; or

(ii) You, as the permittee, fail to maintain the safeguards or otherwise observe the conditions specified in the permit or in any applicable regulations.

(2) Upon cancellation of a permit, you must either:

(i) Surrender all restricted organisms to an APHIS inspector; or

(ii) Destroy all restricted organisms under the supervision of an APHIS inspector.

(e) *Appealing the denial of permit applications or cancellation of permits.* If your permit application has been denied or your permit has been canceled, APHIS will promptly inform you, in writing, of the reasons for the denial or cancellation. You may appeal the decision by writing to the Administrator and providing all of the facts and reasons upon which you are relying to show that your permit application was wrongfully denied or your permit was wrongfully canceled. The Administrator will grant or deny the appeal as promptly as circumstances allow and will state, in writing, the reasons for the decision. If there is a conflict as to any material fact, you may request a hearing to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

§ 322.18 Packaging of shipments.

(a) Restricted organisms must be packed in a container or combination of containers that will prevent the escape of the organisms and the leakage of any contained materials. The container must be sufficiently strong and durable enough to prevent it from rupturing or breaking during shipment.

(b) The outer container must be clearly marked with the contents of the shipment, *i.e.*, either "Live Bees," "Bee Germ Plasm," or "Live Bee Brood," and the name of the region of origin.

(c) Only approved packing materials may be used in a shipment of restricted organisms.

(1) The following materials are approved as packing materials: Absorbent cotton or processed cotton padding free of cottonseed; cages made of processed wood; cellulose materials; excelsior; felt; ground peat (peat moss); paper or paper products; phenolic resin foam; sawdust; sponge rubber; thread waste, twine, or cord; and vermiculite.

(2) Other materials, such as host material for the organism, soil, or other types of packing material, may be included in a container only if identified in the permit application and approved by APHIS on the permit.

§ 322.19 Mailed packages.

(a) If you import a restricted organism through the mail or through commercial express delivery, you must attach a special mailing label, which APHIS will provide with your permit, to the package or container. The mailing label indicates that APHIS has authorized the shipment.

(b) You must address the package containing the restricted organism to the containment facility or apiary identified on the permit.

(c) If the restricted organism arrives in the mail without the mailing label described in paragraph (a) of this section or addressed to a facility or apiary other than the one listed on the permit, an inspector will refuse to allow the organism to enter the United States.

§ 322.20 Restricted organisms that are hand-carried or in personal baggage aboard aircraft arriving in the United States.

(a) If you import restricted organisms via an international flight by hand-carrying the package or carrying it in your personal baggage, then:

(1) The outer container must be clearly marked with the contents of the shipment, *i.e.*, either "Live Bees," "Bee Germ Plasm," or "Live Bee Brood," and the name of the region of origin; and

(2) You must declare it at the port of entry to the United States by providing a copy of the appropriate permit and an invoice or packing list accurately indicating the complete contents of the shipment to an inspector at the port of entry.

(b) Only you or your representative (as stated on the application and permit) may import a restricted organism via an international flight by hand-carrying or carrying it in your personal baggage.

(c) If you fail to declare the restricted organism or present a copy of the permit and an invoice or packing list accurately indicating the complete contents of the shipment at the port of entry, or if the restricted organism is carried by an individual not identified on the application or permit, an inspector will refuse the organism's entry to the United States.

§ 322.21 Restricted organisms that are hand-carried or in a personal or commercial vehicle arriving at a land border port in the United States.

(a) If you import a restricted organism through a land border port in the United States either by hand-carrying or in a personal or commercial vehicle (*i.e.*, automobile or truck), then the person carrying the restricted organism or the driver of the vehicle must present the permit required by § 322.16 of this subpart and an invoice or packing slip accurately indicating the complete contents of the shipment to the inspector at the land border port.

(b) Only you or your representative (as stated on the application and permit) may import a restricted organism through a land border port in the United States either by hand-carrying or in a personal or commercial vehicle (*i.e.*, automobile or truck).

(c) If you fail to present a copy of the permit and an invoice or packing list accurately indicating the complete contents of the shipment at the port of entry, or if the restricted organism is carried by an individual not identified on the application or permit, an inspector will refuse the organism's entry to the United States.

§ 322.22 Inspection; refusal of entry.

(a) APHIS may inspect any restricted organism at the time of importation to determine if the organism meets all of the requirements of this part.

(b) If, upon inspection, any shipment fails to meet the requirements of the regulations, that shipment will be refused entry into the United States. In accordance with § 322.2(c) of this part, the inspector will offer you, or in your absence the shipper, the opportunity to immediately export any refused shipments. If you, or in your absence the shipper, decline to immediately export the shipment, we will destroy the shipment at your expense.

§ 322.23 Ports of entry.

A restricted organism may be imported only at a port of entry staffed by an APHIS inspector.[5] After a restricted organism has been cleared for importation at the port of entry, you must mail or hand-carry the organism immediately and directly from the port of entry to the containment facility or apiary identified on the permit. You may open the package containing the restricted organism only within the containment facility or apiary identified on the permit.

§ 322.24 Post-entry handling.

(a) Immediately following clearance at the port of entry, a restricted organism must move directly to a containment facility that has been inspected and approved by APHIS.[6] We must inspect and approve the facility before we will issue a permit to import a restricted organism.

(b) *Inspection of premises.* Prior to issuing a permit to import restricted organisms, we will inspect the apiary or facility where you intend to contain the restricted organisms. In order to approve the apiary or facility, an inspector must determine that adequate safeguards are in place to prevent the release of diseases or parasites of bees, or of undesirable species or strains of honeybees. We will use the following criteria to determine whether adequate safeguards are in place:

(1) Enclosed containment facilities.

(i) Will the facility's entryways, windows, and other structures, including water, air, and waste handling systems, contain the restricted organisms, parasites and pathogens, and prevent the entry of other organisms and unauthorized visitors?

(ii) Does the facility have operational and procedural safeguards in place to prevent the escape of the restricted organisms, parasites, and pathogens, and to prevent the entry of other organisms and unauthorized visitors?

(iii) Does the facility have a means of inactivating or sterilizing restricted organisms and any breeding materials, pathogens, parasites, containers, or other material?

(2) Containment apiaries.

(i) Is the apiary located in an area devoid of indigenous bees and sufficiently isolated to prevent contact between indigenous bees and imported restricted organisms? Is the area extending from the apiary to the nearest indigenous bees constantly unsuitable for foraging individuals of the imported restricted organisms?

(ii) Does the apiary have sufficient physical barriers to prevent the entry of unauthorized visitors?

(iii) Does the apiary have operational and procedural safeguards in place to prevent the escape of the restricted organisms, parasites, and pathogens, and to prevent the entry of other organisms and unauthorized visitors?

(iv) Does the apiary have a means of inactivating or sterilizing restricted organisms, and any hives, wax, pathogens, parasites, containers, or other materials?

(3) Containment apiaries for honeybees resulting from germ plasm imported from nonapproved regions.

(i) Does the apiary have sufficient physical barriers to prevent the entry of unauthorized visitors?

(ii) Are there sufficient physical barriers (*e.g.*, excluders) in hives in the apiary to prevent the escape of all adult queen and drone honeybees resulting from the germ plasm?

(iii) Does the apiary have operational and procedural safeguards in place to prevent the escape of all queen and drone honeybees resulting from the germ plasm?

(iv) Does the apiary have a means of destroying colonies of honeybees with undesirable characteristics that may result from imported germ plasm?

(c) *Holding in containment.*

(1) If we issue a permit for importing restricted organisms into an approved containment facility or apiary, you may not remove or release the restricted organisms, or the progeny or germ plasm resulting from the restricted organisms, from the apiary or facility without our prior approval.

(2) You must allow us to inspect the apiary or facility and all documents associated with the importation or holding of restricted organisms at any time to determine whether safeguards are being maintained to prevent the release of the restricted organisms, their progeny and germ plasm, parasites, and pathogens.

(3) You must inform us immediately, but no later than 24 hours after detection, if restricted organisms escape from the facilityl.

(d) *Release from containment apiary or facility.*

(1) After rearing the restricted organisms in an approved containment facility through at least 4 months of active reproduction with no evidence of nonindigenous parasites or pathogens or of undesirable characteristics, you may submit a request to us for the release of the bees. The request must include:

(i) Inspection protocols;

(ii) Inspection frequencies;

(iii) Names and titles of inspectors;

(iv) Complete information, including laboratory reports, on detection of diseases and parasites in the population;

(v) Complete notes and observations on behavior, such as aggressiveness and swarming; and

(vi) Any other information or data relating to bee diseases, parasites, or adverse species or subspecies.

(2) Mail your request for release to the Permit Unit, Scientific Services, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236, or fax to (301) 734–8700.

(3) When we receive a complete request for release from containment, we will evaluate the request and determine whether the bees may be released. Our evaluation may include an environmental assessment or environmental impact statement prepared in accordance with the National Environmental Policy Act. We may conduct an additional inspection of the bees during our evaluation of the request. You will receive a written statement as soon as circumstances allow that approves or denies your request for release of the bees.

Subpart D—Transit of Restricted Organisms Through the United States

§ 322.25 General requirements.

(a) You may transit restricted organisms from any region through the United States to another region only in accordance with this part. For a list of restricted organisms, see § 322.15(a).

(b) You may ship restricted organisms only aboard aircraft to the United States for transit to another country.

(c) You may transload a shipment of restricted organisms only once during the shipment's entire transit through the United States and only at an airport on the continental United States. You may not transload restricted organisms in Hawaii. In Hawaii, the restricted organisms must remain on, and depart for another destination from, the same aircraft on which the shipment arrived at the Hawaiian airport.

(d) If adult bees from approved regions may not enter Hawaii because of the presence of Varroa mite, tracheal

[5] To find out if a specific port is staffed by an APHIS inspector, or for a list of ports staffed by APHIS inspectors, contact Permit Unit, Scientific Services, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, Maryland 20737–1236; toll-free (877) 770–5990; fax (301) 734–8700.

[6] For a list of approved facilities, or to arrange to have a facility inspected by APHIS, contact Permit Unit, Scientific Services, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; toll-free (877) 770–5990.

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mite, or African honeybee, those bees may transit Hawaii en route to another State or territory of the United States only if the shipment of bees meets the requirements of this subpart, as well as other applicable requirements of this part.

§ 322.26 Documentation.

Each shipment of restricted organisms transiting the United States must be accompanied by a document issued by the appropriate regulatory authority of the national government of the region of origin stating that the shipment has been inspected and determined to meet the packaging requirements in § 322.27.

§ 322.27 Packaging of transit shipments.

(a) Restricted organisms transiting the United States must be packaged in securely closed and completely enclosed containers that prevent the escape of organisms and the leakage of any contained materials. The container must be sufficiently strong and durable to prevent it from rupturing or breaking during shipment.

(b) In addition to the requirements in paragraph (a) of this section, each pallet of cages containing honeybees transiting the United States must be covered by an escape-proof net that is secured to the pallet so that no honeybees can escape from underneath the net.

(c) The outside of the package must be clearly marked with the contents of the transit shipment, *i.e.*, either "Live Bees," "Bee Germ Plasm," or "Live Bee Brood," and the name of the exporting region.

§ 322.28 Notice of arrival.

At least 2 business days prior to the expected date of arrival of restricted organisms at a port in the United States for in-transit movement, you or your shipper must contact the port to give the following information:

(a) The name of each U.S. airport where the shipment will arrive;

(b) The name of the U.S. airport where the shipment will be transloaded (if applicable);

(c) The date of the shipment's arrival at each U.S. airport;

(d) The date of the shipment's departure from each U.S. airport;

(e) The names and addresses of both the shipper and receiver;

(f) The number of units in the shipment (*i.e.*, number of queens or number of cages of package bees); and

(g) The name of the airline carrying the shipment.

§ 322.29 Inspection and handling.

(a) All shipments of restricted articles transiting the United States are subject to inspection at the port in the United States for compliance with this part. If, upon inspection, a transit shipment of restricted articles is found not to meet the requirements of this part, we will destroy the shipment at your expense.

(b) *Transloading.*—(1) *Adult bees.* You may transload adult bees from one aircraft to another aircraft at the port of arrival in the United States only under the supervision of an inspector. If the adult bees cannot be transloaded immediately to the subsequent flight, you must store them within a completely enclosed building. Adult bees may not be transloaded from an aircraft to ground transportation for subsequent movement through the United States.

(2) *Bee germ plasm.* You may transload bee germ plasm from one aircraft to another at the port of arrival in the United States only under the supervision of an inspector.

§ 322.30 Eligible ports for transit shipments.

You may transit restricted organisms only at a port of entry staffed by an APHIS inspector.[7]

Subpart E—Importation and Transit of Restricted Articles

§ 322.31 General requirements; restricted articles.

(a) The following articles from any region are restricted articles:

(1) Dead bees of any genus;

(2) Beeswax for beekeeping; and

(3) Honey for bee feed.

(b) Restricted articles may only be imported into or transit the United States in accordance with this part.

§ 322.32 Dead bees.

(a) Dead bees imported into or transiting the United States must be either:

(1) Immersed in a solution containing at least 70 percent alcohol;

(2) Immersed in liquid nitrogen; or

(3) Pinned and dried in the manner of scientific specimens.

(b) Dead bees are subject to inspection at the port of entry in the United States to confirm that the requirements of paragraph (a) of this section have been met.

§ 322.33 Export certificate.

Each shipment of restricted articles, except for dead bees, imported into or transiting the United States must be accompanied by an export certificate issued by the appropriate regulatory agency of the national government of the exporting region. The export certificate must state that the articles in the shipment have been treated as follows:

(a) *Beeswax.* Liquefied.

(b) *Honey for bee feed.* Heated to 212 °F (100 °C) for 30 minutes.

§ 322.34 Notice of arrival.

(a) At least 10 business days prior to the arrival in the United States of any shipment of restricted articles, you must notify APHIS of the impending arrival. Your notification must include the following information:

(1) Your name, address, and telephone number;

(2) The name and address of the recipient of the restricted articles;

(3) The name, address, and telephone number of the producer;

(4) The date you expect to receive the shipment;

(5) A description of the contents of the shipment (*i.e.*, dead bees, honey for bee feed, *etc.*); and

(6) The total number of restricted articles you expect to receive.

(b) You must provide the notification to APHIS through one of the following means:

(1) By mail to the Permit Unit, Scientific Services, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; or

(2) By facsimile at (301) 734–8700; or

(3) By electronic mail to *Notification@usda.gov.*

§ 322.35 Mailed packages.

(a) If you import a restricted article through the mail or through commercial express delivery, you must mark all sides of the outside of that package with the contents of the shipment and the name of the exporting region. The marking must be clearly visible using black letters at least 1 inch in height on a white background.

(b) If you import a restricted article through commercial express delivery, you must provide an accurate description of the complete contents of the shipment for the shipment's delivery manifest entry.

(c) In addition to the export certificate required in § 322.33 (if applicable) of this subpart, a restricted article that is imported by mail or commercial express delivery must be accompanied by an invoice or packing list accurately indicating the complete contents of the shipment.

[7] To find out if a specific port is staffed by an APHIS inspector, or for a list of ports staffed by APHIS inspectors, contact Permit Unit, Scientific Services, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, Maryland 20737–1236; toll-free (877) 770–5990; fax (301) 734–8700.

§ 322.36 Restricted articles that are hand-carried or in personal baggage aboard aircraft arriving in the United States.

If you import a restricted article via an international flight by hand-carrying the package or carrying it in your personal baggage, then:

(a) That package containing the restricted article must be clearly marked with the contents of the shipment and the name of the exporting region; and

(b) You must declare it at the port of entry in the United States by providing a copy of the export certificate required in § 322.33 (if applicable) to an inspector at the port.

§ 322.37 Restricted articles that are hand-carried or in a personal or commercial vehicle arriving at a land border port in the United States.

If you import a restricted article through a land border port in the United States either by hand-carrying or in a personal or commercial vehicle (*i.e.*, automobile or truck), then the person carrying the package containing the restricted article or the driver of the vehicle must present the export certificate required by § 322.33 (if applicable) of this subpart and an invoice or packing slip accurately indicating the complete contents of the shipment to the inspector at the land border port.

§ 322.38 Inspection; refusal of entry.

(a) You must present shipments of restricted articles to the inspector at the port of entry in the United States. Shipments of restricted articles must remain at the port of entry until released by the inspector.

(b) The inspector at the port will confirm that all shipments of restricted articles have proper documentation (*see* § 322.33 of this subpart) and that you provided notice of arrival for all shipments of restricted articles (*see* § 322.34 of this subpart).

(c) If, upon inspection, any shipment fails to meet the requirements of this part, that shipment will be refused entry into the United States. In accordance with § 322.2(c) of this part, the inspector will offer you, or in your absence the shipper, the opportunity to immediately export any refused shipments.

§ 322.39 Ports of entry.

A restricted article may be imported only at a port of entry staffed by an APHIS inspector. To find out if a specific port is staffed by an APHIS inspector, or for a list of ports staffed by APHIS inspectors, contact Permit Unit, Scientific Services, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, Maryland 20737–1236; toll-free (877) 770–5990; fax (301) 734–8700.

Done in Washington, DC, this 13th day of August, 2002.

Bill Hawks,

Under Secretary, Marketing and Regulatory Programs.

[FR Doc. 02–20941 Filed 8–16–02; 8:45 am]

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Part III

Department of Education

Rehabilitation Training: Rehabilitation Long-Term Training—Vocational Rehabilitation Counseling; Notice

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DEPARTMENT OF EDUCATION

Rehabilitation Training: Rehabilitation Long-Term Training—Vocational Rehabilitation Counseling

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services proposes a priority under the Rehabilitation Training: Rehabilitation Long-Term Training program. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2003 and in later years. We take this action to focus on training in an identified area of national need. The purpose of this priority is to increase the partnership activities between rehabilitation counseling programs and State vocational rehabilitation (VR) agencies and to increase the number of rehabilitation counseling programs that provide for students experiential activities, such as formal internships or practicum agreements with State VR agencies. We intend the priority to increase the pool of qualified VR counselors available for employment with State VR agencies.

DATES: We must receive your comments on or before September 18, 2002.

ADDRESSES: Address all comments about this proposed priority to Christine Marschall, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Building, Room 3325, Washington, DC 20202–2649. If you prefer to send your comments through the Internet, use the following address: *Christine.Marschall@ed.gov.*

You must include the term "Long-Term Training Program: Vocational Rehabilitation Counseling" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Christine Marschall. Telephone: (202) 205–8926 or via Internet: *Christine.Marschall@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8133.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this proposed priority. We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority in room 3414, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages in rehabilitation as identified by the Secretary;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in areas of personnel shortages in rehabilitation as identified by the Secretary; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

We propose this priority to increase the number of rehabilitation counseling programs that provide experiential activities for students, such as formal internships, practicum agreements, and other partnership activities with State VR agencies. This proposed priority supports a close relationship between the educational institution and the State VR agency by creating or increasing ongoing collaboration in order to increase the number of graduates who seek employment in State VR agencies.

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

Proposed Priority—Partnership With the State VR Agency

Background: According to State VR agency data in the annual submission of the Comprehensive System of Personnel Development (CSPD) plan, a personnel survey conducted by the Council of State Administrators of Vocational Rehabilitation (CSAVR), and the proceedings of the 2002 CSPD national meeting, State VR agencies throughout the nation are experiencing a personnel shortage of qualified VR counselors. Rates of retirement and attrition in State VR agencies reported in the annual CSPD plans indicate that this personnel shortage will increase. A review by the Rehabilitation Services Administration (RSA) of employment locations chosen by RSA-sponsored graduates, as reported by RSA training programs, indicates that only a small percentage of RSA graduates seek employment with State VR agencies. However, State VR agencies reported in the CSAVR survey and at the CSPD national meeting that individuals who are aware of the distinct role of the qualified VR counselor and benefits of employment within a State VR agency are more likely to seek employment with the State.

Priority: This priority supports projects that will increase the knowledge of students of the role and responsibilities of the VR counselor and of the benefits of counseling in State VR agencies. This priority focuses attention on and intends to strengthen the unique role of rehabilitation educators and State VR agencies in the preparation of qualified VR counselors by increasing or creating ongoing collaboration between institutions of higher education and State VR agencies.

Projects funded under this priority must include within the degree program information about and experience in the State VR system. Projects must include partnering activities for students with the State VR agency including experiential activities, such as formal internship or practicum agreements. In addition, experiential activities for students with community-based rehabilitation service providers are encouraged.

Projects must include an evaluation of the impact of project activities.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicable Program Regulations: 34 CFR parts 385 and 386.

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(Catalog of Federal Domestic Assistance Number 84.129B Rehabilitation Long-Term Training—Vocational Rehabilitation Counseling)

Program Authority: 29 U.S.C. 772.

Dated: August 14, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–21025 Filed 8–16–02; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 3009/P.L. 107–210
Trade Act of 2002 (Aug. 6, 2002; 116 Stat. 933)
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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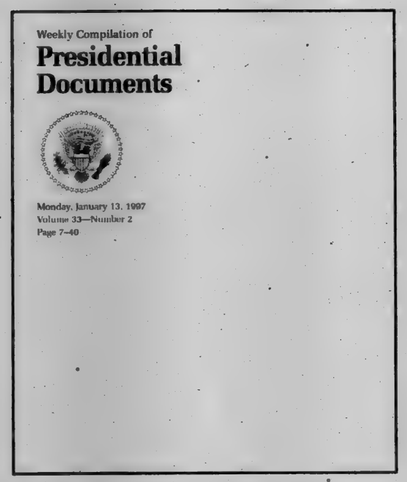
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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 7583 of August 16, 2002

National Health Center Week, 2002

By the President of the United States of America

A Proclamation

America's community health centers are a vital part of our healthcare safety net, providing primary care services to uninsured, low-income families and individuals, regardless of their ability to pay.

Community health centers ensure that all citizens have access to medical treatment and preventative care. Each year, community, migrant, public housing, and homeless health centers serve more than 12 million citizens at over 3,300 delivery sites throughout urban and rural communities in all 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. These centers care for 1 of every 5 low-income children and 1 of every 12 rural residents. By working together with schools, businesses, churches, community organizations, foundations, and State and local governments, these health centers strive to meet the special needs and priorities of communities and to improve the health and well-being of countless families and individuals.

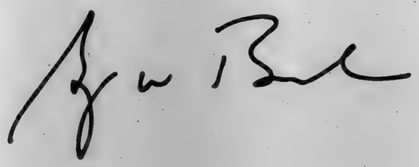
Health centers offer responsive and cost-effective health care that includes comprehensive primary and preventive services; prenatal and postpartum care; patient education, case management, and outreach; translation and other support services. My Administration is committed to increasing Federal support of healthcare centers. Through my Community and Migrant Health Centers Initiative we are working to double the number of patients served in these centers, and create 1,200 new and expanded health center sites over 5 years.

With the observance of National Health Center Week, we recognize the important role and the invaluable contributions of America's health centers, their staff, board members, and all those responsible for their success. During National Health Center week, I join in encouraging all Americans to celebrate the importance of health centers to our communities by participating in health fairs and screenings, blood drives, immunizations, and open house events.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 18 through 24, 2002, as National Health Center Week. I encourage all Americans to observe this week with appropriate activities and programs in order to raise their awareness of the importance and variety of services provided by America's health centers.

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IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of August, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 02–21341
Filed 8–19–02; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 67, No. 161
Tuesday, August 20, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Regulation T]

Credit by Brokers and Dealers; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Foreign Margin Stocks (Foreign List) is composed of certain foreign equity securities that qualify as *margin securities* under Regulation T. The Foreign List is published twice a year by the Board.

EFFECTIVE DATE: September 1, 2002.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Financial Analyst, Division of Banking Supervision and Regulation, (202) 452–2837, or Scott Holz, Senior Counsel, Legal Division, (202) 452–2966, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Listed below is a complete edition of the Board's Foreign List. The Foreign List was last published on February 22, 2002 (67 FR 8182), and became effective March 1, 2002. There are no additions to or deletions from the Foreign List.

The Foreign List is composed of foreign equity securities that qualify as margin securities under Regulation T by meeting the requirements of § 220.11(c) and (d). Additional foreign securities qualify as margin securities if they are deemed by the Securities and Exchange Commission (SEC) to have a "ready market" under SEC Rule 15c3–1 (17 CFR 240.15c3–1) or a "no-action" position issued thereunder. This includes all foreign stocks in the FTSE World Index Series.

It is unlawful for any creditor to make, or cause to be made, any representation to the effect that the inclusion of a security on the Foreign List is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the Board in connection with the Foreign List or the stocks thereon shall be an unlawful representation.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Foreign List specified in § 220.11(c) and (d). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of the Foreign List as soon as possible. The Board has responded to a request by the public and allowed approximately a one-week delay before the Foreign List is effective.

List of Subjects in 12 CFR Part 220

Brokers, Credit, Margin, Margin requirements, Investments, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 220.2 and 220.11, there is set forth below a complete edition of the Foreign List.

Japan

Akita Bank, Ltd.
¥50 par common
Aomori Bank, Ltd.
¥50 par common
Asatsu-DK Inc.
¥50 par common
Bandai Co., Ltd.
¥50 par common
Bank of Nagoya, Ltd.
¥50 par common
Chudenko Corp.
¥50 par common
Chugoku Bank, Ltd.
¥50 par common
Clarion Co., Ltd.
¥50 par common
Daihatsu Motor Co., Ltd.
¥50 par common
Dainippon Screen Mfg. Co., Ltd.
¥50 par common
Denki Kagaku Kogyo
¥50 par common
Eighteenth Bank, Ltd.
¥50 par common
Futaba Corp.
¥50 par common
Futaba Industrial Co., Ltd.
¥50 par common
Higo Bank, Ltd.
¥50 par common
Hitachi Software Engineering Co., Ltd.
¥50 par common
Hokkoku Bank, Ltd.
¥50 par common
Hokuetsu Paper Mills, Ltd.
¥50 par common
Iyo Bank, Ltd.
¥50 par common
Japan Airport Terminal Co., Ltd.
¥50 par common
Juroku Bank, Ltd.
¥50 par common
Kagoshima Bank, Ltd.
¥50 par common
Kamigumi Co., Ltd.
¥50 par common
Katokichi Co., Ltd.
¥50 par common
Keisei Electric Railway Co., Ltd.
¥50 par common
Keiyo Bank, Ltd.
¥50 par common
Komori Corp.
¥50 par common
Konami Co., Ltd.
¥50 par common
Kyowa Exeo Corp.
¥50 par common
Matsushita Seiko Co., Ltd.
¥50 par common
Michinoku Bank, Ltd.
¥50 par common
Musashino Bank, Ltd.
¥500 par common
Namco, Ltd.
¥50 par common
Nichicon Corp.
¥50 par common
Nihon Unisys, Ltd.
¥50 par common
Nippon Comsys Corp.
¥50 par common

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Nishi-Nippon Bank, Ltd.
¥50 par common
Nishi-Nippon Railroad Co., Ltd.
¥50 par common
Nissan Chemical Industries, Ltd.
¥50 par common
Ogaki Kyoritsu Bank, Ltd.
¥50 par common
Q.P. Corp.
¥50 par common
Rinnai Corporation
¥50 par common
Sagami Railway Co., Ltd.
¥50 par common
Sakata Seed Corp.
¥50 par common
Santen Pharmaceutical Co., Ltd.
¥50 par common
Shimadzu Corp.
¥50 par common
Shimamura Co., Ltd.
¥50 par common
Simitomo Rubber Industries, Ltd.
¥50 par common
Taiyo Yuden Co., Ltd.
¥50 par common
Takara Standard Co., Ltd.
¥50 par common
Takuma Co., Ltd.
¥50 par common
Toho Bank, Ltd.
¥50 par common
Toho Gas Co., Ltd.
¥50 par common
Tokyo Ohka Kogyo Co., Ltd.
¥50 par common
Uni-Charm Corp.
¥50 par common
Ushio, Inc.
¥50 par common
Yamaha Motor Co., Ltd.
¥50 par common

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), August 15, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–21188 Filed 8–19–02; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE153, Special Condition 23–123–SC]

Special Conditions; Meridian PA–46–500TP; Protection of Systems From High Intensity Radiated Fields (HIRF): Corrections

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; corrections.

SUMMARY: The FAA published a document in the **Federal Register** on September 13, 1999, concerning final special conditions on the Meridian PA–46–400TP airplane. There was an inadvertent error in the special condition number in the document and there was an incorrect reference in the model number of the airplane. This document contains a correction to the special condition number for the final special conditions and to the model number reference.

EFFECTIVE DATE: The effective date of these corrected special conditions is August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

SUPPLEMENTARY INFORMATION:

Need for Correction

The FAA published a document on September 13, 1999 (64 FR 49365) that issued final special conditions. In the document heading, a special condition number appears that had already been issued for another set of special conditions with a different docket number. This document corrects that error. The document also reference and incorrect model number. PA 46–400TP, so this document also corrects that error.

Correction of Publication

Accordingly, the special condition number, which appears in the heading of Docket No. CD153, is revised from 23–096–SC to 23–123–SC. Also, wherever the reference to PA 46–400TP appears, the reference is revised to read PA 46–500TP.

Issued in Kansas City, Missouri on August 7, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–21177 Filed 8–19–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–1]

Establishment of Class D and Class E4 Airspace; St. Augustine, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D and Class E4 airspace at St. Augustine, FL. A Federal contract tower with a weather reporting system has been constructed at the St. Augustine Airport. Therefore, the airport meets the criteria for establishment of Class D and Class E4 airspace. Class D surface area airspace and Class E4 airspace designated as an extension to Class D airspace is required when the control tower is open to contain existing Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of the St. Augustine Airport and Class E4 airspace extensions that are 4.8 miles wide and extend 7 miles northwest and southeast of the airport.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On January 22, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D and Class E4 airspace at St. Augustine, FL, (67 FR 2835) to provide adequate controlled airspace to contain IFR operations at the St. Augustine Airport. Class D airspace designations for airspace areas extending upward from the surface of the earth and Class E4 airspace areas designated as an extension to a Class D surface area are published in Paragraphs 5000 and 6004 respectively, of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E4 designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D and Class E4 airspace at St. Augustine, FL.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854. 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D St. Augustine, FL [NEW]

St. Augustine Airport, FL
(Lat. 29°57′33″ N, long. 81°20′23″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of St. Augustine Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E4 Airspace Areas Designated as an Extension to a Class D Airspace Area.

* * * * *

ASO FL E4 St. Augustine, FL [NEW]

St. Augustine Airport, FL
(Lat. 29°57′33″ N, long. 81°20′23″ W)
St. Augustine VOR/DME FL
(Lat. 29°57′29″ N, long. 81°20′18″ W)

That airspace extending upward from the surface within 2.4 miles each side of the St. Augustine VOR/DME 127° and 313° radials, extending from the 4-mile radius to 7 miles northwest and southeast of the VOR/DME. This Class E4 airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on August 13, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–21135 Filed 8–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–9]

Amendment to Class E Airspace; Gordon, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace at Gordon, NE. The FAA has developed an Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 04, ORIGINAL Standard Instrument Approach Procedure (SIAP) to serve Gordon Municipal Airport, Gordon, NE. Additional controlled airspace extending upward from 700 feed Above Ground Level (AGL) is needed to accommodate that SIAP. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the SIAP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, November 28, 2002.

Comments for inclusion in the Rules Docket must be received on or before September 30, 2002.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 02–ACE–9, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA has developed RNAV (GPS) RWY 04, ORIGINAL SIAP to serve Gordon Municipal Airport, Gordon, NE. The amendment to Class E airspace at Gordon, NE will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all

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flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and conforming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Comments wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 02–ACE–9." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE NE E5 Gordon, NE [REVISED]

Gordon Municipal Airport, NE

(Lat. 42°48′22″ N., long. 102°10′31″ W.)
Gordon NDB
(Lat. 42°48′04″ N., long. 102°10′46″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Gordon Municipal Airport and within 2.6 miles each side of the 045° bearing from the Gordon NDB extending from the 6.6-mile radius to 7.4 miles north of the airport, and within 2 miles each side of the 229° bearing from the airport extending from the 6.6-mile radius to 10.1 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on August 5, 2002.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 02–21138 Filed 8–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9007]

RIN 1545–AW87

Compromise of Tax Liabilities; Corrections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Tuesday, July 23, 2002 (67 FR 48025) relating to the compromise of internal revenue taxes.

DATES: This correction is effective July 23, 2002.

FOR FURTHER INFORMATION CONTACT: Frederick W. Schindler (202) 622–3620 (not a toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 7122 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9007), which is the subject of FR. Doc. 02–18454, is corrected as follows:

§301.7122–1 [Amended]

1. On page 48030, column 3, 301.7122–1(d)(2), line 7, the language "involving such liability to the Attorney General" is corrected to read "involving such liability to the Department of Justice".

Cynthia E. Grigsby,

Chief, Regulations Unit Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–21204 Filed 8–19–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Instruction 37–132]

Privacy Act; Implementation

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is adding an exemption rule for the system of records F051 AF JA I, entitled 'Commander Directed Inquiries'. The (k)(2) exemption will increase the value of the system of records for law enforcement purposes.

EFFECTIVE DATE: August 6, 2002.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

SUPPLEMENTARY INFORMATION: The proposed rule was published on June 4, 2002, at 67 FR 38450. No comments were received from the public; therefore, the rule is being adopted as final.

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 806b

Privacy.

Accordingly, 32 CFR part 806b is amended as follows:

PART 806b—[AMENDED]

1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Appendix C to part 806b is amended by adding paragraph (b)(22) to read as follows:

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

Appendix C to Part 806b—General and specific exemptions

* * * * *

(b) Specific exemptions. * * *

(22) System identifier and name: F051 AF JA I, Commander Directed Inquiries.

(i) Exemption: (1) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. (2) Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) **Authority:** 5 U.S.C. 552a(k)(2).

(iii) Reasons: (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to

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require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

(F) Consistent with the legislative purpose of the Privacy Act of 1974, the Air Force will grant access to nonexempt material in the records being maintained. Disclosure will be governed by Air Force's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

Dated: August 14, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–21048 Filed 8–19–02; 8:45 am]

BILLING CODE 5001–08–P

POSTAL SERVICE

39 CFR Part 111

Optional Increase in Minimum Number of Pieces Required for Preparation of 5-Digit Packages of Standard Mail Flats

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth *Domestic Mail Manual* (DMM) standards adopted by the Postal Service to allow mailers to select a number from 10 to 17 as the minimum number of pieces at which 5-digit packages may be prepared in a Standard Mail job of flat-size pieces (DMM C050.3.0) that are not more than ¾-inch thick. Currently mailers must prepare 5-digit packages whenever there are 10 or more pieces to a 5-digit ZIP Code destination.

EFFECTIVE DATE: September 5, 2002.

FOR FURTHER INFORMATION CONTACT: Cheryl Beller (703) 292–3747; or Patricia Bennett (703) 292–3639.

SUPPLEMENTARY INFORMATION: Under these new standards, mailers can select a minimum number of pieces greater than 10 at which 5-digit packages of automation rate and Presorted rate Standard Mail flat-size pieces not more than ¾-inch thick, including co-packaged pieces (DMM M950), are prepared within a mailing job. Mailers must use a consistent minimum for 5-digit packages throughout a mailing job. The minimum may not be set higher than 17 pieces, which means that whenever there are 17 or more pieces to a 5-digit ZIP Code destination, those pieces must be prepared in 5-digit packages. The preparation standards for other package levels and for containers are unchanged, and mailers must continue to prepare 3-digit and area distribution center (ADC) packages whenever there are 10 or more pieces to those destinations. Pieces now prepared in 5-digit packages using the current 10-piece minimum will move either to an existing 3-digit package or be consolidated into fewer new 3-digit packages when a higher minimum of 11 to 17 pieces is selected. In either case, the overall number of packages prepared by mailers and processed by the Postal Service should decrease. For example, a 4-ounce catalog prepared in four 5-digit packages for the same 3-digit destination that each contain 10 pieces could be combined in one new 3-digit package (that weighs less than 20 pounds) under the new standards if the minimum 5-digit package size is set at 17.

Any movement of pieces from 5-digit packages to 3-digit packages that results from this new option will not impact postage paid by mailers or Postal Service revenues because Standard Mail flats are eligible for the 3/5 presort rates whether prepared in 5-digit or 3-digit packages. Pieces moving from small 5-digit packages to larger 3-digit packages would not be subject to any additional postage, and mailers are encouraged to set their 5-digit package minimum at 17 pieces to prepare fewer packages. However, anyone wanting to use the current 10-piece package minimum, or to set the minimum between 10 and 17, could do so. Mailers are reminded that the 3/5 Presorted rate for Standard Mail flats is applicable to 5-digit or 3-digit packages prepared in 5-digit or 3-digit sacks containing a minimum of 125 pieces or 15 pounds of pieces or placed on any level pallet. Automation rates are always based on the package presort level and the 3/5 automation rate applies to any pieces in 5-digit and 3-digit packages. It is possible that the selection of a higher 5-digit package minimum may improve the presort level of some pieces that would otherwise fall to a lower package level after all 5-digit packages are prepared. For example, after all 5-digit packages are prepared using the current 10-piece package minimum, less than 10 pieces may remain for the 3-digit destination and the remaining pieces would be prepared in an ADC or mixed ADC package and be subject to the basic rate. When combined with pieces from one or more small 5-digit packages to the same 3-digit destination, these pieces could move to a 3-digit package and be subject to the 3/5 rates.

Because of the operational efficiencies that are expected for mailers and the Postal Service due to the creation and handling of fewer flats packages as a result of this new optional preparation, the Postal Service finds no need to solicit comments or to delay implementation.

Background

Exploratory modeling of piece, package, and container handling costs indicates that the appropriate minimum for 5-digit packages of Standard Mail flat-size pieces is clearly above 10 and could be increased to 17 pieces for flats likely to be processed on the automated flat sorting machine (AFSM) 100. The modeling, conducted by the Postal Service in conjunction with its product redesign efforts, indicates that changing the minimum package size for 5-digit packages is not likely to increase the Postal Service's combined package and piece handling costs. It also suggests that the net gain from reduced package handling using the 17-piece minimum will be greatest for pieces that weigh less than 6 ounces and somewhat less for heavier pieces. Because of the 20-pound maximum package weight (DMM M020.1.8), the elimination of 5-digit packages of heavier pieces will result in the creation of an almost equal number of 3-digit packages and the costs for additional piece handlings will not be offset by reduced package handling costs. As with any change of this type, the impact on a specific mailing will vary based on mail characteristics such as piece weight and presort density. However, it is expected that this optional change should help to reduce overall Postal Service processing costs as well as mailer production costs, and that it should not have any negative impact on service for pieces that move from 5-digit to 3-digit packages.

The expected benefits of this change are based, in large part, on productivities and piece processing efficiencies of the AFSM 100, which can process pieces up to ¾-inch thick. Pieces greater than ¾-inch thick may be processed on the FSM 1000, on the small parcel and bundle sorter (SPBS), or manually, all at lower productivities than if processed on the AFSM 100.

Furthermore, very little incoming secondary processing of pieces to carrier routes occurs on FSM 1000s, and it is more desirable to have mail prepared in 5-digit packages that can be sent directly to the delivery office for distribution to carrier routes. For this reason, the optional higher minimums are limited to flat-size pieces likely to receive AFSM 100 processing, and mailers must continue to use the current 10-piece minimum when preparing 5-digit packages of automation rate flat-size pieces greater than ¾-inch thick.

Two important goals of product redesign are to align rates and preparation requirements with customer needs and capabilities, and to provide products that reduce combined Postal Service and customer costs and fit within the future postal operations environment. The Postal Service believes there are major opportunities to improve flats processing efficiency and that, in the mid-term (within approximately 2 to 5 years), these opportunities can be fully captured only by restructuring rate categories and the corresponding preparation requirements for flats. Although approximately 40 percent of Postal Service mail processing costs for Standard Mail flats are in package and container handling, there are currently few rate incentives to induce customers to package and containerize their mail in ways that reduce Postal Service costs. Beyond the minimums and maximums for packages and containers, there is very little guidance or flexibility for preparing packages and containers. In contrast, to reduce Postal Service piece handling costs, customers are offered a detailed structure of rate incentives for presorting, barcoding, and dropshipping. Implementation of a flexible minimum for 5-digit packages of Standard Mail flats is an attempt to provide guidance for preparing more efficient packages.

The Postal Service discussed the potential for implementing this change with software vendors and major flats printers and mailers at the Mailers Technical Advisory Committee (MTAC) Presort Optimization Work Group meeting in May 2002. Attendees were receptive and indicated that software revisions necessary to implement this preparation change would not be difficult. However, they also noted that the Postal Service would need to act quickly to formalize the changes and inform the mailing industry of their value in order to obtain the greatest benefit for the 2002 fall mailing season, when the Postal Service normally experiences a Standard Mail volume peak. If mailers take advantage of this option quickly, the associated reduction in the volume of packages of flats could help the Postal Service avoid more costly manual processing that may occur during volume peaks.

Although mailers who want to select a higher 5-digit package minimum than 10 pieces will not be required to use Presort Accuracy Validation and Evaluation (PAVE)-certified software, PAVE tests are available for presort software vendors who will support this option.

Based on the expected efficiencies resulting from this change, the Postal Service plans to raise the minimum quantity for preparation of 5-digit packages of Standard Mail AFSM 100 flats from the current 10 pieces in conjunction with the next omnibus rate case.

The Postal Service is interested in receiving feedback about the volume shift in specific mailings from mailers who change their minimum package size. The following information may be sent to Cheryl Beller, Product Redesign, U.S. Postal Service, Room 4039, 1735 N Lynn St, Arlington, VA 22209–6360 (E-mail address: *cbeller1@email.usps.gov*): Total number of pieces in mailing; mailpiece weight; number of pieces prepared in 5-digit packages and the number of 5-digit packages; number of pieces prepared in 3-digit packages and the number of 3-digit packages; and the maximum package parameter (weight or number of pieces). If the maximum package size setting reflects a total package weight lower than 20 pounds, please indicate the maximum package height that correlates to the maximum package size. The number of pieces and number of packages (5-digit and 3-digit) should be shown using both the current 10-piece minimum and the new minimum selected for presort (from 11 and 17).

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the *Domestic Mail Manual* (DMM), which is incorporated by reference in the Code of Federal Regulations (CFR). See 39 CFR part 111.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the *Domestic Mail Manual* (DMM) as follows:

Domestic Mail Manual (DMM)

* * * * *

M Mail Preparation and Sortation

* * * * *

M600 Standard Mail (Nonautomation)

M610 Presorted Standard Mail

* * * * *

4.0 FLAT-SIZE PIECES AND IRREGULAR PARCELS

* * * * *

4.3 Package Preparation

Package size, preparation sequence, and labeling:

[Revise item a to read as follows:]

a. 5-digit:

(1) Flats: required with 17 pieces, optional with 10 to 16 pieces (use of a consistent minimum is required for a mailing job); red label D or optional endorsement line (OEL).

(2) Irregular Parcels: required (10-piece minimum); red label D or optional endorsement line (OEL).

* * * * *

M800 All Automation Mail

* * * * *

M820 Flat-Size Mail

* * * * *

5.0 STANDARD MAIL

5.1 Package Preparation

Package size, preparation sequence, and labeling:

[Revise item a to read as follows:]

a. 5-digit:

(1) Packages containing pieces not more than ¾-inch thick only: required with 17 pieces, optional with 10 to 16 pieces (use of a consistent minimum is required for a mailing job); red label D or optional endorsement line (OEL).

(2) Packages containing pieces with a thickness greater than ¾-inch: required with 10 pieces; red label D or optional endorsement line (OEL).

* * * * *

M900 Advanced Preparation Options for Flats

* * * * *

M950 Co-Packaging Automation Rate and Presorted Rate Pieces

* * * * *

3.0 STANDARD MAIL

* * * * *

3.2 Package Preparation

Package size, preparation sequence, and labeling:

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[Revise item a to read as follows:]

a. 5-digit:

(1) Packages containing pieces not more than ¾-inch thick only: required with 17 pieces, optional with 10 to 16 pieces (use of a consistent minimum is required for a mailing job); red label D or optional endorsement line (OEL).

(2) Packages containing pieces with a thickness greater than ¾-inch: required with 10 pieces; red label D or optional endorsement line (OEL).

* * * * *

We will publish an appropriate amendment to 39 CFR 111.3 to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–21189 Filed 8–19–02; 8:45 am]

BILLING CODE 7710–12–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–7262–3]

Final Effective Date Modification for the Determination of Nonattainment as of November 15, 1999, and Reclassification of the Baton Rouge Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking; delay of effective date.

SUMMARY: On June 24, 2002, EPA published a final rule entitled "Determination of Nonattainment as of November 15, 1999, and Reclassification of the Baton Rouge Ozone Nonattainment Area" (67 FR 42688). The effective date for the final rule was August 23, 2002. At the same time, EPA also published its proposal to delay the effective date of the determination and reclassification until October 4, 2002. The 30-day comment period on our June 24, 2002, proposal to extend the effective date has ended and EPA received twenty-seven comment letters of which twenty-six comment letters expressed support for the delayed effective date. Today EPA is finalizing the modification of the effective date of our June 24, 2002, rule from August 23, 2002, until October 4, 2002. Section 553(d) of the Administrative Procedure Act generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, if an Agency identifies a good cause, section 553(d)(3) allows a rule to take effect earlier, provided that the Agency publishes its reasoning in the final rule. EPA is making this action effective immediately because the effective date of the underlying nonattainment determination and reclassification is imminent, and delaying the effective date of this action would negate the purpose of this rule. In addition, EPA finds good cause for making this action effective immediately because it relieves a restriction that would otherwise go into effect.

DATES: As of August 20, 2002, the effective date of the final rule amending 40 CFR part 81 published at 67 FR 42688, June 24, 2002, is delayed for six weeks, from August 23, 2002, to a new effective date of October 4, 2002. The amendment to 40 CFR part 81 in this final rule is effective October 4, 2002.

ADDRESSES: Copies of documents relevant to this action area available for public inspection during normal business hours at the Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733; and the Louisiana Department of Environmental Quality (LDEQ), 7920 Bluebonnet Boulevard, Baton Rouge, Louisiana 70884. Please contact the appropriate office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Maria L. Martinez, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–2230.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we, us, or our" is used, we mean EPA. Throughout this document, whenever "Baton Rouge Area," "Baton Rouge Nonattainment Area," or "Baton Rouge Ozone Nonattainment Area" is used, we mean the area which includes the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge in the State of Louisiana.

Background

In a Judgment entered on March 7, 2002, the United States District Court for the Middle District of Louisiana, ordered EPA to determine, by June 5, 2002, whether the Baton Rouge area had attained the applicable ozone standard under the Clean Air Act (hereinafter referred to as the CAA or Act). *Louisiana Environmental Action Network (LEAN)* v. *Whitman*, 00–879–A. The Court also ordered EPA to publish in the **Federal Register** a notice of a final action reflecting both the determination and any reclassification of the area required as a result of the determination. The Court also held that it was not acting to restrict the effective date that EPA selects for its action. See the Court's February 27, 2002, Ruling.[1] EPA published its determination on June 24, 2002, in response to the Court's order.

On June 24, 2002, EPA concurrently published its proposal to delay the effective date of the determination and reclassification from August 23, 2002, until October 4, 2002 (67 FR 42697). EPA has determined that the delay of the effective date of the determination of nonattainment and reclassification is necessary to allow regulated entities in the Baton Rouge area time to prepare for the new requirements that are applicable to severe nonattainment areas. In the June 24, 2002, proposal, EPA noted that on the effective date of the reclassification to severe, the major stationary source threshold for the Baton Rouge area will be reduced from 50 tons of emissions on an annual basis to 25 tons. Thus a number of facilities with volatile organic compounds (VOCs) or nitrogen oxide (NO_X) emission levels between 25 and 50 tons per year may become subject to major source requirements for the first time.[2] Extending the effective date of our June 24, 2002, determination to October 4, 2002, will provide adequate time for the facilities affected by the reclassification to comply with the new technical requirements. EPA has determined that sources possibly subject to these new requirements should have additional time to prepare for the impact of these requirements. EPA's decision to extend the effective date for this reason is supported by a number of commenters.

In addition, as EPA stated in its June 24, 2002, proposal, we will continue to work on completing a separate rulemaking on the issue of whether the Baton Rouge area should be granted an extension of its attainment date pursuant to EPA's "Guidance on Extension of Air Quality Attainment Dates for Downwind Transport Areas" **Federal Register** document (64 FR 14441, March 25, 1999) (hereinafter referred to as EPA's extension policy), and remain classified as a serious nonattainment area. By taking this final action to extend the effective date for the nonattainment determination, EPA is in a position to take final action on the proposal to extend the attainment date for the Baton Rouge area before the nonattainment determination becomes effective. Section 181(b)(2)(A) of the Act

[1] For additional information on other court rulings on the issue of an effective date for such action, see, *Sierra Club* v. *Browner*, 130 F. Supp. 2d 78 (D.D.C. 2001), aff'd., 285 F. 3d 63 (D.C. Cir. 2002).

[2] See section 182(d) in conjunction with section 182(f) of the Act for the severe area major source thresholds for these pollutants.

requires that EPA determine attainment within six months of the attainment date. If the attainment date were extended, there would be a new deadline for the determination. Thus, if the attainment date were extended, EPA's obligation to determine attainment would not yet have occurred. If EPA were to extend the attainment date for the Baton Rouge area, EPA would withdraw the published nonattainment determination and the consequent reclassification, which would not yet have gone into effect.

In light of the fact that Louisiana has submitted its final SIP submissions, EPA believes that it will be able to complete rulemaking on the attainment date extension request by October 4, 2002. On August 2, 2002, EPA published its proposal to: (1) Approve the Baton Rouge area's ozone attainment demonstration and transport SIP which proposes an attainment date of November 15, 2005, (2) determine that the Baton Rouge area meets the reasonably available control measures (RACM) requirements of the Act, (3) approve the motor vehicle emission budgets associated with the attainment demonstration, (4) approve the enforceable commitments regarding MOBILE6 and to perform a mid-course review and submit a SIP revision to EPA by May 1, 2004, (5) approve an enforceable transportation control measure (TCM), (6) approve corrections to the 1990 Base Year Emissions Inventory, the 9% Rate-of-Progress Plan, and the 15% Rate-of Progress Plan and, (7) withdraw its June 24, 2002 (67 FR 42688), rulemaking determining nonattainment and reclassifying the Baton Rouge nonattainment area as a severe nonattainment area for ozone. (67 FR 50391). EPA is taking separate actions on other related revisions of the Baton Rouge SIP, including the Inspection and Maintenance Program (67 FR 44410, July 2, 2002), NO_X regulations (67 FR 30638, May 7, 2002, and 67 FR 48095, July 23, 2002), New Source Review (see 67 FR 48090, July 23, 2002), emissions reductions credit banking (see 67 FR 48083, July 23, 2002), Contingency Measures (see 67 FR 35468, May 20, 2002), and SIP revisions dealing with VOC emissions from industrial wastewater (67 FR 41840, June 20, 2002).

If, prior to the reclassification delayed effective date of October 4, 2002, EPA finalizes an extension of the attainment date for the Baton Rouge area pursuant to EPA's extension policy, then EPA would rescind its determination of nonattainment and notice of reclassification of the area and the area would retain its classification as a serious nonattainment area for ozone.

Such a course would allow the Agency to fulfill its duty to take into account upwind transport and allow an opportunity for the Baton Rouge area to qualify for an extension under the attainment date extension policy which EPA has applied in other areas affected by transport. EPA recently issued final rulemakings granting requests for attainment date extensions based on its policy in six ozone nonattainment areas: Washington, DC,[3] (66 FR 568, January 3, 2001); Greater Connecticut, (66 FR 634, January 3, 2001); Springfield, Massachusetts, (66 FR 666, January 3, 2001); and Beaumont/Port Arthur, Texas (66 FR 26913, May 15, 2001); St. Louis, Missouri (66 FR 33996, June 26, 2001).

What Comments Were Received on the Proposed Effective Date Modification for the Determination of Nonattainment and How Has EPA Responded?

EPA received letters from twenty-six commenters in support of the proposal to delay the effective date. We also received one letter opposing the delayed effective date.

Comment 1: Twenty-six commenters supported delaying the effective date of our June 24, 2002, determination to October 4, 2002.

Response 1: EPA has determined that the delay of the effective date of the determination of nonattainment and reclassification is necessary to allow regulated entities in the Baton Rouge area a period of time to prepare for the new requirements that are applicable to severe nonattainment areas.

Comment 2: A commenter contends that delaying the effective date is not necessary for the purpose of allowing facilities to prepare for new requirements applicable to severe nonattainment areas. The commenter argues that the reclassification of the area should have occurred on May 15, 2000, and that therefore regulated facilities in the Baton Rouge area have had abundant time to prepare for the new requirements.

Response 2: Contrary to the commenter's contention, it was not clear until the Court's March, 2002, Order that EPA would be required to make an attainment determination prior to concluding its review of whether the Baton Rouge area qualified for an attainment date extension. Therefore, entities affected by a reclassification did not have much notice of the new controls to which they would be subject. In EPA's May 9, 2001 (66 FR 23646) and July 25, 2001 (66 FR 38608) proposals on the Baton Rouge area, EPA proposed to finalize the nonattainment determination and reclassification notice for the Baton Rouge area only after the area had had an opportunity to qualify for an attainment date extension under the extension policy. As a result, the commenter is incorrect in its assertion that regulated entities were on notice that the area would be reclassified. The commenter has not identified any basis for questioning EPA's determination that regulated entities require additional time to prepare for the impact of the June 24, 2002, final rulemaking. See also the comments submitted in support of extending the effective date for this reason.

Comment 3: Several commenters strongly support EPA's proposal to extend the effective date of its June 24, 2002, determination on the basis that this action will allow EPA sufficient time to work on completing a separate rulemaking on the issue of whether the Baton Rouge area should be granted an extension of its attainment date pursuant to EPA's extension policy, and remain classified as a serious nonattainment area. One commenter takes issue with EPA's use of the period of the delayed effective date to allow EPA to complete consideration of Louisiana's request for an attainment date extension. The commenter asserts that the attainment date extension violates the Clean Air Act, and that a federal Court of Appeals found that EPA had violated the CAA when it extended the attainment deadline for the Washington, DC area. The commenter argues that since EPA cannot grant an attainment date extension, it cannot delay the effective date of the June 24, 2002, rule.

Response 3: On July 2, 2002, the U.S. Court of Appeals for the District of Columbia vacated EPA's approval of an attainment date extension for the Washington, D.C. ozone nonattainment area. *Sierra Club* v. *EPA*, 2002 WL 1407009 (D.C. Cir. July 2, 2002). EPA is currently evaluating this decision and considering what impact it may have on EPA's future actions concerning the Baton Rouge area. Regardless of whether EPA continues to process the attainment date extension during the period prior to the effective date of the June 24, 2002, rule, EPA has concluded that the need for regulated entities to have additional time to prepare for reclassification

[3] On July 2, 2002, the U.S. Court of Appeals for the District of Columbia vacated EPA's approval of an attainment date extension for the Washington, DC ozone nonattainment area. *Sierra Club* v. *EPA*, 2002 WL 1407009 (D.C. Cir. July 2, 2002). EPA is currently evaluating this decision and considering what impact it may have on EPA's future actions concerning the Baton Rouge area.

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provides a sufficient, separate, and independent basis for extending the effective date, and therefore EPA does not rely on the activities relating to the attainment date extension in concluding that the effective date should be extended until October 4, 2002.

Comment 4: A number of commenters note that a "bump-up" of the Baton Rouge area from "serious" to "severe" ozone nonattainment would ignore the efforts of the Baton Rouge Ozone Task Force and the progress toward attainment already achieved by the Baton Rouge area, would result in the implementation of emissions control measures that will produce negligible air quality benefits for the cost, and would cause great harm to economic development of the area. These commenters contend that the revised State Implementation Plan (SIP) submitted to EPA by Louisiana on December 31, 2001, provides the most reasonable, effective and expeditious path to the attainment of the 1-hour ozone NAAQS.

Response 4: The substance of Louisiana's revised SIP is the subject of a separate rulemaking (67 FR 50391, August 2, 2002) and is not under consideration is this action. EPA will address comments regarding Louisiana's revised SIP, as appropriate, in that separate rulemaking. EPA has acknowledged that during the period of the delayed effective date, it will continue to work on completing a separate rulemaking on the issue of whether the Baton Rouge area should be granted an extension of its attainment date pursuant to EPA's extension policy, and remain classified as a serious nonattainment area. However, as noted above, EPA is currently evaluating the recent U.S. Court of Appeals' decision and is considering what impact it may have on EPA's future actions concerning the Baton Rouge area. Regardless of whether EPA continues to process the attainment date extension during the period prior to the effective date of the June 24, 2002, rule, EPA has concluded that the need for regulated entities to have additional time to prepare for reclassification provides a sufficient, separate, and independent basis for extending the effective date, and therefore EPA does not rely on the activities relating to the attainment date extension in concluding that the effective date should be extended until October 4, 2002.

Comment 5: A number of commenters base their support of EPA's proposal on the grounds that the delayed effective date will alleviate some of the supply impacts of the "severe" area requirement to use and sell reformulated gasoline (RFG) in the Baton Rouge area.

Response 5: EPA believes that the need for regulated entities to have additional time to prepare for reclassification provides a sufficient, separate, and independent basis for extending the effective date. EPA expresses no view as to other grounds of support for its action. However, we note the commenters are correct that the Clean Air Act requires mandatory participation in the federal RFG program for an ozone non-attainment area which is reclassified as severe, effective one year after the reclassification. *See* section 211(k)(10)(D) of the CAA. This requirement under the Clean Air Act is implemented as a matter of law; EPA does not have discretion to change, waive, or fail to implement this requirement.

Final Action

For the reasons stated above, and in the June 24, 2002, proposal, EPA is taking final action to extend to October 4, 2002, the effective date of the final rule entitled "Determination of Nonattainment as of November 15, 1999, and Reclassification of the Baton Rouge Ozone Nonattainment Area; State of Louisiana" (67 FR 42688). Section 553(d) of the Administrative Procedure Act generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, if an Agency identifies a good cause, section 553(d)(3) allows a rule to take effect earlier, provided that the Agency publishes its reasoning in the final rule. EPA is making this action effective immediately because the effective date of the underlying nonattainment determination and reclassification is imminent, and delaying the effective date of this action would negate the purpose of this rule. In addition, EPA finds good cause for making this action effective immediately because it relieves a restriction that would otherwise go into effect.

Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities."

The Agency has determined that this effective date modification would result in none of the effects identified in section 3(f) of the Executive Order. This final rulemaking merely delays the effective date of EPA's determination of nonattainment and would not impose any new requirements on any sectors of the economy, or on state, local, or tribal governments or communities.

B. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

C. Executive Order 13175

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. This rulemaking does not affect the communities of Indian tribal governments. Accordingly, the requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rulemaking to delay the effective date of EPA's nonattainment determination does not create any new requirements. Instead, this rulemaking only delays the effective date of a factual determination, and would not regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), I certify that today's proposal would not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

E. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA believes, as discussed above, that the delay of the effective date of a determination of nonattainment does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

F. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This delay of the effective date of a nonattainment determination does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because this action does not impose any new requirements on any sectors of the economy, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this final action.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Carbon monoxide, Nitrogen dioxides, Ozone, Reporting and recordkeeping requirements.

Dated: August 12, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 81.319 the table for "Louisiana—Ozone (1-hour Standard)" is amended by revising the entry for the Baton Rouge area to read as follows:

§ 81.319 Louisiana.

* * * * *

LOUISIANA-OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	[1]Date	Type	[1]Date	Type
Baton Rouge Area:				
Ascension Parish	11/15/90	Nonattainment	10/04/02	Severe.
East Baton Rouge Parish	11/15/90	Nonattainment	10/04/02	Severe.
Iberville Parish	11/15/90	Nonattainment	10/04/02	Severe.
Livingston Parish	11/15/90	Nonattainment	10/04/02	Severe.
West Baton Rouge Parish	11/15/90	Nonattainment	10/04/02	Severe.

[1] This date is October 18, 2000, unless otherwise noted.

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[FR Doc. 02–21195 Filed 8–19–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7262–6]

Florida: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Florida has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Florida's changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on October 21, 2002, unless EPA receives adverse written comment by September 19, 2002. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Narindar M. Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; (404) 562–8440. You can view and copy Florida's application from 8 a.m. to 5 p.m. at the following addresses: The Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400 and from 8:30 a.m. to 3:45 p.m., EPA Region 4, Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960, Phone number (404) 562–8190, Kathy Piselli, Librarian.

FOR FURTHER INFORMATION CONTACT: Narindar M. Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; (404) 562–8440.

SUPPLEMENTARY INFORMATION:

A. Why are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Florida's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Florida Final authorization to operate its hazardous waste program with the changes described in the authorization application. Florida has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Florida, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Florida subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Florida has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- do inspections, and require monitoring, tests, analyses or reports
- enforce RCRA requirements and suspend or revoke permits
- take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the regulations for which Florida is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens If EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the state program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Florida Previously Been Authorized For?

Florida initially received Final authorization on January 29, 1985, effective February 12, 1985 (50 FR 3908), to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on December 1, 1987, effective March 3, 1988 (52 FR 45634), December 16, 1988, effective January 3, 1989 (53 FR 50529), December 14, 1990, effective February 12, 1991 (55 FR 51416), February 5, 1992, effective April 6, 1992 (57 FR 4371), February 7, 1992, effective April 7, 1992 (57 FR 4738), May 20, 1992, effective July 20, 1992 (57 FR 21351), November 9, 1993, effective January 10, 1994, (58 FR 59367), July 11, 1994, effective September 9, 1994 (59 FR 35266), August 16, 1994, effective October 17, 1994 (59 41979), October 26, 1994, effective December 27, 1994 (59 FR 53753), April 1, 1997, effective June 2, 1997 (62 FR 15407), August 23, 2001, effective October 22, 2001 (66 FR 44307). The authorized Florida program was incorporated by reference into the CFR on January 20, 1998, effective March 23, 1998 (63 FR 2896). Florida received corrective action authority on September 18, 2000, effective November 17, 2000 (65 FR 56256).

G. What Changes Are We Authorizing With Today's Action?

On September 10, 1998, Florida submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. Florida's revisions consist of provisions contained in the Boilers and Industrial Furnaces rule. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Florida's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Florida Final authorization for the following program changes:

Description of Federal requirement	Federal Register	Analogous State authority*
Consolidated Checklist for the Burning of Hazardous Waste in Boilers and Industrial Furnaces (85, 94, 96, 98, 105, 110, 111, 114, 125, 127).	56 FR 7134, 02/21/91, 56 FR 32688, 07/17/91; 56 FR 42504, 08/27/91; 56 FR 43874, 09/05/91; 57 FR 27880, 06/22/92; 57 FR 37284, 08/18/92; 57 FR 38558, 08/25/92; 57 FR 44999, 09/30/92; 58 FR 38816, 07/21/93, and FR 58 59598, 12/09/93.	Section 403.72(1), Florida Statute (F.S.) (1993 and 1994 Supplement); Rule 62–730.030(1), Florida Administrative Code (F.A.C.), effective January 5, 1995; Section 403.72(1), F.S., (1993 and 1994 Supplement); Rule 17–730.030(1), F.A.C., effective October 14, 1992; Sections 403.72(1), 403.721(1), 403.721(2), 403.721(6), 403.721(7), 403.722, and 403.7895, F.S. (1993 and 1994 Supplement); Rules 17–730.030(1) and 17–730.181, F.A.C. effective October 14, 1992; Section 403.72(1), F.S. (1993 and 1994 Supplement); Rule 17–730.030(1), F.A.C., effective October 7, 1993 and January 5, 1995; Section 403.72(1), F.S. (1993 and 1994 Supplement); Rule 17–730.030(1), F.A.C., effective October 14, 1992; Rule 62–730.030(1), F.A.C., effective January 5, 1995; Sections 403.087(2), 403.704(16), 403.721(2), 403.722(3), and 403.722(7), F.S. (1993 and 1994 Supplement); Rule 17–730.220(3), F.A.C., effective October 14, 1992; Sections 403.704(15), 403.72(1), 403.721(1), 403.721(2), 403.721(6), 403.721(7), 403.722, and 403.7895, F.S. (1993 and 1994 Supplement); Rules 17–730.020(1), 17–730.021(1)(a), 17–730.030(1), 17–730.180(1), 17–730.180(2), and 17–730.181 F.A.C., effective October 14, 1992; Rules 62–730.020(1), 62–730.030(1),62–730.180(1), 62–730.180(2), and 62–730.181(1), F.A.C. effective January 5, 1995; Sections 403.721(1), 403.721(2), 403.721(6), 403.721(7), 403.722, and 403.7895, F.S. (1993 and 1994 Supplement); Rule 17–730.181, F.A.C., effective October 14, 1992 and October 7, 1993; Sections 403.721(1), 403.721(2), 403.721(6), 403.721(7), 403.722, and 403.7895, F.S. (1993 and 1994 Supplement); Rules 62–730.021(1)(a) and 62–730.181(1), F.A.C., effective January 5, 1995; Sections 403.721(1), 403.721(2), 403.721(6), 403.721(7), 403.722, and 403.7895, F.S. (1993 and 1994 Supplement); Rule 62–730.181(1), F.A.C., effective January 5, 1995

*On August 10, 1994, the Florida Administrative Code chapter 17–730 was renumbered as 62–730 as part of a reorganization of the Florida Department of Environmental Protection. The chapter title, "Hazardous Waste," remained the same, and the contents of the Chapter did not change as a result of the renumbering.

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H. Where Are the Revised State Rules Different From the Federal Rules?

This section discusses certain rules where the State is broader in scope and will not be authorized and optional rules that the state did not adopt.

The State of Florida's permitting requirements for boilers and industrial furnaces are broader in scope than the Federal requirements. Section 403.7895, F. S., requires a certification of need issued by the Governor and Cabinet sitting as the Statewide Multipurpose Hazardous Waste Facility Siting Board before a permit can be issued.

The State did not adopt 40 CFR 260.20 and does not do delisting petitions. Section 120.54(5), Florida Statutes, describes what is required in Florida for rulemaking petitions.

I. Who Handles Permits After the Authorization Takes Effect?

Florida will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until the permits expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Florida is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Florida?

Florida is not authorized to carry out its hazardous waste program in Indian country within the State, which includes:

- Seminole Tribe of Florida
- Miccosukee Tribe of Indians of Florida

Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

K. What Is Codification and Is EPA Codifying Florida's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart K for this authorization of Florida's program changes until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). It does not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective October 21, 2002.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 30, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–21190 Filed 8–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7262–5]

Florida: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Florida has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Florida's changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on October 21, 2002, unless EPA receives adverse written comment by September 19, 2002. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; (404) 562–8440. We must receive your comments by September 19, 2002. You can view and copy Florida's application from 8 a.m. to 5 p.m. at the following addresses: The Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400 and from 8:30 a.m. to 3:45 p.m., EPA Region 4, Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960, Phone number (404) 562–8190, Kathy Piselli, Librarian.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; (404) 562–8440.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Florida's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Florida Final authorization to operate its hazardous waste program with the changes described in the authorization application. Florida has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Florida, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Florida subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Florida has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports
- Enforce RCRA requirements and suspend or revoke permits
- Take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the regulations for which Florida is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the state program changes.

E. What Happens If EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the state program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

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F. What Has Florida Previously Been Authorized for?

Florida initially received Final authorization on January 29, 1985, effective February 12, 1985 (50 FR 3908), to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on December 1, 1987, effective March 3, 1988 (52 FR 45634), December 16, 1988, effective January 3, 1989 (53 FR 50529), December 14, 1990, effective February 12, 1991 (55 FR 51416), February 5, 1992, effective April 6, 1992 (57 FR 4371), February 7, 1992, effective April 7, 1992 (57 FR 4738), May 20, 1992, effective July 20, 1992 (57 FR 21351), November 9, 1993, effective January 10, 1994 (58 FR 59367), July 11, 1994, effective September 9, 1994 (59 FR 35266), August 16, 1994, effective October 17, 1994 (59 FR 41979), October 26, 1994, effective December 27, 1994 (59 FR 53753), April 1, 1997, effective June 2, 1997 (62 FR 15407), August 23, 2001, effective October 22, 2001 (66 FR 44307). The authorized Florida program was incorporated by reference into the CFR on January 20, 1998, effective March 23, 1998 (63 FR 2896). Florida received corrective action authority on September 18, 2000, effective November 18, 2000 (65 FR 56256).

G. What Changes Are We Authorizing With Today's Action?

On September 1, 1998, Florida submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. Florida's revisions consist of provisions contained in RCRA Cluster VII promulgated between July 1, 1996 to June 30, 1997. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Florida's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Florida Final authorization for the following program changes:

Description of Federal requirement	Federal Register	Analogous State authority	Effective date
Checklist 151—Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners.	4/8/96, 61 FR 15566–15660 as amended. 4/8/96, 61 FR 15660–15668 4/30/96, 61 FR 19117 6/28/96, 61 FR 33680–33690 7/10/96, 61 FR 36419–36421 8/26/96, 61 FR 43924–43931 2/19/97, 62 FR 7502–7600	403.721(2), (3), & (6), 403.8055, Florida Statute (F.S.) (1999). Rule 62–730.183, Florida Administrative Code (F.A.C.)	2/4/00
Checklist 153[1]—Conditionally Exempt Small Quantity Generator Disposal Options under Subtitle D.	7/1/96, 61 FR 34252–34278 ...	403.704(15), 403.72(1), and 403.8055, F.S. (1999). Rules 62–701.300(4) and 62–730.030(1), F.A.C	2/4/00
Checklist 155—Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance.	1/14/97, 62 FR 1992–1997	403.721(2), (3), & (6), 403.8055 F.S. (1999). Rule 62–730.183, F.A.C	2/4/00
Checklist 156—Military Munitions Rule: Hazardous Waste Identification and Management; Explosives, Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties.	2/12/97, 62 FR 6622–6657	403.721(2), (3) & (4) and 403.8055. F.S. (1999). Rule 62–730.160(1), F.A.C. 403.061(7), 403.087, 403.704(15), 403.72, 403.721(2), (3), (4), & (6), 403.722, and 403.8055, F.S. (1999) Rules 62–730.021(1)(a), 62–730.030(1), 62–730.160(1), 62–730.170(1), 62–730.180(1) & (2), 62.730.181(1), and 62–730.220(3), F.A.C. 403.721(2) and 403.8055, F.S. (1999) Rule 62–730.181(1)	2/4/00
Checklist 157—Land Disposal Restrictions Phase IV—Treatment Standards for Wood Preserving wastes; Paperwork Reduction and Streamlining, Exemptions from RCRA for Certain Processed Materials; and Miscellaneous Hazardous.	5/12/97, 62 FR 25998–26040	403.72(1), 403.8055, F.S. (1999). Rule 62–730.030(1), F.A.C. 403.721(2), (3), & (6), 403.8055, F.S. (1999) Rule 62–730.183, F.A.C	2/4/00
Checklist 158—Testing and Monitoring Activities Amendment III.	6/13/97, 62 FR 32452—32463	403.704(15), 403.721(2) & (6) and 403.8055, F.S. (1999). Rules 62–730.021(1)(a), 62–730.180(1) & (2) and Rule 62–730.181(1), F.A.C	2/4/00

Description of Federal requirement	Federal Register	Analogous State authority	Effective date
Checklist 159, Conformance with the Carbamate Vacatur	6/17/97, 62 FR 32974–32980	403.72(1) and 403.8055, F.S. (1999). Rule 62–730.030(1), F.A.C. 403.721(2), (3), & (6), 403.8055, F.S. (1999) Rule 62–730.183, F.A.C	2/4/00

[1] For discussion on where state rule differs, refer to Section H. below and the program revision application.

H. Where Are the Revised State Rules Different From the Federal Rules?

Section 261.5(f) and (g) allows for hazardous waste generated by Conditionally Exempt Small Quantity Generators (CESQG) to be managed at municipal solid waste landfills subject to part 258. The State is more stringent than the Federal requirements because Rule 62–701.300 (4) F. A. C. does not allow hazardous wastes in Subtitle D landfills in the State of Florida (Checklist 153).

I. Who Handles Permits After the Authorization Takes Effect?

Florida will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until the permits expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Florida is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Florida?

Florida is not authorized to carry out its hazardous waste program in Indian country within the State, which includes:

- Seminole Tribe of Florida
- Miccosukee Tribe of Indians of Florida

Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

K. What Is Codification and Is EPA Codifying Florida's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart K for this authorization of Florida's program changes until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes state requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective October 21, 2002.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure,

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Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 30, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–21193 Filed 8–19–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications*, 8 FCC Rcd 4735 (1993).

EFFECTIVE DATE: August 20, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted July 31, 2002, and released August 9, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC. 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 222C and adding Channel 222C0 at Omaha.

3. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by removing Channel 266A and adding Channel 266C1 at Amargosa Valley.

4. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 268C3 and adding Channel 268A at Crystal Beach, by removing Channel 237A and adding Channel 291C3 at Floydada, by removing Channel 293A and adding Channel 293C3 at Llano, and by removing Channel 280A and adding Channel 280C2 at Wichita Falls.

5. Section 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 239C1 and adding Channel 239C at Delta.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–21060 Filed 8–19–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 76

[CS Docket No. 95–178; FCC 99–116]

Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document makes a minor correction to part 76 of the Commission's rules pertaining to definition of markets which were published in the **Federal Register** on Thursday June 24, 1999 (64 FR 33796) regarding cable television broadcast signals.

DATES: Effective August 20, 2002.

FOR FURTHER INFORMATION CONTACT: Kenneth Lewis, Media Bureau, (202) 418–2622.

SUPPLEMENTARY INFORMATION: The Order on Reconsideration and Second Report and Order, FCC 99–116, adopted May 21, 1999; released May 26, 1999, approved a final rule regarding the change of market definitions from Arbitron's areas of dominant influence to Nielsen Media Research's designated market areas for must-carry/retransmission elections. In this document we make a non-substantive rule change to correct an error in the publication of § 76.59 of the Commission's rules.

Need for Correction

As published, the final regulations contain an error which may prove to be misleading and need to be clarified.

List of Subject in 47 CFR Part 76

Cable television.

Accordingly, 47 CFR part 76 is corrected by making the following correcting amendments:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE.

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. In § 76.59, add paragraph (d) to read as follows:

§ 76.59 Modification of television markets.

* * * * *

(d) A cable operator shall not delete from carriage the signal of a commercial television station during the pendency of any proceeding pursuant to this section.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–21121 Filed 8–19–02; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 67, No. 161
Tuesday, August 20, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–44–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. This proposal would require replacement of the existing fueling float switch and conduit assemblies in the main and center fuel tanks with new, improved assemblies. This action is necessary to prevent fluid contamination inside the fueling float switch or chafing of the wiring to the in-tank conduit, which could generate an ignition source and consequent fire and explosion in the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 4, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–44–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–44–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Doug Pegors, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1446; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–44–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–44–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 23, 1999, the FAA issued AD 99–05–12, amendment 39–11060 (64 FR 10213, March 3, 1999), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. That AD requires removal of the float switch and wiring and inspection of the float switch wiring in the center fuel tank to detect discrepancies, and either reinstallation of existing float switch and wiring, or replacement of the float switch and wiring with a new float switch and wiring. That action also requires installation of Teflon sleeving over the wiring of the float switch. In lieu of the above mentioned requirements, that AD requires deactivation of the float switch, accomplishment of specific fueling procedures, and installation of Caution signs. Any damaged components that were found during the inspections required by that AD were removed and returned to the airplane manufacturer for investigation. Examination of the returned components revealed that the potential for water and fuel contamination of the internal components of the float switch could provide a path for electrical current from the switch to ground. Such a path could generate an ignition source and consequent fire and explosion in the fuel tank.

Actions Since Issuance of AD 99–05–12

Since the issuance of AD 99–05–12, the manufacturer has designed a new, improved fueling float switch and conduit assemblies. The new float switch is more resistant to fuel and moisture contamination. The new electrical cable conduit for the float switch eliminates sharp bends within

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the conduit and includes a liner system installed inside the conduit to provide added protection against chafing of the float switch wiring. These improvements are designed to eliminate a potential ignition source in the fuel tanks.

AD 99–05–12 did not include Model 737–600, –700, –700C, –800, and –900 series airplanes in the applicability in anticipation of the availability of redesigned components for those airplanes; therefore, those models are addressed in this proposed AD. The FAA is currently considering replacement of the fueling float switch and conduit assemblies for Model 737–100, –200, –300, –400, and –500 series airplanes, once the redesigned components are available for those models.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–28A1142, dated February 7, 2002, which describes procedures for replacement of the existing fueling float switch and conduit assemblies in the main and center fuel tanks with new, improved assemblies. Each assembly includes a new, improved float switch, and a new conduit assembly with a liner system inside the conduit. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 478 airplanes of the affected design in the worldwide fleet. The FAA estimates that 392 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 56 work hours per airplane to accomplish the proposed replacement in the 2 main fuel tanks, as specified in Work Package I, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the work hours for this proposed replacement on U.S. operators is estimated to be $1,317,120, or $3,360 per airplane.

It would take approximately 23 work hours per airplane to accomplish the proposed replacement in the center fuel tank, as specified in Work Package II, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the work hours for this proposed replacement on U.S. operators is estimated to be $540,960, or $1,380 per airplane.

The kit required to accomplish the proposed replacement in all three fuel tanks would cost approximately $5,116 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–44–AD.

Applicability: Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin 737–28A1142, dated February 7, 2002.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fluid contamination inside the fueling float switch or chafing of the wiring to the in-tank conduit, which could generate an ignition source and consequent fire and explosion in the fuel tank, accomplish the following:

Replacement

(a) Replace the existing fueling float switch and conduit assemblies in the main and center fuel tanks with new, improved assemblies (includes a new float switch and a new conduit assembly with a liner system inside the conduit), at the applicable time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, per Work Packages I and II of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1142, dated February 7, 2002.

Note 2: Due to the lack of sleeving on the existing electrical wire installations of the center fuel tank, it is recommended that Work Package II be completed before Work Package I.

(1) For airplanes that have accumulated fewer than 5,000 total flight cycles as of the effective date of this AD: Within 2 years after the effective date of this AD.

(2) For airplanes that have accumulated 5,000 total flight cycles or more, but fewer than 10,000 total flight cycles as of the effective date of this AD: Within 1 year after the effective date of this AD.

(3) For airplanes that have accumulated 10,000 total flight cycles or more as of the effective date of this AD: Within 180 days after the effective date of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 13, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–21053 Filed 8–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–14]

Proposed Establishment of Class E5 Airspace; Spruce Pine, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace at Spruce Pine, NC. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Avery county Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before September 19, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket Nol 02–ASO–14, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to paticipate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–ASO–14." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Spruce Pine, NC. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

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Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More above the Surface of the Earth.

* * * * *

ASO NC E5 Spruce Pine, NC [NEW]

Avery County Airport, NC, Point In Space Coordinates
(Lat. 35°55'52" N, long. 82°00'43" W)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 35°55'52" N, long. 82°00'43" W) serving Avery County Airport.

* * * * *

Issued in College Park, Georgia, on August 14, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–21179 Filed 8–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–15]

Proposed Establishment of Class E5 Airspace; Sylva, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to establish Class E5 airspace at Sylva, NC. A Area Navigation (RNAV) Global Positing System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Jackson County Airport, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before September 19, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal; Aviation Administration, Docket No. 02–ASO–15, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The office docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made. "Comments to Airspace Docket No. 02–ASO–15" The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Sylva, NC. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Sylva, NC [NEW]

Jackson County Airport, Point in Space Coordinates
(Lat. 35° 19'46" N, long. 83° 13'14" W)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 35°19'46" N, long. 83°13'14" W) serving Jackson County Airport; excluding that airspace within the Knoxville TN, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on August 14, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–21180 Filed 8–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace No. 02–ASO–16]

Proposed Amendment of Class E5 Airspace; Andrews-Murphy, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E5 airspace at Andrews-Murphy, NC. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Murphy Medical Center, Murphy, NC. As a result, controlled airspace extending upward from 700 feet Above Ground level (AGL) is needed to contain the SIAP.

EFFECTIVE DATE: Comments must be received on or before September 19, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–16, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 035–5627.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration. P. O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economics, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–ASO–16." The postcard will be date/time stamped and returned to the commenter. All communications received bore the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E5 airspace at Andrews-Murphy, NC. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 in FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, there, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the forgoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Andrews-Murphy, NC [REVISED]

Andrews-Murphy Airport, NC
(Lat. 35°11'42" N, long. 83°51'50" W)
RUGIE Waypoint
(Lat. 35°08'57" N, long. 83°57'29" W)
Andrews-Murphy, NC Point In Space Coordinates
(Lat. 35°11'10" N, long. 83°52'57" W)
Murphy Medical Center, Point In Space Coordinates

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(Lat. 35°05'10" N, long. 83°57'54" W)

That airspace extending upward from 700 feet or more above the surface within a 6.5-mile radius of the Andrews-Murphy Airport and within 3.2 miles each side of the 237° course from the RUGIE Waypoint, extending from the 6.5-mile radius to 8.1 miles southwest of the airport and that airspace within a 6-mile radius of the point in space (Lat. 35°11'10" N, long. 83°52'57" W) serving Andrews-Murphy, NC, and that airspace within a 6-mile radius of the point in space (Lat. 35°05'10" N, long. 83°57'54" W) serving Murphy Medical Center; excluding that airspace within the Knoxville, TN, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on August 14, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–21181 Filed 8–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–17]

Proposed Amendment of Class E5 Airspace; Morganton, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E5 airspace at Morganton, NC. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Grace Hospital, Morganton, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before September 19, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–17, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–ASO–17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E5 airspace at Morganton, NC. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequency and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Morganton, NC [REVISED], Morgan–Lenoir Airport, NC

(Lat. 35°49'15" N, long. 81°36'40" W)

Fiddlers NDB

(Lat. 35°42'37" N, long. 81°40'17" W)

Grace Hospital, Point In Space Coordinates

(Lat. 35°43'31" N, long. 81°39'59" W)

That airspace extending upward from 700 feet or more above the surface within a 9.5-mile radius of the Morganton-Lenoir Airport and within 2.5 miles each side of the 205° bearing from Fiddlers NDB, extending from the 9.5-mile radius to 7 miles southwest of the NDB and that airspace within a 6-mile radius of the point in space (lat. 35°43'31" N, long. 81°39'59" W) serving Grace Hospital; excluding that airspace within the Hickory, NC, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on August 14, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–21182 Filed 8–19–02; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7262–7]

Florida: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Florida has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Florida. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by September 19, 2002.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. You can examine copies of the materials submitted by Florida during normal business hours at the following locations: EPA Region 4 Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, Phone number: (404) 562–8190; or The Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400, Phone number: (850) 488–0300.

FOR FURTHER INFORMATION CONTACT: Narindar M. Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; (404) 562–8440.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: July 30, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–21191 Filed 8–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7262–4]

Florida: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Florida has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Florida. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by September 19, 2002.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. You can examine copies of the materials submitted by Florida during normal business hours at the following locations: EPA Region 4 Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960, Phone number: (404) 562–8190, Kathy Piselli, Librarian; or The Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400, Phone number: (850) 488–0300.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; (404) 562–8440.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: July 30, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–21194 Filed 8–19–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1938, MB Docket No. 02–223, RM–10520]

Digital Television Broadcast Service; Avalon, CA

AGENCY: Federal Communications Commission.

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ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Pappas Southern California License, LLC, licensee of station KAZA–TV, NTSC channel 54, Avalon, California, proposing to amend the DTV Table of Allotments to allot either DTV Channel 29 or DTV Channel 47 to Avalon, which presently does not have a paired DTV Channel allotment. With respect to Pappas' request that the Commission initiate a rule making proceeding to allot DTV Channel 29 to Avalon, the Commission has previously amended the DTV Table of Allotments to substitute DTV Channel 29c for Channel 47 at Ontario, California. Thus, DTV Channel 29 is not available for allotment to Avalon.

DATES: Comments must be filed on or before August 23, 2002, and reply comments on or before August 28, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John Griffith Johnson, Jr., Esquire, Paul, Hastings, Janofsky & Walker, LLP, 1299 Pennsylvania Avenue, NW., 19th Floor, Washington, DC 20004–2400 (Counsel for Pappas Southern California License, LLC).

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–223, adopted August 5, 2002, and released August 7, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under California is amended by adding Avalon, DTV channel 47.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–21211 Filed 8–16–02; 11:58 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1951; MM Docket No. 01–241; RM–10247]

Radio Broadcasting Services; Oscoda, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: Charles Crawford filed a petition for rule making proposing the allotment of Channel 243A at Oscoda, Michigan, as the community's third local FM transmission service. *See* 66 FR 49593, September 28, 2001. On November 2, 2002, petitioner filed a request for dismissal. A showing of continuing interest is required before a channel will be allotted. It is the Commission's policy to refrain from making an allotment to a community absent an expression of interest. Therefore, at the request of petitioner, we will dismiss the instant proposal.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–241, adopted July 31, 2002, and released August 9, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–21085 Filed 8–19–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1948; MB Docket No. 02–225, RM–10517; MB Docket No. 02–226, RM–10459; MB Docket No. 02–227, RM–10467; MB Docket No. 02–228, RM–10466]

Radio Broadcasting Services; Crawfordville, GA, Groom, TX, Sonora, TX, and Spur, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes four allotments in response to four separate petitions. The Audio Division requests comments on these proposals. Ritz Radio proposes the allotment of Channel 234A at Crawfordville, Georgia, as the community's first local aural transmission service (RM–10517). Channel 234A can be allotted to Crawfordville with a site restriction 6 kilometers (3.7 miles) southwest of the community at coordinates 33–31–18 and 82–56–52. Maurice Salsa requests the allotment of Channel 223A at Groom, Texas (RM–10459). Channel 223A can be allotted to Groom with a site restriction 7.5 kilometers (4,6 miles) east of the community at coordinates 35–10–49 and 101–01–46. Katherine Pyeatt proposes the allotment of Channel 272A at Sonora, Texas (RM–10467). Channel 272A can be allotted to Sonora with a site restriction 11.2 kilometers (7 miles) south of the community at coordinates 30–28–07 and 100–36–54. Mexican concurrence will be requested for the allotment at Sonora, Texas. Maurice Salsa requests the allotment of Channel 254A at Spur, Texas (RM–10460). Channel 254A can be allotted to Spur without a site restriction at coordinates 33–28–35 and 100–51–19.

DATES: Comments must be filed on or before September 30, 2002, and reply comments on or before October 15, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Ritz Radio, Lisabeth B. Greene, 4103 Brushy Creek Road Greer, South Carolina 29650 (RM–10517); Maurice Salsa, 5615 Evergreen Valley Drive, Kingwood, Texas 77345 (RM–10459 and RM–10460); Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214 (RM–10467).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–225, MB Docket No. 02–226, MB Docket No. 02–227, and MB Docket No. 02–228, adopted July 31, 2002, and released August 9, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Crawfordville, Channel 234A.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Groom, Channel 223A, by adding Channel 272A at Sonora and by adding Spur, Channel 254A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–21064 Filed 8–19–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1867; MB Docket No. 02–206, RM–10469; MB Docket No. 02–207, RM–10468; MB Docket No. 02–205, RM–10470]

Radio Broadcasting Services; Big Lake, Leakey, TX, and Vici, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes three allotments in response to three separate petitions filed by Robert Fabian. The Audio Division requests comments on these proposals. The first petition proposes the allotment of Channel 249A at Vici, Oklahoma, as the community's first local aural transmission service (RM–10470). Channel 249A can be allotted to Vici without a site restriction at coordinates 36–08–59 and 99–17–54. The second petition requests the allotment of Channel 246A at Big Lake, Texas, at coordinates 31–11–33 and 101–20–53 (RM–10469). The third petition proposes the allotment of Channel 275A at Leakey, Texas, at coordinates 29–41–30 and 99–50–07. Mexican concurrence will be requested for the allotments at Big Lake and Leakey, Texas.

DATES: Comments must be filed on or before September 30, 2002, and reply comments on or before October 15, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Robert Fabian, 4 Hickory Crossing Lane, Argyle, Texas 76226.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–205, MB Docket No. 02–206, and MB Docket No. 02–207, adopted July 31, 2002, and released August 9, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554.

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Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Vici, Channel 249A.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 246A at Big Lake and Channel 275A at Leakey.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–21063 Filed 8–19–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1868, MB Docket No. 02–204, RM–10314]

Radio Broadcasting Services; Pampa, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Katherine Pyeatt proposing the allotment of Channel 277C2 at Pampa, Texas. The coordinates for Channel 277C2 at Pampa are 35–42–07 and 100–50–28. There is a site restriction 21.3 kilometers (13.2 miles) northeast of the community.

DATES: Comments must be filed on or before September 30, 2002, and reply comments on or before October 15, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–204, adopted July 31, 2002, and released August 9, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 277C2 at Pampa.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–21062 Filed 8–19–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1869, MB Docket No. 02–203, RM–10466]

Radio Broadcasting Services; Hooks, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Katherine Pyeatt proposing the allotment of Channel 231A at Hooks, Texas. The coordinates for Channel 231A at Hooks are 33–28–30 and 94–21–32. There is a site restriction 6.6 kilometers (4.1 miles) west of the community.

DATES: Comments must be filed on or before September 30, 2002, and reply comments on or before October 15, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–203, adopted July 31, 2002, and released August 9, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 231A at Hooks.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–21061 Filed 8–19–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1950; MM Docket No. 01–124; RM–10140]

Radio Broadcasting Services; Pearsall, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: Charles Crawford filed a petition for rule making proposing the allotment of Channel 227A at Pearsall, Texas, as the community's third local FM transmission service. *See* 66 FR 33942, June 26, 2001. On April 16, 2002, petitioner filed a request for dismissal. A showing of continuing interest is required before a channel will be allotted. It is the Commission's policy to refrain from making an allotment to a community absent an expression of interest. Therefore, at the request of petitioner, we will dismiss the instant proposal.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–124, adopted July 31, 2002, and released August 9, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–21059 Filed 8–19–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1866, MB Docket No. 02–212, RM–10516]

Radio Broadcasting Services; Vinton, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 287A at Vinton, Louisiana, as that community's first local service. Channel 287A can be allotted to Vinton without a site restriction at coordinates 30–11–26 and 93–34–52.

DATES: Comments must be filed on or before September 30, 2002, and reply comments on or before October 15, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Charles Crawford, 4553 Bordeaux, Avenue, Dallas, Texas 75205.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, MB Docket No. 02–212, adopted July 31, 2002, and released August 9, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Vinton, Channel 287A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–21058 Filed 8–19–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MB Docket No. 02–230; FCC 02–231]

Digital Broadcast Copy Protection

AGENCY: Federal Communications Commission.

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ACTION: Notice of proposed rulemaking.

SUMMARY: This document initiates a rulemaking exploring whether the FCC can and should mandate the use of a copy protection mechanism for digital broadcast television in order to facilitate the DTV transition.

DATES: Comments due October 30, 2002; reply comments are due December 13, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. For further filing information, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Susan Mort, 202–418–1043 or *smort@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking ("NPRM"), FCC 02–231, adopted August 8, 2002; released August 9, 2002. The full text of the Commission's NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW., Washington, DC 20554, or may be purchased from the Commission's copy contractor, Qualex International, (202) 863–2893, Portals II, Room CY–B402, 445 12th St., SW., Washington, DC 20554, or may be reviewed via Internet at *http://www.fcc.gov/mb*.

Synopsis of the Notice of Proposed Rulemaking

I. Introduction

1. The ongoing digital television ("DTV") transition poses many unique logistical and technological challenges. The current lack of digital broadcast copy protection may be a key impediment to the transition's progress. Digital copy protection, also referred to as digital rights management, seeks to prevent the unauthorized copying and redistribution of digital media. Without adequate protection, digital media, unlike its analog counterpart, is susceptible to piracy because an unlimited number of high quality copies can be made and distributed in violation of copyright laws. In the absence of a copy protection scheme for digital broadcast television, content providers have asserted that they will not permit high quality programming to be broadcast digitally. Without such programming, consumers may be reluctant to invest in DTV receivers and equipment, thereby delaying the DTV transition.

Since 1996, an inter-industry group called the Copy Protection Technical Working Group ("CPTWG") has served as a discussion forum for general copy protection issues. On November 28, 2001, the Broadcast Protection Discussion Subgroup ("BPDG") was formed under the auspices of CPTWG in order to specifically address digital broadcast copy protection. According to the BPDG Final Report, more than 70 representatives of the consumer electronics, information technology, motion picture, cable and broadcast industries took part in the group. As a result of its deliberations, the BPDG recently announced a consensus on the use of a "broadcast flag" standard for digital broadcast copy protection. This consensus would require use of the Redistribution Control Descriptor, as set forth in ATSC Standard A/65A (the "ATSC flag"), to mark digital broadcast programming so as to limit its improper use. Despite the consensus reached on the technical standard to be implemented, final agreement was not reached on a set of compliance and robustness requirements to be associated with use of the ATSC flag, enforcement mechanisms, or criteria for approving the use of specific protection technologies in consumer electronics devices. While the BPDG Final Report indicated that a parallel discussion group may be established by CPTWG to continue discussions in some areas where BPDG participants were unable to reach a consensus, including enforcement mechanisms, it remains unclear whether such group will serve as a forum for ongoing industry negotiations.

II. The Broadcast Flag

3. In light of the importance placed upon digital broadcast copy protection by some industry participants, and with a view towards facilitating the DTV transition, this NPRM seeks comment on whether a regulatory copy protection regime is needed within the limited sphere of digital broadcast television. As an initial matter, we seek comment on whether quality digital programming is now being withheld because of concerns over the lack of digital broadcast copy protection. In particular, we seek comment on the nature and extent of the piracy concerns expressed by content providers. If such programming is being withheld, will it continue to be withheld in the absence of a regulatory regime? To what extent would the absence of a digital broadcast copy protection scheme and the lack of high quality digital programming delay or prevent the DTV transition? Would the resulting dynamic threaten the viability of over-the-air television? What impact would this have on consumers?

4. If a digital broadcast flag or other regulatory regime is needed, we seek comment on whether the Commission should adopt rules or create some other mechanism to resolve outstanding compliance, robustness and enforcement issues. We also seek comment on whether there are any technical impediments to implementation of a digital broadcast copy protection scheme. We ask commenters to elaborate on whether the ATSC flag is the appropriate technological model to be used, or whether there are alternatives to the ATSC flag. We seek comment on the effectiveness of any such technological model in protecting digital broadcast content from improper redistribution. For example, we seek comment on the technological robustness of the ATSC flag and whether it can be upgraded or improved upon over time. If the ATSC flag is the best means of protection currently available, but it still has technical flaws, is it better to mandate the flag now and monitor it as technology develops, or to wait until a more effective means of digital broadcast copy protection is developed? Would a regulatory copy protection regime create and maintain industry incentives to continually innovate to improve the method of digital content protection?

5. With respect to the type of Commission regulations that would be appropriate in the digital broadcast copy protection area, we seek comment on whether a government mandate on the transmission side is needed. In other words, we seek comment on whether broadcasters and content providers should be required to embed the ATSC flag or another type of content control mark within digital broadcast programming, or whether they have sufficient incentive to protect such programming such that a government mandate is unnecessary.

6. On the reception side, we seek comment on whether the Commission should mandate that consumer electronics devices recognize and give effect to the ATSC flag or another type of content control mark. If so, we seek comment on whether this mandate should include devices other than DTV broadcast receivers and what the resulting impact would be on consumers. More specifically, the BPDG Final Report anticipates that digital broadcast copy protection will begin at the point of demodulation. We seek comment on whether this is an appropriate point for digital broadcast copy protection to begin in consumer electronics devices. We also seek comment on whether and how downstream devices would be required to protect the content. In addition, we seek comment on whether and how an ATSC flag or other system would work for broadcast stations carried on cable or direct broadcast satellite systems.

7. As to the means by which digital broadcast copy protection would be achieved, we seek comment on whether to require the use of specific copy protection technologies, such as those identified in Table A to the BPDG Final Report, in consumer electronics devices. Table A identifies those copy protection technologies considered by BPDG for use in conjunction with digital outputs in consumer electronics devices, such as Digital Transmission Content Protection ("DTCP" or "5C") or High-Bandwidth Digital Content Protection ("HDCP"). However, BPDG members were unable to agree on the criteria by which a copy protection technology would be evaluated and approved for digital broadcast use and chose to reserve the topic for potential further discussion by a CPTWG parallel group. We seek comment on how a particular technology would receive approval for use in consumer electronics devices for digital broadcast copy protection purposes. We also seek comment on identifying the appropriate entity to make an approval determination.

8. We also seek comment on the extent to which broadcast copy protection technologies raise privacy concerns and whether rules are needed to ensure that consumers' privacy interests are protected. In addition, we seek comment on whether there are First Amendment or any other constitutional issues that we should consider from the point of view of the industries involved or individual consumers.

9. Finally, we seek comment on the impact of the ATSC flag or other digital broadcast copy protection mechanism on consumers. The BPDG Final Report asserts that a broadcast flag system would not interfere with consumers' ability to make secure copies of DTV content for their personal use, either on personal video recorders or removable media. Similarly, the BPDG Final Report states that the requirements to protect digital outputs should not interfere with consumers' ability to send DTV content across secure digital networks, such as "home digital network connecting digital set top boxes, digital recorders, digital servers and digital display devices." We seek comment on these assertions. We also seek comment on the appropriate scope of protection to be accorded DTV broadcast content. In addition, some parties have raised concerns about the potential impact of a broadcast flag requirement on consumers' existing and future electronic equipment. We seek comment on these concerns, as well as the potential effect of a broadcast flag requirement on the development of new consumer technologies. Finally, we seek comment on the cost impact, if any, that a broadcast flag requirement would have on affected consumer electronics equipment.

III. Jurisdiction

10. We seek comment on the jurisdictional basis for Commission rules dealing with digital broadcast television copy protection. Is this an area in which the Commission could exercise its ancillary jurisdiction under Title I of the Act? We ask commenters to identify provisions of the Act that provide the Commission with authority to implement its ancillary jurisdiction. If the Commission has ancillary jurisdiction over digital broadcast copy protection, are there any limits upon its scope? For example, does the Commission have authority to mandate the recognition of the ATSC flag in consumer electronics devices? We also ask commenters to identify any statutory provisions that might provide the Commission with more explicit authority to adopt digital broadcast copy protection rules. For example, do sections 336(b)(4) and (b)(5) impact upon the Commission's ability to adopt digital broadcast copy protection regulations?

IV. Administrative Matters

11. *Authority.* This Notice of Proposed Rulemaking is issued pursuant to authority contained in sections 1, 4(i), 4(j), 303(r), 403 and 601 of the Communications Act of 1934, as amended.

12. *Ex Parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

13. *Accessibility Information.* Accessible formats of this Notice of Proposed Rulemaking (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or at *bmillin@fcc.gov*.

14. *Comment Information.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before October 30, 2002, and reply comments on or before December 13, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

15. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

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16. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this NPRM. The IRFA is set forth below. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the NPRM, and they should have a separate and distinct heading designating them as responses to the IRFA.

Initial Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"), the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking ("NPRM"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided above in paragraph 15. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

18. *Need for, and Objectives of, the Proposed Rules.* The need for FCC regulation in this area is that the lack of digital broadcast copy protection has been identified as a key impediment to anticipated rate and scope of the transition for digital television ("DTV"). In the absence of a digital copy protection scheme preventing the unauthorized copying and redistribution of digital media, content providers have asserted that they will not permit high quality programming to be broadcast digitally. Without such programming, consumers may be reluctant to invest in DTV receivers and equipment, thereby delaying the DTV transition. While private industry negotiations have reached consensus on the technical "broadcast flag" standard to be implemented, ATSC Standard A65/A, agreement was not universally reached on compliance and robustness requirements to be associated with the flag's use. Agreement was also not reached on enforcement mechanisms for digital broadcast copy protection. The NPRM seeks comment on whether the Commission can and should mandate a regulatory copy protection regime for digital broadcast television. The objective of the Proposed Rules will be to facilitate the DTV transition.

19. *Legal Basis.* The authority for the action proposed in this rulemaking is contained in sections 1, 4(i) and (j), 303, 403 and 601 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 303, 403, and 521.

20. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental entity" under section 3 of the Small Business Act. In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

21. In this context, the application of the statutory definition to television stations is of concern. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent.

22. An additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over inclusive to this extent.

23. *Television Broadcasting.* The proposed rules and policies could apply to television broadcasting licensees, and potential licensees of television service. The Small Business Administration defines a television broadcasting station that has no more than $12 million in annual receipts as a small business. Television broadcasting consists of establishments primarily engaged in broadcasting images together with sound, including the production or transmission of visual programming which is broadcast to the public on a predetermined schedule. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce programming in their own studios. Separate establishments primarily engaged in producing programming are classified under other NAICS numbers.

24. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,686 operating television broadcasting stations in the nation as of September 2001. For 1992, the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments. Thus, the new rules could affect approximately 1,686 television stations; approximately 77%, or 1,298 of those stations are considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

25. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating $12.5 million or less in revenue annually. This category includes, among others, cable operators, direct broadcast satellite ("DBS") services, home satellite dish ("HSD") services, multipoint distribution services ("MDS"), multichannel multipoint distribution service ("MMDS"), Instructional Television Fixed Service ("ITFS"), local multipoint distribution service ("LMDS"), satellite master antenna television ("SMATV") systems, and open video systems ("OVS"). According to the Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

26. *Cable Operators.* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. We last estimated that there were 1,439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules adopted in this Report and Order.

27. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

28. *Direct Broadcast Satellite ("DBS") Service.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. There are four licensees of DBS services under Part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated $12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

29. *Home Satellite Dish ("HSD") Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

30. *Multipoint Distribution Service ("MDS"), Multichannel Multipoint Distribution Service ("MMDS") Instructional Television Fixed Service ("ITFS") and Local Multipoint Distribution Service ("LMDS").* MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS. LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

31. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $12.5 million annually. Therefore, for purposes of the IRFA, we find there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

32. The SBA definition of small entities for cable and other program distribution services, which includes such companies generating $12.5 million in annual receipts, seems reasonably applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

33. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding calendar years. These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

34. In sum, there are approximately a total of 2,000 MDS/MMDS/LMDS

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stations currently licensed. Of the approximate total of 2,000 stations, we estimate that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

35. *Satellite Master Antenna Television ("SMATV") Systems.* The SBA definition of small entities for cable and other program distribution services includes SMATV services and, thus, small entities are defined as all such companies generating $12.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

36. *Open Video Systems ("OVS").* Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $ 12.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

37. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment as well as radio and television broadcasting and wireless communications equipment. These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

38. *Computer Manufacturers.* The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity. Census Bureau data indicates that there are 563 firms that manufacture electronic computers and of those, 544 have fewer than 1,000 employees and qualify as small entities. The remaining 19 firms have 1,000 or more employees. We conclude that there are approximately 544 small computer manufacturers.

39. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* At this time, we do not expect that the proposed rules would impose any additional reporting or recordkeeping requirements. However, compliance may require the manufacture of broadcast flag-compliant DTV receivers and other consumer electronics equipment. Compliance may also require broadcasters and/or content providers to include a content control mark within digital broadcast television programs. While these requirements could have an impact on consumer electronics manufacturers, broadcasters and content providers, such impact would be similarly costly for both large and small entities. We seek comment on whether others perceive a need for extensive recordkeeping and, if so, whether the burden would fall on large and small entities differently.

40. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

41. As indicated above, the NPRM seeks comment on whether the Commission can and should mandate a regulatory copy protection regime for digital broadcast television in order to facilitate the DTV transition. This regime may require the manufacture of broadcast flag-compliant DTV receivers and other consumer electronics equipment. It may also require broadcasters and/or content providers to include a content control mark within digital broadcast television programs. At this writing, no alternatives to our proposals herein have been mentioned because we anticipate no differential impact on smaller entities. However, we welcome comment on modifications of the proposals if based on evidence of potential differential impact.

42. *Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.* None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–20957 Filed 8–19–02; 8:45 am]

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Notices

Federal Register
Vol. 67, No. 161
Tuesday, August 20, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary; Notice of Solicitation for Membership to the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Solicitation for membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces solicitation for nominations to fill a new vacancy on the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: Deadline for Advisory Board member nominations is September 15, 2002.

SUPPLEMENTARY INFORMATION: Section 1408 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3123) is amended in the 2002 Farm Bill by adding one additional member to the National Agricultural Research, Extension, Education, and Economics Advisory Board which totals 31 members. Since the Advisory Board's inception by congressional legislation in 1996, each member has represented a specific category related to farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. The additional Advisory Board member is designated as category "(R) one member representing a non-land grant college or university with a historic commitment to research in the food and agricultural sciences." This amendment redesignates former member categories (R) through (DD) to (S) through (EE) respectively.

Nominations for the new category "R" representing Non Land-Grant Colleges or Universities" are being sought. As a result of this new slot, all members currently identified by categories from letter "R" to letter "DD" will be *shifted to the next letter (but will retain their same category title),* as follows:

Category R. Non Land-Grant Colleges or Universities With a historic commitment to Food and Agricultural Research

Category S. Scientific Community not closely associated with Agriculture
Category T. Transportation of Food and Agricultural Products (foreign and domestic)
Category U. Food Retailing and Marketing
Category V. Food and Fiber Processors
Category W. Rural Economic Development
Category X. National Consumer Interest Group
Category Y. National Forestry Group
Category Z. National Conservation or Natural Resource Group
Category AA. Private Sector Organization involved in International Development
Category BB. An Agency of USDA lacking Research Capabilities
Category CC. Research Agency of the Federal Government (other than USDA)
Category DD. National Social Science Association
Category EE. National Organizations directly concerned with Agricultural Research, Education, and Extension

Note: Category R is the only category available for nomination at this time. Nominations for "Category R" above are being solicited from non land-grant colleges or universities that represent a wide variety of food and agricultural research interests throughout the country. In addition to a nomination letter, a nominee must fill out Form AD–755, "Advisory Committee Membership Background Information". All nominees will be vetted before being considered for selection. The appointment to the National Agricultural Research, Extension, Education, and Economics Advisory Board will be made by the Secretary of Agriculture. Please send the nomination letter and the nominee's name, resume, and his/her completed AD–755 form to USDA, Office of the Advisory Board, Research, Education, and Economics, 1400 Independence Avenue, SW., Room 344–A, Jamie L. Whitten Building, Washington, DC 20250–2255, postmarked no later than September 15, 2002. A fax version (fax: 202–720–6199) is also highly recommended to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, 1400 Independence Avenue, SW., Room 344–A, Whitten Building, Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199 or e-mail: *smorgan@reeusda.gov*. Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations of the Advisory Board take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Done at Washington, DC this 30th day of July 2002.

Rodney J. Brown,

Deputy Under Secretary, Research, Education, and Economics, U.S. Department of Agriculture.

[FR Doc. 02–21068 Filed 8–19–02; 8:45 am]
BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Grazing Permit Administration Forms

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on Information Collection Number 0596–0003, Grazing Permit Administration Forms. The proposed information collection authorization covers five existing forms with slight revisions, one existing form without revision, and one new form. The authorization for the forms currently covered by Information Collection Number 0596–0003 expires on December 31, 2002.

DATES: Comments must be received in writing on or before October 21, 2002.

Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Eric Olson, Forest & Rangelands Staff, Mail Stop 1103, Forest Service, USDA, PO Box 96090, Washington, DC 20090–6090.

Comments also may be submitted via facsimile to (202) 205–1096 or by e-mail to *ecolson@fs.fed.us.*

The public may inspect comments received at the offices of the Forest & Rangelands Staff, Sidney Yates Building—3 South, 201 14th Street, SW., Washington, DC 20250, during normal business hours. Visitors are encouraged to call ahead to (202) 205–1457 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Eric Olson, Forest & Rangelands Staff, (202) 205–1457, or send an e-mail to *ecolson@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

The following describes the information collection to be extended:

Title: FS–2200–1, Refund, Credit, or Transfer Application.
OMB Number: 0596–0003.
Expiration Date of Approval: December 31, 2002.
Type of Request: Extension with no revision.
Abstract: Information collected on this form enables the Forest Service to evaluate a grazing permittee's request for a refund, credit, or transfer of the unused portion of the preceding season's grazing fees paid to the Forest Service for the use of National Forest System lands by permitted livestock. In addition to name and mailing address information, the applicant also indicates on this form the amount of permitted grazing use that was not exercised, the reason it was not exercised, the amount of the grazing fees paid for use that was not exercised, and whether this amount should be refunded, credited, or transferred to another account.
Estimate of Annual Burden: 20 minutes.
Type of Respondents: Grazing permittees.
Estimated Annual Number of Respondents: 600.
Estimated Annual Number of Responses per Respondent: 1.
Estimated Total Annual Burden on Respondents: 200 hours.

Description of Information Collection

Title: FS–2200–2, Application for Temporary Grazing or Livestock Use Permit.
OMB Number: 0596–0003.
Expiration Date of Approval: December 31, 2002.
Type of Request: Extension with revision.
Abstract: Information collected on this form enables the Forest Service to determine whether individuals qualify for a temporary grazing or livestock use permit authorizing grazing on certain National Forest System lands for a period not to exceed one year. The Forest Service uses the information on this form to determine whether the applicant is likely to comply with grazing permit terms and conditions; the type, amount, and location where grazing use is being sought; and the applicant's name and mailing address so that the agency knows where and to whom correspondence, including the bill for grazing fees, should be sent. This form has been revised to incorporate material previously contained in Form FS–2200–15, Application and Permit for Livestock Use, which is now obsolete. The revisions do not change the scope or extent of information collection requests that were in the previous form.
Estimate of Annual Burden: 20 minutes.
Type of Respondents: Grazing permittees or applicants seeking short term grazing privileges.
Estimated Annual Number of Respondents: 1,750.
Estimated Annual Number of Responses per Respondent: 1.
Estimated Total Annual Burden on Respondents: 583 hours.

Description of Information Collection

Title: FS–2200–12, Waiver of Term Grazing Permit.
OMB Number: 0596–0003.
Expiration Date of Approval: December 31, 2002.
Type of Request: Extension with revision.
Abstract: Information collected on this form enables the Forest Service to terminate an individual's grazing privileges on certain National Forest System lands based upon that individual's sale or transfer of base ranch property, permitted livestock, or both to another individual who desires to acquire a new grazing permit. The information on this form enables the Forest Service to cancel the grazing permit issued to the individual who sold or transferred the base ranch property, permitted livestock, or both; to identify the individual who acquired the base ranch property, permitted livestock, or both as the preferred applicant for a new grazing permit to replace the cancelled one. This form has been revised but the revisions do not change the scope and extent of the information collection requests that were in the previous form.
Estimate of Annual Burden: 20 minutes.
Type of Respondents: Grazing permittees seeking to relinquish their grazing privileges in favor of individuals who have acquired their base property, permitted livestock, or both.
Estimated Annual Number of Respondents: 750.
Estimated Annual Number of Responses per Respondent: 1.
Estimated Total Annual Burden on Respondents: 250 hours.

Description of Information Collection

Title: FS–2200–13, Escrow Waiver of Term Grazing Permit Privileges.
OMB Number: 0596–0003.
Expiration Date of Approval: December 31, 2002.
Type of Request: Extension with revision.
Abstract: The information on this form enables the Forest Service to identify the name and address of the lender to a permittee, the amount of the loan from the lender to the permittee, and the due date for repayment of the loan by the permittee. This information is used by the Forest Service to determine whether it should hold in escrow on behalf of the lender all of the privileges associated with the grazing permit except the privilege to graze. It allows the Forest Service to notify the lender of important issues associated with the administration of the grazing permit, and facilitates the transfer of a grazing permit to a lender if the permittee defaults on the loan. This form has been revised but the revisions do not change the scope and extent of the information collection requests that were in the previous form.
Estimate of Annual Burden: 20 minutes.
Type of Respondents: Individuals holding a grazing permit who mortgage their base property or permitted livestock.
Estimated Annual Number of Respondents: 150.
Estimated Annual Number of Responses per Respondent: 1.
Estimated Total Annual Burden on Respondents: 50 hours.

Description of Information Collection

Title: FS–2200–16, Application for Term Grazing Permit.
OMB Number: 0596–0003.

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Expiration Date of Approval: December 31, 2002.

Type of Request: Extension with revision.

Abstract: The information collected on this form enables the Forest Service to evaluate an applicant's eligibility and qualification to hold a term grazing permit authorizing the use of National Forest System lands for livestock grazing purposes, to determine the applicant's ability to comply with grazing permit terms and conditions, and to notify the applicant in writing of matters associated with the administration of permitted grazing including, but not limited to, bills for the fees associated with the permitted grazing activity. This form has been revised but the revisions do not change the scope and extent of the information collection requests that were in the previous form.

Estimate of Annual Burden: 30 minutes.

Type of Respondents: Individuals applying for a term grazing permit.

Estimated Annual Number of Respondents: 1,800.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 900 hours.

Description of Information Collection

Title: FS–2200–17, Application for Term Private Land Grazing Permit.

OMB Number: 0596–0003.

Expiration Date of Approval: December 31, 2002.

Type of Request: Extension with revision.

Abstract: The information collected on this form enables the Forest Service to evaluate the applicant's eligibility and qualification to hold a term private-land grazing permit, which authorizes the use of National Forest System lands and private lands owned by the applicant for livestock grazing purposes. The information also enables the Forest Service to determine the applicant's ability to comply with grazing permit terms and conditions, and to notify the applicant regarding grazing permit administration issues including, but not limited to, bills for the grazing fees associated with the permitted grazing activity. This form has been revised but the revisions do not change the scope and extent of the information collection requests that were in the previous form.

Estimate of Annual Burden: 20 minutes.

Type of Respondents: Individuals applying for a term private-land grazing permit.

Estimated Annual Number of Respondents: 150.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 50 hours.

The following describes the new information collection.

Description of Information Collection

Title: FS–2200–__, Ownership Statement by Corporation or Partnership.

OMB Number: 0596–0003.

Type of Request: New.

Abstract: The information collected on this form enables the Forest Service to evaluate whether a corporation or partnership is eligible and qualified to hold a term grazing permit authorizing grazing on certain National Forest System lands, whether the corporation is authorized to conduct business in the state in which the National Forest System lands to be grazed are located, and which shareholders or partners are authorized to sign official documents on behalf of the corporation or partnership. This is a new Service-wide form based on two similar forms that have been used on a regional basis for many years. These two similar forms, R1–FS–2200–5 and R2–FS–2200–6, are covered under the current information collection authorization but will be discontinued when this new Service-wide form becomes effective.

Estimate of Annual Burden: 20 minutes.

Type of Respondents: Corporations or partnerships applying for a grazing permit.

Estimated Annual Number of Respondents: 800.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 267 hours.

Comment Is Invited

Comment is invited on the following: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. In submitting this proposal to the Office of Management and Budget for approval, the Forest Service will summarize and respond to comments received.

Dated: August 9, 2002.

Jack L. Craven,

Acting Deputy Chief, National Forest System.

[FR Doc. 02–21130 Filed 8–19–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra County, CA, Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sierra County Resource Advisory Committee (RAC) will meet on August 27, 2002, in Sierraville, California. The purpose of the meeting is to discuss issues relating to implementing the Secure Rural Schools and Community Self-Determination Act of 2000 (Payments to States) and the expenditure of Title II funds benefiting National Forest System lands on the Humboldt-Toiyabe, Plumas and Tahoe National Forests in Sierra County.

DATES: The meeting will be held August 27, 2002 from 10 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Sierraville Ranger Station, Hwy 89 North, (317 South Lincoln), Sierraville, CA.

FOR FURTHER INFORMATION CONTACT: Ann Westling, Committee Coordinator, USDA, Tahoe National Forest, 631 Coyote St., Nevada City, CA, 95959, (530) 478–6205, E-mail: *awestling@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Welcome and announcements; (2) Review of projects approved for 2001 and implementation status; (3) Review and confirmation of project criteria; (4) Review and confirmation of voting and discussion process for new proposals; (5) Presentation of projects and vote; (6) Public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: August 14, 2002.

Steven T. Eubanks,

Forest Supervisor.

[FR Doc. 02–21077 Filed 8–19–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Colville Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Colville Resource Advisory Committee (RAC) will meet on Wednesday, September 4, 2002 at the Spokane Community College, Colville Campus, Dominion Room at 985 S. Elm Street, Colville, Washington. The meeting will begin at 9 a.m. and conclude at 4 p.m.

Agenda items include: (1) review, modify and approve minutes from March meeting; (2) review and recommend Title II Projects for Fiscal Year 2003 to be submitted to the forest designated official; (3) review the updated Title II Submittal Form; (4) develop agenda for next meeting and (5) Public Forum.

FOR FURTHER INFORMATION CONTACT: Please direct questions regarding this meeting to designated federal official, Nora Rasure or Cynthia Reichelt, Public Affairs Officer, Colville National Forest, 765 S. Main, Colville, Washington 99114, (509) 684–7000.

Dated: August 14, 2002.

Nora B. Rasure,

Forest Supervisor.

[FR Doc. 02–21079 Filed 8–19–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of sixth antidumping duty new shipper review.

SUMMARY: On June 3, 2002, the Department of Commerce published the preliminary results of the sixth new shipper review of the antidumping duty order on brake rotors from the People's Republic of China with respect to Longkou TLC Machinery Co., Ltd. *See Brake Rotors from the People's Republic of China: Preliminary Results of the Sixth Antidumping Duty New Shipper Review*, 67 FR 38251 (June 3, 2002) (*Preliminary Results*). The period of review is April 1, 2001, through September 30, 2001.

No interested party submitted comments on the preliminary results. Although changes were made to the margin calculation based on our verification findings, the final results do not differ from the preliminary results. The final weighted-average dumping margin for the reviewed company is listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: August 20, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Terre Keaton, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department") regulations are to 19 CFR part 351 (2001).

Background

On June 3, 2002, the Department published in the **Federal Register** the preliminary results of the sixth new shipper review of brake rotors from the People's Republic of China ("PRC") (*See* Preliminary Results at 67 FR 38251). We verified Longkou TLC Machinery Co., Ltd.'s ("LKTLC") information from June 10, 2002, through June 13, 2002, and issued the verification report on July 2, 2002. We provided parties the opportunity to comment on the preliminary results of the review. However, no interested party submitted comments. The Department has conducted this review in accordance with section 751 of the Act.

Scope of Order

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under "one ton and a half," and light trucks designated as "one ton and a half."

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning. These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer ("OEM") which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in the order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of the order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are currently classifiable under subheading 8708.39.5010 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Verification

As provided in section 782(i)(A) of the Act, and 19 CFR 351.307, we verified LKTLC's information from June 10, 2002, through June 13, 2002, and issued the verification report on July 2, 2002.

Final Results of the Review

The weighted-average dumping margin for the period April 1, 2001, through September 30, 2001, is as follows:

Manufacturer/ exporter	Time period (de minimis)	Margin (percent)
Longkou TLC Machinery Co., Ltd	04/01/01–09/ 30/01	0.00

Assessment Rates

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR

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351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct the Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's/customer's entries during the review period.

Cash Deposit Requirements

The following deposit rates shall be required for merchandise subject to the order entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(1) and 751(a)(2)(B) of the Act: (1) The cash deposit rate for LKTLC will be zero; (2) the cash deposit rate for PRC exporters for whom the Department has rescinded the review or for whom a review was not requested for this POR will continue to be the rate assigned in an earlier segment of the proceeding or the PRC-wide rate of 43.32 percent; (3) the cash deposit rate for all other PRC exporters will continue to be 43.32 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.213 and 351.214.

Dated: August 14, 2002.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–21176 Filed 8–19–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of partial rescission of antidumping duty administrative review.

EFFECTIVE DATE: August 20, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Kate Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR Part 351 (2001).

Background

On February 1, 2002, the Department published in the **Federal Register** (67 FR 4945) a notice of "Opportunity To Request Administrative Review" of the antidumping duty order on certain preserved mushrooms from the People's Republic of China ("PRC") for the period February 1, 2001, through January 31, 2002. On February 28, 2002, the Coalition of Fair Preserved Mushrooms Trade (the "petitioners") requested an administrative review of the above referenced antidumping duty order for the following companies: China Processed Food Import & Export Company ("China Processed"); Compania Envasadora del Atlantico ("Compania Envasadora"); Gerber Food (Yunnan) Co., Ltd. ("Gerber"); Green Fresh Foods (Zhangzhou) Co., Ltd. ("Green Fresh"); Raoping Xingyu Foods Co., Ltd. ("Raoping Xingyu"); Shantou Hongda Industrial General Corporation ("Shantou Hongda") and Shenxian Dongxing Foods Co., Ltd. ("Shenxian Dongxing"). On March 27, 2002, the Department published a notice of initiation of an administrative review of the antidumping duty order with respect to these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 67 FR 14696.

Partial Recission of Review

On June 11, 2002, the petitioners requested an extension of the deadline to withdraw their requests for review. On June 21, 2002, the Department granted the petitioners' request and extended the deadline until July 9, 2002. On July 9, 2002, the petitioners withdrew their request for an administrative review of Compania Envasadora and China Processed. On July 24, 2002, the petitioners submitted a further letter to the Department seeking to withdraw their request for an administrative review of Raoping Xingyu. On July 30, 2002, respondent Raoping Xingyu submitted a letter requesting that the Department reject the petitioners' request with regard to Raoping Xingyu. On August 2, 2002, the Department informed the respondent Raoping Xingyu of the Department's decision (as set forth below).

Pursuant to section 351.213 (d) of the Department's regulations, the Secretary will rescind an administrative review in whole or in part if a party that requested the review withdraws its request within ninety days of publication of the **Federal Register** notice that initiated the review. Section 351.213(d)(1) further provides that the Secretary may extend this time limit if the Secretary decides that it is reasonable to do so.

Accordingly, we are rescinding in part this review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China as to Compania Envasadora, China Processed and Raoping Xingyu. This review will continue with respect to Gerber, Green Fresh, Shantou Hongda and Shenxian Dongxing.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: August 12, 2002.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–21175 Filed 8–19–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081502A]

Proposed Information Collection; Comment Request; Bluefin Tuna Dealer Reporting Package

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 21, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Brad McHale, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, One Blackburn Dr., Gloucester, MA 01930; phone (978) 281–9260.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), NOAA is responsible for management of the Nation's marine fisheries. In addition, NOAA must comply with the United States' obligations under the Atlantic Tunas Convention Act (16 U.S.C. 1801 *et seq.*). NOAA Fisheries collect information via dealer reports to monitor the U.S. catch of tuna in relation to the quota, thereby ensuring that the United States complies with its international obligations to the International Commission for the Conservation of Atlantic Tunas (ICCAT). Provisions of the domestic regulations are also monitored through this collection of information, such as compliance with closures, fishing seasons, and subquotas by gear type and/or user group. This information provides the catch data necessary to assess the status of tuna resources. Assessments are conducted and presented to ICCAT annually. The data provide, in part, the basis for ICCAT management recommendations that become binding on member nations. In addition, dealer reports provide essential information for domestic management policy and rule-making. This collection also includes imports of Pacific bluefin tuna.

II. Method of Collection

Dealers who buy , sell, or receive for commercial purposes any large medium or giant size class Atlantic bluefin tuna are required to report all transactions to NOAA Fisheries via daily and biweekly reporting forms. These forms collect certain information for each Atlantic bluefin tuna that is sold at landing. Dealers who purchase any other types or sizes of Atlantic tunas, or Pacific coast dealers who export or import bluefin tuna, are required to submit biweekly reports only. Dealers must affix a tag to the tail of each bluefin tuna, record these tag numbers to the label of any packages of tuna parts to be transported for domestic use or export. Anglers who catch giant or large-medium size class Atlantic bluefin tuna must also submit daily reports.

III. Data

OMB Number: 0648–0239.

Form Number: NOAA 88–144.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations(tuna dealers), individuals or households.

Estimated Number of Respondents: 541.

Estimated Time Per Response: 2 minutes for daily reports; 15.5 minutes for biweekly Atlantic bluefin tuna reports; 43 minutes for the Pacific biweekly report; and 1 minute for tagging and recording the tag number of bluefin tuna.

Estimated Total Annual Burden Hours: 1,468.

Estimated Total Annual Cost to Public: $1,096.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is still necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 13, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–21174 Filed 8–19–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 081402B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Gear-Marking Requirements for Atlantic Large Whale Take Reduction Plan.

Form Number(s): None.

OMB Approval Number: 0648–0364.

Type of Request: Regular submission.

Burden Hours: 2,572.

Number of Respondents: 4,506.

Average Hours Per Response: 0.6 minutes.

Needs and Uses: Persons setting lobster trap or gillnet gear in specified areas of the Atlantic Ocean are required to mark their gear with one color designating the type of gear and the area where the gear is set. The shark gillnet fishery requires their gear to be marked with two color codes, one color designating the type of gear and the other designating the area where the gear is set. The designated areas are critical right whale habitat or areas where right whales are seen on a regular basis. The purpose of the requirement is

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to obtain information on where large whales are becoming entangled in fishing gear and the type of gear responsible for the entanglement. The information helps NOAA to focus risk-reduction efforts on specific problem areas rather than broader overall requirements on the industry.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: Third-party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 13, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–21173 Filed 8–19–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Panel To Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the next meeting of the Panel To Access the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction. Notice of this meeting is required under the Federal Advisory Committee Act. (Pub. L. 92–463).

DATES: September 12 and 13, 2002.

ADDRESSES: RAND, 1200 S. Hayes Street, 4th floor, Arlington, VA 22202–5050.

FOR FURTHER INFORMATION CONTACT: RAND provides information about this Panel on its Web site at *http://www.rand.org/organization/nsrd/terrpanel;* it can also be reached at (703) 413–1100 extension 5321.

SUPPLEMENTARY INFORMATION: *Proposed Schedule and Agenda:* Panel To Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction will meet from 11 a.m. until 5:30 p.m. on September 12, 2002 and from 8:30 a.m. until 2 p.m. on September 13, 2002. Time will be allocated for public comments by individuals or organizations at the end of the meeting on September 13.

Public comment presentations will be limited to two minutes each and must be provided in writing prior to the meeting. Mail written presentations and requests to register to attend the open public session to: Nancy Rizor, RAND, 1200 South Hayes Street, Arlington, VA 22202–5050. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: August 12, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–21047 Filed 8–19–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Defense Acquisition University, DoD.

ACTION: Notice of board of visitors meeting.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held in the Packard Conference Center. The purpose of this meeting is to report back to the BoV on continuing items of interest.

DATES: September 18, 2002 from 0900–1500.

ADDRESSES: Packard Conference Center, Building 184, Fort Belvoir, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Reid at 703–805–5133.

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Ms. Diane Reid at 703–805–5133.

Dated: August 14, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–21046 Filed 8–19–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Education Activity (DoDEA).

ACTION: Open meeting notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Appendix 2 of title 5, United States Code, Public Law 92–463, notice is hereby given that a meeting of the Advisory Council on Dependents' Education (ACDE) is scheduled. The purpose of the ACDE is to recommend to the Director, Department of Defense Education Activity (DoDEA), general policies for the operation of the Department of Defense Dependents Schools (DoDDS); to provide the Director with information about effective educational programs and practices that should be considered by DoDDs; and to perform other tasks as may be required by the Secretary of Defense.

DATES: September 19, 2002, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Webb Building, 9th Floor Director's Conference Room, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Janet Rope at 703–696–4385, extension 1959.

Dated: August 14, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–21045 Filed 8–19–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–117–000]

City of Burbank, CA, Complainant v. Calpine Energy Services, L.P., Duke Energy Trading and Marketing, L.L.C., El Paso Merchant Energy, L.P., Respondents.; Notice of Complaint

August 14, 2002.

Take notice that on August 12, 2002, the City of Burbank, California (Burbank) tendered for filing Federal Energy Regulatory Commission (Commission) a "Complaint And Request For Investigation, Contract Modification, And Refunds, Request To Hold Further Procedures In Abeyance, And Request For Privileged Treatment And Proposed Protective Agreement" against Calpine Energy Services, L.P., Duke Energy Trading and Marketing, L.L.C., and El Paso Merchant Energy, L.P. (collectively, Respondents). Burbank's Complaint alleges that prices under contracts for purchases that it entered with Respondents during a period when the California market was dysfunctional are unjust and unreasonable and not in the public interest. Burbank requests the Commission to hold further procedures regarding the Complaint in abeyance. Burbank has requested confidential treatment for certain information.

Copies of the Complaint were served, simultaneous with filing with the Commission, on Respondents, and the Public Utilities Commission of the State of California.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before September 3, 2002. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.

Deputy Secretary.

[FR Doc. 02–21148 Filed 8–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–418–000]

Columbia Gas Transmission Corporation; Notice of Application

August 14, 2002.

Take notice that on August 6, 2002, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia, 22030, filed in [Docket No. CP02–418–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon its Storage Well No. 7519 and associated appurtenances in its Holmes Storage Field in Holmes County, Ohio, all as more fully set forth in the application.

Copies of this application are on file with the Commission and are available for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659.

Columbia states that the due to active stream erosion and the physical condition of the facilities proposed for abandonment are such that an expensive repair or abandonment is required. Columbia further states a concern of the possibility of (1) corrosion of the piping due to stream encroachment; (2) ingress/egress issues related to the encroaching stream; (3) gas migrating to nearby water wells; and (4) debris carried by the stream under flood conditions striking the well and compromising the integrity of the well. The total cost of the abandonment listed in Columbia's application is $110,013.

Any questions regarding the application should be directed to Frederic J. George, Senior Attorney, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia, 26301 at (304) 627–3462 or by fax at (304) 627–3305.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before September 4, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21147 Filed 8–19–02; 8:45 am]

BILLING CODE 6717–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10455–023]

JDJ Energy Company; Notice of Extension of Deadline for Filing Comments and/or Motions on Notice of Application for Amendment of License

August 14, 2002.

Take notice that the deadline for filing comments, motions to intervene, or protests on the notice of application to amend the license for the River Mountain Pumped Storage Project (P–10455–023), issued August 6, 2002, is extended to October 2, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21153 Filed 8–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–085]

Tennessee Gas Pipeline Company; Notice of Clarification Filing

August 14, 2002.

Take notice that on August 8, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a clarification to its Negotiated Rate Tariff Filing of July 25, 2002.

Subsequent to its July 25 filing, Tennessee learned that Rhode Island State Energy Partners, L.P. (RISEP) had merged with Rhode Island State Statutory Energy Trust 2000 (Trust), with the Trust emerging as the surviving entity. Therefore, the negotiated rate arrangement filed on July 25, 2002 is with the Trust and not with RISEP.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.200(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21155 Filed 8–19–02; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–178–000, et al.]

Orion Power New York GP II, Inc., et al.; Electric Rate and Corporate Regulation Filings

August 12, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Orion Power New York GP II, Inc.

[Docket No. EG02–178–000]

Take notice that on August 7, 2002, Orion Power New York GP II, Inc., (OPNY) tendered for filing an application for a determination of exempt wholesale generator status, pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended, (PUHCA), 15 U.S.C. 79z–5a (1994), and Subchapter T, part 365 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR part 365.

OPNY is a Delaware Corporation and owns and operates a generation facility in St Lawrence County, New York.

Comment Date: September 3, 2002.

2. Otter Tail Power Company

[Docket Nos. ER02–912–000, ER02–912–001, ER02–1728–000, ER02–1729–000, ER02–1730–000, and ER02–1732–000]

Take notice that on August 5, 2002, Otter Tail Power Company (Otter Tail) filed a revised service agreement in compliance with the July 5, 2002 Federal Energy Regulatory Commission Order. The proposed service agreement for East Grand Forks concerning Schedules 1, 3A, and 4A are to reflect that they are not required services.

Comment Date: August 26, 2002.

3. Duke Energy Grays Harbor, LLC

[Docket No. ER02–2426–000]

Take notice that on August 7, 2002, Duke Energy Grays Harbor, LLC (Duke Grays Harbor) tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Duke Grays Harbor seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Grays Harbor also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities. Duke Grays Harbor seeks an effective date 60 days from the date of filing of its proposed rate tariff.

Comment Date: August 28, 2002.

4. California Independent System Operator Corporation

[Docket No. ER02–2427–000]

Take notice that on August 7, 2002, the California Independent System Operator Corporation (ISO) tendered for filing Second Revised Service Agreement No. 429 under ISO Rate Schedule No. 1, which is a Participating Generator Agreement (PGA) between the ISO and Delta Energy Center, LLC (Delta). The ISO has revised the PGA to update Original Volume No. 1 of the PGA. The ISO requests that the revised PGA be made effective as of February 8, 2002.

The ISO states that this filing has been served on all entities that are on the official service list for [Docket No. ER02–1224–000].

Comment Date: August 28, 2002.

5. California Independent System Operator Corporation

[Docket No. ER02–2428–000]

Take notice that on August 7, 2002, the California Independent System Operator Corporation (ISO) tendered for filing Second Revised Service Agreement No. 235 under FERC Electric Tariff, Original Volume No. 1, which is a Participating Generator Agreement (PGA) between the ISO and Mountainview Power Company (Mountainview). The ISO has revised the PGA to update Original Volume No. 1 of the PGA. The ISO requests that the revised PGA be made effective as of May 7, 1999.

The ISO has revised the PGA to update Original Volume No. 1 of the PGA. The ISO requests that the revised PGA be made effective as of May 7, 1999.

The ISO states that this filing has been served on all entities that are on the

official service list for [Docket No. ER99–2990–000.

Comment Date: August 28, 2002."

6. California Independent System Operator Corporation

[Docket No. ER02–2429–000]

Take notice that on August 7, 2002, the California Independent System Operator Corporation (ISO) tendered for filing Second Revised Service Agreement No. 233 under FERC Electric Tariff, Original Volume No. 1, which is a Participating Generator Agreement (PGA) between the ISO and Riverside Canal Power Company (Riverside). The ISO has revised the PGA to update Original Volume No. 1 of the PGA. The ISO requests that the revised PGA be made effective as of May 7, 1999.

The ISO states that this filing has been served on all entities that are on the official service list for [Docket No. ER99–2988–000].

Comment Date: August 28, 2002.

7. California Independent System Operator Corporation

[Docket No. ER02–2430–000]

Take notice that on August 7, 2002, the California Independent System Operator Corporation (ISO) tendered for filing Fifth Revised Service Agreement No. 29 under FERC Electric Tariff, Original Volume No. 1, which is a Participating Generator Agreement (PGA) between the ISO and Southern California Edison Company (Edison). The ISO has revised the PGA to update Original Volume No. 1 of the PGA. The ISO requests that the revised PGA be made effective as of December 5, 1997.

The ISO states that this filing has been served on all entities that are on the official service list for [Docket No. ER02–532–000.

Comment Date: August 28, 2002.

8. El Paso Electric Company

[Docket No. ER02–2431–000]

Take notice that on August 7, 2002, El Paso Electric Company (EPE) tendered for filing a Notice of Cancellation of its Rate Schedule No. 56, which governs cost-based sales of partial requirements energy to Imperial Irrigation District. EPE requests an effective date of August 8, 2002, for the cancellation.

Comment Date: August 28, 2002.

9. PJM Interconnection, L.L.C.

[Docket No. ER02–2432–000]

Take notice that on August 7, 2002, PJM interconnection, L.L.C. (PJM), submitted for filing with the Federal Energy Regulatory Commission (Commission) an executed interim interconnection service agreement and an executed interconnection service agreement between PJM and PPL Montour, L.L.C.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties. Copies of this filing were served upon each of the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: August 28, 2002.

10. Puget Sound Energy, Inc.

[Docket No. ER02–2433–000]

Take notice that on August 7, 2002, Puget Sound Energy, Inc. tendered for filing an Interconnection Agreement with The City of Ellensburg (the City). A copy of the filing was served upon the City.

Comment Date: August 28, 2002.

11. Genstar Energy L.L.C.

[Docket No. ER02–2434–000]

Take notice that on August 5, 2002, Genstar Energy, L.L.C. (Genstar) requests the Federal Energy Regulatory Commission terminate without prejudice to refile at a later date Genstar's Rate Schedule No. 1 which was accepted for filing on May 27, 1999 in Docket No. ER99–2364–000.

Comment Date: August 26, 2002.

12. Orion New York GP II, Inc.

[Docket No. ER02–2435–000]

Take notice that on August 7, 2002, Orion New York GP II, Inc. (OPNY) tendered for filing pursuant to Rule 205 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 authorizing OPNY to make sales at market-based rates. OPNY has requested this rate schedule become effective on October 7, 2002.

OPNY intends to sell electric power at wholesale. In transactions where OPNY sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. OPNY's Rate Schedule provides for the sale of energy and capacity at agreed prices.

Comment Date: August 28, 2002.

13. Mid-Continent Area Power Pool

[Docket No. ER02–2436–000]

Take notice that on August 8, 2002, the Mid-Continent Area Power Pool (MAPP), tendered for filing six copies of two amendments to the MAPP Restated Agreement that propose to eliminate the term restrictions that limit service on the MAPP Executive Committee and Regional Reliability Committee.

Comment Date: August 29, 2002.

14. Old Dominion Electric Cooperative

[Docket No. ES02–50–000]

Take notice that on August 5, 2002, Old Dominion Electric Cooperative (Old Dominion) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to (1) issue up to and including $700 million aggregate principal amount in long-term debt securities, and (2) execute up to and including $700 million aggregate principal amount in related swap agreements.

Old Dominion also requests waiver of the competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: August 30, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21033 Filed 8–19–02; 8:45 am]

BILLING CODE 6717–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2114–003 Washington]

Public Utility District No. 2 of Grant County; Notice of Availability of Draft Environmental Assessment and Solicitation of Comments

August 14, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Energy Projects (OEP) has prepared a draft Environmental Assessment (DEA) of an Offer of Settlement (OS) and Memorandum of Agreement (MOA) that propose, as part of a license amendment, spill measures for enhancing the downstream passage survival and passage efficiency of outmigrating anadromous salmonid juveniles at the Priest Rapids Project in Grant County, Washington. Part of the project occupies 3,051.92 acres of Federal lands administered by the Bureau of Land Management, Department of Energy, Department of Army, Bureau of Reclamation, and the U.S. Fish and Wildlife Service.

The DEA contains the staff's analysis of the potential environmental impacts of the proposed amendment and concludes that approval of Grant's proposed amendment or a staff alternative would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the DEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 2114–003 to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. The Commission strongly encourages electronic filings.

For further information, contact Bob Easton at (202) 502–6045.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21150 Filed 8–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Temporary Variance and Soliciting Comments, Motions To Intervene, and Protests

August 14, 2002.

Take notice that the following applicaiion has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request of temporary variance for this water year to allow the diversion of 20,000 additional acre-feet of storage water for irrigation purposes.

b. *Project No.:* 1835–219

c. *Date Filed:* July 31, and August 5, 2002

d. *Applicant:* Nebraska Public Power District

e. *Name of Project:* North Platte/Keystone Diversion Dam

f. *Location:* The project is located on the North and South Platte Rivers in Keith and Lincoln Counties, Nebraska

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)– 825(r) and sections 799 and 801.

h. *Applicant Contact:* Brian Barels, Nebraska Public Power District, P.O. Box 0499, Columbus, NE 68602–0499

i. *FERC Contact:* Any questions on this notice should be addressed to Diana Shannon at (202) 502–8887, or e-mail address: *diana.shannon@ferc.gov*

j. *Deadline for filing comments and or motions:* September 13, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the following number (P–1835–219) on any comments or motions filed.

k. *Description of Request:* For the current water year, Nebraska Public Power District (NPPD) requests the Commission to allow for the diversion of up to 20,000 additional acre-feet (af) of storage water for surface water irrigation purposes in the Gothenburg, Dawson, and Kearney canals. Currently, NPPD is limited to 45,070 af as required by article 403 of the license. At this time, NPPD states western and south-central Nebraska is under severe drought conditions which necessitates this request. The NPPD included with the filing an agreement with Central Nebraska Public Power and Irrigation District [licensee for the Kingsley Dam Project (FERC No. 1417)] , dated July 30, 2002, in which Central has the right to require 'repayment' of the water next year or other year through 2007. The NPPD consulted with and received concurrence from the Nebraska Games and Parks Commission and the U.S. Fish and Wildlife Service. Other entities notified include the Nebraska Audubon Society and the Platte River Whooping Crane Maintenance Trust. On August 9, 2002, the Commission granted NPPD's request, but reserved authority to require changes in operation based upon comments received from this notice.

l. *Location of Application:* This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 208–1371 or for TTY, (202) 208–1659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS, "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21149 Filed 8–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of License Amendment Request and Soliciting Comments, Motions To Intervene, and Protests

August 14, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for License Amendment.

b. *Project No:* 2150–027.

c. *Date Filed:* June 14, 2002.

d. *Applicant:* Puget Sound Energy, Inc.

e. *Name of Project:* Baker River Project.

f. *Location:* The project is located on the Baker River, a tributary of the Skagit River, in Whatcom and Skagit Counties, near Concrete, WA. The project is on Federal Lands in the Mt. Baker-Snoqualmie National Forest.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Mr. William A. Gaines, Puget Sound Energy, Inc., 411 108th Avenue NE, P.O. Box 97034, Bellevue, WA 98009–9734, (425) 454–6363.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Erich Gaedeke at (202) 502–8777, or e-mail address: *erich.gaedeke@ferc.gov.*

j. *Deadline for filing comments and or motions:* September 13, 2002.

All documents (original and seven copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2150–027) on any comments or motions filed.

k. *Description of Request:* Puget Sound Energy, Inc. (licensee) filed an application to amend its project license for the Baker River Project. The licensee requests Commission approval to modify article 33 of the project license, the alternative Enhanced Flood Control/Coordinated Flow Management Plan, to modify project operations for the protection and enhancement of Endangered Species Act listed fall chinook salmon. The licensee's proposal has been developed in consultation with the National Marine Fisheries Service and Fish and Wildlife Service.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number to access the document. For assistance call (202) 502–8222 or for TTY (202) 208–1659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21151 Filed 8–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a New License

August 14, 2002.

a. *Type of Filing:* Notice of Intent to File an Application for a New License.

b. *Project No.:* P–2216.

c. *Date Filed:* August 2, 2002.

d. *Submitted By:* New York Power Authority.

e. *Name of Project:* Robert Moses-Niagara Hydroelectric Project

f. *Location:* On the Niagara River, in the Town of Lewiston and the Town of Niagara, Niagara County, New York. The project does not occupy any Federal lands.

g. *Filed Pursuant To:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *FERC's Contact:* Patti Leppert at (202) 502–6034; e-mail at *patricia.leppert@ferc.gov.*

i. *Licensee's Contact:* Mr. Keith Silliman, Director, Niagara Relicensing, New York Power Authority, 30 South Pearl Street, Albany, New York 12207–3425, (518) 433–6735.

j. *Effective Date of Current License:* September 1, 1957.

k. *Expiration Date of Current License:* August 31, 2007.

l. The existing project has a conventional development and a pumped storage development for a total current installed capacity of 2,538 megawatts (based on currently completed upgrades). Existing project facilities include: (a) Two 700-foot-long intake structures located on the upper Niagara River about 2.6 miles upstream from the American Falls; (b) two 4.3-mile-long concrete underground water

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supply conduits, each measuring 46 feet wide by 66.5 feet high; (c) a forebay; (d) the Lewiston Pump-Generating Plant, measuring 975 feet long by 240 feet wide by 160 feet high; (e) the 1,900-acre Lewiston Reservoir at a maximum water surface elevation of 658 feet United States Lake Survey Datum; (f) the Robert Moses Niagara power plant, including an intake structure, measuring 1,100 feet long by 190 feet wide by 100 feet high; (g) a switch yard; and (h) appurtenant facilities.

m. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by August 31, 2005.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21152 Filed 8–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

August 14, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12305–000.

c. *Date filed:* July 15, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Caesar Creek Lake Dam Hydroelectric Project would be located on Caesar Creek in Warren County, Ohio. The project would utilize the U.S. Army Corps of Engineers' existing Caesar Creek Lake Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* James Hunter, (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12305–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the existing Caesar Creek Lake and Dam, would consist of: (1) A 84-inch-diameter, 40-foot-long penstock connecting to the existing discharge conduit, (2) a powerhouse containing one generating unit with an installed capacity of 1.5 megawatts, (3) a 500-foot-long, 14.7-kilovolt transmission line connecting to an existing substation, and (4) appurtenant facilities. The project would have an average annual generation of 9 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21154 Filed 8–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–356–000]

Canyon Creek Compression Company; Notice of Technical Conference

August 14, 2002.

In the Commission's order issued on June 27, 2002,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that a telephone conference will be held on Tuesday, September 10, 2002, at 10 a.m.

Parties will be sent instruction on how to join the telephone conference.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21156 Filed 8–19–02; 8:45 am]

BILLING CODE 6717–01–P

[1] Canyon Creek Compression Company, 99 FERC ¶ 61,351 (2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–415–000]

East Tennessee Natural Gas Company; Notice of Meeting

August 14, 2002.

The staff of the Federal Energy Regulatory Commission (FERC) will conduct a meeting with the Blue Ridge Coalition and any other interested persons pertaining to East Tennessee Natural Gas Company's proposed natural gas pipeline Patriot Project in Tennessee, Virginia, and North Carolina. The meeting will be held in Room 3M–3 of the FERC headquarters in Washington DC; 888 First Street, NE., on August 22 starting at 3 p.m. Any interested persons may attend.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21146 Filed 8–19–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7263–1]

Proposed Settlement Agreement, Clean Air Act Petition for Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement providing for a proposal to find that the Wallula, Washington PM–10 Nonattainment Area attained the PM–10 NAAQS by December 31, 2001, and related matters.

SUMMARY: EPA hereby gives notice of a proposed Settlement Agreement in the case entitled *The Port of Walla Walla and The Boise Cascade Corp.* v. *EPA and Christine Todd Whitman, Administrator,* No. 01–70576 (9th Cir.). EPA issues this notice in accordance with section 113(g) of the Clean Air Act, as amended (the "Act"), 42 U.S.C. 7413(g), which requires EPA to give notice and provide an opportunity for public comment on proposed settlement agreements.

The litigation challenges EPA's previous finding that the Wallula, Washington Nonattainment Area failed to attain the National Ambient Air Quality Standards ("NAAQS") for particulate matter with an aerodynamic diameter of less than or equal to 10 microns ("PM–10") by December 31, 1997, the attainment date for moderate PM–10 nonattainment areas. EPA published this finding at 66 FR 9663 (February 9, 2001). The Boise Cascade Corporation and the Port of Walla Walla filed a petition for review of this EPA action under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1).

The proposed Settlement Agreement provides that EPA will undertake a rulemaking that will propose to find that the Wallula area did attain the PM–10 NAAQS by December 31, 2001, the attainment date for serious area PM–10 nonattainment areas, based upon a proposed finding that the exceedences of the PM–10 standards that occurred on certain dates were the result of natural events.

For a period of thirty (30) days following the date of publication of this notice, EPA will accept written comments relating to the proposed Settlement Agreement from persons who are not named as parties or interveners to this litigation. EPA or the Department of Justice may withhold or withdraw consent to the proposed Settlement Agreement if the comments disclose facts or circumstances that indicate that the agreement is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice makes such a determination following the comment period, EPA will take the actions set forth in the Settlement Agreement.

A copy of the proposed Settlement Agreement is available from Donna Deneen, Office of Air Quality, QAQ–107, 1200 Sixth Avenue, Seattle, Washington 98101, telephone (206) 553–6706. Written comments should be sent to Julie Vergeront, Esq., Office of Regional Counsel, ORC–158, 1200 Sixth Avenue, Seattle, Washington 98101, telephone (206) 553–1497. Comments must be submitted on or before September 19, 2002.

Lisa K. Friedman,

Associate General Counsel.

[FR Doc. 02–21197 Filed 8–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7262–9]

Operating Permits Program; Notice of Location of Response Letters to Citizens Concerning Program Deficiencies in Georgia, Louisiana, Missouri, and Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

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SUMMARY: The EPA is adding letters to its web site which responds to citizens' comments on alleged deficiencies in the Georgia, Louisiana, Missouri, and Ohio air operating permits programs. The citizen comments were submitted to EPA as a result of a 90-day comment period EPA provided for members of the public to identify deficiencies they perceive exist in State and local agency operatihg permits programs required by title V of the Clean Air Act (Act). The 90-day comment period was from December 11, 2000, until March 12, 2001.

FOR FURTHER INFORMATION CONTACT: Jeff Herring, C304–04, Information Transfer and Program Integration Division, Environmental Protection Agency, Research Triangle Park, North Carolina, 27711. Telephone: 919–541–3195. Internet address: *herring.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: On December 11, 2000 (65 FR 77376), EPA announced a 90-day comment period during which the public could submit comments identifying deficiencies they perceived to exist in State and local agency operating permits programs required by title V of the Act. The 90-day comment period ended on March 12, 2001.

The December 11, 2000 notice solicited comment from the public regarding either deficiencies in the elements of the approved program, such as deficiencies in the States' approved regulations, or deficiencies in how a permitting authority was implementing its program. The Agency indicated that it would consider information received from the public and determine whether it agreed or disagreed with the purported deficiencies and would then publish notices of those findings. Where the Agency agreed that a claimed shortcoming constituted a deficiency, it indicated it would issue a notice of deficiency. Where the Agency disagreed as to the existence of a deficiency, it indicated it would respond to the citizen comments by December 1, 2001, for comments on programs granted interim approval as of December 11, 2000. For programs granted full approval as of December 11, 2000, EPA indicated it would respond to citizen comments by April 1, 2002.

In accordance with the procedures set forth in the December 11, 2000, notice and outlined above, EPA has issued notices of deficiency for several State permitting authorities in connection with the citizen comment letters submitted pursuant to the December 11, 2000, notice. Notices of deficiency have been published in the **Federal Register** for the following permitting authorities:

Permitting authority	Citation
State of Michigan	66 FR 64038, December 11, 2001.
State of Indiana	66 FR 64039, December 11, 2001.
District of Columbia	66 FR 65947, December 21, 2001.
State of Washington	67 FR 72, January 2, 2002.
State of Texas	67 FR 732, January 7, 2002.
State of Missouri	67 FR 13626, March 25, 2002.
State of Ohio	67 FR 19175, April 18, 2002.
34 California Districts	67 FR 35990, May 22, 2002.

The States identified in these notices of deficiency must adopt appropriate corrections to their title V programs and submit them to EPA for approval within the timeframes set out in the notices of deficiency or face highway and/or offsets sanctions under section 179(b) of the Act [1] and implementation of a whole or partial Federal operating permits program under part 71 if they fail to do so.

Also in accordance with the December 11, 2000, notice, EPA has issued Agency response letters to citizen comments which explain EPA's reasoning in those instances where the Agency disagrees that particular alleged problems constitute deficiencies within the meaning of part 70. The EPA hereby notifies the public that EPA letters responding to citizen allegations concerning Georgia, Louisiana, Missouri, and Ohio are available at the following web address: (*http://www.epa.gov/air/oaqps/permits/response/*). In previously published notices (67 FR 6709, January 13, 2002 and 67 FR 16374, April 5, 2002), EPA alerted the public to this same web site as the location for all previously signed EPA response letters. The EPA also notes that when it signs additional EPA response letters in the future, it will publish additional notices of availability to identify the location of its web site containing those letters.

The EPA notes further that the terms "deficiency" and "notice of deficiency" are terms of art under the operating permits regulations in part 70. Thus, as explained in our letters responding to citizen comments, in some instances where EPA declined to issue a notice of deficiency, it was because the Agency disagreed that there was a problem with the State program or its implementation that requires correction. In other instances, however, EPA agreed in whole or in part with commenters that a program was not being properly implemented but nevertheless did not issue a notice of deficiency. Rather, EPA determined that the alleged deficiency had been corrected because the State had made a firm commitment to correct program implementation shortcomings where that could be accomplished on a timely basis by the State administratively without additional rulemaking or legislation.

[1] The EPA is in the process of promulgating a rule which will address the order of sanctions.

Background

Pursuant to section 502(b) of the Act, EPA has promulgated regulations establishing the minimum requirements for State and local air agency operating permits programs. We promulgated these regulations on July 21, 1992 (57 FR 32250), in part 70 of title 40, chapter I, of the Code of Federal Regulations. Section 502(d) of the Act requires each State to develop and submit to EPA an operating permits program meeting the requirements of the part 70 regulations and requires us to approve or disapprove the submitted program. In some cases, States have delegated authority to local city, county, or district air pollution control agencies to administer operating permits programs in their jurisdictions. These operating permits programs must meet the same requirements as the State programs. In accordance with section 502(g) of the Act and 40 CFR 70.4(d), for 99 State and local operating permits programs, we granted "interim" rather than full approval because the programs substantially met, but did not fully meet, the provisions of part 70. For interim approved programs, we identified in the notice of interim approval those program deficiencies that would have to be corrected before we could grant the program full approval. As of December 11, 2000, some of those 99 programs had since been granted full approval and the remainder still had interim approval status.

After a State or local permitting program is granted full or interim approval, EPA has oversight of the program to insure that the program is implemented correctly and is not changed in an unacceptable manner. Section 70.4(i) of the part 70 regulations requires permitting authorities to keep us apprised of any proposed program modifications and also to submit any program modifications to us for approval. Section 70.10(b) requires any approved operating permits program to be implemented " * * * in accordance with the requirements of this part and of any agreement between the State and the Administrator concerning operation of the program."

Furthermore, 40 CFR 70.4(i) and 70.10(b) provide authority for us to require permitting authorities to correct program or implementation deficiencies. As explained previously, EPA has exercised these authorities by in some instances issuing notices of deficiency and in other instances issuing letters explaining why we do not agree that deficiencies exist.

Administrative Requirements

Under section 307(b)(1) of the Act, petitions for judicial review of EPA's letters responding to the citizen letters on the Georgia, Louisiana, Missouri, and Ohio operating permits programs may be filed in the United States Court of Appeals for the appropriate circuit within 60 days of August 20, 2002.

Dated: August 8, 2002.

William T. Harnett,

Director, Information Transfer and Program Integration Division.

[FR Doc. 02–21199 Filed 8–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CO–001–0069; FRL–7262–1]

Adequacy Status of the Aspen, Colorado PM_{10} Maintenance Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this document, EPA is notifying the public that we have found that the motor vehicle emissions budgets in the Aspen maintenance plan for particulate matter of 10 micrograms in size or smaller (PM_{10}) submitted on November 9, 2001, are adequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the City of Aspen and Pitkin County, the Colorado Department of Transportation and the U.S. Department of Transportation are required to use the motor vehicle emissions budgets from this submitted maintenance plan for future conformity determinations.

DATES: This finding is effective September 4, 2002.

FOR FURTHER INFORMATION CONTACT: Jeffrey Kimes, Air & Radiation Program (8P–AR), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6445. The letter documenting our finding is available at EPA's conformity website: *http://www.epa.gov/oms/transp/conform/adequacy.htm.*

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we", "us", or "our" are used we mean EPA.

This action is simply an announcement of a finding that we have already made. We sent a letter to the Colorado Air Pollution Control Division on May 16, 2002, stating that the motor vehicle emissions budgets in the submitted Aspen PM_{10} maintenance plan are adequate. This finding has also been announced on our conformity website at *http://www.epa.gov/oms/transp/conform/adequacy.htm.*

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from our completeness review, and it also should not be used to prejudge our ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved, and vice versa.

We've described our process for determining the adequacy of submitted SIP budgets in a memo entitled, "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision," dated May 14, 1999. We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 6, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 02–21198 Filed 8–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7262–8]

Watershed Initiative: Call for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is launching a new grant program to encourage the protection and restoration of our country's water bodies through the use of watershed approaches. The President's fiscal year (FY) 2003 budget, which is now before Congress, incorporates a request for $21 million for this Watershed Initiative. Subject to the availability of appropriations for this purpose, EPA plans to select through a competitive process up to 20 watersheds throughout the country for grants to support promising watershed-based approaches to clean water. This notice sets forth the process that will be used for selecting the watersheds and serves as the call for nominations from Governors and Tribal Leaders.

DATES: Governor or Tribal Leader nominations must be postmarked and received electronically by EPA on or before November 21, 2002.

ADDRESSES: Nomination packages must be submitted both by mail or courier *and* electronically. Please follow the detailed instructions provided in section V of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Carol Peterson, telephone: 202–566–1304; e-mail: *peterson.carol@epa.gov* or one of the regional contacts listed in section VI of the **SUPPLEMENTARY INFORMATION** section below. Additional information and any updated guidance will be posted on the Watershed Initiative's website at *http://www.epa.gov/owow/watershed/initative.*

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SUPPLEMENTARY INFORMATION:

I. Introduction

A. The Watershed Approach

To address water resource problems more effectively, water resource managers at all levels have been adopting a more comprehensive approach—one that recognizes that the health of aquatic resources is affected by what happens on the land that drains in to a water body. A watershed can be large or small. It can encompass the entire Mississippi River basin or a small stream in western Georgia. The "watershed approach" addresses natural resource issues that cross geographic, jurisdictional and political boundaries. This approach recognizes needs for water supply, water quality, flood control, navigation, hydropower generation, fisheries, biodiversity, habitat preservation and recreation—and it recognizes that these needs often compete. It provides for establishing local priorities in the context of national goals, coordination of public and private actions, encouragement of partnerships to affect change, and enlists the support and knowledge base of the public at the local level.

Over the years, many communities around the country have joined forces to protect their watersheds, often using innovative and novel approaches that are geared toward solving the problems that make sense for their locality. In recent years, governments, non-profit organizations, businesses, and citizens have employed watershed-based approaches to refocus their efforts to protect and restore the nation's waters. These refocused efforts have brought positive results and attainment of State/Tribal water quality standards in some areas.

B. Goals of the Watershed Initiative

On January 25, 2002, EPA announced that it would request $21 million in its fiscal year 2003 budget for a new Watershed Initiative. Subject to the availability of appropriations, EPA will employ a competitive grant process to select up to 20 watersheds in which to award grants under this program. These grants will fund eligible activities in support of comprehensive watershed-based approaches to protecting and restoring water resources.

The Watershed Initiative will build upon the Agency's holistic watershed approach to water quality management. The Initiative will encourage coalition-based strategies for attaining water quality standards and improving water resource protection and restoration on a watershed level. EPA hopes the Initiative will encourage practical and efficient models that can be adapted to local circumstances across the country. The goal of this Initiative is to advance the successes of partnerships and coalitions that have undertaken the necessary watershed evaluations and assessments and have a technically sound watershed plan ready to carry out. EPA believes the Watershed Initiative will help encourage the kind of pro-active, incentive-based protection and restoration measures that will ultimately yield cleaner water.

C. Process for Designing the Watershed Initiative

Since January, EPA has been working with an array of people to gather ideas and suggestions on how to design the new Watershed Initiative. During the last few months, EPA has been interacting (*via* conferences, meetings, listening sessions, and speaking engagements) with States, Tribes, congressional staff, and a host of local government and community groups to: (1) Introduce the Initiative, (2) gain insight into potential challenges, and (3) solicit views on how to design the proposed program. An EPA work group was formed and consists of representatives from other offices within EPA as well as watershed experts from each of the Agency's Regional Offices. EPA held public listening sessions in Washington, DC, and published a notice and request for comments in the **Federal Register** (67 FR 36172; May 23, 2002). Sixty-eight people attended one of the four listening sessions and over 105 responded to the **Federal Register** notice. The Agency considered all of the suggestions and viewpoints in formulating the Watershed Initiative outlined in this notice.

The Agency received comments from a wide variety of interested parties, such as state agencies, county and local authorities, non-profit organizations, academia, other federal agencies, and private citizens. One letter, received from 20 commenters, expressed opposition to the Initiative in general because of the concern that the Initiative would detract from EPA's core regulatory programs. To the contrary, the Watershed Initiative is intended to support any watershed with a far-reaching, comprehensive plan, which could include a regulatory requirement, such as, EPA-approved Total Maximum Daily Loads (TMDLs).

The majority of the respondents were supportive of the Initiative and in agreement with EPA's general approach and suggested criteria. As a result of the comments received, the selection criteria were amended. The concept of a watershed being a "high value" resource was eliminated, and greater weight will be given to those nominations that focus on environmental results and show broad stakeholder involvement.

Of all the questions posed, commenters were most divided on whether the Govérnors and Tribal Leaders should submit the nominations to EPA, or whether the individual watershed organizations should be able to submit their nominations directly to EPA. EPA elected to have the Governors and Tribal Leaders make the nominations. The Agency feels strongly that in order for the Initiative to be successful, the States and Tribes must be committed to the targeted watersheds and play an active role in the Initiative.

D. Funding Availability

Subject to the availability of appropriations, $21 million will be available in FY 2003 for the Watershed Initiative. EPA expects to use the majority of the money for grants to the selected watersheds. EPA anticipates that typical grant awards for the selected watersheds will range from $300,000 to $1,300,000, depending on the amount requested and the overall size and need of the project. About five percent of the total appropriation will go toward enhancing national tools, training, and technical assistance that will help local partnerships be more effective at improving watershed health, so that watersheds which are nominated but not selected, and other watersheds, will also benefit from the Initiative. The total number and amount of the awards will depend on the amount of funds made available.

EPA expects to announce selections early in 2003 and complete the grant award process, including grant work plan negotiations through the appropriate EPA Regional Office, by May 2003. Grants awarded will be one-time awards and grant recipients should use the funds within 2–3 years. Subsequent funding would involve a new call for watershed nominations and is predicated on continued appropriations. Therefore, any proposal for work beyond the initial funding period would need to be submitted through the competitive process and will not receive preferential consideration based on the applicant's previous award.

II. Competing for a Watershed Initiative Grant

EPA will select watersheds through a national competition and will fund projects consisting of eligible activities within each plan (see section IV.C for a description of the activities that are eligible for funding under this grant program). The size or scale of the watershed is based on the range and geographic location(s) of the problem or threat, and the projects to be undertaken to address them. Therefore, the "watershed plan," in this context may be a subset of a larger and more extensive formal watershed plan. Each watershed nomination must contain only one plan, yet a plan may include a single project or multiple projects within the watershed. Preference will be given to inter-jurisdictional watershed plans, that is, those that involve multiple states and/or tribes. Watershed plans that transcend international borders may also be considered provided that the appropriate water agency in the adjacent country is a partner or otherwise supports the project. Watersheds and watershed plans will be selected based on the quality of the nominations received and adherence to the selection criteria. Funding decisions will be made based on the eligibility of the project or projects within the selected watershed plan. A full grant application will be required only for the selected watersheds (see section III).

A. The Nomination and Selection Process

Watersheds must be nominated by Governors or Tribal Leaders. Each Governor or Tribal Leader will prepare or solicit proposed watershed plans from eligible entities in a manner most appropriate to their state or tribe and nominate the most meritorious to EPA.

Governors or Tribal Leaders are invited to nominate two state or tribal watersheds each. There is, however, no limit on the number of inter-state or joint state and tribal watersheds that can be nominated. For inter-state or joint state and tribal watershed plans, any of the involved Governors/Tribal Leaders may submit the nomination. Such watershed nominations must have the endorsement of all affected state or tribal governmental entities before submittal to EPA.

Governors and Tribal Leaders are to submit their watershed nominations to EPA (see section V for the specific details). All nominations will be screened by EPA staff prior to review to determine if they are eligible, complete, and in accordance with instructions laid out in this notice. Once received by EPA, the nominations will undergo two levels of review—one at the regional level and one at the national level. Each of the Agency's Regional Offices will convene a Review and Evaluation Panel that will assess how well the overall watershed plan meets the program criteria described below. Based on the panel review and recommendation, each Regional Administrator will then forward his/her region's top four candidates to EPA's Office of Water at Headquarters. The Office of Water will convene a Technical Advisory Panel at the national level consisting of representatives from the Agency's Program and Regional Offices, as well as members of other federal agencies, to review the technical merit of the watershed plan and eligible projects and rank the watershed nominations sent forward by the EPA Regional Offices. In addition to the prescribed criteria, factors such as geographic diversity, project diversity, watershed size, urban/rural mix, and cost will be considered in ranking nominations for consideration by the Administrator. The Administrator will select the watersheds and the watershed plans to be funded.

B. Matching Requirement

EPA is requiring applicants to demonstrate a minimum non-federal match of 25% of the total cost of the project or projects. The Agency considers this matching contribution as evidence of community support and commitment, and an opportunity to increase the overall scope of the proposed project. In addition to cash, the match can come from in-kind goods and services such as the use of volunteers and their donated time, equipment, expertise, *etc.*, consistent with the regulation governing match requirements (40 CFR 31.24 or 40 CFR 30.23). Other federal funds may be used to meet the match requirement for this grant program if authorized by the statute governing the award of the other federal funds. EPA encourages applicants to leverage as much investment as possible, and those entities that exceed the minimum requirement may be preferred in the selection process (see section II.E).

Tribes and tribal watershed groups may be exempt from this match requirement if they are constrained to such an extent that fulfilling the match requirement would impose undue hardship. EPA acknowledges the limited means of many tribes and the difficulty they may have in obtaining non-federal matching contributions.

C. Format of the Nomination

In addition to a one-page cover letter signed by the Governor or Tribal Leader, the narrative portion of a single nomination should be no more than ten double-spaced pages long, using a 12-point font. The submission should be printed on one side only of an 8½'x11" page and not bound. Each submission must include all of the required elements listed below. A nomination containing a narrative that exceeds 10 pages will not be considered. Project budgets, maps, letters of support, and match certifications may be appended and will not count toward the 10-page limit.

D. Required Elements of the Nomination

In general, nominees should provide a description of what efforts have been done thus far to carry out their watershed plan, and how the infusion of additional funds can result in a synergistic effect and results beyond the existing level of investment. In preparing nomination materials, nominees are to keep in mind the criteria by which their overall watershed plan will be judged as distinct from the individual projects that will be eligible for funding under the grant. Within these required elements, nominees should address completely and to the best of their ability the evaluation criteria outlined below in section II.E.

1. *Narrative Description.* Each nomination must contain the following components as part of the 10-page narrative portion.

(a) Characterization of the Watershed and Watershed Planning Effort

An assessment of the natural resource and environmental conditions, and an identification of problem sources and areas for treatment are required. These include:

(1) A description of the watershed's biological, physical, and, if relevant social and/or cultural characteristics.

(2) An identification of problems or threats facing the watershed.

(3) A comprehensive description of the watershed plan. This should include: (i) Short- and long-term watershed goals, (ii) identification and prioritization of the projects necessary to address the problems or threats facing the watershed; (iii) delineation of which projects that are part of the plan but are not eligible for funding; and (iv) person, or entity, who will be responsible for implementing the watershed plan.

(b) Description of the Proposed Projects

A description of the projects expected to be undertaken using the EPA grant are required. Included in this section should be:

(1) A description of the relationship of the projects to the watershed plan and goals.

(2) A detailed description of the proposed projects for EPA funding including: (i) A description of the

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components and goals of the projects, (ii) a schedule for implementing the projects; (iii) the project's itemized estimated budget including any leveraging commitment; and (iv) environmental milestones for determining whether the goals of the watershed projects are being realized.

(3) A monitoring and evaluation component including performance measures and quarterly progress goals, as well as a description of how the ultimate success of the projects and watershed plan will be measured. The progress and performance of the projects and watershed plan must be measurable by technically sound practices.

(4) A description of how the projects complement or are consistent with other EPA, federal, and/or state programs or mandates.

(5) Person, or entity, who will be responsible for coordinating the proposed projects.

(c) Description of Management and Stakeholder Involvement

A description of the management, staff, supporters, and stakeholders for both the watershed plan and the proposed projects is required, including:

(1) Identification, qualifications, and past experience of the plan's leader, staff, and other active public and private partners who currently participate or are expected to participate in implementation of the watershed plan, along with a description of their specific roles and responsibilities.

(2) Identification, qualifications, and past experience of the project's leader, staff, and other active public and private partners who currently participate or are expected to participate in implementation of the proposed projects, along with a description of their specific roles and responsibilities.

(3) A description of the sources and nature of any technical expertise needed and/or obtained to carry out the projects.

(4) A description or listing of other stakeholders who may play an indirect role in the specific project or overall watershed plan.

(d) A Description of Outreach Activities

Because the selected watersheds are intended to serve as models for other communities and community projects, the following are required:

(1) A strategy for transferring the knowledge gained from this effort to other areas.

(2) A description of an information and outreach component that will be used to enhance public understanding of the watershed and encourage participation in the local project or projects, and future activities regarding implementing the goals of the watershed plan.

2. *Other Requirements.* To substantiate the information contained in the narrative portion of the submission, proof and/or documentation to verify partnerships and matching funds is required and may be submitted as appendices. Items that must accompany the narrative description include:

(a) One-page cover letter signed by the Governor or Tribal Leader.

(b) Budgets reflecting a detailed breakdown of cost by category for each project.

(c) Signed letter(s) from active partners indicating their commitment to implementing the watershed plan or for specific proposed projects.

(d) Signed letter(s) from entities committing to provide matching funds, either cash or in-kind, and the amount of equivalent value of the commitment toward the projects.

(e) For inter-state or joint nominations, signed letter(s) expressing the support of the other participating governmental entities.

(f) Maps (optional).

E. Evaluation Criteria

Watersheds will be nominated and selected based on the submitted watershed plan. Watershed nominations will be scored for each of the following four criteria for a possible total score of 50. Watershed plans that are inter-jurisdictional (*i.e.*, multi-state or state/tribe) will be awarded five points, and nominations that exceed the minimum match requirement will receive five points, Please note that the evaluation criteria focus on the overall watershed plan and not the proposed projects.

1. *Focus on Results (20 total points).* Successful nominees will have demonstrated an in-depth knowledge of the watershed ecology, presented a sound approach for combating threats or impairments to the water system, and identified a primed plan that is likely to achieve tangible, defensible environmental results in a relatively short time period. Reviewers could consider any number of components for this criterion, but will focus on the following:

(a) Watershed plan feasibility and readiness to proceed (10 points). Points will be awarded based on the overall feasibility of the plan from both a biological and engineering perspective. Reviewers also will look at the readiness of the plan and those plans that can be implemented quickly will receive more points. Plans will be evaluated on the technical merit and adequacy of each project. In sum, higher scores will be given to those nominees that have demonstrated a knowledge and understanding of priority water resource problems within the watershed; have substantially completed the assessment and planning phase of the plan; and are ready to begin.

(b) Demonstrated ability (5 points). Plans will be scored based on the qualifications and management capability of the nominee. Reviewers will assess the past experience of project leader(s) and/or partners in designing, implementing, and effectively managing and coordinating activities. Communities or organizations that have no prior experience and have developed their first watershed plan will be evaluated on the basis of their plan and their potential to effectively manage and oversee all phases of the proposed plan and demonstrated working relationship with their partners.

(c) Accountability (5 points). A nomination will be scored based on how well it is supported by a clearly articulated set of performance and progress measures, as well as a description of how these measures will be monitored. Reviewers will evaluate the plan in relation to its likelihood to achieve measurable, defensible environmental results in a relatively short time period, including attaining performance expectations, reaching project goals, and producing objective environmental results.

2. *Broad Support (10 points).* Watershed plans that incorporate a wide variety of state and local participation will be favored. The score for this criterion will be based on the level to which a nominee can demonstrate strong and diverse stakeholder stewardship and support. Reviewers will look for documented effective working relationships among state and local authorities, along with evidence of broad-based community involvement.

3. *Innovation (5 points).* Reviewers will be looking for progressive and forward-thinking plans when evaluating the nominations. Because the selected watersheds are expected to serve as models, watershed plans that undertake unique, innovative, or novel approaches to environmental problem-solving will be scored higher. Watershed plans that address regulatory challenges or provide for market-based incentives are two examples.

4. *Compatibility with other Federal or State Programs (5 points).* Reviewers will evaluate the extent to which the watershed plan and the proposed projects are linked to other existing state or federal programs. Points will be awarded to those watershed plans and proposed projects that integrate the common goals and complement the ongoing efforts occurring at the federal, state, or local level.

III. Applying for a Grant

Only the selected watersheds need to proceed through the grant application process. Once selected to receive a grant, the successful nominee will have 60 days to complete the formal grant application process (*i.e.*, Application for Federal Assistance, Standard Form 424 *et al*). The standard EPA grants application package must be filed according to Agency guidelines. Detailed information and assistance, including an application kit, required forms, and a check list, can be found at *http://www.epa.gov/ogd/AppKit/*. Successful nominees may be asked to modify objectives, work plans, or budgets prior to the final approval of the award. The exact amount of funds to be awarded, the final scope of activities, the duration of the projects, and specific role of the EPA Regional project coordinator will be determined in pre-award negotiations between the nominee and EPA.

Although the selections will be announced at the national level, Watershed Initiative grants will be awarded and managed by the respective EPA Regional Offices. The designated EPA Regional Contact listed in section VI will be available to provide additional guidance in preparing the application, filling out the necessary forms, and answering any questions. In anticipation of this process, all applicants may want to explore this website for useful and pertinent information prior to preparing and submitting their nomination materials.

IV. Statutory and Regulatory Requirements

A. Authority

EPA expects to award most, if not all, of these grants under the authority of section 104(b)(3) of the Clean Water Act (CWA). This section authorizes the Agency to award grants to conduct and promote the coordination and acceleration of activities such as demonstrations, training, education, experiments, investigations, surveys, studies, and research relating to the causes, effect, extent, prevention, reduction, and elimination of water pollution. While the Agency plans to rely primarily on section 104 for authority to award these grants, grant projects, if eligible, could possibly be funded under the CWA authorities found in section 121 (Wet Weather Watershed Pilot Projects) or section 320 (National Estuary Program). Regulations pertaining to EPA grants are in Title 40 of the Code of Federal Regulations (CFR) parts 30, 31 and 35.

B. Eligible Applicants

Under section 104(b)(3) of the Clean Water Act, the following entities are eligible to receive grants: state and tribal water pollution control agencies, interstate or inter-tribal agencies, other public or non-profit private agencies, institutions, organizations, and individuals. The term "State" is defined to include the District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

C. Eligible Activities

All activities must directly support the watershed plan submitted. Grants awarded under section 104(b)(3) for this Initiative may only be used to conduct and promote the coordination and acceleration of activities such as demonstrations, training, education, experiments, investigations, surveys, studies, and research relating to the causes, effect, extent, prevention, reduction, and elimination of water pollution. These activities, while not defined in the statute, advance the state of knowledge, gather information, or transfer information. For instance, "demonstrations" are generally projects that demonstrate new or experimental technologies, methods, or approaches and the results of the project will be disseminated so that others can benefit from the knowledge gained. The innovative compilation of individual projects to create a comprehensive approach to a watershed clean-up or protection effort could constitute a demonstration project under this authority. For example, if a watershed establishes a ten-year goal for its waters and establishes an innovative collaboration of projects and measurement tools to achieve and judge its success, replication of this approach in varying geographic locations or in a diversity of circumstances (*i.e*, rural vs. urban) could be considered a demonstration under section 104(b)(3). Research projects may include the application of established practices when they contribute to learning about an environmental concept or problem.

Other activities are eligible for funding if the grants are awarded under section 121 (Wet Weather Pilot Projects) or section 320 (National Estuary Program) of the CWA. Candidates wishing to be considered for Watershed Initiative funding under section 121 or section 320 are urged to consult the Agency prior to initiating the nomination process because the requirements for those grants are different from those discussed in this notice.

D. Project Implementation and Management

Project monitoring and reporting requirements can be found in 40 CFR 30.50–30.54 and 40 CFR 31.40–30.45. In general, grantees are responsible for managing the day-to-day operations and supported activities of the grant to assure compliance with applicable federal requirements, and for ensuring that established milestones and performance goals are being achieved. Performance reports and financial reports must be submitted quarterly and are due 30 days after the reporting period. The final report is due 90 days after the grant has expired. Grant managers should consult, and work closely with, their regional contact person throughout the award period.

If the project involves the collection of environmental data, certain quality assurance and/or quality control (QA/QC) and peer review requirements may be applicable. Applicants should allow sufficient time and resources for this process in their proposed projects. Environmental data are any measurements or information that describe environmental processes, location, or condition; ecological or health effects and consequences; or the performance of environmental technology. Environmental data also include information collected directly from measurements, produced from models, and obtained from other sources such as data bases or published literature.

Regulations pertaining to QA/QC requirements can be found in 40 CFR 30.54 and 31.45. Additional guidance can be found at *http://www.epa.gov/quality/qa_docs.html#noeparqt* or by calling the Agency's Office of Environmental Information at 202–564–6830.

V. Call for Nominations

EPA invites each Governor and Tribal Leader to submit two nominations for Watershed Initiative grants. Please send the electronic version of the nomination to *initiative.watershed@epa.gov*. No confidential business information should be sent via e-mail and only nomination materials are to be sent to this e-mail box. If unusual or extraordinary circumstances prevent electronic submission of the nomination, please contact the appropriate Regional contact person listed below to discuss alternate arrangements.

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EPA requests that 2 paper copies of the full nomination package also be sent to EPA. Submissions submitted by mail should be sent to: Robert Wayland, Director, Office of Wetlands, Oceans, and Watersheds; Mail Code 4501T; USEPA; 1200 Pennsylvania Avenue NW., Washington, DC 20460. Submissions delivered by courier should be sent to: Robert Wayland, Director, Office of Wetlands, Oceans, and Watersheds; USEPA; Rm. 7130; 1301 Constitution Avenue; NW, Washington, DC 20004. Mark all submissions: ATTN: EPA Watershed Initiative.

Please direct all questions to the Regional contact person and not to the watershed initiative e-mail box. Designated Agency Contacts for each Region are listed in section VI below. All nominations must be postmarked and received electronically by EPA by the November 21, 2002 deadline. Any nomination received after the deadline will not be considered. Please note that the US Government continues to experience security-related delays in US Postal Service deliveries, so the Agency encourages courier service.

VI. Agency Contacts

Region I—Connecticut, Maine, Massachusetts, Rhode Island, Vermont, New Hampshire
Contact: William Walsh-Rogalski or Lynne Hamjian, telephones 617–918–1035 and 617–918–1601; e-mails *walshrogalski.william@epa.gov* and *hamjian.lynne@epa.gov*, respectively.

Region II—New Jersey, New York, Puerto Rico, U.S. Virgin Islands
Contact: Theresa Faber or Cyndy Belz, telephones 212–637–3844 and 212–637–3832; e-mails *faber.theresa@epa.gov* and *belz.cyndy@epa.gov*, respectively.

Region III—Delaware, Maryland, Pennsylvania, Virginia, West Virginia, Washington, DC
Contact: Bernie Sarnoski, telephone 315–814–5756; e-mail *sarnoski.bernie@epa.gov*.

Region IV—Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Kentucky, Tennessee
Contact: William L. Cox, telephone 404–562–9351; e-mail *cox.williaml@epa.gov*.

Region V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin
Contact: Paul Thomas, telephone 312–886–7742; e-mail *thomas.paul@epa.gov*.

Region VI—Louisiana, Texas, Oklahoma, Arkansas, New Mexico
Contact: Brad Lamb, telephone 214–665–6683; e-mail *lamb.brad@epa.gov*.

Region VII—Iowa, Kansas, Missouri, Nebraska
Contact: Julie Elfving, telephone 913–551–7475; e-mail *elfving.julie@epa.gov*.

Region VIII—Colorado, Montana, North Dakota, South Dakota, Utah
Contact: Karen Hamilton, telephone 303–312–6236; e-mail *hamilton.karen@epa.gov*.

Region IX—Arizona, California, Hawaii, Nevada, American Samoa, Mariana Islands, Guam
Contact: Sam Ziegler, telephone 415–972–3399; e-mail ziegler.sam@epa.gov.

Region X—Alaska, Idaho, Oregon, Washington
Contact: Bevin Reid, telephone 206–553–1566; e-mail *reid.bevin@epa.gov*.

Dated: August 14, 2002.

G. Tracy Mehan, III,

Assistant Administrator for Water.

[FR Doc. 02–21196 Filed 8–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7263–3]

Meeting of the Drinking Water Contaminant Candidate List Classification Process Working Group and Small Systems Affordability Working Group of the National Drinking Water Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given of the forthcoming meetings of the Drinking Water Contaminant Candidate List (CCL) Classification Process Work Group, and the Small Systems Affordability Work Group, of the National Drinking Water Advisory Council, established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*).

DATES: The CCL work group will meet on September 18–19, 2002 (9 a.m.–5 p.m. EDT on September 18 and 8 a.m.–3:30 p.m. EDT on September 19). The affordability work group will meet on September 11–12, 2002 (9 a.m.–5:15 p.m. EDT on September 11 and 8:30 a.m.–3:15 p.m. EDT on September 12).

ADDRESSES: Both meetings will be held at RESOLVE Inc., 1255 23rd Street, NW., Suite 275, Washington, DC and are open to the public, but from past experience, seating will likely be limited.

FOR FURTHER INFORMATION CONTACT: For more information on the location and times of these meetings, or general background information please contact the Safe Drinking Water Hotline (phone: 800–426–4791 or (703) 285–1093; e-mail: *hotline-sdwa@epa.gov*). Members of the public are requested to contact RESOLVE if they plan on attending at (202) 944–2300. Any person needing special accommodations at either of these meetings, including wheelchair access, should contact RESOLVE (contact information previously noted), at least five business days before the meeting so that appropriate arrangements can be made. For technical information contact Dr. Jitendra Saxena, Designated Federal Officer, CCL Classification Process Work Group, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4607M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (e-mail: *saxena.jitendra@epa.gov*; Tel. 202–564–5243), and Mr. Amit Kapadia, Designated Federal Officer, Small Systems Affordability Work Group at the same address (e-mail: *kapadia.amit@epa.gov*; Tel: 202–564–4879).

SUPPLEMENTARY INFORMATION:

Drinking Water Contaminants Candidate List Work Group Meeting

The CCL serves as the primary source of priority contaminants for research and regulatory evaluations for the Agency's drinking water program. The list is comprised of both chemical and microbial contaminants that are known or anticipated to occur in public water systems, and may have adverse health effects, and which at the time of publication are not subject to any proposed or promulgated National Primary Drinking Water Regulations (NPDWRs). EPA has formed a CCL Classification Process Work Group of the National Drinking Water Advisory Council (NDWAC) to help the Agency in developing a new risk based priority setting process based upon the recommendations made by the National Research Council (NRC) in its 2001 report.

The work group is comprised of recognized technical experts representing an array of backgrounds and perspectives who are as impartial and objective as possible. The purpose of the meeting is to provide advice to the NDWAC as it develops recommendations for the U.S. Environmental Protection Agency on the classification process EPA ought to use to develop its list of candidate contaminants. The work group is charged with discussing, evaluating, and providing advice on methodologies, activities, and analysis needed to implement the National Research Council's recommendations on an expanded approach for the CCL listing process. This may include advice on developing and identifying: (1) Overall implementation strategy, (2) classification attributes and criteria, (3) pilot projects to validate new classification approaches, (4) risk communication issues, and (5) additional issues not addressed in the NRC Report.

The first meeting of the work group will be held on September 18–19, 2002, and is open to the public for observation purposes only. Statements from the public will be taken at the close of the meeting. EPA is not soliciting written comments and is not planning to formally respond to comments. The first meeting will focus on the: (1) Review of NRC recommendations for a risk based priority ranking process for CCL contaminants, (2) development of an overall implementation strategy, (3) identification of technical expertise needed to support the process, (4) formation of technical subgroups, if deemed necessary, and (5) identification and discussion of other relevant issues.

Small Systems Affordability Work Group Meeting

As part of the 2002 appropriations process, Congress directed EPA to "begin immediately to review the Agency's affordability criteria and how small system variance and exemption programs should be implemented for arsenic" (Conference Report 107–272, page 175). Congress further directed the Agency to prepare a report, which EPA submitted, "on its review of the affordability criteria and the administrative actions undertaken or planned to be undertaken by the Agency, as well as potential funding mechanisms for small community compliance and other legislative actions, which, if taken by the Congress, would best achieve appropriate extensions of time for small communities while also guaranteeing maximum compliance." (Conference Report 107–272, page 175).

In evaluating treatment technologies for small systems, EPA currently uses an affordability threshold of 2.5% of median household income. EPA's national-level affordability criteria consist of two major components: an expenditure baseline and an affordability threshold. The expenditure baseline (derived from annual median household water bills) is subtracted from the affordability threshold (a share of median household income that EPA believes to be a reasonable upper limit for these water bills) to determine the expenditure margin (the maximum increase in household water bills that can be imposed by treatment and still be considered affordable). EPA compares the cost of treatment technologies against the available expenditure margin to determine if an affordable compliance technology can be identified. If EPA cannot identify an affordable compliance technology, then it attempts to identify a variance technology. Findings must be made at both the Federal and State level that compliance technologies are not affordable for small systems before a variance can be granted.

EPA is asking the NDWAC for advice on its national-level affordability criteria and the methodology used to establish these criteria. Taking into consideration the structure of the Safe Drinking Water Act and the limitations of readily available data and information sources, EPA is seeking the Council's opinion of the national level affordability criteria, methodology for deriving the criteria, and approach to applying those criteria to NPDWRs.

As part of the Council's review of EPA's national-level affordability criteria, the Agency is seeking input on (1) the Agency's overall approach, (2) alternatives, if any, to the use of median household income as a metric, (3) alternatives, if any, to 2.5% as a metric, (4) alternatives, if any, to calculating the expenditure baseline, (5) the usefulness of a separate criteria for ground and surface water systems, (6) including an evaluation of the potential availability of financial assistance, and (7) the need for making affordability determinations on a regional basis. Other issue areas may also be discussed. The meeting is open to the public; statements from the public will be taken at the close of the meeting. EPA is not soliciting written comments and is not planning to formally respond to comments.

Dated: August 14, 2002.

William Diamond,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 02–21200 Filed 8–19–02; 8:45 am]

BILLING CODE 6560–50–P

COUNCIL ON ENVIRONMENTAL QUALITY

National Environmental Policy Act Task Force

AGENCY: Council on Environmental Quality.

ACTION: Notice extending comment period.

SUMMARY: By **Federal Register** notice of July 9, 2002 (67 FR 45510–45512), the Council on Environmental Quality (CEQ) notified interested parties it had formed a National Environmental Policy Act (NEPA) task force (Task Force) and invited comment on the proposed nature and scope of NEPA Task Force activities. The Task Force seeks ways to improve and modernize NEPA analyses and documentation and foster improved coordination among all levels of government and the public, and solicits examples of effected NEPA implementation practices to develop a publication of case studies including examples of best practices.

Interested parties have requested that CEQ extend the public comment. The deadline for comments was August 23, 2002. By this notice, CEQ is extending the public comment period to September 23, 2002. Although the time for comments has been extended, CEQ requests that interested parties provide information about examples of effective NEPA implementation practices and examples of best practices as soon as possible.

DATES: Written comments should be submitted on or before September 23, 2002.

ADDRESSES: Electronic or facsimile comments are preferred because federal offices experience intermittent mail delays from security screening. Electronic written comments can be sent to the NEPA Task Force through the Web site at *http://ceq.eh.doe.gov/ntf/* which provides a form for responding to questions posed in the July 9, 2002, notice as well as a direct electronic mail link to *ceq_nepa@fs.fed.us*. Written comments may be faxed to the NEPA Task Force at (801) 517–1021. Written comments may also be submitted to the NEPA Task Force, P.O. Box 221150, Salt Lake City, UT 84122.

FOR FURTHER INFORMATION CONTACT: Rhey Solomon by phone at (202) 456–5432.

SUPPLEMENTARY INFORMATION: On July 9, 2002, CEQ published notice in the **Federal Register** requesting public comment on current NEPA implementing practices and procedures in the following areas: technology,

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information management, and information security; federal and intergovernmental collaboration; programmatic and tiered analyses; and adaptive management and monitoring and evaluation plans. In addition, it was announced that the NEPA Task Force would look at other NEPA implementation issues such as the level of detail included in agencies' procedures and documentation for promulgating categorical exclusions, the utility and structure of format for environmental assessment documents, and implementation practices that would benefit other agencies.

A number of interest groups and individuals have requested that CEQ extend the public comment period. The Council believes that by extending the comment period a better collection of best practices can be assembled and greater in-depth responses will result to the questions posed in the **Federal Register** notice of July 9, 2002 (67 FR 45510–45512). Therefore, the comment period is being extended by 30 days.

Public comments are requested by September 23, 2002.

Dated: August 14, 2002.

James L. Connaughton,

Chairman, Council on Environmental Quality.

[FR Doc. 02–21038 Filed 8–19–02; 8:45 am]

BILLING CODE 3125–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 14, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 21, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman or Leslie Smith, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *jboley@fcc.gov* or *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0962.

Title: Redesignation of the 18 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the Ka-band, and the Allocation of Additional Spectrum for Broadcast Satellite-Service Use.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 500 respondents; 538 responses.

Estimated Time Per Response: 1–4 hours.

Frequency of Response: Recordkeeping requirement, third party disclosure requirement, on occasion reporting requirement.

Total Annual Burden: 553 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission has adopted rules that redesignate portions of the 17.7–20.2 GHz band, among the various currently allocated services in order to make more efficient use of the spectrum and to better accommodate the operational needs of licensees. The Commission proposed licensing of Fixed-Satellite Service (FSS) systems that require an amendment to the reporting requirements to include milestone certifications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–21036 Filed 8–19–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

August 9, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments October 21, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1014.

Title: Ku-band NGSO FSS.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 6 respondents; 28 responses.

Estimated Time Per Response: 1–4 hours.

Frequency of Response: On occasion, one-time, and annual reporting requirements.

Total Annual Burden: 84 hours.

Annual Reporting and Recordkeeping Cost Burden: $87,395.

Needs and Uses: The Commission sought and received emergency clearance of this information collection on 6/10/02. The Commission is now initiating a 60-day comment period to extend this collection with no change for the regular, three-year approval.

On April 26, 2002, the Commission adopted and released IB Docket No. 01–96, FCC 02–123. Applicants to provide NGSO FSS in the Ku-Band will be required to amend their pending applications to conform to frequency sharing methods adopted in the rulemaking. They must also submit milestone certifications, applications for blanket authorizations for multiple numbers of technically identical user earth stations, and annual reports on the status of their space station construction and launch.

The information collected during the Commission's authorization process for U.S.-licensed space station operations will be used by Commission staff in carrying out the agency's duties concerning satellite communications, as required by sections 301, 308, 309 and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 301, 308, 309, and 310.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–21037 Filed 8–19–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 14, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 19, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0540.

Title: Tariff Filing Requirements for Nondominant Common Carriers.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 2,000.

Estimated Time Per Response: 10.5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 21,000 hours.

Total Annual Cost: $1,260,000.

Needs and Uses: The information collected pursuant to the nondominant tariff filing rules is used to comply with Section 203 of the Communications Act of 1934, as amended, which requires that carriers file schedules indicating the rates, terms, and conditions of their service offerings. The information collected pursuant to the tariff filing requirements is used by the Commission to determine whether the rates, terms, and conditions of service offered are just and reasonable as the Act requires. These tariff filing requirements enable the Commission and the public to ensure that the service offerings of communications common carriers comply with the requirements of the Act. If the information were not filed, the Commission would not be able to carry out its responsibilities as required by the Act.

The Commission is publishing this notice to seek an extension of OMB approval under the Paperwork Reduction Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–21120 Filed 8–19–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The FTC is seeking public comments on its proposal to extend through December 31, 2005, the current Paperwork Reduction Act ("PRA") clearance for information collection requirements contained in four product labeling rules enforced by the Commission. That clearance expires on December 31, 2002.

DATES: Comments must be filed by October 21, 2002.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned "Apparel Rules: Paperwork Comment." Comments in electronic form should be sent to *apparelpprwork@ftc.gov* as prescribed below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be sent to Gary Greenfield, Attorney, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Ave., NW., H–576, Washington, DC 20580, (202) 326–2753.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies

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must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests for requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail message directed to the following e-mail box: *apparelpprwork@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR section 4.9(b)(6)(ii).

Staff's burden estimates for the four rules in question are based on data from the Bureau of the Census, U.S. Customs and International Trade Commission, the Department of Labor, and data or other input from industry sources. The relevant information collection requirements within these rules and corresponding burden estimates follow.

1. Regulations Under the Fur Products Labelling Act, 15 U.S.C. 69 *et seq.* ("Fur Act") (Control Number: 3084–0099)

The Fur Act prohibits misbranding and false advertising of fur products. The Fur Act Regulations, 16 CFR 301, establish disclosure requirements that assist consumers in making informed purchasing decisions, and recordkeeping requirements that assist the Commission in enforcing these regulations. The Regulations also provide a procedure for exemption from certain disclosure provisions under the Act.

Estimated annual hours burden: 177,000 hours, rounded to the nearest thousand (62,400 hours for recordkeeping + 114,450 hours for disclosure).

Recordkeeping: The Regulations require that retailers, manufacturers and processors, and importers keep certain records in addition to those they may keep in the ordinary course of business. Staff estimates that 1,500 retailers incur an average recordkeeping burden of about 13 hours per year (19,500 hours total); 225 manufacturers and fur processors combined incur an average recordkeeping burden of about 52 hours per year (11,700 total); and 1,200 importers of furs and fur products incur an average recordkeeping burden of 26 hours per year (31,200 hours total). The combined recordkeeping burden for the industry is approximately 62,400 hours annually.

Disclosure: Staff estimates that 1,710 respondents (210 manufacturers + 1,500 retail sellers of fur garments) each require an average of 20 hours per year to determine label content (34,200 hours total), and an average of five hours per year to draft and order labels (8,550 hours total). Staff estimates that manually attaching a label to an estimated 1,620,000 fur garments requires approximately two minutes per garment for a total of 54,000 hours annually. Thus, the total burden for labeling garments is 96,750 hours per year.

Staff estimates that the incremental burden associated with the Regulations' invoice disclosure requirement, beyond the time that would be devoted to preparing invoices in its absence, is approximately 30 seconds per invoice.[1] The invoice disclosure requirement applies to fur garments, which are generally sold individually, and fur pelts, which are generally sold in groups of at least 50, on average. Assuming invoices are prepared for sales of 1,620,000 garments and 160,000 groups (an estimated 8 million pelts ÷ 50) each of imported and domestic pelts, the invoice disclosure requirement entails an estimated total burden of 16,167 hours.

Staff estimates that the Regulations' advertising disclosure requirements impose an average burden of one hour per year for each of the approximately 1,500 domestic fur retailers, or a total of 1,500 hours.

Thus, staff estimates the total disclosure burden to be approximately 114,450 hours (96,750 hours for labeling + 16,167 hours for invoices + 1,500 hours for advertising).

Estimated annual cost burden: $2,303,000, rounded to the nearest thousand (solely relating to labor costs).

Task	Hourly rate	Burden hours	Labor cost
Determine label content	$20.00	34,200	$684,000
Draft and order labels	13.00	8,550	111,150
Attach labels	[2]8.50	54,000	459,000
Invoice disclosures	13.00	16,167	210,171
Prepare advertising disclosures	18.00	1,500	27,000
Recordkeeping	13.00	62,400	811,200
Total			2,302,521

Staff believes that there are no current start-up costs or other capital costs associated with the Regulations. Because the labeling of fur products has been in integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Regulations' labeling requirements. Industry sources indicate that much of the information required by the Fur Act and its implementing Regulations would be included on the product label even absent the regulations. Similarly, invoicing, recordkeeping, and advertising disclosures are tasks performed in the ordinary course of business so that covered firms would incur no additional capital or other non-labor costs as a result of the Act or the Regulations.

[1] The invoice disclosure burden for PRA purposes excludes the time the respondents would spend for invoicing, apart from the Fur Act Regulations, in the ordinary course of business, *See* 5 CFR 1320.3(b)(2).

[2] Per industry sources, most fur labeling is done in the U.S., and this rate is reflective of an average domestic hourly wage for such tasks. Conversely, attaching labels with regard to the other regulations discussed herein is mostly performed by foreign labor, as detailed in note 3.

2. Regulations Under the Wool Products Labeling Act, 15 U.S.C. 68 *et seq.* ("Wool Act") (Control Number: 3084–0100)

The Wool Act prohibits misbranding of wool products. The Wool Act Regulations, 16 CFR 300, establish disclosure requirements that assist consumers in making informed purchasing decisions and recordkeeping requirements that assist the Commission in enforcing the Regulations.

Estimated annual hours burden: 556,000 hours, rounded to the nearest thousand (125,000 recordkeeping hours + 430,556 disclosure hours).

Recordkeeping: Staff estimates that approximately 5,000 wool firms are subject to the Regulations' recordkeeping requirements. Based on an average annual burden of 25 hours per firm, the total recordkeeping burden is 125,000 hours.

Disclosure: Approximately 10,000 wool firms, producing or importing about 500,000,000 wool products annually, are subject to the Regulations' disclosure requirements. Staff estimates the burden of determining label content to be 20 hours per year per respondent, or a total of 200,000 hours, and the burden of drafting and ordering labels to be 5 hours per respondent per year, or a total of 50,000 hours. Staff believes that the process of attaching labels is now fully automated and integrated into other production steps for about 35 percent of all affected products. For the remaining 325,000,000 items (65 percent of 500,000,000), the process is semi-automated and requires an average of approximately two seconds per item, for a total of 180,556 hours per year. Thus, the total estimated annul burden for all respondents is 430,556 hours. Staff believes that any additional burden associated with advertising disclosure requirements would be minimal (less than 10,000 hours) and can be subsumed within the burden estimates set forth above.

Estimated annual cost burden: $6,817,000, rounded to the nearest thousand (solely relating to labor costs).

Task	Hourly rate	Burden hours	Labor cost
Determine label content	$20.00	200,000	$4,000,000
Draft and order labels	13.00	50,000	650,000
Attach labels	[3]3.00	180,556	$541,668
Recordkeeping	13.00	125,000	1,625,000
Total			6,816,668

Staff believes that there are no current start-up costs or other capital costs associated with the Regulations. Because the labeling of wool products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Regulations. Based on knowledge of the industry, staff believes that much of the information required by the Wool Act and its implementing regulations would be included on the product label even absent their requirements. Similarly, recordkeeping and advertising disclosures are tasks performed in the ordinary course of business so that covered firms would incur no additional capital or other non-labor costs as a result of the Regulations.

[3] For products that are imported, this work generally is done in the country where they are manufactured. According to information compiled by an industry trade association using data from the International Trade Commission, the U.S. Customs Service, and the U.S. Census Bureau, approximately 90% of apparel and other textile products used in the United States is imported. With the remaining 10% attributable to U.S. production at an approximate domestic hourly wage of $8.50 to attach labels, staff has calculated a weighted average hourly wage of $3 per hour attributable to U.S. and foreign labor combined. The estimated percentage of imports supplied by particular countries is based on trade data for 2001 compiled by the Office of Textiles and Apparel, International Trade Administration, U.S. Department of Commerce. Wages in major textile exporting countries, factored into the above hourly wage estimate, were based on data published in February 2000 by the U.S. Department of Labor, Bureau of International Labor Affairs. (See "Wages, Benefits, Poverty Line, and Meeting Workers' Needs in the Apparel and Footwear Industries of Selected Countries," Table I–2: "Prevailing or Average Wages in the Manufacturing Sector and in the Footwear and Apparel Industries in Selected Countries, Latest Available Year").

3. Regulations Under the Textile Fiber Products Identification Act, 15 U.S.C. 70 *et seq.* ("Textile Act") (Control Number: 3084–0101)

The Textile Act prohibits misbranding and false advertising of textile fiber products. The Textile Act Regulations, 16 CFR 303, establish disclosure requirements that assist consumers in making informed purchasing decisions, and recordkeeping requirements that assist the Commission in enforcing the regulations. The Regulations also contain a petition procedure for requesting the establishment of generic names for textile fibers.

Estimated annual hours burden: Approximately 7,547,000 hours, rounded to the nearest thousand (537,500 recordkeeping hours +7,009,722 disclosure hours).

Recordkeeping: Staff estimates that approximately 21,500 textile firms are subject to the Textile Regulations' recordkeeping requirements. Based on an average burden of 25 hours per firm, the total recordkeeping burden is 537,500 hours.

Disclosure: Approximately 31,500 textile firms, producing or importing about 17.2 billion textile fiber products annually, are subject to the Regulations' disclosure requirements.[4] Staff estimates the burden of determining label content to be 20 hours per year per respondent, or a total of 630,000 hours and the burden of drafting and ordering labels to be 5 hours per respondent per year, or a total of 157,500 hours. Staff believes that the process of attaching labels is now fully automated and integrated into other production steps

[4] The apparent-consumption of garments in the U.S. in 2001 was 15.2 billion. Staff estimates that .5 billion garments are exempt from the Textile Act (*i.e.*, any kind of headwear and garments made from something other than a textile fiber product, such as leather) or are subject to a special exemption for hosiery products sold in packages where the label information is contained on the package. Based on available data, staff estimates that an additional 3 billion household textile products (non-garments, such as sheets, towels, blankets) were consumed. However, approximately .5 billion of all of these combined products (garments and non-garments) are subject to the Wool Products Labeling Act, not the Textile Fiber Products Identification Act, because they contain some amount of wool. Thus, the estimated net total products subject to the Textile Fiber Products Identification Act is 17.2 billion.

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for about 35 percent of all affected products. For the remaining 11.2 billion items (65 percent of 17.2 billion), the process is semi-automated and requires an average of approximately two seconds per item, for a total of 6,222,222 hours per year. Thus, the total estimated annual burden for all respondents is 7,009,722 hours. Staff believes that any additional burden associated with advertising disclosure requirements or the filing of generic fiber name petitions would be minimal (less than 10,000 hours) and can be subsumed within the burden estimates set forth above.

Estimated annual cost burden: $40,302,000, rounded to the nearest thousand (solely relating to labor costs).

Task	Hourly rate	Burden hours	Labor cost
Determine label content	$20.00	630,000	$12,600,000
Draft and order labels	13.00	157,500	2,047,500
Attach labels	[5]3.00	6,222,222	18,666,666
Recordkeeping	13.00	537,500	6,987,500
Total	.....	.....	40,301,666

Staff believes that there are no current start-up costs or other capital costs associated with the Regulations. Because the labeling of textile products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Regulations' labeling requirements. Industry sources indicate that much of the information required by the Textile Act and its implementing rules would be included on the product label even absent their requirements. Similarly, recordkeeping, invoicing, and advertising disclosures are tasks performed in the ordinary course of business so that covered firms would incur no additional capital or other non-labor costs as a result of the Regulations.

4. The Care Labeling Rule, 16 CFR Part 423 (Control Number: 3094–0103)

The Care Labeling Rule, 16 CFR Part 423, requires manufacturers and importers to attach a permanent care label to all covered textile clothing in order to assist consumers in making purchase decisions and in determining what method to use to clean their apparel. Also, manufacturers and importers of piece goods used to make textile clothing must provide the same care information on the end of each bolt or roll of fabric.

Estimated annual hours burden: 6,054,000 hours, rounded to the nearest thousand (solely relating to disclosure.[6])

Staff estimates that approximately 16,500 manufacturers or importers of textile apparel, producing about 15.2 billion textile garments annually, are subject to the Rule's disclosure requirements. The burden of developing proper care instructions may vary greatly among firms, primarily based on the number of different lines of textile garments introduced per year that require new or revised care instructions. Staff estimates the burden of determining care instructions to be 43 hours each year per respondent, for a cumulative total of 709,500 hours. Staff further estimates that the burden of drafting and ordering labels is 2 hours each year per respondent, for a total of 33,000 hours. Staff believes that the process of attaching labels is fully automated and integrated into other production steps for about 35 percent of the approximately 14.7 billion garments that are required to have care instructions on permanent labels.[7] For the remaining 9.56 billion items (65 percent of 14.7 billion), the process is semi-automated and requires an average of approximately two seconds per item, for a total of 5,311,100 hours per year. Thus, the total estimated annual burden for all respondents is 6,053,600 hours.

Estimated annual cost burden: $30,552,000, rounded to the nearest thousand (solely relating to labor costs).

Task	Hourly rate	Burden hours	Labor cost
Determine care instructions	$20.00	709,500	$14,190,000
Draft and order labels	13.00	33,00	429,000
Attach labels	[8]3.00	5,311,100	15,933,300
Total	.....	.....	30,552,300

Staff believes that there are no current start-up costs or other capital costs associated with the Rule. Because the labeling of textile products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Rule's labeling requirements. Based on knowledge of the industry, staff believes that much of the information required by the Rule would be included on the product label even absent those requirements.

William E. Kovacic,

General Counsel.

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BILLING CODE 6750–01–M

[5] See note 3.

[6] The Care Labeling Rule imposes no specific recordkeeping requirements. Although the Rule requires manufacturers and importers to have reliable evidence to support the recommended care instructions, companies may provide as support current technical literature or rely on past experience.

[7] About .5 billion of the 15.2 billion garments produced annually are either not covered by the Care Labeling Rule (gloves, hats, caps, and leather, fur, plastic, or leather garments) or are subject to an exemption that allows care instructions to appear on packaging (hosiery).

[8] See note 3.

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The Federal Trade Commission is seeking public comments on its proposal to extend through December 31, 2005 the current Paperwork Reduction Act ("PRA") clearance for information collection requirements contained in four consumer credit regulations enforced by the Commission. That clearance expires on December 31, 2002.

DATES: Comments must be filed by October 21, 2002.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned "Regs BEMZ: Paperwork Comment." Comments in electronic form should be sent to: *RegsBEMZpprwork@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Carole Reynolds, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–3230.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *RegsBEMZpprwork@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR section 4.9(b)(6)(ii)).

The four rules covered by this notice are:

(1) Regulations promulgated under The Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* ("ECOA") ("Regulation B") (Control Number: 3084–0087);

(2) Regulations promulgated under The Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.* ("EFTA") ("Regulation E") (Control Number: 3084–0085);

(3) Regulations promulgated under The Consumer Leasing Act, 15 U.S.C. 1697 *et seq.* ("CLA") ("Regulation M") (Control Number: 3084–0086);

(4) Regulations promulgated under The Truth-In-Lending Act, 15 U.S.C. 1601 *et seq.* ("TILA") ("Regulation Z") (Control Number: 3084–0088);

Each of these four rules impose certain PRA recordkeeping and disclosure requirements associated with providing credit or with other financial transactions. All of these rules require covered entities to keep certain records. Staff believes that these entities would likely retain these records in the normal course of business even absent the recordkeeping requirement in the rules.[1] There is, however, some burden associated with ensuring that covered entities do not prematurely dispose of relevant records during the period of time required by the applicable rule.

Disclosure requirements involve both set-up and monitoring costs as well as certain transaction-specific costs. "Set-up" burden, incurred by new entrants only, includes identifying the applicable disclosure requirements, determining compliance obligations, and designing and developing compliance systems and procedures. "Monitoring" burden, incurred by all covered entities, includes reviewing revisions to regulatory requirements, revising compliance systems and procedures as necessary, and monitoring the ongoing operation of systems and procedures to ensure continued compliance. "Transaction-related" burden refers to the effort associated with providing the various required disclosures in individual transactions. While this burden varies with the number of transactions, the figures shown for transaction-related burden in the tables that follow are estimated averages.

The actual range of compliance burden experienced by covered entities, and reflected in those averages, varies widely. Depending on the extent to which covered entities have developed automated systems and procedures for providing the required disclosures, and the efficacy of those systems and procedures, some entities may have little or no such burden, while others incur a higher burden.[2]

Calculating the burden associated with the four regulations' disclosure requirements is very difficult because of the highly diverse group of affected entities. The "respondents" included in the following burden calculations consist of credit and lease advertisers, creditors, financial institutions, service providers, certain government agencies and others involved in delivering electronic fund transfers of government benefits, and lessors. The burden estimates represent staff's best assessment, based on its knowledge and expertise relating to the financial services industry. To derive these estimates, staff considered the wide variations in covered entities: (1) Size and location; (2) credit or lease products offered, extended, or advertised, and their particular terms; (3) types of electronic fund transfers (EFTs) used; (4) types and occurrences of adverse actions; (5) types of appraisal reports utilized; and (6) automation with regard to compliance operations.

In some instances, where covered entities may make certain required disclosures in the ordinary course of business, the Regulation imposes no PRA burden. In addition, some entities have developed highly automated means of providing the required disclosures, while others rely on methods requiring more manual effort.

The estimated PRA burden associated with these rules, attributable to the Commission, is less today than in the past. Staff believes that as automation and expanded quality control become more pervasive in the financial services

[1] PRA "burden" does not include effort expended in the ordinary course of business, regardless of any regulatory requirement. 5 CFR 1320.3(b)(2).

[2] For example, large retailers may use automated means to provide required disclosures, such as issuing, en masse, notices of changes of terms. Smaller retailers and certain types of creditors may have less automated compliance systems, and thus may issue disclosures on an individual transaction basis, resulting in higher burden.

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industry, entities are able to comply more efficiently.

The cost estimates shown below relate solely to labor costs. The applicable PRA requirements impose minimal capital or other non-labor costs, as affected entities generally have the necessary equipment for other business purposes. Similarly, staff estimates that compliance with these rules entails minimal printing and copying costs beyond that associated with documenting financial transactions in the ordinary course of business. The burden estimates shown below include the time necessary to train staff to be in compliance with the regulations.

The following paragraphs discuss each of these rules, their particular FRA requirements, and staff's best estimates of the related hour and cost burdens.

1. Regulation B

The ECOA prohibits discrimination in the extension of credit. Regulation B, 12 CFR 202, promulgated by the Board of Governors of the Federal Reserve System, establishes both recordkeeping and disclosure requirements to assist consumers in understanding their rights under the ECOA and to assist in detecting unlawful discrimination. The FTC enforces the ECOA as to all creditors except those that are subject to the regulatory authority of another federal agency (such as federally chartered or insured depository institutions).

Estimated annual hours burden: 2,500,000 hours, rounded to the nearest thousand (1,150,000 recordkeeping hours + 1,409,499 disclosure hours).

Recordkeeping: FTC staff estimates that Regulation B's general recordkeeping requirements affect 1,000,000 credit firms subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 1,000,000 hours. Staff also estimates that the requirement that creditors monitor information about race/national original, sex, age, and marital status imposes a maximum burden of one minute each [3] for approximately nine million credit applications (based on industry data regarding the approximate number of mortgage purchase and refinance originations), for a total of 150,000 hours. The total estimated recordkeeping burden is 1,150,000 hours.

Disclosure: Regulation B requires that creditors (*i.e.*, entities that regularly participate in the decision whether to extend credit under Regulation B) provide notices whenever they take adverse action. The Regulation also requires entities that extend various types of mortgage credit to provide a copy of the appraisal report to applicants and to notify them of their right to a copy of the report.

Regulation B applies to retailers, mortgage lenders, mortgage brokers, finance companies, Internet businesses, and others. Below is staff's best estimate of burden applicable to this highly broad spectrum of covered entities.

Disclosure	Setup/monitoring [1]			Transaction-related [2]			Total burden (hours)
	Respondents	Average burden per respondent (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	
Adverse action notices	1,000,000	.5	500,000	200,000,000	.25	833,333	1,333,333
Appraisal notices	22,000	.5	11,000	6,500,000	.25	27,083	38,083
Appraisal reports	22,000	.5	11,000	6,500,000	.25	27,083	38,083
Total							1,409,499

[1] With respect to appraisal notices and appraisal reports, the above figures assume that approximately half of applicable mortgage entities (.5 x 44,000, or 22,000 businesses) would not otherwise provide this information and thus would be affected.
[2] The above figures assume that half of applicable mortgage transactions (.5 x 13,000,000, or 6,500,000) would not otherwise provide the appraisal notices and reports and thus would be affected.

Estimated annual cost burden: $46,418,000, rounded to the nearest thousand.

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below ($50 for managerial or professional time, $20 for skilled technical time, and $10 for clerical time) are averages.

Recordkeeping: Staff estimates that the general recordkeeping responsibility of one hour per creditor would involve approximately 90 percent clerical time and 10 percent skilled technical time. Keeping records of race/national origin, sex, age, and marital status requires an estimated one minute of skilled technical time. As shown below, the total recordkeeping cost is $14,000,000.

Disclosure: For each notice or information item listed, staff estimates that the burden hours consist of 10 percent managerial time and 90 percent skilled technical time. As shown below, the total disclosure cost is $32,418,500.

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($50/hr.)	Time (hours)	Cost ($20/hr.)	Time (hours)	Cost ($10/hr.)	
General Recordkeeping	0	0	100,000	$2,000,000	900,000	$9,000,000	$11,000,000
Other Recordkeeping	0	0	150,000	3,000,000	0	0	3,000,000
Total Recordkeeping							14,000,000
Adverse action notices	133,333	$6,666,650	1,200,000	24,000,000	0	0	30,666,650
Appraisal notices	3,808	190,400	34,275	685,500	0	0	875,900
Appraisal reports	3,808	190,400	34,275	685,500	0	0	875,900

[3] Regulation B contains a model form the creditors may use to gather and retain the required information.

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($50/hr.)	Time (hours)	Cost ($20/hr.)	Time (hours)	Cost ($10/hr.)	
Total Disclosure							32,418,500
Total Recordkeeping and Disclosure							46,418,450

2. Regulation E

The EFTA requires accurate disclosure of the costs, terms, and rights relating to electronic fund transfer (EFT) services to consumers. Regulation E, 12 CFR 205, promulgated by the Board of Governors of the Federal Reserve System, establishes both recordkeeping and disclosure requirements applicable to entities providing EFT services to consumers. The FTC enforces the EFTA as to all entities providing EFT services except those that are subject to the regulatory authority of another federal agency (such as federally chartered or insured depository institutions).

Estimated annual hours burden: 3,580,000 hours (500,000 recordkeeping hours + approximately 3,080,000 disclosure hours).

Recordkeeping: Staff estimates that Regulation E's recordkeeping requirements affect 500,000 firms offering EFT services to consumers and subject to the Commission's jurisdiction, at an average burden of one hour per firm, for a total of 500,000 hours.

Disclosure: Regulation E applies to financial institutions (including certain retailers and electronic commerce entities), service providers, various federal and state agencies offering electronic fund transfers (EFTs), and others. Below is staff's best estimate of burden applicable to this highly broad spectrum of covered entities.

Disclosure	Setup/monitoring			Transaction-related			Total burden (hours)
	Respondents	Average burden per respondent (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	
Initial terms	100,000	.5	50,000	1,000,000	.02	333	50,333
Change in terms	25,000	.5	12,500	33,000,000	.02	11,000	23,500
Periodic statements	100,000	.5	50,000	1,200,000,00	.02	400,000	450,000
Error resolution	100,000	.5	50,000	1,000,000	5	83,333	133,333
Transaction receipts	100,000	.5	50,000	5,000,000,000	.02	1,666,667	1,716,667
Preauthorized transfers	500,000	.5	250,000	1,000,000	.25	4,167	254,167
Service provider notices	100,000	.25	25,000	1,000,000	.25	4,167	29,167
Govt. benefit notices	10,000	.5	5,000	100,000,000	.25	416,667	421,667
ATM notices [1]	500	.25	125	250,000	.25	1,041	1,166
Total							3,080,000

[1] Starting in 2001, ATM operators were required to provide certain notices to consumers regarding ATM fees. Generally, these notices must be provided on or at ATM machines and/or on paper before the consumer is committed to paying a fee.

Estimate annual cost burden: $76,240,000, rounded to the nearest thousand.

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below ($50 for managerial or professional time, $20 for skilled technical time, and $10 for clerical time) are averages.

Recordkeeping: For the 500,000 recordkeeping hours, staff estimates that 10 percent of the burden hours require skilled technical time and 90 percent require clerical time. As shown below, the total recordkeeping cost is $5,500,000.

Disclosure: For each notice or information item listed, staff estimates that 10 percent of the burden hours require managerial time and 90 percent require skilled technical time. As shown below, the total disclosure cost is $70,740,000.

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($50/hr.)	Time (hours)	Cost ($20/hr.)	Time (hours)	Cost ($10/hr.)	
Recordkeeping	0	$0	50,000	$1,000,000	450,000	$4,500,000	$5,500,000
Disclosure:							
Initial terms	5,033	$251,650	45,300	$906,000	0	$0	$1,157,650
Change in terms	2,350	117,500	21,150	423,000	0	0	540,500
Periodic statements	45,000	2,250,000	405,000	8,100,000	0	0	10,350,000
Error resolution	13,333	666,650	120,000	2,400,000	0	0	3,066,650
Transaction receipts	171,667	8,583,350	1,540,000	30,800,000	0	0	39,383,350
Preauthorized transfers	25,417	1,270,850	228,750	4,575,000	0	0	5,845,850
Service provider notices	2,917	145,850	26,250	525,000	0	0	670,850
Govt. benefit notices	42,167	2,108,350	379,500	7,590,000	0	0	9,698,350
ATM Notices	116	5,800	1,050	21,000	0	0	26,800

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($50/hr.)	Time (hours)	Cost ($20/hr.)	Time (hours)	Cost ($10/hr.)	
Total Disclosure							70,740,000
Total Recordkeeping and Disclosures							76,240,000

3. Regulation M

The CLA requires accurate disclosure of the costs and terms of leases to consumers. Regulations M, 12 CFR 213, promulgated by the Board of Governors of the Federal Reserve System, establishes disclosure requirements that assist consumers in comparison shopping and in understanding the terms of leases and recordkeeping requirements that assist enforcement of the CLA. The FTC enforces the CLA as to all lessors and advertisers except those that are subject to the regulatory authority of another federal agency (such as federally chartered or insured depository institutions).

Estimated annual hours burden: 279,000 hours, rounded to the nearest thousand (150,000 recordkeeping hours + 129,167 disclosure hours).

Recordkeeping: Staff estimates that Regulation M's recordkeeping requirements affect approximately 150,000 firms leasing products to consumers and subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 150,000 hours.

Disclosure: Regulation M applies to automobile lessors (such as auto dealers, independent leasing companies, and manufacturers' captive finance companies), computer lessors (such as computer dealers and other retailers), furniture lessors, various electronic commerce lessors, and diverse types of lease advertisers, and others. Below is staff's best estimate of burden applicable to his highly broad spectrum of covered entities.

Disclosure	Setup/Monitoring			Transaction-related			Total burden (hours)
	Respondents	Average burden per respondent (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	
Auto Leases[1]	50,000	.75	37,500	2,500,000	.50	20,833	58,333
Other Leases[2]	100,000	.50	50,000	1,000,000	.25	4,167	54,167
Advertising	25,000	.50	12,500	1,000,000	.25	4,167	16,667
Total							129,167

[1] This category focuses on consumer vehicle leases. Vehicle leasing has decreased in the past two years. Vehicle leases are subject to more lease disclosure requirements (pertaining to computation of payment obligations) than other lease transactions. (Only consumer leases for more than four months are covered.) See 15 U.S.C. 1667(1); 12 CFR 213.2(e)(1).

[2] This category focuses on all types of consumer leases other than vehicle leases. It includes leases for computers, other electronics, small appliances, furniture, and other transactions. (Only consumer leases for more than four months are covered.) See 15 U.S.C. 1667(1); 12 CFR 213.2(e)(1).

Estimated annual cost burden: $4,621,000, rounded to the nearest thousand.

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below ($50 for managerial or professional time, $20 for skilled technical time, and $10 for clerical time) are averages.

Recordkeeping: For the 150,000 recordkeeping hours, staff estimates that 10 percent of the burden hours require skilled technical time and 90 percent require clerical time. As shown below, the total recordkeeping costs is $1,650,000.

Disclosure: For each notice or information item listed, staff estimates that 10 percent of the burden hours require managerial time and 90 percent require skill technical time. As shown below, the total disclosure cost is $2,970,850.

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($50/hr.)	Time (hours)	Cost ($20/hr.)	Time (hours)	Cost ($10/hr.)	
Recordkeeping	0	$0	15,000	$300,000	135,000	$1,350,000	$1,650,000
Disclosures							
Auto Leases	5,833	$291,650	52,500	$1,050,000	0	$0	$1,341,650
Other Leases	5,417	270,850	48,750	975,000	0	0	1,245,850
Advertising	1,667	83,350	15,000	300,000	0	0	383,350
Total Disclosures							2,970,850
Total Recordkeeping and Disclosures							4,620,850

4. Regulation Z

The TILA was enacted for foster comparison credit shopping and informed credit decision making by requiring accurate disclosure of the costs and terms of credit to consumers. Regulation, Z, 12 CFR 226, promulgated by the Board of Governors of the Federal Reserve System, establishes both recordkeeping and disclosure requirements to assist consumers and the enforcement of the TILA. The FTC enforces the TILA as to all creditors and advertisers except those that are subject to the regulatory authority of another federal agency (such as federally chartered or insured depository institutions).

Estimated annual hours burden: 20,179,000 hours, rounded to the nearest thousand (1,000,000 recordkeeping hours + 19,178,749 disclosure hours).

Recordkeeping: FTC staff estimates that Regulation Z's recordkeeping requirements affect approximately 1,000,000 firms offering credit and subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 1,000,000 hours.

Disclosure: Regulation Z disclosure requirements pertain to open-end and closed-end credit. The Regulation applies to retailers (such as department stores, appliance stores, discount retailers, medical-dental service providers, home improvement sellers, and electronic commerce retail operators); mortgage companies; finance companies; credit advertisers; auto dealerships; student loan companies; home fuel or power services (for furnaces, stoves, microwaves, and other heating, cooling or residential power equipment); credit advertisers; and others. Below is staff's best estimate of burden applicable to this highly broad spectrum of covered entities.

Disclosure[1]	Setup/monitoring			Transaction-related			Total burden (hours)
	Respondents	Average burden per respondent (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	
Open-end credit:							
Initial terms	100,000	.5	50,000	50,000,000	.25	208,333	258,333
Rescission notices	10,000	.5	5,000	100,000	.25	417	5,417
Change in terms	25,000	.5	12,500	136,000,000	.125	283,333	295,833
Periodic statements	100,000	.5	50,000	4,800,000,000	.0625	5,000,000	5,050,000
Error resolution	100,000	.5	50,000	10,000,000	5	833,333	883,333
Credit and charge card accounts	100,000	.5	50,000	50,000,000	.25	208,333	258,333
Home equity lines of credit	10,000	.5	5,000	5,000,000	.25	20,833	25,833
Advertising	250,000	.25	62,500	700,000	.5	5833	68,333
Closed-end credit:							
Credit disclosures	800,000	.50	400,000	330,000,000	2	11,000,000	11,400,000
Rescission notices	100,000	.50	50,000	34,000,000	1	566,667	616,667
Variable rate mortgages	75,000	.50	37,500	1,800,000	2	60,000	97,500
High rate/high fee mortgages	50,000	.50	25,000	750,000	2	25,000	50,000
Reverse mortgages	50,000	.50	25,000	150,000	1	2,500	27,500
Advertising	500,000	.25	125,000	1,000,000	1	16,667	141,667
Total open-end credit							6,845,415
Total closed-end credit							12,333,334
Total credit							19,178,749

[1] In some areas, e.g., home equity lines of credit, companies have merged, changed their business focus, and/or have shifted that focus into areas not under the FTC's jurisdiction. Accordingly, staff's estimates account for a reduced number of respondents in these areas. Moreover, computer technology has further facilitated the disclosure process thereby lessening the average burden per respondent, particularly with regard to setup and monitoring.

Estimated annual cost burden: $452,111,000, rounded to the nearest thousand.

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below ($50 for managerial or professional time, $20 for skilled technical time, and $10 for clerical time) are averages.

Recordkeeping: For the 1,000,000 recordkeeping hours, staff estimates that 10 percent of the burden hours require skilled technical time and 90 percent require clerical time. As shown below, the total recordkeeping cost is $11,000,000.

Disclosure: For each notice or information item listed, staff estimates that 10 percent of the burden hours require managerial time and 90 percent require skilled technical time. As shown below, the total disclosure cost is $441,111,200.

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Required task	Managerial		Skilled Techincal		Clerical		Total cost ($)
	Time (hours)	Cost ($50/hr.)	Time (hours)	Cost ($20/hr.)	Time (hours)	Cost (10/hr.)	
Recordkeeping	0	$0	100,000	$2,000,000	900,000	$9,000,000	$11,000,000
Open-end credit Disclosures:							
Initial terms	25,833	$1,291,650	232,500	$4,650,000	0	$0	$5,941,650
Rescission notices	542	$27,100	4,875	$97,500	0	$0	$124,600
Change in terms	29,583	$1,479,150	266,250	$5,325,000	0	$0	$6,804,150
Periodic statements	505,000	$25,250,000	4,545,000	$90,900,000	0	$0	$116,150,000
Error resolution	88,333	$4,416,650	795,000	15,900,000	0	$0	$20,316,650
Credit and charge card accounts	25,833	$1,291,650	232,500	$4,650,000	0	$0	$5,941,650
Home equity lines of credit	2,583	$129,150	23,250	$465,000	0	$0	$594,150
Advertising	6,833	$341,650	61,500	$1,230,000	0	$0	$1,571,650
Total open-end credit							$157,444,500
Closed-end credit Disclosures:							
Credit disclosures	1,140,000	$57,000,000	10,260,000	$205,200,000	0	$0	$262,200,000
Rescission notices	61,667	$3,083,350	555,000	$11,100,000	0	$0	$14,183,350
Variable rate mortgages	9,750	$487,500	87,750	$1,755,000	0	$0	$2,242,500
High rate/high fee mortgages	5,000	$250,000	45,000	$900,000	0	$0	$1,150,000
Reverse mortgages	2,750	$137,500	24,750	$495,000	0	$0	$632,500
Advertising	14,167	$708,350	127,500	$2,550,000	0	$0	$3,258,350
Total closed-end credit							$283,666,700
Total Disclosures							$441,111,200
Total Recordkeeping and Disclosures							$452,111,200

William E. Kovacic,
General Counsel.
[FR Doc. 02–21117 Filed 8–19–02; 8:45 am]
BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[Docket No. 9299]

MSC.Software Corp.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations the complaint previously issued and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 13, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Joe Simons, or Richard Dagen, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3667 or (202) 326–2628.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 3.25(f) of the Commission's rules of practice, 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 14, 2002), on the World Wide Web, at *http://www.ftc.gov/os/2002/08/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*.

Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted for public comment an Agreement Containing Consent Order with MSC.Software Corporation ("MSC") to resolve matters charged in an Administrative Complaint issued by the Commission on October 9, 2001. The Agreement has been placed on the public record for thirty (30) days for receipt of comments from interested members of the public. The Agreement is for settlement purposes only and does not constitute an admission by MSC that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

I. The Commission's Complaint

The Complaint alleged that Respondent MSC.Software Corporation ("MSC") unlawfully acquired Universal Analytics, Inc. ("UAI") and Computerized Structural Analysis and Research Corporation ("CSAR") in 1999 in violation of section 7 of the Clayton Act and section 5 of the FTC Act. The Complaint alleged that the acquisitions may substantially lessen competition or lead to a monopoly in the market for advanced versions of Nastran, a public domain engineering simulation software program. Neither acquisition had been reportable under the Hart-Scott-Rodino reporting thresholds, 15 U.S.C. 18a.

MSC is the largest supplier of computer-aided engineering simulation software in the world. In 2001, its annual worldwide revenue was $236 million. MSC has an estimated 1350 employees located around the world. MSC has grown substantially through acquisitions, having acquired six other engineering software vendors or resellers since 1998. MSC is a publicly-traded company.

The Complaint alleged that MSC, UAI, and CSAR had long been vigorous competitors, each offering an advanced version of Nastran to customers in the aerospace, automotive and other industries. These competing versions of advanced Nastran all derived from a program originally developed by NASA and placed into the public domain. The common origin of these three advanced Nastran versions made switching between them relatively easy. For these reasons, UAI Nastran and CSAR Nastran were close substitutes for MSC.Nastran. Non-Nastran solvers, however, were more distant substitutes. The Complaint alleged that competition among the three advanced Nastran suppliers helped to hold down prices and to promote product innovation.

The Complaint further alleged that MSC was the dominant supplier of advanced versions of Nastran, with an estimated 90 percent of worldwide Nastran revenue. Prior to MSC's acquisitions, UAI and CSAR were the only other firms offering advanced versions of Nastran. They held substantially smaller market shares. Each had about five percent of worldwide advanced Nastran revenues.

The Complaint alleged that the acquisitions were anticompetitive because they increased the level of concentration in already highly concentrated markets. The Complaint further charged that the acquisitions eliminated competition on price and product development and enhancements, created or enhanced MSC's power to raise prices above a competitive level or to withhold or delay product development and enhancements, and prevented the increased competition that MSC expected if other suppliers of engineering software were to acquire UAI and CSAR. Even if other solvers offering advanced analysis capabilities were included in the market, the markets remain highly concentrated and the acquisitions anticompetitive. The Complaint also alleged that MSC's acquisitions were unlawful in separate markets that exist for specific industries or customer categories. According to the Complaint, the appropriate geographic market in which to analyze MSC's acquisitions is the world, although a U.S. market may also exist.

The Complaint also alleged that MSC's acquisitions constitute unlawful monopolization and an attempt to monopolize in violation of section 5 of the FTC Act. It further alleged that MSC's dominant market share prior to and after the acquisitions satisfied the showing required for monopoly power and dangerous probability of success. Moreover, the Complaint alleged that MSC acted willfully and with the specific intent to obtain and maintain a monopoly in the market for advanced versions of advanced Nastran when it made the acquisitions.

The Complaint further charged that entry is not likely, nor, if it did occur, would it likely be timely or sufficient to prevent the anticompetitive effects of the acquisitions.

II. Terms of the Proposed Consent Order

The proposed Order would provide relief for the alleged anticompetitive effects of the acquisitions principally by means of a divestiture intended to restore competition. In addition, the proposed Order contains further provisions intended to facilitate the restoration of competition.

Divestiture. The principal relief under the proposed Order is to require the Respondent to divest, within 150 days after entry of the Order and up to two acquirers to be approved by the Commission, perpetual, worldwide, royalty-free, and non-exclusive licenses to the key intellectual property needed by a new competitor to compete in the sale and licensing of advanced Nastran software. ¶ II.A. The licensed intellectual property rights would consist of the version of MSC.Nastran that is most current as of the date that the Consent Agreement is accepted for public comment by the Commission, as well as all the intellectual property rights acquired by MSC in the two challenged acquisitions. ¶ I.L.1

The licenses would permit the acquirer (or acquirers) to use the licensed rights to sell advanced Nastran software, sublicense others without restriction, and prepare derivative works so as to further develop and enhance the software without further remuneration to MSC once the divestiture is completed. the licenses granted would be non-exclusive, meaning that MSC would continue to retain full rights itself to the licensed intellectual property. ¶ II.A. The basic approach reflected in the settlement, therefore, is to replicate in the hands of the acquirer(s) the crucial intellectual property held by MSC in the aftermath of the challenged acquisitions.

The Order language providing for divestiture "up to two" acquirers tracks the language of the Notice of Contemplated Relief accompanying the Complaint. It reflects MSC's removal of two independent competitors from the marketplace through the challenged acquisitions. The language is intended to leave open to the Commission the option of requiring that two competitors be re-established.

Purpose. Paragraph II.C. of the proposed Order contains a recitation of the Commission's purpose in ordering the divestiture. That provision recites that the purpose of the divestiture is to remedy the lessening of competition alleged in the complaint by establishing one or more viable and effective competitors to MSC engaged in the sale, distribution and licensing of advanced Nastran software for use by customers,

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including customer sin the aerospace and automotive industries, and with the ability to engage in further development and enhancement of advanced Nastran software. It states that, in determining whether the licensing of more than one acquirer may be required, or whether to approve the grant of a license to a particular prospective acquirer, the Commission will consider, among other things, the likely future capability of the prospective acquirer or acquirers to provide effective price and innovation competition to MSC. It also recites that the Commission will consider as well, among other things, any provisions for the hiring by the acquirer(s) of personnel knowledgeable concerning the design, development, maintenance, customer support, sales and marketing of the licensed rights.

The Software To Be Licensed. The intellectual property to be licensed includes all rights relating to the version of MSC.Nastran that is most current as of the date the consent agreement is accepted by the Commission for public comment. ¶ I.L.1.a. Diverstiture of rights to MSC's current version of MSC Nastran is a necessary remedial measure to facilitate the re-establishment of the competition that MSC allegedly eliminated with its two acquisitions. Such divestiture addresses the switching of former UAI and CSAR customers to MSC's own version of advanced Nastran, including former UAI and CSAR customers who may have adapted their prior procedures and customer-written software routines to the MSC version. In addition, such divestiture addresses the fact that MSC has incorporated new features in its releases of MSC.Nastran, including features taken from the CSAR and UAI versions acquired in 1999, and has not carried on any further development of the UAI and CSAR versions of Nastran following the acquisitions. Divestiture of the acquired assets alone would not restore the competitive conditions that existed before the acquisitions (the *status quo ante*), because the 3-year old UAI and CSAR codes are no longer as commercially viable as they were when MSC acquired them. Licensing of the current version of MSC.Nastran is required to give the acquirer or acquirers what UAI and CSAR formerly had: An up-to-date product upon which to base sales and future development efforts.

In addition to the current version of MSC.Nastran, MSC is also required to license to the acquirer(s) all of the intellectual property acquired in the UAI and CSAR acquisitions. ¶ I.L.1.b. and –.c. This relief is integral to the fundamental approach reflected in the settlement, which is to replicate in the hands of the acquirer(s) the intellectual property held by MSC in the aftermath of the challenged acquisitions. Licensing all the UAI and CSAR computer codes (in addition to MSC.Nastran) is justified to permit an acquirer(s) to offer all the computer codes formerly available from UAI and CSAR, including the ability to select aspects of the UAI Nastran and CSAR Nastran codes for possible inclusion in its future advanced Nastran product that have not been incorporated in MSC.Nastran since the acquisitions.

The Order details a broad range of intellectual property rights to be licensed to the acquirer(s). See ¶ I.L.2. In addition to the licensed intellectual property and physical or electronic copies embodying the intellectual property, MSC is also required to divest copies of other materials useful to an acquirer in establishing itself as a competitor to MSC. These include all of the customer files acquired by MSC as a result of the challenged acquisitions, as well as all marking information, sales training materials, and current (as of the divestiture date) customer lists, customer contact information, and customer support log database contents relating to customers who use MSC.Nastran in the United States. ¶ I.E.2. The latter information should be of particular use by an acquirer that may wish to differentiate itself from MSC by its responsiveness to customer needs. In the past, both UAI and CSAR used such tactics to compete against MSC.

Post-Divestiture Rights. In addition to the licensed rights describe above, the Order provides for further rights by the acquirer(s) in the post-divestiture period:

For twelve months after the divestiture date, the acquirer has the right to obtain from MSC ongoing support with respect to MSC.Nastran, in the form of personnel, information, technical assistance, advice and training. This includes reasonable consultation with knowledgeable employees of MSC to ensure that the acquirer's personnel can maintain, develop and support the Licensed Rights in a manner comparable to MSC. This continuing support does not extend to the licensed UAI and CSAR intellectual property, and will be provided at MSC's direct cost. ¶ I.K.4. This continuing support obligation complements the hiring opportunities afforded to the acquirer under other provisions of the Order discussed below.

For not less than three years after the divestiture date, the acquirer has the right to use the trademarks or trade names of the licensed software for the purpose of identifying the acquirer as a licensee from MSC. The acquirer does not otherwise obtain any rights of any kind to the name "MSC" or "MSC.Nastran" or related logos and trademarks of MSC. ¶ I.K.4.

Hiring of MSC Personnel. In order to ensure the ability of the acquirer to provide effective competition, the Order contains procedures to facilitate the acquirer's hiring of valuable MSC personnel. ¶ V. In the aftermath of the acquisitions, MSC was essentially the only employer of computer programmers with thorough knowledge of the proprietary versions of advanced Nastran. The future success of the acquirer in providing ongoing innovation competition in developing advanced Nastran may depend to a significant degree on its hiring of personnel (particularly programmers and customer support engineers) with knowledge of this large and complex body of computer code.

Customer Contracts. Prior to the acquisitions, most of MSC's advanced Nastran customer purchased the software on an annual lease basis—that is, for one-year terms with annual payments and in quantities determined according to annual needs. In the aftermath of the acquisitions, and especially in the 2001–2002 period, many customers converted annual leases for advanced Nastran to "paid-up" licenses—that is, licenses to use the software for an extended term, generally 25 years, for a larger advance payment and continuing maintenance fees during the contract term. This conversion may disadvantage future advanced Nastran competitors who may no longer have access to these customers at competitive prices.

To address the effect of these conversions on the acquirer's ability to attract a customer base, the proposed Order provides that, for a period of one year after the divestiture date, any customer who was converted from an annual lease to a paid-up license for MSC.Nastran in the period since the acquisitions has the right to terminate or rescind its license in whole or in part in order to deal with the acquirer. If a customer chooses to do so, MSC is required to refund or return a pro rata portion of the consideration paid in advance for its paid-up MSC.Nastran license. ¶ VII.A. The Order also provides that MSC is to provide affected customers with written notice of such rights within fourteen days following the divestiture date. ¶ VII.B.

The formula for such refunds bases the pro-rata allocation on the lesser of four years or the contract term. ¶ VII.A. This refund formula should provide substantial incentive for affected customers to consider switching to the acquirer in whole or in part. Under this formula, customers who converted to a paid-up license since mid-year 2001 and who determine to switch to the acquirer at mid-year 2003 will be entitled to a refund of one-half or more of their advance payment for the paid-up MSC.Nastran license.

Although these provisions authorize refund payments by MSC to some customers, they are neither a penalty nor disgorgement. Their purpose is not to punish MSC or deprive it of ill-gotten gains. Rather, the provisions are in furtherance of the principal divestiture relief provided under the Order. They are intended to remove any penalty or disincentive on customers who had no alternative to MSC's terms after 1999, but who might now consider doing business with the acquirer of the divested assets. Indeed, no payment will be due from MSC to a customer unless and until the customer chooses to do business with the acquirer.

Post Divestiture Conduct. The Order includes provisions intended to prevent MSC from disadvantaging the acquirer in its post-divestiture dealings with customers or suppliers.

Advanced Nastran software is used in conjunction with other complementary software. Complementary software includes programs known as "pre- and post-processors" or "meshers" that are used to process input to or output from advanced Nastran and make it useful with other computer data, such as designs produced by CAD software. Complementary software of this sort is produced by various suppliers and by MSC itself. The Order requires MSC, for three years after the divestiture date, to maintain the interoperability of the current and any future versions of MSC's complementary software (including but not limited to its product MSC.Patran) with the licensed software (¶ VIII.A); and prohibits MSC from influencing a supplier of complementary software or services to refuse to deal with the acquirer or stop supporting interoperability with any of the licensed software (¶ VIII.B.).

During the same three-year period, MSC is required to maintain all current input and output file formats for MSC.Nastran. This is to ensure that users of MSC.Nastran would not be impeded or penalized in their use of models, files, or complementary software if they switched to the version of advanced Nastran offered by the acquirer. ¶ VII.C. The Order also requires that MSC not refuse to deal with any customer or prospective customer for the reason, in whole or in part, that such customer or prospective customer deals with the acquirer. ¶ VIII.D. The latter provision is intended to prevent MSC from inhibiting the pre-acquisition practice of many customers to maintain simultaneous licenses for more than one source of advanced Nastran software.

Prior Notice of Future Acquisitions. For a period of ten years, the Order requires MSC to provide prior notice of future acquisitions of any entity engaged in the development or sales of any version of Nastran. ¶IX. This provision is warranted under existing Commission policy because of the risk that MSC may in the future carry out anticompetitive acquisitions that otherwise would not come to the attention of the Commission because the transactions are likely to fall below the Hart-Scott-Rodino reporting thresholds. See Statement of FTC Policy Concerning Prior Approval and Prior Notice Provisions (June 21, 1995.

Monitor, Trustee and Reporting. The proposed Order contains standard monitor and trustee provisions. The Monitor provisions, set out in Paragraph III, authorize appointment of a person to oversee MSC's compliance with the terms of the Order. Such a monitor is warranted in light of the technical nature of the products at issue and the potential complexity of some compliance issues, including employee hiring and customer refunds. The trustee provisions, set out in Paragraph IV, contemplate appointment of a trustee to complete the required divestiture if MSC does not do so within the 150 days specified in the Order. Under these provisions, the Commission will appoint a trustee who will undertake to accomplish the required divestiture at no minimum price. The trustee will have one year to complete the divestiture. Finally, the proposed Order contains provisions for MSC to file regular reports concerning its compliance with the Order terms. ¶X.

III. Opportunity for Public Comment

The Proposed Order has been placed on the public record for 30 days in order to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Agreement and comments received, and will decide whether it should withdraw from the Agreement or make final the Order contained in the Agreement.

By accepting the Proposed Order subject to final approval, the Commission anticipates that the competitive issues described in the Complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the Proposed Order. It is not intended to constitute an official interpretation of the Agreement and Proposed Order or to modify their terms in any way.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

Statement of Commissioner Mozelle W. Thompson

The Commission today accepted a consent agreement to resolve the Commission's administrative complaint against MSC.Software. I voted to accept the agreement; however, I am concerned that industry and the private bar do not mistakenly make too much of the fact that the Commission did not require an up-front buyer for this licensing divestiture.

As a general rule, the Commission is more likely to require that parties present up-front buyers for assets when divesting less than an ongoing business. In this unique case, however, the Commission decided to resolve its concerns about MSC.Software's two consummated acquisitions by accepting an order requiring a prompt divestiture to restore lost competition, instead of potentially delaying relief further by first forcing MSC.Software to negotiate an asset sale to a potential buyer. The Commission makes such remedial assessments on a case-by-case basis, and such assessments would likely vary between relief proscribed for consummated mergers and relief for mergers prior to their consummation under Hart-Scott-Rodino reviews—the vast majority of Commission merger work. I am comfortable with the remedial action in this particular instance because the Commission has fully vetted the divestiture package's market acceptability with industry incumbents. Thus, I am fully confident that the asset package will function successfully in the marketplace and facilitate viable competition.

[FR Doc. 02–21118 Filed 8–19–02; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Notice of Availability; Environmental Assessment and Finding of No Significant Impact for the Proposed Master Development Plan for the U.S. Consumer Product Safety Commission, Gaithersburg, MD

AGENCY: Office of Portfolio Management, General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration is publishing a Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the Proposed Master

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Development Plan for the U.S. Consumer Product Safety Commission in Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Hall, Office of Portfolio Management, WPT, General Services Administration, NCR, 7th and D Streets, SW., Washington, DC, 20407; (202) 401–2354; e-mail at *ernest.hall@hsa.gov*.

SUPPLEMENTARY INFORMATION: The notice of availability is as follows:

Notice of Availability; Environmental Assessment and Finding of No Significant Impact for the Proposed Master Development Plan for the U.S. Consumer Product Safety Commission, Gaithersburg, Maryland

Reply to the Attention of: Mr. Ernest Hall, Office of Portfolio Management, WPT, General Services Administration, NCR, 7th & D Streets, SW., Washington, DC 20407. (202) 401–2354. E-mail: *ernest.hall@hsa.gov*.

The General Services Administration (GSA) is publishing a Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the Proposed Master Development Plan for the U.S. Consumer Product Safety Commission (CPSC) in Gaithersburg, Maryland. The Final EA will be available for public review at the following locations:

GSA National Capital Region, 301 7th Street, SW., Room 7600, Washington, DC 20407.

The Gaithersburg Library, 8660 Montgomery Village Avenue, Gaithersburg, Maryland 20877.

Gaithersburg City Hall, 31 South Summit Avenue, Gaithersburg, MD 20877.

The GSA, acting as development manager for Federal facilities, proposed to adopt a Master Development Plan for the U.S. CPSC National Laboratory in Gaithersburg, Maryland. The plan includes a proposal to construct a Sample Storage Facility on the southeast quadrant of the site and to renovate and expand existing facilities. The proposed action would consist of constructing an 18,000 square foot Sample Storage Facility on the southeast quadrant of the site, and upgrading Buildings A, B, and C to meet CPSC specifications, including adding a connector between Buildings B and C. Interior renovations are required for Buildings E, F, G, and H to bring all aspects of the buildings up to current code requirements. Two additional small burn room areas will be added to the west end of Building G. The proposed action would also include relocating existing water lines, sewer lines, and electrical ducts.

When compared to the other build alternatives in the Final EA, the proposed action would result in the least amount of changes to the site, is the least costly to implement, and best meets CPSC's long-range needs. The proposed action will incorporate measures such as enhanced landscaping and a stormwater detention area to mitigate any permanent aesthetic or stormwater impacts of the proposed development and expansions/renovations.

Finding

Pursuant to the provision of GSA Order ADM 1095.1F, the PBS NEPA Desk Guide, and the regulations issued by the Council of Environmental Quality, (40 CFR parts 1500 to 1508), this is to advise you of our finding, based on the Final Environmental Assessment (EA), that the action described above is considered a major Federal action not significantly affecting the quality of the human environment.

Basis for Finding

The environmental impacts of constructing and operating the proposed facilities were considered in the Final EA pursuant to the National Environmental Policy Act (NEPA). The Final EA, which is available for review at the locations listed on page 1, is incorporated by reference in the FONSI. Constructing and operating the proposed project will not have a significant adverse affect on the human environment.

The EA documents the master planning process undertaken for the future use of the site. The direct, indirect, and cumulative impacts of the three build alternatives and the no action alternative were analyzed in accordance with the NEPA, and the Council on Environmental Quality (CEQ) regulations implementing NEPA. The Final EA analyzes the reasonably foreseeable environmental impacts that could result from the three build alternatives and the no action alternative.

Regardless of which build alternative is selected, all alternatives would involve temporary construction disturbances to the ambient air and noise environment, soils, and stormwater runoff from the site. However, Alternative 2 would involve substantially greater disruption affecting the entire site over a longer period of time. Alternative 3 would involve reducing the existing landscaping. Under the preferred alternative, improvements would affect less than ¼ of the existing site and will incorporate measures such as enhanced landscaping and a stormwater detention area to mitigate any permanent aesthetic or stormwater effects of the proposed CPSC development and renovations. To mitigate potential impacts, GSA will implement the measures that are discussed in the Environmental Assessment.

This Finding of No Significant Impact will become final thirty (30) days after publication in the **Federal Register** provided that no information leading to a contrary finding is received or comes to light during the 30-day public review period.

Donald C. Williams,

Regional Administrator, National Capital Region, U.S. General Services Administration.

[FR Doc. 02–21072 Filed 8–19–02; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security.

Time and Date: 9 a.m. to 5 p.m., August 28, 2002. 9 a.m. to 3 p.m., August 29, 2002.

Place: Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW,, Washington, DC.

Status: Open.

Purpose: The Subcommittee on Standards and Security plans to solicit testimony from a panel of invited experts in medical terminologies to help the Committee define the scope and the criteria for recommendations on the selection of Patient Medical Record Information (PMRI) terminologies under the Health Insurance Portability and Accountability Act (HIPAA). On the second day the Subcommittee will hear from an expert panel about recent initiatives in the public and private sectors aimed at promoting and coordinating national activities for health data standards in support of achieving system interoperability and data comparability in order to meet clinical and public health needs. Additional general topics will include procedure codes and future health data standards recommendations to the HHS Secretary.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Karen Trudel, Senior Technical Advisor, Security and Standards Group, Centers for Medicare and Medicaid Services, MS: C5–24–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, telephone: 410–786–9937; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Dated: August 2, 2002.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 02–21057 Filed 8–19–02; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–45–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

The National Health and Nutrition Examination Survey (NHANES) (OMB No. 0920–0237)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). The National Health and Nutrition Examination Survey (NHANES) has been conducted periodically since 1970 by the National Center for Health Statistics, CDC. The current cycle of NHANES began in February 1999 and will now be conducted on a continuous, rather than periodic, basis. About 5,000 persons will be examined annually. They will receive an interview and a physical examination. Participation in the survey is completely voluntary and confidential.

NHANES programs produce descriptive statistics which measure the health and nutrition status of the general population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States. NHANES monitors the prevalence of chronic conditions and risk factors related to health such as coronary heart disease, arthritis, osteoporosis, pulmonary and infectious diseases, diabetes, high blood pressure, high cholesterol, obesity, smoking, drug and alcohol use, environmental exposures, and diet. NHANES data are used to establish the norms for the general population against which health care providers can compare such patient characteristics as height, weight, and nutrient levels in the blood. Data from NHANES can be compared to those from previous surveys to monitor changes in the health of the U.S. population. NHANES will also establish a national probability sample of genetic material for future genetic research for susceptibility to disease.

Users of NHANES data include Congress; the World Health Organization; Federal agencies such as NIH, EPA, and USDA; private groups such as the American Heart Association; schools of public health; private businesses; individual practitioners; and administrators. NHANES data are used to establish, monitor, and evaluate recommended dietary allowances, food fortification policies, programs to limit environmental exposures, immunization guidelines and health education and disease prevention programs. The estimated annualized burden for this data collection is 56,457 hours.

Respondent	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
1. Screening interview only	13,333	1	0.120
2. Screener and family interviews only	500	1	0.400
3. Screener, family, and SP interviews only	882	1	1.020
4. Screener, family, and SP interviews and primary MEC exam only	5,000	1	6.020
5. Screener, household, and SP interviews, primary MEC exam and full MEC replicate exam	248	1	11.020
6. Home exam	75	1	1.850
7. Interview verification	1,333	1	0.080
8. Hepatitis C follow-up study	67	1	0.500
9. PSA follow-up study	175	1	0.500
10. Second Dietary Recall	4,653	1	0.500
11. Activity Monitor	3,000	1	0.750
12. Optional Telephone follow-up study	2,000	1	0.500
13. Optional Puerto Rican study	2,500	1	6.020

Dated: August 13, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–21050 Filed 8–19–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–44–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written

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comments should be received within 30 days of this notice.

Proposed Project

National Nursing Home Survey (OMB No. 0920–0353)—Reinstatement with Change—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). Section 306 of the Public Health Service Act states that the National Center for Health Statistics "shall collect statistics on health resources * * * [and] utilization of health care, including utilization of * * * services of hospitals, extended care facilities, home health agencies, and other institutions." The data system responsible for collecting this data is the National Health Care Survey (NHCS). The National Nursing Home Survey (NNHS) is part of the Long-term Care Component of the NHCS. The NNHS was conducted in 1973–74, 1977, 1985, 1995, 1997, and 1999. NNHS data describe a major segment of the long-term care system and are used extensively for health care research, health planning and public policy. NNHS provides data on the characteristics of nursing homes in relation to their residents and staff, Medicare and Medicaid certification, basic rates for Medicaid and private pay residents, sources of payment, residents' functional status and diagnoses. The survey provides detailed information on utilization patterns and quality of care that is needed in order to make accurate assessments of the need for and effects of changes in the provision and financing of long-term care for the elderly. The use of long-term care services is becoming an increasingly important issue as the number of elderly increases and persons with disabilities live longer. Data from the NNHS have been used by the National Immunization Program at CDC, the Office of the U.S. Attorney General, the Bureau of Health Professionals at the Health Resources and Services Administration, the National Institute of Dental and Craniofacial Research at the National Institutes of Health, the Agency for Healthcare Research and Quality, the American Health Care Association, Johnson and Johnson Pharmaceutical, the Rand Corporation, AARP, National Academy of Social Insurance, and by newspapers and journals. NCHS plans to conduct the next NNHS in September–December 2003. This national survey will be preceded by a pretest of forms and procedures in January–February 2003. The data collection forms and procedures have been extensively revised from the previous NNHS. The 2003 NNHS will be based on computer-assisted personal interview (CAPI) methodology. The estimated annualized burden for this data collection is 31,258 hours.

Pretest

Forms	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
Facility Questionnaire	100	1	20/60
Nursing Home Staff Questionnaire	100	1	2.5
Current Resident Sampling List	100	1	20/60
Current Resident Questionnaire	100	8	25/60
Discharged Resident Sampling List	100	1	15/60
Discharged Resident Questionnaire	100	8	25/60

Full Survey

Forms	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
Facility Questionnaire	3,000	1	20/60
Nursing Home Staff Questionnaire	3,000	1	2.5
Current Resident Sampling List	3,000	1	20/60
Current Resident Questionnaire	3,000	8	25/60
Discharged Resident Sampling List	3,000	1	15/60
Discharged Resident Questionnaire	3,000	8	25/60

Dated: August 13, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–21051 Filed 8–19–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, National Center for Environmental Health (NCEH): Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee to the Director, National Center for Environmental Health, Centers for Disease Control and Prevention of the Department of Health and Human Services, has been renewed for a 2-year period extending through August 2, 2004.

FOR FURTHER INFORMATION CONTACT: Kent Taylor, Acting Executive Secretary, NCEH, 4770 Buford Highway, N.E., m/s F–29, Atlanta, Georgia 30341–3724. Telephone 770/488–7020, or fax 770/488–7024, e-mail *KXT1@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 14, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–21082 Filed 8–19–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee (SRSHES)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee (SRSHES).

Times and Dates:
8 a.m.–4:30 p.m., September 5, 2002
8 a.m.–11:45 a.m., September 6, 2002

Place: Crowne Plaza, 130 Shipyard Drive, Hilton Head Island, South Carolina 29928, telephone 843–842–2400, fax 843–842–9972.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, and replaced by MOUs signed in 1996 and 2000, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992, 1996, and in 2000, between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community interaction and to serve as a vehicle for community concerns to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include: Savannah River Site (SRS) Monitoring Program and Annual Environmental Report; Georgia Department of Health Monitoring Program at SRS; South Carolina Department of Health Monitoring Program at SRS; and ATSDR/Tritium Health Consult on Potential Tritium Exposures at SRS. Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Phillip Green, Executive Secretary, SRSHES, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 1600 Clifton Road, NE (E–39), Atlanta, Georgia 30333, telephone (404) 498–1800, fax (404) 498–1811, e-mail *PGreen@cdc.gov*.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Phillip Green at least ten (10) working days before the scheduled date of the meeting.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: August 14, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–21085 Filed 8–19–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02223]

The Effect of Trichomonas vaginalis Infection on Vaginal Virus Loads Among HIV-Infected Women—Tulane University Health Sciences Center; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a grant program, "The Effect of Trichomonas vaginalis Infection on Vaginal Virus Loads among HIV-Infected Women" to be performed by Tulane University Health Sciences Center, School of Public Health and Tropical Medicine.

Detection and treatment of Trichomonas vaginalis (T. vaginalis) among HIV-infected women may be an important public health strategy in reducing the spread of HIV infection. This is of profound public health importance, as it would advance medical knowledge in the relationship between T. vaginalis (the most common non-viral STD among HIV-infected women) and vaginal shedding of the HIV virus.

The study may lead to a determination of whether or not the effective treatment of T. vaginalis would result in a reduction in the spread of HIV. This study falls under the public health initiative Human Immunodeficiency Virus (HIV) Prevention.

B. Eligible Applicant

Assistance is provided only to Tulane University Health Sciences Center, School of Public Health and Tropical Medicine. Tulane's application contained an important and unique scientific proposal that was not submitted in response to any existing program announcement, but does fall under the embrace of the Government's public health initiative Human Immunodeficiency Virus (HIV) Prevention. The research team at Tulane has a strong background in conducting similar studies. They are the largest provider of care to women co-infected with HIV and T. vaginalis in the gulf south region. They have the research, clinical, and laboratory expertise needed to conduct such a study. The CDC Division of Sexually Transmitted Disease Prevention (DSTD) performed a thorough review of Tulane's proposal and determined that it would significantly advance the state of medical knowledge, and provide a unique contribution to the understanding of T. vaginalis and HIV infectivity.

C. Funds

Approximately $149,979 is being awarded in FY 2002. The award will begin on or about September 15, 2002, and will be made for a 24-month budget period within a project period of two years.

D. Where To Obtain Additional Information

Business management technical assistance may be obtained from: William J. Ryan, Jr., Grants Management Officer, Procurement and Grants Office,

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Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number 770–488–2717, e-mail address: *wfr4@cdc.gov.*

For program technical assistance, contact: Emily Koumans, MD, Division of STD Prevention, Centers for Disease Control and Prevention, NCHSTP/DSTD, 10 Corporate Square Blvd, Atlanta, GA 30329, Telephone number 404–639–8870, e-mail address: *svs5@cdc.gov.*

Dated: August 13, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–21080 Filed 8–19–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

A Public Health Action Plan To Combat Antimicrobial Resistance (Part II: Global Issues): Meeting for Public Comment on Development of Part II of the Action Plan (Global Issues)

The Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), and National Institutes of Health (NIH) announce an open meeting concerning antimicrobial resistance.

Name: A Public Health Action Plan To Combat Antimicrobial Resistance (Part II: Global Issues): Meeting for Public Comment on the Development of Part II of the Action Plan (Global Issues).

Time and Date: 8:30 a.m.–3:30 p.m., September 26, 2002.

Place: Manchester Grand Hyatt, Manchester Ballroom A & B, 8120 One Market Place, San Diego, California, 92101, U.S.A. Tel: 619–232–1234; Fax: 619–232–5678.

Status: Open to the public, interested experts who are citizens of the United States or other countries are welcomed and encouraged to attend. Limited only by the space available.

Purpose: To solicit comments to aid in the development of A Public Health Action Plan to Combat Antimicrobial Resistance (Part II: Global Issues). The Action Plan serves as a blueprint for specific actions of U.S. government agencies to address the global problem of antimicrobial resistance.

Matters to be Discussed: The agenda will consist of welcome and introductory comments, focusing on the three areas that comprise Part II of the Action Plan, lasting about 90 minutes. The three focus areas are: Surveillance, Prevention and Control, and Research. Breakout groups will then meet to discuss each focus area for approximately 3 hours. Following lunch, the entire group will reconvene for a concluding plenary session lasting approximately 2 hours.

Comments and suggestions from the public for Federal agencies related to each of the focus areas will be taken under advisement by the Antimicrobial Resistance Interagency Task Force. The agenda does not include development of consensus positions, guidelines, or discussions or endorsement of specific commercial products.

The Action Plan (Part I: Domestic Issues) is available at *http://www.cdc.gov/drugresistance.* The public meeting is sponsored by the CDC, FDA, and NIH in collaboration with eight other Federal agencies and departments involved in developing and writing A Public Health Action Plan to Combat Antimicrobial Resistance (Part II: Global Issues).

Agenda items are subject to change as priorities dictate.

Limited time will be available for oral questions, comments, and suggestions from the public. Depending on the number wishing to comment, a time limit may be imposed. In the interest of time, visual aids will not be permitted, although written material may be submitted for subsequent review by the Task Force. Written comments and suggestions from the public are encouraged and should be received by the contact person or email listed below prior to the opening of the meeting or no later than the end of October 2002.

Persons who anticipate attending the meeting are requested to send written notification to the contact person below by September 23, 2002, including name, organization (if applicable), address, phone, fax, and email address.

Contact Person for More Information: Ms. Vickie Garrett, Antimicrobial Resistance, Office of the Director, NCID, CDC, Mailstop C–12, 1600 Clifton Road, NE., Atlanta, GA 30333; telephone 404–639–2603; fax 404–639–4197; or e-mail *aractionplan@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 14, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–21083 Filed 8–19–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Clinical Laboratory Improvement Advisory Committee (CLIAC).

Times and Dates:

8:30 a.m.–5:00 p.m., September 11, 2002.
8:30 a.m.–3:30 p.m., September 12, 2002.

Place: CDC, Koger Center, Williams Building, Conference Rooms 1802 and 1805, 2877 Brandywine Road, Atlanta, Georgia 30341.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact on medical and laboratory practice of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters To Be Discussed: The agenda will include updates from CDC, the Food and Drug Administration, and the Centers for Medicare & Medicaid Services; a report on the Coordinating Council for Clinical Laboratory Workforce's April 2002 meeting and subsequent activities; reports from several organizations on healthcare workforce issues; Department of Health and Human Services' bioterrorism preparedness and response activities; a report on the Secretary's Advisory Committee on Genetic Testing May 2002 meeting; genetics testing survey results from the Pacific Northwest Sentinel Network; and an update on plans for the April 2003 Quality Institute.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Rhonda Whalen, Chief, Laboratory Practice Standards Branch, Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE, Mailstop F–11, Atlanta, Georgia 30341–3724, telephone 770/488–8042, fax 770/488–8279.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 14, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–21081 Filed 8–19–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Public Meeting/Opportunity for Public Comment: Healthy People 2010 Tobacco Objectives

AGENCY: Department of Health and Human Services, Centers for Disease Control and Prevention Office on Smoking and Health.

DATE AND TIME: November 18, 2002, 1 p.m. to 4 p.m.

PLACE: Hilton San Francisco, 333 O'Farrell Street, San Francisco, CA 94102, telephone 415/771–1400.

SUMMARY: The Healthy People 2010 Tobacco Workgroup is convening a meeting and soliciting comments on progress towards meeting the Healthy People 2010 tobacco objectives. The meeting is scheduled immediately prior to the 2002 National Conference on Tobacco or Health. The meeting is open to the public and will allow attendees of the Conference and other interested parties an opportunity to provide input to the Healthy People 2010 Tobacco Workgroup. Individuals and organizations are encouraged to comment on the Healthy People 2010 tobacco objective progress in one or both of the following ways: (1) In writing, by submission through the mail, or e-mail; (2) In person, at a public meeting that will be convened in San Francisco, CA.

STATUS: Open to the public, limited only by the space available. Comments will also be accepted during the public meeting. If you would like to attend the public meeting, you are encouraged to register early by providing your name, title, organization name, address, and telephone number to Monica Swann (address below). If you would like to speak at the meeting, please notify Monica Swann when you register. The U.S. government encourages individuals to submit written comments, either electronically or by mail. Comments also will be accepted during the meeting. Written comments may be submitted until December 27, 2002. Comments can be submitted by mail or electronically (electronic submissions are encouraged).

ADDRESSES: To submit electronic comments, send via e-mail to *Healthypeople@cdc.gov.* To submit comments by mail, send to: Healthy People 2010 Tobacco comments (Attn: Ms. Monica Swann), Office on Smoking and Health, 200 Independence Ave., Room 317-B, Washington, DC 20201.

SUPPLEMENTARY INFORMATION: Healthy People 2010 is a decade-long national initiative based on science, data and policy which aims to improve health, and includes federal and state government and many other diverse stakeholders, and reflects the complexity of the health structure in the United States. There are 28 health topics including tobacco.

The tobacco objectives are broken down into four areas: prevalence; cessation and treatment, secondhand smoke, and social and environmental change. The tobacco objective progress review should document barriers and strategies to achieving the objectives, as well as implementation efforts underway to reach the specific population targets. The comment period and public meeting are intended to give interested persons, including public health and medical professionals, state and local officials, farmers, retailers, manufacturers, and others an opportunity to comment. On November 18, 2002, the Healthy People 2010 Tobacco Workgroup will be receiving comments on progress towards reaching the Healthy People 2010 tobacco objectives. Oral comments are especially requested to cover one or more of the following areas: Adult and youth prevalence, cessation and treatment, secondhand smoke, and disparities. To accommodate all the participants who wish to speak, comments will be limited to three minutes. Written comments are also encouraged from the public on progress towards the Healthy People 2010 tobacco objectives progress. This is an opportunity to provide comments on barriers as well as strategies to reach the tobacco objectives.

The Workgroup is especially seeking information on the Healthy People areas: Adult/youth prevalence, cessation and treatment, secondhand smoke, and disparities.

Background documents on the Healthy People 2010 are available at *http://www.health.gov/healthypeople.* Background information on tobacco is available at www.cdc.gov/tobacco.

Submitted comments will be posted on the Internet at *http://www.cdc.gov/tobacco.*

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Wagman, Office on Smoking and Health, 200 Independence Ave., Suite 317-B, Washington, DC 20201, 202–205–8500 (telephone) or (202) 205–8313 (facsimile) or *healthypeople@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 14, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–21084 Filed 8–19–02; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Temporary Assistance for Needy Families (TANF) Caseload Reduction Documentation Process, ACF–202 (OFA).

OMB Control No: 0970–0199.

Description: To ensure that States receive credit for families that have become self-sufficient and left the welfare rolls, Congress created a caseload reduction credit. The credit reduces the required participation rate that a State must meet for a fiscal year. To receive a caseload reduction credit, a State must complete form ACF–202, the Caseload Reduction Report. The report provides information needed to calculate a caseload reduction credit, and thus determine the participation standard each State must meet for the fiscal year. This report derives from section 407(a)(3) of the Social Security Act and the implementing Federal Regulations at 45 CFR part 261, subpart D.

Respondents: States.

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ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Caseload Reduction Doc. Process, ACF–202 (OFA)	54	1	160	8,640

Title: Reasonable Cause/Corrective Action Documentation Process (OFA).

OMB Control No: 0970–0199.

Description: The Social Security Act provides that States can be penalized for misusing TANF funds and for failure to comply with other requirements. If a State wishes to dispute a penalty determination or wants to be considered for a waiver of a penalty, the State may submit a "reasonable cause" justification and/or a corrective compliance plan. After careful consideration of one or both documents, we will notify the State of our findings with respect to the penalty. This process was established by section 409 of the Social Security Act and the implementing Federal regulations at 45 CFR part 261, subpart E, Part 262, and Part 264.

Respondents: States.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Reasonable Cause/Corrective Action Documentation Process (OFA)	54	2	160	17,280

Title: Annual Report on State Maintenance-of-Effort (MOE) Programs, ACF–204 (OFA).

OMB Control No: 0970–0199.

Description: States must submit an annual report containing information on their State MOE programs via form ACF–204. The report is an important source for information about the different ways States are using their resources to help families attain and maintain self-sufficiency. The information is used to discuss program characteristics in our annual report to Congress, to respond to Congressional and public inquiries about how TANF programs are evolving and to assess State MOE expenditures. The statutory basis for this report is found in sections 409(a)(7) and 411(a)(3) of the Social Security Act and the implementing Federal regulations at 45 CFR 265.9.

Respondents: States.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Annual Report on State MOE Programs, ACF–204	54	1	128	6,912

Estimated Total Annual Burden Hours: 32,832.

In compliance with the requirements of section 3506(c)(2)(A) the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 13, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–21040 Filed 8–19–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: 45 CFR 1301—Head Start Grants Administration.

OMB No. 0980–0243.

Description: 45 CFR part 1301 contains provisions applicable to program administration and grants administration under the Head Start Act, as amended. The provisions specify the requirements for grantee agencies for insurance and bonding, the submission of audits, matching of federal funds, accounting systems certifications and other provisions applicant to personal and general administration of grants. Appendix A of this section also specifies grantee responsibilities when identifying and reporting child abuse and neglect, and specifies the limitations which apply to costs of development and administration of Head Start programs.

Respondents: Head Start Program grants recipients.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
45 CFR Part 1301	2500	2500	2	5,000
Estimated Total Annual Burden Hours				5,000

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 13, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–21041 Filed 8–19–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Court Improvement Program.

OMB No.: New.

Description: The Court Improvement Program provides grants to State court systems to conduct assessments of their foster care and adoption laws and judicial processes, and to develop and implement a plan for system improvement. This Program Instruction (1) describes the requirements for States under the reauthorization of the Court Improvement Program; (2) outlines the programmatic and fiscal provisions and reporting requirements of the program; (3) specifies the application submittal and approval procedures for the program for Fiscal Years 2003 through 2006; and (4) identifies technical resources for use by State courts during the course of the program. This Program Instruction contains information collection requirements that are found in Pub. L. 103–66, as amended by Pub. L. 105–89 and Pub. L. 107–133; and pursuant to receiving a grant award. The information received will be used by the agency to ensure compliance with the statute and provide training and technical assistance to the grantees.

Respondents: State courts.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	52	1	40	2080
Annual Program Report	52	1	24	1247
Estimated Total Annual Burden Hours				3328

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents; including through the use of automated collection techniques or other forms of information technology. Consideration will be given to

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comments and suggestions submitted within 60 days of this publication.

Dated: August 13, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–21042 Filed 8–19–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Quarterly Financial Report (ACF–696).

OMB No.: 0970–0163.

Description: States and Territories use this form to facilitate the reporting of expenditures for the Child Care and Development Fund on a quarterly basis. The form provides specific data regarding financial disbursements, obligations and estimates. It provides States and Territories with a mechanism to request grant awards and certify the availability of State matching funds. Failure to collect this data would seriously compromise the Administration for Children and Families' (ACF) ability to monitor expenditures. This form may also be used to prepare ACF budget submissions to Congress. This information collection is a revised version of the currently used ACF–696 for which Office of Management and Budget approval expires on September 30, 2002.

Respondents: States and Territories that are CCDF grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–696	56	4	8	1792
Estimated Total Annual Burden Hours				1792

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503. Attn: Desk Officer for ACF.

Dated: August 13, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–21043 Filed 8–19–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Medical Device Use in the Home Health Care Community; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled "Home Health Care Committee" (the committee). The committee will recommend to the Center for Devices and Radiological Health (CDRH) appropriate actions that may be taken to promote safe and effective use of medical devices in the home environment. The committee was formed as part of CDRH's strategic planning to understand impediments to the safe and effective operation of medical devices used in the home environment. The committee is interested in learning from other agencies, from industry, and from the public how agencies can work better together using outside interested parties to make medical devices used in the home environment more safe and effective.

Date and Time: The public meeting will be held on September 12, 2002, from 9 a.m. to 4:45 p.m., and on September 13, 2002, from 9 a.m. to 3:30 p.m.

Location: The National Institutes of Health (NIH), Building 45, Natcher Building and Conference Center, Center Dr., Bethesda, MD. Details regarding NIH facilities and visitor information may be found on the Internet at http://www.nih.gov/about/visitorsecurity.htm.

Contact Person: Mary W. Brady, Center for Devices and Radiological Health (HFZ–530), 1350 Piccard Dr., Rockville, MD 20850, 301–594–2102, e-mail: mwb@cdrh.fda.gov.

Agenda: On September 12 and 13, 2002, representatives from various agencies will participate in a series of presentations regarding respective agency roles in home health care including: FDA, the Joint Commission on the Accreditation for Healthcare Organizations, the Department of Veterans Affairs, the Centers for Medicare and Medicaid Services, and the Health Resources and Services Administration. At the conclusion of each presentation audience members will be invited to participate in an open discussion. Each presentation and discussion session will run approximately 1 1/2 hours.

Procedure: Members of the public who are interested in attending as audience members should contact Mary W. Brady by September 5, 2002, or send an e-mail to *CDRHHHCO@cdrh.fda.gov*.

If you need special accommodations due to a disability, please contact Shirley L. Meeks, Center for Devices and Radiological Health (HFZ–017), 2098 Gaither Rd., Rockville, MD 20850, 301–594–1283, ext. 105, at least 7 days in advance of the meeting.

Dated: August 13, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–21207 Filed 8–19–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 9, 2002, from 10:30 a.m. to 5 p.m., and September 10, 2002, from 8 a.m. to 4 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Geretta Wood, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8320, ext. 143, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 9, 2002, the committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for an endovascular graft placed percutaneously to treat infrarenal abdominal aortic aneurysms as an alternative to surgery. On September 10, 2002, the committee will discuss, make recommendations, and vote on a supplement to a PMA for a double disk occluder indicated for closure of patent foramen ovale in patients at risk for recurrent cryptogenic stroke or transient ischemic attack. Background information for each day's topic, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at http://www.fda.gov/cdrh/panelmtg.html. Material for the September 9, 2002, session will be posted on September 6, 2002; material for the September 10, 2002, session will be posted on September 9, 2002.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 30, 2002. On both days, oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of each topic and for approximately 30 minutes near the end of the committee deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before August 30, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 12, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Affairs.

[FR Doc. 02–21210 Filed 8–19–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Nonprescription Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Nonprescription Drugs Advisory Committee with members from the following committees: Anesthetic and Life Support Drugs Advisory Committee, Arthritis Advisory Committee, Cardiovascular and Renal Drugs Advisory Committee, Drug Safety and Risk Management Advisory Committee, and Gastrointestinal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 19 and 20, 2002, from 8 a.m. to 5 p.m.

Location: Hilton, Maryland Ballroom, 8727 Colesville Rd., Silver Spring, MD. The hotel phone number is 301–589–5200.

Contact Person: Sandra Titus or LaNise Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail: Tituss@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) code 12541. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 19, 2002, the committee will discuss safety issues related to the use of acetaminophen. The primary area for discussion will focus on potential hepatotoxicity related to the use of acetaminophen in both over-the-counter (OTC) and prescription (RX) products. On September 20, 2002, the committee will discuss safety issues related to the use of aspirin and other OTC nonsteroidal anti-inflammatory drugs (NSAIDS). The primary areas for discussion will focus on potential gastrointestinal bleeding and renal insufficiency related to the use of these products.

In rulemaking, the agency has proposed aspirin and acetaminophen as category I ingredients for safety and effectiveness. Other NSAIDS and combination products are marketed under new drug applications. The agency continues to believe that these ingredients are safe and effective in the prescription and OTC products currently on the market when properly used. The advisory committee will discuss whether labeling or other

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measures are warranted to reduce the risk of occurrence or the severity of these adverse reactions.

Background material will be available at http://www.fda.gov/ohrms/dockets/ac/acmenu.htm. Click on the year 2002 and go to the September 19th and 20th Nonprescription Drugs Advisory Committee file. As background material becomes available from FDA and interested parties, it will be posted.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 26, 2002. Submissions received by this date will be distributed to the committee as well as posted on the docket site for this meeting. Oral presentations from the public will be scheduled between approximately 8:15 a.m. and 9 a.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 4, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Sandra Titus at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 12, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–21208 Filed 8–19–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pulmonary-Allergy Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 6, 2002, from 7:30 a.m. to 4 p.m.

Location: Holiday Inn, The Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Kimberly L. Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12545. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application (NDA) 21–395, SPIRIVA (Tiotropium bromide) by Boehringer-Ingelheim, for chronic obstructive pulmonary disease.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 1, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 1, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kimberly L. Topper at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 12, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–21209 Filed 8–19–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Indian Health Service Loan Repayment Program

AGENCY: Indian Health Service, HHS.

ACTION: Request for public comment: 60-day Proposed Information Collection: Indian Health Service Loan Repayment Program.

SUMMARY: The Department of Health and Human Services, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Indian Health Service (IHS) is providing a 60-day advance opportunity for public comment on a proposed extension of current information collection activity to be submitted to the Office of Management and Budget for review.

Proposed Collection

Title: 0917–0014, "Indian Health Service Loan Repayment Program." *Type of Information Collection Request:* Extension, without revision, of currently approved information collection. *Form Number:* None. *Forms:* The IHS Loan Repayment Program Information Booklet contains the instructions and the application formats. *Need and Uses of Information Collection:* The IHS Loan Repayment Program identifies health professionals with pre-existing financial obligations for education expenses that meet program criteria and who are qualified and willing to serve at, often remote, IHS health care facilities. Under the program, eligible health professionals sign a contract under which the IHS agrees to repay part or all of their indebtedness for professional training education. In exchange, the health professionals agree to serve for a specified period of time in IHS health care facilities. Eligible health professionals that wish to apply must submit an application to participate in the program. The application requests personal, demographic and educational training information, including information on the educational loans of the individual for which repayment is being requested (*i.e.*, date, amount, account number, purpose of each loan, interest rate, the current balance, *etc*). The data collected is needed and used to evaluate applicant eligibility; rank and prioritize applicants by specialty; assign applicants to IHS health care facilities; determine payment amounts and schedules for paying the lending institutions; and to provide data and statistics for program management review and analysis. *Affected Public:* Individuals and households. *Type of Respondents:* Individuals. *Burden Hours:* The table below provides the estimated burden hours for this information collection:

ESTIMATED BURDEN HOURS

Data collection instrument	Estimated number of respondents	Responses per respondent	Average burden hour per response * (minutes)	Total annual burden hours
Section I	425	1	0.25 (15)	106
Section II	425	1	0.50 (30)	213
Section II	425	4	0.25 (15)	425
Contract	425	1	0.33 (20)	140
Affidavit	425	1	0.17 (10)	72
Lender Certificate	1700	1	0.25 (15)	425
Total	2125			1381

* For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments

Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests For Further Information: Send your written comments and requests for more information on the proposed collection or requests to obtain a copy of the data collection instrument(s) and instructions to: Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852.1601, call non-toll free (301) 443–5938, send via facsimile to (301) 443–2316, or send your e-mail requests, comments, and return address to: *Ihodahdw@hqe.ihs.gov.*

Comment Due Date: Your comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: August 13, 2002.

Michel E. Lincoln,

Acting Director, Indian Health Service.

[FR Doc. 02–21104 Filed 8–19–02; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Refugee Resettlement; Grant to the Department of Human Services, District of Columbia

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, HHS.

ACTION: Grant Award Announcement.

SUMMARY: Notice is hereby given that an award is being made to the Department of Human Services, District of Columbia in the amount of $225,000 to provide funds to refugees in need of employment assistance due to the events of the September 11, 2001 attack on the Pentagon. The closure of Reagan National Airport and the rapid decline in the metropolitan hospitality industry caused substantial numbers of refugees to lose their jobs. Many of these refugees arrived in the United States some time ago and are no longer eligible for refugee cash assistance and refugee medical assistance. The District of Columbia, Department of Human Services, intends to provide funds for mental health services, transportation assistance, English as a Second Language, direct assistance and State administration costs.

After the appropriate reviews, it has been determined that the need for additional services is compelling. The period of this funding will extend through March 30, 2003.

FOR FURTHER INFORMATION CONTACT: Janet Bailey, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–4647.

Dated: May 14, 2002.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 02–21044 Filed 8–19–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2002 Funding Opportunities

AGENCY: Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, HHS.

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ACTION: Notice of funding availability for restricted eligibility.

SUMMARY: This notice is to inform the public that the SAMHSA/CSAP has available $130,000 to supplement the Iowa State Incentive Grant. The Wiatt Foundation donated $100,000 to be used on the National Youth Anti-Drug Media Campaign, specifically in the Sioux City, Iowa media market. The Office of National Drug Control Policy (ONDCP) provided an additional $30,000 that was donated by the UPS Foundation in 1998 through the Partnership for a Drug-Free Iowa. The State Incentive Program Grant provides funds to the States to coordinate, leverage, and/or redirect all substance abuse prevention resources within the State that are directed at communities, families, youth (ages 12–17), schools and workplaces.

Program Contact: For questions concerning program issues, contact: Karen Salem, Rockwall II, Suite 930, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9831, e-mail: *Ksalem@samhsa.gov*

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, e-mail: *Shudak@samhsa.gov*

Dated: August 14, 2002.

Joseph H. Autry III,

Deputy Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–21103 Filed 8–19–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–25]

Delegation of Appointment Authority: Manufactured Housing Consensus Committee

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Delegation of Authority.

SUMMARY: In this notice, the Secretary delegates to the Assistant Secretary of Housing-Federal Housing Commissioner the authority to make appointments relating to the consensus committee for manufactured housing.

EFFECTIVE DATE: August 8, 2002.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Manufactured Housing Program, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Department regulates the design, construction, and safety of manufactured housing pursuant to its authority under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401, *et seq.* ("the Act"). The Act was amended by the Manufactured Housing Improvement Act of 2000 (Title VI, Pub. L. 106–569, 114 Stat. 2944, approved December 27, 2000), in part to provide for the establishment of a consensus committee for manufactured housing. The consensus committee is charged with providing recommendations to the Secretary to adopt, revise, and interpret manufactured housing construction and safety standards and procedural and enforcement regulations, and with submitting to the Secretary proposed model installation standards. The Assistant Secretary for Housing-Federal Housing Commissioner oversees HUD's manufactured housing program.

The responsibilities and authorities of the Secretary to make appointments and designations with respect to the consensus committee is being delegated to the Assistant Secretary for Housing-Federal Housing Commissioner.

Accordingly, the Secretary delegates authority as follows:

1. The authority under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401, *et seq.*, as amended by the Manufactured Housing Improvement Act of 2000 (Title VI, Pub. L. 106–569, 114 Stat. 2944, approved December 27, 2000)) and the implementing regulations to make any necessary or discretionary appointments relating to the consensus committee for manufactured housing is hereby delegated to the Assistant Secretary for Housing-Federal Housing Commissioner.

2. The authority under the Federal Advisory Committee Act, 5 U.S.C. App., and the General Services Administration implementing regulations at 41 CFR part 102–3 to make any necessary or discretionary appointments relating to the consensus committee for manufactured housing is hereby delegated to the Assistant Secretary for Housing-Federal Housing Commissioner.

Authority: National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401, *et seq.*; Federal Advisory Committee Act, 5 U.S.C. App.; Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: August 12, 2002.

Mel Martinez,

Secretary.

[FR Doc. 02–21071 Filed 8–19–02; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4727–N–02]

Real Estate Settlement Procedures Act (RESPA); Simplifying and Improving the Process of Obtaining Mortgages to Reduce Settlement Costs To Consumers; Notice of Availability of Economic Analysis and Correction of OMB E-mail Address

AGENCY: Office of General Counsel, HUD.

ACTION: Notice.

SUMMARY: Through this notice, HUD is advising the public that the Initial Economic Analysis that was prepared in connection with HUD's RESPA proposed rule, published on July 29, 2002, is available for review on HUD's Web site at *www.hud.gov*. In addition, this notice advises the public of a correction made to the e-mail address of the HUD Desk Officer at the Office of Management and Budget (OMB).

FOR FURTHER INFORMATION CONTACT: Ivy Jackson, Acting Director, Interstate Land Sales and RESPA Division, Room 9146, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–0502 (this is not a toll-free number) or for legal questions Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, or Steven J. Sacks or Teresa L. Baker (Senior RESPA Attorneys); Room 9262, telephone (202) 708–3137. Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. The address for the above listed persons is: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: On July 29, 2002, HUD published its RESPA proposed rule on "Simplifying and Improving the Process of Obtaining Mortgages to Reduce Settlement Costs to Consumers." (*See* 68 FR 49134.) In the rule, HUD advised that an Initial Economic Analysis had been prepared for the rule and that the Initial Economic Analysis is available for public inspection during business hours in the Office of the Rules Docket Clerk, Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. The Economic Analysis remains available for public inspection at this location, but for the convenience of the public, HUD has also placed the Initial Economic Analysis on its Web site at *www.hud.gov*.

In this notice, HUD also advises that the e-mail address for Lauren Wittenberg, HUD Desk Officer at OMB, contained an error (see 67 FR 49159, first column). The correct email address for Ms. Wittenberg is *lauren_wittenberg@omb.eop.gov*.

Dated: August 13, 2002.

Aaron Santa Anna,

Assistant General Counsel for Regulations.

[FR Doc. 02–21070 Filed 8–19–02; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by September 19, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–060616

Applicant: William Phifer, West Point, UT

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

PRT–060747

Applicant: Bianca T. Rudolph, Greensburg, PA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

PRT–060842

Applicant: Larry P. Davis, Clarkston, WA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

PRT–060649

Applicant: Sedgewick County Zoo, Wichita, Kansas

The applicant requests a permit to import two captive-born female jaguars (*Panthera onca*) as a two-year breeding loan from the Asunción Zoo in Paraguay for the purpose of enhancement of the propagation of the species.

PRT–707102

Applicant: Priour Brothers Ranch, Ingram, TX

The applicant requests renewal of their permit which authorizes interstate and foreign commerce, export, and cull of excess animals for the following species: swamp deer (*Cervus duvauceli*), Eld's deer (*Cervus eldi*) and red lechwe (*Kobus leche*) from their captive-raised herd for the purpose of enhancement of the survival of the species in the wild. This notification covers activities conducted by the applicant for a period of three years. Permittee must apply for renewal annually.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: August 2, 2002.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–21106 Filed 8–19–02; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Managers Forum

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (1988) and 41 CFR 101–6.1015(b). The Department of the Interior hereby gives notice of a public meeting of the Alaska Land Managers Forum (ALMF) to be held on Thursday, August 29, 2002, beginning at 9:00 a.m. It will take place in Suite 240 of the Atwood Building, 550 W. 7th Avenue, Anchorage, Alaska. This meeting will be held to hear reports on and to discuss Trails Improvement Technology Techniques, ANCSA 17(b) Easement Inventory Update and Management Strategy, Navigability Initiatives; and to receive comments from the public.

FOR FURTHER INFORMATION CONTACT: Ronald B. McCoy at (907) 271–5485.

Ron McCoy,

Coordinator, Department of the Interior, Office of the Secretary—Alaska.

[FR Doc. 02–21105 Filed 8–19–02; 8:45 am]

BILLING CODE 4310–RP–P

DEPARTMENT OF THE INTERIOR

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt.

SUMMARY: We announce our receipt of applications to conduct certain activities pertaining to scientific

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research and enhancement of survival of endangered species.

DATES: Written comments on these requests for permits must be received by September 19, 2002.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director-Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; telephone 303–236–7400, facsimile 303–236–0027.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone 303–236–7400.

SUPPLEMENTARY INFORMATION: The following applicants have requested renewal of scientific research and enhancement of survival permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Applicant: Mark C. Belk, Brigham Young University, Provo, Utah, TE–060645.

The applicant requests a permit to take June sucker (*Chasmistes liorus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Mark C. Reed, Sedgwick County Zoo, Wichita, Kansas, TE–060667.

The applicant requests a permit to possess Wyoming toads (*Bufo baxteri*) for public display in conjunction with recovery activities for the purpose of enhancing the species' survival and recovery.

Applicant: Mark J. Bellini, Earthtouch Environmental Consulting, Provo, Utah, TE–060668.

The applicant requests a permit to survey for Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Charlotte Ann Popperling, Hutchinson Zoo, Hutchinson, Kansas, TE–051824.

The applicant requests a permit to possess black-footed ferrets (*Mustela nigripes*) for public display in conjunction with recovery activities for the purpose of enhancing the species' survival and recovery.

Dated: August 5, 2002.

John A. Blankenship,

Regional Director, Denver, Colorado.

[FR Doc. 02–21086 Filed 8–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by September 19, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Randy Miller's Predators in Action, Inc., Big Bear City, CA, PRT–815482, 835802, and 012984.

The applicant requests a permit to export, re-export, and re-import tigers (*Panthera tigris*) to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

Applicant: Kevin M. Siembida, Columbiana, OH, PRT–060420.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Michael Bruce Allen, Vidalia, GA, PRT–060451.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: James W. Cabela, Sidney, NE, PRT–060463.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Texas A&M University at Galveston, Galveston, TX, PRT–060260.

The applicant requests a permit to import biological samples collected from live wild Kemp's ridley sea turtle (*Lepidochelys kempii*), as well as infertile and/or non-viable eggs, egg shells, and dead hatchlings for the purpose of scientific research. This notification covers activities conducted by the applicant over a five-year period.

Applicant: Hollywood Animals and Animal Rental Unlimited, Inc., Los Angeles, CA, PRT–060474.

The applicant requests a permit to export, re-export, and re-import African leopards (*Panthera pardus*) to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: Hollywood Animals and Animal Rental Unlimited, Inc., Los Angeles, CA, PRT–814588.

The applicant requests the re-issuance and amendment of their permit to re-export and re-import tigers (*Panthera tigris*) to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: Hollywood Animals and Animal Rental Unlimited, Inc., Los Angeles, CA, PRT–060470, 060471, 060472, and 060473.

The applicant requests a permit to re-export and re-import African leopards (*Panthera pardus*) to/from worldwide locations to enhance the survival of the species through conservation education. These animals were previously authorized under PRT–814588. This notification covers activities conducted by the applicant over a three year period.

Applicant: Zoological Society of San Diego, San Diego, CA, PRT–060416.

The applicant requests a permit to re-export one live male giant panda (*Ailuropoda melanoleuca*) owned by the Government of China, originally imported as part of their research program in 1997, back to China. This re-export is part of the approved loan program for the benefit of the survival of the species and will allow continuation and completion of the research projects.

Applicant: Zoological Society of San Diego, San Diego, CA, PRT–053884.

The applicant requests a permit to import one live male giant panda (*Ailuropoda melanoleuca*) owned by the Government of China. This import is part of the loan program for the benefit of the survival of the species approved in 1997 and will allow continuation and completion of the research projects.

Applicant: Saint Louis Zoological Park, Saint Louis, MO, PRT–059390.

The applicant requests a permit to import three captive-bred cheetah (*Acinonyx jubatus*), from the Wassenaar Wildlife Breeding Center, Wassenaar, The Netherlands, for the purpose of enhancement of the survival of the species through captive propagation.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Lawrence P. Rudolph, Greensburg, PA, PRT–058229.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Norwegian Bay polar bear population in Canada for personal use.

Applicant: Thomas J. Pallansch, Elk River, MN, PRT–060217.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Norwegian Bay polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: July 26, 2002.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–21107 Filed 8–19–02; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Incidental Take of Threatened Species for the Dahle Property, El Paso County, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for incidental take of endangered species.

On May 24, 2002, a notice was published in the **Federal Register** (Vol. 67 No. 101 FR 36644), that an application was filed with the U.S. Fish and Wildlife Service (Service) by Lee J. Dahle of the Dahle Property, El Paso County, Colorado, for a permit to incidentally take, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 USC 1539), as amended, Preble's meadow jumping mouse (*Zapus hudsonius preblei*), pursuant to the terms of the "Low-Effect/Habitat Conservation Plan for Issuance of an Endangered Species Section 10(a)(1)(B) Permit for the Incidental Take of the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*) at the Dahle Property" in El Paso County, Colorado.

Notice is hereby given that on July 29, 2002, as authorized by the provisions of the Act, the Service issued a permit (TE–056467) to the above named party subject to certain conditions set forth therein. The permit was granted only after the Service determined that it was applied for in good faith, that granting the permit will not be to the disadvantage of the threatened species, and that it will be consistent with the purposes and policy set forth in the Endangered Species Act, as amended.

Additional information on this permit action may be requested by contacting the Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215, telephone (303) 275–2370, between the hours of 7 am and 4:30 pm weekdays.

Dated: July 29, 2002.

Ralph O. Morgenweck,

Regional Director, Region 6, U.S. Fish and Wildlife Service.

[FR Doc. 02–21087 Filed 8–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On January 11, 2002, a notice was published in the **Federal Register** (67 FR 1494), that an application had been filed with the Fish and Wildlife Service by Trevor Davis for a permit (PRT–051276) to import one polar bear taken from the Norwegian Bay population, Canada, for personal use.

Notice is hereby given that on March 13, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On January 22, 2002, a notice was published in the **Federal Register** (67 FR 2900), that an application had been filed with the Fish and Wildlife Service by Ken Morrill for a permit (PRT–051613) to import one polar bear taken from the Lancaster Sound population, Canada, for personal use.

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Notice is hereby given that on April 2, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On February 8, 2002, a notice was published in the **Federal Register** (67 FR 6048), that an application had been filed with the Fish and Wildlife Service by Ralph Schaller for a permit (PRT–052375) to import one polar bear taken from the Western Hudson Bay population, Canada, for personal use.

Notice is hereby given that on March 18, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On March 7, 2002, a notice was published in the **Federal Register** (67 FR 10430), that an application had been filed with the Fish and Wildlife Service by Wayne W. Webber for a permit (PRT–052890) to import one polar bear taken from the Western Hudson Bay population, Canada, for personal use.

Notice is hereby given that on April 30, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On April 25, 2002, a notice was published in the **Federal Register** (67 FR 20544), that an application had been filed with the Fish and Wildlife Service by Richard Hawkins for a permit (PRT–055367) to import one polar bear taken from the Lancaster Sound population, Canada, for personal use.

Notice is hereby given that on June 12, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On April 25, 2002, a notice was published in the **Federal Register** (67 FR 20544), that an application had been filed with the Fish and Wildlife Service by Jerry P. Mariska for a permit (PRT–055368) to import one polar bear taken from the Lancaster Sound population, Canada, for personal use.

Notice is hereby given that on June 12, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On April 25, 2002, a notice was published in the **Federal Register** (67 FR 20544), that an application had been filed with the Fish and Wildlife Service by Richard B. Sapa for a permit (PRT–055302) to import one polar bear taken from the Southern Beaufort Sea population, Canada, for personal use.

Notice is hereby given that on June 19, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On May 7, 2002, a notice was published in the **Federal Register** (67 FR 30720), that an application had been filed with the Fish and Wildlife Service by Thomas P. Bruner for a permit (PRT–055566) to import one polar bear taken from the Lancaster Sound population, Canada, for personal use.

Notice is hereby given that on June 28, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On May 30, 2002, a notice was published in the **Federal Register** (67 FR 37853), that an application had been filed with the Fish and Wildlife Service by John F. Baker for a permit (PRT–056495) to import one polar bear taken from the Southern Beaufort Sea population, Canada, for personal use.

Notice is hereby given that on July 10, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: July 26, 2002.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–21108 Filed 8–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Twelfth Regular Meeting; Announcement of Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The United States, as a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), will attend the twelfth regular meeting of the Conference of the Parties to CITES (COP12) in Santiago, Chile, November 3–15, 2002. Currently, the United States is developing its negotiating positions on proposed resolutions, proposed decisions, agenda items, and proposed amendments to the CITES Appendices submitted by other countries and the CITES Secretariat for consideration at COP12. With this notice we announce a public meeting to discuss the tentative U.S. negotiating positions on these proposals and agenda items.

DATES: The public meeting will be held on September 10, 2002, at 1:30 p.m. In developing the U.S. negotiating positions on proposed resolutions, proposed decisions, agenda items, and species amendment proposals submitted by other countries and the CITES Secretariat for consideration at COP12, we will consider written information and comments you submit if we receive them by October 4, 2002.

ADDRESSES:

Public Meeting

The public meeting will be held in Sidney Yates Auditorium, in the Department of the Interior at 18th and C Streets, NW., Washington, DC. Directions to the building can be obtained by contacting the Division of Management Authority (see **FOR FURTHER INFORMATION CONTACT**, below).

Available Information

Information concerning the tentative U.S. negotiating positions for COP12 is available upon request from the Division of Management Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 700; Arlington, VA 22203. Effective on or about September 3, 2002, this information will also be available from our World Wide Website (*http://international.fws.gov/cop12/cop12.html*) and via our Faxback system. You may obtain the information via the Faxback system by dialing 703/358–2400, our Faxback telephone number, following the automated instructions, and entering Document Number 5054 when prompted to enter a document number.

Comment Submission

Comments pertaining to proposed resolutions, proposed decisions, and/or agenda items should be sent to the Division of Management Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 700; Arlington, VA 22203, or via E-mail at: *cites@fws.gov*, or via fax at: 703/358–2298. Comments pertaining to species amendment proposals should be sent to the Division of Scientific Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 750; Arlington, VA 22203, or via E-mail at: *scientificauthority@fws.gov*, or via fax at: 703/358–2276. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at either the Division of Management Authority or the Division of Scientific Authority.

FOR FURTHER INFORMATION CONTACT: Andrea Gaski, Division of Management Authority, Branch of CITES Operations, phone: 703/358–2095, fax: 703/358–2298, E-mail: *cites@fws.gov*; or Robert R. Gabel, Division of Scientific Authority, phone: 703/358–1708, fax: 703/358–2276, E-mail: *scientificauthority@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may be threatened with extinction if their trade is not controlled. These species are listed in Appendices to CITES, copies of which are available from the Division of Management Authority or the Division of Scientific Authority at the above addresses, from our World Wide Website at *http://international.fws.gov/cites/cites.html*, or from the official CITES Secretariat Website at *http://www.cites.org/eng/append/index.shtml*. Currently, 158 countries, including the United States, are Parties to CITES. CITES calls for biennial meetings of the Conference of the Parties, which review its implementation, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose and vote on amendments to Appendices I and II, resolutions, decisions, and agenda items for consideration by the Conference of the Parties.

This is our fifth in a series of **Federal Register** notices that provide you with an opportunity to participate in the development of the United States' negotiating positions for COP12. We published our first such **Federal Register** notice on June 12, 2001 (66 FR 31686), and with it we requested information and recommendations on potential species amendments for the United States to consider proposing at COP12. Information on that **Federal Register** notice, and on species amendment proposals, is available from the Division of Scientific Authority at the above address. We published our second such **Federal Register** notice on July 25, 2001 (66 FR 38739), and with it we requested information and recommendations on potential resolutions, decisions, and agenda items for the United States to submit for consideration at COP12. You may obtain information on that **Federal Register** notice, and on proposed resolutions, proposed decisions, and agenda items, from the Division of Management Authority at the above address. We published our third such **Federal Register** notice on March 27, 2002 (67 FR 14728), and with it we announced a public meeting to discuss potential species amendment proposals, proposed resolutions, proposed decisions, and agenda items that the United States is considering submitting for consideration at COP12. With that notice, we also provided information on how non-governmental organizations based in the United States can attend COP12 as observers. You may obtain information on that **Federal Register** notice from the Division of Management Authority at the above address. We published our fourth such **Federal Register** notice on April 18, 2002 (67 FR 19207), and with it we listed potential proposed resolutions, proposed decisions, agenda items, and proposed amendments to the CITES Appendices that the United States was considering submitting for consideration at COP12, and invited your comments on these potential proposals. You may obtain information on that **Federal Register** notice from the Division of Management Authority (for information pertaining to proposed resolutions, proposed decisions, and agenda items) or the Division of Scientific Authority (for information pertaining to proposed amendments to the Appendices) at the above addresses. On June 6, 2002, the United States submitted to the CITES Secretariat, for consideration at COP12, its proposed resolutions, proposed decisions, agenda items, and proposed amendments to the CITES Appendices. These documents are available from our World Wide Website at: *http://international.fws.gov/cop12/ussubmission.html*. You may locate our regulations governing this public process in 50 CFR 23.31–23.39.

COP12 is scheduled to be held in Santiago, Chile, November 3–15, 2002.

Announcement of Public Meeting

We announce that we will hold a public meeting to discuss with you the tentative U.S. negotiating positions on proposed resolutions, proposed decisions, agenda items, and proposed amendments to the CITES Appendices submitted by other countries and the CITES Secretariat for consideration at COP12. The public meeting will be held on September 10, 2002, from 1:30 p.m. to 4:30 p.m. in Sidney Yates Auditorium of the Department of the Interior at 18th and C Streets, NW., Washington, DC. You can obtain directions to the building by contacting the Division of Management Authority (see **FOR FURTHER INFORMATION CONTACT**, above). Sidney Yates Auditorium is accessible to the handicapped. Persons planning to attend the meeting who require interpretation for the hearing impaired should notify the Division of Management Authority as soon as possible. All persons planning to attend the meeting will be required to present photo identification when entering the building.

Future Actions

We are planning to soon publish a **Federal Register** notice announcing the provisional agenda for COP12 and informing you about tentative U.S. negotiating positions on proposals to amend the Appendices, proposed resolutions, proposed decisions, and other agenda items before the Parties for consideration at COP12.

Author: The primary author of this notice is Mark Albert, Division of Management Authority; under the authority of the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

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Dated: July 24, 2002.

Marshall P. Jones, Jr.,

Acting Director.

[FR Doc. 02–21074 Filed 8–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for approval.

SUMMARY: The public is invited to comment on the following application for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

DATES: Written data, comments, or requests for a copy of this complete application must be received by September 19, 2002.

ADDRESSES: Written data, comments, or requests for a copy of this complete application should be sent to the Chief, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Andrea Gaski, Chief, Branch of CITES Operations, Division of Management Authority, at 703–358–2095.

SUPPLEMENTARY INFORMATION:

Applicant: Mr. David Marez of Sun Valley, California.

The applicant wishes to establish a cooperative breeding program for Abyssinian lovebird (*Agapornis taranta*). The applicant wishes to be an active participant in this program along with nine other individuals. Bird Clubs of America has agreed to assume oversight responsibility of this program if it is approved.

Documents and other information submitted with this application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice.

Dated: July 26, 2002.

Andrea Gaski,

Chief, Branch of CITES Operations, Division of Management Authority.

[FR Doc. 02–21073 Filed 8–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–1320–EL]

Retraction of Notice of Intent To Prepare a Land Use Analysis/ Environmental Assessment

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Retraction of intent to prepare a land use analysis/environmental assessment (LUA/EA).

SUMMARY: The Bureau of Land Management (BLM) published two notices in the **Federal Register** dated February 21, 2002; both of same title. The notice on page 8033–8034 (LUA/EA for coal lease application by Southfork Coal Company) is retracted, but will be republished with errors having been corrected. The notice on page 8034 (LUA/EA for coal lease application by Chas Coal, L.L.C.) remains correct.

FOR FURTHER INFORMATION CONTACT: John A Lewis, Bureau of Land Management, 411 Briarwood Drive, Suite 404, Jackson, MS 39206; telephone (601) 977–5437.

Dated: July 23, 2002.

Duane Winters,

Acting Field Manager.

[FR Doc. 02–21069 Filed 8–19–02; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1020–PG: GP2–0119]

Notice of Public Meeting, John Day/ Snake Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day Snake Resource Advisory Council (RAC), will meet as indicated below.

DATES: The first meeting will be held September 3, 2002 as a tour starting at the Ukiah Ranger Station, Ukiah, OR. On September 4, 2002 the RAC will meet at the Oxford Inn Suites in Pendleton, OR beginning at 8 a.m. The second meeting will be held on December 3 and 4, 2002 at the Oxford Inn Suites in Pendleton, OR, beginning at 8 a.m. both days. The public comment period will begin at approximately 1 p.m. on September 4, 2002 and December 3, 2002. All meetings will adjourn at approximately 3 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in North East Oregon.

At the two meetings, topics we plan to discuss include:

Off-Highway Vehicle Subgroup—Issue ID/Field Trip

Hells Canyon, Blue Mountain and Noxious Weed Subgroups—Membership Approval/Review

Sage Grouse Subgroup—Identify statewide rep; primary & secondary members

JDS RACE/EO RAC—What affects both

National Fire Plan—Native Seeds

Agency Updates

Meeting Procedures

Winter Meetings/Information Sharing

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Virginia Gibbons at (541) 416–6700, Prineville Bureau of Land Management, 3050 NE. Third Street, Prineville, OR 97754.

Dated: August 12, 2002.

A. Barron Bail,

District Manager.

[FR Doc. 02–21052 Filed 8–19–02; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 10, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St., NW., Suite 400, Washington, DC 20002; or by fax, 202–343–1836. Written or faxed comments should be submitted by September 4, 2002.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARKANSAS

Pulaski County

Prospect Terrace Apartments, 3603 Kavanaugh Blvd., Little Rock, 02001043

Union County

McWilliams, J.H., House, 323 West Oak St., El Dorado, 02001044

GEORGIA

DeKalb County

Kirkwood School, 138 Kirkwood Rd., Atlanta, 02001045

IOWA

Black Hawk County

Chapple and Young Block, 316–318–320 Main St., La Port City, 02001025

Cerro Gordo County

MBA (Modern Brotherhood of America) Building, 103 E. State St., Mason City, 02001021

Clayton County

McGregor Commercial Historic District (Iowa's Main Street Commercial Architecture MPS), 100–300 blks of Main St., 100–200 blks. of A St., McGregor, 02001033

Dubuque County

Grand Opera House (Footlights in Farm Country: Iowa Opera Houses MPS), 135 8th St., Dubuque, 02001029

Jackson County

Rose Hill Historic District, 1400–1700 blks of Douglas St., Grandview Blvd. and Summit St., Sioux City, 02001022

Johnson County

Longfellow Historic District (Iowa City, Iowa MPS AD), Roughly bounded by Court, Rundell, Sheridan, and west boundary of Longfellow School, Iowa City, 02001023

Lee County

The Park Place—Grand Avenue Residential District, 4th at Park Place and Orleans St. and N up Grand Ave. to Rand Park, Keokuk, 02001020

Linn County

Central City Commercial Historic District (Central City, Iowa MPS), E. Main St. 300–400 blk., N. 4th St. to Commercial, Central City, 02001027

Dows Street Historic District (Ely, Iowa MPS), Dows St. bet. State and Main Sts., Ely, 02001026

Marshall County

State Center Commercial Historic District (Iowa's Main Street Commercial Architecture MPS), Main St. Blks 200–100 West and 100 East, State Center, 02001034

Mitchell County

Osage Commercial Historic District (Iowa's Main Street Commercial Architecture MPS), Main Street Blks. 700, 600 and parts of 500, Osage, 02001030

Walnut Grove School, 3272 Foothill Ave., Osage, 02001028

Montgomery County

Grant Commercial Historic District (Iowa's Main Street Commercial Architecture MPS), Parts of Second St. and U Ave., Grant, 02001031

Muscatine County

West Liberty Commercial Historic District (Iowa's Main Street Commercial Architecture MPS), Bounded by 4th St., Railroad Tracks, Clay and Spencer Sts., West Liberty, 02001035

Polk County

Hohberger Building, 502–506 E. Locust St., Des Moines, 02001019

Taylor County

Bedford Commerical Historic District (Iowa's Main Street Commercial Architecture MPS), 200–500 blks. Main St., 500–600 blks, Court, 500 blk. Central, Bedford, 02001032

Van Buren County

Vernon School, 26849 South St., Vernon, 02001024

LOUISIANA

Tangipahoa Parish

Dykes Log Cabin, 17250 State Line Rd., Kentwood, 02001036

MASSACHUSETTS

Middlesex County

Case's Corner Historic District, School, Wellesley, Newton and Ash Sts., Weston, 02001038

Plymouth County

First Trinitarian Congregational Church, 381 Country Way, Scituate, 02001037

Suffolk County

Paine Furniture Building, 75–81 Arlington St., Boston, 02001039

MISSOURI

St. Louis Independent city

Century-Syndicate Trust Building, Bounded by Locust, Ninth, Tenth and Olive Sts., St. Louis (Independent City), 02001054

NEW YORK

Erie County

St. Mary of the Angels Motherhouse Complex, 400 Mill St., Williamsville, 02001046

Otsego County

Chapin Memorial Church, 12 Ford Ave., Oneonta, 02001049

Cornfield, The, 655 Cty Rd. 26, Fly Creek, 02001047

Rockland County

Bear Mountain Inn, Seven Lakes Drive, Bear Mountain, 02001048

Suffolk County

New Suffolk School, Fifth Street at King St., New Suffolk, 02001050

Warren County

Mixter Blacksmith Shop, 27 Main St., Warrensburg, 02001051

OHIO

Summit County

Smith, William, House (Canal, Railroad, and Industrial Resources of the Village of Clinton/Warwick, Ohio MPS), 7894 Main St., Clinton, 02001052

UTAH

Emery County

Lemmon, Leander, House, 45 West Center, Huntington, 02001040

Salt Lake County

Sarah Daft Home for the Aged, 737 S. 1300 East, Salt Lake City, 02001041

San Juan County

St. Christopher's Episcopal Mission, UT 163, Bluff, 02001042

WEST VIRGINIA

Nicholas County

Brown, Dr. Flavius, House, Old Wilderness Rd., Summersville, 02001053

A request for *removal* has been made for the following resources:

IOWA

Allamakee County

Meier, Fred W., Round Barn (Iowa Round Barns: The Sixty Year Experiment TR), Off IA 9 Ludlow, 86001411

SOUTH DAKOTA

Todd County

Rosebud Agency, Main St. and Legion Ave., Rosebud, 80003733

[FR Doc. 02–21034 Filed 8–19–02; 8:45 am]

BILLING CODE 4310–70–P

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INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–477]

Certain Ammonium Octamolybdate Isomers; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 18, 2002, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Climax Molybdenum Company of Phoenix, Arizona. A letter supplementing the complaint was filed on August 7, 2002. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ammonium octamolybdate isomers by reason of infringement of claim 1 of U.S. Letters Patent 5,985,236. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's ADD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public*.

FOR FURTHER INFORMATION CONTACT: James B. Coughlan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2221.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's rules of practice and procedure, 19 CFR 210.10 (2002).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on August 14, 2002, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain ammonium octamolybdate isomers by reason of infringement of claim 1 of U.S. Letters Patent 5,985,236, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is Climax Molybdenum Company, One North Central Ave., Phoenix, Arizona 85004.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Molychem LLC, 2625 Sewell St., Rockford, Illinois 61109.

(c) James B. Coughlan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–L, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondent in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such a response will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting a response to the complaint will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against the respondent.

Issued: August 15, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–21160 Filed 8–19–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Policing Services

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: New Secure Our Schools Act Grant Application Kit.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 111, page 39742 on June 10, 2002, allowing for a 60 day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until September 19, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Secure Our Schools Act Grant Application Kit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS). Affected public who will be asked or required to respond, as well as a brief abstract: *Primary:* Law enforcement agencies in collaboration with schools to improve security in and on school grounds. *Other:* None. *Abstract:* The information collected will be used by the COPS Office to determine grantee's eligibility for funding under the Secure Our Schools Act Grant Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 100 responses. The estimated amount of time required for the average respondent to respond is 9 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 900 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: August 14, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–21110 Filed 8–19–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: New Collection OJJDP National Training and Technical Assistance Center (NTTAC) user feedback form.

The Department of Justice (DOJ), Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 21, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Marilyn Landon, (202) 616–3648 Office of Justice Programs, US Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* NTTAC User Feedback Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Office of Justice Programs, US Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal Government; Individuals or households; Not-for-profit institutions; Businesses or other for-profit. The NTTAC User Feedback Form is designed to collect the data necessary to continuously improve customer service intended to meet the needs of the juvenile justice field at-large and the OJJDP-funded TA provider network. Within 15 days of satisfying a request for technical assistance (TA), NTTAC staff will send this Form to TA requester to capture important feedback on the TA requester's satisfaction with the quality, efficiency, referrals, and resources of the NTTAC.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 290 responses, one for each respondent. The estimated amount of time required for the average respondent to respond is 8 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,320 burden hours annually associated with this information collection.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: August 14, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–21109 Filed 8–19–02; 8:45 am]

BILLING CODE 4410–18–M

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 01–45]

Chattem Chemicals, Inc., Chattanooga, Tennessee; Notice of Administrative Hearing, Summary of Comments and Objections; Notice of Hearing

This Notice of Administrative Hearing, Summary of Comments and Objections, regarding the application of Chattem Chemicals, Inc. (Chattem), for registration as an importer of the Schedule II controlled substances raw opium and poppy straw concentrate is published pursuant to 21 CFR 1301.34(a). On August 10, 2001, notice was published in the **Federal Register**, 65 FR 42239 (DEA 2001), stating that Chattem has applied to be registered as an importer of amphetamine, methamphetamine, phenylacetone, thebaine, raw opium, and poppy straw concentrate.

On September 7, 2001, Organichem Corporation (Organichem), filed comments and a request for hearing on Chattem's application with respect to amphetamine. On September 10, 2001, Noramco of Delaware, Inc. (Noramco), filed comments and a request for hearing on Chattem's application with respect to raw opium, poppy straw concentrate, and thebaine; and Penick Corporation (Penick), filed comments and requested a hearing on Chattem's application with respect to raw opium, poppy straw concentrate, thebaine, phenylacetone, methamphetamine, and amphetamine. On September 13, 2001, Mallinckrodt, Inc. (Mallinckrodt), filed a request for hearing on Chattem's application with respect thebaine, raw opium, amphetamine, and poppy straw concentrate. On December 5, 2001, Chattem withdrew its application with respect to amphetamine and thebaine; thus the comments of other manufacturers with respect to these substances are moot and Organichem is not a party to this proceeding. Subsequently, Penick limited its request for a hearing to Chattem's application to import raw opium and poppy straw concentrate. Notice is hereby given that a hearing with respect to Chattem's application to be registered as an importer of raw opium and poppy straw concentrate will be conducted pursuant to the provisions of 21 U.S.C. 952(a) and 958 and 21 CFR 1301.34.

Hearing Date: The hearing will begin at 9:30 a.m. on September 23, 2002, and will be held at the Drug Enforcement Administration Headquarters, 600 Army Navy Drive, Hearing Room, Room E–2103, Arlington, Virginia. The hearing will be closed to any person not involved in the preparation or presentation of the case.

Notice of Appearance: Any person entitled to participate in this hearing pursuant to 21 CFR 1301.34, and desiring to do so, may participate by filing a notice of intention to participate, in triplicate, and in accordance with 21 CFR 1301.34, with the hearing Clerk, Office of Administrative Law Judges, Drug Enforcement Administration, Washington, DC 20537, within 30 days of the date of publication of this notice in the **Federal Register**. Each notice of appearance must be in the form prescribed in 21 CFR 1316.48. Chattem, Penick, Noramco, Mallinckrodt, and DEA Office of Chief Counsel need not file a notice of intention to participate.

For Further Information Contact: Helen Farmer, Hearing Clerk, Drug Enforcement Administration, Office of Administrative Law Judges, Washington, DC 20537; Telephone (202) 307–8188.

Summary of Comments and Objections

Noramco's Comments: Noramco asserts that Chattem bears the burden of proving that its registration to import would be consistent with the public interest, that because Chattem lacks experience manufacturing active pharmaceutical ingredients from raw opium and poppy straw concentrate, it will be difficult for Chattem to produce these materials as efficiently as existing registrants, thereby aggravating the long-term shortage of narcotic raw materials. Noramco also states that existing manufacturers of bulk narcotic substances are producing an adequate and uninterrupted supply under adequately competitive conditions

Penick's Comments: Penick states that Chattem bears the burden of proving that its registration would be consistent with the public interest, that there needs to be a finding of the sufficiency of adequate competition in the marketplace, that it is not possible to determine Chattem's capabilities for processing opium or poppy straw concentrate, that Chattem lacks experience in the processing of opium and poppy straw concentrate, and there is insufficient public information about Chattem's knowledge and prior experience in the international marketplace.

Dated: August 14, 2002.

John B. Brown III,

Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 02–21187 Filed 8–19–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 12, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1996 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 693–4158 or e-mail *Howze-Marlene@dol.gov.*

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics (BLS).

Title: The Consumer Expenditure Surveys: The Quarterly Interview and the Diary.

OMB Number: 1220–0050.

Affected Public: Individuals or households

Form	Total respondents	Frequency	Total responses	Average minutes	Estimated total burden (in hours)
CE Quarterly Interview (CAPI) Instrument	9,629	4	38,516	90	57,774
Quarterly Interview Re-interview	2,118	1	2,118	15	530
CE Diary: CE–801, Record of Your Daily Expenses	7,745	2	15,490	105	27,108
CE Diary: CE–802, Household Questionnaire	7,745	3	23,235	25	9,681
CE Diary Re-interview: CE–880, CE–880 (N)	1,293	1	1,293	12	259
Total	17,374		80,652		95,352

Please note: Re-interview respondents are a subset of the original number of respondents for each survey. Therefore, they are not counted again in the totals.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Consumer Expenditure (CE) Surveys are used to gather information on expenditures, income, and other related subjects. These data are used to periodically update the National Consumer Price Index. The BLS will use data collected in the CE Surveys to (1) provide data required for the CPI revision; (2) provide a continuous flow of data on income and expenditure patters for use in economic analysis and policy formulation; and (3) provide a flexible consumer survey vehicle that is available for use by other Federal Government agencies. In addition, the data are used by a variety of researchers in academia and the private sector. The data are collected from a national probability sample of households designed to represent the total civilian non-institutional population. The BLS conducts the CE Survey under the authority of Title 29, Section 2 of the United States Code. The Census Bureau collects information in the CE Surveys under the authority of Title 13, United States Code, Section 8b, that allows the Census Bureau to undertake surveys for other agencies.

Ira L. Mills

DOL Clearance Officer.

[FR Doc. 02–21088 Filed 8–19–02; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 7, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or e-mail *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: New Collection.

Agency: Bureau of Labor Statistics (BLS).

Title: CPS Volunteer Supplement.

OMB Number: 1220–0NEW.

Affected Public: Individuals or households.

Frequency: On Occasion.

Number of Respondents: 58,000.

Number of Annual Responses: 116,000.

Total Burden Hours: 5,800.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Volunteer Supplement will provide information on the total number of individuals in the United States involved in unpaid volunteer activities, factors that motivate volunteerism, measures of the frequency or intensity with which individuals volunteer, types of organizations that facilitate volunteerism, and activities in which volunteers participate. The BLS is undertaking this project at the request of the USA Freedom Corps that seeks to promote a culture of responsibility, service, and citizenship. The Volunteer Supplement will provide the ability to accurately and reliably measure the current level of volunteer activities in the U.S.

Ira L. Mills,

DOL Clearance Officer.

[FR Doc. 02–21089 Filed 8–19–02; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 6, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or e-mail *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316),

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within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Labor Organization and Auxiliary Reports.

OMB Number: 1215–0188.

Affected Public: Not-for-profit institutions; Business or other for-profit; and Individuals or households.

Frequency: Semi-annually and Annually.

ESTIMATED TIME PER RESPONSE AND TOTAL BURDEN HOURS

Form name	Responses/respondents	Hours per respondent (reporting)	Burden hours (reporting)	Minutes per respondent (recordkeeping)	Burden hours (record-keeping)	Total burden hours
LM–1	253	0.83	210	5	21	231
LM–2	5,932	14.75	87,497	30	2,966	90,463
LM–3	12,722	6.5	82,693	15	3,181	85,874
LM–4	8,108	0.83	6,730	2	270	7,000
LM–10	116	0.50	58	5	10	68
LM–15	427	1.50	641	20	142	783
LM–15A	71	0.33	23	2	2	25
LM–16	110	0.33	36	1	2	38
LM–20	231	0.33	76	2	8	84
LM–21	36	0.50	18	5	3	21
LM–30	139	0.50	70	5	12	82
S–1	82	0.50	41	5	7	48
SARF*	2,142	0.17	364	2	71	435
Total	30,369		178,457		6,695	185,152

*Simplified Annual Report Format.

Total Annualized Capital/Startup Costs: $0.

Total Annual Cost (operating/maintaining systems or purchasing services): $0.

Description: The Labor-Management Reporting and Disclosure Act (LMRDA) requires unions to file annual financial reports, and copies of their constitution and bylaws with the Department of Labor (DOL). Under certain circumstances, reports are required of union officers and employees, employers, labor relations consultants, and surety companies. Filers are required to retain supporting records for five years; unions are required to retain election records for one year. All reports are available for public disclosure. Information supplied on the reports may be utilized by union members to help self-govern their unions, by the general public, and as research material for both outside researches and within DOL. The information is also used to assist DOL and other government agencies in detecting improper practices on the part of labor organizations, their officers and/or representatives, and is used by Congress in oversight and legislative functions. The following is a list of the reporting forms contained in this information collection and their regulatory and legislative citations: LM–1, Labor Organization Information Report, 29 CFR 402, 29 U.S.C. 431(a); LM–2, Labor Organization Annual Report, 29 CFR 402.5 and 403.3; 29 U.S.C. 431(b); LM–3, Labor Organization Annual Report, 29 CFR 402.5 and 403.4; 29 U.S.C. 431(b); LM–4, Labor Organization Annual Report, 29 CFR 402.5 and 403.4; 29 U.S.C. 431(b); LM–10, Employer Report, 29 CFR part 405, 29 U.S.C. 433(a); LM–15, Trusteeship Report, 29 CFR part 408, 29 U.S.C. 461; LM–15A, Report on Selection of Delegates and Officers, 29 CFR part 408, 29 U.S.C. 461; LM–16, Terminal Trusteeship Report, 29 CFR part 408, 29 U.S.C. 461; LM–20, Agreement and Activities Report, 29 CFR part 406, 29 U.S.C. 433(b); LM–21, Receipts and Disbursements Report, 29 CFR part 406, 29 U.S.C. 433(b); LM–30, Labor Organization Officer and Employee Report, 29 CFR part 404, 29 U.S.C. 432; S–1, Surety Company Annual Report, 29 CFR part 409, 29 U.S.C. 441; and Simplified Annual Report Format, 29 CFR part 403, 29 U.S.C. 431(b).

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–21090 Filed 8–19–02; 8:45 am]

BILLING CODE 4510–CP–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of August, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,352; Dana Corp., Perfect Circle Div., Richmond Machining Plant, Richmond, IN

TA–W–41,158; P/E Technologies, Inc., Cleveland, OH

TA–W–41,510; Chicago Bridge and Iron, Provo, UT

TA–W–41,452; American Paper Tube, Port Gibson, MS

TA–W–41,398; Acordis Cellulosic Fibers, Inc., Axis, AL

TA–W–41,442; Ponderosa Pulp Products, Oshkosh, WI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–41,367 & A,B; Schlumberger Oilfield Services, Lafayette, LA, New Iberia, LA and Houma, LA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,685; Ingersoll-Rand Co., Kentucky Design Center, Mayfield, KY

TA–W–41,246; Avanticase-Hoyt Corp., Chili, NY

TA–W–41,568; Invensys Sensor Systems, Clarostat Sensors and Controls, Molding Dept., El Paso, TX

TA–W–41,497; Furnimex Products USA, Inc., Charm House Manufacturing, Sumter, SC

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–41,575; Schlumberger Oilfield Services, Well Services Division, Midland, TX

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–41,141; Garan, Inc., Kaplan, LA: February 8, 2001.

TA–W–41,511; BP Exploration Alaska, Inc., Anchorage, AK: April 16, 2001.

TA–W–41,521; Dekko Engineering, Manitowoc, WI: April 16, 2001.

TA–W–41,584; Square D Company, Oshkosh, WI: April 14, 2002.

TA–W–41,641; Southwest Cupid, Bristow, OK: May 21, 2001.

TA–W–41,677; Ames True Temper, Plant #2, Parkersburg, WV: May 17, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of August, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof (including workers in any agricultural firm or appropriate subdivision thereof), have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increased imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–06009; Dana Corp., Perfect Circle Div., Richmond Machining Plant, Richmond, IN

NAFTA–TAA–06032; Ameripol Synpol Corp., Odessa, TX

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–06030 & A, B; Schlumberger Oilfield Services, Lafayette, LA, New Iberia, LA and Houma, LA

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–06195; Invensys Sensor Systems, Clarostat Sensors and Controls, Molding Department, El Paso, TX: April 29, 2001

NAFTA–TAA–06226; Fender Musical Instruments Corp., Corona, CA: May 17, 2001

NAFTA–TAA–06152; Telect, Liberty Lake, WA: April 19, 2001.

I hereby certify that the aforementioned determinations were issued during the month of August, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 12, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–21097 Filed 8–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39, 749, TA–W–39, 749A, and TA–W–39, 749B]

BHP Copper, Inc, Pinto Valley, Miami, AZ; BHP Copper, Inc., Tucson/San Manuel Operations, Tucson/San Manuel, AZ; BHP Copper, Inc., Robinson Operations, Ely, NV; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on March 25, 2002,

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applicable to workers of BHP Copper, Inc., Pinto Valley, Miami, Arizona. The notice was published in the **Federal Register** on April 5, 2002 (67 FR 16441).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations occurred at the Tucson/San Manuel Arizona Operations and the Robinson Operations, Ely, Nevada location of BHP Copper, Inc.

Workers at the Tucson/San Manuel operation were engaged in the production of copper cathode until all plant production ceased in March, 2002. Workers at the Robinson operations were retained after all plant production ceased in 1999 to maintain the operating equipment and to facilitate the closing of the operation. Workers separated at the Robinson facility were previously certified for TAA in August, 1999 (TA–W–36,531A).

Based on these findings, the Department is amending the certification to include workers of the Tucson/San Manuel Operations and Robinson Operations, Ely, Nevada locations of BHP Copper, Inc.

The intent of the Department's certification is to include all workers of BHP Copper, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–39, 749 is hereby issued as follows:

All workers of BHP Copper, Inc., Pinto Valley, Miami, Arizona (TA–W–39,749), BHP Copper, Inc., Tucson/San Manuel Operations, Tucson/San Manuel, Arizona (TA–W–39,749A) and BHP Copper, Inc., Robinson Operations, Ely, Nevada (TA–W–39,749B) who became totally or partially separated from employment on or after July 11, 2000, through March 25, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of August, 2002.

Edward A. Tomchick,

Division, Division of Trade Adjustment Assistance.

[FR Doc. 02–21093 Filed 8–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,527]

BHP Copper, Inc., Tucson, AZ, Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 13, 2002 in response to a worker petition which was filed on behalf of workers at BHP Copper, Inc., Tucson, Arizona.

An active certification covering the petitioning group of workers is already in effect (TA–W–39,749A, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 8th day of August, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–21102 Filed 8–19–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,446]

Duel Systems, a Wholly Owned Subsidiary of Methode Electronics, San Jose, California; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 29, 2002 in response to a petition filed by a company official on behalf of workers at Duel Systems, a wholly owned subsidiary of Methode Electronics, San Jose, California.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 5th day of August, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–21098 Filed 8–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,155 and TA–W–41,155A]

International Steel Wool Corp., a Subsidiary of F.H. Bonn Co., Springfield, OH; International Steel Wool Corp., a Subsidiary of F.H. Bonn Co., Headquarters Office, Mission, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 30, 2002, applicable to workers of International Steel Wool Corp., a Subsidiary of F.H. Bonn Co., Springfield, Ohio. The notice was published in the **Federal Register** on May 17, 2002 (67 FR 35143).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations occurred at the Headquarters Office located in Mission, Texas. The workers at the Mission, Texas location provide administrative services supporting the production of annealed steel wool at the Springfield, Ohio facility of the subject firm.

Based on these findings, the Department is amending the certification to include workers of International Steel Wool Corp., Headquarters Office, Mission, Texas.

The intent of the Department's certification is to include all workers of International Steel Wool Corp. A subsidiary of F. H. Bonn Co., who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,155 is hereby issued as follows:

All workers of International Steel Wool Corp., Springfield, Ohio (TA–W–41,155), and International Steel Wool Corp., Headquarters Office, Mission, Texas (TA–W–41,155A), who became totally or partially separated from employment on or after March 25, 2001, through April 30, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 12 day of August, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–21095 Filed 8–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,260]

Laird Technologies, Asheboro, NC; Notice of Negative Determination Regarding Application for Reconsideration,

By application dated July 26, 2002, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on July 2, 2002 and published in the **Federal Register** on July 18, 2002 (67 FR 47400).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Laird Technologies, Asheboro, North Carolina engaged in the production of Electromagnetic Interface (EMI) and Radio Frequency Interface (RFI) Shielding, was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department conducted a survey of the subject company's major customers regarding their purchases of EMI/RFI shielding in 2000 and 2001. The customers reported either no imports or declining imports during the relevant period. The subject firm did not import EMI/RFI shielding during the relevant period. Laird Technologies is transferring production from Asheboro, North Carolina to other affiliated domestic facilities.

The petitioner appears to be indicating the company is building a production plant in China and sometime in the future the Chinese plant will be producing products like or directly competitive with what the subject plant produced. The petitioner believes the shift in production to China meets the eligibility requirements of the Trade Act of 1974, as amended.

A shift in production to a foreign source under TAA is not a relevant factor in meeting the eligibility requirement under section 222(3) of the Trade Act of 1974, as amended. Any potential imports of Electromagnetic Interface (EMI) and Radio Frequency Interface (RFI) Shielding into the United States from the Chinese plant must enter the United States during the relevant period of the investigation to meet the eligibility requirement of section 222(3) of the Trade Act of 1974, as amended.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 12th day of August, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–21096 Filed 8–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,475]

Ruger Equipment, Inc., Urichsville, Ohio; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of July 19, 2002, the United Steelworkers of America, Local 2737–10 requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on July 8, 2002, and published in the **Federal Register** on July 22, 2002 (67 FR 47861).

The petitioner supplied a list of customers unavailable during the original investigation. The Department of Labor will conduct a survey of these customers to determine if imports contributed importantly to the declines in employment at the subject plant.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 12th day of August, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–21099 Filed 8–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 30, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 30, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 5th day of August, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

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APPENDIX

[Petitions instituted on 08/05/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,911	Sappi Fine Paper Mill (Comp)	Muskegon, MI.	03/26/2002	Fine Coated Paper Products.
41,912	ADC Telecommunications (Wrks)	Shakopee, MN.	06/11/2002	Fiber Optics and Telecommunication Equip.
41,913	Barrick Gold Corp (Comp)	Eureka, NV ..	07/18/2002	Gold.
41,914	Tom Harmon Logging (Comp)	LaPine, OR	07/15/2002	Wood Chips.
41,915	Mountain High Timber (Comp)	LaPine, OR	07/15/2002	Wood Chips.
41,916	Emess Design Group, LLC (AFGWD)	Ellwood City, PA.	07/15/2002	Lighting Products.
41,917	Susquehanna Pfaltzgraff (Wrks)	York, PA	07/12/2002	Dinnerware.
41,918	Unilever Best Foods (Wrks)	Santa Cruz, CA.	07/24/2002	Tea Bags.
41,919	Saint-Gobain Abrasives (PACE)	Niagara Falls, NY.	07/18/2002	Abrasive Products (Sheets, Rolls).
41,920	BAE Systems (Wrks)	Wellington, KS.	07/01/2002	Boeing Aircraft Parts.
41,921	Delphi Packard Electric (IUE)	Gadsden, AL	07/24/2002	GM Wiring Harnesses & Distribution System.
41,922	Porterco, LLC (Comp)	Magnolia, AR	07/23/2002	Rifle & Shotgun Slings, Garment Carriers.
41,923	Phelps Dodge Hidalgo (Comp)	Playas, NM ..	07/24/2002	Anode Copper and Sulfuric Acid.
41,924	McDonald Woodworks, Inc. (Wrks)	Philadelphia, MS.	07/17/2002	Wooden Shipping Pallets, Crates, Bases.
41,925	Flowserve (Comp)	Springville, UT.	07/18/2002	Control Valves and Actuators.
41,926	Atlas Aichem Plastic (IBT)	Conneaut, OH.	07/19/2002	Polyethylene and Polypropylene Sheets.
41,927	David Stevens (UNITE)	Blackwood, NJ.	07/25/2002	Women's Apparel.
41,928	Veco Alaska (Comp)	Anchorage, AK.	07/16/2002	Crude Oil.
41,929	Mel, Inc. (Comp)	Winchester, MA.	07/20/2002	Convert Griege Materials.
41,930	Lapror Plastics (Co.)	Manitowoc, WI.	07/25/2002	Handles and Knobs.
41,931	Vertical Aviation Tech. (Comp)	Sanford, FL	01/25/2002	Helicopters.
41,932	Jet Craft Boats (Wrks)	Medford, OR	07/29/2002	Aluminum Boats.
41,933	Agere Systems, Inc. (IBEW)	Orlando, FL	02/15/2002	Semiconductor Products.

[FR Doc. 02–21091 Filed 8–19–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5952 and TA–W–40,976]

Abitibi Consolidated, Donohue Industries, Inc., Lufkin Division, Lufkin, TX; Notice of Revised Determination on Reconsideration

By letter dated June 21, 2002, the company, requested administrative reconsideration of the Department's denial of North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) and Trade Adjustment Assistance (TAA), applicable to workers of Abitibi Consolidated, Donohue Industries, Inc., Lufkin Division, Lufkin, Texas. The denial notice applicable to NAFTA–05952 was signed on May 20, 2002 and the denial notice for TA–W–40,976 was signed on May 23, 2002. The notices were published in the **Federal Register** on June 11, 2002, for NAFTA–5952 (67 FR 40005) and for TA–W–40,976 (67 FR 40004).

The workers of Abitibi Consolidated, Donohue Industries, Inc., Lufkin Division, Lufkin, Texas engaged in activities related to the production of newsprint and specialty paper were denied NAFTA–TAA because criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of section 250 of the Trade Act of 1974, as amended, were not met. The subject firm did not import newsprint and specialty paper from Canada or Mexico during the relevant period. There was no shift in the production of newsprint and specialty paper from the subject firm to Canada or Mexico during the relevant period.

The workers of Abitibi Consolidated, Donohue Industries, Inc., Lufkin Division, Lufkin, Texas were denied TAA because criterion (3) of the group eligibility requirements of section 222 of the Trade Act of 1974, as amended, was not met. Imports did not contribute importantly to the worker separations during the relevant period.

The petitioner states that they responded to the Department's questions on a subsidiary perspective only, rather than on a company-wide basis. Thus they did not indicate the parent company, a Canadian based newsprint manufacturer, imported newsprint products to the United States.

The Department contacted the company requesting further information concerning the allegation. The company provided additional information showing the company increased their reliance on imported Canadian newsprint paper from their parent company located in Canada. The imports from Canada replaced a meaningful portion of the subject plant's production as subject plant production was phased out during the relevant period.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that increased imports of newsprint paper, including imports from Canada, contributed importantly to the decline in production and to the total or partial separation of workers at Abitibi Consolidated, Donohue Industries, Inc., Lufkin Division, Lufkin, Texas. In accordance with the provisions of the Act, I make the following revised determination:

All workers at Abitibi Consolidated, Donohue Industries, Inc., Lufkin Division, Lufkin, Texas (NAFTA–5952), who became totally or partially separated from employment on or after February 24, 2001, through two years from the date of certification, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974;" and

"All workers at Abitibi Consolidated, Donohue Industries, Inc., Lufkin Division, Lufkin, Texas (TA–W–40,976), who became totally or partially separated from employment on or after January 20, 2001, through two years from the date of certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 13th day of August, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–21094 Filed 8–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05663]

Exide Technologies, Transportation Global Business Unit, Shreveport, Louisiana; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of June 28, 2002 the International Union, UAW, Region 5 and Local Union 1532 requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance. The denial notice was signed on May 16, 2002 and published in the **Federal Register** on June 4, 2002 (67 FR 38522).

The petitioner supplied a list of additional customers they believe should be surveyed, since they feel the Department did not survey the correct customers for the relevant period. On further review, the Department will conduct a survey of these customers to determine if imports contributed importantly to the declines in employment at the subject plant.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 12th day of August, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–21100 Filed 8–19–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon Notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of DTAA not later than August 30, 2002.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown not later than August 30, 2002.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 14th day of August, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
GL and V USA (Co.)	Nashua, NH	07/29/2002	NAFTA–6, 419	Baffle filters, disk filters, screens.
Seton Company (Co.)	Saxton, PA	08/02/2002	NAFTA–6, 420	Cut-to-pattern leather pieces for autos.
Buck Forkardt Inc. (USWA)	Kalamazoo, MI	07/31/2002	NAFTA–6, 421	Chuck pinions, chuck scrolls, cast.
Matsushita Home Appliance Corp. (Wkrs).	Danville, KY	08/01/2002	NAFTA–6, 422	Vacuum cleaners.
Exxon Mobil Corporation (Wkrs)	Gibsonia, PA	08/02/2002	NAFTA–6, 423	Grease.
Potlatch Corporation (Wkrs)	Warren, AR	08/02/2002	NAFTA–6, 424	Lumber production.
Fort Darborn Company (Wkrs)	Coldwater, MI	07/31/2002	NAFTA–6, 425	Food labels.
Mahoning Mills, Inc. (Wkrs)	Kutztown, PA	08/02/2002	NAFTA–6, 426	Under garments.
Samuel Whittar (USWA)	Detroit, MI	07/31/2002	NAFTA–6, 427	Strip steel fabrication.
Jet Craft Boats of Oregon (Wkrs)	Medford, OR	08/01/2002	NAFTA–6, 428	Aluminum boats.
Valeo Switches and Detection Systems (Co.).	Ft. Worth, TX	08/02/2002	NAFTA–6, 429	Switches and detection systems.

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APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Scranton Lace Company (Wkrs)	Scranton, PA	08/01/2002	NAFTA–6, 430	Tablecloths, curtains, napkins, runners.
Celestica (Co.)	Mt. Pleasant, IA	08/01/2002	NAFTA–6, 431	Two-way FM radios.
Emess Design Group, LLC (AFGWU).	Ellwood City, PA	07/31/2002	NAFTA–6, 432	Lamps, lighting design products.
G and G Sewing Machine Company (Co.).	Dunmore, PA	07/31/2002	NAFTA–6, 433	Sewing equipment, parts, customized unit.
International Data (Wkrs)	El Paso, TX	07/30/2002	NAFTA–6, 434	Data entry/customer service.
A.O. Smith Electrical Products (Co.)	Scottsville, KY	07/29/2002	NAFTA–6, 435	Stator and coil electric motor assemblie.
Buffalo Color Corp. (Wkrs)	Buffalo, NY	07/30/2002	NAFTA–6, 436	Indigo dye for denim.
Ohmits Manufacturing (Wkrs)	Skokie, IL	07/12/2002	NAFTA–6, 437	Electrical resistors.
Corbin Limited (UNITE)	Ashland, KY	08/05/2002	NAFTA–6, 438	Men and women's tailored suits.
Encompass Group, LLC (Co.)	Eastman, GA	07/31/2002	NAFTA–6, 439	Healthcare apparel.
ADC Telecommunications (Wkrs)	Shakopee, MN	06/11/2002	NAFTA–6, 440	Telecommunications equipment.
Helsapenn (UNITE)	Philadelphia, PA	08/05/2002	NAFTA–6, 441	Shoulder pads.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Flextronics Enclosure Systems (Co.)	Elk Grove Village, IL	08/05/2002	NAFTA–6, 442	Sheet metal computer parts.
Tellabs, Inc. (Wkrs)	Burlington, MA	07/31/2002	NAFTA–6, 443	Telecommunications system for metro appl.
Trinity Industries (Wkrs)	Butler, PA	07/26/2002	NAFTA–6, 444	Railroad freight car parts.
Creo (Wkrs)	Bedford, MA	08/05/2002	NAFTA–6, 445	Scanning equipment.
Pabst Meat Supply (Wkrs)	Invergrove Height, MN	08/05/2002	NAFTA–6, 446	Frozen hamburger patties.
ADC Telecommunications (Wkrs)	Shakopee, MN	08/05/2002	NAFTA–6, 447	Telecommunications.
Crown Cork and Seal (IAM)	Portland, OR	08/05/2002	NAFTA–6, 448	Metal can ends.
IMI Cornelius (Wkrs)	Anoka, MN	07/09/2002	NAFTA–6, 449	Beverage dispensers.
ADC Telecommunications (Wkrs)	Eden Prairie, MN	08/05/2002	NAFTA–6, 450	Optical connecting switching equipment.
Celestica Corp. (Co.)	Rochester, MN	08/12/2002	NAFTA–6, 451	Printed circuit assemblies.
National Torch Tip (IUE)	Pittsburgh, PA	08/12/2002	NAFTA–6, 452	Torch tips.
U.S. Manufacturing (Wkrs)	Bad Axe, MI	08/12/2002	NAFTA–6, 453	Manual steering gear.
Peterson Spring (UAW)	Three Rivers, MI	08/12/2002	NAFTA–6, 454	Auto parts.
Pella Plastics (Co.)	So. Pittsburgh, TN	08/02/2002	NAFTA–6, 455	Plastic molded parts.
C.R. Bard (Co.)	Mentor, OH	08/06/2002	NAFTA–6, 456	Medical devices.
Clore Automotive (Co.)	Bloomington, MN	08/08/2002	NAFTA–6, 457	Battery chargers.
Versa Tool (Wkrs)	Meadville, PA	08/12/2002	NAFTA–6, 458	Injection molds.
Competitive Engineering (Co.)	Tucson, AZ	08/10/2002	NAFTA–6, 459	Precisioned machined parts.
Damas, Inc (Wkrs)	Long Island City, NY	08/01/2002	NAFTA–6, 460	Knits garments.
Dimension Tech (Wkrs)	Ironwood, MI	08/06/2002	NAFTA–6, 461	Acture frame moulding.
Dunbrooke Industries (Co.)	El Dorado Spring, MO	08/06/2002	NAFTA–6, 462	Apparel.
Baker Ewter Prize (Wkrs)	Alphena, MI	08/09/2002	NAFTA–6, 463	Blocks.
Saturn Electronics and Engineering (Wkrs).	Auburn Hills, MI	08/08/2002	NAFTA–6, 464	Electronic boards & modules.
Corning (Co.)	Concord, NC	08/09/2002	NAFTA–6, 465	Optical fiber technology.
Welcast Plastics-Harris Welco (Co.)	Barberton, OH	06/24/2002	NAFTA–6, 466	Plastic lens.

[FR Doc. 02–21092 Filed 8–19–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6269]

Kraft Foods, Inc., Beverages Division, Chicago, Illinois; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on June 12, 2002, in response to a petition filed by a company official on behalf of workers at Kraft Foods, Inc., Beverages Division, Chicago, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 6th day of August, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–21101 Filed 8–19–02; 8:45 am]

BILLING CODE 4510–30–P

LEGAL SERVICES CORPORATION

Development of a National Reporting System to Collect Performance and "Outcomes" Information on the Results of the Services Provided by LSC-funded Grantees to Eligible Clients

AGENCY: Legal Services Corporation.

ACTION: Request for Information on the Development of a National Reporting System to Collect Performance and "Outcomes" Information on the Results of the Services Provided by LSC-funded Grantees to Eligible Clients.

SUMMARY: This notice is a request for information for use by the Legal Services Corporation regarding the Development of a National Reporting System to Collect "Outcomes" Information on the Results of the Services Provided by LSC-funded grantees to Eligible Clients.

ADDRESSES: Two (2) copies of written submissions should be addressed to Wendy Burnette, Legal Services Corporation, 750 First Street NE., Washington, DC 20002–4250.

DATES: Information must be submitted by 5 p.m., September 28, 2002.

FOR FURTHER INFORMATION CONTACT: Randi Youells or Michael Genz, Legal Services Corporation, 750 1st Street NE., Washington, DC 20002–4250.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation (LSC) is a private, nonprofit corporation established by the Congress of the United States to ensure equal access to justice under the law by providing legal assistance in civil matter to low-income individuals. LSC is headed by an 11-member board of directors, appointed by the President and confirmed by the Senate.

LSC does not itself provide legal services to low-income Americans. The Corporation is authorized by Congress to make grants and contracts to support the provision of civil legal assistance to clients who meet eligibility requirements. LSC develops and administers policy consistent with Congressional mandate, secures and receives federal appropriations and allocates these appropriations to not-for-profit legal services organizations throughout the county; assures that grantees of LSC funds comply with federal law and regulations; and guarantees the delivery of high quality services to eligible low-income people in the United States and its territories. LSC makes grants to organizations that provide legal assistance to indigent persons throughout the United States, Puerto Rico, the District of Columbia, the U.S. Virgin Islands, Guam, and Micronesia. LSC grants federal dollars to independent local programs chosen through a system of competition.

As a delivery *system*, legal services programs provide a full range of services to eligible clients. While grantees provide many kinds of services to clients, all are reported to LSC as either cases (the CSR reporting system) or matters (the MSR reporting system). However, neither CSR nor MSR statistics give any information on the outcome of a particular case. In fact, the CSR system reveals very little about a case closed by and LSC-funded grantee other than the following:

- That the grantee accepted the case, that is, the case met the eligibility guidelines established by the program's board and by LSC;
- That the case was 'completed' or closed within the calendar year covered by the CSR submission;
- The manner in which the case was handled, such as 'advice'; and
- The general area of law in which the case falls (e.g., housing law, family law).

This is perceived as problematic for several reasons:

(1) By simply counting closed cases the CSR system reduces the provision of legal services to a number rather than helping us understand what changes grantees have made in the lives of our clients and their communities.

(2) Reducing to a single number (a 'closed case') the services that a grantee provides to a client makes the work of grantees seem easy and undemanding.

(3) Because the CSR data do not measure performance and outcomes, it does not allow LSC and its grantees to objectivity track whether we are expanding access and improving performance quality as required by LSC's five-year Strategic Plan.

(4) CSR data do not allow for comparisons of grantees in terms of the efficiency and effectiveness of grantees' work for clients. Although we are able to extrapolate 'cost-per-case' from the CSR data, the data do not enable us to identify which grantees are working ineffectively or do not otherwise meet the standards commonly expected of high quality legal services providers. Conversely, we cannot objectivity identify our strongest programs so that we can understand what makes them 'best' in order to replicate them.

(5) The CSR/MSR data do not present information that allows the legal service community to draw reasonable conclusions about what happened to those clients who were given advice or brief service, or who received assistance through a service classified by LSC as a 'matter,' such as the receipt of community legal education materials.

Request for Information

LSC invites interested parties to submit written information relevant to the development of outcomes measures for legal services programs. Information provided through public submission will be considered by the Legal Services Corporation in developing a strategy to design a data system to supplant or supplement the current CSR and MSR systems.

Materials submitted should be confined to the specific topic of the study. In particular, the LSC is seeking written submissions on the following topics: outcomes and related performance measurement systems for legal services programs currently in use across the country; optimal ways to assess equity, quality, and efficiency within and across legal services agencies; the types of performance information that can and should be tracked in a viable performance measurement system; performance measurement in relation to other evaluation activities; the performance measurement development process; and optimal ways of assessing the accuracy and usefulness of performance measurement systems.

Information acquired through this Request for Information process is provided voluntarily, will not be compensated and will not obligate LSC to pursue any particular course of action or strategy.

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

[FR Doc. 02–21167 Filed 8–19–02; 8:45 am]

BILLING CODE 7050–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–099]

National Environmental Policy Act; NASA Ames Development Plan

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of the Final Programmatic Environmental

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Impact Statement (FPEIS) for the NASA Ames Development Plan (NADP).

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), and NASA "Procedures for Implementing the National Environmental Policy Act (NEPA)" (14 CFR part 1216 subpart 1216.3), NASA has prepared a FPEIS for the proposed NADP. The purpose of the FPEIS is to assess the environmental consequences associated with development under the proposed NADP, which is intended to bring new research and development (R&D) uses to the NASA Ames Research Center (ARC) in Santa Clara County, California. NASA is planning to develop a world-class, shared-used educational and R&D campus focused on astrobiology, life sciences, space sciences, nanotechnology, biotechnology, information technology and aeronautics. As part of the NADP, NASA officials plan to create partnerships with federal, state and local government agencies, universities, private industry and non-profit organizations in support of NASA's mission to conduct research and develop new technologies.

DATES: NASA will take no final action on the NADP before September 9, 2002, or 30 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's Notice of Availability of the NADP FPEIS, whichever is later.

ADDRESSES: The FPEIS can be reviewed at the following locations:

(a) Mountain View Public Library, Reference Section, 585 Franklin Street, Mountain View, CA (650–903–6887).

(b) Sunnyvale Public Library, Reference Section, 665 West Olive Avenue, Sunnyvale, CA (650–730–7300).

(c) NASA Headquarters, Library, Room l]20, 300 E Street SW, Washington, DC 20546 (202–358–0167).

(d) Access electronically at *http://researchpark.arc.nasa.gov.*

In addition, the FPEIS may be examined at the following locations through the NASA Freedom of Information Act Offices as follows:

(a) NASA, Dryden Flight Research Center, P.O. Box 273, Edwards, CA 93523 (661–276–2704).

(b) NASA, Glenn Research Center at Lewis Field, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2755).

(c) NASA, Goddard Space Flight Center, Greenbelt Road, Greenbelt, MD 20771 (301–286–0730).

(d) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

(e) NASA, Johnson Space Center, Houston, TX 77058 (281–483–8612).

(f) Spaceport U.S.A., Room 2001, John F. Kennedy Space Center, FL 32899. Please call Lisa Fowler at 321–867–2201 in advance.

(g) NASA, Langley Research Center, Hampton, VA 23681 (757–864–2497).

(h) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (256–544–2030).

(i) NASA, Stennis Space Center, MS 39529 (228–688–2164).

FOR FURTHER INFORMATION CONTACT: Sandy Olliges, NASA, Ames Research Center, M.S. 218–1/Building 218, Moffett Field, CA 94035–1000; telephone 650–604–3355; electronic mail (*solliges@mail.arc.nasa.gov*).

SUPPLEMENTARY INFORMATION: In 1991, the Federal Base Closure and Realignment Commission decided to close Moffett Field Naval Air Station. Subsequently, the U.S. Department of Defense transferred stewardship of the property to NASA. NASA took over administration of Moffett Field in 1994. The immediate issues were how to use the newly acquired land in a manner consistent with NASA's mission, and how to pay for the maintenance and operations of such a large site. These matters were originally addressed in the Moffett Field Comprehensive Use Plan (CUP) and its associated Environmental Assessment (EA), which resulted in a Finding of No Significant Impact (FONSI) in 1994. After the transfer of the property, local community leaders formed a Community Advisory Committee (CAC) and recommended uses for the newly acquired land. The uses proposed in the NADP are consistent with the CAC recommendations.

In addition to the activities described in the CUP, NASA now proposes to develop the NASA Research Park (NRP) and other areas by building on the full range of existing high-technology and aviation resources at Moffett Field and creating partnerships with Federal, State, and local governmental agencies, universities, private industry and non-profit organizations in support of NASA's mission to develop new scientific knowledge and technologies. With the help of these collaborative organizations and consistent with its mission, NASA proposes to develop a world-class, shared-use educational and R&D campus focused on the advancement of human knowledge about nanotechnology, information technology, biotechnology, astrobiology, life sciences, space sciences and aeronautics. By integrating public and private R&D efforts at the NRP, NASA would create a hub for technology transfer, stay involved with cutting-edge technology advances, and facilitate the commercial applications of NASA's basic scientific research.

Alternatives for the development at the Center in the FPEIS include:

Alternative 1: The No Action Alternative. Under the No Action (a.k.a. No Project) Alternative, NASA would not propose new development for ARC at this time. However, NASA would implement several projects at ARC that are already approved pursuant to the NASA ARC CUP EA and FONSI, and the California Air National Guard Master Plan EA and FONSI.

Alternative 2: In Alternative 2, NASA proposes to develop approximately 360,000 square meters (3.9 million square feet) of new space in the NRP, Bay View, and Eastside/Airfield areas. Within the NRP area, there would be approximately 190,000 square meters (2 million square feet) of new educational, office, research and development, museum, conference center, housing and retail development. Approximately 52,000 square meters (560,000 square feet) of existing non-historic structures would be demolished, and approximately 46,000 square meters (500,000 square feet) of existing space would be renovated. In this alternative, NASA proposes approximately 121,000 square meters (1.3 million square feet) of new educational and housing development in the Bay View area, and approximately 51,000 square meters (550,000 square feet) of new low density research and development and light industrial space. Hangars 2 and 3 in the Eastside Airfield area would be renovated. Total build out under this alternative would be approximately 845,000 square meters (9.1 million square feet).

Alternative 3: Based on the ideas of Traditional Neighborhood Design, NASA, in Alternative 3, would create a new mixed-use development within the NRP. In this alternative, NASA proposes to: (1) Add approximately 280,000 square meters (3 million square feet) of new educational, office, research and development, museum, conference center, housing and retail development, (2) demolish approximately 52,000 square meters (560,000 square feet) of non-historic structures, and (3) renovate approximately 46,000 square meters (500,000 square feet) of existing space. NASA does not propose any new construction in the Bay View or Eastside/Airfield areas, although

Hangars 2 and 3 in the Eastside/Airfield area would be renovated for low-intensity research and development or light industrial uses. The total build out under Alternative 3 would be approximately 760,000 square meters (8.2 million square feet).

Alternative 4: In Alternative 4, NASA would concentrate more of the new development in the Bay View area than it would in the other alternatives, while creating less dense development in the NRP area. In Alternative 4, NASA proposes to: (1) Add approximately 145,000 square meters (1.6 million square feet) of new educational office, research and development, museum, conference center, housing and retail space in the NRP area, (2) demolish approximately 52,000 square meters (560,000 square feet) of non-historic structures and (3) renovate approximately 46,000 square meters (500,000 square feet) of existing space. In the Bay View area, NASA proposes approximately 251,000 square meters (2.7 million square feet) of new office, research and development, laboratory, educational, and student/faculty housing development. In the Eastside/Airfield area, NASA proposes to (1) create approximately 62,000 square meters (670,000 square feet) of new light industrial, research and development, office and educational facility development, and (2) renovate the historic hangars. The total build out under Alternative 4 would be approximately 940,000 square meters (10.1 million square feet).

Alternative 5: Under Alternative 5, NASA would allow some new construction in each of the four development areas, but would concentrate most of this construction in the NRP area. In this alternative, NASA proposes to: (1) Add approximately 192,000 square meters (2.1 million square feet) of new educational, office, research and development, museum, conference center, housing and retail space in the NRP Area, (2) demolish approximately 52,000 square meters (560,000 square feet) of non-historic structures, and (3) renovate approximately 56,000 square meters (600,000 square feet) of existing space. In the Bay View area, NASA proposes to add approximately 93,000 square meters (1 million square feet) of new development, primarily for housing. In the Eastside/Airfield area, NASA proposes to construct approximately 1,115 square meters (12,000 square feet) of new space in a new control tower to replace the existing control tower that would be demolished in the NRP area. Finally, in the Ames Campus area, NASA proposes to demolish approximately 37,000 square meters (400,000 square feet) of existing buildings to make way for 46,000 square meters (500,000 square feet) of high density office and research and development space. Total build out under Alternative 5 would be approximately 780,000 square meters (8.4 million square feet).

Mitigated Alternative 5: The Preferred Alternative Under Mitigated Alternative 5, development would be the same as in Alternative 5, with several exceptions. In the NRP area, the land area of parcel 1, which is proposed to accommodate the Lab Project proposed under the baseline, would be decreased. The development potential of this parcel would be kept the same through an increase in the parcel's allowed Floor Area Ratio (FAR). The land area of NRP Parcel 6, which is proposed for housing, would be increased, with a corresponding increase in its development potential. As well, a portion of building 19 and all of building 20 would be redesigned for use as dormitory housing. This would be in keeping with the historic use of these buildings, which were originally built as enlisted personnel and officer's housing respectively.

To accommodate additional housing, the land area of Bay View Parcel 1, which is designated for housing would be increased, as would the parcel's allowable FAR. However, the area of other parcels proposed for development was decreased, so the total land area proposed for development in the Bay View would remain the same. In the Bay View area, 1,120 townhomes and apartment units would be provided, as compared to 750 under Alternative 5 without mitigation.

The residential development in the Bay View area would occur in the 100-year floodplain. This site is the only on-site location suitable for the additional housing, which is required to help mitigate the significant environmental impacts on the jobs/housing imbalance and traffic. Fill would be added to approximately 23 acres to bring the finished grade above the 100-year floodplain elevation. No adverse impacts to human health or the environment are expected to result.

NASA has selected Mitigated Alternative Five as the Preferred Alternative. The Preferred Alternative has been identified as the option that best meets NASA's purpose and need, and has the fewest significant environmental impacts. However, even with the proposed mitigation measures, there would be significant impacts to air quality, traffic, and the jobs/housing imbalance.

The FPEIS also includes the General Conformity Determination for Carbon Monoxide, which is provided in Appendix D of the FPEIS. Although more than 100 tons per year of carbon monoxide would be generated by the preferred alternative, no violation of National Ambient Air Quality Standards is expected.

Pursuant to section 7 of the Endangered Species Act, NASA has conducted informal consultation with the U.S. Fish and Wildlife Service, and has prepared a Biological Assessment to describe the effects of the proposed action on the federally listed species at the site. No adverse effect is expected from implementation of the preferred alternative. The Biological Assessment is provided as Appendix E to the FPEIS.

Pursuant to the National Historic Preservation Act (NHPA), NASA has prepared a Historic Resources Protection Plan (HRPP) for the Shenandoah Plaza Historic District in the proposed NRP, and a Programmatic Agreement (PA) with the Advisory Council on Historic Preservation and the California State Historic Preservation Officer, to adopt and implement the HRPP. Under the proposed action, most noncontributing structures in the Historic District would be demolished, along with the non-historic buildings in the NRP that are outside the Historic District. Historic District infill and new construction in the area of potential effect would comply with the NHPA. No adverse effect is expected from implementation of the preferred alternative. The HRPP and PA are in appendix G of the FPEIS.

NASA has prepared a consistency determination for the entire NADP project relative to the Coastal Zone Management Act administered by the Bay Conservation and Development Commission (BCDC). This consistency determination was submitted to BCDC on April 12, 2002, with additional information submitted on May 29 and July 9, 2002. This consistency determination concluded that the proposed NADP would be consistent to the maximum extent practicable with the Bay Plan, McAteer-Petris Act, and the Coastal Zone Management Act. BCDC concurred with NASA's consistency determination on July 18, 2002.

Future projects implemented pursuant to the NADP will be evaluated for NEPA compliance by the NASA ARC Environmental Services Office to determine if the project's environmental impacts were adequately described in the FPEIS. Any applicable mitigation measures will also be identified. If the project is not adequately covered by the

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FPEIS, then NASA will determine what level of additional NEPA analysis may be required. In addition to the NEPA review, NASA will review its partners' proposed projects for compliance with the NADP Design Guide, the Transportation Demand Management Program, the Historic Resources Protection Plan, and the Environmental Issues Management Plan, which are described in the FPEIS, as well as with Federal, State, and local environmental, health, and safety laws, regulations, and ordinances; Executive Orders; NASA ARC policies; and other applicable codes and standards.

Dated: August 14, 2002.

Jeffrey E. Sutton,

Assistant Administrator for Management Systems.

[FR Doc. 02–21201 Filed 8–19–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–100]

NASA Advisory Council, Revolutionize Aviation Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aerospace Technology Advisory Committee (ATAC), Revolutionize Aviation Subcommittee (RAS).

DATES: Wednesday, September 18, 2002, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 3H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Bernice E. Lynch, Office of Aerospace Technology, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4594.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Revolutionize Aviation Subcommittee (RAS) Overview
- Overview of Aeronautics Programs
- NASA Aeronautics Performance Report
- NASA Aeronautics Strategy & Planning

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: August 14, 2002.

Sylvia K. Kraemer,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–21202 Filed 8–19–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before September 19, 2002, to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Brooke Dickson, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for these information collections on June 7, 2002 (67 FR 39442 and 39443). No comments were received. NARA has submitted the described information collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Application for attendance at the Institute for the Editing of Historical Documents.
   OMB number: 3095–0012.
   Agency form number: None.
   Type of review: Regular.
   Affected public: Individuals, often already working on documentary editing projects, who wish to apply to attend the annual one-week Institute for the Editing of Historical Documents, an intensive seminar in all aspects of modern documentary editing techniques taught by visiting editors and specialists.
   Estimated number of respondents: 25.
   Estimated time per response: 1.5 hours.
   Frequency of response: On occasion, no more than annually (when respondent wishes to apply for attendance at the Institute).
   Estimated total annual burden hours: 37.5 hours.
   Abstract: The application is used by the NHPRC staff to establish the applicants qualifications and to permit selection of those individuals best qualified to attend the Institute jointly sponsored by the NHPRC, the State Historical Society of Wisconsin, and the University of Wisconsin. Selected applicants forms are forwarded to the resident advisors of the Institute, who use them to determine what areas of instruction would be most useful to the applicants.

2. *Title:* National Historical Publications and Records Commission Grant Program.
   OMB number: 3095–0013.
   Agency form number: None.
   Type of review: Regular.
   Affected public: Nonprofit organizations and institutions, state and local government agencies, Federally-acknowledged or state-recognized Native American tribes or groups, and individuals who apply for NHPRC grants for support of historical documentary editions, archival preservation and planning projects, and other records projects.
   Estimated number of respondents: 134 per year submit applications; approximately 100 grantees among the applicant respondents also submit semiannual narrative performance reports.
   Estimated time per response: 54 hours per application; 2 hours per narrative report.
   Frequency of response: On occasion for the application; semiannually for the narrative report. Currently, the NHPRC considers grant applications 2 times per year; respondents usually submit no more than one application per year.
   Estimated total annual burden hours: 7,636 hours.
   Abstract: The application is used by the NHPRC staff, reviewers, and the Commission to determine if the applicant and proposed project are eligible for an NHPRC grant, and whether the proposed project is methodologically sound and suitable for support. The narrative report is used by the NHPRC staff to monitor the performance of grants.

3. *Title:* Applications for Archival Administration and Historical Documentary Editing Fellowships.
   OMB number: 3095–0014.
   Agency form number: None.
   Type of review: Regular.
   Affected public: Individuals who wish to apply for an NHPRC fellowship in archival administration or historical documentary editing. Applicants for the archival administration fellowship must have at least two years professional archival work experience; applicants for the editing fellowship must hold a Ph.D. or have completed all requirements for the degree except the dissertation.
   Estimated number of respondents: 9.
   Estimated time per response: 8 hours.
   Frequency of response: Generally one-time.
   Estimated total annual burden hours: 72 hours.
   Abstract: The application is used by the NHPRC staff to establish the applicants' qualifications and to permit selection by the host institution of those individuals best qualified for the fellowships. One fellowship in archival administration and one fellowship in historical editing are awarded each year.

4. *Title:* Application for host institutions of archival administration and historical editing fellowships.
   OMB number: 3095–0015.
   Agency form number: None.
   Type of review: Regular.
   Affected public: Nonprofit institutions or organizations that have active archival or special collections programs, and historical documentary publication projects that have received an NHPRC grant.
   Estimated number of respondents: 9.
   Estimated time per response: 17 hours.
   Frequency of response: Generally, one-time although an institution may apply in subsequent years.
   Estimated total annual burden hours: 153 hours.
   Abstract: The application is used by the NHPRC staff to select applicants to serve as host institutions for the two fellowships supported by the NHPRC each year.

Dated: August 13, 2002.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 02–21039 Filed 8–19–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CAPITAL PLANNING COMMISSION

Public Comment Period on the Draft National Capital Urban Design and Security Plan

AGENCY: National Capital Planning Commission.

ACTION: Availability of the Draft National Capital Urban Design and Security Plan and opportunity for public comment.

SUMMARY: In response to the proliferation of hastily installed security barriers that are marring the appearance of Washington's Monumental Core, the National Capital Planning Commission has prepared a draft Urban Design and Security Plan to identify permanent, comprehensive security and streetscape improvements to be developed over the next three to five years. The plan proposes solutions for areas throughout the Monumental Core including Pennsylvania Avenue, the Federal Triangle, the National Mall, Independence and Constitution Avenues, the Lincoln and Jefferson Memorials, Downtown, the West End, and the Southwest Federal Center. The Commission is conducting a 60-day public comment period on the draft plan.

DATES: An information session that includes opportunity for public comment will be held on Wednesday, September 4, 2002 from 5:30 p.m. to 7:30 p.m.

ADDRESSES: The meeting will be held at the National Capital Planning Commission office, 401 9th Street, NW., North Lobby, Suite 500, Washington, DC 20576.

SUPPLEMENTARY INFORMATION: The draft plan is available on the Commission's Web site *www.ncpc.gov*. It is also available on CD from the Commission's offices at 401 9th Street, NW., North Lobby, Suite 500, Washington, DC 20576. Printed copies will be available upon request from July 26, 2002. Individuals interested in testifying at the public meetings should call the National Capital Planning Commission, 202–482–7200. Members of the public who wish to testify and have not signed up in advance may sign up at the meeting before the start of the session. Those testifying will be limited to three minutes for individuals and five minutes for organizations, and will generally be scheduled on a first-come basis. Written comments may be submitted before, during or after the public meeting. Comments may be mailed to the attention of Elizabeth Miller at the National Capital Planning Commission. Comments may also be sent by fax: 202–482–7272 or by e-mail: *infor@ncpc.gov*. All comments should be received by the end of the comment period, September 9, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth Miller, 202–482–7246.

Dated: August 9, 2002.

Ash J. Jain,

Certifying Officer.

[FR Doc. 02–21066 Filed 8–19–02; 8:45 am]

BILLING CODE 7502–02–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Submission for OMB Review; Comment Request

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 [Pub. L. 104–13, 44 U.S.C. Chapter 35]. Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts' Deputy for Guidelines, Panel, & Council Operations, A.B. Spellman 202/682–5421. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call 202/682–5496 between 10 a.m. and 4 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503, 202/395–7316, within 30 days from the date of this publication in the **Federal Register**.

The Office of Management and Budget (OMB) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary

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for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of all of its funding application guidelines and grantee reporting requirements. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Agency: National Endowment for the Arts.

Title: Blanket Justification for NEA Funding Application Guidelines and Reporting Requirements FY 2004–FY 2007.

OMB Number: 3135–0112.

Frequency: Annually.

Affected Public: Nonprofit organizations, state & local arts agencies, and individuals.

Estimated Number of Respondents: 5,380.

Estimated Time Per Respondent: 21 hours (applications)/8 hours (reports).

Total Burden Hours: 129,152.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): 0.

Description: Guideline instructions and applications elicit relevant information from individuals, nonprofit organizations, and state and local arts agencies that apply for funding from the NEA. This information is necessary for the accurate, fair, and thorough consideration of competing proposals in the review process. According to OMB Circulars A–102 and A–110, recipients of federal funds are required to report on project activities and expenditures. Reporting requirements are necessary to ascertain that grant projects have been completed, and all terms and conditions fulfilled.

ADDRESSES: A.B. Spellman, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 516, Washington, DC 20506–0001, telephone 202/682–5421 (this is not a toll-free number), fax 202/682–5049.

Murray Welsh,

Director, Administrative Services, National Endowment for the Arts.

[FR Doc. 02–21123 Filed 8–19–02; 8:45 am]

BILLING CODE 7537–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

SES Performance Review Board

AGENCY: The National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: This notice announces the membership of the Performance Review Board of the National Endowment for the Humanities.

FOR FURTHER INFORMATION CONTACT: Timothy G. Connelly, Director of Human Resources, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; telephone (202) 606–8415.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 3393 and 4314(c)(1) through (5) require each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, both an executive resources board and a performance review board for SES. The National Endowment for the Humanities has a combined Board, which is referred to as the Executive Resources and Performance Review Board (ERPRB).

Effective September 1, 2002, the members of the National Endowment for the Humanities SES Performance Review Board selected to serve two-year appointments are Nancy Rogers, Director, Division of Public Programs—Board Chairman, Jeffrey Thomas, Assistant Chairman for Planning and Operations, Brett Bobley, Chief Information Officer, and Edie Manza, Director, Federal/State Partnership. Cherie Harder, Senior Counselor to the Chairman, will serve until replaced.

Bruce Cole,

Chairman.

[FR Doc. 02–21168 Filed 8–19–02; 8:45 am]

BILLING CODE 7536–01–U

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of August 19, 26, September 2, 9, 16, 23, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 19, 2002

Monday, August 19, 2002

8:30 a.m. Discussion of Security Issues (Closed—Ex. 1)

Wednesday, August 21, 2002

9:30 a.m. Briefing on NRC International Activities (Public Meeting) (Contact: Janice Dunn Lee, 301–415–1780)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

1:55 p.m. Affirmation Session (Public Meeting) (If needed)

2:00 p.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, 301–415–2308)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of August 26, 2002—Tentative

There are no meetings scheduled for the Week of August 26, 2002.

Week of September 2, 2002—Tentative

There are no meetings scheduled for the Week of September 2, 2002.

Week of September 9, 2002—Tentative

There are no meetings scheduled for the Week of September 9, 2002.

Week of September 16, 2002—Tentative

There are no meetings scheduled for the Week of September 16, 2002.

Week of September 23, 2002—Tentative

There are no meetings scheduled for the Week of September 23, 2002.

The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

ADDITIONAL INFORMATION: By a vote of 5–0 on August 12 and 13, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Security Issues (Closed—Ex. 1)" be held on August 19, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving the Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: August 15, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–21254 Filed 8–16–02; 10:05 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from July 26, 2002 through August 8, 2002. The last biweekly notice was published on August 6, 2002 (67 FR 50947).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By September 19, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

[1] The most recent version of Title 10 of the CODE OF FEDERAL REGULATIONS, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief."

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As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov*.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: July 24, 2002.

Description of amendments request: The proposed amendments would revise Technical Specifications (TS) Section 3.1.7, "Standby Liquid Control (SLC) System," to reflect modifications being made to the system as a result of transition to the GE14 fuel design. To support this transition, the required in-vessel boron concentration, supplied by the SLC system, would be increased from 660 ppm natural boron to a concentration equivalent to 720 ppm natural boron. This would be accomplished by use of sodium pentaborate solution enriched with the Boron-10 isotope. As a result, (1) a new Surveillance Requirement (SR) 3.1.7.8 would be added to verify sodium pentaborate enrichment, (2) the minimum sodium pentaborate concentration value would be lowered in TS Figure 3.1.7–1, "Sodium Pentaborate Solution Volume Versus Concentration Requirements," and (3) the temperature versus concentration requirements of TS Figure 3.1.7–2, "Sodium Pentaborate Solution Temperature Versus Concentration Requirements," would be revised. In a related change, SR 3.1.7.3 would also be revised. Currently, the SR verifies temperature of the SLC pump suction piping. The SR would be revised to verify temperature of the suction and discharge piping up to the SLC injection valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendments do not alter the design or operation of the Standby Liquid Control (SLC) system, but rather revise Technical Specification (TS) Section 3.1.7 requirements to ensure acceptable SLC boron solution volume and concentration values to produce a minimum in-vessel boron concentration which is sufficient to bring the reactor to a subcritical condition without taking credit for control rod movement. The existing design of the SLC system is sufficient to handle enriched sodium pentaborate solution, which is chemically and physically similar to the current solution. The SLC system is not considered to be an initiator of any analyzed event. Therefore, the proposed amendments do not increase the probability of a previously evaluated accident.

The current TS Section 3.1.7 requirements ensure acceptable SLC boron solution volume and concentration values to produce a minimum in-vessel natural boron concentration of 660 ppm. The proposed change revises the boron solution requirements of TS Figures 3.1.7–1 and 3.1.7–2, to ensure a minimum in-vessel concentration equivalent to 720 ppm natural boron. A minimum concentration equivalent to 720 ppm natural boron in the reactor is sufficient to bring the reactor, at any time in a fuel cycle, from full power and minimum control rod inventory to a subcritical condition with the reactor in the most reactive, xenon free state without taking credit for control rod movement. This concentration was determined by General Electric using the approved methods described in Revision 14 of General Electric Standard Application for Reactor Fuel (GESTAR II), NEDE 24011–P–A. The analysis assumes Brunswick Steam Electric Plant (BSEP) operation with an equilibrium core of GE14 fuel, operating at 2923 megawatts thermal (MWt) with 24 month operating cycles.

As stated above, the in-vessel boron concentration is being raised from 660 ppm natural to 720 ppm equivalent. This will be accomplished by use of sodium pentaborate solution enriched with the Boron-10 isotope. As a result, a new Surveillance Requirement (SR) 3.1.7.8 is added. This SR verifies sodium pentaborate enrichment is greater than or equal to 47 atom percent Boron-10 prior to addition to the SLC tank, thereby ensuring a minimum concentration equivalent to 720 ppm natural boron in the reactor will be achieved.

Use of sodium pentaborate enriched to 47 atom percent Boron-10 allows the volume versus concentration requirements of TS Figure 3.1.7–1 to be lowered. This, in turn, lowers the solution's saturation temperature. Accordingly, the temperature versus concentration requirements of TS Figure 3.1.7–2 are revised. The existing 5° F margin to the saturation temperature specified in the bases is maintained in the revised TS Figure 3.1.7–2.

The concentration requirements of the SLC system boron solution will ensure that the SLC system continues to comply with the requirements of 10 CFR 50.62(c)(4).

The SLC system is also used to maintain suppression pool pH level above 7 following a loss-of-coolant-accident (LOCA) involving significant fission product releases. This ensures that iodine will be retained in the suppression pool water post-LOCA. The revised sodium pentaborate solution requirements were evaluated using the methodology provided in NUREG–1465, "Accident Source Terms for Light-Water Nuclear Power Plants, Final Report," dated February 1, 1995 and NUREG/CR–5950, "Iodine Evolution and pH Control," dated December 1992. This evaluation demonstrated that the SLC system continues to meet its post-LOCA suppression pool pH control design function.

The change to SR 3.1.7.3 is conservative in nature and is consistent with both the current Bases for SR 3.1.7.3 and plant operating practice. Required verification of the discharge as well as suction piping temperature provides additional assurance of system operability.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendments do not alter the design or operation of the SLC system, but rather revise TS Section 3.1.7 requirements to ensure acceptable SLC boron solution volume and concentration values to produce a minimum in-vessel boron concentration which is sufficient to bring the reactor to a subcritical condition without taking credit for control rod movement. The existing design of the SLC system is sufficient to handle enriched sodium pentaborate solution, which is chemically and physically similar to the current solution. Using the enriched solution does not change any of the key SLC system process parameters (*i.e.*, flow rates, discharge pressure, required net positive suction head, etc.). Correct enrichment is ensured by the addition of a new SR to verify sodium pentaborate enrichment prior to addition to the SLC tank. The existing 5° F margin to the saturation temperature specified in the bases is maintained. The change to SR 3.1.7.3 is conservative in nature and is consistent with both the current Bases for SR 3.1.7.3 and plant operating practice. Required verification of the discharge as well as suction piping temperature provides additional assurance of system operability. Therefore, the proposed amendments cannot create a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the boron solution requirements of TS Figures 3.1.7–1 and 3.1.7–2, to ensure a minimum in-vessel concentration equivalent to 720 ppm natural boron. A minimum concentration equivalent to 720 ppm natural boron in the reactor is sufficient to bring the reactor, at any time in a fuel cycle, from full power and minimum control rod inventory to a subcritical condition with the reactor in the most reactive, xenon free state without taking credit for control rod movement. This concentration was determined by General Electric using the approved methods described in GESTAR II. The existing design of the SLC system is sufficient to handle enriched sodium pentaborate solution, which is chemically and physically similar to the current solution. Correct enrichment is ensured by the addition of a new SR 3.1.7.8 to verify sodium pentaborate enrichment prior to addition to the SLC tank. The existing 5° F margin to the saturation temperature specified in the bases is maintained. The existing SLC system design requires that SLC inject a quantity of boron that includes an additional 25% above that needed for an in-vessel boron concentration of 660 ppm. This additional 25% is injected to compensate for imperfect mixing, leakage, and volume in other small piping connected to the reactor. This margin will be maintained such that an additional 25% above that needed for an in-vessel boron concentration equivalent to 720 ppm natural boron will also be injected. The minimum sodium pentaborate concentration of 8.5 weight percent, proposed by this amendment request, ensures that the SLC system continues to meet its post-LOCA suppression pool pH control design function. The change to SR 3.1.7.3 is conservative in nature and is consistent with both the current Bases for SR 3.1.7.3 and plant operating practice. Required verification of the discharge as well as suction piping temperature provides additional assurance of system operability.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Kahtan Jabbour, Acting.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: July 16, 2002.

Description of amendment request: Energy Northwest is requesting changes

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to the technical specifications (TS) to change the specified minimum emergency diesel generator (DG) steady state output voltage from 3740 volts to 3910 volts.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed license amendment is administrative and does not involve any design changes or physical changes to plant equipment. The ability of the DGs to perform their safety functions to mitigate consequences is not affected and will continue to be demonstrated in the same manner. Therefore the proposed amendment will not affect the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed license amendment does not involve changes to plant equipment and the DGs will continue to perform to their required parameters in the same manner. Because the performance of the DGs will remain unchanged, this proposed amendment does not present the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed amendment is solely a request to revise the Technical Specifications regarding minimum steady state DG output voltage requirements. This change would not affect any operating parameter or equipment performance. Because this proposed amendment would not affect operation, the margin of safety maintained by Columbia would remain unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: July 8, 2002.

Description of amendment request: The proposed amendments would change Appendix A, Technical Specifications (TS), of Facility Operating License Nos. NPF–11 and NPF–18. Specifically, the proposed change would add two footnotes to TS Table 3.3.8.1–1, "Loss of Power Instrumentation," Functions 1.e and 2.e, "Degraded Voltage—Time Delay, LOCA," and makes an editorial change to the heading of TS Table 3.3.8.1–1. The Degraded Voltage—Time Delay, LOCA, function is currently required to be OPERABLE during plant configurations when the emergency core cooling system (ECCS) instrumentation that generates the loss-of-coolant accident (LOCA) signal is not required to be OPERABLE. The proposed changes correct this inconsistency by adding two new footnotes to TS Table 3.3.8.1–1 that modify the required OPERABILITY of the Degraded Voltage—Time Delay, LOCA, function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The TS Table 3.3.8.1–1 Function column heading change to add the reference to the Opposite Unit Division 2 is an editorial change. It was always the intent and practice of LaSalle County Station to apply TS requirements from this column to the Opposite Unit Division 2 4.16 kV emergency bus.

The operation of the Degraded Voltage—Time Delay, LOCA, function is not a precursor to any accident previously evaluated. Thus, the proposed changes to modify the OPERABILITY of the Degraded Voltage—Time Delay, LOCA, function to be consistent with the OPERABILITY of the ECCS instrumentation that generate the timer initiating LOCA signal do not have any affect on the probability of an accident previously evaluated.

Successful operation of the required safety functions of the ECCS is dependent upon the availability of adequate power sources for energizing the various components such as pump motors, motor operated valves, and the associated control components. Offsite power is the preferred source of power for the 4.16 kV emergency buses. The Degraded Voltage—Time Delay, LOCA, function does provide assurance that the ECCS will perform as designed by initiating the disconnect of the 4.16 kV emergency buses from the offsite power sources and connected to the onsite DG power sources, if it is determined that insufficient offsite voltage is available. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes to modify the OPERABILITY of the Degraded Voltage—Time Delay, LOCA, function to be consistent with the OPERABILITY of the ECCS instrumentation that generate the timer initiating LOCA signal, will not affect the control parameters governing unit operation or the response of plant equipment to transient conditions. The proposed changes do not introduce any new equipment, modes of system operation or failure mechanisms.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The Degraded Voltage Time Delay circuitry is composed of two time delay components. Upon detection of a degraded voltage condition, the Degraded Voltage—Time Delay, No LOCA, function timer is initiated with a TS Allowable Value of ≥ 270.1 seconds and ≤ 329.9 seconds. If a coincident LOCA signal is detected, the Degraded Voltage—Time Delay, No LOCA, function timer is bypassed and the Degraded Voltage—Time Delay, LOCA, function timer is initiated. The Degraded Voltage—Time Delay, LOCA, function timer has a TS Allowable Value of ≥ 9.4 seconds and ≤ 10.9 seconds. The Time Delay Allowable Values are long enough to provide time for the offsite power supply to recover to normal voltages, but short enough to ensure that sufficient power is available to the required equipment. The shorter time delay associated with a coincident LOCA signal is required to ensure that the ECCS injection assumptions of the LOCA analyses are met. The proposed changes do not affect the Time Delay Allowable Values.

The Drywell Pressure—High instrumentation is required to be OPERABLE in MODES 1, 2 and 3. In MODES 4 and 5, the Drywell Pressure—High instrumentation is not required to be OPERABLE since there is insufficient energy in the reactor to pressurize the drywell to the Drywell Pressure—High setpoint.

The Reactor Vessel Water Level—Low Low Low, Level 1 and Reactor Vessel Water Level—Low Low, Level 2 ECCS instrumentation is required to be OPERABLE in MODES 1, 2, 3 and 4. In MODE 5, the ECCS instrumentation is required to be OPERABLE except with the spent fuel storage pool gates removed and the water level ≥ 22 feet over the top of the reactor pressure vessel flange. In this situation, the water level provides sufficient coolant inventory to allow operator action to terminate the inventory loss prior to fuel uncovery in case of an inadvertent draindown.

The Drywell Pressure—High, Reactor Vessel Water Level—Low Low Low, Level 1 and the Reactor Vessel Water Level—Low Low, Level 2 ECCS instrumentation are not required to be OPERABLE when not in MODES 1, 2, 3, 4, and 5 (i.e., no fuel in the vessel).

The proposed changes will modify the OPERABILITY of the Degraded Voltage—Time Delay, LOCA, function to be consistent with the OPERABILITY of the above described ECCS instrumentation that generate the timer initiating LOCA signal. Thus, the proposed changes are consistent with the ECCS injection assumptions of the LOCA analyses.

The Degraded Voltage—Time Delay, No LOCA, function provides adequate protection to ensure that other required systems powered from the diesel generators (DGs) function as designed in any non-LOCA accident in which a loss of power is assumed when the Degraded Voltage—Time Delay, LOCA, function is not required to be OPERABLE.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Florida Power and Light Company, et al. (FPL), Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: July 18, 2002.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) regarding Engineered Safety Feature Actuation System instrumentation. Specifically, they would limit the period of time that inoperable recirculation actuation signal (RAS), containment spray actuation signal (CSAS), and auxiliary feedwater actuation signal (AFAS) input channels could be in the bypassed and/or tripped condition. Generally, the proposed TS employ a 48-hour completion time to restore an inoperable channel, which, in most cases, is more restrictive than the existing TS, is comparable to the value used in the Standard TS for Combustion Engineering plants, and is a reasonable expected repair time based on plant maintenance history.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would operation of the facility in accordance with the proposed amendments involve a significant increase in the probability or consequences of an accident previously evaluated?

No, facility operation under the new Technical Specification (TS) restrictions would not increase the probability of occurrence of any accident previously evaluated. The proposed changes only affect the emergency safety features actuation system (ESFAS) functions of RAS, CSAS, and AFAS; generally limiting the time that any instrument channel may be inoperable in a bypassed or tripped condition. No physical plant changes are proposed in conjunction with these revisions. The proposed changes to RAS and AFAS channel operability greatly reduce the time that actuation systems are vulnerable to spurious, inadvertent actuation. The proposed changes do allow a new unlimited time for trip of one CSAS channel on Unit 1. Unit 2 already contains provision for the indefinite single channel trip of CSAS, and this change will also make the two units similar. Additionally, it is important to note that inadvertent actuation of any of these functions (RAS, CSAS, or AFAS) during plant operation is not an accident initiating event. Therefore, with no physical effects on the plant and no increase in probability that the subject ESFAS functions will initiate an accident, there is no increased probability that any previously evaluated accident will occur. The changes provided in this safety evaluation do not affect the assumptions or results of any accident evaluated in the UFSAR [Updated Final Safety Analysis Report].

Likewise, the consequences of any accident previously evaluated have not been increased. The proposed changes, by limiting the time that ESFAS functions are inoperable, will increase the reliability of the associated ESFAS functions to respond to accidents. In particular, the revision to the RAS TS will limit the time that the RAS will be vulnerable to single failure and will therefore improve the system reliability during an accident. As these proposed changes constitute no physical change to the facility and only serve to increase ESFAS function reliability, FPL concludes that the consequences of previously evaluated accidents are not increased. The ability of the ESFAS to respond to accident conditions as assumed in any accident analysis has not been affected.

2. Would operation of the facility in accordance with the proposed amendments create the possibility of a new or different kind of accident from any accident previously evaluated?

No, the proposed activity does not create the possibility of an accident of a different type than any previously evaluated. The proposed changes only affect the ESFAS functions of RAS, CSAS, and AFAS; generally limiting the time that any instrument channel may be inoperable in a bypassed or tripped condition. No physical plant changes are proposed in conjunction with these revisions. Thereby, the proposed changes do not create any new equipment interfaces, equipment response characteristics, or operating configurations. Without creation of a new interaction of materials, operating configuration, or operating interface, there is no possibility that the proposed changes can introduce a new or different kind of accident.

3. Would operation of the facility in accordance with the proposed amendments involve a significant reduction in a margin of safety?

The margin of safety as defined in the basis for any Technical Specification or in any licensing document has not been reduced. Except for the change in end state specified for the AFAS automatic actuation logic LCO [Limiting Condition for Operation], the TS Bases for the associated ESFAS LCO do not explicitly discuss a related margin of safety. Changing the AFAS automatic actuation logic LCO end state from Mode 5 to Mode 4 is not a reduction in a margin of safety. That proposed change is consistent with the TS applicability for the AFAS and auxiliary feedwater systems as well as the bases for TS LCOs. Additionally, by virtue of the increased ESFAS reliability provided by the proposed amendments, it is evident that the margin of safety will not be reduced in any manner.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Kahtan N. Jabbour, Acting.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: June 24, 2002.

Description of amendment request: The proposed amendment would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less* * *" to "* * *up to 24 hours or up to the limit of the specified Frequency, whichever is greater* * *." In addition, the following requirement would be added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The NRC staff issued a notice of opportunity for comment in the **Federal**

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Register on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated June 24, 2002. The NSHC determination is restated below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in [a] margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on [a] margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard J. Laufer.

PPL Susquehanna, LLC, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: July 17, 2002.

Description of amendment request: The proposed amendment would change the Unit 2 Technical Specifications (TSs) by including the Unit 2 Cycle 12 (U2C12) Minimum Critical Power Ratio (MCPR) Safety Limits in Section 2.1.1.2, changing the references listed in Section 5.6.5.b, and changing the design features in Section 4.2.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No: The proposed change to the MCPR Safety Limits does not directly or indirectly affect any plant system, equipment, component, or change the processes used to operate the plant. Further, the U2C12 MCPR Safety Limits are generated using NRC approved methodology and meet the applicable acceptance criteria. Thus, this proposed amendment does not involve a significant increase in the probability of occurrence of an accident previously evaluated.

Prior to the startup of U2C12, licensing analyses are performed (using NRC approved methodology referenced in Technical Specification Section 5.6.5.b) to determine changes in the critical power ratio as a result of anticipated operational occurrences. These results are added to the MCPR Safety Limit values proposed herein to generate the MCPR operating limits in the U2C12 [Core Operating Limits Report] COLR. These limits could be different from those specified for the U2C11 COLR. The COLR operating limits thus assure that the MCPR Safety Limit will not be exceeded during normal operation or anticipated operational occurrences, thus providing the required level of protection for the fuel rod cladding. Postulated accidents are also analyzed prior to the startup of U2C12 and the results shown to be within the NRC approved criteria. The proposed change to the MCPR Safety Limit will have a negligible impact on the results of these accident analyses.

The U2C12 reload fuel bundles will utilize a small amount of depleted uranium ("tails") in certain fuel rods, in addition to natural and slightly enriched uranium. There is no change to the composition of the fuel pellets containing tails material, (*i.e.*, UO2) except a slight decrease in the amount of [uranium-235] U_{235}. Therefore, the use of depleted uranium ("tails") in the fuel rods does not affect the mechanical performance of the fuel rods. The impact of the use of tails on core performance is included in the reload licensing analysis.

The changes to the references in Section 5.6.5.b were made to properly reflect the NRC approved methodology used to generate the U2C12 core operating limits. The use of this approved methodology does not increase the probability of occurrence or consequences of an accident previously evaluated.

Therefore, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously analyzed?

No: The change to the MCPR Safety Limits and the U2C12 core loading which it supports does not directly or indirectly affect any plant system, equipment, or component (other than the core itself) and therefore does not affect the failure modes of any of these. Thus, the proposed [change does] not create the possibility of a previously unevaluated operator error or a new single failure.

The use of depleted uranium ("tails") in the fuel rods does not affect the mechanical performance of the fuel rods.

The changes to the references in Section 5.6.5.b were made to properly reflect the NRC approved methodology used to generate the U2C12 core operating limits. The use of this approved methodology does not create the possibility of a new or different kind of accident.

Therefore, this proposed amendment does not involve a possibility of a new or different kind of accident from any accident previously analyzed.

3. Does the proposed change involve a significant reduction in a margin of safety?

No: Since the proposed [change does] not alter any plant system, equipment, component, or the processes used to operate the plant, the proposed change will not jeopardize or degrade the function or operation of any plant system or component governed by Technical Specifications. The proposed MCPR Safety Limits do not involve a significant reduction in the margin of safety as currently defined in the Bases of the applicable Technical Specification sections, because the MCPR Safety Limits calculated for U2C12 preserve the required margin of safety.

The use of depleted uranium ("tails") in the fuel rods does not affect the mechanical performance of the fuel rods.

The changes to the references in Section 5.6.5.b were made to properly reflect the NRC approved methodology used to generate the U2C12 core operating limits. This approved methodology is used to demonstrate that all applicable criteria are met, thus, demonstrating that there is no reduction in the margin of safety.

Therefore, these changes do not involve a significant reduction in [the] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Richard J. Laufer.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: July 18, 2002.

Description of amendment request: The licensee proposes to change Salem Technical Specifications (TSs) requirements associated with its containment spray nozzles. The frequency of TS Surveillance Requirement (SR) 4.6.2.1.d for verifying that the containment spray nozzles are unobstructed would be changed from a fixed 10-year frequency to after activities that could result in nozzle blockage. PSEG proposes to either evaluate the work performed to determine the impact to the containment spray system, or perform an air or smoke flow test.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the testing requirements for the containment spray nozzles to only require verification that each spray nozzle is unobstructed following activities that could result in nozzle blockage. The proposed change does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. No active or passive failure mechanisms that could lead to an accident are affected. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. The containment spray system is not an accident initiator but is used for mitigation of design basis accidents. As a result, the probability of any accident previously evaluated, is not significantly increased.

The consequences of a previously evaluated accident are not significantly increased. The proposed change revises the current Surveillance Frequency from 10 years to following activities that could result in spray nozzle blockage. Since activities that could introduce foreign material into the system (such as inadvertent actuation of the containment spray system or loss of foreign material control) are the most likely cause for obstruction, testing or inspection following such activities would verify that the nozzle(s) are unobstructed, and the system is capable of performing its safety function. No other evolutions require the system boundary to be breached, so introduction of debris during times when maintenance activities are not in progress are precluded. Introduction of foreign materials into the system from the exterior is highly unlikely due to the location of the spray headers, the passive nature of the nozzles, and the fact that the stainless steel containment spray headers are maintained dry which does not lend itself to active degradation mechanisms such as corrosion. The proposed testing requirements are considered sufficient to provide a high degree of confidence that containment spray will function when required.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the test frequency for the containment spray system nozzles does not involve the use or installation of new equipment. Installed equipment is not operated in a new or different manner. No new or different system interactions are created, and no new processes are introduced. The current foreign material exclusion practices have been reviewed and judged sufficient to provide high confidence that debris will not be introduced during times when the system boundary is breached.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The revision to the containment spray nozzle testing frequency does not introduce any new setpoints at which protective or mitigative actions are initiated. No current setpoints are altered by this change. The design and functioning of the containment spray system is unchanged. Since the system is not susceptible to corrosion induced obstruction nor is the introduction of foreign material from the exterior likely, the proposed testing frequency is sufficient to provide high confidence that the containment spray system will be available to provide the flow necessary to mitigate the consequences of a design basis accident. Therefore, the capability of the system will remain unchanged. As a result, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: Jacob I. Zimmerman, Acting.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: July 29, 2002.

Description of amendment request: The proposed change to the Technical Specifications (TSs) would revise the requirements for containment closure associated with the equipment hatch and personnel airlocks during Core Alterations and movement of irradiated fuel within the containment. This proposed change would allow the equipment hatch and the personnel airlocks to remain open during fuel movement in the containment provided

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administrative controls are developed and implemented, ensuring the closure of the equipment hatch and personnel airlock following a fuel handling accident within the containment building. In addition, the associated TS Bases are revised.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

An alternate source term calculation has been performed for Salem Nuclear Station that demonstrates that offsite and control room dose consequences of a postulated fuel handling accident remain within the limits provided sufficient decay has occurred prior to the movement of irradiated fuel without taking credit for certain mitigation features such as ventilation filter systems and containment closure. Fuel movement is allowed provided that irradiated fuel has undergone the required decay time.

The proposed amendment would allow movement of sufficiently decayed irradiated fuel within the containment building with the equipment hatch and personnel air locks open provided that administrative controls are implemented to promptly (within 1 hour) close the containment penetrations.

Either the Containment Purge system or the Auxiliary Building Ventilation System with suction from the containment atmosphere, with associated radiation monitoring will be available whenever movement of irradiated fuel is in progress in the containment building and the equipment hatch is open. If for any reason, this ventilation requirement can not be met, movement of fuel assemblies within the containment building shall be discontinued until the flow path(s) can be reestablished or close the equipment hatch and personnel airlocks. The amendment also would allow movement of irradiated fuel assemblies within the Fuel Handling Building with the Fuel Handling Area Ventilation System (FHAVS) in operation but no credit taken for filtration.

This amendment does not alter the methodology of the FHA [Fuel-Handling Accident] or equipment used directly in fuel handling operations. Neither ventilation filter systems, the CPES [Containment Purge Exhaust System] nor the FHAVS, is used to actually handle fuel. Therefore neither of these systems is an "accident initiator". Similarly, neither the equipment hatch, the personnel air locks, nor any other containment penetration, nor any component thereof is an accident initiator.

In the postulated Fuel Handling Accident, the revised dose calculations, performed using 10 CFR 50.67 and Regulatory Guide 1.183, Alternative Source Term, do not take credit for automatic containment purge isolation thus allowing for continuous monitoring of containment activity until containment closure is achieved. If required, containment purge isolation can be initiated manually from the control room.

Actual fuel handling operations are not affected by the proposed changes. Therefore, the probability of a Fuel Handling Accident is not affected with the proposed amendment. No other accident initiator is affected by the proposed changes.

The FHA in the Fuel Handling Building has been analyzed without credit for filtration by the FHAVS. The analyses of these design basis events were conducted with the Alternative Source Term Methodology in accordance with 10 CFR 50.67 and Regulatory Guide 1.183. These analyses show that the resultant radiation doses are within the limits specified in these documents.

The TEDE [Total Effective Dose Equivalent] radiation doses from the analyses supporting this LCR [License Change Request] have been compared to equivalent TEDE radiation doses estimated with the guidelines of R.G. [Regulatory Guide] 1.183. The new values are shown to be within the regulatory guidelines.

The revision to the definition of Core Alterations simply reflects the definition in the Standard Technical Specifications, NUREG 1431 for Westinghouse Plants and is supported by the bounding effects of the Fuel Handling Accident analysis.

The deletion of Core Alterations from the APPLICABILITY section of the affected LCO's [Limiting Conditions for Operation] is based on the fact that, during Core Alterations only, the FHA results in cladding damage and potential radiological release. Consequently, the deletion of Core Alterations is consistent with industry approved practice and guidance documents (ex: TSTF [Technical Specification Task Force]-51, revision 2).

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve addition or modification to any plant system, structure, or component. The proposed amendment would permit the equipment hatch and personnel air locks to be open during movement of irradiated fuel. The proposed amendment does not involve any change in the operation of these containment penetrations. Having these penetrations open does not create the possibility of a new accident.

The proposed amendment also would remove the requirements for operability of the FHAVS Filtration System during movement of sufficiently decayed irradiated fuel. It does not alter the operation of these systems. Therefore, the system is not an accident initiator. Modification of the requirements of operability for the system from the plant Technical Specifications does not create the possibility of a new accident.

The revision to the definition of Core Alterations simply reflects the industry position supported by the definition in the Standard Technical Specifications, NUREG 1431 for Westinghouse Plants and is supported by the bounding effects of the Fuel Handling Accident analysis.

The deletion of Core Alterations from the APPLICABILITY section of the affected LCO's is based on the fact that, during Core Alterations only, the FHA results in cladding damage and potential radiological release. Consequently, the deletion of Core Alterations is consistent with industry approved practice and guidance documents (ex: TSTF–51, revision 2).

The proposed amendment does not create the possibility of a new or different kind of accident than any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The assumptions and input used in the analysis are conservative as noted below. The design basis Fuel Handling Accidents have been defined to identify conservative conditions. The source term and radioactivity releases have been calculated pursuant to Regulatory Guide 1.183 and with conservative assumptions concerning prior reactor operation. The control room atmospheric dispersion factors have been calculated with conservative assumptions associated with the release. The conservative assumptions and input noted above ensure that the radiation doses cited in this License Change Request are the upper bound to radiological consequences of a Fuel Handling Accident either in Containment or the Fuel Handling Building. The analyses show that there is a significant margin between the TEDE radiation doses calculated for the postulated Fuel Handling Accident using the Alternative Source Term and the acceptance limits of 10 CFR 50.67 and Regulatory Guide 1.183.

The revision to the definition of Core Alterations simply reflects the industry position supported by the definition in the Standard Technical Specifications, NUREG 1431 for Westinghouse Plants and is supported by the bounding effects of the Fuel Handling Accident analysis.

The deletion of Core Alterations from the APPLICABILITY section of the affected LCO's is based on the fact that, during Core Alterations only the FHA results in cladding damage and potential radiological release. Consequently, the deletion of Core Alterations is consistent with industry approved practice and guidance documents (ex: TSTF–51, revision 2).

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: Jacob Zimmerman, Acting.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: March 20, 2002.

Description of amendment request: This proposed change revises the iodine dose conversion factors used in the determination of the dose equivalent I–131 reactor coolant specific activity and in the calculation of the offsite radiological consequences for those Final Safety Analysis Report (FSAR) Chapter 15 accidents that include iodine spiking effects.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

This proposed change revises the iodine dose conversion factors used in the determination of the dose equivalent I–131 reactor coolant specific activity and in the calculation of the offsite radiological consequences for those FSAR Chapter 15 accidents that include iodine spiking effects. The iodine dose conversion factors are changed from the values in TID [Technical Information Document] 14844 to the values in ICRP [International Commission on Radiological Protection] 30, consistent with NUREG–1431. The accidents affected by this change are the steam generator tube rupture, main steam line break and CVCS [Chemical and Volume Control System] line rupture. The proposed change also revises certain input assumptions (letdown demineralize iodine removal efficiency, primary coolant leakage and uncertainty in letdown flow) used in determining the accident initiated (concurrent) iodine spiking source terms input to the offsite radiological consequences calculations. The change in dose conversion factors and the input assumptions does not affect any normal operation or accident scenarios. There are no changes to any plant procedures or equipment that would relate to the probability of an accident. The change in the iodine spiking input assumptions identified in NSAL [Nuclear Safety Advisory Letter]-00–04 results in an increase in the calculated offsite dose consequences for the steam generator tube rupture, main steam line break and CVCS line rupture. Use of the ICRP 30 iodine dose conversion factors offsets this increase such that the resulting calculated offsite dose consequences are less severe than those previously presented in the FSAR for the steam generator tube rupture, main steam line break and CVCS line rupture. * * *

Thyroid doses for the other accidents described in the FSAR will continue to be reported using the conservative TID 14844 iodine dose conversion factors until a future update is required.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes to Technical Specification [TS] 1.10, Definitions, Dose Equivalent I–131 and the use of the iodine spiking input assumptions listed in NSAL–00–04 [do] not introduce any new accident initiator mechanisms. The dose conversion factors are used in determining the reactor coolant dose equivalent I–131 specific activity and in the calculation of offsite dose consequences for certain design basis accidents which include the effects of iodine spiking as revised based on the iodine spiking input changes (letdown demineralizer iodine removal efficiency, primary coolant leakage and uncertainty in letdown flow) provided in NSAL–00–04. No existing accident scenarios are affected and no new scenarios are created. The proposed change does not introduce alterations to system operations, changes to equipment operability or technical specification operability requirements, nor to Engineered Safety Features Actuation System instrumentation or setpoints. The proposed change does not revise any of the actual equipment or instrumentation in the plant nor does it change the actual alarm setpoints or information available to the operators to monitor Technical Specification commitments. It does not introduce any new or different failure mechanisms or limiting single failures. A new or different kind of accident is thus not created.

3. Does this change involve a significant reduction in margin of safety?

The proposed change to Technical Specification 1.10, Definitions, Dose Equivalent I–131 preserves the conclusions of plant safety analyses presented in the FSAR. This proposed change revises the iodine dose conversion factors used in the calculation of the potential offsite radiological consequences following those Chapter 15 accidents that include iodine spiking effects as revised based on the iodine spiking input changes provided in NSAL–00–04. The dose conversion factors are changed from the values in TID–14844 to the values in ICRP 30, consistent with the criteria in NUREG–1431. This activity relates to TS section B3/4.4.8 and TS section 1.10 Dose Equivalent I–131. TS section B3/4.4.8 states that the limitation on the specific activity of the primary coolant ensures that the resulting 2 hour doses at the site boundary will not exceed an appropriately small fraction of Part 100 limits following a steam generator tube rupture accident. TS Section 1.10 defines the acceptable values for the iodine dose conversion factors. The change in the accident initiated iodine spiking calculation input parameters identified in NSAL–00–04 results in an increase in the calculated offsite dose consequences for the steam generator tube rupture, main steam line break and CVCS line rupture. Use of the ICRP 30 iodine dose conversion factors offsets this increase such that the resulting calculated offsite dose consequences are less severe than those previously presented in the FSAR. Therefore, the margin of safety is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: John A. Nakoski.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348, Joseph M. Farley Nuclear Plant, Unit 1, Houston County, Alabama

Date of amendment request: March 4, 2002, as supplemented by letter dated July 11, 2002.

Description of amendment request: The proposed amendment would revise Technical specifications (TS) 5.5.9.3.a, "Steam Generator Tube Surveillance Program, Inspection Frequencies." Specifically, the proposed changes would revise the Farley Nuclear Plant, Unit 1 TS to allow a 40 month inspection interval after its first (post-replacement) inservice inspection, rather than after two consecutive inspections resulting in C–1 classification.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed one-time change revises the steam generator (SG) inspection interval requirements in Technical Specification (TS) 5.5.9.3, "Steam Generator (SG) Tube Surveillance Program, Inspection Frequencies," for the Farley Nuclear Plant, Unit 1, Spring 2003 refueling outage, to allow a 40 month inspection frequency after one inspection, rather than after two consecutive inspections with results that are within the C–1 category. C–1 category is defined as "less than 5% of the total tubes inspected are degraded tubes and none of the inspected tubes are defective."

The proposed one-time extension of the Unit 1 SG tube inservice inspection interval does not involve changing any structure, system, or component, or affect reactor operations. It is not an initiator of an accident and does not change any existing safety analysis previously analyzed in the Farley Nuclear Plants' Final Safety Analysis Report

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(FSAR). As such, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

Since the proposed change does not alter the plant design, there is no direct increase in SG leakage. Industry experience indicates that the probability of increased SG tube degradation would not go undetected.

Additionally, steps described below will further minimize the risk associated with this extension. For example, the scope of inspections performed during the last Farley Nuclear Plant, Unit 1, refueling outage (*i.e.*, the first refueling outage following SG replacement) exceeded the TS requirements for the first two refueling outages after SG replacement. That is, more tubes were inspected than were required by TS. Currently, Farley Nuclear Plant, Unit 1, does not have an SG damage mechanism, and will meet the current industry examination guidelines without performing SG inspections during the next refueling outage. Additionally, as part of our SG Program, both a Condition Monitoring Assessment and an Operational Assessment are performed after each inspection and compared to the Nuclear Energy Institute (NEI) 97–06, "Steam Generator Program Guidelines," performance criteria. The results of the Condition Monitoring Assessment demonstrated that all performance criteria were met during the Farley Nuclear Plant, Unit 1, Fall 2001 refueling outage, and the results of the Operational Assessment show that all performance criteria will be met over the proposed operating period. Considering these actions, along with the improved SG design and reliability of Westinghouse replacement SGs, extending the SG tube inspection frequency does not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change revises the SG inspection frequency requirements in TS 5.5.9.3.a, "Steam Generator (SG) Tube Surveillance Program, Inspection Frequencies," for the Farley Nuclear Plant, Unit 1, Spring 2003 refueling outage, to allow a 40 month inspection interval after one inspection, rather than after two consecutive inspections, with inspection results within the C–1 category.

The proposed change will not alter any plant design basis or postulated accident resulting from potential SG tube degradation. The scope of inspections performed during the last Farley Nuclear Plant, Unit 1, refueling outage (*i.e.*, the first refueling outage following SG replacement) significantly exceeded the TS requirements for the scope of the first two refueling outages after SG replacement.

Primary-to-secondary leakage that may be experienced during all plant conditions is expected to remain within current accident analysis assumptions. The proposed change does not affect the design of the SGs, the method of SG operation, or reactor coolant chemistry controls. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. The proposed change involves a one-time extension to the SG tube inservice inspection frequency, and, therefore, will not give rise to new failure modes. In addition, the proposed change does not impact any other plant systems or components.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The SG tubes are an integral part of the Reactor Coolant System (RCS) pressure boundary that are relied upon to maintain the RCS pressure and inventory. The SG tubes isolate the radioactive fission products in the reactor coolant from the secondary system. The safety function of the SGs is maintained by ensuring the integrity of the SG tubes. In addition, the SG tubes comprise the heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system.

SG tube integrity is a function of the design, environment, and current physical condition. Extending the SG tube inservice inspection frequency by one operating cycle will not alter the function or design of the SGs. SG inspections conducted during the first refueling outage following SG replacement demonstrated that the SGs do not have an active damage mechanism, and the scope of those inspections significantly exceeded those required by the TS. These inspection results were comparable to similar inspection results for second generation alloy 690 models of replacement SGs installed at other plants, and subsequent inspections at those plants yielded results that support this extension request. The improved design of the replacement SGs also provides reasonable assurance that significant tube degradation is not likely to occur over the proposed operating period.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Section Chief: John A. Nakoski.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 25, 2002.

Description of amendment request: **The amendment would revise Surveillance Requirements 3.3.1.2 and 3.3.1.3 of Technical Specification 3.3.1, "Reactor Trip System (RTS) Instrumentation."**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no hardware changes. The RTS instrumentation will be unaffected. Protection systems will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained.

The probability and consequences of accidents previously evaluated in the USAR [Updated Safety Analysis Report] are not adversely affected because the change to the NIS [Nuclear Instrumentation System] power range channel daily surveillance assures the conservative response of the channel even at part-power levels.

The proposed changes modify the NIS power range channel daily surveillance requirement to assure the NIS power range functions are tested in a manner consistent with the safety analysis and licensing basis.

The proposed changes will not affect the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to the normal plant operating parameters or accident mitigation performance.

The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the USAR.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. This amendment will not affect the normal method of plant operation or change any operating parameters. No performance requirements or response time limits will be affected; however, the proposed TS Bases changes impose explicit NIS power range high trip setpoint adjustment requirements prior to adjusting indicated power in a decreasing power direction. These requirements are consistent with assumptions made in the safety analysis and licensing basis.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

This amendment does not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes require a revision to the criteria for implementation of NIS power range channel adjustments based on secondary power calorimetric calculations; however, the changes do not eliminate any RTS surveillances or alter the frequency of surveillances required by the Technical Specifications. The revision to the criteria for implementation of the daily surveillance will have a conservative effect on the performance of the NIS power range channels, particularly at part-power conditions. The nominal trip setpoints specified in the Technical Specification Bases and the safety analysis limits assumed in the transient and accident analyses are unchanged. None of the acceptance criteria for any accident analysis is changed.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the output power limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor ($F\Delta H$), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

The imposition of appropriate surveillance testing requirement will not reduce any margin of safety since the changes will assure that safety analysis assumptions on equipment operability are verified on a periodic frequency.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 25, 2002.

Description of amendment request: **The amendment would revise Chapter 5.0, "Administrative Controls," of the technical specifications (TSs) to allow the use of generic personnel titles in the TSs in place of plant-specific personnel titles.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect accident initiators or assumptions. The radiological consequences of an accident previously evaluated remain unchanged. These changes involve administrative changes concerning the use of personnel titles and do not affect responsibilities or qualifications of plant personnel.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are administrative in nature. As such, there are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. This amendment will not affect the normal method of plant operation or change any operating parameters. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effects or challenges imposed on any safety-related system as a result of this amendment.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any [accident] previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. The use of generic personnel titles will not reduce any margin of safety. (These changes involve administrative changes concerning the use of personnel titles and do not affect responsibilities or qualifications of plant personnel.)

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

South Carolina Electric & Gas, Docket No. 50–395, Virgil C. Summer Nuclear Station, Fairfield County, South Carolina

Date of amendment request: July 24, 2001, as supplemented April 4, 2002, May 7, 2002, June 17, 2002, July 2, 2002, July 15, 2002, and July 25, 2002.

Brief description of amendment request: **This amendment would increase the spent fuel pool storage capacity by replacing all 11 existing rack modules with 12 new high density storage racks. The rerack will increase the storage capacity from 1,276 storage cells to 1,712 storage cells. The degrading Boraflex neutron-absorbing material in the existing racks will be replaced by Boral material that will be used in the new racks.**

Date of publication of individual notice in ***Federal Register:*** June 25, 2002 (67 FR 42810).

Expiration date of individual notice: July 25, 2002.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

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amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: December 13, 2001, as supplemented by letter dated May 1, 2002.

Brief description of amendments: The amendments add the following to the Technical Specifications: (1) The phrase, "or if open, capable of being closed," to the Limiting Condition for Operation 3.9.3 for the equipment hatch, during core alterations or movement of irradiated fuel assemblies inside containment, and (2) the requirement to verify the capability to close the equipment hatch in a new Surveillance Requirement 3.9.3.3. The amendments allow the equipment hatch to be open in refueling outages during the conditions stated above.

Date of issuance: July 25, 2002.

Effective date: July 25, 2002, and shall be implemented within 90 days of the date of issuance, including the incorporation of the changes to the Technical Specification Bases as described in the licensee's letters dated December 13, 2001, and May 1, 2002.

Amendment Nos.: Unit 1–143, Unit 2–143, Unit 3–143.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 22, 2002 (67 FR 2919). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 2002.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: January 31, 2002.

Brief description of amendments: These amendments correct administrative errors in Section 5.6.5, "Core Operating Limits Report (COLR)," of the Technical Specifications and Section 2.0, "Environmental Protection Issues," of the Environmental Protection Program.

Date of issuance: August 6, 2002.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment Nos.: 254/231.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 28, 2002 (67 FR 36927). The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated August 6, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: August 28, 2001.

Brief description of amendment: The amendment revised Technical Specification (TS) 3/4.5.1, "Safety Injection Tanks (SITs)" to delete surveillance requirement (SR) 4.5.1.f. This SR provided verification of the automatic opening features of the SIT outlet isolation valves.

Date of issuance: August 7, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 268.

Facility Operating License No. DPR–65: This amendment revised the TSs.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55010). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 7, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: September 26, 2001.

Brief description of amendment: The amendment modifies the Millstone Nuclear Power Station, Unit No. 3 (MP3) Technical Specifications (TSs) to relocate MP3 TSs related to the control rod position indication system requirements for shutdown to the licensee-controlled Technical Requirements Manual (TRM). The Index and Bases pages of the affected TSs will also be modified to address the proposed changes.

Date of issuance: July 30, 2002.

Effective date: As of the date of issuance, and shall be implemented within 60 days from the date of issuance.

Amendment No.: 207.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 14, 2001 (66 FR 57120). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 30, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: April 16, 2002.

Brief description of amendments: The amendments revise Surveillance Requirement (SR) 3.0.3 to extend the delay period before entering a Limiting Condition for Operation following a missed surveillance. The delay period is extended from the current limit of " * * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to " * * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement is added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

Date of issuance: August 1, 2002.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 201 & 194.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 14, 2002 (67 FR 34482). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 1, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: April 16, 2002.

Brief description of amendments: The amendments revise Surveillance Requirement (SR) 3.0.3 to extend the delay period before entering a Limiting Condition for Operation following a missed surveillance. The delay period is extended from the current limit of " * * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to " * * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement is added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

Date of issuance: July 30, 2002.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 205/186.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 14, 2002 (67 FR 34483). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 30, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: April 16, 2002.

Brief description of amendments: The amendments revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of " * * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to " * * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement is added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

Date of Issuance: July 30, 2002.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 327, 327, 328.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 14, 2002 (67 FR 34483). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 30, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: June 13, 2002.

Brief description of amendment: The amendment revised Technical Specifications Section 4.13.A, "Inspection Requirements," to allow the use of the optimum eddy current probe size when performing steam generator tube inspections. The amendment also corrects grammatical and typographical errors.

Date of issuance: July 29, 2002.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 230.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42806). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: January 8, 2002.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.1.B, "Heatup and Cooldown," to delete the requirements governing the reactor vessel surveillance program, including the reactor vessel specimen withdrawal schedule. In addition, the changes corrected errors in TS 4.2, "Inservice Inspection and Testing;" TS 5.2.C, "Design Features—Containment;" and TS 6.4, "Administrative Controls—Training." TS Sections 6.1, "Responsibility" and 6.2, "Organization" were changed to reflect the organizational changes resulting from the transfer of the operating license to Entergy Nuclear Operations, Inc. on September 6, 2001.

Date of issuance: July 30, 2002.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 231.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 5, 2002 (67 FR 10011). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 30, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York County, Pennsylvania

Date of application for amendments: March 19, 2002.

Brief description of amendments: These amendments allow plant operation to continue if the temperature of the normal heat sink (NHS) exceeds the Technical Specification (TS) limit of 90 °F provided that the NHS temperature averaged over the previous

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24-hour period is verified at least once per hour to be less than or equal to 90 °F, and the NHS temperature does not exceed a maximum value of 92 °F. The format for this change had been previously approved by the Nuclear Regulatory Commission for the Standard TSs as per TS Task Force (TSTF) change TSTF–330, Revision 3, "Allowed Outage Time—Ultimate Heat Sink", on October 13, 2000. In addition, an administrative change removes references to a temporary TS change which expired on May 31, 2000.

Date of issuance: July 29, 2002.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendments Nos.: 244/248.

Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 14, 2002 (67 FR 34486). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 29, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois

Date of application for amendment: April 8, 2002, as supplemented June 18 and July 3, 2002.

Brief description of amendment: The amendment revises the safety limit minimum critical power ratio for two-loop and single-loop operation.

Date of issuance: July 29, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 207.

Facility Operating License No. DPR–29: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 14, 2002 (67 FR 34487). The supplements dated June 18 and July 3, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 2002.

No significant hazards consideration comments received: No.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: August 16, 2001, as supplemented by letter dated November 19, 2001.

Brief description of amendment: The amendment revises the license to incorporate a new License Condition 2.B.(9). The license condition terminates license jurisdiction for a portion of the Maine Yankee Atomic Power Station site (referred to as the Non-Impacted Backlands (west of Bailey Cove and west of Young's Brook and north of Old Ferry Road)), thereby releasing these lands from Facility Operating License No. DPR–36.

Date of issuance: July 30, 2002.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 167.

Facility Operating License No. DPR–36: The amendment revised the license.

Date of initial notice in ***Federal Register:*** March 19, 2002 (67 FR 12604). The November 19, 2001, supplemental letter provided additional information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 30, 2002.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: November 26, 2001, as supplemented on May 20, 2002.

Brief description of amendment: The amendment deleted Section 3/4.2.6, "Inservice Inspection and Testing," revised Section 4.2.7, "Reactor Coolant System Isolation Valves," added a new Section 6.17, "Inservice Testing Program," and deleted several reporting requirements in Section 6.9.3, "Special Reports."

Date of issuance: August 5, 2002.

Effective date: August 5, 2002.

Amendment No.: 173.

Facility Operating License No. DPR–63: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 26, 2001 (66 FR 66468). The May 20, 2002, supplemental letter provided clarifying information that was within the scope of the amendment request and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 2002.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: June 8, 2001, as supplemented by letters dated February 4, April 8, May 7, June 6, and June 28, 2002.

Brief description of amendments: These amendments revised TS 3.3.5.1, "Emergency Core Cooling System Instrumentation," by deleting Function 3e, thus preventing the automatic swap of the suction source for the high pressure coolant injection pump from the condensate storage tank to the suppression pool on high suppression pool level.

Date of issuance: August 5, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days of their associated plant modifications, and no later than December 31, 2002.

Amendment Nos.: 204/178.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 3, 2001 (66 FR 50471). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 5, 2002.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket No. 50–498, South Texas Project, Unit 1, Matagorda County, Texas

Date of amendment request: January 28, 2002, as supplemented by letters dated June 20 and July 3, and 30, 2002. The supplemental information provided clarification that did not change the scope or the initial no significant hazards consideration determination.

Brief description of amendment: The amendment revises Technical Specification (TS) 4.4.5.3a, "Steam Generator Surveillance Requirements." Specifically, the changes would revise the South Texas Project Unit 1 TS to a 40-month inspection interval after its first (post-replacement) inservice inspection rather than two consecutive inspection resulting in C–1 classification.

Date of issuance: July 31, 2002.

Effective date: July 31, 2002.

Amendment No.: 140.

Facility Operating License No. NPF–76: The amendment revises the Technical Specification.

Date of initial notice in ***Federal Register:*** March 19, 2002 (67 FR 12607). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 2002.

No significant hazards consideration comments received: No.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: October 5, 2001, as supplemented on November 7 and 8, 2001, and January 23 and April 30, 2002.

Brief description of amendment: The amendment revises the license and technical specifications to reflect changes related to the transfer of the license for the Vermont Yankee Nuclear Power Station, previously held by Vermont Yankee Nuclear Power Corporation, to Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.

Date of Issuance: July 31, 2002.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 208.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** December 7, 2001 (66 FR 63566). The letters dated January 23 and April 30, 2002, provided clarifying information and did not expand the application beyond the scope of the notice or affect the applicability of the Commission's generic no significant hazards consideration determination pursuant to 10 CFR 2.1315.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 31, 2002.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: February 21, 2002.

Brief description of amendment: The amendment revises several of the Required Actions in the technical specifications that require suspension of operations involving positive reactivity additions or suspension of operations involving reactor coolant system (RCS) boron concentration reductions. In addition, the proposed amendment revises several Limiting Condition for Operation (LCO) Notes that preclude reductions in RCS boron concentration. This amendment revises these Required Actions and LCO Notes to allow small, controlled, safe insertions of positive reactivity, but limits the introduction of positive reactivity such that compliance with the required shutdown margin or refueling boron concentration limits will still be satisfied. This amendment is based on an NRC-approved traveler, Technical Specification Task Force (TSTF)–286, Revision 2.

Date of issuance: July 29, 2002.

Effective date: July 29, 2002, and shall be implemented within 60 days of the date of issuance.

Amendment No.: 145.

Facility Operating License No. NPF–42: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 16, 2002 (67 FR 18650). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated: July 29, 2002.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: August 7, 2001, as supplemented by letter dated February 20, 2002.

Brief description of amendment: The amendment revises Limiting Condition for Operation 3.9.4 to allow the equipment hatch to be open during core alterations or movement of irradiated fuel assemblies inside containment, and adds the requirement to verify the capability to install the equipment hatch in a new Surveillance Requirement 3.9.4.2. The existing SR 3.9.4.2 would be renumbered SR 3.9.4.3, but would otherwise not be changed.

Date of issuance: July 30, 2002.

Effective date: July 30, 2002, and shall be implemented within 6 months of the date of issuance, including the incorporation of changes to the Technical Specification Bases as described in licensee's application dated August 7, 2001, and supplemental letter dated February 20, 2002.

Amendment No.: 146.

Facility Operating License No. NPF–42: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 5, 2001 (66 FR 46482). The supplemental letter dated February 20, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 30, 2002.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendment to Facility Operating License and Final No Significant Hazards Consideration Determination

During the period since publication of the last biweekly notice, individual notices of issuance of amendments have been issued for the facilities as listed below. These notices were previously published as separate individual notices. They are repeated here because this biweekly notice lists all amendments that have been issued for which the Commission has made a final determination that an amendment involves no significant hazards consideration.

In this case, a prior Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing was issued, a hearing was requested, and the amendment was issued before any hearing because the Commission made a final determination that the amendment involves no significant hazards consideration.

Details are contained in the individual notice as cited.

Entergy Nuclear Indian Point 2, LLC, et al., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: July 13, 2001, as supplemented November 30, 2001, March 13, April 3, May 30, and June 13, 2002.

Brief description of amendment: The amendment made a one-time only change to the Technical Specification Surveillance Requirement 4.4.A.3 to revise the frequency for the containment integrated leak rate test (ILRT, Type A test) from at least once per 10 years to once per 15 years. This change applies only to the interval following the last Type A test that was performed satisfactorily in June 1991 at IP2.

Date of issuance: August 5, 2002.

Amendment No.: 232.

Effective date: As of date of issuance and shall be implemented within 60 days.

Facility Operating License No. DPR–26: Amendment revise the technical specifications.

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Date of individual notice in ***Federal Register:*** August 22, 2001 (66 FR 44165). The November 30, 2001, March 13, April 3, May 30, and June 13, 2002, letters provided clarifying information that did not expand the application beyond the scope of the initial notice or change the initial proposed no significant hazards consideration determination.

Dated at Rockville, Maryland, this 9th day of August 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–20843 Filed 8–19–02; 8:45 am]

BILLING CODE 7590–01–P

COMMISSION ON OCEAN POLICY

Public Meeting

AGENCY: Commission on Ocean Policy.

ACTION: Notice.

SUMMARY: The U.S. Commission on Ocean Policy will hold its ninth and final regional meeting, the Commission's eleventh public meeting, to hear and discuss issues of concern to the Great Lakes region.

DATES: Public meetings will be held Tuesday, September 24, 2002 from 8:30 a.m. to 6 p.m. and Wednesday, September 25, 2002 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting location is the Phelps Auditorium, John G. Shedd Aquarium, 1200 South Lake Shore Drive, Chicago, IL 60605. (Please use the Group Entrance located on the South side of the John G. Shedd Aquarium.)

FOR FURTHER INFORMATION CONTACT: Terry Schaff, U.S. Commission on Ocean Policy, 1120 20th Street, NW., Washington, DC, 20036, 202–418–3442, *schaff@oceancommission.gov.*

SUPPLEMENTARY INFORMATION: This meeting is being held pursuant to requirements under the Oceans Act of 2000 (Public Law 106–256, Section 3(e)(1)(E)). The agenda will include presentations by invited speakers representing local and regional government agencies and non-governmental organizations, comments from the public and any required administrative discussions and executive sessions. Invited speakers and members of the public are requested to submit their statements for the record electronically by Monday, September 16, 2002 to the meeting Point of Contact. A public comment period is scheduled for Wednesday, September 25, 2002. The meeting agenda, including the specific time for the public comment period, and guidelines for making public comments will be posted on the Commission's Web site at *http://www.oceancommission.gov* prior to the meeting.

Dated: August 13, 2002.

Thomas R. Kitsos,

Executive Director, U.S. Commission on Ocean Policy.

[FR Doc. 02–21049 Filed 8–19–02; 8:45 am]

BILLING CODE 6820–WM–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 10a–1, SEC File No. 270–413, OMB Control No. 3235–0475
Rule 12d2–1, SEC File No. 270–98, OMB Control No. 3235–0081
Rule 12d2–2 and Form 25, SEC File No. 270–86, OMB Control No. 3235–0080
Rule 17Ab2–1 and Form CA–1, SEC File No. 270–203 OMB Control No. 3235–0195
Rule 17Ad–3(b), SEC File No. 270–424, OMB Control No. 3235–0473

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget requests for approval of extension on the following:

Rule 10a–1 (17 CFR 240.10a–1) under the Securities Exchange Act of 1934 (Exchange Act) is designed to limit short selling of a security in a declining market, by requiring, in effect, that each successive lower price be established by a long seller. The price at which short sales may be effected is established by reference to the last sale price reported in the consolidated system or on a particular marketplace. Rule 10a–1 requires each broker or dealer that effects any sell order for a security registered on, or admitted to unlisted trading privileges on, a national securities exchange to mark the relevant order ticket either "long" or "short."

There are approximately 7,258 brokers and dealers registered with the national securities exchanges. The Commission has considered each of these respondents for the purposes of calculating the reporting burden under Rule 10a–1. Each of these approximately 7,258 registered broker-dealers effects sell orders for securities registered on, or admitted to unlisted trading privileges on, a national securities exchange. In addition, each respondent makes an estimated 59,071 annual responses, for an aggregate total of 428,743,000 responses per year. Each response takes approximately .000139 hours (.5 seconds) to complete. Thus, the total compliance burden per year is 59,595 burden hours.

There is no retention period requirement under Rule 10a–1. This Rule does not involve the collection of confidential information.

Rule 12d2–1 (17 CFR 240.17d2–1) was adopted in 1935 pursuant to sections 12 and 23 of the Exchange Act. The Rule provides the procedures by which a national securities exchange may suspend from trading a security that is listed and registered on the exchange. Under Rule 12d2–1, an exchange is permitted to suspend from trading a listed security in accordance with its rules, and must promptly notify the Commission of any such suspension, along with the effective date and the reasons for the suspension.

Any such suspension may be continued until such time as the Commission may determine that the suspension is designed to evade the provisions of section 12(d) of the Exchange Act and Rule 12d2–2 thereunder.[1] During the continuance of such suspension under Rule 12d2–1, the exchange is required to notify the Commission promptly of any change in the reasons for the suspension. Upon the restoration to trading of any security suspended under the Rule, the exchange must notify the Commission promptly of the effective date of such restoration.

The trading suspension notices serve a number of purposes. First, they inform the Commission that an exchange has suspended from trading a listed security or reintroduced trading in a previously suspended security. They also provide the Commission with information necessary for it to determine that the suspension has been accomplished in accordance with the rules of the exchange, and to verify that the exchange has not evaded the requirements of section 12(d) of the Exchange Act and Rule 12d2–2 thereunder by improperly employing a trading suspension. Without the Rule, the Commission would be unable to fully implement these statutory responsibilities.

There are nine national securities exchanges that are subject to Rule 12d2–

[1] Rule 12d2–2 prescribes the circumstances under which a security may be delisted, and provides the procedures for taking such action.

1. The burden of complying with the Rule is not evenly distributed among the exchanges since there are many more securities listed on the New York Stock Exchange, Inc. ("NYSE") and the American Stock Exchange LLC ("Amex") than on the other exchanges.[2] However, for purposes of this filing, it is assumed that the number of responses is evenly divided among the exchanges. Since approximately 173 responses under Rule 12d2–1 are received annually by the Commission from the national securities exchanges, the resultant aggregate annual reporting hour burden would be, assuming on average one-half reporting hour per response, 86.5 annual burden hours for all exchanges. The collection of information obligations imposed by Rule 12d2–1 is mandatory. The response will be available to the public and will not be kept confidential.

Rule 12d2–2 (17 CFR 240.12d2–2) and Form 25 (17 CFR 249.25) were adopted in 1935 and 1952, respectively, pursuant to Sections 12 and 23 of the Exchange Act. Rule 12d2–2 sets forth the conditions and procedures under which a security may be delisted. Rule 12d2–2 also requires, under certain circumstances, that the Exchange file with the Commission a Form 25 to delist the Security. Form 25 provides the Commission with the name of the security, the effective date of the delisting, and the date and type of event causing the delisting.

Delisting notices and applications for delisting serve a number of purposes. First, the reports and notices required under paragraphs (a) and (b) of Rule 12d2–2 (which do not require Commission action) inform the Commission that a security previously traded on an exchange is no longer traded. In addition, the applications for delisting required under paragraphs (c) and (d) of Rule 12d2–2 provide the Commission with the information necessary for it to determine that the delisting has been accomplished in accordance with the rules of the exchange and whether the delisting should be subject to any terms and conditions necessary for the protection of investors. Further, delisting applications are available to members of the public who may wish to comment or submit information to the Commission regarding the applications. Without the Rule, the Commission lacks the information necessary for it to fully meet these statutory responsibilities.

There are nine national securities exchanges that are subject to Rule 12d2–2 and Form 25. The burden of complying with Rule 12d2–2 and Form 25 is not evenly distributed among the exchanges, however, since there are many more securities listed on the NYSE and the Amex than on the other exchanges. However, for purposes of this filing, the staff has assumed that the number of responses is evenly divided among the exchanges. Since approximately 687 responses under the Rule and Form are received annually by the Commission from the national securities exchanges, the resultant aggregate annual reporting hour burden would be, assuming on average one hour per response, 687 annual burden hours for all exchanges. In addition, since approximately 52 responses are received by the Commission annually from issuers wishing to remove their securities from listing and registration on exchanges, the Commission staff estimates that the aggregate annual reporting hour burden on issuers would be, assuming on average two reporting hours per response, 104 annual burden hours for all issuers. Accordingly, the total annual hour burden for all respondents to comply with Rule 12d2–2 is 791 hours.

The collection of information obligations imposed by Rule 12d2–2 and Form 25 are mandatory. The response will be available to the public and will not be kept confidential.

Rule 17Ab2–1 (17 CFR 240.17Ab2–1) and Form CA–1 (17 CFR 249b.200) require clearing agencies to register with the Commission and to meet certain requirements with regard to, among other things, a clearing agency's organization, capacities, and rules. The information is collected from the clearing agency upon the initial application for registration on Form CA–1. Thereafter, information is collected by amendment to the initial Form CA–1 when material changes in circumstances necessitates modification of the information previously provided to the Commission.

The Commission uses the information disclosed on Form CA–1 to (i) determine whether an applicant meets the standards for registration set forth in section 17A of the Exchange Act, (ii) enforce compliance with the Exchange Act's registration requirement, and (iii) provide information about specific registered clearing agencies for compliance and investigatory purposes. Without Rule 17Ab2–1, the Commission could not perform these duties as statutorily required.

There are currently thirteen registered clearing agencies and five clearing agencies that have been granted an exemption from registration. The Commission staff estimates that each initial Form CA–1 requires approximately 130 hours to complete and submit for approval. Hours required for amendments to Form CA–1 that must be submitted to the Commission in connection with material changes to the initial CA–1 can vary, depending upon the nature and extent of the amendment. Since the Commission only receives an average of one submission per year, the aggregate annual burden associated with compliance with Rule 17Ab2–1 and Form CA–1 is 130 hours. Based upon the staff's experience, the average cost to clearing agencies of preparing and filing the initial Form CA–1 is estimated to be $17,911. There is no recordkeeping requirement for Rule 17Ab2–1 or Form CA–1. This rule and form does not involve the collection of confidential information.

Rule 17Ad–3(b) (17 CFR 240.17Ad–3) requires registered transfer agents which for each of two consecutive months have failed to turnaround at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) or to process at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) to send to the chief executive officer of each issuer for which such registered transfer agent acts a copy of the written notice required under Rule 17Ad–2(c), (d), and (h). The issuer may use the information contained in the notices in several ways: (1) to provide an early warning to the issuer of the transfer agent's non-compliance with the Commission's minimum performance standards regarding registered transfer agents, and (2) to assure that issuers are aware of certain problems and poor performances with respect to the transfer agents that are servicing the issuer's securities. If the issuer does not receive notice of a registered transfer agent's failure to comply with the Commission's minimum performance standards then the issuer will be unable to take remedial action to correct the problem or to find another registered transfer agent. Pursuant to Rule 17Ad–3(b), a transfer agent that has already filed a Notice of Non-Compliance with the Commission pursuant to Rule 17Ad–2 will only be required to send a copy of that notice to issuers for which it acts when that transfer agent fails to turnaround 75% of all routine items or to process 75% of all items.

The Commission estimates that of the seven transfer agents that filed the Notice of Non-Compliance pursuant to Rule 17Ad–2, only two transfer agents will meet the requirements of Rule 17Ad–3(b). If a transfer agent fails to meet the minimum requirements under

[2] In fact, some exchanges do not file any trading suspension reports in a given year.

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17Ad–3(b), such transfer agent is simply sending a copy of a form that had already been produced for the Commission. The Commission estimates a requirement will take each respondent approximately one hour to complete, for a total annual estimate burden of two hours at cost of approximately $60.00 for each hour.

Please note that an agency may not conduct or sponsor, and a person is not required to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 12, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21125 Filed 8–19–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Pacific Exchange, Inc. (EVCI Career Colleges, Common Stock, $.0001 Par Value) File No. 1–14827

August 14, 2002.

EVCI Career Colleges, a Delaware corporation, ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.0001 par value ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

The Board of Directors ("Board") of the Issuer approved a resolution on June 14, 2002 to withdraw the Security from listing on the Exchange. The Board stated that the financial cost, time, and other Company resources required to continue listing the Security on the Exchange outweigh the benefits to the Company and its stockholders. The Issuer states that it will continue to list its Security on the Boston Stock Exchange, Inc. ("BSE")

The Issuer stated in its application that it has complied with the rules of the PCX Equities, Inc. ("PCXE") that govern the removal of securities from listing and registration on the Exchange. The Issuer's application relates solely to the withdrawal of the Security from listing on the PCX and shall have no affect upon the Security's continued listing on the BSE or its obligation to be registered under section 12(b) of the Act.[3]

Any interested person may, on or before September 6, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–21126 Filed 8–19–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27560]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 14, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 9, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 9, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

KeySpan, Corp. et al. (70–10063)

KeySpan Corporation ("KeySpan"), a combination gas and electric registered holding company; KeySpan's utility subsidiaries: The Brooklyn Union Gas Company ("KED NY"); KeySpan Gas East Corporation ("KED LI"); and KeySpan Generation LLC ("KeySpan Generation"); KeySpan's direct nonutility subsidiaries: KeySpan Energy Corporation; KeySpan Electric Services LLC; KeySpan Exploration & Production LLC; KeySpan Technologies Inc.; KeySpan MHK, Inc.; KeySpan Corporate Services LLC; KeySpan Utility Services LLC; Marquez Development Corp.; Island Energy Services Company, Inc.; LILCO Energy Systems, Inc.; KeySpan-Ravenswood LLC; KeySpan-Ravenswood Services Corp.; KeySpan Services, Inc.; KeySpan Energy Trading Services LLC; and KeySpan Energy Supply LLC; and their respective nonutility subsidiaries; KeySpan New England, LLC ("KNE LLC"), a gas utility holding company exempt from registration under section 3(a)(1) of the Act by order;[1] KNE LLC's gas utility subsidiaries: Boston Gas Company ("Boston Gas"); Essex Gas Company ("Essex Gas"); Colonial Gas Company ("Colonial Gas"); and EnergyNorth Natural Gas, Inc. ("ENGI"); KNE LLC's nonutility subsidiaries: EE Acquisition Company, Inc.; EEG Acquisition Company, Inc.; Eastern Associated Securities Corp.; Eastern Energy Systems Corp.; Eastern Rivermoor Company, Inc.; Eastern Urban Services, Inc.; Mystic Steamship Corporation; PCC Land Company, Inc.; Philadelphia Coke Co., Inc.; Water Products Group Incorporated; Western Associated Energy Corp.; Midland Enterprises Inc.; ServiceEdge Partners, Inc.; and AMR Data Corporation; Broken Bridge Corporation; EnergyNorth Realty, Inc.; and their respective subsidiaries (together, "Applicants"), One MetroTech Center, Brooklyn, NY 11201, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 32 and 33 of the Act and rules 45 and 53 under the Act.

[1] Holding Co. Act Release No. 27532 (May 29, 2002).

I. Background

KeySpan is a registered public-utility holding company. In an order dated November 7, 2000,[2] as supplemented by the order dated December 1, 2000[3] (together, the "Merger Order"), the Commission approved KeySpan's acquisition of Eastern Enterprises ("Merger"). In addition, on November 8, 2000, the Commission issued an order,[4] as supplemented by an order issued on December 1, 2000[5] (together, the "Financing Order"), authorizing a program of external financings, credit support arrangements and related proposals for KeySpan and its subsidiaries.

KeySpan directly or indirectly owns the following seven public-utility companies: (1) KED NY, which distributes natural gas at retail to residential, commercial and industrial customers in the New York City Boroughs of Brooklyn, Staten Island and Queens; (2) KED LI, which distributes natural gas at retail to customers in New York State located in the counties of Nassau and Suffolk on Long Island and the Rockaway Peninsula in Queens County; (3) KeySpan Generation, which owns and operates electric generation capacity located on Long Island all of which is sold at wholesale to the Long Island Power Authority ("LIPA") for resale by LIPA to its approximately 1.1 million customers; (4) Boston Gas, which distributes natural gas to customers located in Boston and other cities and towns in eastern and central Massachusetts; (5) Essex Gas, which distributes natural gas to customers in eastern Massachusetts to customers; (6) Colonial Gas, which distributes natural gas to customers located in northeastern Massachusetts and on Cape Cod; and (7) ENGI, which distributes natural gas to customers located in southern and central New Hampshire, and the City of Berlin located in northern New Hampshire. KED NY, KED LI, KeySpan Generation, Boston Gas, Colonial Gas, Essex Gas and ENGI are collectively referred to as the "Utility Subsidiaries". Together, KED NY and KED LI serve approximately 1.66 million customers. Together, Boston Gas, Colonial Gas and Essex Gas serve approximately 768,000 customers. ENGI serves approximately 75,000 customers. KeySpan, through its Subsidiaries,[6] engages in energy related non-utility activities as described in the Merger Order.

In the Financing Order,[7] the Commission authorized KeySpan and its Subsidiaries to engage in a program of external and intrasystem financings (including credit support arrangements), to organize and acquire the securities of specified types of subsidiaries (including exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs")) and to engage in other financial and structural transactions from time to time through December 31, 2003 ("Authorization Period").

Among other specific approvals granted in the Financing Order, the Commission authorized:

(1) KeySpan, directly or indirectly through its affiliates or Subsidiaries, to have aggregate investments in EWGs and FUCOs up to 250% of KeySpan's consolidated retained earnings ("EWG/FUCO Investment Approval");

(2) KeySpan, subject to an aggregate amount of $5.1 billion ("Aggregate Financing Amount") and other financing parameters set forth in the Financing Order, to (i) maintain existing financings, and (ii) issue and sell through the Authorization Period up to $1.5 billion of additional securities at any time outstanding ("Additional Financing Approval");

(3) The Utility Subsidiaries, to the extent not exempt under rule 52, to issue, sell and have outstanding at any one time during the Authorization Period new debt securities with maturities of one year or less up to the specified amounts ("Utility Short-Term Debt Amounts"): KED NY ($250 million); KED LI ($185 million); KeySpan Generation ($50 million); Boston Gas ($150 million); Colonial Gas ($75 million); Essex Gas ($20 million); and ENGI ($35 million);

(4) KeySpan and the Subsidiaries to acquire the equity securities of one or more special-purpose subsidiaries organized solely to facilitate a financing and to guaranty the securities issued by these Financing Subsidiaries (as defined below), to the extent not exempt under rule 45(b) and rule 52 ("Financing Subsidiary Approval"); and

(5) KeySpan to (i) maintain in effect and to amend, renew, extend and/or replace any and all of its existing guarantees, letters of credit, expense agreements and other forms of credit support ("Guarantees") with respect to the obligations of the Subsidiaries or which may be entered into or given prior to the completion of the Merger including the Guarantees listed in Exhibit C to the application in SEC File No. 70–9699 ("Financing Application") which were approximately $2 billion and (ii) enter into additional Guarantees (i.e., in addition to the existing Guarantees at the time of the Merger). Included in the Exhibit C Guarantees authorized by the Financing Order were a $13,000,000 guarantee and $12,000,000 guarantee KeySpan had provided to Hawkeye Construction, LLC ("Hawkeye"), a non-affiliate, under an agreement entered into in June 2000 prior to the Merger.

II. Terms and Conditions of the Financing[8]

Financings by each Applicant will be subject to the following conditions ("Financing Parameters"): (1) During the Authorization Period, KeySpan's common equity will be at least 30% of its consolidated capitalization, and each Utility Subsidiary's common equity will be at least 30% of its capitalization; (2) any long-term debt issued by KeySpan to unaffiliated parties under the authority requested in this application-declaration will be rated investment grade or will meet the qualifications for being rated investment grade by a nationally recognized statistical rating organization; (3) the effective cost of money on long-term debt financings will not exceed 500 basis points over comparable term U.S. Treasury securities and the effective cost of money on short-term debt financings will not exceed 500 basis points over the comparable term London Interbank Offered Rate ("LIBOR"); (4) the effective cost of money on preferred stock and other fixed-income oriented securities will not exceed 500 basis points over LIBOR; (5) the maturity of indebtedness will not exceed 50 years; and (6) the underwriting fees, commissions, and other similar remuneration paid in connection with the non-competitive issue, sale or distribution of a security will not exceed an amount or percentage of the principal or total amount of the security being issued that would be charged to other companies with a

[2] Holding Co. Act Release No. 27271.

[3] Holding Co. Act Release No. 27287.

[4] Holding Co. Act Release No. 27272.

[5] Holding Co. Act Release No. 27286.

[6] Each directly and indirectly owned subsidiary of KeySpan is referred to individually as a "Subsidiary" and collectively as "Subsidiaries."

[7] Holding Co. Act Release Nos. 27272 (Nov. 8, 2000) and 27286 (Dec. 1, 2000).

[8] These terms and conditions are the same as those set forth in the Financing Order.

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similar credit rating and credit profile in a comparable arm's-length transaction.

The proceeds from the financings proposed in this application-declaration will be used for lawful corporate purposes, including: (1) Refinancing acquisition debt for the Merger; (2) financing investments by and capital expenditures of KeySpan and its Subsidiaries; (3) the repayment, redemption, refunding or purchase by KeySpan or any Subsidiary of any of its own securities under rule 42 under the Act; and (4) financing working capital requirements of KeySpan and its Subsidiaries.

III. Requested Authority

Generally, KeySpan and the Subsidiaries request the following modifications to the Financing Order authorizations with respect to the above-described approvals:

(1) Modification of the EWG/FUCO Investment Approval to permit KeySpan, either directly or through its affiliates or Subsidiaries, to make aggregate investments (as defined in rule 53) up to $2.2 billion dollars in EWGs and FUCOs during the Authorization Period. The proposed EWG/FUCO Investment Approval limit represents approximately 418% of KeySpan's consolidated retained earnings for the four quarters ended March 31, 2002;

(2) An increase of the Additional Financing Amount from $1.5 billion to $2.2 billion and an increase in the Aggregate Financing Amount from $5.1 billion to $5.8 billion, during the Authorization Period;

(3) An increase in the Utility Short-Term Debt Amounts during the Authorization Period as specifically set forth below;

(4) Modification of the Financing Subsidiary Approval so that KeySpan, in addition to the Subsidiaries, can issue long-term debt to the Financing Subsidiaries that may be subordinated to other long-term debt issued by KeySpan from time to time; and

(5) Authorization to include within KeySpan's existing Guarantee authority an additional guarantee obligation of $60,000,000 it has to Hawkeye under the June 2000 agreement which KeySpan failed to include in the Financing Application.

A. EWG/FUCO Investment Approval

In the Financing Order, the Commission authorized KeySpan, directly or indirectly through its affiliates and Subsidiaries, to have "aggregate investments" (as defined in rule 53) in EWGs and FUCOs up to 250% of KeySpan's "consolidated retained earnings" (also as defined in rule 53). KeySpan requests that the Commission permit KeySpan, directly or indirectly through its affiliates or Subsidiaries, to make "aggregate investments" in existing and future EWGs and FUCOs through the Authorization Period of up to $2.2 billion, which represents approximately 418% of KeySpan's consolidated retained earnings for the four quarters ended March 31, 2002. At March 31, 2002, the consolidated amount of KeySpan's anticipated or current aggregate investment in existing EWGs and FUCOs was $791,000,000, which represents approximately 150% of KeySpan's consolidated retained earnings at March 31, 2002 ($525,588,000).

B. Additional Financing Approval

KeySpan requests that the Commission increase the Additional Financing Amount of $1.5 billion approved in the Financing Order to $2.2 billion in the aggregate during the Authorization Period. Applicants state the increase of $700 million is necessary to ensure that KeySpan has flexibility with regard to its financing authority to obtain additional capital through debt or security issuances, as may be needed, to accommodate the EWG and FUCO investments up to the proposed $2.2 billion requested above. KeySpan further requests that the Commission increase the Aggregate Financing Amount on existing and Additional Financing Amounts from $5.1 billion to $5.8 billion, to reflect the increase of $700 million in the Additional Financing Amount requested.

KeySpan also requests authorization to issue long-term debt securities that may be convertible into or exchanged for KeySpan common stock. KeySpan's issuance and sale of additional securities up to the $2.2 billion for the Additional Financing Amount, and $5.8 billion for the increase in the Aggregate Financing Amount, will be subject to the Financing Parameters set forth above and any other applicable conditions, commitments or restrictions contained in the Financing Order or this proceeding that are applicable to these security issuances.

C. Utility Subsidiary Financings

The Utility Subsidiaries request that the Commission increase the Utility Short-Term Debt Amount during the Authorization Period to permit the Utility Subsidiaries to issue short-term debt up to the aggregate principal amounts and in accordance with the applicable Financing Parameters set forth above: KED NY ($300 million); KED LI ($300 million); KeySpan Generation ($75 million); Boston Gas ($500 million); Colonial Gas ($125 million); Essex Gas ($25 million); and ENGI ($125 million).

In the Financing Order, the Commission also approved the "Utility Money Pool" but limited the amount each Utility Subsidiary could borrow at any one time during the authorization period to its applicable Utility Short-Term Debt Amount. The Utility Subsidiaries request that the aggregate amounts that each Utility Subsidiary may borrow at any one time from the Utility Money Pool be increased to correspond to the aggregate amounts for each Utility Subsidiary set forth above. Except for the modification in borrowing amounts, no other change is requested for the Utility Money Pool as approved in the Financing Order.

D. Financing Subsidiaries

In the Financing Order, the Commission authorized KeySpan and the Subsidiaries to organize new corporations, trusts, partnerships or other entities created for the purpose of facilitating financings through their issuance to third parties of income preferred securities or other authorized securities or issued under an applicable exemption ("Financing Subsidiaries"). The Financing Order approved the following requests:

1. Authorization of these Financing Subsidiaries to issue securities to third parties in the event the issuances are not exempt under rule 52;

2. Authorization (a) to issue debentures or other evidences of indebtedness by any of the Subsidiaries to a Financing Subsidiary in return for the proceeds of the financing, (b) of the acquisition by any of the Subsidiaries of voting interests or equity securities issued by a Financing Subsidiary to establish any such Subsidiary's ownership of a Financing Subsidiary (the equity portion of the entity generally being created through a capital contribution or the purchase of equity securities, ranging from one to three percent of the capitalization of the financing entity) and (c) of the guarantee (both payment and performance) by KeySpan of such Financing Subsidiaries' obligations.

3. Authorization of each of the Subsidiaries to enter into an expense agreement with its respective Financing Subsidiary, under which it would agree to pay all expenses of the Financing Subsidiary; and

4. Any amounts issued by the Financing Subsidiaries to third parties under this authorization will be included in the overall external financing limitation authorized in the Financing Application for the immediate parent of the financing entity. However, the underlying intra-system mirror debt and parent guarantee shall not be so included.

KeySpan requests that the Commission modify the authorizations in the Financing Order regarding the Financing Subsidiaries as follows: (i) With respect to item 1 above, authorization for these Financing Subsidiaries to issue preferred stock or other securities that are convertible into or exchangeable for KeySpan common stock; (ii) with respect to item 2(a) above, KeySpan, in addition to its Subsidiaries, has authority to issue debentures or other evidences of indebtedness to a Financing Subsidiary in return for the proceeds of the financing; (iii) with respect to item 2(b) above, KeySpan, in addition to its Subsidiaries, has authority to acquire voting interests or equity securities issued by a Financing Subsidiary to establish any such Subsidiary's ownership of a Financing Subsidiary (the equity portion of the entity generally being created through a capital contribution or the purchase of equity securities, ranging from one to three percent of the capitalization of the financing entity); (iv) with respect to item 3 above, KeySpan, in addition to each of the Subsidiaries, is authorized to enter into an expense agreement with its respective Financing Subsidiary, under which it would agree to pay all expenses of the Financing Subsidiary; and (v) with respect to item 4 above, any amounts issued by these Financing Subsidiaries to third parties under this authorization will be included in the overall external financing limitation authorized in the Financing Order or this proceeding, as applicable, for the immediate parent of the financing entity.

In addition, the Financing Order authorized KeySpan to issue debt securities under the KeySpan Indenture. In connection with the modifications requested above regarding KeySpan's actions in connection with Financing Subsidiaries, KeySpan requests that its authorization under the Financing Order be modified to include the following: (a) Any securities issued by KeySpan will be unsecured and, except as set forth in (b) below, unsubordinated obligations of KeySpan, and (b) debt securities issued only to a direct Financing Subsidiary of KeySpan may be subordinated debt of KeySpan and may be issued either under the KeySpan Indenture, a supplemental indenture entered into with a new trustee under the KeySpan Indenture or under a new indenture that will contain provisions substantially similar to those contained in the KeySpan Indenture.

E. Guarantees

In addition, the Financing Order authorized KeySpan to maintain in effect and to amend, renew, extend and/or replace any and all of its existing guarantees, letters of credit, expense agreements and other forms of credit support ("Guarantees") with respect to the obligations of the Subsidiaries or which may be entered into or given prior to the completion of the Merger including the Guarantees listed in Exhibit C to the Financing Application. As stated in the Financing Application, at that time KeySpan had approximately $2 billion in Guarantees outstanding which were expected to remain in place following the Merger. The Financing Order further authorized KeySpan to enter into additional Guarantees (*i.e.*, in addition to the existing Guarantees), subject to the appropriate Financing Parameters, with respect to the obligations of the Subsidiaries as may be appropriate or necessary to enable such companies to carry on in the ordinary course of their respective businesses in an aggregate principal amount not to exceed $2.0 billion outstanding at any one time (not taking into account obligations exempt under rule 45).

At the time it received the Guarantees authorizations, KeySpan contemplated that all of its existing Guarantees be included within the scope of the Financing Order. However, in listing its existing Guarantees in Exhibit C of the Financing Application, KeySpan states that it inadvertently failed to include certain of its contractual obligations to Hawkeye (formerly known as KeySpan Energy Construction, LLC), which existed prior to the Merger under a written agreement, dated June 20, 2000 ("Purchase Agreement"), regarding the sale of KeySpan's subsidiary then known as KeySpan Energy Construction, LLC ("KECL"). At the Purchase Agreement closing which occurred prior to the Merger, all of KeySpan's ownership interests in KECL were transferred to WJH Equities, LLC, an unaffiliated entity. Subsequent to this transfer, KECL changed its name to Hawkeye.

The Purchase Agreement, provides, *inter alia*, that (i) KeySpan, through October 25, 2004, is obligated to make and execute guarantees of Hawkeye's debt to Hawkeye's lenders in an aggregate principal amount of up to $13,000,000 (the "$13,000,000 Guaranty"); and (ii) KeySpan, through October 25, 2004, is obligated take such steps (and provide such guarantees and assurances) as Hawkeye may require to enable it to obtain bonds (including payment, performance and completion bonds) as Hawkeye may deem necessary or desirable in connection with projects to be undertaken by Hawkeye up to a maximum in the aggregate of bonds totaling $60,000,000 in each calendar year (the "$60,000,000 Guaranty"). In addition, KeySpan is obligated to provide support for a line of credit issued to an affiliate of Hawkeye in an amount up to $12,000,000.

In Exhibit C of the Financing Application, KeySpan included its obligations to Hawkeye with respect to the $13,000,000 Guaranty and the $12,000,000 support for a line of credit. However, KeySpan states that it inadvertently failed to include in its request the existing $60,000,000 Guaranty obligation to Hawkeye under the Purchase Agreement.

KeySpan requests that the Commission authorize KeySpan to make and provide additional guarantees and assurances to Hawkeye up to an aggregate of $60,000,000 in any calendar year as set forth above. The $60,000,000 Guaranty will be included in the total dollar amount of Guarantees currently authorized by the Commission. KeySpan will in no event exceed its $2.0 billion limit on future Guarantees previously set by the Financing Order.

Except as stated in the application-declaration, KeySpan and the Subsidiaries are not seeking any other changes or modifications to the terms, conditions or limitations otherwise applicable under the Financing Order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21127 Filed 8–19–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46350; File No. SR–NASD–2002–86]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. To Establish and Set a Fee for a New Data Feed for the Nasdaq InterMarket

August 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

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("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On July 19, 2002, Nasdaq amended the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010(c), to make available a new data feed of market participant quotations from the Nasdaq InterMarket, Nasdaq's facility for over-the-counter trading of exchange-listed securities, and set a fee for purchase of that feed. The text of the proposed rule change is below. Proposed additions are in italics.

7010 System Services

(a)—(b) No Change.

(c) (1)—(2) No Change.

(3) The charge to be paid by the subscriber for each terminal receiving the iM Quotes Service shall be $6 per month.

(d)—(r) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* July 19, 2002 letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Joseph Morra, Special Counsel, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, Nasdaq substituted new proposed rule language for the language provided in the original filing.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Today, Nasdaq provides the quotation information for participants in the Nasdaq InterMarket to the Securities Industry Automation Corporation ("SIAC"). SIAC, in turn, disseminates this real-time information via its Consolidated Quotation Service ("CQS") data feed along with the best bids and offers ("BBOs") from exchanges that participate in the Consolidated Quotations Plan ("CQ Plan"). Because Nasdaq operates as a national securities association, and not as an exchange, it is required and permitted to disseminate its InterMarket market participant quotations through SIAC, the securities information processor for the CQ Plan.

Once Nasdaq is an exchange, it will no longer be able to disseminate market participant quotations through SIAC because Rule 11Ac1–1 under the Act[4] only provides for the dissemination of exchanges' BBOs through the consolidated data streams. As an exchange, Nasdaq's BBO will be disseminated through SIAC and factored into SIAC's calculation of the National BBO in NYSE- and Amex-listed issues.

Because Nasdaq InterMarket participants rely on the real-time market participant quotations, it is critical that Nasdaq continue to provide this information after it has registered as an exchange. Market participant quotations facilitate market participants' order routing decisions and are a source of market transparency regarding the depth and interest in the InterMarket that is useful to both traders and investors. Nasdaq is developing the "iM Quotes" data feed that will provide broker-dealers and market data vendors with access to real-time InterMarket participant quotations once Nasdaq is an exchange. Twenty-two market data distributors, including a number of broker-dealers, have already ordered the iM Quotes data feed.

The $6 monthly per terminal fee will apply to all subscribers that access the iM Quotes market participant data on a real-time basis, either through a market data vendor like Bloomberg, ILX, or Reuters or through internal dissemination systems operated by broker-dealers. The $6 charge will include all issues quoted through the InterMarket including both Amex- and NYSE-listed issues. Today, subscribers to Amex and/or NYSE data are entitled to the corresponding InterMarket participant quotations that are disseminated by SIAC through the CQS data feed, although some market data vendors do not offer that data to their subscribers.

The proposed fee was derived, in part, on the anticipated traffic through the service in comparison to existing Nasdaq data feed services. Average daily message traffic in the iM Quotes feed is anticipated to be about 900,000 messages per day. This is about 11% of the average daily traffic associated with NQDS, the data feed that supports market participant quotations in Nasdaq-listed issues. The $6 iM Quotes fee is 15% of the proposed fee of $40 for QuoteView, which is the data entitlement, based on the NQDS data feed. In addition, Nasdaq considered the current costs of operating the NQDS data feed, and projected the annual operating costs for iM Quotes, adjusting for anticipated differences in traffic.

While the new data service will be introduced as early as September of 2002, Nasdaq will defer the effective date for this fee until January 1, 2003.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[5] in general, and with section 15A(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among member and issuers and other persons using any facility or system which the association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

[4] 17 CFR 240.11Ac1–1.

[5] 15 U.S.C. 78o–3.

[6] 15 U.S.C. 78o–3(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–86 and should be submitted by September 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21128 Filed 8–20–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46337; File No. SR–NSCC–2002–04]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Modifying NSCC's Rules to Accept Trade Input for Debt Security Trades Executed on the American Stock Exchange from its Members for Comparison Processing

August 12, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 14, 2002, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow NSCC to accept directly from NSCC members for processing in NSCC's trade comparison service debt security trades executed on the American Stock Exchange ("Amex") that were previously reported to NSCC by the New York Stock Exchange's ("NYSE") Online Comparison System ("OCS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

With the elimination of the use of OCS by the NYSE for debt security trades executed on the Amex, NSCC is modifying its rules in order to accept trade input for such trades from members for comparison processing. The proposed rule change will allow NSCC to process these trades in the same manner that it processes over-the-counter corporate bond trades submitted directly to it by its members for comparison. In addition, the proposed rule change reflects technical changes regarding (i) the use of Withhold tickets and (ii) the submission to NSCC of debt securities trades executed on the NYSE[3] to conform the rules to current practice.

This filing enables debt security trades executed on the Amex[4] to be submitted to NSCC in a cost efficient manner that is currently utilized by NSCC in connection with similar types of trades; therefore, NSCC believes it is consistent with the provisions of Section 17A of the Act, as amended, and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change effects a change in an existing service of NSCC that (i) does not adversely affect the safe-guarding of securities or funds in the custody or control of the clearing agency or for which it is responsible, and (ii) does not significantly affect the respective rights and obligations of the clearing agency or persons using the service, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(4)[6] promulgated thereunder. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] All debt security trades executed on the NYSE are now submitted to NSCC by the NYSE Automated Bond System.

[4] NSCC will also process other debt security trades that may have been previously submitted to NSCC via OCS if the trades are eligible to be processed in its Fixed Income Transaction System.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(4).

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amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NSCC. All submissions should refer to the File No. SR–NSCC–2002–04 and should be submitted by September 10, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21067 Filed 8–19–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46344; File No. SR–NYSE–2001–44]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 of the Proposed Rule Change by the New York Stock Exchange, Inc. Relating to NYSE Rule 407 ("Transactions—Employees of Members, Member Organizations and the Exchange")

August 13, 2002.

On October 22, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] the proposed rule change to incorporate and amend an existing written interpretation of NYSE Rule 407 to require that associated persons obtain their employers' written approval before entering into private securities transactions, and define the terms "securities or commodities account," "private securities transactions," and "other financial institution." The proposed rule change was published in the **Federal Register** on December 4, 2001.[3] The Commission received three comments on the proposed rule change.[4] On December 12, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.[5] On April 16, 2002, the NYSE filed a response to the comment letters.[6] On July 3, 2002, the NYSE submitted Amendment No. 2 to the proposed rule change.[7] This order approves the proposed rule change, as amended, and approves Amendment No. 2 on an accelerated basis.

I. Description of the Proposed Rule Change

NYSE Rule 407(b) requires that members, allied members and employees obtain prior written consent from their employers in order to open and maintain a securities or commodities account at another broker-dealer, investment adviser, bank or other financial institution. Employers of such associated persons must receive duplicate confirmations and statements of such accounts.

The Exchange proposes to amend NYSE Rule 407, and incorporate and amend an existing interpretation of NYSE Rule 407 in the *NYSE Interpretation Handbook*, to require that associated persons of members or member organizations obtain their employers' written approval (rather than notification) before entering into private securities transactions. The Exchange also proposes that associated persons effecting private securities transactions shall arrange for duplicate confirmations and statements (or their equivalents) to be sent to another person designated by their member or member organization under NYSE Rule 342(b)(1) ("Offices—Approval, Supervision and Control") to periodically review such transactions.

The Exchange proposes to define the terms "securities or commodities account," "private securities transactions" and "other financial institution." The Exchange also proposes to amend NYSE Rule 407 to provide the Exchange with the general authority to waive any of the requirements of the rule upon written request of a member or member organization that has the obligation to approve the account and where good cause is shown.

II. Summary of Comments

The Commission received three comment letters on the proposal.[8] The commenters generally supported the NYSE's proposal to require member firms to conduct a transactional-based review of private securities transactions.[9] However, the commenters recommended certain technical changes to the proposed rule language to reflect the purpose of the proposed rule change.[10] Further, one commenter stated that, although the proposal requires that associated persons effecting private securities transactions arrange for duplicate confirmations and statements (or their equivalents), there may be instances in which confirmations and statements would not be available.[11] Therefore, the commenter believed that in absence of confirmations and statements, a private placement memorandum, offering circular, or subscription agreement may be more appropriate to review.

Regarding the commenters' concerns about clarifying the proposed rule language, the NYSE believed it was not necessary to clarify the text of the proposed rule change.[12] In response to the commenter's suggestions of other documents that NYSE members and member organizations review in the absence of confirmations and statements on private securities transactions, the NYSE stated that the proposed rule language currently addresses this concern by providing for the review of confirmations, statements, "or their equivalents."[13] The NYSE also stated that it expects members and member organizations to monitor individual transactions based on the information available to them.[14] Further, the NYSE stated that where confirmations and statements were not available from the issuers, members and member organizations would be required to develop and implement policies, which among other things, provide for periodic updates and attestations from employees as to their existing, and any additional, private securities transactions.[15]

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposal, as amended, is consistent with Section 6(b)(5) of the Act,[17] which requires, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade.

The Commission believes that requiring associated persons of members or member organizations to obtain their employers' written approval before entering into private securities transactions will provide member organizations another tool to assist in carrying out their supervisory responsibilities. In addition, it will make for more consistent regulation across the industry.[18] After careful consideration of the commenters' concerns about the proposed rule language and its requirements, the Commission believes that the proposal sufficiently addresses the types of information that would be necessary to be reviewed by a designated Exchange member or member organization. The Commission believes that the proposed rule change should assist the Exchange and its members and member organizations in monitoring employee transactions for possible conflicts of interest or violations of self-regulatory organization or SEC requirements.

IV. Amendment No. 2 of the Proposed Rule Change

The Commission finds good cause for approving Amendment No. 2 of the proposed rule change prior to the thirtieth day after notice of publication in the **Federal Register**. Amendment No. 2 clarifies that the proposal applies to associated persons of members or member organizations that either establish or maintain a securities or commodities account, or a private securities transaction. In addition, Amendment No. 2 modifies the proposed rule text to require members and member organizations to develop and maintain written procedures for reviewing any securities or commodities accounts, or private securities transactions. The Commission believes that it is not necessary to separately solicit comment on Amendment No. 2 before approving this proposal because Amendment No. 2 makes changes to clarify the responsibilities of Exchange members, member organizations, and their employees, pursuant to this rule. The Commission therefore finds that the approval of Amendment No. 2 on an accelerated basis is appropriate.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether the amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE–2001–44 and should be submitted by September 10, 2002.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NYSE–2001–44), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21129 Filed 8–19–02; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region I Regulatory Fairness Board

The Small Business Administration Region I Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Tuesday, September 17, 2002 at 9 a.m. at the Thomas P. O'Neil Federal Building, Auditorium—First Floor, 10 Causeway Street, Boston, MA 02222, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact David Polatin in writing or by fax, in order to be put on the agenda. David Polatin, U.S. Small Business Administration, Massachusetts District Office, 10 Causeway Street, Suite 812, Boston, MA 02222, phone (617) 565–5562, fax (617) 565–5597, e-mail *david.polatin@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Dated: August 13, 2002.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 02–21078 Filed 8–19–02; 8:45 am]

BILLING CODE 8025–01–P

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45097 (November 21, 2001), 66 FR 63084.

[4] *See* letters to Jonathan G. Katz, Secretary, Commission, from Michael Dardis, Vice President, Compliance Manager, Wells Fargo Investments, dated January 11, 2002 ("Wells Fargo Letter"); and Les Klein, Managing Director, Solomon Smith Barney, dated January 11, 2002 ("SSB Letter"). *See also* letter from Brian C. Underwood, Senior Vice President, Director of Compliance, A.G. Edwards & Sons, Inc., to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 24, 2002 ("A.G. Edwards Letter").

[5] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission, dated December 11, 2001 ("Amendment No. 1"). Amendment No. 1 modifies the proposed definition of a "securities or commodities account," by adding a non-inclusive phrase to be consistent with the proposed definitions of other terms in the proposed rule text. This was a technical amendment and is not subject to notice and comment.

[6] *See* letter from Richard P. Bernard, Executive Vice President and General Counsel, NYSE, to Nancy Sanow, Assistant Director, Division, Commission, dated April 15, 2002 ("NYSE Response Letter").

[7] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Katherine A. England, Assistant Director, Division, Commission, dated July 5, 2002 ("Amendment No. 2"). Amendment No. 2 clarifies that the proposed rule text shall apply to associated persons of members or member organizations that either establish or maintain a securities or commodities account, or a private securities transaction. In addition, Amendment No. 2 modifies the proposed rule text to require members and member organizations to develop and maintain written procedures for reviewing any securities or commodities accounts, or private securities transactions.

[8] *See* note 4, *supra.*

[9] *See* Wells Fargo Letter; SSB Letter; A.G. Edwards Letter.

[10] *Id.*

[11] *See* A.G. Edwards Letter.

[12] *See* NYSE Response Letter (stating that the NYSE would clarify the requirements of the rule in an Information Memo upon approval of the proposal by the Commission).

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15. U.S.C. 78f(b)(5).

[18] *See* NASD Rule 3040.

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

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DEPARTMENT OF STATE

[Public Notice 4101]

Office of Educational and Cultural Affairs (ECA/EC/PS); 30-Day Notice of Proposed Information Collection: Form DS–3036, Exchange Visitor Program Application and Form DS–3037, Update of Information on Exchange Visitor Program Sponsor; OMB Control Number 1405–0120

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this Notice.

OMB Approval Number 1405–0120

The following summarizes the information collection proposal submitted to OMB:

Type of Request: An extension of a currently approved collection.

Originating Office: Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs.

Title of Information Collection: Exchange Visitor Program Application—DS–3036; Update of Information on Exchange Visitor Program Sponsor—DS–3037.

Frequency: DS–3036—Approximately 150 new organizations submit applications to be designated as Exchange Visitor Program sponsors each year. DS–3037—The Department has approximately 1500 currently designated sponsors. It is estimated that each designated organization makes two submissions annually to update information on their Program or to order Form DS–2019, brochures and supplies to administer their Program.

Form Number: DS–3036/DS–3037.

Respondents: U.S. government, and public and private organizations wishing to become designated sponsors and Department of State designated sponsors.

Estimated Number of Respondents: DS–3036—150; DS–3037—3,000.

Average Hours per Response: DS–3036—20 minutes; DS–3037—8 hours.

Total Estimated Burden: DS–3036—1200 hours; DS–3037—1,000 hours.

Public comments are being solicited to permit the Department to:

—Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the Department, including whether the proposed information collection is necessary for the proper performance of the functions of the Department.

• Evaluate the accuracy of the Department's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Sally J. Lawrence, Chief, Private Sector Division, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, U.S. Department of State, 301 Fourth Street, SW., Room 734, Washington, DC 20547; telephone 202–401–9810. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: August 5, 2002.

James D. Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–21172 Filed 8–19–02; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF STATE

[Public Notice 4044]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Notice of Meeting

The Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea will conduct an open meeting at 1 PM on Tuesday, September 10, 2002, in Room 3200 of the Department of Transportation Headquarters, 400 Seventh Street, SW, Washington, DC 20590–0001. The primary purpose of the meeting is to prepare for the Seventh Session of International Maritime Organization (IMO) Sub-Committee on Dangerous Goods, Solid Cargoes and Containers (DSC 7), to be held at the IMO Headquarters in London, England from September 23 to September 27, 2002.

The primary matters to be considered include:

a. Amendments to the International Maritime Dangerous Goods (IMDG) Code, its Annexes and Supplements including harmonization of the IMDG Code with the United Nations Recommendations on the Transport of Dangerous Goods, and implementation of Annex III of the Marine Pollution Convention (MARPOL 73/78), as amended.

b. Review of the Code of Safe Practice for Solid Bulk Cargoes (BC Code), including evaluation of properties of solid bulk cargoes.

c. Cargo securing manual.

d. Casualty and incident reports and analysis.

e. Development of an instrument for multimodal training requirements.

f. Stowage and segregation requirements for freight containers on containerships with partially weatherproof hatchway covers.

g. Development of a manual on loading and unloading of solid bulk cargoes for terminal representatives.

h. Guidance on serious structural deficiencies in containers.

i. Measures to enhance maritime security.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. E. P. Pfersich, U.S. Coast Guard (G–MSO–3), Room 1210, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–1217.

Dated: August 8, 2002.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 02–21169 Filed 8–19–02; 8:45 am]

BILLING CODE 4710–07–U

DEPARTMENT OF STATE

[Public Notice 4080]

Shipping Coordinating Committee, Subcommittee for the Prevention of Marine Pollution; Notice of Meeting

The Shipping Coordinating Committee, Subcommittee for the Prevention of Marine Pollution, will conduct an open meeting at 9:30 a.m. on Thursday, September 26, 2002, in Room 2415 at the U.S. Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593.

The purpose of this meeting will be to review the agenda items to be considered at the forty-eighth Session of the International Maritime Organization (IMO) Marine Environment Protection Committee (MEPC 48) to be held at the IMO Headquarters in London from 7 through 11 October 2002. Proposed U.S. positions on the agenda items for MEPC 48 will be discussed.

The primary matters to be considered include:

a. Harmful aquatic organisms in ballast water;

b. Recycling of ships;

c. Prevention of air pollution from ships;

d. Consideration and adoption of amendments to mandatory instruments;

e. Implementation of the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) and the OPRC-Hazardous Noxious Substances Protocol (OPRC–HNS) and relevant conference resolutions;

f. Identification and protection of Special Areas and Particularly Sensitive Sea Areas;

g. Inadequacy of reception facilities;

h. Promotion of implementation and enforcement of the International Convention on the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) and related Codes;

i. Technical co-operation program;

j. Interpretation and amendments of MARPOL 73/78 and related Codes;

k. Harmful effects of the use of anti-fouling paints for ships; Future role of formal safety assessment and human element issues;

l. Future role of formal safety assessment and human element issues; and

m. Work program of the Committee and subsidiary bodies.

Please note that hard copies of documents associated with MEPC 48 will not be available at this meeting. Documents will be available in Adobe Acrobat format on CD–ROM on the day of the meeting. To request documents prior to the meeting date, please write to the address or place a request for the documents via the web link provided below.

Members of the public may attend the meeting up to the seating capacity of the room. For further information, or to submit views in advance of the meeting, please contact Lieutenant Commander David Beck, U.S. Coast Guard, Environmental Standards Division (G–MSO–4), 2100 Second Street, SW., Washington, DC 20593–0001; telephone (202) 267–0713; fax (202) 267–4690, e-mail *dbeck@comdt.uscg.mil*; or on-line at: *http://www.uscg.mil/hq/g-m/mso/mso4/mepc.html*.

Dated: August 8, 2002.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 02–21170 Filed 8–19–02; 8:45 am]

BILLING CODE 4710–07–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–13126]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Number 2115–0141

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of one Information Collection Request (ICR). The ICR concerns Lifesaving, Electrical, and Engineering Equipment, Construction, and Materials. Before submitting the ICR to OMB, the Coast Guard is inviting comments on it.

DATES: Comments must reach the Coast Guard on or before October 21, 2002.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2002–13126] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2002–13126], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Request

Title: 46 CFR Subchapter Q: Lifesaving, Electrical, and Engineering Equipment, Construction, and Materials.

OMB Control Number: 2115–0141.

Summary: The Coast Guard needs to collect this information so it can ensure compliance with rules governing specific types of safety equipment and material installed on commercial vessels and pleasure craft. Manufacturers must submit drawings, specifications, and laboratory test reports to the Coast Guard before it grants any approval.

Need: 46 U.S.C. 2103, 3306, 3703, and 4302 authorize the Coast Guard to establish rules for safety equipment and material. 46 CFR parts 159 to 164 contain these rules. This information will help the Coast Guard determine whether manufacturers are in compliance with these rules. When the Coast Guard approves any safety equipment or material for use on a commercial vessel or pleasure craft, it issues the manufacturer a Certificate of Approval.

Respondents: Manufacturers of safety equipment and materials.

Frequency: On occasion.

Burden: The estimated burden is 16,880 hours a year.

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Dated: August 13, 2002.

N. S. Heiner,

Acting Director of Information and Technology.

[FR Doc. 02–21133 Filed 8–19–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–13117]

Great Lakes Pilotage Advisory Committee; vacancy.

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Great Lakes Pilotage Advisory Committee (GLPAC). GLPAC advises the Coast Guard on matters related to regulations and policies on the pilotage of vessels on the Great Lakes.

DATES: Application forms should reach us on or before September 19, 2002.

ADDRESSES: You may request an application form and waiver by writing to Commandant (G–MW), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling 202–267–6164; by faxing 202–267–4700; or by e-mailing *Jshort@comdt.uscg.mil*. Send your completed application, waiver, and short resume to the above street address or by fax to 202–267–4700. This notice and the application and waiver forms are available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Margie Hegy, Executive Director of GLPAC, at (202) 267–0415, fax (202) 267–4700.

SUPPLEMENTARY INFORMATION: The Great Lakes Pilotage Advisory Committee (GLPAC) is a Federal advisory committee under 5 U.S.C. App. 2. It advises the Secretary of Transportation, via the Commandant of the Coast Guard, on the rules and regulations that govern the registration of pilots, the operating requirements for U.S. registered pilots, pilot training policies, and the policies and regulations that establish rates charges and conditions for pilotage services.

GLPAC meets at least twice a year at various locations in the continental United States. It may also meet for extraordinary purposes. Subcommittees or working groups may be designated to consider specific problems and will meet as required.

We will consider applications for one position that has never been filled since the GLPAC was established. The position is unique in that the member is required to have a background in finance or accounting, and the requirement for five years of practical experience in maritime operations that the other six members must meet is waived for this position. However, applicants with some knowledge of the marine industry would be desirable. Applicants who do not live or work in the Great Lakes community are specifically encouraged to apply.

All applications will be reviewed and discussed by the other six Committee members as the candidate for this position must be recommended to the Secretary of Transportation by a unanimous vote of the other members of the Committee. This discussion will occur in a public forum, however, information of a personal nature that would invade the privacy of the applicant, including his/her name, will be blacked out before the applications are made available to the public. Applicants will be asked to sign a waiver to allow discussion at a public meeting of GLPAC.

Each member serves for a term of 3 years. A few members may serve consecutive terms. All members serve without compensation from the Federal Government, although travel reimbursement and per diem will be provided.

In support of the policy of the Department of Transportation on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Dated: August 13, 2002.

J. P. Brusseau,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–21132 Filed 8–19–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–13133]

Great Lakes Pilotage Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Great Lakes Pilotage Advisory Committee (GLPAC) and its Subcommittee on Technology will meet to discuss various issues relating to pilotage on the Great Lakes. The meeting will be open to the public.

DATES: The Subcommittee will meet on Friday, September 6, 2002, from 8 a.m. to 11 a.m. GLPAC will meet on Friday, September 6, 2002, from 12 (noon) to 3:30 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before September 3, 2002. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before August 30, 2002.

ADDRESSES: GLPAC will meet at the St. Lawrence Hotel, Corner Main and West Orvis Street, Massena, NY 13662. Send written material and requests to make oral presentations to Margie Hegy, Commandant (G-MW), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Margie Hegy, Executive Director of GLPAC, telephone 202–267–0415, fax 202–267–4700.

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meetings

Subcommittee on Technology. The agenda includes the following:

(1) Presentation of Portable Piloting Units used by the Canadian pilots.

(2) Assessment of technology needs of U.S. pilots on the U.S. Great Lakes.

Great Lakes Pilotage Advisory Committee (GLPAC). The agenda includes the following:

(1) Update on Bridge Hour Study.

(2) Update on Pilotage Office Relocation Study.

(3) Progress report from Technology Subcommittee.

(4) Pilot attrition.

(5) Proposed AIS Carriage Requirement.

(6) GLPAC priorities—issues.

(7) Frequency of meetings.

The GLPAC meetings follow a public meeting on a bridge hour study being conducted on Great Lakes pilotage. This meeting will held on September 5, 2002, from 4 p.m. to 7 p.m. at the same location and will be formally announced in a future issue of the **Federal Register**.

Procedural

The meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than September 3, 2002. Written material for distribution at the meeting should reach the Coast Guard no later than September 3, 2002. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 10 copies to Margie Hegy at the address in the **ADDRESSES** section no later than August 30, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: August 14, 2002.

Joseph J. Angelo,

Acting Assistant Commandant Marine Safety, Security and Environmental Protection.

[FR Doc. 02–21131 Filed 8–19–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Engine Instructions for Continued Airworthiness

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) No. 20.XX, Turbojet, Turboprop & Turbofan Engine Induction System Icing.

DATES: Comments must be received on or before October 21, 2002.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: John Fisher, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: John Fisher, Engine and Propeller Standards Staff, ANE–110, at the above address, telephone (781) 238–7149, fax (781) 238–7199, or e-mail to *john.fisher@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named under **FOR FURTHER INFORMATION CONTACT** or by downloading the proposed AC from the following Internet Web site: *http:\\www2.airweb.FAA.gov/Regulatory_and_Guidance_Library/RgDAC.nsf/mainframe?openframeset* The FAA invites interested parties to comment on the proposed AC. Comments should identify the subject of the AC and be submitted to the individual identified under **FOR FURTHER INFORMATION CONTACT**. The FAA will consider all communications received by the closing date before issuing the final AC.

Background

This AC is on the subject of continued airworthiness of aircraft engines certificated under Title 14 of the Code of Federal Regulation (CFR) parts 33 and 25. The information and guidance presented in this AC would provide a method that can be used to demonstrate compliance with the requirements of §§ 25.1093, 33.68, 33.77, and 33.89.

On January 24, 2000, a Notice was published in the **Federal Register** (65 FR 3752), requesting public comments by February 23, 2000. Since then, those public comments, as well as other significant changes were made to the proposed AC. Therefore, this Notice announces an additional request for public comments on the revised AC proposal.

This advisory circular, published under the authority granted to the Administrator by 49 U.S.C. 106(g), 40113, 44701–44702, 44704, provides guidance for these proposed requirements.

Issued in Burlington, Massachusetts, on August 8, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–21186 Filed 8–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 45–2B, Identification and Registration Marking

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Advisory Circular (AC) 45–2B, Identification and Registration Marking for review and comments. The proposed AC provides guidance and information to comply with the requirements for identifying aircraft and related products with identification plates, and identifying aircraft with nationality and registration marks. This AC provides a means, but not the only means, of demonstrating compliance with the requirements of Title 14, Code of Federal Regulations (14 CFR), part 45, Identification and Registration Marking.

DATES: Comments submitted must identify the proposed AC 45–2B and be received no later than 30 days after the date of this publication.

ADDRESSES: Copies of the proposed AC can be obtained from and comments may be returned to the following: Federal Aviation Administration, Airworthiness Certification Branch, AIR–220, Production and Airworthiness Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: David Broughton, Airworthiness Certification Branch, AIR–220, Production and Airworthiness Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–9575.

SUPPLEMENTARY INFORMATION:

Background

Proposed AC 45–2B is written in the Plain Language format to provide information and guidance on the requirements of identifying aircraft and related products with identification plates, and identifying aircraft with nationality and registration marks.

Comments invited

Interested persons are invited to comment on proposed AC 45–2B listed on this notice by submitting such written data, views, or arguments, as they desire, to the aforementioned specified address. The Aircraft Certification Service will consider all communications received on or before the closing date before issuing the final AC.

Comments received on the proposed AC may be examined before and after the comment closing date in Room 815, FAA headquarters building, (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on August 15, 2002.

Frank P. Paskiewicz,

Manager, Production and Airworthiness Division.

[FR Doc. 02–21184 Filed 8–19–02; 8:45 am]

BILLING CODE 4910–13–M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at Charlottesville-Albemarle Airport, Charlottesville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of proposed release of 4.07 acres of land at the Charlottesville-Albemarle Airport, Charlottesville, Virginia to the Virginia Department of Transportation in exchange for 4.274 acres of land within the abandoned Route 606 Right-of-Row. There are no adverse impacts to the Airport and the land is not needed for airport development. The relocated Route 606 is shown on the Airport Layout Plan. Fair Market Value of the land has been evaluated for both parcels and will be an even exchange for the Airport Sponsor.

DATES: Comments must be received on or before September 19, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Terry J. Page, Manager, FAA Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Bryan Elliott, Executive Director, Charlottesville-Albemarle Airport, at the following address: Bryan Elliott, Executive Director, Charlottesville-Albemarle Airport Authority, 100 Bowen Loop, Suite 200, Charlottesville, VA 22911.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Page, Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166; telephone (703) 661–1354, fax (703) 661/1370, e-mail *Terry.Page@faa.gov*.

SUPPLEMENTARY INFORMATION: On April 5, 2002, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 10–181 (Apr. 5, 2002; 114 Stat. 61) (AIR 21) requires that a 30 day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Chantilly, Virginia on August 5, 2002.

Terry J. Page,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. 02–21140 Filed 8–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 29, 2002, page 21010.

DATES: Comments must be submitted on or before September 19, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Airport Master Record.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0015.

Form(s): FAA Forms 5010–1, 5010–2, 5010–3, 5010–5.

Affected Public: A total of 19,345 public and private airport operators.

Abstract: 49 USC 329(b) directs the Secretary of Transportation to collect information about civil aeronautics. The goal of this information collection is to obtain a yearly update of all airports on record and new airports with the FAA either through physical inspection or mail solicitation. The information is required to carry out FAA missions related to the aviation industry, flight planning, and airport engineering. The affected public are operators of private and public use airports.

Estimated Annual Burden Hours: An estimated 8,770 hours annually.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 14, 2002.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 02–21183 Filed 8–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Conversion of Aircraft Records to an Electronic Record Based System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of conversion of aircraft records to an electronic record based system.

SUMMARY: The aircraft records at the Civil Aviation Registry's Aircraft Registration Branch, Oklahoma City, Oklahoma, have been maintained on updateable microfiche. Those records have been converted to an electronic record based system. Effective August 8, 2002, copies of aircraft records can be provided to requesters in either a paper format or a digital portable document format on a compact disc.

DATES: Effective August 8, 2002, those electronic records will become the official records for the Civil Aviation Registry's Aircraft Registration Branch.

FOR FURTHER INFORMATION CONTACT: Julie Stanford, Manager, Aircraft Registration Branch (AFS–750), Mike Monroney Aeronautical Center, Federal Aviation Administration, P.O. Box 25504, Oklahoma City, Oklahoma 73125. Telephone: (405) 954–3131.

SUPPLEMENTARY INFORMATION: Beginning in 1926, the records pertaining to United States registered aircraft were maintained in folders, identified by the registration number of the aircraft, which contained either the original documents, or certified copies of such documents, submitted for recordation.

In October 1978, following a comprehensive study, it was determined that the aircraft records would be replaced by an updateable microfiche system. It was further determined that effective May 1, 1981, the microfiche would become the official aircraft record.

The updateable microfiche and the equipment required to operate and maintain that system are no longer manufactured. The microfiche system used by the Civil Aviation Registry's Aircraft Registration Branch is no longer supportable. It was determined that the microfiche should be replaced with an electronic records based system. It was further determined that those electronic records would be the official aircraft records of the Civil Aviation Registry's Aircraft Registration Branch.

Effective August 8, 2002, any person requesting a copy of a record will be provided with their choice of either a paper or digital portable document format copy of the electronic record concerning that aircraft.

Issued in Oklahoma City, OK, on August 2, 2002.

Mark D. Lash,

Manager, Civil Aviation Registry.

[FR Doc. 02–21185 Filed 8–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application PFC No. 02–04–U–00–A00 To Use the Revenue From a Passenger Facility Charge (PFC) at Altoona-Blair County Airport, Altoona, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Altoona-Blair County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 19, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Sharon Daboin/Manager Har-Ado FAA, Airports District Office, 3905 Hartzdale Dr, Suite #508, Camp Hill, PA 17011

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Charles Pillar, Airport Manager of the Blair County Airport Authority at the following address: Blair County Airport Authority, 2 Airport Drive, Martinsburg, PA 16662.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Blair County Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Sharon Daboin/Manager HAR–ADO Airports District Office, 3905 Hartzdale Drive, Suite 508, (717) 730–2830. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue form a PFC at Altoona-Blair County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 1, 2002, the FAA determined that the application to use the revenue from a PFC submitted by Blair County Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 28, 2002.

The following is a brief overview of the application.

PFC Application No.: PFC No. 02–04–U–00–AOO.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 2002.

Proposed charge expiration date: March 1, 2003.

Total estimated PFC revenue: $135,340.

Brief description of proposed project(s):

—Purchase of Avigation Easements and topping/removing of trees and brush penetrating runway approach surfaces, runway primary surfaces and runway OFZ's.

—Fourteen Avigation easements will be acquired totaling approximately 13 acres. These easements will be located along the right and left sides of the approach to Runway 20. See the attached easement acquisition and obstruction plans.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: No Class of Carriers will be excluded from collection of PFC.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Fitzgerald Federal Building #111, Airports Division, AEA–610, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Blair County Airport Authority.

Issued in HBG, PA on July 1, 2002.

Sharon Daboin,

Manager, HAR–ADO, Eastern Region.

[FR Doc. 02–21141 Filed 8–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement PS–ACE100–2002–002]

Policy Statement PS–ACE100–2002–002, Installation Approval of Multi-Function Displays Using the Approved Model List (AML) Supplemental Type Certification (STC) Process

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of policy statement.

SUMMARY: This notice announces the issuance of Policy Statement PS–ACE100–2002–002, Installation Approval of Multi-Function Displays Using the Approved Model List (AML) Supplemental Type Certification (STC) Process. This policy encourages use of the Approved Model List Supplemental Type Certification Process for installation approval of multi-function displays.

DATES: Policy Statement PS–ACE100–2002–002 was issued by the Manager, Small Airplane Directorate, Aircraft Certification Service, ACE–100, on July 30, 2002.

How to Obtain Copies: A paper copy of Policy Statement PS–ACE100–2002–002 may be obtained by contacting Barry Ballenger, Aerospace Engineer, FAA, Small Airplane Directorate, Standards Office, ACE–110, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4152 or by faxing your request to (816) 329–4149. The policy will also be available on the Internet at *www.faa.gov/certification/aircraft/small_airplanes_advisory.htm*.

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Issued in Kansas City, Missouri, on August 7, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–21178 Filed 8–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13148]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ANDIAMO.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 19, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13148. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832, Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* ANDIAMO. Owner: Andiamo, LLC.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "The vessel is 44 feet in length, 23 feet in breadth, and is designed to carry 8 persons in four cabins. The gross and net tonnages are 16 and 14 tons, respectively."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "The intended use of the vessel is to engage in crewed chartered operations for hire for no more than 12 passengers on the east coast of the United States from Maine to Florida, including the inland waters of the Chesapeake Bay." "Also * * * Puerto Rico and Virgin Islands"

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1995. *Place of construction:* France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "This waiver will have negligible impact on other commercial passenger vessel operators. The crewed charter yacht business is concentrated in the U.S. and British Virgin Islands where over 300 such yachts are engaged in the charter business primarily during the winter and spring months, November to May. Few of these boats return to the continental United States during the summer months to offer their services. As a result, the demand for charter boats in the United States exceeds the available supply * * *"

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "This waiver will have a positive impact on U.S. shipyards. Any increase in the number of crewed charter boats operating in U.S. waters will necessarily result in more repair and refitting work for U.S. shipyards. Charter boats require substantial repairs and maintenance each year because of the harsh marine environment in which they work. * * * any increase in the charter business in U.S. continental waters will increase the need for work performed by U.S. shipyards."

Dated: August 15, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–21159 Filed 8–19–02; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 9, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 19, 2002, to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0057.
Form Number: None.
Type of Review: Extension.
Title: Annual Letters—Certificates of Authority (A) and Admitted Reinsurer (B).
Description: Annual letters are sent to insurance companies providing surety bonds to protect the Federal Government or companies providing reinsurance (except on excess risks running to the United States).

Information provided is needed for the renewal of Treasury Certified companies and determination of underwriting limitations, and renewal of companies recognized as Admitted Reinsurers. Summary information of Treasury Certified companies is published in Circular 570, while a separate list of companies recognized as Admitted Reinsurers is generated.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 347.
Estimated Burden Hours Per Respondent: 39 hours and 45 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 13,793 hours.

Clearance Officer:Juanita Holder, Financial Management Service, 3700 East West Highway, Room 135, PGP II, Hyattsville, MD 20782.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–21054 Filed 8–19–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 12, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 19, 2002, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0184.
Form Number: IRS Form 4797.
Type of Review: Revision.
Title: Sales of Business Property.
Description: Form 4797 is used by taxpayers to report sales, exchanges, or involuntary conversion of assets, other than capital assets, and involuntary conversion of capital assets held more than one year. It is also used to compute ordinary income from recapture and the recapture of prior year section 1231 losses.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 1,396,388.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 33 hr., 28 min.
Learning about the law or the form: 7 hr., 56 min.
Preparing, copying, assembling, and sending the form to the IRS: 8 hr., 50 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 70,196,425 hours.
OMB Number: 1545–1012.
Form Number: IRS Form 5305A–SEP.
Type of Review: Extension.
Title: Salary Reduction Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.
Description: Form 5305A–SEP is used by an employer to make an agreement to provide benefits to all employees under a salary reduction Simplified Employee Pension (SEP) described in section 408(k). This form is not to be filed with IRS, but is to be retained in the employers' records as proof of establishing such a plan, thereby justifying a deduction for contributions made to the SEP. The data is used to verify the deduction.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 100,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 3 hr., 52 min.
Learning about the law or the form: 5 hr., 1 min.
Preparing the form: 49 min.
Estimated Total Reporting/Recordkeeping Burden: 972,00 hours.
OMB Number: 1545–1498.
Regulation Project Number: REG–209826–96 NPRM.
Type of Review: Extension.
Title: Application of the Grantor Trust Rules to Nonexempt Employees' Trusts.
Description: The regulations provide rules for the application of the grantor trust rules to certain nonexempt employees' trusts. Taxpayers must indicate on a return that they are relying on a special rule to reduce the overfunded amount of the trust.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,000 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224; (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–21055 Filed 8–19–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 14, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before September 19, 2002 to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–0120.
Form Number: IRS Form 1099–G.
Type of Review: Extension.
Title: Certain Government and Qualified State Tuition Program Payments.
Description: Form 1099–G is used by governments (primarily state and local) to report to the IRS (and notify recipients of) certain payments (*e.g.*, unemployment compensation and income tax refunds). IRS uses the information to insure that the income is being properly reported by the recipients on their returns.
Respondents: Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 2,900.
Estimated Burden Hours Per Respondent: 11 minutes.
Frequency of Response: Annually.

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Estimated Total Reporting Burden: 11,590,000 hours.

OMB Number: 1545–0126.

Form Number: IRS Form 1120–F.

Type of Review: Revision.

Title: U.S. Income Tax Return of a Foreign Corporation.

Description: Form 1120–F is used by foreign corporations that have investments, or a business, or a branch in the U.S. The IRS uses Form 1120–F to determine if the foreign corporation has correctly reported its income, deductions, and tax, and to determine if it has paid the correct amount of tax.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 21,618.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—105 hr., 28 min.
Learning about the law or the form—41 hr., 9 min.
Preparing the form—68 hr., 52 min.
Copying, assembling, and sending the form to the IRS—61 hr., 58 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 4,809,573 hours.

OMB Number: 1545–1007.

Form Number: IRS Form 8606.

Type of Review: Revision.

Title: Nondeductible IRAs.

Description: Internal Revenue Code (IRC) section 408(o) requires certain information regarding nondeductible contributions to traditional IRAs (reported on Part I of Form 8606). IRC section 408A(d) requires information regarding conversions from traditional IRAs to Roth IRAs and distributions from Roth IRAs (reported on Parts II & III of Form 8606). IRC section 530 requires information regarding distributions from ED IRAs (reported on Part IV of Form 8606).

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 1,800,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—1 hr., 4 min.
Learning about the law or the form—1 hr., 12 min.
Preparing the form—49 min.
Copying, assembling, and sending the form to the IRS—41 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 2,427,770 hours.

OMB Number: 1545–1653.

Revenue Procedure Number: Revenue Procedure 99–26.

Type of Review: Extension.

Title: Secured Employee Benefits Settlement Initiative.

Description: This revenue procedure provides taxpayers options to settle cases in which they accelerated deductions for accrued employee benefits secured by a letter of credit, bond, or other similar financial instrument.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 100.

Estimated Burden Hours Per Respondent/Recordkeeper: 20 hours.

Frequency of Response: Other (one-time).

Estimated Total Reporting/ Recordkeeping Burden: 2,000 hours.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–21164 Filed 8–19–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 14, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 19, 2002 to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–1411.

Form Number: IRS Forms 8843.

Type of Review: Extension.

Title: Statement for Exempt Individuals and Individuals With a Medical Condition.

Description: Form 8843 is used by an alien individual to explain the basis of the individual's claim that he or she is able to exclude days of presence in the U.S. because the individual is a teacher/trainee or student; professional athlete; or has a medical condition or problem.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 150,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

[In minutes]

	Form 8843 parts I & II	Form 8843 parts I & III	Form 8843 parts I & IV	Form 8843 parts I & V
Recordkeeping	13	13	13	13
Learning about the law or the form	7	6	6	6
Preparing the form	30	33	25	29
Copying, assembling, and sending the form to the IRS	16	16	16	16

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 174,345 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–21165 Filed 8–19–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Certificates of Label Approval (COLAs) Online Access Request.

DATES: Written comments should be received on or before October 21, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Thomas Stewart, Program Manager, E Government, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8193.

SUPPLEMENTARY INFORMATION:

Title: COLAs Online Access Request.

Form Number: ATF F 5013.2.

Abstract: The information on this form will be used by ATF to authenticate end users in the system to electronically file Certificates of Label Approval (COLAs). The system will authenticate end users by comparing information submitted on the form to records held in multiple, independently sourced databases, such as consumer credit, postal address and credit card databases. By checking multiple sources, often with an overlapping scope of coverage, the verification engine will facilitate the authentication process and reduce the possibility of fraud. After verifying the applicant user is who they claim to be, a password will be issued to allow the user to access the system.

Current Actions: This is a new information collection.

Type of Review: New.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Total Annual Burden Hours: 300.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 8, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–20875 Filed 8–19–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Evaluation of Training, Arson For Prosecutors Training Program (Follow-up Survey).

DATES: Written comments should be received on or before October 21, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Joanne Bailey, Learning Systems Management Division, 800 K Street, NW., Suite 600, Washington, DC 20001, (202) 927–3086.

SUPPLEMENTARY INFORMATION:

Title: Evaluation of Training, Arson For Prosecutors Training Program (Follow-up Survey).

Abstract: ATF is conducting training evaluation to determine the effectiveness and value of its training programs. The information collected on the survey will provide ATF with data on how the training participants have transferred the knowledge and skills learned to their jobs. This data will help ATF determine whether the training program is consistently meeting objectives and impacting the performance of the individuals in their work place.

Current Actions: New information collection.

Type of Review: New.

Affected Public: State, Local, or Tribal Government.

Estimated Number of Respondents: 125.

Estimated Total Annual Burden Hours: 63.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated August 8, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–20876 Filed 8–19–02; 8:45 am]

BILLING CODE 4810–31–P

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Change of Bond (Consent of Surety).

DATES: Written comments should be received on or before October 21, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8185.

SUPPLEMENTARY INFORMATION: *Title:* Change of Bond (Consent of Surety).

OMB Number: 1512–0078.

Form Number: ATF F 5000.18.

Abstract: A Change of Bond (Consent of Surety) is executed by both the bonding company and a proprietor and acts as a binding legal agreement between the two parties to extend the terms of a bond. A bond is necessary to cover specific liabilities on the revenue produced from untaxpaid commodities.

Current Actions: This information collection has been revised. Extension of Coverage of Bond, ATF F 2105 (5000.7) has been removed from 1512–0534 and has been combined with ATF F 1533 (5000.18), Consent of Surety. The new form will be identified as Change of Bond (Consent of Surety), ATF F 5000.18. The form has been revised in the plain language format. The Change of Bond (Consent of Surety) is filed with ATF and a copy is retained by ATF as long as it remains current and in force.

Type of Review: Revision.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Total Annual Burden Hours: 2,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 8, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–20877 Filed 8–19–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Taxable Articles Without Payment of Tax.

DATES: Written comments should be received on or before October 21, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert P. Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION: *Title:* Taxable Articles Without Payment of Tax.

OMB Number: 1512–0119.

Form Number: ATF F 5200.14.

Abstract: ATF collects the information on ATF F 5200.14 to ensure that ATF protects the revenue and promotes compliance with laws and regulations. ATF gathers information about the specific activities listed on ATF F 5200.14 to monitor taxable articles. Also, ATF examines and verifies entries so that unusual activities, errors and omissions may be identified and follow-up action may be taken to protect the Government's revenue.

Current Actions: ATF F 5200.14 has been revised. The title of the form has been changed from Notice of Removal of Tobacco Products, Cigarette Papers or Cigarette Tubes to Taxable Articles Without Payment of Tax. The revised form will increase the accuracy of submissions by persons who make entries on the form. Follow-up contact will reduce among manufacturers, proprietors of export warehouses or customs manufacturing warehouses, other individuals and ATF due to additional instructions. The form has been revised to the plain language format.

Type of Review: Revision.

Affected Public: Business or other for-profit, individuals or households, Federal Government.

Estimated Number of Respondents: 272.

Estimated Total Annual Burden Hours: 15,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 8, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–20878 Filed 8–19–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Drawback on Distilled Spirits Exported.

DATES: Written comments should be received on or before October 21, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8185.

SUPPLEMENTARY INFORMATION: *Title:* Drawback on Distilled Spirits Exported.

OMB Number: 1512–0199.

Form Number: ATF F 5110.30.

Abstract: The information collected on ATF F 5110.30 provides a uniform format for determining that taxes have already been paid. The form details specific operations and accounts for taxable commodities. Tax liability is established to prevent jeopardy to the revenue derived from distilled spirits. ATF examines and verifies entries so as to identify unusual activities, errors or omissions.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Total Annual Burden Hours: 10,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 8, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–20879 Filed 8–19–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application and Permit Under 26 U.S.C. 5181—Alcohol Fuel Producer.

DATES: Written comments should be received on or before October 21, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Steve Simon, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Application and Permit Under 26 U.S.C. 5181—Alcohol Fuel Producer.

OMB Number: 1512–0214.

Form Number: ATF F 5110.74.

Abstract: This form is used by persons who wish to produce alcohol for fuel use and describes the person(s) applying for the permit, location of the proposed operation, type of material used for production, and the amount of spirits to be produced.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 734.

Estimated Total Annual Burden Hours: 1,321.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

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or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 8, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–20880 Filed 8–19–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Computation of Tax and Agreement to Pay Tax on Puerto Rican Cigars or Cigarettes.

DATES: Written comments should be received on or before October 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dave Royalty, Chief, Revenue Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8200.

SUPPLEMENTARY INFORMATION:

Title: Computation of Tax and Agreement to Pay Tax on Puerto Rican Cigars or Cigarettes.

OMB Number: 1512–0156.

Form Number: ATF F 2987.

Abstract: ATF F 2987 is used to calculate the tax due on cigars and cigarettes manufactured in Puerto Rico and shipped to the U.S. The form identifies the tax payer, cigars or cigarettes by tax class and certification by a U.S. Customs official as to the amount of shipment, and that the shipment has been released to the U.S.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 30.

Estimated Total Annual Burden Hours: 150.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 8, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–20887 Filed 8–19–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Revocation of Customs Broker License

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.45(a)), the following Customs broker license is revoked by operation of law.

Name	License No.	Port name
A.S.I. Customs Brokers, Inc.	21025	New York
Speed Cargo Service, Inc.	20829	Miami

Dated: August 12, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–21115 Filed 8–19–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Cancellation of Customs Broker Permit

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker local permits are canceled without prejudice.

Name	Permit No.	Port name
Arthur Andersen LLP.	94–037	Los Angeles
Murphy International Corp.	153	Seattle
James P. Cesped	04581–P	San Francisco

Dated: August 12, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–21114 Filed 8–19–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Cancellation of Customs Broker License

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses and any and all associated local and national permits are canceled without prejudice.

Name	License No.	Port name
Arthur J. Humphries, Inc.	04197	Seattle
Inter-Cargo SWF	17455	Tampa
Liberty International, Inc.	07491	Boston
Stone & Downer Company.	00161	Boston
Border Brokerage Company, Inc.	03389	Seattle
Unitrans International Corporation.	06728	San Francisco

Liberty International, Inc. and Unitrans International Corporation continue to hold valid Customs broker licenses issued through other broker districts.

Dated: August 12, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–21112 Filed 8–19–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Cancellation of Customs Broker License Due to Death of the License Holder

AGENCY: Customs Service, Department of the Treasury.

ACTION: Cancellation of license.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following individual Customs broker license has been cancelled due to death of the broker:

Name	License No.	Port name
Charlotte Patricia Gromberg.	13180	Los Angeles
Margaret M. Goldy	10467	Philadelphia

Dated: August 12, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–21113 Filed 8–19–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 10001

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 10001, Request for Closing Agreement Relating to Advance Refunding Issue Under Sections 148 and 7121 and Revenue Procedure 96–41.

DATES: Written comments should be received on or before October 21, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (Carol.a.Savage@irs.gov.), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Request for Closing Agreement Relating to Advance Refunding Issue Under Sections 148 and 7121 and Revenue Procedure 96–41.

OMB Number: 1545–1492.

Form Number: Form 10001 is used in conjunction with a closing agreement program involving certain issuers of tax exempt advance refunding bonds. Revenue Procedure 96–41 established this voluntary compliance program and prescribed the filing of Form 10001 to request a closing agreement.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments, and not-for-profit institutions.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 14, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–21206 Filed 8–19–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–6: OTS Nos. H–3027 and 02449]

Citizens South Banking Corporation, Gastonia, NC; Approval of Conversion Application

Notice is hereby given that on August 14, 2002, the Director, Examination Policy, Office of Thrift Supervision ("OTS"), or her designee, acting pursuant to delegated authority, approved the application of Citizens South Bank, Gastonia, North Carolina, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and the OTS Southeast Regional Office, 1475 Peachtree Street, NE., Atlanta, GA 30309.

Dated: August 15, 2002.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 02–21162 Filed 8–19–02; 8:45 am]

BILLING CODE 6720–01–M

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–7: OTS Nos. H–3867 and 03309]

TierOne Corporation, Lincoln, NE; Approval of Conversion Application

Notice is hereby given that on August 9, 2002, the Director, Examination Policy, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of TierOne Bank, Lincoln, Nebraska, to convert from the mutual to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW., Washington, DC 20552, and the OTS Midwest Regional Office, 225 E. John Carpenter Freeway, Suite 500, Irving, Texas 75062–2326.

Dated: August 15, 2002.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 02–21163 Filed 8–19–02; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Management (OM), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 19, 2002. *For Further Information or a Copy of the Submission Contact*: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900-New."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900-New" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Donations to National Veterans Museum (Via Credit Card), VA Form 5579a. *OMB Control Number*: 2900-New. *Type of Review*: New Collection. *Abstract*: VA Form 5579a will be used to accept donations via credit cards from individuals and corporations who wish to make a contribution to VA's National Veterans Museum. The Museum will tell the story of VA's link to American history. A range of interactive exhibits will introduce visitors to the services provided by VA and its precursors including the: (1) Benefits programs; (2) health care services and medical research; and (3) National Cemeteries. The Museum will include state-of-art theatrical presentations, a Connection Center where visitors can use multimedia computer terminals with Internet access, and interactive audio-visual exhibits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 3, 2002, at page 38319–38320. *Affected Public*: Individuals or households and business or other for profit. *Estimated Annual Burden*: 83 hours. *Estimated Average Burden Per Respondent*: 1 minute. *Frequency of Response*: One-time. *Estimated Number of Respondents*: 5,000.

Dated: August 8, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–21119 Filed 8–19–02; 8:45 am]

BILLING CODE 8320–01–U

Corrections

Federal Register

Vol. 67, No. 161

Tuesday, August 20, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Customs Service

Wool Manufacturer Payment Clarification and Technical Corrections Act

Correction

In notice document 02–20478 beginning on page 52520 in the issue of Monday, August 12, 2002 make the following correction:

On page 52520, in the third column, in the second full paragraph, in the 15th line, after "their" delete "4".

[FR Doc. C2–20478 Filed 8–19–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

[T.D. 02–40]

RIN 1515–AD04

Access to Customs Security Areas at Airports

Correction

In the issue of Friday, August 9, 2002, on page 51928, in the third column, in the correction of rule document 02-19055, in § 122.187, in amendatory instruction 5., in the fourth line, "may choose" should read "he may choose".

[FR Doc. C2–19055 Filed 8–19–02; 8:45 am]

BILLING CODE 1505–01–D

OFFICE OF MANAGEMENT AND BUDGET

Standard Data Elements for Electronically Posting Synopses of Federal Agencies' Financial Assistance Program Announcements at FedBizOpps

Correction

In notice document 02–20261 beginning on page 52554 in the issue of Monday, August 12, 2002, make the following correction:

On page 52557, at the top of the page, the table is corrected in part to read as follows:

Data element	Description	Required?
How to get full announcement	Hypertext stating where to get the full announcement. If it is available on the Internet, this field should include the descriptor that precedes the URL for the full announcement (e.g., "Click on the following link to see the full text of the announcement for this funding opportunity:").	Required.
Electronic link to full announcement	The URL for the full announcement, if it is on the Internet.	Optional.
Eligible applicants	Designed to help potential applicants narrow their searches to programs where they are most likely to be eligible (although they still must read the full announcement for details because eligibility may be further limited to certain subsets of applicants within the categories below).. 99 = Unrestricted (i.e., open to any type of entity below)	Required to either select "99" for unrestricted or select all others that apply.

[FR Doc. C2–20261 Filed 8–19–02; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Tuesday,
August 20, 2002

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Newcomb's Snail; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH95

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Newcomb's Snail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Newcomb's snail *(Erinna newcombi)* pursuant to the Endangered Species Act of 1973, as amended (Act). The designated critical habitat consists of eight stream segments and associated tributaries, springs and seeps, and adjacent riparian areas on the island of Kauai, Hawaii, totaling 19.76 kilometers (12.28 miles) of stream channel and 1,812 hectares (4,479 acres).

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. All areas designated as critical habitat for the Newcomb's snail contain the primary constituent elements (habitat components) essential for the conservation of the species. This final rule takes into consideration the potential economic and other effects of designating critical habitat for the Newcomb's snail.

We solicited data and comments from the public on all aspects of the proposed rule and draft economic analysis. We revised the proposal and the draft economic analysis to incorporate or address new information received from public comments on the proposed critical habitat designation and the draft economic analysis on the proposed designation and new scientific and commercial information made available since the proposal was published.

DATES: This rule is effective September 19, 2002.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Fish and Wildlife Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian archipelago consists of eight main islands and the numerous shoals and atolls of the northwestern Hawaiian Islands. The islands were formed sequentially by basaltic lava that emerged from the earth's crust located near the current southeastern coast of the island of Hawaii (Stearns 1985). Ongoing erosion has formed steep-walled valleys with well-developed soils and stream systems throughout the chain. Kauai, geologically the oldest and most northwesterly of the eight main islands, is characterized by deep valleys, high rainfall, abundant vegetation, and numerous streams and springs.

The island of Kauai is 1,430 square kilometers (km^2) (552 square miles (mi^2)) in size, the fourth largest of the main Hawaiian islands. Most of the land mass of Kauai was formed between 5.6 and 3.6 million years ago from one or more large shield volcanoes. More recent, secondary eruptions occurred over the eastern portion of the island as recently as the Pleistocene epoch, approximately 0.6 million years ago. Due to the age and climate of the island, Kauai is heavily eroded, with numerous steep, water-carved valleys and gulches.

The prevailing northeasterly trade winds are typically laden with moisture in the central Pacific latitudes where Kauai is located. Substantial precipitation is brought to the windward and interior portions of the island as a result of uplift and cooling of the warm, moist surface airmass as it flows over the steep topography of the island. The high-elevation areas in the vicinity of the Alakai Plateau such as Mt. Waialeale (1,600 meters (m), 5,248 feet (ft)), are among the rainiest places on earth, receiving an average of 11.3 m (444 inches (in)) of precipitation annually (Juvik and Juvik 1998). This large volume of rainwater flows to perennial and intermittent streams and wetlands, and infiltrates into the island's aquifers. The west and southwest coastal areas of the island lie in the rain shadow of the Alakai Plateau and interior uplands, and these areas receive considerably less rain.

Kauai has at least 61 streams that are considered perennial, and a similarly large number of intermittent streams (Hawaii Stream Assessment (HSA)1990). The Hanalei River, for example, is 27 km (17 mi) in length and is the largest stream system in the State by volume, with a long-term mean discharge of 216 cubic feet per second (cfs) (6.12 cubic meters per second (cms), 34-year average calculated from 1964 to 1997). The headwaters of the Hanalei River are near the summit of Mt. Waialeale and the river flows towards Hanalei Bay on the island's north shore. The basalts that form the bulk of the main Hawaiian islands are porous and permeable, which facilitates infiltration and storage of ground water. A lens-shaped body of ground water (the basal lens) exists within these porous basalts at lower elevations. In some areas, the basal lens is partially confined by lower-permeability coastal alluvial and calcareous deposits ("caprock"). Recent ground water investigations in the southern Lihue basin indicate that permeabilities of both the basalt and the younger rock from secondary eruptions are low, which allows the basal ground water lens to thicken and thereby reach greater elevations than on the other Hawaiian islands (Izuka and Gingerich 1998). This causes basal ground water to enter and support stream and spring flow up to relatively high elevations. Because the basal lens ground water reserve is very large in size, streams, springs, and rock seeps (rheocrenes) fed by basal ground water exhibit highly permanent, stable flows. In addition to the basal lens, smaller, perched ground water systems form at higher elevations above dense geologic features of low permeability such as those formed by layers of ash. Ground water bodies may also form within higher elevation geologic formations as a result of confinement by dikes, which are vertical sheets of low-permeability rock that cut through more permeable basalt in some places. Ground water bodies that form behind these perched and dike-confined aquifers contribute water to streams and springs at higher elevations, although these aquifers are smaller in volume than basal systems and their contribution to surface water would be expected to be reduced during prolonged drought (MacDonald *et al.* 1960).

Human-caused modifications to surface and ground water systems on Kauai and throughout Hawaii have profoundly altered natural hydrologic regimes. Plantation irrigation systems, built to support the cultivation of sugar cane over a century ago, transfer large volumes of water out of natural watercourses and into extensive systems of ditches, tunnels, flumes, reservoirs, and ultimately to fields. Historically, stream water diversion structures were typically built to be highly efficient in their ability to entrain water. These

dams usually divert all flowing stream water at moderate to low flows, leaving the stream channel below the dam dry. At least one-third of all Kauai's streams are significantly dewatered for agricultural and industrial water supplies (HSA 1990); in 1994, a total of 224.17 million gallons per day (mgd) was used island-wide for irrigation, and 93.72 mgd was used for generation of hydroelectric power (Wilcox 1996).

Four species of Lymnaeidae snails are native to Hawaii (Morrison 1968, Hubendick 1952). Three of these species are found on two or more of the eight main islands. The fourth species, Newcomb's snail, is restricted to the island of Kauai. Newcomb's snail is unique among the Hawaiian lymnaeids in that the shell spire typically associated with lymnaeids has been substantially reduced. The result is a smooth, black shell formed by a single, oval whorl, 6 millimeters (mm) (0.25 in) long and 3 mm (0.12 in) wide. A similar shell shape is found in a Japanese lymnaeid (Burch 1968), but Burch's study of chromosome number shows that Newcomb's snail has evolutionary ties to the rest of the Hawaiian lymnaeids, all of which are derived from North American ancestors (Patterson and Burch 1978). This parallel evolution of similar shell morphology in Japan and Hawaii from two distinct lineages of lymnaeid snails is of particular scientific interest.

At the present time, there is no generally accepted nomenclature for the genera of Hawaiian lymnaeids, although each of these snail species, including Newcomb's snail, is recognized as a well-defined species. Newcomb's snail was originally described as *Erinna newcombi* in 1855 by H. & A. Adams (see Hubendick 1952). Hubendick (1952) did not feel that the distinctive shell form (described above) and reduced structures of the nervous system of Newcomb's snail warranted a monotypic genus. In fact, Hubendick included all Hawaiian lymnaeids in the genus Lymnaea. Morrison (1968) contradicted Hubendick, and argued that the distinctive shell characters of Newcomb's snail supported the generic name *Erinna*. Burch (1968), Patterson and Burch (1978), Taylor (1988), and Cowie *et al.* (1995) all followed Morrison and referred to Newcomb's snail as *Erinna newcombi*. This is the currently accepted scientific name for Newcomb's snail.

The Newcomb's snail is restricted to freshwater. While the details of its ecology are not well known, Newcomb's snail probably has a life history similar to other members of the family. These snails generally feed on algae and vegetation growing on submerged rocks. Eggs are attached to submerged rocks or vegetation and there are no widely dispersing larval stages; the entire life cycle is tied to the stream system in which the adults live (Baker 1911). Very little is known about the biological or environmental factors that affect population size in Newcomb's snails. Important factors may include annual, multi-year or decadal changes in streams flows, severe-weather high-flow channel-scouring events, or periods of severe or prolonged drought. Dispersal of the snails in both upstream and downstream directions within a stream system probably plays an important function in gene flow and in colonizing or recolonizing suitable habitat, especially microhabitat that is protected from channel scour. Dispersal of the Newcomb's snail between stream systems is likely very infrequent due to their freshwater habitat requirements, and historic dispersal probably relied on long-term erosional events that captured adjacent stream systems. It should be noted that this life history differs greatly from the freshwater Hawaiian neritid snails (*Neritina* spp.), which have marine larvae that colonize streams following a period of oceanic dispersal (Kinzie 1990). It is likely that larvae of these neritid snails can disperse across the oceanic expanses that separate the Hawaiian Islands and colonize streams on any or all of these islands. This dispersal capacity is not available to the Newcomb's snail.

Based on past and recent field observations, the specific habitat requirements of the Newcomb's snail include fast-flowing perennial streams and associated springs, seeps, and vertical-to-overhanging waterfalls (Stephen Miller, U.S. Fish and Wildlife Service *in litt.* 1994a, 1994b; Polhemus *et al.* 1992; Burch 1968; and Hubendick 1952). Surveys of main stream channels of many of the perennial streams of Kauai indicate that the Newcomb's snail is found only in protected areas within main stream channels (Michael Kido, University of Hawaii, *in litt.* 1994). The limited occurrence of this snail in main stream channels is likely due to periodic channel scouring by sediment, rocks, and boulders that are moved downstream during runoff events due to the frequent heavy rains. Consequently, suitable habitat is generally associated with overhanging waterfalls located in the main channel of perennial streams supported by stable ground water input, or with small, spring-fed tributaries. Another common element among the sites harboring snail populations is that the water source appears to be consistent and permanent, even during severe drought.

Five populations of Newcomb's snail were identified and documented in museum records and other literature prior to 1925. These include populations from sites located in Waipahee Stream (a tributary to Kealia Stream), Wainiha River, Hanakapiai Stream, Hanakoa Stream, and Kalalau Stream. Other records that are older and not as well-substantiated in museum collections or other literature include populations in Limahuli Stream and Hanapepe Stream.

At least two of these populations (in Hanakapiai Stream and Hanakoa Stream) are now thought to be extirpated. A population in the Wainiha River was apparently located in about 1987 but has not been revisited since it was found, and its status is unkown (R. Kinzie, pers. comm 2002, *in litt.* 2002). Of the two remaining pre-1925 populations, one (Waipahee Stream) is small and the other (Kalalau Stream) is relatively large (*see* below). Since about 1993, surveys of approximately 50 sites located along numerous streams and their associated tributaries and springs on Kauai have located four previously unknown populations of Newcomb's snail (M. Kido, *in litt.* 1994). The current known range of Newcomb's snail is limited to very small sites located within six stream systems in north- and east-facing drainages on Kauai. They are: Kalalau Stream; Lumahai River; Hanalei River (four subpopulations); Waipahee Stream (a tributary to Kealia Stream); two subpopulations in Makaleha Stream (a tributary to Kapaa Stream); and the North Fork Wailua River (two subpopulations). A few individual snails have been observed in Lumahuli Stream (M. Kido, pers. comm., 2001), but if a viable population occurs there, it has not been located.

No historic information is available on the population size of the Newcomb's snail. However, recent reports indicate that two of the six known populations of the Newcomb's snail are relatively large: the Kalalau Stream and Lumahai River populations. The Kalalau Stream population is found in the northeastern fork of Kalalau Stream on two permanent waterfalls and in the stream reach between the waterfalls. The high density of individuals in this population may be indicative of an undisturbed natural condition. The estimated maximum density at the base of the upper waterfall, including the area behind the falling water, is approximately 800 snails/square meter (m^2) (75 snails/square foot (ft^2)) (S. Miller, *in litt.* 1994b). The total area occupied by these

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snails could not be accurately evaluated due to the extreme vertical orientation of the waterfall. Habitat used by these snails may be limited to the lower section of the waterfall that receives a high amount of spray from the falling water. Little information on specific size or area is currently available for the population of the Newcomb's snail from the Lumahai River, although this population has been reported to be large (M. Kido, *in litt.* 1995).

The population in Makaleha Stream is divided into two subpopulations. The subpopulation at the waterfall that forms the head of the main channel of Makaleha Stream is estimated at 30 snails/m² (2 to 3 snails/ft²) distributed over 2 to 3 m² (21 to 32 ft²) (M. Kido, *in litt.* 1994; M. Kido, *in litt.* 1995). This is considerably smaller than the population in Kalalau Stream described above. The reasons for differences in these two populations are not known with certainty, but may be due to the presence or absence of non-native predators and biocontrol agents that feed on lymnaeid snails. The subpopulation that occupies Makaleha Springs (which forms a series of very small tributaries to Makaleha Stream) covers approximately 20 to 30 m² (212 to 318 ft²) (S. Miller, *in litt.* 1994a). Snail densities at this site are difficult to estimate but may be as high as 20 to 30 snails/m² (1 to 3 snails/ft²) (S. Miller, *in litt.* 1994a).

The sizes of three other populations of Newcomb's snail have been characterized as small. The population in the Waipahee tributary of Kealia Stream is estimated to cover 5 to 10 m² (53 to 106 ft²) with a density of approximately 50 to 80 snails/m² (4 to 8 snails/ft²) (Adam Asquith, U.S. Fish and Wildlife Service, *in litt.* 1994a). The population of Newcomb's snail in the Hanalei River is divided into four subpopulations in the upper reach of this river (M. Kido, *in litt.* 1994, 1995). One subpopulation has approximately 10 to 20 snails/m² (1 to 2 snails/ft²) and occupies 2 to 3 m² (21 to 32 ft²) (M. Kido, *in litt.* 1994). A second subpopulation supports approximately 25 snails. The two remaining subpopulations in the Hanalei River are reported to be small with very few snails (M. Kido, *in litt.* 1995). The population found in the North Fork of the Wailua River just upstream of a concrete agricultural water diversion intake, appears to vary over time but was made up of just a few scattered individuals during surveys in 1996 (A. Asquith, *in litt.* 1995). A second, larger subpopulation is reported from the Kawaikini waterfall area in the headwaters of the North Fork Wailua River, but no estimates were made of its population size (M. Kido, *in litt.* 2002).

Based on these data, we estimate that the six known populations of Newcomb's snail have a total of approximately 6,000 to 7,000 individuals. The great majority of these snails, perhaps over 90 percent, are located in the populations found in Kalalau Stream and the Lumahai River.

Previous Federal Action

The February 28, 1996, **Federal Register** Notice of Review of Plant and Animal Taxa That Are Candidates for Listing as Endangered or Threatened Species (61 FR 7596) included Newcomb's snail as a candidate species. Candidates are those species for which we have on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule to list, but issuance of the proposed rule is precluded by other higher priority listing actions. We published a proposed rule on July 21, 1997 (62 FR 38953), to list this species as threatened. On January 26, 2000 (65 FR 4162), we published a final rule determining Newcomb's snail to be a threatened species.

In the final listing rule we determined that designation of critical habitat for the Newcomb's snail would be prudent because such a designation could benefit the species beyond listing as threatened by extending protection under section 7 of the Act to currently unoccupied habitat and by providing informational and educational benefits. Despite the prudency determination, we also indicated that we were not able to develop a proposed critical habitat designation for the Newcomb's snail at that time due to budgetary and workload constraints. However, on June 2, 2000, the U.S. Fish and Wildlife Service was ordered by U.S. District Court in *Center for Biological Diversity* v. *Babbitt*, Civil No. 99–00603 (D. Haw.), to publish the critical habitat designation for Newcomb's snail by February 1, 2002. The plaintiffs and the Service have entered into a consent decree extending this deadline to August 10, 2002. This rule responds to the court's order.

On March 5, 2001, we mailed letters to 104 potentially interested parties informing them that the Service was in the process of designating critical habitat for the Newcomb's snail and requesting from them information concerning the range of the Newcomb's snail, observational life history accounts, current threats, and management activities on lands where Newcomb's snail currently occurs or occurred in the past. The letters contained a fact sheet describing the Newcomb's snail and included a map depicting the current range of the Newcomb's snail. Recipients of these letters included land owners and managers that own and manage land at the two sites where Newcomb's snails are found on private lands, and the various State agencies responsible for managing State of Hawaii lands and water resources at the other locations where the Newcomb's snail is known to occur. We received seven responses to our written request for information: four from various State agencies within the Hawaii Department of Land and Natural Resources (State Historic Preservation Office, Commission on Water Resource Management, Land Division, and the Office of the Chairperson of the Board of Land and Natural Resources), one from the Office of Hawaiian Affairs, one from the Office of the Mayor of Kauai County, and one from a museum-affiliated researcher. The information provided in the responses was considered and incorporated into the process of identifying critical habitat. On March 15, 2001, a public informational meeting was held on Kauai to provide an opportunity for the general public, non-governmental organizations, and representatives from government agencies to meet with Service personnel and discuss the critical habitat designation process. Approximately ten people attended this meeting.

We published a proposed rule to designate critical habitat in the **Federal Register** on January 28, 2002 (67 FR 3849). The public comment period was originally scheduled to end on March 29, 2002. However, on March 29, 2002, we published a combined Notice of Availability for the Draft Economic Analysis and a notification for public hearing (67 FR 15159). This action extended the public comment period to April 29, 2002. The issues raised in the comments received on the proposed rule and our responses are presented later in this document.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of regulatory protection to lands designated as critical habitat. Further, consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus.

However, critical habitat also provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified to help to avoid accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat or its physical or biological features must be "essential to the conservation of the species." Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide at least one of the physical or biological features essential to the conservation of the species. These are also known as primary constituent elements, as defined at 50 CFR 424.12(b). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments and other unpublished materials.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of the designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 prohibitions, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, Habitat Conservation Plans (HCP), or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods and Criteria Used To Identify Critical Habitat

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of the Newcomb's snail. This information included: peer-reviewed scientific publications (Hubendick 1952, Morrison 1968, Patterson and Burch 1978, and Cowie *et al.* 1995); unpublished reports, field notes and correspondence by Service personnel, State agency biologists, and university researchers (M. Kido, *in litt.* 1994, 1995; S. Miller *in litt.* 1994a, 1994b; A. Asquith, *in litt.* 1994, 1995; Donald Heacock, Hawaii Department of Land and Natural Resources Division of Aquatic Resources, *in litt.* 1994; D. Heacock, pers. comm., 2002); information solicited by the Service from Federal, State, and private land managers and land owners prior to development of the draft critical habitat proposal; and comments and testimony obtained after publication of the proposed critical habitat designation for the Newcomb's snail.

Most of the currently occupied Newcomb's snail sites are located in close proximity to one another. For example, the Hanalei river population is located just 3.2 km (2.0 mi) from the North Fork Wailua River population, and the Makaleha Springs population is just 2.5 km (1.6 mi) from the Waipahee Stream population. The exception is the population found in Kalalau Stream, which is located 11.8 km (7.3 mi) from the Lumahai River population, its nearest neighbor. Despite the relatively short straight-line distances between snail populations, the steep, rugged terrain and circular shape of the island creates local topography that allow the sites to be exposed to severe weather and other natural phenomena from markedly different directions. For example, the Hanalei River valley is aligned in a south-to-north direction, while the North Fork Wailua River valley extends from north-to-south. The two Newcomb's snail populations in these drainages are separated by a distance of a few kilometers, however the extremely steep ridgelines between

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them are over 900 m (2,953 ft) in elevation. Because the terrain where Newcomb's snails are found is remote and rugged, three of the six known populations (located in Kalalau Stream, Lumahai River, and Waipahee Stream) have not been censused since their initial discovery or rediscovery. Growth rates, life span, reproductive potential, age at first reproduction, dietary needs, and microhabitat preferences are not known. As noted above, accurate population estimates and the natural variability of populations over time are also not available. We are in the process of developing a draft recovery plan for this species, and we anticipate the draft being available for public review and comment by the fall of 2002.

Because of the topography of the island and the prevalent weather patterns, torrential rains that may cause flooding, channel scour, and landslides are usually restricted to one or two quadrants of the island during any single storm event. Recent examples of such recurring natural phenomena include Hurricane Iniki (a category 4 hurricane which devastated the northwest and northern portions of Kauai on September 11, 1992), Hurricane Iwa (November 23, 1982), and the huge upper Olokele Valley landslide of October 31, 1981 (Fitzsimons *et al.* 1993, Jones *et al.* 1984). Each of these events markedly degraded or possibly eliminated large areas of potential Newcomb's snail habitat which had never been surveyed to locate snail populations. In the other extreme, serious drought is a regularly recurring natural phenomenon in the central Pacific (Giambelluca *et al.* 1991). These physical conditions indicate that recovery through protection of the existing populations, plus reestablishment of populations in suitable areas of historical range that provide a wide geographical separation, is necessary for the ensured survival of the species. We therefore find that inclusion of two currently unoccupied areas identified as containing the primary constituent elements is essential to the conservation of the Newcomb's snail. These two sites are located in the northwest quadrant of the island, in drainages between the Lumahai River and Kalalau Stream populations. These two locations are identified as priority recovery units for translocation efforts in the draft Newcomb's snail Recovery Plan currently under preparation by the Service.

Recovery will require restoration of Newcomb's snails to areas of historically occupied habitat either through natural dispersal or translocation. Mere stabilization of Newcomb's snail populations within its currently occupied habitat will not provide long-term conservation for the species. The sub-units currently occupied by known Newcomb's snail populations are not sufficiently dispersed to consider the species safe from extinction. Existing known populations are found in remarkably small areas of only a few square meters of aquatic habitat, each of which is at risk from even a small, localized landslide or high flow event. Recovery actions are likely to include: maintaining existing populations through regulatory mechanisms that protect water resources, watershed protection and stabilization efforts; control of non-native predators; and translocation of snails for the purpose of reestablishing additional self-sustaining populations in the wild. Recovery will require persistence of populations of snails that are geographically separated in natural habitats to reduce the threat of total elimination of entire populations through catastrophic events such as hurricanes, landslides, drought, and predator invasions.

We used several criteria to identify and select sub-units for designation as critical habitat: (1) We began with all locations that are currently confirmed occupied by Newcomb's snail; (2) we then added two locations where Newcomb's snail was found historically but is now thought to be extirpated in the northwest extent of its range. In deciding which unoccupied areas to designate as critical habitat, we gave preference to sites that: (a) Were well documented in museum and other historical records, (b) were most recently known to be occupied, and (c) provided the greatest geographic diversity to the array of locations under consideration for critical habitat. These two sites are on lands that are publicly owned (Na Pali Coast State Park and Hono O Na Pali Natural Area Reserve). These areas are in the northwest quadrant of the island and would presumably be most exposed to severe weather events such as hurricanes from the north and northwest. With the exception of the Kalalau Stream population, all other populations of Newcomb's snails are located in the northeast or southeast quadrants of the island, and these sites would be exposed to severe weather events such as hurricanes primarily from the northeast and east.

Within the critical habitat unit boundaries, only waterbodies containing the primary constituent elements are designated as critical habitat. Existing features and structures within the boundaries of the mapped units, such as dams, ditches, tunnels, flumes, and other human-made features that do not contain the primary constituent elements, are not included as critical habitat. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12 in determining which areas to designate as critical habitat, we are required to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations and protection. Such features are termed primary constituent elements, and include but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals and other nutritional or physiological requirements; cover or shelter; space for breeding and reproduction; and habitats that are protected from disturbance and are representative of the historic geographical and ecological distributions of the species.

The primary constituent elements for the Newcomb's snail are those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal. These primary constituent elements are found in locations that, as a result of their geologic and hydrologic setting in the landscape, support permanently flowing streams, springs and seeps in mid-elevation locations in valleys on the island of Kauai. The primary constituent elements are: cool, clean, moderate- to fast-flowing water in streams, springs and seeps; their adjacent riparian areas and hydrogeologic features that capture and direct water flow to these spring and stream systems; a perennial flow of water throughout even the most severe drought conditions; and stream channel morphology that provides protection from channel scour by having overhanging waterfalls, protected tributaries, or similar areas. All designated critical habitat areas contain the primary constituent elements for the Newcomb's snail.

Critical Habitat Designation

Three critical habitat units are established with eight stream sub-units within those units. Unit I, entitled the Na Pali Coast Streams, consists of sub-units identified in Kalalau Stream, Hanakoa Stream, and Hanakapiai Stream. Unit II, entitled the Central Rivers, consists of sub-units identified in Lumahai River and Hanalei River. Unit III, entitled the Eastside Mountain Streams, consists of subunits identified in Waipahee Stream, Makaleha Stream, and North Fork Wailua River. These three units are made up of stream complexes that share similar characteristics (Table 1). Each stream complex shares common topography, watershed characteristics, snail population characteristics, and exposure to natural disasters.

The final designation was reduced from that originally proposed. The proposed designation of critical habitat included nine stream sub-units and 26.29 km (16.35 mi) of stream channel and a total acreage of 2,109 ha (5,212 ac), the final rule includes eight stream sub-units and 19.76 km (12.28 mi) of stream channel and a total acreage of 1,812 ha (4,479 ac). The rationale for altering the final designation from that proposed is discussed in detail below.

Sub-units designated as critical habitat provide the full range of primary constituent elements needed by the Newcomb's snail, including foraging, sheltering, reproduction, and dispersal. Critical habitat is limited to areas that contain primary constituent elements. Critical habitat boundaries were derived using topographical characteristics of the valley and include segments of perennial streams where Newcomb's snails occur or occurred historically, their tributaries, associated springs, and seeps. The upper and lower elevations of critical habitat boundaries were chosen based upon the elevational distribution from each recorded population, or from nearby watersheds where Newcomb's snails are found or were found historically. In addition to segments of perennial streams, their tributaries, and associated springs, and the area of upland riparian habitat where these occur and are necessary to maintain watershed integrity, is included in the designation of critical habitat. The riparian areas are included in this critical habitat designation because the stream and spring systems identified are dependent upon riparian areas for moderating water flow, shading which contribute to cool water temperatures, sediment retention which contributes to water clarity, and nutrient inputs. The boundaries of the riparian areas were delineated and mapped using the known or inferred stream channel elevation contours of the perennial stream segments. Riparian area boundaries were generally broader in larger watersheds which have low-gradient valley floors. These large watersheds also tend to contain more tributary subwatersheds with perennial water flow, as in the case of the Hanalei River where one of these tributaries contains a known subpopulation of Newcomb's snails. The mapped riparian area boundaries were smaller in those stream segments that exhibit narrow valley floors and steep valley walls directly adjacent to the streams (*for example*: Hanakoa and Hanakapiai Streams).

Areas designated as critical habitat for the Newcomb's snail occur in eight separate streams and include the main channel of a named stream, contiguous named and unnamed tributaries, and adjacent springs and seeps, and associated riparian areas (Table 1). Critical habitat includes sub-units under State and private ownership and includes six sites currently known to be occupied (Kalalau Stream, Lumahai River, Hanalei River, Waipahee stream, Makaleha Stream, and North Fork Wailua River) and, in addition, includes two sub-units where the species was known to occur in the early 1900s, but where it is now thought to be extirpated (Hanakoa and Hanakapiai Streams).

TABLE 1.—CRITICAL HABITAT UNITS FOR THE NEWCOMB'S SNAIL BY LOWER AND UPPER BOUNDARY ELEVATIONS IN METERS (M) (FEET (FT)) AND THE LENGTH OF THE STREAM SEGMENTS IN KILOMETERS (KM) (MILES (MI))

Critical habitat stream complex unit	Critical habitat sub-units	Ownership	Lower boundary elevation	Upper boundary elevation	Stream segment length*
I. Na Pali Coast Streams	(a) Kalalau Stream	State—Na Pali Coast State Park.	183 m (600 ft)	488 m (1,600 ft)	1.38 km (0.86 mi)
	(b) Hanakoa Stream	State—Na Pali Coast State Park.	122 m (400 ft)	457 m (1,500 ft)	0.80 km (0.50 mi)
	(c) Hanakapiai Stream	State—Na Pali Coast State Park.	183 m (600 ft)	457 m (1,500 ft)	0.56 km (0.35 mi)
II. Central Rivers	(a) Lumahai River	Private—Kamehameha Schools.	183 m (600 ft)	457 m (1,500 ft)	5.0 km (3.11 mi)
	(b) Hanalei River	State—Halela Forest Reserve.	122 m (400 ft)	457 m (1,500 ft)	7.58 km (4.71 mi)
III. Eastside Mountain Streams.	(a) Waipahee Stream	Private—Cornerstone Hawaii Holdings, LLC.	262 m (680 ft)	366 m (1,200 ft)	1.73 km (1.08 mi)
	(b) Makaleha Stream	State—Kealia Forest Reserve.	183 m (600 ft)	457 m (1,500 ft)	1.59 km (0.99 mi)
	(c) North Fork Wailua River.	State—Lihue-Koloa Forest Reserve.	335 m (1,100 ft)	427 m (1,400 ft)	1.12 km (0.7 mi)
Total					19.76 km (12.28 mi)

*Length of main stream channel, does not include tributaries or springs.

Certain areas with reported, but unconfirmed, populations of the Newcomb's snail have not been designated as critical habitat. We did not designate critical habitat in the Hanapepe Stream system where museum specimens apparently were collected in the 1840s but where no subsequent surveys have been undertaken. Also, we did not designate two areas where new information indicated that Newcomb's snails were observed in recent years, but whose populations have not been confirmed: a population at Kawaikini Falls of the upper North Fork Wailua River, and a population in a spring/tributary adjacent to the Waihina River at an approximate stream channel elevation of 180 to 190 m (590 to 620 ft). These additional sites are on river systems that are already represented in the critical habitat designation, and thus are not essential to the conservation of the

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species, or are not designated for the reasons discussed under the section *"Summary of Changes from the Proposed Rule"* below.

Stream reaches are identified using elevations of the stream or tributary channels as upstream and downstream boundaries; these elevations were derived separately for each of the eight reaches and were delineated by recognizing unique physiographic features within each watershed such as waterfalls, small tributaries, and springs. A brief description of each stream reach and reasons for designating it as critical habitat are presented below.

Unit I: Na Pali Coast Streams

Streams in the Na Pali Coast unit are small, short, and flow over steep terrain. These streams are located in the northwest quadrant of the island, and, because they are located in smaller watersheds, they are directly exposed to coastal weather conditions. Rainfall in this area is lower than in the other watersheds designated as critical habitat. The vegetation of the Na Pali Coast Stream Unit consists primarily of mixed-species mesic (moderate moisture) forest composed of native and introduced plant species. The higher elevations are primarily native forest, but the lower elevations are more disturbed and are dominated by introduced plant species. Newcomb's snail is known from three stream sub-units in this unit, Kalalau Stream, Hanakoa Stream, and Hanakapiai Stream. Kalalau Stream is currently occupied. Hanakoa Stream and Hanakapiai Stream were known to harbor Newcomb's snail populations relatively recently but the species is now thought to be extirpated at those sites.

Sub-Unit I(a): Kalalau Stream

Critical habitat for Newcomb's snail is designated for all flowing waters associated with the east fork of Kalalau Stream and its tributaries, including springs and seeps, and riparian habitat necessary to maintain the integrity of the watershed. The Kalalau Stream location designated includes 1.38 km (0.86 mi) of stream channel and 149 ha (368 ac) and lies within the elevational contours of 183 to 488 m (600 to 1,600 ft). This reach contains one of the two largest known populations of Newcomb's snails, and it contains the largest observed population of snails documented on public lands. At least two large, vertical or overhanging waterfalls in this reach appear to provide important refuge from high, channel-scouring flows (S. Miller, *in litt.* 1994b). This population is currently the most isolated of the known Newcomb's snail populations, and it is separated from the nearest neighboring population, located in Lumahai River, by 11.8 km (7.3 mi). It is the only remaining population in the northwest quadrant of the island.

This sub-unit is essential to the conservation of Newcomb's snail because it has the most robust population of snails ever recorded, as documented in a Service survey conducted in 1994. This sub-unit is required to maintain one of the six known populations of snails. This stream segment is located within the Na Pali Coast State Park. Kalalau Stream has no water diversions.

Sub-Unit I(b): Hanakoa Stream

Critical habitat for Newcomb's snail is designated for all flowing waters associated with Hanakoa Stream and its tributaries, including springs and seeps and riparian habitat necessary to maintain the integrity of the watershed. The Hanakoa Stream location designated includes 0.80 km (0.50 mi) of stream channel and 63 ha (156 ac) and falls within the elevational contours of 122 to 457 m (400 to 1,500 ft). Historical records from the early 1900s indicate that Newcomb's snails were found in this stream; however, a recent survey failed to locate any snails (S. Miller *in litt.* 1994b). This reach is located on the northwest side of the island and is exposed to severe weather approaching from the northwest. Hanakoa Stream was heavily impacted by Hurricane Iniki in 1992 (Fitzsimons *et al.* 1993), prior to surveys intended to locate populations of Newcomb's snail.

This sub-unit is essential to the conservation of Newcomb's snail because the currently known occupied sub-units are not sufficient to provide for the long term conservation of the species alone. The sub-units currently known to be occupied by Newcomb's snail populations are not sufficiently dispersed to consider the species safe from extinction. Existing known populations are found in remarkably small areas of only a few square meters of aquatic habitat, each of which is at risk from even a small, localized landslide or high flow event. Hanakoa Stream also adds to the geographic diversity by adding areas in the northwest quadrant of the island which is likely to be most exposed to severe weather events such as hurricanes from the north and northwest. Currently, the only known occupied site in this quadrant is Kalalau Stream. With the exception of the Kalalau Stream population, all other populations of Newcomb's snails are located in the northeast or southeast quadrants of the island, and these sites would be exposed to severe weather events such as hurricanes primarily from the northeast and east. This location on Hanakapiai stream is within the historical range of Newcomb's snail, is well documented in museum and other historical records, and was most recently known to be occupied compared to other streams (the early 1900's as opposed to Hanapepe Stream where specimens were collected in the 1840's with no additional information available). Additionally, this stream segment is located within the Na Pali Coast State Park and is adjacent to the Honu O Na Pali Natural Area Reserve and has no water diversions which make it less likely to have land use conflicts.

Sub-Unit I(c): Hanakapiai Stream

Critical habitat for Newcomb's snail is designated for all flowing waters associated with Hanakapiai Stream and its tributaries, including springs and seeps, and riparian habitat necessary to maintain the integrity of the watershed. The Hanakapiai Stream location designated includes 0.56 km (0.35 mi) of stream channel and 35 ha (86 ac) and falls within the elevational contours of 183 to 457 m (600 to 1,500 ft). Historical records indicate that Newcomb's snail occurred in this reach; however, no recent surveys have located snails (M. Kido, *in litt.* 1994; G. Smith, pers. obs. 2002). This reach, like those in Kalalau and Hanakoa streams, is located in the northwest portion of the island and is exposed to severe weather from the north and northwest (Fitzsimons *et al.* 1993).

This sub-unit is essential to the conservation of Newcomb's snail because currently occupied sub-units and the addition of one other unoccupied stream is not sufficiently dispersed to consider the species safe from extinction. As with sub-unit I(b), the addition of Hanakapiai Stream will provide section 7 protections for additional habitat necessary to re-establish the snail in additional streams in this part of the island and once the snails are reestablished, will decrease the risk of losing the presence of snails in the northwest quadrant of the island. Streams in the northwest quadrant of the island are likely to be most exposed to severe weather events such as hurricanes from the north and northwest and currently only contains one occupied location in Kalalau Stream. The five other known occupied stream sub-units are located in the northeast or southeast quadrants of the island, and these sites would be exposed to severe weather events such as hurricanes primarily from the northeast and east. This location on Hanakoa stream is within the historical range of Newcomb's snail, is well documented in museum and other historical records, and was most recently known to be occupied compared to other streams (the early 1900's as opposed to Hanapepe Stream where specimens were collected in the 1840's with no additional information available). In addition, this stream segment is located within the Na Pali Coast State Park and is adjacent to the Honu O Na Pali Natural Area Reserve and has no water diversions, making it less likely to have conflicting land uses.

Unit II: Central Rivers

The central rivers of Kauai are large relative to other streams in the State, and flow through relatively low-gradient watersheds. These rivers are located in the northern half of the island and, because their headwaters are located well inland and in large valleys, are exposed to weather conditions that are greatly influenced by the surrounding landmass. Rainfall in this area is higher than in the other watersheds designated as critical habitat. The vegetation of the Central Rivers Complex watersheds consists primarily of mixed-species wet and mesic forest composed of native and introduced plant species. The higher elevations are primarily native forest, but the lower elevations are more disturbed and are dominated by introduced plant species. The two sub-units, Lumahai River and Hanalei River are occupied by Newcomb's snail.

Sub-Unit II(a): Lumahai River

Critical habitat for Newcomb's snail is designated for all flowing waters associated with Lumahai River and its tributaries, including springs and seeps, and riparian habitat necessary to maintain the integrity of the watershed. The Lumahai River location designated includes 5.0 km (3.11 mi) of stream channel and 492 ha (1,216 ac) and falls within the elevational contours of 183 to 457 m (600 to 1,500 ft). One of the largest populations of Newcomb's snails ever documented occurs in this reach of Lumahai River and its tributaries. This stream segment is located on private land. Lumahai River has no water diversions.

This sub-unit is essential to the conservation of Newcomb's snail because it has one of the most robust population of snails ever discovered, as recorded at the time of the discovery of the population by Hawaii Department of Land and Natural Resources division of Aquatic Resources personnel in 1994. This sub-unit is required as critical habitat to conserve one of the six known populations of Newcomb's snails.

Sub-Unit II(b): Hanalei River

Critical habitat for Newcomb's snail is designated for all flowing waters associated with the Hanalei River and its tributaries, including springs and seeps, and riparian habitat necessary to maintain the integrity of the watershed. The Hanalei River location designated includes 7.58 km (4.71 mi) of stream channel and 876 ha (2,165 ac) and falls within the elevational contours of 122 to 457 m (400 to 1,500 ft), excluding ditches and flumes. The four sub-populations found within this stream system represent the largest number of Newcomb's snail sub-populations occurring within a single watershed. Segments of several named tributaries to the Hanalei River are included in this designation, and these include Kaapoko, Kaiwa, and Waipunaea Streams. This stream segment is located within the Halela Forest Reserve on State lands.

The critical habitat that contains the Hanalei River subpopulations of Newcomb's snail is essential to the conservation of the species because this area is needed to maintain one of the six existing known populations of snails.

A complex of stream diversion works that includes dams, ditches and tunnels, is found at the 378 m (1,240 ft) elevation of the Hanalei River, in the vicinity of the upper two main-channel Hanalei River sub-populations and upstream of the Kaapoko tributary sub-population at an elevation of 396 m (1,300 ft). These dams and associated ditches and tunnels historically diverted large volumes of water out of Kaapoko tributary and the Hanalei River to watersheds in the southeast portion of the island for irrigation use. Typical diversion structures in Hawaiian streams completely divert all of a stream's flowing water during moderate- to low-flow periods, leaving the stream channel below the dam completely dry. The water diversion structures and associated ditches and tunnels in the upper Hanalei River and its tributaries have been in disrepair since the early 1990s. Although these human-made features locally alter flow characteristics, no water is currently diverted out of the Hanalei watershed.

Unit III: Eastside Mountain Streams

The streams designated as critical habitat in this area flow towards the east and southeast portions of the island and are intermediate in size. Rainfall is moderate in comparison to the other sub-units designated as critical habitat. All three of the sub-units included in this stream complex, Waipahee Stream, Makaleha Stream, and North Fork Wailua River, are occupied by populations of snails. The vegetation of the Eastside Mountain Stream watersheds consists primarily of mixed-species wet forest composed of native and introduced plant species. The higher elevations are primarily native forest, but the lower elevations are more disturbed and are dominated by introduced plant species.

Sub-Unit III(a): Waipahee Stream (Tributary to Kealia Stream)

Critical habitat for Newcomb's snail is designated for all flowing waters associated with Waipahee Stream and its tributaries, including springs and seeps, and riparian habitat necessary to maintain the integrity of the watershed. The Waipahee Stream location in the proposed rule included 2.41 km (1.50 mi) of stream channel and 106 ha (262 ac). Due to new information received during the comment period, indicating that some of the area originally proposed does not contain the primary constituent element of perennial flow, we reduced the size of this designation by 0.68 km (0.43 mi) of stream channel and 40 ha (99 ac). The Waipahee Stream location designated now includes 1.73 km (1.08 mi) of stream channel and 66 ha (163 ac) and falls within the elevational contours of 262 to 366 m (680 to 1,200 ft). Newcomb's snail was historically known to occur in Waipahee Stream, and a survey has confirmed the presence of Newcomb's snails within this reach (A. Asquith, in litt. 1994a).

The location designated on Waipahee Stream is occupied by Newcomb's snail and is essential to the conservation of the species because this area is needed to maintain one of the six existing populations of snails.

Waipahee Stream is located on private land that, in areas below the 262 m (680 ft) elevation and outside of designated critical habitat, is undergoing a transition in use from commercial plantation-style sugarcane agriculture to pasture, forestry, diversified crops, and "ecotourism" use. Higher elevation areas (above the 262 m (680 ft) elevation) of these private lands, such as where Newcomb's snails are found, are not used for agriculture and are relatively undisturbed. Water is diverted from Kealia Stream at several locations at lower elevations (below the 262 m (680 ft) elevation) outside of the designated critical habitat location.

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Sub-Unit III(b): Makaleha Stream (Tributary to Kapaa Stream)

Critical habitat for Newcomb's snail is designated for all flowing waters associated with Makaleha Stream and its tributaries, including Makaleha Springs, other springs, and seeps, and riparian habitat necessary to maintain the integrity of the watershed. The Makaleha Stream location designated includes 1.59 km (0.99 mi) of stream channel and 95 ha (235 ac) and falls within the elevational contours of 183 to 457 m (600 to 1,500 ft). The Makaleha Stream and Makaleha Springs Newcomb's snail populations have been surveyed several times in recent years. Two subpopulations are known to occur within this reach. Newcomb's snails are found within the complex of small tributary streams originating from Makaleha Springs, and a small number of snails are found upstream of the springs at a waterfall located in the Makaleha Stream main channel. This stream segment is located within the Kealia Forest Reserve on State lands.

The critical habitat that contains the Makaleha Stream population of Newcomb's snail is essential to the conservation of the species because this area is needed to maintain one of the six existing populations of snails.

Water is diverted from Makaleha Stream and Kapaa Stream at several locations at lower elevations (below 183 m (600 ft) elevation) and outside of designated critical habitat locations.

Sub-Unit III(c): North Fork Wailua River

Critical habitat for Newcomb's snail is designated for all flowing waters associated with the North Fork of the Wailua River and its tributaries, including springs and seeps, and riparian habitat necessary to maintain the integrity of the watershed. The North Fork Wailua location in the proposed rule included 1.71 km (1.06 mi) of stream channel and 64 ha (158 ac). Due to new information received during the comment period indicating that some of the area we proposed did not contain the primary constituent element of perennial flow, we reduced this designation by 0.59 km (0.37 mi) of stream channel and 28 ha (68 ac). The North Fork Wailua River location designated now includes 1.12 km (0.7 mi) of stream channel and 36 ha (90 ac) and falls within the elevational contours of 335 to 427 m (1,100 to 1,400 ft). This population was discovered in 1995 and has fluctuated in size in subsequent observations (A. Asquith, *in litt.* 1995). This stream segment is located within the Lihue-Koloa Forest Reserve on State lands. A water diversion exists just downstream of the critical habitat boundary.

The location designated as critical habitat in the North Fork Wailua River is occupied by Newcomb's snail and is essential to the conservation of the species because this area is needed to maintain one of the six known populations of snails.

Effects of Critical Habitat Designation

Section 7—Consultation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. Individuals, organizations, States, local governments, and other non-Federal entities are not affected by the designation of critical habitat unless their actions occur on Federal lands, require Federal authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including us, to insure that their actions are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. This requirement is met through section 7 consultation under the Act. Our regulations define "jeopardize the continued existence" as to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). "Destruction or adverse modification of designated critical habitat" is defined as a direct or indirect alteration that appreciably diminishes the value of the critical habitat for both the survival and recovery of the species (50 CFR 402.02). Such alterations include, but are not limited to, adverse changes to the physical or biological features, i.e., the primary constituent elements, that were the basis for determining the habitat to be critical.

The relationship between a species' survival and its recovery has been a source of confusion to some in the past. We believe that a species' ability to recover depends on its ability to survive into the future when its recovery can be achieved; thus, the concepts of long-term survival and recovery are intricately linked. However, in the March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434) regarding our previous not prudent finding, the Court found our definition of destruction or adverse modification as currently contained in 50 CFR 402.02 to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species nor to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. This consultation assists Federal action agencies in ensuring that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in jeopardizing a listed species or the destruction or adverse modification of critical habitat, we would also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy or the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat.

Activities on Federal lands that may affect the Newcomb's snail or its critical habitat would require section 7 consultation; however, no populations of Newcomb's snail are known to exist on Federal land. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (ACOE) under section 404 of the Clean Water Act, or some other Federal action, including funding (*e.g.*, from the Federal Highway Administration, Federal Aviation Administration, Federal Emergency Management Agency, or Natural Resources Conservation Service) which may affect a listed species or its critical habitat will be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for the conservation of the Newcomb's snail is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that may directly or indirectly adversely affect critical habitat include, but are not limited to:

(1) Destroying or degrading Newcomb's snail habitat (as defined in the primary constituent elements discussion) through activities adjacent to or upstream of Newcomb's snail habitat. Such activities may include reduction or redirection of stream or spring water flow, dam construction, channel alteration or realignment, substrate alteration, or other direct means (*e.g.*, pesticide or herbicide application, waste discharge, ground water withdrawal, ground water contamination, reduction of ground water recharge, *etc.*).

(2) Appreciably decreasing habitat value or quality through indirect effects (*e.g.*, introduction or promotion of invasive plant species, watershed degradation through overgrazing, augmentation of feral ungulate populations, an altered fire regime, or other activities that degrade water quality or quantity to an extent that it detrimentally affects stream structure and function).

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations on listed wildlife and plants and inquiries about prohibitions and permits should be directed to the U.S. Fish and Wildlife Service, Endangered Species Act Section 10 Program at the same address.

Application of the Section 3(5)(A) Criteria Regarding Special Management Considerations or Protection

Areas containing the primary constituent elements that are under management to fully address the conservation needs of the Newcomb's snail and that do not require additional special management or protection do not meet the definition of critical habitat in section 3(5)(A)(i) of the Act and would not be included in this critical habitat designation. Special management and protection are not required if adequate management and protection are already in place. Adequate special management or protection is provided by a legally operative plan/agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species.

To determine if a plan provides adequate management or protection we consider: (1) Whether a current plan specifies the management actions and whether such actions provide sufficient conservation benefit to the species; (2) whether the plan provides assurances that the conservation management strategies will be implemented; and (3) whether the plan provides assurances that the conservation management strategies will be effective. In determining if management strategies are likely to be implemented, we consider whether: (a) A management plan or agreement exists that specifies the management actions being implemented or to be implemented; (b) the plan includes a timely schedule for implementation; (c) there is a high probability that the funding source(s) or other resources necessary to implement the actions will be available; and (d) the party(ies) have the authority and long-term commitment to the agreement or plan to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands. In determining whether an action is likely to be effective, we consider whether: (a) The plan specifically addresses the management needs, including reduction of threats to the species; (b) such actions have been successful in the past; (c) the plan includes provisions for monitoring and assessment of the effectiveness of the management actions; and (d) adaptive management principles have been incorporated into the plan.

Based on information provided to us by land owners and managers to date, several areas are covered under current management plans and are being managed in a manner that meets some of the conservation needs of the Newcomb's snail. For example, in the case of most state-owned and managed Forest Reserves and certain areas within State Parks, hunting of feral ungulates is a management action that is undertaken to maintain the integrity of the watersheds by retaining vegetative cover, reducing the effects of overgrazing on forest vegetation and soils, and subsequently limiting transport of sediments into streams. Despite the beneficial results of some management plans currently under implementation, we find that at no site does the current management adequately reduce the primary threats to this species, nor did any land owner or land manager expect that their actions were sufficient for consideration for exclusion under 3(5)(A)(i) of the Act.

Habitat Conservation Plans

Since there are no approved HCPs in which the Newcomb's snail is a covered species or other conservation plans that are currently completed that specifically address the Newcomb's snail, we did

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not exclude any lands from this critical habitat designation pursuant to section 4(b)(2) of the Act on this basis.

However, we believe that in many instances the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. We will provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of the Newcomb's snail and appropriate management for those areas. The take minimization and mitigation measures provided under such HCPs may protect the essential habitat lands designated as critical habitat in this rule. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat. If an HCP that addresses the Newcomb's snail as a covered species is ultimately approved, the Service may reassess the critical habitat boundaries in light of the HCP.

Summary of Comments and Recommendations

In the proposed rule published on January 28, 2002, (67 FR 3849) we requested all interested parties to submit comments on the specifics of the proposal including information related to biological justification, policy, economics, and proposed critical habitat boundaries. The comment period was scheduled to close on March 29, 2002. The comment period was extended until April 29, 2002 (67 FR 15159) to allow for additional comments on the proposed designation, and comments on the draft economic analysis (EA) of the proposed critical habitat.

We contacted all appropriate State and Federal agencies, county governments, elected officials, the Office of Hawaiian Affairs, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of legal notices in two newspapers: the Honolulu Advertiser and the Garden Isle on March 29, 2002. We provided notification of the draft EA through telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, media outlets, local jurisdictions, and interest groups. We also published the draft EA and associated material on our Region 1 Fish and Wildlife Office Internet site following its release on March 29, 2002. In addition to inviting public comment on the proposed designation and the draft EA analysis on the proposed designation, the latter notices announced the date and time of a public hearing on the proposed designation. The hearing was held on April 17, 2002, in Lihue, Kauai from 6:00 p.m. to 8:00 p.m. Transcripts of this hearing are available for inspection (see **ADDRESSES** section). The hearing was attended by approximately 15 people, and 9 persons provided oral testimony. Immediately prior to the hearing, Service staff presented informational materials to the public and were available for an informal question and answer session. Approximately 15 people attended the question and answer session.

Six biologists, with expertise in the fields of malacology (the study of mollusks) and stream ecology of Hawaii, provided scientific and technical peer review for the designation of critical habitat for the Newcomb's snail; all six responded with written comments. Four of the six expressed clear support for the designation, though they recognized the limitations of scientific knowledge of life history and population characteristics of Newcomb's snail. The remaining two scientific reviewers were of the opinion that, due to the lack of detailed distribution, life history, and population data for the species, the proposal could not be objectively reviewed. Three of the six stated that their review was made difficult by a lack of adequate scientific documentation specifically regarding threats due to predation and habitat degradation. Four of the reviewers supported including additional historically occupied sites because Newcomb's snail is cryptic and populations are highly localized; these reviewers felt that there was a high likelihood of undiscovered populations existing in these areas, and that there was a strong possibility of reconfirming occupation by snails of historically documented sites. One reviewer reported a population of Newcomb's snail previously unknown to the Service. This population was observed in the Wainiha river watershed in the late 1980s, downstream of the existing hydroelectric diversion. These snails were not found in the main river channel but in a spring-fed tributary. Two of the reviewers suggested specific locations where critical habitat should have been expanded; in one case this was to protect additional watershed areas upstream of the current boundaries. The other reviewer specifically suggested expanding the critical habitat to include the Wainiha River downstream of the hydroelectric diversion dam to protect the population of Newcomb's snails reported from that location. Our responses to these comments are either addressed in the text or below.

We received a total of 1,818 comment letters/testimonies, during the public comment period, a large number of these (1,800) were similar in nature and appeared to be from an organized mass mailing. Comments were received from a variety of State and local agencies, and separate private organizations or individuals. Of these 1,818 comments, 1,808 were in favor of the designation, 9 against it, and 1 was neutral. We reviewed all comments received for substantive issues and comments, and new information regarding the Newcomb's snail. Similar comments were grouped into three general issues relating specifically to the proposed critical habitat determination and draft EA on the proposed determination. Comments have been incorporated directly into the final rule or final addendum to the economic analysis or addressed in the following summary.

Issue 1. Biological Justification and Methodology

1. *Comment:* The majority of peer reviewers noted the lack of knowledge regarding basic biology of the species. Two of the scientific reviewers noted that little peer-reviewed biological and ecological information is available for the Newcomb's snail, and that much of the technical information used for the critical habitat designation is based on unpublished reports and field observations by Service staff, State biologists, and university researchers.

Our Response: As noted in the Background section of this rule, the Service recognizes the limited amount of scientific data available for this species, especially the very limited amount of information that is available in a peer-reviewed format. However, we are currently under court order to proceed with the designation of critical habitat. *Center for Biological Diversity* v. *Babbitt*, Civil No. 99–00603 (D. Haw. June 2, 2002). The Endangered Species Act requires us to use the best available scientific and commercial information in undertaking species listing and recovery actions, including the designation of critical habitat as set forth in this rule. Prior to the rulemaking process associated with listing the Newcomb's snail as threatened, the Service participated in or led a number of reconnaissance surveys in numerous watersheds on Kauai to document presence or absence of Newcomb's snails at these locations. In addition, our natural resource partners, including the University of Hawaii Sea Grant College Program, the State of Hawaii Department of Land and Natural Resources Division of Aquatic Resources, and the University of Hawaii Stream Research Center, have provided us reports of field observations at many sites on Kauai including data from visits to at least 20 streams in watersheds across the island. While we acknowledge the lack of peer-reviewed published information regarding the Newcomb's snail, we have used the best scientific and commercial data available to identify and delineate the critical habitat boundaries.

2. *Comment:* Many areas of potential but unsurveyed critical habitat exist on Kauai. More specifically, several peer reviewers noted this as follows: (1) A thorough investigation should be conducted to determine whether other populations exist that may require critical habitat designation; (2) existing but undocumented populations should not be left out of critical habitat designation; (3) populations of snails could well have simply been missed during recent surveys.

Our Response: Because Newcomb's snail is small and somewhat cryptic, we acknowledge that there is some probability that new populations will be discovered. However, the process by which we analyzed current and historical distribution patterns and subsequently designated critical habitat was focused on determining and mapping those areas that are essential to the conservation of the species, based upon the best available scientific information. If undocumented populations are confirmed or additional populations are discovered in the future that lead us to reconsider critical habitat boundaries, we may revise the critical habitat designation if such action is supported by this new information and funding is available.

3. *Comment:* Several peer reviewers indicated that biological and hydrological processes outside of the critical habitat boundaries could have impacts to the Newcomb's snail. More specifically, these comments were: (1) Indirect effects of habitat alteration, especially activities that may promote expansion of non-native species that could potentially prey on the snail should be considered; (2) ground water withdrawals could have a negative effect on habitat requirements of the snail, and a recent U.S. Geological Survey (USGS) survey report discussing ground water withdrawals should provide useful information; (3) water development at a site out of the designated critical habitat area could still have detrimental effects on the life-history requirements of the target species; and (4) a more detailed discussion and justification is needed for including only mid-elevation locations, upper elevational changes could jeopardize the mid-elevation habitats and associated proximal scale primary constituent elements; as a result, inclusion of upper elevational linkage is important for maintaining sites without present snail occupation.

Our Response: We concur with the reviewers on the importance of these biological and hydrological processes for creating and maintaining habitat essential to the survival and conservation of the Newcomb's snail. We considered the importance of these processes, as well as the contribution of ground water in supporting stream ecosystems, when delineating the boundaries of critical habitat for this final designation We included the areas within and adjacent to the stream channels, springs, seeps and tributaries that provide for those biological and hydrological processes which are essential for the conservation of the Newcomb's snail.

4. *Comment:* One peer reviewer noted the following: (1) Habitat requirements are limited to generalized observations and are speculative on what may eventually be essential for the recovery of the species; (2) habitat features that are essential to the conservation of the snail are so generalized that they can be applied to almost any of the native stream animals, i.e., they are essential to all native stream animals; (3) designation of such large areas does not identify the habitat features essential to the conservation and recovery of the species.

Our Response: Both historical and current observations of Newcomb's snails in their natural habitats were used to infer a reasonable interpretation and description of the primary constituent elements required by the Newcomb's snail for its existence. Many, but not all, elements are shared by other aquatic organisms. The combination of the primary constituent elements for Newcomb's snail, and other hydrologic, elevational, and topographic characteristics that we evaluated, effectively narrowed the number of potential sites for consideration for critical habitat on Kauai to relatively few streams.

5. *Comment:* Two of the peer reviewers noted that some of the predators described in the proposal as potential threats may not co-occur with Newcomb's snail, and one specifically noted that predatory snails could extirpate small aggregations of Newcomb's snail in a very short time once the predator located them.

Our Response: Newcomb's snails are in fact found sympatrically with the introduced predator species in question, although not at every location where the snails are found. The snail populations in Makaleha Stream, North Fork Wailua River, and the Hanalei River are most likely to co-occur with these predators such as the introduced swordtail *Xiphophorous spp.* and the frogs *Rana spp.*, which prefer pool habitat. The populations found in Lumahai River and Kalalau Stream are less likely to encounter these predators because they are found in small tributaries, seeps and springs, or on protected rock surfaces under waterfalls. We note that a study on introduced rainbow trout diets in streams of the Kokee area of Kauai undertaken by the Bishop Museum (Englund *et al.* 2000) identified that Lymnaeid snails numerically made up the third largest dietary component of 80 trout whose stomach contents were analyzed, many of these Lymnaeids share similar life history and microhabitat preferences with the Newcomb's snail. In the report, the authors acknowledge that native populations of Lymnaeids could be affected by trout predation, but because the snails from the trout diet study were not identified to species, no definitive conclusions could be drawn. Terrestrial predators, such as rosey wolf snail (*Euglandina rosea*) and the introduced Sciomyzid marsh flies, are very widespread and have probably dispersed throughout the Newcomb's snail current and historic range. Therefore, despite the fact that not every predator listed as a potential threat co-occurs with the Newcomb's snail at every site, predation by introduced species is a concern in every critical habitat unit.

6. *Comment:* The degree of genetic flow between populations can be reasonably assumed to be very low. Straight-line map distances are not related to the dispersal abilities of the snails. In addition, inclusion of scientifically based inferences would improve the proposal justification. It is reasonable to assume the Newcomb's snail is hermaphroditic with a potential of more than one generation per year.

Our Response: It is reasonable to make the assumption that genetic flow between either sub-populations within a watershed or populations between watersheds occurs at a very low rate. In the Background section of this rule we report straight-line distances between several occupied sites along with the marked elevational changes of the ridgelines between the sites. By calling attention to the steep terrain, we illustrate the degree of physical (and resulting genetic) separation between the snails inhabiting these locations. It

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is beyond the scope of this discussion to speculate on whether Newcomb's snail is dioecious (two sexes), or hermaphroditic (either concurrently or sequentially) or if the snail exhibits a semelparous (reproduce once then die) or other type of life history pattern, additional studies need to be conducted to answer these questions.

7. *Comment:* Several comments questioned the utility of designating critical habitat for recovery of the Newcomb's snail. These comments were: (1) Designations will not lead to recovery of the species; (2) designation of large tracts of land or water will not ensure benefit or recovery to a threatened or endangered species; and (3) designation of critical habitat will not do anything to accomplish the desired purpose of saving the species.

Our Response: Critical habitat designation is one of a number of conservation tools established in the Act that can play an important role in the recovery of a species. For a Federal action to adversely modify critical habitat, the action would have to adversely affect the critical habitat's constituent elements or their management in a manner likely to appreciably diminish or preclude the role of that habitat in the conservation of the species. Designation of critical habitat is a way to guide Federal agencies in evaluating their actions, in consultation with the Service, such that their actions do not hamper conservation of listed species. There also are educational or informational benefits to the designation of critical habitat. Education benefits include the notification of land owners, land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements.

8. *Comment:* How can the Service know an area is essential to the conservation of the species when the area does not currently support many, if any, individuals?

Our Response: Determination of critical habitat areas essential to the conservation of Newcomb's snail is not dependent upon current population size at any one location. Our analysis used historical information as an indicator of past population distribution, and further considered the degree of threat to these locations due to the random occurrence of natural disasters such as hurricanes, drought, and catastrophic landslides. The ultimate goal of our analysis was to designate only areas that are required for the conservation of the snail despite the potential for local extirpations of one or more individual populations. Critical habitat designation resulted from the consideration of topographic and hydrologic features at individual sites in light of the threat of elimination of one or more entire populations.

9. *Comment:* One commentor stated that Newcomb's snail was not found on a 1998 survey which included the area around Waipahee Stream on the Cornerstone Hawaii Holdings, LLC property. They were also unaware of any information that showed that the snail had been found to exist anywhere on the property or on lands adjacent to the property. They also stated that they were unaware of any information that the property was within either the current or historic range of Newcomb's snail. The commentor also stated that they were unaware of any attempts being made by the Service or any other governmental agency to enter the property to gather scientific data, and that there was no reason to believe that excluding the property from critical habitat designation would lead to the snail's extinction.

Our Response: Our records indicate that Newcomb's snails were observed in springs and tributaries adjacent to Waipahee Stream historically (circa 1910) and again in 1994 by Service and State of Hawaii Department of Land and Natural Resources, Division of Aquatic Resources personnel. The 1998 wildlife survey report mentioned by the commenter was focused on terrestrial wildlife and was not an aquatic organism survey, therefore was not designed to evaluate the presence or absence of Newcomb's snails. Waipahee Stream is one of only six watersheds known with certainty to harbor extant populations of Newcomb's snails. This fact, along with the physiographic position of the Waipahee watershed on the island, indicates that the location is essential to the conservation of the Newcomb's snail. Service biologists will coordinate with the landowner to collect scientific data as time and resources allow.

10. *Comment:* The North Fork Wailua River, Hanalei River, and Wainiha River are not essential to the conservation of the species.

Our Response: The North Fork Wailua River and the Hanalei River are two of only six watersheds known with certainty to harbor current populations of Newcomb's snails. When evaluating the needs of a species known from only a few populations, this fact alone indicates that the areas should receive special consideration and may be essential to the species conservation. Our analysis, based upon the topographic and landscape-level features of the island, coupled with the probability of threat from natural disasters have led us to conclude that these sites are essential to the conservation of the species. The potential value of the Wainiha River watershed for the recovery of the Newcomb's snail is also high; however, our reevaluation of the critical habitat sub-unit at that location led us to the conclusion that the sub-unit should be excluded based upon economic and other relevant impacts, consistent with section 4(b)(2) of the Act.

11. *Comment:* Several commenters addressed the scientific basis for the critical habitat designations. These comments were: (1) The science must be better known before the Service can designate critical habitat; (2) critical habitat designation should be reconsidered until the scientific details are available; (3) the Service should revisit the Wailua River with an independent aquatic biologist to confirm Newcomb's snail findings; (4) the proposed designations are overly broad and not based on sound science; and (5) there was a lack of peer review of the data.

Our Response: In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, we used the best available information in designating critical habitat. Our analysis incorporated virtually all published and unpublished scientific studies on the Newcomb's snail, as well as field notes and other information such as photos, sketches, and maps produced by Service and State agency biologists and university researchers. Service biologists also examined museum collections and catalogs and corresponded with museum-affiliated researchers at the National Museum of Natural History (Smithsonian) and the British Museum of Natural History regarding early collections and locality information associated with the Newcomb's snail. During the development of the proposed designation and following its publication during the extended comment period, we solicited biological data and public participation in the rule-making process. In accordance with our policy on peer review published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of appropriate and independent specialists regarding the proposed rule. We solicited comments from six biologists with expertise in the fields of malacology (the study of mollusks) and stream ecology of Hawaii. They provided scientific and technical peer review for the designation of critical habitat for the Newcomb's snail; all six responded with written comments. Four of the six expressed clear support for the designation.

The purpose of this peer review was to ensure that our designation methodology for Newcomb's snail critical habitat was based on scientifically sound data, assumptions, and analyses. The comments of all of the peer reviewers were taken into consideration in the development of this final designation. We are currently unable to conduct more detailed research, such as a population viability analysis, for the Newcomb's snail due to time and funding constraints. We are required under a court-approved settlement agreement to finalize this designation by August 10, 2002. We will continue to monitor the species and collect new information as time and resources allow. If supported by new information, we may revise the critical habitat designation in the future.

12. *Comment:* Several comments addressed the designation of the North Fork Wailua River sub-unit citing the lack of specific information that designation of the sub-unit would lead to Newcomb's snail recovery. These comments were: (1) That it is premature to conclude the North Fork Wailua River has a significant snail population or that it would be a suitable place for rehabilitation of the species; (2) an investigation should be made as to why the population declined in the North Fork Wailua River and if the snails ever lived here in great numbers to evaluate whether any habitat alteration would make any difference; and (3) how can the North Fork Wailua River become a place of restoration for the snails when they are impacted by frequent floods, landslides, and hurricanes.

Our Response: The North Fork Wailua River is one of only six watersheds known with certainty to harbor extant populations of Newcomb's snails. This fact alone indicates that the area is of considerable importance to conservation of the species. Anecdotal evidence indicates that of all snail populations observed, the population found in the North Fork Wailua River appears to be the most variable over time, perhaps due to localized stream channel topography which leads to frequent displacement of individuals due to recurring floods and resulting channel scour. However, only through a snail population monitoring program at this site can the suspected population variability be confirmed. Even if this is the case, the stream habitats occupied by Newcomb's snails frequently undergo considerable physical change due to the effects of floods and Newcomb's snail populations are expected to vary in response to these naturally occurring environmental events. The Newcomb's snails found in the North Fork of the Wailua River are located in the southwest extreme of the known range of the species, and considering the risk of catastrophic events occurring in one or more of the watersheds known to harbor Newcomb's snails, it is considered essential to the conservation of the species.

13. *Comment:* Several comments contrasted hydrologic conditions upstream and downstream of the water diversion structure located in the North Fork Wailua River. These comments were: (1) downstream of the diversion in the North Fork Wailua River does not contain the primary constituent elements; and (2) critical habitat for North Fork Wailua River should exclude the stream reach and tributary area below the ditch intake and diversion and critical habitat should not include any area downstream of a line drawn perpendicular to the centerline of the stream at the upstream end of the pool formed by the diversion dam.

Our Response: In response to our request for information regarding Newcomb's snail biology, and current or historical distribution, we obtained and analyzed new information that demonstrated complete dewatering of the reach below the water diversion structure located in the originally proposed critical habitat sub-unit on the North Fork Wailua River. Because a perennial instream flow of cool, clean water is considered to be an important primary constituent element for the Newcomb's snail, the dewatered reaches do not contain the primary constituent elements required and therefore do not meet the definition of critical habitat and are not essential for the conservation of the species. We modified the lower boundary of the sub-unit to only include the stream channel and adjacent area upstream of the diversion structure where stream flow is continuous. A similar modification was made to the Waipahee Stream sub-unit, based on the same rationale.

14. *Comment:* One peer reviewer reported a population of Newcomb's snails in the Wainiha River Valley. This population is reported to be downstream of the hydropower diversion in a tributary spring and seep area, not in the main channel of the river. The observation of this population of snails was in the late 1980s. As a result, it was suggested that we extend the lower elevational boundary for the originally proposed Wainiha River sub-unit from 244 m elevation to the 200 m elevation. Another commenter, who is affiliated with a university stream research institute, reported a population was observed in Kawaikini Falls in about 1997. The commenter recommended protecting the Kawaikini Falls population and the entire stream continuum down to the diversion weir, by extending the boundaries of the North Fork Wailua River sub-unit to include the entire stream from the point of diversion (approximately 326 m elevation) to the base of Mt. Waialeale/Mt. Kawaikini including all tributaries entering the main channel in the region.

Our Response: The Service believes that larger stream systems such as the North Fork Wailua River and the central rivers of Kauai such as Wainiha, Lumahai and Hanalei may harbor additional populations of Newcomb's snails because of these watersheds' large size and numerous hydrologic features such as mid-channel bedrock areas and seeps and springs that could support habitat for snails and the Service recognizes that additional survey efforts are needed to determine with certainty the existence of Newcomb's snails in the majority of potential habitat on Kauai, especially historically occupied areas that have not been resurveyed for many years. However, as noted elsewhere in this rule, in determining critical habitat in occupied habitat, we relied on well-documented observations of snail populations from recent years. While the reports provided by the commenters are useful in focusing future survey efforts, no verified collections or other supporting information (specific location data or photographs) accompanied the reports of Newcomb's snail populations previously unknown to the Service. Moreover, the proposed critical habitat sub-unit in the Wainiha River watershed was excluded from critical habitat designation as described in Exclusions Under 4(b)(2). The report of a sub-population in the upstream reaches of the North Fork Wailua River suggests that habitat conditions are adequate for Newcomb's snail in a variety of locations within that watershed; however, based on elevation and topography we believe the core area of suitable habitat to be demarcated by the critical habitat boundaries as presented in this rule.

In addition, an important consideration in delineating critical habitat was to create an adequate geographical configuration of critical habitat units which would eliminate the threat of extinction caused by natural disaster. This was accomplished by identifying multiple critical habitat units in different regions of the island. The resulting geographic array includes watersheds immediately to the east and immediately to the west of the Wainiha River, and includes a sub-unit in the

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North Fork Wailua River Watershed approximately 3 km (1.9 mi) downstream of Kawaikini Falls. The two unoccupied units included in this rule, Sub-Unit I(b), Hanakoa Stream, and Sub-Unit I(c), Hanakapiai Stream are located in an area that is represented by only one occupied stream which would be inadequate to buffer against a natural disaster that occurred there.

15. *Comment:* Some commenters suggested that critical habitat boundaries be expanded to include Hanapepe Stream, because of a reported historical observation of Newcomb's snails in that watershed, and they requested that we designate habitat in the southern part of the island as well as the north and northeast.

Our Response: The critical habitat boundaries are based primarily upon the current distribution of Newcomb's snails, as documented by Service personnel and our natural resource and conservation partners in recent years. The degree to which historically occupied sites were considered was dependent upon the geographic location of the sites, the dates of last observation of the snails, and the ability of our staff to independently verify historical observations through review of historical records and examination of museum collections. We placed greater emphasis on more recent, well-documented historical observations that included site-specific locality information. Our correspondence with malacologists at the National Museum of Natural History did reveal a very early collection of Newcomb's snail from the Hanapepe watershed. The collection appears to have been made in about 1840 by members of the the U.S. Exploring Expedition (the Wilkes Expedition), approximately 25 years prior to the species being described. Service biologists examined the locality information associated with the specimen label and determined that it is insufficient to adequately describe where in the watershed the collection was made. We are not aware of any other historical or recent additional surveys or collections in the Hanapepe watershed to confirm the existence of Newcomb's snail. The Service recognizes that this new information is important because it indicates that the historical range of Newcomb's snail included sites somewhere along the course of the Hanapepe River. However, the critical habitat boundaries were based on currently occupied sites, or on well-documented observations confirming sites that were occupied at least through the 1910s or 1920s, as shown by detailed museum records. Other critical habitat units were chosen to create an array of multiple discrete populations across the island to reduce the risk of extinction due to catastrophic natural events such as hurricanes and enhance recovery. Our conclusion is that eight sites located in three physiographic provinces of the island are sufficient to achieve these goals.

16. *Comment:* Multiple commentors stated that the critical habitat designation should include all areas where Newcomb's snail formerly existed. Also, multiple commentors requested that unoccupied areas that are suitable for reintroduction of Newcomb's snail be designated critical habitat to reduce the risk of extinction.

Our Response: Historical distribution was an important factor in evaluating critical habitat for the Newcomb's snail, and especially the locations where Newcomb's snail have not been recorded in recent surveys and could be locally extirpated. Our requirement for establishing critical habitat is to designate only those areas that are essential for the conservation of the species, and this was accomplished by designating critical habitat sub-units within the six known watersheds where Newcomb's snail are found and in two of the watersheds where they may have been extirpated in recent years. This approach provides an array of critical habitat sub-units in three quadrants of the island. This approach will reduce the extinction risk due to the probability that entire populations will be eliminated due to the random occurrence of a localized natural disaster such as a hurricane or major landslide.

17. *Comment:* Other potential habitat may in time become essential to the survival of Newcomb's snail. Certain habitat types or geographical areas may be of greater importance to the species during different phases of its life history.

Our Response: We agree. As new information about the biology and life history of Newcomb's snail becomes available, we may revise the critical habitat designation in the future if new information supports a change in the critical habitat designation and funding is available.

18. *Comment:* Broad habitat-based conservation approaches to species recovery may be inappropriate for a small island State such as Hawaii.

Our Response: We are directed to use the best available information in undertaking species listing and recovery actions, including the designation of critical habitat. With very few exceptions, the scientifically accepted approach for protecting threatened or endangered species, including Newcomb's snail, is to employ habitat-based conservation strategies as a part of recovery planning and implementation. Establishing effective conservation measures on a small and isolated landmass such as Kauai requires conservation of habitat as well as control of other potential threats such as invasive species and introduced predators. Critical habitat designation is one mechanism by which potential changes to habitats resulting from federally funded or permitted projects can be reviewed.

19. *Comment:* Two commentors suggested that the Service describe the critical habitat designations in "ahupuaa" terms, and that the Service should take a watershed approach.

Our Response: The ahupuaa concept is that the basic management unit for natural resources, such as land and water, be demarcated roughly along watershed boundaries that extend from the mountains to the sea. This approach was used by ancient Hawaiians and is gaining renewed acceptance under current natural resources management schemes. By definition, critical habitat is only the area that is identified to be essential for the conservation of a species. In the case of Newcomb's snail, critical habitat units include distinct stream segments and portions of the adjacent associated riparian areas. We recommend that critical habitat unit boundaries be incorporated into larger landscape-level natural resource planning and watershed management that employ the ahupuaa concept.

20. *Comment:* Protecting critical habitat is essential not only for the recovery of this species, but also to protect the ecosystem on which Newcomb's snail relies for its long-term survival and recovery.

Our Response: We agree, however our designation of critical habitat is limited to the areas of habitat we conclude are essential for the conservation of the Newcomb's snail. Larger-scale ecosystem protection efforts should be addressed through other means.

21. *Comment:* Agricultural lands and areas supporting agricultural lands, including streams used for irrigation and hydropower generation, should be excluded from designation because the benefits of exclusion would far outweigh the benefits of designation, and exclusion would not result in the extinction of the species.

Our Response: No agricultural lands are included in the designation of critical habitat for Newcomb's snail. Also, no operating water diversion structures that remove water from stream channels for agricultural use are included in the designation.

Agricultural areas and water diversions are located downstream of the critical habitat sub-units established by this rule. Since no Federal actions associated with agriculture and its supporting infrastructure, such as stream water used for irrigation, were identified within the designated critical habitat units, we did not determine if the benefits of excluding any area associated with agriculture would outweigh the benefits of designation.

22. *Comment:* Critical habitat is going to prevent or very seriously impede any development of hydroelectric power.

Our Response: There are currently seven hydropower plants operating on the island of Kauai. These plants range in size from 0.5 to 3.8 megawatts and the latest was built in 1930. Since that time, while several power plants were proposed in the 1980s, none have been built and only one received all of the permits necessary to begin construction. The economic analysis also identified another potential project outside of critical habitat. This project, along with the one formerly permitted but not built are further discussed below and were covered in the economic analysis.

Federal Energy Regulatory Commission (FERC) records indicate that they have accepted a preliminary permit application for a hydropower project on the South Fork of the Wailua River. This is the only hydropower development proposal in existence on Kauai at this time, and the planning for this project will not be affected by designation of critical habitat. We are not aware of any current plans for hydroelectric plants on the streams that are being designated as critical habitat.

We are aware, however, of a plan that was proposed in the early 1980s by Alexander and Baldwin (A&B). A&B planned for a second power plant in the Wainiha Valley, upstream from their current operating plant. Apparently, A&B secured all of the permits necessary at that time to construct the project but at the last minute the company decided to invest their funds in an alternative project (a coffee company). Since that time, all of the approvals and permits that were obtained have expired.

Our economic analysis considered the feasibility of this project under current market conditions and concluded that the project is no longer feasible. The analysis also concluded that it was unlikely that any additional new hydropower projects would be considered and approved given existing environmental protection standards for the area, likely public opposition over stream diversions, and the resulting difficulties in obtaining approvals and permits. Furthermore, because the island has adequate electrical capacity for the foreseeable future, the energy price such a potential project would receive from Kauai Electric would likely be about seven cents per kWh, which would reflect avoided fuel costs but not capital costs. Consequently, the current market conditions make the feasibility of the previously planned project by A&B seem unlikely in today's climate.

Furthermore, all sites designated as critical habitat for Newcomb's snail are located in the State Conservation District, a land use status which greatly restricts the range of possible economic activities that may take place on those lands. Considering the existing land use designation under State law, and that no hydropower development has occurred at any site on the island in many decades, the economic forces and existing environmental and cultural concerns make it very unlikely that new hydropower projects will be approved, regardless of the status of lands with regard to critical habitat designation. Even if a hydroelectric project is proposed in designated critical habitat, and a FERC permit is required, section 7 consultation would not substantially affect such a project unless it jeopardizes the continued existence of the species or results in adverse modification of critical habitat, and even then, we would try to propose reasonable and prudent alternatives consistent with the purpose of the project.

23. *Comment:* How can the Service propose critical habitat or introduce snails in areas with water diversion when it appears likely that the snails will move within the stream?

Our Response: There are two potential types of snail movements that may occur. One is over geologic or evolutionary time-scales (tens or hundreds of thousands of years) where Newcomb's snails may move within stream systems, and that these movements would result in colonization of new areas of suitable habitat over very long periods of time. The second potential type of movement may come from the unlikely times when snails are involuntarily dislodged and may float downstream. We have no information to either support or refute the premise that this snail movement results in new areas being colonized over shorter time periods (decades or centuries). For this reason, whether or not snails might move within a stream in the event of a translocation experiment cannot be ascertained. Water diversion systems including dams, ditches and tunnels are human-made and are not expected to contain the primary constituent elements for the Newcomb's snail, and therefore, these structures are explicitly excluded from critical habitat designation.

24. *Comment:* Concern was expressed by two commenters about the potential for reintroduction or translocation of Newcomb's snail. These were: (1) that the Service apparently intends to spread Newcomb's snails into some streams where the snails are not known to currently exist; and (2) that the Service needs to provide additional information regarding the mechanism by which reintroduction of endangered or threatened species on privately owned lands would occur.

Our Response: A recovery plan is in development that will specify a range of actions that could be implemented for recovery of the Newcomb's snail. Translocation of snails to sites where snails were found historically, or to areas exhibiting suitable habitat characteristics will likely be a potential action outlined in the recovery plan. However, a variety of considerations will be evaluated prior to implementing any recovery action, such as the likelihood of success of a translocation experiment and its contribution to conservation of the snail. The agreement of participating private landowners, State or local agencies would be essential. The Service does not have authority to access state or private property to translocate a species without approval of the landowner, and would work with any such landowners to develop a mutually agreeable legal framework for partnership. Possible mechanisms could include, for example, development of a safe harbor agreement or designating any translocated population as an experimental population under section 10(j) of the Act. Federal funding may also be provided.

25. *Comment:* One commentor expressed serious concern with the suggestion that translocation experiments may take place in the Wainiha watershed as part of a recovery planning and implementation effort for the Newcomb's snail.

Our Response: As stated above, a recovery plan is in development that will specify a range of actions that could be implemented for recovery of the Newcomb's snail. Translocation of snails to sites where snails were found historically, including sites within the Wainiha watershed, or to other areas exhibiting suitable habitat characteristics, may be a potential action outlined in the recovery plan. Implementation of this or any other element of the recovery plan is not certain, and a variety of factors will be

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evaluated prior to implementing any of the recovery actions under consideration. The Wainiha watershed is not included in this designation (*see* Exclusions Under 4(b)(2) below), and access for the purpose of reintroducing of snails into the Wainiha River or any other stream would require permission and cooperation of the landowner.

26. *Comment:* Plans to translocate snails are troubling since populations may be genetically unique and movement between stream systems can be disastrous. The plan is premature and further information is necessary.

Our Response: As explained above, a recovery plan is in development that will specify a range of actions that could be implemented for recovery of the Newcomb's snail. Prior to any translocation the effect upon the genetic structure of isolated sub-populations and the population as a whole will be evaluated in detail.

Issue 2. Policy and Regulations

27. *Comment:* One commentor wanted to be assured that none of their Federal tax dollars would inadvertently be used to aid or abet extinction of any native flora or fauna.

Our Response: Endangered Species Act section 7 consultations, which can be initiated by a Federal action within designated critical habitat, is a mechanism to assure that Federal actions do not jeopardize the continued existence of threatened or endangered species.

28. *Comment:* Hawaiian endangered species do not do well when people have access to them. Whenever Hawaiian endangered species are impacted by human populations, their numbers go down. Public access to critical habitat is going to have to be restricted.

Our Response: Undoubtedly, human activities have had a negative impact to many species in Hawaii. However, numerous threatened and endangered species are currently on the road to recovery through the direct intervention of humans. These include marine and terrestrial vertebrates, plants, and invertebrates. The designation of an area as critical habitat does not in itself restrict public access. The regulatory effect of critical habitat designation is limited to requiring consultation under section 7 of the Act for Federal actions. Since few, if any, Federal actions affect public access to the State and private lands designated as critical habitat for Newcomb's snail, it is unlikely that public access to these areas will be altered.

29. *Comment:* When private landowners are affected by zoning regulations that are perceived as restrictive, voluntary cooperation by private landowners will cease.

Our Response: We understand that there is the possibility of an unfortunate negative reaction from some private landowners for actions that the Service is mandated to undertake by Federal law. The Service strives to minimize the impacts to landowners through a variety of outreach and communication efforts. Economic and other relevant impacts of designation have been analyzed and considered in making this designation of critical habitat. Many threatened and endangered species occur on private lands and the Service recognizes the importance of conservation actions by private landowners. Cooperation from private landowners is an important element of Service conservation efforts, and the Service has had considerable success in developing partnerships with large and small landowners, government agencies, and non-governmental organizations for conservation activities on Kauai, in the State of Hawaii, and throughout the nation.

30. *Comment:* One commenter indicated that designation of critical habitat must accommodate traditional gathering rights of native Hawaiians as reflected in the State constitution.

Our Response: Newcomb's snails are not known to be a resource used traditionally by native Hawaiians. The Service does not anticipate that take of Newcomb's snails for traditional and customary use will occur. However, because traditional gathering does not involve a Federal action, the exercise of traditional gathering rights of native Hawaiians for other aquatic or terrestrial resources is not affected by this rule.

31. *Comment:* One commentor stated that excluding any areas from designation based on current management would violate 16 U.S.C. 1533(a)(3), and further stated that conservation efforts do not alter the habitat's critical nature or the need to ensure its protection. Multiple commentors stated that areas already subject to conservation measures or that may be the subject of conservation agreements in the future should not be excluded from critical habitat.

Our Response: Critical habitat is defined, in part, as areas on which are found the physical or biological features essential to the conservation of the species and which may require special management considerations or protections (16 U.S.C. 1532(5)). We believe that it is reasonable to interpret this provision as excluding areas which do not require special management or protection is already in place. This includes, for example, a legally operative plan/agreement that addresses the maintenance and improvement of the primary constituent elements required by the Newcomb's snail and which also provides certainty in management for the conservation of the species. A variety of specific criteria are used to evaluate whether adequate management and implementation of specified conservation actions are sufficient for lands to be excluded from critical habitat designation on this basis. While we recognize that some of the areas included within the critical habitat boundaries for the Newcomb's snail have some level of management, no management plans or documented conservation activities which specifically recognize and address the Newcomb's snail are in place or underway. Therefore, no lands were excluded on the basis of existing adequate management.

32. *Comment:* The Service did not adequately address the takings of private property as a result of designating critical habitat for the Newcomb's snail. If the critical habitat proposal would require reducing water diversions from any stream, the Service should investigate whether that would take anyone's vested water rights. In addition, if the proposed designation of critical habitat precipitates conversion of agricultural land to conservation land that has no economically beneficial use, then the Federal and State governments will have taken private property.

Our Response: We have assessed the takings implications of this rule in accordance with Executive Order 12630 and have concluded that this rule does not pose significant takings implications. Because no critical habitat sub-unit boundaries are located downstream of existing diversions, no requirements to reduce out-of-stream water use will arise as a result of this rule. Likewise, no land zoned for agriculture is included in the final rule, therefore no agriculture-zoned land could be rezoned for conservation as a result of this rule.

Issue 3. Economics

33. *Comment:* One commentor stated that the draft economic analysis (DEA) fails to satisfy the requirement of section 4 of the Act.

Our Response: We disagree. Section 4(b)(2) of the Act and 50 CFR 424.19 require us to consider the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We published our proposed designation of critical habitat for the Newcomb's snail in the **Federal Register** on January 28, 2002 (67 FR 3849). The draft economic analysis (DEA) of the proposed critical habitat designation was made available for review and public comment during a 30-day public comment period beginning on March 29, 2002 (67 FR 15159). In the DEA, we performed a comprehensive review of all potential activities that may be impacted by the proposed critical habitat. Where possible we quantified the impacts of critical habitat designation, where this was not possible we qualitatively assessed the impacts. Based on the public comments received during the comment period, a final addendum to the economic analysis of critical habitat of the Newcomb's snail was drafted. The final addendum addresses the concerns raised through the comment period and takes into consideration new information. The draft economic analysis issued in March 2002 as modified by the addendum constitute the economic analysis for this final rule. Please refer to the Economic Analysis section of this final rule for a more detailed discussion of these analyses. Copies of both the economic analysis and the addendum are in the supporting record for this rulemaking and can be inspected by contacting the Pacific Islands Fish and Wildlife Office (refer to the **ADDRESSES** section of this rule).

34. *Comment:* One commentor stated that the Service fails to adequately analyze the economic impact to small entities under the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act. Another commentor stated that the cost to small entities will be substantial and devastating. A third commentor stated that three statements in the rule are erroneous: (1) We are certifying the rule will not have a significant effect on a small number of small entities; (2) we are certifying the proposed designation will not have a significant economic impact on a substantial number of small entities; (3) this proposed rule is not expected to significantly affect energy supplies.

Our Response: Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The economic analysis found that the only small entity that may be impacted by the designation of critical habitat is the Waipa Foundation. The Foundation is a small community-based corporation and is likely to be considered a small organization under the RFA/SBREFA definition. This would occur if the Waipa Foundation and Kamehameha Schools enters into an agreement with the Nature Conservancy of Hawaii (TNCH) to manage the Lumahai Valley for conservation and educational and cultural benefits. TNCH and the Waipa Foundation may seek funding from the Service to manage the valley, in which case the Service may conduct an internal consultation with a low level of complexity. The DEA states that the estimated cost of time and effort expended for a third-party applicant for a consultation with a low level of complexity is $1,400. Thus, the designation of critical habitat for the snail is not likely to have a significant economic impact on the Waipa Foundation or any other small entity.

Because they are not considered small entities, Federal and State agencies were not included in the RFA/SBREFA analysis. Also, neither of the private land owners affected by this rule are considered small entities: the Kamehameha Schools is a very large educational trust and has extensive land holdings statewide; and Cornerstone Kauai Holdings, Inc. is not considered a small business based upon its revenues resulting from land subdivision and resale (using the U.S. Small Business Administration (SBA) definition of small business). A&B is also not considered to be a small business based on its revenue structure and the corresponding SBA definition of small businesses for their industry sector. TNCH is likely to be involved in section 7 consultations on conservation projects that it undertakes, however TNCH is also a large organization that is dominant in the conservation and land management field in Kauai County.

Existing energy supplies will not be impacted by the critical habitat designation. No hydroelectric facilities lie within any of the eight critical habitat sub-units as designated. The waters entrained into the North Wailua Ditch by the North Fork Wailua River diversion, which is located downstream of critical habitat sub-unit IIIc, are diverted into the Waiahi Stream watershed. A complex of water diversions and ditches from these and adjoining streams are used to operate the Upper and Lower Waiahi Power Plants, which are owned and operated by Kauai Electric. The lower boundary of the North Fork Wailua River critical habitat unit was modified, on the basis of Newcomb's snail habitat requirements, to exclude the North Wailua Ditch diversion structure.

The State of Hawaii Department of Economic Development and Tourism (DBEDT) described the potential for new or expanded hydropower production capacity for Kauai. This agency reports that, because of existing protections and significant environmental concerns, the only location suitable for hydropower development is the Lower Wailua River, a location that would not be effected by the designation of critical habitat in this rule. As stated previously, if a hydroelectric project is proposed in designated critical habitat, and section 7 consultation results in finding such a project jeopardizes the continued existence of the species or results in adverse modification of critical habitat, the Service would try to propose reasonable and prudent alternatives consistent with the purpose of the Act that would allow the project to be completed.

As a result, we are certifying that the final rule will not have a significant effect on a substantial number of small entities and the rule will not significantly affect energy supplies. We are basing our assertion on the information provided in the economic analysis that was prepared for the proposed rule and the addendum to this analysis that was prepared for the final rule, which incorporated new information that was provided during the public comment period.

35. *Comment:* The DEA fails to consider economic impacts of listing and critical habitat that result through interaction with State law, specifically Hawaii's Endangered Species Act. *New Mexico Cattlegrowers Association* v. *U.S. Fish and Wildlife Service* requires consideration of the impact of listing as well as the impact of designating an area as critical habitat. Instead, the analysis is expressly limited to the impact of federal agency consultation under the jeopardy standard. However, since listing triggers listing under State law, the Service must consider the impact of take prohibitions under State law (and consequently federal law which prohibits destruction of plants in knowing violation of State law).

Our Response: The Service is addressing the 10th Circuit's concern that we consider the economic impacts

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of designation by addressing all of the economic impacts of critical habitat designation even if they are attributable co-extensively to the listing of the species. In particular, since the only regulatory effect of critical habitat is from applications of section 7, the Service considers the economic impacts of section 7 consultations related to critical habitat even if they are attributable co-extensively to the listed status of the species. In addition, we look at any indirect costs of critical habitat designation such as where critical habitat triggers the applicability of a State or local statute. However, where it is the listing of a species that prompts action at the State or local level, the impacts are not attributable to critical habitat designation and are not appropriately considered in the economic analysis of critical habitat designation. Take prohibitions under Hawaii law are purely attributable to a listing decision and do not co-extensively occur because of critical habitat designations. There are no take prohibitions associated with critical habitat.

36. *Comment:* The DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically Hawaii's Land Use Law. Critical habitat could result in downzoning under State law. HRS § 205–2(e) states that conservation districts shall include areas necessary for conserving endangered species. HRS 195D–5.1 states that DLNR shall initiate amendments in order to include the habitat of rare species. Even if DLNR does not act, the Land Use Commission may initiate such changes, or they may be forced by citizen suits. Areas for endangered species are placed in the protected subzone with the most severe restrictions. While existing uses can be grandfathered in, downzoning will prevent landowners from being able to shift uses in the future, reduce market value, and make the land unmortgageable.

Our Response: Economic impacts are not expected to occur as a result of the critical habitat designation due to land being redistricted from the state Agricultural, Rural, or Urban District to the Conservation District. All of the land designated as critical habitat for the Newcomb's snail is currently within the State Conservation District.

37. *Comment:* The DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically Hawaii's Environmental Impact Statement Law. HRS 343–5 applies to any use of conservation land, and a full Environmental Impact Statement is required if any of the significance criteria listed in HAR 11–200–12 apply. One of these criteria is that an action is significant if it "substantially affects a rare, threatened or endangered species or its habitat." This will result in costly procedural requirements and delays. However, the DEA does not acknowledge that any impact on endangered species habitat will be deemed to be "significant."

Our Response: Adverse impacts on development, including delays for additional studies and agency reviews, increased costs for environmental studies, increased risk of project denials, increased risk of costly mitigation measures, increased risk of litigation over approvals, etc., are not expected since, as discussed in the economic analysis, no development projects are likely to occur within the areas designated as critical habitat for Newcomb's snail. This reflects the facts that (1) the subject land is largely unsuitable for development due to the rugged mountain terrain, lack of access, and remote locations; and (2) existing land-use controls in the Conservation District severely limit development. None of the proposed critical habitat lies within the Special Management Areas designated by Kauai County under the Hawaii's Coastal Zone Management Program (HRS 205A).

38. *Comment:* The DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically the State Water Code. HRS 174C–2 states that "adequate provision shall be made for protection of fish and wildlife. HRS 174C–71 instructs the Commission of Water Resource Management to establish an instream use protection program to protect fish and wildlife. There are water diversion systems in at least four of the proposed units, including two irrigation ditches presently in use and one that is presently unused. However, the DEA does not consider whether designation would trigger State law limits on water diversion, even if they do not involve federal consultations under the ESA. Excluding artificial irrigation structures does not eliminate the economic impacts. If any water diversions will likely be reduced due to critical habitat designation, these economic effects must be considered. In addition, since landowners may depend on water pumped from other watersheds, these effects can be far-reaching.

Our Response: The areas designated as critical habitat for the Newcomb's snail were modified for biological reasons to only include stream channels upstream of operating water diversions (see explanation under Summary of Changes from the Proposed Rule). For this reason it is unlikely that the State would impose restrictions on existing stream diversions in order to restore stream flows. Since no current stream diversions or dewatered reaches downstream from the diversions remain in the critical habitat as modified we would not expect any loss of irrigation water to farmers and ranchers, or a related loss of existing and potential farm and ranch production. Concerns specific to Wainiha Valley no longer apply since critical habitat is no longer proposed for this area.

Further, as discussed in the EA, no known plans exist for new stream diversions for the purpose of hydroelectric power production or irrigation withdrawals in the subject areas. Because of existing and projected market conditions, and the significant environmental and cultural concerns that arose in conjunction with previous hydropower development schemes that were ultimately abandoned, approvals for new stream diversions for new hydropower plants or irrigation withdrawals are unlikely. Therefore potential loss of alternative energy production capacity and, for some private lands, a potential loss in property values, is similarly unlikely.

Instream uses protected by the State Water Code established in HRS 174-C include a variety of uses including recreation, cultural uses and scenic values, in addition to support and propagation of aquatic life. The instream use protection program established by the Water Code and implemented by the Commission on Water Resource Management does not expand in scope within areas designed as critical habitat.

39. *Comment:* One commentor stated that the DEA does not fully examine the indirect impacts on agriculture from designation. One commentor stated that the impact upon farmers who rely on irrigation water or working to obtain irrigation water must be addressed in the EA. One commentor stated that critical habitat designation and the additional restrictions it would place on the community will have a significant economic effect on water resources that directly support the agricultural industry.

Our Response: Our economic analysis considered both the direct and indirect impacts that the rule could have on the agricultural industry and concluded that this industry would not be significantly impacted. First, we are not designating critical habitat on any agricultural lands. Consequently, we do not believe that the designation will have a direct impact on agricultural activities. The economic analysis also considered whether the agriculture industry could be indirectly affected through changes in their irrigation system resulting from critical habitat designation. The analysis concluded that existing irrigation systems could not be affected because they lie outside and downstream of designated critical habitat. Furthermore, it is unlikely that future irrigation systems will be affected by this rule because there are no currently known plans for new stream diversions and even without the Snail critical habitat, development of new stream diversions in these areas is unlikely given current environmental concerns, likely public opposition to new stream diversions, and difficulty obtaining permits in today's socio-economic climate.

The analysis also noted that as the sugar plantations shut down on Kauai, large volumes of water are freed for use by other agricultural activities. Replacement agricultural activities use significantly less water than sugarcane. Some of the former sugarcane lands have been replanted in diversified crops which generally use about half as much water per acre as sugarcane. However, most of the former sugarcane lands are now either lie fallow or are used for grazing cattle and are no longer irrigated. Thus, it does not appear likely that there will be an economic need for new diversions to support agricultural activities in the foreseeable future.

40. *Comment:* One commentor was concerned that if water development is restricted due to critical habitat impacts, the additional burden and costs associated with affordable housing and the visitor industry will have a tremendous effect. One commentor stated that there will be a significant socio-economic impact on the community by restricting activities and access to public lands, future water resource developments may be restricted to certain areas and require additional costs which may be passed on to the users, and affordable housing is dependent on the future availability of water resources.

Our Response: Increased restrictions on developing potable water resources, resulting in higher water costs and adverse impacts on affordable housing and the visitor industry are unlikely. Almost all potable water on Kauai is supplied from groundwater since these sources do not require expensive treatment. Existing and future drinking water sources are located downgradient of the areas designated as critical habitat for the Newcomb's snail. In addition, most of the critical habitat units are in areas that are far removed from where new wells are likely to be developed. Critical habitat designation for Newcomb's snail will have no adverse impact on groundwater recharge and will not reduce the sustainable yield of potable water from the aquifer.

Restrictions on access to public lands resulting in socioeconomic costs are also unlikely. Designation of critical habitat would impose no restrictions on access to public lands. However, as noted elsewhere, hiking to these lands is difficult due to their remoteness; some of the units are accessible only by helicopter and are rarely visited. New obligations for how private landowners manage their lands are not expected, however the potential cost of land and stream management under voluntary conservation programs for the snail are addressed in the EA.

41. *Comment:* One commentor stated that the cost of potential citizen suits preventing certain activities or requiring some sort of management in critical habitat was not discussed in the DEA. Another commentor stated that critical habitat designation will bring unnecessary and costly litigation. One commentor stated that proposed critical habitat could entail considerable cost to both the State and private landowners. One commentor stated that critical habitat designation could indirectly result in limitations or special management requirements being established on private lands. These costs should be considered. Costs of delays to projects while surveys, studies, and Service review are undertaken and all potential consequences of designation should be considered, not solely those with the direct jurisdiction of the Service.

Our Response: Some landowners and managers are concerned that this critical habitat designation will directly or indirectly impose new obligations on them with regard to how they must manage their land, even if they do not propose a new project, land use, or activity. However, the Act does not obligate landowners to manage their land to protect critical habitat, nor would landowners and managers be obligated under the Act to participate in projects to recover a species for which critical habitat has been established.

Adverse impacts on development, including delays for additional studies and agency reviews, increased costs for environmental studies, increased risk of project denials, increased risk of costly mitigation measures, increased risk of litigation over approvals, etc., are not expected since, as discussed in the EA, no development projects are likely to occur in the proposed critical habitat. This reflects the facts that the subject land is largely unsuitable for development due to the rugged mountain terrain, lack of access, and remote location; and that existing land-use controls in the Conservation District severely limit development. While it is conceivable that there may initially be an increase in subsequent lawsuits related to the critical habitat designation, it is not possible to predict their number, degree of complexity, or any other associated effect with project delays due to scant historical evidence for the Newcomb's snail.

42. *Comment:* One commentor stated that the DEA has a lack of a thorough benefits analysis. It does not include the benefits of watershed protection and improvement, protection of other stream and riparian biota, and the value of the snail as an indicator of ecological health. Other multiple commentors stated that the DEA ignored the benefit of keeping other native species off the endangered species list, of maintaining water quality and quantity, of promoting ground water recharge, and of preventing siltation of the marine environment, thus protecting coral reefs. Another commentor noted that additional benefits of critical habitat include combating global warming, providing recreational opportunities, attracting ecotourism, and preserving Hawaii's natural heritage. The Service must use the tools available such as a University of Hawaii Secretariat for Conservation Biology study that estimated the value of ecosystem services, to determine the benefits of critical habitat.

Our Response: There is little disagreement in the published economics literature that real social welfare benefits can result from the conservation and recovery of endangered and threatened species. Such benefits have also been ascribed to preservation of open space and biodiversity, both of which are associated with species conservation. Likewise, a regional economy can benefit from the preservation of healthy populations of endangered and threatened species, and the habitat on which these species depend. It is not feasible, however, to fully describe and accurately quantify these benefits in the specific context of the Newcomb's snail critical habitat. For example, most of the studies in the economics literature do not allow for the separation of the benefits of listing (including the Act's take provisions) from the benefits of critical habitat designation. The discussion presented in the DEA and in the Addendum provides examples of potential benefits, which derive primarily from the listing of the species, based on information obtained in the

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course of developing the economic analysis. It is not intended to provide a complete analysis of the benefits that could result from section 7 of the Act in general, or of critical habitat designation in particular. In short, the Service believes that the benefits of critical habitat designation are best expressed in biological terms that can be weighed against the expected cost impacts of the rulemaking; our analysis under section 4(b)(2) of the Act focuses this comparison.

Regarding other native aquatic species, the Service believes that five species of concern (four snails and one fish) and one candidate species (a damselfly) may occur within the critical habitat boundaries for the Newcomb's snail. As more is learned about these species (*e.g.*, their populations and trends, ranges, threats to their survival, *etc.*), the Service may list one or more of them as threatened or endangered. As indicated in the economic analysis, the critical habitat designation and listing of the Newcomb's snail are expected to result in few or no modifications to projects or activities over the next ten years. Nevertheless, critical habitat designation may help to educate landowners and organizations about the locations of the Newcomb's snail and where to focus future conservation efforts, including efforts to control non-native predators. Thus, critical habitat designation may indirectly enhance the survival of other native aquatic species that share the same habitat as the Newcomb's snail. If the Service determines that one or more of these species does not need to be added to the threatened and endangered species list, the avoided cost (*i.e.*, economic benefits) could be large. However, the economic value of these indirect benefits to other native aquatic species is not quantified because of a lack of information on: (1) The nature and extent of future conservation projects due to the Newcomb's snail listing and its critical habitat designation, or enhancements to other conservation projects due to the Newcomb's snail; (2) the resulting improvements in stream quality; (3) the nature and extent of the benefits to other native aquatic species (*e.g.*, increases in their populations and ranges); (4) the reduced probability that one or more other species will be listed; (5) the avoided cost of the listing and designation of critical habitat; and (6) the economic value to society of enhanced survival of these species.

In the case of islandwide beneficial impacts, such as water recharge, the proposed Newcomb's snail critical habitat comprises a comparatively small area (less than 3 percent) of the mountainous interior of Kauai. As indicated in the DEA, the critical habitat areas are not subject to development pressures or other significant changes because they are located in the upper headwater reaches of streams. Much of the critical habitat is located in areas of steep slopes, remote locations, and difficult access; some of the units are accessible only by helicopter and are rarely visited. Also, all of the units are in the State Conservation District which severely limits development, most commercial activities, and other changes in land use. Assuming no Newcomb's snail listing and no critical habitat designation, no significant changes are expected in watershed, riparian, or stream conditions. Even with the species listing and critical habitat designation along with related efforts to control threats to the Newcomb's snail, anticipated changes in game-mammal management of surrounding lands (the most liberal hunting is already allowed in these areas in order to reduce ungulate populations), and other related land and stream management are not expected and, no significant changes to the watershed, riparian, or stream conditions are expected. Thus, critical habitat designation for the Newcomb's snail is expected to result in few benefits related to increased groundwater recharge, stream water quality, reduced siltation of nearshore reefs and other marine resources, reduced global warming, increased recreational opportunities, increased ecotourism, *etc.*

The 1999 analysis by University of Hawaii (UH) was, in fact, used in the DEA as a resource document for concepts, and for identifying documents that report the original research on certain subjects. However, the UH study has limited applicability for valuing the benefits of Newcomb's snail critical habitat designation for a number of reasons. First, the UH study had a different purpose, which was to estimate the total value of environmental benefits provided by the entire Koolau Mountains on the island of Oahu versus the value of the more limited benefits provided by the proposed Newcomb's snail critical habitat on the island of Kauai. Consistent with its purpose, the UH study provides no estimates of the changes in environmental conditions resulting from changes in land and stream management due to critical habitat designations. Furthermore, many of the assumptions and much of the analysis in the UH study are not transferable to the economic analysis for the Newcomb's snail critical habitat. For example, the value of water recharge in the UH study reflects projected water supply and demand conditions on Oahu, an island which is 9 percent larger than Kauai but has a population of more than 12 times that of Kauai. Also, the UH benefit analysis of reducing soil runoff is unique to three valleys that drain through partially channelized streams in urban areas into the man-made Ala Wai Canal. Since this canal was designed without adequate flushing from stream or ocean currents, it functions as an unintended settling basin and must undergo expensive dredging periodically. In addition, the recreational and ecotourism values provided in the UH study apply to areas that are accessible to most hikers, which is not the case with most of the Newcomb's snail critical habitat. As mentioned previously, the Newcomb's snail critical habitat units are located in the upper reaches of streams and rivers on Kauai, and the majority of these areas are rarely visited.

43. *Comment:* One commentor stated that the DEA fails to evaluate the practical effect of critical habitat designation will have on Special Management Area permits administered by Kauai County as required by Hawaii's Coastal Zone Management Act. Because these permits will be harder to get, it will result in delays which will cause a decline in property values and may make it impossible to develop.

Our Response: None of the critical habitat designated for the Newcomb's snail lies within the Special Management Areas designated by Kauai County under the Hawaii's Coastal Zone Management Program.

44. *Comment:* The conclusion under E.O. 12866 that the rule will not have an annual economic effect of $100 million or more, or adversely affect in a material way any sector of the economy or State or local governments or communities, is flawed because it does not consider the major adverse impacts from secondary effects.

Our Response: For the reasons explained in our EA, we do not believe that this rule, as designated, will have an annual economic effect of $100 million or more. However, pursuant to Executive Order (E.O.) 12866, Office of Management and Budget (OMB) determined that it raises novel legal or policy issues. Therefore, it is "a significant regulatory action" under E.O. 12866, and, as a result, it rule has undergone OMB review.

Both the DEA and the EA addendum provide analysis of the indirect costs associated with designation of critical habitat for the Newcomb's snail in terms of land management, loss in property values, and impacts to existing and future stream diversions. These indirect costs were considered and those costs that could be quantitatively estimated were addressed in the DEA and the EA addendum. Some potential costs were not estimated because the likelihood of actually incurring the cost is considered to be extremely remote. For a complete listing of all secondary effects considered and any resulting economic impacts, refer to the DEA and the EA addendum under section 3.d Other Costs.

Summary of Changes From the Proposed Rule

Two critical habitat boundaries were modified due to new information received during the comment period. The downstream boundaries of Sub-Unit III(a) (Waipahee Stream) and Sub-Unit III(c) (North Fork Wailua River) were modified after our analysis of this new information.

In both locations, at various times, existing diversion structures completely remove water from the stream to ditch systems. This diverted water flows into a ditch system and is then used for irrigation and hydropower production. These diversion structures were built in the early 1900s during the expansion of the sugar industry in the Hawaiian Islands. At that time, no structural modifications were incorporated into the design of dams and weirs to facilitate passage of aquatic organisms, nor did environmental considerations lead to the maintenance of stream flows in the reaches below the dams. To the contrary, these diversion structures were expressly designed to be as efficient as possible in capturing and diverting as much of the stream flow as possible, particularly during periods of moderate and low flow, when agricultural demand for water resources is high.

The North Fork Wailua River sub-unit is located on State lands. A series of changes to agricultural water needs, ownership of plantation lands, and a transfer of ownership of the island's electrical power utility, have left long-term resolution of future water allocation and operation and maintenance of the ditch system in question. Despite some uncertainty with water use, State agencies charged with licensing the water withdrawals have committed to at least two private entities that this diversion will remain in place and continue to function much as it has historically. A rough, quantitative estimate and analysis of hydrologic characteristics of the diversion operation submitted to the Service by the current water users (Alton Miyamoto, V.P. and General Manager, Kauai Electric, *in litt.* 2002) demonstrated that the reach below the dam is dry approximately 25 percent of the time. Therefore, the area below the dam does not contain the primary constituent element of perennial flow and therefore is not critical habitat.

The Waipahee sub-unit is located on private lands that have already undergone a transition from sugar cane to diversified crops and grazing. The landowner continues to divert water from the stream to maintain reservoirs on the property to support these activities, and in anticipation of unspecified future water needs. Anecdotal evidence indicates that the diversion removes all of the water from the stream during low flow periods at the Waipahee diversion.

Because an ample instream flow of cool, clean water is considered to be one of the primary constituent elements for the Newcomb's snail, and the diversion structures in the proposed Waipahee and North Fork Wailua River sub-units have altered the hydrologic regimes of the reaches below the dams to the extent that no water flows past the dams during biologically significant periods of time, we conclude that the reaches below the diversion structures do not exhibit the primary constituent elements required by the Newcomb's snail and are therefore not essential for its conservation. In both cases, the lower elevation boundary of critical habitat was moved to a location just upstream of the diversion dam, where stream flow is continuous and subject only to natural fluctuation. This resulted in a reduction of 0.68 km (0.43 mi) of stream channel and 40 ha (99 ac) of total area from the final designation for the Waipahee Stream sub-unit and 0.59 km (0.37 mi) of stream channel and 28 ha (68 ac) of total area from the final designation for the North Fork Wailua River sub-unit.

The proposed critical habitat designation in the Wainiha River was excluded based upon the reasons set out below (*see* Exclusions Under Section 4(b)(2) below). Removing the Wainiha sub-unit resulted in removing an additional 5.3 km (3.3 mi) and 229 ha (566 ac) from the final designation of critical habitat.

Economic Analysis

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available, and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat designation if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species.

Following the publication of the proposed critical habitat designation, a draft EA was prepared to estimate the potential economic effects of the proposed designation. The draft EA was made available for public review on March 29, 2002 (67 FR 3849). We accepted comments on the draft EA until April 29, 2002. Additionally, we held a public hearing on the proposed designation and the draft EA on April 17, 2002, in Lihue, HI. Following the close of the comment period for the draft EA, a final addendum was completed which incorporated public comments on the draft EA and made any necessary modifications to the economic analysis. The economic analysis for this rule consists of the draft EA as modified by the Addendum to the EA.

Our economic analysis evaluated the section 7 economic effects associated with the listing of the Newcomb's snail as a threatened species under the Act, as well as any potential effects of the critical habitat designation above and beyond those economic impacts associated with listing. To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a "without critical habitat" baseline and compared it to a "with critical habitat" scenario. The "without critical habitat" baseline represented the current and expected economic activity prior to the critical habitat designation, including protections afforded the species under Federal and State laws, as well as other existing land-use restrictions. The difference between the two scenarios measured the net change in economic activity attributable to the designation of critical habitat. The categories of potential costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations associated with the listing or with the critical habitat, including technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat; and (4) potential offsetting beneficial costs associated with critical habitat including educational benefits. The majority of consultations resulting from the critical habitat designation for the Newcomb's snail are likely to address

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conservation actions such as watershed restoration and ecosystem protection. While consultations related to future water management activities, such as hydropower and water diversion, are possible, they are considered unlikely for reasons discussed in the economic analysis.

The addendum to the draft EA estimates that the designation may result in potential economic effects of $28,500 over a 10-year period, and concludes that economic impacts anticipated from the designation of critical habitat for the Newcomb's snail would not be significant. This is a reduction of $5,200 from the costs estimated in the original draft EA, and is due to the exclusion of one of the originally proposed critical habitat sub-units, and the modification of boundaries of two other sub-units. As described in the analyses, direct costs result from conservation projects and secondary costs result from investigations of the implications of critical habitat designation. A more detailed discussion of our economic analysis is contained in the draft EA and the Addendum. Both documents are included in the supporting documentation for this rule making and available for inspection at the Pacific Islands Fish and Wildlife Office (refer to **ADDRESSES** Section).

No critical habitat sub-units proposed in the draft rule were excluded or modified due to economic impacts. However, as described above, section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic impacts, of designating critical habitat. A proposed critical habitat sub-unit located in the Wainiha River Valley was excluded from designation based upon the relevant issue that designation of critical habitat would have a negative effect on the voluntary landowner conservation activities in the Valley, both ongoing and in development. The proposed 566-acre sub-unit is on private lands owned by Alexander and Baldwin, Inc. (A&B). A&B owns a 10,120-acre parcel that encompasses the large and remote central segment of the Wainiha River Valley.

The proposed Wainiha sub-unit is not known to be occupied by Newcomb's snail, although there is a credible report of a population of snails observed downstream of the diversion dam in the late 1980s. The most likely conservation actions in the Wainiha River Valley for the Newcomb's snail would be experimental translocation to establish new populations of Newcomb's snail, and surveys to potentially locate undocumented populations in unsurveyed habitat. Both of these activities would require substantial voluntary cooperation by A&B. Long term conservation in the valley might also include development of a Safe Harbor Agreement or a rule under section 10(j) of the Act (described below), both of which would require considerable landowner support and participation.

(1) Benefits of Inclusion

The benefits of inclusion of the Wainiha River Valley sub-unit within the area designated as critical habitat for the Newcomb's snail would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed actions do not destroy or adversely modify critical habitat. Historically, no consultations have occurred for the Newcomb's snail because the species was listed recently and is only found in remote locations on non-Federal lands where Federal actions are infrequent and therefore rarely trigger section 7 consultations.

Since about 1910, a run-of-the-river hydropower facility has operated in the Wainiha watershed. Currently, this hydropower plant is operated by Kauai Coffee Co., a subsidiary of A&B. The water diversion dam for the hydropower facility is immediately downstream of the boundary of the proposed critical habitat sub-unit for Newcomb's snail. There are no firm plans for new or expanded hydropower in the near future, and neither our draft EA or Addendum found a high probability of such expansion given the State Conservation District zoning of the land, environmental and cultural concerns, and the resulting exhaustive permitting and licencing procedures required for hydropower development.

Although we believe the likelihood of a consultation is remote, in the event that a hydropower development plan is actually proposed for this location, consultation requirements under section 7 of the Act would be triggered as a result of the permitting processes administered by the U.S. Army Corps of Engineers (ACOE) and, potentially, the Federal Energy Regulatory Commission (FERC). The benefit of critical habitat designation would ensure that any permits given by either the ACOE or FERC would not likely destroy or adversely modify any critical habitat. Without critical habitat designation in areas considered unoccupied by the Newcomb's snail, projects would not likely trigger consultation requirements under the Act.

Another benefit is that the designation of critical habitat can serve to educate the public regarding the potential conservation value of an area, and may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. Both of these outcomes are important for the Newcomb's snail. Because little is know of this species' biology and distribution, virtually any information that reaches a wide audience about this species can be considered valuable. Likewise, any information about this species and its habitats that reaches other parties engaged in conservation activities would be considered valuable.

(2) Benefits of Exclusion

The landowner and other interested parties stated that the designation of critical habitat as originally proposed could have a negative impact on future voluntary conservation efforts in Wainiha River Valley, including the reintroduction of Newcomb's snail. Through a voluntary agreement with the State of Hawaii Department of Land and Natural Resources Division of Forestry and Wildlife (DOFAW), A&B allows DOFAW to manage the Wainiha parcel for conservation purposes. Preservation of the parcel, in concert with the surrounding State lands (State-owned Halela Forest Reserve and the Alakai Wilderness Preserve), conserves watershed resources which in turn conserves habitat for Newcomb's snail. This management strategy is consistent with recovery of the species. While DOFAW restricts access to the parcel, they are not conducting management activities at this time. A&B has informed the Service that they are currently negotiating a voluntary conservation easement with TNCH to provide more active management of the valley for watershed protection. A&B has advised the Service that these negotiations, that will benefit Newcomb's snail by protecting its habitat, could be negatively impacted if critical habitat is designated for Newcomb's snail. Although the Service's draft EA did not find it likely, the landowners believe that critical habitat designation will result in State and County permits containing additional requirements and expense for protection of lands designated critical habitat.

Approximately one third, or 12,141 ha (30,000 ac), of the land owned by A&B lies within the State Conservation District. A significant portion of lands under conservation zoning as well as other lands provide habitat for and support resources such as threatened and endangered species and migratory birds. A&B has a history of entering into conservation agreements with various Federal and State agencies and non-governmental organizations on many of these lands. These arrangements take a variety of forms. They include partnership commitments ranging from simply allowing access to A&B-owned lands for government agency and non-governmental organization conservation partners to undertake surveys and site visits, to more extensive participation such as the provision of staff and funding for more active collaborative conservation partnerships. Ongoing examples of this include cave conservation actions undertaken by Kukuiula Develpment Co., an A&B subsidiary, to preserve cave habitat utilized by endangered cave fauna in the Koloa area of Kauai; and the active participation of the East Maui Irrigation Co., another A&B subsidiary, in the East Maui Watershed Partnership which is a collaborative multi-party organization leading the conservation of land and water resources in the east Maui mountains. Thus, ongoing conservation partnerships with A&B have a proven conservation benefit for threatened and endangered species and other resources.

We believe it is essential for the recovery of Newcomb's snail to build on continued conservation activities with a proven partner. Approximately 80 percent of imperiled species in the United States occur partly or solely on private lands where the Service has little management authority. In addition, recovery actions involving the reintroduction of listed species onto private lands requires the voluntary cooperation of the landowner. Therefore, "a successful recovery program is highly dependent on developing working partnerships with a wide variety of entities, and the voluntary cooperation of thousands of non-Federal landowners and others is essential to accomplishing recovery for listed species" (Crouse *et al.* 2002). Because the Federal government owns relatively little land in the State of Hawaii, and because large tracts of land suitable for conservation of threatened and endangered species is owned by private landowners, successful recovery of listed species in Hawaii is especially dependent upon working partnerships and the voluntary cooperation of non-Federal landowners. This is illustrated by the distribution of Newcomb's snail on Kauai: none of the locations known to be occupied by the snail are under Federal ownership, one site where snails are known to occur is on private lands, and one site where the snail was known from historical observations is privately owned (the Wainiha River Valley). The remaining occupied and previously occupied sites are on state-owned lands. Without the cooperation of these non-Federal landowners, neither surveys nor reintroduction of the Newcomb's snail can occur.

Because the recovery plan for the Newcomb's snail is currently being drafted, specific strategies for recovery appropriate for the Wainiha River Valley are not yet in place. However, it is clear that recovery of the species require reproducing, self-sustaining populations of Newcomb's snails located in a geographic array across the landscape, with both population numbers and population locations of sufficient robustness to withstand periodic threats due to natural disaster or biological threats. Since the Newcomb's snail is considered to be extirpated from this area, and natural repopulation is likely not possible without human assistance, the establishment of a non-essential experimental population of Newcomb's snails under section 10(j) of the Act, as well as development of a Safe Harbor Agreement, will be considered in Newcomb's snail recovery planning for the Wainiha River Valley. Several issues will need to be addressed before a decision is made on how best to accomplish this goal, including, for example, the degree of geographic isolation of any translocated population and whether a translocated population would be considered to be essential. The apparent local extinctions of Newcomb's snails in three watersheds in the north and northwest part of its range (Hanakoa Stream, Hanakapiai Stream, and Wainiha River) indicate that active management of threats, and research into the feasibility of reintroductions, may have to occur in the near term. Therefore it is essential for us to maintain all possible options to achieve these goals.

Section 10(j) of the Act enables us to designate certain populations of Federally listed species that are released into the wild as "experimental." The circumstances under which this designation can be applied are: (1) The population is geographically separate from non-experimental populations of the same species (*e.g.*, the population is reintroduced outside the species' current range but within its probable historical range); and (2) we determine that the release will further the conservation of the species. Section 10(j) is designed to increase our flexibility in managing an experimental population by allowing us to treat the population as threatened, regardless of the species' status elsewhere in its range. Threatened status gives us more discretion in developing and implementing management programs and special regulations for a population and allows us to develop any regulations we consider necessary to provide for the conservation of a threatened species. In situations where we have experimental populations, certain section 9 prohibitions (*e.g.*, harm, harass, capture) that apply to endangered and threatened species may no longer apply, and a special rule can be developed that contains the prohibitions and exceptions necessary and appropriate to conserve that species. This flexibility allows us to manage the experimental population in a manner that will ensure that current and future land, water, or air uses and activities will not be unnecessarily restricted and the population can be managed for recovery purposes.

When we designate a population as experimental, section 10(j) of the Act requires that we determine whether that population is either essential or nonessential to the continued existence of the species, based on the best available information. Nonessential experimental populations located outside National Wildlife Refuge System or National Park System lands are treated, for the purposes of section 7 of the Act, as if they are proposed for listing. Thus, for nonessential experimental populations, only two provisions of section 7 would apply outside National Wildlife Refuge System and National Park System lands: section 7(a)(1), which requires all Federal agencies to use their authorities to conserve listed species, and section 7(a)(4), which requires Federal agencies to informally confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. Section 7(a)(2) of the Act, which requires Federal agencies to ensure that their activities are not likely to jeopardize the continued existence of a listed species, would not apply to the 10(j) population except on National Wildlife Refuge System and National Park System lands. Experimental populations determined to be "essential" to the survival of the species would remain subject to the consultation provisions of section 7(a)(2) of the Act.

In order to establish an experimental population we must issue a proposed regulation and consider public comments on the proposed rule prior to publishing a final regulation. In addition, we must comply with the National Environmental Policy Act (NEPA). Also, our regulations require that, to the extent practicable, a regulation issued under section 10(j) of the Act represent an agreement between

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the Service, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of the experimental population (*see* 50 CFR 17.81(d)).

The flexibility gained by establishment of a nonessential experimental population through section 10(j) would be of little value if there is a designation of critical habitat that overlaps it, as Federal agencies would still be required to consult with us on any actions that may affect the designated critical habitat. In effect, the flexibility gained from section 10(j) would be rendered useless by the designation of critical habitat. In fact, section 10(j)(2)(C)(ii)(B) of the Act states that critical habitat shall not be designated under the Act for any experimental population determined to be not essential to the continued existence of a species. Although our draft EA and Addendum conclude that the probability of a Federal action occurring in Wainiha Valley is remote, the decision not to designate critical habitat in this area retains all flexibility provided by section 10(j), if it were to occur.

Both section 10(j) and Safe Harbor Agreements are meant to encourage state, local, and private cooperation through management flexibility. Critical habitat is often viewed negatively by landowners. It is important for recovery of this species that we have the support of A&B when we move towards taking specific recovery actions within the Wainiha River Valley. An important element in the recovery planning process for the Newcomb's snail is that the Service retain the flexibility in management options for reestablishing the species in areas outside of its current occupied range. The benefit of excluding this area from critical habitat is that we would retain this flexibility.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, the Service has determined that the benefits of excluding Wainiha River Valley as critical habitat for Newcomb's snail outweigh the benefits of including it as critical habitat. This conclusion is based on the following factors:

1. The Wainiha River Valley is currently being managed on a voluntary and cooperative basis with the State of Hawaii to achieve important conservation goals, and A&B is negotiating a longer term agreement with TNC to manage the watershed for conservation. In the past, A&B has cooperated with the Service, the State, and other organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits.

2. Given the current conservation management regime in place for the Wainiha River Valley, and the likely future conservation management described above, the Service believes the overall benefits of including this unoccupied sub-unit as critical habitat are relatively small. The designation of critical habitat can serve to educate the general public as well as conservation organizations regarding the potential conservation value of an area, but this goal will be effectively accomplished through the identification of this area in the Newcomb's snail recovery plan (USFWS in prep.) and in the management agreements described above. Likewise, there will be little Federal regulatory benefit to the species because, as described in the economic analysis, this proposed critical habitat sub-unit is unlikely to be affected by Federal activities requiring section 7 consultation. The Service is unable to identify any other potential benefits associated with critical habitat for this proposed sub-unit.

3. The proposed Wainiha River Valley critical habitat sub-unit is currently believed to be unoccupied by Newcomb's snail, and any future conservation efforts, such as translocation of snails to unoccupied habitat within the valley, will require the cooperation and good will of A&B. Also, the upper portions of the Valley owned by A&B include relatively pristine native forests. Preservation of these portions of the valley which require ongoing voluntary cooperation with governmental and private entities will protect the watershed and in turn the habitat for the snail.

4. A&B and other members of the public have commented that the designation of critical habitat in Wainiha River Valley will likely have a negative impact on ongoing and future voluntary conservation efforts by A&B in the valley. The Service believes there is a reasonable likelihood that A&B will curtail their current behavior of participating in voluntary conservation efforts on their lands on Kauai.

5. Critical habitat will also limit the management flexibility, including establishing nonessential experimental populations under section 10(j) of the Act or developing a Safe Harbor Agreement, needed to implement recovery actions and other conservation efforts for the Newcomb's snail in the Wainiha River Valley. If critical habitat is designated in this sub-unit we believe that existing and upcoming voluntary conservation programs, such as reintroduction, of Newcomb's snail into the Wainiha watershed will be impaired.

In conclusion, we find that the designation of critical habitat in Wainiha River Valley would most likely have a net negative conservation effect on Newcomb's snail recovery and other conservation activities. As described above, the overall benefits to the species of a critical habitat designation for this sub-unit are relatively small. We believe there is a higher likelihood of beneficial conservation activities occurring in the Wainiha River Valley without designated critical habitat than there would be with designated critical habitat in this location. We reached this conclusion because the landowner will more likely continue and increase their ongoing voluntary conservation efforts in the valley, to the benefit of the Newcomb's snail. Because the ultimate purpose of critical habitat is to contribute to the conservation of listed species, the Service believes it is reasonable and necessary to exclude areas from critical habitat where such designation has a high likelihood of negatively impacting ongoing voluntary conservation activities, and, in this case, the negative impacts outweigh any discernable conservation benefits of designation. Therefore, on balance it is the Service's conclusion that the net benefits of excluding the Wainiha River Valley from critical habitat for the Newcomb's snail outweigh the benefits of including it.

(4) Exclusion of This Sub-Unit Will Not Cause Extinction of the Species

The remaining eight critical habitat sub-units provide adequate habitat for the long term conservation of the species by providing six occupied sub-units and two unoccupied sub-units. These sub-units give protection from stochastic events and provide room for maintenance and expansion of the existing population. There is a much greater likelihood of undertaking conservation actions at this site to prevent extinction, such as translocation of snails to establish an additional population, without the Wainiha River Valley sub-unit being designated as critical habitat. Therefore, the exclusion of the proposed Wainiha River Valley sub-unit, which is not known to be occupied by the species at this time, will not cause the extinction of the Newcomb's snail.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by OMB, as OMB determined that this rule may raise novel legal or policy issues. As required by E.O. 12866, we have provided a copy of the rule, which describes the need for this action and how the designation meets that need, and the economic analysis, which assess the costs and benefits of this critical habitat designation, to OMB for review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that rules will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today's rule, we are certifying that the rule will not have a significant effect on a substantial number of small entities. The following discussion explains the factual basis for this certification.

Small entities include small organizations, such as independent non-profit organizations, small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, *etc.*). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. A "substantial number" of small entities is more than 20 percent of those small entities affected by the regulation, out of the total universe of small entities in the industry or, if appropriate, industry segment. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

The only regulatory effect of the designation of critical habitat is on activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect the Newcomb's snail. Federal agencies must also consult with us if their activities may affect designated critical habitat. When the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act. Because the Newcomb's snail has been listed only a relatively short time and there have been no activities with Federal involvement in these areas during this time, there is no history of consultations based on the listing of this species. Therefore, for the purposes of this review and certification under the RFA, we are assuming that any future consultations in the area designated as critical habitat will be due to the critical habitat designation.

Designation of critical habitat could also require reinitiation of consultation for ongoing Federal activities. However, since the Newcomb's snail has only been listed since January 2000, and there are no consultations involving the species, the requirement to reinitiate consultations for ongoing projects will not affect a substantial number of small entities.

None of the designation is on Federal lands. Six of the eight sites are on lands owned and managed by the State of Hawaii, which is not a small entity for purposes of this analysis. This includes sub-units within the Na Pali Coast State Park, Hono O Na Pali Natural Area Reserve, the Halela Forest Reserve and the Lihue-Koloa Forest Reserve. All of these land areas are primarily managed for conservation of natural resources, including threatened and endangered species.

Two of the eight sub-units of the designation are on private land. On private lands, activities that lack Federal involvement would not be affected by the critical habitat designation. Few, if any, activities of an economic nature currently occur on the private lands in the area encompassed by this designation. These areas are in the State Conservation District and have a very limited range of allowable activities that could occur there under the State Conservation District Use permitting program. Because of the Conservation District zoning, and because the sites are remote and inaccessible, development of commercial or agricultural activities is very unlikely. Therefore, Federal agencies such as the Economic Development Administration, which is occasionally involved in funding municipal projects, is unlikely to be involved in projects in these areas. On the Island of Kauai, previous consultations under section 7 of the Act between us and other Federal agencies most frequently involved the Department of the Navy and ACOE. In the case of ACOE consultations, the applicant is often the County of Kauai which is not considered a small entity as defined here. ACOE consultations involve permits for discharge of fill material in wetlands or waterways and occur due to the presence of threatened or endangered species (primarily the five endangered Hawaiian waterbirds) that spend at least part of their life in aquatic habitats. Because the stream channels designated as Newcomb's snail critical habitat are remote, no consultations due to ACOE permits are anticipated for activities such as road construction. Construction of new diversion structures in the stream segments designated as critical habitat,

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or rehabilitation of the abandoned water diversion structures in the Hanalei critical habitat sub-unit, is unlikely because agricultural practices have changed and irrigation demands have greatly diminished, but if such activities do occur and involve discharge of fill, ACOE permitting and section 7 consultation would be required.

Furthermore, we have identified only four entities, of which one may be considered a small entity, that may be affected by the implementation of a critical habitat designation on private lands. The four entities that may be impacted by the critical habitat designation are The Nature Conservancy of Hawaii (TNCH), Kamehameha Schools, Cornerstone Hawaii Holdings, LLC and Waipa Foundation. Critical habitat may impact Kamehameha Schools and Cornerstone Hawaii Holdings, LLC in terms of a slight decrease in value of some land it owns in the Conservation District and possibly expenditures on services to investigate the implications of critical habitat. The RFA/SBREFA defines "small organization" as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field (5 U.S.C. 601). TNCH is a large organization that is dominant in the conservation and land management field in Kauai County. Thus, TNCH is not likely to be considered a small organization. Kamhameha Schools is a non-profit, private educational institution which owns a considerable amount of real estate in Hawaii and other states. It is the dominant private trust in Hawaii dedicated to education and thus is not a small organization. The U.S. Small Business Administration defines businesses in the land-subdivision and land-development industry as small if their annual sales are less than $6 million. According to this definition and the information we obtained for our economic analysis, Cornerstone Hawaii Holdings, LLC is not a small business. The only small entity that may be impacted by the designation of critical habitat is the Waipa Foundation. Our EA states that the Waipa Foundation could be impacted if Kamehameha Schools enters into an agreement with TNCH and the Waipa Foundation to manage the Lumahai Valley for conservation and educational and cultural benefits. TNCH and the Waipa Foundation may seek funding from the Service to manage the valley, in which case the Service may conduct an internal consultation with a low level of complexity. TNCH and the Waipa Foundation could be involved in the consultation process, but their involvement would not be mandatory. Most of the cost of the consultation is likely to be borne by TNCH and in addition, Kamehameha Schools and possibly other organizations are likely to provide funding to the Waipa Foundation to help cover some or all of the costs incurred during consultation. Therefore, the designation of critical habitat for the Newcomb's snail is not likely to have a significant economic impact on the Waipa Foundation or any other small entity.

In summary, we have considered whether this rule would result in a significant economic effect on a substantial number of small entities. It would not affect a substantial number of small entities. The entire designation involves six sites on State lands and two sites on privately owned land, all of which are located in areas where likely future land uses are not expected to result in Federal involvement or section 7 consultations except for conservation activities.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, which applies to regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this has been designated as a significant regulatory action by OMB under E.O. 12866 for the reasons described above, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. No significant energy production, supply, and distribution facilities are included within designated critical habitat. Further, for the reasons described in the economic analysis, we do not believe that designation of critical habitat for Newcomb's snail will affect future energy production, in particular, hydropower development. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 August 25, 2000 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that Federal agencies funding, permitting, or authorizing other activities must ensure that their actions will not adversely modify the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we evaluated the impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation and found the direct and indirect costs associated with critical habitat designation to be small in relation to any small governments potentially affected.

(b) For the reasons described in the economic analysis and this final rule, this rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year. The designation of critical habitat imposes no obligations on State or local governments. Therefore, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the Newcomb's snail in a takings implication assessment. The takings implications assessment concludes that this rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this final rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with the Department of the Interior and Department of Commerce policy, we requested information from appropriate State resource agencies in Hawaii. The designation of critical habitat for the Newcomb's snail would have little incremental impact on State and local governments and their activities. The EA found that management of game hunting, conservation projects and natural disaster recovery projects may incur direct costs associated with section 7 consultations as a result of this designation. However, the designation may have some benefit to these governments in that the areas essential to the conservation of this species are more clearly defined, and the primary constituent elements of the habitat necessary for the survival of the species are identified. This definition and identification may assist these local governments in long-range planning rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Newcomb's snail.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not have to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. The designation of critical habitat for the Newcomb's snail does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this rule is available upon request from the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

The primary author of this document is Gordon Smith, Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for "Snail, Newcomb's" under "SNAILS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
SNAILS							
Snail, Newcomb's	*Erinna newcombi*	U.S.A. (HI)	Entire	T	680	17.95(f)	N/A

3. Amend § 17.95 (f) by adding critical habitat for the Newcomb's snail (*Erinna newcombi*) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and snails.* * * *

Newcomb's Snail (*Erinna newcombi*)

(1) Critical Habitat Units are depicted for the County of Kauai, Hawaii, on the maps below.

(2) Within these areas, the primary constituent elements required by the Newcomb's snail are those habitat components that are essential for the biological needs of foraging, sheltering, reproduction, and dispersal. The primary constituent elements are: cool, clean, moderate-to fast-flowing water in streams, springs, and seeps; their adjacent riparian areas and hydrogeologic features that capture and direct water flow to these spring and stream systems; a perennial flow of water throughout even the most severe drought conditions; and stream channel morphology that provides protection from channel scour by having overhanging waterfalls, protected tributaries, or similar refugia.

(3) Existing human-made features and structures within the boundaries of the mapped units, such as dams, ditches, tunnels, flumes, and other human-made features that do not contain the primary constituent elements, are not included as critical habitat.

(4) Critical Habitat Unit I—Na Pali Coast Streams—(i) Unit I(a): Kalalau Stream (149 ha; 368 ac). The Kalalau Stream Newcomb's snail critical habitat location consists of all flowing surface waters within 63 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 435010, 2450871; 434991, 2450828; 435008, 2450782; 435112, 2450715; 435107, 2450681; 435044, 2450591; 435058, 2450537; 435120, 2450441; 435078, 2450308; 435048, 2450279;

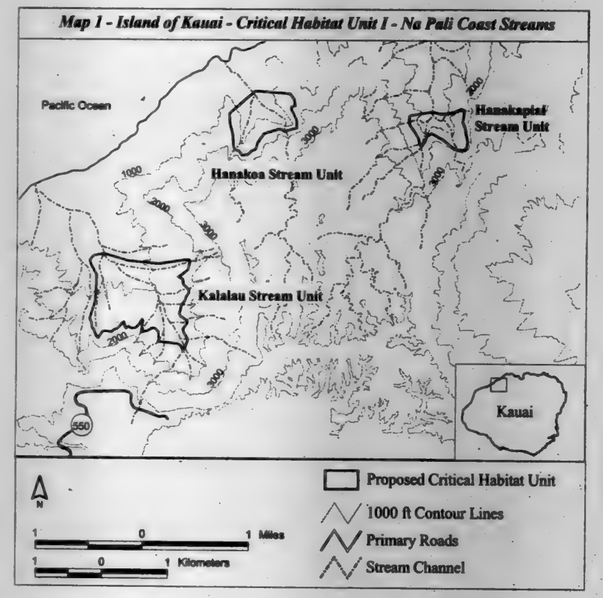
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435017, 2450341; 434968, 2450375; 434678, 2450406; 434682, 2450441; 434678, 2450551; 434618, 2450603; 434578, 2450602; 434518, 2450564; 434418, 2450540; 434444, 2450711; 434428, 2450733; 434388, 2450657; 434338, 2450612; 434278, 2450596; 434228, 2450621; 434188, 2450596; 434166, 2450621; 434159, 2450691; 434148, 2450691; 434058, 2450599; 433995, 2450571; 433968, 2450540; 433878, 2450559; 433825, 2450544; 433767, 2450451; 433738, 2450478; 433700, 2450581; 433670, 2450611; 433670, 2450671; 433633, 2450738; 433715, 2450996; 433732, 2451168; 433740, 2451380; 433642, 2451551; 433633, 2451598; 433688, 2451664; 433842, 2451694; 434206, 2451592; 434680, 2451547; 435053, 2451609; 435129, 2451611; 435147, 2451590; 435114, 2451460; 435048, 2451400; 434973, 2451360; 435041, 2451320; 435043, 2451250; 435134, 2451170; 435126, 2451120; 435089, 2451069; 435075, 2451013; 435018, 2450933; 435010, 2450871;

(ii) Unit I(b): Hanakoa Stream (63 ha; 156 ac). The Hanakoa Stream Newcomb's snail critical habitat location consists of all flowing surface waters within 24 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 435729, 2453628; 435717, 2453789; 436111, 2454127; 436637, 2454087; 436700, 2454008; 436719, 2453907; 436658, 2453889; 436654, 2453857; 436735, 2453697; 436744, 2453577; 436558, 2453527; 436518, 2453555; 436478, 2453559; 436250, 2453496; 436152, 2453358; 436123, 2453263; 436068, 2453238; 435998, 2453171; 435918, 2453168; 435869, 2453229; 435799, 2453248; 435780, 2453320; 435770, 2453490; 435729, 2453628.

(iii) Unit I(c): Hanakapiai Stream (35 ha; 86 ac). The Hanakapiai Stream Newcomb's snail critical habitat location consists of all flowing surface waters within 25 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 438438, 2453772; 438785, 2453827; 438899, 2453794; 438961, 2453796; 439113, 2453829; 439216, 2453871; 439257, 2453846; 439234, 2453666; 439263, 2453606; 439310, 2453377; 439299, 2453306; 439258, 2453253; 439158, 2453265; 439098, 2453290; 438949, 2453407; 438769, 2453508; 438692, 2453457; 438674, 2453387; 438618, 2453307; 438591, 2453347; 438578, 2453417; 438525, 2453507; 438443, 2453622; 438429, 2453677; 438438, 2453772.

(iv) Map 1—Unit I—Na Pali Coast Streams follows:

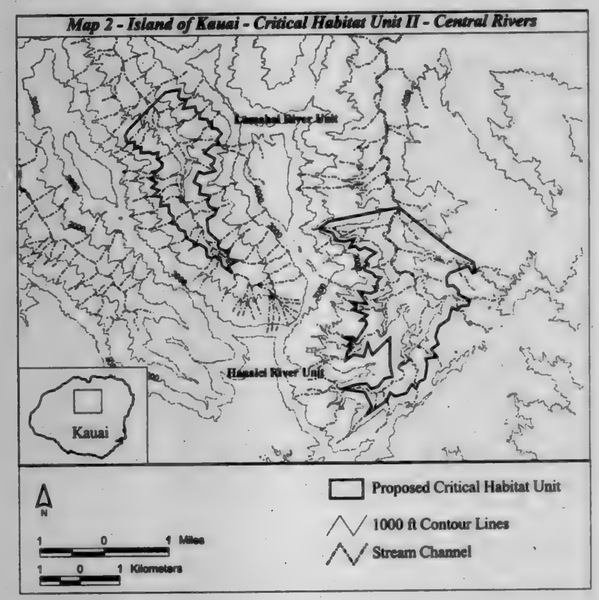


(5) Critical Habitat Unit II—Central Rivers—(i) Unit II(a): Lumahai River (492 ha; 1,216 ac). The Lumahai River Newcomb's snail critical habitat location consists of all flowing surface waters within 89 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 447598, 2445954; 447344, 2446136; 447298, 2446352; 447248, 2446290; 447178, 2446384; 447088, 2446327; 446972, 2446364; 446950, 2446572; 446787, 2446678; 446648, 2446627; 446648, 2446739; 446445, 2446836; 446409, 2447000; 446278, 2447034; 446208, 2447169; 446097, 2447178; 446141, 2447349; 446024, 2447449; 446014, 2447649; 445808, 2447618; 445809, 2447680; 445839, 2447840; 445616, 2447859; 445773, 2448009; 445589, 2448069; 445728, 2448189; 445531, 2448299; 445685, 2448359; 445605, 2448469; 445728, 2448478; 445854, 2448578; 445858, 2448680; 445728, 2448778; 445759, 2448939; 445618, 2448896; 445548, 2448954;

445318, 2448932; 445338, 2449080; 445164, 2449034; 445171, 2449211; 444998, 2449168; 444932, 2449348; 445008, 2449493; 445936, 2450417; 446309, 2450498; 446262, 2450317; 446309, 2450238; 446476, 2450245; 446385, 2450007; 446688, 2450060; 446714, 2449913; 446811, 2449890; 446799, 2449758; 446998, 2449747; 447028, 2449643; 447101, 2449690; 447098, 2449525; 447228, 2449509; 447343, 2449387; 447229, 2449247; 447298, 2449117; 447128, 2449116; 446901, 2448918; 447174, 2448778; 447144, 2448668; 447066, 2448628; 447190, 2448478; 446898, 2448400; 446778, 2448451; 446649, 2448198; 446831, 2448108; 446782, 2447899; 447064, 2447862; 446986, 2447707; 447038, 2447583; 447225, 2447529; 447162, 2447395; 446973, 2447289; 447008, 2446969; 447288, 2446719; 447234, 2446659; 447268, 2446571; 447448, 2446499; 447548, 2446559; 447484, 2446393; 447518, 2446304; 447739, 2446259; 447507, 2446131; 447598, 2445954;

(ii) Unit II(b): Hanalei River (876 ha; 2,165 ac). The Hanalei River Newcomb's snail critical habitat location consists of all flowing surface waters within 91 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 450038, 2447210; 451786, 2447529; 453099, 2446469; 453648, 2446167; 453691, 2445925; 453614, 2445904; 453508, 2446074; 453044, 2445908; 452961, 2445785; 452974, 2445578; 453125, 2445605; 453267, 2445468; 453258, 2445377; 453550, 2445238; 453508, 2445111; 453318, 2445096; 453238, 2444991; 453098, 2445064; 453010, 2444769; 452768, 2444606; 452680, 2444349; 452760, 2444169; 452581, 2444039; 452723, 2443844; 452429, 2443810; 452486, 2443680; 452419, 2443309; 452280, 2443240; 452198, 2443073; 452088, 2443185; 451948, 2442960; 451678, 2442885; 451549, 2442979; 451471, 2442787; 450955, 2442448; 451082, 2442651; 450916, 2442988; 450337, 2443081; 450718, 2443188; 450968, 2443197; 451068, 2443077; 451255, 2443133; 451414, 2443330; 451612, 2443370; 451552, 2443666; 451549, 2444330; 451107, 2443911; 450988, 2444210; 450894, 2443874; 450638, 2443920; 450431, 2443773; 450492, 2444026; 450614, 2444100; 450468, 2444134; 450592, 2444250; 450389, 2444360; 450621, 2444363; 450698, 2444275; 450967, 2444669; 450939, 2444770; 450803, 2444769; 450978, 2444899; 450611, 2445032; 450698, 2445101; 450573, 2445219; 450969, 2445168; 450768, 2445479; 451068, 2445422; 451226, 2445489; 451158, 2445584; 451251, 2445606; 451216, 2445692; 451335, 2445819; 451188, 2445824; 451124, 2445925; 450928, 2445983; 450904, 2446088; 451017, 2446148; 450940, 2446208; 451031, 2446325; 451208, 2446428; 450928, 2446552; 450788, 2446490; 450668, 2446603; 450538, 2446560; 450668, 2446774; 450418, 2446700; 450199, 2446739; 450133, 2446913; 449784, 2447034; 450038, 2447210.

(iii) Map 2—Unit II—Central Rivers—follows:



(6) Critical Habitat Unit III—Eastside Mountain Streams—(i) Unit III(a): Waipahee Stream (66 ha; 163 ac). The Waipahee Stream Newcomb's snail critical habitat location consists of all flowing surface waters within 78 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 458921, 2447414; 458943, 2447424; 458998, 2447420; 459102, 2447444; 459044,

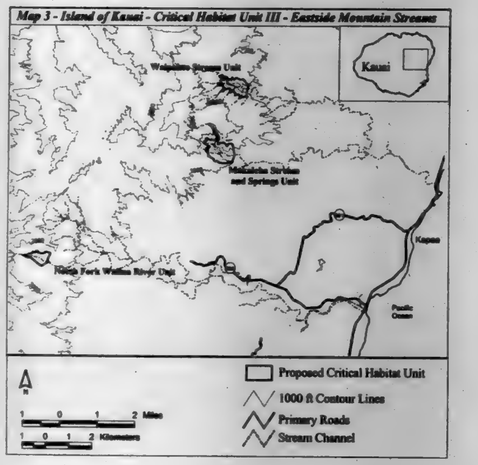
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2447534; 459104, 2447563; 459108, 2447613; 459085, 2447643; 459100, 2447671; 459118, 2447693; 459108, 2447714; 459078, 2447703; 459048, 2447661; 459028, 2447663; 459017, 2447694; 459045, 2447696; 459054, 2447727; 459118, 2447770; 459164, 2447749; 459191, 2447646; 459231, 2447596; 459309, 2447603; 459321, 2447623; 459306, 2447685; 459351, 2447663; 459398, 2447531; 459478, 2447584; 459518, 2447553; 459568, 2447656; 459586, 2447613; 459648, 2447556; 459738, 2447649; 459918, 2447569; 459998, 2447569; 460018, 2447584; 460048, 2447572; 460055, 2447576; 460261, 2447303; 460229, 2447182; 460178, 2446882; 460172, 2446875; 460058, 2446836; 459978, 2446834; 459906, 2446782; 459887, 2446803; 459902, 2446878; 459848, 2446946; 459818, 2446933; 459778, 2446940; 459694, 2446904; 459702, 2447004; 459648, 2447020; 459638, 2447098; 459608, 2447104; 459508, 2447031; 459502, 2447068; 459448, 2447061; 459500, 2447134; 459467, 2447203; 459445, 2447214; 459408, 2447183; 459388, 2447194; 459318, 2447163; 459268, 2447169; 459248, 2447139; 459218, 2447136; 459182, 2447074; 459148, 2447057; 459078, 2447076; 459083, 2447094; 459148, 2447124; 459185, 2447224; 459166, 2447274; 459178, 2447334; 459118, 2447345; 458948, 2447313; 459001, 2447384; 458928, 2447407.

(ii) Unit III(b): Makaleha Stream (95 ha; 235 ac). The Makaleha Stream Newcomb's snail critical habitat location consists of all flowing surface waters within 68 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 459368, 2444730; 459372, 2444732; 459414, 2444830; 459438, 2444851; 459498, 2444854; 459528, 2444873; 459588, 2444828; 459601, 2444832; 459689, 2444388; 459662, 2444260; 459604, 2444112; 459455, 2444044; 459279, 2444030; 459064, 2444037; 459008, 2444069; 459002, 2444101; 458968, 2444099; 458944, 2444123; 458878, 2444096; 458808, 2444142; 458803, 2444197; 458748, 2444245; 458658, 2444279; 458633, 2444322; 458576, 2444325; 458582, 2444377; 458552, 2444407; 458568, 2444467; 458478, 2444527; 458474, 2444587; 458537, 2444607; 458492, 2444667; 458608, 2444684; 458633, 2444746; 458545, 2444763; 458495, 2444803; 458485, 2444833; 458418, 2444844; 458347, 2444897; 458418, 2444925; 458411, 2444963; 458504, 2444960; 458503, 2444991; 458458, 2445046; 458458, 2445076; 458528, 2445084; 458582, 2445036; 458678, 2444990; 458718, 2445049; 458798, 2444992; 458818, 2444992; 458868, 2445050; 458908, 2445056; 458933, 2445106; 458927, 2445176; 458854, 2445276; 458808, 2445463; 458960, 2445258; 459033, 2445116; 459033, 2445066; 458978, 2444969; 458983, 2444831; 459038, 2444842; 459088, 2444900; 459158, 2444877; 459218, 2444913; 459331, 2444816; 459368, 2444730.

(iii) Unit III(c): North Fork Wailua River (36 ha; 90 ac). The North Fork Wailua River Newcomb's snail critical habitat location consists of all flowing surface waters within 23 boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 450656, 2440137; 450861, 2440154; 450920, 2440206; 450968, 2440196; 451045, 2440217; 451079, 2440286; 451145, 2440241; 451197, 2440262; 451211, 2440324; 451291, 2440314; 451291, 2440244; 451426, 2440217; 451589, 2440237; 451616, 2440286; 451811, 2440230; 451801, 2440139; 451748, 2440049; 451717, 2439976; 451701, 2439841; 451455, 2439688; 451343, 2439745; 450968, 2440043; 450840, 2440040.

(iv) Map 3—Unit III—Eastside Mountain Streams follows:



Dated: August 9, 2002.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–20696 Filed 8–19–02; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday,
August 20, 2002

Part III

Department of Transportation

Office of the Secretary

14 CFR Part 330

Procedures for Compensation of Air Carriers; Final Rule

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 330

[Docket OST–2001–10885]

RIN 2105–AD06

Procedures for Compensation of Air Carriers

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: On September 22, 2001, President Bush signed into law the Air Transportation Safety and System Stabilization Act ("the Act"). The Act makes available to the President funds to compensate air carriers, as defined in the Act, for direct losses suffered as a result of any Federal ground stop order and incremental losses beginning September 11, 2001, and ending December 31, 2001, directly resulting from the September 11 terrorist attacks on the United States. On October 29, 2001, the Department published a rule to carry out this Act, which it amended on January 2, 2002, and April 16, 2002. The Department requested comment on each of these issuances, and the comments received were addressed in the subsequent version of the rule. This document responds to the comments received on the April 2002 amendments.

DATES: This rule is effective August 20, 2002.

FOR FURTHER INFORMATION CONTACT: Steven Hatley, U.S. Department of Transportation, Office of International Aviation, 400 7th Street, SW., Room 6402, Washington, DC 20590. Telephone 202–366–1213.

SUPPLEMENTARY INFORMATION: As a consequence of the terrorist attacks on the United States on September 11, 2001, the U.S. commercial aviation industry suffered severe financial losses. These losses placed the financial survival of many air carriers at risk. Acting rapidly to preserve the continued viability of the U.S. air transportation system, President Bush sought and Congress enacted the Air Transportation Safety and System Stabilization Act ("the Act"), Pub. L. 107–42.

Under section 101(a)(2)(A–B) of the Act, a total of $5 billion in compensation is provided for "direct losses incurred beginning on September 11, 2001, by air carriers as a result of any Federal ground stop order issued by the Secretary of Transportation or any subsequent order which continues or renews such stoppage; and the incremental losses incurred beginning September 11, 2001 and ending December 31, 2001, by air carriers as a direct result of such attacks."

On October 29, 2001 (66 FR 54616), the Department published in the **Federal Register** a final rule and request for comments to establish procedures for air carriers regarding compensation under the Act. The rule covered such subjects as eligibility, deadlines for application, information and forms required of applicants, and audit requirements. On January 2, 2002 (67 FR 250), the Department published an amendment to the final rule that responded to comments on the October 29 rule. On the same date (67 FR 263), the Department also requested comments concerning whether a set-aside of a portion of the funds authorized by the Act should be established to ensure adequate compensation for certain classes of air carriers. On April 16, 2002, the Department published further amendments to the final rule that, among other provisions, did establish such a set-aside (67 FR 18468). The Department requested comments on the rule, as amended. We received a number of comments, primarily from air carriers and their organizations, to which this document responds.

With the amendments to the rule and responses to comments we are publishing in this document, the Department has completed the rulemaking process. Part 330, as published today, will govern the ultimate determinations of the amount of compensation for which air carriers are eligible.

Comments and Responses

Air Ambulance Issues

The Association of Air Medical Services (AAMS) disagreed with the Department's decision, in the April 2002 amendments to Part 330, to base compensation for carriers eligible for the set-aside on a cents per available seat-mile (ASM) calculation. This, AAMS said, was contrary to the direction given by Congress in P.L. 107–42 authorizing the Department to establish a set-aside for carriers "for whom application of a distribution formula containing available seat miles as a factor would inadequately reflect their share of direct and incremental losses." AAMS said that, as a result of this decision, air ambulances would still be compensated for a much smaller percentage of their losses than other small carriers flying similar aircraft. This is because air ambulances fly fewer ASMs than other types of carriers, though they incur greater expenses on a full-time basis while waiting for a call.

AAMS also disagreed with the Department's determination that the costs of medical personnel should not be viewed as transportation expenses, saying that these personnel were essential to the specialized functions for which air ambulances are licensed. Ten individual air ambulance companies submitted very similar letters that essentially echoed the AAMS position, adding that they supported AAMS' previous proposal for basing set-aside compensation for air ambulances on the Medicare fee schedule.

DOT Response

As part of the Aviation and Transportation Security Act, Pub. L. 107–71, Congress granted the President the discretion to establish a set-aside to provide compensation for various classes of air carriers, including air ambulances and air tour operators, which would be inadequately compensated under the ASM formula. Section 124(d)(2) of the Security Act further required that any amount so set aside be distributed "proportionately among such carriers based on an appropriate auditable measure."

The Department solicited comments through the **Federal Register** on whether such a set-side should be established, which types of carriers it might cover, and what method or methods might be used to allocate any funds so set aside. Many types of carriers offered comments, and although strong cases were made that smaller carriers had been disadvantaged by the ASM formula, the comments reflected a lack of consensus on any single approach that might be used to allocate set-aside funds proportionately among them. Different types of carriers tended to advocate compensation formulas that would address their particular situations, but not be applicable to the situations of other carriers. 67 FR 18468 (April 16, 2002).

Ultimately, the Department established the set-aside and, in its discretion, established eligibility standards that we believed were fair to all types of carriers in the affected classes. Those eligibility standards allowed carriers to participate if they operated fewer than 10 million ASMs in the benchmark month of August 2001. Rather than adopt a different allocation formula for each type of carrier, which would have been difficult to administer and would likely have perpetuated some of the originally perceived inequities, the Department chose to continue to rely on ASMs as the base auditable measure. At the same time,

however, it substantially increased the compensation that would be paid for each ASM flown by carriers in the affected classes. We also established a minimum recovery level of 25 percent of eligible transportation-related losses, as well as a higher ASM formula amount for the smallest air carriers (*i.e.*, fewer than 310,000 ASMs for August 2001). Typically, this approach will allow carriers in the set-aside class to receive significantly more than the amount of compensation that would have been paid under the ASM formula set forth in Pub. L. 107–42.

We understand that some carriers still feel disadvantaged under this approach. However, it largely brings smaller passenger carriers up to an equivalent level of compensation as received by the larger passenger carriers. In some instances, smaller carriers will be receiving up to 20 times more than they would have received under the old formula.

As to arguments that medical costs should be included within the compensation formula as integral to aircraft operations, the Department has interpreted the Stabilization Act as intended to provide short-term assistance for the air transportation industry. Assistance was limited to air carriers, defined in the first instance as providers of "air transportation" (49 U.S.C. § 40102(a)). Moreover, Congress established market share formulas based on ASMs and Revenue Ton-Miles (RTMs) as an alternative for establishing compensation. As these are measures of air transportation operations, not measures of ancillary activities, we have construed Congress' intent as limited to providing compensation for the air transportation activities of eligible carriers. Thus, when we have received applications from air carriers whose businesses contained non-air-transportation-related activities, we have sought to extract those activities from our compensation calculations (except if those activities were clearly de minimis).

Typical of the non-air-transportation operations that have been excluded are airfield concessions and "package tour" operations. If entities that operate only airfield concessions and "package tours" are ineligible in their own right for direct compensation, it follows that air carriers who derive significant revenues from such activities should not be able to obtain significant additional compensation on account of those activities.

This reasoning was extended to pertain as well to the non-air transportation aspects of air ambulance operations. A major portion of the revenues and expenses of air ambulances originate from the medical personnel, equipment, and supplies that are involved, elements that are not air-transportation in nature and which would not be eligible for compensation in their own right. We believe that the more expansive formula for assistance under the set-aside program, rather than broadening direct compensation to include losses attributable to these ancillary functions, constitutes the more appropriate way to provide an increased level of compensation for air ambulances, as well as for other small carriers.

Other Set-Aside Issues

Four carriers asserted that they should be included among the classes of carriers eligible for the set-aside. Sky Quest Charters said that it should be included as an indirect public charter carrier. Sky Quest also complained that using the August ASM-based formula is unfair in its circumstance, since its busiest months are in the fall and winter (e.g., student charter business for spring break). Vacation Travel International, another carrier that focuses on student charter trips, contended that student travel providers should be recognized as a separate class eligible for the set-aside, since there are several carriers in this category and their Spring 2002 losses are now known. Vacation Travel also complained that it is arbitrary to exclude indirect air carriers that cannot provide August 2001 ASM data because August is not when they conduct most of their operations.

Eagle Canyon Airlines/Eagle Jet Charter said that small certificated air carriers in the commuter air carrier classification should be included, suggesting that their omission from the April 2002 amendments to Part 330 was an inadvertent quirk in definition of commuter air carriers used in the rule. GWV International said that public charter indirect air carriers who do not report ASMs should be included. GWV also asked for clarification of how ASMs flown for an indirect air carrier by a foreign, as opposed to domestic, direct air carrier are counted.

Senator Charles Schumer of New York asked the Department to find a way of adjusting the floor for set-aside compensation above 25 percent to accommodate the situation of New York City area carriers (e.g., Liberty Helicopter) whose operations were shut down for a prolonged period after September 11.

The Sierra Club renewed its request that Grand Canyon air tour operators not be eligible for set-aside funds, or compensation generally. These operators, in the Sierra Club's view, are responsible for preventing compliance with the noise reduction provisions of National Park Overflights Act of 1987. The Sierra Club maintains that FAA's rulemaking on the subject of Grand Canyon air tours is very inadequate, and environmental groups are currently in litigation with the FAA. The Sierra Club says that it is inappropriate and counterproductive to compensate the tour operators, which will just result in continued or additional aircraft noise and further noncompliance with the Overflights Act.

DOT Response

The eligibility of each of the four air carriers who commented on this point to receive funds under the set-aside program can only be determined by reviewing the situation of each carrier on a case-by-case basis. The rule provides that certain air carriers (air taxi operators, commuters, and regionals) qualify for set-aside funds if they reported (or performed) fewer than 10 million ASMs for the month of August 2001. Indirect air carriers are also eligible for set-aside funds if they fall within the 10 million ASM limit.

In developing the set-aside program, the Department faced the difficult task of identifying classes of air carriers that would be inadequately compensated by the original statutory formula on the one hand, while on the other hand developing an alternative compensation formula that would more adequately compensate these carriers using an appropriate auditable measure. In addition to considering comments to the docket, the Department also reviewed data gathered by the Department through the application process used during the first two rounds of compensation payments. Here, the Department considered loss claim and ASM data to assist in determining which classes of carriers were inadequately compensated (as a percentage of their claimed losses) under the existing statutory formula.

With respect to Sky Quest's concern about the use of August ASMs, we note that August 2001 ASMs were specified by Congress in the Act as the benchmark for determining market shares. Further, we found that, in general, the use of August 2001 ASMs did not, by itself, result in serious inequities. Rather, we found that the use of a single ASM rate to compensate vastly different sized air carrier operations created inadequacies. In fact, the number of August 2001 ASMs reported by applicants provided the Department with both a method of determining which classes of carriers should receive set-aside funds and an

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appropriate auditable measure for distributing those funds. By relying upon the August 2001 ASM data, the Department was able to identify two classes of carriers based on the size of their operations and develop a compensation formula to more adequately address their circumstances.

As noted above in the response to AAMS comments, we understand that some individual carriers may still feel disadvantaged by this approach. However, it largely brings smaller passenger carriers up to an equivalent level of compensation as received by the larger passenger carriers. In any event, we created a safety net that guarantees that all set-aside carriers will be compensated for no less than 25 percent of their eligible transportation-related losses, regardless of how many ASMs they report for the month of August 2001.

With respect to the comments that student travel providers should be treated as separate class of air carriers for set-aside purposes, we again make the point that the statute indicates that the Department should identify broad classes of carriers rather than try to adopt a different allocation formula for each type or subtype of carrier. Doing the latter would have made the program difficult to administer and would likely have perpetuated some of the originally perceived inequities. As discussed with respect to the air ambulance issues, the Department believes that its set-aside formula greatly increases compensation for a wide array of types of carrier and most individual carriers compared to the original statutory formula and makes the compensation system much more equitable.

Small certificated air carriers in the commuter classification are eligible for the set-aside provided they meet all other criteria. Public charter indirect air carriers are likewise eligible if they meet other set-aside criteria. We would point out, in response to GWV's comment, that air carriers that do not report ASMs to the Department on a regular basis are still eligible for set-aside funds. In our final rule published on October 29, 2001 and amended on January 2, 2002, the Department established the process that an air carrier must follow to report ASMs for the purpose of receiving compensation under the Act. These procedures are found at 14 CFR 330.31. A carrier that does not regularly report ASMs to the Department may submit a calculation of August 2001 ASMs to the Department with its application, meeting the requirements of § 330.31(d) (see 67 FR 250, January 2, 2002).

With respect to Senator Schumer's comment concerning the situation of New York City-based carriers such as Liberty Helicopters, we note the discussion of the rationale for the establishment of the set-side formula in the section of this document concerning air ambulance issues. The same rationale applies to a carrier like Liberty Helicopters. We note further that Liberty Helicopters is one of the carriers that would receive, under the set-aside, about 20 times the compensation that it would have received under the statutory formula in the Stabilization Act .

The Department does not have the ability under the statutes involved to tailor compensation to the individual needs or situation of every carrier. In accordance with the statute, the distribution approach is intended to address "classes of air carriers" and involve a "proportional" allocation based on an "appropriate auditable measure." Moreover, the Department is required to distribute a finite compensation fund to an applicant pool of up to 600 carriers, pursuant to a Congressional mandate to provide compensation on an expeditious basis to ensure the survival of the airline industry—tasks that, taken together, make tailoring compensation decisions to individual applicant situations almost impossible.

We continue to believe that the Sierra Club's comment is an effort to use the airline compensation program rulemaking as a means further advocating its position concerning Grand Canyon air tour operators and the FAA's rulemaking concerning air tours over the Canyon. We understand fully that the Sierra Club and other environmental organizations strongly oppose Grand Canyon air tours, believe that current operations in the Canyon area are inconsistent with the National Parks Overflights Act, and disagree with the FAA's rulemaking on the subject. Those issues are being addressed in other forums. In enacting the Stabilization Act, Congress gave no hint that the resolution of these issues was to have any impact on the provision of compensation to air carriers who suffered losses as the result of the September 11 attacks.

Cargo Carrier Issues

The Cargo Airline Association (CAA) argued that by deleting 330.31(d)((i)(iv) and (d)(2) of the January 2002 version of the rule, the Department eliminated the requirement that indirect air carriers submit documentation that the direct air carrier providing the transportation is either ineligible for compensation or will not claim compensation. This deletion, CAA said, would permit indirect air carriers to count the same RTMs as their direct air carrier partners. This decision was inadequately justified and contrary to statute, in CAA's view. CAA also cited the statements in the Department's January 2002 preamble justifying the deleted provisions. CAA said the Department must better explain the rationale for this change and ensure that the total pool of RTMs, which acts as the denominator of the compensation equation, does not include RTMs not reported to the Secretary in April—June of 2001.

Emery Air Freight, while a member of CAA, disassociated itself from CAA's comment with respect to the "double counting" issue described above, saying that under the April 2002 amendments to Part 330, both the direct and indirect air carrier could appropriately claim their separate compensable losses from the same operation. In this connection, Emery suggested that the Department amend § 330.31(c)(3), which prohibits a carrier from including ASMs or RTMs that are "reported by or are attributable to flights by another carrier." This, Emery said, was inconsistent with the deletion of §§ 330.31(d)(i)(iv) and (d)(2).

Emery also suggested that the methodology for calculating relative market share should be modified to equalize the situation of carriers that do both the indirect and direct carriage functions in-house and those that partner with a separate company. Under Emery's suggestion, an integrated carrier would add RTM equivalents representing their indirect carrier function to the numerator of their compensation cap formula and add the same number, here representing their direct carrier functions, to both the numerator and denominator. This would place the integrated carrier in roughly the same position as a pair of separate companies that together provided a comparable service.

Emery agrees that indirect air carriers should be able to claim RTMs flown by foreign direct air carriers, but only in the case where the foreign carrier is an all-cargo carrier (because of a reference in section 103(b)(2)(B) of the Act to all-cargo carriers). Foreign combined passenger-cargo carriers would not be entitled to the same treatment, Emery said. BAX Global disagreed with Emery on this point, saying that indirect air carriers like BAX should be able to count RTMs flown by foreign combination passenger-cargo carriers, lest the indirect carrier lose some compensation for which it was otherwise entitled. The indirect carrier's role is the same regardless of the type of carrier on which the cargo is transported, BAX said.

DOT Response

The Department notes that, with respect to the inclusion of certain ASMs and RTMs claimed by indirect air carriers as eligible in Round 2, there was a body of such air transportation units (ASMs and RTMs) for which indirect carriers likely sustained losses resulting from the events of September 11 that were, nonetheless, deemed ineligible. Eligible ASMs and RTMs for indirect carriers had been considered those in which the carriers providing the direct flights had not, and would not, file as their own for compensation under this program. Ineligible ASMs and RTMs for indirect carriers were those operated on direct carriers that had filed, or would file, for compensation related to the applicable air transportation units. This distinction was established, even though both indirect and direct carriers might have sustained post-September 11 losses for those same, shared ASMs and RTMs. Furthermore, those September 11-related losses were sustained by indirect air carriers that were otherwise deemed fully eligible by the Department to file for compensation under the Act.

The Act has established a specific mechanism for determining the payment ceiling for eligible air carriers based upon their market shares, with the numerator representing a given carrier's respective ASMs or RTMs and the denominator representing the total number of these air transportation units. This resulting fraction is then multiplied by the level of the appropriation that is applicable based on the nature of the carrier's business, $0.5 billion for all-cargo operations (with market share measured by RTMs for the second quarter of 2001), and $4.5 billion for passenger and mixed passenger/cargo operations (with market share measured by ASMs for the month of August 2001), to determine ceiling payments by carrier. It is anticipated that these amounts are to be paid to eligible carriers unless their demonstrated September 11 related losses were less than that amount.

By regulation, 67 FR 18468, April 16, 2002, the Department has sought to remedy the distinction that prevented some indirect carriers from seeking compensation for their losses associated with the provision of these shared ASMs and RTMs. At the same time, the Department concluded that it was fair and appropriate to maintain the levels of compensation to both direct air carriers and indirect carriers that reported ASMs and RTMs that were not shared between eligible carriers.

The formula for payment of compensation established by the Congress in the Act provides an opportunity for the Department to meet this goal, since a number of air carriers are being compensated for demonstrated September 11-related losses that were less than the amounts they would receive based upon their market share of air transportation units. Given that fact, the authorized $4.5 billion for passenger and combination operations, and $0.5 billion for cargo-only operations, would not, in fact, be fully utilized. The Department believes that the Congressional direction to compensate air carriers—without distinction as to whether they were direct or indirect carriers—can be accomplished within the authorized amounts by allowing compensation for indirect air carriers based upon their shared ASMs and RTMs. However, in order to avoid double-counting those that were actually operated, we will not add those ASMs and RTMs to the denominator of the formula. The result will be to allow full consideration for the ASMs and RTMs of indirect carriers, without diluting the compensation that would be afforded direct carriers for unshared operations. We project that funds will be sufficient to fully compensate all carriers in this manner.

Finally, we agree with Emery that inclusion of section 330.31(c)(3) in the rule is inconsistent with our intent to allow shared ASMs and RTMs to be eligible for compensation-by inclusion in the numerator-and it should be deleted. Further, we concur with Emery that the clear language of the Act precludes us from compensating cargo operations that are performed on mixed passenger/cargo flights. Cargo tonnage associated with such services will not be eligible for inclusion in the RTM pool or in a carrier's computation of market-share payment based upon second quarter 2001 air transportation units.

Time Extensions and Agreed-Upon Procedures (AUP) Issues

Six carriers, the Air Transport Association (ATA), and the National Air Transportation Association (NATA) requested extensions of varying length in the deadline for reporting to the Department on the basis of full AUPs or simplified procedures. NATA also said that some small businesses may have difficulty in generating the data required by the April 2002 amendments to Part 330. NATA suggested that carriers who had filed applications in the previous two rounds, but who were unable to create and submit the newly required data in a timely fashion, could forego additional compensation in the third round without having to pay back compensation provided under the first two rounds. A certification and submission of tax returns would suffice in these cases.

Capital Cargo International Airlines suggested that the determination of whether a carrier would have to submit a full AUP report or comply with simplified procedures should be based on the relative reimbursement requested by carriers, rather than on the carrier's ASMs or RTMs. This would ease administrative burdens on carriers who were requesting relatively little compensation, the carrier said. GWV International asked for a waiver process to allow it to comply with the simplified procedures, rather than full AUPs. GWV said that it was modestly over the 10 million ASM "breakpoint" and that the cost of doing a full AUP engagement would exceed the increment in compensation it would get for having 13 million rather than 10 million ASMs.

DOT Response

Former § 330.21 (which has now been removed; see discussion of application deadlines below) provided procedures for granting time extensions to applicants that could demonstrate good cause. We granted time extension requests on an individual basis where appropriate. In some cases, we granted time extensions to groups. For example, we granted the 30-day time extension sought by NATA to NATA air carrier members who may be eligible for the set-aside program. Given the need to complete the compensation process as soon as possible and the prejudice to the program and other carriers that could come from extending deadlines, we did not make any across-the-board change in the application deadline, however.

We are not relaxing our requirement for a third-round application because the second round application lacked actual results for the September 11–December 31, 2001 period, but contained only estimates. Because the Act authorizes the Department to provide compensation only after a determination of air carrier losses, we need to have an accurate calculation of those losses, not merely estimates. Most NATA air carrier members are eligible to use simplified procedures in completing the third round application.

With respect to Capital Cargo's comment, for most carriers the ASM or RTM amount will track the amount that the applicant may receive. The Department required the full agreed-upon procedure report from larger carriers because their finances and loss statements typically involve larger

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dollar amounts and greater complexity than the counterpart submissions from smaller carriers.

With respect to GWV's comment, the Department already has a process for applying for an exemption from a regulatory requirement (49 CFR 5.11–5.13). Thus there is no need to establish a separate waiver process for the air carrier compensation program. It should be noted that the Department ordinarily will not grant an exemption where the applicant is really seeking a change in a regulation, e.g., that the cut-off be 13 million ASMs rather than 10 million ASMs, as opposed to presenting a relatively unique situation and rationale for different treatment that is not generally applicable and was not considered in the rulemaking.

Direct and Incremental Losses

Kitty Hawk Aircargo objected to the Department's conclusion that any incremental gains by a carrier after the end of the FAA ground stop through December 31, 2001, offset losses that occurred during the ground stop. Kitty Hawk argues that the Department's position is inconsistent with the Act, which allegedly created two separate categories of losses eligible for compensation: direct and incremental losses. The Department's approach, in Kitty Hawk's view, collapses the two separate categories into one generic category, contrary to the language of the statute. Kitty Hawk also says that this approach is inconsistent with the Department's actions in compensating other carriers based on the conclusion that they were less profitable than they forecast before September 11, since Kitty Hawk's ground stop losses reduced the overall profitability of the company over the entire post-September 11 period.

ATA essentially agreed with Kitty Hawk's position, saying that carriers who suffered direct losses as the result of the ground stop resulting from September 11 attacks should be compensated for those losses, even if they did not suffer incremental losses after the ground stop. ATA views the Act as compensating carriers for these direct losses, plus any additional incremental losses. It does not believe there is a basis in the statute to reduce or offset compensation relating to direct losses on the basis of the carrier's financial performance during the post-ground stop period. This is true, ATA says, even if it is difficult as an accounting matter to separate the two.

DOT Response

The Department has carefully reviewed the language and legislative history of the Act, and we remain convinced that the interpretation underlying the April 2002 amendments to part 330 is consistent with the statute. Title I of the Act directs the President to "compensate air carriers for losses incurred by the air carriers as a result of the terrorist attacks on the United States that occurred on September 11, 2001." Specifically, section 101(a)(2) directs the President to compensate air carriers for:

> (A) direct losses incurred beginning on September 11, 2001, by air carriers as a result of any Federal ground stop order issued by the Secretary of Transportation or any subsequent order which continues or renews such a stoppage; and
>
> (B) the incremental losses incurred beginning September 11, 2001, and ending December 31, 2001, by air carriers as a direct result of [the terrorist] attacks.

The Act does not expressly address the situation in which an air carrier experiences short-term losses due to the Federal ground stop order but subsequently experiences better-than-forecasted profits for the balance of the year. Similarly, the Act does not expressly address the issue of whether an air carrier may exclude consideration of any incremental gains during the period of September 11 to December 31, 2001 or whether these gains must be used to offset order-related losses.

We note, first, that Congress wrote subparagraphs (A) and (B) in the conjunctive, linked by the word "and." By using the term "and," it appears that Congress intended the two categories of losses to be added or taken together, rather then allowing a choice between the two categories, or even the choice of "either or both." This reading of section 101(a)(2) of the Act is buttressed by section 103(a), which provides that "the amount of compensation payable to an air carrier under section 101(a)(2) may not exceed the amount of losses described in section 101(a)(2) * * * that the air carrier *incurred*" (emphasis added). In this section, Congress did not separately identify order- and attack-related losses, as Kitty Hawk and ATA suggest, but instead combined the two while establishing a limit on carrier compensation. We interpret the language in Section 103 as indicating that subparagraphs (A) and (B) in Section 101(a)(2) must be taken together when determining the amount of losses that a carrier has incurred.

We also note that the terms "losses" and "incurred" are not expressly defined in the Act. In common usage the term "loss" generally refers to something that is gone and cannot be recovered. The term "incur" is generally defined as meaning to become liable or subject to, as in to incur debt. Thus, the common usage of these terms would appear to indicate that Congress intended the Act to compensate carriers for those permanent, un-recovered economic losses that the carrier actually experienced or became liable for during the entire applicable time period.

Further, we observe that the Act does not qualify the terms "incur" or "loss" by indicating that an air carrier may claim temporary losses, nor does it indicate that a carrier may claim losses incurred in a partial period (i.e., September 11 to September 30, 2001). Instead, the Act establishes two specific and overlapping time periods during which losses must be incurred: (1) The period covered by the Federal ground stop order, and (2) the period from September 11 to December 31, 2001. These specific time periods serve both to limit the government's obligation to compensate carriers for their September 11-related losses and to establish a finite period during which incremental losses will change a carrier's calculation of direct order-related losses. Any losses not recovered as of December 31, 2001, will be considered permanent for the purposes of compensation under the Act.

In the Department's view, Kitty Hawk's approach could result in compensating carriers for losses that were not really incurred. For example, a loss might be claimed because a service could not be provided during the ground stop, yet that same service might have been provided at no loss two days later. Since the order-related losses are limited to only the period of time during which the order was in effect, any recovery of those losses by a carrier immediately after the order was lifted could only be identified by reviewing the carrier's revenues and expenses during the incremental loss period. Thus, the only way to ensure that a carrier is not compensated for temporary direct order-related losses that are later offset by increased gains, is to consider the carrier's incremental gains or losses through the end of 2001 along with its order-related direct losses.

We view the legislative history of the Act as consistent with our interpretation of the meaning of its language. Congress enacted the statute at a time when its members, and many other observers, believed that the air carrier industry as a whole would suffer immediate and prolonged financial losses as a result of the terrorist attacks. Congress was concerned that the effect of both the order and the public's fear of flying would force individual carriers and the industry as a whole over the brink of collapse, with devastating impacts on the rest of the United States economy.

It is our view that Congress intended the compensation payments to serve as a stabilizing force for individual air carriers and for the industry. The purpose of the payments was to mitigate or prevent losses as a way of preventing bankruptcies, massive service disruptions and additional layoffs. In this context, we are not persuaded by claims that a carrier is entitled to be compensated for temporary losses suffered during the Federal ground stop order, when that same carrier returned to profitability and actually achieved better-than-forecasted profits during the remainder of 2001. Nor are we persuaded that a carrier's ground stop losses necessarily reduced the overall profitability of the company over the entire post-September 11 period; as noted, some and potentially all of those losses were only temporary in nature, and experience suggests that some carriers, especially cargo carriers, did better than expected after September 11 because of such September 11-related factors as increased shipments of military cargo, diversion of cargo to all-cargo aircraft from combi aircraft, etc. Again, we do not believe the Act requires, or Congress intended, to provide compensation to carriers in such situations.

Repayment Issues

Federal Express (FedEx) objects to the provision that a carrier must immediately repay any excess amount of compensation that the Department determines the carrier has received. In FedEx's view, such a demand for immediate repayment is inconsistent with the Act, which would not contemplate such a demand until after the final audit process had been completed. It would be inconsistent with the Act for the Department to make any final conclusions about the propriety of distributions to a carrier in advance of such an audit, in FedEx's opinion.

FedEx adds that if the Department is to attempt to recoup funds it asserts a carrier was overpaid, it must use the procedures of the Federal Claims Collection Act of 1966, which apply to, among other things, overpayments. Therefore, FedEx says, the rule must be revised to conform to the procedures required by the statute.

DOT Response

The Assistant Secretary for Aviation and International Affairs has been delegated the President's authority to determine whether an air carrier has incurred losses that are eligible for compensation under the Act. (See 66 FR 49507 (September 27, 2001); 49 CFR 1.56a(j); 66 FR 55599 (Nov. 2, 2001)). Once she has made a final determination, DOT will either pay that amount or demand a repayment if prior overpayment is found to have occurred. Nothing in the Act requires the Assistant Secretary to wait for a review by the Office of Inspector General, the General Accounting Office, or a private auditor to determine the appropriate compensation amount for a carrier. The Act provides merely that the Secretary or the Comptroller General "may" audit a carrier's statements and request any information they deem necessary for such an audit. If we or the Comptroller General choose later to conduct an audit, and that subsequent audit shows that the Assistant Secretary's determination should be modified, the Department retains the ability to make an appropriate adjustment at that time.

If the Assistant Secretary finds that a carrier has been paid an amount in excess of the compensation for which it is eligible, the excess amount becomes an overpayment as that term is defined in the Federal Claims Collection Act and its implementing regulations. The Department will comply with Collection Act requirements in pursuing recovery of overpayments made under the Stabilization Act. We have revised section 330.9(b) to make this point expressly.

Distinguishing Between Attack-Related and Other Items

FedEx disagrees with the substance of the April 2002 amendments to Part 330 with respect to some aspects of the computation of losses. FedEx says that neither economic gains or losses unrelated to the September 11 attacks should be factored into the compensation calculation. It argues that the April 2002 amendments to Part 330 impermissibly permits savings that would have occurred in the absence of the attacks to offset losses that resulted from the attacks. FedEx also says the Department should use certain accounting principles to distinguish between attack-related and unrelated items, so as not to arbitrarily exclude, for example, all cost savings, regardless of source. Generally, FedEx argues for a case-by-case approach that does not make assumptions about the relationship of an item to the September 11 attacks.

ATA expressed concern that DOT would exclude some non-recurring charges that resulted from the September 11 attacks while forcing the inclusion of certain non-recurring credits that do not result from the attacks. Negative variances between forecast and actual that meet the statutory test for compensability should not be automatically excluded; nor should positive variances that do not meet this test be automatically included. In addition, ATA views DOT's approach as too closely tied to profits and losses, rather than to liquidity.

DOT Response

Section 101(a)(2) of the Act provides that the President shall compensate air carriers for direct losses incurred beginning September 11, 2001, as the result of any Federal ground stop orders, and their incremental losses incurred between September 11 and December 31, 2001, "as a direct result of the terrorist attacks." Section 103(a) directs that compensation may not exceed the amount "that the air carrier demonstrates to the satisfaction of the President, using sworn financial statements or other appropriate data, that the air carrier incurred." Section 107(3) of the Stabilization Act further specifies that the term "incremental loss" does not include any loss that the President determines would have been incurred if the September 11 terrorist attacks on the United States had not occurred.

In the preamble to DOT's April 2002 amendments to Part 330, we expressed our continued belief that "in most cases, the comparison between pre-September 11, 2001 forecasts and actual results provides an approximation of the incremental losses that are a direct result of the [terrorist] attacks, and that approximation, without more, gives effect to the language of the statute." 67 FR at 18472. However, we have also noted that additional review of the components of an air carrier's loss may reveal that certain items were clearly not the direct or indirect result of the terrorist attacks and should therefore not be included in the basis for compensation.

To facilitate the DOT's review of an applicant's claim, and to assist applicants in preparing their claims, we published guidelines at 14 CFR 330.39, which identify the types of losses for which the DOT would not normally provide compensation. The preamble to our April 2002 amendments also provided a more detailed explanation of these items and how the DOT would treat them. Specifically, we identified "aircraft impairment charges, charges or expenses attributable to lease buyouts, or other losses that are not actually or fully realized" during the compensation period to be the types of losses that would not be eligible for compensation under the Act. 14 CFR 330.39(a)(1).

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Further, we stated that the DOT "will consider requests to accept adjustments for extraordinary or non-recurring expenses or revenues on a case-by-case basis." 14 CFR 330.39(a)(2).

In our guidance for air carriers identifying the types of losses for which we would not normally provide compensation, we stated that the DOT "generally does not accept claims by air carriers that cost savings should be excluded from the calculation of incurred losses." 14 CFR 330.39(b). The DOT provided a detailed explanation of this provision in the preamble to the April 2002 amendments:

> The Department expects that many applicants have experienced, by their own initiatives, a reduction in actual versus forecast expenses, giving rise to a question of whether any such reductions may be excluded from the calculations of losses on the ground that they are unrelated to the terrorist attacks. As a general rule, for the reasons stated below, the Department will treat such variances for all categories of expenses as being attributable to the terrorist attacks. First, we would expect that cost reduction plans not related to the terrorist attacks would have been reflected in an applicant's pre-September 11 forecasted financials. Second, we believe it highly likely that expense reduction efforts undertaken after September 11 were attributable, implicitly if not explicitly, to changed expectations regarding revenues after the attacks. Third, we note that Congress provided that we compensate air carriers for 'losses incurred.' Cost savings that are achieved in fact reduce an air carrier's losses, and the calculations required under our regulations may not be manipulated to exclude actual reductions in expenses, thereby generating a basis for increased compensation. Moreover, we interpret Congress' language here as indicating an intent that carriers not receive increased compensation for achieving savings in costs, which they have an independent obligation to their managements and shareholders to achieve, and which it is reasonable to expect them to undertake to mitigate the need for compensation under the Act. (67 FR 18473.)

Nonetheless, we also acknowledged that there may be some circumstances in which cost savings could be proven, to our satisfaction, to be unrelated, directly or indirectly, to the terrorist attacks. We directed any air carrier claiming such adjustments to provide pre-existing documentary support for its claims.

We have reviewed the comments of FedEx and ATA on this issue and find no basis to believe that our approach to the issue of cost savings was misguided or incorrect. However, consistent with their comments, the Department intends to review all claimed adjustments on a case-by-case basis. In this regard, carriers are reminded that they have the burden of proving to the Department's satisfaction that the losses they claim are the direct or indirect result of the terrorist attacks, supplying sufficient documentation to demonstrate to the Department that the claimed losses should be compensated under the Act.

ASMs or RTMs Flown by Foreign Direct Carriers

FedEx renews an argument made in ATA comments to the January 2002 rule that in the case of an indirect air carrier applicant, both the indirect and direct carrier involved must be U.S. citizens. FedEx believes that direct air carriers should receive compensation before indirect air carriers are paid. FedEx further asserts that allowing U.S. indirect air carriers to claim compensation for RTMs or ASMs flown by foreign direct air carriers expands the program to compensate foreign air carriers, which it views as beyond the authority of the Act. FedEx also refers to audit problems that could be created by reliance on ASMs or RTMs flown by a foreign direct air carrier.

Unlike FedEx, ATA does not renew its argument that ASMs or RTMs involving U.S. indirect air carriers and foreign direct air carriers be excluded. However, ATA urges the Department to ensure that payments do not end up compensating foreign carriers or dilute the amount of compensation of other eligible carriers. DOT should also ensure that the total RTM universe does not exceed the RTMs reported to the Secretary for April—June 2001.

DOT Response

The process for calculating an indirect air carrier's ASMs or RTMs was established in the Department's final rule on January 2, 2002, and was amended on April 16, 2002. An eligible indirect air carrier (and only U.S. citizens may be eligible indirect air carriers) may count ASMs or RTMs flown by a foreign direct air carrier, even though that direct air carrier is not itself eligible for compensation under the Act. The Department sees nothing in the legislation that would preclude such eligibility for these indirect carriers and discerns little or no difference in the service provided, whether the passengers or cargo were carried on foreign or domestic flights.

We do not agree with the assertion that this approach results in compensation being paid to a foreign air carrier. The losses incurred by a U.S. indirect air carrier do not differ based on the citizenship of its direct air carrier partner. The Department properly implements the Act by compensating the U.S. indirect air carrier's losses. It is clear that the Department is not making any payments to a foreign air carrier based on its participation in an arrangement with a U.S. indirect air carrier, and we have every expectation that the Department's approach will not diminish the compensation available for eligible U.S. air carriers. It is equally clear that a U.S. air carrier like FedEx is not disadvantaged by the Department's decision to compensate indirect air carriers, regardless of the nationality of their direct air carrier partners.

Administrative Law Issues

CAA objected to the Department's decision to issue the April 2002 amendments to part 330 as a final rule with a request for comments, rather than as a notice of proposed rulemaking (NPRM). CAA asserted that the April 2002 amendments to part 330 made significant changes without adequate analysis.

FedEx disagreed with the Department's characterization of the April 2002 amendments to Part 330 as an emergency rule, saying that there was no longer an emergency seven months after September 11. In FedEx's view, the promulgation of the rule as an emergency rule was inconsistent with Administrative Procedure Act (APA) requirements. In addition, FedEx alleges, the rule makes substantive changes in DOT requirements (e.g., with respect to repayment rules) without adequate explanation. FedEx asks the Department to withdraw the April 2002 and issue an NPRM for a new rule that would comport with FedEx's notion of proper implementation of the Act.

DOT Response

Under the APA, agencies are authorized to issue rules without prior opportunity for notice and comment if such an opportunity is unnecessary, impracticable, or contrary to the public interest. Agencies may make final rules effective immediately if there is good cause for doing so. The Department believes that the April 2002 amendments to Part 330 clearly met these criteria. As noted above, the statute directs the Department to compensate carriers as expeditiously as possible. While many large carriers had already been paid significant compensation in the first several months of this program, many smaller carriers had not. These smaller carriers were still suffering the financial impacts of the September 11 attacks without the assistance of compensation, because application procedures covering them and the set-aside provision had not been put into place.

To delay further compensation to these carriers by issuing only a proposed rule in April would have ignored the dire situation in which many of these carriers may find themselves. It was necessary to put the appropriate provisions in place immediately to address the situation of smaller carriers, rather than to wait for the resolution of disagreements with larger carriers. Doing so is consistent with Congressional direction to provide compensation on an expeditious basis to ensure the survival of the airline industry, a task we view as applying to all the segments of the industry. We also believe that clarifying for all parties the Department's views on compensation issues that had been raised by earlier comments and communications to the Department was a valuable service to the industry.

Even for carriers who commented specifically on this issue, the APA argument is now effectively moot. All carriers have now had the opportunity to comment, and the final version of Part 330 the Department is promulgating today, after considering all comments, establishes the provisions that will govern the final determination of compensation for the commenters and other carriers. All payments under previous versions of the rule were estimated and subject to adjustment. There have been no final payments or final determinations of the amount of compensation for which a carrier is eligible until now, after all the comments have been considered. Between the April 2002 amendments to Part 330 and this final rule, the commenting carriers and others have not lost any of the compensation for which they will be ultimately be eligible.

Finally, we would note that the emergency designation in the discussion on Executive Order 12866 in the preamble to the April 2002 amendments to Part 330 pertains to the timing and nature of Office of Management and Budget (OMB) review of the document, not to the APA justifications for publishing an immediately effective final rule without having previously issued a notice of proposed rulemaking. In light of the continuing threats to the United States from terrorism, and this nation's continuing efforts to recover from the effects of the September 11 attacks and rebuild a secure and financially sound air transportation industry, we cannot agree with assertions that there is no longer an emergency situation justifying expeditious processing of this rule by OMB.

Application Deadlines

Over the course of the Department's implementation of the Act, the Department has set, and on some occasions extended, deadlines for submission of applications for compensation and supporting materials. Initially, applications for carriers other than air taxis had to reach the Department by November 13, 2001. Air taxis were required to apply by November 26, 2001.

Subsequently, the Department permitted certain classes of carriers that had not previously filed an application or wanted to amend their applications to do so by February 8, 2002. Following the adoption of the set-aside for small carriers, we permitted carriers eligible for the set-aside to send in an initial or amended application by May 16, 2002. We applied this same deadline to carriers that did not previously submit an application for compensation because of the provisions of former § 330.31(d)(1)(iv) or (d)(2)(iv) or a carrier that wished to amend its application because of the removal of these provisions. The Department extended the May 16 deadlines for both these groups of carriers to July 29, 2002 for good cause, but no time extensions have been granted beyond July 29, 2002.

In addition, carriers that had already received compensation or submitted an application for compensation before April 16, 2002, were required to submit a "third round" application, including the report of the agreed-upon procedures engagement required by § 330.37(c) or the simplified procedures report required by § 330.37(d), as applicable. These carriers were also required to submit copies of monthly profit and loss statements for the months July 2001 through January 2002, each of which must have included the imputed price per gallon average of the fuel used for all aircraft during that month. These statements were required to be certified true and accurate (see § 330.33). These carriers were required to submit this application and all required supporting materials by May 16, 2002. The Department extended this deadline to July 29, 2002 for good cause, but no time extensions have been granted beyond July 29, 2002.

Because all these deadlines have previously been established and have passed, and the Department has not granted any further extensions, we believe that retaining an "applications deadlines" section in the regulatory text is unnecessary, since it would have no prospective effect. Consequently, we have removed and reserved § 330.21.

Miscellaneous Issues

ATA asked the Department to clarify that, beyond Form 330 and associated data, no more information would be needed from carriers. ATA also would like timetables for the completion of the compensation process. In addition, ATA requested that the Department publish on its web site the total ASM and RTM denominators used by the Department to calculate the compensation cap for carriers (which ATA believes is likely to be closer to 90 rather than 94 million ASMs) as well as the ASMs and RTMs associated with an eligible carrier's payment. ATA also suggested some minor edits to Form 330 (Final).

In addition, while the Department did not receive any comments specifically on the point, an issue has arisen during the review of carrier applications that merits discussion. This issue relates to the appropriate forecast to be utilized in determining a carrier's losses due to the events of September 11. In some cases, several forecasts might have been prepared, refined, or adjusted at different times, requiring the Department to choose among them for the one that best satisfies the need for an objective and timely forecast of financial expectations for the September 11 to December 31 period.

DOT Response

The Department is interested in Form 330 (Final) and the information and records that bear on the numbers in that form. In reviewing applications, the Department requests additional supporting information and documents where needed for the Department to make a proper determination. With respect to timetable, we have paid out over $4.3 billion of the $5 billion that was appropriated, and we remain committed to making the remaining payments as soon as possible.

With respect to publishing the final denominators, the Department has adjusted the denominators with each round to reflect the latest information and experience. At this time, the final numbers have still not been determined because of late filed data. Any air carrier paid under the formula can readily determine the denominator used in calculating its payment by using its own ASM or RTM total and $4.5 billion and $500 million, respectively. We have not made the minor edits to Form 330 (Final) suggested by ATA because most carriers were able to complete the form without confusion, and where there were inconsistencies the Department was able to readily resolve them.

As to forecast issues, we have required the submission of the most

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recent pre-September 11 profit/loss forecast for September 11 to December 31, 2001. Expressions of this requirement appear in various wordings in the regulation, regulatory preambles, and the Model Agreed-Upon Procedures and Simplified Procedures. Our intent has always been to obtain a reliable, objective, and up-to-date forecast that reasonably represented a *pre-September 11* outlook as to expected financial results for the September 11 through December 31 period. In some cases, this may lead to difficult choices between timeliness and approval at the highest corporate levels. For example, the latest forecast adopted by the Chief Executive Officer of a company may rely on months-old analysis, which may be obsolete given events in the fast-changing airline industry. Alternatively, a forecast completed in early September by staff personnel for a limited corporate purpose may be very timely, but lack the reliability that would come from more senior review. In situations in which such choices must be made, the Department will seek in all cases to use that forecast which, under the totality of circumstances, provides the best combination of reliability, objectivity, and proximity to September 11, but that in all situations excludes consideration of the September 11 attacks and subsequent events.

Editorial Amendments

In this final rule, we are making a variety of editorial amendments to the final rule, to correct and update dates, citations, and references to Form 330 and remove some out-of-date references. For example, most of § 330.27(e) and all of § 330.27(f) are being removed as unnecessary and out of date, given changes to Form 330 and the existence of data on actual, rather than estimated, losses. Section 330.31(c)(3) is being deleted as inconsistent with the Department's determination that indirect air carriers may, in appropriate circumstances, include ASMs or RTMs representing operations of direct air carriers. We intended to delete this provision in the April 2002 publication, but through editorial error failed to do so. Because both passenger and all-cargo carriers are applying on the same form, we combined paragraphs (a) and (b) in § 330.27 and made clear that both groups, not just all-cargo carriers, must exclude non-air transportation related expenses. Section 330.13 has been updated to indicate that, if an air carrier previously received compensation, it must submit a Form 330 (Final) and other required documents even if it is not seeking additional compensation. One key reason for this requirement is that "second round" applications lacked actual results for the September 11–December 31, 2001 period, but contained only estimates.

Regulatory Analyses and Notices

Executive Order 12866

These amendments do not constitute an economically significant rule under Executive Order 12866, but they are significant under the Executive Order and the Department's Regulatory Policies and Procedures, because they affect important sectors of the air transportation industry and are of general policy interest. As part of a program to compensate air carriers for September 11-related losses, this rule will have a continuing favorable economic impact on the air transportation industry.

The Department concludes, based on the continuing extraordinary situation confronting the nation in the wake of the September 11 attacks and the Congressional imperative to ensure the expeditious completion of the compensation process, that this final rule merits expedited review by OMB, as provided in Section 6(a)(3)(D) of Executive Order 12866. In accordance with Section 6(a)(3)(D), this rule was submitted to the Office of Management and Budget for review. As noted above, treating this rulemaking as one in which the need for expeditious action precludes use of the normal OMB review process does not implicate APA issues with respect to prior opportunity for notice and comment and immediate effective date.

Regulatory Flexibility Act and Federalism

Under 5 U.S.C. 604, we note that this rule may have a significant economic effect on a substantial number of small entities. In analyzing small entity impact of the amendments, we believe that, to the extent that the rule does impact small air carriers, the impact is a highly favorable one, since it will result in carriers subject to the set-aside receiving more compensation than these carriers would have received otherwise. The Department has also concluded that this rule does not have sufficient federalism implications to warrant the consultation requirements of Executive Order 13132.

Paperwork Reduction Act

The Department's analysis of the information collection burdens under the April 2002 amendments to Part 330 applies to this rule as well. Under the Paperwork Reduction Act, the Office of Management and Budget approved this information collection on an emergency basis, with Control Number 2105–0548.

Administrative Procedure Act Findings

The public has had a prior opportunity to comment on the provisions of today's final rule, in the context of the opportunity for comment provided to the April 2002 amendments to part 330. While the Department believes that, because of the need to move quickly to provide compensation to air carriers for the purpose of maintaining a safe, efficient, and viable commercial aviation system in the wake of the events of September 11, 2001, this opportunity would not be mandated under under 5 U.S.C. 553, the Department provided it in the interest of allowing interested parties a fair opportunity to make their views known. The preamble of this rule has responded to the comments we received. For the same reasons cited above, a delay of the effective date under 5 U.S.C. 801, *et seq.*, is not being provided. On the same basis, we have determined that there is good cause to make the rule effective immediately, rather than in 30 days.

List of Subjects in 14 CFR Part 330

Air carriers, Grant programs—transportation, Reporting and recordkeeping requirements.

Issued this 9th day of August 2002, at Washington, DC.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

For the reasons set forth in the preamble, the Department revises 14 CFR part 330, to read as follows:

PART 330—PROCEDURES FOR COMPENSATION OF AIR CARRIERS

Subpart A—General Provisions

Sec.

330.1 What is the purpose of this part?
330.3 What do the terms used in this part mean?
330.5 What funds will the Department distribute under this part?
330.7 [Reserved]
330.9 What are the limits on compensation to air carriers?
330.11 Which air carriers are eligible to apply for compensation under this part?
330.13 If an air carrier received compensation under the Act previously, does it have to submit a third-round application?
330.15 [Reserved]
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Subpart B—Application Procedures

330.21 [Reserved]
330.23 To what address must air carriers send their applications?
330.25 What are the components of an air carrier's application for compensation?
330.27 What information must certificated and commuter air carriers submit?
330.29 What information must air taxi operators submit on Form 330 (Final) and Form 330–C?
330.31 What data must air carriers submit concerning ASMs or RTMs?
330.33 Must carriers certify the truth and accuracy of data they submit?
330.35 What records must carriers retain?
330.37 Are carriers which participate in this program subject to audit?
330.39 What are examples of types of losses that the Department does not allow?

Subpart C—Set-Aside for Certain Carriers

3330.41 What funds is the Department setting aside for eligible classes of air carriers?
330.43 What classes of air carriers are eligible under the set-aside?
330.45 What is the basis on which air carriers will be compensated under the set-aside?
Appendix A to Part 330—Forms for All Carriers
Appendix B to Part 330—[Reserved]
Appendix C to Part 330—Forms for Air Taxi Operators

Authority: Pub. L. 107–42, 115 Stat. 230 (49 U.S.C. 40101 note); sec. 124(d), Pub. L. 107–71, 115 Stat. 631 (49 U.S.C. 40101 note).

Subpart A—General Provisions

§ 330.1 What is the purpose of this part?

The purpose of this part is to establish procedures to implement section 101(a)(2) of the Air Transportation Safety and System Stabilization Act ("the Act"), Public Law 107–42, 115 Stat. 230 (49 U.S.C. 40101 note). This statutory provision is intended to compensate air carriers for direct losses incurred as a result of the Federal ground stop order issued by the Secretary of Transportation, and any subsequent orders, following the terrorist attacks of September 11, 2001, and incremental losses incurred from September 11 through December 31, 2001, as the result of those attacks.

§ 330.3 What do the terms used in this part mean?

The following terms apply to this part:

Air carrier means any U.S. air carrier, as defined in 49 U.S.C. 40102.

Air taxi operator means an air carrier, other than a commuter air carrier, that holds authority issued under 14 CFR part 298 and 14 CFR part 121 or part 135.

Available seat-miles (ASMs) means the aircraft miles flown on each flight stage by an air carrier multiplied by the number of seats available for revenue use on that stage.

Certificated air carrier means an air carrier holding a certificate issued under 49 U.S.C. 41102 or 41103.

Commuter air carrier means an air carrier as defined in 14 CFR 298.2(e) that holds a commuter air carrier authorization issued under 49 U.S.C. 41738.

Incremental loss means a loss incurred by an air carrier in the period of September 11, 2001–December 31, 2001, as a result of the terrorist attacks on the United States of September 11, 2001. It does not include any loss that would have been incurred if the terrorist attacks on the United States of September 11, 2001, had not occurred.

Regional air carrier means an air carrier that operates at least one large aircraft and has annual operating revenues of less than $100 million.

Revenue ton-miles (RTMs) means the aircraft miles flown on each flight stage by the air carrier multiplied by the number of tons of revenue cargo transported on that stage. For purposes of this part, RTMs include only those resulting from all-cargo flights.

§ 330.5 What funds will the Department distribute under this part?

Under this part, the Department will distribute up to the full amount of the compensation it determines is payable to air carriers under section 103(b) of the Act, and up to the full amount of the set-aside provided for in subpart C of this part to air carriers eligible for it. The Department may require additional information to support payments to individual carriers in connection with this final payment.

§ 330.7 [Reserved]

§ 330.9 What are the limits on compensation to air carriers?

(a) You are eligible to receive compensation equaling the lesser of your direct and incremental losses or the amount calculated by the formula set forth in section 103(b)(2) of the Act.

(b) If at any time we determine that a carrier has been compensated in an amount that exceeds the amount to which it is entitled under section 103(b) of the Act or the subpart C set-aside program, the Department will notify the carrier of the basis for the determination, the amount that must be repaid, and the procedures to follow for making a repayment. We will follow collection procedures under the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 et seq.) to the extent required by law, in recovering such overpayments. This process will also apply to collection of overpayments by the Department as a result of an audit by representatives of the Department, including the Office of the Inspector General, or the Comptroller General under section 103 of the Act, which may be the subject of a separate collection action.

§ 330.11 Which carriers are eligible to apply for compensation under this part?

(a) If you are a certificated air carrier, a commuter air carrier, an air taxi, or an indirect air carrier, you are eligible to apply for compensation under Subpart B of this part.

(b) [Reserved]

(c) If you are a foreign air carrier, commercial operator, flying club, fractional owner, general aviation operator, fixed base operator, flight school, or ticket agent, you are not eligible to apply for compensation under this part.

§ 330.13 If an air carrier received compensation under the Act previously, does it have to submit a third-round application?

Yes, if, as an air carrier, you previously received compensation under section 101(a)(2) of the Act, you must, in all cases, submit a complete Form 330 (Final) and other documents required under this part. You must do so even if you are not seeking additional compensation.

§ 330.15 [Reserved]

§ 330.17 [Reserved]

Subpart B—Application Procedures

§ 330.21 [Reserved]

§ 330.23 To what address must air carriers send their applications?

(a) You must submit your application, and all required supporting information, in hard copy (not by fax or electronic means) to the following address:

U.S. Department of Transportation, Aviation Relief Desk (X–50), 400 7th Street, SW., Room 6401, Washington, DC 20590.

(b) If your complete application is not sent to the address in paragraph (a) of this section as required in this section, the Department will not accept it.

§ 330.25 What are the components of an air carrier's application for compensation?

As an air carrier applying for compensation under this part, you must provide to the Department all materials described in §§ 330.27–330.33. The Department will not accept your application if it does not comply fully with the requirements of this subpart.

§ 330.27 What information must certificated and commuter air carriers submit?

(a) You must submit Form 330 (Final), found in Appendix A to this part. Data supplied on Form 330 (Final) in Appendix A to this part must be tied

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only to the airline portion of their businesses and must exclude non-air transportation related expenses.

(b) [Reserved]

(c) Air carriers that operate both passenger/combination aircraft and all-cargo aircraft and routinely report to the Department ASMs and RTMs separately for both types of flights must submit two versions of Form 330 (Final) in Appendix A to this part to seek compensation on both an ASM and RTM basis. Financial and operational data (both actual and forecasted) must be disaggregated and correlate exclusively to one or the other type of operation.

(d) You must include the following financial information on Form 330 (Final) for the period September 11, 2001 through December 31, 2001:

(1) Your pre-September 11, 2001, profit/loss forecast for the period beginning September 11, 2001, and ending December 31, 2001. This forecast must reflect seasonal reductions in capacity and the cost savings associated with such reductions. Documentation verifying that the pre-September 11, 2001, forecast was, in fact, completed before that date must also be submitted with your application.

(2) Your actual results for that same period reflecting any losses that were a direct result of the terrorist attacks of September 11, 2001. These actual results must incorporate all cost reductions associated with capacity reductions and furloughs you made due to the reduced demand for air service after the September 11th attacks (*e.g.*, employee pay-adjustments and furloughs, changes in aircraft fleet in service, schedule and capacity changes, etc.).

(3) The difference between your forecast profits/losses and actual results for that period (*i.e.*, the difference between the figures in paragraphs (d) (1) and (2) of this section).

(4) The actual losses you report must be net losses, before taxes, taking into account savings from such items as reductions in passenger and cargo handling costs, fuel consumption, landing fees, revenue/traffic-related expenses (*e.g.*, commissions, food and beverage, booking fees, credit card fees), and savings of other costs due to the ground stop and subsequent schedule/capacity/staff reductions (including savings from layoffs of employees, adjusted for severance payments), as well as proceeds from business recovery insurance or other insurance payments. You must not report as losses insurance premium increases that have been or will be compensated by the Government under the Act, or other losses that have been or will be compensated by other subsidies or assistance provided by Federal, state, or local governments.

§ 330.29 What information must air taxi operators submit on Form 330 (Final) and Form 330–C?

As an air taxi operator, you must complete Form 330 (Final) in accordance with the requirements in § 330.27. You must also complete pages 2, 5, and 6 (certifying pages 2 and 5) of Form 330–C as shown in Appendix C to this part. Explanatory notes are included on that Form.

§ 330.31 What data must air carriers submit concerning ASMs or RTMs?

(a) Except as provided in paragraph (d) of this section, if you are applying for compensation as a passenger or combination passenger/cargo carrier, you must have submitted your August 2001 total completed ASM report to the Department for your system-wide air service (e.g., scheduled, non-scheduled, foreign, and domestic).

(b) Except as provided in paragraph (d) of this section, if you are applying for compensation as an all-cargo carrier, you must have submitted your RTM reports to the Department for the second calendar quarter of 2001.

(c) In calculating and submitting ASMs and RTMs under paragraphs (a) and (b) of this section, there are certain things you must not do:

(1) Except at the direction of the Department, or to correct an error that you document to the Department, you must not alter the ASM or RTM reports you earlier submitted to the Department. Your ASMs or RTMs for purposes of this part are as you have reported them to the Department according to existing standards, requirements, and methodologies established by the Office of Airline Information (Bureau of Transportation Statistics).

(2) You must not include ASMs or RTMs resulting from operations by your code-sharing or alliance partners.

(d) If you have not previously reported ASMs or RTMs as provided in paragraphs (a) and (b) of this section for a given operation or operations, you may submit your calculation of ASMs or RTMs to the Department with your application. You must certify the accuracy of this calculation and submit with your application the data and assumptions on which the calculation is based. After reviewing your submission, the Department may modify or reject your calculation.

(1) If you are a direct air carrier that has operated your aircraft for a lessee (i.e., a wet lease, or aircraft, crew, maintenance, and insurance (ACMI) operation), you may submit your calculation of ASMs or RTMs for these flights. Your submission must include the following elements:

(i) Documentation that you otherwise qualify as an air carrier;

(ii) Documentation that you are a wet lessor, and an explanation of why you did not previously report ASMs or RTMs for the operations in question;

(iii) Documentation of the identify of the wet lessees involved in these operations; and

(iv) Accurate and auditable records of ASMs or RTMs actually flown during the relevant time period for these operations.

(2) If you are an indirect air carrier, you may submit your calculation of ASMs or RTMs for flights that direct air carriers have operated for you under contract or other arrangement. Your submission must include the following elements:

(i) Documentation that you otherwise qualify as an air carrier;

(ii) Documentation that you are an indirect air carrier, and an explanation of why you did not previously report ASMs or RTMs for the operations in question;

(iii) Documentation of the identify of the direct air carriers involved in these operations; and

(iv) Accurate and auditable records of ASMs or RTMs actually flown during the relevant time period for these operations.

§ 330.33 Must carriers certify the truth and accuracy of data they submit?

Yes, with respect to all information submitted or retained under §§ 330.27–330.31 and 330.35, your Chief Executive Officer (CEO), Chief Financial Officer (CFO), or Chief Operating Officer (COO) or, if those titles are not used, the equivalent officer, must certify that the submitted information was prepared under his or her supervision and is true and accurate, under penalty of law.

§ 330.35 What records must carriers retain?

As an air carrier that applies for compensation under this part, you must retain records as follows:

(a) You must retain all books, records, and other source and summary documentation supporting your claims for compensation of direct and incremental losses pursuant to Sections 101, 103, and 106 of the Act. This requirement includes, but is not limited to, the following:

(1) You must retain supporting evidence and documentation demonstrating the validity of the data you provide under §§ 330.27–330.31.

(2) You must retain documentation verifying that your pre-September 11, 2001, forecast was the most recent forecast available to that date.

(3) You must also retain documentation outlining the assumptions made for all forecasts and the source of the data and other inputs used in making the forecasts.

(4) You must agree to have your independent public accountant retain all reports, working papers, and supporting documentation pertaining to the agreed-upon procedures engagement conducted by your independent public accountant under the requirements of this part for a period of five years. The accountant must make this information available for audit and examination by representatives of the Department of Transportation (including the Office of the Inspector General), the Comptroller General of the United States, or other Federal agencies.

(b) You must preserve and maintain this documentation in a manner that readily permits its audit and examination by representatives of the Department of Transportation (including the Office of the Inspector General), the Comptroller General of the United States, or other Federal agencies.

(c) You must retain this documentation for five years.

(d) You must make all requested data available within one week from a request by the Department of Transportation (including the Office of the Inspector General), the Comptroller General of the United States, or other Federal agencies.

§ 330.37 Are carriers which participate in this program subject to audit?

(a) All payments you receive from the Department of Transportation under this program are subject to audit. All information you submit with your applications and all records and documentation that you retain are also subject to audit.

(b) Except as provided in paragraph (d) of this section, before you are eligible to receive payment from the final installment of compensation under the Act, there must be an independent public accountant's report based on the performance of procedures agreed upon by the Department of Transportation with respect to the carrier's forecasts and actual results. The independent public accountant's engagement must be performed in accordance with generally accepted professional standards applicable to agreed-upon procedures engagements. You must submit the results of the agreed-upon procedures engagement to the Department with your application for payment of the final installment.

(c) The following are the core requirements for the independent public accountant's review:

(1) Determine that the earnings forecast presented to the Department was inclusive of the entity's full operations as an air carrier and was the most current forecast prepared prior to September 11, 2001;

(2) Determine that, if forecasts presented to the Department for prior periods had material variances from actual results, the carrier provided explanations to account for such variances;

(3) Determine that the methodology for allocating revenue and expenses to the periods September 1–10 and September 11–30, from the forecasted and actual September results, was in accordance with air carrier records and analyses;

(4) Determine that the actual expenses and revenues presented to the Department are in accordance with the official accounting records of the carrier or the financial statements included in the carrier's Securities and Exchange Commission Form 10–Q (for availability, see 17 CFR 249.0–1(b)), and consistent with Generally Accepted Accounting Principles (GAAP), except to the extent that GAAP would require or allow treatment that would be inconsistent with the Act or this part;

(5) Verify that the carrier provided explanations supporting the allocation methodology used if the forecasted and/or actual results for the September 11—30 period was different from allocating 66.7 percent of the total amounts for September;

(6) Determine that the carrier provided full explanations for all material differences between forecast and actual results for the September 11—30, 2001 period and the October 1—December 31, 2001 period;

(7) Determine that the amounts included in management's explanations for such material differences were in accordance with the carrier's analysis of such fluctuations, and the amounts and explanations were traceable to supporting general ledger accounting records or analyses prepared by the carrier;

(8) Determine that the amounts presented to the Department in Form 330 (Final), pages 2–3, in appendix A to this part that the carrier identified as adjustments to the difference between the pre-September 11 forecast and actual results for the period September 11 through December 31, 2001, were in accordance with the official accounting records of the carrier or the financial statements included in the carrier's Securities and Exchange Commission Form 10–Q, and consistent with GAAP, except to the extent that GAAP would require or allow treatment that would be inconsistent with the Act or this part;

(9) Determine that the insurance recoveries and government payments reported by the air carrier and offsetting income were in accordance with the air carrier's general ledger accounting records;

(10) Determine that the information presented in the air carrier's Supplemental Certification were in accordance with the air carrier's general ledger accounting records;

(11) Include in the auditor's report full documentation for each exception taken by the auditor; and

(12) Identify air carrier reports and records utilized in performing the procedures in paragraphs (c)(1) through (11) of this section.

(d) If you are a carrier that reported fewer than 10 million ASMs for the month of August 2001 or fewer than two million RTMs for the quarter ending June 30, 2001, you are not required to report to the Department on the basis of an agreed-upon procedures engagement by an independent public accountant. Instead, you may report on the basis of simplified procedures approved by the Department.

§ 330.39 What are examples of types of losses that the Department does not allow?

(a)(1) The Department generally does not allow air carriers to include in their calculations aircraft impairment charges, charges or expenses attributable to lease buyouts, or other losses that are not actually and fully realized in the period between September 11, 2001 and December 31, 2001.

(2) The Department will consider requests to accept adjustments for extraordinary or non-recurring expenses or revenues on a case-by-case basis. If, as a carrier, you make such a request, you must demonstrate the following to the satisfaction of the Department:

(i) That the expense or revenue was (or was not, as appropriate) the direct result of the terrorist attacks of September 11, 2001;

(ii) That the revenue or expense was reported in accordance with Generally Accepted Accounting Principles (GAAP), except to the extent that the GAAP would require or allow treatment that would be inconsistent with the Act or this part;

(iii) That an expense was fully borne within the September 11—December 31, 2001, period and is permanent; and

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(iv) That the resulting additional compensation would not be duplicative of other allowances for compensation.

(b) The Department generally does not accept claims by air carriers that cost savings should be excluded from the calculation of incurred losses. Consequently, the Department will generally not allow such claims to be used in a way that has the effect of increasing the compensation for which an air carrier is eligible.

Subpart C—Set-Aside for Certain Carriers

§ 330.41 What funds is the Department setting aside for eligible classes of air carriers?

The Department is setting aside a sum of up to $35 million to compensate eligible classes of air carriers, for which application of a distribution formula containing ASMs as a factor, as set forth in section 103(b)(2) of the Act, would inadequately reflect their share of direct and incremental losses.

§ 330.43 What classes of air carriers are eligible under the set-aside?

There are two classes of eligible air carriers:

(a) You are a Class I air carrier if you are an air taxi, regional, commuter, or indirect air carrier and you reported 310,000 or fewer ASMs to the Department for the month of August 2001 (10,000 ASMs per day).

(b) You are a Class II air carrier if you are an air taxi, regional, commuter, or indirect air carrier and you reported between 310,001 and 10 million ASMs to the Department for the month of August 2001.

§ 330.45 What is the basis on which air carriers will be compensated under the set-aside?

(a) Except as provided in paragraph (c) of this section, as an air carrier eligible for compensation through the set-aside, you will be compensated for an amount calculated as provided in paragraph (b) of this section.

(b)(1) As a Class I carrier, your compensation will be calculated using a fixed ASM rate equivalent to the mean losses per ASM for all Class I carriers applying for compensation.

(2) As a Class II carrier, your compensation will be calculated using a graduated ASM rate equivalent to—

(i) The mean loss per ASM for all Class I carriers applying for compensation, for each of the first 310,000 ASMs reported; and

(ii) The mean remaining loss per ASM for all Class II carriers applying for compensation for each ASM in excess of 310,000.

(3) For purposes of this paragraph (b), ASMs are those verified by the Department for August 2001.

(4) Any compensation payments previously made to air carriers eligible for the set-aside will be deducted from the amount calculated as the carrier's total compensation under the set-aside formula.

(c) If you are an air carrier whose compensation is calculated using an ASM rate as provided in paragraph (b) of this section, your compensation will not be less than an amount equivalent to 25 percent of the direct and incremental transportation-related losses you have demonstrated to the satisfaction of the Department were incurred as a direct result of the terrorist attacks of September 11, 2001. Your compensation will not be more than an amount equivalent to the mean percentage of compensation for losses received by passenger and combination air carriers that are not eligible for the set-aside funds, unless you would have been compensated for more than that percentage of losses under the formula set forth in section 103(b)(2) of the Act, in which case you will be compensated under that formula.

Appendix A to Part 330—Forms for All Carriers

BILLING CODE 4910-62-P

FORM 330 (Final)
Page 1 of 6
(for completion by all carriers)

AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT
APPLICATION FOR COMPENSATION

NAME, ADDRESS, AND TELEPHONE NUMBER OF AIR CARRIER	
TYPE OF DOT ECONOMIC AUTHORITY HELD	
COMPENSATION AMOUNT RECEIVED TO DATE UNDER SECTION 101(A)(2) OF THE ACT	

Forecasted and Actual Losses for the Period September 11, 2001 to December 31, 2001

Carrier Financial Data	Column A: Pre 9/11/01 Forecast for the Period 9/11/01 thru 12/31/01	Column B: Actual Results for the Period 9/11/01 thru 12/31/01	Column C: Difference Between the Pre 9/11/01 Forecast & Actual Results for 9/11/01 thru 12/31/01 (A-B)
1. Total Operating Revenue			
2. Total Operating Expenses			
3. Total Operating Income (1-2)			
4. Non-Operating Revenue			
5. Non-Operating Expenses			
6. Income Before Taxes (3 + 4 –5)			

Fuel Price Used in Forecast: Average price per gallon of fuel used in the pre-September 11 forecast for the period from September 11, 2001 through December 31, 2001: _____.

Monthly Profit and Loss Statements: Per section 330.21(h), you must also submit copies of monthly profit and loss statements for the months July 2001 through January 2002, each of which must include the imputed price per gallon average of the fuel used for all aircraft during that month.

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FORM 330 (Final)
Page 2 of 6
(for completion by all carriers)

NAME OF AIR CARRIER	

Identification and Explanation of Out-of-Period, Extraordinary or Non-Recurring Revenues and Expenses, and Adjustments to Revenues and Expenses Stemming from Changes Not Directly Related to the Terrorist Events of September 11, 2001

(Note: For definitions and background information in completing this Form, see the sections on "Impairments and Other Extraordinary or Nonrecurring Items" and "Adjustment for Losses Not the Direct Result of the Events of September 11" in the preamble accompanying the original issuance of this form (67 FR 18468; April 16, 2002). See especially the discussion of impairment of assets, lease buyouts, and limitations on treatment of cost reductions below forecast. The three blank lines in each table indicate the format, rather than the expected number of entries.)

In Table 1 below, separately identify and explain any and all out-of-period revenues, extraordinary or non-recurring revenues, and adjustments to actual revenues not directly related to the terrorist events of September 11, 2001 that were **included** in Column B (Boxes B-1 and B-4 on page 1 of this form) but not in Column A, the forecasted revenues. You should use a separate sheet to provide a complete explanation.

Table 1. Adjustments in Included Revenues

Included Revenue Items	Dollar Amount	Explanation (on separate sheet)

In Table 2 below, separately identify and explain any and all out-of-period revenues, extraordinary or non-recurring revenues, and adjustments to actual revenues not directly related to the terrorist events of September 11, 2001 that were **excluded from** Column B (Boxes B-1 and B-4 on page 1 of this form) but not from Column A, the forecasted revenues. You should use a separate sheet if necessary to provide a complete explanation.

Table 2. Adjustments in Excluded Revenues

Excluded Revenue Items	Dollar Amount	Explanation (on separate sheet)

In Table 3 below, separately identify and explain any and all out-of-period expenses, extraordinary or non-recurring expenses, and adjustments to actual expenses not directly related to the terrorist events of September 11, 2001 that were **included** in Column B (Boxes B-2 and B-5 on page 1 of this form) but not in Column A, the forecasted expenses. You should use a separate sheet to provide a complete explanation.

Table 3. Adjustments in Included Expenses

Included Expense Item	Dollar Amount	Explanation (on separate sheet)

In Table 4 below, separately identify and explain any and all out-of-period expenses, extraordinary or non-recurring expenses, and adjustments to actual expenses not directly related to the terrorist events of September 11, 2001 that were **excluded from** Column B (Boxes B-2 and B-5 on page 1 of this form) but not from Column A, the forecasted expenses. You should use a separate sheet to provide a complete explanation.

Table 4. Adjustments in Excluded Expenses

Excluded Expense Item	Dollar Amount	Explanation

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FORM 330 (Final)
Page 4 of 6
(to be completed by all-cargo carriers)

NAME OF AIR CARRIER	

ALL-CARGO OPERATIONAL DATA

Cargo Carrier Operating Data	Pre 9-11-01 Forecast for the Period 9-11-01 through 12-31-01	Actual Data for the Period 9-11-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and Actual Loss for the Period 9-11-01 thru 12-31-01
Revenue Tons Enplaned			
Revenue Ton Miles (RTMs)			
Available Ton Miles (ATMs)			
Load Factor (%)			
Departures Performed			
Cargo Revenue Yield per RTM			

FORM 330 (Final)
Page 5 of 6
(to be completed by passenger and combination carriers)

NAME OF AIR CARRIER	

PASSENGER AND COMBINATION CARRIER OPERATIONAL DATA

Passenger Carrier Operating Data	Pre 9-11-01 Forecast for the Period 9-11-01 thru 12-31-01	Actual Data for the Period 9-11-01 thru 12-31-01	Difference Between the Pre 9-11-01 Forecast and Actual Loss for the Period 9-11-01 thru 12-31-01
Revenue Passengers Carried			
Revenue Passenger Miles (RPMs)			
Available Seat Miles (ASMs)			
Load Factor (%)			
Breakeven Load Factor (%)			
Average Length of Passenger Haul			
Departures Performed			
Average Passenger Fare ($)			
Passenger Revenue Yield per RPM (cents)			
Operating Revenue per ASM (cents)			
Operating Expense per ASM (cents)			

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FORM 330 (Final)
Page 6 of 6

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR CARRIER	

Compensation payments will be made via Electronic Funds Transfer. The Department of Transportation can process this type of payment only if air carrier applicants submit the following banking information with their request:

Air Carrier Bank Routing Number	_ _ _ _ _ _ _ _ _ (9 positions)
Air Carrier Bank Account Number	
Name on Account	
Type of Account (*e.g.*, checking, savings)	
Taxpayer ID Number	

I CERTIFY THAT THE INFORMATION ON FORM 330 (FINAL) AND THE MONTHLY PROFIT AND LOSS STATEMENTS SUBMITED AS PART OF THE APPLICATION ARE TRUE AND ACCURATE UNDER PENALTY OF LAW. FALSIFICATION OF A CLAIM FOR COMPENSATION/PAYMENTS UNDER PUB. L. 107-42 MAY RESULT IN CRIMINAL PROSECUTION RESULTING IN FINE AND/OR IMPRISONMENT.

_____ _____

CERTIFYING OFFICER (CEO, CFO or COO) DATE

Print Name_____ Telephone Number _____

Title: _____

Appendix B to Part 330—[Reserved]

Appendix C to Part 330—Forms for Air Taxi Operators

FORM 330-C
Page 1 of 7

AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT APPLICATION FOR COMPENSATION FOR AIR TAXI OPERATORS

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR TAXI OPERATOR	
DATE OF MOST RECENT PART 298 REGISTRATION OR AMENDMENT	
FAA PART 135 OR 121 CERTIFICATE NUMBER	

PART 1: FORECASTED & ACTUAL LOSSES FOR THE PERIOD SEPTEMBER 11, 2001 TO SEPTEMBER 30, 2001 (in whole dollars)

Air Taxi Financial Data	Contracted/Planned Operations for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 09-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

The operations for hire for which losses are claimed in this chart must have been cancelled entirely, resulting in a complete loss of revenue for those operations. Revenue for these operations must not have been re-captured through subsequent re-accommodation of the same trips. Such non-recovered losses in revenues had associated countervailing reductions in operating expenses that have also been incorporated in the data and calculations in this chart.

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FORM 330-C
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NAME OF AIR CARRIER	

**PART 2: REPORT OF OPERATING STATISTICS FOR AIR TRANSPORTATION FOR HIRE*
(in whole numbers)**

FOR AIRCRAFT USED IN PASSENGER, PASSENGER/CARGO & OTHER TRANSPORT SERVICES FOR THE MONTH OF AUGUST 2001

Aircraft Type	Number of Type in Use for Transport Services**	Number of Seats Available per Aircraft for Use by Paid Passengers	Revenue Aircraft Miles Flown in Transport Services	Available Seat Miles in Transport Services	Revenue Airborne Hours in Transport Services	Revenue Aircraft Departures in Transport Services
1)						
2)						
3)						
4)						
5)						
6)						

FOR AIRCRAFT USED ONLY FOR ALL-CARGO OPERATIONS* FOR THE QUARTER ENDED JUNE 30, 2001**

Aircraft Type	Number of Type in Use for Transport Services**	Available Payload Capacity (in pounds)	Revenue Aircraft Miles Flown in Transport Services	Cargo Revenue Ton Miles in Transport Services (if known)	Revenue Airborne Hours in Transport Services	Revenue Aircraft Departures in Transport Services
1)						
2)						
3)						
4)						
5)						
6)						

* Air transportation for hire includes only commercial services operated under Part 121 or Part 135 operating certificates. Other services operated under Part 91, as well as dry leases and flights operated for the purpose of flight instructions, maintenance testing and aircraft positioning are excluded.
** This number should be the same number as listed on the operator's current Part 298 registration and current FAA-issued operations specifications.
*** For all-cargo operations, please note aircraft that are operated under contract for another express or all-cargo carrier and identify those carriers and provide details on a separate, attached sheet.

NOTE: If the operator records and reports aircraft miles, the operator should compute and enter available seat miles by multiplying the number of seats times the aircraft miles. If the operator does not report aircraft miles, DOT will compute the available seat miles. If the operator records and reports cargo RTMs, the operator should enter the amounts directly on the form. If not, DOT will estimate the RTMs based on the other data submitted. All carriers, however, must report airborne hours and departures.

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**PART 3: ESTIMATE OF LOSS FOR THE PERIOD OCTOBER 1, 2001 TO DECEMBER 31, 2001
(in whole dollars)**

Air Taxi Financial Data	Pre 09-11-01 Forecast* for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 09-11-01 Forecast and the Current Forecast for the period 10-01-01 through 12-31-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

* For those air taxi operators that do not typically prepare forecasts, use contracted/scheduled services that were scheduled before September 11, 2001 and can be documented.

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PART 4: OPERATIONAL DATA
(in whole numbers or dollars)

Air Taxi Operational Data		Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Forecast for 10-01-01 through 12-31-01
Total operating revenues				
Total operating expenses				
Total operations for hire (departures)				
Total available seat miles OR				
Total revenue ton miles				
Total aircraft in fleet:				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			
Seats available per aircraft:				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			
Total aircraft miles flown:				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			
Total airborne hours:				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			
Available payload capacity (in lbs.) (all-cargo operations only):				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			

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PART 5: HISTORICAL OPERATIONAL DATA
(in whole numbers or dollars)

Air Taxi Operational Data		Month of Sept 2000	Month of Oct 2000	Month of Nov 2000	Month of Dec 2000	Month of July 2001	Month of Aug 2001
Total operating revenues							
Total operating expenses							
Total operations for hire (departures)							
Total available seat miles OR							
Total revenue ton miles							
Total aircraft in fleet:							
(Show aircraft types in the next column)	1)						
	2)						
	3)						
	4)						
	5)						
	6)						
Seats available per aircraft:							
(Show aircraft types in the next column)	1)						
	2)						
	3)						
	4)						
	5)						
	6)						
Total aircraft miles flown:							
(Show aircraft types in the next column)	1)						
	2)						
	3)						
	4)						
	5)						
	6)						
Total airborne hours:							
(Show aircraft types in the next column)	1)						
	2)						
	3)						
	4)						
	5)						
	6)						
Available payload capacity (in lbs.) (all-cargo operations only):							
(Show aircraft types in the next column)	1)						
	2)						
	3)						
	4)						
	5)						
	6)						

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Part 6: ACCOUNT INFORMATION AND CERTIFICATION

Compensation payments will be made via Electronic Funds Transfer. The Department of Transportation can process this type of payment only if air carrier applicants submit the following banking information with their requests:

Air Carrier Bank Routing Number	_ _ _ _ _ _ _ _ _ (9 positions)
Air Carrier Bank Account Number	
Name on Account	
Type of Account (*e.g.*, checking, savings)	
Taxpayer ID Number	

I CERTIFY THAT THE INFORMATION CONTAINED IN PARTS 1 THROUGH 5 OF THIS FORM (FORM 330-C) IS TRUE AND ACCURATE UNDER PENALTY OF LAW. FALSIFICATION OF A CLAIM FOR COMPENSATION/PAYMENTS UNDER PUB. L. 107-42 MAY RESULT IN CRIMINAL PROSECUTION RESULTING IN FINE AND/OR IMPRISONMENT (18 U.S.C. 1001).

Certifying Officer (signature) **Date**

Print Name and Title (CEO, CFO or COO) **Telephone Number**

EXPLANATORY NOTES:

1. In order to avoid the possibility of misinterpretation, we are requiring that numbers or notations (for example, "N/A") be entered into all data blocks on all forms even if those numbers are zero. We also note that all amounts are to be reported in whole numbers.

2. The required forecasted amounts should be based on a forecasting and/or budgeting approach or similar accounting system if the air carrier routinely uses that method. For those carriers whose accounting systems or methodologies rely more on actual or short run projections, we ask that they make a "good faith" effort to categorize their revenues and expenses according to the required forms. In this regard, the following may provide additional assistance.

3. As general guidance, we include the following information that has been adapted from 14 CFR Part 298 (Section 298.62) or 14 CFR Part 241. Air transportation for hire includes only commercial services operated under Part 121 or Part 135 operating certificates. Other services operated under Part 91, as well as dry leases and flights operated for the purpose of flight instructions, maintenance testing and aircraft positioning are excluded.

4. Total operating revenues generally include gross revenues accruing from services ordinarily associated with air transportation. It is meant to include revenue derived from scheduled service, on demand and nonscheduled service operations.

5. In general, total operating expenses include expenses of the type usually and ordinarily incurred in the performance of air transportation. It includes expenses incurred: directly in the in-flight operation of aircraft; in the holding of aircraft and aircraft personnel in readiness for assignment to an in-flight status; on the ground, in controlling and protecting the in-flight movement of aircraft; landing and handling aircraft on the ground; selling transportation, servicing and handling passenger and cargo traffic; promoting the development of traffic; and administering operations generally. It shall also include expenses which are specifically identifiable with the repair and upkeep of property and equipment used in the performance of air transportation and all depreciation and amortization expenses applicable to property and equipment used in providing air transportation services.

6. Non-operating income includes such items as interest income and other similar investments. It may also include capital gains (for example, aircraft sales). Non-operating expenses include interest expense and other expenses attributable to financing or other activities that are extraneous to and not an integral part of air transportation or its incidental services. It may also include capital losses (for example, aircraft sales).

7. We note that claims for compensation cannot be based solely on lost revenues, that is, the total revenue that an air taxi operator expected to receive from flights that would have been flown but were cancelled due to the DOT-mandated flight stoppage. While these amounts would provide information on the changes in total operating revenues, it is important to recognize that changes in total operating expenses must also be considered in calculating operating income and net income which is ultimately used to determine compensation. Also, for those carriers with less sophisticated accounting systems, the calculation of forecasted total operating expenses might be based on an analysis of fixed costs (those that stay the same regardless of the number of flights or changes in passenger and cargo traffic) and variable costs (those that change in proportion to the level of operations and traffic volume).

8. All carriers should be able to provide actual financial results for the period of September 11 to September 30, 2001, as required. We will not accept incomplete forms or reports that are submitted in lieu of the required forms and we will not accept the submission of invoices, flight logs, sales records, calendar notations of events or other similar documents in lieu of the required forms. However, supporting documentation must be retained for audit purposes.

[FR Doc. 02–21226 Filed 8–16–02; 10:47 am]
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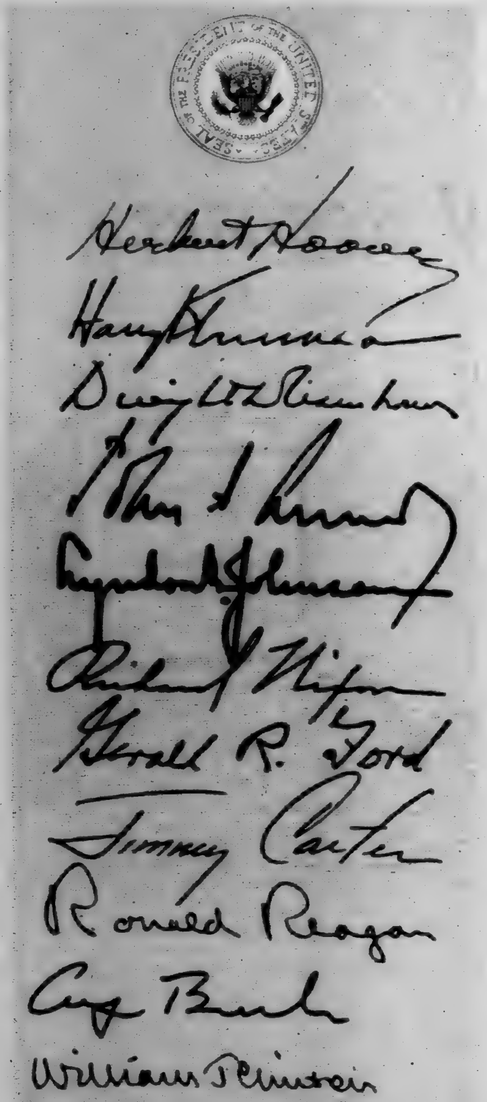
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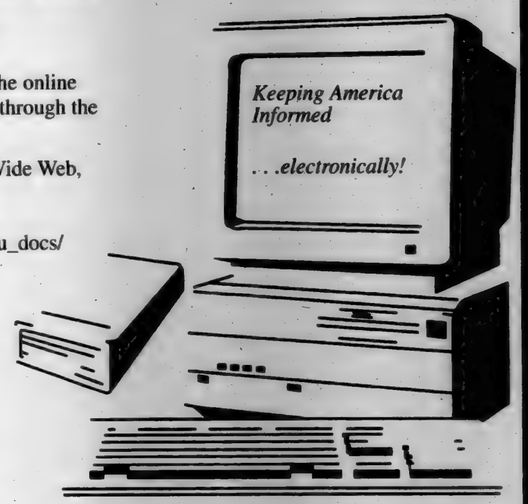
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Rules and Regulations

Federal Register
Vol. 67, No. 162
Wednesday, August 21, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Crop Insurance Regulations, Removal of a Miscellaneous Provision

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) is removing an outdated malting barley provision option that is no longer required in the administration of the Federal crop insurance program.

EFFECTIVE DATE: September 20, 2002.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Insurance Management Specialist, Product Development Division, Federal Crop Insurance Corporation, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO, 64133–4676, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

This rule does not contain information collection requirements that would require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

The rule will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. No additional work is required as a result of this action on the part of either the insured or the insurance companies. Additionally, the regulation does not require any greater action on the part of small entities than is required on the part of large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 or 7 CFR § 400.169, as applicable, must be exhausted before any action for judicial review of any determination or action by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has reviewed its regulations published at 7 CFR part 457 and determined that the provisions for malting barley published at § 457.103 are no longer applicable because the provisions currently in effect for malting barley are published at 7 CFR § 457.118.

Since the purpose of this rule is simply to remove the provisions that are no longer necessary in the administration of the Federal crop insurance program, this rule is considered a rule of agency practice or procedure. Therefore, under section 553(b) of the Administrative Procedures Act, this rule does not need to be published for notice and comment.

List of Subjects in 7 CFR Part 457

Crop Insurance, Malting barley.

Final Rule

Accordingly, under the authority of 7 U.S.C. 1506(l) and 1506(p), the Federal Crop Insurance Corporation hereby amends 7 CFR Chapter IV as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

PART 457—[AMENDED]

2. In part 457, remove and reserve § 457.103.

Signed in Washington, DC, on August 15, 2002.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 02–21220 Filed 8–20–02; 8:45 am]

BILLING CODE 3410–08–P

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–3]

Establishment of Class E Airspace; Caruthersville, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which establishes Class E airspace at Caruthersville, MO. The initial publication identified the airspace action as a modification of Class E airspace but, in fact, no Class E airspace area extending upward from 700 above the surface of the earth existed at Caruthersville, MO. The description of the established Class E airspace at Caruthersville, MO is unchanged from that of the initial publication.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 18, 2002 (67 FR 19107). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 3, 2002. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on August 5, 2002.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 02–21139 Filed 8–20–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket No. RM02–15–000]

Annual Update of Filing Fees

August 14, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; annual update of Commission filing fees.

SUMMARY: In accordance with 18 CFR 381.104, the Commission issues this update of its filing fees. This document provides the yearly update using data in the Commission's Management, Administrative, and Payroll System to calculate the new fees. The purpose of updating is to adjust the fees on the basis of the Commission's costs for Fiscal Year 2001.

EFFECTIVE DATE: September 20, 2002.

FOR FURTHER INFORMATION CONTACT: Troy Cole, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Room 42–66, Washington, DC 20426, 202–502–6161.

SUPPLEMENTARY INFORMATION:

Document Availability: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page *(http://www.ferc.gov)* and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Web site during normal business hours from our Help line at (202) 502–8222 (e-mail to *WebMaster@ferc.gov*) or the Public Reference at (202) 208–1371 (e-mail to *public.referenceroom@ferc.gov*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Web site are available. User assistance is also available.

The Federal Energy Regulatory Commission (Commission) is issuing this document to update filing fees that the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to 18 CFR 381.104, the Commission is establishing updated fees on the basis of the Commission's Fiscal Year 2001 costs. The adjusted fees announced in this document are effective September 20, 2002. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this final rule is not a major rule within the meaning of section 251 of Subtitle E of Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). The Commission is submitting this final rule to both houses of the United States Congress and to the Comptroller General of the United States.

The new fee schedule is as follows:

	Amount
Fees Applicable to the Natural Gas Policy Act	
1. Petitions for rate approval pursuant to 18 CFR 284.123(b)(2). (18 CFR 381.403)	$ 9,090
Fees Applicable to General Activities	
1. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act). (18 CFR 381.302(a))	18,260
2. Review of a Department of Energy remedial order:	
Amount in controversy	
$0–9,999. (18 CFR 381.303(b))	100
$10,000–29,999. (18 CFR 381.303(b))	600
$30,000 or more. (18 CFR 381.303(a))	26,660
3. Review of a Department of Energy denial of adjustment:	
Amount in controversy	
$0–9,999. (18 CFR 381.304(b))	100
$10,000–29,999. (18 CFR 381.304(b))	600
$30,000 or more. (18 CFR 381.304(a))	13,980
4. Written legal interpretations by the Office of General Counsel. (18 CFR 381.305(a))	5,240
Fees Applicable to Natural Gas Pipelines	
1. Pipeline certificate applications pursuant to 18 CFR 284.224. (18 CFR 381.207(b))	[1] 1,000
Fees Applicable to Cogenerators and Small Power Producers	
1. Certification of qualifying status as a small power production facility. (18 CFR 381.505(a))	15,700
2. Certification of qualifying status as a cogeneration facility. (18 CFR 381.505(a))	17,770
3. Applications for exempt wholesale generator status. (18 CFR 381.801)	990

[1] This fee has not been changed.

List of Subjects in 18 CFR Part 381

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

Thomas R. Herlihy,

Executive Director and Chief Financial Officer.

In consideration of the foregoing, the Commission amends part 381, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 381—FEES

1. The authority citation for part 381 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 381.302 [Amended]

2. In 381.302, paragraph (a) is amended by removing "$16,530" and adding "$18,260" in its place.

§ 381.303 [Amended]

3. In 381.303, paragraph (a) is amended by removing "$24,140" and adding "$26,660" in its place.

§ 381.304 [Amended]

4. In 381.304, paragraph (a) is amended by removing "$12,650" and adding "$13,980" in its place.

§ 381.305 [Amended]

5. In 381.305, paragraph (a) is amended by removing "$4,740" and adding "$5,240" in its place.

§ 381.403 [Amended]

6. Section 381.403 is amended by removing "$8,230" and adding "$9,090" in its place.

§ 381.505 [Amended]

7. In 381.505, paragraph (a) is amended by removing "$14,220" and adding "$15,700" in its place and by removing "$16,090" and adding "$17,770" in its place.

§ 381.801 [Amended]

8. Section 381.801 is amended by removing "$970" and adding "$990" in its place.

[FR Doc. 02–21157 Filed 8–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9013]

RIN 1545–AN64

Limitations on Passive Activity Losses and Credits—Treatment of Self-Charged Items of Income and Expense

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: These regulations provide guidance on the treatment of self-charged items of income and expense under section 469. The regulations recharacterize a percentage of certain portfolio income and expense as passive income and expense (self-charged items) when a taxpayer engages in a lending transaction with a partnership or an S corporation (passthrough entity) in which the taxpayer owns a direct or indirect interest and the loan proceeds are used in a passive activity. Similar rules apply to lending transactions between two identically owned passthrough entities. These final regulations affect taxpayers subject to the limitations on passive activity losses and credits.

DATES: *Effective Date:* These regulations are effective August 21, 2002.

Applicability Date: For dates of applicability of these regulations, see § 1.469–11 of these regulations.

FOR FURTHER INFORMATION CONTACT: Danielle M. Grimm at (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1244. Responses to this collection of information are required to obtain the benefit of self-charged treatment of income and expense under section 469.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent varies from 5 minutes to 15 minutes, depending on individual circumstances, with an estimated average of 6 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 469(a)(1)(A) of the Internal Revenue Code (Code) provides that if aggregate losses from passive activities exceed aggregate income from passive activities for the taxable year, the excess losses are not allowable for that taxable year. Under section 469(e)(1), passive activity income does not include income from interest, dividends, annuities, and royalties not derived in the ordinary course of a trade or business. However, under the rules of § 1.163–8T, if borrowed funds are used in a passive activity, the interest expense is treated as a passive activity deduction. Consequently, in certain lending transactions, a taxpayer may have interest income that is characterized as portfolio income under section 469(e)(1) and interest expense that is characterized as a passive activity deduction under § 1.163–8T. The legislative history of section 469 indicates that this result is inappropriate because the items of interest income and expense are essentially "self-charged" and thus lack economic significance.

On April 5, 1991, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG–209365–89 at 56 FR 14034) proposing amendments to 26 CFR part 1 under section 469 of the Code relating to the treatment of self-charged items of income and expense for purposes of applying the limitations on passive activity losses and passive activity credits.

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A number of public comments were received and a public hearing was held on September 6, 1991. Given the significant period of time that had elapsed since the former comment period, additional comments were solicited in Notice 2001–47 (2001–36 I.R.B. 212). After consideration of all of the comments received, the proposed regulations are adopted, as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

The proposed regulations provide self-charged treatment for items of interest income and interest expense in lending transactions between a taxpayer and a passthrough entity in which the taxpayer holds a direct or qualifying indirect interest. Several commentators suggested that the regulations should also apply to lending transactions between related passthrough entities such as brother-sister entities in which the taxpayer owns interests because such transactions also may result in mismatched income and expense for purposes of section 469. In response to the suggestions, the self-charged rules are extended to identically owned passthrough entities. This extension is limited to identically owned entities because of concerns regarding the difficulty of identifying self-charged items in transactions between less closely related or unrelated entities.

Certain commentators requested the removal of the qualifying indirect interest rule in the proposed regulations. The qualifying indirect interest rule provides that a taxpayer must have at least a 10-percent indirect interest in a passthrough entity to qualify for self-charged treatment. Commentators noted that a taxpayer that owns less than a 10 percent interest nevertheless may receive large amounts of self-charged income and expense. This suggestion has been adopted. Accordingly, the regulations no longer contain the qualifying indirect interest rule.

Noting that Congress authorized the Secretary to identify other situations in which self-charged treatment is appropriate, several commentators suggested that self-charged treatment be extended to other transactions involving rental real estate activities, such as the payment of management fees and salaries. After publication of the proposed regulations, Congress considered the impact of section 469 on rental real estate transactions and enacted specific relief in section 469(c)(7) for certain real estate professionals for taxable years beginning after 1993. There was no indication in the legislative history of section 469(c)(7) that Congress considered additional relief for real estate transactions necessary or desirable. Moreover, there is less justification for the complexity of a self-charged rule in this area after the enactment of section 469(c)(7) because that change substantially reduced the number of real estate transactions that would benefit from a self-charged rule. Accordingly, the regulations do not extend the self-charged treatment to other transactions involving rental real estate.

A number of comments suggested that the regulations clarify whether the self-charged rules apply to guaranteed payments to a partner for the use of capital. Section 1.469–2(e)(2)(ii) of the regulations treats these payments as interest income. Accordingly, the regulations clarify that lending transactions include guaranteed payments for the use of capital under section 707(c).

Some comments requested clarification on the types of interest eligible for self-charged treatment. The comments noted that the examples in the regulations may be interpreted as precluding certain types of interest because the introductory language states that the lending transactions described in the examples do not result in foregone interest (within the meaning of section 7872(e)(2)), original issue discount (within the meaning of section 1273), or total unstated interest (within the meaning of section 483(b)). Accordingly, the regulations clarify that the examples assume, solely for purposes of simplifying the presentation, that the lending transactions do not involve foregone interest, original issue discount, or total unstated interest.

A few comments responded to the notice of proposed rulemaking's solicitation for suggestions on the proper treatment of items recognized in different taxable years. One comment suggested the use of a suspense account. Under this suggestion, in the year in which the taxpayer identifies the corresponding item of self-charged income or expense, that item would be netted against the self-charged item in the suspense account. Another comment suggested that where the recognition of passive interest expense precedes the recognition of passive income, the taxpayer could elect to treat the income as passive when ultimately recognized. Another suggestion was to allow the taxpayer to recharacterize interest income or expense equal to the amount calculated on a cumulative basis. The commentators recognize that to implement the above methods would require more complex regulations.

After consideration of these comments, the final regulations adopt the rule of the proposed regulations that the self-charged rules apply only to self-charged items recognized in the same taxable year. This rule is consistent with the legislative history and avoids the complexity of the other suggested methods. For similar reasons, comments suggesting special rules for capitalized expenses are not adopted.

Certain commentators requested that the regulations be extended to apply to transactions between taxpayers and their trusts, estates, REMICs and housing cooperatives. The regulations address the transactions identified by Congress involving S corporations and partnerships (including entities classified as partnerships for federal tax purposes). Application of the self-charged rules to other types of entities would require a significant expansion of the scope of these regulations to address broader issues concerning the manner in which section 469 applies to those entities.

The applicability date of the final regulations is consistent with the applicability date as proposed. However, certain clarifications have been made to the transition rule. In the transition period, a taxpayer may use any reasonable method to offset items of interest income and interest expense from lending transactions.

Effective Date

These regulations are applicable for taxable years beginning after December 31, 1986. However, for taxable years beginning before June 4, 1991, a taxpayer that owns an interest in a passthrough entity is not required to apply these provisions and may use any reasonable method to offset items of interest income and interest expense from lending transactions between the passthrough entity and its owners or between certain passthrough entities. Items from nonlending transactions cannot be offset under the self-charged rules.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12886. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Danielle M. Grimm, Office of the Associate Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.469–7 also issued under 26 U.S.C. 469(l). * * *

Par. 2. Section 1.469–0 is amended by:

1. Revising the entry for § 1.469–7.
2. Adding entries for § 1.469–7(a) through (h).
3. Revising the entries for § 1.469–11(c)(1) and (c)(1)(i).
4. Adding an entry for § 1.469–11, paragraph (c)(1)(iii).

The additions and revisions read as follows:

§ 1.469–0 Table of contents.

* * * * *

§ 1.469–7 Treatment of self-charged items of interest income and deduction.

(a) In general.
(1) Applicability and effect of rules.
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(b) Definitions.
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(4) Entity taxable year.
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(c) Taxpayer loans to passthrough entity.
(1) Applicability.
(2) General rule.
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(1) Applicability.
(2) General rule.
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(e) Identically-owned passthrough entities.
(1) Applicability.
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(1) Example.
(f) Identification of properly allocable deductions.
(g) Election to avoid application of the rules of this section.
(1) In general.
(2) Form of election.
(3) Period for which election applies.
(4) Revocation.
(h) Examples.

§ 1.469–11 Effective date and transition rules.

* * * * *

(c) * * *
(1) Application of certain income recharacterization rules and self-charged rules.
(i) Certain recharacterization rules inapplicable in 1987.

* * * * *

(iii) Self-charged rules.

* * * * *

Par. 3. Section 1.469–7 is amended by:

(1) Revising the section heading.
(2) Adding paragraphs (a) through (h).

The revision and additions read as follows:

§ 1.469–7 Treatment of self-charged items of interest income and deduction.

(a) *In general*—(1) *Applicability and effect of rules.* This section sets forth rules that apply, for purposes of section 469 and the regulations thereunder, in the case of a lending transaction (including guaranteed payments for the use of capital under section 707(c)) between a taxpayer and a passthrough entity in which the taxpayer owns a direct or indirect interest, or between certain passthrough entities. The rules apply only to items of interest income and interest expense that are recognized in the same taxable year. The rules—

(i) Treat certain interest income resulting from these lending transactions as passive activity gross income;

(ii) Treat certain deductions for interest expense that is properly allocable to the interest income as passive activity deductions; and

(iii) Allocate the passive activity gross income and passive activity deductions resulting from this treatment among the taxpayer's activities.

(2) *Priority of rules in this section.* The character of amounts treated under the rules of this section as passive activity gross income and passive activity deductions and the activities to which these amounts are allocated are determined under the rules of this section and not under the rules of §§ 1.163–8T, 1.469–2(c) and (d), and 1.469–2T(c) and (d).

(b) *Definitions.* The following definitions set forth the meaning of certain terms for purposes of this section:

(1) *Passthrough entity.* The term *passthrough entity* means a partnership or an S corporation.

(2) *Taxpayer's share.* A *taxpayer's share* of an item of income or deduction of a passthrough entity is the amount treated as an item of income or deduction of the taxpayer for the taxable year under section 702 (relating to the treatment of distributive shares of partnership items as items of partners) or section 1366 (relating to the treatment of pro rata shares of S corporation items as items of shareholders).

(3) *Taxpayer's indirect interest.* The taxpayer has an indirect interest in an entity if the interest is held through one or more passthrough entities.

(4) *Entity taxable year.* In applying this section for a taxable year of a taxpayer, the term *entity taxable year* means the taxable year of the passthrough entity for which the entity reports items that are taken into account under section 702 or section 1366 for the taxpayer's taxable year.

(5) *Deductions for a taxable year.* The term *deductions for a taxable year* means deductions that would be allowable for the taxable year if the taxpayer's taxable income for all taxable years were determined without regard to sections 163(d), 170(b), 469, 613A(d), and 1211.

(c) *Taxpayer loans to passthrough entity*—(1) *Applicability.* Except as provided in paragraph (g) of this section, this paragraph (c) applies with respect to a taxpayer's interest in a passthrough entity (borrowing entity) for a taxable year if—

(i) The borrowing entity has deductions for the entity taxable year for interest charged to the borrowing entity by persons that own direct or indirect interests in the borrowing entity at any time during the entity taxable year (the borrowing entity's self-charged interest deductions);

(ii) The taxpayer owns a direct or an indirect interest in the borrowing entity at any time during the entity taxable year and has gross income for the taxable year from interest charged to the borrowing entity by the taxpayer or a passthrough entity through which the taxpayer holds an interest in the borrowing entity (the taxpayer's income from interest charged to the borrowing entity); and

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(iii) The taxpayer's share of the borrowing entity's self-charged interest deductions includes passive activity deductions.

(2) *General rule.* If any of the borrowing entity's self-charged interest deductions are allocable to an activity for a taxable year in which this paragraph (c) applies, the passive activity gross income and passive activity deductions from that activity are determined under the following rules—

(i) The applicable percentage of each item of the taxpayer's income for the taxable year from interest charged to the borrowing entity is treated as passive activity gross income from the activity; and

(ii) The applicable percentage of each deduction for the taxable year for interest expense that is properly allocable (within the meaning of paragraph (f) of this section) to the taxpayer's income from the interest charged to the borrowing entity is treated as a passive activity deduction from the activity.

(3) *Applicable percentage.* In applying this paragraph (c) with respect to a taxpayer's interest in a borrowing entity, the applicable percentage is separately determined for each of the taxpayer's activities. The percentage applicable to an activity for a taxable year is obtained by dividing—

(i) The taxpayer's share for the taxable year of the borrowing entity's self-charged interest deductions that are treated as passive activity deductions from the activity by

(ii) The greater of—

(A) The taxpayer's share for the taxable year of the borrowing entity's aggregate self-charged interest deductions for all activities (regardless of whether these deductions are treated as passive activity deductions); or

(B) The taxpayer's aggregate income for the taxable year from interest charged to the borrowing entity for all activities of the borrowing entity.

(d) *Passthrough entity loans to taxpayer*—(1) *Applicability.* Except as provided in paragraph (g) of this section, this paragraph (d) applies with respect to a taxpayer's interest in a passthrough entity (lending entity) for a taxable year if—

(i) The lending entity has gross income for the entity taxable year from interest charged by the lending entity to persons that own direct or indirect interests in the lending entity at any time during the entity taxable year (the lending entity's self-charged interest income);

(ii) The taxpayer owns a direct or an indirect interest in the lending entity at any time during the entity taxable year and has deductions for the taxable year for interest charged by the lending entity to the taxpayer or a passthrough entity through which the taxpayer holds an interest in the lending entity (the taxpayer's deductions for interest charged by the lending entity); and

(iii) The taxpayer's deductions for interest charged by the lending entity include passive activity deductions.

(2) *General rule.* If any of the taxpayer's deductions for interest charged by the lending entity are allocable to an activity for a taxable year in which this paragraph (d) applies, the passive activity gross income and passive activity deductions from that activity are determined under the following rules—

(i) The applicable percentage of the taxpayer's share for the taxable year of each item of the lending entity's self-charged interest income is treated as passive activity gross income from the activity.

(ii) The applicable percentage of the taxpayer's share for the taxable year of each deduction for interest expense that is properly allocable (within the meaning of paragraph (f) of this section) to the lending entity's self-charged interest income is treated as a passive activity deduction from the activity.

(3) *Applicable percentage.* In applying this paragraph (d) with respect to a taxpayer's interest in a lending entity, the applicable percentage is separately determined for each of the taxpayer's activities. The percentage applicable to an activity for a taxable year is obtained by dividing—

(i) The taxpayer's deductions for the taxable year for interest charged by the lending entity, to the extent treated as passive activity deductions from the activity; by

(ii) The greater of—

(A) The taxpayer's aggregate deductions for all activities for the taxable year for interest charged by the lending entity (regardless of whether these deductions are treated as passive activity deductions); or

(B) The taxpayer's aggregate share for the taxable year of the lending entity's self-charged interest income for all activities of the lending entity.

(e) *Identically-owned passthrough entities*—(1) *Applicability.* Except as provided in paragraph (g) of this section, this paragraph (e) applies with respect to lending transactions between passthrough entities if each owner of the borrowing entity has the same proportionate ownership interest in the lending entity.

(2) *General rule.* To the extent an owner shares in interest income from a loan between passthrough entities described in paragraph (e)(1) of this section, the owner is treated as having made the loan to the borrowing passthrough entity and paragraph (c) of this section applies to determine the applicable percentage of portfolio income of properly allocable interest expense that is recharacterized as passive.

(3) *Example.* The following example illustrates the application of this paragraph (e):

Example. (i) A and B, both calendar year taxpayers, each own a 50-percent interest in the capital and profits of partnerships RS and XY, both calendar year partnerships. Under the partnership agreements of RS and XY, A and B are each entitled to a 50-percent distributive share of each partnership's income, gain, loss, deduction, or credit. RS makes a $20,000 loan to XY and XY pays RS $2,000 of interest for the taxable year. A's distributive share of interest income attributable to this loan is $1,000 (50 percent × $2,000). XY uses all of the proceeds received from RS is a passive activity. A's distributive share of interest expense attributable to the loan is $1,000 (50 percent × $2,000).

(ii) This paragraph (e) applies in determining A's passive activity gross income because RS and XY are identically-owned passthrough entities as described in paragraph (e)(1) of this section. Under paragraph (e)(2) of this section, the RS-to-XY loan is treated as if A made the loan to XY. Therefore, A must apply paragraph (c) of this section to determine the applicable percentage of portfolio income that is recharacterized as passive income.

(iii) Paragraph (c) of this section applies in determining A's passive activity gross income because: XY has deductions for interest charged to XY by RS for the taxable year (XY's self-charged interest deductions); A owns an interest in XY during XY's taxable year and has gross income for the taxable year from interest charged to XY by RS; and A's share of XY's self-charged interest deductions includes passive activity deductions. See paragraph (c)(1) of this section.

(iv) Under paragraph (c)(2)(i) of this section, the applicable percentage of A's interest income is recharacterized as passive activity gross income from the activity. Paragraph (c)(3) of this section provides that the applicable percentage is obtained by dividing A's share for the taxable year of XY's self-charged interest deductions that are treated as passive activity deductions from the activity ($1,000) by the greater of A's share for the taxable year of XY's self-charged interest deductions ($1,000), or A's income for the year from interest charged to XY ($1,000). Thus, A's applicable percentage is 100 percent ($1,000/$1,000), and $1,000 (100 percent x $1,000) of A's income from interest charged to XY is treated as passive activity gross income from the passive activity.

(f) *Identification of properly allocable deductions.* For purposes of this section, interest expense is properly allocable to an item of interest income if the interest expense is allocated under § 1.163–8T to an expenditure that—

(1) Is properly chargeable to capital account with respect to the investment producing the item of interest income; or

(2) May reasonably be taken into account as a cost of producing the item of interest income.

(g) *Election to avoid application of the rules of this section*—(1) *In general.* Paragraphs (c), (d) and (e) of this section shall not apply with respect to any taxpayer's interest in a passthrough entity for a taxable year if the passthrough entity has made, under this paragraph (g), an election that applies to the entity's taxable year.

(2) *Form of election.* A passthrough entity makes an election under this paragraph (g) by attaching to its return (or amended return) a written statement that includes the name, address, and taxpayer identification number of the passthrough entity and a declaration that an election is being made under this paragraph (g).

(3) *Period for which election applies.* An election under this paragraph (g) made with a return (or amended return) for a taxable year applies to that taxable year and all subsequent taxable years that end before the date on which the election is revoked.

(4) *Revocation.* An election under this paragraph (g) may be revoked only with the consent of the Commissioner.

(h) *Examples.* The following examples illustrate the principles of this section. The examples assume for purposes of simplifying the presentation, that the lending transactions described do not result in foregone interest (within the meaning of section 7872(e)(2)), original issue discount (within the meaning of section 1273), or total unstated interest (within the meaning of section 483(b)).

Example 1. (i) A and B, two calendar year individuals, each own 50-percent interests in the capital, profits and losses of AB, a calendar year partnership. AB is engaged in a single rental activity within the meaning of § 1.469–1T(e)(3). AB borrows $50,000 from A and uses the loan proceeds in the rental activity. AB pays $5,000 of interest to A for the taxable year. A and B each incur $2,500 of interest expense as their distributive share of AB's interest expense.

(ii) AB has self-charged interest deductions for the taxable year (*i.e.*, the deductions for interest charged to AB by A); A owns a direct interest in AB during AB's taxable year and has income for A's taxable year from interest charged to AB; and A's share of AB's self-charged interest deductions includes passive activity deductions. Accordingly, paragraph (c) of this section applies in determining A's passive activity gross income. See paragraph (c)(1) of this section.

(iii) Under paragraph (c)(2)(i) of this section, the applicable percentage of A's interest income is recharacterized as passive activity gross income from AB's rental activity. Paragraph (c)(3) of this section provides that the applicable percentage is obtained by dividing A's share for the taxable year of AB's self-charged interest deductions that are treated as passive activity deductions from the activity ($2,500) by the greater of A's share for the taxable year of AB's self-charged interest deductions ($2,500), or A's income for the taxable year from interest charged to AB ($5,000). Thus, A's applicable percentage is 50 percent ($2,500/$5,000), and $2,500 (50 percent × $5,000) of A's income from interest charged to AB is treated as passive activity gross income from the passive activity A conducts through AB.

(iv) Because B does not have any gross income for the year from interest charged to AB, this section does not apply to B. See paragraph (c)(1)(ii) of this section.

Example 2. (i) C and D, two calendar year taxpayers, each own 50-percent interests in the capital and profits of CD, a calendar year partnership. CD is engaged in a single rental activity, within the meaning of § 1.469–1T(e)(3). C obtains a $10,000 loan from a third-party lender, and pays the lender $900 in interest for the taxable year. C lends the $10,000 to CD, and receives $1,000 of interest income from CD for the taxable year. D lends $20,000 to CD and receives $2,000 of interest income from CD for the taxable year. CD uses all of the proceeds in the rental activity. C and D are each allocated $1,500 (50 percent x $3,000) of interest expense as their distributive share of CD's interest expense for the taxable year.

(ii) CD has self-charged interest deductions for the taxable year (i.e., deductions for interest charged to CD by C and D); C and D each own direct interests in CD during CD's taxable year and have gross income for the taxable year from interest charged to CD; and both C's and D's shares of CD's self-charged interest deductions include passive activity deductions. Accordingly, paragraph (c) of this section applies in determining C's and D's passive activity gross income. See paragraph (c)(1) of this section.

(iii) Under paragraph (c)(2)(i) of this section, the applicable percentage of each partner's interest income is recharacterized as passive activity gross income from CD's rental activity. Paragraph (c)(3) of this section provides that C's applicable percentage is obtained by dividing C's share for the taxable year of CD's self-charged interest deductions that are treated as passive activity deductions from the activity ($1,500) by the greater of C's share for the taxable year of CD's self-charged interest deductions ($1,500), or C's income for the taxable year from interest charged to CD ($1,000). Thus, C's applicable percentage is 100 percent ($1,500/$1,500), and all of C's income from interest charged to CD ($1,000) is treated as passive activity gross income from the passive activity C conducts through CD. Similarly, D's applicable percentage is obtained by dividing D's share for the taxable year of CD's self-charged interest deductions that are treated as passive activity deductions from the activity ($1,500) by the greater of D's share for the taxable year of CD's self-charged interest deductions ($1,500), or D's income for the taxable year from interest charged to CD ($2,000). Thus, D's applicable percentage is 75 percent ($1,500/$2,000), and $1,500 (75 percent × $2,000) of D's income from interest charged to CD is treated as passive activity gross income from the rental activity.

(iv) The $900 of interest expense that C pays to the third-party lender is allocated under § 1.163–8T(c)(1) to an expenditure that is properly chargeable to capital account with respect to the loan to CD. Thus, the expense is properly allocable to the interest income C receives from CD (see paragraph (f) of this section). Under paragraph (c)(2)(ii) of this section, the applicable percentage of C's deductions for the taxable year for interest expense that is properly allocable to C's income from interest charged to CD is recharacterized as a passive activity deduction from CD's rental activity. Accordingly, all of C's $900 interest deduction is treated as a passive activity deduction from the rental activity.

Example 3. (i) E and F, calendar year taxpayers, each own 50 percent of the stock of X, a calendar year S corporation. E borrows $30,000 from X, and pays X $3,000 of interest for the taxable year. E uses $15,000 of the loan proceeds to make a personal expenditure (as defined in § 1.163–8T(b)(5)), and uses $15,000 of loan proceeds to purchase a trade or business activity in which E does not materially participate (within the meaning of § 1.469–5T) for the taxable year. E and F each receive $1,500 as their pro rata share of X's interest income from the loan for the taxable year.

(ii) X has gross income for X's taxable year from interest charged to E (X's self-charged interest income); E owns a direct interest in X during X's taxable year and has deductions for the taxable year for interest charged by X; and E's deductions for interest charged by X include passive activity deductions. Accordingly, paragraph (d) of this section applies in determining E's passive activity gross income. See paragraph (d)(1) of this section.

(iii) Under the rules in paragraph (d)(2)(i) of this section, the applicable percentage of E's share of X's self-charged interest income is recharacterized as passive activity gross income from the activity. Paragraph (d)(3) of this section provides that the applicable percentage is obtained by dividing E's deductions for the taxable year for interest charged by X, to the extent treated as passive activity deductions from the activity ($1,500), by the greater of E's deductions for the taxable year for interest charged by X, regardless of whether those deductions are treated as passive activity deductions ($3,000), or E's share for the taxable year of X's self-charged interest income ($1,500). Thus, E's applicable percentage is 50 percent ($1,500/$3,000), and $750 (50 percent × $1,500) of E's share of X's self-charged interest income is treated as passive activity gross income.

(iv) Because F does not have any deductions for the taxable year for interest charged by X, this section does not apply to F. See paragraph (d)(1)(ii) of this section.

Example 4. (i) This *Example 4* illustrates the application of this section to a partner

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that has a different taxable year from the partnership. The facts are the same as in *Example 1* except as follows: Partnership AB has properly adopted a fiscal year ending June 30 for federal tax purposes; AB borrows the $50,000 from A on October 1, 1990; and under the terms of the loan, AB must pay A $5,000 in interest annually, in quarterly installments, for a term of 2 years.

(ii) For A's taxable years from 1990 through 1993 and AB's corresponding entity taxable years (as defined in paragraph (b)(4) of this section) A's interest income and AB's interest deductions from the loan are as follows:

	A's interest income	AB's interest deductions
1990	$1,250	0
1991	5,000	$3,750
1992	3,750	5,000
1993	0	1,250

(iii) For A's taxable year ending December 31, 1990, the corresponding entity taxable year is AB's taxable year ending June 30, 1990. Because AB does not have any deductions for the entity taxable year for interest charged to AB by A, paragraph (c) of this section does not apply in determining A's passive activity gross income for 1990 (see paragraph (c)(1)(i) of this section). Accordingly, A reports $1,250 of portfolio income on A's 1990 income tax return.

(iv) For A's taxable year ending December 31, 1991, the corresponding entity taxable year ends on June 30, 1991. AB has $3,750 of deductions for the entity taxable year for interest charged to AB by A (AB's self-charged interest deductions); A owns a direct interest in AB during the entity taxable year and has $5,000 of interest income for A's taxable year from interest charged to AB; and A's share of AB's self-charged interest deductions includes passive activity deductions. Accordingly, paragraph (c) of this section applies in determining A's passive activity gross income.

(v) Under paragraph (c)(2)(i) of this section, the applicable percentage of A's 1991 interest income is recharacterized as passive activity gross income from the activity. Paragraph (c)(3) of this section provides that the applicable percentage is obtained by dividing A's share for A's 1991 taxable year of AB's self-charged interest deductions that are treated as passive activity deductions from the activity ($0 percent × $3,750 = $1,875) by the greater of A's share for A's taxable year of AB's self-charged interest deductions ($1,875), or A's income for A's taxable year from interest charged to AB ($5,000). Thus, A's applicable percentage is 37.5 percent ($1,875/$5,000), and $1,875 (37.5 percent × $5,000) of A's income from interest charged to AB is treated as passive activity gross income from the passive activity A conducts through AB.

(vi) For A's taxable year ending December 31, 1992, the corresponding entity taxable year ends on June 30, 1992. AB has $5,000 of deductions for the entity taxable year for interest charged to AB by A (AB's self-charged interest deductions); A owns a direct interest in AB during the entity taxable year and has $3,750 of gross income for A's taxable year from interest charged to AB; and A's share of AB's self-charged interest deductions includes passive activity deductions. Accordingly, paragraph (c) of this section applies in determining A's passive activity gross income.

(vii) The applicable percentage for 1992 is obtained by dividing A's share for A's 1992 taxable year of AB's self-charged interest deductions that are treated as passive activity deductions from the activity ($2,500) by the greater of A's share for A's taxable year of AB's self-charged interest deductions ($2,500), or A's income for A's taxable year from interest charged to AB ($3,750). Thus, A's applicable percentage is 66⅔ percent ($2,500/$3,750), and $2,500 (66⅔ percent × $3,750) of A's income from interest charged to AB is treated as passive activity gross income from the passive activity A conducts through AB.

(viii) Paragraph (c) of this section does not apply in determining A's passive activity gross income for the taxable year ending December 31, 1993, because A has no gross income for the taxable year from interest charged to AB (see paragraph (c)(1)(ii) of this section). A's share of AB's self-charged interest deductions for the entity taxable year ending June 30, 1993 ($625) is taken into account as a passive activity deduction on A's 1993 income tax return.

(ix) Because B does not have any gross income from interest charged to AB for any of the taxable years, this section does not apply to B. See paragraph (c)(1)(ii) of this section.

Example 5. (i) This *Example 5* illustrates the application of the rules of this section in the case of a taxpayer who has an indirect interest in a partnership. G, a calendar year taxpayer, is an 80-percent partner in partnership UTP. UTP owns a 25-percent interest in the capital and profits of partnership LTP. UTP and LTP are both calendar year partnerships. The partners of LTP conduct a single passive activity through LTP. UTP obtains a $10,000 loan from a bank, and pays the bank $1,000 of interest per year. G's distributive share of the interest paid to the bank is $800 (80 percent × $1,000). UTP uses the $10,000 debt proceeds and another $10,000 of cash to make a loan to LTP, and LTP pays UTP $2,000 of interest for the taxable year. G's distributive share of interest income attributable to the UTP-to-LTP loan is $1,600 (80 percent × $2,000). LTP uses all of the proceeds received from UTP in the passive activity. UTP's distributive share of interest expense attributable to the UTP-to-LTP loan is $500 (25 percent × $2,000). G's distributive share of interest expense attributable to the UTP-to-LTP loan is $400 (80 percent × $500).

(ii) LTP has deductions for interest charged to LTP by UTP for the taxable year (LTP's self-charged interest deductions); G owns an indirect interest in LTP during LTP's taxable year and has gross income for the taxable year from interest charged to LTP by a passthrough entity (UTP) through which G owns an interest in LTP; and G's share of LTP's self-charged interest deductions includes passive activity deductions. Accordingly, paragraph (c) of this section applies in determining G's passive activity gross income. See paragraph (c)(1) of this section.

(iii) Under paragraph (c)(2)(i) of this section, the applicable percentage of G's interest income is recharacterized as passive activity gross income from the activity. Paragraph (c)(3) of this section provides that the applicable percentage is obtained by dividing G's share for the taxable year of LTP's self-charged interest deductions that are treated as passive activity deductions from the activity ($400) by the greater of G's share for the taxable year of LTP's self-charged interest deductions ($400), or G's income for the year from interest charged to LTP ($1,600). Thus, G's applicable percentage is 25 percent ($400/$1,600), and $400 (25 percent × $1,600) of G's income from interest charged to LTP is treated as passive activity gross income from the passive activity that G conducts through UTP and LTP.

(iv) G's $800 distributive share of the interest expense that UTP pays to the third-party lender is allocated under § 1.163–8T(c)(1) to an expenditure that is properly chargeable to capital account with respect to the loan to LTP. Thus, the expense is a deduction properly allocable to the interest income that G receives as a result of the UTP-to-LTP loan (see paragraph (f) of this section). Under paragraph (c)(2)(ii) of this section, the applicable percentage of G's deductions for the taxable year for interest expense that is properly allocable to G's income from interest charged by UTP to LTP is recharacterized as a passive activity deduction from LTP's passive activity. Accordingly, $200 (25 percent x $800) of G's interest deduction is treated as a passive activity deduction from LTP's activity.

Example 6. (i) This *Example 6* illustrates the application of the rules of this section in the case of a taxpayer who conducts two passive activities through a passthrough entity. J, a calendar year taxpayer, is the 100-percent shareholder of Y, a calendar year S corporation. J conducts two passive activities through Y: a rental activity and a trade or business activity in which J does not materially participate. Y borrows $80,000 from J, and uses $60,000 of the loan proceeds in the rental activity and $20,000 of the loan proceeds in the passive trade or business activity. Y pays $8,000 of interest to J for the taxable year, and J incurs $8,000 of interest expense as J's distributive share of Y's interest expense.

(ii) Y has self-charged interest deductions for the taxable year (i.e., the deductions for interest charged to Y by J); J owns a direct interest in Y during Y's taxable year and has gross income for J's taxable year from interest charged to Y; and J's share of Y's self-charged interest deductions includes passive activity deductions. Accordingly, paragraph (c) of this section applies in determining J's passive activity gross income. See paragraph (c)(1) of this section.

(iii) Under paragraph (c)(2)(i) of this section, the applicable percentage of J's interest income is recharacterized as passive activity gross income from the activity. Paragraph (c)(3) of this section provides that the applicable percentage is obtained by dividing J's share for the taxable year of Y's self-charged interest deductions that are treated as passive activity deductions from the rental activity ($6,000) by the greater of J's share for the taxable year of Y's self-charged interest deductions ($8,000), or J's income for the taxable year from interest charged to Y ($8,000). Thus, J's applicable percentage is 75 percent ($6,000/$8,000), and $6,000 (75 percent × $8,000) of J's income from interest charged to Y is treated as passive activity gross income from the rental activity J conducts through Y.

(iv) Under paragraph (c)(2)(i) of this section, the applicable percentage of J's interest income is recharacterized as passive activity gross income attributable to the passive trade or business activity. Paragraph (c)(3) of this section provides that the applicable percentage is obtained by dividing J's share for the taxable year of Y's self-charged interest deductions that are treated as passive activity deductions from the passive trade or business activity ($2,000) by the greater of J's share for the taxable year of Y's self-charged interest deductions ($8,000), or J's income for the taxable year from interest charged to Y ($8,000). Thus, J's applicable percentage is 25 percent ($2,000/$8,000), and $2,000 of J's income from interest charged to Y is treated as passive activity gross income from the passive trade or business activity J conducts through Y.

Par. 4. Section 1.469–11 is amended as follows:

1. Paragraph (a)(3) is amended by removing the language "and" at the end of the paragraph.

2. Paragraph (a)(4) is redesignated as paragraph (a)(5) and a new paragraph (a)(4) is added.

3. The paragraph headings for (c)(1) and (c)(1)(i) are revised.

4. Paragraph (c)(1)(iii) is added.

5. The added and revised provisions read as follows:

§ 1.469–11 Effective date and transition rules.

(a) * * *

(4) The rules contained in § 1.469–7 apply for taxable years ending after December 31, 1986; and

* * * * *

(c) * * *

(1) *Application of certain income recharacterization rules and self-charged rules*—(i) *Certain recharacterization rules inapplicable in 1987.* * * *

* * * * *

(iii) *Self-charged rules.* For taxable years beginning before June 4, 1991—

(*1*) A taxpayer is not required to apply the rules in § 1.469–7 in computing the taxpayer's passive activity loss and passive activity credit; and

(*2*) A taxpayer that owns an interest in a passthrough entity may use any reasonable method of offsetting items of interest income and interest expense from lending transactions between the passthrough entity and its owners or between identically-owned passthrough entities (as defined in § 1.469–7(e)) to compute the taxpayer's passive activity loss and passive activity credit. Items from nonlending transactions cannot be offset under the self-charged rules.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for the part 602 continues to read:

Authority: 26 U.S.C. 7805.

Par. 6. In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	
1.469–7	1545–1244
. . . . .	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: July 31, 2002.

Pamela F. Olson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 02–21203 Filed 8–20–02; 8:45 am]

BILLING CODE 4830–01–P

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 811

[CSOSA–0005–I]

RIN 3225–AA03

District of Columbia Sex Offender Registration

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Interim Rule.

SUMMARY: The Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA") is issuing interim regulations that set forth procedures and requirements relating to the registration of sex offenders, verification of the information maintained on sex offenders, and reporting of changes in that information. These regulations carry out responsibilities of CSOSA under federal and District of Columbia law.

DATES: Effective August 21, 2002; comments must be submitted by October 21, 2002; incorporation by reference of publications listed in the regulation is approved by the Director of the Federal Register as of August 21, 2002.

ADDRESSES: Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager (telephone (202) 220–5359; e-mail *roy.nanovic@csosa.gov*).

SUPPLEMENTARY INFORMATION: The Court Services and Offender Supervision Agency for the District Of Columbia ("CSOSA") is adopting interim regulations on the registration of sex offenders (28 CFR part 811).

Under the Sex Offender Registration Act of 1999 ("SORA" or "Act", D.C. Law 13–137, D.C. Official Code sections 22–4001 *et seq.*), and section 166(a) of the Consolidated Appropriations Act, 2000 (Pub. L. 106–113 section 166(a), 113 Stat. 1530; D.C. Official Code section 24–133(c)(5)), CSOSA is responsible for carrying out sex offender registration functions in the District of Columbia, including maintaining and operating the sex offender registry. The sex offender registry contains information about sex offenders who live, reside, work, or attend school in the District of Columbia. Information about sex offenders and photographs, fingerprints, and supporting documents are provided by CSOSA to the Metropolitan Police Department, which is responsible for disclosing information about registered sex offenders to the public in conformity with District of Columbia laws and regulations. Appropriate information is also transmitted to the FBI, which operates the National Sex Offender Registry, and to sex offender registration authorities in other jurisdictions. This system is designed to further public safety by facilitating effective law enforcement, enabling members of the public to take lawful measures to protect themselves and their families, and reducing offenders' exposure to temptation to commit more crimes.

CSOSA is adopting these interim regulations, which exercise and implement powers and authorities of CSOSA under existing Federal and District of Columbia laws and District of Columbia regulations, in order to fully

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effectuate the registration system and inform sex offenders and other members of the public of the requirements for registration. These regulations adopt and incorporate related regulations promulgated by the District of Columbia government, 6A DCMR sections 400 *et seq.*; include a statement of applicability; identify laws which provide for official notice to sex offenders concerning their obligation to register, but make it clear that lack of notice does not excuse a failure to register; discuss facts on which a determination of a person's obligation to register, the length of registration, and the notification classification may be based; authorize suspension of registration requirements during any period in which a sex offender is detained, incarcerated, confined, civilly committed, or hospitalized in a secure facility; set forth the duration of registration and the method for calculating a ten-year registration period; detail the obligations of sex offenders and CSOSA for initial registration; describe what a person must do to obtain judicial review of a determination that the person must register, or of a determination of the person's classification for purposes of registration or notification; detail the procedures and time limits for verification and reporting changes in registration information; provide alternatives for sex offenders who cannot comply with the time limits; describe the penalties for failing to comply with the Sex Offender Registration Act of 1999 or any procedures, requirements, rules, or regulations promulgated under the Act; and notify sex offenders where they are to direct information in writing or to appear in person.

Matters of Regulatory Procedure

Administrative Procedure Act

The implementation of these regulations as interim regulations, with provision for post-promulgation public comments, is based on the "good cause" exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3). The regulations implement, in part, section 166(a) of the Consolidated Appropriations Act, 2000 (Pub. L. 106–113 section 166(a), 113 Stat. 1530; D.C. Official Code section 24–133(c)(5)), which directs CSOSA to carry out sex offender registration functions in the District of Columbia, and various provisions of District of Columbia law and regulations, including sections 3, 8, 9 and 10 of the Sex Offender Registration Act of 1999 (D.C. Official Code section 22–4002, 4007, 4008 & 4009) and 6A DCMR sections 405.1, 409.1, 409.2, 410.1, which grant CSOSA the authority to make certain decisions and to adopt procedures and requirements relating to sex offender registration in the District of Columbia.

As stated in the report of the District of Columbia Council's Judiciary Committee for the District's Sex Offender Registration Act, "[a] sex offender registration and notification program, if appropriately designed and effectively implemented, can promote public safety in at least three ways: by facilitating effective law enforcement; by enabling members of the public to take direct measures of a lawful nature for the protection of themselves and their families; and by reducing registered offenders' exposure to temptation to commit more offenses." Committee on the Judiciary, Report on Bill 13–250, The Sex Offender Registration Act of 1999, at 3 (Nov. 15, 1999). Given the importance of having accurate, complete, and up-to-date information about sex offenders available to both law enforcement officials and to the public, and the fact that the formulation of implementing regulations closely follows the statutory framework and existing District of Columbia regulations, it is impracticable and unnecessary to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553(b) or with the delayed effective date normally required under 5 U.S.C. 553(d). Moreover, as noted, the collection of sex offender registration information and its release to law enforcement and other agencies and the public pursuant to the Sex Offender Registration Act of 1999 furthers important public safety interests by facilitating the solution and prevention of crime by law enforcement, enabling lawful community self-protection measures, and reducing the temptation for recidivism. Delay in the full implementation of the law—including the ability to prosecute and take other actions in relation to sex offenders who fail to comply with its requirements—would thwart or delay the realization of these public safety benefits. Therefore, it would be contrary to the public interest to adopt these regulations with the prior notice and comment period normally required under 5 U.S.C. 553(b) or with the delayed effective date normally required under 5 U.S.C. 553(d).

For the foregoing reasons, CSOSA is issuing these regulations without any delay in their effectiveness as an interim rule and without a prior notice of proposed rulemaking. Any interested person, however, who wishes to submit comments on the interim rule may do so by writing or e-mailing the agency at the addresses given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions. CSOSA will consider comments received during the comment period before taking final action on the interim rule. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address.

Executive Order 12866

This rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Director of CSOSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of CSOSA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule pertains to agency management, and its economic impact is limited to the agency's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, the Director of CSOSA has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

If you have suggestions on how to improve the clarity of these regulations, write, e-mail, or call the Records Manager (Roy Nanovic) at the address or telephone number given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions.

List of Subjects in 28 CFR Part 811

Incorporation by Reference; Probation and Parole.

Paul A. Quander, Jr.,
Director.

Accordingly, we amend chapter VIII, Title 28 of the Code of Federal Regulations by adding a new Part 811 as set forth below.

PART 811—SEX OFFENDER REGISTRATION

Sec.

811.1 Purpose and scope; relation to District of Columbia regulations.
811.2 Applicability.
811.3 Notice of obligation to register.
811.4 Determination of the obligation to register and the length of registration.
811.5 Commencement of the obligation to register.
811.6 Duration of the obligation to register.
811.7 Initial registration.
811.8 Review of determination to register.
811.9 Periodic verification of registration information.
811.10 Changes in registration information.
811.11 Compliance.
811.12 Penalties.
811.13 Notices and appearances.
811.14 Definitions.
Appendix A to Part 811—Listing of Sex Offender Registration Offenses by Class

Authority: 5 U.S.C. 301; Pub. L. 105–33, 111 Stat. 251; Pub. L. 106–113, sec. 166(a), 113 Stat. 1530

§ 811.1 Purpose and scope; relation to District of Columbia regulations.

(a) In accordance with its sex offender registration functions authorized by section 166(a) of the Consolidated Appropriations Act, 2000 (Pub. L. 106–113, sec. 166(a), 113 Stat. 1530; D.C. Official Code secs. 24–133(c)(5)) and as further authorized by the Sex Offender Registration Act of 1999 ("the Act," D.C. Law 13–137, D.C. Official Code, secs. 22–4001 *et seq.*), the Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA") operates and maintains the sex offender registry for the District of Columbia. The regulations in this part set forth procedures and requirements relating to registration, verification, and changes in information for sex offenders who live, reside, work, or attend school in the District of Columbia.

(b) Chapter 4 of Title 6A, District of Columbia Municipal Regulations (DCMR)(47 D.C. Reg. 10042, December 22, 2000), contains regulations issued by the government of the District of Columbia for the sex offender registration system in the District of Columbia ("District of Columbia regulations"). Chapter 4 of Title 6A, DCMR (47 D.C. Reg. 10042, December 22, 2000) is incorporated by reference in this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Chapter 4 of Title 6A, DCMR, is available for inspection at the Office of the Federal Register, 800 N. Capitol Street, NW., Suite 700, Washington, DC. Copies of Chapter 4 of Title 6A, DCMR, may be obtained from the District of Columbia's Office of Documents and Administrative Issuances, 441 4th Street, NW., Room 520S, Washington, DC 20001. CSOSA hereby adopts all powers and authorities that the District of Columbia regulations authorize CSOSA to exercise, and hereby adopts all procedures and requirements that the District of Columbia regulations state that CSOSA shall adopt or carry out, including but not limited to all such powers, authorities, procedures and requirements relating to registration, verification, and changes in information.

§ 811.2 Applicability.

(a) Sex offender registration requirements apply to all persons who live, reside, work, or attend school in the District of Columbia, and who:

(1) committed a registration offense on or after July 11, 2000;

(2) committed a registration offense at any time and were in custody or under supervision on or after July 11, 2000;

(3) were required to register under the law of the District of Columbia as was in effect on July 10, 2000; or

(4) committed a registration offense at any time in another jurisdiction and, within the registration period (see §§ 811.5 and 811.6), entered the District of Columbia to live, reside, work or attend school.

(b) "Committed a registration offense" means that a person was found guilty or found not guilty by reason of insanity of a registration offense or was determined to be a sexual psychopath. Registration offenses are defined in section 2(8) of the Sex Offender Registration Act of 1999 (D.C. Official Code § 22–4001(8)), subject to the exceptions in section 17(b) of that Act (D.C. Official Code section 22–4016), and are listed descriptively in the Appendix to Part 811 (which also provides information on registration and notification classes). Any future revision to the statutory provisions designating registration offenses will be effective notwithstanding the timing of any conforming revision of these regulations, including the Appendix.

§ 811.3 Notice of obligation to register.

(a) Sex offenders may be notified of their obligation to register under various provisions of law. See sections 4, 6 and 8 of the Sex Offender Registration Act of 1999 (D.C. Official Code sections 22–4003, 4005, 4007) (relating to notice by the District of Columbia Superior Court, Department of Corrections, or CSOSA); 18 U.S.C. 4042(c) (relating to notice by Federal Bureau of Prisons and probation offices); 18 U.S.C. 3563(a)(8), 3583(d), 4209(a) (inclusion of registration requirements as conditions of release under federal law); 42 U.S.C. 14071(b)(1) (notice under federal law standards for state sex offender registration programs).

(b) In some cases, sex offenders may not be notified of their obligation to register. Lack of notice does not excuse a failure to register because sex offenders have an independent obligation to register. Persons who have been convicted or found not guilty by reason of insanity of a sex offense or who have been determined to be a sexual psychopath should report to CSOSA in order to ascertain whether they are required to register.

§ 811.4 Determination of the obligation to register and the length of registration.

(a) If the Superior Court finds that a person committed a registration offense, the Superior Court enters an order certifying that the person is a sex offender and that the person is subject to registration for a prescribed period of time (see § 811.6).

(b) If a court order has not been entered certifying that a person is a sex offender and that the person is subject to registration for a prescribed period of time, CSOSA makes those determinations. CSOSA also determines the notification classification if the Court has not done so. Facts on which CSOSA's determination may be based include:

(1) The offense or offenses of conviction (or finding of not guilty by reason of insanity) or a determination that the person is a sexual psychopath;

(2) For certain offenses, facts that may not be apparent on the face of the

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conviction (or finding of not guilty by reason of insanity), such as:
(i) the age of the victim;
(ii) whether force was involved; or
(iii) whether the offense involved an undercover law enforcement officer who was believed to be an adult;
(3) Prior criminal history;
(4) For an offense committed in or prosecuted under the law of another jurisdiction, whether the offense involved conduct that was the same as or substantially similar to a District of Columbia registration offense; and
(5) The amount of time that has elapsed as computed under § 811.6.

§ 811.5 Commencement of the obligation to register.

(a) A sex offender's obligation to register starts when the sex offender is found guilty or not guilty by reason of insanity of a registration offense or is determined to be a sexual psychopath. However, CSOSA may suspend registration requirements during any period of time in which a sex offender is detained, incarcerated, confined, civilly committed, or hospitalized in a secure facility.
(b) A sex offender must register if the sex offender is placed on probation, parole, supervised release, or convalescent leave, is conditionally or unconditionally released from a secure facility, is granted unaccompanied grounds privileges or other unaccompanied leave, absconds or escapes, is otherwise not detained, incarcerated, confined, civilly committed, or hospitalized in a secure facility, or enters the District of Columbia from another jurisdiction to live, reside, work, or attend school. Registration shall be effectuated as provided in § 811.7 and may be carried out prior to the occurrence of a circumstance described in this paragraph, including the release of or granting of leave to a sex offender.

§ 811.6 Duration of the obligation to register.

(a) *Lifetime registration.* The registration period for a sex offender who is required to register for life shall end upon the sex offender's death.
(b) *Term of years registration.* (1) The registration period for any other sex offender shall end upon the expiration of the sex offender's probation, parole, supervised release, conditional release, or convalescent leave, or ten years after the sex offender is placed on probation, parole, supervised release, conditional release, or convalescent leave, or is unconditionally released from a correctional facility, prison, hospital or other place of confinement, whichever is latest.
(2) In computing ten years, CSOSA will not count:
(i) Any time in which the sex offender has failed to register or otherwise failed to comply with requirements of the Act or any procedures, requirements, rules, or regulations promulgated under the Act, including these regulations and the District of Columbia regulations;
(ii) Any time in which a sex offender is detained, incarcerated, confined, civilly committed, or hospitalized in a mental health facility; and
(iii) Any time in which a sex offender was registered prior to a revocation of probation, parole, supervised release, conditional release, or convalescent leave.
(3) In computing ten years, CSOSA will count any time in which a sex offender was registered in another jurisdiction unless that time is not counted because of a circumstance set forth in paragraph (b)(2) of this section.
(c) *Reversal, vacation, or pardon.* A person's obligation to register terminates if the person's conviction, finding of not guilty by reason of insanity, or finding that the person is a sexual psychopath is reversed or vacated, or if the person has been pardoned for the offense on the ground of innocence, and the person has committed no other offenses for which registration is required.
(d) *Termination of obligation to register in the District of Columbia under other circumstances.* A sex offender's obligation to register in the District of Columbia terminates if the sex offender no longer lives, resides, works or attends school in the District of Columbia. However, the obligation to register in the District of Columbia resumes if the sex offender re-enters the District of Columbia within the registration period to live, reside, work or attend school.

§ 811.7 Initial registration.

(a) *Duties of sex offender.* (1) A sex offender must notify CSOSA within 3 days of the occurrence of any circumstance described in § 811.5(b), including but not limited to being sentenced to probation, being released (including any escape or abscondance) from incarceration or confinement, or entering the District of Columbia to live, reside, work, or attend school.
(2) A sex offender must meet with a responsible officer or official, as directed by CSOSA, for the purpose of registration, and must cooperate in such a meeting, including:
(i) Providing any information required for registration and cooperating in photographing and fingerprinting;
(ii) Reviewing information obtained by CSOSA pursuant to paragraph (b) of this section as CSOSA directs and either attesting to its accuracy or setting forth in writing, under penalties of perjury, the exact portion or portions that are not accurate; and
(iii) Acknowledging receipt of information concerning the sex offender's duties under the Act, including reading (or, if the sex offender cannot read, listening to a reading of) and signing a form or forms stating that these duties have been explained to the sex offender.
(3) In case of disagreement with CSOSA's determination that the person must register or with CSOSA's determination of the person's classification for purposes of registration or notification, the person must follow the review procedures set forth in § 811.8.
(b) *Duties of CSOSA.* (1) CSOSA shall obtain information relating to the sex offender for the purpose of registration including:
(i) Name(s) and alias(es);
(ii) Date of birth;
(iii) Physical description such as sex, race, height, weight, eye color, hair color, tattoos, scars, or other marks or characteristics;
(iv) Social security, PDID, DCDC and FBI numbers;
(v) Driver's license number and make, model, color, and license plate number of any motor vehicle(s) the sex offender owns;
(vi) A photograph and set of fingerprints;
(vii) Current and/or anticipated home, school, work address(es) and telephone number(s); and
(viii) Other information that may assist CSOSA or the Metropolitan Police Department in locating the sex offender.
(2) CSOSA shall also obtain a detailed description of the offense(s) on the basis of which a sex offender is required to register, the presentence report(s), the victim impact statement(s), the date(s) of conviction and any sentence(s) imposed, the sex offender's criminal record and a detailed description of any relevant offense or offenses, pertinent statutes and case law in other jurisdictions, and any other information it deems useful in order to determine a sex offender's obligation to register, term of registration, and notification classification, to verify the accuracy of the information provided, to assist other jurisdictions' sex offender registration agencies and authorities, or to assist the Metropolitan Police Department in its law enforcement functions.
(3) CSOSA shall inform a sex offender of the sex offender's duty to:

(i) Comply with the requirements set forth in paragraph (a) of this section for initial registration;
(ii) Periodically verify the address(es) at which the sex offender lives, resides, works, and/or attends school, and other information, as provided in § 811.9;
(iii) Report any change of address and any other changes in registration information (including changes in appearance), as provided in § 811.10;
(iv) Notify CSOSA if the sex offender is moving to another jurisdiction or works or attends school in another jurisdiction and to register in any such jurisdiction; and
(v) Comply with the requirements of the Act and any procedures, requirements, rules, or regulations promulgated under the Act, including these regulations and the District of Columbia regulations.
(4) CSOSA shall inform the sex offender of the penalties for failure to comply with the sex offender's duties.
(5) If the Superior Court has not entered an order certifying that a person is a sex offender, CSOSA shall inform the person that, if the person disagrees with CSOSA's determination that the person must register or CSOSA's determination of the person's classification for purposes of registration or notification, then the person must follow the review procedures set forth in § 811.8. CSOSA shall provide the person with a form to notify CSOSA of an intent to seek such review.

§ 811.8 Review of determination to register.

(a) If a person, other than a person who has been certified as a sex offender by the Court, disagrees with CSOSA's determination that the person is subject to registration or with CSOSA's determination of the person's classification for purposes of registration or notification, the person may seek judicial review of the determination, subject to the limitations of section 5(a)(1) of the Act (D.C. Official Code § 22–4004(a)(1)), by:
(1) Immediately providing CSOSA with a notice of intent to seek review upon being informed of the determination; and
(2) Within 30 calendar days of the date on which the person is informed of CSOSA's determination, filing a motion in the Superior Court setting forth the disputed facts and attaching any documents or affidavits upon which the person intends to rely.
(b) A person who fails to comply with paragraph (a) of this section may seek review of CSOSA's determination only in conformity with the limitations of section 5(a)(1) of the Act (D.C. Official Code Section 4004(a)(1)) and for good cause shown and to prevent manifest injustice by filing a motion in the Court within three years of the date on which the person is informed of CSOSA's determination.

§ 811.9 Periodic verification of registration information.

(a) Sex offenders who are required to register for life must verify registration information quarterly pursuant to the procedures set forth in paragraph (d) of this section.
(b) All other sex offenders must verify registration information annually pursuant to the procedures set forth in paragraph (d) of this section.
(c) Quarterly or annually, as appropriate, CSOSA will mail a verification form to the home address of the sex offender.
(d) The sex offender must correct any information on the form which is inaccurate or out of date and must sign, thumb-print, and return the form to CSOSA no later than 14 calendar days after the date on which CSOSA placed it in the mail. The sex offender has the option of returning the form by mail or in person unless:
(1) The sex offender is also on probation, parole, or supervised release or otherwise must report to CSOSA, and CSOSA directs the sex offender to verify the registration information in person;
(2) CSOSA directs the sex offender to appear in person because the sex offender has previously failed to submit a timely verification or submitted an incomplete or inaccurate verification; or
(3) CSOSA directs the sex offender to appear in person for the purpose of taking a new photograph documenting a significant change in physical appearance or updating a photograph that is five or more years old.

§ 811.10 Changes in registration information.

(a)(1) A sex offender must notify CSOSA if the sex offender:
(i) Ceases to live or reside at the registered address or moves to a different address;
(ii) leaves a job or obtains a new job, or leaves a school or enrolls in a new school; or
(iii) ceases to own or becomes an owner of any motor vehicle.
(2) A sex offender must notify CSOSA if there is a significant change in the sex offender's appearance and report as directed for the purpose of having a new photograph taken. Any question regarding whether a change in physical appearance is significant is to be referred to CSOSA.
(3) A sex offender must notify CSOSA if the sex offender is moving to another jurisdiction or if the sex offender works or attends school in another jurisdiction and must register in any such jurisdiction.
(b) Notice of the changes described in paragraph (a) of this section must be in writing and must be provided prior to the change if feasible and in any event within three days of the change. Notices of change in address or place of work or school attendance must include new address, location, and phone number information. Notice relating to ownership of a motor vehicle must include the make, model, color, and license plate number of the vehicle.

§ 811.11 Compliance.

(a) A sex offender may be excused from strict compliance with the time limits set forth in these regulations if the sex offender notifies CSOSA in advance of circumstances that will interfere with compliance and makes alternative arrangements to satisfy the requirements or, in the case of an emergency, notifies CSOSA as soon as the sex offender is able to do so.
(b) CSOSA may direct that a sex offender meet with a responsible officer or official for the purpose of securing compliance or discussing non-compliance with any requirements of the Act or any procedures, requirements, rules, or regulations promulgated under the Act, including these regulations and the District of Columbia regulations.

§ 811.12 Penalties.

A violation of the requirements of the Act or any procedures, requirements, rules, or regulations promulgated under the Act, including these regulations and the District of Columbia regulations, may result in criminal prosecution under section 16 of the Act (D.C. Official Code Section 22–4015), revocation of probation, parole, supervised release, or conditional release, and extension of the registration period under § 811.6(b)(2).

§ 811.13 Notices and appearances.

Unless otherwise directed by the Court or CSOSA,
(a) Notices or reports that are required to be submitted in writing should be sent to: Sex Offender Registration Unit, Court Services and Offender Supervision Agency, Room 2002, 300 Indiana Avenue, NW., Washington, DC 20001.
(b) A person who is required to report in person should go to: Sex Offender Supervision Office, Court Services and Offender Supervision Agency, Room

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2002, 300 Indiana Avenue, NW., Washington, DC 20001.

§ 811.14 Definitions.

(a) The terms "attends school," "Court," "in custody or under supervision," "sex offender," and "works" shall have the same meaning as set forth in Section 2 of the Sex Offender Registration Act of 1999 (D.C. Official Code Section 22–4001).

(b) The term "the Act" means the Sex Offender Registration Act of 1999 (D.C. Official Code Section 22–4001 *et seq.*).

(c) The term "days" means business days unless otherwise specified.

(d) In relation to a motor vehicle, the term "owns" includes both exclusive ownership and co-ownership, and the term "owner" includes both exclusive owners and co-owners.

Appendix A to Part 811—Listing of Sex Offender Registration Offenses by Class

Class A Offenders—All Lifetime Registrants

(D.C. Official Code Secs. 22–4001(6), 4002(b), 4011(b)(2)(A))

1. Class A includes offenders who have been convicted or found not guilty by reason of insanity of:
(a) First degree sexual abuse;
(b) Second degree sexual abuse;
(c) Rape;
(d) Forcible sodomy;
(e) First degree child sexual abuse committed against a child under 12;
(f) Carnal knowledge (statutory rape) committed against a child under 12;
(g) Sodomy committed against a child under 12;
(h) Murder committed before, during, or after engaging in or attempting to engage in a sexual act or contact or rape;
(i) Manslaughter committed before, during, or after engaging in or attempting to engage in a sexual act or contact or rape;
(j) Attempting to commit any of the foregoing offenses;
(k) Conspiring to commit any of the foregoing offenses; or
(l) Assault with intent to commit any of the foregoing offenses.

2. Class A also includes offenders who:
(a) In two or more trials or plea proceedings, have been convicted or found not guilty by reason of insanity of a felony registration offense or any registration offense against a minor. (Recidivism).
(b) In a single trial or plea proceeding, have been convicted or found not guilty by reason of insanity of registration offenses against two or more victims where each offense is a felony or committed against a minor (Multiple victims).
(c) Have been determined to be sexual psychopaths.

3. Class A also includes offenders who have been convicted or found not guilty by reason of insanity under the law of another jurisdiction of offenses that involved conduct that is the same as or substantially similar to that above.

Class B Offenders—"Ten Year" Registrants

(Other Offenses Against Minors, Wards, Patients, or Clients)

(D.C. Official Code Secs. 22–4001(8), 4002(a), 4011(b)(2)(B))

1. Class B includes offenders who are not included in Class A and have been convicted or found not guilty by reason of insanity of any of the following crimes against a minor (that is, a person under the age of 18):
(a) Third degree sexual abuse;
(b) Fourth degree sexual abuse;
(c) Misdemeanor sexual abuse;
(d) First degree child sexual abuse;
(e) Second degree child sexual abuse;
(f) Carnal knowledge (statutory rape);
(g) Sodomy committed against a minor;
(h) Indecent acts on a child;
(i) Enticing a child;
(j) Lewd, indecent or obscene acts;
(k) Sexual performance using a minor;
(l) Incest;
(m) Obscenity;
(n) Prostitution/Pandering;
(o) Assault (unwanted sexual touching);
(p) Threatening to commit a sexual offense;
(q) First or second degree burglary with intent to commit sex offense;
(r) Kidnapping (does not require a sexual purpose);
(s) Assault with intent to commit any of the foregoing offenses;
(t) Attempting to commit any of the foregoing offenses;
(u) Conspiring to commit any of the foregoing offenses; or
(v) Any offense against a minor for which the offender agreed in a plea agreement to be subject to sex offender registration requirements.

2. Class B also includes offenders who are not included in Class A and have been convicted or found not guilty by reason of insanity of any of the following crimes regardless of the age of the victim:
(a) First degree sexual abuse of a ward or resident of a hospital, treatment facility or other institution.
(b) Second degree sexual abuse of a ward or resident of a hospital, treatment facility or other institution.
(c) First degree sexual abuse of a patient or client.
(d) Second degree sexual abuse of a patient or client.

3. Class B also includes offenders who are not included in Class A and have been convicted or found not guilty by reason of insanity under the law of another jurisdiction of offenses that involved conduct that is the same as or substantially similar to that above.

Class C Offenders—"Ten Year" Registrants

(Other Offenses Against Adult Victims)

(D.C. Official Code Secs. 22–4001(8), 4002(a), 4011(b)(2)(C))

1. Class C includes offenders who are not included in Class A or Class B and have committed any of the following crimes against an adult (that is, a person 18 years of age or older):
(a) Third degree sexual abuse;
(b) Fourth degree sexual abuse;
(c) First or second degree burglary with intent to commit sex offense;
(d) Kidnapping with intent to commit sex offense;
(e) Threatening to commit a sexual offense (felony);
(f) Assault with intent to commit any of the foregoing offenses;
(g) Attempting to commit any of the foregoing offenses;
(h) Conspiring to commit any of the foregoing offenses, or;
(i) Any offense for which the offender agreed in a plea agreement to be subject to sex offender registration requirements.

2. Class C also includes offenders who are not included in Class A or Class B and have been convicted or found not guilty by reason of insanity under the law of another jurisdiction of offenses that involved conduct that is the same as or substantially similar to that above.

Exceptions (D.C. Official Code Sec. 22–4016(b))

The following do not constitute registration offenses:

1. Any sexual offense between consenting adults or an attempt, conspiracy or solicitation to commit such an offense, except for offenses to which consent is not a defense as provided in Section 218 of the Anti-Sexual Abuse Act of 1994 (D.C. Official Code § 22–3017).

2. Any misdemeanor offense that involved a person's sexual touching or attempted or solicited sexual touching of an undercover law enforcement officer where the person believed that the officer was an adult.

3. Any misdemeanor offense committed against an adult, except where the offender agrees in a plea agreement to be subject to sex offender registration requirements.

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COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 812

[CSOSA–0006–I]

RIN 3225–AA04

Collection and Use of DNA Information

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Interim Rule.

SUMMARY: The Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA") is adopting interim regulations to implement section 4 of the DNA Analysis Backlog Elimination Act of 2000, in conjunction with District of Columbia laws enacted pursuant to that Act which specify qualifying District of Columbia offenses for purposes of DNA sample collection. The interim regulations set forth the responsibilities of CSOSA for collecting DNA samples from individuals under its supervision who have been convicted of specific offenses identified by District of Columbia statute. The regulations specify that DNA samples are to be collected, handled, preserved, and submitted to the Federal Bureau of Investigation ("FBI") in accordance with FBI guidelines for inclusion in the Combined DNA Index System ("CODIS"), a national database of DNA profiles from convicted offenders, unsolved crime scenes, and missing persons. The regulations also specify that CSOSA will cooperate with the Federal Bureau of Prisons to ensure that unnecessary samples will not be collected; establish a standard for what constitutes an individual's refusal to cooperate in the collection of a DNA sample; and define what steps CSOSA deems to be reasonably necessary to take when an individual refuses to cooperate. The regulations identify in an appendix the offenses which qualify for DNA collection, as they appear in the District of Columbia public laws, in the District of Columbia Code (1981 *ed.*), and in the District of Columbia Official Code (2001 *ed.*).

DATES: Effective August 21, 2002; comments must be submitted by October 21, 2002.

ADDRESSES: Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager (telephone: (202) 220–5359; e-mail: *roy.nanovic@csosa.gov).*

SUPPLEMENTARY INFORMATION: The Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA") is adopting interim regulations on the collection and use of DNA information (28 CFR part 812).

The DNA Analysis Backlog Elimination Act of 2000 (Pub. L. 106–546, 114 Stat. 2726) authorizes the collection of DNA samples from persons convicted of "qualifying District of Columbia offenses" who are in the custody of the Federal Bureau of Prisons ("BOP") or who are on supervised release, parole, or probation and under CSOSA's supervision. Qualifying District of Columbia offenses were identified by the Council of the District of Columbia in the DNA Sample Collection Act of 2001, District of Columbia Act 14–076, the DNA Sample Collection Emergency Act of 2001, District of Columbia Act 14–077, and the DNA Sample Collection Congressional Review Emergency Act of 2001, District of Columbia Act 14–130.

The DNA information becomes part of the Combined DNA Index System ("CODIS"), a national database of DNA profiles from convicted offenders, unsolved crime scenes, and missing persons. CODIS allows State and local forensic laboratories to exchange and compare DNA profiles electronically, thereby linking serial violent crimes, especially sexual assaults, to each other, and to identify suspects by matching DNA from crime scenes to convicted offenders.

CSOSA is responsible for the supervision of adults on probation, parole, or supervised release for District of Columbia Code offenses in the District of Columbia. Under the provisions of the DNA Analysis Backlog Elimination Act of 2000, CSOSA must collect a DNA sample from each individual under its supervision who is, or has been, convicted of a qualifying District of Columbia offense. CSOSA has the discretion not to collect a sample from the individual if CODIS already has a DNA analysis for the individual. CSOSA also has the authority to use such means as are reasonably necessary to collect a sample from an individual who refuses to cooperate in the collection of the sample.

CSOSA's regulations list the qualifying District of Columbia offenses in an appendix to the part. The offenses are listed in three tables. Table 1 presents the offenses as they were identified in the "DNA Sample Collection Act of 2001". Table 2 presents the offenses in numerical order under the D.C. Code, (1981 Edition). Table 3 presents the offenses in numerical order under the D.C. Official Code (2001 Edition). These tables are presented for informational purposes only. Any future revision to the District of Columbia Code sections designating the qualifying offenses will be effective notwithstanding the timing of a conforming revision of the appendix by CSOSA.

Section 812.2 of CSOSA's interim regulations establishes procedures for coordinating the collection of samples with BOP. BOP has the authority to collect DNA samples from District of Columbia Code offenders in its custody. CSOSA will exchange information concerning the collection of the DNA sample from District of Columbia Code offenders in their custody or under their supervision in order to ensure that DNA samples will not be taken from District of Columbia Code offenders unnecessarily.

Section 812.4 pertains to collection procedures. Paragraph (a) specifies that the DNA sample (currently in the form of a blood sample) will be collected in accordance with FBI guidelines. Paragraph (b) establishes what CSOSA deems to be a refusal to cooperate by an individual who is subject to collection. Paragraph (c) describes what reasonably necessary measures CSOSA will take in response to such refusal, including administrative sanctions, referral for criminal prosecution, and a request for revocation of probation, parole, or supervised release which could result in commitment to the custody of the Federal Bureau of Prisons, thereby facilitating collection procedures authorized by Department of Justice regulations (28 CFR part 28).

Matters of Regulatory Procedure

Administrative Procedure Act

The implementation of these regulations as interim regulations, with provision for post-promulgation public comments, is based on the "good cause" exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3). The rule implements section 4 of Pub. L. 106–546 (42 U.S.C. 14135b), which requires the Director of CSOSA to "collect a DNA sample from each individual under the supervision of the Agency who is on supervised release, parole, or probation who is, or has been, convicted of a qualifying District of Columbia offense" and requires collection of DNA samples to commence not later than 180 days after the effective date of the Act. Given that section 4(d) authorizes the government of the District of Columbia to "determine those offenses under the District of Columbia Code that shall be treated * * * as qualifying District of Columbia offenses," Congress must have been aware that it would not be feasible within a 180-day time period to enact the required District of Columbia legislation, publish a proposed regulation for notice and comment, as well as a subsequent final rule, and for the period of the final rule's delayed effective date to have run. Public Law 106–546, in conjunction with the District of Columbia legislation, is explicit and comprehensive concerning the types of offenses that will be treated as qualifying District of Columbia offenses and concerning the responsibilities of CSOSA in collecting DNA samples. In light of the short statutory time frame for the implementation of this law and the fact that the formulation of implementing regulations involves the exercise of relatively little discretion, it is impracticable and unnecessary to adopt this rule with the prior notice and comment period normally required

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under 5 U.S.C. 553(b) or with the delayed effective date normally required under 5 U.S.C. 553(d).

Moreover, the collection, analysis, and indexing of DNA samples as required by Public Law 106–546 furthers important public safety interests by facilitating the solution and prevention of crime, *see* H.R. Rep. No. 900, 106th Cong., 2d Sess. 8–11 (2000) (House Judiciary Committee Report). Delay in the full implementation of the law—including the absence of a specification of what constitutes a refusal to cooperate in DNA sample collection and what measures are to be taken in response to such a refusal, as set forth in these regulations—would thwart or delay the realization of these public safety benefits. Dangerous offenders who might be successfully identified through DNA matching may reach the end of supervision before DNA sample collection can be carried out, thereby remaining at large to engage in further crimes against the public. Furthermore, delay in collecting, analyzing, and indexing DNA samples, and hence in the identification of offenders, may foreclose prosecution due to the running of statutes of limitations. Failure to identify, or delay in identifying, offenders as the perpetrators of crimes through DNA matching also increases the risk that innocent persons may be wrongfully suspected, accused, or convicted of such crimes. Therefore, it would be contrary to the public interest to adopt these regulations with the prior notice and comment period normally required under 5 U.S.C. 553(b) or with the delayed effective date normally required under 5 U.S.C. 553(d).

Any interested person who wishes to submit comments on the interim rule, however, may do so by writing or e-mailing the agency at the addresses given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions.

Executive Order 12866

This interim rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Director of CSOSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of CSOSA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule pertains to agency management, and its economic impact is limited to the agency's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, the Director of CSOSA has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We want to make CSOSA's documents easy to read and understand. If you have suggestions on how to improve the clarity of these regulations, write, e-mail, or call the Records Manager (Roy Nanovic) at the address or telephone number given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions.

List of Subjects in 28 CFR Part 812

Probation and Parole.

Paul A. Quander, Jr.,

Director.

Accordingly, we amend chapter VIII, Title 28 of the Code of Federal regulations by adding new part 812 as set forth below.

PART 812—COLLECTION AND USE OF DNA INFORMATION

Sec.

812.1 Purpose.
812.2 Individuals subject to DNA collection.
812.3 Coordination with the Federal Bureau of Prisons.
812.4 Collection procedures.

Appendix A to Part 812—Qualifying District of Columbia Code Offenses

Authority: 5 U.S.C. 301; Pub. L. 106–546 (114 Stat. 2726).

§ 812.1 Purpose.

The Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA") cooperates with other federal agencies to ensure that DNA samples from offenders are appropriately furnished to the Federal Bureau of Investigation ("FBI") for DNA analysis. The results of the DNA analyses are to be included in the Combined DNA Index System ("CODIS").

§ 812.2 Individuals subject to DNA collection.

CSOSA is responsible for collecting a DNA sample from each individual under its supervision who is, or has been, convicted of a qualifying District of Columbia Code offense. Qualifying District of Columbia Code offenses were designated by the Council of the District of Columbia in the "DNA Sample Collection Act of 2001." CSOSA provides a listing of these offenses in the Appendix to this part. The list is presented for informational purposes only. Any future revision to the District of Columbia Code sections designating the qualifying offenses will be effective notwithstanding the timing of a conforming revision of the Appendix by CSOSA. CSOSA may choose not to collect a sample from an individual if it determines that CODIS already contains a DNA analysis for the individual.

§ 812.3 Coordination with the Federal Bureau of Prisons.

(a) CSOSA will coordinate with the Federal Bureau of Prisons in order to obtain documentation regarding the collection of a DNA sample when the Federal Bureau of Prisons releases an inmate to CSOSA's supervision or as requested by CSOSA.

(b) CSOSA shall provide the Federal Bureau of Prisons with documentation regarding the collection of a DNA sample from a District of Columbia Code offender when CSOSA returns the District of Columbia Code offender to the custody of the Federal Bureau of Prisons or as requested by the Federal Bureau of Prisons.

§ 812.4 Collection procedures.

(a) DNA samples will be collected, handled, preserved, and submitted to the FBI in accordance with FBI guidelines.

(b) CSOSA has the authority to use such means as are reasonably necessary to collect a sample from an individual who refuses to cooperate in the collection of the sample. Unless CSOSA determines that there are mitigating circumstances, CSOSA will consider that an individual is refusing to cooperate if:

(1) The individual is being ordered or transferred to CSOSA's supervision, but fails to report to CSOSA for collection of the sample within 15 business days of being sentenced to probation or being discharged from a correctional institution; or

(2) The individual is already under CSOSA supervision and has been notified by his or her Community Supervision Officer of the time to report for collection of the sample, but fails to report for collection of the sample; or

(3) The individual has reported to CSOSA for collection of the sample, but fails to provided the sample after being given a minimum of one hour to do so; or

(4) The individual specifically states that he or she will not cooperate.

(c) When an individual has refused to cooperate in the collection of the sample, CSOSA deems the following to be reasonably necessary means for obtaining the sample:

(1) Impose administrative sanctions;

(2) Request a revocation hearing by the releasing authority; and/or

(3) Refer the individual who refuses to cooperate for criminal prosecution for a class A misdemeanor pursuant to section 4(a)(5) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135b(a)(5)).

APPENDIX A TO PART 812—QUALIFYING DISTRICT OF COLUMBIA CODE OFFENSES

As enacted by the Council of the District of Columbia, the DNA Sample Collection Act of 2001 identifies the criminal offenses listed in Table 1 of this appendix as "qualifying District of Columbia offenses" for the purposes of the DNA Analysis Backlog Elimination Act of 2000 (Pub. L. 106–546, 114 Stat. 2726). Table 2 of this Appendix lists these same offenses in numerical order under the D.C. Code, 1981 Edition. Table 3 of this Appendix lists these same offenses in numerical order under the D.C. Official Code, 2001 Edition. The tables follow:

Table 1. Offense Listing

(1) Section 820 of An Act To establish a code of law for the District of Columbia (arson);

(2) Section 821 of An Act To establish a code of law for the District of Columbia (burning of one's own property with intent to defraud or injure another);

(3) Section 848 of An Act To establish a code of law for the District of Columbia (malicious burning, destruction, or injury of another's property);

(4) Section 803 of An Act To establish a code of law for the District of Columbia (assault with intent to kill, rob, or poison, or to commit first degree sexual abuse, second degree sexual abuse or child sexual abuse);

(5) Section 804 of An Act To establish a code of law for the District of Columbia, (assault with intent to commit mayhem or with dangerous weapon);

(6) Section 806a of An Act To establish a code of law for the District of Columbia (aggravated assault);

(7) Section 432(b) of the Revised Statutes, relating to the District of Columbia (assault on member of police force, campus or university special police, or fire department using a deadly or dangerous weapon);

(8) Section 807 of An Act To establish a code of law for the District of Columbia (mayhem or maliciously disfiguring);

(9) Section 3 of An act for the protection of children in the District of Columbia and for other purposes (cruelty to children);

(10) Section 9 of An Act for the preservation of the public peace and the protection of property within the District of Columbia (lewd, indecent, or obscene acts (knowingly in the presence of a child under the age of 16 years));

(11) Section 823 of An Act To establish a code of law for the District of Columbia (burglary);

(12) Section 875 of An Act To establish a code of law for the District of Columbia (incest);

(13) Section 872 of An Act To establish a code of law for the District of Columbia (certain obscene activities involving minors);

(14) Section 3 of the District of Columbia Protection of Minors Act of 1982 (sexual performances using minors);

(15) Section 812 of An Act To establish a code of law for the District of Columbia (kidnapping);

(16) Section 798 of An Act To establish a code of law for the District of Columbia (murder in the first degree);

(17) Section 799 of An Act To establish a code of law for the District of Columbia (murder in the first degree—obstructing railroad);

(18) Section 800 of An Act To establish a code of law for the District of Columbia (murder in the second degree);

(19) Section 802 of An Act To establish a code of law for the District of Columbia (voluntary manslaughter only);

(20) Section 802a of An Act To establish a code of law for the District of Columbia (murder of a law enforcement officer);

(21) Section 813 of An Act To establish a code of law for the District of Columbia (abducting, enticing, or harboring a child for prostitution);

(22) Section 1 of An Act In relation to pandering, to define and prohibit the same and to provide for the punishment thereof (pandering; inducing or compelling an individual to engage in prostitution);

(23) Section 2 of An Act In relation to pandering, to define and prohibit the same and to provide for the punishment thereof (compelling an individual to live life of prostitution against his or her will);

(24) Section 4 of An Act In relation to pandering, to define and prohibit the same and to provide for the punishment thereof (causing spouse to live in prostitution);

(25) Section 5 of An Act In relation to pandering, to define and prohibit the same and to provide for the punishment thereof (detaining an individual in disorderly house for debt there contracted);

(26) Forcible rape, carnal knowledge or statutory rape as these offenses were proscribed until May 23, 1995 by section 808 of An Act To establish a code of law for the District of Columbia;

(27) Section 810 of An Act To establish a code of law for the District of Columbia (robbery);

(28) Section 811 of An Act To establish a code of law for the District of Columbia (attempted robbery);

(29) Section 811a of An Act To establish a code of law for the District of Columbia (carjacking);

(30) Indecent acts with children as this offense was proscribed until May 23, 1995 by section 103(a) of An Act To provide for the treatment of sexual psychopaths in the District of Columbia, and for other purposes;

(31) Enticing a child as this offense was proscribed until May 23, 1995 by section 103(b) of An Act To provide for the treatment of sexual psychopaths in the District of Columbia, and for other purposes;

(32) Sodomy as this offense was proscribed until May 23, 1995 by section 104(a) of An Act To provide for the treatment of sexual psychopaths in the District of Columbia, and for other purposes where the offense was forcible or committed against a minor;

(33) Section 201 of the Anti-Sexual Abuse Act of 1994 (first degree sexual abuse);

(34) Section 202 of the Anti-Sexual Abuse Act of 1994 (second degree sexual abuse);

(35) Section 203 of the Anti-Sexual Abuse Act of 1994 (third degree sexual abuse);

(36) Section 204 of the Anti-Sexual Abuse Act of 1994 (fourth degree sexual abuse);

(37) Section 205 of the Anti-Sexual Abuse Act of 1994 (misdemeanor sexual abuse);

(38) Section 207 of the Anti-Sexual Abuse Act of 1994 (first degree child sexual abuse);

(39) Section 208 of the Anti-Sexual Abuse Act of 1994 (second degree child sexual abuse);

(40) Section 209 of the Anti-Sexual Abuse Act of 1994 (enticing a child);

(41) Section 212 of the Anti-Sexual Abuse Act of 1994 (first degree sexual abuse of a ward);

(42) Section 213 of the Anti-Sexual Abuse Act of 1994 (second degree sexual abuse of a ward);

(43) Section 214 of the Anti-Sexual Abuse Act of 1994 (first degree sexual abuse of a patient or client);

(44) Section 215 of the Anti-Sexual Abuse Act of 1994 (second degree sexual abuse of a patient or client);

(45) Section 217 of the Anti-Sexual Abuse Act of 1994 (attempts to commit sexual offenses); and

(46) Attempt or conspiracy to commit any of the offenses listed in items (1) through (45) of this table.

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Table 2. Offense Listing (D.C. Official Code, 1981 Edition)

(1) D.C. Code section 22–401—arson;
(2) D.C. Code section 22–402—burning of one's own property with intent to defraud or injure another;
(3) D.C. Code section 22–403—malicious burning, destruction or injury of another's property;
(4) D.C. Code section 22–501—assault with intent to kill, rob, or poison, or to commit first degree sexual abuse, second degree sexual abuse or child sexual abuse;
(5) D.C. Code section 22–502—assault with intent to commit mayhem or with dangerous weapon;
(6) D.C. Code section 22–504.1—aggravated assault;
(7) D.C. Code section 22–505(b)—assault on member of police force, campus or university special police, or fire department using a deadly or dangerous weapon;
(8) D.C. Code section 22–506—mayhem or maliciously disfiguring;
(9) D.C. Code section 22–901—cruelty to children;
(10) D.C. Code section 22–1112(b)—lewd, indecent or obscene acts (knowingly in the presence of a child under the age of 16 years);
(11) D.C. Code section 22–1801—burglary;
(12) D.C. Code section 22–1901—incest;
(13) D.C. Code section 22–2001—certain obscene activities involving a minor;
(14) D.C. Code section 22–2012—sexual performances using minors;
(15) D.C. Code section 22–2101—kidnapping;
(16) D.C. Code section 22–2401—murder in the first degree;
(17) D.C. Code section 22–2402—murder in the first degree (obstructing railroad);
(18) D.C. Code section 22–2403—murder in the second degree;
(19) D.C. Code section 22–2405—voluntary manslaughter only;
(20) D.C. Code section 22–2406—murder of a law enforcement officer;
(21) D.C. Code section 22–2704—abducting, enticing, or harboring a child for prostitution;
(22) D.C. Code section 22–2705—pandering; inducing or compelling an individual to engage in prostitution;
(23) D.C. Code section 22–2706—compelling an individual to live life of prostitution against his or her will;
(24) D.C. Code section 22–2708—causing spouse to live in prostitution;
(25) D.C. Code section 22–2709—detaining an individual in disorderly house for debt there contracted;
(26) D.C. Code section 22–2801 [repealed May 23, 1995]—forcible rape, carnal knowledge or statutory rape;
(27) D.C. Code section 22–2901—robbery;
(28) D.C. Code section 22–2902—attempted robbery;
(29) D.C. Code section 22–2903—carjacking;
(30) D.C. Code section 22–3501(a) [repealed May 23, 1995]—indecent acts with children;
(31) D.C. Code section 22–3501(b) [repealed May 23, 1995]—enticing a child;
(32) D.C. Code section 22–3502(a) [repealed May 23, 1995]—sodomy where the offense was forcible or committed against a minor;
(33) D.C. Code section 22–4102—first degree sexual abuse;
(34) D.C. Code section 22–4103—second degree sexual abuse;
(35) D.C. Code section 22–4104—third degree sexual abuse;
(36) D.C. Code section 22–4105—fourth degree sexual abuse;
(37) D.C. Code section 22–4106—misdemeanor sexual abuse;
(38) D.C. Code section 22–4108—first degree child sexual abuse;
(39) D.C. Code section 22–4109—second degree child sexual abuse;
(40) D.C. Code section 22–4110—enticing a child;
(41) D.C. Code section 22–4113—first degree sexual abuse of a ward;
(42) D.C. Code section 22–4114—second degree sexual abuse of a ward;
(43) D.C. Code section 22–4115—first degree sexual abuse of a patient or client;
(44) D.C. Code section 22–4116—second degree sexual abuse of a patient or client;
(45) D.C. Code section 22–4118—attempts to commit sexual offenses;
(46) Attempt or conspiracy to commit any of the offenses listed in items (1) through (45) of this table.

Table 3. Offense Listing (D.C. Official Code, 2001 Edition)

(1) D.C. Code section 22–301—arson;
(2) D.C. Code section 22–302—burning of one's own property with intent to defraud or injure another;
(3) D.C. Code section 22–303—malicious burning, destruction, or injury of another's property;
(4) D.C. Code section 22–401—assault with intent to kill, rob, or poison, or to commit first degree sexual abuse, second degree sexual abuse or child sexual abuse;
(5) D.C. Code section 22–402—assault with intent to commit mayhem or with dangerous weapon;
(6) D.C. Code section 22–404.01—aggravated assault;
(7) D.C. Code section 22–405(b)—assault on member of police force, campus or university special police, or fire department using a deadly or dangerous weapon;
(8) D.C. Code section 22–406—mayhem or maliciously disfiguring;
(9) D.C. Code section 22–801—burglary;
(10) D.C. Code section 22–1101—cruelty to children;
(11) D.C. Code section 22–1312(b)—lewd, indecent, or obscene acts (knowingly in the presence of a child under the age of 16 years);
(12) D.C. Code section 22–1901—incest;
(13) D.C. Code section 22–2001—kidnapping;
(14) D.C. Code section 22–2101—murder in the first degree;
(15) D.C. Code section 22–2102—murder in the first degree—obstructing railroad;
(16) D.C. Code section 22–2103—murder in the second degree;
(17) D.C. Code section 22–2105—voluntary manslaughter only;
(18) D.C. Code section 22–2106—murder of a law enforcement officer;
(19) D.C. Code section 22–2201—certain obscene activities involving minors;
(20) D.C. Code section 22–2704—abducting, enticing, or harboring a child for prostitution;
(21) D.C. Code section 22–2705—pandering; inducing or compelling an individual to engage in prostitution;
(22) D.C. Code section 22–2706—compelling an individual to live life of prostitution against his or her will;
(23) D.C. Code section 22–2708—causing spouse to live in prostitution;
(24) D.C. Code section 22–2709—detaining an individual in disorderly house for debt there contracted;
(25) D.C. Code section 22–2801—robbery;
(26) D.C. Code section 22–2802—attempted robbery;
(27) D.C. Code section 22–2803—carjacking;
(28) D.C. Code section 22–3002—first degree sexual abuse;
(29) D.C. Code section 22–3003—second degree sexual abuse;
(30) D.C. Code section 22–3004—third degree sexual abuse;
(31) D.C. Code section 22–3005—fourth degree sexual abuse;
(32) D.C. Code section 22–3006—misdemeanor sexual abuse;
(33) D.C. Code section 22–3008—first degree child sexual abuse;
(34) D.C. Code section 22–3009—second degree child sexual abuse;
(35) D.C. Code section 22–3010—enticing a child;
(36) D.C. Code section 22–3013—first degree sexual abuse of a ward;
(37) D.C. Code section 22–3014—second degree sexual abuse of a ward;
(38) D.C. Code section 22–3015—first degree sexual abuse of a patient or client;
(39) D.C. Code section 22–3016—second degree sexual abuse of a patient or client;
(40) D.C. Code section 22–3018—attempts to commit sexual offenses;
(41) D.C. Code section 22–3102—sexual performances using minors;
(42) D.C. Code section 22–3801(a) [repealed May 23, 1995]—indecent acts with children;
(43) D.C. Code section 22–3801(b) [repealed May 23, 1995]—enticing a child;
(44) D.C. Code section 22–3802(a) [repealed May 23, 1995]—sodomy where the offense was forcible or committed against a minor;
(45) D.C. Code section 22–4801 [repealed May 23, 1995]—forcible rape, carnal knowledge or statutory rape;
(46) D.C. Code section 22–1803 or section 22–1805a—attempt or conspiracy to commit any of the offenses listed in items (1) through (45) of this table.

[FR Doc. 02–20606 Filed 8–20–02; 8:45 am]
BILLING CODE 3129–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S204A]

RIN 1218–AC02

Regulatory Flexibility Act Review of the Excavations Standard

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Regulatory Flexibility Act review; request for comments.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is conducting a review of the Excavations Standard pursuant to Section 610 of the Regulatory Flexibility Act and Section 5 of Executive Order 12866 on Regulatory Planning and Review. The purpose of this review is to determine, while protecting worker safety, whether this standard should be maintained without change, rescinded, or modified in order to minimize any significant impact of the rule on a substantial number of small entities and whether the rule should be changed to reduce regulatory burden or improve its effectiveness. Written public comments on these and other relevant issues are welcomed.

DATES: Written comments to OSHA must be sent or postmarked by November 19, 2002.

ADDRESSES: You may submit three copies of your written comments to the OSHA Docket Office, Docket No. S204A, Technical Data Center, Room N–2625, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone (202) 693–2350. If your written comments are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You do not have to send OSHA a hard copy of your faxed comments.

You may submit comments electronically through OSHA's Homepage at *http://ecomments.osha.gov/*. Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies of the material to the OSHA Docket Office at the above address. When submitting such materials to the OSHA Docket Office, you must clearly identify your electronic comments by name, date, subject, and docket number so that we can attach them to your electronic comments.

FOR FURTHER INFORMATION CONTACT: Joanna Dizikes Friedrich, Directorate of Policy, Occupational Safety and Health Administration, Room N3641, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 693–2400, Fax (202) 693–1641.

SUPPLEMENTARY INFORMATION: In 1971, the Secretary of Labor promulgated a safety standard for excavations (36 FR 7340, April 17, 1971) pursuant to section 107 of the Contract Work Hours and Safety Standards Act. Later in 1971, OSHA designated this Standard as an established occupational safety and health standard (36 FR 10466, May 29, 1971) in accordance with section 6(a) of the Occupational Safety and Health Act.

In 1989, OSHA revised this Standard (54 FR 45894, October 31, 1989) to use performance criteria where possible, rather than specification requirements; to consolidate and simplify existing provisions; to add and clarify definitions; to eliminate duplicate provisions and ambiguous language; to provide a consistent method of soil classification; and to give employers added flexibility in providing protection for employees. The Standard was amended August 9, 1994 (59 FR 40730) to protect workers using walkways over excavations.

The Excavations Standard is currently found in 29 CFR, subpart P, 1926.650–1926.652 and Appendices A–F, and covers the construction industry. The purpose of the Standard is to protect employees from deaths and injuries resulting from excavation work, including deaths and injuries resulting from cave-ins. The Standard regulates the use of support systems, sloping and benching systems, and other systems of protection as means of protection against excavation cave-ins. In addition, the Standard regulates the means of access to and egress from excavations, along with employee exposure to vehicular traffic, falling loads, hazardous atmospheres, water accumulation, and unstable structures in and adjacent to excavations. The Standard applies to all types of excavations, including trenches, made in the earth's surface.

OSHA has selected the Excavation Standard for review in accordance with the regulatory review provisions of Section 610 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Section 5 of Executive Order 12866 (58 FR 51735, 51739, October 4, 1993). The purpose of a review under Section 610 of the Regulatory Flexibility Act:

(S)hall be to determine whether such rule should be continued without change, or should be rescinded, or amended consistent with the stated objectives of applicable statutes to minimize any significant impact of the rules on a substantial number of small entities.

The Agency shall consider the following factors:

(1) The continued need for the rule;
(2) The nature of complaints or comments received concerning the rule from the public;
(3) The complexity of the rule;
(4) The extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and
(5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

The review requirements of Section 5 of Executive Order 12866 require agencies:

To reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the [Agency] have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive Order, within applicable law; and to otherwise improve the effectiveness of existing regulations.

An important step in the review process involves the gathering and analysis of information from affected persons about their experience with the rule and any material changes in circumstances since issuance of the rule. This document requests written comments on the continuing need for the rule, its adequacy or inadequacy, its small business impacts, and other relevant issues. Comments concerning the following subjects would assist the Agency in its review. (The purpose of these questions is to assist commenters in their responses and not to limit the format or substance of their comments. Of course, comments are requested on all issues raised by Section 610 of the Regulatory Flexibility Act and Section 5 of Executive Order 12866.)

Safety/Effectiveness

1. Do any aspects of Subpart P need to be updated as a result of technological developments over the past decade?

2. Does compliance with the Excavations Standard at 29 CFR subpart P (i.e., §§ 1926.650–1926.652 and Appendices A–E) provide safety from cave-ins and other trenching and excavation accidents? Are there additional protections which could improve safety?

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3. If firms fail to comply with the Excavations Standard, is non-compliance more commonly the result of: (1) A lack of information (e.g., about the dangers, or the safety requirements); (2) inadequate supervision; (3) cost pressures; or (4) other factors? How could OSHA encourage improved compliance?

4. Are OSHA's requirements in the Excavations Standard known to firms that do trenching and excavation jobs, including small firms and firms that dig trenches only occasionally? How could awareness be increased for such firms?

Costs and Impacts

5. Does OSHA's Excavations Standard impose an unnecessary burden to small businesses, or to industry in general? If so, which requirements, and how could this burden be reduced without decreasing safety?

6. Do any of the requirements in the Excavations Standard lead to a disproportionate burden on small entities? If so, which requirements lead to a disproportionate burden, and how?

7. What percent of the time and cost of an excavation job do safety measures represent? Do these percentages vary significantly depending on the type of job, soil, firm, or other factors? Provide data, if possible.

8. Which types of safety measures have the greatest impact on productivity? The lowest impact on productivity?

9. Do bidding practices (or requirements) for construction jobs encourage or discourage uniform compliance with the Excavations Standard (e.g., by explicitly identifying planned subpart P safety measures in bids delivered to customers, or by certifying compliance with subpart P as part of the bid)?

10. How have changes in technology, the economy, or other factors affected the compliance costs associated with the rule over the past decade or so?

11. How might OSHA modify the requirements to reduce costs without jeopardizing safety?

Clarity/Duplication

12. Are any aspects of the Excavations Standard unclear, needlessly complex, or duplicative? Do any portions of the Excavations Standard overlap, duplicate, or conflict with other Federal, State or local government rules?

13. Do other government entities, including other countries, have alternative trenching and excavation approaches? If so, how do they differ from OSHA's approach? Are these alternative approaches more effective?

Additional Information on the Excavations Standard: The major occupational hazards of excavation work result from cave-ins, from exposure to underground utilities, and from material or equipment falling into the excavation. Precautions to protect against cave-ins include bracing, sloping, benching, and shielding. However, the proper use of these techniques requires an understanding of the importance of such factors as excavation depth and width, soil type, hydraulic pressure, and other specific conditions present at the worksite.

Excavation work is performed during the construction of buildings, bridges, towers, and other construction projects. There is a greater economic incentive to shore excavations, as opposed to trenches, due to the greater risks of incurring re-excavation expenses due to collapsed walls, and due to the possibility that damage suits would result from the collapse of buildings located adjacent to an excavation. In comparison, trenching is primarily performed by utility contractors who construct gas, sewer, water, and utility lines. Much of this work is performed as a result of competitive bids from state and local governments or local utilities. Trenches are less likely to be in close proximity to other structures; structures adjacent to trenches are less likely to collapse; and the cost of redigging a collapsed trench is far less than of re-excavating the foundation of a building.

OSHA statistics show that during the period 1990–2000, an average of approximately 70 fatalities per year occurred as a result of excavation and trenching accidents. These fatalities fall across numerous Standard Industrial Classifications (SICs),[1] but over 80 percent of the fatalities occurred in the following 12 SICs:

SIC 1623—Water, sewer, pipeline, communications, and power line
SIC 1794—Excavation work
SIC 1711—Plumbing, heating, and air conditioning
SIC 1629—Heavy construction
SIC 1542—General contractors, non-residential, non-industrial
SIC 1611—Highway and street construction
SIC 1521—General contractors, single family homes
SIC 1771—Concrete work
SIC 1799—Special trade contractors
SIC 1622—Bridge, tunnel, and elevated highway
SIC 1731—Electrical work
SIC 1795—Wrecking and demolition work

While the annual number of fatalities has remained fairly constant over this 1990–2000 period, the fatality rate as a percentage of the real value of construction activity has declined. One factor contributing to this decline has been an increased use of new "trenchless" technologies, such as directional drilling, pipejacking, microtunnelling, auger boring, impact ramming, pipe bursting, folded pipes, and spray on linings. These technologies can result in fewer accidents by eliminating or reducing the amount of time that workers are physically exposed to the hazards of trenching. For example, some of these technologies use remote-controlled equipment to dig and lay cables, to install pipe, or to replace existing pipes.

The construction industry has grown by approximately 20 percent (constant dollars) since the Excavations Standard was last modified in 1989. The Small Business Administration (SBA) generally classifies the entities affected by this standard as small if their annual revenues are less than $12 million (for affected entities falling within NAIC 235) or $28.5 million (for affected entities falling within NAICs 233 and 234). Under these guidelines, the vast majority of entities affected by the Standard are small entities.

Comments: All comments shall be submitted or postmarked by November 19, 2002, to the address above. OSHA will review the written public comments as part of the process of conducting this regulatory review of the Excavations Standard. All comments received will be included in Docket No. S204A and will be available for public review in the OSHA Docket Office.

Authority: This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, on August 14, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 02–21221 Filed 8–20–02; 8:45 am]

BILLING CODE 4510–26–P

[1] Industries are classified by SIC, as opposed to the newer North American Industrial Classification (NAIC) system, due to the historical nature of OSHA's statistics. The relevant NAICs fall within NAIC 23 (Construction), including NAIC 233 (Building, Developing, and General Contracting), 234 (Heavy Construction), 235 (Special Trade Contractors), and other subclassifications.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–057]

RIN 2115–AE46

Special Local Regulations for Marine Events; Bush River, Abingdon, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the "Harford County Power Boat Regatta", a marine event to be held on the waters of Bush River near Abingdon, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Bush River during the event.

DATES: This rule is effective from 11:30 a.m. on August 31, 2002 to 6:30 p.m. on September 1, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–02–057 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ronald Houck, Marine Information Specialist, Commander, Coast Guard Activities Baltimore, at (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The event will begin on Saturday, August 31, 2002. There is not sufficient time to allow for a notice and comment period, prior to the event. Because of the danger inherent in high-speed boat races, special local regulations are necessary to provide for the safety of participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. In addition, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

Background and Purpose

On August 31 and September 1, 2002, the Harford County Power Boat Association will sponsor the "Harford County Power Boat Regatta", on the waters of the Bush River, near Abingdon, Maryland. The event will consist of approximately 75 inboard hydroplanes and runabouts racing in heats counter-clockwise around a 1.25-mile oval racecourse. A fleet of spectator vessels is anticipated. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of spectators, participants and transiting vessels.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the Bush River. The temporary special local regulations will be enforced from 11:30 a.m. to 6:30 p.m. on both August 31 and September 1, 2002. The effect will be to restrict general navigation in the regulated area during the event. Except for participants in the "Harford County Power Boat Regatta" and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. The Patrol Commander will allow non-participating vessels to transit the event area between races at slow speed. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Although this rule prevents traffic from transiting a portion of the Bush River during the event, the effect of this rule will not be significant due to the limited duration of the regulation, the fact that the Patrol Commander will allow non-participating vessels to transit the event area between races, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Bush River during the event.

Although this rule prevents traffic from transiting or anchoring in a portion of the Bush River during the event, the effect of this rule will not be significant because of its limited duration, the fact that the Patrol Commander will allow non-participating vessels to transit the event area between races, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by

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employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We prepared an "Environmental Assessment" in accordance with Commandant Instruction M16475.1C, and determined that this rule will not significantly affect the quality of the human environment. The "Environmental Assessment" and "Finding of No Significant Impact" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. From 11:30 a.m. on August 31, 2002 to 6:30 p.m. on September 1, 2002, add temporary section, § 100.35–T05–057 to read as follows:

§ 100.35–T05–057 Bush River, Abingdon, Maryland.

(a) *Definitions.*

(1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant.* Includes all vessels participating in the Harford County Power Boat Regatta under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Activities Baltimore.

(b) *Regulated area.* Includes the waters of the Bush River bounded on the south by the Amtrak railroad drawbridge, thence northerly from the eastern end of the drawbridge along the shoreline to Church Point at latitude 39°27′48″ N, longitude 76°13′42″ W, thence westerly to Bush Point at latitude 39°27′42″ N, longitude 76°14′30″ W, thence southwesterly along the shoreline to Otter Point at latitude 39°26′48″ N, longitude 76°15′42″ W, thence southerly to Flying Point at latitude 39°26′30″ N, longitude 76°15′30″ W, thence southeasterly along the shoreline to the western end of the Amtrak railroad drawbridge. All coordinates reference Datum: NAD 1983.

(c) *Special local regulations.*

(1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(iii) Unless otherwise directed by the official patrol, operate at a minimum wake speed not to exceed six (6) knots.

(d) *Enforcement period.* This section will be enforced from 11:30 a.m. to 6:30 p.m. on both August 31 and September 1, 2002.

Dated: August 14, 2002.

A.E. Brooks,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 02–21298 Filed 8–20–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco 02–017]

RIN 2115–AA97

Safety Zone; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing moving safety zones extending one-hundred (100) yards around each vessel participating in the Parade of Ships-Festival of Sail as each vessel transits through San Francisco Bay to its respective mooring site on August 28, 2002. These temporary safety zones are necessary to provide for the safety of the crews, spectators, participants of the event, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within these safety zones unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 12 [PDT] to 4:30 [PDT] on August 28, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco 02–017] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Building 14, Alameda, CA 94501–5100, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Diana Cranston, Chief, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Final approval and permitting of this event were not issued in time to engage in notice and comment rulemaking. Moreover, through various meetings and correspondence, the Coast Guard has attempted to involve other agencies in the planning process of the Parade of Ships-Festival of Sail. The public will also be reminded about this event through Broadcast Notice to Mariners (BNM) announcements and Local Notice to Mariner (LNM) publications. Moreover, the event will have minimal impact on the public since it is of a short duration, four and one-half (4.5) hours, and will take place during non-commute hours from 12 p.m. until 4:30 p.m.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. It would be contrary to the public interest not to publish this rule because the event has been permitted and participants and the public require protection.

Background and Purpose

The American Sail Training Association, in coordination with local sponsors like "Sail San Francisco", is sponsoring the 2002 Tall Ships Challenge race series transiting the Pacific Ocean along the west coast of North America. Between the races, the participating vessels will visit several ports including San Francisco Bay. These temporary safety zones are established in support of the Parade of Ships-Festival of Sail, a marine event that includes participating vessels transiting through San Francisco Bay and, upon completion of the parade, mooring in San Francisco Bay, giving spectators an opportunity to tour the participating vessels. These temporary safety zones are necessary to provide for the safety of the crews, spectators, and participants of the Parade of Ships-Festival of Sail and are also necessary to protect other vessels and users of waterway.

Discussion of Rule

The Coast Guard establishes moving safety zones extending one-hundred (100) yards around each vessel participating in the Parade of Ships-Festival of Sail as each vessel transits through San Francisco Bay to its respective mooring site. Vessels participating in the event will fly a black-and-yellow pennant indicating their official association with the Parade of Ships-Festival of Sail. The safety zones surrounding the participant vessels will be enforced from 12 p.m. to 4:30 p.m. on August 28, 2002. The safety zones are necessary to provide for the safety of the crews, spectators, and participants of the Parade of Ships-Festival of Sail and to protect other vessels and users of the waterways. Persons and vessels would be prohibited from entering into, transiting through, or anchoring within these safety zones unless authorized by the Captain of the Port, or his designated representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of its limited duration of four and one-half (4.5) hours and the limited geographic scope of the safety zones.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

These safety zones would not have a significant economic impact on a substantial number of small entities because these zones are limited in scope and duration (in effect for only four and one-half (4.5) hours on August 28, 2002). In addition, the Coast Guard will issue broadcast notice to mariners alerts via VHF–FM marine channel 16 before the safety zone is enforced.

Assistance for Small Entities

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have

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determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are proposing to establish a safety zone. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add a new § 165.T11–089 to read as follows:

§ 165.T11–089 Safety Zone; San Francisco Bay, CA.

(a) *Location.* Temporary moving safety zones are established as a one-hundred (100) yard radius around each vessel participating in the Parade of Ships-Festival of Sail as each vessel transits through San Francisco Bay to its respective mooring site. The vessels participating in this event will be distinguished by their flying a black and yellow pennant.

(b) *Effective period.* This section is effective from 12:00 p.m. until 4:30 p.m. on August 28, 2002.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through or anchoring within these safety zones is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco, or his designated representative.

Dated: August 12, 2002.

L. L. Hereth,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 02–21297 Filed 8–20–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0150; FRL–7188–4]

Imidacloprid; Re-Establishment of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes time-limited tolerances for combined residues of the insecticide imidacloprid (1-[6-chloro-3-pyridinyl) methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, in or on turnip, roots at 0.3 parts per million (ppm); turnip, tops at 3.5 ppm; beet, garden, roots at 0.3 ppm; and beet, garden, tops for an additional 2–year period. These tolerances will expire and are revoked on June 30, 2004. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on turnips and garden beets. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation is effective August 21, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0150, must be received on or before October 21, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0150 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9367; e-mail address: ertman.andrew@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0150. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of November 29, 1996 (FRL–5575–1), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), it established time-limited tolerances for the combined residues of the insecticide imidacloprid (1-[6-chloro-3-pyridinyl) methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, in or on turnip roots at 0.3 ppm; turnip tops at 3.5 ppm; beet roots at 0.3 ppm; and beet tops at 3.5 ppm with an expiration date of November 29, 1997.

These tolerances were subsequently extended on in **Federal Register** documents published on December 12, 1997 (extended to Novemer 29, 1998), October 7, 1998 (extended to June 30, 2000), and August 9, 2000 (extended to June 30, 2002). The extension that was published on August 9, 2000 amended § 180.472(b) by extending the expirations dates of turnip roots; turnip tops; beet roots; and beet tops. However; these changes have never been reflected in the tolerance table in § 180.472(b) because the time-limited tolerances for these commodities were originally listed in the tolerance table for § 180.472(a). This document will re-establish the tolerances using the correct commodity terms from the Food and Feed Commodity Vocabulary database, correctly place them in the table to § 180.472(b), and remove the commodities turnip roots, turnip tops, beet roots and beet tops from the table in § 180.472(a).

Recently, EPA has received an objection to a tolerance it established for imidacloprid on a different food commodity. The objection was filed by the Natural Resources Defense Council (NRDC) and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. Although this objection concerns separate rulemaking proceedings under the FFDCA, EPA has considered whether it is appropriate to re-establish the emergency exemption tolerances for imidacloprid while the objection is still pending.

Factors taken into account by EPA included how close the Agency is to concluding the proceedings on the objection, the nature of the current action, whether NRDC's objection raised frivolous issues, and the extent to which the issues raised by NRDC had already been considered by EPA. Although NRDC's objection is not frivolous, the other factors all support extending these tolerances at this time. First, the objections proceeding is not near to conclusion. NRDC's objections raise complex legal, scientific, policy, and factual matters and EPA has just initiated a 60 day public comment period on them. (See 67 FR 41628, June 19, 2002, FRL–7167–7) Second, the nature of the current actions are extremely time-sensitive as they address emergency situations. Third, the issues raised by NRDC are not new matters but questions that have been the subject of considerable study by EPA and comment by stakeholders. Accordingly, EPA is proceeding with re-establishing the tolerances for imidacloprid.

EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of imidacloprid on turnips and garden beets for this year's growing season due to a continuation of the emergencies in California and Arizona. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of imidacloprid on turnips and garden beets for control of aphids in Arizona and California, respectively.

EPA assessed the potential risks presented by residues of imidacloprid in or on turnip roots, turnip tops, garden beet roots, and garden beet tops. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerances under FFDCA section

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408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule published in the **Federal Register** of November 29, 1996 (FRL–5575–1). Based on that data and information considered, the Agency reaffirms that re-establishment of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are re-established for an additional 2–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on June 30, 2004, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on turnip, roots; turnip, tops; beet, garden, roots; and beet, garden, tops after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0150 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 21, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0150, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule re-establishes time-limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 11, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. In § 180.472, amend the table in paragraph (a) by removing the entries for the commodities turnip tops; turnip roots; beet tops; and beet roots and amend the table in paragraph (b) by adding alphabetically the following entries:

§ 180.472 Imidacloprid; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Beet, garden, roots;	0.3	06/30/04
Beet, garden, tops;	3.5	06/30/04
* * *	* * *	* * *
Turnip, roots;	0.3	06/30/04
Turnip, tops;	3.5	06/30/04
* * *	* * *	* * *

* * * * *

[FR Doc. 02–20990 Filed 8–20–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0176; FRL–7191–5]

Sulfentrazone; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of sulfentrazone, N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl] methanesulfonamide, and its metabolites 3-hydroxymethyl sulfentrazone (HMS) and 3-desmethyl sulfentrazone (DMS) in or on flax, seed; potato; potato, wet peel; and potato, granules/flakes. This action is in response to EPA's granting of an emergency exemption under section 18

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of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on flax and potatoes. This regulation establishes maximum permissible levels for residues of sulfentrazone in these food commodities. These tolerances will expire and are revoked on December 31, 2004.

DATES: This regulation is effective August 21, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0176, must be received on or before October 21, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number –OPP–2002–0176 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9367; e-mail address: Ertman.Andrew@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0176. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for combined residues of the herbicide sulfentrazone, N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl] methanesulfonamide, and its metabolites 3-hydroxymethyl sulfentrazone (HMS) and 3-desmethyl sulfentrazone (DMS), in or on flax, seed at 0.20 part per million (ppm); potato at 0.10 ppm; potato, wet peel at 0.15 ppm; and potato, granules/flakes at 0.20 ppm. These tolerances will expire and are revoked on December 31, 2004. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Sulfentrzone on Flax and Potatoes and FFDCA Tolerances

North Dakota submitted a section 18 request for the emergency use of sulfentrazone on flax to control kochia. EPA reviewed this request and concluded that the situation was urgent and non-routine.

Colorado and Nebraska submitted section 18 requests for the emergency use of sulfentrazone on potatoes to control ALS-inhibitor and triazine-resistant Palmer amaranth, redroot pigweed, common waterhemp. EPA reviewed these requests and concluded that the situations were urgent and non-routine. EPA has authorized under FIFRA section 18 the use of sulfentrazone on flax to control kochia in North Dakota, and on potatoes for control of ALS-inhibitor and triazine-resistant Palmer amaranth, redroot pigweed, common waterhemp in Colorado and Nebraska. After having reviewed these submissions, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of sulfentrazone in or on flax and potatoes. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 2004, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on flax, seed; potato; potato, wet peel; potato, granules/flakes after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether sulfentrazone meets EPA's registration requirements for use on flax and/or potatoes or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of sulfentrzone by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than North Dakota, Colorado and Nebraska to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for sulfentrazone, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of sulfentrazone and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for combined residues of sulfentrazone in or on flax, seed at 0.20 ppm; potato at 0.10 ppm; potato, wet peel at 0.15 ppm; and potato, granules/flakes at 0.20 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for sulfentrazone used for human risk assessment is shown in the following Table 1:

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TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR SULFENTRAZONE FOR USE IN HUMAN RISK ASSESSMENT

ExposureScenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary females 13–50 years of age	NOAEL = 10.0 mg/kg/day UF = 100 Acute RfD = 0.10 mg/kg/day	FQPA SF = 10 aPAD = acute RfD ÷ FQPA SF = 0.01 mg/kg/day	Developmental study in rats Developmental LOAEL = 25 mg/kg/day based on decreased fetal weight and retarded skeletal development as evidenced by an increased number of litters with any variation and by decreased numbers of caudal vertebral and metacarpal ossification sites.
Acute dietary general population including infants and children	NOAEL = 250 mg/kg/day UF = 100 Acute RfD = 2.5 mg/kg/day	FQPA SF = 10 aPAD = acute RfD ÷ FQPA SF = 0.25 mg/kg/day	Acute neurotoxicity study in rats LOAEL = 750 mg/kg/day based on increased incidences of clinical signs abdominal gripping, abdominogenital staining, and/or reddish-brown staining under the cage, FOB findings, and decreased motor activity which were reversed by day 14 post dose.
Chronic dietary all populations	NOAEL= 14.0 mg/kg/day UF = 100 Chronic RfD = 0.14 mg/kg/day	FQPA SF = 10 cPAD = chronic RfD ÷ FQPA SF = 0.014 mg/kg/day	2–generation reproduction study in rats LOAEL = 33/44 mg/kg/day in males and females, respectively, based on 1) decreased maternal body weight and/or body weight gain during gestation in both P and F1 generations, 2) reduced premating body weight gains in the second generation (F1 adults), 3) increased duration of gestation in both F1 and F2 dams, 4) reduced prenatal viability (fetal and litter), 5) reduced litter size, 6) increased number of stillborn pups, 7) reduced pup and litter postnatal survival, and 8) decreased pup body weights throughout gestation. In males, effects included decreased fertility in F1 generation and/or atrophy of the germinal epithelium of the testes, oligospermia and intratubular degeneration of the seminal product in the epididymis.

*The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.498) for the combined residues of sulfentrazone, in or on a variety of raw agricultural commodities. A permanent tolerance has been established for residues of sulfentrazone on soybean seed. Tolerances are established for inadvertent and indirect residues of sulfentrazone on cereal grains. Time-limited tolerances have been established on bean, lima (succulent seed without pod); cowpeas (without pod); horseradish, roots; sugarcane, cane; sunflower, seeds; and, sunflower, forage. These time-limited tolerances have an expiration date of 12/31/02. Risk assessments were conducted by EPA to assess dietary exposures from sulfentrazone in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Tolerance level residues and 100% crop treated information were used for all commodities (Tier 1). As the acute analyses were Tier 1 assessments, acute risk estimates are presented at the 95th percentile.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance level residues and 100% crop treated information were used for all commodities (Tier 1).

iii. *Cancer.* Sulfentrazone has been classified as a "Group E" chemical (not likely to be carcinogenic to humans via relevant routes of exposure). Therefore, no cancer risk assessment was performed.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for sulfentrazone in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of sulfentrazone.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and screening concentration in ground water (SCI-GROW), which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to sulfentrazone they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the EECs of sulfentrazone for acute exposures are estimated to be 16 parts per billion (ppb) for surface water and 16 ppb for ground water. The EECs for chronic exposures are estimated to be 4 ppb for surface water and 16 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Sulfentrazone is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether sulfentrazone has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, sulfentrazone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that sulfentrazone has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies*—i. *Rats.* In the oral developmental study in rats, the maternal (systemic) NOAEL was 25 mg/kg/day, based on increased spleen weights and splenic extramedullary hematopoiesis at the LOAEL of 50 mg/kg/day. The developmental (fetal) NOAEL was 10 mg/kg/day, based on decreased mean fetal weight and retardation in skeletal development as evidenced by increased numbers of litters with any variation and by decreased numbers of caudal vertebral and metacarpal ossification sites at the LOAEL of 25 mg/kg/day.

In the dermal developmental study in rats, the maternal (systemic) NOAEL was 250 mg/kg/day and a LOAEL was not determined. The developmental (fetal) NOAEL was 100 mg/kg/day, based on decreased fetal weight and increased fetal variations (hypoplastic or wavy ribs, incompletely ossified lumbar vertebral arches, incompletely ossified ischia or pubes, and reduced numbers of thoracic vertebral and rib ossification sites) at the LOAEL of 250 mg/kg/day.

ii. *Rabbits.* In the oral developmental toxicity study in rabbits, the maternal (systemic) NOAEL was 100 mg/kg/day, based on increased abortions, clinical signs (decreased feces and hematuria), and reduced body weight gain during gestation at the LOAEL of 250 mg/kg/day. The developmental (pup) NOAEL was 100 mg/kg/day, based on increased resorptions, decreased live fetuses per litter, and decreased fetal weight at the LOAEL of 250 mg/kg/day.

3. *Reproductive toxicity study—Rats.* In the 2–generation reproductive toxicity study in rats, the maternal (systemic) NOAEL was 14/16 mg/kg/day in males and females, respectively, based on decreased maternal body weight and/or body weight gain during gestation in both P and F1 generations, and reduced premating body weight gains in the second generation (F1 adults) at the LOAEL of 33/44 mg/kg/day for males and females, respectively. The developmental (pup) NOAEL was 14/16 mg/kg/day based on: (1) Reduced prenatal viability (fetal and litter), (2) reduced litter size, (3) increased number of stillborn pups, (4) reduced pup and litter postnatal survival, and (5) decreased pup body weights throughout lactation at the LOAEL of 33/44 mg/kg/day. The reproductive NOAEL was 14/16 mg/kg/day, based on: (1) Increased duration of gestation in both F1 and F2 dams, (2) decreased fertility in F1 generation (males), and/or (3) atrophy of the germinal epithelium of the testes, oligospermia and intratubular degeneration of the seminal product in the epididymis at the LOAEL of 33/44 mg/kg/day.

4. *Prenatal and postnatal sensitivity.* The toxicological database for evaluating prenatal and postnatal toxicity for sulfentrazone is complete with respect to current data requirements. Based on the developmental and reproductive toxicity studies discussed above for sulfentrazone there appears to be prenatal and postnatal sensitivity.

5. *Conclusion.* There is a complete toxicity database for sulfentrazone and exposure data are complete or are estimated based on data that reasonably

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accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be retained. For acute dietary analysis, the FQPA safety factor was retained and is applicable to the U.S. population and all subgroups due to the increased susceptibility observed in the prenatal developmental studies. For chronic dietary analysis, the FQPA safety factor was retained and is applicable for all populations due to the qualitative increased susceptibility observed in the 2–generation reproduction study.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by EPA are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to sulfentrazone in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of sulfentrazone on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to sulfentrazone will occupy <1% of the aPAD for the U.S. population, 8% of the aPAD for females 13 years and older, <1% of the aPAD for all infants (<1 year old) and <1% of the aPAD for children (1–6 years old). In addition, despite the potential for acute dietary exposure to sulfentrazone in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of sulfentrazone in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO SULFENTRAZONE

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females, 13–50 years old	0.01	8	16	16	270
U.S. Population	0.25	<1	16	16	8,700
Children (1–6 years old) and all infants (<1 year old)	0.25	<1	16	16	2500

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to sulfentrazone from food will utilize 3% of the cPAD for the U.S. population, 5% of the cPAD for all infants (<1 year old) and 6% of the cPAD for children (1–6 years old). There are no residential uses for sulfentrazone that result in chronic residential exposure to sulfentrazone. In addition, despite the potential for chronic dietary exposure to sulfentrazone in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of sulfentrazone in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON- CANCER) EXPOSURE TO SULFENTRAZONE

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.014	4	4.0	16	470
Children (1–6 years old) and all infants (< 1 year old)	0.014	8	4.0	16	130
Females (13–50 years old)	0.014	3	4.0	16	410
Males (13–19 years old)	0.014	4	4.0	16	470

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Sulfentrazone is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Sulfentrazone is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population.* Because sulfentrazone is not a carcinogen, a cancer aggregate risk assessment was not conducted.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to sulfentrazone residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical methodology for the determination of sulfentrazone, 3-desmethyl sulfentrazone, and 3-hydroxymethyl sulfentrazone residues in/on various matrices was submitted with a petition for a sulfentrazone tolerance on soybeans. A petition method validation (PMV) was successfully completed by the Agency's Analytical Chemistry Laboratory. The Limit of Quantitation (LOQ) and Minimum Detection Limit (MDL) were determined to be 0.05 ppm and 0.005–0.025 ppm, respectively. EPA concluded that the method is suitable for enforcement purposes.

Adequate enforcement methodology (example—gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: *furlow.calvin@epa.gov.*

B. International Residue Limits

There are no Codex maximum residue limits (MRLs) established for sulfentrazone on either flax or potatoes.

VI. Conclusion

Therefore, the tolerances are established for combined residues of sulfentrazone, N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide, and its metabolites 3-hydroxymethyl sulfentrazone (HMS) and 3-desmethyl sulfentrazone (DMS), in or on flax, seed at 0.20 ppm; potato at 0.10 ppm; potato, wet peel at 0.15 ppm; and potato, granules/flakes at 0.20 ppm

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0176 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 21, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket ID number OPP–2002–0176, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your

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request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes time limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the [tolerances] in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

August 12, 2002.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.498 is amended by alphabetically adding commodities to the table in paragraph (b) to read as follows:

§ 180.498 Sulfentrazone; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
* * * * *		
Flax, seed	0.20	12/31/04

Commodity	Parts per million	Expiration/revocation date
* * * * *		
Potato	0.10	12/31/04
Potato, granules/flakes	0.20	12/31/04
Potato, wet peel	0.15	12/31/04
* * * * *		

* * * * *

[FR Doc. 02–20989 Filed 8–20–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0178; FRL–7192–2]

Clomazone; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes for tolerances for residues of clomazone in or on peppermint tops and spearmint tops. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective August 21, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0178, must be received on or before October 21, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0178 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0178. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of July 17, 2002 (67 FR 46981) (FRL–7185–8), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 2E6407) by IR-4, 681 U.S. Highway # 1 South, North Brunswick, New Jersey 08902–3390. This notice included a summary of the petition prepared by FMC Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.425 be amended by establishing tolerances for residues of the herbicide clomazone, 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone, in or on peppermint tops and spearmint tops at 0.05 part per million (ppm).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include

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occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of clomazone on peppermint tops and spearmint tops at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing these tolerances follow.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by clomazone is discussed in Unit III.A. of the Final Rule on Clomazone Pesticide Tolerance published in the **Federal Register** of Feburary 14, 2001 (66 FR 10196) (FRL–6764–2).

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for clomazone used for human risk assessment is discussed in Unit III.B. of the Final Rule on Clomazone Pesticide Tolerance published in the **Federal Register** of Feburary 14, 2001 (66 FR 10196).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.425) for the residues of clomazone, in or on a variety of raw agricultural commodities ranging from 0.1 to 0.05 ppm as follows: Snaps beans; cabbage; cottonseed; cucumber; succulent peas; peppers; pumpkins; rice grain; rice straw; soybeans; summer squash; winter squash; sugar cane; sweet potato; cucurbit vegetables; and tuberous and corm vegetables (except potato). Risk assessments were conducted by EPA to assess dietary exposures from clomazone in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: A Tier 1 acute analysis was performed for females 13–50 years old using existing and recommended tolerance level residues, 100 percent of crop treated (% CT) information, and DEEM® default processing factors.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A Tier 1 chronic analysis was performed for the general U.S. population and all population subgroups using existing and recommended tolerance level residues, 100% CT information, and DEEM® default processing factors.

iii. *Cancer.* The Agency has classified clomazone as a "not likely human carcinogen" based on the lack of a carcinogenic response in rats and mice and the lack of mutagenic concern. Therefore, a cancer risk assessment was not performed for this action.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for clomazone in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of clomazone.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and Screening Concentration in Ground Water (SCI-GROW), which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to clomazone, they are further discussed in Unit II.E.

The EECs were based on the proposed uses of clomazone as specified on the CommandR 3 ME label (maximum application rate = 1.25 pound active ingredient per acre (lb ai/A)).

i. *Surface water.* The maximum acute and chronic surface water EECs for both parent clomazone and FMC 65317 were estimated by the Tier 1 screening models GENEEC and GENEECX. For surface water, the maximum acute EEC was 95 parts per billion (ppb) and the maximum chronic (56–day) EEC was 68 ppb. EPA's interim policy allows the 56–day GENEEC value to be divided by an adjustment factor of 3 to obtain a value for chronic risk assessment calculations. Therefore, a surface water value of 23 ppb was used for chronic risk assessment.

ii. *Ground water.* The predicted maximum ground water EEC for both parent clomazone and FMC 65317, using the Tier 1 screening model SCI-GROW2, was 2.4 ppb which was considered as both an acute and chronic value for risk assessment purposes.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Clomazone is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether clomazone has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, clomazone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that clomazone has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* There is no quantitative or qualitative evidence of susceptibility of rat or rabbit fetuses to *in utero* exposure in the available developmental studies. In the 2–generation reproduction study, no qualitative or quantitative evidence of increased susceptibility was observed.

3. *Conclusion.* There is a complete toxicity database for clomazone and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The FQPA factor was reduced to 1X because of the following reasons: There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure; a developmental neurotoxicity study is not required; and the dietary (food and drinking water) exposure assessments will not underestimate the potential exposures for infants and children (there are currently no registered residential uses).

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by EPA are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be

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taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to clomazone will occupy <1% of the aPAD for females 13 years and older at the 95th percentile. Thus, the acute dietary risk associated with the existing and proposed uses of clomazone does not exceed EPA's level of concern (>100% aPAD). However, there is potential for acute dietary exposure to clomazone in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 1:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO CLOMAZONE

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females 13–50 years old	1.0	<1.0	95	2.4	30,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to clomazone from food will utilize <1% of the cPAD for the U.S. population, and all population subgroups. There are no residential uses for clomazone that result in chronic residential exposure to clomazone. However, there is potential for chronic dietary exposure to clomazone in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON- CANCER) EXPOSURE TO CLOMAZONE

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.84	<1	23	2.4	29,000
All infants (<1 year old)	0.84	<1	23	2.4	8,400
Children (1–6 years old)	0.84	<1	23	2.4	8,400
Females(13–50 years old)	0.84	<1	23	2.4	25,000

3. *Short and intermediate-term risk.* Short and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Clomazone is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population.* The Agency has classified clomazone as a "not likely human carcinogen" based on the lack of a carcinogenic response in rats and mice and the lack of mutagenic concern. Therefore, no cancer risk is expected.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to clomazone residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for the determination of the residues of clomazone in plants. Briefly, samples are acid hydrolyzed, hexane extracted, Na_2CO_3 washed, and cleaned-up with a Florisil® column. The resulting samples are analyzed by gas chromatography (GC) using a nitrogen phosphorus detector (NPD) or mass spectrometer (MS). The limit of quantitation (LOQ) for this method is 0.05 ppm. A confirmatory procedure (GC/MS-SIM) is available (Method I, PAM II).

Adequate enforcement methodology (example—gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There is neither a Codex proposal, nor Canadian or Mexican maximum residue limits (MRLs) for residues of clomazone in/on mint.

V. Conclusion

Therefore, tolerances are established for residues of clomazone, 2-(2-chlorophenyl)methyl- 4,4-dimethyl-3-isoxazolidinone, in or on peppermint tops and spearmint tops at 0.05 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0178 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 21, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0178, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

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levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 16, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.425 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.425 Clomazone; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Peppermint, tops	0.05
* * *	* *
Spearmint, tops	0.05
* * *	* *

* * * * *

[FR Doc. 02–21278 Filed 8–16–02; 4:19 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7264–1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a petition submitted by the United States Department of Energy Savannah River Operations Office (DOE–SR) to exclude (or "delist") certain hazardous wastes from the lists of hazardous wastes under the Resource Conservation and Recovery Act (RCRA). DOE–SR generated the petitioned waste by treating wastes from various activities at the Savannah River Site (SRS). The petitioned waste meets the definitions of listed RCRA hazardous wastes F006 and F028. DOE–SR petitioned EPA to grant a one-time, generator-specific delisting for its F006 and F028 waste, because DOE–SR believes that its waste does not meet the criteria for which theses types of wastes were listed. The waste is a radioactive mixed waste (RMW) because it is both a RCRA hazardous waste and a radioactive waste. EPA reviewed all of the waste-specific information provided by DOE–SR, performed calculations, and determined that the waste, which has a low level of radioactivity, could be disposed in a landfill for low-level radioactive waste without harming human health and the environment. The petition is for a one-time delisting, because the petitioned waste has been generated, will be completely disposed of at one time, and will not be generated again. Today's final rule grants DOE–SR's petition to delist its F006 and F028 waste. No public comments on the proposed rule were received. Today's final action means that DOE–SR's petitioned waste will no longer be classified as F006 and F028, and will not be subject to regulation as a hazardous waste under Subtitle C of RCRA, provided that it is disposed in a low-level radioactive waste landfill, in accordance with the Atomic Energy Act. The waste will still be subject to the Atomic Energy Act and local, State, and Federal regulations for low-level radioactive solid wastes that are not RCRA hazardous wastes.

EFFECTIVE DATE: This rule is effective on August 21, 2002.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays.

The reference number for this docket is R4–01–02–DOESRSF. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies. For copying at the South Carolina Department of Health and Environmental Control (SCDHEC), please see below.

FOR FURTHER INFORMATION CONTACT: For general and technical information concerning this final rule, please contact Judy Sophianopoulos, RCRA Enforcement and Compliance Branch (Mail Code 4WD–RCRA), U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8604, or call, toll free (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call. Questions may also be e-mailed to Ms. Sophianopoulos at *sophianopoulos.judy@epa.gov*. You may also contact Myra C. Reece, Director, South Carolina Department of Health and Environmental Control, Lower Savannah District Environmental Quality Control, 218 Beaufort Street, NE., Aiken, South Carolina 29801, Phone: (803) 641–7670. If you wish to copy documents at SCDHEC, Lower Savannah District Environmental Quality Control, please contact Ms. Reece for copying procedures and costs.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background
A. What Is a Delisting Petition?
B. What Laws and Regulations Give EPA the Authority to Delist Wastes?
C. What is the History of this Rulemaking?
II. Summary of Delisting Petition Submitted by the United States Department of Energy Savannah River Operations Office (DOE–SR)
A. What Waste Did DOE–SR Petition EPA to Delist?
B. What Information Did DOE–SR Submit to Support This Petition?
III. EPA's Evaluation and Final Rule
A. What Decision Is EPA Finalizing and Why?
B. What Are the Terms of This Exclusion?
C. When Is the Delisting Effective?
D. How Does This Action Affect the States?
IV. Public Comments Received on the Proposed Exclusion
A. Who Submitted Comments on the Proposed Rule?
B. Comments and Responses From EPA
V. Analytical and Regulatory Requirements
A. Executive Order 12866: Regulatory Planning and Review
B. What Economic and Equity Analyses Were Completed in Support of the Proposed Delisting for DOE–SR's Petitioned Waste: Residue from Treating M–Area Waste by Vitrification and Cementitious Treatability Samples?
C. What Substantive Comments Were Received on the Cost/Economic Aspects of the Proposed Delisting for DOE–SR's Petitioned Waste: Residue from Treating M–Area Waste by Vitrification and Cementitious Treatability Samples?
D. What Are the Potential Costs and Benefits of Today's Final Rule?
E. What Consideration Was Given to Small Entities Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*?
F. Was the Unfunded Mandates Reform Act Considered in this Final Rule?
G. Were Equity Issues and Children's Health Considered in this Final Rule?
1. Executive Order 12898: Environmental Justice
2. Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks"
H. What Consideration Was Given to Tribal Governments?
I. Were Federalism Implications Considered in Today's Final Rule?
J. Were Energy Impacts Considered?
VI. Paperwork Reduction Act
VII. National Technology Transfer and Advancement Act of 1995
VIII. The Congressional Review Act (5 U.S.C. 801 *et seq.*, as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)

I. Background

A. What Is a Delisting Petition?

A delisting petition is a request made by a hazardous waste generator to exclude one or more of his/her wastes from the lists of RCRA-regulated hazardous wastes in §§ 261.31, 261.32, and 261.33 of Title 40 of the Code of Federal Regulations (40 CFR 261.31, 261.32, and 261.33). The regulatory requirements for a delisting petition are in 40 CFR 260.20 and 260.22. EPA, Region 6 has prepared a guidance manual, *Region 6 Guidance Manual for the Petitioner*,[1] which is recommended by EPA Headquarters in Washington, DC and all EPA Regions.

B. What Laws and Regulations Give EPA the Authority To Delist Wastes?

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11 (a)(2) or (a)(3). Discarded commercial chemical product wastes which meet the listing criteria are listed in § 261.33(e) and (f).

[1] This manual may be down-loaded from Region 6's Web site at the following URL address: *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dlistpdf.htm*.

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason; §§ 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. *See* § 260.22(a) and the background documents for the listed wastes. Second, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. *See* § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on the hazardous waste characteristics (*i.e.*, characteristics which may be promulgated subsequent to a delisting decision.)

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See 40 CFR 261.3 (a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived-from" rules and remanded them to the EPA on procedural grounds. *Shell Oil Co.* v. *EPA*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other

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ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278), and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. On May 16, 2001, EPA amended the mixture and derived-from rules for certain types of wastes (66 FR 27218 and 66 FR 27266). The mixture and derived-from rules are codified in 40 CFR 261.3, paragraphs (a)(2)(iv) and (c)(2)(i). EPA plans to address all waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority to evaluate and approve or deny petitions submitted in accordance with §§ 260.20 and 260.22 by generators within their Regions (National Delegation of Authority 8–19) in States not yet authorized to administer a delisting program in lieu of the Federal program. On March 11, 1996, the Regional Administrator of EPA, Region 4, redelegated delisting authority to the Director of the Waste Management Division (Regional Delegation of Authority 8–19).

C. What is the History of This Rulemaking?

The United States Department of Energy Savannah River Operations Office (DOE–SR), Aiken, South Carolina (DOE–SR), is seeking a delisting for vitrified radioactive mixed waste (RMW) generated at the Savannah River Site (SRS) in Aiken, South Carolina. The petitioned waste meets the listing definitions of F006 and F028 in § 261.31[2] and was generated by vitrification treatment of F006 and F027[3] waste from the SRS—Area where nuclear reactor components were produced. The petitioned waste also includes a small volume of non-vitrified waste which consists of cementitious treatability samples (EPA Hazardous Waste No. F006).

The hazardous constituents of concern[4] for which F006 was listed are cadmium, hexavalent chromium, nickel, and cyanide (complexed). F028 was listed for tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts. DOE–SR petitioned the EPA to exclude its F028 waste (generated from thermal treatment of F027 waste) and F006 waste because DOE-SR believes that the petitioned waste does not meet the criteria for which the waste was listed. DOE–SR claims that its F006 and F028 waste will not be hazardous because the constituents of concern for which F006 and F028 are listed are either not present or present only at such low concentrations that the waste does not meet the criteria in § 261.11(a)(3) for listing a waste as hazardous. DOE–SR also believes that this waste will not be hazardous for any other reason (*i.e.*, there will be no additional constituents or factors that could cause the waste to be hazardous[5]). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4).

DOE–SR petitioned EPA, Region 4, in September 1996 and submitted revised petitions in September 1998 and September 2000, to exclude this F006 and F028 waste, on a one-time, generator-specific basis, from the lists of hazardous wastes in 40 CFR part 261, subpart D.

As a result of the EPA's evaluation of DOE–SR's petition, the Agency proposed to grant a delisting to DOE–SR on March 15, 2002. *See* 67 FR 11639–11651, March 15, 2002 for details. EPA received no public comments on the proposed rule and today's rulemaking finalizes the proposed decision to grant DOE–SR's petition for delisting.

[2] F006: "Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum."

F028: "Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F023, F026, and F027."

[3] F027: "Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-tri-chlorophenol as the sole component.)"

[4] The hazardous constituents of concern for every listed waste are in *Appendix VII of Part 261—Basis for Listing Hazardous Waste.*

[5] Note that the waste remains subject to the Atomic Energy Act because of its radioactivity.

II. Summary of Delisting Petition Submitted by the United States Department of Energy Savannah River Operations Office (DOE–SR)

A. What Waste Did DOE–SR Petition EPA To Delist?

DOE–SR petitioned EPA, Region 4, in September 1996 and submitted revised petitions in September 1998 and September 2000, to exclude 538 cubic yards of vitrified F006 and F028 waste and 0.12 cubic yards of cementitious treatability sample F006 waste, on a one-time, generator-specific basis, from the lists of hazardous wastes in 40 CFR part 261, subpart D. DOE–SR treated ten waste streams generated in the Savannah River Site M-Area from 1983 through 1999, by vitrification. The treatment residue of all these streams is the 538 cubic yards of petitioned waste. The 0.12 cubic yards of petitioned waste comes from treatability studies of cementing F006 waste, and is referred to as cementitious treatability samples.

B. What Information Did DOE–SR Submit To Support This Petition?

In support of its petition, DOE–SR submitted: (1) Descriptions[6] of the waste streams that contributed to the petitioned waste, the areas where the contributing waste streams were generated, and the vitrification treatment process that generated the petitioned waste; (2) Material Safety Data Sheets (MSDSs) for all chemicals used in processes that generated the waste streams from which the petitioned waste was derived and the vitrification process that generated the petitioned waste; (3) the total volume of petitioned waste generated; (4) results of analysis of untreated waste and the petitioned waste for all constituents in appendix VIII of 40 CFR part 261 or appendix IX of part 264; (5) results of the analysis of leachate obtained by means of the Toxicity Characteristic Leaching Procedure ((TCLP), SW–846 Method 1311), from the petitioned waste and historical results obtained by the Extraction Procedure Toxicity leaching method ((EPTox), SW–846 Method 1310); (6) results of the determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity, in these wastes; and (7) results of the analysis of the petitioned waste by means of the Multiple Extraction Procedure (MEP), SW–846 Method 1320[7].

[6] Detailed descriptions may be found in the DOE–SR's Approved Site Treatment Plan (1996), developed pursuant to the Federal Facility Compliance Act of 1992.

[7] "SW–846" means EPAs Publication SW–846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods." Methods in this publication are referred to in today's final rule as "SW–846," followed by the appropriate method number.

Please see the proposed rule, 67 FR 11639–11651, March 15, 2002 for details on DOE–SR's analytical data, vitrification process, and generation process for the petitioned waste. A summary of analytical data was presented in Preamble Section II, Table 1B of the proposed rule (67 FR 11639–11651, March 15, 2002). EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has maintained a spot-check sampling and analysis program to verify the representative nature of data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before or after granting a delisting. Section 3007 of RCRA gives EPA the authority to conduct inspections to determine if a delisted waste is meeting the delisting conditions.

III. EPA's Evaluation and Final Rule

A. What Decision Is EPA Finalizing and Why?

In today's final rule, EPA is finalizing the delisting exactly as proposed in 67 FR 11639–11651, March 15, 2002. Appendix IX, Table 1 of 40 CFR part 261 is amended as proposed (67 FR 11650–11651). Table 1 below, which is a reproduction of Table 2 of the proposed rule (67 FR 11645–11646), summarizes delisting and risk levels calculated by DRAS for DOE–SR's petitioned waste.

TABLE 1: DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR DOE–SR'S PETITIONED WASTE

Constituent	Delisting level (mg/l TCLP)	DAF	DRAS-calculated risk for maximum concentration of carcinogen in waste	DRAS-calculated hazard quotient for maximum concentration of non-carcinogen in waste
Arsenic	0.0649	1,330	3.47×10^{-7}	
Barium	*5,070; 3,860 Based on MCL	1,930		5.66×10^{-6}
Beryllium (Carcinogenic Effect)	Not Enough Information: Effect Based on Inhalation 28.8 Based on MCL.	7.21×10^{3}	2.13×10^{-11}	
Beryllium (Non-Carcinogenic Effect)	541; 28.8 Based on MCL	7.21×10^{3}		2.16×10^{-6}
Cadmium (Carcinogenic Effect)	Not Enough Information: Effect Based on Inhalation; 10.4 Based on MCL.	2,080	4.17×10^{-15}	
Cadmium (Non-Carcinogenic Effect)	*39; 10.4 Based on MCL	2,080		1.15×10^{-4}
Chromium (Hexavalent; Carcinogenic Effect)	Not Enough Information: Effect Based on Inhalation; 107 Based on MCL.	1,070	5.30×10^{-12}	
Chromium (Not Hexavalent; Non-Carcinogenic Effect).	$*1.50 \times 10^{7}$; 2.67×10^{4} Based on MCL	2.67×10^{5}		5.48×10^{-7}
Lead	*5,200	3.46×10^{5}		(**)
Nickel	1,960	2,610		5.64×10^{-4}
Silver	*266	1420		3.71×10^{-5}
Fluoride	Not Enough Information; 4,990 Based on MCL	1,250		(***)
Acetonitrile	847	1,320		6.00×10^{-7}
Total Hazard Quotient for All Waste Constituents.				1.09×10^{-3}
Total Carcinogenic Risk for the Waste (due to Arsenic, Beryllium, Cadmium, and Hexavalent Chromium).			3.48×10^{-7}	

*These levels are all greater than the Toxicity Characteristic (TC) regulatory level in 40 CFR 261.24. A waste cannot be delisted if it exhibits a hazardous characteristic; therefore, the delisting level for each of these constituents could not be greater than the TC level of 100 for Barium; 1.0 for Cadmium; 5.0 for Chromium; 5.0 for Lead; and 5.0 for Silver. MCL = Maximum Contaminant Level of National Primary Drinking Water Standards.

**Not Enough Information: There is No Reference Dose for Lead.

***Not Enough Information.

After reviewing the analytical data and information on processes and vitrification feed materials that DOE–SR submitted in the delisting petition, EPA developed a list of constituents of concern and calculated delisting levels and risks using Region 6 Delisting Risk Assessment Software (DRAS) and Dilution Attenuation Factors (DAFs) from the EPA Composite Model for Landfills with Transformation Products (EPACMTP) (67 FR 11639–11651, March 15, 2002). EPA requested public comment on this proposed method of calculating delisting levels and risks for DOE–SR's petitioned waste. No public comments were received.

EPA also requested comment on three additional methods of evaluating DOE–SR's delisting petition and determining delisting levels: (1) Use of the Multiple Extraction Procedure (MEP), SW–846 Method 1320, to evaluate the long-term resistance of the waste to leaching in a landfill; (2) comparing total concentrations of constituents in the waste to the results obtained by DRAS for total concentrations; and (3) comparing concentrations of constituents in the waste and waste leachate to the Land Disposal Restrictions (LDR) Universal Treatment Standards. (1) The MEP results for DOE–SR's petitioned waste indicated long-term resistance to leaching in a landfill. For example, less than 1% of

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the available nickel would be expected to leach from the waste in more than 100 years (67 FR 11646). (2) Total concentrations of constituents in the petitioned waste were several orders of magnitude below results obtained by DRAS for total concentrations. The maximum reported total concentrations for DOE–SR's petitioned waste were all below the following levels (mg/kg): Arsenic—10; Barium—200; Beryllium—10; Cadmium—10; Chromium—500; Lead—200; Nickel—10,000; Silver—20; Acetonitrile—1.0, and Fluoride—1.0. (3) The petitioned waste meets the LDR Universal Treatment Standards, as required by the Federal Facility Compliance Agreement. No public comments were received.

B. What Are the Terms of This Exclusion?

In today's final rule, EPA is excluding DOE–SR's petitioned waste from being listed as F006 and F028, based on descriptions of waste management and waste history, evaluation of the results of waste sample analysis, and on the requirement that DOE–SR's petitioned waste must be disposed in accordance with the Atomic Energy Act. This exclusion is valid only if the petitioner disposes of the waste in a low-level radioactive waste landfill in accordance with the Atomic Energy Act, as required by the amended Table 1 of appendix IX of 40 CFR part 261. Under these conditions, the petitioned waste is not subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270. Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the waste remains a solid waste under RCRA and a low-level radioactive waste under the Atomic Energy Act. As such, the waste must be handled in accordance with all applicable Federal, State, and local solid waste management and low-level radioactive waste regulations. Pursuant to RCRA section 3007, EPA may also sample and analyze the waste to verify reported analytical data.

C. When Is the Delisting Effective?

This final rule is effective on August 21, 2002. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this final rule reduces the existing requirements for the petitioner. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect the States?

This final rule is issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal and State programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws. Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, *i.e.*, to make their own delisting decisions. Therefore this final exclusion does not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, SRS must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

Under section 3006 of RCRA, EPA may authorize qualified States to administer the RCRA hazardous waste program within the State. *See* 40 CFR part 271 for the overall standards and requirements for authorization. Following authorization, the State requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized States also have independent authority to bring enforcement actions under State law. A State may receive authorization by following the approval process described under 40 CFR part 271.

After a State receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. The State must adopt such requirements to maintain authorization.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized States at the same time that they take effect in unauthorized States. Although authorized States are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorizes the State to do so. Authorized States are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program. *See* also 40 CFR 271.1(i). Therefore, authorized States are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent.

Today's final rule is promulgated pursuant to HSWA authority, and contains provisions that are less stringent than the current Federal program. The final exclusion for DOE–SR's petitioned waste would be less stringent. Consequently, States would not be required to adopt this final exclusion as a condition of authorization of their hazardous waste programs.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

No one submitted comments on the proposed rule to EPA.

B. Comments and Responses From EPA

EPA did not receive any comments.

V. Analytical and Regulatory Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to comprehensive review by the Office of Management and Budget (OMB), and the other provisions of the Executive Order. A significant regulatory action is defined by the Order as one that may:

—Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
—Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
—Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or
—Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

EPA has determined that today's final rule is not a significant regulatory action as defined by Executive Order 12866 and is, therefore, not subject to OMB comprehensive review and the other provisions of the Executive Order.

B. What Economic and Equity Analyses Were Completed in Support of the Proposed Delisting for DOE–SR's Petitioned Waste: Residue From Treating M-Area Waste by Vitrification and Cementitious Treatability Samples?

No economic and equity analyses were required in support of the March 15, 2002 proposed rule. The proposed rule applies only to a one-time generated waste at a single facility. Therefore the proposal would have had no generalized effect on industrial compliance costs and would have reduced compliance costs for the single facility, DOE–SR Savannah River Site.

C. What Substantive Comments Were Received on the Cost/Economic Aspects of the Proposed Delisting for DOE–SR's Petitioned Waste: Residue From Treating M-Area Waste by Vitrification and Cementitious Treatability Samples?

EPA received no public comments on the proposed rule to delist DO–ESR's petitioned waste.

D. What Are the Potential Costs and Benefits of Today's Final Rule?

The value of any regulatory action is traditionally measured by the net change in social welfare that it generates. All other factors being equal, a rule that generates positive net welfare would be advantageous to society, while a rule that results in negative net welfare to society should be avoided.

Today's final rule applies to a one-time generated waste at a single facility. Therefore, EPA has determined that the rule is not expected to have any generalized economic, health, or environmental effects on society.

E. What Consideration Was Given to Small Entities Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.?

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's final rule on small entities, a small entity is defined either by the number of employees or by the annual dollar amount of sales/revenues. The level at which an entity is considered small is determined for each North American Industrial Classification System (NAICS) code by the Small Business Administration (SBA).

EPA has examined the potential effects today's final rule may have on small entities, as required by the RFA/Small Business Regulatory Enforcement Fairness Act (SBREFA). Today's final rule affects a one-time generated waste at a single facility, DOE–SR Savannah River Site. Therefore, EPA has determined and certifies that this rule will not have a significant economic impact on a substantial number of small entities.

F. Was the Unfunded Mandates Reform Act Considered in This Final Rule?

Executive Order 12875, "Enhancing the Intergovernmental Partnership" (October 26, 1993), called on federal agencies to provide a statement supporting the need to issue any regulation containing an unfunded federal mandate and describing prior consultation with representatives of affected state, local, and tribal governments.

Signed into law on March 22, 1995, the Unfunded Mandates Reform Act (UMRA) supersedes Executive Order 12875, reiterating the previously established directives while also imposing additional requirements for federal agencies issuing any regulation containing an unfunded mandate.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any single year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, the Agency must develop a small government agency plan, as required under section 203 of UMRA. This plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule is not subject to the requirements of sections 202 and 205 of UMRA. Today's final rule will not result in $100 million or more in incremental expenditures. The aggregate annualized incremental social costs for today's final rule are projected to be near zero. Furthermore, today's final rule is not subject to the requirements of section 203 of UMRA. Section 203 requires agencies to develop a small government Agency plan before establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. EPA has determined that this final rule will not significantly or uniquely affect small governments.

G. Were Equity Issues and Children's Health Considered in This Final Rule?

By applicable executive order, we are required to consider the impacts of today's rule with regard to environmental justice and children's health.

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1. Executive Order 12898: Environmental Justice

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population" (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). Today's final rule applies to a one-time generated waste at a single facility. We have no data indicating that today's final rule would result in disproportionately negative impacts on minority or low income communities.

2. Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks"

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. Today's final rule is not subject to the Executive Order because it is not economically significant, as defined in Executive Order 12866."

H. What Consideration Was Given to Tribal Governments?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Today's final rule will not significantly or uniquely affect the communities of Indian tribal governments, nor impose substantial direct compliance costs on them.

I. Were Federalism Implications Considered in Today's Final Determination?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Today's final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Order. Thus, Executive Order 13132 does not apply to this final rule.

J. Were Energy Impacts Considered?

Executive Order 13211, "Actions Concerning Regulations That Affect Energy Supply, Distribution, or Use" (May 18, 2001), addresses the need for regulatory actions to more fully consider the potential energy impacts of the proposed rule and resulting actions. Under the Order, agencies are required to prepare a Statement of Energy Effects when a regulatory action may have significant adverse effects on energy supply, distribution, or use, including impacts on price and foreign supplies. Additionally, the requirements obligate agencies to consider reasonable alternatives to regulatory actions with adverse effects and the impacts the alternatives might have upon energy supply, distribution, or use.

Today's final rule applies to a one-time generated waste at a single facility and is not likely to have any significant adverse impact on factors affecting energy supply. EPA believes that Executive Order 13211 is not relevant to this action.

VI. Paperwork Reduction Act

This final determination does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because there are no paperwork requirements as part of this final rule, EPA is not required to prepare an Information Collection Request (ICR) in support of today's action.

VII. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule involves evaluation of environmental monitoring or measurement. Consistent with the Agency's Performance Based Measurement System ("PBMS"), EPA proposed not to require the use of specific, prescribed analytical methods, except when required by regulation in 40 CFR parts 260 through 270. Therefore, today's final rule allows the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified. Measurements were completed by the facility prior to publication of the proposed rule and EPA evaluated the data before publishing the proposed rule and promulgating today's final rule.

VIII. The Congressional Review Act (5 U.S.C. 801 *et seq.*, as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States.

The EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedures, or practice that do not substantially affect the rights or obligations of non-agency parties. *See* 5 U.S.C. 804(3). A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication as a final rule in the **Federal Register**.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: August 8, 2002.

Jewell A. Harper,

Acting Director, Waste Management Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX, part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	•
Savannah River Site (SRS)	Aiken, South Carolina	Vitrified waste (EPA Hazardous Waste Nos. F006 and F028) that the United States Department of Energy Savannah River Operations Office (DOE–SR) generated by treating the following waste streams from the M-Area of the Savannah River Site (SRS) in Aiken, South Carolina, as designated in the SRS Site Treatment Plan: W–004, Plating Line Sludge from Supernate Treatment; W–995, Mark 15 Filter Cake; W–029, Sludge Treatability Samples (glass and cementitious); W–031, Uranium/Chromium Solution; W–037, High Nickel Plating Line Sludge; W–038, Plating Line Sump Material; W–039, Nickel Plating Line Solution; W–048, Soils from Spill Remediation and Sampling Programs; W–054, Uranium/Lead Solution; W–082, Soils from Chemicals, Metals, and Pesticides Pits Excavation; and Dilute Effluent Treatment Facility (DETF) Filtercake (no Site Treatment Plan code). This is a one-time exclusion for 538 cubic yards of waste (hereinafter referred to as "DOE–SR Vitrified Waste") that was generated from 1996 through 1999 and 0.12 cubic yard of cementitious treatability samples (hereinafter referred to as "CTS") generated from 1988 through 1991 (EPA Hazardous Waste No. F006). The one-time exclusion for these wastes is contingent on their being disposed in a low-level radioactive waste landfill, in accordance with the Atomic Energy Act, after [insert date of final rule.] DOE–SR has demonstrated that concentrations of toxic constituents in the DOE–SR Vitrified Waste and CTS do not exceed the following levels: (1) *TCLP Concentrations:* All leachable concentrations for these metals did not exceed the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS): (mg/l TCLP): Arsenic—5.0; Barium—21; Beryllium—1.22; Cadmium—0.11; Chromium—0.60; Lead—0.75; Nickel—11; and Silver—0.14. In addition, none of the metals in the DOE–SR Vitrified Waste exceeded the allowable delisting levels of the EPA, Region 6 Delisting Risk Assessment Software (DRAS): (mg/l TCLP): Arsenic—0.0649; Barium—100.0; Beryllium—0.40; Cadmium—1.0; Chromium—5.0; Lead—5.0; Nickel—10.0; and Silver—5.0. These metal concentrations were measured in the waste leachate obtained by the method specified in 40 CFR 261.24. *Total Concentrations in Unextracted Waste:* The total concentrations in the DOE–SR Vitrified Waste, not the waste leachate, did not exceed the following levels (mg/kg): Arsenic—10; Barium—200; Beryllium—10; Cadmium—10; Chromium—500; Lead—200; Nickel—10,000; Silver—20; Acetonitrile—1.0, which is below the LDR UTS of 38 mg/kg; and Fluoride—1.0

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TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) *Data Records:* Records of analytical data for the petitioned waste must be maintained by DOE–SR for a minimum of three years, and must be furnished upon request by EPA or the State of South Carolina, and made available for inspection. Failure to maintain the required records for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be maintained with a signed copy of the certification statement in 40 CFR 260.22(i)(12). (3) *Reopener Language:* (A) If, at any time after disposal of the delisted waste, DOE–SR possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent is identified at a level higher than the delisting level allowed by EPA in granting the petition, DOE–SR must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (3)(A) and any other information received from any source, EPA will make a preliminary determination as to whether the reported information requires that EPA take action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If EPA determines that the reported information does require Agency action, EPA will notify the facility in writing of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing DOE–SR with an opportunity to present information as to why the proposed action is not necessary. DOE–SR shall have 10 days from the date of EPA's notice to present such information.(E) Following the receipt of information from DOE–SR, as described in paragraph (3)(D), or if no such information is received within 10 days, EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment, given the information received in accordance with paragraphs (3)(A) or (3)(B). Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise. (4) *Notification Requirements:* DOE–SR must provide a one-time written notification to any State Regulatory Agency in a State to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.

[FR Doc. 02–21287 Filed 8–20–02; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–192

Federal Management Regulation; Technical Amendments

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Correction and technical amendment to final rule.

SUMMARY: This document makes amendments to the Federal Management Regulation (FMR) in order to correct references and make a technical amendment to the mail management regulations of the FMR.

DATES: Effective Date: August 21, 2002.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, Regulatory Secretariat, Acquisition Policy Division (MVP), General Services Administration, 1800 F Street, NW., Washington, DC 20405, (202) 208–7312.

List of Subjects in 41 CFR Part 102–192

Government contracts, Intergovernmental relations, Reporting and recordkeeping requirements, Security measurements.

Therefore, GSA amends 41 CFR part 102–192 as set forth below:

PART 102–192—MAIL MANAGEMENT

1. The authority citation for 41 CFR part 102–192 continues to read as follows:

Authority: Sec. 2, Pub. L. 94–575, as amended, 44 U.S.C. 2904; 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390.

§ 102–192.55 [Amended]

2. Redesignate § 192.55 as § 102–192.55.

§ 102–192.125 [Amended]

3. Amend § 102–192.125 in the introductory text by removing "§ 192.50" and adding "§ 102–192.50" in its place and in paragraph (e) by removing "(see subpart C) of this part;" and adding "(see subpart C of this part);" in its place.

Dated: August 13, 2002.

Laurie Duarte,

Regulatory Secretariat, Acquisition Policy Division.

[FR Doc. 02–21076 Filed 8–20–02; 8:45 am]

BILLING CODE 6820–24–P

Proposed Rules

Federal Register
Vol. 67, No. 162
Wednesday, August 21, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA58

Review Inspection Requirements

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA

ACTION: Proposed rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to revise the regulations under the United States Grain Standards Act (Act), as amended, to allow interested persons to specify the quality factor(s) that would be redetermined during a reinspection or appeal inspection for grade. Currently, reinspections and appeal inspections for grade must include a redetermination (i.e., a complete review or examination) of all official factors that may determine the grade, are reported on the original certificate, or are required to be shown. Requiring that all quality factors be completely reexamined during a reinspection or appeal inspection is not efficient, is time consuming, and can be costly. Further, a detailed review of the preceding inspection service is not always needed to confirm the quality of the grain. This proposed action would allow interested parties to specify which official factor(s) should be redetermined during the reinspection or appeal inspection service.

DATES: Comments must be received on or before October 21, 2002.

ADDRESSES: Written comments must be submitted to Tess Butler, GIPSA, USDA, Room 1647–S, Stop 3604, Washington, DC 20250; FAX (202) 690–2755; e-mail, *comments.gipsadc@usda.gov*.

All comments received will be made available for public inspection in Room 1647–South Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: John Giler, at (202) 720–1748.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the United States Grain Standards Act (Act) (7 U.S.C. 71 *et seq.*) the Official United States Standards for Grain are used to measure and describe the physical and biological properties of grain at the time of inspection. The grade, class, and condition that are reported on the official inspection certificate are based on factors that are defined in these standards. There are three kinds of factors: condition factors, grade determining factors, and nongrade determining factors.

1. Condition factors include heating, odor (musty, sour, and commercially objectionable), infestation, special grade factors (*e.g.*, smut and garlic), and distinctly low quality factors, such as toxic seeds. When grain is found to contain an unacceptable level of one or more of these conditions factors, it is graded U.S. Sample Grade or assigned a special grade, such as Infested.

2. Grade determining factors include, but are not limited to, test weight per bushel, foreign material, damaged kernels, and other classes. These factors are common to most grain. As the percentage of such factors increase (or decreases, as in the case of test weight per bushel), the numerical grade decreases. For example: U.S. No. 2 Hard Red Winter wheat may contain not more than 4.0% total damaged kernels, U.S. No. 3 may contain not more than 7.0%, and U.S. No. 4 may contain not more than 10.0%.

3. Non-grade determining factors include moisture in all grains, dockage in certain small grains, protein in wheat and soybeans, oil in soybeans and sunflower seed, and aflatoxin in corn. The value of each of these factors varies with crop year and end-use. Therefore, except for dockage and moisture, which must always be determined, these factors are only determined upon request.

After the sample has been analyzed for all factors, a grade is assigned to the sample equal to the lowest grade determined for any one of the factors. For example, if all of the factors were determined to be at the U.S. No. 1 level, except for one factor that was at the U.S. No. 3 level, then the lot would be graded U.S. No. 3. Therefore, the final grade assigned to a sample or lot is directly dependent on achieving accuracy (closeness to the true value) and precision (repeatability) in the values obtained for the various grading factors. Accuracy and precision are affected mainly by the type of sampling device, the sampling procedure, and the grading factors; i.e., machine-determined values (objective), human judgement values (subjective), and sample homogeneity (inherent). The sources of variation are highly interrelated; each is involved, to some extent, in the final value ascribed to each grading factor of a lot and to the grade designation of that lot.

Due to inherent sampling and inspection variability, users of the official inspection system have an opportunity to obtain another inspection service when certificated results are questionable. That is, if an interested party disagrees with the grade or factor results assigned to a lot of grain, they may request that the official agency (or in some cases, GIPSA) reinspect the grain or ask GIPSA to perform an appeal inspection. There is a limit, however, on the number of times this can be done. From the original inspection service an interested person may obtain a reinspection service, an appeal inspection service, and a Board Appeal inspection service. The same inspection office that provided the original inspection service provides the reinspection service. The appeal inspection service is handled at one of the GIPSA field offices. The Board of Appeals and Review provides the Board Appeal inspection service, the highest level of inspection service available, in Kansas City, Missouri. The scope of the reinspection or appeal inspection is limited to the scope of the original inspection. Official criteria are considered separately from official grade and official factors when determining kind and scope. If the request specifies a different kind and scope, the request must be dismissed.

Finally, a reinspection certificate supersedes the original inspection certificate and an appeal inspection certificate supersedes the original and reinspection certificate, if a reinspection was performed. The superseded certificate(s) are considered null and void as of the date of the reinspection or appeal inspection certificate, and must be promptly surrendered. If the

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superseded original certificate(s) is in the custody of the office that performed the review inspection, it is marked VOID. If the superseded certificate is not in the custody of the reviewing office at the time the reinspection or appeal inspection certificate is issued, the following statement is shown on the appeal certificate: "The superseded certificate has not been surrendered." Furthermore, each reinspection and appeal inspection certificate must clearly show the word "Reinspection" or "Appeal Inspection," and the following statement: "This certificate supersedes Certificate No. __, dated ____."

For export vessels, a reinspection or appeal inspection may be requested on either the entire lot or on a material portion (*i.e.*, part of a lot that has been found to be inferior to the contract or declared grade). When a material portion occurs, the applicant for service is entitled to one field review (either a reinspection or appeal inspection) and a Board Appeal inspection in an attempt to remove the material portion designation. If the review inspection does not eliminate the material portion designation and the applicant elects to leave the grain on board the carrier, it is considered as a separate lot and is certificated as such. If the review inspection eliminates the material portion designation, the review inspection results replace the original results on the shiplot inspection log. In such cases, no statement regarding the reinspection is required to be shown on the inspection certificate.

In addition to these restrictions, §§ 800.125 and .135 of the regulations currently require that reinspections and appeal inspections for grade must include a complete review of all official factors that: (1) May determine the grade; or (2) are reported on the original certificate; and (3) are required to be shown. Consequently, even if the official inspector who is performing the reinspection or appeal inspection finds there is only one grade-determining factor, all of the factors that were reported on the original certificate must be redetermined.

In most instances, the applicant for service does not need a complete review. Usually, applicants for a reinspection or an appeal inspection service only question the result of a specific quality factor. This is evidenced by the many applications for reinspections and appeal inspections that request a review inspection of a specific factor. In addition to being unwanted, redetermining all official factors requires significant time to complete. This increases inspection costs and may cause delays in elevator operations.

Various industry groups have indicated that requiring all factors to be completely reviewed on reinspections and appeal inspections is usually unnecessary and always costly. But, others have indicated that the regulations must not allow official personnel to overlook questionable factor results just because the applicant for the inspection does not request that certain factors be redetermined during the course of a review inspection. Both of these views have merit. All official inspections (original, reinspection, or appeal inspection) must be accurate.

To provide effective and efficient official inspection services that better meet industry needs, GIPSA proposes that applicants for service would be allowed to specify the factor(s) that are to be redetermined as part of a reinspection or an appeal inspection service. However, reinspections for grade, appeal and Board appeal inspections for grade may include a review of any pertinent factor(s), as deemed necessary by official personnel. If there is an indication that a factor (or factors) may have been misgraded or overlooked on the previous inspection, then the factor(s) in question will be redetermined.

Under the current regulations, when official grade or official factor and official criteria are reported on the same certificate, a reinspection or appeal inspection certificate is required to show a special statement. The special statement indicates that the reinspection results or appeal or Board appeal inspection results represent the official grade, official factors or official criteria and that all other results are those of the original, reinspection, or, in the case of a Board appeal, the appeal inspection service. In formulating this proposal, GIPSA considered requiring reinspection and appeal inspection certificates to show a statement that would identify which factors were determined during the review inspection(s) and which were determined on a preceding inspection. GIPSA has not included such additional certification requirements in this proposal. However, GIPSA is seeking comments specifically about this issue, particularly from those who are currently using official inspection services.

Proposed Action

GIPSA proposes to revise § 800.125 to allow requests for reinspection to be limited to one or more grade or condition factors, and to revise § 800.135 to allow requests for appeal inspections to be limited to one or more grade or condition factors. In addition, GIPSA is proposing to revise §§ 800.125 and 800.135 to simplify the wording of both regulations.

Executive Order 12866 and Effect on Small Entities

This proposed rule has been determined to be significant for purpose of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB). In addition, pursuant to requirements set forth in the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*), GIPSA has considered the economic impact of this proposed rule on small entities and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

The proposed rule will affect entities engaged in shipping grain to and from points within the United States and exporting grain from the United States. GIPSA estimates there are approximately 9,500 off-farm storage facilities and 57 export elevators in the United States that could receive official inspection services by GIPSA, delegated States, or designated agencies. Official inspection services are provided by 12 GIPSA field offices, 2 Federal/State offices, 7 GIPSA suboffices, 8 delegated States, and 59 designated agencies. Under provisions of the Act, it is not mandatory for non-export grain to be officially inspected. Further, most users of the official inspection services and those entities that perform these services do not meet the requirements for small entities. Even though some users could be considered small entities, this proposed rule relieves regulatory requirements and improves the efficiency of official inspection services. No additional cost is expected to result from this action.

Requiring all reinspections and appeal inspections for grade to include a complete review of all official factors is not needed by applicants or other parties to transactions, or by official inspection personnel. Furthermore, this requirement often reduces the efficiency of providing official inspection services and may cause unnecessary delays in elevator operations. Allowing applicants to specify which official factor(s) are to be redetermined during the reinspection or appeal inspection service will improve the efficiency of the inspection service due to the time required to analyze all official quality factors.

Prior to developing this proposed rule change, GIPSA considered restricting the proposed action to either appeal inspections or to reinspections. Our analysis was as follows:

1. Restrict Proposed Action To Appeal Inspections

GIPSA inspectors, who are assigned to specific GIPSA field offices, are the only ones who can perform appeal inspections. Currently, GIPSA has only fourteen field offices and less than 200 full-time GIPSA inspectors nationwide. Most domestic inspection services are provided by official agencies and not by GIPSA field offices. Therefore, applicants for service usually opt for a reinspection, rather than requesting an appeal inspection. (*See* Table 1.) The only applicants for service that would benefit from this alternative are those located at the few export ports where GIPSA does onsite original inspection services. GIPSA believes that restricting the current proposed action to only appeal inspections would adversely impact the cost benefits and the flexibility associated with the current proposal. Table 1 below illustrates this point.

TABLE 1.—FULL-GRADE INSPECTION SUMMARY, FY 1994–2001

Year	Original inspections			Reinspections			Appeals
	OA's [1]	GIPSA [2]	Total	OA's [1]	GIPSA [2]	Total	GIPSA [2]
FY 1997	1,828,519	119,907	1,948,426	36,698	4,844	41,542	3,140
FY 1998	1,861,718	117,267	1,918,985	29,012	5,058	34,078	3,443
FY 1999	1,750,211	117,916	1,868,127	26,046	4,529	30,575	3,103
FY 2000	1,717,625	110,114	1,827,739	19,778	4,515	24,293	3,103
FY 2001	1,706,817	102,295	1,809,112	22,073	4,797	26,870	3,105

[1] Total performed by all state and private official agencies.
[2] Total performed by all GIPSA field offices.

2. Restrict Proposed Action to Reinspections

Licensed inspectors employed by state or private official agencies perform most reinspections. GIPSA only performs reinspections at certain export port locations. GIPSA believes that if the proposed action were limited to reinspections, more applicants for service could potentially benefit than limiting the proposed action to appeal inspections. Some applicants, however, might be placed at a competitive disadvantage because their sales contracts require them to request appeal inspections on some or all original inspection services. Additionally, about ten percent of all reinspections are appealed. If the grading procedures for appeals are different from the preceding reinspection, the review inspection process is not similar for all levels of the review inspection process.

The review inspection process should provide all applicants the same opportunity for inspection services. Reinspection services and appeal inspection services should be similar in scope and effect. For this reason, GIPSA decided to propose the regulatory change that would favorably affect both the reinspection process and the appeal inspection process.

The cost savings of the proposed action on the grain industry could be very positive. Although it is impossible to estimate an exact dollar savings, the time spent waiting for inspection results could be reduced by at least 50 percent and could, in certain circumstances, exceed 90 percent. Since grain elevators often "idle" their load-out operations until the results of a reinspection or appeal are known, domestic shippers could save several hundred dollars in operation and demurrage costs on an average 100-car unit train. The savings for exporters could reach $10,000 for some vessels. For example: If elevator X has a fixed operating cost of $500 an hour and it takes an average of 30 minutes to perform a reinspection or appeal inspection, then each reinspection or appeal will cost the elevator an additional $250 in down time. If the time required to perform the reinspection or appeal is reduced to 15 minutes, the elevator saves $125 per inspection due to the more efficient inspection service. These savings could be multiplied if the time saved on performing the reinspections or appeals allows the elevator to avoid or limit demurrage (*i.e.*, a fee assessed to the elevator for failing to complete the loading of a unit train or ship within a specified period). Currently, the demurrage for railcars can range up to $50 per day per car. The demurrage on export vessels can reach $10,000 a day.

The potential revenue impact of the proposed action on GIPSA and official agencies should not be significant. In the long run, this proposed rule may encourage slightly more reinspection and appeal inspection services because of the increased efficiencies associated with the proposal. However, GIPSA does not believe that its net revenue will significantly change. GIPSA routinely reviews the agency's revenue and cost of service as part of its ongoing fee review process. If inspection services and revenue from those services change significantly, GIPSA may determine a change in fees is needed and would do so as part of a fee proposal.

Executive Order 12988 and 12898

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administration procedures that must be exhausted prior to any judicial challenge to the provision of this rule.

Pursuant to Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations," GIPSA has considered potential civil rights implications of this proposed rule on minorities, women, or persons with disabilities to ensure that no person or group will be discriminated against on the basis of race, color, sex, national origin, religion, age, disability, or marital or familial status. The proposed rule will apply in the same manner to all persons and groups whose activities are regulated, regardless of race, gender, national origin, or disability. Preliminary information indicates that the proposal will have no effect on protected populations. GIPSA will make wide distribution of this proposal and will address all comments in the final rulemaking.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements in Part 800 have been previously approved by OMB and assigned OMB No. 0580–0013.

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List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grains.

PART 800—GENERAL PROVISIONS

For reason set out in the preamble, GIPSA proposes to amend 7 CFR part 800 as follows:

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 800.125 (b) is revised to read as follows:

§ 800.125 Who may request reinspection services or review of weighing services.

* * * * *

(b) *Kind and scope of request.* A reinspection or review of weighing service is limited to the kind and scope of the original service. If the request specifies a different kind or scope, the request shall be dismissed but may be resubmitted as a request for original services: Provided, however, that an applicant for service may request a reinspection of a specific factor(s), official grade and factors, or official criteria. In addition, reinspections for grade may include a review of any pertinent factor(s), as deemed necessary by official personnel. Official criteria are considered separately from official grade or official factors when determining the kind and scope. When requested, a reinspection for official grade or official factors and official criteria may be handled separately even though both sets of results are reported on the same certificate. Moreover, a reinspection or review of weighing may be requested on either the inspection or Class X weighing results when both results are reported on a combination inspection and Class X weight certificate.

3. Section 800.135(b) is revised to read as follows:

§ 800.135 Who may request appeal inspection services.

* * * * *

(b) *Kind and scope of request.* An appeal inspection service is limited to the kind and scope of the original or reinspection service; or, in the case of a Board Appeal inspection service, the kind and scope of the appeal inspection service. If the request specifies a different kind or scope, the request shall be dismissed but may be resubmitted as a request for original services: Provided, however, that an applicant for service may request an appeal or Board Appeal inspection of a specific factor(s), official grade and factors, or official criteria. In addition, appeal and Board Appeal inspections for grade may include a review of any pertinent factor(s), as deemed necessary by official personnel. Official criteria are considered separately from official grade or official factors when determining kind and scope. When requested, an appeal inspection for grade, or official factors, and official criteria may be handled separately even though both results are reported on the same certificate. Moreover, an appeal inspection may be requested on the inspection results when both inspection and Class X weighing results are reported on a combination inspection and Class X weight certificate.

(Approved by the Office of Management and Budget under control number 0580–0013)

Dated: August 15, 2002.

Donna Reifschneider,

Administrator.

[FR Doc. 02–21158 Filed 8–20–02; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Chapter VII

[Docket No. 020725179–2179–01]

Effectiveness of Licensing Procedures for Agricultural Commodities to Cuba

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Request for comments.

SUMMARY: The Bureau of Industry and Security (BIS) is requesting public comments on the effectiveness of its licensing procedures as defined in the Export Administration Regulations for the export of agricultural commodities to Cuba. BIS is required to submit a biennial report to the Congress on the operation of the licensing system for such exports, which was created to implement the Trade Sanctions Reform and Export Enhancement Act of 2000. To help make this assessment, BIS is seeking public comments on the effectiveness of these measures.

DATES: Comments must be received by September 20, 2002.

ADDRESSES: Written comments (three copies) should be sent to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044. Comments may also be e-mailed to Brian Nilsson, Office of Strategic Trade and Foreign Policy Controls, at *BNilsson@bis.doc.gov*.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Controls Division, Bureau of Industry and Security, Telephone: (202) 482–5400. Additional information on BIS procedures is available under the heading "Trade Sanctions Reform and Export Enhancement Act" at *www.bis.doc.gov*. Copies of this material may also be requested by contacting the Office of Strategic Trade and Foreign Policy Controls.

SUPPLEMENTARY INFORMATION: The current procedures of the Bureau of Industry and Security (BIS) for authorizing the export of agricultural commodities to Cuba are set forth in § 740.18 of the Export Administration Regulations (EAR). Under the provisions of section 906(c) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) (Pub. L. 106–387), as amended, BIS must submit a report to the Congress on the operation of the licensing system under Section 906 of TSRA for the preceding two-year period. This report is to include the number and types of licenses applied for, the number and types of licenses approved, the average amount of time elapsed from the date of filing of a license application until the date of its approval, the extent to which the licensing procedures were effectively implemented, and a description of comments received from interested parties about the extent to which the licensing procedures were effective, after holding a public 30-day comment period. This notice serves as public notice to solicit such comments.

Parties submitting comments are asked to be as specific as possible. All comments received by the close of the comment period will be considered by BIS in developing the report to Congress. All information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BIS requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

Copies of the public record concerning these regulations may be requested from: Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, Room 6883, 1401 Constitution Avenue, NW., Washington, DC 20230; (202) 482–0637. This component does not maintain a separate public inspection facility. Requesters should first view BIS's website (which can be reached through *www.bis.doc.gov*). If requesters cannot access BIS's website, please call the number above for assistance.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 02–21161 Filed 8–20–02; 8:45 am]

BILLING CODE 3510–33–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Consolidation of Customs Drawback Centers

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to reflect a planned closure of the Customs Drawback Centers located at the ports of Boston, Massachusetts; Miami, Florida; and New Orleans, Louisiana. Because of a sustained decrease in the number of drawback claims and the amount of drawback payments, Customs is proposing a consolidation of the Drawback Program. The closing of the three Drawback Centers is part of the planned consolidation and is intended to promote operational efficiency in the processing of drawback claims.

DATES: Comments must be received on or before September 20, 2002.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at the U.S. Customs Service, 799 9th Street, NW., Washington, DC, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Sherri Hoffman, U.S. Customs Service, Entry and Drawback Management, (202) 927–0300.

SUPPLEMENTARY INFORMATION:

Background

Consolidation of Drawback Centers

Since 1996, Customs has recognized a decrease in both the number of drawback claims and the amount of drawback payments. To verify these trends, and to determine how to most efficiently operate the Drawback Program, Customs conducted an internal evaluation of the program. Customs also retained the services of an independent contractor to review the Drawback Program to ensure that the agency's findings were valid.

The findings of both the agency-led review and the independent contractor's assessment indicated the benefits of consolidating the processing of drawback claims by reducing the number of Drawback Centers.

In a Notice to Congress on March 12, 2001, filed in accordance with 19 U.S.C. 2075, Customs proposed the closure of four Drawback Centers. The Senate Finance and House Ways and Means Committees concurred with the proposal for consolidation, but with the recommendation that only three Drawback Centers be eliminated and the San Francisco Drawback Center remain operational. The Commissioner of Customs concurred with this recommendation and it was proposed to phase-in the closure of the Drawback Centers located at the ports of Boston, MA; Miami, FL; and New Orleans, LA. The remaining five Drawback Centers, located at the ports of New York, NY/Newark, NJ; Houston, TX; Chicago, IL; Los Angeles, CA; and San Francisco, CA would remain operational.

Closing of Drawback Centers To Be Phased-In

To assist the remaining five Drawback Centers in accommodating an increased number of drawback claims, it is proposed to phase-in the closing of the three Drawback Centers. If, after further consideration and review of any comments submitted in response to the solicitation of comments set forth in this document, Customs decides to adopt as a final rule these proposed changes, it is proposed to phase-in the closing of the Drawback Centers as follows:

(1) The first Drawback Centers to close would be the centers at the ports of Boston, Massachusetts and New Orleans, Louisiana. These two centers would close 30 days from the date a final rule adopting these proposed changes is published in the **Federal Register**. At that time, drawback claims would no longer be accepted at the Boston or New Orleans Drawback Centers, and claims would be required to be filed at one of the five remaining Drawback Centers. Drawback claims submitted to the Boston or New Orleans Drawback Centers after this date would be rejected. Once rejected, it would be the responsibility of the claimant to ensure timely filing of the drawback claim at one of the five remaining Drawback Centers. Customs personnel at the ports of Boston and New Orleans would continue to process drawback claims that were submitted prior to commencement of this first phase-in. period, for a period of 12-months. After this time, all remaining claims filed at the Boston Drawback Center prior to commencement of this first phase-in period, that have not been liquidated and require Customs review, would be forwarded to the New York/Newark Drawback Center for final processing. All remaining claims that were filed at the New Orleans Drawback Center prior to commencement of this first phase-in period, that have not been liquidated and require Customs review, would be forwarded to the Houston Drawback Center for final processing.

(2) The third Drawback Center to close would be the one located at the port of Miami, Florida. This center would close 180 days from the date a final rule adopting these proposed changes is published in the **Federal Register**. At that time, drawback claims would no longer be accepted at the Miami Drawback Center, and claims would be required to be filed at one of the five remaining Drawback Centers. Drawback claims submitted to the Miami Drawback Center after this date would be rejected. Once rejected, it would be the responsibility of the claimant to ensure timely filing of the drawback claim at one of the five remaining Drawback Centers. Customs personnel at the port of Miami would continue to process drawback claims that were submitted prior to commencement of this second phase-in period, for a period of 12-months. After this time, all remaining claims filed at the Miami Drawback Center prior to commencement of this second phase-in period, that have not been liquidated and require Customs review, would be forwarded to the Chicago Drawback Center for final processing.

Claimant Requirements To File in Designated Alternate Drawback Centers

In order to file a drawback claim at one of the five remaining Drawback Centers, a claimant would be required to possess either a district permit for the location at which the claim will be filed or a national permit. Claimants are reminded that a national permit requires use of the Automated Broker Interface of Customs Automated Commercial System when filing drawback claims. Claimants must ensure that all permit, license and bond requirements are met in accordance with the regulations. *See* parts 111 and 113 of the Customs Regulations.

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Maintenance of Drawback Information

Throughout the staged consolidation period, claimants would be required to provide Customs with advance notification of any changes in the information provided regarding a drawback claim. This notification must be provided in accordance with part 191 of the Customs Regulations (19 CFR part 191).

Explanation of Amendments

Section 101.3(b)(1) of the Customs Regulations lists the Customs ports of entry. Eight ports are denoted with an asterisk that designates their status as a "Drawback unit/office." This document proposes to amend § 101.3(b)(1) to delete the asterisks in § 101.3(b)(1) next to the port listings for Boston, Miami and New Orleans.

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, NW., Washington, DC.

The Regulatory Flexibility Act and Executive Order 12866

Although this document is being issued with notice for public comment, because it relates to agency management and organization, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Agency organization matters, such as this proposed closing of three Customs Drawback Centers, are not subject to Executive Order 12866.

Drafting Information

The principal author of this document was Ms. Suzanne Kingsbury, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Customs ports of entry.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend part 101 of the Customs Regulations (19 CFR part 101) as follows:

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Section 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

2. In § 101.3, the table in paragraph (b)(1) is amended by removing the plus sign in the "Ports of entry" column before the column listings for "Miami" under the state of Florida, "New Orleans" under the state of Louisiana, and "Boston" under the state of Massachusetts.

Robert C. Bonner,

Commissioner of Customs.

Approved: August 15, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–21111 Filed 8–20–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket Numbers 98N–0496 and 00N–1633]

RIN 0910–AB24 and 0910–AB95

Import for Export; Reporting and Recordkeeping Requirements for Unapproved or Violative Products Imported for Further Processing or Incorporation and Subsequent Export; Marking Requirements for and Prohibitions on the Reimportation of Imported Food Products That Have Been Refused Admission Into the United States; Withdrawal

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rules; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of two proposed rules. One proposed rule, which appeared in the **Federal Register** on November 24, 1998 (63 FR 64930), would have established reporting and recordkeeping requirements for certain products that are imported into the United States for further processing or incorporation into products that are then exported. The second proposed rule, which appeared in the **Federal Register** on January 22, 2001 (66 FR 6502), would have established requirements for marking imported food that has been refused entry into the United States for safety reasons. FDA is withdrawing these proposed rules due to recent changes in Federal law.

DATES: The proposed rules are withdrawn August 21, 2002.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy, Planning, and Legislation (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION: On November 24, 1998, FDA published a proposed rule in the **Federal Register** (63 FR 64930) that would have established reporting and recordkeeping requirements for certain products that are imported under section 801(d)(3) and (d)(4) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381(d)(3) and (d)(4)). These sections of the act allowed the importation of certain unapproved or otherwise noncompliant products or articles provided that those products or articles are further processed or incorporated into other products and then exported from the United States.

On January 22, 2001, FDA and the Department of the Treasury jointly prescribed a proposed rule in the **Federal Register** (66 FR 6502) that would have allowed FDA to require food importers or consignees to mark imported foods if, for safety reasons, FDA had refused to allow such foods to enter the United States. The mark would have stated, "UNITED STATES REFUSED ENTRY," and the proposed rule would have established the mark's size and required the mark to be affixed on packing containers holding the refused food and on invoices, bills of lading, and any other documentation accompanying the food when it is exported from the United States.

We received comments on both rules and also held public meetings to discuss the proposed rule on the marking of refused food imports. After reviewing the comments, we wrote and intended to issue final rules in 2002.

On June 12, 2002, the President signed into law the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188). The new law contains provisions that change the legal context of the two proposed FDA regulations described previously in this document. For example, the new law gives FDA express authority to require marking on any food product that had been refused admission into the United States whereas the proposed rule would have required marking on food refused admission for safety reasons only.

The new law also significantly revises section 801(d)(3) of the act; it prescribes new reporting requirements that differ from those in the FDA proposed rule.

Because of the changes brought about by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, FDA is withdrawing both proposed rules. FDA will consider whether new rulemakings or other actions are necessary to implement the new statutory requirements.

Dated: August 13, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–21264 Filed 8–20–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 02N–0241]

Amendment of Regulations on Aluminum in Large and Small Volume Parenterals Used in Total Parenteral Nutrition; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of August 12, 2002 (67 FR 52429). The document proposed to amend FDA's regulations to change the labeling requirements concerning aluminum in small volume parenterals and pharmacy bulk packages used in total parenteral nutrition. The document was published with an inadvertent error. This document corrects that error.

DATES: Submit written or electronic comments by October 28, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments at http://www.fda.gov/dockets/ecomments. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Doris B. Tucker, Office of Policy, Planning, and Legislation (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–20300, appearing on page 52429 in the **Federal Register** of Monday, August 12, 2002, the following correction is made:

1. On page 52429, in the third column, in the seventh line "§ 201.323©" is corrected to read "§ 201.3239(c)".

Dated: August 15, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–21265 Filed 8–20–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201 and 343

[Docket No. 77N–094I]

RIN 0910–AA01

Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of the Tentative Final Monograph, and Related Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the tentative final monograph (TFM) for over-the-counter (OTC) internal analgesic, antipyretic, and antirheumatic (IAAA) drug products to include ibuprofen as a generally recognized safe and effective analgesic/antipyretic active ingredient for OTC use. FDA is also proposing to amend its regulations to include consistent allergy warnings for OTC IAAA drug products containing nonsteroidal anti-inflammatory active ingredients. These proposals are in response to a citizen petition (Ref. 1) and to a comment submitted in response to that petition (Ref. 2) and are part of the ongoing review of OTC drug products conducted by FDA.

DATES: Submit written or electronic comments by November 19, 2002. Submit written or electronic comments on the agency's economic impact determination by November 19, 2002. Please see section XII of this document for the effective date of any final rule that may publish based on this proposal.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Ida I. Yoder, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

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I. Background

Ibuprofen is benzeneacetic acid, α-methyl-4-(2-methylpropyl), (±)-, a member of the propionic acid class of nonsteroidal anti-inflammatory drugs (NSAIDs). The commercially available drug is a racemic mixture of two optical isomers (S-[+] and R-[-] ibuprofen). The racemic mixture is recognized in the U.S. Pharmacopeia (U.S.P.) (Ref. 3). Ibuprofen has been available as a prescription drug for the treatment of osteoarthritis and rheumatoid arthritis at a dose of 1,200 to 3,200 milligrams (mg) per (/) day since 1974 in the United States and since 1969 in the United Kingdom. Ibuprofen has also been marketed by prescription and OTC in numerous countries throughout the world (Ref. 4).

Safety and effectiveness data submitted to the agency to support the approval of the OTC marketing of a 200-mg ibuprofen tablet were considered by the Arthritis Advisory Committee (AAC)

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at its August 18, 1983, meeting. Based on the available data, the AAC concluded that a 200-mg ibuprofen product could be used safely and effectively OTC, without the supervision of a physician (Ref. 5). It has been available on the OTC market for use in adults and children 12 years and older since 1984 through the new drug application (NDA) process. It is marketed at a 200-mg dosage strength, for the relief of minor aches and pains and for fever reduction. A single OTC dose is 200 to 400 mg with a maximum daily dose of 1,200 mg.

The AAC suggested warnings and precautions that it believed should appear in labeling to alert individuals to certain risks, especially those individuals who should not use ibuprofen without the supervision of a physician. The AAC was concerned that the promotion of OTC ibuprofen not counteract a warning regarding ibuprofen's cross-reactivity with aspirin (Ref. 5). The agency's approved labeling for ibuprofen includes warnings for aspirin sensitive individuals and people taking other OTC pain reliever/fever reducer products (Ref. 6).

On October 17, 1983, a citizen petition (Ref. 7) was submitted that requested the agency to reopen the administrative record for OTC IAAA drug products to amend the proposed monograph to include ibuprofen as an internal analgesic ingredient in a 200-mg tablet with a maximum 1,200-mg total daily dose. The agency denied the petition on May 18, 1984 (Ref. 8) for several reasons, one of which (use for a material time and to a material extent) is discussed in section III.A of this document.

In the **Federal Register** of November 16, 1988 (53 FR 46204), the agency published a TFM to establish conditions under which OTC IAAA drug products are generally recognized as safe and effective, and not misbranded. The TFM proposed acetaminophen, aspirin, carbaspirin calcium, choline salicylate, magnesium salicylate, and sodium salicylate as generally recognized as safe and effective IAAA active ingredients for OTC use and appropriate labeling for OTC drug products containing these ingredients. Ibuprofen was not discussed in the TFM.

Subsequent to the TFM, the agency received a citizen petition (Ref. 1) requesting that the TFM be amended to include racemic ibuprofen in an oral dosage form, as a single active ingredient. The petition recommended a minimum effective dose of 200 mg ibuprofen for use by adults and children 12 years and older. The petition requested the same indications as proposed for other monograph IAAA active ingredients in § 343.50(b)(1) (21 CFR 343.50(b)(1)): "For the temporary relief of minor aches and pains associated with a cold, sore throat, headache, toothache, muscular aches, backache, premenstrual and menstrual cramps (dysmenorrhea), and for the minor pain from arthritis, and to reduce fever."

The petition requested warnings specific for the OTC use of ibuprofen, including the following warning, in this form, or in a different format conveying the same information:

ASPIRIN SENSITIVE PATIENTS: Although this product does not contain aspirin, it may cause a severe reaction in people allergic to aspirin. Do not take ibuprofen if you have had any of the following reactions to any pain reliever/fever reducer:

- allergic reaction
- shock
- hives
- difficulty breathing
- asthma
- swelling

If you are under a doctor's care for any serious condition, consult a doctor before taking this product. As with aspirin and acetaminophen, if you have any condition which requires you to take prescription drugs or if you have had any problems or serious side effects from taking any nonprescription pain reliever, do not take this product without first discussing it with your doctor. IF YOU EXPERIENCE ANY SYMPTOMS WHICH ARE UNUSUAL OR SEEM UNRELATED TO THE CONDITION FOR WHICH YOU TOOK IBUPROFEN, CONSULT A DOCTOR BEFORE TAKING ANY MORE OF IT. Although ibuprofen is indicated for the same conditions as aspirin and acetaminophen, it should not be taken with them except under a doctor's direction. Do not combine this product with any other ibuprofen-containing product.

The petition also suggested the following directions for use:

Adults: Take 200 mg every 4 to 6 hours while symptoms persist. If pain or fever does not respond to 200 mg, 400 mg may be used but do not exceed 1,200 mg in 24 hours, unless directed by a doctor. The smallest effective dose should be used. Take with food or milk if occasional and mild heartburn, upset stomach, or stomach pain occurs with use. Consult a doctor if these symptoms are more than mild or if they persist. Children: Do not give this product to children under 12 years of age except under the advice and supervision of a doctor.

The petition asserted that ibuprofen has been marketed for a material time and to a material extent. To support this statement, the petition presented information indicating that from May 1984 (when ibuprofen first became available OTC in the United States) through 1996 over 90 billion 200-mg tablet doses were sold (Ref. 1). The petition noted that more than 20 companies now market OTC ibuprofen drug products and provided information to show that the sale of OTC ibuprofen in the United States is comparable to that of aspirin and acetaminophen. Thus, the petitioner said, given the enormous volume of sales and more than 13 years of marketing, ibuprofen has been available as an OTC drug product for a material time and to a material extent, is now generally recognized as safe and effective, and is no longer a new drug. The petition did not request monograph status for ibuprofen for children under 12 years of age.

The petition (Ref. 1) included a summary of safety and effectiveness data (through 1982) previously submitted to FDA to support the prescription-to-OTC switch of ibuprofen. That summary included effectiveness data for ibuprofen for analgesic (dysmenorrhea, dental, musculoskeletal, postpartum and postsurgical pain, and headache), antipyretic, and anti-inflammatory use and a safety overview of specific organ systems, special populations, and postmarketing data. The petition (Ref. 1) also included the results from a search of the worldwide medical literature from 1983 through August 1996 of adverse events associated with ibuprofen, mostly in the OTC dosage range.

The published studies and case reports included in the petition involved mainly OTC doses of ibuprofen (less than or equal to 1,200 mg/day) for an OTC-indicated duration (less than 10 days use for pain, or 3 days for fever) that occurred in generally healthy individuals, 12 years of age or older. The agency's comments on the citizen petition are on file in the Dockets Management Branch (Ref. 9). The petitioner subsequently submitted additional information in support of ibuprofen's safety profile (Ref. 10), which included publications from 1990 through 1998, generated from a number of databases.

The agency also received a comment opposing the petition's request to include ibuprofen in the TFM (Ref. 2). The petition, related correspondence, additional information, and the opposing comment are on public display in the Dockets Management Branch (see **ADDRESSES**).

II. Comment in Opposition to the Citizen Petition

One comment (Ref. 2), opposing the petition's request, stated there is: (1) A lack of a general recognition of safety and effectiveness of all oral ibuprofen dosage forms, (2) a significant potential for use of OTC ibuprofen products at prescription dosage levels, and (3) a continued need for adverse event reporting and other marketing controls. Therefore, the comment contended, ibuprofen (200 mg) should remain subject to the NDA process.

The comment suggested that allowing marketing of ibuprofen (200 mg) in any "suitable" oral dosage form (as provided for in the TFM) creates a potential for consumer harm. As examples, the comment mentioned several risks if ibuprofen would be included in the monograph: (1) Changes in product composition and manufacturing methods that would not be subject to prior FDA review, and (2) possible misuse of ibuprofen products due to the concurrent marketing of ibuprofen suspensions (one marketed under a monograph for adults and the other marketed under the new drug approval process and labeled for children).

The comment also criticized the data included in the petition. The comment observed that although data on adverse events in prescription dosages is relevant to the consideration of whether an ingredient is appropriate for inclusion in the monograph, the petition submitted only information on adverse effects at OTC doses. The comment asserted that ingestion of larger doses (2,400 to 3,600 mg) has not been seen due to the relative expense of the OTC tablets. The comment contended that the lowered prices that would result from monograph status of ibuprofen (200 mg) could increase the potential for harm because prescription ibuprofen users may be enticed to switch to OTC drug products and self-medicate at prescription dose levels without a doctor's supervision. The comment did not provide any data to support its assertions.

The agency agrees with the opposing comment (Ref. 2) that ibuprofen is not generally recognized as safe and effective in all dosage forms. For instance, ibuprofen in suspension formulation for adult use has not been marketed OTC, and children's formulations have been marketed OTC less than 5 years. Thus, these formulations are not generally recognized as safe and effective for OTC use. In some studies evaluating the effectiveness of ibuprofen, capsule formulations were used as a means of blinding the studies. However, ibuprofen has been marketed OTC for adult use almost entirely in tablet formulations (i.e., tablets, caplets, and gelcaps (a tablet dosage form)) throughout its marketing history. Thus, current evidence for ibuprofen to be generally recognized as safe and effective for OTC use is only sufficient for tablet formulations. This proposal does not include liqui-gel formulations (ibuprofen solubilized in a gel matrix).

The comment raised a concern about the potential for OTC ibuprofen to be used at prescription-dose levels. Currently approved NDA and abbreviated new drug application (ANDA) labeling for OTC ibuprofen drug products contains directions for appropriate OTC dosing. Products marketed under an OTC drug monograph will contain the same directions. Further, both the NDA/ANDA and the proposed monograph labeling alert consumers of the hazards associated with improper use and when to seek the advice of a physician. Given that the comment did not include any data to support its concern, the agency finds no basis to believe that the potential for misuse of these OTC ibuprofen drug products will be greater if their marketing status is changed from an NDA/ANDA to OTC drug monograph.

The agency appreciates the comment's concern for the need for continued adverse event reporting and other marketing controls. The safety of ibuprofen has been monitored since it was first marketed in the United States under the new drug approval process (as a prescription drug in 1974 and as an OTC drug in 1984) and as a generic drug (for prescription use in 1985 and for OTC use in 1986). The agency monitors the quality of products marketed under OTC drug monographs through its current good manufacturing practice regulations in part 211 (21 CFR part 211) and its inspection authority. Based on the available data, the agency finds the safety profile of ibuprofen to be comparable to that of other OTC internal analgesics (e.g., aspirin and acetaminophen) that have been proposed as generally recognized to be safe for OTC use.

During ibuprofen's extensive OTC marketing history significant formulation and manufacturing issues have not arisen. The agency does not anticipate any potential problems if ibuprofen, in specific tablet formulations, is included in the monograph for adult use. Specifications for ibuprofen tablets are recognized in the U.S.P. (Ref. 3). Although there is some degree of risk associated with the use of any OTC drug, whether marketed through the NDA/ANDA process, as a generic drug, or under an OTC drug monograph, the agency believes ibuprofen 200 mg in a tablet dosage form for adult use has been marketed safely OTC for a sufficient time and extent that it can be generally recognized as safe and effective for OTC use.

III. The Agency's Evaluation of the Citizen Petition

A. Use for a Material Time and to a Material Extent

In 1984, the agency denied a petition (Ref. 7) to include ibuprofen in the OTC IAAA monograph because the request was for a new dosage strength (200 mg) which the agency determined had not been used to a material extent and for a material time in the United States and, thus, was considered a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). The petitioner had contended that ibuprofen had been available in the United States since 1974 as a prescription drug with more than 18.8 billion cumulative 400-mg doses of the drug distributed worldwide through August 1982, and that the drug is currently the fourth largest prescription drug by volume in the United States. In its denial letter (Ref. 8), the agency pointed out that experience with ibuprofen at prescription strength is pertinent to the drug's safety, but such experience cannot support general recognition that the product, at a different strength and daily dose, can be used safely and effectively by the patient alone. The agency concluded that the petition ignored the lack of experience with the proposed single 200-mg tablet dose as an OTC drug product.

Since that time, the current petition (Ref. 1) points out that from May 1984 (when ibuprofen 200-mg first became available OTC in the United States) through 1996 over 90 billion 200-mg tablet doses were sold. That number has substantially increased since 1996. The agency has determined that ibuprofen's 17 years of OTC marketing with over 100 billion doses of 200-mg tablets sold shows that the drug at this dosage and in this dosage form as an internal analgesic and antipyretic has been used for a material time and to a material extent to qualify it for inclusion in an OTC drug monograph.

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B. Safety

1. Preclinical

a. *Toxicity.* The toxicity of ibuprofen has been extensively studied in a number of animal species (Refs. 11 and 12) and well characterized. The LD_{50} in the mouse was 800 mg/kilogram (kg) orally and 320 mg/kg intraperitoneally. In rats, the LD_{50} was 1,600 mg/kg orally and 1,300 mg/kg subcutaneously. In dogs, adverse effects were observed after a single oral dose of 125 mg/kg. There were no apparent ill effects after a single 20 or 50 mg/kg dose. Ibuprofen in lethal doses depressed the central nervous system of rodents, and was ulcerogenic in rodents and nonrodents.

Newly weaned male and female rats were given 180, 60, 20, and 7.5 mg/kg/day ibuprofen by oral gavage for 26 weeks (Ref. 12) . Rats receiving ibuprofen grew normally except for male rats receiving the 180-mg/kg/day dose which gained significantly less weight than controls. When examined hematologically in the final week of dosing, both males and females on the 180 mg/kg/day dose were anemic as evidenced by low erythrocyte counts, hemoglobin concentrations, and hematocrits. Significant increases in the weights of the kidney, liver, and spleen occurred in both sexes. Histologic examination of the tissues revealed no significant changes except for one male and three female rats in the 180-mg dose group (10 animals/sex/group) that had intestinal ulcers.

In a followup experiment (Ref. 12) to determine if the changes observed in the 26-week study were reversible, male and female rats were given 180, 60, and 20 mg/kg/day for 13 weeks. The day after dosing ended, half the animals in each group were sacrificed and the rest were kept undosed for 3 weeks. Generally, the results from this experiment were supportive of the 26-week study. Males given 180 mg/kg/day had enlarged kidneys, spleen, and testes. A dose-dependant enlargement of the kidney occurred in females. An enlargement of the liver and ovaries occurred in females on 180 mg/kg/day, and of the spleen and ovaries in females on 60 mg/kg/day. None of the enlarged organs were histologically abnormal. These changes were found to be reversible 3 weeks after the end of dosing.

No significant hematological or biochemical alterations were observed in dogs (two dogs/sex/group) given 16, 4, or 2 mg/kg/day ibuprofen (administered as two doses 6 hours apart) for 26 weeks (Ref. 12). In the eighth week of dosing, female dogs in the high-dose group showed gross signs of gastrointestinal (GI) disturbance characterized by frequent vomiting, diarrhea (with occasional passage of fresh blood), and loss of blood. Occult blood was irregularly detected in fecal samples obtained from all dogs in the high-dose group from day 8 on. At autopsy, organ weights were normal and pathologic changes were limited to ulcerative lesions of the GI tract.

The effects of ibuprofen on reproduction have been studied in rats and rabbits (Ref. 12). Rats were administered 180, 60, 20, or 7.5 mg/kg/day ibuprofen on days 1 through 20 of pregnancy. All litters were of normal size and weight. No difference in the incidence of fetal malformations was found between the treated and control groups.

A reproduction study in rabbits (Ref. 12) at doses of 60, 20, or 7.5 mg/kg/day was conducted on days 1 through 29 of pregnancy. Female rabbits given 60 mg/kg/day had fewer live fetuses per litter than did controls, but there was no significant difference in the number of dead and resorbed rabbits per litter. However, there was a reduction in the ratio of implants to corpora lutea, which suggested that the decrease in live litter size was due to interruption of early pregnancy. The average fetal weight was normal. At the lower doses, the litter size was unaffected. Apart from four young in one litter (60 mg/kg/day) with multiple malformations characteristic of cyclopia, there was no consistent pattern of dose-related malformations. The authors concluded that ibuprofen is not teratogenic but may reduce fertility by affecting early pregnancy at the high dose.

The labeling of ibuprofen drug products currently marketed under an NDA/ANDA includes the general pregnancy/breast-feeding warning in § 201.63(a) (21 CFR 201.63(a)) advising that a health professional should be consulted before use. It also includes a statement like that required for aspirin drug products in § 201.63(e), which warns that it is especially important not to use the product during the third trimester of pregnancy because it could cause problems in the unborn child and complications during delivery. The agency is proposing to expand the warning in § 201.63(e) to include ibuprofen. (See section V, number 1 of this document.)

b. *Pharmacokinetics.* Ibuprofen's mode of action is not completely understood, but it may be related to its ability to inhibit prostaglandin synthetase (Ref. 13). Following oral dosing, ibuprofen has been found in synovial fluid, which is the proposed site of action for ibuprofen in patients with rheumatoid arthritis (Ref. 14). The pharmacologic activity of ibuprofen has been attributed mostly to the S-[+]-enantiomer (Refs. 15 and 16). After administration of racemic ibuprofen, the inactive R-[-]-enantiomer is slowly and incompletely (60 percent) converted to the biologically active S-[+]-enantiomer, primarily through both presystemic and systemic chiral inversion (Refs. 17, 18, and 19).

The pharmacokinetics of ibuprofen have been well documented (Ref. 20). The absorption of orally administered ibuprofen is rapid and approximately 80 percent of the dose is absorbed from the GI tract. Peak plasma levels in humans are reached between 45 and 90 minutes after administration of a single oral dose on an empty stomach, depending upon the formulation (Ref. 21). The extent of absorption is unchanged when ibuprofen is taken with meals (Ref. 22).

Following oral administration, the apparent plasma volume of distribution has been reported to be between 0.1 to 0.2 liter (L)/kg, which approximates plasma volume and suggests minimal tissue binding is present (Refs. 23 and 24). Ibuprofen is extensively bound (more than 98 percent) to whole human plasma and purified serum albumin at therapeutic concentrations, and may participate in plasma protein binding displacement reactions (Refs. 25 and 26). The apparent volume of distribution, based on total concentration, increases significantly with dose, but there is no attendant change in free drug volume of distribution (Ref. 27). The protein binding of ibuprofen is similar between normal individuals and people with osteoarthritis and rheumatoid arthritis and is not influenced by age or gender (Refs. 28 and 29).

Plasma concentrations of ibuprofen appear to decline in a biphasic manner with a plasma half-life of 2 to 4 hours for the racemate (Ref. 20). Ibuprofen is metabolized via oxidation by the cytochrome P–450 enzyme CYP 2C9 to form two inactive metabolites, hydroxy- and carboxypropyl-phenylpropionic acid (Refs. 30 and 31). These metabolites (or their glucuronide conjugates) are excreted in the urine and account for about 50 to 60 percent of the oral dose administered (Refs. 32 and 33). Less than 10 percent of the drug is excreted in urine unchanged (Ref. 32). The remainder is eliminated in the feces, as metabolites and unabsorbed drug. Excretion of ibuprofen is essentially complete within 24 hours following oral administration of a single dose (Ref. 33). While total clearance may be affected by age, no dosage adjustment is needed in the elderly (Ref. 34). Ibuprofen does not appear in the breast milk of mothers to any appreciable extent (i.e., < 0.0008 percent of the plasma level) (Ref. 35).

Ibuprofen is neither an inducer or an inhibitor of cytochrome P–450 mediated metabolism. At doses above those recommended for OTC use (1,200 mg daily, in divided doses), ibuprofen may decrease the renal excretion of some drugs due to ibuprofen's ability to interfere with renal prostaglandin synthesis necessary for normal renal function. This interference in the renal elimination of other drugs can be estimated by following the net reduction in creatinine clearance. Ibuprofen can cause an increase in blood pressure in hypertensive patients being treated with diuretics alone or diuretics combined with other agents (Ref. 36).

2. Clinical Data

The petition (Ref. 1) and a subsequent submission (Ref. 10) provided extensive published clinical data on the safety of OTC use of ibuprofen. The data provide a safety profile typical of other OTC drugs in the NSAID class.

a. *Gastrointestinal.* The GI tract is one of the major organ systems commonly affected by NSAID-induced drug toxicity. This resulted in a GI warning in the prescription labeling for these drugs (Refs. 37 and 38). At the August 18, 1983, AAC meeting, data submitted in support of the NDA for ibuprofen 200 mg to be marketed as an OTC drug product suggested that, of all NSAIDs available at that time, ibuprofen caused the least amount of GI irritation (Ref. 39).

Additional support in favor of ibuprofen's overall gastric tolerability was generated in a recent study by Moore et al. (Ref. 40), which evaluated the tolerability of ibuprofen (1,200 mg/day) and acetaminophen (up to 3 grams (g)/day) to that of aspirin (up to 3 g/day). This study was a large, blinded, randomized, multicenter, 7-day analgesic study conducted in France in 8,677 adults with mild to moderate pain due to a variety of conditions. Although the incidence for significant (serious, severe, or moderate) adverse events (including all body systems) for the ibuprofen treated group (13.7 percent) was comparable to that of the acetaminophen treated group (14.5 percent), both drugs were shown to be significantly better tolerated than aspirin (18.7 percent; $p < 0.001$ via a one-sided 96.5 percent confidence interval (CI)). A total of six subjects reported having GI bleeds during this study, four from the acetaminophen group and two from the aspirin group, one of whom developed peptic ulcer. Overall, treatment with ibuprofen was associated with fewer significant adverse GI events than aspirin ($p < 0.001$) or acetaminophen ($p < 0.02$). The incidences of abdominal pain and dyspepsia were both significantly lower in the ibuprofen group as compared with the aspirin ($p < 0.001$) or acetaminophen ($p < 0.02$) groups. Although this study was designed to approximate the general population who would use OTC doses and durations of these three analgesics, its selection criteria prohibited any individual with known risk factors for GI bleeding from participating. Thus, selection bias may have been introduced and resulted in a lower incidence of GI adverse events than what may be seen in the general population at risk.

In a retrospective, nested, case-controlled study of Medicaid enrollees, Griffin et al. (Ref. 41) compared the relative risk (RR) for the development of peptic ulcer disease (PUD) in 1,415 subjects 65 years and older who were current nonaspirin NSAID users to nonusers. Eighty-three of the 1,415 subjects who were hospitalized due to PUD during the period studied were identified as having been exposed to OTC doses (1,200 mg) of ibuprofen. The overall RR for the development of PUD in this group was found to be 2.3 (95 percent CI: 1.8 to 3.0). Further examination by dose revealed that in 70 subjects exposed to doses less than 2,400 mg ibuprofen the RR for the development of PUD was 2.2 (95 percent CI: 1.7 to 2.9), and in 13 subjects exposed to 2,400 mg or greater the RR increased to 3.3 (95 percent CI: 1.7 to 6.5).

Bradley et al. (Ref. 42) conducted a 4-week, double-blind, randomized trial in 184 subjects comparing the effectiveness and safety of the maximum approved OTC daily dose of 1,200 mg of ibuprofen (number of subjects (n) = 62) to that of a prescription dose of 2,400 mg/day (n = 61), and to 4,000 mg/day of acetaminophen (n = 59) for the treatment of osteoarthritis. While there were no significant differences in the number of side effects reported during this study, the study demonstrated a trend towards a dose-dependent increase in minor GI adverse events (nausea and dyspepsia) associated with higher doses of ibuprofen (1,200 mg/day: 7/62 or 11.3 percent; versus 2,400 mg/day: 14/61 or 23 percent). In addition, two subjects treated with 2,400 mg/day of ibuprofen became positive for occult blood while participating in the study.

Although these studies (Refs. 41 and 42) demonstrate that a dose-dependent relationship exists for ibuprofen-induced gastrotoxicity, the number of subjects exposed to OTC doses of ibuprofen (1,200 mg or less a day) is too small to draw valid conclusions. Further, the study results may also be confounded since the studies did not control for other risk factors (i.e., smoking, alcoholism, concomitant use of corticosteroids and anticoagulants, advanced age, prior history of PUD, or deteriorated general health status) which are known to increase the risk of developing GI bleeding while using NSAIDs. In addition, the results of the retrospective study (Ref. 41) may be biased because the exposure data from that study were generated from records of prescriptions written for both the study and control populations rather than what was actually used by the subjects.

In a matched, case-controlled, international study of upper gastrointestinal bleeding (UGIB), Kaufman et al. (Ref. 43) evaluated the association between regular and occasional NSAID use and the risk of major UGIB in subjects hospitalized with their first major UGIB. Subjects were asked about their history of NSAID use, and details of timing, duration, frequency, and the daily dose of each episode of use. The focus of the data analysis was on NSAID use in the week immediately before the day of onset of bleeding. Exposure was defined as any use in the week before the index day. No evidence of an association of gastric bleeding with either regular use (n = 9; RR: 1.0 [95 percent, 0.4 to 2.6]) or occasional use (n = 14; RR 1.1 [95 percent, 0.5 to 2.4]) of ibuprofen was identified in this study. Among the cases of gastric bleeding, the median ibuprofen dose was 2,332 mg. The RR for developing a duodenal bleed with regular use (n = 7) of ibuprofen was 2.4 (95 percent, 0.5 to 11), the median daily ibuprofen dose ingested was 1,074 mg.

Strom et al. (Ref. 44) did a retrospective, case-controlled study in a Medicaid population generated database and evaluated the risk of developing GI bleeding associated with the use of OTC-simulated doses of naproxen sodium (600 mg/day or less) versus ibuprofen (1,200 mg/day or less). (At the time of the study, naproxen sodium was not yet approved for OTC use.) Although this study demonstrated that the overall incidence of UGIB associated with either the use of naproxen sodium [0.026 percent (95 percent CI, 0.017 percent to 0.038 percent)] or ibuprofen [0.012 percent (95 percent CI, 0.008 percent to 0.017 percent)] at simulated OTC doses was relatively low, the RR for developing an UGIB was approximately twofold higher for the

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naproxen sodium cohort [2.0 (95 percent CI, 1.1 to 3.8)] as compared to the ibuprofen cohort. The study also showed that the RR for developing UGIB is increased in subjects who ingest multiple NSAIDs at OTC doses [4.1 (95 percent CI, 1.2 to 13.8)].

Endoscopic data (Refs. 45 and 46) demonstrated that while ibuprofen produced less GI mucosal toxicity or gastric injury than other NSAIDs, low doses of ibuprofen produced lesions in some subjects. In a study by Bergmann et al. (Ref. 45), endoscopic lesions of 12 healthy volunteers were evaluated after the administration of single doses of ketoprofen (25 mg), ibuprofen (200 mg), and aspirin (500 mg), and rated on a scale of 0 to 4. Endoscopic scores for ketoprofen were comparable to those for ibuprofen. After a single dose of ibuprofen 200 mg, eight subjects had endoscopic scores of 0, one had a score of 1, and three had scores of 2. For ketoprofen, nine subjects had a score of 0, two had a score of 2, and one had a score of 3.

Lanza (Ref. 46) conducted an endoscopic study of normal volunteers without histories of PUD. Subjects were prohibited from using alcohol and other NSAIDs for the week before and during the study. Ingestion of 1,200 mg/day of ibuprofen for 7 days produced a gastric injury score of 0.46 (on a scale of 0 to 4) and a 0 ulcer incidence rate in the 13 subjects studied. However, an increase in the ibuprofen dose to 1,600 mg/day for 7 days under the same conditions produced ulcers in 5 out of the 55 (9.1 percent) subjects studied, and an injury score of 1.24.

A chromium 51-labeled fecal blood loss study (Ref. 47) indicated that after 5 days of treatment with either ibuprofen 1,500 mg/day, aspirin 1,500 mg/day, lysine clonixinate 375 mg/day, or placebo, the fecal blood loss in subjects treated with ibuprofen was significantly less than the aspirin treated group. Nevertheless, treatment with ibuprofen lead to a small increase in mean daily blood loss of +0.52 milliliter (mL)/day.

These studies indicate that ibuprofen, at OTC doses, has a low level of GI toxicity but is not entirely devoid of such toxicity. The agency believes that even this low level of toxicity could increase the risk of GI bleeding in people who have other risk factors for developing GI bleeding. Therefore, the agency is proposing including a warning in the labeling of OTC ibuprofen to alert individuals at risk for GI problems associated with the use of the product. The warning would include: "Ask a doctor before use if you have: • stomach problems that last or come back, such as heartburn, upset stomach, or pain • ulcers • bleeding problems".

b. *Renal.* NSAIDs affect renal physiology by inhibiting cyclo-oxygenase and the synthesis of vasodilatory prostaglandins resulting in acute intrarenal hemodynamic changes that can cause reversible deterioration in the renal function of susceptible individuals (Ref. 48). Thus, in individuals with decreased renal blood flow, impaired renal function, or hypovolemia, the use of NSAIDs can produce an increase in serum creatinine concentrations and a decrease in creatinine clearance that may progress to acute renal failure, but which is reversible by stopping the drug (Ref. 48). This has necessitated precaution statements in the labeling of prescription NSAIDs directed at the management of patients who use these drugs, despite having prostaglandin-dependent states such as renal disease, heart failure, liver dysfunction, concomitant diuretic therapy, and advanced age that put them at risk for developing this type of nephrotoxicity (Ref. 38). Although the class labeling for prescription NSAIDs also mentions idiosyncratic forms of nephrotoxicity, such as papillary necrosis, acute interstitial nephritis, and nephrotic syndrome that may develop with long-term use of these drugs, these cases are usually not associated with any identifiable risk factor and are rare in occurrence (Ref. 49).

The petition (Ref. 1) included a summary package that was prepared for the August 18, 1983, AAC meeting in which ibuprofen 200 mg was considered for OTC marketing. The summary included safety data generated from clinical trials and supportive evidence from a review of then-published case reports of ibuprofen-associated nephrotoxicity. The summary concluded that although ibuprofen does cause cyclo-oxygenase mediated renal toxicity like other members of the NSAID class, the reversibility of this condition is dependent upon its recognition and the discontinuation of the drug, particularly when it occurs in those at risk, such as the chronically ill or the elderly (Ref. 39).

In support of ibuprofen's renal safety profile, four studies (Refs. 50 through 53) that evaluated the prostaglandin-mediated effects of OTC doses of ibuprofen (≤ 1,200 mg a day) on renal function were reviewed. In a crossover study, Farquhar (Ref. 50) evaluated the renal effects of ibuprofen (1,200 mg daily) and acetaminophen (4 g daily) versus a placebo in 12 healthy men (n = 6) and women (n = 6) who were subjected to progressive renal stress. Subjects were on a low-sodium diet, on limited exercise, and given a drug or placebo for 3 days and the morning of day four. On day four, the participants were subjected to treadmill exercise, in the heat, to cause dehydration. The combined stressors caused decreases in effective renal plasma flow, glomerular filtration rate (GFR), and sodium excretion. Baseline GFR (range 118 to 123 mL/minute (min) decreased to 73 ± 5, 78 ± 4, and 82 ± 5 mL/min, post-exercise, in the ibuprofen, acetaminophen, and placebo groups, respectively, with a significantly greater decrease in GFR for ibuprofen than placebo ($p < 0.05$). The decrease in GFR for the acetaminophen group was not significantly different from placebo. The authors attributed the lower GFR that occurred in the ibuprofen arm of the study to renal prostaglandin inhibition by the drug.

In a randomized, disease-controlled study, Ciabattoni et al. (Ref. 51) evaluated the prostacyclin-mediated effects on GFR and renal blood flow of 20 women with chronic glomerular disease versus 19 normal healthy control subjects following 7 days of treatment with ibuprofen (1,200 mg daily) versus sulindac (400 mg daily). In the 10 subjects with renal insufficiency who were given ibuprofen, the serum creatinine level was increased by about 40 percent and the creatinine and para-aminohippurate clearances were decreased by 28 ± 7 and 35 ± 8 percent, respectively, during treatment ($p < 0.01$). Renal function returned to baseline values after ibuprofen was discontinued, although the serum creatinine and creatinine clearance were still significantly altered up to 5 days after ibuprofen was stopped.

Welton et al. (Ref. 52) evaluated the renal effects of ibuprofen (800 mg three times daily), piroxicam (20 mg daily), and sulindac (200 mg twice daily) in an 11-day, randomized, triple crossover study of 12 women with asymptomatic, mild, stable, chronic renal failure with serum creatinine ranging from 130 to 270 micromoles (μmol)/L. Although all the subjects were able to complete courses of treatment with piroxicam and sulindac, three subjects developed acute decreases in renal function with an elevation in their renal parameters that met the study criteria for stopping (defined as an increase in serum creatinine of 130 μmol/L or more, or a serum potassium value of more than 6 millimole/L (mmol/L)) by the eighth day of treatment with ibuprofen. When these three subjects were rechallenged with ibuprofen, 400 mg three times a day, two again developed acute deterioration of renal function. The authors concluded that a brief course of nonprescription ibuprofen may result in the precipitous decrease in the renal function of people with asymptomatic, mild, chronic renal failure.

In contrast, Furey et al. (Ref. 53) did a 7-day, double-blind, randomized study comparing the renovascular effects of ibuprofen (400 mg three times daily) versus that of aspirin (650 mg three times daily) and acetaminophen (650 mg three times daily) in 25 elderly subjects with mild renal insufficiency, and hypertension controlled with thiazide diuretics. Although the mean baseline serum creatinine levels for all three treatment groups were comparable, the mean baseline serum creatinine clearances were higher in both the acetaminophen (78.9 ± 8.3 mL/min) and aspirin (67.1 ± 6.4 mL/min) treatment groups as compared to the ibuprofen group (56.3 ± 5.3 mL/min). On analysis, this was not found to be statistically different. This study failed to demonstrate any statistically significant changes in the five renal parameters (serum creatinine, creatinine clearance, blood urea nitrogen (BUN), serum potassium and sodium) evaluated in any of the three treatment groups.

The three studies by Farquhar (Ref. 50), Ciabattoni et al. (Ref. 51), and Welton et al. (Ref. 52) demonstrated that, at an OTC dose of ibuprofen (1,200 mg daily), hemodynamic changes in the kidney do occur in subjects with prostaglandin-dependent states, which can lead to diminished renal function. The inability of the study by Furey et al. (Ref. 53) to demonstrate any significant deterioration in any of the renal parameters studied may be due to the fact that the subjects who participated in this study may not have had severe enough renal disease as manifested by the mildly elevated range of their baseline mean serum creatinine from 1.4 ± 0.08 mg/deciliter (dL) to 1.5 ± 0.07 mg/dL to demonstrate ibuprofen's prostaglandin-dependent renal effects. Thus, despite their histories of hypertension and the concomitant use of diuretics, these subjects may also have had adequate renal reserves to compensate for any ibuprofen-mediated decreases in their renal function.

The largest study involving an OTC dose of ibuprofen that included monitoring of renal function was the 4-week study by Bradley et al. (Ref. 42). This study compared the effectiveness of low-dose (1,200 mg daily) and high-dose (2,400 mg daily) ibuprofen and acetaminophen (4,000 mg daily) in the treatment of osteoarthritis in 184 subjects. Side effects were similar in all three groups. The serum creatinine level increased by more than 17 μmol/L (0.2 mg/dL) in four of the subjects receiving low-dose ibuprofen, six receiving high-dose ibuprofen, and one receiving acetaminophen. As a group, the serum creatinine concentration increased only slightly (2.7 μmol/L) in the high-dose ibuprofen group ($p = 0.04$), but there was no increase in the low-dose group. Although this trial is the only study which compared a low-dose (i.e., OTC dose) to a high-dose (i.e., prescription-strength dose) ibuprofen and could possibly be interpreted as a dose-ranging study for the renal effects of ibuprofen-mediated prostaglandin inhibition, the subjects who were entered into this trial were healthy with a mean age of 55.7 ± 13.7 to 57.2 ± 11.7 years. Exclusion criteria prohibited participation by subjects with medical conditions that contraindicated the use of the study medications. Thus, the study subjects were not reflective of the population identified at risk for developing this type of nephrotoxicity.

The petition included numerous case reports (Refs. 54 through 61) of renal failure associated with the use of OTC doses of ibuprofen in people with normal renal function. Four cases (Refs. 54 through 57) described the syndrome of acute flank pain with reversible renal failure following short-term doses of 1,200 mg, or less, of ibuprofen. One (Ref. 54) of these four cases was confounded by the concomitant use of alcohol, and one (Ref. 55) used alcohol and acetaminophen, both of which can cause nephrotoxicity. Four reports (Ref. 58 through 61) described cases of idiosyncratic drug-induced types of renal failure. One of the cases (Ref. 61) discussed a case of idiosyncratic hypersensitivity reaction in an elderly man who experienced acute renal failure twice; once after taking ibuprofen orally and, again, a few years later, after using a topical formulation of ibuprofen. Renal function returned to normal in all eight people after medical therapy. The agency is aware of additional case reports of patients who developed renal toxicity after taking ibuprofen (Refs. 62 through 66).

In 1996, the National Kidney Foundation published a position paper in which it recommended that consumer labeling of OTC analgesic drug products contain warnings directed to the population at risk for the development of nephrotoxicity associated with the use of these products (Ref. 67). These recommendations were based on the review of a database that contained 556 articles on aspirin, acetaminophen, aspirin/acetaminophen combinations, and NSAID-related renal disease by an ad hoc group of expert investigators and clinicians. This committee suggested the following consumer warning for OTC NSAID-containing products:

> DO NOT TAKE THIS PRODUCT WITHOUT PHYSICIAN SUPERVISION IF: (1) You are allergic to aspirin; (2) you are under a physician's care for asthma or stomach problems (such as heartburn); (3) you take diuretic medicine; (4) you have heart disease, high blood pressure, kidney disease, or liver disease; (5) you are over 65 years of age.

The information contained in the literature review and case reports submitted in support of this petition confirms that OTC doses of ibuprofen can exert a variety of renal adverse effects, particularly in those who are predisposed by prostaglandin-dependent states. Although the sporadic nature of the idiosyncratic drug-induced type of ibuprofen nephrotoxicity makes it impossible to predict which group of individuals is at risk for developing this type of adverse event, this is not the case with individuals who experience prostaglandin-driven hemodynamic changes in renal function. The latter, if recognized, is reversible following discontinuation of the drug. Thus, based on the information reviewed, the agency concurs with the recommendations made by the National Kidney Foundation that the consumer labeling for OTC ibuprofen should have a warning directed at those at risk for the development of acute renal failure associated with the use of the product. The agency is proposing a warning that includes: "Ask a doctor before use if you have: • high blood pressure, heart or kidney disease, are taking a diuretic, or are over 65 years of age".

c. *Hepatic.* The petition (Ref. 1) contained only one case report (Ref. 68) from the literature of biopsy-proven drug-induced hepatitis that occurred in a person taking 1,200 mg daily ibuprofen and cefadrine. The authors concluded that the liver lesion was induced by drug hypersensitivity. The supplemental submission (Ref. 10) included one case report (Ref. 69) of drug-induced vanishing bile duct syndrome secondary to ibuprofen. Similarly, the authors of this report concluded that the reaction was induced by a drug hypersensitivity.

In a retrospective, crossover cohort study, Garcia-Rodriguez et al. (Ref. 70) evaluated the risk of developing serious, acute, noninfectious liver injury associated with the use of NSAIDs. One of the 16 subjects was identified as having NSAID-induced hepatitis: A 93-year-old male who developed cholestatic jaundice after taking 1,200

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mg of ibuprofen along with other hepatotoxic drugs. Causality could not be directly associated with ibuprofen in this case due to the concomitant use of other hepatotoxic drugs.

In a review of FDA postmarketing data of NSAID-induced hepatotoxicity, Katz et al. (Ref. 71) noted that while ibuprofen is known to cause idiosyncratic metabolic toxicity of the liver, ibuprofen and ketoprofen were found to have the lowest reported calculated incidences of hepatotoxicity (0.55 percent and 0.56 percent respectively) of all NSAIDs evaluated at that time. Due to the limitations of FDA's reporting requirements, the authors were unable to estimate separately the incidence of this phenomena associated with OTC doses of ibuprofen. Given the available information, the agency sees no need to propose a hepatitis warning at this time.

d. *Blood.* Three case reports from the literature described hematological events attributed to ibuprofen (Refs. 72, 73, and 74). Two of these (Refs. 72 and 73) involved individuals taking OTC doses of ibuprofen who developed thrombocytopenia and white-cell aplasia with bone marrow plasmacytosis. The duration of ibuprofen use was not stated in the second case report. The third individual (Ref. 74), taking an undisclosed dose of ibuprofen (by prescription), developed Pelger-Huet syndrome due to a complement-dependent immunoglobulin G (IgG) antibody that prevented bone marrow production of myeloid stem cells. Ibuprofen is known to reversibly inhibit platelet aggregation (Ref. 75). Further, ibuprofen has been shown to potentiate the effects of warfarin. As a result, the agency believes consumers who are taking anticoagulants should be alerted to check with a health professional before taking ibuprofen because of the potential for bleeding. Thus, the agency is proposing a warning that includes: "Ask a doctor or pharmacist before use if you are: • taking a prescription drug for anticoagulation (blood thinning)".

e. *Immune system.* Ibuprofen has been associated with some hypersensitivity reactions. The petition (Ref. 1) included 14 case reports (Refs. 76 through 86) from the worldwide literature that described hypersensitivity and anaphylactic reactions to ibuprofen. The reports of ibuprofen-associated hypersensitivity (Refs. 76 through 80) included six individuals with underlying histories of asthma (one (Ref. 78) of whom also had a known allergy to aspirin). Three of the individuals with asthma died following hypersensitivity reactions that were attributed to ibuprofen (Refs. 76, 77, and 78). One report (Ref. 86) included five patients with Sjögren's syndrome who developed symptomatic drug allergies after taking ibuprofen.

Hypersensitivity reactions were also reported in one individual (Ref. 80) with general allergies (including a known aspirin sensitivity), in one individual (Ref. 82) with systemic lupus erythematosus, and in three individuals (Refs. 83, 84, and 85) with no apparent underlying illnesses (one (Ref. 84) had taken aspirin just prior to the reaction). The petition also included an abstract of a report of challenge testing with ibuprofen (Ref. 87) in 42 people with histories of allergies to various analgesic agents. Five people experienced anaphylactic reactions to incremental doses of up to 500 mg of ibuprofen. Eleven of 33 subjects had similar reactions to aspirin. The agency is proposing an "Allergy alert" warning and additional allergy warning statements for all OTC drug products containing NSAID IAAA active ingredients. (See section IV of this document.)

f. *Nervous system.* The petition (Ref. 1) included 20 literature citations (Refs. 82 and 88 through 106) that described 21 individuals with aseptic meningitis associated with the use of ibuprofen. Twelve of these individuals (Refs. 82, 88 through 95, 98, and 100) had underlying histories of systemic lupus erythematosus or other immune disorders, 3 (Ref. 96) had histories of arthritis, 1 (Ref. 97) had a history of spontaneous recurrent aseptic meningitis, and 5 (Refs. 100 through 104) reportedly had no underlying medical problems. The supplemental submission (Ref. 10) included several review articles (Refs. 107 through 110) that described the spectrum of central nervous system side effects reported to be associated with NSAIDs, as well as case reports (Refs. 111 through 115) of aseptic meningitis associated with the use of a variety of NSAIDs. Although there has been an increase in availability and use of NSAIDs in general, the overall number of aseptic meningitis cases reported to be associated with the use of these agents since 1978 is only about 35. Most of the case reports (Refs. 111, 112, and 114) involved individuals with underlying collagen vascular disorders (i.e., systemic lupus erythematosus and rheumatoid arthritis). Several cases (Refs. 111, 113, and 115) established direct causality by histories of positive dechallenge-rechallenge with the suspected NSAID. While other NSAIDs were sometimes implicated, ibuprofen was the most commonly reported. The agency does not believe a nervous system warning is needed at this time.

g. *Skin.* There were a total of seven case reports (Refs. 116 through 122) and two articles (Refs. 123 and 124) on the results of provocative skin testing with ibuprofen. The seven case reports describe episodes of fixed drug reactions (Ref. 116), erythema nodosum (Ref. 117), a bullous drug eruption (Ref. 118), various cases of urticaria (Ref. 119), exacerbations of psoriasis (Refs. 120 and 121), and the occurrence of dermatitis herpetiformis (Ref. 122). The doses of ibuprofen involved in these cases, when reported, were 800 mg daily. The two articles (Refs. 123 and 124) described the results of provocative testing with a variety of drugs including ibuprofen. Of the 169 patients tested, 11 had positive skin reactions to ibuprofen. As stated above, the agency is proposing allergy warnings for OTC drug products containing NSAIDs. (See section IV of this document.)

h. *Special senses.* There were three case reports (Refs. 125, 126, and 127) and one adverse event, which occurred during a clinical trial (Ref. 128), that mentioned ibuprofen's effects on the visual parameters. The reports involved macular hemorrhage in people with age-related maculopathy (Ref. 126), vortex keratopathy (Ref. 127), iridocyclitis (Ref. 125), and depressed contrast sensitivity (Ref. 128) associated with total daily doses of ibuprofen ranging from 800 to 2,400 mg. Given the available information, the agency sees no need to propose a special senses warning at this time.

3. Spontaneous Reporting System (SRS) and Adverse Event Reporting System (AERS) Data

The petition analyzed adverse event data from the FDA SRS for all single-ingredient OTC ibuprofen drug products marketed in the United States for the time period from May 1984 through July 1996. Adverse reaction reports associated with a generic OTC ibuprofen drug product marketed under an ANDA or prescription ibuprofen drug products used at OTC doses were excluded from this analysis. A total of 8,168 case reports associated with 16,627 adverse events in the SRS database attributed to the use of single-ingredient, nongeneric OTC ibuprofen were thus identified. The total number of adverse events was greater than the total number of case reports because some case reports included more than one adverse reaction associated with the use of the drug.

The petitioner screened the electronic records of all case reports for confounding factors. Reports were considered confounded if they included the coadministration of at least one other medication (drug confounder), the administration of ibuprofen in a dose greater than 1,200 mg/day (dose confounder), the administration of ibuprofen for more than 10 days (duration confounder), or if the subject was less than 12 years of age (age confounder). Reports with missing or unreliable data were included in the analysis. Screening for confounders yielded 3,540 nonconfounded case reports which generated 6,197 adverse events. Case reports were then reviewed to identify serious reports associated with OTC ibuprofen. Of the 3,540 nonconfounded case reports, 592 were considered to be serious in nature. FDA's definition of a serious outcome is an event that results in death or hospitalization, is life threatening, produces permanently disability or congenital anomaly, or one in which medical intervention is required. However, the case report forms for these serious reactions were not included in the petition. The petition (Ref. 1) submitted information on case reports from the SRS associated with the use of OTC ibuprofen, reported by COSTART (Coding Symbols for Thesaurus of Adverse Reaction Terms) body system terminology. The information is summarized in table 1 of this document and represents the number of case reports that included at least one adverse event associated with the COSTART term.

TABLE 1.—SUMMARY OF CASES ASSOCIATED WITH THE USE OF OTC IBUPROFEN IN THE FDA SPONTANEOUS REPORTING SYSTEM FROM MAY 1984 THROUGH JULY 1996 (REF. 1)

COSTART Term	No. of Cases Reported	No. of Nonconfounded Cases	No. of Serious Nonconfounded Cases
Allergic reaction/ anaphylaxis	461	261	72
Body as a whole	3,686	1,786	236
Cardiovascular system	795	293	127
Digestive system	2,445	916	236
Endocrine system	32	12	8
Hematological/lymphatic systems (blood)	679	141	92
Liver	165	35	9
Metabolic and nutritional system	757	176	71
Musculoskeletal system	163	49	7
Nervous system	1,447	577	101
Respiratory system	629	250	81
Skin and appendages	1,339	589	71
Special senses	479	188	29
Urogenital system	716	176	61

The 592 serious nonconfounded case reports included 7 deaths associated with the use of OTC ibuprofen (2 GI, 1 hematological effects, 2 anaphylaxis, 1 miscarriage, and 1 in utero exposure resulting in the postpartum death of an encephalic infant). As shown above in table 1 of this document, the largest number of adverse events involved the GI system. Of the 236 nonconfounded serious case reports related to the GI system, 94 were GI hemorrhage, 52 were various ulcerations, 32 were melena, 25 were abdominal pain, and 20 were hematemesis. This additional evidence supports the need for a GI tract warning in the consumer labeling of OTC ibuprofen drug products.

FDA queried its AERS database for reports of renal failure in adults, over 16 years of age, associated with the use of OTC doses of ibuprofen for the period extending from the time of initial approval for OTC marketing (May 18, 1984) through August 10, 1999 (Ref. 129). For completeness, a search of the AERS database was also done for reports of renal failure in people 16 years of age and under. Fourteen cases of renal failure were identified in this population. In 8 of the 14 cases, a children's suspension formulation was used while, in the remaining 6 cases, 200-mg tablets were reportedly ingested. After excluding cases involving prescription dosages, overdoses, or duplication, there were a total of 80 cases of renal failure in adults over 16 years of age associated with the use of 1,200 mg, or less, of ibuprofen a day. Although 37 of these 80 cases had positive dechallenges with the discontinuation of ibuprofen (which is supportive of the reversibility of this drug-induced adverse event), 9 cases required dialysis treatment. Of these 80 cases, 56 were severe enough to require hospitalization, with 9 reported deaths, out of which 5 listed ibuprofen-induced renal failure as a contributing cause of death. Hypertension (16), pre-existing renal insufficiency (8), diabetes (7), other cardiac problems (8), alcoholism (3), and hepatic disease (2) were some of the most commonly concurrent medical disorders reported. In addition, 15 people were reported to have been taking diuretics prior to developing renal failure. These cases further support the need for consumer labeling directed at those individuals with predisposing medical conditions for the development of ibuprofen-induced prostaglandin-dependent renal toxicity. (See section III.B.2.b of this document.)

4. American Association of Poison Control Center (AAPCC) Data

The petition (Ref. 1) also included data on ibuprofen from the Toxic Exposure Surveillance System (TESS) collected by the AAPCC from 1987 to 1996. During that time, TESS reported only 9 fatalities from 163,948 OTC ibuprofen exposures compared to 450 fatalities from 312,618 acetaminophen exposures, and 401 fatalities from 153,495 aspirin exposures. The supplemental submission (Ref. 10) included additional information on the nine deaths, reports of seven additional deaths related to OTC ibuprofen in 1997, and three other deaths related to OTC or prescription-strength ibuprofen that occurred in 1996.

Of these 19 deaths, 14 were classified as intentional suicides. One person ingested 165 tablets of 200-mg strength ibuprofen and the other 13 ingested other drugs in combination with OTC ibuprofen. Of the remaining five cases, one was classified as a therapeutic error in a person with a history of alcoholism and hepatic disease waiting for a liver transplant, who reportedly took "excessive" amounts of acetaminophen and ibuprofen for pain. This person's death was attributed to chronic hepatic failure associated with ethanol and

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acetaminophen toxicity, chronic pancreatitis, and gastritis.

Another case was reported as intentional misuse in a patient with a history of chronic alcoholism, cirrhosis, and portal hypertension who developed acute liver failure following the chronic use of ibuprofen and acetaminophen. Another case of reported intentional misuse involved a patient with a history of drug abuse who reportedly ingested 27 tablets containing 100 mg propoxyphene napsylate and 650 mg acetaminophen and 50 tablets of ibuprofen (strength not specified) over a 16- to 48-hour period. The remaining two cases were listed as adverse drug reactions in young children. Thus, a large majority of the deaths were suicidal overdoses or intentional abuse associated with the concomitant use of other drugs, and should not be directly attributed to ibuprofen. A few of the cases could have been due to allergic reactions related to ibuprofen use. An allergy warning is required to appear in the labeling of OTC ibuprofen drug products marketed under an NDA/ANDA to alert consumers of that risk.

5. Drug-Drug Interactions

The petition (Ref. 1) included eight journal articles (Refs. 53 and 130 through 135) that described clinical trials involving a variety of antihypertensive agents (i.e., calcium channel blockers, angiotensin converting enzyme inhibitors, and triamterene-hydrochlorothiazide) in chronically treated and elderly hypertensive patients with renal insufficiency who took OTC doses of ibuprofen. The studies did not demonstrate any diminished antihypertensive effectiveness when these drugs were coadministered with ibuprofen. This is in contrast to the diminution in the effectiveness of a variety of antihypertensive medications such as beta-blockers, ACE inhibitors, hydralazine, and diuretic agents in patients who use prescription doses of NSAIDs (Ref. 136).

6. Tentative Conclusion on the Safety of Ibuprofen

Based on the evaluation of available information, the agency concludes ibuprofen is generally recognized as safe for OTC use by adults and children 12 years of age and older, if the labeling includes appropriate warnings and directions for use. The agency is proposing to include warnings to alert individuals of the potential for renal and GI problems associated with the use of ibuprofen. For consistency in labeling, the agency is also proposing to include the same allergy alert warning statements in the labeling of all OTC NSAID products.

C. Effectiveness

The reports of clinical effectiveness trials submitted in the petition (Ref. 1) compared OTC doses of ibuprofen to aspirin, acetaminophen, and/or codeine-containing analgesic compounds. The petition identified a number of double-blind, randomized clinical trials, either placebo or active controlled. Most of the studies are generally applicable to the indications proposed in § 343.50 of the TFM for other OTC internal analgesic/antipyretic drug products (e.g., dental pain, pain of arthritis, dysmenorrhea, headache, and sore throat). Nineteen studies (Refs. 137 through 155) were placebo-controlled, and the reports concluded that ibuprofen, at the OTC doses studied, was a more effective analgesic agent than placebo. The authors of these studies (Refs. 137 through 155) and three active-controlled trials (Refs. 156, 157, and 158) also reported that, at the OTC doses studied, ibuprofen was either comparable to or more effective than aspirin, acetaminophen, and various strengths of codeine-containing analgesics or other NSAIDs tested. The pain models included in the studies were dental, headache, episiotomy, sore throat, and dysmenorrhea. One report (Ref. 159) described the results of two randomized, double-blind, parallel studies that compared the antipyretic effectiveness of ibuprofen to aspirin in adults, which showed effectiveness of both the 200- and 400-mg doses of ibuprofen.

The only dosage forms used in the trials and identified in the reports were tablets, caplets, and capsules. Some of the reports did not identify the dosage form. Table 2 of this document summarizes the placebo-controlled and active-controlled trials the agency reviewed to demonstrate the effectiveness of OTC doses of ibuprofen for various pain and fever models.

TABLE 2.—TRIALS TO DEMONSTRATE THE EFFECTIVENESS OF IBUPROFEN FOR VARIOUS PAIN AND FEVER MODELS

Investigator(s) (reference number)	Type of Pain Measured	Dosage Form	Treatment[2] (dosage in mg)	Reported Results
Cooper (137)	Dental	Tablets	I 400; AP 600; AP300 + C 30; AP 600 + C 60; P	I more effective than AP 600, AP 300 + C 30, and P (p values not given)
Cooper (138)	Dental	Tablets	I 400; C 60; A 650; A 650 + C 60; I 400 + C 60; P	I 400 more effective than A ($p<0.05$) and C ($p<0.001$); I + C more effective than A + C ($p<0.05$)
Cooper (139)	Dental	N.S.[1]	I 200; AP 650; P	I more effective than P ($p<0.05$); I comparable to AP
Cooper (140)	Dental	N.S.[1]	I 200; I 400; AP 1000; P	I 200 and I 400 comparable to AP; all more effective than P (p values not given)
Cooper (141)	Dental	N.S.[1]	I 200; I 400; AP 1000; P	I 200 and I 400 comparable to AP; all more effective than P (p values not given)
Cooper (142)	Dental	N.S.[1]	I 200; AP 650; I 200 + AP 650; P	I more effective than AP ($p<0.05$) and P ($p<0.025$); I + AP more effective than AP ($p<0.05$) and P (p value not given)
Cooper et al. (143)	Dental	N.S.[1]	I 400; AP 1000; P	I more effective than AP ($p<0.05$) and P ($p<0.001$)
Forbes et al. (144)	Dental	Capsule	I 400; AP 600; AP 600 + C 60; K 10; K 20; P	I, K 10 and K 20 not significantly different; I more effective ($p<0.05$) than AP and AP + C; all more effective than P ($p<0.01$)

TABLE 2.—TRIALS TO DEMONSTRATE THE EFFECTIVENESS OF IBUPROFEN FOR VARIOUS PAIN AND FEVER MODELS—Continued

Investigator(s) (reference number)	Type of Pain Measured	Dosage Form	Treatment[2] (dosage in mg)	Reported Results
Forbes et al. (145)	Dental	Capsule	I 400; A 650; B 5; B 10; B 25; P	I more effective ($p<0.01$) than A, B 5, and B 10; I comparable to B 25; all more effective than P ($p<0.01$ to $p<0.05$)
Forbes et al. (146)	Dental	Capsule	I 400; A 650; B 10; B 25; B 50; B 100; P	I more effective than A ($p<0.01$); B 25 and B 100 more effective than I ($p<0.01$); all more effective than P ($p<0.01$)
Giles et al. (147)	Dental	N.S.[1]	I 200; C 15; I 200 + C 15; A 600; P	I comparable to A and I + C, and more effective ($p<0.05$) than C and P; I + C comparable to A and more effective ($p<0.05$) than C and P
Jain et al. (148)	Dental	Tablet	I 100; I 200; I 400; A 650; P	I (all doses) and A more effective than P ($p<0.001$); no consistent significant difference among active groups
Mehlisch et al. (149)	Dental	Tablet or caplet	I 400; AP 1000; P	I more effective ($p<0.001$) than AP and P; AP more effective than P ($p<0.001$)
Ngan et al. (150)	Dental	Capsule	I 400; A 650; P	I more effective ($p<0.05$) than A and P; A more effective than P ($p<0.05$)
Diamond (151)	Headache	Tablet	I 400; I 800; A 650; P	No statistically significant difference among active drugs; all active drugs more effective than P ($p = 0.02$ to $p = 0.018$)
Schachtel et al. (152)	Headache	Capsule	I 400; AP 1000; P	I more effective ($p<0.01$) than AP and P; AP more effective than P ($p<0.01$)
Nebe et al. (153)	Headache	Tablet	I 200; A 500; P	I at least as effective as A; I and A more effective than P ($p = 0.002$ and 0.046, respectively)
Schachtel et al. (154)	Episiotomy	N.S.[1]	I 400; AP 1000; P	I more effective ($p<0.05$) than AP and P; AP more effective than P ($p<0.05$)
Schachtel et al. (155)	Sore throat	N.S.[1]	I 400; AP 1000; P	I more effective ($p<0.01$) than AP and P; AP more effective than P ($p<0.01$)
Habib et al. (156)	Dental	Enteric coated tablets.	I 400; DHC 30; A 600 + CA 60 (soluble); AP 1000 + C 16 + CA 60 (dispersible)	I comparable to AP + C + CA ($p>0.05$) and A + CA ($p>0.05$); All more effective than DHC ($p<0.001$ in each case)
Noyelle et al. (157)	Headache	Capsule	I 400; A 650; A 1000; AP 1000	I comparable to A 1000; I more effective ($p>0.01$) than A 650 and AP 1000
Milsom and Andersch (158).	Dysmenorrhea	N.S.[1]	I 400; N 250; AP 500	I reduced pain ($p<0.05$); I more effective than N and AP (no p value given); N and AP no significant reduction in pain
Gaitonde et al. (159)	Fever	Capsule	I 200; A 300 (Study 1), I 400; A 600 (Study 2)	I 200 and I 400 effective as antipyretics; I 200 comparable to A 300 ($p>0.05$); I 400 comparable to A 600 ($p>0.05$)

[1] N.S. = Not stated.
[2] A = aspirin; AP = acetaminophen; B = bromfenac; CA = caffeine; C = codeine; DHC = dihydrocodeine; I = ibuprofen; K = ketorolac; N = naproxen sodium; P = placebo.

The agency has evaluated the reports and agrees that the studies support the effectiveness of ibuprofen as an OTC drug product for a variety of pain and fever models. These studies support the general recognition of racemic ibuprofen as an effective internal analgesic/antipyretic drug at a minimum dose of 200 mg every 4 to 6 hours.

D. Labeling

Internal analgesic/antipyretic drug products containing ibuprofen have been marketed for OTC use under the NDA/ANDA process for many years with indications for use and warnings similar to those proposed in § 343.50(b) and (c) of the TFM for other OTC internal analgesic/antipyretic drug products. In the **Federal Register** of March 17, 1999 (64 FR 13254), FDA established a standardized format and standardized content for the labeling of OTC drug products (§ 201.66 (21 CFR 201.66)). Table 3 of this document shows parts of the approved labeling for currently marketed OTC ibuprofen drug products for adults under the NDA process, using the new "Drug Facts" labeling format in § 201.66.

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Table 3.–Current (NDA) Ibuprofen Labeling using the Format in § 201.66

Drug Facts

Active Ingredient (in each tablet) — ***Purpose***
Ibuprofen (200 mg) — Pain reliever/fever reducer

Uses
- temporarily relieves minor aches and pains due to:
  - minor pain of arthritis
  - headache
  - backache
  - menstrual cramps
  - the common cold
  - muscular aches
  - toothache
- temporarily reduces fever

Warnings
Allergy alert: Ibuprofen may cause a severe allergic reaction which may include:
- hives
- facial swelling
- asthma (wheezing)
- shock

Alcohol warning: If you consume 3 or more alcoholic drinks every day, ask your doctor whether you should take ibuprofen or other pain relievers/fever reducers. Ibuprofen may cause stomach bleeding.

Do not use if you have ever had an allergic reaction to any other pain reliever/fever reducer

Ask a doctor before use if you have:
- stomach pain
- problems or serious side effects from taking pain relievers or fever reducers

Ask a doctor or pharmacist before use if you are:
- under a doctor's care for any serious condition
- taking any other drug
- taking any other product that contains ibuprofen or any other pain reliever/fever reducer

When using this product take with food or milk if stomach upset occurs

Stop use and ask a doctor if:
- an allergic reaction occurs. Seek medical help right away.
- pain gets worse or lasts more than 10 days
- fever gets worse or lasts more than 3 days
- stomach pain or upset gets worse or lasts
- redness or swelling is present in the painful area
- any new symptoms occur

If pregnant or breast-feeding, ask a health professional before use. It is especially important not to use ibuprofen during the last 3 months of pregnancy unless definitely directed to do so by a doctor because it may cause problems in the unborn child or complications during delivery.

Keep out of reach of children. In case of overdose, get medical help or contact a Poison Control Center right away.

Directions
- adults:
  - take 1 tablet every 4 to 6 hours while symptoms persist
  - if pain or fever does not respond to 1 tablet, 2 tablets may be used
  - do not exceed 6 tablets in 24 hours unless directed by a doctor
  - the smallest effective dose should be used
- children under 12 years: ask a doctor

Other information ■ store at 20 - 25°C (68 - 77°F). ■ avoid high humidity and excessive heat above 40°C (104°F).

Inactive ingredients [list inactive ingredients in alphabetical order]

Questions or Comments? Call xxx xxx xxxx

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In addition to the indications approved for currently marketed OTC ibuprofen 200-mg products, the proposed labeling in the TFM for other internal analgesic/antipyretic drug products includes an indication for sore throat in § 343.50(b)(1). The agency will discuss the proposed sore throat indication for all of these drug products in a future issue of the **Federal Register**. Currently marketed ibuprofen for adult use does not include an indication for sore throat. Thus, the agency is not including a sore throat claim for ibuprofen in this current proposal.

The approved labeling of OTC drug products containing aspirin, ibuprofen, ketoprofen, and naproxen sodium as active ingredients, marketed under the NDA/ANDA process, includes an "Allergy alert" warning and additional allergy warning statements under the headings "Do not use" and "Stop use and ask a doctor if" (see table 3 of this document). These allergy warning statements are similar to the allergy warnings requested in the petition. Proposed labeling for OTC drug products containing aspirin ingredients in § 343.10(b) and (c) (21 CFR 343.10(b) and (c)) of the TFM also includes an allergy warning in § 343.50(c)(1)(iv), which states: "Do not take this product if you are allergic to aspirin or if you have asthma unless directed by a doctor." For those products containing salicylate active ingredients in § 343.10(d) through (f) the proposed warning in § 343.50(c)(1)(vi) of the TFM states: "Do not take this product if you are allergic to salicylates (including aspirin) unless directed by a doctor."

The Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products (the Panel) proposed allergy warnings for aspirin. In discussing the safety of OTC aspirin use (42 FR 35346 at 35397 through 35399, July 8, 1977), the Panel concluded that in sensitive individuals aspirin produces allergic type reactions, that include: (1) Rash, (2) swelling, (3) hives and giant hives, (4) shortness of breath to severe asthma attacks, and (5) anaphylactic shock involving laryngeal swelling and a precipitous drop in blood pressure. The Panel provided a detailed discussion of the importance of an aspirin hypersensitivity warning (42 FR 35346 at 35397). The Panel noted that the incidence of hypersensitivity reactions (dermal and pulmonary) has been estimated to be about 0.2 percent of the general population, but that as much as 20 percent is found in some subgroups (asthmatics and people with chronic urticaria). Thus, the Panel concluded that these adverse effects occur in a significant proportion of the population and they can be serious and even life-threatening in some instances.

The Panel suggested an asthmatic response to aspirin is nonimmunologic and related to the inhibition of prostaglandin synthesis, and noted that cross-sensitivity is commonly seen with other prostaglandin synthesis inhibitors including indomethacin, flufenamic acid, mefenamic acid, ibruprofen, and phenylbutazone. The Panel suggested dermal hypersensitivity is an immunologic response, and that these individuals also appear to be susceptible to anaphylaxis and more susceptible to cross-sensitivity to salicylic acid and acetaminophen (42 FR 35346 at 35398). The Panel concluded, based on the known risk of aspirin and salicylate hypersensitivity in a significant portion of the general population, that these products should bear warnings alerting consumers who are allergic to these products to consult a doctor before using the products (42 FR 35346 at 35499). The agency has determined that a consistent approach is needed for all OTC NSAID drug products. As discussed in section IV of this document, the agency is proposing standardized allergy alert and warning statements for all OTC NSAID IAAA drug products.

In the safety discussion above (sections III.B.2.a, III.B.2.b, III.B.2.d, and III.B.3), the agency noted that the use of ibuprofen has some risk for certain individuals. GI bleeding may be increased for certain at-risk individuals (i.e., people with ulcers). For people taking anticoagulants, the risk for GI bleeding is already increased, and the use of ibuprofen by those individuals is likely to further increase that risk. Individuals with certain medical conditions are at increased risk for developing renal failure. The agency believes individuals need to be alerted to these risks. The agency is proposing that the labeling of ibuprofen include warnings related to GI bleeding, use of anticoagulant drugs, and medical conditions that predispose individuals to renal failure, using the standardized labeling format for OTC drug products.

IV. The Agency's Tentative Conclusions and Proposals

After reviewing the information submitted and other relevant information, FDA has determined that ibuprofen 200-mg tablets have been used for a material time and to a material extent to qualify for inclusion in an OTC drug monograph. Therefore, FDA is proposing that ibuprofen, in 200-mg tablet formulation, be generally recognized as safe and effective as an OTC IAAA drug for adults and children 12 years of age and older. The safety and effectiveness of ibuprofen are further supported by the data the agency evaluated in two NDAs in 1983, the findings of the AAC in 1983, and the subsequent marketing history of ibuprofen for OTC use. The agency believes ibuprofen can be marketed OTC under the monograph system for the indications previously approved under the NDA/ANDA process for adult formulations if labeled with the appropriate warnings and directions for use. The agency agrees with the petition that the proposed labeling should only include adults and children 12 years of age and older. The agency is proposing to amend the TFM for OTC IAAA drug products to include ibuprofen 200 mg, in tablet formulation, in § 343.10(g) as a safe and effective ingredient for the relief of pain and fever in adults and children 12 years of age and older, and to include specific warnings and directions for use in § 343.50(c) and (d), similar to those suggested by the petition and those approved by FDA for currently marketed OTC ibuprofen drug products under the new drug review process. The proposed labeling is in a different format than that requested by the petition. However, the format is consistent with the new OTC labeling format in § 201.66, which was issued after the petition was submitted. In addition to the warnings already included in the labeling for OTC ibuprofen drug products under the NDA/ANDA process, the agency is proposing warning statements related to GI and renal problems and use of anticoagulant drugs.

The agency also tentatively concludes that, for consistency, the "Allergy alert" and additional allergy warning statements required for ibuprofen, ketoprofen, and naproxen sodium should be extended to all OTC NSAID IAAA drug products, whether marketed under an OTC drug monograph or an NDA/ANDA. These standardized allergy alert and warning statements (in proposed § 201.324) would provide the following information:

(a) Allergy alert: [insert name of active ingredient (first letter of first word for ingredient in uppercase)] may cause a severe allergic reaction which may include: • hives • facial swelling • asthma (wheezing) • shock

(b) Do not use: • if you have ever had an allergic reaction to any other pain reliever/fever reducer [This statement appears as the first warning under the subheading "Do not use."]

(c) Stop use and ask a doctor if: • an allergic reaction occurs. Seek medical help right away. [These statements appear as the first warning under the subheading "Stop use and ask a doctor if."]

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Should this proposed amendment to part 201 relating to allergy warning statements for OTC IAAA drug products be published as a final rule, then the proposed allergy warnings in §§ 343.50(c)(1)(iv)(A), (c)(1)(vi), (c)(2)(iv)(A), and (c)(2)(vi) will be replaced with a reference to the allergy warning requirements in proposed § 201.324. Final agency action on this proposal will occur in a future issue of the **Federal Register**.

V. Summary of Proposed Agency Changes

Section 201.63

1. The agency is proposing to amend the third-trimester pregnancy warning to include OTC drug products containing ibuprofen.

Section 201.324 (proposed)

2. The agency is proposing to require an "Allergy alert" and additional allergy warning statements for all OTC drug products containing NSAID IAAA active ingredients—including, but not limited to, aspirin, carbaspirin calcium, choline salicylate, ibuprofen, ketoprofen, magnesium salicylate, naproxen sodium, and sodium salicylate. (See section III of this document.)

Part 343 (21 CFR Part 343)

3. The agency is proposing to add a definition for ibuprofen in § 343.3.

4. The agency is proposing to add § 343.10(g) to include ibuprofen as an active ingredient.

5. The agency is proposing to reword the statements in § 343.20(b)(2) providing for the combination of any analgesic/antipyretic in § 343.10 and cough-cold products and in § 343.20(b)(4) providing for the combination of any analgesic in § 343.10 and diuretic drug products to provide for combinations with specific IAAA active ingredients (but not including ibuprofen). The petition did not include data for the safety and effectiveness of ibuprofen in combination with these ingredients, nor did it request ibuprofen, as a combination drug product, to be included in the TFM.

6. The agency is proposing to revise the headings in proposed § 343.50(b)(1), (c)(1)(i), and (c)(2)(i) from "For products containing any ingredient in § 343.10." to "For products containing any ingredient in § 343.10(a) through (f)" to limit those paragraphs to specific active ingredients (not including ibuprofen).

7. The agency is proposing to add § 343.50(b)(5) to include indications for ibuprofen.

8. The agency is proposing to revise the phrase related to allergy in the allergy/asthma warning for adults in proposed § 343.50(c)(1)(iv)(A) to read as follows: "Do not use this product if you have asthma unless directed by a doctor". Similarly, for products labeled for children in § 343.50(c)(2)(iv)(A) the agency is proposing to revise the warning to read as follows: "Do not give this product to children who have asthma unless directed by a doctor".

9. The agency is proposing to revise the warning in proposed § 343.50(c)(1)(iv)(B) to reference the pregnancy/breast-feeding warnings in § 201.63(a) and (e).

10. The agency is proposing to revise the warnings in § 343.50(c)(1)(iv)(A), (c)(1)(vi), (c)(2)(iv)(A), and (c)(2)(vi) for adults and children, respectively, to require the allergy warning statements in proposed § 201.324 for products containing any ingredient in § 343.10(b) through (g). (The allergy part of the previously proposed allergy/asthma warning in § 343.50(c)(1)(iv)(A) is now covered by proposed § 201.324.)

11. The agency is proposing the following warnings for drug products containing ibuprofen in § 343.10(g) labeled for use by adults:

(a) The "Allergy alert" warnings in proposed § 201.324(a), (b), and (c).

(b) The alcohol warning in § 201.322(a)(2).

(c) The following statements after the subheading "Ask a doctor before use if you have:

- problems or serious side effects from taking pain relievers or fever reducers
- stomach problems that last or come back, such as heartburn, upset stomach, or pain
- ulcers
- bleeding problems
- high blood pressure, heart or kidney disease, are taking a diuretic, or are over 65 years of age".

(d) The following statements after the subheading "Ask a doctor or pharmacist before use if you are:

- under a doctor's care for a serious condition
- taking any other product that contains ibuprofen, or any other pain reliever/fever reducer
- taking a prescription drug for anticoagulation (blood thinning)
- taking any other drug".

(e) The following statement after the subheading "When using this product take with food or milk if stomach upset occurs".

(f) The following statements after the subheading "Stop use and ask a doctor if:

- an allergic reaction occurs. Seek medical help right away.
- pain gets worse or lasts more than 10 days
- fever gets worse or lasts more than 3 days
- stomach pain or upset gets worse or lasts
- redness or swelling is present in the painful area
- any new symptoms appear".

(g) The pregnancy/breast-feeding warning in § 201.63 of this chapter.

(h) The "Keep out of reach of children" warning in § 330.1(g).

12. The agency is proposing the following directions for ibuprofen in § 343.10(g):

"• do not take more than directed [in bold type]

- adults and children 12 years and over:
- 200 milligrams[3] every 4 to 6 hours while symptoms persist
- if pain or fever does not respond to 200 milligrams[3], 400 milligrams[3] may be used
- do not exceed 1,200 milligrams[3] in 24 hours, unless directed by a doctor
- the smallest effective dose should be used
- children under 12 years: ask a doctor".

[3]Convert number of milligrams to proper dosage.

VI. Labeling Guidance

In the **Federal Register** of March 17, 1999 (64 FR 13254), the agency published a final rule for standardized format and content requirements for OTC drug product labeling under § 201.66. An example of some aspects of the required format for labeling of OTC IAAA drug products containing ibuprofen appears in table 3 of this document. The ibuprofen labeling in the proposed amendment to the TFM (see the codified section of this document) appears in the new format.

VII. Implementation

Ibuprofen may be marketed only under an approved drug application prior to completion of a final rule for OTC IAAA drug products.

The agency encourages manufacturers to comply voluntarily with the provisions of this proposed rule for the labeling of OTC NSAID IAAA drug products that do not contain ibuprofen and that are marketed under an OTC drug TFM prior to the completion of a final rule, despite the fact that revisions in the requirements may occur in the final rule in response to submitted comments. Such labeling may be disseminated pending issuance of a final rule, subject to the risk that the agency may, in the final rule, adopt a different position that could require relabeling, recall, or other regulatory action. Should any manufacturer choose to adopt the labeling described in this proposed rule, and should any revisions occur in the final rule, the agency will permit the use of existing stocks of

labels for those products labeled according to this proposed rule for a period of 18 months following the publication of the final rule. Those manufacturers who do not wish to revise the labeling in accordance with this proposal may continue to use the labeling proposed in the 1988 TFM (53 FR 46204 at 46258 through 46260) until a final rule becomes effective.

VIII. Analysis of Impacts

FDA has examined the impacts of this proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the principles set out in the Executive order and in these two statutes. OMB has determined that the proposed rule is a significant regulatory action as defined by the Executive order. This economic analysis, together with other relevant sections of this document, serves as the agency's initial regulatory flexibility analysis, as required under the Regulatory Flexibility Act.

The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this proposed rule, because the proposed rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this proposed rule is to include ibuprofen in the monograph for OTC IAAA drug products and to require consistent "Allergy alert" and additional allergy warning statements in the labeling of all OTC NSAID IAAA products. As most OTC NSAID IAAA products will be marketed under the final OTC IAAA monograph, these products will not have to include the allergy warnings in this proposal in product labeling until the final monograph is issued and becomes effective.

Current manufacturers of OTC 200-mg ibuprofen drug products should incur only minor one-time costs to relabel their products to meet the monograph. These costs may be offset by the elimination of the cost to maintain a market application, such as filing annual reports and submitting manufacturing supplements. Other manufacturers who may wish to market OTC 200-mg ibuprofen drug products would be able to enter the marketplace without the costs associated with obtaining an approved NDA/ANDA. Their costs would be those associated with the standard startup of any OTC drug marketed under the monograph system.

This proposed rule amends part 201 (21 CFR part 201) and will require relabeling for many OTC drug products containing NSAID IAAA ingredients. Most manufacturers that market such products under an approved NDA/ANDA already include the proposed "Allergy alert" and allergy warning statements in the product's labeling. Some manufacturers of these products, however, would have to revise the "Allergy alert" and allergy warning statements to conform to the proposed labeling. In addition, manufacturers of monograph products containing NSAID IAAA ingredients will have to relabel and include the revised allergy warnings in accord with the compliance dates specified in the IAAA products final rule. However, these allergy warnings are only one part of the overall labeling changes that will occur at that time when IAAA products are required to implement the standardized format and content requirements in § 201.66. The agency does not believe the proposed revised warnings will have a measurable impact on product usage.

The agency's analysis of impacts in the final rule that established the labeling requirements in § 201.66 applied only to products covered by the final OTC drug monographs or approved product applications (64 FR 13254 at 13283). Because these relabeling costs for OTC IAAA products have not been accounted for in earlier rules, the agency is presenting them here. The following discussion addresses the cost of product relabeling under § 201.66 that will result from the IAAA final monograph, which includes, in part, the labeling in this proposal.

Based on information in the agency's Drug Listing System, there are approximately 102 manufacturers and 322 distributors that together account for 2,000 to 2,400 OTC NSAID IAAA products. Assuming an average of 3 individual stockkeeping units (SKUs) (individual products, packages, and sizes) per product, up to 7,200 SKUs would require the allergy warnings. Estimates of relabeling costs for the type of changes required by the IAAA final monograph vary greatly and range from $500 to $15,000 per SKU depending on whether the products are nationally branded or private label. Because of the large number of products affected, the agency used the same weighted average cost to relabel (i.e., $3,600 per SKU)[1] that was used to estimate the cost of the standardized format and content requirements for OTC drug products in § 201.66 (64 FR 13254 at 13279 to 13281). Therefore, the estimated one-time cost to relabel these products is $25.9 million ($3,600 x 7,200 SKUs).

In addition to the above costs, some manufacturers may incur one-time and annually recurring costs if they need to increase the size of the label and/or package size of some SKUs because of the additional information required by this proposed rule. The agency had estimated that about 6,400 of the almost 100,000 marketed OTC drug SKUs may require increased label and/or package sizes to comply with the final labeling rule (64 FR 13254). As many of these 6,400 SKUs were for products subject to this final rule, much of the costs for increasing label and/or package sizes may have already been accounted for in the agency's impact analysis of that broader rule. The agency estimates that the additional lines of labeling required by this proposed rule could compel an additional 5 percent of the approximately 7,200 affected SKUs to increase their label size and/or package size.[2]

[1]The average weighted cost to relabel was calculated by using midpoint estimates of the cost to redesign labels and value of inventory losses of old labels by type of product and firm. The midpoint estimate for labeling design for large nationally branded SKUs is $10,000 per SKU, the midpoint estimate for smaller branded SKUs is $4,500 per SKU, and the cost to relabel private label SKUs is $1,261. About 10 percent of the SKUs are nationally branded goods, 20 percent are smaller branded products, and 70 percent of the SKUs are private label goods. The average label inventory loss is about $2,968 per SKU for nationally branded products and about $576 per SKU for smaller branded products and private label goods. (($10,000 x 0.10) + ($4,500 x 0.20) + ($1,261 x 0.70) + ($2,968 x 0.10) + ($576 x 0.90) = $3,598)

[2]FDA has assumed tht all 7,200 SKUs will need to be relabeled to accommodate the standardized

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Because of the large number of products affected by this rule, the agency assumes that the average cost per SKU to increase label and/or package sizes would be similar to that previously estimated by FDA for its analysis of the standardized format and content requirements for OTC drug products in § 201.66 (64 FR 13254). The model used to estimate the cost to change label/package sizes for that rule was developed by Eastern Research Group, Inc. (ERG), a private economics consulting firm under contract to FDA (Ref. 160). ERG assigned probabilities to several options for package changes, including adding a carton (if not already present), adding a fifth panel, increasing the size of the packaging or switching to a nonstandard form of labeling such as peel-back or accordion labels. Where applicable, the cost for changing a container size included container inventory loss, adjustment of the packaging line, and stability testing. Based on this model, FDA had estimated that the cost to increase label/package sizes to comply with the standardized format and content requirements for OTC drug products in § 201.66 was $38.1 million for 6,313 SKUs, with an annual recurring cost of $11.5 million. Consequently the average per SKU one-time cost was $6,038, and the average per SKU recurring cost was $1,820. Under the same assumptions, this proposed rule would impose additional one-time costs for increasing label/package sizes of $2.2 million (0.05 x 7,200 SKUs x $6,038), with annual recurring costs of $0.7 million (0.05 x 7,200 SKUs x $1,820). Thus, FDA estimates the overall costs of the OTC IAAA final monograph, which would include the labeling in this proposed rule, and the labeling required under § 201.66 to be $28.1 million in one-time costs and $0.7 million in annual recurring costs.

The proposed rule would not require any new reporting and recordkeeping activities, and no additional professional skills are needed. The March 17, 1999, standardized format and content requirements final rule for OTC drug product labeling in § 201.66 (64 FR 13254) will have an effect on the labeling of most of these products. There are no Federal rules that duplicate, overlap, or conflict with the proposed rule.

This proposed rule should not have a significant economic impact on a substantial number of small entities. However, the agency lacks sales information for the affected companies to quantify the impact. The Small Business Administration has determined that a small firm in this industry employs fewer than 750 employees. Approximately 70 percent of the 102 manufacturers affected by this proposed rule are estimated to be small. (Note: The cost to relabel private label goods are usually bourne by the manufacturer rather than the distributor.) The economic impact on any particular small firm is difficult to measure, because it will vary with the number of products affected, the number of SKUs per product, and the number of label and/or package sizes that require changing. For example, if a small manufacturer must relabel three products, or nine SKUs, the total one-time cost would be $32,400 assuming $3,600 as the average cost to relabel. Another small manufacturer of private label products may also need to relabel 3 products, with 3 SKUs per product, but for 20 customers. Its cost would be $648,000. If either of these manufacturers had to increase the label and/or package sizes of their SKUs, the costs would be even higher. However, the total cost will primarily result from relabeling OTC IAAA drug products in accord with the future final monograph for those products and the standardized format and content requirements for labeling OTC drug products in § 201.66 (64 FR 13254) at the same time. The agency invites small firms to address this economic impact. (See section XI of this document—request for comments.)

Concerning the allergy alert warning, the agency considered but rejected the following alternatives: (1) Voluntary relabeling, and (2) longer implementation period. The agency does not consider either of these approaches acceptable because they do not ensure that consumers will have the most updated information needed for the safe and effective use of OTC drug products containing NSAID IAAA active ingredients. Concerning ibuprofen, the agency considered: (1) Not including ibuprofen in the monograph, and (2) marketing before a final rule is issued. The option to not include ibuprofen in the monograph was rejected because the agency considers the data presented supportive of monograph status. The agency is not allowing marketing under the monograph to occur prior to a final rule because of a number of new labeling statements being proposed. Not allowing marketing under this proposed rule does not interrupt current OTC marketing of products containing ibuprofen and will allow the agency to consider comments on the additional labeling for OTC ibuprofen drug products before finalizing the monograph labeling. The agency does not consider an exemption for small entities who wish to market ibuprofen to be necessary because those manufacturers or distributors can enter the marketplace under the monograph at any time after a final rule issues.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC drug products that contain ibuprofen or other NSAID IAAA active ingredients. Comments regarding the impact of this rulemaking on these OTC drug products should be accompanied by appropriate documentation. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

IX. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements in this proposal are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the proposed labeling is a public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public (5 CFR 1320.3(c)(2)).

X. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this proposal by November 19, 2002. Submit written comments on the agency's economic impact determination by November 19, 2002. Three copies of all written comments are to be submitted. Individuals submitting written comments or anyone submitting electronic comments may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

format and content requirements in § 201.66 and the proposed warning. When calculating the cost of the standardized format and content requirements, FDA included the cost to increase the size of the label or the package size to accommodate the standardized format. As a result of this proposal, the warning adds additional lines of text to the label. FDA estimates that 5 percent of the 7,200 SKUs may require larger labels or package sizes to accommodate the additional text.

XII. Proposed Effective Date

FDA is proposing that any final rule based on this proposal become effective 12 months after the date of its publication in the **Federal Register** or at a later date if stated in the final rule. The compliance date for products with annual sales less than $25,000 would be 24 months after the date of publication of a final rule in the **Federal Register** or at a later date if stated in the final rule.

XIII. References

The following references are on display in the Dockets Management Branch (address above), under Docket No. 77N–094I (or 77N–0094, where indicated), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. CP13, Docket No. 77N–0094, Dockets Management Branch.
2. Comment No. C233, Docket No. 77N–0094, Dockets Management Branch.
3. *The United States Pharmacopeia 24—The National Formulary 19*, The United States Pharmacopeial Convention, Inc., Rockville, MD, p. 856, 1999.
4. *Martindale—The Extra Pharmacopeia*, 31st ed., edited by J. Reynolds, Royal Pharmaceutical Society, London, pp. 50–51, 1996.
5. Minutes of the Seventeenth Meeting of the Arthritis Advisory Committee, OTC Vol. 03BTFM(I), Docket No. 77N–094I, Dockets Management Branch.
6. Summary Basis of Approval for New Drug Application for Ibuprofen (200 mg), OTC Vol. 03BTFM(I), Docket No. 77N–094I, Dockets Management Branch.
7. Comment No. CP3, Docket No. 77N–0094, Dockets Management Branch.
8. Comment No. PDN002, Docket No. 77N–0094, Dockets Management Branch.
9. Memoranda of Telecon Between Representatives of Whitehall Robins Health Care and FDA on August 6, 1998, and August 26, 1998, coded MT12 and MT13, respectively, Docket No. 77N–0094, Dockets Management Branch.
10. Comment No. SUP44, Docket No. 77N–0094, Dockets Management Branch.
11. Davies, E. F. and G. S. Avery, "Ibuprofen: A Review of Its Pharmacological Properties and Therapeutic Efficacy in Rheumatic Disorders," *Drugs*, 2:257–408, 1971.
12. Adams, S. S. et al., "Absorption, Distribution, and Toxicity of Ibuprofen," *Toxicology and Applied Pharmacology*, 15:310–330, 1969.
13. Neupert, W. et al., "Effects of Ibuprofen Enantiomers and its Coenzyme a Thioester on Human Prostaglandin Endoperoxide Synthases," *British Journal of Pharmacology*, 122:487–92, 1997.
14. Abernathy, D. R. and D. J. Greenblatt, "Ibuprofen Disposition in Obese Individuals," *Arthritis and Rheumatism*, 28:1117–21, 1985.
15. Adams, S. S., P. Bresloff, and C. G. Mason, "Pharmacological Differences Between the Optical Isomers of Ibuprofen, Evidence for Metabolic Inversion of the (-)-Isomer," *Journal of Pharmacy and Pharmacology*, 28:256–257, 1976.
16. Geisslinger, G. et al., "Pharmacological Differences Between the R(-)- and S(+)-Ibuprofen," *Agents and Actions*, 27:455–457, 1989.
17. Cheng, H. et al., "Pharmacokinetics and Bioinversion of Ibuprofen Enantiomers in Humans," *Pharmaceutical Research*, 11:824–830, 1994.
18. Cox, S. R., "Effect of Route of Administration on the Chiral Inversion of R(-)-Ibuprofen" (abstract), *Clinical Pharmacology and Therapeutics*, 43:146, 1988.
19. Jamali, F. et al., "Human Pharmacokinetics of Ibuprofen Enantiomers Following Different Doses and Formulations: Intestinal Chiral Inversion," *Journal of Pharmaceutical Sciences*, 81:221–225, 1992.
20. Davies, N. M., "Clinical Pharmacokinetics of Ibuprofen," *Clinical Pharmacokinetics*, 34:101–154, 1998.
21. Gillespie, W. R. et al., "Relative Bioavailability of Commercially Available Ibuprofen Oral Dosage Forms in Humans," *Journal of Pharmaceutical Sciences*, 71:1034–1038, 1982.
22. Adams, S. S. and J. Warwick-Buckler, "Ibuprofen and Flurbiprofen," *Clinical Rheumatic Diseases*, 5:359–378, 1979.
23. Verbeeck, R. K., "Pathophysiologic Factors Affecting the Pharmacokinetics of Nonsteroidal Anti-Inflammatory Drugs," *Journal of Rheumatology*, 15 (suppl. 17):44–57, 1988.
24. Jamali, F. and D. R. Brocks, "Clinical Pharmacokinetics of Ketoprofen and Its Enantiomers," *Clinical Pharmacokinetics*, 19:197–217, 1990.
25. Whitlam, J. B. and K. F. Brown, "Ultrafiltration in Serum Protein Binding Determinations," *Journal of Pharmaceutical Sciences*, 70:146–50, 1981.
26. Vowles, D. T. and B. Marchant, "Protein Binding of Ibuprofen and Its Relationship to Drug Interactions," *British Journal of Clinical Practice*, 1 (Symp. Suppl.):13–19, 1980.
27. Albert, K. S. and C. M. Gernaat, "Pharmacokinetics of Ibuprofen," *American Journal of Medicine*, 23:40–46, 1984.
28. Wanwimolruk, S., D. J. Birkett, and P. M. Brooks, "Protein Binding of Some Nonsteroidal Anti-Inflammatory Drugs in Rheumatoid Arthritis," *Clinical Pharmacokinetics*, 7:85–92, 1982.
29. Greenblatt, D. J. et al., "Absorption and Disposition of Ibuprofen in the Elderly," *Arthritis and Rheumatology*, 27:1066–1069, 1984.
30. Leeman, T. D. et al., "A Major Role for Cytochrome P450TB (CYP23) Subfamily in the Actions of Non-Steroidal Anti-Inflammatory Drugs," *Drugs Under Experimental and Clinical Research*, 19:189–195, 1993.
31. Hamman, M. A., G. A. Thompson, and S. D. Hall, "Regioselective and Stereoselective Metabolism of Ibuprofen by Human Cytochrome P450 2C," *Biochemical Pharmacology*, 54:33–41 1997.
32. Evans, A. M. et al., "The Relationship Between the Pharmacokinetics of Ibuprofen Enantiomers and the Dose of Racemic Ibuprofen in Humans," *Biopharmaceutics and Drug Disposition*, 11:507–518, 1990.
33. Rudy, A. C. et al., "Stereoselective Metabolism of Ibuprofen in Humans: Administration of R-, S- and Racemic Ibuprofen," *Journal of Pharmacology and Experimental Therapeutics*, 259:1133–1139, 1991.
34. Albert, K. S. et al., "Effects of Age on the Clinical Pharmacokinetics of Ibuprofen," *American Journal of Medicine*, 6:47–50, 1984.
35. Walter, K. and C. Dilger, "Ibuprofen in Human Milk," *British Journal of Clinical Pharmacology*, 44:211–212 1997.
36. Gurwitz, J. H. et al., "The Impact of Ibuprofen on the Efficacy of Antihypertensive Treatment With Hydrochlorthiazide in Elderly Patients," *Journal of Gerontology*, 51A: M74–M79, 1996.
37. Agency Letter to Prescription NSAID Manufacturers/Sponsors, OTC Vol. 03BTFM(I), Docket No. 77N–094I, Dockets Management Branch.
38. Motrin (prescription) Label, *Physicians' Desk Reference*, 54th ed., Directory Services edited by David W. Sifton, Medical Economics Co., Inc., Montvale, NJ, pp. 1684–1687, 2000.
39. "Summary of Safety and Efficacy Data From the Advil New Drug Application (1983)," Appendix C, Comment No. CP13, Docket No. 77N–0094, Dockets Management Branch.
40. Moore, N. et al., "The PAIN Study: Paracetamol, Aspirin, and Ibuprofen, New Tolerability Study. A Large-Scale, Randomized Clinical Trial Comparing the Tolerability of Aspirin, Ibuprofen, and Paracetamol for Short-Term Analgesia," *Clinical Drug Investigations*, 18:89–98, 1999.
41. Griffin, M. R. et al., "Nonsteroidal Anti-Inflammatory Drug Use and Increased Risk for Peptic Ulcer Disease in Elderly Persons," *Annals of Internal Medicine*, 114:257, 1991.
42. Bradley, J. D. et al., "Comparison of an Anti-Inflammatory Dose of Ibuprofen, An Analgesic Dose of Ibuprofen, and Acetaminophen in the Treatment of Osteoarthritis of the Knee," *New England Journal of Medicine*, 325:87–91, 1991.
43. Kaufman, D. W. et al., "Nonsteroidal Anti-Inflammatory Drug Use in Relation to Major Upper Gastrointestinal Bleeding," *Clinical Pharmacology and Therapy*, 53:485, 1993.
44. Strom, B. L. et al., "Gastrointestinal Tract Bleeding Associated With Naproxen Sodium Versus Ibuprofen," *Archives of Internal Medicine*, 157:2626–2631, 1997.
45. Bergmann, J. F. et al., "Endoscopic Evaluation of the Effect of Ketoprofen, Ibuprofen, and Aspirin on the Gastroduodenal Mucosa," *European Journal of Clinical Pharmacology*, 42:685, 1992.
46. Lanza, F. L., "A Review of Gastric Ulcer and Gastrointestinal Injury in Normal Volunteers Receiving Aspirin and Other Nonsteroidal Anti-Inflammatory Drugs," *Scandinavian Journal of Gastroenterology*, 24 (Suppl. 163):24–31, 1989.

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47. Bidlingmaier, A. et al. "Gastrointestinal Blood Loss Induced by Three Different Nonsteroidal Anti-Inflammatory Drugs," *Arzneim Forsch*, 45:491–493, 1995.

48. Insel, P. A., "Analgesic-Antipyretic and Anti-Inflammatory Agents and Drugs Employed in the Treatment of Gout" (Chapter 27), *Goodman and Gilman's The Pharmacological Basis of Therapeutics*, 9th ed., Hardman, J. G., and L. E. Limbird, Editors-in-Chief, McGraw-Hill, Health Professions Division, New York, NY, pp. 617–657, 1996.

49. Kirschenbaum, M. A. and G. A. Shah, "Nephropathy of Nonsteroidal Anti-Inflammatory Agents," *Textbook of Nephrology*, 3rd. ed., edited by Massry, S. G. and R. J. Glassock, Williams and Wilkins, Baltimore, MD, pp. 940–947, 1995.

50. Farquhar, W. B. et al., "Effects of Acetaminophen and Ibuprofen on Renal Function in the Stressed Kidney," *Journal of Applied Physiology*, 86:598–604, 1999.

51. Ciabottoni, G. et al., "Effects of Sulindac and Ibuprofen in Patients With Chronic Glomerular Disease: Evidence for the Dependence of Renal Function on Prostacyclin," *New England Journal of Medicine*, 310:279–283, 1984.

52. Whelton, A. et al., "Renal Effects of Ibuprofen, Piroxicam, and Sulindac in Patients With Asymptomatic Renal Failure: Prospective, Randomized, Crossover Comparison," *Annals of Internal Medicine*, 112:568–576, 1990.

53. Furey, S. A., R. Vargas, and F. G. McMahan, "Renovascular Effects of Nonprescription Ibuprofen in Elderly Hypertensive Patients With Mild Renal Impairment," *Pharmacotherapy*, 13:143–148, 1993.

54. Elsasser, G. N., L. Lopez, and E. Evans, "Reversible Acute Renal Failure Associated With Ibuprofen Ingestion and Binge Drinking," *Journal of Family Practice*, 27:221, 1988.

55. Johnson, G. and S. F. Wen, "Syndrome of Flank Pain and Acute Renal Failure After Binge Drinking and Nonsteroidal Anti-Inflammatory Drug Ingestion," *Journal of the American Society of Nephrology*, 5:1647, 1995.

56. McIntire, S. C. et al., "Acute Flank Pain and Reversible Renal Dysfunction Associated With Nonsteroidal Anti-Inflammatory Drug Use," *Pediatrics*, 92:459–460, 1993.

57. Wattad, A., T. Feehan, and F. M. Shepard, "A Unique Complication of Nonsteroidal Anti-Inflammatory Drug Use," *Pediatrics*, 93:693, 1993.

58. Moss, A. H. et al., "Over-the-Counter Ibuprofen and Renal Failure," *Annals of Internal Medicine*, 105:303, 1986.

59. Corwin, H. L. and J. V. Bonventure, "Renal Insufficiency Associated With Nonsteroidal Anti-Inflammatory Drugs," *American Journal of Kidney Disease*, 4:147–152, 1984.

60. Marasco, W. A., P. W. Gikas, and R. Azziz-Baumgartener, "Ibuprofen-Associated Renal Dysfunction, Pathophysiologic Mechanisms of Acute Renal Failure Hyperkalemia, Tubular Necrosis, and Proteinuria," *Archives of Internal Medicine*, 147:2107, 1987.

61. Fernando, A. H. N. et al., "Renal Failure After Topical Use of NSAID's," *British Medical Journal*, 308:533, 1994.

62. Spierto, T. J., M. B. Kaufman, and C. A. Stoukedes, "Acute Renal Failure Associated With the Use of Over-the-Counter Ibuprofen," *The Annals of Pharmacotherapy*, 26:714, 1992.

63. Atkinson, L. K., G. H. Goodship, and M. K. Ward, "Acute Renal Failure Associated With Acute Pyelonephritis and Consumption of Non-Steroidal Anti-Inflammatory Drugs," *British Medical Journal*, 292:97–98, 1986.

64. Sheiner, P. A. et al., "Acute Renal Failure Associated With the Use of Ibuprofen in Two Liver Transplant Recipients on FK506," *Transplant*, 57:1132–1133, 1994.

65. Rault, R. M., "Case Report: Hyponatremia Associated With Non-Steroidal Anti-Inflammatory Drugs," *American Journal of Medical Science*, 305:318–320, 1993.

66. Wachtel, A. et al., "Non-Steroidal Anti-Inflammatory Agents and Acute Renal Failure," *Mayo Clinic Proceedings*, 57:601, 1982 (Letters).

67. Henrich, W. L. et al., "Analgesic and the Kidney: Summary and Recommendations to the Scientific Advisory Board of the National Kidney Foundation From an Ad Hoc Committee of the National Kidney Foundation," *American Journal of Kidney Diseases*, 27:162–165, 1996.

68. Fukui, M. et al., "A Case of Drug-Induced Hepatitis With Multinuclear Giant Hepatic Cells in Adult," *Kanzo*, 26:500–505, 1985.

69. Alam, I., L. D. Ferrell, and M. Bass, "Vanishing Bile Duct Syndrome Temporarily Associated With Ibuprofen Use," *American Journal of Gastroenterology*, 91:1626–1630, 1996.

70. Garcia-Rodriguez, L.A. et al., "The Role of Non-Steroidal Anti-Inflammatory Drugs in Acute Liver Injury," *British Medical Journal*, 305:865–868, 1992.

71. Katz, L. M., and P. Y. Love, "NSAIDs and the Liver," *Therapeutic Applications of NSAIDs* (chapter 12), edited by J. P. Famaey and H. E. Paulus, Marcel Dekker, Inc., New York, NY, pp. 247–263, 1992.

72. Jain, S., "Ibuprofen-Induced Thrombocytopenia," *British Journal of Clinical Practice*, 48:51, 1994.

73. Manus, S. W. et al., "Ibuprofen Associated Pure White-Cell Aplasia," *Archives of Internal Medicine*, 314:624, 1986.

74. Deutsch P. H. and G. L. Mandell, "Reversible Pelger-Huet Anomaly Associated With Ibuprofen Therapy," *Archives of Internal Medicine*, 145:166, 1985.

75. Wittkowsky, A. K., "Thrombosis," *Applied Therapeutics: The Clinical Use of Drugs*, 6th ed., edited by Young, L. Y., and M. A. Koda-Kimble, Applied Therapeutics, Inc., Vancouver, WA, ch. 12, pp. 20–21, 1995.

76. Mathur, S. L., "Ibuprofen in Bronchial Asthma," *Journal of the Association of Physicians of India*, 36:523, 1988.

77. Ayers, J. G., D. M. Flemming, and R. M. Whittington, "Asthma Death Due to Ibuprofen," *Lancet*, 1:1082, 1987.

78. Anderson, J. S. and H. Guldager, "Ibuprofen-Triggered Asthma Attack in a Patient With Known Aspirin Hypersensitivity," *Ugeske Laeger*, 151:1885, 1989.

79. Antonicelli, L. and A. Tagliabracci, "Asthma Death Induced by Ibuprofen," *Monaldi Archives for Chest Disease*, 50:276–278, 1995.

80. Jamil, A. S. and F. S. Majd, "Life-Threatening Asthma and Anti-Inflammatory Drugs," *Journal of Kuwaiti Medical Association*, 22:165, 1988.

81. Sharma, S. K., "Ibuprofen (Brufen) Induced Bronchial Asthma," *Journal of the Association of Physicians of India*, 32:843, 1984.

82. Mandell, B. F. and Raps, E. C., "Severe Systemic Hypersensitivity Reaction to Ibuprofen Occurring After Prolonged Therapy," *American Journal of Medicine*, 82:817–820, 1987.

83. Lee, R. P., E. G. King, and A. S. Russell, "Ibuprofen: A Severe Reaction," *Canadian Medical Association Journal*, 61:463, 1986.

84. Harman Fridrich, H., G. A. Zach, and K. L. Fridrich, "Aspirin-Intolerance Syndrome: Report of a Case," *Oral Surgery, Oral Medicine, and Oral Pathology*, 61:463–465, 1986.

85. Butterfield H. et al., "Severe Generalized Reaction to Ibuprofen: Report of a Case," *Journal of Rheumatology*, 13:649, 1986.

86. Katz, J. et al., "Drug Allergy in Sjögren's Syndrome," *Lancet*, 337:239, 1991.

87. Ekert, F. et al, "Anaphylactoid Reactions Due to Ibuprofen" (abstract), *Journal of Allergy and Clinical Immunology*, 89:347, 1992.

88. Grimm, A. M. and J. E. Wolf, "Aseptic Meningitis Associated With Nonprescription Ibuprofen Use" (letter to the editor), *DICP, The Annals of Pharmacotherapy*, 23:712, 1989.

89. Katona, B. G. et al., "Aseptic Meningitis From Over-the-Counter Ibuprofen," *Lancet*, 1:59, 1988 (letters).

90. Durback, M. A., J. Freeman, and V. R. Schumacher, "Recurrent Ibuprofen-Induced Aseptic Meningitis: Third Episode After Only 200 mg of Generic Ibuprofen," *Arthritis and Rheumatology*, 31:813–815, 1988.

91. Agus, B. et al., "Acute Central Nervous System Symptoms Caused by Ibuprofen in Connective Tissue Disease," *Journal of Rheumatology*, 17:1094–1096, 1990.

92. Ewert, B. H., "Ibuprofen-Associated Meningitis in a Woman With Only Serologic Evidence of a Rheumatologic Disorder," *American Journal of Medical Science*, 287:326–327, 1989.

93. Lortholary, A. et al., "Generalized Status Epilepticus After Ingestion of Ibuprofen (Brufen) Disclosing Lupus Erythematosus," *LaRevue de Medicine Interne*, 11:243–244, 1990.

94. Treves, R. et al., "Aseptic Meningitis and Acute Renal Failure Induced by Ibuprofen During the Treatment of Systemic Lupus Erythematosus," *Revue de Rheumatisme*, 50:75–76, 1983.

95. Colamarino, R., M. Soubrier, and M. Zenut-Leaud, "Aseptic Meningitis Due to Ibuprofen (Nuprofen) in Cases of Connective-Tissue Disease," *Therapie*, 48:516–518, 1993.

96. Perera, D. R., A. K. Seiffert, and H. M. Greeley, "Ibuprofen and Meningoencephalitis," *Southern Medical Journal*, 100:619, 1984.

97. Thilman, A. F. et al., "Recurrent Aseptic Meningitis (Mollaret Meningitis)—Spontaneous and Drug-Induced Appearance," *Fortschritte der Neurologie-Psychiatrie* (Stuttgart), 59:493–497, 1991.

98. Gilbert, G. J. and H. W. Eichenbaum, "Ibuprofen-Induced Meningitis in an Elderly Patient With Systemic Lupus Erythematosus," *Southern Medical Journal*, 82:514–515, 1989.

99. Hanson, L. and H. J. Morgan, "Ibuprofen-Induced Aseptic Meningitis," *Journal of Tennessee Medical Association*, 87:58, 1994.

100. Lawson, J. M. and M. J. Grady, "Ibuprofen-Induced Aseptic Meningitis in a Previously Healthy Patient," *Western Journal of Medicine*, 143:386–387, 1985.

101. Quinn, J. P., R. A. Weinstein, and L. R. Caplan, "Eosinophilic Meningitis and Ibuprofen Therapy," *Neurology*, 34:108–109, 1984.

102. Mifsud, A. J., "Drug-Related Recurrent Meningitis," *Journal of Infection*, 17:151–153, 1988.

103. Van der Zwan, A. and J. G. Van Dam, "Side Effects of Medicinal Agents—Ibuprofen Meningitis," *Ned Tijdschr Geneeskd*, 136:1613–1614, 1992.

104. Chez, M. et al., "Ibuprofen-Induced Meningitis: Detection of Intrathecal IgG Synthesis and Immune Complexes," *Neurology*, 39:1578–1580, 1989.

105. Bouland, D. L., N. L. Specht, and D. R. Hegstad, "Ibuprofen and Aseptic Meningitis," *Annals of Internal Medicine*, 104:731, 1986.

106. Davis, B. J. et al., "Drug-Induced Aseptic Meningitis Caused by Two Medications," *Neurology*, 44:984–985, 1994.

107. Chaudhry, H. J. and B. A. Cunha, "Drug-Induced Aseptic Meningitis," *Postgraduate Medicine*, 90:65–70, 1991.

108. Morgan, A. and D. Clark, "CNS Adverse Effects of Nonsteroidal Anti-Inflammatory Drugs," *CNS Drugs*, 4:281–290, 1998.

109. Hoppmann, R. A., J. G. Peden, and S. K. Ober, "Central Nervous System Side Effects of Nonsteroidal Anti-Inflammatory Drugs," *Archives of Internal Medicine*, 151:1309–1313, 1991.

110. Perlman, D. M., "Ibuprofen-Induced Aseptic Meningitis in Individuals With HIV," *Abstract of International Conference on AIDS*, 119, 1992.

111. Horn, A. C. and S. W. Jarrett, "Ibuprofen-Induced Aseptic Meningitis in Rheumatoid Arthritis," *Annals of Pharmacotherapy*, 31:1009–1011, 1997.

112. Eustace, S. and B. Buff, "Magnetic Resonance Imaging in Drug-Induced Meningitis," *Canadian Association of Radiology Journal*, 45:463–465, 1994.

113. Greenberg, G. N., "Recurrent Sulindac-Induced Aseptic Meningitis in a Patient Tolerant to Other Nonsteroidal Anti-Inflammatory Drugs," *Southern Medical Journal*, 11:1463–1464, 1998.

114. Jensen, S. et al., "Ibuprofen-Induced Meningitis in a Male With Systemic Lupus Erythematosus," *Acta Medica Scandinavica*, 221:509–511, 1987.

115. Rottach, K. et al., "Mollaret's Meningitis: A New Aetiologic Feature," *European Neurology*, 36:172–173, 1996.

116. Bharija, S. C. and M. S. Belhaj, "Fixed Drug Eruption on Three Independent Sites Induced by Chemically Unrelated Drugs," *Dermatologica*, 181:237, 1990.

117. Khan, A. R., "Erythema Nodosum After Ibuprofen," *British Medical Journal*, 288:1048, 1984.

118. Laing, V. B. et al., "Pemphigold-Like Bullous Eruption Related to Ibuprofen," *Journal of the American Academy of Dermatology*, 19:91–94, 1988.

119. Shelly, E. D. and W. B. Shelley, "Ibuprofen Urticaria," *Journal of the American Academy of Dermatology*, 17:1057–1058, 1987.

120. Ben-Chetrit, E. and A. Rubinow, "Exacerbation of Psoriasis by Ibuprofen," *Cutis*, 38:45, 1986.

121. Pavithran, K., "Exacerbation of Psoriasis by Ibuprofen," Indian Journal of Dermatology, *Venereology, and Leprology*, 53:372–373, 1987.

122. Tousignant, J. et al., "Dermatitis Herpetiformis Induced by Nonsteroidal Anti-Inflammatory Drugs," *International Journal of Dermatology*, 33:199–200, 1994.

123. Kanwar, A. J. et al., "Drugs Causing Fixed Eruptions," *Journal of Dermatology*, 11:383–385, 1984.

124. Kanwar, A. J. et al., "Ninety-eight Fixed Drug Eruptions With Provocation Tests," *Dermatologica*, 177:274–279, 1988.

125. Kaplan, B. H. et al., "Aseptic Meningitis and Iridocyclitis Related to Ibuprofen," *American Journal of Ophthalmology*, 117:119–120, 1994.

126. Kinshuck, D. and L. Stevenson, "Complications of NSAID Therapy in Patients With Macular Disease," *Survey of Ophthalmology*, 37:149–150, 1992.

127. Fitt, A. et al., "Vortex Keratopathy Associated With Ibuprofen Therapy," *Eye*, 10:145–146, 1996.

128. Ridder III, W. H. and A. Tomlinson, "Effect of Ibuprofen on Contrast Sensitivity," *Optometry and Vision Science*, 69:652–655, 1992.

129. FDA's evaluation of data in its Adverse Event Reporting System, OTC Vol. 03BTFM(I), Docket No. 77N–094I, Dockets Management Branch.

130. Minuz, P. et al., "Antihypertensive Activity of Enalapril. Effect of Ibuprofen and Different Salt Intakes," *Journal of Clinical Hypertension*, 3:645–653, 1987.

131. Gehr, T. W. B. et al., "Interaction of Triamterene-Hydrochlorothiazide (T–H) and Ibuprofen (I)," *Clinical Pharmacology & Therapeutics*, 47:200, 1990.

132. Radack, K. L. et. al., "Ibuprofen Interferes With the Efficacy of Antihypertensive Drugs," *Annals of Internal Medicine*, 107:628–635, 1987.

133. Minuz, P. et al., "Amlodipine and Haemodynamic Effects of Cyclo-Oxygenase Inhibition," *British Journal of Clinical Pharmacology*, 39:45–50, 1995.

134. Pancera, P. et al., "Changes in Peripheral Hemodynamics and Vasodilating Prostaglandins After High-Dose Short-Term Ibuprofen in Chronically Treated Hypertensive Patients," *Prostaglandins, Leukotrienes and Essential Fatty Acids*, 54:217–222, 1996.

135. Halawa, B., "Effect of Indomethacin and Ibuprofen on the Blood Pressure of Patients Treated With Nifedipine or Captopril," *Polski Tygodnik Lekarsi*, 48:313–315, 1993.

136. Brater, D. G., "Drug-Drug and Drug-Disease Interactions With Nonsteroidal Anti-Inflammatory Drugs," *American Journal of Medicine*, 80 (supplement 1A):62–77, 1986.

137. Cooper, S. A., "Five Studies on Ibuprofen for Postsurgical Dental Pain (Study 2)," *American Journal of Medicine*, 77:70–77, 1984.

138. Cooper, S. A., "Five Studies on Ibuprofen for Postsurgical Dental Pain (Study 5)," *American Journal of Medicine*, 77:70–77, 1984.

139. Cooper, S. A., "The Relative Effectiveness of Ibuprofen in Dental Pain (Study 3)," *Compendium of Continuing Education University of Pennsylvania School of Dental Medicine*, 7:578–588, 1986.

140. Cooper, S. A., "The Relative Effectiveness of Ibuprofen in Dental Pain (Study 4)," *Compendium of Continuing Education University of Pennsylvania School of Dental Medicine*, 7:578–588, 1986.

141. Cooper, S. A., "The Relative Effectiveness of Ibuprofen in Dental Pain (Study 5)," *Compendium of Continuing Education University of Pennsylvania School of Dental Medicine*, 7:578–588, 1986.

142. Cooper, S. A., "The Relative Effectiveness of Ibuprofen in Dental Pain (Study 2)," *Compendium of Continuing Education University of Pennsylvania School of Dental Medicine*, 7:578–588, 1986.

143. Cooper, S. A. et al., "Ibuprofen and Acetaminophen in the Relief of Acute Pain: A Randomized, Double-Blind, Placebo-Controlled Study," *Journal of Clinical Pharmacology*, 29:1026–1030, 1989.

144. Forbes, J. A. et. al., "Evaluation of Ketorolac, Ibuprofen, Acetaminophen, and an Acetaminophen-Codeine Combination in Post-Operative Oral Surgery Pain," *Pharmacotherapy*, 10 (Suppl. 6):94S–105S, 1990.

145. Forbes, J. A. et al., "Evaluation of Bromfenac, Aspirin, and Ibuprofen in Postoperative Oral Surgery Pain," *Pharmacotherapy*, 11:64–70, 1991.

146. Forbes, J. A. et al., "Analgesic Efficacy of Bromfenac, Ibuprofen, and Aspirin in Postoperative Oral Surgery Pain," *Clinical Pharmacology*, 51:343–352, 1992.

147. Giles, A. D. et al., "A Single-Dose Assessment of an Ibuprofen/Codeine Combination in Post-Operative Dental Pain," *International Journal of Oral Maxillofacillary Surgery*, 15:727–732, 1986.

148. Jain, A. K. et al., "Analgesic Efficacy of Low-Dose Ibuprofen in Dental Extraction Pain," *Pharmacotherapy*, 6:318–322, 1986.

149. Mehlisch, D. R. et al., "Multi-Center Clinical Trial of Ibuprofen and Acetaminophen in the Treatment of Postoperative Dental Pain," *Journal of American Dental Association*, 121:257–263, 1990.

150. Ngan, P. et al., "The Effect of Ibuprofen on the Level of Discomfort in Patients Undergoing Orthodontic Treatment," *American Journal of Orthodontics and Dentofacial Orthopedics*, 106:88–95, 1994.

151. Diamond, S., "Ibuprofen Versus Aspirin and Placebo in the Treatment of

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Muscle Contraction Headache," *Headache*, 23:206-210, 1983.

152. Schachtel, B. P., S. A. Furey, and W. R. Thoden, "Nonprescription Ibuprofen and Acetaminophen in the Treatment of Tension-Type Headache," *Journal of Clinical Pharmacology*, 36:1120–1125, 1996.

153. Nebe, J., M. Heier, and H. C. Diener, "Low-Dose Ibuprofen in Self-Medication of Mild to Moderate Headache: A Comparison With Acetylsalicylic Acid and Placebo," *Cephalalgia*, 5:531–535, 1995.

154. Schachtel, B., W. R. Thoden, and R. I. Baybutt, "Ibuprofen and Acetaminophen in the Relief of Postpartum Episiotomy Pain," *Journal of Clinical Pharmacology*, 29:550–553, 1989.

155. Schachtel, B. P. et al., "Sore Throat Pain in the Evaluation of Mild Analgesics," *Clinical Pharmacology and Therapeutics*, 44:704–711, 1988.

156. Habib, S. et al., "A Study of the Comparative Effectiveness of Four Common Analgesics in the Control of Post-Surgical Dental Pain," *Oral Surgery, Oral Medicine, and Oral Pathology*, 70:559–563, 1990.

157. Noyelle, R. M. et al., "Ibuprofen, Aspirin, and Paracetamol Compared in a Community Study," *Pharmaceutical Journal*, 238:561–564, 1987.

158. Milsom, I. and B. Andersch, "Effect of Ibuprofen, Naproxen Sodium, and Paracetamol on Intrauterine Pressure and Menstrual Pain in Dysmenorrhea," *British Journal of Obstetrics and Gynecology*, 91:1129–1135, 1984.

159. Gaitonde, B. B. et al., "Antipyretic Activity of Ibuprofen (Brufen)," *Journal of the Association of Physicians in India*, 21:579–584, 1973.

160. Eastern Research Group, Inc., "Cost Impacts of the Over-the-Counter Pharmaceutical Labeling Rule," OTC Vol. 28FR, Docket No. 96N–0420, Dockets Management Branch.

List of Subjects

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 343

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 201 and 343 be amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

2. Section 201.63 is amended by revising paragraph (e) to read as follows:

§ 201.63 Pregnancy/breast-feeding warning.

* * * * *

(e) The labeling of orally or rectally administered OTC aspirin- and ibuprofen-containing products must bear a warning that immediately follows the general warning identified in paragraph (a) of this section. The warning shall be as follows:

"It is especially important not to use" [select "aspirin," "carbaspirin calcium," or "ibuprofen," as appropriate] "during the last 3 months of pregnancy unless definitely directed to do so by a doctor because it may cause problems in the unborn child or complications during delivery."

3. Section 201.324 is added to subpart G to read as follows:

§ 201.324 Over-the-counter drug products containing internal analgesic/antipyretic active ingredients; required allergy warning statements.

The labeling for all over-the-counter (OTC) drug products containing nonsteroidal anti-inflammatory internal analgesic/antipyretic active ingredients—including but not limited to aspirin, carbaspirin calcium, choline salicylate, ibuprofen, ketoprofen, magnesium salicylate, naproxen sodium, and sodium salicylate—whether subject to an applicable OTC drug monograph or an approved drug application, contains the following allergy warnings under the heading "Warnings":

(a) "Allergy alert: [insert name of active ingredient (first letter of first word for ingredient in uppercase)] may cause a severe allergic reaction which may include: [bullet][1] hives [bullet] facial swelling [bullet] asthma (wheezing) [bullet] shock".

(b) "Do not use [insert bullet if more than one warning occurs under this subheading] if you have ever had" or for products labeled only for use in children under 12 years of age, "Do not use [insert bullet if more than one warning occurs under this subheading] if your child has ever had" followed by, "an allergic reaction to any other pain reliever/fever reducer". [This statement appears as the first warning under the subheading "Do not use."]

(c) "Stop use and ask a doctor if [insert bullet if more than one warning occurs under this heading] an allergic reaction occurs. Seek medical help right away." [These statements appear as the first warning under the subheading "Stop use and ask a doctor if."]

[1] See § 201.66(b)(4) of this chapter for definition of bullet symbol.

PART 343—INTERNAL ANALGESIC, ANTIPYRETIC, AND ANTIRHEUMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

4. The authority citation for 21 CFR part 343 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

5. Section 343.3 is amended by alphabetically adding a definition for ibuprofen to read as follows:

§ 343.3 Definitions.

* * * * *

Ibuprofen. A racemic mixture of the S-[+] and R-[-] enantiomers of ibuprofen in a tablet formulation for adults and children 12 years and older.

* * * * *

6. Section 343.10, as proposed at 53 FR 46255, November 16, 1988, is further amended by adding paragraph (g) to read as follows:

§ 343.10 Analgesic-antipyretic active ingredients.

* * * * *

(g) Ibuprofen 200-milligram tablet.

* * * * *

7. Section 343.20, as proposed at 53 FR 46255, November 16, 1988, is further is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 343.20 Permitted combinations of active ingredients.

* * * * *

(b) * * *

(2) *Analgesic-antipyretic active ingredients identified in § 343.10(a) through (f) and cough-cold combinations.* See § 341.40 of this chapter.

* * * * *

(4) *Analgesic and diuretic combinations.* Any analgesic identified in § 343.10(a) through (f) or any combination of analgesics identified in § 343.20(a) may be combined with any diuretic identified in § 357.1012 of this chapter provided the product bears labeling indications in accordance with § 357.1060(b) of this chapter.

8. Section 343.50, as proposed at 53 FR 46255, November 16, 1988, is further is amended by revising the headings in paragraphs (b)(1), (c)(1)(i), and (c)(2)(i); and the text of paragraphs (c)(1)(iv)(A), (c)(1)(iv)(B), (c)(1)(vi), (c)(2)(iv)(A), and (c)(2)(vi); and by adding paragraphs (b)(5), (c)(1)(ix), and (d)(7) to read as follows:

§ 343.50 Labeling of analgesic-antipyretic drug products.

* * * * *

(b) * * *

(1) *For products containing any ingredient identified in § 343.10(a) through (f).* * * *

* * * * *

(5) *For products containing ibuprofen identified in § 343.10(g).* The labeling of the product contains any of the indications in § 343.50(b) except "sore throat."

(c) * * *

(1) * * *

(i) *For products containing any ingredient identified in § 343.10(a) through (f).* * * *

* * * * *

(iv) * * *

(A) "Do not use this product if you have asthma unless directed by a doctor".

(B) The labeling contains the pregnancy/breast-feeding warnings set forth in § 201.63(a) and (e) of this chapter.

* * * * *

(vi) *For products containing any ingredient identified in § 343.10(b) through (g).* The labeling contains the allergy warnings set forth in § 201.324(a), (b), and (c) of this chapter.

* * * * *

(ix) *For products containing ibuprofen identified in § 343.10(g).* (A) The alcohol warning set forth in § 201.322(a)(2) of this chapter appears after the subheading "Alcohol warning:."

(B) "Ask a doctor before use if you have: [bullet][1] problems or serious side effects from taking pain relievers or fever reducers [bullet] stomach problems that last or come back, such as heartburn, upset stomach, or pain [bullet] ulcers [bullet] bleeding problems [bullet] high blood pressure, heart or kidney disease, are taking a diuretic, or are over 65 years of age".

(C) "Ask a doctor or pharmacist before use if you are: [bullet] under a doctor's care for any serious condition [bullet] taking any other product that contains ibuprofen, or any other pain reliever/fever reducer [bullet] taking a prescription drug for anticoagulation (blood thinning) [bullet] taking any other drug".

(D) "When using this product: [insert bullet if more than one warning occurs under this subheading] take with food or milk if stomach upset occurs".

(E) In addition to the warning required in § 201.324(c) of this chapter, the following statements appear after the subheading "Stop use and ask a doctor if: [bullet] pain gets worse or lasts more than 10 days [bullet] fever gets worse or lasts more than 3 days [bullet] stomach pain gets worse or lasts [bullet] redness or swelling is present in the painful area [bullet] any new symptoms appear".

(F) The labeling contains the pregnancy/breast-feeding warnings set forth in § 201.63(a) and (e) of this chapter.

(2) * * *

(i) *For products containing any ingredient identified in § 343.10(a) through (f).* * * *

* * * * *

(iv) * * *

(A) "Do not give this product to children who have asthma unless directed by a doctor".

* * * * *

(vi) *For products containing any ingredient in § 343.10(b) through (g).* The labeling contains the allergy warnings set forth in § 201.324(a), (b), and (c) of this chapter.

* * * * *

(d) * * *

* * * * *

(7) *For products containing ibuprofen identified in § 343.10(g).* The labeling states "[bullet][1] do not take more than directed [in bold type] [bullet] adults and children 12 years and over: [bullet] 200 milligrams [2] every 4 to 6 hours while symptoms persist [bullet] if pain or fever does not respond to 200 milligrams[2], 400 milligrams[2] may be used [bullet] do not exceed 1,200 milligrams[2] in 24 hours, unless directed by a doctor [bullet] the smallest effective dose should be used [bullet] children under 12 years: ask a doctor".

* * * * *

Dated: January 10, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–21122 Filed 8–20–02; 8:45 am]

BILLING CODE 4160–01–S

[1] See § 201.66(b)(4) of this chapter for definition of bullet symbol.

[2] Convert number of milligrams to proper dosage.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–200234; FRL–7264–4]

Proposed Determination of Attainment of 1-hour Ozone Standard as of November 15, 1993, for the Birmingham, AL, Marginal Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to determine that the Birmingham marginal ozone nonattainment area (hereinafter referred to as the Birmingham area) attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS) by November 15, 1993, the date required by the Clean Air Act (CAA). The Birmingham area is comprised of Jefferson and Shelby Counties. On July, 10, 2002, the United States District Court for the District of Columbia concluded that EPA failed to exercise its non-discretionary duty to make a final attainment determination for the Birmingham area by May 15, 1994. The Court required that EPA make a formal attainment determination within 120 days from date of opinion. *Sierra Club v. Whitman*, No. 00–2206 (D.D.C. July 10, 2002). Therefore, in response to the Court's order, EPA proposes to determine that the Birmingham area attained the 1-hour ozone standard by its statutory attainment date of November 15, 1993.

DATES: Written comments must be received on or before September 20, 2002.

ADDRESSES: All comments should be addressed to: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available at the following address for inspection during normal business hours: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

The interested persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day and reference file AL–200234.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Proposing To Take?

Pursuant to section 181(b)(2)(A) of the CAA, EPA is proposing to determine that the Birmingham area has attained the 1-hour NAAQS for ozone by November 15, 1993, the date required by section 181(a)(1) of the CAA. This determination is based upon three years of complete, quality-assured, ambient air monitoring data for the years 1991–1993 which indicate that Birmingham area attained the 1-hour ozone NAAQS.

II. What Is the Background for This Action?

The Clean Air Act (CAA) requires EPA to establish NAAQS for certain pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare (CAA sections 108 and 109). In 1979, EPA promulgated the 1-hour 0.12 parts per million (ppm) ground-level ozone NAAQS (44 FR 8202 (February 8, 1979)). Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOC) react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone.

An area exceeds the 1-hour ozone NAAQS each time an ambient air quality monitor records a 1-hour average ozone concentration above 0.124 ppm. An area is violating the NAAQS when the average of expected exceedances during a consecutive three-year period is greater than 1 at any one monitor (40 CFR part 50, appendix H). The CAA required EPA to designate as nonattainment any area that was violating the 1-hour ozone NAAQS, generally based on air quality monitoring data from the three-year period from 1987–1989, or any area contributing to a violation (CAA section 107(d)(4); 56 FR 56694 (November 6, 1991)). The CAA further classified these areas, based on the area's design value (*i.e.*, the 4th highest ozone value during the relevant three year period at the violating monitor with the highest ozone levels), as marginal, moderate, serious, severe or extreme (CAA section 181(a)). Marginal areas were suffering the least significant air pollution problems.

The control requirements and dates by which attainment needs to be achieved vary with the area's classification. Marginal areas were subject to the fewest mandated control requirements and had the earliest attainment date. Marginal areas were required to attain the 1-hour NAAQS by November 15, 1993. Section 181(a) of the CAA.

The Birmingham area was originally designated as a 1-hour ozone nonattainment area by EPA on March 3, 1978 (43 FR 8962). The Birmingham nonattainment area at that time was geographically defined as Jefferson County, Alabama. On November 6, 1991, by operation of law under section 181(a) of the CAA, EPA classified the Birmingham nonattainment area as a marginal nonattainment area for ozone and added Shelby County to the nonattainment area (56 FR 56693). The nonattainment classification for the Birmingham marginal ozone area was based on ambient air sampling measurements for ozone made during 1987–1989. The area was required to attain the 1-hour ozone NAAQS by November 15, 1993, (*i.e.*, three years from the enactment of the CAA) which is the date set forth in section 181(a)(1).

For further background, see the Court's opinion in *Sierra Club* v. *Whitman*, No. 00–2206 (D.D.C. July 10, 2002).

Section 181(b)(2)(A) of the Clean Air Act states that:

Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date. Except for any Severe or Extreme area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) to the higher of—

(i) the next higher classification for the area, or

(ii) the classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B).

No area shall be reclassified as extreme under clause (ii).

After the end of the 1993 ozone season, the Birmingham area had three years of quality assured air monitoring data (1991, 1992 and 1993) which demonstrated that the 1-hour ozone NAAQS was attained. Table 1 shows the number of exceedances at each of the monitoring sites in Jefferson and Shelby Counties. No individual monitor recorded more than two exceedances during the three year period. The national 1-hour primary and secondary ambient air quality standard for ozone is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm is equal to or less than 1, averaged over a three year period (40 CFR part 50, appendix H). The design value for the Birmingham area is 0.124 ppm, based on the fourth highest 1-hour value recorded at the Bearden Farm monitor. The recorded values for that monitor were 0.144, 0.125, 0.124, and 0.124 ppm.

TABLE 1.—BIRMINGHAM AREA 1-HOUR OZONE NAAQS EXCEEDANCES FROM 1991 TO 1993

Year	Jefferson County					Shelby County
	Fairfield	Route 8 McAdory	Tamassee LA	Pinson High Sch	Tarrant Elem Sch	Bearden Farm
1991	0	0	0	0	0	0
1992	0	0	0	1	1	0
1993	0	0	1	0	0	2

Therefore, in accordance with section 181(b)(2) of the CAA, EPA proposes to determine that the Birmingham area attained the standard by the area's November 15, 1993, attainment date.

III. Why Is EPA Taking This Action?

In 2000, the Sierra Club brought suit in district court, seeking, among other claims, an order requiring EPA to issue a determination pursuant to section 181(b) as to whether the Birmingham area had attained the NAAQS.

On July, 10, 2002, the United States District Court for the District of Columbia concluded that EPA failed to perform its non-discretionary duty to make a final attainment determination for the Birmingham area (CAA section 181(6)) by May 15, 1994. The Court required EPA to make a formal determination within 120 days from the date of its opinion. *Sierra Club* v. *Whitman*, No. 00–2206 (D.D.C. July 10, 2002). In compliance with the Court's order, EPA proposes to determine that the Birmingham area had attained the 1-hour ozone standard by November 15, 1993.

IV. Proposed Action

Pursuant to section 181(b)(2)(A) of the CAA, EPA is proposing to determine that the Birmingham area attained the 1-hour NAAQS for ozone by November 15, 1993. This determination is based upon the area's design value as of its attainment date, and upon three years of complete, quality-assured, ambient air monitoring data for the years 1991–1993 which indicate that Birmingham area attained the 1-hour ozone NAAQS.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed determination of attainment does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 9, 2002.

J. I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 02–21286 Filed 8–20–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 060702E]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has determined that an application for EFPs contains all of the required information and warrants further consideration. The Regional Administrator is considering the impacts of the activities to be authorized under the EFPs with respect to the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs in response to an application submitted by the Groundfish Group Associated Fisheries of Maine (Associated Fisheries of Maine), in collaboration with Manomet Center for Conservation Sciences (Manomet). These EFPs would allow up to 12 vessels to fish for yellowtail flounder in NE multispecies year-round Closed Area II (CA II) during the months of August through December, 2002, and July, 2003, with the potential of the August trips occurring in 2003 depending on when the EFPs are issued.

The purpose of the study is to collect observer-based data to determine whether seasonal access to portions of CA II for the purpose of harvesting Georges Bank (GB) yellowtail flounder is possible without significant bycatch and discard of other regulated NE multispecies, particularly Atlantic cod and haddock. This information could then be used by the New England Fishery Management Council (Council) and NMFS to determine the feasibility of establishing a seasonal access program that would allow the harvest of GB yellowtail flounder in portions of CA II.

DATES: Comments on this action must be received at the appropriate address or

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fax number (see **ADDRESSES**) on or before September 5, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Yellowtail EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Environmental Assessment (EA) are available from the NE Regional Office at the same address.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, (978) 281–9103, email *allison.ferreira@noaa.gov*

SUPPLEMENTARY INFORMATION:

Background

Three year-round closed areas were established in 1994 under Amendment 5 to the FMP to provide protection to concentrations of regulated NE multispecies, particularly Atlantic cod, haddock, and yellowtail flounder. These closure areas, Closed Area I, Closed Area II and the Nantucket Lightship Closure Area, have proven to be effective in improving the stock status of several species, in particular, the status of GB yellowtail flounder. Spawning stock biomass (SSB) for GB yellowtail flounder increased from 2,600 mt in 1992 to 33,500 mt in 1999. Mean stock biomass also increased from 4,500 mt in 1992 to 49,600 mt in 1999. In 2001, the Transboundary Resources Assessment Committee's (TRAC) Advisory Report on Stock Status estimated GB yellowtail flounder SSB to be between 37,000 and 50,500 mt (80–percent probability) and the mean biomass to be between 48,000 and 66,500 mt (80–percent probability). Furthermore, in 2001, the Multispecies Monitoring Committee (MMC) estimated the mean biomass for GB yellowtail flounder to be 55,437 mt, which is well above the biomass target (B_{target}) of 49,000 mt. In addition, the MMC estimated the 2001 fishing mortality rate (F) for GB yellowtail flounder to be F_{2001}=0.14, which is well below the target F of $F_{0.1}$=0.25.

In their EFP application, Manomet and the Associated Fisheries of Maine state that common knowledge within the fishing and scientific communities suggests that Atlantic cod and haddock are less available in certain portions of CA II during specific seasons. The applicants feel that there is a need to support this knowledge with scientific data, potentially enabling the rebuilt GB yellowtail flounder resource to be utilized without impacting the management programs that currently protect the rebuilding stocks of cod and haddock on Georges Bank.

Proposed EFP

The Associated Fisheries of Maine, in collaboration with Manomet, have submitted an application for 17 EFPs (12 vessels and 5 alternates) that would exempt these vessels from the days-at-sea (DAS) requirements specified under 50 CFR 648.80 and 648.82, and CA II restrictions specified under § 648.81. The proposed study would occur in the area south of 41°30′ N. lat. within CA II. The experiment would consist of two vessels conducting one concurrent 5–day trip each month for the months of August through December, 2002 and July, 2003, for a total of 6 concurrent trips and 12 total vessel trips for the study. Each trip would consist of 2 transiting days and 3 sampling days, for a total of 24 vessel transiting days and 36 vessel sampling days over the course of the study. Participating vessels would be prohibited from fishing in areas outside of CA II during an experimental fishing trip. In order to offset the cost of the experiment, the applicant has requested that the participating vessels be exempt from DAS requirements while participating in the proposed experimental fishery.

Survey operations would follow a pre-determined sampling design. The sample area would be divided into grids of approximately 6 square miles (15.5 sq. km) During each trip, hauls would be conducted in each grid, with each haul lasting 20 minutes. The sampling design would enable comparison trawls between vessels in order to standardize catch data between vessels. A total of 51 hauls, 26 hauls for vessel 1 and 25 hauls for vessel 2, would be conducted during each trip. Vessels would utilize standard otter trawl gear having a codend mesh size of 6.5–inch (16.5 cm) square mesh, the minimum mesh size for the GB Regulated Mesh Area.

A total allowable catch (TAC) of GB yellowtail flounder of 220 mt would be established for the experimental fishery. This equates to approximately 40,000 lb (18,144 kg) of yellowtail flounder per vessel, per trip. Incidental catch of cod and haddock would be limited to 2,000 lb (907 kg) and 3,000 lb (1,361 kg) per DAS, respectively. In addition, all fish landed would have to meet minimum size requirements.

Several species of skates are found in the southern portion of CA II where the proposed experimental fishery would be conducted. Due to concerns over skate bycatch, particularly the bycatch of thorny and barndoor skate, the applicants have agreed to identify and record all skates caught and return all skates caught to the sea immediately in order to minimize mortality. No skates would be retained for landing or sale. In addition, the applicants have stated that the bycatch of skates would be avoided to the extent practicable.

A minimum of two observers, consisting of Manomet scientific staff, would be present on board each participating vessel, equating to 100–percent observer coverage for this experimental fishery. All catch would be sorted, weighed and recorded by species. In addition, commercially important species, including all skate species, would be individually weighed and measured. Observers would be responsible for collecting all biological and environmental data on NMFS observer forms. Interim reports would be provided to NMFS at the end of each trip outlining total catch, including bycatch and discards. Participating vessels may also be required to report estimates of daily catch to NMFS via a call-in system in order to monitor the GB yellowtail TAC of 220 mt requested for this experimental fishery.

The EFPs would contain a provision that the Regional Administrator has the authority to reconsider the continuation of the proposed experimental fishery on a month-by-month basis. The Regional Administrator would be authorized to terminate the experimental fishery if the yellowtail flounder TAC of 220 mt is exceeded or if excessive bycatch of cod, haddock and other species of concern (including, but not limited to, skate) occurs during any given trip.

A draft EA has been prepared that analyzes the impacts of the proposed experimental fishery on the human environment. This draft EA concludes that the proposed activities to be conducted under the requested EFPs are consistent with the goals and objectives of the FMP, would not be detrimental to the well-being of any stocks of fish harvested, and would have no significant environmental impacts. The draft EA also concludes that the proposed experimental fishery would not be detrimental to Essential Fish Habitat, marine mammals, or protected species.

EFPs would be issued to up to 17 vessels exempting them from the DAS requirements and CA II restrictions of the FMP.

Based on the results of the proposed experimental fishery, this action may lead to future rulemaking.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 14, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–21316 Filed 8–20–02; 8:45 am]

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Notices

Federal Register
Vol. 67, No. 162
Wednesday, August 21, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–018–3]

Availability of Evaluation Related to FMD Status of Great Britain; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments; correction.

SUMMARY: In a notice published in the **Federal Register** on July 16, 2002 (Docket No. 01–018–2), we announced the availability for review and comment of a document that assesses the foot-and-mouth disease status of Great Britain (England, Scotland, Wales, and the Isle of Man) and the related disease risks associated with importing animals and animal products into the United States from Great Britain. The notice contained an incorrect Internet address. This document corrects that error.

DATES: We will consider all comments that we receive on Docket No. 01–018–2 on or before September 16, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–018–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–018–2. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01–018–2" on the subject line.

You may read the evaluation and any comments that we receive on the evaluation in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Anne Goodman, Supervisory Staff Officer, Regionalization Evaluation Services, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION: On July 16, 2002, we published in the **Federal Register** (67 FR 46628–46629, Docket No. 01–018–2) a notice of availability and request for comments for a document entitled "APHIS Evaluation of FMD Status of Great Britain (England, Scotland, Wales, and the Isle of Man)" (May 2002). This evaluation assesses the foot-and-mouth disease status of Great Britain and related disease risks associated with importing animals and animal products into the United States from Great Britain. This evaluation will serve as a basis to determine whether to relieve certain prohibitions and restrictions on the importation of ruminants and swine and fresh (chilled or frozen) meat and other products of ruminants and swine into the United States from Great Britain. We are making the evaluation available for public comment for 60 days. Comments must be received on or before September 16, 2002.

In the background portion of the notice, we provided an Internet address where the evaluation could be viewed. This address was incorrect. The Internet address should have read: *http://www.aphis.usda.gov/vs/reg-request.html*. This document corrects that error.

Correction

In FR Doc. 02–17795, published on July 16, 2002 (67 FR 46628–46629), make the following correction: On page 46629, first column, fourth full paragraph, in the first sentence, correct "http://www.aphis.usda.gov/vs/reg-request.html" to read "http://www.aphis.usda.gov/vs/reg-request.html".

Done in Washington, DC, this 15th day of August, 2002.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–21275 Filed 8–20–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Dixie National Forest, Utah, Long Deer Vegetation Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a Supplemental Environment Impact Statement.

SUMMARY: The USDA Forest Service will prepare a Supplemental Environmental Impact Statement (SEIS) to the South Spruce Ecosystem Rehabilitation Project EIS (1999) to implement vegetation management treatments in the spruce/fir forests within the Cedar City Ranger District, Dixie National Forest, Utah. The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they can participate in the process and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by thirty days after publication of this Notice of Intent in the **Federal Register**. The draft supplemental environmental impact statement is expected in September 2002. The final supplemental environmental impact statement is expected in December 2002.

ADDRESSES: Send written comments to: Long Deer Interdisciplinary Team Leader, Cedar City Ranger District, Dixie National Forest, 1789 Wedgewood, Cedar City, Utah 84720.

FOR FURTHER INFORMATION CONTACT: Long Deer Interdisciplinary Team Leader, Cedar City Ranger District, Dixie National Forest, 1789 Wedgewood, Cedar City, Utah 84720.

SUPPLEMENTARY INFORMATION: The proposed project is located in a 10,436 acre analysis area in portions of the Tommy, Duck, and Upper Midway Creek watersheds. Approximately 7,514 acres of the project area are forested and 2,922 acres are non-forested. The proposed commercial conifer treatment areas currently are infested with spruce beetle (*Dendroctonus rufipennis*).

The purpose of the project is to harvest approximately 2,443 acres of dead, dying, and high risk Engelmann spruce trees to recover wood products that would otherwise be lost, while still meeting desired resources objectives for the project area. Minor amounts of subalpine fir trees (less than 15% of the total removed) would also be removed to encourage open growth, spruce or subalpine fir regeneration, improve residual stand vigor, or that will likely be damaged or killed during the removal of the spruce trees.

Rehabilitation of areas heavily impacted by bark beetle mortality through the completion of natural and artificial regeneration activities would occur as needed. An estimated 1,000 acres would be planted with spruce seedlings. Reforestation is essential to providing for the most rapid progression toward the desired future condition for forest cover in the project area.

Aspen regeneration of approximately 470 acres is also included in this proposal. These areas are included with the 2,443 acres of salvage/improvement treatments. Treatments would include tree removal followed by burning or mechanical treatment (commercial harvest) with or without burning.

Within the areas proposed for treatments, approximately 102 acres would be machine piled and burned and 619 acres would be broadcast burned to reduce fuels to the desired levels and to help stimulate the regeneration of aspen.

Travel management is proposed for portions of the project area. The purpose of this activity is to restore and rehabilitate ecological values in areas where excessive numbers of open roads exist; primarily to offset the loss of big game hiding cover from harvest activities. Moving these portions of the project area toward or below the Land Resource Management Plan guideline of two miles of open road per square mile will reduce the adverse environmental impacts associated with excessive numbers of open roads and loss of cover. A reduction in open road density will also reduce long-term maintenance costs while promoting safe, efficient public travel on the open road system. Road closures would be accomplished with earth and rock barriers, fences, or gates. The open road density for the analysis area would be reduced from the current 2.39 miles per square mile to 1.70 miles per square mile.

Vegetation management treatments involving commercial harvest, aspen regeneration, and travel management would occur on National Forest system lands located within portions of section 19, 30–32 of Township (T) 37 South (S), Range (R) 8 West (W); sections 13, 14, 23–26, 35, and 36 of T37S, R8½W; sections 11–14, 23–26, 35 and 36 of T37S, R9W; sections 1 and 2 of T38S, R9W; and sections 4–6, and 8–10 of T38S, R8W, Salt Lake City Meridian, Iron and Kane Counties, UT.

The transportation system required to access commercial harvest areas is in place. All skid trails would be obliterated and may be seeded upon completion of the project.

The proposed actions would implement management direction, contribute to meeting the goals and objectives identified in the DNF–LRMP, and move the project area toward the desired condition. This project SEIS would be tiered to the Dixie National Forest LRMP EIS (1986), which provides goals, objectives, standards and guidelines for the various activities and land allocations on the Forest.

The Forest Service would analyze and document direct, indirect, and cumulative environmental effects for a range of alternatives. Each alternative would include mitigation measures and monitoring requirements. One alternative to the proposed action has been identified at this time. Alternative A was developed to address an issue identified during scoping. This alternative would close less roads in order to maintain access to dispersed campsites and popular off highway vehicle routes. The open road density would be reduced from the existing 2.39 miles per square mile to 1.80 miles per square mile under this alternative. All other actions would be identical to the Proposed Action. No other issue has been identified beyond those initially identified and analyzed under separate alternatives in the South Spruce Ecosystem Rehabilitation Project EIS.

Responsible Official: Randy Swick, Acting Forest Supervisor, Dixie National Forest, is the responsible official. He can be reached by mail at 1789 Wedgewood, Cedar City, Utah, 84720.

Comments Requested: Comments will continue to be received and considered throughout the analysis process. Comments received in response to this notice and through scoping, including names and addresses of those who comment, will be considered part of the public record of this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The draft SEIS is expected to be filed with the EPA (Environmental Protection Agency) and to be available for public review. At that time the EPA will publish a notice of availability of the draft SEIS in the **Federal Register**. The comment period for the draft environmental impact statement will be forty-five days from the date the EPA's notice of availability appears in the **Federal Register**. Comments on the draft SEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (Reviewers may wish to refer to the *Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act* at 40 CFR 1503.3 in addressing these points).

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could have been raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental

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impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at the time it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns about the proposed action, comments on the draft supplemental environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final SEIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft SEIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The Responsible Official will document the decision and rationale for the decision in a Record of Decision. The final SEIS is scheduled for completion in December, 2002. The decision will be subject to review under Forest Service Appeal Regulations.

Dated: August 9, 2002.

Randall G. Swick,

Acting Forest Supervisor, Dixie National Forest.

[FR Doc. 02–21215 Filed 8–20–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Revision of the Land and Resource Management Plan for the Medicine Bow National Forest, Albany County, Carbon County, Converse County, Natrona County, Platte County, WY

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement in conjunction with revision of the Land and Resource Management Plan for the Medicine Bow National Forest.

SUMMARY: The Forest Service will prepare an environmental impact statement in conjunction with the revision of the Land and Resource Management Plan (hereafter referred to as the Forest Plan or Plan) for the Medicine Bow National Forest.

DATES: Comments concerning the issues, concerns and scope of the analysis with regard to the proposed action were requested to be received in writing by November 15, 1999. The Forest Service expects to file a Draft Environmental Impact Statement with the Environmental Protection Agency (EPA) and make it available for public comment in December 2002. The agency expects to file the Final Environmental Impact Statement in December 2003.

ADDRESSES: Send written comments to: Mary Peterson, Forest Supervisor, Medicine Bow-Routt National Forests, 2468 Jackson Street, Laramie, Wyoming 82070.

FOR FURTHER INFORMATION CONTACT: Dave Harris, Planning Team Leader, (307) 745–2403.

Responsible Official: Rick D. Cables, Rocky Mountain Regional Forester at P.O. Box 25127, Lakewood, CO 80225–0127.

Cooperating Agencies: State of Wyoming, through the Office of Federal Land Policy; Bureau of Land Management; and Conservation Districts.

SUPPLEMENTARY INFORMATION: This is a revised Notice of Intent for the prior notice promulgated in the **Federal Register**, Vol. 64, No. 194, on October 7, 1999 page 54609. The Notice of Intent is being revised for the following reasons:

(1) The draft EIS has been delayed two years. The original expected release date was October 2000; the new expected date is December 2002. The final EIS is expected to be published December 2003.

(2) Two cooperating agencies have been added. The Bureau of Land Management in Wyoming (USDI–BLM) will cooperate on the preparation of the EIS and decisions regarding mineral leasing. Seven Wyoming Conservation Districts (Little Snake River, Saratoga-Encampment-Rawlins, Medicine Bow, Conserve County, Laramie County, and Laramie Rivers Conservation Districts and the Platte County Resource District, hereinafter referred to as County Conservation Districts) will cooperate in water quality monitoring, planning for impaired watersheds, socio-economic analysis, and public involvement.

(3) The responsible official has changed. Rick D. Cables is the current Regional Forester for the Rocky Mountain Region and responsible official for the Medicine Bow Forest Plan Revision.

Pursuant to part 36 Code of Federal Regulations (CFR) 219.10(g), the Regional Forester for the Rocky Mountain Region gives notice of the agency's intent to prepare an environmental impact statement for the revision effort described above. According to 36 CFR 219.10(g), land and resource management plans are ordinarily revised on a 10- to 15-year cycle. The existing Forest Plan was approved November 20, 1985.

The Forest Service is the lead agency in this revision effort. The State of Wyoming, by and through the Office of Federal Land Policy; USDI–BLM; and County Conservation Districts are cooperating agencies by virtue of special expertise and jurisdiction. The State of Wyoming was listed as a cooperating agency in the 1999 Notice of Intent.

Forest Plans describe the intended management of National Forests. Agency decisions in the Plan will do the following:

* Establish multiple-use goals and objectives (36 CFR 219.11);
* Establish forestwide management requirements (standards and guidelines) to fulfill the requirements of 16 USC 1604 applying to future activities (resource integration requirements, 36 CFR 219.13 to 219.27);
* Establish management areas and management area direction (management area prescriptions) applying to future activities in that management area (resource integration and minimum specific management requirements) 36 CFR 219.11(c);
* Establish monitoring and evaluation requirements (36 CFR 219.11(d));
* Determine suitability and potential capability of lands for producing forage for grazing animals and for providing habitat for management indicator species (36 CFR 219.20), designate lands not suited for timber production, and, where applicable, establish allowable timber sale quantity (36 CFR 219.14, 219.15, and 219.21);
* Where applicable to oil and gas resources, determine the planning area leasing decision (lands administratively available for leasing) and the leasing decision for specific lands [36 CFR 228.102(4)(d) & (e)]. Where applicable, BLM will issue a decision document on leasing for federal minerals, both under Forest Service administered surface and under private surface.
* Where applicable, recommend Wild and Scenic River designations, in cooperation with the National Park Service, in accordance with 16 USC 1274; and
* Where applicable, recommend non-Wilderness allocations or Wilderness recommendations for roadless areas (26 CFR 219.17).

The authorization of project level activities within the planning area occurs through project decison-making, the second stage of forest and grassland planning. Project-level decisions must comply with National Environmental Policy Act (NEPA) procedures and must include a determination that the project is consistent with the Management Plan, or the Plan must be amended according to the National Forest Management Act (NFMA).

Release and Review of the EIS: The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment by December 2002. At that time, the EPA will publish a notice of availability for the DEIS in the **Federal Register**. The comment period on the DEIS will be 90 days from the date the EPA publishes the notice of availability in the **Federal Register**.

Reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions; Vermont *Yankee Nuclear Power Com.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the Final Environmental Impact Statement (FEIS) may be waived or dismissed by the courts; *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.*, v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the three-month comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the DEIS. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the DEIS, comments will be analyzed, considered, and responded to by the Forest Service in preparing the Final EIS. The FEIS is scheduled to be completed in December 2003. The responsible officials will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making decisions regarding these revisions. The responsible official will document his decision and reasons for the decision in a Record of Decision for the revised Management Plan. The decision will be subject to appeal in accordance with 36 CFR 217.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909–15, section 21.2)

Dated: July 19, 2002.

Richard C. Stem,

Deputy Regional Forester, Resources, Rocky Mountain Region.

[FR Doc. 02–21258 Filed 8–20–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Advisory Committee (PAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes Provincial Advisory Committee will meet on September 11–12, 2002. The first day is a field trip to the Dilman project on the Deschutes River to view implementation of activities related to forest health and dispersed recreation on the Deschutes National Forest. The second day will be a business meeting beginning 9 a.m. and ending 4 p.m. at the La Pine Library at 16425 1st St. in La Pine, Oregon. Topics include Northwest Forest Plan Monitoring, Deschutes National Forest Recreation Strategy, Upper Deschutes Resource Management Plan, Hosmer, Subcommittee updates/Round Robin, and a Public Forum from 3–3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Chris Mickle, Province Liaison, USDA, Bend-Ft. Rock Ranger District, 1230 NE. 3rd., Bend, OR, 97701, Phone (541) 383–4769.

Dated: August 14, 2002.

Leslie A.C. Weldon,

Forest Supervisor.

[FR Doc. 02–21217 Filed 8–20–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on September 19, 2002, from 3 p.m. to 6 p.m.

ADDRESSES: The meeting will be held at the Lake County Board of Supervisor's Chambers at 255 North Forbes Street, Lakeport.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Committee Coordinator, USDA, Mendocino National Forest, Upper Lake Ranger District, 10025 Elk Mountain Road, Upper Lake, CA 95485. (707) 275–2361; e-mail *dmcintosh@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Roll Call/Establish Quorum; (2) Review and Approval of the Minutes of the August 8, 2002 Meeting; (3) Finalize business for 2002; (4) Discuss/revise evaluation criteria for projects; (5) Evaluate Committee Membership; (6) Discussion on Chair Position for 2003; (7) Discussion on Next Meeting Date; and (8) Discuss Project Cost Accounting USFS/County of Lake; (9) Recommend Projects for 2003; (10) Public Comment period. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: August 14, 2002.

Blaine P. Baker,

Designated Federal Officer.

[FR Doc. 02–21260 Filed 8–20–02; 8:45 am]

BILLING CODE 3410–11–M

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 32–2002]

Foreign-Trade Zone 219—Yuma, Arizona; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Yuma County Airport Authority, Inc., grantee of Foreign-Trade Zone 219, requesting authority to expand FTZ 219, Yuma, Arizona, to include an additional site within the San Luis Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 14, 2002.

FTZ 219 was approved by the Board on April 2, 1997 (Board Order 874, 62 FR 17580, 4/10/97), and expanded on April 5, 2001 (Board Order 1161, 66 FR 19422, 4/16/01). The zone project currently consists of two parcels (125 acres) within the Yuma International Airport complex (Site 1), 2191 East 32nd Street, Yuma.

The applicant is now requesting authority to expand the general-purpose zone to include an additional site (95 acres) in Yuma: *Proposed Site 2* (95 acres)—Yuma Commerce Center, approximately 5 miles east of the Yuma International Airport on Business Loop Interstate 8. The site is owned by the Ingold Family Limited Partnership/Sun River Investment Properties. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submission via Express/Package Delivery Services: Foreign-Trade Zones Board U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW, Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW, Washington, DC 20230.

The closing period for their receipt is October 21, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 4, 2002).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the Yuma Main Library, 350 South 3rd Avenue, Yuma, Arizona 85364.

Dated: August 14, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–21328 Filed 8–20–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 31–2002]

Foreign-Trade Zone 86—Tacoma, Washington: Expansion of Manufacturing Authority—Subzone 86E; Matsushita Kotobuki Electronics Industries of America, Inc. (20- and 27-inch Television/Video Cassette Recorder/DVD Combination Units)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Tacoma, Washington, grantee of FTZ 86, requesting on behalf of Matsushita Kotobuki Electronics Industries of America, Inc. (MKA), to expand the scope of manufacturing authority under zone procedures within Subzone 86E, at the MKA facilities in Vancouver, Washington. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 12, 2002.

Subzone 86E was approved by the Board in 2000 at four sites in Vancouver, Washington (five buildings and two trailers, 427,300 sq. ft. total). Authority was granted for the manufacture of 9- and 13-inch television/video cassette recorder/DVD combination units (Board Order 1176, 66 FR 32933, 6/19/2001).

MKA is now proposing to expand the scope of manufacturing activity conducted under zone procedures at Subzone 86E to include 20-inch flat and round screen television/video cassette recorder/DVD combination units and 27-inch flat screen television/video cassette recorder/DVD combination units. The finished products would have duty rates of 3.9% *ad valorem*. Additional foreign-sourced materials under the proposed expanded scope would include 20-inch flat cathode ray tubes, 20-inch round cathode ray tubes, and 27-inch flat cathode ray tubes. Duty rates on those components are currently 15% *ad valorem*.

Expanded subzone authority would exempt MKA from Customs duty payments on the aforementioned foreign components when used in export production. On its domestic sales, MKA would be able to choose the lower duty rate that applies to the finished products for the foreign components, when applicable.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is October 21, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 4, 2002. A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, One World Trade Center, 121 SW Salmon Street, Suite 242, Portland, OR 97204.

Dated: August 13, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–21327 Filed 8–20–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Closed Meeting of the U.S. Automotive Parts Advisory Committee (APAC)

AGENCY: International Trade Administration, Commerce.

ACTION: Announcement of meeting.

SUMMARY: The APAC will have a closed meeting on September 9, 2002, at the U.S. Department of Commerce to discuss U.S.-made automotive parts sales in Japanese and other Asian markets.

DATES: September 9, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Reck, U.S. Department of Commerce, Room 4036, Washington, DC 20230, telephone: 202–482–1418.

SUPPLEMENTARY INFORMATION: The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Automotive Parts Act of 1998 (Public Law 105–261). The Committee: (1) Reports to the Secretary of Commerce on barriers to sales of U.S.-made automotive parts and accessories in Japanese and other Asian markets; (2) reviews and considers data collected on sales of U.S.-made auto parts and accessories in Japanese and other Asian markets; (3) advises the Secretary of Commerce during consultations with other Governments on issues concerning sales of U.S.-made automotive parts in Japanese and other Asian markets; and (4) assists in establishing priorities for the initiative to increase sales of U.S.-made auto parts and accessories to Japanese markets, and otherwise provide assistance and direction to the Secretary of Commerce in carrying out the intent of that section; and (5) assists the Secretary of Commerce in reporting to Congress by submitting an annual written report to the Secretary on the sale of U.S.-made automotive parts in Japanese and other Asian markets, as well as any other issues with respect to which the Committee provides advice pursuant to its authorizing legislation. At the meeting, committee members will discuss specific trade and sales expansion programs related to automotive parts trade policy between the United States and Japan and other Asian markets.

The Acting Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on August 14, 2002, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the September 9th meeting of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b (c)(4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: August 16, 2002.

Henry Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 02–21305 Filed 8–20–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081202D]

Atlantic Highly Migratory Species; Advisory Panels

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for nominations.

SUMMARY: NMFS solicits nominations for the Highly Migratory Species (HMS) advisory panel (AP) and the Billfish AP, and announces a joint meeting tentatively for November 2002, in Silver Spring, MD. The purpose of the AP's will be to assist NMFS in the collection and evaluation of information relevant to modification or amendment of the fisheries management plan for Atlantic tunas, swordfish, and sharks (HMS FMP) and to modification of the Billfish FMP Amendment. The AP will include representatives from all interests in HMS fisheries and billfish fisheries, respectively.

DATES: Nominations must be submitted on or before October 7, 2002.

ADDRESSES: Nominations and comments on Statement of Organization, Practices and Procedures revision recommendations should be submitted in writing to Chris Rogers, Chief, Highly Migratory Species Division, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910. Nominations may be submitted by fax; 301–713–1917.

FOR FURTHER INFORMATION CONTACT: Othel Freeman or Carol Douglas (301) 713–2347.

SUPPLEMENTARY INFORMATION:

Introduction

In accordance with the Magnuson-Stevens Fishery Conservation and Management Act, (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104–297, Advisory Panels (AP) have been established to consult with NMFS in the collection and evaluation of information relevant to the HMS FMP (April 1999) and the Billfish FMP Amendment (April 1999). Nominations are being sought to fill one third of the posts of the HMS AP for three year appointments, and one half of the posts of the Billfish AP for two year appointments. The nomination process and appointments are required by the Statement of Organization, Practices and Procedures (SOPP) for each AP.

The purpose of the HMS AP is to advise and assist the Secretary of Commerce (Secretary) in the collection and evaluation of information relevant to any amendment to the HMS FMP (April 1999). The HMS AP evaluates future management options for Atlantic tunas, swordfish and sharks under the requirements of the Magnuson-Stevens Act.

The purpose of the Billfish AP is to advise and assist the Secretary in the collection and evaluation of information relevant to any amendment to the Billfish FMP. The Billfish AP evaluates future management options for Atlantic billfish under the requirements of the Magnuson-Stevens Act.

Procedures and Guidelines

A. Procedures for Appointing the Advisory Panels

Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, governmental entities and non-governmental organizations will be considered for membership in the AP.

Nominations are invited from all individuals and constituent groups. The nomination should include:

1. The name of the applicant or nominee and a description of their interest in highly migratory species (HMS) or one species in particular from among sharks, swordfish, tunas and billfish;

2. A statement of background and/or qualifications;

3. The AP to which the applicant seeks appointment;

4. A written commitment that the applicant or nominee shall actively participate in good faith in the tasks of the AP.

Tenure for the HMS AP:

Member tenure will be for 3 years, with one third of the members' terms expiring on the last day of each calendar year. All appointments will be for 3 years (36 months).

Tenure for the Billfish AP:

Member tenure will be for 2 years, with one half of the terms expiring on the last day of each calendar year. All appointments will be for 2 years (24 months).

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B. *Participants*

The HMS AP consists of not less than twenty-two (22) members who are knowledgeable about the pelagic fisheries for all Atlantic HMS species. The Billfish AP consists of not less than eight (8) members who are knowledgeable about the pelagic fisheries for all billfish species. Nominations for each AP will be accepted to allow representation from recreational and commercial fishing interests, the conservation community, and the scientific community.

NMFS does not believe that each potentially affected organization or individual must necessarily have its own representative, but each area of interest must be adequately represented. The intent is to have a group that, as a whole, reflects an appropriate and equitable balance and mix of interests given the responsibilities of each AP. Criteria for membership include one or more of the following: (a) Experience in the recreational fishing industry involved in catching swordfish, tunas, billfish, or sharks; (b) experience in the commercial fishing industry for HMS; (c) experience in fishery-related industries (marinas, bait and tackle shops); (d) experience in the scientific community working with HMS; (e) representation of a private, non-governmental, regional, (non-Federal) state, national, or international organization representing marine fisheries, environmental, governmental or academic interests dealing with HMS.

Five (5) additional members of the AP include one voting representative each of the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council. The AP also includes twenty-two (22) ex-officio participants: twenty (20) representatives of the constituent states and two (2) representatives of the constituent interstate commissions; the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission.

NMFS will provide the necessary administrative support, including technical assistance, for the AP. However, NMFS will not compensate participants with monetary support of any kind. Depending on availability of funds members maybe reimbursed for for travel costs related to the AP meetings.

C. *Tentative Schedule*

Meetings of each AP will be held as frequently as necessary but are routinely held once each year in the Spring. Often the meetings are held jointly, and may be held in conjunction with other advisory panel meetings or public hearings. The meeting is tentatively scheduled for November 2002, in Silver Spring, MD. This meeting is being held in addition to the routinely held Spring meeting.

Authority: 16 U.S.C. 971 *et seq.*and 1801 *et seq.*

Dated: August 15, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–21315 Filed 8–20–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081502B]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Enforcement Committee and Advisory Panel and its Vessel Monitoring Systems (VMS) Committee in September, 2002 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on September 4 and 5, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the New England Fishery Management Council Office, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Wednesday, September 4, 2002, at 9 a.m.—Joint Enforcement Committee and Advisory Panel Meeting.

The committee will review federal vessel permit issues associated with the Atlantic herring fishery and requiring fishermen to have a valid VMS number prior to issuance of the permit. This would be consistent with previous federal fisheries that require VMS. They will also discuss prohibiting fishermen with federal vessel permits from selling fish to unlicensed dealers. Current regulations prohibit dealers without permit from buying fish from federally permitted vessels.

Also included in the agenda will be review of the enforceability of the following: alternatives for Multispecies Amendment 13; draft enforcement analysis for scallops; general category landings restriction, particularly those in the state-waters only exemption for scallops; review of species ID guide for skates and its utility for enforcement as well as proposed prohibitions on possession, landing, sale and recommendations for tolerances on prohibitions and/or possession limits to account for mis-identification of skates. The committee will also discuss whether to increase advisory panel membership.

Thursday, September 5, 2002, at 9:30 a.m.—Vessel Monitoring System Committee Meeting.

Location: New England Fishery Management Council Office, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

The committee will discuss the concept of using automated vessel monitoring systems in New England fisheries. The agenda will include discussion of current VMS performance, alternative tracking devices now available, future expansion of VMS programs and VMS use for other management measures. The committee also may discuss other business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: August 15, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–21309 Filed 8–20–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081502F]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Oversight Committee in September, 2002. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Monday, September 9, 2002, at 1 p.m.

ADDRESSES: The meeting will be held at Providence Biltmore, 11 Dorrance Street, Kennedy Plaza, Providence, RI 02903; telephone: (401) 421–0700.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will meet to develop recommendations for approval of final alternatives in the annual adjustment to the Scallop Fishery Management Plan (FMP) (Framework Adjustment 15 to the FMP); options under consideration for the 2003 fishing year include but are not limited to: an adjustment to the annual day-at-sea allocations for vessels with limited access permits, continuing the controlled access program for one or both of the Hudson Canyon and VA/NC Areas, and a day-at-sea tradeoff exemption procedure. The committee will also review the Habitat Committee's recommendations for alternatives in Amendment 10 and may develop advice for the September 10–12, 2002 Council meeting. Other business may be taken up as needed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: August 15, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–21313 Filed 8–20–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081502E]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BS/AI) Groundfish Plan Team meetings.

SUMMARY: The North Pacific Fishery Management Council's (Council) GOA and BS/AI Groundfish Plan Team will meet in Alaska.

DATES: The meeting will be held on September 9-10, 2002.

ADDRESSES: The Groundfish Plan Teams will meet at the Alaska Fishery Science Center, 7600 Sand Point Way NE, Bldg. 4, Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council Staff: 907–271–2809.

SUPPLEMENTARY INFORMATION: On Monday, the 9th of September at 1 p.m., the Groundfish Plan Teams will meet at the Alaska Fishery Science Center. Items to be discussed include, Status of DPSEIS, SSL Protection Measures, Ecosystem Chapter, Other Species update, ESA listings. BS/AI will review preliminary drafts of Arrowtooth, Eastern Bering Sea Pollock and Atka mackerel. GOA will review a preliminary draft of pollock hydroacoustic survey results, assessment update.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 15, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–21312 Filed 8–20–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081502H]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Gulf of Alaska Working Group will meet in Kodiak, AK.

DATES: The meeting will be held on September 19-21, 2002.

ADDRESSES: The meeting will be held at the Best Western Kodiak Inn, 236 Rezanof Drive, in the Harbor Room, Kodiak, AK 99615.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff: 907–271–2809.

SUPPLEMENTARY INFORMATION: On Thursday, September 19th, the committee will meet starting at 1 p.m.

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through noon on Saturday, September 21st, to review staff discussion papers on a preliminary data report, rockfish bycatch, converting halibut trawl bycatch into longline or pot directed fishery quota shares, the effects of an extended groundfish fishing season on halibut bycatch, alternative approaches to rationalizing Gulf of Alaska groundfish fisheries, and additional proposals for elements and options for analysis. An update on the public scoping process will be presented. Opportunities for public comment will be scheduled each day.

Alhough non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 16, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–21314 Filed 8–20–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081502C]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory bodies will hold public meetings.

DATES: The Council and its advisory bodies will meet September 7–13, 2002. The Council meeting will begin on Tuesday, September 10, at 10 a.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held from 8 a.m. until 10 a.m. on Tuesday, September 10 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the DoubleTree Hotel Columbia River, 1401 N Hayden Island Drive, Portland, OR 97217; telephone: 503–283–2111.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: 503–820–2280 or 866–806–7204.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order. All items listed are subject to potential Council action.

A. Call to Order

1. Opening Remarks, Introductions
2. Council Member Appointments
3. Roll Call
4. Executive Director's Report
5. Approve Agenda
6. Approve March and April Minutes

B. Habitat Issues

Essential Fish Habitat Issues

C. Groundfish Management

1. NMFS Report on Groundfish Management
2. Final Harvest Levels and Other Specifications for 2003
3. Adoption of 2003 Groundfish Management Measures
4. Status of Fisheries and Inseason Adjustments
5. Exempted Fishing Permits (EFP): Update and New Proposals
6. Groundfish Programmatic and Essential Fish Habitat FMP Environmental Impact Statements
7. Update on Amendment 16– Rebuilding Plans
8. Groundfish Stock Assessment Priorities for 2003
9. Amendment 17– Multi-Year Management
10. Scoping for Delegation of Nearshore Management Authority

D. Salmon Management

1. NMFS Report
2. Update of Ongoing Fisheries
3. Scientific and Statistical Committee Methodology Review Priorities

E. Marine Reserves

1. Marine Reserve Proposals for Channel Island National Marine Sanctuary
2. Update on Marine Reserves Processes

F. Pacific Halibut Management

1. Status of 2002 Pacific Halibut Fisheries
2. Proposed Changes to the Catch Sharing Plan and Annual Regulations

G. Coastal Pelagic Species Management

1. NMFS Report
2. Pacific Sardine Fishery Update

H. Administrative and Other Matters

1. Legislative Matters
2. Financial Matters
3. Appointments to Advisory Bodies, Standing Committees, and Other Forums
4. Council Staff Work Load Priorities
5. November 2002 Council Meeting Draft Agenda

SCHEDULE OF ANCILLARY MEETINGS

SATURDAY, SEPTEMBER 7, 2002	
Groundfish Management Team	1 p.m.
SUNDAY, SEPTEMBER 8, 2002	
Groundfish Management Team	8 a.m.
MONDAY, SEPTEMBER 9, 2002	
Council Secretariat	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Salmon Advisory Subpanel	10 a.m.
Salmon Technical Team	10 a.m.
Habitat Committee	10 a.m.

SCHEDULE OF ANCILLARY MEETINGS—Continued

Legislative Committee	10 a.m.
Budget Committee	1 p.m.
TUESDAY, SEPTEMBER 10, 2002	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Salmon Advisory Subpanel	8 a.m.
Salmon Technical Team	As necessary
Enforcement Consultants	Immediately following Council Session
WEDNESDAY, SEPTEMBER 11, 2002	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Coastal Pelagic Species Advisory Subpanel	10 a.m.
Groundfish Advisory Subpanel	As necessary
Groundfish Management Team	As necessary
Salmon Advisory Subpanel	As necessary
Salmon Technical Team	As necessary
Enforcement Consultants	As necessary
THURSDAY, SEPTEMBER 12, 2002	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	As necessary
Salmon Advisory Subpanel	As necessary
Salmon Technical Team	As necessary
Enforcement Consultants	As necessary
FRIDAY, SEPTEMBER 13, 2002	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Enforcement Consultants	As necessary

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503)820–2280 or (866)806–7204 at least 5 days prior to the meeting date.

Dated: August 15, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–21310 Filed 8–20–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081502D]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Advisory Subpanel (CPSAS) will hold a conference call, which is open to the public.

DATES: The CPSAS will convene via conference call Friday, September 6, 2002, from 1 p.m. until business for the day is completed.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for a list of public listening station locations.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: Public listening stations will be available at the following locations:

1. National Marine Fisheries Service, 501 W Ocean Blvd., Long Beach, CA 90802, (562) 980–4000, Contact: Jim Morgan;
2. California Department of Fish and Game, 1933 Cliff Drive, Suite 9, Santa Barbara, CA 93109, (805) 568–1231, Contact: Marija Vojkovich;
3. California Department of Fish and Game, 20 Lower Ragsdale Drive, Suite 100, Monterey, CA 93940, (831) 649–2870, Contact: Travis Tanaka; and
4. Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384, (503) 820–2280, Contact: Dan Waldeck.

The purpose of the work session is to prepare CPSAS comments to the Council regarding two matters, (1) potential collateral impacts on CPS fisheries from proposed regulations for the 2003 West Coast groundfish fishery, and (2) recommendations from the

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Council's Ad Hoc Marine Reserves Policy Committee regarding marine reserves in California state waters. Both of these matters are due for final Council consideration at the September 2002 Council meeting. This conference call is intended to provide the CPSAS opportunity to consider these matters and develop recommendations for the Council.

Although nonemergency issues not contained in the CPSAS meeting agenda may come before the CPSAS for discussion, those issues may not be the subject of formal CPSAS action during this meeting. CPSAS action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSAS's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: August 16, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–21311 Filed 8–20–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080602D]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Plan Development Team (HMSPDT) will hold a work session, which is open to the public.

DATES: The HMSPDT will meet Wednesday, September 4, 2002 from 8 a.m. until 5 p.m.; and Thursday, September 5, 2002 from 8 a.m. until business for the day is completed.

ADDRESSES: The work session will be held at the Hubbs-Sea World Research Institute, Auditorium, 2595 Ingraham Street, San Diego, CA 92109; telephone: (619) 226–3870.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck, Pacific Fishery Management Council, telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the work session is to review comments on the draft fishery management plan (FMP) for West Coast highly migratory species (HMS) and revise the FMP accordingly for presentation to the Council at the November Council meeting. The HMS FMP is scheduled for final Council action in November 2002.

Although nonemergency issues not contained in the HMSPDT meeting agenda may come before the HMSPDT for discussion, those issues may not be the subject of formal HMSPDT action during this meeting. HMSPDT action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the HMSPDT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: August 9, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–21317 Filed 8–20–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Thailand

August 16, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 21, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63036, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 16, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on August 21, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
300	6,683,636 kilograms.
301–O [2]	1,531,953 kilograms.

Category	Adjusted twelve-month limit [1]
313–O [3]	30,921,420 square meters.
619	10,777,870 square meters.
620	10,940,248 square meters.
Group II	
Sublevels in Group II	
338/339	2,742,895 dozen.
347/348	1,303,280 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 301–O: only HTS numbers 5205.21.0020, 5205.21.0090, 5205.22.0020, 5205.22.0090, 5205.23.0020, 5205.23.0090, 5205.24.0020, 5205.24.0090, 5205.26.0020, 5205.26.0090, 5205.27.0020, 5205.27.0090, 5205.28.0020, 5205.28.0090, 5205.41.0020, 5205.41.0090, 5205.42.0020, 5205.42.0090, 5205.43.0020, 5205.43.0090, 5205.44.0020, 5205.44.0090, 5205.46.0020, 5205.46.0090, 5205.47.0020, 5205.47.0090, 5205.48.0020 and 5205.48.0090.

[3] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–21276 Filed 8–20–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Short Supply Request under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

August 15, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Denial of the request alleging that certain100 percent cotton yarn-dyed flannel fabrics, for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner.

SUMMARY: On June 11, 2002, the Chairman of CITA received a request from Intradeco Corporation of Miami, Florida alleging that certain fabrics, classified under subheading 5208.43.00 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that apparel of such fabrics be eligible for preferential treatment under the CBTPA. Based on currently available information, CITA has determined that these subject fabrics can be supplied by the domestic industry in commercial quantities in a timely manner and therefore denies the request.

FOR FURTHER INFORMATION CONTACT: For Further Information Contact: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States or a CBTPA beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On June 11, 2002, the Chairman of CITA received a request from Intradeco Corporation of Miami, Florida alleging that certain 100 percent cotton yarn-dyed flannel fabrics, classified under subheading 5208.43.00 of the HTSUS, of construction 2X2 twill weave 64X54, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that apparel of such fabric that are both cut and sewn or otherwise assembled in one or more CBTPA beneficiary countries be eligible for preferential treatment under the CBTPA.

On June 17, 2002, CITA solicited public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. On July 5, 2002, CITA and the Office of the U.S. Trade Representative offered to hold consultations with the relevant Congressional committees. We also requested the advice of the U.S. International Trade Commission and the relevant Industry Sector Advisory Committees.

CITA has determined that certain 100 percent cotton yarn-dyed flannel fabrics, classified under subheading 5208.43.00 of the HTSUS, of construction 2X2 twill weave 64X54, used in apparel, can be supplied by the domestic industry in commercial quantities in a timely manner. On the basis of currently available information, including review of the request, public comment and advice received, and its understanding of the industry, CITA has determined that there is domestic capacity to supply these fabrics. Intradeco's request is denied.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–21223 Filed 8–20–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Short Supply Petition under the North American Free Trade Agreement (NAFTA)

August 15, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a petition for a modification of the NAFTA rules of origin for certain products made of yarn from combed fine animal hair.

SUMMARY: On July 12, 2002, the Chairman of CITA received a petition from Amicale Industries, Inc. (Amicale) alleging that yarn of combed fine animal hair, classified in subheading 5108.20.60 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the NAFTA region in commercial quantities in a timely manner and requesting that the President proclaim a modification of the NAFTA rules of origin. Amicale requests that the NAFTA rules of origin for woven fabrics of subheadings, 5112.11.60, 5112.19.95, and for men's and women's apparel of subheadings 6203.11.30, 6203.11.90, 6203.21.30, 6203.21.90, 6203.31.90, 6203.41.18, 6204.11.00, 6204.21.00, 6204.31.10, 6204.31.20, 6204.51.00, and 6204.61.90,

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be modified to allow for the use of non-North American origin yarn of subheading 5108.20.60. Such a proclamation may be made only after reaching agreement with the other NAFTA countries on the modification. CITA hereby solicits public comments on this petition, in particular with regard to whether yarn of combed fine animal hair classified under HTSUS subheading 5108.20.60 can be supplied by the domestic industry in commercial quantities in a timely manner. To be ensured full consideration, comments must be submitted by September 20, 2002, to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: For Further Information Contact: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q)); Executive Order 11651 of March 3, 1972, as amended.

BACKGROUND:

Under the North American Free Trade Agreement (NAFTA), NAFTA countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the NAFTA rules of origin, which are set out in Annex 401 to the NAFTA. The NAFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the NAFTA countries. In consultations regarding such a change, the NAFTA countries are to consider issues of availability of supply of fibers, yarns, or fabrics in the free trade area and whether domestic producers are capable of supplying commercial quantities of the good in a timely manner. The Statement of Administrative Action (SAA) that accompanied the NAFTA Implementation Act stated that any interested person may submit to CITA a request for a modification to a particular rule of origin based on a change in the availability in North America of a particular fiber, yarn or fabric and that the requesting party would bear the burden of demonstrating that a change is warranted. The SAA provides that CITA may make a recommendation to the President regarding a change to a rule of origin for a textile or apparel good. The NAFTA Implementation Act provides the President with the authority to proclaim modifications to the NAFTA rules of origin as are necessary to implement an agreement with one or more NAFTA country on such a modification.

On July 12, 2002, the Chairman of CITA received a petition from Amicale Industries, Inc. (Amicale) alleging that yarn of combed fine animal hair, classified in subheading 5108.20.60 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the NAFTA region in commercial quantities in a timely manner and requesting that the President proclaim a modification of the NAFTA rules of origin. Amicale requests that the NAFTA rules of origin for woven fabrics of subheadings, 5112.11.60, 5112.19.95, and for men's and women's apparel of subheadings 6203.11.30, 6203.11.90, 6203.21.30, 6203.21.90, 6203.31.90, 6203.41.18, 6204.11.00, 6204.21.00, 6204.31.10, 6204.31.20, 6204.51.00, and 6204.61.90, be modified to allow for the use of non-North American origin yarn of subheading 5108.20.60. Such a proclamation may be made only after reaching agreement with the other NAFTA countries on the modification.

CITA is soliciting public comments regarding this request, particularly with respect to whether yarn of combed fine animal hair, classified in HTSUS subheading 5108.20.60, can be supplied by the domestic industry in commercial quantities in a timely manner. To be ensured full consideration, comments must be received no later than September 20, 2002. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that yarn of fine animal hair can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarn stating that it produces the yarn that is in the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–21222 Filed 8–20–02; 8:45 am]

BILLING CODE 3510–DR–S

CONGRESSIONAL BUDGET OFFICE

Notice of Transmittal of Sequestration Update Report for Fiscal Year 2003 to the Congress and the Office of Management and Budget

Pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its *Sequestration Update Report for Fiscal Year 2003* to the House of Representatives, the Senate and the Office of Management and Budget.

William J. Gainer,

Associate Director, Management, Congressional Budget Office.

[FR Doc. 02–21282 Filed 8–20–02; 8:45 am]

BILLING CODE 0701–02–M

DEPARTMENT OF DEFENSE

Department of the Army

Reserve Officers' Training Corps Program Subcommittee; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice; date correction.

SUMMARY: The open meetings scheduled for June 25, 2002 from 8 a.m. to 5 p.m. and June 27, 2002 from 8 a.m. to 5 p.m. published in the **Federal Register** on May 24, 2002 (67 FR 36577) have been rescheduled. The open meeting will now be held on October 1, 2002 from 8 a.m. to 5 p.m. and on October 2, 2002 from 8 a.m. to 12 p.m. in Hampton, Virginia at the Radisson Hotel Hampton.

FOR FURTHER INFORMATION CONTACT: Commander, HQ U.S. Army Cadet Command, ATTN: ATCC–TT (Mrs. Johnson), Fort Monroe, VA 23651. Telephone number is (757) 788–4586.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–21306 Filed 8–20–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 21, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 15, 2002.

John D. Tressler,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision of a currently approved collection.

Title: Student Aid Report (SAR) (JS).

Frequency: Annually.

Affected Public: Individuals or household (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 20,524,631.

Burden Hours: 4,871,526.

Abstract: The Student Aid Report (SAR) is used to notify all applicants of their eligibility to receive Federal student aid for postsecondary education. The form is submitted by the applicant to the institution of their choice.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2097. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address Vivian.Reese@ed.gov. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–21216 Filed 8–20–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–120–000]

Edison Mission Energy, Inc., Complainant v. PJM Interconnection L.L.C. and PJM Market Monitoring Unit, Respondents; Notice of Complaint

August 15, 2002.

Take notice that on August 14, 2002, Edison Mission Energy, Inc. filed a complaint against PJM Interconnection L.L.C. and the PJM Market Monitoring Unit objecting to the lack of confidentiality safeguards contained in the PJM Market Mitigation Plan that would protect the disclosure of confidential fuel cost information requested by the PJM Market Monitoring Unit.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before September 3, 2002. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 208–1659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21270 Filed 8–20–02; 8:45 am]

BILLING CODE 6717–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–065 California]

El Dorado Irrigation District; Notice of Public Meeting

August 15, 2002.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No. 184), filed on February 22, 2000. The El Dorado Project, licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El Dorado, Alpine, and Amador Counties, California. The project occupies lands of the Eldorado National Forest.

The EID, several state and federal agencies, and several non-governmental agencies are working collaboratively with a facilitator to resolve certain issues relevant to this proceeding. This meeting is a part of that collaborative process.

On Friday, August 30, 2002, the Aquatics/Hydrology workgroup will meet from 9:00 a.m. until 4:00 p.m. The meeting will focus on hydrologic modeling of different operational alternatives for the project. We invite the participation of all interested governmental agencies, non-governmental organizations, and the general public in this meeting.

The meeting will be held at the Rancho Cordova Holiday Inn, located at 11131 Folsom Blvd.,Rancho Cordova, California.

For further information, please contact Elizabeth Molloy at (202) 502–8771 or John Mudre at (202) 502–8902.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21273 Filed 8–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–119–000]

The Kroger Co., Complainant v. Dynegy Power Marketing, Inc., Respondent; Notice of Complaint

August 15, 2002.

Take notice that on August 14, 2002, The Kroger Co. tendered for filing with the Federal Energy Regulatory Commission (Commission) a complaint against Dynegy Power Marketing, Inc. (Dynegy) seeking Commission action: to declare the prices contained in four wholesale confirmations executed in Spring 2001 as unjust and unreasonable and contrary to the public interest; to set just and reasonable prices based on current market conditions; to establish a refund effective date within 60 days of filing of the complaint; and to initiate hearing procedures.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before September 13, 2002. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 208–1659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21269 Filed 8–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–20–000]

Union Light, Heat and Power Company; Notice of Petition for Rate Approval

August 15, 2002.

Take notice that on July 18, 2002, Union Light, Heat and Power Company (Union) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve the proposed rates as fair and equitable for transportation and storage services performed under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Union proposes to establish a monthly 100% reservation charge rate of $0.3046 per Dekatherm of demand associated with a no-notice quality service to be rendered pursuant to its Order No. 63 blanket certificate issued on December 1, 1998, in Docket No. CP98–70–000.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before August 22, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is on file with the Commission are available for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21274 Filed 8–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1423–004, et al.]

Midwest Independent Transmission System Operator, Inc., et al.; Electric Rate and Corporate Regulation Filings

August 13, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Midwest Independent Transmission System Operator, Inc.

[Docket Nos. ER02–1423–004 and ER02–1842–002]

Take notice that on August 5, 2002, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO), submitted certain revisions to the Joint Open Access Transmission Tariff of the Midwest Independent Transmission System Operator, Inc. for the Transmission System (Michigan) in compliance with the Federal Energy Regulatory Commission's (Commission) July 5, 2002 order in these proceedings. The Midwest ISO requests that these changes become effective May 1, 2002.

A copy of the filing was served upon the parties on the official Commission service lists established in these proceeding, on all affected state commissions, and on other affected parties.

Comment Date: August 26, 2002.

2. Conoco Gas & Power Marketing

[Docket No. ER02–1890–000]

Take notice that on July 31, 2002, Conoco Gas & Power Marketing, a Division of Conoco, Inc., tendered for filing a Notice of Withdrawal. This entity is no longer involved in power transactions.

Comment Date: August 23, 2002.

3. New York Independent System Operator, Inc.

[Docket No. ER02–1961–001]

Take notice that on August 5, 2002, the New York Independent System Operator, Inc. (NYISO) filed in this docket a response to the Commission's July 5, 2002 deficiency letter. The NYISO has requested an effective date of June 1, 2002 for the filing.

The NYISO has served a copy of this filing upon all parties that have executed service agreements under the NYISO's OATT and Services Tariff and on the electric utility regulatory agencies of New York, New Jersey and Pennsylvania, including, as directed in the Deficiency Letter, a copy of this filing to all parties who have either requested or been granted intervention in these proceedings.

Comment Date: August 26, 2002.

4. Puget Sound Energy, Inc.

[Docket No. ER02–2012–001]

Take notice that on August 7, 2002, Puget Sound Energy, Inc. (Puget) submitted for filing, a revised Rate Schedule, a First Revised Service Agreement No. 1, which includes the Amendment No. 1 to the Agreement for the Installation of Electrical Facilities—South SeaTac filed on June 4, 2002. This First Revised Service Agreement No. 1 is effective May 17, 2002.

Comment Date: August 27, 2002.

5. Southaven Power, LLC

[Docket No. ER02–2056–000]

Take notice that on August 6, 2002, Southaven Power, LLC submitted a Notice of Withdrawal of the Request for Authorization to Amend Market-Based Rate Tariff filed June 10, 2002 in the above referenced docket.

Comment Date: August 26, 2002.

6. Green Country Energy, LLC

[Docket No. ER02–2057–000]

Take notice that on August 6, 2002, Green Country Energy, LLC, submitted a Notice of Withdrawal of the Request for Authorization to Amend Market-Based Rate Tariff filed in the above referenced docket on June 10, 2002.

Comment Date: August 26, 2002.

7. Cogentrix Energy Power Marketing, Inc.

[Docket No. ER02–2058–000]

Take notice that on August 6, 2002, Cogentrix Energy Power Marketing, Inc., submitted a Notice of Withdrawal of the Request for Authorization to Amend Market-Based Rate Tariff in the above referenced docket on June 10, 2002.

Comment Date: August 26, 2002.

8. Rathdrum Power, LLC

[Docket No. ER02–2059–000]

Take notice that on August 6, 2002, Rathdrum Power, LLC, submitted a Notice of Withdrawal of the Request for Authorization to Amend Market-Based Rate Tariff in the above referenced docket on June 10, 2002.

Comment Date: August 26, 2002.

9. Jackson County Power, LLC

[Docket No. ER02–2060–000]

Take notice that on August 6, 2002, Jackson County Power, LLC, submitted a Notice of Withdrawal of the Requests for Authorization to Amend Market-Based Rate Tariff in the above referenced docket on June 10, 2002.

Comment Date: August 26, 2002.

10. Caledonia Generating, LLC

[Docket No. ER02–2061–000]

Take notice that on August 6, 2002, Caledonia Generating, LLC, submitted a Notice of Withdrawal of the Request for Authorization to Amend Market-Based Rate Tariff filed in the above referenced docket on June 10, 2002.

Comment Date: August 26, 2002.

11. Quachita Power, LLC

[Docket No. ER02–2062–000]

Take notice that on August 6, 2002, Quachita Power, LLC, submitted a Notice of Withdrawal of the Request for Authorization to Amend Market-Based Rate Tariff filed in the above referenced docket on June 10, 2002.

Comment Date: August 26, 2002.

12. Cogentrix Lawrence County, LLC

[Docket No. ER02–2063–000]

Take notice that on August 6, 2002, Cogentrix Lawrence County, LLC, submitted a Notice of Withdrawal of the Request for Authorization to Amend Market-Based Rate Tariff in the above referenced docket on June 10, 2002.

Comment Date: August 26, 2002.

13. Southwestern Power Marketers, Inc.

[Docket No. ER02–2438–000]

Take notice that on August 6, 2002, Southwestern Power Marketers, Inc., has formally ceased operations. Please withdraw the market based tariff in Docket No. ER97–2529–000.

Comment Date: August 27, 2002.

14. Enerserve, L.C.

[Docket No. ER02–2439–000]

Take notice that on August 8, 2002, Enerserve, L.C. was closed. Enerserve, L.C. is requesting termination of the certificate authorizing to engage in wholesale electric power and energy transaction as a marketer.

Comment Date: August 29, 2002.

15. Alcoa Power Generating, Inc.

[Docket No. ER02–2440–000]

Take notice that on August 8, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.15(a), 18 CFR 35.15(a) of the Commission's Regulations, Alcoa Power Generating, Inc. (APGI) filed with the Federal Energy Regulatory Commission a Notice of Termination of its Long-Term Agreement by and between APGI and Aquila Merchant Services, Inc., successor to Aquila Energy Marketing Corporation. Pursuant to Section 35.15(a) of the Commission's Regulations, APGI requests an effective date for this termination of August 9, 2002.

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Comment Date: August 29, 2002.

16. Tucson Electric Power Company

[Docket No. ER02–2441–000]

Take notice that on August 8, 2002, Tucson Electric Power Company tendered for filing one (1) Umbrella Service Agreement (for short-term firm service) and one (1) Service Agreement (for non-firm service) pursuant to Part II of Tucson's Open Access Transmission Tariff, which was filed in Docket No. ER01–208–000.

The details of the service agreements are Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service dated as of August 2, 2002 by and between Tucson Electric Power Company and UBS AG, London Branch—FERC Electric Tariff Vol. No. 2, Service Agreement No. 200. No service has commenced at this time.

Form of Service Agreement for Non-Firm Point-to Point Transmission Service dated as of August 2, 2002 by and between Tucson Electric Power Company and UBS AG, London Branch—FERC Electric Tariff Vol. No. 2, Service Agreement No. 201. No service has commenced at this time.

Comment Date: August 29, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21266 Filed 8–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Participation at MISO–PJM–SPP Single Market Design Forum Meeting

August 15, 2002.

The Federal Energy Regulatory Commission hereby gives notice that on August 22, 2002, members of its staff will attend the MISO–PJM–SPP Single Market Design Forum meeting, concerning the development of a joint and common wholesale energy market for the Midwest Independent Transmission System Operator, Inc. (MISO), PJM Interconnection (PJM) and Southwest Power Pool, Inc. (SPP) regions. The staff's attendance is part of the Commission's ongoing outreach efforts. The meeting is sponsored by MISO, PJM and SPP, and will be held on August 22, 2002, 10:00 a.m. at the Sheraton Suites International, 7032 Elm Road, Baltimore, MD 20240. This meeting is open to the public. The meeting may discuss matters at issue in Docket No. RM01–12–000, Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, and in Docket No. EL02–65–000, *et al.*, Alliance Companies, *et al.*

For more information, contact Mike Gahagan, Vice President, Chief Information Officer & Chief Strategic Officer, Midwest Independent Transmission System Operator, Inc. at (317) 249–5450, or Lawrence R. Greenfield, Senior Counsel, Federal Energy Regulatory Commission at (202) 502–6415 or *lawrence.greenfield@ferc.gov.*

Dated:

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21271 Filed 8–20–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–7263–4]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption—Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA today, pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b), is granting California its request for a waiver of federal preemption, with the exceptions noted below, for its Onboard Refueling Vapor Recovery (ORVR) regulations. By letter dated July 22, 1997, the California Air Resources Board (CARB) requested that EPA grant California a waiver of federal preemption for its ORVR regulations which primarily incorporate EPA's ORVR regulations and with a phase-in commencing in 1998.

ADDRESSES: The Agency's Decision Document, containing an explanation of the Assistant Administrator's decision, as well as all documents relied upon in making that decision, including those submitted to EPA by CARB, are available at the EPA's Air and Radiation Docket and Information Center (Air Docket). The Air Docket Office is open from 8 to 4 p.m. Monday through Friday, at EPA, Air Docket (6102), Room M–1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460. The reference number for this docket is A–97–38.

Electronic copies of this Notice and the accompanying Decision Document are available via the Internet on the Office of Transportation and Air Quality (OTAQ) website (*http://www.epa.gov/OTAQ*). Users can finds these documents by accessing the OTAQ website and looking at the path entitled, "Regulations." This service is free of charge, except for any cost you already incur for Internet connectivity. The electronic **Federal Register** version of the Notice is made available on the day of publication on the primary website (*http://www.epa.gov/docs/fedrgstr/EPA–AIR*).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

FOR FURTHER INFORMATION CONTACT: David J. Dickinson, Certification and Compliance Division, U.S. Environmental Protection Agency, Ariel Rios Building (6405J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 564–9256. Fax: (202) 565–2057. E-Mail address: *Dickinson.David@EPA.GOV.*

SUPPLEMENTARY INFORMATION: I have decided to grant California a waiver of Federal preemption pursuant to section 209(b) of the Act for amendments to its motor vehicle pollution control program for ORVR which incorporates (1) EPA's emission standards (0.20 grams hydrocarbon, Organic Material Hydrocarbon Equivalent, for alcohol fuels, per gallon of fuel dispensed); (2) Federal preconditioning and sequencing provisions for integrated and non-integrated ORVR systems; and (3) Federal refueling steps common to both integrated and non-integrated ORVR systems.[1]

Section 209(b) of the Act provides that, if certain criteria are met, the Administrator shall waive Federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California needs State standards to meet compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of the Act.

CARB determined that its ORVR standards and accompanying enforcement procedures do not cause California's standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. EPA received no comments that questioned CARB's determination. As indicated in footnote one, to the extent that CARB's ORVR regulation does not apply to gaseous fueled vehicles a waiver for such vehicles is not granted, and as further explained in the Decision Document the federal ORVR regulations apply to such vehicles. In all other respects EPA cannot make a finding that CARB's determination, that its ORVR requirements are, in the aggregate, at least as protective of public health and welfare, is arbitrary and capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program, which includes the subject standards and procedures. No information has been submitted to demonstrate that California no longer has a compelling and extraordinary need for its own program. Therefore, I agree that California continues to have compelling and extraordinary conditions which require its own program, and, thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its emission standards and test procedures are technologically feasible and present no inconsistency with federal requirements and are, therefore, consistent with section 202(a) of the Act. No information has been presented to demonstrate that CARB's requirements are inconsistent with section 202(a) of the Act, nor does EPA have any other reason to believe that CARB's requirements are inconsistent with section 202(a). Thus, I cannot find that California's ORVR requirements will be inconsistent with section 202(a) of the Act. Accordingly, I hereby grant the waiver requested by California.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeal for the District of Columbia Circuit. Petitions for review must be filed by October 21, 2002. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

As with past waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

[1] Title 13, California Code of Regulations (CCR), section 1978 and the incorporated "California Refueling Emissions Standards and Test Procedures for 1998 and Subsequent Model Motor Vehicles" as adopted by CARB Executive Order G–96–026 on April 24, 1996. As explained below, EPA is not waiving section 1978 as it applies to vehicles fueled by CNG or LPG to the extent that CARB's ORVR regulation does not apply to such vehicles. In addition, EPA is not at this time waiving the amendments CARB made to section 1978 at its November 5, 1998 hearing including CARB's new regulation "California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Motor Vehicles." EPA anticipated that it will consider CARB's new regulation and matters regarding CARB's clarifications on gaseous and gasoline fueled vehicles within the context of a future waiver proceeding or when California's regulations are brought within the scope of today's waiver.

Dated: August 13, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–21290 Filed 8–20–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7263–5]

2002 Clean Air Excellence Awards Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency established the Clean Air Excellence Awards Program in February 2000. This is an annual awards program to recognize outstanding and innovative efforts that support progress in achieving clean air. This notice announces the competition for the Year 2002 program.

Awards Program Notice: Pursuant to 42 U.S.C. 7403(a)(1) and (2) and sections 103(a)(1) and (2) of the Clean Air Act (CAA), notice is hereby given that the EPA's Office of Air and Radiation (OAR) announces the opening of competition for the Year 2002 "Clean Air Excellence Awards Program" (CAEAP). The intent of the program is to recognize and honor outstanding, innovative efforts that help to make progress in achieving cleaner air. The CAEAP is open to both public and private entities. Entries are limited to the United States. There are six award categories: (1) Clean Air Technology; (2) Community Development/Redevelopment; (3) Education/Outreach; (4) Regulatory/Policy Innovations; (5) Transportation Efficiency Innovations; and (6) Outstanding Individual Achievement Award. Awards are recognition only and are given on an annual basis.

Entry Requirements and Deadline: All applicants are asked to submit their entry on a CAEAP entry form, contained in the CAEAP Entry Package, which may be obtained from the Clean Air Act Advisory Committee (CAAAC) web site at *www.epa.gov/oar/caaac* and click on Awards Program or by contacting Mr. Paul Rasmussen, U.S. EPA at 202–564–1306 or 202–564–1352 (Fax), mailing address: Office of Air and Radiation (6102A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The entry form is a simple, three-part form asking for general information on the applicant and the proposed entry; asking for a description of why the entry is deserving of an award; and requiring

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information from three (3) independent references for the proposed entry. Applicants should also submit additional supporting documentation as necessary. Specific directions and information on filing an entry form are included in the Entry Package available through the directions above. The deadline for all submission of entries is September 19, 2002.

Judging and Award Criteria: Judging will be accomplished through a screening process conducted by EPA staff, with input from outside subject experts, as needed. A workgroup of the CAAAC will provide advice to EPA on the entries. The final award decision will be made by the EPA Assistant Administrator for Air and Radiation. Entries will be judged using both general criteria and criteria specific to each individual category. There are four (4) general criteria: (1) The entry directly or indirectly (i.e., by encouraging actions) reduces emissions of criteria pollutants or hazardous/toxic air pollutants; (2) The entry demonstrates innovation and uniqueness; (3) The entry provides a model for others to follow (i.e., it is replicable); and (4) The positive outcomes from the entry are continuing/sustainable. Although not required to win an award, the following general criteria will also be considered in the judging process: (1) The entry has positive effects on other environmental media in addition to air; (2) The entry demonstrates effective collaboration and partnerships; and (3) The individual or organization submitting the entry has effectively measured/evaluated the outcomes of the project, program, technology, etc. As mentioned above, additional criteria will be used for each individual award category. These criteria are listed in the 2002 Entry Package.

FOR FURTHER INFORMATION CONTACT: For further information concerning this new awards program please use the CAAAC Web site cited above or contact Paul Rasmussen at the telephone and address cited above.

Dated: August 8, 2002.

Robert Brenner,

Principal Deputy Assistant Administrator for Air and Radiation.

[FR Doc. 02–21289 Filed 8–20–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7264–2]

Assistance for Local Governments That Wish To Develop and Implement Environmental Management Systems (EMS)

AGENCY: Environmental Protection Agency.

ACTION: Notice; announcement of a program to assist local agencies that wish to voluntarily develop and implement environmental management systems (EMS); request for applications.

SUMMARY: The Environmental Protection Agency (EPA) announces its intention to assist up to ten local government organizations that wish to develop and implement environmental management systems (EMS). While no direct financial assistance would be provided to participants. Other assistance, in the form of training workshops, on-site visits, and electronic materials/consultation would be provided. EPA would provide partial funding for this program through a cooperative agreement with the Global Environment and Technology Foundation (GETF), a non-profit organization that specializes in EMS training and implementation, located in Annandale, Virginia, but the majority of the funding would be provided by the participants through individual agreements with GETF. GETF will then work closely with each participant throughout the life of the program and provide training, technical assistance, site visits, and other materials designed to help each participant develop a complete EMS, using the ISO 14001 International EMS Standard as a baseline. Participants would also be asked to communicate and share information with local stakeholders as their EMS is developed. Each participant would also provide data about their EMSs, including a short case study, to a National Clearinghouse of EMS Information that is designed to help a wide range of public agencies develop EMSs for their operations. This clearinghouse is located at *www.peercenter.net*.

This initiative is similar to and builds on the successes of two previous projects sponsored by EPA. More information on these projects can also be found at *www.peercenter.net*. The initiative is also consistent with EPA's overall policy position of encouraging EMS adoption in key sectors. This statement was recently signed by the EPA Administrator and can be found at *www.epa.gov/ems*.

This initiative is being led by EPA's Office of Water and co-sponsored by the Office of Air and Radiation and the Office of Solid Waste.

DATES: Letters of Application from interested organizations should be submitted no later than September 30, 2002.

ADDRESSES: Letters of application should be submitted in writing or faxed to: Craig Ruberti, Global Environment and Technology Foundation (GETF), 7010 Little River Turnpike, Suite 460, Annandale, Virginia, 22003, (703) 750–640, FAX (703) 750–6506.

FOR FURTHER INFORMATION CONTACT: Jim Horne, U.S. EPA, Office of Wastewater Management, 1200 Pennsylvania Avenue, NW., 20460, (202) 564–0571, *horne.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Over the past 8–10 years, there has been increasing evidence that organizations that adopt environmental management systems (EMS) for their operations can realize significant benefits in terms of improved environmental performance, including but not limited to environmental compliance, prevention of pollution, increased operational efficiency, and improved relations with regulatory agencies. Originally adopted in the private sector, EMSs are now proving to be a powerful tool that can also help public agencies, especially local governments. EMSs do not impose new technical requirements, nor do they act as a substitute for existing regulatory requirements. EMSs provide a powerful and replicable method for an organization to more effectively *manage* its environmental obligations and, as a result, improve its overall environmental performance, including areas not subject to legal requirements. EMSs can also help organizations reduce unnecessary costs.

Since 1997, the U.S. Environmental Protection Agency (EPA) has led a major effort to assist and build partnerships with public agencies, primarily local governments, voluntarily adopt environmental management systems (EMS) for their operations, using the ISO 14001 International EMS Standard as a baseline. These initiatives have documented a series of important benefits for the 23 organizations that have participated including improved environmental performance, cost savings, and better community relations. The experiences of these agencies have also helped to demonstrate the value of EMSs in the public sector, provided much valuable information that can help other public agencies in the future, and pointed out the need for EPA to continue to build strong partnerships with local governments that wish to adopt EMSs. Organizations interested in applying for the program described below are encouraged to learn more about the benefits that previous participants have realized through their EMSs by going to *www.peercenter.net*.

As a result of the successes of these efforts, EPA has recently launched the Public Entity EMS Resource Center Initiative (PEER). The PEER Initiative consists of two major components—(1) A national clearinghouse of EMS information geared to the particular needs of public agencies, especially local governments, located at *www.peercenter.net* and (2) a group of eight EMS Local Resource Centers (LRCs) around the country, housed in academic and other non-profit institutions, that can provide EMS assistance and training for public agencies in different areas around the country. A listing of these Local Resource Centers can be found at the Web site listed above. The national program described in this notice will compliment the work of the Local Resource Centers, help provide additional valuable for the information in the national clearinghouse described above, and maintain momentum for EMS adoption in the public sector.

II. Program Description

Participants in this program would be required to:

(1) Develop an environmental management system (EMS) for an operation of their choosing, using the ISO 14001 International Standard as a baseline. Participants will be provided with information on the process, costs, and benefits of achieving 3rd party certification for their EMS, but will not be required to achieve certification;

(2) Communicate and share information with local stakeholders as the EMS is developed;

(3) Adopt performance objectives for the EMS that address compliance, environmental performance beyond compliance, and pollution prevention;

(4) Share information about their EMS and other relevant information through the national clearinghouse of EMS information for public entities described above (*www.peercenter.net*).

The Global Environment and Technology Foundation (GETF), through a cooperative agreement with U.S. EPA, will work closely with each participant to help them meet these requirements, over a two year period beginning in late 2002. GETF will provide this assistance through regular workshops involving all participants, site assistance visits for each participants, regular conference calls, and other written and electronic materials. In addition, participants will receive informal mentoring, as appropriate, from agencies that have participated in the two previous local government EMS initiatives sponsored by U.S. EPA.

III. Guidelines for Application

Organizations wishing to apply for this program need to:

1. Submit a letter of application to the person listed above in the summary of this Notice no later than September 30, 2002;

2. This letter should be signed by the head of the organization and contain the following information:

—A brief description of the organization and its responsibilities;

—The name of a top management representative who will have the responsibility and authority for ensuring that the EMS is developed based on the program description provided above. This person should be available to travel and participate in up to four workshops with other participants over the life of the project. These workshops will be held approximately every six months;

—A preliminary, non-binding indication of the particular operation for which the EMS will be developed (i.e. wastewater treatment plant, public works department, transit operation, etc.). If necessary, a final determination of the operation for which the EMS will be developed can take place once organizations have been selected for the program;

—A description of the reasons the organization wishes to participate in the program and some of the benefits it hopes to realize from adopting an EMS;

—Finally, a clear assurance that top management in the organization will provide the necessary visibility, staff time, and other resources necessary to successfully develop and implement the EMS through an EMS implementation team. Ongoing top management support is the most critical factor for ensuring a successful and sustainable EMS.

EPA funding will be provided through GETF and used to offset some of the costs of participating in the program, such as travel to workshops. However, participants will be asked to pay the majority of the costs of participation, through an agreement with GETF. This funding can be provided on a yearly basis. EPA believes the costs of participation are competitive with costs incurred by other local governments to develop EMSs and that participation in this national program will provide significant benefits to each participant.

Once all applications are received, follow up interviews will be conducted by GETF with each applicant to discuss the information contained in their letter of application in more detail, along with any other information needed before final decisions on program participation are made. GETF will consult with EPA before final decisions are made. These final decisions are expected no later than November 20, 2002, after which GETF will work with each participant to schedule the first program workshop.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 02–21291 Filed 8–20–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7263–6]

Clean Air Act Advisory Committee Notice of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical scientific, and enforcement policy issues.

Open Meeting Notice: Pursuant to 5 U.S.C. App.2 Section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Wednesday, October 30, 2002, from approximately 8:30 a.m. to 2:30 p.m. at the Renaissance Mayflower Hotel, 1127 Connecticut Ave., NW., Washington, DC. Seating will be available on a first come, first served basis. Three of the CAAAC's four Subcommittees (the Linking Energy, Land Use, Transportation, and Air Quality Concerns Subcommittee; the Permits/NSR/Toxics Integration Subcommittee; and the Economics Incentives and Regulatory Innovations Subcommittee) will hold meetings on Tuesday, October 29, 2002 from approximately 1 p.m. to 7 p.m. at the Renaissance Mayflower Hotel, the same location as the full Committee. The

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Energy, Clean Air and Climate Change Subcommittee will not meet at this time. The schedule for the three Subcommittees meetings is: Linking Energy, Land Use, Transportation, and Air Quality—1 p.m. to 3 p.m.; Permits/NSR/Toxics—3 p.m. to 5 p.m.; and Economics Incentives and Regulatory Innovations—5 p.m. to 7 p.m.

Inspection of Committee Documents: The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket item A–94–34 (CAAAC). The Docket office can be reached by telephoning 202–260–7548; FAX 202–260–4400.

FOR FURTHER INFORMATION CONTACT: For Further Information concerning this meeting of the full CAAAC, please contact Paul Rasmussen, Office of Air and Radiation, US EPA (202) 564–1306, FAX (202) 564–1352 or by mail at US EPA, Office of Air and Radiation (Mail code 6102 A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004. For information on the subcommittee meetings, please contact the following individuals: (1) Permits/NSR/Toxics Integration—Debbie Stackhouse, 919–541–3554; and (2) Linking Transportation, Land Use and Air Quality Concerns—Robert Larson, 734–214–4277; and (3) Economic Incentives and Regulatory Innovations—Carey Fitzmaurice, 202–564–1667. Additional information on these meetings and for the CAAAC and its Subcommittees can be found on the CAAAC Web Site: *www.epa.gov/oar/caaac/*

Dated: August 8, 2002.

Robert D. Brenner,

Principal Deputy Assistant Administrator for Air and Radiation.

[FR Doc. 02–21288 Filed 8–20–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0207; FRL–7195–3]

Tribal Pesticide Programs Council; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Tribal Pesticide Program Council (TPPC), will hold a 2–day meeting, beginning on September 25, 2002, and ending on September 26, 2002. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on September 25, 2002, from 9 a.m. to 5 p.m., and September 26, 2002, from 9 a.m. to 5 p. m. On September 25 and 26 at 1:15 to 2:15 p.m., the Tribal caucus is closed to EPA and the general public.

ADDRESSES: This meeting will be held at the Silver Star Hotel and Casino at Pearl River Resort, Highway 16 West, Choctaw, MS.

FOR FURTHER INFORMATION CONTACT: Georgia A. McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: mcduffie.georgia@epa.gov.

Lillian Wilmore, Tribal Pesticide Program Council Facilitator, P.O. Box 470829; Brookline Village, MA 02447–0829; telephone number (617) 232–5742; fax number: (617) 277–1656; e-mail address: naecology@aol.com.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to Tribes with pesticide programs or pesticide interests. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0207. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0207 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0207. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Tentative Agenda

This unit provides tentative agenda topics for the 2–day meeting.

1. TPPC State of the Council Report.

2. Presentation and questions and answers by EPA's Office of Pesticide Programs, Field and External Affairs Division.

3. Reports from Working Groups and TPPC participation in other meetings: Environmental indicators, Tribal Strategy and FOSTTA, Pesticide Program Dialogue Committee, Report on the Western Regional Pesticide Conference, Certification and Training Advisory Group (CTAG), Water Quality and Pesticides Management, and Worker Protection.

4. Tribal caucus.

5. Reports from other Tribal organizations: American Indian Environmental Office (AIEO), Tribal Operations Committee (TOC), Regional Tribal Operations Committee (RTOC), Intertribal Agricultural Council (IAC), and National Tribal Environmental Council (NTEC).

6. Homeland security.

7. Environmental Justice: Fish Consumption Report.

8. EPA's Office of Enforcement and Compliance Assurance (OECA) related issues.

i. Continuing issues reference.

ii. Data collections issues - Form 5700–33H.

9. Tribal caucus.

10. Section 18 and other Tribal authority issues.

11. Pesticide priorities for 2004 and 2005.

12. Updates from the Regional Offices.

13. EPA's Office of Prevention, Pesticides, and Toxic Substances (OPPTS) - Overview and subsistence issues focus.

14. Report on funding of special projects and water quality projects to Tribes and report from Blackfeet nation on their special project.

15. NAGPRA Working Group.

16. Federal Inspector credentials criteria.

17. Tribal code development: A panel discussion - with opportunity for questions.

List of Subjects

Environmental protection, Pesticide and pests.

Dated: August 12, 2002.

Anne E. Lindsay,

Director, Field and External Affairs, Office of Pesticide Programs.

FR Doc. 02–20994 Filed 8–20–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0159; FRL–7190–3]

Pronamide Tolerance Reassessment Decisions; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice of a tolerance reassessment for pronamide starts a 30–day public comment period during which the public is encouraged to submit comments on the Agency's "Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision (TRED) for pronamide." The Agency is providing an opportunity, through this notice, for interested parties to comment in accordance with procedures described in Unit I of this document. All comments will be carefully considered by the Agency. If any comment causes the Agency to revise its decision on reassessment of these tolerances, EPA will publish notice of its amendment in the **Federal Register**.

DATES: Comments, identified by docket control number OPP–2002–0159 must be received on or before September 20, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0159 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Cecelia Watson, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–4329; e-mail address: watson.cecelia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug, and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticides users; and members of the public interested in the use of pesticides: Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access TRED documents electronically, go directly to the TREDs table on the EPA Office of Pesticide Programs Home Page, at http://www.epa.gov/pesticides/reregistration/status.htm

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0159. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0159 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0159. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the appropriate person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

This notice constitutes and announces the availability of the TRED for pronamide. This decision has been developed as part of the public participation process that EPA and the U.S. Department of Agriculture (USDA) are using to involve the public in the reassessment of pesticide tolerances under FFDCA. EPA must review tolerances and tolerance exemptions that were in effect when FQPA was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard of the new law.

FFDCA requires EPA to review all the tolerances for registered chemicals in effect on or before the date of the enactment. In reviewing these tolerances, the Agency must consider, among other things, aggregate risks from non-occupational sources of pesticide exposure, whether there is increased susceptibility to infants and children, and the cumulative effects of pesticides with a common mechanism of toxicity. The tolerances are considered reassessed once the safety finding has been made or a revocation occurs. A reregistration eligibility decision (RED) was completed for pronamide in April 1994, prior to FQPA enactment, and therefore needed an updated assessment to consider the provisions of the Act.

FFDCA requires that the Agency, when considering whether to establish, modify, or revoke a tolerance, consider "available information" concerning the cumulative effects of a particular pesticide's residue and "other substances that have a common mechanism of toxicity."

As indicated above, the Agency will also evaluate the cumulative risk, if necessary, posed by the entire group of chemicals with which a common mechanism of toxicity is shared, and issue a final tolerance reassessment decision once the cumulative assessment for that group is completed. At this time, pronamide has not been identified as sharing a common method of toxicity and is not scheduled for a cumulative risk assessment.

All registrants of pesticide products containing one or more of the active ingredients listed in this document are being sent the TRED, and must respond to labeling requirements within 8 months of receipt. Furthermore, the Agency requests a response to all generic confirmatory data from technical registrants within 90 days of receipt.

The reregistration program is being conducted under congressionally-mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing this TRED as a final document with a 30–day comment period. All comments will be carefully considered by the Agency. If any comment significantly affects the TRED, EPA will amend the TRED by publishing the amendment in the **Federal Register**.

B. What is the Agency's Authority for Taking this Action?

The legal authority for these TREDs falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredients are eligible for reregistration," and either reregistering products or taking "other appropriate regulatory action."

List of Subjects

Environmental protection, Chemicals, Pesticides and pests, Tolerances.

Dated: August 2, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–21295 Filed 8–20–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0186; FRL–7193–3]

Pesticide Product; Registration Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product Bollgard II containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5412; e-mail address: cole.leonard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access a fact sheet which provides more detail on this registration, go to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/, and select "fact sheet."

2. *In person.* The Agency has established an official record for this action under docket control number OPP–2002–0186. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

II. Did EPA Approve the Application?

The Agency approved the application after considering all required data on risks associated with the proposed use of Cry1Ac and Cry2Ab stacked proteins, and information on social, economic, and environmental benefits to be derived from use. Specifically, the

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Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of Cry1Ac and Cry2Ab stacked proteins when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Applications

EPA issued a notice, published in the **Federal Register** of March 21, 2001 (66 FR 15867) (FRL–6770–6), which announced that Monsanto Company, 700 Chesterfield Parkway North, St. Louis, MO 63198, had submitted an application to register the pesticide product, Bollgard II Cotton (EPA File Symbol 524–LEE) containing the active *Bacillus thuringiensis* Cry2Ab protein and the genetic material necessary for its production (Vector GHBK11L) in cotton. Monsanto transformed a Bollgard cotton variety with vector GHBK11L using particle bombardment to add the Cry2Ab gene for full commercial registration on cotton. This product was not previously registered.

The application was approved on June 14, 2002, as Bollgard II, Plant-incorporated protectant containing Cry1Ac and Cry2Ab stacked proteins (EPA Registration Number 524–522) for a 20,000 acre seed increase.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 7, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 02–20873 Filed 8–20–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0208; FRL–7195–2]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0208, must be received on or before September 20, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0208 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6224; e-mail address: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0208. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0208 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0208. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests.

Dated: August 12, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Bayer Corporation

PP 0F6094

EPA has received a pesticide petition (0F6094) from Bayer Corporation, 8400 Hawthorn Road, Kansas City MO, 64120–0013, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of propoxycarbazone-sodium, methyl 2-[[[(4,5-dihydro-4-methyl-5-oxo-3-propoxy-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl]benzoate, sodium salt and its metabolite, methyl 2-[[[(4,5-dihydro-4-methyl-5-oxo-3-(2'-hydroxy-propoxy)-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl]benzoate in or on the raw agricultural commodities (RACs) wheat forage, wheat hay, wheat straw, wheat grain, meat, and meat byproducts, (cattle, sheep, goats, horses, hogs), and milk at 1.5, 0.15, 0.05, 0.01, 0.05, and 0.002 parts per million (ppm); respectively. EPA has determined that the petition contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of MKH–6561 (propoxycarbazone-sodium) in wheat was rapid, as only minor amounts of MKH–6561 were found in some of the wheat matrices. The primary metabolic pathway in wheat appeared to be hydroxylation of the propoxy side chain of MKH–6561 to give Pr-2-OH MKH–6561 (methyl 2-[[[(4,5-dihydro-4-methyl-5-oxo-3-(2'-hydroxy-propoxy)-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl]benzoate). Hydrolysis of Pr-2-OH MKH–6561 then gave Pr-2-OH NMT and, probably the sulfonamide methyl ester which was not observed in any wheat matrices. Hydrolysis of the sulfonamide methyl ester gave sulfonamide acid, which was in equilibrium with saccharin. A minor metabolic pathway was demethylation of MKH–6561 to yield *N*-desmethyl MKH–6561.

2. *Analytical method*—i. *Plant.* The proposed tolerance expression is MKH–6561 and Pr-2-OH MKH–6561. An analytical method was developed to measure these two analytes in plant matrices. The method was validated in wheat tissues. MKH–6561 and Pr-2-OH MKH–6561 were extracted from the wheat tissues with 0.05 M NH_4OH using accelerated solvent extraction. Trifluoroacetic acid (0.5 milliliter (mL)) and an isotopically labeled internal standard were added to the extract. The whole extract was loaded onto a C–18 solid phase extraction (SPE) cartridge. The C–18 SPE cartridge was washed with aqueous trifluoroacetic acid (0.1%) and aqueous acetic acid (0.1%). A three to one mixture of acetonitrile and aqueous acetic acid (0.1%) was used to elute the analytes from the C–18 SPE cartridge. Water and acetic acid were added to the sample which was analyzed by LC/MS/MS.

ii. *Animal.* The proposed tolerance expression is MKH–6561. An analytical method was developed to measure this analyte in animal tissues and milk. The method was validated in animal tissues and milk. MKH–6561 was extracted from the tissues with 0.05 M NH_4OH

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using accelerated solvent extraction. Trifluoroacetic acid (0.5 mL) and an isotopically labeled internal standard were added to the extract which was then centrifuged at 2,000 rpm for 10 minutes. Approximately half of the sample was loaded onto a C–18 SPE cartridge. The C–18 SPE cartridge was washed with aqueous trifluoroacetic acid (0.1%) and aqueous acetic acid (0.1%). A three to one mixture of acetonitrile and aqueous acetic acid (0.1%) was used to elute the analytes from the C–18 SPE cartridge. Water and acetic acid were added to the sample which was analyzed by LC/MS/MS. Milk samples were analyzed by amending an aliquot of milk with trifluororacetic acid (0.5 mL) and isotopically labeled internal standard. The sample was purified by C–18 SPE as described above. The resultant sample was analyzed by LC/MS/MS.

3. *Magnitude of residues.* Twenty-one field trials were conducted in 19 locations to evaluate the quantity of MKH–6561 and Pr-2-OH MKH–6561 in wheat forage, hay, straw, and grain following treatment with MKH–6561, 70 water dispersible granule (WG) at an application rate of 45 grams of active ingredient per hectare in the spring or at 30 grams active ingredient per hectare in the fall and 30 grams active ingredient per hectare in the spring. The highest average field trial (HAFT) residue in wheat forage, hay, straw, and grain were 1.21, 0.12, 0.03, and <0.01 ppm respectively.

B. Toxicological Profile

1. *Acute toxicity.* i. MKH–6561 is of very low acute toxicity to fasted rats following a single oral administration. The acute oral LD_{50} is >5,000 milligrams/kilogram/body weight (mg/kg/bwt) for males and females.

ii. MKH–6561 is not toxic to rats following a single dermal application. The acute dermal LD_{50} is >5,000 mg/kg/bwt for males and females.

iii. An acute inhalation study with rats showed low toxicity with a 4–hour dust aerosol LC_{50} 5,030 mg/m^3 air for males and females.

iv. An eye irritation study in rabbits showed minimal irritation completely reversible within 48 hours.

v. A dermal irritation study in rabbits showed slight irritation completely reversible within 48 hours.

vi. MKH–6561 has no skin sensitizing potential under the conditions of the maximization test in guinea pigs.

2. *Genotoxicity.* The genotoxic action of MKH–6561 was studied in bacteria and mammalian cells with the aid of various *in vitro* test systems (*Salmonella* microsome test, hypoxanthine guanine phophoribosy transferase (HGPRT) test with chinese hamster V79 cells, cytogenetic study with chinese hamster V79 cells, and unscheduled DNA synthesis (UDS) test) and in one *in vivo* test (micronucleus test). None of the tests revealed any evidence of a mutagenic or genotoxic potential of MKH–6561. The compound did not induce point mutation, DNA damage or chromosome aberration (CA).

3. *Reproductive and developmental toxicity.* i. In a 2–generation reproduction study, Wistar rats were administered MKH–6561 at levels of 0, 1,000, 4,000, or 16,000 ppm in the diet. The no observe advese effect level (NOAEL) for reproductive parameters was established at 16,000 ppm (1,231 mg/kg bwt/day in males and 1,605 mg/kg bwt/day in females), the highest dose tested (HDT). The parental NOAEL was 1,000 ppm (80 mg/kg bwt/day in F_1 males and 93 mg/kg bwt/day in F_0 females).

ii. A developmental toxicity study was conducted with Wistar rats via oral gavage of MKH–6561 at levels of 0, 100, 300, and 1,000 mg/kg bwt/day on days 6 through 19 of gestation. There were no signs of maternal toxicity, embryotoxicity, fetotoxicity, or teratogenicity at the level of 1,000 mg/kg bwt/day. Therefore, the maternal and developmental NOAELs for rats were established at 1,000 mg/kg bwt/day, the limit dose for this study type. No teratogenic potential of MKH–6561 was evident in rats.

iii. Himalayan rabbits were administered MKH–6561 at levels of 0, 20, 100, 500, or 1,000 mg/kg bwt/day by oral gavage on days 6 through 28 post coitum in a test for developmental toxicity. A maternal NOAEL of 100 mg/kg bwt/day was established based on cold ears, alopecia, swelling of vulva, decreased feed, and water intake, body weight loss, gastrointestinal tract (GI) effects, liver effects, and thyroid hormone level effects. The gestation rate NOAEL of 100 mg/kg bwt/day was based on one abortion (assessed as secondary due to maternal toxicity) at 500 mg/kg bwt/day. The NOAEL for fetal parameters of 500 mg/kg bwt/day was based on placental effects, increased post-implantation loss, decreased number of fetuses, decreased fetal weight, retarded fetal skeletal ossification, and possible increase in lobulation of liver in fetuses at 1,000 mg/kg bwt/day. No teratogenic potential of MKH–6561 was evident in rabbits.

4. *Subchronic toxicity.* i. A 28–day dermal toxicity study in Wistar rats established a local and systemic NOAEL of 1,000 mg/kg bwt/day (the dermal limit dose) for males and females.

ii. A 14–week feeding study was conducted with Wistar rats at dietary dose levels of 0, 250, 1,000, 4,000, or 20,000 ppm. The NOAEL was determined to be 4,000 ppm (286.4 mg/kg bwt/day in males and 350.6 mg/kg bwt/day in females) based upon increased water consumption (reversible during the 4–week recovery period) and an irritative effect of the forestomach epithelium (reversible during the 4–week recovery period) in males and females dosed at 20,000 ppm as well as reduced glucose and triglyceride levels in females only dosed at 20,000 ppm.

iii. A 91–day feeding study was conducted with B6C3F_1 mice at dietary dose levels of 0, 625, 2,500, or 10,000 ppm. The NOAELs determined for males and females were 625 ppm (205 mg/kg bwt/day) and 2,500 ppm (1,159 mg/kg bwt/day), respectively, based on decreased body weights in 2,500 ppm males and 10,000 ppm females.

iv. A 2–month range-finding feeding study in Beagle dogs, at levels of 0, 1,000, 5,000, 10,000, and 40,000 ppm in the diet established a NOAEL of 10,000 ppm (322.2 mg/kg bwt/day in males and 285.6 mg/kg bwt/day in females) based on elevated hepatic biotransformation enzymes at 40,000 ppm.

5. *Chronic toxicity.* i. A 2–year chronic/oncogenicity study was conducted with male and female Fischer 344 rats at dietary levels of 0, 50, 500, or 1,000 mg/kg bwt/day for approximately the first 7 months of the study (dose adjustment). From approximately 7 months to study termination, the doses were 0, 1,000, 10,000, and 20,000 ppm in the diet. A chronic toxicity NOAEL of 1,000 ppm (43 mg/kg bwt/day in males and 49 mg/kg bwt/day in females) was determined based on increased urine pH and decreased body weight gain at 1–year (but not 2 years) at 10,000 ppm and 20,000 ppm. No carcinogenic potential was indicated.

ii. B6C3F_1 mice were administered MKH–6561 via the diet at levels of 0, 280, 1,400, and 7,000 ppm in a 2–year chronic feeding/carcinogenicity study. The chronic toxicity NOAEL was established at 1,400 ppm (369.0 mg/kg/day in males and 626.9 mg/kg bwt/day in females) based on retarded body weight development. No carcinogenic potential was indicated.

iii. A 1–year feeding study in Beagle dogs was conducted at 0, 2,000, 10,000, and 25,000 ppm in the diet. The NOAEL in males was determined to be 10,000 ppm (258.0 mg/kg bwt/day) based upon increased absolute adrenal gland weight without an increase in relative adrenal gland weight and slight enlargement of zona fasciculata microscopically, without a correlation to adrenal gland weight in males dosed at 25,000 ppm. The NOAEL in females was determined to be 2,000 ppm (55.7 mg/kg bwt/day) based upon decreased food consumption and decreased relative heart weight in females dosed at 10,000 and 25,000 ppm.

6. *Animal metabolism.* i. A single oral dose of 2 mg/kg/bwt [triazolinone-3-^{14}C]MKH–6561 was administered to rats. Between 22% and 24% of the administered dose was absorbed. Maximum plasma radiation levels were observed 0.33 hours after dosing. Within 48 hours of dosing, between CA 88% and 97% of the radioactivity was excreted via urine and feces. Approximately 80–88% of the excreted radioactivity was unchanged parent compound. The highest single metabolite concentration was CA 3% of the administered dose. The terminal elimination half-live for total radioactivity was CA 12–13 hours, so no bioaccumulation of MKH–6561 or its metabolites will occur.

ii. Single oral doses of 2 mg/kg/bwt and 200 mg/kg/bwt [phenyl-UL-^{14}C]MKH–6561 were administered to rats. Between CA 21–31% of the administered dose was absorbed. Maximum plasma radiation levels were observed after 0.33 hours (low dose) and 1–hour (high dose). Within 48 hours of dosing, CA 97–104% of the administered dose was eliminated via urine and feces. Approximately 75–86% of the administered dose was eliminated as unchanged parent compound. The maximum single metabolite concentration was 8.8% of the administered dose. At the end of the study, less than 0.25% of the administered dose was found in organs and tissues. In a separate bile fistulation experiment, the predominantly fecal elimination was confirmed to be due to incomplete absorption of radioactivity from the GI tract. The terminal elimination half-live for total radioactivity was CA 9–11 hours, so no bioaccumulation of MKH–6561 or its metabolites will occur.

iii. Laying hens were given a daily dose of protonated MKH–6561 [phenyl-UL-^{14}C] at 3.12 mg/kg/bwt for 3 consecutive days. The residue levels were 1.343 ppm in liver, 0.017 ppm in muscle, 0.014 ppm in fat, 0.006 ppm in the day–1 eggs, 0.009 ppm in the day–2 eggs, and 0.012 ppm in the day–3 eggs. The residue levels based on a theoretical 1x application rate, as determined from residue levels observed in the MKH–6561 wheat field trials would all be considerably less than 0.001 ppm. The major residue identified in tissues and eggs were MKH–6561, Pr-2-OH MKH–6561, MKH–6561 sulfonamide methyl ester, and saccharin. The major metabolic pathway of MKH–6561 [phenyl-UL-^{14}C] in poultry was hydrolysis of the parent compound producing *N*-methyl propyl triazolinone and sulfonamide methyl ester. The sulfonamide methyl ester was then converted to saccharin. A minor pathway involved hydoxylation at the 2–position of the triazolinone propoxy group. In the liver, the major metabolic pathway led to the formation of protein bound MKH–6561 residue through conjugation with the amino acid serine.

iv. Laying hens were given a daily dose of protonated MKH–6561 [triazolinone-3-^{14}C] at 2.91 mg/kg/bwt for 3 consecutive days. The residue levels were 0.184 ppm in liver, 0.044 ppm in muscle, 0.015 ppm in the fat, 0.011 ppm in the day–1 egg, 0.016 ppm in the day–2 egg, and 0.022 ppm in the day–3 egg. The residue levels in tissues and eggs based on a theoretical 1x application, as determined from the residue levels observed in the MKH–6561 wheat field trials, would all be considerably less that 0.001 ppm. The metabolism of MKH–6561 [triazolinone-3-^{14}C] appeared to involve both hydroxylation at the 2–position of the propoxy group and hydrolysis of the phenyl sulfonamide linkage.

v. Goats were dosed with 1.0 mg/kg/bwt of MKH–6561 [phenyl-UL-^{14}C] for 3 consecutive days. Residue levels were 3.643 ppm in liver, 0.486 ppm in kidney, 0.009 ppm in muscle, 0.004 ppm in fat, 0.015 ppm in day–1 milk and, 0.022 ppm in day–2 milk. The metabolic pathway was based on hydrolysis of the sulfonamide to yield MKH–6561 sulfonamide methyl ester and saccharin. The saccharin was then conjugated to proteins which were found mainly in the liver and kidney.

vi. Goats were dosed with MKH–6561 [triazolinone-3-^{14}C] at a dose of 0.98 mg/kg/bwt for 3 consecutive days. Residue levels were 0.171 ppm in liver, 0.425 ppm in kidney, 0.040 ppm in muscle, 0.007 ppm in fat, 0.046 ppm in day–1 milk, and 0.057 ppm in day–2 milk. The metabolism of MKH–6561 involved the cleavage of the phenyl sulfonylurea side chain and the hydroxylation of the propyl side chain on the triazolinone ring system after the cleavage of the phenyl sulfonylurea side chain.

7. *Metabolite toxicology.* i. 4-OH-saccharin is of low acute toxicity to fasted rats following a single oral administration. The acute oral LD_{50} is >5,000 mg/kg/bwt for males and females. 4-OH-saccharin is considered non-mutagenic with and without S9 mix in the plate incorporation as well as in the preincubation modification of the *Salmonella* microsome test.

ii. MKH–8394 is of very low acute toxicity to fasted rats following a single oral administration. The acute oral LD_{50} is>5,000 mg/kg/bwt for males and females. MKH–8394 is considered non-mutagenic with and without S9 mix in the plate incorporation as well as in the preincubation modification of the *Salmonella* microsome test.

iii. KTS–9061 (Pr-2-OH MKH–6561) is not toxic to fasted rats following a single oral administration. The acute oral LD_{50} is>5,000 mg/kg/bwt for males and females. KTS–9061 is considered non-mutagenic with and without S9 mix in the plate incorporation as well as in the preincubation modification of the *Salmonella*/microsome test. KTS–9061 is considered non-clastogenic with and without S9 mix CA test *in vitro* using chinese hamster V79 cells. Wistar rats were administered KTS–9061 via the diet at levels of 0, 800, 4,000, and 10,000 ppm for approximately 4 weeks. The NOAEL was determined to be 10,000 ppm (905.3 mg/kg bwt/day in males and 880.0 mg/kg bwt/day in females), the HDT.

iv. KTS–9304 has low to moderate acute toxicity to fasted rats following a single oral administration. The acute oral LD_{50} was 263 mg/kg/bwt in males and 1,756 mg/kg/bwt in females. KTS–9304 is considered non-mutagenic with and without S9 mix in the plate incorporation as well as in the preincubation modification of the *Salmonella*/microsome test.

8. *Endocrine disruption.* There is no evidence to suggest that MKH–6561 has an effect on the endocrine system. Studies in this data base include evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following short-term and long-term exposure. These studies revealed no endocrine effects due to MKH–6561.

9. *Other studies.* i. An acute neurotoxicity screening study in Wistar rats established a NOAEL for males and females of 2,000 mg/kg/bwt (HDT).

ii. A 13–week neurotoxicity screening study in Wistar rats established a NOAEL of 20,000 ppm (1,321 mg/kg bwt/day in males and 1,651 mg/kg/day in females) (HDT). No neurotoxic potential was observed..

iii. A Plaque-Forming-Cell Assay to investigate immunotoxicological potential was performed on male Wistar rats after an approximate 4–week exposure of 0, 4,000, 10,000, or 20,000 ppm in the diet. The Plaque-Forming-Cell Assay NOAEL was 20,000 ppm (2,144 mg/kg bwt/day; HDT). The

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overall study NOAEL was 10,000 ppm (986 mg/kg bwt/day) based upon increased water intake at 20,000 ppm.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Estimates of chronic dietary exposure to residues of MKH–6561 utilized the proposed tolerances in wheat forage, wheat hay, wheat straw, wheat grain, meat, and meat byproducts (cattle, sheep, goats, horses, hogs), and milk of 1.5, 0.15, 0.05, 0.01, 0.05, and 0.002 ppm respectively. Other assumptions were that 100% of the target crop would be treated with MKH–6561 and that no loss of residue would occur due to processing or cooking. For chronic exposures, a reference dose (RfD) of 0.43 mg/kg/day was assumed based on and NOAEL of 43 mg/kg bwt/day from the combined chronic toxicity/oncogenicity study in the rat. A safety factor of 100 was used based on interspecies extrapolation (10x) and intraspecies variability (10x). Using these conservative assumptions, dietary residues of MKH–6561 contribute 0.000219 mg/kg/day (0.1% of the RfD) for children 1 to 6 years old, the most sensitive sub-population. For the U.S. population, the exposure was 0.000098 mg/kg/day (0.02% of the RfD). For acute dietary exposure, the same conservative assumptions were made. A NOAEL of 100 mg/kg bwt/day from the developmental toxicity study in rabbits and an safety factor of 100 were used in the acute dietary assessment. The safety factor of 100 was based on interspecies extrapolation (10x) and intraspecies variability (10x). Acute dietary exposure at the 95th percentile was negligible for all population subgroups. For children 1 to 6 years old (the most sensitive sub-population,) and for the U.S. population, <0.1% of the acute RfD was consumed at the 95th percentile.

ii. *Drinking water.* Estimates of chronic dietary exposure to residues of MKH–6561 utilized the proposed tolerances in wheat forage, wheat hay, wheat straw, wheat grain, meat, and meat byproducts (cattle, sheep, goats, horses, hogs), and milk of 1.5, 0.15, 0.05, 0.01, 0.05, and 0.002 ppm respectively. Other assumptions were that 100% of the target crop would be treated with MKH–6561 and that no loss of residue would occur due to processing or cooking. For chronic exposures, an RfD of 0.43 mg/kg/day was assumed based on and NOAEL of 43 mg/kg bwt/day from the combined chronic toxicity/oncogenicity study in the rat. A safety factor of 100 was used based on interspecies extrapolation (10x) and intraspecies variability (10x). Using these conservative assumptions, dietary residues of MKH–6561 contribute 0.000219 mg/kg/day (0.1% of the RfD) for children 1 to 6 years old, the most sensitive sub-population. For the U.S. population, the exposure was 0.000098 mg/kg/day (0.02% of the RfD). For acute dietary exposure, the same conservative assumptions were made. A NOAEL of 100 mg/kg bwt/day from the developmental toxicity study in rabbits and an safety factor of 100 were used in the acute dietary assessment. The safety factor of 100 was based on interspecies extrapolation (10x) and intraspecies variability (10x). Acute dietary exposure at the 95th percentile was negligible for all population subgroups. For children 1 to 6 years old (the most sensitive sub-population,) and for the U.S. population, <0.1% of the acute RfD was consumed at the 95th percentile.

2. *Non-dietary exposure.* There are no current non-food uses for BAY MKH–6561 registered under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. No non-food uses are proposed for BAY MKH6561 and no non-dietary exposures are expected for the general population.

D. Cumulative Effects

BAY MKH–6561 is a sulfonamide herbicide. There is no information to suggest that any chemical in this class of herbicides has a common mechanism of mammalian toxicity or that chemicals in this class produce similar effects so it is not appropriate to combine exposures of BAY MKH–6561 with other herbicides. Bayer Corporation is considering only the potential risk of BAY MKH–6561.

E. Safety Determination

1. *U.S. population.* As presented previously, the exposure of the U.S. general population to MKH–6561 is low, and the risks, based on comparisons to the RFD, are minimal. The margins of safety from the use of MKH–6561 are well within EPA's acceptable limits. Bayer Corporation concludes that there is a reasonable certainty that no harm will result to the U.S. population from aggregate exposure to MKH–6561 residues.

2. *Infants and children.* The complete toxicological data base including the developmental toxicity and 2–generation reproduction studies were considered in assessing the potential for additional sensitivity of infants and children to residues of BAY MKH–6561. The developmental toxicity studies in rats and rabbits revealed no increased sensitivity of rats or rabbits to *in-utero* exposure to BAY MKH–6561. The 2–generation reproduction study did not reveal any increased sensitivity of rats to *in-utero* or postnatal exposure to BAY MKH–6561. Furthermore, none of the other toxicology studies revealed any data demonstrating that young animals were more sensitive to BAY MKH–6561 than adult animals. The data taken collectively clearly demonstrate that application of a FQPA uncertainty factor for increased sensitivity of infants and children is not necessary for BAY MKH–6561.

F. International Tolerances

There are currently no international Codex tolerances established for BAY MKH–6561. It is not currently registered in any other countries. There are no harmonized maximum residue levels at the European Union level at present.

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BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0172 FRL–7191–1]

Notice of Filing of Pesticide Petitions to Establish Tolerances for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002,–0172, must be received on or before September 20, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0172 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particularly entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0172. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0172 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person* or by courier. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticides Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0172. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA to response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that the petitions contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

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Dated: August 14, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner summary of the pesticide petitions is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petitions were prepared by the Interregional Research Project No. 4 (IR–4) and represents the view the Interregional Research Project No. 4 EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project No. 4 (IR–4)

PP 0E6178, 2E6386, 2E6410, and 2E6432

EPA has received pesticide petitions (0E6178, 2E6386, 2E6410, and 2E6432) from the Interregional Research Project No. 4 (IR–4), Rutgers, The State University of New Jersey, Highway No. 1 South, North Brunswick, NJ, 08902–3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.493 by establishing tolerances for residues of the fungicide dimethomorph [(E,Z)4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]-morpholine] in or on the following raw agricultural commodities: Dried cone hop at 60 parts per million (ppm) (0E6178); leaf lettuce and head lettuce at 10 ppm (2E6386); cucurbit vegetable group at 0.5 ppm (2E6410); and bulb vegetable group at 2 ppm (2E6432). A related petition (PP 8F4946) for the establishment of a tolerance for residues of dimethomorph in or on imported dried hops cones at 45 ppm has previously been filed by American Cyanamid Company. This notice includes summaries of the petitions prepared by BASF Corporation, Research Triangle Park, NC. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of these petitions. Additional data may be needed before EPA rules on these petitions.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the residues of dimethomorph is adequately understood. No metabolites were identified that require regulation.

2. *Analytical method.* A reliable method for the determination of dimethomorph residues in dried hops cones, lettuce (head and leaf), cucurbit vegetables (crop group 9), and bulb vegetables (crop group 3) exists; this method is the FDA Multi-Residue Method, Protocol D, as published in the Pesticide Analytical Manual 1.

3. *Magnitude of residues.* Complete residue data for dimethomorph and the petitioned tolerances have been submitted. The data support the requested tolerances.

B. Toxicological Profile

1. *Acute toxicity*—i. An acute oral toxicity study was conducted in the Sprague-Dawley rat for dimethomorph technical with a lethal dose $(LD)_{50}$ of 4,300 milligrams/kilogram body weight (mg/kg bwt) for males and 3,500 mg/kg bwt for females. Based upon EPA toxicity criteria, the acute oral toxicity category for dimethomorph technical is Category III or slightly toxic.

ii. Oral LD_{50} studies were conducted on the two isomers (E and Z) alone:

a. An acute oral toxicity study in the wistar rat for the E-isomer with a LD_{50} greater than 5,000 mg/kg bwt for males and approximately 5,000 mg/kg bwt for females.

b. An acute oral toxicity study in the wistar rat for the Z-isomer with a LD_{50} greater than 5,000 my/kg bwt for both males and females.

iii. An acute dermal toxicity study was conducted in the Wistar rat for dimethomorph technical with a dermal LD_{50} greater than 5,000 mg/kg bwt for both males and females. Based on the EPA toxicity category criteria, the acute dermal toxicity category for dimethomorph is Category IV or relatively non-toxic.

iv. A 4-hour inhalation study was conducted in wistar rats for dimethomorph technical with a lethal concentration $(LC)_{50}$ greater than 4.2 mg/L for both males and females. Based on the EPA toxicity category criteria, the acute inhalation toxicity category for dimethomorph technical is Category IV or relatively non-toxic.

2. *Genotoxicty*—i. Salmonella reverse gene mutation assays (2 studies) were negative up to a limit dose of 5,000 grams (g)/plate. Chinese hamster lung V79 cells were negative up to toxic doses in two studies.

ii. Two chinese hamster lung structural chromosomal studies were reportedly positive for chromosomal aberrations at the highest dose tested (HDT) (160 grams milliliter (g/mL)/–S9; 170 g/mL/+S9). Dimethomorph induced only a weak response in increasing chromosome aberrations in this test system. These results were not confirmed in two micronucleus tests under in vivo conditions.

iii. Structural chromosomal aberration studies were weakly positive in human lymphocytic cultures, but only in S9 activated cultures treated at 422 g/mL, the HDT, were strongly cytotoxic. No increase in chromosomal aberrations was observed in the absence of S9 activation at all doses. Furthermore, the positive clastogenic response observed under the in vitro conditions was not conformed in two in vivo micronucleus assays.

iv. Micronucleus assay (2 studies) indicated that dimethomorph was negative for inducing micronuclei in bone marrow cells of mice following intraperitoneal administration of doses up to 200 mg/kg or oral doses up to the limit dose of 5,000 mg/kg. Thus, dimethomorph was found to be negative in these studies for causing cytogenic damage in vivo.

v. Dimethomorph was negative for inducing unscheduled DNA synthesis, in cultured rat liver cells, at doses up to 250 g/mL, a weakly cytotoxic level.

vi. Dimethomorph was negative for transformation in Syrian hamster embryo cells treated, in the presence and absence of activation, up to cytotoxic concentrations (265 g/mL/+S9; 50 g/mL/–S9).

3. *Reproductive and developmental toxicity*—i. A rat developmental toxicity study was conducted with the lowest observed adverse effect level (LOAEL) for maternal toxicity of 160 mg/kg/day and the no observed adverse effect level (NOAEL) for maternal toxicity of 60 mg/kg/day. The NOAEL for developmental toxicity is 60 mg/kg/day. Dimethomorph is not carcinogenic in the Sprague-Dawley rat.

ii. A rabbit development toxicity study was conducted with a LOAEL for maternal toxicity of 650 mg/kg/day and a NOAEL for maternal toxicity of 300 mg/kg/day. The NOAEL for developmental toxicity is 650 mg/kg/day, the HDT.

iii. A two-generation rat reproduction study was conducted with a LOAEL for parental systemic toxicity of 1,000 ppm, or approximately 80 mg/kg/day, and a NOAEL for parental systemic toxicity of 300 ppm, or approximately 24 mg/kg/day. The NOAEL for fertility and reproductive function was 1,000 ppm, the highest concentration tested (HCT), or approximately 80 mg/kg bwt/day.

4. *Subchronic toxicity*—i. A 90-day dietary study was conducted in Sprague-Dawley rats with a NOAEL of greater than or equal to 1,000 ppm, the HCT, or approximately 73 mg/kg/day for males and 82 mg/kg/day for females.

ii. A 90-day dog dietary study was conducted with a NOAEL of 450 ppm, or approximately 15 mg/kg/day, and a LOAEL of 1,350 ppm, or approximately 43 mg/kg/day.

5. *Chronic toxicity*—i. A 2-year chronic toxicity study was conducted in Sprague-Dawley rats with a NOAEL of 200 ppm or approximately 9 mg/kg/day for males and 12 mg/kg/day for females. The LOAEL for systemic toxicity is 750 ppm, or approximately 36 mg/kg/day for males and 58 mg/kg/day for females.

ii. A 1-year chronic toxicity study was conducted in dogs with a NOAEL of 450 ppm, or approximately 14.7 mg/kg/day and a LOAEL of 1,350, or approximately 44.6 mg/kg/day.

iii. A 2-year carcinogenicity study was conducted in Sprague-Dawley rats with a NOAEL for systemic toxicity of 200 ppm, or approximately 9 mg/kg/day for males and 11 mg/kg/day for females. The LOAEL for systemic toxicity was 750 ppm, or approximately 34 mg/kg/day for males and 46 mg/kg/day for females. There was no evidence of increased incidence of neoplastic lesions in treated animals. The NOAEL for carcinogenicity is 2,000 ppm, the HCT, or approximately 95 mg/kg/day for males and 132 mg/kg/day for females.

iv. A 2-year carcinogenicity study was conducted in mice with a NOAEL for systemic toxicity of 100 mg/kg/day and a LOAEL of 1,000 mg/kg/day. There was no evidence of increased incidence of neoplastic lesions in treated animals. The NOAEL for carcinogenicity is 1,000 mg/kg/day, the HDT.

6. *Animal metabolism.* Results from the livestock and rat metabolism studies show that orally administered dimethomorph was rapidly excreted by the animals. The principal route of elimination is the feces.

7. *Metabolite toxicology.* There were no metabolites identified in plant or animal commodities which require regulation.

8. *Endocrine disruption.* Collective organ weights and histopathological findings from the two-generation reproduction study in rats, as well as from the subchronic and chronic toxicity studies in two or more animal species, demonstrate no apparent estrogenic effects or effects on the endocrine system. There is no information available which suggests that dimethomorph technical would be associated with endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure.* Tolerances have been established (40 CFR 180.493) for the residues of dimethomorph in or on potatoes at 0.05 ppm, potatoes, wet peel at 0.15 ppm, tomato at 0.5 ppm, tomato paste at 1.0 ppm, hop, dried cones at 60 ppm (import tolerance) and time-limited tolerances have been established for cantaloupe, cucumber, squash and watermelon at 1 ppm and on the cereal grains group: fodder at 0.15 ppm, forage and grain at 0.05 ppm, hay at 0.10 ppm, and straw at 0.15 ppm.

i. *Food*—a. Acute dietary exposure. An acute dietary risk assessment is not required because no acute toxicological endpoints were identified by EPA for dimethomorph.

b. *Chronic dietary exposure.* To assess the potential chronic dietary exposure to dimethomorph residues for all tolerances in effect early in 1999, EPA used the Dietary Exposure Evaluation Model (DEEM®) to conduct a chronic dietary (food only) exposure analysis. In conducting this analysis, EPA made very conservative assumptions: That all commodities having dimethomorph tolerances contain residues of dimethomorph and that those residues are at the level of the tolerance. These assumptions result in an overestimate of human dietary exposure. All section 18 tolerances (cantaloupe, watermelon, cucumber, squash, and tomato) were included in this assessment along with tolerances for cereal grain crops and potato.

ii. *Drinking water.* The Generic Estimated Environmental Concentration (GENEEC) was 24 parts per billion (ppb) for 56 days. This model was used to determine surface water residues. Dimethomorph residues in ground water were also estimated using the Screening Concentration in Ground Water (SCI–GROW) model, but these estimates were significantly lower than those obtained from the GENEEC model. Given the low levels of dimethomorph residues as estimated by the GENEEC model, the additional use of dimethomorph on hops, lettuce, cucurbit vegetables, and bulb vegetables is not expected to reach a level of concern for residues in drinking water.

2. *Non-dietary exposure.* Currently, there are no registered residential uses for dimethomorph in the United States. Thus, an assessment of non-dietary exposure is not relevant to this petition.

D. Cumulative Effects

There is no information to indicate that any toxic effects produced by dimethomorph would be cumulative with those of any other chemical. The fungicidal mode of action of dimethomorph is unique; dimethomorph inhibits cell wall formation only in Oomycete fungi. The result is lysis of the cell wall that kills growing cells and inhibits spore formation in mature hyphae. This unique mode of action and limited pest spectrum suggest that there is little or no potential for cumulative toxic effects in mammals. In addition, the toxicity studies submitted to support this petition do not indicate that dimethomorph is a particularly toxic compound. No toxic end-points of potential concern were identified.

E. Safety Determination

1. U.S. population. The cPAD is 0.1 mg/kg bwt/day, based on a NOAEL of approximately 10 mg/kg bwt/day (200 ppm) from a 2-year dietary toxicity study in rats that demonstrated decreased body weight and liver foci in females at 750 ppm. The cPAD is calculated using an uncertainty factor of 100. The theoretical maximum residue contribution (TMRC) for lettuce, cucurbit and bulb vegetable is estimated at 0.003 mg/kg bwt/day for the general population. This represents a dietary exposure to the general population of the United States that is 3.0% of the cPAD. The TMRC for dried hops cones is estimated at 0.0000515 mg/kg bwt/day for the general population. This represents a dietary exposure to the general population of the United States which is 0.05% of the cPAD. The combined TMRC for all current and pending dimethomorph tolerances in potato, tomato, grape, hop, cereal grain commodities, lettuce (head and leaf), endive (escarole), radicchio, cucurbit vegetable (crop group 9), and bulb vegetable (crop group 3) will utilize less than 10% of the cPAD for the general U.S. population. Since EPA generally has no concern for exposures below 100% of the cPAD, there is a reasonable certainty that no harm will result from aggregate exposure to dimethomorph residues in or on commodities of the cited crops.

Drinking Water

i. *Lettuce, cucurbit and bulb vegetables.* Currently, the only federally registered food/feed uses of dimethomorph in the United States are on potato and tomato crops. For these uses, the Drinking Water Level of Concern (DWLOC) from chronic exposure to dimethomorph was estimated by BASF to be 2,800 ppb for the U.S. population and for males 13 years and older, and 910 ppb for children 1–6 years of age. Given the low levels of dimethomorph residues as

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estimated by the GENEEC model, the large margin of exposure (38x-116x), and the similar use patterns of dimethomorph on commodities of the cited crops, the additional proposed uses of dimethomorph are not expected to reach a level of concern for residues in drinking water.

ii. *Hops.* For this use, the DWLOC from chronic exposure to dimethomorph was estimated by EPA to be 3,400 ppb for the U.S. population and for males 13 years and older, 2,900 ppb for females 13 years and older, and 960 ppb for children (1–6 years of age). Given the low levels of dimethomorph residues as estimated by the GENEEC model and the large margin of exposure (40x-142x), the additional use of dimethomorph on hops is not expected to reach a level of concern for residues in drinking water.

2. *Infants and children.* The TMRC for all commodities covered in this petition is minimal. The consumption of residues of dimethomorph on lettuce (head and leaf), cucurbit vegetables (crop group 9), and bulb vegetables (crop group 3) will use approximately 7.0% of the cPAD for children ages 1–6. The TMRC for residues of dimethomorph in hops as consumed by infants, non-nursing infants, children ages 1–6, and children ages 7–12 are each estimated to be 0.00% of the cPAD. Moreover, the combined TMRC values for all current and pending dimethomorph tolerances will utilize less than 10% of the cPAD for each of the subgroups.

The results of the studies submitted to support this package provide no evidence that dimethomorph caused reproductive, developmental or reproductive effects. No such effects were noted at dose levels that were not maternally toxic. The NOAELs observed in the developmental and reproductive studies were 6 to 65 times higher than the NOAEL used to establish the cPAD. There is no evidence to indicate that children or infants would be more sensitive than adults to toxic effects caused by exposure to dimethomorph.

Therefore, the registrant believes that the results of the toxicology and metabolism studies support both the safety of dimethomorph to humans based on the intended use as a fungicide on domestically produced hops, lettuce (head and leaf), cucurbit vegetables (crop group 9), and bulb vegetables (crop group 3) and the granting of the requested tolerances.

F. International Tolerances

There are no Canadian, Mexican, or codex MRLs established for dimethomorph for the commodities associated with this request; consequently, a discussion of international harmonization is not relevant.

[FR Doc. 02–21279 Filed 8–16–02; 4:19 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0170; FRL–7190–9]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0170, must be received on or before September 20, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0170 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311	Crop production Animal production Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0170. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0170 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0170. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

August 15, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the Interregional Research Project Number 4 (IR-4), and represents the view of IR-4. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR–4)

PP 2E6404

EPA has received a pesticide petition 2E6404 from Interregional Research Project Number 4 (IR-4), 681 US Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.473 by establishing a tolerance for residues of the herbicide glufosinate ammonium (butonoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt) and its metabolite, 3-methylphosphinico-propionic acid, expressed as 2-amino-4-(hydroxmethylphosphinyl) butanoic acid in or on the raw agricultural commodities blueberry, lingonberry, juneberry, and salal at 0.10 part per million (ppm). This notice includes a summary of the petition prepared by Aventis CropScience U.S.A., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The nature of residues found in plants as a result of a treatment of glufosinate-ammonium is well understood.

2. *Analytical method.* The enforcement analytical method utilizes gas chromatography for detecting and measuring levels of glufosinate-ammonium and metabolites with a general limit of quantification of 0.05 ppm. This method allows detection of residues at or above the proposed tolerances.

3. *Magnitude of residues.* Field residue trials were conducted at sites in New Jersey, New Hampshire, North Carolina, and Michigan. The treatment regime was selected to represent the use

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pattern that is the most likely to result in the highest residues. Glufosinate-ammonium derived residues did not exceed 0.072 ppm in blueberries when sampled at 14 days or more after the last treatment.

B. Toxicological Profile

1. *Acute toxicity.* Glufosinate-ammonium has been classified as toxicity category III for acute oral, dermal, and inhalation toxicity and for eye irritation. Glufosinate-ammonium is not a dermal irritant (toxicity category IV) nor is it a dermal sensitizer. The oral lethal dose $(LD)_{50}$ is 2 grams/kilogram (g/kg) in male rats and 1.62 g/kg in female rats.

2. *Genotoxicty.* Based on results of a complete genotoxicity data base, there is no evidence of mutagenic activity in a battery of studies, including: Salmonella spp., *E coli, in vitro* mammalian cell gene mutation assays, mammalian cell chromosome aberration assays, *in vivo* mouse bone marrow micronucleus assays, and unscheduled DNA synthesis assays.

3. *Reproductive and developmental toxicity.* In a developmental toxicity study, groups of 20 pregnant female Wistar rats were administered glufosinate-ammonium by gavage at doses of 0, 0.5, 2.24 10, 50, and 250 milligrams/kilogram/day (mg/kg/day) from days 7 to 16 of pregnancy. The no observed adverse effect level (NOAEL) for maternal toxicity is 10 mg/kg/day; the LOAEL is 50 mg/kg/day based on vaginal bleeding and hyperactivity in dams. In the fetus, the NOAEL is 50 mg/kg/day, based on dilated renal pelvis observations at the lowest observed adverse effect level (LOAEL) of 250 mg/kg/day.

In a developmental toxicity study, groups of 15 pregnant female Himalayan rabbits were administered glufosinate-ammonium by gavage at doses of 0, 2.0, 6.3, or 20.0 mg/kg/day from days 7 to 19 of pregnancy. In maternal animals, decreases in food consumption and body weight gain were observed at the 20 mg/kg/day dose level. The NOAEL for maternal toxicity was 6.3 mg/kg/day and that for developmental toxicity was 20 mg/kg/day.

In a multi-generation reproduction study, glufosinate-ammonium was administered to groups of 30 male and 30 female Wistar/Han rats in the diet at concentrations of 0, 40, 120, or 360 ppm. The LOAEL for systemic toxicity is 120 ppm based on increased kidney weights in both sexes and generations. The systemic toxicity NOAEL is 40 ppm. The LOAEL for reproductive/developmental toxicity is 360 ppm based on a decreased number of viable pups at this dose. The NOAEL is 120 ppm.

4. *Subchronic toxicity.* In a subchronic oral toxicity study, glufosinate-ammonium was administered to 10 NMRI mice/sex/dose in the diet at levels of 0, 80, 320, or 1,280 ppm (equivalent to 0, 12, 48 or 192 mg/kg/day for 13 weeks. Significant ($p < 0.05$) increases were observed in serum aspartate aminotransferase and in alkaline phosphatase in high-dose (192 mg/kg/day) males. Also observed were increases in absolute and relative liver weights in mid-(48 mg/kg/day) and high-dose males. The NOAEL is 12 mg/kg/day, the LOAEL is 48 mg/kg/day based on the changes in clinical biochemistry and liver weights.

5. *Chronic toxicity.* In a combined chronic toxicity/carcinogenicity study, glufosinate-ammonium was administered to 50 Wistar rats/sex/dose in the diet for 130 weeks at dose levels of 0, 40, 140, or 500 ppm (mean compound intake in males was 0, 1.9, 6.8, and 24.4 mg/kg/day and for females was 0, 2.4, 8.2, and 28.7 mg/kg/day, respectively). A dose-related increase in mortality was noted in females at 140 and 500 ppm; whereas in males, increased absolute and relative kidney weights were noted at 140 ppm and 500 ppm. The NOAEL was considered to be 40 ppm. No treatment-related carcinogenic response was noted.

In a carcinogenicity study, glufosinate-ammonium was administered to 50 NMRI mice/sex/dose in the diet at dose levels of 0, 80, 160 (males only), or 320 (females only) ppm for 104 weeks. The NOAEL for systemic toxicity is 80 ppm (10.82/16.19 mg/kg/day in males/females (M/F), and the LOAEL is 160/320 ppm (22.60/ 63.96 mg/kg/day in M/F), based on increased mortality in males, increased glucose levels in males and females, and changes in glutathione levels in males. No increase in tumor incidence was found in any treatment group.

In a chronic feeding study, technical glufosinate-ammonium was fed to male and female beagle dogs for 12 months in the diet at levels of 2.0, 5.0, or 8.5 mg/kg/day. The NOAEL is 5.0 mg/kg/day based on clinical signs of toxicity, reduced weight gain and mortality at the 8.5 mg/kg/day dose level. In a rat carcinogenicity study, glufosinate-ammonium was administered to Wistar rats (60/sex/group) for up to 24 months at 0, 1,000, 5,000, or 10,000 ppm (equivalent to 0, 45.4, 228.9, or 466.3 mg/kg/day in males and 0, 57.1, 281.5, or 579.3 mg/kg/day in females). The LOAEL for chronic toxicity is 5,000 ppm (equivalent to 228.9 mg/kg/day for male rats and 281.5 mg/kg/day for females), based on increased incidences of retinal atrophy. The chronic NOAEL is 1,000 ppm. Under the conditions of this study, there was no evidence of carcinogenic potential. Dosing was considered adequate based on the increased incidence of retinal atrophy.

6. *Animal metabolism.* Studies conducted in rats using 14C-glufosinate-ammonium have shown that the compound is poorly absorbed (5-10%) after oral administration and is rapidly eliminated primarily as the parent compound. The highest residue levels were found in liver and kidney tissues.

The metabolic profile and the quantitative distribution of metabolites were very similar in both goat and hen. The vast majority of the dose was excreted, primarily as parent compound. The very limited residues found in edible tissues, milk and eggs were comprised principally of glufosinate and 3-methylphosphinico-propionic acid (Hoe 061517), with lesser amounts of N-acetyl-L-glufosinate (Hoe 099730) and 2-methylphosphinico-acetic acid (Hoe 064619).

7. *Metabolite toxicology.* Additional testing has been conducted with the major metabolites, 3-methylphosphinico-propionic acid, and N-acetyl-L-glufosinate. Based on subchronic and developmental toxicity study results, a profile of similar or less toxicity was observed for the metabolites as compared to the parent compound, glufosinate-ammonium.

8. *Endocrine disruption.* No special studies have been conducted to investigate the potential of glufosinate-ammonium to induce estrogenic or other endocrine effects. However, no evidence of estrogenic or other endocrine effects have been noted in any of the toxicology studies that have been conducted with this product and there is no reason to suspect that any such effects would be likely.

C. Aggregate Exposure

1. *Dietary exposure.* Tolerances have been established (40 CFR 180.473) for the combined residues of glufosinate-ammonium and metabolites in or on a variety of raw agricultural commodities. No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicity studies. EPA has, therefore, not established an acute reference dose (RfD) for the general population including infants and children. An acute RfD of 0.063 mg/kg/day was established, however, for the females 13+ subgroup. Therefore, an acute dietary analysis was conducted for this subpopulation; whereas, chronic dietary analysis was conducted for the usual populations.

i. *Food.* An acute dietary analysis was conducted using the Dietary Exposure Evaluation Model™ (DEEM) software and the 1994–1996 CSFII consumption data base. The analysis assumed tolerance level residues for all commodities and 100% of crop treated for all registered or pending uses. This tier one analysis resulted in an exposure of 0.007552 mg/kg bwt/day (95th percentile) for the female 13+ subpopulation (the only population of concern) representing 36% utilization of the acute reference dose (RfD).

Chronic dietary analysis was conducted to estimate exposure to potential glufosinate-ammonium residues in or on registered and proposed commodities. The DEEM software and the 1994–1996 USDA food consumption data were used. Tolerance level residues were assumed for all commodities. Percent crop treated values generated by the agency were incorporated as follows: Tree nuts 1%; apples, 1%; field corn, 2.6%; grapes, 1%; and soybeans, 1%. Aventis CropScience estimates that an upper bound value for cotton at market maturity is 20% and that for potato is 10%. All other crops are included at 100% of crop treated. Chronic dietary exposure estimates from residues of glufosinate-ammonium for the U.S. population represented approximately 25% of the chronic RfD; whereas that for children 1–6, the subpopulation with the highest exposure, represented approximately 61% of the chronic RfD. This analysis was based on highly conservative assumptions, yet still indicates that dietary exposures for all segments of the population are well within the chronic RfDs. The Agency has no concerns with RfD utilization up to 100%.

ii. *Drinking water.* EPA's standard operating procedure for Drinking Water Exposure and Risk Assessments was used to perform the drinking water assessment. The models Screening Concentration in Ground Water (SCI-GROW) and EPA's Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM-EXAMS) were used to estimate the concentration of glufosinate-ammonium that might occur in water. The acute drinking water level of comparison (DWLOC) for females 13+ is 403 parts per billion (ppb). In comparison, the acute drinking water estimated concentrations (DWEC) calculated by the Generic Expected Environmental Concentration (GENEEC) is 127 ppb.

The chronic DWLOC calculated for adults is 185 ppb and that for children/toddlers is 41 ppb. The chronic DWEC calculated using a worst case scenario is 31 ppb (GENEEC). The DWLOCs are based on highly conservative dietary (food) exposures and are expected to be much higher in real world situations reducing further the percent utilization of the DWLOC.

2. *Non-dietary exposure.* Glufosinate-ammonium is currently registered for use on the following non-food sites: areas around ornamentals, shade trees, Christmas trees, shrubs, walks, driveways, flower beds, farmstead buildings, in shelter belts, and along fences. It is also registered for use as a post-emergent herbicide on farmsteads, areas associated with airports, commercial plants, storage and lumber yards, highways, educational facilities, fence lines, ditch banks, dry ditches, schools, parking lots, tank farms, pumping stations, parks, utility rights-of-way, roadsides, railroads, and other public areas and similar industrial and non-food crop areas. It is also registered for lawn renovation uses.

EPA has determined that there are no acute or chronic non-dietary exposure scenarios. Further, the Agency has determined that it is not appropriate to aggregate short- and intermediate-term non-dietary exposure with dietary exposures in risk assessments because the end-points are different.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." EPA has indicated that, at this time, the Agency does not have available data to determine whether glufosinate-ammonium has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, glufosinate-ammonium does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance petition, therefore, it has not been assumed that glufosinate-ammonium has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* Using the conservative assumptions described above and based on the completeness and reliability of the toxicity data, it is concluded that chronic dietary exposure to the registered and proposed uses of glufosinate-ammonium will utilize at most 25% of the chronic RfD for the U.S. population. The actual exposure is likely to be significantly less than predicted by this analysis as data and models that are more realistic are developed. Exposures below 100% of the RfD are generally assumed to be of no concern because the RfD dose represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health.

The acute population of concern, female 13+ utilizes 36% of the acute RfD. This is a tier one highly conservative assessment and actual exposure is likely to be far less. DWLOCs based on dietary exposures are greater than highly conservative estimated levels, and would be expected to be well below the 100% level of the RfD, if they occur at all. Therefore, there is a reasonable certainty that no harm will occur to the U.S. population from aggregate exposure (food, drinking water and nonresidential) to residues of glufosinate-ammonium and metabolites.

2. *Infants and children.* The toxicological data base is sufficient for evaluating prenatal and postnatal toxicity for glufosinate-ammonium. There are no prenatal or postnatal susceptibility concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation reproduction study. Based on clinical signs of neurological toxicity in short and intermediate dermal toxicity studies with rats, EPA has determined that an added FQPA safety factor of 3x is appropriate of assessing the risk of glufosinate-ammonium derived residues in crop commodities. Using the conservative assumptions described in the exposure section above, the percent of the chronic reference dose that will be used for exposure to residues of glufosinate-ammonium in food for children 1–6 years old (the most highly exposed subgroup) is 61%. Infants utilize 37% of the chronic RfD. As in the adult situation, DWLOCs are higher than the worst case drinking water estimated concentrations and are expected to use well below 100% of the RfD, if they occur at all. Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of glufosinate-ammonium.

F. International Tolerances

The codex maximum residue limit for glufosinate-ammonium and metabolite in or on berries and other small fruits (except for currants) has been

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established by the Codex Alimentarius Commission at 0.10 ppm.

[FR Doc. 02–21280 Filed 8–16–02; 4:19 pm]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0177; FRL–7191–6]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0177, must be received on or before September 20, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0177 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0177. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0177 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0177. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 13, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1E6321, 2E6354, 2E6370, 2E6384, 2E6400, and 2E6422

EPA has received pesticide petitions (1E6321, 2E6354, 2E6370, 2E6384, 2E6400, and 2E6422) from IR-4 New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180.495 by establishing tolerances for residues of spinosad, Spinosyn A (Factor A; CAS#131929-60-7) or 2-[(6-deoxy-2,3,4-tri-O-methyl-α-L-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-14-methyl-1H- as Indaceno [3,2-d]oxacyclododecin-7,15-dione; and Spinosyn D (Factor D; CAS# 131929-63-0) or 2-[(6-deoxy-2,3,4-tri-O-methyl-α-L-manno-pyranosyl)oxy]-13-[[5-(dimethyl-amino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9, 10,11,12,13,14,16a,16b-tetradecahydro-4,14-methyl-1H- as Indaceno [3,2-d]oxacyclododecin-7,15-dione in or on the following raw agricultural commodities: fig at 0.1 parts per million (ppm) (1E6321), herbs subgroup at 8.0 ppm (2E6354), root vegetable subgroup at 0.1 (2E6384), dry bulb onion at 0.1 ppm (2E6384), caneberry subgroup at 0.7 ppm (2E6400), grape at 0.6 ppm (2E6422), raisin at 0.6 ppm (2E6422), grape juice at 1.2 ppm (2E6422), and peanut at 0.02 ppm (2E6370).

This notice includes a summary of the petitions prepared by Dow Agro Sciences LLC, Indianapolis, IN 46268. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on these petitions.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of spinosad in plants (apples, cabbage, cotton, tomato, and turnip) is adequately understood for the purposes of these tolerances. A rotational crop study showed no carryover of measurable spinosad related residues in representative test crops.

2. *Analytical method.* There is a practical method (immunoassay) for detecting (0.005 ppm) and measuring (0.01 ppm) levels of spinosad in or on food with a limit of detection that allows monitoring of food with residues at or above the level set for these tolerances. The method has had a successful method tryout in the EPA's laboratories.

3. *Magnitude of residues.* The magnitude of residues for spinosad is adequately understood for the purpose of the proposed tolerances.

B. Toxicological Profile

1. *Acute toxicity.* Spinosad has low acute toxicity. The rat oral lethal dose (LD_{50}) is 3,738 milligrams/kilograms (mg/kg) for males and <5,000 mg/kg for females, whereas the mouse oral lethal dose (LD_{50}) is <5,000 mg/kg. The rabbit dermal LD_{50} is <5,000 mg/kg and the rat inhalation lethal concentration (LC_{50}) is <5.18 mg/l air. In addition, spinosad is not a skin sensitizer in guinea pigs and does not produce significant dermal or ocular irritation in rabbits. End use formulations of spinosad that are water based suspension concentrates have similar low acute toxicity profiles.

2. *Genotoxicty.* Short term assays for genotoxicty consisting of a bacterial reverse mutation assay (Ames test), an in vitro assay for cytogenetic damage using the Chinese hamster ovary cells, an *in vitro* mammalian gene mutation assay using mouse lymphoma cells, an *in vitro* assay for DNA damage and repair in rat hypothecates, and an *in vivo* cytogenetic assay in the mouse bone marrow (micro nucleus test) have been conducted with spinosad. These studies show a lack of genotoxicty.

3. *Reproductive and developmental toxicity.* Spinosad caused decreased body weights in maternal rats given 200 mg/kg/day by gavage highest dose tested (HDT). This was not accompanied by either embryo toxicity, fetal toxicity, or developmental. The no observed adverse effect level (NOAEL) for maternal and fetal toxicity in rats were 50 and 200 mg/kg/day, respectively. A developmental study in rabbits showed that spinosad caused decreased body weight gain and a few abortions in maternal rabbits given 50 mg/kg/day (HDT). Maternal toxicity was not accompanied by either embryo toxicity, fetal toxicity, or developmental. The NOAEL for maternal and fetal toxicity in rabbits were 10 and 50 mg/kg/day, respectively. In a 2-generation reproduction study in rats, parental toxicity was observed in both males and females given 100 mg/kg/day (HDT). Perinatal effects (decreased litter size and pup weight) at 100 mg/kg/day were

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attributed to maternal toxicity. The NOAEL for maternal and pup effects was 10 mg/kg/day.

4. *Subchronic toxicity.* Spinosad was evaluated in 13-week dietary studies and showed a NOAEL of 4.89 and 5.38 mg/kg/day, respectively in male and female dogs; 6 and 8 mg/kg/day, respectively in male and female mice; and 33.9 and 38.8 mg/kg/day, respectively in male and female rats. No dermal irritation or systemic toxicity occurred in a 21-day repeated dose dermal toxicity study in rabbits given 1,000 mg/kg/day.

5. *Chronic toxicity.* Based on chronic testing with spinosad in the dog and the rat, the EPA has set a reference dose (RfD) of 0.027 mg/kg/day for spinosad. The RfD has incorporated a 100-fold safety factor to the NOAEL found in the chronic dog study to account for inter- and intra-species variation. The NOAEL shown in the dog chronic study was 2.68 and 2.72 mg/kg/day, respectively for male and female dogs. The NOAEL (systemic) shown in the rat chronic/carcinogenicity/neurotoxicity study were 9.5 and 12.0 mg/kg/day, respectively for male and female rats.

Using the Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), it is proposed that spinosad be classified as Group E for carcinogenicity (no evidence of carcinogenicity) based on the results of carcinogenicity studies in 2 species. There was no evidence of carcinogenicity in an 18-month mouse feeding study and a 24-month rat feeding study at all dosages tested. The NOAEL shown in the mouse carcinogenicity study was 11.4 and 13.8 mg/kg/day, respectively for male and female mice. A maximum tolerated dose was achieved at the top dosage level tested in both of these studies based on excessive mortality. Thus, the doses tested are adequate for identifying a cancer risk. Accordingly, a cancer risk assessment is not needed.

6. *Animal metabolism.* There were no major differences in the bioavailability, routes or rates of excretion, or metabolism of spinosyn A and spinosyn D following oral administration in rats. Urine and fecal excretions were almost completed in 48-hours post-dosing. In addition, the routes and rates of excretion were not affected by repeated administration.

7. *Metabolite toxicology.* The residue of concern for tolerance setting purposes is the parent material (spinosyn A and spinosyn D). Thus, there is no need to address metabolite toxicity.

8. *Endocrine disruption.* There is no evidence to suggest that spinosad has an effect on any endocrine system.

C. Aggregate Exposure

1. *Dietary exposure—i. Food.* For purposes of assessing the potential dietary exposure from use of spinosad on the raw agricultural commodities listed in this notice as well as from other existing spinosad crop uses, a conservative estimate of aggregate exposure is determined by basing the theoretical maximum residue contribution (TMRC) on the proposed tolerance level for spinosad and assuming that 100% of these proposed new crops and other existing (registered for use) crops grown in the U.S. were treated with spinosad. The TMRC is obtained by multiplying the tolerance residue levels by the consumption data which estimates the amount of crops and related foodstuffs consumed by various population subgroups. The use of a tolerance level and 100% of crop treated clearly results in an overestimate of human exposure and a safety determination for the use of spinosad on crops cited in this summary that is based on a conservative exposure assessment.

ii. *Drinking water.* Another potential source of dietary exposure are residues in drinking water. Based on the available environmental studies conducted with spinosad wherein it's properties show little or no mobility in soil, there is no anticipated exposure to residues of spinosad in drinking water. In addition, there is no established maximum concentration level for residues of spinosad in drinking water.

2. *Non-dietary exposure.* Spinosad is currently registered for outdoor use on turf and ornamentals at low rates of application (0.04 to 0.54 lb active ingedient (a.i.) per acre) and indoor use for drywood termite control (extremely low application rates used with no occupant exposure expected). Thus, the potential for non-dietary exposure to the general population is considered negligible.

D. Cumulative Effects

The potential for cumulative effects of spinosad and other substances that have a common mechanism of toxicity is also considered. In terms of insect control, spinosad causes excitation of the insect nervous system, leading to involuntary muscle contractions, prostration with tremors, and finally paralysis. These effects are consistent with the activation of nicotinic acetylcholine receptors by a mechanism that is clearly novel and unique among known insecticidal compounds. Spinosad also has effects on the GABA receptor function that may contribute further to its insecticidal activity. Based on results found in tests with various mammalian species, spinosad appears to have a mechanism of toxicity like that of many amphiphilic cationic compounds. There is no reliable information to indicate that toxic effects produced by spinosad would be cumulative with those of any other pesticide chemical. Thus it is appropriate to consider only the potential risks of spinosad in an aggregate exposure assessment.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions and the RfD, the aggregate exposure to spinosad use on existing crop uses utilizes 40.5% of the RfD for the U.S. population from a previous EPA assessment based on the chronic population adjusted dose (cPAD). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The new crop uses proposed in this notice are minor ones and are expected to contribute only a negligible impact to the RfD. Thus, it is clear that there is reasonable certainty that no harm will result from aggregate exposure to spinosad residues on existing and all pending crop uses listed in this notice.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of spinosad, data from developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability and potential systemic toxicity of mating animals and on various parameters associated with the well-being of pups.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the data base for spinosad relative to pre- and post-natal effects for children is complete. Further, for spinosad, the NOAEL in the dog chronic feeding study which was used to calculate the RfD (0.027 mg/kg/day) is already lower than the NOAEL from the developmental studies in rats and rabbits by a factor of more than 10-fold.

Concerning the reproduction study in rats, the pup effects shown at the HDT were attributed to maternal toxicity. Therefore, it is concluded that an additional uncertainty factor is not needed and that the RfD at 0.027 mg/kg/day is appropriate for assessing risk to infants and children.

In addition, the 10X factor to account for enhanced sensitivity of infants and children is not needed because: (1) The data provided no indication of increased susceptibility of rats or rabbits to *in utero* and/or post-natal exposure to spinosad. In the prenatal developmental toxicity studies in rats and rabbits and 2-generation reproduction in rats, effects in the offspring were observed only at or below treatment levels which resulted in evidence of parental toxicity, (2) no neurotoxic signs have been observed in any of the standard required studies conducted, (3) the toxicology data base is complete and there are no data gaps, and (4) exposure data are complete or are estimated based on data that reasonably account for potential exposure.

Using the conservative exposure assumptions previously described (tolerance level residues), the percent RfD utilized by the aggregate exposure to residues of spinosad on existing crop uses is 84.4% for children 1 to 6 years old, the most sensitive population subgroup from an EPA assessment based on the chronic population adjusted dose (cPAD). The new crop uses proposed in this notice are minor ones and are expected to contribute only a negligible impact to the RfD. Thus, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, it is concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to spinosad residues on the above proposed uses including existing crop uses.

F. International Tolerances

There are no Codex maximum residue levels (MRLs) established for residues of spinosad on grapes, herbs, caneberries, root vegetables, dry bulb onions, or figs.

[FR Doc. 02–21281 Filed 8–16–02; 4:19 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0184; FRL–7194–7]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0184, must be received on or before September 20, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0184 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8380; e-mail address: gandhi.bipin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0184. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0184 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs

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(OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0184. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

August 12,2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Magna Bon Corporation

2E6476

EPA has received a pesticide petition (2E6476) from Magna Bon Corporation, 1531 NW 25th Drive, Okeechobee, FL 34972 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by amending an established exemption from the requirement of a tolerance for sulfuric acid in 40 CFR 180.1001(c). Currently this tolerance exemption allows the use of sulfuric acid as an inert ingredient for pre-harvest and post-harvest uses with a limitation of 0.1% in the pesticide formulation when used as a pH control agent. This petition proposes to increase the limitation to 10% and to include a new use as a chelating agent. This petition also requests the establishment of an exemption from the requirement of a tolerance in plants and plants products, meat, milk, poultry, eggs, fish, shellfish, and irrigated crops when it results from the use of sulfuric acid as an inert ingredient in a pesticide product used in irrigation conveyance systems and lakes, ponds, reservoirs, or bodies of water in which fish or shellfish are cultivated.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Sulfuric acid is used to adjust the pH in water in mix tanks and will be continually used for other purposes, such as chelation, etc. In-can formulations also use sulfuric acid for the same reasons. The metabolism of sulfuric acid is well known in the literature (see Reregistration Eligibility Decision (RED)) FACTS, December 1993 - an EPA RED Fact Sheet which is available through EPA's pesticide website (http://www.epa.gov/pesticides). Sulfuric acid is already registered as an active ingredient (10%) on garlic and onion when used as an herbicide and for the purpose of defoliation of crop plants such as potatoes. The metabolism of sulfuric acid was examined at the time of reregistration. Sulfuric acid is also used as a sanitizer for food processing and dairy facilities, and equipment and utensils used in food and feed contact.

The current exemption from the requirement of a tolerance in 40 CFR 180.1001(c) describing the limitation for sulfuric acid as a inert in the "formulated product" should be changed to read 10% rather than the exemption from a tolerance at the level of 0.1%. Any data in the existing files can be used to support this change in the "formulated" product. The use pattern should be changed from use only as a pH control agent to "a chelating agent." People may be exposed to sulfuric acid in the formulated product. However this exposure involves such dilute solutions when in the "final use dilution" applied that it is believed inconsequential.

The product will also be applied post-harvest and the sulfuric acid in a formulation will not affect the metabolism of harvested products. Sulfuric acid is already used to sanitize milk lines and food processing surfaces by wipe-on and CIP treatments. The use as an inert in formulations in the "final use dilution" will not increase risk when used in formulations applied to growing crops or to raw agricultural commodities after harvest, meat, milk, poultry, eggs, fish, shellfish, and irrigated crops. In addition, sulfuric acid can be used in formulations as an algaecide, herbicide, or fungicide in irrigation conveyance systems and lakes, ponds, reservoirs, or bodies of water which fish or shellfish are cultivated or the bodies of water to be used for drinking water.

2. *Analytical method.* Standard methodology for sulfuric acid is adequate.

3. *Magnitude of residues.* The sulfuric acid will be used in accordance with good agricultural practices and no residues are expected. The history of the compound suggests that the product is safe for use on or in products for uses on/in plants, animals, humans and potable water.

Sulfuric acid will be applied as an inert ingredient according to labels approved by the EPA at rates reflected in a change in the wording of the tolerance exemption that reads 0.1% to 10.0%. The "final use dilution" will contain considerably less sulfuric acid when applied to growing crops, post-harvest produce, drinking water, meat, milk, poultry, eggs, fish, shellfish, irrigated crops, conveyance systems, lakes, ponds, reservoirs, or bodies of water in which fish or shellfish are cultivated or water that is used for drinking water. Since the product is not systemic the product can be washed from the surface of the plant or animal parts before being consumed as the normal practice.

B. Toxicological Profile

1. *Acute toxicity.* The toxicology of sulfuric acid is well-known. The toxicology file for registrations which use sulfuric acids as an active ingredient are available through EPA's data bases. In addition, EPA has issued a RED document: Mineral Acids, in 1994, which includes sulfuric acid. This document explored the toxicology profile of sulfuric acid. The website is: http://www.epa.gov/pesticides/reregistration/status.htm.

The literature is full of references on the acute toxic effects of sulfuric acid. The data file for Magna Bon includes a toxicology study performed with sulfuric acid used as an inert at 4%. A material safety data sheet is available upon request.

2. *Genotoxicty.* There is no known genotoxicity. All studies have been negative.

3. *Reproductive and developmental toxicity.* There are no known effects on man or other animals.

4. *Subchronic toxicity.* There are no known effects on man or other animals.

5. *Chronic toxicity.* There are no known effects on man or other animals.

6. *Animal metabolism.* There are no known adverse effects to animals.

7. *Metabolite toxicology.* The metabolism of sulfuric acid is well known.

8. *Endocrine disruption.* There are no known effects on man.

C. Aggregate Exposure

1. *Dietary exposure.* Sulfuric acid is present in small amounts in every day living. Sulfur dioxide is present in air as the result of petro-chemical combustion. Sulfuric acid is formed as a result of the combination of water and sulfur dioxide in the air and is common in all metropolitan areas.

Sulfuric acid being used as a crop protector or in a post-harvest application will add little exposure given the current exposure.

Although there are no guideline studies for this data requirement *per se*, there is adequate information in the extensive open literature on sulfuric acid to characterize its toxicity.

In addition, sulfuric acid is Generally Recognized as Safe (GRAS) by the U.S. Food and Drug Administration.

i. *Food.* The total consumption of agricultural products, fish, shell-fish, and meat treated with sulfuric acid can be calculated as being at or below daily minimums of mineral requirements for humans. In addition, the plant and meat products are washed before cooking.

ii. *Drinking water.* A food additive tolerance is requested in potable water at a level of 0.1 ppm maximum.

2. *Non-dietary exposure.* The population is exposed to sulfuric acid on an almost daily basis. Dermal exposure is the most prevalent.

D. Cumulative Effects

There are no cumulative effects. The amount of sulfuric acid used to treat the plants, harvested plant products, fish, shellfish, poultry, and meat would be a way of lowering bacterial, fungi and even-viral organisms from becoming a problem under most circumstances.

E. Safety Determination

1. *U.S. population.* Using sulfuric acid will reduce costs of protecting the above-mentioned products and giving adequate protection to such post-harvested crops, fish, shellfish, poultry, and meat products without harm to humans, animals, plants, plant products and the environment.

2. *Infants and children.* Foods are washed and processed. Sulfuric acid food products will be washed. The foods are normally further processed with the result of little or no detectable levels of sulfuric acid.

F. International Tolerances

The countries of the world have not restricted sulfuric acid for the purposes requested.

[FR Doc. 02–21296 Filed 8–20–02; 8:45 am]

BILLING CODE 6560–60–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7265–3]

Real-Time Monitoring for Toxicity Caused by Harmful Algal Blooms and Other Water Quality Perturbations; Correction

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; correction.

SUMMARY: On August 14, 2002, the U.S. Environmental Protection Agency's (EPA) National Center for Environmental Assessment (NCEA) of the Office of Research and Development (ORD) published a notice in the **Federal Register** (67 FR 53001) announcing the availability of a final report titled, *Real-Time Monitoring for Toxicity Caused by Harmful Algal Blooms and Other Water Quality Perturbations* (EPA/600/R–01/103). This document corrects a telephone number correction for the National Service Center for Environmental Publications (NSCEP).

FOR FURTHER INFORMATION CONTACT: For further information contact the Technical Information Staff, National Center for Environmental Assessment/Washington Office (8623D), U.S. Environmental Protection Agency, 1200

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Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: 202–564–3261; fax: 202–565–0050.

Correction

In the **Federal Register** of August 14, 2002, in FR Doc. 02–20581, on page 53001, in the first column, correct the **ADDRESSES** caption to read:

ADDRESSES: The document is available electronically through the NCEA Web site at (*www.epa.gov/ncea*) under the *Publications* menus. A limited number of paper copies will be available from EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, Ohio 45242; telephone: 1–800–490–9198 or 513–489–8190; facsimile: 513–489–8695. Please provide your name and mailing address and the title and EPA number of the requested publication.

Dated: August 16, 2002.

Art Payne,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–21425 Filed 8–20–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0182; FRL–7193–5]

Guidance for Developing and Performing Quality Control of Water Modeling Standard Scenarios and Standard Scenario Metadata Files; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting comments on two documents, "PRZM Field and Orchard Crop Scenario Metadata" and "Standard Procedures for Conducting Quality Control and Quality Assurance for Pesticide Root Zone Model (PRZM) Field and Orchard Crop Scenarios." Interested parties may request a copy of the draft proposed procedures and scenario documentation as a set in Unit I.B. of this notice. The PRZM Field and Orchard Crop Scenario Metadata documents the crop-specific parameters (specific value used and its reference) which are key elements of the exposure scenario used to determine surface water concentrations in ecological and drinking water assessments. Standard Procedures for Conducting Quality Control and Quality Assurance for PRZM Field and Orchard Crop Scenarios provides a defined set of steps (methods of selecting or estimating specific scenario values and available references) to develop and/or ensure the quality of a crop scenario. Both documents provide a transparent description of each environmental modeling scenario and the procedures used to create them while providing consistent and reproducible products.

DATES: Comments, identified by docket ID number OPP–2002–0182, must be received on or before October 21, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0182 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Sid Abel, Environmental Fate and Effects Division (7507C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7346; fax number: (703) 305–6309; e-mail address: abel.sid@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those who are or may be conducting surface water modeling assessments on behalf of pesticide registration, risk assessments or those who may be involved in developing information directly related to data necessary to develop a modeling scenario. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about Standard Procedures for Conducting Quality Control and Quality Assurance for Pesticide Root Zone Model (PRZM) Field and Orchard Crop Scenarios and PRZM Field and Orchard Crop Scenario Metadata, go directly to the Home Page for the Office of Pesticide Programs at: http://www.epa.gov/oppefed1/models/water/op_scenario_metadata_df_061602.htm and http://www.epa.gov/oppefed1/models/water/qa_qc_documentation_ver2 .htm

2. *By mail.* You may obtain copies of these documents, and certain other related documents that might be available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0182 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0182. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

The Agency is seeking comment on two documents that describe how EPA develops and uses pesticide surface water modeling scenarios in ecological and drinking water exposure and risk assessments. These documents are entitled "Pesticide Root Zone Model (PRZM) Field and Orchard Crop Scenario Metadata" and "Standard Procedures for Conducting Quality Control and Quality Assurance for PRZM Field and Orchard Crop Scenarios" and can be found at the following web addresses: http://www.epa.gov/oppefed1/models/water/op_scenario_metadata_df_061602.htm and http://www.epa.gov/oppefed1/models/water/qa_qc_documentation_ver2 .htm

Modeling scenarios are defined as the set of characteristics of the agricultural crop to which a pesticide may be applied (e.g., cotton) and the field information on which the crop is actually grown (e.g., soils) that are necessary to estimate pesticide transport to surface water. The modeling sites, or scenarios, the OPP uses to estimate environmental concentrations in surface water are documented in and developed through the use of these documents.

These documents were developed to support the following activities: OP Cumulative Risk Assessment, the Agency's Information Quality Guideline, data quality guidelines and to improve environmental assessments.

The first document, "PRZM Field and Orchard Crop Scenario Metadata," provides a detailed listing of the parameters and associated values specific to a crop and field combination (e.g., a cotton field in Yazoo County, Mississippi). OPP evaluated several approaches to documenting the parameters from a modeling scenario used to estimate environmental exposures. This format is believed to provide the most appropriate means to readily document and recall critical information contained in a given scenario. Users of this format, whether Agency staff or the public, will be able to quickly document a scenario in a consistent manner that meets quality standards implemented by the OPP. In addition, users who retrieve information or wish to understand the content of a crop-field scenario for a pesticide assessment will be assured of a standardized format which simplifies review. Information in this document reflects the results of the second document "Standard Procedures for Conducting Quality Control and Quality Assurance for PRZM Field and Orchard Crop Scenarios."

Standard Procedures for Conducting Quality Control and Quality Assurance for PRZM Field and Orchard Crop Scenarios describes the set of procedures, methods, and references to "construct" or review for consistency the information contained in a crop-field scenario. The steps and recommendation described in this guidance provide a sound scientific basis for selecting information with relevance to what is observed in an actual agricultural field such as cotton. The methodology is intended to give the regulated community, decision-makers and the public confidence that assessments resulting from the use of scenarios representing an agricultural field reflect conditions that are likely to occur in the "real world." Numerous methods and sources of credible scientific information are given in this document and are considered readily available to the public through voice contact, public information sources (e.g., public libraries) or the world wide web. The Agency has identified and described as best possible information to support this guidance and seeks comments on what additional information would help improve modeling scenarios.

List of Subjects

Environmental protection, Environmental modeling, Pesticide Root Zone Model, PRZM, Surface water exposure, Pesticides, Crops, Modeling Guidance.

Dated: August 5, 2002.

Sidney Abel, III,

Chief, Environmental Risk Branch I, Office of Pesticide Programs.

[FR Doc. 02–20874 Filed 8–20–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7264–3]

Peak Oil Superfund Site; Notice of Proposed de Minimis Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed de minimis settlement.

SUMMARY: Under section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency has offered a de minimis settlement at the Peak Oil Superfund Site (Site) under an Administrative Order on Consent (AOC) to settle claims for past and future response costs at the Site. Approximately 263 parties have returned signature pages accepting EPA's settlement offer. For thirty (30) days following the publication of this notice, EPA will receive written comments relating to the settlement. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from:

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Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Comments should reference the Peak Oil Superfund Site, Tampa, Florida, and EPA Docket No. CER–04–2002–3753. Written comments may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: August 8, 2002.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–21292 Filed 8–20–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 02–138; FCC 02–166]

Mountain Wireless, Inc. and Clear Channel Broadcasting License, Inc.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the FCC designates the applications to assign the licenses of radio stations WSKW(AM) and WHQO(FM), Skowhegan, Maine, from Mountain Wireless, Inc. ("Mountain") to Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"). The Commission cannot find, based on the record, that grant of these applications is consistent with the public interest, convenience, and necessity. Accordingly, pursuant to 47 U.S.C. 309(e), the Commission designates the applications for hearing to determine whether the public interest, convenience, and necessity will be served by grant of the applications.

DATES: See **SUPPLEMENTARY INFORMATION** section for document filing dates.

ADDRESSES: Please file documents with the Investigations and Hearing Division, Enforcement Bureau, Federal Communications Commission, Room 3–B431, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Charles W. Kelley, Chief, Investigations and Hearing Division, Enforcement Bureau, at (202) 418–1420.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Hearing Designation Order, MM Docket No. 02–138, adopted on June 5, 2002 and released on July 10, 2002. The full text is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW, Washington, DC 20554. The full text may also be purchased from the Commission's copy contractor, Qualex International, Room CY–B402, 445 12th Street, SW, Washington, DC 20554, telephone (202) 863–2983, facsimile (202) 863–2898, or via e-mail at *qualexint@aol.com*, or may be viewed via the internet at: *http://www.fcc.gov/Document_Indexes/Media/2002_index_MB_Order.html*. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Synopsis of the Order

1. In March 1996, the Commission relaxed the numerical station limits in its local radio ownership rule in accordance with Congress's directive in section 202(b) of the Telecommunications Act of 1996. Since then, the Commission has received applications proposing transactions that would comply with the new limits, but that nevertheless could produce concentration levels that raised significant concerns about the potential impact on the public interest. In response to these concerns, the Commission concluded that it has an independent obligation to consider whether a proposed pattern of radio ownership that complies with the local radio ownership limits would otherwise have an adverse competitive effect in a particular local radio market and thus would be inconsistent with the public interest. In August 1998, the Commission also began flagging public notices of radio station transactions that would result in one entity controlling 50 percent or more of the advertising revenues in the relevant Arbitron radio market or two entities controlling 70 percent or more of the advertising revenues in that market. On November 8, 2001, we adopted the Notice of Proposed Rulemaking in MM Docket No. 01–317, 16 FCC Rcd 19861 (2001), 66 FR 63986, December 11, 2001 ("*Local Radio Ownership NPRM*"). We expressed concern that our current policies on local radio ownership did not adequately reflect current industry conditions and had led to unfortunate delays in the processing of assignment and transfer applications. Accordingly, we adopted the *Local Radio Ownership NPRM* to undertake a comprehensive examination of our rules and policies concerning local radio ownership and to develop a new framework that will be more responsive to current marketplace realities while continuing to address our core public interest concerns of promoting diversity and competition. In the *Local Radio Ownership NPRM*, we also set forth an interim policy to guide our actions on radio assignment and transfer of control applications pending a decision in that proceeding. Under our interim policy, we presume that an application that falls below the 50/70 screen will not raise competition concerns unless a petition to deny raising competition issues is filed. For applications identified by the 50/70 screen, the interim policy directs the Commission's staff to conduct a public interest analysis, including an independent preliminary competition analysis, and sets forth generic areas of inquiry for this purpose. The interim policy also sets forth timetables for staff recommendations to the Commission for the disposition of cases that may raise competition concerns.

2. On September 18, 2001, Mountain and Clear Channel filed applications proposing to assign the licenses of WSKW(AM) and WHQO(FM) from Mountain to Clear Channel. The applications were unopposed. Clear Channel currently owns six stations in the Augusta-Waterville, Maine Arbitron metropolitan market ("Augusta-Waterville metro"): (1) WFAU(AM), Gardiner, Maine; (2) WABK–FM, Gardiner, Maine; (3) WCME(FM), Boothbay Harbor, Maine; (4) WIGY(FM), Madison, Maine; (5) WKCG(FM), Augusta, Maine; and (6) WTOS–FM, Skowhegan, Maine.

3. Section 310(d) of the Communications Act of 1934, as amended (the "Communications Act"), 47 U.S.C. 310(d), requires the Commission to find that the public interest, convenience and necessity would be served by the assignment of Mountain's radio broadcast licenses to Clear Channel before the assignment may occur. Under the interim policy set forth in our *Local Radio Ownership NPRM* we conduct a public interest analysis, including but not limited to an independent preliminary competition analysis of the proposed transaction based on publicly available information and information in the Commission's records. Under the interim policy, to decide whether a proposed assignment serves the public interest, we first determine whether it complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission's rules, including our local radio ownership rules. If it does, we then consider any potential public interest harms of the proposed transaction as well as any potential public interest benefits to determine whether, on balance, the assignment serves the public interest. The Commission's analysis of public interest benefits and harms includes an analysis of the potential competitive effects of the transaction, as informed by traditional antitrust principles. However, the Commission's public interest evaluation is not limited to competition concerns but necessarily encompasses the broad aims of the Communications Act. These broad aims include, among other things, ensuring the existence of an efficient, nationwide radio communications service available to everyone and promoting locally oriented service and diversity in media voices. Our public interest analysis therefore includes assessing whether the transfer will affect the quality of radio services or responsiveness to the local needs of the community, and whether it will result in the provision of new or additional services to listeners. Thus, under our interim policy, where a proposed transaction raises concerns about economic concentration, we will consider evidence that the particular circumstances of a case may mitigate any adverse impact that might otherwise result, as well as any evidence of benefits to radio listeners that might result from the proposed transaction. Ultimately, it is the potential impact of the transaction on listeners that will determine whether we can find that, on balance, grant of a particular radio station assignment or transfer of control application serves the public interest.

4. Having concluded that the proposed transaction is consistent with the numerical limits set forth in our ownership rules, we turn to our competition analysis. Here, we find that the proposed transaction would create a market in which the combined market share of the top two group owners in the market would be 99.5%. We find that Clear Channel has failed to demonstrate particular circumstances in this market sufficient to overcome a concern that this level of economic concentration in this market will harm the public interest. To the extent Clear Channel presents generic arguments challenging the parameters of our current competition analysis, we will address such concerns in the context of the *Local Radio Ownership NPRM* and need not consider them here. Rather, we look only to the record of this case to determine whether there are unique facts that persuade us that grant of these assignment applications would serve the public interest despite the apparent economic concentration it will create. On the basis of the information before us, we are unable to make the required finding that the public interest, convenience and necessity will be served by granting the subject applications. Accordingly, we will designate the assignment applications for hearing to determine, pursuant to 47 U.S.C. 309(e), and based on the evidence to be adduced at hearing, whether the public interest, convenience and necessity will be served by the grant of the applications.

5. We direct the Administrative Law Judge ("ALJ") to examine in an evidentiary hearing the particular circumstances of the Augusta-Waterville metro to determine whether the factual assumptions in Section III.C. of the Hearing Designation Order are correct. We further direct the ALJ to determine, in light of his or her conclusions, whether the transaction is likely to cause any anticompetitive harms, and to determine what, if any, public benefits would accrue from this transaction. Finally, we direct the ALJ to apply these findings to determine whether, on balance, grant of the applications would serve the public interest.

6. To defer further consideration of the applications to assign the licenses of Stations WSKW(AM) and WHQO(FM), Skowhegan, Maine, from Mountain to Clear Channel in accordance with the interim policy, Mountain and Clear Channel must file a joint election to defer consideration of the applications. Such election must be filed by September 5, 2002.

7. In the event the parties do not timely file the joint election set forth in the paragraph above, pursuant to 47 U.S.C. 309(e), the applications to assign the licenses of Stations WSKW(AM) and WHQO(FM), Skowhegan, Maine, from Mountain to Clear Channel are designated for hearing at a time and place to be specified in a subsequent Order, to determine, in light of the evidence to be presented in the hearing, whether the public interest, convenience and necessity would be served by the grant of the above-captioned assignment applications (File Nos. BAL–20010918ABB/BALH–20010918ABC).

8. Pursuant to 47 U.S.C. 309(e), the burden of proof with respect to both the introduction of evidence and the issue specified in this Order shall be upon Mountain and Clear Channel, the applicant parties in this proceeding.

9. A copy of each document filed in this proceeding subsequent to the date of adoption of this Order must be served on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations and Hearings Division of the Enforcement Bureau at (202) 418–1420. Such service must be addressed to the named counsel of record, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 3–B431, Washington, DC 20554.

10. The effectiveness of this Order is stayed until September 11, 2002, no less than 10 days prior to which the parties may amend their applications or file such other information with the Media Bureau as they deem relevant to ameliorate the competition concerns identified in this Order.

11. To avail themselves of the opportunity to be heard, Mountain and Clear Channel, pursuant to 47 CFR 1.221(c) and 1.221(e), in person or by their respective attorneys, must file, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Such written appearance shall be filed by September 11, 2002. Pursuant to 47 CFR 1.221(c) of the Commission's rules, if the parties fail to file an appearance within the specified time period, the assignment applications will be dismissed with prejudice for failure to prosecute.

12. The applicants, pursuant to 47 U.S.C. 311(a)(2) and 47 CFR 73.3594, must give notice of the hearing within the time and in the manner prescribed, and must advise the Commission of the publication of such notice as required by 47 CFR 73.3594(g).

13. The applications to assign the licenses of stations WSKW(AM) and WHQO(FM), Skowhegan, Maine, from Mountain to Clear Channel will be held in abeyance pending the outcome of this proceeding.

14. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send copies of this Order to all parties by Certified Mail—Return Receipt Requested.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–21302 Filed 8–20–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 02–139; FCC 02–165]

Youngstown Radio License, L.L.C. and Citicasters Licenses, Inc.

AGENCY: Federal Communications Commission.

VOL 67 ISS 162 AG 21 2002 UMI

ACTION: Notice.

SUMMARY: In this document, the FCC designates the applications to assign the licenses of radio stations WNIO(AM) and WNCD(FM), Youngstown, Ohio, WICT(FM), Grove City, Pennsylvania and WAKZ(FM), Sharpsville, Pennsylvania, from Youngstown Radio License, L.L.C. ("Youngstown Radio") to Citicasters Licenses, Inc., a wholly-owned subsidiary of Clear Channel Communications, Inc. ("Clear Channel"). The Commission cannot find, based on the record, that grant of these applications is consistent with the public interest, convenience, and necessity. Accordingly, pursuant to 47 U.S.C. 309(e), the Commission designates the applications for hearing to determine whether the public interest, convenience, and necessity will be served by grant of the applications.

DATES: *See* **SUPPLEMENTARY INFORMATION** section for document filing dates.

ADDRESSES: Please file documents with the Investigations and Hearing Division, Enforcement Bureau, Federal Communications Commission, Room 3–B431, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Charles W. Kelley, Chief, Investigations and Hearing Division, Enforcement Bureau, at (202) 418–1420.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Hearing Designation Order, MM Docket No. 02–139, adopted on June 5, 2002 and released on July 10, 2002. The full text is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The full text may also be purchased from the Commission's copy contractor, Qualex International, Room CY–B402, 445 12th Street, SW., Washington, DC 20554, telephone (202) 863–2983, facsimile (202) 863–2898, or via e-mail at *qualexint@aol.com*, or may be viewed via the internet at: *http://www.fcc.gov/Document_Indexes/Media/2002_index_MB_Order.html*. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Synopsis of the Order

1. In March 1996, the Commission relaxed the numerical station limits in its local radio ownership rule in accordance with Congress's directive in section 202(b) of the Telecommunications Act of 1996. Since then, the Commission has received applications proposing transactions that would comply with the new limits, but that nevertheless could produce concentration levels that raised significant concerns about the potential impact on the public interest. In response to these concerns, the Commission concluded that it has an independent obligation to consider whether a proposed pattern of radio ownership that complies with the local radio ownership limits would otherwise have an adverse competitive effect in a particular local radio market and thus would be inconsistent with the public interest. In August 1998, the Commission also began flagging public notices of radio station transactions that would result in one entity controlling 50 percent or more of the advertising revenues in the relevant Arbitron radio market or two entities controlling 70 percent or more of the advertising revenues in that market. On November 8, 2001, we adopted the Notice of Proposed Rulemaking in MM Docket No. 01–317, 16 FCC Rcd 19861, 66 FR 63986, December 11, 2001 ("*Local Radio Ownership NPRM*"). We expressed concern that our current policies on local radio ownership did not adequately reflect current industry conditions and had led to unfortunate delays in the processing of assignment and transfer applications. Accordingly, we adopted the *Local Radio Ownership NPRM* to undertake a comprehensive examination of our rules and policies concerning local radio ownership and to develop a new framework that will be more responsive to current marketplace realities while continuing to address our core public interest concerns of promoting diversity and competition. In the *Local Radio Ownership NPRM*, we also set forth an interim policy to guide our actions on radio assignment and transfer of control applications pending a decision in that proceeding. Under our interim policy, we presume that an application that falls below the 50/70 screen will not raise competition concerns unless a petition to deny raising competition issues is filed. For applications identified by the 50/70 screen, the interim policy directs the Commission's staff to conduct a public interest analysis, including an independent preliminary competition analysis, and sets forth generic areas of inquiry for this purpose. The interim policy also sets forth timetables for staff recommendations to the Commission for the disposition of cases that may raise competition concerns.

2. On October 1, 1999, Youngstown Radio and Clear Channel filed applications proposing to assign the licenses of WNIO(AM), WNCD(FM), WICT(FM), and WAKZ(FM) from Youngstown Radio to Clear Channel. The applications were unopposed. Clear Channel currently owns three stations in the Youngstown-Warren, Ohio Arbitron metropolitan market ("Youngstown-Warren metro"): (1) WMXY(FM), Youngstown, Ohio; (2) WKBN(AM), Youngstown, Ohio; and (3) WBBG(FM), Niles, Ohio.

3. Section 310(d) of the Communications Act of 1934, as amended (the "Communications Act"), 47 U.S.C. 310(d), requires the Commission to find that the public interest, convenience and necessity would be served by the assignment of Youngstown Radio's radio broadcast licenses to Clear Channel before the assignment may occur. Under the interim policy set forth in our *Local Radio Ownership NPRM* we conduct a public interest analysis, including but not limited to an independent preliminary competition analysis of the proposed transaction based on publicly available information and information in the Commission's records. Under the interim policy, to decide whether a proposed assignment serves the public interest, we first determine whether it complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission's rules, including our local radio ownership rules. If it does, we then consider any potential public interest harms of the proposed transaction as well as any potential public interest benefits to determine whether, on balance, the assignment serves the public interest. The Commission's analysis of public interest benefits and harms includes an analysis of the potential competitive effects of the transaction, as informed by traditional antitrust principles. However, the Commission's public interest evaluation is not limited to competition concerns but necessarily encompasses the broad aims of the Communications Act. These broad aims include, among other things, ensuring the existence of an efficient, nationwide radio communications service available to everyone and promoting locally oriented service and diversity in media voices. Our public interest analysis therefore includes assessing whether the transfer will affect the quality of radio services or responsiveness to the local needs of the community, and whether it will result in the provision of new or additional services to listeners. Thus, under our interim policy, where a proposed transaction raises concerns about economic concentration, we will consider evidence that the particular circumstances of a case may mitigate any adverse impact that might otherwise result, as well as any evidence of benefits to radio listeners that might result from the proposed transaction. Ultimately, it is the potential impact of the transaction on listeners that will determine whether we can find that, on balance, grant of a particular radio station assignment or transfer of control application serves the public interest.

4. Having concluded that the proposed transaction is consistent with the numerical limits set forth in our ownership rules, we turn to our competition analysis. Here, we find that the proposed transaction would create a market in which the combined market share of the top two group owners in the market would be 95.3%. We find that Clear Channel has failed to demonstrate particular circumstances in this market sufficient to overcome a concern that this level of economic concentration in this market will harm the public interest. To the extent Clear Channel presents generic arguments challenging the parameters of our current competition analysis, we will address such concerns in the context of the *Local Radio Ownership NPRM* and need not consider them here. Rather, we look only to the record of this case to determine whether there are unique facts that persuade us that grant of this assignment application would serve the public interest despite the apparent economic concentration it will create. On the basis of the information before us, we are unable to make the required finding that the public interest, convenience and necessity will be served by granting the subject applications. Accordingly, we will designate the assignment applications for hearing to determine, pursuant to 47 U.S.C. 309(e), and based on the evidence to be adduced at hearing, whether the public interest, convenience and necessity will be served by the grant of the applications.

5. We direct the Administrative Law Judge ("ALJ") to examine in an evidentiary hearing the particular circumstances of the Youngstown-Warren metro to determine whether the factual assumptions in Section III.C. of the Hearing Designation Order are correct. We further direct the ALJ to determine, in light of his or her conclusions, whether the transaction is likely to cause any anticompetitive harms, and to determine what, if any, public benefits would accrue from this transaction. Finally, we direct the ALJ to apply these findings to determine whether, on balance, grant of the applications would serve the public interest.

6. To defer further consideration of the applications to assign the licenses of stations WNIO(AM) and WNCD(FM), Youngstown, Ohio, WICT(FM), Grove City, Pennsylvania, and WAKZ(FM), Sharpsville, Pennsylvania, from Youngstown Radio to Clear Channel in accordance with the interim policy, Youngstown Radio and Clear Channel must file a joint election to defer consideration of the applications. Such election must be filed by September 5, 2002.

7. In the event the parties do not timely file the joint election set forth in the paragraph above, pursuant to 47 U.S.C. 309(e), the applications to assign the licenses of stations WNIO(AM) and WNCD(FM), Youngstown, Ohio, WICT(FM), Grove City, Pennsylvania, and WAKZ(FM), Sharpsville, Pennsylvania, from Youngstown Radio to Clear Channel are designated for hearing at a time and place to be specified in a subsequent Order, to determine, in light of the evidence to be presented in the hearing, whether the public interest, convenience and necessity would be served by the grant of the above-captioned assignment applications (File Nos. BAL/BALH–19991001ABM–ABP).

8. Pursuant to 47 U.S.C. 309(e), the burden of proof with respect to both the introduction of evidence and the issue specified in this Order shall be upon Youngstown Radio and Clear Channel, the applicant parties in this proceeding.

9. A copy of each document filed in this proceeding subsequent to the date of adoption of this Order must be served on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations and Hearings Division of the Enforcement Bureau at (202) 418–1420. Such service must be addressed to the named counsel of record, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 3–B431, Washington, DC 20554.

10. The effectiveness of this Order is stayed until September 11, 2002, no less than 10 days prior to which the parties may amend their applications or file such other information with the Media Bureau as they deem relevant to ameliorate the competition concerns identified in this Order.

11. To avail themselves of the opportunity to be heard, Youngstown Radio and Clear Channel, pursuant to 47 CFR 1.221(c) and 1.221(e), in person or by their respective attorneys, must file, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Such written appearance shall be filed by September 11, 2002. Pursuant to 47 CFR 1.221(c), if the parties fail to file an appearance within the specified time period, the assignment applications will be dismissed with prejudice for failure to prosecute.

12. The applicants, pursuant to 47 U.S.C. 311(a)(2) and 47 CFR 73.3594, must give notice of the hearing within the time and in the manner prescribed, and must advise the Commission of the publication of such notice as required by 47 CFR 73.3594(g).

13. The applications to assign the licenses of stations WNIO(AM) and WNCD(FM), Youngstown, Ohio, WICT(FM), Grove City, Pennsylvania, and WAKZ(FM), Sharpsville, Pennsylvania, from Youngstown Radio to Clear Channel will be held in abeyance pending the outcome of this proceeding.

14. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send copies of this Order to all parties by Certified Mail—Return Receipt Requested.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–21303 Filed 8–20–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 02–137; FCC 02–167]

Sheldon Broadcasting, Ltd. and Clear Channel Broadcasting License, Inc.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the FCC designates the application to assign the license of radio station KLFX(FM), Nolanville, Texas, from Sheldon Broadcasting, Ltd. ("Sheldon" to Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"). The Commission cannot find, based on the record, that grant of this application is consistent with the public interest, convenience, and necessity. Accordingly, pursuant to 47 U.S.C. 309(e), the Commission designates the application for hearing to determine whether the public interest, convenience, and necessity will be served by grant of the application.

DATES: SEE SUPPLEMENTARY INFORMATION section for document filing dates.

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ADDRESSES: Please file documents with the Investigations and Hearing Division, Enforcement Bureau, Federal Communications Commission, Room 3–B431, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Charles W. Kelley, Chief, Investigations and Hearing Division, Enforcement Bureau, at (202) 418–1420.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Hearing Designation Order, MM Docket No. 02–137, adopted on June 5, 2002 and released on July 10, 2002. The full text is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The full text may also be purchased from the Commission's copy contractor, Qualex International, Room CY–B402, 445 12th Street, SW., Washington, DC 20554, telephone (202) 863–2983, facsimile (202) 863–2898, or via e-mail at *qualexint@aol.com*, or may be viewed via the internet at: *http://www.fcc.gov/Document_Indexes/Media/2002_index_MB_Order.html*. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Synopsis of the Order

1. In March 1996, the Commission relaxed the numerical station limits in its local radio ownership rule in accordance with Congress's directive in section 202(b) of the Telecommunications Act of 1996. Since then, the Commission has received applications proposing transactions that would comply with the new limits, but that nevertheless could produce concentration levels that raised significant concerns about the potential impact on the public interest. In response to these concerns, the Commission concluded that it has an independent obligation to consider whether a proposed pattern of radio ownership that complies with the local radio ownership limits would otherwise have an adverse competitive effect in a particular local radio market and thus would be inconsistent with the public interest. In August 1998, the Commission also began flagging public notices of radio station transactions that would result in one entity controlling 50 percent or more of the advertising revenues in the relevant Arbitron radio market or two entities controlling 70 percent or more of the advertising revenues in that market. On November 8, 2001, we adopted the Notice of Proposed Rulemaking in MM Docket No. 01–317, 16 FCC Rcd 19861, 66 FR 63986, December 11, 2001 (*"Local Radio Ownership NPRM"*). We expressed concern that our current policies on local radio ownership did not adequately reflect current industry conditions and had led to unfortunate delays in the processing of assignment and transfer applications. Accordingly, we adopted the *Local Radio Ownership NPRM* to undertake a comprehensive examination of our rules and policies concerning local radio ownership and to develop a new framework that will be more responsive to current marketplace realities while continuing to address our core public interest concerns of promoting diversity and competition. In the *Local Radio Ownership NPRM*, we also set forth an interim policy to guide our actions on radio assignment and transfer of control applications pending a decision in that proceeding. Under our interim policy, we presume that an application that falls below the 50/70 screen will not raise competition concerns unless a petition to deny raising competition issues is filed. For applications identified by the 50/70 screen, the interim policy directs the Commission's staff to conduct a public interest analysis, including an independent preliminary competition analysis, and sets forth generic areas of inquiry for this purpose. The interim policy also sets forth timetables for staff recommendations to the Commission for the disposition of cases that may raise competition concerns.

2. On August 13, 2001, Clear Channel and Sheldon filed an application proposing to assign the license of station KLFX(FM) from Sheldon to Clear Channel. The application was unopposed. Clear Channel currently is the licensee of two stations in the Killeen-Temple, Texas Arbitron metro: KASZ(FM), Gatesville, Texas, and KIIZ(FM), Killeen, Texas.

3. Section 310(d) of the Communications Act of 1934, as amended (the "Communications Act"), 47 U.S.C. 310(d), requires the Commission to find that the public interest, convenience and necessity would be served by the assignment of Sheldon's radio broadcast license to Clear Channel before the assignment may occur. Under the interim policy set forth in our *Local Radio Ownership NPRM*, we conduct a public interest analysis, including but not limited to an independent preliminary competition analysis of the proposed transaction based on publicly available information and information in the Commission's records. Under the interim policy, to decide whether a proposed assignment serves the public interest, we first determine whether it complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission's rules, including our local radio ownership rules. If it does, we then consider any potential public interest harms of the proposed transaction as well as any potential public interest benefits to determine whether, on balance, the assignment serves the public interest. The Commission's analysis of public interest benefits and harms includes an analysis of the potential competitive effects of the transaction, as informed by traditional antitrust principles. However, the Commission's public interest evaluation is not limited to competition concerns but necessarily encompasses the broad aims of the Communications Act. These broad aims include, among other things, ensuring the existence of an efficient, nationwide radio communications service available to everyone and promoting locally oriented service and diversity in media voices. Our public interest analysis therefore includes assessing whether the transfer will affect the quality of radio services or responsiveness to the local needs of the community, and whether it will result in the provision of new or additional services to listeners. Thus, under our interim policy, where a proposed transaction raises concerns about economic concentration, we will consider evidence that the particular circumstances of a case may mitigate any adverse impact that might otherwise result, as well as any evidence of benefits to radio listeners that might result from the proposed transaction. Ultimately, it is the potential impact of the transaction on listeners that will determine whether we can find that, on balance, grant of a particular radio station assignment or transfer of control application serves the public interest.

4. Having concluded that the proposed transaction is consistent with the numerical limits set forth in our ownership rules, we turn to our competition analysis. Here, we find that the proposed transaction would create a market in which the combined market share of the top two group owners in the market would be 98.2%. We find that Clear Channel has failed to demonstrate particular circumstances in this market sufficient to overcome a concern that this level of economic concentration in this market will harm the public interest. To the extent Clear Channel presents generic arguments challenging the parameters of our current competition analysis, we will address such concerns in the context of the *Local Radio Ownership NPRM* and need not consider them here. Rather, we look only to the record of this case to determine whether there are unique facts that persuade us that grant of this assignment application would serve the public interest despite the apparent economic concentration it will create. On the basis of the information before us, we are unable to make the required finding that the public interest, convenience and necessity will be served by granting the subject application. Accordingly, we will designate the assignment applications for hearing to determine, pursuant to 47 U.S.C. 309(e), and based on the evidence to be adduced at hearing, whether the public interest, convenience and necessity will be served by the grant of the application.

5. We direct the Administrative Law Judge ("ALJ") to examine in an evidentiary hearing the particular circumstances of the Killeen-Temple, Texas metro to determine whether the factual assumptions in Section III.C. of the Hearing Designation Order are correct. We further direct the ALJ to determine, in light of his or her conclusions, whether the transaction is likely to cause any anticompetitive harms, and to determine what, if any, public benefits would accrue from this transaction. Finally, we direct the ALJ to apply these findings to determine whether, on balance, grant of the application would serve the public interest.

6. To defer further consideration of the application to assign the license of station KLFX(FM), Nolanville, Texas, from Sheldon to Clear Channel in accordance with the interim policy, Sheldon and Clear Channel must file a joint election to defer consideration of the application. Such election must be filed by September 5, 2002.

7. In the event the parties do not timely file the joint election set forth in the paragraph above, pursuant to 47 U.S.C. 309(e), the application to assign the license of station KLFX(FM), Nolanville, Texas, from Sheldon to Clear Channel is designated for hearing at a time and place to be specified in a subsequent Order, to determine, in light of the evidence to be presented in the hearing, whether the public interest, convenience and necessity would be served by the grant of the above-captioned assignment application (File No. BALH–20010813AAM).

8. Pursuant to 47 U.S.C. 309(e), the burden of proof with respect to both the introduction of evidence and the issue specified in this Order shall be upon Sheldon and Clear Channel, the applicant parties in this proceeding.

9. A copy of each document filed in this proceeding subsequent to the date of adoption of this Order must be served on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations and Hearings Division of the Enforcement Bureau at (202) 418–1420. Such service must be addressed to the named counsel of record, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 3–B431, Washington, DC 20554.

10. The effectiveness of this Order is stayed until September 10, 2002, no less than 10 days prior to which the parties may amend their application or file such other information with the Media Bureau as they deem relevant to ameliorate the competition concerns identified in this Order.

11. To avail themselves of the opportunity to be heard, Sheldon and Clear Channel, pursuant to 47 CFR 1.221(c) and 1.221(e), in person or by their respective attorneys, must file, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Such written appearance shall be filed by September 10, 2002. Pursuant to 47 CFR 1.221(c) of the Commission's rules, if the parties fail to file an appearance within the specified time period, the assignment application will be dismissed with prejudice for failure to prosecute.

12. The applicants, pursuant to 47 U.S.C. 311(a)(2), and 47 CFR 73.3594 must give notice of the hearing within the time and in the manner prescribed, and must advise the Commission of the publication of such notice as required by 47 CFR 73.3594(g).

13. The application to assign the licenses of station KLFX(FM), Nolanville, Texas, from Sheldon to Clear Channel will be held in abeyance pending the outcome of this proceeding.

14. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send copies of this Order to all parties by Certified Mail—Return Receipt Requested.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–21339 Filed 8–20–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2569]

Petitions for Reconsideration of Action in Rulemaking Proceedings

August 13, 2002.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by September 5, 2002. *See* § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities (CC Docket No. 98–67).

Number of Petitions Filed: 2.

Subject: In the Matter of Amendment of Part 15 of the Commission's Rules Regarding Spread Spectrum Devices (ET Docket No. 99–231).

Number of Petitions Filed: 1.

Subject: In the Matter of Amendment of Eligibility Requirements in Part 78 Regarding 12 GHz Cable Television Relay Service (CS Docket No. 99–250, RM–9257).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–21213 Filed 8–20–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011793–001.

Title: Maersk Sealand/Great Western Asia-U.S. West Coast Slot Charter Agreement.

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Parties: A.P. Moller-Maersk Sealand, Great Western Steamship Company.

Synopsis: The amendment to the agreement provides for regularly scheduled service in place of the previous ad hoc service.

By Order of the Federal Maritime Commission.

Dated: August 16, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–21336 Filed 8–20–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 3978F
Name: AIS Gator Exports, Inc.
Address: 201 Springsong Road, Lithia, FL 33547
Date Revoked: May 2, 2002.
Reason: Failed to maintain a valid bond.

License Number: 13273N
Name: ATF Cargo International, Inc.
Address: 1683 Galvez Avenue, San Francisco, CA 94124
Date Revoked: July 21, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4033F
Name: Ayma Cargo Corp.
Address: 10854 NW 29th, Suite 200, Miami, FL 33172
Date Revoked: July 6, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17391N
Name: Amfak Global Services, Inc.
Address: 205 Meadow Road, Edison, NJ 08817
Date Revoked: July 28, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15306N
Name: Buyers Express, Inc.
Address: 6000 Carnegie Blvd., Charlotte, NC 28209
Date Revoked: July 10, 2002.
Reason: Failed to maintain a valid bond.

License Number: 8670N
Name: C.V.S. Enterprises, Inc.
Address: 8390 Faust Avenue, West Hills, CA 91304
Date Revoked: July 10, 2002.
Reason: Failed to maintain a valid bond.

License Number: 11995N
Name: Calinex Shipping, Inc.
Address: 500 W. 140th Street, Gardena, CA 90248
Date Revoked: June 28, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16961N
Name: Cargo Network Express, Inc.
Address: 2801 N.W. 74th Avenue, #216, Miami, FL 33122
Date Revoked: June 9, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16448N
Name: Delpa International Corp.
Address: 7084 N.W. 50th Street, Miami, FL 33166
Date Revoked: August 9, 2002.
Reason: Failed to maintain a valid bond.

License Number: 11959N
Name: ESBO Shipping Inc.
Address: 175–01 Rockaway Blvd., Suite 205, Jamaica, NY 11434
Date Revoked: July 6, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15753N
Name: Eagle Logistics, Inc.
Address: 534 Merrick Road, Suite 1, Lynbrook, NY 11563
Date Revoked: July 24, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16844N
Name: Estes Express Lines, Inc.
Address: P.O. Box 25612, 1100 E. Commerce Road, Richmond, VA 23224
Date Revoked: July 31, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3240F
Name: Freight Connections International, Ltd.
Address: 935 West 175th Street, Homewood, IL 60430–2028
Date Revoked: June 30, 2002.
Reason: Surrendered license voluntarily.

License Number: 13271N
Name: Gallagher Transfer & Storage Company, Inc.
Address: 2401 Elysian Fields Avenue, New Orleans, LA 70117
Date Revoked: July 10, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15134N
Name: Internavigation, Inc.
Address: 229 N. Central Avenue, Suite 609, Glendale, CA 91203
Date Revoked: June 15, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16893N
Name: Jenkar International Freight Ltd. dba American Express Line
Address: 150–30 132nd Avenue, Jamaica, NY 11434
Date Revoked: July 28, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15269N
Name: Marine Logistics Incorporated
Address: 15110 Ripplewind Drive, Houston, TX 77068
Date Revoked: July 25, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17350N
Name: Millenium Transportation Group, Inc.
Address: 1901 E. Lambert Road, Suite 104, La Habra, CA 90631
Date Revoked: August 7, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15655N
Name: Millennium Plus, Inc.
Address: 10910 S. La Cienega Blvd., Inglewood, CA 90304
Date Revoked: August 9, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17498N
Name: Newkor America, Inc. dba Trans Bay
Address: 625 W. Victoria Street, Compton, CA 90220
Date Revoked: August 9, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17135N
Name: Next Day Cargo, Inc.
Address: 8805 N.W. 35th Lane, Miami, FL 33172
Date Revoked: July 25, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16758N
Name: Nextrans International, Inc.
Address: 19550 Dominguez Hills Drive, Rancho Dominguez, CA 90220
Date Revoked: July 7, 2002.
Reason: Failed to maintain a valid bond.

License Number: 13709N
Name: Pac West Trading & Transport, Inc. dba Pacwest Transport
Address: 2531 West 237th Street, Suite 122, Torrance, CA 90505
Date Revoked: August 9, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17497N
Name: Palumbo USA Miami, Inc.
Address: 8405 N.W. 53rd Street, Suite B–220, Koger Center, Athens Bldg., Miami, FL 33166
Date revoked: July 27, 2002.
Reason: Failed to maintain a valid bond.

License number: 12282N
Name: Philippine Islands Cargo Transport, U.S.A.
Address: 542 Sally Lee Avenue, Azusa, CA 91702-5344
Date revoked: July 3, 2002.
Reason: Failed to maintain a valid bond.

License number: 17268N.
Name: RCM International Shipping U.S.A., L.L.C.
Address: 10–C West Access Road, Kenner, LA 70062.
Date revoked: July 18, 2002.
Reason: Failed to maintain a valid bond.

License number: 15926F.
Name: Safcomar Inc.
Address: One Exchange Place, Suite 402, Jersey City, NJ 07302.
Date revoked: June 9, 2002.
Reason: Failed to maintain a valid bond.

License number: 17257N.
Name: Sea-Go International Inc.
Address: 400 Washington Street, Mt. Holly, NJ 08060.
Date revoked: June 28, 2002.
Reason: Failed to maintain a valid bond.

License number: 17505N.
Name: Trans Logistics, Inc. dba World Express
Address: 520 E. Carson Plaza Ct., Suite 205, Carson, CA 90746.
Date revoked: August 1, 2002.
Reason: Failed to maintain a valid bond.

License number: 17836N.
Name: U.S. Sea Wave Express, Inc.
Address: 2931 Plaza Del Amo, #74, Torrance, CA 90503.
Date revoked: August 4, 2002.
Reason: Failed to maintain a valid bond.

License number: 16716N.
Name: Ventana Cargo USA, Inc.
Address: 182–08 149th Avenue, Jamaica, NY 11413.
Date revoked: July 24, 2002.
Reason: Operating without a qualifying individual.

License number: 14235N.
Name: Village Traders, Ltd.
Address: 22428 Thunderbird Place, Hayward, CA 94545.
Date revoked: August 1, 2002.
Reason: Failed to maintain a valid bond.

License number: 6941N.
Name: Worldwide Freight System, Inc.
Address: 2401 Utah Avenue South, Suite 200, Seattle, WA 98275.
Date revoked: July 13, 2002.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–21335 Filed 8–20–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/address	Date reissued
16426N	First Express International Corp., 148–36 Guy R. Brewer Blvd., Suite 200, Jamaica, NY 11434.	May 25, 2002.
16171N	Pecton Air Freight (USA) Inc., 175–01 Rockaway Blvd., Rm. 215, Jamaica, NY 11434	May 25, 2002.
1457F	Schmidt, Pritchard & Co., Inc., 9801 West Lawrence Avenue, Schiller Park, IL 60176	May 23, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–21338 Filed 8–20–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicant:
NSCP Cargo Corporation, 23595 Cabot Blvd., Suite 116, Hayward, CA 94545.
Officers: Guillermo E. Pena, Compliance Officer, (Qualifying Individual), Arion Alabado, Director.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:
ILS-International Logistics Solutions, Inc., 1337 East Rock Wren Road, Phoenix, AZ 85048.
Officer: Larry Nass, President, (Qualifying Individual),
Tons Consolidators, Inc., 4309 Rousseau Lane, Palos Verdes Peninsula, CA 90274.
Officers: Ellen, Ling Ying Chen, Secretary, (Qualifying Individual), Hong Wai Tung, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary *Applicant:*
A.O.C.H. Services Corp., 24 North Road, Stony Brook, NY 11790.
Officer: Joseph A. Costanzo, President, (Qualifying Individual).

Dated: August 16, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–21337 Filed 8–20–02; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Invitation To Submit Quality Measures to AHRQ's National Quality Measures Clearinghouse

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: In response to its legislative mandate to compile health care quality measures (see Background section below), the Agency for Healthcare Research and Quality (AHRQ) invites

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organizations, and other developers of health care quality measures to submit tested (and/or valid and reliable) quality measures for inclusion in the World Wide Web-based National Quality Measures Clearinghouse (NQMC).

AHRQ is sponsoring the development of NQMC to promote widespread access to quality measures by the health care community and other interested individuals. NQMC is designed to be a database for information on specific health care quality measures and measure sets. The scheduled availability date for the NQMC Web site is December/Winter 2002.

Measure developers are asked to submit measures and measure updates that meet the NQMC inclusion criteria, along with supporting documentation, on an ongoing basis. NQMC will contain descriptive summaries of each measure catalogued in the NQMC database. Developers have the option of making their entire measure available through NQMC or may opt to provide ordering information that NQMC will include in the measure summary. NQMC users will be directed to contact the measure developer to obtain or purchase the entire measure if it is not available via the NQMC Web site. Quality measure summaries will be retrievable by many parameters including topic, target population, and setting of care. Users of NQMC will be able to search NQMC and the National Guideline Clearinghouse™ *www.guideline.gov*.—simultaneously.

DATES: Quality measures and measure sets will be received on an ongoing basis by ECRI at the address below. ECRI, a nonprofit health services research organization, will perform the technical work of the NQMC, under contract with AHRQ.

ADDRESSES: Organizations interested in contributing to the NQMC should submit two hard copies of each measure and documentation that the measure meets the NQMC Inclusion Criteria in typed format and electronic (if available), including name, address, phone, and e-mail address of a contact person to: Vivian H. Coates, NQMC Project Director, ECRI, 5200 Butler Pike, Plymouth Meeting, PA 19462–1298.

FOR FURTHER INFORMATION CONTACT: Forward questions to *qualitymeasures@ahrq.gov*.

SUPPLEMENTARY INFORMATION:

Background

AHRQ is the lead Federal agency for enhancing the quality, appropriateness, and effectiveness of healthcare services and access to such services. In carrying out its mission, AHRQ conducts and supports research that develops and presents scientific evidence on methods for measuring quality and strategies for improving quality. Under section 912(a)(2)(C) Title IX, of the Agency for Healthcare Research and Quality Act of 1999, AHRQ is charged with compiling health care quality measures that have been developed in the public and private sector. To this end AHRQ will compile and present measures in the NQMC that have been submitted by the public and private sector, and that meet the following definitions and inclusion criteria.

As part of its mandate to use existing technologies to promote health care quality improvement, NQMC will use the World Wide Web to effectively and efficiently reach a broad audience within the health care community. This Web-based repository of quality measures is intended to facilitate quick identification and access to quality measures by practitioners and health related organizations [*e.g.*, third party payers, peer review groups, professional societies submitting measures]. The measures will in turn be used to make assessments that may ultimately inform health care decisions.

Quality Measure Definition

The NQMC defines a quality measure as a mechanism to assign a quantifier to quality of care by comparison to a criterion.

Criteria

A measure must meet all of the following criteria to be included in the NQMC. If the measures do not meet one or more of these inclusion criteria, the submission forms will be returned to the submitter with a request for further documentation or development in the identified area. The submitter may revise and resubmit measures.

1. The quality measure must address some aspect(s) of quality of care delivered to defined patients by a defined individual, group of individuals or organizations and must relate to at least one of the following domains: (a) Process of care (a health care service provided to or on behalf of a patient); (b) Outcome of care (a health state of a patient resulting from health care); (c) Access to care (the patient's attainment of timely and appropriate health care); and, (d) Patient experience of care (a report by a patient concerning observations of and participation in health care).

2. The submitter must provide English-language documentation that includes at least each of the three following items: (i) The rationale for the measure (The rationale is a brief statement describing the patients and the specific aspect of health care to which the measure applies. The rationale may also include the evidence basis for the measure, and an explanation of how to interpret results, if that information is provided.); (ii) A description of the denominator and numerator of the measure (including specific variables for inclusion or exclusion of cases from either the denominator or numerator). Note—a continuous variable statement (*e.g.*, "time to thrombolysis") may be an acceptable alternative and measures whose metric is other than a rate or percentage will be considered on an individual basis; and, (iii) The data source(s) for the measure.

3. The submitter should provide documentation of supporting evidence appropriate for the measure domain: (1) For process measures, evidence that the measured clinical process has led to improved health outcomes; (2) For outcome measures, evidence that the outcome measure has been used to detect the impact of one or more clinical interventions; (3) For access measures, evidence that an assoication exists between the result of the access measure and the outcomes of or satisfaction with care; and (4) For patient experience measures, evidence that an association exists between the measure of patient experience of health care and the values and preferences of patients/consumers.

The documentation must consist of at least one of the following types of evidence: (1) One or more research studies published in a National Library of Medicine (NLM) indexed, peer-reviewed journal; (2) A systematic review of the clinical literature; (3) A clinical practice guideline or other peer-reviewed synthesis of the clinical evidence; (4) A formal consensus procedure involving expert clinicians and clinical researchers.

Additionally, for patient experience measures, evidence should include focus groups involving patients and/or cognitive testing of the measures by patients. For access measures, the consensus panel should also include other relevant stakeholders.

4. At least one of the following criteria must be satisfied with specific information attached in each case: (1) The measure has been cited in one or more reports in a National Library of Medicine (NLM) indexed, peer-reviewed journal, applying or evaluating the measure's properties; (2) The submitter provides documented peer-reviewed evidence evaluating the reliability (the degree to which the measure is free from random error) and validity (the degree to which the measure is associated with what it purports to measure) of the measure; or (3) The measure has been developed, adopted, adapted, or endorsed by an organization that promotes rigorous development and use of clinical performance measures. Such an organization may be at the international, National, regional, State or local levels (*e.g.*, a multi-state consortium, a State Medicaid agency, or a health organization or delivery system). Note—Adapted measures are those measures developed by one organization, and then subsequently adopted and modified in some way by another organization.

5. The measure must be in current use or currently in pilot testing and must be the most recent version if the measure has been revised. A measure is in current use if at least one health care organization has used the measure to evaluate or report on quality of care within the previous three years.

Dated: August 15, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–21326 Filed 8–20–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02039]

Expansion of HIV/AIDS/STD Prevention and Support in the Royal Government of Cambodia; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a Cooperative Agreement with the Ministry of Health (MOH), Royal Government of Cambodia (Cambodia), for the improvement and expansion of HIV/AIDS/STD prevention and support activities in Cambodia.

The purpose of this cooperative agreement is to improve and expand laboratory capacity and coordination of HIV prevention activities with the MOH and among non-governmental organizations (NGOs) in Cambodia. This will be accomplished through cooperation between CDC Cambodia, the MOH, National Center for HIV/AIDS Dermatology and STDs (NCHADS), National Clinic for Dermatology and STIs, as well as the MOH National Institute of Public Health (NIPH) to:

(1) Expand the national reference laboratory capacity for HIV and STD at the National Institute of Public Health.

(2) Develop national referral laboratory capacity at NCHADS.

(3) Pilot a program to integrate the various technical strategies of the Global AIDS Program at either the operational health district or the provincial health district level.

These collaborative activities could profoundly impact the scope and intensity of the implementation of the National AIDS Policy, which calls for multi-sectoral action on many fronts. Successful implementation and expansion of laboratory capacity building could substantially increase the MOH's ability to provide high quality reference and referral laboratory service and strengthen ties between NGOs and government HIV/AIDS-related programs. Successful implementation of a pilot integration project through cooperative efforts of MOH, NGOs, and CDC could eventually lead to significant improvements in coordination of HIV/AIDS prevention and care activities country-wide.

B. Eligible Applicants

The MOH is the only appropriate and qualified organization to fulfill the requirements set forth for Cambodia in this announcement because:

1. The MOH is uniquely positioned, in terms of legal authority, experience and credibility among Cambodian citizens to provide health sector HIV/AIDS/STD Prevention Activities.

2. The purpose of the announcement is to build upon an existing framework of health information and activities for which the MOH has the responsibility for implementing.

3. The MOH has been mandated by the National AIDS Authority(NAA) to coordinate and implement health sector activities necessary for the control of the HIV/AIDS epidemic in Cambodia.

4. The MOH already has established mechanisms to access health information enabling it to immediately become engaged in the activities listed in this announcement.

C. Funds

Approximately $810,000 is being awarded in FY2002. The award will begin on or about August 1, 2002 and will be made for a 12-month budget period within a five-year project period.

D. Where to Obtain Additional Information

To obtain business management technical assistance, contact: Angelia D. Hill, Lead Grants Management Specialist, International & Territories Acquisition & Assistance Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, MS E–09, Atlanta, GA 30341–4146. Telephone number: (770) 488–2785. FAX: (770) 488–2866. E-mail address: *aph8@cdc.gov*.

For program technical assistance, contact: Jack N. Spencer, Global AIDS Program (GAP), Cambodia Country Team, National Center for HIV/STD/and TB Prevention, Centers for Disease Control & Prevention, Cambodia-CDC AIDS Project Team, AmEmbassy Phnom Penh, Phnom Penh, Cambodia. Telephone: 011–855 23 217640. E-mail: *jns1@cdc.gov*.

Dated: August 14, 2002.

Sandra R. Manning,

CGFM, Director, Procurement & Grants Office, Centers for Disease Control & Prevention.

[FR Doc. 02–21251 Filed 8–20–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Potential Health Effects Involving Use of Perchloroethylene; Notice of Meeting

National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Potential Health Effects Involving Use of Perchloroethylene (PCE) in Dry-cleaning and Other Industries: Scientific Presentations and Information-gathering Meeting.

Time and Date: 9 a.m.–5 p.m., September 25, 2002.

Place: Alice Hamilton Building, Conference Room C, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Forum will include scientists and representatives from various government agencies and independent groups, and is open to the public, limited only by the space available. The meeting room accommodates 80 people. Due to limited space, notification of intent to attend the meeting must be made with Judy Curless no later than September 13, 2002. Ms. Curless can be reached by telephone at 513/533–8314 or by e-mail *jcc4@cdc.gov*. Requests to attend will be accommodated on a first come basis.

Purpose: To discuss current research with PCE and identify partners for exchange of information and data on occupational exposure to PCE and potential health effects. A panel of invited participants will present data. Presentations and discussion will focus on health effects related to occupational exposures to PCE as well as data from studies of carcinogenicity and other effects in

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animals. The public is invited to attend and will have the opportunity to provide comments.

Contact Person for General Information: Judy Curless, Education and Information Division, NIOSH, CDC, 4676 Columbia Parkway, MS C–32, Cincinnati, Ohio 45226, telephone 513/533–8314, fax 513/533–8230, e-mail *jcc4@cdc.gov*.

Contact Person for Technical Information: Thomas Lentz, Education and Information Division, NIOSH, CDC, 4676 Columbia Parkway, MS C–32, Cincinnati, Ohio 45226, telephone 513/533–8260, fax 513/533–8230, e-mail *tbl7@cdc.gov*.

Written research, data, or supporting materials to be considered in support of the information gathering effort should be submitted to the NIOSH Docket Office, ATTN: Diane Miller, Robert A. Taft Laboratories, M/S C–34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/533–8450, fax 513/533–8285. Comments may also be submitted by e-mail to: *NIOCINDOCKET@CDC.GOV*. E-mail attachments should be formatted as WordPerfect 6/7/8/9, or Microsoft Word. Comments should be submitted to NIOSH no later than November 15, 2002, and should reference docket number NIOSH–007 in the subject heading.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 15, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–21252 Filed 8–20–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Board on Radiation and Worker Health (ABRWH).

Time and Date: 1 p.m.–2 p.m., August 22, 2002.

Place: Teleconference call will originate at the Centers for Disease Control and Prevention, National Institutes for Occupational Safety and Health, Atlanta, Georgia. Please *see* **SUPPLEMENTARY INFORMATION** for details on accessing the teleconference.

Status: Open to the public, teleconference access limited only by ports available.

Background: The Advisory Board on Radiation and Worker Health ("the Board") was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by Department of Health and Human Services (HHS), advice on methods of dose reconstruction which have been promulgated as an interim final rule, evaluation of the validity and quality of dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH) for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000, the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the Centers for Disease Control and Prevention (CDC). NIOSH implements this responsibility for CDC. The charter was signed on August 3, 2001 and in November 2001, the President completed the appointment of an initial roster of 10 Board members. The initial tasks of the Board have been to review and provide advice on the proposed and interim rules of HHS.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: Agenda for this meeting will focus on the Board finalizing comments on the Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act of 2000; proposed rule 42 CFR part 83. The period for comment closes on August 26, 2002, and the Advisory Board on Radiation and Worker Health is required to comment as mandated by the Energy Employees Occupational Illness Compensation Program Act of 2000.

Agenda items are subject to change as priorities dictate.

This request has been submitted late as this conference call was scheduled on August 15, 2002. This conference call cannot be delayed as the open comment period closes on August 26, 2002; two business days after this conference call takes place.

SUPPLEMENTARY INFORMATION: This conference call is scheduled for 1:00 p.m. Eastern Standard Time. To access the teleconference you must dial 1/800–311–3437. To be automatically connected to the call, you will need to provide the operator with the participant code "984100" and you will be connected to the call.

Contact Person for More Information: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4498, fax 513/458–7125.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 16, 2002.

Joseph E. Salter,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–21400 Filed 8–20–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Fees for Sanitation Inspections of Cruise Ships

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces fees for vessel sanitation inspections for fiscal year 2003 (October 1, 2002, through September 30, 2003).

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: David L. Forney, Chief, Vessel Sanitation Program, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop F–16, Atlanta, Georgia 30341–3724, telephone (770) 488–7333, e-mail: *Dforney@cdc.gov*.

SUPPLEMENTARY INFORMATION:

Purpose and Background

The fee schedule for sanitation inspections of passenger cruise ships currently inspected under the Vessel Sanitation Program (VSP) was first published in the **Federal Register** on November 24, 1987 (52 FR 45019), and CDC began collecting fees on March 1, 1988. Since then, CDC has published the fee schedule annually. This notice announces fees effective October 1, 2002.

The formula used to determine the fees is as follows:

$$\text{Average cost per inspection} = \frac{\text{Total cost of VSP}}{\text{Weighted Number of annual inspections}}$$

The average cost per inspection is multiplied by a size/cost factor to determine the fee for vessels in each size category. The size/cost factor was established in the proposed fee schedule published in the **Federal Register** on July 17, 1987 (52 FR 27060), and revised in a schedule published in the **Federal Register** on November 28, 1989 (54 FR 48942). The revised size/cost factor is presented in Appendix A.

Fee

The fee schedule is presented in Appendix A and will be effective October 1, 2002, through September 30, 2003. This fee schedule represents a 4.2 percent decrease over the current fee schedule, which became effective October 1, 2001. If travel expenses continue to increase, it may be necessary to readjust the fees before September 30, 2003, because travel comprises a sizable portion of the program's costs. If such a readjustment in the fee schedule is necessary, a notice will be published in the **Federal Register** 30 days before the effective date.

Applicability

The fees will be applicable to all passenger cruise vessels for which inspections are conducted as part of CDC's VSP.

Dated: August 15, 2002.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention.

APPENDIX

Appendix A

SIZE/COST FACTOR

Vessel size	GRT[1]	Average cost
Extra Small	<3,001	0.25
Small	3,001–15,001	0.50
Medium	15,000–30,000	1.00
Large	30,001–60,000	1.50
Extra Large	>60,000	2.00

[1] GRT—Gross register tonnage in cubic feet, as shown in *Lloyd's Register of Shipping.*

FEE SCHEDULE OCTOBER 1, 2002–SEPTEMBER 30, 2003

Vessel size	GRT[1]	Fee ($U.S.)
Extra small	<3,001	1,150
Small	3,001–15,000	2,300
Medium	15,001–30,000	4,600
Large	30,001–60,000	6,900
Extra large	>60,000	9,200

Note: Inspections and reinspections involve the same procedure, require the same amount of time, and are, therefore, charged at the same rate.

[FR Doc. 02–21249 Filed 8–20–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0350]

Draft Guidance for Industry on Handling and Retention of Bioavailability and Bioequivalence Testing Samples; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Handling and Retention of Bioavailability and Bioequivalence Testing Samples." Inspection of clinical and analytical sites that perform bioavailability (BA) and bioequivalence (BE) studies frequently reveals the absence of reserve samples at the testing facilities where the studies are conducted. The draft guidance is intended to clarify how to distribute test articles and reference standards to testing facilities, how to randomly select reserve samples, and how to retain reserve samples.

EFFECTIVE DATE: Submit written or electronic comments on the draft guidance by September 20, 2002. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Martin Yau, Center for Drug Evaluation and Research (HFD–45), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5458.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Handling and Retention of Bioavailability and Bioequivalence Testing Samples." Following the generic drug crisis in the 1980s, FDA issued regulations to deter possible bias and fraud in BA and BE testing by study sponsors and/or drug manufacturers (58 FR 25918, April 28, 1993). In the preamble of the final rule, the agency stated that the study sponsor should not separate out the reserve samples of the test article and reference standard prior to sending the drug product to the testing facility. This is to ensure that the reserve samples are in fact representative of the same batches provided by the study sponsor for the testing. FDA's Division of Scientific Investigations and field investigators from the Office of Regulatory Affairs conduct inspections of clinical and analytical sites that perform BA and BE studies for sponsors and/or drug manufacturers seeking approval of generic and new drug products. A frequent finding from these inspections is the absence of reserve samples at the testing facility. This draft guidance clarifies the responsibilities of the involved parties for retention of samples used in BA and BE studies. It includes recommendations for sampling techniques and responsibilities in various study settings.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on retention of BA and BE testing samples. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An

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alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written comments on the draft guidance. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Persons with access to the Internet may obtain the document at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: August 13, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–21262 Filed 8–20–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0337]

Draft Guidance for Industry on Liposome Drug Products: Chemistry, Manufacturing, and Controls; Human Pharmacokinetics and Bioavailability; and Labeling Documentation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Liposome Drug Products: Chemistry, Manufacturing, and Controls; Human Pharmacokinetics and Bioavailability; and Labeling Documentation." This guidance provides recommendations to applicants on the chemistry, manufacturing, and controls (CMC); human pharmacokinetics and bioavailability; and labeling documentation for liposome drug products submitted in new drug applications (NDAs).

DATES: Submit written or electronic comments on the draft guidance by November 19, 2002. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Liang Zhou, Center for Drug Evaluation and Research (HFD–180), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7471.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Liposome Drug Products: Chemistry, Manufacturing, and Controls; Human Pharmacokinetics and Bioavailability; and Labeling Documentation."

Liposome drug products are defined as drug products containing drug substances (active pharmaceutical ingredients) encapsulated in liposomes. A liposome is a microvesicle composed of a bilayer of lipid amphipathic molecules enclosing an aqueous compartment. Liposome drug products are formed when a liposome is used to encapsulate a drug substance within the lipid bilayer or in the interior aqueous space of the liposome. A drug substance in a liposome formulation is intended to exhibit a different pharmacokinetic and/or tissue distribution (PK/TD) profile from the same drug substance (or active moiety) in a nonliposomal formulation given by the same route of administration. The complete characterization of the PK/TD profile of a new liposome drug product is essential to establish the safe and effective dosing regimen of the product.

The guidance provides recommendations to applicants on the CMC, human pharmacokinetics and bioavailability, and labeling documentation for liposome drug products submitted in NDAs. The guidance does not provide recommendations on: (1) Clinical efficacy and safety studies, (2) nonclinical pharmacology and/or toxicology studies, (3) bioequivalence studies or those to document sameness, (4) liposomal formulations of vaccine adjuvants or biologics, or (5) drug-lipid complexes.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on liposome drug products: CMC, human pharmacokinetics and bioavailability, and labeling documentation. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: August 13, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–21263 Filed 8–20–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Rural Assistance Center

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration announces up to $600,000 in FY 2002 funds is available to fund a single competitive cooperative agreement to support the development of a Rural Assistance Center (RAC) demonstration project. The RAC will assist rural communities and individual rural citizens in building and sustaining high-quality rural health care delivery systems.

Eligibility is open to any public or private entity. Faith-based organizations are eligible to apply for these funds. Awards will be made under the program authority of Section 301 of the Public Health Service Act. Funds for this award were appropriated under Public Law 107–116. The award will be for a period of three years. Additional funding of up to $600,000 annually in the second or third years is contingent on the availability of funds and grantee performance.

DATES: Applicants for this program are requested to notify the Office of Rural Health Policy by September 1, 2002. Notification of intent to apply can be made in one of three ways: telephone: 301–443–0835; e-mail *shirsch@hrsa.gov;* mail, Office of Rural Health Policy, Room 9A–55, 5600 Fishers Lane, Rockville, MD 20857. The deadline for receipt of grant applications is September 16, 2002. Applications will be considered on time if received on or before this date.

ADDRESSES: To receive a complete application kit, applicants may telephone the HRSA Grants Application Center at 1–877–477–2123 (1–877–HRSA–123) beginning August 16, 2002, or register on-line at: *http://www.hrsa.gov/*, or by accessing *http://www.hrsa.gov/g_order3.htm* directly. This program uses the standard Form PHS 5161–1 (rev. 7/00) for applications (approved under OMB No. 0920–0428). Applicants must use the Catalog of Federal Domestic Assistance (CFDA) number 93.223 when requesting application materials. The CFDA is a Government wide compendium of enumerated Federal programs, projects, services, and activities that provide assistance. An original and paper copies of applications should be mailed to: HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg MD, telephone: 1–877–HRSA–123 (477–2123), E-mail: *hrsagac@hrsa.gov.*

This application guidance and the required form for the Rural Assistance Center Program may also be downloaded in either Microsoft Word or Adobe Acrobat format (.pdf) from the ORHP Homepage at *http://www.ruralhealth.hrsa.gov.* Please contact Steve Hirsch at 301–443–0835 or *shirsch@hrsa.gov* if you need technical assistance in accessing the ORHP Home Page via the Internet.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

For the 65 million people living in rural America, the U.S. Department of Health and Human Services' mission to protect health and to provide assistance for those in need is especially relevant. Health care and social service programs in rural communities provide needed support of communities' well-being and represent a significant segment of the local economies. These programs, however, frequently lack adequate funds, personnel and support network.

For more than a decade, the Office of Rural Health Policy has supported activities that assist states, localities and rural citizens as they work to build and sustain high-quality rural health care delivery systems. One component of that support has been the Rural Information Center Health Service (RICHS). The intent of the RAC is to demonstrate that this activity can be expanded and enhanced to better serve rural communities by identifying private and public resources, collecting and sharing information about models that work, and serving as a technical resource for a wide range of health and social service issues.

In July of 2001, Secretary of Health and Human Services Tommy G. Thompson created a rural task force to assess how the Department serves rural communities. Among the key findings of this year-long initiative is that DHHS operates more than 220 discrete programs that affect rural communities. As part of the rural initiative, the Department's Rural Task Force also collected more than 450 public comments on a variety of issues affecting rural communities. One of the key themes that emerged from these public comments is the need to reach out to rural communities and help them identify how best to access the broad range of health and social services programs that are available to rural communities.

The Rural Assistance Center will serve as a focal point of information about the broad range of public and private opportunities that are available to support rural communities. The RAC will help rural communities navigate these opportunities, identify successful state and community models and provide links to existing private and public resources that support rural health care and social service delivery. This will, in turn, help rural communities build and enhance their rural services and strengthen their communities.

Authorization: Section 301 of the Public Health Service Act, 42 U.S.C. 241.

Purpose

The purpose of this cooperative agreement is to assist rural communities in developing and sustaining high-quality rural health care and social service delivery systems through an integrated assistance center. Specifically, through this cooperative agreement the RAC will:

(1) Serve as a support to rural communities and rural citizens to identify available programs for improving the ability of rural communities to provide high-quality health care and social services.

(2) Identify and synthesize information about the availability of existing private and public resources for enhancing rural health care and social service delivery.

(3) Identify and disseminate information about models that work in rural communities that have been able to sustain, enhance and improve their local health care and social service delivery systems.

(4) Promote collaboration among DHHS programs that serve rural communities to increase effectiveness and reduce duplication of effort.

Eligibility

Under section 301 of the Public Health Service Act, any public or private entity is eligible to apply. Under the President's initiative, community-based and faith-based organizations that are otherwise eligible and believe they can contribute to HRSA's program objectives are encouraged to consider this initiative.

Funding Levels/Project Periods

The administrative and funding instrument to be used for the RAC will be a cooperative agreement, in which substantial ORHP policy expertise and/or programmatic involvement with the awardee is anticipated during the performance of the project. There is no requirement for matching funds with this program. Under the terms of this cooperative agreement, in addition to the required monitoring and technical assistance, Federal responsibilities will include:

(1) Participation in meetings conducted during the period of the cooperative agreement.

(2) Ongoing review of activities and procedures to be established and implemented.

(3) Review of project information prior to dissemination.

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(4) Review of information on project activities.

(5) Assistance with the establishment of contacts with Federal and State agencies, grant projects and other contacts that may be relevant to the project's mission and referrals to these agencies.

One project will be approved for three years. Up to $600,000 in fiscal year 2002 funds will be used to fund the first year. Additional funding of up to $600,000 annually in years two and three will be contingent on the availability of funds and grantee performance.

Review Criteria

Applications that are complete and responsive to the guidance will be evaluated by an objective review panel specifically convened for this solicitation and in accordance with HRSA grants management policies and procedures.

Applications will be reviewed using the following criteria:

1. Knowledge and Understanding of the Issues relating to Rural Health and Rural Social Services (Weight: 20%) and the Challenges Facing Providers and Beneficiaries in Rural Areas

- The degree of understanding of the evolution of rural health and social services and the historical challenges facing rural communities in terms of resources and demographics (including populations experiencing cultural and linguistic barriers to care).
- The degree of thoroughness in describing how the RAC will address information gaps for rural communities.
- The extent of applicant knowledge of rural health and social service issues.
- The extent of applicant knowledge of the individuals and organizations involved in the rural health and social services.

2. Soundness and Adequacy of Project Plan (Weight: 30%)

- The extent to which the project objectives address the program purpose and are measurable, time-framed, and appropriate in relation to both the program requirements and identified needs.
- The degree to which the program areas outlined in the grant guidance have been addressed, prioritized and justified.
- The quality and feasibility of the project plan or methodology and its relation to the project's goals and objectives.
- The extent to which the proposed approach identifies the resources that will be used to implement the strategies.
- The degree to which the approaches are technically sound and appropriate to the project goals and objectives.

3. Soundness of Implementation Plan (Weight: 10%)

- The soundness of the plan for creating and implementing the RAC.
- The extent to which the applicant describes how the project staff will determine the degree to which proposed activities are being successfully conducted and completed, based on the objectives outlined.

4. Applicant's Capability and Capacity (Weight: 30%)

- The extent to which the applicant has demonstrated expertise and its capability to oversee and successfully carry out the project.
- Evidence that a sufficient number of project personnel and resources are proposed. Biographical sketches/curricula vitae document education, skills and experience that are relevant and necessary for the proposed project.

5. Appropriateness of Budget (Weight: 10%)

- The extent to which the proposed budget is realistic, adequately justified, and consistent with the proposed project plan.
- The extent to which the costs of administration and monitoring/evaluation are reasonable and proportionate to the costs of service provision.
- The degree to which the costs of the proposed project are economical in relation to the proposed service utilization.

Additional criteria may be used in the review of applications for this competition. Any such criteria will be identified in the program guidance included in the application kit. Applicants should pay strict attention to addressing these criteria, in addition to those referenced above.

This program is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is also not subject to the Public Health Systems Reporting Requirements.

Paperwork Reduction Act

OMB approval for any data collection in connection with this cooperative agreement will be sought, as required under the Paperwork Reduction Act of 1995.

Dated: August 15, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–21340 Filed 8–20–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Development of High-Yield Technologies for Isolating Exfoliated Cells in Body Fluids.

Dated: September 18, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Boulevard, Executive Plaza North, Room H, Rockville, MD 20852.

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892, (301) 496–7576, *bielatk@mail.nih.gov*.

Catalogue of Federal Domestic Assistance Program Nos. 93,392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21234 Filed 8–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Phase I & Phase II Clinical Studies of Chemopreventive Agents.

Date: September 30–October 1, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lalita D Palekar, PHD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institute of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21244 Filed 8–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, "Autoimmunity: Mechanisms of Unresponsiveness".

Date: September 11, 2002.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Geetha P. Bansal, PhD, Scientific Review Administrator, NIAID/DEA, Scientific Review Program, Room 2217, 6700B Rockledge Drive MSC–7616, Bethesda, MD 20892–7616, 301–496–2550, *gbansal@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21232 Filed 8–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, "Imaging Inflammation in Autoimmune Disease".

Date: September 10, 2002.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Geetha P Bansal, PhD, Scientific Review Administrator, NIAID/DEA, Scientific Review Program, Room 2217, 6700B Rockledge Drive MSC–7616, Bethesda, MD 20892–7616, 301–496–2550, *gbansal@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21233 Filed 8–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: September 22–24, 2002.

Closed: September 22, 2002, 7 PM to 10 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

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Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Open: September 23, 2002, 8:30 AM to 9:25 AM.
Agenda: To discuss program planning and program accomplishments.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852.
Closed: September 23, 2002, 9:25 AM to 9:55 AM.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.
Open: September 23, 2002, 9:55 AM to 10:35 AM.
Agenda: To discuss program planning and program accomplishments.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.
Closed: September 23, 2002, 10:35 AM to 11:05 AM.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.
Open: September 23, 2002, 11:05 AM to 12:00 PM.
Agenda: To discuss program planning and program accomplishments.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.
Closed: September 23, 2002, 12 PM to 1:20 PM.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.
Open: September 23, 2002, 1:20 PM to 2 PM.
Agenda: To discuss program planning and program accomplishments.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.
Closed: September 23, 2002, 2 PM to 2:30 PM.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.
Open: September 23, 2002, 2:30 PM to 3:10 PM.
Agenda: To discuss program planning and program accomplishments.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.
Closed: September 23, 2002, 3:10 PM to 3:30 PM.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.
Closed: September 23, 2002, 4:30 PM to 7 PM.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Closed: September 24, 2002, 8:30 AM to Adjournment.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Story C. Landis, PhD, Director, Division of Intramural Research, NINDS, National Institutes of Health, Building 36, Room 5A05, Bethesda, MD 20892, 301–435–2232.
(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 13, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–21236 Filed 8–20–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel. K23s, K24s, & K25s.
Date: September 11, 2002.
Time: 1 pm to 2 pm.
Agenda: To review and evaluate grant applications.
Place: 1 Democracy, 6701 Democracy Blvd, Suite 707 MSC 4870, Bethesda, MD 20892–4870, (Telephone Conference Call).
Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Disease, Natcher Building, MSC 6500, 45 Center Drive, 5AS—25H, Bethesda, MD 20892, (301) 594–4952.
(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 13, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–21237 Filed 8–20–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel. Clinical Trial Planning Grants.
Date: September 10, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Richard J Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.
(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 13, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–21238 Filed 8–20–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Parkinson's Disease Gene Therapy Study Group.
Date: August 18–19, 2002.[1]
Time: 7:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites, 4300 Military Road, NW., Chevy Chase, MD 20015.
Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, NeuroAIDS Studies.
Date: August 21–22, 2002.
Time: 7:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin Grand Hotel, 2350 M Street, NW., Washington, DC 20037.
Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660.
This notice is being published less than 15 days prior to the meeting due in the timing limitations imposed by the review and funding cycle.
(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 13, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–21240 Filed 8–20–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 BB (29) R21, Application Review Meeting.
Date: August 16, 2002.[1]
Time: 3 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).
Contact Person: Elsie D.Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, *etaylor@niaaa.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

[1] Editorial note: This document was received at the Office of the Federal Register on August 16, 2002.

[1] *Editorial Note:* This document was received at the Office of the Federal Register on August 16, 2002.

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Dated: August 13, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–21245 Filed 8–20–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–78, Review of R01 and R21 Grants.
Date: August 19–20, 2002.[1]
Time: 8:30 AM to 12 PM.
Agenda: To review and evaluate grant applications and/or proposals.
Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Anna Sandberg, MPH, DRPH, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–3089.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–79, Review of R01 Grants.
Date: August 20, 2002.
Time: 1:30 PM to 3:30 PM.
Agenda: To review and evaluate grant applications and/or proposals.
Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Anna Sandberg, MPH, DRPH, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–3089.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–95, Review of R13 Grants.
Date: September 10, 2002.
Time: 3 PM to 5 PM.
Agenda: To review and evaluate grant applications and/or proposals.
Place: 45 Center Drive, Natcher Bldg., Conf. Rms. A & D, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: H. George Hausch, PHD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–94, Review of R25 Grants.
Date: September 17, 2002.
Time: 1 PM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: 45 Center Drive, Natcher Building, Conference Room E1/2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: H. George Hausch, PHD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.
(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 14, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–21247 Filed 8–20–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biomedical Library and Informatics Review Committee.
Date: November 7–8, 2002.
Time: November 7, 2002, 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.
Time: November 8, 2002, 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.
Contact Person: Merlyn M. Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.
(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 13, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–21235 Filed 8–20–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL LIBRARY OF MEDICINE, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine, Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine.
Date: October 7–8, 2002.
Time: October 7, 2002, 7 PM to 10 PM.
Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.
Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.
Time: October 8, 2002, 8:30 AM to 2:00 PM.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.
Contact Person: David J. Lipman, MD, Director, Natl Ctr for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Bethesda, MD 20894.
(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 14, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–21241 Filed 8–20–02; 8:45 am]
BILLING CODE 4140–01–M

[1] Editorial Note: This document was received at the Office of the Federal Register on August 16, 2002.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Publication Grants.
Date: November 15, 2002.
Time: 8:30 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Merlyn M. Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.
(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 13, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–21242 Filed 8–20–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the PubMed Central National Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: PubMed Central National Advisory Committee.
Date: November 4, 2002.
Time: 9:30 a.m. to 4 p.m.
Agenda: Review and Analysis of Systems.
Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.
Contact Person: David J. Lipman, MD, Director, Natl Ctr for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.pubmedcentral.nih.gov/about/nac/html*, where an agenda and any additional information for the meeting will be posed when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 13, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–21243 Filed 8–20–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which could constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vision Bioengineering Research Grants and Partnership.
Date: August 23, 2002.
Time: 11 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Peter Lyster, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7806, Bethesda, MD 20892, (301) 435–1256, *lysterp@mail.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 13, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–21246 Filed 8–20–02; 8:45 am]
BILLING CODE 4140–01–M

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–33]

Notice of Submission of Proposed Information Collection to OMB; Single Family Premium Collection Subsystem-Periodic (SFPCS–P)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 20, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0536) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department. This Notice also lists the following information:

Title of Proposal: Single Family Premium Collection Subsystem-Periodic (9SFPCS–P)

OMB Approval Number: 2502–0536.

Form Numbers: None.

Description of the Need For the Information and Its Proposed Use: Mortgagees are required to submit mortgage insurance premium data on a monthly basis.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	1,800	12		1		21,600

Total Estimated Burden Hours: 21,600.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 13, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–21229 Filed 8–20–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–34]

Mortgage Insurance for Cooperative and Condominium Housing; Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 20, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0141) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including the number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Mortgage Insurance for Cooperative and Condominium Housing.

OMB Approval Number: 2502–0141.

Form Numbers: HUD–93201.

Description of the Need for the Information and Its Proposed Use: Project Information is analyzed to determine whether a cooperative or condominium project is eligible for mortgage insurance.

Respondents: Business or other for-profit, not-for-profit institutions.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	15	1		6		91

Total Estimated Burden Hours: 91.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 13, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–21230 Filed 8–20–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent to Prepare a Comprehensive Conservation Plan and Associated Environmental Impact Statement for the Desert National Wildlife Refuge Complex

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and Associated Environmental Impact Statement for the Desert National Wildlife Refuge Complex.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Conservation Plan (CCP) and an associated Environmental Impact Statement (EIS) for the Desert National Wildlife Refuge Complex. The Desert National Wildlife Refuge Complex is composed of Ash Meadows National Wildlife Refuge, Desert National Wildlife Range, Moapa Valley National Wildlife Refuge and Pahranagat National Wildlife Refuge located in Clark, Lincoln and Nye Counties, Nevada. A Wilderness Review of Desert National Wildlife Range will also be completed concurrently in accordance with the Wilderness Act of 1964, as amended, and Refuge Planning Policy 602 FW Chapters 1, 2, and 3. The Service is furnishing this notice in compliance with our National Wildlife Refuge Planning Policy and the National Environmental Policy Act of 1969, as amended (NEPA), and implementing regulations, to advise other agencies, Tribal Governments, and the public of our intentions, and to obtain suggestions and information on the scope of issues and alternatives to include in the CCP and the environmental document.

DATES: A series of public scoping meetings will be held on September 16 through September 19 at the following locations:

Date	Time	Location
Sept. 16, 2002	7–9 pm	Moapa Community Center, Moapa Valley, NV.
Sept. 17, 2002	7–9 pm	Fish and Wildlife Service Office, Las Vegas, NV.
Sept. 18, 2002	4–6 pm	Amargosa Valley Multi-purpose Building, Amargosa Valley, NV.
Sept. 18, 2002	7–9 pm	Bob Ruud Community Center, Pahrump, NV.
Sept. 19, 2002	7–9 pm	Alamo Annex Building, Alamo, NV.

Interested persons are encouraged to attend these meetings to identify issues, concerns, and opportunities to be addressed in the CCP. For directions to the meetings, please contact us at the phone number listed below. To ensure that the Service has adequate time to evaluate and incorporate suggestions and other input into the planning process, comments should be received within 60 days from the date of this notice.

ADDRESSES: Address comments and requests to be put on the mailing list, receive more information, or receive a copy of the most recent planning update to: Project Leader, U.S. Fish and Wildlife Service, 4701 North Torrey Pines, Las Vegas, NV 89130 or call the Complex at (702) 515–5450. Submit faxes to (702) 515–5460. If you choose to submit comments via electronic mail, visit *http://desertcomplex.fws.gov* and use the "Guest Mailbox" provided at that site. More information on the CCP process is also available at the above internet site by selecting the "CCP Planning Update" link.

FOR FURTHER INFORMATION CONTACT: Richard Birger, Project Leader, at the address and phone number above.

SUPPLEMENTARY INFORMATION:

Ash Meadows National Wildlife Refuge

Established in 1984 under the authority of the Endangered Species Act of 1973, as amended, the Refuge comprises 23,000 acres of spring fed wetlands, mesquite bosques, and desert uplands that provide habitat for at least 24 plants and animal species found nowhere else in the world. The primary purpose of the Refuge is to provide for the protection and recovery of endangered fish and plants, such as Devil's Hole, Ash Meadows Amargosa, and Warm Springs pupfish, Ash Meadows speckled dace, Ash Meadows milk-vetch, spring-loving centaury plant, Ash Meadows sunray, Ash Meadows ivesia, Ash Meadows gumplant, and Ash Meadows blazing star. The Amargosa Pupfish Station, located within the Refuge, is home to a vertebrate species that may have one of the most restricted habitats on the planet. The most striking feature of the

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Refuge is the more than 30 spring-fed pools and streams that contrast sharply with the arid desert that surround them.

Desert National Wildlife Range

The Refuge, established in 1936 by Executive Order No. 7373 for the protection, preservation and management of desert bighorn sheep, as well as other forms of native flora and fauna occurring on the Refuge, encompasses 1.5 million acres of the diverse Mojave Desert in southern Nevada. It is the largest National Wildlife Refuge in the lower 48 states.

The Military Lands Withdrawal Act of 1999, Pub. L. No. 106–65, authorized the withdrawal of 2,919,890 acres of public lands in Clark, Nye, and Lincoln Counties, Nevada from all forms of appropriation under the public lands laws (including the mining laws and the mineral leasing and the geothermal leasing laws). These withdrawn lands were reserved for use by the Secretary of the Air Force for military testing, training and other defense-related purposes. During the period of withdrawal, the Act provides that the lands within the Desert National Wildlife Range will be managed by the Secretary of the Interior pursuant to the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd, *et seq.*) and other laws applicable to the National Wildlife Refuge System. Pursuant to a Memorandum of Understanding with the Secretary of the Air Force, The Secretary of the Interior is to manage withdrawn lands for the purposes for which the Refuge was established and to support current and future military aviation training.

Moapa Valley National Wildlife Refuge

The Refuge was established September 10, 1979, under the authority of the Endangered Species Act of 1969, as amended, to secure habitat for the endangered Moapa dace. The Refuge is located on 106 acres in northeastern Clark County. Due to its small size, fragile habitats, on-going habitat restoration work, and unsafe structures, the Refuge is currently closed to the general public.

Pahranagat National Wildlife Refuge

The Refuge was established in 1963, under the authority of the Migratory Bird Conservation Act, as amended, to provide protection and habitat for migrating birds in the Pahranagat Valley. The 5,382 acre refuge consists of marshes, meadows, lakes, and upland desert habitat. It provides nesting, resting, and feeding areas for ducks, geese, swans, and other birds.

Background and Planning Process

The National Wildlife Refuge System Administration Act of 1966, as amended, requires the Service to manage all lands within the National Wildlife Refuge System in accordance with an approved CCP (16 U.S.C. 668dd(e)). The CCP will guide wildlife, habitat, and public use management decisions and identify refuge goals, long-range objectives, and strategies for achieving Refuge purposes. Public input into this planning process is encouraged. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will implement management strategies over the next 15 years. Until the CCP is completed, Refuge management will continue to be guided by refuge purposes, federal legislation regarding management of national wildlife refuges, and other legal, regulatory and policy guidance.

Comments and concerns received will be used to develop goals, key issues and management strategies, and draft alternatives. Additional opportunities for public participation will occur throughout the CCP process, which is expected to be completed by 2005. Input from interested federal, state, and local agencies, Native American tribes, organizations and individuals is encouraged.

During development of the CCP, we will comply with the provisions of NEPA through concurrent preparation of an EIS that will accompany the CCP. The draft EIS will contain a No Action Alternative, a proposed action alternative, and potentially other alternatives. The alternatives will be used to define management options and compare their effects. The potential environmental impacts of each alternative will be analyzed in the draft EIS. A range of alternatives (and their effects on the biological resources and on the local communities) that address the issues and the management strategies associated with the issues will be evaluated in the EIS.

We are required by Service policy to complete a wilderness review of Service managed lands to determine if any lands are suitable for inclusion in the National Wilderness Preservation System. The wilderness review will be integrated into the CCP/EIS process including identification of areas that meet the minimum wilderness criteria; evaluation of the wilderness suitability of alternatives; and documentation of recommendations. Wilderness designation requires Congressional legislation. The last step, if appropriate, would consist of forwarding any suitable recommendations from the Director of the Service, through the Secretary of the Interior and the President, to Congress in a Wilderness Study Report.

Conclusion

With the publication of this notice, the public is encouraged to help identify potential issues, management actions and concerns; significant problems or impacts; and opportunities to resolve them. The public scoping period will continue for 60 days from the date of this notice. However, the Service will accept comments throughout the planning process.

All comments received from individuals on environmental impact statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations [40CFR1506.6(f)] and other Service and Departmental policy and procedures.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, Executive Order 12996, and Service policies and procedures for compliance with those regulations.

Dated: August 7, 2002.

Ken McDermond,

Acting Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–20699 Filed 8–20–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting of the Klamath Fisheries Management Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. The objectives of this meeting are to hear technical reports, discuss management of Klamath Basin spring Chinook, review the 2002 fisheries, and discuss fall Chinook management and allocation issues related to the 2003 season. The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 10 a.m. to 5 p.m. on Wednesday, October 9, 2002, from 8 a.m. to 5 p.m. on Thursday, October 10, 2002, and from 8 a.m to 1 p.m. on Friday, October 11, 2002.

ADDRESSES: The meeting will be held at the U.S. Fish and Wildlife Service, Yreka Fish and Wildlife Office, 1829 South Oregon Street, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Phil Detrich, Project Leader, U.S. Fish and Wildlife Service; 1829 South Oregon Street; Yreka, California 96097; telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Klamath Fishery Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: August 14, 2002.

John Engbring,

Acting Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–21253 Filed 8–20–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Notice of meeting.

California Bay-Delta Public Advisory Committee Public Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the California Bay-Delta Public Advisory Committee will meet on September 19, 2002. The agenda for the Committee meeting will include reports from subcommittees, discussions on future governance, workplans and budgets, and water operations, regional reports, and implementation of the CALFED Bay-Delta Program with State and Federal officials.

DATES: The meeting will be held Thursday, September 19, 2002 from 9 a.m. to 4 p.m. If reasonable accommodation is needed due to a disability, please contact Pauline Nevins at (916) 657–2666 or TDD (800) 735–2929 at least 1 week prior to the meeting.

ADDRESSES: The meeting will be held at the Metropolitan Water District of Southern California located at 700 North Alameda Street, Room 2–456, Los Angeles, California.

FOR FURTHER INFORMATION CONTACT: Eugenia Laychak, CALFED Bay Delta Program, at (916) 654–4214, or Diane Buzzard, U.S. Bureau of Reclamation, at (916) 978–5022.

SUPPLEMENTARY INFORMATION: The Committee was established to provide assistance and recommendations to Secretary of the Interior Gale Norton and California Governor Gray Davis on implementation of the CALFED Bay-Delta Program. The Committee will advise on annual priorities, integration of the eleven Program elements, and overall balancing of the four Program objectives of ecosystem restoration, water quality, levee system integrity, and water supply reliability. The Program is a consortium of 23 State and Federal agencies with the mission to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the San Francisco/Sacramento and San Joaquin Bay Delta.

Committee and meeting materials will be available on the CALFED Bay-Delta Web site: *http://calfed.ca.gov* and at the meeting. This meeting is open to the public. Oral comments will be accepted from members of the public at the meeting and will be limited to 3–5 minutes.

(**Authority:** The Committee was established pursuant to the Department of the Interior's authority to implement the Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*, the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, and the acts amendatory thereof or supplementary thereto, all collectively referred to as the Federal Reclamation laws, and in particular, the Central Valley Project Improvement Act, Title 34 of Pub. L. 102–575.)

Dated: August 6, 2002.

Fredrick W. Breitenbach,

Acting Special Projects Officer, Mid-Pacific Region.

[FR Doc. 02–21250 Filed 8–20–02; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: reinstatement, with change, of a previously approved collection for which approval has expired; Budget Detail Worksheet.

The Department of Justice (DOJ), Office of Justice Programs has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 99, page 36023 on May 22, 2002, allowing for a 60 day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until September 20, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

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are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Budget Detail Worksheet.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form: None. Office of Justice Program, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: All potential grantee partners who are possible recipients of our discretionary grant programs. The eligible recipients include state and local government, Indian tribes, profit entities, non-profit entities, educational institutions, and individuals. The form is not mandatory and is recommended as a guide to assist the recipient in preparing the budget narrative as authorized in 28 CFR parts 66 and 70.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 2500 respondents will complete a 4-hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the forms is 10,000 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 15, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–21224 Filed 8–20–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Bureau of International Labor Affairs

Request for Information on Forced/Indentured Child Labor Pursuant to Executive Order 13126; Firecracker Industry in China

AGENCY: Bureau of International Labor Affairs, Labor.

ACTION: Request for information.

SUMMARY: This notice is a request for information to assist the Department of Labor in the examination of whether forced child labor exists in the firecracker industry in China. This review is being conducted pursuant to Executive Order 13126 ("Prohibition of Acquisition of Produced by Forced or Indentured Child Labor") and the "Procedural Guidelines for Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor" in the Federal Acquisition Regulation.

The Department anticipates that written information regarding forced child labor in the firecracker industry in China will aid it in determining, in consultation with the Departments of State and Treasury, whether this product, and its originating country, should be added to the Executive Order list.

DATES: Submitters of information are requested to provide two (2) copies of their written submission to the International Child Labor Program at the address below by September 20, 2002.

ADDRESSES: Written submissions should be addressed to Christine Camillo at the International Child Labor Program, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5307, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Christine Camillo, International Child Labor Program, Bureau of International Labor Affairs, at (693–4839; fax (202) 693–4830.

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order No. 13126, which was published in the **Federal Register** on June 16, 1999 (64 FR 32383–32385), declared that it was "the policy of the United States Government * * * that the executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of good, wares articles, and merchandise mined, produced or manufactured wholly or in part by forced or indentured child labor". Pursuant to the Executive Order, and following public notice and comment, the Department of Labor published in the January 18, 2001 **Federal Register**, a final list of products, identified by their country of origin, that the Department, in consultation and cooperation with the Departments of State and Treasury, has a reasonable basis to believe might have been mined, produced or manufactured with forced or indentured child labor. In addition to this list, the Department also published on January 18, 2001, a notice of procedural guidelines for maintaining, reviewing, and, as appropriate, revising the list of products required by Executive Order 13126 [48 CFR subpart 22.15]. The List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor can be accessed on the Internet at *www.dol.gov/ilab* or can be obtained from: International Child Labor Program (ICLP), Bureau of International Labor Affairs, Room S–5307, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–4843; fax (202) 693–4830. A copy of the Procedural Guidelines is also available from the International Child Labor Program office.

Pursuant to Section 3 of the Executive Order, the Federal Acquisition Regulatory Councils published a final rule in the **Federal Register** on January 18, 2001, pursuant to that federal contractors who supply products which appear on the list issued by the Department of Labor must certify to the contracting officer that the contractor, or, in the case of an incorporated contractor, a responsible official of the contractor, has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor. The regulation also imposes other requirements with respect to contracts for products on the Department of Labor's List.

II. China/Firecrackers Executive Order Submission

On June 29, 2001, the Department of Labor accepted for review a submission under Executive Order 13126 regarding the use of forced child labor in the firecracker industry in China. The submission, which was provided by State Department Watch, included information describing a March 2001 incident in which children in Jiangxi Province, China were allegedly killed while being forced to manufacture firecrackers at their school.

III. Definition of Forced/Indentured Child Labor

Under Section 6c of Executive Order 13126—

Forced or indentured child labor means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

IV. Information Sought

The Department is requesting information about the specific child labor incident described above or any other similar incidents where children have been forced to manufacture fireworks in China as well as efforts made by the Government of China to address this problem.

This notice is a general solicitation of comments from the public. All submitted comments will be made a part of the record of the review referred to above and will be available for public inspection.

Signed at Washington, DC, this 15th day of August, 2002.

Thomas B. Moorhead,

Deputy Under Secretary for International Labor Affairs.

[FR Doc. 02–21331 Filed 8–20–02; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,609, TA–W–40,609A, TA–W–40,609B, TA–W–40,609C, and TA–W–40,609D]

Leybold Vacuum USA, Inc.; Export, Pennsylvania, Tempe, Arizona, Milwaukee, Oregon, Austin, Texas, San Jose, California; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 12, 2002, applicable to workers of Leybold Vacuum USA, Inc., Export, Pennsylvania. The notice was published in the **Federal Register** on June 24, 2002 (67 FR 42583).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the Tempe, Arizona, Milwaukee, Oregon, Austin, Texas and San Jose, California locations of Leybold Vacuum USA, Inc. These employees provided sales and direct field support services supporting the production of dry vacuum pumps and other pumps at the Export, Pennsylvania location of the subject firm.

Based on these findings, the Department is amending this certification to include employees of the Tempe, Arizona, Milwaukee, Oregon, Austin, Texas and San Jose, California facilities of Leybold Vacuum USA, Inc.

The intent of the Department's certification is to include all workers of Leybold Vacuum USA, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,609 is hereby issued as follows:

All workers of Leybold Vacuum USA, Inc., Export, Pennsylvania (TA–W–40,609), Tempe, Arizona, (TA–W–40,609A), Milwaukee, Oregon (TA–W–40,609B), Austin, Texas (TA–W–40,609C) and San Jose, California (TA–W–40,609D) who became totally or partially separated from employment on or after December 7, 2000, through June 12, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 15th day of August, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–21333 Filed 8–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6022]

Motorola, SDS, BMC, Mesa, Arizona; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on March 25, 2002, in response to a petition filed on behalf of workers at Motorola, SDS, BMC, Mesa, Arizona.

The petition has been deemed invalid. The three petitioners were separated from the subject firm more than one year prior to the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 13th day of August 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–21334 Filed 8–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request, Submitted for Public Comment and Recommendations; Preparation and Maintenance of Accurate and Up-to-date Certified Mine Maps for Surface and Underground Coal Mines; Submittal of Underground Mine Closure Maps; and, Notification of MSHA Prior to Opening New Mines or the Reopening of Inactive or Abandoned Mines

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Record of Mine Closure addressed in 30 CFR 75.1204 and 75.1204–1; the inclusion of standards requiring MSHA notification and inspection prior to mining when opening a new mine or reopening an inactive or abandoned mine addressed in 30 CFR.75.373 and 75.1721; and, the inclusion of standards requiring underground and surface mine operators to prepare and maintain accurate and up-to-date mine maps addressed in 30 CFR 75.1200, 75.1200–1, 75.1201, 75.1202, 75.1202–1, 75.1203, 75,372, 77.1200, 77.1201 and 77.1202.

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MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the For Further Information Contact section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "**Federal Register** Documents."

DATES: Submit comments on or before October 21, 2002.

ADDRESSES: Send comments to David . Meyer, Director, Administration and Management, 1100 Wilson Boulevard, Room 2125, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to *Meyer-David@msha.gov*, along with an original printed copy. Mr. Meyer can be reached at (202) 693–9802 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane E. Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@msha.gov* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Title 30 CFR 75.1200, 75.1200–1, 75.1201, 75.1202, 75.1202–1, and 75.1203 require underground coal mine operators to have in a fireproof repository in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazards, an accurate and up-to-date map of such mine drawn on scale. These standards specify the information which must be shown, the range of acceptable scale, the surveying technique or equivalent accuracy required of the surveying which must be used to prepare the map, that the maps must be certified as accurate by a registered engineer or surveyor, that the maps must be kept continuously up-to-date by temporary notations and must be revised and supplemented to include the temporary notations at intervals not more than 6 months. In addition, the mine operator must provide the MSHA District Manager a copy of the certified mine map annually during the operating life of the mine. These maps are essential to the planning and safe operation of the mine. In addition, these maps provide a graphic presentation of the locations of working sections and the locations of fixed surface and underground mine facilities and equipment, escapeway routes, coal haulage and man and materials haulage entries and other information essential to mine rescue or mine fire fighting activities in the event of mine fire, explosion or inundations of gas or water. The information is essential to the safe operation of adjacent mines and mines approaching the worked out areas of active or abandoned mines. Section 75.372 requires underground mine operators to submit three copies of an up-to-date mine map to the District Manager at intervals not exceeding 12 months.

Title 30 CFR 75.1204 and 75.1204–1 require that whenever an underground coal mine operator permanently closes or abandons a coal mine, or temporarily closes a coal mine for a period of 90 days, the operator shall file with MSHA a copy of the mine map revised and supplemented to the date of closure. Maps are retained in a repository and are made available to mine operators of adjacent properties. The maps are necessary to provide an accurate record of underground areas that have been mined to help prevent active mine operators from mining into abandoned areas that may contain water or harmful gases.

Title 30 CFR 77.1200, 77.1201 and 77.1202 require surface coal mine operators to maintain an accurate and up-to-date map of the mine and specified the information to be shown on the map, the acceptable range of map scales, that the map be certified a registered engineer or surveyor, that the be available for inspection by the Secretary or his authorized representative. These maps are essential for the safe operation of the mine and provide essential information to operators of adjacent surface and underground mine operators. Properly prepared effectively utilized surface mine maps can prevent outbursts of water impounded in underground mine workings and/or inundations of underground mines by surface impounded water or water and or gases impounded in surface auger mining worked out areas.

Title 30 75.373 and 75.1721 require that after a mine is abandoned or declared inactive and before it is reopened, mine operations shall not begin until MSHA has been notified and has completed an inspection. Standard 75.1721 specifies that the notification be in writing and lists specific information, preliminary arrangements and mine plans which must be submitted to the MSHA District Manager.

II. Current Actions

Mine operators are required to conduct surveying such that mine maps are maintained accurate and up-to-date, the maps must be revised every 6 months and certified accurate by a registered engineer or surveyor and to submit copies of the certified underground maps to MSHA annually and an up-to-date and revised mine closure map whenever an operator permanently closes or abandons a coal mine, or temporarily closes a coal mine for a period of more than 90 days, he or she shall promptly notify the Secretary of such closure.

In addition, mine operators must notify MSHA so that an inspection can be conducted when ever a new mine is opened or a previously abandoned or inactive mine is reopened. The information required to be gathered and recorded on mine maps is essential to the safe operation of the mine and essential to the effectiveness of mandatory inspections and mandated mine plan approval by MSHA. Such information cannot be replaced by any other source and anything less than continuously updated and accurate information would place miner's safety at risk.

The information collected through the submittal of mine closure maps is used by operators of adjacent coal mines when approaching abandoned underground mines. The abandoned mine could be flooded with water or contain explosive amounts of methane or harmful gases. If the operator were to mine into such an area, unaware of the hazards, miners could be killed or seriously injured. In addition, it is in the public interest to maintain permanent records of the locations, extent of workings and potential hazards associated with abandoned mines. The public safety can be adversely affected by future land usage where such hazards are not known or inaccurately assessed. MSHA collects the closure maps and provides those documents to the Office of Surface Mining, Reclamation & Enforcement for inclusion in a repository of abandoned mine maps. Therefore, MSHA is continuing the certification and application of 30 CFR 75.1204 to assure the required information remains available for the protection of miner's and public safety. In addition, MSHA has added the burden hours and cost estimates for standards which address the preparation and maintenance of certified mine maps for surface and underground coal mines and the notification of MSHA prior to the opening on new coal mines or the reopening of inactive or abandoned mines.

Type of Review: Reinstatement.

Agency: Mine Safety and Health Administration.

Title: Preparation and Maintenance of Accurate and Up-to-date Certified Mine maps for Surface and Underground Coal Mines; Submittal of Underground Mine Closure Maps; and, Notification of MSHA Prior to Opening New Mines or the Reopening of Inactive or Abandoned Mines.

OMB Number: 1219–0073.

Recordkeeping: Mine operators are required conduct surveying such that mine maps are maintained accurate and up-to-date, the maps must be revised every 6 months and certified accurate by a registered engineer or surveyor and to submit copies of the certified underground maps to MSHA annually and an up-to-date and revised mine closure map whenever an operator permanently closes or abandons a coal mine, or temporarily closes a coal mine for a period of more than 90 days, he or she shall promptly notify the Secretary of such closure.

In addition, mine operators must notify MSHA so that an inspection can be conducted when ever a new mine is opened or a previously abandoned or inactive mine is reopened. The information required to be gathered and recorded on mine maps is essential to the safe operation of the mine and essential to the effectiveness of mandatory inspections and mandated mine plan approval by MSHA. Such information cannot be replaced by any other source and anything less than continuously updated and accurate information would place miner's safety at risk.

Affected Public: Business or other for-profit.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (in hours)	Burden hours
75.1200, 75.1200–1, 75.1201, 75.1202, 75.1202–1, 75.1203.	893	Biannual	448	32	14,336
75.1204 & 75.1204–1	724	On occasion	724	2	1,448
75.373 & 75.1721	94	On occasion	94	6	564
77.1200, 77.1201 & 77.1202	1,514	Biannual	757	10	7,580
Total	[1] 3,225		1299	[2]	23,928

[1] The total respondents are 893 underground mines or 1,514 surface mines; however, 25% of the mine operators perform these tasks utilizing mine-staff, the remaining 75% utilize contracting services. The contracting services are included as an Operating and Maintenance cost (shown below).

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): Contract Surveying and Map preparation $23,803,160.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 16, 2002.

Richard L. Brechbiel,

Deputy Director, Office of Administration and Management.

[FR Doc. 02–21332 Filed 8–20–02; 8:45 am]

BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on August 24, 2002. The meeting will begin at 9 a.m. and continue until conclusion of the Board's agenda.

LOCATION: The Marriott at Metro Center, 775 12th Street, NW., Washington, DC.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Board's meeting of June 1, 2002.
3. Approval of the minutes of the Executive Session of the Board's meeting of June 1, 2002.
4. Approval of the minutes of the Board's telephonic meeting of May 23, 2002.
5. Chairman's Report.
6. Members' Report.
7. Acting Inspector General's Report.
8. President's Report.
9. Consider and act on the report of the Board's Committee on Provision for the Delivery of Legal Services.
10. Consider and act on the report of the Board's Operations and Regulations Committee.
11. Consider and act on the report of the Board's Finance Committee.
12. Consider and act on changes to the Board's 2002 meeting schedule.

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Closed Session

13. Briefing [1] by the Inspector General on the activities of the Office of Inspector General.
14. Consider and act on the Office of Legal Affairs' report on potential and pending litigation involving LSC.

Open Session

15. Consider and act on other business.
16. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: August 16, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–21359 Filed 8–16–02; 5:01 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Finance Committee

TIME AND DATE: The Finance Committee of the Legal Services Corporation Board of Directors will meet on August 23, 2002. The meeting will begin at 3:30 p.m. and continue until the Committee concludes its agenda.

LOCATION: The Marriott at Metro Center, 775 12th Street, NW, Washington, DC.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of May 31, 2002.
3. Report on the projected operating expenses for Fiscal Year 2002 based on operating experiences through June 30, 2002.
4. Report on the internal budgetary adjustments.
5. Consider and act on the President's recommendations for Consolidated Operating Budget reallocations.
6. Consider and act on proposed Temporary Operating Budget for Fiscal Year 2003.
7. Consider and act on budget mark for Fiscal Year 2004, including receipt of public comment.
8. Consider and act on other business.
9. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: August 16, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–21360 Filed 8–16–02; 5:01 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Operations & Regulations Committee

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on August 23, 2002. The meeting will begin at 1 p.m. and continue until the Committee concludes its agenda.

LOCATION: The Marriott at Metro Center, 775 12th Street, NW, Washington, DC.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of May 31, 2002.
3. A panel of three Executive Directors (Michelle DeBord, MidPenn Legal Services, Inc., Harrisburg, PA; Harold E. Creacy, Ocean-Monmouth Legal Services, Inc., Toms River, NJ; and Paul C. Julien, Southern Arizona Legal Aid, Inc., Tucson, AZ) will discuss their experiences undergoing on-site visits from the Office of Compliance & Enforcement conducting a CSM/CMS review, a technical review, and accountability training.
4. Status report on current open rulemakings and Rulemaking Protocol.
5. Consider and act on Rulemaking Protocol.
6. Consider and act on Limited English Proficiency Guidance.
7. Consider and act on potential identification of new appropriate subject(s) for rulemaking.
8. Consider and act on contract renewals for LSC Vice Presidents Randi Youells, Mauricio Vivero, and Victor Fortuno.
9. Consider and act on other business.
10. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: August 16, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–21361 Filed 8–16–02; 5:01 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Committee on Provision for the Delivery of Legal Services

TIME AND DATE: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on August 23, 2002. The meeting will begin at 9 a.m. and continue until the Committee concludes its agenda.

LOCATION: The Marriott at Metro Center, 775 12th Street, NW., Washington, DC.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of May 31, 2002.
3. Office of Program Performance (OPP) and Office of Information Management (OIM) "Matters" Project Update by Chris Sundseth and Glenn Rawdon.
4. Update by Randi Youells and John Meyer on 2003 Census Adjustments.
5. Focus on the Field—Presentation by Cynthia Schneider on the Challenges of Delivering Legal Services in Alaska.
6. Update by Althea Hayward on LSC's Diversity Initiatives/Creation of a Grantee Board Training Module on Diversity.
7. Update by Joyce Raby on the 2003 Technology Initiative Grants.
8. State Planning Update by Robert Gross.
9. Update by Reginald Haley on the 2003 Competition.
10. Consider and act on proposed 2003 Grant Assurances.
11. Consider and act on other business.
12. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary of the Corporation, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: August 16, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–21362 Filed 8–16–02; 5:01 pm]

BILLING CODE 7050–01–P

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR 1622.2 and 1622.3.

NUCLEAR REGULATORY COMMISSION

Enforcement Program and Alternative Dispute Resolution; Request for Comments and Announcement of Pubic Meetings

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comments and announcement of public meetings.

SUMMARY: On December 14, 2001 (66 FR 64890), the Nuclear Regulatory Commission (NRC) announced its intent to evaluate the use of Alternative Dispute Resolution (ADR) in the NRC's enforcement program, which is defined in the NUREG–1600, "General Statement of Policy and Procedure for NRC Enforcement Actions (Enforcement Policy). The NRC is undergoing this evaluation because government-wide, ADR techniques have proven to be efficient and effective in resolving a wide range of disputes. On March 12, 2002, the staff conducted an ADR workshop to evaluate the strengths and weaknesses associated with its use in the enforcement area. The staff has evaluated the outcome of this workshop and concluded that: (1) There may be a role for ADR in the enforcement program; however, further review is needed, (2) if ADR has a role, the NRC should focus on areas resulting in the largest benefits, (3) a pilot program should be the first step to implementation, and (4) additional stakeholder input is needed.

The staff concluded that in order to make any final recommendations for incorporation into the enforcement program or the development of a pilot program, additional stakeholder input is necessary. As a result, additional comment is being sought and a number of public meetings and workshops are being scheduled at various locations throughout the country. Various options associated with the development of a pilot program for the use of ADR in the enforcement process will be discussed. Information on ADR is available on the NRC's Web site at *www.nrc.gov:* select What we Do, Enforcement, then Public Involvement in Enforcement.

DATES: The comment period expires October 21, 2002.

ADDRESSES: Submit written responses to the questions contained in the Discussion section of this Notice to Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Comments may be submitted by e-mail to *nrcrep@nrc.gov.* Copies of comments received may be examined at the NRC's Public Document Room, located at One White Flint North (O1–F21), Rockville, Maryland, 20852–2738.

FOR FURTHER INFORMATION CONTACT: Barry Westreich, Senior Enforcement Specialist, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (301) 415–3456, e-mail *bcw@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

"ADR" is a term that refers to a number of voluntary processes, such as mediation and facilitated dialogues, that can be used to assist parties in resolving disputes and potential conflicts. The Administrative Dispute Resolution Act of 1996 (ADRA) encourages the use of ADR by Federal agencies, and defines ADR as "any procedure that is used to resolve issues in controversy, including but not limited to, conciliation, facilitation, mediation, fact finding, mini trials, arbitration, and use of Omsbuds, or any combination thereof." 5 U.S.C. 571(3). These techniques involve the use of a neutral third party ("neutral"), either from within the agency or from outside the agency, and are typically voluntary processes in terms of the decision to participate, the type of process used, and the content of the final agreement. Federal agency experience with ADR has demonstrated that the use of these techniques can result in the quicker and more economical resolution of issues, more effective outcomes, and improved relationships. The NRC has a general ADR Policy, 57 FR 36678; August 14, 1992, that supports and encourages the use of ADR in NRC activities. In addition, the NRC has used ADR effectively in a variety of circumstances, including rulemaking and policy development, and Equal Employment Opportunity (EEO) disputes.

Although a few enforcement cases have been resolved through the use of "settlement judges" from the Atomic Safety and Licensing Board Panel, pursuant to 10 CFR 2.203 there has been no systematic evaluation of the need for ADR in the enforcement process. As a result of previous stakeholder input, the staff is considering the development of a pilot program for the use of ADR in the enforcement process.

Discussion

On December 14, 2001, a **Federal Register** notice (FRN) was issued soliciting comments on the use of ADR in the enforcement process (66FR64890). The 60-day comment period was extended to March 29, 2002. A workshop was held on March 12, 2002. The responses to the FRN and those expressed at the workshop indicated that the views on the appropriateness and potential usefulness of ADR techniques were widely varied. The industry and its legal counsel embraced the use of ADR techniques broadly and the public interest stakeholders were generally opposed to exploring possible uses of ADR in enforcement. Also, many stakeholders appeared to misunderstand what ADR is and how it can be used.

The workshop consisted of an overview of the agency's enforcement program to a panel consisting of: one independent ADR specialist; four ADR specialists from various Federal agencies; representatives from the Nuclear Energy Institute (NEI); representatives from the Union of Concerned Scientists; representatives from two law firms representing nuclear utilities; and, representatives from two law firms representing environmental whistle blowers. The panelists discussed the merits and debated the usefulness of ADR techniques in the context of the enforcement process.

Overall, many of the participants (*i.e.*, industry representatives, agency ADR experts, and an attorney from the environmental whistle blower community) believed that ADR could be used beneficially in the NRC enforcement process. They also did not think that any particular areas of the enforcement process should be eliminated from consideration. These participants noted that any decision to

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use ADR was not irrevocable and the results, either from a pilot, or some type of full-scale implementation, would need to be evaluated. The attorney from the environmental whistle blower community who was in favor of ADR confined her suggestions to the use of ADR in 10 CFR 50.7 discrimination cases and suggested a model that the NRC might follow based on DOE experience. Most participants also recommended taking a flexible view on what types of ADR techniques should be used and noted, for example, that facilitation could also be used effectively, as well as mediation. Those participants supporting the use of ADR recommended that a wide pool of third party neutrals should be available for the parties to select from for any particular dispute.

The citizen group representative was opposed to ADR on the grounds that ADR would only provide an opportunity for the enforcement process to be weakened. In written comments, it was noted that if ADR was to have a role, it should only be considered for establishing the fact set that is then used by the NRC staff to determine sanctions, for example, as to when a non-conforming condition was identified or whether the cause of the violation was wilful. However, its use would be "distasteful" when ADR is used in a case that involved a challenge to a proposed sanction. In respect to the potential need for confidentiality in ADR, this commentor noted that more deals brokered behind closed doors can only expand the widely perceived impression that NRC has an inappropriate close relationship with the industry it regulates.

Conclusions and Plans for Developing a Recommendation

Based on review of the comments received and provided during the March 12, 2002, workshop, the staff has reached several conclusions and plans to proceed as follows:

- There *may* be a role for ADR in the enforcement program.

Based on the many pros and cons regarding the use of ADR in the NRC enforcement program and that many of the comments received were opposed on the same issues, the staff cannot draw any final conclusions regarding whether ADR should ultimately have a role in the enforcement program and, if it does have a role, how it should be incorporated. However, based on review of stakeholder input, the staff believes that there are areas in the enforcement program which may benefit from the incorporation of ADR and that these areas should be reviewed further.

The staff needs to specifically evaluate whether the use of ADR will not detract from the overall objective of the NRC enforcement program—deterrence and achieving lasting corrective actions, maintaining safety, increasing (or at least maintaining) public confidence, and increasing (or at least maintaining) effectiveness.

- If ADR has a role, NRC should initially focus efforts on areas resulting in the largest benefits.

Commentors provided a wide range of potential benefits and drawbacks to using ADR. While the staff recognizes that it needs to evaluate all benefits and drawbacks, the staff believes that the largest benefits of implementation of ADR in the enforcement program are greater efficiency, lower costs, and better timeliness. Therefore, the staff plans to narrow the initial focus and scope of its review and evaluation of the use of ADR to areas that would realize these benefits. The staff plans to review whether ADR should be incorporated into one of the following areas of the enforcement program for reactor and materials cases: cases involving potential discrimination and cases involving potential wrongdoing. Historically, these types of cases have taken the most time and resources for all parties involved. However, while the staff plans to limit the scope of its review at this time, the staff is not precluding expanded use of ADR in the future. Specifically, if incorporation of ADR is appropriate and demonstrates a benefit, the staff will review further use of ADR in other areas.

- If ADR has a role, it should initially be implemented as a pilot program.

Based on review of the stakeholder's comments, it is clear that some stakeholders, both internal and external, do not see the benefits of incorporating ADR into the enforcement program. In fact, some believe it will have a negative impact on the enforcement process. Therefore, if the staff recommends incorporation of ADR into the enforcement program, it will recommend initial implementation as a pilot program. The staff believes that implementation of a pilot will better demonstrate whether the benefits can be realized, provide confidence that there will be no, or minimal, negative impacts, and will provide additional information for how ADR can be further incorporated into the enforcement program. For a pilot to be successful in demonstrating the use of ADR, the staff believes that the pilot program should include a representative sample of cases. There should be a sufficient number of cases included in the pilot to adequately exercise the enforcement process but not too many that will overwhelm the staff and process. The pilot should specifically address at which points in the enforcement process ADR should be used.

The staff notes that use of an ADR pilot program would be voluntary for all parties, including the NRC. Therefore, if implementation of the pilot for a specific case would compromise the enforcement process, NRC could withdraw from ADR for the case. Other parties would have the same option. In such cases, the NRC would follow the current enforcement process.

- Additional stakeholder input is warranted.

As stated, stakeholder input is very mixed on a number of issues important to the use of ADR. In order to make any final recommendations for incorporation of ADR into the enforcement program, or even the development of a pilot program, additional stakeholder interactions are necessary.

In view of the above, the staff seeks additional input from the public and other stakeholders in written form or at workshops to be scheduled throughout the country over the next few months. The staff proposes to evaluate the use of ADR in a pilot program, initially for some percentage of wrongdoing and discrimination cases in both the materials and reactor areas. The staff is currently evaluating whether to use ADR in a number of points in the process. Specifically, (1) following identification of wrongdoing or an allegation of discrimination but prior to a full investigation into the matter, (2) following an investigation that substantiates the matter but prior to an enforcement conference, (3) following the issuance of a Notice of Violation and Proposed Imposition of Civil Penalty but prior to any Imposition of Civil Penalty, and (4) following an Imposition of Civil Penalty but prior to a Hearing on the matter. The staff requests that comments be focused on issues related to the implementation of a pilot program at the above steps in the NRC process, and include factors such as what ADR techniques would be useful at certain points, what pool of neutrals should be used, who should attend the ADR sessions, and what ground rules should be implemented. Also, the staff requests that comments be focused on the pros and cons of ADR as they relate to these points in the process and in maintaining safety, increasing public confidence, and maintaining the effectiveness of the enforcement program for the above noted areas.

The staff also plans to hold several public meetings and workshops at various locations to solicit stakeholder input. Specifically the staff plans to hold meetings and workshops, tentatively scheduled at the following locations and dates:

- Hanford, WA: Week of September 2, 2002
- Chicago, IL: Week of September 16, 2002
- San Diego, CA: Week of September 23, 2002
- New Orleans, LA: Week of October 7, 2002
- Washington, DC: Week of October 14, 2002

The staff will provide specific information regarding the meeting dates times and locations on the NRC's Web site at *www.nrc.gov* select What We DO, then Public Involvement in Enforcement. Once the actions identified above have been completed, the staff will provide the Commission a proposed pilot program for approval or will provide an alternative recommendation regarding the use of ADR.

Dated at Rockville, Maryland, this 13th day of August, 2002.

For the Nuclear Regulatory Commission.

Frank J. Congel,

Director, Office of Enforcement.

[FR Doc. 02–21255 Filed 8–20–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on September 9, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Monday, September 9, 2002—1 p.m. until the conclusion of business.

The Subcommittee will continue its review of the proposed resolution of Generic Safety Issue (GSI)–185, "Control of Recriticality Following Small-Break LOCAs in PWRs." The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Mr. Paul A. Boehnert (telephone 301–415–8065) between 7:30 a.m. and 5 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda that may have occurred.

Dated: August 14, 2002.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–21256 Filed 8–20–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Fire Protection; Notice of Meeting

The ACRS Subcommittee on Fire Protection will hold a meeting on September 11, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The agenda for the subject meeting shall be as follows: Wednesday, September 11, 2002—8:30 a.m. until the conclusion of business.

The Subcommittee will review the staff's Fire Protection Research Plan, status of fire protection research activities, fire protection inspection process and findings, and other related matters, including industry activities. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify one of the ACRS staff engineers named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and allotted therefor can be obtained by contacting either Mr. Sam Duraiswamy (telephone 301/415–7364) or Mr. Timothy J. Kobetz (Telephone 301–415–8716) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact one of the above named individuals at least two working days prior to the meeting to be advised of any potential changes to the agenda that may have occurred.

Dated: August 14, 2002.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–21257 Filed 8–20–02; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Proposed Peace Corps Information Quality Guidelines

AGENCY: Peace Corps.

ACTION: Proposed guidelines.

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SUMMARY: These proposed information quality guidelines are required by law and are intended to ensure and maximize the quality of information disseminated to the public by the Peace Corps. The guidelines are based on those issued by the Office of Management and Budget (OMB) on January 3, 2002 (67 FR 369–378), as corrected and reprinted on February 22, 2002 (67 FR 8451–8460). The guidelines set out the Agency's policies and procedures for ensuring the quality (objectivity, utility, and integrity) of information provided to the public. The guidelines also establish administrative mechanisms permitting affected persons to seek and obtain, where appropriate, timely correction of information maintained and disseminated by the Agency that does not comply with the OMB or its own guidelines. These guidelines represent Agency policy and procedures and have no legal effect and do not create any legal rights or obligations.

DATES: Public comment is requested on the guidelines. Comments must be received September 20, 2002.

ADDRESSES: Comments should be submitted to Suzanne B. Glasow, Associate General Counsel, Office of the General Counsel, 1111 20th Street NW., Washington, DC 20526.

FOR FURTHER INFORMATION CONTACT: Suzanne B. Glasow, Associate General Counsel, 202–692–2150.

SUPPLEMENTARY INFORMATION: OMB issued guidelines on January 3, 2002 (67 FR 369–378), as corrected and reprinted on February 22, 2002 (67 FR 8451–8460), to implement Section 515 of the Treasury and General Government Appropriations Act for FY 2001) Public Law 106–554, HR 5658). Section 515 and the OMB Guidelines require each federal agency subject to the Paperwork Reduction Act to issue its own guidelines that provide policies and procedures used by the Agency to ensure the objectivity, utility, and integrity of information disseminated by the Agency. The guidelines must also establish administrative mechanisms allowing affected persons to obtain correction of information disseminated to the public that does not comply with the OMB and Agency guidelines. The Peace Corps requests public comment on these proposed guidelines.

Guidelines for Ensuring and Maximizing the Quality of Information Prior to Public Dissemination

Section I Purpose

These guidelines are intended to set out the Agency's procedures for ensuring the quality of information it disseminates to the public.

Section II Definitions

1. "Affected persons" are those who may directly benefit or be harmed by the disseminated information, including: (a) Persons seeking to address information about themselves or about the persons to whom they are directly related or publicly associated; and (b) persons that may reasonably be expected to experience significant adverse impact to their financial interests as a result of the information deficiency.

2. "Dissemination" means the distribution of information initiated or sponsored by the Peace Corps to the general public within the United States. Dissemination does not include distribution of information or other materials that are:

(a) Intended for government employees, including Peace Corps employees and Volunteers, or government contractors or grantees (for example: directories, staffing information, internal manuals; cables);

(b) Intended for U.S. Government agencies;

(c) Produced in response to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or similar laws;

(d) Correspondence or other communications limited to individuals (examples include questions or concerns about individual passports, visas, adoptions, missing persons, applications for employment, or federal benefits) or to other persons, as defined in this section;

(e) Distributed to the pass as a summary of a recent event or Peace Corps action;

(f) Archival records; public filings; responses to subpoenas or compulsory document productions; or

(g) Documents prepared and released in the context of adjudicative processes. (These guidelines do not impose any additional requirements on agencies during adjudicative proceedings and do not provide parties to such adjudicative proceedings any additional rights of challenge or appeal.)

3. "Influential," when used in the phrase "influential scientific, financial, or statistical information," refers to a narrow category of information with respect to which an agency can reasonably determine that dissemination will have a clear and substantial impact on important public policies or important private sector decisions. To be considered influential, information must be based on objective and quantifiable data that constitute a principal basis for substantive policy positions adopted by the Peace Corps. Any influential information to be disseminated by the Peace Corps is reviewed for quality by the Agency, or another agency within the federal government, depending on who is primarily responsible for developing such information. Where circumstances deem it appropriate, the Agency may include the identity of the federal government agency or international organization originating any cited influential information in information disseminated by the Peace Corps.

4. "Information," for purposes of these guidelines, means any communication or representation of knowledge, such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that Peace Corps disseminates on the Agency's external web page, but does not include the provision of hyperlinks to information that others disseminate. "Information" does not include:

(a) Statements on foreign policy or that might cause harm to the national security;

(b) Information originated by, and attributed to, non-Peace Corps sources, provided the Peace Corps does not expressly rely on it;

(c) Opinions, where the Agency's presentation makes it clear that what is being offered is someone's opinion rather than fact or the Agency's views;

(d) Statements related solely to the internal personnel rules and practices of the Peace Corps or materials produced for Peace Corps employees, contractors, Volunteers, agents or alumni;

(e) Descriptions of the Peace Corps, its responsibilities and its organizational components;

(f) Testimony of Peace Corps officials before courts, administrative bodies, or Congress;

(g) Investigatory material complied pursuant to U.S. law or for law enforcement purposes in the United States or abroad; or

(h) Statements which are, or which reasonably may be expected to become, the subject of litigation, whether before a U.S. or foreign court or in an international arbitral or other dispute resolution proceeding.

5. "Integrity" refers to the security of information, that is, the protection of the information from unauthorized access, revision, corruption, or falsification.

6. "Objectivity" addresses whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner, including background information where warranted by the circumstances.

7. "Person" means an individual, an organization, or a State or local government or division thereof.

8. "Quality" is an umbrella term comprising the terms "utility," "objectivity," and "integrity."

9. "Utility" refers to the usefulness of the information to its intended users.

Section III Procedures To Ensure the Quality of Information

The Peace Corps is committed to providing the public with reliable and useful information. To meet this goal, the Agency collects information from as many reasonably available and reliable sources as appropriate and subjects draft information intended for public dissemination to a thorough review process. Quality control procedures apply at all stages of the information lifecycle, including the times of creation, collection, maintenance, and dissemination.

A. Objectivity and Utility of Information

1. The office collecting and drafting information intended for public dissemination has the primary responsibility to follow quality control procedures, pursuing the most knowledgeable and reliable sources reasonably available through the Agency's resources and by confirming the objectivity and utility of information internally within the office, with all interested Agency offices, and with other government agencies, when appropriate.

2. The Agency's quality control system for information dissemination is based generally on the "action" and "clearance" processes. The action process constitutes the work done by the office responsible for the product. The "clearance" process involves the review of the product by offices who are authorized to provide clearance and approval of the product. This dual process places responsibility for action upon a particular office while ensuring that the information and opinions of other offices are brought to bear on the proposed action.

3. The action office should assign an action to an "action officer," typically the principal drafter. The action officer will follow any office specific quality review procedures and consult informally with officers in other interested offices before preparing the information. The action officer's role includes:

(a) Preparing an action document after consulting the necessary materials and people, including government and non-government sources, as appropriate;

(b) Determining clearance points;

(c) Making the initial determination as to where the final decision shall be made;

(d) Obtaining clearances and approvals; and

(e) Overcoming delays and, if necessary, presenting the matter to higher authority.

4. Clearances or approvals of information for dissemination are generally obtained from any office within the Peace Corps or any other agency within the federal government that has a substantive interest in the information. If an office designated for clearance disagrees with the information and differences cannot be resolved at that level, the matter is raised to an Agency official at a higher level.

5. Action officers may also seek advice from other offices having a collateral interest in the subject matter of the information. Offices with collateral interests are offices whose field of responsibility is not vitally affected by the proposed action, but they may have useful information or views to contribute. Clearances from such offices are not required.

6. Where there are differences in views within the Agency concerning proposed information, the differences are generally documented and explained to offices asked to clear or approve the document. After reasonable efforts have been made to resolve any substantive differences, superior officers are informed of the dissenting views and made the necessary decisions. Final clearance of all publications developed for public dissemination must be cleared by the Senior Publications Manager.

7. While the "action" and "clearance" processes are general requirements for a range of information dissemination actions, there are specific requirements for certain categories of information dissemination. For example, information disseminated on the Agency's external web site must be cleared by the Agency's Internet Communications Director. Information disseminated on the Agency's internal web site must be cleared by the Agency's Intranet Manager.

8. The quality of the Agency's disseminated information is also controlled by limits on who may speak on behalf of the Agency. The Agency's Director of Communications has been delegated authority to speak on behalf of the Peace Corps.

9. When the Agency disseminates reports or other statements, it seeks input from multiple qualified and expert sources The Agency also attempts to corroborate all information received. In instances where statements cannot be corroborated adequately, those statements are accompanied by attribution to the source, wherever practicable, to assist the reader in assessing their credibility. Where the Agency disseminates conclusions on an issue, effort is made to identify the facts or events upon which the conclusions are based, to the extent appropriate.

B. Integrity of Information

1. "Integrity" refers to the security of information (paper, electronic and other forms), including the protection of the information from unauthorized access, revision, or from being compromised through corruption or falsification.

2. The security of electronic information is the responsibility of the Chief Information Officer (CIO) who approves new policies, oversees security operations related to Agency-wide information resources, management, and systems, and engages in policy development and planning.

3. Within the Agency, the Information Technology (IT) security program gives every Agency staff member general responsibility for the security of the IT systems they use. Technology implementers and the Agency's senior staff are assigned more explicit responsibilities. The IT Security Program Manager's role includes developing and maintaining an information security program, promoting effective implementation and maintenance of information security policies and procedures, controlling techniques throughout the Agency, and training, overseeing and assisting Agency personnel with significant information security related responsibilities. Under the CIO, the Agency develops, implements, and maintains new computer software and hardware systems and provides operational support for systems and system users.

4. Assisted by the IT Security Program Manager, office directors and program managers are primarily responsible and accountable for the integrity of information within their offices. On a day-to-day basis, the responsibilities are carried out by the managers of networks, systems and applications. These technical personnel assess and manage the information security risks associated with the operations and assets for programs and systems within their control. In that capacity, the technical personnel determine the levels of information security appropriate to protect such operations and assets and periodically test and evaluate information security controls and techniques.

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5. The security of paper and other forms of information, other than electronic information, is the responsibility of the Director of Security.

Section IV Requests for Correction of Information

The Peace Corps works to be responsive to users of its information and to improve its information products. The procedures set out in this section are available to "affected" persons who seek to correct information publicly disseminated by the Peace Corps and apply to information disseminated by the Peace Corps on or after October 1, 2002.

1. Persons seeking to correct information publicly disseminated by the Peace Corps must send a written request to the Senior Publications Manager, Office of the Director, 1111 20th Street, NW., Washington, DC 20526.

2. Requests for correction are presumed timely if submitted within sixty (60) days of the dissemination date of the information being challenged.

3. Requests will be assigned a reference number and a notice of receipt of the request will be sent to the requester.

4 The reviewing office will give the request due consideration, including a review of the disseminated information at issue and other materials, as appropriate.

5. In determining whether a response to the request for correction is appropriate, the reviewing office shall consider the following factors:

(a) Whether the statements challenged by the requester fall within the scope of "information" that has been disseminated by the Agency, as those terms are defined in these guidelines;

(b) Whether the requester is "affected" by the information at issue, as that term is defined in these guidelines;

(c) The importance of the formations involved; and

(d) The nature and extent of the request and the public benefit of making the requested correction.

6. A request will not be considered if the Agency determines:

(a) It is not submitted by an "affected" person, as that term is defined in these guidelines;

(b) It does not involve the correction of information publicly disseminated by the Peace Corps;

(c) It is not timely; or

(d) Consideration of the request would not advance material interests of the requester, the general public, or the Peace Corps.

7. Where the reviewing office determines that the information publicly disseminated by the Agency was incorrect, it may take corrective measures, as appropriate, recognizing the potential implications for the requester, the United States, and the Agency, without disrupting Agency process.

8. Where the Agency determines that a response under these guidelines is not appropriate, it will so advise the requester.

9. In most cases, where response under these guidelines is appropriate, the Agency will respond within sixty (60) days of request. The requester will be notified if additional time is required. Agency responses will describe the disposition of the request, the reasons for the disposition, and any corrective action taken or pending.

10. Subject to applicable law, rules or regulations, notice of corrective measures may include, but are not limited to, personal contacts via letter, press releases, or posting on the Agency's website. Notice of corrective measures, where appropriate, should be designed to provide reasonable notice to all affected persons.

Section V Procedures for Requesting Reconsideration

1. An affected person who received notice from the Agency of the disposition of his or her request under Section IV of these guidelines, may request consideration of the disposition, unless the disposition was a determination that a response to the request was not appropriate.

2. To request reconsideration, the requester shall make the request in writing to the Director of the Peace Corps, and include a copy of original request for correction previously submitted to the Agency. The request for reconsideration shall be sent to the Office of the Director, 1111 20th Street, NW., Washington, DC 20526. Requests for Reconsideration must be submitted within thirty (30) days of the date of the Agency's disposition notification to the requester.

3. Requests for Reconsideration shall be reviewed by the Director or designee. The Director or designee shall apply the same standards and procedures applicable to the original request for correction.

4. The Agency will generally respond within sixty (60) days of receipt of the request. The requester will be informed of the disposition of the request and reasonable notice shall be given affected persons of any corrective actions taken. The decision shall constitute a final action by the Agency.

Dated: August 15, 2002.

Tyler S. Posey,

General Counsel.

[FR Doc. 02–21304 Filed 8–20–02; 8:45 am]

BILLING CODE 6015–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration on the American Stock Exchange LLC (Carolina Power & Light Company, $5.00 Preferred Stock, no par value) File No. 1–13382

August 15, 2002.

Carolina Power & Light Company, a North Carolina corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its $5.00 Preferred Stock, no par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of North Carolina, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and from registration under section 12(b) of the Act,[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4] The Board of Directors ("Board") of the Issuer unanimously approved a resolution on March 20, 2002 to withdraw the Issuer's Security from listing on the Amex. In making the decision to withdraw its Security from the Amex, the Board states that although the Security was originally listed on the Amex to provide a liquid market and better exposure for the Security, current trading volumes are very small, and with the significant technological improvements by the stock exchanges and the availability of online order processing and broader coverage by the broker community nationwide, the advantages of listing no longer exist.

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).

The Issuer will seek quotation of its Security on the OTC Bulletin Board.

Any interested person may, on or before September 9, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–21318 Filed 8–20–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46362; File No. SR–Amex–2002–38]

Self Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto To Designate the New Trading Floor on the Ground Floor of the Exchange as a "Separate Trading Area"

August 15, 2002.

On April 23, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to designate the new trading floor on the ground floor of the Exchange ("Harry's") as a "separate trading area."

On June 6, 2002, the Amex submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on July 5, 2002.[4] The Commission received no comment letters on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act[7] because it is designed to prevent fraudulent and manipulative acts and practices, and promote just and equitable principles of trade.

The Commission previously approved similar proposals by the Amex to designate the sections of its trading floor as separate trading areas for the purposes of stock and options trading.[8] In these Orders, the Commission required that the trading of stocks and their related options be sufficiently separated in a manner that minimized the time and place advantages that could be derived from the proximity of the equity and options trading areas. In addition to the physical separation of the trading locations of equities and their related options, Amex Rule 958(f) prohibits jointly registered equity and options traders from entering options transactions on a Paired Security[9] for one hour after leaving the equity floor where the underlying security trades. Finally, the Orders restricted the use of hand signals or other like means of communication between members to communicate between floors.

The Commission is satisfied that these conditions are met here. Options on both listed and non-Amex-listed equities are traded on Harry's while Amex-listed equities are traded on the Main Trading Floor. Harry's is located in a separate area on the ground floor of the Exchange and is only accessible from the Exchange's other trading locations by escalator. Accordingly, the trading posts located on Harry's are not visible from the Main Trading Floor. Furthermore, the Exchange represents that it maintains adequate surveillance systems designed to prevent trading abuses and manipulation as well as to ensure compliance with the relevant Exchange rules consistent with the 1988, 1998 and Index Orders.[10] Further, the Commission notes that the Exchange's rules regarding Paired Securities would prohibit the trading of an equity in the same physical location as its related option.[11]

Therefore, the Commission finds that Harry's is a separate trading area for purposes of trading options on Amex-listed and non-listed stocks. The Commission's approval is premised on the belief that the Amex's proposed trading locations for equities and options are sufficiently separated such that there is no time and place advantage derived from the physical proximity of Harry's to locations where the underlying equities trade. Accordingly, any decision by the Amex to change the location of the designated options relative area to the designated stock area or to modify the means of access between them, would require the submission of a proposed rule change under section 19(b) of the Act.[12]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change and Amendment No. 1 thereto (File No. SR–Amex–2002–38) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21322 Filed 8–20–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46363; File No. SR–CBOE–2002–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Extension of the Permissible Maturity of FLEX Index Options to Ten Years

August 15, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

[1] 17 CFR 200.30–3(a)(1).
[2] 15 U.S.C. 78s(b)(1).
[3] 17 CFR 240.19b–4.
[4] *See* letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 5, 2002 ("Amendment No. 1").
[5] *See* Securities Exchange Act Release No. 46131 (June 27, 2002), 67 FR 44900.
[5] In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).
[6] 15 U.S.C. 78f.
[7] 15 U.S.C. 78f(b)(5).
[8] Securities Exchange Act Release Nos. 26147 (October 3, 1988), 53 FR 39556 (October 7, 1988) ("1988 Order"); 34359 (July 12, 1994), 59 FR 36799 (July 19, 1994) ("Index Order"); and 39631 (February 9, 1998), 63 FR 8229 (February 18, 1998)("1998 Order") (collectively "Orders").
[9] Generally, a Paired Security is a security which is the subject of securities trading on the Exchange and options trading on the Exchange. *See* Amex Rule 900(b)(38).
[10] Telephone Conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Christopher Solgan, Law Clerk, Division, Commission, on August 13, 2002.
[11] *See* Amex Rules 900(b)(38), (40), and (41).
[12] 15 U.S.C. 78s.
[13] 15 U.S.C. 78s(b)(2).
[14] 17 CFR 200.30–3(a)(12).

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("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 30, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 24.4A, "Terms of FLEX Options," to provide a maximum term of ten years for Flexible Exchange ("FLEX") index options under certain circumstances.

The text of the proposed rule change is available at the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, under CBOE Rule 24A.4(a)(4)(i), FLEX index options are limited to a maturity of five years. The purpose of the proposal is to allow FLEX index options traded on the CBOE to have a maturity beyond five years and up to ten years in certain circumstances.

FLEX index option have traded on the CBOE since February 1993.[3] FLEX index options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. Currently, FLEX index options are limited to a maximum term of five years. The CBOE states that the Exchange recently has received numerous requests from broker-dealers to extend the maturity of FLEX index options to ten years. According to the CBOE, among the reasons broker-dealers have been interested in seeking an extension in the allowable maturity is that some of their institutional customers trade or issue securities with five- to ten-year terms and are seeking a method to hedge that long-term risk.

The proposed amendment to CBOE Rule 24A.4(a)(4)(i) would permit FLEX index options with terms up to a maximum of ten years when requested by a Submitting Member if the FLEX Post Official determines that sufficient liquidity exists among FLEX index participating members. According to the CBOE, the liquidity requirement will help to ensure that there is not a proliferation of longer-term FLEX index options series where no interest in trading such options exists.[4]

The CBOE states that the proposal will allow institutions to use longer-term FLEX index options to protect portfolios from long-term market moves with a known and limited cost. The CBOE believes that the proposal will better serve the long-term hedging needs of institutional investors and provide those investors with an alternative to hedging their portfolios with off-exchange customized options and warrants.

The CBOE states that by allowing for the extension of the maturity of FLEX index options to ten years in situations where there is demand for a longer-term expiration and where there is sufficient liquidity among FLEX index participating members to support the request, the proposal will better serve the needs of the CBOE's customers and the CBOE members who make a market for such customers. The CBOE believes that the proposal is consistent with and furthers the objectives of section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file number SR–CBOE–2002–23 and should be submitted by September 11, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21323 Filed 8–20–02; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (order approving File No. SR–CBOE–92–17).

[4] The CBOE notes that the Commission approved a CBOE rule change that permits the listing of FLEX equity options with terms from three to five years under similar circumstances. *See* Securities Exchange Act Release No. 39524 (January 8, 1998), 63 FR 3009 (January 20, 1998) (order approving File No. SR–CBOE–97–57).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46357; File No. SR–NASD–2002–111]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Amend Nasdaq's Transaction Credit Pilot Program for Exchange-Listed Securities to Eliminate Volume Eligibility Thresholds

August 15, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 9, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010(c)(2) to modify Nasdaq's transaction credit pilot program for exchange-listed securities. Nasdaq will implement the proposed rule change on a retroactive basis, as of July 1, 2002. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

7010. System Services

(a)–(b) No change.

(c)(1) No change.

(2) Exchange-Listed Securities Transaction Credit[.]

For a pilot period, [qualified] NASD members that trade securities listed on the NYSE and Amex in over-the-counter transactions reported by the NASD to the Consolidated Tape Association may receive from the NASD transaction credits based on the number of trades so reported. [To qualify for the credit with respect to Tape A reports, an NASD member must account for 500 or more average daily Tape A reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. To qualify for the credit with respect to Tape B reports, an NASD member must account for 500 or more average daily Tape B reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. If an NASD member is so qualified to earn credits based either on its Tape A activity, or its Tape B activity, or both, that] *An NASD* member may earn credits from one or both pools maintained by the NASD, each pool representing 40% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions. [A qualified] *An* NASD member may earn credits from the pools according to the member's pro rata share of the NASD's over-the-counter trade reports in each of Tape A and Tape B for each calendar quarter, [starting with July 1, 2000 for Tape A reports (April 1, 2000 for Tape B reports) and] ending with the calendar quarter starting on October 1, 2002.

(d)–(r) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's InterMarket is a quotation, communication, and execution system that allows NASD members to trade stocks listed on the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex").[3] The InterMarket competes with regional exchanges like the Chicago Stock Exchange ("CHX") and the Cincinnati Stock Exchange ("CSE") for retail order flow in stocks listed on the NYSE and the Amex. InterMarket comprises the Computer Assisted Execution System ("CAES"), a system that facilitates the execution of trades in listed securities between NASD members that participate in InterMarket, and the Intermarket Trading System ("ITS"), a national market plan system that permits trades between NASD members and specialists on the floors of national securities exchanges that trade listed securities.[4]

Nasdaq is proposing to modify the InterMarket Transaction Credit Pilot Program (the "Program") that it began in 1999.[5] Under the Program, Nasdaq shares a portion of the tape revenues that it receives (through the NASD) from the Consolidated Tape Association (the "CTA"), by providing a transaction credit to members who engage in OTC trading activity in NYSE and Amex securities. The Program helps InterMarket market makers and investors lower costs associated with trading listed securities. The Program is also a tool for Nasdaq to compete against other exchanges (particularly CSE and CHX) that offer similar programs.[6]

Under the Program, Nasdaq calculates two separate pools of revenue from which credits can be earned: one representing 40% of the gross revenues received from the CTA for providing trade reports in NYSE-listed securities executed in the InterMarket for dissemination by the CTA ("Tape A"), the other representing 40% of the gross revenue received from the CTA for reporting Amex trades ("Tape B"). Eligibility for transaction credits is based on concurrent quarterly trading activity.

Nasdaq is proposing to eliminate the requirement that a member print an average of 500 daily trades of Tape A securities during a quarter to qualify for Tape A sharing, as well as the comparable volume threshold for Tape B securities. Nasdaq originally included these thresholds in the Program because it believed that a member should

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. *See* Securities Exchange Act Release No. 42907 (June 7, 2000); 65 FR 37445 (June 14, 2000) (SR–NASD–2000–32).

[4] *See* CAES/ITS User Guide. www.intermarket.nasdaqtrader.com at p.5.

[5] *See* Securities Exchange Act Release No. 41174 (Mar. 16, 1999), 64 FR 14034 (Mar. 23, 1999) (SR–NASD–99–13). The SEC issued notice of subsequent extensions of the Program. *See* Securities Exchange Act Release Nos. 42095 (Nov. 3, 1999), 64 FR 61680 (Nov. 12, 1999) (SR–NASD–99–59); 42672 (Apr. 12, 2000), 65 FR 21225 (Apr. 20, 2000) (SR–NASD–2000–10); 42907 (June 7, 2000), 65 FR 37445 (June 14, 2000) (SR–NASD–2000–32); 43831 (Jan. 10, 2001), 66 FR 4882 (Jan. 18, 2001) (SR–NASD–2000–72); 44098 (Mar. 23, 2000), 66 FR 17462 (Mar. 30, 2001) (SR–NASD–01–15); 44734 (Aug. 22, 2001), 66 FR 4537 (Aug. 26, 2001) (SR–NASD–2001–42); 45273 (Jan. 14, 2002), 67 FR 2716 (Jan. 18, 2002) (SR–NASD–2001–92); and 46232 (July 19, 2002), 67 FR 48691 (July 25, 2002) (SR–NASD–2002–94).

[6] *See* Securities Exchange Act Release No. 38237 (Feb. 4, 1997), 62 FR 6592 (Feb. 12, 1997) (SR–CHX–97–01) and Securities Exchange Act Release No. 39395 (Dec. 3, 1997), 62 FR 65113 (Dec. 10, 1997) (SR–CSE–97–12.

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demonstrate a clear commitment to operating in the InterMarket by achieving the threshold levels of trading before being eligible for tape sharing. Nasdaq has now concluded that the thresholds should be eliminated, however, for a number of reasons. First, the advent of riskless principal trade reporting,[7] which often eliminates the need to report one part of a two-part transaction, has reduced the number of trades reported for a given level of transaction activity and thereby made the 500-trade threshold more difficult for certain participants to meet. Second, the tape sharing programs of Nasdaq's competitors, such as CSE and CHX, do not have similar threshold requirements. For these reasons, Nasdaq believes that the thresholds should be eliminated, so that the tape sharing program will be available to all members that participate in InterMarket, regardless of their level of activity.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including section 15A(b)(5) of the Act,[8] which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The elimination of the volume threshold requirement for transaction credits will increase the number of market participants eligible for transaction credits, thereby lowering the cost of InterMarket transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

[7] Securities Exchange Act Release No. 41606 (July 8, 1999); 64 FR 38226 (July 15, 1999) (SR–NASD–98–08) (approving riskless principal trade reporting for InterMarket); Securities Exchange Act Release No. 43469 (Oct. 20, 2000), 65 FR 64468 (Oct. 27, 2000) (SR–NASD–2000–80) (delaying implementation of riskless principal reporting rules until February 1, 2001).

[8] 15 U.S.C. 78o-3(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–111 and should be submitted by September 11, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21319 Filed 8–20–02; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46361; File No. SR–NASD–2002–102]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. To Amend the Fee Schedule for the Nasdaq Application of the Primex Auction System®

August 15, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 31, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by Nasdaq. Nasdaq has designated this proposal as one constituting a fee filing under section 19(b)(3)(A) of the Act,[3] which renders the rule effective upon the Commission's receipt of this filing. Nasdaq will begin assessing fees pursuant to the revised fee schedule beginning on August 1, 2002. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010(r) to modify the fee schedule for the Nasdaq Application of the Primex Auction System ("Primex"). Nasdaq will implement the proposed rule change on August 1, 2002. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

(r) Nasdaq Application of the Primex Auction System

The following charges shall apply to the use of the Nasdaq Application of the Primex Auction System:

(1) Transaction charges

Execution services—for all participants:	
• Order entry	No fee
• Auction Response (per share, per execution [—$5.00 maximum]).*	$ [.01].*005*
Matching Rights—Primex Auction Market Makers (PAMMs) only:	
• 50 Percent Match	No fee
• Two-Cent Match (per share, per retained order—$2.50 Maximum).**	$ .0025
Revenue Sharing—PAMMs only:	
• Each order executed:***	1/3 of transaction fee

(2) Monthly Access fees

Software	
• Workstation license or unique logon:	Per work station logon:
Stations/logons 1–10	$200
Stations/logons 11–25	$100
Stations/logons 26 and above.	$50
• Proprietary interface license:	Per license:
API specification	$500
FIX (customized protocol).	$500
Network	
• Dedicated line:	Per line:
256K	*$1,781*
64K with non-guaranteed 256K burst capacity [primary with backup].	$1,564
56K	*$712*
Installation/Uninstall $1,000 per Nasdaq Staff site visit	

*This fee applies to both Indications and "real-time" Responses. When two orders match directly, a fee is charged to the party that entered the second order.

**This fee is charged in the event a PAMM attaches its matching right to an order, and the crowd offers two cents or less price improvement to that order.

***Paid to a PAMM when it enters an order that interacts with crowd interest in the system. Revenue sharing applies only to orders in those securities in which the firm is registered as a PAMM. The revenue sharing amounts will be paid on a quarterly basis.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The amendments modify NASD Rule 7010(r), which establishes the fee schedule for Primex. Specifically, the amendments reduce the auction response fee from $.01 to $.005 per execution, per share, and remove the $5.00 maximum fee cap per execution. In addition, the amendments establish the fees for two additional bandwidth options Nasdaq will begin providing to members that access Primex.

While the fee schedule for Primex was filed initially in December 2001, the prices for the fee schedule were established in 2000.[4] Nasdaq represents that since that time transaction prices in the overall market have decreased and, as a result, the Primex fee schedule is no longer competitive. This proposal responds to the developments in the market and reduces the auction response fee. With the reduction in the auction response fee, Nasdaq also is eliminating the provision capping the per execution fee at $5.00. Nasdaq represents that the cap was intended to make Primex pricing competitive for the execution of large orders. However, with the new, lower per share charge, Nasdaq believes the pricing is competitive even without the cap.

This proposal also establishes the fees for two new bandwidth options for accessing Primex. Nasdaq currently provides a 64 kilobyte per second ("K") connection that automatically increases to 256K if needed due to increased message traffic ("burst capacity"). The increase to 256K, however, is constrained, and may not be available, if other users are already using the burst capacity. The charge for this bandwidth option will remain unchanged. The two new bandwidth options will accommodate users with high message traffic and those with low message traffic.

To accommodate users with high message traffic, Nasdaq is offering a connection that provides a constant 256K capacity, as opposed to a burst capacity feature. The monthly charge for this option will be $1,781. Members that submit lower amounts of message traffic will have the option to use a 56K constant connection. The monthly charge for this option will be $712.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[5] in general and with section 15A(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable fees among members. Nasdaq believes the fee reduction recognizes the changes in pricing that have occurred in the market and are designed to make the fees for Primex competitive with other trading venues. In addition, the fees for the new alternatives for connecting to Primex are based on the bandwidth provided and will be charged consistently to all members that choose the particular connection option.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Nasdaq has designated the proposed rule change as a fee change pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(2) thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions

[4] *See* Securities Exchange Act Release No. 45285 (January 15, 2002), 67 FR 3521 (January 24, 2002). In the filing establishing the original fee schedule for Primex, Nasdaq indicated it would not charge any fees during the initial few months Primex was operating, and that it would notify members through a Head Trader Alert when it would begin assessing fees. Nasdaq will begin assessing fees on August 1, 2002 according to the revised fee schedule, and will notify members accordingly. As such, fees were never charged under the original fee schedule.

[5] 15 U.S.C. 78o–3.

[6] 15 U.S.C. 78o–3.

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should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–102 and should be submitted by September 11, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21321 Filed 8–20–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–46351; File No. SR–NASD–2002–110)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Establish a New Registration Category for Proctors of In-Firm Delivery of the Regulatory Element of the Continuing Education Requirements

August 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 8, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to establish NASD Rule 1043, a new registration category for proctors of in-firm delivery of the Regulatory Element of the NASD's continuing education requirements. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

1040. Registration of Assistant Representatives [-Order Processing] *and Proctors*

1041. Registration Requirements *for Assistant Representatives*

(a) through (c) No change.

1042. Restrictions *for Assistant Representatives*

(a) through (c) No change.

1043. Proctors of In-Firm Delivery of Regulatory Element

(a) Any person associated with a member seeking to be designated as a Proctor under Rule 1120(a)(6)(E) for the purposes of in-firm delivery of the Regulatory Element shall be required to be registered pursuant to Rule 1120(a)(6)(E)(iii), but shall not be required to pass a Qualification Examination.

(b) Any person associated with a member may be designated as a Proctor upon approval of an Application for Registration pursuant to Article V, Section 2 of NASD's By-Laws. Any person whose sole registration is as a Proctor pursuant to this Rule 1043 shall not be qualified to function in any other area requiring registration with NASD.

(c) Nothing in this Rule 1043 shall prohibit a person who is registered with NASD in any other capacity from also serving as a Proctor without being designated as such under these provisions.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish a new registration category for proctors of in-firm delivery of the Regulatory Element of the NASD's continuing education requirements. The Regulatory Element requires all registered persons to participate in a prescribed computer-based training session within 120 days of their second registration anniversary date and every three years thereafter. The Regulatory Element focuses on compliance, regulatory and ethical standards.

NASD Rule 1120(a)(6) permits each member to administer the continuing education Regulatory Element program to their registered persons through a program delivered on the member's premises, provided that the member adheres to certain technology, administrative and regulatory standards. Among the requirements for in-firm delivery of the Regulatory Element is that the program sessions be proctored by an individual registered with a self-regulatory organization ("SRO") and supervised by a designated principal.

NASD Rule1120(a)(6) was intended to ease the burden on members to meet their continuing education requirements. However, the NASD has observed that many members have chosen not to avail themselves of the in-firm delivery options. Members have informed the NASD that the registration requirement for proctors is one reason more members have not used in-firm delivery. Members either do not have registered persons available to act as proctors or do not want to commit resources needed to prepare a proctor for an exam-based registration. The Securities Industry/Regulatory Council on Continuing Education recommended that the SROs develop a means to allow proctors to be registered without taking a qualification examination.[3] The NASD supported that recommendation and believes this proposed rule change is an effective solution that makes in-firm delivery a more attractive and efficient option for members while maintaining the integrity of the program.

Importantly, while the proposed rule change would permit proctors to be registered without an exam, it would still require the proctors to submit an application for registration in accordance with NASD By-Laws. As such, proctors would be required to file a Form U–4, which provides detailed employment and disciplinary history so that the NASD can monitor the fitness of individuals to serve in that capacity. Any person whose sole registration is as a proctor under the proposed rule change would not be permitted to engage in any other activities requiring registration with the NASD. The proposal would not prohibit a person who is registered with the NASD in any other capacity from also serving as a proctor, as is permitted under existing rules.

[3] The Council includes 14 members representing a cross-section of securities firms and six SROs, including the NASD. The Council facilitates industry/regulatory coordination of the administration and future development of the Continuing Education Program.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[4] which requires among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change will result in more efficient delivery of the NASD's continuing education requirements, while maintaining the integrity of the continuing education program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

[4] 15 U.S.C. 78o–3(b)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–110 and should be submitted by September 11, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21324 Filed 8–20–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46356; File No. SR–NASD–2002–83]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish Fees Assessed on Non-Members for the Use of Computer-to-Computer Interface Transmission Control Protocol/Internet Protocol Lines That Use Message Queue Series Software

August 15, 2002.

On June 14, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish fees for non-members for the use of Computer-to-Computer Interface Transmission Control Protocol/Internet Protocol lines that use Message Queue Series ("MQ Series") software. The proposed rule change was published for notice and comment in the **Federal Register** on July 2, 2002.[3] The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[4] and, in particular, the requirements of section 15A(b)(5),[5] which requires the rules of a national securities association to provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility which the association operates or controls. The Commission believes Nasdaq's decision to charge firms that opt to use MQ Series a higher fee for lines that use the software than for comparable lines that do not, and to leave the existing fees unchanged for firms that do not use MQ Series, is reasonable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[6], that the proposed rule change (SR–NASD–2002–83) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21325 Filed 8–20–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 46112 (June 25, 2002), 67 FR 44488.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o–3(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46360; File No. SR–PCX–2002–49]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Amending PCX Rule 6.82(d)(2) in Order to Change the Percentage of Guaranteed Participation Afforded to Lead Market Makers

August 15, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on July 25, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend PCX Rule 6.82(d)(2) in order to change the percentage of guaranteed participation afforded to Lead Market Makers ("LMMs").

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

PACIFIC EXCHANGE, INC.

RULES OF THE BOARD OF GOVERNORS

Rule 6.82(a)–(c)—No change.

(d) Rights of Lead Market Makers:

(1)—No change.

(2) Guaranteed Participation. [Except as provided in subsections (A) and (B), below,] LMMs shall be allocated [50%] *40%* participation (or such lesser percentage as the Options Allocation Committee may establish as a condition in allocating an issue to an LLM) in transactions occurring at their disseminated bids and/or offers in their allocated issue(s). LMM participation may be greater than [50%] *40%* as a result of successful competition by means of "public outcry." LMMs at their own discretion may direct some or all of their participation to competing public orders in the crowd. Public orders placed in the book shall take priority pursuant to Exchange rules. Oversight and enforcement shall be the responsibility of the OBO.

[(A) Multiply-traded Issues. If the average daily trading volume in a multiply-traded issue reaches 3,000 contracts at the Exchange during any three-calendar-month period (measured on a "rolling" three-calendar-month basis), and if:]

[(i) in the case of an issue traded by two options exchanges, the Exchange's monthly share of the total multi-exchange customer trading volume in the issue drops from above 70% to below 70%; or]

[(ii) in the case of an issue traded by three or more options exchanges, the Exchange's monthly share of the total multi-exchange customer trading volume in the issue drops from above 45% to below 45%; the Options Allocation Committee will evaluate the LMM's performance in that issue and, based on that evaluation, may reduce the LMM's guaranteed participation in that issue from 50% to 40%.]

[(B) Non multiply-traded issues. If the average daily trading volume in a non-multiply-traded issue reaches 3,000 contracts at the Exchange during any three-calendar-month period (measured on a "rolling" three-calendar-month basis), the Options Allocation Committee will evaluate the LMM's performance in that issue and, based on that evaluation, may reduce the LMM's guaranteed participation in that issue from 50% to 25%.]

[(C) Return to Previous Levels of Guaranteed Participation. If the Options Allocation Committee has reduced an LMM's guaranteed participation in an issue pursuant to subsections (A) or (B) above, and average daily trading volume in the issue falls below 3,000 contracts at the Exchange during any three-calendar-month period (measured on a "rolling" three-calendar-month basis), the Options Allocation Committee will evaluate the LMM's performance in that issue and, based on that evaluation, may raise the LMM's guaranteed participation in that issue from 40% to 50% (in a multiply-traded issue) or from 25% to 50% (in a non-multiply-traded issue).]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Exchange rules provide that LMMs may be allocated a maximum guaranteed participation of 50% in transactions occurring at their disseminated bid or offer.[3] The Exchange has assessed guaranteed participation levels of other exchanges[4] in relation to its own rules[5] and determined that, in establishing a fair and orderly market, it is appropriate to decrease the LMM guaranteed from 50% to 40%. The Exchange also believes it is desirable to continue to grant the Options Allocation Committee ("OAC") the discretion to allocate less than 40% guaranteed participation on a case-by-case basis as a condition of allocating an issue to an LMM.[6]

The proposed rule also eliminates PCX Rules 6.82(d)(2)(A)–(C), which relate to guaranteed participation for LMMs with respect to multiply-traded and non multiply-traded issues. According to the Exchange, these rules were designed to measure LMM performance and allow the OAC to take market share into consideration when determining to reduce an LMM's guaranteed participation percentage in a particular issue. However, the Exchange believes that the process articulated in the rule is overly complicated and no longer serves its intended use, especially in light of this proposed rule to decrease guaranteed participation levels from 50% to 40%.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(5),[8] in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4[10] thereunder because the Exchange has designated the proposed rule change as one that does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will permit the Exchange to promptly decrease the LMM guaranteed from 50% to 40%, affording Market Makers a greater opportunity to interact with orders and thereby enhancing competition on the Exchange. For these Commission designates the proposal to be become operative immediately.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–2002–49 and should be submitted by September 11, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21320 Filed 8–20–02; 8:45 am]

BILLING CODE 8010–01–P

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* PCX Rule 6.82(d)(2). The Rules of the PCX require that transactions of LMMs and Market Makers ("MMs") constitute a course of dealing that is reasonably calculated to contribute to the maintenance of a fair and orderly market. In furtherance of that goal, the Exchange has always required LMMs and MMs to make markets in options transactions and provide liquidity to the Exchange. LMMs have additional responsibilities that include, *inter alia*, the obligation to (1) assure that the disseminated market quotations are accurate; (2) determine formulas for generating automatically updated quotations and disclosing the elements of the formula to the members of the trading crowd; (3) be present at the trading post throughout every business day; (4) participate at all times in the automated execution system for each assigned option issue; (5) promote the exchange as a marketplace by assisting in meeting and educating market participants; and (6) maintain sufficient cash or liquid asset position.

[4] Each of the other four options exchanges provides a tiered structure that guarantees specialists no more than 40% participation where there is more than one member on parity with the specialist's best bid or offer. *See* Chicago Board Options Exchange, Inc. Rule 8.87; Philadelphia Stock Exchange, Inc. Rule 1014(g); American Stock Exchange LLC Rule 950(d), Commentary .05; International Stock Exchange, Inc. Rule 713, Supplementary Material .01.

[5] *See, e.g.*, PCX Rule 6.47(b) (limiting LMM guaranteed participation in facilitation trades to 40%).

[6] *See* Securities Exchange Act Release No. 45937 (May 15, 2002), 67 FR 36283 (May 23, 2002)(approving SR–PCX 2002–13 to allow the OAC to establish, as a condition in allocating an issue to an LMM, a lesser guaranteed percentage).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C.78c(f).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 4103]

Registration for the Diversity Immigrant (DV–2004) Visa Program

ACTION: Notice of registration for the Diversity Immigrant Visa Program.

This public notice provides information on how to apply for the DV 2004 Program. This notice is issued pursuant to 22 CFR 42.33(b)(2) which implements sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(I) of the Immigration and Nationality Act, as amended, (8 U.S.C. 1151(a)(3) and (e), 1153(c), and 1154(a)(1)(I)).

Entry Procedures for Immigrant Visas To Be Made Available in the DV Category During Fiscal Year 2004

Entries for DV–2004 must be received at one of the Kentucky Consular Center Mailing Addresses listed in this Notice between noon on Monday, October 7, 2002 and noon on Wednesday, November 6, 2002. Entries received before or after these dates will be disqualified regardless of when they are postmarked. Entries mailed to any address other than the Kentucky Consular Center addresses listed in this notice will be disqualified.

How Are Visas Apportioned?

Visas are apportioned among six geographic regions with a greater number of visas going to regions with lower rates of immigration, and no visas going to countries sending more than 50,000 immigrants to the U.S. in the past five years. Within each of the six regions, no one country may receive more than seven percent of the available Diversity Visas in one year. By law, the U.S. Diversity Visa Program makes available a maximum of 55,000 each year. However, the Nicaraguan and Central American Relief Act (NACARA) stipulates that beginning as early as DV–99 and for as long as necessary, 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA Program. This reduction began in DV–1999 and remains in effect for DV–2004.

For DV–2004, natives of the following are not eligible to apply because they sent more than 50,000 immigrants to the United States in the previous five years:

Canada
China (mainland-born)
Colombia
Dominican Republic
El Salvador
Haiti

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India
Jamaica
Mexico
Pakistan
Philippines
South Korea
United Kingdom (except Northern Ireland) and its dependent territories
Vietnam

(Persons born in Hong Kong SAR, Macau SAR and Taiwan are eligible.)

What Are the Requirements To Apply for the DV–2004 Visas?

Chargeability

To enter, an applicant must be able to claim nativity in an eligible country, and must meet either the education or training requirement of the DV program. Nativity in most cases is determined by the applicant's place of birth. However, if a person was born in an ineligible country but his/her spouse was born in an eligible country, such person can claim the spouse's country of birth rather than his/her own. Also, if a person was born in an ineligible country, but neither of his/her parents was born there or resided there at the time of the birth, such person may be able to claim nativity in one of the parents' country of birth.

Education or Training

To enter, an applicant must have either a high school education or its equivalent, defined in the U.S. as successful completion of a 12-year course of elementary and secondary education; or two years of work experience within the past five years in an occupation requiring at least two years of training or experience to perform. U.S. Department of Labor definitions, as indicated in the O*Net OnLine database, will apply. If a person does not meet these requirements, he/she should not submit an entry to the DV program.

Submitting an Entry

Only one entry may be submitted by or for each applicant during the registration period. Submission of more than one entry will disqualify the person. The applicant must personally sign the entry, in his/her native alphabet. Neither an initialed signature nor block printing of the applicant's name will be accepted and will result in the disqualification of the entry. Failure of the applicant to personally sign his/her own entry will result in disqualification.

Completing the Entry

There is no specific form for the entry. Failure to provide all of the information listed below will disqualify the applicant. Simply use a plain sheet of paper and type or clearly print in the English (Roman) alphabet (preferably in the order listed below):

1. Full name, with the last (surname/family) name underlined:
   Examples: Public, Sara Jane (or) Lopez, Juan Antonio.
2. Date and place of birth:
   Date: Day, Month, Year.
   Example: 15 November 1961.
   Place: City/Town, District/County/Province, Country.
   Example: Munich, Bavaria, Germany.
   The name of the country should be that which is currently in use for the place where the applicant was born (For example, Slovenia, rather than Yugoslavia; Kazakhstan rather than Soviet Union.)
3. The applicant's native country if different from country of birth:
   If the applicant is claiming nativity in a country other than his/her place of birth, this must be clearly indicated on the entry. This information must match with what is put on the upper left corner of the entry envelope. (See "MAILING THE ENTRY" below.) If an applicant is claiming nativity through spouse or parent, please indicate this on the entry. (See "REQUIREMENTS" section for more information on this item.
4. Name, date and place of birth of the applicant's spouse and unmarried children who are under the age of 21 (other than children who are already U.S. citizens or lawful permanent residents). Include natural children, stepchildren, as well as all legally-adopted children. List spouse and children regardless of whether or not they reside with you and whether or not they will immigrate with you. (Failure to provide ALL of this information will disqualify the applicant.) Note: married children and children 21 years or older will not qualify for the DV Program.
5. Full mailing address!
   This must be clear and complete, as any communications will be sent there. A telephone number is optional, but useful.
6. Photographs. Attach a recent photograph, either black and white or in color, of the applicant, spouse and each child.
   If photos do not conform to the following specifications, the entry will be disqualified:
   The photo must between 1½ by 1½ and 2 by 2 inches (37–50 mm) square in size, with the name and date of birth printed on the back of the applicant's, spouse's and child's photo.
   The person photographed must be directly facing the camera. The head should not be tilted up, down or to the side and should cover about 50% of the area of the photo.
   The person should be in front of a neutral, light-colored background.
   The face must be in focus.
   The person photographed may not wear a hat or dark glasses or other paraphernalia which detracts from the face.
   Photos with the alien wearing head coverings or hats are only acceptable due to religious beliefs, and even then, may not obscure any portion of the face of the applicant.
   Photos of applicants wearing tribal, military, airline or other headware not specifically religious in nature will not be accepted.
   The photograph (not a photocopy) should be attached to the entry with clear tape—DO NOT use staples or paperclips, which can jam the mail processing equipment.
7. Signature: The entry will be disqualified if the entry is not personally signed by the applicant with the usual and customary signature in his/her native alphabet. Neither an initialed signature nor block printing of the applicant's name will be accepted.

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SAMPLE ENTRY

There is no specific format for the DV entry. The following is a sample entry, but other formats may be used. Failure to include all of the required information will disqualify the applicant.

1. FULL NAME: _____ _____
LAST (surname/family) *FIRST*

2. DATE OF BIRTH _____
Day, Month, Year

PLACE OF BIRTH _____
City/Town, District/County/Province, Country

3. APPLICANT'S NATIVE COUNTRY, IF DIFFERENT FROM COUNTRY OF BIRTH

_____
(See requirements above)

4. NAME, DATE AND PLACE OF BIRTH OF THE APPLICANT'S SPOUSE AND CHILDREN

Name	*Date of birth (day, month, year)*	*Place of birth*
Name	*Date of birth (day, month, year)*	*Place of birth*
Name	*Date of birth (day, month, year)*	*Place of birth*

Attach information on additional children as necessary.
Use the back of the page if there is insufficient space.

5. FULL MAILING ADDRESS: _____
_____

6. PHOTOGRAPH: *Attach recent photograph of the applicant, the applicant's spouse and all children. Individual separate photographs must be attached for the spouse and all children. Print the name and date of birth of each family member on the back of each photograph. Photos may be attached to the back of the entry if there is not enough room on the front*

7. SIGNATURE: _____

*Failure to **personally sign** the entry will disqualify the applicant.*

Mailing the Entry

Submit the entry by regular or airmail to the address matching the region of the applicant's country of nativity. Entries sent by express or priority mail, second day airmail, fax, hand, messenger, or any means requiring receipts or special handling will not be processed.

- The envelope must be between 6 and 10 inches (15 to 25 cm) long and 3½ and 4½ inches (9 to 11 cm) wide.
- Postcards are not acceptable.
- Envelopes inside express or oversized mail packets are not acceptable.
- In the upper left-hand corner of the envelope the applicant must write his/her country of nativity, followed by the applicant's name and full return address, even if both are the same.

Failure to provide this information will disqualify the entry.

Mailing address: The mailing addresses for the six regions are as follows:

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Africa	(Includes all countries on the African continent and adjacent islands):.	DV Program, Kentucky Consular Center, 1001 Visa Crest, Migrate, KY 41901–1000, USA.
Asia	(Extends from Israel to the Northern Pacific Islands, and includes Indonesia):.	DV Program Kentucky Consular Center, 2002 Visa Crest, Migrate, KY 41902–2000, USA.
Europe	(Extends from Greenland to Russia, and includes all countries of the former USSR).	DV Program Kentucky Consular Center, 3003 Visa Crest, Migrate, KY 41903–3000, USA.
South America/Central America/ Caribbean.	(Extends from Central America (Guatemala) and the Caribbean nations to Chile.).	DV Program Kentucky Consular Center, 4004 Visa Crest, Migrate, KY 41904–4000, USA.
Oceania	(Includes Australia, New Zealand, Papua New Guinea and all countries and islands of the South Pacific).	DV Program Kentucky Consular Center, 5005 Visa Crest, Migrate, KY 41905–5000, USA.
North America	(Includes the Bahamas)	DV Program Kentucky Consular Center, 6006 Visa Crest, Migrate, KY 41906–6000, USA.

EXAMPLE: An applicant who was born in Australia and now lives in France may submit one entry to the appropriate address for Oceania; the envelope should look like this:

6" - 10" or 15 cm - 25 cm

Australia
Applicant's Full Name
Street Address
City, Province, Postal Code
France

DV Program
Kentucky Consular Center
5005 Visa Crest
Migrate, KY 41905-5000, U.S.A.

3 1/2 - 4 1/2"
or
9 cm - 11 cm

Selection

Every application received during the mail-in period and prepared in accordance with these instructions will have an equal random chance of being selected within its region. No outside service can legitimately improve an applicant's chances of being chosen or guarantee that an entry will win.

Important notice: In order to actually receive a visa, applicants selected in the random drawing must meet all eligibility requirements under U.S. law, including any applicable special processing requirements established in response to the events of September 11, 2001. These requirements may significantly increase the level of scrutiny required and time necessary for processing of applications for natives of some countries listed in this notice; particularly those where a higher level activity related to post-September 11 concerns has been indicated. These include, but are not limited to, countries identified as state sponsors of terrorism. Processing of applications and issuance of diversity visas to successful applicants and their eligible family members MUST occur by September 30, 2004. Family members may not obtain diversity visas to follow to join the applicant in the U.S. after this date. There is NO initial fee, other than postage required to enter the DV–2004 program. The use of an outside intermediary or assistance to prepare a DV–2004 entry is entirely at the applicant's discretion. Qualified entries received directly from applicants or through intermediaries have equal chances of being selected by computer. There is no advantage to mailing early, or mailing from any particular locale. However, more than one application per person will disqualify the person from registration.

Determining 2004 DV Countries

The Immigration and Naturalization Service (INS) determines the DV regional limits for each year according to a formula specified in section 203(c) of the Immigration and Nationality Act. Natives of the following countries are eligible for the 2004 DV Program:

Africa

Algeria
Angola
Benin
Botswana
Burkina Faso
Burundi
Cameroon
Cape Verde
Central African Republic
Chad
Comoros
Congo
Congo, Democratic Republic of the
Cote D'Ivoire (Ivory Coast)
Djibouti
Egypt
Equatorial Guinea
Eritrea
Ethiopia
Gabon
Gambia, The
Ghana
Guinea
Guinea-Bissau
Kenya
Lesotho
Liberia
Libya
Madagascar
Malawi
Mali
Mauritania
Mauritius
Morocco
Mozambique
Namibia
Niger
Nigeria
Rwanda
Sao Tome and Principe
Senegal
Seychelles
Sierra Leone
Somalia
South Africa
Sudan
Swaziland
Tanzania
Togo
Tunisia
Uganda
Zambia
Zimbabwe

Asia

Afghanistan
Bahrain
Bangladesh
Bhutan
Brunei
Burma
Cambodia
Hong Kong Special Administrative Region
Indonesia
Iran
Iraq
Israel
Japan
Jordan
Kuwait
Laos
Lebanon
Macau Special Administrative Region
Malaysia
Maldives
Mongolia
Nepal
North Korea
Oman
Qatar
Saudi Arabia
Singapore
Sri Lanka
Syria
Taiwan
Thailand
United Arab Emirates
Yemen

Asia countries whose natives do not qualify for this year's diversity program: China (mainland-born), India, Pakistan, South Korea, Philippines, and Vietnam.

Europe

Albania
Andorra
Armenia
Austria
Azerbaijan
Belarus
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark (including components and dependent areas overseas)
Estonia
Finland
France (including components and dependent areas overseas)
Georgia
Germany
Greece
Hungary
Iceland
Ireland
Italy
Kazakhstan
Kyrgyzstan
Latvia
Liechtenstein
Lithuania
Luxembourg
Macedonia, the Former Yugoslav Republic of
Malta
Moldova
Monaco
Netherlands (including components and dependent areas overseas)
Northern Ireland *
Norway
Poland
Portugal
Romania
Russia
San Marino
Slovakia
Slovenia
Spain
Sweden
Switzerland
Tajikistan
Turkey
Turkmenistan
Ukraine
Uzbekistan
Vatican City
Yugoslavia, Federal Republic of

European countries whose natives do not qualify for this year's diversity program: Great Britain (including Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena, Turks and Caicos Islands.

***NOTE:** For the purposes of the diversity program only, Northern Ireland is treated separately and DOES qualify for this year's program.

North America

Bahamas, The

In North America, natives of CANADA do not qualify for this year's diversity program.

Oceania

Australia (including components and dependent areas overseas)
Fiji
Kiribati
Marshall Islands
Micronesia, Federated States of
Nauru
New Zealand (including components and dependent areas overseas)
Palau
Papua New Guinea
Samoa
Solomon Islands
Tonga
Tuvalu
Vanuatu

South American, Central American, and the Caribbean

Antigua and Barbuda
Argentina
Barbados
Belize
Bolivia
Brazil
Chile
Costa Rica
Cuba
Dominica
Ecuador
Grenada
Guatemala
Guyana
Honduras
Nicaragua
Panama
Paraguay
Peru
St. Kitts and Nevis
St. Lucia
St. Vincent and the Grenadines
Suriname
Trinidad and Tobago
Uruguay
Venezuela

Countries in this region whose natives do not qualify for this year's diversity program: Colombia, Dominican Republic, El Salvador, Haiti, Jamaica and Mexico.

Notifying Successful Entrants

Only successful entrants will be notified. They will be notified by mail

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between April and July of 2003 at the address listed on their entry. Successful entrants will also be sent instructions on how to apply for an immigrant visa, including information on the fee for immigrant visas and a separate visa lottery surcharge. Successful entrants must complete the immigrant visa application process and meet all eligibility requirements under U.S. law to be issued a visa.

Being selected in the DV Lottery does not automatically guarantee issuance of a visa, even if the applicant is qualified, because the number of entries selected and registered is greater than the number of immigrant visas available. Those selected will, therefore, need to complete and file their immigrant visa applications quickly. Once all the diversity visas have been issued or on September 30, 2004, whichever is sooner, the DV Program for Fiscal Year 2004 will end.

Obtaining Instructions on Entering the DV Lottery

Interested persons may call (202) 331–7199, which describes the various means to obtain further details on entering the DV–2004 program. Applicants overseas may contact the nearest U.S. embassy or consulate for instructions on the DV lottery. DV information is also available in the Visa Bulletin, on the Internet at *http://travel.state.gov* or via the Consular Affairs automated fax at (202) 647–3000 (code 1103). Calls to the automated fax service must be made from a fax machine using the receiver or voice option of the caller's fax equipment.

George Lannon,

Acting Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 02–21411 Filed 8–20–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Pottawattamie County, IA, Douglas County, NE

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for improving the freeway system for Interstate-80 (I–80), I–29, and I–480 in the City of Council Bluffs, Pottawattamie County, Iowa, and the City of Omaha, Douglas County, Nebraska.

FOR FURTHER INFORMATION CONTACT: Rebecca Hiatt, Operations Engineer, FHWA, 105 6th Street, Ames, IA 50010–6337, (515) 233–7321. James P. Rost, Director, Office of Location and Environment, Iowa Department of Transportation, 800 Lincoln Way, Ames, IA 50010, (515) 239–1798.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register's** home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA, in cooperation with the Iowa Department of Transportation, will prepare an environmental impact statement (EIS) for the proposed Council Bluffs Interstate System Improvement Project including improvements to I–80, I–29, and I–480. The system deficiencies noted in an earlier needs study (conducted by the Metropolitan Planning Organization and the City of Council Bluffs in April 1999) included deteriorated roadways and bridges, reduced travel efficiency, substandard roadway geometry, and safety issues. The proposed system improvements include approximately 18 mainline-miles of interstate, and 16 interchanges (3 system, 13 service). The project area includes Interstate 80 from near the 24th Street interchange in the City of Omaha, Nebraska, east to U.S. Hwy 6 (Kanesville Blvd) just northeast of the City of Council Bluffs, Iowa. The project also includes: Interstate 29, from just south of Iowa Hwy 92 and U.S. Hwy 275 south of Council Bluffs, and north to Iowa Hwy 192 (16th Street) just north of Council Bluffs; Interstate 480 from the Missouri River Bridge (on the Nebraska side) to Interstate 29 at the Broadway interchange in Council Bluffs; studies of the Missouri River crossings; and an underpass of the Union Pacific mainline.

Due to the size of the system and the multi-year/multi-project approach, a tiered EIS process will be conducted. A Tier 1 EIS will be prepared to determine the preferred set of long-range improvements for the I–80, I–29, and I–480 freeway system. The EIS will consider a broad range of alternatives including no action, reconstruction of the existing alignment, and improvements to transportation system management, transportation demand management, transit, and cross-town corridors. Following the conclusion of the Tier 1 EIS, preliminary engineering, in-depth environmental studies, and Tier 2 environmental documents (EIS, environmental assessment (EA), or categorical exclusion (CE)) will be completed for individual projects as appropriate.

Letters describing the proposed action and soliciting comments have been sent to appropriate federal, state, and local agencies, and to private organizations and citizens who are known to be interested in this proposed project.

A scoping meeting for identifying significant issues to be addressed in the environmental impact statement will be held on September 12, 2002 from 4 to 7 p.m. at the Best Western Crossroads of the Bluffs at 2216 27th Avenue (I–80 and 24th Street), Council Bluffs, Iowa.

In addition to the scoping meeting, a series of public meetings and a public hearing on the draft EIS will be held in the City of Council Bluffs, Iowa, during 2002, 2003 and 2004. Public notice will be given of the time and place of the public meetings and public hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the Iowa Department of Transportation or FHWA at the address provided under the caption **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 315; 49 CFR 1.48)

Bobby W. Blackmon,

Division Administrator.

[FR Doc. 02–21214 Filed 8–20–02; 8:45 am]

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MARITIME ADMINISTRATION

[Docket Number: MARAD–2002–13156]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DESTINY'S WINDS.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 20, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13156. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* DESTINY'S WINDS. *Owner:* Hugh C. Garver.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "The vessel is 46′ long, 14′ breadth, with a gross tonnage of 16 and a net tonnage of 14."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "I intend to use the vessel for charter work throughout the coastline of Florida. If possible, I would extend the area to include New Orleans to Savannah, GA."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1980. *Place of construction:* La Rochelle, France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "To my knowledge, there are no long range charter sail operators in the area of Destin, Florida. In researching the feasibility of such an operation, I could only find five advertised charter operators within the geographic area I have requested."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "Throughout the coastline, there are many facilities that one can get immediate towing and repair service. They could help me if necessary and any work would be of benefit to them should I need their services."

Dated: August 16, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–21299 Filed 8–20–02; 8:45 am]

BILLING CODE 4910–81–P

MARITIME ADMINISTRATION

[Docket Number: MARAD–2002–13155]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel WILD FLOWER.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 20, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13155. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been

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received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* WILD FLOWER. *Owner:* Wild Flower Enterprises.

(2) Size, capacity and tonnage of vessel. According to the applicant: "The vessel is 64'8" long, her breadth is 17'5" and her depth is 7'. Her gross tonnage is 29 GRT and her net tonnage is 26 NRT."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "The vessel is unique in the crewed chartering industry in that . . . she charters only for two passengers . . . The average charter lasts for one week (food and wine included in the price) with the boat on anchor or on a mooring overnight . . . The geographic region of intended operation is in the waters from New York City through the waters of Maine."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1985. *Place of construction:* Taiwan, ROC.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "Since there are currently no vessels in the intended area of operation over 55' that charter exclusively for two passengers, there can be no impact, if the waiver is granted on other commercial vessel operators."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "If the application is granted, the vessel will be in the United States in the appropriate season and can have her yearly hauling and bottom painting done at U.S. shipyards. This can only have a positive impact on these shipyards."

Dated: August 16, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–21300 Filed 8–20–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

[Treasury Order Number 150–39]

Delegation of Authority to Act as Competent or Taxation Authority for Possessions of the United States

July 17, 2002.

1. *Purpose.* The purpose of this Order is to formalize the authority of the Commissioner of Internal Revenue to act as the competent authority or taxation authority under tax coordination agreements and tax implementation agreements with the possessions of the United States, with the responsibility for coordination and liaison of tax administration issues involving the possessions of the United States.

2. *Delegation.* The authority of the Secretary of the Treasury to act as competent authority or taxation authority with regard to tax implementation and coordination agreements that are entered into with the possessions of the United States is hereby delegated to the Commissioner of Internal Revenue. The authority of the Commissioner of Internal Revenue to provide for the administration of the United States internal revenue laws in the possessions of the United States (including administration of the aforesaid tax agreements) remains in effect.

3. *Redelegation.* The Commissioner may redelegate this authority in writing to any officer or employee of the Internal Revenue Service.

4. *Ratification.* To the extent that any action heretofore taken by the Commissioner of Internal Revenue or his delegate consistent with the delegation set forth in this Order may require ratification, such action is hereby affirmed and ratified.

Authorities

a. IRC § 7803(a)(2).

b. Subtitle G of Title XII of the Tax Reform Act of 1986, sections 1271 to 1277 of Pub. Law 99–514, 100 Stat. 2085, 2591–2602.

6. *Office of Primary Interest.* Commissioner of Internal Revenue.

Paul H. O'Neill,

Secretary of the Treasury.

[FR Doc. 02–21259 Filed 8–20–02; 8:45 am]

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Corrections

Federal Register
Vol. 67, No. 162
Wednesday, August 21, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–22–AD; Amendment 39–12835; AD 2002–08–54]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, 222U, and 230 Helicopters

Correction

In rule document 02–19486 beginning on page 50793 in the issue of Tuesday, August 6, 2002 make the following correction:

§39.13 [Corrected]

On page 50794, in §39.13, in the table, under the " Model" heading, in the third entry "(3)" should read "(3) 230 ".

[FR Doc. C2–19486 Filed 8–20–02; 8:45 am]

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Federal Register

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August 21, 2002

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Topeka Shiner; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI20

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Topeka Shiner

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the Topeka shiner (*Notropis topeka*). This proposal is made in response to a court settlement in *Biodiversity Legal Foundation et al.* v. *Ralph Morganweck et al.* C00–D–1180, committing the Service to submit for publication in the **Federal Register** a proposal to withdraw the existing "not prudent" critical habitat determination together with a new proposed critical habitat determination for the Topeka shiner by August 13, 2002. We are proposing to designate as critical habitat a total of 186 stream segments, representing 3,765.9 kilometers (2,340 miles) of stream in the States of Iowa, Kansas, Minnesota, Nebraska, and South Dakota. Proposed critical habitat includes portions of the North Raccoon, Boone, and Rock River watersheds in Iowa; the Kansas, Big Blue, Smoky Hill, and Cottonwood River watersheds in Kansas; the Rock and Big Sioux River watersheds in Minnesota; and the Big Sioux, Vermillion, and James River watersheds in South Dakota. If this proposed rule is finalized, Federal agencies proposing actions that may affect the areas designated as critical habitat must consult with the Service on the effects of the proposed actions, pursuant to section 7(a)(2) of the Act. A draft Economic Analysis will be prepared in the near future and made available for public comment. We will specify the availability of the draft Economic Analysis and subsequent reopening of the comment period in local and regional newspapers in the range of the species and through a notice in the **Federal Register**.

DATES: We will consider all comments on the proposed rule received from interested parties by October 21, 2002. We will hold public meetings in—Manhattan, KS, on September 4, 2002; Bethany, MO, on September 5, 2002; Fort Dodge, IA, on September 9, 2002; Pipestone, MN, on September 10, 2002; Sioux Falls, SD on September 11, 2002; and, Madison, NE, on September 12, 2002. We will start all meetings promptly at 6 p.m. and end them no later than 9 p.m. (*See* "Public Hearings and Meetings" section for times and locations.)

ADDRESSES: Send your comments on the proposed rule to the Kansas Ecological Services Field Office, U.S. Fish and Wildlife Service, 315 Houston Street, Suite E, Manhattan, KS 66502. The complete file for the proposed rule will be available for public inspection, by appointment, during normal business hours at the above address. Copies of the proposed rule are available by writing to the above address or by connecting to the Service internet web site at "*http://mountain-prairie.fws.gov/topekashiner/ch.*"

FOR FURTHER INFORMATION CONTACT: Vernon Tabor, Kansas Ecological Services Field Office, at the above address; telephone (785) 539–3474, facsimile (785) 539–8567.

SUPPLEMENTARY INFORMATION:

Background

The Topeka shiner is a small, stout minnow, not exceeding 75 millimeters (3 inches) in total length. The head is short with a small, moderately oblique mouth. The eye diameter is equal to or slightly longer than the snout. The dorsal fin is large, with the height more than one half the predorsal length of the fish, originating over the leading edge of the pectoral fins. Dorsal and pelvic fins each contain eight rays. The anal and pectoral fins contain 7 and 13 rays respectively, and there are 32 to 37 lateral line scales. Dorsally the body is olivaceous (olive-green), with a distinct dark stripe preceding the dorsal fin. A dusky stripe is exhibited along the entire longitudinal length of the lateral line. The scales above this line are darkly outlined with pigment, appearing cross-hatched. Below the lateral line the body lacks pigment, appearing silvery-white. A distinct chevron-like spot exists at the base of the caudal fin (Cross 1967; Pflieger 1975; U.S. Fish and Wildlife Service 1993).

The Topeka shiner was first described by C.H. Gilbert in 1884, using specimens captured from Shunganunga Creek, Shawnee County, Kansas (Gilbert 1884), a tributary to the Kansas River. The Topeka shiner is 1 of 83 species within the genus *Notropis* (Robins et al. 1991), all in North America. The genus is within the minnow family (*Cyprinidae*).

The Topeka shiner is characteristic of small to mid-size prairie streams with relatively high water quality and cool to moderate temperatures. Many of these streams exhibit perennial flow; however, some become intermittent during summer or periods of prolonged drought. At times when surface flows cease, pool levels and moderate water temperatures are maintained by percolation through the streambed or groundwater seepage. The predominant substrate types within these streams are gravel, cobble, and sand; however, bedrock and clay hardpan overlain by a layer of silt are not uncommon (Minckley and Cross 1959). Recently in northern portions of the species' range, the Topeka shiner has been found to exist at some stream sites with degraded water quality and habitat quality, characterized by moderately high turbidity and thick deposits of fine sediments, respectively (Hatch, University of Minnesota, pers. comm. 2000; Berry, South Dakota State University, pers. comm. 2000). At present, it is unknown whether the species utilizes these sites year-round or seasonally, or moves through these areas in an attempt to disperse from core habitat areas.

In the late 1990s, the Topeka shiner was discovered to inhabit a number of off-channel sites in Minnesota and Iowa, primarily cut-off channels and oxbows that are seasonally flooded (Hatch, pers. comm. 1999; Menzel, Iowa State University, pers. comm. 1999). It is speculated that a common factor of these off-channel sites is a connection with the water table, enabling water quality, particularly temperature and dissolved oxygen concentrations, to stay within the tolerance levels of the species during hot, dry periods. It also is suggested that the ground water contact prevents total freeze-out of these pools during winter.

Topeka shiners most often occur in pool and run areas of streams, seldom being found in riffles. They are most often pelagic (living in open water) in nature, occurring in mid-water and surface areas, and are primarily considered a schooling fish. Occasionally individuals of this species have been found in larger streams, downstream of known populations (Cross 1967; Pflieger 1975; Tabor, U.S. Fish and Wildlife Service 1998).

Historically, the Topeka shiner was widespread and abundant throughout small to mid-size streams of the central prairie regions of the United States. The Topeka shiner's historic range includes portions of Iowa, Kansas, Minnesota, Missouri, Nebraska, and South Dakota. Stream basins within the range historically occupied by the Topeka shiner include the Des Moines, Raccoon, Boone, Missouri, Big Sioux, Cedar, Shell Rock, Rock, and Iowa

Basins in Iowa; the Arkansas, Kansas, Big Blue, Saline, Solomon, Republican, Smoky Hill, Wakarusa, Cottonwood, Nemaha, and Blue Basins in Kansas; the Des Moines, Cedar, Big Sioux, and Rock Basins in Minnesota; the Missouri, Grand, Lamine, Chariton, Des Moines, Loutre, Middle, Hundred and Two, and Blue Basins in Missouri; the Big Blue, Elkhorn, Missouri, and Loup Basins in Nebraska; and the Big Sioux, Vermillion, and James Basins in South Dakota. The known geographic range (watershed area where the species was known to occur) of the Topeka shiner has been reduced by approximately 90 percent. The number of historically known collection sites (documented in the literature or by museum specimens) of Topeka shiner has been reduced by approximately 70 percent, with approximately 50 percent of this decline occurring within the last 40–50 years. The species now primarily exists in isolated population complexes (adjoining stream segments) and individual isolated stream reaches.

The Topeka shiner is impacted by habitat destruction, degradation, modification, and fragmentation resulting from siltation, reduced water quality, tributary impoundment, stream channelization, in-stream gravel mining, and changes in stream hydrology. The species also can be impacted by introduced predaceous fishes. Additional information on the biology and status of the Topeka shiner can be found in the December 15, 1998, final listing determination (63 FR 69008). Biological factors relevant to the species' habitat needs are discussed in the Primary Constituent Elements portion of this proposed rule.

Previous Federal Action

In 1990 the Service's Kansas Field Office began a status review of the Topeka shiner using data collected from stream sampling activities and information requested from knowledgeable individuals and agencies, including State fish and wildlife conservation agencies, State health and pollution control agencies, colleges and universities, and other Service offices. The Topeka shiner first received listing consideration when the species was included in the Animal Candidate Review for Listing as Endangered or Threatened Species, as a category 2 candidate species, published in the **Federal Register** (56 FR 58816) on November 21, 1991. Category 2 candidate species were those species for which information in the possession of the Service indicated that a proposal to list the species as endangered or threatened was possibly appropriate, but sufficient data on biological vulnerability and threats were not currently available to support proposed rules for listing. A status report, dated February 16, 1993 (Service 1993), was subsequently prepared concerning the species. In the November 15, 1994, Animal Candidate Review for Listing as Endangered or Threatened Species, published in the **Federal Register** (59 FR 58999), the Topeka shiner was reclassified as a category 1 candidate species. Category 1 candidates comprised taxa for which the Service had substantial information on biological vulnerability and threats to support proposals to list the taxa as endangered or threatened. We have since discontinued the category 1 and category 2 designations for candidates and have established a new policy defining candidate species. Candidate species are currently defined as those species for which the Service has sufficient information on file detailing biological vulnerability and threats to support issuance of a proposed rule to list as threatened or endangered, but issuance of the proposed rule is precluded by other listing actions. In the February 28, 1996, Review of Plant and Animal Taxa That Are Candidates for Listing as Endangered or Threatened Species, published in the **Federal Register** (61 FR 7596), the Topeka shiner was reclassified as a candidate species.

We published a proposed rule to list the Topeka shiner as endangered in the **Federal Register** on October 24, 1997 (62 FR 55381). Included in the proposed rule was notification of the opening of a 60-day public comment period and request for public hearings. The comment period was open from October 24, 1997, to December 23, 1997. Four public hearings were held from January 26–29, 1998, across the species' range. A notice to reopen the public comment period was published in the **Federal Register** (62 FR 67324) to accommodate the hearings. This comment period was open from January 12, 1998, to February 9, 1998. We published the final rule listing the Topeka shiner as an endangered species on December 15, 1998 (63 FR 69008). The effective date of the listing was January 14, 1999. We did not designate critical habitat at the time of listing, as we determined that designation of critical habitat was not prudent.

In early 1999, we assembled the Topeka Shiner Recovery Team. The team is composed of species experts from academia and industry, State natural resource agency personnel with knowledge of the species, and Fish and Wildlife Service staff. Seven team meetings were held between 1999 to 2001, with the task of developing a draft recovery plan for the species. The Service is reviewing this draft and hopes its findings can be used as a basis for its proposed recovery plan.

In an April 4, 2001, court settlement of the case, *Biodiversity Legal Foundation et al.* v. *Ralph Morganweck et al.*, C00–D–1180, we agreed to reconsider our prudency determination and, if prudent, propose critical habitat for the Topeka shiner by August 13, 2002, and to finalize our decision on critical habitat by August 13, 2003.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as—(I) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. The term "conservation," as defined in section 3(3) of the Act, means "to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary."

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences with the Service on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that

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do not involve a Federal nexus, critical habitat designation would not result in any regulatory requirement for these actions.

To be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas in which the primary constituent elements, as defined at 50 CFR 424.12(b), are found).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

In accordance with sections 3(5)(C) of the Act, not all areas that can be occupied by a species will be designated critical habitat. Within the geographic area occupied by the species we designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to conserve the species. We will not speculate about what areas might be found to be essential if better information becomes available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. We will not designate areas within the geographic area occupied by the species unless at least one of the primary constituent elements, as defined at 50 CFR 424.12(b), is present. Moreover, areas occupied by certain known populations of the Topeka shiner have not been proposed as critical habitat. For example, we did not propose critical habitat for some small scattered populations or habitats in areas highly impacted by human development.

Our regulations state, "The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Based on the best available science and commercial data, there appears to be no foundation upon which to make a determination that the conservation needs of the Topeka shiner require designation of critical habitat outside of the geographic area occupied by the species, so we have not proposed to designate critical habitat outside of the geographic area believed to be occupied.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, procedures, and guidance to ensure decisions made by the Service represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States, Tribes, and counties, scientific status surveys and studies, and biological assessments or other unpublished materials, and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize designation of critical habitat may not include all habitat eventually determined as necessary to recover the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act, and the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in likely-to-jeopardize findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts, if new information available to these planning efforts calls for a different outcome.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat we are required to base critical habitat determinations on the best scientific and commercial data available and to consider physical and biological features (primary constituent elements) that are essential to conservation of the species, and that may require special management considerations and protection. These physical and biological features include, but are not limited to—(1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing (or development) of offspring; and (5) habitats protected from disturbance or that are representative of the historic geographical and ecological distributions of a species.

The following studies involving the habitat requirements, life history, and population biology of Topeka shiner serve as the best science available in establishing the primary constituent elements listed below—Barber 1986; Blausey 2001; Cross 1967; Cross 1970; Cross and Collins 1975; Cross and Collins 1995; Deacon and Metcalf 1961; Gelwicks and Bruenderman 1996; Hatch 2001; Hatch and Besaw 2001; Katula 1998; Kerns 1983; Leopold et al. 1992; Michels 2000; Michl and Peters 1993; Minckley and Cross 1959; Pflieger 1975; Pflieger 1997; Rosgen 1996; Shranke *et al.* 2001; Stark *et al.* 1999; U.S. Fish and Wildlife Service 1993; Wall *et al.* 2001.

Given the large geographic range the species historically occupied, and the varying habitats used by the different life-history stages, describing specific values or conditions for each of these habitat features is not always possible. However, the following discussion summarizes the biological and habitat requirements of the Topeka shiner relevant to identifying the primary constituent elements of its critical habitat.

Topeka shiners are typically found in small, low order, prairie streams with good water quality, relatively cool temperatures, and low fish diversity (Minckley and Cross 1959; Cross 1967; Barber 1986; Cross and Collins 1995; Pflieger 1997; Blausey 2001). Although Topeka shiners can tolerate a range of water temperatures, cooler, spring-maintained systems are considered

optimum (Cross and Collins 1995; Pflieger 1997). These streams generally maintain perennial flow but may become intermittent during summer or periods of drought. Evermann and Cox (1896) reported on surveys from the Nebraska portion of the Big Blue River watershed, and noted that Topeka shiners occurred in "pond-like, isolated portions of streams which dry up in parts of their course during dry weather." Minckley and Cross (1959) found Topeka shiners "almost exclusively in quiet, open pools of small, clear streams that drain upland prairies." They also noted that when these streams approach intermittency the "pools are maintained at fairly stable levels by percolation through the gravel or by springs." Similar habitat characteristics are described for populations in Missouri by Pflieger (1997). In South Dakota, Blausey (2001) found that runs were the dominant habitat type associated with Topeka shiner presence, although higher densities of the species were collected in pools. While characteristic of pools with stable water levels, the Topeka shiner appears to be well adapted to periodic drought conditions common to prairie streams. For example, Kerns (1983) found that even though mortality of several fish species was high in desiccating pools, juvenile Topeka shiners seemed especially drought-resistant.

In Kansas, Missouri, and South Dakota, Topeka shiners typically occur in streams with clean gravel, cobble, or sand bottoms (Pflieger 1975; Kerns 1983; Barber 1986; Cross and Collins 1995; Pflieger 1997; Blausey 2001). However, bedrock and clay hardpan covered by a thin layer of silt are not uncommon (Minckley and Cross 1959). In western Kansas pools containing Topeka shiners, Stark *et al.* (1999) determined the primary substrate to be coarse sand overlain by silt and detritus. Similarly, Michl and Peters (1993) reported the collection of Topeka shiners from a Nebraska stream having a sand and detritus substrate. While main channel areas may be typical of Kansas, Missouri, and South Dakota populations, Topeka shiners in Minnesota and Iowa appear more abundant in off-channel oxbows and side-channels than in the main channels (Menzel pers. comm. 1999; Hatch 2001). These seasonally flooded habitats also appear to have a connection with the water table, enabling temperature and dissolved oxygen to stay within tolerance levels of the species during dry, hot periods. It also suggests that the groundwater connection may prevent complete freezing of these pools in winter. Groundwater availability was a primary predictor of Topeka shiner presence in South Dakota (Blausey 2001). While we have recently found the species in some stream sites with excessive sedimentation, it is unknown whether the species uses these locations year-round, for portions of the year, or occupy these areas during periods of dispersal. In much of the range of Topeka shiner, moderate-sized mainstem streams likely provide occasional dispersal corridors for the species (Cunningham, Eco-Centrics, Inc., Omaha, Nebraska, pers. comm. 1999; Menzel pers. comm. 2001). In most cases these larger streams do not provide habitat conditions suitable for the species to complete its necessary life cycle requirements, but in the Iowa and Minnesota range of the species oxbow and other off-channel habitats adjacent to these mainstems do provide these requirements (Menzel pers. comm. 2001; Hatch 2001). In these cases, the primary constituent elements of critical habitat are present in the off-channel areas, but not in the larger mainstem streams themselves, even though they likely provide corridors for dispersion to other areas of suitable habitat.

Topeka shiners are short-lived species, rarely surviving to their third summer (Minckley and Cross 1959; Cross 1967; Kerns 1983; Cross and Collins 1995; Pflieger 1997; Hatch 2001). The species typically matures at 12–14 months of age (Kerns 1983; Cross and Collins 1995; Pflieger 1997). Based on ovarian development, Hatch (2001) suggested that Topeka shiners are multiple-clutch spawners. Topeka shiners spawn in pool habitats, over green sunfish (*Lepomis cyanellus*) and orangespotted sunfish (*Lepomis humilis*) nests, from late May to August in Kansas and Missouri (Kerns 1983; Cross and Collins 1995; Pflieger 1997). Stark *et al.* (1999) observed Topeka shiners spawning on the periphery of green sunfish nests and suggested that the habitats provided by these nests are important to the reproductive success of Topeka shiners. These same authors reported aggregations of Topeka shiners in close association with fathead minnow (*Pimephales promelas*) and orangespotted sunfish nests, but no spawning activities were observed. In Minnesota, Hatch (2001) found that Topeka shiners use rubble, boulder, and concrete rip-rap at the margins of pools and slow runs. Several authors have reported the defense of small territories by breeding male Topeka shiners (Kerns 1983, Pflieger 1997, Katula 1998, Stark *et al.* 1999, Hatch 2001). In Jack Creek, Chase County, Kansas, Mammoliti (Kansas Department of Wildlife and Parks, pers. comm. 1999) observed two male Topeka shiners defending a longear sunfish (*Lepomis megalotis*) nest as the male sunfish loafed nearby. Other authors have noted upstream movement as reproductive behavior in Topeka shiners (Minckley and Cross 1959, Kerns 1983, Barber 1986).

The Topeka shiner is primarily a schooling fish and found throughout the water column. Pflieger (1997) noted that the species schooled with other cyprinids in mid-water or near the surface. Other studies have reported Topeka shiners schooling in the lower portion of the water column with central stonerollers (*Campostoma annomalum*) (Kerns 1983, Stark *et al.* 1999). While typical of small, headwater streams, occasionally the species has been captured in larger streams, downstream of known populations. Barber (1986) noted variation in mobility within a population of Topeka shiner based on sex and age class. In the spring, as precipitation and water temperatures increased, adult males tended to move upstream or downstream. In many instances, the fish moved back to their original pool. Young-of-the-year fish tended to move downstream in the fall. Others have reported displacement of fish downstream during periods of high flow (Cross, University of Kansas, pers. comm. 1994; Tabor pers. comm. 1994). Although it is evident that the species has some capacity to disperse, at present the degree of dispersal and the species' ability to "tributary hop" is unknown. It has been suggested that populations found in short, direct tributaries to the Missouri River were evidence of a historic dispersal eastward by "tributary hopping." However, Deacon and Metcalf (1961) found the Topeka shiner to be one of several fishes with a low capacity for dispersal following drought conditions. In addition, Michels (2000) conducted a range-wide genetic analysis of different populations of Topeka shiner and suggested that successful migration, even between adjacent populations, is rare and that movement over long distances is unlikely.

Earlier researchers (Kerns 1983, Cross and Collins 1995) reported that Topeka shiners are benthic insectivores that feed primarily on midges (chironomids), true flies (dipterans), and mayflies (ephemeropterans), with zooplankton (cladocerans and copepods) also contributing to their diet. More recent studies have found Topeka shiner feeding at a variety of trophic levels and on diverse foods. Stark *et al.* (1999) observed Topeka shiners consuming

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eggs from fathead minnow nests in Willow Creek, Wallace County, Kansas. In Minnesota, food included several kinds of zooplankton, a variety of immature aquatic insects, larval fish, algal and vascular plant matter, including seed capsules (Hatch and Besaw 1998). These authors suggested that Topeka shiners function both as benthic and nektonic feeders, and propose that the species also may feed from the surfaces of aquatic plants.

We determine the primary constituent elements associated with critical habitat for Topeka shiner to be:

1. Streams most often with permanent flow, but that can become intermittent during dry periods;

2. Side channel pools and oxbows either seasonally connected to a stream or maintained by groundwater inputs, at a surface elevation equal to or lower than the bank-full discharge stream elevation. The bankfull discharge is the flow at which water begins leaving the channel and flowing into the floodplain; this level is generally attained every 1 to 2 years. Bankfull discharge, while a function of the size of the stream, is a fairly constant feature related to the formation, maintenance, and dimensions of the stream channel;

3. Streams and side channel pools with water quality necessary for unimpaired behavior, growth, and viability of all life stages. The water quality components can vary seasonally and include—temperature (1 to 30°Centigrade), total suspended solids (0 to 2000 ppm), conductivity (100 to 800 mhos), dissolved oxygen (4 ppm or greater), pH (7.0 to 9.0), and other chemical characteristics;

4. Living and spawning areas for adult Topeka shiner with pools or runs with water velocities less than 0.5 meters/second (approx. 20 inches/second) and depths ranging from 0.1 to 2.0 meters (approximately 4 to 80 inches);

5. Living areas for juvenile Topeka shiner with water velocities less than 0.5 meters/second (approx. 20 inches/second) with depths less than 0.25 meters (approx. 10 inches) and moderate amounts of instream aquatic cover, such as woody debris, overhanging terrestrial vegetation, and aquatic plants;

6. Sand, gravel, cobble, and silt substrates with amounts of fine sediment and substrate embeddedness that allows for nest building and maintenance of nests and eggs by native Lepomis sunfishes (green sunfish, orangespotted sunfish, longear sunfish) and Topeka shiner as necessary for reproduction, unimpaired behavior, growth, and viability of all life stages;

7. An adequate terrestrial, semiaquatic, and aquatic invertebrate food base that allows for unimpaired growth, reproduction, and survival of all life stages;

8. A hydrologic regime capable of forming, maintaining, or restoring the flow periodicity, channel morphology, fish community composition, off-channel habitats, and habitat components described in the other primary constituent elements; and

9. Few or no nonnative predatory or competitive nonnative species present.

The areas we are proposing for designation as critical habitat for Topeka shiner provide the above primary constituent elements essential for the conservation of the species. The proposed areas require special management considerations or protection to ensure their contribution to the conservation of the species.

Proposed Critical Habitat Designation

In proposing critical habitat for Topeka shiner, we reviewed the overall approach to the conservation of the species undertaken by local, State, Tribal, and Federal agencies and private individuals and organizations since the species' listing in 1998. We also considered the measures identified as necessary for recovery, as outlined in the species' preliminary draft recovery plan. Additionally, we solicited information and recommendations from knowledgeable biologists and members of the Topeka Shiner Recovery Team. We also reviewed the available information pertaining to habitat requirements of the species received during the listing process.

TABLE 1.—NUMBER OF STREAM SEGMENTS AND TOTAL STREAM MILEAGE PROPOSED FOR DESIGNATION AS CRITICAL HABITAT FOR TOPEKA SHINER BY STATE

State	No. of stream segments proposed by State	Total stream mileage proposed by State
Iowa	25	225
Kansas	63	587
Minnesota	57	605
Nebraska	1	6
South Dakota	40	917
Total	186	2,340

TABLE 2.—NUMBER OF STREAM SEGMENTS AND TOTAL STREAM MILEAGE PROPOSED FOR DESIGNATION AS CRITICAL HABITAT FOR TOPEKA SHINER BY COUNTY

County	Number of stream segments proposed by county	Stream mileage proposed by county
Iowa:		
Calhoun	8	68
Carroll	2	7
Dallas	3	3
Greene	8	87
Hamilton	1	1
Lyon	3	16
Osceola	1	5
Sac	4	12
Webster	1	9
Wright	3	16
Kansas:		
Butler	1	5
Chase	27	200
Dickinson	4	49
Geary	7	62
Greenwood	2	7
Marion	1	9
Marshall	2	22
Morris	6	22
Pottawatomie	1	5
Riley	4	44
Shawnee	1	18
Wabaunsee	15	136
Wallace	1	9
Minnesota:		
Lincoln	4	27
Murray	2	19
Nobles	14	115
Pipestone	21	196
Rock	25	247
Nebraska:		
Madison	1	6
South Dakota:		
Aurora	1	27
Beadle	3	98
Brookings	6	106
Clay	2	29
Davison	4	63
Deuel	2	36
Hamlin	1	8
Hanson	3	48
Hutchinson	6	66
Lincoln	3	41
McCook	2	47
Miner	2	31
Minnehaha	6	102
Moody	5	63
Turner	6	151

Note: Many stream segments occur in more than one county, thus inflating the total number per State, if totaled.

Due to the need for additional information on the species, its habitats, restoration potential, possible unknown isolated occurrences, and other factors, interim criteria for downlisting and delisting were set forth in a preliminary draft recovery plan now under review by the Service. The recovery team agreed that even though much information on the species is known, it would be prudent to develop interim recovery criteria, as opposed to final criteria at the time the plan was developed. It also was agreed by the recovery team that the interim recovery criteria would later be adjusted to reflect new information, as it becomes available, solidifying final recovery criteria. The primary information need identified in coming to this decision was information on stream and watershed conditions within unoccupied historic range, in reference to the potential for reintroduction and reestablishment of the species in these areas. Additionally, there was the need for more information on the species' range, particularly in Nebraska and parts of Iowa, where isolated, remnant populations of Topeka shiner might be discovered, possibly affecting recovery goals. If previously unknown populations were found in these areas, this would avoid the need for reintroduction in these areas. Reintroduction and successful reestablishment is most often viewed as being more difficult than maintenance and enhancement of existing populations and habitat. The interim recovery criteria recommend protection of existing populations, enhancement and restoration of habitats occupied by depleted populations, and reintroduction and reestablishment of the species into unoccupied streams within the historical range. Since information and data are lacking on conditions of the watersheds and instream habitat in unoccupied historic range of the species, we do not propose habitat in these areas, even though we recognize that the interim recovery criteria includes reintroduction and reestablishment of Topeka shiner to these areas. We are proposing stream segments occupied by Topeka shiner, and some stream segments with no records of capture for the species that connect with occupied stream segments. These connecting stream segments possess the primary constituent elements necessary for proposal, and likely harbor the species during some flow conditions. Examples of habitat use of this type include, upstream movement during high flows or wet periods, and downstream habitat use during dry periods or periods of extended drought. Due to this consideration, we regard all stream segments proposed for critical habitat as within the geographical area occupied by the species.

Within the geographic area occupied by the species, we are designating only areas currently known to be "essential to the conservation of the species." Critical habitat should already have, or have the potential for developing in the near future, many or all of the features and habitat characteristics that are necessary to sustain the species. We do not speculate about what areas might be found to be essential if better information were available, or what areas may become essential over time. If information available at the time of designation does not show an area provides essential support for a species at any phase of its life cycle, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements that provide essential life cycle needs of the species, as defined at 50 CFR 424.12(b). Furthermore, we recognize designation of critical habitat may not include all habitat eventually determined as necessary to recover the species. For these reasons, areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to those planning efforts calls for a different outcome.

The proposed critical habitat described below constitutes our best assessment of areas needed for the conservation of Topeka shiner and is based on the best scientific and commercial information available. The proposed areas are essential to the conservation of the species because they currently support populations of Topeka shiner or provide critical links or corridors to other habitat for the species. The stream segments proposed for designation as critical habitat in this proposed rule are consistent with the preliminary draft recovery plan's first recovery criterion, which states that recovery of the species will be recognized as achieved when all naturally occurring populations within primary and secondary recovery units are determined to be stable or increasing over a period of 10 years.

Important considerations in selection of areas proposed in this rule include factors specific to each geographic area, watershed and stream segment, such as stream size and length, connectivity, and habitat diversity, as well as range-wide recovery considerations, such as genetic diversity and representation of major portions of the species' historical range. The proposed critical habitat reflects the need for habitat complexes and individual stream reaches of sufficient size to provide habitat for Topeka shiner populations large enough to be self-sustaining over time, despite fluctuations in local conditions.

Habitat complexes contain interconnected waters so that Topeka shiners can move between areas, at least during certain flows or seasons. The ability of the fish to repopulate areas where they are now depleted or extirpated is vital to the species' conservation. Some complexes may include stream reaches with minimal instream habitat, but which provide migration corridors for Topeka shiners. These corridors play a vital role in the dispersal of the species and the overall functioning of the aquatic ecosystem and, therefore, the integrity of upstream and downstream habitats.

The proposed designation includes representatives of all known populations of the species so as to conserve and protect genetic diversity within the species. Information on the Topeka shiner indicates a high degree of genetic differentiation among many of the remnant populations (Michels 2000), making conservation of as many of these populations as possible important to efforts to preserve genetic diversity.

Uncertainty on upstream and downstream distributional limits of some populations may result in areas of occupied habitat being excluded from the designation. Additionally, there are streams with some recent association with Topeka shiners that may not be proposed for designation. These could include streams with records of one-time captures of Topeka shiner; streams for which habitat conditions are unknown; streams with unprecise, generalized, or questionable capture locations; and streams with severely altered habitat, lacking the primary constituent elements (*e.g.*, drainage ditches).

Our determination of which stream segments to propose for designation used the best scientific information and data available. We began the process by

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compiling information on the species and its habitat to create draft maps of potentially suitable stream reaches. We then consulted species experts in academia, members of the Topeka Shiner Recovery Team, and biologists from State natural resource and fish and wildlife agencies familiar with the species or the watersheds in areas with the Topeka shiner. We also consulted biologists from other Service offices in the species' range. We asked for their review of the stream reaches identified on the draft maps, and for any suggested changes or additions.

Factors considered in determining specific stream segments included—streams with occupancy and habitat information for the species; stream reaches with all or some of the primary constituent elements for Topeka shiners, including those able to attain them in the foreseeable future; habitat models; information on the species' ecology and biology; stream morphology and hydrology information; regional habitat use by the species, such as use of side-channel pools in Iowa, Minnesota, and the Big Sioux drainage in South Dakota; major habitat alterations, such as channelization and dams; and information on the mobility of Topeka shiner in reference to connectivity of adjacent stream reaches, and to home range and dispersal characteristics. Information and suggested changes provided by the individuals and agencies who reviewed the draft maps were carefully considered and implemented where they were consistent with the Service's criteria for designating critical habitat.

The proposed designation includes 186 stream segments, encompassing 3,765.9 kilometers (2,340 miles) of streams, including adjacent off-channel pool habitats in Iowa, Minnesota, and the Big Sioux River watershed of South Dakota. The stream segments are within 11 major watersheds in the States of Iowa, Kansas, Minnesota, Nebraska, and South Dakota. These 186 proposed stream segments encompass 23 stream complexes (2 or more connecting stream segments) and 18 individual, isolated streams. No habitat is proposed for Missouri (see Exclusions from Critical Habitat section below).

Proposed critical habitat includes the stream channels within the identified stream reaches and off-channel pools and oxbows in the Minnesota, Iowa, and the Big Sioux River portion of the South Dakota range. Side channel pools and oxbows that are proposed for designation are typically either seasonally connected to a stream or have waters maintained by groundwater inputs. The defining stream elevation for determining the lateral extent of proposed critical habitat in stream channels and off-channel or oxbow pools is the elevation equal to the bankfull discharge stream elevation. The bankfull discharge is the flow at which water begins leaving the channel and flowing into the floodplain (Rosgen 1996). This level is generally attained every 1 to 2 years (Leopold *et al.* 1992). Bankfull discharge, while a function of the size of the stream, is a fairly constant feature related to the formation, maintenance, and dimensions of the stream channel (Rosgen 1996).

We propose the following areas for designation as critical habitat. These areas—(1) Are currently considered occupied or provide critical links or corridors between occupied habitats and/or potentially occupied habitat; (2) provide all or some of the primary constituent elements essential to the conservation of the species; and (3) may require special management considerations or protection. (See the Regulation Promulgation section of this rule for legal descriptions and maps of the boundaries.)

Iowa

Raccoon River Watershed

1. North Raccoon River Complex (19 stream segments), Calhoun, Carroll, Dallas, Greene, Sac, and Webster Counties, Iowa. Multiple tributary streams and some of their adjacent off-channel pool habitats in this complex have recent collection records for Topeka shiners. While some habitat in these tributaries has been altered (primarily by channelization and sedimentation), current habitat conditions provide most or all of the primary constituent elements consistent with designation as critical habitat. Off-channel pool habitats adjacent to the mainstem of the North Raccoon River also have been discovered to be Topeka shiner habitat, and we propose these areas as well. However, records of Topeka shiners are lacking from the mainstem of the North Raccoon River itself. It is likely that the mainstem provides an important dispersal corridor for the species between tributary streams and off-channel pools adjacent to the mainstem, particularly during high flow events, but the habitat components within the mainstem itself do not provide the primary constituent elements necessary for proposing it for designation as critical habitat. We are proposing 19 stream segments within portions of the following tributaries and their qualifying, adjacent off-channel habitat for designation—Indian Creek, Ditch 57, and Outlet Creek; Camp Creek and West Fork Camp Creek; Prairie Creek; Lake Creek; Purgatory Creek; Cedar Creek, West Cedar Creek, and East Cedar Creek; Short Creek; Hardin Creek; Buttrick Creek, West Buttrick Creek, and East Buttrick Creek; and Elm Branch and Swan Lake Branch. Additionally, qualifying off-channel pool habitat (as described in the section on Primary Constituent Elements) adjacent to the mainstem of the North Raccoon River is proposed for designation.

Boone River Watershed

2. Eagle Creek (one stream segment), Hamilton and Wright Counties, Iowa. Eagle Creek has several recent collections of Topeka shiner even though a large portion of its upper basin has been severely altered by stream channelization and drainage ditch construction. The lower reaches of Eagle Creek still retain much of its natural stream morphology, including meanders and pool habitat. We propose the lower reach of Eagle Creek and qualifying, adjacent off-channel pool habitats for designation. The upper, channelized, portions of Eagle Creek are not proposed for designation.

3. Ditch 3 and Ditch 19 Complex (two stream segments), Wright County, Iowa. The proposed reach of Ditch 3 extends from its confluence with the Boone River, upstream to the Humboldt County line. Ditch 19 also extends upstream from its confluence with Ditch 3 to the Humboldt County line. While the general map descriptions of these streams are termed "ditches" due to channelization activities in the past, both streams have reestablished much of their natural morphology and instream habitat conditions in the recent past, including meanders and pool habitats. Habitat components within these streams are consistent with the Primary Consistent Elements necessary for designation as critical habitat downstream from the Humboldt County line. Topeka shiners have been recently captured from both streams. Qualifying off-channel pool habitat also is proposed. Habitat upstream from the Humboldt County line is highly modified by channelization and is not proposed for designation.

Rock River Watershed

4. Rock River Complex (two stream segments in Iowa), Lyon County, Iowa. The Rock River Complex is comprised of 2 stream segments in Iowa and 28 stream segments in Minnesota. Topeka shiners have recently been captured throughout much of the Rock River watershed, both from streams and adjacent off-channel pools and oxbows. We propose the reach of the Rock River from its confluence with Kanaranzi Creek upstream to the border with Minnesota, and Kanaranzi Creek from the confluence with the Rock River upstream to the Minnesota border. Adjacent, qualifying off-channel pool habitats along both stream segments also are proposed.

5. Little Rock River Complex (one stream segment in Iowa), Lyon and Osceola Counties, Iowa. The Little Rock River Complex is comprised of one stream segment in Iowa and two stream segments in Minnesota. Topeka shiners have recently been captured in portions of the Little Rock River watershed, both from streams and adjacent off-channel pools and oxbows. We propose the reach of the Little Rock River from near the town of Little Rock, Iowa, upstream to the Minnesota border, including qualifying, adjacent off-channel pool habitat.

Kansas

Big Sioux River Watershed

1. Medary Creek Complex (two stream segments in Minnesota), Lincoln County, Minnesota. This complex is comprised of two stream segments in Minnesota and three in South Dakota. Topeka shiners recently have been captured from several localities in this complex. We propose portions of Medary Creek and an unnamed tributary, and adjacent off-channel pool habitat for designation.

2. Flandreau Creek Complex (four stream segments in Minnesota), Lincoln and Pipestone Counties, Minnesota. This complex is comprised of four stream segments in Minnesota and one in South Dakota. Topeka shiners have been recently captured from several localities in this complex. We proposed portions of Flandreau Creek and an unnamed tributary, East Branch Flandreau Creek, Willow Creek, and adjacent off-channel pool habitat for designation.

3. Split Rock/Pipestone/Beaver Creek Complex (18 stream segments in Minnesota), Pipestone and Rock Counties, Minnesota. This complex is comprised of 18 stream segments in Minnesota and 7 in South Dakota. The streams and some of their adjacent off-channel pool habitats in this complex have recent collection records for the Topeka shiner. While some habitat in these tributary streams has been altered, primarily by channelization and sedimentation, current habitat conditions provide most or all of the primary constituent elements.

Cottonwood River Watershed

1. Fox Creek Complex (three stream segments), Chase County, Kansas. This complex is characterized by high quality aquatic habitat. Recent collection records exist from two unnamed tributaries to Fox Creek. We propose for designation the lower reach of Fox Creek from near Strong City, Kansas, upstream through the Tallgrass Prairie National Preserve, an area managed by the U.S. National Park Service, and two unnamed tributary streams in the Preserve.

2. Diamond Creek Complex (eight stream segments), Chase and Morris Counties, Kansas. This complex is generally characterized by high-quality aquatic habitat draining large tracts of tallgrass prairie. However, an upstream portion of the basin has been largely converted to rowcropping, with a subsequent decline in aquatic habitat quality. Recent collection records exist in many of the streams draining the upland prairie habitat. We propose portions of the following streams for designation—Diamond Creek from near its confluence with the Cottonwood River, upstream to the confluence with Sixmile Creek; Gannon Creek and an unnamed tributary; Mulvane Creek; Schaffer Creek and four unnamed tributaries; Dodds Creek; Sixmile Creek; Mulberry Creek and an unnamed tributary; and an unnamed direct tributary to the Cottonwood River immediately adjacent to, and downstream from, the lower reach of Diamond Creek.

3. Middle Creek Complex (three stream segments), Chase County, Kansas. This complex is generally characterized by high-quality aquatic habitat draining large tracts of tallgrass prairie. However, portions of the western sub-basins have been converted to rowcropping. There also are several tributary streams that have had intensive dam construction, resulting in major changes to habitat and fish communities. Following dam development in the Stribby Creek drainage of the Middle Creek Basin, Topeka shiners disappeared both upstream and downstream from the impoundments. Recent collection records only exist from two streams—Collett Creek, and an unnamed tributary to Middle Creek in the lower portion of the basin. We propose portions of the following streams for designation—the lower reach of Middle Creek and two adjoining unnamed tributaries; and Collett Creek.

4. South Fork of the Cottonwood River (South Fork) Complex (15 stream segments), Butler, Chase, and Greenwood Counties, Kansas. This complex is characterized by high-quality aquatic habitat draining large tracts of tallgrass prairie. Many of the streams within this watershed have capture records for the species. There are several tributaries, including one site on the upper mainstem, that were dammed just prior to the Topeka shiner being listed as an endangered species. There have been no recent surveys along these streams to determine if Topeka shiner populations have been affected; however, the species persists in other portions of the watershed. We propose portions of the following streams for designation—the mainstem of the South Fork of the Cottonwood River from its confluence with the Cottonwood River, upstream to near its headwaters; Sharpes Creek; Rock Creek; Den Creek; Crocker Creek and an unnamed tributary; Mercer Creek and two unnamed tributaries; Jack Creek; Thurman Creek and an unnamed tributary; Little Cedar Creek; Shaw Creek; and Bloody Creek, a direct tributary to the Cottonwood River immediately downstream from the South Fork of the Cottonwood River confluence with the mainstem.

5. Mud Creek (one stream segment), Marion County, Kansas. This watershed is characterized by a mosaic of prairie- and cropland. We propose one stream segment in the upper portion of the Mud Creek watershed.

Kansas River Watershed

6. Mill Creek Complex (14 stream segments), Wabaunsee County, Kansas. This complex is generally characterized by high-quality aquatic habitat draining large tracts of tallgrass prairie. However, much of the floodplain areas of mainstem Mill Creek and several of its tributaries have been converted to cropland. This conversion, likely in combination with intensive instream gravel dredging, has resulted in headcutting, bank erosion, and the loss of riparian vegetation. There is a moderate level of tributary dam development, primarily in the headwaters of the basin, and there are riparian and instream areas where cattle are over-wintered, resulting in large inputs of nutrients to the streams during periods of heavy rainfall. Recent collection records of Topeka shiner exist for many of the streams in the basin, but their abundance appears to be declining when compared with capture records from the 1950s–1970s. We propose portions of the following streams for designation—Mill Creek upstream from State Highway 30; West Branch Mill Creek; South Branch Mill Creek; East Branch Mill Creek; Mulberry Creek;

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Spring Creek (a direct tributary to mainstem Mill Creek); Kuenzli Creek; Paw Paw Creek; Pretty Creek; Hendricks Creek; Loire Creek; Illinois Creek; Spring Creek (a tributary to West Branch Mill Creek); and Nehring Creek.

7. Mission Creek (one stream segment), Shawnee and Wabaunsee Counties, Kansas. This stream is characterized by good aquatic habitat draining tallgrass prairie uplands and a cultivated floodplain. Riparian conditions are good and generally appear stable. We propose the reach of Mission Creek upstream from Interstate Highway 70.

8. Deep Creek Complex (two stream segments), Riley County, Kansas. The Deep Creek Complex is characterized by high-quality aquatic habitat draining tallgrass prairie uplands and a partially cultivated floodplain. Riparian conditions are good and generally appear stable except for upstream reaches of Deep Creek where intensive instream gravel mining is occurring, resulting in severe stream bank erosion and headcutting. Recent records of Topeka shiner exist from the Pilsbury Crossing area of Deep Creek, and the lower and mid-reaches of School Creek. We propose portions of the following streams for designation—Deep Creek from near its confluence with the Kansas River, upstream to Interstate Highway 70; and approximately the downstream one-half of School Creek.

9. Wildcat Creek Complex (two stream segments), Riley County, Kansas. The Wildcat Creek Complex is composed of two stream segments and drains a variety of landscapes including cultivated cropland, tallgrass prairie uplands, and woodlands. The lower portion of the proposed downstream reach drains areas of suburban Manhattan, Kansas. This suburban reach retains good habitat quality including pool/riffle complexes, meanders, and stable riparian conditions. Riparian conditions throughout the proposed reaches are generally in good condition. Wildcat Creek's aquatic habitat is moderately impacted by sediment and nutrient inputs from upstream sources. We propose a stream segment near Riley, Kansas, and a reach from near Keats to Manhattan, Kansas. We are proposing to exclude the reach of Wildcat Creek flowing through the Fort Riley Military Installation (see Exclusions from Critical Habitat section).

10. Clarks Creek Complex (five stream segments), Geary County, Kansas. These streams can generally be characterized as having good aquatic habitat draining tallgrass prairie uplands and a partially cultivated floodplain. Riparian conditions are good and generally appear stable. Instream gravel mining occurs at variable levels in this complex. Capture records of Topeka shiner within this complex are recent. We propose portions of the following streams for designation—a mid-basin reach of Clarks Creek; Thomas Creek; Davis Creek; Dry Creek; and West Branch Dry Creek.

11. Lyon Creek Complex (five stream segments), Geary and Dickinson Counties, Kansas. The Lyon Creek Complex is composed of five stream segments that drain variable landscapes. Much of the basin, particularly the western portion, drains a mosaic of prairie uplands and croplands. Instream habitat conditions vary, with some stream reaches degraded by heavy sediment and nutrient loading. Watershed impoundments and ponds are a major feature in several of the sub-drainages of this watershed, particularly in the southeastern portion of the Lyon Creek watershed. We propose portions of the following streams for designation—the lower and mid-basin reaches of Lyon Creek; Rock Springs Creek; Carry Creek and an unnamed tributary; and West Branch Lyon Creek.

12. Walnut Creek (one stream segment), Big Blue River Watershed, Riley County, Kansas. Walnut Creek is characterized by good quality aquatic habitat. However, this reach at times has limited downstream refugia due to the backup of floodwaters from Tuttle Creek Reservoir. The proposed reach is upstream from the flood pool of the reservoir.

Big Blue River Watershed

13. Clear Fork Creek (one stream segment), Marshall and Pottawatomie Counties, Kansas. Clear Fork Creek is a tributary to the Black Vermillion River. Their confluence is in the flood pool of Tuttle Creek Reservoir. This stream is characterized by good aquatic habitat draining primarily tallgrass prairie uplands and a partially cultivated floodplain. Riparian conditions are good and generally appear stable. An apparently stable population of Topeka shiners exists within its mid-to upper reaches. Clear Fork Creek is a relatively long stream upstream of the flood pool of the reservoir, with the upper and middle reaches proposed for designation.

14. North Elm Creek (one stream segment), Marshall County, Kansas. North Elm Creek is a direct tributary to the Big Blue River near the Kansas/Nebraska border. This stream is characterized by moderately degraded instream habitat in many places, as a result of heavy sediment loading. The watershed is predominantly cropland. However, there are known areas within this stream with springs and seeps which likely contribute to the species' continuing existence in this locale. The proposed reach of North Elm Creek is upstream from its confluence with the Big Blue River to near its headwaters.

Smoky Hill River Watershed

15. Willow Creek (one stream segment), Wallace County, Kansas. The available habitat in this stream is a series of spring-fed pools with good water quality, in a watershed drained by shortgrass prairie and areas of dryland and irrigated cropping. Good land stewardship on the property surrounding the permanent pools, in combination with the spring inflows, are likely the primary factors in the continuing conservation of this population.

Minnesota

Big Sioux River Watershed

1. *Medary Creek Complex (two stream segments in Minnesota), Lincoln County, Minnesota.* This complex is comprised of two stream segments in Minnesota and three in South Dakota. Topeka shiners recently have been captured from several localities in this complex. We propose portions of Medary Creek and an unnamed tributary, and adjacent off-channel pool habitat for designation.

2. Flandreau Creek Complex (four stream segments in Minnesota), Lincoln and Pipestone Counties, Minnesota. This complex is comprised of four stream segments in Minnesota and one in South Dakota. Topeka shiners have been recently captured from several localities in this complex. We propose portions of Flandreau Creek and an unnamed tributary, East Branch Flandreau Creek, Willow Creek, and adjacent off-channel pool habitat for designation.

3. Split Rock/Pipestone/Beaver Creek Complex (18 stream segments in Minnesota), Pipestone and Rock Counties, Minnesota. This complex is comprised of 18 stream segments in Minnesota and 7 in South Dakota. The streams and some of their adjacent off-channel pool habitats in this complex have recent collection records for the Topeka shiner. While some habitat in these tributary streams has been altered, primarily by channelization and sedimentation, current habitat conditions provide most or all of the primary constituent elements consistent with designation as critical habitat. We propose for designation portions of—Pipestone Creek and two unnamed tributaries; North Branch Pipestone Creek and an unnamed tributary; and Split Rock Creek and five unnamed tributaries; Beaver Creek and two unnamed tributaries; Little Beaver Creek; Springwater Creek; and adjacent off-channel pool habitat.

Rock River Watershed

4. Rock River Complex (28 stream segments in Minnesota), Murray, Nobles, Pipestone, and Rock Counties, Minnesota. The Rock River Complex is comprised of 28 stream segments in Minnesota and 2 stream segments in Iowa. Many streams in this complex have been impacted by channelization and sedimentation to varying degrees. These streams are characterized by predominantly natural morphology, instream pools, and a number of off-channel and oxbow pools, with some short reaches of channelization. Topeka shiners have recently been captured throughout much of the Rock River watershed, from both streams and adjacent off-channel pools and oxbows. We propose portions of the following stream reaches, along with adjacent off-channel pool habitat for designation—the Rock River from Minnesota/Iowa border, upstream to near Holland, Minnesota, and six unnamed tributaries; East Branch Rock River and an unnamed tributary; Kanaranzi Creek, East Branch Kanaranzi Creek, and three unnamed tributaries; Norwegian Creek and an unnamed tributary; Ash Creek; Elk Creek and an unnamed tributary; Champepadan Creek and three unnamed tributaries; Mound Creek; Poplar Creek and an unnamed tributary; and Chanarambie Creek and North Branch Chanarambie Creek.

5. Little Rock River Complex (two stream segments in Minnesota), Nobles County, Minnesota. The Little Rock River Complex is comprised of two stream segment in Minnesota and one stream segment in Iowa. Topeka shiners have recently been captured in portions of the Little Rock River watershed, both from streams and adjacent off-channel pools and oxbows. We propose the reaches of the Little Rock River from the Minnesota/Iowa border, upstream to near Rushmore, Minnesota, and portions of Little Rock Creek, including adjacent off-channel pool habitat.

6. Mud Creek Complex (three stream segments), Rock County, Minnesota. This complex is comprised of three stream segments. We propose portions of Mud Creek and two unnamed tributaries, and adjacent off-channel pool habitat for designation.

Nebraska

1. Taylor Creek (one stream segment), Elkhorn River Watershed, Madison County, Nebraska. A small population of Topeka shiners exists in this stream, with two recent captures of the species. This is the only stream in Nebraska with capture records for the species since 1989, and is the only proposed critical habitat in the greater Platte River watershed. Taylor Creek is somewhat modified in portions of its watershed, but retains several of the primary constituent elements necessary for designation as critical habitat, including stream morphology, pools, and instream habitat. The proposed reach of Taylor Creek is upstream from its confluence with Union Creek, near Madison, Nebraska.

South Dakota

Big Sioux River Watershed

1. Hidewood Creek (one stream segment), Deuel and Hamlin Counties, South Dakota. We propose to designate critical habitat on Hidewood Creek from its confluence with the Big Sioux River, to upstream of State Highway 15, including adjacent off-channel pool habitat.

2. Peg Munky Run (one stream segment), Deuel County, South Dakota. We propose habitat from State Highway 28, upstream to near Interstate Highway 29, including adjacent off-channel pool habitat. The downstream reach of this stream, to the confluence with the Big Sioux River, provides a possible corridor for dispersal by the species. However, this reach is highly channelized and does not have the necessary primary constituent elements present for proposing designation.

3. Sixmile Creek Complex (two stream segments), Brookings County, South Dakota. Habitat is proposed from near the confluence with the Big Sioux River, to upstream of White, South Dakota. The proposed reaches include portions of Sixmile Creek and an unnamed tributary, including adjacent off-channel pool habitat.

4. Medary Creek Complex (three stream segments), Brookings County, South Dakota. This complex is comprised of three stream segments in South Dakota and two in Minnesota. Topeka shiners have recently been captured from several localities in this complex. We propose for designation—Medary Creek from the confluence with the Big Sioux River, upstream to the South Dakota/Minnesota border; and portions of Deer Creek and an unnamed tributary, and adjacent off-channel pool habitat.

Lower Big Sioux Watershed

5. Spring Creek (one stream segment), Brookings and Moody Counties, South Dakota. The proposed reach runs from the confluence with the Big Sioux River, upstream to the South Dakota/Minnesota border, including adjacent off-channel pool habitat.

6. Flandreau Creek Complex (one stream segment in South Dakota), Moody County, South Dakota. This complex is comprised of one stream segment in South Dakota and four stream segments in Minnesota. Topeka shiners have been recently captured from several localities in this complex in Minnesota. No known collections exist from the reach proposed in South Dakota. However, this reach of stream is a likely dispersal corridor, and could be used as refugia for the species during long periods of drought. We propose for designation—Flandreau Creek, and adjacent off-channel pool habitat, from the confluence with the Big Sioux River, upstream to the South Dakota/Minnesota border.

7. Brookfield Creek (one stream segment), Brookings County, South Dakota. The stream reach proposed for designation runs upstream from the confluence with the Big Sioux River, including adjacent off-channel pool habitat.

8. Slip-Up Creek (one stream segment), Minnehaha County, South Dakota. The stream reach proposed for designation runs from the confluence with the Big Sioux River upstream, and includes adjacent off-channel pool habitat.

9. Split Rock/Pipestone/Beaver Creek Complex (seven stream segments in South Dakota), Minnehaha and Moody Counties, South Dakota. This complex is comprised of 7 stream segments in South Dakota and 18 in Minnesota. The streams and some of their adjacent off-channel pool habitats in this complex have recent collection records for Topeka shiner. While some habitat in these tributary streams has been altered, primarily by channelization and sedimentation, current habitat conditions provide most or all of the primary constituent elements consistent with designation as critical habitat. We propose for designation portions of—Split Rock Creek and an unnamed tributary; Pipestone Creek and an unnamed tributary; West Pipestone Creek; Beaver Creek; Fourmile Creek; and adjacent off-channel pool habitat within these reaches.

Vermillion River Watershed

10. Vermillion River Complex (nine stream segments), Clay, Lincoln,

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McCook, Miner, and Turner Counties, South Dakota. This complex is comprised primarily of long reaches of the Vermillion River mainstem and West Fork Vermillion River. Additionally, several tributaries provide habitat for the species, with conditions varying across the complex. While some aquatic habitat has been altered, primarily by channelization and sedimentation, current habitat conditions provide most or all of the primary constituent elements consistent with designation as critical habitat. Topeka shiners have been captured in several locations within this complex, including the mainstem river reaches. It is likely that the species utilizes these mainstem reaches as dispersal corridors and refugia during periods of drought. We propose portions of the following streams for designation—Vermillion River; West Fork Vermillion River; East Fork Vermillion River; Silver Lake Creek; Camp Creek; Turkey Ridge Creek; Long Creek; Saddle Creek; and Blind Creek.

Lower James River Watershed

11. Lonetree Creek Complex (two stream segments), Hutchinson County, South Dakota. This complex provides the primary constituent elements necessary for designation as critical habitat, including natural stream morphology and instream habitat. We propose portions of Lonetree Creek immediately upstream from its confluence with the James River, and South Branch Lonetree Creek.

12. Dry Creek Complex (two stream segments), Hutchinson County, South Dakota. This complex provides the primary constituent elements necessary for designation as critical habitat, including natural stream morphology and instream habitat. We propose portions of Dry Creek upstream from its confluence with the James River and North Branch Dry Creek.

13. Wolf Creek (one stream segment), Hutchinson County, South Dakota. This stream is characterized by moderate quality aquatic habitat draining a mostly grassy floodplain and primarily cultivated uplands. The stream reach proposed for designation runs upstream from the confluence with the James River.

14. Twelve-mile Creek (one stream segment), Davison, Hanson, and Hutchinson Counties, South Dakota. This stream is characterized by moderate quality aquatic habitat draining a mostly grassy floodplain and primarily cultivated uplands. The stream reach proposed for designation upstream runs from the confluence with the James River.

15. Enemy Creek (one stream segment), Davison and Hanson Counties, South Dakota. This stream is characterized by moderate quality aquatic habitat draining a mostly grassy floodplain and primarily cultivated uplands. The stream reach proposed for designation runs upstream from the confluence with the James River.

16. Rock Creek (one stream segment), Davison, Hanson, and Miner Counties, South Dakota. This stream is characterized by moderate quality aquatic habitat draining a grassy floodplain and primarily cultivated uplands. The stream reach proposed for designation runs upstream from the confluence with the James River.

17. Firesteel Creek Complex (two stream segments), Aurora and Davison Counties, South Dakota. This complex provides the primary constituent elements necessary for designation as critical habitat, including natural stream morphology and instream habitat. We are proposing the reach of Firesteel Creek from near the headwaters of Lake Mitchell upstream to the confluence with West Branch Firesteel Creek and West Branch Firesteel upstream to near Wilmarth Lake.

Upper James River Watershed

18. Pearl Creek Complex (two stream segments), Beadle County, South Dakota. The streams in this complex are characterized by quality aquatic habitat draining a grassy floodplain and primarily cultivated uplands. Riparian conditions are good and appear stable. Recent records of Topeka shiners within these stream segments suggest a healthy and stable population. We propose for designation portions of Pearl Creek from its confluence with the James River upstream past its confluence with Middle Pearl Creek and a reach of Middle Pearl Creek upstream from its confluence with Pearl Creek.

19. Shue Creek (one stream segment), Beadle County, South Dakota. This stream is characterized by quality aquatic habitat draining a grassy floodplain and primarily cultivated uplands. The stream reach proposed for designation runs from Shue Creek's confluence with the James River upstream to Staum Dam.

Exclusions From Critical Habitat

Section 3(5) of the Act defines critical habitat, in part, as areas within the geographical area occupied by the species "on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection." Special management consideration is not required if adequate management or protection is already in place. Adequate special management consideration or protection is provided by a legally operative plan or agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. We use the following three criteria to determine if a plan provides adequate special management or protection—(1) A current plan or agreement must be complete and provide sufficient conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, (*i.e.*, provide for periodic monitoring and revisions as necessary). If all of these criteria are met, then lands covered under the plan would no longer meet the definition of critical habitat.

Missouri—Exclusion Under Section 3(5)(A)

In Missouri, the Topeka shiner historically occurred in small, headwater streams in northern portions of the State, within the Missouri/Grand River Watershed. This area has been designated as Primary Recovery Unit 5 by the Topeka Shiner Recovery Team in the preliminary Draft Topeka Shiner Recovery Plan. The Topeka shiner has been a focal species for planning and conservation efforts on various levels in the State since the mid-1990s. In 1995, the Missouri Department of Conservation (MDC) established a 5-member Topeka shiner Working Group and a 16-member Advisory Group to direct, implement, and facilitate Topeka shiner recovery actions in Missouri. In 1996, MDC, with approval of the Conservation Commission of Missouri (Conservation Commission), listed the Topeka shiner as an endangered species under the State's Wildlife Code (Conservation Commission of Missouri 2001). In January 1999, MDC adopted and approved an Action Plan for the Topeka shiner (*Notropis topeka*) in Missouri (Action Plan) (Missouri Department of Conservation 1999). The Action Plan identifies comprehensive conservation measures and programs necessary to achieve recovery of the Topeka shiner in Missouri. Implementation of recovery efforts for the Topeka shiner in Missouri as outlined in this plan are ongoing. In 1999, the Conservation Commission established the Private Lands Services Division within MDC. Eighty-three MDC staff were redirected to private land

conservation throughout the State, including a minimum of 16 Private Lands Services personnel with responsibility for the counties in Primary Recovery Unit 5. Duties of personnel within this division include the facilitation of conservation efforts on private property throughout Missouri for all federally listed species, including the Topeka shiner. Additionally, there are at least 86 fisheries, forestry, natural history, protection, and wildlife staff delivering services to private landowners as a routine aspect of their job within Primary Recovery Unit 5.

Within the Missouri/Grand Watershed in Missouri, the following Topeka shiner conservation actions have been completed or are ongoing—(1) Establishment of the Missouri Topeka Shiner Working Group to direct the recovery of the species throughout the State; (2) the development and ongoing implementation of the Action Plan; (3) establishment of permanent sampling sites and standardized monitoring of Missouri's Topeka shiner populations and completion of a recent state-wide survey for the species (Gelwicks and Bruenderman 1996); (4) initiation of artificial propagation of Topeka shiners including the development and refinement of captive rearing techniques that will be applicable across the range of the species; (5) completion of genetic analyses of different populations of Topeka shiners in Missouri; (6) incorporation of Topeka shiner recovery and conservation efforts in State strategic planning documents on several different levels (*e.g.*, regional management guidelines, watershed inventory and assessment plans, hatchery plans, conservation area plans, various division work plans) that facilitate the implementation of activities identified in the State Action Plan and the Service's preliminary draft Recovery Plan; (7) development and dissemination of public outreach and education materials throughout Missouri and elsewhere within the range of the species (*e.g.*, Best Management Plans, posters, pamphlets, "critter" collector cards; various articles published in the Missouri Conservationist magazine); (8) completion and dissemination of several ecological and life history studies involving Topeka shiner; (9) securing matching funds from the Service (*e.g.*, Cooperative Endangered Species Conservation Fund, Partners for Fish and Wildlife) to conduct surveys and ecological studies, and for various habitat restoration and enhancement activities; and (10) revision of the Action Plan that will include actions not yet completed since 1999 and those uncompleted actions identified in the Service's preliminary draft Recovery Plan. Revision of the Action Plan will include a detailed implementation schedule following the Service's time table outlined in the Service's preliminary draft Recovery Plan.

Other specific Topeka shiner conservation efforts being undertaken within the Missouri/Grand Watershed in Missouri in accordance with the Action Plan are—(1) Implementation of a landowner incentive program and completion of a study on the potential impacts of Confined Animal Feeding Operations within the Moniteau Creek Watershed; (2) development of 10-year fish monitoring plans for the Moniteau, Bon Femme, and Sugar Creek watersheds; (3) development and implementation of a Sugar Creek sub-basin management plan; (4) development and implementation of a Three Creeks Conservation Area Management Plan within the Bon Femme Creek Watershed; (5) protection and management of Bon Femme Creek by establishing these watersheds as Missouri Department of Natural Resources' Agricultural Non-point Source Pollution Special Area Land Treatment watersheds; and (6) reestablishment or restoration of riparian corridors through tree plantings, natural regeneration, fencing to restrict livestock use of stream banks, creation of alternative livestock watering sources, establishment of warm season grass buffer strips, streambank stabilization activities, and actions outlined in a grazing plan developed for private landowners within the Bon Femme, Moniteau, and Sugar Creek watersheds. Additionally, 10 Missouri Stream Teams formally "adopted" various stretches of occupied Topeka shiner habitat within the Bon Femme, Moniteau, and Sugar Creek watersheds. Stream teams assist in the conservation of the Topeka shiner in these watersheds by promoting local citizen awareness of Topeka shiners and stream health, and by direct involvement with stream cleaning and water quality monitoring activities.

Additional assurances that the Action Plan will be implemented and conservation of the Topeka shiner will be achieved in Missouri is demonstrated by the following actions—(1) To date, at least $105,000 has been expended on recovery actions for the Topeka shiner in Missouri, and is likely to increase to at least $600,000 within the next 10 years; (2) 80 percent (*i.e.*, 12 of 15) of the priority 1 tasks (*i.e.*, those actions deemed necessary to prevent extinction of the species) identified and outlined in the implementation schedule of the Service's preliminary draft Recovery Plan have either been completed or are currently being implemented by MDC in cooperation with us, the Topeka Shiner Recovery Team, and other Federal, State, and private entities; (3) the Private Land Services Division within MDC greatly facilitates the implementation of recovery actions on private property where the species currently exists or where the species may be reintroduced; (4) planned expansion of our Partners for Fish and Wildlife Program within Topeka shiner-occupied habitat to benefit an additional 10–15 landowners at an estimated cost of $100,000 within the next 5 years (Kelly Srigley Werner, Fish and Wildlife Service Missouri Private Lands Coordinator, pers. comm.); (5) commitments by MDC Fisheries and Natural History divisions staff to help coordinate and implement Topeka shiner recovery efforts between MDC and Federal, State, and private entities, and MDC's Topeka Shiner Recovery Coordinator; (6) active participation by MDC on the Topeka Shiner Recovery Team; and (7) revisions to the Action Plan, scheduled for completion within the current calendar year, will focus on incorporating any of the recovery actions outlined in the Service's preliminary draft Recovery Plan that are currently not addressed. The scientific soundness of MDC's Action Plan was further validated by us and the Recovery Team when the Action Plan's monitoring protocol and recommendations for reducing and eliminating threats to the Topeka shiner were incorporated, in part, into the Service's preliminary draft Recovery Plan.

We evaluated the Action Plan and associated Topeka shiner conservation actions that have been completed, ongoing, or planned in Missouri against our three criteria used to determine whether lands require "special management considerations or protections," under the definition of critical habitat in section 3 of the Act. The Action Plan clearly provides conservation benefits to the species; the Action Plan provides assurances that conservation efforts will be implemented since MDC has authority to implement the plan, has put in place the funding and staffing necessary to implement the Plan, and has completed or begun work on many significant elements of the Plan; and the Action Plan and efforts of MDC will be effective since they include biological goals, restoration objectives, and monitoring consistent with the preliminary draft

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Recovery Plan. Therefore, we determined that all Topeka shiner areas in Missouri (Primary Recovery Unit 5) do not meet the definition of critical habitat because there is adequate special management or protection, and we did not include them in this proposal.

Fort Riley, Kansas (Department of the Army)—Exclusion Under Section 3(5)(A)

The Fort Riley Military Installation, located in Riley and Geary Counties, Kansas, is primarily an infantry and tank training facility. Fort Riley lies within the Flint Hills Region of Kansas and has several low order streams that drain to the Kansas River. Presently, the Topeka shiner occurs in four streams on Fort Riley—Wildcat Creek and its tributaries, Wind Creek, Little Arkansas Creek, and Sevenmile Creek. These streams are within Primary Recovery Unit 1, as designated by the preliminary draft Topeka Shiner Recovery Plan.

The Topeka shiner has been a focal species for planning and conservation efforts on Fort Riley since the early 1990s, with numerous stream surveys occurring from this time to the present. Development of management guidelines for the species was initialized in 1994. The first Endangered Species Management Plan for Topeka Shiner on Fort Riley was formalized in 1997. This management plan was revised and incorporated into Fort Riley's Integrated Natural Resource Management Plan 2001–2005, which was formalized July 30, 2001 (Keating, Ft. Riley Natural Resources Division, pers. comm. 2002). This management plan outlines and describes—conservation goals; management prescriptions and actions; a monitoring plan; estimates of time, cost, and personnel needed; a checklist of tasks; and an annual report (Department of the Army 2001).

We evaluated the Fort Riley Endangered Species Management Plan for Topeka Shiner and the Fort's associated Topeka shiner conservation actions that have been completed, ongoing, or planned, against our three criteria used to determine whether lands require "special management considerations or protections," under the definition of critical habitat in section 3 of the Act. This management plan provides conservation benefits to the species; the plan provides assurances that conservation efforts will be implemented; and the plan and efforts of the Army will be effective since they include biological goals, restoration objectives, and monitoring consistent with the draft Recovery Plan. Therefore, we determine that all Topeka shiner areas on Fort Riley do not meet the definition of critical habitat because there is adequate special management or protection, and we did not include them in this proposal.

Land Ownership

The vast majority (approximately 98 percent) of proposed critical habitat is in private ownership. Private lands are primarily used for grazing and agriculture, but also include some urban, suburban, and industrial areas. Additionally, there are small, scattered tracts of State and Federal lands.

Effects of Critical Habitat Designation

Designating critical habitat does not, in itself, lead to the recovery of a listed species. The designation does not establish a reserve, create a management plan, establish numerical population goals, prescribe specific management practices (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery and conservation plans, and through section 7 consultation and section 10 permits.

However, designation of critical habitat can help focus conservation activities for listed species by identifying areas essential to conserve the species. Designation of critical habitat also alerts the public, as well as land-managing agencies, to the importance of these areas. As a result of critical habitat designation, Federal agencies may be able to prioritize landowner incentive programs such as Conservation Reserve Program enrollment and other private landowner agreements that benefit the Topeka shiner. Critical habitat designation also may assist States and local governments in prioritizing their conservation and land management programs.

Section 7 Consultation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which apply only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. Individuals, organizations, States, local governments, and other non-Federal entities are not affected by the designation of critical habitat unless their actions occur on Federal lands, require Federal authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including us, to insure that their actions are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. This requirement is met through section 7 consultation under the Act. Adverse modification might result from alterations that include, but are not limited to, adverse changes to the physical or biological features, *i.e.*, the primary constituent elements that were the basis for determining the habitat to be critical.

Conference for Proposed Critical Habitat

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to result in the destruction or adverse modification of proposed critical habitat. The regulations for interagency cooperation regarding proposed critical habitat are codified at 50 CFR 402.10. During a conference on the effects of a Federal action on proposed critical habitat, we make nonbinding recommendations on ways to minimize or avoid adverse effects of the action. We document these recommendations and any conclusions reached in a conference report provided to the Federal agency and to any applicant involved.

If requested by the Federal agency and deemed appropriate by us, the conference may be conducted in accordance with the procedures for formal consultation under 50 CFR 402.14. We may adopt an opinion issued at the conclusion of the conference as our biological opinion when the critical habitat is designated by final rule, but only if new information or changes to the proposed Federal action would not significantly alter the content of the opinion.

Consultation for Designated Critical Habitat

If a Federal action may affect a listed species or its designated critical habitat, the action agency must initiate consultation with us (50 CFR 402.14). Through this consultation, we would advise the agency whether the action would likely jeopardize the continued existence of the species or adversely modify its critical habitat.

When we issue a biological opinion that concludes that an action is likely to result in the destruction or adverse modification of critical habitat, we must provide reasonable and prudent alternatives to the action, if any are identifiable. Reasonable and prudent alternatives are actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the proposed action, are

consistent with the scope of the action agency's authority and jurisdiction, are economically and technologically feasible, and would likely avoid the destruction or adverse modification of critical habitat (50 CFR 402.02).

Reinitiation of Prior Consultations

A Federal agency may request a conference with us for any previously reviewed action that is likely to destroy or adversely modify proposed critical habitat and over which the agency retains discretionary involvement or control, as described above under "Conference for Proposed Critical Habitat." Following designation of critical habitat, regulations at 50 CFR 402.16 require a Federal agency to reinitiate consultation for previously reviewed actions that may affect critical habitat and over which the agency has retained discretionary involvement or control.

Federal Actions That May Destroy or Adversely Modify Topeka Shiner Critical Habitat

Section 4(b)(8) of the Act requires us to include in any proposed or final regulation that designates critical habitat a description and evaluation of those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. A wide range of Federal activities have the potential to destroy or adversely modify critical habitat for the Topeka shiner. These activities may include land and water management actions of Federal agencies (*e.g.*, U.S. Army Corps of Engineers, Natural Resources Conservation Service, and Bureau of Reclamation), and related or similar actions of other federally regulated projects (*e.g.*, road and bridge construction activities by the Federal Highway Administration; dredge and fill projects, sand and gravel mining, and bank stabilization activities conducted or authorized by the U.S. Army Corps of Engineers; and National Pollutant Discharge Elimination System permits authorized by the Environmental Protection Agency). Specifically, activities that may destroy or adversely modify critical habitat are those that alter the primary constituent elements (defined above) to an extent that the value of critical habitat for both the survival and recovery of the Topeka shiner is appreciably reduced. Such activities include, but are not limited to:

(1) Significantly and detrimentally altering the minimum flow or the natural flow regime of any of the designated stream segments. Possible actions include groundwater pumping, impoundment, and water diversion. We note that flow reductions that result from actions affecting tributaries of the proposed stream reaches also may destroy or adversely modify critical habitat;

(2) Significantly and detrimentally altering the characteristics of the riparian zone in any of the designated stream segments. Possible actions would include vegetation manipulation, timber harvest, road construction and maintenance, livestock grazing, off-road vehicle use, powerline or pipeline construction and repair, mining, and urban and suburban development;

(3) Significantly and detrimentally altering the channel morphology of any of the stream segments listed above. Possible actions include channelization, impoundment, road and bridge construction, deprivation of substrate source, destruction and alteration of riparian vegetation, reduction of available floodplain, removal of gravel or floodplain terrace materials, reduction in stream flow, and excessive sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances;

(4) Significantly and detrimentally altering the water chemistry in any of the designated stream segments. Possible actions include release of chemical or biological pollutants into the surface water or connected groundwater at a point source or by dispersed release (non-point); and

(5) Introducing, spreading, or augmenting nonnative aquatic species in any of the designated stream segments. Possible actions include fish stocking for sport, aesthetics, biological control, or other purposes; use of live bait fish; aquaculture; construction and operation of canals; and interbasin water transfers.

Not all of the identified activities are necessarily of current concern within the range of the Topeka shiner; however, they do indicate the potential types of activities that will require consultation in the future and, therefore, may be affected by critical habitat designation. We note that the areas we propose for designation as critical habitat for the Topeka shiner are occupied by the species, and actions that adversely modify critical habitat may also jeopardize the continued existence of the species.

As discussed previously, Federal actions that are found likely to destroy or adversely modify critical habitat may often be modified, through development of reasonable and prudent alternatives, in ways that will remove the likelihood of destruction or adverse modification of critical habitat. Such project modifications may include such things as adjusting the timing of projects to avoid sensitive periods for the species and its habitat; replanting riparian vegetation; minimizing work and vehicle use in the wetted channel; restricting riparian and upland vegetation clearing; fencing to exclude livestock and limit recreational use; use of alternative livestock management techniques; avoidance of pollution; minimizing ground disturbance in the floodplain; use of alternative material sources; storage of equipment and staging of operations outside the floodplain; use of sediment barriers; access restrictions; and use of best management practices to minimize erosion.

If you have questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Kansas Ecological Services Field Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Division of Endangered Species, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (telephone 303–236–7400; facsimile 303–236–0027).

A preliminary draft recovery plan for the Topeka shiner has been developed and is undergoing internal review prior to being formally proposed, peer-reviewed by scientists, and published to solicit public comments. The recovery plan, when finalized, will provide recommendations on recovering this species, including recommendations on management of critical habitat. Should the recovery plan recommend adding or deleting areas as critical habitat, we will consider whether a future revision of critical habitat is appropriate.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating these areas as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of designating these areas as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the

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draft economic analysis with a notice in the **Federal Register**, and, if necessary, reopen the comment period at the time to accept comments on the economic analysis or further comments on the proposed rule. The economic analysis will be available at *http://mountain-prairie.fws.gov/topekashiner/ch*. This economic analysis will serve as the basis of our analysis under section 4(b)(2), and of any exclusions. As this economic analysis is not yet completed, we are not yet able to identify proposed exclusions under section 4(b)(2) in this proposed rule. We will review this analysis, public comments on the analysis and this proposed rule, and the benefits of designating areas as critical habitat; we may identify certain proposed areas that should be excluded from the final critical habitat designation, provided these exclusions will not result in the extinction of the species. As a result, the final critical habitat determination may differ from this proposal.

American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

In accordance with the Presidential Memorandum of April 29, 1994, we believe that, to the maximum extent possible, tribes should be the governmental entities to manage their lands and tribal trust resources. To this end, we support tribal measures that preclude the need for conservation regulations, and we provide technical assistance to Indian tribes who wish assistance in developing and expanding tribal programs for the management of healthy ecosystems so that Federal conservation regulations, such as designation of critical habitat, on tribal lands are unnecessary. The Presidential Memorandum of April 29, 1994, also requires us to consult with the tribes on matters that affect them, and section 4(b)(2) of the Act requires us to gather information regarding the designation of critical habitat and the effects thereof from all relevant sources, including the tribes.

In examining the geographic extent of areas proposed for designation as critical habitat, we did not identify any tribal trust resources, tribally owned fee lands, or tribal rights that might be affected by the designation. Our South Dakota Field Office corresponded with the Bureau of Indian Affairs (BIA), Great Plains Regional Office, which identified two potentially affected tribes, the Sisseton—Wahpeton Sioux Tribe and the Flandreau Santee Sioux Tribe. The BIA communicated that these tribes do have land held in trust, either by the tribe or individuals, within the general range of the Topeka shiner, but did not provide locality information. We further contacted the tribes. The Sisseton—Wahpeton Sioux Tribe responded with general information on potential Topeka shiner habitat on their tribal lands and requested funding from the Service and the BIA for surveys for the Topeka shiner. However, up to the time of this publication, no maps identifying the location of these trust lands have been provided. Therefore, we are unable to identify any tribal trust lands potentially proposed for designation as critical habitat. We do not anticipate that proposal of critical habitat on non-tribal lands will result in any impact on tribal trust resources or the exercise of tribal rights. In complying with our tribal trust responsibilities, we must communicate with all tribes potentially affected by the designation. Therefore, we are soliciting additional information during the comment period on potential effects to the tribes or tribal resources that may result from critical habitat designation.

Public Comments Solicited

We intend for any final action resulting from this proposal to be as accurate and effective as possible. Therefore, we are soliciting comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party regarding this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of excluding areas will outweigh the benefits of including areas as critical habitat;

(2) Specific information on the abundance of the Topeka shiner and the amount and distribution of its habitat;

(3) Areas that are essential to the conservation of the species and that may require special management considerations or protection and why;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and

(6) Economic and other values associated with designating critical habitat for the Topeka shiner, such as those derived from nonconsumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection, increased soil retention, existence values, and reductions in administrative costs).

Our practice is to make comments that we receive on this rulemaking, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, including the individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following:

(1) Are the requirements in the document clearly stated?

(2) Does the proposed rule contain technical language or jargon that interferes with the clarity?

(3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document?

(5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to—Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail comments to *Exsec@ios.doi.gov*.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule immediately following publication in the **Federal Register** to these peer reviewers. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat. We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings and Meetings

The Act provides for one or more public hearings or meetings on this proposal, if requested. Given the large geographic extent covered by this proposal, we have scheduled six public meetings.

Public meetings will be held at:

1. Manhattan, KS, on September 4, 2002, at the Ramada Inn, Landon Room, 17th and Anderson Avenue;
2. Bethany, MO, on September 5, 2002, at the Bethany Community Center, 105 North 25th Street;
3. Fort Dodge, IA, on September 9, 2002, at the Best Western Starlite Village, 1518 3rd Avenue NW.;
4. Pipestone, MN, on September 10, 2002, at the Pipestone National Monument;
5. Sioux Falls, SD, on September 11, 2002, at the Country Inn and Suites, Riverfront Room, 200 East 8th Street;
6. Madison, NE., on September 12, 2002, at the Shelter House, 300 West 10th Street.

All public meetings will run from 6 p.m. to 9 p.m.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). The Service is preparing a draft economic analysis of this proposed rule, and will use this analysis to meet the requirement of section 4(b)(2) of the ESA to determine the economic consequences of designating the specific areas as critical habitat and excluding any area from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless failure to designate such areas as critical habitat will lead to the extinction of the Topeka shiner. This analysis will be available for public comment before finalizing this designation. The availability of the draft economic analysis will be announced in the **Federal Register**.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis, we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is expected to result in few, if any, restrictions in addition to those currently in existence. As indicated on Table 1 (*see Critical Habitat Designation*), we designated property owned by Federal and State governments, and private entities.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act, and section 10 of the Rivers and Harbors Act;

(2) Regulation of water flows, water delivery, and diversion by Federal agencies;

(3) Sale, exchange, or lease of lands owned by a Federal agency;

(4) Road construction and maintenance and right-of-way designation;

(5) Funding of low-interest loans to facilitate the construction of low-income housing by the Department of Housing and Urban Development;

(6) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(7) Promulgation of air and water quality standards under the Clean Air Act and the Clean Water Act and the cleanup of toxic waste and superfund sites under the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation, and Liability Act by the U.S. Environmental Protection Agency;

(8) Issuance of Endangered Species Act section 10(a)(1)(B) permits by the Fish and Wildlife Service; and

(9) Activities funded, carried out, or authorized by any Federal agency.

Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities in areas of critical habitat occupied by the species. In the economic analysis, we will evaluate whether designation of critical habitat will have an effect on activities carried out by small entities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause—(a) Any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, Tribal, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (Executive Order 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this proposed rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) the Service will use the economic analysis to further evaluate this situation.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This determination will not "take" private property and will not alter the long-term value of private property. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of Topeka shiner as defined in section 9 of the Act and its implementing regulations (50 FR 17.31). Due to current public knowledge of the species' protection, the prohibition against take of Topeka shiner both within and outside of the proposed areas, and the fact that critical habitat

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provides no incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. While real estate market values may temporarily decline following designation, due to the perception that critical habitat designation may impose additional regulatory burdens on land use, we expect any such impacts to be short term. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to utilize their property in ways consistent with the conservation of the Topeka shiner.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, the Service requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in Iowa, Kansas, Minnesota, Missouri, Nebraska, and South Dakota, as well as during the listing process. We will continue to coordinate any future designation of critical habitat for Topeka shiner with the appropriate State agencies. The designation of critical habitat for the Topeka shiner imposes few additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, doing so may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Act and plan public meetings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Topeka shiner.

Paperwork Reduction Act of 1995

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. Information collections associated with Endangered Species permits are covered by an existing OMB approval and are assigned control number 1018–0094, which expires on July 31, 2004. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

National Environmental Policy Act

Our position is that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the National Environmental Policy Act (NEPA) in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F .3d 1495 (Ninth Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)). However, when the range of the species includes States within the 10th Circuit, pursuant to the 10th Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service*, 75 F .3d 1429 (10th Cir. 1996), we will complete a NEPA analysis with an Environmental Assessment. The range of the Topeka shiner includes States within the 10th Circuit; therefore, we are completing an Environmental Assessment and will announce its availability in the **Federal Register**.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, *"Government-to-Government Relations with Native American Tribal Governments"* (59 FR 22951), Executive Order 13175, and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We are required to assess the effects of critical habitat designation on tribal lands and tribal trust resources. We believe that no tribal lands or tribal trust resources are essential for the conservation of the Topeka shiner.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Kansas Ecological Services Field Office (*see* **ADDRESSES**).

Author

The primary author of this proposed rule is Vernon Tabor, Kansas Ecological Services Field Office (*see* **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h), by revising the entry for "Shiner, Topeka" under "FISHES" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
FISHES							

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
Shiner, Topeka	(*Notropis topeka=tristis*).	U.S.A. (IA, KS, MN, MO, NE, SD).	Entire	E	654	17.95(e)	N/A
*	*	*	*	*	*	*	*

3. Amend § 17.95(e) by adding critical habitat for the Topeka shiner (*Notropis topeka*) in the same alphabetical order as this species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.* * * *

Topeka Shiner (*Notropis topeka*)

(1) Critical habitat is depicted for Calhoun, Carroll, Dallas, Greene, Hamilton, Lyon, Osceola, Sac, Webster, and Wright Counties, Iowa; Butler, Chase, Dickinson, Geary, Greenwood, Marion, Marshall, Morris, Pottawatomie, Riley, Shawnee, Wabaunsee, and Wallace Counties, Kansas; Lincoln, Murray, Nobles, Pipestone, and Rock Counties, Minnesota; Madison County, Nebraska; Aurora, Beadle, Brookings, Clay, Davison, Deuel, Hamlin, Hanson, Hutchinson, Lincoln, McCook, Miner, Minnehaha, Moody, and Turner Counties, South Dakota, on the maps and as described below.

(2) Critical habitat includes all proposed stream channels up to the bankfull discharge elevation. Additionally, in Iowa, Minnesota, and the Big Sioux River drainage of South Dakota, the off-channel, side-channel, and oxbow pools at elevations at or below the bankfull discharge elevation. Bankfull discharge is the flow at which water begins to leave the channel and move into the floodplain and generally occurs with a frequency of every 1 to 2 years.

(3) Within these areas, the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, and reproduction. These elements include the following for Topeka shiner—(1) Streams most often with permanent flow, but that can become intermittent during dry periods; (2) Side channel pools and oxbows either seasonally connected to a stream or maintained by groundwater inputs, at a surface elevation equal to or lower than the bankfull discharge stream elevation. The bankfull discharge is the flow at which water begins leaving the channel and flowing into the floodplain; this level is generally attained every 1 to 2 years. Bankfull discharge, while a function of the size of the stream, is a fairly constant feature related to the formation, maintenance, and dimensions of the stream channel; (3) Streams and side channel pools with water quality necessary for unimpaired behavior, growth, and viability of all life stages. (The water quality components include—temperature, turbidity, conductivity, salinity, dissolved oxygen, pH, chemical contaminants, and other chemical characteristics); (4) Living and spawning areas for adult Topeka shiner with pools or runs with water velocities less than 0.5 meters/second (approx. 20 inches/second) and depths ranging from 0.1–2.0 meters (approx. 4–80 inches); (5) Living areas for juvenile Topeka shiner with water velocities less than 0.5 meters/second (approx. 20 inches/second) with depths less than 0.25 meters (approx. 10 inches) and moderate amounts of instream aquatic cover, such as woody debris, overhanging terrestrial vegetation, and aquatic plants; (6) Sand, gravel, cobble, and silt substrates with amounts of fine sediment and substrate embeddedness that allows for nest building and maintenance of nests and eggs by native *Lepomis* sunfishes (green sunfish, orangespotted sunfish, longear sunfish) and Topeka shiner as necessary for reproduction, unimpaired behavior, growth, and viability of all life stages; (7) An adequate terrestrial, semiaquatic, and aquatic invertebrate food base that allows for unimpaired growth, reproduction, and survival of all life stages; (8) A hydrologic regime capable of forming, maintaining, or restoring the flow periodicity, channel morphology, fish community composition, off-channel habitats, and habitat components described in the other primary constituent elements; and (9) Few or no nonnative predatory or competitive nonnative species present.

(4) Critical habitat was identified using—the Fifth Principal Meridian in Iowa, Missouri, and Minnesota; the Sixth Principal Meridian in Kansas and Nebraska; U.S. Geological Survey 30*60 minute (1:100,000) quadrangle maps; the National Hydrography Dataset (1:100,000) for hydrology; and Digital Line Graph (1:2,000,000) for county and State boundaries.

(5) Map 1 follows:

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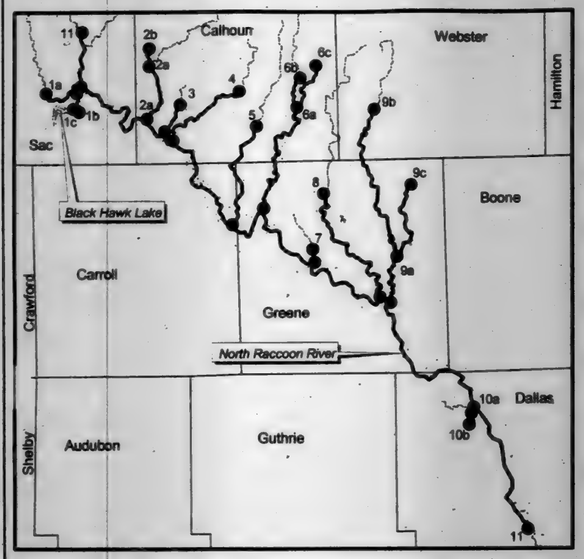
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Map 1

General Locations of Proposed Critical Habitat for the Topeka Shiner

(Notropis topeka)

Iowa - North Raccoon River Watershed



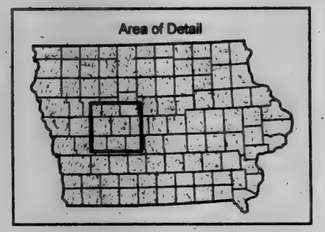
Reaches

1a. Indian Creek
1b. Ditch 57
1c. Outlet Creek
2. Camp Creek
3. Prairie Creek
4. Lake Creek
5. Purgatory Creek
6a. Cedar Creek
6b. West Cedar Creek
6c. East Cedar Creek
7. Short Creek
8. Hardin Creek
9a. Buttrick Creek
9b. West Buttrick Creek
9c. East Buttrick Creek
10a. Elm Branch
10b. Swan Lake Branch
11. Off-channel and side channel pools adjacent to North Raccoon River

5 0 5 10 15 20 Miles

N

Proposed Critical Habitat
Not Proposed as Critical Habitat
County Lines



DISCLAIMER

This map is a graphical representation of Topeka shiner critical habitat and is provided for illustrative purposes only. The map and GIS files used to create this map are not the definitve source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible (given existing time, resources, data, and display constraints), the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.

North Raccoon River Complex

1a. Indian Creek from its confluence with the North Raccoon River (T87N, R35W, Sec. 24), upstream through T87N, R35W, Sec. 29.

1b. Tributary to Indian Creek (Ditch 57), from their confluence (T87N, R35W, Sec. 23), upstream to the confluence with the outlet creek from Black Hawk Lake (T86N, R36W, Sec. 1).

1c. Outlet Creek from Black Hawk Lake from its confluence with Ditch 57 (T86N, R36W, Sec. 1), upstream to lake outlet (T87N, R35W, Sec. 35).

2a. Camp Creek from its confluence with the North Raccoon River (T86N, R34W, Sec. 7), upstream through T87N, R34W, Sec. 8.

2b. West Fork Camp Creek from its confluence with Camp Creek (T87N, R34W, Sec. 8), upstream through T88N, R34W, Sec. 32.

3. Prairie Creek from its confluence with the North Raccoon River (T86N, R34W, Sec. 16), upstream through T87N, R34W, Sec. 35.

4. Lake Creek from its confluence with the North Raccoon River (T86N, R34W, Sec. 23), upstream through T87N, R33W, Sec. 25.

5. Purgatory Creek from its confluence with the North Raccoon River (T84N, R33W, Sec. 11), upstream through T86N, R32W, Sec. 17.

6a. Cedar Creek from its confluence with the North Raccoon River (T85N, R32W, Sec. 33), upstream to the confluence of West Cedar Creek and East Cedar Creek (T87N, R31W, Sec. 31).

6b. West Cedar Creek from its confluence with East Cedar Creek (T87N, R31W, Sec. 31), upstream through T87N, R31W, Sec. 18.

6c. East Cedar Creek from its confluence with West Cedar Creek (T87N, R31W, Sec. 31), upstream through T87N, R31W, Sec. 9.

7. Short Creek from its confluence with the North Raccoon River (T84N, R31W, Sec. 33), upstream through T84N, R31W, Sec. 28.

8. Hardin Creek from its confluence with the North Raccoon River (T83N, R30W, Sec. 23), upstream through T85N, R31W, Sec. 27.

9a. Buttrick Creek from its confluence with the North Raccoon River (T83N, R30W, Sec. 26), upstream to the confluence of West Buttrick Creek and East Buttrick Creek (T84N, R30W, Sec. 25).

9b. West Buttrick Creek, from its confluence with East Buttrick Creek (T84N, R30W, Sec. 25), upstream through T86N, R30W, Sec. 3.

9c. East Buttrick Creek, from its confluence with West Buttrick Creek (T84N, R30W, Sec. 25), upstream through T85N, R29W, Sec. 20.

10a. Elm Branch from its confluence with the North Raccoon River (T81N, R28W, Sec. 28), upstream to its confluence with Swan Lake Branch T81N, R28W, Sec. 28.

10b. Swan Lake Branch from its confluence with Elm Branch (T81N, R28W, Sec. 28), upstream through T80N, R28W, Sec. 4.

11. Off-channel and side-channel pools (that meet the previously described criteria) adjacent to the North Raccoon River from U.S. Highway 6 (T79N, R27W, Sec. 32), upstream to U.S. Highway 20 (T88N, R36W, Sec. 24).

(6) Map 2 follows:

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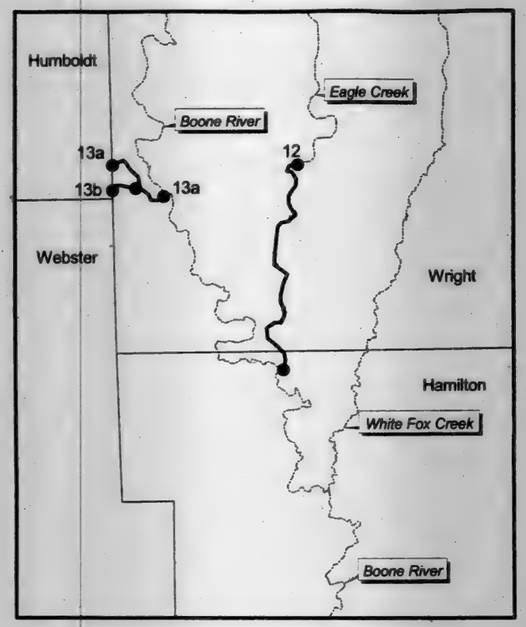
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Map 2

General Locations of Proposed Critical Habitat for the Topeka Shiner

(Notropis topeka)

Iowa - Boone River Watershed

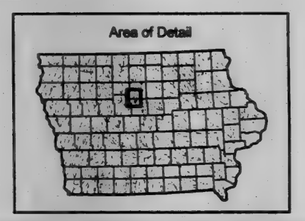


Reaches

12. Eagle Creek
13a. Ditch 3
13b. Ditch 19

5 0 5 Miles

Area of Detail



Proposed Critical Habitat
Not Proposed as Critical Habitat
County Lines

N

CLAIMER

map is a graphical representation of Topeka shiner critical habitat and is provided for illustrative poses only. The map and GIS files used to create this map are not the definitve source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible (given existing time, resources, data, and display constraints), the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.

12. Eagle Creek from its confluence with the Boone River (T89N, R25W, Sec. 6), upstream through T91N, R25W, Sec. 30.

Ditch 3 and Ditch 19 Complex

13a. Ditch 3 from its confluence with the Boone River (T91N, R26W, Sec. 32), upstream through T91N, R26W, Sec. 30.

13b. Ditch 19 from its confluence with Ditch 3 (T91N, R26W, Sec. 31), upstream through T91N, R26W, Sec. 31.

(7) Map 3 follows:

BILLING CODE 4310-55-P

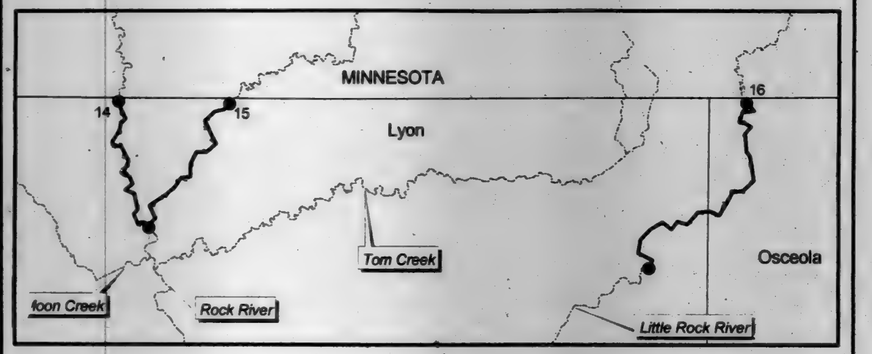
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Map 3

General Locations of Proposed Critical Habitat for the Topeka Shiner

(Notropis topeka)

Iowa - Rock River Watershed



CLAIMER

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Rock River Complex

14. Rock River from its confluence with Kanaranzi Creek (T100N, R45W, Sec. 28), upstream to the Iowa/Minnesota State border (T100N, R45W, Sec. 8).

15. Kanaranzi Creek from its confluence with the Rock River (T100N, R45W, Sec. 28), upstream to the Iowa/Minnesota State border (T100N, R45W, Sec. 11).

Little Rock River Complex

16. Little Rock River from State Highway 9 (T100N, R43W, Sec. 34), upstream to the Iowa/Minnesota State border (T100N, R42W, Sec. 7).

(8) Map 4 follows:

BILLING CODE 4310-55-P

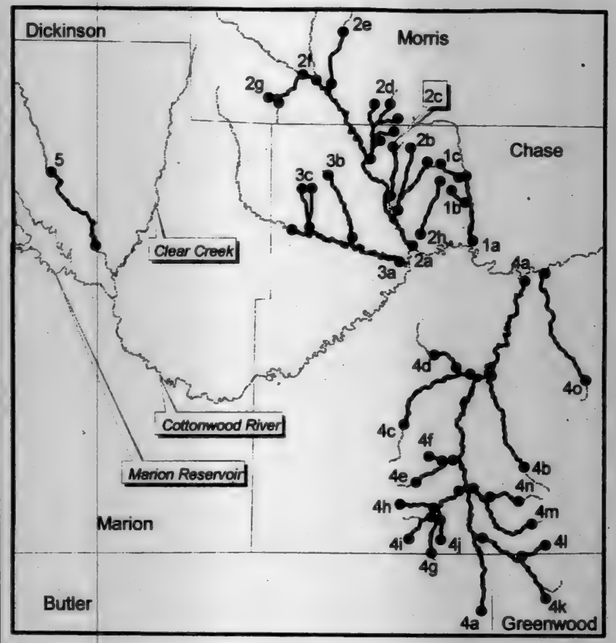
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Map 4

General Locations of Proposed Critical Habitat for the Topeka Shiner

(Notropis topeka)

Kansas - Cottonwood River Watershed



Reaches

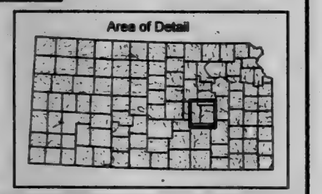
1a. Fox Creek
1b. Unnamed tributary
1c. Unnamed tributary
2a. Diamond Creek
2b. Gannon Creek
2c. Mulvane Creek
2d. Schaffer Creek
2e. Dodds Creek
2f. Sixmile Creek
2g. Mulberry Creek
2h. Unnamed tributary
3a. Middle Creek
3b. Collett Creek
3c. Unnamed tributary
4a. South Fork
4b. Sharpes Creek
4c. Rock Creek
4d. Den Creek
4e. Crocker Creek
4f. Unnamed tributary
4g. Mercer Creek
4h. Jack Creek
4i. Unnamed tributary
4j. Unnamed tributary
4k. Thurman Creek
4l. Unnamed tributary
4m. Little Cedar Creek
4n. Shaw Creek
4o. Bloody Creek
5. Mud Creek

5 0 5 10 Miles

Proposed Critical Habitat
Not Proposed as Critical Habitat
County Lines

N

Area of Detail



CLAIMER

map is a graphical representation of Topeka shiner critical habitat and is provided for illustrative ...poses only. The map and GIS files used to create this map are not the definitve source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible (given existing time, resources, data, and display constraints), the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.

Fox Creek Complex

1a. Fox Creek from U.S. Highway 50 (T19S, R8E, Sec. 17), upstream through T18S, R8E, Sec. 29.

1b. Unnamed tributary to Fox Creek, from their confluence (T18S, R8E, Sec. 32), upstream through T18S, R8E, Sec. 31.

1c. Unnamed tributary to Fox Creek, from their confluence (T18S, R8E, Sec. 29), upstream through T18S, R8E, Sec. 19.

Diamond Creek Complex

2a. Diamond Creek from U.S. Highway 50 (T19S, R7E, Sec. 14), upstream to its confluence with Sixmile Creek (T17S, R6E, Sec. 21).

2b. Gannon Creek from its confluence with Diamond Creek (T19S, R7E, Sec. 10), upstream through T18S, R7E, Sec. 24; and an unnamed tributary to Gannon Creek, from their confluence (T18S, R7E, Sec. 34), upstream through T18S, R7E, Sec. 14.

2c. Mulvane Creek from its confluence with Diamond Creek (T18S, R7E, Sec. 33), upstream through T18S, R7E, Sec. 16.

2d. Schaffer Creek from its confluence with Diamond Creek (T18S, R7E, Sec. 17), upstream through T17S, R7E, Sec. 33; an unnamed tributary stream from its confluence with Schaffer Creek (T18S, R7E, Sec. 5), upstream through T17S, R7E, Sec. 32; an unnamed tributary stream from its confluence with Schaffer Creek (T18S, R7E, Sec. 5), upstream through T18S, R7E, Sec. 3; an unnamed tributary stream from its confluence with Schaffer Creek (T18S, R7E, Sec. 8), upstream through T18S, R7E, Sec. 4; and an unnamed tributary stream from its confluence with Schaffer Creek (T18S, R7E, Sec. 8), upstream through T18S, R7E, Sec. 8.

2e. Dodds Creek from its confluence with Diamond Creek (T17S, R6E, Sec. 26), upstream through T17S, R6E, Sec. 1.

2f. Sixmile Creek from its confluence with Diamond Creek (T17S, R6E, Sec. 22), upstream to its confluence with Mulberry Creek (T17S, R6E, Sec. 21).

2g. Mulberry Creek from its confluence with Sixmile Creek (T17S, R6E, Sec. 21), upstream through T17S, R6E, Sec. 30; and an unnamed tributary to Mulberry Creek from their confluence (T17S, R6E, Sec. 30), upstream through T17S, R6E, Sec. 30.

2h. Unnamed tributary to the Cottonwood River from their confluence (T19S, R7E, Sec. 12), upstream through T18S, R8E, Sec. 30.

Middle Creek Complex

3a. Middle Creek from U.S. Highway 50 (T19S, R7E, Sec. 22), upstream to its confluence with Stribby Creek (T19S, R6E, Sec. 8).

3b. Collett Creek from its confluence with Middle Creek (T19S, R7E, Sec. 18), upstream through T18S, R6E, Sec. 26).

3c. Unnamed tributary to Middle Creek, from their confluence (T19S, R6E, Sec. 10), upstream through T18S, R6E, Sec. 33); and an unnamed tributary to the first tributary, from their confluence, upstream through T18S, R6E, Sec. 34.

South Fork of the Cottonwood River (South Fork) Complex

4a. South Fork from its confluence with the Cottonwood River (T19S, R8E, Sec. 25), upstream through T23S, R8E, Sec. 21.

4b. Sharpes Creek from its confluence with the South Fork (T20S, R8E, Sec. 34), upstream through T21S, R8E, Sec. 36.

4c. Rock Creek from its confluence with the South Fork (T20S, R8E, Sec. 33), upstream through T21S, R7E, Sec. 14.

4d. Den Creek from its confluence with Rock Creek (T20S, R8E, Sec. 31), upstream through T20S, R8E, Sec. 30.

4e. Crocker Creek from its confluence with the South Fork (T21S, R8E, Sec. 31), upstream through T22S, R7E, Sec. 1.

4f. Unnamed tributary to Crocker Creek from their confluence (T21S, R8E, Sec. 31), upstream through T21S, R8E, Sec. 31.

4g. Mercer Creek from its confluence with the South Fork (T22S, R8E, Sec. 8), upstream through T22S, R8E, Sec. 31.

4h. Jack Creek from its confluence with Mercer Creek (T22S, R8E, Sec. 18), upstream through T22S, R7E, Sec. 14.

4i. Unnamed tributary to Mercer Creek, from their confluence (T22S, R8E, Sec. 19), upstream through T22S, R7E, Sec. 26.

4j. Unnamed tributary to Mercer Creek, from their confluence (T22S, R8E, Sec. 19), upstream through T22S, R8E, Sec. 31.

4k. Thurman Creek from its confluence with the South Fork (T22S, R8E, Sec. 29), upstream through T23S, R9E, Sec. 17.

4l. Unnamed tributary to Thurman Creek, from their confluence (T23S, R8E, Sec. 1), upstream through T22S, R9E, Sec. 31.

4m. Little Cedar Creek from its confluence with the South Fork (T22S, R8E, Sec. 8), upstream through T22S, R8E, Sec. 25.

4n. Shaw Creek from its confluence with Little Cedar Creek (T22S, R8E, Sec. 16), upstream through T22S, R8E, Sec. 14.

4o. Bloody Creek from its confluence with the Cottonwood River (T19S, R9E, Sec. 29), upstream through T20S, R9E, Sec. 34.

5. Mud Creek from the south section line of T19S, R3E, Sec. 13, upstream through T18S, R3E, Sec. 28.

(9) Map 5 follows:

BILLING CODE 4310-55-P

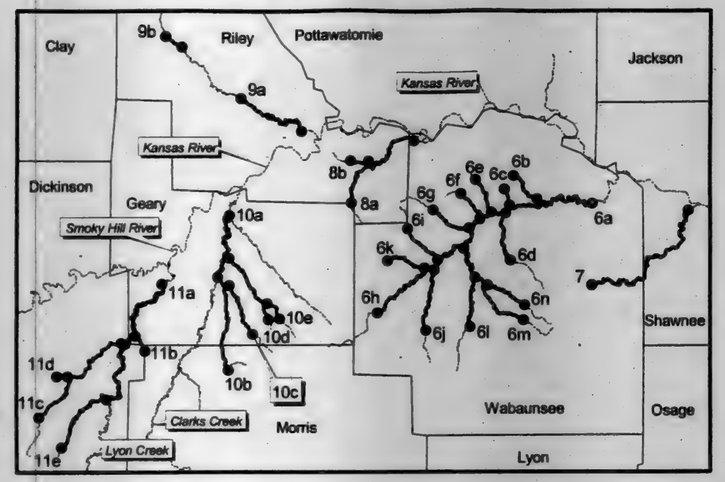
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Map 5

General Locations of Proposed Critical Habitat for the Topeka Shiner

(Notropis topeka)

Kansas - Kansas River Watershed



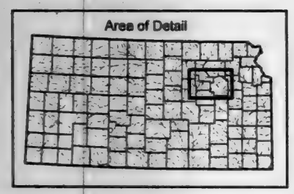
5 0 5 10 Miles

Proposed Critical Habitat

Not Proposed as Critical Habitat

County Lines

Area of Detail



Reaches

6a.	Mill Creek	8a.	Deep Creek
6b.	Mulberry Creek	8b.	School Creek
6c.	Unnamed Tributary	9a.	Wildcat Creek
6d.	Kuenzil Creek	9b.	Wildcat Creek
6e.	Spring Creek	10a.	Clarks Creek
6f.	Pretty Creek	10b.	Thomas Creek
6g.	Hendricks Creek	10c.	Davis Creek
6h.	West Branch Mill Creek	10d.	Dry Creek
6i.	Loire Creek	10e.	Unnamed tributary
6j.	Illinois Creek	11a.	Lyon Creek
6k.	Spring Creek	11b.	Rock Springs Creek
6l.	South Branch Mill Creek	11c.	Carry Creek
6m.	East Branch Mill Creek	11d.	Unnamed tributary
6n.	Nehring Creek	11e.	West Branch Lyon Creek
7.	Mission Creek		

CLAIMER

map is a graphical representation of Topeka shiner critical habitat and is provided for illustrative poses only. The map and GIS files used to create this map are not the definitive source for determining critical habitat boundaries. While the Service mekes every effort to represent the critical habitat shown on this map as completely and accurately as possible (given existing time, resources, data, and display constraints), the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.

Mill Creek Complex

6a. Mill Creek from Kansas Highway 30 (T11S, R12E, Sec. 26), upstream to the confluence of West Branch Mill Creek and South Branch Mill Creek (T12S, R10E, Sec. 15).

6b. Mulberry Creek from its confluence with Mill Creek (T11S, R11E, Sec. 25), upstream through T11S, R11E, Sec. 10.

6c. Spring Creek from its confluence with Mill Creek (T11S, R11E, Sec. 28), upstream through T11S, R11E, Sec. 21.

6d. Kuenzli Creek from its confluence with Mill Creek (T11S, R11E, Sec. 33), upstream through T12S, R11E, Sec. 21.

6e. Paw Paw Creek from its confluence with Mill Creek (T11S, R11E, Sec. 31), upstream through T11S, R10E, Sec. 13.

6f. Pretty Creek from its confluence with Mill Creek (T11S, R10E, Sec. 36), upstream to Kansas Highway 99 (T11S, R10E, Sec. 22).

6g. Hendricks Creek from its confluence with Mill Creek (T12S, R10E, Sec. 2), upstream through T11S, R10E, Sec. 31.

6h. West Branch Mill Creek from its confluence with South Branch Mill Creek (T12S, R10E, Sec. 15), upstream through T13S, R9E, Sec. 20.

6i. Loire Creek from its confluence with West Branch Mill Creek (T12S, R10E, Sec. 29), upstream through T12S, R9E, Sec. 11.

6j. Illinois Creek from its confluence with West Branch Mill Creek (T12S, R10E, Sec. 30), upstream through T13S, R9E, Sec. 11.

6k. Spring Creek from its confluence with West Branch Mill Creek (T12S, R10E, Sec. 30), upstream through T12S, R9E, Sec. 21.

6l. South Branch Mill Creek from its confluence with West Branch Mill Creek (T12S, R10E, Sec. 15), upstream to Kansas Highway 4/99 (T13S, R10E, Sec. 26).

6m. East Branch Mill Creek from its confluence with South Branch Mill Creek (T12S, R10E, Sec. 35), upstream through T13S, R11E, Sec. 22.

6n. Nehring Creek from its confluence with East Branch Mill Creek (T13S, R10E, Sec. 1), upstream through T13S, R11E, Sec. 15.

7. Mission Creek from Interstate Highway 70 (T11S, R14E, Sec. 33), upstream to the confluence of North Branch Mission Creek and South Branch Mission Creek (T13S, R12E, Sec. 1).

Deep Creek Complex

8a. Deep Creek from Kansas Highway 18 (T10S, R9E, Sec. 26), upstream to Interstate Highway 70 (T11S, R8E, Sec. 26).

8b. School Creek from its confluence with Deep Creek (T11S, R9E, Sec. 6), upstream through T11S, R8E, Sec. 2.

Wildcat Creek Complex

9a. Wildcat Creek from Kansas Highway 18/Ft. Riley Boulevard (T10S, R7E, Sec. 24), upstream to the Ft. Riley boundary near Keats, Kansas (T10S, R6E, Sec. 1).

9b. Wildcat Creek from the Ft. Riley boundary near Riley, Kansas (T9S, R5E, Sec. 12), upstream to U.S. Highway 77 (T9S, R5E, Sec. 3).

Clarks Creek Complex

10a. Clarks Creek from its confluence with Humboldt Creek (T11S, R6E, Sec. 35), upstream to its confluence with Thomas Creek (T12S, R6E, Sec. 34).

10b. Thomas Creek from its confluence with Clarks Creek (T12S, R6E, Sec. 34), upstream through T13S, R6E, Sec. 34.

10c. Davis Creek from its confluence with Thomas Creek (T13S, R6E, Sec. 2), upstream through T13S, R7E, Sec. 31.

10d. Dry Creek from its confluence with Clarks Creek (T12S, R6E, Sec. 23), upstream through T13S, R7E, Sec. 22.

10e. West Branch Dry Creek from its confluence with Dry Creek (T13S, R7E, Sec. 16), upstream through T13S, R7E, Sec. 21.

Lyon Creek Complex

11a. Lyon Creek from U.S. Highway 77 (T13S, R5E, Sec. 3), upstream to the confluence with West Branch Lyon Creek (T15S, R4E, Sec. 2).

11b. Rock Springs Creek from its confluence with Lyon Creek (T13S, R5E, Sec. 3), upstream through T14S, R5E, Sec. 5.

11c. Carry Creek from its confluence with Lyon Creek (T13S, R5E, Sec. 31), upstream through T15S, R3E, Sec. 10.

11d. Unnamed tributary to Carry Creek from their confluence (T14S, R4E, Sec. 19), upstream through T14S, R3E, Sec. 24.

11e. West Branch Lyon Creek from its confluence with Lyon Creek (T15S, R4E, Sec. 2), upstream through T15S, R3E, Sec. 25.

(10) Map 6 follows:

BILLING CODE 4310-55-P

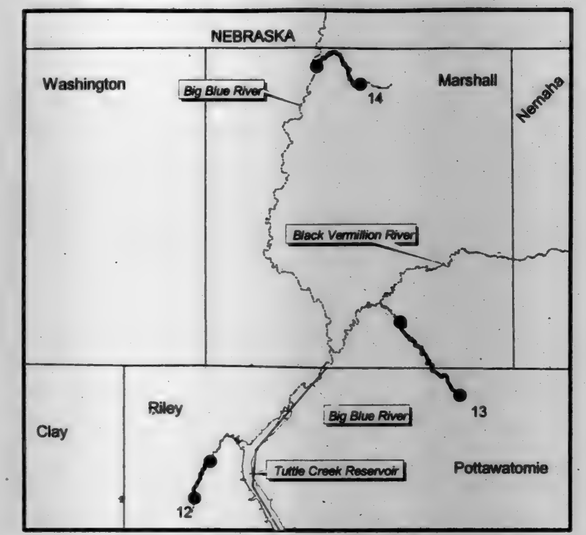
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Map 6

General Locations of Proposed Critical Habitat for the Topeka Shiner

(Notropis topeka)

Kansas - Big Blue Watershed



Proposed Critical Habitat
Not Proposed as Critical Habitat
County Lines

5 0 5 10 15 Miles

Area of Detail



N

Reaches

12. Walnut Creek
13. Clear Fork Creek
14. North Elm Creek

CLAIMER

map is a graphical representation of Topeka shiner critical habitat and is provided for illustrative poses only. The map and GIS files used to create this map are not the definitve source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible (given existing time, resources, data, and display constraints), the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.

12. Walnut Creek from the east section line of T7S, R6E, Sec. 19, upstream through T8S, R5E, Sec. 1.

13. Clear Fork Creek from its confluence with Jim Creek (T5S, R9E, Sec. 17), upstream through T6S, R10E, Sec. 18.

14. North Elm Creek from its confluence with the Big Blue River (T1S, R7E, Sec. 11), upstream through T1S, R8E, Sec. 21.

(11) Map 7 follows:

BILLING CODE 4310-55-P

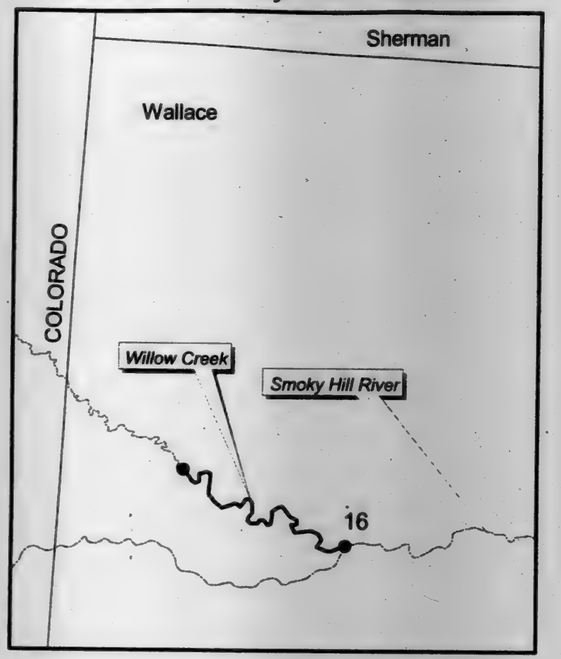
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Map 7

General Locations of Proposed Critical Habitat for the Topeka Shiner

(Notropis topeka)

Kansas - Smoky Hill Watershed



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15. Willow Creek from its confluence with the Smoky Hill River (T13S, R41W, Sec. 17), upstream through T13S, R42W, Sec. 3.

(12) Map 8 follows:

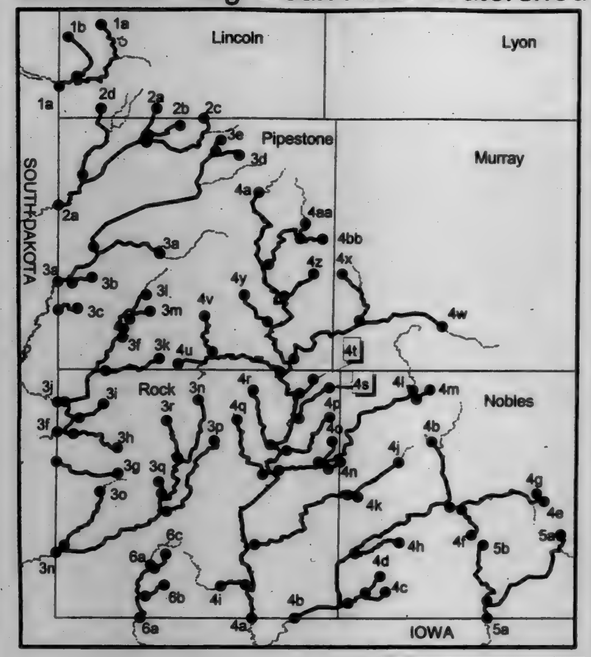
BILLING CODE 4310-55-P

Map 8

General Locations of Proposed Critical Habitat for the Topeka Shiner

(Notropis topeka)

Minnesota - Big Sioux River Watershed



Reaches

1a. Medary Creek
1b. Unnamed tributary
2a. Flandreau Creek
2b. Unnamed tributary
2c. East Branch Flandreau Creek
2d. Willow Creek
3a. Pipestone Creek
3b. Unnamed tributary
3c. Unnamed tributary
3d. North Branch Pipestone Creek
3e. Unnamed tributary
3f. Split Rock Creek
3g. Unnamed tributary
3h. Unnamed tributary
3i. Unnamed tributary
3j. Pipestone Creek
3k. Unnamed tributary
3l. Split Rock Creek
3m. Unnamed tributary
3n. Beaver Creek
3o. Springwater Creek
3p. Little Beaver Creek
3q. Unnamed tributary
3r. Unnamed tributary
4a. Rock River
4b. Kanaranzi Creek
4c. Norwegian Creek
4d. Unnamed tributary
4e. East Branch Kanaranzi Creek
4f. Unnamed tributary
4g. Unnamed tributary
4h. Unnamed tributary
4i. Ash Creek
4j. Elk Creek
4k. Unnamed tributary
4l. Champepadan Creek
4m. Unnamed tributary
4n. Unnamed tributary
4o. Unnamed tributary
4p. Unnamed tributary
4q. Mound Creek
4r. Unnamed tributary
4s. Unnamed tributary
4t. Unnamed tributary
4u. Popular Creek
4v. Unnamed tributary
4w. Chanarambie Creek
4x. North Branch Chanarambie Cr.
4y. Unnamed tributary
4z. Unnamed tributary
4aa. East Branch Rock River
4bb. Unnamed tributary
5a. Little Rock River
5b. Little Rock Creek
6a. Mud Creek
6b. Unnamed tributary
6c. Unnamed tributary

CLAIMER

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Medary Creek Complex

1a. Medary Creek from the MN/SD state border (T109N, R47W, Sec. 13), upstream through T110N, R46W, Sec. 21.

1b. Unnamed tributary to Medary Creek, from their confluence (T109N, R46W, Sec. 18), upstream through T110N, R46W, Sec. 30.

Flandreau Creek Complex

2a. Flandreau Creek from the Minnesota/South Dakota State border (T107N, R47W, Sec. 13), upstream through (T109N, R45W, Sec. 31).

2b. Unnamed tributary to Flandreau Creek, from their confluence (T108N, R46W, Sec. 11), upstream through T108N, R45W, Sec. 6.

2c. East Branch Flandreau Creek from its confluence with Flandreau Creek (T108N, R46W, Sec. 14), upstream through T108N, R45W, Sec. 4.

2d. Willow Creek from its confluence with Flandreau Creek (T107N, R46W, Sec. 6), upstream through T109N, R46W, Sec. 3.

Split Rock/Pipestone/Beaver Creek Complex

3a. Pipestone Creek from the Minnesota/South Dakota State border (T106N, R47W, Sec. 23), upstream through T106N, R46W, Sec. 1.

3b. Unnamed tributary to Pipestone Creek, from their confluence (T106N, R47W, Sec. 24), upstream through T106N, R46W, Sec. 19.

3c. Unnamed tributary to Pipestone Creek, from the Minnesota/South Dakota State border (T105N, R47W, Sec. 2), upstream through T105N, R46W, Sec. 1.

3d. North Branch Pipestone Creek from its confluence with Pipestone Creek (T107N, R46W, Sec. 5), upstream through T108N, R45W, Sec. 23.

3e. Unnamed tributary to North Branch Pipestone Creek, from their confluence (T108N, R45W, Sec. 22), upstream through T108N, R45W, Sec. 15.

3f. Split Rock Creek from the Minnesota/South Dakota State border (T103N, R47W, Sec. 2), upstream to Split Rock Lake Outlet (T105N, R46W, Sec. 20).

3g. Unnamed tributary to Split Rock Creek from the Minnesota/South Dakota State border (T103N, R47W, Sec. 23), upstream through T103N, R46W, Sec. 29.

3h. Unnamed tributary to Split Rock Creek, from their confluence (T103N, R47W, Sec. 2), upstream through T103N, R46W, Sec. 8.

3i. Unnamed tributary to Split Rock Creek, from their confluence (T104N, R47W, Sec. 25), upstream through T104N, R46W, Sec. 19.

3j. Pipestone Creek from its confluence with Split Rock Creek (T104N, R47W, Sec. 23), upstream to the Minnesota/South Dakota State border (T104N, R47W, Sec. 23).

3k. Unnamed tributary to Split Rock Creek, from their confluence (T104N, R46W, Sec. 6), upstream through T105N, R46W, Sec. 36.

3l. Split Rock Creek from the headwater of Split Rock Lake (T105N, R46W, Sec. 15), upstream through T106N, R46W, Sec. 35.

3m. Unnamed tributary to Split Rock Creek, from their confluence (T105N, R46W, Sec. 3), upstream through T105N, R46W, Sec. 2.

3n. Beaver Creek from the Minnesota/South Dakota State border (T102N, R47W, Sec. 35), upstream through T104N, R45W, Sec. 20.

3o. Springwater Creek from its confluence with Beaver Creek (T102N, R47W, Sec. 35), upstream through T102N, R46W, Sec. 6.

3p. Little Beaver Creek from its confluence with Beaver Creek (T102N, R46W, Sec. 12), upstream through T103N, R45W, Sec. 9.

3q. Unnamed tributary to Beaver Creek, from their confluence (T102N, R46W, Sec. 1), upstream through T103N, R46W, Sec. 35.

3r. Unnamed tributary to Beaver Creek, from their confluence (T103N, R45W, Sec. 18), upstream through T104N, R46W, Sec. 36.

Rock River Complex

4a. Rock River from the Minnesota/Iowa State border (T101N, R45W, Sec. 36), upstream through T107N, R44W, Sec. 7.

4b. Kanaranzi Creek from the Minnesota/Iowa State border (T101N, R44W, Sec. 33), upstream through T103N, R42W, Sec. 7).

4c. Norwegian Creek from its confluence with Kanaranzi Creek (T101N, R44W, Sec. 25), upstream through T101N, R43W, Sec. 21.

4d. Unnamed tributary to Norwegian Creek, from their confluence (T101N, R44W, Sec. 20), upstream through T101N, R44W, Sec. 16.

4e. East Branch Kanaranzi Creek from its confluence with Kanaranzi Creek (T102N, R42W, Sec. 5), upstream through T102N, R41W, Sec. 5.

4f. Unnamed tributary to East Branch Kanaranzi Creek, from their confluence (T102N, R42W, Sec. 9), upstream through T102N, R42W, Sec. 22.

4g. Unnamed tributary to East Branch Kanaranzi Creek, from their confluence (T102N, R42W, Sec. 5), upstream through T102N, R42W, Sec. 5.

4h. Unnamed tributary to Kanaranzi Creek, from their confluence (T102N, R43W, Sec. 31), upstream through T102N, R43W, Sec. 27.

4i. Ash Creek from its confluence with the Rock River (T101N, R45W, Sec. 24), upstream through T101N, R45W, Sec. 14.

4j. Elk Creek from its confluence with the Rock River (T102N, R45W, Sec. 36), upstream through T103N, R43W, Sec. 22.

4k. Unnamed tributary to Elk Creek, from their confluence (T102N, R44W, Sec. 1), upstream through T102N, R43W, Sec. 6.

4l. Champepadan Creek from its confluence with the Rock River (T103N, R44W, Sec. 29), upstream through T104N, R43W, Sec. 14.

4m. Unnamed tributary to Champepadan Creek, from their confluence (T104N, R43W, Sec. 14), upstream through T104N, R43W, Sec. 13.

4n. Unnamed tributary to Champepadan Creek, from their confluence (T103N, R44W, Sec. 23), upstream through T103N, R44W, Sec. 24.

4o. Unnamed tributary to Champepadan Creek, from their confluence (T103N, R44W, Sec. 23), upstream through T103N, R44W, Sec. 12.

4p. Unnamed tributary to the Rock River, from their confluence (T103N, R44W, Sec. 8), upstream through T104N, R44W, Sec. 26.

4q. Mound Creek from its confluence with the Rock River (T103N, R44W, Sec. 30), upstream through T104N, R45W, Sec. 35).

4r. Unnamed tributary to the Rock River, from their confluence (T103N, R44W, Sec. 7), upstream through T104N, R45W, Sec. 23.

4s. Unnamed tributary to the Rock River, from their confluence (T104N, R44W, Sec. 28), upstream through T104N, R44W, Sec. 11.

4t. Unnamed tributary to the Rock River, from their confluence (T104N, R44W, Sec. 16), upstream through T104N, R44W, Sec. 10.

4u. Poplar Creek from its confluence with the Rock River (T104N, R44W, Sec. 5), upstream through T105N, R45W, Sec. 32.

4v. Unnamed tributary to Poplar Creek, from their confluence (T105N, R45W, Sec. 27, upstream through T105N, R45W, Sec. 9.

4w. Chanarambie Creek from its confluence with the Rock River (T105N, R44W, Sec. 33), upstream through (T105N, R42W, Sec. 8).

4x. North Branch Chanarambie Creek from its confluence with Chanarambie Creek (T105N, R43W, Sec. 8), upstream through T106N, R43W, Sec. 18.

4y. Unnamed tributary to the Rock River, from their confluence (T105N, R44W, Sec. 8), upstream through T106N, R45W, Sec. 36.

4z. Unnamed tributary to the Rock River, from their confluence (T106N, R44W, Sec. 33), upstream through T106N, R44W, Sec. 23.

4aa. East Branch Rock River from its confluence with the Rock River (T106N, R44W, Sec. 18), upstream through T107N, R44W, Sec. 27.

4bb. Unnamed tributary to East Branch Rock River, from their confluence (T107N, R44W, Sec. 34), upstream through T106N, R43W, Sec. 35.

Little Rock River Complex

5a. Little Rock River from the Minnesota/Iowa State border (T101N, R42W, Sec. 35), upstream through T102N, R41W, Sec. 27.

5b. Little Rock Creek from its confluence with the Little Rock River (T101N, R42W, Sec. 26), upstream through T102N, R42W, Sec. 34.

Mud Creek Complex

6a. Mud Creek from the Minnesota/Iowa State border (T102N, R46W, Sec. 34), upstream thru T101N, R46W, Sec. 11.

6b. Unnamed tributary to Mud Creek, from their confluence (T101N, R46W, Sec. 22), upstream through T101N, R46W, Sec. 24.

6c. Unnamed tributary to Mud Creek, from their confluence (T101N, R46W, Sec. 10), upstream through T101N, R46W, Sec. 1.

(13) Map 9 follows:

BILLING CODE 4310-55-P

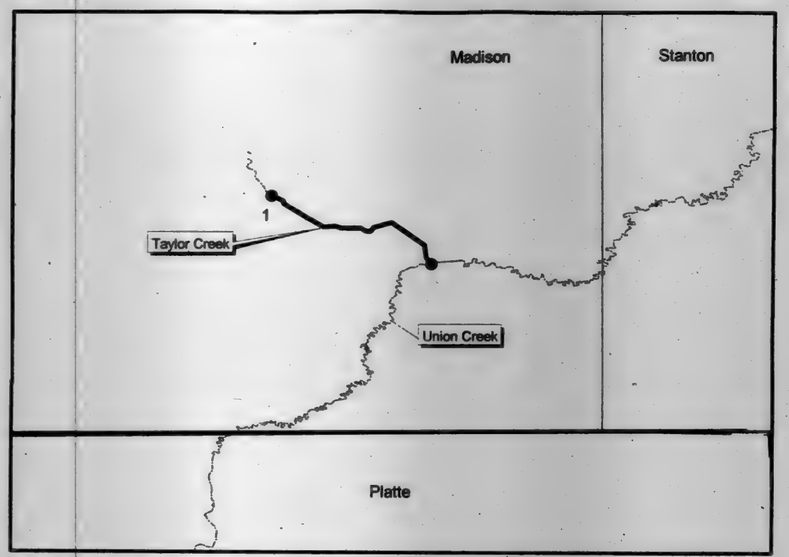
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Map 9

General Locations of Proposed Critical Habitat for the Topeka Shiner

(Notropis topeka)

Nebraska - Elkhorn River Watershed



DISCLAIMER

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1. Taylor Creek from its confluence with Union Creek (T22N, R1W, Sec. 32), upstream through T22N, R2W, Sec. 22.

(14) Map 10 follows:

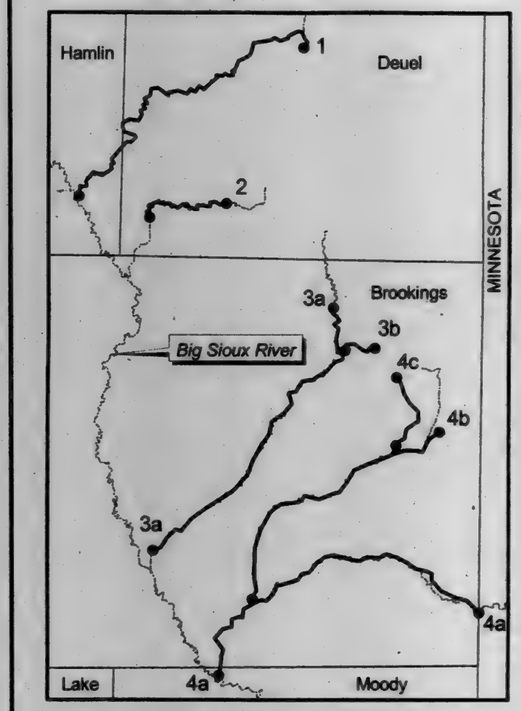
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Map 10

General Locations of Proposed Critical Habitat for the Topeka Shiner

(Notropis topeka)

South Dakota - Upper Big Sioux Watershed



Reaches

1. Hidewood Creek
2. Peg Munky Run
3a. Sixmile Creek
3b. Unnamed tributary
4a. Medary Creek
4b. Deer Creek
4c. Unnamed tibutary

Proposed Critical Habitat
Not Proposed as Critical Habitat
County Lines

N

Area of Detail

DISCLAIMER

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1. Hidewood Creek from its confluence with the Big Sioux River (T113N, R51W, Sec. 15), upstream to State Highway 15 (T115N, R49W, Sec. 35).

2. Peg Munky Run from State Highway 28 (T113N, R50W, Sec. 20), upstream through T113N, R50W, Sec. 24 (near Interstate Highway 29).

Sixmile Creek Complex

3a. Sixmile Creek from T110N, R50W, Sec. 33, upstream through T112N, R48W, Sec. 19.

3b. Unnamed tributary to Sixmile Creek, from their confluence (T112N, R48W, Sec. 31), upstream through T112N, R48W, Sec. 33.

Medary Creek Complex

4a. Medary Creek from its confluence with the Big Sioux River (T108N, R49W, Sec. 6), upstream to the SD/MN state border (T109N, R47W, Sec. 15).

4b. Deer Creek from its confluence with Medary Creek (T109N, R49W, Sec. 16), upstream through T111N, R47W, Sec. 30.

4c. Unnamed tributary to Deer Creek, from their confluence (T111N, R48W, Sec. 35), upstream through T111N, R48W, Sec. 11.

(15) Map 11 follows:

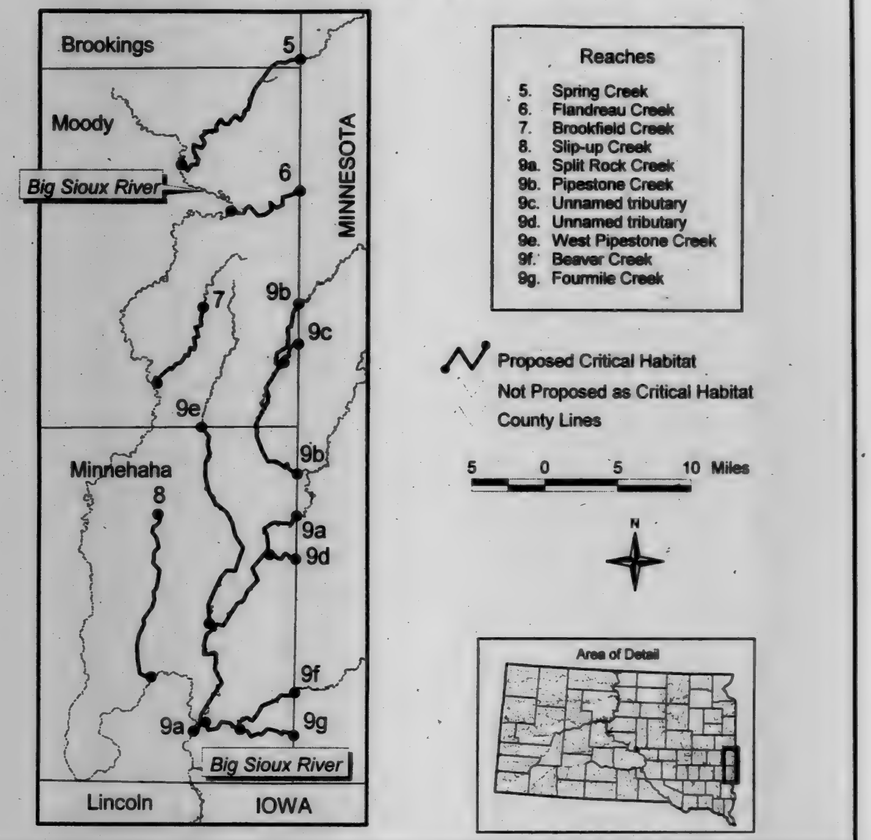
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Map 11

General Locations of Proposed Critical Habitat for the Topeka Shiner

(Notropis topeka)

South Dakota - Lower Big Sioux Watershed



CLAIMER

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5. Spring Creek from its confluence with the Big Sioux River (T107N, R48W, Sec. 5), upstream to the South Dakota/Minnesota State border (T109N, R47W, Sec. 34).

Flandreau Creek Complex

6. Flandreau Creek from its confluence with the Big Sioux River (T107N, R48W, Sec. 23), upstream to the South Dakota/Minnesota State border (T107N, R47W, Sec. 15).

7. Brookfield Creek from its confluence with the Big Sioux River (T105N, R49W, Sec. 24), upstream through T106N, R48W, Sec. 28.

8. Slip-Up Creek from it confluence with the Big Sioux River (T102N, R49W, Sec. 36), upstream through T103N, R48W, Sec. 6.

Split Rock/Pipestone/Beaver Creek Complex

9a. Split Rock Creek from its confluence with the Big Sioux River (T101N, R48W, Sec. 16), upstream to the South Dakota/Minnesota State border (T103N, R47W, Sec. 3).

9b. Pipestone Creek from the South Dakota/Minnesota State border (T104N, R47W, Sec. 22), upstream to the SD/MN state border (T106N, R47W, Sec. 22).

9c. Unnamed tributary to Pipestone Creek, from their confluence (T105N, R47W, Sec. 9), upstream to the South Dakota/Minnesota State border (T105N, R47W, Sec. 3).

9d. Unnamed tributary to Split Rock Creek, from their confluence (T103N, R47W, Sec. 17), upstream to the South Dakota/Minnesota State border (T103N, R47W, Sec. 22).

9e. West Pipestone Creek from its confluence with Split Rock Creek (T102N, R48W, Sec. 11), upstream through T104N, R48W, Sec. 3.

9f. Beaver Creek from its confluence with Split Rock Creek (T101N, R48W, Sec. 10), upstream to the South Dakota/Minnesota State border (T102N, R47W, Sec. 34).

9g. Fourmile Creek from its confluence with Beaver Creek (T101N, R48W, Sec. 13), upstream to the South Dakota/Minnesota State border (T101N, R47W, Sec. 15).

(16) Map 12 follows:

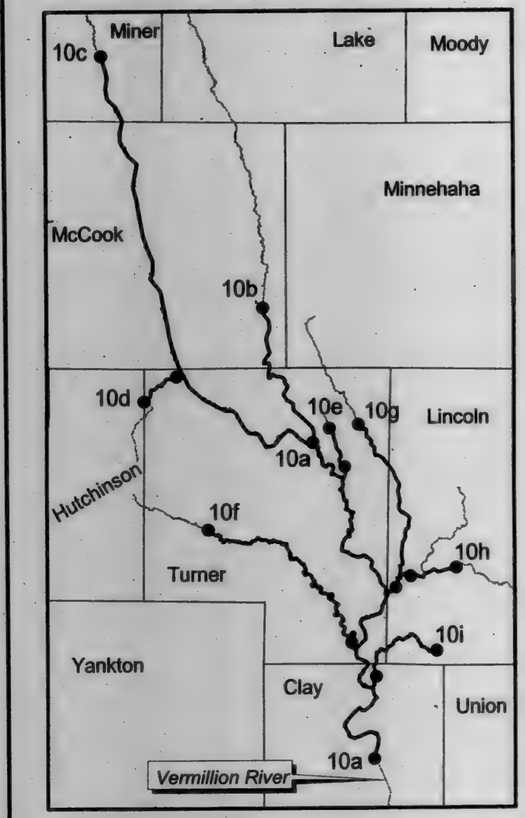
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Map 12

General Locations of Proposed Critical Habitat for the Topeka Shiner

(Notropis topeka)

South Dakota - Vermillion River Watershed



Reaches

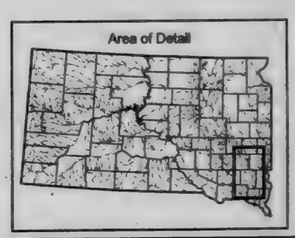
- 10a. Vermillion River
- 10b. East Fork Vermillion River
- 10c. West Fork Vermillion River
- 10d. Silver Lake Creek
- 10e. Camp Creek
- 10f. Turkey Ridge Creek
- 10g. Long Creek
- 10h. Saddle Creek
- 10i. Blind Creek

Proposed Critical Habitat
Not Proposed as Critical Habitat
County Lines

5 0 5 10 15 Miles

N

Area of Detail



DISCLAIMER

This map is a graphical representation of Topeka shiner critical habitat and is provided for illustrative purposes only. The map and GIS files used to create this map are not the definitive source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible (given existing time, resources, data, and display constraints), the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.

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Vermillion River Complex

10a. Vermillion River from the southeast corner of T94N, R52W, Sec. 14, upstream to the confluence of West Fork Vermillion River and East Fork Vermillion River (T99N, R53W, Sec. 14).

10b. East Fork Vermillion River, from its confluence with the West Fork Vermillion River (T99N, R53W, Sec. 14), upstream to East Vermillion Lake Dam (T102N, R53W, Sec. 34).

10c. West Fork Vermillion River, from its confluence with the East Fork Vermillion River (T99N, R53W, Sec. 14), upstream through T105N, R56W, Sec. 1.

10d. Silver Lake Creek from its confluence with the West Fork Vermillion River (T100N, R55W, Sec. 10), upstream to the Silver Lake outlet (T100N, R55W, Sec. 30).

10e. Camp Creek from its confluence with the Vermillion River (T99N, R52W, Sec. 32), upstream through T99N, R52W, Sec. 7.

10f. Turkey Ridge Creek from its confluence with the Vermillion River (T96N, R52W, Sec. 28), upstream through T98N, R54W, Sec. 31.

10g. Long Creek from its confluence with the Vermillion River (T97N, R51W, Sec. 31), upstream through T99N, R52W, Sec. 3.

10h. Saddle Creek from its confluence with Long Creek (T97N, R51W, Sec. 20), upstream through T97N, R50W, Sec. 18.

10i. Blind Creek from its confluence with the Vermillion River (T95N, R52W, Sec. 11), upstream through T96N, R51W, Sec. 26.

(17) Map 13 follows:

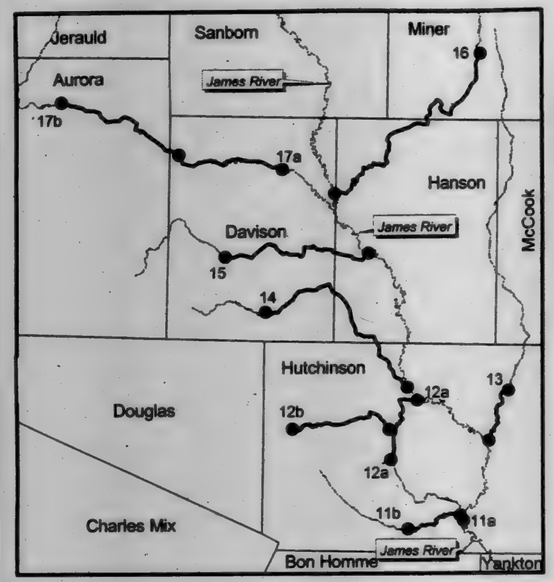
BILLING CODE 4310-55-P

Map 13

General Locations of Proposed Critical Habitat for the Topeka Shiner

(Notropis topeka)

South Dakota - Lower James River Watershed



Reaches

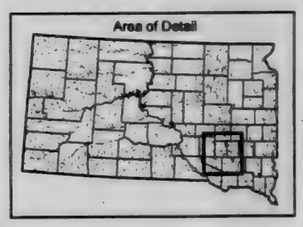
11a. Lonetree Creek
11b. South Branch Lonetree Creek
12a. Dry Creek
12b. North Branch Dry Creek
13. Wolf Creek
14. Twelvemile Creek
15. Enermy Creek
16. Rock Creek
17a. Firesteel Creek
17b. West Branch Firesteel Creek

N

5 0 5 10 15 Miles

Proposed Critical Habitat
Not Proposed as Critical Habitat
County Lines

Area of Detail



CLAIMER

map is a graphical representation of Topeka shiner critical habitat and is provided for illustrative poses only. The map and GIS files used to create this map are not the definitive source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible (given existing time, resources, data, and display constraints), the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.

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Lonetree Creek Complex

11a. Lonetree Creek from its confluence with the James River (T97N, R58W, Sec. 14), upstream to its confluence with South Branch Lonetree Creek (T97N, R58W, Sec. 10).

11b. South Branch Lonetree Creek from its confluence with Lonetree Creek (T97N, R58W, Sec. 10), upstream through T97N, R59W, Sec. 23.

Dry Creek Complex

12a. Dry Creek from its confluence with the James River (T99N, R59W, Sec. 11), upstream through T98N, R59W, Sec. 9.

12b. North Branch Dry Creek from its confluence with Dry Creek (T99N, R59W, Sec. 28), upstream through T99N, R61W, Sec. 27.

13. Wolf Creek from its confluence with the James River (T99N, R57W, Sec. 31), upstream through T99N, R57W, Sec. 4.

14. Twelvemile Creek from its confluence with the James River (T99N, R59W, Sec. 3), upstream through T101N, R61W, Sec. 23.

15. Enemy Creek from its confluence with the James River (T102N, R59W, Sec. 15), upstream through T102N, R61W, Sec.19.

16. Rock Creek from its confluence with the James River (T103N, R60W, Sec. 13), upstream through T106N, R57W, Sec. 34.

Firesteel Creek Complex

17a. Firesteel Creek from the east section line of T104N, R61W, Sec. 36, upstream to the confluence with West Branch Firesteel Creek (T104N, R62W, Sec. 30).

17b. West Branch Firesteel Creek from its confluence with Firesteel Creek (T104N, R62W, Sec. 30), upstream to Wilmarth Lake outlet (T105N, R64W, Sec. 31).

(18) Map 14 follows:

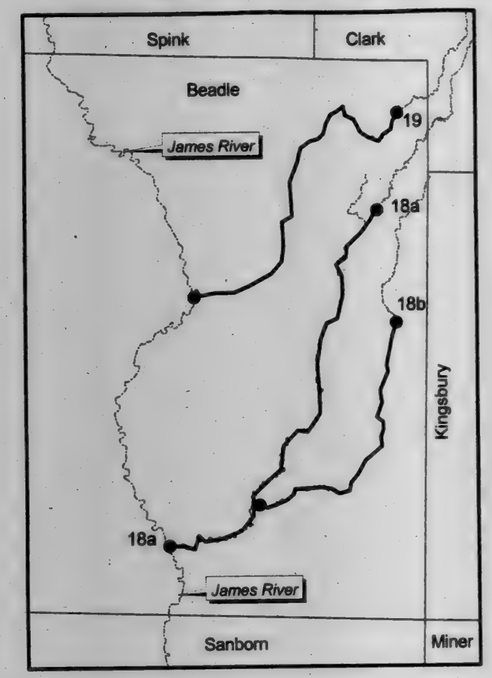
BILLING CODE 4310-55-P

Map 14

General Locations of Proposed Critical Habitat for the Topeka Shiner

(Notropis topeka)

South Dakota - Upper James River Watershed



CLAIMER

map is a graphical representation of Topeka shiner critical habitat and is provided for illustrative poses only. The map and GIS files used to create this map are not the definitve source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible (given existing time, resources, data, and display constraints), the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.

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Pearl Creek Complex

18a. Pearl Creek from its confluence with the James River (T109N, R61W, Sec. 15), upstream through T112N, R59W, Sec. 16.

18b. Middle Pearl Creek from its confluence with Pearl Creek (T109N, R60W, Sec. 4), upstream through T110N, R59W, Sec. 14.

19. Shue Creek from its confluence with the James River (T111N, R61W, Sec. 11), upstream to Staum Dam (T113N, R59W, Sec. 14).

* * * * *

Dated: August 12, 2002.

Craig Manson,

Assistant Secretary for Fish, Wildlife, and Parks.

[FR Doc. 02–20939 Filed 8–20–02; 8:45 am]

BILLING CODE 4310–55–C

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Wednesday,
August 21, 2002

Part III

Department of Housing and Urban Development

24 CFR Part 203
Amendments to the Section 203(k) Rehabilitation Loan Insurance Program; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4701–P–01]

RIN 2502–AH73

Amendments to the Section 203(k) Rehabilitation Loan Insurance Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's regulations for the Section 203(k) Rehabilitation Loan Insurance Program (203(k) Program). The 203(k) Program is the Federal Housing Administration's (FHA's) primary program for the rehabilitation and repair of single family properties. First, the proposed rule would limit 203(k) rehabilitation loan insurance to one-unit structures. The proposed rule would also establish a cap on the total cost of rehabilitation. The dollar amount of the rehabilitation could not exceed 20 percent of the FHA statutory single family mortgage limit for a one-unit structure in a "high cost area." These changes would simplify the 203(k) Program for both lenders and homebuyers, and strengthen HUD's capacity to safeguard the FHA Insurance Fund.

DATES: *Comments Due Date:* October 21, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Room 9266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–2121 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—The Section 203(k) Rehabilitation Loan Insurance Program

Section 203(k) of the National Housing Act (12 U.S.C. 1709(k)) authorizes HUD to insure loans for the purchase and/or rehabilitation and repair of residential properties. The 203(k) Program is HUD's primary program for the rehabilitation and repair of single family properties. Section 203(k) loan insurance enables homebuyers and homeowners to finance both the purchase (or refinance) of a house and the cost of its rehabilitation through a single mortgage. The regulations implementing the 203(k) Program are located in 24 CFR 203.50 and 24 CFR 203.440 through 203.495. HUD's Office of Housing—Federal Housing Administration (FHA) administers the Program.

The 203(k) Program fills a unique and important role for homebuyers. In the conventional loan market, a homebuyer who purchases a home that is in need of repair or modernization usually has to follow a time-consuming and costly process. The homebuyer must obtain financing to purchase the dwelling, additional financing for the rehabilitation work, and a permanent mortgage after rehabilitation is completed to pay off the interim loans. The interim acquisition and improvement loans often have relatively high interest rates and short repayment terms. The 203(k) Program was designed to address this situation. Under this program, a homebuyer may obtain a single loan, at a long-term fixed (or variable) rate, to finance both the acquisition and rehabilitation of the property.

The extent of the rehabilitation covered by 203(k) loan insurance may range from relatively minor (though a minimum of $5,000 in cost is required) to virtual reconstruction. For example, a home that has been demolished, or will be razed as part of rehabilitation, is eligible provided that some of the existing foundation system remains in place. Section 203(k) loan insurance can also finance the rehabilitation of the residential portion of a property that has non-residential uses.

II. This Proposed Rule

This proposed rule would make two amendments to HUD's regulations for the 203(k) Program. Specifically, the proposed rule would: (1) Limit 203(k) rehabilitation loan insurance to one-unit structures; and (2) establish a cap on the total cost of the rehabilitation. These changes would simplify the program for both lenders and homebuyers, and strengthen HUD's capacity to safeguard the FHA Insurance Fund. This section of the preamble describes the proposed changes to the 203(k) Program.

A. Limit to One-Unit Structures

Under HUD's regulations at § 203.50(a), the 203(k) Program may be used for the rehabilitation of a one- to four-unit structure that will be used primarily for residential purposes. In addition to typical home rehabilitation projects, this program can be used to convert a one-unit structure to a two-, three-, or four-unit structure. An existing multi-unit structure can be decreased to a one- to four-unit structure. However, the regulations also require that rehabilitation loan transactions must constitute an acceptable risk, as determined by the Secretary of HUD (see § 203.50(e)).

FHA statistics show that over the past eleven years, the 203(k) Program has experienced unacceptably high default rates for multi-unit (*i.e.*, two- to four-unit) properties. The average default rate for 203(k) multi-unit properties is greater than the average default rate for multi-unit properties associated with the Section 203(b) Program (HUD's principal single family mortgage insurance program). For example, during Fiscal Years 1999 through 2001, the average default rate for two-, three-, and four-unit 203(k) properties was 32.8% greater than the average default rate for two-, three-, and four-unit properties under the 203(b) Program. To address these excessive default and claim rates, the proposed rule would amend § 203.50(e) to provide that the Secretary has determined that loan transactions for the rehabilitation of two-, three-, and four-unit structures (other than those involving the conversion of such structures to one-unit structures) constitute an unacceptable risk. This amendment would limit 203(k) loan insurance to one-unit structures. The proposed change would also prohibit the conversion of one-unit structures to two-, three-, or four-unit structures, as well as the expansion of existing two- to four-unit structures to sizes larger than a one-unit structure.

B. Cap on Total Cost of Rehabilitation

Another possible reason for the excessive claim and default rates is that the program is complex for both lenders and homebuyers, especially first time homebuyers. Since the 203(k) Program is used for rehabilitation of a property, financing under the program involves the use of contractors, consultants, engineers, and paperwork not required under other FHA insurance programs. Simplification of the 203(k) Program will assist in reducing the number of insurance claims and comply with Congressional mandates to maintain the FHA Insurance Fund in a sound actuarial manner.

One method for reducing the complexity of the 203(k) Program is to limit the dollar amount of the rehabilitation. Currently, there is no such restriction, although the cost of the rehabilitation must be $5,000 or greater and the overall loan amount may not exceed the limits prescribed in § 203.50(f). This proposed rule would provide that the total cost of the rehabilitation may not exceed 20 percent of the FHA statutory single family mortgage limit for a one-unit structure in a "high cost area," irrespective of location. The FHA mortgage limits are established by HUD pursuant to section 203(b)(2)(A) of the National Housing Act (12 U.S.C. 1709(b)(2)(A)). HUD announces these mortgage limits annually through a Mortgagee Letter, typically in late December for effect on January 1st of the following year. The most recent single family mortgage limits are set forth in Mortgagee Letter 01–31, issued on December 28, 2001. A copy of the Mortgagee Letter may be obtained through the HUD Web site at *http://www.hud.gov*. Under Mortgagee Letter 01–31, the maximum mortgage amount for a one-unit structure in a "high cost area" is $261,609. The total cost of 203(k) rehabilitation would be capped at 20 percent of this amount, or $52,321. A sampling of data available to FHA indicates that the average dollar amount of rehabilitation on a 203(k) loan in Fiscal Years 1999 and 2000 was approximately $29,000. Accordingly, HUD believes that the proposed dollar cap on rehabilitation is appropriate to prevent the 203(k) Program from being used for overly complicated and expensive work, while continuing to serve homebuyers purchasing a one-unit structure in need of moderate rehabilitation.

The proposed cap would only include costs related to the actual rehabilitation of the property and would not include costs such as consultant fees, supplemental origination fees, the costs of preparing architectural exhibits, and contingency fees. Additionally, the cap would also exclude: (1) Rehabilitation costs incurred to improve the energy efficiency standards of the home; and (2) six months of mortgage payments.

III. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Office of General Counsel, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the office of the Department's Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows.

First, the proposed rule would limit 203(k) rehabilitation loan insurance to one-unit structures. Over the last eleven years, approximately 80 percent of all 203(k) loans have been made for single unit structures. Accordingly, the economic impact on small lenders of limiting the program to one-unit structures would not be significant in comparison to the total number of 203(k) loans made. In addition, although 203(k) loan insurance would no longer be available for the rehabilitation of multi-unit structures, there are other FHA mortgage insurance products that can be used for the rehabilitation of such structures. For example, FHA's Title I program can be used to improve a multi-unit structure after purchase. Nothing in this proposed rule would preclude lenders participating in the FHA programs from offering such alternate mortgage insurance products.

The proposed rule would also cap the total cost of rehabilitation to 20 percent of the HUD single family mortgage limit for a one-unit structure in a "high cost area." As noted above in this preamble, the average amount of rehabilitation on a 203(k) loan in Fiscal Years 1999 and 2000 was approximately $29,000. Accordingly, HUD believes that the proposed rehabilitation cap of $52,321 is appropriate to prevent the 203(k) Program from being used for overly complicated and expensive work, while continuing to serve the program's primary customer—homebuyers purchasing a one-unit structure in need of moderate rehabilitation.

Finally, as the HUD mortgage limits increase each year, the dollar amount of the proposed cap will also rise. For example, the FHA statutory single family mortgage limit for a one-unit structure in a high-cost area rose over 9 percent from 2001 ($239,250) to 2002 ($261,609).

HUD has taken other steps to help ensure that the proposed cap does not impose a substantial economic burden on either 203(k) lenders or borrowers. For example, the proposed cap would only include costs related to the actual rehabilitation of the property and would not include costs such as consultant fees, supplemental origination fees, the costs of preparing architectural exhibits, and contingency fees. Additionally, the cap would not include rehabilitation costs incurred to improve the energy efficiency standards of the home and six months of mortgage payments.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

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Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Number for the Section 203(k) Rehabilitation Loan Insurance program is 14.108.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 203 as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

2. Amend § 203.50 by revising paragraph (e) and adding paragraph (m) to read as follows:

§ 203.50 Eligibility of rehabilitation loans.

* * * * *

(e)(1) The loan transaction shall be an acceptable risk as determined by the Secretary.

(2) The Secretary has determined that loan transactions for the rehabilitation of two-, three-, and four-unit structures (other than those involving the conversion of such structures to one-unit structures) constitute an unacceptable risk.

* * * * *

(m) *Maximum cost of rehabilitation.* For purposes of paragraph (f) of this section, the maximum cost of the rehabilitation shall not exceed 20 percent of the loan dollar amount limitation established by HUD pursuant to section 203(b)(2)(A) of the National Housing Act (12 U.S.C. 1709(b)(2)(A)) for a one-unit structure in a "high cost area." This limit does not apply to:

(1) Costs incurred to improve the energy efficiency standards of the property;

(2) Six months of mortgage payments; and

(3) Costs not directly related to the physical rehabilitation of the property, such as (but not limited to):

(i) Consultant fees;

(ii) Supplemental origination fees;

(iii) The costs of preparing architectural exhibits; and

(iv) Contingency fees.

Dated: July 8, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–21228 Filed 8–20–02; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Wednesday,
August 21, 2002

Part IV

Department of Housing and Urban Development

24 CFR Part 203

Schedule for Submission of One-Time and Up-Front Mortgage Insurance Premiums; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4690–P–01]

RIN 2502–AH64

Schedule for Submission of One-Time and Up-Front Mortgage Insurance Premiums

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: Mortgage insurance premiums ("MIPs") in many of HUD's single family mortgage insurance programs are paid at the beginning of the mortgage, as either a "one-time" or "up-front" payment. Since 1993, HUD has required that all up-front MIPs be paid electronically through automated clearinghouses. One-time MIPs are also paid electronically. Given the electronic processing of payments, which requires only a short time period, a 15 calendar day period in which to remit the funds is no longer necessary, and shortening the period would result in increased efficiencies within the mortgage insurance programs. In addition, some lenders have misused MIP funds during the 15-day period. Therefore, this rule proposes to shorten the remittance period from 15 calendar days to three business days (Monday through Friday, exclusive of Federal holidays) for both one-time and up-front MIPs.

In addition, there is some confusion about when the remittance time period begins. Therefore, this rule proposes a more precise definition of when the remittance period begins.

DATES: *Comment Due Date:* October 21, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, at (202) 708–2121. Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Background

Section 203(c)(1) of the National Housing Act authorizes the Secretary to set the premium charge for insurance of mortgages under Title II of the National Housing Act. In a June 23, 1983, final rule (48 FR 28804) that followed a proposed rule and public comment, HUD established the one-time MIP for single-family programs, citing improved cash management for HUD without increased burdens on borrowers. The specific programs affected by this one-time MIP are listed in 24 CFR 203.259a, and include loans for refinancing loans insured under the National Housing Act (*see* 24 CFR 203.43(c)); mortgages in Hawaiian Home Lands (*see* 24 CFR 203.43i); and loans which are obligations of the Mutual Mortgage Insurance fund, which were executed before July 1, 1991.

Under the implementing rule for the one-time MIP, at 24 CFR 203.280—203.283, mortgagees in the affected programs pay the entire premium for the borrower within 15 days of closing. The rule generally contemplates that borrowers would amortize the mortgage insurance premium over the life of the loan, and that the premium amount would be calculated based on actuarial factors including the mortgage term and the costs projected by HUD discounted at a rate based on the expected rate of return of the mortgage insurance fund's investments. (*See* 48 FR 28795.)

Section 203(c)(2) of the National Housing Act authorizes the up-front MIP, implemented at 24 CFR 203.284, which applies to all other mortgages executed on or after July 1, 1991 that are obligations of the Mutual Mortgage Insurance Fund. The up-front MIP requires the payment of a single premium of up to 2.25 percent of the original insured principal balance of the mortgage, and annual payments of .50 percent of the remaining insured principal balance for stated periods of time that vary depending on the original principal obligation of the mortgage.

HUD's regulations at 24 CFR 203.280 state that, for mortgages in which a one-time MIP is charged, the payment shall be made within 15 days of closing. In addition, up-front MIPs under 24 CFR 203.284 and 203.285 are subject to the same 15-day requirement. See 24 CFR 203.284(f) and 203.285(c), incorporating 24 CFR 203.280 by cross-reference.

Since April 7, 1993, it has been mandatory for lenders to make up-front MIP payments in the single-family insurance program through an electronic system. (*See, e.g.,* Mortgagee Letter 94–25.) The one-time MIP is remitted electronically as well. (*See, e.g.,* Mortgagee Letter 96–33.) In such an environment, where the funds are transmitted within a few moments rather than by mailing, it is no longer necessary for the lender to retain the funds beyond a brief period for accounting purposes. Furthermore, there have been some instances of MIP premium monies being misused by some lenders during the 15-day period, and earlier remittance should eliminate this problem while improving the cash flow of the insurance fund.

B. This Proposed Rule

This proposed rule would amend 24 CFR 203.280 and 203.282 to reduce the remittance period for the up-front and one-time MIP in affected single-family programs from 15 calendar days to 3 business days, and to adjust the late charge provisions accordingly. Business days are Monday through Friday, excluding Federal holidays. In addition, the rule provides that in the case of refinancings, the three-day period will be counted from the date of disbursement of the mortgage proceeds rather than the loan closing.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule imposes no new obligations of any kind, but only shortens the timing of an existing obligation to remit one-time and up-front mortgage insurance premiums. Because these premiums are remitted electronically, very little remittance time is actually required. This rule should impose no significant burdens on business.

Notwithstanding HUD's determination that this rule does not have a significant economic impact on a substantial number of small entities, HUD specifically invites comment regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble.

Environmental Impact

This proposed rule does not direct, provide for assistance of loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to this rule is 14.117.

List of Subjects for 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

For the reasons stated in the preamble, HUD amends 24 CFR part 203 as follows:

PART 203—SINGLE FAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

Subpart B—Contract Rights and Obligations

2. Revise 24 CFR 203.280 to read as follows:

§ 203.280 One-time or up-front MIP.

(a) For mortgages for which a one-time or up-front MIP is to be charged in accordance with §§ 203.259a, 203.284, or § 203.285, the mortgagee shall, as a condition to the endorsement of the mortgage for insurance, pay to the Commissioner for the account of the mortgagor, in a manner prescribed by the Commissioner, a premium representing the total obligation for the insuring of the mortgage by the Commissioner or the up-front portion of the total obligation, as applicable, within three business days of the date of closing, or, in the case of a refinancing transaction, within three business days from the date of disbursement of the mortgage proceeds.

(b) For purposes of this section, "business days" means Monday through Friday, exclusive of Federal holidays.

3. Revise 24 CFR 203.282 to read as follows:

§ 203.282 Mortgagee's late charge and interest.

(a) Payment of a one-time or up-front MIP is late if not received by HUD within three business days after the closing, or the disbursement of the loan funds in a refinancing transaction. Late payments shall include a late charge of four percent of the amount of the MIP.

(b) If payment of the MIP is not received by HUD within 30 days after the closing, or the disbursement of the loan funds in a refinancing transaction, the mortgagee will be charged additional late fees until payment is received at an interest rate set in conformity with the Treasury Fiscal Requirements Manual.

Dated: July 8, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–21227 Filed 8–20–02; 8:45 am]

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Part V

Department of Housing and Urban Development

24 CFR Part 234
FHA Approval of Condominium Developments Located in the Commonwealth of Puerto Rico for Mortgage Insurance Under the Section 234(c) Program; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 234

[Docket No. FR–4713–P–01]

RIN 2502–AH80

FHA Approval of Condominium Developments Located in the Commonwealth of Puerto Rico for Mortgage Insurance Under the Section 234(c) Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Department's regulations with respect to condominium ownership mortgage insurance to provide that the date of recordation for purposes of obtaining Federal Housing Administration (FHA) approval of a condominium development in the Commonwealth of Puerto Rico for mortgage insurance under the Section 234(c) program is the date the condominium legal documents are presented to the Commonwealth Registry of the Property. The Department believes that the proposed change will improve homeownership opportunities through increased FHA activity under the Section 234(c) program.

DATES: *Comment Due Date:* October 21, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Office of the Deputy Assistant Secretary for Single Family Housing, Room 9278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–2121 ext. 2204 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 234(c) of the National Housing Act (12 U.S.C. 1715y(c)) (Act) authorizes the Secretary to insure an individual mortgage on a one-family unit in a multifamily project and an undivided interest in the common areas and facilities that serve the project, provided certain conditions are met. The regulations at 24 CFR 234.26(b) provide that the project in which a unit is located shall be committed to a plan of condominium ownership by a deed or other recorded instrument that is acceptable to the FHA Commissioner. As it relates to condominiums, recordation especially commits the developer to following through with the establishment of a viable condominium. Recordation marks a specific point in time when various fees must be paid and when rights and obligations vest in a non-profit condominium association that has been created by the articles of condominium association.

Section 234(k) of the Act provides that, before FHA mortgage insurance can be placed on a unit in a condominium project converted from rental property, at least one year must elapse between the date of conversion and the date application for insurance is made. Conversion is not defined in the Act. HUD's regulations at 24 CFR 234.3 define conversion as the date on which all documents necessary to create a condominium under State law (and under local law) have been recorded.

Under the Commonwealth of Puerto Rico's inscription law, the legal documents to create a condominium regime are "presented" to the Commonwealth Office of the Property Registry, which closely reviews the documents for sufficiency and accuracy. If the documents are found to be in compliance, or can be corrected to be brought into compliance, the documents then are inscribed or recorded. (Because of a current backlog, the review process now takes several years.) When the condominium documents are presented, a condominium regime is established. During the review period, the purchaser acquires a fee interest in a unit together with a common, undivided interest in the common areas as do purchasers in those jurisdictions with more standard recordation procedures. Only in extraordinary circumstances would recordation of the condominium documents not ultimately occur once the legal documents are presented to the Commonwealth Office of the Property Registry.

From the time the condominium legal documents are presented for inscription, the developer/proponent is responsible for paying assessments and costs associated with operating and maintaining the project as a condominium. This can result in substantial cost to a developer prior to the project's eligibility for FHA mortgage insurance.

II. This Rule

This proposed rule would revise the definition of "conversion" in 24 CFR 234.26(b) to provide that, in the case of Puerto Rico, conversion is defined as the date on which a condominium development's legal documents (which must be in compliance with applicable law) are "presented" for inscription (*i.e.*, recordation) to the Commonwealth Registry under Puerto Rico's inscription process. This revision would allow the Department's approval of condominium developments in Puerto Rico for FHA mortgage insurance on individual units within the project on the basis of evidence of presentment of legal documents and the parties obtaining title insurance on each unit.

III. Findings and Certifications

Environmental Review

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose a Federal mandate that will result in expenditure by State, local, or tribal governments, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are no unusual procedures that would need to be complied with by small entities. Although HUD has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Numbers for 24 CFR part 234 are 14.117 and 14.133.

List of Subjects in 24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 234 to read as follows:

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 234 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715y; 42 U.S.C. 3535(d).

2. The definition of "conversion" in § 234.3 is revised to read as follows:

§ 234.3 Definitions

* * * * *

Conversion means the date on which all documents necessary to create a condominium under State law (and under local law, where applicable) have been recorded, except that in the case of the Commonwealth of Puerto Rico, *conversion* is defined as the date on which the legal documents (which must be in compliance with applicable law) to create a condominium are presented for inscription (*i.e.*, recordation) to the Commonwealth Office of the Property Registry.

* * * * *

Dated: July 8, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–21225 Filed 8–20–02; 8:45 am]

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Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 125, and 135
Revisions to Digital Flight Data Recorder Requirements; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, and 135

[Docket No.: FAA–2002–11705; Amendment No. 121–292, 125–39 and 135–85]

RIN 2120–AH81

Revisions to Digital Flight Data Recorder Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the flight data recorder regulations by expanding the recording ranges for certain data parameters for all covered airplanes. This amendment is necessary because certain airplanes are unable to record certain flight parameters under the existing resolution criteria without undergoing unintended and expensive retrofit.

DATES: This final rule is effective on August 20, 2002.

FOR FURTHER INFORMATION CONTACT: Gary Davis, Flight Standards Service, Air Transportation Division, AFS–201A, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8166; facsimile (202) 267–5229, e-mail *gary.davis@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last five digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's web page at *http://www.faa.gov/avr/armhome.htm* or the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under FOR FURTHER INFORMATION CONTACT. You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us *9–AWA–SBREFA@faa.gov*.

Background

The regulations adopted by the FAA in August of 1997 (62 FR 38362) substantially improved the requirements for flight data recorders and mandated that up to 88 parameters of flight data of recorded for diagnostic use in the event of an accident or serious incident. Most of the improvements in the recording capacity did not directly affect Airbus airplanes, however, because almost all of the additional parameters required by the FAA had been incorporated previously into Airbus product specifications. In the case of a few parameters, however, Airbus airplanes were unable to meet the parameter recording requirements adopted in the rule. In 1997, the FAA stated that it had tailored the rule to avoid major equipment redesign or retrofits. The new requirements were to be met in stages, with the first 34 parameters being required at the next heavy maintenance check after August 18, 1999, but no later than August 20, 2001; followed by parameters 35 through 57 for aircraft manufactured after August 18, 2000, upon delivery; and finally parameters 58 through 88 for aircraft manufactured after August 19, 2002, upon delivery.

On August 24, 1999 (64 FR 46117), the FAA amended the digital flight data, recorder (DFDR) resolution and sampling requirements for several parameters for Airbus airplanes. The amendments addressed only the first 34 parameters. Similarly, on August 24, 2000 (64 FR 51741), the FAA revised the DFDR regulations, making technical changes related to parameters 35 through 57 to accommodate Airbus airplanes.

Petition for Rulemaking

By letter dated February 22, 2002, Airbus petitioned the FAA to further amend Appendix M to part 121 and Appendix E to part 125. The letter states that Airbus had completed its audit of compliance requirements for parameters 58 through 88, and identified three specific technical issues of compliance for which it sought relief. Specifically, Airbus seeks minor technical changes to the recording requirements for parameter 83 (cockpit trim control input position—roll), parameter 84 (cockpit trim control input position—yaw), and parameter 88 (cockpit flight control input force—rudder). However, since its February letter, Airbus has withdrawn its request for changes to the requirements for parameter 88.

Airbus notes that the FAA, in adopting the new DFDR recording resolution requirements, did not intend to require equipment redesign or retrofit, and that the requested specification changes would be consistent with that intent. Airbus airplanes have been recording these parameters for many years, and Airbus claims that there would be no safety or analytic benefit to replace sensors that are virtually compliant with the regulatory specifications. According to Airbus, the deviations to current resolution requirements they are seeking are small, and are consistent with the smallest increment employed in the parameters for actual measurement of the respective flight control surfaces.

Specifically, Airbus seeks changes to the DFDR recording requirements for the following parameters as contained in Appendix M to part 121 and appendix E to part 125 of 14 CFR:

Parameter 83, cockpit trim control input position—roll, is required to be resolved to 0.028 degrees (0.2% of operational range of ±7 degrees). On A310 and A300–600 series aircraft this is implemented with a resolution of 0.096 degrees. Airbus asserts that this resolution is nearly identical to the smallest increment used in deflection of the roll control surfaces for each model, which is 0.092 degrees in the A310 aircraft and 0.091 degrees in the A300–600 aircraft. Airbus states that achieving the additional resolution would provide no substantive benefit. Airbus requests that a footnote be added in Appendix M to part 121 and Appendix E to part 125, to reflect this deviation for the airplane models noted.

Parameter 84, cockpit trim control input position—yaw, is required to be resolved to 0.08 degrees (0.2% of operational range of ±20 degrees). On A318/319/320/321 series aircraft, this is implemented with a resolution of 0.088 degrees. Airbus asserts that this resolution surpasses the smallest increment used to deflect the yaw control surfaces for each model, which is 0.112 degrees for the A320 family. Airbus requests that a footnote be added in Appendix M to part 121 and Appendix E to part 125, to reflect this deviation for the airplane models noted.

Airbus states that U.S. operators of the affected airplanes would incur substantial costs associated with being involved in the redesign and installation of new DFDR equipment to achieve precise compliance with the recording resolution requirements of the current regulations. In addition, if new aircraft were delivered with DFDR recording equipment that differs from that installed on existing aircraft, operators would have to maintain the equipment separately, increasing recordkeeping requirements and costs. Airbus states that these added costs would not be balanced by any increase in safety or investigative capability. Accordingly, Airbus concludes that it is in the public interest to make the requested regulatory modifications.

Discussion of Comments

On April 22, 2002, the FAA published a notice of petition for rulemaking, with a request for comments, discussing this Airbus request (67 FR 19534). The comment period for that notice (Notice No. PE–2002–28) closed on May 22, 2002. In response to that notice we received two generally favorable comments, one from the Air Transport Association (ATA) and another from the Boeing Airplane Company (Boeing). The ATA supports the Airbus petition, reaffirming that the 1997 rule was not intended to necessitate retrofit modifications. The ATA agrees with the petitioner's claim that the required changes to the production configurations and the resulting differences with the configurations for airplanes already in service would be neither cost effective nor beneficial in mishap investigations.

Boeing concurs with the requested revisions to the parameter 83 and parameter 84 resolutions, stating that they are minor and would not significantly affect the ability of accident investigators to perform their investigation. However, Boeing questioned the need to revise the accuracy requirement for parameter 88, and is concerned that any changes to the rule might affect the method of compliance for which it had received approval. Since Airbus withdrew its request to amend the recording requirements of parameter 88, no change to that parameter is included in this amendment.

FAA's Response

The FAA considered carefully all the comments received. Because no commenter opposed the requested changes to parameters 83 and 84, the FAA has determined that the changes would be in the public interest.

Airbus requested that these amendments be codified as footnotes to the affected appendixes. After considerable discussion with technical representatives and accident investigators, however, the FAA has determined the requested changes can be made to the appendices and made available to all airplanes without compromising resources available to accident investigators. The incremental difference in the measurements obtained are considered insignificant. Further, the FAA notes that the same parameters and resolution requirements appear in Appendix F to part 135. Because the changes requested will apply to all airplanes subject to parts 121 and 125, the FAA finds that the same changes are appropriate for the part 135 requirements. Accordingly, in Part 121 Appendix M, Part 125 Appendix E, and Part 135 Appendix F, resolution recording requirements for parameters 83 and 84 will be amended to read 0.7% and 0.3% of full range, respectively.

Good Cause for Immediate Adoption

Sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedure Act (APA) (5 U.S.C. Sections 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with certain notice procedures for rules when they find "good cause" to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency, for good cause, finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Section 553(d)(3) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delayed effective date requirement in section 553.

The FAA finds that the requirements for notice and public comment to this amendment have been met because the FAA published for comment Airbus's original petition for rulemaking. Further, if the changes are delayed awaiting additional public notice and comment, regulated entities would be unable to comply with an August 20, 2002, compliance deadline. Therefore, the FAA finds that further notice and comment are unnecessary and that good cause exists for making these amendment effective on August 20, 2002.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no new requirements for information collection associated with this rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

Regulations with an expected minimal impact the above-specified analyses are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full Evaluation, a statement to

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that effect and the basis for it is included in the proposed regulation. The FAA has determined that there are no costs associated with this final rule. Instead, this rule change relieves operators of Airbus airplanes from a cost that would have been inadvertently imposed on them in the adoption of the 1997 regulations. This cost would have been imposed beginning on August 20, 2002. This change effectuates the original intent of the 1997 regulations.

In conducting these analyses, FAA has determined this rule (1) has benefits which justify its costs; (2) is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866 and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will have little effect on international trade; and (5) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

The purpose of this rule is to eliminate the necessity to incorporate unnecessary changes into an existing type of airplane that already meets the requirements of the rule except for minor variations in the resolution recording requirement. The FAA has determined that allowing the continued resolution-recording at a slightly different value will not impact safety or the collection of accident investigation data. This rule would result in cost savings because air carriers would not have to make minor, but costly, changes and subsequently pass those costs on to the public in the form of higher ticket prices.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule will relieve unnecessary costs to operators of certain airplanes. Therefore, the FAA expects this rule to impose no cost on small entities. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking and has determined that it will reduce costs to U.S. operators of certain airplanes but will have a minimal effect on international trade.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal Mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do no apply.

Executive Order 3132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Drug testing, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter 1 of Title 14, Code of Federal Regulations as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, Pub. L. 107–71, 115 Stat. 597–647.

2. Amend Appendix M to part 121 to revise numbers 83 and 84 to read as follows:

Appendix M to Part 121—Airplane Flight Recorder Specifications

The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second.

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
83. Cockpit trim control input position—roll.	Full Range	±5%	1	0.7% of full range.	Where mechanical means for control inputs are not available, cockpit display trim position should be recorded.
84. Cockpit trim control input position—yaw.	Full range	±5%	1	0.3% of full range.	Where mechanical means for control input are not available, cockpit display trim positions should be recorded.

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

3. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

4. Amend Appendix E to part 125 to revise item numbers 83 and 84 to read as follows:

Appendix E to Part 125—Airplane Flight Recorder Specifications

The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second.

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
83. Cockpit trim control input position—roll.	Full Range	±5%	1	0.7% of full range.	Where mechanical means for control inputs are not available, cockpit display trim position should be recorded.
84. Cockpit trim control input position—yaw.	Full Range	±5%	1	0.3% of full range.	Where mechanical means for control input are not available, cockpit display trim positions should be recorded.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

5. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44709, 44705, 44711–44713, 44715–44717, 44722.

6. Amend Appendix F to part 135 revise item numbers 83 and 84 to read as follows:

Appendix F to Part 135—Airplane Flight Recorder Specifications

The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second.

Parameters	Range	Accuracy (Sensor input)	Seconds per sampling interval	Resolution	Remarks
83. Cockpit trim control input position—roll.	Full Range	±5%	1	0.7% of full range.	Where mechanical means for control inputs are not available, cockpit display trim position should be recorded.

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Parameters	Range	Accuracy (Sensor input)	Seconds per sampling interval	Resolution	Remarks
84. Cockpit trim control input position—yaw.	Full Range	±5%	1	0.3% of full range.	Where mechanical means for control input are not available, cockpit display trim positions should be recorded.

* * * * *

Issued in Washington, DC, on August 15, 2002.

Monte R. Belger,

Acting Administrator.

[FR Doc. 02–21171 Filed 8–19–02; 9:44 pm]

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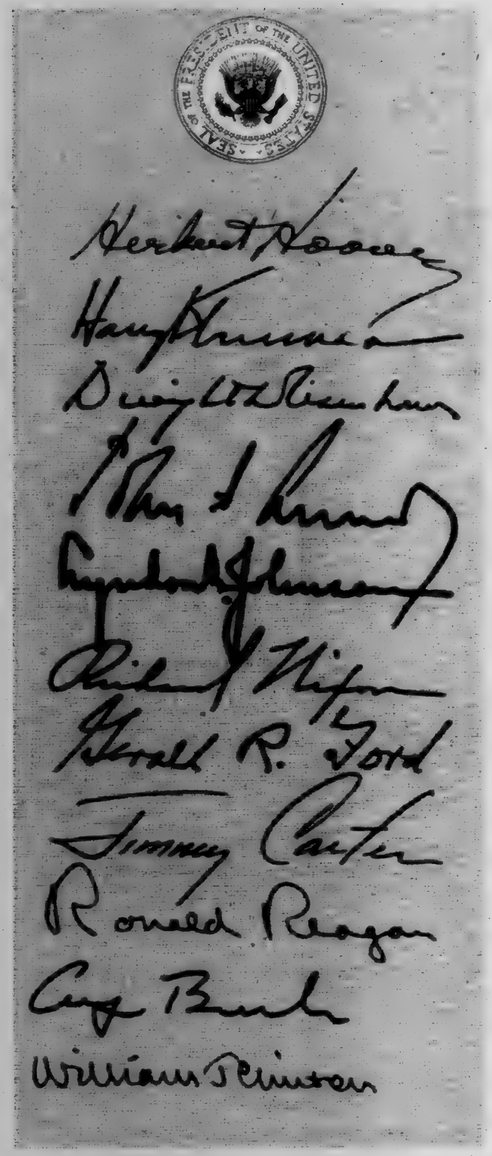
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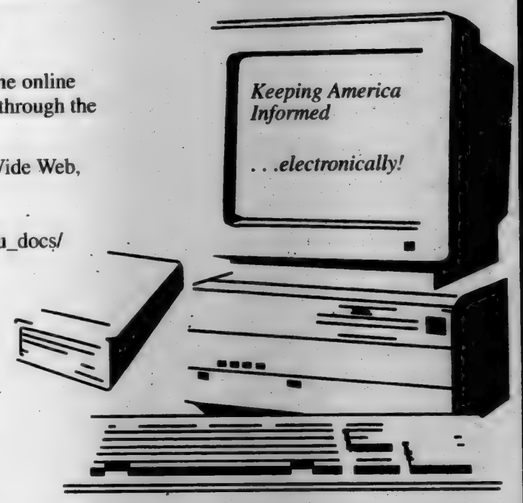
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Presidential Documents

Title 3—

The President

Presidential Determination No. 2002–28 of August 14, 2002

Presidential Determination on Military Drawdown for Tunisia

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by the Constitution and laws of the United States, including title III (Foreign Military Financing) of the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115), I hereby direct the drawdown of defense articles and services from the stocks of the Department of Defense, and military education and training of the aggregate value of $5 million for Tunisia, for the purposes of part II of the Foreign Assistance Act of 1961, as amended.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register**.

THE WHITE HOUSE,
Washington, August 14, 2002.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV02–920–3 IFR]

Kiwifruit Grown in California; Relaxation of Pack and Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises pack and container requirements currently prescribed for California kiwifruit under the California kiwifruit marketing order (order). The order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule increases the number of pieces of fruit per 8-pound sample for three size designations and decreases the number of individual pieces of fruit per 8-pound sample for one size designation, revises lot stamping requirements for plastic containers, suspends the standard packaging requirement for volume filled containers of kiwifruit designated by weight for the 2002–03 season, and removes obsolete language from the text of the regulation. These changes were unanimously recommended by the Committee and are expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve grower returns.

DATES: Effective August 23, 2002. Comments received by October 21, 2002 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920 as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises container and pack requirements currently prescribed for California kiwifruit under the order. This rule increases the number of pieces of fruit per 8-pound sample for three size designations and decreases the number of individual pieces of fruit per 8-pound sample that handlers can pack for one size designation, revises lot stamping requirements for plastic containers, suspends the standard packaging requirement for volume filled containers of kiwifruit designated by weight for the 2002–03 season, and removes obsolete language from the text of the regulation. These changes were unanimously recommended by the Committee and are expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve grower returns. The Committee unanimously recommended these changes at its April 9, 2002, meeting.

Numerical Count Size Designations

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements.

Section 920.52 authorizes the establishment of pack requirements. Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iii) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume filled, or bulk containers.

The amount of kiwifruit supplied to the domestic market by California

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handlers has declined 40 percent since the 1992–93 season, while imports from Europe have increased 1,409 percent. During the 2000–01 season approximately 3.2 million tray equivalents were imported from Europe. Imports from Europe are in direct competition with California kiwifruit. Additionally, grower prices have steadily declined in spite of a continuous increase in the U.S. per capita consumption of kiwifruit. When the order was implemented in 1984, the average Free-on-Board (FOB) value was $1.14 per pound. A recent review of FOB values showed that the average FOB value for the 1992–93 season through the 1999–2000 season was $0.56 per pound, a decline of $0.58 per pound.

As previously mentioned, the rules and regulations specify a maximum number of fruit per 8-pound sample for each numerical count size designation for kiwifruit packed in bags, volume filled, or bulk containers. California and imported fruit size designations by weight have differed since the implementation of the order. In 1998, the Committee addressed these differences by revising the numerical count per size designation specified in § 920.302(a)(iv) of the order's administrative rules and regulations. An interim final rule published in the **Federal Register** on September 3, 1998 (63 FR 46861), increased the number of fruit that could be packed per 8-pound samples of size designations 30 through 42. A final rule concerning this matter was published in the **Federal Register** on July 29, 1999 (64 FR 41010).

Buyers generally prefer to purchase containers with a greater number of pieces of fruit in the box. Therefore, at its September 19, 2001, meeting, the Committee again addressed the differences in size designations between California kiwifruit and imported kiwifruit and unanimously recommended relaxing pack requirements under § 920.302(a)(iii) to permit handlers to pack more individual pieces of fruit in an 8-pound sample for various sizes.

The Committee unanimously recommended increasing the maximum number of fruit per 8-pound sample for sizes 42 through 25, eliminating size 21, and adding new sizes 20 and 23. These changes as shown in the following chart were implemented through an interim final rule (66 FR 1413, October 29, 2001) and a final rule (67 FR 11396, March 14, 2002). Changes are in bold.

Size designation	Maximum number of fruit per 8-pound sample
20	**27**
23	**29**
25	32
27/28	35
30	**38**
33	**43**
36	**45**
39	**49**
42	**54**
45	55

This chart is commonly referred to as the "Size Designation Chart" in the industry. Increasing the maximum number of fruit per 8-pound sample allowed some smaller-sized fruit to be packed into a larger-size category. This change allowed one more piece of fruit to be packed per 8-pound sample in sizes 42 and 39, three more pieces of fruit to be packed in size 36, seven more pieces of fruit to be packed in size 33, and five more pieces of fruit to be packed in sizes 27/28 and 25.

Increasing the maximum number of fruit permitted per 8-pound samples during the 2001–02 season enabled handlers to better meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold.

The changes to the size designation chart have helped reduce the sizing differences between California and imported kiwifruit during the 2001–02 season and allowed more fruit to be sold; however, handlers found that adjustments are still needed in some of the size designations to bring them closer to imported fruit size designations and to allow more accurate sorting into the size categories with handler sizing equipment. Sizing equipment had difficulty during the 2001–02 season distinguishing between sizes.

Therefore, at its April 9, 2002, meeting, the Committee unanimously recommended increasing the maximum number of fruit per 8-pound sample for sizes 23, 30, and 36, and reducing the maximum number of fruit per 8-pound sample for size 42. The maximum number of fruit allowed in size 23 will be increased from 29 pieces of fruit per 8-pound sample to 30 pieces; in size 30, 39 pieces of fruit will be allowed instead of 38 pieces; in size 36, 46 pieces of fruit will be allowed instead of 45; and in size 42, the number of fruit allowed will be decreased from 54 pieces of fruit per 8-pound sample to 53 pieces. These recommended changes are shown in the following chart. Recommended changes are shown in bold.

Size designation	Maximum number of fruit per 8-pound sample
20	27
23	29 **30**
25	32
27/28	35
30	38 **39**
33	43
36	45 **46**
39	49
42	54 **53**
45	55

The Committee believes that increasing the number of fruit permitted per 8-pound samples of sizes 23, 30, and 36, and decreasing the number of fruit per 8-pound sample for size 42 will result in more clearly defined size categories, and allow sizing equipment to more uniformly separate fruit of different sizes. Additionally, these adjustments will make the four size designations more similar to those for imported fruit. This action will not affect import requirements.

Lot Stamping Requirements

Section 920.52 of the order authorizes the establishment of container requirements. Section 920.55 of the order requires inspection and certification of kiwifruit, handled by handlers.

Section 920.303(d) requires all exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector. It further requires that individual consumer packages of kiwifruit placed directly on a pallet have all outside or exposed packages on a pallet plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or have one inspection label placed on each side of the pallet. However, kiwifruit packed into individual consumer packages within a master container that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service (inspection service) are exempted from the lot stamp number requirement.

The lot stamp number is used by the inspection service to identify and locate the corresponding inspector's working papers or notes. Working papers are the documents each inspector completes while performing an inspection on a lot of kiwifruit.

During the 2001 season, the kiwifruit industry began using plastic containers of various dimensions that can hold either bulk or tray packed kiwifruit. Some of these containers are reusable. Kiwifruit packed in reusable plastic containers (RPCs) is typically delivered to the retailer, where the containers are emptied and returned to the clearinghouse for cleaning and redistribution. As RPCs do not support markings that are permanently affixed to the container, all markings must be printed on cards, which slip into tabs on the front or sides of the containers. The cards are easily inserted and removed and contribute to the efficient use of the container. Because of their unique portability, the industry and inspection service are concerned that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers, enabling a handler to avoid inspection on a lot or lots of kiwifruit.

The industry experimented last season with round adhesive labels on RPCs. The lot stamp number was stamped on the round adhesive label and placed on the RPCs; however, manufacturers found that it was difficult to remove the adhesive label in the wash cycle. Additionally, handlers found that increased labor was needed to affix the adhesive labels and lot stamp number to the plastic containers. Handler members calculated that affixing adhesive labels to RPCs and one-way plastic containers cost the kiwifruit industry approximately $0.10 per container in materials and labor.

The inspection service and the Committee have presented their concerns to the manufacturers of these types of containers. One manufacturer has indicated a willingness to address the problem by offering an area on the principal display panel where the container markings will adhere to the plastic container. However, the manufacturer believes that this change may not be feasible in the near future.

To address the additional time and cost of affixing adhesive labels to containers, the Committee unanimously recommended that handlers be allowed to use any method of positive lot identification (PLI) in accordance with Federal or Federal-State Inspection Service (inspection service) procedures. The Committee estimated that allowing handlers to use any method of PLI acceptable to inspection service will reduce handler costs by $8,700, and will make handler operations more efficient. This action will not affect import requirements.

Standard Packaging for Volume Filled Containers Designated by Weight

Section 920.52 authorizes the establishment of pack requirements. Paragraphs (1) and (3) of § 920.52 specify that the USDA may fix the weight of containers used in the handling of kiwifruit.

Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(v) requires that all volume filled containers of kiwifruit designated by weight shall hold 22-pounds (10-kilograms) net weight of kiwifruit unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit.

In a volume filled container, fairly uniform size kiwifruit are loosely packed without cell compartments, cardboard fillers or molded trays. Handlers may ship volume filled containers marked by either the appropriate count or net weight of kiwifruit. Handler shipments are based upon the preference of the receiver.

In 1994, the Committee unanimously recommended and USDA established standard packaging for certain volume filled containers designated by weight. At that time 52 percent of the total crop was packed into volume filled containers. The percentage of the total crop packed into volume filled containers increased to 85 percent during the 2001–02 season. In 2001–02, imports from the Northern hemisphere (Greece, Italy, and France) totaled approximately 17 percent of the U.S. market share. The majority of imported kiwifruit was shipped in 19.8-pound (9-kilogram) volume filled containers, whereas the order limits California handlers to 22-pound (10-kilogram) net weight volume filled containers. Retailers do not differentiate between an imported 19.8-pound (9-kilogram) and a 22-pound (10-kilogram) net weight volume filled container from California. Because buyers pay the same price for each container, the affect is not favorable for California handlers.

Section 920.302(a)(4)(v) requires handlers to utilize a standard packaging of 22-pounds (10-kilograms) net weight for volume filled containers that are over 10-pounds or less than 35-pounds net weight of kiwifruit. This restriction limits California kiwifruit handlers in meeting buyer's demands for other types of packaging.

Therefore, at its April 9, 2002, meeting, the Committee unanimously recommended suspending the standardized packaging requirement of 22-pounds (10-kilograms) net weight for volume filled containers for the 2002–03 season. The Committee expects that this suspension will enable California handlers to meet packaging demands of the retailer for volume filled containers, make California kiwifruit more competitive by allowing handlers to match other packaging styles, and reduce handlers' packaging costs. This change will not affect the import regulation.

Removal of Obsolete Language

Paragraphs (a) and (b) of § 920.60 authorize reporting requirements for kiwifruit handlers under the marketing order.

Section 920.160 requires each handler who ships kiwifruit to file a report of shipment and inventory data to the Committee no later than the fifth day of the month following such shipment. Handlers who ship less than 10,000 trays or the equivalent thereof, per fiscal year, and who have qualified with the Committee are only required to furnish such report of shipment and inventory data twice each year. Paragraphs (a)(1) through (a)(6) of § 920.160 specify the types of information to be provided on the shipment report. Paragraph (a)(4) requires handlers to report inventory at the end of the reporting period by container; paragraph (a)(5) requires handlers to report the amount of kiwifruit lost in repack; and paragraph (a)(6) requires handlers to report the amount of fruit set aside for processing.

The Committee has not been collecting this information from handlers since the early 1990's. Therefore, the Committee unanimously recommended removing these obsolete reporting requirements from § 920.160 of the order's rules and regulations at the April 9, 2002, meeting.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 52 handlers of California kiwifruit subject to

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regulation under the marketing order and approximately 326 growers in the production area. Small agricultural service firms are defined as those whose annual receipts are less than $5,000,000, and small agricultural growers are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $750,000. None of the 52 handlers subject to regulation have annual kiwifruit sales of at least $5,000,000. Two of the 326 growers subject to regulation have annual sales of at least $750,000. Therefore, a majority of the kiwifruit handlers and growers may be classified as small entities.

This rule invites comments on revisions to container and pack requirements prescribed under the California kiwifruit order. This rule increases the number of pieces of fruit per 8-pound sample for three size designations and decreases the number of pieces of fruit per 8-pound sample for one size designation, revises lot stamping requirements for plastic containers, suspends the standard packaging requirement for volume filled containers of kiwifruit designated by weight for the 2002–03 season, and removes obsolete language contained in paragraphs (a)(4), (a)(5), and (a)(6) of § 920.160 that has not been applicable for several years. The Committee unanimously recommended these changes at its April 9, 2002, meeting. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve grower returns. Authority for these actions is provided in §§ 920.52, 920.55, and 920.60 of the order.

Numerical Count Size Designations

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements.

Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iii) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume filled, or bulk containers.

The amount of kiwifruit supplied to the domestic market by California handlers has declined 40 percent since the 1992–93 season, while imports from Europe have increased 1,409 percent. During the 2000–01 season approximately 3.2 million tray equivalents were imported from Europe. Imports from Europe are in direct competition with California kiwifruit. Additionally, grower prices have steadily declined in spite of a continuous increase in the U.S. per capita consumption of kiwifruit. When the order was implemented in 1984, the average Free-on-Board (FOB) value was $1.14 per pound. A recent review of FOB values showed that the average FOB value for the 1992–93 season through the 1999–2000 season was $0.56 per pound, a decline of $0.58 per pound.

As previously mentioned, the rules and regulations specify a maximum number of fruit per 8-pound sample for each numerical count size designation for kiwifruit packed in bags, volume filled, or bulk containers. California and imported fruit size designations by weight have differed since the implementation of the order. In 1998 the Committee addressed these differences by revising the numerical count per size designation specified in § 920.302(a)(iv) of the order's administrative rules and regulations. An interim final rule published in the **Federal Register** on September 3, 1998 (63 FR 46861), increased the number of fruit that could be packed per 8-pound samples of size designations 30 through 42. A final rule concerning this matter was published in the **Federal Register** on July 29, 1999 (64 FR 41010).

Buyers generally prefer to purchase containers with a greater number of pieces of fruit in the box. Therefore, at its September 19, 2001, meeting, the Committee again addressed the differences in size designations between California kiwifruit and imported kiwifruit and unanimously recommended relaxing pack requirements under § 920.302(a)(iii) to permit handlers to pack more individual pieces of fruit in an 8-pound sample for various size designations, and, thus, better meet buyer preferences.

The Committee unanimously recommended increasing the maximum number of fruit per 8-pound sample for sizes 42 through 25, eliminating size 21, and adding new sizes 20 and 23. These changes, as shown in the following chart, were implemented through an interim final rule (66 FR 1413, October 29, 2001), and finalized by a final rule (67 FR 11396, March 14, 2002). Changes are shown in bold.

Size designation	Maximum number of fruit per 8-pound sample
20	**27**
23	**29**
25	**32**
27/28	**35**
30	**38**
33	**43**
36	**45**
39	**49**
42	**54**
45	55

This chart is commonly referred to as the "Size Designation Chart" in the industry. Increasing the maximum number of fruit per 8-pound sample allowed some smaller-sized fruit to be packed into a larger-size category. This change allowed one more piece of fruit to be packed per 8-pound sample in sizes 42 and 39, three more pieces of fruit to be packed in size 36, seven more pieces of fruit to be packed in size 33, and five more pieces of fruit to be packed in sizes 27/28 and 25.

Increasing the maximum number of fruit permitted per 8-pound samples during the 2001–02 season enabled handlers to better meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold.

The changes to the size designation chart helped reduce the sizing differences between California and imported kiwifruit during the 2001–02 season and allowed more fruit to be sold. However, handlers find that adjustments are still needed in some of the size designations to bring them closer to imported fruit size designations and to allow more accurate sorting into the size categories with handler sizing equipment. Sizing equipment had difficulty during the 2001–02 season distinguishing between sizes.

Therefore, at its April 9, 2002, meeting, the Committee unanimously recommended increasing the maximum number of fruit per 8-pound sample for sizes 23, 30, and 36, and reducing the maximum number of fruit per 8-pound sample for size 42. Size 23 will be increased from 29 pieces of fruit per 8-pound sample to 30 pieces, size 30 will be increased from 38 pieces of fruit per 8-pound sample to 39 pieces of fruit, size 36 will be increased from 45 pieces of fruit per 8-pound sample to 46 pieces, and size 42 will be decreased from 54 pieces of fruit per 8-pound sample to 53 pieces. These recommended changes are shown in the following chart in bold.

Size designation	Maximum number of fruit per 8-pound sample
20	27
23	29 **30**
25	32
27/28	35
30	38 **39**
33	43
36	45 **46**
39	49
42	54 **53**
45	55

The Committee believes that increasing the number of fruit permitted per 8-pound samples of sizes 23, 30, and 36, and decreasing the number of fruit in 8-pound samples for size 42 will result in more clearly defined size categories and allow sizing equipment to more uniformly separate fruit of different sizes. Additionally, these adjustments will make the four size designations more similar to those for imported fruit. This action will not affect import requirements.

The Committee discussed alternatives to these changes. It considered suspending the size designation chart to lower inspection costs and allow handlers to pack similar to imports. However, it did not adopt this option because it concluded inspection costs will not be significantly lowered and because a recent grower survey showed that uniform sizing is one of the most important issues to the California kiwifruit growers.

Another suggestion presented was to leave the size designation chart unchanged. The Committee did not adopt this suggestion because it believes that handlers will benefit from the revised numerical counts for sizes 23, 30, 36, and 42.

After considering these alternatives, the Committee recommended relaxing the pack requirements for three sizes and tightening the pack requirements for one size. Small and large growers and handlers are expected to benefit from these changes. A reasonable crop estimate for the 2002–03 season is 7.5 million tray equivalents. The average FOB value for the 2001–02 season is estimated to be $3.50 per tray equivalent. The Committee estimated that the changes to the numerical count for size designations 23, 30, 36 and 42 will increase the average FOB value for the 2002–03 season to $3.75 per tray equivalent. It is anticipated that the FOB value for the 2002–03 season will increase by $1,875,000 ($3.75—$3.50 x 7,500,000 tray equivalents). This change will not affect the minimum size and will not allow fruit currently considered "undersized" to be shipped. These changes will not affect import requirements. These changes are expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve grower returns.

Lot Stamping Requirements

Section 920.303 (d) requires all exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet, to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector. It further requires that individual consumer packages of kiwifruit placed directly on a pallet have all qutside or exposed packages on a pallet plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or have one inspection label placed on each side of the pallet. However, kiwifruit packed into individual consumer packages within a master container that are being directly loaded into a vehicle for export shipment under the supervision of the inspection service is exempted from the lot stamp number requirement. The lot stamp number is used by the inspection service to identify and locate the corresponding inspector's working papers or notes. Working papers are the documents each inspector completes while performing an inspection on a lot of kiwifruit and the information in the working papers is used by the inspector to determine the grade of the inspected lot.

During the 2001 season, the kiwifruit industry began using plastic containers of various dimensions that can hold either bulk or tray packed kiwifruit. Some of these containers are reusable. Kiwifruit packed in reusable plastic containers (RPCs) is typically delivered to the retailer where the containers are emptied and returned to the clearinghouse for cleaning and redistribution. As RPCs do not support markings that are permanently affixed to the container, all markings must be printed on cards, which slip into tabs on the front or sides of the containers. The cards are easily inserted and removed and further contribute to the efficient use of the container. Because of their unique portability, the industry and inspection service are concerned that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers, enabling a handler to avoid inspection on a lot or lots of kiwifruit.

The industry experimented last season with round adhesive labels on RPCs. The lot stamp number was stamped on the round adhesive label and placed on the RPCs; however, manufacturers found that it was difficult to remove the adhesive label in the wash cycle. Additionally, handlers found that increased labor was needed to affix the adhesive labels and lot stamp number to the plastic containers. Handler members calculated that affixing adhesive labels to RPCs and one-way plastic containers cost the kiwifruit industry approximately $0.10 per container in materials and labor. The inspection service and the Committee have presented their concerns to the manufacturers of these types of containers. One manufacturer has indicated a willingness to address the problem by offering an area on the principal display panel where the container markings will adhere to the plastic container. However, this change may not be feasible in the near future.

To address the additional time and cost of affixing adhesive labels to containers, the Committee unanimously recommended that handlers be allowed to use any method of PLI in accordance with Federal or Federal-State Inspection Service (inspection service) procedures. The Committee estimated that allowing handlers to use any method of PLI acceptable to the inspection service will reduce handler costs by $8,700, and will make handler operations more efficient. This action will not affect import requirements.

The Committee discussed alternatives to this change including not changing the lot stamp requirements for plastic containers. After considering this alternative, the Committee recommended relaxing the container marking requirements provided that plastic containers meet any approved method of PLI. The Committee believes that handlers and growers will benefit from such a relaxation. This change is expected to help handlers compete more effectively in the marketplace and to improve grower returns. This action will not affect import requirements.

Standard Packaging for Volume Filled Containers Designated by Weight

Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302 (a)(4)(v) requires that all volume filled containers of kiwifruit designated by weight shall hold 22-pounds (10-kilograms) net weight of kiwifruit unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit.

In a volume filled container, fairly uniform size kiwifruit are loosely packed without cell compartments, cardboard fillers or molded trays. Handlers may ship volume filled containers marked by either the appropriate count or net weight of kiwifruit. Handler shipments are based upon the preference of the receiver.

In 1994, the Committee unanimously recommended, and USDA established standard packaging for certain volume filled containers packed by weight. At that time, 52 percent of the total crop was packed into volume filled containers. The percentage of the total crop packed into volume filled

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containers increased to 85 percent during the 2001–02 season. In 2001–02, imports from the Northern Hemisphere (Greece, Italy, and France) totaled approximately 17 percent of the U.S. market share. The majority of imported kiwifruit was shipped in 19.8-pound (9-kilogram) volume filled containers, whereas the order limits California handlers to 22-pound (10-kilogram) net weight volume filled containers. Retailers do not differentiate between an imported 19.8-pound (9-kilogram) and 22-pound (10-kilogram) net weight volume filled container from California. Because buyers pay the same price for each container, the effect is not favorable for California handlers.

Section 920.302(a)(4)(v) requires handlers to utilize a standard 22-pound (10-kilogram) net weight standard packaging for volume filled containers that are over 10-pounds or less than 35-pounds net weight. This restriction limits California kiwifruit handlers in meeting buyer's demands for other types of packaging.

Therefore, at its April 9, 2002, meeting, the Committee unanimously recommended suspending the standard 22-pound (10-kilogram) net weight packaging requirement for volume filled containers designated by weight for the 2002–03 season. The Committee expects that this suspension will enable California handlers to meet packaging demands of the retailer for volume filled containers; make California kiwifruit more competitive with imports by allowing handlers to pack similar to imports; and reduce handlers' packaging costs. This change will not impact import requirements.

The Committee discussed alternatives at the April 9, 2002, meeting. One Committee member suggested leaving the standard packaging requirement unchanged. However, the Committee believes that relaxing the standard packaging requirement of 22-pound (10-kilogram) net weight for volume filled containers designated by weight will allow handlers the flexibility to meet buyer container preferences and to increase sales.

The Committee considered other alternatives to revising packing and container requirements; but determined that these suggestions will not adequately address the industry problems.

Removal of Obsolete Language

Paragraphs (a) and (b) of § 920.60 authorize reporting requirements for kiwifruit handlers under the marketing order.

Section 920.160 requires each handler who ships kiwifruit to file a report of shipment and inventory data to the Committee no later than the fifth day of the month following such shipment. Handlers who ship less than 10,000 trays or the equivalent thereof, per fiscal year, and who have qualified with the Committee are only required to furnish such report of shipment and inventory data twice each year. Paragraphs (a)(1) through (a)(6) of § 920.160 specify the types of information to be provided on the shipment report. Paragraph (a)(4) requires handlers to report inventory at the end of the reporting period by container; paragraph (a)(5) requires handlers to report the amount of kiwifruit lost in repack; and paragraph (a)(6) requires handlers to report the amount of fruit set aside for processing.

The Committee has not been collecting this information from handlers since the early 1990's. Therefore, the Committee unanimously recommended removing these obsolete reporting requirements from § 920.160 of the order's rules and regulations at the April 9, 2002, meeting. It is estimated that the handler burden will not be impacted, as the current shipment report form approved by the Office of Management and Budget (OMB) under OMB No. 0581–0189 does not contain these data elements.

This rule will relax pack and container requirements under the kiwifruit order. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

In addition, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the April 9, 2002, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on revisions to pack and container requirements currently prescribed under the California marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C., it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes pack and container requirements; (2) the 2002–2003 harvest is expected to begin during September and this relaxation should be in place as soon as possible to enable handlers to make operational decisions and to cover as much of the harvest as possible; (3) the Committee unanimously recommended these changes to provide handlers more marketing flexibility at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 920.160 [Amended]

2. In § 920.160, paragraphs (a)(4), (a)(5), and (a)(6) are removed.

3. In § 920.302, paragraph (a)(4)(v) is suspended beginning with August 23, 2002 through July 31, 2003, and the table in paragraph (a)(4)(iii) is revised to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

(a) * * *

(4) * * *

(iii) * * *

Column 1 size designation	Column 2 maximum number of fruit per 8 pound sample
20	27
23	30
25	32
27/28	35
30	39
33	43
36	46
39	49
42	53
45	55

* * * * *

4. In § 920.303, paragraph (d) is revised to read as follows:

§ 920.303 Container marking regulations.

* * * * *

(d) All exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet, shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except for individual consumer packages within a master container and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service. Individual consumer packages of kiwifruit placed directly on a pallet shall have all outside or exposed packages on a pallet plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or have one inspection label placed on each side of the pallet. Plastic containers of kiwifruit, placed on a pallet, shall be positive lot identified (PLI) in accordance with Federal or Federal-State Inspection Service procedures and shall have required information on the cards of the individual containers, as provided in this section of the regulations.

* * * * *

Dated: August 16, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–21364 Filed 8–19–02; 10:25 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–387–AD; Amendment 39–12854; AD 2002–16–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777 series airplanes, that requires modification of the supports for the wire bundles of the fuel quantity indicator system (FQIS), and follow-on actions, if necessary. The actions specified by this AD are intended to prevent chafing of the FQIS wiring on surrounding structures and systems. Such chafing could result in exposure of the bare conductor in close proximity to structures or other electrically conductive return paths, and potential electrical arcing and explosion in the fuel tank in the event of an additional wiring failure outside the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Effective September 26, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 26, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Vann, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1024; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes was published in the **Federal Register** on July 25, 2001 (66 FR 38588). That action proposed to require modification of the supports for the fuel quantity indicator system (FQIS) wire bundles.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Withdraw Proposed Rule

One commenter states that the change proposed by the FAA has already been addressed by the manufacturer, per the release of the service bulletins referenced in the proposed rule that specify inspecting the in-tank wiring and revising the installation to enhance the wire separation from the in-tank structure. The commenter adds that, in testing where there was the potential for wire chafing from fuel sloshing and vibration, and during inspections, wire chafing was not found. The commenter states that chafed fuel quantity indicator system (FQIS) wiring, in combination with certain wiring or component failures, resulting in a potential ignition source, is improbable because of the safety design features that preclude such an occurrence. The commenter notes several reasons that the actions in the proposed rule are not necessary. First, the FQIS processor on Model 777 series airplanes is designed to meet electrical unit intrinsic safety levels, per the manufacturer's requirements. Second, the FQIS wiring has an outer insulation jacket, then a double-braided shield for protection, and each wire has its own insulation jacket. Third, for 70 percent of the distance from the processor to the wing spar, the FQIS wiring has a spatial separation from other airplane wiring. Fourth, the in-tank wiring conductor is nickel-plated, which, per in-service data, is proven to be resistant to fuel tank corrosion.

The FAA infers that the commenter wants the proposed rule withdrawn. We do not agree. We have conducted many inspections of the fuel tanks on Model 777 series airplanes, and have found that the current wiring installation design is highly sensitive to wiring installation quality, such that the level of installation quality control necessary to prevent chafing is unrealistic. In addition, other factors such as fuel sloshing, airplane flexure, inertial loads, and fuel tank maintenance can cause the wiring to move into positions where chafing can occur. The modifications specified in the referenced service bulletins provide the necessary improvements to prevent chafing of the

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FQIS wiring. Additionally, although the commenter stated that chafed wiring, in combination with certain wiring or component failures, would not result in a potential ignition source, we do not agree. The design features of the FQIS cannot ensure that, over the lifetime of the airplane, sufficient energy will not cause electrical arcing from entering the fuel tank.

The same commenter asks that, if the proposed rule is adopted as final, it be changed to reference subsequent revisions of the referenced service bulletins for accomplishment of the specified actions.

We do not agree with the commenter. An AD may only refer to service documents that are submitted and approved by the Office of the Federal Register for "incorporation by reference." In order for operators to use later revisions of the referenced document (issued after the publication of the AD), either the AD must be revised to refer to the specific later revisions, or operators must request approval for the use of them as an alternative method of compliance with this AD under the provisions of paragraph (c) of this AD. No change to the final rule is necessary in regard to the previous comments.

Extend Compliance Time

One commenter asks that the compliance time specified in the proposed rule be extended from 24 to 48 months. The commenter states that the airlines should be allowed to schedule incorporation of the modifications at a convenient heavy maintenance check if the specified safety procedures are in place and no evidence of chafing is found during testing or incorporation of the modifications.

We do not agree with the commenter. The commenter provides no technical justification for increasing the compliance time as requested. Further, the areas where the wiring concerns being remedied by this AD are regularly exposed to flammable fuel vapors. Arcing in the tank can cause ignition of these flammable fuel vapors. In light of this, and since the unsafe condition addressed by this AD is a significant safety issue, we have determined that the compliance time of 24 months, as proposed, is warranted.

In developing an appropriate compliance time for the actions required by this AD, we considered not only those safety issues, but the manufacturer's recommendations, parts availability, and the practical aspect of accomplishing the modifications within an interval paralleling normal scheduled maintenance for the majority of affected operators. In light of all of these factors described previously, we consider 24 months to be an appropriate compliance time wherein safety will not be adversely affected. No change to the final rule is necessary in this regard.

Eliminate Reporting Requirement

One commenter asks that the reporting requirement included in paragraph (b) of the proposed rule be eliminated. The commenter states that at the time it accomplished the specified modifications, the referenced service bulletins did not include formal procedures or steps for inspection of the damaged wire. Therefore, the commenter did not include those steps in its internal documentation and cannot compile the information for the reporting requirement. The commenter notes that to comply it would have to re-inspect the wiring that has already been modified on all affected airplanes. This would include unscheduled fuel tank entries, which would not take place during a normal maintenance visit and would have a significant financial impact on the airlines.

We partially agree with the commenter, but we do not agree to eliminate paragraph (b) of the final rule. However, we agree that if operators have accomplished the modifications required by paragraph (a) of the final rule, they should not have to re-enter the fuel tank to obtain the information necessary for the reporting requirement submission. Therefore, we have revised paragraph (b)(2) of the final rule to require submission of a report of findings from the previously completed fuel tank modification within 60 days after the effective date of this final rule.

Explanation of Change to Final Rule

The FAA finds that the follow-on actions (Replacement and Reporting of Damaged Wiring), as specified in paragraph (b) of this AD, were inadvertently omitted from the Summary section of the proposed rule. Those actions have been included in the Summary section of this final rule for clarification. We also have changed the heading for paragraph (b) of the final rule to specify "Follow-On Actions," in lieu of "Replacement and Reporting of Damaged Wiring," to better define the actions specified in paragraph (b) of this final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 266 airplanes of the affected design in the worldwide fleet. The FAA estimates that 75 airplanes of U.S. registry will be affected by this AD, that it will take approximately the number of work hours per airplane displayed in the table below to accomplish the required modifications, and that the average labor rate is $60 per work hour. Required parts costs are also listed in the table below:

ESTIMATED COST IMPACT

Boeing service bulletin	Number of work hours per airplane	Parts cost per airplane	Estimated cost per airplane	Number of U.S. airplanes affected	Estimated cost to U.S. fleet
777–28–0012	38	$628	$2,908	23	$66,884
777–28–0016 (Group 1)	43	490	3,070	18	55,260
777–28–0016 (Group 2)	48	839	3,719	57	211,983
777–28–0021 (Work Package 1)	30	1,058	2,858	75	214,350
777–28–0021 (Work Package 2)	32	1,058	2,978	75	223,350

Service Bulletins 777–28–0012 and 777–28–0016 both address center fuel tank (CFT) wiring improvements and require CFT entry. Operators should note that concurrent incorporation of these two service bulletins would minimize tank entries and would be a cost savings (33 work hours per airplane) to the operators because they would need to de-fuel, access, and close access to the CFT only once.

The cost impact figures discussed in the table above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–15 Boeing: Amendment 39–12854. Docket 2000–NM–387–AD.

Applicability: Model 777 series airplanes, line numbers 1 through 266 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the fuel quantity indicator system (FQIS) wiring on surrounding structures and systems, which could result in exposure of the bare conductor in close proximity to structures or other electrically conductive return paths, and potential electrical arcing and explosion in the fuel tank in the event of an additional wiring failure outside the fuel tank, accomplish the following:

Modifications

(a) Within 24 months after the effective date of this AD, complete the actions required by paragraphs (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

Modification of Model 777–200 Center Fuel Tank Wiring

(1) For Model 777–200 series airplanes identified in Boeing Special Attention Service Bulletin 777–28–0012, dated September 2, 1999, modify the FQIS wire bundles (including removing the FQIS wire bundle support brackets at each spanwise beam penetration and replacing them with seals, removing the FQIS wire bundle support brackets from the side of the body rib, installing a grommet in the penetration hole, and replacing the bracket with two new brackets), in accordance with the Accomplishment Instructions of the service bulletin.

Modification of Model 777–200 and –300 Center Fuel Tank Wiring

(2) For Model 777–200 and –300 series airplanes identified in Boeing Special Attention Service Bulletin 777–28–0016, dated April 27, 2000, modify the supports for the FQIS wire bundles in the center fuel tank (including installing spacers on the FQIS wiring support brackets and standoffs, installing a clamp next to the grommet at each tank unit, and replacing the clamp filler O-rings), in accordance with the Accomplishment Instructions of the service bulletin.

Modification of Model 777–200 and –300 Main Fuel Tank Wiring

(3) For Model 777–200 and –300 series airplanes identified in Boeing Special Attention Service Bulletin 777–28–0021, dated April 27, 2000, modify the FQIS wire bundles in the main fuel tanks (including installing spacers on the wiring support brackets and standoffs, installing a clamp next to the grommet at each tank unit, and replacing the clamp O-rings), in accordance with the Accomplishment Instructions of the service bulletin.

Follow-On Actions

(b) If any damaged wiring is found during the performance of the modifications required by paragraph (a)(1), (a)(2), or (a)(3) of this AD, before further flight, replace the damaged wiring with new wiring in accordance with Boeing Standard Wiring Practices Manual D6–54446, Chapter 20, Section 10, Subject 11 (20–10–11), dated August 1, 1996. Then submit a report of damaged wire findings to Service Bulletin Engineering, Boeing Commercial Airplane Group, P.O. Box 3707, Mail Stop 2H–37, Seattle, Washington 98124–2207, at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. The report must include a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the modifications are accomplished after the effective date of this AD: Submit the report within 14 days after performing the applicable modification required by paragraph (a)(1), (a)(2), or (a)(3) of this AD.

(2) For airplanes on which the modifications were accomplished before the effective date of this AD, it is not necessary to re-enter the fuel tanks to conduct inspections. Based on records collected during the previous modifications, submit the report within 60 days after the effective date of this AD. The report must include the date the modifications were done; any problems recorded when doing the modifications; a description of where the problems were found, if recorded; and a point of contact and telephone number.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of

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compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The modifications shall be done in accordance with Boeing Special Attention Service Bulletin 777–28–0012, dated September 2, 1999; Boeing Special Attention Service Bulletin 777–28–0016, dated April 27, 2000; and Boeing Special Attention Service Bulletin 777–28–0021, dated April 27, 2000; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on September 26, 2002.

Issued in Renton, Washington, on August 5, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20269 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–307–AD; Amendment 39–12849; AD 2002–16–10]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes, that requires various modifications of the airstair (main passenger) door. This action is necessary to prevent failure of the airstair door to open after a landing, which could result in a blocked escape route during an emergency evacuation. This action is intended to address the identified unsafe condition.

DATES: Effective September 26, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 26, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes was published in the **Federal Register** on March 20, 2002 (67 FR 12908). That action proposed to require various modifications of the airstair (main passenger) door.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Credit Language

Since the language in Note 3 of the proposed AD is regulatory in nature, the note has been redesignated as paragraph (b) in this final rule. The remaining paragraphs of this final rule have been redesignated to accommodate this change.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA had determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA provides the following cost estimates for the actions specified by this AD:

Action per service bulletin	Work hours per airplane	Labor rate per hour	Parts cost per airplane	Number of U.S. airplanes affected	Per-airplane cost	Fleet cost
8–52–46	3	$60	$297	194	$477	$92,538
8–52–38	4	60	1,930	130	2,170	282,100
8–52–57	1	60	0	194	60	11,640
8–52–56	4	60	0	194	240	46,560
8–52–59	3	60	0	194	180	34,920

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include

incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–10 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–12849. Docket 2000–NM–307–AD.

Applicability: Model DHC–8–100, –200, and –300 series airplanes; certificated in any category; serial numbers 003 through 550.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the airstair door to open after a landing, which could result in a blocked escape route during an emergency evacuation, accomplish the following:

Modifications

(a) Modify the airplane as specified in Table 1 of this AD. Table 1 is as follows:

TABLE 1.—MODIFICATION REQUIREMENTS

For model—	Modify the airstair door by—	Within—	In accordance with the accomplishment instructions of bombardier service bulletin—
(1) DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes; serial numbers 003 through 522 inclusive.	Replacing the inflation valve with a new valve of an improved design (Modsum 8Q100185).	6 months after the effective date of this AD.	8–52–46, dated September 30, 1998.
(2) DHC–8–102, –103, –106, –301, –311, and –315 series airplanes; serial numbers 003 through 400 inclusive.	Reworking the airstair door cable balance assembly (Modsum 8/2205).	6 months after the effective date of this AD.	8–52–38, dated October 10, 1995; or 8–52–38, Revision "A," dated September 19, 1997.
(3) DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes; serial numbers 003 through 550 inclusive.	Replacing the upper cable guards on the airstair door with new, improved cable guards (Modsum 8Q101093).	6 months after the effective date of this AD, but after the modification required by paragraph (a)(2) of this AD.	8–52–57, dated February 23, 2000; or 8–52–57, Revision "A," dated July 28, 2000; or 8–52–57, Revision "B," dated November 14, 2000.
(4) DHC–8–102, –103, 106, –201, –202, –301, 311, and –315 series airplanes; serial numbers 003 through 550 inclusive.	(i) Manufacturing and installing a support bracket assembly (Modsum 8Q101086); and/or.	6 months after the effective date of this AD.	8–52–56, Revision "C," dated March 10, 2000; or 8–52–56, Revision "D," dated May 18, 2000; or 8–52–56, Revision "E," dated July 20, 2000; or 8–52–56, Revision "F," dated August 29, 2000; or 8–52–56, Revision "G," dated November 7, 2000.
	(ii) Replacing the airstair door gas springs with new gas springs (Modsum 8Q101074).	6 months after the effective date of this AD.	8–52–59, dated September 18, 2000; or 8–52–59, Revision "A," dated January 3, 2001.

Note 2: Modsum 8Q101093 (paragraph (a)(3) of this AD) cannot be accomplished before Modification 8/2205 (paragraph (a)(2) of this AD), because Modsum 8Q101093 introduces a redesigned cable guard that replaces a cable guard that is part of Modification 8/2205.

(b) Modification, as specified by either paragraph (a)(4)(i) or (a)(4)(ii)—or both—of this AD, is acceptable for compliance with

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the requirements of paragraph (a)(4) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with the Bombardier service bulletins listed in Table 2 of this AD, as applicable. Table 2 is as follows:

TABLE 2.—SERVICE DOCUMENTS

Service bulletin	Revision level	Dated
8–52–38 ...	Original ...	October 10, 1995.
8–52–38 ...	'A'	September 19, 1997.
8–52–46 ...	Original ...	September 30, 1998.
8–52–56 ...	'C'	March 10, 2000.
8–52–56 ...	'D'	May 18, 2000.
8–52–56 ...	'E'	July 20, 2000.
8–52–56 ...	'F'	August 29, 2000.
8–52–56 ...	'G'	November 7, 2000.
8–52–57 ...	Original ...	February 23, 2000.
8–52–57 ...	'A'	July 28, 2000.
8–52–57 ...	'B'	November 14, 2000.
8–52–59 ...	Original ...	September 18, 2000.
8–52–59 ...	'A'	January 3, 2001.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–19R1, dated January 22, 2001.

Effective Date

(f) This amendment becomes effective on September 26, 2002.

Issued in Renton, Washington, on August 12, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20931 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–10–AD; Amendment 39–12864; AD 2002–16–25]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arriel Models 2 S1, 2 B, and 2 C Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Turbomeca S.A. Arriel models 2 S1, 2 B, and 2 C turboshaft engines. This amendment requires initial and repetitive visual inspections for fuel leaks, and replacement of fuel pumps that are found leaking fuel. In addition, this amendment requires that fuel pumps found with pump wall thickness below minimum be removed from service. This amendment is prompted by a manufacturing investigation of pump bodies found to have below minimum material thickness, which could cause fuel leakage through thin, porous walls, reducing fuel pump fire resistance. The actions specified by this AD are intended to prevent fuel leakage, which may cause engine fires that could lead to an in-flight engine shutdown, damage to the helicopter, and forced landing.

DATES: Effective September 26, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 26, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 64 40 00; fax (33) 05 59 64 60 80. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Woldan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7136; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Turbomeca S.A. Arriel models 2 S1, 2 B, and 2 C turboshaft engines was published in the **Federal Register** on February 11, 2002 (67 FR 6210). That action proposed to require initial and repetitive visual inspections for fuel leaks, and replacement of fuel pumps that are found leaking fuel. In addition, that action proposed to require that fuel pumps found with pump wall thickness below minimum be removed from service. These proposed actions would be done in accordance with Turbomeca Service Bulletin (SB) No. 292 73 2803, dated July 2, 1999.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 44 engines of the affected design in the worldwide fleet. It is unknown how many engines are installed on aircraft of U.S. registry that would be affected by this AD. The FAA estimates that it would take approximately 1.5 work hours per engine to accomplish the actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $59,000 per engine. Based on these figures, the total cost of the AD is estimated to be $59,090 per engine. Assuming all 44 engines are installed on aircraft of U.S. registry, the total cost is estimated to be $2,599,960. The manufacturer has advised the Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, that affected pumps may be exchanged free of charge, thereby substantially reducing the potential cost of this rule.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–16–25 Turbomeca S.A.: Amendment 39–12864. Docket No. 2001–NE–10–AD.

Applicability

This airworthiness directive (AD) is applicable to Turbomeca S.A. Arriel models 2 S1, 2 B, and 2 C turboshaft engines. These engines are installed on, but not limited to Sikorsky S76, Eurocopter France "Ecureuil" AS 350 B3, and Eurocopter France "Dauphin" AS 365 N3 helicopters.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent fuel leakage, which may cause engine fires that could lead to an in-flight engine shutdown, damage to the helicopter, and forced landing, do the following:

Inspections and Actions

(a) For the fuel metering high pressure/low pressure (HP/LP) pump assemblies listed by serial number (SN) in Appendix 1 of Turbomeca Service Bulletin (SB) No. 292 73 2803, dated July 2, 1999, do the following:

(1) After the last flight of each day, within five minutes of engine shutdown, perform a visual inspection of the floor of the helicopter engine bay for fuel leaks.

(2) If evidence of a fuel leak is observed, inspect the fuel metering HP/LP pump assembly for leakage and if leakage is observed, replace with a serviceable pump assembly before further flight.

(3) If visual inspection of the floor of the helicopter engine bay for fuel leaks reveals no leaks, do either of the following:

(i) Continue repetitive visual inspections of the floor of the helicopter engine bay for fuel leaks in accordance with paragraph (a)(1) of this AD, and perform repetitive visual inspections of the fuel metering HP/LP pump assembly for fuel leaks at intervals not to exceed 50 hours of operation. If evidence of fuel leaking is observed, replace the pump assembly with a serviceable pump assembly before further flight, in accordance with Turbomeca SB No. 292 73 2803, dated July 2, 1999; or

(ii) Remove the pump assembly and inspect to determine if pump body material wall thickness is below the minimum material thickness, in accordance with Section 2 of Turbomeca SB No. 292 73 2803, dated July 2, 1999. If pump body material wall thickness is at or above the minimum material thickness, mark the pump assembly by adding a letter "x" to the end of the SN.

(b) Replace the fuel metering HP/LP pump assembly if listed by SN in Appendix 1 of Turbomeca Service Bulletin (SB) No. 292 73 2803, dated July 2, 1999, with a serviceable pump assembly by December 31, 2006.

Definitions

(c) For the purposes of this AD, a serviceable pump assembly is a fuel metering HP/LP pump assembly not listed by SN in Appendix 1 of Turbomeca SB No. 292 73 2803, dated July 2, 1999, or a fuel metering HP/LP pump assembly listed by SN in Appendix 1 whose pump body material wall thickness has been determined by inspection to be at or above the minimum material thickness, and marked in accordance with paragraph (a)(3)(ii) of this AD.

Terminating Action

(d) Replacement, or verification of correct wall thickness of a fuel metering HP/LP pump assembly that is listed in Appendix 1 of Turbomeca SB No. 292 73 2803, dated July 2, 1999, with a serviceable pump assembly as defined in paragraph (c) of this AD, is considered terminating action for the inspection requirements specified in paragraph (a) of this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(g) The inspections and removals must be done in accordance with Turbomeca SB No. 292 73 2803, dated July 2, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 64 40 00; fax (33) 05 59 64 60 80. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Direction Generale de L'Aviation Civile (DGAC) Airworthiness Directive AD 99–285(A), dated July 13, 1999.

Effective Date

(h) This amendment becomes effective on September 26, 2002.

Issued in Burlington, Massachusetts, on August 14, 2002.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–21355 Filed 8–21–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–061]

RIN 2115–AE46

Special Local Regulations for Marine Events; Delaware River, Pea Patch Island to Delaware City, DE

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the "Escape from Fort Delaware—One Mile Swim", a marine event to be held September 21, 2002 on the waters of the Delaware River between Pea Patch Island and Delaware City, Delaware. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Delaware River between Pea Patch Island and Delaware City during the event.

DATES: This rule is effective from 1:15 p.m. to 3:15 p.m. on September 21, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–061 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. The event will be held on Saturday, September 21, 2002. There is not sufficient time to allow for an appropriate notice and comment period, prior to the event. Because of the danger posed to approximately 175 swimmers competing within a confined area, special local regulations are necessary to provide for the safety of event participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. In addition, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

Background and Purpose

On September 21, 2002, CanalFest 2002, Inc. will sponsor the Escape from Fort Delaware—One Mile Swim. The event will consist of approximately 175 swimmers competing on a portion of the Delaware River between Pea Patch Island and Delaware City, Delaware. A fleet of spectator vessels is expected to gather near the event site to view the swimmers. Due to the need for vessel control during the swimming event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the Delaware River between Pea Patch Island and Delaware City, Delaware. The temporary special local regulations will be in effect from 1:15 p.m. to 3:15 p.m. on September 21, 2002. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Although this rule prevents traffic from transiting a portion of the Delaware River during the event, the effect of this rule will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Delaware River during the event.

Although this rule prevents traffic from transiting a portion of the Delaware River during the event, the effect of this regulation will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraphs (34)(h) and (35)(a) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are specifically excluded from further analysis and documentation under those sections. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. From 1:15 p.m. to 3:15 p.m. on September 21, 2002, add temporary section, § 100.35–T05–061 to read as follows:

§ 100.35–T05–061 Delaware River, Pea Patch Island to Delaware City, Delaware.

(a) *Definitions.* (1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Philadelphia.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Group Philadelphia with a commissioned, warrant, or petty officer of the Coast Guard on board and displaying a Coast Guard ensign

(b) *Regulated area.* All waters of the Delaware River between Pea Patch Island and Delaware City, Delaware, bounded by a line connecting the following points:

Latitude	Longitude
39°36′35.7″ North	075°35′25.6″ West, thence to
39°34′57.3″ North	075°33′23.1″ West, thence to
39°34′11.9″ North	075°34′28.6″ West, thence to
39°35′52.4″ North	075°36′33.9″ West

All coordinates reference Datum NAD 1983.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(d) *Enforcement period.* This section will be enforced from 1:15 p.m. to 3:15 p.m. on September 21, 2002.

Dated: August 14, 2002.

A. E. Brooks,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 02–21468 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–059]

RIN 2115–AE46

Special Local Regulations for Marine Events; Atlantic Ocean, Atlantic City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the "Trump Marina Offshore Grand Prix", a marine event to be held September 20–22, 2002, on the waters of the Atlantic Ocean, adjacent to

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Atlantic City, New Jersey. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Atlantic Ocean during the event.

DATES: This rule is effective from 11:30 a.m. on September 20, 2002, to 3:30 p.m. on September 22, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–059 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. There is not sufficient time to allow for a notice and comment period, prior to the event on September 20–22, 2002. Because of the danger inherent in high-speed boat races, special local regulations are necessary to provide for the safety of spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. In addition, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

Background and Purpose

On September 20–22, 2002, the New Jersey Performance Power Boat Club will sponsor the "Trump Marina Offshore Grand Prix", on the Atlantic Ocean, adjacent to Atlantic City, New Jersey. The event will consist of approximately 90 offshore power boats racing in heats along a 5 mile course on both September 21 and September 22, 2002. Preliminary speed trials along the same course will be conducted on September 20, 2002. A fleet of spectator vessels is anticipated. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey. The regulated area includes a 3-mile long section of the Atlantic Ocean south of Absecon Inlet, extending approximately 900-yards out from the shoreline. The temporary special local regulations will be enforced from 11:30 a.m. to 3:30 p.m. on September 20, 21, and 22, 2002. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Although this rule prevents traffic from transiting a portion of the Atlantic Ocean during the event, the effect of this rule will not be significant due to the limited duration of the regulation, the fact that non-participating vessels may transit outside the regulated area during the event, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Atlantic Ocean during the event.

Although this rule prevents traffic from transiting or anchoring in a portion of the Atlantic Ocean during the event, the effect of this rule will not be significant because of the limited duration that the regulated area will be in effect, the fact that non-participating vessels may transit outside the regulated area during the event, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(h), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are specifically excluded from further analysis and documentation under that section. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C 1233; 49 CFR 1.46.

2. From 11:30 a.m. on September 20, 2002 to 3:30 p.m. on September 22, 2002, add temporary section, § 100.35–T05–059 to read as follows:

§ 100.35–T05–059 Atlantic Ocean, Atlantic City, New Jersey.

(a) *Definitions.* (1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Atlantic City.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Group Atlantic City with a commissioned, warrant, or petty officer of the Coast Guard on board and displaying a Coast Guard ensign.

(b) *Regulated area.* All waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: southeasterly from a point along the shoreline at latitude 39°21′50″ N, longitude 074°24′37″ W, thence to latitude 39°20′40″ N, longitude 74°23′50″ W, thence southwesterly to latitude 39°19′33″ N, longitude 074°26′52″ W, thence northwesterly to a point along the shoreline at latitude 39°20′43″ N, longitude 74°27′40″ W, thence northeasterly along the shoreline to latitude 39°21′50″ N, longitude 074°24′37″ W. All coordinates reference Datum NAD 1983.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in these areas shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(d) *Enforcement period.* This section will be enforced from 11:30 a.m. to 3:30 p.m. on September 20, 21, and 22, 2002.

Dated: August 14, 2002.

A.E. Brooks,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 02–21470 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–062]

RIN 2115–AE46

Special Local Regulations for Marine Events; Sunset Lake, Wildwood Crest, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the "Sunset Lake Hydrofest", a marine event to be held September 28 and 29, 2002, on the waters of Sunset Lake near Wildwood Crest, New Jersey. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in portions of Sunset Lake during the event.

DATES: This rule is effective from 9:30 a.m. on September 28, 2002, to 6:30 p.m. on September 29, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–062 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Commander

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(Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The high-speed power boat races will take place on September 28 and 29, 2002. There is not sufficient time to allow for a notice and comment period, prior to the event. Because of the danger inherent in high-speed power boat races, special local regulations are necessary to provide for the safety of spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. In addition, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

Background and Purpose

On September 28 and 29, 2002, the Sunset Lake Hydrofest Association will sponsor the "Sunset Lake Hydrofest", on the waters of Sunset Lake near Wildwood Crest, New Jersey. The event will consist of approximately 80 inboard hydroplanes, Jersey Speed Skiffs and flat-bottom Ski boats racing in heats counter-clockwise around an oval racecourse. A fleet of 50 to 100 spectator vessels is anticipated. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of Sunset Lake. The temporary special local regulations will be enforced from 9:30 a.m. to 6:30 p.m. (local time) on both September 28 and 29, 2002, and will restrict general navigation in the regulated area during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Although this rule prevents traffic from transiting a portion of Sunset Lake during the event, the effect of this rule will not be significant due to the limited duration of the regulation and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of Sunset Lake during the event.

Although this rule prevents traffic from transiting or anchoring in a portion of Sunset Lake during the event, the effect of this rule will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(h) and (35)(a) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under those sections. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C 1233; 49 CFR 1.46.

2. From 9:30 a.m. on September 28, 2002 to 6:30 p.m. on September 29, 2002, add temporary section, § 100.35–T05–062 to read as follows:

§ 100.35–T05–062 Sunset Lake, Wildwood Crest, New Jersey.

(a) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Atlantic City.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Group Atlantic City with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the Sunset Lake Hydrofest under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Group Atlantic City.

(b) *Regulated area.* Includes all waters of Sunset Lake, from shoreline to shoreline, south of latitude 38°58′32″ N. All coordinates reference Datum: NAD 1983.

(c) *Special local regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(iii) Unless otherwise directed by the official patrol, operate at a minimum wake speed not to exceed six (6) knots.

(d) *Enforcement period.* This section will be enforced from 9:30 a.m. to 6:30 p.m. on both September 28 and 29, 2002.

Dated: August 14, 2002.

A.E. Brooks,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 02–21469 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AI22

Schedule for Rating Disabilities; Intervertebral Disc Syndrome

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends that portion of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities that addresses intervertebral disc syndrome. The effect of this action is to clarify the criteria to ensure that veterans diagnosed with this condition meet uniform criteria and receive consistent evaluations.

DATES: *Effective Date:* This amendment is effective September 23, 2002.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Policy and Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend the evaluation criteria for diagnostic code 5293, intervertebral disc syndrome (IVDS), in the **Federal Register** of February 24, 1997 (62 FR 8204). Interested persons were invited to submit written comments on or before April 25, 1997. We received comments from the Vietnam Veterans of America, Disabled American Veterans, Paralyzed Veterans of America, and two concerned individuals.

We proposed to evaluate IVDS either on its chronic neurologic and orthopedic manifestations or on the total annual duration of incapacitating episodes, whichever would result in a higher evaluation. One commenter recommended that the final rule specify whether there could be separate evaluations of the chronic manifestations of each spinal segment with IVDS; whether there could be separate evaluations based on incapacitating episodes of each spinal segment; and whether one spinal segment could be evaluated based on incapacitating episodes and another on chronic manifestations.

In response to this comment, we have added a third note specifying that IVDS in separate spinal segments will be separately evaluated as long as the effect on each segment is clearly distinct. Inherent in the rule is the concept that each affected spinal segment will be evaluated under the method that results in the highest overall evaluation. This means that affected segments may be separately evaluated based on: (1) Incapacitating episodes, (2) chronic manifestations; or (3) one affected segment may be evaluated based on incapacitating episodes and another segment may be evaluated based on chronic manifestations.

One commenter stated that acute incapacitating symptoms are distinct from chronic symptoms involving

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persistent orthopedic and neurological manifestations because each has a different effect on functionality. The commenter stated that IVDS should be rated on both acute and chronic symptoms, as long as the manifestations are different, and then the ratings should be combined. The commenter stated that, if for example a veteran has foot drop as a result of IVDS that interferes with earning capacity and also requires frequent bed rest due to IVDS that affects earning capacity, the veteran has separate disabilities that should be evaluated separately and then combined, rather than rating based on the higher of the two respective evaluations.

Acute incapacitating symptoms and chronic symptoms do not necessarily represent different manifestations of IVDS. For example, IVDS may result in chronic back pain and limitation of motion (a chronic orthopedic manifestation); back pain and limitation of motion may also cause periods of acute incapacitation. Some individuals present predominantly or exclusively with acute symptoms, some with chronic symptoms, and some with both. We have provided alternative methods of evaluation that allow the use of either the chronic manifestations or the total duration of incapacitating episodes for evaluation, whichever results in a higher evaluation. But, in our view, assigning an evaluation under both methods for functional impairment due to IVDS would clearly result in duplicate evaluations of a single disability, and therefore would constitute pyramiding, which is prohibited by 38 CFR 4.14. We therefore make no change in response to this comment.

Another commenter noted that, in some individuals both IVDS and residuals of a vertebral fracture in the same spinal segment are service-connected. Diagnostic code 5285, which applies to fractures of vertebral bodies, directs that ten percent be added to a spinal evaluation if it is less than 60 percent disabling and if there is demonstrable deformity of the vertebral body. The commenter suggested that the evaluation criteria indicate whether ten percent should be added to a rating for IVDS for either chronic residuals or incapacitating episodes.

When vertebral fracture and IVDS are present in the same spinal segment, the signs and symptoms of each condition commonly overlap and may be inseparable. For example, both conditions may cause pain and limitation of motion of the spine and neurologic disability. In such cases, a single overall evaluation for the manifestations of both disabilities would be assigned, since evaluating the same disability under two diagnoses is prohibited (*see* 38 CFR 4.14). Ten percent would be added to the single overall evaluation, if it is less than 60 percent disabling, when there is demonstrable vertebral deformity, because the x-ray finding that is the basis for the added ten percent does not duplicate or overlap any other evaluation criteria for either condition. This is true whether the evaluation is based on the criteria for residuals of vertebral fracture, on the total duration of incapacitating episodes of IVDS, or on the chronic orthopedic and neurologic manifestations of IVDS. There may be some cases where the effects of IVDS and vertebral fracture are clearly separable. When that happens, the fracture residuals would be evaluated under diagnostic code 5285, with ten percent added for deformity of the vertebral body when appropriate, and the IVDS would be evaluated under either alternative method, as directed. As with other complex rating issues, if the situation arises, raters may request an advisory review opinion from the Compensation and Pension Service, but we do not believe this situation arises frequently enough to warrant the addition of specific regulatory instructions. We therefore make no change based on this comment.

The same commenter asked if bed rest because of spasm warrants the added 10 percent.

The instruction under diagnostic code 5285 specifies that ten percent is to be added on the basis of demonstrable vertebral deformity due to fracture. Bed rest because of spasm therefore does not warrant an additional 10 percent.

Another commenter recommended that the rule specify whether the evaluation for incapacitating episodes is to be compared with the neurologic and orthopedic evaluations, once combined pursuant to 38 CFR 4.25, or with the higher of those evaluations if both are present.

In response to this comment, we have revised the language under diagnostic code 5293 to direct that IVDS be evaluated based either on the total duration of incapacitating episodes or on the combination of separate evaluations of its chronic orthopedic and neurologic manifestations, whichever method results in the higher evaluation.

One commenter suggested that VA increase the proposed percentage evaluations for incapacitating episodes having a total duration of at least four to six weeks during the past 12 months because, in the commenter's view, veterans who are incapacitated for four to six weeks or more over the course of a year are unemployable. Another commenter also suggested that the evaluation criteria for IVDS should include a 100-percent level.

IVDS is characterized by periods of exacerbation and remission, with a tendency toward recovery over time ("Practical Orthopedic Medicine" (Brian Corrigan and G.D. Maitland) 312, 1983). When IVDS first appears, with few exceptions, the preferred treatment is conservative and includes bed rest of approximately two to four weeks. The majority of patients with IVDS recover from the acute symptoms and have minimal residual functional or work capacity impairments ("Disability Evaluation" (Stephen L. Demeter, M.D., Gunnar B.J. Anderson, M.D., and George M. Smith, M.D.) 288, 1996). The minority in whom conservative treatment fails; or who have repeated, disabling attacks resulting in prolonged loss of time from work; or who have intractable pain or severe or progressive neurological signs, will undergo surgery ("Fundamentals of Orthopedics" (John J. Gartland, M.D.) 334, 1987). Only an occasional patient has disabling back pain and radicular symptoms after surgery ("Campbell's Operative Orthopaedics") 2114, 1980). Therefore, except for short periods of treatment, or periods of convalescence following surgery, IVDS is rarely totally disabling.

The percentage ratings in the schedule "represent as far as can practicably be determined the average impairment in earning capacity resulting from such diseases and injuries and their residual conditions in civil occupations," 38 CFR 4.1; 38 U.S.C. 1155, and, in our view, a 100 percent evaluation level for IVDS is not warranted. If a veteran has permanent neurological or orthopedic residuals following back surgery, those residuals could alternatively be rated under other appropriate rating formula. Also, an individual who is shown by the evidence to be unemployable may be assigned a total evaluation (even though the schedule does not provide a 100-percent evaluation) under the provisions of 38 CFR 4.16, 4.17, and 4.18. In view of this fact, and the information regarding the course and outcome of IVDS after treatment, we make no change based on this comment.

Another commenter suggested that the rule clarify the meaning of incapacitating episodes "per year" in order to assure that the calendar year is not used.

In response to this comment, we have revised diagnostic code 5293, for the sake of clarity, to specify total duration of incapacitating symptoms "during the past 12 months" rather than "per year."

We proposed to define the term "incapacitating episode of intervertebral disc syndrome" to mean a period of acute symptoms (orthopedic, neurologic, or both), requiring bed rest prescribed by a physician and treatment by a physician. Such treatment by a physician would not require a visit to a physician's office or hospital but would include telephone consultation with a physician. One commenter suggested that we revise the definition to require bed rest "prescribed by a physician," but eliminate the requirement for treatment.

A physician prescribing bed rest will ordinarily prescribe treatment, *e.g.*, analgesics, muscle relaxants, or traction, as well. In our view, the requirement for treatment by a physician makes the criteria clearer, more objective, and more likely to promote consistent evaluations. We therefore make no change in response to this comment. However, in order to clarify note (1), we have added "prescribed by a physician" following "bed rest."

The same commenter suggested that we waive the requirement for medical verification of the veteran's previous episodes of incapacitating back pain in original claims for IVDS because in such cases there would otherwise be a one-year waiting period from the date of claim.

Although in an original compensation claim, an award will be effective from the date of claim or the date entitlement arose, whichever is later (38 CFR 3.400(b)(2)(i)), nothing in the regulations precludes VA from considering medical evidence establishing the total duration of incapacitating episodes during the twelve-month period preceding the date of claim when evaluating the disability. Existing medical records documenting incapacitating episodes of IVDS, as defined in the regulation, during the twelve months before the veteran filed a claim, would be sufficient to establish the severity of the condition without a one-year waiting period. If there are no records of the need for bed rest and treatment, by regulation there were no incapacitating episodes. Chronic manifestations, on the other hand, could be evaluated based on an examination, regardless of whether there were any prior incapacitating episodes. We therefore make no change based on this comment.

Another commenter objected to the proposal to evaluate IVDS based only on doctor-ordered periods of bed rest and suggested that objective findings of IVDS provide a basis for evaluation and should be incorporated into the schedular criteria.

Objective findings, when present, may be used to evaluate IVDS based on chronic orthopedic and neurologic manifestations that are rating criteria under other diagnostic codes. However, some individuals with disabling IVDS exhibit few, if any, objective findings between incapacitating episodes. We have therefore provided alternative evaluation criteria based on periods of incapacitating episodes. Since we will evaluate IVDS under whichever method would result in the higher overall evaluation, we make no change based on this comment.

One commenter assumed that VA will issue companion regulations on how to rate each neurologic and orthopedic manifestation of IVDS, since chronic symptoms are not assigned evaluations in the proposed regulation. The commenter urged that such criteria accurately reflect impairment of earning capacity.

VA plans no separate regulation to address each neurologic and orthopedic manifestation of IVDS. There are existing criteria for evaluating neurologic and orthopedic disabilities, whether they result from IVDS, stroke, or other condition, in the neurologic and musculoskeletal portions of the rating schedule. Additional neurologic manifestations are addressed under diagnostic codes in the schedule for rating genitourinary or digestive systems. For further clarity, we have revised note (2) to indicate that the chronic orthopedic and neurologic manifestations of IVDS are to be evaluated under the most appropriate code or codes. Evaluating disabilities due to IVDS that are identical to disabilities of other etiology under the same criteria will assure consistency and fairness of evaluations.

Proposed note (2) stated that, when evaluating IVDS on the basis of chronic manifestations, orthopedic manifestations, such as limitation of motion of lumbar or cervical spine, paravertebral muscle spasm, or scoliosis of the spine, are to be evaluated under diagnostic code 5293 (IVDS), using evaluation criteria for an appropriate diagnostic code, and neurologic manifestations, such as footdrop, muscle atrophy, sensory loss, or neurogenic bladder, are to be evaluated separately under diagnostic code 5293, using evaluation criteria for an appropriate diagnostic code. One commenter said the note does not provide clear or objective guidance on the degree of disability to be assigned for these manifestations.

There are so many potential neurologic and orthopedic manifestations of IVDS that it would be impractical to incorporate all of them into a single set of criteria. It is not only more practical, but also consistent with the manner in which VA evaluates other conditions that may affect more than one body system, to use evaluation criteria for existing orthopedic and neurologic diagnostic codes to evaluate the specific manifestations of IVDS. We therefore make no change based on this comment.

The same commenter suggested additional chronic manifestations of IVDS that the commenter believes are more objective than the proposed criteria.

The criteria suggested by the commenter would require subjective interpretations of terms such as "light" or "heavy" labor, "moderate" activity, etc. In our view this language is less objective than that in the proposed criteria, and we make no change based on this comment.

One commenter asserted that proposed note (2) conflicts with *Esteban* v. *Brown*, 6 Vet. App. 259 (1994), because it precludes an evaluation for the orthopedic manifestations of the spine in addition to an evaluation for IVDS under diagnostic code 5293.

In *Esteban*, a case that concerned the evaluation of a facial injury, with residuals of painful scars, injury to the facial muscles, and disfigurement, the Court of Appeals for Veterans Claims (CAVC) pointed out that each of the three disabling effects of the injury could be separately evaluated unless they constitute the "same disability" or the "same manifestation" under 38 CFR 4.14 (see above), or unless any of the diagnostic codes in question state that a veteran may not be rated separately for the described conditions. None of the three diagnostic codes at issue precluded separate ratings for the described conditions and the CAVC stated that the critical element in the case was that none of the symptomatology for any one of the three conditions is duplicative of, or overlapping with, the symptomatology of the other two conditions.

Diagnostic code 5293 allows for separate evaluations of chronic orthopedic and chronic neurologic manifestations of IVDS because these manifestations are separate and distinct, and do not constitute the "same disability" or the "same manifestation" under 38 CFR 4.14. However, virtually all acute incapacitating episodes rated under diagnostic code 5293 for IVDS would be the result of chronic orthopedic and/or chronic neurologic

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findings. We therefore believe that, if ratings for orthopedic and chronic manifestations were combined with a rating for incapacitating episodes under diagnostic code 5293, it would result in evaluation of the same disability under multiple diagnostic codes, a result which is to be avoided per 38 CFR 4.14. Also providing alternative methods for evaluating IVDS is consistent with the manner in which we evaluate other conditions. For example, lupus erythematosus, diagnostic code 6350, may be evaluated based either on an overall evaluation under 6350 or on an evaluation of its residuals under other diagnostic codes in an appropriate system or systems, whichever method results in a higher evaluation. As a result, there is no conflict with *Esteban*, and we make no change based on this comment.

One commenter stated that the rule is inconsistent with the manner in which IVDS and orthopedic and/or neurologic manifestations were rated under the prior version of diagnostic code 5293. According to the commenter, prior diagnostic code 5293 allowed the maximum 60-percent rating for disability attributable to IVDS plus a separate rating for disability affecting other body parts or functions. In support of this comment, the commenter cited *Bierman* v. *Brown*, 6 Vet. App. 125, 129 (1994).

Evaluations of zero to 40 percent under the previous version of diagnostic code 5293 were based on recurring attacks and the extent of relief between attacks. The maximum evaluation of 60 percent required "persistent symptoms compatible with sciatic neuropathy with characteristic pain and demonstrable muscle spasm, absent ankle jerk, or other neurological findings appropriate to site of diseased disc, little intermittent relief." In *Bierman*, the Board of Veterans' Appeals (BVA) denied a separate rating for neurological deficits because the veteran's 60 percent for IVDS under diagnostic code 5293 already compensated him for neurological deficits and their effects for which he was seeking a separate rating. The CAVC stated that, because the BVA failed to articulate a satisfactory statement of reasons or bases for its rating, the Court could not determine why this veteran's IVDS was not rated separately for foot drop under DC 8521, pertaining to paralysis of the popliteal nerve. The CAVC also stated that it was unclear from the rating schedule itself which functional disabilities were compensated as part of a 60-percent rating for IVDS.

Notwithstanding the commenter's interpretation of the prior evaluation criteria, a memorandum issued by the BVA Chairman, Memorandum, No. 01–92–23, dated August 10, 1992, did not interpret prior diagnostic code 5293 to allow a full 60 percent in addition to a separate evaluation for other body parts. Rather, it stated that, except for exceptional cases, a single rating of 60 percent will ordinarily be assigned when a veteran's footdrop is the result of radiculopathy attributable to IVDS. By specifying in this rulemaking that a rating for IVDS may be based either on the combined severity of the chronic neurological and orthopedic findings, or on the extent of incapacitating episodes resulting from all manifestations of the disease under diagnostic code 5293, we clarify how functional manifestations of IVDS are to be evaluated, and we make no further changes based on this comment.

The same commenter stated that the rating criteria in the proposed rule are not consistent with other ratings in the schedule because the design of the proposed rule does not provide a rating that corresponds to functional impairment.

We disagree. On the contrary, the revised rule will assure consistency with other ratings in the schedule because the same rating criteria will be used to evaluate identical disabilities, regardless of etiology. The functional impairment due to footdrop or limitation of motion of the spine, for example, will be evaluated using the same criteria, whether due to IVDS or any other cause. If both footdrop and limitation of motion of the spine are present, the combined evaluation will be the same, whether due to IVDS or any other cause. These provisions are clearly consistent with the approach and manner in which we assess functional impairment in similar disabilities, and we make no change based on this comment.

The same commenter stated that the rule must "continue" to recognize that secondary disabilities involving separate anatomical segments or body parts and separate functions are separately ratable and may be rated in combination with a 60-percent rating for disc syndrome itself.

As discussed above, the commenter's interpretation of the previous evaluation criteria for IVDS is not consistent with VA's interpretation. Under the new criteria, all orthopedic and neurologic disabilities that are part of IVDS, whether affecting the spine, the extremities, the bladder, or other areas, will be evaluated under one or the other of the alternative methods of evaluation. However, the revised regulation is also clear that IVDS cannot be evaluated under both sets of criteria for a single spinal segment. If the evaluation is based on the chronic orthopedic and neurologic manifestations, there will be no evaluation for incapacitating episodes. We therefore make no change based on this comment.

We have edited the definition of incapacitating episodes for clarity and have defined "chronic manifestations" to mean "orthopedic and neurologic signs and symptoms resulting from IVDS that are present constantly, or nearly so." These are not substantive changes.

We have also simplified note (2) by editing for clarity and by removing specific examples of chronic manifestations, which we believe are unnecessary.

VA appreciates the comments submitted in response to the proposed rule, which is now adopted with the amendments noted above.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Approved: June 24, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 4 is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

Subpart B—Disability Ratings

2. Section 4.71a is amended by revising diagnostic code 5293 and adding an authority citation at the end of the section to read as follows:

§ 4.71a Schedule of ratings—musculoskeletal system.

* * * * *

THE SPINE

	Rating
* * * * *	
5293 Intervertebral disc syndrome:	
Evaluate intervertebral disc syndrome (preoperatively or postoperatively) either on the total duration of incapacitating episodes over the past 12 months or by combining under § 4.25 separate evaluations of its chronic orthopedic and neurologic manifestations along with evaluations for all other disabilities, whichever method results in the higher evaluation.	
With incapacitating episodes having a total duration of at least six weeks during the past 12 months	60
With incapacitating episodes having a total duration of at least four weeks but less than six weeks during the past 12 months	40
With incapacitating episodes having a total duration of at least two weeks but less than four weeks during the past 12 months	20

THE SPINE—Continued

	Rating
With incapacitating episodes having a total duration of at least one week but less than two weeks during the past 12 months	10

Note (1): For purposes of evaluations under 5293, an incapacitating episode is a period of acute signs and symptoms due to intervertebral disc syndrome that requires bed rest prescribed by a physician and treatment by a physician. "Chronic orthopedic and neurologic manifestations" means orthopedic and neurologic signs and symptoms resulting from intervertebral disc syndrome that are present constantly, or nearly so.

Note (2): When evaluating on the basis of chronic manifestations, evaluate orthopedic disabilities using evaluation criteria for the most appropriate orthopedic diagnostic code or codes. Evaluate neurologic disabilities separately using evaluation criteria for the most appropriate neurologic diagnostic code or codes.

Note (3): If intervertebral disc syndrome is present in more than one spinal segment, provided that the effects in each spinal segment are clearly distinct, evaluate each segment on the basis of chronic orthopedic and neurologic manifestations or incapacitating episodes, whichever method results in a higher evaluation for that segment.

* * * * *

(Authority: 38 U.S.C. 1155)

[FR Doc. 02–21365 Filed 8–21–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 264–0355a; FRL–7258–3]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns the emission of volatile organic compounds (VOC) from steam drive crude oil production wells.

DATES: This rule is effective on October 21, 2002, without further notice, unless EPA receives adverse comments by September 23, 2002. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted rule revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revision and TSD at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

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TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
MBUAPCD	427	Steam Drive Crude Oil Production Wells	12/19/01	03/15/02

On May 7, 2002, this submittal was found to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved into the SIP on February 9, 1996 (60 FR 8565) a version of Rule 427, adopted on August 25, 1993.

C. What Is the Purpose of the Submitted Rule Revision?

The purpose of these revisions to Rule 427 is to add certain exemptions for components with less than 10% VOC, to add a limitation on the number of wells that have open-ended lines, and to add two test methods.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Clean Air Act of 1990 (CAA)), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (*see* section 182(a)(2)(A)), and must not relax existing requirements (*see* sections 110(l) and 193). The MBUAPCD regulates an ozone attainment area. 40 CFR part 81. Therefore Rule 427 is not required to fulfill RACT requirements.

Guidance and policy documents that we used to define specific enforceability requirements include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987* **Federal Register**, (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

B. Does the Rule Meet the Evaluation Criteria?

The principal changes to improve the rule include the incorporation of the latest applicable test methods and the limitation on the number of open-ended line. This latter revision should improve the effectiveness of the rule by reducing the potential number of valves that can leak. The rule revisions also exempt streams containing less than 10% VOC. These streams contribute negligible VOC emissions. This exemption should improve the effectiveness of the rule by allowing employees to work on areas where VOC emissions potentially can be decreased, allowing more time to repair leaks. This allowance is made because repairs are often contracted out and the contractor may not be able to perform the retesting in the time previously allowed. The net result is that these rule revisions should not significantly affect emissions from these sources, and should not interfere with the areas plan to maintain the ozone National Ambient Air Quality Standards (NAAQS).

We believe the rule is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations.

The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rule

The TSD for Rule 427 describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by September 23, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 21, 2002. This will incorporate this rule into the federally-enforceable SIP.

III. Background Information

A. Why Was This Rule Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. EPA has established a NAAQS for ozone. Section 110(a) of the CAA requires states to submit regulations necessary to achieve and maintain the ozone NAAQS. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 21, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. Section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 16, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(297)(i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(297) * * *

(i) * * *

(D) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 427, adopted on January 16, 1980 and amended on December 19, 2001.

* * * * *

[FR Doc. 02–21435 Filed 8–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0203; FRL–7194–3

Iprovalicarb; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an import tolerance for residues of iprovalicarb in or on grape at 2.0 parts per million (ppm). Tomen Agro, Inc. and Bayer Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective August 22, 2002. Objections and requests for hearings, identified by docket control number OPP–2002–0203, must be received on or before October 21, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–2002–0203 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6742; e-mail address: mcneilly.dennis@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

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Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations", "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/ Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–2002–0203. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of September 22, 2000 (65 FR 57338) (FRL–6737–8), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the filing of a pesticide petition (PP 9E6020) by Tomen Agro, Inc; and, Bayer Corporation, 100 First Street, Suite 1700, San Francisco, CA 94105; and, 8400 Hawthorn Road, Kansas City, MO 64120, respectively. This notice included a summary of the petition prepared by Tomen Agro, Inc. and Bayer Corp., the registrant. Iprovalicarb is an amino acid amide carbamate that belongs to a new class of chemicals derived from natural amino acids. Iprovalicarb acts both as a contact and systemic fungicide and is proposed for use in the European Union for control of Oomycete fungi, such as downy mildew. Review of this import tolerance was completed in cooperation with Canada's Pest Management Regulatory Agency. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing import tolerances for residues of the fungicide iprovalicarb, [2-methyl-1[[[(1S)-(4-methylphenyl) ethyl] amino]carbonyl] propyl]carbamic acid methylethylester, in or on grape and raisin at 2.0 ppm. An additional tolerance for the processed food, raisins, is not necessary because any residue in raisin from this use will be covered by the tolerance for grape.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *"

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for an import tolerance for residues of iprovalicarb on grape at 2.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by iprovalicarb are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity, mice	NOAEL = 325.0 for males; 696.5 for females mg/kg/day LOAEL = 1,724.6 for males, 3,599.5 for females mg/kg/day based on elevated water intake and changes in hematological parameters (erythrocyte count, MCV) in males; increases in liver weights and plasma cholesterol in females.
870.3100	90–Day oral toxicity, rat	NOAEL = 372.7 for males; 561.4 for females mg/kg/day LOAEL = 1,524.0 for males, 2,585.9 for females mg/kg/day based on males: decrease in plasma triglycerides and increase in leukoyte counts, alkaline phosphatase levels, pale livers and increased relative liver weights; females: increased food intake, decreased body weight gain and food efficiency and increased plasma cholesterol levels.
870.3150	90–Day oral toxicity, dog	NOAEL = 9.1 mg/kg/day LOAEL = 62.5 mg/kg/day based on increased absolute and relative liver weight, hepatocellular hypertrophy, increased serum activity of activity of alkaline phosphatase and decreased plasma protein levels.
870.3700	Prenatal developmental in rodents (rat)	Maternal NOAEL = 1,000 mg/kg/day LOAEL = >1,000 mg/kg/day based on the absence of treatment related toxicity in the dams at the highest dose tested. Developmental NOAEL = 1,000 mg/kg/day LOAEL = >1,000 mg/kg/day based on the absence of treatment related toxicity in the fetuses at the highest dose tested.
870.3700	Prenatal developmental in nonrodents(rabbit)	Maternal NOAEL = 1,000 mg/kg/day LOAEL = >1,000 mg/kg/day based on the absence of treatment related toxicity in the dams at the highest dose tested. Developmental NOAEL = 1,000 mg/kg/day LOAEL = >1,000 mg/kg/day based on the absence of treatment related toxicity in the fetuses at the highest dose tested.
870.3800	Reproduction and fertility effects, rat	Parental/Systemic NOAEL = 214.9 mg/kg/day LOAEL = 2,509 mg/kg/day based on increased relative liver weights in both sexes and bile duct proliferation in F_0 and F_1 parental males. Reproductive NOAEL = 214.9 mg/kg/day LOAEL = 2,509 mg/kg/day based on decreased mean litter weight at day 28 (F_1 and F_2), reduced body weight development in F_1 and F_2 pups. Offspring NOAEL = 214.9 mg/kg/day LOAEL = 2,509 mg/kg/day based on reduced body weight development during lactation and increased relative liver weights of the pups.
870.4100	Chronic toxicity, dog	NOAEL = 2.62 mg/kg/day LOAEL = 24.69 mg/kg/day based on biochemical and morphological liver effects, e.g., swelling, distinct lobulation and discoloration, increases in absolute and relative liver weights, and activities of ALT and ALP, hepatocelluiar hypertrophy and periportal fatty change.
870.4200	Carcinogenicity, mice	NOAEL = 58.5 mg/kg/day LOAEL = 283.4 mg/kg/day based on increased blood urea nitrogen concentration, decreased kidney weights and histopathological changes in the kidneys. No evidence of carcinogenicity.
870.4300	Combined chronic toxicity/ Carcinogenicity, rats	NOAEL = 26.0 mg/kg/day LOAEL = 262.5 mg/kg/day based on histopathological changes in the liver (bile duct hyperplasia). Evidence of carcinogenicity, consisting of treatment-related rare and uncommon tumors in multiple organs/tissues in male and female rats.
870.5100	Gene mutation	Negative with and without S9 activation up to 5,000 micrograms/plate in bacterial reverse mutation test (*S. typhimurium*).
870.5300	*In vitro* mammalian cell gene mutation	Negative with and without S9 activation up to 125 micrograms/mL (with S9) and 150 micrograms/mL (without S9) in *in vitro* mammalian cell forward mutation test (Chinese hamster lung fibroblasts).
870.5375	*In vitro* mammalian chromosomal aberration tests	Negative with and without S9 activation up to 150 micrograms/ml in *in vitro* mammalian cell assay (Chinese hamster ovary cells).
870.5385	Mammalian chromosomal aberration	Negative at 2,000 mg/kg in *in vivo* bone marrow micronucleus assay (mice).

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TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.5550	Unscheduled DNA synthesis	Negative up to 500 micrograms/ml in *in vitro* mammalian cell assay (rat primary hepatocytes).
870.6200	Acute neurotoxicity screening battery, rat	NOAEL = 2,000 mg/kg/day LOAEL = >2,000 mg/kg/day based on no effects at the highest dose tested.
870.6200	Subchronic neurotoxicity screening battery	Systemic. NOAEL = 86.0 mg/kg/day LOAEL = 342.0 mg/kg/day based on decreased body weight and increased food consumption. Neurotoxicity. NOAEL = 1,434 mg/kg/day for males and 2,314 mg/kg/day for females LOAEL = >1,434 mg/kg/day for males and >2314 mg/kg/day for females based on no effects at the highest dose tested.
870.7485	Metabolism and pharmaco-kinetics	Up to 99% excreted via urine and feces within 72 hours. Material metabolized extensively; small percentage passed through rat unchanged. Twelve metabolites identified. Proposed biotransformation pathway via oxidation of methyl group on aromatic ring, leading to carboxylic acid metabolite via hydroxymethyl-derivative.
	Special studies	28–Day Dietary - Dog: NOAEL was 3.0 mg/kg/day for males and 3.4 mg/kg/day for females. The LOAEL was 31.5 mg/kg/day for males and 35.0 mg/kg/day for females based on hepatocellular hypertrophy, vacuolated hepatocytes and elevated serum alkaline phosphatase activity. 28–Day Dietary + 28–Day Recovery - Dog: The microsomal enzyme induction LOAEL was 2.93–3.01 mg/kg/day (the highest dose tested). The NOAEL was 0.77 mg/kg/day. Liver foci test for tumor initiating effects - Rats (males only): Negative for tumor initiating potential in rat liver. 28–Day Dietary Rat: NOAEL = 579.3 mg/kg/day for males and 195.8 mg/kg/day for females. LOAEL=1,934.4 mg/kg/day for males and 572.8 mg/kg/day for females based on increases in alkaline phosphatase, cholesterol and relative liver weights in males; increases in cholesterol and triglycerides as well as absolute and relative liver weights in females.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences. No special uncertainty factors were appropriate or used in the dietary risk assessment.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC. In this case because this is an import tolerance only, there is only dietary risk.

The linear default risk methodology (Q_1^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q_1^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q_1^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for iprovalicarb used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR IPROVALICARB FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF[1] and Level of Concern for Risk Assessment	Study and Toxicological Effects
Chronic Dietary all populations	NOAEL= 2.6 mg/kg/day UF = 100 Chronic RfD = 0.026 mg/kg/day.	FQPA SF = 1X cPAD = chronic RfD/FQPA SF = 0.026 mg/kg/day.	1–Year Dog Study LOAEL = 24.69 mg/kg/day based on liver effects: swelling, enlargement, distinct lobulation and discoloration, increased absolute and relative liver weights, and accompanying hepatocellular hypertrophy and fatty change, and elevated serum liver enzyme activities.
Cancer (oral)	Q_1^* = 4.5 X 10^{-4} (mg/kg/day)$^{-1}$	.....	Combined chronic toxicity/carcinogenicity, two–year rat study Q_1^* based on the combined follicular cell adenomas and carcinomas in the thyroid gland of female rats.

[1] The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* This is the first feed and/or food use for iprovalicarb in the United States. This activity reflects the establishment of a U.S. import tolerance on grape without a U.S. registration and therefore the only exposure that occurs is dietary. Risk assessments were conducted by EPA to assess dietary exposures from iprovalicarb in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. Iprovalicarb is of low acute oral toxicity in rats with no adverse effects observed at doses well above the limit test dose (>5,000 mg/kg). In addition, rat and rabbit teratology studies and an acute neurotoxicity rat study, presented no effects indicative of early toxicity. Also, in sub-chronic feeding and reproduction toxicity studies, there were no treatment-related effects that could be attributable to a single dose. It is for these reasons that an acute analysis was not conducted, i.e., due to the lack of any appropriate toxicological end-point. Accordingly, an acute risk analysis was not appropriate and was not conducted.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A DEEM® chronic dietary exposure analysis was performed using tolerance residue levels and 100% crop treated. Data from a grape processing study indicated that iprovalicarb residues did not concentrate in grape processed commodities; therefore, the DEEM® concentration factors for grape (i.e.: juice, juice-concentrate, raisin) were set at 1, indicating no concentration of residues. The DEEM® analysis included wine, sherry and raisin. EPA does not expect the chronic risk to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—CHRONIC (NON-CANCER) EXPOSURE TO IPROVALICARB

Population Subgroup	Dietary exposure (mg/kg/day)	cPAD (mg/kg/day)	%cPAD (Food)
U.S. Population	0.000688	0.026	2.6
All infants (<1 year old)	0.001282	0.026	4.9
Children (1–6 years old)	0.002443	0.026	9.3
Children (7–12 years old)	0.000668	0.026	2.6

iii. *Cancer.* In accordance with the EPA Draft Guidelines for Carcinogen Risk Assessment (July, 1999) the Agency has classified iprovalicarb into the category "Likely to be carcinogenic to humans" based on the following weight-of-the-evidence considerations:

Iprovalicarb induced rare and infrequently occurring tumors in Wistar rats. At the high dose, males developed malignant osteosarcomas and females also developed benign transitional cell papillomas of the urinary bladder. At the mid and high doses, females also developed malignant mixed Mullerian tumors of the uterus and follicular cell adenomas and carcinomas in the thyroid gland. Although the incidences of these tumors were low, they are rare or uncommon in Wistar rats. Most of these tumors were induced above the limit dose (1,000 mg/kg/day) which was adequate and not excessively toxic. In mice, no treatment-related increase in tumors was observed in animals treated above the limit dose which was adequate and not excessively toxic.

Iprovalicarb is not mutagenic. Although mechanistic studies suggested that iprovalicarb may not be a tumor initiator, these studies were inadequate to establish the definitive mode of action for tumor induction in rats.

The Agency is using a linear low-dose extrapolation (Q_1^*) approach for estimating the human cancer risk based

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on the most potent tumor in rats. This approach is supported by the lack of confirmation of the mode of action of iprovalicarb. The most potent Q_1^* for iprovalicarb was determined to be 4.5×10^{-4} $(mg/kg/day)^{-1}$ based on combined follicular cell adenomas and carcinomas in the thyroid gland of the female rat.

Percent crop treated and/or anticipated residues were not used.

2. *Dietary exposure from drinking water.* Residues in drinking water are not expected to result as a consequence of establishing an import tolerance for iprovalicarb residues in or on grape. Iprovalicarb is not registered for use in the United States. Therefore, exposures through drinking water is unlikely.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.*, for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Iprovalicarb is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether iprovalicarb has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, iprovalicarb does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that iprovalicarb has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* There is no evidence for increased susceptibility of fetuses to *in utero* exposure of iprovalicarb in either the rat developmental or rabbit developmental studies. In both studies, the NOAEL for both maternal and developmental toxicity was the highest dose tested.

Based on the results in the 2-generation reproduction study in rats, a qualitative increased susceptibility of the neonates (as compared with adults) was demonstrated for iprovalicarb. The parental systemic NOAELs were based on decreased body weights and liver weights as well as bile duct proliferation; for females, the parental systemic NOAELs were based on increased relative liver weights. Reproductive LOAELs were not attained (greater than higest dose tested (HDT), limit dose). In offspring, the NOAELs were based on decreased mean litter weight on day 28, reduced body weight during lactation, and increased pup relative liver weights as well as reduced lactation index in F_1. There was considered to be an increase in sensitivity of the neonates (as compared with adults) because of the lower lactation index (decreased pup survival) and decreased pup body weight. Although there is evidence of qualitative susceptibility in the 2-generation reproduction study, the Agency concludes that there is a low level of concern (and no residual uncertainty) because: (1) The increased susceptibility (decrease in pup survival) was seen only at the highest dose tested (2,074 mg/kg/day) which is twice the limit dose; (2) the decrease in pup survival was seen only in one generation (F_1, not replicated in F_2); (3) there are clearly defined NOAELs/LOAELs for parental and offspring toxicity; and (4) the effects seen in the offspring occurred at a much higher dose (192 mg/kg/day) than that used to establish the chronic RFD (NOAEL of 2.6 mg/kg/day).

3. *Conclusion.* There is a complete toxicity database for an import tolerance for iprovalicarb and exposure data are complete or are estimated based on data that reasonably accounts for potential dietary exposures. The Agency concludes that there are reliable data that indicate there are no (residual) concerns for pre- and/or postnatal toxicity following exposure to iprovalicarb and therefore, no additional safety factor (1X) is necessary to protect the safety of infants and children.

E. Aggregate Risks and Determination of Safety

1. *Acute risk.* Iprovalicarb is of low acute oral toxicity in rats with no adverse effects observed at doses well above the limit test dose (>5,000 mg/kg). In addition, rat and rabbit teratology studies and an acute neurotoxicity rat study, presented no effects indicative of early toxicity. Also, in sub-chronic feeding and reproduction toxicity studies, there were no treatment-related effects that could be attributable to a single dose. It is for these reasons that iprovalicarb is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to iprovalicarb from food will utilize 2.6% of the cPAD for the U.S. population, 4.9% of the cPAD for All infants (<1 year old), 9.3% of the cPAD for children 1–6 years old and 2.6% of the cPAD for children 7–12 years old. There are no residential uses for iprovalicarb.

In addition, there is not any potential for chronic dietary exposure to iprovalicarb in drinking water because the only use is an import tolerance. There are no U.S. registered products or uses at this time. EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO IPROVALICARB

Population Subgroup	cPAD (mg/kg/day)	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.026	2.6	N/A	N/A	N/A

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO IPROVALICARB—Continued

Population Subgroup	cPAD (mg/kg/day)	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
All infants (<1 year old)	0.026	4.9	N/A	N/A	N/A
Children (1–6 years old)	0.026	9.3	N/A	N/A	N/A
Children (7–12 years old)	0.026	2.6	N/A	N/A	N/A

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Iprovalicarb is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern. Residues in water, both surface and ground water, are expected to be zero because there are no U.S. uses, only this import tolerance for grape.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Iprovalicarb is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern. Residues in water, both surface and ground water, are expected to be zero because there are no U.S. uses, only this import tolerance for grape.

5. *Aggregate cancer risk for U.S. population.* The lifetime risk of developing cancer from iprovalicarb exposure is determined for the U.S. population (total) only. The estimated exposure to iprovalicarb is 0.000688 mg/kg/day. Applying the Q_1^* of 4.5×10^{-4} $(mg/kg/day)^{-1}$ to the exposure value results in a cancer risk estimate of 3.1×10^{-7}. This risk is negligible.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to iprovalicarb residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The enforcement analytical residue analytical method is an liquid chromotography/mass spectrometry method. The limit of quantitation is 0.05 ppm in grape, wine, juice and raisin. Recovery and sensitivity of the method is considered adequate (95–114%).

Adequate enforcement methodology (example—gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Paul Golden, USEPA (7503C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (410) 305–2960; e-mail address: www.epa.gov/oppbead1/methods/ (RAM Mailbox).

B. International Residue Limits

No maximum residue levels have yet been established by the CODEX Alimentarius Commission for iprovalicarb in/on grape or raisin.

V. Conclusion

Therefore, tolerances are established for residues of iprovalicarb, [2-methyl-1[[[(1S)-(4-methylphenyl)ethyl] amino]carbonyl] propyl]carbamic acid methylethylester, in or on grape at 2.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–2002–0203 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 21, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters

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Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–2002–0203, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: August 15, 2002.

Joseph J. Merenda,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.581 is added to read as follows:

§ 180.581 Iprovalicarb; tolerances for residues.

(a) *General.* Tolerances are established for residues of iprovalicarb, [2-methyl-1[[[(1S)-(4-methylphenyl) ethyl] amino]carbonyl] propyl]carbamic acid methylethylester, in or on the following commodities.

Commodity	Parts per million
Grape[1]	2.0

[1] No U.S. registration as of July 31, 2002.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 02–21293 Filed 8–21–02; 8:45 am]

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Proposed Rules

Federal Register
Vol. 67, No. 163
Thursday, August 22, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 3

[EOIR No. 130I; AG Order No. 2607–2002]

RIN 1125–AA33

Executive Office for Immigration Review; Section 212(c) Relief for Aliens with Certain Criminal Convictions Before April 1, 1997

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Correction to proposed rule.

SUMMARY: This document contains a correction to the proposed rule published Tuesday, August 13, 2002, at 67 FR 52627, relating to relief under section 212(c) of the Immigration and Nationality Act for aliens with certain criminal convictions before April 1, 1997.

FOR FURTHER INFORMATION CONTACT: Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia, 22041, telephone number (703) 305–0470 (not a toll free call).

SUPPLEMENTARY INFORMATION: The proposed rule that is the subject of these corrections amends Department of Justice regulations by establishing procedures for certain lawful permanent residents (LPRs) to apply for relief from deportation or removal pursuant to former section 212(c) of the Immigration and Nationality Act and sets forth procedures for filing special motions to seek such relief before an Immigration Judge or the Board of Immigration Appeals for LPRs currently in proceedings or under final orders for deportation or removal.

Need for Correction

As published, the proposed rule contains a typographical error that may cause confusion and therefore is in need of clarification. In proposed § 3.44(d), the rule describes the effect of a prior denial of section 212(c) relief on discretionary grounds. As currently published, the rule states that if an LPR had been previously denied relief, a new motion to seek relief would be granted. The actual effect of a previous denial of section 212(c) on discretionary grounds is that a new motion seeking relief would be denied.

Correction

§ 3.44 [Corrected]

1. On page 52632, in the second column, line 13, in paragraph (d) of § 3.44, the words "will be granted" are deleted and the words "will not be granted" are added in lieu thereof.

Rosemary Hart,

Federal Register Liaison Officer.

[FR Doc. 02–21035 Filed 8–21–02; 8:45 am]

BILLING CODE 4410–30–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 72 and 73

RIN 3150–AG90

Event Notification Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its event notification regulations that apply to an Independent Spent Fuel Storage Installation (ISFSI) and to a Monitored Retrievable Storage (MRS) installation. The proposed rule would also amend safeguards event notification requirements that apply to facilities subject to part 73, such as reactor facilities, fuel cycle facilities, ISFSIs, an MRS, licensees who possess or transport special nuclear material or spent fuel, a geological repository operations area, and the gaseous diffusion plants. With respect to both the event notification requirements and the safeguards event notification requirements, the changes are intended to align these requirements with recent changes to the power reactor event notification requirements. The changes would reduce licensee burden through the consolidation of some notifications and lengthening the reporting period for other notifications. However, some new requirements would be added to permit the NRC to more effectively carry out its responsibilities during emergencies and in responding to public, media, and other stakeholder inquiries during events or conditions at licensees' facilities.

DATES: The comment period expires November 5, 2002. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Web site (*http://ruleforum.llnl.gov*). This site provides the capability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking Web site.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/reading-rm/ADAMS.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Tony DiPalo, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6191, e-mail, *ajd@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

An advance notice of proposed rulemaking (ANPR) was published on July 23, 1998 (63 FR 39522), notifying the public that the NRC was considering amending its event notification reporting requirements. Although the ANPR was primarily directed at potential changes to power reactor event notification requirements in §§ 50.72 and 50.73, the notice also requested public comments to identify areas where other event notification reporting requirements could be simplified and/or modified to be less burdensome and more risk informed. The issue of potential changes for other reporting requirements was included both in the agenda at a public meeting held on August 21, 1998, to discuss the ANPR, and for the public workshop on September 1, 1998, on Direction Setting Issue (DSI) 13, "The Role of Industry." Pertinent suggestions were provided at those meetings as well as in written comments on the ANPR.

In SECY–99–022, "Rulemaking to Modify Reporting Requirements for Power Reactors" (January 20, 1999), the NRC staff presented recommendations that had been made in public comments for changes to reporting requirements beyond those to §§ 50.72 and 50.73, including the following:

- 10 CFR 72.75 contains the requirement for a 4-hour report and 30-day written follow-up report. Revise this requirement to 8 hours and 60 days similar to changes proposed for §§ 50.72 and 50.73.
- 10 CFR 73.71 and Appendix G (Reportable Safeguards Events) to part 73 contain requirements for 1-hour reports. Amend these requirements to 8 hours and 60 days similar to changes proposed for §§ 50.72 and 50.73.

The Commission subsequently issued a final rule revising the event reporting requirements in §§ 50.72, 50.73, and 72.216 (65 FR 63769; October 25, 2000), and directed the NRC staff to consider similar changes to the event notification requirements in parts 72 and 73 under a separate rulemaking. On March 27, 2001, the NRC staff submitted a rulemaking plan to the Commission, "10 CFR parts 72 and 73—Conforming Requirements of Event Notification" (SECY–01–0054), to revise the event notification reporting requirements in parts 72 and 73 to more closely align them with those of part 50 reactor facilities. On April 18, 2001, the Commission approved the recommendations in SECY–01–0054 to proceed with the development of a proposed rule to revise the event reporting requirements in parts 72 and 73.

Discussion

This proposed rule would amend the NRC's regulations at 10 CFR part 72 to change several event notification requirements that apply to an Independent Spent Fuel Storage Installation (ISFSI) and a Monitored Retrievable Storage (MRS) installation. The proposed rule would also amend safeguards event notification requirements that apply to facilities subject to part 73, such as reactor facilities, fuel cycle facilities, ISFSIs, an MRS, licensees who possess or transport special nuclear material or spent fuel, a geological repository operations area, and the gaseous diffusion plants. With respect to both the event notification requirements and the safeguards event notification requirements, the changes are intended to align these requirements with recent changes to the power reactor event notification requirements in part 50 made in a final rule issued on October 25, 2000 (65 FR 63769). The NRC evaluated the issues and concerns of the part 50 event notification reporting requirements and considered this regulatory framework as a basis for concluding that similar changes to the event notification reporting requirements in parts 72 and 73 were also warranted. The event reporting requirements of parts 72 and 73 affect both material licensees and nuclear power plant licensees. Most of the facilities subject to the event notification reporting requirements in parts 72 and 73 (power reactors and ISFSIs) are either physically co-located with reactor facilities or are reactor facilities. Most part 72 licensees are also part 50 licensees. These licensees share the same management structure and share the same emergency preparedness organization. Conforming the reporting requirements of part 72 with the revised requirements of part 50 thus will reduce regulatory burden and potential confusion, would maintain safety, and would take advantage of the work already performed to relate risk to reporting requirements for these types of facilities.

With respect to the part 73 event notification requirements, the 30-day period for submitting written follow-up reports for safeguards events should also be extended to 60 days to be consistent with § 50.73. Changing the time limit from 30 days to 60 days does not imply that licensees should take longer than they previously did to develop and implement corrective actions. The NRC expects licensees to take corrective actions on a time scale commensurate with the safety significance of the issue. However, for those cases where it does take longer than thirty days to complete a root cause analysis, this change will result in fewer licensee event reports that require amendment by submittal of an amended report. The extension is based on simplicity for reporting, importance to risk, and having the required reporting time be consistent with the need for NRC action. Furthermore, the increased time for follow-up reporting would allow for the completion of required root cause analyses and engineering evaluations, and full identification of corrective actions after event discovery; preparation of more complete and accurate event reports; and fewer event report revisions and supplemental reports. However, the NRC believes the verbal safeguards event notification requirements should remain at 1 hour because the NRC may need to respond expeditiously to licensee safeguards notifications and notify other licensees and Federal agencies of the event, particularly in light of the heightened threat environment after the terrorist attacks of September 11, 2001.

Revising the parts 72 and 73 event notification reporting requirements to be consistent with those in part 50 would maintain safety and take advantage of the work already performed on the risk impacts of the event notification requirements for part 50 licensees. The revision of parts 72 and 73 would also reduce licensee burden through consolidation of some notifications and lengthening the reporting period for other notifications to correspond to the times required under part 50. The current event notification reporting requirements in part 50 require written notification within 60 days and verbal notification within 1 hour (emergency events), and within 1-hour, 4-hours and 8-hours for some non-emergency events. The need for a 4-hour versus an 8-hour non-emergency notification is based on the urgency of the situation and the NRC's need to take prompt action.

Additionally, the NRC would remove § 72.216, "Reports." Section 72.216 does not contain separate requirements, but merely directs a part 72 general licensee to comply with the reporting requirements of §§ 72.74 and 72.75. However, the need for this section was obviated with the addition of § 72.13, "Applicability," to the part 72 regulations in a final rule issued on August 21, 2000 (65 FR 50606). Section 72.13 contains direction on the part 72 regulations that apply to specific licensees, general licensees, or certificate holders. Section 72.13(c) currently requires a general licensee to

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comply with §§ 72.74 and 72.75. Therefore, § 72.216 is no longer needed and would be removed and reserved. In addition, § 72.9 would be revised as a conforming change because of the removal of § 72.216. Also, the reference to § 72.19 would be removed from § 72.9 because there is no § 72.19 in part 72.

The NRC believes that consideration of the proposed changes is consistent with two of NRC's strategic performance goals to reduce unnecessary regulatory burden on stakeholders and to increase public confidence in NRC's regulatory process to maintain safety.

Discussion of Proposed Amendments Section-by-Section

This proposed rule would make several changes to the event notification reporting requirements in parts 72 and 73 that would align the event notification requirements for ISFSIs and MRS facilities and safeguards event notification requirements more closely with recent changes to §§ 50.72 and 50.73. These changes would reduce licensee burden through the consolidation of some notifications and lengthening of reporting periods for others. Additionally, some new requirements would be added to permit the NRC to more effectively carry out its responsibilities during emergencies and in responding to public, media, and other stakeholder inquiries. Finally, some changes would be made to improve organization, clarification, and readability through the use of plain language.

10 CFR 72.9 Information collection requirements: OMB approval.

Paragraph (a) would remain unchanged.

Paragraph (b) would be revised to remove §§ 72.19 and 72.216 as a conforming change.

10 CFR 72.75 Reporting requirements for specific events and conditions.

Paragraph (a) would remain unchanged.

Paragraph (b) would be split into two new paragraphs (b) and (c) for 4-hour and 8-hour notifications, respectively. In new paragraph (b), the existing 4-hour notification requirement remains unchanged for departing from a certificate condition or technical specification during an emergency (current paragraph (b)(4)); a new requirement would be added to notify the NRC when another Government agency is notified or a news release is planned to permit the NRC to promptly respond to public, media, and other stakeholder inquiries during events; and lastly, the current 4-hour notifications would be removed for events that require immediate action to avoid exposure or unplanned fires or explosions (current paragraphs (b)(1) and (b)(6)) because they are redundant with the requirements in paragraph (a) above.

In new paragraph (c), the existing 4-hour event notifications would be changed to 8-hour notifications for a defect in any spent fuel storage structure, system, or component important to safety [1] (current paragraph (b)(2)) a significant reduction in the effectiveness of any spent fuel storage confinement system in use (current paragraph (b)(3)), and an event that requires the transport of a radioactively contaminated person to an offsite medical facility for treatment (revision of paragraph (b)(5)). These changes reduce unnecessary licensee burden consistent with Part 50 event notification requirements.

Existing paragraph (c) for 24-hour reports would be redesignated as paragraph (d) and revised as follows: The current notification would be retained for events in which equipment important to safety fails to function (current paragraph (c)(2)). The requirement for notification of unplanned contamination events requiring controls restricting worker access for greater than 24 hours would be removed because such an event occurring at an ISFSI or MRS does not rise to a level of significance that would warrant notification. Facilities that store and manipulate spent fuel assemblies are by their very nature subject to identification of contamination outside of posted radiological contamination control areas (i.e., hot particles). The NRC considers the identification, control, and decontamination of these areas a routine radiation protection function, not an event requiring NRC notification—even if it takes the licensee more than 24 hours to clean up the contamination. Furthermore, although these 24-hour verbal reports are due within 24 hours of the discovery of the event, their significance requires that this notification requirement would be revised to permit these notifications to be delayed to the next working day (i.e., 8 a.m. Eastern time) when the end of the 24-hour period falls outside of normal NRC working hours (7:30 a.m.–5 p.m. Eastern time), a weekend, or a Federal holiday.

Current paragraph (d) would be split into three paragraphs and redesignated as new paragraphs (e), (f), and (g) (i.e., initial verbal notifications, follow-up verbal notifications, and written notifications) to provide greater clarity and consistency with part 50 event notification requirements.

In new paragraph (e), the current requirement would be retained to notify the NRC Operations Center by telephone of emergency and non-emergency conditions (current paragraph (d)(1)). A new requirement would be added to identify the Emergency Class or the 4-hour, 8-hour, or 24-hour notification to eliminate confusion and facilitate NRC response to the emergency. The current requirement would remain unchanged to provide supporting information (current paragraphs (d)(1)(i) through (v)).

In new paragraph (f), new requirements would be added for licensees to make follow-up notifications to immediately report degrading conditions, declaration of any Emergency Class, change of an Emergency Class, termination of the Emergency Class, the results of evaluations, the effectiveness of responses or protective measures, and information on unexpected ISFSI or MRS behavior. These added requirements would ensure that the information on a degrading condition or termination of the event is promptly communicated to the NRC. Consistent with current policy for reactor licensees, the NRC expects a part 72 licensee to make any follow-up notifications to the NRC as soon as possible, but no later than 1 hour from the time of identification. Additionally, a requirement would be added to maintain an open, continuous communication channel with the NRC Operations Center upon request by the NRC. This requirement would be consistent with the current part 50 event reporting requirements and would ensure that during an ongoing emergency, the communications between the licensee and the NRC are not interrupted by the inability to complete a phone call when telephone circuits could be temporarily overloaded.

In new paragraph (g), the current 30-day requirement would be revised to require that written reports be submitted within 60 days (current paragraph (d)(2)) reducing the occurrence of supplemental reports and licensee burden. The requirements for human performance events (current paragraphs (d)(2)(i) through (d)(7), except (d)(2)(ii)(I)) would be revised to be consistent with currently revised § 50.73(b)(2)(ii)(J). Additionally, in paragraph (g)(2)(xii) the requirement to specify the quantities and chemical and physical forms of the material involved in the event would be expanded to include reactor-related greater-than-class-C (GTCC) waste because the Commission recently added authority to part 72 for the storage of reactor-related GTCC waste (see 66 FR 51823; October 11, 2001). Furthermore, a new requirement would be added on legibility of reports (new paragraph (g)(8)) to be consistent with the current § 50.73(e).

New paragraph (h) would be added to indicate that the Commission may require a licensee to submit supplemental information if this information is necessary for the NRC to obtain a complete understanding of an unusually complex or significant event.

New paragraph (i) would be added to clarify that the requirements of § 72.75 apply: after a specific part 72 license has been issued to an applicant; after a part 72 general licensee has first placed spent fuel on the ISFSI storage pad (if the ISFSI is located inside the reactor facility's collocated protected area) or when the spent fuel is being transferred outside of the reactor facility's protected area to the ISFSI storage pad (if the ISFSI storage pad is located outside of the reactor facility's protected area); and to non-emergency events that occurred within 3 years of the date of discovery. This paragraph would reduce licensee confusion on when the provisions of this section become applicable. The 3-year limitation would eliminate notifications for events that are no longer significant and would be consistent with the current §§ 50.72 and 50.73.

10 CFR 72.216 Reports.

This section would be removed and reserved because it is no longer needed.

10 CFR 73.71 Reporting of safeguards events.

In paragraph (a)(4), the period for submitting written follow-up notifications would be extended from 30 days to 60 days. Changing the time limit from 30 days to 60 days does not imply that licensees should take longer than they previously did to develop and implement corrective actions. The NRC expects licensees to take corrective actions on a time scale commensurate with the safety significance of the issue. However, for those cases where it does take longer than thirty days to complete a root cause analysis, this change will result in fewer licensee event reports that require amendment by submittal of an amended report. The revision to the requirements for submission of written followup safeguards reports will not affect the NRC's ability to promptly respond to safeguards events, because the written reports are not relied upon by NRC staff for prompt response to significant events, but instead the reports are used for such followup actions as considering the need for enforcement action, evaluating whether a generic communication may be necessary, and evaluating the adequacy of existing NRC regulations and guidance. The extension is based on simplicity for reporting, importance to risk, and the required reporting time consistent with the need for prompt NRC action. Additionally the increased time for follow-up reporting would allow for: the completion of the required root cause analyses and engineering evaluations, and fully identify corrective actions after event discovery; preparation of more complete and accurate event reports; and, fewer event report revisions and supplemental reports, thus reducing unnecessary licensee burden. This proposed change would also be consistent with the Commission's actions in the final rule revising § 50.73. In paragraph (d), the period for submitting written follow-up notifications also would be extended from 30 to 60 days.

Appendix G to Part 73 Reportable Safeguards Events.

As a conforming change to § 73.71(a)(4), paragraph I of Appendix G to part 73 would also be revised to require that the period for submitting written follow-up notifications be extended from 30 days to 60 days.

Criminal Penalties

For the purpose of section 223 of the Atomic Energy Act (AEA), the Commission is proposing to amend 10 CFR parts 72 and 73 under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would amend its regulations to change several event notification requirements for ISFSI and MRS facilities and safeguards event notification requirements to more closely align them with event notifications for reactor facilities. The changes would reduce licensee burden through the consolidation of some notifications and lengthening the reporting period for other notifications. Some new requirements would be added to permit the NRC to more effectively carry out its responsibilities during emergencies and in responding to public, media, and other stakeholder inquiries. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction

[1] 10 CFR 72.3—*Definitions.* Structures, systems, and components important to safety means those features of the ISFSI, MRS, and spent fuel storage cask whose functions are: To maintain the conditions required to store spent fuel or high-level radioactive waste safely; to prevent damage to the spent fuel or the high-level radioactive waste container during handling and storage; or to provide reasonable assurance that spent fuel or high-level radioactive waste can be received, handled, packaged, stored, and retrieved without undue risk to the health and safety of the public.

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Act of 1995 (44 U.S.C. 3501 *et seq.*) These information collection requirements have been submitted to the Office of Management and Budget (OMB) for approval. Existing requirements were approved by the OMB, approval numbers 3150–0002 and –0132.

The burden to the public for these information collections in 10 CFR parts 72 and 73 is estimated to average 24 hours per response for part 72 and 13 hours per response for part 73, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0002 and –0132), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by September 23, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission.

The Commission requests public comment on the draft regulatory analysis and is specifically requesting stakeholder input on: (1) The number of reports per year a typical licensee could be anticipated to make under these modified event reporting requirements, (2) the number of hours per report a typical licensee could be expected to expend in preparing and submitting these reports, and (3) the number of NRC staff hours that would be saved by extending the period for submitting written reports from 30 to 60 days.

The regulatory analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD, and in the NRC's interactive rulemaking Web site as described under the **ADDRESSES** heading. Single copies of the regulatory analysis may be requested from Tony DiPalo, telephone (301) 415–6191, e-mail, *ajd@nrc.gov* of the Office of Nuclear Material Safety and Safeguards.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The majority of companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The Commission has determined that, as in the final rule 10 CFR parts 50 and 72, "Reporting Requirements for Nuclear Power Reactors and Independent Spent Fuel Storage Installations at Power Reactor Sites," the backfit rule (10 CFR 50.109, 72.62) does not apply to information collection and reporting requirements such as those reporting requirements contained in this proposed rule. The proposed rule does not involve any provisions that would impose backfits as defined in the backfit rule. Thus, a backfit analysis is not required.

List of Subjects

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistle blowing.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transport, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR parts 72 and 73.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR RELATED GREATER THAN CLASS C WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended; sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended; 202, 206, 88 Stat. 1242, as amended; 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142 (b) and 148 (c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162 (b), 10168 (c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec.133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.9, paragraph (b) is revised to read as follows:

§ 72.9 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 72.7, 72.11, 72.16, 72.22 through 72.34, 72.42, 72.44, 72.48 through 72.56, 72.62, 72.70 through 72.82, 72.90, 72.92, 72.94, 72.98, 72.100, 72.102, 72.104, 72.108, 72.120, 72.126, 72.140 through 72.176, 72.180 through 72.186, 72.192, 72.206, 72.212, 72.218, 72.230, 72.232, 72.234, 72.236, 72.240, 72.242, 72.244, and 72.248.

3. Section 72.75 is revised to read as follows:

§ 72.75 Reporting requirements for specific events and conditions.

(a) *Emergency notifications.* Each licensee shall notify the NRC Operations Center upon the declaration of an emergency as specified in the licensee's approved emergency plan addressed in § 72.32 of this part. The licensee shall notify the NRC immediately after notification of the appropriate State or local agencies, but not later than one hour after the time the licensee declares an emergency.

(b) *Non-emergency notifications.* Four-hour reports—Each licensee shall notify the NRC as soon as possible but not later than four hours after the discovery of any of the following events or conditions involving spent fuel, HLW, or reactor related GTCC waste;

(1) An action taken in an emergency that departs from a condition or a technical specification contained in a license or certificate of compliance issued under this part when the action is immediately needed to protect the public health and safety, and no action consistent with license or certificate of compliance conditions or technical specifications that can provide adequate or equivalent protection is immediately apparent.

(2) Any event or situation related to the health and safety of the public or onsite personnel, or protection of the environment, for which a news release is planned or notification to other government agencies has been or will be made. Such an event may include an onsite fatality or inadvertent release of radioactively contaminated materials.

(c) *Non-emergency notifications.* Eight-hour reports. Each licensee shall notify the NRC as soon as possible but not later than eight hours after the discovery of any of the following events or conditions involving spent fuel, HLW, or reactor related GTCC waste;

(1) A defect in any spent fuel storage structure, system, or component that is important to safety.

(2) A significant reduction in the effectiveness of any spent fuel storage confinement system during use.

(3) Any event requiring the transport of a radioactively contaminated person to an offsite medical facility for treatment.

(d) *Non-emergency notifications.* 24-hour reports. Each licensee shall notify the NRC within 24 hours after the discovery of any of the following events involving spent fuel or HLW:

(1) An event in which important to safety equipment is disabled or fails to function as designed when:

(i) The equipment is required by regulation, license condition, or certificate of compliance to be available and operable to prevent releases that could exceed regulatory limits, to prevent exposures to radiation or radioactive materials that could exceed regulatory limits, or to mitigate the consequences of an accident; and

(ii) No redundant equipment was available and operable to perform the required safety function.

(2) For notifications made under this paragraph, the licensee may delay the notification to the NRC if the end of the 24-hour period occurs outside of the NRC's normal working day (*i.e.*, 7:30 a.m. to 5 p.m. Eastern time), on a weekend, or a Federal holiday. In these cases, the licensee shall notify the NRC before 8 a.m. Eastern time on the next working day.

(e) *Initial notification.* Reports made by licensees in response to the requirements of this section must be made as follows:

(1) Licensees shall make reports required by paragraphs (a), (b), (c), or (d) of this section by telephone to the NRC Operations Center.[2]

(2) When making a report under paragraphs (a), (b), (c), or (d) of this section, the licensee shall identify:

(i) The Emergency Class declared; or

(ii) Paragraph (b), "four-hour reports," paragraph (c), "eight-hour reports," or paragraph (d), "24-hour reports," as the paragraph of this section requiring notification of the non-emergency event.

(3) To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) The caller's name and call back telephone number;

(ii) A description of the event, including date and time;

(iii) The exact location of the event;

(iv) The quantities and chemical and physical forms of the spent fuel, HLW, or reactor-related GTCC waste; and

(v) Any personnel radiation exposure data.

(f) *Follow-up notification.* With respect to the telephone notifications made under paragraphs (a), (b), or (c) of this section, in addition to making the required initial notification, each licensee shall during the course of the event:

(1) Immediately report any further degradation in the level of safety of the ISFSI or MRS or other worsening conditions, including those that require the declaration of any of the Emergency Classes, if such a declaration has not been previously made; or any change from one Emergency Class to another; or a termination of the Emergency Class.

(2) Immediately report the results of ensuing evaluations or assessments of ISFSI or MRS conditions; the effectiveness of response or protective measures taken; and information related to ISFSI or MRS behavior that is not understood.

(3) Maintain an open, continuous communication channel with the NRC Operations Center upon request by the NRC.

(g) *Preparation and submission of written reports.* Each licensee who makes an initial notification required by paragraphs (a), (b), (c), or (d) of this section shall also submit a written follow-up report to the Commission within 60 days of the initial notification. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all the necessary information and the appropriate distribution is made. These written reports must be submitted to the NRC, in accordance with § 72.4. These reports must include the following information:

(1) A brief abstract describing the major occurrences during the event, including all component or system failures that contributed to the event and significant corrective action taken or planned to prevent recurrence;

(2) A clear, specific, narrative description of the event that occurred so that knowledgeable readers conversant with the design of an ISFSI or MRS, but not familiar with the details of a particular facility, can understand the complete event. The narrative description must include the following specific information as appropriate for the particular event:

(i) The ISFSI or MRS operating conditions before the event;

[2] The commercial telephone number of the NRC Operations Center is (301) 816–5100. Those licensees with an available Emergency Notification System (ENS) shall use the ENS to notify the NRC Operations Center.

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(ii) The status of structures, components, or systems that were inoperable at the start of the event and that contributed to the event;

(iii) The dates and approximate times of occurrences;

(iv) The cause of each component or system failure or personnel error, if known;

(v) The failure mode, mechanism, and effect of each failed component, if known;

(vi) A list of systems or secondary functions that were also affected for failures of components with multiple functions;

(vii) For wet spent fuel storage systems only, after the failure that rendered a train of a safety system inoperable, an estimate of the elapsed time from the discovery of the failure until the train was returned to service;

(viii) The method of discovery of each component or system failure or procedural error;

(ix) For each human performance related root cause, the licensee shall discuss the cause(s) and circumstances;

(x) For wet spent fuel storage systems only, any automatically and manually initiated safety system responses;

(xi) The manufacturer and model number (or other identification) of each component that failed during the event;

(xii) The quantities and chemical and physical forms of the spent fuel, HLW, or reactor-related GTCC waste;

(3) An assessment of the safety consequences and implications of the event. This assessment must include the availability of other systems or components that could have performed the same function as the components and systems that failed during the event;

(4) A description of any corrective actions planned as a result of the event, including those to reduce the probability of similar events occurring in the future;

(5) Reference to any previous similar events at the same facility that are known to the licensee;

(6) The name and telephone number of a person within the licensee's organization who is knowledgeable about the event and can provide additional information concerning the event and the facility's characteristics;

(7) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name;

(8) The reports submitted under the provisions of this section must be of sufficient quality to permit legible reproduction and optical scanning.

(h) Supplemental information. The Commission may require the licensee to submit specific additional information beyond that required by paragraph (g) of this section if the Commission finds that supplemental material is necessary for complete understanding of an unusually complex or significant event. These requests for supplemental information will be made in writing, and the licensee shall submit, as specified in § 72.4, the requested information as a supplement to the initial written report.

(i) *Applicability.* The requirements of this section apply to—

(1)(i) Licensees issued a specific license under § 72.40; and

(ii) Licensees issued a general license under § 72.210, after the licensee has placed spent fuel on the ISFSI storage pad (if the ISFSI is located inside the collocated protected area, for a reactor licensed under part 50 of this chapter) or after the licensee has transferred spent fuel waste outside the reactor licensee's protected area to the ISFSI storage pad (if the ISFSI is located outside the collocated protected area, for a reactor licensed under part 50 of this chapter).

(2) Those non-emergency events specified in paragraphs (b), (c), and (d) of this section that occurred within 3 years of the date of discovery

§ 72.216 [Removed and Reserved]

4. Section 72.216 is removed and reserved.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

5. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

6. In § 73.71, paragraph (a)(4) and (d) are revised to read as follows:

§ 73.71 Reporting of safeguards events.

(a) * * *

(4) The initial telephonic notification must be followed within 60 days by a written report submitted to the U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555–0001. The licensee shall also submit one copy to the appropriate NRC Regional Office listed in appendix A to this part. The report must include sufficient information for NRC analysis and evaluation.

* * * * *

(d) Each licensee shall submit to the Commission the 60-day written reports required under the provisions of this section that are of a quality that will permit legible reproduction and processing. If the facility is subject to § 50.73 of this chapter, the licensee shall prepare the written report on NRC Form 366. If the facility is not subject to § 50.73 of this chapter, the licensee shall not use this form but shall prepare the written report in letter format. The report must include sufficient information for NRC analysis and evaluation.

* * * * *

7. In Appendix G to Part 73, the introductory sentence in paragraph I is revised to read as follows:

Appendix G to Part 73—Reportable Safeguards Events

* * * * *

I. Events to be reported within one hour of discovery, followed by a written report within 60 days.

* * * * *

Dated at Rockville, Maryland, this 6th day of August, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–21414 Filed 8–21–02; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 2002—14]

Contribution Limitations and Prohibitions

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission seeks comments on proposed changes to its rules relating to contribution limitations and prohibitions under the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"). The proposed rules are based on the Bipartisan Campaign Reform Act of 2002 ("BCRA"), which increases contribution limits for individuals and political committees; prohibits contributions and donations by minors to certain political committees; and prohibits contributions, donations, and certain expenditures and disbursements by foreign nationals. Please note that the draft rules that follow do not represent a final decision by the Commission on the issues presented by this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before September 13, 2002. If the Commission receives sufficient requests to testify, it will hold a hearing on these proposed rules on October 3, 2002, at 10 a.m. Persons wishing to testify at the hearing should so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *BCRAPart110@fec.gov* and must include the full name, electronic mail address, and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address, and postal service address of the commenter will not be considered. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web Site within ten business days of the close of the comment period. If the Commission conducts a hearing on these proposed rules, the hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, or Attorneys Mr. Michael Marinelli (contribution limitations), Ms. Dawn Odrowski (minor contributions), or Ms. Anne A. Weissenborn (foreign nationals), 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002, Public Law 107–155, 116 Stat. 81 (March 27, 2002), contains extensive detailed amendments to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* This Notice of Proposed Rulemaking ("NPRM") is part of a continuing series of rulemakings the Commission is publishing over the next several months in order to meet the rulemaking deadlines set out in BCRA.

This NPRM addresses the increase in contribution limits, the prohibition on contributions and donations by minors to certain political committees, and the prohibition on contributions, donations, and certain expenditures by foreign nationals. These changes to the Act addressed in this NPRM are only a few of many changes made to the Act by BCRA. Other rulemakings have addressed or will address: (1) Non-Federal funds or "soft money" (promulgated on June 22, 2002, 67 FR 49063 (July 29, 2002)); (2) coordinated and independent expenditures; [1] (3) the so-called "millionaires' amendment," which increases contribution limits for congressional candidates facing self-financed candidates on a sliding scale, based on the amount of personal funds the opponent contributes to his or her campaign; (4) electioneering communications (for NPRM, *see* 67 FR 51131 (Aug. 7, 2002)); (5) other new and amended provisions, including inaugural committees, fraudulent solicitations, disclaimers, personal use of campaign funds, and civil penalties; (6) reporting; and (7) reorganization of "contribution" and "expenditure" definitions (for final rules, *see* 67 FR 50582, August 5, 2002). The reporting NPRM will contain the reporting rules proposed in several of the other NPRMs and will restructure 11 CFR part 104 to make the reporting rules more user-friendly. Section 402(c) of BCRA establishes a 270-day deadline for the Commission to promulgate these rules. Since BCRA was signed into law on March 27, 2002, the 270-day deadline is December 22, 2002.

Introduction

The Act limits the amounts that individuals and entities are permitted to contribute, and who may contribute those amounts, to candidates, political committees, and political party committees for use in Federal elections. 2 U.S.C. 441a and 441e. BCRA amends the FECA by increasing some of the contribution limits in 2 U.S.C. 441a (but only for contributions made on or after January 1, 2003), and by prohibiting certain contributions by minors in new 2 U.S.C. 441k. BCRA also amends 2 U.S.C. 441e, which prohibits contributions, donations, and expenditures made by foreign nationals. The proposed rules would implement these amendments.

[1] This NPRM will also address certain communications that are coordinated with candidate or political party committees that would otherwise constitute electioneering communications.

Increases in Contribution Limits

1. Increases in the Contribution Limits for Individuals (11 CFR 110.1 and 110.5)

The Act limits the amount that individuals may contribute to candidates, political committees, and political parties for use in Federal elections. 2 U.S.C. 441a. The pre-BCRA provisions of the Act permit persons to contribute up to $1,000 to Federal candidates per election and up to $20,000 per year to political committees established and maintained by national political parties.[2] For contributions made on or after January 1, 2003, BCRA amends 2 U.S.C. 441a(a)(1)(A) to increase the amount persons can contribute to Federal candidates to $2,000 per election and amends 2 U.S.C. 441a(a)(1)(B) to increase the amount that may be contributed by individuals to committees maintained and controlled by national political parties to $25,000 per year.

Current 11 CFR 110.1(b)(1) and (c)(1), which contain the contribution limits in 2 U.S.C. 441a(a)(1)(A) and (B), would be amended to incorporate the new increased contribution limits. Proposed paragraph (b)(1) would establish the new base contribution limit of $2,000 that a person may contribute to a candidate for election to any Federal office. Under proposed paragraph (b)(1)(i), that limit of $2,000 would be increased if necessary each election cycle by the difference in the price index in accordance with proposed 11 CFR 110.17, which is discussed below. Once the limit is increased, proposed paragraph (b)(1)(ii) would establish the effective dates of the increase from the day after the last general election to the day of the next general election. Because the contribution limits could change every two years, depending upon the consumer price index, proposed paragraph (b)(1)(iii) states that the Commission would publish the new contribution limits in effect in the **Federal Register** every odd-numbered year and maintain that information on its Web Site. Proposed section 110.1(c)(1) would parallel proposed section 110.1(b)(1), except it would establish the base contribution limit that

[2] The Act also permits a person to contribute up to $5,000 per year to any other political committees. 2 U.S.C. 441a (a)(1)(C). This limit was left unchanged by BCRA. However BCRA did revise 2 U.S.C. 441a(a)(1) by adding paragraph (D), which permits persons to make up to $10,000 in contributions to a political committee established and maintained by a State committee of a political party in a calendar year. This provision is addressed in a separate rulemaking. See Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money Final Rules, 67 FR 49063 (July 29, 2002).

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a person would be able to make to a political committee of a national political party at $25,000 per calendar year. Proposed paragraphs (c)(1)(i), (ii), and (iii) would mirror proposed paragraph (b)(1)(i), (ii), and (iii), applying the same indexing as necessary each election cycle with the same effective dates.

The limit for the calendar year when the change becomes effective would be affected as well. These new contribution limits would be effective January 1, 2003, and would apply to contributions made on or after that date. The Commission seeks comments on whether these increased contribution limits should apply to elections that occurred before the effective date of the increase in the contribution limits. For example, if the contribution limit were to be increased from $2,000 to $2,100, effective November 3, 2004, and contributor X makes a $2,000 contribution to candidate Y in October of 2004, could contributor X make a $100 contribution after November 3, 2004 designated for the general election, provided that candidate Y's principal campaign committee still has net debts outstanding?

BCRA also amends the provisions in the Act that establish the aggregate contributions that may be made by individuals. Under 2 U.S.C. 441a(a)(3), individuals have been permitted to make no more than $25,000 in aggregate contributions per calendar year. This section has been revised by BCRA to establish new bi-annual aggregate limits that permit individuals to make up to $95,000 in contributions, including up to $37,500 in contributions to candidates and their authorized committees and up to $57,500 in contributions to any other committees. 2 U.S.C. 441a(a)(3)(A) and (B). The $57,500 aggregate contribution limit contains a further restriction in that no more than $37,500 of this amount may be given to committees that are not the political committees of national political parties. 2 U.S.C. 441a(a)(3)(B).

Current 11 CFR 110.5(b) would be amended to incorporate the increased bi-annual aggregate contribution limits, which will be effective January 1, 2003. Proposed paragraph (b)(1)(i) would contain the new bi-annual aggregate limit for contributions to candidates and their authorized committees. Proposed paragraph (b)(1)(ii) would contain the new bi-annual aggregate limit for contributions to other political committees.

However, 2 U.S.C. 441a(i)(1)(C) and 441a–1(a)(1)(B) contain an important exception to the contribution limits that has implications for the bi-annual aggregate limits for individuals. Under these sections, the individual contribution limits to candidates for the U.S House of Representatives and U.S. Senate are increased if the candidate is opposing another candidate who makes expenditures from his or her personal funds above a certain threshold. Contributions made under these provisions do not apply to the individual contributor's bi-annual aggregate limits. 2 U.S.C. 441a(i)(1)(C) and 441a–1(a)(1)(B). Proposed paragraph 110.5(b)(1)(iii) would reflect this exception, which will be addressed in greater detail in a separate NPRM concerning the so-called "millionaires' amendment."

Proposed paragraph (b)(2) of 11 CFR 110.5 would reference the increase, if necessary, in the bi-annual aggregate limits by the percent difference in the price index as described in proposed 11 CFR 110.17 (*see* the discussion below). Proposed paragraph (b)(3) would provide that the time period in which the price indexing applies also applies to the aggregation of contributions for purposes of the application of the bi-annual aggregate limits. An example of how the time period would operate for both the increase and the aggregation would also be included in proposed paragraph (b)(3). Proposed paragraph (b)(4) would restate the Commission's intention to publish information regarding the adjusted limits in the **Federal Register** and on the Commission's web site.

2. Increases in the Limits for Contributions by Party Committees to Senate Candidates (11 CFR 110.2)

Under pre-BCRA 2 U.S.C. 441a(h), the Republican and Democratic Senatorial campaign committees or the national committee of a political party or any combination of such committees were permitted to contribute $17,500 to a candidate for election or nomination to the U.S. Senate during the year of the election. BCRA amends this section of the Act to increase the amount that may be contributed by these committees to senatorial candidates to $35,000 on or after January 1, 2003. Current 11 CFR 110.2(e), which contains this limit, would be amended to increase the limit to $35,000.

3. Extension of Indexing to Inflation for Some Contribution Limitations (11 CFR 110.5 and 110.17)

Pre-BCRA 2 U.S.C. 441a(c) mandated yearly indexing to inflation of the expenditure limitations established by 2 U.S.C. 441a(b) (the limits on expenditures by candidates for the office of President of the United States who accept public funding) and 2 U.S.C. 441a(d) (the limits on expenditures by national party committees, State party committees, or their subordinate committees in connection with the general election campaign of candidates for Federal office).

BCRA amends 2 U.S.C. 441a(c) to extend the inflation indexing to: the limitations for contributions made by persons under 2 U.S.C. 441a(a)(1)(A) and 441a(a)(1)(B); the bi-annual aggregate contribution limits for individuals now found at 2 U.S.C. 441a(a)(3); and the limitation for contributions made to U.S. Senate candidates by certain party committees at 2 U.S.C. 441a(h). 2 U.S.C. 441a(c)(1)(B). The adjustments for inflation for 2 U.S.C. 441a(a)(1)(A), 441a(a)(1)(B), 441a(a)(3) and 441a(h) are to be made only in odd-numbered years and such increases will be in effect for the 2-year period beginning on the first day following the date of the general election in the year preceding and ending on the date of the next general election. 2 U.S.C. 441a(c)(1)(C).

BCRA, however, presents a conflict concerning the interaction of 2 U.S.C. 441a(a)(3), which establishes the bi-annual aggregate contribution limits for individuals, and 2 U.S.C. 441a(c)(1)(C), which mandates indexing to inflation of these bi-annual aggregate limits. Section 441a(a)(3) of the Act specifically provides that the bi-annual aggregate limits for contributions made by individuals should apply during the period that begins on January 1 of an odd-numbered year and ends on December 31 of the next even-numbered year. For example, the dollar aggregate limits operate from January 1, 2005 to December 31, 2006. However, the inflation indexing for this provision as applied by 2 U.S.C. 441a(c)(1)(C) would operate from the day after the general election to the date of the next general election, e.g. November 3, 2004 to November 7, 2006, after which date the next two year inflation indexing period would alter the bi-annual aggregate contribution limits again. Thus, these competing time limits seem to dictate different contributions limits for the period from November 3, 2004 to January 1, 2005 and could not be applied simultaneously. Therefore, the conflict between 2 U.S.C. 441a(a)(3) and 441a(c)(1)(C) must be resolved to determine the time period in which the bi-annual aggregate contribution limits apply.

It is one principle of legislative interpretation that where two provisions of a statute are in conflict, the conflicting provision which is last in time or last in order of arrangement prevails. *See Inter-Continental Promotions* v. *MacDonald*, 367 F.2d 293 (5th Cir. 1966). Following this principle, because 2 U.S.C. 441a(c)(1)(C) appears later than 2 U.S.C. 441a(a)(3) in order of arrangement, both in BCRA and as codified in the Act, 2 U.S.C. 441a(c)(1)(C) would determine the time period of the bi-annual contribution limits for 2 U.S.C. 441a(a)(3). Therefore, the proposed rules would set the time period for the bi-annual contribution limits from the day after the general election, i.e. the first Wednesday following the first Monday in November of an even numbered year, to the date of the next general election, i.e. the first Tuesday following the first Monday in November of the next even numbered year. *See* proposed 11 CFR 110.5(b) and 110.17 below. Under this approach, runoff elections following the general election would not postpone the increase in the annual contribution limits. The Commission seeks comment on whether this interpretation of the statutory language and the proposed time period for the bi-annual aggregate contribution limits is appropriate.

Another question for the interpretation of the BCRA amendments to 2 U.S.C. 441a(c) relates to a timing issue in the administrative application of the inflation indexing. The increased contribution limits of 2 U.S.C. 441a(a)(1)(A) and (B), 441a(a)(3), and 441a(h) apply to contributions made on or after January 1, 2003. However, under the interpretation outlined above, 2 U.S.C. 441a(c)(1)(C) requires that these same contribution limits be increased through indexing for inflation in odd-numbered years with the increase in effect starting with the day following the last general election in the previous year. This could imply that initial contribution limits authorized by BCRA to take legal effect on January 1, 2003, should also be increased by the difference in the price index. Comments are requested on this possible interpretation, which is not included in the proposed revisions to section 110.5 below.

A further change in 2 U.S.C. 441a(c) is the introduction of a rounding provision for all the amounts that are increased by the indexing to inflation in 2 U.S.C. 441a. If the final amount is not a multiple of $100, it is rounded to the nearest multiple of $100. 2 U.S.C. 441a(c)(1)(B)(iii).

The current regulation at 11 CFR 110.9(c) that describes the expenditure limits subject to inflation indexing does not include any of the inflation indexing discussed above. In order to address the price indexing for the new contributions and expenditures limitations in a comprehensive manner, the Commission proposes to add new section 110.17 to track the changes to 2 U.S.C. 441a(c). In this new section 110.17, proposed paragraph (a) would restate current section 110.9(c) for the price index increases that previously existed for the party committee and Presidential candidate spending limits established by 11 CFR 110.7 and 110.8.

However, proposed paragraph (a) would contain one important change from current 11 CFR 110.9(c). Section 110.9(c) had incorrectly stated that the expenditure limitations established by sections 110.7 and 110.8 would be increased by the annual percent difference of the price index, as certified to the Commission by the Secretary of Labor. Section 441a(c) of the Act does not use an annual percent difference of the price index to calculate the increases. Instead, it requires the use of the percent difference between the price index for the 12 months preceding the beginning of the calendar year in which the change is made and the base period. For party committee expenditures limitations and Presidential candidate expenditures limitations, the base period is calendar year 1974 with the change being in effect for that calendar year. Proposed paragraph (a) would correctly state the standard to be applied and would delete the term "annual" from the regulation.

Proposed paragraph (b) of new section 110.17 would track 2 U.S.C. 441a(c)(1)(B) and state that the following contributions limits would be indexed to inflation: Proposed 11 CFR 110.1(b)(1) (limits for individuals contributing to candidates and authorized political committees); proposed 110.1(c)(1) (limits for contributions made to national party committees); proposed 110.2(e) (limits for contributions made by party committees to Senatorial candidates); and proposed 110.5 (bi-annual aggregate contribution limits for individuals). Consequently, current paragraph 110.9(c) would be removed.

Proposed section 110.17(b)(1) would specify that these contribution limitations would be increased during odd numbered years and that the increased limit would be in effect for a two-year period. Proposed paragraph (b)(2) would establish that 2001 is the base year for the calculation of the price index difference. Proposed paragraph 110.17(c) would implement the new rounding provision found at 2 U.S.C. 441a(c)(B)(iii).

The Act at 2 U.S.C. 441a(c)(2)(A) and proposed paragraph 110.17(d) specifically identify the price index as the average over a calendar year of the Consumer Price Index (all items-United States city average) published by the Bureau of Labor Statistics. The Department of Labor computes the CPI using two population groups: All Urban Consumers (CPI–U) and Clerical Workers (CPI–W). The CPI–U represents approximately 87% of the total United States population while the CPI–W, a subset of the CPI–U, represents 32% of the total United States population.[3] While neither the Act nor BCRA have specified which population group is to be used, the Commission has historically used the more inclusive CPI–U since that would seem the best method to calculate changes in the affected limitation. The Commission invites comments on whether this or an alternative approach would be preferable.

Proposed paragraph 110.17(e) would state that the Commission would provide information concerning the amount of the adjusted contribution limitations through the **Federal Register** and the Commission's web site.

In order to alert the reader to these contribution limit increases, each section containing a contribution increase that is subject to the indexing also contains a new paragraph referring to these increases. These would be proposed paragraphs 110.1(b)(1)(i), (ii), and (iii); (c)(1)(i), (ii), and (iii); 110.2(e)(2); and 110.5(b)(2).

Prohibition on Contributions by Minors

Senator McCain, a primary sponsor of BCRA, stated during the Senate debate that the prohibition on contributions by minors is intended to prevent evasion of FECA's contribution limits and "restores the integrity of the individual contribution limits by preventing parents from funneling contributions through their children, many of whom are simply too young to make such contributions knowingly." 148 Cong. Rec. S2145–2146 (daily ed. March 20, 2002).

During the debate, BCRA's sponsors acknowledged that many individuals younger than 18 years old enthusiastically supported candidates and pointed out that they could continue to do so by volunteering on campaigns and expressing their views through speaking and writing. *See* 148 Cong. Rec. S2146 (daily ed. March 20, 2002).

[3] The CPI published by the Department of Labor may be found over the Internet at *http://www.bls.gov/cpi/home.htm.*

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1. 11 CFR 110.19 Contributions by Minors

BCRA prohibits minors (individuals 17 years old and younger) from making a contribution to a candidate or a contribution or donation to a political party committee. *See* 2 U.S.C. 441k. The Commission is proposing to place the regulations that address this prohibition in a new section 11 CFR 110.19.

Under current regulations, a child under 18 years of age may make contributions in accordance with the limits of the Act provided that the child voluntarily and willingly makes the decision to contribute, the funds, goods or services contributed are owned or controlled exclusively by the child, and the contribution is not made from the proceeds of a gift given to the child to make a contribution or is not in any way controlled by an individual other than the child. *See* current 11 CFR 110.1(i)(2). Consequently, the proposed rules would amend current 11 CFR 110.1(i)(2) to conform with BCRA. *See* below for discussion of the proposed conforming amendments.

Proposed paragraph (a) of new 11 CFR 110.19 would address contributions by minors to candidates. That paragraph would state that an individual who is 17 years old or younger must not make a contribution to a candidate for Federal office. Proposed paragraph (a) would further clarify that a contribution to a Federal candidate includes a contribution to a candidate's principal campaign committee, to any other authorized committee of that candidate, or to any entity directly or indirectly established, financed, maintained or controlled by one or more Federal candidates.

The Commission believes that prohibiting contributions by minors to entities directly or indirectly established, financed, maintained or controlled by a Federal candidate is within the scope of BCRA, but it seeks comment on this issue. The Commission also seeks comment on whether minors who are emancipated under State law should be exempt from the prohibition. A condition of emancipation under State law usually entails a showing that a minor manages his or her own financial affairs, which would lessen the likelihood that a parent would funnel contributions through the emancipated minor child. Finally, the Commission seeks comment on whether the regulations should make clear that the relevant time for determining whether a minor has made a prohibited contribution is the age of the minor at the time he or she makes a contribution, i.e., when the minor relinquishes control over the contribution. *See* 11 CFR 110.1(b)(6).

Proposed § 110.19(b) addresses contributions and donations made by minors to political party committees. Because BCRA specifically prohibits donations as well as contributions by minors to "a committee of a political party," proposed paragraph (b) states that individuals 17 years old or younger may not make contributions or donations to a national, State, district or local committee of a political party. Thus, as proposed, the regulations would interpret BCRA as prohibiting minors from making any donations whatsoever to non-Federal accounts of State, district and local party committees. To the extent that a non-Federal account of a State or local party committee may contain Levin funds, i.e., funds raised under State law but limited under Federal law to $10,000 per contributor, to finance certain Federal election activity such as voter registration and get-out-the vote activities, prohibiting donations by minors to State, district and local party committees has a clear nexus to Federal elections. It should be noted that this interpretation may preempt certain State laws to the extent that States permit minors to donate to state and local political parties.

The Commission seeks comment, however, as to whether a narrower construction of the prohibition on donations by minors to state, district, and local political party committees may be warranted. For example, the prohibition on donations by minors in 2 U.S.C. 441k could be interpreted to apply only to donations used to conduct activities that have some effect on Federal elections. Consequently, under this interpretation, a minor may make a donation only if the recipient state, district, or local party committee can show through a reasonable accounting method or by establishing a separate account that the donation is used exclusively for purposes that have no effect upon any Federal election to the extent permitted by State law. It is important to note, however, that a number of State laws treat contributions by minors as contributions by their parent(s) or guardian(s). *See* for example, Kan. Stat. Ann. 25–4153(c) and Okla. Stat. t. 74, 257:10–1–2(a)(1) and (h)(2).

Proposed 11 CFR 110.19(c) addresses contributions to other political committees, such as separate segregated funds and non-connected committees. The proposed rule would prohibit an individual who is 17 years old or younger from making a contribution to any such political committee if the contribution is earmarked or otherwise directed to one or more Federal candidates or political committees or organizations covered in proposed paragraphs (a) and (b).

Proposed 11 CFR 110.19(d) would make clear that minors are not prohibited from volunteering their services to Federal candidates, political party committees or other political committees. The exclusion of volunteer services is based on the statement made by Senator McCain in the BCRA Senate debate, as noted above, that Congress intended that minors could continue to participate in campaigns by volunteering.

Proposed paragraph (e) would define an entity "directly or indirectly established, financed, maintained, or controlled" by a candidate for purposes of the prohibition on minors' contributions to candidates as one that meets the definition of "directly or indirectly establish, finance, maintain or control" at 11 CFR 300.2(c). For the definition, *see* Final Rules for "Excessive and Prohibited Contributions: Non-Federal Funds or Soft Money," 67 FR 49063 (July 29, 2002).

2. Conforming Amendments to 11 CFR 110.1(i)

As discussed above, beginning on November 6, 2002, BCRA prohibits individuals who are 17 years old or younger from making contributions to Federal candidates and contributions or donations to political party committees. However, BCRA also provides that this prohibition will not apply with respect to runoff elections, recounts or election contests resulting from elections held prior to November 6, 2002. *See* 2 U.S.C. 431 note. Consequently, the current regulation concerning contributions by minors at 11 CFR 110.1(i)(2) would be amended by adding new paragraph (i)(3) to clarify that the provisions of 11 CFR 110.1(i)(2) would continue to apply to contributions made by minors to authorized committees and political party committees in connection with runoff elections, recounts or election contests resulting from elections held prior to November 6, 2002. It would also clarify that contributions made by minors to authorized committees and political party committees for all other elections held after November 6, 2002 would be governed by proposed 11 CFR 110.19.

Because 2 U.S.C. 441k specifically prohibits contributions by minors to candidates and political party committees rather than to political committees in general, the proposed rules contemplate that minors could continue to make contributions to political committees other than authorized committees or political party committees in accordance with the requirements of 11 CFR 110.1(i)(2). Consequently, 11 CFR 110.1(i)(2) would be amended to reflect this interpretation. The Commission seeks comment on whether 2 U.S.C. 441k could be interpreted to also prohibit contributions by minors to these other political committees.

Reattribution and Redesignation

With BCRA's renewed focus on contribution limits, the Commission is considering updating and streamlining its rules for designating contributions for a particular election or attributing contributions to particular donors. Current 11 CFR 110.1 and 110.2 set forth the procedures for the redesignation or reattribution of excessive contributions. Section 110.1(b)(5) permits an excessive contribution to a candidate that is not designated in writing for a particular election to be designated for a different election, provided that a signed, written redesignation is obtained from the contributor within 60 days. *See* 11 CFR 110.1(b)(5)(i)(C) and 110.1(b)(5)(ii). Given the amount of resources the Commission and the regulated community have had to devote to authorized committees' failure to properly follow these procedures, the Commission seeks comment on several ways to address this problem. Although BCRA does not address the procedures for handling excessive contributions, the Commission seeks comment on the following possible changes to §§ sections 110.1, 110.2 and 102.9 as a matter of administrative convenience and to better effectuate donor intent.

One possible change to § 110.1(b)(5) would be to presume that when a contributor makes an undesignated, excessive contribution to a candidate's authorized committee before a primary election, the contributor intends to contribute the excessive amount to the general election, provided that the total amount contributed does not exceed the limitations on contributions for both elections. If this presumption were allowed, the authorized committee would be permitted to treat the excessive amount of the contribution as a contribution made with respect to the general election without needing to obtain written permission from the contributor, or even to notify the contributor that such action had been taken. This approach, which is included in the proposed rules as Alternative 1–A in § 110.1(b)(5)(ii)(B), would be designed to minimize the administrative burden on authorized committees when a contributor's intent could be reasonably inferred.

Alternatively, or in conjunction with the presumption approach, the committee could be required to inform the contributor as to how the contribution had been designated, and that the contributor may request a refund. This approach is included in the proposed rules as Alternative 1–B in § 110.1(b)(5)(ii)(B). As with the presumption approach, no confirmation from the contributor would be required. If the Commission were to adopt the notification approach, then 11 CFR 110.1(l) would need to be amended to specify the documentation required to be retained under such an approach.

The Commission seeks comment on how this notification approach compares to or fits with the presumption approach. Would the benefit of requiring notification of contributors outweigh the administrative burden to authorized committees of providing and retaining records of such notification? What methods of notification (*e.g.*, mail, electronic mail or oral communication accompanied by a contemporaneous signed record of the conversation) should be permitted if this notification approach is adopted? Should notification be required within thirty days of the treasurer's receipt of the contribution? If a contributor requests a refund, should the treasurer be required to make the refund within thirty days of receipt of the request?

The Commission specifically seeks comment on the merits of applying the presumption or notification approach described above to an undesignated, excessive contribution received before a primary election. In addition, the Commission seeks comment on whether it should allow the presumption or notification approach for other types of redesignations, or for reattributions. *See* 11 CFR 110.1(b)(5)(i), 110.1(k) and 110.2(b)(5)(i). For example, should the Commission permit backward-looking presumptions, so that excessive general election contributions received after a primary election may be designated by an authorized committee to pay off primary debt? Alternatively, should it be presumed that a contributor intended to contribute an excessive amount beyond a current election cycle? Are backward-looking presumptions or presumptions beyond a current election cycle consistent with what contributors can be reasonably expected to have intended? More generally, if the Commission adopts the presumption or notification approach for certain contributions in § 110.1, should the Commission make conforming changes to the requirements for contributions by multicandidate political committees in § 110.2? Are there circumstances where the presumption or notification approach would be appropriate for the reattribution of a contribution to a different donor, such as when a contribution made by written instrument is imprinted with the names of more than one account holder? Alternatives 2–A and 2–B in proposed 11 CFR 110.1(k)(3)(ii)(B) sets forth how the presumption and notification approaches could be applied under those circumstances. If the Commission adopts the presumption or notification approach for certain types of redesignations or reattributions, conforming amendments will be required in §§ 110.1 and 110.2.

Whether or not the Commission decides to allow the presumption or notification approach for certain types of redesignations or reattributions, there will remain circumstances where redesignation or reattribution might not be appropriate without some form of authorization from the contributor. *See, e.g.*, 11 CFR 110.1(b)(5)(i)(B). Under current §§ 110.1 and 110.2, authorization from the contributor can only be obtained through written authorization signed by the contributor. The Commission seeks comment on whether it should eliminate the signature requirement for all redesignations and reattributions under 11 CFR 110.1 and 110.2, and instead permit authorization from the contributor by email or through oral communications with the contributor when there is a contemporaneous signed record of the conversation, as is permitted under the Commission's best efforts regulations (*see* 11 CFR 104.7(b)(2)). Eliminating the signature requirement or permitting committees to obtain authorization orally or by e-mail for redesignations and reattributions would require amendments to §§ 110.1 and 110.2.

In addition to concerns about balancing administrative burdens with adequate protection of contributors' intent, the Commission has concerns about some committees' illegal use of contributions received for the general election during the primary election, despite the existing requirement that authorized committees distinguish contributions received for the primary election and contributions received for the general election. *See* 11 CFR 102.9(e). In order to reduce the illegal use of funds during the primary election through the use of contributions intended for the general election, the Commission seeks comment on whether

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all committees should be required to segregate contributions for the primary election from contributions for the general election. This could be done by tightening the requirements currently set forth in 11 CFR 102.9(e) so that separate accounts for primary and general election contributions would be mandatory, not optional.

Recordkeeping also plays a crucial role in ensuring compliance with the Act's contribution limitations. The Commission seeks comment on whether the recordkeeping duties set forth in 11 CFR 102.9 should explicitly require political committees to retain certain records of all contributions over $50. Should political committees be required to keep copies of contribution checks, either as photocopies or as digital images? Should committees be required to keep records of contributions made by credit card or debit card, such as credit card slips, processing batch reports, or other records created by the committee or provided by the credit or debit card processor? Many committees keep such records now, so it is not anticipated that it would create a significant additional administrative burden if such a recordkeeping requirement were adopted. Finally, the Commission seeks comment on whether 11 CFR 102.9 should include an explicit requirement that political committees maintain copies of all written solicitations.

Prohibition on Contributions, Donations, Expenditures and Disbursements by Foreign Nationals (11 CFR 110.20)

As indicated by the title of section 303 of BCRA, "Strengthening Foreign Money Ban," Congress amended 2 U.S.C. 441e to further delineate and expand the ban on campaign contributions and donations by foreign nationals. BCRA expressly applies the ban to contributions and donations solicited or made directly or indirectly to candidates for State and local as well as Federal office. 2 U.S.C. 441e(a)(1)(A) and (a)(2). Furthermore, the prohibition is expressly applied to contributions and donations to committees of political parties and is extended to disbursements for electioneering communications as well as to expenditures and independent expenditures. 2 U.S.C. 441e(a)(1)(B) and (C).

Consequently, the Commission proposes to amend 11 CFR part 110 to implement the revised statutory provision. The proposed rules would remove and reserve 11 CFR 110.4(a), the current regulation that addresses foreign nationals. In its place, new § 110.20 would be created to describe the prohibitions on contributions, donations, expenditures, independent expenditures, and disbursements by foreign nationals. This new section would also incorporate the provision in 2 U.S.C. 441e(a)(2) which prohibits persons from soliciting, accepting, or receiving contributions and donations from foreign nationals.

1. "Indirectly" versus "Through Any Other Person"

BCRA bans foreign national contributions and donations made "directly or indirectly." Former 2 U.S.C. 441e(a) banned foreign national contributions made directly "or through any other person." It is unclear what Congress intended in changing the terminology. While both phrases would address contributions made through conduits, the term "indirectly" could have a broader scope because the general purpose of section 303 of BCRA is to strengthen the ban on contributions and donations by foreign nationals. Comments are solicited as to whether "indirectly" should be construed to have a broader meaning than "through any other person" and if so, whether the rules should explicitly reflect this interpretation by defining "indirectly." Please note that the proposed rule does not define "indirectly."

Given the above-cited statutory provisions, proposed paragraph 110.20(a) would explicitly state that foreign nationals shall not, directly or indirectly, make contributions or donations in connection with any election for Federal, State, or local office. Because BCRA retains the provision on express or implied promise, proposed paragraph (a) would also include that language. Additionally, proposed paragraph (a) would define "election" in accordance with 11 CFR 100.2 and proposed 11 CFR 110.20(j). While current § 100.2 addresses Federal elections, proposed paragraph (j) would define "election" generically so that it would include State and local elections.

Comment is also sought on whether "indirectly" should cover a foreign controlled U.S. corporation, including a U.S. subsidiary of a foreign corporation, when such corporation seeks to make (1) non-federal donations of corporate treasury funds, or (2) federal contributions through a political action committee. Specifically, the Commission seeks comment on whether BCRA's new statutory language prohibits foreign controlled U.S. corporations, including a U.S. subsidiary of a foreign corporation, from making corporate donations, or from making federal contributions from their PACs, or both.

2. Impact of the Addition of "Donation" in the Foreign National Ban

In BCRA, Congress added the "donation" of funds by foreign nationals to its prior ban on "contributions" by foreign nationals. In 2000, the Commission included in its legislative recommendations to Congress a proposal that 2 U.S.C. 441e be amended to clarify that the statutory prohibition on foreign national contributions extends to State and local elections. The Commission noted that this could be accomplished by changing "contribution" to "donation."

In BCRA, Congress chose to retain "contribution" and to add "donation" as a prohibited activity, while also explicitly listing "a Federal, State, or local election" as the elections in connection with which such contributions and donations must not be made. By means of this two-fold approach, Congress left no doubt as to its intention to prohibit foreign national support of candidates and their committees for all Federal, State, and local elections.

According to the section-by-section analysis of BCRA by Senator Feingold, the revision to 2 U.S.C. 441e "prohibits foreign nationals from making any contribution to a committee of a political party or any contribution in connection with federal, state or local elections, including any electioneering communications. This clarifies that the ban on contributions [by] foreign nationals applies to soft money donations." (Statement of Sen. Feingold, 148 Cong. Rec. S1991–1997 (daily ed. Mar. 18, 20020)).

While final rules entitled "Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money" define "donation" at 11 CFR 300.2(e) for purposes of 11 CFR part 300, the proposed rules do not define "donation" for purposes of this rulemaking. The Commission seeks comments on whether it should include a definition of "donation" and, if so, should the definition be limited to proposed 11 CFR 110.20 or 11 CFR part 110, or should it be included in 11 CFR part 100 and have general applicability to all of the Commission's regulations.

3. Effects on Committees of Political Parties

BCRA also expressly extends the prohibition on foreign national contributions and donations to those made to committees of political parties, with foreign nationals prohibited from making any donations to such committees. 2 U.S.C. 441e(a)(1)(B). The particular committees covered would include the national party committees, the national congressional campaign committees, as well as all State, district, local, and subordinate committees. In light of the addition of "donation" to the statutory language, it appears that the prohibition on foreign national funds would extend to all political party organizations, whether or not they are political committees under the Act. In addition, because many party committee activities affect Federal, State, and local elections, this interpretation is supported by, and would reinforce, the prohibition in 2 U.S.C. 441e(a)(1)(A) on foreign national contributions and donations in connection with a Federal, State, or local election. Consequently, proposed 11 CFR 110.20(b) would adopt this interpretation. Comments are requested on whether the proposed rules should adopt a different interpretation.

4. Expenditures, Independent Expenditures, and Disbursements for Electioneering Communications

BCRA prohibits a foreign national from making "an expenditure, independent expenditure, or disbursement for an electioneering communication."[4] 2 U.S.C. 441e(a)(1)(C). This provision, read alone, could be construed so that "expenditure," "independent expenditure," and "disbursement" modify "for an electioneering communication," therefore narrowing the scope of "expenditure" and "independent expenditure" to include only "electioneering communications." BCRA, however, expressly exempts from the definition of "electioneering communication" "a communication which constitutes an expenditure or an independent expenditure under this Act. * * *" 2 U.S.C. 434(f)(3)(B)(ii). Thus, statutory construction would require that the phrase "for an electioneering communication" at 2 U.S.C. 441e(a)(1)(C) is read as modified only by the term "disbursement," with the prohibitions against an expenditure" or an "independent expenditure" being general in scope, *i.e.*, not limited to electioneering communications.

Consequently, proposed 11 CFR 110.20(d) would prohibit expenditures, independent expenditures, and disbursements[5] by foreign nationals for activities in connection with Federal, State, or local elections. Proposed paragraph (e) would specifically prohibit disbursements for electioneering communications by foreign nationals.

5. Other Disbursements

BCRA expressly prohibits all expenditures and independent expenditures by foreign nationals, and also prohibits all disbursements by foreign nationals for electioneering communications. Section 431(9)(A)(1) of FECA defines "expenditure" as "any purchase, payment, * * * or anything of value made for the purpose of influencing any election for Federal office," and 2 U.S.C. 431(17) defines "independent expenditure" as "an expenditure by a person expressly advocating the election or defeat of a clearly defined candidate which is made without cooperation or consultation with any candidate * * * ." Thus, the terms "expenditure" and "independent expenditure" apply only to activities related to Federal elections. In contrast, "disbursement," a term used in both FECA and BCRA, but not defined in the statutes, is now defined in new 11 CFR 300.2(d) as "any purchase or payment made by (1) a political committee; or (2) any other person, including an organization that is not a political committee, that is subject to the Act." This definition of "disbursement" covers all payments including "expenditures," "independent expenditures," and those made in connection with non-Federal elections.

However, BCRA does not contain an express prohibition against foreign national disbursements for activities other than electioneering communications. This omission leaves in question the status of disbursements by foreign nationals for activities in connection with State and local elections that are by definition not "expenditures" or "independent expenditures" because they are not made to influence Federal elections. How the Commission addressed a similar issue in the past, however, provides guidance on this question.

Former 2 U.S.C. 441e contained no express prohibition against expenditures by foreign nationals. In response to this statutory silence, the Commission in 1989 revised 11 CFR 110.4(a) to state that foreign nationals were prohibited from making expenditures as well as contributions. The Explanation and Justification for that amendment stated: "The FECA generally prohibits expenditures when it prohibits contributions by a specific category [of] persons, thereby ensuring that the person cannot accomplish indirectly what they are prohibited from doing directly." 54 FR 8581 (Nov. 24, 1989). The Explanation and Justification continued: "Nothing in Section 441e's legislative history suggests that Congress intended to deviate from the FECA's general pattern of treating contributions and expenditures in parallel fashion." *Id.*

As discussed above, BCRA adds "donations" to the activities prohibited to foreign nationals, this being one way in which the reach of the statute is extended to State and local elections to which the term "contributions" does not apply. As was the case earlier with the FECA, there is nothing in BCRA that would indicate an intent on the part of Congress to treat disbursements for State or local elections any differently than it now treats expenditures for Federal elections. Therefore, the Commission in the regulations proposes to treat "donations" and "disbursements" in the same parallel fashion as it has treated "contributions" and "expenditures" in the past.

Consequently, proposed 11 CFR 110.20(d) would also prohibit disbursements by foreign nationals whether or not they are made for electioneering communications. Comments are sought as to whether a definition of "disbursement" using language similar to that in 11 CFR 300.2(d) should be included in 11 CFR 110.20.

6. Building Funds

The FECA prohibits foreign nationals from making any contribution or donation to national party committees, including donations for the purchase or construction of an office building. See 2 U.S.C. 441e. In addition, new 11 CFR 300.35(a) explicitly provides that the prohibitions in BCRA against contributions and donations by foreign nationals do not permit party committees to spend funds contributed or donated by foreign nationals for the purchase or construction of State or local party committee office buildings. Final Rule and Explanation and Justification, 67 FR 49101, 49127 (July 29, 2002). The Explanation and Justification for 11 CFR 300.35 indicates that this prohibition on foreign national funding also extends to in-kind contributions or donations. Consistent with new 11 CFR 300.35(a), the Commission proposes to add paragraph

[4] BCRA defines "electioneering communication" as a "broadcast, cable, or satellite communication" that "refers to a clearly identified candidate for Federal office," that is made within particular time frames, and that is targeted to the relevant electorate if it refers to a candidate other than those for the office of President or Vice-President. 2 U.S.C. 434(f)(3)(A)(i)(I). For a discussion of electioneering communications, *see* the Notice of Proposed Rulemaking entitled "Electioneering Communication," 67 FR 51131 (August 7, 2002).

[5] *See* below for discussion on disbursements.

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(f) to 11 CFR 110.20 to explicitly state that foreign nationals are prohibited from making contributions or donations to committees of a political party for the construction or purchase of any office building.

7. Soliciting, Accepting, or Receiving Contributions or Donations from Foreign Nationals; Assisting Foreign Nationals to Make Contributions or Donations

BCRA prohibits any person from soliciting, accepting, or receiving from a foreign national a contribution or donation made in connection with a Federal, State, or local election, or made to a party committee. 2 U.S.C. 441e(a)(2). However, both the former and the current foreign national prohibitions in 2 U.S.C. 441e are silent as to the degree of knowledge, if any, that such person should be shown to have had regarding the foreign national status of the contributor or donor before the person will be deemed to have violated the statute. In contrast, other parts of FECA and BCRA expressly provide that knowledge is an element of the violation.[6]

The Commission in recent years has addressed the issue of required knowledge in a number of complex enforcement matters arising under former 2 U.S.C. 441e(a). In these matters, the Commission has confronted the questions of whether the statute or the First Amendment requires a person to have had knowledge of the contributor or donor's foreign national status in order to have been in violation of the foreign-national prohibition, and, if so, what degree of knowledge was required. Should, for example, actual knowledge at the time of a solicitation or receipt have been a prerequisite for a violation, or should the person have been required to follow up on certain factors that would have raised the suspicions of an objective observer?

Whether the foreign national prohibition as amended by BCRA contains a knowledge requirement is an important issue that may affect the implementation of this prohibition. One alternative is to assume, given the silence in both FECA and BCRA on this question, that Congress intended this to be a strict liability statute. The fact that Congress has used "knowingly" in other provisions of FECA and BCRA but did not include this standard with regard to the solicitation, acceptance or receipt of foreign national contributions and donations could be construed as intent not to require knowledge in this regard. However, an exception to the plain meaning rule is that it is not applied when an injustice would result. Sutherland Statutory Construction 47:25. Based upon Commission enforcement experience with political committees, and, in particular, with the involvement of volunteers in the solicitation and receipt of contributions and donation, a knowledge requirement, and related standards for the levels of knowledge to be required, may produce a less harsh result than a strict liability standard. Proposed 11 CFR 110.20(g), discussed below, would include a knowledge requirement with three different degrees of knowledge. Comments are sought regarding the addition of a knowledge requirement and of standards to be applied in determining whether such knowledge existed in a particular situation.

Additionally, the foreign national prohibition raises issues concerning the liability of persons who knowingly assist foreign nationals in making contributions or donations. Recently the Commission has addressed situations in which the liability of someone who served as a conduit or intermediary for a foreign national contribution was in question because he or she had not technically solicited, accepted or received the contribution at issue. Section 441e of FECA does not explicitly address those who assist others to violate its prohibition on foreign national contributions and donations. However, the Commission has taken the position in enforcement matters that, because 2 U.S.C. 441e prohibits foreign nationals from making contributions directly or through another person, and because the statute also prohibits persons from soliciting, accepting or receiving such contributions or donations, even a U.S. citizen's use of money acquired from a foreign national is prohibited, if that money was acquired for the purpose of enabling the foreign national to make political contributions.

Accordingly, proposed 11 CFR 110.20(g)(1) would prohibit any person from knowingly soliciting, accepting or receiving a contribution or donation from a foreign national. Proposed 11 CFR 110.20(g)(2) would prohibit any person from knowingly acting as a conduit or intermediary for receipt of a contribution or donation from a foreign national. Proposed 11 CFR 110.20(g)(3) would prohibit any person from knowingly providing substantial assistance with regard to the making of a contribution or donation by a foreign national.

Proposed paragraph (g)(4) would set forth the standards to be applied in determining whether the knowledge required by proposed paragraphs (g)(1), (2), and (3) exists in particular situations. Proposed paragraph (g)(4)(i) through (iii) would provide three alternative ways, any one of which would establish that a person has knowingly solicited, accepted or received a contribution or donation from a foreign national, or that a person knowingly acted as a conduit or intermediary for a foreign national to make a contribution or donation.

The first knowledge standard at proposed paragraph (g)(4)(i) would be that of actual knowledge. The second standard at proposed paragraph (g)(4)(ii) would require awareness on the part of the person soliciting, accepting or receiving a contribution or donation of certain facts that would lead a reasonable person to conclude that there is a substantial probability that the contribution or donation has come from a foreign source. This second standard would be in effect a "reason to know" standard, and is different from a "should have known" standard. Restatement (Second) of Agency, sec. 9, cmts. d and e (1958). The third standard at proposed paragraph (g)(4)(iii) would address situations in which the person soliciting, accepting or receiving a contribution is or becomes aware of facts that should have led any reasonable person to inquire about the status of the contributor or donor; however, the solicitor or recipient failed to so inquire. This third alternative would be in effect a willful blindness standard covering situations in which a known fact may not equal a substantial probability of illegality but at least should prompt an inquiry. Proposed paragraph (g)(5) would set out several categories of facts that are intended to be illustrative of the types of information that should lead a recipient to question the origins of a contribution or donation under proposed paragraph (g)(4)(ii) or (iii).

Comments are requested as to whether the standards or levels of knowledge at proposed paragraph (g)(4) are appropriate and whether there are other potential facts that should be added to those at proposed paragraph (g)(5). Further, comments are requested as to whether the regulation should expressly require that recipient candidates and committees actively seek information about the nationality of contributors and donors whenever one of the factors listed is at issue.

Current Commission regulations provide that political committee treasurers shall examine all contributions received for evidence of illegality. *See* 11 CFR 103.3(b). Contributions that "present genuine questions" as to whether they were made by corporations, labor organizations, foreign nationals, or other prohibited sources may, within 10 days of receipt, either be deposited or returned to the contributor. *Id.* If any such contribution is deposited, the treasurer has an affirmative duty to investigate the contribution and use best efforts to determine the legality of the contribution. 11 CFR 103.3(b)(1). If, despite such due diligence, the treasurer is unable to determine the legality of the contribution within 30 days, the treasurer is required to refund the contribution to the contributor. *Id.*

If a treasurer of a political committee later discovers that a contribution is illegal based on new information that was not available at the time the contribution was received and deposited, the treasurer must refund the contribution to the contributor within 30 days of the date in which the illegality is discovered. 11 CFR 103.3(b)(2). This provision applies "to contributions from foreign nationals or Federal contractors when there is no evidence of illegality on the face of the contributions themselves." Explanation and Justification, 52 FR 760, 768–69 (Jan. 9, 1987).

In light of BCRA's new statutory provisions regarding the foreign-national ban, the Commission seeks comment on when political committees and their treasurers have an affirmative duty to investigate contributions and donations to confirm that they do not come from foreign sources. Specifically, the Commission seeks comment on whether such an affirmative duty is limited to circumstances when contributions and donations "present genuine questions" as to whether they are lawful, as outlined in 11 CFR 103.3. Are there additional circumstances when such an affirmative duty arises? Are the circumstances limited to when there is "evidence of illegality on the face of the contributions themselves" (Explanation and Justification, 52 FR at 768–69) or when the political committee otherwise has specific, credible information at the time of the contribution indicating that the contribution may be from a foreign source? *See* proposed 11 CFR 110.20(g)(5) (identifying specific factual circumstances). Should the Commission consider creating any safe harbors within which political committees are deemed to have satisfied whatever affirmative duty exists to investigate contributions or donations to confirm that they do not come from foreign sources? One possible safe harbor could be for political committees who acquire proof of U.S. citizenship (such as copies of U.S. passports) for donors who reside outside the United States or who list a foreign address or who make a contribution or donation through a foreign bank. If a political committee later discovers that a contribution or donation is illegal based on new information that was not available at the time the contribution or donation was received and deposited, is the political committee immunized from liability under section 303 of BCRA, provided that the political committee refunds the contribution or donation within 30 days of the date in which the illegality is discovered pursuant to 11 CFR 103.3(b)(2)? Comments are sought on all of these issues.

In addition, comments are sought as to whether the Commission should incorporate into proposed § 110.20(g) the definition of "solicit" in 11 CFR 300.2(m),[7] whether it should leave the term undefined, or whether it should give the term a more expansive or a narrower reading in this context.

Proposed 11 CFR 110.20(h) would retain the current prohibition at 11 CFR 110.4(a)(3) on participation by foreign nationals in the decision-making process of any person, including entities such as corporations, labor organizations or political committees, related to Federal and non-Federal election-related activities. Foreign nationals would thus continue to be prohibited from taking part in decisions about contributions to any candidates or committees and about expenditures made in support of, or in opposition to, such candidates or committees. Foreign nationals would also continue to be prohibited from involvement in the direct management of a political committee, including a separate segregated fund and a non-connected committee.

8. Definitions

Proposed new 11 CFR 110.20(i) would retain the definition of "foreign national" currently found at 11 CFR 110.4(a)(4). Proposed 11 CFR 110.20(i)(1) and (2) would include the current exemptions for certain foreign principals as provided in 22 U.S.C. 611(b) and for permanent resident aliens as defined in 8 U.S.C. 1101(a)(20). At proposed 11 CFR 110.20(i)(3), however, the definition of "foreign national" would be narrowed by the exclusion of U.S. nationals as they are in turn defined in 8 U.S.C. 1101(a)(22).[8]

Proposed new 11 CFR 110.20(j) would define "election" for purposes of this section. Although "election" is defined at 11 CFR 100.2, the definition at that section is stated expressly in terms of Federal elections. New 11 CFR 110.20(j) would extend the overall definition to include elections at all political levels.

9. Donations to Presidential Inaugural Committees

Section 308 of BCRA amends section 510 of Title 36, United States Code, to prohibit Presidential inaugural committees from accepting donations from foreign nationals as defined in 2 U.S.C. 441e(b). 36 U.S.C. 510(c). Although section 308 does not amend Title 2, United States Code, its prohibition on donations by foreign nationals to Presidential inaugural committees, including its reference to the definition of "foreign national" in the Act, fits naturally within 11 CFR 110.20. Therefore, proposed new 11 CFR 110.20(c) has been created for this purpose.

Section 308 does not include a prohibition against the making of donations to Presidential inaugural committees by foreign nationals. Comments are sought as to whether the regulations should include a prohibition in this regard.

Conforming Amendment to 11 CFR 110.9

Current 11 CFR 110.9, entitled "Miscellaneous provisions," includes four paragraphs that address: (a) Violations of the contribution limitations; (b) fraudulent misrepresentations; (c) price index increase; and (d) voting age population. Because this rulemaking and other BCRA rulemaking projects[9] would amend and move the provisions on fraudulent misrepresentation, the price index increase, and voting age population, only paragraph (a) of § 110.9, addressing violations of the contribution limitations, would remain. Therefore, the proposed rules would amend § 110.9 so that it contains only the provisions of paragraph (a) and the title of § 110.9 would be amended to

[6] "No candidate or political committee shall *knowingly* accept any contribution or make any expenditure in violation of the provisions of this section * * *." 2 U.S.C. 441a(f) (emphasis added).

[7] The definition is part of the recently adopted final rules entitled "Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money," 67 FR 49063 (July 29, 2002).

[8] "National of the United States" is defined as "(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States." 8 U.S.C. 1101(a)(22).

[9] The BCRA rulemaking project entitled "Other Provisions" will address the fraudulent misrepresentation provisions and the BCRA rulemaking project entitled "Coordination and Independent Expenditures" will address the voting age population provisions.

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"Violations of limitations" to reflect that change.

The proposed rules would also add the word "knowingly" in two places pertaining to the acceptance of contributions in violation of the limitations and prohibitions set forth in 11 CFR part 110. This revision would better reflect the knowledge requirement in 2 U.S.C. 441a(f) and 441f.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The Commission certifies that the attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the national, State, and local party committees of the two major political parties are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions.

Minors and most of foreign nationals are individuals, and therefore, not small entities. Furthermore, the proposed rules, which are based on statutory language, clarify and describe in further detail the already existing ban on contributions by foreign nationals. Additionally, to the extent that there may be foreign nationals that may fall within the definition of "small entities," their numbers are not substantial, particularly the number that would make a donation, expenditure, independent expenditure, or disbursement in connection with a Federal, State, or local election.

In addition, the small entities to which the rules would apply would not be unduly burdened by the proposed increased contribution levels, which would give such small entities more latitude in the amount they contribute. The increase in contribution limits for individuals and national party committees would not create a burden for them even if they were small entities.

List of Subjects in 11 CFR Part 110

Campaign funds, Political committees and parties.

For reasons set out in the preamble, it is proposed to amend subchapter A of chapter I of title 11 of the *Code of Federal Regulations* as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. The authority citation for part 110 would be revised to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 441k.

2. Section 110.1 would be amended by revising paragraphs (a), (b)(1), (b)(5)(ii), (c)(1), (i), and (k)(3)(ii) to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).

(a) *Scope.* This section applies to all contributions made by any persons as defined in 11 CFR 110.10, except multicandidate political committees as defined in 11 CFR 110.5(e)(3) or entities and individuals prohibited from making contributions under 11 CFR 110.19 and 110.20 and 11 CFR parts 114 and 115.

(b) *Contributions to candidates;* designations; and redesignations. (1) No person shall make contributions to any candidate, his or her authorized political committees or agents with respect to any election for Federal office that, in the aggregate, exceed $2,000.

(i) The limitation in the introductory text of paragraph (b)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17.

(ii) The increased limitation shall be in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election. For example, an increase in the limitation made in January 2005 is effective from November 3, 2004 to November 7, 2006.

(iii) In every odd numbered year, the Commission will publish in the Federal Register the amount of the contribution limit in effect and place such information on the Commission's Web site.

* * * * *

(5) * * *

(ii) (A) A contribution shall be considered to be redesignated for another election if—

(*1*) The treasurer of the recipient authorized political committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request the refund of the contribution as an alternative to providing a written redesignation; and

(*2*) Within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of the contribution for another election, which is signed by the contributor.

Alternative 1–A

(B) Notwithstanding paragraph (b)(5)(ii)(A) of this section or any other provision of this section, the treasurer of the recipient authorized political committee may treat all or part of the amount of the contribution that exceeds the contribution limits in paragraph (b)(1) of this section as made with respect to the general election, provided that:

(*1*) The contribution was made before the primary election;

(*2*) The contribution was not designated for a particular election;

(*3*) The contribution would exceed the limitation on contributions set forth in paragraph (b)(1) of this section if it were treated as a contribution made for the primary election; and

(*4*) Such redesignation would not cause the contributor to exceed any of the limitations on contributions set forth in paragraph (b)(1) of this section.

Alternative 1–B

(B) Notwithstanding paragraph (b)(5)(ii)(A) of this section or any other provision of this section, the treasurer of the recipient authorized political committee may treat all or part of the amount of the contribution that exceeds the contribution limits in paragraph (b)(1) of this section as made with respect to the general election, provided that:

(*1*) The contribution was made before the primary election;

(*2*) The contribution was not designated for a particular election;

(*3*) The contribution would exceed the limitation on contributions set forth in paragraph (b)(1) of this section if it were treated as a contribution made for the primary election;

(*4*) Such redesignation would not cause the contributor to exceed any of the limitations on contributions set forth in paragraph (b)(1) of this section;

(*5*) The treasurer of the recipient authorized political committee notifies the contributor of how the contribution was redesignated and that the contributor may request a refund of the contribution; and

(*6*) Within thirty days from the date of the treasurer's receipt of the contribution, the treasurer shall provide notification required in paragraph (b)(5)(ii)(B)(*5*) of this section to the contributor in writing; by electronic mail; or through oral communication with the contributor, provided that the treasurer makes a contemporaneous, signed record of the conversation.

* * * * *

(c) *Contributions to political party committees.* (1) No person shall make contributions to the political committees established and maintained by a national political party in any calendar year that in the aggregate exceed $25,000.

(i) The limitation in paragraph (c)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17.

(ii) The increased limitation shall be in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election. For example, an increase in the limitation made in January 2005 is effective from November 3, 2004 to November 7, 2006.

(iii) In every odd numbered year, the Commission will publish in the **Federal Register** the amount of the contribution limit in effect and place such information on the Commission's web site.

* * * * *

(i) *Contributions by spouses and minors.* (1) The limitations on contributions of this section shall apply separately to contributions made by each spouse even if only one spouse has income.

(2) Minor children (children under 18 years of age) may make contributions to any political committee, other than an authorized committee or a political party committee, which in the aggregate do not exceed the limitations on contributions of this section, if—

(i) The decision to contribute is made knowingly and voluntarily by the minor child;

(ii) The funds, goods, or services contributed are owned or controlled exclusively by the minor child, such as income earned by the child, the proceeds of a trust for which the child is the beneficiary, or a savings account opened and maintained exclusively in the child's name; and

(iii) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another individual.

(3) Paragraph (i)(2) of this section will apply to contributions made by minor children to authorized committees and political party committees for runoff elections, recounts or election contests resulting from elections held prior to November 6, 2002. For all other elections held after November 6, 2002, contributions by minor children to authorized committees and political party committees are prohibited. *See* 11 CFR 110.19.

* * * * *

(k) * * *

(3) * * *

(ii) (A) A contribution shall be considered to be reattributed to another contributor if—

(*1*) The treasurer of the recipient authorized political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and

(*2*) Within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Alternative 2–A

(B) Notwithstanding paragraph (k)(3)(ii)(A) of this section or any other provision of this section, a contribution described in paragraph (k)(3)(i) of this section that was made by a written instrument that is imprinted with the names of more than one account holder may be apportioned equally between the account holders, unless a different instruction is provided by the account holder(s) on the instrument or in a separate writing, provided that such apportionment would not cause a contributor to exceed any of the limitations on contributions set forth in paragraph (b)(1) of this section.

Alternative 2–B

(B)(*1*) Notwithstanding paragraph (k)(3)(ii)(A) of this section or any other provision of this section, a contribution described in paragraph (k)(3)(i) of this section that was made by a written instrument that is imprinted with the names of more than one account holder may be apportioned equally between the account holders, unless a different instruction is provided by the account holder(s) on the instrument or in a separate writing, provided that such apportionment would not cause a contributor to exceed any of the limitations on contributions set forth in paragraph (b)(1) of this section.

(*2*) The treasurer of the recipient authorized political committee shall notify each account holder of how the contribution was apportioned and that the contributors may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution. Within thirty days from the date of the treasurer's receipt of the contribution, the treasurer shall provide such notification to each account holder in writing; by electronic mail; or through oral communication, provided that the treasurer makes a contemporaneous, signed record of the conversation(s).

* * * * *

3. Section 110.2 would be amended by revising the section heading and paragraph (e) to read as follows:

§ 110.2 Contributions by multi-candidate political committees (2 U.S.C. 441a(a)(2)).

* * * * *

(e) *Contributions by political party committees to Senatorial candidates.* (1) Notwithstanding any other provision of the Act, or of these regulations, the Republican and Democratic Senatorial campaign committees, or the national committee of a political party, may make contributions of not more than a combined total of $35,000 to a candidate for nomination or election to the Senate during the calendar year of the election for which he or she is a candidate. Any contribution made by such committee to a Senatorial candidate under this paragraph in a year other than the calendar year in which the election is held shall be considered to be made during the calendar year in which the election is held.

(2) The limitation in paragraph (e)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17. The increased limitation shall be in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election. For example, an increase in the limitation made in January 2005 is effective from November 3, 2004 to November 7, 2006. In every odd numbered year, the Commission will publish in the **Federal Register** the amount of the contribution limit in effect and place such information on the Commission's web site.

* * * * *

4. Section 110.4 would be amended by revising the section heading and by removing and reserving paragraph (a).

§ 110.4 Prohibited contributions (2 U.S.C. 441f, 441g, 432(c)(2)).

* * * * *

5. Section 110.5 would be amended by revising the section heading and paragraphs (a), (b), (d), and (e) to read as follows:

§ 110.5 Aggregate bi-annual contribution limitation for individuals (2 U.S.C. 441a(a)(3)).

(a) *Scope.* This section applies to all contributions made by any individual, except individuals prohibited from making contributions under 11 CFR 110.19 and 110.20 and 11 CFR part 115.

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(b) *Bi-annual limitations.* (1) In the two-year period described in paragraphs (b)(2) and (3) of this section, no individual may make contributions aggregating more than $95,000, including:

(i) $37,500 in the case of contributions to candidates and the authorized committees of candidates; and

(ii) $57,500 in the case of any other contributions, of which not more than $37,500 may be attributable to contributions to political committees which are not political committees of national political parties;

(iii) However, contributions made under the increased limits under 11 CFR part 400 are not subject to the limitations of paragraph (b)(1)(i) and (ii) of this section.

(2) The limitation in paragraph (b)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17. The increased limitation shall be in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election.

(3) The contribution limits in paragraph (b)(1) must be aggregated within the same time period as described in paragraph (b)(2). For example, an increase in the limitation made in January 2005 is effective from November 3, 2004 to November 7, 2006. Contributions must likewise be aggregated from November 3, 2004 to November 7, 2006.

(4) In every odd numbered year, the Commission will publish in the **Federal Register** the amount of the contribution limit in effect and place such information on the Commission's web site.

* * * * *

(d) *Independent expenditures.* The bi-annual limitation on contributions in this section applies to contributions made to persons, including political committees, making independent expenditures under 11 CFR part 109.

(e) *Contributions to delegates and delegate committees.* The bi-annual limitation on contributions in this section applies to contributions to delegate and delegate committees under 11 CFR 110.14.

6. Section 110.9 would be revised to read as follows:

§ 110.9 Violation of limitations.

No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of part 110. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this part 110.

§§ 110.15 and 110.16 [Added and Reserved]

7. Sections 110.15 and 110.16 would be added and reserved.

8. Section 110.17 would be added to read as follows:

§ 110.17 Price index increase.

(a) *Price index increases for party committee expenditure limitations and Presidential candidate expenditure limitations.* The limitations on expenditures established by 11 CFR 110.7 and 110.8 shall be increased by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period.

(1) Each amount so increased shall be the amount in effect for that calendar year.

(2) For purposes of this paragraph (a) the term base period means calendar year 1974.

(b) *Price index increases for contributions by persons, by political parties to Senatorial candidates, and the bi-annual aggregate contribution limitation for individuals.* The limitations on contributions established by 11 CFR 110.1(b) and (c), 110.2(e), and 110.5, shall be increased only in odd-numbered years by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period.

(1) The increased limitations shall be in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amounts are increased and ending on the date of the next general election. For example, increases in the limitations made in January 2005 are effective from November 3, 2004 to November 7, 2006.

(2) For purposes of this paragraph (b) the term base period means calendar year 2001.

(c) *Rounding of price index increases.* If any amount after adjustment under paragraph (a) or (b) of this section is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

(d) *Definition of price index.* For purposes of this section, the term price index means the average over a calendar year of the Consumer Price Index (all items-United States city average) published monthly by the Bureau of Labor Statistics.

(e) *Publication of price index increases.* In every odd numbered year, the Commission will publish in the **Federal Register** the amount of the contribution limits in effect and place such information on the Commission's web site.

§§ 110.18 [Added and Reserved]

9. Section 110.18 would be added and reserved.

10. Section 110.19 would be added to read as follows:

§ 110.19 Contributions by minors.

(a) *Contributions to candidates.* An individual who is 17 years old or younger shall not make a contribution to a candidate for Federal office, including a contribution to any of the following:

(1) A principal campaign committee designated pursuant to 11 CFR 101.1(a);

(2) Any other political committee authorized by a candidate under 11 CFR 101.1(b) and 102.13 to receive contributions or make expenditures on behalf of such candidate; or

(3) Any entity directly or indirectly established, financed, maintained or controlled by one or more Federal candidates.

(b) *Contributions to political party committees.* An individual who is 17 years old or younger shall not make a contribution or donation to:

(1) A national, State, district or local committee of a political party, including a national congressional campaign committee; or

(2) Any entity directly or indirectly established, financed, maintained or controlled by a national, State, district or local committee of a political party.

(c) *Contributions to other political committees.* An individual who is 17 years old or younger shall not make a contribution to any other political committee if that contribution is earmarked or otherwise directed to one or more Federal candidates or political committees or organizations covered by paragraphs (a) and (b) of this section. *See* 11 CFR 110.6.

(d) *Volunteer services.* Nothing in this section shall prohibit an individual who is 17 years old or younger from providing volunteer services to any Federal candidate or political committee.

(e) *Definition of directly or indirectly established, financed, maintained or controlled.* Directly or indirectly established, financed, maintained or controlled has the same meaning as in 11 CFR 300.2(c).

11. Section 110.20 would be added to read as follows:

§ 110.20 Prohibition on contributions, donations, expenditures and disbursements by foreign nationals.

(a) A foreign national shall not, directly or indirectly, make a contribution or a donation of money or other thing of value, or expressly or impliedly promise to make a contribution or donation in connection with any local, State or Federal election as defined in 11 CFR 100.2 and paragraph (j) of this section.

(b) A foreign national shall not, directly or indirectly, make a contribution or donation to a committee of a political party. For purposes of this section, a committee of a political party includes a national party committee, a national congressional campaign committee, a State, district, or local party committee, or a subordinate committee of a State party committee, whether or not it is a political committee.

(c) A Presidential inaugural committee shall not knowingly accept any donation from a foreign national.

(d) A foreign national shall not, directly or indirectly, make any expenditure, independent expenditure, or disbursement in connection with any Federal, State, or local election as defined in 11 CFR 100.2 and paragraph (j) of this section.

(e) A foreign national shall not, directly or indirectly, make any disbursement for an electioneering communication as defined in 11 CFR 100.29.

(f) A Foreign national shall not, directly or indirectly, make a contribution or donation to a committee of a political party for the purchase or construction of an office building. See 11 CFR 300.10 and 300.35.

(g)(1) No person shall knowingly solicit, accept, or receive from a foreign national any contribution or donation prohibited by paragraphs (a) through (c) of this section.

(2) No person shall knowingly receive funds as a conduit or intermediary for a contribution or donation prohibited by paragraphs (a) through (c) of this section.

(3) No person shall knowingly provide substantial assistance with regard to the making of a contribution or donation prohibited by paragraphs (a) through (c) of this section.

(4) For purposes of paragraphs (c) and (g) of this section, knowingly means that a person must:

(i) Have actual knowledge that the source of the funds solicited, accepted or received is a foreign national, or

(ii) Have been aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited, accepted or received is a foreign national; or

(iii) Have been aware of facts that would have led a reasonable person to inquire whether the source of the funds solicited, accepted, or received is a foreign national, but the person failed to conduct a reasonable inquiry.

(5) For purposes of paragraphs (g)(4)(ii) and (iii) of this section, pertinent facts include, but are not limited to:

(i) The use by the contributor or donor of a foreign passport or passport number for identification purposes;

(ii) The provision by the contributor or donor of a foreign address;

(iii) The contribution or donation is made by means of a check or other written instrument drawn on a foreign bank or by a wire transfer from a foreign bank; or

(iv) The contributor or donor resides abroad.

(h) A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, or political committee, with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions or expenditures in connection with elections for any local, State, or Federal office or decisions concerning the administration of a political committee.

(i) For purposes of this section, *foreign national* means—

(1) A foreign principal, as defined in 22 U.S.C. 611(b); or

(2) An individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence as defined in 8 U.S.C. 1101(a)(20); however,

(3) *Foreign national* shall not include any individual who is a citizen of the United States, or who is a national of the United States as defined in 8 U.S.C. 1101(a)(22).

(j) For purposes of this section, *election* means the process by which individuals, whether opposed or unopposed, seek nomination for election, or election, to public office. This definition includes any general, primary, special and runoff election, and a caucus or convention of a political party.

Dated: August 16, 2002.

Karl J. Sandstrom,

Vice Chairman, Federal Election Commission.

[FR Doc. 02–21277 Filed 8–21–02; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 26015; Notice No. 89–25]

RIN 2120–AD34

Airplane Engine Cowling Retention

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing a previously published Notice of Proposed Rulemaking (NPRM) (54 FR 38610, September 19, 1989) that would provide improved engine cowling retention for transport category airplanes by adding specific design requirements for cowling retention systems. The proposed rule would have promoted design and construction of cowling retention systems to withstand vibration, inertial loads, over-pressure, normal air loads, and thermal conditions of an engine compartment fire after failure or improper fastening of latching devices. We are withdrawing the proposed rule because the proposal has been surpassed by technological advances. The issues will be addressed by future regulatory action based on recommendations from the Aviation Rulemaking Advisory Committee, and will be harmonized with similar regulations in Europe and Transport Canada.

FOR FURTHER INFORMATION CONTACT: Michael McRae, Propulsion and Mechanical Systems Branch, Federal Aviation Administration, telephone 425–227–2113, e-mail *mike.mcrae@faa.gov.*

SUPPLEMENTARY INFORMATION

Background

On September 19, 1989, the FAA published Notice of Proposed Rulemaking No. 89–25 (54 FR 38610) to propose an amendment to 14 CFR part 25, and invited public comment on the issue of engine cowling retention. Section 25.1193, Cowling and nacelle skin, addresses the design of engine cowlings, but does not address the single failure of a latch or hinge, or an improperly fastened latch. Several in-

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flight incidents of engine cowling separation resulted in damage to airplanes and property on the ground, and highlighted the need to re-evaluate the design and maintenance requirements applicable to engine cowlings. Notice No. 89–25 proposes to specify standards for failsafe criteria in the design of engine cowling retention systems, which would enable the systems to withstand the loss of a single latch and easily detect unlocked or improperly closed latches. The comment period for Notice No. 89–25 closed March 19, 1990.

Discussion of Comments

Fifteen commenters responded to the NPRM. In general, most commenters are in favor of the proposed requirement for direct visual inspection of cowling retention systems, and are not in favor of the proposed cockpit visual warning system. A few commenters suggest additional enhancements to the proposal.

Four commenters favor direct visual inspection of the cowling but oppose the cockpit visual warning system. One of these commenters states that the direct visual inspection makes redundant the proposed addition of a cockpit visual warning system. Another opposes the cockpit visual warning system stating that the system would not be justified economically or functionally. Others state that the cockpit visual warning system would be impractical, introduce the potential for false signal indications, add complexity, and increase potential for failures detrimental to safety.

One commenter states that the real problem is inadequate preflight inspections. Another commenter notes concern about the clarity of terms, and the low probability of a double failure condition of an engine fire and an unlatched latch. An additional commenter considers the fundamental problem to be the lack of preload and resulting wear, plus any accidental damage done while opening or closing the latch. In response to commenters' interest in direct visual inspections, the FAA continues to require pilots to determine that an aircraft is in a condition safe for flight and encourage an on-going focus on appropriate preflight inspections to uphold safety standards.

Commenters also express concern about harmonization of any engine cowling requirements. The withdrawal of Notice No. 89–25 will allow the FAA to consider harmonization concerns and address the issues more completely in future regulatory actions in consideration of recommendations developed within ARAC.

ICAO and Harmonization

The International Civil Aviation Organization (ICAO) established the International Standards and Recommended Practices to promote international cooperation towards the highest possible degree of uniformity in regulations and standards. The FAA and the Joint Aviation Authorities (JAA) of Europe came together to standardize their respective codes of regulation and identified a number of significant regulatory differences. Both consider harmonization a high priority. The FAA tasked ARAC with the harmonization effort. In 1999, the FAA and JAA agreed on a Fast Track Harmonization Program to expedite the standardization process. ICAO Resolution A29–3, Global Rule Harmonization, urges States to take positive action to promote global harmonization of national rules for application of ICAO standards. The FAA actively supports ICAO initiatives and programs to achieve a safe and efficient aviation system worldwide.

Reason for Withdrawal

The FAA is involved in eliminating unnecessary differences and harmonizing where practical similar requirements with the JAA and Transport Canada. The FAA finds that including the issues of Notice No. 89–25 within harmonization efforts assigned to ARAC will contribute to a more complete analysis of the issues and will better serve the public interest. We will propose future changes to the Code of Federal Regulations to achieve harmonization through an NPRM with an opportunity for public comment. Therefore, the FAA withdraws Notice No. 89–25, (54 FR 38610) published September 19, 1989.

Issued in Washington, DC, on August 16, 2002.

Ronald T. Wojnar,

Deputy Director, Aircraft Certification Service (AIR–1).

[FR Doc. 02–21472 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 25263; Notice No. 87–3]

RIN 2120–AB46

Low Fuel Quantity Alerting System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing a previously published Notice of Proposed Rulemaking (NPRM) to amend airworthiness standards for transport category airplanes by requiring a means to alert the flight crew to potentially unsafe low fuel quantities. We are withdrawing the proposed rule because information has been surpassed by technological advances. The issues will be addressed by future regulatory action based on recommendations from the Aviation Rulemaking Advisory Committee (ARAC). The FAA has determined that future regulatory action, including the broader scope of a harmonized proposal, will better serve the public interest.

FOR FURTHER INFORMATION CONTACT: Michael McRae, Propulsion and Mechanical Systems Branch, Federal Aviation Administration, telephone 425–227–2113, e-mail *mike.mcrae@faa.gov.*

SUPPLEMENTARY INFORMATION

Background

On May 12, 1987, the FAA published Notice of Proposed Rulemaking No. 87–3 (52 FR 17890) to propose an amendment to part 25 of title 14, Code of Federal Regulations, and invited public comment on the subject of a low fuel quantity alerting system. Notice No. 87–3 proposes to amend airworthiness standards for transport category airplanes by requiring a means to alert the flight crew to potentially unsafe low fuel quantities. The alerting system would be required to be independent of the normal fuel quantity measurement system, and the alert would have to occur with no less fuel remaining than that required to operate for 30 minutes at normal cruising conditions. The comment period closed September 9, 1987.

Discussion of Comments

Ten comments were received in response to the NPRM. In general, most commenters were in favor of the NPRM for the low fuel quantity alerting system, with a few commenters suggesting additional enhancements to the proposal.

Of the commenters that express support for the proposal, one urges a similar rule change to parts 23, 121, and 135 of title 14 of the Code of Federal Regulations. Of the commenters who feel additional technology is warranted, one recommends a review and application to existing aircraft, another recommends an annual calibration check of the system, and another offers some design considerations. Several commenters find the cost estimation to be underestimated in the NPRM.

Two commenters support the proposal and state that the phrase "30 minutes at normal cruising conditions" needs clarification. Another two commenters object to the same phrase, but oppose the proposal, because it only applies to one configuration and one altitude. Both of these commenters assert that the proposal should only apply to air carriers whose aircraft weigh over 75,000 pounds.

The FAA acknowledges these contributions to the rulemaking process, and affirms its commitment to aviation safety by continuing to clarify, update, and harmonize its regulations. We will address any remaining concerns in future regulatory actions as we pursue global harmonization of aviation regulations.

ICAO and Harmonization

The International Civil Aviation Organization (ICAO) established the International Standards and Recommended Practices to promote international cooperation towards the highest possible degree of uniformity in regulations and standards. Thirty-two States and authorities joined in the goal of standardization.

The FAA and the Joint Aviation Authorities (JAA) of Europe came together to standardize their respective codes of regulation and identified a number of significant regulatory differences. Both consider harmonization of the two codes a high priority. In 1999, the FAA and JAA agreed on a Fast Track Harmonization Program to expedite the standardization process. ICAO Resolution A29–3, Global Rule Harmonization, urges States to take positive action to promote global harmonization of national rules for application of ICAO standards. The FAA actively supports ICAO initiatives and programs to achieve a safe and efficient aviation system worldwide.

Reason for Withdrawal

The FAA is involved in eliminating unnecessary differences and harmonizing, where practical, similar requirements with Europe and Transport Canada. We find that including the issues of Notice No. 87–3 within harmonization efforts assigned to ARAC will contribute to a more complete and current analysis of the issues that will better serve the public interest. In addition, future regulatory action will allow the public to benefit from the inclusion of technological advances relevant to the issues. To achieve harmonization goals and address technological issues, we will propose future changes to the Code of Federal Regulations through an NPRM with opportunity for public comment. Therefore, the FAA withdraws Notice No. 87–3 (52 FR 17890), published May 12, 1987.

Issued in Washington, DC, on August 16, 2002.

Ronald T. Wojnar,

Deputy Director, Aircraft Certification Service (AIR–1).

[FR Doc. 02–21471 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–80–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 206L, L–1, L–3 and L–4 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed superseding airworthiness directive (AD) for the specified Bell Helicopter Textron Canada (BHTC) helicopters. That proposal would have required inspecting the tailboom skins for a crack, replacing a cracked tailboom with a modified tailboom before further flight, and implementing a recurring inspection of the modified tailboom. That proposal was prompted by several reports of cracks found during mandatory inspections. This supplemental notice of proposed rulemaking (SNPRM) renews and revises the proposal by providing a terminating action, incorporating a more recent revision to the alert service bulletin (ASB), and increasing the compliance time for performing the inspections. The actions specified by this proposal are intended to detect a crack in the tailboom and to prevent separation of the tailboom from the helicopter and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before September 23, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–80–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–80–AD." The postcard will be date stamped and returned to the commenter.

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Discussion

A proposal to amend 14 CFR part 39 to add an AD for certain BHTC helicopters was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on April 19, 2000 (65 FR 20927). That NPRM proposed inspecting the tailboom skins for a crack; replacing any cracked tailboom with an airworthy modified tailboom; modifying the tailboom within the next 300 hours time-in-service (TIS); and inspecting the modified tailboom for a crack at intervals not to exceed 1200 hours TIS. That NPRM was prompted by several reports of cracked tailbooms found during mandatory inspections. That condition, if not corrected, could result in separation of the tailboom from the helicopter and subsequent loss of control of the helicopter.

Since issuing that NPRM, the FAA has received comments from two commenters, the manufacturer and an operator, requesting changes to the proposed actions. We have considered all these comments.

Both commenters state that the proposed compliance time for modifying the tailboom within 300 hours TIS should be increased to 600 hours TIS or no later than December 31, 2000, whichever occurs first, to coincide with the compliance times in the applicable ASB. The commenters state that changing the compliance time would give the manufacturer time to deliver the required secondary parts to modify the tailboom and eliminate considerable replanning by operators of their maintenance programs. Also, the commenters state that the repetitive inspections required before modifying the tailboom will ensure safety until the modification is done.

The FAA agrees with the comments, however, the December 31, 2000, date has passed. Further, since publication of the NPRM, the manufacturer has revised their ASB and changed the compliance time to March 31, 2002. That date has also passed. Because of these delays, we have reevaluated the need for modifying the tailboom within 300 hours time-in-service (TIS). We now believe that a compliance time of 600 hours TIS is sufficient to meet our safety objectives.

One commenter states that the compliance time should change because a redesigned tailboom, part number (P/N) 206–033–004–181, is now manufactured with the required skin doubler hot-bonded in place. The FAA agrees and will add a statement in the proposal that installing an airworthy, redesigned tailboom, P/N 206–033–004–181, is terminating action for the requirements of the AD.

Another commenter states that the AD should inform operators that modifying the tailboom in accordance with earlier versions of the referenced ASB is acceptable (the proposal referenced Revision D of BHTC ASB 206L–99–115). The FAA agrees because changes to the original ASB are minor and do not change or compromise the previous engineering approval. Therefore, the proposal will include a note stating that modifying the tailboom in accordance with earlier versions of the referenced ASB is acceptable.

Finally, a commenter advised us that the phone and fax numbers listed for obtaining service information is incorrect; we have corrected those numbers in this proposal.

Since these changes expand the scope of the originally proposed rule and the previous NPRM has been published for more than 2 years, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA estimates that this proposed AD would affect 1546 helicopters of U.S. registry. The FAA also estimates that this proposed AD would require 52 work hours to accomplish the proposed actions, an average labor rate of $60 per work hour, and $22,954 for parts. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $40,310,404, assuming all the tailbooms are replaced.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron Canada: Docket No. 99–SW–80–AD. Supersedes AD 99–13–12, Amendment 39–11207, Docket No. 99–SW–23–AD.

Applicability: Model 206L helicopters, serial numbers (S/N) 45004 through 45049, 45051 through 45153, and 46601 through 46617; Model 206L–1 helicopters, S/N 45154 through 45790; Model 206L–3 helicopters, S/N 51001 through 51612; and Model 206L–4 helicopters, S/N 52001 through 52163, 52165 through 52212, and 52214 through 52216, with tailboom, part number (P/N) 206–033–004–all dash numbers, except P/N 206–033–004–181, installed, certificated in any category.

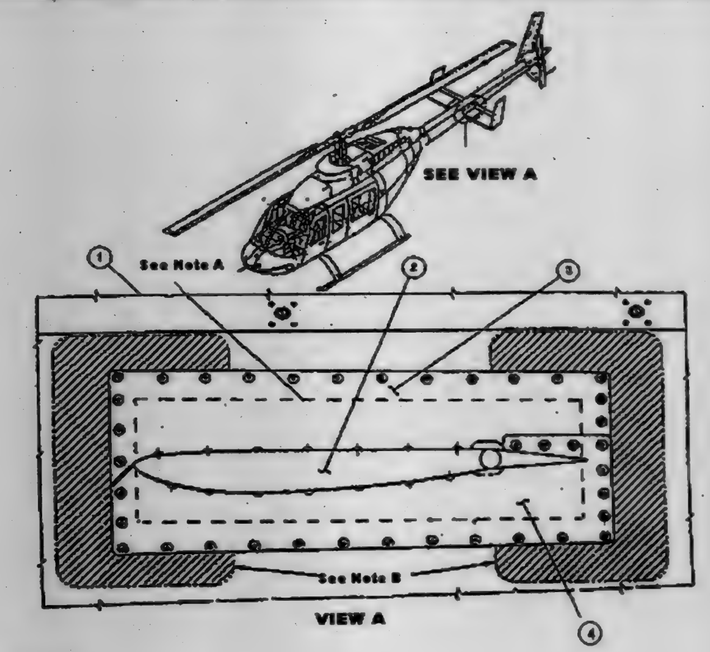
Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect a crack in the tailboom skin and to prevent separation of the tailboom from the helicopter and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight and thereafter at intervals not to exceed 10 hours time-in-service (TIS) until accomplishing a one-time fluorescent-penetrant inspection (FPI) required by paragraph (c)(2) of this AD, visually inspect for a crack in the tailboom using a 10-power or higher magnifying glass in the shaded areas as depicted in Figure 1 of this AD:

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LEGEND

1. **Tailboom assembly**
2. **Horizontal stabilizer**
3. **Upper support**
4. **Lower support**

NOTES

A. Inspect entire edge of stabilizer opening on both sides of the tailboom.

B. Inspect for a crack in these two areas on both sides of the tailboom

Figure 1

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(b) At intervals not to exceed 5 hours TIS, visually check for a crack in the tailboom in the shaded areas as depicted in Figure 1 of this AD. The visual check may be performed by an owner/operator (pilot) holding at least a private pilot certificate and must be entered into the helicopter records showing compliance with this paragraph in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).

(c) Within 50 hours TIS:

(1) Remove all four horizontal stabilizer supports, P/N 206–023–100-all dash numbers, from the tailboom and the horizontal stabilizer.

(2) Perform a one-time FPI of the edges of the tailboom skins for any crack around the left and right horizontal stabilizer openings as shown in Figure 1 of this AD. Remove paint and primer to inspect the edges and exterior skin surface in the skin area at least ¾ inch around the edges of the horizontal stabilizer openings as shown in Figure 1 of this AD.

(d) At intervals not to exceed 100 hours TIS after completing the FPI:

(1) Remove all four horizontal stabilizer supports, P/N 206–023–100-all dash numbers, from the tailboom and the horizontal stabilizer.

(2) Visually inspect the entire edge of the horizontal stabilizer opening on both sides of the tailboom for any crack using a 10-power or higher magnifying glass.

(e) Within 600 hours TIS, inspect and modify the tailboom in accordance with the Accomplishment Instructions, Parts I, II, and III of Bell Helicopter Textron Canada (BHTC) Alert Service Bulletin 206L–99–115, Revision F, dated April 14, 2001 (ASB).

(f) After modifying a tailboom in accordance with paragraph (e) of this AD or installing a tailboom modified in accordance with paragraph (e) of this AD, at intervals not to exceed 1200 hours TIS, inspect the modified tailboom in accordance with the Accomplishment Instructions, Part IV, of the ASB.

(g) If a crack is found during any check or inspection required by this AD, before further flight, replace the cracked tailboom with an airworthy tailboom modified according to the requirements of paragraph (e) of this AD or with an airworthy tailboom, P/N 206–033–004–181.

Note 2: Modifying the tailboom in accordance with revisions before Revision F of BHTC ASB 206L–99–115 is acceptable for the modifications required by paragraph (e) of this AD.

(h) Inspecting and modifying the tailboom in accordance with paragraph (e) of this AD is terminating action for the requirements of paragraphs (a) through (d) of this AD. Installing an airworthy tailboom, P/N 206–033–004–181, constitutes terminating action for the requirements of this AD.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(j) Special flight permits may be issued for a one-time flight, not to exceed 5 hours TIS and a maximum of one landing in accordance with 14 CFR 21.197 and 21.199, to operate the helicopter to a location where the requirements of this AD can be accomplished. The visual preflight check required by paragraph (b) of this AD must be accomplished before making a one-time flight.

Note 4: The subject of this AD is addressed in Transport Canada (Canada) AD CF–98–42R3, dated February 17, 2000.

Issued in Fort Worth, Texas, on August 13, 2002.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–21357 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–21–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Limited BN–2, BN–2A, BN–2B, BN–2T, and BN2A MK. III Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Pilatus Britten-Norman Limited (Pilatus Britten-Norman) BN–2, BN–2A, BN–2B, BN–2T, BN2A MK. III series airplanes. This proposed AD would require you to repetitively inspect the bottom corner of the engine mount bracket for cracks and replace any cracked bracket with a new one. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this proposed AD are intended to detect and correct cracks in the engine mount bracket. Such a condition could cause the engine mount assembly to fail, which could result in the engine separating from the airplane and lead to loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 27, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–21–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2002–CE–21–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from B–N Group Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that

summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–21–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all Pilatus Britten-Norman BN–2, BN–2A, BN–2B, BN–2T, and BN2A MK. III series airplanes. The CAA reports two occurrences of extensive cracks being found on the bottom corner of the engine mount bracket between the attachment flange and the main bracket. The cracks were found during regular scheduled maintenance.

The manufacturer has determined that this condition is a result of the reinforcing doubler being too close to the flange.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not detected and corrected, could result in failure of the engine mount. Such failure could result in the engine separating from the airplane and lead to loss of control of the airplane.

Is There Service Information That Applies to This Subject?

Pilatus Britten-Norman has issued Service Bulletin SB 275, Issue 1, dated November 30, 2001.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for inspecting the engine mount bracket for cracks and specifies replacing any cracked bracket.

What Action Did the CAA Take?

The CAA classified this service bulletin as mandatory and issued CAA AD Number 005–11–2001, not dated, in order to ensure the continued airworthiness of these airplanes in the United Kingdom.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the CAA has kept FAA informed of the situation described above.

Are There Differences Between This Proposed AD, the Service Information, and the CAA AD?

The CAA AD and the service information allows continued flight if cracks are found in the engine mount bracket that do not exceed certain limits. The applicable service bulletin specifies replacement of the engine mount bracket only if cracks are found exceeding this limit, as does CAA AD 005–11–2001. This proposed AD, if adopted, would not allow continued flight if any crack is found. FAA policy is to disallow airplane operation when known cracks exist in primary structure, unless the ability to sustain ultimate load with these cracks is proven. The engine mount bracket is considered primary structure, and the FAA has not received any analysis to prove that ultimate load can be sustained with cracks in this area.

Is There a Modification I Can Incorporate Instead of Repetitively Inspecting the Engine Mount Brackets?

The FAA has determined that long-term continued operational safety would be better assured by design changes that remove the source of the problem rather than by performing repetitive inspections. With this in mind, we will continue to work with Pilatus Britten-Norman in collecting information to determine whether a future design change may be necessary.

The FAA's Determination and an Explanation of the Provisions of this Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that:

—the unsafe condition referenced in this document exists or could develop on other Pilatus Britten-Norman BN–2, BN–2A, BN–2B, BN–2T, and BN2A MK. III series airplanes of the same type design that are on the U.S. registry;

—the actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to repetitively inspect the bottom corner of the engine mount bracket for cracks, replace any cracked bracket, return the removed bracket(s) to Pilatus Britten-Norman, and report the return to FAA.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 126 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection for BN–2, BN–2A, and BN–2B, and BN2A MK. III series airplanes:

Labor cost	Parts cost	Total cost per airplane
4 workhours x $60 per hour = $240	$10	$250

We estimate the following costs to accomplish the proposed inspection for BN–2T series airplanes:

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Labor cost	Parts cost	Total cost per airplane
8 workhours x $60 per hour = $480	$10	$490

We estimate the following costs to accomplish any necessary replacements for BN–2, BN–2A, BN–2B, and BN–2T series airplanes that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost per bracket	Total cost per bracket per engine
48 workhours x $60 per hour = $2,880 per engine (2 engines per airplane).	$1,295 (2 brackets per engine)	$2,880 + $1,295 = $4,175

We estimate the following costs to accomplish any necessary replacements for BN2A MK. III series airplanes that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost per bracket	Total cost per bracket per engine
48 workhours x $60 per hour = $2,880 per engine (2 engines per airplane)	$714	$2,880 + $714 = $3.594

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is "within the next 500 hours time-in-service (TIS) or within the next 24 calendar months after the effective date of this AD, whichever occurs first."

Why Is the Compliance Time of This Proposed AD Presented in Both Hours TIS and Calendar Time?

We have established the compliance time of this proposed AD in both hours TIS and calendar time. The unsafe condition is dependent upon repetitive airplane operation. However, the recommended maintenance program specifies other actions in this area at intervals not to exceed 2 years. Therefore, the compliance time will ensure that high-time airplanes are inspected within a certain amount of hours TIS and the lower time airplanes would be inspected at the next maintenance event in the affected area. We have determined that this compliance time:

—Will ensure that the unsafe condition is addressed in a timely manner on all affected airplanes; and

—Will not inadvertently ground any of the affected airplanes.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Pilatus Britten-Norman Limited: Docket No. 2002–CE–21–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models, all serial numbers, that are certificated in any category:

Models

BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, BN–2T–4R, BN2A MK. III, BN2A MK. III–2, BN2A MK. III–3

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the engine mount bracket. Such a condition could cause the engine mount assembly to fail, which could result in the engine separating from the airplane and lead to loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the bottom corner of the engine mounting bracket between the attachment flange and the main part of the bracket for cracks. (i) If cracks are found during any inspection, replace the bracket with a new bracket and continue with the repetitive inspection requirements of this AD. (ii) If no cracks are found during any inspection, continue with the repetitive inspection requirements of this AD.	Initially inspect within the next 500 hours time-in-service (TIS) or within the next 24 calendar months after the effective date of this AD, whichever occurs first, and repetitively inspect thereafter at intervals not-to-exceed 500 hours TIS or 1,000 landings, whichever occurs first. Replace cracked bracket prior to further flight after the inspection in which the crack is found.	In accordance with Pilatus Britten Norman Service Bulletin SB 275, Issue 1, dated November 30, 2001.
(2) Send the removed brackets to the Engineering and Design Authority, B–N Group Ltd. and report the return to FAA. The Office Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. the 3501 *et seq.*) and assigned OMB Control Number 2120–0056.	Within 10 days after removing the bracket or within 10 days after the effective date of this AD, whichever occurs later.	Send the removed brackets to B–N Group Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR, and report the return to Doug Rudolph, FAA, at the address in paragraph (f) of this AD.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from B–N Group Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in the United Kingdom CAA AD Number 005–11–2001, not dated.

Issued in Kansas City, Missouri, on August 14, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–21356 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. PL02–6–000]

Notice of Inquiry Concerning Natural Gas Pipeline Negotiated Rate Policies and Practices; Extension of Comment Period

August 8, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inquiry; extension of time.

SUMMARY: On July 17, 2002, the Commission issued a Notice of Inquiry Concerning Natural Gas Pipeline Negotiated Rate Policies and Practices (67 FR 48952, July 25, 2002). The dates for filing initial and reply comments are being extended at the request of the National Association of State Utility Consumer Advocates.

DATES: Initial comments should be filed on or before September 25, 2002. Reply comments should be filed on or before October 25, 2002.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael G. Henry, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 208–0532.

SUPPLEMENTARY INFORMATION: On July 26, 2002, the National Association of State Utility Consumer Advocates (NASUCA) filed a motion for an extension of time to file comments in response to the Commission's Notice of Inquiry (NOI) issued July 17, 2002, in the above-docketed proceeding. In its motion, the NASUCA states that because the issues presented in the NOI are of such significant importance to the natural gas industry and because of the press of other business, additional time is needed for the preparation of responsive comments. The motion further states that the Process Gas Consumers Group, the Interstate Natural Gas Association of America, the Natural Gas Supply Association and the American Gas Industry support the motion for additional time.

Upon consideration, notice is hereby given that an extension of time for filing comments on the NOI is granted to and including September 25, 2002. Reply comments shall be filed on or before October 25, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21272 Filed 8–21–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103823–99]

RIN 1545–AX12

Guidance on Cost Recovery Under the Income Forecast Method; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels the public hearing on proposed regulations relating to cost recovery under the income forecast method.

DATES: The public hearing originally scheduled for Wednesday, September 4, 2002 at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Guy R. Traynor of the Regulations Unit, Associate Chief Counsel (Income Tax & Accounting), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Friday, May 31, 2002, announced that a public hearing was scheduled for September 4, 2002 at 10 a.m., in the auditorium of the Internal Revenue New Carrollton Building, at 5000 Ellin Road, Lanham, MD 20706. The subject of the public hearing is proposed regulations under section 167 of the Internal Revenue Code. The deadline for submitting outlines and requests to speak at the hearing for these proposed regulations expired on August 13, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of August 19, 2002, no one has requested to speak. Therefore, the public hearing scheduled for September 4, 2002, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax & Accounting).

[FR Doc. 02–21464 Filed 8–21–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 7

[Notice No. 952; Re: Notice No. 946]

RIN 1512–AC10

Labeling and Advertising of Malt Beverages (2000R–107P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This notice extends the comment period for Notice No. 946, a notice of proposed rulemaking published in the **Federal Register** on June 27, 2002, for an additional 30 days. The proposed rule revises the regulations regarding the labeling and advertising of malt beverages in accordance with plain language principles. These changes also incorporate minor technical amendments. There are no changes in the requirements of the existing regulations. We are making this change in order to more clearly communicate the regulations' existing requirements.

DATES: We must receive your comments on or before September 25, 2002.

ADDRESSES: Send written comments to: Chief, Regulations Division, Notice No. 946, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221.

See the Public Participation section below for information on alternative methods of commenting, and for information on how and where to review Notice No. 946 and the comments received in response to that notice.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Program Manager, Bureau of Alcohol, Tobacco and Firearms, 10 Causeway Street, Room 701, Boston, MA 02222; telephone 617–557–1323.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms (ATF) published Notice No. 946 in the **Federal Register** on June 27, 2002, announcing the proposed plain language revision of 27 CFR Part 7, Labeling and Advertising of Malt Beverages. Please see Notice No. 946 at 67 FR 43496 for a discussion of the proposed revisions and for the proposed rule language.

As the proposed revision only adopts the plain language style, there is no change in the intent of the regulations from the existing part 7. There are no changes to the authority, scope, or effect of the regulations. The authority for the regulations in part 7 remains 27 U.S.C. 205.

We issued the original requirements in part 7 after an opportunity for notice and comment during the rulemaking process. Since we are proposing to make only stylistic changes and minor technical amendments, we are limiting comments on the proposed rule to the plain language issue.

Public Participation

We request comments from all interested persons. We will carefully consider all comments we receive on or before September 25, 2002. We will give the same consideration to comments we receive after that date if it is practical to do so, but we can give assurance of consideration only to comments we receive on or before September 25, 2002.

Comments Limited to Plain Language Issue

Because we only propose to amend these regulations to conform to the plain language style, we are limiting comments to the effects of this change in the regulations' language. Accordingly, comments should be limited to the following questions:

- Does this language have the same effect as the old regulations?
- Does the plain language format effect the operation of the regulations?
- Is this new style helpful or useful?

We will not consider in this rulemaking any comments that go beyond this scope.

Will ATF Treat My Comments as Confidential?

We will not recognize any material in comments as confidential, and your comments may be disclosed to the public. You should not include any material that you consider to be confidential or inappropriate for public disclosure. We may disclose the name of any person submitting a comment.

How May I Submit Comments?

By Mail: You may send written comments by U.S. mail to the address shown above in the **ADDRESSES** section of this notice.

By Fax: You may submit comments by facsimile transmission to (202) 927–8602. Facsimile comments must reference Notice No. 946 and must:

- Be legible when printed on 8½″ x 11″ paper;
- Contain a written signature; and
- Be five pages or less in length (to ensure access to our equipment).

We will not acknowledge receipt of FAX transmittals. We will treat facsimile comments as originals.

By E-Mail: You may submit comments of any length by electronic mail to nprm@atfhq.atf.treas.gov. Electronic mail comments must include:

- A reference to Notice No. 946;
- Your e-mail address; and
- Your name and post office address.

We will not acknowledge receipt of e-mail comments. We will treat e-mail comments as originals.

By On-line Form: You may also submit comments electronically using the comment form provided with the online copy of Notice No. 946 on the ATF Internet web site at *http://www.atf.treas.gov/alcohol/rules/index.htm*. We will treat comments submitted via the web site as originals.

How Does ATF Use the Comments?

We will summarize and discuss pertinent comments in the preamble to any subsequent notices or the final rule published as a result of the comments. We will not acknowledge receipt of comments or reply to individual comments.

Can I Review Comments Received?

You may view copies of the comments on Notice No. 946 by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–7890. You may request copies of the comments (at 20 cents per page) by writing to the ATF Reference Librarian at the address shown above.

For the convenience of the public, ATF will post comments received in response to Notice No. 946 on the ATF web site. All comments posted on our web site will show the name of the commenter, but will have street addresses, telephone numbers, and e-mail addresses removed. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comment will be available in the ATF library as noted above. To access online copies of the comments on this rulemaking, visit *http://www.atf.treas.gov/*, select "Regulations," and then "Notices of proposed rulemaking (Alcohol)." Then click on the "View Comments" button for Notice No. 946.

Drafting Information

The principal author of Notice No. 946 is William H. Foster, and the author of this notice is Michael D. Hoover, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 7

Advertising, Authority delegations, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

Authority and Issuance

This notice is issued under the authority contained in 27 U.S.C. 205.

Signed: August 16, 2002.

Thomas R. Crone,

Chief, Regulations Division.

[FR Doc. 02–21455 Filed 8–21–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–0054a]

RIN 1218–AB45

Occupational Exposure to Hexavalent Chromium (CrVI)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for information.

SUMMARY: OSHA requests data, comments, and information on issues relevant to occupational exposure to hexavalent chromium (CrVI), including: Significant epidemiological, animal, and in vitro studies; the relationship between occupational exposures to CrVI and the development of adverse health effects; industry profiles of use, current exposures, and population at risk; types and availability of control methodologies; analytical methods; medical screening and surveillance procedures; exposure assessment programs; employee training programs; and use of personal protective equipment.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or sent) by November 20, 2002.

Facsimile and electronic transmission: Your comments must be sent by November 20, 2002. (Please see the **SUPPLEMENTARY INFORMATION** provided below for additional information on submitting comments.)

ADDRESSES: *Regular mail, express delivery, hand-delivery, and messenger service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. H–0054a, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210; telephone (202) 693–2350. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket No. H–0054a, in your comments.

Electronic: You may submit comments but not attachments through the Internet at *http://ecomments.osha.gov*. (See the **SUPPLEMENTARY INFORMATION** provided below for additional information on submitting comments.)

FOR FURTHER INFORMATION CONTACT: General information and press inquiries—OSHA Office of Public Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (Telephone: (202) 693–1999); Technical information—Jeff Snyder, Directorate of Health Standards, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 (Telephone (202)—693-2292). For additional copies of this **Federal Register** notice, contact OSHA, Office of Publications, U.S. Department of Labor, Room N–3101, 200 Constitution Avenue, NW., Washington, DC, 20210; telephone (202) 693–1888. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's web page on the Internet at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this notice by (1) hard copy, or (2) FAX transmission (facsimile), or (3) electronically through the OSHA Webpage. Please note that you cannot attach materials, such as studies or journal articles, to electronic comments. If you have additional materials, you must submit three copies of the materials to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Contact the

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OSHA Docket Office at (202)-693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

All comments and submissions will be available for inspection and copying at the OSHA Docket Office at the above address. Comment and submissions posted on OSHA's Web site are available at *http://www.osha.gov*. OSHA cautions you about submitting personal information such as social security numbers and birth dates. Contact the OSHA Docket Office at (202)–693–2350 for information about materials not available through the OSHA Webpage and for assistance in using the Webpage to locate docket submissions.

II. Background

Properties and Uses. Chromium exists in several oxidation states. Its most important natural source is as the mineral chromite ($FeOCr_2O_3$). Common forms of chromium compounds are trivalent chromium (CrIII), and hexavalent chromium (CrVI). CrVI can be produced when CrIII is heated in the presence of mineral bases and oxygen. Such a change (from CrIII to CrVI) also occurs as a by-product of welding or cutting operations on stainless steel. In addition, a portion of CrIII used in refractory bricks can convert to CrVI during normal furnace operations.

CrVI compounds are characterized by high melting points, very high boiling points, varying solubilities, a wide array of colors, corrosion resistance and resistance to acid. These properties make chromium ideal for use in such widely diversified products as corrosion-resistant materials, pigments, coatings, metal plating, and chemicals.

Health risks associated with occupational exposure to CrVI. Epidemiologic studies of workers exposed to CrVI have consistently shown a positive correlation between exposure to CrVI and excess lung cancer. See, *e.g.*, Machle and Gregorius (1948, Ex. 7–2); U.S. Public Health Service/Gafafer (1953, Ex. 7–3); Baetjer (1950, Ex. 7–6); Hayes *et al* (1979, Ex.7–15); Braver (1985, Ex. 7–17); Mancuso (1975, Ex. 18–3; 1997 Exs. 23, 24); and Gibb *et al* (2000, Ex. 25). The International Agency for Research on Cancer (IARC) (Ex. 18–1) and the U.S. Environmental Protection Agency (EPA) (Ex. 19–1) have classified CrVI as a human carcinogen based on excess lung cancers found in workers involved in chromate production, chromate pigment production, and chromium plating. The American Conference for Governmental Hygienists (ACGIH) classifies water-insoluble and water-soluble Cr IV compounds, zinc chromate, and strontium chromate as class A1 (confirmed human) carcinogens. (2002, ACGIH, TLVs® and BEIs®, Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices).

Occupational exposure to CrVI has also been associated with non-cancer health effects of the skin, such as dermatoses and chrome holes; and problems of the respiratory system including nasal septum irritation and perforation.

Occupational health regulation of CrVI exposure. In 1971, OSHA adopted and made applicable to general industry a national consensus standard (ANSI Z37.7–1971) for chromic acid and chromates (compounds that contain chromium in its hexavalent state). 29 U.S.C. 655(a). The general industry standard sets a permissible exposure limit ("PEL") for hexavalent chromium compounds at 100 micrograms per cubic meter ($\mu g/m^3$) as a ceiling concentration measured as chromic acid (CrO_3), 29 CFR 1910.1000, Table Z–1 and Z–2. In 1971, OSHA also adopted, as its hexavalent chromium standard for construction work, an established federal standard that had been promulgated under the Construction Safety Act, 40 U.S.C. 333. That standard sets a PEL of 100 $\mu g/m^3$ (measured as CrO_3) as an 8-hour time-weighted average (8-hour TWA) for chromic acid and chromates, 29 CFR.1926.55.

In 1993, the Oil, Chemical and Atomic Workers Union (OCAW) and Public Citizen Health Research Group petitioned OSHA to issue an Emergency Temporary Standard (ETS) to immediately lower the PEL in all workplaces to 0.5 $\mu g/m^3$, measured as an 8-hour TWA. OSHA denied the petition because it failed to satisfy the stringent criteria for an ETS. However, OSHA opened a rulemaking docket and began to collect information that would be relevant to a CrVI rule.

The information available to date indicates that occupational exposures to CrVI presents a number of complex and difficult issues (e.g., data gaps on current usage of and exposure to CrVI, differences in opinion on the interpretation of health effects data). In this notice, OSHA is seeking information to help the agency resolve some of these issues. OSHA believes that affording interested members of the public the opportunity to be heard on these issues would benefit the agency's decisional process.

III. Request for Data, Comments, and Information

OSHA requests data, comments, and information on a variety of topics relevant to the agency's review of occupational exposure to CrVI. The topics include: Adverse health effects associated with occupational exposure to CrVI; methods, costs, and effectiveness of control strategies that can reduce exposure to CrVI; and medical management of exposed employees.

The questions below highlight the areas of concern to OSHA. When answering specific numbered questions below, please key your responses to the number of the question, explain the reasons supporting your views, and identify and provide relevant information on which you rely, including, but not limited to, data, studies and articles. The public is also welcome to comment on other issues raised by this notice.

A. Health Effects

As discussed above, OSHA is aware of a number of studies reporting an association between adverse health effects and exposure to CrVI. In this notice, OSHA is seeking information associated with, and analysis of, the most recent and important studies that the agency can use to evaluate health effects.

(1) What studies (including positive and negative studies) should OSHA consider useful in assessing the potential carcinogenic, mutagenic, and non-carcinogenic health risks of CrVI exposure? Explain your scientific rationale for recommending these studies including potential strengths and weaknesses such as size of the population (or sample) studied, characterization of exposure, and confounding factors.

(2) Are there any recent studies that examine the dermal effects of CrVI exposure?

(3) Are there any studies showing adverse health effects resulting from routes of occupational CrVI exposure other than dermal contact and inhalation? What are those adverse health effects?

(4) Are there any important studies related to the dose response behavior of CrVI, including cellular, mechanistic, and dosimetric considerations? For instance, are any health effects of CrVI dependent on the time period over which exposure occurs rather than dependent on the total cumulative dose received or are there data that suggest CrVI exhibits a threshold effect?

(5) Do short-term peak exposures play a role in causing adverse CrVI health effects? If so, what studies are available that examine these types of effects. How should short-term peak exposures be addressed when evaluating CrVI health effects data? In answering, please consider both animal and human studies.

(6) How should OSHA address animal and epidemiological studies that rely on different analytical methods than are currently available to assess exposure when evaluating the health effects data contained in those studies?

(7) Animal studies are designed to test individual CrVI compounds (e.g., lead chromate, strontium chromate, potassium chromate). Epidemiological studies are designed to evaluate CrVI exposures in individual workplaces or by types of industries (e.g., chromate production, welding, pigment manufacture). Can or should the results from these individually tested compounds or work settings/industries be grouped together to assess the overall toxicity of CrVI or should each compound or industry be analyzed separately? Do different CrVI compounds have specific properties (e.g, solubility) that should be taken into consideration when evaluating animal or human studies?

B. Risk Assessment

OSHA is aware of the following risk assessments on human studies of lung cancer among workers exposed to CrVI via inhalation: The 1984 risk assessment prepared by the U.S. EPA (Ex. 19–1); the 1986 risk assessment prepared by Gibb et al. (Ex. 7–102); and the 1995 risk assessment by K.S. Crump Division (Ex. 13–5). These risk assessments relied heavily on the epidemiologic studies conducted by Mancuso (1975, Ex. 18–3) and Hayes et al. (Ex. 1979, Ex. 7–15). Since these risk assessments, Gibb et al. (2000, Ex. 25) has updated the investigation of the cohort originally studied by Hayes et al. (Ex. 7–15). This study notes limitations in the Mancuso data. OSHA is seeking the best available data to use in assessments of occupational risks of CrVI-related adverse health effects to CrVI-exposed workers. OSHA is especially interested in studies of occupational exposure that quantify exposure data and control for important confounding variables, have good statistical power, and are well conducted.

(8) Do the EPA (Ex. 19–1), the Gibb et al (Ex. 7–102) and the K.S. Crump (Ex. 13–5) risk assessments adequately characterize the lung cancer risks of CrVI? Please provide your rationale including information on studies selected and risk assessment methodology.

(9) What approaches (i.e., methods, models, data used) should OSHA use for estimating risk of CrVI exposure?

(10) Are there biological endpoints, besides lung cancer, that could or should be used to estimate the occupational risk to CrVI-exposed workers?

(11) What mathematical models are appropriate to quantify the risk of cancer or other adverse health effects associated with exposure to CrVI? What are the strengths and weaknesses of those models?

(12) Animal studies can add value to a risk assessment in areas such as dose-response. What, if any, animal studies are appropriate for use in a CrVI risk assessment? Which animal species, tumor incidences, route(s) of administration, and dose level(s) would be most appropriate.

(13) When extrapolating from animal studies, what additional corrections, if any, should be made to account for the route of exposure used in the study (e.g., topical application, injection, inhalation)?

(14) What other factors should OSHA take into consideration when analyzing risks associated with exposure to CrVI at the current permissible exposure level and in determining safe levels of exposure to CrVI?

C. Methods of Analyzing Exposure Levels

In June 1998, OSHA revised and validated its analytical method "ID–215" to evaluate airborne occupational exposures of CrVI (Ex. 29). The method, ID–215, is very sensitive, with a qualitative detection limit of 0.001 ug/m^3 for a 960 liter air sample. The quantitative detection limit is 0.003 ug/m^3 for a 960 liter air sample.

Method ID–215 is an improvement over prior analytical methods for airborne CrVI. Prior methods may have been subject to greater interference from other heavy metals. In addition, reducing agents such as Fe(II) could convert CrVI to CrIII and thus reduce the amount of CrVI reported as measured.

(15) Are there methods other than ID–215 for measuring exposure levels in the range of 0.02 to 10 ug/m^3 that would be as accurate as, or more accurate than, OSHA's ID–215?

(16) Are there methods for conducting wipe samples?

(17) Are there methods for conducting field-tests?

(18) Are there methods to determine the presence or absence of CrVI in buildings for which no blueprints are in existence?

D. OSHA's Investigations into Occupational Exposures, Control Measures, and Technological and Economic Feasibility

In 1994, OSHA contractor Meridian Research, Inc. delivered to the agency a report, Selected Chapters of an Economic Impact Analysis for a Revised OSHA Standard for Chromium VI: Introduction, Industry Profiles, Exposure Profiles, Technological Feasibility (for 6 Industries) and Environmental Impacts. (Ex. 26). This report was based, in part, on earlier analyses conducted by Centaur (Ex. 27). The purpose of the Meridian report was to "evaluate the impact a revision of the Occupational Safety and Health Administration (OSHA) standard for CrVI may have in the principal industries that would be affected by the new standard" and to "[identify] the potentially affected industries, [discuss] the structure of these industries, [determine] the size of the population at risk, [identify] current levels of exposure, and [describe] some of the economic impacts potentially associated with a reduction in CrVI exposures."

Meridian identified many industries with potential CrVI exposure for which Meridian was unable to provide full information. For example, OSHA lacks information on number of employees exposed, number of sites, nature and level of exposures, controls and how CrVI is used in processes for industries such as woodworking, refractory brick production, portland cement uses and leather tanning. Moreover, in the years since the Meridian report, market forces, technological changes and environmental factors have, in varying degrees, altered the magnitude, frequency, and duration of employee exposures in the industries that have traditionally handled CrVI. Because of these trends, some industries have abandoned or dramatically reduced usage of CrVI.

For these reasons, OSHA has worked to obtain additional information on affected industries and workers by utilizing the following sources: (1) Inspection reports collected and summarized within OSHA's computerized Integrated Management Information System; (2) occupational health studies; and (3) data related to site visits conducted by the National Institute for Occupational Safety and Health (NIOSH) under an inter-agency agreement between NIOSH and OSHA. OSHA sought information on patterns of employee exposure, specific routes of exposure, type and cost of engineering controls in particular industries, and types and costs of personal protective

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equipment. OSHA has worked closely with NIOSH on this update. NIOSH has completed its field surveillance program and has delivered reports on roughly one-half of the sites. It has also summarized exposure data for the remaining sites. (Ex. 28). OSHA requests that the public review the industrial and exposure data reported by Meridian and NIOSH and provide comment on the representativeness of these data. OSHA further requests that the public comment on technological and economic forces that, especially within the last five to ten years, have altered worker exposure to CrVI.

Employee Exposure and Monitoring

(19) Are the industrial profiles described by Meridian and NIOSH reasonably reflective of current conditions, or have workplace and process conditions and worker activities changed to such an extent that the profiles would need revision? Are there industries or processes with CrVI exposures that are not covered in these reports?

(20) Are the exposure profiles reported by Meridian and NIOSH reasonably representative of affected industry processes or have there been changes in the statistical distribution of worker exposures in those profiles? OSHA requests exposure data that will enable the Agency to expand its current profile of the exposed worker population. For cases where commenters are able to provide exposure data, OSHA requests that, if possible, exposure data be personal samples with clear descriptions of the length of the sample. If this is not possible, the exposure data should clearly indicate the form and length of the exposure. In addition, exposure data that provide information concerning the controls in place are more valuable than exposure data without such information

(21) What are the job categories in which employees are potentially exposed to CrVI in your company or industry? For each job category, provide a brief description of the operation.

(22) How many employees are exposed, or have the potential for exposure, to CrVI in each job category in your company or industry?

(23) What are the frequency, duration and levels of exposures to CrVI at each job category in your company or industry? Include the analytical method and type of samples used for determining exposure levels. For cases where commenters are able to provide exposure data, OSHA requests that, if possible, exposure data be personal samples with clear descriptions of the length of the sample. If this is not possible, the exposure data should clearly indicate the form and length of the exposure.

(24) What engineering controls and types of protective equipment are either in use or available for each job category?

(25) What sampling and analytical methods are currently available to measure CrVI in your workplace? Provide details on the accuracy and precision of the sampling method, the range and limits of detection, the method of validation of sampling and analysis, and chemical interference.

(26) Describe any programs you have implemented for initial monitoring of exposure to CrVI. Do you conduct initial sampling or do you rely on objective data to estimate CrVI exposures? Describe any other programs you have implemented for assessing an employee's initial exposure to CrVI.

(27) Describe any follow-up or subsequent exposure assessments that you conduct. How often do you conduct any such follow-up or subsequent exposure assessments?

Control Measures and Technological Feasibility

(28) Have there been technological changes within your industry that have influenced the magnitude, frequency, or duration of exposure to CrVI and the means by which employers attempt to control exposures? The Agency requests that commenters describe in detail any technological changes within industries that have altered methods of control. Provide direct links between control technologies and data on exposure levels associated with the application of controls.

(29) Have you installed engineering controls or adopted work practices with the purpose of reducing exposure to CrVI? If so, have these controls or work practices resulted in a reduction of CrVI exposure? Please give specific examples where the introduction of controls and work practices have reduced exposure to CrVI.

(30) Has there been a trend to eliminate CrVI from production processes, products and services? If so, OSHA requests that interested parties comment on the success of substitution efforts. In particular, OSHA requests that commenters estimate the percentage reduction in CrVI, and the extent to which CrVI is still necessary in their processes within product lines or production activities. OSHA also requests that commenters describe any technical, economic or other barriers or hindrances to substitution.

Economic Impact

(31) The Agency seeks comment on potential impacts of reducing occupational exposures to CrVI, in terms of costs of controls, reduction in illness, cost savings related to accident avoidance, effects on revenue and profit, changes in worker productivity, or any other impact measure that commenters wish to identify. In describing and estimating impacts, please provide explicit examples of costs that could be incurred (e.g., dollar estimates of controls) or benefits that could be achieved (e.g., dollar estimates of medical savings from reduced cases of chromium-related illness).

(32) OSHA requests that commenters provide information on changes in market conditions that could result from reducing employees' exposures to CrVI. Include in your response any changes in market structure or concentration, or effects on domestic or international shipments of chromium-related products or services, that would result from reducing occupational exposures to CrVI.

E. Personal Protective Equipment and Respirators

(33) Are respirators provided to employees in your company or industry to protect against excessive airborne exposure CrVI? Why are they necessary and how are these respirators selected? Identify the type, model number, and manufacturer of such respirators by task.

(34) What other types of protective equipment, such as gloves, aprons, or other clothing, are provided to employees? How is this protective equipment selected?

(35) Under what conditions (e.g., exposure level, type of operations, duration of exposure) are protective equipment and respirators used?

(36) Are there processes or areas where it is infeasible to use respirators or other protective equipment to protect against exposure to CrVI? Describe those situations and explain why it is difficult to use protective equipment. How are employees protected in those situations?

F. Employee Training

(37) What job categories are included in your training program for reducing risks associated with CrVI exposure? How do you determine which job categories receive training?

(38) Describe the training employees receive, including the length and frequency of the training course, the topics covered, and the availability of training aids such as audio-visual aids and written operating instructions. Also describe any other factors that affect the cost of training and provide any estimate of the cost of training.

(39) How do you determine the effectiveness of the training? Are decreased absenteeism, decreased medical/insurance costs, decreased accident rates/severity, and increased productivity factors in your determination? Are there any other factors in your determination? How are language barriers to training addressed?

(40) Are there ways in which CrVI-related training could be improved?

G. Medical Programs

OSHA is interested in medical programs that employers use or could use in the identification of signs and symptoms of illnesses associated with occupational exposures to CrVI. OSHA is especially interested in those programs focusing on prevention or treatment of CrVI-related injuries or illnesses for employees who have occupational exposure to CrVI.

(41) What medical or clinical examinations have potential usefulness in identifying workers with adverse health effects resulting from occupational CrVI exposure? Include specific tests or procedures used in any such examination and other useful information, such as the types of laboratories used for biological tests, the frequency of examinations and follow-up tests, and the contents of the examinations?

(42) What CrVI-related illnesses or conditions have you observed? What programs do you have in place to detect and refer employees for medical management?

(43) Do you have any information to suggest that the use of an employee medical management program designed to prevent adverse CrVI-related health effects such as "chrome holes" (ulcerations of the skin caused by CrVI) or nasal septum perforations reduces the incidence or prevalence of other CrVI-related effects, such as lung or other cancers?

(44) Are there any studies that suggest that elevated biological indicators (such as CrVI in blood or urine) are associated with an elevated risk of lung cancer or other adverse health effects such as asthma? What are normal levels of chromium in blood or urine in non-occupational exposed populations? Are these indicators affected by diet?

(45) Is there any information that suggests that biological indicators other than CrVI in blood or urine could be appropriate for evaluating risk of adverse health effects associated with CrVI exposures among workers?

(46) Are there any studies that suggest that chromium with other valences, other than in the CrVI valence, can be taken up by the red blood cells?

(47) When you evaluate an employee's chromium-blood levels, do you use whole blood or packed red blood cells? What is the significance of using one over the other?

(48) How do you determine eligibility in your medical screening program?

(49) Provide any information relating reduction in adverse health outcomes to the implementation of medical surveillance programs.

(50) Are your healthcare costs less after medical screening is initiated?

(51) Do you ever remove employees because of illness or injury related to CrVI exposure? If so, describe the circumstances of the removal and potential return. For how long are these employees removed? Are workers ever permanently removed?

(52) Please describe any special medical screening and treatment you conduct for chrome holes, dermatoses, and nasal septal perforations.

H. Environmental Effects

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) regulations (49 CFR. Part 1500, 43 F.R. 55978, November 29, 1978), and the Department of Labor (DOL) NEPA Compliance Regulations (29 CFR. Part 11); (45 F.R. 51187 *et seq.*, August 1, 1980) require that OSHA give appropriate consideration to environmental issues and impacts of proposed actions significantly affecting the quality of the human environment. OSHA is currently collecting written information and data on possible environmental impacts that could occur outside of the workplace (e.g., exposure to the community through contaminated air/water, contaminated waste sites, etc.) if the agency were to issue guidance or revise the existing standard for occupational exposure to CrVI. Such information should include both negative and positive environmental effects that could be expected to result from guidance or a revised standard. Specifically, OSHA requests comments and information on the following:

(53) How might reducing occupational exposures to CrVI exposure affect the environment?

(54) What is the potential direct or indirect impact of reducing employee exposure to CrVI exposure on water and air pollution, energy usage, solid waste disposal, and land use?

(55) How would any available CrVI substitutes alter ambient air quality, water quality, solid waste disposal, and land use?

(56) Are there situations in which reducing CrVI exposures to employees would be inconsistent with meeting environmental regulations?

I. Impact on Small Business Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), OSHA is required to assess the impact of proposed and final rules on small entities. OSHA requests that members of the small business community, or other parties familiar with regulation of small business, address any special circumstances facing small firms in controlling occupational exposure to CrVI.

(57) How many and what kinds of small businesses or other small entities in your industry could be affected by reducing exposures to CrVI? Describe any such effects.

(58) Are there special issues that make control of CrVI exposures more difficult or more costly in small firms?

(59) Are there any reasons that the benefits of reducing occupational exposure to CrVI might be less in small firms than in larger firms? With regard to potential impacts on small firms, please describe specific concerns that should be addressed. Please describe alternatives that might serve to minimize these impacts while meeting the requirements of the OSH Act.

J. Duplication/Overlapping/Conflicting Rules

(60) Are there any federal regulations that might duplicate, overlap or conflict with guidance or a revised standard concerning CrVI? If so, identify which ones and explain how they would duplicate, overlap or conflict.

(61) Are there any federal programs in areas such as defense or energy that might be impacted by guidance or a revised standard concerning CrVI? If so, identify which ones and explain how they would be impacted.

Authority and Signature

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary's Order 3–2000, and 29 CFR Part 1911.

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Signed at Washington, DC this 16th day of August, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–21449 Filed 8–21–02; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AL26

Schedule for Rating Disabilities; Guidelines for Application of Evaluation Criteria for Certain Respiratory and Cardiovascular Conditions; Evaluation of Hypertension With Heart Disease

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities, in order to provide guidance in the evaluation of certain respiratory and cardiovascular conditions, and to explain that hypertension will be evaluated separately from hypertensive and other types of heart diseases. The intended effect of this amendment is to clarify the use of the current criteria for evaluating respiratory and cardiovascular conditions, particularly in cases where alternative criteria are provided, in order to ensure that veterans receive consistent evaluations and are not required to undergo unnecessary tests.

DATES: Comments must be received on or before October 21, 2002.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AL26." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION:

Evaluation of Certain Respiratory Conditions

Since revised evaluation criteria for respiratory conditions were established in 1996, the evaluation of most respiratory conditions has been based primarily on the results of specific pulmonary function tests (PFT's). Conditions evaluated on that basis include chronic bronchitis (diagnostic code 6600), pulmonary emphysema (diagnostic code 6603), chronic obstructive pulmonary disease (diagnostic code 6604), interstitial lung disease (diagnostic codes 6825–6833), and restrictive lung disease (diagnostic codes 6840–6845). In some cases, the rating schedule provides alternative evaluation criteria that may be used instead of PFT's. These include measures of the maximum exercise capacity; the presence of pulmonary hypertension (documented by echocardiogram or cardiac catheterization), cor pulmonale, or right ventricular hypertrophy; episode(s) of respiratory failure; and a requirement for outpatient oxygen therapy. Alternative criteria were established in order to provide more than one route to reach a particular level of evaluation and, at the same time, avoid requiring that veterans undergo additional invasive, risky, costly, or time-consuming tests when one or more objective and reliable tests or findings suitable for evaluation purposes are already of record.

Applying the PFT results can be difficult in some cases. We therefore propose to add provisions that would clarify the use of PFT's in evaluating respiratory conditions to 38 CFR 4.96 as paragraph (d), titled "Special provisions for the application of evaluation criteria for diagnostic codes 6600, 6603, 6604, 6825–6833, and 6840–6845." We developed these provisions after consultation with the Pulmonary/Critical Care Advisory Committee of the Veterans Health Administration.

Chronic bronchitis (diagnostic code 6600) is an example of a respiratory condition that is evaluated primarily on the basis of PFT's but also has alternative evaluation criteria. The criteria for a 100-percent evaluation are FEV–1 (Forced Expiratory Volume in one second) less than 40 percent of predicted value, the ratio of FEV–1 to FVC (Forced Vital Capacity) less than 40 percent, DLCO (SB) (Diffusion Capacity of the Lung for Carbon Monoxide by the Single Breath Method) less than 40-percent predicted, maximum exercise capacity less than 15 ml/kg/min oxygen consumption (with cardiac or respiratory limitation), cor pulmonale (right heart failure), right ventricular hypertrophy, pulmonary hypertension (shown by echocardiogram or cardiac catheterization), episode(s) of acute respiratory failure, or a requirement for outpatient oxygen therapy. The criteria for a 60-percent evaluation are FEV–1 of 40- to 55-percent predicted, FEV–1/FVC of 40 to 55 percent, DLCO (SB) of 40- to 55-percent predicted, or maximum oxygen consumption of 15 to 20 ml/kg/min (with cardiorespiratory limit). The criteria for a 30-percent evaluation are FEV–1 of 56- to 70-percent predicted, FEV–1/FVC of 56 to 70 percent, or DLCO (SB) 56- to 65-percent predicted. The criteria for a 10-percent evaluation are FEV–1 of 71- to 80-percent predicted, FEV–1/FVC of 71 to 80 percent, or DLCO (SB) 66- to 80-percent predicted.

For the first provision, we propose to state when pulmonary function testing is not needed for disability evaluation purposes. The first instance would be when there is a maximum exercise capacity of record that is 20 ml/kg/min or less (which would result in a 60- or 100-percent evaluation). Although this test is not routinely done, and not all facilities have the necessary equipment to conduct the test, if available, it is a reliable and precise way to assess respiratory disability, so it may be used to evaluate when it is available and is reported at levels that would warrant a 60- or 100-percent evaluation. If not of record, however, evaluation will be based on alternative criteria. The second instance would be when pulmonary hypertension (documented by an echocardiogram or cardiac catheterization), cor pulmonale, or right ventricular hypertrophy has been diagnosed. Any of these would result in a 100-percent evaluation. The third instance would be when there is a history of one or more episodes of acute respiratory failure, and the fourth instance would be when there is a requirement for outpatient oxygen therapy, because either of these also establishes entitlement to a 100-percent evaluation.

Routine pulmonary function testing may or may not include a measurement of DLCO (SB) (Diffusion Capacity of the Lung for Carbon Monoxide by the Single Breath Method). The DLCO (SB) is not useful or valid in assessing every respiratory condition (for example, it is not valid in cases where the lung volume is decreased), so it is up to the examiner to assess whether it would provide useful information in a particular case. We therefore propose to add a second provision that would state that if the DLCO (SB) is not of record, evaluation will be based on alternative criteria as long as the examiner states why the DLCO (SB) would not be useful or valid in a particular case.

The third provision directs that when the PFT's are not consistent with the clinical findings, evaluation will be based on the PFT's unless the examiner states why they are not a valid indication of respiratory functional impairment in a particular case. The rationale for this is that PFT's are reliable, objective tests, and the respiratory system evaluation criteria have been revised in part to remove subjective assessment criteria, such as self-reported symptoms, in order to ensure consistent ratings. The PFT-based criteria are similar to the method of assessing impairment due to respiratory disease used by the American Thoracic Society and the American Medical Association *Guides to the Evaluation of Permanent Impairment*, 5th ed. (2001).

The fourth provision states that post-bronchodilator studies are required when PFT's are done for disability evaluation purposes except when the results of pre-bronchodilator pulmonary function tests are normal or when an examiner determines that post-bronchodilator studies should not be done and states why (for example, because the patient is allergic to the bronchodilator). The American Lung Association/American Thoracic Society Component Committee on Disability Criteria recommends testing for pulmonary function after optimum therapy.

The fifth provision also applies to post-bronchodilator studies and states that when evaluating based on PFT's, the post-bronchodilator results (rather than pre-bronchodilator results) will be used in applying the evaluation criteria in the rating schedule unless the post-bronchodilator results were poorer than the pre-bronchodilator results. In those cases, the pre-bronchodilator values will be used. The American Lung Association/American Thoracic Society Component Committee on Disability Criteria recommends testing for pulmonary function after optimum therapy. The best possible pulmonary function (which is ordinarily post-bronchodilator functioning) is the basis of standards for pulmonary function testing. If the bronchodilator has a contrary effect, the best pulmonary function would be the pre-bronchodilator functioning.

The sixth provision addresses cases in which there is a disparity between the results of different PFT's (FEV–1, FVC, etc.), so that the level of evaluation would differ depending on which test result is used to evaluate. In such cases, the test result that the examiner states most accurately reflects the level of disability would be used to evaluate.

The seventh provision states that a decreased FEV–1/FVC ratio will be considered normal if the FEV–1 is greater than 100 percent. In that case, both the FVC and the FEV–1 would be high (better than normal), so a decreased ratio would not indicate pathology.

Evaluation of Certain Cardiovascular Conditions

In 38 CFR 4.104 (Schedule of ratings—cardiovascular system), diagnostic codes 7000 (valvular heart disease), 7001 (endocarditis), 7002 (pericarditis), 7003 (pericardial adhesions), 7004 (syphilitic heart disease), 7005 (arteriosclerotic heart disease), 7006 (myocardial infarction), 7007 (hypertensive heart disease), 7011 (ventricular arrhythmias (sustained)), 7015 (atrioventricular block), 7016 (heart valve replacement), 7017 (coronary bypass surgery), 7018 (implantable cardiac pacemakers), 7019 (cardiac transplantation), and 7020 (cardiomyopathy) have almost identical evaluation criteria. As in the case of respiratory conditions, there are alternative criteria for evaluation at some levels, and some criteria are based on the results of special tests. For example, the evaluation criteria for diagnostic code 7000, valvular heart disease, are, in part, as follows: for a 100-percent evaluation, chronic congestive heart failure, workload of 3 METs (metabolic equivalents) or less results in dyspnea, fatigue, angina, dizziness, or syncope, or left ventricular dysfunction with an ejection fraction of less than 30 percent; for a 60-percent evaluation, more than one episode of acute congestive heart failure in the past year, workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or left ventricular dysfunction with an ejection fraction of 30 to 50 percent; for a 30—percent evaluation, workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or evidence of cardiac hypertrophy or dilatation on electro-cardiogram, echocardiogram, or X-ray; and for a 10-percent evaluation, workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or continuous medication required.

There are many tests that can assess cardiac function, as the presence of alternative criteria at various levels indicates. Which ones are done in a clinical situation for a particular patient, however, depends on many criteria, such as the type of heart disease, the clinical status of the patient, the clinician's preference, the local availability of certain tests, etc. The alternative criteria we provide at a particular level of evaluation are meant to closely approximate one another in the degree of cardiac disability they represent. For example, a National Institutes of Health publication titled "Heart Failure: Evaluation and Care of Patients With Left-Ventricular Systolic Dysfunction" (*http://text.nlm.nih.gov/ahcpr/lvd/www/lvdctxt.html*) states that the majority of patients with heart failure have moderate-to-severe left-ventricular systolic dysfunction and ejection fractions of less than 35–40 percent. Therefore, if congestive heart failure is present, the condition can be evaluated on that basis, with no need for a ventricular ejection fraction study to be conducted for rating purposes. The rating schedule requires that a diagnosis of cardiac enlargement or hypertrophy be supported by either X-ray, EKG, or echocardiogram, but it does not require that all 3 tests be done in every case simply for rating purposes. Our intent in providing alternative criteria was to avoid the need for a veteran to undergo additional tests that might be invasive, risky, costly, or time-consuming, if one or more objective and reliable tests or findings suitable for evaluation purposes are already of record. Although it was not our intent to require that a veteran undergo every test listed in the criteria, some individuals have interpreted the regulation as requiring that every veteran undergoing evaluation for one of these heart conditions have X-rays, an echocardiogram, a ventricular ejection fraction test (which can be done either by means of echocardiography or radionuclide ventriculography (MUGA scan)), and METs measurement (by exercise stress testing), in order to be certain that a higher evaluation based on one of the alternative criteria is not warranted. This regulation is proposed in order to clarify the application of these criteria.

We propose to add a new § 4.100, to be titled "Application of the evaluation criteria for diagnostic codes 7000–7007, 7011, and 7015–7020," to VA's Schedule for Rating Disabilities. This section would contain three provisions guiding the evaluation of specified cardiovascular conditions. The first provision would require the evaluator to ascertain in all cases whether or not cardiac hypertrophy or dilatation (documented by electrocardiogram, echocardiogram, or X-ray) is present and whether or not there is a need for

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continuous medication. Either of these would establish entitlement to a minimum evaluation level, and it is therefore essential to know whether either is present.

A second provision would indicate that even if the requirement for a 10% (based on the need for continuous medication) or 30% (based on the presence of cardiac hypertrophy or dilatation) evaluation is met, METs testing is always required except in the following cases: (1) When there is a medical contraindication, (2) when the left ventricular ejection fraction has been measured and is 50% or less, (3) when chronic congestive heart failure is present or there has been more than one episode of congestive heart failure within the past year, or (4) when a 100% evaluation can be assigned on another basis (such as during the three-month period following myocardial infarction). The rationale for this provision is that cardiac disability may warrant a higher evaluation on some other basis, such as the METs level, than the minimum evaluations assigned for continuous medication, or cardiac enlargement or hypertrophy. For example, even if a veteran with disability due to arteriosclerotic heart disease with angina requires continuous medication warranting a 10-percent evaluation, the METs level might warrant a higher evaluation.

The left ventricular ejection fraction (LVEF) is an objective measure of left ventricular function, that is, of the heart's ability to pump blood throughout the body. Decreased left ventricular function is a good indicator of the level of severity, prognosis, response to treatment, etc., of many heart problems. It has no value for rating purposes, however, unless it is decreased, because serious cardiac disability may be present even though the left ventricular function is normal. Whether an LVEF study is needed must be determined in a clinical setting. For rating purposes, the LVEF test is not necessary if there is a clinical diagnosis of either chronic congestive heart failure or a history of more than one episode of congestive heart failure within the past year because congestive heart failure of this degree establishes eligibility for a total (100-percent) evaluation. The LVEF test is also not usually necessary if METs testing, another very good indicator of the overall cardiovascular functional capacity, is available. We therefore propose that a third provision state that if LVEF testing is not of record, evaluation will be based on alternative criteria unless the examiner states that the LVEF test is needed in a particular case because the available medical information does not sufficiently reflect the severity of the veteran's cardiovascular disability.

These provisions will clarify the method of evaluation of these heart conditions.

Evaluation of Hypertension and Hypertensive Heart Disease

Before the cardiovascular system was revised in 1997, the evaluation criteria for hypertensive heart disease (diagnostic code 7007 in § 4.104 of 38 CFR), a condition that means the heart is enlarged or hypertrophied due to hypertension, were based in part on blood pressure readings. Hypertension itself was also evaluated primarily on the basis of blood pressure readings. Separately evaluating hypertension and hypertensive heart disease at that time was therefore prohibited because it would have meant evaluating two different conditions based on the same findings (or evaluating the same disability under two diagnoses), a process prohibited by 38 CFR 4.14, Avoidance of pyramiding. Since 1997, hypertensive heart disease has been evaluated on the same basis as most other types of heart disease, namely, the results of exercise testing expressed in METs, the presence of congestive heart failure, the ventricular ejection fraction, etc. It is no longer evaluated on the basis of blood pressure readings. Therefore, hypertension and hypertensive heart disease may now be separately evaluated because each has separate and independent evaluation criteria that do not overlap. There is therefore no conflict with § 4.14. The rating schedule changes left some confused about whether or not separate evaluations for hypertension and hypertensive heart disease are now appropriate. To eliminate the confusion, we propose to add a new note (3) under diagnostic code 7101, hypertensive vascular disease, in § 4.104, stating that hypertension will be separately evaluated from hypertensive heart disease and other types of heart disease.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Approved: June 26, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4 (subpart B) is proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

2. Section 4.96 is amended by adding paragraph (d) preceding the authority citation at the end of the section to read as follows:

§ 4.96 Special provisions regarding evaluation of respiratory conditions.

* * * * * *

(d) *Special provisions for the application of evaluation criteria for diagnostic codes 6600, 6603, 6604, 6825–6833, and 6840–6845.* (1) Pulmonary function tests (PFT's) are required to evaluate these conditions except:

(i) When the results of a maximum exercise capacity test are of record and are 20 ml/kg/min or less. If a maximum exercise capacity test is not of record, evaluate based on alternative criteria.

(ii) When pulmonary hypertension (documented by an echocardiogram or cardiac catheterization), cor pulmonale, or right ventricular hypertrophy, has been diagnosed.

(iii) When there have been one or more episodes of acute respiratory failure.

(iv) When outpatient oxygen therapy is required.

(2) If the DLCO (SB) (Diffusion Capacity of the Lung for Carbon Monoxide by the Single Breath Method) test is not of record, evaluate based on alternative criteria as long as the examiner states why the test would not be useful or valid in a particular case.

(3) When the PFT's are not consistent with clinical findings, evaluate based on the PFT's unless the examiner states why they are not a valid indication of respiratory functional impairment in a particular case.

(4) Post-bronchodilator studies are required when PFT's are done for disability evaluation purposes except when the results of pre-bronchodilator pulmonary function tests are normal or when the examiner determines that post-bronchodilator studies should not be done and states why.

(5) When evaluating based on PFT's, use post-bronchodilator results in applying the evaluation criteria in the rating schedule unless the post-bronchodilator results were poorer than the pre-bronchodilator results. In those cases, use the pre-bronchodilator values for rating purposes.

(6) When there is a disparity between the results of different PFT's (FEV–1 (Forced Expiratory Volume in one second), FVC (Forced Vital Capacity), etc.), so that the level of evaluation would differ depending on which test result is used, use the test result that the examiner states most accurately reflects the level of disability.

(7) Consider a decreased FEV–1/FVC ratio to be normal if the FEV–1 is greater than 100 percent.

* * * * *

3. Section 4.100 is added to read as follows:

§ 4.100 Application of the evaluation criteria for diagnostic codes 7000–7007, 7011, and 7015–7020.

(a) Whether or not cardiac hypertrophy or dilatation (documented by electrocardiogram, echocardiogram, or X-ray) is present and whether or not there is a need for continuous medication must be ascertained in all cases.

(b) Even if the requirement for a 10% (based on the need for continuous medication) or 30% (based on the presence of cardiac hypertrophy or dilatation) evaluation is met, METs testing is required in all cases except:

(1) When there is a medical contraindication.

(2) When the left ventricular ejection fraction has been measured and is 50% or less.

(3) When chronic congestive heart failure is present or there has been more than one episode of congestive heart failure within the past year.

(4) When a 100% evaluation can be assigned on another basis.

(c) If left ventricular ejection fraction (LVEF) testing is not of record, evaluate based on the alternative criteria unless the examiner states that the LVEF test is needed in a particular case because the available medical information does not sufficiently reflect the severity of the veteran's cardiovascular disability.

4. Section 4.104, diagnostic code 7101 is amended by adding a Note 3 to read as follows:

§ 4.104 Schedule of ratings—cardiovascular system.

DISEASES OF THE HEART

	Rating
* * * * *	
7101 Hypertensive vascular disease (hypertension and isolated systolic hypertension):	
* * * * *	

Note (3): Evaluate hypertension separately from hypertensive heart disease and other types of heart disease.

* * * * *

[FR Doc. 02–21366 Filed 8–21–02; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Simplified Address Format for Letter-Size and Flat-Size Standard Mail and Periodicals

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would amend some of the standards and identification procedures for Standard Mail and Periodicals letter-size and flat-size mail using the simplified address format as provided in *Domestic Mail Manual* (DMM) A040.4.0. This proposal would improve the processing and distribution of such mail and would also clarify and expand the standards for identifying this mail that does not bear a specific delivery address.

DATES: Comments must be received on or before September 23, 2002.

ADDRESSES: Mail or deliver written comments to the manager, Mail Preparation and Standards, Postal Service Headquarters, 1735 N Lynn Street, Suite 3025, Arlington, Virginia 22209–6038. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at Postal Service Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, Washington, DC. Comments may also be submitted via fax to 703–292–4058, ATTN: O.B. Akinwole.

FOR FURTHER INFORMATION CONTACT: OB Akinwole at (703) 292–3643.

SUPPLEMENTARY INFORMATION: Some mailers elect to use the simplified form of address for their mass mailings. Simplified address is an alternate-addressing format that allows mailers to prepare mailpieces without using individual names and addresses within very specific requirements. Instead of using individual addresses, the mailpieces are simply addressed as "Postal Customer" (or a similar designation as permitted). Eligibility to use the simplified address format is determined by the type of route selected for distribution, and in some instances by the type of mailer, as follows:

- Rural Routes, Highway Contract Routes, and Post Office Boxes. Any mailer may use simplified address format for the distribution of mail to rural routes, highway contract routes, and Post Office boxes at offices without city carrier service. Distribution of such mail is made to each boxholder on a rural route or highway contract route, each family on a rural route or highway contract route (at any Post Office), or all Post Office boxholders at a Post Office without city carrier service.
- City Routes and Post Office Boxes. Only certain authorized governmental entities may use the simplified address format for the distribution of mail to city routes or to Post Office boxes at Post Offices with city carrier service. Authorized governmental entities include U.S. Congress and Federal Government agencies or state, county, or municipal governments, and the governments of the District of Columbia, the Commonwealth of Puerto Rico, and any U.S. territory or possession listed in *Domestic Mail Manual* (DMM) G010.

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Distribution of such mail must be made to each stop or possible delivery on city carrier routes, or to each Post Office box at Post Offices with city carrier service.

Under this proposal, *Domestic Mail Manual* (DMM) A040 would be revised to clarify the preparation requirements for letters and flats that use the simplified address format. Additionally, all congressional mailings using the simplified address format would use PS Tag 11, Congressional Mail, "Postmaster—Open and Distribute" on all containers to ensure appropriate handling through downstream postal processes. This tag, which would help identify congressional mail as it moves through the mailstream, would be firmly attached to the mailing container.

These proposed clarifications are a result of recommendations and suggestions from mailers and Postal Service personnel. The proposal would ensure that customer expectations for accurate processing and timely delivery are met. This would be achieved by clarifying and reinforcing procedures that would increase the identification of containers used in preparation of this type of mail. The Postal Service and mailers who use this mail format believe that clarifying and reinforcing the preparation and container labeling requirements would enable more accurate processing of the mail. It would also help maintain the integrity of mail using the simplified address format and prevent potential service breakdowns that may occur when such mail is inadvertently separated from the container identifying its destination as a result of inadequate preparation and container labeling. These discrepancies can cause unnecessary delays during postal handling and may increase postal processing costs.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions to the DMM, incorporated by reference in the *Code of Federal Regulations* (See CFR part 111).

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend *Domestic Mail Manual* A040, E200, and M200 as follows:

Domestic Mail Manual (DMM)

A Addressing

A000 Basic Addressing

* * * * *

A040 Alternative Addressing Formats

1.0 . SIMPLIFIED ADDRESS

* * * * *

1.2 Use—City Routes, P.O. Boxholders

[Revise 1.2 by deleting the last sentence in the first paragraph and replacing it with the following sentence:]

* * * The following also applies:

* * *

* * * * *

1.3 Mail Preparation

[Revise 1.3 as follows:]

All pieces must be prepared in carrier route or 5-digit carrier route or carrier routes containers; 3-digit carrier route or carrier routes containers are not allowed. All flat-size pieces must be prepared in carrier route or 5-digit carrier sacks. All pieces for the same carrier route must be tied in packages of 50, so far as practicable, and each package must bear a facing slip showing desired distribution (e.g., 5-digit ZIP Code and route number). If the pieces are tied in quantities other than 50 each, the actual number must be shown on the facing slip. Delivery statistics for routes may be obtained as described in A930. Pieces in such mailings must also meet the following standards:

a. All pieces must be in the same processing category.

b. Pieces must be marked according to M012.

c. Letter-size pieces must be prepared in trays, and flat-size pieces must be prepared in sacks under M220 or M620, as applicable.

d. If selective distribution is desired, enough pieces must be presented to cover the route or routes selected.

[Delete 1.4. Redesignate 1.5, 1.6, and 1.7 as 1.4, 1.5 and 1.6, respectively.]

* * * * *

4.0 CONGRESSIONAL FRANK

* * * * *

[Redesignate current 4.3 and 4.4 as 4.4 and 4.5, and add new 4.3 to read as follows:]

4.3 Mail Preparation

Mailers must prepare containers of mail using the simplified address format in the manner listed below:

a. Containers of congressional frank mailpieces using the simplified address format must be prepared under A040.

b. PS Tag 11, *Congressional Mail*, "Postmaster—Open and Distribute" must be securely affixed to each sack or tray of congressional mail to ensure adequate identification of the mail. On trays, the tag must be affixed to the end that bears the tray label.

[Redesignate current 4.3 and 4.4 as 4.4 and 4.5, and add new 4.3 to read as follows:]

* * * * *

E Eligibility

* * * * *

E200 Periodicals

E230 Carrier Route Rates

* * * * *

3.0 WALK-SEQUENCE DISCOUNTS

* * * * *

3.3 Addressing Standards

[Revise 3.3b as follows:]

b. Official matter, whether mailed under congressional frank or by certain government entities for delivery on a city route, may use the appropriate simplified address format described in A040.

* * * * *

M Mail Preparation and Sortation

* * * * *

M200 Periodicals (Nonautomation)

* * * * *

M220 Carrier Route Rates

1.0 BASIC INFORMATION

1.1 General Preparation Standards

[Add new item h to read as follows:]

* * * h. Pieces with a simplified address must meet the corresponding preparation standards in A040 and the eligibility standards in E215.

* * * * *

[Revise the heading of 3.0 to read as follows:]

3.0 PREPARATION (LETTER-SIZE PIECES)

[Designate 3.0 as 3.1 and add new 3.2 to read as follows:]

3.2 Tray Line 2 for Pieces With Simplified Address

For trays that contain letter-size pieces with a simplified address prepared under A040, use "MAN" on Line 2 in place of "BC."

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–21461 Filed 8–21–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 264–0355b; FRL–7258–4]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns the emission of volatile organic compounds (VOC) from steam drive crude oil production wells.

DATE: Any comments on this proposal must arrive by September 23, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted rule revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revision and TSD at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of the local MBUAPCD Rule 427. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 16, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–21436 Filed 8–21–02; 8:45 am]

BILLING CODE 0560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7265–8]

National Emission Standards for Hazardous Air Pollutants: Chlorine and Hydrochloric Acid Emissions From Chlorine Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The EPA is announcing the extension of the public comment period on the proposed decision not to regulate national emission standards for hazardous air pollutants for chlorine production facilities. We originally requested comments on the proposed rule by September 3, 2002 (67 FR 44713, July 3, 2002). We are extending the deadline for written comments to October 3, 2002 because the docket for the proposed rule, which contains pertinent information related to the proposal, was not available for inspection prior to July 31, 2002.

DATES: Comments may be submitted by October 3, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2002–09, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket Number A–2002–09, Room Number B108, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section. Comments may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov*. Comments submitted by e-mail must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in WordPerfect® version 5.1, 6.1, or 8 file format. All comments and data submitted in electronic form must be identified by the docket number A–2002–09. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: OAQPS Document Control Officer, C404–02, Attention: Mr. Iliam D. Rosario, U.S. EPA, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket. Information related to the proposed standards is available for inspection at the Air and Radiation Docket and Information Center, Docket No. A–2002–09. The docket is located at the U.S. EPA, 1301 Constitution Avenue, NW., Room Number B108, Washington, DC 20460, telephone (202) 260–7548. The docket is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Iliam D. Rosario, Metals Group, Emission Standards Division, C439–02, U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5308; facsimile number (919) 541–5450; electronic mail address *rosario.iliam@epa.gov*.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations,

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Recordkeeping and reporting requirements.

Dated: August 16, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–21437 Filed 8–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7265–7]

RIN 2060–AE85

National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The EPA is announcing the extension of the public comment period on the proposed national emission standards for hazardous air pollutants (NESHAP) for mercury cell chlor-alkali plants. We originally requested comments on the proposed rule by September 3, 2002 (67 FR 44672, July 3, 2002). We are extending the deadline for written comments to October 3, 2002 because the docket for the proposed rule, which contains pertinent information related to the proposal, was not available for inspection prior to July 31, 2002. In addition, we have received a request for a 30-day extension from the Chlorine Institute to provide more time to evaluate the provisions contained in the proposed rule and to provide detailed comments.

DATES: Comments may be submitted by October 3, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2000–32, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket Number A–2000–32, Room Number B108, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section. Comments may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov*. Comments submitted by e-mail must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in WordPerfect® version 5.1, 6.1, or 8 file format. All comments and data submitted in electronic form must be identified by the docket number A–2000–32. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: OAQPS Document Control Officer, C404–02, Attention: Mr. Iliam D. Rosario, U.S. EPA, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket. Information related to the proposed standards is available for inspection at the Air and Radiation Docket and Information Center, Docket No. A–2000–32. The docket is located at the U.S. EPA, 1301 Constitution Avenue, NW, Room Number B108, Washington, DC 20460, telephone (202) 260–7548. The docket is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Iliam D. Rosario, Metals Group, Emission Standards Division, C439–02, U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5308; facsimile number (919) 541–5450; electronic mail address *rosario.iliam@epa.gov*.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Recordkeeping and reporting requirements.

Dated: August 15, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–21438 Filed 8–21–02; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 67, No. 163

Thursday, August 22, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 16, 2002.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: USDA Biological Shipment Record—Beneficial Organisms.

OMB Control Number: 0518–0013.

Summary of Collection: The Biological Control Documentation Program records the importation and release of foreign biological control agents. Provision of the data is entirely voluntary and is used to populate the USDA "Release of Beneficial Organisms in the United States and Territories" (ROBO) database.

Need and Use of the Information: The Agricultural Research Service will collect information on the biological/control and taxonomic research program by recording the introduction and release of non-indigenous biological control organisms in the pollinators in the United States. If information were not collected there would be no systematic method for the collection of such information.

Description of Respondents: Federal Government; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 100.

Frequency of Responses: Reporting: On occasion; annually.

Total Burden Hours: 25.

Economic Research Service

Title: Food Security Supplement to the Current Population Survey.

OMB Control Number: 0536–0043.

Summary of Collection: The Food Security Supplement is sponsored by the Economic Research Service (ERS) as a research and evaluation activity authorized under Section 17 of the Food Stamp Act of 1977. ERS is collaborating with the Food and Nutrition Service (FNS) and the Bureau of Census to continue this program of research and development. The Food Stamp Program (FSP) is currently the primary source of nutrition assistance for low-income Americans enabling households to improve their diet by increasing their food purchasing power. As the nation's primary public program for ensuring food security and alleviating hunger, USDA needs to regularly monitor these conditions among its target population. This need requires that USDA continue basic data collection, analysis, and evaluation.

Need and Use of the Information: ERS will collect information from the Current Population Survey Food Security Supplement to routinely obtain data from a large, representative national sample in order to develop a measure that can be used to track the prevalence of food insecurity and hunger within the U.S. population, as a whole, and by important population subgroups, and to continue development and improvement of methods for measuring these conditions. The data collected will partially fulfill the requirements of the Congressionally mandated 10-Year Plan for the National Nutrition Monitoring and Related Research Program.

Description of Respondents: Individuals or households.

Number of Respondents: 57,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 7,126.

Farm Service Agency

Title: Offer Forms.

OMB Control Number: 0560–0177.

Summary of Collection: The Agricultural Trade Development and Assistance Act of 1954, as amended, (Title II, Pub. L. 480), Section 416(b) of the Agricultural Act of 1949, as amended (Section 416(b)), and the Food for Progress Act of 1985, as amended (for Food for Progress) authorizes CCC's Export Operations Division to procure, sell and transport agricultural commodities, and obtain discharge/delivery survey information. Contractors, vendors, and steamship companies submit competitive offers for agricultural commodities and services. The Farm Service Agency (FSA) will collect information using several forms.

Need and Use of the Information: The information collected will enable Kansas City Commodity Office (KCCO) to evaluate offers impartially, purchase or sell commodities, and obtain services to meet domestic and export program needs. Without the information KCCO could not meet program requirements.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 2,025.

Frequency of Responses: Recordkeeping; reporting: On occasion; quarterly; weekly; semi-annually; monthly; annually; other (Bi-weekly & bi-monthly)

Total Burden Hours: 6,758.

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Rural Utilities Service

Title: Accounting Requirements for RUS Electric and Telecommunications Borrows.

OMB Control Number: 0572–0003.

Summary of Collection: Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture that makes loans (direct and guaranteed) to finance electric and telecommunications facilities in rural areas. Currently, there are approximately 685 active electric borrowers and 737 RUS telecommunications borrows. RUS does not own or operate rural electric facilities. Its function is to provide, through self-liquidating loans and technical assistance, adequate and dependable electric and telecommunications service to rural people under rates and conditions that permit productive use of these utility services. RUS borrowers, as all businesses, need accounting systems for their own internal use as well as external use. Such records are maintained as part of normal business practices. Without systems, no records would exist, for example, or what they own or what they owe. Such records systems provide borrowers with information that is required by the manager and board of directors to operate on a dialy basis, to complete their tax returns, and to support requests to state regulatory commissions for rate approvals.

Need and Use of the Information: RUS collects information to evaluate a borrower's financial performance, to determine whether current loans are at risk, and to determine the credit worthiness of future loans. If basic financial records were not maintained, the borrower, its investors, and RUS would be unable to evaluate a borrower's financial performance.

Description of Respondents: Not-for-profit institutions; business or other for-profit.

Number of Respondents: 1,422.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 38,394.

Animal and Plant Health Inspection Service

Title: Imported Fire Ant.

OMB Control Number: 0579–0102.

Summary of Collection: The Plant Protection and Quarantine Service (PPQ) of USDA's Animal and Plant Health Inspection Service (APHIS) has the responsibility of enforcing quarantines that are designed to prevent Imported Fire Ants from invading areas of the United States that are not yet infested. Information is collected through a variety of forms and certificates to ensure that nursery stock are free of infestation and to regulate movement of specific articles that might carry Imported Fire Ants from infested areas to non-infested areas.

Need and Use of the Information: APHIS requires a variety of forms and certifications to be provided by nursery owners to ensure that plant stock is visually inspected for Imported Fire Ants and to document what treatment was performed if Imported Fire Ants were detected. Additionally, nursery owners must provide information on the movement of regulated items from quarantined areas. APHIS officials used this information to ensure compliance with the Federal and State Imported Fire Ant regulations. Without the collection of this information, APHIS would be unable to prevent Imported Fire Ants from moving beyond the quarantine zone.

Description of Respondents: Business or other for-profit; Federal Government; State, Local or Tribal Government; Farms.

Number of Respondents: 4,024.

Frequency of Responses: Recordkeeping; Reporting: Other (twice monthly).

Total Burden Hours: 5,010.

Animal and Plant Health Inspection Service

Title: Foot-and-Mouth Disease; Prohibition on Importation of Farm Equipment.

OMB Control Number: 0579–0195.

Summary of Collection: 21 U.S.C. authorizes sections 111, 114, 114a, 115, 120, 121, 125, 126 134a, 134c, 134f, and 134g. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as tuberculosis, as well as to take actions to prevent and to manage exotic diseases such as foot-and-mouth disease (FMD) and other foreign diseases. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service (APHIS) ability to compete in exporting animals and animal products. Because of the recent increase in the spread of FMD in different parts of the world, APHIS published an interim rule to prohibit the importation of all used farm equipment into the United States from regions in which FMD exists, unless the equipment has been cleaned free of all soil and other particulate material in the exporting region.

Need and Use of the Information: APHIS will collect information through the use of a certification statement in which the exporter states that the cleaning of the equipment has been done. This is necessary to help prevent the introduction of foot-and-mouth disease into the United States. If the information were not collected APHIS would be forced to discontinue the importation of any used farm equipment from FMD regions, a development that could have a damaging financial impact on exporters and importers of this equipment.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 1,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,000.

Animal and Plant Health Inspection Service

Title: Center for Animal Health Monitoring Catfish 2003.

OMB Control Number: 0579–NEW.

Summary of Collection: The Department of Agriculture is responsible for protecting the health of our Nation's livestock and poultry populations by preventing the introduction and interstate spread of contagious, infectious, or communicable diseases of livestock (including farm-raised fish) and poultry and for eradicating such diseases from the United States when feasible. The Animal and Plant Health Inspection Service (APHIS) operates the National Animal Health Monitoring System (NAHMS), which collects on a national basis, statistically valid and scientifically sound data on the prevalence and economic importance of livestock and poultry diseases. NAHMS will initiate a national study titled Catfish 2003. The Catfish 2003 study will take place on farms in Alabama, Arkansas, Louisiana, and Mississippi. 7 U.S.C. 391, the Animal Industry Act of 1884, which established the precursor of the Animal and Plant Health Inspection Service, Veterinary Services, the Bureau of Animal Industry, mandates collection and dissemination of animal and poultry health data and information.

Need and Use of the Information: APHIS will use the information collected to (1) address emerging issues, (2) determine the economic consequences of disease, (3) and develop trade strategies and support trade decisions. APHIS will also collect information on the aspects of the catfish growers operation ranging from stocking and feeding practices to pest management practices.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government; Farms.

Number of Respondents: 1,080.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 495.

Animal and Plant Health Inspection Service

Title: National Animal Health Monitoring System Dairy 2002.

OMB Control Number: 0579–NEW.

Summary of Collection: The Department of Agriculture is responsible for protecting the health of our Nation's livestock and poultry populations by preventing the introduction and interstate spread of contagious, infectious, or communicable diseases of livestock and poultry and for eradicating such diseases from the United States when feasible. The Animal and Plant Health Inspection Service (APHIS) operates the National Animal Health Monitoring System (NAHMS), which collects on a national basis, statistically valid and scientifically sound data on the prevalence and economic importance of livestock and poultry diseases. NAHMS will initiate a national study titled Dairy 2002. The data collected through the national study will be used to describe Johne's management strategies, evaluate management factors associated with key food safety pathogens, describe level of understanding and preparedness of U.S. dairy producers to respond to threats of foreign animal diseases, and describe biosecurity practices, baseline dairy health, and animal waste handling practices. 7 U.S.C. 391, the Animal Industry Act of 1884, which established the precursor of the Animal and Plant Health Inspection Service, Veterinary Services, the Bureau of Animal Industry, mandates collection and dissemination of animal and poultry health data and information. APHIS will use several forms to collect information.

Need and Use of the Information: APHIS will use the information collected to (1) predict or detect national and regional trends in disease emergence and movement, (2) address emerging issues, (3) determine the economic consequences of diseases, and (4) develop trade strategies and support trade decisions. Without this type of national data, the U.S. ability to detect trends in management, production and health status that increase/decrease farm economy, either directly or indirectly, would be reduced or nonexistent. The ability to respond to international trade issues involving the health status of the U.S. dairy herd would be severely reduced, jeopardizing the marketability of meat and byproducts.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government; Farms.

Number of Respondents: 8,405.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 6,680.

Food and Nutrition Service

Title: Evaluation of the NSLP Application and Verification Pilot Project.

OMB Control Number: 0584-NEW.

Summary of Collection: The National School Lunch Program (NSLP) provides federal financial assistance and commodities to schools serving lunches that meet required nutrition standards. Children living in families whose incomes are 130 percent or less of the federal poverty level qualify for free meals; those living in families whose income are between 131 and 185 percent of poverty qualify for reduced-price meals. A verification process instituted in the early 1980s required that each school verify the application of a small sample of families by requiring them to submit documentation of their income. During the late 1990s, USDA and members of Congress became concerned about an apparent increase in the rates of error in determining eligibility for free and reduced-price meals. The study found that the number of children approved for free meals exceeded by 20 percent. In response to concerns about apparent increases in the number of ineligible students approved for free and reduced-price meals, the Food and Nutrition Service (FNS) has undertaken a set of pilot demonstration designed to improve the process of approving students for free and reduced-price meals and verifying their eligibility.

Need and Use of the Information: FNS will collect information to improve the accuracy of the eligibility determination system; raise substantial barriers to income-eligible households; deter income-ineligible households from becoming approved for free/reduced price meals benefits. Not conducting this data collection would significantly impede USDA's ability to evaluate the impacts of the NSLP Application/ Verification Pilot Projects.

Description of Respondents: Individuals or household; State, Local, or Tribal Government.

Number of Respondents: 3,216.

Frequency of Responses: Reporting: On occasion; other (1 time).

Total Burden Hours: 2,308.

Food and Nutrition Service

Title: Case Study of NSLP Verification Outcomes in Large Metropolitan Areas.

OMB Control Number: 0584–NEW.

Summary of Collection: The National School Lunch Program (NSLP) provides federal financial assistance and commodities to schools serving lunches that meet required nutrition standards. Children living in families whose incomes are 130 percent or less of the federal poverty level qualify for free meals; those living in families whose incomes are between 131 and 185 percent of poverty qualify for reduced-price meals. A verification process instituted in the early 1980s required that each school verify the application of a small sample of families by requiring them to submit documentation of their income. During the late 1990s, USDA and members of Congress became concerned about an apparent increase in the number of children approved for free and reduced-price meals whose family income made them ineligible. The planned Case Study of Verification Outcomes in Large Metropolitan School Food Authorities will document the outcomes of verification in 21 large metropolitan school districts around the country. Also, through in-person interviews, it will independently assess the eligibility status of two groups of verified cases: (1) Those students continuing to attend district schools whose benefits are terminated for failure to respond to the verification request, and (2) those students whose benefits are unchanged as a result of the verification process.

Need and Use of the Information: FNS will collect information about whether the verification process terminates the benefits of students whose incomes would make them eligible and also evaluate the collection and processing of information by the School Food Authority. Not conducting this data collection would significantly impede the ability of USDA and Congress to evaluate potential changes to the NSLP that might be considered to improve program targeting and administration.

Description of Respondents: Individuals or household; State, Local or Tribal Government.

Number of Respondents: 1,113.

Frequency of Responses: Reporting: On occasion; other (1 time).

Total Burden Hours: 672.

Forest Service

Title: "How Are We Doing"? Customer Service Comment Card.

OMB Control Number: 0596–0146.

Summary of Collection: Executive Order 12862 issued September 11, 1993, directed Federal agencies to change the way they do business, to reform their management practices, to provide service to the public that matches or exceeds the best service available in the private sector, and to establish and implement customer service standards

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to carry out principles of the National Performance Review. In response to this Executive Order, the Forest Service (FS) set up their customer service comment card program to provide an easy way for the public and partners to communicate their level of satisfaction with FS services and facilities.

Need and Use of the Information: FS will collect information to monitor customer perceptions and provide a means to learn about and address customer complaints. FS will also collect information to help them to improve services and facilities.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 15,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,000.

Food Safety and Inspection Service

Title: Pathogen Reduction/Hazard Analysis and Critical Control Point (HACCP) System.

OMB Control Number: 0583–0103.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451). These statutes mandate that FSIS protect the public by ensuring the meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS has begun to build the principle of prevention into its inspection program and requires regulated establishments to prepare operating plans and continuously report performance against the plans.

Need and Use of the Information: Information will be collected from establishments as proof that standard operating plans have been developed. Additionally, information must be reported and pertinent records maintained on the occurrence and numbers of pathogenic microoganisms on meat and poultry products. FSIS will use this information during the inspection process to determine whether an establishment should change its operating procedures so that the public's health is protected.

Description of Respondents: Business or other for-profit.

Number of Respondents: 7,374.

Frequency of Responses: Recordkeeping; Reporting: On occasion; other (daily).

Total Burden Hours: 7,904,222.

Barbara A. Lacour,

Departmental Information Clearance Officer.

[FR Doc. 02–21375 Filed 8–21–02; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–023N]

FSIS Security Guidelines for Food Processors; Notice of Availability

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability; request for public comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of the Agency's current Security Guidelines for Food Processors. These guidelines were developed to assist Federal- and State-inspected plants that produce meat, poultry, and egg products in identifying ways to strengthen their security plans to protect against acts of bioterrorism. FSIS recognizes that Federal- and State-inspected plants may also be aware of, and be adopting, security guidelines from other government agencies, industry organizations, and private sector experts. However, plants that do not have access to specialized security planning advice should find these guidelines useful as they develop and improve their food security plans.

These guidelines were designed and developed to meet the particular needs of meat, poultry, and egg processing plants and to be easily understood and readily adaptable by plant officials. While these guidelines are voluntary, and plants may choose to adopt measures suggested by many different sources, it is vital that all plants take steps to assure the security of their operations. The guidelines are available in both English and Spanish.

DATES: Submit written comments on the security guidelines to the FSIS Docket Clerk no later than October 21, 2002.

ADDRESSES: Copies of the FSIS Security Guidelines are available from the FSIS Docket Clerk, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700. Copies also are available on the Internet at: *http:www.fsis.usda.gov/oppde/rdad/publications.htm.* Send all written comments on the proposed security guidelines to the above address. All comments received will be considered part of the public record and will be available for viewing in the Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Perfecto Santiago, Assistant Deputy Administrator, Program Development Staff, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; telephone (202) 205–0699 or fax (202) 401–1760.

SUPPLEMENTARY INFORMATION: For nearly a century, the U.S. Department of Agriculture (USDA) has been protecting the Nation's food supply. Over this long history, FSIS has worked to develop the infrastructure to confront new food biosecurity challenges. FSIS has thousands of food inspectors and veterinarians working in meat, poultry and egg product plants every day, and at ports of entry to this country to prevent, detect, and act in response to food safety emergencies.

In January 2002, President Bush signed into law the FY 2002 Defense Appropriations Act, which includes $328 million in emergency funding for the USDA to further protect the public by strengthening essential programs and services related to biosecurity issues. FSIS will receive $15 million for security upgrades and bioterrorism protection. Of that amount, $10 million is allocated to conduct a food safety bioterrorism protection program. This includes education and specialized training for food safety regulatory and inspection personnel; technical assistance for State, local and international food safety authorities; a food biosecurity awareness campaign targeted to the general public and regulated industries; and expanded FSIS laboratory capabilities to test meat and poultry products for bacterial and chemical agents. Physical security, cyber-security and telecommunications at government facilities also will be strengthened.

FSIS recognizes that American food producers have a vested interest in making biosecurity a priority. FSIS will continue to seek input from stakeholders in developing guidance on biosecurity matters. To ensure that the producers of meat, poultry, and egg products have access to information to protect themselves, FSIS developed the guidelines. These guidelines include measures food processing establishments may consider for the prevention and handling of intentional acts of contamination. The guidelines address the need for establishments to develop and maintain food security plans that cover both inside and outside security. The guidelines also include security measures for slaughter and processing, storage, shipping and receiving, water and ice supply, mail handling, and personnel.

FSIS is providing these guidelines to its field employees, who will assist plants that seek further information or advice; however, inspectors will not mandate adoption of any of the guidelines. The Agency intends to continue working to enhance guidance to businesses engaged in the production and distribution of regulated food and to work with other agencies to provide additional guidance for transportation, storage, and handling. The guidelines were developed as a first step, but FSIS recognizes the need for food protection guidelines from the ranch or farm to the consumer's table. FSIS invites public comment to strengthen these steps as part of the Homeland Security effort for the food and agricultural sectors.

Additional Public Notification

Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice and informed about the mechanism for providing their comments, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available online through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information, contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv), go to the "Constituent Update" page on the FSIS web site at *http://www.fsis.usda.gov/oa/update.htm.* Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done in Washington, DC, on August 18, 2002.

William J. Hudnall,

Acting Administrator.

[FR Doc. 02–21376 Filed 8–21–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Medicine Bow-Routt National Forests and Thunder Basin National Grassland Jackson County, CO; Green Ridge Mountain Pine Beetle Analysis

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental effects of a site specific proposal to salvage, reduce the spread and minimize further mortality from the existing mountain pine beetle epidemic, within the Green Ridge Mountain Pine Beetle Analysis Area of the Parks Ranger District of the Medicine Bow-Routt National Forests within Jackson County, Colorado. A small portion of the preventive treatments is proposed within an inventoried roadless area.

DATES: The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review during December 2002. At that time, the EPA will publish a Notice of Availability (NOA) of the draft EIS in the **Federal Register.** The comment period on the draft EIS will be for a period of not less than 45 days from the date the EPA publishes the NOA in the **Federal Register.** It is important that those interested in the management of this area to comment at that time.

The final EIS is expected to be available in March 2003. In the final EIS, the Forest Service will respond to any comments received during the public comment period that pertain to the environmental analysis. Those comments and the Forest Service responses will be disclosed and discussed in the final EIS and will be considered when the final decision about this proposal is made.

ADDRESSES: Send written comments to Terry DeLay, Brush Creek/Hayden Ranger District, PO Box 249, Saratoga, WY 82331. Electronic mail (e-mail) may be sent to *tdelay@fs.fed.us* and FAX may be sent to (307) 326–5250. Telephone: (307) 326–2518.

FOR FURTHER INFORMATION CONTACT: Mail correspondence to Terry DeLay, Brush Creek/Hayden Ranger District, PO Box 249, Saratoga, WY 82331, (telephone (307) 326–2518), or Chuck Oliver, District Ranger, Parks Ranger District, PO Box 158, Walden, CO 80480, (telephone (970) 723–2750). Electronic mail (e-mail) may be sent to *tdelay@fs.fed.us* and FAX may be sent to (307) 326–5250.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this project is to reduce the spread of mountain pine beetle, salvage dead trees, and reforest affected areas on National Forest lands within the Green Ridge Analysis Area, in order to help protect forested areas on adjacent private land, and to alleviate potential negative effects of the beetle epidemic to the various resources on this portion of the Forest.

Proposed Action

The proposed action is a mix of protection, prevention, suppression, and restoration treatment activities geared to address the purpose and need of reducing the spread of mountain pine beetle on National Forest lands within the analysis area, including commercial timber sale, prescribed burning and precommercial thinning.

Responsible Official

Rick Cables, Regional Forester, USDA Forest Service, Rocky Mountain Region, 740 Simms Street, Golden, Colorado 80401, is the official responsible for making the decision on this action. He will document his decision and rationale in a Record of Decision.

Nature of Decision To Be Made

The Responsible Official will consider the results of the analysis and its findings and then document the final decision in a Record of Decision (ROD). The decision will include a determination whether or not to implement the proposed action or another alternative.

Scoping Process

The National Environmental Policy Act (NEPA) requires an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to the proposed action.

The Forest Service is soliciting comments during the scoping phase of the environmental analysis process from Federal, State and local agencies, Indian Tribes, and organizations and individuals who may be interested or

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affected by the decision. The analysis process will include:

1. Identification of the issues to be addressed.
2. Identification of the issues to be analyzed in detail.
3. Elimination of non-significant issues, issues addressed by previous environmental analyses, and issues not within the scope of this decision.

Public Involvement

Public scoping describing the Green Ridge Mountain Pine Beetle Analysis Area was initiated on July 31, 2002. Comments from scoping efforts will be reviewed to identify potential issues for this analysis. While comments are welcome at any time, comments received within 30 days of the publication of this notice in the **Federal Register** will be most useful for the identification of issues and the analysis of alternatives. As previously mentioned, comments may be sent by electronic mail (e-mail) to *tdelay@fs.fed.us*. Written comments may be mailed to the Brush Creek/Hayden Ranger District, PO Box 249, Saratoga, WY 82331, Attention: Terry DeLay. Please reference the *Green Ridge Mountain Pine Beetle Analysis EIS* on the subject line. The name and mailing address of the commenter should be provided with their comments so that future documents pertaining to this environmental analysis and the decision can be provided to interested parties.

Preliminary Issues

The following potential issues and concerns were identified through internal scoping:

(1) Beetle treatments within an inventoried roadless area, (2) beetle spread from National Forest to adjacent private lands, (3) cumulative impacts of past and proposed treatments, and (4) the **Federal Register** listed the town of Rand, Colorado, as one of the communities nationwide that are at risk from wildfire(s).

Release of Names

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within ten (10) days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Action publishes the notices of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised during the draft environmental impact statement stage, but are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F.Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns related to the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft document. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives displayed in the document. Reviewers should refer to the Council on Environmental Quality Regulations at 40 CFR 1503.3 for implementing the procedural provisions of the National Environmental Policy Act for addressing these points.

Dated: August 2, 2002.

Rick D. Cables,

Regional Forester.

[FR Doc. 02–21452 Filed 8–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sawtooth National Forest, Idaho; Upper and Lower East Fork Allotment Management Plan Analysis

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) for the Upper and Lower East Fork Allotments. The proposed action in the EIS is to authorize grazing through revised allotment management plans (AMPs) for the Upper East Fork Allotment and the Lower East Fork Allotment by reducing the stocking rate and reducing the area of the two allotments. The EIS will analyze the effects of the proposed action and alternatives. The agency gives notice of the full National Environmental Policy Act (NEPA) analysis and decision making process on the proposal so interested and affected members of the public may participate and contribute to the final decision. The Sawtooth National Forest invites written comments and suggestions on the scope of the analysis and the issues to address.

DATES: Written comments concerning the proposed project should be postmarked within 30 days from the day after publication of this announcement in the **Federal Register.** Comments received in response to this solicitation, including the names and addresses to those who comment, will be considered part of the public record on this proposal and will be available to public inspection. The draft environmental impact statement is expected to be available for public review and comment in January, 2003 and the final environmental impact statement is expected to be available September, 2003.

ADDRESSES: Send written comments to Lisa Stoeffler, Deputy Area Ranger at Stanley Ranger Station; HC 64, Box 9900; Stanley, Idaho, 83278. Faxes should be sent to 208–774–3003 and e-mails to *lstoeffler@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project and scope of analysis should be directed to Seth Phalen, Team Leader, at the above address, or phone at (202) 774–3000.

SUPPLEMENTARY INFORMATION: The analysis area is located in the White Cloud Mountain range in Custer County, south of Clayton, ID and is administered by the Sawtooth National Recreation Area (SNRA) of the Sawtooth National Forest. The two allotments are located in portions of Townships 7 and 8 North and Ranges 15, 16, and 17 East, Boise Meridian. The proposed action will be in compliance with Sawtooth National Forest Land and Resource Management Plan (Forest Plan of 1987), as amended, which provides overall guidance for management of this area and Public Law 92–400, the Organic Act for the Sawtooth National Recreation Area.

Purpose and Need for Action

Existing conditions on the allotments do not meet the desired future conditions identified in the Forest Plan. The AMPs were written prior to the listing of threatened chinook salmon, steelhead trout, bull trout, Canada lynx and Utes' Ladies Tresses and do not reflect their needs. Ten years of monitoring the project area has shown consistent overuse of riparian vegetation. The purpose and need for the proposed action is to prepare new AMPs to meet the present Forest Service policy and direction, Forest Plan direction, standards and guidelines, and to protect recently listed species.

Proposed Action

The Proposed Action would authorize grazing on the allotments but at reduced stocking rates and would reduce the area available for grazing within the two allotments. AMPs would be revised to reflect these changes. An adaptive management strategy, which would allow for flexibility during the implementation for grazing strategy, would allow permittees to respond to changing conditions and unexpected results. Permitted numbers and seasons would be modified as necessary to meet standards, based on monitoring results of the previous season.

Possible Alternatives

Possible alternatives include: Alt. 1—continued grazing as currently permitted (No action); Alt. 2—reduced stocking rate and permitted area; Alt. 3—reduced stocking rate with the current permitted area; Alt. 4—current stock rate and permitted area under a deferred grazing system (applies to the Lower East Fork Allotment only), and Alt. 5—No grazing (grazing phased out).

Responsible Official

The responsible official is the Area Ranger of the Sawtooth National Recreation Area, Sawtooth National Forest.

Nature of the Decision To Be Made

The responsible official will decide if domestic livestock grazing can occur within the analysis area, and if so, where within the analysis area and at what intensity (timing and duration). The responsible official will also decide what structural range improvements (fences, water troughs, *etc.*), if any, are needed.

Scoping Process

Public notices have been placed in local newspapers.

Preliminary Issues

The following preliminary issues have been identified. (1) Livestock grazing may affect water quality and habitat for listed fish. (2) Livestock grazing may affect riparian and upland vegetation. (3) Livestock grazing may affect wildlife habitat. (4) Livestock grazing may affect the recreation experiences of visitors. (5) Changes in the current grazing numbers may affect the permittees.

Early Notice of Importance of Public Participation in Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days form the date of Environmental Protect Agency publishes the notice of availability in the **Federal Register.**

The Forest Services believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues raised by the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: August 16, 2002.

Ruth Monahan,

Sawtooth Forest Supervisor.

[FR Doc. 02–21402 Filed 8–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra and Sequoia National Forests' Resource Advisory Committee (RAC) for Fresno County will meet on September 17, 2002, 6:30–9:15 p.m. The Fresno County Resource Advisory Committee will meet at the Forest Supervisor's office Clovis, CA. The purpose of the meeting is for the Resource Advisory Committee to receive project proposals for recommendations to the Forest Supervisor for expenditure of Fresno County Title II funds.

DATES: The Fresno RAC meeting will be held on September 17, 2002. The meeting will be held from 6:30 p.m. to 9:15 p.m.

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ADDRESSES: The Fresno County RAC meeting will be held at the Sierra National Forest Supervisor's office, 1600 Tollhouse Road, Clovis, CA.

FOR FURTHER INFORMATION CONTACT: Sue Exline, USDA, Sierra National Forest, 1600 Tollhouse Road, Clovis, CA 93611; (559) 297–0706 ext. 4804; e-mail *skexline@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include; (1) Review and approve the July 16, 2002 meeting notes; (2) Consideration of Title II project proposals from the public and from the RAC members; (3) Confirm the date, location and agenda of the next meeting; (4) Public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: August 15, 2002.

Ray Porter,

District Ranger.

[FR Doc. 02–21353 Filed 8–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Central Idaho Resource Advisory Committee; Salmon-Challis National Forest; Butte, Custer, and Lemhi Counties, ID

AGENCY: Forest Service, USDA Forest Service.

ACTION: Notice of meeting of the Resource Advisory Committee.

SUMMARY: The Central Idaho Resource Advisory Committee will meet at 5 p.m., September 4, 2002 at the Lost River Ranger District Office, Mackay, Idaho. The 15-member committee will evaluate proposed resource projects for recommendation to the Salmon-Challis National Forest , using funds made available through Title II of the Secure Rural Schools and Community Self-determination Act. The meeting is open to the public and time will be scheduled for public comments.

The Central Idaho Resource Advisory Committee was established by the Secretary of Agriculture under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000 to work collaboratively with the Salmon-Challis National Forest to provide advice and recommendations consistent with the purposes of the Act.

George P. Matejko,

Forest Supervisor, Salmon-Challis National Forest, Designated Federal Official.

[FR Doc. 02–21403 Filed 8–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–001]

Potassium Permanganate From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 22, 2002.

FOR FURTHER INFORMATION CONTACT: John Conniff or Drew Jackson, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1009 or (202) 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245–day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On February 26, 2002, the Department published a notice of initiation of administrative review of the antidumping duty order on potassium permanganate from the People's Republic of China, covering the period January 1, 2001 through December 31, 2001. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 8780. The preliminary results are currently due no later than October 3, 2002.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit because of the time needed to consider certain factual issues in the case. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than January 31, 2003. *See* Decision Memorandum from Holly A. Kuga to Bernard T. Carreau, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the Department's main building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: August 16, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 02–21460 Filed 8–21–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Thursday, September 19, 2002. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the consensus process, select applicants for site visits, determine possible conflict of interest for site visited companies, review feedback to first stage applicants, discuss feedback checklist for Judges, begin stage III of the judging process, a debriefing on the State and Local Workshop and a program update. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register 48 hours in advance in order to be admitted. Please submit your name, time of arrival, email address and phone number to Virginia Davis no later than Monday, September 16, 2002, and she will provide you with instructions for admittance. Ms. Davis' e-mail address is *virginia.davis@nist.gov* and her phone number is 301/975–2361.

DATES: The meeting will convene September 19, 2002 at 9 a.m. and adjourn at 4:30 p.m. on September 19, 2002. It is estimated that the closed portion of the meeting will last from 9 a.m. until 1 p.m. and the open portion of the meeting will last from 1 p.m. until 4:30 p.m.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Building 222, Red Training Room, Gaithersburg, Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 11, 2002, that part of the meeting of the Judges Panel will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with section 552b(c)(4) of Title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: August 15, 2002.

Arden L. Bement, Jr.,

Director.

[FR Doc. 02–21462 Filed 8–21–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081902A]

Proposed Information Collection; Comment Request; Southeast Region Electronic Reporting Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 21, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Poffenberger, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, Florida 33149,(phone 305–361–4263).

SUPPLEMENTARY INFORMATION:

I. Abstract

This data collection activity is a one-time survey to collect information from persons and/or companies that have been issued a federal fisheries permit in the Southeast Region. The purpose of the survey is to collect on the availability and use of personal computers and whether these persons and/or companies would be willing to report electronically via the Internet. There are several methods that can be undertaken by the National Marine Fisheries Service to make reporting data more efficient through electronic reporting, but the availability of personal computers and their use is an important part of determining how best to provide this alternative reporting methodology.

II. Method of Collection

The Southeast Fisheries Science Center will conduct this survey through the mail. A short form has been developed that is to be filled out by the permit holder (usually the vessel owner or manager of the seafood processing company) and returned to the Center in a pre-addressed, postage-paid envelope.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations (seafood dealers and fishermen).

Estimated Number of Respondents: 6,500.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 540.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 16, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–21458 Filed 8–21–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by John T. Keegan From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

By letter dated September 6, 2001, Aram V. Terchunian filed with the Secretary of Commerce (Secretary) a notice of appeal on behalf of Peter and Nancy Fenner (Appellant), pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.*, and the Department of Commerce's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the New York Department of State (State) to the Appellant's consistency certification for a U.S. Army Corps of Engineers' permit to build a catwalk and dock at West Hampton Dunes.

The CZMA provides that a timely objection by a state precludes any federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the State's consistency objections based on either Ground I or Ground II. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) The activity furthers the national interest as articulated in §§ 302 or 303 of the CZMA, in a significant or substantial manner, (2) the national interest furthered by the activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively, and (3) there is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program. *See* 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within 30 days of the publication of this notice and should be sent to Ms. Suzanne Bass, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Copies of comments will also be forwarded to the Appellant and the State.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the State and the Office of the Assistant General Counsel for Ocean Services.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Bass, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, 301–713–2967.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance]

Dated: August 4, 2002.

James R. Walpole,

General Counsel.

[FR Doc. 02–21453 Filed 8–21–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF ENERGY

[DE–PS07–02ID14265]

University Research for the High Temperature Superconductivity Program

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of competitive financial assistance solicitation.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for university research projects in partnership with a national laboratory in support of the High Temperature Superconductivity Program to expand the research base. The research must support Superconductivity for Electric Systems Program milestones, research objectives, and long-term goals. Information on Superconductivity for Electric Systems Program can be found at URL: *http://www.eren.doe.gov/superconductivity/pdfs/superconelectric_reg_materials.pdf.*

DATES: The issuance date of Solicitation Number DE–PS07–02ID14265 will be on or about August 15, 2002. The application, SF 424, technical proposal, and resumes, must have an IIPS transmission time stamp of not later than 5 p.m. MST on Friday, October 25, 2002. Late applications will not be considered.

ADDRESSES: Completed applications are required to be submitted via the U.S. Department of Energy Industry Interactive Procurement System (IIPS) at the following URL: *http://e-center.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Dahl, Contract Specialist at dahlee@id.doe.gov, facsimile at (208) 526–5548, or by telephone at (208) 526–7214.

SUPPLEMENTARY INFORMATION: DOE anticipates making approximately 5 cooperative agreement awards under this solicitation with a maximum estimated DOE funding of $200,000 per year for each cooperative agreement up to a three-year period, subject to the availability of funds. Approximately $3 million in federal funds are expected to be available to fund selected research projects over the three-year period. Cost share is not required. The solicitation is available in its full text via the Internet at the following address: *http://e-center.doe.gov.* The statutory authority for this program is the Department of Energy Organization Act of 1977, Public Law 95–91 and the Federal Non-Nuclear Energy Research and Development Act, Public Law 93.577. The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.087, Renewable Energy Research and Development.

Issued in Idaho Falls on August 15, 2002.

Michael L. Adams,

Acting Director, Procurement Services Division.

[FR Doc. 02–21418 Filed 8–21–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC02–520–000, FERC–520]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

August 16, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by October 18, 2002.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE, Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426 and should refer to Docket No. IC02–520–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's website at *www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–208–0258 or by e-mail to *efiling@ferc.fed.us.* Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. User assistance for FERRIS is available at 202–502–2222, or by e-mail to *contentmaster@ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)502–8415, by fax at (202)208–2425, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–520 "Application for Authority to Hold Interlocking Directorate Positions"[1] (OMB No. 1902–0083) is used by the Commission to implement the statutory provisions of Section 305(b) of the Federal Power Act (FPA), 16 U.S.C. 825d. Section 305(b) makes the holding of certain defined interlocking corporate positions unlawful unless the Commission has authorized the interlocks to be held, and requires the applicant to show in a form and manner as prescribed by the Commission, that neither public nor private interests will be adversely affected by the holding of the position. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 45.

Under part 45, each person that desires to hold interlocking positions must submit an application to the Commission for authorization, or if qualified, comply with the requirements for automatic authorization. The interlocking positions application requirements are set forth in Section 45.8; automatic authorization requirements are set forth in Section 45.9. In addition, a person already holding an existing authorized interlocking position, must apply for separate authorization under Section 45.4(a) when appointed to a new position within the same company. The information required under part 45 generally identifies the applicant, describes the various interlocking positions the applicant seeks authorization to hold, provides information on the applicant's financial interests, other officers and directors of the firms involved, and the nature of the business relationships among the firms.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
28	1	51.8	1,450

Estimated cost burden to respondents is $81,591: (1,450 hours / 2,080 hours per year × $117,041 per year). The cost per respondent is equal to $ 2,914.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the

[1] Interlocking Directorates is defined as a number of separately organized and functioning corporations managed by the same or nearly the same group of directors; bringing about a community of interest between the companies.

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burden of the collection of information on those who are to respond.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21385 Filed 8–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC02–598–000, FERC–598]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

August 16, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by October 18, 2002.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE, Washington, DC 20426. Comments may be filed either in paper format or electronically. Those filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 and should refer to Docket No. IC02–598–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *www.ferc.gov* and click on "Make An E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–208–0258 or by e-mail to *efiling@ferc.fed.us*. Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. User assistance for FERRIS is available at 202–502–8222, or by e-mail to *contentmaster@ferc.fed.us*.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 208–2425, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–598 "Determination for Entities Seeking Exempt Wholesale Generator Status" (OMB No. 1902–0166) is used by the Commission to implement the statutory provisions of Section 32 of the Public Utility Holding Company Act of 1935 (PUHCA), as amended by Section 711 of the Energy Policy Act of 1992, 16 U.S.C. 824d. Section 32(a) of PUHCA defines an Exempt Wholesale Generator (EWG) as an individual determined by the Commission to be engaged directly or indirectly through one or more affiliates, and exclusively in the business of owning and/or operating all or part of eligible facilities and selling electric energy at wholesale. An eligible facility may include interconnecting transmission facilities necessary to effect wholesale power sales. Persons granted EWG status will be exempt from regulation under PUHCA. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 365.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
112	1	6	672

Estimated total cost burden to respondents is $37,813 (672 hours/2,080 hours per year x $117,041 per year). The cost per respondent is equal to $338.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21386 Filed 8–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–260–000, CP01–439–000, and CP02–142–000]

Columbia Gas Transmission Corporation; Notice of Public Meeting

August 16, 2002.

Take notice that a meeting is scheduled in the above-captioned proceedings for September 4, 2002, at 2 p.m., in Room No. 62–26, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The meeting was requested by Columbia Gas Transmission Corporation for the purpose of discussing potential modifications to the projects in the referenced dockets. Any interested persons may attend.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21384 Filed 8–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–100–000, et al.]

Mirant Neenah, LLC, et al.; Electric Rate and Corporate Regulation Filings

August 14, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Mirant Neenah, LLC; Alliant Energy Resources, Inc.; Mirant Wisconsin Investments, Inc.;

[Docket No. EC02–100–000]

Take notice that on August 7, 2002, Mirant Neenah, LLC (Mirant Neenah); Alliant Energy Resources, Inc. (Alliant Energy Resources), and Mirant Wisconsin Investments, Inc. (Mirant Wisconsin) tendered for filing a joint application for authorization for Mirant Wisconsin to sell its membership interests in Mirant Neenah to Alliant Energy Resources.

Comment Date: August 28, 2002.

2. ONEOK Power Marketing Company and ONEOK Energy Marketing and Trading Company, L.P.

[Docket No. EC02–101–000]

Take notice that on August 7, 2002, ONEOK Power Marketing Company (OPMC) and ONEOK Energy Marketing and Trading Company, L.P. (OEMT) submitted for filing an application pursuant to section 203 of the Federal Power Act to merge the facilities of OPMC into OEMT, both wholly owned subsidiaries of ONEOK, Inc.

Comment Date: August 28, 2002.

3. Black River Power, LLC

[Docket No. EC02–102–000]

Take notice that on August 12, 2002, Black River Power, LLC (Black River), tendered for filing, pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b (1994), and Part 33 of the Commission's regulations, 18 CFR part 33, an application for authorization of a disposition of jurisdictional facilities as a result of the transfer of control of Black River to a voting trust. The transaction is expected to result in the disposition of jurisdictional facilities consisting of Black River's rate schedules and transmission facilities interconnected with the Fort Drum Project, a 52 MW topping-cycle electric generation project located at the Fort Drum Army Base near Watertown, New York.

Comment Date: August 29, 2002.

4. Niagara Mohawk Power Corporation

[Docket No. ER02–1266–003]

Take notice that on August 8, 2002, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk) amended its Compliance Filing previously submitted in this proceeding on July 16, 2002 in conformance with the Federal Energy Regulatory Commission's July 1, 2002 Order in Docket No. ER02–1266–001.

Comment Date: August 29, 2002

5. Kentucky Utilities Company

[Docket Nos. ER02–2265–001, ER02–2267–001, ER02–2272–001, and ER02–2282–001]

Take notice that on August 9, 2002, Kentucky Utilities (KU) tendered for filing (1) a renumbered contract between KU and the City of Madisonville Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and (2) a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Dockets No. ER02–2265–000, ER02–2266–000, ER02–2267–000, ER02–2272–000, ER02–2282–000 and ER02–2282 . The renumbered SEPA Contract is designated Rate Schedule FERC No. 306.

Comment Date: August 30, 2002.

6. Kentucky Utilities Company

[Docket Nos. ER02–2268–001, ER02–2277–001, ER02–2278–001, and ER02–2279–001]

Take notice that on August 9, 2002, Kentucky Utilities (KU) tendered for filing (1) a renumbered contract between KU and the City of Falmouth Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and (2) a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket No. ER02–2276–000. The renumbered SEPA Contract is designated Rate Schedule FERC No.310.

Comment Date: August 30, 2002.

7. Southern Company Services, Inc.

[Docket No. ER02–2442–000]

Take notice that on August 9, 2002, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Operating Companies), tendered for Commission review information and replacement tariff sheets concerning the accrual of post-retirement benefits other than pensions as set forth in Statement of Financial Accounting Standard No. 106 by the Financial Accounting Standards Board in agreements and tariffs of the Operating Companies (jointly and individually). The following Commission approved rate schedules are affected:

SoCos.—Rate Schedule No. 15
SoCos.—Rate Schedule No. 30
SoCos.—Rate Schedule No. 33
SoCos.—Rate Schedule No. 47
SoCos.—Rate Schedule No. 51
SoCos.—Rate Schedule No. 53
SoCos.—Rate Schedule No. 59
SoCos.—Rate Schedule No. 62
SoCos.—Rate Schedule No. 70
SoCos.—Rate Schedule No. 76
SoCos.—Rate Schedule No. 77
SoCos.—Rate Schedule No. 78
SoCos.—Rate Schedule No. 93
Alabama Power—Rate Schedule No. 145
Georgia Power—Rate Schedule No. 803
Georgia Power—Rate Schedule Nos. 824, 825 and 826
Georgia Power—Rate Schedule Nos. 836, 837, and 838
Mississippi Power—Rate Schedule No. 135
Gulf Power—Rate Schedule No. 82
Gulf Power—Rate Schedule No. 84

Comment Date: August 30, 2002.

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8. Vermont Electric Power Company, Inc.

[Docket No. ER02–2443–000]

Take notice that on August 9, 2002, Vermont Electric Power Company, Inc. (VELCO) tendered for filing with the Federal Energy Regulatory Commission an executed Interconnection Agreement between VELCO and Entergy Nuclear Vermont Yankee, LLC (Entergy Nuclear VY) that sets forth the terms and conditions governing the interconnection between Entergy Nuclear VY's generating facility and VELCO's transmission system.

Comment Date: August 30, 2002.

9. Calpine Construction Finance Company, L.P.

[Docket No. ER02–2444–000]

Take notice that on August 9, 2002, Calpine Construction Finance Company, L.P. (CCFC) filed an executed power marketing agreement under which CCFC will make wholesale sales of electric energy to Calpine Energy Services, L.P. at market-based rates. CCFC requests privileged treatment of this agreement pursuant to 18 CFR 388.112.

Comment Date: August 30, 2002.

10. Citizens Communications Company

[Docket No. ER02–2445–000]

Take notice that on August 9, 2002, Citizens Communications Company (Citizens) filed a Non-Firm Interchange Agreement with Aha Macav Power Service. The filing relates to emergency service that Citizens' Arizona Electric Division (AED) provided to Aha Macav Power Service during an emergency outage on July 13 and 14, 2002.

Citizens requests waiver of the Commission's prior notice requirements, and an effective date of July 13, 2002 for the agreement. Copies of this filing were served on the entities listed on the certificate of service attached to the filing. In addition, a copy of the rate schedule is available for inspection at the offices of Citizens' Arizona Electric Division during regular business hours.

Comment Date: August 30, 2002.

11. San Diego Gas & Electric Company

[Docket No. ER02–2446–000]

Take notice that on August 9, 2002 San Diego Gas & Electric Company (SDG&E) tendered for filing its final cost reconciliation for the interconnection of 98 MW generation facilities owned by Wildflower Energy, LP (Wildflower). SDG&E seeks approval of final costs totaling $438,608.78.

Along with approval of its costs, SDG&E seeks approval of an increase in the monthly Operating & Maintenance (O&M) charges payable to SDG&E by Wildflower from .0025 times the cost of the installed facilities to .0035783 times the cost of the facilities. SDG&E also requests waiver of the sixty day notice period for the effective date of the increase, as required by 18 CFR 35.11.

SDG&E states that copies of its filing have been served on Wildflower.

Comment Date: August 30, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21383 Filed 8–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1326–002, et al.]

PJM Interconnection, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

August 15, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PJM Interconnection, L.L.C.

[Docket No. ER02–1326–002]

Take notice that on August 12, 2002, consistent with the Commission's May 31, 2002 "Order Accepting Tariff Sheets As Modified" 99 FERC ¶ 61,227, PJM Interconnection, L.L.C. (PJM) submitted an amended compliance filing in this docket revising the PJM Open Access Tariff and the Amended And Restated Operating Agreement of PJM Interconnection, L.L.C. to incorporate certain changes to its Economic Load Response Program.

Consistent with the May 31 Order, PJM requests an effective date of June 1, 2002 for the revisions. Copies of this filing have been served on all persons on the service list in Docket No. ER02–1326–000, all PJM members, and the state electric utility commissions in the PJM region.

Comment Date: September 3, 2002.

2. Illinois Power Company

[Docket No. ER02–1400–002]

Take notice that on August 12, 2002, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 65251–2200, filed a First Revised Interconnection and Operating Agreement (First Revised IOA). The First Revised IOA is subject to Illinois Power's Open Access Transmission Tariff. Illinois Power requests an effective date of March 8, 2002 for the First Revised IOA.

Comment Date: September 3, 2002.

3. American Electric Power Service Corporation

[Docket No. ER02–1817–002]

Take notice that on August 12, 2002, American Electric Power Service Corporation (AEP) tendered for filing with the Federal Energy Regulatory Commission (Commission) on behalf of Ohio Power Company, an operating company of the American Electric Power System (collectively AEP) amendments to an Interconnection and Operation Agreement between AEP and Lima Energy Company (LEC). The amendments are filed in compliance with the Commission's Order issued on July 12, 2002 in the above-captioned proceeding.

Comment Date: September 3, 2002.

4. Kentucky Utilities Company

[Docket No. ER02–2269–001]

Take notice that on August 9, 2002, Kentucky Utilities (KU) tendered for filing (1) a renumbered contract between KU and the City of Bardwell Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and (2) a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket No. ER02–2269–000. The renumbered SEPA Contract is designated Rate Schedule FERC No. 307.

Comment Date: August 30, 2002.

5. Kentucky Utilities Company

[Docket No. ER02–2270–001]

Take notice that on August 9, 2002, Kentucky Utilities (KU) tendered for filing with the Federal Energy Regulatory Commission (Commission) a renumbered contract between KU and the City of Barbourville Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket No. ER02–2270–000. The renumbered SEPA Contract is designated Rate Schedule FERC No. 304.

Comment Date: August 30, 2002.

6. Kentucky Utilities Company

[Docket No. ER02–2271–001]

Take notice that on August 9, 2002, Kentucky Utilities (KU) tendered for filing (1) a renumbered contract between KU and the City of Bardstown Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and (2) a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket No. ER02–2271–000. The renumbered SEPA Contract is designated Rate Schedule FERC No. 302.

Comment Date: August 30, 2002.

7. Kentucky Utilities Company

[Docket No. ER02–2273–001]

Take notice that on August 9, 2002, Kentucky Utilities Company (KU) tendered for filing with the Federal Energy Regulatory Commission (Commission) a renumbered contract between KU and the City of Frankfort Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket No. ER02–2273–000. The renumbered SEPA Contract is designated Rate Schedule FERC No. 311.

Comment Date: August 30, 2002.

8. Kentucky Utilities Company

[Docket No. ER02–2274–001]

Take notice that on August 9, 2002, Kentucky Utilities Company (KU) tendered for filing with the Federal Energy Regulatory Commission (Commission) a renumbered contract between KU and the City of Benham Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket No. ER02–2274–000. The renumbered SEPA Contract is designated Rate Schedule FERC No. 308.

Comment Date: August 30, 2002.

9. Kentucky Utilities Company

[Docket No. ER02–2275–001]

Take notice that on August 9, 2002, Kentucky Utilities Company (KU) tendered for filing with the Federal Energy Regulatory Commission (Commission) a renumbered contract between KU and the City of Corbin Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket No. ER02–2275–000. The renumbered SEPA Contract is designated Rate Schedule FERC No. 309.

Comment Date: August 30, 2002.

10. Kentucky Utilities Company

[Docket No. ER02–2276–001]

Take notice that on August 9, 2002, Kentucky Utilities Company(KU) tendered for filing with the Federal Energy Regulatory Commission (Commission) a renumbered contract between KU and the City of Falmouth Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket No. ER02–2276–000. The renumbered SEPA Contract is designated Rate Schedule FERC No. 310.

Comment Date: August 30, 2002.

11. Kentucky Utilities Company

[Docket Nos. ER02–2280–001 and ER02–2281–001

Take notice that on August 9, 2002, Kentucky Utilities Company (KU) tendered for filing with the Federal Energy Regulatory Commission (Commission) a renumbered contract between KU and the City of Providence Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket Nos. ER02–2280–000 and ER02–2281–000. The renumbered SEPA Contract is designated Rate Schedule FERC No. 305.

Comment Date: August 30, 2002.

12. Kentucky Utilities Company

[Docket No. ER02–2283–001]

Take notice that on August 9, 2002, Kentucky Utilities (KU) tendered for filing with the Federal Energy Regulatory Commission (Commission) a renumbered contract between KU and the City of Owensboro Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket No. ER02–2283–000. The renumbered SEPA Contract is designated Rate Schedule FERC No 300.

Comment Date: August 30, 2002.

13. Kentucky Utilities Company

[Docket No. ER02–2284–001]

Take notice that on August 9, 2002, Kentucky Utilities Company(KU) tendered for filing with the Federal Energy Regulatory Commission (Commission) a renumbered contract between KU and the City of Paris Kentucky dealing with the treatment of power received from the Southeastern Power Administration (SEPA) and a fully executed amendment to the SEPA Contract. The SEPA Contract had been incorrectly attached to a power sales agreement which KU requested to be removed in Docket No. ER02–2284–000. The renumbered SEPA Contract is designated Rate Schedule FERC No. 301.

Comment Date: August 30, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

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20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21382 Filed 8–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

August 16, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. Copies of these filings are on file with the Commission and are available for public inspection. The documents may be viewed on the web at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 508–8222 or for TTY, (202) 208–1659.

EXEMPT

Docket No.	Date filed	Presenter or requester
1. Project No. 2612–005.	8–5–02	Don Klima.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21387 Filed 8–21–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0035; FRL–7187–6]

Substantial Risk Information Reporting under Section 8(e) of the Toxic Substances Control Act; Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), EPA is seeking public comment on the following Information Collection Request (ICR): Substantial Risk Information Reporting under Section 8(e) of the Toxic Substances Control Act (TSCA) (EPA ICR No. 0794.10, OMB No. 2070–0046). This ICR involves a collection activity that is currently approved and scheduled to expire on January 31, 2003. The information collected under this ICR relates to reporting requirements placed on persons who manufacture, import, process, or distribute in commerce chemical substances or mixtures and who obtain information that such substances or mixtures present a substantial risk of injury to health or the environment. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPPT–2002–0035, must be received on or before October 21, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0035 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Richard Hefter, Risk Assessment Division (7403M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–7649; fax number: (202) 564–1626; e-mail address: hefter.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a company that manufactures, imports, processes, or distributes in commerce a chemical substance or mixture and which obtains information that reasonably supports the conclusion that such substance or mixture presents a substantial risk of

injury to health or the environment. Potentially affected categories and entities may include, but are not limited to:

Type of business	NAICS codes
Chemical manufacturing	325
Petroleum refineries	32411

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 564–3119 and select item 4096 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket ID number OPPT–2002–0035. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0035 on the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPPT–2002–0035. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology,

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e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Substantial Risk Information Reporting under Section 8(e) of the Toxic Substances Control Act (TSCA).

ICR numbers: EPA ICR No. 0794.10, OMB No. 2070–0046.

ICR status: This ICR is currently scheduled to expire on January 31, 2003. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: TSCA section 8(e) requires that any person who manufactures, imports, processes, or distributes in commerce a chemical substance or mixture and which obtains information that reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment must immediately inform EPA of such information. EPA routinely disseminates TSCA section 8(e) data it receives to other Federal agencies to provide information about newly discovered chemical hazards and risks.

Responses to the collection of information are mandatory (see 15 U.S.C. 2607(e)). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to range between 5.0 hours and 27.0 hours per response, depending upon the nature of the response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 218.

Frequency of response: On occasion.

Estimated average number of responses for each respondent: 1.

Estimated total annual burden hours: 6,431.

Estimated total annual burden costs: $675,255.

VI. Are There Changes in the Estimates from the Last Approval?

There is a decrease of 1,778 hours (from 8,209 hours to 6,431 hours) in the total estimated respondent burden compared with that identified in the information collection request most recently approved by OMB. This change results from an overall decrease in section 8(e) reporting, primarily from a reduction in the number of follow-up/supplemental section 8(e) notices received. In previous ICR renewals, EPA used an historical average of 2.2 follow-up notices per each initial submission. This figure was based on EPA's experience and system for reviewing section 8(e) notices in place pre-1990. During that time EPA received fewer than 100 initial notices per year and was able to perform a much more detailed review of each notice received. The consequence of that review was that there was much more interaction with the submitting companies generating numerous follow-up notices and information submissions. However, during and since the 1991 Compliance Audit Program, because of the increase in initial notices submitted, EPA has contacted submitters for additional information only for those initial notices that are identified during the preliminary screening evaluation as needing additional information from the submitters. Consequently, the number of follow-up notices has fallen due to the changed nature of EPA's review of initial notices. Over the last 3 fiscal years, EPA has received 341 follow-up notices versus 653 initial notices, or approximately 0.5 follow-up notices per initial notice.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: August 9, 2002.

Susan B. Hazen,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 02–21444 Filed 8–21–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7265–5]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby at (202) 566–1672, or e-mail at *Auby.susan@epa.gov.* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1608.03; State Program Adequacy Determination: Municipal Solid Waste Landfills (MSWLFs) and Non-municipal, Non-hazardous Waste Disposal Units that Receive Conditionally Exempt Small Quantity Generator (CESQG) Hazardous Waste in 40 CFR part 239; was approved 06/21/2002; OMB No. 2050–0152; expires 06/30/2005.

EPA ICR No. 1352.09; Community Right-to-Know Reporting Requirements under section 311 and 312 of the Emergency Planning and Community Right-to-Know (EPCRA); in 40 CFR part 370, and 40 CFR 370.25, 370.30, 370.21(c) (1) & (2); was approved 06/21/2002; OMB No. 2050–0072; expires 10/31/2004.

EPA ICR No. 1985.02; National Emission Standards for Hazardous Air Pollutants (NESHAP) for Leather Finishing Operations in 40 CFR 63.5330–63.5390 and 63.5400–63.5430; was approved 06/12/2002; OMB No. 2060–0478; expires 06/30/2005.

EPA ICR No. 1896.03; Disinfectants/Disinfection Byproducts, Chemical, and Radionuclides Information Collection Request; Unregulated Contaminant Monitoring Regulation List 2 Amendments (proposed rule); was approved 06/17/2002; OMB No. 2040–0204; expires 12/31/2004.

EPA ICR No. 1955.02; Operator Certification Guidelines and Operator Certification Expense Reimbursement Grants Program; OMB No. 2040–0236; expires 06/30/2005.

EPA ICR No. 1877.02; Milestones Plan for the Bleached Papergrade Kraft and Soda Sub-category of the Pulp, Paper, and Paperboard Point Source Category; in 40 CFR 430.24 (b) and (c); OMB No. 2040–0202; expires 06/30/2005.

EPA ICR No. 1829.02; Best Management Practices (BMP) for Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Kraft Sulfite Subcategory of the Pulp, Paper and Paperboard Point Source Category; in 40 CFR 430.03; was approved 06/28/2002; OMB No. 2040–0207; expires 06/30/2005.

EPA ICR No. 0270.41; Public Water systems Supervision Program Public Notification Amendment; in 40 CFR 141.31; 141.33 and 141.201–141.210, 40 CFR 142.14 (f), 142.15 (a), and 142.16(a); was approved 06/28/2002; OMB No. 2040–0090; expires 11/30/2004.

EPA ICR No. 2016.01; Drinking Water Customer Satisfaction Survey; was approved 07/24/2002; OMB No. 2040–0247; expires 05/31/2003.

EPA ICR No. 0969.06; Final Authorization for Hazardous Waste Management in 40 CFR part 271, subpart A, and 40 CFR 271.21, 271.23; was approved 07/25/2002; OMB 2050–0041; expires 07/31/2005.

Comment Filed

EPA ICR No. 2020.01; Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington in 40 CFR 49.121–49.139 and 49.9861–49.17810; on 06/21/2002; OMB filed comment.

Withdrawn/Continued

EPA ICR No. 1591.04; Regulation of Fuels and Fuel Additives; Reformulated Gasoline Terminal Receipt Date; OMB No. 2060–0277; on 06/24/2002 this ICR was withdrawn from OMB review.

Disapproved

EPA ICR No. 2060.01; Cooling Water Intake Structures Existing Facility (Phase II) Proposed Rule; on 06/17/2002 this ICR was disapproved by OMB.

Dated: August 15, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–21442 Filed 8–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7265–9]

Contractor and Subcontractor Access to Confidential Business Information Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has authorized prime contractors and subcontractors access to information that has been, or will be, submitted to EPA under sections 112 and 114 of the Clean Air Act (CAA). Some of the information may be claimed to be confidential business information (CBI) by the submitter.

DATES: Access to confidential data submitted to EPA will occur no sooner than September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Roberto Morales, Document Control Officer, Office of Air Quality Planning and Standards (C404–02), EPA, Research Triangle Park, North Carolina 27711, (919) 541–0880.

SUPPLEMENTARY INFORMATION: The EPA is issuing the notice to inform all submitters of information under sections 112 and 114 of the CAA that EPA may provide to the contractors and subcontractors listed below access to those materials on a need-to-know basis:

1. Prime Contractor

Environmental Consulting and Research, Inc. (EC/R), 2327 Englert Drive, Suite 100, Durham, NC 27713.

Contract 68D01055

2. Prime Contractor

Environmental Consulting and Research, Inc. (EC/R), 2327 Englert Drive, Suite 100, Durham, NC 27713.

Contract 68D01071

Subcontractors:
ICF, Inc.
Cadmus
Menzie-Cura
TRJ (Ted Johnson)
SBG (Susan B. Goldhabaer)

3. Prime Contractor

Environmental Consulting and Research, Inc. (EC/R), 2327 Englert Drive, Suite 100, Durham, NC 27713.

Contract 68D01076

Subcontractors:
ICF, Inc.
Eastern Research Group (ERG)
Pacific Environmental Services (PES)
MCNC
TRJ (Ted Johnson)
SBG (Susan B. Goldhabaer
Jim Capel

4. Prime Contractor

Eastern Research Group, Inc. (ERG), 110 Hartwell Avenue, Lexington, MA 02173.

Contract 68D01078

Subcontractors:
Research Triangle Institute (RTI)
EC/R, Inc.
Alpha-Gamma Technologies
SKT Consulting Services, Inc.

5. Prime Contractor

Eastern Research Group, Inc. (ERG), 110 Hartwell Avenue, Lexington, MA 02173.

Contract 69D01081

6. Prime Contractor

ICF, Inc., 9300 Lee Highway, Fairfax, VA 22031.

Contract 68D01052

Subcontractors:
EC/R, Inc.
Alpha-Gamma Technologies, Inc.
HeiTech Services, Inc.
Dr. Deborah Amaral
Jim Capel
Douglas Crawford Brown

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TRJ (Ted Johnson)
Dr. Bradford Lyon
Dr. Thomas McKone

7. Prime Contractor

Research Triangle Institute, 3040 Cornwallis Road, Research Triangle Park, NC 27709.

Contract 68D01079

Subcontractors:
Caldwell Environmental
North State Engineering, Inc.
Razor Environmental

8. Prime Contractor

Pacific Environmental Services (PES), 5001 South Miami Boulevard, Research Triangle Park, NC 27709.

Contract 68D01077

Subcontractors:
Alpha Gamma Technologies
SKT Consulting Services, Inc.
Bennet King Environmental Consultant, Inc.

9. Prime Contractor

Research Triangle Institute (RTI), 3040 Cornwallis Road, Research Triangle Park, NC 27709.

Contract 68D01073

Subcontractor:

The Kervic Company

The contractors and subcontractors will provide technical support to the Office of Air Quality Planning and Standards in source assessment or with a source category survey and proceed through development of standards or control techniques guidelines, risk assessments, and national air toxics assessments.

In accordance with 40 CFR 2.301(h), EPA has determined that the above listed contractors and subcontractors require access to CBI submitted to EPA under sections 112 and 114 of the CAA in order to perform work satisfactorily under the above noted contracts. The contractors' and subcontractors' personnel will be given access to information submitted under sections 112 and 114 of the CAA. The contractors' personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to CBI. All contractor and subcontractor access to CAA CBI will take place at the contractors' or subcontractors' facilities. The contractors and subcontractors will have appropriate procedures and facilities in place to safeguard the CAA CBI to which the contractors and subcontractors have access.

Clearance for access to CAA CBI is scheduled to expire on September 30, 2006 under contracts 68D01055, 68D01071, 68D01076, 68D01078, 68D01081, 68D01052 68D01079, 68D01077, and 68D1073.

Dated: August 14, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–21440 Filed 8–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7265–6]

Office of Research and Development; Board of Scientific Counselors, Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2) notification is hereby given that the Environmental Protection Agency, Office of Research and Development (ORD), Board of Scientific Counselors (BOSC), will hold an Executive Committee Meeting.

DATES: The Meeting will be held on September 23–24, 2002. On Monday, September 23, the Meeting will begin at 1 p.m., and recess at 4:30 p.m. On Tuesday, September 24, the Meeting will begin at 9 a.m. and adjourn at 4:30 p.m. Times noted are Eastern Time.

ADDRESSES: The Meeting will be held at the Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia 22209, (703) 524–6400.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, (8701R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (202) 564–6853.

SUPPLEMENTARY INFORMATION: Agenda items will include, but not be limited to: Discussion of BOSC Sub-Committee draft reports of ORD Labs/Centers site visits, Ad-hoc Subcommittee on Communications Progress Report, and Consultation on Biotechnology.

Anyone desiring a draft agenda may fax their request to Shirley R. Hamilton at (202) 565–2444. The meeting is open to the public. Any member of the public wishing to make a presentation at the meeting should contact Shirley Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Board of Scientific Counselors, Office of Research and Development (8701R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; or by telephone at (202) 564–6853. In general each individual making an oral presentation will be limited to a total of three minutes.

Dated: August 13, 2002.

Peter W. Preuss,

Director, National Center for Environmental Research.

[FR Doc. 02–21441 Filed 8–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0230; FRL–7197–2]

Organophosphate Pesticides, Availability of the Revised Organophosphate Cumulative Risk Assessment; Additional Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA is extending the comment period for the revised organophosphorous (OP) cumulative risk assessment until September 9, 2002. The revised OP cumulative risk assessment was released to the public for comment in the **Federal Register** of June 20, 2002, and the comment period was extended by a second document published in the **Federal Register** of July 22, 2002. The revised assessment was developed as part of EPA's process for tolerance reassessments under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). By allowing access and opportunity for comment on the revised risk assessment, EPA is seeking to strengthen stakeholder involvement and help ensure our decisions under FQPA are transparent and based on the best available information.

DATES: Comments, identified by the docket ID number OPP–2002–0230, must be received on or before September 9, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0230 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; fax number: (703) 308–8005; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining and submitting comments on the revisions to the OP pesticide cumulative risk assessment, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/cumulative.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0230. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

As described in Unit III. of the notice published in the **Federal Register** of June 20, 2002 (67 FR 41993) (FRL–7183–1), you may submit your comments through the mail, in person, or electronically. Please follow the instructions that are provided in that notice. Do not submit any information electronically that you consider to be CBI. To ensure proper receipt by EPA, be sure to identify docket ID number OPP–2002–0230 in the subject line on the first page of your response.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

EPA is extending the comment period for the revised OP cumulative risk assessment, which was released to the public for comment in the **Federal Register** of June 20, 2002 (67 FR 41993) (FRL–7183–1). The documents provide information on the revisions that were made to the preliminary OP cumulative risk assessment, which was released to the public in the **Federal Register** of December 28, 2001 (66 FR 67249) (FRL–6816–5). The comment period was extended until August 21, 2002, through a notice published in the **Federal Register** of July 22, 2002 (67 FR 47797) (FRL–7190–7).

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 19, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–21568 Filed 8–20–02; 2:43 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7265–2]

Emission Guidelines for Existing Small Municipal Waste Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of denial of petitions for reconsideration.

SUMMARY: In February 2001, EPA received two petitions for reconsideration of the emission guidelines for existing small municipal waste combustion (MWC) units (40 CFR part 60 subpart BBBB). The first

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petition, dated February 2, 2001, was from Mr. Timothy Henderson representing Waste Energy Partners Limited Partnership, eco/Springfield, L.L.C., and Wasatch Energy Systems (f.k.a. Davis County Solid Waste Management and Energy Recovery Special Service District), which subsequently withdrew its petition (collectively Industry Petitioners). The second petition, dated February 5, 2001, was from the New York Public Interest Research Group, Inc. (NYPIRG). The petitions and all available information submitted by the petitioners along with information contained in the rulemaking docket (Docket No. A–98–18) were considered in reaching a decision on the merits of the petitions. After careful consideration, the EPA Administrator determined to deny the petitions and the petitioners were notified of this fact in separate letters signed by Jeffrey R. Holmstead, Assistant Administrator for the Office of Air and Radiation, and dated August 7, 2002 (Industry Petitioners) and August 14, 2002 (NYPIRG). Copies of the denial letters are contained in Docket No. A–98–18.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Stevenson at Combustion Group, Emission Standards Division (C439–01), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5264, facsimile number (919) 541–5450, electronic mail address *"stevenson.walt@epa.gov."*

Dated: August 15, 2002.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 02–21443 Filed 8–21–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. section 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of a currently approved collection.

Title: Certified Statement for Semiannual Deposit Insurance Assessment.

Form Number: 6420/07A.

OMB Number: 3064–0057.

Annual Burden:

Estimated annual number of responses: 19,400.

Estimated time per response: 15 minutes.

Average annual burden hours: 4,850 hours.

Expiration Date of OMB Clearance: September 30, 2002.

OMB Reviewer: Joseph Lackey, (202) 395–4741, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Legal Division, Room MB–3109, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before September 23, 2002 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Certified statements are prepared to report and certify deposit liabilities and to compute the assessment payment due for deposit insurance protection.

Dated: August 7, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–21451 Filed 8–21–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

Previously announced date and time: Tuesday, August 20, 2002. Meeting closed to the public. This meeting was cancelled.

DATE & TIME: Tuesday, August 27, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Wednesday, August 28, 2002 and Thursday, August 29, 2002.

PLACE: 999 E Street, NW., Washington, DC (Ninth floor).

STATUS: This hearing will be open to the public.

MATTER BEFORE THE COMMISSION:

Electioneering Communications: Notice of Proposed Rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–21597 Filed 8–20–02; 3:49 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency is submitting a request for review and approved of a collection of information in use without OMB approval. The Collection of information concerns FEMA's collecting information about the financial state of affairs and the housing plans of disaster victims. FEMA needs the information in order to effectively evaluate an applicant's need for mortgage and rental assistance provided under the Mortgage and Rental Assistance Program.

The request is submitted under the emergency processing procedures in Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting that this collection of information be approved by August 12, 2002. The approval will authorize FEMA to use the collection through February 28, 2003.

FEMA plans to follow this emergency request with a request for a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, FEMA invites the general public to comment on the collection of information. This notice and request for comments is in accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)).

SUPPLEMENTARY INFORMATION: The Mortgage and Rental Assistance Program is authorized by section 408(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended. The program was established to allow the Federal government to assist disaster victims who, as a result of financial hardship caused by a major disaster, are unable to continue paying their mortgage or rent and are in jeopardy of being evicted or foreclosed. In order for FEMA to comply with the statutory criterion of financial hardship for the Mortgage and Rental Assistance Program, we must collect financial information on the disaster assistance applicant to determine the level of financial loss and if the applicant qualifies as a hardship.

Collection of Information:

Title: Mortgage and Rental Assistance Program.

Type of Information Collection: Existing collection in use without OMB approval.

Forms: MRA Financial Certification; MRA Certification of Household Income; MRA Request for Additional Assistance; MRA Notice of Delinquency.

Abstract: Individuals requesting mortgage and rental assistance, will be required to provide, in writing, information about their financial state of affairs and their housing plans to that FEMA can effectively evaluate their need for mortgage and rental assistance. The requested information from the applicant is not available from any other source. The information collected has limited use and is only applicable to FEMA's Mortgage and Rental Assistance Program. The information collected from the applicant will be used exclusively for reviewing the financial loss of the applicant and making eligibility decisions. A FEMA disaster housing officer will review the information submitted in accordance with established program criteria and procedures.

Affected Public: Individuals and households.

Estimated Total Annual Burden Hours: 10,200 hours.

Information collection request	Number of respondents	Frequency of response	Time per response	Annual burden hours
MRA Financial Certification	2550	1	120 minutes	5100
MRA Certification of Household Income	2550	1	60 minutes	2550
MRA Request for Additional Assistance	2550	1	30 minutes	1275
MRA Notice of Delinquency	2550	1	30 minutes	1275
Total	2,550	1	Avg. 1 hr	10,200

Estimated Cost: The total estimated annual cost to the applicant is $105,774.00. The cost is determined by the average hourly rate of $10.37 (average wage plus the price of a stamp) times the 10,200 estimated annual burden hours.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Submit comments to OMB within 30-days of the publication date of this notice. To ensure that FEMA is fully aware of any comments or concerns that you share with OMB, please provide us with a copy of your comments. FEMA will continue to accept comments for 60 days from the date of this notice.

OMB Addressee: Interested persons should submit written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Emergency Management Agency, 725 17th Street, NW., Washington, DC 20503.

FEMA Addressee: Submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and System Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472 or via e-mail at *InformationCollections@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Contact David Porter, Programs Specialist, Community and Family Services Branch, Recovery Division, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, at telephone number (202) 646–3939 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625, FAX number (202) 646–3347, or email address: *InformationCollections@fema.gov.*

Dated: August 6, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–20961 Filed 8–21–02; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested

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persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 16, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Northfield Holdings Corp., Staten Island, New York; to become a bank holding company by acquiring 100 percent of the voting share of Northfield Savings Bank, Staten Island, New York.

2. NSB Holding Corp., Staten Island, New York; to acquire voting shares of Northfield Holdings Corp., Staten Island, New York.

3. NSB Holding Corp., Staten Island, New York; and Northfield Holdings Corp., Staten Island, New York; to acquire Liberty Bank, Avenel, New Jersey, and thereby engage in owning and operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

B. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Deerfield Bancshares, Inc., Clarksburg, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Clarksburg Commercial Bank, Clarksburg, Ohio.

Board of Governors of the Federal Reserve System, August 16, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–21349 Filed 8–21–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Docket No. R–1111

Policy Statement on Payments System RiskPotential Longer–Term Policy Direction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board is announcing its decision not to pursue in the foreseeable future the following policy options as part of a potential longer–term direction for the Board's payments system risk policy (PSR policy): (1) lowering self–assessed net debit caps and eliminating two–week average caps and (2) rejecting all payments with settlement–day finality that would cause an institution to exceed its daylight overdraft capacity level. The Board will, however, continue analyzing the benefits and drawbacks of a two–tiered pricing regime for daylight overdrafts in which institutions that pledge collateral to the Reserve Banks would pay a lower fee on their collateralized daylight overdrafts than on their uncollateralized daylight overdrafts.

FOR FURTHER INFORMATION CONTACT: Jeff Stehm, Assistant Director (202/452–2217), Stacy Coleman, Manager (202/452–2934), or John Gibbons, Senior Financial Services Analyst (202/452–6409), Division of Reserve Bank Operations and Payment Systems; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

I. Background: In June 2001, the Board requested comment on a number of modifications to the PSR policy, including several near–term changes and a potential longer–term direction.[1] These requests for comment resulted from a broad review of the Board's PSR policy. This review evaluated the effectiveness of the Board's daylight credit policies, recognizing that significant changes had occurred in the banking, payments, and regulatory environment in the past few years. In conducting its review, the Board evaluated the effect of past policy actions on depository institutions' behavior and on the markets generally and also considered the effect of various payment system initiatives on payments activity and the demand for daylight credit.

Following the public comment period for the near–term changes, the Board made several changes to the policy, including allowing depository institutions with self–assessed net debit caps to pledge collateral to the Federal Reserve in order to access additional daylight overdraft capacity above their net debit cap levels and modifying the criteria used to determine a foreign banking organization's U.S. capital equivalency measure (66 FR 64419, December 13, 2001). Currently, the Board is focusing on the potential longer–term direction for the PSR policy. The policy options identified in the request for comment included the following: (1) lowering self–assessed net debit caps and eliminating two–week average caps, (2) rejecting all payments with settlement–day finality that would cause an institution to exceed its daylight overdraft capacity level, referred to as universal real–time monitoring (URTM), and (3) implementing a two–tiered pricing regime for daylight overdrafts in which institutions that pledge collateral to the Reserve Banks would pay a lower fee on their collateralized daylight overdrafts than on their uncollateralized daylight overdrafts (66 FR 30208, June 5, 2001).[2]

II. Summary of Comments and Analysis

The following section describes the options proposed in June 2001 for a potential longer–term PSR policy direction, summarizes and analyzes the comments received on the proposals, and discusses the rationale for not pursuing lower self–assessed net debit caps or URTM in the foreseeable future and for continuing to analyze a two–tiered pricing regime. The Board received a total of thirty–six comment letters on its potential longer–term PSR policy direction. The commenters included nineteen commercial banking organizations and seven of their trade associations, three clearing organizations, two other trade associations, and five Federal Reserve Banks. Not all commenters, however, addressed each of the options identified in the potential longer–term direction.

A. Net Debit Cap Levels

The Board evaluated the benefits and drawbacks of reducing self–assessed single–day net debit caps to levels near those of the current two–week average caps and eliminating two–week average net debit caps. Under the Board's PSR policy, the Reserve Banks establish limits or net debit caps on the maximum amount of uncollateralized daylight credit that depository institutions may incur in their Federal Reserve accounts. Net debit caps are calculated by applying a cap multiple from one of six cap classes to a depository institution's capital measure. An institution may request a self–assessed cap (average, above average, or high) by completing a self–assessment.[3] Alternatively, a depository institution may request a de minimis cap by submitting a board–of–director resolution to its Reserve Bank, or its Reserve Bank may assign an exempt–from–filing cap. A Reserve Bank also may assign a zero cap in consideration of certain factors, or a depository institution that wants to restrict its own use of Federal Reserve daylight credit may request a zero cap.

Twenty–nine organizations commented on lowering the single–day net debit cap and eliminating the two–week average cap. Of those organizations, sixteen did not support the proposal. Commenters generally did not support lowering the single–day net debit cap and eliminating the two–week average cap because of concerns about reduced flexibility in a depository institution's ability to process payments. Of the thirteen commenters that supported a lower single–day net debit cap and the elimination of the two–week average cap, most believed that Reserve Banks could reduce potential credit exposure while not affecting most depository institutions' ability to process payments. Several commenters also noted that eliminating the two–week average cap could reduce some of the policy's administrative burden. Finally, several commenters stated that institutions affected by a lower single–day net debit cap should have sufficient flexibility because depository institutions can now gain additional overdraft capacity by pledging collateral.

Three commenters that supported lowering net debit cap levels recommended that the Board lower them gradually to allow institutions an adjustment period and to allow the Federal Reserve time to evaluate the effects of lower net debit caps on the payments system. One organization that supported lowering net debit caps recommended that the policy allow institutions to exceed their net debit cap up to 20 percent on an infrequent basis without requiring collateral. Another organization supported lowering net debit caps as long as limits on collateralized daylight overdraft capacity above the net debit cap were set sufficiently high that institutions would not experience liquidity constraints.

The Board believes that reducing self–assessed net debit caps and eliminating two–week average caps generally would not affect most depository institutions' account–management and payment activities. In its request for comment, the Board noted that 96 percent of depository institutions with self–assessed net debit caps use less than 50 percent of their daylight overdraft capacity for their average peak overdrafts. Furthermore, Reserve Banks' credit exposure would be reduced by less than 5 percent if those institutions with self–assessed net debit caps that currently use more than 50 percent of their daylight overdraft capacity reduced their peak overdrafts to within the proposed net debit cap limits. As a result, lower net debit caps likely would not materially reduce Reserve Bank credit exposure. The current net debit cap limits do, however, provide institutions greater flexibility in managing their payments flows. In addition, the actual or potential liquidity implications of payment system initiatives, such as the Continuous Linked Settlement (CLS) system, have not been fully realized both in terms of the liquidity demands resulting from its implementation and its interaction with other payment systems. These potential liquidity demands, especially in times of financial market stress, need to be understood more fully for the Board to evaluate thoroughly the benefits and drawbacks of lowering self–assessed single–day net debit caps and eliminating two–week average caps.

The drawbacks of reduced flexibility in managing payment flows during a period of structural change in the payments system appear to outweigh the potential efficiencies gained by reducing administrative burden from lowering single–day net debit caps and eliminating two–week average caps. Accordingly, the Board will not consider lowering self–assessed single–day net debit caps and eliminating two–week average caps as a policy option in the foreseeable future.

B. Monitoring in Real Time All Institutions' Payments With Settlement–Day Finality

The Board also evaluated the benefits and drawbacks of URTM, which is defined as using the Reserve Banks' Account Balance Monitoring System (ABMS) to reject any payment with settlement–day finality that would cause an account holder's overdrafts to exceed its net debit cap.[4]

Thirty–one organizations commented on URTM. Of those organizations that responded, twenty–four did not support implementing URTM. Most commenters did not support URTM because of concerns that it could be unnecessarily restrictive for healthy depository institutions and could cause or exacerbate disruptions in the payments system. Many commenters also highlighted URTM's potential effects on ACH credit originations. In particular, several commenters raised concerns about URTM requiring prefunding for ACH credit originations and the potential negative effects on the value–dating aspect of ACH.[5] One commenter that supported URTM, however, stated that preventing institutions from exceeding their net debit cap with overdrafts due to payments with settlement–day finality would reduce risk in the payments system. Another commenter supported URTM because it likely would have only negligible effects on delays in the payments system and payments would be rejected or processed based on real–time balances.

If the Board were to implement URTM, a number of commenters recommended that it do so gradually to minimize potential disruptions to the payments system. For example, some commenters recommended introducing URTM by rejecting only Fedwire funds transfers at first and adding additional payment types later. Several commenters also recommended pending payments, instead of rejecting them, and making individual credit decisions on each payment. Under URTM the potential volume of payments that might be pended and need to be reviewed to make a credit decision could increase significantly, especially in times of market stress. Payments processing could be negatively affected as a result. In addition, the order in which payments could be released and an institution's access to its pended payments queue are issues that would need to be addressed in considering this option.

The Board believes the primary benefit of URTM is that it allows Reserve Banks to better manage the small, yet important, risk that a depository institution could unexpectedly fail with a significant daylight overdraft position that far

[1] The Board's current policy is described in the Policy Statement on Payments System Risk. The policy statement can be found at http://www.federalreserve.gov/paymentsystems/psr/policy.pdf.

[2] Payments with settlement–day finality include Fedwire funds and book–entry securities transfers, net settlement service (NSS) transactions, automated clearing house (ACH) credit transactions, and cash withdrawals.

[3] The self–assessment requires an institution to evaluate and rate its creditworthiness, intraday funds management and controls, customer credit policies and controls, operating controls, and contingency procedures to support a higher daylight overdraft cap.

[4] ABMS provides intraday account information to the Reserve Banks and depository institutions. It serves as both an information source and a monitoring tool. ABMS is used primarily to give authorized Reserve Bank personnel a mechanism to control and monitor account activity for selected institutions. It also provides a means for institutions to obtain information concerning their intraday balances for managing daylight overdrafts. This information includes opening balances, a depository institution's daylight overdraft capacity and collateral limits, Fedwire funds and book–entry securities transfers, net settlement service transactions, and other payment activity.

[5] Value dating allows originators to submit ACH transactions for settlement on a later, specified date.

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exceeds its net debit cap. The Board, however, also recognizes the benefits of financially healthy depository institutions having flexibility in managing their payment activity, especially during times of financial market stress. A policy that places a hard cap on daylight credit might cause or exacerbate disruptions for a given depository institution's payment flows or the payments system more generally. In addition, the liquidity implications related to CLS and its interaction with other payments systems need to be understood more fully for the Board to evaluate thoroughly the benefits and drawbacks of URTM. Concerns over disrupting the payments system, especially during times of market stress, likely outweigh the benefits of managing daylight overdrafts for unexpected failures of depository institutions. As a result, the Board will not implement URTM as a policy option in the foreseeable future.

C. Two-Tiered Pricing Regime

The Board will continue evaluating the benefits and drawbacks of implementing a two-tiered pricing regime that would assess a lower fee on collateralized daylight overdrafts than on uncollateralized daylight overdrafts. In evaluating the level of the daylight overdraft fee, the Board is considering policy changes that might more efficiently balance the costs, risks, and benefits associated with the provision of Federal Reserve intraday credit.

The daylight overdraft fee is a critical component of the PSR policy, and its modification in 1995 was the impetus for the Board's PSR policy review.[6] During the policy review, the Board compared Federal Reserve daylight credit extensions and private-sector lending under line-of-credit arrangements in assessing policy alternatives that might create a more efficient balance of the costs, risks, and benefits associated with Federal Reserve intraday credit. The most notable distinction between daylight credit extensions and private-sector lending is that private-sector lenders usually charge a lower rate when loans are collateralized. Collateralized lending generally carries a lower interest rate than uncollateralized lending because taking collateral lowers the lender's risk, allowing for a lower credit risk premium. In most situations, the Reserve Banks do not require collateral when extending daylight credit to depository institutions.[7] When Reserve Banks accept or require collateral for daylight credit extensions, however, the same daylight overdraft fee applies to both collateralized and uncollateralized daylight overdrafts. The Board also notes that the majority of Federal Reserve daylight credit extensions are currently implicitly collateralized because any collateral that a depository institution pledges to a Reserve Bank can be used to offset any of the institution's obligations to the Reserve Bank.[8]

Twenty-six organizations commented on two-tiered pricing. Twenty-two of those organizations supported some form of a two-tiered pricing regime. Most commenters favored a two-tiered pricing mechanism because they believed that it would reduce risk to the public sector and provide depository institutions the ability to weigh the costs and benefits of lower-rate collateralized credit with higher-rate uncollateralized credit.

One commenter that did not support two-tiered pricing stated that many smaller community banks might not be able to pledge collateral to receive a lower price, possibly placing them at a competitive disadvantage relative to larger depository institutions that likely are capable of pledging sufficient collateral to receive a lower price on most of their overdrafts. The Board is sensitive to policies that place certain depository institutions at a competitive advantage relative to other depository institutions. Most small depository institutions, however, generally do not pay daylight overdraft fees because they use little or no daylight credit. When pricing was introduced, the Board purposely permitted a minimal level of free overdrafts for most depository institutions based on the institution's capital. The purpose was to exempt from fees a very large number of depository institutions that account for a very small portion of total overdrafts.[9] As a result, the Board does not believe that small depository institutions would be disadvantaged by a two-tiered pricing policy relative to large depository institutions.

A number of commenters indicated that they would support two-tiered pricing only if lower-priced collateralized daylight credit could be used before uncollateralized daylight credit. In developing a two-tiered pricing regime, the Board intends to allow depository institutions with collateral pledged to the Federal Reserve to be charged the collateralized price for intraday credit used up to the level of collateral pledged as long as the collateral is not securing other outstanding obligations. Any additional intraday credit used that was uncollateralized would be priced higher. Moreover, depository institutions with self-assessed net debit caps that have been approved for collateralized daylight overdraft capacity above their net debit caps would be able to use the collateral pledged for this purpose to receive the collateralized price on the first dollars of daylight credit used. A few other commenters indicated that they support two-tiered pricing only if the rate for collateralized daylight credit is lower than the current rate.

Because two-tiered pricing may help balance the costs and benefits of providing daylight credit, and such a policy is more consistent with standard industry practices, the Board will continue to analyze the benefits and drawbacks of two-tiered pricing, taking into consideration the issues raised by commenters.

III. Competitive Impact Analysis

The Board has established procedures for assessing the competitive impact of rule or policy changes that have a substantial impact on payments system participants.[10] Under these procedures, the Board assesses whether a change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints, or due to a dominant market position of the Federal Reserve deriving from such differences. If no reasonable modifications will mitigate the adverse competitive effects, the Board will determine whether the expected benefits are significant enough to proceed with the change despite the adverse effects. The Board believes maintaining the status quo while continuing to analyze two-tiered pricing will have no adverse effect on the ability of other service providers to compete effectively with the Federal Reserve Banks in providing similar services.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. ch. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed this notice under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in this notice.

By order of the Board of Governors of the Federal Reserve System, August 19, 2002.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 02-21454 Filed 8-21-02; 8:45 am]

BILLING CODE 6210-01-S

[6] The current daylight overdraft fee is 36 basis points, quoted as an annual rate on the basis of a 24-hour day. To obtain the daily overdraft fee for the standard Fedwire operating day, the 36-basis-point fee is multiplied by the fraction of the 24-hour day during which Fedwire is scheduled to operate. For example, under the current 18-hour Fedwire operating day, the effective daylight overdraft fee equals 27 basis points.

[7] The current policy allows depository institutions with self-assessed net debit caps to pledge collateral to gain additional capacity above their net debit caps.

[8] The majority of the collateral pledged to the Reserve Banks is pledged for discount window purposes. Federal Reserve Operating Circulars 1 and 10 provide Reserve Banks with a security interest in any of a depository institution's assets in the possession or control of, or maintained with, a Reserve Bank. These assets include collateral pledged to the Reserve Banks as well as items in the process of collection and any investment property that the institution may legally encumber.

[9] For depository institutions with regular access to the discount window, Reserve Banks also waive daylight overdraft fees if the charge for a reserve maintenance period is twenty-five dollars or less.

[10] These procedures are described in the Board's policy statement "The Federal Reserve in the Payments System", as revised in March 1990 (55 FR 11648, March 29, 1990).

GENERAL SERVICES ADMINISTRATION

Office of Management Services; Cancellation of an Optional Form by the Department of State

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of State is canceling the following Optional Form because of low demand in the Federal Supply Service: OF 157, Medical Examination of Applicants for United States Visas.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Cunningham, Department of State, 202-312-9605.

DATES: Effective August 22, 2002.

Dated: August 14, 2002.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 02-21399 Filed 8-21-02; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed Collections; Comments Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments; call the OS Reports Clearance Office ant (202) 619-2118 or e-mail *Geerie.Jones@HHS.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: 1. Responsibilities of Awardees and Applicant Institutions for Reporting Possible Misconduct in Science (42 CFR part 50 subpart A)—0937-0198—Extension—As required by section 493 of the Public Health Service Act, the Secretary by regulation shall require that applicant and awardee institutions receiving PHS funds must investigate and report instances of alleged or apparent misconduct in science. *Respondents:* State and local governments, business or other for-profit, non-profit institutions—Reporting Burden Information—*Number of Respondents:* 3330; Number of Annual Responses: 3,430; *Average Burden per Response:* .273 hours; *Total Reporting Burden:* 938 hours—Disclosure Burden Information—*Number of Respondents;* 3330; Number of Annual Responses; 3390; *Average Burden per Response:* .5 hours; *Total Disclosure Burden:* 1,695 hours—Recordkeeping Burden Information—*Number of Respondents;* 40; Number of Annual Responses 140; *Average Burden per Response:* 7.77 hours; *Total Recordkeeping Burden:* 1088 hours—Total Burden—3,721 hours.

Send comments via e-mail to *Geerie.Jones@HHS.gov* or mail to OS Reports Clearance Office, Room 503H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington DC, 20201. Comments should be received within 60 days of this notice.

Dated: August 14, 2002.

William R. Beldon,

Acting, Deputy Assistant Secretary, Budget.

[FR Doc. 02-21426 Filed 8-21-02; 8:45 am]

BILLING CODE 4150-31-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-02-73]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498-1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Survey of Awareness, Knowledge, and Use of the National Report on Human Exposure to Environmental Chemicals by Health Care Providers, Public Health Professionals, Policy Makers, and Environmental Scientists—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background

A survey is proposed to determine audience awareness, knowledge, and uses of the *National Report on Human Exposure to Environmental Chemicals.*

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The Division of Laboratory Sciences at the National Center for Environmental Health released the first of a series of biomonitoring reports, The *National Report on Human Exposure to Environmental Chemicals*, in March 2001. The next report is planned for late fall 2002. The first Report, published in 2001, established baseline data on 24 chemicals (metals, organophosphate pesticides, and phthalates) and trend data on lead, cadmium, and cotinine, which is a metabolite of nicotine. The 2002 Report will provide measurements for at least 75 more chemicals, including new data on the 27 chemicals listed in the 2001 Report. Subsequent reports will add more chemicals and trend data on chemicals included in previously published reports.

A survey is proposed to determine target audiences' awareness of the report, knowledge about the contents of the report, and audience uses of data in the report. Target audiences who will be surveyed include: (1) Scientists conducting research in related fields; (2) State, local, and public health agencies conducting health interventions and research on chemical exposures; (3) healthcare providers and other clinicians; and (4) local and State policy makers who regulate or make recommendations concerning uses and control of environmental chemicals.

The general purpose of the Report is "to provide unique exposure information to scientists, physicians, and health officials to help prevent disease that results from exposure to environmental chemicals." There is no cost to the respondents.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Environmental Scientists	250	1	1	250
Public Health Officials	250	1	1	250
Health Care Providers	250	1	1	250
Policy Makers	250	1	1	250
Total				1,000

Dated: August 15, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–21354 Filed 8–21–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) (Formerly the Health Care Financing Administration).

ACTION: Notice of modified or altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter a SOR, "Carrier Medicare Claims Record (CMCR) System", System No. 09–70–0501. We propose to delete published routine uses numbered 1, 3, 4, 5, 6, 7, 9, 12, 14, 16, 17, 18, 19, 21, 22, 23, 24, and an unnumbered routine use authorizing disclosure to the Social Security Administration (SSA). We propose to delete published routine uses number 1 authorizing disclosure to claimants and their authorized representatives, number 3 authorizing disclosure to third party contacts to establish or verify information, number 4 authorizing disclosure to the Treasury Department for investigating alleged theft, number 5 authorizing disclosure to the United States Postal Service (USPS), number 6 authorizing disclosure to the Department of Justice (DOJ) to combat fraud and abuse, number 7 authorizing disclosure to the Railroad Retirement Board (RRB), number 9 authorizing disclosure to State Licensing Boards for review of unethical practices, number 12 authorizing disclosure to state welfare departments, number 14 authorizing disclosure to state audit agencies, number 16 authorizing disclosure to senior citizen volunteers to assist beneficiaries, number 17 authorizing disclosure to a contractor to recover erroneous Medicare payments, number 18 authorizing disclosure to state and other governmental Workers' Compensation Agencies, number 19 authorizing disclosure to insurance companies providing protection to enrollees, number 21 authorizing disclosure to an agency of a state government or established by law, number 22 authorizing disclosure to insurers who are primary payers to Medicare, number 23 authorizing disclosure to the Internal Revenue Service, number 24 authorizing disclosure to servicing fiscal intermediaries/carriers banks to transfer remittance advice to Medicare, and an unnumbered routine use authorizing disclosure to the Social Security Administration (SSA).

A disclosure permitted under routine uses number 4, 5, 7, 9, 12, 14, 18, 21, 23, and to the SSA will be made a part of proposed routine use number 2. Proposed routine use number 2 will allow for release of information to "another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent". Disclosures permitted under published routine uses number 1, 3, 16, and 24 will be combined with published routine use number 2, which permits release to "third party contacts," and covered by proposed routine use number 3. Disclosure authorized to "insurance companies providing protection to enrollees" under routine use 19 and to "insurers who are primary payers to Medicare" under routine use number 22 will be combined and listed as proposed routine use number 6. Disclosures permitted under published routine use number 17 will be covered by proposed routine use number 10, which will permit the release of data to contractors and grantees for the purposes of combating fraud and abuse. Disclosures permitted under published routine use number 6 will be covered by proposed routine use number 11, which will permit the release of data to other Federal agencies for the purposes of combating fraud and abuse. We propose to renumber published routine use number 20 as proposed routine use number 1 and modify the language to clarify the circumstances for disclosure to contractors and consultants.

The security classification previously reported as "None" will be modified to reflect that the data in this system is considered to be "Level Three Privacy Act Sensitive." We are modifying the language in the remaining routine uses to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the SOR is to properly pay medical insurance benefits to or on behalf of entitled beneficiaries. Information in this system will also be released to: support regulatory and policy functions performed within the Agency or by a contractor or consultant, another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent, third party contacts, providers and suppliers of services dealing through fiscal intermediaries or carriers, Peer Review Organizations (PRO), insurance companies and other groups providing protection for their enrollees, insurers and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C § 1395y (b), an individual or organization for a research, evaluation, or epidemiological project, support constituent requests made to a congressional representative, support litigation involving the Agency related to this SOR, and combat fraud and abuse in certain Federally funded health care programs. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on August 8, 2002. To ensure that all parties have adequate time in which to comment, the modified or altered SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Anita Denion, Health Insurance Specialist, Business Solutions Operating Group, Division of Carrier Systems, Office of Information Services, CMS, Room N2–07–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–7022.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System

A. Statutory and Regulatory Basis for SOR

In 1994, CMS modified a SOR under the authority of sections 1842, 1862 (b) and 1874 of Title XVIII of the Social Security Act (42 United States Code (U.S.C.)) 1395u, 1395y (b), and 1395kk). Notice of the modification to this system, "Carrier Medicare Claims Records, System No. 09–70–0501" was published in the **Federal Register** (FR) 59 FR 37244 (July 21, 1994), an unnumbered routine use was added for the SSA at 61 FR 6645 (Feb. 21, 1996), three new fraud and abuse routine uses were added at 63 FR 38414 (July 16, 1998), and then at 65 FR 60552 (Aug. 18, 2000), two of the fraud and abuse routine uses were revised and a third deleted.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The system contains information on Medicare beneficiaries who have submitted claims for Supplemental Medical Insurance (SMI) benefit (Medicare Part B), or individuals whose enrollment in an employer group health benefits plan covers the beneficiary. Information contained in this system consist of request(s) for payment, provider billing for patient services, prepayment plan for group Medicare practice dealing through a carrier, health insurance claim form, request(s) for medical payment, explanation of benefits, request for claim number verification, payment record transmittal, statement of person regarding Medicare payment for medical services furnished deceased patient, report of prior period of entitlement, itemized bills and other similar documents required to support payments to beneficiaries and to physicians and other suppliers of Part B services, and Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claims payment.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use". The government will only release CMCR information that can be associated with an individual as provided for under "Section III. Entities Who May Receive Disclosures Under Routine Use". Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only disclose the minimum personal data necessary to achieve the purpose of CMCR. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.*, to properly pay medical insurance benefits to or on behalf of entitled beneficiaries.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all individually-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

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III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the CMCR without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

5. To Agency contractors or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this SOR.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

Carriers and intermediaries occasionally work with contractors to identify and recover erroneous Medicare payments for which workers' compensation programs are liable.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent pursuant to agreements with CMS to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require CMCR information for the purposes of determining, evaluating, and/or assessing cost, effectiveness, and/or the quality of health care services provided in the state, to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

The Treasury Department may require CMCR data for investigating alleged theft, forgery, or unlawful negotiation of Medicare reimbursement checks.

The USPS may require CMCR data for investigating alleged forgery or theft of reimbursement checks.

The RRB requires CMCR information to enable them to assist in the implementation and maintenance of the Medicare program.

The SSA requires CMCR data to enable them to assist in the implementation and maintenance of the Medicare program.

The IRS may require CMCR data for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plan or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y (b).

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with the HHS for administration of state supplementation payments for determinations of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under section 1843 of the Social Security Act (the Act), for quality control studies, for determining eligibility of recipients of assistance under Titles IV, and XIX of the Act, and for the complete administration of the Medicaid program. CMCR data will be released to the state only on those individuals who are patients under the services of a Medicaid program within the state or who are residents of that state.

Occasionally state licensing boards require access to the CMCR data for review of unethical practices or non-professional conduct.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require CMCR information for auditing of Medicare eligibility considerations. Disclosure of physicians' customary charge data are made to state audit agencies in order to ascertain the corrections of Title XIX charges and payments. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this SOR.

State and other governmental worker's compensation agencies working with CMS to assure that workers' compensation payments are made where Medicare has erroneously paid and workers' compensation programs are liable.

3. To third party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the Medicare program; and the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of program activities.

Third parties contacts require CMCR information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual or the representative of the applicant, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

Senior citizen volunteers working in the carriers and intermediaries' offices to assist Medicare beneficiaries request for assistance may require access to CMCR information.

Occasionally fiscal intermediary/carrier banks, automated clearing houses, value added networks (VAN), and provider banks, to the extent necessary transfer to providers electronic remittance advice of Medicare payments, and with respect to provider banks, to the extent necessary to provide account management services to providers using this information.

4. To providers and suppliers of services dealing through fiscal intermediaries or carriers for the administration of Title XVIII of the Social Security Act.

Providers and suppliers of services require CMCR information in order to establish the validity of evidence, or to verify the accuracy of information presented by the individual as it concerns the individual's entitlement to benefits under the Medicare program, including proper reimbursement for services provided.

Providers and suppliers of services who are attempting to validate items on which the amounts included in the annual Physician/Supplier Payment List, or other similar publications are based.

5. To Peer Review Organizations (PRO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

PROs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. PROs will assist the state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, and prepare summary information for release to CMS.

6. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (i.e., health maintenance organizations (HMOs) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers, TPAs, HMOs, and HCPPs may require CMCR information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

7. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

CMCR data will provide for research, evaluation, and epidemiological projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

8. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

9. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court, or adjudicatory body involved.

10. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

11. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require CMCR information for the purpose of combating fraud and abuse in such Federally funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164.

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65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information".

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

A. Administrative Safeguards

The CMCR system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act (PRA) of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, "Security of Federal Automated Information Resources". CMS has prepared a comprehensive system security plan as required by the Office and Management and Budget (OMB) Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, "Guide for Developing Security Plans for Information Technology Systems." Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user as determined at the Agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- *Database Administrator* class owns the database objects; e.g., tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- *Quality Control Administrator* class has read and write access to key fields in the database;
- *Quality Indicator (QI) Report Generator* class has read-only access to all fields and tables;
- *Policy Research* class has query access to tables, but are not allowed to access confidential individual identification information; and
- *Submitter* class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards: All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMCR system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card key and/or combination that grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the Agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the Agency level.
- Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- Warnings—Legal notices and security warnings display on all servers and workstations.
- Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

There are several levels of security found in the CMCR system. Windows NT provides much of the overall system security. The Windows NT security model is designed to meet the C2-level criteria as defined by the U.S. Department of Defense's Trusted Computer System Evaluation Criteria document (DoD 5200.28–STD, December 1985). Netscape Enterprise Server is the security mechanism for all transmission connections to the system. As a result, Netscape controls all information access requests. Anti-virus software is applied at both the workstation and NT server levels.

Access to different areas on the Windows NT server are maintained through the use of file, directory and share level permissions. These different levels of access control provide security that is managed at the user and group level within the NT domain. The file and directory level access controls rely on the presence of an NT File System (NTFS) hard drive partition. This provides the most robust security and is tied directly to the file system. Windows NT security is applied at both the workstation and NT server levels.

C. Procedural Safeguards: All automated systems must comply with Federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified SOR on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this SOR.

CMS will monitor the collection and reporting of CMCR data. CMCR information on individuals is completed by contractor personnel and submitted to CMS through standard systems located at different locations. CMS will utilize a variety of onsite and offsite edits and audits to increase the accuracy of CMCR data.

CMS will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure of identifiable data from the modified system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: August 15, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

09–70–0501

SYSTEM NAME:

Carrier Medicare Claims Record (CMCR) System, HHS/CMS/OIS.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850. See Appendix A for various remote sites where this system is also maintained.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains information on Medicare beneficiaries who have submitted claims for Supplemental Medical Insurance (SMI) benefit (Medicare Part B), or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in this system consist of request(s) for payment, provider billing for patient services, prepayment plan for group Medicare practice dealing through a carrier, health insurance claim form, request(s) for medical payment, explanation of benefits, request for claim number verification, payment record transmittal, statement of person regarding Medicare payment for medical services furnished deceased patient, report of prior period of entitlement, itemized bills and other similar documents required to support payments to beneficiaries and to physicians and other suppliers of Part B services, and Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claims payment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the maintenance of this SOR is given under the authority of sections 1842, 1862 (b) and 1874 of Title XVIII of the Social Security Act (the Act) (42 United States Code (U.S.C.) sections 1395u, 1395y (b), and 1395kk).

PURPOSE(S):

The primary purpose of the SOR is to properly pay medical insurance benefits to or on behalf of entitled beneficiaries. Information in this system will also be released to: support regulatory and policy functions performed within the Agency or by a contractor or consultant, another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent, third party contacts, providers and suppliers of services directly or through fiscal intermediaries or carriers, Peer Review Organizations (PRO), insurance companies and other groups providing protection for their enrollees, insurers and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. 1395y (b), an individual or organization for a research, evaluation, or epidemiological project, support constituent requests made to a congressional representative, support litigation involving the agency related to this SOR, and combat fraud and abuse in certain Federally funded health care programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the CMCR without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information".

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). We propose to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent pursuant to agreements with CMS to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3. To third party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to,

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benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the Medicare program; and the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of program activities.

4. To providers and suppliers of services dealing through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

5. To Peer Review Organizations (PRO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

6. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.*, health maintenance organizations (HMOs) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

7. To an individual or organization for research, evaluation, or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

8. To a Member of Congress or congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

9. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

10. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

11. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by the beneficiary's name, HIC, and assigned unique physician identification number.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMCR system. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management Circular #10, Automated Information Systems Security Program; CMS Automated Information Systems Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Records are closed at the end of the calendar year in which paid, held 2 additional years, transferred to Federal records center and destroyed after another 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Business Solutions Operating Group, Division of Carrier Systems, Office of Information Services, CMS, 7500 Security Boulevard, Room S1–05–06, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, HIC, address, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system is obtained from third party agencies, Social Security Administration's Master Beneficiary Record, and CMS's Enrollment Database.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A. Health Insurance Claims

Medicare records are maintained at the CMS Central Office (see section 1 below for the address). Health Insurance Records of the Medicare program can also be accessed through a representative of the CMS Regional Office (see section 2 below for addresses). Medicare claims records are also maintained by private insurance organizations that share in administering provisions of the health insurance programs. These private insurance organizations, referred to as carriers and intermediaries, are under contract to the Health Care Financing Administration and the Social Security Administration to perform specific task in the Medicare program (see section three below for addresses for intermediaries, section four addresses the carriers, and section five addresses the Payment Safeguard Contractors.

I. Central Office Address

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

II. CMS Regional Offices

BOSTON REGION—Connecticut, Maine, Massachusetts; New Hampshire, Rhode Island, Vermont. John F. Kennedy Federal Building, Room 1211, Boston, Massachusetts 02203. Office Hours: 8:30 a.m.–5 p.m.

NEW YORK REGION—New Jersey, New York, Puerto Rico, Virgin Islands. 26 Federal Plaza, Room 715, New York, New York 10007, Office Hours: 8:30 a.m.–5 p.m.

PHILADELPHIA REGION—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia. Post Office Box 8460, Philadelphia, Pennsylvania 19101. Office Hours: 8:30 a.m.–5 p.m.

ATLANTA REGION—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee. 101 Marietta Street, Suite 702, Atlanta, Georgia 30223, Office Hours: 8:30 a.m.–4:30 p.m.

CHICAGO REGION—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin. Suite A–824, Chicago, Illinois 60604. Office Hours: 8 a.m.–4:45 p.m.

DALLAS REGION—Arkansas, Louisiana, New Mexico, Oklahoma, Texas, 1200 Main Tower Building, Dallas, Texas. Office Hours: 8 a.m.–4:30 p.m.

KANSAS CITY REGION—Iowa, Kansas, Missouri, Nebraska. New Federal Office Building, 601 East 12th Street—Room 436, Kansas City, Missouri 64106. Office Hours: 8 a.m.–4:45 p.m.

DENVER REGION—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. Federal Office Building, 1961 Stout St—Room 1185, Denver, Colorado 80294. Office Hours: 8 a.m.–4:30 p.m.

SAN FRANCISCO REGION—American Samoa, Arizona, California, Guam, Hawaii, Nevada. Federal Office Building, 10 Van Ness Avenue, 20th Floor, San Francisco, California 94102. Office Hours: 8 a.m.–4:30 p.m.

SEATTLE REGION—Alaska, Idaho, Oregon, Washington. 1321 Second Avenue, Room 615, Mail Stop 211, Seattle, Washington 98101. Office Hours 8 a.m.–4:30 p.m.

III. Intermediary Addresses (Hospital Insurance)

Medicare Coordinator, ASSOC. HOSPITAL SERV. MAINE (ME BC), 2 GANNETT DRIVE, SOUTH PORTLAND, ME 04106–6911.

Medicare Coordinator, Anthem New Hampshire, 300 GOFFS FALLS ROAD, MANCHESTER, NH 03111–0001.

Medicare Coordinator, BC/BS RHODE ISLAND (RI BC), 444 WESTMINSTER STREET, PROVIDENCE, RI 02903–3279.

Medicare Coordinator, EMPIRE MEDICARE SERVICES, 400 S. SALINA STREET, SYRACUSE, NY 13202.

Medicare Coordinator, COOPERATIVA, P.O. BOX 363428, SAN JUAN, PR 00936–3428.

Medicare Coordinator, MARYLAND B/C, P.O. BOX 4368, 1946 GREENSPRING AVE., TIMONIUM, MD 21093.

Medicare Coordinator, Highmark, P5103, 120 FIFTH AVENUE PLACE, PITTSBURGH, PA 15222–3099.

Medicare Coordinator, UNITED GOVERNMENT SERVICES, 1515 N. RIVERCENTER DR., MILWAUKEE, WI 53212.

Medicare Coordinator, ALABAMA B/C, 450 RIVERCHASE PARKWAY EAST, BIRMINGHAM, AL 35298.

Medicare Coordinator, FLORIDA B/C, 532 RIVERSIDE AVE., JACKSONVILLE, FL 32202–4918.

Medicare Coordinator, GEORGIA B/C, P.O. BOX 9048, 2357 WARM SPRINGS ROAD, COLUMBUS, GA 31908.

Medicare Coordinator, MISSISSIPPI B/C B MS, P.O. BOX 23035, 3545 LAKELAND DRIVE, JACKSON, MI 39225–3035.

Medicare Coordinator, NORTH CAROLINA B/C, P.O. BOX 2291, DURHAM, NC 27702–2291.

Medicare Coordinator, PALMETTO GBA A/RHHI, 17 TECHNOLOGY CIRCLE, COLUMBIA, SC 29203–0001.

Medicare Coordinator, TENNESSEE B/C, 801 PINE STREET, CHATTANOOGA, TN 37402–2555.

Medicare Coordinator, ANTHEM INSURANCE CO. (ANTHEM IN), P.O. BOX 50451, 8115 KNUE ROAD, INDIANAPOLIS, IN 46250–1936.

Medicare Coordinator, ARKANSAS B/C, 601 GAINES STREET, LITTLE ROCK, AR 72203.

Medicare Coordinator, GROUP HEALTH OF OKLAHOMA, 1215 SOUTH BOULDER, TULSA, OK 74119–2827.

Medicare Coordinator, TrailBlazer, P.O. BOX 660156, DALLAS, TX 75266–0156.

Medicare Coordinator, Cahaba GBA, STATION 7, 636 GRAND AVENUE, DES MOINES, IA 50309–2551.

Medicare Coordinator, KANSAS B/C, P.O. BOX 239, 1133 TOPEKA AVE., TOPEKA, KS 66629–0001.

Medicare Coordinator, NEBRASKA B/C, P.O. BOX 3248, MAIN PO STATION, OMAHA, NE 68180–0001.

Medicare Coordinator, MUTUAL OF OMAHA, P.O. BOX 1602, OMAHA, NE 68101.

Medicare Coordinator, MONTANA B/C, P.O. BOX 5017, GREAT FALLS DIV., GREAT FALLS, MT 59403–5017.

Medicare Coordinator, Noridian, 4510 13TH AVENUE S.W., FARGO, ND 58121–0001.

Medicare Coordinator, UTAH B/C, P.O. BOX 30270, 2455 PARLEYS WAY, SALT LAKE CITY, UT 84130–0270.

Medicare Coordinator, WYOMING B/C, 4000 HOUSE AVENUE, CHEYENNE, WY 82003.

Medicare Coordinator, ARIZONA B/C, P.O. BOX 37700, PHOENIX, AZ 85069.

Medicare Coordinator, UGS, P.O. BOX 70000, VAN NUYS, CA 91470–0000.

Medicare Coordinator, Regents BC, P.O. BOX 8110 M/S D–4A, PORTLAND, OR 97207–8110.

Medicare Coordinator, Premera BC, P.O. BOX 2847, SEATTLE, WA 98111–2847.

IV. Medicare Carriers

Medicare Coordinator, NHIC, 75 Sargent William Terry Drive, Hingham, MA 02044.

Medicare Coordinator, B/S Rhode Island (RI BS), 444 Westminster Street, Providence, RI 02903–2790.

Medicare Coordinator, Trailblazer Health Enterprises, Meriden Park, 538 Preston Ave., Meriden, CT 06450.

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Medicare Coordinator, Upstate Medicare Division, 11 Lewis Road, Binghamton, NY 13902.

Medicare Coordinator, Empire Medicare Services, 2651 Strang Blvd., Yorktown Heights, NY, 10598.

Medicare Coordinator, Empire Medicare Services, NJ, 300 East Park Drive, Harrisburg, PA 17106.

Medicare Coordinator, Triple S, #1441 F.D., Roosvelt Ave., Guaynabo, PR 00968.

Medicare Coordinator, Group Health Inc., 4th Floor, 88 West End Avenue, New York, NY 10023.

Medicare Coordinator, Highmark, P.O. Box 89065, 1800 Center Street, Camp Hill, PA 17089–9065.

Medicare Coordinator, Trailblazers Part B, 11150 McCormick Drive, Executive Plaza 3 Suite 200, Hunt Valley, MD 21031.

Medicare Coordinator, Trailblazer Health Enterprises, Virginia, P.O. Box 26463, Richmond, VA 23261–6463. United Medicare Coordinator, Tricenturion, 1 Tower Square, Hartford, CT 06183.

Medicare Coordinator, Alabama B/S, 450 Riverchase Parkway East, Birmingham, AL 35298.

Medicare Coordinator, Cahaba GBA, 12052 Middleground Road, Suite A, Savannah, GA 31419.

Medicare Coordinator, Florida B/S, 532 Riverside Ave, Jacksonville, FL 32202–4918.

Medicare Coordinator, Administar Federal, 9901 Linnstation Road, Louisville, KY 40223.

Medicare Coordinator, Palmetto GBA, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, CIGNA, 2 Vantage Way, Nashville, TN 37228.

Medicare Coordinator, Railraod Retirement Board, 2743 Perimeter Parkway, Building 250, Augusta, GA 30999.

Medicare Coordinator, Cahaba GBA, Jackson Miss, P.O. Box 22545, Jackson, MI 39225–2545.

Medicare Coordinator, Adminastar Federal (IN), 8115 Knue Road, Indianapolis, IN 46250–1936.

Medicare Coordinator, Wisconsin Physicians Service, P.O. Box 8190, Madison, Wi 53708–8190.

Medicare Coordinator, Nationwide Mutual Insurance Co., P.O. Box 16788, 1 Nationwide Plaza, Columbus, Oh 43216–6788.

Medicare Coordinator, Arkansas B/S, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Arkansas-New Mexico, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Palmetto GBA—DMERC, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, Trailblazer Health Enterprises, 901 South Central Expressway, Richardson, TX 75080.

Medicare Coordinator, Nordian, 636 Grand Avenue, Des Moines, IA 50309–2551.

Medicare Coordinator, Kansas B/S, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.

Medicare Coordinator, Kansas B/S—NE, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0239.

Medicare Coordinator, Montana B/S, P.O. Box 4309, Helena, MT 59601.

Medicare Coordinator, Nordian, 4305 13th Avenue South, Fargo, ND 58103–3373.

Medicare Coordinator, Noridian Bcbsnd (C0), 730 N. Simms #100, Golden, CO 80401–4730.

Medicare Coordinator, Noridian Bcbsnd(WY), 4305 13th Avenue South, Fargo, ND 58103–3373.

Medicare Coordinator, Utah B/S, P.O. Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.

Medicare Coordinator, Transamerica Occidental, P.O. Box 54905, Los Angeles, CA 90054–4905.

Medicare Coordinator, NHIC—California, 450 W. East Avenue, Chico, CA 95926.

Medicare Coordinator, Cigna, Suite 254, 3150 Lakeharbor, Boise, ID 83703.

Medicare Coordinator, Cigna, Suite 506, 2 Vantage Way, Nashville, TN 37228.

V. Payment Safeguard Contractors

Medicare Coordinator, Aspen Systems Corporation, 2277 Research Blvd., Rockville, MD 20850.

Medicare Coordinator, DynCorp Electronic Data Systems (EDS), 11710 Plaza America Drive, 5400 Legacy Drive, Reston, VA 20190–6017.

Medicare Coordinator, Lifecare Management Partners Mutual of Omaha Insurance Co., 6601 Little River Turnpike, Suite 300, Mutual of Omaha Plaza, Omaha, NE 68175.

Medicare Coordinator, Reliance Safeguard Solutions, Inc., P.O. Box 30207, 400 South Salina Street, 2890 East Cottonwood Pkwy., Syracuse, NY 13202.

Medicare Coordinator, Science Applications International, Inc., 6565 Arlington Blvd. P.O. Box 100282, Falls Church, VA.

Medicare Coordinator, California Medical Review, Inc., Integriguard Division Federal Sector Civil Group, One Sansome Street, San Francisco, CA 94104–4448.

Medicare Coordinator, Computer Sciences Corporation, Suite 600, 3120 Timanus Lane, Baltimore, MD 21244.

Medicare Coordinator, Electronic Data Systems (EDS), 11710 Plaza America Drive, 5400 Legacy Drive, Plano, TX 75204.

Medicare Coordinator, TriCenturion, L.L.C., P.O. Box 100282, Columbia, SC 29202.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KP, the Office of the Deputy Assistant Secretary for Administration (ODASA) [67 FR 8816], as last amended, February 26, 2002. This notice reflects the restructuring of the Office of the Deputy Assistant Secretary and the realignment of functions within the Office.

This Chapter is amended as follows:

1. Chapter KP, Office of the Deputy Assistant Secretary for Administration

A. Delete KP.10 Organization in its Entirety and Replace With the Following:

KP.10 Organization. The Office of the Deputy Assistant Secretary for Administration is headed by the Deputy Assistant Secretary who reports to the Assistant Secretary for Children and Families. The Office is organized as follows:

- Immediate Office of the Deputy Assistant Secretary for Administration (KPA)
- Office of Information Services (KPB)
- Office of Financial Services (KPC)
- Office of Management Resources (KPD)
- Office of Grants Management (KPG)
- Equal Employment Opportunity and Civil Rights Staff (KPH)

B. Delete KP.20 Functions, Paragraph A, The Office of the Deputy Assistant Secretary for Administration (ODASA), in its Entirety and Replace With the Following:

KP.20 Functions. A. The Immediate Office of the Deputy Assistant Secretary for Administration (ODASA) directs and coordinates all administrative activities for the Administration for Children and Families (ACF). The Deputy Assistant Secretary for Administration serves as ACF's: Chief Financial Officer; Chief Grants Management Officer; Federal Manager's Financial Integrity Act (FMFIA) Management Control Officer; Principal Information Resource Management Official serving as Chief Information Officer; Deputy Ethics Counselor; Personnel Security Representative; and Reports Clearance Officer. The Deputy Assistant Secretary for Administration serves as the ACF liaison to the Office of the General Counsel, and as appropriate, initiates action in securing resolution of legal matters relating to management of the agency, and represents the Assistant Secretary on all administrative litigation matters.

The Deputy Assistant Secretary for Administration represents the Assistant Secretary in HHS and with other Federal agencies and task forces in defining objectives and priorities, and in coordinating activities associated with

Presidential Management Agenda initiatives. ODASA provides leadership of assigned ACF special initiatives arising from Departmental, federal and non-federal directives to improve service delivery to customers.

The Deputy Assistant Secretary for Administration provides day-to-day executive leadership and direction to the Immediate Office of the Deputy Assistant Secretary, Equal Employment Opportunity and Civil Rights Staff, Office of Information Services, Office of Financial Services, Office of Management Resources, and the Office of Grants Management. The Deputy Director for Administration assists the Deputy Assistant Secretary in carrying out the responsibilities of the Office.

The Immediate Office of the Deputy Assistant Secretary for Administration contains the Administrative Services Team, the Budget Team and the Physical Security and Safety Team.

The Administrative Services Team provides direction in meeting the human capital management needs within ODASA. The Team provides leadership, guidance, oversight and liaison functions for ODASA personnel related issues and activities as well as other administrative functions within ODASA. The Administrative Services Team coordinates with the Office of the Secretary to provide ODASA staff with a full array of personnel services, including position management, performance management, employee recognition, staffing, recruitment, employee and labor relations, employee assistance, payroll liaison, staff development and training, and special hiring and placement programs. The Team develops and maintains systems to track personnel actions to keep the Deputy Assistant Secretary for Administration and ODASA Office Directors informed about the status of personnel actions, employee programs, services and benefits.

The Budget Team manages the formulation and execution of ODASA's federal administration budget and assigned ACF program and common expense budgets. The Budget Team maintains budgetary controls on ODASA accounts, reconciling accounting reports and invoices, and monitoring all spending. The Team develops, defends and executes the assigned funds for rent, repair and alterations, facilities activities, telecommunication, information technology, personnel services and training. The Team also controls ODASA's credit card for small purchases.

The Physical Security and Safety Team is responsible for planning, managing, and directing ACF's safety, security, and emergency management programs. The Team serves as the lead for ACF in coordination and liaison with Departmental, GSA and other Federal agencies on implementation of federal physical security directives. The Physical Security and Safety Team serves as lead for all tenant security matters in the Aerospace Building. The Team is responsible for planning and executing ACF's environmental health program, and ensuring that appropriate occupational health and safety plans are in place. The Team is responsible for issuing, managing and controlling badge and cardkey systems to control access to agency space for security purposes.

C. Delete KP.20 Functions, Paragraph B, The Office of Information Services (OIS), in its Entirety and Replace With the Following:

B. The Office of Information Services (OIS) supports the Deputy Assistant Secretary in providing centralized information technology policy, procedures, standards and guidelines. The OIS Director serves as the Deputy Chief Information Officer, supporting the Chief Information Officer in the full range of activities required to carry out ACF's information technology (IT) and information resource management (IRM) programs. The Office provides liaison with OMB, GSA, and GAO on all IT and IRM matters and manages major interdepartmental IRM initiatives. It directs and coordinates ACF's Privacy Act responsibilities. The Office coordinates mandated OMB information collection approvals and plans. It directs and maintains ACF records and forms management programs. OIS develops long-range IRM plans; develops IRM policy, procurement plans and budgets for ACF information systems. The Office develops and implements procurement strategies for ADP support services. OIS reviews and analyzes all ADP acquisition documentation for compliance with applicable laws and regulations as well as for procurement strategy. It coordinates technical assistance provided to program offices on ADP support services procurements. The Office oversees the implementation of e-government policies through leadership and coordination with ACF program and staff offices; develops, recommends and implements policies, procedures, standards and guidelines; and serves as the ACF liaison with the Department and other federal and non-federal agencies to coordinate e-government strategies and policies.

OIS plans, manages, maintains and operates ACF's local area networks, nationwide area network and personal computers; provides for equipment and software acquisition, maintenance and user support for end-user computing; and manages and maintains a Help Desk for ACF users. OIS develops and implements policies and plans for and acquires and manages data communications services; provides liaison with HHS, GSA and private firms on data communications equipment and systems.

OIS designs, develops, implements and maintains application systems to support ACF budget, program and administrative systems. The Office provides technical assistance to ACF program offices procuring system support services; technical assistance to State and local agencies on ACF computer systems; develops software policy, procedures, standards and guidelines; and conducts required Departmental reviews of ADP systems.

OIS designs, develops, and maintains system support for e-government activities; provides technical assistance to ACF program offices for e-government support services; and provides technical assistance on e-government systems to State and local agencies.

The Office develops and/or implements agency telecommunications management policy in accordance with Federal regulations and procedures. The Office reviews and directs payment of agency telephone invoices. It recommends and advises on the design and function of telecommunications systems, based on user needs, costs and technological availability. The Office communicates with private industry service providers to coordinate the acquisition, installation and maintenance of voice/data telecommunications equipment and systems. It is responsible for other sources of communications capability such as pagers, cellular phone service, cable TV service, and audio conferencing equipment and service. It updates and maintains the databases for telephone lines and equipment inventories.

OIS establishes, implements, maintains and oversees an IT security program that assures adequate security is provided for all agency information collected, processed, transmitted, stored or disseminated in general support systems and applications. The Office develops and implements ACF policies, standards and procedures consistent with government-wide IT security policies; conducts the ACF system security activities required by OMB IT security directives; develops, implements and maintains a security

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training plan for IT professionals; and provides security awareness training for all ACF staff.

D. Delete KP.20 Functions, Paragraph C, The Office of Financial Services (OFS), in its Entirety and Replace With the Following:

C. The Office of Financial Services (OFS) supports the Deputy Assistant Secretary for Administration in fulfilling ACF's Chief Financial Officer (CFO) and Federal Manager's Financial (FMFIA) Management Control Officer responsibilities including preparation of the CFO 5-Year Plan; performs audit oversight and liaison activities, including preparing reports to Congress, Office of the General Counsel and the Office of the Inspector General. OFS writes/interprets financial policy and researches appropriation law issues; oversees and coordinates ACF's FMFIA activities; performs debt management functions; develops and administers quality assurance, training and certification programs for grants management; and is responsible for the annual preparation and audit of ACF's financial statement requirements. The Office develops/interprets internal policies and procedures for ACF components and coordinates the management of ACF's interagency agreement activities.

The Office provides agency-wide guidance to program and regional office staff on grant related issues; including developing and interpreting financial and grants policy, coordinating strategic grants planning, facilitating policy advisory groups, and assuring consistent grant program announcements. The Office prepares, coordinates and disseminates action transmittals, information memoranda, and other policy guidance on financial and grants management issues; provides financial and grants administration technical assistance to ACF staff; directs and/or coordinates management initiatives to improve financial administration of ACF mandatory and discretionary grant programs. OFS develops and administers grants management training for ACF program and grants staff and administers grants management certification for ACF grants staff.

OFS is responsible for developing ACF policies and procedures under which States obtain Federal Financial Participation in the cost of automated systems development to support programs funded under the Social Security Act. It serves as the departmental focal point and coordinator for the development and implementation of strategies and policies related to payment integrity, welfare systems integration, electronic benefit transfer and related initiatives and programs; and provides leadership and guidance to interagency work groups in these areas for the Department.

The Office provides policy guidance, management leadership and coordination regarding the optimum inter-operation of the multitude of complex Federal, State, local, tribal and private information technology systems used to carry out ACF programs. OFS provides leadership and coordination in the areas of State systems assessments, systems design and planning, systems integration, data exchanges, information management, information security and electronic information exchanges.

E. Delete KP.20 Functions, Paragraph D, The Office of Organizational Development Services; Paragraph E, The Office of Customer Service and Administration; and Paragraph L, The Office of Administrative Services and Facilities Management in Their Entirety and Establish the Following:

D. The Office of Management Resources (OMR) advises the Deputy Assistant Secretary for Administration on human resource management, materiel resource management, and organizational and employee development activities for ACF. OMR provides leadership, direction and oversight for human resource management services provided to ACF through a contract and supplemental memoranda of understanding (MOUs) with the Program Support Center (PSC). OMR, in collaboration and coordination with the PSC, provides advice and assistance to ACF managers in their personnel management activities, including recruitment, selection, position management, performance management, designated performance and incentive awards and employee assistance programs and other services to ACF employees. OMR provides management, direction and oversight of the following personnel administrative services: the exercise of appointing authority, position classification, awards authorization, performance management evaluation, personnel action processing and record keeping, merit promotion, special hiring and placement programs. OMR serves as liaison between ACF, the Department and the Office of Personnel Management. It provides technical advice and assistance on personnel policy, regulations and laws. OMR formulates and interprets policies pertaining to existing personnel administration and management matters and formulates and interprets new human resource programs and strategies.

The Office, in collaboration and coordination with the PSC, provides oversight and management advisory services on all ACF employee relations issues. The Office plans and coordinates ACF employee relations and labor relations activities, including the application and interpretation of the Federal Labor Management Relations Program, collective bargaining agreements, disciplinary and adverse action regulations and appeals. The Office participates in the formulation and implementation of policies, practices and matters affecting bargaining unit employees' working conditions by assuring management's compliance with the Federal Labor Relations Program (5 U.S.C. Chapter 71). The Office maintains oversight, leadership and direction of the labor-management and employee relations services provided under contract with the PSC.

OMR is responsible for formulation, planning, analysis and development of ACF human resource policies and programs, workforce planning, and liaison functions to the Department on ACF payroll matters.

The Office formulates and oversees the implementation of ACF-wide policies, regulations and procedures concerning all aspects of the Senior Executive Service (SES), and SES-equivalent recruitment, staffing, position establishment, compensation, award, performance management and related personnel areas. The Office manages the ACF SES performance recognition systems and provides services for functions of the Executive Secretary to the Executive Resources Board and the Performance Review Board. OMR coordinates Schedule C and executive personnel activity with the Office of the Secretary and is the focal point for data, reports and analyses relating to Schedule C, SES and Executive-level personnel.

OMR administers the ACF Ethics program, the Personnel Security program, and the Drug Testing program in coordination with the Department's Office of Government Ethics, the Office of General Counsel and the Office of Security and Drug Testing.

The Office of Management Resources directs and manages ACF's administrative support services, and materiel management programs and activities. The Office provides, prepares, coordinates and disseminates information, policy and procedural guidance on administrative and materiel management issues on an agency-wide basis. It directs and/or coordinates

management initiatives to improve ACF administrative and materiel management services with the goal of continually improving services while containing costs.

The Office establishes and manages contracts and/or blanket purchase agreements for administrative support and materiel management services, including space design, building alteration and repair, reprographics, moving, labor, property management and inventory, systems furniture acquisitions and assembly, and fleet management.

The Office provides management and oversight of ACF mail delivery services and activities, including Federal and contractor postal services nationwide, covering all classes of U.S. Postal Service mail, priority and express mail services, and courier services, etc.

The Office directs all activities associated with the ACF Master Housing Plan, including coordination and development of the agency long-range space budget; planning, budgeting, identification, solicitation, acceptance and utilization of office and special purpose space, repairs, and alterations; serving as principal liaison with GSA and other Federal agencies, building managers and materiel engineers, architects and commercial representatives, for space acquisition, negotiation of lease terms, dealing with sensitive issues such as handicapped barriers, and space shortages. It develops and maintains space floor plans and inventories, directory boards, and locator signs. The Office serves as principal liaison with private and/or Federal building managers for all administrative services and materiel management activities.

The Office plans, manages/operates employee transportation programs, including shuttle service and fleet management; employee and visitor parking. The Office develops and implements ACF travel policies and procedures consistent with Federal requirements. The Office provides technical assistance and oversight; coordinates ACF use of the Travel Management System; manages employee participation in the Travel Charge Card program, and coordinates Travel Management Center services for ACF. It purchases and tracks common use supplies, stationery and publications. It plans and manages reprographic services.

The Office develops and implements policies and procedures for the ACF Personal Property Management program, including managing the ACF Personal Property Inventory, and other personal property activities.

OMR advises the Deputy Assistant Secretary for Administration on organizational analysis and development including: delegations of authority; planning for new organizational elements; and planning, organizing and performing studies, analyses and evaluations related to structural, functional and organizational issues, problems and policies to ensure organizational effectiveness. The Office administers ACF's system for review, approval and documentation of delegations of authority. The Office provides technical assistance and guidance to ACF offices on intra-component organizational proposals and is responsible for development and/or review of inter-component organizational proposals. The Office develops policies and procedures for implementing organizational development activities and provides leadership of assigned ACF special initiatives arising from Departmental, federal and non-federal directives to improve service delivery to customers and to enhance employee work environment. The Office manages and coordinates designated incentive awards programs.

The Office develops training policy and plans for ACF. It provides leadership in directing and managing Agency-wide staff development and training activities for ACF. OMR is responsible for the functional management of all information technology and software training, common needs training, and management training in the agency, including policy development, guidance, technical assistance and evaluation of all aspects of career, employee, supervisory, management and executive training. The Office provides leadership in managing/overseeing and monitoring the ACF Training Resource Center and the Computer Training and Information Centers. The Office develops and manages the consolidated training budget for the Agency.

F. Delete KB.20 Functions, Paragraph G, The Office of Grants Management in its Entirety and Replace With the Following:

G. The Office of Grants Management (OGM) supports the Deputy Assistant Secretary for Administration in fulfilling ACF's Chief Grants Management Officer Responsibilities. The Office serves as the principal office within ACF for ensuring the business and financial responsibilities of grants administration are carried out. OGM provides direct administration and management of ACF discretionary, formula, entitlement and block grants; directs all grants and cooperative agreements awarded by ACF and assures compliance with applicable statutes, regulations, and policies; and performs audit resolutions. The Office provides leadership and technical guidance to ACF program and regional Offices on grant operations and grants management issues; OGM interprets and implements financial policies, regulations, legislation and appropriations law; and secures resolution of legal matters relating to grants administration and management. The Office coordinates with the Office of Financial Services on crosscutting issues.

OGM provides agency-wide leadership and guidance to program officials and staff on grants management related issues, including: Assisting in developing, implementing, and evaluating program plans, strategies, regulations, program announcements, guidelines, and procedures applicable to ACF discretionary, formula, entitlement and block grant programs. The Office provides oversight and direction in the establishment of appropriate State and grantee allocations.

OGM is responsible for directing the receipt and review of all competitive grant applications; developing proposals and/or coordinating management initiatives to improve the efficiency of both the financial administration and awarding of ACF discretionary, formula, entitlement and block grant programs; and developing procedures for monitoring and review of ACF grant programs. The Office serves as the lead for ACF in coordination and liaison with the Department, Regional Offices and other Federal agencies on grants administration and management.

G. Delete KB.20 Functions, Paragraph H, The Equal Employment Opportunity and Civil Rights Staff in its Entirety and Replace With the Following:

H. The Equal Employment Opportunity and Civil Rights Staff (EEOCRS) serves as the principal advisor, through the Deputy Assistant Secretary for Administration, to the Assistant Secretary on all aspects of the Agency's Equal Employment Opportunity and Civil Rights program.

The Staff serves as the liaison between ACF and the HHS Office for Civil Rights. The Staff directs and manages the ACF Equal Employment Opportunity and Civil Rights program in accordance with Equal Employment Opportunity Commission (EEOC) regulations and HHS guidelines. The immediate oversight is provided by a staff under the direction of the ACF EEO

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Officer. The Staff plans, develops and evaluates programs and procedures designed to identify and eliminate discrimination in employment, training, incentive awards, promotion and career opportunities. They are responsible for implementing and evaluating a cost-effective, timely and impartial system for processing individual complaints of discrimination under Title VII of the Civil Rights Act of 1964, as amended. The Staff provides information, guidance, advice and technical assistance to ACF supervisors and managers on affirmative employment planning and other means of achieving parity and promoting work force diversity. The Staff is responsible for ensuring that ACF-conducted programs do not discriminate against recipients on the basis of race, color, national origin, age or disability. The Staff monitors and implements civil rights compliance actions under Title VI, Section 504 of the Rehabilitation Act of 1973, as amended and the Age Discrimination Act of 1975, as amended. The Staff implements the applicable provisions of the Americans with Disabilities Act of 1990.

Dated: August 14, 2002.

Wade F. Horn,

Assistant Secretary for Children and Families.

[FR Doc. 02–21465 Filed 8–21–02; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Clinical Research.

Date: August 29, 2002.

Time: 10 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sheryl K. Brining, Ph.D., Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Centre, MSC 7965, 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892, 301–435–0809, *brinings@ncrr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: August 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21343 Filed 8–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAID.

Date: December 9–11, 2002.

Time: 8 a.m. to 12:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Building 10, Sheldon M. Wolff Memorial Conference Room 11S235, 10 Center Drive, National Institutes of Health, Bethesda, MD 20892.

Contact Person: Thomas J. Kindt, Ph.D., Director, Division of Intramural Research, National Inst. of Allergy & Infectious Diseases, Building 10, Room 4A31, Bethesda, MD 20892, 301 496–3006, *tk9c@nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21345 Filed 8–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: October 10–11, 2002.

Open: October 10, 2002, 9 a.m. to 11 a.m.

Agenda: Administrative reports and program discussions.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, 2nd Floor Mezzanine, Bethesda, MD 20894.

Closed: October 10, 2002, 11 a.m. to 5 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, 2nd Floor Mezzanine, Bethesda, MD 20894.

Closed: October 11, 2002, 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, 2nd Floor Mezzanine, Bethesda, MD 20894.

Contact Person: Sheldon Kotzin, MLS, Chief, Bibliographic Services Division, Division of Library Operations, National Library of Medicine, Building 38A, Room 4N419, 8600 Rockville Pike, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 02–21344 Filed 8–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine; Board of Scientific Counselors, Lister Hill Center.

Date: September 26–27, 2002.

Open: September 26, 2002, 9 a.m. to 1 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: September 26, 2002, 1 p.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.

Open: September 26, 2002, 2 p.m. to 5 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.

Open: September 27, 2002, 9 a.m. to 12 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Jackie Duley, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Bldg 38A, RM 7N–705, Bethesda, MD, 301–496–4441.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21346 Filed 8–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 66 FR 21406, April 30, 2001, and redesignated from Part HN as Part N at 60 FR 56606, November 9, 1995) is amended as set forth below to reflect the transfer of the bacterial toxins and therapeutics research function from the National Institute of Dental and Craniofacial Research to the National Institute of Allergy and Infectious Diseases, National Institutes of Health.

Section N–B, Organization and Functions, under the heading National Institute of Allergy and Infectious Diseases (NM, formerly HNM), Division of Intramural Research (NM2, formerly HNM2), insert the following:

Bacterial Toxins and Therapeutics Section (NM–8, formerly HNM2–8). (1) Studies the actions of bacterial protein toxins on animal cells, using methods of biochemistry, microbiology, genetics, and cell biology; and (2) focuses on pathogenic bacteria, especially Bacillus antracis, to include (a) identification and analysis of bacterial virulence factors and their genetic regulation, (b) structure-function analysis of bacterial toxin proteins and other virulence factors, and (c) development of improved vaccines and therapeutics.

Delegations of Authority Statement: All delegations and redelegations of authority to officers and employees of NIH that were in effect immediately prior to the effective date of this establishment and are consistent with this establishment shall continue in effect, pending further redelegation.

Dated: August 11, 2002.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 02–21347 Filed 8–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Privacy Act of 1974; Proposed New System of Records

AGENCY: National Institutes of Health (NIH), HHS.

ACTION: Notification of proposed new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the National Institutes of Health (NIH) is publishing a notice of a proposal to create a new system of records 09–25–0217, "NIH Business System (NBS), HHS/NIH." The main purposes of the

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system include: (1) Tracking of all payments to individuals, exclusive of salaries and wages, based upon prior entry into the NIH accounting system of the official commitment and obligation of government funds, (2) establishment of a receivable record and the tracking of repayment status when a person is to repay funds advanced as a loan or scholarship, etc., (3) establishment of a receivable record for recovery of the amount claimed, in the event of an overpayment to a person, and (4) development of reports of taxable income to the Internal Revenue Service (IRS) and applicable State and local tax offices.

DATES: The NIH invites interested parties to submit comments on the proposed uses on or before September 23, 2002. The NIH will send a Report of the Proposed New System to the Congress and to the Office of Management and Budget (OMB). The proposed new system of records will be effective 40 days from the date submitted to the OMB, unless NIH receives comments that would result in a contrary determination.

ADDRESSES: Please address comments to: NIH Privacy Act Officer, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, Maryland 20892. (301) 496–2832 (This is not a toll-free number).

Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Eric Cole, NBS System Manager, National Institutes of Health, 6707 Democracy Boulevard, Suite 1001, Bethesda, Maryland 20892–5470. 301–451–0043.

SUPPLEMENTARY INFORMATION: Sections 301 and 302 of United States Code (U.S.C.), Title 5, Sections 3101and 3102 of United States Code (U.S.C.), title 44, and Executive Order 9397 (Nov. 22, 1943) authorize the Secretary to implement and establish the use of accounting systems at NIH.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: August 13, 2002.

Charles E. Leasure, Jr.,

Deputy Director for Management, National Institutes of Health.

09–25–0217

SECURITY CLASSIFICATION:

None.

SYSTEM NAME: ADMINISTRATION:

NIH Business System (NBS), HHS/NIH.

SYSTEM LOCATION:

Records are maintained in databases located within the NIH computer facilities and in the files of the NIH functional offices that are required to identify individuals in order to manage the Federal resources and authorities assigned to them. A current list of sites is available by writing the System Manager listed under the Notification Procedure below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The proposed system of records covers all persons who receive a payment exclusive of salary or wages, from the NIH, and all persons owing money to the NIH. Persons receiving payments include, but are not limited to, travelers on official business, grantees, contractors, consultants, Fellows and recipients of loans and scholarships. Persons owing monies include, but are not limited to, persons who have been overpaid and who owe the NIH a refund the persons who have received from NIH goods or services for which there is a charge or fee (*e.g.*, Freedom of Information Act requesters).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN) or EIN/TID, address, email address, phone number, purpose of payment or request for payment, bank account and routing numbers, accounting classification and the amount paid or billed. Also, in the event of an overpayment and for outstanding charges, fees, loans, grants or scholarships, the amount of the indebtedness, the repayment status and the amount to be collected. In the event of an administrative wage garnishment, information about the debtor's employment status and disposable pay available for withholding will be maintained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 302, 44 U.S.C. 3101 and 3102, Executive Order 9397.

PURPOSE(S):

These records are an integral part of the accounting system at the NIH. The records are used to keep track of all payments to individuals, exclusive of salaries and wages, based upon prior entry into the systems of the official commitment and obligation of government funds. When a person is to repay funds advanced as a loan or scholarship, etc., the records will be used to establish a receivable record and to track repayment status. In the event of an overpayment to a person, the record is used to establish a receivable record for recovery of the amount claimed. The records are also used internally to develop reports for the Internal Revenue Service (IRS) and applicable State and local taxing officials of taxable income.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Records will be routinely disclosed to the Treasury Department in order to effect payment.

2. Records may be disclosed to Members of Congress concerning a Federal financial assistance program in order for members to make informed opinions on programs and/or activities impacting on legislative decisions. Also, disclosure may be made to a Member of Congress or to a Congressional staff member in response to an inquiry from the Congressional office made at the written request of the individual.

3. Disclosure may be made to the Department of Justice for the purpose of obtaining its advice regarding whether particular records are required to be disclosed under the Freedom of Information Act.

4. A record from this system may be disclosed to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to its decision on the matter.

5. Where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service (IRS) or the Civil Rights Commission, issue a subpoena to the NIH for records in this system of records, the NIH will make such records available, provided however, that in each case, the NIH determines that such disclosure is compatible with the purpose for which the records were collected.

6. Where a contract between a component of HHS and a labor organization recognized under E.O. 11491 provides that the agency will disclose personal records relevant to the organization's mission, records in the system of records may be disclosed to such an organization.

7. A record may be disclosed to the Department of Justice, to a court, or other tribunal, or to another party before such tribunal, when: (1) HHS, or any component thereof; (2) any HHS employee in his or her official capacity; (3) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (4) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to the litigation or has an interest in the litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the government party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

8. A record about a loan applicant or potential contractor or grantee may be disclosed from the system of records to credit reporting agencies to obtain a credit report in order to assess and verify the person's ability to repay debts owed to the Federal Government.

9. When a person applies for a loan under a loan program as to which the OMB has made a determination under I.R.C. 6103(a)(3), a record about his or her application may be disclosed to the Treasury Department to find out whether he or she has a delinquent tax account, for the sole purpose of determining the person's creditworthiness.

10. A record from this system may be disclosed to the following entities in order to help collect a debt owed the United States:

a. To another Federal agency so that agency can effect a salary offset;

b. To the Treasury Department or another Federal agency in order to effect an administrative offset under common law or under 31 U.S.C. 3716 (withholding from money payable to, or held on behalf of, the individual);

c. To the Treasury Department to request the person's mailing address under I.R.C. 6103(m)(2) in order to help locate the person or to have a credit report prepared;

d. To agents of HHS and to other third parties, including credit reporting agencies, to help locate the person or to obtain a credit report on him or her, in order to help collect or compromise a debt;

e. To debt collection agents or contractors under 31 U.S.C. 3718 or under common law to help collect a past due amount or locate or recover a debtors' assets;

f. To the Justice Department for litigation or for further administrative action; and

g. To the public, as provided by 31 U.S.C. 3720E, in order to publish or otherwise publicly disseminate information regarding the identity of the person and the existence of a non-tax debt. Disclosure under parts (d) and (g) is limited to the individual's name, address, social security number, and other information necessary to identify the person. Disclosure under parts (a)–(c) and (e) is limited to those items; the amount, status, and history of the claim; and the agency or program under which the claim arose. An address obtained from the IRS may be disclosed to a credit reporting agency under part (d) only for the purpose of preparing a credit-report on the individual.

11. A record from this system may be disclosed to another Federal agency that has asked HHS to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States. Disclosure is limited to name and address, Social Security number, and other information necessary to identify the individual; information about the money payable to or held for the individual; and other information concerning the administrative offset.

12. Disclosure with regard to claims or debts arising under or payable under the Social Security Act may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) of the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal Government. Disclosure is limited to the individual's name, address, Social Security number, and other information necessary to establish the individual's identity; the amount, status and history of the claim; and the agency or program under which the claim arose.

13. Information in this system of records is used to prepare W–2s and 1099 Forms to submit to the Internal Revenue Service and to applicable State and local governments. Items considered to be included as income to a person: certain travel related payments to employees, all payments made to persons not treated as employees (*e.g.*, fees to consultants and experts), and amounts written-off as legally or administratively uncollectible, in whole or in part.

14. A record may be disclosed to banks enrolled in the Treasury Credit Card Network to collect a payment or debt when the person has given his or her credit card number for this purpose.

15. Records may be disclosed to a contractor (and/or to its subcontractor) who has been engaged to perform services on an automated data processing (ADP) system used in processing financial transactions. The contractor may have been engaged to develop, modify and test a new ADP system, including both software and hardware upgrades or enhancements to such a system; perform periodic or major maintenance on an existing ADP system; audit or otherwise evaluate the performance of such an ADP system; and/or operate such a system.

16. Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for the NIH but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

17. A record from this system may be disclosed to any Federal agency or its agents in order to participate in a computer matching of a list of debtors against a list of Federal employees. Disclosure of records is limited to debtors' names, names of employers, taxpayers' identifying numbers, address (including addresses of employers), dates of birth, and other information necessary to establish the person's identity.

18. A record of a person responsible for a current claim may be disclosed to a commercial reporting agency in order to aid in the collection of claims, typically by providing an incentive to the person to repay the claim or a debt timely. Disclosure of records is limited to information about a person that is relevant and necessary to meet the principal purpose(s) for which it is intended to be used under the law.

19. A record from this system may be disclosed to the Treasury Department or to an agency operating a Debt Collection Center designated by the Treasury in order to effect a collection of past due amounts.

20. If HHS decides to sell a debt pursuant to 31 U.S.C. 3711(I), a record from the system may be disclosed to purchasers, potential purchasers, and contractors engaged to assist in the sale or to obtain information necessary for potential purchasers to formulate bids and information necessary for purchasers to pursue collection remedies.

21. If HHS decides to administratively garnish wages of a delinquent debtor

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under the wage garnishment provision in 31 U.S.C. 3720D, a record from the system may be disclosed to the debtor's employer. This disclosure will take the form of a wage garnishment order directing that the employer pay a portion of the employee/debtor's wages to the Federal Government. Disclosure of records is limited to the debtor's name, address, and social security number.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12): Disclosure may be made from this system to "consumer reporting agencies," as defined in 31 U.S.C. 3701(a)(3). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal Government, by providing an incentive for debtors to repay these debts by making them part of the debtor's credit records. Disclosure of records is limited to the individual's name, address, social security number, and other information necessary to establish the individual's identity; the amount, status and history of the claim; and the agency or program under which the claim arose. The disclosure will be made only after the procedural requirements of 31 U.S.C. 3711(e) have been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on computer discs and tapes. Automated records are stored in controlled access areas. Hard copy documents and automated records will both be maintained in accordance with Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records", and the HHS Automated Information System Security Program Handbook.

RETRIEVABILITY:

Records are retrieved by name, accounting classification, social security number, voucher number or other identifying numbers or characteristics.

SAFEGUARDS:

The NBS will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to the Privacy Act of 1974, Computer Security Act of 1987, Paperwork Reduction Act of 1995, Clinger-Cohen Act of 1996, and the Office of Management and Budget (OMB) Circular A–130, Appendix III, "Security of Federal Automated Information Resources."

Paragraphs A–C of this section highlight some of the specific methods that NIH is using to ensure the security of this system and the information within it.

A. *Authorized Users:* Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees (as part of the user authentication process) to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. To insure security of the data, each individual user's privilege level is managed via authentication and role-based authorizations that ensure minimum and necessary access. This prevents unauthorized users from accessing and modifying critical data.

B. *Physical Safeguards:* All server sites have implemented the following minimum requirements. Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination that grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to automated information system resources caused by fire, electricity, water and inadequate climate controls.

C. *Procedural Safeguards:* All automated systems must comply with Federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data and the risk and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records."

SYSTEM MANAGER(S) AND ADDRESSES:

Eric Cole, NBS System Manager, 6707 Democracy Boulevard, Suite 1001, MSC 5470, Bethesda, MD 20892.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the System Manager listed above. A written request must contain the name, address and social security number of the requestor and his or her signature that either is notarized to verify his or her identify or contain a written certification that the requestor is who he or she claims to be and understands that the knowing an willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should also specify the record contents being sought. Individuals may also request an accounting of disclosures of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above, identify the record, and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

All persons who receive a payment other than salary or wages, from the NIH or owe money to the NIH; officials performing services on behalf of HHS; other Federal agencies; consumer reporting agencies/credit bureaus; travel vouchers submitted by individuals to the NIH; grant, contract or loan award documents; delinquent loan, grant or scholarship records; invoices of services rendered to the NIH; applications for a travel advance submitted to the NIH; NIH Human Resource Database (HRDB); NIH electronic Directory (NEDS); and employers of debtors subject to administrative wage garnishment.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–21348 Filed 8–21–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for Prevention/Early Intervention Services.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) announces the availability of FY 2003 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA), including Part I, *Cooperative Agreement for Prevention/Early Intervention Services (SM 03–004), and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements,* before preparing and submitting an application.

Activity deadline	Application	Est. funds, FY 2003 (millions)	Est. Number of awards	Project period
Cooperative Agreement for Prevention/Early Intervention Services	10–22–2002	$1.0	2–3	3 years.

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. This program is being announced prior to the annual appropriation for FY 2003 for SAMHSA's programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2003 to permit funding of a reasonable number of applications being hereby solicited. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner and thus allow prompt implementation and evaluation of promising practices. All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund any applications. This program is authorized under Section 520A of the Public Health Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions

Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Mental Health Services Knowledge Exchange Network (KEN), P.O. Box 42490, Washington, DC 20015. Telephone: 1–800–789–2647.

The PHS 5161–1 application form and the full text of the grant announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov,* (Click on "Grant Opportunities").

When requesting an application kit, the applicant must specify the particular announcement number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose

The Substance Abuse and Mental Health Services Administration (SAMHSA),Center for Mental Health Services (CMHS) is accepting applications for fiscal year (FY) 2003 cooperative agreements to develop and implement the Prevention/Early Intervention Services Program. The goal of the Prevention/Early Intervention Services Program is to develop prevention and intervention mental health services and programs at the community level for children, adolescents and their families. The purpose of this initiative is to increase the capacity of cities, counties, and tribal governments to provide prevention and early intervention treatment services to meet emerging and urgent mental health needs of communities. The program will help communities to build the service system infrastructure necessary to address serious local or regional mental health problems through prevention and early treatment interventions having a strong evidence base.

Eligibility

Eligibility to apply for Prevention/Early Intervention awards will be limited to cities, counties, and tribal governments and their agencies. Eligibility is restricted to local government because the purpose of the program is to add needed mental health services at the local level, and as such these services are the responsibility of the local government.

Availability of Funds

Approximately $1 million is expected to be available for FY 2003. Approximately two to three awards will be made in total costs (direct and indirect) that range from $300,000 to $400,000 per year. The total funds available and actual funding levels will depend on the receipt of an appropriation. Annual continuation of the award depends on the availability of funds and progress achieved.

Period of Support

Awards may be requested for a project period of up to 3 years.

Criteria for Review and Funding

General Review Criteria

Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criterion. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number

93.243.

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Program Contact

For questions concerning program issues, contact: Gail F. Ritchie, M.S.W., Special Programs Development Branch, Division of Program Development, Special Population and Projects, CMHS/SAMHSA, 5600 Fishers Lane, Room 17C–05, Rockville, MD 20857. (301) 443–1752. E-mail: *gritchie@samhsa.gov.*

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857. (301) 443–9666. E-Mail: *gsimpson@samhsa.gov.*

Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372

Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials or on SAMHSA's website under "Assistance with Grant Applications". The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: August 15, 2002.

Joseph H. Autry III,

Deputy Administrator.

[FR Doc. 02–21342 Filed 8–21–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for cooperative agreements for State Emergency Response Capacity.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS), Center for Substance Abuse Treatment (CSAT), and Center for Substance Abuse Prevention (CSAP) announce the availability of FY 2003 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA), including Part I, *Cooperative Agreements for State Emergency Response Capacity (SM 03–001)*, and Part II, *General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements*, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2003 (millions)	Est. number of awards	Project Period
Cooperative Agreement for State Emergency Response Capacity	10–22–2002	$4.0	40	2 years.

The actual amount available for the award may vary, depending on the unanticipated program requirements and the number and quality of applications received. This program is being announced prior to the annual appropriation for FY 2003 for SAMHSA's programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2003 to permit funding of a reasonable number of applications being hereby solicited. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner and thus allow prompt implementation and evaluation of promising practices.

All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund any applications. This program is authorized under Section 520A, Section 509, and Section 516 of the Public Health Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions

Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: The Center for Mental Health Services (CMHS), Knowledge Exchange Network (KEN), Telephone: 1–800–789–2647.

The PHS 5161–1 application form and the full text of the grant announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov,* (Click on "Grant Opportunities").

When requesting an application kit, the applicant must specify the particular announcement number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS), Center for Substance Abuse Treatment (CSAT), and Center for Substance Abuse Prevention (CSAP) are accepting applications for fiscal year (FY) 2003 cooperative agreements to develop and implement the State Emergency Response Capacity. The goal of the State Emergency Response Capacity Program is to enhance State-level capacity for a coordinated response to mental health and substance abuse service needs in the aftermath of large scale emergencies (both natural and human caused). Incident response plans and response infrastructure developed under the grant must include both mental health and substance abuse agencies and must focus on coordinated mental health and substance abuse emergency planning and capacity development activities.

Eligibility

All 50 States, Indian Tribes, and consortia of Indian tribes, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands may apply. State mental health and substance abuse authorities must apply in partnership. In States, territories, or tribal governments with administratively separate mental health and substance abuse authorities, a lead agency must be designated for grant purposes. SAMHSA has limited eligibility to States, and Indian tribes because these governmental units have a mandated oversight role in mental health, substance abuse, and emergency management activities.

Availability of Funds

Approximately $4 million is expected to be available for FY 2003. Approximately 40 awards will be made in total costs (direct and indirect) of up to $100,000 per year. The total funds available and actual funding levels will depend on the receipt of an appropriation. Annual continuation of the award depends on the availability of funds and progress achieved.

Period of Support

An award may be requested for a project period of up to 2 years.

Criteria for Review and Funding

General Review Criteria

Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criterion. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number

93.243.

Program Contact

For questions concerning program issues, contact: Seth Hassett, M.S.W., Public Health Advisor, 5600 Fishers Lane, Room 17C–20, Rockville, MD 20857. (301) 443–4735. E-Mail: *shassett@samhsa.gov.*

For questions regarding grants management issues, contact: Steve Hudak, Grants Management Officer, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 13–603, Rockville, MD 20857. (301) 443–9666. E-Mail: *shudak@samhsa.gov.*

Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

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Executive Order 12372

Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials or on SAMHSA's Web site under "Assistance with Grant Applications". The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: August 15, 2002.

Joseph H. Autry III,

Deputy Administrator, SAMHSA.

[FR Doc. 02–21358 Filed 8–21–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–35]

Notice of Submission of Proposed Information to OMB; Single Family Mortgage Insurance on Indian Reservations and Other Restricted Lands

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 23, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0340) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the number and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Single Family Mortgage Insurance on Indian Reservations and Other Restricted Lands.

OMB Approval Number: 2502–0340.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Insured single family mortgages on reservation lands must meet regulatory requirements to provide eviction procedures, first liens, and an appeal process.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Frequency of Submission: On occasion.

	Number of respondents	X	Annual responses	X	Hours per response	=	Burden hours
Reporting Burden	1,220		1		0.5		610

Total Estimated Burden Hours: 610.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 15, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–21398 Filed 8–21–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Primary Series Quadrangles; Price Increase

ACTION: Notice of USGS price increase for 1:24,000-scale, 1:25,000-scale and 1:63,360-scale primary series quadrangles.

SUMMARY: The U.S. Geological Survey will increase prices for their 1:24,000-scale, 1:25,000-scale and 1:63,360-scale primary series quadrangles from $4.00 to $6.00 per quadrangle.

Prices for these products were last revised nearly 7 years ago and will be adjusted to accurately reflect and ensure recovery of the costs associated with their reproduction and distribution. These changes are consistent with guidance contained in the Office of Management and Budget (OMB) Circular A–130, concerning management of Federal information resources (Revised Nov. 2000), Circular A–25, establishing Federal policy regarding fees assessed for Government services, which permits government agencies to recover reproduction and distribution costs from the sale of their products.

DATES: The price will increase to $6.00 per quadrangle effective September 1, 2002. All map orders received by or postmarked before September 1, 2002, will be subject to the current price of $4.00 per quadrangle. On August 19, 2002, the U.S. Geological Survey Business Partners will receive a 2-week advance notification of the impending price increase.

FOR FURTHER INFORMATION CONTACT: James Brokaw, Geographic Information Office, (303) 236–5435 or by e-mail at *jbrokaw@usgs.gov.*

Dated: August 13, 2002.

Karen Siderelis,

Geographic Information Officer.

[FR Doc. 02–21404 Filed 8–21–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–EU; IDI 8104, IDI 8105, IDI 8175, IDI 8934]

Termination of Desert Land Entry and Carey Act Classifications

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates Desert Land Entry and Carey Act Classifications on 1173.93 acres of land in Elmore County as these classifications are no longer needed.

EFFECTIVE DATE: August 22, 2002.

FOR FURTHER INFORMATION CONTACT: Catherine D. Foster, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3863.

SUPPLEMENTARY INFORMATION: On February 14, 1983, the lands listed below were classified as either suitable or unsuitable for entry under the authority of the Desert Land Act of March 3, 1877, as amended and supplemented (43 U.S.C. 321, *et seq.*) and the Carey Act of August 18, 1894, as amended (43 U.S.C. 641 *et seq.*). The classifications on the following described lands are hereby terminated:

Serial No.	Classification	Township	Range	Section	Subdivision
IDI 8104	Suitable	5 S	10 E	33	S½SE¼, NW¼SE¼.
	Non-Suitable	5 S	10 E	32	Lot 8, S½SE¼.
				33	S½SW¼.
IDI 8105	Suitable	5 S	10 E	33	NE¼SE¼, NW¼SW¼.
	Non-Suitable			34	S½SW¼.
		6 S	10 E	3	Lots 3 & 4.
				5	Lot 1.
IDI 8175	Suitable	6 S	12 E	18	Lots 13–17.
				19	Lots 6 & 7.
	Non-Suitable	6 S	12 E	18	Lot 12.
IDI 8934	Suitable	6 S	11 E	13	SW¼.
				14	SE¼SE¼.
		6 S	12 E	18	Lots 6–8.

At 9 a.m. on August 22, 2002, the Desert Land Entry and Carey Act classifications identified above will be terminated. No opening order is required as these lands will remain open since they were never segregated from the operation of the public land laws, including the mining laws and mineral leasing laws.

Dated: May 29, 2002.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 02–21390 Filed 8–21–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–1430–ER; A–059905]

Public Land Closure; Prohibition of Certain Activities; AK

AGENCY: Anchorage Field Office, Bureau of Land Management, DOI.

ACTION: Notice to the public of temporary public lands closure and prohibition of certain activities on public lands administered by the Anchorage Field Office, Bureau of Land Management, Alaska; withdrawal of Supplementary Rule.

SUMMARY: This notice closes certain public lands in Alaska administered by the Bureau of Land Management (BLM) to the use of fireworks and to the use of firearms for purposes other than licensed hunting. It also prohibits the use of lead shot for hunting. This closure notice is necessary for the management of actions, activities, and use on public lands which may have, or are having, adverse impacts on persons using public lands, on property, and on resources located on public lands. The subject lands are utilized for a public boat launch, lawful hunting and boating, and are adjacent to the heavily traveled Glenn Highway.

This notice also withdraws a previously published notice of Supplementary Rules on the same subject matter.

EFFECTIVE DATE: This closure notice is effective August 22, 2002 and will remain in effect until such lands are conveyed to the State of Alaska.

ADDRESSES: A map showing this closure and prohibitions is available from the following BLM office: BLM–Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599.

The map may also be viewed on the Field Office Web site at: *http://www.anchorage.ak.blm.gov/knikclose.html*

FOR FURTHER INFORMATION CONTACT: Peter J. Ditton, Anchorage Field Manager, 907–267–1246.

SUPPLEMENTARY INFORMATION:

Background

While hunters, boaters, and other recreationists can schedule their use around published hunting seasons for safety reasons, they are not able to avoid random shooting, or "plinking," at makeshift targets such as bottles, cans, or natural objects. Motorists on the Glenn Highway are not able to schedule their highway travel to avoid such shooting. Local conditions such as heavy brush can reduce visibility and increase the hazard to other

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recreationists and motorists from shooting.

Recent incidents involving random target shooting have endangered other users of this area, as well as motorists on the adjacent Glenn Highway. The discharge of fireworks increases the risk of wildfires. In addition, resource damage is occurring from the accumulation of debris and lead contamination. To reduce the incidence of future conflicts and enhance public safety, this area of public land known as the Knik River Access or Gravel Pit Lake, located north of Anchorage, Alaska, is being closed to the discharge of fireworks and discharge of firearms. This area will remain open to lawful hunting by licensed hunters during seasons administered by the Alaska Department of Fish and Game. Shotgun use will be limited to ammunition containing steel or other non-lead shot.

Lands Affected

The affected lands are public lands administered by the Bureau Land Management, Anchorage Field Office, and are described as follows:

T. 16 N., R. 1 E., Seward Meridian, Alaska

Sec. 10: Lot 6, West of the Alaska Railroad
Sec. 15: Lot 6

This closure notice does not apply to other lands, specifically State or Federal lands, including State lands in the Palmer Hay Flats State Wildlife Refuge.

Withdrawal of Supplementary Rules

The Supplementary Rules published on May 17, 2002 (67 FR 35133), are hereby withdrawn.

Closure Order

1. *Authority:* 43 CFR 8364.1.

2. *Closure:* The following described lands are closed to discharge of fireworks and to the discharge of firearms except by licensed hunters during seasons designated and administered by the Alaska Department of Fish and Game:

T. 16 N., R. 1 E., Seward Meridian, Alaska

Sec. 10: Lot 6, West of the Alaska Railroad
Sec. 15: Lot 6

3. *Prohibited Acts:* The following acts are prohibited in the closed areas:

a. The discharge of fireworks.

b. The discharge of firearms except by licensed hunters during seasons administered by the Alaska Department of Fish and Game.

c. The use of shotgun ammunition containing lead shot.

4. *Penalties:* Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), if you knowingly and willfully violate or fail to comply with any of the prohibited acts provided in this closure notice, you may be subject to a fine under 18 U.S.C. 3571 or other penalties in accordance with 43 U.S.C. 1733.

Dated: August 16, 2002.

June Bailey,

Associate Field Manager.

[FR Doc. 02–21401 Filed 8–21–02; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–1020–PG]

Notice of Public Meeting, Central Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Central Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held October 2 & 3, 2002, at the Chinook Motor Inn, in Chinook, MT. The October 2 meeting will begin at 1 p.m. with a 30-minute public comment period and will adjourn at approximately 4:30 p.m. The October 3 meeting will begin at 8 a.m.; will provide a public comment period at 1 p.m.; and will adjourn at approximately 3:30 p.m.

SUPPLEMENTARY INFORMATION: The Central Montana Resource Advisory Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in north central Montana. During this meeting the topics to be discussed include:

—An update concerning the scoping open houses for the monument resource management plan;
—a fee system discussion concerning the Upper Missouri National Wild and Scenic River;
—information about easements;
—a summary concerning the North Blaine County Oil and Gas Update;
—information about sage grouse management;
—recommendations from the RAC's Missouri River Visitor Use subgroup;
—reports from field managers;
—reports concerning recent RAC field tours;
—a discussion of visitor use figures for the 2002 float season on the Upper Missouri; and
—a discussion of BLM's Lewis & Clark liaison efforts with Native American tribes.

All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Bruce W. Reed, Field Manager, Malta Field Office, 501 S. 2nd Street East, Malta, MT, 59538, (406) 654–1240.

David L. Mari,

Field Manager.

[FR Doc. 02–21219 Filed 8–21–02; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–070–02–1430–ES; AZA 31566]

Arizona: Notice of Realty Action; Lease and Conveyance of Public Lands in Mohave County, Lake Havasu City, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification of public land for recreation and public purposes lease and conveyance.

SUMMARY: The following described public land in Mohave County, Arizona, has been examined and found suitable for classification in accordance with section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, and Executive Order No. 6910, as suitable for lease and disposal under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 *et seq.*):

Gila and Salt River Meridian, Arizona

T. 13 N., R. 19 W.,
sec. 20, NW¼SE¼,
Containing 40 acres, more or less.

SUPPLEMENTARY INFORMATION: Lake Havasu City (LHC) has filed an R&PP application requesting the described land to be made available to meet recreational and public purposes of the community. The LHC proposes to use the land for development of sports fields for public soccer, football, playground, picnic areas, dog park, a trail, and for other related recreational events. Lease and conveyance of the land for recreational and public purposes would be in the public interest and is consistent with the Yuma Resource Management Plan, 1985, which identifies the land as potentially suitable for disposal. The land is not required for any Federal purposes.

Lease and conveyance (patent) when issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals, together with the right to prospect for, mine and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior.

And will be subject to:

1. The provisions of the R&PP Act and all applicable regulations of the Secretary of the Interior.

Segregation

Upon publication of this Notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease and conveyance under the R&PP Act, leasing under the mineral leasing laws, and mineral material disposal laws.

Classification Comments

Interested parties may submit comments involving the suitability of the land for sports fields for public soccer, football, playground, picnic areas, dog park, and trail. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the Bureau of Land Management followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for sports fields for public soccer, football, playground, picnic areas, dog park, and trail.

DATES: For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the Field Manager, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406. Any adverse comments will be reviewed by the Arizona State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication of this Notice in the **Federal Register**. The land will not be offered for lease and conveyance until after the classification becomes effective.

Comments, including names and street addresses of respondents, will be available for public review at the address below during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Realty Specialist Maria Rosalez, Bureau of Land Management, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406 or telephone (928) 505–1227.

Dated: June 27, 2002.

Donald Ellsworth,

Field Manager.

[FR Doc. 02–21394 Filed 8–21–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–032–0–1430–EU]

Realty Action: Recreation and Public Purpose Act Classification; Mason County, MI

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Recreation and Public Purposes Act (R&PP) classification; Michigan.

SUMMARY: The following public lands near the community of Ludington in Mason County, Michigan have been examined and found suitable for classification for lease or conveyance to the State of Michigan, Department of Natural Resources (DNR), under the provisions of the Recreation and Public Purposes (R&PP) Act of 1926, as amended (43 U.S.C. 869 *et seq.*). Therefore, in accordance with Section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f) and EO 6964, the following described lands are hereby classified as suitable for disposal under the provisions of the R&PP Act of 1926, as amended (43 U.S.C. 869 *et seq.*) and, accordingly, opened for only that purpose.

Michigan Meridian

T. 19 N., R. 18 W.,
S ½ Lot 1 and Lot 2, Section 7

The above lands aggregate 57.5 acres in Mason County, Michigan.

This action classifies the lands identified above for disposal through the R&PP Act to protect the historic lighthouse and the surrounding lands. The subject land was identified in the Michigan Resource Management Plan Amendment, approved June 30, 1997, as not needed for Federal purposes and having potential for disposal to protect the historic structures and surrounding lands. Lease or conveyance of the land for recreational and public purpose use would be in the public interest. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Milwaukee Field Office, Wisconsin.

The Michigan DNR has applied for patent to the land under the R&PP Act, as an addition to Ludington State Park.

FOR FURTHER INFORMATION CONTACT: Paul J. Salvatore, Realty Specialist, Bureau of Land Management, Milwaukee Field Office, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin 53203, (414) 297–4413.

SUPPLEMENTARY INFORMATION: Pursuant to an Executive Order dated October 16, 1866, public land in Mason County, Michigan was reserved for lighthouse purposes. The Big Sable Lighthouse is located within this parcel on the eastern shore of Lake Michigan near the city of Ludington.

On May 22, 1926, through an Act of Congress, the Secretary of Commerce was authorized to dispose of that portion of the Big Sable lighthouse reservation no longer needed for lighthouse purposes to Mason County, Michigan for public park purposes. The portion of the reservation to be conveyed was described as section 6, lots 1 through 4; section 7, E½, lots 1 through 3; section 18, NE¼, W½ SE¼ and lot 1; T. 19 N., R. 18 W., Michigan Meridian and comprised 799.62 acres.

The remaining land described as S½ Lot 1 and Lot 2, section 7, T. 19 N., R. 18 W., Michigan Meridian, continued to

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be reserved by the 1866 Executive Order after 1926. The Department of Transportation, United States Coast Guard has submitted a Notice of Intent (NOI) to relinquish custody, accountability and control of the remaining 57.5 acres. The Bureau of Land Management has recommended that the remaining lands be determined suitable for return to their former status as public lands, such determination to be made by the Secretary of the Interior and accomplished by the issuance of a public land order revoking the Executive Order as to the remaining lands. A proposed public land order for this purpose currently is pending and awaiting action within the Department.

The State of Michigan Department of Natural Resources has applied for patent to the land under the R&PP Act of 1926, as an addition to Ludington State Park.

The lease/patent when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act of 1926, as amended, and to all applicable regulations of the Secretary of the Interior.
2. Valid existing rights.
3. All minerals are reserved to the United States, together with the right to prospect for, mine and remove the minerals.
4. Terms and conditions identified through the site specific environmental analysis.
5. Any other rights or reservations that the authorized officer deems appropriate to ensure public access and proper management of Federal lands and interest therein.

Upon publication of this Notice in the **Federal Register**, the above described lands will be segregated from all forms of disposal or appropriation under the public land laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days after issuance of this notice, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the Field Manager, Milwaukee Field Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin 53203.

Classification Comments

Interested parties may submit comments involving the suitability of the land for R&PP Act classification, and particularly, whether the land is physically suited for inclusion in the state park, whether the use will maximize future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with state and federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application, the development plan, the management plan, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for inclusion in the state park.

Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: August 1, 2002.

James W. Dryden,

Milwaukee Field Manager.

[FR Doc. 02–21391 Filed 8–21–02; 8:45 am]

BILLING CODE 4310–PN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–032–2–1430–EU]

Realty Action: Recreation and Public Purpose Act Classification; Huron County, MI

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Recreation and Public Purposes Act (R&PP) Classification; Michigan.

SUMMARY: The following public lands near the community of Port Hope in Huron County, Michigan have been examined and found suitable for classification for lease or conveyance to the Huron County Road Commission, County Parks Department, under the provisions of the Recreation and Public Purposes (R&PP) Act of 1926, as amended (43 U.S.C. 869 *et seq.*). Therefore, in accordance with Section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f) and EO 6964, the following described lands are hereby classified as suitable for disposal under the provisions of the R&PP Act of 1926, as amended (43 U.S.C. 869 *et seq.*) and, accordingly, opened for only that purpose.

Michigan Meridian

T. 18 N., R. 14 E.,
Pointe Aux Barques Lighthouse Reservation, located in lot 2, sec. 2, being more particularly described as:
Beginning at the ¼ section corner of secs. 2 and 11, T. 18 N., R. 14 E., Thence,
N. 34° 11′ E., 29.39 chs., to Angle Point No. 1, the place of beginning,
N. 50° 10′ E., 0.50 chs., to a point on line,
N. 50° 10′ E., 4.21 chs., to Angle Point No. 2,
S. 89° 31′ E., 1.14 chs., to a point on line,
S. 89° 31′ E., 0.46 chs., to Angle Point No. 3 on the present shoreline of Lake Huron,
Thence, with the meanders of Lake Huron,
N. 35° 48′ W., 0.62 chs.,
N. 3° 51′ E., 1.24 chs.,
N. 54° 52′ W., 1.59 chs., to Angle Point No. 4,
S. 0° 29′ W., 0.52 chs., to a point on line,
S. 0° 29′ W., 1.63 chs., to Angle point No. 5,
S. 50° 11′ W., 4.54 chs., to a point on line,
S. 50° 11′ W., 0.50 chs., to Angle Point No. 6,
S. 39° 50′ E., 0.38 chs., to Angle Point No. 1, the place of beginning.

The area described contains 0.47 acre in Huron County.

Huron County proposes to integrate the lands into the existing Lighthouse County Park. This action classifies the lands identified above for disposal through the Recreation and Public Purposes Act of 1926 (43 U.S.C. 869 *et seq.*) to protect the historic lighthouse and the surrounding lands. The subject land was identified in the Michigan Resource Management Plan Amendment, approved June 30, 1997, as not needed for Federal purposes and having potential for disposal to protect the historic structures and surrounding lands. Lease or conveyance of the land for recreational and public purpose use would be in the public interest. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Milwaukee Field Office, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Paul J. Salvatore, Realty Specialist, Bureau of Land Management, Milwaukee Field Office, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin 53203, (414) 297–4413.

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order dated May 24, 1857, a parcel of public land totaling 87.1 acres located in Huron County, Michigan, described as Lots 1 and 2, Section 2, Township 18 North, Range 14 East, Michigan Meridian, was reserved for lighthouse purposes. The parcel contains the Pointe Aux Barques Lighthouse and is located on the western shore of Lake Huron near the cities of Port Hope and Huron City, Michigan.

On May 28, 1935, through an Act of Congress, the Secretary of Commerce was authorized to dispose of certain lighthouse reservations. Section 16 of that Act authorized the Secretary of Commerce to convey that portion of the Pointe Aux Barques lighthouse reservation no longer needed for lighthouse purposes to Huron County, Michigan for public park purposes. The Secretary of Commerce conveyed these lands, approximately 56.6 acres, through a Deed dated August 10, 1935.

Through a Quit Claim Deed dated March 18, 1958, the General Services Administration transferred 29.9 acres of the remaining lands of the lighthouse reservation to Huron County for park and recreation purposes. This left 0.47 acres, more or less, of the original lighthouse reservation of 87.1 acres.

The Department of Transportation, United States Coast Guard, submitted a Notice of Intent (NOI) to relinquish custody, accountability and control of the remaining 0.47 acres, more or less. The Bureau of Land Management has recommended that the remaining lands be determined suitable for return to their former status as public lands, such determination to be made by the Secretary of the Interior and accomplished by the issuance of a public land order revoking the Executive Order as to the remaining lands. A proposed public land order for this purpose currently is pending and awaiting action within the Department.

The Huron County Road Commission, County Parks Department, has applied for patent to the land under the R&PP Act of 1926, as an addition to Lighthouse County Park.

The lease/patent when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act of 1926, as amended and to all applicable regulations of the Secretary of the Interior.
2. Valid existing rights.
3. All minerals are reserved to the United States, together with the right to prospect for, mine and remove the minerals.
4. Terms and conditions identified through the site specific environmental analysis.
5. Any other rights or reservations that the authorized officer deems appropriate to ensure public access and proper management of Federal lands and interest therein.

Upon publication of this Notice in the **Federal Register**, the above described lands will be segregated from all forms of disposal or appropriation under the public land laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days after issuance of this notice, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the Field Manager, Milwaukee Field Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin 53203.

Classification Comments

Interested parties may submit comments involving the suitability of the land for R&PP Act classification, and particularly, whether the land is physically suited for inclusion in the county park, whether the use will maximize future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with state and federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application, the development plan, the management plan, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for inclusion in the county park.

Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this Notice in the **Federal Register**.

Dated: August 1, 2002.

James W. Dryden,

Milwaukee Field Manager.

[FR Doc. 02–21392 Filed 8–21–02; 8:45 am]

BILLING CODE 4310–PN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–EU; N–74957]

Esmeralda County, Nevada; Notice of Realty Action: Segregation Terminated, Sale of Public Land in Esmeralda County, Nevada, by Non-Competitive Sale Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Segregation terminated, non-competitive sale of public lands in Esmeralda County, Nevada.

SUMMARY: The following described lands near Dyer, Esmeralda County, Nevada, was segregated for exchange purposes on May 3, 2002 under serial number N–74957. The exchange segregation on the subject land will be terminated upon publication of this notice in the **Federal Register**. The segregation for exchange purposes is being terminated in order to allow for a sale. The lands have been examined and found suitable for disposal by direct sale, at the appraised fair market value, to John Mauer of Dyer, Nevada. Authority for the sale is in Sections 203 and 209 of the Federal Land Policy and Management Act of October 21,1976 (43 U.S.C. 1701,1713, 1719).

Mount Diablo Meridian, Nevada

T. 4 S., R. 36 E.,
Sec. 23, SE¼NW¼, NE¼SW¼;
Totaling 80.0 acres more or less.

The above-described lands are hereby classified for disposal in accordance with section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, Act of June 28, 1934, as amended and Executive Order 6910.

DATES: Comments must be submitted within 45 days of the date this Notice is published in the **Federal Register**.

ADDRESSES: Bureau of Land Management, Tonopah Field Station, 1553 South Main Street, Post Office Box 911, Tonopah, Nevada 89049.

FOR FURTHER INFORMATION CONTACT: Wendy Barlow, Realty Specialist, at the above address or at (775) 482–7806.

SUPPLEMENTARY INFORMATION: This parcel of land near Dyer, Nevada, is being offered by direct sale to John Mauer. The land is not required for Federal purposes. The proposed action is consistent with the objectives, goals, and decisions of the Tonopah Resource Management Plan.

Conveyance of the available mineral interests will occur simultaneously with the sale of the land. Acceptance of the sale offer will constitute an application for the available minerals and the purchaser will be charged a $50.00 nonrefundable filing fee for the mineral interests.

The proponent will have 30 days from the date of receiving the sale offer to accept the offer and to submit a deposit of 30 percent of the purchase price, the $50 mineral filing fee, and money for publication costs. The purchaser must submit the rest of the purchase price, within 90 days from the date the sale offer is received. Payments may be by certified check, postal money order, bank draft, or cashier's check made payable to the U. S. Department of the Interior—BLM. Failure to meet conditions established for this sale will void the sale and any money received for the sale will be forfeited.

The patent, when issued, will contain a reservation to the United States for a right-of-way for ditches and canals

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constructed by the authority of the United States under the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945, and will be subject to:

1. Esmeralda County RS 2477 assertion, for a road having a varied width;

2. Oil, gas, and Geothermal Resources; and

3. Valid Existing rights.

Publication of this Notice in the **Federal Register** segregates the subject lands from all appropriations under the public land laws, except sale under the Federal Land Policy and Management Act of 1976. The segregation will terminate upon issuance of the patent or 270 days from date of publication, which ever occurs first.

For a period of 45 days from the date this Notice is published in the **Federal Register**, interested parties may submit comments to the Tonopah Field Station Manager at the above address. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of timely filed objections this realty action will become the final determination of the Department of the Interior. The land will not be offered for sale until at least sixty days after the date this notice was published in the **Federal Register**.

Dated: June 27, 2002.

Jack L. Hamby,

Acting Assistant Field Manager, Tonopah.

[FR Doc. 02–21389 Filed 8–21–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–EU; N–75920, N–75921, N–75922, N–75923, N–75924, N–75925, N–75926]

Notice of Realty Action: Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive sale of public lands in White Pine County, Nevada.

SUMMARY: The below listed public lands in White Pine County, Nevada have been examined and found suitable for disposal, at not less than fair market value. In accordance with Section 7 of the Act of June 28, 1934, as amended, 43 U.S.C. 315f and EO 6910, the described lands are hereby classified as suitable for disposal under the authority of Sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713, and 1719), and the Federal Land Transaction Facilitation Act of July 25, 2000 (Pub. L. 106–248).

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Assistant Field Manager, Nonrenewable Resources.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Jeffrey A. Weeks, Assistant Field Manager, Nonrenewable Resources, HC 33, Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the sale, including the reservations, sale procedures and conditions, planning and environmental documents, will be available at the Ely Field Office of the Bureau of Land Management, 702 North Industrial Way, Ely, Nevada 89301, or by contacting Gianna Vaccaro, Realty Specialist, at the above address or telephone (775) 289–1885.

SUPPLEMENTARY INFORMATION: The following described parcels of land, situated in White Pine County are being offered as a competitive sale.

Mount Diablo Meridian, Nevada

Parcel 1, casefile N–75923 located at:
T. 10 N., R. 62 E.,
Section 5, SW¼NE¼, SE¼NW¼,
containing 80.00 acres more or less.

Parcel 2, casefile N–75922 located at:
T. 12 N., R. 67 E.,
Section 12, SW¼NE¼, NW¼SE¼, W½NE¼SE¼, SE¼NW¼, NE¼NW¼,
containing 180.00 acres more or less.

Parcel 3, casefile N–75921 located at:
T. 13 N., R. 61 E.,
Section 35, Lots 3 and 4, SE¼, SW¼NE¼,
containing 200.00 acres more or less.

Parcel 4, casefile N–75926 located at:
T. 15 N., R. 63 E.,
Section 12, W½W½, W½E½NW¼, W½E½SW¼,
containing 240.00 acres more or less.

Parcel 5, casefile N–75925 located at:
T. 17 N., R. 55 E.,
Section 6, Lots 5 and 6, SW¼SE¼NW¼, N½NW¼NE¼SW¼,
containing 10.00 acres more or less.

Parcel 6, casefile N–75920 located at:
T. 17 N., R. 64 E.,
Section 18, SE¼NE¼,
containing 40.00 acres more or less.

Parcel 7, casefile N–75924 located at:
T. 21 N., R. 64 E.,
Section 19, Lots 3 and 4, SE¼SW¼, S½SW¼,
Section 20, S½SW¼,
containing 279.20 acres more or less.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest. The subject lands will be sold for at least fair market value as determined by appraisal. In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-refundable filing fee in conjunction with the final payment for processing of the conveyance of the locatable mineral interests. The parcels will be offered for competitive sale by oral auction. The date of the oral auction is unknown at this time; once the known date is determined a notice will be published in the **Federal Register**. Lands will not be offered for sale until at least 60 days after the date of publication of this future notice in the **Federal Register**. The highest qualifying bid for each parcel will be declared the high bid. The apparent high bidder must submit the required bid deposit immediately following the close of the sale in the form of cash, personal check, bank draft, cashiers check, money order, or any combination thereof, made payable to the Bureau of Land Management, for not less than 20 percent of the amount bid. The remainder of the full bid price must be paid within 180 calendar days of the date of sale. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the bid deposit to be forfeited to the BLM. If the highest qualified bid is rejected or the bidder released from it, the authorized officer will determine if the parcel shall be reoffered to the next highest bidder. If the lands are not sold, they may remain available for sale on a continuing basis until sold. Federal law requires that bidders must be U.S. citizens 18 years of age or older, a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; or an entity, including but not limited to associations or partnerships, capable of holding property or interests therein under the law of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit. In order to determine the fair market value of the subject public lands through appraisal, certain assumptions have been made on the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government.

Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the lands offered for sale; conveyance of the subject lands will not be on a contingency basis. It is the buyers' responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. It is also the buyers' responsibility to be aware of existing and potential uses for nearby properties.

When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

The patent, when issued, will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All the oil and gas mineral deposits in the land subject to this conveyance, including without limitation, the disposition of these substances under the mineral leasing laws. Its permittees, licensees and lessees, the right to prospect for, mine and remove the mineral owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe. This reservation includes all necessary and incidental activities conducted in accordance with the provisions of the mineral leasing laws in effect at the time such activities are undertaken, including, without limitation, necessary access and exit rights, all drilling, underground, or surface mining operation, storage and transportation facilities deemed necessary and authorized under law and implementing regulations.

3. All land parcels are subject to all valid and existing rights. Encumbrances of records are available for review during business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, at the Bureau of Land Management, Ely Field Office, 702 North Industrial Way, Ely, Nevada.

4. The parcels are subject to reservations for roads, public utilities and flood control purposes, both existing and proposes, in accordance with the local governing entities' Transportation Plans.

5. All purchasers/patentees, by accepting a patent, agree to indemnify, defend, and hold harmless the United States from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgements of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or leasees, or any third party, arising out of, or in connection with, the patentee's use, occupancy, or operations of the patented real property. The indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or leasees , or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violation of federal, state, and local laws and regulations that are now, or may in the future become, applicable to the real property; (2) Judgements, claims, or demands of any kind assessed against the United States: (3) Costs, expenses, or damages of any kind incurred by the United States: (4) or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), as defined by federal or state environmental laws; off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resources damages as defined by federal and state laws. This convent shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, and leasing under the mineral leasing laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding this action to the Assistant Field Manager, Nonrenewable Resources at the address listed above. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. Any comments received during the process, as well as the commentor's name and address, will be available to the public in the administrative record and/or pursuant to the Freedom of Information Act request. You may indicate for the record that you do not wish your name and/or address made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A commentor's request to have their name and/or address withheld from the public release will be honored to the extent permissible by law.

Dated: July 23, 2002.

Mark S. Henderson,

Acting Assistant Field Manager, Nonrenewable Resources.

[FR Doc. 02–21396 Filed 8–21–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–1430–01; N–66421]

Notice of Realty Action: Non-Competitive Sale of Public Lands in Lincoln County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The below listed public land in Caliente, Lincoln County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than fair market value. In accordance with Section 7 of the Act of June 28, 1934, as amended, 43 U.S.C. 315f and EO 6910, the described lands are hereby classified as suitable for disposal under the authority of Section 203 and Section 209 of the Federal Land Policy and Management Act of October 21, 1976; 43 U.S.C. 1713 and 1719.

DATES: Interested parties may submit comments to the Assistant Field Manager, Nonrenewable Resources until October 7, 2002.

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ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Jeffrey A. Weeks, Assistant Field Manager, Nonrenewable Resources, HC 33, Box 33500, Ely, Nevada 89301–9408.

FOR FURTHER INFORMATION CONTACT: Kevin Finn, Realty Specialist, at the above address or telephone (702) 289–1849.

SUPPLEMENTARY INFORMATION: The following described parcel of land, situated in Lincoln County is being offered as a direct sale to the City of Caliente.

Mount Diablo Meridian, Nevada

T. 4 S., R. 66 E., Sec. 12,
S½NE¼SE¼SE¼NE¼, SE¼SE¼NE¼,
E½NE¼NE¼SE¼,
E½NW¼NE¼NE¼SE¼,
E½SW¼NE¼NE¼SE¼,
NE¼SE¼NE¼SE¼.
T. 4 S., R. 67 E., Sec. 7, Lots 3, 4.
containing 105.21 acres.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest. In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests, excluding those mineral interests retained by the federal government. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests. The direct sale of this land is supported by the Lincoln County Commissioners.

The purpose of the sale is to allow for the City of Caliente to construct an industrial park. The proportion of existing Recreation & Public Purposes Lease N–12843 issued to the City of Caliente and encumbering the sale site will be relinquished by the City of Caliente immediately prior to patent.

Appraised value of the above described parcel is $150,000.

The patent, when issued, will contain the following reservations to the United States:

(1) A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

(2) All the sodium, potassium and oil and gas mineral deposits in the land subject to this conveyance.

(3) All prior existing rights.

All purchasers/patentees, by accepting a patent, agree to indemnify, defend, and hold harmless the United States from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or lessees, or any third party, arising out of, or in connection with, the patentee's use, occupancy , or operations of the patented real property. The indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violation of federal, state, and local laws and regulations that are now, or may in the future become, applicable to the real property: (2) Judgments, claims or demands of any kind assessed against the United States: (3) Costs, expenses, or damages of any kind incurred by the United States: (4) or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), as defined by federal or state environmental laws; off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resources damages as defined by federal and state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

Upon publication of this notice in the **Federal Register**, the above-described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws. The segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding this action to the Assistant Field Manager, Nonrenewable Resources at the address listed above. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may reject an offer to purchase, if in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: June 25, 2002.

Jeffrey A. Weeks,

Assistant Field Manager, Nonrenewable Resources.

[FR Doc. 02–21397 Filed 8–21–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–010–1232–HB–UT17–24–1A]

Notice of Proposed Supplementary Rules on Public Lands in Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rules for certain public lands managed by the Bureau of Land Management within the Little Sahara Special Recreation Management Area (SMRA), Fillmore Field Office, Utah.

SUMMARY: The Bureau of Land Management (BLM) is proposing supplementary rules to apply to the public lands within the Little Sahara Special Recreation Management Area (SRMA), Fillmore Field Office, Utah. The rules are necessary for the management of actions, activities, and public use on certain public land which may have or are having adverse impacts on persons using public lands, on property, and on resources located on public lands located in, or acquired for inclusion within, the Little Sahara Recreation Management Area.

DATES: Comments on the proposed supplementary rules must be received or postmarked by 30 days after publication of this notice to be assured consideration. In developing final supplementary rules, BLM may not consider postmarked or received in person or by electronic mail after this date.

ADDRESSES: Mail: Bureau of Land Management 115 E 500 N, Fillmore, Utah 84631. Personal or messenger delivery: 115 E 500 N, Fillmore, Utah 84631.

FOR FURTHER INFORMATION CONTACT: Ferris Clegg, Bureau of Land Management, Richfield Field Office 150 East 900 North, Richfield, Utah 84701. Telephone (435) 896–1500.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Please submit your comments on issues related to the proposed supplementary rules, in writing, according to the **ADDRESSES** section above. Comments on the proposed supplementary rules should be specific, should be confined to issues pertinent to the proposed supplementary rules, and should explain the reason for any recommended change. When possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives after the close of the comment period or comments delivered to an address other than those listed above.

BLM will make your comments, including your name and address, available for public review at the Fillmore Field Office address listed in **ADDRESSES** above during regular business hours (8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays). If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

II. Discussion of the Supplementary Rules

The Utah State Director of the Bureau of Land Management is establishing these supplementary rules which are necessary for the protection of persons, property and public lands and resources within the Little Sahara Special Recreation Management Area, lands acquired for inclusion in the Little Sahara Special Recreation Management Area, and all lands that may be incorporated into the Little Sahara Recreation Management Area, in the Fillmore Field Office, as provided for in 43 CFR 8365.1–6.

These rules are in addition to and supplement the rules found in 43 CFR part 8300.

The affected lands are located in the following areas:

Salt Lake Base Meridian

T.12S.,R.4W.
Sec. 19, lots 3 and 4, E½SW¼, and SE¼;
Sec. 20, W½SW¼, and SE¼SW¼;
Sec. 28, S½SW¼;
Sec. 29, W½NE¼, SE¼NE¼, W½, and SE¼;
Secs. 30 to 33, inclusive;
Sec. 34, SW¼NW¼, SW¼, and S½SE¼.
T.13S., R.4W.
Secs. 3 to 10, inclusive;
Sec. 15, N½,SW¼,N½SE¼, and SW¼SE¼;
Secs. 16 to 21, inclusive;
Sec. 22, NW¼,W½SW¼;
Sec. 28, lots 1, 2, 3, and 4;
Sec. 29, lots 1, 2, 3, and 4, SW¼NE¼, S½NW¼SW¼, and W½SE¼;
Sec. 30 and 31;
Sec 32, W½E½, W½.
T.14S., R4W.
Sec. 5, lots 1, 2, 3, and 4, S½N½, SW¼, and W½SE¼;
Secs. 6 and 7;
Sec. 8, W½
Sec. 17, W½NW¼;
Sec. 18. T.12S., R5W;
Sec. 24, S½;
Secs. 25 to 29, inclusive;
Secs. 30, SE¼NE¼,SE¼SW¼, and SE¼;
Secs. 31 to 36, inclusive.
T.13S., R5W.
Secs. 1 to 36, inclusive.
T.14S., R5W.
Secs. 1 to 5, inclusive;
Sec. 6, lots 1 to 9, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, E½;
Secs. 8 to 15, inclusive;
Sec. 16, N½;
Sec. 17, N½;
Sec. 18, NE¼NE¼;
Secs. 22 to 24, inclusive;

III. Procedural requirements

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 or more on the economy. They are directed at preventing unlawful personal behavior on public lands, for purposes of protecting public health and safety. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. They proposed supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues. The supplementary rules merely enable BLM law enforcement personnel to enforce state law where appropriate on public lands.

Clarity on the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed rule clearly stated?

(2) Does the proposed rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in Bold type and is preceded by the abbreviation "Sec." and a numbered heading; for example, Sec. 1.3 Protective Headgear.)

(5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

If you have any comments that concern how we could make this proposed rule easier to understand, in addition to sending the original to the address shown in **ADDRESSES**, above, please send a copy to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Execsec@ios.doi.gov*.

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that the proposed supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The proposed supplementary rules will enable BLM law enforcement personnel to cite persons not obeying the rules of the Little Sahara Recreation Area for the purpose of protecting public health and safety. BLM has placed the EA and the Finding of NO Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. BLM invites the public to review these

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documents and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the Written Comments section above.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, (RFA) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The proposed supplementary rules do not pertain specifically to commercial or governmental entities of any size, but contain rules to protect the health and safety of individuals, property, and resources on the public lands. Therefore, BLM has determined under the RFA that these proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a "major rule" as defined at 5 U.S.C. 804(2). Again, the supplementary rules pertain only to individuals who may use the public lands. In this respect, the regulation of such use is necessary to protect the public lands and facilities and those, including small business concessioners and outfitters, who use them. The supplementary rules have no effect on business-commercial or industrial use of the public lands.

Unfunded Mandates Reform Act

These proposed supplementary rules do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor do these proposed supplementary rules have a significant or unique effect on State, local, or tribal governments or the private sector. The supplementary rules do not require anything of State, local, or tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions, and Interference With Constitutionally Protected Property Rights (Takings)

The proposed supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights in any form, and do not cause the impairment of anyone's property rights. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed supplementary rules will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The supplementary rules apply in only one State, Utah, and do not address jurisdictional issues involving the State government. Therefore, in accordance with Executive Order 13132, BLM has determined that these proposed supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, Utah State Office of BLM has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of this supplementary rules is Ferris Clegg of the Fillmore Field Office, BLM.

Dated: October 17, 2001.

Sally Wisely,

State Director.

[**Editorial Note:** This document was received at the Office of the Federal Register on August 16, 2002.]

Supplementary Rules, Little Sahara Special Recreation Management Area

Sec. 1.0 Vehicle Equipment Requirements

Sec. 1.1 Safety Flags

a. A safety flag is required on all off-highway vehicles. This includes all all-terrain vehicles (ATVs), dirt bikes and dune buggies. You must not operate, or give any person permission to operate, an off-highway vehicle that is not equipped with a safety flag within the Little Sahara Special recreation Management Area.

b. The safety flag must be—

1. Red or orange in color and a minimum of six by 12 inches;

2. Attached to the off-highway vehicle in such a manner that the top of the flag is at least eight feet above the surface of level ground.

Sec. 1.2 Minimum Age

a. You must be 8 years of age or older to operate or ride on an off-highway vehicle within the Little Sahara Special Recreation Management Age.

b. You must not give any child under 8 years of age permission to operate any off-highway vehicle within the Little Sahara Special Recreation Management Area.

Sec. 1.3 Protective Headgear

a. You must not operate or ride on an off-highway vehicle within the Little Sahara Special Recreation Management Area unless you are wearing properly fitted, safety-rated protective headgear designed for motorized vehicle use, if you are under the age of 18.

b. You must not vie permission to any person under the age of 18 to operate or ride on an off-highway vehicle within the Little Sahara Special Recreation Management Area unless that person is wearing properly fitted, safety-rated protective headgear designed for motorized vehicle use.

Sec. 20 Prohibited Acts

Sec. 2.1 Government Property

Your must not vandalize, climb on or otherwise interfere or tamper with any building, structure, sign, water line water tank equipment, or any other government property or government contracted property within the Little Sahara Special Recreation Management Area.

Sec. 2.2 Spray Paint

The following are prohibited:

a. The use of spray paint or paint-ball guns within the Little Sahara Special Recreation Management Area except for:

1. The official business of any Federal, state, county, or local governmental entity, or

2. The necessary performance of work related to the maintenance or construction of any authorized improvements or facilities on public lands;

b. The possession of spray paint containers within the Little Sahara Special Management Area, except when such containers of spray paint are located—

1. In the trunk of a motor vehicle; or

2. In some other portion of the motor vehicle designed for the storage of luggage and not normally occupied by or readily accessible to the operator or passengers, if the motor vehicle is not equipped with a trunk.

Sec. 2.3 Glass Containers

Within the Little Sahara Special Recreation Management Area, you must not possess glass containers outside of vehicles, camp trailers, or tents.

Sec. 2.4 Bonfires

You must not knowingly create or maintain any large bonfire within the area of Little Sahara Special Recreation Management Area. For the purpose of this supplemental rule, a large bonfire means a fire with flames over three feet tall or a fire that cannot be contained in a 3-foot diameter area.

Sec. 2.5 Wooden Pallets

You must not bring into the Little Sahara Special Recreation Management Area or possess within the Little Sahara Special Recreation Management Area any pallets or lumber or wood products with nails or other metal objects affixed to such wood, lumber or wood products. You may carry or possess wood or lumber so long as they do not have nails or other metal objects attached to them.

Sec. 3.0 Permits and Fees

Sec. 3.1 Fees

Except as provided in Sec. 3.2 of these supplementary rules—

a. You must not enter the Little Sahara Special Recreation Management Area by any means or ways, public or private, without properly paying required fees.

b. Your must not enter, camp, park, or stay longer than one hour within the Little Sahara Special Recreation Management Area without properly paying required fees.

Sec. 3.2 Contracts

a. You may not enter the Little Sahara Special Recreation Management Area without paying required fees, unless you have a current annual pass contract or obtain a temporary contract in lieu of fees from BLM and sign it in the presence of the issuing officer.

b. You must not violate the terms, conditions, and stipulations of your current annual pass contract or a temporary contract in lieu of fees under paragraph a. of this section.

Sec. 4.0 Penalties

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), if you knowingly and willfully violate or fail to comply with any of the supplementary rules provided in this notice you may be subject to a fine under 18 U.S.C. 3571 or other penalties in accordance with 43 U.S.C. 1733.

[FR Doc. 02–21388 Filed 8–21–02; 8:45 am]

BILLING CODE 4110–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–02–1220–PD–241A]

Interim Final Supplementary Rules for the Sand Mountain and the Walker Lake Recreation Areas; Churchill and Mineral County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Interim final supplementary rules.

SUMMARY: The Carson City Field Office Manager establishes these Supplementary Rules to provide for the protection of persons, property, and public lands and resources. They consolidate and clarify rules published in previous **Federal Register** notices, establish that Sand Mountain will be subject to a user fee collection and establish additional supplementary rules of conduct for visitors to the Sand Mountain and the Walker Lake Recreation Areas.

DATES: The following supplementary rules are being published on an interim final basis, effective August 22, 2002. You may send your comments about these supplementary rules to the address below. Comments must be received or postmarked by September 23, 2002.

ADDRESSES: Mail: Manager, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701.

Personal or messenger delivery: 5665 Morgan Mill Road, Carson City, Nevada 89701. Internet e-mail: *Christina_Miller@nv.blm.gov*

FOR FURTHER INFORMATION CONTACT: Chris Miller, Outdoor Recreation Planner, or Terry Knight, Acting Deputy Assistant Manager, Non-Renewable Resources, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701. Telephone (775) 885–6000. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

Please submit your comments on issues related to the supplementary rules, in writing, according to the **ADDRESSES** section above. Comments on the supplementary rules should be specific, should be confined to issues pertinent to the supplementary rules, and should explain the reasons for any recommended change. Where possible, your comments should reference the specific section or paragraph of the interim final rule that you are addressing. BLM may not necessarily consider, or include in the Administrative Record, comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

Under certain conditions, BLM can keep your personal identification confidential. You must prominently state your request for confidentiality at the beginning of your comment. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

Discussion of Rules

Certain other prohibited activities were recommended in the Recreation Area Management Plan for the Sand Mountain Recreation Area. These recommendations subsequently were published as specific prohibited acts in the **Federal Register** on July 1, 1992. These rules required minor modification and clarification.

Certain other supplementary rules are necessary in order to provide for the safety of visitors to the Recreation Areas. Speed limits are needed on access roads and in designated camping areas. Ignition of fireworks is a violation of State law and a danger to both persons and property.

Clarification of existing rules is needed to protect plant life, wildlife habitat and historic resources, and due to increases in public use we are proposing additional rules. Indiscriminate vehicle use in that portion of the Sand Mountain Recreation Area, where the off-road vehicle designation is "limited", has destroyed vegetation, caused harassment of wildlife, and threatens the integrity of the Sand Springs Pony Express Station and Desert Study Area.

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These supplementary rules specifically identify those routes that are open to vehicle use within this "limited" designation area. Rules regarding the closure of certain lands within the Recreation Area to camping were published in the **Federal Register** on July 1, 1992. This notice contains a legal description of those lands and designates the area of Developed Recreation Site for the Walker Lake Recreation Area.

Procedural Matters

These supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

BLM has determined that the supplementary rules are categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1. In addition, the supplementary rules do not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These supplementary rules are not a "major rule" as defined at 5 U.S.C. 804(2). These rules are limited in scope to a small section of public land and are intended to establish rules of conduct and acceptable behavior at the site for the protection of resources and the visiting public.

These supplementary rules do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor do these supplementary rules have a significant or unique effect on State, local, or tribal governments or the private sector. These supplementary rules do not require funding or resources from State, Local, or tribal governments. These supplementary rules do not affect private property or property rights nor are they intended to deny or constrain any valid existing right. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

These supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules are applicable only on public land managed by the BLM and do not extend to adjacent private property. No taking of private property is contemplated in these supplementary rules. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

The supplementary rules will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. These supplementary rules are intended to protect property, resources, and the visiting public on a designated area of public land. The scope and effect of these supplementary rules are limited to those public purposes and do not redefine or impact established governmental structures, responsibilities, policies, or procedures. Therefore, in accordance with Executive Order 13132, BLM has determined that these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Under Executive Order 12988, we have determined that these supplementary rules will not unduly burden the judicial system and that these supplementary rules meet the requirements of sections 3(a) and 3(b)(2) of the Order. These supplementary rules have been written in plain text and are clearly understandable.

In accordance with Executive Order 13175, we have found that this final rule does not include policies that have tribal implications. These supplementary rules do not impact tribal lands nor are they intended to limit or interfere with any right or privilege granted to Native Americans.

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Lands Covered by the Supplementary Rules

The public lands affected by these restrictions are described as follows:

Sand Mountain Recreation Area

Mt. Diablo Meridian

T. 16 N., R 32 E.,
Sec. 4: Lots 1—4 inclusive, SW¼NE¼, S½NW¼, N½SW¼, SW¼SW¼;
Sec. 5: Lots 1–4 inclusive, S½N½, All public land north of U.S. Route 50;
T. 17 N., R 32 E.,
Sec. 15: S½S½;
Sec. 16: SE¼SE¼;
Sec. 20: SE¼;
Sec. 21: All
Sec. 22: W½, NE¼;
Sec. 28: All
Sec. 29: All
Sec. 32: All
Sec. 33: All

Walker Lake Recreation Area

Includes all public land east of U.S. Route 95 to Walker Lake within:

Mt. Diablo Meridian

T. 10 N., R 29 E.,
Sec. 5:
Sec. 8:
Sec. 17:
Sec. 20:
Sec. 29:
Sec. 32:

The principal author of these supplementary rules is Stanley Zuber of the Carson City Field Office, Bureau of Land Management, Department of the Interior.

For the reasons stated in the preamble, and under the authority of 43 CFR part 8360, sections 8364.1, 8365, 8365.1–2, 8365.1–6 and 8365.2, the BLM State Director, Nevada, issues the following supplementary rules.

Dated: April 23, 2002.

Jean Rivers-Council,

Acting State Director, Nevada.

Supplementary Rules for the Sand Mountain Recreation Area

Sec. 1 Motor Vehicle Rules

a. All motorized vehicles, other than those traveling on maintained roads, must be equipped with an 8 foot whip mast and a six (6) inch by twelve (12) inch solid red or orange colored safety flag. Flags may be pennant, triangle, square, or rectangular shape. The mast must be securely mounted on the vehicle and extend eight (8) feet from the ground to the mast tip when the vehicle is stopped. Safety flags must be attached within 10 inches of the tip of the whip mast with club or other flags mounted below safety flag or on another whip.

b. You must not operate any motorized vehicle in excess of 25 mph on any maintained road within the Recreation Area, or in excess of 15 mph within any designated camping area.

c. Within that portion of the Recreation Area where vehicle use is designated as "limited", there are only two roads open to motorized vehicles. These roads are:

(1) The main access road leading from U.S. Route 50 to the northernmost restroom facility and,

(2) The secondary access road leading from the main access road to the parking area near the Sand Springs Pony Express Station and Desert Study Area.

d. No person shall drink an alcoholic beverage, or have in their possession or on their person any open container that contains an alcoholic beverage, while operating in or on a motorized vehicle.

Sec. 2 Other Restrictions on Recreation Use

a. You must not camp on the following lands, other than in an area designated for that purpose:

Mt. Diablo Meridian

T. 17 N., R. 32 E.,
Sec. 28 SW¼:
Sec. 29 E½SE1/4, W½SE¼;

b. You must not camp on any other public lands within the Sand Mountain Recreation Area in Sec. 5, T.16N, R.32E, or within one mile of the boundary of the Recreation Area.

c. You must not operate or use any audio equipment, such as a radio, television, musical instrument, or other noise producing device, or motorized equipment, between the hours of 12 a.m. and 6 a.m. in a manner that makes unreasonable noise that disturbs other visitors; or operate or use a public address system without written authorization from the Field Office Manager.

d. Persons using the area will be subject to a user fee.

Sec. 3 Prohibited Acts

You must not:

a. Operate a motorized vehicle in the Recreation Area without the attached safety flag as described under Sec. 1 a. of these supplementary rules;

b. Operate a motorized vehicle in excess of the posted speed limit;

c. Drink an alcoholic beverage, or have in your possession or on your person any open container that contains an alcoholic beverage, while operating in or on a motorized vehicle;

d. Camp outside the designated camping area described in Sec. 2a. of these supplementary rules;

e. Discharge any firearms, fireworks, or projectiles;

f. Make any unreasonable noise that disturbs other visitors between the hours of 12 a.m. and 6 a.m. as described in Sec. 2c. of these supplementary rules;

g. Possess or use any glass cup or bottle, empty or not, used for carrying any liquid for drinking purposes;

h. Bring in, dispose of or possess any firewood containing nails, screws, or other metal hardware;

i. Dump gray or wastewater at the Recreation Area; or

j. Use Sand Mountain Recreation Area without paying the user fee.

Sec. 4 Penalties

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), any person failing to comply with these supplementary rules may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, other penalties in accordance with 43 U.S.C. 1733, or both.

Sec. 5 Administrative and Emergency Use

These supplementary rules do not apply to emergency or law enforcement personnel, or BLM employees engaged in the performance of their official duties.

Supplementary Rules for the Walker Lake Recreation Area

Sec. 1 Motor Vehicle Rules

a. No person shall operate any motorized vehicle in excess of 25 mph on any maintained road within the Recreation Area, or in excess of 15 mph within any designated camping area.

b. No person shall drink an alcoholic beverage, or have in their possession or on their person any open container that contains an alcoholic beverage, while operating in or on a motorized vehicle.

Sec. 2 Developed Recreation Site

The following lands are designated as the developed recreation site as defined in 43 CFR 8360.0–5(c). Includes all public land east of U.S. Route 95 to Walker Lake within:

Mt. Diablo Meridian

T. 10 N., R 29 E.,
Sec. 29;
Sec. 32:

Rules stated in 43 CFR 8365.2 apply to this area.

Sec. 3 Other Restrictions on Recreation Use

No person shall operate or use any audio equipment, such as a radio, television, musical instrument, or other noise producing device, or motorized equipment, between the hours of 12 a.m. and 6 a.m. in a manner that makes unreasonable noise that disturbs other visitors; or operate or use a public address system without written authorization from the Field Office Manager.

Sec. 4 Prohibited Acts

You must not:

a. Operate a motorized vehicle in excess of the posted speed limit;

b. Drink an alcoholic beverage, or have in your possession or on your person any open container that contains an alcoholic beverage, while operating in or on a motorized vehicle;

c. Discharge any firearms, fireworks, or projectiles.

f. Make any unreasonable noise that disturbs other visitors between the hours of 12 a.m. and 6 a.m. as described in Sec. 6a. of these supplementary rules.

g. Possess or use any glass cup or bottle, empty or not, used for carrying any liquid for drinking purposes;

h. Bring in, dispose of or possess any firewood containing nails, screws, and other metal hardware.

i. No dumping of gray or wastewater at Sand Mountain Recreation Area.

Sec. 5 Penalties

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), any person failing to comply with these supplementary rules may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, other penalties in accordance with 43 U.S.C. 1733, or both.

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Sec. 6 Administrative and Emergency Use

These supplementary rules do not apply to emergency or law enforcement personnel, or BLM employees engaged in the performance of their official duties.

[FR Doc. 02–21395 Filed 8–21–02; 8:45 am]
BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MTM 93636]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; MT

AGENCY: Bureau of Land Management, Interior

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw 170.00 acres of National Forest System land to protect the Big Ice Cave and its subterranean water supply. The land was previously withdrawn by Public Land Order No. 6119 which has expired. Protection is still needed for this unique geologic and hydrologic formation and its important cultural and recreational values. This notice segregates the land for up to 2 years from location or entry under the United States mining laws. The land will remain open to all other uses which may by law be made of National Forest System land.

DATES: Comments and requests for a public meeting must be received by September 23, 2002.

ADDRESSES: Comments and meeting requests should be sent to the Forest Supervisor, Custer National Forest, P.O. Box 50760, Billing, Montana 59105.

FOR FURTHER INFORMATION CONTACT: Susan Newell, Custer National Forest, P.O. Box 50760, Billings, Montana 59105, 406–657–6200, extension 225, or Sandy Ward, BLM Montana State Office, 406–896–5052.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to withdraw the following described National Forest System land from location or entry under the United States mining laws, subject to valid existing rights:

Custer National Forest

Principal Meridian, Montana

Unsurveyed, but which probably will be when surveyed:

T.8 S., R. 27 E.,
Sec. 3, SE¼
Sec. 10, N½N½NW¼NE¼.

The area described contains 170.00 acres in Carbon Country.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed extension may present their views in writing to the Forest Supervisor, Custer National Forest.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this proposed extension. All interested persons who desire a public meeting for the purpose of being heard on the proposal must submit a written request, by the date specified above, to the Forest Supervisor, Custer National Forest. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days prior to the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: March 8, 2002.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 02–21393 Filed 8–21–02; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: New Collection; Making Officer Redeployment Effective (MORE) Closeout Report.

The Department of Justice (DOJ), Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 21, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Making Officer Redeployment Effective (MORE) Closeout Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* COPS Form Number: N/A.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: MORE award recipients. Other: None. Abstract: The information collected will be used by the COPS Office to determine that MORE award recipients have completed the grant programmatic requirements.

(5) *As estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 1,856 responses per year. The estimated amount of time required for the average respondent to respond is: 1.0 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,712 annually.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: August 16, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–21450 Filed 8–21–02; 8:45 am]
BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *Occidental Chem. Corp.*, Civ. A. No. 4:CV–98–0686, was lodged on August 2, 2002, with the United States District Court for the Middle District of Pennsylvania.

In this action, the United States sought recovery of past and future response costs under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607, the imposition of a civil penalty under Section 106 of CERCLA, 42 U.S.C. 9606, due to Occidental Chemical Corporation's ("Occidental") failure to comply with EPA's 1997 Unilateral Administrative Order ("UAO"), Docket No. III–97–79–DC, and injunctive relief requiring Occidental to comply with the UAO in the future. Under the Consent Decree, Occidental will pay the United States $561,000 for past and future response costs incurred or to be incurred in connection with the clean-up of the Centre County Kepone Superfund Site ("the Site"), located in State College, Centre County, Pennsylvania.

Furthermore, in order to fulfill its obligations under the UAO, which directed Occidental to "participate and cooperate" in performing the response actions at Operable Unit #1 ("OU–1") of the Site with Ruetgers Organics Corporation ("ROC"), Occidental will make a good faith offer to ROC of at least $220,000 as its appropriate share of the response actions to be performed under the UAO. If ROC rejects Occidental's good faith offer, Occidental will instead pay $220,000 to the EPA Hazardous Substance Superfund in reimbursement for response costs incurred in connection with OU–1 at the Site.

Finally, to resolve its failure to comply with the UAO, Occidental will pay a civil penalty of $21,000 and perform a Supplemental Environmental Project ("SEPP"), involving the acquisition of an environmental easement, the Hartle Farm, at a cost of at least $84,000.

The Department of Justice will receive, for a period of not less than thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Occidental Chem. Corp.* (4:CV–98–0686), DOJ Ref. #90–11–3–1436A.

The Consent Decree may be examined at the Office of the United States Attorney, 228 Walnut Street, Room 220, Harrisburg, PA 17108, and at the Region III Office of the Environmental Protection agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood at (202) 514–0097 [Phone confirmation number (202) 514–1547]. In requesting a copy from the Consent Decree Library, please refer to the referenced case and enclose a check in the amount of $10.25 (25 cents per page reproduction cost), payable to the United States Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 02–21369 Filed 8–21–02; 8:45 am]
BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. National Association of Police Equipment Distributors, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Southern District of Florida in *United States of America* v. *National Association of Police Equipment Distributors, Inc.* ("NAPED"), Civil Action No. 02–80703. On July 29, 2002, the United States filed a Complaint to obtain equitable and other relief to prevent and restrain violations of Section I of the Sherman Act as amended, 15 U.S.C. 1. The United States brought this action to enjoin NAPED from engaging in an unlawful group boycott of manufacturers that participated or considered participating in the United States General Services Administration program under Section 1122 of the National Defense Authorization Act of 1994 to make available police equipment products to state and local law enforcement agencies at GSA-negotiated prices. The proposed Final Judgment, filed at the same time as the Complaint, requires NAPED to eliminate the anticompetitive conduct identified in the Complaint.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 200, 325 Seventh Street, NW., and at the Office of the Clerk of the United States District Court for the Southern District of Florida, West Palm Beach Florida.

Public comment is invited within sixty (60) days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Marvin N. Price, Jr., Chief, Chicago Field Office, Antitrust Division, U.S. Department of Justice, 209 S. LaSalle Street, Suite 600, Chicago, IL 60604, (telephone: (312) 353–7530).

Dorothy B. Fountain,

Deputy Director of Operations.

Stipulation

The undersigned parties, by their respective attorneys, stipulate as follows:

1. A Final Judgment in the form attached hereto may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

2. Defendant shall abide by and comply with the provisions of the

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proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court rule declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

3. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

4. For purposes of this Stipulation and the accompanying Final Judgment only, defendant stipulates that: (i) The Complaint states a claim uopn which relief may be granted under Section 1 of the Sherman Act; (ii) the Court has jurisdiction over the subject matter of this action and over each of the parties hereto; and (iii) venue of this action is proper in this Court.

5. In the event plaintiff withdraws its consent, as provided in paragraph (1) above, or in the event that the Court declines to enter the proposed Final Judgment pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendant represents that the undertakings ordered in the proposed Final Judgment can and will be satisfied, and that defendant will not later raise claims of hardship or difficulty as grounds for asking the Court to modify any of the undertakings contained therein.

Dated: July 25, 2002.

For Plaintiff United States of America:
Charles A. James,
Assistant Attorney General.
Deborah P. Majoras,
Deputy Assistant Attorney General.
Dorothy B. Fountain,
Deputy Director of Operations.
Marvin N. Price. Jr.,
Chief, Chicago Field Office.
Frank J. Vondrak
Assistant Chief, Chicago Field Office.
For Defendant Naped, INC.
Paula Cozzi Goedert, Esq.,
IL Bar #00978515, Jenner & Block, One IBM Plaza, Chicago, IL 60611, (312) 222–9350, (312) 527–0484 (Fax), E-Mail: pgoedert@jenner.com.
Rosemary Simota Thompson,
IL Bar #6204990, E-Mail:
rosemary.thompson@usdoj.gov.
Donna Alberts Peel,
Attorney.
Diane Lotko-Baker,
Attorney.
Attorneys, U.S. Department of Justice, Antitrust Division, 209 S. LaSalle Street, Suite 600, Chicago, Illinois 60604, (312) 353–7530, (312) 353–4136 (Fax).

III. Applicability

A. This Final Judgment applies to the defendant and to each of its officers, directors, agents and employees.

B. Defendant shall require, as a condition of any merger, reorganization, or acquisition by any other organization, that the organization to which defendant is to be merged or reorganized, or by which it is to be acquired, agree to be bound by the provisions of this Final Judgment.

C. Nothing in this Final Judgment creates any rights for, or gives standing to, any person not a party to this action.

IV. Prohibited Conduct

Defendant is hereby enjoined from:

A. Directly or indirectly entering into, adhering to, or enforcing any agreement with any distributor or dealer to hinder through any means any manufacturer's participation in the GSA Program;

B. Directly or indirectly entering into, adhering to, or enforcing any agreement with any distributor or dealer to retaliate in any way against any manufacturer for participating or considering participating in or seeking information about the GSA Program;

C. Urging, encouraging, advocating or suggesting that any distributor or dealer urge, encourage, advocate, or suggest to any manufacturer that it discard Section 1122 purchase orders or commit any other misrepresentation to circumvent the requirements of the GSA Program;

D. Urging, encouraging, advocating or suggesting that any distributor or dealer refrain from conducting business with any manufacturer for participating in, considering participating in, or seeking information regarding the GSA Program;

E. Urging, encouraging, advocating or suggesting that any distributor, dealer or manufacturer (1) refuse to do business with particular persons or types of persons, (2) reduce the amount of business they do with particular persons or types of persons, or (3) do business with particular persons or types of persons only on specified terms.

II. Definitions

As used in this Final Judgment:

A. "Agreement" means a contract, arrangement, or understanding, formal or informal, oral or written, between to or more persons.

B. "Dealer" or "Distributor" means any person that distributes police equipment products manufactured by another person or who purchases or acquires such product for resale to any other person.

C. "GSA" means General Services Administration of the United States Government.

D. "GSA Program" means the General Services Administration's ("GSA") program pursuant to Section 1122 of the National Defense Authorization Act of 1994, which permits state and local governments to purchase equipment products for drug interdiction under GSA schedules, and any other programs under which state and local governments are able to purchase police equipment products through a GSA schedule.

E. "Manufacturer" means any person who makes a assembles police equipment including each of its divisions, parents, subsidiaries, and affiliates.

F. "NAPED" or "defendant" means National Association of Police Equipment Distributors, Inc., including each of its committees, divisions, parents, subsidiaries, and affiliates, and any person action on behalf of any of them, as well as its successors and assigns.

G. "Organizations" means any corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute or other business, legal or government entity.

H. "Person" means any natural person, corporation, company, partnership, joint venture firm, association, proprietorship, agency, board, authority, commission, office or other business or legal entity, whether private or governmental.

I. "Police Equipment" means any product used primarily in law enforcement.

J. "Section 1122" means Section 1122 of the National Defense Authorization Act of 1994, which permits state and local governments to purchase police equipment products for drug interdiction under GSA schedules.

Final Judgment

Plaintiff, United States of America, filed its Complaint on July 29, 2002. Plaintiff and defendant, National Association of Police Equipment Distributors, Inc. ("NAPED"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not constitute any evidence against or an admission by any party with respect to any issue of fact or law herein.

Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby ordered, adjudged, and decreed, as follows:

I. Jurisdiction and Venue

This court has jurisdiction over the subject matter of this action and over the defendant. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act, 15 U.S.C. 1. Venue is a proper in the District Court for the Southern District of Florida.

V. Limiting Conditions

A. Nothing in this Final Judgment shall prohibit defendant from:

1. Continuing to disseminate public statements regarding contemplated changes in the laws affecting the GSA Program, GSA policies, or procurement of police equipment by state and local governments;

2. Engaging in collective actions to procure government action when such actions are protected under the Noerr-Pennington doctrine, as established by *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), and *United Mine Workers* v. *Pennington*, 381 U.S. 657 (1965);

3. Presenting the views, opinions or concerns of its members on topics to manufacturers, distributors or dealers, consumers, or other interested parties, provided that such activities do not violate any provision contained in Section IV above;

B. Nothing in this Final Judgment shall prohibit any individual distributor or dealer, acting alone and not on behalf of or in common with defendant or any of defendant's officers, directors, agents, employees, successors, or assigns, from negotiating any terms of its business relationship with any manufacturer, including terms related to a manufacturer's policies.

VI. Notification Provisions

Defendant is ordered and directed:

A. To publish the Final Judgment and a written notice, in the form attached as Appendix A to this Final Judgment, in *Law & Order* magazine within 60 days of the entry of this Final Judgment;

B. To send a written notice, in the form attached as Appendix A to this Final Judgment, to each distributor or dealer who is a current member of NAPED within 30 days of the entry of this Final Judgment; and

C. To send a written notice, in the form attached as Appendix A to this Final Judgment, to each distributor or dealer who becomes a member of NAPED within 10 years of entry of this Final Judgment. Such notice shall be sent within 30 days after the distributor or dealer becomes a member of NAPED.

VII. Compliance Program

A. Defendant is ordered to establish and maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for implementing the antitrust compliance program and achieving full compliance with this Final Judgment and the antitrust laws. The Antitrust Compliance Officer shall, on a continuing basis, be responsible for the following:

1. Furnishing a copy of this Final Judgment within 30 days of entry of the Final Judgment to each of defendant's officers, directors, and employees, except for employees whose functions are purely clerical or manual and do not address issues related to the sale or purchase of police equipment;

2. Furnishing within 30 days a copy of this Final Judgment to any person who succeeds to a position described in Section VII A.1;

3. Arranging for an annual briefing to each person designated in Section VII A.1 or 2 on the meaning and requirements of this Final Judgment and the antitrust laws;

4. Obtaining from each person designated in Section VII A.1 or 2 certification that he or she: (1) Has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (2) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer; and (3) understands that any person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against NAPED and/or any person who violates this Final Judgment;

5. Maintaining: (1) A record of certifications received pursuant to this Section; (2) a file of all documents related to any alleged violation of this Final Judgment and the antitrust laws; and (3) a record of all communications related to any such violation, which shall identify the date and place of the communications, the persons involved, the subject matter of the communication, and the results of any related investigation;

6. Reviewing the final draft of each speech and policy statement made by any officer, director, or employee in order to ensure its adherence with this Final Judgment;

7. Reviewing the purpose for the formation or creation of each committee and task force in order to ensure its adherence with this Final Judgment;

8. Reviewing the content of each letter, memorandum, and report written by or on behalf of any director in his or her capacity as a NAPED director or on NAPED stationery in order to ensure its adherence with this Final Judgment.

B. If defendant's Antitrust Compliance Officer learns of any violations of any of the terms and conditions contained in this Final Judgment, defendant shall immediately take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

VIII. Certification

A. Within 60 days after the entry of this Final Judgment, defendant shall certify to the plaintiff that it has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with Section VII above.

B. For 10 years after the entry of this Final Judgment, on or before its anniversary date, defendant shall file with plaintiff an annual statement as to the fact and manner of its compliance with the provisions of Sections VI and VII.

IX. Plaintiff's Access

A. For the purpose of determining or securing compliance with this Final Judgment or determining whether this Final Judgment should be modified or terminated, and subject to any legally recognized privilege, authorized representatives of the Antitrust Division of the United States Department of Justice, shall upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant, be permitted:

1. Access during regular business hours to inspect and copy all records and documents in the possession, custody, or under the control of defendant, which may have counsel present, relating to any matters contained in this Final Judgment;

2. To interview defendant's officers, directors, employees or agents, who may have their individual counsel present, regarding any such matters; and

3. To obtain written reports from defendant, under oath if requested, relating to any matters contained in this Final Judgment.

B. Defendant shall have the right to be represented by counsel in any process under this Section.

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C. No information or documents obtained by the means provided in this Section shall be divulged by the plaintiff to any person other than duly authorized representatives of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies, in writing, the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

X. Duration of the Final Judgment

Except as otherwise provided hereinabove, this Final Judgment shall remain in effect until 10 years from the date of entry.

XI. Construction, Enforcement, Modification and Compliance

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

XII. Public Interest

Entry of this Final Judgment is in the public interest.

Appendix A

On July 29, 2002, the Antitrust Division of the United States Department of Justice filed a civil suit alleging that the National Association of Police Equipment Distributors ("NAPED") had engaged in certain practices that violated Section 1 of the Sherman Antitrust Act. Without being subject to any monetary penalties, NAPED has agreed to the entry of a civil consent order to settle this matter. The consent order does not constitute evidence or admission by any party with respect to any issue of fact or law. The consent order applies to NAPED and all of its officers, directors, employees, and agents, but not to any distributor or dealer acting on its own.

Under the consent order, NAPED may not enter into, adhere to, or enforce any agreement with any distributor or dealer to hinder through any means any manufacturers' participation in the GSA Program. The GSA Program includes the General Services Administration's ("GSA") program pursuant to Section 1122 of the National Defense Authorization Act of 1994, which permits state and local governments to purchase police equipment products for drug interdiction under GSA schedules, and any other program under which state and local governments are able to purchase police equipment products through a GSA schedule.

The consent order further provides that NAPED may not enter into, adhere to, or enforce any agreement with any distributor or dealer to retaliate in any way against any manufacturer for participating or considering participating in or seeking information about the GSA Program. NAPED is also prohibited from recommending that any distributor or dealer: (1) Suggest to any manufacturer that it discard Section 1122 purchase orders or commit any other misrepresentation to circumvent the requirements of the GSA Program; or (2) refrain from conducting business with any manufacturer for participating in, considering participating in, or seeking information regarding the GSA Program. Furthermore, NAPED is prohibited from recommending that any distributor, dealer or manufacturer refuse to do business or reduce the amount of business it does with particular people or organizations, or types of people or organizations. Finally, NAPED is prohibited from recommending that any distributor, dealer, or manufacturer do business with particular people or organizations, or types of people or organizations, only on specified terms. Failure to comply with the consent order may result in conviction for contempt of court.

The consent order does not prohibit NAPED from continuing certain activities, including disseminating public statements regarding contemplated changes in the laws affecting the GSA Program, GSA policies, or procurement of police equipment by state and local governments; seeking to procure government action; and presenting members' views to distributors or dealers, manufacturers, consumers, or other interested parties in ways that do not otherwise violate the consent order.

Competitive Impact Statement

The United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On July 29, 2002, the United States filed a civil antitrust Complaint alleging that the defendant had violated Section 1 of the Sherman Act, 15 U.S.C. 1. The defendant, the National Association of Police Equipment Distributors, Inc. ("NAPED"), is a trade association. Its members are competing distributors and dealers of police equipment products such as body armor, batons, uniforms, and handcuffs. The Complaint alleges that, from 1998 to 1999, the defendant engaged in an unlawful group boycott of manufacturers who participated or considered participating in the United States General Services Administration program under Section 1122 of the National Defense Authorization Act of 1994 ("GSA Program") to make police equipment products available to state and local law enforcement agencies at reduced prices.

On July 29, 2002, the United States and the defendant filed a Stipulation in which they consented to the entry of a proposed Final Judgment that requires the defendant to eliminate the anticompetitive conduct identified in the Complaint. Specifically, the proposed Final Judgment provides that the defendant may not enter into, adhere to, or enforce any agreement with any distributor or dealer to hinder any manufacturer's participation in the GSA Program. The proposed Final Judgment also provides that the defendant may not enter into, adhere to, or enforce any agreement with any distributor or dealer to retaliate against any manufacturer for participating or considering participating in or seeking information about the GSA Program. Defendant is also prohibited from recommending that any distributor or dealer: (1) Suggest to any manufacturer that it discard Section 1122 purchase orders or commit any other misrepresentation to circumvent the requirements of the GSA Program; or (2) refrain from conducting business with any manufacturer for participating in, considering participating in, or seeking information regarding the GSA Program. The defendant is prohibited from recommending that any distributor, dealer or manufacturer do business only with particular people or organizations, or types of people or organizations, or do business only on specified terms.

The United States and the defendant have agreed that the proposed Final Judgment may be entered after compliance with the APPA, provided that the United States has not withdrawn its consent. Entry of the Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the Final Judgment's provisions and to punish violations thereof.

II. Description of Practices Giving Rise to the Alleged Violation of the Antitrust Laws

A. Background on the GSA Program and the Defendant

GSA negotiates contracts with manufacturers of police equipment products that allow federal agencies to purchase such products at a discount. The GSA Program is authorized by Section 1122 of the National Defense Authorization Act of 1994, which permits state and local law enforcement entities to purchase products directly from manufacturers at prices negotiated by the GSA, as long as the equipment is used for drug interdiction.

Although the GSA Program was enacted into law in 1994, it was initially a pilot program. At first, any manufacturer that sold to federal entities under the GSA schedule was required to honor Section 1122 orders. In 1998, only a few states were fully operational participants and order volume was low. On January 1, 1999, the program was changed and manufacturers' participation in Section 1122 became voluntary. By 1999, over half of the states had committed to work on the GSA Program rollout, and order volume increased accordingly. Currently, most states are participants in the GSA Program.

Prior to the GSA Program, state and local governments purchased most law enforcement equipment from distributors or dealers at prices reflecting their mark-ups. After the GSA Program, manufacturers selling police equipment at GSA-negotiated prices competed with distributors for sales of police equipment to state and local law enforcement agencies. Thus, state and local law enforcement agencies could choose to buy police equipment directly from the manufacturers under the GSA Program at negotiated prices, or from distributors who often provided them with certain services not provided by manufacturers.

Defendant's members specialize in selling and servicing police equipment products to state and local law enforcement agencies and carry a small inventory. Generally, they do not have GSA contracts for federal sales. The typical NAPED member is a distributor or dealer who operates his or her own business, although a few large catalog houses are also members. The large catalog houses carry a significant inventory and sell by mail order. When state and local governments purchase directly from manufacturers under a discounted GSA schedule, distributors and dealers lose those sales.

B. Illegal Agreement To Boycott Manufacturers

In the spring of 1998, the defendant, through its officers, directors, and members, engaged in conduct to prevent manufacturers' participation in the GSA Program and thereby limit competition in the sale of police equipment to state and local law enforcement agencies. This conduct spanned approximately eighteen months.

During the summer of 1998, the defendant, through its members, contacted manufacturers under the guise of taking a survey of manufacturers' attitudes towards the GSA Program and pressured them to avoid their legal obligations to accept orders from state and local law enforcement and not to participate in the GSA program. The defendant monitored activities of manufacturers and encouraged its members to express their displeasure with 1122 sales and to discourage manufacturers' participation in the GSA program.

In the spring of 1999, defendant's officers told at least three manufacturers that distributors would not do business with them if they participated in the GSA Program. These manufacturers believed that these officers were speaking directly or indirectly on behalf of NAPED and its members. Defendant's efforts caused at lease some manufacturers to eliminate their participation in the GSA Program.

For example, one manufacturer, fearing that it would be "blackballed" by defendant's members for participating in a GSA Program event to attract purchasers and vendors, withdrew its registration for the event from the GSA Web site. Another manufacturer, which attended the GSA Program event, was excluded from the mail order catalog of one of NAPED's members as a result of its participation. Also, during a meeting with executives of a large manufacturer, defendant's then-president stated that the trade association would not "support" manufacturers that engaged in 1122 sales under the GSA Program. The executives understood this to mean that the members of NAPED would no longer do business with their company if it participated in the GSA Program.

C. Effects of the Agreement

The purpose and effect of the boycott agreement between defendant and its members was to prevent participation by manufacturers in the GSA Program and thereby preventing them from competing with distributors or dealers for the sale of police equipment to state and local law enforcement agencies. As a result of the agreement, participation by manufacturers in the GSA Program was significantly less than it otherwise would have been. Thus, state and local law enforcement agencies were deprived of some of the benefits of free and open competition in the purchase of police equipment products.

III. Explanation of the Proposed Final Judgment

A. Prohibited Conduct

The proposed Final Judgment prohibits the defendant from engaging in five (5) categories of prohibited conduct. These prohibitions are intended to deter the defendant from using the threat of a group boycott by its members to pressure manufacturers to decline participation in the GSA Program, or any other program under which state and local governments are able to purchase products through a GSA schedule. These provisions will also bar the defendant from urging its members to reduce or eliminate the amount of business they do with manufacturers engaged in the GSA Program.

Section IV.A of the proposed Final Judgment contains a general prohibition against any agreement by the defendant with any distributor or dealer to hinder any manufacturer's participation in the GSA Program. Section IV.B contains a similar prohibition against any agreement by the defendant with any distributor or dealer to retaliate against any manufacturer for participating or considering participating in the GSA Program. Section IV.C prohibits the defendant from urging, encouraging, advocating, or suggesting that any distributor or dealer urge, encourage, advocate, or suggest to any manufacturer that it discard 1122 purchase orders or commit any other misrepresentation to circumvent the requirements of the GSA Program. Section IV.D prohibits the defendant from urging, encouraging, advocating, or suggesting that any distributor or dealer refrain from conducting business with any manufacturer for participating in or considering participating in the GSA Program. Finally, Section IV.E prohibits the defendant from urging distributors, dealers, or manufacturers to refuse to do business or reduce their business with particular types of persons, or do business with particular persons only on specified terms.

B. Limiting Conditions

Section V of the proposed Final Judgment contains certain limiting provisions that clarify the scope of the prohibitions in Section IV. Section V

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identifies specific activities that are unlikely to restrict competition and are not prohibited by the decree. Specifically, Section V.A provides that the defendant may: (1) Continue to disseminate public statements regarding contemplated changes in the laws affecting the GSA 1122 Program, GSA policies, or procurement of police equipment by state and local branches of government; (2) engage in collective action to procure government action, such as lobbying activities, when those actions are immune from antitrust challenge under the Noerr-Pennington doctrine; and (3) present the views, opinions, or concerns of its members on topics to manufacturers, distributors or dealers, consumers, or other interested parties, provided that such activities do not violate any provision contained in Section IV. Section V.B clarifies that nothing in the proposed Final Judgment limits individual distributor or dealers' rights to act independently.

C. Additional Relief

Section VI of the proposed Final Judgment requires the defendant to publish a notice describing the Final Judgment in *Law and Order*, an industry trade publication, within sixty (60) days after the proposed Final Judgment is entered. Section VI also requires that written notice be sent to all distributors or dealers who are current members of NAPED within thirty (30) days after the proposed Final Judgment is entered. A copy of the written notice also must be sent to each dealer or distributor who becomes a member of NAPED during the ten-year term of this Final Judgment.

Section VII requires the defendant to set up an antitrust compliance program to ensure that its members are aware of and comply with the limitations in the proposed Final Judgment and the antitrust laws. Section VII requires the defendant to designate an Antitrust Compliance Officer and to furnish a copy of the Final Judgment, together with a written explanation of its terms, to each of its officers, directors, and non-clerical employees who address issues related to the purchase and sale of police equipment products. The Antitrust Compliance officer is also required to review: (1) The final draft of each speech and policy statement by each officer, director, or employee; (2) the purpose for the creation of each committee and task force; and (3) the content of each letter, memorandum, and report written by or on behalf of each director in his or her capacity as a NAPED director, in order to ensure adherence to the Final Judgment.

Section VIII requires the defendant to certify the designation of an Antitrust Compliance Officer and the distribution of the Final Judgment as required by Section VII. It also requires the defendant to submit to the United States an annual statement regarding defendant's compliance with the Final Judgment.

Section IX of the proposed Final Judgment provides that, upon request of the Department of Justice, the defendant shall submit written reports, under oath, with respect to any of the matters contained in the Final Judgment. Additionally, the Department of Justice is permitted to inspect and copy all books and records, and to interview defendant's officers, directors, employees, and agents.

D. Effect of the Final Judgment

The parties have stipulated that the Court may enter the proposed Final Judgment at any time after compliance with the APPA. The proposed Final Judgment states that it shall not constitute any evidence against or an admission by either party with respect to any issue of fact or law. Section III of the proposed Final Judgment provides that it shall apply to the defendant and each of its officers, directors, agents, employees, successors, and assigns and to any organization to which it is to be merged or reorganized, or by which it is to be acquired.

The Government believes that the proposed Final Judgment is fully adequate to prevent the continuation or recurrence of the violations of Section 1 of the Sherman Act alleged in the Complaint, and that disposition of this proceeding without further litigation is appropriate and in the public interest.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Final Judgment has no prima facie effect in any subsequent lawsuits that may be brought against the defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest. The Department believes that entry of this Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Marvin N. Price, Jr., Chief, Chicago Field Office, U.S. Department of Justice, Antitrust Division, 209 S. LaSalle St., Suite 600, Chicago, Illinois 60604.

Under Section XI of the proposed Final Judgment, the Court will retain jurisdiction over this action, and the parties may apply to the Court for orders necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment. The proposed Final Judgment would expire ten (10) year from the date of its entry.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the Department considered litigation on the merits. The Department rejected that alternative for two reasons. First, a trial would involve substantial cost to both the United States and to the defendant and is not warranted because the proposed Final Judgment provides all the relief the Government would likely obtain following a successful trial. Second, the Department is satisfied that the various compliance procedures to which the defendant has agreed will ensure that the anticompetitive practices alleged in the Complaint are unlikely to recur and, if they do recur, will be punishable by civil or criminal contempt, as appropriate.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment is "in the public interest." In making that determination, the Court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e).

As the United States Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." [1] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[2]

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); see also Microsoft; 56 F.3d at 1458. Precedent requires that:

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[3]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. A "proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" [4]

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." Microsoft, 56 F.3d at 1459. Since the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing the case in the first place," it follows that court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. Id.

VIII. Determinative Materials And Documents

There are no determinative documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 25, 2002.

Respectfully submitted,

Rosemary Simota Thompson,
Trial Attorney, U.S. Department of Justice, Antitrust Division, Chicago Field Office, 209 S. La Salle St., Suite 600, Chicago, Illinois 60604, (312) 353–7530, (312) 353–1046 (Fax), rosemary.thompson@usdoj.gov (E-mail).

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[1] 119 Cong. Rec. 24,598 (1973). See United States v. Gillette Co., 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. No. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in 1974 U.S.C.C.A.N. 6535, 6538.

[2] *United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D.Mo. 1977); see also *United States* v. *Loew's Inc.*, 783 F. Supp. 211, 214 (S.D.N.Y. 1992); *United States* v. *Columbia Artists Mgmt., Inc.*, 662 F. Supp. 865, 870 (S.D.N.Y. 1987).

[3] *United States* v. *Bechtel Corp.*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Boardcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. See also *United States* v. *Amerian Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984).

[4] *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), (quoting *United States* v. *Gillette*, 406 F. Supp. at 716), aff'd sub nom. *Maryland* v. *United States*, 460 U.S. 1001 (1983); see *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985); *United States* v. *Carrols Dev. Corp.*, 454 F. Supp. 1215, 1222 (N.D.N.Y. 1978).

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. The Manitowoc Co. Inc., Grove Investors Inc., and National Crane Corp.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *The Manitowoc Co. Inc., Grove Investors Inc., and National Crane Corp.*, Civil No. 02 CV 01509 (RCL).

On July 31, 2002, the United States filed a Complaint alleging that the proposed acquisition by Manitowoc of Grove would violate section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in development, production, and sale of medium- and heavy-lift boom trucks in North America. The proposed Final Judgment, filed the same time as the Complaint, requires that the defendants divest either Manitowoc's or Grove's boom truck business to a person acceptable to the United States within 150 days after July 31st. Copies of the Complaint, the proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impacts

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Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, Suite 215 North, 325 7th Street, NW, Washington, DC 20004 (telephone: 202/514–2692), and at the Clerk's Office of the U.S. Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001 .

Public comment is invited within 60-days of the date of this notice. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer, II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: (202) 307–0924).

Dorothy B. Fountain,

Deputy Director of Operations.

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. "Acquire" means the entity or entities to whom defendants divest the National Crane or Manitowoc Boom Truck Business.

B. "Manitowoc" means defendant The Manitowoc Company, Inc., a Wisconsin corporation with its headquarters in Manitowoc, WI, its successors and assigns, and its subsidiaries (including Manitowoc Boom Trucks, Inc.), divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

C. "Grove" means Investors, Inc., a Delaware corporation with its headquarters in Shady Grove, PA, and its successors and assigns, it subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

D. "National Crane" means National Crane Corporation, a Delaware corporation with its headquarters in Waverly, NE, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

E. "Boom truck" means any stiff boom telescopic crane designed for mounting on a commercial truck chassis fitted with outriggers for load lift stability.

F. "Manitowoc Boom Truck Business" means Manitowoc Boom Trucks, Inc. and its line of boom trucks, including:

1. Any and all tangible assets used in Manitowoc's boom truck manufacturing business, including Manitowoc's boom truck production facility in Georgetown, Texas; manufacturing, assembling and testing equipment, tooling, and other fixed assets; personal property, inventory, office furniture, materials, supplies, and other tangible property and all other assets used exclusively in connection with the Manitowoc Boom Truck Business; all license, permits, and authorizations issued by any governmental entity or organization in connection with making or selling boom trucks; all contracts, supply or teaming arrangements, leases, commitments, and understandings relating to the Manitowoc Boom Truck Business; all customer lists, accounts, and credit records of boom truck distributors, dealers, or end users; and sales, performance, service and repair, warranty, or other records relating to the Manitowoc Boom Truck Business; and

2. Any and all intangible assets used in developing, producing, selling, repairing or servicing Manitowoc, Manitex, USTC, JLG or Pioneer boom trucks, including but not limited to: (a) The Manitex, USTC, JLG and Pioneer brand names and all other intellectual property rights used exclusively in connection with the Manitowoc Boom Truck Business; (b) with respect to all other intellectual property rights (except the use of the Manitowoc brand name) used in connection with both the Manitowoc assets, a transferable, paid-up license, exclusive in the boom truck field use; (c) with respect to use of the Manitowoc brand name, at Acquirer's option, subject to approval of the United States, at its sole discretion, a transferable, paid-up license, not to exceed three years in length, exclusive in the boom truck field of use; (d) all existing licenses and sublicenses relating exclusively to the Manitowoc Boom Truck Business; and (e) a transferable, paid-up sublicense, exclusive in the boom truck field of use, to all other existing licenses and sublicenses relating to the Manitowoc Boom Truck Business. Intellectual property rights, as used herein, include, but are not limited to, patents, licenses and sublicenses, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, quality assurance and control procedures, design tools and stimulation capability, manuals, and all data concerning historic and current research and development relating to the Manitowoc Boom Truck Business.

Manitowoc Boom Truck Business, as used herein, does not include the right to develop, produce or sell Model S282, a mobile self-erecting tower crane licensed by Manitowoc from a foreign subsidiary, Potain.

G. "National Crane Booth Truck Business" means National Crane and its line of boom trucks, including:

1. Any and all tangible assets used in National Crane's boom truck manufacturing business, including its boom truck production facility in Waverly, Nebraska; manufacturing, assembling and testing equipment, tooling and other fixed assets; personal property, inventory, office furniture, materials, supplies, and other tangible property and all other assets used exclusively in connection with the National Crane Boom Truck Business; all licenses, permits, and authorizations issued by any governmental entity or organization in connection with making or selling boom trucks; all contracts, supply or teaming arrangements, leases, commitments, and understandings relating to the National Crane Boom Truck Business; all customer lists, accounts, and credit records of boom truck distributors, dealers, or end users; and sales, performance, service and repair, warranty, or other records relating to the National Crane Boom Truck Business; and

2. Any and all intangible assets used in developing, producing, selling, repairing, or servicing National or National Crane brand boom trucks, including but not limited to: (a) The National Crane and National brand names and all other intellectual property rights used exclusively in connection with the National Crane Boom Truck Business; (b) with respect to all other intellectual property rights used in connection with both the National Crane Boom Truck Business and other nondivested Grove assets, a transferable, paid-up license, exclusive in the boom truck field of use; (c) all existing licenses and sublicenses relating exclusively to the National Crane Boom Truck Business; and (d) a transferable, paid-up sublicense, exclusive in the boom truck field of use, to all other existing licenses and sublicenses relating to the National Crane Boom Truck Business. Intellectual property rights, as used herein, include, but are not limited to, patents, licenses and sublicenses, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, quality assurance and control procedures, design tools and simulation capability,

manuals, and all data concerning historic and current research and development relating to the National Crane Boom Truck Business.

II. Objectives

The Final Judgment filed in this case is meant to ensure defendants' prompt divestiture of either the National Crane or Manitowoc Boom Truck Business for the purpose of ensuring the establishment of a viable competitor in the boom truck industry capable of competing effectively to supply boom trucks in North America and to remedy the anticompetitive effects that the United States alleges would otherwise result from Manitowoc's acquisition of Grove. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the National Crane and Manitowoc Boom Truck Businesses are operated as competitively independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by the consummation of Manitowoc's acquisition of Grove, and that competition is maintained during the pendency of the ordered divestiture.

III. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. Compliance With and Entry of Final Judgment

A. The Parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before (1) the Court has signed this Hold Separate Stipulation and Order and (2) defendants have obtained from their lenders a written unconditional commitment to release any security interest(s) in the assets of the National Crane or Manitowoc Boom Truck Business pursuant to a divestiture under the terms of the Final Judgment.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. Hold Separate Provisions

Until the divestiture required by the Final Judgment has been accomplished:

A. Defendants shall preserve, maintain, and continue to operate, respectively, the National Crane and Manitowoc Boom Truck Businesses as competitively independent, economically viable parts of ongoing competitive businesses, with management, research, design, development, promotions, marketing, sales, and operations of such assets held entirely separate, distinct, and apart from each other's operations and from those of defendants' other operations. Within twenty (20) days after the entry of this Hold Separate Stipulation and Order, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the National Crane and Manitowoc Boom Truck Businesses will be maintained and operated as independent, ongoing, economically viable and active competitors in the boom truck industry; (2) management of the National Crane and Manitowoc Boom Truck Businesses (designated in Section V(J)) will not be influenced by defendants, except to the extent necessary to carry out defendants' obligations under this Hold Separate Stipulation and Order and the proposed Final Judgment; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning research, development, marketing, production, distribution, or sales of products by or under any of the National Crane and Manitowoc Boom Truck Businesses will be kept separate and apart from each other's operations.

C. Defendants shall use all reasonable efforts to maintain and increase the research, development, sales, and revenues of the products produced by or sold under the National Crane and Manitowoc Boom Truck Businesses, and shall maintain at 2001 levels or previously approved levels for 2002, whichever are higher, all research, development, product improvement, promotional, advertising, sales, technical assistance, marketing and merchandising support for the National Crane and Manitowoc Boom Truck Businesses.

D. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the National Crane and Manitowoc Boom Truck Businesses as economically viable and competitive, ongoing businesses, consistent with the requirements of Sections V(A) and V(B).

E. Defendants shall take all steps necessary to ensure that all the assets of the National Crane and Manitowoc Boom Truck Businesses are fully maintained in operable condition at no less than current capacity and sales, and shall maintain and adhere to normal product improvement and upgrade and repair and maintenance schedules for those assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any assets of the National Crane or Manitowoc Boom Truck Businesses; provided, however, that nothing in this provision prohibits defendants from selling inventory in the ordinary course of business or, subject to the terms of Section IV(C)(2), offering a lender a security interest in assets

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pursuant to Manitowoc's preexisting revolving lines of credit.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the National Crane and Manitowoc Boom Truck Businesses.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale of the National Crane and Manitowoc Boom Truck Businesses.

I. Defendants' employees with primary responsibility for the research, design, development, promotion, distribution, sale, and operation of the National Crane and Manitowoc Boom Truck Businesses shall not be transferred or reassigned to other areas within the company except for transfer bids initiated by employees pursuant to defendants' regular, established job posting policy. Defendants shall provide the United States with ten (10) calendar days notice of such transfer.

J. Prior to consummation of their transaction, defendants Grove and National Crane shall appoint Dan Wolf to oversee the National Crane Boom Truck Business and defendant Manitowoc shall appoint Brad Rogers to oversee the Manitowoc Boom Truck Business, and to be responsible for defendants' compliance with this section. Dan Wolf shall have complete managerial responsibility for the National Crane Boom Truck Business, and Brad Rogers shall have complete managerial responsibility for the Manitowoc Boom Truck Business, subject to the provisions of this Final Judgment. In the event either person is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to an Acquirer acceptable to the United States.

L. This Hold Separate Stipulation and order shall remain in effect until consummation of the divestiture required by the proposed Final Judgment or until further order of the Court.

Dated: July 30, 2002.

Respectfully submitted,

for Plaintiff, United States of America: Anthony E. Harris, Esquire, Illinois Bar No.: 1133713, United States Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, Telephone No.: (202) 307–6583.

For Defendant, the Manitowoc Company, Inc.: Darryl S. Bell, Esquire, Quarles & Brady LLP, 411 East Wisconsin Avenue, Suite 2040, Milwaukee, WI 53202–4497, Telephone No.: (414) 277–5123.

For Defendants, Grove Investors, Inc. and National Crane Corporation: Michael L. Weiner, Esquire, Skadden Arps Slate Meagher & Flom LLP, Four Times Square, New York, NY 10036, Telephone No.: (212) 735–3000.

Order

It is so ordered by the Court, this _____day of July 2002.

United States District Judge

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on July 29, 2002, plaintiff and defendants, The Manitowoc Company, Inc. ("Maintiowoc"), Grove Investors, Inc. ("Grove"), and National Crane, Inc. ("National Crane"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And Whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

And Whereas, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to the United States that the divestiture required below can and will be made and that defendants will later raise no claim of hardship of difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged and Decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. "Acquirer" means the entity or entities to whom defendants divest the National Crane or Manitowoc Boom Truck Business.

B. "Manitowoc" means defendant The Manitowoc Company, Inc.; a Wisconsin corporation with its headquarters in Manitowoc, WI, its successors and assigns, and its subsidiaries (including Manitowoc Boom Truck, Inc.), divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

C. "Grove" means Grove Investors, Inc., a Delaware corporation with its headquarters in Shady Grove, PA, and its successors and assigns, its subsidiaries, divisions, groups, affiliates, partnerships,joint ventures,and their directors, officers, managers agents, and employees.

D. "National Crane" means National crane Corp., a Delaware corporation with its headquarters in Waverly, NE, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

E. "Boom truck" means any stiff boom telescopic crane designed for mounting on a commercial truck chassis fitted with outriggers for load lift stability.

F. "Manitowoc Boom Truck Business" means Manitowoc Boom Trucks, Inc. and its line of boom trucks, including:

1. Any and all tangible assets used in Manitowoc's boom truck manufacturing business, including Manitowoc's boom truck production facility in Georgetown, Texas; manufacturing, assembling and testing equipment, tooling, and other fixed assets; personal property, inventory, office furniture, materials, supplies, and other tangible property, and all other assets used exclusively in connection with the Manitowoc Boom Truck Business; all licenses, permits, and authorizations issued by any governmental entity or organization in connection with making or selling boom trucks; all contracts, supply or teaming arrangements, leases, commitments, and understandings relating to the Manitowoc Boom Truck Business; all customers lists, accounts, and credit records of boom truck distributors, dealers or end users; and sales, performance, service and repair, warranty or other records relating to the Manitowoc Boom Truck Business; and

2. Any and all intangible assets used in developing, producing, selling, repairing or servicing Manitowoc, Manitex, USTC, JLG or Pioneer boom trucks, including but not limited to: (a) The Manitex, USTC, JLG and Pioneer brand names and all other intellectual property rights used exclusively in connection with the Manitowoc Boom Truck Business; (b) with respect to all other intellectual property rights (except the use of the Manitowoc brand name) used in connection with both the Manitowoc Boom Truck Business and other nondivested Manitowoc assets, a transferable, paid-up license, exclusive in the boom truck field of use; (c) with respect to use of the Manitowoc brand name, at Acquirer's option, subject to approval of the United States, at its sole discretion, a transferable, paid-up license, not to exceed three years in length, exclusive in the boom truck field of use; (d) all existing licenses and sublicenses relating exclusively to the Manitowoc Boom Truck Business; and (e) a transferable paid-up sublicense, exclusive in the boom truck field of sue, to all other existing licenses and sublicenses relating to the Manitowoc Boom Truck Business. Intellectual property rights, as used herein, include, but are not limited to, patents, license and sublicenses, technical information, computer software and related documentation, known-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, quality assurance and control procedures, design tools and simulation capability, manuals, and all data concerning historic and current research and development relating to the Manitowoc Boom Truck Business.

Manitowoc Boom Truck Business, as used herein, does not include the right to develop, produce or sell Model S282, mobile self-erecting tower crane licensed by Manitowoc from a foreign subsidiary, Potain.

G. "National cranes Boom Truck Business" means National Crane and its line of boom trucks, including:

1. Any and all tangible assets used in national Crane's boom truck manufacturing business, including its boom truck production facility in Waverly, Nebraska; manufacturing, assembling and testing equipment, tooling and other fixed assets; personal property, inventory, office furniture, materials, supplies, and other tangible property and all other assets used exclusively in connection with the National Crane Boom Truck Business; and licenses, permits and authorizations issue by any governmental entity or organization in connection with making or selling boom trucks; all contracts, supply or teaming arrangements, leases, commitments and understandings relating to the National Crane Boom Truck Businesses; all customer lists, accounts, and credit records of boom truck distributors, dealers or end users; and sales, performance, service and repair, warranty or other records relating to the National crane Boom Truck Business; and

2. Any and all intangible assets used in developing, producing, selling, repairing or servicing National or National Crane brand boom trucks, including but not limited to: (a) The National Crane and National brand names and all other intellectual property rights used exclusively in connection with the National Crane Boom Truck Business; (b) with respect to all other intellectual property rights used in connection with both the national crane Boom Truck Business and other nondivested Grove asses, a transferable, paid-up license, exclusive in the boom truck field of use; (c) all existing licenses and sublicenses relating exclusively to the National Crane Boom Truck Business; and (d) a transferable, paid-up sublicense, exclusive in the boom truck field of use, to all other existing licenses and sublicenses relating to the National Crane Boom Truck Business. Intellectual property rights, as used herein, include, but are not limited to, patents, licenses and sublicenses, technical information, computer software and related documentation, known-how, trade secrets, drawing, blueprints, designs, design protocols, specifications for materials, quality assurance and control procedures, design tools and simulation capability, manuals, and all data concerning historic and current research and development relating to the National Crane Boom Truck Business.

III. Applicability

A. This Final Judgment applies to Manitowoc, Grove and National Crane, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their asserts or of lesser business units that include the National Crane or Manitowoc Boom Truck Business, that the purchaser agrees to be bound by the provisions of this Final Judgment, provided, however, that defendants need not obtain such an agreement from the Acquirer.

IV. Divestiture

A. Defendants are ordered and directed, within one hundred and fifty (150) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the National Crane or Manitowoc Boom Truck Business in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period of up to thirty (30) calendar days, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the National Crane or Manitowoc Boom Truck Business as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the National Crane or Manitowoc Boom Truck Business, whichever is then available for sale. Defendants shall inform any person making inquiry regarding a possible purchase of the National Crane or Manitowoc Boom Truck Business that either will be divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the National Crane or Manitowoc Boom Truck Business, whichever, is then available for sale, customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privilege. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide prospective Acquirers of the National Crane or Manitowoc Boom Truck Business and the United States information relating to the personnel involved in the production, operation, development and sale of the National Crane or Manitowoc Boom Truck Business (whichever is then available for sale) to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any defendants employee whose primary responsibility

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is the production, operation, development and sale of the boom truck products of the National Crane or Manitowoc Boom Truck Business.

D. Defendants shall permit prospective Acquirers of the National Crane or Manitowoc Boom Truck Business to have reasonable access to personnel and to make inspections of the physical facilities of the National or Manitowoc Boom Truck Business (whichever is then available for sale); access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer of the National Crane or Manitowoc Boom Truck Business that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the National Crane and Manitowoc Boom Truck Businesses.

G. Defendants shall not take any action, direct or indirect, that would prevent or discourage in any way any dealer from distributing the boom truck products of the National Crane or Manitowoc Boom Truck Business, whichever is actually divested, for a period of two years after such divestiture. Nothing in this provision, however, shall prevent defendants from promoting and selling in the ordinary course of business products that compete with the National Crane or Manitowoc Boom Truck Business.

H. Defendants shall warrant to the Acquirer of the National Crane or Manitowoc Boom Truck Business that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and the following the sale of the National Crane or Manitowoc Boom Truck Business, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the National Crane or Manitowoc Boom Truck Business.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire National Crane or Manitowoc Boom Truck Business, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the National Crane or Manitowoc Boom Truck Business can and will be used by the Acquirer as part of a viable, ongoing business, engaged in developing, manufacturing and selling boom trucks in North America. Divestiture of the National Crane or Manitowoc Boom Truck Business may be made to an Acquirer, provided that it is demonstrated to the sole satisfaction of the United States that the National Crane or Manitowoc Boom Truck Business will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, which pursuant to Section IV or Section V of this Final Judgment,

1. Shall be made to an Acquirer that, in the United State's sole judgment, has the managerial, operational, and financial capability to compete effectively in the manufacturer and sale of boom trucks in North America; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If defendants have not divested the National Crane or Manitowoc Boom Truck Business within the time period specified in Section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of either the National Crane or Manitowoc Boom Truck Business.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the National Crane or Manitowoc Boom Truck Business. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as plaintiff approves, and shall account for all monies derived from the sale of the National Crane or Manitowoc Boom Truck Business and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the National Crane or Manitowoc Boom Truck Business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to customary confidentiality protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the National Crane and Manitowoc Boom Truck Businesses and shall describe in detail each contact with any such person. The trustee shall maintain full records of all

efforts made to divest the National Crane and Manitowoc Boom Truck Business.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the National or Manitowoc Boom Truck Business, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee if applicable additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(D) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V(D), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture order by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the National Crane or Manitowoc Boom Truck Business, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the National Crane and Manitowoc Boom Truck Businesses, and to provide required information to any prospective Acquirer, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on the information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve the National Crane and Manitowac Boom Truck Businesses and to divest the National Crane or Manitowoc Boom Truck Business until one year after such divestiture has been completed.

X. Compliance Inspection

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. Access during defendants' office hours to inspect and copy, or at plaintiff's option, to require defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if

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requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the National Crane or Manitowoc Boom Truck Assets, whichever is divested, during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, an to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On July 30, 2002, the United States filed a civil antitrust suit alleging that the proposed acquisition by The Manitowoc Company, Inc. ("Manitowoc") of Grove Investors, Inc. ("Grove") would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The Complaint alleges that a combination of Manitowoc and Grove would substantially lessen competition in the development, production, and sale of medium- and heavy-lift boom trucks in North America. Combining Grove and Manitowoc, the largest and third largest producers of medium- and heavy-lift boom trucks, would result in a single firm—Manitowoc—with a market share of over 60 percent, and two firms with a combined share of over 90 percent, of North American sales of medium- and heavy-lift boom trucks. This reduction in competition would lead to higher prices and reduced product quality and innovation for medium- and heavy-lift boom trucks to the detriment of consumers. Accordingly, the prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act, and (2) a permanent injunction that would prevent Manitowoc from acquiring control of or otherwise combining its assets with Grove and its boom truck subsidiary, National Crane Corp.

At the same time the Complaint was filed, the United States filed a proposed settlement that would permit Manitowoc to complete its acquisition of Grove, but require defendants to divest either Manitowoc's or Grove's boom truck business in such a way as to preserve competition in North America. The settlement consists of a Hold Separate Stipulation and Order and a proposed Final Judgment.

According to the terms of the settlement, defendants must divest either Manitowoc's or Grove's boom truck business to a person acceptable to the United States, in its sole discretion, within one hundred and fifty (150) calendar days after the filing of the Complaint in this matter, or within five (5) days after notice of entry of the Final Judgment, whichever is later. The United States, in its sole discretion, may extend the time period for divestiture by an additional period of time, not to exceed 30 days. If defendants do not complete the divestiture within the prescribed time period, then the United States may nominate, and the Court will appoint, a trustee who will have sole authority to divest either the National Crane or the Manitowoc boom truck business.

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the APPA. Entry of the proposed Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violations of the Antitrust Laws

A. The Defendants and the Proposed Transaction

Manitowoc, based in Manitowoc, WI, is a publicly held conglomerate with three principal lines of business: Production and sale of commercial refrigeration equipment, construction and repair of lake-going freighters, and production and sale of various types of stationary and mobile cranes. In 2001, Manitowoc reported approximately $1.2 billion in total revenues.

Grove makes and sells all types of mobile cranes, including hydraulic truck-mounted, all-terrain, and rough-terrain cranes. A Grove subsidiary, National Crane, makes boom trucks and knuckleboom cranes. In 2001, Grove reported revenues in excess of $713 million.

On March 19, 2002, Manitowoc and Grove announced an agreement pursuant to which Manitowo would acquire Grove and assume its liabilities in a transaction valued at approximately $270 million. This transaction would combine the nation's largest and third largest producers of medium- and heavy-lift boom trucks, and in the process, substantially lessen competition in the already highly concentrated North American market for medium- and heavy-lift boom trucks.

B. The Effects of the Transaction on Competition in the Sale of Medium- and Heavy-Lift Boom Trucks

1. Relevant Market: North American Production and Sale of Medium- and Heavy-Lift Boom Trucks

The Complaint alleges that the development, production, and sale of medium- and heavy-lift boom trucks is a relevant product market within the meaning of Section 7 of the Clayton Act. A "boom truck" is a stiff boom telescopic crane mounted on a standard flat-bed commercial truck chassis. This general-purpose mobile crane has a broad range of applications in the construction, petroleum, and utility industries. Although boom trucks are produced in many models and sizes, their nominal load lift ratings generally distinguish them as either light-, medium-, or heavy-lift cranes. A combination of highly desirable features sets medium- and heavy-lift boom trucks apart from all other types of cranes or lifting devices. These features include an ability safely to haul loads and travel at highway speeds from site to site, exceptional load lift (from 15 tons to 40 tons) and reach (40 feet to over 100 feet) capability, overall versatility, and general ease of use.

Medium- and heavy-lift boom trucks offer an appealing package of versatility and performance at attractive prices—a combination unmatched by any other type of crane (*e.g.*, knuckleboom, hydraulic truck, all-terrain, rough-terrain, tower, and lattice boom cranes; service vehicles; or boom trucks with lower nominal lift rating capability) or lifting device (*e.g.*, fork-lift trucks, aerial manlift vehicles). For that reason, prospective customers would be willing to pay a significant premium over current prices before seriously considering any other type of crane or lifting device. Medium- and heavy-lift boom trucks are a relevant product market in which to assess the competitive effects of a combination of Manitowoc and Grove.[1]

The Complaint alleges that the sale of medium- and heavy-lift boom trucks in North America is a relevant geographic market within the meaning of Section 7 of the Clayton Act. Over 99 percent of medium- and heavy-lift boom trucks sold in North America are produced by firms located in either the United States or Canada. Although a very few medium-lift boom trucks have been imported from a single firm in Japan, historically, foreign producers have not developed and produced a sufficiently wide range of different models of boom trucks, and have not established a reputation for quality, safety, and reliability or the extensive distribution networks that would enable them to attract significant sales of medium- and heavy-lift boom trucks away from North American firms. A small but significant and nontransitory increase in prices of North American medium- or heavy-lift boom trucks would not precipitate a significant loss of sales to imported products. North America this is a relevant geographic market in which to assess the competitive effects of Manitowoc's proposed acquisition of Grove.

2. Anticompetitive Effects of the Acquisition

The Complaint alleges that in this highly concentrated market for medium- and heavy-lift boom trucks, a combination of Manitowoc and Grove likely would; (i) Substantially lessen competition in development, production, and sale of medium- and heavy-lift boom trucks in North America, (ii) eliminate actual and potential competition between Manitowoc's and Grove's medium- and heavy-lift boom truck businesses; and (iii) increase prices and reduce current levels of quality and innovation for medium- and heavy-lift boom trucks.

Specifically, the Complaint alleges that Grove (via National Crane) and Manitowoc are, respectively, the nation's largest and third largest producers of medium- and heavy-lift boom trucks. There is only one other major producer of medium- and heavy-lift boom trucks. Combined, the three largest competitors command over 90 percent of all sales of medium- and heavy-lift boom trucks in North America. Three small firms (two North American and one Asian) produce somewhat specialized products that account for less than ten percent of unit sales of medium- and heavy-lift boom trucks in North America. Individually and collectively, however, these small firms do not have the production capacity, strong reputation for safety and reliability, or extensive distribution networks necessary to attract sufficient sales away from the much larger market incumbents, and hence effectively constrain any post-merger exercise of market power.[2]

Manitowoc's acquisition of Grove is likely to diminish competition substantially by creating conditions conducive to: (a) The two remaining major competitors engaging in tacit or explicit coordinated pricing to the detriment of consumers since neither would have to worry about competition from Grove; and (b) Manitowoc unilaterally increasing its prices for medium- and heavy-lift boom trucks.

Significant new entry into development, production and sales of medium- and heavy-lift boom trucks would be difficult, time consuming, and hence unlikely to deter (or constrain) an exercise of market power after the acquisition by Manitowoc of Grove. To be successful in this industry, a new competitor[3] must not only construct a production facility and establish a large network of dealers to provide sales, service, and customer support for its products, it must also develop a strong reputation for producing high quality, safe, and reliable boom trucks. Successful new entry would require a substantial capital investment in the form of sunk costs,[4] which would be large relative to the size of the North American boom truck industry and the risk of any expected profits. Considering the time required, expense, investment risks, and expected returns, it is highly unlikely that following a combination of Manitowoc and Grove, new market entry would occur on such a magnitude and scale as to displace sufficient sales from the two remaining major incumbent producers of medium- and heavy-lift boom trucks to constrain a post-merger exercise of market power.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will preserve competition in the sale of medium- and heavy-lift boom trucks in North America. The Judgment requires that within one hundred and fifty (150) calendar days after the filing of the Complaint in this matter, or within five (5) days after notice of entry of the Final Judgment, whichever is later, Manitowoc must sell its own or Grove's boom truck business to an acquirer acceptable to the United States. The United States may extend this time period for divestiture for one additional period, not to exceed 30 days. Defendants must use their best efforts to divest either the Manitowoc or Grove boom truck business as expeditiously as possible, and until the ordered divestiture takes place, the defendants must cooperate with any prospective purchasers.

If Manitowoc does not accomplish the ordered divestiture within the

[1] The basic competitive analysis (*i.e.*, three to two reduction in major competitors in an already highly concentrated market) would not change appreciably if one were to examine individual models by load lift capability (concluding perhaps that models within a certain range of load lift capability comprise a relevant product, *e.g.*, 15–17 ton boom trucks), rather than, as in this case, considering larger boom trucks collectively as a single market for "medium and heavy lift boom trucks."

[2] These small rivals would be unable to quickly and easily expand their sales of medium- and heavy-lift boom trucks for many of the same reasons why significant new entry would be difficult, time-consuming and unlikely, post-merger. *See* p. 7, below.

[3] Entry into the production and sale of medium- and heavy-lift boom trucks may be de novo (*i.e.*, by a new producer) or lateral (*e.g.*, by an established maker of other types of cranes or lifting devices).

[4] The term "sunk costs" as used in this context includes the costs of acquiring tangible and intangible assets that cannot be recovered through the redeployment of these assets outside the relevant market, *i.e.*, costs uniquely incurred to enter the production and sale of medium- and heavy-lift boom trucks in North America and that cannot be recovered upon exit from that industry.

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prescribed time period, the United States will nominate, and the Court will appoint, a trustee to assume sole power and authority to complete the divestiture. Defendants must cooperate fully with the trustee's efforts to divest either boom truck business to an acquirer acceptable to the United States and periodically report to the United States on their divestiture efforts.

If the trustee is appointed, the defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is completed. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate to carry out the purpose of the trust, including extending the trust and the term of the trustee's appointment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the brining of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Manitowoc and Grove. The United States could have continued the litigation to seek preliminary and permanent injunctions against Manitowoc's acquisition of Grove. The United States is satisfied, however, that the divestiture of the assets as proposed in the Final Judgment will establish, preserve, and ensure competition in the relevant market. To this end, the United States is convinced that the proposed relief, once implemented by the Court, will prevent Manitowoc's acquisition of Grove from having adverse competitive effects.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court *may* consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added) As the United States Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[5] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 CCH Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[6]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A]" proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is within the reaches of public interest.'"[7]

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States alleges in its Complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Since the "court's authority to review the decree depends entirely on the Government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that the Court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. *Id.*

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 30, 2002.

Respectfully submitted,

Anthony E. Harris,
Illinois Bar No. 1133713, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530, (202) 307–6583.

[FR Doc. 02–21350 Filed 8–21–02; 8:45 am]
BILLING CODE 4410–11–M

[5] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). As "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[6] *United States* v. *Bechetel*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F.2d at 565.

[7] *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982) (citations omitted), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983) *quoting United States Gillette Co., supra*. 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

AGENCY: 60-day emergency notice information collection under review: new collection; financial status report (SF 269A).

The Department of Justice, Office of Justice Programs, Office of the Comptroller, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by August 30, 2002. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulations Affairs, Attention: Department of Justice Desk Officer, (202) 395–6466, Washington, DC 20503.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Cynthia J. Schwimer, Comptroller, (202) 307–0623, Office of the Comptroller, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531, or facsimile at (202) 307–1463.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

1. *Type of information collection:* New collection.

2. *The title of the form/collection:* Financial Status Report (SF 269A).

3. *The agency for number, if any, and the applicable component of the department sponsoring the collection:* Non-applicable.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The form is completed by grant recipients who were awarded grants by the Department of Justice, Office of Justice Programs. It is used as an aid for grant recipients to report the status of their expenditures.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The estimated total number of respondents are 11,292, and the estimated time to complete the form is one and a half hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 67,752 hours annual burden associated with this information collection.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: August 16, 2002.

Brenda E. Dyer,
Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–21380 Filed 8–21–02; 8:45 am]
BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: reinstatement, with change, of a previously approved collection for which approval has expired; Accounting System and Financial Capability Questionnaire.

The Department of Justice (DOJ), Office of Justice Programs has submitted

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the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 67, Number 104, page 37867 on May 30, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 23, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency; including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, With Change, of a Previously Approved Collection for Which Approval has Expired.

(2) *Title of the Form/Collection:* Accounting System and Financial Capability Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: OJP Form 7120/1. Office of Justice Programs, US Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary, Not-for-profit institutions. Other: For-profit institutions. This form will be completed by applicants that are newly-formed firms or established firms with no previous grants awarded by the Office of Justice Programs. It is used as an aide to determine those applicants/grantees that may require special attention in matters relating to the accountability of Federal funds. This information is required for assessing the financial risk of a potential recipient in administrating federal funds in accordance with OMB Circular A–110 and 28 CFR part 70.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 100 respondents will complete a 4-hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 400 annual total burden hours associated with this collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 16, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–21381 Filed 8–21–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 15, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Darrin King (202) 693–4129 or *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: PY 2002 Workforce Information Grant Plan and Annual Performance Report.

OMB Number: 1205–0417.

Frequency: Annually.

Affected Public: State, Local, or Tribal Government; Federal Government.

Number of Respondents: 54.

Estimated Time Per respondent: The Annual Plan is 65 hours, the Customer Satisfaction information is 642 hours, and the Annual Report is 57 hours.

Total Burden Hours: 41,256 hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Department of Labor is requesting OMB approval to require States to submit additional narrative in the annual grant plan, to assess customer satisfaction with State workforce information and to include summary of the results of customer satisfaction assessment in an annual performance report, as conditions for receiving Workforce Information Core Products and Services reimbursable grants.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–21406 Filed 8–21–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 8, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Type of Review: Extension of a currently approved collection.

Title: Longshoring and Marine Terminal Operations—29 CFR parts 1917 and 1918.

OMB Number: 1218–0196.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government; and Federal Government.

Frequency: Initially, on occasion, weekly, monthly, and annually.

Type of Response: Recordkeeping and third-party disclosure.

Number of Respondents: 748.

Number of Annual Responses: 149,670.

Average Time Per Response: Varies from 2 minutes to post a warning sign to 8 hours to mark a flat bed and low boy trailer with their cargo capacity.

Total Burden Hours: 36,688.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: 29 CFR parts 1917 and 1918 contain a number of collections of information requirements which are used by employers to ensure that employees are informed properly about the safety and health hazards associated with marine terminal and longshoring operations. These standards contain requirements related to the testing, certification and marking of specific types of cargo lifting appliances and associated cargo handling gear and other cargo handling equipment such as conveyors and industrial trucks. The collections of information required from employers by OSHA are necessary to reduce employee injuries and fatalities associated with cargo lifting gear, transfer of vehicular cargo, manual cargo handling, and exposure to hazardous atmospheres. The Agency uses the records developed in response to a number of the information collection requirements to find out if employers are complying adequately with the provisions of the standards.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–21407 Filed 8–21–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 8, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1996 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Office for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Type of Review: Extension of a currently approved collection.

Title: Derricks—29 CFR 1910.181.

OMB Number: 1218–0222.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government; and Federal Government.

Frequency: On occasion and Monthly.

Type of Response: Recordkeeping and Third-party disclosure.

Number of Respondents: 10,000.

Number of Annual Responses: 115,000.

Average Time Per Response: Varies from 3 minutes (.05 hour) to post or keep information to 15 minutes (.25 hour) to inspect rope and to prepare, maintain, and disclose a certification record.

Total Burden Hours: 28,550.

Total Annualized Capital/Startup Costs: $0.

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Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: 29 CFR 1910.181, the Derricks Standard, specifies two paperwork requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it. The purposes of these requirements is to prevent death and serious injuries to employees by ensuring that the derrick is not used to lift loads beyond its rated capacity and that all the ropes are inspected for wear and tear.

Paragraph (c)(1) requires that for permanently installed derricks a clearly legible rating chart be provided with each derrick and securely affixed to the derrick. Paragraph (c)(2) requires that for non-permanent installations, the manufacturer provide sufficient information from which capacity charts can be prepared by the employer for the particular installation. The capacity charts must be located at the derrick or at the jobsite office. The data on the capacity charts provide information to the employees to assure that the derricks are used as designed and not overloaded or used beyond the range specified in the charts.

Paragraph (g)(1) requires employers to thoroughly inspect all running rope in use, and to do so at least once a month. In addition, before using rope, which has been idle for at least a month, it must be inspected as prescribed by paragraph (g)(3) and a record prepared to certify that the inspection was done. The certification records must include the inspection date, the signature of the person conducting the inspection, and the identifier of the rope inspected. Employers must keep the certification records on file and available for inspection. The certification records provide employers, employees, and OSHA compliance officers with assurance that the ropes are in good condition.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–21408 Filed 8–21–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

Temporary Extended Unemployment Compensation Program Reports; Correction

ACTION: Correction.

SUMMARY: In notice document 02–20611 beginning on page 53023 in the issue of Wednesday, August 14, 2002, make the following correction:

On page 53023 on the second line of the third column, the OMB Control number previously listed as 1205–0009 should be changed to 1205–0433.

Dated: August 16, 2002.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 02–21405 Filed 8–21–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Exemption Application No. D–10959]

Prohibited Transaction Exemption 2002–37; et al.; Grant of Individual Exemptions; Adams Wood Products, Inc. Profit Sharing Plan (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Adams Wood Products, Inc. Profit Sharing Plan (the Plan), Located in Morristown, Tennessee

[Prohibited Transaction Exemption 2002–37; Exemption Application No. D–10959]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) a non-interest bearing loan (the Loan) by Adams Wood Products, Inc. (AWP), the Plan sponsor, to the Plan to reimburse the Plan for losses incurred concerning past investments by the Plan in certain promissory notes (the Notes); and (2) the potential repayment by the Plan to AWP of certain moneys if the Plan recovers any of the investments in the Notes. This exemption is subject to the following conditions:

(a) The Plan pays no interest nor incurs any other expense relating to the Loan;

(b) The amount of the Loan includes the following:

(1) $340,187.38, which represents the amount due on the consolidated note (the Consolidated Note) on June 30, 2000;

(2) opportunity costs as follows: (a) the amount due on the Consolidated Note from June 30, 2000, the last date when the Plan received interest on the Consolidated Note to January 26, 2001, the date when AWP placed funds in Certificates of Deposit (CDs); and (b) an additional amount yet to be determined to provide the Plan with an identical rate of return as AWP received as a result of AWP's investment in the CDs for the period between January 26, 2001

and the date the Plan receives the Loan amount; and

(3) $4,630.84 to reimburse the Plan for all interest on the 1st note and 2nd note, due respectively, on April 20, 2001 and April 15, 2002; and

(c) Any repayment by the Plan is restricted solely to the amount, if any, recovered by the Plan with respect to the Loan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on June 6, 2002 at 67 FR 39051.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

Unifi, Inc. Retirement Savings Plan (the Plan), Located in Greensboro, North Carolina

[Prohibited Transaction Exemption 2002–38; Exemption Application No. D–11094]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the prospective cash sale of a certain parcel of improved real property (the Property) by the Plan to Unifi, Inc. (Unifi), the Plan's sponsor and, as such, a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) the sale is a one-time cash transaction;

(b) the Plan receives the greater of: (i) $7,500,000; or (ii) fair market value for the Property, as established by an independent qualified appraiser at the time of the sale;

(c) the Plan pays no commissions or other expenses associated with the sale; and

(d) the applicant files Form 5330 with the Internal Revenue Service and pays all of the appropriate excise taxes with regard to the past and continuing lease of the Property (the Lease) by the Plan to Unifi [1] within 60 days of the date that this exemption is published in the **Federal Register**.

For a more complete statement of the facts and representations supporting the Department of Labor's (the Department) decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published in the **Federal Register** on June 6, 2002 at 67 FR 39062.

[1] See Prohibited Transaction Exemption 87–28 (PTE 87–29, 52 FR 8380, Mach 17, 1987) with regard to the Lease.

Written Comments

The Department received one written comment (the Comment) with respect to the Notice and no requests for a hearing. The Comment was filed by legal counsel for Wachovia Bank, N.A. (Wachovia). The Comment responds to certain statements concerning Wachovia's conduct as the independent fiduciary for the Lease under PTE 87–28. These statements were made in the exemption application filed by Unifi (the Application) and in the Notice. PTE 87–28 permitted the Lease, pursuant to the terms and conditions contained therein, until its expiration. The Lease expired, by its terms, on March 12, 2002. Wachovia was the designated independent fiduciary for the Plan in the transaction.

The Comment was subsequently sent by the Department to Unifi for their response. Set forth below are the points made by Wachovia together with responses to those points made by Unifi.

I. Discussion of Wachovia's Comment

Paragraph 2 of the Summary of the Facts and Representations (the Summary) contained in the Notice states, in relevant part, that the applicant maintains that all terms and conditions of PTE 87–28 have been met. The applicant, however, makes no representation as to whether Wachovia fulfilled all of its obligations as the independent fiduciary under PTE 87–28.

In the Comment, Wachovia states that in a letter dated May 7, 2002 to counsel for Unifi, a copy of which was provided to the Department, they discussed certain business relationships between Unifi and Wachovia's banking department and certain Wachovia affiliates. For the reasons set forth in that letter, Wachovia states again for the record that it has at all times performed all its obligations as independent fiduciary with respect to the Lease under PTE 87–28.

Paragraph 2 of the Summary also states that the applicant represents that Wachovia, as the independent fiduciary for the Lease under PTE 87–28, unilaterally elected to cease functioning as the independent fiduciary for the Plan effective on or before March 13, 2002. Therefore, as of that date, Unifi states that it was engaging in a prohibited transaction under the Act by continuing the Lease, pursuant to a holdover provision contained therein.

In the Comment, Wachovia responds that it was Unifi's continuation of the Lease that caused Unifi to engage in a prohibited transaction with the Plan. Wachovia informed Unifi that the Department likely would require, as a condition to any exemption providing retroactive relief for continuation of the Lease after the original termination date, that an independent fiduciary represent the Plan at all times after the expiration of the Lease. Wachovia identified potential successor independent fiduciaries with whom Unifi engaged in discussions. However, Wachovia states that Unifi failed to reach an agreement with any of them.

Additionally, the Comment contains Wachovia's clarifications on certain statements contained in the Application. In a letter dated May 20, 2002, counsel to Unifi stated to the Department that Unifi is contemplating legal action against Wachovia, in which Unifi would allege that Wachovia failed to locate a suitable tenant for the Property upon termination of the Lease as required by paragraph 2(b)(v) of the independent fiduciary agreement (the I/F Agreement), therefore causing monetary damages to Unifi.

In the Comment, Wachovia clarifies that Wachovia worked with Unifi to find a purchaser for the Property, and identified two potential buyers. Unifi indicated in these sales negotiations that it intended to lease the Property after it was sold. These sales negotiations were terminated when Unifi rejected the terms of a proposed future lease. Unifi has acknowledged that these negotiations were consistent with Wachovia's duties as the independent fiduciary. After negotiations with potential buyers terminated, Wachovia assisted Unifi in applying for an extension of Unifi's existing exemption (*i.e.*, PTE 87–28).

In the Application, Unifi represented to the Department that Wachovia is refusing to perform its services under the I/F Agreement dated September 3, 1996, between Wachovia and Unifi.

In the Comment, Wachovia states that as indicated in Wachovia's letter to Unifi dated March 11, 2002, Unifi was aware that Wachovia was not prepared to continue to serve as the independent fiduciary, and Unifi's representatives apparently concurred with that decision. Again, Wachovia represents that it assisted Unifi in finding potential successor independent fiduciaries, but Unifi failed to reach agreement with any of them.

In summary, Wachovia states that it met all its obligations as the independent fiduciary for the Plan with respect to the Lease. Wachovia maintains that all terms and conditions of PTE 87–28 relating to its duties and responsibilities as the independent fiduciary for the Plan were satisfied.

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II. Discussion of Unifi's Response to the Comment

In its response to the Comment (the Response), Unifi states that the Comment made by Wachovia does not discuss the substance of the proposed sale of the Property by the Plan to Unifi, which is the subject transaction in the Notice.

The Response further states that the reason Unifi mentioned Wachovia in the Application was to clarify to the Department why Unifi, and not Wachovia, was submitting the Application to the Department. Unifi states that apart from Wachovia's status as the independent fiduciary for the Lease under PTE 87–28, Wachovia is not an interested party to the proposed sale.

In conclusion, Unifi states that Wachovia has no real interest in the proposed sale of the Property by the Plan to Unifi. There are no statements in the Comment that are in support or against the terms of the proposed sale. Therefore, Unifi respectfully requests that the Department grant the exemption as proposed.

The Department notes that it is offering no views at this time with regard to either Wachovia's conduct as the independent fiduciary for the Plan for purposes of the Lease, pursuant to PTE 87–28, or Unifi's concerns relating thereto. In this regard, the Department notes that the Comment does not object to the proposed sale of the Property by the Plan to Unifi.

Copies of the letters mentioned above, as well as other relevant correspondence, are available for public inspection and may be obtained by interested persons from the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210. Interested persons should request File No. D–11094 (with respect to the proposed sale of the Property by the Plan to Unifi) and File No. D–11080 (with respect to Unifi's initial exemption request for a continuation of the Lease).

Upon consideration of the entire record, the Department has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of August, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–21431 Filed 8–21–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–39; Exemption Application No. D–11036]

Grant of Individual Exemption To Amend and Replace Prohibited Transaction Exemption (PTE) 85–131, Involving the Watkins Master Trust (the Trust), Located in Atlanta, GA

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of individual exemption to modify and replace PTE 85–131.

SUMMARY: This document contains a final exemption before the Department of Labor (the Department) that amends and replaces PTE 85–131 (50 FR 32333, August 9, 1985). PTE 85–131 is an individual exemption providing relief, since March 29, 1985, for (1) the leasing of certain improved real property by the Trust to Watkins Associated Industries, Inc. (Watkins), a party in interest with respect to the plans (the Plans) participating in the Trust under the terms of a written lease (the New Lease); and (2) the possible cash purchase of the Trust's interest in the property by Watkins.

The final exemption modifies an option to purchase provision in the New Lease by allowing Watkins to acquire the Trust's leasehold interests in a building, the improvements constructed thereon, and in a ground lease on May 8, 2002, instead of at the end of New Lease renewal term on December 31, 2008. In addition, the exemption replaces PTE 85–131, which expired by operation of law upon the consummation of the sale. The exemption affects participants and beneficiaries of, and fiduciaries with respect to the Trust.

EFFECTIVE DATE: This exemption is effective as of May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8556. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 18, 2002, the Department published a notice of proposed exemption in the **Federal Register** at 67 FR 41517 that would amend and replace PTE 85–131. PTE 85–131 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code.

The proposed exemption was requested in an application filed on behalf of the Trust and Watkins,* pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this exemption is being issued solely by the Department.

*The Department also has under consideration a similar exemption request (D–11038) that was filed on behalf of Wilwat Properties, Inc., a party in interest with respect to the Plans participation in the Trust.

The proposed exemption gave interested persons an opportunity to comment and to request a hearing. In this regard, all interested persons were invited to submit written comments or requests for a hearing on the pending exemption on or before August 2, 2002. All comments were to be made a part of the record.

During the comment period, the Department received one written comment from a participant in the Watkins Associated Industries, Inc. Profit Sharing Plan, who objected to the exemption and requested that no changes be made to his individual account in this Plan. The Department received no requests for a public hearing.

For further information regarding the comment or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11036) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Accordingly, after giving full consideration to the entire record, including the written comment received, the Department has decided to grant the exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) In accordance with section 408(a) of the Act, section 4975(c)(2) of the Code, and the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, August 10, 1990), the Department finds that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) The exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This exemption is subject to the express condition that the facts and representations set forth in the notice of proposed exemption relating to PTE 85–131 and the proposal underlying this grant notice, accurately describe, where relevant, the material terms of the transaction that was consummated pursuant to this exemption.

Exemption

Under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990), the Department hereby amends and replaces PTE 85–131. Accordingly, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective May 8, 2002, to the sale by the Watkins Master Trust (the Trust) of its leasehold interests in certain improved real property, consisting of a building (the Building), the improvements constructed thereon (the Improvements), and a ground lease (the Ground Lease), to Watkins Associated Industries, Inc. (Watkins), a party in interest with respect to the Trust, in connection with an amendment to an option to purchase provision contained in a written lease between the Trust and Watkins, as described in Prohibited Transaction Exemption 85–131 (50 FR 32333, August 9, 1985).

This exemption is subject to the following conditions:

(a) All terms and conditions of the sale were at least as favorable to the Trust as those obtainable in an arm's length transaction with an unrelated party;

(b) The sale was a one-time transaction for cash;

(c) The fair market value of the Trust's leasehold interests in the Building, the Improvements and the Ground Lease was determined by qualified, independent appraisers in initial and updated appraisal reports;

(d) The Trust did not pay any real estate fees, commissions, costs or other expenses in connection with the sale;

(e) The Trust received, as consideration for the sale, an amount that was no less than the greater of (1) the fair market value of the Trust's leasehold interests in the Building, the Improvements and the Ground Lease; or (2) the Trust's total investment in such property, as of the date of the sale;

(f) In the event the Trust could not obtain a release from the owner of the Ground Lease from its obligations thereunder upon the completion of the sale, Watkins agreed to assume all liabilities under such lease and indemnify the Trust against any liability to the owner of the Ground Lease; and

(g) The Trustee, as the independent fiduciary for the Trust with respect to the sale, determined that such transaction was in the best interest of the Trust and was protective of the participants and beneficiaries of the Trust, and monitored such transaction on behalf of the Trust.

EFFECTIVE DATE: This exemption is effective as of May 8, 2002.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 85–131 and this final exemption, refer to the proposed exemptions and the grant notice which are cited above.

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Signed at Washington, DC, this 19th day of August, 2002.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–21432 Filed 8–21–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–40; Exemption Application No. D–11038]

Grant of Individual Exemption To Amend and Replace Prohibited Transaction Exemption (PTE) 90–15, Involving the Watkins Master Trust (the Trust), Located in Atlanta, GA

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of individual exemption to modify and replace PTE 90–15.

SUMMARY: This document contains a final exemption before the Department of Labor (the Department) that amends and replaces PTE 90–15 (55 FR 12967, April 6, 1990). PTE 90–15 is an individual exemption providing relief, since September 20, 1989, for (1) the leasing of office space in a commercial office building (the Building) by the Trust to Wilwat Properties, Inc. (Wilwat), a party in interest with respect to the plans (the Plans) participating in the Trust under the provisions of a written lease (the New Lease); and (2) the possible cash purchase of the Trust's interest in the property by Wilwat.

The final exemption modifies an option to purchase provision in the New Lease by allowing Wilwat to acquire the Trust's leasehold interests in the Building, including the improvements constructed thereon, and the Trust's interest in a ground lease on May 8, 2002, instead of at any time during the final six months of the New Lease renewal term ending on December 31, 2008. In addition, the exemption replaces PTE 90–15, which expired by operation of law upon the consummation of the sale. The exemption affects participants and beneficiaries of, and fiduciaries with respect to the Trust.

EFFECTIVE DATE: This exemption is effective as of May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8556. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 18, 2002, the Department published a notice of proposed exemption in the **Federal Register** at 67 FR 41521 that would amend and replace PTE 90–15. PTE 90–15 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code.

The proposed exemption was requested in an application filed on behalf of the Trust and Wilwat,* pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this exemption is being issued solely by the Department.

The proposed exemption gave interested persons an opportunity to comment and to request a hearing. In this regard, all interested persons were invited to submit written comments or requests for a hearing on the pending exemption on or before August 2, 2002. All comments were to be made a part of the record.

During the comment period, the Department received one written comment from a participant in the Watkins Associated Industries, Inc., Profit Sharing Plan, who objected to the exemption and requested that no changes be made to his individual account in this Plan. The Department received no requests for a public hearing.

For further information regarding the comment or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11038) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, including the written comment received, the Department has decided to grant the exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) In accordance with section 408(a) of the Act, section 4975(c)(2) of the Code, and the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, August 10, 1990), the Department finds that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) The exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This exemption is subject to the express condition that the facts and representations set forth in the notice of proposed exemption relating to PTE 90–15 and this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

* The Department also has under consideration a similar exemption request (D–11036) that was filed on behalf of Watkins Associated Industries, Inc., the sponsor of the Trust and a party in interest with respect to the Plans partcipating in the Trust.

Exemption

Under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990), the Department hereby amends and replaces PTE 90–15. Accordingly, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective May 8, 2002, to the sale by the Watkins Master Trust (the Trust) of its leasehold interests in certain improved real property, consisting of a building (the Building), the improvements constructed thereon (the Improvements), and ground lease (the Ground Lease), to Wilwat Properties, Inc. (Wilwat), a party in interest with respect to the Trust, in connection with an amendment to an option to purchase provision contained in a written lease between the Trust and Wilwat, as described in Prohibited Transaction Exemption 90–15 (55 FR 12967, April 6, 1990).

This exemption is subject to the following conditions:

(a) All terms and conditions of the sale were at least as favorable to the Trust as those obtainable in an arm's length transaction with an unrelated party;

(b) The sale was a one-time transaction for cash;

(c) The fair market value of the Trust's leasehold interests in the Building, the Improvements and the Ground Lease was determined by qualified, independent appraisers in initial and updated appraisal reports;

(d) The Trust did not pay any real estate fees, commissions, costs or other expenses in connection with the sale;

(e) The Trust received, as consideration for the sale, an amount that was no less than the greater of (1) the fair market value of the Trust's leasehold interests in the Building, the Improvements and the Ground Lease; or (2) the Trust's total investment in such property, as of the date of the sale;

(f) In the event the Trust could not obtain a release from the owner of the Ground Lease from its obligations thereunder upon the completion of the sale, Wilwat agreed to assume all liabilities under such lease and would indemnify the Trust against any liability to the owner of the Ground Lease; and

(g) The Trustee, as the independent fiduciary for the Trust with respect to the sale, determined that such transaction was in the best interest of the Trust and was protective of the participants and beneficiaries of the Trust, and monitored such transaction on behalf of the Trust.

EFFECTIVE DATE: This exemption is effective as of May 8, 2002.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 90–15 and this final exemption, refer to the proposed exemptions and the grant notice which are cited above.

Signed at Washington, DC, this 19th day of August 2002.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–21433 Filed 8–21–02; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–41; Application Number D–11077]

Amendment to Prohibited Transaction Exemption (PTE) 2000–58 Involving Bear, Stearns & Co. Inc., Prudential Securities Incorporated, et al.

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of an amendment to certain of the Underwriter Exemptions.[1]

SUMMARY: This document contains a final exemption issued by the Department of Labor (the Department) which amends certain of the Underwriter Exemptions. The Underwriter Exemptions are individual exemptions that provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding and disposition by employee benefit plans (plans) of certain asset-backed pass-through certificates representing undivided interests in those investment trusts. The amendment permits the trustee of the trust to be an affiliate of the underwriter of the certificates. The amendment affects the participants and beneficiaries of the plans participating in such transactions and the fiduciaries with respect to such plans.

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8540. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 22, 2002, notice (the Notice) was published in the **Federal Register** (67 FR 36028) of the pendency before the Department of a proposed exemption

[1] The term "Underwriter Exemptions" refers to the following individual Prohibited Transaction Exemptions (PTEs): PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–23, 55 FR 20545 (May 17, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–31, 55 FR 23144 (June 6, 1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–33, 55 FR 23151 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 55 FR 48178 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); PTE 95–26, 60 FR 17586 (April 6, 1995); PTE 95–59, 60 FR 35938 (July 12, 1995); PTE 95–89, 60 FR 49011 (September 21, 1995); PTE 96–22, 61 FR 14828 (April 3, 1996); PTE 96–84, 61 FR 58234 (November 13, 1996); PTE 96–92, 61 FR 66334 (December 17, 1996); PTE 96–94, 61 FR 68787 (December 30, 1996); PTE 97–05, 62 FR 1926 (January 14, 1997); PTE 97–28, 62 FR 28515 (May 23, 1997); PTE 97–34, 62 FR 39021 (July 21, 1997); PTE 98–08, 63 FR 8498 (February 19, 1998); PTE 99–41, 64 FR 11046 (March 8, 1999); PTE 2000–19, 65 FR 25950 (May 4, 2000); PTE 2000–33, 65 FR 37171 (June 13, 2000); PTE 2000–41, 65 FR 51039 (August 22, 2000); and PTE 2000–55 (November 13, 2000).

In addition, the Department notes that it is also granting individual exemptive relief for: Deutsche Bank A.G., New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Final Authorization Number (FAN) 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); Ironwood Capital Partners Ltd., FAN 99–31E (December 20, 1999); and William J. Mayer Securities LLC, FAN 01–25E (October 15, 2001), which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62.

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that would amend certain of the Underwriter Exemptions. The Underwriter Exemptions are individual exemptions that provide relief from certain of the prohibited transaction restrictions of sections 406(a), 406(b) and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act), as amended, and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), as amended, by reason of certain provisions of section 4975(c)(1) of the Code. All of the Underwriter Exemptions were amended by Prohibited Transaction Exemption 97–34 (62 FR 39021, July 21, 1997) and by Prohibited Transaction Exemption 2000–58 (65 FR 67765, November 13, 2000).

On March 28, 2002, the Department granted a final exemption to J.P. Morgan Chase & Company (J.P. Morgan Chase) which amended three of the Underwriter Exemptions granted to J.P. Morgan Chase and certain of its affiliates.[2] (See PTE 2002–19, 67 FR 14979). The Department subsequently contacted The Bond Market Association, a trade association which represents securities firms and banks that underwrite, trade and sell debt securities, which confirmed that a majority of its members currently possessing Underwriter Exemptions desired the same relief provided to J.P. Morgan Chase under PTE 2002–19. Accordingly, the Department determined to amend the remaining Underwriter Exemptions on its own motion.

The amendment, as proposed, modified the remaining Underwriter Exemptions as set forth below:

The first sentence of section II.A.(4) of these exemptions is amended to read: "The Trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter."

The Notice invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held. The Department received one written comment and no requests for a hearing in response to the proposed exemption.

The comment, submitted by The Bond Market Association, requested that the amendment have an effective date of January 1, 2001. The comment stated that one member of the Association desired such an earlier effective date, and in the interests of consistency and administrative efficiency, the Association requested that all other Underwriter Exemptions affected by the proposed exemption be amended as of January 1, 2001.

The Department concurs with the commenter and has given the amendment to section II.A.(4) a January 1, 2001, effective date.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of the plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries; and

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Exemption

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990), the Department amends the following individual Prohibited Transaction Exemptions (PTEs): PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 55 FR 48178 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); PTE 95–26, 60 FR 17586 (April 6, 1995); PTE 95–59, 60 FR 35938 (July 12, 1995); PTE 95–89, 60 FR 49011 (September 21, 1995); PTE 96–22, 61 FR 14828 (April 3, 1996); PTE 96–84, 61 FR 58234 (November 13, 1996); PTE 96–92, 61 FR 66334 (December 17, 1996); PTE 96–94, 61 FR 68787 (December 30, 1996); PTE 97–05, 62 FR 1926 (January 14, 1997); PTE 97–28, 62 FR 28515 (May 23, 1997); PTE 98–08, 63 FR 8498 (February 19, 1998); PTE 99–11, 64 FR 11046 (March 8, 1999); PTE 2000–19, 65 FR 25950 (May 4, 2000); PTE 2000–33, 65 FR 37171 (June 13, 2000); PTE 2000–41, 65 FR 51039 (August 22, 2000); and PTE 2000–55 (November 13, 2000), each as subsequently amended by PTE 97–34 and PTE 2000–58.

In addition, the Department notes that it is also granting individual exemptive relief for: Deutsche Bank A.G., New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Final Authorization Number (FAN) 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); Ironwood Capital Partners Ltd., FAN 99–31E (December 20, 1999); and William J. Mayer Securities, FAN 01–25E (October 15, 2001), which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62.

[2] The exemptions are PTE 90–23 (55 FR 20545, May 17, 1990), PTE 90–31 (55 FR 23144, June 6, 1990), and PTE 90–33 (55 FR 23151, June 6, 1990).

I. Transactions

A. Effective for transactions occurring on or after August 23, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving Issuers and Securities evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and an employee benefit plan when the Sponsor, Servicer, Trustee or Insurer of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an Obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Security on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[3]

B. Effective for transactions occurring on or after August 23, 2000, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Securities is (a) an Obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the Issuer, or (b) an Affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the Issuer is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of Securities does not exceed 25 percent of all of the Securities of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Securities, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Securities representing an interest in an Issuer containing assets sold or serviced by the same entity.[4] For purposes of this paragraph (iv) only, an entity will not be considered to service assets contained in a Issuer if it is merely a Subservicer of that Issuer;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities, provided that the conditions set forth in paragraphs (i), (iii) and (iv) of subsection I.B.(1) are met; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective for transactions occurring on or after August 23, 2000, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of an Issuer, including the use of any Eligible Swap transaction; or, effective January 1, 1999, the defeasance of a mortgage obligation held as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction, provided:

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement;

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase Securities issued by the Issuer;[5] and

(3) The defeasance of a mortgage obligation and the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction meet the terms and conditions for such defeasance and substitution as are described in the prospectus or private placement memorandum for such Securities, which terms and conditions have been approved by a Rating Agency and does not result in the Securities receiving a lower credit rating from the Rating Agency than the current rating of the Securities.

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a Servicer of the Issuer from a person other than the Trustee or Sponsor, unless such fee constitutes a Qualified Administrative Fee.

D. Effective for transactions occurring on or after August 23, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of Securities.

II. General Conditions

A. The relief provided under section I. is available only if the following conditions are met:

(1) The acquisition of Securities by a plan is on terms (including the Security price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

[3] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act, and regulation 29 CFR 2510.3–21(c).

[4] For purposes of this Underwriter Exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[5] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the securities were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, references to "prospectus" include any related prospectus supplement thereto, pursuant to which Securities are offered to investors.

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(2) The rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer, unless the Securities are issued in a Designated Transaction;

(3) The Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the three (or in the case of Designated Transactions, four) highest generic rating categories;

(4) The Trustee is not an Affiliate of any member of the Restricted Group, other than, effective on or after January 1, 2001, an Underwriter. For purposes of this requirement:

(a) The Trustee shall not be considered to be an Affiliate of a Servicer solely because the Trustee has succeeded to the rights and responsibilities of the Servicer pursuant to the terms of a Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the Servicer; and

(b) Effective for transactions occurring on or after January 1, 1998, subsection II.A.(4) will be deemed satisfied notwithstanding a Servicer becoming an Affiliate of the Trustee as the result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities, provided that:

(i) Such Servicer ceases to be an Affiliate of the Trustee no later than six months after the later of August 23, 2000 or the date such Servicer became an Affiliate of the Trustee; and

(ii) Such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee;

(5) The sum of all payments made to and retained by the Underwriters in connection with the distribution or placement of Securities represents not more than Reasonable Compensation for underwriting or placing the Securities; the sum of all payments made to and retained by the Sponsor pursuant to the assignment of obligations (or interests therein) to the Issuer represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the Servicer represents not more than Reasonable Compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(6) The plan investing in such Securities is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund an Issuer have not all been transferred to the Issuer on the Closing Date, additional obligations of the types specified in subsection III.B.(1) may be transferred to the Issuer during the Pre-Funding Period in exchange for amounts credited to the Pre-Funding Account, provided that:

(a) The Pre-Funding Limit is not exceeded;

(b) All such additional obligations meet the same terms and conditions for determining the eligibility of the original obligations used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency.

Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders or by a Rating Agency;

(c) The transfer of such additional obligations to the Issuer during the Pre-Funding Period does not result in the Securities receiving a lower credit rating from a Rating Agency upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations held by the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the Issuer on the Closing Date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to those which were acquired as of the Closing Date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agency, the Underwriter and the Trustee) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the Closing Date;

(f) The Pre-Funding Period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The Trustee of the Trust (or any agent with which the Trustee contracts to provide Trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the obligations in the Trust or the holder of a security interest in the obligations held by the Issuer, will enforce all the rights created in favor of securityholders of the Issuer, including employee benefit plans subject to the Act;

(8) In order to insure that the assets of the Issuer may not be reached by creditors of the Sponsor in the event of bankruptcy or other insolvency of the Sponsor:

(a) The legal documents establishing the Issuer will contain:

(i) Restrictions on the Issuer's ability to borrow money or issue debt other than in connection with the securitization;

(ii) Restrictions on the Issuer merging with another entity, reorganizing, liquidating or selling assets (other than in connection with the securitization);

(iii) Restrictions limiting the authorized activities of the Issuer to activities relating to the securitization;

(iv) If the Issuer is not a Trust, provisions for the election of at least one independent director/partner/member whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer; and

(v) If the Issuer is not a Trust, requirements that each independent director/partner/member must be an individual that does not have a significant interest in, or other relationships with, the Sponsor or any of its Affiliates; and

(b) The Pooling and Servicing Agreement and/or other agreements establishing the contractual relationships between the parties to the securitization transaction will contain covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding until after the Securities have been paid; and

(c) Prior to the issuance by the Issuer of any Securities, a legal opinion is received which states that either:

(i) A "true sale" of the assets being transferred to the Issuer by the Sponsor has occurred and that such transfer is not being made pursuant to a financing of the assets by the Sponsor; or

(ii) In the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor;

(9) If a particular class of Securities held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the Issuer, then each particular swap transaction relating to such Securities:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall provide that if the credit rating of the counterparty is withdrawn or reduced by any Rating Agency below a level specified by the Rating Agency, the Servicer (as agent for the Trustee) shall, within the period specified under the Pooling and Servicing Agreement:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of Securities will not be withdrawn or reduced.

In the event that the Servicer fails to meet its obligations under this subsection II.A.(9)(c), plan securityholders will be notified in the immediately following Trustee's periodic report which is provided to securityholders, and sixty days after the receipt of such report, the exemptive relief provided under section I.C. will prospectively cease to be applicable to any class of Securities held by a plan which involves such Ratings Dependent Swap; provided that in no event will such plan securityholders be notified any later than the end of the second month that begins after the date on which such failure occurs.

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the counterparty is withdrawn or reduced below the lowest level specified in section III.GG., the Servicer (as agent for the Trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the Trustee in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the Issuer to make any termination payments to the counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor;

(10) Any class of Securities, to which one or more swap agreements entered into by the Issuer applies, may be acquired or held in reliance upon this Underwriter Exemption only by Qualified Plan Investors; and

(11) Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the Issuer's assets.

B. Neither any Underwriter, Sponsor, Trustee, Servicer, Insurer or any Obligor, unless it or any of its Affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire Securities, shall be denied the relief provided under section I., if the provision of subsection II.A.(6) is not satisfied with respect to acquisition or holding by a plan of such Securities, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of Securities, the Trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's Securities) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6).

III. Definitions

For purposes of this exemption:

A. "Security" means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

B. "Issuer" means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code); and the corpus or assets of which consist solely of:

(1) (a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, Qualified Equipment Notes Secured by Leases); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and/or commercial real property (including obligations secured by leasehold interests on residential or commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or Qualified Motor Vehicle Leases; and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR 2510.3–101(i)(2);[6] and/or

[6] In Advisory Opinion 99–05A (Feb. 22, 1999), the Department expressed its view that mortgage pool certificates guaranteed and issued by the Federal Agricultural Mortgage Corporation ("Farmer Mac") meet the definition of a guaranteed governmental mortgage pool certificate as defined in 29 CFR 2510.3–101(i)(2).

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(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this subsection B.(1).[7]

Notwithstanding the foregoing, residential and home equity loan receivables issued in Designated Transactions may be less than fully secured, provided that: (i) The rights and interests evidenced by the Securities issued in such Designated Transactions (as defined in section III.DD.) are not subordinated to the rights and interests evidenced by Securities of the same issuer; (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (iii) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (I) The outstanding principal balance due under the obligation which is held by the Issuer and (II) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

(2) Property which had secured any of the obligations described in subsection III.B.(1);

(3) (a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to securityholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to securityholders pursuant to any Eligible Swap Agreement meeting the conditions of subsection II.A.(9) or pursuant to any Eligible Yield Supplement Agreement; and/or

(c) Cash transferred to the Issuer on the Closing Date and permitted investments made therewith which:

(i) Are credited to a Pre-Funding Account established to purchase additional obligations with respect to which the conditions set forth in paragraphs (a)–(g) of subsection II.A.(7) are met; and/or

(ii) Are credited to a Capitalized Interest Account; and

(iii) Are held by the Issuer for a period ending no later than the first distribution date to securityholders occurring after the end of the Pre-Funding Period.

For purposes of this paragraph (c) of subsection III.B.(3), the term "permitted investments" means investments which: (i) Are either: (x) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (y) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; (ii) are described in the Pooling and Servicing Agreement; and (iii) are permitted by the Rating Agency.

(4) Rights of the Trustee under the Pooling and Servicing Agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, Eligible Yield Supplement Agreements, Eligible Swap Agreements meeting the conditions of subsection II.A.(9) or other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term "Issuer" does not include any investment pool unless: (i) The assets of the type described in paragraphs (a)–(f) of subsection III.B.(1) which are contained in the investment pool have been included in other investment pools, (ii) Securities evidencing interests in such other investment pools have been rated in one of the three (or in the case of Designated Transactions, four) highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption, and (iii) Securities evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption.

C. "Underwriter" means:

(1) An entity defined as an Underwriter in subsection III.C.(1) of each of the Underwriter Exemptions that are being amended by this exemption. In addition, the term Underwriter includes Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Credit Lyonnais Securities (USA) Inc., ABN AMRO Inc., Ironwood Capital Partners Ltd. and William J. Mayer Securities LLC (which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; or

(3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) is a manager or co-manager with respect to the Securities.

D. "Sponsor" means the entity that organizes an Issuer by depositing obligations therein in exchange for Securities.

E. "Master Servicer" means the entity that is a party to the Pooling and Servicing Agreement relating to assets of the Issuer and is fully responsible for servicing, directly or through Subservicers, the assets of the Issuer.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the Master Servicer, services loans contained in the Issuer, but is not a party to the Pooling and Servicing Agreement.

G. "Servicer" means any entity which services loans contained in the Issuer, including the Master Servicer and any Subservicer.

H. "Trust" means an Issuer which is a trust (including an owner trust, grantor trust or a REMIC or FASIT which is organized as a Trust).

I. "Trustee" means the Trustee of any Trust which issues Securities and also includes an Indenture Trustee. "Indenture Trustee" means the Trustee appointed under the indenture pursuant to which the subject Securities are issued, the rights of holders of the Securities are set forth and a security interest in the Trust assets in favor of the holders of the Securities is created. The Trustee or the Indenture Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Issuer, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of holders of the Securities, including those rights arising in the event of default by the servicer.

J. "Insurer" means the insurer or guarantor of, or provider of other credit support for, an Issuer. Notwithstanding the foregoing, a person is not an insurer solely because it holds Securities representing an interest in an Issuer which are of a class subordinated to Securities representing an interest in the same Issuer.

[7] The Department wishes to take the opportunity to clarify its view that the definition of Issuer contained in subsection III.B. includes a two-tier structure under which Securities issued by the first Issuer, which contains a pool of receivables described above, are transferred to a second Issuer which issues Securities that are sold to plans. However, the Department is of the further view that, since the Underwriter Exemption generally provides relief only for the direct or indirect acquisition or disposition of Securities that are not subordinated, no relief would be available if the Securities held by the second Issuer were subordinated to the rights and interests evidenced by other Securities issued by the first Issuer, unless such Securities were issued in a Designated Transaction.

K. "Obligor" means any person, other than the Insurer, that is obligated to make payments with respect to any obligation or receivable included in the Issuer. Where an Issuer contains Qualified Motor Vehicle Leases or Qualified Equipment Notes Secured by Leases, "Obligor" shall also include any owner of property subject to any lease included in the Issuer, or subject to any lease securing an obligation included in the Issuer.

L. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

M. "Restricted Group" with respect to a class of Securities means:

(1) Each Underwriter;

(2) Each Insurer;

(3) The Sponsor;

(4) The Trustee;

(5) Each Servicer;

(6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer;

(7) Each counterparty in an Eligible Swap Agreement; or

(8) Any Affiliate of a person described in subsections III.M.(1)–(7).

N. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

O. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

P. A person will be "independent" of another person only if:

(1) Such person is not an Affiliate of that other person; and

(2) The other person, or an Affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

Q. "Sale" includes the entrance into a Forward Delivery Commitment, provided:

(1) The terms of the Forward Delivery Commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and

(3) At the time of the delivery, all conditions of this Underwriter Exemption applicable to sales are met.

R. "Forward Delivery Commitment" means a contract for the purchase or sale of one or more Securities to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the Securities) and optional contracts (which give one party the right but not the obligation to deliver Securities to, or demand delivery of Securities from, the other party).

S. "Reasonable Compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

T. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the Obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The Servicer may not charge the fee absent the act or failure to act referred to in subsection III.T.(1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the Pooling and Servicing Agreement; and

(4) The amount paid to investors in the Issuer will not be reduced by the amount of any such fee waived by the Servicer.

U. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the Issuer's security interest in the equipment is at least as protective of the rights of the Issuer as the Issuer would have if the equipment note were secured only by the equipment and not the lease.

V. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(1) The Issuer owns or holds a security interest in the lease;

(2) The Issuer owns or holds a security interest in the leased motor vehicle; and

(3) The Issuer's security interest in the leased motor vehicle is at least as protective of the Issuer's rights as the Issuer would receive under a motor vehicle installment loan contract.

W. "Pooling and Servicing Agreement" means the agreement or agreements among a Sponsor, a Servicer and the Trustee establishing a Trust. "Pooling and Servicing Agreement" also includes the indenture entered into by the Issuer and the Indenture Trustee.

X. "Rating Agency" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies Inc., Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., Fitch ICBA, Inc. or any successors thereto.

Y. "Capitalized Interest Account" means an Issuer account: (i) which is established to compensate securityholders for shortfalls, if any, between investment earnings on the Pre-Funding Account and the interest rate payable under the Securities; and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

Z. "Closing Date" means the date the Issuer is formed, the Securities are first issued and the Issuer's assets (other than those additional obligations which are to be funded from the Pre-Funding Account pursuant to subsection II.A.(7)) are transferred to the Issuer.

AA. "Pre-Funding Account" means an Issuer account: (i) Which is established to purchase additional obligations, which obligations meet the conditions set forth in paragraph (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

BB. "Pre-Funding Limit" means a percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered, which is less than or equal to: (i) 40 percent, effective for transactions occurring on or after January 1, 1992, but prior to May 23, 1997; and (ii) 25 percent, for transactions occurring on or after May 23, 1997.

CC. "Pre-Funding Period" means the period commencing on the Closing Date and ending no later than the earliest to occur of: (i) The date the amount on deposit in the Pre-Funding Account is less than the minimum dollar amount specified in the Pooling and Servicing Agreement; (ii) the date on which an event of default occurs under the Pooling and Servicing Agreement or (iii) the date which is the later of three months or ninety days after the Closing Date.

DD. "Designated Transaction" means a securitization transaction in which the assets of the Issuer consist of secured consumer receivables, secured credit instruments or secured obligations that

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bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein. For purposes of this section III.DD., the collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

EE. "Ratings Dependent Swap" means an interest rate swap, or (if purchased by or on behalf of the Issuer) an interest rate cap contract, that is part of the structure of a class of Securities where the rating assigned by the Rating Agency to any class of Securities held by any plan is dependent on the terms and conditions of the swap and the rating of the counterparty, and if such Security rating is not dependent on the existence of the swap and rating of the counterparty, such swap or cap shall be referred to as a "Non-Ratings Dependent Swap". With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer, that entering into an Eligible Swap with such counterparty will not affect the rating of the Securities.

FF. "Eligible Swap" means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. dollars;

(2) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the class of Securities to which the swap relates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g., LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3);

(4) Which is not leveraged (i.e., payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subsection III.FF.(2), and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is either the earlier of the date on which the Issuer terminates or the related class of securities is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subsections III.FF.(1) through (4) without the consent of the Trustee.

GG. "Eligible Swap Counterparty" means a bank or other financial institution which has a rating, at the date of issuance of the Securities by the Issuer, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility under the Underwriter Exemption, such swap counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

HH. "Qualified Plan Investor" means a plan investor or group of plan investors on whose behalf the decision to purchase Securities is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the Issuer and the effect such swap would have upon the credit ratings of the Securities. For purposes of the Underwriter Exemption, such a fiduciary is either:

(1) A "qualified professional asset manager" (QPAM),[8] as defined under Part V(a) of PTE 84–14, 49 FR 9494, 9506 (March 13, 1984);

(2) An "in-house asset manager" (INHAM),[9] as defined under Part IV(a) of PTE 96–23, 61 FR 15975, 15982 (April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

II. "Excess Spread" means, as of any day funds are distributed from the Issuer, the amount by which the interest allocated to Securities exceeds the amount necessary to pay interest to securityholders, servicing fees and expenses.

JJ. "Eligible Yield Supplement Agreement" means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer, an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Effective for transactions occurring on or after April 7, 1998, such an agreement or arrangement may involve a notional principal contract provided that:

(1) It is denominated in U.S. dollars;

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (e.g., LIBOR or COFI), with the Issuer receiving such payments on at least a quarterly basis;

(3) It is not "leveraged" as described in subsection III.FF.(4);

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.JJ.(1)-(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either: (i) the principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3).

[8] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of $50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[9] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

IV. Modifications

For the Underwriter Exemptions provided to Residential Funding Corporation, Residential Funding Mortgage Securities, Inc., et. al. and GE Capital Mortgage Services, Inc. and GECC Capital Markets (the Applicants) (PTEs 94–29 and 94–73, respectively);

A. Section III.A. of this exemption is modified to read as follows:

A. "Security" means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which (i) one of the Applicants or any of its Affiliates is the Sponsor, [and] an entity which has received from the Department an individual prohibited transaction exemption relating to Securities which is similar to this exemption, is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent or (ii) one of the Applicants or any of its Affiliates is the sole underwriter or the manager or co-manager of the underwriting syndicate, or a selling or placement agent.

B. Section III.C. of this exemption is modified to read as follows:

C. Underwriter means:

(1) An entity defined as an Underwriter in subsection III.C.(1) of each of the Underwriter Exemptions that are being amended by this exemption. In addition, the term Underwriter includes Ironwood Capital Partners Ltd., Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc.; ABN AMRO, Credit Lyonnais Securities, Inc. and William J. Mayer Securities LLC (which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity;

(3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) above is a manger or co-manager with respect to the Securities; or

(4) Any entity which has received from the Department an individual prohibited transaction exemption relating to Securities which is similar to this exemption.

V. Effective Date

This exemption is effective for transactions occurring on or after August 23, 2000, except as otherwise provided in section I.C., subsection II.A.(4) and section III.JJ. of the exemption. Section I.C., relating to the defeasance of mortgage obligations, is applicable to transactions occurring on or after January 1, 1999; the provision of subsection II.A.(4) permitting the Trustee to be an Affiliate of an Underwriter is applicable to transactions occurring on or after January 1, 2001; subsection II.A.(4)(b) is applicable to transactions occurring on or after January 1, 1998; and section III.JJ., relating to Eligible Yield Supplement Agreements involving notional principal contracts, is applicable to transactions occurring on or after April 7, 1998.

For a more complete statement of the facts and representations supporting the Department's decision to amend the Underwriter Exemptions, refer to the notice of proposed exemption that was published on May 22, 2002.

Signed at Washington, DC, this 19th day of August, 2002.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–21434 Filed 8–21–02; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Notice of Availability of Calendar Year 2003 Competitive Grant Funds for Services Areas MI–9, MI–12, MI–13, MI–14, MI–15, NMI–1, and MMI in Michigan

AGENCY: Legal Services Corporation.

ACTION: Solicitation of proposals for the Provision of Civil Legal Services for service areas MI–9, MI–12, MI–13, MI–14, MI–15, NMI–1, and MMI in Michigan.

SUMMARY: The Legal Services Corporation (LSC) is the national organization charged with administering federal funds provided for civil legal services to the poor. Congress has adopted legislation requiring LSC to utilize a system of competitive bidding for the award of grants and contracts.

LSC hereby announces the availability of competitive grant funds and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient and high quality civil legal services to the eligible client population in the Basic Field-General, Basic Field-Migrant, and Basic Field-Native American service areas in Michigan. The exact amount of congressionally appropriated funds and the date and terms of their availability for calendar year 2003 are not yet known.

DATES: See **SUPPLEMENTARY INFORMATION** section for grants competition dates.

ADDRESSES: Legal Services Corporation—Competitive Grants, 750 First Street NE, 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Office of Program Performance, competitive grants service desk by fax at 1.877.378.9997, by e-mail at *competition@lsc.gov*, or visit the LSC competition Web site at *www.ain.lsc.gov*.

SUPPLEMENTARY INFORMATION: The Request for Proposals (RFP) is available from *www.ain.lsc.gov*. A Notice of Intent to Compete is required. It is due by 5 p.m. ET, September 13, 2002. Grant proposals must be received at LSC by 5 p.m. ET, October 11, 2002. LSC is seeking proposals from non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients, and from private attorneys, groups of private attorneys or law firms, state or local governments, and substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

The RFP, containing the grant application, guidelines, proposal content requirements and specific selection criteria, is available at *www.ain.lsc.gov*. Descriptions of the Michigan service areas are available at *www.ain.lsc.gov* (Once at the site, click on Bulletin Board). LSC will not fax the solicitation package to interested parties.

Issue Date: August 16, 2002.

Michael A. Genz,

Director, Office of Program Performance.

[FR Doc. 02–21379 Filed 8–21–02; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Proposed Collection; Comment Request

AGENCY: National Endowment for the Humanities.

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ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) is soliciting public comments on the proposed information collection described below. The proposed information collection will be sent to the Office of Management and Budget (OMB) for review, as required by the provisions of the Paperwork Reduction Act of 1995.

DATES: Comments on this information collection must be submitted on or before October 21, 2002.

ADDRESSES: Send comments to Ms. Susan Daisey, Director, Office of Grant Management, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 311, Washington, DC 20506, or by email to: *sdaisey@neh.gov*. Telephone: 202–606–8494.

SUPPLEMENTARY INFORMATION: The National Endowment for the Humanities will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This notice is soliciting comments from members of the public and affected agencies. NEH is particularly interested in comments which help the agency to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond.

This Notice also lists the following information:

Type of Review: Extension of a currently approved collection.

Agency: National Endowment for the Humanities.

Title of Proposal: My History is America's History Website.

OMB Number: 3136–0136.

Frequency of Collection: Continual.

Affected Public: General Public.

Number of Respondents: Approximately 400,000 per year.

Estimated Time per Respondent: Approximately one quarter hour per response.

Estimated Total Burden Hours: 100,000.

Total Annulized capital/startup costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: Comments submitted in response to this notice will be summarized and/or included in the request submitted to the Office of Management and Budget for extended approval of the information collection request; they will also become a matter of public record.

Lynne Munson,

Deputy Chairman.

[FR Doc. 02–21475 Filed 8–21–02; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–131]

Notice of Renewal of Facility Operating License No. R–57, Department of Veterans Affairs, Nebraska–Western Iowa Health Care System

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 11 to Facility Operating License No. R–57 for the Department of Veterans Affairs, Nebraska–Western Iowa Health Care System (the licensee), which renews the license for operation of the Alan J. Blotcky Reactor Facility located at the Department of Veterans Affairs, Nebraska–Western Iowa Health Care System, Omaha Division (formerly known as the VA Medical Center Omaha) in Omaha, Nebraska.

The facility is a non-power reactor that has been operating at a power level not in excess of 20 kilowatts (thermal). The renewed Facility Operating License No. R–57 will expire 20 years from its date of issuance.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR chapter 1. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notice of the proposed issuance of this renewal in the **Federal Register** on January 26, 1995, at 60 CFR part 5228. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

Continues operation of the reactor will not require alteration of buildings or structures, will not lead to significant changes in effluents released from the facility to the environment, will not increase the probability or consequences of accidents, and will not involve any unresolved issues concerning alternative uses of available resources. Based on the foregoing and on the Environmental Assessment, the Commission concludes that renewal of the license will not result in any significant environmental impacts.

The Commission has prepared a "Safety Evaluation Report Related to the Renewal of the Operating License for the Research Reactor at the Department of Veterans Affairs, Nebraska–Western Iowa Health Care System, Omaha Division" for the renewal of Facility Operating License No. R–57 and has, based on that evaluation, concluded that the facility can continue to be operated by the licensee without endangering the health and safety of the public.

The Commission also prepared an Environmental Assessment which was published in the **Federal Register** on November 27, 2001, (66 FR 59267) for the renewal of Facility Operating License No. R–57 and has concluded that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see: (1) The application for amendment dated May 10, 1993, as supplemented on March 1, 1995, December 17, 1997, March 12, April 5; July 29, November 24 and December 2, 1999, January 4, September 25, October 2 and October 24, 2000, and August 8 and October 16, 2001, (2) Amendment No. 11 to Facility Operating License No. R–57; (3) the related Safety Evaluation Report and (4) the Environmental Assessment dated November 20, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, (first floor), Rockville, Maryland. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRS's public documents. Documents related to this license renewal dated on or after November 24, 1999, may be accessed through the NRC's Public Electronic Reading Room on the internet at *http://www.nrc.gov*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 5th day of August 2002.

For the U.S. Nuclear Regulatory Commission.

Patrick M. Madden,

Section Chief, Research and Test Reactors Section, Operating Reactor Improvements Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–21415 Filed 8–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Dominion Nuclear Connecticut, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–65 issued to Dominion Nuclear Connecticut, Inc. (the licensee) for operation of the Millstone Power Station, Unit No. 2, located in New London County, Connecticut.

The proposed amendment would revise Technical Specification (TS) Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of "* * * up to 24 hours" to "* * * up to 24 hours or up to the limit of the specified surveillance interval, whichever is greater." In addition, the following requirement would be added to SR 4.0.3: "A risk evaluation shall be performed for any surveillance delayed greater than 24 hours and the risk impact shall be managed."

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process (CLIIP). The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the model NSHC determination for amendments concerning missed surveillances in its application dated July 19, 2002.

The proposed amendment would also make administrative changes to SRs 4.01 and 4.03 to be consistent with NUREG–1432, Revision 2, "Standard Technical Specifications, Combustion Engineering Plants." These changes are necessary to make the current MP2 TSs compatible with the proposed CLIIP changes for missed surveillances. The licensee provided its analysis of the issue of NSHC for these proposed changes in its application.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves NSHC. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

[CLIIP Changes]

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

[Administrative Changes]

The proposed change involves rewording of the existing Technical Specifications to be consistent with NUREG–1432, Revision 2. These modifications involve no technical changes to the existing Technical Specifications. As such, these changes are administrative in nature and do not affect initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, these changes will not increase the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

[CLIIP Changes]

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

[Administrative Changes]

The proposed change involves rewording of the existing Technical Specifications to be consistent with NUREG–1432, Revision 2. The change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The changes will not impose any new or different requirements or eliminate any existing requirements. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

[CLIIP Changes]

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform

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the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

[Administrative Changes]

The proposed change involves rewording of the existing Technical Specifications to be consistent with NUREG–1432, Revision 2. The changes are administrative in nature and will not involve any technical changes. The changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. Also, since these changes are administrative in nature, no question of safety is involved. Therefore, there will be no reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves NSHC. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 23, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief."

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of NSHC. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves NSHC, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 19, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 16th day of August, 2002.

For the Nuclear Regulatory Commission.

Richard B. Ennis,

Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–21417 Filed 8–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

PSEG Nuclear LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of PSEG Nuclear LLC (the licensee) to withdraw its August 17, 2001, application for proposed amendment to Facility Operating License Nos. DPR–70 and DPR–75 for the Salem Nuclear Generating Station, Unit Nos. 1 and 2, located in Salem County, New Jersey.

The proposed amendment would have revised Salem Technical Specification (TS) Surveillance Requirement 4.6.2.3, and its associated TS Bases. Specifically, the proposed change would have modified the current acceptance criterion for the service water flow rate through the Containment Fan Coil Units from ≥ 2,550 gallons per minute (gpm) to ≥ 2,300 gpm.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 17, 2001 (66 FR 52802). However, by letter dated August 15, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 17, 2001, and the licensee's letter dated August 15, 2002, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 16th day of August, 2002.

For the Nuclear Regulatory Commission.

Robert J. Fretz,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–21412 Filed 8–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light Company, H.B. Robinson Steam Electric Plant, Unit No. 2; Notice of Intent to Prepare an Environmental Impact Statement and Conduct Scoping Process

Carolina Power & Light Co. (CP&L) has submitted an application for renewal of Facility Operating License DPR–23 for an additional 20 years of operation at the H. B. Robinson Steam Electric Plant (Robinson), Unit No. 2. Robinson is located in Darlington County, South Carolina, approximately 5 miles north-northwest of Hartsville, South Carolina. The application for renewal was submitted by letter dated June 17, 2002, pursuant to 10 CFR part 54. A notice of receipt of application, including the environmental report (ER), was published in the **Federal Register** on July 18, 2002 (67 FR 47410). A notice of acceptance for docketing of

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the application for renewal of the facility operating license was published in the **Federal Register** on August 16, 2002 (67 FR 53626). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) in support of the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29.

In accordance with 10 CFR 54.23 and 10 CFR 51.53(c), CP&L submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR Part 51 and is available for public inspection at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html*, which provides access through the NRC's Public Electronic Reading Room (PERR) link. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to pdr@nrc.gov. The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/robinson.html*. In addition, the Hartsville Memorial Library, located at 147 West College Avenue, Hartsville, South Carolina 29550, has agreed to make the ER available for public inspection.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants," (NUREG–1437) in support of the review of the application for renewal of the Robinson operating license for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. Section 51.95 of 10 CFR requires that the NRC prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with the National Environmental Policy Act (NEPA) and the NRC's regulations found in 10 CFR part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate, from detailed study, those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, and include any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. The applicant, Carolina Power & Light Co.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the Robinson license renewal supplement to the GEIS. The scoping meetings will be held in the C.W. Coker Auditorium of Davidson Hall on the campus of Coker College in Hartsville, South Carolina, on Wednesday, September 25, 2002. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include (1) an overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour before the start of each session in Davidson Hall. No comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting Mr. Richard L. Emch, Jr., by telephone at 1–800–368–5642, extension 1590, or by Internet to the NRC at *RobinsonEIS@nrc.gov* no later than September 20, 2002. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. Mr. Emch will need to be contacted no later than September 20, 2002, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the Robinson license renewal review to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6 D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by October 25, 2002. Electronic comments may be sent by the Internet to the NRC at RobinsonEIS@nrc.gov. Electronic submissions should be sent no later than October 25, 2002, to be considered in the scoping process. Comments will be available electronically and accessible through the NRC's PERR link *http://www.nrc.gov/reading-rm/adams.html*.

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal application was the subject of the aforementioned **Federal Register** notice of acceptance for docketing. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection through the PERR link. The staff will then prepare and issue, for comment, the draft supplement to the GEIS, which will be the subject of separate notices and separate public meetings. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Emch at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 16th day of August, 2002.

For the Nuclear Regulatory Commission.

Samson S. Lee,

Acting Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–21413 Filed 8–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Receipt of Supplemental Environmental Report for the Mixed Oxide Fuel Fabrication Facility and Notice of Public Meetings

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt and notice of public meetings.

SUMMARY: On July 11, 2002, the U.S. Nuclear Regulatory Commission (NRC) received a supplemental Environmental Report (ER) from Duke COGEMA Stone & Webster (DCS), for the proposed Mixed Oxide (MOX) Fuel Fabrication Facility. The need for the supplemental ER arose, in January 2002, when the U.S. Department of Energy (DOE) announced its decision to alter its planned hybrid approach for surplus weapons plutonium disposition [65 FR 1608]. The Plutonium Immobilization Plant (PIP) that DOE had planned to build and operate as part of its hybrid approach will not be built. Instead, DOE decided that 34 metric tons of surplus weapons plutonium would be converted into MOX fuel at the proposed MOX facility. DOE's decision not to build the Plutonium Immobilization Plant (PIP) and convert all of the plutonium into MOX fuel requires design changes to the proposed MOX facility. The NRC staff found that due to these changes, DCS would be required to submit a supplemental ER. A notice of delay in issuance of the Draft and Final Environmental Impact Statements (EIS) for the proposed MOX facility was published in the **Federal Register** on April 24, 2002 (67 FR 20183). This **Federal Register** notice also discussed changes to the proposed MOX facility and DOE surplus disposition program.

The NRC will host three public meetings. The meetings are part of the continuing process to keep affected stakeholders and the public informed of plans, schedules and important issues related to the preparation of the EIS, and to answer questions. The purpose of the meetings will be to inform the public of changes in the supplemental ER and the DOE surplus disposition program. NRC staff will also discuss how these changes have affected the scope of the Draft EIS summarized in the Scoping Summary Report dated August 2001. In the April 24, 2002 **Federal Register** notice, public comment was solicited on two issues.

(1) How the immobilization of surplus plutonium as a No Action Alternative should be discussed in the DEIS, since DOE has canceled plans to build the Plutonium Immobilization Plant.

(2) Whether there are additional reasonable alternatives not identified during scoping that should be considered in the DEIS, in light of the changes described above. As discussed in the Scoping Summary Report, NRC is considering the environmental impacts of the proposed action (construction and operation of the proposed MOX fuel fabrication facility), continued storage of surplus plutonium at existing DOE sites, and immobilization of surplus plutonium. If the immobilization alternative is not considered, then the DEIS would only evaluate the proposed action and one No Action Alternative.

NRC staff will summarize the responses received and solicit views of people at the meetings. Information will be provided on the EIS review process and stakeholders will be updated on the revised EIS schedule. The meeting dates, times and locations are listed below:

Tuesday, September 17, 2002, 7 p.m. to 10 p.m., North Augusta Community Center, 495 Brookside Avenue, North Augusta, South Carolina.

Wednesday, September 18, 2002, 7 p.m. to 10 p.m., Coastal Georgia Center, 305 Fahm Street, Savannah, Georgia.

Thursday, September 19, 2002, 7 p.m. to 10 p.m., Charlotte-Mecklenburg Government Center, 600 E. Fourth Street, Charlotte, North Carolina.

FOR FURTHER INFORMATION CONTACT: For general information on the NRC NEPA process, please contact: Tim Harris at (301) 415–6613. For general or technical information associated with the proposed MOX facility, please contact: Tim Johnson at (301) 415–7299, or Drew Persinko at (301) 415–6522.

Availability of Documents for Review

Information on the supplemental ER and other documents associated with the proposed MOX project are available for public review through our electronic reading room: *http://www.nrc.gov/reading-rm.html* or the MOX web page: *http://www.nrc.gov/materials/fuel-cycle-fac/MOX/licensing.html*. Documents may also be obtained from NRC's Public Document Room at U.S. Nuclear Regulatory Commission, Public Document Room, Washington, DC 20555.

Signed in Rockville, MD, this 15th day of August, 2002.

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For the Nuclear Regulatory Commission.

Cheryl Trottier,

Chief, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–21416 Filed 8–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on September 23, 2002, Bob Ruud Community Center, 150 N. Highway 160, Pahrump, Nevada.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: *Monday, September 23, 2002—3 p.m. until 4:45 p.m.*

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the Designated Federal Official, Howard J. Larson (telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual two working days prior to the meeting to be advised of any changes in schedule that may have occurred.

Dated: August 15, 2002.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–21419 Filed 8–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Human Factors; Notice of Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on September 10, 2002, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, September 10, 2002—8:30 a.m. until the conclusion of business.*

The Subcommittee will review the proposed Human Reliability Research Program Plan, including research activities and plans related to data collection and development of analysis tools on human reliability associated with nuclear power plant operation and safety. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify one of the ACRS staff engineers named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting either Dr. Medhat M. El-Zeftawy (telephone 301–415–6889) or Mr. August W. Cronenberg (telephone 301–415–6809) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individuals at least two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: August 15, 2002.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–21420 Filed 8–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on September 9, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: *Monday, September 9, 2002—10:45 a.m. until 12:30 p.m.*

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any changes in schedule that may have occurred.

Dated: August 15, 2002.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–21421 Filed 8–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Plant Operations; Notice of Meeting

The ACRS Subcommittee on Plant Operations will hold a meeting on September 9, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Monday, September 9, 2002—1:30 p.m. until 5 p.m.*

The Subcommittee will continue its discussion of activities associated with the Reactor Oversight Process (ROP), specifically status of staff activities to address the issue in the Staff Requirements Memorandum of December 20, 2001, in which the Commission directed that the NRC staff, with input from ACRS, should provide recommendations for resolving in a transparent manner, apparent conflicts and discrepancies between aspects of the revised ROP process that are risk-informed (*e.g.*, significance determination process) and those that are performance based (*e.g.*, performance indicators). The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman and written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding matters scheduled for this meeting.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Ms. Maggalean W. Weston (telephone 301/415–3151) between 8 a.m. and 5:30 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda that may have occurred.

Dated: August 15, 2002.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–21422 Filed 8–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on September 9, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Monday, September 9, 2002—8:30 a.m. until 10:30 a.m.*

The Subcommittee will discuss proposed revisions to Regulatory Guide 1.174, "Use of PRA in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," and Standard Review Plan Chapter 19, "Guidance on Use of PRA in Plant-Specific, Risk-Informed Decisionmaking," including the ACRS recommendations provided in its letter of July 23, 2002. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify one of the staff engineers named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding these matters.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting either Mr. Howard J. Larson (telephone: 301–415–6805) or Mr. August W. Cronenberg (telephone 301–415–6809) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact one of the above named individuals one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

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Dated: August 15, 2002.
Howard J. Larson,
Acting Associate Director for Technical Support, ACRS/ACNW.
[FR Doc. 02–21423 Filed 8–21–02; 8:45 am]
BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

September 5, 2002 Public Hearing; Sunshine Act

Time and Date: 2 PM, Thursday, September 5, 2002.

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

Status: Hearing OPEN to the Public at 2 PM.

Purpose: Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Procedures: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 PM, Tuesday, September 3, 2002. The notice must include the individual's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 PM, Tuesday, September 3, 2002. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at *cdown@opic.gov*.

Dated: August 29, 2002.
Connie M. Downs,
OPIC Corporate Secretary.
[FR Doc. 02–21542 Filed 8–20–02; 3:43 pm]
BILLING CODE 3210–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Request for Medicare Payment.

(2) *Form(s) submitted:* G–740s, CMS–1500.

(3) *OMB Number:* 3220–0131.

(4) *Expiration date of current OMB clearance:* 11/30/2002.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households, Business or other for-profit.

(7) *Estimated annual number of respondents: See* Justification (Item No. 12).

(8) *Total annual responses:* 1.

(9) *Total annual reporting hours:* 1.

(10) *Collection description:* The Railroad Retirement Board (RRB) administers the Medicare program for persons covered by the Railroad Retirement System. The collection obtains the information needed by Palmetto GBA, the RRB's carrier, to pay claims for services covered under Part B of the program.

Additional Information or Comments

Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,
Clearance Officer.
[FR Doc. 02–21352 Filed 8–21–02; 8:45 am]
BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27561]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 16, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 10, 2002, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After DATE, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Grid Group plc (70–10067)

National Grid Group plc ("National Grid" or "Applicant"), 15 Marylebone Road, London NW1 5JD, United Kingdom, a registered holding company, has filed a declaration under sections 6(a), 7, and 33 of the Act and rules 53 and 54 under the Act.

I. Background

In connection with its intended acquisition of the approximately 3.5 billion outstanding ordinary shares of Lattice Group plc ("Lattice") a United Kingdom gas utility holding company, ("Merger"), National Grid proposes to issue and sell approximately $9.4 billion of its ordinary shares for the purpose of financing the acquisition of a foreign utility company as defined in section 33 of the Act ("FUCO"). Further, National Grid seeks authority to issue and sell an additional amount of

approximately $7.5 billion of debt and equity securities and to enter into guarantees all for the purpose of financing the acquisition of or guaranteeing the securities of FUCOs. National Grid currently has FUCO investments of approximately $3.1 billion.

A. Merger Parties

1. National Grid

National Grid was incorporated in England and Wales on July 11, 2000. Its ordinary shares are listed on the London Stock Exchange and its American Depositary Receipts are listed on the New York Stock Exchange. As of April 19, 2002 there were 1,776,636,707 ordinary shares and one special share outstanding. National Grid employs, in conjunction with its subsidiaries, approximately 14,000 employees. As of April 19, 2002, National Grid had a market capitalization of approximately $12.6 billion.

National Grid holds ownership interests in various utility and nonutility businesses outside the United States through National Grid Holdings One plc ("National Grid Holdings One").[1] National Grid Holdings One's principal business in the United Kingdom ("UK") is the transmission of electricity in England and Wales, which it conducts through its wholly owned indirect subsidiary, The National Grid Company ("NCG"). National Grid through National Grid Holdings One has electric utility businesses located in Argentina and Zambia.[2] In addition, National Grid is engaged in undersea electric transmission interconnector projects in Australia, Norway, the Netherlands and Ireland that are in various stages of development. National Grid conducts its utility and nonutility businesses[3] in the United States through National Grid USA, an indirect, wholly owned registered holding company subsidiary of National Grid.

National Grid USA is engaged, through its subsidiaries, in electric distribution to residential, commercial, and industrial customers in New England and the distribution and sale of electricity and natural gas to residential, commercial, and industrial customers in New York. The company owns all of the outstanding stock of the following public-utility companies: Niagara Mohawk Power Corporation ("Niagara Mohawk"), Massachusetts Electric Company, The Narragansett Electric Company, Granite State Electric Company, and Nantucket Electric Company (collectively, "Distribution companies"). The Distribution Companies deliver electricity to residential, commercial, and industrial customers, operate and maintain distribution power lines and substations, provide metering, billing, and customer services, design and build distribution-related facilities, and provide related products and services including energy efficiency programs for customers. Niagara Mohawk also provides gas utility service to approximately 550,000 customers in New York State. National Grid USA also holds ownership interests in four other public-utility companies: New England Power Company ("NEPCO"), New England Electric Transmission Corporation ("NEET"), New England Hydro-Transmission Corporation ("N.H. Hydro") and New England Hydro-Transmission Electric Company, Inc. ("Massachusetts Hydro"). NEPCO, a wholly owned subsidiary of National Grid USA, operates electricity transmission facilities in the states of Massachusetts, Rhode Island, New Hampshire, and Vermont, and holds National Grid USA's remaining interests in certain generating units (which the company is actively seeking to divest). NEET, another wholly owned subsidiary of National Grid USA, owns and operates a direct current/alternating current converter terminal facility for the first phase of the Hydro-Quebec and New England interconnection ("Interconnection") and six miles of high voltage direct current transmission line in New Hampshire. N.H. Hydro, in which National Grid USA holds 53.97% of the common stock, operates 121 miles of high voltage direct current transmission line in New Hampshire for the second phase of the Interconnection, extending to the Massachusetts border. National Grid USA holds directly 53.97% of the common stock of N.H. Hydro, which operates 121 miles of high voltage direct current transmission line in New Hampshire for the second phase of the Interconnection, extending to the Massachusetts border. National Grid USA also holds directly 53.97% of the voting stock of Massachusetts Hydro, which operates a direct current/alternating current terminal and related facilities for the second phase of the Interconnection and twelve miles of high-voltage direct current transmission line in Massachusetts.

2. Lattice

Lattice is incorporated in England and Wales, and is one of three successors to the former British Gas plc. The company's ordinary shares are listed on the London Stock Exchange. As of April 19, 2002, there were 3,528,149,704 ordinary shares and one special share outstanding. Lattice employs, in conjunction with its subsidiaries, approximately 17,000 employees. As of April 19, 2002, Lattice had a market capitalization of approximately $8.8 billion.

The Lattice system is subdivided into two holding companies: Transco Holdings plc ("Transco Holdings") and Lattice Group Holdings Ltc. ("Lattice Group Holdings"). Transco plc ("Transco"), the principal subsidiary of Transco Holdings, owns, operates, and develops the majority of Great Britain's gas transportation and distribution system.

Through subsidiaries, Lattice Group Holdings: provides advanced technology and systems solutions for energy and utility companies; provides gas connection services to the gas transportation network under a service provider contract with Transco;[4] provides multi-utility infrastructure services to industrial and commercial customers and developers; manages the Lattice system's non-operational real estate portfolio;[5] offers leasing and vehicle management services; provides managed payroll services, pensions administration, accounting, business process outsourcing and consulting services; and acquires, builds, leases, and manages sites for mobile telecommunications operators in the United Kingdom.

B. Merger

The terms of the Merger are governed by a Scheme of Arrangement ("Scheme"). Under the Scheme: (1) The issued shares of Lattice would be cancelled, and new shares would be issued to National Grid Holdings One; (2) National Grid would issue 0.375 shares of its stock to Lattice shareholders in exchange for each Lattice share held; (3) National Grid shareholders would retain their shares; and (4) National Grid would be renamed National Grid Transco plc ("Grid Transco") and would retain its listings

[1] National Grid Holdings One is a FUCO within the meaning of section 33 of the Act.

[2] National Grid is joint owner of Transener SA, the owner and operator of the principal high-voltage electricity system in Argentina. In Zambia, National Grid is joint owner of Copperbelt Energy Corporation, the former Power Division of the Zambia Consolidated Copper Mines.

[3] National Grid USA's nonutility subsidiaries, among other activities, construct and lease of fiber optic telecommunications systems and provide electric utility restructuring and customer choice consulting services to nonaffiliated utilities.

[4] Lattice Group Holdings also seeks to provide indirectly facilities management services in other non-gas markets.

[5] Applicant states that the protfolio consists largely of land and buildings either currently or previously occupied by a Lattice system company.

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on the London and New York stock exchanges. Applicant states that, upon completion of the Merger, National Grid and Lattice shareholders would hold approximately 57.3% and 42.7%, respectively, of the issued shares of Grid Transco.

C. Current Authority

By order dated January 16, 2002 (HCAR No. 27490), the Commission authorized, among other things, National Grid to (1) invest up to $5.406 billion in FUCOs; and (2) issue and sell equity and debt securities the value of which would not exceed an aggregate amount of $6 billion at any one time outstanding ("Aggregate Limit") through September 30, 2004. More specifically, National Grid was authorized to issue up to $4.5 billion in equity securities and $5 billion in debt securities, subject to the Aggregate Limit.

II. Requested Authority

As of March 31, 2002, National Grid had invested, in the aggregate, approximately $3.104 billion in FUCOs; therefore, National Grid's current unused FUCO investment authority is $2.302 billion. The Merger alone would require the issuance of approximately $9.4 billion in Grid Transco shares, and a corresponding increase in the holding company's authorized level of FUCO investment. Consequently, Grid Transco's aggregate investment would be approximately $12.5 billion. To effect the Merger and maintain flexibility to make other FUCO investments, National Grid requests authority, through September 30, 2004, to: (1) Issue and sell equity and debt securities and to enter into guarantees up to an aggregate limit of $20 billion, subject to the following subcategory limits: up to (a) $18 billion in equity securities; (b) $12 billion in debt securities; and (c) $6 billion in guaranties; and (2) invest up to $20 billion in FUCOs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21427 Filed 8–21–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 26, 2002:

An Open Meeting will be held on Tuesday, August 27, 2002, at 10 a.m., in Room 1C30, the William O. Douglas Room, and Closed Meetings will be held on Wednesday, August 28, 2002 at 10 a.m., and Thursday, August 29, 2002 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (8), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Wednesday, August 28, 2002, will be:

Formal orders of investigation;
Litigation matter;
Regulatory matter bearing enforcement implications;
Institution and settlement of injunctive actions; and
Institution and settlement of administrative proceedings of an enforcement nature.

The subject matter of the Closed Meeting scheduled for Thursday, August 29, 2002, will be:

Settlement of injunctive actions;
and Opinions

The subject matter of the Open Meeting scheduled for Tuesday, August 27, 2002, will be:

1. The Commission will consider approving a delegation to the General Counsel to issue certain orders in Commission administrative proceedings. The proposed delegation would authorize the General Counsel to issue orders, pursuant to Rule of Practice 411(b), under which the Commission would take up on its own motion the issue of what sanctions are appropriate in the public interest.

2. The Commission will consider whether to issue a notice of an application from The Mexico Fund, Inc. (the "Fund") seeking certain exemptions from the Investment Company Act of 1940. The application seeks an order to permit the Fund to make periodic repurchase offers in compliance with rule 23c–3 under the Act, except that (i) the repurchase offers would be for between one and one hundred percent of the Fund's outstanding shares provided that the Fund will offer to repurchase at least five percent of its outstanding shares each fiscal year; (ii) shareholders participating in the repurchase offers would receive in-kind pro rata portfolio securities of the Fund for their shares; and (iii) the board of directors of the Fund would be able to set and reset the periodic interval between repurchase offers at 3, 6 or 12 months upon prior notice to shareholders. The Fund also requests that the order permit it to remain a closed-end management investment company should the Fund's securities be deemed "redeemable securities" as a result of the repurchase offers and to permit certain affiliated shareholders to participate in the repurchases.

3. The Commission will consider whether to adopt amendments to accelerate the filing of quarterly and annual reports under the Securities Exchange Act of 1934. The amendments also would require companies to disclose in their annual reports whether they provide access to their reports on their websites. The amendments were proposed by the Commission in April, 2002.

4. The Commission will consider whether to adopt new rules that would require an issuer's principal executive and financial officers to certify the issuer's quarterly and annual reports filed under the Securities Exchange Act of 1934. In addition, the new rules would require issuers to maintain internal controls to provide reasonable assurance that they are able to collect, process and disclose the information required in their Exchange Act reports, and to periodically review and evaluate these controls. The Commission announced in Exchange Act Release No. 46300 (Aug. 2, 2002) that it would consider rules to implement Section 302 of the Sarbanes-Oxley Act of 2002.

5. The Commission will consider adopting rules and form amendments to implement the accelerated filing deadline applicable to change of beneficial ownership reports required to be filed by officers, directors and principal security holders under Section 16(a) of the Securities Exchange Act of 1934, as amended by Section 403 of the Sarbanes-Oxley Act of 2002. The Commission announced in Exchange Act Release No. 46313 (Aug. 6, 2002) that it would consider adopting such amendments.

6. The Commission will consider whether the National Association of Securities Dealers, Inc. ("NASD") and the Nasdaq Stock Market, Inc. ("Nasdaq") have satisfied the conditions that must be implemented prior to or at the same time as Nasdaq's implementation of a new order display and collection facility ("SuperMontage"). The conditions, which were imposed by the Commission in a prior order granting conditional approval of the SuperMontage, include an alternative display facility established by the NASD for the display of market maker and ECN quotes.

7. The Commission will consider whether to grant a de minimis exemption from the trade-through restrictions of the Intermarket Trading System Plan for transactions in exchange-traded funds tracking the Nasdaq-100 Index ("QQQs"), the Dow Jones Industrial Average ("DIAMONDs"), and the Standard and Poors 500 Index ("SPDRs"). The exemption would cover transactions that are executed at no more than three cents ($0.03) away from the national best bid and offer displayed in the Consolidated Quote.

8. The Commission will consider whether to issue a release adopting rule amendments and a new rule under the Securities Exchange Act of 1934 ("Exchange Act") that were proposed for comment in the **Federal Register** on June 10, 2002. New paragraph (e) of Rule 10b–10 and new Rule 11d2–1 are designed to clarify the disclosures broker-dealers effecting transactions in security futures products in futures accounts must make in the confirmations sent to customers regarding those transactions.

9. The Commission is proposing for comment amendments to the formula for determination of customer reserve requirements ("Reserve Formula") of broker-dealers under Rule 15c3–3 to the Securities Exchange Act of 1934. The proposed amendments relate to treatment under the Reserve Formula of customer security futures product margin required and on deposit with a registered clearing agency or a derivatives clearing organization.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: August 20, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21598 Filed 8–20–02; 3:57 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46364; File No. SR–Amex–2002–62]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Amending Amex Rule 174 To Provide for Dissemination of a Depth Indication

August 15, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 19, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On August 2, 2002, the Amex filed an amendment to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Commentary .03 to Amex Rule 174, Disclosures by Specialists,[4] to provide for dissemination of a depth indication by Exchange specialists. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Rule 174 Disclosures by Specialists [Prohibited]

* * * * *

Commentary .03

(a) On a best efforts basis, the specialist may disseminate a depth indication in any security. Such depth indication may be disseminated for the purpose of indicating that there is additional market interest to buy below the current published bid, or additional market interest to sell above the current published offer, as described in paragraph (b) below. The depth indication shall be disseminated by means of an appropriate symbolic designation, appended to the current published bid and/or offer, as appropriate, but the depth indication shall not itself be deemed to constitute a "firm quotation" for purposes of this Rule or Rule 11Ac1–1 under the Securities Exchange Act of 1934.

(b) The depth indication may be disseminated only when there is market interest, consisting of the specialist's proprietary interest as well as interest reflected by orders represented by the specialist as agent (including percentage orders), aggregating such minimum number of shares and range of prices below the published bid or above the published offer as the Exchange deems appropriate and communicates to its membership.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add Commentary .03 to Amex Rule 174, Disclosures by Specialists, to permit Amex specialists to disseminate a depth indication, indicating that there is additional market interest in a security to buy below the current displayed bid or interest to sell above the current displayed offer. The Amex believes this change will enhance market transparency and thereby facilitate execution of orders at the best available price. The depth indication of additional market interest would include specialist proprietary interest, orders on the specialist's book, and other orders, including percentage orders, that the specialist is representing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] See letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 1, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange corrected typographical errors in the text of the proposed rule language and requested that the Commission waive the 30-day pre-operative period required under Rule 19b–4(f)(6), 17 CFR 240.19b–4(f)(6). For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on August 2, 2002.

[4] Prior to this filing, the title of Amex Rule 174 was "Disclosures by Specialists Prohibited," but the rule title will be referred to hereafter in this filing as "Disclosures by Specialists."

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as agent. A specialist would disseminate a depth indication on a "best efforts basis," exercising professional judgment based on current market conditions.

The depth indication would not include the actual number of shares available at better prices, but would provide information that a minimum aggregate number of shares is available within a specified variation from the current bid or offer. The Exchange would establish and communicate the parameters to specialists and other members and member organizations, as well as any change to those parameters based on the Exchange's experience. At the start-up of dissemination of the depth indication, the indication would signify that there is additional market interest aggregating 20,000 shares within $0.15 below the published bid or above the published offer or both. Any change to these parameters will be filed with the Commission pursuant to Section 19(b) of the Act.[5] The depth indication would be disseminated over the Consolidated Quotation System ("CQS"). The depth indication would be for informational purposes only and would not constitute a firm quotation for purposes of Amex rules or the SEC's Firm Quote Rule.[6] The Exchange has determined to implement these procedures on a Floor-wide basis to all equities, including Exchange-Traded Funds.

The proposed depth indication procedures and share/price parameters relating to the depth indication are similar to those filed and implemented by the New York Stock Exchange, Inc. ("NYSE").[7] The Amex's proposal differs from the NYSE's in that, in addition to the depth indication, the NYSE proposed to implement a "depth condition," which would be disseminated via the NYSE's proprietary distribution network, and which would show the actual number of shares of additional market interest at a particular price below the published bid or above the published offer, with no specified minimum number of shares or range of prices below (above) the bid (offer). The Amex is not proposing to implement a depth condition at this time.

The Exchange is also amending the captioned title for Amex Rule 174 to delete the word "prohibited." Amex believes this amendment is appropriate because Amex Rule 174 currently deals principally with information that a specialist is permitted to disclose rather than information prohibited to be disclosed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and the provisions of Section 6(b)(5) of the Act,[9] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[12] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

The Amex has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date should provide immediate additional market transparency regarding interest within specified size and price parameters. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–62 and should be submitted by September 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21429 Filed 8–21–02; 8:45 am]

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[5] 15 U.S.C. 78s(b).

[6] Rule 11Ac1–1 under the Act, 17 CFR 240.11Ac1–1.

[7] *See* Securities Exchange Act Release No. 44084 (March 16, 2001), 66 FR 16307 (March 23, 2001) (SR–NYSE–2001–06).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] As required under Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date. *See* letter from Michael Cavalier, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated June 18, 2002.

[13] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46370; File No. SR–CBOE–2002–29]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Index-Linked Exchangeable Notes

August 16, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 7, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 on August 12, 2002.[3] The Exchange filed Amendment No. 2 on August 16, 2002.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change and Amendments Nos. 1 and 2 thereto.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt listing standards for a new product to be known as index-linked exchangeable notes. The text of the proposed rule change, as amended, follows. Additions are in *italics*.

* * * * *

CHAPTER I

Definitions

Rule 1.1 (a)–(yy) No Change.

* * * * *

* * * Interpretation and Policies:

.01–.04 No Change.

.05 The term Index-Linked Exchangeable Note means an exchangeable debt security that is exchangeable at the option of the holder (subject to the requirement that the holder in most circumstances exchange a specified minimum amount of notes), on call by the issuer, or at maturity for a cash amount based on the reported market prices of the underlying stocks of an underlying index.

* * * * *

Rule 31.5 (A)–(N) No Change.

(O) Index-Linked Exchangeable Notes

Index-Linked Exchangeable Notes, which are debt securities that are exchangeable at the option of the holder (subject to the requirement that the holder in most circumstances exchange a specified minimum of notes), on call by the issuer or at maturity for a cash amount ("Cash Amount") based on the reported market prices of underlying stocks of an underlying index, will be considered for listing and trading on the Exchange pursuant to Rule 19b–4e under the Securities Exchange Act of 1934, provided:

(a) Both the issue and the issuer of such security shall meet the criteria set forth in Rule 31.5(F)(a)–(c), except that the minimum public distribution shall be 150,000 notes with a minimum of 400 public note-holders, except if traded in thousand dollar denominations, then no minimum number of holders.

(b) The notes have an original term to maturity of one year.

(c) Index-linked exchangeable notes will be treated as equity securities for margin and all other purposes.

(d) The issuer shall be expected to have a minimum tangible net worth in excess of $250,000,000 and to otherwise substantially exceed the earnings requirements set forth in Rule 31.5(A)(2). In the alternative, the issuer will be expected:

(i) To have a minimum tangible net worth of $150,000,000 and to otherwise substantially exceed the earnings requirements set forth in 31.5(A)(2); and

(ii) Not to have issued index-linked exchangeable notes where the issue price of all the issuer's other index-linked exchangeable note offerings (combined with other index-linked exchangeable note offerings) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth. In the case of an issuer which is unable to satisfy the earnings criteria set forth in CBOE Rule 31.5(A)(2), then the Exchange generally will require the issuer to have the following: (i) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million.

(e) Any index to which an exchangeable note is linked shall either be: (i) An index that has been created by a third party and has been approved for the trading of options or other derivative securities (each, a "Third Party Index") either by the Commission under section 19(b)(2) of the Securities Exchange Act of 1934, as amended ("Act") and the rules thereunder or by the Exchange under rules adopted pursuant to Rule 19b–4(e); and, additionally, the securities underlying the Third Party index must be issued by a company that has a continuous reporting obligation under the Act and the security must be listed on a national securities exchange or the Nasdaq National Market and be subject to last sale reporting pursuant to Rule 11Aa3–1 under the Act, and the Third Party Index shall comply with Rule 24.2(b)(12); or (ii) an index in which the issuer has created and for which an Exchange will have obtained approval from either the Commission pursuant to Rule 19(b)(2) and rules thereunder, or from the Exchange under rules adopted pursuant to Rule 19b–4(e). The Issuer Indices and their underlying securities must meet one of the following:

(i) The procedures and criteria set forth in CBOE Rule 24.2(b)–(c); or

(ii) The criteria set forth in CBOE Rules 31.5(I)(d)–(i), Interpretation and Policies .04 and .06 to Rule 31.5(I), Rule 24.2(b)(12), and the index concentration limits so established in CBOE Rule 24.2(b)(6) and Rule 24.2(c)(1) as it relates to Rule 24.2(b)(12).

(f) Beginning twelve (12) months after the initial issuance of a series of index-linked exchangeable notes, the Exchange will consider the suspension of trading in or removal from listing of that series of index-linked exchangeable notes under any of the following circumstances:

(i) If the series has fewer than 50,000 notes issued and outstanding;

(ii) If the market value of all index-linked exchangeable notes of that series issued and outstanding is less than $100,000,000; or

(iii) If such other event shall occur or such other condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On August 12, 2002, the Exchange filed a Form 19b–4, which replaced the original filing in its entirety ("Amendment No. 1"). In Amendment No. 1, the Exchange corrected typographical errors and amended the proposed rule text to conform it to those previously approved by both the American Stock Exchange LLC ("Amex") and the Philadelphia Stock Exchange, Inc. ("Phlx"). *See* Securities Exchange Act Release No. 44621 (July 30, 2001), 66 FR 41064 (August 6, 2001); and Securities Exchange Act Release No. 45082 (November 19, 2001), 66 FR 59282 (November 27, 2001).

[4] *See* letter from Jim Flynn, Attorney, CBOE, to Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated August 15, 2002 ("Amendment No. 2"). In Amendment No. 2, CBOE made a change to the proposed rule text to conform it to those previously approved by both the Amex and Phlx. *See* Securities Exchange Act Release No. 44621, *supra* note 3; and Securities Exchange Act Release No., *supra* note 3.

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* * * *Interpretations and Policies:*

.01 The Exchange will not consider for listing any index-linked exchangeable note linked to an unsponsored ADR without the prior consent of the Commission staff.

.02 In the event the Exchange wants to list an index-linked exchangeable note which will pay interest at a floating rate, the Exchange will notify the Commission staff before listing such index-linked exchangeable note.

.03 Each member organization transacting business on behalf of customers in index-linked exchangeable notes must comply with the requirements of Rule 30.50(c) concerning a member organization's duty to know its customers and approve its customers' accounts.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to adopt listing standards for Index-Linked Exchangeable Notes. Under CBOE Rule 31.5(F) (*Other Securities*), the Exchange may approve for listing and trading, securities which cannot be otherwise covered by the listing criteria for common and preferred stocks, bonds, debentures, or warrants. CBOE now proposes to list for trading, under new Exchange Rule 31.5(O), index-linked exchangeable notes that are designed to allow investors to hold a single, exchange-listed note exchangeable for the cash value of the underlying stocks ("Underlying Stocks") of an index ("Underlying Index," or "Index") and thereby acquire, in a single security and single trade, exposure to a specific index of Underlying Securities.

A. Index-Linked Exchangeable Notes Generally

Description. Index-Linked Exchangeable Notes are debt securities that are exchangeable at the option of the holder (subject to the requirement that the holder in most circumstances exchanges a specified minimum amount of notes), on call by the issuer, or at maturity for a cash amount (the "Cash Value Amount") based on the reported market prices of the underlying stocks of an underlying index. Each index-linked exchangeable note is intended to provide investors with an instrument that closely tracks the Underlying Index. Notwithstanding that the notes are linked to an index, they will trade as a single security. The linkage is on a 1-to-1 basis so that a holder of notes is fully exposed to depreciation and appreciation of the Underlying Stocks.[5] The Exchange will disseminate, on a real-time basis for each series of index-linked exchangeable notes, an estimate, updated every 15 seconds, of the value of a note of that series.[6] This will be based, for example, upon current information regarding the value of the Underlying Index. The value for any newly created index shall be disseminated by the Exchange on a real time basis and updated every 15 seconds.

Index-linked exchangeable notes are expected to trade at a lower cost than the cost of trading each of the Underlying Stocks separately,[7] and also to give investors the ability to maintain index exposure without any management or administrative fees and ongoing expenses. The initial offering price for an index-linked exchangeable note will be established on the date the note is priced for sale to the public. In addition, unlike many hybrid products, index-linked exchangeable notes will not include embedded options or leverage. Because index-linked exchangeable notes are debt securities, holders will not be recognized by issuers of the Underlying Stocks as the owner of those stocks and holders will have no rights as a stockholder with respect to those stocks.

Additional issuances of series of index-linked exchangeable notes may be made subsequent to the initial issuance of that series, and prior to the maturity of that series, for purposes of providing market liquidity. Each series of index-linked exchangeable notes may or may not provide for quarterly interest coupons based on dividends or other cash distributions paid on the Underlying Stocks during a prescribed period and an annual supplemental coupon based on the value of the Underlying Index during a prescribed period. Index-linked exchangeable notes will generally be acquired, held, or transferred only in round-lot amounts, or multiples thereof, of 100 notes, although odd-lot orders are permissible.

Beginning on a specified date, and up to a specified date prior to the maturity date or any call date, the holder of an index-linked exchangeable note may exchange some or all of its index-linked exchangeable notes for their Cash Value Amount plus any accrued, but unpaid, quarterly interest coupons. Holders will generally be required to exchange a certain specified minimum amount of index-linked exchangeable notes, although this minimum requirement may be waived following a downgrade in the issuer's credit rating below specified thresholds or the occurrence of other specified events.

Index-linked exchangeable notes may be subject to call by the issuer on specified dates or during specified periods, upon at least 30, but not more than 60, days notice to holders. The call price would be equal to the Cash Value Amount, plus any accrued but unpaid quarterly interest coupons.

At maturity, the holder of an index-linked exchangeable note will receive a cash amount equal to the Cash Value Amount plus any accumulated, but unpaid, quarterly and annual supplemental interest coupons. Although a specific maturity date will not be established until the time of the initial offering of a series of index-linked exchangeable notes, the index-linked exchangeable notes will provide for maturity within a period of not less than one nor more than thirty years from the date of issue.

B. Criteria for Initial and Continued Listing

Initial Listing. In connection with the initial listing of each series of index-linked exchangeable notes, at the time trading would begin, both the issue and issuer of such security must meet the criteria set forth in Rule 31.5(F), except that the minimum public distribution shall be 150,000 notes with a minimum of 400 public note-holders, and, if traded in thousand dollar denominations, then no minimum number of holders is required.

[5] Telephone conversation between Jim Flynn, Attorney, CBOE, and Christopher Solgan, Law Clerk, Division, Commission, on August 15, 2002.

[6] Where the Issuer of the index-linked exchangeable note disseminates the estimate of the value of the note through another exchange, the CBOE will ensure that such value is being disseminated by such other exchange on a real-time basis and updated every 15 seconds.

[7] CBOE forwards that this would be due to reduced commission and custody costs.

Continued Listing. Beginning twelve months after the initial issuance of a series of index-linked exchangeable notes the Exchange will consider the suspension of trading in, or the removal from listing of, those series of index-linked exchangeable notes upon the occurrence of any of the following circumstances: (i) If the series has fewer than 50,000 notes issued and outstanding; (ii) if the market value of all index-linked exchangeable notes of that series issued and outstanding is less than $1 million; or (iii) if such other event shall occur or such other condition exist which, in the opinion of the Exchange, makes further dealings on the Exchange unadvisable.

C. Eligibility Standards for Issuers

The following standards shall apply to each issuer of index-linked exchangeable notes:

(i) *Assets/Equity:* The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer that is unable to satisfy the earnings criteria set forth in the first sentence of CBOE Rule 31.5(A)(2), the Exchange generally will require the issuer to have the following: (A) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (B) assets in excess of $100 million and stockholders' equity of at least $20 million.

(ii) *Distribution:* Minimum public distribution of 150,000 notes with a minimum of 400 public noteholders, except, if traded in thousand dollar denominations, then no minimum number of holders.

(iii) *Principal Amount/Aggregate Market Value:* Not less than $4 million.

(iv) *Tangible Net Worth:* The issuer will be expected to have a minimum tangible net worth in excess of $250 million, and to otherwise substantially exceed the earnings requirements set forth in CBOE Rule 31.5(A)(2). In the alternative, the issuer will be expected: (A) To have a minimum tangible net worth of $150 million, and to otherwise substantially exceed the earnings requirements set forth in CBOE Rule 31.5(A)(2); and (B) not to have issued index-linked exchangeable notes where the original issue price of all the issuer's other index-linked exchangeable note offerings (combined with other index-linked exchangeable note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

D. Description of the Underlying Indices

Underlying Indices will either be: (i) Indices that have been created by a third party and have been reviewed and approved for the trading of options or other derivative securities (each, a Third Party Index) either by the Commission under Section 19(b)(2) of the Act,[8] and the rules thereunder, or by the Exchange under rules adopted pursuant to Rule 19b–4(e),[9] or (ii) indices which the issuer has created and for which an Exchange will have obtained approval either from the Commission pursuant to Section 19(b)(2) of the Act,[10] and rules thereunder, or from the Exchange under rules adopted pursuant to Rule 19b–4(e)[11] ("Issuer Index").

All changes to an Underlying Index, including the deletion and addition of Underlying Stocks, index rebalancing, and changes to the calculation of the index, will be made in accordance with the Commission's Section 19(b)(2) order or the Exchange rules under which that index was approved, as the case may be.

The Underlying Index will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar, or modified equal-dollar weighting methodology. If the issuer or a broker-dealer is responsible for maintaining (or has a role in maintaining) the Underlying Index, it would be required to erect and maintain a "Fire Wall," in a form satisfactory to the Exchange, to prevent the flow of information regarding the Underlying Index from the index production personnel to the sales and trading personnel, and the index must be calculated by a third party who is not a broker-dealer.

E. Eligibility Standards for Underlying Stocks

The following standards shall apply to each Underlying stock:

(i) *General Criteria:* Each issuer of an Underlying Stock shall be an Exchange Act reporting company that is listed on a national securities exchange or is traded through the facilities of a national securities association and is subject to last sale reporting.

(ii) *Criteria Applicable to Underlying Stocks of Third-Party Indices:* In addition to meeting the "General Criteria" set forth under clause (d)(i) above, each Underlying Stock of a Third-Party Index shall also meet the criteria specified for Underlying Stocks of that index in the Commission's Section 19(b)(2) order approving that index or the Exchange rules under which it was approved.

[8] 15 U.S.C. 78s(b).

[9] 17 CFR 240.19b–4(e).

[10] 15 U.S.C. 78(s)b.

[11] 17 CFR 240.19b–4(e).

(iii) *Criteria Applicable to Underlying Stocks of Issuer Indices:* In addition to meeting the "General Criteria" set forth under clause (d)(i) above, each Underlying Stock of an Issuer Index shall also meet the criteria specified in (A) or (B) below:

(A) Each Underlying Stock of an Issuer Index shall meet each of the following criteria:

(1) A minimum market value of at least $75 million, except that for each of the lowest weighted Underlying Stocks in the index that in the aggregate account for no more than 10% of the weight of the index, the market value can be at least $50 million;

(2) Trading volume in each of the last six months of not less than 1 million shares, except that for each of the lowest weighted Underlying Stocks in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;

(3) In a capitalization-weighted index, the lesser of the five highest weighted Underlying Stocks in the index or the highest weighted Underlying Stocks in the index that, in the aggregate, represent at least 30% of the total number of Underlying Stocks in the index, each have an average monthly trading volume of at least 2 million shares over the previous six months;

(4) 90% of the index's numerical index value and at least 80% of the total number of Underlying Stocks will meet the current criteria for standardized option trading set forth in CBOE Rule 5.3;

(5) American Depositary Receipts ("ADRs") that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the index;

(6) All component stocks or ADRs will either be listed on the American Stock Exchange or the New York Stock Exchange or traded through the facilities of the Nasdaq and reported National Market System ("NMS") securities; and

(7) No Underlying Stock will represent more than 25% of the weight of the index, and the five highest weighted Underlying Stocks in the index will not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 Underlying Stocks).

(8) The standards set forth in clauses (1) to (7) above must be continuously maintained, except that:

(a) The criteria that no single Underlying Stock represent more than 25% of the weight of the index and the five highest weighted Underlying Stocks in the index cannot represent more than

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50% (or 60% of indices with less than 25 Underlying Stocks) of the weight of the index, need only be satisfied for capitalization-weighted and price-weighted indices as of the first day of January and July of each year;

(b) The total number of Underlying Stocks in the index may not increase or decrease by more than 33⅓rd% from the number of Underlying Stocks in the index at the time of its initial listing, and in no event may be fewer than nine Underlying Stocks;

(c) The trading volume of each Underlying Stock in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted Underlying Stocks in the index that in the aggregate account for no more than 10% of the weight of the index trading volume must be at least 400,000 shares for each of the last six months; and

(d) In a capitalization-weighted index, the lesser of the five highest weighted Underlying Stocks in the index or the highest weighted Underlying Stocks in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had an average monthly trading volume of at least 1 million shares over the previous six months.

(B) In the alternative, each Underlying Stock of an Issuer Index shall meet each of the following criteria:

(1)(a) A minimum market capitalization of $3 billion and during the 12 months preceding listing is shown to have traded at least 2.5 million shares; (b) a minimum market capitalization of $1.5 billion and during the 12 months preceding listing is shown to have traded at least 10 million shares; or (c) a minimum market capitalization of $500 million and during the 12 months preceding listing is shown to have traded at least 15 million shares;

(2) No Underlying Stock will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% of the weight of the index (60% from an index consisting of fewer than 25 component securities), except that for capitalization-weighted and price-weighted indices, these standards need be satisfied only as of the first day of January and July in each year;

(3) If any Underlying Stock is the stock of a non-U.S. company that is traded in the U.S. market as sponsored American Depositary Shares ("ADS") or ADRs then for each such security the Exchange shall either:

(a) Have in place a comprehensive surveillance sharing agreement with the primary exchange on which each security underlying the ADS or ADR is traded;

(b) The combined trading volume of each non-U.S. security and other related non-U.S. securities occurring in the U.S. market or in markets with which the Exchange has in place a comprehensive surveillance sharing agreement represents (on a share equivalent basis for any ADS) at least 50% of the combined worldwide trading volume in each non-U.S. security, other related non-U.S. securities, and other classes of common stock related to each non-U.S. security over the six-month period preceding the date of listing of the related index-linked exchangeable note; or (c)(i) The combined trading volume of each non-U.S. security and other related non-U.S. securities occurring in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in each non-U.S. security and in other related non-U.S. securities over the six-month period preceding the date of listing of the related index-linked exchangeable note; (ii) the average daily trading volume for each non-U.S. security in the U.S. markets over the six months preceding the date of listing of the related index-linked exchangeable note is 100,000 or more shares; and (iii) the trading volume is at least 60,000 shares per day in the U.S. markets on a majority of the trading days for the six months preceding the date of listing of the related index-linked exchangeable note.

(4) An Underlying Stock may not exceed 5% of the total outstanding common shares of the issuer of that Underlying Stock, however, if any Underlying Stock is a non-U.S. security represented by ADSs, common shares, or otherwise, then for each such index-linked exchangeable note the instrument may not exceed

(a) 2% of the total shares outstanding worldwide provided at least 20% of the worldwide trading volume in each non-U.S. security and related non-U.S. security during the six-month period preceding the date of listing occurs in the U.S. market;

(b) 3% of the total worldwide shares outstanding provided at least 50% of the worldwide trading volume in each non-U.S. security and related non-U.S. security during the six-month period preceding the date of listing occurs in the U.S. market; and

(c) 5% of the total shares outstanding worldwide provided at least 70% of the worldwide trading volume in each non-U.S. security and related non-U.S. security during the six-month period preceding the date of listing occurs in the U.S. market.

(5) If any non-U.S. security and related securities has less than 30% of the worldwide trading volume occurring in the U.S. market during the six-month period preceding the date of listing, then the instrument may not be linked to that non-U.S. security.

If an issuer proposes to list an index-linked exchangeable note that relates to more than the allowable percentages set forth above, the Exchange with the concurrence of the staff of the Division, will evaluate the maximum percentage of index-linked exchangeable notes that may be issued on a case-by-case basis. If an Underlying Stock to which an index-linked exchangeable note is to be linked is the stock of a non-U.S. company which is traded in the U.S. market as a sponsored ADS, ordinary shares or otherwise, then the minimum number of holders of such Underlying Stock shall be 2,000.

F. Exchange Rules Applicable to Index-Linked Exchangeable Notes

Index-linked exchangeable notes will be treated as equity instruments. Index-linked exchangeable notes will be subject to all Exchange rules governing the trading of equity securities, including provisions of CBOE Rule 30.76 (Trade-Through Rule), which prohibits Exchange members from initiating trade-throughs for ITS securities, as well as Exchange rules governing priority, parity and precedence of orders, market volatility-related trading halt provisions and responsibilities of market-makers.[12] Exchange equity margins will apply to the trading in index-linked exchangeable notes.

Prior to the commencement of trading in index-linked exchangeable notes, the Exchange will issue a circular to members highlighting the characteristics of index-linked exchangeable notes, including, but not limited to: That the notes are subject to call by the issuer; that members must adhere to the procedures established under CBOE Rule 9.7 in the opening of new accounts; that the Exchange may consider factors such as those set forth in CBOE Rule 24.7 in exercising its discretion to halt or suspend trading; and that trading will be halted in the event that market volatility parameters set forth in CBOE Rule 6.3B have been reached.

[12] However, CBOE represents that if index-linked exchangeable notes are traded only in round lots (or round-lot multiples), the Exchange's rules relating to odd-lot executions will not apply.

Lastly, the Exchange's surveillance procedures for index-linked exchangeable notes will be similar to the procedures used for equity-linked term notes, index portfolio receipts trust issued receipts, and other equity non-option products traded on the CBOE and will incorporate and rely upon existing CBOE surveillance systems. The Exchange will closely monitor activity in index-linked exchangeable notes to identify and deter any potential improper trading activity in the index-linked exchangeable notes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[13] in general and furthers the objectives of Section 6(b)(5)[14] in particular in that it is designed to promote just and equitable principles of trade as well as to protect investors and the public interest, by increasing trading opportunities which should, in turn, increase the depth and liquidity of the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2002–29 and should be submitted by September 12, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change and Amendment Nos. 1 and 2 thereto are consistent with the requirements of Section 6(b)(5) of the Act[15] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the Exchange's proposal to list and trade index-linked exchangeable notes will provide an instrument for investors to achieve desired investment objectives through the purchase of debt securities—index-linked exchangeable notes—exchangeable for the cash value of the Underlying Stocks of an Underlying Index.[16] Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[17] Furthermore, the Commission has approved the trading of identical products on the Amex[18] and the Phlx.[19]

The Commission notes that the initial offering price of an index-linked exchangeable note will be determined on the date that the note is priced for sale to the public. The Commission believes that index-linked exchangeable notes will be attractive to investors because they are expected to trade at lower cost than the cost of trading each of the Underlying Stocks separately. The Commission also notes that the Exchange will disseminate an estimate of the value of a note for each series of index-linked exchangeable notes, on a real time basis, every 15 seconds. The value of any Underlying Index will also be publicly available to investors on a real time basis. The CBOE, for example, has stated that to the extent there is an existing Index, it will ensure its value is publicly available, and if it is a new Index, that the CBOE would publish the value itself on a real time basis. This will ensure investors receive up-to-date information on the value of the note and the Underlying Index. Accordingly, index-linked exchangeable notes should allow investors to: (i) Respond quickly to market changes through intra-day trading opportunities; (ii) engage in hedging strategies not currently available to retail investors; and (iii) reduce transaction costs for trading a group or index of securities.

Although the value of index-linked exchangeable notes will be based on the value of the Underlying Stocks in an Underlying Index, index-linked exchangeable notes are not leveraged instruments.[20] In essence, index-linked exchangeable notes are debt securities based on the Underlying Stocks of an Underlying Index; the holders of such notes will not be considered owners of the Underlying Stocks and will not have the rights of a stockholder in those stocks. However, index-linked exchangeable notes will be regulated as equity instruments and will be subject to all of the Exchange's rules governing the trading of equity securities. Nevertheless, the Commission believes that the unique nature of index-linked exchangeable notes, related to, among

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] Index-linked exchangeable notes will generally be acquired, held or transferred only in round-lot amounts (or round-lot multiples) of 100 notes although odd-lot orders are permissible. Although these notes will have features similar to other index related products, they differ from other products with respect to their exchangeability feature. The Commission notes that the holder of the note may exchange the notes at his or her option, on call by the issuer, or at maturity for the cash value based upon the reported market prices of the Underlying Stocks of an Underlying Index. Holders, however, will generally be required to exchange a certain specified minimum amount of index-linked exchangeable notes, although this minimum requirement may be waived following a downgrade in the issuer's credit rating below specified thresholds or the occurrence of other specified events.

[17] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[18] *See* Securities Exchange Act Release No. 44621, *supra* note 3.

[19] *See* Securities Exchange Act Release No. 45082, *supra* note 3.

[20] In contrast, proposals to list exchange-traded derivative products that contain a built-in leverage feature or component raise additional regulatory issues, including heightened concerns regarding manipulation, market impact, and customer suitability. *See, e.g.*, Securities Exchange Act Release No. 36165 (August 29, 1995), 60 FR 46653 (September 7, 1995) (relating to the establishment of uniform listing and trading guidelines for stock index, currency, and currency index warrants).

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other things, the exchangeability feature,[21] raise certain product design, disclosure, trading, and other issues that must be addressed.

A. Index-Linked Exchangeable Notes Generally

The Commission believes that the proposed index-linked exchangeable notes are reasonably designed to provide investors with an investment vehicle that substantially reflects the value of the Underlying Stocks of an Underlying Index. Index-linked exchangeable notes will be treated as equity instruments subject to CBOE rules governing the trading of equity securities. As such, the Commission finds that adequate rules and procedures exist to govern the trading of index-linked exchangeable notes. In this regard, the Commission notes that the Exchange will impose specific criteria in the selection of issuers, the Underlying Stocks, and the Underlying Indices.

As noted above, the CBOE rules for index-linked exchangeable notes contain specific criteria for issuers. For example, the issuer must have a minimum tangible net worth in excess of $250 million and substantially exceed the earnings requirements in the first sentence of CBOE Rule 31.5(A)(2); or a minimum tangible value of $150 million, substantially exceed the earnings requirements in the first sentence of CBOE Rule 31.5(A)(2), and not to have issued index-linked exchangeable notes where the original issue price of all the issuer's other index-linked exchangeable note offerings (combined with other index-linked exchangeable note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth. These criteria are in part intended to ensure that the issuer has enough assets to meet its obligations under the terms of the note and should help to reduce systematic risk.

The minimum issue requirements for the issue of index-linked exchangeable notes should also serve to establish a minimum level of liquidity for the product. These issue requirements include: (i) A minimum public distribution of 150,000 notes with a minimum of 400 public noteholders (no minimum number of holders if traded in one thousand dollar denominations), and (ii) market value of $4 million.

The CBOE rules applicable to the index-linked exchangeable notes also contain minimum requirements for the Indices the note can be linked to and the underlying components of those Indices. For example, because all components of an Underlying Index must be a U.S. reporting company, there will be information of available Index component stocks. Further, the CBOE's proposed rules for the Indices underlying index-linked exchangeable notes are linked to other approved criteria for index related products. Accordingly, any Underlying Index would have to follow the criteria adopted by the Commission for that Index, including the criteria for component stocks already in CBOE's rules. These requirements will generally contain, among other things, minimum market capitalization, trading volume, and concentration requirements that are designed to reduce manipulation concerns and ensure a minimum level of liquidity for component securities.

In summary, the rules for selecting components of Indices are intended to make the Underlying Stocks and the Underlying Indices representative of the market they are intended to reflect as well as to reduce manipulation concerns by setting forth minimum liquidity standards for Underlying Stocks. Accordingly, the Commission believes that these criteria should serve to ensure that the Underlying Stocks of Underlying Indices are well capitalized and actively traded.

B. Disclosure

The Commission believes that the Exchange's proposal should ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading index-linked exchangeable notes. The Commission notes that upon the initial listing of any class of index-linked exchangeable notes, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this type of security.[22] The circular will also note Exchange members' responsibilities under CBOE Rule 30.50(c) regarding transactions in index-linked exchangeable notes. CBOE Rule 30.50(c) generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.[23] Exchange Rule 30.50(c) further requires that members be personally informed of the essential facts of each customer prior to giving the required written approval for the opening of that customer account.[24]

C. Trading of Index-Linked Exchangeable Notes

The Commission finds that adequate rules and procedures exist to govern the trading of index-linked exchangeable notes. Index-linked exchangeable notes will be treated as equity instruments subject to all CBOE rules governing the trading of equity securities. These rules include: rules governing priority, parity and precedence of orders, market volatility related trading halt provisions pursuant to Exchange Rule 6.3B, responsibilities of specialists, members dealing for their own accounts, odd-lot brokers, and registered traders, and handling of orders and reports. In addition, the Exchange's equity margin rules and the regular equity trading hours of 9:30 am to 4:00 pm will apply to transactions in index-linked exchangeable notes.

The Commission is satisfied with CBOE's development of specific listing and delisting criteria for index-linked exchangeable notes. For example, in connection with the initial listing of each series of index-linked exchangeable notes, the Exchange has established that a minimum of 150,000 notes held by at least 400 holders be required to be outstanding when trading begins. These criteria should help ensure that a minimum level of liquidity will exist in each series of index-linked exchangeable notes to allow for maintenance of fair and orderly markets. The delisting criteria also allows the Exchange to consider suspension of trading and the delisting of a series of index-linked exchangeable notes if an event were to occur that made further dealings in such series inadvisable. This will give the CBOE flexibility to delist index-linked exchangeable notes if circumstances warrant such action. Further, CBOE rules have specific criteria that allow them to delist if there is fewer than 50,000 notes issued and outstanding, or if the market value of the index-exchangeable notes is less than $100,000. This should ensure a minimum level of liquidity for these products. Accordingly, the Commission believes that the rules governing the trading of index-linked exchangeable notes, consistent with Section 6(b)(5) of the Act,[25] provide adequate safeguards to protect investors and the public interest. While the index-linked exchangeable notes have certain call and redemption features that make them different from other products, the CBOE has addressed any concerns by adopting the existing criteria used in other index related products. In addition, the CBOE will highlight these different features in the circular to members.

D. Dissemination of Information

The Commission believes that the value of index-linked exchangeable notes that the Exchange proposes to disseminate will provide investors with timely and useful information concerning the value of the index-linked exchangeable notes based on current information regarding the value of the Underlying Index. The value of the Underlying Index will also be publicly disseminated. This information will be disseminated and updated every 15 seconds during regular CBOE trading hours of 8:30 a.m. to 3 p.m., Chicago time.

E. Surveillance

The Commission believes that the surveillance procedures developed by the CBOE for index-linked exchangeable notes should be adequate to address concerns associated with the listing and trading of such notes. In this regard, the CBOE has developed procedures to monitor activity in index-linked exchangeable notes to identify and deter improper trading activity.

The Commission also notes that concerns are raised when a broker-dealer is involved in the development and maintenance of an Underlying Index upon which a product, such as index-linked exchangeable notes is based, in that case, the broker-dealer and its affiliate should have procedures designed specifically to address the improper sharing of information. The Commission notes that the Exchange requires the implementation of procedures that are satisfactory to the Exchange to prevent the misuse of material, non-public information regarding changes to Underlying Stocks of an Underlying Index in a particular series of index-linked exchangeable notes. In addition, the Commission notes that if a broker-dealer is involved in developing or maintaining an Underlying Index, the Index must be calculated by a third party who is not a broker-dealer.[26] The Commission believes that such information barrier procedures will address the unauthorized transfer and misuse of material, non-public information.

F. Scope of the Commission's Order

The Commission is approving the Exchange's proposed listing and trading standards for the index-linked exchangeable notes as discussed herein. Index-linked exchangeable notes addressed in this order can be listed pursuant to Rule 19b–4(e)[27] if they meet the standards discussed above in the CBOE rules. The Commission notes that with respect to any future rules adopted by the Exchange pursuant to Rule 19b–4(e),[28] the Exchange has indicated that in its Section 19(b)(2) filings to adopt such new rules, it will state and discuss whether or not it proposes to apply the new rule standards to index-linked exchangeable notes.

G. Accelerated Approval

The Commission finds good cause for approving the proposal and Amendments Nos. 1 and 2 thereto prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The proposal establishes listing and trading standards for a new product, index-linked exchangeable notes. Granting accelerated approval will allow the Exchange to immediately begin listing and trading series of index-linked exchangeable notes under these new standards. While the structure of the product is different from those previously reviewed by the Commission, the CBOE proposes to apply existing criteria used for other index related products. In addition, the Commission has approved the trading of identical products on the Amex[29] and the Phlx.[30] Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,[31] to approve the proposal and Amendments Nos. 1 and 2 thereto on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–CBOE–2002–29) and Amendments Nos. 1 and 2 thereto are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

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[21] *See supra* note 15.

[22] The Exchange represents that it will highlight the exchangeability feature of index-linked exchangeable notes in its circular to members.

[23] CBOE Rule 30.50(c).

[24] *Id.*

[25] 15 U.S.C. 78f(6)(5).

[26] *See* CBOE Rule 24.2(b)(12).

[27] 17 CFR 240.19b–4(e).

[28] 17 CFR 240.19b–4(e).

[29] *See* Securities Exchange Act Release No. 44621, *supra* note 3.

[30] *See* Securities Exchange Act Release No. 45082, *supra* note 3.

[31] 15 U.S.C. 78f(b)(5) and 78s(b).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46369; File No. SR–NASD–2002–42]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change and Amendments Nos. 1, 2, 3, 4, 5 and 6 Thereto by the National Association of Securities Dealers, Inc. Relating to the Integrated Processing of Odd-Lot Share Amounts in Nasdaq's SuperMontage System

August 16, 2002.

I. Introduction

On March 25, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend several NASD Rules governing the operation of Nasdaq's future Order Display and Collector Facility ("SuperMontage") to allow the system to accept, integrate, process, and otherwise facilitate the interaction of orders of less than one round-lot (100 shares) with all other SuperMontage quotes and orders. Nasdaq filed Amendment No. 1 to the proposed rule change on April 23, 2002.[3] Nasdaq filed Amendment No. 2 to the proposed rule change on May 17, 2002.[4] Nasdaq filed Amendment No. 3 to the proposed rule change on May 17, 2002.[5] The proposed rule change, as amended by Amendments Nos. 1, 2, and 3, was published for comment in the **Federal Register** on May 28, 2002.[6] The Commission received thirteen comment letters on the proposed rule change, as amended.[7] Nasdaq filed Amendment

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On April 23, 2002, the Exchange filed a Form 19b–4, which replaced the original filing in its entirety ("Amendment No. 1").

[4] On May 17, 2002, the Exchange filed a Form 19b–4, which replaced the original filing and Amendment No. 1 in their entirety ("Amendment No. 2").

[5] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 17, 2002 ("Amendment No. 3").

[6] *See* Securities Exchange Act Release No. 45968 (May 20, 2002), 67 FR 36946 ("Proposing Release").

[7] *See* email to rule-comments@sec.gov, Commission, from Joshua Levine, dated May 30, 2002 ("Levine Letter"). *See also* letters to Jonathan G. Katz, Secretary, Commission, from Keith A. Gertsen, Managing Director, Head, Nasdaq Trading,

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No. 4 to the proposed rule change on June 6, 2002.[8] Nasdaq filed Amendment No. 5 to the proposed rule change on August 9, 2002.[9] Nasdaq filed Amendment No. 6 to the proposed rule change on August 13, 2002.[10] This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

As originally approved, SuperMontage included a separate mechanism for processing and executing odd-lot orders at the inside price.[11] Nasdaq now proposes to fully integrate the processing of odd, mixed, and round-lot orders in the SuperMontage Non-Directed Order Process.[12] As such, Nasdaq would not provide a separate process for odd-lot orders in SuperMontage, as originally approved, but instead would allow the entry and execution of orders in any whole share amount from 1 to 999,999 shares.

A. Entry and Display of Quotes/Orders

Under the proposal, all Nasdaq market participants including market makers, Electronic Communication Networks ("ECNs"), order entry firms, and Unlisted Trading Privilege ("UTP") Exchanges will be able to enter orders into SuperMontage in any whole-share amount from 1 to 999,999 shares. Odd-lot and mixed-lot orders would generally be treated the same as round-lot orders. For instance, odd-lot and mixed-lot orders, like round-lot orders, will receive a time stamp upon entry in the SuperMontage. Market makers and ECNs ("Nasdaq Quoting Market Participants") and UTP Exchanges will be able to enter odd-lot and mixed-lot orders as market orders or limit orders with any non-directed order designation type permitted by the NASD rules.[13] Odd-lot and mixed-lot orders will be aggregated, decremented, and cancelled under the same terms and conditions as round-lot orders.[14] Odd-lot and mixed-lot orders could be preferenced to other market participants in the same manner as round-lots.[15] While orders originally entered into the SuperMontage as odd-lots would not be able to use reserve size, orders originally entered into the system as mixed-lots could use reserve size.[16]

Under the proposal, all displayed interest in the Nasdaq Order Display Facility ("NODF") would continue to be in round-lot increments. The NODF, which aggregates all quotes and orders (attributable and non-attributable) at each price level, and displays the five best prices with associated aggregate size on each side of the market, will reflect odd and mixed-lots in the manner described below. For display purposes, Nasdaq would aggregate the shares of the multiple quotes[17] and orders entered by a Nasdaq Quoting Market Participant or UTP Exchange at a single price level and round that total share amount down to the nearest round-lot amount for display and dissemination.[18] Likewise, if a party enters a mixed-lot order, the system would round down the mixed-lot order to the nearest round-lot increment for display in the NODF. Any odd-lot portion of a mixed-lot that is not displayed as a result of this rounding process would remain in the system eligible for execution, with the time-priority of its original entry. Orders originally entered as odd-lots that are not aggregated to any other quotes and orders, and quotes or orders that have been decremented to an odd-lot remainder would not be displayed.

Although the SuperMontage is similar in many respects to Nasdaq's current trading platform, because it is a new system, market participants will have to program their interfaces to enable them to utilize SuperMontage features. For market participants that update their technology to permit them to enter multiple quotes or orders, any insufficient amount of shares at a price level to display a round-lot share amount (*i.e.*, odd-lot remainder) after an execution against its quote/order would remain in the system eligible for execution, unless cancelled by the market participant. Because odd-lots will not be displayed in SuperMontage, the system would display that market participant's next best priced quote/order in a round-lot share amount on that same side of the market if the market participant has attributable and displayable trading interest of at least a single round-lot share amount in the system. If the market participant does not have another quote/order in SuperMontage on a particular side of the market, and the market participant fails to update its quote/order, a new quote/order would be generated using the "penalty quote refresh" process.[19]

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and Ken P. Dengler, Managing Director, Head, Nasdaq Sales Trading, Deutsche Bank Securities, Inc., dated June 14, 2002 ("Deutsche Bank Letter"); C. Thomas Richardson, Head, Nasdaq Trading, Salomon Smith Barney, dated June 14, 2002 ("Salomon Letter"); Michael A. Bird, Chairman, and John C. Giesea, President and Chief Operating Officer, Securities Traders Association, dated June 17, 2002 ("STA Letter"); Bruce Turner, CIBC World Markets Corp. ("CIBC"), dated June 6, 2002 ("CIBC Turner Letter"); Scott W. Anderson, Associate Director, Region Americas Legal, USB Warburg LLC, dated June 17, 2002 ("USB Warburg Letter"); Howard Berstein, Vice President, Compliance Department, Robertson Stephens, Inc., dated June 17, 2002, ("Robertson Stephens Letter"); Robert Arancio on behalf of Mathew Johnson, Managing Director, Lehman Brothers Inc., dated June 18, 2002 ("Lehman Letter"); Elliot Levine, Assistant General Counsel and Executive Director, CIBC, dated June 18, 2002 ("CIBC Levine Letter"); John P. Hughes SR. V.P., Director, Nasdaq & Listed Trading, Janney Montgomery Scott LLC, dated June 12, 2002 ("Janney Letter"); Heidi H. Reynolds, Managing Director, Nasdaq Trading, Morgan Keegan & Company, Inc., dated June 14, 2002 ("Morgan Letter"); C.E. Wasson, SVP Director, Nasdaq Trading, Legg Mason, Inc., dated June 20, 2002 ("Legg Mason Letter"); and Gerald D. Putnam, Chairman and CEO, Archipelago Holdings, LLC, dated July 9, 2002 ("Arca Letter").

[8] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated June 6, 2002 ("Amendment No. 4"). In Amendment No. 4, Nasdaq made technical, non-substantive changes to the proposed rule text, which were reflected in the Proposing Release.

[9] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated August 9, 2002 ("Amendment No. 5"). In Amendment No. 5, Nasdaq made technical, non-substantive changes to the proposed rule text that are not subject to notice and comment.

[10] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated August 13, 2002 ("Amendment No. 6"). In Amendment No. 6, Nasdaq amended the text of NASD Rule 4710(b)(2)(A) to reflect recent amendments to the rule. See Securities Exchange Act Release No. 46320 (August 8, 2002) (File No. SR–NASD–2002–84). The Commission notes that this is a technical, non-substantive amendment and not subject to notice and comment.

[11] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) ("SuperMontage Order").

[12] The term "odd-lot" refers to an order that is less than 100 shares. The term "round-lot" refers to an order in 100 share increments. The term "mixed-lot" refers to an order that is comprised of round and odd lots.

[13] *See* NASD Rule 4706(a)(1)(B).

[14] *See* NASD Rule 4710(b).

[15] *See* NASD Rule 4710(b)(1)(B)(iv).

[16] *See* Securities Exchange Act Release No. 46320 (August 8, 2002), 67 FR 53033 (August 14, 2002) (File No. SR–NASD–2002–84).

[17] The Commission notes that the Nasdaq system will continue to display and require the entry of quotes in round-lot increments. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Kelly Riley, Senior Special Counsel, Division, Commission, on July 31, 2002.

[18] For example, if a Nasdaq Quoting Market Participant enters three separate orders to buy 50 shares, 225 shares and 590 shares at the same price level, it would have displayed next to its market identifier on the bid side of the market an aggregate quote size of 800 shares (50 + 225 + 590 = 865, rounded down to 800 shares for display purposes).

[19] Pursuant to NASD Rule 4710(b)(5) if all market maker bids and/or offers are exhausted so that there are no longer any quote or orders displayed on the bid or offer side of the market, and the market maker does not update its principal quote via Auto Quote Refresh ("AQR"), transmit a revised attributable quote/order to Nasdaq, or have another attributable quote or order in the system, the system, after 30 seconds, will refresh only the market maker's exhausted bid or offer quote to a normal unit of trading priced $0.01 inferior to the lesser of either: (a) The last valid displayed inside bid/offer in the security before all such bids/offers were exhausted; or (b) the market maker's last displayed bid/offer before exhaustion. If the resulting bid/offer quote will create a locked or crossed market, SuperMontage will instead re-open the exhausted market maker's bid/offer quote at a price $0.01 inferior to the unexhausted inside bid/offer in that security. If at any time this penalty quote refresh process will result in the creation of a bid/offer of less than $0.01, the system will refresh that bid/offer to a price of $0.01. *See* Securities Exchange Act Release No. 46141 (June 28, 2002), 67 FR 44906 (July 5, 2002) (approving File No. SR–NASD–2002–01).

The odd-lot remainders of market participants using updated technology would remain in the system, undisplayed, until executed or cancelled, with its original time-stamp of entry.[20]

In the Proposing Release, Nasdaq explained that during the initial SuperMontage roll-out it will also permit participants to access SuperMontage using their current technology ("Legacy Quotes"), but that the use of current technology limits a market participant's ability to use certain SuperMontage features. Most notably, if a participant uses its current technology, it will be unable to enter multiple quotes/orders in SuperMontage. According to Nasdaq, because of the inability of Legacy Quote users to enter multiple quotes/orders, it would also be technologically infeasible for these market participants to simultaneously support a quote/order and an odd-lot remainder in the system. Thus, the odd-lot remainders of Legacy Quote users would be purged from SuperMontage contemporaneous with a market participant's quote or order being refreshed to at least a round-lot amount. The quote of a market participant that uses Legacy Quote technology may be refreshed: (1) By the market participant, (2) using the AQR function to a price and size selected by the entering party,[21] or (3) using the penalty quote refresh process.[22]

Nasdaq Quoting Market Participants and UTP Exchanges entering orders that are at least 100 shares would be able to use the SuperMontage reserve size function.[23] If a quote/order with a reserve size is decremented to an odd-lot remainder, the system would refresh the quote/order from reserve size by an amount designated by the market participant. Any odd-lot remainder available prior to the reserve size refresh would be retained by the system. Thus, the reserve size refresh amount and the odd-lot remainder would be aggregated and displayed.[24]

B. Execution Process

Under the proposal, odd-lots and mixed-lots shall be executed on a share-by-share basis consistent with the SuperMontage order execution algorithms. Like round-lots, odd-lots and mixed-lots would be executed pursuant to the execution algorithm selected (price/time (default), price/time with fee consideration, and price/size/time) by the entering market participant.[25] Accordingly, SuperMontage would not execute an odd or a mixed-lot at an inferior price level until all better-priced share amounts that are in the system, including undisplayed odd-lots, are executed.

Under the proposal, undisplayed odd-lots with a better price than the Nasdaq best bid or offer ("BBO") would be executed pursuant to the SuperMontage rule for clearing locked and crossed markets.[26] A locked market occurs when a market participant's bid equals the lowest offer of another market participant. A crossed market occurs when a market participant's bid exceeds the lowest offer of another market participant. If a market participant submitted a quote that would lock or cross an undisplayed odd-lot, that market participant would receive a system warning. To complete the quote entry, the participant would have to override the system warning.[27] If a Nasdaq Quoting Market Participant or UTP Exchange used the system override for a quote that would lock or cross an undisplayed odd-lot, the SuperMontage would not display the quote, but instead would reformat the quote as a marketable limit order and enter it into the SuperMontage as a non-directed order for execution. The reformatted order would be routed to the undisplayed odd-lot order next in the queue that would be locked or crossed, and the order would be executed at the price of the undisplayed odd-lot. Once the odd-lot execution takes place, if the Nasdaq Quoting Market Participant or UTP Exchange's quote that would have locked or crossed the odd-lot has not been completely filled, the SuperMontage would reformat the order again and display it (consistent with the parameters of the quote) as a quote on behalf of the entering Nasdaq Quoting Market Participant or UTP Exchange. If the market participant did not override the system warning for a quote/order that would lock or cross an undisplayed odd-lot, the SuperMontage would reject the market participant's quote and return it to the entering party.

C. Trade Reporting

Under the proposal, Nasdaq would continue to disseminate transactions to the public tape, whether it is a round or mixed-lot execution, in round-lot increments. Thus, mixed-lot executions would be rounded down to the next lowest round-lot increment for the purpose of reporting transactions to the public tape. Odd-lot transactions would not be reported to the tape. However, odd-lots and mixed-lots would be included in Nasdaq's daily volume report.

III. Summary of Comments

The Commission received thirteen comment letters on the proposed rule change, all of which supported the proposal.[28] A majority of commenters noted that the proposal should enhance

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[20] Market-makers cannot fulfill their quote display obligations through the presence of odd-lot remainders in the system. *See* NASD Rule 4613.

[21] Nasdaq's AQR function will allow Legacy Quote market participants to have their displayed quote refreshed to a pre-determined price and size (round-lot share amount) immediately after its displayed and reserve size at a price level is reduced to less than 100 shares. Any odd-lot share amount present at the time a Legacy Quote market participant's quote is refreshed by AQR shall not be retained in SuperMontage for execution and the system would only recognize and potentially process the round-lot refreshed amount. Market participants using updated technology who have the ability to enter multiple quotes/orders cannot use the AQR function.

[22] Between the time a Legacy Quote user's quote/order is decremented to less than a round-lot share amount and the Legacy Quote user's quote is refreshed pursuant to the penalty quote refresh process (or updated by the transmission of a revised attributable quote) an odd-lot remainder would be eligible for execution in SuperMontage.

[23] Orders originally entered as odd-lots would not be able to use reserve size refresh. *See supra* note and accompanying text.

[24] For example, a market maker ("MMA") is displaying a 1000 share bid quote. MMA has 5000 shares in reserve and a 500 share refresh size. SuperMontage executes 925 shares against MMA's quote. Upon execution, since MMA's displayable interest is less than 100 shares, the system would refresh MMA's quote by the refresh amount—500 shares, but would also retain the 75 share odd-lot remainder in the system. The resulting 575 share total would remain in the system and available for execution but would be rounded down to 500 shares for display purposes.

[25] The three SuperMontage order execution algorithms will make an exception for non-directed, non-preferenced orders entered by a market maker or ECN when that market maker or ECN's quote/order is at the inside market. *See* NASD Rule 4710(b)(1)(B)(iv).

[26] *See* NASD Rule 4710(b)(3)(A).

[27] Prior to entry, a market participant could append an override instruction to the locking/crossing quote. The system would deliver an execution or a rejection based on the market participant's instructions.

[28] *See supra* note 7. One commenter, however, noted that it would only support approval of the proposed rule change on a pilot basis. This commenter believed that only after SuperMontage becomes operational can a better solution to the odd-lot process become apparent. In addition, the commenter suggested that Nasdaq study the proposed odd-lot process in the SuperMontage environment. *See* UBS Warburg Letter.

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both liquidity and transparency.[29] Several commenters believed that the proposal could benefit individual investors by providing small orders with standing along with large orders on the book.[30] Several commenters also believed that the proposed changes would continue to address the gaming issues that the originally approved odd-lot process intended to minimize.[31] Some commenters noted that the proposal would remove the possibility that existed in the previously approved odd-lot process that a market maker might have to execute more shares than it was willing to trade.[32] Finally, a few commenters believed that the proposal would prevent market participants from hiding significant numbers of shares from their quote and the tape by entering multiple odd-lots.[33]

One commenter, while supporting approval of the proposal, suggested modifications.[34] First, the commenter suggested that SuperMontage permit participants to enter multiple quotes/orders with odd-lot and mixed-lot sizes. Second, the commenter suggested that Nasdaq extend its trade reporting rules to cover odd-lot transactions. Finally, the commenter suggested that Nasdaq introduce the actual shares concept to their data feeds (*i.e.*, disseminate the actual size of quotes and orders).

In response to these suggestions, Nasdaq submitted a letter to the Commission.[35] Nasdaq stated that the requirement that initial entry of quotes be in round-lot amounts is based on the concept that a party should not be allowed to initially enter a quotation that is not displayable. With regard to trade reporting and Nasdaq data feeds, Nasdaq stated that expanding the actual shares concept to the dissemination of quotes and orders would raise issues that impact numerous market participants, including data vendors, other markets, the internal systems of broker-dealers, regulators, and public investors.

Finally, one commenter, while supporting Nasdaq's goal of integrating odd-lot orders in the execution process, raised concerns about the technical design of the proposal.[36] Specifically, the commenter expressed concern regarding undisplayed odd-lots orders that have a better price than the displayed BBO. The commenter explained that order-delivery ECNs would have three options when an undisplayed odd-lot order was locked or crossed: (1) Override the lock/cross warning message and receive an automatic execution, (2) accept the lock/cross warning message, have the system reject and return the quotation, and not display it in SuperMontage, or (3) convert the quotation to an order and re-submit it to SuperMontage. The commenter believed that these three options were respectively problematic because: (1) ECNs would be exposed to dual liability, (2) compliance with the Quote Rule[37] would be frustrated, and (3) delays in the entry of trading interest in the system would result.

In response, Nasdaq submitted a letter to the Commission.[38] Specifically, Nasdaq disagrees with the commenter's suggestion that Nasdaq's refusal to display a quotation of an ECN that locks or crosses the market is contrary to its requirements under the Quote Rule. According to Nasdaq, this issue was previously resolved by the Commission both in the context of the Order Handling Rules and the SuperMontage Order. Further, Nasdaq believes that SuperMontage ensures that ECNs are able to make reasonable efforts to trade before entering quotes that would lock or cross the market. Accordingly, Nasdaq believes that ECNs do have the ability to display their trading interest in SuperMontage by converting any locking or crossing quotation into an order or overriding the warning message, which enables ECNs to meet their obligations to display customer orders and also satisfies Nasdaq requirements under the Quote Rule.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[39] The Commission finds that the proposed rule change, as amended, is consistent with Section 15A of the Act.[40] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[41]

With this filing Nasdaq proposes to fully integrate the entry, execution, and processing of odd and mixed-lot orders into SuperMontage. Integrating odd-lot orders into SuperMontage should provide investors with small-sized orders with many system protections that they do not currently enjoy. For example, odd-lot orders and odd-lot portions of mixed-lot orders will participate in the Non-Directed Order Process in virtually the same manner as larger sized round-lot quotes and orders. Under the proposal, odd-lot and mixed-lot orders will achieve price and time priority on the same basis as round-lot orders. Whether the order is an odd, mixed, or round-lot, SuperMontage gives execution priority to the best price in the system (as determined by the order execution algorithm selected by the entering party).[42] Specifically, odd and mixed-lot orders will receive a time stamp upon entry into SuperMontage, which will be effective until the order is fully executed or cancelled. The Commission believes that integrating odd, mixed, and round-lot orders into SuperMontage should provide investors of such orders with better executions and should enhance the integrity of the market.

The Commission believes that the proposal may increase liquidity and transparency in SuperMontage.[43] The integration of odd and mixed-lot orders could increase liquidity since odd-lots and the odd-lot portion of mixed-lot orders will be able to fully interact with the round-lot market. The accessibility and eligibility for execution of odd-lots and the odd-lot portion of mixed-lots should add depth to the market, which also could increase liquidity. Although SuperMontage will continue to only display quotes and orders in round-lot increments, the system will aggregate all shares (orders and quotes) entered by a Nasdaq Quoting Market Participant or UTP Exchange, at a single price level and then round that total share amount down to the nearest round-lot amount for display and dissemination. While the actual size of a Nasdaq Quoting Market Participant's trading interest may not be fully displayed, adding odd-lot amounts to the disseminated size of Nasdaq Quoting Market Participants should portray a more accurate representation of trading interest. Thus, the proposal should enhance transparency.

The Commission believes that small retail investors who may find it difficult to participate in the market in full round-lot increments, will be able to have their smaller-sized orders interact with the orders of institutional investors and highly-capitalized individuals. As noted by a commenter, odd-lot orders are employed typically by small investors who cannot afford to transact in full round-lot quantities.[44] Further, the Commission believes that the proposed rule change should give market participants greater flexibility in handling small retail customer orders as market participants will be able to enter odd-lots and mixed-lots in SuperMontage with system protections similar to round-lots.

As previously noted, Nasdaq will continue to only display quotes and orders in round-lot increments.[45] One commenter did express a concern about the presence of undisplayed odd-lot orders that have a better price than the displayed BBO.[46] The commenter explained that order delivery ECNs would have three options when their quote locked or crossed an undisplayed odd-lot order: (1) Override the lock/cross warning message and receive an automatic execution, (2) accept the lock/cross warning message, have the system reject and return the quotation, and not display the order in SuperMontage, or (3) convert the quotation to an order and re-submit it to SuperMontage. The commenter believed that these three options were respectively problematic because: (1) ECNs would be exposed to dual liability, (2) compliance with the Quote Rule[47] would be frustrated, and (3) delays in the entry of trading interest in the system would result. While the Commission appreciates the commenter's concerns, the Commission believes that Nasdaq and traditional exchanges must have the flexibility to rethink their structures to permit appropriate responses to the rapidly changing marketplace. Congress instructed the Commission to seek to "enhance competition and to allow economic forces, interacting with a fair regulatory field, to arrive at appropriate variation in practices and services."[48] The Commission finds that the proposal to fully integrate the entry, execution, and processing of odd and mixed-lot orders in SuperMontage is consistent with these goals in that it is reasonably designed to promote price discovery, best execution, liquidity, and market innovation, while continuing to preserve competition among market centers. The Commission emphasizes that participation in SuperMontage as originally designed, and as subsequently amended, is voluntary.

As the commenter noted, ECNs that do not wish to be exposed to dual liability could accept the lock/cross warning message and then re-route the order to SuperMontage. While this solution may be less than optimal, the commenter indicated that it is a viable option. Further, the Commission notes that the original approval of the SuperMontage was conditioned on the NASD offering a quote and trade reporting alternative that satisfies the Order Handling Rules, Regulation ATS, and other regulatory requirements for ATSs, ECNs, and market makers prior to or at the same time as the implementation of SuperMontage.[49] Thus, prior to the implementation of the SuperMontage, market participants will be able to fulfill their obligations under the Order Handling Rules if they choose not to participate in the SuperMontage for any reason.

Notwithstanding the flexibility warranted in a market center's determination of its market structure, the Commission expects that Nasdaq will carefully monitor quote and execution quality under the proposal. In addition, the Commission expects Nasdaq to monitor the impact and surveil the entry and execution of odd-lot orders in SuperMontage. If the integration of odd-lot orders has a deleterious effect on quoting and execution in the Nasdaq market, the Commission expects that Nasdaq will submit an appropriate response, in the form of a proposed rule change, to restore and enhance quote and execution quality.

Finally, the Commission finds that with regard to trade reporting this proposal raises no new regulatory issues and that Nasdaq will continue to meet its trade reporting obligations under the Act.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[50] that the proposed rule change (SR–NASD–2002–42), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[51]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21378 Filed 8–21–02; 8:45 am]

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[29] *See* Deutsche Bank Letter, Salomon Letter, STA Letter, CIBC Turner Letter, Lehman Letter, CIBC Levine Letter, Janney Letter, and Morgan Letter.

[30] *See* Deutsche Bank Letter, STA Letter, CIBC Turner Letter, Lehman Letter, CIBC Levine Letter, Janney Letter, and Morgan Letter.

[31] *See* CIBC Turner Letter, CIBC Levine Letter, Janney Letter, and Legg Mason Letter.

[32] *See* Deutsche Bank Letter, Salomon Letter, STA Letter, Robertson Stephens Letter, and Lehman Letter.

[33] *See* Deutsche Bank Letter, CIBC Turner Letter, CIBC Levine Letter, and Morgan Letter.

[34] *See* Levine Letter.

[35] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine England, Assistant Director, Division, Commission, dated July 2, 2002.

[36] *See* Arca Letter.

[37] Exchange Act Rule 11Ac1–1, 17 CFR 240.11Ac1–1.

[38] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine England, Assistant Director, Division, Commission, dated July 26, 2002.

[39] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[40] 15 U.S.C. 78*o*–3.

[41] 15 U.S.C. 78*o*–3(b)(6).

[42] *See* NASD Rule 4710.

[43] The Commission notes that a majority of commenters believed that the proposal would enhance liquidity and transparency. *See supra* note 29 and accompanying text.

[44] *See* Levine Letter. *See also* CIBC Levine Letter.

[45] The Commission notes that the Customer Limit Order Display Rule exempts odd-lot orders from the display requirement. *See* Exchange Act Rule 11Ac1–4(c)(3), 17 CFR 240.11Ac1–4(c)(3).

[46] *See* Arca Letter.

[47] Exchange Act Rule 11Ac1–1, 17 CFR 240.11Ac1–1.

[48] *See* S. Rep. No. 94–75, 94th Cong., 1st Sess. 7 (1975) at p. 8 ("Senate Report").

[49] On July 24, 2002, the Commission approved an NASD proposal to establish an alternate display facility on a pilot basis. *See* Securities Exchange Act Release No. 46249, 67 FR 49822 (July 31, 2002) (File No. SR–NASD–2002–97). However, the Order expressly notes that the Commission has not determined that the preconditions of SuperMontage have been met.

[50] 15 U.S.C. 78s(b)(2).

[51] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46373; File No. SR–NASD–2002–101]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. To Increase Fees for the Mutual Fund Quotation Service and To Adopt a New Fee To Process a Request To Amend the Name and/or Symbol of a Fund

August 16, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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Amendment No. 1 to the proposal with the Commission on August 5, 2002.[3] Nasdaq filed Amendment No. 2 to the proposal with the Commission on August 15, 2002.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes amend NASD Rule 7090 to increase fees associated with the Mutual Fund Quotation Service ("MFQS" or the "Service") and to adopt a new administrative fee to process a request to amend the name and/or symbol of a fund. If approved, Nasdaq proposes to implement the proposed rule change on the first day of the month immediately following approval by the Commission.

The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

Rule 7090. Mutual Fund Quotation Service

(a) Funds and Unit Investment Trusts included in the Mutual Fund Quotation Service ("MFQS") shall be assessed an annual fee of $400 per fund or trust authorized for the News Media Lists and $275 per fund or trust authorized for the Supplemental List. Funds or trusts authorized during the course of an annual billing period shall receive a proportion of these fees but no credit or refund shall accrue to funds or trusts terminated during an annual billing period. In addition, there shall be a one-time application processing fee of [$250] *$325* for each new fund or trust authorized.

(b) If a Unit Investment Trust expires by its own terms during an annual billing period and is replaced within three months by a trust that is materially similar in investment objective, the replacing trust shall be charged a one-time application fee of $150. In addition, the replacing trust shall not be charged an annual fee if the expiring trust has already paid an annual fee for that annual billing period.

(c) Funds included in the MFQS and pricing agents designated by such funds ("Subscriber"), shall be assessed a monthly fee of [$75] *$100* for each logon identification obtained by the Subscriber. A Subscriber may use a logon identification to transmit to Nasdaq pricing and other information that the Subscriber agrees to provide to Nasdaq.

(d) Funds included in the MFQS shall be assessed a $20 administrative fee to process a request to amend the name and/or the symbol of a fund.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The MFQS was created to collect and to disseminate data pertaining to the value of open- and closed-end mutual funds, money market funds, and unit investment trusts. Currently, the MFQS disseminates the valuation data for over 17,000 funds, an increase of over 45 percent since January 2000. Funds must meet minimum eligibility criteria in order to be included in the MFQS.[5] The MFQS has two "lists" in which a fund may be included—the News Media List and the Supplemental List—and each list has its own eligibility requirements. If a fund qualifies for the News Media List, pricing information about the fund is eligible for inclusion in the fund tables of newspapers and is also eligible for dissemination over Nasdaq's Level 1 Service, which is distributed to market data vendors. If a fund qualifies for the Supplemental List, the pricing information about that fund generally is not included in newspaper fund tables, but is disseminated over Nasdaq's Level 1 Service. The Supplemental List, therefore, provides significant visibility for funds that do not otherwise qualify for inclusion in the News Media List.

MFQS permits funds included in the Service or a pricing agent designated by such funds ("Subscribers") to transmit specific fund-related information directly to Nasdaq via the Internet. This information includes, but is not limited to, net asset value, offer price, closing market price, capital gains distributions, and assets. Nasdaq assigns to each Subscriber one or more logon identifications that allow the Subscriber to interface with the MFQS and transmit data securely to Nasdaq. Each logon identification is unique and allows only one user at a Subscriber to access the MFQS at a time; however, a Subscriber may obtain multiple logon identifications, to allow multiple users to access the MFQS simultaneously.

On June 3, 2002, Nasdaq introduced several enhancements to the MFQS Web site in response to enhancement requests from Subscribers, including new data messages for the pricing of unit investment trusts, new query tools to evaluate statistics regarding fund pricing updates, and improvements in the efficiency of fund update processing.

In 1998, Nasdaq established a fee of $75 per month per logon identification to cover the costs of maintaining the security of web-based access to the MFQS.[6] Since that time, Nasdaq has regularly upgraded its security software and hardware to keep pace with the evolving complexity of Internet security threats. As a result, Nasdaq proposes to increase this fee to $100 per month per logon identification to reflect the costs of these upgrades and the costs of recent website enhancements.[7]

Currently, funds wishing to list with MFQS pay a one-time application processing fee of $250, and thereafter pay an annual listing fee. The application processing fee has not been modified since it was introduced in 1996.[8] Since that time, the growth of MFQS has required the staff that process applications to shift from a desktop database using off-the-shelf software to a more sophisticated database and tracking system that requires full software lifecycle support (e.g., software engineers, quality control testing, and technical staff support in production). To reflect the costs associated with this upgrade, as well as general increases in the personnel costs associated with MFQS since 1996, Nasdaq proposes to increase the fee to $325.

Finally, Nasdaq introduces a nominal $20 fee for processing requests to change the name and/or symbol of a fund that is currently listed on MFQS. In 2001, MFQS operations personnel performed over 2,000 name and symbol changes for listed funds. Nasdaq believes that it should be compensated for the personnel and system costs associated with making these changes. The fee would be charged for each request to change a name and/or symbol. Thus, if a fund requested a simultaneous change to its name and its symbol, the fee would still be $20.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[9] in general, and with section 15A(b)(5) of the Act,[10] in particular, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq believes that the fee changes are necessary to ensure that the fees for MFQS continue to cover the costs of its operation. The fees will be imposed directly on funds that benefit from the operation of the System.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR–NASD–2002–101 and should be submitted by September 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21428 Filed 8–21–02; 8:45 am]

BILLING CODE 8010–01–P

[3] See letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 5, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq made technical corrections to the proposed rule text.

[4] See letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated August 14, 2002 ("Amendment No. 2"). In Amendment No. 2, Nasdaq amended the purpose section of the proposal to better reflect the basis for each proposed fee increase.

[5] See NASD Rule 6800.

[6] See Securities Exchange Act Release No. 40694 (November 19, 1998); 63 FR 65832 (November 30, 1998).

[7] Nasdaq understands that while this fee was initially designed to only cover the cost of maintaining the Internet security of the system, Nasdaq now believes that the fee increase is necessary to cover the additional costs of developing and providing web-based access to MFQS. Telephone conversation between John M. Yetter, Assistant General Counsel, Nasdaq, and Christopher Solgan, Law Clerk, Division, Commission, on August 6, 2002.

[8] See Securities Exchange Act Release No. 37014 (March 22, 1996); 61 FR 14182 (March 29, 1996).

[9] 15 U.S.C. 78o–3.

[10] 15 U.S.C. 78o–3(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46372; File No. SR–NYSE–2002–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Renewal of Supplemental Procedures Relating to Arbitration Rules

August 16, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] notice is hereby given that on August 2, 2002 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities Exchange Commission ("SEC" or "Commission") the proposed Renewal of Supplemental Procedures to the Arbitration Rules as described in Items, I, II and III below, which items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the Renewal of Supplemental Procedures from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed Renewal of Supplemental Procedures is to allow the parties to agree, on a pilot basis for two years from the date of filing, to select arbitrators under a procedure that is an alternative to NYSE Rules 601 and 607. The proposed Renewal of the Supplemental Procedures is fully described in Exhibit A of the Form 19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the placed specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed Renewal of Supplemental Procedures is to allow the parties to agree, on a pilot basis for two years from the date of filing, to select arbitrators under a procedure that is an alternative to NYSE Rules 601 and 607. The proposed Renewal of Supplemental Procedures is based, in part, on rules approved by the Securities Industry Conference on Arbitration ("SICA") that established a list selection procedure for appointment of arbitrators. The Supplemental Procedures are voluntary and will not be used unless all parties agree to them.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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The Supplemental Procedures invite the parties to select their own arbitrators or agree on a procedure to select arbitrators. The Supplemental Procedures also suggest two ways the parties can select arbitrators instead of having the Exchange appoint them.

The Exchange started an informal pilot program in July 1998 in an attempt to gauge the parties' interest in alternative ways to select arbitrators. The Exchange's Board approved a two-year pilot program for Supplemental Procedures for selecting arbitrators in April 6, 2000. The Exchange filed the Supplemental Procedure with the SEC and they became effective on August 1, 2000.[3]

NYSE Appoints Arbitrators Under Rules 601 and 607

Under NYSE Rules 601 and 607, the Director of Arbitration appoints arbitrators to serve on each case. The Director generally delegates this task to a staff attorney. Each party has one peremptory challenge that allows the party to remove an arbitrator without specifying a reason. The parties have unlimited challenges for cause.

In 1998, the National Association of Securities Dealers, Inc. ("NASD") amended its rules to require that all arbitrators be appointed using a rotational list selection system. Their rule differs somewhat from the SICA Uniform Code and the Exchange's proposed Supplemental Procedures.

Voluntary Supplemental Procedures for Selecting Arbitrators

(a) *Party Agreement on Arbitrator Selection*

Under NYSE Rules, described above, the Director of Arbitration appoints the arbitrators, subject to the parties' challenges. The parties, however, may agree on an alternative way to select arbitrators. If all parties agree, they may select the arbitrators themselves or decide how they will be selected. The Exchange will accommodate any reasonable alternative way to select arbitrators, provided the parties agree. The Exchange also offers two alternative ways to appoint arbitrators. The following is a brief description of each method.

(b) *Random List Selection*

Under Random List Selection, the Exchange provides the parties with a list of names of arbitrators randomly generated by computer. Except as described below, the list will have fifteen names. Ten of the arbitrators will be public arbitrators as defined by NYSE Rule 607(a)(3), and five will be securities industry arbitrators as defined by NYSE Rule 607(a)(2), unless the public customer or non-member request a panel consisting of at least a majority from the securities industry. If, in the determination of the Exchange, the limited size of the arbitrator pool in a particular city makes a list of fifteen impractical, the lists may be limited to nine arbitrators, six public arbitrators and three securities industry arbitrators. Before the Exchange sends the lists of the parties, it will review the arbitrators' profiles for obvious conflicts or relationships with the parties or their counsel. The Exchange will replace those with conflicts by having the computer randomly select the name of a replacement arbitrator. The parties are also provided with the arbitrators' biographical and disclosure information as specified in NYSE Rules 608 (Notice of Selection of Arbitrators).

Within ten business days of receiving the lists, the parties may strike any or all of the names on the list. The parties are asked to number the remaining names in order of their preference (with "1" being the highest preference) and return the lists to the Exchange. If any arbitrator is removed from the list for cause before the expiration of the time within which to return the lists, the Exchange will provide a replacement name. The Exchange eliminates the names stricken and determines the ranking of the remaining names by adding the parties' rankings. The NYSE determines mutual preferences by adding the numbers assigned by each party to each arbitrator and selecting arbitrators with the lowest numbers first. The Exchange invites arbitrators to serve in order of the parties' combined preferences. In cases of a tie in the rankings, arbitrators will be invited to serve in alphabetical order.

If the Exchange cannot assemble a panel of arbitrators from the parties' lists, the Exchange will provide the parties with a second randomly generated list of names. The second list will have three names for each open seat on the panel. On the second list, each party has one non-renewable peremptory for each vacancy on the panel. Each party is to number the remaining names in order of its preference. If any arbitrator is removed from the list for cause before the expiration of the time within which to return the lists, the Exchange will provide a replacement name. If there remains more than one name per vacancy after the parties have exercised their strike, the Exchange will invite arbitrators to serve in order of the parties' combined preferences. In the case of a tie, the Exchange will invite arbitrators to serve in alphabetical order.

The Exchange will notify the arbitrators of their selection and advise the parties of any disclosures under Rule 610.

(c) *Enhanced List Selection*

The second alternative is a hybrid of Exchange Rules and Random List Selection. Under Enhanced List Selection, the Exchange provides the parties with the names and profiles of nine arbitrators, six public arbitrators and three securities industry arbitrators, unless the public customer or non-member requests a panel consisting of at least a majority from the securities industry. The staff attorney selects these arbitrators based upon their qualifications and experience. The parties may exercise three peremptory challenges and number, in order of their preference (with "1" being the highest preference) the remaining names. If the Exchange removes any arbitrator from the list for cause before the end of the time to return the lists, the Exchange will provide a replacement name. The staff attorney then invites the arbitrators to serve based upon the parties' combined rankings. In case of a tie in the rankings, the Exchange will invite arbitrators to serve in alphabetical order.

If the Exchange cannot appoint a complete panel from the list, the staff attorney will appoint an arbitrator or arbitrators to complete the panel. Each party has one non-renewable peremptory challenge for each arbitrator the Exchange appoints. A party must use a peremptory challenge within ten business days of receiving notice of the appointment. The parties have unlimited challenges for cause.

Voluntary Pilot Program

The Exchange does not believe a rule requiring one of the alternative selection methods is appropriate at this time. Since July of 1998, the Exchange has offered parties the opportunity to select arbitrators on a voluntary basis similar to those detailed above. The Exchange has attempted to gauge the parties' interest in using alternatives to appoint arbitrators. After approximately 24 months of offering these alternatives, less than 15 percent of the parties in arbitration have chosen the alternatives. The Exchange has asked the parties to comment on the pilot, but has had limited responses. Some who responded preferred greater party control over the selection of arbitrators afforded by list selection. Others expressed a preference for the value added by the participation of Exchange staff attorneys in selecting arbitrators. To date, the results of the pilot program have been inconclusive. Accordingly, it is appropriate to renew the pilot program for two more years to allow the Exchange to collect additional information about the desirability of the Supplemental Procedures. The modest rate of acceptance leads the Exchange to recommend that the alternatives be continued on a voluntary basis.

[3] Exchange Act Release No. 43214 (August 28, 2002) 65 FR 53247 (September 1, 2000).

1. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)[4] of the Act in that it promotes just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate,[5] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7]

The Commission also notes that under Rule 19b–4(f)(6)(iii), the proposal does not become operative for 30 days after date of its filing, or such shorter time as the Commission may designate it consistent with the protection of investors and the public interest. The Exchange requests a waiver of this 30-day period for the following reasons. First, the Supplemental Procedures are voluntary. Second, the Exchange notes that it based the Supplemental Procedures on the Uniform Code of Arbitration developed by SICA. Finally, the Exchange notes that the Commission approved a similar rule change by the National Association of Securities Dealers, Inc. ("NASD") that provides for a list selection of arbitrators.[8] For the reasons discussed above, the Commission designates that the waiver of the 30-day period is consistent with the protection of investors and the public interest.[9]

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2002–30 and should be submitted by September 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21430 Filed 8–21–02; 8:45 am]

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[4] 15 U.S.C. 78f(b)(5).

[5] The Exchange provided the Commission with the five-business day notice required by Rule 19b–4(f)(6) of the Act on August 2, 2002.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] *See* Exchange Act Release No. 40555 (October 14, 1998) 63 FR 56670 (October 22, 1998).

[9] For the purposes only of accelerating the operating date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3427]

State of Alaska; Amendment #1

In accordance with information received from the Federal Emergency Management Agency, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to August 26, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is March 26, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 15, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–21448 Filed 8–21–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3426]

State of Arizona; Amendment #3

In accordance with information received from the Federal Emergency Management Agency, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to August 26, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is March 25, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 15, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–21447 Filed 8–21–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3425]

State of Iowa; Amendment #3

In accordance with information received from the Federal Emergency Management Agency, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to August 19, 2002.

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All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is March 19, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 15, 2002.

Herbert L. Mitchell,

Associate Administrator For Disaster Assistance.

[FR Doc. 02–21446 Filed 8–21–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4081]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The Department of State announces the meeting of the U.S. Advisory Commission on Public Diplomacy on Wednesday, September 18 in Room 1408 of the U.S. Department of State at 2201 C Street, NW., Washington, DC. The meeting will take place from 10 a.m. to 12 p.m.

The Commission will release its plan to reform the structure and build the resources of America's public diplomacy—how the nation informs and influences foreign audiences. The recommendations include funding levels, leadership models and suggestions on private initiatives that promote dialogue and have a cumulative long-term effect on attitudes toward the United States.

The U.S. Advisory Commission on Public Diplomacy is a bipartisan Presidentially appointed panel created by Congress in 1948 to provide oversight of U.S. Government activities intended to understand, inform and influence foreign publics. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current commission members include Harold Pachios of Maine, who is the chairman; Charles Dolan of Virginia, who is the vice chairman; Penne Percy Korth of Washington, D.C.; Lewis Manilow of Illinois; and Maria Elena Torano of Florida.

Members of the general public may attend the meeting, though attendance of public members will be limited to the seating available. Access to the building is controlled, and individual building passes are required for all attendees.

To attend the meeting, please contact Matt Lauer at (202) 619–4457 and provide date of birth and social security number. For more information visit *www.state.gov/r/adcompd*.

Dated: August 15, 2002.

Matthew Lauer,

Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 02–21459 Filed 8–21–02; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket Nos. OST–95–179 and 95–623]

Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases

AGENCY: Office of the Secretary, DOT

ACTION: Notice of Request for Extension of a Currently Approved Information Collection

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces and requests comments on the Department of Transportation's (Department or DOT) intention request extension of a previously approved collection that reflects DOT's current consumer notification rules and policies to ensure that consumers have pertinent information about airline code-sharing arrangements and long-term wet leases in domestic and international air transportation.

DATES: Comments on this notice should be received September 23, 2002.

ADDRESSES: Attention Competition and Policy Analysis Division (X–55), Office of Aviation Analysis, U.S. Department of Transportation, Room PL–401, Docket Nos. OST–95–179 and OST–95–623, 400 Seventh Street, SW., Washington, DC 20590. Three copies are requested but not required.

FOR FURTHER INFORMATION CONTACT: Jack Schmidt, Office of Aviation and International Economics, Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590, (202) 366–5420.

SUPPLEMENTARY INFORMATION:

Title: Disclosure of Code-sharing Arrangements and Long-term Wet Leases.

OMB Control Number: 2105–0537.

Type of request: Extension of a previously approved collection.

Affected Public: All U.S. air carriers, foreign air carriers, computer reservations systems (CRSs), travel agents doing business in the United States, and the traveling public.

Comments are invited on: (a) Whether this collection of information (third party notification) is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on the respondents, including through the use of automated techniques or other forms of information technology.

Issued in Washington, DC, on August 19, 2002.

Michael Robinson,

Program Analyst.

[FR Doc. 02–21466 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–95–177]

Disclosure of Change-of-Gauge Services

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Request for Extension of a Currently Approved Information Collection.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces the Department of Transportation's (DOT) intention to request the extension of a previously approved collection.

DATES: Comments on this notice must be received September 23, 2002.

ADDRESSES: Attention Competition and Policy Analysis Division (X–55), Office of Aviation Analysis, U.S. Department of Transportation, Room PL–401, Docket No. OST–95–177 (formerly 47546), 400 Seventh Street, SW., Washington, DC 20590. Three copies are requested, but not required.

FOR FURTHER INFORMATION CONTACT: Jack Schmidt, Competition and Policy Analysis Division (X–55), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590, (202) 366–5903.

SUPPLEMENTARY INFORMATION:

Title: Disclosure of Change-of-Gauge Services.

OMB Control Number: 2105–0538.

Type of Request: Extension of a previously approved collection.

Affected Public: All U.S. air carriers, foreign air carriers, computer reservations systems, travel agents doing business in the United States and the traveling public.

Comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on the respondents, including through the use of automated techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC, on August 19, 2002.

Michael Robinson,

Program Analyst.

[FR Doc. 02–21467 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Review Under 49 U.S.C. 41720 of United/US Airways Agreements

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Extension of waiting period.

SUMMARY: United Air Lines and US Airways have submitted code-sharing and frequent flyer program reciprocity agreements to the Department for review under 49 U.S.C. 41720. That statute requires such agreements between major U.S. passenger airlines to be submitted to the Department at least thirty days before the agreements' proposed effective date and authorizes the Department to extend the waiting period for any such agreement. The Department has determined to extend the waiting period for the United/US Airways agreements for an additional thirty days.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: As provided by 49 U.S.C. 41720, on July 25 United and US Airways submitted code-sharing and frequent flyer program reciprocity agreements to the Department more than thirty days before the airlines planned to implement them. The statute authorizes us to extend the waiting period by 150 days with respect to a code-sharing agreement and by 60 days for the other types of agreements covered by the advance-filing requirement.

We have been reviewing the agreements, the comments submitted by outside parties, and other information in our possession, and we have been consulting with the Justice Department. We have also given interested parties an opportunity to submit comments on the agreements. 67 FR 50745 (August 5, 2002). As has been the case with respect to all agreements submitted under 49 U.S.C. 41720 since its enactment, our review of the United/US Airways agreements has been informal. *See* 67 FR 50745.

The purpose of our review is to see whether we should begin a formal investigation under section 41712 of the arrangements between United and US Airways, or take other action as a result of the agreements. United and US Airways will not need to obtain our approval before implementing their agreements after the end of the statutory waiting period (either the original waiting period or any extended period established by us). To block two airlines from implementing an agreement, we would normally need to issue an order under 49 U.S.C. 41712 (formerly section 411 of the Federal Aviation Act) in a formal enforcement proceeding that determines that the agreement's implementation would be an unfair or deceptive practice or unfair method of competition that would violate that section. Our informal review of the agreements accordingly focuses on whether they would significantly reduce competition.

We have concluded that we need additional time to determine whether the agreements or specific provisions in the agreements raise questions under 49 U.S.C. 41712 that may require us to request modifications of the agreements or to institute an enforcement proceeding. The agreements present important issues that require additional investigation by us. We have therefore determined to extend the waiting period by another thirty days, from August 24 to September 23. We understand that the two airlines wish to be able to implement the agreements promptly, and we therefore intend to conclude our review as soon as reasonably possible.

We recognize that the Air Carrier Association of America ("ACAA") filed a motion to suspend proceedings and open a docket. ACAA argues that all information relating to the application should be made public, including all discussions between US Airways and the Air Transportation Stabilization Board ("ATSB"), the board that is considering a loan guarantee application filed by United and that has conditionally approved a loan guarantee application filed by US Airways. Docket OST–2002–12986. We have given ACAA and all other interested persons the ability to comment on the United/US Airways agreements. If ACAA has evidence and analysis indicating that the United/US Airways agreements in whole or in part may involve unfair methods of competition, it has had the opportunity to submit that material for our consideration.

In addition, the ACAA motion incorrectly assumes that the ATSB based its conditional approval of the US Airways application on the airline's ability to implement its agreements with United. The letter released by the ATSB did not make the implementation of those agreements a necessary condition to approval of the loan guarantee application. The ATSB has been expressly informed and is fully aware that this Department and the Justice Department have independent responsibilities for preventing unlawful anti-competitive conduct in the airline industry and that this Department has other independent regulatory responsibilities over the airline industry and the airports used by commercial airlines. This Department intends to carry out all of its regulatory responsibilities regarding the agreements before it completely independent of any matters that may or may not be pending before the ATSB.

Issued in Washington, DC, on August 19, 2002.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–21555 Filed 8–20–02; 2:43 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2002–12432]

Application for Exemptions From Driver Physical Qualification Standards From Jerry Parker

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT

ACTION: Notice of application for exemptions; request for comments.

SUMMARY: The FMCSA requests public comment on a request for an exemption application from the Federal standards for vision and for the loss or impairment

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of limbs by Mr. Jerry Parker. Mr. Parker does not meet the vision requirements because of severe vision loss in his right eye. He does not meet the physical qualification requirements for the loss or impairment of limbs because he is missing his left arm and is unable to demonstrate power grasp prehension and precision prehension with each upper limb separately. In order for Mr. Parker to operate a commercial motor vehicle (CMV) in interstate commerce, he must be granted an exemption from both requirements. Mr. Parker believes his driving record indicates that a level of safety can be achieved that is equivalent to, or greater than, the level of safety that would be obtained by complying with the standards for vision and for loss or impairment of limbs set forth in the Federal Motor Carrier Safety Regulations.

DATES: We must receive your comments on or before September 23, 2002.

ADDRESSES: You can mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington DC 20590–0001. You can also submit comments as well as see the submission of other commenters at *http://dmses.dot.gov*. Please include the docket number that appears in the heading of this document. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to know that we received your comments, please include a self-addressed, stamped postcard or print a copy of the acknowledgement page that appears after you submit comments electronically.

FOR FURTHER INFORMATION CONTACT: For information about the exemptions in this notice, you may contact Ms. Kaye Kirby, Office of Bus and Truck Standards and Operations, (202) 366–3109; Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Sections 31315 and 31136 of title 49 of the United States Code (U.S.C.) provide the FMCSA with authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). An exemption provides time-limited regulatory relief from one or more FMCSRs given to a person or class of persons subject to the regulations, or who intend to engage in an activity that would make them subject to the regulations. An exemption provides the person or class of persons with relief from the regulations for up to two years, and may be renewed. Sections 31315 and 31136(e) of 49 U.S.C. require the agency to consider whether the terms and conditions for the exemption would achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulations when evaluating applications for exemptions.

In addition, the agency must publish a notice in the **Federal Register** for each exemption requested, explaining the request that has been filed; providing the public with an opportunity to inspect the safety analysis and any other relevant information known to the agency; and requesting public comment on the exemption. Before granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period and all terms and conditions of the exemption. The terms and conditions established by FMCSA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

On December 8, 1998, FMCSA published an interim final rule implementing section 4007 of the Transportation Equity Act for the 21st Century (TEA–21)(codified at 49 U.S.C. 31315) (See 63 FR 67600). The regulations at 49 CFR part 381 establish the procedures to be followed to request waivers and to apply for exemptions from the FMCSRs, and the provisions used to process them.

Mr. Parker's Request for Regulatory Relief

Mr. Parker applied for a vision waiver from the FHWA in 1996, under the agency's authority to grant waivers to regulations promulgated under the Motor Carrier Safety Act of 1984. That authority has since been superseded by 49 U.S.C 31315. The criteria for obtaining a vision waiver was established under the agency's former Vision Waiver Program and included a provision that applicants for vision waivers meet all other physical qualification requirements under 49 CFR 391.41. When the agency discovered that Mr. Parker's left arm had been amputated at the shoulder, his application for a vision waiver was denied. The agency indicated that it lacked sufficient evidence to determine if someone with both a vision impairment and limb impairment could safely operate a CMV. Subsequently, the agency has learned that Mr. Parker may have some degree of impairment in his right arm

Mr. Parker filed a Petition for Review with the United States Court of Appeals for the Sixth Circuit arguing that denial violated the Rehabilitation Act because the FMCSA did not perform an individualized inquiry into the merits of Mr. Parker's petition. On March 17, 2000, the Court ruled that the agency's administrative decision was arbitrary and capricious, and a violation of the Rehabilitation Act (*Jerry W. Parker* v. *United States Department of Transportation*, 207 F. 3d 359 (6th Cir. 2000)). The Court was concerned that the decision not to assess Mr. Parker's actual driving capabilities was not consistent with the agency's prior determination under the vision waiver program that the best predictor of future performance by a driver was the driver's past record of accidents and traffic violations. The court concluded that agency failure to assess Mr. Parker's actual driving capability created a per se rule against granting vision waivers to individuals with multiple disabilities. The Sixth Circuit remanded the case to FMCSA to create a functional capacity test that relies upon our finding that an individual's driving record is indicative of future performance.

In response to the Court's ruling, FMCSA is currently considering requests for exceptions to the physical qualifications standards from drivers with multiple disabilities, to be applications for exemptions. Each disability that would preclude the driver from complying with the physical qualifications standards should be considered separately with regard to the agency's process for determining whether to grant or deny the petition upon review of public comments. The agency has made a preliminary decision to use the existing procedures under 49 CFR part 381.

Consistent with the agency's preliminary decision concerning drivers with multiple disabilities, the agency is considering Mr. Parker's request as: (1) An application for an exemption from the vision standard under section 391.41(b)(10); and (2) an application for an exemption from the standard for the loss of limbs at section 391.41(b)(1).

Section 391.41(b)(10) requires a person to have distant vision acuity of a least 20/40 (Snellen) in each eye with or without corrective lenses; and distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses; and field of vision of at least 70 degrees in the horizontal meridian in each eye; and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber. Section 391.41(b)(1) requires that a person have no loss of foot, leg, hand, or arm, or alternatively, be granted a skill performance evaluation (SPE) certificate [previously called a "waiver"] pursuant to section 391.49. The alternative physical qualification standards for the loss or impairment of limbs, at 49 CFR 391.49(d)(3)(i)(B), include a requirement that applicants for SPE certificates include with their application a medical evaluation summary that, "* * * the applicant is capable of demonstrating precision prehension (e.g. manipulating knobs and switches) and power grasp prehension (e.g. holding and maneuvering the steering wheel) with each upper limb separately."

Mr. Parker does not meet the vision requirements because of a congenital eye condition known as Coats disease in his right eye. His ability to see with his right eye is below that which could be measured on the standard Snellen chart. However, he has corrected vision of 20/20 in his left eye. Mr. Parker does not meet the physical qualification requirements for the loss of limbs and he is unable to demonstrate precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately. Under current regulations at 49 CFR 391.41/391.49, Mr. Parker would need to use a prosthetic device in order to demonstrate precision and power grasp prehension. He does not use a prosthetic device to assist in operating CMVs. Mr. Parker's left arm was amputated above the elbow. His right arm has severe scarring and he has had multiple surgeries on this arm as a result of the injuries sustained in the accident that necessitated the amputation of the left arm.

Mr. Parker stated that he has driven safely over 1.2 million miles in a CMV since 1985. He has no accidents and no traffic violations on his driving record.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment from all interested parties on Mr. Parker's application for an exemption from the Federal standards for vision and for the loss of limbs. Interested persons should consider each exemption separately, to the greatest extent practicable. FMCSA also requests comments on our plan to assess individual physical impairments separately (only vision and limb). We have not yet made a final decision on potential diabetic exemptions and today's notice pronounces no proposal on how to handle those situations. The agency may grant or deny either or both requests based on the comments received, and any other relevant information that is available to the agency.

Issued on: August 19, 2002.

Pamela M. Pelcovits,

Director, Office of Policy Plans and Regulation.

[FR Doc. 02–21476 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–200213161]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SPIRIT.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 23, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13161. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: SPIRIT. Owner: Pamela L. Benson (in process of vessel purchase, sale final 9/10/2002).

(2) Size, capacity and tonnage of vessel. According to the applicant: "Gross Tonnage: 14, Net Tonnage: 13, Length: 41 feet, Hull Depth: 5.7 feet, Hull Breadth: 12.7 feet."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Sail Training, targeted but not exclusive to, youth and women. Geographic Area: Puget Sound, San Juan Islands."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1986. Place of construction: Richmond, BC, Canada.

(5) A statement on the impact this waiver will have on other commercial

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passenger vessel operators. According to the applicant: "There are no sailing schools or sail training vessels to my knowledge, in the Port Orchard/Bremerton/Silverdale area, which is located on the west side of Puget Sound. The nearest sailing school is in Gig Harbor, 20 miles away that only utilizes sailing dinghies. In addition, to my knowledge, there are no sail charters available on the entire west side of Puget Sound."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: " I do not see any impact that this would have on U.S. Shipyards, as the U.S. Shipyards do not currently produce a low-profile pilothouse sailing vessel of this configuration."

Dated: August 16, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–21445 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting: Change of Date

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of the meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC) originally scheduled to be held at 11 AM on Wednesday, August 28, 2002, will now be held at 11 AM on Wednesday, September 11, 2002, by conference call in the Administrator's Office, room 5424, 400 7th Street, SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than September 6, 2002, Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on August 19, 2002.

Marc C. Owen,

Chief Counsel.

[FR Doc. 02–21474 Filed 8–21–02; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, "Fiduciary Activities of National Banks—12 CFR part 9."

DATES: You should submit written comments by October 21, 2002.

ADDRESSES: You should direct comments to the Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0140, 250 E Street, SW., Washington, DC 20219. Due to recent, temporary disruptions in the OCC's mail service, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW, Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

A copy of the comments should also be sent by mail to the OMB Desk Officer for the OCC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or by e-mail to *jlackeyj@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: You can request additional information from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Fiduciary Activities of National Banks—12 CFR 9.

OMB Number: 1557–0140.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection. The OCC requests only that OMB extend its approval of the information collection.

Under 12 U.S.C. 92a, the OCC regulates the fiduciary activities of national banks, including the administration of collective investment funds. The requirements in 12 CFR Part 9 enable the OCC to perform its responsibilities relating to the fiduciary activities of national banks and collective investment funds. The collections of information in Part 9 are found in §§ 9.8(b), 9.9(a) and (b), 9.17(a), 9.18(b)(1), 9.18(b)(6)(ii), 9.18(b)(6)(iv), and 9.18(c)(5) as follows:

Section 9.8(b) requires a national bank to maintain fiduciary records;

Section 9.9(a) and (b) require a national bank to note the results of a fiduciary audit in the minutes of the board of directors;

Section 9.17(a) requires a national bank that wants to surrender its fiduciary powers to file with the OCC a certified copy of the resolution of its board of directors;

Section 9.18(b)(1) requires a national bank to establish and maintain each collective investment fund in accordance with a written plan;

Section 9.18(b)(1) also requires a national bank to make the plan available for public inspection and to provide a copy of the plan to any person who requests it;

Section 9.18(b)(6)(ii) requires a national bank to prepare a financial report of the fund;

Section 9.18(b)(6)(iv) requires a national bank to disclose the financial report to investors and other interested persons; and

Section 9.18(c)(5) requires a national bank to request OCC approval of special exemption funds.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Total Annual Responses: 1,000.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 15,010 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 15, 2002.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 02–21424 Filed 8–21–02; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Intent To Grant Exclusive License

AGENCY: Department of Veterans Affairs, Research and Development Office.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs, Research and Development Office, intends to grant to 21st Century Medicine, Inc., 10844 Edison Court, Rancho Cucamonga, California, 91730, U.S.A., an exclusive license to practice U.S. Patent Application Number 09/546,860, filed Apr. 10, 2000, entitled Compositions and Methods for Tissue Preservation; and International Patent Application Number PCT/US01/11834 (WO 01/76364 A2), filed Apr. 10, 2001, entitled Composition and Methods for Tissue Preservation.

DATES: Comments must be received within fifteen (15) days from the date of this published Notice.

ADDRESSES: Send comments to: Mindy Aisen, MD, Director of Technology Transfer, Department of Veterans Affairs; Attn: 122; 810 Vermont Avenue NW., Washington, DC 20420. Telephone: (202) 408–3670; Facsimile: (202) 275–7228; e-mail: *mindy.aisen@mail.va.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the published patent applications may be obtained from the U.S. Patent and Trademark Office at *www.uspto.gov*.

SUPPLEMENTARY INFORMATION: It is in the public interest to so license these inventions as 21st Century Medicine, Inc., submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published Notice, the Department of Veterans Affairs Research and Development Office receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Dated: August 14, 2002.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 02–21367 Filed 8–21–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled "Current and Former Accredited Representative, Claims Agent, Representative and Claims Agent Applicant and Rejected Applicant and Attorney Records—VA" (01VA022) as set forth in the **Federal Register**, 40 FR 38095 (8/26/75), and amended in 47 FR 1460 (1/13/82), 54 FR 30969 (7/25/89), and 59 FR 47377 (9/15/94). VA is amending the system notice by revising the paragraphs on System Location, Categories of Individuals Covered by the System, Categories of Records in the System, Retention and Disposal, and Record Access Procedures, and by deleting current routine uses 10 and 11 and adding two new routine uses 10 and 11.

DATES: Comments on the proposed amendments to this system of records must be received no later than September 23, 2002. If no public comments are received by this date, the amendments will become effective on September 23, 2002.

ADDRESSES: You may mail or hand-deliver written comments concerning the proposed new system of records to the Office of Regulatory Law (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 273–9289; or email comments to *OGCRegulations@mail.va.gov*. All relevant material received before September 23, 2002, will be considered. Comments will be available for public inspection at the above address in the Office of Regulatory Law, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Martin Sendek, Staff Attorney, Professional Staff Group II, Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6330.

SUPPLEMENTARY INFORMATION: VA is changing the System Location paragraph by deleting the phrase "District Counsel Offices" and replacing it with the phrase "Regional Counsel Offices" because the Office of General Counsel (OGC) reorganized its field offices, and in the course of that reorganization, renamed the remaining offices as "Regional Counsel Offices".

Changes to the Categories of Individuals Covered by the System and Categories of Records in the System reflect the addition of certain information on attorneys to the system of records, clarify the system description, and update the system description for consistency with current form designations.

Paragraph (2) under Categories of Individuals Covered by the System is rewritten to more clearly state the individuals covered, and to delete the redundant statement that claims agents are not attorneys. Under VA regulations, claims agents, by definition, are not attorneys. OGC is deleting the language currently in paragraph (4) because those records are now maintained by the Veterans Benefits Administration. The new paragraph (4) reflects records that OGC maintains on attorneys, and additional records that it will maintain under proposed regulations, once published in final form. The proposed rule was published at 63 FR 59495 (1998).

VA is amending three paragraphs under Categories of Records in the

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System. Paragraph (6) is amended to reflect that VA has new form numbers for the applications of service organization representatives and claims agents to represent veterans before VA. Also, claims agents are moved from paragraph (7) to paragraph (6). The language of paragraph (7) is not amended; however, it now will only cover individuals who apply to represent individuals before VA, generally on a one-time basis, who are neither service organization representatives nor claims agents. An example would be an individual who seeks to represent his brother on his brother's claim. Finally, paragraph (9) is amended by replacing the word "termination" with the word "cancellation", which is the term that has been used in the applicable VA regulation. Paragraph (9) will also include records on probation or reprimand of individuals for conduct associated with their representational activities when the regulation published at 63 FR 59495 (1998) is published as a final rule.

The Records Retention and Disposal paragraph is changed to reflect current OGC policies in these subject areas.

Routine Uses. OGC no longer needs to make the disclosures authorized under current routine uses 10 and 11, and, accordingly, VA is rescinding them. OGC, however, does need to disclose information in two situations for which there currently are no routine uses. Consequently, OGC is inserting those two new routine uses as new routine uses 10 and 11 in place of the routine uses rescinded. New routine use 10 permits VA to release information pertaining to unlawful, unprofessional, or unethical actions by an individual in this record system to employers, and licensing organizations, such as State bar associations, when VA determines that the information relates to activities for which the individual is employed or to activities subject to the licensing organization; *e.g.*, possible ethical violations by attorneys. For example, if VA cancels the accreditation of an individual veterans service organization employee to represent veterans, VA must be able to tell the service organization that its employee may no longer represent veterans on behalf of the service organization before VA. The second routine use (new routine use 11) would allow VA to share the same information with other Federal and State agencies, and Federal courts before whom these individuals may be authorized to appear.

A "Report of Altered System of Records" and an advance copy of the revised system notice have been sent to the chairmen and ranking members of the Committee on Governmental Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, as required by 5 U.S.C. 552a(o) (Privacy Act) and guidelines issued by the Office of Management and Budget.

Approved: August 9, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

01VA022

SYSTEM NAME:

Current and Former Accredited Representative, Claims Agent, Representative and Claims Agent Applicant and Rejected Applicant and Attorney Records—VA

SYSTEM LOCATION:

[The phrase "District Counsel Offices" is replaced by the phrase "Regional Counsel Offices".]

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

* * * * *

(2) Claims agents who have applied for accreditation, are currently accredited, or have previously been accredited by VA to represent claimants for benefits;

* * * * *

(4) Attorneys who have been the subject of correspondence, investigations, or proceedings relating to their fitness to represent claimants for benefits before VA.

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * * *

(6) VA Forms 2–21 and 21, (Application for Accreditation as Service Organization Representative) 21a, (Application for Accreditation as a Claims Agent);

* * * * *

(9) Documents, decisions, correspondence, and other information relating to or including the granting, denial, suspension, or cancellation of accreditation of representatives, claims agents, or attorneys, and information concerning the placement of representatives, claims agents, or attorneys on probation by VA or VA's issuance of a reprimand to such an individual pertaining to conduct relating to representation of claimants for benefits before VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

10. The Office of General Counsel may disclose the name and address of any prospective, present, or former accredited representative, claims agent, or attorney, and any information concerning such individual that relates to unlawful, unprofessional, or unethical actions by that individual or to VA's denial, cancellation, suspension or termination of an individual's VA accreditation, or to both, where applicable, to employing entities and State and Federal licensing organizations when such information may be relevant to the initial or continued employment or licensing of a prospective, present, or former accredited representative, claims agent, or attorney by an employing entity or licensing organization. VA will not disclose the names and home addresses of veterans and their dependents to licensing organizations pursuant to this routine use.

11. The Office of General Counsel may disclose the name and address of any prospective, present, or former accredited representative, claims agent, or attorney, and any information concerning such individual that relates to unlawful, unprofessional, or unethical actions by that individual or to VA's denial, cancellation, suspension or termination of an individual's VA accreditation, or to both, where applicable, to other Federal and State agencies and to Federal courts when such information may be relevant to the individual's provision of representational services before such agency or court. VA will not disclose the names and home addresses of veterans and their dependents pursuant to this routine use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

* * * * *

RETENTION AND DISPOSAL:

VA maintains and disposes of records in accordance with records disposition authority approved by the Archivist of the United States.

* * * * *

RECORD ACCESS PROCEDURES

Individuals seeking copies of records under this system that pertain to themselves, or seeking to amend such records, should make those requests under the Privacy Act. Individuals seeking copies of records pertaining to others should request them under the Freedom of Information Act. All such requests should be in writing, over the original, handwritten signature of the requester, and should be mailed to: FOIA/PA Officer (026G), Office of General Counsel, 810 Vermont Ave., NW., Washington, DC 20420.

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[FR Doc. 02–21368 Filed 8–21–02; 8:45 am]

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Corrections

Federal Register
Vol. 67, No. 162
Thursday, August 22, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 438

[CMS–2104–F]

RIN 0938–AK96

Medicaid Program; Medicaid Managed Care: New Provisions

Correction

In rule document 02–14747 beginning on page 40988 in the issue of Friday, June 14, 2002, make the following correction:

§ 438.214 [Corrected]

On page 41108, in the second column, in §438.214, in the second paragraph, in the first line "(a)" should read "(b)".

[FR Doc. C2–14747 Filed 8–21–02; 8:45 am]
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Federal Register

Thursday,
August 22, 2002

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 400, 405, and 426
Medicare Program: Review of National Coverage Determinations and Local Coverage Determinations; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Parts 400, 405, and 426

[CMS–3063–P]

RIN 0938–AK60

Medicare Program: Review of National Coverage Determinations and Local Coverage Determinations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would create a new process to allow certain Medicare beneficiaries to challenge national coverage determinations (NCDs) and local coverage determinations (LCDs). It would implement portions of section 522 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000. The right to challenge NCDs and LCDs would be distinct from the existing appeal rights that Medicare beneficiaries have for the adjudication of Medicare claims.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 21, 2002.

ADDRESSES: In commenting, please refer to file code CMS–3063–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3063–P, P.O. Box 8017, Baltimore, MD 21244–8017.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Vadim Lubarsky, 410–786–0840 for National Coverage Determinations. Mélanie Combs, 410–786–7683 for Local Coverage Determinations.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Timely comments will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, contact Van Ross at (410) 786–4473.

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This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The Web site address is *http://www.access.gpo.gov/nara/index.html*.

Note: The former name of the Centers for Medicare & Medicaid Services (CMS) was the Health Care Financing Administration (HCFA). The terms CMS and HCFA can be used interchangeably.

I. Background

A. Overview of Existing Statutes, Regulations, and Policies

Medicare is the nation's largest health insurance program covering approximately 40 million Americans. Beneficiaries consist primarily of individuals 65 years of age or older, some disabled people under 65 years of age, and people with end-stage renal disease (permanent kidney failure treated with dialysis or a transplant).

The original Medicare program consists of two parts. Part A, known as the hospital insurance program, covers certain care provided to inpatients in hospitals, critical access hospitals, skilled nursing facilities, as well as hospice care and some home health care. Part B, the supplementary medical insurance program, covers certain physicians' services, outpatient hospital care, and other medical services that are not covered under Part A. While the original Medicare program covers many health care items and services, it does not cover all health care expenses.

In addition to the original Medicare program, beneficiaries may elect to receive health care coverage under the Medicare+Choice (M+C) program under Part C of the Medicare program. This program provides beneficiaries with various options, including the right to choose a Medicare managed care plan or a Medicare private fee-for-service plan. Under the M+C program, an individual is entitled to those items and services (other than hospice care) for which benefits are available under Part A and Part B. An M+C plan may provide additional health care items and services that are not covered under the original Medicare program.

The Medicare Act gives beneficiaries specific rights to challenge particular types of decisions. CMS is committed to providing beneficiaries an opportunity to fully exercise these statutory rights. Moreover, we are committed to resolution of these disputes in a fair and efficient manner.

B. Claims Appeal Process

Under the original Medicare program, a beneficiary may generally obtain health services from any institution, agency, or person qualified to participate in the Medicare program that undertakes to provide the service to the individual. Assuming that a qualified provider or supplier has furnished medical care, the health care provider or supplier, or, in some cases, a beneficiary would submit a claim for benefits under the Medicare program. If the claim is for an item or service that falls within a Medicare benefit category, is reasonable and necessary for the individual, and is not otherwise statutorily excluded, then a government contractor, either a fiscal intermediary (for claims under Part A or Part B) or a carrier (for claims under Part B) would pay the claim. If the Medicare contractor determines that the medical care is not covered under the Medicare program, however, the Medicare contractor would deny the claim. In

fiscal year 2001, fee-for-service Medicare contractors adjudicated over 930 million initial claims and approximately 6.7 million claim appeals.

Except in a few narrow circumstances, an individual seeking Medicare payment for health care items or services cannot obtain an advance determination (before obtaining the item or service) on whether we would make Medicare payment. The Supreme Court has recognized that the Secretary must be given an opportunity to rule on a real claim, rather than rendering advisory opinions. See *Heckler* v. *Ringer*, 466 U.S. 602, 621–22 (1984).

If we deny a claim, we would provide notice to the beneficiary and give the beneficiary an opportunity to challenge the decision according to procedures we established in our regulations. We established an appeals process in our regulations under the fee-for-service program at 42 CFR part 405, subparts G and H. The statute requires that an individual exhaust these remedies before the individual may seek judicial review to challenge the Secretary's final decision. For purposes of this preamble, we would identify these procedures as the "claims appeal process." This proposed rule does not seek to significantly alter the existing claims appeal process. Nor does this proposed rule significantly alter our existing regulations authorizing pre-service appeals for M+C beneficiaries as established at §§ 422.560 through 422.622.

Following exhaustion of these administrative remedies, the Medicare statute provides the opportunity for a dissatisfied individual to seek review in Federal court. As part of this civil action, a party may challenge the validity of a national coverage determination.

C. National Coverage Determinations (NCDs)

National Coverage Determinations (NCDs) are national policy statements that we publish to identify the circumstances under which particular services will be considered covered by Medicare. NCDs made under section 1862(a)(1) of the Social Security Act (the Act) have been nationwide, prospective, population-based policies that apply to clinical subsets or classes of Medicare beneficiaries and describe the clinical circumstances and settings under which particular services are reasonable and necessary (or are not reasonable and necessary). Our current regulations at § 405.732 and § 405.860 further recognize that the agency also has issued other types of NCDs, often related to scope of benefits under other statutory benefit categories that were made under "other applicable provisions of the Act." Under our existing regulations, both scope of benefits NCDs and the NCDs made under section 1862(a)(1)(A) of the Act are controlling authorities for Medicare contractors—carriers, fiscal intermediaries (FIs), quality improvement organizations (QIOs), formerly known as Peer Review Organizations, health maintenance organizations (HMOs), competitive medical plans (CMPs), and health care prepayment plans (HCPPs). In addition, national coverage decisions are also controlling on M+C organizations (see § 422.101). Under our current regulations, only NCDs made under section 1862(a)(1) of the Act are controlling authorities for administrative law judges.

The procedures we use to develop NCDs were set forth in a **Federal Register** notice published April 27, 1999 (64 FR 22619 through 22625). Section 522 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554), enacted on December 21, 2000 (by creating section 1869(f)(4) of the Act) also establishes a revised process by which we would make NCDs in certain cases. We would set forth this NCD development process through a separate notice in the **Federal Register**.

D. Local Medical Review Policy (LMRP)

Local Medical Review Policies (LMRPs) are contractor-specific policies that identify the circumstances under which particular items or services will be (or will not be) considered covered and correctly coded. We authorize certain contractors to make LMRPs and define these contractors' LMRP jurisdiction in each contract or task order we enter into with a contractor. Each LMRP applies only in the jurisdiction (or part of a jurisdiction) of an individual contractor. LMRPs are currently developed by carriers, FIs, Durable Medical Equipment Regional Carriers (DMERCs), and Regional Home Health Intermediaries (RHHIs). The adoption of an LMRP by a contractor, however, does not preclude CMS from making an NCD.

A contractor may adopt an LMRP that has been developed individually or collaboratively with other contractors. The adoption of an LMRP through a collaborative effort by contractors does not constitute an NCD regardless of the number of contractors who decide to adopt the LMRP. An LMRP is not controlling authority for administrative law judges (ALJs) or the Departmental Appeals Board (Board) in the claims appeals process. These guidelines simply help to ensure that similar claims are processed in a consistent manner within those jurisdictions. LMRPs may not conflict with an NCD, but may be written in the absence of, or as an adjunct to, an NCD.

The Secretary instructs contractors on the procedures to be used in developing LMRPs and does so in program instructions. (See *http://www.cms.hhs.gov/manuals/108_pim/pim83c13.asp#sect4*) to review the current requirements regarding when contractors should develop LMRPs.) In addition, the Secretary has the authority to prescribe the criteria contractors will use when writing the medical necessity provisions in their LMRPs. (See *http://www.cms.hhs.gov/manuals/108_pim/pim83c13.asp#sect5.1*). Finally, the Secretary defines the process requirements contractors must follow in order to ensure that all interested parties—including beneficiaries, providers, manufacturers, associations, advocacy groups, and other members of the public—are afforded an opportunity to review and comment on most LMRPs before they become final. (See *http://www.cms.hhs.gov/manuals/108_pim/pimc13.asp#sec7.4*)

An LMRP may contain any or all of the following:

- Coding provisions.
- Benefit category provisions.
- Statutory exclusion provisions.
- Medical necessity provisions (provisions related to the authority under section 1862(a)(1)(A) of the Act, which prohibits payment for any expenses incurred for services that are not reasonable and necessary (often called the "medical necessity" provision.))

Some LMRPs contain only a single type of provision, while other LMRPs contain all four types. The provisions described in bullets two through four above constitute coverage provisions.

E. Differences Between NCDs and LMRPs

Under our claims appeals process, ALJs are not bound by LMRPs. Thus, an ALJ may rule that Medicare payment is due on a particular item or service received by a beneficiary, even if the contractor's LMRP clearly prohibited payment for the particular service. On the other hand, contractors and ALJs are bound by NCDs. ALJs may not review an NCD.

F. Individual Claim Determinations

It is important to note that contractors make individual claim determinations, even in the absence of an NCD or LMRP.

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In these circumstances when there is no published policy on a particular topic, decisions are made based on the individual's particular factual situation. See *Heckler* v. *Ringer*, 466 U.S. at 617 (recognizing that the Secretary has discretion to either establish a generally applicable rule or to allow individual adjudication).

II. Impact of Section 522 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000

A. Overview of the Legislation

Section 522 of BIPA created a new administrative review process that enables certain beneficiaries to challenge local coverage determinations (LCDs) and NCDs. These appeal rights are distinct from the existing appeal rights for the adjudication of Medicare claims. This section also creates additional avenues for beneficiaries to seek judicial review. Before BIPA, the statute did not provide an administrative avenue to challenge the facial validity of NCDs or LMRPs. BIPA defines LCDs as "a determination by a fiscal intermediary or a carrier under part A or part B, as applicable, respecting whether or not a particular item or service is covered on an intermediary-or carrier-wide basis under such parts, in accordance with section 1862(a)(1)(A)."

B. New Definition: Local Coverage Determination (LCD)

Section 522 of BIPA does not use the term "LMRP." Rather, it uses the term "local coverage determination (LCD)." This definition indicates that only those determinations made by FIs and carriers under the "reasonable and necessary" provision are to be considered LCDs.

C. Differences Between an LMRP and an LCD

As described in section I.D of this preamble, an LMRP may contain four different types of provisions (benefit category, statutory exclusion, medical necessity, and coding). An LCD, on the other hand, has been specifically defined in statute as a determination only under section 1862(a)(1)(A) of the Act's "reasonable and necessary" provision. For the purposes of this regulation, we will use the term "medical necessity provision" to describe section 1862(a)(1)(A) of the Act. We intend to work with contractors to divide LMRPs into separate LCD and non-LCD documents; it is likely that LMRPs will continue to exist for the next several years. During this time, the term LCD will refer to both of the following:

- Separate, stand-alone documents entitled "LCDs" that contain only medical necessity language; and
- The medical necessity provisions of an LMRP.

D. Impact of Section 522 of BIPA on the Definition of NCD

Section 522 of BIPA defines an NCD as "a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under this title [title XVIII], but does not include a determination of what code, if any, is assigned to a particular item or service covered under this title or a determination with respect to the amount of payment made for a particular item or service so covered." This new statutory definition is not limited to only those determinations made under section 1862(a)(1) of the Act, but extends to benefit category and statutory exclusion determinations made by the Secretary as well. Typically, scope of benefits NCDs would further specify whether services would be covered under specific statutory categories that exist under Part A and Part B of the Medicare Act. (Section 1812, 1832, and 1861(s)). Thus, a scope of benefits NCD could be used to establish a policy on whether a particular device is considered durable medical equipment. Similarly, the Medicare Act prohibits payment for certain specific services. We may choose to establish an NCD describing those types of procedures (for example, whether care constitutes a routine physical examination, or cosmetic surgery). Therefore, as we discuss later in section III.A of this preamble, we are proposing to revise the definition of an NCD in § 400.202 to include those determinations made by the Secretary on grounds other than section 1862(a)(1) of the Act with respect to whether or not a particular service is covered and to reflect the statutory definition. We are proposing conforming changes to §§ 405.732 and 405.860 to reflect that any type of NCD may not be reviewed by an ALJ.

Section 522 of BIPA enables certain individuals who are in need of an item or service to challenge an NCD that would deny coverage of that item or service in an administrative proceeding before the Board.

Under section 1869(f)(4)(C) of the Act, for the purpose of reviews of NCDs, certain determinations that no national coverage or noncoverage determination is appropriate, are also subject to administrative review. Specifically, this right to review occurs only in cases in which there was no NCD, and a person with standing requested an NCD under section 1869(f)(4)(A) of the Act, and the Secretary determined that no national coverage determination would be made. We will identify this limited situation as a "deemed NCD." In addition, if we have failed to meet a deadline we set under section 1869(f)(4)(A)(iv) of the Act, we are deemed to have made a determination that no coverage or noncoverage determination is appropriate.

E. Differences Between the Claims Appeal Process and the NCD/LCD Review Processes

As explained earlier in this preamble, the existing claims appeal rights are not significantly changed by section 522 of BIPA. Our claims appeal regulations will continue to provide detailed administrative appeal rights for beneficiaries whose claims are denied. These claims appeal procedures permit beneficiaries to challenge the initial claims denial and include *de novo* review by an independent ALJ. If still dissatisfied after exhausting all administrative remedies, a beneficiary has a right to seek judicial review in a Federal district court. This administrative system enables beneficiaries to submit any relevant information pertaining to this individual claim. Moreover, because LCDs are not controlling authorities for ALJs, an individual claim appeal could result in the claim being paid without the need to challenge the underlying LCD. Another section of BIPA, section 521, makes changes to those procedures with a different effective date. We would address any necessary revisions to our claims appeals regulations in future **Federal Register** documents.

We view section 522 of BIPA as creating an administrative review process that is separate and independent from the claims appeals process. The procedures used in section 522 for the BIPA administrative challenges process will be different, because the nature of the challenge and the relevant evidence is different. A challenge under section 522 of BIPA is a challenge to an entire policy, or specific provisions contained therein, and not just one claim denial. Therefore, section 522 of BIPA challenges may lead to changes that impact other beneficiaries if the policies are found to be unreasonable under the applicable standard for review.

Complaints under section 522 of BIPA also are subject to specific standing rules. Namely, under section 1869(f)(5) of the Act "[a]n action under this subsection seeking review of a[n NCD] or [LCD] may be initiated only by individuals entitled to benefits under part A, or enrolled under part B, or both, who are in need of the items or services that are the subject of the coverage determination." Only a beneficiary who has standing may bring an administrative challenge under section 522 of BIPA. Those rights cannot be assigned to anyone else. We are proposing to define "in need" as an aggrieved party who needs an item or service but has not yet received the item or service. At the time the complaint is filed, an aggrieved party may not have received the service that is the subject of the challenge, unless it is an item that is needed on an ongoing basis such as diabetic test strips. In general, the standing provision will require people seeking review of an NCD or LCD to receive the item or service after filing a challenge under section 522 of BIPA.

Although section 522 of BIPA does not enable a Medicare beneficiary to seek an advance determination on a particular claim or in advance of obtaining an item or service, an individual can challenge in advance of receiving an item or service the policy (LCD or NCD) that would cause the claim to be denied. As we discuss in greater detail in section III.E of this preamble, a successful challenge would result in the individual having his or her specific claim adjudicated without reference to the challenged policy. Claims that are otherwise payable, may be paid. In addition, a successful challenge to an LCD or NCD may result in the following:

- The policy being retired.
- Further agency action to modify the policy by clarifying the rationale or supplementing the record supporting the policy.

F. The Reconsideration Process

1. NCDs

We previously established a procedure by which individuals could seek reconsideration of policies established in an NCD. These procedures were set forth in the April 27, 1999 notice (64 FR 22619, 22625). In general, the reconsideration process permits any individual (not just aggrieved parties) to submit new evidence to us for review, or to suggest that we had misinterpreted existing evidence. We then review this evidence and do one of two things. First, if we believe that the evidence has merit and warrants a change to the NCD, we would revise the NCD and issue a new NCD in its place. If we do not believe the evidence warrants a change to the NCD, we would supplement the NCD record with this new evidence and reissue the NCD with no changes. A revised or reissued NCD becomes the policy subject to review under section 522 of BIPA.

We believe that CMS or contractor personnel with medical and scientific experience should first consider new clinical and scientific evidence to determine whether any changes to our coverage policies are necessary. The reconsideration process that we previously created was consistent with this approach. An aggrieved party may also submit new evidence in the coverage review processes. If new evidence is submitted during the coverage appeals process, those proceedings will be stayed in order for our policy makers or contractor clinical and scientific experts to consider the new clinical and scientific evidence. Once that reconsideration process is completed, the coverage review process will resume.

New evidence is any clinical or scientific evidence that was not previously considered by the agency or contractor when the NCD was issued.

2. Local Policy

The local policy reconsideration process is set forth in the Program Integrity Manual, Chapter 13, Section 11 (see *http//www.cms.hhs.gov/manual/108_pim/pim83c13.asp#sect11*). The local policy reconsideration process parallels the NCD reconsideration process.

New evidence is any clinical or scientific evidence that was not previously considered by the agency or contractor when the local policy was issued.

G. Difference Between an LCD/NCD Review and an LCD/NCD Reconsideration

The main difference between an LCD/NCD review under section 522 of BIPA and an LCD/NCD reconsideration is the avenue an individual chooses to take to initiate a change to a coverage policy. All interested parties, including an aggrieved party, could request a reconsideration of an LCD or NCD, rather than filing a complaint to initiate the review of an LCD or NCD. Conversely, only an aggrieved party could file a complaint to initiate the review of an LCD or NCD. If the aggrieved party believes that we, or the contractor, misinterpreted evidence or excluded available evidence in making the coverage determination or has new evidence to submit, then the aggrieved party has the option to file a request for a reconsideration by us or our contractor or file a complaint to seek review by an adjudicator.

In the reconsideration process, all interested parties, not just aggrieved parties, would have the opportunity to submit new scientific and medical evidence for review by individuals with medical and scientific expertise. The reconsideration process would permit experts to make judgments about those policies, rather than using an adjudicatory proceeding. Regardless of whether the reconsideration leads to a change in policy, we would update the LCD or NCD record to include the new evidence and, because of the new date of issuance, would establish a new NCD or LCD. The NCD or LCD updated by a reconsideration will lead to a new coverage determination that an aggrieved party may subsequently challenge by filing a complaint with the appropriate adjudicator. This is discussed in greater detail in section III.E of this preamble.

III. Provisions of the Proposed Rule

A. Overview

We are proposing that a Medicare beneficiary who qualifies as an aggrieved party may challenge an LCD or an NCD (or specific provisions therein) by filing an acceptable complaint with the Social Security Administration's Office of Hearings and Appeals (OHA) or the Board of HHS, respectively. The LCD or NCD review process is initiated if the applicable adjudicator determines the complaint to be acceptable.

In this proposed rule, we are proposing in § 400.202 to add a definition of the "Board" to mean the Departmental Appeals Board. We are also proposing to add a definition of "Local coverage determination (LCD)" and to revise the definition of "National coverage determination (NCD)." These definitions are specific to Medicare and would be revised to reflect the definitions for these terms found in section 522 of BIPA. The proposed rule would make clear that a determination of what code, if any, that is assigned to a service or a determination with respect to the amount of payment to be made for the service is not included in the definition of an LCD or an NCD. We use the term "Services" as defined in § 400.202 to include both "items and services."

We are proposing to revise paragraph (a) of § 405.732, "Review of a national coverage decision (NCD)," to state that an NCD is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under title XVIII. An NCD

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does not include a determination of what code, if any, is assigned to a particular item or service covered under title XVIII or a determination with respect to the amount of payment made for a particular item or service. NCDs are made under section 1862(a)(1) of the Act or other applicable provisions of the Act. An NCD is binding on all Medicare carriers, fiscal intermediaries, QIOs, HMOs, CMPs, HCPPs, and ALJs.

We are proposing to revise paragraph (b) of § 405.732 to state that an ALJ may not disregard, set aside, or otherwise review an NCD. An ALJ may review the facts of a particular case to determine whether an NCD applies to a specific claim for benefits and, if so, whether the NCD has been applied correctly to the claim.

We are proposing to revise paragraph (c) of § 405.732 to state for initial determinations made before October 1, 2002, and for challenges to an NCD made under section 1862(a)(1) of the Act, a court's review of an NCD is limited to whether the record is incomplete or otherwise lacks adequate information to support the validity of the decision, unless the case has been remanded to the Secretary to supplement the record regarding the NCD. The court may not invalidate an NCD except upon review of the supplemental record.

We are proposing to revise paragraph (a) of § 405.860, "Review of a national coverage determination (NCD)," to state that an NCD is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under title XVIII. An NCD does not include a determination of what code, if any, is assigned to a particular item or service covered under title XVIII or a determination with respect to the amount of payment made for a particular item or service. NCDs are made under section 1862(a)(1) of the Act or other applicable provisions of the Act. An NCD is binding on all Medicare carriers, fiscal intermediaries, QIOs, HMOs, CMPs, HCPPs, and ALJs.

We are proposing to revise paragraph (b) of § 405.860 to state that an ALJ may not disregard, set aside, or otherwise review an NCD. An ALJ may review the facts of a particular case to determine whether an NCD applies to a specific claim for benefits and, if so, whether the NCD has been applied correctly to the claim.

We are proposing to revise paragraph (c) of § 405.860 to state for initial determinations made before October 1, 2002, and for challenges to an NCD made under section 1862(a)(1) of the Act, a court's review of an NCD is limited to whether the record is incomplete or otherwise lacks adequate information to support the validity of the decision, unless the case has been remanded to the Secretary to supplement the record regarding the NCD. The court may not invalidate an NCD except upon review of the supplemental record.

We are also proposing to add a new part 426, titled "Reviews of Local and National Coverage Determinations," to title 42 of the CFR. In addition, we are proposing the following in part 426:

- Subpart A would contain general provisions applicable to the entire part.
- Subpart B would be reserved.
- Subpart C would contain the general provisions applicable to the review of LCDs and NCDs.
- Subpart D would contain the provisions specific to the review of LCDs
- Subpart E would contain the provisions specific to the review of NCDs.

B. Subpart A (General Provisions)

Subpart A of part 426 would specify the general provisions applicable to the entire part. Section 426.100, "Basis and scope," would set forth the basis (under sections 1869(f)(1) and (f)(2) of the Act), and the scope would specify the requirements and procedures for the review of LCDs and NCDs. In § 426.110, we would define the terms used in part 426 whose definitions may not otherwise be implicit.

Under section 522 of BIPA, only an "Aggrieved party" may file a complaint to initiate the review of an NCD or an LCD. We would define "Aggrieved party" as a Medicare beneficiary who is entitled to benefits under Part A, enrolled under Part B, or both (including an individual enrolled in fee-for-service Medicare, in a Medicare+Choice plan, or in another Medicare managed care plan), and is in need of a service that is the subject of an applicable LCD (in the relevant jurisdiction) or an NCD, as documented by the beneficiary's treating physician.

To properly demonstrate that a beneficiary is "in need," we are proposing that the beneficiary's treating physician document the need for the service. We believe this definition is consistent with the plain language of the statute and ensures that only beneficiaries who are aggrieved have standing to use this review process. Furthermore, we believe the statutory language allowing reviews of coverage determinations to be "* * * initiated only by individuals * * * who are in need" means individuals have not yet received the service that is the subject of the coverage determination. Therefore, an individual who has already received a service would not ordinarily qualify as an aggrieved party under our definition, and would not be eligible to initiate a review of a coverage determination regarding that service because he or she would no longer be in need of that service. However, there would be an exception for individuals who have a continuing need for a particular item or service that is subject to an NCD or LCD. We would require that an individual must be an aggrieved party at the time a complaint is filed, but we would not preclude an individual from receiving the service that is named in the complaint after the complaint is filed.

An individual who has an ongoing need for a service, or an individual who has received a service in the past but has a need to receive the service again (and has not received the service at the time a complaint has been filed) would meet our definition of aggrieved party because an unfulfilled need for the service exists.

We would define "Contractor" as a carrier (including a DMERC) or an FI (including an RHHI) that has jurisdiction for the LCD at issue. Specifically, a carrier or FI with LCD jurisdiction for a particular geographical area would be the contractor responsible for, among other things, providing the record of its LCDs.

We would define "Deemed NCD" as a determination that the Secretary makes in response to a request for an NCD by an aggrieved party under section 1869(f)(4)(B) and (C) of the Act, that no national coverage or noncoverage determination is appropriate, or the Secretary failed to meet the deadline under section 1869(f)(4)(iv) of the Act. Section 1869(f)(4)(C) of the Act deems certain decisions of the Secretary to be NCDs for purposes of administrative review. These circumstances would be as follows:

- When there was no NCD for a particular service.
- When an aggrieved party submits a request to the Secretary to make a determination about that service.
- When the Secretary determines that no national coverage or noncoverage determination is appropriate.

The statute directs that only these determinations are deemed to be NCDs that may be reviewed by the Board. The Supreme Court has recognized, however, that the Secretary's decision of whether to issue a generally applicable rule or to allow individual adjudication "are clearly discretionary decisions." *Heckler* v. *Ringer*, 466 U.S. 602, 617 (1984).

We would define "New evidence" as clinical or scientific evidence that was not previously considered by us or the contractor before the NCD or LCD was issued.

We would define "Party" as an individual who has the right to participate in the LCD or NCD review process. A party includes an aggrieved party, a contractor, and, as appropriate, CMS. In the case of an LCD review, we may choose whether to be a party in the review along with the contractor. We believe that we, or our contractors, should be afforded an opportunity to participate in these reviews. These reviews involve challenges to important agency policies that may impact millions of beneficiaries. We believe either we or the contractors who issued the LCDs or NCDs should be given the opportunity to present evidence and make arguments supporting the rationale behind their coverage policies before an adjudicator issues a decision on whether the policies are reasonable. We note that we are always a party to an NCD review and contractors would not participate in an NCD review.

We would also define "Reasonableness standard" as the standard that an ALJ or the Board must apply when conducting an LCD or an NCD review. In determining whether NCDs or LCDs are valid, the adjudicator must uphold a challenged policy (or a provision or provisions of a challenged policy) if the findings of fact, interpretations of law, and applications of fact to law by CMS or the contractor are reasonable based on the NCD or LCD record. We are proposing to use the statutory language from sections 1869(f)(1)(A)(iii) and (f)(2)(A)(i) of the Act, which instructs adjudicators to defer only to the reasonable findings of fact, reasonable interpretations of law, and reasonable applications of fact to law by the Secretary.

We are requesting public comments on the feasibility of using an alternative dispute resolution (ADR) process and suggestions regarding how an ADR process could be used in an evidence-based review process.

C. Subpart B (Reserved)

We are proposing to reserve subpart B.

D. Subpart C (General Provisions for the Review of LCDs and NCDs)

We are proposing that the general provisions common to both the review of LCDs and NCDs would be established in subpart C. In § 426.300(a), we are proposing that the review of a challenged provision (or provisions) of an LCD is conducted by an ALJ only upon the receipt of an acceptable complaint as described in § 426.400. We are also proposing in § 426.300(b) that the review of a challenged provision (or provisions) of an NCD is conducted by the Board only upon the receipt of an acceptable complaint as described in § 426.500. An acceptable complaint can only be submitted to the applicable adjudicator by an aggrieved party. Additionally, § 426.300(c) would allow for the review of deemed NCDs, a process that would parallel the review of NCDs.

For the reasons described in section II.E of this preamble, we are proposing in § 426.310(a) to keep LCD and NCD reviews independent of the claims appeal processes set forth in part 405, subparts F and G; part 417, subpart Q; and part 422, subpart M. In § 426.310(b), we would also require an aggrieved party to notify the OHA or the Board of the disposition of any pending claim or appeal relating to the aggrieved party's LCD or NCD complaint. The aggrieved party would have to make this notification as soon as possible, regardless of the time during the coverage determination review that the aggrieved party filed a claim. As discussed earlier in this section of the preamble, we would allow the aggrieved party to receive a service after filing a complaint, without affecting the coverage determination review. However, in most circumstances, an individual could not obtain a service, submit a claim under the claims appeal process, and then seek to file a complaint because the individual would not satisfy the "in need" requirement.

In § 426.320(a), we are proposing that only an aggrieved party may initiate a review to challenge an LCD or NCD (or an existing specific provision or provisions of an LCD or an NCD) by filing an acceptable complaint. Sections 1869(f)(1)(A)(iii) and (f)(2)(A)(i) of the Act are very specific in allowing these reviews only to be initiated by an aggrieved party. Under this requirement, an aggrieved party would be allowed only to challenge language that exists within an LCD or NCD. Similarly, the statute does not allow for an aggrieved party to use this process to challenge anything that does not meet the definition of an LCD or an NCD (see § 426.320(b)). For example, draft LCDs and NCDs would be excluded from review as they are predecisional. LCDs and NCDs that are no longer in effect would also be excluded as they are no longer in effect. Other interpretive policies that are not LCDs or NCDs would also not be subject to review under this process.

Contractor policies that are not based on section 1862(a)(1)(A) of the Act, the "medical necessity" provision, would not be subject to review. The statutory language in section 522 of BIPA specifically limits the definition of LCDs to those documents or parts of documents that are based on section 1862(a)(1)(A) of the Act. Provisions of contractor policies, that are based on things other than the medical necessity statute, such as benefit category determinations, statutory exclusion determinations, and coding determinations, would not be subject to review under this part.

In addition, any M+C or other managed care plan policy, rule, or procedure would not be subject to review under this process. Further, the 522 complaint process is distinct from the pre-service appeal rights established for M+C plan and other Medicare managed care enrollees.

Individual claim determinations by adjudicators would also not be subject to review under this process. Beneficiaries who wish to appeal an individual claim determination must do so through the claims appeal process.

Although NCDs and deemed NCDs would be subject to review under this process, determinations not meeting those definitions would not be subject to review under this process. For example, a determination made by us at the request of a provider that no national coverage or noncoverage determination is appropriate would not be considered a deemed NCD because a deemed NCD would only be the result of an aggrieved party requesting an NCD under section 1869(f)(4) of the Act. These determinations, therefore, would not be subject to review under this process.

In § 426.330, we are proposing not to allow an aggrieved party to assign his or her rights to file a complaint against an LCD or NCD to any other individual or entity. Neither an ALJ nor the Board will recognize as valid any attempt to assign rights under section 1869(f) of the Act. In § 426.330(b), we are proposing that the aggrieved party filing the complaint bears the burden of proof and the burden of persuasion for the issue or issues raised in the complaint. The burden of persuasion will be judged by a preponderance of the evidence. While it is by no means required, we realize that some aggrieved parties may wish to retain representation.

In § 426.340, we are proposing that if an aggrieved party submits new evidence pertaining to an NCD or LCD, the administrative proceedings under part 426 will be stayed upon request from us or the contractor to consider the

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additional clinical or scientific evidence. Following the review of this evidence, we or the contractor will file a supplemental record. Because the aggrieved party could submit new information that was not previously considered at several steps of the section 522 of BIPA review process, we are proposing that whenever an aggrieved party introduces new evidence, the section 522 of BIPA proceedings will be stayed upon request from us or the contractor in order to permit clinical and scientific experts to evaluate the evidence using the reconsideration process discussed earlier in this preamble. Thus, in the case in which an aggrieved party seeks to rely on new clinical or scientific evidence, the aggrieved party has a choice to file a review of the coverage policy with an appropriate external review entity under section 522 of BIPA or file a reconsideration review request, as discussed earlier in this preamble. In either case, our policy makers or the appropriate contractor clinical or scientific experts would be given the opportunity to formally consider the evidence submitted by the aggrieved party and revise our policy if the clinical and scientific evidence supports a change. Following the reconsideration, if necessary, a supplemental record would be prepared and section 522 of BIPA proceedings could continue. An aggrieved party is not prohibited from filing a simultaneous appeal with an adjudicator and a reconsideration review request with us or our contractor.

E. Subpart D (The Review of an LCD) and Subpart E (The Review of an NCD)

In subparts D and E, we are proposing to set forth the procedures for the review of LCDs and NCDs, respectively. The process for NCD reviews is largely the same as the process for LCD reviews. The major exceptions are as follows:

- NCDs may be based on other statutory provisions, not just section 1862(a)(1)(A) of the Act.
- NCD reviews are conducted by the Board.
- There is no role for ALJs or contractors in an NCD review.
- We are always a party to an NCD review.
- The process for taking an NCD out of effect is different than an LCD being "retired."
- Board administrative decisions regarding NCDs would be made available in a searchable format on the Medicare Internet site, with identifying information removed.

For the purpose of this preamble, we will consolidate the discussion of the requirements and policy decisions when possible. Sections 426.400 and 426.500 would contain the requirements for filing an acceptable complaint regarding a provision or provisions of an LCD and an NCD, respectively. In both cases, a complaint must be in writing and must be from an aggrieved party. In § 426.400(a), we would require that complaints regarding LCDs would have to be submitted to the OHA of the Social Security Administration, and complaints regarding NCDs would have to be submitted to the Board of HHS (see § 426.500(a)). We would also require, in both cases, a valid complaint to contain the beneficiary-identifying information listed in § 426.400(c)(1) and § 426.500(c)(1) including the treating physician's certification that the beneficiary needs the service that is the subject of the coverage determination, and a statement from the treating physician that payment for the service is likely to be denied under that coverage determination.

We believe that the physician's certification is necessary to ensure that the individual is an aggrieved party (see our discussion of the definition of aggrieved party in section III.A of this preamble.) In § 426.400(b), we would further require that the complaint be received by the OHA or the Board (whichever is applicable) within 6 months of this certification so that reviews of coverage determinations will remain reasonably current. We are proposing that a complaint contain the physician's statement that payment for the service is likely to be denied under the coverage determination because we believe that this step will help to ensure an actual controversy exists.

We would also require the information in §§ 426.400(c)(2) and (c)(3) and 426.500(c)(2) and (c)(3), which is necessary to identify the LCD or NCD (or the specific provision or provisions of the LCD or NCD) that is (are) adversely affecting the aggrieved party. We also would require a statement from the aggrieved party that explains the rationale for the complaint and states whether the service has been received (which in some cases would indicate that the individual is not an aggrieved party) (see §§ 426.400(c)(3) and 426.500(c)(3).

We are also proposing, in §§ 426.400(c)(4) and 426.500(c)(4), to allow the aggrieved party to submit copies of clinical or scientific evidence that supports the complaint. In § 426.400(d), we are proposing that two or more aggrieved parties may initiate the review of an LCD by filing a single written complaint with the OHA if the conditions in § 426.400(d)(1)(i) and (d)(ii) are met. Similarly, in § 426.500(d), we are proposing that two or more aggrieved parties may initiate the review of an NCD by filing a single complaint with the Board if the conditions in § 426.500(d)(1)(i) and (ii) are met.

Section 426.405 would specify the authority of the ALJ during an LCD review, including authority during a hearing, if applicable, as well as the authority that an ALJ would not have during an LCD review (see § 426.405(d)). We believe that the authority that would be granted to, and the authority that would not be granted to, an ALJ during an LCD review by this section is consistent with the statute and with common practice in other administrative proceedings. Similarly, in § 426.505, we would set forth the specific authority of the Board during an NCD review, if applicable, as well as the authority that the Board would not have during an NCD review (see § 426.505(d)).

Sections 426.406 and 426.506 would prohibit ex parte contacts so that no party or person (except employees of the ALJ's office) would communicate in any way with the ALJ on any substantive matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

In § 426.410, we would establish the ALJ's role in docketing and evaluating the acceptability of LCD complaints. These procedures would be very similar to the Board's role in docketing and evaluating the acceptability of NCD complaints proposed in § 426.510. Under the procedures, the adjudicatory body would receive and docket the complaint (which, at the discretion of the adjudicators, could include the name of the coverage determination rather than the individual bringing the challenge), evaluate the acceptability of the complaint, and take similar actions thereafter.

We are proposing in §§ 426.410 and 426.510 the criteria that a complaint would have to meet to be considered as an acceptable complaint by an ALJ or the Board. An aggrieved party must file the complaint; the complaint must meet all of the requirements of a valid complaint regarding an LCD in § 426.400, or regarding an NCD in § 426.500, and could only be challenging a policy that meets the definition of an LCD or an NCD.

If a complaint is deemed to be unacceptable after having been evaluated under §§ 426.410(b) and 426.510(b), the applicable adjudicator would provide the aggrieved party (or parties) one opportunity to amend the unacceptable complaint within a timeframe set forth by the adjudicator (see §§ 426.410(c) and 426.510(c)). If the aggrieved party (or parties) does not submit an acceptable amended complaint within this time frame, the adjudicator would issue an administrative decision dismissing the unacceptable complaint. We are seeking public comment on whether an aggrieved party should also be precluded from filing another complaint on the same issue for some period of time.

If after having been evaluated under §§ 426.410(b) and 426.510(b), a complaint is accepted, the adjudicator would send a letter to the aggrieved party (or parties) acknowledging the complaint and informing them of the docket number (see § 426.410(d)). The adjudicator would also forward a copy of the complaint and the acknowledgement letter to the applicable contractor and us, and request that we or the contractor send a copy of the LCD record to the ALJ and all parties to the LCD review. We believe that these steps will provide all parties involved in the LCD review with the information to proceed with the review. The corresponding section in § 426.510(d) would require the adjudicator to follow the same process for NCDs.

In §§ 426.410(e) and 426.510(e), we would allow for adjudicators to consolidate complaints regarding LCDs and NCDs, respectively. Under this provision, several complaints could be consolidated into one review if the complaints were appropriately similar. The review processes would not be affected by a decision to consolidate complaints into one review. Rather, consolidation would only be a tool to reduce the burden of multiple or duplicative challenges to the same policy.

In § 426.415, we would provide information identifying the person who would represent the contractor in the LCD review process to the ALJ, and all parties to the LCD review. We would make a decision whether the agency or the contractor would participate in the LCD review. Under the corresponding section in § 426.515, we would provide a copy of the NCD record (as described in § 426.518) to the Board and all parties to the NCD review.

Sections 426.418 and 426.518 would describe the elements of a contractor's LCD and NCD record, respectively. We are proposing that an LCD or NCD record would be composed of documents and materials that we, or the contractor, considered during the development of the LCD and NCD. In §§ 426.418(b) and 426.518(b), we would not include privileged material, proprietary data or any new evidence as part of the record under §§ 426.415 and 426.515 or otherwise prohibited from release by Federal law. Official records presented to the Board may contain proprietary data or information, if the information was used in reaching the NCD under appeal. In these instances, we would propose that proprietary information be protected from inappropriate disclosure according to all applicable statutes, regulations, or other formal, binding agreements governing use and release of the information. We are inviting public comments on the scope of proprietary data and the extent to which this material should be disclosed.

In § 426.420, we would allow a contractor to retire the LCD under review before the date the ALJ issues an administrative decision regarding the LCD. Retiring an LCD would mean that the contractor could no longer use that LCD in the adjudication of claims; thus, there would no longer be a need for an LCD review. In § 426.520, we would be allowed to repeal an NCD under review before the date the Board issues an administrative decision regarding that NCD. Repealing an existing NCD would mean this policy would no longer be a controlling authority for our contractors and certain adjudicators. Thus, there no longer would be a need for an NCD review concerning the superceded NCD.

Under §§ 426.423 and 426.523, we are proposing to permit aggrieved parties who filed the complaint to withdraw complaints regarding LCDs and NCDs, respectively. We would allow an aggrieved party to withdraw a complaint before the applicable adjudicator issues an administrative decision regarding the complaint by simply sending a written notice to the OHA, the applicable contractor, and us (if applicable) for LCDs, or to the Board and us for NCDs (see §§ 426.423(b) and 426.523(b)). Under this process, the adjudicator would issue an administrative decision (discussed later in this section of the preamble) dismissing the complaint, and the aggrieved party would not be able to file another complaint to the same coverage determination for 6 months. This proposal is designed to encourage disputes to be resolved in an efficient manner by discouraging a challenger from filing a complaint but voluntarily dismissing that challenge after significant administrative resources have been expended.

In the case of a joint complaint, one or more aggrieved parties may withdraw from the review without affecting the status of any remaining aggrieved party or parties named in the complaint. The adjudicator would issue an administrative decision dismissing the complaint for the aggrieved party or parties who wish to withdraw, and the review would continue until the adjudicator issued an administrative decision on the merits, or until each aggrieved party withdrew his or her respective complaint. Similarly, if the adjudicator had decided to hold a consolidated review, an aggrieved party or parties who are part of the consolidated review may withdraw without affecting the status of the other aggrieved party or parties who are part of the consolidated review (See §§ 426.423(c) and 426.523(c).

Sections 426.425 and 426.525 would contain the processes for LCD and NCD reviews, respectively, that take place once the record has been filed. Sections 1869(f)(1)(A)(iii) and 1869(f)(2)(A)(i) of the Act, as added by section 522 of BIPA, state that the adjudicators of NCD and LCD reviews, respectively, "* * * shall review the record and shall permit discovery and the taking of evidence to evaluate the reasonableness of the determination, if the [adjudicator] determines that the record is incomplete or lacks adequate information to support the validity of the determination." Therefore, we would allow the aggrieved party who submitted the complaint to file a motion alleging that the LCD record (or the NCD record in the case of an NCD review) is not complete, not adequate to support the validity of the coverage determination, or both. This motion would be filed after the aggrieved party has had adequate time to review the record (we are proposing 30 days after receipt of the record, with an extension if requested). The motion would be submitted to the adjudicator, the contractor (if an LCD review), and us (if applicable) (see §§ 426.425(a) and 426.525(a)).

If the adjudicator determines that the record is not complete, not adequate to support the validity of the coverage determination, or both, the adjudicator would notify all parties to the review of this decision and allow discovery (as proposed in §§ 426.432 and 426.532 and discussed later in this section of the preamble). Therefore, discovery would be allowed only if the aggrieved party filed a motion that the record was not complete, not adequate to support the validity of the coverage determination, or both, and the adjudicator agreed with that motion.

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If the adjudicator determines that the record is complete and adequate to support the validity of the coverage determination, the adjudicator would deny the motion, would not permit discovery, but would review the provision or provisions named in the complaint based on the reasonableness standard.

Under §§ 426.425(a)(3) and 426.525(a)(3), if an aggrieved party files a motion, based on new evidence, alleging that the contractor's LCD or NCD record is not complete, not adequate to support the validity of the LCD or NCD, or both, the Board or the ALJ would stay the proceedings upon request from us or the contractor to permit a consideration of the new evidence as described in § 426.340.

Under §§ 426.429 and 426.529, we would describe the process for submitting a supplemental record after new evidence has been considered under § 426.340. An aggrieved party may request additional discovery or continue the process to seek a decision by the ALJ or the Board.

Under §§ 426.430 and 426.530, we are proposing the ALJ's or Board's role in determining whether the contractor's LCD or our NCD record would be complete and adequate to support the validity of the LCD or NCD. In paragraph (a), we are proposing that if the aggrieved party does not file a motion described in § 426.425(a)(1) or § 426.429(a)(1), the ALJ or Board will review the contractor's LCD or our NCD record and apply the reasonableness standard, as described in § 426.431.

In paragraph (b) of §§ 426.430 and 426.530, we are proposing that if the aggrieved party files a motion described in § 426.425(a) or § 426.429(a), the ALJ or Board must: (1) Allow the contractor or us to submit a statement to the ALJ or Board and the aggrieved party responding to the motion described in paragraph (a) of this section; (2) review the contents of the LCD or NCD record, as described in § 426.418; (3) hold conferences, if necessary, which may be conducted (at the ALJ's or Board's discretion) either in person, or, by mutual agreement of the parties, by telephone, picture-tel, or any other means agreed upon by all parties involved; and (4) determine whether the contractor's LCD or our NCD record is complete and adequate to support the validity of the LCD or NCD.

In paragraph (c) of §§ 426.430 and 426.530, we are proposing the ALJ's or Board's role in determining the completeness of the contractor's LCD or our NCD record, and in determining the adequacy of the contractor's LCD or our NCD record to support the validity of the LCD or NCD.

We are considering requiring the petitioner in an NCD or LCD proceeding before the adjudicator to submit a statement about the factual and legal basis on which that party considers that record to be "incomplete" and/or to "lack adequate information to support the validity of the determination," and an offer of proof supporting any factual allegations on the "incompleteness" of the record. CMS or the contractor would respond in writing to this statement of "incompleteness." The adjudicator would review the NCD or LCD record and both parties' submissions. If the adjudicator concluded that the NCD or LCD record is complete and adequate to support the validity of the determination, the adjudicator could issue a written decision to that effect. This decision would then constitute a final agency action, appealable to court. If the adjudicator determined that the record was incomplete or lacked adequate information, the adjudicator could issue a written ruling explaining the reasons for this decision. The adjudicator would then be required to permit discovery and to hold a hearing for the taking of additional evidence on any material issues of fact. Both parties could supplement the record at this stage of the review process. We seek comments on whether this "adequacy of information" determination procedure by the adjudicator would lead to more prompt resolution of cases and better utilization of resources for all parties involved.

Under §§ 426.431 and 426.531, we would describe the process that adjudicators would use to review the provision(s) named in a complaint based on the reasonableness standard. We would require the adjudicator to confine the review to the provision(s) of the coverage determination named in the complaint and to the clinical or scientific evidence contained in the record (or supplemental record). The adjudicator would have the option to consult with impartial scientific or clinical experts, and consider any previous ALJ or Board administrative decision (made under part 426) regarding the same provision(s) named in the complaint. We are proposing that previous ALJ or Board administrative decisions made under this part may be considered, but are not a controlling precedent. It is possible that a later challenger may introduce pertinent clinical or scientific evidence that was not submitted in the previous proceedings. We are requesting public comment on this approach.

In addition, the adjudicator would have the option, under § 426.431(b) and 426.531(b), to conduct a hearing, and allow subpoenas and the taking of evidence (discussed in the section of the preamble on § 426.440 and § 426.540).

In §§ 426.431(c) and 426.531(c), we are proposing that ALJs and the Board would be bound by applicable provisions of the Act, our regulations, and rulings. Moreover, NCDs would be controlling authorities for ALJs. This policy is consistent with section 1869(f)(1)(A)(i) of the Act.

Under §§ 426.432 and 426.532, we are proposing that in paragraph (a), if the ALJ or Board orders discovery, the ALJ or Board would establish a reasonable timeframe for discovery, ensure that a party to the LCD or NCD review who receives a discovery request has certain rights, and ensure that a nonparty to the LCD or NCD review who receives a discovery request has the same rights in responding to a discovery request as any party. In paragraph (b), we are proposing that any party or nonparty receiving a discovery request may file a motion for a protective order before the date of production of the discovery.

Under §§ 426.432 and 426.532, we would also set forth the rules for discovery during an LCD or NCD review, respectively. Only an ALJ could order discovery during an LCD review if the ALJ found the contractor's LCD record to be incomplete, inadequate to support the validity of the LCD, or both, and after a motion had been filed under § 426.425. Likewise, only the Board could order discovery during an NCD review if the Board found our NCD record to be incomplete, inadequate to support the validity of the NCD, or both, and after a motion had been filed under § 426.525. We would require the adjudicator to establish a timeframe for the discovery process.

In § 426.432(c), § 426.432(d), and § 426.432(e), we are proposing that only documents relating to a specific LCD or NCD be eligible for discovery. The sections relating to discovery do not require the creation of any document. We believe that this is consistent with normal practice and will avoid unnecessary delays in the coverage determination reviews.

Under § 426.432(f), we are proposing that an adjudicator may order us or our contractor to provide an index of any documents withheld on the basis of privilege and, if necessary, conduct an in-camera review of any documents withheld on the basis of privilege.

While reviewing a provision of an LCD or NCD based on the reasonableness standard, the adjudicator may, if necessary, issue subpoenas,

consult with appropriate clinical or scientific experts, and take evidence during a hearing. In §§ 426.435 and 426.535, we are proposing the process for obtaining and responding to, subpoenas during a coverage determination review. A request for a subpoena to require the attendance of an individual at a hearing (or provide evidence at a hearing) would have to be filed with the adjudicator by a party to the coverage determination review at least 30 days before the hearing is scheduled. In addition to designating the witnesses (and their locations) and the evidence to be produced by those witnesses, the subpoena would have to state the facts that the party expects the witness to establish, and state whether these facts could be established by other evidence or without the use of a subpoena. We believe that this will serve the purpose of ensuring that only those witnesses closest to, and most familiar with, the coverage determinations will be subpoenaed to a hearing and will allow the adjudication to exclude irrelevant matters. Because an LCD or NCD review is limited to the scientific and clinical evidence pertaining to the matter at the time the LCD or NCD was issued, testimonial evidence must be related to the appropriate time period. We are proposing in § 426.340 that if an expert submits new clinical and scientific evidence, additional action by us or the contractor may be necessary.

The subpoena sections also detail the role of adjudicators in granting subpoenas, the role of a party in serving a subpoena, and the role and rights of the individual receiving a subpoena (including the right to file a motion to quash a subpoena). In addition, in §§ 426.435(h) and 426.535(h), we would also set forth the remedy afforded under section 205(e) of the Act, if a subpoena is not obeyed.

We are proposing the rules relating to evidence in coverage determination reviews in §§ 426.440 and 426.540. Under §§ 426.440(a) and 426.540(a), the ALJ or Board would determine the admissibility of evidence consistent with § 426.340. Under §§ 426.440(f) and 426.540(f), we would require experts submitting reports to be available for cross-examination at an evidentiary hearing. Under §§ 426.440(g) and 426.540(g), we would require that, unless otherwise ordered by the adjudicator for good cause, all documents and other evidence be open to examination by all parties to the review.

In §§ 426.441 and 426.541, we are proposing that the adjudicator notify all parties when the discovery period is closed.

Under §§ 426.444 and 426.544, we would describe an adjudicator's dismissal for cause of a complaint regarding an LCD or an NCD, respectively. A dismissal would be effectuated by the issuance of an administrative decision dismissing a complaint. In general, an adjudicator may dismiss a complaint if an aggrieved party (or his or her representative) fails to attend or participate in a pre-hearing conference or hearing without good cause or fails to comply with a lawful order from an adjudicator (see §§ 426.444(a) and 426.544(a)). Under §§ 426.444(b) and 426.544(b), we would require that the adjudicator dismiss complaints that fail to meet the requirements for acceptable complaints, including complaints regarding inapplicable policies or determinations. We would also require that the adjudicator must also dismiss a complaint if the aggrieved party withdraws the complaint, or if the complaint seeks review of a matter beyond the adjudicator's authority.

If an aggrieved party dies after initiating the coverage determination complaint process and after filing an initial claim for benefits, the aggrieved party's estate could pursue payment under the claims appeals process, but the estate may not pursue a policy challenge.

Under §§ 426.444(b)(6), we would also require an ALJ to issue an administrative decision dismissing a complaint if the applicable contractor was to notify the ALJ that the LCD is being retired. When a contractor decides to retire an LCD, it means that the LCD (or the provision(s) of the LCD removed as part of the revision) cannot be used in the adjudication of claims after the date of issuance of the retirement. We would require that the LCD would no longer be effective within 30 days of the date of notifying the ALJ. We are proposing this rule because retiring an LCD ensures that the LCD will no longer be used in that particular jurisdiction and renders a challenge to the policy moot. Similarly, in § 426.544(b)(6), we would notify the Board that the NCD is no longer in effect.

Under §§ 426.444(c) and 426.544(c), we would require that an adjudicator may, at the request of any party, or on his or her own motion, dismiss a complaint if the adjudicator has already issued an administrative decision on the LCD or the NCD or provisions of an LCD or an NCD and the aggrieved party has not presented any new clinical or scientific evidence that supports the complaint.

In §§ 426.445 and 426.545, we would require that witness fees, for appearances during a hearing, be paid by the party seeking to present the witness.

Under §§ 426.446 and 426.546, we would require that an ALJ and the Board, respectively, ensure that any hearing conducted regarding a coverage determination review is open to the public and mechanically or stenographically recorded. While these proceedings are open to the public, adjudicators are under no obligation to announce or publicize these proceedings. Further, the public has no right to participate in these proceedings. These sections would also require that all evidence upon which the adjudicator relies for a decision be contained in the record, and that any pertinent document or record be incorporated into the record of the coverage determination hearing.

Under §§ 426.447 and 426.547, we would set forth the procedures for the issuance and notification of ALJ and Board administrative decisions, respectively. The applicable adjudicator, within 90 days from closing the review record to the taking of evidence, would be required either to issue an administrative decision, or provide notice that the administrative decision is pending, and an approximate date a decision will be issued. In § 426.547(b), we would explain that Board administrative decisions regarding NCDs would be available on the Medicare internet site of the Department of Health and Human Services. Steps would also have to be taken to ensure the privacy of the parties to the review, in conjunction with applicable statutes and regulations.

Under § 426.450, we would describe the required elements of an ALJ's administrative decision regarding an LCD. In § 426.550, we would similarly describe the required elements of the Board's administrative decision regarding an NCD. As discussed earlier in this section of the preamble, an administrative decision may include the dismissal of a complaint. If the complaint is not dismissed, the administrative decision would have to contain a statement pertaining to each provision listed in the complaint and stating whether the provision is valid or invalid under the reasonableness standard. We would also require that the administrative decision include the information in §§ 426.450(b) and 426.550(b), which include LCD review or NCD review identifying information, claim information (if known), a rationale for the basis of the administrative decision, a summary of

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the evidence reviewed during the review, and the respective ALJ's or Board member's signature and date.

In §§ 426.455 and 426.555, we are proposing that an administrative decision be prohibited from doing any of the following:

- Ordering us or our contractors to take specific actions in modifying (including adding to, or deleting language from) a provision(s) of an LCD or NCD.
- Ordering us or our contractors to pay a specific claim.
- Establishing a time limit for the establishment of a new or revised LCD or NCD.
- Reviewing or evaluating an LCD or NCD other than the LCD or NCD under review.
- Including a requirement for us or our contractors that specifies payment, coding, or systems changes for an LCD or NCD, or deadlines for implementing these changes.

In §§ 426.460 and 426.560, we would describe the effect of administrative decisions issued under §§ 426.447 and 426.547. We are proposing these provisions because we believe that the exact wording of a new coverage determination should be made by the contractor or us. These policies affect other beneficiaries and, thus, these determinations should be made by clinicians and scientific experts who have the necessary specialized training. Thus, we and the contractor would remain the entities responsible for ensuring that the clinical and scientific policies are sound, resulting in the best quality of care for beneficiaries.

The effect of an administrative decision would depend on the outcome of the coverage determination review. If the adjudicator found that the provision(s) named in the complaint was (were) valid under the reasonableness standard, the aggrieved party or parties (in the case of an LCD review) could appeal that decision to the Board or (in the case of NCD review) may challenge the final agency action in Federal court.

If the adjudicator found that the provision(s) listed in the complaint was (were) invalid under the reasonableness standard and the contractor or we do not appeal this decision to the Board in a timely manner, the contractor must or we will do several things. First, there would be individual claim relief for the aggrieved party or parties named in the complaint(s).

- If the aggrieved party received (fee-for-service or managed care) service that was the subject of the challenged coverage determination after the date the complaint was filed, and a claim has been filed, then we would instruct the contractor (if applicable) or Medicare managed care organization not to use the provision(s) of the coverage determination that was (were) found invalid in the adjudication of that claim.
- If the aggrieved party has not received the service, the individual may obtain the service and file a claim, which could be reviewed by the contractor, without using the provision that has been found invalid.

Neither the first level appeal reviewer nor the hearing officer would be bound by the invalidated provision, as they were bound at the initial claim determination. Specifically, we would instruct the contractor to make a claim determination without using the LCD or NCD provision(s) that has been found invalid in each of the following situations: (1) The claim has not been adjudicated; (2) the claim was denied but not appealed, in which case the contractor must re-open the claim; or (3) the claim was adjudicated, denied and appealed at any level. It is important to note that individual claim relief can only be provided to an aggrieved party if his or her individual claim or appeal has not been paid during the individual claims adjudication process.

Second, there would be additional relief. Within 30 days of the issuance of the administrative decision, we or the contractor would have to send a letter to the aggrieved party and the adjudicator announcing the intent to either retire the coverage determination, or conduct a reconsideration of that policy. As discussed earlier, the retirement of a coverage determination means that it can no longer be used in the adjudication of claims. And, as also described earlier, a reconsideration of a coverage determination could result in a new LCD or NCD that does one of the following:

- Supplements the record or rationale and reaffirms the coverage determination.
- Revises the coverage determination.
- Retires the coverage determination.

Supplementing the record could include the addition to the record of evidence that was not in the LCD or NCD record, or a more detailed rationale as to why the contractor or we believe the LCD or NCD should remain in effect. Although the specific language of the LCD or NCD may not change in this case, the LCD or NCD would have to be reissued to reflect the updated decision and record.

Under § 426.462, "Notice of an ALJ's administrative decision," we are proposing that after the ALJ has made a decision regarding an LCD complaint, the ALJ would send a written notice of the administrative decision to each party. The notice must contain a finding with respect to the LCD complaint and inform each party to the determination of his or her rights to seek further review if he or she is dissatisfied with the determination, and the time limit under which an appeal must be requested.

Under § 426.562, "Notice of the Board's administrative decision," we are proposing that after the Board has made a decision regarding an NCD complaint, the Board would send a written notice of the administrative decision to each party. The notice must contain a finding with respect to the coverage complaint and inform each party to the determination of his or her rights to seek further review if he or she is dissatisfied with the determination, and the time limit under which an appeal must be requested.

In the remainder of the sections proposed in subpart D, we would set forth the procedure for appealing an ALJ's administrative decision regarding an LCD review. In § 426.465(a), we are proposing that an aggrieved party may appeal part or all of an ALJ's administrative decision that states that a provision of the LCD listed in the complaint is valid under the reasonableness standard, or that dismisses a complaint (with certain exceptions). We would also allow an aggrieved party who was part of a joint complaint or a consolidated LCD review to appeal an ALJ's administrative decision either independently or as a group.

In § 426.465(b), we are proposing that we or our contractor be allowed to appeal an ALJ decision that an LCD was unreasonable to the Board.

In § 426.465(c), we are proposing that the implementation of the ALJ decision will be stayed pending review by the Board.

In § 426.465(d), we are proposing not to allow an aggrieved party to appeal a dismissal in certain circumstances, namely, if the aggrieved party who filed the complaint withdraws the complaint, or because the contractor retired the LCD.

Under § 426.465(e), we are proposing that an appeal would have to be submitted to the Board within 60 calendar days of the date the ALJ's administrative decision was issued. We believe this is a reasonable timeframe to allow a party to make a decision on whether to appeal and to prepare the necessary documents, but we would permit the Board to consider a late appeal if good cause is shown by the party.

Section 426.465(f) would list the necessary components of an appeal to identify the relevant parties and issues.

In § 426.565, "Board's role in making an LCD or NCD review record available," we are proposing that upon a request from a Federal Court, the Board must provide to the Federal Court, a copy of the Board's LCD or NCD review record (as described in § 426.567).

In § 426.467, "Board's LCD review record," we are proposing in paragraph (a) that except as provided in paragraph (b) of this section, the Board's LCD review record consists of any document or material that the Board compiled or considered during an LCD review, including, but not limited to, the following:

- The LCD complaint.
- The LCD and LCD record.
- The supplemental LCD record, if applicable.
- The Board's administrative decision.
- Transcripts of record.
- Any other relevant evidence gathered under § 426.440.

We are proposing in paragraph (b) that the LCD record would not include material that is privileged or otherwise prohibited from release by Federal law.

In § 426.567, "Board's NCD review record," we are proposing in paragraph (a) that except as provided in paragraph (b) of this section, the Board's NCD review record consists of any document or material that the Board compiled or considered during an NCD review, including, but not limited to, the following:

- The NCD complaint.
- The NCD and NCD record.
- The supplemental NCD record, if applicable.
- The Board's administrative decision.
- Transcripts of record.
- Any other relevant evidence gathered under § 426.540.

We are proposing in paragraph (b) that the NCD record would not include material that is privileged or otherwise prohibited from release by Federal law.

In § 426.468, we propose that an aggrieved party who initiates an LCD review, but does not appeal any part or parts of an ALJ's administrative decision to the Board in a timely manner, would waive his or her right to any further review of that part or those parts.

In § 426.470, we are proposing that the Board's role in docketing and evaluating the acceptability of appeals of ALJ administrative decisions would be similar to the process that an ALJ would use in docketing and evaluating the acceptability of a complaint. The Board would assign a number to the appeal and determine if it meets all of the requirements of an acceptable appeal proposed in § 426.465. Unlike the evaluation of an initial complaint, however, we would require, in § 426.470(c), that the Board issue an administrative decision dismissing an unacceptable appeal, instead of allowing an opportunity to amend an unacceptable appeal. If the Board determines that the appeal is acceptable, in § 426.465(d), we would require the Board to send notification to the aggrieved party (or parties), to the contractor, and, if applicable, to us. The Board would also request a copy of the LCD review record (discussed later in this section of the preamble) from the ALJ who issued the administrative decision.

Upon the request from the Board to provide copies of the LCD review record under § 426.470, we would require that an ALJ send a copy of the LCD review record to the Board (see § 426.472). Under § 426.474, we would describe what the ALJ's LCD review record would contain. In general, the LCD review record consists of any document or material that the ALJ compiled or considered during the LCD review.

Once the Board has accepted an appeal to an ALJ's administrative decision and received the ALJ's LCD review record, we are proposing in § 426.476 the steps that the Board would take in reviewing the ALJ's administrative decision. In addition to reviewing the ALJ's LCD review record and the ALJ's administrative decision, the Board would allow the contractor or, if applicable, us, to submit a statement to the Board and the aggrieved party responding to the appeal. The final required step in the Board review of an ALJ's administrative decision would be to issue an administrative decision, which is discussed in more detail later in this section of the preamble. If the appeal of the ALJ's administrative decision is based on a disputed issue of fact, we would require that the Board base its administrative decision on whether the ALJ's administrative decision was supported by substantial evidence on the whole from the LCD review record. If the appeal of the ALJ's administrative decision is based on a disputed issue of law, we would require that the Board base its administrative decision on whether the ALJ's administrative decision is erroneous. If the appeal were based both on a disputed issue of fact and a disputed issue of law, the Board would base its administrative decision on both of the above standards.

We believe that the Board review of an appeal of an ALJ's administrative decision should remain a paper review of existing materials. Accordingly, we are proposing, in § 426.476(b), to prohibit the Board from considering any issue not raised in the parties' briefs, or considering any evidence that is not a part of the ALJ's LCD review record. In § 426.476(c), we would establish controlling authorities that the Board must consider when reviewing appeals of ALJ administrative decisions. These include the applicable provisions of the Act, our regulations and rulings, and NCDs.

In § 426.476(d), we would require the Board to dismiss an appeal of an ALJ's administrative decision if the contractor retired the LCD during the appeal.

In § 426.478, we are proposing to allow the contractor to retire an LCD during the Board's review of the ALJ's administrative decision. As stated in the previous paragraph, this would lead to the Board dismissing the appeal.

In § 426.480, we are proposing to allow a party to withdraw an appeal of an ALJ's administrative decision. The provisions proposed in this section, for a party acting alone or as part of a joint or consolidated appeal, would be the same as the provisions for withdrawing a complaint in § 426.423.

In § 426.482, we would require the issuance and notification of a Board administrative decision regarding an appealed ALJ administrative decision. These provisions would be the same as the provisions we are proposing for the issuance and notification of an ALJ administrative decision in § 426.445.

In § 426.484, we would set forth the mandatory provisions of a Board administrative decision regarding an appealed ALJ administrative decision. We would require the Board to either dismiss the appeal or, for each part of the ALJ's administrative decision named in the appeal, to issue a statement either upholding or reversing that part or all of the ALJ's administrative decision. Because the Board is conducting a review of the ALJ's administrative decision using the ALJ's LCD review record, and is not conducting a de novo review of the LCD itself, a Board administrative decision either upholding or reversing each part, or all of the ALJ's administrative decision is the proper outcome. The Board's administrative decision would also be required to include the information necessary to identify the appeal, the rationale for the Board's administrative decision, and the signature of a Board member.

In § 426.486, we would prohibit the Board's administrative decision from

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including those provisions that we are proposing to exclude from the ALJ's administrative decision in § 426.455, for the reasons discussed earlier in this preamble. In § 426.488, we would set forth the effect of a Board administrative decision. Section 426.488(a) explains the relief that would be provided to a successful challenger. Moreover, there may be coverage relief. The contractor would have the option of either retiring the LCD, or conducting a reconsideration of the LCD, if the Board's administrative decision reversed an ALJ finding of validity under the reasonableness standard.

We note that if the Board's administrative decision is the reversal of an ALJ's administrative decision that dismissed a complaint regarding an LCD, the case would be remanded to the ALJ, and the LCD review would continue from the point at which it was dismissed by the ALJ.

We propose permitting the Board to remand cases to the ALJ in a limited number of circumstances. In § 426.489(a), we are proposing that the Board may remand a case to the OHA, if the ALJ's administrative decision that does not comply with § 426.340, § 426.405, § 426.450, § 426.455, and § 426.474, or does not include:

- Findings of fact.
- Interpretations of law.
- Applications of fact to law.
- Summary of evidence reviewed.
- The signature of the ALJ.

In § 426.489(b), we propose prohibiting the Board from remanding cases to an ALJ to review new or additional LCD evidence submitted during an appeal of an LCD complaint to the Board.

In § 426.489(c), we propose that the Board notify all parties to the complaint when an LCD complaint is remanded to OHA. Section 426.489(d) describes the actions that an ALJ will take upon receipt of a coverage complaint remand.

In § 426.489(d), we propose that upon receipt of Board remand, an ALJ will take any action this is consistent with the Board's remand order.

In § 426.490, we are proposing that a decision by the Board would constitute a final agency action and would be subject to judicial review. Neither the contractor nor we may appeal a Board administrative decision.

In § 426.570, we are proposing that a decision by the Board would constitute a final agency action and would be subject to judicial review. We may not appeal a Board administrative decision.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, 44 U.S.C. section 3506(c)(2)(A) requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Sections 426.400 and 426.500

Sections 426.400, Procedure for filing an acceptable complaint to a provision (or provisions) of an LCD, and 426.500, Procedure for filing an acceptable complaint to a provision or provisions of an NCD, state that an aggrieved party may initiate a review of an LCD or NCD, respectively, by filing a written complaint and also state what sort of information is required in the complaint to justify that he or she qualifies as aggrieved party under our proposed definition at § 426.110. This documentation would include the certification of the beneficiary's treating physician that the beneficiary needs a service, and a statement from the treating physician that payment for the service is likely to be denied under a coverage determination.

We estimate that 3,000 LCD and 15 to 20 NCD complaints will be filed per year. We estimate that it will take the aggrieved party 4 hours to draft the complaint and gather the information to send to us. Thus, we estimate the national burden would be 12,080 hours annually.

Other sections discuss the filing of various motions, petitions, and notice that the aggrieved party is withdrawing the request for a hearing and appeal. These actions are all exempt from the PRA under 5 CFR 1320.4, *Coverage.* These actions are part of an administrative action; administrative actions are not covered by the PRA or its regulations.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, Information Technology Investment Management Group, Attn.: Julie Brown, CMS–3063–P, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the substantive comments in the preamble to that document.

VI. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), as amended by Executive Order 13258, and the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), as amended. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). We believe that this rule will not meet the $100 million threshold and, therefore, is not a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We do not believe that this rule would have an effect on the governments mentioned, nor would the private sector costs associated with the rule be greater than $110 million.

B. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule would not have a substantial effect on State or local governments.

C. Anticipated Effects

1. Effects on Medicare Beneficiaries

In developing this proposed rule, we considered how to make it user-friendly for the individual beneficiaries who qualify as aggrieved parties to initiate the review of an LCD or an NCD. Possible access obstacles for some aggrieved parties include limited financial resources, limited mobility, various disabilities, absence of legal representation, and difficulty in compiling and presenting scientific and clinical materials. We have sought to include means to alleviate these obstacles as much as possible through this proposed rule, but would also expect the ALJs and the Board to use the flexibility proposed for them in this rule to respond to obstacles that may confront individual aggrieved parties in particular cases.

Some concerns may remain about how to facilitate participation, especially when evidence is taken in person, by aggrieved parties with limited mobility or resources. The proposed rule seeks to address this by providing for most evidence to be submitted in written form and by allowing use of a variety of electronic means for remote attendance at any oral proceeding, if one is needed. In addition, the rule provides flexibility for ALJs and the Board to tailor proceedings in each case to best reflect the needs of the parties, the appropriate scope of participation, and the nature of the issues presented.

While we would require some documentation to support a complainant's assertions of being an aggrieved party (see §§ 426.400 and 426.500), we would accept that documentation as sufficient to show standing to challenge an LCD or an NCD. In this way, we seek to minimize disputes over beneficiaries' factual circumstances, to alleviate privacy concerns about confidential medical records and other patient-specific information, and to reduce any intrusive discovery burden on beneficiaries.

Our intent is to ensure that beneficiaries fully understand these rights. Once a final rule is published, we expect to produce a user-friendly guide that beneficiaries may use to assist them in accessing this process. In addition, we specifically request public comments on additional procedures, consistent with the statute that would enable this process to work more efficiently.

We have also provided for appropriate measures to be taken to address confidentiality and privilege issues relating to privileged or confidential trade secrets, commercial information, or financial information.

2. Effects on Providers

We do not believe that the provisions of this rule would have an effect on providers, except to the extent that a provider would supply documentation that an aggrieved party is in need of a specific service, and that payment for the service would likely be denied under the LCD or NCD. It would also be possible for a provider to be subpoenaed under §§ 426.435 and 426.535, but proposed §§ 426.445 and 426.545 would allow for compensation under this circumstance. We believe that the rule would have an insignificant economic impact on health care providers or the health care industry as a whole.

3. Effects on the Medicare Program

The Medicare program would incur certain administrative costs associated with coverage determination reviews, the cost of being a party to coverage determination reviews, and the cost of reevaluating policies.

D. Alternatives Considered

We considered various alternative approaches for implementing the ALJ or Board administrative decisions with respect to an LCD and NCD. One alternative we considered was to allow an ALJ or Board to specify the type of relief that would be afforded to the aggrieved party in those instances in which an ALJ or the Board issued a finding of unreasonable under the reasonableness standard. We contemplated whether it would be feasible based on the record developed in this proceeding for an ALJ or the Board to order us to make payment for a particular claim for the individual. We determined, however, that because the record in a policy challenge adjudication focuses on the challenged policy, and not on the beneficiary's particular medical circumstances or entitlement to Medicare benefits, it would not be possible to allow an ALJ or the Board to order payment in those circumstances. In some cases, other statutory restrictions may apply for a particular claim that would prevent Medicare from making payment even if the LCD or NCD were found reasonable. For instance, if care were furnished by an excluded physician in other than an emergency situation, section 1862(e)(1) of the Act would bar Medicare payment. There are other examples where rules other than an NCD may lead to the denial of a claim. To avoid redundant claims/appeals processes, we have proposed that individual relief would be determined through our existing claims appeals procedures, but the LCD or NCD that was found unreasonable by the ALJ or the Board would not be applied.

Further, we do not believe that it is appropriate for an ALJ or the Board to write or rewrite coverage determinations. LCDs and NCDs are based on clinical and scientific evidence to develop policies that are both sound and effective, and continue to ensure the highest quality of covered care for Medicare recipients. For the sake of continuing to ensure that aggrieved parties receive the same quality care as all other Medicare recipients, and for the sake of efficiently administering this process, we believe that clinicians and scientific experts should continue to develop these policies. To have anyone other than a clinician or scientific

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expert revise Medicare policy would not be in the best interest of the beneficiary that relies on receiving the highest quality care possible.

In accordance with the provisions of Executive Order 12866, as amended by Executive Order 13258, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 400

Grant programs-health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 426

Administrative practice and procedure, Centers for Medicare & Medicaid Services, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, CMS proposes to amend 42 CFR chapter IV as follows:

PART 400—INTRODUCTION; DEFINITIONS

1. The authority citation for part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

2. Amend § 400.202 by adding the definitions of "Board" and "Local coverage determination (LCD)" and by revising the definition of "National coverage determination (NCD)" to read as follows:

§ 400.202 Definitions specific to Medicare.

* * * * *

Board means the Departmental Appeals Board.

* * * * *

Local coverage determination (LCD) means a decision by a fiscal intermediary or a carrier under Medicare Part A or Part B, as applicable, whether to cover a particular service on an intermediary-wide or carrier-wide basis in accordance with section 1862(a)(1)(A) of the Act. An LCD does not include a determination of which code, if any, is assigned to a service or a determination with respect to the amount of payment to be made for the service.

* * * * *

National coverage determination (NCD) means a decision that CMS makes regarding whether to cover a particular service nationally under title XVIII of the Act. An NCD does not include a determination of what code, if any, is assigned to a service or a determination with respect to the amount of payment to be made for the service.

* * * * *

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

3. The authority citation for part 405 continues to read as follows:

Authority: Secs. 1102, 1155, 1869(b), 1871, 1872, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c–4, 1395ff(b), 1395hh, 1395ii, and 1395pp).

4. Revise § 405.732 to read follows:

§ 405.732 Review of a national coverage determination (NCD).

(a) General. An NCD is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under title XVIII. An NCD does not include a determination of what code, if any, is assigned to a particular item or service covered under title XVIII or a determination with respect to the amount of payment made for a particular item or service. NCDs are made under section 1862(a)(1) of the Act or other applicable provisions of the Act. An NCD is binding on all Medicare carriers, fiscal intermediaries, QIOs, HMOs, CMPs, HCPPs, and ALJs.

(b) Review by ALJ. (1) An ALJ may not disregard, set aside, or otherwise review an NCD.

(2) An ALJ may review the facts of a particular case to determine whether an NCD applies to a specific claim for benefits and, if so, whether the NCD has been applied correctly to the claim.

(c) Review by Court. For initial determinations made before October 1, 2002, and for challenges to an NCD made under section 1862(a)(1) of the Act, a court's review of an NCD is limited to whether the record is incomplete or otherwise lacks adequate information to support the validity of the decision, unless the case has been remanded to the Secretary to supplement the record regarding the NCD. The court may not invalidate an NCD except upon review of the supplemental record.

5. Revise § 405.860 to read as follows:

§ 405.860 Review of a national coverage determination (NCD).

(a) *General.* An NCD is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under title XVIII. An NCD does not include a determination of what code, if any, is assigned to a particular item or service covered under title XVIII or a determination with respect to the amount of payment made for a particular item or service. NCDs are made under section 1862(a)(1) of the Act or other applicable provisions of the Act. An NCD is binding on all Medicare carriers, fiscal intermediaries, QIOs, HMOs, CMPs, HCPPs, and ALJs.

(b) Review by ALJ.

(1) An ALJ may not disregard, set aside, or otherwise review an NCD.

(2) An ALJ may review the facts of a particular case to determine whether an NCD applies to a specific claim for benefits and, if so, whether the NCD has been applied correctly to the claim.

(c) Review by Court. For initial determinations made before October 1, 2002, and for challenges to an NCD made under section 1862(a)(1) of the Act, a court's review of an NCD is limited to whether the record is incomplete or otherwise lacks adequate information to support the validity of the decision, unless the case has been remanded to the Secretary to supplement the record regarding the NCD. The court may not invalidate an NCD except upon review of the supplemental record.

6. Add part 426 to read as follows:

PART 426–REVIEWS OF LOCAL AND NATIONAL COVERAGE DETERMINATIONS

Subpart A—General Provisions

Sec.
426.100 Basis and scope.
426.110 Definitions.

Subpart B—[Reserved]

Subpart C—General Provisions for the Review of LCDs and NCDs

426.300 Review of LCDs, NCDs, and deemed NCDs.
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426.320 Challenges to LCDs and NCDs.
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PART 426—REVIEWS OF LOCAL AND NATIONAL COVERAGE DETERMINATIONS

Subpart A—General Provisions

§ 426.100 Basis and scope.

(a) *Basis.* This part implements sections 1869(f)(1) and (f)(2) of the Act, which provide for the review of LCDs, NCDs, and certain determinations that are deemed to be NCDs by statute.

(b) *Scope.* This subpart establishes the requirements and procedures for the review of LCDs and NCDs.

§ 426.110 Definitions.

For the purposes of this part, the following definitions apply:

Aggrieved party means a Medicare beneficiary who—

(1) Is entitled to benefits under Part A, enrolled under Part B, or both (including an individual enrolled in fee-for-service Medicare, in a Medicare+Choice plan, or in another Medicare managed care plan); and

(2) Is in need of a service that is the subject of an applicable LCD (in the relevant jurisdiction) or an NCD, as documented by the beneficiary's treating physician.

Contractor means a carrier (including a Durable Medical Equipment Regional Carrier), or a fiscal intermediary (including a Regional Home Health Intermediary) that has jurisdiction for the LCD at issue.

Deemed NCD means a determination that the Secretary makes, in response to a request for an NCD by an aggrieved party under section 1869(f)(4)(B) and (C) of the Act, that no national coverage or noncoverage determination is appropriate, or the Secretary failed to meet the deadline under section 1869(f)(4)(iv) of the Act.

New evidence means clinical or scientific evidence that was not previously considered by CMS or the contractor before the NCD or LCD was issued.

Party means an individual who has a right to participate in the LCD or NCD review process. A party includes an aggrieved party, a contractor, and, as appropriate, CMS.

Reasonableness standard means the standard that an ALJ or the Board must apply when conducting an LCD or an NCD review. In determining whether NCDs or LCDs are valid, the adjudicator must uphold a challenged policy (or a provision or provisions of a challenged policy) if the findings of fact, interpretations of law, and applications of fact to law by CMS or the contractor are reasonable based on the NCD or LCD record.

Subpart B—[Reserved]

Subpart C—General Provisions for the Review of LCDs and NCDs

§ 426.300 Review of LCDs, NCDs, and deemed NCDs.

(a) Upon the receipt of an acceptable LCD complaint as described in § 426.400, an ALJ conducts a review of a challenged provision (or provisions) of an LCD using the reasonableness standard.

(b) Upon the receipt of an acceptable NCD complaint as described in § 426.500, the Board conducts an NCD review of a challenged provision (or provisions) of an NCD using the reasonableness standard.

(c) The procedures established in this part governing the review of NCDs also apply in cases in which a deemed NCD is challenged.

§ 426.310 LCD and NCD reviews and individual claim appeals.

(a) LCD and NCD reviews are independent of the claims appeal processes set forth in part 405, subparts F and G; part 417, subpart Q; and part 422, subpart M of this chapter.

(b) An aggrieved party must notify the OHA or the Board, as appropriate, regarding the submission and disposition of any pending claim or appeal relating to the subject of the aggrieved party's LCD or NCD complaint. This reporting obligation continues throughout the entire LCD or NCD review process.

§ 426.320 Challenges to LCDs and NCDs.

(a) *Right to challenge.* Only an aggrieved party may initiate a review to

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challenge an existing specific provision or provisions of an LCD or NCD by filing an acceptable complaint.

(b) *Exclusions from review.* Some items are not reviewable under this part, including:

(1) Pre-decisional materials, including—

(i) Draft LCDs;

(ii) Template LCDs or suggested LCDs; and

(iii) Draft NCDs, including national coverage decision memoranda.

(2) Retired LCDs or NCDs that are no longer in effect.

(3) Interpretive policies that are not an LCD or NCD.

(4) Contractor decisions that are not based on section 1862(a)(1)(A) of the Act.

(5) Contractor claims processing edits.

(6) Payment amounts or methodologies.

(7) Coding issues, including determinations, methodologies, definitions, or rules.

(8) Contractor bulletin articles, educational materials, or web site frequently asked questions.

(9) Any M+C organization or managed care plan policy, rule, or procedure.

(10) An individual claim determination.

(11) Any other policy that is not an LCD or an NCD as set forth in § 400.202 of this chapter.

§ 426.330 No assignment of rights by an aggrieved party.

(a) *Assignment of rights.* An aggrieved party may not assign his or her rights to file a complaint to a provision (or provisions) of an LCD or NCD to any other individual or entity. Neither an ALJ nor the Board will recognize as valid any attempt to assign rights under section 1869(f) of the Act.

(b) *Burden of proof.* During an LCD or NCD review, an aggrieved party bears the burden of proof and the burden of persuasion for the issue(s) raised in a complaint. The burden of persuasion will be judged by a preponderance of the evidence.

§ 426.340 Stay of proceedings for review of new evidence.

(a) If an aggrieved party submits new evidence, or the Board or ALJ admits new evidence, pertaining to an LCD or NCD, the Board or ALJ will send the new evidence to CMS or the contractor for review. Upon review of this new evidence, CMS or the contractor will determine whether a request for stay of administrative proceedings under this part 426 to consider the additional clinical or scientific evidence is necessary. Upon such a request, the Board or ALJ will do the following:

(1) Stay the proceedings.

(2) Set a reasonable timeframe within which CMS or the contractor will complete the review.

(3) Upon request of CMS or the contractor, extend the timeframe for the period of time requested by CMS or the contractor, unless the aggrieved party can demonstrate that the CMS contractor request is unreasonable.

(b) Following the CMS or the contractor review of this new evidence, CMS or the contractor will file a supplemental record.

Subpart D—Review of an LCD

§ 426.400 Procedure for filing an acceptable complaint to a provision (or provisions) of an LCD.

(a) *The complaint.* An aggrieved party may initiate a review of an LCD by filing a written complaint with the Social Security Administration, Office of Hearings and Appeals (OHA).

(b) *Timeliness of a complaint.* The OHA must receive a complaint within 6 months of the written statement described in paragraph (c)(1)(vi) of this section.

(c) *Components of a valid complaint.* A complaint must contain the following information:

(1) *Beneficiary-identifying information:*

(i) Beneficiary's name.

(ii) Beneficiary's mailing address.

(iii) Beneficiary's State of residence, if different from mailing address.

(iv) Beneficiary's telephone number.

(v) Beneficiary's Health Insurance Claim number.

(vi) A copy of the treating physician's certification that, in his or her medical opinion, the beneficiary needs the service that is the subject of the LCD.

(vii) A statement from the treating physician that Medicare coverage for the service needed is likely to be denied under the applicable contractor's LCD.

(2) *LCD-identifying information:*

(i) Name of the contractor using the LCD.

(ii) Title of final LCD being challenged.

(iii) The specific provision (or provisions) of the LCD adversely affecting the aggrieved party.

(3) *Aggrieved party statement.* A statement from the aggrieved party explaining the rationale for the allegation that the provision(s) of the LCD is (are) not valid under the reasonableness standard, and whether the aggrieved party has received the service related to the LCD.

(4) *Clinical or scientific evidence.* Copies of clinical or scientific evidence that supports the complaint.

(d) *Joint complaints*—(1) *Conditions for a joint compliant.* Two or more aggrieved parties may initiate the review of an LCD by filing a single written complaint with the OHA if all of the following conditions are met:

(i) Each aggrieved party named in the joint complaint has a similar medical condition.

(ii) Each aggrieved party named in the joint complaint is filing the complaint in regard to the same provision(s) of the same LCD.

(2) *Components of a valid joint complaint.* A joint complaint must contain the following information:

(i) The beneficiary-identifying information described in paragraph (c)(1) of this section for each aggrieved party named in the joint complaint.

(ii) The LCD-identifying information described in paragraph (c)(2) of this section.

(iii) The documentation described in paragraphs (c)(3) and (c)(4) of this section.

(3) *Timeliness of a joint complaint.* The OHA must receive a joint complaint within 6 months of the date of the documentation from each aggrieved party's treating physician expressing the belief that payment for the needed service would likely be denied under the LCD in question.

§ 426.405 Authority of the ALJ.

(a) An ALJ conducts a fair and impartial hearing, avoids unnecessary delay, maintains order, and ensures that all proceedings are recorded.

(b) An ALJ defers only to reasonable findings of fact, reasonable interpretations of law, and reasonable applications of fact to law by the Secretary.

(c) The ALJ has the authority to do any of the following:

(1) Review complaints by an aggrieved party (or aggrieved parties).

(2) Dismiss complaints that fail to comply with § 426.400.

(3) Set and change the date, time, and place of a hearing upon reasonable notice to the parties to the review.

(4) Continue or recess a hearing for a reasonable period of time.

(5) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(6) Consult with scientific and clinical experts on his or her own motion concerning clinical or scientific evidence.

(7) Set schedules for submission of exhibits and written reports of experts.

(8) Administer oaths and affirmations.

(9) Examine witnesses.

(10) Issue subpoenas requiring the attendance of witnesses at hearings as permitted by this part.

(11) Issue subpoenas requiring the production of existing documents before, and relating to, the hearing as permitted by this part.

(12) Rule on motions and other procedural matters.

(13) Regulate the scope and timing of documentary discovery as permitted by this part.

(14) Regulate the course of a hearing and the conduct of representatives, parties, and witnesses.

(15) Receive, rule on, exclude, or limit evidence, in accordance with § 426.340.

(16) Take official notice of facts, upon motion of a party.

(17) Decide cases, upon the motion of a party, by summary judgment when there is no disputed issue of material fact.

(18) Conduct any conference, argument, or hearing in person or, upon agreement of the parties, by telephone, picture-tel, or any other means.

(19) Issue administrative decisions.

(20) Exclude a party to an LCD review (or a party's representative) for failure to comply with an ALJ order or procedural request without good cause.

(d) The ALJ does not have authority to do any of the following under this part:

(1) Conduct an LCD review or conduct LCD hearings on his or her own motion or on the motion of a nonaggrieved party.

(2) Receive or accept any new evidence without following § 426.340.

(3) Review any decisions by contractors to develop a new or revised LCD.

(4) Conduct an LCD review of any draft, retired, template, or suggested LCDs.

(5) Conduct a review of any NCD according to section 1869(f)(1)(A)(i) of the Act.

(6) Conduct a review of the merits of an invalid LCD complaint.

(7) Conduct a review of any policy that is not an LCD, as defined in § 400.202 of this chapter.

(8) Compel mediation or settlement negotiations by aggrieved parties.

(9) Deny a request for withdrawal of a complaint by an aggrieved party.

(10) Compel the contractor to conduct studies, surveys, or develop new information to support an LCD record.

(11) Deny a contractor the right to retire an LCD.

(12) Deny a contractor or CMS the right to conduct a reconsideration review when any party submits new evidence.

(13) Make a determination under § 426.441 before a contractor's reconsideration of new evidence as described in § 426.340.

(14) Compel CMS or its contractors to conduct studies, surveys, or develop new information to support an LCD record.

(15) Find invalid applicable Federal statutes, regulations, rulings or NCDs.

(16) Enter an administrative decision defining the specific terms of a subsequent LCD.

§ 426.406 Ex parte contacts.

No party or person (except employees of the ALJ's office) will communicate in any way with the ALJ on any substantive matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 426.410 ALJ's role in docketing and evaluating the acceptability of LCD complaints.

(a) *Docketing the complaint.* The Office of Hearings and Appeals does the following upon receiving a complaint regarding an LCD:

(1) *Dockets the complaint.*

(2) Forwards the complaint to the selected ALJ.

(b) *Evaluating the acceptability of the complaint.* The ALJ assigned to the LCD review determines if the complaint is acceptable by confirming all of the following:

(1) The complaint is being submitted by an aggrieved party or, in the case of a joint complaint, that each individual named in the joint complaint is an aggrieved party. (In determining if a complaint is acceptable, the ALJ will assume that the facts alleged by the treating physician's statement regarding the aggrieved party's (or parties) clinical condition are true.)

(2) The complaint meets the requirements for a valid complaint in § 426.400 and does not challenge one of the documents in § 426.320(b).

(c) *Unacceptable complaint.*

(1) If the ALJ determines that the complaint is unacceptable, the ALJ must provide the aggrieved party (or parties) one opportunity to amend the unacceptable complaint.

(2) If the aggrieved party (or parties) fail(s) to submit an acceptable amended complaint within a reasonable timeframe as determined by the ALJ, the ALJ must issue an administrative decision dismissing the unacceptable complaint.

(d) *Acceptable complaint.* If the ALJ determines that the complaint (or amended complaint) is acceptable, the ALJ does the following:

(1) Sends a letter to the aggrieved party (or parties) acknowledging the complaint and informing the aggrieved party (or parties) of the docket number.

(2) Forwards a copy of the complaint and the letter described in paragraph (d)(1) of this section to the applicable contractor and CMS.

(3) Requests that CMS or the contractor send a copy of the LCD record to the ALJ and all parties to the LCD review.

(e) *Consolidation of complaints regarding an LCD*—(1) *Criteria for consolidation.* If two or more aggrieved parties submit separate acceptable complaints regarding the same provision(s) of the same LCD, an ALJ may, upon his or her own motion or by motion of any party to the LCD review, consolidate the complaints and conduct a consolidated LCD review if all of the following criteria are met:

(i) The complaints are in regard to the same provision(s) of the same LCD.

(ii) The complaints contain common questions of law, common questions of fact, or both.

(2) *Decision to consolidate complaints.* If an ALJ decides to consolidate complaints, the ALJ does the following:

(i) Provides notification that the LCD review will be consolidated and informs all parties of the new docket number.

(ii) Makes a single record of the proceeding.

(iii) Considers the relevant evidence introduced in each LCD challenge as introduced in the consolidated review.

(3) *Decision not to consolidate complaints.* If an ALJ decides not to consolidate complaints, the ALJ conducts separate LCD reviews for each complaint.

§ 426.415 CMS's role in the LCD review.

CMS will provide to the ALJ, and all parties to the LCD review, information identifying the person who will represent the contractor, if necessary, in the LCD review process.

§ 426.418 Contractor's LCD record.

(a) *Elements of a contractor's LCD record.* Except as provided in paragraph (b) of this section, the contractor's LCD record consists of any document or material that the contractor considered during the development of the LCD, including, but not limited to, the following:

(1) The LCD being challenged.

(2) Any relevant medical evidence considered on or before the date the LCD was issued, including, but not limited to, the following:

(i) Scientific articles.

(ii) Technology assessments.

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(iii) Clinical guidelines.
(iv) Records from the Food and Drug Administration regarding safety and efficacy of a drug or device,
(v) Statements from clinical experts, medical textbooks, claims data, or other indication of medical standard of practice.
(3) Comment and Response Document (a summary of comments received by the contractor concerning the draft LCD).
(b) *Documents excluded from the contractor's LCD record.* The LCD record does not include the following:
(1) Material that is privileged.
(2) Any new evidence.
(3) Proprietary data.

§ 426.420 Retiring an LCD under review.

A contractor may retire an LCD under review before the date the ALJ issues an administrative decision regarding that LCD. Retiring an LCD under review has the same effect as an administrative decision under § 426.460(b).

§ 426.423 Withdrawing a complaint regarding an LCD under review.

(a) *Circumstance under which an aggrieved party may withdraw a complaint regarding an LCD.* An aggrieved party who filed a complaint regarding an LCD may withdraw the complaint before the ALJ issues an administrative decision regarding that LCD. The aggrieved party may not file another complaint to the same coverage determination for 6 months.
(b) *Process for an aggrieved party withdrawing a complaint regarding an LCD.* To withdraw a complaint regarding an LCD, the aggrieved party who filed the complaint must send a written notice announcing the intent to withdraw to the OHA (see § 426.400), CMS (if applicable), and the applicable contractor.
(c) *Actions the ALJ must take upon receiving a notice announcing the intent to withdraw a complaint regarding an LCD*—(1) *LCD reviews involving one aggrieved party.* If the ALJ receives a notice announcing the intent to withdraw a complaint regarding an LCD before the date the ALJ issued an administrative decision regarding that LCD, the ALJ issues an administrative decision dismissing the complaint under § 426.444 and informing the aggrieved party that he or she may not file another complaint to the same coverage determination for 6 months.
(2) *LCD reviews involving joint complaints.* If the ALJ receives a notice from an aggrieved party who is named in a joint complaint announcing the intent to withdraw a complaint regarding an LCD before the date the ALJ issued an administrative decision regarding that LCD, the ALJ issues an administrative decision dismissing only that aggrieved party from the complaint under § 426.444. The ALJ continues the LCD review if there is one or more aggrieved party who does not withdraw from the joint complaint.
(3) *Consolidated LCD reviews.* If the ALJ receives a notice from an aggrieved party who is part of a consolidated LCD review announcing the intent to withdraw a complaint regarding an LCD before the date the ALJ issued an administrative decision regarding that LCD, the ALJ removes that aggrieved party from the consolidated LCD review and issues an administrative decision dismissing that aggrieved party's complaint under § 426.444. The ALJ continues the LCD review if there is one or more aggrieved parties who does not withdraw from the joint complaint.

§ 426.425 LCD review.

(a) Opportunity for the aggrieved party to state that the contractor's LCD record is not complete, not adequate to support the validity of the LCD, or both: Upon receipt of the contractor's LCD record, the aggrieved party who submitted the complaint may file a motion alleging that the contractor's LCD record is not complete, not adequate to support the validity of the LCD, or both. This motion must be submitted to the ALJ, the contractor, or CMS, as appropriate, within 30 days (or within additional time as allowed by the ALJ) of the date the aggrieved party receives the contractor's LCD record.
(1) If an aggrieved party does not file a motion alleging that the contractor's LCD record is incomplete or lacks adequate information to support the validity of the LCD, then the ALJ makes a determination whether the LCD record is complete and adequate, as described in § 426.430(a).
(2) If an aggrieved party files a motion alleging that the contractor's LCD record is not complete, not adequate to support the validity of the LCD, or both, based on clinical and scientific evidence contained in the LCD record, then the ALJ makes a determination whether the LCD record is complete and adequate, as described in § 426.430(b).
(3) If an aggrieved party files a motion alleging that the contractor's supplemental LCD record is not complete, not adequate to support the validity of the LCD, or both, based on new evidence, then the ALJ stays the proceeding upon request by the contractor or CMS as described in § 426.340.
(b) The aggrieved party may file a petition with the ALJ requesting additional time to review the contractor's LCD record. This petition must be submitted to the ALJ within 30 days of the receipt of the LCD record (or within additional time as allowed by the ALJ). This petition shall be in writing, shall state the reason(s) why the request for extension is being made, and the amount of additional time needed to review the contractor's LCD record. The ALJ may extend the time for reviewing the contractor's LCD case file by an aggrieved party for a reasonable period of time.

§ 426.429 Review following supplemental record.

(a) *Opportunity for the aggrieved party to review the supplemental LCD record.* Upon receipt of the contractor's supplemental LCD record, following a reconsideration under § 426.340, the aggrieved party who submitted the complaint may file a motion alleging that the contractor's LCD record is not complete, not adequate to support the validity of the LCD, or both. This motion must be submitted to the ALJ, the contractor, and CMS within 30 days (or within additional time as allowed by the ALJ) of the date the aggrieved party receives the supplemental LCD record.
(1) If an aggrieved party does not file a motion alleging that the contractor's supplemental LCD record is incomplete or lacks adequate information to support the validity of the LCD, then the ALJ makes a determination whether the LCD record is complete and adequate, as described in § 426.430(a).
(2) If an aggrieved party files a motion alleging that the contractor's LCD record is not complete, not adequate to support the validity of the LCD, or both, based on clinical and scientific evidence contained in the LCD record, then the ALJ makes a determination whether the LCD record is complete and adequate, as described in § 426.430(b).
(3) If an aggrieved party files a motion alleging that the contractor's supplemental LCD record is not complete, not adequate to support the validity of the LCD, or both, based on new evidence, then the ALJ stays the proceeding upon request by the contractor or CMS as described in § 426.340.
(b) *Request for additional time to review the contractor's supplemental LCD record by the aggrieved party.* The aggrieved party may file a petition with the ALJ requesting additional time to review the contractor's supplemental LCD record. This petition must be submitted to the ALJ within 30 days of the filing of the supplemental record (or within additional time as allowed by the ALJ). Such petition shall be in writing, shall state the reason(s) why the request for extension is being made, and the amount of additional time needed to review the contractor's supplemental LCD record. The ALJ may extend the time for reviewing the contractor's supplemental LCD record for a reasonable period of time

§ 426.430 ALJ's role in determining whether the contractor's LCD record is complete and adequate to support the validity of the LCD.

(a) If the aggrieved party does not file a motion described in § 426.425(a) or § 426.429(a), the ALJ reviews the contractor's LCD record and applies the reasonableness standard, as described in § 426.431.
(b) If the aggrieved party files a motion described in § 426.425(a) or § 426.429(a), the ALJ must do the following:
(1) Allow the contractor or CMS to submit a statement to the ALJ and the aggrieved party responding to the motion described in paragraph (a) of this section. This statement must be submitted within 30 days (or within additional time as allowed by the ALJ) of the date the contractor receives the statement from the aggrieved party described in paragraph (a) of this section.
(2) Review the contents of the LCD record, as described in § 426.418.
(3) Hold conferences, if necessary, which may be conducted (at the ALJ's discretion) either in person, or, by mutual agreement of the parties, by telephone, picture-tel, or any other means agreed upon by all parties involved.
(4) Determine whether the contractor's LCD record is complete and adequate to support the validity of the LCD.
(c) ALJ's determination of the completeness of the contractor's LCD record, and the determination of contractor's LCD record's adequacy to support the validity of the LCD:
(1) *ALJ determination that the contractor's LCD record is complete and adequate to support the validity of the LCD.* If the ALJ determines that the contractor's LCD record is complete and adequate to support the validity of the LCD, the ALJ does the following:
(i) Sends a letter to the aggrieved party, the contractor, and CMS stating that the ALJ finds the contractor's LCD record to be complete and adequate to support the validity of the LCD.
(ii) Reviews the provision(s) of the LCD listed in the complaint based on the reasonableness standard as described in § 426.431.
(2) *ALJ determination that the contractor's LCD record is not complete, not adequate to support the validity of the LCD, or both.* If the ALJ determines that the contractor's LCD record is not complete, not adequate to support the validity of the LCD, or both, the ALJ does the following:
(i) Sends a letter to the aggrieved party, the contractor, and CMS (if applicable) stating that the contractor's LCD record is not complete, not adequate to support the validity of the LCD, or both.
(ii) Allows discovery as described in § 426.432.
(iii) Upon admission of new evidence, follows the process for review of new evidence as described in § 426.340.
(iv) Reviews the provision(s) of the LCD listed in the complaint to apply the reasonableness standard as described in § 426.431.

§ 426.431 ALJ's review of the LCD to apply the reasonableness standard.

(a) *Required steps.* An ALJ must do the following to review the provision(s) listed in the aggrieved party's complaint based on the reasonableness standard:
(1) Confine the LCD review to the provision(s) of the LCD raised in the aggrieved party's complaint filed with the OHA, and to clinical or scientific evidence that is contained in the LCD record (or supplemental record).
(2) Close the LCD review record to the taking of evidence.
(3) Issue an administrative decision as described in § 426.447.
(b) *Optional steps.* The ALJ may do the following to apply the reasonableness standard to the provision(s) listed in the aggrieved party's complaint:
(1) Conduct a hearing, and allow subpoenas as described in § 426.435 and the taking of evidence as described in § 426.440.
(2) At a hearing, consult with appropriate scientific or clinical experts concerning clinical or scientific evidence.
(3) Consider any previous ALJ administrative decision made under § 426.447 regarding the same provision(s) of the LCD under review.
(4) Consider any previous Board administrative decision made under § 426.482 regarding the same provision(s) of the LCD under review.
(c) *Authority for ALJs in LCD reviews when applying the reasonableness standard.* In applying the reasonableness standard to a provision (or provisions) of an LCD, the ALJ must follow the applicable provisions of the following:
(1) The Social Security Act.
(2) CMS regulations.
(3) CMS rulings.
(4) NCDs.

§ 426.432 Discovery.

(a) *General rules.* If the ALJ orders discovery, the ALJ does the following:
(1) Establishes a reasonable timeframe for discovery.
(2) Ensures that a party to the LCD review who receives a discovery request has certain rights that include, but are not limited to, the following:
(i) The right to select and use an attorney or other representative during the discovery process.
(ii) The right to submit discovery responses, objections, motions, or other pertinent materials to the ALJ.
(3) Ensures that a nonparty to the LCD review who receives a discovery request has the same rights in responding to a discovery request as any party.
(b) *Protective orders*—(1) *Request for a protective order.* Any party or nonparty receiving a discovery request may file a motion for a protective order before the date of production of the discovery.
(2) *The ALJ granting of a protective order.* The ALJ may grant a motion for a protective order if (s)he finds that the discovery sought—
(i) Is irrelevant;
(ii) Is unduly costly or burdensome;
(iii) Will unduly delay the proceeding;
(iv) Is privileged under Federal law; or
(v) Is proprietary data.
(c) *Types of discovery available.* A party may make a request to another party or nonparty for production of documents relating to a specific LCD.
(d) *Types of documents.* For the purpose of this section, the term "documents" includes relevant information, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained in this section will be interpreted to require the creation of a document.
(e) *Types of discovery not available.* Requests for admissions, depositions, written interrogatories, or any other forms of discovery, other than those permitted under paragraph (d) of this section, are not authorized.
(f) *Privileged documents*—(1) *Options for the ALJ.* The ALJ may, in appropriate circumstances, do any of the following:
(i) Order CMS to provide an index of any documents withheld on the basis of privilege and to state the basis for the privilege claim.
(ii) Conduct an in-camera review of any documents withheld on the basis of privilege.
(2) *Confidentiality.* If the ALJ orders the release of any document when

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privilege was asserted, the ALJ must order that all names or identifying information that is not relevant to the specific LCD be redacted from the document.

§ 426.435 Subpoenas.

(a) *Purpose of a subpoena.* A subpoena requires the attendance of an individual at a hearing and may also require the individual (whether or not the individual is a party) to produce evidence authorized under § 426.440 at or before the hearing.

(b) *Filing a motion for a subpoena.* A party seeking a subpoena must file a written motion with the ALJ not less than 30 days before the date fixed for the hearing. The motion must do all of the following:

(1) Designate the witnesses.

(2) Specify any evidence to be produced.

(3) Describe the address and location with sufficient particularity to permit the witnesses to be found.

(4) State the pertinent facts that the party expects to establish by the witnesses or documents and whether the facts could be established by other evidence without the use of a subpoena.

(c) *Response to a motion for a subpoena.* Within 15 days after the written motion requesting issuance of a subpoena is served on all parties, any party may file an opposition to the motion or other response.

(d) *Extension for good cause.* The ALJ may modify the deadlines specified in paragraphs (b) and (c) of this section for good cause.

(e) *Motion for a subpoena granted.* If the ALJ grants a motion requesting issuance of a subpoena, the subpoena must do the following:

(1) Be issued in the name of the ALJ.

(2) Include the docket number and title of the LCD under review.

(3) Provide notice that the subpoena is issued according to sections 1872 and 205(d) and (e) of the Act.

(4) Specify the time and place at which the witness is to appear and any evidence the witness is to produce.

(f) *Delivery of the subpoena.* The party seeking the subpoena will serve it by personal delivery to the individual named, or by certified mail return receipt requested, addressed to the individual at his or her last dwelling place or principal place of business.

(g) *Motion to quash a subpoena.* The individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within 10 days after service.

(h) *Refusal to obey a subpoena.* The exclusive remedy for contumacy by, or refusal to obey a subpoena duly served upon, any person is specified in section 205(e) of the Act (42 U.S.C. 405(e)).

§ 426.440 Evidence.

(a) The ALJ determines the admissibility of evidence consistent with § 426.340.(b) Except as provided in this part, the ALJ is not bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence when appropriate, for example, to exclude unreliable evidence.

(b) The ALJ must exclude evidence that (s)he determines is clearly irrelevant or immaterial.

(c) Although relevant, the ALJ must exclude evidence if the ALJ determines it is privileged under Federal law.

(d) Consistent with § 426.340, the ALJ may permit the parties to introduce the testimony of scientific and clinical experts, rebuttal witnesses, and other relevant evidence, only if the testimony is related to evidence that was considered in the LCD. This testimony may be submitted in the form of a written report, accompanied by the curriculum vitae of the expert preparing the report.

(e) Experts submitting reports must be available for cross-examination at an evidentiary hearing upon request of the ALJ or a party to the proceeding, or the reports will be excluded from the record.

(f) All documents and other evidence offered or taken for the record will be open to examination by all parties, unless otherwise ordered by the ALJ for good cause shown.

§ 426.441 Closing discovery.

Upon completion of discovery, the ALJ will notify all parties in writing that the discovery period is closed.

§ 426.444 Dismissals for cause.

(a) The ALJ may, at the request of any party, or on his or her own motion, dismiss a complaint if the aggrieved party (or his or her representative) fails to do either of the following:

(1) Attend or participate in a prehearing conference or hearing without good cause.

(2) Comply with a lawful order of the ALJ.

(b) The ALJ must dismiss any provision(s) of a complaint in any of the following circumstances:

(1) The ALJ does not have the authority to rule on that provision under § 426.405(d).

(2) The complaint is not timely. (See § 426.400(b).)

(3) The complaint is not filed by an aggrieved party, or is filed by an individual who is unable to demonstrate that he or she is in need of a particular service. (See § 426.400.)

(4) The aggrieved party no longer needs the service because the aggrieved party has received the service before the aggrieved party filed the complaint with the OHA. Except for an individual who has a continuing need for a particular item or service that is subject to an LCD.

(5) The complaint challenges a provision or provisions of an NCD. (See § 426.405.)

(6) The contractor notifies the ALJ that they have retired the LCD. (See § 426.420.)

(7) The aggrieved party withdraws the complaint. (See § 426.423.)

(8) The aggrieved party is deceased.

(9) Nothing in the preceding list of circumstances leading to automatic dismissal shall be construed as having any force and effect concerning the legal rights of representatives of a deceased beneficiary to properly pursue settlement of a claim.

(c) The ALJ may, at the request of any party, or on his or her own motion, dismiss a complaint if an ALJ has already issued an administrative decision on the LCD or provisions of an LCD and the aggrieved party has not presented any new clinical or scientific evidence that supports the complaint.

§ 426.445 Witness fees.

(a) A witness testifying at a hearing before an ALJ receives the same fees and mileage as witnesses in Federal district courts of the United States. If the witness is an expert, he or she will be entitled to an expert witness fee. Witness fees will be paid by the party seeking to present the witness.

(b) If an ALJ requests expert testimony, the OHA is responsible for paying all applicable fees and mileage.

§ 426.446 Record of hearing.

The ALJ must ensure that all hearings are open to the public and must be mechanically or stenographically reported. All evidence upon which the ALJ relies for decision must be contained in the record, either directly or by appropriate reference. All medical reports, exhibits, and any other pertinent document or record, either in whole or in material part, introduced as evidence, must be marked for identification and incorporated into the record.

§ 426.447 Issuance and notification of an ALJ's administrative decision.

An ALJ must issue to all parties to the LCD review, within 90 days of closing the LCD review record to the taking of evidence, one of the following:

(a) A written administrative decision, including a description of appeal rights.

(b) A written notification stating that an administrative decision is pending, and an approximate date of issuance for the administrative decision.

§ 426.450 Mandatory provisions of an ALJ's administrative decision.

(a) *Finding.* An ALJ's administrative decision must include one of the following:

(1) A determination that the provision of the LCD is valid under the reasonableness standard.

(2) A determination that the provision of the LCD is not valid under the reasonableness standard.

(3) A statement dismissing the complaint regarding the LCD and a rationale for the dismissal.

(b) *Other information.* An ALJ's administrative decision must include all of the following:

(1) The date of issuance.

(2) The docket number of the LCD review.

(3) The names of the parties to the LCD review.

(4) A statement as to whether the aggrieved party has filed a claim for the service(s) named in the complaint, the date(s)-of-service, and the disposition, if known.

(5) A rationale for the basis of the ALJ's administrative decision, including the following:

(i) Findings of fact.

(ii) Interpretations of law.

(iii) Applications of fact to law.

(6) A summary of the evidence reviewed.

(7) A statement regarding appeal rights.

(8) The signature of the ALJ.

§ 426.455 Prohibited provisions of an ALJ's administrative decision.

An ALJ's administrative decision must not do any of the following:

(a) Order CMS or its contractors to modify (including adding to or deleting from) a provision or provisions of an LCD.

(b) Order CMS or its contractors to pay a specific claim.

(c) Establish a time limit for the establishment of a new or revised LCD.

(d) Review, evaluate, or address an LCD other than the LCD under review.

(e) Include a requirement for CMS or its contractors that specifies payment, coding, or systems changes for an LCD, or deadlines for implementing these types of changes.

(f) Order or address how a contractor(s) should implement an LCD.

§ 426.460 Effect of an ALJ's administrative decision.

(a) *Valid under the reasonableness standard.* If the ALJ finds that the provision or provisions of the LCD named in the complaint is (are) valid under the reasonableness standard, the aggrieved party or parties may appeal that (those) part(s) of the administrative decision to the Board under § 426.465.

(b) *Not valid under the reasonableness standard.* If the ALJ finds that the provision or provisions of the LCD named in the complaint is (are) invalid under the reasonableness standard, and no appeal is filed by the contractor or CMS under § 426.465(b) then CMS will instruct its contractor, the M+C plan, or other Medicare managed care plan to provide the following relief.

(1) *Individual claim relief when a claim is pending or has been previously adjudicated.* If an aggrieved party's claim/appeal(s) had previously been denied, the contractor, an M+C plan or another Medicare managed care plan must reopen the aggrieved party's claim and adjudicate the claim without using the provision(s) of the LCD that the ALJ found invalid.

(2) *Individual claim relief when no claim is pending.* If a revised LCD is issued, the contractor, the M+C plan, and any other Medicare managed care plan within contractor's jurisdiction will use the revised LCD in reviewing claim/appeal submissions or request for services for items delivered or services performed on or after the effective date.

(3) *Coverage determination relief.* If no appeal is filed by the contractor of CMS under § 426.425(b), within 30 days of the issuance of the ALJ's administrative decision, the contractor or CMS must send a letter to the ALJ and the aggrieved party or parties named in the complaint announcing the intent to do one of the following:

(i) Retire the LCD in its entirety, or retire the provision or provisions of the LCD that the ALJ's administrative decision stated was (were) not valid under the reasonableness standard.

(ii) Conduct a reconsideration using the information collected during the LCD review, as well as any other applicable information, and do one of the following:

(A) Supplement the LCD record or rationale, and reaffirm the LCD.

(B) Revise the LCD.

(C) Retire the LCD.

(iii) Unless retired under paragraph (b)(3)(i), or (b)(3)(ii)(C) of this section, the contractor may continue to use the LCD in adjudicating claims for individuals who did not challenge the LCD while a reconsideration is pending.

§ 426.462 Notice of an ALJ's administrative decision.

After the ALJ has made a decision regarding an LCD complaint, the ALJ sends a written notice of the administrative decision to each party. The notice must—

(a) Contain a finding with respect to the LCD complaint, and

(b) Inform each party to the determination of his or her rights to seek further review if he or she is dissatisfied with the determination, and the time limit under which an appeal must be requested.

§ 426.465 Appealing part or all of an ALJ's administrative decision.

(a) *Circumstance under which an aggrieved party may appeal part or all of an ALJ's administrative decision.* An aggrieved party (including one or more aggrieved parties named in a joint complaint and an aggrieved party who is part of a consolidated LCD review) may appeal to the Board any part of an ALJ's administrative decision that does the following:

(1) States that a provision of an LCD is valid under the reasonableness standard.

(2) Dismisses a complaint regarding an LCD (except as prohibited in paragraph (b) of this section).

(b) *Circumstance under which a contractor or CMS may appeal part or all of an ALJ's administrative decision.* A contractor or CMS may appeal to the Board any part of an ALJ's administrative decision that states that a provision (or provisions) of an LCD is (are) unreasonable.

(c) *Stay of an implementation pending appeal.*

(1) If an ALJ's administrative decision finds a provision or provisions of an LCD unreasonable, an appeal by a contractor or CMS stays implementation of the ALJ's administrative decision until a final decision is issued by the Board.

(2) The appeal request must be submitted to the Board in accordance with paragraph (e) of this section.

(d) *Circumstance under which an ALJ's administrative decision cannot be appealed.* An ALJ's administrative order dismissing a complaint is not subject to appeal in either of the following circumstances:

(1) The contractor retires the LCD under review.

(2) The aggrieved party who filed the complaint withdraws the complaint.

(e) *Receipt of the appeal by the Board.* Unless there is good cause, an appeal described in paragraphs (a) or (b) of this section must be received by the Board within 60 calendar days of the date the

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ALJ's administrative decision was issued. If the 60th calendar day falls on a Saturday, Sunday, or Federal holiday, the Board must receive the appeal by the next business day.

(f) *Filing an appeal.* (1) To file an appeal described in paragraph (a) of this section, an aggrieved party, a contractor, or CMS must send the following to the Board at: The Department of Health and Human Services, Department Appeals Board, Room 637D, Humphrey Building, Attention: NCD Complaint, 200 Independence Avenue, SW., Washington, DC 20201:

(i) The full names and addresses of the parties and participants named in the ALJ's administrative decision, including the name of the LCD.

(ii) The date of issuance of the ALJ's administrative decision.

(iii) The docket number that appears on the ALJ's administrative decision.

(iv) A statement identifying the part(s) of the ALJ's administrative decision that are being appealed.

(2) If an appeal described in paragraph (a) of this section is not received by the Board by the date described in paragraph (c) of this section, it must include a rationale stating why the late appeal should be accepted by the Board.

(3) An appeal described in paragraph (a) of this section may include a statement explaining why the ALJ's decision should be reversed.

§ 426.467 Board's LCD review record.

(a) *Elements of the Board's LCD review record.* Except as provided in paragraph (b) of this section, the Board's LCD review record consists of any document or material that the Board compiled or considered during an LCD review, including, but not limited to, the following:

(1) The LCD complaint.

(2) The LCD and LCD record.

(3) The supplemental LCD record, if applicable.

(4) The Board's administrative decision.

(5) Transcripts of record.

(6) Any other relevant evidence gathered under § 426.440.

(b) *Documents excluded from the contractor/CMS' LCD record.* The LCD record does not include material that is privileged or otherwise prohibited from release by Federal law.

§ 426.468 Decision to not appeal an ALJ's administrative decision.

(a) Failure to timely appeal without good cause waives the right to challenge any part(s) of the ALJ's administrative decision under § 426.665.

(b) Unless the Board finds good cause for late filing, an untimely appeal will be dismissed.

(c) If a party does not submit a timely appeal to any part(s) of the ALJ's administrative decision on an LCD review to the Board, as provided in this subpart, then the ALJ's administrative decision is final and not subject to any further review.

§ 426.470 Board's role in docketing and evaluating the acceptability of appeals of ALJ administrative decisions.

(a) *Docketing the appeal.* The Board does the following upon receiving an appeal of part or all of an ALJ's administrative decision:

(1) Dockets the appeal either separately or with similar appeals (see paragraph (e) of this section).

(2) Assigns a docket number.

(b) *Evaluating the acceptability of the appeal.* The Board determines if the appeal is acceptable by confirming that the appeal meets all of the criteria in § 426.465.

(c) *Unacceptable appeal.* If the Board determines that an appeal is unacceptable, the Board must issue an administrative decision dismissing the appeal.

(d) *Acceptable appeal.* If the Board determines that an appeal is acceptable, the Board does the following:

(1) Sends a letter to the appellant to acknowledge that the appeal is acceptable, and informing them of the docket number.

(2) Forwards a copy of the appeal and the letter described in paragraph (d)(1) of this section to all parties involved in the appeal.

(3) Requests that the ALJ send a copy of the LCD review record to the Board and all parties involved in the appeal.

§ 426.472 ALJ's role in making the LCD review record available.

Upon a request from the Board, the ALJ must provide to the Board, and all parties to the review of the ALJ's administrative decision, a copy of the ALJ's LCD review record (as described in § 426.474).

§ 426.474 ALJ's LCD review record.

(a) *Elements of the ALJ's LCD review record.* Except as provided in paragraph (b) of this section, the ALJ's LCD review record consists of any document or material that the ALJ compiled or considered during the LCD review, including, but not limited to, the following:

(1) The LCD complaint.

(2) The LCD and LCD record.

(3) The supplemental LCD record, if applicable.

(4) The ALJ's administrative decision.

(5) Transcripts of record.

(6) Any other relevant evidence gathered under § 426.440.

(b) *Documents excluded from the contractor's LCD record.* The LCD record does not include material that is privileged or otherwise prohibited from release by Federal law.

§ 426.476 Board review of an ALJ's administrative decision.

(a) *Mandatory steps.* If the Board determines that an appeal meets the requirements of § 426.465, the Board must do the following:

(1) Allow the aggrieved party, the contractor or CMS to submit a statement to the Board and the appellant in response to the appeal.

(2) Review the entire LCD review record, or the portion of the LCD review record at issue.

(3) Issue an administrative decision, as described in § 426.482, based on one, or both, of the following standards:

(i) *Disputed issue of fact.* If the appeal of the ALJ's administrative decision is based on a disputed issue of fact, the Board determines whether the ALJ's administrative decision is supported by substantial evidence on the whole LCD review record.

(ii) *Disputed issue of law.* If the appeal of the ALJ's administrative decision is based on a disputed issue of law, the Board determines whether the ALJ's administrative decision is erroneous.

(b) *Prohibited steps.* The Board must not do any of the following:

(1) Consider any issue not raised in the parties' briefs.

(2) Consider any evidence that is not part of the LCD review record.

(c) *Authority for Board in reviewing ALJ administrative decisions.* In determining whether an ALJ's administrative decision should be upheld or overturned, the Board must follow the applicable provisions of the following:

(1) The Social Security Act.

(2) CMS regulations.

(3) CMS rulings.

(4) NCDs.

(d) *Dismissal of ALJ's administrative decision.* The Board must dismiss the appeal of an ALJ's administrative decision if the contractor notifies the Board that it has retired the LCD.

§ 426.478 Retiring an LCD during the Board's review of an ALJ's administrative decision.

A contractor may retire an LCD during the Board's review of an ALJ's administrative decision. If an LCD is retired, the aggrieved party is entitled to individual claim relief provided at § 426.488(b).

§ 426.480 Withdrawing an appeal of an ALJ's administrative decision.

(a) *Withdrawal of an appeal of an ALJ's administrative decision.* A party who filed an appeal of an ALJ's administrative decision may withdraw the appeal before the Board issues an administrative decision regarding the ALJ's administrative decision.

(b) *Process withdrawing an appeal of an ALJ's administrative decision.* To withdraw an appeal of an ALJ's administrative decision, the party who filed the appeal must send a written notice announcing the intent to withdraw to the Board (see § 426.465), and any other party.

(c) *Actions the Board must take upon receiving a notice announcing the intent to withdraw an appeal of an ALJ's administrative decision*—(1) *Appeals involving one aggrieved party, or initiated by CMS or a contractor.* If the Board receives a notice announcing the intent to withdraw an appeal of an ALJ's administrative decision before the date the Board has issued its administrative decision, the Board must issue an administrative decision dismissing the appeal under § 426.484.

(2) *Appeals involving joint complaints.* If the Board receives a notice announcing the intent to withdraw an appeal from an aggrieved party who is named in a joint appeal before the date the Board issued its administrative decision, the Board must issue an administrative decision dismissing only that aggrieved party from the appeal under § 426.482. The Board must continue its review of the ALJ's administrative decision for the remaining aggrieved party or parties who have not withdrawn their appeal.

§ 426.482 Issuance and notification of a Board administrative decision.

The Board must issue a written administrative decision, including a description of appeal rights, to all parties to the review of the ALJ administrative decision.

§ 426.484 Mandatory provisions of a Board administrative decision.

(a) *Finding.* A Board administrative decision must include at least one of the following:

(1) A statement upholding the part(s) of the ALJ administrative decision named in the appeal.

(2) A statement reversing the part(s) of the ALJ administrative decision named in the appeal.

(3) A statement dismissing the appeal of an ALJ administrative decision and a rationale for the dismissal.

(b) *Other information.* A Board administrative decision must include all of the following:

(1) The date of issuance.

(2) The docket number of the review of the ALJ administrative decision.

(3) The names of the parties to the review of the ALJ administrative decision.

(4) A summary of the ALJ's administrative decision.

(5) A rationale for the basis of the Board's administrative decision including the following:

(i) Findings of fact.

(ii) Interpretations of law.

(iii) Application of fact to law.

(6) The signature of a Board member.

§ 426.486 Prohibited provisions of a Board administrative decision.

A Board administrative decision must not do any of the following:

(a) Order CMS or its contractors to take specific actions in modifying (including adding to or deleting from) a provision or provisions of an LCD.

(b) Order CMS or its contractors to pay a specific claim.

(c) Establish a time limit for the establishment of a new or revised LCD.

(d) Review or evaluate an LCD other than the LCD named in the ALJ's administrative decision.

(e) Include a requirement for CMS or its contractors that specifies payment, coding, or system changes for an LCD or deadlines for implementing these changes.

(f) Order CMS or its contractors to implement an LCD in a particular manner.

§ 426.488 Effect of a Board administrative decision.

(a) *The Board's administrative decision upholds an ALJ determination that an LCD is valid or reverses an ALJ determination that an LCD is invalid.* If the Board's administrative decision upholds the ALJ determination that an LCD is valid under the reasonableness standard or reverses an ALJ determination that than LCD is invalid, the contractor or CMS is not required to take any action.

(b) *The Board's administrative decision upholds an ALJ determination that the LCD is invalid.* If the Board's administrative decision upholds an ALJ determination that the LCD is invalid, CMS will instruct its contractor, the M+C plan, or other Medicare managed care plan to provide individual claim relief.

(1) *Individual claim relief when a claim is pending or has been previously adjudicated.* If an aggrieved party's claim/appeal(s) had previously been denied, the contractor, an M+C plan, or another Medicare managed care plan must reopen the aggrieved party's claim and adjudicate the claim without using the provision(s) of the LCD that the ALJ found invalid.

(2) *Individual claim relief when no claim is pending.* If a revised LCD is issued, the contractor, the M+C plan, and any other Medicare managed care plan within contractor's jurisdiction will use the revised LCD in reviewing claim or appeal submissions or request for services for items delivered or services performed on or after the effective date.

(3) *Coverage determination relief.* Within 30 days of the issuance of the Board's administrative decision, the contractor or CMS must send a letter to the Board and the aggrieved party or parties named in the complaint announcing the intent to do one of the following:

(i) Retire the LCD in its entirety, or retire the provision or provisions of the LCD found to be invalid under the reasonableness standard.

(ii) Conduct a reconsideration using the information collected during the LCD review, as well as any other applicable information, and do one of the following:

(A) Supplement the LCD record or rationale, and reaffirm the LCD.

(B) Revise the LCD.

(C) Retire the LCD.

(iii) The contractor may continue to use the LCD in adjudicating claims for individuals who did not challenge the LCD while a reconsideration is pending.

(c) *The Board's administrative decision reverses a dismissal.* If the Board's administrative decision reverses an ALJ's administrative decision dismissing a complaint, the LCD review is remanded to the ALJ and the LCD review continues.

§ 426.489 Board remand authority.

(a) *When the Board may remand a case.* The Board may remand a case to an ALJ, if the ALJ's administrative decision—

(1) Does not comply with § 426.340, § 426.405, § 426.450, § 426.455, or § 426.474; or,

(2) Does not include the following:

(i) Findings of fact.

(ii) Interpretations of law.

(iii) Applications of fact to law.

(iv) Summary of the evidence reviewed.

(v) The signature of the ALJ.

(b) *When the Board may not remand a case.* The Board may not remand a case to an ALJ to review new or additional evidence submitted during the Board review of an LCD complaint.

(c) *Notice when case is remanded to the OHA.* If the Board remands a case to the OHA, the Board will—

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(1) Notify each aggrieved party at his or her last known address, the contractor and CMS of the Board's remand decision; and

(2) Explain why the case is being remanded and the specific actions ordered by the Board.

(d) *Action by an ALJ on remand.* An ALJ will take any action that is ordered by the Board and may take any additional action that is not inconsistent with the Board's remand order.

§ 426.490 Board administrative decision.

A decision by the Board constitutes a final agency action and is subject to judicial review. Neither the contractor nor CMS may appeal a Board administrative decision.

Subpart E—Review of an NCD

§ 426.500 Procedure for filing an acceptable complaint to a provision or provisions of an NCD.

(a) *The complaint.* An aggrieved party may initiate a review of an NCD by filing a written complaint with the Department of Health and Human Services, Departmental Appeals Board, Room 637D, Humphrey Building, Attention: NCD Complaint, 200 Independence Avenue, SW., Washington, DC 20201.

(b) *Timeliness of a complaint.* The Board must receive a complaint within 6 months of the written statement described in paragraph (c)(1)(vi) of this section.

(c) *Components of a valid complaint.* A complaint must contain the following information:

(1) Beneficiary-identifying information:

(i) Beneficiary's name.

(ii) Beneficiary's mailing address.

(iii) Beneficiary's State of residence, if different from mailing address.

(iv) Beneficiary's telephone number.

(v) Beneficiary's Health Insurance Claim number.

(vi) A copy of the treating physician's certification that, in his or her medical opinion, the beneficiary needs the service that is the subject of the NCD.

(vii) A statement from the treating physician that Medicare coverage for the service needed is likely to be denied under the applicable NCD.

(2) *NCD-identifying information:*

(i) Title of final NCD being challenged.

(ii) The specific provision or provisions of the NCD adversely affecting the aggrieved party.

(3) *Aggrieved party statement.* A statement from the aggrieved party explaining the rationale for the allegation that the provision(s) of the NCD is (are) not valid under the reasonableness standard, and whether the aggrieved party has received the service related to the NCD.

(4) *Clinical or scientific evidence.* Copies of clinical or scientific evidence that supports the complaint.

(d) *Joint complaints*—(1) *Conditions for a joint complaint.* Two or more aggrieved parties may initiate the review of an NCD by filing a single written complaint with the Board if all of the following conditions are met:

(i) Each aggrieved party named in the joint complaint has a similar medical condition.

(ii) Each aggrieved party named in the joint complaint is filing the complaint in regard to the same provision(s) of the same NCD.

(2) *Components of a valid joint complaint.* A joint complaint must contain the following information:

(i) The beneficiary-identifying information described in paragraph (c)(1) of this section for each aggrieved party named in the joint complaint.

(ii) The NCD-identifying information described in paragraph (c)(2) of this section.

(iii) The documentation described in paragraphs (c)(3) and (c)(4) of this section.

(3) *Timeliness of a joint complaint.* The Board must receive a joint complaint within 6 months of the date of the documentation from each aggrieved party's treating physician expressing the belief that payment for the needed service is likely to be denied under the NCD in question.

§ 426.505 Authority of the Board.

(a) The Board conducts a fair and impartial hearing, avoids unnecessary delay, maintains order, and ensures that all proceedings are recorded.

(b) The Board defers only to reasonable findings of fact, reasonable interpretations of law, and reasonable applications of fact to law by the Secretary.

(c) The Board has the authority to do any of the following:

(1) Review complaints by an aggrieved party (or aggrieved parties).

(2) Dismiss complaints that fail to comply with § 426.500.

(3) Set and change the date, time, and place of a hearing upon reasonable notice to the parties to the review.

(4) Continue or recess a hearing for a reasonable period of time.

(5) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(6) Consult with scientific and clinical experts on its own motion, concerning clinical or scientific evidence.

(7) Set schedules for submission of exhibits and written reports of experts.

(8) Administer oaths and affirmations.

(9) Examine witnesses.

(10) Issue subpoenas requiring the attendance of witnesses at hearings as permitted by this part.

(11) Issue subpoenas requiring the production of existing documents before, and relating to, the hearing as permitted by this part.

(12) Rule on motions and other procedural matters.

(13) Regulate the scope and timing of documentary discovery as permitted by this part.

(14) Regulate the course of a hearing and the conduct of representatives, parties, and witnesses.

(15) Receive, rule on, exclude, or limit evidence, in accordance with § 426.340.

(16) Take official notice of facts, upon motion of a party.

(17) Decide cases, upon the motion of a party, by summary judgment when there is no disputed issue of material fact.

(18) Conduct any conference, argument, or hearing in person or, upon agreement of the parties, by telephone, picture-tel, or any other means.

(19) Issue administrative decisions, including remand orders.

(20) Exclude a party to an NCD review (or a party's representative) for failure to comply with a Board order or procedural request without good cause.

(d) The Board does not have authority to do any of the following under this part:

(1) Conduct an NCD review or conduct NCD hearings, except as provided by § 426.465.

(2) Conduct an NCD review or conduct NCD hearings on its own motion or on the motion of a nonaggrieved party.

(3) Receive or accept any new evidence without following § 426.340.

(4) Review any decisions by CMS to develop a new or revised NCD.

(5) Conduct a review of any draft NCDs or coverage decision memoranda.

(6) Conduct a review of the merits of an invalid NCD complaint.

(7) Conduct an NCD review of any policy that is not an NCD, as defined in § 400.202 of this chapter.

(8) Compel mediation or settlement negotiations by aggrieved parties.

(9) Deny a request for withdrawal of a complaint by an aggrieved party.

(10) Compel CMS to conduct studies, surveys, or develop new information to support an NCD record.

(11) Deny CMS the right to repeal an NCD.

(12) Subject to the timely filing requirements, deny an aggrieved party, CMS, or its contractor the right to appeal an ALJ administrative decision.

(13) Deny CMS the right to conduct an NCD reconsideration review when any party submits new evidence.

(14) Make a determination under § 426.541 before a CMS reconsideration review of new evidence as described in § 426.340.

(15) Find invalid applicable Federal statutes, regulations, or ruling (other than a ruling that meets the definition of an NCD in § 400.202 of this chapter).

(16) Enter an administrative decision defining the specific terms of a subsequent NCD.

§ 426.506 Ex parte contacts

No party or person (except employees of the Board's office) will communicate in any way with the Board on any substantive matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 426.510 Board's role in docketing and evaluating the acceptability of NCD complaints.

(a) *Docketing the complaint.* The Board must docket a complaint when it receives a complaint regarding an NCD.

(b) *Evaluating the acceptability of the complaint.* The Board determines if the complaint is acceptable by confirming all of the following:

(1) The complaint is being submitted by an aggrieved party or, in the case of a joint complaint, that each individual named in the joint complaint is an aggrieved party. (In determining if a complaint is acceptable, the Board will assume that the facts alleged by the treating physician's statement regarding the aggrieved party's (or parties') clinical condition are true.)

(2) The complaint meets the requirements for a valid complaint in § 426.500 and is not one of the documents in § 426.320(b).

(c) *Unacceptable complaint.*

(1) If the Board determines that the complaint is unacceptable, the Board must provide the aggrieved party (or parties) one opportunity to amend the unacceptable complaint.

(2) If the aggrieved party (or parties) fail(s) to submit an acceptable amended complaint within a reasonable timeframe as determined by the Board, the Board must issue an administrative decision dismissing the unacceptable complaint.

(d) *Acceptable complaint.* If the Board determines that the complaint (or amended complaint) is acceptable, the Board does the following:

(1) Sends a letter to the aggrieved party (or parties) acknowledging the complaint and informing the aggrieved party (or parties) of the docket number.

(2) Forwards a copy of the complaint and the letter described in paragraph (d)(1) of this section to CMS.

(3) Requests that CMS send a copy of the NCD record to the Board and all parties to the NCD review.

(e) *Consolidation of complaints regarding an NCD*—(1) *Criteria for consolidation.* If two or more aggrieved parties submit separate acceptable complaints to the same provision(s) of the same NCD, the Board may, upon its own motion or by motion of any party to the NCD review, consolidate the complaints and conduct a consolidated NCD review if all of the following criteria are met:

(i) The complaints are in regard to the same provision(s) of the same NCD.

(ii) The complaints contain common questions of law, common questions of fact, or both.

(2) *Decision to consolidate complaints.* If the Board decides to consolidate complaints, the Board does the following:

(i) Provides notification that the NCD review will be consolidated and informing all parties of the new docket number.

(ii) Makes a single record of the proceeding.

(iii) Considers the relevant evidence introduced in each NCD challenge as introduced in the consolidated review.

(3) *Decision not to consolidate complaints.* If the Board decides not to consolidate complaints, the Board conducts separate NCD reviews for each complaint.

§ 426.515 CMS's role in making the NCD record available.

CMS will provide a copy of the NCD record (as described in § 426.518) to the Board and all parties to the NCD review.

§ 426.518 NCD record.

(a) *Elements of the NCD record.* Except as provided in paragraph (b) of this section, the NCD record consists of any document or material that CMS considered during the development of the NCD, including, but not limited to, the following:

(1) The NCD being challenged.

(2) Any relevant medical evidence considered on or before the date the NCD was issued, including, but not limited to, the following:

(i) Scientific articles.

(ii) Technology assessments.

(iii) Clinical guidelines.

(iv) Records from the Food and Drug Administration regarding safety and efficacy of a drug or device except where prohibited by Federal law.

(v) Statements from clinical experts, medical textbooks, claims data, or other indication of medical standard of practice.

(3) Public comments received (comments received during the notice and comment period).

(b) *Documents excluded from the NCD record.* The NCD record does not include the following:

(1) Material that is privileged or otherwise prohibited from release by Federal law.

(2) Any new evidence.

(3) Proprietary data.

(1) § 426.520 Repealing an NCD under review.

CMS may repeal an NCD under review before the date the Board issues an administrative decision regarding that NCD. Repealing an NCD under review has the same effect as an administrative decision under § 426.560(b).

§ 426.523 Withdrawing a complaint regarding an NCD under review.

(a) *Circumstance under which an aggrieved party withdraws a complaint regarding an NCD.* An aggrieved party who filed a complaint regarding an NCD may withdraw the complaint before the Board issues an administrative decision regarding that NCD. The aggrieved party may not file another complaint to the same coverage determination for 6 months.

(b) *Process for an aggrieved party withdrawing a complaint regarding an NCD.* To withdraw a complaint regarding an NCD, the aggrieved party who filed the complaint must send a written notice announcing the intent to withdraw to the Board (see § 426.500) and CMS.

(c) *Actions the Board must take upon receiving a notice announcing the intent to withdraw a complaint regarding an NCD*—(1) *NCD reviews involving one aggrieved party.* If the Board receives a notice announcing the intent to withdraw a complaint regarding an NCD before the date the Board issued an administrative decision regarding that NCD, the Board issues an administrative decision dismissing the complaint under § 426.544 and informing the aggrieved party that he or she may not file another complaint to the same coverage determination for 6 months.

(2) *NCD reviews involving joint complaints.* If the Board receives a notice from an aggrieved party who is named in a joint complaint announcing the intent to withdraw a complaint regarding an NCD before the date the

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Board issued an administrative decision regarding that NCD, the Board issues an administrative decision dismissing only that aggrieved party from the complaint under § 426.544. The Board continues the NCD review if there is one or more aggrieved party who does not withdraw from the joint complaint.

(3) *Consolidated NCD reviews.* If the Board receives a notice from an aggrieved party who is part of a consolidated NCD review announcing the intent to withdraw a complaint regarding an NCD before the date the Board issued an administrative decision regarding that NCD, the Board removes that aggrieved party from the consolidated NCD review and issues an administrative decision dismissing that aggrieved party's complaint under § 426.544. The Board continues the NCD review if there is one or more aggrieved party who does not withdraw from the joint complaint.

§ 426.525 NCD review.

(a) Opportunity for the aggrieved party to state that the NCD record is not complete, not adequate to support the validity of the NCD, or both. Upon receipt of the NCD record, the aggrieved party who submitted the complaint may file a motion alleging that the NCD record is not complete, not adequate to support the validity of the NCD, or both. This motion must be submitted to the Board and CMS within 30 days (or within additional time as allowed by the Board) of the date the aggrieved party receives the NCD record.

(1) If an aggrieved party does not file a motion alleging that the NCD record is incomplete or lacks adequate information to support the validity of the NCD, then the Board makes a determination whether the NCD record is complete and adequate, as described in § 426.530(a).

(2) If an aggrieved party files a motion alleging that the NCD record is not complete, not adequate to support the validity of the NCD, or both, based on clinical and scientific evidence contained in the NCD record, then the Board makes a determination whether the NCD record is complete and adequate, as described in § 426.530(b).

(3) If an aggrieved party files a motion alleging that the NCD record is not complete, not adequate to support the validity of the NCD, or both, based on new evidence, then the Board stays the proceeding upon request by CMS as described in § 426.340.

(b) *The aggrieved party may file a petition with the Board requesting additional time to review the NCD record.* This petition must be submitted to the Board within 30 days (or within additional time as allowed by the Board). This petition shall be in writing, will state the reason(s) why the request for extension is being made, and the amount of additional time needed to review the NCD record. The Board may extend the time for reviewing the NCD case file by an aggrieved party for a reasonable period of time.

§ 426.529 Review following supplemental record.

(a) *Opportunity for the aggrieved party to review the supplemental NCD record.* Upon receipt of the supplemental NCD record following a reconsideration under § 426.340, the aggrieved party who submitted the complaint may file a motion alleging that the NCD record is not complete, not adequate to support the validity of the NCD, or both. This motion must be submitted to the Board and CMS within 30 days (or within additional time as allowed by the Board) of the date the aggrieved party receives the supplemental NCD record.

(1) If an aggrieved party does not file a motion alleging the supplemental NCD record is incomplete or lacks adequate information to support the validity of the NCD, then the Board makes a determination whether the NCD record is complete and adequate, as described in § 426.530(a).

(2) If an aggrieved party files a motion alleging that the NCD record is not complete, not adequate to support the validity of the NCD, or both, based on clinical and scientific evidence contained in the NCD record, then the Board makes a determination whether the NCD record is complete and adequate, as described in § 426.530(b).

(3) If an aggrieved party files a motion alleging that the supplemental NCD record is not complete, not adequate to support the validity of the NCD, or both, based on new evidence, then the Board stays the proceeding upon request by CMS as described in § 426.340.

(b) *Request for additional time to review the CMS's supplemental NCD record by the aggrieved party.* The aggrieved party may file a petition with the Board requesting additional time to review CMS's supplemental NCD record. This petition must be submitted to the Board within 30 days (or within additional time as allowed by the Board). This petition shall be in writing, shall state the reason(s) why the request for extension is being made, and the amount of time needed to review the supplemental NCD record. The Board may extend the time for reviewing the supplemental NCD record for a reasonable period of time.

§ 426.530 Board's role in determining whether the NCD record is complete and adequate to support the validity of the NCD.

(a) If the aggrieved party does not file a motion described in § 426.525(a) or § 426.529(a), the Board reviews CMS's NCD record and applies the reasonableness standard, as described in § 426.531.

(b) If the aggrieved party files a motion described in § 426.525(a) or § 426.529(a), the Board must do the following:

(1) Allow the CMS to submit a statement to the Board and the aggrieved party responding to the motion described in paragraph (a) of this section. This statement must be submitted within 30 days (or within additional time as allowed by the Board) of the date CMS receives the statement from the aggrieved party described in paragraph (a) of this section.

(2) Review the contents of the NCD record, as described in § 426.518.

(3) Hold conferences, if necessary, which may be conducted (at the Board's discretion) either in person, or, by mutual agreement of the parties, by telephone, picture-tel, or any other means agreed upon by all parties involved.

(4) Determine if the NCD record is complete and adequate to support the validity of the NCD.

(c) Board's determination of the completeness of the NCD record, and the determination of CMS's NCD record's adequacy to support the validity of the NCD:

(1) *Board determination that the NCD record is complete and adequate to support the validity of the NCD.* If the Board determines that the NCD record is complete and adequate to support the validity of the NCD, the Board does the following:

(i) Sends a letter to the aggrieved party, the contractor, and CMS stating that the Board finds the NCD record to be complete and adequate to support the validity of the NCD.

(ii) Reviews the provision(s) of the NCD named in the complaint based on the reasonableness standard as described in § 426.531.

(2) *Board determination that the CMS's NCD record is not complete, not adequate to support the validity of the NCD, or both.* If the Board determines that CMS's NCD record is not complete, not adequate to support the validity of the NCD, or both, the Board does the following:

(i) Sends a letter to the aggrieved party and CMS stating that the NCD record is not complete, not adequate to support the validity of the NCD, or both.

(ii) Allows discovery as described in § 426.532.

(iii) Upon admission of new evidence, follows the process for review of new evidence as described in § 426.340.

(iv) Reviews the provision(s) of the NCD named in the complaint to apply the reasonableness standard as described in § 426.531.

§ 426.531 Board's review of the NCD to apply the reasonableness standard.

(a) *Required steps.* The Board must do the following to review the provision(s) named in the aggrieved party's complaint based on the reasonableness standard:

(1) Confine the NCD review to the provision(s) of the NCD raised in the aggrieved party's complaint filed with the Board, and to clinical or scientific evidence that is contained in the NCD record (or supplemental record).

(2) Close the NCD review record to the taking of evidence.

(3) Issue an administrative decision as described in § 426.547.

(b) *Optional steps.* The Board may do the following to apply the reasonableness standard to the provision(s) named in the aggrieved party's complaint:

(1) Conduct a hearing, and allow subpoenas as described in § 426.535 and the taking of evidence as described in § 426.540.

(2) At a hearing, consult with appropriate scientific or clinical experts concerning clinical or scientific evidence.

(3) Consider any previous Board administrative decision made under § 426.547 regarding the same provision(s) of the NCD under review.

(c) *Authority for the Board in NCD reviews when applying the reasonableness standard.* In applying the reasonableness standard to a provision (or provisions) of an NCD, the Board must follow the applicable provisions of the following:

(1) The Social Security Act.

(2) CMS regulations.

(3) CMS rulings.

(4) NCDs.

§ 426.532 Discovery.

(a) *General rules.* If the Board orders discovery, the Board does the following:

(1) Establishes a reasonable time frame for discovery.

(2) Ensures that a party to the NCD review who receives a discovery request has certain rights, which include, but are not limited to, the following:

(i) The right to select and use an attorney or other representative during the discovery process.

(ii) The right to submit discovery responses, objections, motions, or other pertinent materials to the Board.

(3) Ensures that a nonparty to the NCD review who receives a discovery request has the same rights in responding to a discovery request as any party.

(b) *Protective orders*—(1) *Request for a protective order.* Any party or nonparty receiving a discovery request may file a motion for a protective order before the date of production of the discovery.

(2) *The Board granting of a protective order.* The Board may grant a motion for protective order if it finds that the discovery sought—

(i) Is irrelevant;

(ii) Is unduly costly or burdensome;

(iii) Will unduly delay the proceeding;

(iv) Is privileged under Federal law; or

(v) Is proprietary data.

(c) *Types of discovery available.* A party may make a request to another party or nonparty for production of documents relating to a specific NCD.

(d) *Types of documents.* For the purpose of this section, the term documents includes relevant information, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained in this section will be interpreted to require the creation of a document.

(e) *Types of discovery not available.* Requests for admissions, depositions, written interrogatories, or any other forms of discovery, other than those permitted under paragraph (d) of this section, are not authorized.

(f) *Privileged documents*—(1) *Options for the Board.* The Board may, in appropriate circumstances, do any of the following:

(i) Order CMS to provide an index of any documents withheld on the basis of privilege and to state the basis for the privilege claim.

(ii) Conduct an in-camera review of any documents withheld on the basis of privilege.

(2) *Confidentiality.* If the Board orders the release of any document when privilege was asserted, the Board must order that all names or identifying information that is not relevant to the specific NCD must be redacted from the document.

§ 426.535 Subpoenas.

(a) *Purpose of a subpoena.* A subpoena requires the attendance of an individual at a hearing and may also require the individual (whether or not the individual is a party) to produce evidence authorized under § 426.540 at or before the hearing.

(b) *Filing a motion for a subpoena.* A party seeking a subpoena must file a written motion with the Board not less than 30 days before the date fixed for the hearing. The motion must do all of the following:

(1) Designate the witnesses.

(2) Specify any evidence to be produced.

(3) Describe the address and location with sufficient particularity to permit the witnesses to be found.

(4) State the pertinent facts that the party expects to establish by the witnesses or documents and whether the facts could be established by other evidence without the use of a subpoena.

(c) *Response to a motion for a subpoena.* Within 15 days after the written motion requesting issuance of a subpoena is served on all parties, any party may file an opposition to the motion or other response.

(d) *Extension for good cause.* The Board may modify the deadlines specified in paragraphs (b) and (c) of this section for good cause.

(e) *Motion for a subpoena granted.* If the Board grants a motion requesting issuance of a subpoena, the subpoena must do the following:

(1) Be issued in the name of the Board.

(2) Include the docket number and title of the NCD under review.

(3) Provide notice that the subpoena is issued according to sections 1872 and 205(d) and (e) of the Social Security Act.

(4) Specify the time and place at which the witness is to appear and any evidence the witness is to produce.

(f) *Delivery of the subpoena.* The party seeking the subpoena will serve it by personal delivery to the individual named, or by certified mail return receipt requested, addressed to the individual at his or her last dwelling place or principal place of business.

(g) *Motion to quash a subpoena.* The individual to whom the subpoena is directed may file with the Board a motion to quash the subpoena within 10 days after service.

(h) *Refusal to obey a subpoena.* The exclusive remedy for contumacy by, or refusal to obey a subpoena duly served upon, any person is specified in section 205(e) of the Act (42 U.S.C. 405(e)).

§ 426.540 Evidence.

(a) The Board determines the admissibility of evidence consistent with § 426.340.

(b) Except as provided in this part, the Board is not bound by the Federal Rules of Evidence. However, the Board may apply the Federal Rules of Evidence

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when appropriate, for example, to exclude unreliable evidence.

(c) The Board must exclude evidence that it determines is clearly irrelevant or immaterial.

(d) Although relevant, the Board must exclude evidence if the Board determines it is privileged under Federal law.

(e) Consistent with § 426.340, the Board may permit the parties to introduce the testimony of scientific and clinical experts, rebuttal witnesses, and other relevant evidence, only if the testimony is related to evidence that was considered in the NCD. This testimony may be submitted in the form of a written report, accompanied by the curriculum vitae of the expert preparing the report.

(f) Experts submitting reports must be available for cross-examination at an evidentiary hearing upon request of the Board or a party to the proceeding, or the report will be excluded from the record.

(g) All documents and other evidence offered or taken for the record will be open to examination by all parties, unless otherwise ordered by the Board for good cause shown.

§ 426.541 Closing discovery.

Upon completion of discovery, the Board will notify all parties in writing that the discovery period is closed.

§ 426.544 Dismissals for cause.

(a) The Board may, at the request of any party, or on its own motion, dismiss a complaint if the aggrieved party (or his or her representative) fails to do either of the following:

(1) Attend or participate in a prehearing conference or hearing without good cause.

(2) Comply with a lawful order of the Board.

(b) The Board must dismiss any provision(s) of a complaint in any of the following circumstances:

(1) The Board does not have the authority to rule on that provision under § 426.505(d).

(2) The complaint is not timely. (See § 426.500.)

(3) The complaint is not filed by an aggrieved party, or is filed by an individual who is unable to demonstrate that he or she is in need of a particular service. (See § 426.500.)

(4) The aggrieved party no longer needs the service because the aggrieved party has received the service before the aggrieved party filed the complaint with the Board, except for an individual who has a continuing need for a particular item or service that is subject to an NCD.

(5) The complaint challenges a provision or provisions of an LCD except as provided in § 426.476. (See § 426.505.)

(6) CMS notifies the Board that the NCD is no longer in effect. (See § 426.520.)

(7) The aggrieved party withdraws the complaint. (See § 426.523.)

(8) The aggrieved party is deceased.

(9) Nothing in the preceding list of circumstances leading to automatic dismissal shall be construed as having any force and effect concerning the legal rights of representatives of a deceased beneficiary to properly pursue settlement of a claim.

(c) The Board may, at the request of any party, or on his or her own motion, dismiss a complaint if the Board has already issued an administrative decision on the NCD or provisions of an NCD and the aggrieved party has not presented any new clinical or scientific evidence that supports the complaint.

§ 426.545 Witness fees.

(a) A witness testifying at a hearing before the Board receives the same fees and mileage as witnesses in Federal district courts of the United States. If the witness is an expert, he or she will be entitled to an expert witness fee. Witness fees will be paid by the party seeking to present the witness.

(b) If the Board requests expert testimony, the Board is responsible for paying all applicable fees and mileage.

§ 426.546 Record of hearing.

The Board must ensure that all hearings are open to the public and must be mechanically or stenographically reported. All evidence upon which the Board relies for decision must be contained in the transcript of testimony, either directly or by appropriate reference. All medical reports, exhibits, and any other pertinent document or record, either in whole or in material part, introduced as evidence, must be marked for identification and incorporated into the record.

§ 426.547 Issuance, notification, and posting of a Board's administrative decision.

The Board must do all of the following:

(a) Issue to all parties to the NCD review, within 90 days of closing the NCD review record to the taking of evidence, one of the following:

(1) A written administrative decision, including a description of appeal rights.

(2) A written notification stating that an administrative decision is pending, and an approximate date of issuance for the administrative decision.

(b) Make the administrative decision available on the Internet located at the Medicare Internet site of the Department of Health and Human Services. The posted decision will not include any information that would identify any individual, provider of service, or supplier.

§ 426.550 Mandatory provisions of the Board's administrative decision.

(a) *Finding.* The Board's administrative decision must include one of the following:

(1) A determination that the provision of the NCD is valid under the reasonableness standard.

(2) A determination that the provision of the NCD is not valid under the reasonableness standard.

(3) A statement dismissing the complaint regarding the NCD, and a rationale for the dismissal.

(b) *Other information.* The Board's administrative decision must include all of the following:

(1) The date of issuance.

(2) The docket number of the NCD review.

(3) The names of the parties to the NCD review.

(4) A statement as to whether the aggrieved party has filed a claim for the service(s) named in the complaint, the date(s)-of-service, and the disposition, if known.

(5) A rationale for the basis of the Board's administrative decision, including the following:

(i) Findings of fact.

(ii) Interpretations of law.

(iii) Applications of fact to law.

(6) A summary of the evidence reviewed.

(7) A statement regarding the right to judicial review.

(8) The signature of a Board member.

§ 426.555 Prohibited provisions of the Board's administrative decision.

The Board's administrative decision must not do any of the following:

(a) Order CMS to modify (including adding to or deleting from) a provision or provisions of an NCD.

(b) Order CMS to pay a specific claim.

(c) Establish a time limit for the establishment of a new or revised NCD.

(d) Review, evaluate, or address an NCD other than the NCD under review.

(e) Include a requirement for CMS that specifies payment, coding, or systems changes for an NCD, or deadlines for implementing these types of changes.

(f) Order or address how CMS implements an NCD.

§ 426.560 Effect of the Board's administrative decision.

(a) *Valid under the reasonableness standard.* If the Board finds that the provision (or provisions) of an NCD named in the complaint is (are) valid under the reasonableness standard, the aggrieved party may challenge the final agency action in Federal court.

(b) *Not valid under the reasonableness standard.* If the Board finds that the provision (or provisions) of an NCD named in the complaint is (are) invalid under the reasonableness standard, then CMS will instruct its contractor, M+C plan, or other Medicare managed care plan to provide the following relief.

(1) *Individual claim relief when a claim is pending or has been previously adjudicated.* If an aggrieved party's claim/appeal(s) had previously been denied, the contractor, an M+C plan, or another Medicare managed care plan must reopen the aggrieved party's claim and adjudicate the claim without using the provision(s) of the NCD that the Board found invalid.

(2) *Individual claim relief when no claim is pending.* If a revised NCD is issued, contractors, M+C plans, and other Medicare managed care plans must use the revised NCD in reviewing claim/appeal submissions or request for service for items delivered or services performed on or after the effective date.

(3) *Coverage determination relief.* Within 30 days of the issuance of the Board's administrative decision, CMS must send a letter to the Board and the aggrieved party or parties named in the complaint announcing the intent to do one of the following:

(i) Repeal the NCD in its entirety, or repeal the provision or provisions of the NCD that the Board's administrative decision stated was (were) not valid under the reasonableness standard.

(ii) Conduct a reconsideration using the information collected during the NCD review, as well as any other applicable information, and do one of the following:

(A) Supplement the NCD record or rationale, and issue a new NCD.

(B) Revise the NCD.

(C) Repeal the NCD.

(iii) Unless repealed under paragraph (b)(3)(i) or (b)(3)(ii)(C) of this section, the contractor may continue to use the NCD in adjudicating claims for individuals who did not challenge the NCD while a reconsideration is pending.

§ 426.562 Notice of the Board's administrative decision.

After the Board has made a decision regarding an NCD complaint, the Board sends a written notice of the administrative decision to each party. The notice must—

(a) Contain a finding with respect to the NCD complaint; and

(b) Inform each party to the determination of his or her rights to seek further review if he or she is dissatisfied with the determination, and the time limit under which an appeal must be requested.

§ 426.565 Board's role in making an LCD or NCD review record available.

Upon a request from a Federal Court, the Board must provide to the Federal Court, a copy of the Board's LCD or NCD review record (as described in § 426.567).

§ 426.567 Board's NCD review record.

(a) *Elements of the Board's NCD review record.* Except as provided in paragraph (b) of this section, the Board's NCD review record consists of any document or material that the Board compiled or considered during an NCD review, including, but not limited to, the following:

(1) The NCD complaint.

(2) The NCD and NCD record.

(3) The supplemental NCD record, if applicable.

(4) The Board's administrative decision.

(5) Transcripts of record.

(6) Any other relevant evidence gathered under § 426.540.

(b) *Documents excluded from the contractor/CMS' NCD record.* The NCD record does not include material that is privileged or otherwise prohibited from release by Federal law.

§ 426.570 Board administrative decision.

A decision by the Board constitutes a final agency action and is subject to judicial review. CMS may not appeal a Board administrative decision.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 26, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 16, 2002.

Tommy G. Thompson,

Secretary.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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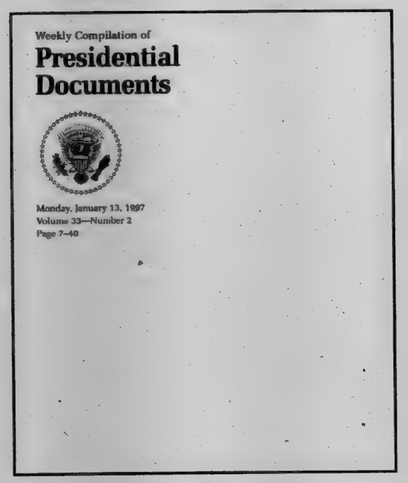
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. FV02–922–1 FR]

Apricots Grown in Designated Counties in Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Washington Apricot Marketing Committee (Committee) for the 2002–03 and subsequent fiscal periods from $2.00 to $2.50 per ton of apricots handled. The Committee locally administers the marketing order which regulates the handling of apricots grown in designated counties in Washington. Authorization to assess apricot handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: August 26, 2002.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 132 and Marketing Order No. 922, both as amended (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Washington apricot handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein will be applicable to all assessable apricots beginning on April 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2002–03 and subsequent fiscal periods from $2.00 to $2.50 per ton of apricots handled.

The Washington apricot marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are growers and handlers of Washington apricots. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997–98 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 15, 2002, and unanimously recommended 2002–03 expenditures of $11,685 and an assessment rate of $2.50 per ton of apricots. In comparison, last year's budgeted expenditures were $11,230. The recommended rate is $.50 higher than the rate currently in effect. The increase is necessary to offset an increase in salaries and operating expenses, and an anticipated decrease in production due to the adverse effect of cooler temperatures on the size and quality of the 2002 apricot crop.

The major expenditures recommended by the Committee for the 2002–03 fiscal period include $5,892 for salaries, $1,000 for travel, $816 for rent and maintenance, and $540 for office equipment and repair. Budgeted expenses for these items in 2001–2002 were $5,731, $1,000, $792, and $264, respectively.

Washington apricot shipments for 2002 are estimated at 3,650 tons which should provide $9,125 in assessment income. This income, along with approximately $2,540 from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $8,257) would be kept within the maximum

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permitted by the order. The order permits an operating reserve in an amount not to exceed approximately one fiscal period's operational expenses (§ 922.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 200 producers of apricots in the production area and approximately 30 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on a three-year average fresh apricot production of 4,406 tons (Committee records), a three-year average of producer prices of $832 per ton reported by the National Agricultural Statistics Service, and 200 Washington apricot producers, the average annual producer revenue is approximately $18,329. In addition, based on Committee records and 2001 F.O.B. prices ranging from $14.50 to $22.50 per 24-pound container reported by USDA's Market News Service, all of the Washington apricot handlers ship under $5,000,000 worth of apricots. In view of the foregoing, it can be concluded that all of the Washington apricot producers and handlers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent fiscal periods from $2.00 to $2.50 per ton of apricots. The Committee unanimously recommended 2002–03 expenditures of $11,685 and an assessment rate of $2.50 per ton. The increased assessment rate is $.50 higher than the 2001–02 rate. The quantity of assessable apricots for the 2002–03 fiscal period is estimated at 3,650 tons. Income derived from handler assessments (approximately $9,125), along with funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2002–03 fiscal period include $5,892 for salaries, $1,000 for travel, $816 for rent and maintenance, and $540 for office equipment and repair. Budgeted expenses for these items in 2001–02 were $5,731, $1,000, $792, and $264, respectively.

The assessment rate increase is necessary to offset increases in salaries and operating expenses, and an anticipated decrease in production due to the adverse effect of cooler temperatures on the size and quality of the 2002 apricot crop. As of March 31, 2002, the Committee's reserve was $8,257. At the previous assessment rate of $2.00 per ton and an estimated 2002 apricot production of 3,650 tons, the projected reserve on March 31, 2003, would have been $3,872. The Committee believed that such a level of reserve would not have been adequate should there have been another reduced crop. At the rate of $2.50 per ton (assessment income of $9,125) and expenditures of $11,685, the Committee may need to draw up to $2,540 from its reserve. If reserve funds in this amount are needed, the projected reserve will be approximately $5,697 on March 31, 2003, which the Committee determined to be acceptable.

The Committee considered alternate levels of assessment but determined that increasing the assessment rate to $2.50 per ton is adequate to maintain the reserve at an acceptable level. The Committee decided that an assessment rate between $2.00 per ton and $2.50 per ton would not have maintained the reserve at an adequate level. Prior to arriving at this rate of assessment, the Committee considered information from various sources, such as the Committee's Finance and Executive Committees.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2002–03 fiscal period could range between $800 and $850 per ton of apricots. Therefore, the estimated assessment revenue for the 2002–03 as a percentage of total producer revenue could range between 0.31 and 0.29 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Washington apricot industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 15, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Washington apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on July 1, 2002 (67 FR 44095). Washington apricot handlers were also notified of the increased assessment rate. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending July 31, 2002, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2002–03 fiscal period began on April 1, 2002, and the order requires that the rate of assessment for each fiscal period apply to all assessable apricots handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 922 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 922.235 is revised to read as follows:

§ 922.235 Assessment rate.

On and after April 1, 2002, an assessment rate of $2.50 per ton is established for the Washington Apricot Marketing Committee.

Dated: August 19, 2002.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–21538 Filed 8–22–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV02–925–2 FIR]

Grapes Grown in a Designated Area of Southeastern California; Revision to Container and Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which revised the container and pack requirements currently prescribed under the California grape marketing order (order). The order regulates the handling of grapes grown in a designated area of Southeastern California and is administered locally by the California Desert Grape Administrative Committee (Committee). This rule continues in effect the addition of four new containers (38L, 38M, CP, and CP1) to the list of containers authorized for use by grape handlers regulated under the grape order. This rule continues to allow reusable plastic containers (RPCs) in shipping grapes, and continues in effect revisions to lot stamping requirements for RPCs, revisions exempting master containers containing individual consumer packages from the minimum net weight requirements specified under the order, and revisions to marking and minimum net weight requirements for clarity. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve producer returns.

EFFECTIVE DATE: September 23, 2002.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; *telephone:* (202) 720–2491, *Fax:* (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; *telephone:* (202) 720–2491, *Fax:* (202) 720–8938, or *e-mail: Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925 (7 CFR part 925), as amended, regulating the handling of grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect language in § 925.304 of the order's rules and regulations which added four new containers (38L, 38M, CP, and CP1) to the list of containers authorized for use by grape handlers regulated under the grape order, allowed RPCs in shipping grapes, revised the lot stamping requirements for RPCs, and exempted master containers containing individual consumer packages from the minimum net weight requirements specified under the order. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve producer returns. The Committee unanimously recommended these changes at its February 12, 2002, meeting and clarified via a fax vote on February 21, 2002.

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Addition of Four New Containers and Usage of RPCs

Section 925.52(a)(4) of the grape order provides authority to regulate size, capacity, weight, dimensions, marking, materials, and pack of containers, which may be used in the handling of grapes.

Prior to publication of the interim final rule (67 FR 20607, April 26, 2002), § 925.304(b)(1) of the order's rules and regulations outlined container and pack requirements for grapes and required such grapes to be packed in containers which were new and clean and which otherwise met the requirements of §§ 1380.14, 1380.19(n), 1436.37, and 1436.38 of Title 3: California Code of Regulations (CA Code of Regulations).

Additionally, prior to publication of the above-mentioned interim final rule, §§ 925.304(b)(1)(i) through (b)(1)(iii) of the order's rules and regulations authorized ten containers (28, 38J, 38K, 38Q, 38R, 38S, 38T, 38U, 38V, and a 5 kilo) for use by grape handlers, and also authorized the Committee to approve other types of containers for experimental or research purposes.

Section 925.304(f) states that certain container and pack requirements cited in this regulation are specified in the Code of Regulations and are incorporated by reference and that a notice of any change in these materials will be published in the **Federal Register**.

Container requirements prescribed under the California grape order were revised in January 1998 (63 FR 655, January 7, 1998). In March 1998, the 38L grape lug was added to the CA Code of Regulations, but had not yet been added to the list of approved containers under the Federal order. The 38L grape lug is defined as any container with an inside depth of 7⅝ inches, an outside width of 13 11/16 inches, and an outside length of 16 inches.

Since that time, many retailers had asked handlers to pack grapes in specific RPCs, corrugated lugs, and master containers that are not authorized as containers under § 925.304(b)(1)(i). There are several manufacturers of these containers, and each manufacturer's container dimensions vary slightly. During previous seasons, handlers applied for and obtained Committee approval to use these containers on an experimental basis.

Prior to February 2002, the Grape and Tree Fruit League (League) petitioned the California Department of Food and Agriculture (CDFA) to add the 38M grape lug to the list of standardized containers in the CA Code of Regulations. Standard containers represent container types that are recognized by the industry and adopted by the retail trade. The CDFA expected the 38M grape lug to be standardized in the CA Code of Regulations by May 2002. The 38M grape lug was standardized in the CA Code of Regulations on May 29, 2002.

At its February 12, 2002, meeting, the Committee unanimously recommended and USDA approved adding most of the containers previously approved as experimental containers, including the 38M grape lug, to the list of containers authorized under the order's rules and regulations. In reviewing container dimensions, the Committee concluded that the depth, width, and length dimensions for the 38L, 38M, CP, and CP1 grape lugs encompass the dimensions for the containers previously approved by the Committee for experimental purposes. Therefore, the Committee unanimously recommended, through a fax vote on February 21, 2002, and USDA approved adding the following four containers to the list of ten containers authorized in the order's rules and regulations (67 FR 20607, April 26, 2002):

Container	Depth inside	Width outside	Length outside
38L Grape Lug	7⅝	13 11/16	16
38M Grape Lug	4¼–5¾	15⅜–16	23½–24
CP Grape Lug	3 15/16–4¾	15¾–15 9/16	23½–23¾
CP1 Grape Lug	4¾–5	19½–20	23¾–24

These containers may be constructed of several different materials (*e.g.*, plastic or fiberboard) but should conform to the range of dimensions listed above.

These containers are an integral part of the marketing efforts used by many handlers to meet market demands. Some of these containers are RPCs. Retailers have requested that fruit be shipped in RPCs, as it can be cooled quickly in these containers. This, in turn, helps ensure that the grapes are fresh when they arrive at destination. The use of RPCs may result in substantial savings to retailers for storage and disposal as retailers return RPCs to a central area for cleaning and redistribution. Cost savings may accrue to handlers, as well, since they do not have to buy new containers for each shipment.

Prior to issuance of an interim final rule (67 FR 20607, April 26, 2002), Section 925.304(b)(1) of the rules and regulations required grapes to be packed in new and clean containers. Containers, other than RPCs, are intended to be used once and discarded. RPCs are typically delivered to the retailer, emptied, and returned to the clearinghouse for cleaning and redistribution. As RPCs are reusable, the Committee recommended that the rules and regulations be revised to allow RPCs to be reused, provided such containers are cleaned. Allowing RPCs to be reused is expected to reduce the burden on handlers, as they will not have to apply and obtain Committee approval annually to utilize them.

Adding these four containers to the order's rules and regulations and allowing RPCs to be reused will enable handlers to meet their customer requirements this season. This action will help the industry in providing consumers with high quality grapes, promoting buyer satisfaction, and improving producer returns. This action will not impact the grape import requirements.

Lot Stamping Requirements

Section 925.55 of the order requires inspection and certification of grapes, handled by handlers. Prior to publication of an interim final rule (67 FR 20607, April 26, 2002), § 925.304(b)(4) of the grape order's rules and regulations required containers of grapes to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, and specified that such requirement shall not apply to containers in the center tier of a 3 box by 3 box pallet configuration.

During the 2001 season, the Committee approved the use of RPCs for experimental purposes. RPCs are made of plastic and retailers send these reusable containers to a central clearinghouse after use for cleaning and sanitizing. Because RPCs are reusable, these plastic containers do not support markings that are permanently affixed to the container. All markings must be printed on cards which slip into tabs on the front or sides of the containers. The cards are easily inserted and removed, and further contribute to the efficient use of the container. Because of their unique portability, the industry and inspection service are concerned that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers.

The industry experimented last season with round adhesive labels on RPCs. The lot stamp number was stamped on the round adhesive label and the label was placed on the RPCs. However, it was difficult to remove the adhesive label in the wash cycle. Additionally, handlers found that workers needed to affix the adhesive label to the RPCs, and inspectors needed to stamp the lot stamp number on the adhesive labels, outside of cold storage facilities. During July 2001, temperatures in the production area reached 100 to 118 degrees Fahrenheit. Committee members estimated that for each hour that grapes were outside of cold storage after harvest, a day's shelf life was lost. Handler members calculated that affixing adhesive labels to RPCs cost the grape industry approximately $0.10 per grape lug in materials and labor. The inspection service and the Committee have presented their concerns to the manufacturers of these types of grape lugs. One manufacturer has indicated a willingness to address the problem by offering an area on the principal display panel where the container markings will adhere to the box. However, the manufacturer believes that this change may not be feasible in the near future.

To address the additional time and cost of affixing adhesive labels to containers, the Committee unanimously recommended and the USDA approved the stamping of lot stamp numbers on two USDA-approved pallet tags, with each pallet tag affixed to opposite sides of each pallet of containers (67 FR 20607, April 26, 2002). The pallets will be wrapped with clear plastic immediately after inspection, ensuring the tags cannot be easily removed, although the tags remain visible beneath the wrap. The Committee estimated that affixing lot stamp numbers to pallet tags would reduce handler costs by $950,000, make handler operations more efficient, and will provide consumers with high quality grapes. Additionally, each lot will be traceable through the lot stamp, since the lot stamp number on the pallet tag corresponds to the lot stamp number annotated on the inspection certificate. This action will not affect imports.

Minimum Net Weight Requirements

Section 925.52(a)(4) of the grape order provides authority to fix the size, capacity, weight, dimensions, markings, materials, and pack of the container, which may be used in the handling of grapes.

Section 925.304(b)(2) of the order's rules and regulations specifies that the minimum net weight of grapes in any container, except for containers containing grapes packed in sawdust, cork, excelsior or similar packing material or packed in bags or wrapped in plastic or paper, and experimental containers, shall be 20 pounds based on the average net weight of grapes in a representative sample of containers.

Prior to publication of an interim final rule (67 FR 20607, April 26, 2002), § 925.340(b)(2) further specified that containers of grapes packed in bags or wrapped in plastic or paper prior to being placed in these containers shall meet a minimum net weight requirement of 18 pounds.

Several years ago, the California Table Grape Commission (Commission) funded a 3-year research project designed to determine if current practices were getting the product to the retailer and ultimately the consumer in the best possible condition. A study of grape packaging was conducted by Dr. Harry Shorey of the University of California at Davis and the University of California at Kearney Agricultural Center at Parlier. The study concluded that the California grape industry should modify container dimensions so that containers will fit better on the standard 48 x 40-inch pallets, and that the container minimum net weights should be reduced to 18 and 20 pounds. Based on these conclusions, the Committee recommended and USDA approved reducing the minimum net weight requirements in March 1996 to enhance the deliverability of grapes (61 FR 11129, March 19, 1996).

Since that time, grape handlers have packed grapes in 18 and 20-pound containers and marked such containers as 18 and 20 pounds. The minimum net weight of grapes in 20-pound containers is based on the average net weight of grapes in a representative sample of containers. The minimum net weight of grapes in 18-pound containers also is based on the average net weight of grapes in a representative sample of containers. The language in § 925.304(b)(2) was changed by an interim final rule (67 FR 20607, April 26, 2002), to specifically provide that containers containing grapes packed in bags or wrapped in plastic or paper prior to being placed in these containers must meet a minimum net weight requirement of 18 pounds based on an average net weight of grapes in a representative sample of containers.

Approximately 95 percent of all grapes shipped during the 2001 season were shipped in 18-pound containers. Grapes normally lose moisture during shipment. To address mislabeling concerns, it is common practice in the industry to pack containers of grapes slightly over the minimum net weight required to allow for shrink, and to mark these containers as 18 or 20 pounds, respectively. Last season, some containers were packed with slightly more than 21 pounds and marked as 21 pounds. Marking containers other than 18 or 20 pounds caused confusion in the marketplace and impacted handler assessments and statistical reporting. Thus, the Committee unanimously recommended at its February 12, 2002, meeting, that containers packed with slightly more than 18 or 20 pounds shall be marked as 18 and 20 pounds, respectively. To address this issue, the text of the interim final rule (67 FR 20607, April 26, 2002) provided that containers other than master containers containing individual consumer packages are to be marked with the minimum net weight of 18 or 20 pounds, as appropriate.

Recently, retailers have requested master containers containing individual consumer packages that weigh a total of 24 pounds, 16 pounds, or 10 pounds. An individual consumer package is a package that is customarily produced and distributed for sale to individuals for their personal consumption.

The Committee discussed the best means of allowing handlers to meet orders for master containers containing individual consumer packages that had different minimum net weight requirements. The Committee estimated that approximately 2 percent of the crop is shipped in master containers containing individual consumer packages and unanimously recommended and USDA approved revising § 925.304(b)(2) to exempt master containers containing individual consumer packages from the minimum net weight requirements of 18 or 20 pounds (67 FR 20607, April 26, 2002). These changes will enable handlers to compete more effectively in the marketplace and to better meet the needs of buyers. These revisions do not impact the grape import regulation.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of

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this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 80 producers of grapes in the production area and approximately 26 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Last year, about 69 percent of the handlers could be considered small businesses under SBA's definition and about 31 percent could be considered large businesses. It is estimated that about 88 percent of the producers have annual receipts of less than $750,000. Therefore, the majority of handlers and producers of grapes may be classified as small entities.

This rule continues in effect language in § 925.304 of the order's rules and regulations which added four new containers (38L, 38M, CP, and CP1) to the list of containers authorized for use by grape handlers regulated under the grape order, which covers grapes grown in a designated area of Southeastern California. This rule continues to allow handlers to ship grapes in RPCs, continues in effect the revised the lot stamping requirements for RPCs, and continues to exempt master containers containing individual consumer packages from the minimum net weight requirements specified under the order. Additionally, this rule continues to clarify marking requirements for 18 and 20 pound containers and continues in effect the removal of obsolete language in §§ 925.304(a) and 925.304(b)(iii) that was applicable to the period June 1, 1998, through August 15, 1998.

The order regulates the handling of grapes grown in California and is administered locally by the Committee. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve producer returns. The Committee unanimously recommended these changes. Authority for these actions is provided in §§ 925.52 and 925.55 of the order.

Addition of Four New Containers and Usage of RPCs

Prior to publication of an interim final rule (67 FR 20607, April 26, 2002), § 925.304(b)(1) of the order's rules and regulations outlined container and pack requirements for grapes and required grapes be packed in containers which were new and clean and which otherwise met the requirements of §§ 1380.14, 1380.19(n), 1436.37, and 1436.38 of CA Code of Regulations.

Prior to publication of an interim final rule, (67 FR 20607, April 26, 2002) §§ 925.304(b)(1)(i) through (b)(1)(iii) of the order's rules and regulations authorized ten containers for use by grape handlers, and also authorized the Committee to approve other types of containers for experimental or research purposes.

Section 925.304(f) states that certain container and pack requirements cited in this regulation are specified in the Code of Regulations and are incorporated by reference and that a notice of any change in these materials will be published in the **Federal Register**.

Container requirements prescribed under the California grape order were revised in January 1998 (63 FR 655, January 7, 1998). In March 1998, the 38L grape lug was added to the CA Code of Regulations, but had not yet been added to the list of approved containers under the order. The 38L grape lug is defined as any container with an inside depth of 7⅝ inches, an outside width of 13 11/16 inches, and an outside length of 16 inches.

Since that time, many retailers have asked handlers to pack grapes in specific RPCs, corrugated lugs, and master containers that are not authorized as containers under § 925.304(b)(1)(i). There are several manufacturers of these containers, and each manufacturer's container dimensions vary slightly. During previous seasons, handlers applied for and obtained Committee approval to use these containers on an experimental basis.

Prior to the Committee's February 12, 2002, meeting, the League had petitioned the CDFA to add the 38M grape lug to its list of standardized containers in the CA Code of Regulations. Standard containers represent container types that are recognized by the industry and adopted by the retail trade.

The range of dimensions allowed for the 38M grape lug encompasses the dimensions of many of the containers used experimentally during previous seasons, including some RPCs. The CDFA expected to standardize the 38M grape lug in the Code of Regulations by May 2002. The 38M grape lug was standardized in the Code of Regulations effective May 29, 2002.

At its February 12, 2002, meeting, the Committee unanimously recommended adding most of the containers previously approved as experimental containers during the 2001 season, including the 38M grape lug, to the list of containers authorized under the order's rules and regulations. In reviewing container dimensions, the Committee concluded that the 38L, 38M, CP, and CP1 grape lugs' depth, width, and length dimensions will encompass the containers previously approved by the Committee for experimental purposes. Therefore, the Committee unanimously recommended, through a fax vote on February 21, 2002, and USDA approved adding the following four containers to the list of ten containers authorized in the order's rules and regulations (67 FR 20607, April 26, 2002):

Container	Depth inside	Width outside	Length outside
38L Grape Lug	7⅝	13 11/16	16
38M Grape Lug	4¼–5¾	15⅜–16	23½–24
CP Grape Lug	3 15/16–4¾	15¾–15 9/16	23½–23¾
CP1 Grape Lug	4¾–5	19½–20	23¾–24

These containers may be constructed of several different materials (*e.g.*, plastic or fiberboard) but should conform to the range of dimensions listed above.

The Committee discussed alternatives to this change, including making no changes to the list of containers authorized under the grape order's rules and regulations. The Committee determined that the 38L, 38M, CP, and CP1 grape lugs should be added to the rules and regulations as these containers are an integral part of the marketing efforts used by many handlers to meet market demands. Some of these containers are RPCs. Retailers have requested that fruit be shipped in RPCs, as it can be cooled quickly in them, helping to ensure freshness. The use of RPCs may result in substantial savings to retailers for storage and disposal as retailers return RPCs to a central area for cleaning and redistribution. Cost savings may accrue to handlers, as well, since they do not have to buy new containers for each shipment.

Prior to publication of an interim final rule (67 FR 20607, April 26, 2002), Section 925.304(b)(1) of the rules and regulations required such grapes to be packed in new and clean containers. Containers, other than RPCs, are intended to be used once and discarded. RPCs are typically delivered to the retailer, emptied, and returned to the clearinghouse for cleaning and redistribution. As RPCs are reusable, the Committee recommended that the rules and regulations be revised to allow RPCs to be reused, provided such containers are cleaned. Allowing cleaned RPCs to be reused is expected to help handlers better meet buyer needs.

Adding these four containers to the rules and regulations will enable handlers to meet their customer requirements this season. This action will continue to help the industry in providing consumers with high quality grapes, promoting buyer satisfaction, and improving producer returns. This action will not impact the grape import requirements.

Lot Stamping Requirements

Prior to publication of an interim final rule (67 FR 20607, April 26, 2002), Section 925.304(b)(4) of the grape order's rules and regulations required containers of grapes to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, and specified that such requirement shall not apply to containers in the center tier in a 3 box by 3 box pallet configuration.

During the 2001 season, the Committee approved usage of RPCs for experimental purposes. RPCs are made of plastic and retailers send these reusable containers to a central clearinghouse after use for cleaning and sanitizing. Because RPCs are reusable, these plastic containers do not support markings that are permanently affixed to the container. All markings must be printed on cards, which slip into tabs on the front or sides of the containers. The cards are easily inserted and removed, and further contribute to the efficient use of the container. Because of their unique portability, the industry and inspection service are concerned that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers.

The industry experimented last season with round adhesive labels on RPCs. The lot stamp number was stamped on the round adhesive label and the label was placed on the RPCs. However, manufacturers found that it was difficult to remove in the wash cycle. Additionally, handlers found that workers need to affix the adhesive label to the RPCs, and inspectors needed to stamp the lot stamp number on the adhesive labels, outside of cold storage facilities. During July 2001, temperatures in the production area reached 100 to 118 degrees Fahrenheit. Committee members estimated that for each hour that grapes were outside of cold storage after harvest, a day's shelf life was lost. Handler members calculated that affixing adhesive labels to RPCs cost the grape industry approximately $0.10 per grape lug in materials and labor. The inspection service and the Committee have presented their concerns to the manufacturers of these types of grape lugs. One manufacturer has indicated a willingness to address the problem by offering an area on the principle display panel where the container markings will adhere to the box, which will meet the needs of the industries, the inspection service, and the manufacturer. However, the manufacturer believes that this change may not be feasible in the near future.

To address the additional time and cost of affixing adhesive labels to containers, the Committee unanimously recommended the stamping of lot stamp numbers be on two USDA-approved pallet tags, with each pallet tag affixed to opposite sides of each pallet of containers. The pallets will be wrapped with clear plastic immediately after inspection ensuring the tags cannot be easily removed, although the tags remain visible beneath the wrap. The Committee estimated that affixing lot stamp numbers to pallet tags would reduce handler costs by $950,000, make handler operations more efficient, and will provide consumers with high quality grapes. Additionally, each lot will be traceable through the lot stamp, since the lot stamp number on the pallet tag corresponds to the lot stamp number annotated on the inspection certificate.

The Committee discussed alternatives to this change, including making no changes to the lot stamp-numbering requirement. The Committee believes that relaxing the lot stamp numbering requirement under the rules and regulations will result in better quality grapes being shipped to consumers, a reduction in handler costs, and improved producer returns. Thus, the Committee recommended and USDA approved revising § 925.304(b)(4) to require the number be stamped on two USDA-approved pallet tags for RPCs, and that the pallet tags be placed on opposite sides of each pallet (67 FR 20607, April 26, 2002). This action will not affect imports.

Minimum Net Weight Requirements

Section 925.304(b)(2) of the order's rules and regulations specifies that the minimum net weight of grapes in any container, except for containers containing grapes packed in sawdust, cork, excelsior or similar packing material or packed in bags or wrapped in plastic or paper. It specifies that approved experimental containers shall be 20 pounds based on the average net weight of grapes in a representative sample of containers.

Prior to publication of an interim final rule (67 FR 20607, April 26, 2002), § 925.340(b)(2) further specified that containers of grapes packed in bags or wrapped in plastic or paper prior to being placed in these containers shall meet a minimum net weight requirement of 18 pounds.

Several years ago, the Commission funded a 3-year research project designed to determine if current practices were getting the product to the retailer and ultimately the consumer in the best possible condition. A study of grape packaging was conducted by Dr. Harry Shorey of the University of California at Davis and the University of California at Kearney Agricultural Center at Parlier. The study concluded that the California grape industry should modify container dimensions so that containers will fit better on the standard 48 x 40-inch pallets, and that the container minimum net weights should be reduced to 18 and 20 pounds. Based on these conclusions, the Committee recommended and USDA approved reducing the minimum net weight requirements in March 1996 to enhance the deliverability of grapes (61 FR 11129, March 19, 1996).

Since that time, grape handlers have packed grapes in 18 and 20-pound containers and marked such containers as 18 and 20 pounds. Approximately 95 percent of all grapes shipped during the 2001 season were shipped in 18-pound containers. Grapes normally lose moisture during shipment. To address

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mislabeling concerns, it is common practice in the industry to pack containers of grapes slightly over the minimum net weight required to allow for shrink, and to mark these containers as 18 or 20 pounds, respectively. Last season, some containers were packed with slightly more than 21 pounds and marked as 21 pounds. Marking containers other than 18 or 20 pounds caused confusion in the marketplace and impacted handler assessments and statistical reporting. Thus, the Committee unanimously recommended at its February 12, 2002, meeting, that containers packed with slightly more than 18 or 20 pounds shall be marked as 18 or 20 pounds, as appropriate. To address this issue, § 925.304(b)(2) was revised to provide that containers other than master containers containing individual consumer packages to be marked with the minimum net weight of 18 or 20 pounds, as appropriate (67 FR 20607, April 26, 2002).

The Committee discussed alternatives to this change. The Committee believes that allowing markings other than 18 or 20-pound markings could cause confusion in the marketplace and may not address the mislabeling concerns as grapes lose moisture and shrink during shipment. Thus, the Committee unanimously recommended at its February 12, 2002, meeting, that the container marking requirements in § 925.304(b)(2) be revised as provided in the interim final rule (67 FR 20607, April 26, 2002).

Recently, retailers have requested master containers containing individual consumer packages that weigh a total of 24 pounds, 16 pounds, or 10 pounds. An individual consumer package is a package that is customarily produced and distributed for sale to individuals for their personal consumption.

The Committee discussed alternatives to this change, including making no change to the minimum net weight requirement for master containers containing individual consumer packages, but believes that providing this exception for mater containers is in the best interest of handlers. The Committee estimated that approximately 2 percent of the crop is shipped in master containers containing individual consumer packages. The 2002 crop was estimated to be 9.5 million lugs. Allowing master containers containing individual consumer packages will enable handlers to market an additional 190,000 lugs of grapes. Therefore, the Committee unanimously recommended and USDA approved revising § 925.304(b)(2) to exempt master containers containing individual consumer packages from the minimum net weight requirements of 18 or 20 pounds. (67 FR 20607, April 26, 2002).

Finally, the language in § 925.304(b)(2) was changed for clarity to specifically provide that containers containing grapes packed in bags or wrapped in plastic or paper prior to being placed in these containers must meet a minimum net weight requirement of 18 pounds based on an average net weight of grapes in a representative sample of containers.

These revisions will enable handlers to compete more effectively in the marketplace and to better meet the needs of buyers. Imported grapes will not be affected by this action.

Removal of Obsolete Language

This rule continues in effect the minor changes to remove obsolete language in paragraphs (a) and (b)(iii) of § 925.304. These paragraphs included references to the period June 1, 1998, through August 15, 1998, which marked the trial usage of the "DGAC Consumer No. 1 Institutional" (DGAC) grade.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large grape handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the grape industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the February 12, 2002, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. A fax vote was conducted to clarify the recommendation regarding the number and dimensions of containers to be added to the list currently authorized under the grape order. All handlers were provided information on the number and dimensions of containers to be added to the order.

An interim final rule concerning this action was published in the **Federal Register** on April 26, 2002. Copies of the rule were mailed by the Committee's staff to all Committee members and grape handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period which ended June 25, 2002. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (67 FR 20607, April 26, 2002) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements and orders, Reporting and recordkeeping requirements.

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 925 which was published at 67 FR 20607 on April 26, 2002, is adopted as a final rule without change.

Dated: August 19, 2002.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–21536 Filed 8–22–02; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustments—Redoubt Lake and Three Southeastern Alaska Lake Systems

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Seasonal adjustments.

SUMMARY: This provides notice of the Federal Subsistence Board's in-season management actions to protect sockeye salmon escapement in three Southeastern Alaska lake systems and to remove unnecessary restrictions on salmon harvest by non-Federally qualified users at Redoubt Lake. The fishing schedules and closures will provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on February 7, 2002. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2002 regulatory year.

DATES: The Falls Lake, Salmon Lake, and Klag Bay Lake action is effective July 24, 2002, through August 31, 2002. The Redoubt Lake action is effective July 25, 2002, through September 21, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, Part 100 and Title 36, Part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2002 fishing seasons, harvest limits, and methods and means were published on February 7, 2002, (67 FR 5890).

Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

These adjustments are necessary because of weak returns of the sockeye salmon run in the Afognak Lake, Falls Lake, Salmon Lake, and Klag Bay Lake systems based on in-season run assessments. The adjustment for Redoubt Lake is necessary because of strong returns of sockeye salmon to that lake system. These actions are authorized and in accordance with 50 CFR 100.19(d)–(e) and 36 CFR 242.19(d)–(e).

Southeastern Alaska Lake Systems

The Falls Lake system was closed because sockeye salmon returns were very low, and to avoid excessive harvest effort for this relatively small sockeye population. The current harvest to date has exceeded the previous 5-year average and the weir counts have been very low.

The Salmon Lake system was closed because sockeye salmon returns were very low, and to avoid excessive harvest effort for this relatively small sockeye population. The total escapement to July 23, 2002, was 259 at Salmon Lake. In 2001 total escapement for Salmon Lake was 1039 sockeye salmon.

The Klag Bay Lake system was closed since sockeye salmon returns were very low, and to avoid excessive harvest effort for this relatively small sockeye population. The current harvest to date has exceeded the previous 5-year average and the weir counts have been very low.

This regulatory action was necessary to assure the continued viability of the sockeye salmon runs and provide a long-term subsistence priority during a period of limited harvest opportunity. These closures brought the Federal subsistence fishing regulations in line with the similar ADF&G action for unified management and minimized confusion under the dual management system.

Redoubt Lake

On July 25, 2002, the Federal Subsistence Board suspended the sockeye harvest closure for non-Federally qualified users on the Redoubt Lake system. The projected escapement for 2002 of 32,887 fish is well above the previous 10-year average escapement. As a result of the larger than expected return, the Board suspended the now unnecessary, closure restrictions on non-Federally qualified users. This action also allowed users to fish under a State subsistence fishing permit rather than having to obtain a Federal permit.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these emergency closures are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on

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February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276.)

Compliance with Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

The adjustments have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as boat, fishing gear, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustments will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: July 25, 2002.

Kenneth E. Thompson,

Subsistence Program Leader, USDA-Forest Service.

Dated: July 25, 2002.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

[FR Doc. 02–21567 Filed 8–22–02; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Region II Docket No. NJ52–243(a); FRL–7264–6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On January 15, 2002, the New Jersey State Department of Environmental Protection (NJDEP) submitted a request to EPA to redesignate the New Jersey portion of the New York-Northern New Jersey-Long Island Carbon Monoxide (CO) nonattainment area from nonattainment to attainment of the National Ambient Quality Standard (NAAQS) for CO. EPA is approving this request from the State of New Jersey because it meets the redesignation requirements set forth in the Clean Air Act. In addition, EPA is approving the New Jersey CO maintenance plan because it provides for continued maintenance of the CO NAAQS.

EPA is also approving the New Jersey CO attainment demonstration that was submitted on August 7, 1998. This provides for full approval of New Jersey's State Implementation Plan (SIP) for CO.

Additionally, EPA is approving the 2007 and 2014 transportation conformity budgets found in New Jersey's CO maintenance plan. Finally, EPA is approving the 1997 transportation conformity budget submitted on December 10, 1999 as an addendum to the New Jersey CO attainment demonstration submitted on August 7, 1998.

The intended effect of this action is to approve a plan that demonstrates that the CO standard has been attained and will continue to be attained.

DATES: This direct final rule will be effective on October 22, 2002 unless EPA receives adverse comments by September 23, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the State submittals and EPA's Technical Support Document are available for public inspection during normal business hours, by appointment, at the following addresses:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

New Jersey Department of Environmental Protection, Office of Energy, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625

FOR FURTHER INFORMATION CONTACT: Henry Feingersh, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212)637–4249.

SUPPLEMENTARY INFORMATION:

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1. What is required by the Clean Air Act and how does it apply to New Jersey?
2. What Was Included in New Jersey's Submittal and Does It Meet the Clean Air Act Requirements?
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6. Administrative Requirements

1. What Is Required by the Clean Air Act and How Does It Apply to New Jersey?

Under the Clean Air Act (CAA) as amended in 1990, air quality designations can be revised if sufficient data is available to warrant such revisions.

Section 107(d)(3)(E) of the CAA identifies five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

a. The Area Must Have Attained the Applicable NAAQS

b. The area must have a fully approved SIP under section 110(k) of the CAA.

c. The air quality improvement must be permanent and enforceable.

d. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA.

e. The area must meet all applicable requirements under section 110 and Part D of the CAA.

Pursuant to sections 107, 186, and 187 of the CAA, the New Jersey portion of the New York-Northern New Jersey-Long Island CO nonattainment area is classified as a moderate 2 area (*i.e.*, an area having a CO design value of 12.8—16.4 parts per million, or ppm). The entire non-attainment area is included within the New York-Northern New Jersey-Long Island Consolidated Metropolitan Statistical Area (CMSA). The areas in New Jersey which are designated non-attainment include the Counties of Hudson, Essex, Bergen, and Union and the municipalities of Clifton, Passaic, and Paterson in Passaic County.

The CO design value used for designation and control program development purposes was 13.5 ppm and was based on ambient CO data from a monitor in Kings County, New York. Kings County was chosen because this site recorded the highest CO values in the multistate nonattainment area. (See 56 FR 56694 (November 6, 1991) and 57 FR 56762 (November 30, 1992), codified at 40 CFR 81.333.) For moderate 2 CO nonattainment areas, the CAA required attainment of the National Ambient Air Quality Standard (NAAQS) by December 31, 1995. The remainder of the State of New Jersey is designated attainment for CO.

In the area being redesignated today, there was a measured exceedance of the CO NAAQS in 1994. Consequently, on April 24, 1996, the State of New Jersey submitted a request for a one year extension of the attainment date to December 31, 1996 as allowed for in the CAA if adjoining states concur. On July 31, 1996 and June 27, 1996, the States of New York and Connecticut respectively submitted letters to EPA concurring with New Jersey's request and requested their own extensions. Pursuant to section 186(a)(4), EPA granted the request for a one year extension to December 31, 1996 in a November 5, 1996 **Federal Register** notice (61 FR 56897).

2. What Was Included in New Jersey's Submittal and Does It Meet the Clean Air Act Requirements?

On August 7, 1998, New Jersey submitted its CO attainment demonstration. This proposed revision is contained in a document entitled "State Implementation Plan (SIP) Revision for the Attainment and Maintenance of the Carbon Monoxide National Ambient Air Quality Standards—Attainment Demonstration for the New Jersey Portion of the New York-Northern New Jersey-Long Island Carbon Monoxide Nonattainment Area." The State held a public hearing for this SIP revision on August 11, 1997.

In an effort to comply with the CAA and to ensure continued attainment of the NAAQS, on January 15, 2002, the State of New Jersey submitted a CO redesignation request and maintenance plan for the New Jersey portion of the CO nonattainment area. New Jersey held a public hearing for this proposal on December 18, 2001.

The following is a brief description of how the State has fulfilled each of the CAA redesignation requirements.

a. The Area Must Have Attained the Applicable NAAQS

New Jersey's CO air monitoring data shows that from calendar year 1995 through calendar year 2000, no violations of the CO NAAQS have occurred. A violation is considered to have occurred when measured levels exceed the standard more than once at the same CO monitor during a calendar year.

In addition, in order to demonstrate attainment of the CO NAAQS, the data must be quality-assured and not show a violation of the standard for the last two consecutive years. New Jersey's CO data has been quality assured and shows no more than one exceedance of the NAAQS per year over the most recent two complete years of data (1999 and 2000). Moreover, EPA's review of available data for 2001 and the first few

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months of 2002 indicates no exceedances of the CO standard since 2000. Therefore, EPA finds that the New Jersey portion of the CMSA has met the first statutory criterion for attainment of the CO NAAQS (40 CFR 50.9 and appendix C).

b. The Area Must Have a Fully Approved SIP Under Section 110(k) of the CAA

The 1990 CAA required that nonattainment areas meet specific new requirements depending on the severity of the nonattainment classification. Requirements for New Jersey include an attainment demonstration, forecast of vehicle miles traveled, the preparation of a 1990 emission inventory with periodic updates, the development of contingency measures, implementation of an enhanced inspection and maintenance (I/M) program, and adherence to the transportation and general conformity rules. In today's action EPA is fully approving New Jersey's January 15, 2002 CO SIP revision as meeting all of the requirements of section 110(a)(2)(I) of the CAA, including the requirements of Part D (relating to nonattainment), which were due prior to the date of New Jersey's redesignation request.

Previously Approved Requirements

New Jersey's emissions inventory and contingency measures were approved by EPA as part of the New Jersey CO SIP on December 7, 1995 (60 FR 62741). Similarly, the vehicle miles traveled forecast was approved on July 25, 1996 (61 FR 38591).

Implementation of New Jersey's enhanced I/M program began on December 13, 1999. After the State successfully demonstrated its decentralized test and repair effectiveness rate credit claim and revised its performance standard modeling to reflect the program as implemented, EPA published a final approval of the enhanced I/M program on January 22, 2002 (67 FR 2811).

Requirements Currently Being Approved

New Jersey submitted an August 7, 1998 CO attainment demonstration to EPA in which all of the modeled intersections attained the 8-hour CO standard of 9 ppm. Since air quality values at the most congested intersections were determined to not exceed the standard, New Jersey has demonstrated that the entire area is and will continue to be in attainment for CO. New Jersey used appropriate modeling techniques and modeling inputs in its demonstration. EPA is, therefore, approving the attainment demonstration at this time. Accordingly, as a result of today's action and the previous EPA actions noted above, New Jersey's CO SIP is fully approved.

Conformity

Section 176 of the CAA contains requirements related to conformity. Although EPA regulations require that states adopt transportation conformity provisions (40 CFR 51.390) and general conformity provisions (40 CFR 51.851) in their SIPs for areas designated nonattainment, or that are subject to an EPA approved maintenance plan, EPA has determined that transportation and general conformity SIPs are not applicable requirements for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in EPA's approval of the Boston, Massachusetts CO redesignation, where EPA modified its national policy regarding the interpretation of the provisions of section 107(d)(3)(E) concerning the applicable requirements for purposes of reviewing a CO redesignation request (61 FR 2918, January 30, 1996).

EPA's decision is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment. Therefore, the State remains obligated to adopt the transportation and general conformity rules even after redesignation and would risk sanctions for failure to do so. Unlike most requirements of section 110 and part D, which are linked to the nonattainment status of the area, the conformity requirements apply to both nonattainment and maintenance areas. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of approved state rules. Therefore, a delay in approving State rules does not relieve an area from the obligation to implement conformity requirements.

New Jersey does not yet have approved transportation and general conformity SIPs, however, EPA may approve this redesignation. Areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules, if State rules are not yet approved. The State has developed new conformity budgets for CO that must be used in future conformity determinations, in accordance with the Federal conformity rules. These budgets are discussed in detail later in this notice. Accordingly, EPA believes it is appropriate to evaluate New Jersey's redesignation request independent of the status of the State's conformity regulations.

Part D New Source Review Requirements

Consistent with the October 14, 1994 EPA guidance from Mary D. Nichols, entitled "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," EPA is not requiring full approval of a Part D NSR program by New Jersey as a prerequisite to redesignation to attainment. Under this guidance, nonattainment areas may be redesignated to attainment notwithstanding the lack of a fully approved Part D NSR program so long as the program is not relied upon for maintenance. New Jersey has not relied on a NSR program to maintain air quality within the CO standard. Moreover, because the New Jersey portion of the CO nonattainment area is being redesignated to attainment by this action, New Jersey's Prevention of Significant Deterioration (PSD) requirements, not Part D NSR, will be applicable to new or modified sources of CO.

c. The Air Quality Improvement Must Be Permanent and Enforceable

As part of the August 7, 1998 CO SIP revision, New Jersey submitted a demonstration that the improvement in air quality within the nonattainment area is due to permanent and enforceable reductions in emissions of CO resulting from implementation of a number of measures to control motor vehicle CO emissions. These measures include the Federal Motor Vehicle Control Program, Federal reformulated gasoline regulation, and New Jersey's pre-1990 modifications to its motor vehicle I/M program.

The State of New Jersey has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the CO emissions in the base year are not artificially low due to, for example, a local economic downturn. EPA finds that the combination of existing EPA-approved SIP and federal measures contribute to the permanence and enforceability of reduction in ambient CO levels that have allowed New Jersey to attain the NAAQS since 1995.

d. The Area Must Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after EPA approves a redesignation to attainment. Eight years after the redesignation, a state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems should they arise. In this action, EPA is approving New Jersey's maintenance plan because EPA finds that New Jersey's submittal meets the requirements of section 175A.

1996 Attainment Year Inventory

Sections 172(c)(3) and 187(a)(1) of the CAA require that CO plan provisions include a comprehensive, accurate, and current emission inventory from all sources of relevant pollutants in the nonattainment area. In addition, page 8, section 5a of the September 4, 1992 memorandum from John Calcagni, former Director, Air Quality Management Division, to EPA Regional Air Division Directors entitled "Procedures for Processing Requests to Redesignate Areas to Attainment," requires States to "develop an attainment inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS. This inventory should be consistent with EPA's most recent guidance on emission inventories for nonattainment areas available at the time and should include emissions during the time period associated with the monitoring data showing attainment."

New Jersey originally provided an estimate of 1996 attainment year emissions in its August 7, 1998 attainment demonstration. This was supplemented on October 1, 2001, when New Jersey submitted a revised 1996 attainment year CO inventory. The inventory, which is based on the winter time months spanning from December 1995 through February 1996, includes average winter time daily emissions from stationary point sources, stationary area sources, on-road mobile sources, and non-road mobile sources of CO. New Jersey's submittal reflects emission estimates that have been revised to incorporate methodological changes, including new control assumptions and updated vehicle registration data since that original submittal. The inventory was prepared in a manner consistent with EPA's most recent guidance for preparing actual emission inventories. Table I below shows the source sector contributions by county to the overall CO emissions in 1996.

For the reader's information, New Jersey has chosen to use countywide emission inventory values for attainment demonstration and projection purposes in Passaic County, rather than limiting the inventory to the three nonattainment municipalities. The State believes countywide CO inventory and projection values are more technically sound than sub-county estimates would have been in this case and are adequately protective of air quality.

TABLE I.—THE 1996 CARBON MONOXIDE ATTAINMENT EMISSION INVENTORY

County	Carbon Monoxide Emissions (tons per day)				
	Point sources	Area sources	On-road mobile sources	Non-road mobile sources	County totals
Bergen	1.62	28.10	297.77	127.80	455.29
Essex	2.77	11.81	208.70	63.82	287.10
Hudson	8.83	5.15	126.79	42.88	183.64
Passaic	0.72	39.65	141.07	38.74	220.17
Union	4.18	13.98	153.36	47.60	219.11
Sector totals	18.12	98.69	927.69	320.84	1365.31

Grand Total From All Sources: 1365.31 tons per peak winter season day.

EPA has reviewed New Jersey's 1996 attainment year inventory and finds that it was prepared in a manner acceptable to EPA. Therefore, EPA is approving the CO inventory for the counties of Bergen, Essex, Hudson, Union, and Passaic.

Projection Year Inventories

As part of the January 15, 2002 SIP submittal, New Jersey included projection year inventories for 2007 and 2014. These emissions, which reflect post-1996 control measure assumptions, are provided in Table 2 below in comparison to the 1996 attainment year inventory.

TABLE 2.—THE 1996 ATTAINMENT AND 2007 AND 2014 PROJECTED CARBON MONOXIDE SEASON CARBON MONOXIDE EMISSION INVENTORIES BY COUNTY

County	1996 Attainment Emission Inventory (tons/day)	2007 Projected Emission Inventory (tons/day)	2014 Projected Emission Inventory (tons/day)
Bergen	455.29	350.56	381.01
Essex	287.10	209.08	222.18
Hudson	183.64	118.20	130.76
Passaic	220.17	163.46	171.53
Union	219.11	156.41	166.45
Totals	1365.31	997.71	1071.93

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Based on the projections provided above, New Jersey estimates that total CO emissions within the nonattainment area will decrease from 1,365.31 tons per day in the 1996 attainment year to 1,071.93 tons per day in 2014. Such a reduction in CO emissions clearly supports New Jersey's contention that the CO NAAQS will be maintained into the forseeable future. Both the attainment and projected inventories submitted by New Jersey were prepared in accordance with EPA's most recent guidance. The attainment year and projection year totals in Tables 1 and 2 show that the future CO emissions are expected to be below the level of emissions in the attainment year and takes into account national, regional, and local (state) emission reduction benefits from the following control programs: Tier I—Post 1990 Federal Motor Vehicle Control Program; Federal Reformulated Gasoline; National Low Emission Vehicle Program; Enhanced Inspection and Maintenance Program; and Phase I of the Federal Spark Ignition Small Engine Rule. For more details on how New Jersey prepared its attainment year and projection year inventories, the reader is referred to the technical support document which accompanies this action. EPA finds that New Jersey has projected its 2007 and 2014 emissions using appropriate growth factors and methodology and is therefore, approving the CO projection year inventories for the counties of Bergen, Essex, Hudson, Union, and Passaic.

Transportation Conformity Budgets

The submittal included transportation conformity budgets based on the control strategies, growth projections and assumptions used in the attainment demonstration and maintenance plans for the CO nonattainment area. Table 3 presents the 1997, 2007 and 2014 CO transportation conformity budgets in tons of CO per winter day. The transportation conformity budget for 1997 was submitted on December 10, 1999 as an addendum to the New Jersey CO attainment demonstration submitted by NJDEP on August 7, 1998. EPA announced its findings that the 1997 budget was adequate for transportation conformity purposes on June 9, 2000 (65 FR 36689). The transportation conformity budgets for 2007 and 2014 were included in the maintenance plan portion of the January 15, 2002 submittal. EPA sent a letter to NJDEP on April 22, 2002 stating that the 2007 and 2014 CO budgets are adequate for transportation conformity purposes. This finding was published in the **Federal Register** on May 8, 2002 at 67 FR 30915. These budgets are consistent with the State's emission baseline and projected inventories for highway mobile sources. EPA is now approving the 1997, 2007, and 2014 transportation conformity budgets for CO.

TABLE 3.—CARBON MONOXIDE TRANSPORTATION CONFORMITY BUDGETS
(tons of CO/winter day)

Year	CO (tons/winter day)
1997	690.43
2007	492.41
2014	490.45

Monitoring Network

New Jersey has committed to continue to operate its existing air monitoring network and quality assurance program in accordance with 40 CFR part 58 to ensure the development of complete and accurate air monitoring data.

Verification of Continued Attainment

Continued attainment of the CO NAAQS in New Jersey depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The State has projected CO emissions out to 2014 with the interim year of 2007. New Jersey will review monitoring data each year and will check for trends. If upward trends are observed, the State will review conditions to determine the cause of the increase. If this review does not reveal the cause of the increase and an exceedance is possible, emission estimates will be generated and compared to those from the 1996 attainment inventory. New Jersey has committed to report to EPA within six months of finding any upward air quality trends.

EPA is approving the State of New Jersey's plans for verifying continued attainment of the CO standard and for identifying areas at risk of exceeding the CO standard.

Contingency Plan

The level of CO emissions in New Jersey will largely determine its ability to stay in compliance with the CO NAAQS in the future. Despite the State's best efforts to demonstrate continued compliance with the NAAQS, it is possible that the ambient air pollutant concentrations may exceed or violate the NAAQS based upon some unforeseeable condition. In order to avoid this, the CAA requires states to develop contingency measures to offset unexpected emission increases. New Jersey has committed to implement a set of actions which will reduce truck idling emissions. In addition, the State will work with the local metropolitan planning organization, the North Jersey Transportation Planning Authority, to implement various transportation control measures.

e. The Area Must Meet All Applicable Requirements Under Section 110 and Part D of the CAA

In section 2.b. of this document EPA sets forth the basis for its conclusion that New Jersey has a fully approved SIP which meets the applicable requirements of section 110 and Part D of the CAA. EPA notes that section 110 also requires that states include in their SIPs, where applicable, oxygenated gasoline programs. The oxygenated fuels program was removed from the New Jersey SIP because the entire CMSA, including the New York and Connecticut portions, were attaining the CO NAAQS. Consequently, the State demonstrated to EPA's satisfaction that the program was no longer necessary to continue to attain the CO NAAQS (see 64 FR 63690 (November 22, 1999)).

3. What Are EPA's Findings?

EPA has determined that the information received from the NJDEP constitutes complete redesignation requests under the general completeness criteria of 40 CFR part 51, appendix V, sections 2.1 and 2.2. Additionally, the New Jersey redesignation request meets the five requirements of section 107(d)(3)(E), noted earlier.

4. What Are EPA's Conclusions?

EPA is approving New Jersey's request for redesignating the New Jersey portion of the New York-Northern New Jersey-Long Island CO nonattainment area to attainment, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. EPA is also approving the New Jersey CO maintenance plan because it meets the requirements set forth in section 175A of the CAA. In addition, EPA is approving the New Jersey CO attainment demonstration that was submitted on August 7, 1998. Finally, EPA is approving the 2007 and 2014 transportation conformity budgets found in New Jersey's CO maintenance plan and the 1997 transportation conformity budget submitted on December 10, 1999 as an addendum to New Jersey's August 7, 1998 CO attainment demonstration.

5. EPA Rulemaking Action

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective October 22, 2002 without further notice unless the Agency receives adverse comments by September 23, 2002.

If the EPA receives adverse comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

6. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 22, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: August 7, 2002.

William J. Muszynski,

Deputy Regional Administrator, Region 2.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart FF—New Jersey

2. Section 52.1581 is added to read as follows:

§ 52.1581 Control strategy: Carbon monoxide.

(a) Approval—The September 28, 1995 revision to the carbon monoxide state implementation plan for Camden County and the Nine not-classified areas (the city of Trenton, the City of Burlington, the Borough of Penns Grove (part), the Borough of Freehold, the City of Morristown, the City of Perth Amboy, the City of Toms River, the Borough of Somerville, and the City of Atlantic City). This revision included a maintenance plan which demonstrated continued attainment of the National Ambient Air Quality Standard for carbon monoxide through the year 2007.

(b) The base year carbon monoxide emission inventory requirement of section 187(a)(1) of the 1990 Clean Air Act Amendments has been satisfied for the entire State. The inventory was submitted on November 15, 1992 and amended on September 28, 1995 by the New Jersey Department of Environmental Protection as a revision to the carbon monoxide State Implementation Plan.

(c) Approval—The November 15, 1992, October 4, 1993, and August 7, 1998 revisions to the carbon monoxide state implementation plan for the New Jersey portion of the New York—Northern New Jersey—Long Island

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Carbon Monoxide nonattainment area. This included an attainment demonstration and the control measures needed to attain the National Ambient Air Quality Standard for carbon monoxide. The January 15, 2002, request to redesignate the New Jersey portion of the New York—Northern New Jersey—Long Island Carbon Monoxide nonattainment area from nonattainment to attainment of the National Ambient Air Quality Standard for carbon monoxide. As part of the redesignation request, the State submitted a maintenance plan which demonstrated continued attainment of the National Ambient Air Quality Standard for carbon monoxide through the year 2014.

3. Section 52.1582 is amended by revising the section heading and removing and reserving paragraph (d)(2) to read as follows:

§ 52.1582 Control strategy and regulations: Ozone.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart C—Section 107 Attainment Status Designations

2. In § 81.331, the table for "New Jersey-Carbon Monoxide" is amended by revising the entry for "New York—N. New Jersey—Long Island Area" to read as follows:

§ 81.331 New Jersey.

* * * * * *

NEW JERSEY-CARBON MONOXIDE

Designated Area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
New York-N. New Jersey-Long Island Area:				
Bergen	October 22, 2002	Attainment.		
Essex County	do	Attainment.		
Hudson County	do	Attainment.		
Passaic County (part)				
City of Clifton	do	Attainment.		
City of Paterson	do	Attainment.		
City of Passaic	do	Attainment.		
Union County	do	Attainment.		

[1] This date is November 15, 1990, unless otherwise noted.

* * * * * *

[FR Doc. 02–21283 Filed 8–22–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–082–FOA; FRL–7263–9]

Determination of Attainment of the 1-Hour Ozone Standard for San Diego County, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This rulemaking contains EPA's final determination that the San Diego area has attained the 1-hour ozone air quality standard by the deadline required by the Clean Air Act. If adverse written comments are received, we will withdraw the direct final rule and address the comments received in a new final rule; otherwise no further rulemaking will occur on this action. Elsewhere in this issue of the **Federal Register**, we are proposing to make this finding of attainment.

DATES: This direct final finding is effective October 22, 2002, without further notice, unless we receive adverse comments by September 23, 2002. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Please address your comments to: Dave Jesson, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the State's submittal are available for public inspection during normal business hours at EPA's Region 9 office and at the following locations:

California Air Resources Board, 1001 I Street, Sacramento, CA 95814.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

FOR FURTHER INFORMATION CONTACT: Dave Jesson, US EPA Region 9, at (415) 972–3957, or *jesson.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Attainment Finding

A. San Diego's Ozone Classification and Current Status

When the Clean Air Act (CAA) Amendments were enacted in 1990, each area of the country that was designated nonattainment for the 1-hour ozone national ambient air quality standard (NAAQS), including the San Diego area, was classified by operation of law as marginal, moderate, serious, severe, or extreme depending on the severity of the area's air quality problem.[1] CAA sections 107(d)(1)(C) and 181(a). The San Diego area was initially classified as severe. See 40 CFR 81.305 and 56 FR 56694 (November 6, 1991). The area was reclassified as serious after we determined that the ozone design value used in the original classification was incorrect. 60 FR 3771 (January 19, 1995).

[1] The 1-hour ozone nonattainment area is the "San Diego Area," which comprises the entire County of San Diego. See 40 CFR 81.305.

Upon the San Diego area's reclassification as serious, the CAA required submittal of a state implementation plan (SIP) demonstrating attainment of the 1-hour ozone standard as expeditiously as practicable but no later than November 15, 1999. CAA sections 181(a)(1) and 182(c)(2)(A). The SIP had to meet several other CAA requirements for serious areas. See generally CAA section 182(c). The San Diego County Air Pollution Control District (SDCAPCD) adopted a serious area plan addressing these provisions, and we approved the SIP submittal on January 8, 1997 (62 FR 1150).

Although the San Diego area did not attain the standard by the November 15, 1999 deadline, the area did qualify to have that deadline extended, since the area had complied with all requirements and commitments in the SIP and recorded no more than 1 exceedance of the NAAQS in 1999. For areas meeting these provisions, CAA section 181(a)(5) allows us to grant up to two 1-year extensions. On October 11, 2000 (65 FR 65025), we granted the San Diego area a 1-year attainment date extension to November 15, 2000, and on August 6, 2001 (66 FR 40908), we granted the area a second 1-year extension to November 15, 2001, since the area again had no more than 1 exceedance in the previous year.

On March 28, 2002, Richard J. Smith, Acting Director, SDCAPCD, addressed a letter to Michael P. Kenny, Executive Officer of the California Air Resources Board (CARB), asking that the State petition us to make an attainment finding because quality-assured ambient ozone data show no more than one exceedance at any monitoring station in the San Diego area for the 1999–2001 period. On June 21, 2002, CARB formally requested that we make a finding of attainment for the San Diego area based on the area's design value as of the 2001 attainment date (letter from Michael P. Kenny to Wayne Nastri, Regional Administrator, EPA Region 9).

B. Clean Air Act Provisions for Attainment Findings

Under CAA section 181(b)(2)(A), we must determine within six months of the applicable attainment date whether an ozone nonattainment area has attained the standard. If we find that a serious area has not attained the standard and does not qualify for an extension, it is reclassified by operation of law to severe. Under CAA section 181(b)(2)(A), we must base our determination of attainment or failure to attain on the area's design value as of its applicable attainment date, which for the San Diego area was November 15, 2001.

The 1-hour ozone NAAQS is 0.12 ppm, not to be exceeded on average more than 1 day per year over any 3-year period. 40 CFR 50.9 and appendix H. Under our policies, we determine if an area has attained the 1-hour standard by calculating, at each monitor, the average number of days over the standard per year during the preceding 3-year period.[2] For this direct final rulemaking, we have based our determination of attainment on both the design value and the average number of exceedance days per year as of November 15, 2001.

The design value is an ambient ozone concentration that indicates the severity of the ozone problem in an area and is used to determine the level of emission reductions needed to attain the standard, that is, it is the ozone level around which a State designs its control strategy for attaining the ozone standard. A monitor's design value is the fourth highest ambient concentration recorded at that monitor over the previous 3 years. An area's design value is the highest of the design values from the area's monitors.[3]

We make attainment determinations for ozone nonattainment areas using all available, quality-assured air quality data for the 3-year period up to and including the attainment date.[4]

[2] See generally 57 FR 13506 (April 16, 1992) and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; "Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas," February 3, 1994. While explicitly applicable only to marginal areas, the general procedures for evaluating attainment in this memorandum apply regardless of the initial classification of an area because all findings of attainment are made pursuant to the same Clean Air Act requirements in section 181(b)(2).

[3] The fourth highest value is used as the design value because a monitor may record up to 3 exceedances of the standard in a 3-year period and still show attainment, since 3 exceedances over 3 years would average 1 day per year, the maximum allowed to show attainment of the 1-hour ozone standard. If the monitor records a fourth exceedance in that period, it would average more than 1 exceedance day per year and would no longer show attainment. Therefore, if a State can reduce the fourth highest ozone value to below the standard, thus preventing a fourth exceedance, then it will be able to demonstrate attainment.

[4] All quality-assured available data include all data available from the state and local/national air monitoring (SLAMS/NAMS) network as submitted to EPA's AIRS system and all data available to EPA from special purpose monitoring (SPM) sites that meet the requirements of 40 CFR 58.13. See Memorandum John Seitz, Director, OAQPS, to Regional Air Directors; "Agency Policy on the Use of Ozone Special Purpose Monitoring Data," August 22, 1997.

[5] See memorandum, William G. Laxton, Director, Technical Support Division, Office of Air Quality Planning and Standards to Regional Air Directors, "Ozone and Carbon Monoxide Design Value Calculations," June 18, 1990.

Consequently, we used all of the 1999, 2000, and 2001 quality-assured data available to determine whether the San Diego area attained the 1-hour ozone standard by November 15, 2001. From the available air quality data, we have calculated the average number of days over the standard and the design value for each ozone monitor in the San Diego nonattainment area.

C. Attainment Finding for the San Diego Area

1. Adequacy of the San Diego Area Ozone Monitoring Network

Determining whether or not an area has attained the 1-hour ozone standard under CAA section 181(b)(1)(A) is based on monitored air quality data. Thus, the validity of a determination of attainment depends on whether the monitoring network adequately measures ambient ozone levels in the area.

We evaluate 4 basic elements in determining the adequacy of an area's ozone monitoring network. The network needs to meet the design requirements of 40 CFR part 58, appendix D; the network needs to utilize monitoring equipment designated as reference or equivalent methods under 40 CFR part 53; and the agency or agencies operating the equipment need to have a quality assurance plan in place that meets the requirements of 40 CFR part 58, appendix A. The ozone network in the San Diego area meets or exceeds these requirements and is therefore adequate for use in determining the ozone attainment status of the area.

2. The San Diego Area's Ozone Design Value for the 1999–2001 Period

We have listed in Table 1 the design values and the average number of exceedance days per year for the 1999 to 2001 period for each monitoring site in the San Diego area. We calculated the design values following the procedures in the Laxton memo.[5]

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TABLE 1.—AVERAGE NUMBER OF OZONE EXCEEDANCE DAYS PER YEAR AND DESIGN VALUES BY MONITOR IN SAN DIEGO COUNTY, 1999–2001

Site	Average number of exceedance days per year	Site design value (ppm)
Chula Vista (SLAMS)	0	0.10
El Cajon (PAMS/NAMS)	0	0.10
Oceanside (SLAMS)	0	0.09
San Diego/Overland (PAMS/NAMS)	0.3	0.11
Del Mar (SLAMS)	0	0.09
Escondido (SLAMS)	0.3	0.11
Alpine (PAMS/SLAMS)	0.3	0.12
San Diego/12th Street (SLAMS)	0	0.09
Camp Pendleton (PAMS/SLAMS)	0	0.10
Otay Mesa (SLAMS)	0	0.09

Note: EPA's monitoring network regulations are codified at 40 CFR 58. The regulations provide for National Air Monitoring Stations (NAMS), State or Local Air Monitoring Stations (SLAMS), and Photochemical Assessment Monitoring Stations (PAMS). All of the stations in the San Diego County monitoring network are operated by SDCAPCD or CARB. The monitoring data are submitted to EPA's Aerometric Information Retrieval System-Air Quality Subsystem (AIRS–AQS) database.

From Table 1, the highest design value at any monitor, and thus the design value for the San Diego area, is .12 ppm at the Alpine site. No monitor in the San Diego area recorded an average of more than 1 exceedance of the 1-hour ozone standard per year during the 1999 to 2001 period.

Because the area's design value does not exceed the 0.12 ppm 1-hour ozone standard and the area has averaged less than 1 exceedance per year at each monitor for the 1999 to 2001 period, we find that the San Diego area has attained the 1-hour ozone standard by its Clean Air Act mandated attainment date of November 15, 2001.

D. Attainment Findings and Redesignations to Attainment

A finding that an area has attained the 1-hour ozone standard under CAA section 181(b)(1)(A) does not redesignate the area to attainment for the 1-hour standard nor does it guarantee a future redesignation to attainment.

The redesignation of an area to attainment under CAA section 107(d)(3)(E) is a separate process from a finding of attainment under CAA section 181(b)(1)(A). Unlike an attainment finding where we need only determine that the area has had the prerequisite number of clean years, a redesignation to attainment requires additional submittals and multiple determinations. Under CAA section 107(d)(3)(E), we must make the following determinations:

1. The area has attained the relevant NAAQS at the time of redesignation.

2. The State has a fully approved SIP for the area.

3. The improvements in air quality are due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal regulations and other permanent and enforceable reductions.

4. We have fully approved a maintenance plan for the area under CAA section 175A.

5. The State has met all the nonattainment area requirements applicable to the area.

To address the provisions of CAA section 175A, SDCAPCD is preparing an ozone redesignation request and maintenance plan, which is scheduled for adoption later this year. It is possible, although not expected, that the San Diego area might violate the 1-hour ozone NAAQS before the maintenance plan is approved and the area is redesignated to attainment. If such a violation were to occur after EPA's finding of attainment under CAA section 181(b)(2)(A) in this rulemaking, EPA believes that issuance of a SIP call under CAA section 110(k)(5) would be an appropriate response. This SIP call could require the State to submit, by a reasonable deadline but not to exceed 18 months, a revised plan demonstrating expeditious attainment and compliance with other requirements of subpart 2 applicable to the area at the time of this finding.

II. Final Action

We are finding that the San Diego area has attained the 1-hour ozone NAAQS under CAA section 181(b)(2)(A).

We are publishing this action without prior proposal because we view this as a noncontroversial finding and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposed finding of attainment if relevant adverse comments are filed. This rule will be effective October 22, 2002 without further notice unless relevant adverse comments are received by September 23, 2002. If we receive such comments, this action will be withdrawn before the effective date. All public comments received will then be addressed in a subsequent final rule based on the proposed action. We will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 22, 2002.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely determines that the San Diego area has attained a previously-established national ambient air quality standard based on an objective review of measured air quality data. As such, the action imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely makes a determination based on air quality data, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This action also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use voluntary consensus standards (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. EPA believes that VCS are inapplicable to today's final action because the action does not require the public to perform activities conducive to the use of VCS. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 8, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–21560 Filed 8–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0183; FRL–7194–4]

Triflumizole; Pesticide Tolerance for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of triflumizole (1-(1-((4-chloro-2-(trifluoromethyl) phenyl)imino)-2-propoxyethyl)-1*H*-imidazole) and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent in or on hazelnuts, or filberts (EPA preferred term). This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on filberts. This regulation establishes a maximum permissible level for residues of triflumizole in this food commodity. The tolerance will expire and is revoked on June 30, 2004.

DATES: This regulation is effective August 23, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0183, must be received on or before October 22, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0183 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Conrath, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9356; e-mail address: conrath.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0183. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public

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Information and Records Integrity Branch (PIRIB), Rm. 119, Mall # 2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the fungicide triflumizole, (1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1*H*-imidazole) and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent, in or on filbert at 0.05 part per million (ppm). This tolerance will expire and is revoked on June 30, 2004. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18-related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Triflumizole on Filberts and FFDCA Tolerance

Since the discovery of Eastern Filbert Blight (EFB) in Oregon in the late 1980's, none of the control tactics have provided complete control, and the disease continues to spread.

Without adequate control of EFB, not only are significant economic losses likely, but the long-term viability of the filbert industry is also in jeopardy, as 98% of U.S. filbert production occurs in Oregon. Efficacy trials have indicated that the triflumizole provides better control, as compared to the currently available alternatives, none of which are systemic in nature. EPA has authorized under FIFRA section 18 the use of triflumizole on filberts for control of Eastern Filbert Blight in Oregon. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of triflumizole in or on filberts. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is establishing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6). Although this tolerance will expire and is revoked on June 30, 2004, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on filberts after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed the level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether triflumizole meets EPA's registration requirements for use on filberts or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of triflumizole by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Oregon to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for triflumizole, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of triflumizole and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of triflumizole in or on filbert at 0.05 ppm.

The most recent estimated aggregate risks resulting from the use of triflumizole are discussed in the **Federal Register** for June 12, 2002 (67 FR 40219) (FRL–7180–5), Final Rule establishing tolerances for residues of triflumizole in/on cucurbit vegetables, strawberries, sweet cherries, and tart cherries, because in that prior action, risks were estimated assuming tolerance level residues in all commodities for established tolerances, as well as those being proposed, such as this exempted use on filberts. Refer to the June 12, 2002 **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon that risk assessment and the findings made in the **Federal Register** document in support of this action. Below is a brief summary of the aggregate risk assessment.

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. A summary of the toxicological dose and endpoints for triflumizole for use in human risk assessment is discussed in Unit III.A. of the final rule mentioned above, published in the **Federal Register** of June 12, 2002 (67 FR 40219).

EPA assessed risk scenarios for triflumizole under acute and chronic exposure scenarios.

The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity.

The following assumptions were made for the acute exposure assessments: A conservative, unrefined Tier 1 acute dietary exposure assessment was conducted for females 13–50 years old using tolerance level residues and modified DEEM™ processing factors for apples and grapes, based on the results of previously submitted processing studies. The Agency assumed 100% crop treated (CT) for all other registered and proposed triflumizole food uses.

Using these exposure assessments, EPA concluded that triflumizole exposure from food consumption will utilize 19% of the acute population adjusted dose (aPAD) for the US population subgroup of concern, females 13 years and older. No acute toxicity endpoint was selected for the general U.S. population, including infants and children; therefore, an acute dietary exposure assessment was not conducted for these groups. In addition, despite the potential for acute dietary exposure to triflumizole in drinking water, after calculating drinking water levels of concern (DWLOCs) and comparing them to conservative model estimated environmental concentrations (EECs) of triflumizole in surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 1.

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO TRIFLUMIZOLE

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Female (13+ years)	0.03	19	191	0.12	710

The following assumptions were made for the chronic exposure assessments: A partially refined, Tier 3 chronic dietary assessment was conducted for the general U.S. population and all population subgroups (including infants and children) using anticipated residues, modified DEEM™ processing factors for apples and grapes based on the results of previously submitted processing studies, and average weighted percent crop treated information for apples, grapes, and pears.

Using these exposure assessments, EPA concluded that exposure to triflumizole from food will utilize 11% of the cPAD for the population subgroup infants <1 year old, 18% for children 1-6 years old, and 8% for the overall U.S. population and as well as all other population subgroups. The most highly exposed subpopulation is children 1-6 years old at 18% of the cPAD. Based on the use pattern, chronic residential exposure to residues of triflumizole is not expected. In addition, despite the potential for chronic dietary exposure to triflumizole in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of triflumizole in surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 2.

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO TRIFLUMIZOLE

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population (48 contiguous states)	0.005	8	40	0.12	160
Infants (<1 year old)	0.005	11	40	0.12	45
Children (1–6 years old)	0.005	18	40	0.12	41

Triflumizole is classified as a "Group E" chemical (evidence of non-carcinogenicity in humans) based on adequate studies in 2 species of animal. Therefore, a cancer dietary exposure assessment was not performed.

Short- and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). For triflumizole, the Agency did not perform short-term or intermediate-term assessments because there are currently no registered or proposed uses for homeowner application and residential post-application exposures are expected to be negligible.

Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to triflumizole residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Francis Griffith, Analytical Chemistry Branch, Environmental Science Center, U.S. Environmental Protection Agency, 701 Mapes Road, Fort George G. Meade, MD 20755–5350; telephone number (410)

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305–2905; e-mail address: griffith.francis@epa.gov.

B. International Residue Limits

There are no Codex maximum residue limits established for triflumizole residues in/on any crop commodities. Therefore, no compatibility problems exist for the proposed tolerance.

C. Conditions

A maximum of four applications may be made. A maximum of 0.125–0.25 pound active ingredient may be applied using ground or aerial equipment. No more than 1 pound active ingredient may be applied per acre per season.

VI. Conclusion

Therefore, the tolerance is established for residues of triflumizole (1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1*H*-imidazole) and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent, in or on filbert at 0.05 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0183 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 22, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your written request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall # 2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket ID number OPP–2002–0183, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 17, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.476 is amended by adding text and a table to paragraph (b) to read as follows:

§ 180.476 Triflumizole; tolerances for residues.

* * * * *

(b) Time-limited tolerances are established for the residues of triflumizole (1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1*H*-imidazole) and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table, and will expire and are revoked on the dates specified.

Commodity	Parts per million	Expiration/revocation date
Filbert	0.05	6/30/04

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7791]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Program Marketing and Partnership Division, Federal Insurance and Mitigation Administration, 500 C Street, SW.; Room 411, Washington, DC 20472, (202) 646–3098.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region III				
Virginia:				
Boykins, Town of, Southampton County ..	510151	May 20, 1975, Emerg.; April 1, 1982, Reg. September 4, 2002.	Sept. 4, 2002	Sept. 4, 2002.
Branchville, Town of, Southampton County.	510296	July 21, 1975; March 30, 1979, Reg. September 4, 2002.	.....do	Do.
Franklin, City of, Independent City	510060	July 19, 1974, Emerg.; August 15, 1980, Reg. September 4, 2002.	.....do	Do.
Isle of Wight County, Unincorporated Areas.	510303	May 20, 1975, Emerg.; August 19, 1991, Reg. September 4, 2002.	.....do	Do.
Smithfield, Town of, Isle of Wight County	510081	September 24, 1974, Emerg.; December 5, 1990, Reg. September 4, 2002.	.....do	Do.
Southampton County, Unincorporated Areas.	510315	September 16, 1974, Emerg.; December 15, 1982, Reg. September 4, 2002.	.....do	Do.
Suffolk, City of, Independent City	510156	January 22, 1975, Emerg.; November 16, 1990, Reg. September 4, 2002.	.....do	Do.
Windsor, Town of, Isle of Wight County ...	510295	August 11, 1988, Emerg.; August 1, 1990, Reg. September 4, 2002.	.....do	Do.
Region V				
Ohio:				
New Boston, Village of, Scioto County	390497	April 17, 1975, Emerg.; January 26, 1983, Reg. September 4, 2002.	.....do	Do.
Portsmouth, City of, Scioto County	390498	March 7, 1975, Emerg.; August 15, 1983, Reg. September 4, 2002.	.....do	Do.
Rarden, Village of, Scioto County	390499	February 14, 1977, Emerg.; April 17, 1989, Reg. September 4, 2002.	.....do	Do.
Scioto County, Unincorporated Areas	390496	November 20, 1975, Emerg.; June 19, 1989, Reg. September 4, 2002.	.....do	Do.
Wisconsin:				
Bay City, Village of, Pierce County	555543	July 31, 1970, Emerg.; June 11, 1971, Reg. September 4, 2002.	.....do	Do.
Region VI				
New Mexico:				
Lovington, City of, Lea County	350031	December 10, 1974, Emerg.; November 1, 1989, Reg. September 4, 2002.	.....do	Do.
Region VIII				
North Dakota:				
Harwood, Township of, Cass County	380338	April 11, 1978, Emerg.; September 30, 1980, Reg. September 4, 2002.	.....do	Do.
Reed, Township of, Cass County	380257	December 27, 1977, Emerg.; October 15, 1980, Reg. September 4, 2002.	.....do	Do.
Reiles Acres, City of, Cass County	380324	March 22, 1978, Emerg.; September 30, 1987, Reg. September 4, 2002.	.....do	Do.
West Fargo, City of, Cass County	380024	December 6, 1973, Emerg.; April 17, 1978, Reg. September 4, 2002.	.....do	Do.
Region IV				
Florida:				
Callaway, City of, Bay County	120005	January 13, 1975, Emerg.; July 16, 1980, Reg. September 18, 2002.	Sept. 18, 2002 ..	Sept. 18, 2002
Parker, City of, Bay County	120011	May 5, 1975, Emerg.; August 1, 1980, Reg. September 18, 2002.	.....do	Do.
Region V				
Ohio:				
Meigs County, Unincorporated Areas	390387	February 9, 1977, Emerg.; November 16, 1995, Reg. September 18, 2002.	.....do	Do.
Middleport, Village of, Meigs County	390388	August 28, 1974, Emerg.; September 29, 1978, Reg. September 18, 2002.	.....do	Do.
Pomeroy, Village of, Meigs County	390389	July 24, 1975, Emerg.; July 5, 1983, Reg. September 18, 2002.	.....do	Do.
Racine, Village of, Meigs County	390390	March 31, 1976, Emerg.; August 15, 1983, Reg. September 18, 2002.	.....do	Do.
Rutland, Village of, Meigs County	390670	September 3, 1975, Emerg.; November 2, 1990, Reg. September 18, 2002.	.....do	Do.
Syracuse, Village of, Meigs County	390391	July 2, 1975, Emerg.; July 5, 1983, Reg. September 18, 2002.	.....do	Do.

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State/location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Wisconsin:				
Chippewa Falls, City of, Chippewa County	550044	April 16, 1971, Emerg.; September 1, 1977, Reg. September 18, 2002.	.....do	Do.
Region VI				
Texas:				
Abernathy, City of, Lubbock County	480271	June 6, 1975, Emerg.; August 24, 1982, Reg. September 18, 2002.	.....do	Do.
Idalou, Town of, Lubbock County	480916	May 19, 1978, Emerg.; June 1, 1988, Reg. September 18, 2002.	.....do	Do.
Lubbock, City of, Lubbock County	480452	May 24, 1973, Emerg.; September 2, 1982, Reg. September 18, 2002.	.....do	Do.
Slanton, Town of, Lubbock County	480453	June 25, 1975, Emerg.; August 3, 1982, Reg. September 18, 2002.	.....do	Do.
Region VII				
Kansas:.				
Andover, City of, Butler County	200383	February 7, 1977, Emerg.; December 4, 1986, Reg. September 18, 2002.	.....do	Do.
Region II				
New York:				
Corning, City of, Steuben County	360772	February, 23, 1973, Emerg.; December 1, 1977, Reg. September 27, 2002.	Sept. 27, 2002 ..	Sept. 27, 2002
Corning, Town of, Steuben County	360773	March 23, 1973, Emerg.; August 3, 1981, Reg. September 27, 2002.	.....do	Do.
Hamilton, Town of, Madison County	360401	July 2, 1975, Emerg.; May 1, 1985, Reg. September 27, 2002.	.....do	Do.
Hamilton, Village of, Madison County	360402	January 3, 1975, Emerg.; April 1, 1987, Reg. September 27, 2002.	.....do	Do.
Region IX				
Nevada:				
Boulder, City of, Clark County	320004	August 25, 1975, Emerg.; September 16, 1981, Reg. September 27, 2002.	.....do	Do.
Clark County, Unincorporated Areas	320003	June 27, 1975, Emerg.; September 29, 1989, Reg. September 27, 2002.	.....do	Do.
Henderson, City of, Clark County	320005	January 14, 1975, Emerg.; June 15, 1982, Reg. September 27, 2002.	.....do	Do.
Las Vegas, City of, Clark County	325276	August 16, 1974, Emerg.; September 30, 1980, Reg. September 27, 2002.	.....do	Do.
Mesquite, City of, Clark County	320035	November 6, 1985, Emerg.; September 28, 1990, Reg. September 27, 2002.	.....do	Do.
North Las Vegas, City of, Clark County ...	320007	August 8, 1973, Emerg.; January 16, 1981, Reg. September 27, 2002.	.....do	Do.

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension.

Dated: August 14, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–21503 Filed 8–22–02; 8:45 am]

BILLING CODE 6718–02–P

Proposed Rules

Federal Register
Vol. 67, No. 164
Friday, August 23, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 121, 125, and 135

RIN 2120–AC87 and 2120–AA49

Withdrawal of Rulemaking Actions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rules; withdrawal.

SUMMARY: The FAA is withdrawing a notice of proposed rulemaking (NPRM) and an advance notice of proposed rulemaking (ANPRM). This action is necessary due to technological advances that have occurred since we published these documents. The effect of this action is to inform the public of our decision to discontinue work on these proposals. This action is part of our effort to address recommendations of the Government Accounting Office and the Management Advisory Council by reducing the number of items in the Regulatory Agenda.

FOR FURTHER INFORMATION CONTACT: Patrick W. Boyd, Office of Rulemaking (ARM–23), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–7320.

SUPPLEMENTARY INFORMATION

Installation of Crashworthy Fuselage Fuel Tanks and Fuel Lines, RIN 2120–AC87

On May 2, 1989, the FAA published an ANPRM seeking information on the feasibility of installing, in all air carrier aircraft, fuselage fuel tanks and fuel lines that are rupture resistant and that disconnect and seal in the event of an accident (54 FR 18824). We issued the ANPRM in response to section 9(a) of the Aviation Safety Research Act of 1988 (Pub. L. 100–591). The comment period closed on October 30, 1989.

Since the FAA published the ANPRM, many technological advancements in fuel tank design have occurred. In addition, we are currently engaged in a process of harmonizing fuel tank and fuel line requirements with the European Joint Aviation Authority. For these reasons, we are withdrawing this ANPRM. We may consider further rulemaking action on this issue in the future.

Fuel System Vent Fire Protection, RIN 2120–AA49

On February 2, 1995, the FAA published an NPRM to amend the airworthiness standards for transport category airplanes to require fuel system vent protection during post-crash ground fires (60 FR 6632). The proposal was the result of information obtained from public hearings on aircraft fire safety and was intended to provide protection against a fuel tank explosion following a post-crash ground fire. The comment period closed on June 2, 1995.

Since the FAA published the NPRM, technological advancements have occurred in this area also. In addition, the issues raised in the NPRM will be addressed by future regulatory action developed within the Aviation Rulemaking Advisory Committee as part of the FAA's program to harmonize its regulations with those of the European Joint Aviation Authorities. The FAA believes future rulemaking action that may be broader in scope and a harmonized proposal will better serve the public interest.

Conclusion

The FAA withdraws the following documents:

- Advance Notice of Proposed Rulemaking entitled, Installation of Crashworthy Fuselage Fuel Tanks and Fuel Lines, RIN 2120–AC87, May 2, 1989, 54 FR 18824; and
- Notice of Proposed Rulemaking entitled, Fuel System Vent Fire Protection, RIN 2120–AA49, February 2, 1995, 60 FR 6632.

Issued in Washington, DC, on August 16, 2002.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. 02–21570 Filed 8–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–34–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require replacement of the aileron control override quadrant with a modified unit. This action is necessary to prevent corrosion of the input override mechanism bearings of the lateral central control actuator, which, in the event of a subsequent jam in the pilot's aileron control system, could result in failure of the aileron override system and consequent reduced lateral controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 7, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–34–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington

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98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1506; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket 2002–NM–34–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2002–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of the seizing of the input override mechanism bearings of the lateral central control actuator on affected airplanes. The seizing was discovered during an inspection and has been attributed to corrosion on the steel bearings in the override mechanism. A failed override system is a latent failure and does not affect normal operation. However, if the pilot's control system were to subsequently jam, the seizing of the override bearings could have prevented the aileron control override system from operating properly. This condition, if not corrected, could result in reduced lateral control of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–27A0175, dated October 25, 2001, which describes procedures for replacing the aileron control override quadrant with a modified unit. The modification involves replacing the existing steel bearings with corrosion-resistant steel bearings. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed AD and Service Bulletin

Service Bulletin 767–27A0175 recommends that operators perform the actions specified by Boeing Service Bulletin 767–27–0142 before the actions of this proposed AD. The FAA agrees that both service bulletins require access to the same area of the airplane, so accomplishment of both actions at the same time would be convenient for operators. However, the FAA finds that accomplishment of the actions in Service Bulletin 767–27–0142 is not necessary in connection with this AD to ensure the safety of affected airplanes.

Cost Impact

There are approximately 811 airplanes of the affected design in the worldwide fleet. The FAA estimates that 318 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $146 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $103,668, or $326 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–34–AD.

Applicability: Model 767 series airplanes; certificated in any category; line numbers 1 through 811 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion of the input override mechanism bearings of the lateral central control actuator, which, in the event of a subsequent jam in the pilot's aileron control system, could result in failure of the aileron override system and consequent reduced lateral controllability of the airplane, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD, replace the aileron control override quadrant with a modified unit, in accordance with Boeing Alert Service Bulletin 767–27A0175, dated October 25, 2001.

Note 2: This AD does not require accomplishment of the actions specified by Boeing Service Bulletin 767–27–0142.

Spare Parts

(b) As of the effective date of this AD, no person may install, on any airplane, an aileron control override quadrant that has not been modified in accordance with the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 19, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–21509 Filed 8–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–358–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), MD–10–10F, and MD–10–30F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), MD–10–10F, and MD–10–30F airplanes. This proposal would require inspections of the linear variable differential transducers (LVDTs) of the autopilot for discrepancies, and follow-on actions, if necessary. This action is necessary to prevent failure of the LVDTs, which could result in an automatic pitch trim malfunction or an autopilot disconnect, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 7, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–358–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–358–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4243, fax (425) 687–4248. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

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• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–358–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–358–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has been informed by the manufacturer that certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), MD–10–10F, and MD–10–30F airplanes having linear variable differential transducers (LVDT) were delivered with an undersize nylok element on the threaded extension end. If such undersizing is not corrected, the LVDT plunger jamnut could become loose causing an automatic pitch trim malfunction, an elevator stand-off resulting in automatic pitch trim operation in one direction only, or an autopilot disconnect.

Also, we received one report of a pitch trim incident in flight that resulted in an uncommanded nose-down pitch of the airplane. Investigation revealed that the cause of that incident was loose shear rivets in the drive assembly of the automatic pitch trim LVDT. The loose shear rivets allowed the automatic pitch trim LVDT to shift enough to command the horizontal stabilizer to put the airplane in a nose-down direction. Further investigation revealed additional airplanes with loose rivets, and one airplane with an additional problem with the attachment to the automatic pitch trim LVDT. Binding between the plunger and body of the LVDT due to loose rivets can cause failure of the LVDT shear rivets. Such conditions, if not corrected, could result in an automatic pitch trim malfunction and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC10–22A126, dated October 31, 2001, which describes procedures for a visual inspection of the shear rivets of the LVDTs of the drive assembly of the automatic pitch trim for discrepancies (sheared and/or loose rivets), and these six follow-on conditions:

• *Condition 1:* If no sheared or loose rivets are found, no further action is needed.

• *Condition 2:* If any sheared and/or loose rivets are found, repair the drive assembly and repeat visual inspection of the LVDT for further discrepancies (misalignment, corrosion, bent plunger, restricted movement, or hangar binding). If no discrepancy is found, no further action is needed.

• *Condition 3:* If a discrepancy is found after doing Condition 2, do the corrective actions specified in Conditions 4 through 6, as applicable.

• *Condition 4:* If the LVDT is misaligned, realign.

• *Condition 5:* If any corrosion, a bent plunger, or restricted movement of the LVDT is found, replace the existing LVDT with a new LVDT.

• *Condition 6:* If hangar binding of the LVDT is found, replace the LVDT hangar assembly with a new assembly.

We also have reviewed and approved Boeing Alert Service Bulletin DC10–22A127, dated December 17, 2001, which describes procedures for a visual inspection of the LVDTs for affected serial numbers (with an undersize nylok element) and these two options for follow-on actions:

• *Option 1:* Replace any affected LVDT with a new LVDT; then do the automatic pitch trim adjustment/test.

• *Option 2:* Install a heat shrinkable sleeve over the LVDT jamnut; then do repetitive inspections for loose LVDT jamnuts until the LVDT is replaced.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Difference Between This Proposed AD and the Service Information

The service bulletins described previously refer to a "visual" inspection. For the purposes of this AD, we have determined that the procedures in the service bulletins constitute a "detailed inspection." Note 2 of this proposed AD defines such an inspection.

Explanation of AD Applicability

We have specified model designations in the applicability of this proposed AD as published in the most recent type certificate data sheet for the affected models. These model designations differ in the referenced service bulletins.

Cost Impact

There are approximately 394 airplanes of the affected design in the worldwide fleet. The FAA estimates that 252 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the inspection specified in Boeing Alert Service Bulletin DC10–22A126, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $15,120, or $60 per airplane.

It would take approximately 1 work hour per airplane to accomplish the inspection specified in Boeing Alert Service Bulletin DC10–22A127, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $15,120, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator be required to perform the follow-on actions specified in Boeing Alert Service Bulletin DC10–22A126, the cost estimates are as follows:

• *Condition 2—Repair/inspect:* 1 work hour per airplane at $60 per work hour.

• *Condition 4—Realign:* 1 work hour per airplane at $60 per work hour.

• *Condition 5—Replace LVDT:* 1 work hour per airplane at $60 per work hour; estimated parts cost of $900.

• *Condition 5—Replace hangar:* 1 work hour per airplane at $60 per work hour; estimated parts cost of $100.

Should an operator be required to perform the follow-on actions specified in Boeing Alert Service Bulletin DC10–22A127, the cost estimates are as follows:

• *Option 1—Replace LVDT and do adjustment/test:* 2 work hours per airplane at $60 per work hour; estimated parts cost of $900.

• *Option 2—Install a heat shrinkable sleeve and inspect:* 2 work hours per airplane at $60 per work hour.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–358–AD.

Applicability: Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), MD–10–10F, and MD–10–30F airplanes; as listed in Boeing Alert Service Bulletin DC10–22A126, dated October 31, 2001; and Boeing Alert Service Bulletin DC10–22A127, dated December 17, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the linear variable differential transducers (LVDTs) of the autopilot, which could result in an automatic pitch trim malfunction or an autopilot disconnect, and consequent reduced controllability of the airplane, accomplish the following:

Detailed Inspections/Follow-On Actions

(a) Within 90 days after the effective date of this AD: Do the detailed inspections of the LVDTs of the autopilot for discrepancies as required by paragraphs (a)(1) and (a)(2) of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) Inspect the LVDTs for affected serial numbers (with undersize nylok elements) per Figure 1 of Boeing Alert Service Bulletin DC10–22A127, dated December 17, 2001. If any affected serial number is found, before further flight, do either Option 1 (including replacing the LVDT with a new LVDT and doing an automatic pitch trim adjustment/test), or Option 2 (including installing a heat-shrinkable sleeve over the LVDT jamnut and doing repetitive inspections for any loose jamnut every 500 flight hours until the LVDT is replaced with a new LVDT), of Condition 1 of the service bulletin, per the service bulletin. If any discrepancy is found, before further flight, replace the LVDT with a new LVDT. If no discrepancy is found, install a shield assembly per Condition 2 of the service bulletin.

(2) Inspect the shear rivets of the LVDTs of the drive assembly of the automatic pitch trim for discrepancies (shearing and/or looseness), per Boeing Alert Service Bulletin DC10–22A126, dated October 31, 2001. If any discrepancy is found, before further flight, do Conditions 2 through 6 (including repairing the driver assembly and inspecting the LVDT within 9 months after doing the repair; doing an automatic pitch trim adjustment/test; aligning the LVDT; replacing the existing LVDT with a new LVDT; and replacing the hangar assembly with a new assembly), as applicable, of the service bulletin, per the service bulletin. If no discrepancy is found, no further action is required by this paragraph.

Spares

(b) As of the effective date of this AD, no one may install an LVDT with a serial number listed in the "Affected Serial Numbers" table in Figure 1 of Boeing Alert Service Bulletin DC10–22A127, dated December 17, 2001, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 19, 2002.

Vi L. Lipski,

Manager, , Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–21508 Filed 8–22–02; 8:45 am]

BILLING CODE 4910–13–P

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–364–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Model Falcon 2000 series airplanes. This proposal would require performing an inspection to determine the serial number on the identification plate on each of the three hydraulic shut-off valve (HSOV) actuators on the left-hand and right-hand hydraulic reservoirs, and replacing an HSOV actuator with a new HSOV actuator, if necessary. This action is necessary to ensure that proper HSOV actuators are installed on the hydraulic fluid reservoirs. In the event of an engine fire, a faulty HSOV, if not corrected, could allow the flow of flammable fluid to the engine nacelle, which could result in an engine nacelle fire that could not be readily extinguished. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 23, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–364–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–364–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–364–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–364–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Dassault Model Falcon 2000 series airplanes. The DGAC advises that it has received reports of a batch of faulty hydraulic shut-off valve (HSOV) actuators that may be installed on the hydraulic reservoirs of certain Model Falcon 2000 series airplanes. The left-hand hydraulic reservoir has two HSOV actuators, and the right-hand hydraulic reservoir has one HSOV actuator. An HSOV actuator is intended to close the HSOV in order to stop the flow of flammable fluid to the engine nacelle in the event of a fire. The faulty HSOV actuators have defective switches and may not close the HSOVs when required. The cause of these faulty HSOV actuators has been attributed to a manufacturing process error during the production of the HSOV actuators. This condition, if not corrected, could allow the flow of flammable fluid to the engine nacelle, which could result in an engine nacelle fire that could not be readily extinguished.

Explanation of Relevant Service Information

Dassault has issued Service Bulletin F2000–A223, dated October 17, 2001, which describes procedures for an inspection to determine the serial number on the identification plate on each of the three HSOV actuators on the left-hand and right-hand hydraulic reservoirs. The service bulletin also describes procedures for replacing an HSOV actuator with a new HSOV actuator (including torquing the screw), if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2001–497–011(B), dated October 17, 2001, in order to assure the continued airworthiness of these airplanes in France. The French airworthiness directive contains a typographical error in that it references Dassault Service Bulletin "F2000–223" instead of Dassault Service Bulletin F2000–A223.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the Dassault service bulletin described previously.

Cost Impact

The FAA estimates that 87 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $10,440, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dassault Aviation: Docket 2001–NM–364–AD.

Applicability: Model Falcon 2000 series airplanes, serial numbers 2 through 132, except serial numbers 123, 130, and 131; certificated in any category; excluding those airplanes on which the actions specified in Dassault Service Bulletin F2000-A223, dated October 17, 2001, has been done.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an engine nacelle fire that cannot be readily extinguished, accomplish the following:

Inspection

(a) Within 3 months after the effective date of this AD, inspect to determine the serial number on the identification plate on each of the three hydraulic shut-off valve (HSOV) actuators on the left-hand and right-hand hydraulic reservoirs, per the Accomplishment Instructions of the service bulletin.

Corrective Action

(b) If any serial number specified in paragraph 2.B.(3) of the Accomplishment Instructions of Dassault Service Bulletin F2000–A223, dated October 17, 2001, is found during the inspection required by paragraph (a) of this AD, before further flight, replace the HSOV actuator with a new HSOV actuator (including torquing the screw), per the Accomplishment Instructions of Dassault Service Bulletin F2000–A223, dated October 17, 2001.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 2001–497–011(B), dated October 17, 2001.

Issued in Renton, Washington, on August 19, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–21507 Filed 8–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–277–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness

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directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes. This proposal would require a one-time inspection at a certain disconnect panel in the left forward cargo compartment to find contamination of electrical connectors and to determine if a dripshield is installed over the disconnect panel, and corrective actions if necessary. This action is necessary to find and fix contamination of certain electrical connectors and prevent future contamination of these connectors, which could cause electrical arcing that could result in a fire on the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 7, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–277–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–277–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–277–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–277–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of electrical arcing that resulted in a fire on a McDonnell Douglas Model DC–9–32 airplane. Investigation revealed that a connector at a disconnect panel at station Y=237.000 in the left forward cargo compartment was contaminated with what appeared to be blue water. Further investigation revealed that a dripshield should have been installed over the subject disconnect panel on airplanes equipped with forward lavatories. This condition, if not corrected, could cause electrical arcing that could result in a fire on the airplane.

The subject area on certain McDonnell Douglas Model DC–9–10, DC–9–20, other DC–9–30, DC–9–40, and DC–9–50 series airplanes is almost identical to that on the affected Model DC–9–32 airplane. Therefore, those airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC9–24A190, Revision 01, dated November 21, 2001, which describes procedures for a one-time visual inspection at a disconnect panel at station Y=237.000 in the left forward cargo compartment to find evidence of contamination (*e.g.*, staining or corrosion) of electrical connectors by blue water, and to determine if a dripshield is installed over the disconnect panel. The service bulletin also describes procedures for installation of a dripshield if one is not already installed. If any evidence of contamination is found, corrective action includes removing the connectors and installing new or serviceable connectors. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 80 airplanes of the affected design in the worldwide fleet. The FAA estimates that 51 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $3,060, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–277–AD.

Applicability: Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–932F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, and DC–9–51 airplanes; listed in Boeing Alert Service Bulletin DC9–24A190, Revision 01, dated November 21, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix contamination of certain electrical connectors and prevent future contamination of these connectors, which could cause electrical arcing and result in a fire on the airplane, accomplish the following:

One-Time Inspection and Corrective Actions

(a) Within 18 months after the effective date of this AD, perform a one-time general visual inspection of the disconnect panel at station Y=237.000 in the left forward cargo compartment to find evidence of contamination (*e.g.*, staining or corrosion) of electrical connectors by blue water, and to determine if a dripshield is installed over the disconnect panel. Do this inspection according to the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–24A190, Revision 01, dated November 21, 2001.

(1) If no evidence of contamination of electrical connectors is found, and a dripshield is installed, no further action is required by this AD.

(2) If any evidence of contamination of any electrical connector is found: Before further flight, remove each affected connector, and install a new or serviceable connector according to the service bulletin.

(3) If no dripshield is installed over the disconnect panel: Before further flight, install a dripshield according to the service bulletin.

Previously Accomplished Inspections and Corrective Actions

(b) Inspections and corrective actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin DC9–24A190, dated July 31, 2001, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 19, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–21506 Filed 8–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–8]

Proposed Establishment of Class E2 and Class E4 Airspace and Modification of Existing Class E5 Airspace; Ainsworth, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace designated as a surface area for Ainsworth Municipal Airport, NE; establish Class E airspace designated as an extension to Class E surface area at Ainsworth, NE; and modify Class E airspace extending upward from 700 feet above the surface of the earth at Ainsworth, NE. The FAA has developed Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 17 ORIGINAL Standard Instrument Approach Procedure (SIAP), RNAV (GPS) RWY 35 ORIGINAL SIAP, VHF Omni-directional Range (VOR) RWY 17 Amendment 3 SIAP and VOR RWY 35 Amendment 4 SIAP to serve Ainsworth Municipal Airport, NE. Class

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E surface area airspace, extensions to this Class E surface area airspace and additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) are needed to protect instrument flight rules (IFR) operations at Ainsworth, NE. This Class E surface area, Class E surface area extensions and additional controlled airspace extending upward from 700 feet AGL will ensure that aircraft executing straight-in SIAPs to RWY 17 and RWY 35 remain within controlled airspace. Adoption of this proposal would result in establishing Class E surface area and extensions at Ainsworth Municipal Airport, NE and also result in additional Class E airspace extending upward from 700 feet at Ainsworth, NE.

DATES: Comments must be received on or before October 11, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Air Traffic Division, Airspace Branch Manager, ACE–520, DOT Regional Headquarters Building, Docket Number 02–ACE–8, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–ACE–8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri, both before and after the closing date for comments. A report that summarizes each substantive-public contact with FAA personnel concerned with this rule making will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace designated as a surface area for Ainsworth Municipal Airport, NE; establish Class E airspace designated as an extension to Class E surface area at Ainsworth, NE; and modify Class E airspace extending upward from 700 feet above the surface of the earth at Ainsworth, NE.

This Class E airspace surface area, Class E airspace surface area extensions and additional controlled airspace extending upward from 700 feet AGL are needed to ensure that aircraft executing straight-in SIAPs to RWY 17 and RWY 35 remain within controlled airspace. The areas would be depicted on appropriate aeronautical charts. Class E airspace surface areas, Class E airspace surface area extensions and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraphs 6002, 6004 and 6005 respectively of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE NE E2 Ainsworth, NE

Ainsworth Municipal Airport, NE
(Lat. 42°34′45″ N., long. 99°59′35″ W.)
Ainsworth VOR/DME
(Lat. 42°34′09″ N., long. 99°59′23″ W.)
Within a 4.3-mile radius of Ainsworth Municipal Airport.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ACE NE E4 Ainsworth, NE

Ainsworth Municipal Airport, NE
(Lat. 42°34′45″ N., long. 99°59′35″ W.)
Ainsworth VOR/DME
(Lat. 42°34′09″ N., long. 99°59′23″ W.)
That airspace extending upward from the surface within 2.4 miles each side of the Ainsworth VOR/DME 197° radial extending from the 4.3-mile radius of Ainsworth Municipal Airport to 7 miles south of the airport; and within 2.4 miles each side of the Ainsworth VOR/DME 348° radial extending from the 4.3-mile radius of Ainsworth Municipal Airport to 7 miles north of the airport.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ACE NE 35 Ainsworth, NE [Revised]

Ainsworth Municipal Airport, NE
(Lat. 42°34′45″ N., long. 99°59′35″ W.)
Ainsworth VOR/DME
(Lat. 42°34′09″ N., long. 99°59′23″ W.)
That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Ainsworth Municipal Airport and within 3.9 miles each side of the 179° bearing from the airport extending from the 7.4-mile radius to 9.6 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on August 9, 2002.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 02–21576 Filed 8–22–02; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Region II Docket No. NJ52–243(b); FRL–7264–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) revision submitted on January 15, 2002 by the State of New Jersey to redesignate the New Jersey portion of the New York-Northern New Jersey-Long Island Carbon Monoxide (CO) nonattainment area from nonattainment to attainment of the National Ambient Quality Standard (NAAQS) for CO. EPA is proposing to approve the New Jersey CO maintenance plan because it provides for continued maintenance of the CO NAAQS.

EPA is also proposing to approve New Jersey's CO attainment demonstration that was submitted on August 7, 1998. This will provide for full approval of New Jersey's State Implementation Plan (SIP) for CO. Additionally, EPA is proposing to approve the 1997 transportation conformity budget submitted on December 10, 1999 as an addendum to the New Jersey CO attainment demonstration submitted on August 7, 1998. Finally, EPA is proposing to approve the 2007 and 2014 transportation conformity budgets found in New Jersey's CO maintenance plan.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP submittal, as a direct final rule without prior proposal because the Agency views these as noncontroversial submittals and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before September 23, 2002.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Pollution Control, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Henry Feingersh, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–4249.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: August 7, 2002.

William J. Muszynski,

P.E., Deputy Regional Administrator, Region 2.

[FR Doc. 02–21284 Filed 8–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–062–FOAb; FRL–7263–7]

Determination of Attainment of the 1-Hour Ozone Standard for San Diego County, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the San Diego County area has attained the 1-hour ozone air quality standard by the deadline required by the Clean Air Act (CAA).

DATES: Comments on this proposal must be received by September 23, 2002.

ADDRESSES: Please address your comments to Dave Jesson, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the State's submittal are available for public inspection during normal business hours at EPA's Region 9 office and at the following locations:

California Air Resources Board, 1001 I Street, Sacramento, CA 95814.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

FOR FURTHER INFORMATION CONTACT: Dave Jesson, US EPA Region 9, at (415) 972–3957, or *jesson.david@epa.gov*.

SUPPLEMENTARY INFORMATION: In the Rules and Regulations section of this **Federal Register**, we are finding that the San Diego area has attained the 1-hour ozone National Ambient Air Quality Standards (NAAQS) under CAA Section 181(b)(2)(A). We are taking this action without prior proposal because we believe that the finding is not controversial. If we receive adverse

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comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 8, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–21561 Filed 8–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7266–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Gould Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, announces its intent to delete the Gould Site (Site) from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Oregon Department of Environmental Quality (DEQ) have determined that the remedial action for the site has been successfully executed.

DATES: Comments concerning the proposed deletion of this Site from the NPL may be submitted on or before September 23, 2002.

ADDRESSES: Comments may be mailed to: Beverly Gaines, EPA Point of Contact, U. S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Stop, ECL–110, Seattle, Washington 98101.

Comprehensive information and the deletion docket for this Site are available through the Region 10 public docket which is available for reviewing at: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Superfund Records Center, Seattle, Washington 98101.

Information on the site and a copy of the deletion docket are also available for viewing at the Information Repository which is located at: Multnomah County Library, 801 SW 10th Avenue, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: Beverly Gaines, EPA Point of Contact, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Stop, ECL–110, Seattle, Washington 98101, phone: (206) 553–1066, fax: (206) 553–0124, e-mail: *gaines.beverly@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region 10 announces its intent to delete the Gould Site, which is located in the City of Portland, Oregon, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. EPA and the State of Oregon Department of Environmental Quality (DEQ)have determined that the remedial action for the site has been successfully executed.

EPA will accept comments on the proposal to delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures EPA is using for this action. Section IV discusses the Gould Site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from, or recategorized on the NPL, where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate, or

(iii) The Remedial Investigation has shown that the site poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate additional remedial actions. Whenever there is a significant release from a deleted site from the NPL, the site may be restored to the NPL without application of the Hazard Ranking System.

In the case of this site, the selected remedy is protective of human health and the environment; however, the remedy will leave waste on site above levels that allow for unlimited use and unrestricted exposure. A review of the selected remedy will occur at least every five years from initiation of the remedial action. The next five-year review will be done before September 28, 2002.

III. Deletion Procedures

The following procedures were used for the intended deletion of this site: (1) All appropriate response under CERCLA has been implemented and no further action by EPA is appropriate; (2) the State of Oregon has concurred with the proposed deletion decision; (3) a notice has been published in the local newspapers and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and (4) all relevant documents have been made available in the local site information repositories.

Deletion of the site from the NPL does not in itself, create, alter or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in section II of this notice, Sec. 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of this site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

Site Background and History

The Gould Site is located in the City of Portland, Oregon between NW Saint Helen's Road and NW Front Avenue in a heavily industrialized area northwest of downtown Portland known as the Doane lake area. The Site includes a 9.2 acre property currently owned by Gould Inc. that was the location of the former secondary lead smelter and battery recycle facility. Areas outside the property boundary is where battery casings and other residues from operations on the Gould property were placed.

A secondary lead smelting operation began at the Gould Site in 1949 under the ownership of Morris P. Kirk and Sons, a subsidiary of NL Industries, Inc. (NL). Facility operations included lead-acid battery recycling, lead smelting and refining, and lead oxide production. Gould purchased the property in 1979 and closed the facility in 1981. During facility operations, discarded battery casing materials and other lead smelter wastes were used as fill on the Gould Site and an adjacent property. Acid from batteries was drained to Doane Lake during several years of operation.

The Gould Site is adjacent to the former location of the Rhone-Poulenc Ag Company (Rhone-Poulenc) facility. Rhone-Poulenc is conducting an investigation under DEQ oversight and State authority of on-site and off-site contamination associated with their former pesticide and herbicide manufacturing facility.

The Gould Site is approximately one thousand feet southwest of the Willamette River. The Lower Willamette River, known as the Portland Harbor area, was recently added to the NPL because of sediment contamination. A remedial investigation and feasibility study (RI/FS) of the Lower Willamette River is being conducted by a group of Potentially Responsible Parties (PRPs) under a Consent Order signed by EPA and the PRPs in September 2001.

In 1981 and 1982, a joint investigation of contamination at the Gould Site was conducted by EPA and Oregon Department of Environmental Quality). EPA included the site on the NPL in 1983 because of documented lead contamination. In 1985 NL and Gould signed a Consent Order with EPA under which the two companies conducted an RI/FS. The RI/FS was completed in February 1988. The RI/FS showed there were high levels of lead contamination in battery casings and other smelter waste, soil, debris and in East Doane Lake sediments at the Site.

Selected Remedy

Soil Operable Unit

In March 1988, EPA issued a Record of Decision (ROD) for the Soils Operable Unit. The selected remedy included excavating and treating battery casings, recovering lead for recycle, excavation of contaminated soil and East Doane Lake sediments followed by stabilization of material that exceeds Resource Conservation and Recovery Act (RCRA) characteristic hazardous waste levels, monitoring air, groundwater, and surface water quality. The 1988 ROD also included additional study of groundwater to determine whether action was needed because there was insufficient hydrogeologic information available to make a decision on the groundwater.

The selected remedy was expected to control the migration of contaminants from the Site by minimizing releases to the air and groundwater. Surface soil cleanup levels for lead of 1000 mg/kg were selected to be protective of human industrial exposures, including direct contact, inhalation, and ingestion. The intent was to recycle materials that could potentially be recycled (lead and casing materials).

Excavation and treatment of contaminated surface soils, battery casing piles, buried battery casings, matte (smelter waste), and other debris began in the summer of 1993. Excavated battery casings were processed through a treatment plant to separate materials (lead fines, metallic lead, clean plastic, and clean ebonite) for recycle. Contaminated soil and matte were stabilized to bind contaminants for backfilling on Site.

An estimated 24,000 tons of contaminated battery casings were treated through the treatment/separation process, with 244 tons of plastic and 88 tons of coarse lead recycled. An estimated 20,000 blocks (each measuring one cubic yard) of stabilized material was produced. Several hundred tons of contaminated debris were shipped off site for disposal. Approximately 15,000 cubic yards of contaminated material were stockpiled on Site.

The treatment/recycle process was suspended in 1994 because of operational problems, inconsistent results, and significantly increased costs. EPA subsequently determined that the selected remedy was no longer appropriate based on operating experience and conditions at the Site.

In June 1997, EPA issued a ROD Amendment for the Soils Operable Unit that changed the cleanup remedy previously selected at the Site. The modified selected remedy included the following:

—Excavation and dewatering of contaminated East Doane Lake remnant (EDLR) sediments followed by backfilling the EDLR with clean imported backfill;
—Excavation of the remaining battery casings on the Gould property;
—Treatment (stabilization or fixation) of the lead fines stockpile, the screened Gould excavation stockpile, and other lead contaminated material identified as principal threat waste;
—Construction of a lined and capped on-site containment facility (OCF), with leachate collection and treatment, on the Gould property;
—Consolidating contaminated material, including sediments, treated and untreated stockpiled materials, casings, soil and debris in the line and capped OCF;
—Filling the East Doane Lake remnant and the open excavation in the Lake Area of the Rhone-Poulenc property;
—Performing groundwater monitoring to ensure the effectiveness of the cleanup, and that contaminants were not mobilized during its implementation.

Response Actions

The 1997 ROD Amendment also required mitigation/restoration to compensate for the loss of the estimated 3.1 acres of EDLR open water habitat. The ROD Amendment retained the surface soil cleanup level for lead at 1,000 mg/kg (the cleanup level selected in the 1988 ROD). Lead contamination was the principal threat addressed in the ROD and the primary contaminant of concern addressed in the 1997 ROD Amendment. The ROD Amendment modified the contaminated subsurface

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material that would be excavated as part of the remedial action. Instead of requiring all subsurface material contaminated above RCRA characteristic waste levels to be excavated, it allowed some subsurface materials in excess of those levels to remain in place based on types of materials, location and updated information about groundwater contamination.

In the 1997 ROD Amendment, EPA determined that results of previous groundwater monitoring had not confirmed lead contamination in area groundwater. Data collected in 1995 and 1996 indicated that lead contamination was not widespread or significant in groundwater near the site. The ROD Amendment further concluded that although it did not appear there was a need for treatment of groundwater for lead, monitoring would be continued to further evaluate site conditions, and provide a basis for future cleanup or no action decisions for groundwater.

DEQ issued a Removal Action Decision Memorandum under State law in May 1998 that evaluated removal alternatives for organic contamination in portions of the East Doane lake remnant that could be performed in conjunction with the sediment removal action described in EPA's ROD Amendment for the Gould Site. DEQ's evaluation was based on additional sampling in the East Doane Lake remnant which indicated that sediments were also contaminated with organic chemicals that appeared to be related to past waste management practices at the Rhone-Poulenc Ag Company (Rhone-Poulenc) facility that was located adjacent to the Gould property. DEQ determined that removal of additional sediments in portions of East Doane Lake was warranted to address organic contamination and that the removal should occur in conjunction with sediment removal under the Gould Site remedial action. Rhone-Poulenc did not agree to perform the removal action and DEQ funded the removal of additional contaminated sediments.

Nine Gould Potentially Responsible Parties (PRPs) signed a Consent Decree with EPA that was lodged in U.S. District Court in Portland, Oregon in March, 1998. The PRPs began work in the summer of 1998 with the excavation, dewatering, and stockpiling of contaminated sediments from EDLR. Construction of the on-site containment facility, excavation and treatment of other contaminated materials, placement of the waste in the containment facility, and other cleanup actions required by the ROD Amendment have been completed as described below:

—East Doane lake contaminated sediments: Dredging, mechanical dewatering and stockpiling an estimated 8,700 cubic yards of contaminated EDLR sediment (including sediment removed as part of the DEQ removal action) and debris was completed in November of 1999. In addition, 55 compressed gas cylinders that were buried in the east portion of EDLR sediments were recovered, overpacked, and transported to an off-site facility for treatment and disposal.

—Gould property battery casings—An estimated 3590 cubic yards of battery casings and other waste material were excavated from the south shoreline of EDLR.

—Treatment of principle threat/stockpiled material—An estimated 7850 cubic yards of stockpiled material, including the lead fines stockpile, were treated by fixation to pass RCRA characteristic waste levels.

—On-site containment facility—Construction of the 4.5 acre containment facility on the Gould property is complete. The OCF includes a double bottom liner, leachate collection and treatment, and a multi-media cap. The leachate collection and treatment system are operational. Leachate is pre-treated for metals prior to transport to the Rhone-Poulenc wastewater treatment facility for additional treatment prior to discharge to the Willamette River in accordance with Rhone-Poulenc's NPDES permit.

—Consolidating contaminant material in the OCF—An estimated 77,700 cubic yards of contaminated material have been placed in the OCF. The OCF was capped with a multimedia cap following materials placement. The final topsoil covering and seeding were completed in August 2000.

—East Doane Lake remnant and the open excavation in the Lake Area of the Rhone-Poulenc property—backfilling the East Doane Lake remnant and the open excavation in the Lake Area of Rhone-Poulenc with clean material was completed in 1998 following excavation of the contaminated sediments.

—Groundwater monitoring—groundwater monitoring was carried out during remedial action to ensure the effectiveness of the cleanup and that contaminants were not mobilized during its implementation; and to gather additional information for the groundwater evaluation. Long-term groundwater monitoring will continue as part of the remedial action requirements for the Soils Operable Unit and the operation and maintenance plan for the OCF.

Other cleanup activities performed as part of the remedial action included demolition of on-site structures, asbestos abatement and polychlorinated biphenyl (PCB) light ballast removal and disposal, and excavation of surface soils contaminated above the 1,000 ppm lead cleanup level established by the ROD Amendment. Extensive air monitoring of lead and particulate levels was conducted to ensure that fugitive dust from construction activities were adequately controlled. Perimeter security fencing was installed to restrict access to the OCF.

EPA has approved a wetlands mitigation plan which provides funding and requires acquisition of an off-site property as mitigation for the loss of East Doane lake wetland and open-water habitat. EPA will approve the specific property in consultation with U.S. Fish and Wildlife Service prior to acquisition.

Groundwater Operable Unit ROD

EPA released a proposed plan that described the agency's preferred alternative of no further action for the Gould Site Groundwater Operable Unit on August 10, 2000. No comments were received during the 30-day public comment period.

EPA issued a "No Action" ROD for the Groundwater Operable Unit on September 28, 2000. The ROD concluded that cleanup of the Gould Site Soils Operable Unit has addressed lead-contaminated waste, soil, debris, and other potential sources of groundwater contamination from the Gould site operations. Groundwater investigations and monitoring have not shown a need for additional cleanup of Gould site contaminants in groundwater. Long-term groundwater monitoring will continue as required by the ROD Amendment for the Soils Operable Unit.

Cleanup Standards

The remedial action cleanup activities at the Gould Site are consistent with the objectives of the NCP and will provide protection to human health and the environment. The major sources of contamination, including battery casings, smelter waste, and lead-contaminated waste, soil, and debris have been addressed.

Air monitoring for dust and lead was performed during remedial construction and non-construction activities. The action levels for the Site ranged from 0.5 to 1.5 ug/cubic meter with specific corrective actions required at each level. Results for individual sampling events ranged from non-detect to 3.5 ug/cubic meter. Average quarterly lead concentrations for the Site did not exceed Federal and State of Oregon standard for lead (1.5 ug/cubic meter).

Groundwater samples were collected during six sampling events during construction activities from on-site and off-site wells. Sample results indicated that there were no exceedences of the 15 micrograms/liter action level for lead established under the Safe Drinking Water Act.

Surface soil (0 to 1ft depth) sampling was performed at the Site to identify soils exceeding 1,000 mg/kg total lead and confirm removal. Surface soils that required removal outside the footprint of the OCF were located in the lake area of the Rhone-Poulenc property and the eastern and southern portions of the Gould property. Surface soil inside the footprint of the OCF was also removed as part of the site preparation for the OCF. Contaminated surface soils from these areas were excavated and disposed of in the OCF. Confirmatory sampling was performed and sample analysis was conducted for areas outside the OCF footprint in accordance with the Quality Assurance Project Plan results were reviewed and approved by EPA representatives prior to backfilling with imported non-contaminated soil.

East Doane lake was divided into sampling quadrants and dredging depths were predetermined based on sample results. Post-dredging sampling was also conducted to evaluate whether dredging achieved the criteria of EP Toxicity for lead. Total lead levels were also collected for comparison purposes. Re-dredging of sediment in quadrants that did not meet the criteria was conducted until the sample results within the quadrant indicated the criteria was met and/or EPA approved backfilling the sample quadrant based on sample results in the quadrant and consideration of the practical limits of dredging. The East Doane lake remnant was then backfilled in accordance with the ROD and contract documents.

Two stockpiles of waste material were designated as principle threat waste, the lead fines stockpile and the screened excavation stockpile. This waste was treated by stabilization to achieve a RCRA waste characteristic level of less than 5 mg/l of lead. Quality control confirmatory samples were collected to verify that the results met the performance standard.

Operation and Maintenance

Operation and maintenance activities began in January 2000 in accordance with the Final Remedial Design Report and Draft Operation and Maintenance Plan. The Final Operation and Maintenance Plan was completed November 6, 2001. It addresses activities, responsibilities and schedules for the following site components: OCF cover condition and stability, erosion and sedimentation controls, access roads, security fencing, storm water systems, leachate collection and removal, and groundwater monitoring. The plan also addresses monitoring and inspection frequency and responsibilities. Site inspections, maintenance and monitoring have been performed and will continue to be performed in accordance with the Operation and Maintenance Plan. EPA approved the Final Operation and Maintenance Plan on May 15, 2002.

Institutional Controls

Future use of the property is limited to industrial or other uses compatible with the cleanup under the terms of the Environmental Protection Restrictive Covenant and Easements that were granted by property owners to meet the requirements of the Consent Decree. EPA will evaluate the institutional controls at least every five years as part the five-year reviews that will be conducted at the Site.

Five-Year Review

Hazardous substances will remain at the Site above levels that allow unlimited use and unrestricted exposure after the completion of the remedial action. Pursuant to CERCLA Section 121(c) and provided in the current guidance on Five-Year Reviews, EPA must conduct a statutory five-year review to ensure that the remedy continues to provide adequate protection of human health and the environment. EPA conducted the first five-year review of the Gould Site on September 28, 1997, and the next five-year review is scheduled to be completed by September 28, 2002.

Community Involvement

EPA provided routine progress fact sheets to keep the public advised of site cleanup activities. There was not a great deal of interest in the excavation of waste materials and construction of the On-site Containment Facility (OCF) from the general public, but workers at an adjacent Metro waste transfer facility did raise concerns about the potential for off-site migration of lead-contaminated dust. Arrangements were made to provide air monitoring results directly to representatives from the transfer facility to keep workers advised and provide assurances that lead levels were being adequately controlled.

Applicable Deletion Criteria

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if "responsible parties have implemented all appropriate response actions required." EPA, with the concurrence of the State of Oregon, believe that this criterion for deletion has been met. There is no significant threat to human health or the environment and, therefore; no further remedial action is necessary. Subsequently, EPA is proposing deletion of this site from the NPL. Documents supporting this action are available in the deletion docket at the information repositories.

State Concurrence

In a letter dated August 8, 2002, from the Oregon Department of Environmental Quality (DEQ), DEQ concurs with the proposed deletion of the Gould Superfund Site from the NPL.

Dated: August 15, 2002.

Ronald A. Kreizenbeck,

Acting Regional Administrator, U.S. EPA, Region 10.

[FR Doc. 02–21553 Filed 8–22–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 72, Appendix A

RIN 0920–AA06

Interstate Shipment of Etiologic Agents; Select Agents

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice of intent to issue regulations.

SUMMARY: On June 12, 2002, President George W. Bush signed Public Law 107–188, Public Health Safety and Bioterrorism Preparedness and Response Act of 2002. The Act specifies that the Secretary of the Department of Health and Human Services establish and maintain a list of biological agents and toxins that have the potential to pose a severe threat to public health and safety. The Secretary directed the Centers for Disease Control and Prevention (CDC) to convene an inter-agency work group to review the current list of biological agents and toxins found in 42 CFR part 72, Appendix A, and revise the list as necessary.

Prior to issuing the Interim Final Rule, as required by Public Law 107–

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188, the CDC is interested in obtaining public comments on the revisions to 42 CFR part 72, Appendix A, that are under consideration. In addition to these revisions, the CDC is particularly interested in obtaining comments on whether there are biological agents and toxins that should be added to the list or removed from the list.

DATES: Submit comments on or before September 17, 2002.

ADDRESSES: Comments on the revisions to the list of select agents and toxins that are under consideration should be marked "Comments on Select Agents" and mailed to: Centers for Disease Control and Prevention, National Center for Infectious Diseases, Select Agent Transfer Program, 1600 Clifton Road NE., Mailstop E–79, Atlanta, Georgia 30333. Due to staff and equipment limitations, CDC cannot accept comments by facsimile or electronic mail.

FOR FURTHER INFORMATION CONTACT: For information concerning the revisions to the list of select agents and toxins that are under consideration should contact: Ms. Jennifer Brooks, National Center for Infectious Diseases, Office of the Director, 1600 Clifton Road NE., Mailstop C–12, Atlanta, Georgia 30333. Telephone: (404) 639–2763.

SUPPLEMENTARY INFORMATION:

Background

President George W. Bush signed the Public Health Safety and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188) on June 12, 2002. The Act specifies that the Secretary of the Department of Health and Human Services establish and maintain a list of biological agents and toxins that have the potential to pose a severe threat to public health and safety. The current list of select agents and toxins was published in the **Federal Register** on October 24, 1996, and appears as Appendix A to 42 CFR part 72. This notice of intent is part of the rule-making process that will culminate in the publication of an Interim Final Rule. CDC anticipates publishing this rule in coordination with the U.S. Department of Agriculture on or before December 9, 2002.

The Secretary directed the Centers for Disease Control and Prevention (CDC) to convene an inter-agency work group to review the current list of biological agents and toxins and revise the list as necessary. Members of the work group included representatives from the Department of Health and Human Services/Office of the Secretary (DHHS/OS), the Centers for Disease Control and Prevention (CDC), the National Institutes of Health (NIH), the Food and Drug Administration (FDA), the Department of the Army (DoD/Army), the Department of the Navy (DoD/Navy), the Department of the Air Force (DoD/AF), the U.S. Department of Agriculture (USDA), the Environmental Protection Agency (EPA), the Agency for Toxic Substances and Disease Registry (ATSDR), the Department of Labor/Occupational Safety and Health Administration (OSHA), the National Institute of Occupational Safety and Health (CDC/NIOSH), the Department of Transportation (DoT), the Department of Commerce (DoC), Department of Energy (DoE), the Department of Justice (DoJ), the Federal Bureau of Investigation (FBI), the Central Intelligence Agency (CIA), the Defense Intelligence Agency (DoD/DIA), and the U.S. Postal Service (USPS).

The Current List of Select Agents and Toxins

The current list of select agents and toxins was previously published in the **Federal Register** on October 24, 1996 and appears as Appendix A to 42 CFR part 72. In June 2002, CDC convened an interagency working group to review the current list of select agents and toxins and develop recommendations regarding possible changes to the list. CDC has reviewed those recommendations and this notice of intent seeks to solicit comments from the public on potential changes to the current list of select agents and toxins. Of the 36 select agents and toxins on CDC's current list, 18 of these appear on the USDA list of agents and toxins required under Section 212(a) and located in 9 CFR 121.2(a). These 18 agents and toxins appear on both the CDC and USDA lists since they pose a risk to both human and animal health. Because the process of changing the list of select agents and toxins was in the initial stages when USDA published its interim rule on August 8, 2002 and when this CDC notice of intent is being published, the list of agents and toxins found in both 42 CFR part 72, Appendix A, and 9 CFR 121.2(a) reflects the select agent list promulgated by CDC in October 1996. The notification requirement for persons in possession of any select agent as published by CDC on July 12, 2002 and USDA on August 8, 2002, applies to the current list of agents and toxins and is unaffected by the information solicited by this notice.

Summary of Changes to Appendix A, 42 CFR Part 72, That Are Under Consideration

The following changes are being considered to the list of *Viruses:*

1. Rename "Equine Morbillivirus" to "Nipah and Hendra Complex viruses".
2. Change "Tick-borne encephalitis complex viruses" to "Tick-borne encephalitis complex (flavi) viruses (Central European Tick-borne encephalitis, Far Eastern Tick-borne encephalitis (Russian Spring and Summer encephalitis, Kyasanur Forest disease, Omsk Hemorrhagic Fever))".
3. *Delete:* "Viruses causing hantavirus pulmonary syndrome" and "Yellow fever virus".
4. *Add:* "Monkeypox virus" and "Herpes B virus".
5. *Remove:* exemptions list since exemptions will be covered in the Interim Final Rule.

The following changes are being considered to the list of *Bacteria:*

1. Remove "(Pseudomonas)" from the name of "Burkholderia (Pseudomonas) mallei" and "Burkholderia (Pseudomonas) pseudomallei".
2. Change "Clostridium botulinum" to "Botulinum neurotoxin producing strains of Clostridium".
3. *Remove the header:* Rickettsiae and combine these agents with the agents in the bacteria list.
4. *Remove:* exemptions list since this will be covered in the Interim Final Rule.

The following change is being considered to the list of *Fungi:*

1. Change Coccidioides immitis to Coccidioides immitis, C. posadasii.

The following changes are being considered to the list of *Toxins:*

1. *Remove:* "Aflatoxins".
2. Change "Botulinum toxins" to "Botulinum neurotoxins".
3. Change "Shigatoxin" to "Shigatoxin and Shiga-like toxins".

The following change is being considered for *Exemptions:*

1. Change "Exemptions: Toxins for medical use, inactivated for use as vaccines, or toxin preparations for biomedical research use at an LD<INF> 50 for vertebrates of more than 100 nanograms per kilogram body weight are exempt. National standard toxins required for biologic potency testing as described in 9 CFR part 113 are exempt." to "Exemptions: Toxin preparations containing ≤ 1 mg of Botulinum neurotoxins; ≤ 10 mg of Staphylococcal enterotoxins; or ≤ 100 mg of Abrin, Clostridium perfringens epsilon toxin, Conotoxins, Diacetoxyscirpenol, Ricin, Saxitoxin, Shigatoxin and Shiga-like toxins, Tetrodotoxin, or T–2 toxin, are exempt. Toxin preparation stored in more than one location within a facility must be aggregated in determining if the exemption applies. The medical use of toxins for patient treatment are exempt."

The following changes are being considered to *Recombinant Organisms/Molecules:*

1. Change title "Recombinant Organisms/Molecules" to "Genetic Elements, Recombinant Nucleic Acids, and Recombinant Organisms".

2. Change "1. Genetically modified microorganisms or genetic elements from organisms on Appendix A, shown to produce or encode for a factor associated with a disease. 2. Genetically modified microorganisms or genetic elements that contain nucleic acid sequences coding for any of the toxins listed in this Appendix, or their toxic subunits." to:

"1. Full length nucleic acids (synthetic or naturally derived) of any of the viruses listed in Appendix A.

2. Nucleic acids (synthetic or naturally derived) of 100 nucleotides or more in length of Variola major virus (smallpox virus).

3. Nucleic acids (synthetic or naturally derived) of bacteria, fungi, or viruses listed in Appendix A that encode for either a functional toxin or virulence factor sufficient to cause disease if the nucleic acid is: (1) Expressed in vivo or in vitro; (2) in an expression vector or host chromosome; or (3) in a carrier plasmid.

4. Nucleic acids (synthetic or naturally derived) that encode for functional form of any of the toxins listed in Appendix A if: (1) Expressed in vivo or in vitro; (2) in an expression vector or host chromosome; or (3) in a carrier plasmid.

5. Microorganisms in Appendix A that have been genetically modified."

Finally, CDC is considering the following change to *Additional Exemptions:*

1. Remove the following text since exemptions will be addressed in the Interim Final Rule:

"1. Products subject to regulation under the Federal Insecticide Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*) and the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*) are exempt.

2. Additional exemptions for otherwise covered strains will be considered when CDC reviews and updates the list of select agents and toxins in this Appendix. Individuals seeking an exemption should submit a request to CDC that specifies the agent or strain to be exempted and explains why such an exemption should be granted. Future exemptions will be published in the **Federal Register** for review and comment prior to inclusion in this Appendix."

List of Select Agents and Toxins

The following is the list of select agents and toxins that is being considered for adoption:

Viruses

1. Crimean-Congo haemorrhagic fever virus
2. Eastern Equine Encephalitis virus
3. Ebola viruses
4. Herpes B virus
5. Lassa fever virus
6. Marburg virus
7. Monkeypox virus
8. Nipah and Hendra Complex viruses
9. Rift Valley fever virus
10. South American Haemorrhagic fever viruses (Junin, Machupo, Sabia, Flexal, Guanarito)
11. Tick-borne encephalitis complex (flavi) viruses (Central European Tick-borne encephalitis, Far Eastern Tick-borne encephalitis (Russian Spring and Summer encephalitis, Kyasanur Forest disease, Omsk Hemorrhagic Fever))
12. Variola major virus (Smallpox virus)
13. Venezuelan Equine Encephalitis virus

Bacteria

1. Bacillus anthracis
2. Brucella abortus
3. Brucella melitensis
4. Brucella suis
5. Burkholderia mallei
6. Burkholderia pseudomallei
7. Botulinum neurotoxin producing strains of Clostridium
8. Coxiella burnetii
9. Francisella tularensis
10. Rickettsia prowazekii
11. Rickettsia rickettsii
12. Yersinia pestis

Fungi

1. Coccidioides immitis
2. Coccidioides posadasii

Toxins

1. Abrin
2. Botulinum neurotoxins
3. Clostridium perfringens epsilon toxin
4. Conotoxins
5. Diacetoxyscirpenol
6. Ricin
7. Saxitoxin
8. Shigatoxin and Shiga-like toxins
9. Staphylococcal enterotoxins
10. Tetrodotoxin
11. T–2 toxin

Exemptions: Toxin preparations containing ≤1 mg of Botulinum neurotoxins; ≤10 mg of Staphylococcal enterotoxins; or ≤100 mg of Abrin, Clostridium perfringens epsilon toxin, Conotoxins, Diacetoxyscirpenol, Ricin, Saxitoxin, Shigatoxin and Shiga-like toxins, Tetrodotoxin, or T–2 toxin, are exempt. Toxin preparation stored in more than one location within a facility must be aggregated in determining if the exemption applies. The medical use of toxins for patient treatment are exempt.

Genetic Elements, Recombinant Nucleic Acids, and Recombinant Organisms

1. Full length nucleic acids (synthetic or naturally derived) of any of the viruses listed in Appendix A.

2. Nucleic acids (synthetic or naturally derived) of 100 nucleotides or more in length of Variola major virus (smallpox virus).

3. Nucleic acids (synthetic or naturally derived) of bacteria, fungi, or viruses listed in Appendix A that encode for either a functional toxin or virulence factor sufficient to cause disease if the nucleic acid is: (1) Expressed in vivo or in vitro; (2) in an expression vector or host chromosome; or (3) in a carrier plasmid.

4. Nucleic acids (synthetic or naturally derived) that encode for functional form of any of the toxins listed in Appendix A if: (1) Expressed in vivo or in vitro; (2) in an expression vector or host chromosome; or (3) in a carrier plasmid.

5. Microorganisms in Appendix A that have been genetically modified.

Other Restrictions

The deliberate transfer of a drug resistance trait to microorganisms listed in this Appendix that are not known to acquire the trait naturally is currently prohibited if such acquisition could compromise the use of the drug to control these disease agents in humans or veterinary medicine.

Dated: August 9, 2002.

Julie Louise Gerberding,

Director, Centers for Disease Control and Prevention.

[FR Doc. 02–21512 Filed 8–20–02; 4:01 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH08

Endangered and Threatened Wildlife and Plants; Designations of Critical Habitat for Plant Species From the Island of Molokai, HI

AGENCY: Fish and Wildlife Service, Interior.

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ACTION: Proposed rule; reopening of comment period, and public hearing announcement.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice of a public hearing on the proposed critical habitat designations for 46 plants from the island of Molokai, Hawaii. In addition, the comment period which originally closed on June 4, 2002, will be reopened. The new comment period and hearing will allow all interested parties to submit oral or written comments on the proposal. We are seeking comments or suggestions from the public, other concerned agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

DATES: The comment period for this proposal now closes on September 30, 2002. Any comments received by the closing date will be considered in the final decision on this proposal. The public hearing will be held from 6 p.m. to 8 p.m. on Monday, September 9, 2002, on the island of Molokai, Hawaii. Prior to the public hearing, the Service will be available from 3:30 to 4:30 p.m. to provide information and to answer questions. The Service will also be available for questions after the hearing.

ADDRESSES: The public hearing will be held at the Mitchell Pauole Center Hall, 90 Ainoa Street, Kaunakakai, Hawaii. Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3–122, PO Box 50088, Honolulu, HI 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, at the above address (telephone 808/541–3441, facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

On April 5, 2002, we published a revised proposed critical habitat rule for 46 of the 51 plant species listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), known historically from the island of Molokai (67 FR 16492). The original comment period closed on June 4, 2002. The comment period now closes on September 30, 2002. Written comments should be submitted to us (*see* **ADDRESSES** section).

A total of 51 species historically found on Molokai were listed as endangered or threatened species under the Act between 1991 and 1999. Some of these species may also occur on other Hawaiian islands. Previously, we proposed that designation of critical habitat was prudent for 47 (*Adenophorus periens, Alectryon macrococcus, Bidens wiebkei, Bonamia menziesii, Brighamia rockii, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea mannii, Cyanea procera, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense, Flueggea neowawraea, Hedyotis mannii, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Marsilea villosa, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*) of the 51 species reported from the island of Molokai. No change is made to the 47 proposed prudency determinations in the April 5, 2002, revised proposed critical habitat rule for plants from Molokai. We previously proposed that designation of critical habitat was not prudent for *Pritchardia munroi* because it would likely increase the threats from vandalism or collection of this species on Molokai, and we did not propose critical habitat for this species (65 FR 83158). No change is made to this proposed prudency determination in the April 5, 2002, revised proposed critical habitat rule (67 FR 16492). In the April 5, 2002, revised proposed critical habitat rule, we proposed that designation of critical habitat is prudent for *Eugenia koolauensis*, a species for which a prudency determination has not been made previously. We determined that designation of critical habitat was prudent for *Labordia triflora* and *Melicope munroi* at the time of their listing in 1999.

We also propose designation of critical habitat for 46 (*Adenophorus periens, Alectryon macrococcus, Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea mannii, Cyanea procera, Diellia erecta, Diplazium molokaiense, Eugenia koolauensis, Flueggea neowawraea, Hedyotis mannii, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Marsilea villosa, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*) plant species. Critical habitat is not proposed for four (*Bonamia menziesii, Cyperus trachysanthos, Melicope munroi,* and *Solanum incompletum*) of the 51 species which no longer occur on the island of Molokai, and for which we are unable to identify any habitat that is essential to their conservation on the island of Molokai. Critical habitat is not proposed for *Pritchardia munroi* for the reasons given above. Ten critical habitat units, totaling approximately 17,614 hectares (43,532 acres), are proposed for designation on the island of Molokai. For locations of these proposed units, please consult the proposed rule (67 FR 16492) (April 5, 2002).

Section 4(b)(5)(E) of the Act, requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to a request from a government agency of the State of Hawaii, we will hold a public hearing on the date and at the address described in the **DATES** and **ADDRESSES** sections above.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to us. Legal notices announcing the date, time, and location of the public hearing will be published in newspapers concurrently with the **Federal Register** notice.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Patti Carroll at 503/231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date.

Information regarding this proposal is available in alternate formats upon request.

We will accept public comments on the draft economic analysis until September 11, 2002.

Comments from the public regarding this proposed rule are sought, especially regarding:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1);

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act;

(3) Specific information on the amount, distribution, and quality of habitat for the 46 species, and what habitat is essential to the conservation of the species and why;

(4) Land use practices and current or planned activities in the subject areas, and their possible impacts on proposed critical habitat;

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities; energy development, low income households, and local governments;

(6) Economic and other potential values associated with designating critical habitat for the above plant species such as those derived from non-consumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection, increased soil retention, "existence values", and reductions in administrative costs); and

(7) Information for use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

Reopening of the comment period will enable us to respond to the request for a public hearing on the proposed action. The comment period on this proposal now closes on September 30, 2002. Written comments should be submitted to the Service office listed in the **ADDRESSES** section.

Author

The primary author of this notice is Michelle Mansker (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 14, 2002.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–21626 Filed 8–22–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 081302B]

Mid-Atlantic Fishery Management Council and New England Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of supplemental scoping meetings; request for comments.

SUMMARY: The Mid-Atlantic and New England Fishery Management Councils (Councils) are currently developing Amendment 2 to the Monkfish Fishery Management Plan (FMP), pursuant to the Magnuson- Stevens Fishery Conservation and Management Act of 1976, as amended. Among management measures, the FMP implemented a limited access system which restricts participation in the monkish fishery within Federal waters based on historical participation. The Councils are considering revising the monkfish limited access permit system in Amendment 2 to allow vessels that landed monkfish after the original control date in the southern end of the range of the fishery to qualify for permits.

In January 2002, at one of their regularly scheduled meetings, the Councils provided the public with an opportunity to comment on the monkfish limited access permit system in Amendment 2. Once again, the Councils intend to provide the public with an opportunity to comment on this particular issue. The intended effect of this action is to alert interested public of the commencement of this supplemental scoping process and to provide for public participation.

DATES: The Councils will discuss and take scoping comments on options to amend the monkfish limited access program in Amendment 2 at public meetings in September 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times. Written scoping comments must be received on or before 5 p.m. EST, September 27, 2002.

ADDRESSES: Written comments should be directed to Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, DE 19904–6790. Comments may also be submitted by facsimile (fax) to (302) 674–5399. Comments should be marked "Comments on Monkfish Amendment 2." The Council will not accept unsigned faxes or comments by e-mail.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, telephone (302) 674–2331, ext. 19.

SUPPLEMENTARY INFORMATION:

Background

A notice of intent to prepare a Monkfish Supplemental Environmental Impact Statement (SEIS) and notice of public scoping process was published in the **Federal Register** on December 10, 2001 (66 FR 63666). The purpose of this notice was to initiate the public scoping process to determine the scope of the issues to be included in the SEIS for Amendment 2. In particular, this notice sought public comment on the possibility of revising the monkfish limited access program qualification criteria to include Virginia and North Carolina vessels that were excluded from the qualification criteria due to mis-information regarding the extent of the monkfish fishery management unit in a public hearing document for the initial FMP. The public scoping comment period for Amendment 2 ended on February 11, 2002. This notice announces a supplemental scoping process to seek further public comment on options to address the exclusion of Virginia and North Carolina vessels, or other vessels that may meet the revised limited access criteria, from the monkfish limited access fishery.

Scoping Meetings

The public will have an opportunity to provide oral comments on the options that would potentially amend the monkfish limited access program at the September meeting of the New England Fishery Management Council, and three additional public meetings to be held in September, as described below. The dates, times, and locations of the hearings are scheduled as follows:

1. Wednesday, September 11, 2002, 7–9 p.m.—Roanoke Island Festival Park, One Festival Park, Manteo, NC 27954; telephone: 252–475–1500.

2. Wednesday, September 11, 2002, 6–8 p.m.—Providence Biltmore Hotel, Providence, RI 02903; telephone: 401–421–0700.

3. Thursday, September 12, 2002, 7–10 p.m.—Chincoteague Center, 6155

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Community Drive, Chincoteague, VA 23336; telephone: 757–336–0614.

Special Accommodations

These public meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 19, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–21589 Filed 8–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020724175–2175–01; I.D. 062602E]

RIN 0648–AP71

Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 69 To Revise American Fisheries Act Inshore Cooperative Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Supplemental proposed rule; request for comments.

SUMMARY: NMFS proposes additional changes related to an earlier proposed rule to implement Amendment 69 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This proposed amendment would allow an American Fisheries Act (AFA) inshore cooperative to contract with a non-member vessel to harvest a portion of the cooperative's pollock allocation. The North Pacific Fishery Management Council (Council) developed Amendment 69 to provide greater flexibility to inshore catcher vessel cooperatives to arrange for the harvest of their pollock allocation, and to address potential emergency situations, such as vessel breakdowns, that would prevent a cooperative from harvesting its entire allocation. This action is designed to be consistent with the environmental and socioeconomic objectives of the AFA, the Magnuson-Stevens Fishery Management and Conservation Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

DATES: Comments on the proposed rule must be received on or before October 7, 2002.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Administrator, Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to Federal Building, Fourth Floor, 709 West 9th Street, Juneau, AK, and marked Attn: Lori Gravel. Copies of the Regulatory Impact Review/ Initial Regulatory Flexibility Analysis (RIR/ IRFA) prepared for Amendment 69 may be obtained from NMFS at the above address. Send comments on collection-of-information requirements to the NMFS, Alaska Region and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer). Additional information on the AFA, and the regulations to implement Amendments 61/61/13/8, may be found in the proposed rule to implement Amendments 61/61/13/8, and in the final Environmental Impact Statement prepared for Amendments 61/61/13/8, which is available from NMFS at the addresses noted above.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7650, or *kent.lind@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands Management Area (BSAI) under the FMP. The Council prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and the AFA (Div. C, Title II, Pub. L. No. 105–277, 112 Stat. 2681 (1998)). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council has submitted Amendment 69 for Secretary of Commerce review and a Notice of Availability of the FMP amendment was published in the **Federal Register** on July 5, 2002 (67 FR 44794), with comments on the FMP amendment invited through September 3, 2002. Comments may address the FMP amendment, the proposed rule, or both, but must be received by September 3, 2002, to be considered in the approval/ disapproval decision on the FMP amendment. All comments received by that time, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/ disapproval decision on the FMP amendment.

Background Information on the AFA

The AFA established a limited access program for the inshore sector of the BSAI pollock fishery that is based on the formation of fishery cooperatives around each inshore pollock processor. Under the AFA, if at least 80 percent of the catcher vessels that delivered the majority of their BSAI pollock catch to a specific inshore processor during the previous year form a fishery cooperative, and agree to deliver at least 90 percent of its BSAI pollock catch to that same processor, then NMFS must grant the cooperative an exclusive allocation of BSAI pollock based on the member vessels' catch histories from 1995–1997. NMFS issues a single pollock allocation to each cooperative and the cooperative may make sub-allocations of pollock to each individual vessel owner in the cooperative.

All the inshore cooperative agreements implemented to date have provided each member of the cooperative an allocation of pollock that is proportionate to the member vessel's catch history in a manner determined by the cooperative (generally, the best 2 of 3 years from 1995–1997). In effect, the inshore cooperative program functions as a privately run individual fishing quota in which NMFS assigns overall cooperative allocations and each member vessel is granted by the cooperative the exclusive right to harvest its portion of the cooperative's annual pollock allocation. Each cooperative allows its members to harvest their individual allocations or to "lease" their individual allocations to other members of the cooperative.

NMFS first implemented this inshore cooperative allocation program in 2000 through emergency interim rule (65 FR 4520, January 28, 2000). The program was renewed for 2001 with modifications recommended by the Council that allowed inactive vessels to remain eligible to join fishery cooperatives even if they did not fish for pollock during the previous year (66 FR 7327, January 22, 2001) and again in 2002 (67 FR 956, January 8, 2002).

During the time period when the provisions of the AFA were implemented through interim regulations, the Council and NMFS also undertook the development of a comprehensive FMP amendment package to implement the provisions of the AFA on a permanent basis. These amendments to implement the AFA included: Amendment 61 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, Amendment 61 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, Amendment 13 to the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crab, and Amendment 8 to the Fishery Management Plan for the Scallop Fishery off Alaska (Amendments 61/61/13/8). This proposed Amendment 69 would supersede paragraphs 210(b)(1)(B) and 210(b)(5) of the AFA, to the extent that these paragraphs affect the BSAI groundfish fisheries, which would be implemented by Amendments 61/61/13/8 and currently prohibit such contracts with outside vessels. Amendments 61/61/13/8 were partially approved on February 27, 2002, and a proposed rule to implement the amendments, which includes the operating regulations for inshore catcher vessel cooperatives, was published on December 17, 2001 (66 FR 65028).

Additional information on the AFA, and the regulations to implement Amendments 61/61/13/8, may be found in the proposed rule to implement Amendments 61/61/13/8 (66 FR 65028; December 17, 2001), and in the Environmental Impact Statement prepared for Amendments 61/61/13/8, which is available from NMFS (see **ADDRESSES**).

Purpose and Need for Amendment 69

Several existing regulations and administrative limitations prevent inshore cooperatives from contracting with non-member vessels to harvest a portion of the cooperative's BSAI pollock allocation. First, NMFS recordkeeping and reporting requirements specify that all landings from the BSAI directed pollock fishery that are made by the member vessels of a cooperative must accrue against that cooperative's annual allocation. The NMFS database in its present form automatically assigns a single cooperative code to each AFA catcher vessel (the code representing the cooperative of which the vessel is a member) and therefore precludes a vessel from reporting landings using any different cooperative code during a fishing year. Second, regulations at 50 CFR 679.7(k)(5)(i) prohibit a catcher vessel listed on an AFA inshore cooperative permit to harvest pollock in excess of the cooperative's allocation. This prohibition prevents the member vessels in one cooperative from contracting to harvest a portion of the allocation of another cooperative.

These restrictions, which have the effect of preventing inshore cooperatives from contracting with non-member vessels, are required by subparagraph 210(b)(1)(B) of the AFA, which states:

> Effective January 1, 2000. . . upon the filing of a contract implementing a fishery cooperative under subsection (a) which. . . specifies, except as provided in paragraph (6), that such catcher vessels will deliver pollock in the directed pollock fishery only to such shoreside processor during the year in which the fishery cooperative will be in effect and that such shoreside processor has agreed to process such pollock, the Secretary shall allow only such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) to harvest the aggregate percentage of the directed fishing allowance under section 206(b)(1) in the year in which the fishery cooperative will be in effect that is equivalent to the aggregate total amount of pollock harvested by such catcher vessels (and by such catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) in the directed pollock fishery for processing by the inshore component during 1995, 1996, and 1997 relative to the aggregate total amount of pollock harvested in the directed pollock fishery for processing by the inshore component during such years and shall prevent such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) from harvesting in aggregate in excess of such percentage of such directed fishing allowance.

And also by the last sentence of paragraph 210(b)(5) of the AFA which states:

> . . .A catcher vessel eligible under section 208(a) the catch history of which has been attributed to a fishery cooperative under paragraph (1) during any calendar year may not harvest any pollock apportioned under section 206(b)(1) in such calendar year other than the pollock reserved under paragraph (1) for such fishery cooperative.

The Council developed Amendment 69 to modify these limitations in response to requests from the inshore pollock industry to provide greater harvest flexibility to members of inshore pollock cooperatives. Amendment 69 has three objectives: (1) Increase efficiency and provide catcher vessel owners with a more functional market for leasing of individual pollock allocations, (2) ensure that an inshore cooperative is able to harvest its entire allocation in the event of vessel breakdowns or other unanticipated emergencies, and (3) improve safety by providing greater flexibility for larger catcher vessels to harvest cooperative allocations during hazardous weather in winter months and when Steller sea lion conservation measures require that fishing be done further offshore.

With respect to the first objective, the AFA currently limits the lease market for pollock quota to only those vessels that are members of the same cooperative. In cooperatives where a substantial number of the vessels are owned or controlled by the associated processor, owners of independent catcher vessels may have limited opportunities to lease quota to other independent vessel owners in the same cooperative. The problem could become even more acute at certain times of the year when only plant-owned vessels are operating. In this hypothetical case, an independent catcher vessel owner could have only one potential customer willing to lease his quota and, therefore, may be in a weak bargaining position. This independent catcher vessel owner likely would benefit from a broader market for his pollock allotment. Efficiency could improve if the vessel that is being contracted to harvest the pollock has lower operating costs than the vessel initially granted use rights to the pollock by the cooperative, depending upon the cost and terms of the lease contract.

With respect to the second objective, under existing regulations, if one or more vessels in a cooperative break down or are otherwise out of commission, and the other vessels in the cooperative are already operating at full capacity, a catcher vessel owner could be unable to contract with a replacement vessel to harvest his portion of the cooperative's pollock allocation. An unexpected emergency such as a dockside fire or accidents that disable or destroy several member vessels of a cooperative at the same time could result in the cooperative being unable to harvest a large portion of its annual allocation. This proposed rule would give cooperatives the means to deal with such emergency situations and facilitate their ability to harvest their entire annual allocations.

With respect to the third objective, safety could be improved if the owners of smaller catcher vessels have greater flexibility to enter into contracts with larger (presumably safer) vessels to harvest the smaller vessel's allocation during the more hazardous weather conditions common during winter months and when Steller sea lion protection measures require that fishing be conducted further offshore. Under existing regulations, the owner of a smaller catcher vessel could be under greater pressure to fish in less than safe conditions if he is unable to contract with larger vessels within his cooperative to harvest some or all of his pollock allocation.

Council Authority to Supersede the AFA

Subsection 213(c) of the AFA provides the Council with the following authority to recommend management

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measures to supersede certain provisions of the AFA:

(c) CHANGES TO FISHERY COOPERATIVE LIMITATIONS AND POLLOCK CDQ ALLOCATION. The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act

(1) that supersede the provisions of this title, except for sections 206 and 208, for conservation purposes or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery caused by this title or fishery cooperatives in the directed pollock fishery, provided such measures take into account all factors affecting the fisheries and are imposed fairly and equitably to the extent practicable among and within the sectors in the directed pollock fishery;

(2) that supersede the allocation in section 206(a) for any of the years 2002, 2003, and 2004, upon the finding by such Council that the western Alaska community development quota program for pollock has been adversely affected by the amendments in this title; or

(3) that supersede the criteria required in paragraph (1) of section 210(b) to be used by the Secretary to set the percentage allowed to be harvested by catcher vessels pursuant to a fishery cooperative under such paragraph.

Any measure recommended by the Council that supersedes a specific provision of the AFA must be implemented by FMP amendment in accordance with the Magnuson-Stevens Act. In developing Amendment 69, the Council determined that all three objectives for Amendment 69 meet the criteria established in paragraph 213(c)(1) of the AFA, which states that the Council may recommend measures that supersede the AFA "to mitigate adverse effects . . . on owners of fewer than three vessels in the directed pollock fishery..."

Elements of the Proposed Rule

The proposed rule to implement Amendment 69 contains the following requirements for inshore cooperatives that wish to contract with non-member vessels to harvest a portion of a cooperative's annual BSAI pollock allocation.

Application process. A cooperative that wishes to contract with a vessel that is a member of another inshore cooperative would be required to complete and submit to NMFS a completed vessel contract form. The form would be provided by NMFS and would require that the cooperative identify the contract vessel, the contact vessel's home cooperative, and describe how pollock landings by the contract vessel are to be assigned between cooperatives. Cooperatives would be allowed to contract with a non-member vessel to fish for the cooperative for a certain period of time, or to harvest a certain tonnage of pollock. The contract form also must indicate how any harvest overages by the contract vessel will be treated. A vessel contract form would not be valid unless it was signed by the cooperative's designated representative, the contracted vessel owner, and the designated representative for the vessel's home cooperative. These signatures are necessary to ensure that all affected parties are in agreement as to the terms of the contract and to avoid any disputes about how a contract vessel's catch is to be attributed.

Fishing for multiple cooperatives. Under the proposed rule, a vessel owner could enter into simultaneous contracts with more than one cooperative. This could occur, for example, at the end of a fishing season when several cooperatives have very small remaining allocations and it is more cost-effective for a single vessel to conduct "mop up" operations for several cooperatives at one time than for each individual cooperative to send a separate vessel to harvest the small remaining tonnages of pollock. If a vessel owner wishes to enter into contracts with more than one cooperative at the same time, then all the affected cooperatives would be required to submit their contract applications together and the contract applications would need to specify how the contracted vessel's harvest and any overages are to be assigned among the various cooperatives.

Recordkeeping and reporting requirements. Inshore processors are currently required to report in their shoreside electronic delivery reports the name and co-op code of each vessel that makes a delivery to that processor. Under the proposed rule, this requirement would not change. However each vessel operator would be obligated to correctly identify for the processor the co-op code that should be assigned to each delivery. In the event that a vessel is making a single delivery on behalf of more than one cooperative, the processor would submit a separate delivery report for each cooperative that identifies the tonnage of pollock that is assigned to each cooperative. Cooperatives would be required to report any contracted landings by non-member vessels on their weekly reports to NMFS. Cooperatives also would be required to provide a summary of all contracted fishing by non-member vessels in their preliminary and final annual reports.

Liability. For the purpose of liability, a non-member vessel under contract to a cooperative would be considered to be a member of the cooperative for the duration of the terms of the contract. This means that the members of the cooperative could be held jointly and severally liable for any fishing violations made by the operator of the contracted vessel.

Effects of contract fishing on future qualification for membership. Under the proposed rule, BSAI pollock landings made by a vessel while under contract to another cooperative would not be used to determine the vessel's qualification for future membership in a cooperative. Only landings attributed to the vessel's home cooperative would be used to determine which cooperative the vessel is eligible to join in a future year. The purpose of this measure is to prevent contracted fishing activity from affecting which cooperative a vessel is eligible to join in the subsequent fishing year.

Classification

At this time, NMFS has not determined that the amendment that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an initial regulatory flexibility analysis that describes the economic impact this proposed rule, if adopted, would have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**). A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of the preamble and in the **SUMMARY** section of the preamble and in the IRFA. Implementation of this proposed rule would involve a modification to an existing form to allow a cooperative to identify a non-member vessel with which the cooperative intends to contact. This modification would have no impact on small entities because the reporting and record-keeping burden would be fulfilled entirely by cooperatives, none of which are small entities. NMFS is aware of no existing relevant Federal rules which duplicate, overlap, or conflict with the proposed rule.

The IRFA concluded that no small entities would be directly affected by this proposed rule. Therefore, it is unlikely that the action would result in a significant adverse impact on a substantial number of directly regulated small entities. The basis for this conclusion is set out below:

A total of 100 inshore catcher vessels, six inshore processors (owning eight AFA plants), four communities that are home to those processors, 18 communities where the owners of these vessels reside, and other industry support businesses that could be directly or indirectly impacted by the proposed regulations. Only those entities "directly regulated" under the proposed alternatives are appropriately included in the RFA, based upon Small Business Administration (SBA) guidelines for completion of the IRFA and FRFA. SBA guidelines require that affiliated entities be considered as a single entity when making determinations about size. Because all of the vessels that are members of a cooperative are affiliates of the cooperative (which also includes the processor associated with the cooperative), each cooperative itself is considered a single entity for purposes of size determination. Furthermore, because each cooperative has combined gross revenues exceeding $3.5 million, no such cooperative meets the "small entities" criterion for IRFA purposes. In addition to the catcher vessel cooperatives described above, the remaining entities directly affected by this regulation are the eight AFA inshore processors that receive pollock from catcher vessel cooperatives. All of these processors are considered large entities because they exceed the SBA size criterion for fish processing facilities. Therefore, none of the entities directly regulated by this action are considered small entities for IRFA purposes.

All six of the inshore processors are considered large entities because they employ more than 500 people in their worldwide operations. The processors are also affiliated with their associated cooperative's catcher vessel fleet and that would also cause them to be classified as large entities.

None of the communities involved in the BSAI pollock fishery are directly regulated by this proposed amendment. Therefore, they are not appropriately subjects of the IRFA under SBA guidelines.

In conclusion, the Council's preferred alternative would not likely result in a significant adverse impact on a substantial number of directly regulated small entities. This proposed action does not duplicate, overlap, or conflict with other Federal rules and takes into consideration the BSAI groundfish regulations under part 679 in order to be consistent with the objectives of the FMP.

This rule contains a collection-of-information requirement not subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) because the total universe of respondents is less than 10. Under AFA, the number of inshore cooperatives is limited to no more than 8 because only 8 inshore processors are eligible to process pollock under the AFA and only one cooperative can be associated with each processor. To date, only seven processors have cooperatives associated with them. The eighth processor has not been operating in the BSAI pollock fishery since 1999. Thus, the actual number of respondents is equal to 7 and a theoretical maximum of 8.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 15, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set forth in the preamble, the proposed rule amending 50 CFR part 679 published at 66 FR 65028 (December 17, 2001) is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 is revised to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57.

2. In § 679.4, paragraph (l)(6)(ii)(D)(*2*)(*iii*) is added to read as follows:

§ 679.4 Permits.

* * * * *

(l) * * *

(6) * * *

(ii) * * *

(D) * * *

(*2*) * * *

(*iii*) Harvests under contract to a cooperative. Any landings made by a vessel operating under contract to an inshore cooperative in which it was not a member will not be used to determine eligibility under this paragraph (l)(6)(ii)(D)(*2*).

* * * * *

3. In § 679.7, paragraphs (k)(5)(i) and (k)(5)(ii) are revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(k) * * *

(5) * * * (i) *Quota overages.* Use an AFA catcher vessel listed on an AFA inshore cooperative fishing permit, or under contract to the cooperative under § 679.62(c) to harvest non-CDQ pollock in excess of the cooperative's annual allocation of pollock specified under § 679.62.

(ii) *Liability.* An inshore pollock cooperative is prohibited from exceeding its annual allocation of BSAI pollock TAC. The owners and operators of all vessels listed on the cooperative fishing permit are responsible for ensuring that the operators of all member vessels, and any vessels under contract to the cooperative, comply with all applicable regulations contained in part 679. The owners and operators will be held jointly and severally liable for overages of an annual cooperative allocation, and for any other violation of these regulations committed by a member vessel, or a vessel under contract to the cooperative.

* * * * *

4. In § 679.62. paragraphs (e), (f), and (g) are revised and paragraph (i) is added to read as follows:

§ 679.62 Inshore sector cooperative allocation program.

* * * * *

(e) *What are the restrictions on fishing under a cooperative fishing permit?* A cooperative that receives a cooperative fishing permit under § 679.4(l)(6) must comply with all of the fishing restrictions set out in this section. The owners and operators of all the member vessels that are named on an inshore cooperative fishing permit and the owners and operators of any vessels under contract to the cooperative under paragraph (c) of this section are jointly and severally responsible for compliance with all of the requirements of a cooperative fishing permit.

(f) *What vessels are eligible to fish under an inshore cooperative fishing permit?* Only catcher vessels listed on a cooperative's AFA inshore cooperative fishing permit or vessels under contract to the cooperative under paragraph (i) of this section are permitted to harvest any portion of an inshore cooperative's annual pollock allocation.

(g) *What harvests accrue against an inshore cooperative's annual pollock allocation?* The following catches will accrue against a cooperative's annual pollock allocation regardless of whether the pollock was retained or discarded:

(1) *Member vessels.* All pollock caught by a member vessel while engaged in directed fishing for pollock in the BSAI by a member vessel unless the vessel is under contract to another cooperative and the pollock is assigned to another cooperative.

(2) *Contract vessels.* All pollock contracted for harvest and caught by a

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vessel under contract to the cooperative under paragraph (c) of this section while the vessel was engaged in directed fishing for pollock in the BSAI.

* * * * *

(i) *Contract fishing by non-member vessels.* A cooperative that wishes to contract with a non-member vessel to harvest a portion of the cooperative's annual pollock allocation must comply with the following procedures.

(1) *How does a cooperative contract with a non-member vessel?* A cooperative that wishes to contract with a non-member vessel must submit a completed contract fishing application to the Alaska Region, NMFS, in accordance with the contract fishing application instructions.

(2) *What information must be included on a contract fishing application?* The following information must be included on a contract fishing application:

(i) *Co-op name(s).* The names of the cooperative or cooperatives that wish to contract with a non-member vessel

(ii) *Designated representative(s).* The names and signatures of the designated representatives for the cooperatives that wish to contract with a non-member vessel and the vessel's home cooperative.

(iii) *Vessel name.* The name and AFA permit number of the contracted vessel

(iv) *Vessel owner.* The name and signature of the owner of the contracted vessel

(v) *Harvest schedule.* A completed harvest schedule showing how all catch and any overages by the contracted vessel will be allocated between the contracting cooperative (or cooperatives) and the contract vessel's home cooperative. In the event that multiple cooperatives are jointly contracting with a non-member vessel, the harvest schedule must unambiguously specify how all catch and any overages will be allocated among the various cooperatives.

(3) *What vessels are eligible to conduct contract fishing on behalf of an inshore cooperative?* Only AFA catcher vessels with an inshore fishing endorsement that are members of an inshore cooperative may conduct contract fishing on behalf of another inshore cooperative.

(4) *Who must be informed?* A cooperative that has contracted with a non-member vessel to harvest a portion of its inshore pollock allocation must inform any AFA inshore processors to whom the vessel will deliver pollock while under contract to the cooperative prior to the start of fishing under the contract.

(5) *How must contract fishing be reported to NMFS?* An AFA inshore processor that receives pollock harvested by a vessel under contract to a cooperative must report the delivery to NMFS on the electronic delivery report by using the co-op code for the contracting cooperative rather than the co-op code of the vessel's home cooperative.

[FR Doc. 02–21457 Filed 8–22–02; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 164
Friday, August 23, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–051–1]

International Sanitary and Phytosanitary Standard-Setting Activities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with legislation implementing the results of the Uruguay Round of negotiations under the General Agreement on Tariffs and Trade, we are informing the public of international standard-setting activities of the Office International des Epizooties, the Secretariat of the International Plant Protection Convention, and the North American Plant Protection Organization, and we are soliciting public comment on the standards to be considered.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–051–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–051–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–051–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For general information on the topics covered in this notice, contact Mr. John Greifer, Director, Trade Support Team, International Services, APHIS, Room 1132, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250; (202) 720–7677. For specific information regarding standard-setting activities of the Office International des Epizooties, contact Dr. Michael David, Chief, Sanitary International Standards Team, VS, APHIS, 4700 River Road Unit 33, Riverdale, MD 20737–1231; (301) 734–8093. For specific information regarding the standard-setting activities of the International Plant Protection Convention or the North American Plant Protection Organization, contact Mr. Narcy Klag, Program Manager, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8469.

SUPPLEMENTARY INFORMATION:

Background

The World Trade Organization (WTO) was established as the common international institutional framework for governing trade relations among its members in matters related to the Uruguay Round Agreements. The WTO is the successor organization to the General Agreement on Tariffs and Trade. U.S. membership in the WTO was approved by Congress when it enacted the Uruguay Round Agreements Act (Pub. L. 103–465), which was signed into law by the President on December 8, 1994. The WTO Agreements, which established the WTO, entered into force with respect to the United States on January 1, 1995. The Uruguay Round Agreements Act amended title IV of the Trade Agreements Act of 1979 (19 U.S.C. 2531 *et seq.*). Section 491 of the Trade Agreement Act of 1979, as amended (19 U.S.C. 2578), requires the President to designate an agency to be responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of each international standard-setting organization. The designated agency must inform the public by publishing an annual notice in the **Federal Register** that provides the following information: (1) The SPS standards under consideration or planned for consideration by the international standard-setting organization; and (2) for each SPS standard specified, a description of the consideration or planned consideration of that standard, a statement of whether the United States is participating or plans to participate in the consideration of that standard, the agenda for U.S. participation, if any, and the agency responsible for representing the United States with respect to that standard.

"International standard" is defined in 19 U.S.C. 2578b as any standard, guideline, or recommendation: (1) Adopted by the Codex Alimentarius Commission (Codex) regarding food safety; (2) developed under the auspices of the Office International des Epizooties (OIE) regarding animal health and zoonoses; (3) developed under the auspices of the Secretariat of the International Plant Protection Convention (IPPC) in cooperation with the North American Plant Protection Organization (NAPPO) regarding plant health; or (4) established by or developed under any other international organization agreed to by the member countries of the North American Free Trade Agreement (NAFTA) or the member countries of the WTO.

The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the Secretary of Agriculture as the official responsible for informing the public of the SPS standard-setting activities of Codex, OIE, IPPC, and NAPPO. The United States Department of Agriculture's (USDA's) Food Safety and Inspection Service (FSIS) informs the public of Codex standard-setting activities and Animal and Plant Health Inspection Service (APHIS) informs the public of OIE, IPPC, and NAPPO standard-setting activities.

FSIS publishes an annual notice in the **Federal Register** to inform the public of SPS standard-setting activities for Codex. Codex was created in 1962 by

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two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization. It is the major international organization for encouraging international trade in food and protecting the health and economic interests of consumers.

APHIS publishes notice of OIE, IPPC, and NAPPO activities related to international standards and for representing the United States with respect to these standards.

Following are descriptions of the OIE, IPPC, and NAPPO organizations and the standard-setting agenda for each of these institutions. We have described the agenda that each of these organizations will address at their annual general sessions, including standards that may be presented for adoption or consideration, as well as other initiatives that may be underway at the OIE, IPPC, and NAPPO.

The agendas for these meetings are subject to change, and the draft standards identified in this notice may not be sufficiently developed and ready for adoption as indicated. Also, while it is the intent of the United States to support adoption of international standards and to participate actively and fully in their development, it should be recognized that the U.S. position on a specific draft standard will depend on the acceptability of the final draft. Given the dynamic and interactive nature of the standard-setting process, we encourage any persons who are interested in the most current details about a specific draft standard or the U.S. position on a particular standard-setting issue, or in providing comments on a specific standard that may be under development, to contact APHIS. Contact information is provided at the beginning of this notice under **FOR FURTHER INFORMATION CONTACT**.

OIE Standard-Setting Activities

The OIE was established in Paris, France, in 1924 with the signing of an international agreement by 28 countries. It is currently composed of 162 member nations, each of which is represented by a delegate who, in most cases, is the chief veterinary officer of that country. The WTO has recognized the OIE as the international forum for setting animal health standards, reporting global animal situations and disease status, and presenting guidelines and recommendations on sanitary measures relating to animal health.

The OIE facilitates intergovernmental cooperation to prevent the spread of contagious diseases in animals by sharing scientific research among its members. The major functions of the OIE are to collect and disseminate information on the distribution and occurrence of animal diseases and to ensure that scientifically justified standards govern international trade in animals and animal products. The OIE aims to achieve this through the development and revision of international standards for diagnostic tests, vaccines, and the safe international trade of animals and animal products.

The OIE provides annual reports on the global distribution of animal diseases, recognizes the free status of member countries for certain diseases, categorizes animal diseases with respect to their international significance, publishes bulletins on global disease status, and provides animal disease control guidelines to member countries.

The various OIE commissions and working groups undertake the initial analysis and preparation of draft standards, which are then circulated to member countries for consultation (review and comment). Draft standards are revised accordingly and then presented to the OIE General Session, which meets annually every May, for review and adoption. Adoption, as a general rule, is based on consensus of the OIE membership.

The next OIE General Session is scheduled for May 18–24, 2003, in Paris, France. The Associate Administrator for APHIS' Veterinary Services is the official U.S. delegate to the OIE. The Associate Administrator intends to participate in the proceedings and will discuss or comment on APHIS' position on any standard up for adoption. Information about current and past OIE draft Code chapters may be found at *http://www.aphis.usda.gov/vs/ncie/oie/* or by contacting Dr. Michael David (see **FOR FURTHER INFORMATION CONTACT** above).

OIE Code Chapters Up for Adoption

Existing Code chapters that may be revised and new chapters that may be drafted in preparation for the next General Session in 2003 include the following:

1. Infectious Bursal Disease (IBD)

This is a disease of poultry. This existing chapter will be revised to incorporate contemporary scientific knowledge about IBD (*e.g.*, new knowledge regarding surveillance for the disease, testing, *etc.*). These changes may affect current OIE export certification standards for products that may be affected with IBD.

2. Guidelines for Conducting a Risk Assessment on Bovine Spongiform Encephalopathy (BSE) in Cattle

This is intended to provide guidance on conducting a risk assessment that identifies all potential factors for BSE occurrence and their historic perspective in a nation's cattle herd. These factors include: the feeding of meat-and-bone meal or greaves of ruminant origin; the importation of meat-and-bone meal or greaves potentially contaminated with a transmissible spongiform encephalopathy (TSE) or feedstuffs containing either; importation of animals or embryos/oocytes potentially infected with a TSE; epidemiological situation concerning all animal TSEs in the country or zone; extent of knowledge of the population structure of cattle, sheep, and goats in the country or zone; and the origin of any unprocessed animal by-products, the parameters of the rendering processes and the methods of animal feed production.

3. Maedi-visna

This is a disease of sheep and goats. This would represent a new OIE Code chapter. The Chapter will provide recommendations for the trade of sheep and goats and their products as it pertains to Maedi-visna.

4. Traceability

This represents a new undertaking for OIE in the area of animal health and is intended to provide guidance on traceability, or the tracking of animals and animal products throughout their production system.

5. Guidelines on the Judgment of Equivalence

This represents a new undertaking for OIE and is intended to provide guidance on making equivalency determinations in the area of animal health.

As a matter of process, these chapters are drafted (or revised) by ad hoc groups composed of technical experts nominated by the OIE Code Commission by virtue of their subject-area expertise (not their national affiliation). Once the ad hoc expert group completes its task of drafting a new chapter or revising an existing one, the chapter is then distributed to member countries for review and comment. Historically, the OIE has distributed the proposed or revised Code chapters to its member countries by late October of each year. However, this year the OIE will try to provide proposed chapters by early September to allow Member States more time for comment. The draft standard is revised by the OIE Code Commission on the basis of relevant scientific comments received from member countries.

The United States (*i.e.*, USDA/APHIS) intends to review and, where appropriate, comment on all draft chapter revisions once it receives them from the OIE. USDA/APHIS intends to distribute these drafts to the U.S. livestock industry, veterinary experts in various U.S. academic institutions, and other interested persons for review and comment. The drafts will be posted on the Internet at *http://www.aphis.usda.gov/vs/ncie/oie/*. Hence, U.S. comments submitted to the OIE will be based on APHIS' analysis and relevant scientific information received from various domestic commenters. Additional information regarding these draft standards may be obtained by contacting Dr. Michael David (see **FOR FURTHER INFORMATION CONTACT** above).

Generally, if a country has concerns with a particular draft standard, and supports those concerns with sound technical information, the OIE Code Commission will revise that standard accordingly and present the revised draft for adoption at the General Session in May. In the event that a country's concerns regarding a draft standard are not taken into account, that country may refuse to support the standard when it comes up for adoption at the General Session. However, each member country is obligated to review, comment, and make decisions regarding the adoption of standards strictly on their scientific merits.

OIE Future Work Program

In the next few years, the OIE Code Commission is expected to address the following issues or establish ad hoc groups of experts to update and/or develop the standards for the following issues:

1. Animal Welfare

This represents an effort to develop principles that can be applied to different animal welfare standards, such as housing, transportation, and slaughter. The United States will consider its position on this new standard after it reviews a prepared draft.

2. Food Safety

This represents an effort to reduce the public health risks in food from microbiological, chemical, and other risk factors at the farm level and prior to slaughter and would be accomplished by working more closely (strengthening relationships) with the relevant international organizations such as Codex, FAO, and WHO. The United States will consider its position on this new standard after it reviews a prepared draft.

3. Avian Influenza, Foot and Mouth Disease, and BSE

These represent revisions to existing chapters. The United States will consider its position on these new standards after it reviews a prepared draft.

4. Diseases of Bees

This represents a revision to or updating of an existing OIE Code chapter. This chapter, which addresses most diseases of honeybees, including mites, will be revised to incorporate changes in scientific knowledge about various honeybee diseases. This chapter will continue to provide guidance for certifying honeybee packages and queen bees for export purposes. The United States will consider its position on this new standard after it reviews a prepared draft.

5. BSE in Small Ruminants

This would be a new OIE Code chapter intended to provide guidance for export certification of sheep and goats and their products. The United States will consider its position on this new standard after it reviews a prepared draft.

Other OIE Topics

Every year at the General Session, two technical items are presented. For the May 2003 General Session, the following technical items will be presented:

1. The socioeconomic impact of animal diseases.
2. Regionalization as an instrument for preventing the propagation of diseases, including those of camelids.

The information in this notice includes all the information currently available to us on OIE standards currently under development or consideration. Information on OIE standards is available on the Internet at *http://www.oie.int*. Further, a formal agenda for the next General Session will be available to member countries in February 2003, and copies will be available to the public once the agenda is published. For the most current information on meeting times, working groups, and/or meeting agendas, including information on official U.S. participation in OIE activities, and U.S. positions on standards being considered, contact Dr. Michael David (*see* **FOR FURTHER INFORMATION CONTACT** above). Those wishing to provide comments on any areas of work under the OIE may do so at any time by responding to this notice (see **ADDRESSES** above) or by providing comments through Dr. David.

IPPC Standard-Setting Activities

The IPPC is a multilateral convention adopted in 1952 for the purpose of securing common and effective action to prevent the spread and introduction of pests of plants and plant products and to promote appropriate measures for their control. Under the IPPC, the understanding of plant protection has been, and continues to be, broad, encompassing the protection of both cultivated and noncultivated plants from direct or indirect injury by plant pests. Activities addressed by the IPPC include the development and establishment of international plant health standards, the harmonization of phytosanitary activities through emerging standards, the facilitation of the exchange of official and scientific information among countries, and the furnishing of technical assistance to developing countries that are signatories to the IPPC.

The IPPC is placed under the authority of the FAO, and the members of the Secretariat of the IPPC are appointed by the FAO. The IPPC is implemented by national plant protection organizations in cooperation with regional plant protection organizations, the Interim Commission on Phytosanitary Measures (ICPM), and the Secretariat of the IPPC. The United States plays a major role in all standard-setting activities under the IPPC and has representation on FAO's highest governing body, the FAO Conference.

The United States became a contracting party to the IPPC in 1972 and has been actively involved in furthering the work of the IPPC ever since. The IPPC was amended in 1979, and the amended version entered into force in 1991 after two-thirds of the contracting countries accepted the amendment. More recently, in 1997, contracting parties completed negotiations on further amendments that were approved by the FAO Conference and submitted to the parties for acceptance. This 1997 amendment updated phytosanitary concepts and formalized the standard-setting structure within the IPPC. The 1997 amended version of the IPPC will enter into force once two-thirds of the current contracting parties notify the Director General of FAO of their acceptance of the amendment. At this date, 39 of the required 72 member countries have deposited their official letters of acceptance. The U.S. Senate gave its advice and consent to acceptance of the newly revised IPPC on October 18,

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2000. The President submitted the official letter of acceptance to the FAO Director General on October 4, 2001.

The IPPC has been, and continues to be, administered at the national level by plant quarantine officials whose primary objective is to safeguard plant resources from injurious pests. In the United States, the national plant protection organization is APHIS' Plant Protection and Quarantine (PPQ) program. The steps for developing a standard under the revised IPPC are described below.

Step 1

Proposals for a new international standard for phytosanitary measures (ISPM) or for the review or revision of an existing ISPM are submitted to the Secretariat of the IPPC in the form of a discussion paper accompanied by a topic or draft standard. Drafts can be submitted by individual countries, but are more commonly submitted by regional plant protection organizations (RPPO's). Alternately, the Secretariat can propose a new standard or amendments to existing standards.

Step 2

A summary of proposals is submitted by the Secretariat to the ICPM. The ICPM identifies the topics and priorities for standard setting from among the proposals submitted to the Secretariat and others that may be raised by the ICPM.

Step 3

Specifications for the standards identified as priorities by the ICPM are drafted by the Secretariat. The draft specifications are submitted to the Standards Committee for approval/amendment and are subsequently made available to members and RPPO's for comment (60 days). Comments are submitted in writing to the Secretariat. Taking into account the comments, the Standards Committee finalizes the specifications.

Step 4

The standard is drafted or revised in accordance with the specifications by a working group designated by the Standards Committee. The resulting draft standard is submitted to the Standards Committee for review.

Step 5

Draft standards approved by the Standards Committee are distributed to members by the Secretariat and RPPO's for consultation (120 days). Comments are submitted in writing to the Secretariat. Where appropriate, the Standards Committee may establish open-ended discussion groups as forums for further comment. The Secretariat summarizes the comments and submits them to the Standards Committee.

Step 6

Taking into account the comments, the Secretariat, in cooperation with the Standards Committee, revises the draft standard. The Standards Committee submits the final version to the ICPM for adoption.

Step 7

The ISPM is established through formal adoption by the ICPM according to Rule X of the Rules of Procedure of the ICPM.

Step 8

Review of the ISPM is completed by the specified date or such other date as may be agreed upon by the ICPM.

Each member country is represented on the ICPM by a single delegate. Although experts and advisers may accompany the delegate to meetings of the ICPM, only the delegate (or an authorized alternate) may represent each member country in considering a standard up for approval. Parties involved in a vote by the ICPM are to make every effort to reach agreement on all matters by consensus. Only after all efforts to reach a consensus have been exhausted may a decision on a standard be passed by a vote of two-thirds of delegates present and voting.

Technical experts from the United States have participated directly in working groups and indirectly as reviewers of all IPPC draft standards. In addition, documents and positions developed by APHIS and NAPPO have served as the basis for many of the standards adopted to date. This notice describes each of the IPPC standards currently under consideration or up for adoption. The full text of each standard will be available on the APHIS Internet Web site at *http://www.aphis.usda.gov/ppq/pim/standards/*. Interested individuals may review the standards posted on this website and submit comments via the website.

The next ICPM meeting is scheduled for April 7–11, 2003, at FAO Headquarters in Rome, Italy. The Deputy Administrator for APHIS' PPQ programs is the U.S. delegate to the ICPM. The Deputy Administrator intends to participate in the proceedings and will discuss or comment on APHIS' position on any standard up for adoption. The provisional agenda for the meeting is as follows:

Provisional Agenda for the Fourth Interim Commission on Phytosanitary Measures

1. Opening of the session.
2. Adoption of the agenda.
3. Report by the chairperson.
4. Report by the Secretariat.
5. Adoption of international standards (*see* section below entitled "IPPC Standards Up for Adoption in 2003" for details).
6. Items arising from the Third Session of the ICPM (*see* section below entitled "New Standard Setting Initiatives" for details).
7. Work program for harmonization.
8. Status of the 1997 revised IPPC.
9. Other business.
10. Date and venue of the next meeting.
11. Adoption of the report.

IPPC Standards Up for Adoption in 2003

It is expected that the following standards will be sufficiently developed to be considered by the ICPM for adoption at its April 2003 meeting. The United States, represented by APHIS' Deputy Administrator for PPQ, will participate in the consideration of these standards. The U.S. position on each of these issues will be developed prior to the ICPM session and will be based on APHIS' analysis, information from other U.S. Government agencies, and relevant scientific information from interested stakeholders. The standards that are most likely to be considered for adoption include:

1. Environmental Impact of Quarantine Pests

This work will supplement and strengthen the existing standard on "Pest Risk Analysis for Quarantine Pests" by providing detailed guidelines for evaluating the environmental impacts of quarantine pests, including quarantine pests that are invasive. This standard was reviewed and edited by the Standards Panel and was entered into the country consultation phase during the early part of 2002. The Standards Panel will review comments from consultation and prepare the final draft. The expectation is that the standard will be completed and ready for ICPM approval in 2003. The United States intends to support adoption of this draft standard, assuming it is ready for such consideration.

2. Economic Importance

The ICPM (at its third meeting) agreed on the need to develop guidelines to clarify the meaning and scope of "economic importance"—a term found in the pest risk analysis (PRA) standard, in the definition of quarantine pest, and other IPPC documents. The goal is to ensure a common understanding that "economic importance" of pest introduction may include monetary and/or non-monetary impacts (*e.g.*, pest impacts on wild flora or the environment which may be difficult to express in dollar terms). Such guidelines will help clarify the scope of the IPPC as covering not only agriculturally significant pests, but also pests which may be harmful to wild flora or non-cultivated systems. This standard was reviewed and edited by the Standards Panel and was entered into the country consultation phase during the early part of 2002. The Standards Panel will review comments from consultation and prepare the final draft. The goal is to have a guideline prepared for ICPM approval in 2003. The United States intends to support adoption of this draft standard assuming it is ready for such consideration.

3. Guidelines for the Use of Irradiation as a Phytosanitary Measure

This standard provides technical guidance for the evaluation, adoption, and use of irradiation as a phytosanitary treatment. It is designed to encourage consistency by providing essential information concerning the technical and operational aspects of using irradiation as a treatment for plant pests. This standard is important as it provides an alternative to the use of methyl bromide as a treatment for quarantine pests. This standard was reviewed and edited by the Standards Panel and was entered into the country consultation phase during the early part of 2002. The Standards Panel will review comments from consultation and prepare the final draft. The goal is to have a guideline prepared for ICPM approval in 2003. The United States intends to support adoption of this draft standard assuming it is ready for such consideration.

New Standard-Setting Initiatives, Including Those in Development

A number of expert working group meetings or other technical consultations will take place during 2002 and early 2003 on the topics listed below. These standard-setting initiatives are not expected to be completed prior to March 2003 and, therefore, will not be ready for adoption at the 2003 ICPM session. Nonetheless, APHIS intends to participate actively and fully in each of these working groups. The U.S. position on each of the topics to be addressed by these various working groups will be developed prior to these working group meetings and will be based on APHIS' technical analysis, information from other U.S. Government agencies, and relevant scientific information from interested stakeholders.

1. Living Modified Organisms (LMOs) Standard

At its third annual meeting in 2001, the ICPM agreed on the need to develop a phytosanitary standard for assessing potential pest risks associated with LMOs. The goal of this standard is to provide clear and comprehensive guidance on the conduct of PRA procedures as regards the phytosanitary risks that may be presented by LMOs. Accordingly, this standard will take into account: Existing PRA procedures and standards (IPPC and others that may be relevant); relevant hazards and methods for the evaluation of the potential phytosanitary risks presented by LMOs; and, the goal of ensuring a PRA procedure for LMOs that is consistent with relevant aspects of the Cartagena Protocol. The target date for completion of the LMO standard is 2004.

2. Efficacy of Phytosanitary Measures

ICPM consensus exists on the need to develop a standard for evaluating the efficacy of phytosanitary measures. The goal is to ensure the development of guidelines for evaluating phytosanitary measures on a consistent, rigorous, and sound basis and providing IPPC recognition of those which meet established criteria. This standard will be critical for supporting future commodity specific standards (*e.g.* hot water treatment for fruit flies) as well as the development of IPPC guidelines for making "equivalency" determinations. Work on this standard will begin in 2002 with the goal of having the standard ready for ICPM approval in 2004.

3. Guidelines for Equivalence

It is recognized that different phytosanitary measures can provide equivalent plant health protection for the purpose of international trade. This standard will provide guidelines for assessing and comparing different phytosanitary measures in order to make equivalency determinations. This standard will be directly linked to the draft standards work, currently underway, related to "efficacy of measures." ICPM members agreed on the need to establish criteria and guidance for evaluating the efficacy of measures (*i.e.*, treatments, systems, *etc.*) prior to developing guidelines for equivalence.

4. Guidelines for Surveillance for Specific Pests (Citrus Canker)

This specific surveillance standard will describe the components of survey and monitoring systems for the purpose of detecting citrus canker and generating the necessary data for use in pest risk analyses and the establishment of pest-free areas. During the course of work on this particular standard, there have emerged substantial differences of opinion among experts regarding several aspects of the standard, particularly the appropriate statistical levels for survey. Work will continue on this draft standard in 2002 with the goal of having it ready for ICPM approval in 2004.

5. Pest Risk Analysis for Regulated Non-Quarantine Pests

Certain pests that are not quarantine pests may be subject to phytosanitary regulations and procedures because their presence above a specific level results in economically unacceptable impacts associated with the intended use of the plants. Under the IPPC, such pests are referred to as "regulated non-quarantine pests." The classification of a pest as a regulated non-quarantine pest and any restrictions placed on the importation of the plant species with which it is associated must be justified by pest risk analysis. This standard will provide guidance for conducting an appropriate PRA necessary to demonstrate that importation of a particular plant for propagation may result in an unacceptable impact and to guide subsequent risk management decisions. The goal is to have this standard ready for ICPM approval in 2004.

6. Guidelines for an Import Regulatory System

A first draft was considered by an IPPC working group in 1997. Since then the draft has undergone several revisions. In November 2001, the IPPC Interim Standards Committee recommended that a small working group be organized to consider the latest draft. The primary issue is the level of detail that the standard will contain as regards structural and operational aspects of import regulatory systems. The group met in February 2002 and developed a revised edition. This draft will be reviewed by the Standards Panel in November 2002.

7. Inspection Methodology

The first draft of the standard on inspection methodology was prepared in 1995. Since then the draft standard has undergone several revisions and has been distributed to members for their formal review (1999). An expert group

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may be convened in the near future to consider the draft standard in light of Members' comments.

8. Pest Listing

The IPPC requires contracting parties to establish and update lists of regulated pests for phytosanitary certification purposes. A working group is drafting standardized guidelines for meeting these obligations. These draft guidelines will describe lists of regulated pests, the purpose of the guidelines, and their relationship to phytosanitary certification procedures. There were some serious reservations by several countries after country consultations, however, these concerns have now been resolved with those countries. Work will continue on this draft standard in 2002 with the goal of having it ready for ICPM approval in 2004.

For more detailed information on the above topics, which will be addressed by various working groups established by the ICPM, contact Mr. Narcy Klag (*see* **FOR FURTHER INFORMATION CONTACT** above).

Also, APHIS posts draft standards on the Internet (*http://www.aphis.usda.gov/ppq/pim/standards*) as they become available and provides information on when comments on standards are due. Additional information on IPPC standards is available on the FAO's Web site at *http://www.ippc.int*. For the most current information on official U.S. participation in IPPC activities, including U.S. positions on standards being considered, contact Mr. Narcy Klag (*see* **FOR FURTHER INFORMATION CONTACT** above). Those wishing to provide comments on any of the areas of work being undertaken by the IPPC may do so at any time by responding to this notice (see **ADDRESSES** above) or by providing comments through Mr. Klag.

NAPPO Standard-Setting Activities

NAPPO, a regional plant protection organization created in 1976 under the IPPC, coordinates the efforts among Canada, the United States, and Mexico to protect their plant resources from the entry, establishment, and spread of harmful plant pests, while facilitating intra- and inter-regional trade.

NAPPO conducts its business through panels and annual meetings held among the three member countries. The NAPPO Executive Committee charges individual panels with the responsibility for drawing up proposals for NAPPO positions, policies, and standards. These panels are made up of representatives from each member country who have scientific expertise related to the policy or standard being considered.

Proposals drawn up by the individual panels are circulated for review to government and industry officials in Canada, Mexico, and the United States, who may suggest revisions. In the United States, draft standards are circulated to industry, States, and various Government agencies for consideration and comment. The draft standards are posted on the Internet at *http://www.aphis.usda.gov/ppq/standards;* interested persons may submit comments via that Web site. Once revisions are made, the proposal is sent to the NAPPO working group and the NAPPO standards panel for technical reviews and then to the Executive Committee for final approval, which is granted by consensus.

The annual NAPPO meeting is scheduled for October 21–25, 2002, in Oaxaca, Mexico. The NAPPO Executive Committee meeting will take place on October 20, and a special session will be held on October 21 to solicit the input of industry groups so that suggestions can be incorporated into the NAPPO work plan. The Deputy Administrator for APHIS' PPQ programs is a member of the NAPPO Executive Committee. The Deputy Administrator intends to participate in the proceedings and will discuss or comment on APHIS' position on any standard up for adoption or any proposals to develop new standards.

The work plan for 2002 was established after the October 2001 Annual Meeting in San Diego, CA. The Deputy Administrator for PPQ participated in establishing this NAPPO work plan (*see* panel assignments below).

Below is a summary of current panel assignments as they relate to the ongoing development of NAPPO standards. USDA/APHIS intends to participate actively and fully in the work of each of these panels. The U.S. position on each topic will be guided and informed by the best scientific information available on each of these topics. For each of the following panels, the United States will consider its position on any draft standard after it reviews a prepared draft. Information regarding the following NAPPO panel topics, assignments, and activities, and updates on meeting times and locations, may be obtained from the NAPPO home page at *http://www.nappo.org* or by contacting Mr. Narcy Klag (*see* **FOR FURTHER INFORMATION CONTACT** above).

1. Accreditation Panel (Inspector Accreditation)

This panel will work towards facilitating the proper implementation of the standard "Accreditation of Individuals to Sign Federal Phytosanitary Certificates." A review of the U.S. system was conducted in June 2001 and a review of the Canadian system was conducted in early 2002. A review of Mexico's system will follow. A written report will be provided to the Executive Committee.

2. Biological Control Panel

This panel will work on developing a standard for biological control facilities.

3. Biotechnology Panel

This panel will continue to develop a NAPPO standard for the review of products of biotechnology that focuses on the assessment of the potential to present a plant pest risk. Modules for unconfined field release and importation of transgenic material for uses other than planting will be drafted.

4. Citrus Panel

The panel will continue to work on the standard for the entry of citrus propagative material into NAPPO member countries.

5. Forestry Panel

The panel will work on trying to harmonize, between NAPPO countries, the implementation of the international standard for wood packaging material.

6. Fruit Panel

The panel will finalize the standard "Verification and Maintenance of Fruit Fly-Free Areas." Approval of this standard by the NAPPO Executive Committee is expected this year.

7. Fruit Tree Panel

The panel will finalize the standard "NAPPO Guidelines for the Safe Movement of Plum Pox Host Material."

8. Grapevine Panel

This panel will finalize the NAPPO grapevine standard and prepare it for approval by the NAPPO Executive Committee.

9. Pest Risk Analysis Panel

This panel will coordinate NAPPO input on the development of the IPPC standard entitled "Pest Risk Analysis for Regulated Non-Quarantine Pests."

10. Phytosanitary Alert System

This panel will finalize the NAPPO standard on pest reporting. The standard should be approved by the Executive Committee this year.

11. Potato Panel

This panel will review and revise the NAPPO Potato Standard pest list and then conduct in-country consultations regarding pest status.

12. Potato Technical Advisory Group

This ad-hoc panel will prepare the minituber production guidelines for North America for country consultations.

13. Standards Panel

This panel is responsible for the following: Providing updates on standards for the NAPPO newsletter; coordinating the review of new and amended NAPPO standards and ensuring that comments received during the country consultation phase are incorporated as appropriate; organizing conference calls and preparing NAPPO discussion documents for possible use at the IPPC; and promoting implementation of recently adopted IPPC standards. The panel will finalize a NAPPO standard for implementing the recently adopted IPPC standard "Notification of Interceptions and Non-Compliance" and will finalize a standard for developing bilateral workplans.

The PPQ Deputy Administrator, as the official U.S. delegate to NAPPO, intends to participate in the adoption of those regional plant health standards, including the work described above, once they are completed and ready for such consideration.

The information in this notice includes all the information available to us on NAPPO standards currently under development or consideration. For updates on meeting times and for information on the working panels that may become available following publication of this notice, check the NAPPO Web page on the Internet at *http://www.nappo.org* or contact Mr. Narcy Klag (*see* **FOR FURTHER INFORMATION CONTACT** above). Information on official U.S. participation in NAPPO activities, including U.S. positions on standards being considered, may also be obtained from Mr. Klag. Those wishing to provide comments on any of the topics being addressed by any of the NAPPO panels may do so at any time by responding to this notice (*see* **ADDRESSES** above) or by transmitting comments through Mr. Klag.

Done in Washington, DC, this 19th day of August, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–21539 Filed 8–22–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Rocky Mountain Ranger District Access and Travel Management Plan EIS, Lewis and Clark National Forest; Glacier, Pondera, Teton, and Lewis & Clark Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to develop a travel management plan to regulate motorized and non-motorized travel on roads and trails on lands administered by the Rocky Mountain Ranger District, also known as the Rocky Mountain Division of the Lewis and Clark National Forest. Approximately 392,000 acres of National Forest System lands are contained within the analysis area. Designated wilderness areas that are part of the Rocky Mountain Ranger District will *not* be included in this effort. The purpose of the project is to evaluate the impacts of motorized and non-motorized travel within the planning area, and to identify and select an action alternative that allows recreational use and enjoyment of the National Forest System lands,, minimizes resource damage, reduces adverse effects to terrestrial and aquatic species, and mitigates or reduces conflicts between types of uses. Needs for securing additional legal public access routes to reach National Forest System lands will be identified and discussed, but no decision will be made on acquiring specific routes.

DATES: Comments concerning the scope of the analysis should be received on or before 45 days after publication of this notice in the **Federal Register**.

ADDRESSES: Send written comments to Rick Prausa, Forest Supervisor, Lewis and Clark National Forest, 1101 15th Street, North, Box 869, Great Falls, MT 59401. People sending comments electronically can do so by putting "Rocky Mountain Front Travel Plan" on the subject line of their e-mail to r1 lewisclark *comments@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Dick Schwecke, EIS Team Leader (406) 791–7700.

SUPPLEMENTARY INFORMATION: This project addresses travel management planning on one of the seven mountain ranges managed partly or entirely by the Lewis and Clark National Forest. The Rocky Mountain Ranger District project includes approximately 392,000 acres, which is about 21% of the Lewis and Clark National Forest. Approximately 385,900 acres of designated wilderness areas that are part of the Rocky Mountain Ranger District will not be included in this effort. The purpose of this project is to evaluate the impacts of motorized and non-motorized travel on existing roads and trails within the planning area. The Forest Service intends to identify action alternatives that provide for public access, use, and enjoyment of the Lewis and Clark National Forest, while also minimizing resource damage, reducing adverse effects to terrestrial and aquatic species, and mitigating or reducing conflicts between types of uses. The project is intended to focus on identifying the types of use and season of use that would be appropriate on roads, trails, and specific areas within the mountain range to be analyzed.

Public Involvement. The Forest Service will be seeking information, comments and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in, or affected by, the proposed action. Comments received will be included in the documentation for the EIS. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. While public participation in this analysis is welcome at any time, comments received within 45 days of the publication of this notice will be especially useful in the preparation of the Draft EIS. The scoping process will include identifying: potential issues, significant issues to be analyzed in depth, alternatives to the proposed action, and potential environmental effects of the proposal and alternatives.

Estimated Dates for Filing. The Draft EIS for the Rocky Mountain Ranger District Access and Travel Management Plan is expected to be available for public review by March 2003. The comment period on the draft EIS will be 45 days. It is very important that those interested in the management of this area participate at that time. The final EIS is scheduled to be completed by October 2003. In the final EIS, the Forest Service is required to respond to comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

The Reviewers Obligation to Comment. The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings

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related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the review's position and contentions. (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. (*Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed actions participate by the close of the 45-day comment period so that substantive comments and objects are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statements.

To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on the draft environmental impact statements should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statements. Comments may also address the adequacy of the draft environmental impact statements or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments on the draft EIS should be directed to the responsible official: Rick Prausa, Forest Supervisor, Lewis and Clark National Forest, 1101 15th Street North, Great Falls, MT 59401.

Dated: August 19, 2002.

Rick Prausa,

Forest Supervisor.

[FR Doc. 02–21540 Filed 8–22–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Sanders County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Lolo and Kootenai National Forests' Sanders County Resource Advisory Committee will meet on August 27 at 6 p.m. in Thompson Falls, Montana for a business meeting. The meeting is open to the public.

DATES: August 27, 2002.

ADDRESSES: The meeting will be held at the Thompson Falls Courthouse, 1111 Main Street, Thompson Falls, MT 59873.

FOR FURTHER INFORMATION CONTACT: Lisa Krueger, Designated Forest Official (DFO), District Ranger Plains/Thompson Falls District, Lolo National Forest at (406) 826–4321, or Brian Avery, District Ranger, Cabinet Ranger District, Kootenai National Forest at (406) 827–3533.

SUPPLEMENTARY INFORMATION: If the meeting location is changed, notice will be posted in the local newspapers, including the Clark Fork Valley Press, the Sanders County Ledger, Daily Interlake and the Missoulian.

Dated: August 16, 2002.

Brian Avery,

Committee Coordinator, District Ranger, Cabinet Ranger District.

[FR Doc. 02–21541 Filed 8–22–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AB94

Clarification of Extraordinary Circumstances for Categories of Actions Excluded From Documentation in an Environmental Assessment or an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of final interim directive.

SUMMARY: The Forest Service is adopting an Interim Directive to guide employees in complying with the National Environmental Policy Act and the Council on Environmental Quality (CEQ) regulations for certain actions which can be categorically excluded from documentation in an environmental assessment or an environmental impact statement. The Interim Directive clarifies the consideration of extraordinary circumstances as they apply to categorical exclusions. The intent of this Interim Directive is to facilitate employees' consistent interpretation and application of CEQ regulations and related agency policy.

EFFECTIVE DATE: This Interim Directive No. 1909.15–2002–2 is effective August 23, 2002.

ADDRESSES: This Interim Directive is available electronically from the Forest Service via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives.* Single paper copies of this Interim Directive also are available by contacting Dave Sire, Forest Service, USDA, Ecosystem Management Coordination Staff (Mail Stop 1104), 1400 Independence Avenue, SW., Washington, DC 20250–1104.

FOR FURTHER INFORMATION CONTACT: Dave Sire, Ecosystem Management Coordination Staff, 202–205–2935, or Julia Riber, Ecosystem Management Coordination Staff, 406–329–3678.

SUPPLEMENTARY INFORMATION: On September 20, 2001, the Forest Service published a proposed Interim Directive to Forest Service Handbook (FSH) 1909.15, Chapter 30, which would partially revise the agency's direction on the use of categorical exclusions (66 FR 48412). The intent of this proposed Interim Directive was to assist employees in interpreting and complying with the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations for certain actions which can be categorically excluded from documentation in an environmental assessment (EA) or an environmental impact statement (EIS). The proposed Interim Directive would have added three new categories for special use authorizations involving administrative changes when no changes are proposed in the authorized activities or facilities. The proposal also included a modification of handbook text to clarify agency policy concerning extraordinary circumstances.

Nearly 26,000 responses in the form of letters, postcards, and e-mail messages were received during the 60-day comment period. These comments came from private citizens, elected officials, and from groups and individuals representing businesses, private organizations, and Federal agencies. Responses consisted of over 800 original letters and over 25,000 form letters.

Public comment on the Interim Directive addressed a wide range of topics, many of which were directed at general Forest Service management direction, particularly the management of roadless areas. Most comments revealed a significant split in opinion on

the proposal. Many people opposed the proposed Interim Directive or recommended further restriction of the use of categorical exclusions, while many others supported the proposed Interim Directive or favored further expansion of the use of categorical exclusions. Some respondents agreed that existing direction concerning extraordinary circumstances needs clarification.

Because of the volume and nature of comments received on the proposed Interim Directive, the agency has decided to separate the special uses categorical exclusions portion of the proposal from the clarification of extraordinary circumstances. Accordingly, this notice addresses only those comments received on the direction concerning extraordinary circumstances. A separate notice will be published later to address comments on categorical exclusions for the issuance of certain special use authorizations.

Previous Direction

Forest Service Handbook 1909.15, Chapter 30, includes direction for consideration of extraordinary circumstances when Responsible Officials are contemplating categorical exclusion of a proposed action from further analysis and documentation in an EA or EIS.

Prior to this present action, direction on extraordinary circumstances was last revised in 1992. At section 30.5, extraordinary circumstances were defined as conditions associated with a normally excluded action that are identified during scoping as potentially having effects which may significantly affect the environment. At section 30.3, paragraph 2, extraordinary circumstances were described as including, but not limited to the presence of, the following: steep slopes or highly erosive soils; threatened or endangered species or their critical habitat; flood plains, wetlands, or municipal watersheds; Congressionally designated areas such as wilderness, wilderness study areas, or national recreation areas; inventoried roadless areas; research natural areas; and Native American religious or cultural sites, archeological sites, or historic properties or areas. Paragraph 3 of section 30.3 stated that scoping is required on all proposed actions, including those that would appear to be categorically excluded. Moreover, this paragraph provided that if scoping indicated that extraordinary circumstances are present and it was uncertain that the proposed action may have a significant effect on the environment, then personnel must prepare an EA. If scoping indicated that the proposed action may have a significant environmental effect, an EIS would be prepared.

Summary of the Proposed Clarification of Extraordinary Circumstances

Public and employee confusion has risen with regard to the 1992 direction on the application of a categorical exclusion to a proposed action when a listed resource condition is present. The proposed revisions to Handbook sections 30.3 and 30.5 were intended to clarify the agency's intent that the presence of a listed resource condition in section 30.3, paragraph 2 does not automatically preclude use of a categorical exclusion. The proposed revisions to sections 30.3 and 30.5 included the following:

- *Section 30.3, paragraph 1b.* References were made to the definition of extraordinary circumstances in section 30.5 and policy in paragraph 2 of section 30.3. Extraordinary circumstances were qualified as instances that could result in significant environmental effect.
- *Section 30.3, paragraph 2.* Extraordinary circumstances were qualified, stating that extraordinary circumstances occur when a proposed action would have a significant effect on the resource conditions set out in paragraphs 2a through 2g. The proposal went on to state that the Responsible Official may issue a categorical exclusion even when one or more of the resources conditions listed in paragraphs 2a through 2g are present, but only if the official determines on a case-by-case basis that the proposed action would not have a significant effect on the listed resource conditions.
- *Section 30.3, paragraph 3.* Two sentences were removed, which described when to prepare an EA and when to prepare an EIS.
- *Section 30.3, paragraph 4.* A sentence was added to the paragraph reminding readers to consider the need to evaluate new information or changed circumstances if implementing an action that has already been analyzed and documented.
- *Section 30.5.* Extraordinary circumstances were defined as instances where a proposed action normally excluded from documentation in a EA or EIS is identified as having a significant effect on resource conditions set out in section 30.3, paragraphs 2a through 2g.

In response to comment on the proposed Interim Directive, published September 20, 2001, the agency has further refined the Interim Directive as described in the following summary of comments.

Comments on the Need for the Interim Directive

Comment: Many respondents believe that there is no need for the proposed changes. They believe that proposed actions can be analyzed with a concise EA if necessary and, therefore, there is no need to clarify the definition of extraordinary circumstances. Others expressed strong disapproval of the agency's use of categorical exclusions altogether and recommended either further restricting their use or a complete elimination of categorical exclusions.

Response: The CEQ regulations (40 CFR 1500.4(p)) encourage the appropriate use of categorical exclusions to reduce paperwork and unnecessary delays. The agency believes that its use of categorical exclusions has been and continues to be appropriate. The agency further believes that the time and expense required by even the most concise EA's is not justified for those actions that qualify for categorical exclusion. Therefore, the agency remains committed to issuance of an Interim Directive.

Comment: Many respondents believe Forest Service direction contained in the 1992 definition (57 FR 43180) of extraordinary circumstances clearly prohibits the use of a categorical exclusion whenever the action takes place in the presence of the resource conditions listed in paragraph 2 of section 30.3 and, therefore, there is no need for clarification.

Response: The Forest Service does not agree. The agency has long held in administrative appeal reviews and in litigation that the mere presence of these resource conditions does not necessarily preclude use of categorical exclusions. Since 1992, handbook direction has focused on the effects of a proposed action in determining if a categorical exclusion is appropriate. As stated in section 30.3, paragraph 3 as adopted in 1992, if uncertainty exists over the significance of environmental effects, a categorical exclusion would not be appropriate.

Comments on Compliance With Law and Regulation

Comment: Citing various court rulings over the use of categorical exclusions when extraordinary circumstances exist, some respondents claimed that the proposed Interim Directive would violate CEQ regulations for implementing NEPA. They claim that it is inappropriate to use categorical exclusions when extraordinary circumstances are present.

Response: The proposal that was issued for comment in September of

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2001, described paragraphs 2a through 2g as resource conditions and attempted to clarify that it is the degree of the potential effect of a proposed action on those resource conditions that determines the existence of extraordinary circumstances. In response to comment, chapter 30.3, paragraph 3 has been further modified in the final policy to emphasize that it is the uncertainty over significance of the effects of a proposed action that requires preparation of an EA. Paragraph 2 in section 30.3 lists resource conditions that should be considered in determining whether extraordinary circumstances related to the proposed action warrant additional analysis and documentation in an EA or EIS. The list of resource conditions in paragraph 2 does not preclude consideration of other factors or conditions that the Responsible Official may deem appropriate. Paragraph 2 has also been modified to emphasize that it is the degree of the potential effect of a proposed action on those resource conditions that determines the existence of extraordinary circumstances. This direction is consistent with CEQ regulations requiring that agencies provide for extraordinary circumstances.

Comment: Some respondents believe that the proposed Interim Directive would change the type of activities that may occur within the habitat of threatened and endangered species and that the Forest Service should formally consult with the U.S. Fish and Wildlife Service on this proposal as required by the Endangered Species Act.

Response: The agency has determined that this revision itself will have no effect on threatened or endangered species or their habitat. The proposed Interim Directive will not change the types of activities that may occur within the habitat of threatened and endangered species. Therefore, consultation with the U.S. Fish and Wildlife Service is not required. Any categorically excluded actions proposed within the habitat of threatened or endangered species are still subject to the consultation requirements of the Endangered Species Act.

Comment: Some respondents believe that the proposed Interim Directive would change the types of activities that may occur on American Indian or Alaska Native religious or cultural sites and that the Forest Service should consult with Tribes on this proposal as required by the National Historic Preservation Act and implementing regulations.

Response: The Forest Service wants to reassure these respondents that the Interim Directive would not change the types of activities it may authorize on or near American Indian and Alaska Native religious or cultural sites. The Interim Directive only clarifies agency policy regarding extraordinary circumstances, which has no effect on religious or cultural sites. Therefore, consultation with Tribes is not required for the promulgation of this Interim Directive.

Comment: Some respondents feel that the proposed change to the Forest Service Handbook section on extraordinary circumstances would change the assumption upon which all the categories listed in chapter 30 were created, specifically, how the use of each category of actions would be constrained by extraordinary circumstances. Therefore, respondents believe that additional effects analysis is now necessary to reassess whether each category of actions does or does not individually or cumulatively have a significant effect on the environment in compliance with the CEQ regulations on categorical exclusions.

Response: The Interim Directive merely clarifies current policy concerning extraordinary circumstances. This Interim Directive does not change the assumptions upon which the categories of actions listed in chapter 30 were created. Therefore, the agency's conclusion that the categories of actions listed in chapter 30 have no individually or cumulatively significant environmental impacts remains unchanged.

Comments on Public Participation

Comment: A considerable amount of comment revolved around the Interim Directive's effect on the public's role in decisionmaking. Many respondents are concerned that the proposal would increase the use of categorical exclusions and thereby decrease the public's opportunity for involvement and oversight of the management of National Forest System lands. Other respondents think that scoping is not warranted for actions that may be categorically excluded.

Response: Forest Service direction requires scoping for all proposed actions subject to NEPA (FSH 1909.15, section 11). Through scoping, the Forest Service identifies any important issues, identifies interested and affected persons, and determines the extent of analysis and documentation that will be necessary for the Responsible Official to make an informed decision on a proposed action. One integral part of this scoping process is determining the appropriate level of public participation. Forest Service Handbook 1909.15, section 11, directs the Responsible Official to consider options for involving potentially interested and affected agencies, organizations, and persons in the analysis process commensurate with public interest in the proposed action, regardless of the type of documentation used.

Comment: Respondents were also concerned that more decisions will be made through a categorical exclusion and, consequently, fewer decisions will be appealable.

Response: As previously noted, the purpose of this Interim Directive is to clarify existing NEPA procedures, not to broaden the use of categorical exclusions. Additionally, appeal of decisions is addressed in the regulations at 36 CFR part 215, not in the agency's NEPA procedures. In a separate effort, the agency is currently reviewing the appeal regulations. If the agency proposes any changes to the appeal regulations, the public will be provided with notice and an opportunity to comment.

Comments on Impacts

Comment: Many of the respondents who were opposed to the proposed Interim Directive feel that any increase in the use of categorical exclusions represents a reduction in environmental review and the use of science in decisionmaking. As a result, they feel that the proposed Interim Directive could result in adverse impacts to National Forest System lands and resources, including roadless areas, wilderness areas, national recreation areas, threatened and endangered species, American Indian sacred sites, and archeological sites.

Response: Categorical exclusions are to be used for routine actions that have been found by the agency through repeated environmental review to have no significant environmental effects either individually or cumulatively. Final direction in paragraph 2 of section 30.3 now requires consideration of whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or EIS. Final direction in paragraph 3 of section 30.3 emphasizes that an EA is the appropriate form of documentation when the significance of effects is uncertain.

Additionally, the Forest Service is required to comply with all applicable laws, regulations, and policies for every action it undertakes on National Forest System lands. Therefore, all actions, even those that are excluded from documentation in an EA or an EIS, must comply with laws and regulations governing the protection of resources, such as roadless areas, wilderness, national recreation areas, threatened and endangered species, American Indian sacred sites, and archeological sites.

Comments on the Interim Directive

Comment: Some respondents questioned how long the Interim Directive (ID) would be in effect or under what circumstances it would terminate.

Response: As was stated in the preamble for the proposed directives published in the September 20, 2001, **Federal Register** (66 FR 48412), the changes are being made through an ID only for administrative efficiency. The agency is proposing modifications to other parts of this chapter; for example, the agency has proposed to add three new categories for certain special use authorizations. Additionally, previously issued IDs need to be incorporated into Chapter 30. In accordance with its policies on directive issuances the agency has chosen to issue this clarification of extraordinary circumstances as an ID. The agency will give notice when Chapter 30 is amended to incorporate these IDs.

Comments on Section 30.3 Policy

Comment: Many respondents contend that the proposed Interim Directive does not comply with the definition of categorical exclusion contained in the CEQ regulations and, therefore, violates NEPA. They were concerned that the proposed language would eliminate the possibility of ever doing an EA for an action listed in the categories. They feared that instead the proposed Interim Directive would lead to a situation where an internal review could be used to determine whether the project may have a significant effect on the environment, which would be in direct conflict with the CEQ establishment of the EA as the appropriate method of determining if a project may have significant effects.

Response: The agency agrees that the language in both the preamble and the proposed directive could be interpreted to bypass the EA process. Therefore, the agency has modified the text in the final Interim Directive to address these concerns. The proposed language and the confusion that resulted from it led to a great many of the concerns voiced by those who were opposed to the proposal. The agency agrees with the numerous respondents who indicated that if there is a question regarding whether environmental effects may be significant, a categorical exclusion would not be appropriate. In response, the final policy reinstates the language of paragraph 3, which states that it is the uncertainty over significance of the effects of a proposed action that requires preparation of an EA. The proposed Interim Directive at 30.3, paragraph 2, stated that extraordinary circumstances occur when a proposed action would have a significant effect on a set of listed resource conditions. Paragraph 2 now identifies a list of resource conditions that, if present, require the Responsible Official to consider whether extraordinary circumstances related to a proposed action warrant analysis in an EA or EIS. Paragraph 2 also states that the mere presence of these resources does not preclude use of a categorical exclusion. In response to contentions that the definition of extraordinary circumstances is not consistent with the CEQ regulations, the final policy does not contain a definition of extraordinary circumstances. The CEQ regulations direct agencies not to paraphrase the regulations, but to supplement them. The agency sees little value in expanding on CEQ's use of the term "extraordinary circumstances". The agency's final policy, therefore, relies on the context in which CEQ uses the term and provides for extraordinary circumstances as directed by the CEQ regulations at 40 CFR 1508.4.

Comment: Some respondents objected to the concept that a Responsible Official can make a case-by-case analysis of whether a proposed action has extraordinary circumstances and, therefore, whether or not it can be excluded from documentation in an EA or EIS. They did not think this complies with CEQ regulatory requirements for an agency to develop specific criteria and classes of actions for categorical exclusions.

Response: The CEQ regulations at 40 CFR 1507.3 direct agencies to include specific criteria for and identification of those typical classes of actions that normally do not require either an EA or EIS. Those categories of actions are identified along with appropriate criteria for their use in handbook sections 31.1b and 31.2. The agency believes that an appropriate evaluation of the potential effects of a proposed action can and should be made by the Responsible Official prior to the placement of the proposed action in a category for exclusion. The text in paragraphs 2 and 3 of section 30.3 have been modified to emphasize that the Responsible Official determines whether or not extraordinary circumstances exist, and further, when it is appropriate to prepare an EA or an EIS.

Comment: A few respondents suggested that the directive should include clear guidelines by which a Responsible Official can determine when the use of a categorical exclusion is appropriate. Other respondents stated that Forest Service officials have the expertise to assess the relationship between the proposed action and extraordinary circumstances and, therefore, it is appropriate for them to determine the level of NEPA analysis necessary for a proposed action.

Response: Forest Service Handbook, section 11.6, directs Responsible Officials to determine the appropriate level of analysis and documentation based upon the nature of the proposed action; preliminary issues associated with the proposed action; interested and affected agencies, organizations, and individuals; and the extent of existing available documentation. The list of resource conditions (sec. 30.3, para. 2) that require consideration of whether extraordinary circumstances related to the proposed action warrant analysis in an EA or EIS provide sufficient guidance for Responsible Officials to determine the appropriate level of analysis and documentation for a proposed action.

Comment: A few respondents commented that the terms "steep slopes" and "highly erosive soils" were ambiguous and out of date.

Response: The agency agrees that these terms could be subjective and has removed them from paragraph 2 in the final policy.

Comment: The addition of proposed and sensitive species to the list of resource conditions for extraordinary circumstances elicited paradoxical responses from respondents. Those generally favoring the overall new language for extraordinary circumstances opposed this specific change, while those generally opposed to the overall new language for extraordinary circumstances endorsed this part of the Interim Directive.

Response: Paragraph 3 of the final Interim Directive emphasizes that the Responsible Official must determine, based on scoping, whether uncertainty exists over the significance of effects of a proposed action. Additionally, paragraph 2 now indicates that the occurrence of sensitive species requires consideration of whether extraordinary circumstances related to the proposed action warrant analysis in an EA or EIS. Together these two paragraphs address the concerns of both those in favor and those who opposed the proposal.

Comment: One respondent suggested defining the term "sensitive" in the Interim Directive so that it is not open to interpretation.

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Response: Generally, the agency avoids defining terms that are already defined in other places within its directive system. Almost all of the terms used in the definition of extraordinary circumstances are defined in other places in the Forest Service Handbook or Manual. In this case, the terms "endangered, threatened, and sensitive species" and "designated and proposed critical habitat" are already defined in Forest Service Manual (FSM) 2670. Sensitive species are defined in FSM 2670 as those plant and animal species identified by a Regional Forester for which population viability is a concern.

Comment: Many respondents feel it is inappropriate to use categorical exclusions in some specific areas such as roadless areas, wilderness areas, and municipal watersheds. They point out that, under the proposed interpretation of extraordinary circumstances, the agency could now perform logging, mining, and the construction of roads and motorized trails and utility lines in these areas without the documentation and analysis required by an EA or an EIS.

Response: The agency has responded to this fear by revising proposed paragraphs 2 and 3. Paragraph 3 emphasizes that the Responsible Official must determine, based on scoping whether uncertainty exists over the significance of effects of a proposed action. Paragraph 2 now indicates that occurrence of specific areas such as roadless areas, wilderness areas, and municipal watersheds requires consideration of whether extraordinary circumstances related to the proposed action warrant analysis in an EA or EIS.

Comment: One respondent suggested that the American Indian and Alaska Native religious or cultural sites should be a separate extraordinary circumstance rather than combined with archeological and historic properties or areas.

Response: Paragraph 2 in the final policy separates American Indian and Alaska Native religious or cultural sites from historic properties.

Comment: One respondent objected to the Forest Service proposal to remove the sentences in section 30.3, paragraph 3 that refer to when it is appropriate to document an analysis with an EA or an EIS instead of categorically excluding a proposed action.

Response: After careful consideration, the agency has determined that the direction is clearer if the sentences on EA's and EIS's are included and, therefore, has reinstated them.

Comment: One respondent felt that the language in section 30.3, paragraph 4 regarding when new information triggers additional NEPA analysis was not clear.

Response: After careful review, paragraph 4 has been removed. It may have had purpose during early implementation of NEPA, but it merely repeats direction already contained in Chapter 10, section 18.

Comments on Section 30.5 Definitions

Comment: One respondent was concerned that the new definition of extraordinary circumstances in section 30.5 omitted the phrase "during scoping". He felt that phrase was needed in the definition to make it clear that scoping is an important step in determining which projects may be categorically excluded.

Response: The agency shares that concern and has responded by putting these references to scoping back into paragraph 3. The first of these sentences states that if the Responsible Official determines, based on scoping that it is uncertain whether the proposed action may have a significant effect on the environment, an EA must be prepared. The definition of extraordinary circumstances has been removed in the final policy. The agency's final policy relies on the context in which CEQ uses the term and provides for extraordinary circumstances in paragraph 2, as directed by the CEQ regulations at 40 CFR 1508.4.

Environmental Impact

Comment: Some respondents stated that because the Interim Directive addresses extraordinary circumstances, the Forest Service must prepare an environmental assessment or an environmental impact statement on the proposed Interim Directive to comply with NEPA.

Response: Forest Service Handbook 1909.15, section 31.1b (57 FR 43180), excludes from documentation in an environmental assessment or environmental impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." This Interim Directive to FSH 1909.15 falls within this category of actions. The handbook by definition (Forest Service Manual Chapter 1110; 36 CFR 200.4) sets out procedures and technical instructions for complying with CEQ's regulations. Although the proposed clarification directly addresses extraordinary circumstances, it merely provides guidance and does not compel any activities to occur. Therefore, regardless of the interpretation of the agency's 1992 policy, the agency has found that there are no extraordinary circumstances related to this Interim Directive that would result in a significant environmental effect. The procedural and technical nature of the proposed change, and the finding that no extraordinary circumstances exist, lead the agency to conclude that preparation of environmental impact statement or environmental assessment is not required for this Interim Directive. In addition, pursuant to 40 CFR 1505.1 and 1507.3, the agency has consulted with the Council on Environmental Quality (CEQ) to ensure full compliance with the purposes and provisions of NEPA and the CEQ implementing regulations.

Regulatory Impact

This final Interim Directive has been reviewed under USDA procedures and Executive Order 12866, Regulatory Planning and Review. It has been determined that this is not a significant action. This action to clarify agency direction will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This action will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this action is not subject to Office of Management and Budget review under Executive Order 12866.

Moreover, the final Interim Directive has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it is hereby certified that the final Interim Directive will not have a significant economic impact on a substantial number of small entities as defined by the act because it will not impose record-keeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

Federalism and Consultation and Coordination With Indian Tribal Governments

The agency has considered this final Interim Directive under the requirements of Executive Order 13132, Federalism, and has concluded that the final Interim Directive conforms with the federalism principles set out in this Executive order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary.

Moreover, this final Interim Directive does not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and therefore advance consultation with tribes was not required.

No Takings Implications

This final Interim Directive has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the final Interim Directive does not pose the risk of a taking of Constitutionally protected private property.

Civil Justice Reform Act

This final Interim Directive has been reviewed under Executive Order 12988, Civil Justice Reform. It, (1) Preempts all State and local laws and regulations that are in conflict with this proposed Interim Directive or which would impede its full implementation; (2) has no retroactive effects; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this interim final directive on State, local, and tribal governments and the private sector. This interim final directive does not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Energy Effects

This final Interim Directive has been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this final Interim Directive does not constitute a significant energy action as defined in the Executive order.

Controlling Paperwork Burdens on the Public

This final Interim Directive does not contain any additional record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use, and therefore, imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Conclusion

Having considered the comments received, the Forest Service is adopting an Interim Directive that clarifies direction regarding consideration of extraordinary circumstances for categories of actions that can be excluded from documentation in an EA or an EIS. This change is being implemented through the issuance of an Interim Directive to FSH 1909.15, Environmental Policy and Procedures Handbook, Chapter 30. Although an Interim Directive (ID) expires in 18 months from its issue date, the clarification of extraordinary circumstances is intended to be a permanent revision. The text of this Interim Directive, along with other Interim Directives, will be incorporated into a revision of the entire Chapter 30 soon.

Dated: August 13, 2002.

Sally Collins,

Associate Chief.

Text of Final Interim Directive

Note: The Forest Service organizes its directive system by alphanumeric codes and subject headings. Only those sections of the Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures Handbook, affected by this policy are included in this notice. The intended audience for this direction is Forest Service employees charged with project planning and environmental analysis. Selected headings and existing text are provided to assist the reader in placing the revised direction in context. Paper and electronic copies of this Interim Directive and the entire chapter 30 of FSH 1909.15 are available as set out in the **ADDRESSES** section at the beginning of this notice.

FSH 1909.15—Environmental Policy and Procedures Handbook

Chapter 30—Categorical Exclusion From Documentation

30.3 Policy.

1. A proposed action may be categorically excluded from further analysis and documentation in an environmental impact statement (EIS) or environmental assessment (EA) only if there are no extraordinary circumstances related to the proposed action and if:

a. The proposed action is within one of the categories in the Department of Agriculture (USDA) NEPA policies and procedures in 7 CFR part 1b, or

b. The proposed action is within a category listed in section 31.1b or 31.2.

2. Resource conditions that should be considered in determining whether extraordinary circumstances related to the proposed action warrant further analysis and documentation in an EA or an EIS are:

a. Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species;

b. Flood plains, wetlands, or municipal watersheds.

c. Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas.

d. Inventoried roadless areas.

e. Research natural areas.

f. American Indian and Alaska Native religious or cultural sites.

g. Archaeological sites, or historic properties or areas.

The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion. It is the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.

3. Scoping is required on all proposed actions, including those that would appear to be categorically excluded. If the Responsible Official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA (ch. 40). If the Responsible Official determines, based on scoping, that the proposed action may have a significant environmental effect, prepare an EIS (ch. 20).

(Direction in paragraph 4 is removed.)

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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Otter Creek Watershed Supplemental Plan Number 5, Iowa County, Wisconsin

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Otter Creek Watershed Supplemental Plan Number 5, Iowa County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Tom Krapf, Water Resources Staff Leader, Natural Resources Conservation Service, 6515 Watts Road, Suite 200, Madison, Wisconsin, 53719. Telephone (608) 276–8732.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Patricia S. Leavenworth, State Conservationist has determined that the preparation and review of an environmental impact statement are not needed for this project. The project purpose is flood prevention and recreation. The planned works of improvement include the repair of the dam and improvement of the coldwater discharge flow. The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Thomas Krapf.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: August 15, 2002.

Patricia S. Leavenworth,

State Conservationist.

[FR Doc. 02–21494 Filed 8–22–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue five revised conservation practice standards in Section IV of the FOTG. The revised standards are: Mulching (484), Lined Waterway or Outlet (468), Conservation Cover (327), Tree/Shrub Establishment (612), and Pest Management (595).

These practices may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to *darrell.brown@in.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: July 22, 2002.

Jane E. Hardisty,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 02–21495 Filed 8–22–02; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 22, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: MOLLE II Carrier Sleep System,
8465–01–465–2124
8465–01–465–7508.
NPA: Alabama Industries for the Blind, Talladega, Alabama.
NPA: Industries of the Blind, Inc., Greensboro, North Carolina.
NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.
Product/NSN: Mop, Deck, Rayon Refill, M.R. 1028.
NPA: Arizona Industries for the Blind, Phoenix, Arizona.
NPA: Mississippi Industries for the Blind, Jackson, Mississippi.
NPA: New York City Industries for the Blind, Brooklyn, New York.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
Product/NSN: Mop, Deck, Cotton Refill, M.R. 1029.
NPA: Arizona Industries for the Blind, Phoenix, Arizona.
NPA: Mississippi Industries for the Blind, Jackson, Mississippi.
NPA: New York City Industries for the Blind, Brooklyn, New York.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

The following products have been proposed for deletion from the Procurement List:

Products

Product/NSN: Executive/Personal Time Management System, 7510–01–450–5423 (Pocket Planning Set—2000), 7510–01–450–5428 (Pocket Planning Set—2001), 7510–01–450–5435 (Pocket Planning Set—2002), 7510–01–463–0798 (2000 Tabbed Monthly—3 hole), 7510–01–463–0799 (2000 Tabbed Monthly—7 hole), 7510–01–463–0801 (Daymax Tabbed Monthly—7 hole), 7510–01–463–0803 (Daymax Tabbed Monthly—3 hole), 7530–01–458–3130 (LE Black), 7530–00–D16–0057 (Organizer, Day Planner, Travel Size).
NPA: The Easter Seal Society of Western Pennsylvania, Pittsburgh, Pennsylvania.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–21564 Filed 8–22–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List product previously furnished by such agencies.

EFFECTIVE DATE: September 22, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On May 17, June 28, and July 5, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 35096, 43482, and 44808) of proposed additions to and deletions from the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and services and impact of the additions on the current or most recent contractors, the Committee has determined that the product and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. The action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

Accordingly, the following product and services are added to the Procurement List:

Product

Product/NSN: Sash Cord, 4020–00–551–3343.
NPA: East Texas Lighthouse for the Blind, Tyler, Texas.
Contract Activity: GSA, General Products Center, Fort Worth, Texas.

Services

Service Type/Location: Base Supply Center, Headquarters U.S. Army Infantry Center, Fort Benning, Georgia.
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Contract Activity: Headquarters U.S. Army Infantry Center, Fort Benning, Georgia.
Service Type/Location: Fulfillment Services, Veterans Affairs Blind Rehabilitation Center, Augusta, Georgia.
NPA: Columbia Lighthouse for the Blind, Washington, DC.
Contract Activity: Veterans Affairs Medical Center, Columbia, South Carolina.
Service Type/Location: Janitorial/Custodial, Air Traffic Control Tower, Indianapolis, Indiana.
NPA: Child-Adult Resource Services, Inc., Green Castle, Indiana.
Contract Activity: Federal Aviation Administration, Des Plains, Illinois.
Service Type/Location: Janitorial/Custodial, Air Traffic Control Tower, Peoria, Illinois.
NPA: Community Workshop & Training Center, Peoria, Illinois.
Contract Activity: Federal Aviation Administration, Des Plains, Illinois.
Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Danville, Illinois.
NPA: Rehab Products & Services, Danville, Illinois.
Contract Activity: HQ, 88th Regional Support Command, Fort Snelling, Minnesota.
Service Type/Location: Mailing Services, USDA, Animal and Plant Health Inspection Service, Food Safety Inspection Service, Minneapolis, Minnesota.
NPA: Tasks Unlimited, Inc., Minneapolis, Minnesota.
Contract Activity: Animal & Plant Health Inspection Service, Minneapolis.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

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2. The action will not have a severe economic impact on future contractors for the products.

3. The action may result in authorizing small entities to furnish the products to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

After consideration of the relevant matter presented, the committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following products are hereby deleted from the Procurement List:

Products

Product/NSN: Harness Assembly, 1660–00–066–2078.
NPA: Human Technologies Corporation, Utica, New York.
Contract Activity: Defense Supply Center—Richmond, Richmond, Virginia.

Product/NSN: Insert, Foam, Laminated, 8135–00–NSH–0002.
NPA: None currently authorized.
Contract Activity: Bureau of the Mint, Department of the Treasury, Washington, DC.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 02–21565 Filed 8–22–02; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 010209034–2188–05]

Qualifying Urban Areas for Census 2000; Correction

AGENCY: Bureau of the Census, Department of Commerce.
ACTION: Notice.

SUMMARY: On May 1, 2002 (67 FR 21962), the Bureau of the Census (Census Bureau) published a **Federal Register** Notice listing the areas that qualified as urbanized areas and urban clusters based on the results of Census 2000. The Census Bureau is correcting the lists of urbanized areas and urban clusters, and also is modifying the area and population of a few urbanized areas and urban clusters by adding small amounts of territory to selected urbanized areas and urban clusters. Most of the corrections are the results of clerical errors.

EFFECTIVE DATE: August 23, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Marx, Chief, Geography Division, U.S. Census Bureau, 4700 Silver Hill Road, Stop 7400, Washington, DC 20233–7400; telephone (301) 457–2131; e-mail at: *ua@geo.census.gov*.

SUPPLEMENTARY INFORMATION: On May 1, 2002 (67 FR 21962), the Census Bureau published a **Federal Register** Notice listing the areas that qualified as urbanized areas and urban clusters based on the results of Census 2000. The Census Bureau is correcting the lists of urbanized areas and urban clusters, and also is modifying the area and population of a few urbanized areas and urban clusters by adding small amounts of territory to selected urbanized areas and urban clusters.

The Census Bureau is providing the following corrections to the original Notice.

Page 21963, Column 1, Section A.1.: The Census Bureau is removing Hagåtña, GU, from the list of new urbanized areas and designating the area as an urban cluster. The Census Bureau is making this correction as a result of a correction to the "Urban Area Criteria for Census 2000" notice (67 FR 11663; March 15, 2002). The criteria correction is being published in a separate Notice in this issue of the **Federal Register**. The criteria correction, which affects only Guam, excludes the criterion for designating urbanized areas in Guam and allows urban clusters in Guam to have a population of 50,000 or more.

Page 21963, Column 1, Section A.1.: The Census Bureau is adding Hanford, CA, to the list of new urbanized areas. The Hanford, CA, Urbanized Area includes the area of the former Census 2000 Hanford, CA, Urban Cluster and the Lemoore, CA, Urban Cluster. The Census Bureau is making this correction to resolve a clerical error.

Page 21963, Column 3, Section A.3.: The Census Bureau is merging the previously identified San Rafael—Novato, CA, Urbanized Area with the San Francisco—Oakland, CA, Urbanized Area. The text will now read, "Concord, CA; Livermore, CA; San Francisco—Oakland, CA; and Vallejo, CA (San Francisco—Oakland, CA)." The Census Bureau is making this correction to resolve a clerical error.

Page 21963, Column 3, Section A.5.: The text for the Anchorage, AK, note incorrectly referenced the "Northwest Anchorage, AK urban cluster (UC)." The urban cluster name is Anchorage Northeast. The text is corrected to read "Anchorage, AK: does not include the separate Anchorage Northeast, AK urban cluster (UC), which was defined from part of the 1990 census UA." The Census Bureau is making this correction to resolve a clerical error.

Page 21965, Column 3, Section B., List of Urbanized Areas: "Denver—Aurora, CO 1,984,887" is corrected to read "Denver—Aurora, CO 1,984,889." This correction is made to resolve a clerical error.

Page 21966, Column 1, Section B., List of Urbanized Areas: "Fort Collins, CO 206,633" is corrected to read "Fort Collins, CO 206,757." This correction is being made to resolve a clerical error.

Page 21966, Column 1, Section B., List of Urbanized Areas: Delete "Hagåtña, GU 132,241" from the list of urbanized areas. The Census Bureau is making this correction as a result of a correction to the "Urban Area Criteria for Census 2000" notice (67 FR 11663; March 15, 2002). The correction Notice changes the designation of Hagåtña, GU, from an urbanized area to an urban cluster. The criteria correction is being published in a separate Notice in this issue of the **Federal Register**.

Page 21966, Column 1, Section B., List of Urbanized Areas: Add "Hanford, CA 69,639" to the list of urbanized areas. This correction is made to resolve a clerical error.

Page 21966, Column 1, Section B., List of Urbanized Areas: "Holland, MI 91,795" is corrected to read "Holland, MI 91,921." This correction is made to resolve a clerical error.

Page 21967, Column 1, Section B., List of Urbanized Areas: "San Francisco—Oakland, CA 2,995,769" is corrected to read "San Francisco—Oakland, CA 3,228,605." This correction is made to resolve a clerical error and reflects the merging of the previously identified San Rafael—Novato, CA Urbanized Area with the San Francisco—Oakland, CA Urbanized Area.

Page 21967, Column 1, Section B., List of Urbanized Areas: Delete "San Rafael—Novato, CA 232,836" from the list of urbanized areas. This change is being made to resolve a clerical error and reflects the merger of this previously identified area with the San Francisco—Oakland, CA Urbanized Area.

The Census Bureau is providing the following additional information. The corrections below do not directly affect the text in the original Notice, but they provide important information.

The Census Bureau is merging the Coamo, PR, Urban Cluster and the Salinas—Coco, PR, Urban Cluster to form the Coamo, PR, Urban Cluster with a population of 46,065. This correction is made to resolve a clerical error.

The Census Bureau is adding Hagåtña, GU, to the list of urban clusters. This correction is being made as a result of a correction to the Urban Area Criteria for Census 2000 that changes the designation of Hagåtña, GU, from an urbanized area to an urban cluster.

The Census Bureau is making very minor changes to several urbanized areas and urban clusters by adding census blocks; most of these blocks consist only of water. These changes are being made to resolve clerical errors. The Denver—Aurora, CO; Fort Collins, CO; and Holland, MI, Urbanized Areas are the only urbanized areas that have changes in population; each is listed separately elsewhere in this Notice.

A list of the other affected urbanized areas and urban clusters is available from the Census Bureau at the Census 2000 Urban and Rural Classification Web page at: *http://www.census.gov/geo/www/ua/ua_2k.html*.

Executive Order 12866

This Notice is not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

Because a Notice and opportunity for public comment are not required by 5 U.S.C. 553, or any other law, for lists of urbanized areas, this Notice is not subject to the analytical requirements of the Regulatory Flexibility Act. Thus, a Regulatory Flexibility Analysis is not required and none has been prepared (5 U.S.C. 603[a]).

Paperwork Reduction Act

This Notice does not represent a collection of information subject to the requirements of the Paperwork Reduction Act, Title 44, U.S.C., Chapter 35.

Dated: August 20, 2002.
Charles Louis Kincannon,
Director, Bureau of the Census.
[FR Doc. 02–21547 Filed 8–22–02; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 010209034–2187–05]

Urban Area Criteria for Census 2000; Correction

AGENCY: Bureau of the Census, Department of Commerce.
ACTION: Notice.

SUMMARY: On March 15, 2002 (67 FR 11663), the Bureau of the Census (Census Bureau) published a **Federal Register** Notice of Final Program Criteria announcing its criteria for defining urban and rural territory based on the results of Census 2000. The Census Bureau is correcting the final criteria as they apply to Guam.

EFFECTIVE DATE: August 23, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Marx, Chief, Geography Division, U.S. Census Bureau, 4700 Silver Hill Road, Stop 7400, Washington, DC 20233–7400; telephone (301) 457–2131; e-mail at: *ua@geo.census.gov*.

SUPPLEMENTARY INFORMATION: On March 15, 2002 (67 FR 11663), the Census Bureau published a **Federal Register** Notice of Final Program Criteria announcing its criteria for defining urban and rural territory based on the results of Census 2000. The Census Bureau is correcting the final criteria as they apply to Guam.

The Census Bureau is providing the following correction to the original Notice.

Page 11667, Column 1, first paragraph under the "Urban Area Criteria for Census 2000" heading: "The following criteria apply to the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands of the United States" is corrected to read, "The following criteria apply to the 50 states, the District of Columbia, Puerto Rico, American Samoa, the Northern Mariana Islands, and the Virgin Islands of the United States. The criteria also can be applied to Guam, at the request of the Governor. Lacking such a request, all urban population in Guam, regardless of cluster size, will be designated as in "urban clusters."

This correction is provided in accordance with an agreement between the Census Bureau and the government of Guam. All urban areas defined within Guam based on the results of Census 2000 are designated as urban clusters regardless of their total population.

Executive Order 12866

This Notice has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

Even though we gave the public prior notice and an opportunity for public comment, we were not required to do so by Title 5, United States Code (U.S.C.), Section 553, or any other law. Therefore, a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603[a]).

Paperwork Reduction Act

This program Notice does not represent a collection of information subject to the requirements of the Paperwork Reduction Act, Title 44, U.S.C., Chapter 35.

Dated: August 20, 2002.
Charles Louis Kincannon,
Director, Bureau of the Census.
[FR Doc. 02–21546 Filed 8–22–02; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Correction: Notice of Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 7, 2002

SUMMARY: On July 31, 2002, the Department of Commerce (the Department) issued the preliminary results for the administrative review of the antidumping duty order on fresh Atlantic Salmon from Chile for the period of review July 1, 2000, through June 30, 2001. *See Notice of Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile* (Preliminary Results), 67 FR 51182 (August 7, 2002). The notice erroneously stated that the published weighted-average margins applied to the period July 1, 1999, through June 30, 2000. However, the correct period is July 1, 2000, through June 30, 2001. No other changes have been made to the Preliminary Results.

FOR FURTHER INFORMATION CONTACT: Tracy Levstik or Constance Handley, at (202) 482–2815 or (202) 482–0631, respectively; AD/CVD Enforcement Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

Dated: August 19, 2002.
Faryar Shirzad,
Assistant Secretary for Import Administration.
[FR Doc. 02–21593 Filed 8–22–02; 8:45 am]
BILLING CODE 3510–DS–S

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DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of revocation of Export Trade Certificate of Review No. 99–00006.

SUMMARY: The Secretary of Commerce issued an Export Trade Certificate of Review to T.P. International Expo Services, Inc. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to T.P. International Expo Services, Inc.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325 (1999). Pursuant to this authority, a certificate of review was issued on January 11, 2000 to T.P. International Expo Services, Inc.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (section 308 of the Act, 15 U.S.C. 4018, § 325.14(a) of the Regulations, 15 CFR 325.14(a)). The annual report is due within 45 days after the anniversary date of the issuance of the Certificate of Review (§325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation (§§ 325.10(a) and 325.14(c) of the regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On January 7, 2002, the Department of Commerce sent to T.P. International Expo Services, Inc. a letter containing annual report questions with a reminder that its annual report was due on February 25, 2002. Additional reminders were sent on April 11, 2002 and on May 21, 2002. The Department has received no written response from T.P. International Expo Services, Inc. to any of these letters.

On July 10, 2002, and in accordance with § 325.10(c)(2) of the Regulations, (15 CFR 325.10 (c)(2)), the Department of Commerce sent a letter by certified mail to notify T.P. International Expo Services, Inc. that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing T.P. International Expo Services, Inc. thirty days to respond was published in the **Federal Register** on July 16, 2002 at 67 FR 46634. Pursuant to § 325.10(c)(2) of the regulations (15 CFR 325.10(c)(2)), the Department considers the failure of T.P. International Expo Services, Inc. to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to T.P. International Expo Services, Inc. for its failure to file an annual report. The Department has sent a letter, dated August 19, 2002, to notify T.P. International Expo Services, Inc. of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** §§ 325.10(c)(4) and 325.11 of the Regulations, 15 CFR 324.10(c)(4) and 325.11 of the Regulations, 15 CFR 325.10(c)(4) and 325.11.

Dated: August 19, 2002.

Jeffrey Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 02–21594 Filed 8–22–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081402A]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application to modify an existing scientific research/enhancement permit (1044) and request for comment.

SUMMARY: Notice is hereby given that NOAA Fisheries has received an application for a permit modification for permit number 1044 from the Southwest Fisheries Science Center (SWFSC) in Santa Cruz, CA. The modified permit would affect ten Evolutionarily Significant Units (ESUs) of salmonids identified in **SUPPLEMENTARY INFORMATION** following. This document serves to notify the public of the availability of the permit modification application for review and comment before a final approval or disapproval is made by NOAA Fisheries.

DATES: Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on September 23, 2002.

ADDRESSES: Written comments on the modification request should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment: Daniel Logan, Protected Species Division, NOAA Fisheries, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (ph: 707–575–6053, fax: 707–578–3435). Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NOAA Fisheries, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: Daniel Logan at phone number 707–575–6053, or e-mail: *dan.logan@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NOAA Fisheries regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NOAA Fisheries.

Species Covered in This Notice

This notice is relevant to the following eight threatened and two endangered salmonid ESUs: threatened Southern Oregon/northern California Coasts coho salmon (*Oncorhynchus kisutch*), threatened Central California Coast coho salmon, threatened California Coastal Chinook salmon (*O. tshawytscha*), threatened Central Valley Spring-run Chinook salmon, endangered Sacramento River Winter-run Chinook salmon, threatened Northern California steelhead (*O. mykiss*), threatened Central California Coast steelhead, threatened Central Valley steelhead, threatened South-central California Coast steelhead, and endangered Southern California steelhead.

Modification Request Received

SWFSC requests a modification to permit 1044 for takes of adult and juvenile ESA-listed coho salmon, chinook salmon, and steelhead associated with population studies, carcass counts, redd surveys, genetic analyses, and habitat association studies. Presently, permit 1044 authorizes intentional takes of adult and juvenile threatened Southern Oregon/northern California Coasts coho salmon, and threatened Central California Coast coho salmon for projects in northern California. This requested modification would add intentional takes of threatened California Coastal chinook salmon, threatened Central Valley Spring-run chinook salmon, endangered Sacramento River Winter-run chinook salmon, threatened Northern California steelhead, threatened Central California Coast steelhead, threatened Central Valley steelhead, threatened South-central California Coast steelhead, and endangered Southern California steelhead to the SWFSC permit.

Dated: August 19, 2002.

Susan L. Pultz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–21590 Filed 8–22–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021102C]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final organized decision process.

SUMMARY: The Dolphin Protection Consumer Information Act (DPCIA) requires the Secretary of Commerce (Secretary), subject to certain conditions, to amend the "dolphin-safe" labeling standard so that tuna from the eastern tropical Pacific Ocean (ETP) purse seine fishery caught in sets in which no dolphins were killed or seriously injured may be labeled "dolphin-safe." The Secretary is required by the Marine Mammal Protection Act (MMPA) to conduct specified scientific research and to make a finding, based on the results of that research, information obtained under the International Dolphin Conservation Program (IDCP), and any other relevant information, as to whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a "significant adverse impact" on any depleted dolphin stock in the ETP. "Significant adverse impact" is not defined in the statute. On February 15, 2002, NMFS proposed an organized decision process (ODP) for outlining the types of information that will be available to the Secretary and the context in which the Secretary will consider the information in arriving at a final finding. NMFS accepted public comment on the proposed ODP for 60 days. This notice responds to comments and contains the final ODP to be used by the Secretary in making the finding.

FOR FURTHER INFORMATION CONTACT: Nicole R. Le Boeuf, Office of Protected Resources, NMFS, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Background

Since its enactment in 1972, the MMPA (16 U.S.C. 1361 *et seq.*) has been amended several times to address the issue of dolphin mortality in the ETP tuna purse seine fishery. As concern among U.S. consumers grew, the DPCIA (16 U.S.C. 1385) was enacted in 1990 to establish the dolphin-safe labeling standard. The International Dolphin Conservation Program Act (IDCPA), (Public Law 105–42), was enacted in 1997, in response to the success of the ETP tuna purse seine fishery in dramatically reducing dolphin mortality caused by normal fishing operations. The IDCPA amended both the MMPA and the DPCIA. The MMPA, as amended by the IDCPA, requires the Secretary to conduct specified scientific research on dolphin stocks in the ETP. The DPCIA, as amended by the IDCPA, requires the Secretary to make a finding, based on the scientific research, information obtained under the IDCP (the international program of dolphin conservation established by the nations participating in the ETP purse seine fishery), and any other relevant information, as to whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a "significant adverse impact" on any depleted dolphin stock in the ETP. There are three depleted dolphin stocks in the ETP: northeastern offshore spotted, eastern spinner, and coastal spotted. The ETP is the area of the Pacific Ocean bounded by 40° N. lat., 40° S. lat., 160° W. long., and the western coastlines of North, Central, and South America.

The Secretary's finding will determine the definition of "dolphin-safe" as applicable to tuna harvested by purse seine vessels with carrying capacities of greater than 400 short tons operating in the ETP. Refer to the **Federal Register** Notice at 64 FR 24590 (May 7, 1999), for more information on the dolphin-safe labeling standard.

The DPCIA requires the Secretary to make an initial finding regarding the dolphin-safe label in 1999, and a final finding by December 31, 2002. On April 29, 1999, NMFS made an initial finding that there was insufficient evidence at that time to determine whether the chase and encirclement of dolphins by the tuna purse seine fishery was having a significant adverse impact on any depleted dolphin stock in the ETP (NMFS 1999) (64 FR 24590). The U.S. District Court for the Northern District of California in *Brower* v. *Daley*, 93 F. Supp. 2d 1071 (N. D. Ca. 2000), set aside this determination, and that ruling was affirmed by the Ninth Circuit Court of Appeals in *Brower* v. *Evans*, 257 F. 3d 1058 (9th Cir. 2001). As a result, the dolphin-safe labeling standard (from section (h)(2) of the DPCIA) is currently in effect.

NMFS' IDCPA research activities will provide substantial additional information for the final finding relative to what was available for the initial finding in 1999. Some of this new information will include: dolphin abundance data from 1999 and 2000, updated mortality estimates based on observer data, an updated review of scientific literature on stress in marine mammals, results from a necropsy study of dolphins killed in the fishery, a review of historical demographic and biological data related to dolphins involved in the fishery, results from a required chase-recapture experiment, as well as information regarding variability

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in the biological and physical parameters of the ETP ecosystem over time. To accommodate this newly available scientific and other relevant information and based on input received on the initial finding in 1999, NMFS has revised its decision-making process for the final finding.

Responses to Comments

In order to provide the public an opportunity to review and give input regarding the Secretary's revised decision-making process, NMFS solicited public comment on the proposed ODP (67 FR 7134) on February 15, 2002. Prior to publishing the proposed ODP in the **Federal Register**, NMFS provided a copy to the Marine Mammal Commission (MMC), an independent agency created by Congress to review and make recommendations on domestic and international actions and policies of federal agencies charged with marine mammal conservation and protection, and the Inter-American Tropical Tuna Commission (IATTC), the international body responsible for the conservation and management of tuna, dolphins, and billfish found in the ETP, for their initial input. During the public comment period, NMFS received approximately 400 comments on the proposed ODP. Comments were received from environmental organizations, the tuna industry, members of the public, the MMC, the IATTC, the U.S. Department of State, two members of the U.S. House of Representatives, and several foreign nations. While the majority of the comments were duplicates, the substance of all comments on the proposed ODP and responses to comments are described in this notice.

As indicated in the proposed ODP, NMFS required all additional scientific information for the Secretary's consideration to be submitted by May 1, 2002. Along with comments on the proposed ODP, some commenters submitted information for the Secretary's consideration. This information will be considered along with the results of the required research, information obtained under the IDCP, and other relevant information for the final finding. However, only comments pertaining to the proposed ODP are described here. Editorial and/or technical comments are not described in this document. As indicated in the proposed ODP, comments were not accepted when submitted via electronic mail or the Internet. Key issues and concerns are summarized below along with responses:

General Comments

Comment 1: One commenter indicated that NMFS must accommodate comments on the proposed ODP from the IATTC and its members outside of the public comment period, with assurances that those comments will be effectively taken into consideration and made a part of the administrative record on the finding process. Similarly, another commenter stated that all of the views expressed by the IATTC should be fully and effectively taken into account and serve as a basis to make all the necessary corrections that have been identified.

Response: Pursuant to section 304(a)(1) of the MMPA, NMFS is required to consult with the MMC and the IATTC regarding the required scientific studies related to the Secretary's findings. In doing so, NMFS has met with both entities on several occasions throughout the planning and execution of the required research program. While the ODP is a policy guidance document and not directly a part of the research process described in section 304(a), NMFS will take into consideration all comments received from the MMC and the IATTC, as well as other comments received during the 60–day public comment period. As is standard in the public comment process, NMFS will incorporate comments with which it concurs and will explain its rationale for not incorporating the remaining comments. All comments and any other materials used by NMFS as a part of the decision-making process will be a part of the administrative record.

Comment 2: One commenter recommended that the ODP be re-written to consider "potential unknown" infractions of the Agreement on the International Dolphin Conservation Program (AIDCP) by foreign tuna vessels.

Response: NMFS believes that infractions of the AIDCP are cause for concern. However, it is not possible for NMFS to quantify or anticipate potential unknown infractions of the AIDCP. For this reason, they have not been considered in the ODP.

Comment 3: One commenter noted that the ODP should reflect a balance between conservation and utilization.

Response: NMFS recognizes the need to balance conservation and management goals with sustainable use of marine living resources. In this particular case, the DPCIA requires the Secretary to focus on the impact of the ETP tuna purse seine fishery on depleted dolphin stocks. The ODP will reflect this mandate and the associated provisions of the IDCPA.

Comment 4: One commenter noted that the IATTC should be meaningfully consulted in the development of the ODP. Two other commenters suggested that the development of a sound ODP can only be done in close cooperation with the IATTC and that discussions should be set up between NOAA and the IATTC Secretariat before adopting the final ODP in order to establish guidelines based on sound science and international standards. Another commenter similarly noted that the ODP should be consistent with the development of regional fisheries bodies.

Response: NMFS agrees that the ODP can benefit from meaningful input from the IATTC, the competent regional fisheries organization in this case, and has consulted with the IATTC as described in the response to comment 1. Additionally, NMFS received and carefully considered comments from the IATTC, including input from its member nations, during the public comment period on the proposed ODP.

Comment 5: One commenter indicated that the ODP should be consistent with goals of ecosystem management and multi-lateral cooperation. Another commenter suggested that the ODP should be developed consistent with the general expectations from the parties involved in the spirit of international cooperation.

Response: NMFS believes that principles of sound ecosystem management and multi-lateral efforts are the key to the long-term conservation of dolphins and other living marine resources in the ETP. As indicated in the response to comment 4, NMFS considered comments submitted by the IATTC that included input from its member nations, as well as comments provided from IATTC-member nations directly, during the public comment period on the proposed ODP.

Comment 6: One commenter indicated that issues of uncertainty and probability must be assessed on balance and handled in an even way in the ODP. Another commenter made a similar statement and went on to note that the proposed ODP departs from such notion.

Response: NMFS agrees that some level of uncertainty is inherent in all aspects of science, including data collection. NMFS will provide this information to the Secretary for his consideration. However, NMFS disagrees that the ODP runs contrary to this concept or should be changed.

Comment 7: One commenter suggested that it is not necessary for the ODP to contain a detailed description of the dolphin-safe definition and recent court cases because this information can be found elsewhere and could easily be mischaracterized.

Response: NMFS agrees and limited discussion of the court rulings to the Background section of the ODP and did not include it within the body of the ODP itself.

Comment 8: One commenter was concerned that the proposed ODP contained elements that could provide a foundation for litigation that might reverse the Secretary's finding with no genuine scientific grounds. The commenter went on to state that the proposed ODP could provide a strong foundation for entities that have historically opposed any modification to the dolphin-safe label to promote adverse litigation and significantly enhance the potential to reverse the final finding by the courts on no genuine scientific grounds.

Response: NMFS disagrees. NMFS believes that the proposal to present the Secretary with the appropriate information for consideration in the final finding conforms with the requirements of the DPCIA.

Comment 9: One commenter indicated that it would be useful if the acronyms such as IDCP, ETP, DPCIA, and others are more clearly explained in the document.

Response: NMFS agrees and has inserted additional language to further explain these and other terms.

Comments on Overview: How to Determine Significance

Comment 10: Two commenters indicated that while the proposed ODP identifies the types of information that will be considered, it does not provide sufficient guidance and/or criteria as to what will be or will not be deemed to be significant. As an example, one commenter noted that there was no indication of what NMFS believes would constitute an "appreciable delay" in recovery time in the proposed ODP.

Response: NMFS believes that the ODP provides the Secretary with a sound basis for weighing various types of complex information in a manner that will be informative and transparent. The term "appreciably delay" will be interpreted in a manner that is consistent with NMFS policies for managing that recovery of depleted marine mammal stocks that interact with commercial fisheries.

Comments on the Role of Direct Mortality in the Decision Process

Comment 11: One commenter indicated that the Direct Mortality Question and the Abundance Question [now renamed the Growth Rate Question] are narrowly drawn and recommended that this issue be thoroughly reviewed for its legal propriety and impact.

Response: NMFS disagrees that these questions are narrowly drawn or that they should be changed based on legal grounds.

Comments on the Role of Indirect Effects on the Decision Process

Comment 12: NMFS received a comment that direct and indirect mortality should not automatically be considered to have an adverse impact on dolphin stocks, and that doing so would be inconsistent with the Potential Biological Removal (PBR) standard. The commenter went on to suggest that the proposed ODP makes unsubstantiated assumptions that direct mortality caused by the fishery is adverse to dolphin stocks. The commenter indicated that reducing population levels can have beneficial impacts for the stocks.

Response: NMFS disagrees. In the 1970s and 1980s, dolphin mortality caused by the ETP tuna purse seine fishery resulted in the three dolphin stocks at issue here being designated as depleted under the MMPA. Because of this, NMFS sees no plausible way to conclude that either direct mortality or indirect effects can be considered beneficial to these stocks of dolphin. Further, the Secretary is not charged with confirming that mortality is adverse, but with determining whether such adverse impacts are significant to any depleted dolphin stock.

Comment 13: One commenter indicated that the ODP should consider injuries to dolphins and should consider the repeated chase of dolphins.

Response: NMFS agrees. Using criteria developed by the IDCP and the IATTC, NMFS is including in the estimation of mortality, individual injuries that are deemed to be "serious injuries" or those which will likely result in mortality. Further, the ODP includes consideration of stress and other indirect effects of the fishery on dolphins. With respect to the repeated chase of dolphins, NMFS is attempting to estimate the rate of capture of individual dolphins and that for each depleted dolphin stock. NMFS will consider these estimates in its evaluation of overall impact.

Comment 14: One commenter indicated that NMFS' evaluation of indirect mortality must take into account the types and magnitude of any stress to dolphins caused by the tuna purse seine fishery and quantify such stresses to the population level using current data. The commenter recommended that the Indirect Effects Question in the ODP must seek to answer, and wherever possible, quantify to the population level using current data on sets per year: (1) estimates of the number of times an individual dolphin may be set upon; (2) mortality attributable to the fishery; and (3) dolphin school size in sets made on dolphins.

Response: NMFS agrees and is making every effort to quantify indirect effects of the fishery on dolphin stocks, including making estimates of the three parameters indicated by the commenter.

Comment 15: One commenter noted that NMFS should consider unobserved and uncounted dolphin mortality for the final finding. The commenter also indicated that stress may be causing serious harm and cryptic death in dolphins and may affect reproduction and physiology and should be considered in the ODP. Two other commenters similarly indicated that cow-calf separation should be considered in the ODP.

Response: NMFS agrees and believes that Indirect Effect Question in the ODP addresses the concern that the tuna purse seine fishery may be impacting depleted dolphin stocks in ways other than through direct and observed mortality, including through cryptic mortality and cow-calf separation.

Comment 16: One commenter recommended that NMFS delete the list of possible indirect effects that the fishery may be having on depleted dolphin stocks found in the proposed ODP.

Response: NMFS disagrees. NMFS believes that the issue of cryptic mortality and indirect effects of the fishery on dolphins may not be entirely intuitive and therefore it is helpful to include examples of indirect mortality and other possible indirect effects in the ODP.

Comment 17: One commenter indicated that the phrase "cause for concern" in the Indirect Effects Question was too open-ended.

Response: NMFS agrees and reworded the Indirect Effects Question to read: "For each stock, is the estimated number of dolphins affected by the tuna fishery, considering data on sets per year, mortality attributable to the fishery, indicators of stress in blood, skin and other tissues, cow-calf separation and other relevant indirect effects information, at a magnitude and

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degree that would not risk recovery or appreciably delay recovery to its OSP level (how and to what degree)?≥

Comments on the Role of Ecosystem Change in the Decision Process

Comment 18: One commenter recommended that the ODP take into consideration whether more or less dolphin mortality impacts the health of the entire ETP ecosystem.

Response: Pursuant to the DPCIA, the Secretary is charged with making a determination regarding the impact of the tuna purse seine fishery on any depleted dolphin stock. The Secretary is not required to make a determination on the health of the entire ETP ecosystem. However, ETP ecosystem health is considered in the ODP as it relates to the status of dolphin stocks.

Comment 19: One commenter suggested that NMFS add the phrase, "taking into consideration the reliability of the abundance estimates and other questions such as the possibility that stock boundaries have changed," to the end of the first sentence of the section entitled the "Role of Ecosystem Change in the Decision Process" in the proposed ODP.

Response: NMFS disagrees but is aware of the dynamic nature of both dolphin stock distribution and boundaries in the ETP. The definition of dolphin stocks, using distributional, morphological, genetic, and demographic information, is a matter of continuing research. Decades of data provide strong evidence that no such large shifts in dolphin distributions have occurred that would invalidate NMFS abundance estimates. If larger shifts in distribution occurred, they would be detected both by sightings from tuna vessels and by sightings from research vessels. However, dolphin stock boundaries have changed in the past and may change again in the future as more data become available. Because distribution of dolphins also changes each year in response to perturbations in oceanographic conditions, NMFS research vessel surveys were designed to produce valid estimates of abundance even if annual changes in distribution occur. Additionally, NMFS thoroughly considered the reliability of the abundance estimates and will explicitly address the uncertainty in the population model.

Comment 20: Another commenter indicated that the ODP contains an error in logic with respect to the fishery potentially being penalized if there is either an increase or a decrease in carrying capacity of the ETP.

Response: NMFS disagrees. Given the depleted status of ETP dolphin stocks and the mandate of the MMPA to recover depleted stocks to optimum sustainable population (OSP) levels, any adverse impacts that the fishery is having on the stocks must be evaluated for significance in the context of the dolphins' habitat and their subsequent ability to recover. With that in mind, the expectations for dolphin population growth will be appropriately scaled to the information obtained about the state of the ETP carrying capacity. If the carrying capacity has substantially diminished in such a way that would make it more difficult for a depleted stock to recover, then any given effect of the fishery would be considered more significant. Conversely, if the carrying capacity has substantially increased in such a way that is beneficial to the dolphin stocks, then expectations for growth (i.e. recovery) in those stocks will be higher. In either case, apparent carrying capacity changes will be considered in evaluating whether current OSP ranges should continue to apply.

Comment 21: One commenter indicated that NMFS' approach to evaluating changes in the ETP ecosystem and its carrying capacity in the proposed ODP is too simplistic as it is difficult to estimate both historic and current carrying capacity. The commenter went on to note that there are rarely sufficient scientific data available for scientists to examine both ecological changes and marine mammal population trends and the linkages between the two. The commenter suggested that NMFS' scheme set forth in the 1992 Proposed Regime to Govern Interactions Between Marine Mammals and Commercial Fishing Operations, which proposed making determinations with respect to OSP levels using current carrying capacity as adjusted to account for human-caused habitat degradation and destruction, would be more appropriate than the currently proposed approach. The commenter indicated that this was because a lack of dolphin recovery could be due to a change in carrying capacity that has resulted in a density-dependent change through lower population growth levels, compensation, or stabilization. Another commenter expressed concern that the Ecosystem Question is the first question to be addressed by the Secretary, as there is general agreement that scientists know less about the ecosystem and the potential impacts on dolphins than any of the other questions. Another commenter indicated that should the Secretary find that the ecosystem changes have occurred in the ETP, this would indicate a need to provide additional protection to the depleted dolphin populations.

Response: To determine whether a substantial change in the ETP ecosystem has occurred, NMFS has collected a large amount of scientific information, which is undergoing an independent peer review process. NMFS and external expert reviewers are evaluating all available and relevant information to determine whether sufficient information exists to detect a regime shift or change in carrying capacity, should such changes have occurred. With respect to providing depleted dolphin stocks additional protection, NMFS has provided for this in the ODP by indicating that if the ETP carrying capacity for dolphins has substantially declined, dolphin stocks could sustain fewer mortalities and other adverse impacts than if the carrying capacity has remained constant or increased or if the ecological structure of the ETP has not changed.

Comment 22: One commenter indicated that both the Direct and Indirect Effects Questions should not be considered in light of the Ecosystem Question. The commenter indicated that once the status of the dolphin stocks is re-evaluated in light of the ETP's current carrying capacity, an appropriate recovery factory can be inserted into the PBR calculation to take this into account without requiring a separate evaluation of this point in each question in the ODP.

Response: NMFS disagrees with this comment and believes that both the Indirect Effects and Direct Mortality Questions are essential for the Secretary to consider, regardless of the answer to the Ecosystem Question. However, it may not be feasible to quantify the extent to which any changes in the ETP ecosystem have affected the depleted dolphin stocks, and therefore not feasible to assign a value to be inserted into a PBR calculation. Also, as the Secretary will choose the appropriate standard of mortality, PBR levels for the dolphin stocks may or may not be applicable.

Comment 23: One commenter noted that the proposed ODP places too much emphasis on environmental change, and that there is no evidence to support this as a cause of lack of dolphin recovery.

Response: NMFS disagrees because, as indicated in the response to comment 20, substantial changes in an ecosystem can affect the ability of a population or stock of organisms to thrive and/or recover from a previous period of overexploitation such as occurred with these depleted dolphin stocks. As indicated in response to comment 21, NMFS has collected a large amount of scientific information to determine whether a substantial change in the ecosystem has occurred. Additionally, a panel of independent experts (described at 67 FR 31279) will determine whether evidence exists to attribute ecosystem changes as a cause of any observed lack of dolphin recovery.

Comment 24: One commenter suggested that the following question be added to the end of the Ecosystem Question: "Or has the carrying capacity increased substantially or has the ecological structure changed in any way that could promote depleted dolphin stocks to grow at rates faster than expected in a static ecosystem?≥

Response: NMFS disagrees that this change is necessary.

Comments on Methods For Determining Significance of Estimated Mortality

Comment 25: One commenter suggested that NMFS should adopt only one appropriate mortality standard against which to measure significance and that doing otherwise could potentially undermine the domestic implementation of the PBR system in U.S. commercial fisheries and could have wide-ranging policy implications.

Response: The ODP does not prescribe that the Secretary use more than one standard of mortality and other impacts in making the final finding. Instead, based on the circumstances of the scientific findings and other relevant information, the ODP allows the Secretary to choose the most appropriate mortality standard with which to assess significance.

Comment 26: One commenter stated that both PBR and stock mortality limit (SML) standards are flawed and violate the MMPA standards for dolphin mortality. The commenter added that the standard for dolphin mortality in the tuna fishery is "levels approaching zero mortality." The commenter went on to indicate that the major cause for concern for these depleted dolphin populations is that the observed mortality is not accurate, and therefore the use of either the PBR or SML standard in the ODP is inappropriate because true mortality levels are unknown.

Response: Both the PBR and the SML systems have proven to be effective at managing fishery impact on marine mammals, and NMFS is making every effort to quantify total impact on the dolphin stocks, including direct mortality and indirect effects.

Comment 27: NMFS received a comment regarding the provision of the ODP that allows the Secretary to consider a mortality standard lower than PBR because a decline in carrying capacity may actually be causing the dolphin stocks to not grow. The commenter indicated that if dolphin populations are declining in connection with a decline in the carrying capacity, the fishery should not be penalized.

Response: See response to comment 20.

Comment 28: One commenter indicated that the ODP fails to define the methodology for calculating PBR, and that this should be established in advance and must be scientifically supportable.

Response: As indicated in the proposed ODP, the standard method for calculating PBR can be found at: *http://nmml.afsc.noaa.gov/library/gammsrep/gammsrep.htm*. Calculating PBR in some other way would only be necessary if the abundance estimates each had very different levels of precision, and they do not.

Comment 29: Several commenters indicated that PBR is the most appropriate standard for assessing the impact of the fishery on dolphin stocks and that references to other mortality standards should be removed from the ODP.

Response: NMFS agrees that the PBR standard is an effective standard for measuring the impact of fisheries on marine mammals, however, NMFS believes the Secretary should have the flexibility to consider other standards of mortality as appropriate.

Comment 30: Three commenters stated that the use of SMLs in the ODP as a measure of mortality is arbitrary and/or irrelevant. The commenters suggested that the use of SMLs in the Secretary's decision would result in the United States not being able to comply with its obligations under the AIDCP. Another commenter went on to indicate that SMLs were not intended to be a standard for measuring impacts on dolphin populations, but reflected a commitment to reduce dolphin mortality to the lowest levels believed to be achievable on a continuing basis and are not biological thresholds for sustainability of dolphin populations.

Response: The SML standard for mortality was developed as a part of the IDCP, and in this respect, NMFS agrees that it represents the lowest levels of mortality believed to be achievable on a continuing basis by the ETP tuna purse seine fishery. However, NMFS disagrees that the SML system is arbitrary, irrelevant, or is not intended to be a standard for managing impacts of the fishery on dolphin populations. In fact, the SML system has proven to be an effective tool for managing dolphin mortality in the ETP tuna purse seine fishery and has been embraced by the ratifying nations of the AIDCP. Moreover, Congressional intent within the MMPA, as amended by the IDCPA, and the goals of the nations that are party to the AIDCP are consistent with the SML standard as more conservative than steps taken under other provisions of the MMPA for reducing marine mammal takes in other commercial fisheries. The applicability of SMLs is found in sections 301(b)(2), 302(a)(1), and 304(b)(2)(A) of the MMPA, with virtually identical statements being found in Article II, sections 1 and 2, and also in Article V, section 1(a) of the AIDCP, further indicating international support for the SML standard as a measure of the impacts of the tuna purse seine fishery on dolphins in the ETP. This system is designed to ensure that a stock's recovery is not appreciably delayed over time. Therefore, NMFS disagrees that the use of the SML system as a measure of the significance of fishery impacts on ETP dolphin stocks lacks biological merit or would prevent the United States from complying with its obligations under the AIDCP.

Comments on the Organized Decision Process

Comment 31: One commenter suggested that even though the data to be used in the final finding have already been collected and analyzed, NMFS should describe its decision framework in detail, including its choices of measures of significance, in the final determination.

Response: NMFS will publish the final ODP and the IDCPA Science Report in advance of the final finding. The latter will contain various confidence intervals and probabilities for the Secretary's consideration in the final finding. Those used by the Secretary to make the final finding will be published in the final decision and made available to the public at that time.

Comment 32: Two commenters indicated that the proposed ODP significantly diminishes the Secretary's ability to consider valuable information and limits his flexibility in making the final finding. Similarly, two other commenters indicated that the proposed ODP constrains the presentation of data to the Secretary and severely limits his ability to benefit from the knowledge of the IATTC. Two commenters noted that the 50–year knowledge of the IATTC should be taken into consideration in the ODP, particularly with respect to the definitions of dolphin stock depletion and stress.

Response: NMFS disagrees that the ODP constrains the Secretary to considering an unduly limited amount

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of information for the final finding, especially with respect to input from the IATTC. NMFS works with the IATTC, as the competent regional fisheries organization in the ETP, on many aspects of this issue and has benefitted from its input throughout the IDCPA Research Program, including the consideration of its comments on the proposed ODP. Indeed, NMFS relied upon on the IATTC's data regarding fishing effort and sets on dolphins, as well as on its evaluation of the use of TVOD in estimating dolphin abundance among other things. NMFS is unaware of any IATTC-defined terms for dolphin stock depletion and stress. NMFS relies on the MMPA definition of "depleted" and will define stress as appropriate in the IDCPA Science Report.

Comment 33: One commenter stated that the ODP should guide the Secretary's decision, using science, instead of leaving him to make up his own mind.

Response: The DPCIA requires the Secretary to make the final finding based on the scientific research required under section 304(a) of the MMPA, information obtained under the IDCP, and any other relevant information. NMFS believes that the ODP reflects this by providing ample guidance for the Secretary regarding the scope and weighting of such information.

Comment 34: One commenter stated that weaknesses and scientific inconsistencies in the ODP could lead to a conclusion that would further impede the United States' ability to fulfill its obligations under the AIDCP and further endanger the protection of the marine ecosystem and living marine resources.

Response: NMFS disagrees. In fact, NMFS believes that the ODP provides the Secretary with a sound basis for weighing various types of complex information in a manner that will be informative and transparent, and will further confirm the United States' commitment to the AIDCP and other multi-lateral efforts to conserve living marine resources.

Comment 35: One commenter noted that the ODP does not reflect important aspects of NMFS research and should be re-written to reflect the important conclusions previously made by NMFS scientists.

Response: NMFS disagrees. The ODP is specifically tailored to include results from all NMFS research activities conducted under the IDCPA, as well as associated research efforts undertaken in conjunction with the IDCP, and any other relevant information that NMFS believes will address the question of whether the intentional chase and encirclement of dolphins by the ETP tuna purse seine fishery is having a significant adverse impact on any depleted dolphin stock.

Comment 36: One commenter indicated that the questions used in the ODP should be: (1) During the period of the purse seine fishery, has the carrying capacity of the ETP changed? (2) Has this change resulted in a density-dependent response in the depleted dolphin stocks? and (3) Given a change in the carrying capacity, what is the status of the dolphin stocks with respect to optimum sustainable population levels using both current and historic carrying capacity?

Response: NMFS believes that, while worded somewhat differently, the intent of the first question is already included in the ODP. NMFS generally considered questions similar to the remaining two during the development of the ODP, but rejected them because NMFS believes that they do not sufficiently address the statutory question and may be unanswerable with the available data.

Comment 37: Three commenters noted that the third and fourth sentences of the third paragraph under the Organized Decision Process section were in direct contradiction with one another.

Response: NMFS agrees. This contradiction was an oversight and has been corrected by replacing the words "Direct Mortality Question" with "Growth Rate Question."

Comment 38: Two commenters were concerned that the proposed ODP was not conducive to a sound scientific approach through which the Secretary can obtain adequate guidance. Similarly, another commenter noted that the ODP's questions are not clearly grounded in scientific decision-making, will not answer the statutory question, and should be re-written to provide clear benchmarks for the Secretary.

Response: See responses to comments 33 and 34, as NMFS believes the ODP is specifically tailored to include NMFS research activities under the IDCPA, as well as associated research efforts conducted in conjunction with the IDCP, and any other relevant research that NMFS believes will address the question of whether the intentional chase and encirclement of dolphins by the ETP tuna purse seine fishery is having a significant adverse impact on any depleted dolphin stock.

Comment 39: One commenter suggested that the evaluation of direct mortality in the ODP should be separate from evaluation of quantifiable estimates of indirect mortality.

Response: NMFS disagrees that quantifiable levels of indirect mortality should be considered separately from direct mortality as they will contribute to the total estimate of impact of the fishery on dolphin stocks.

Comment 40: One commenter indicated that the Abundance Question [now the Growth Rate Question] does not easily lend itself to a "yes" or "no" answer due to the high level of uncertainty inherent in efforts to measure abundance and to estimate growth rates in marine mammal populations. The commenter added that this is especially true given the short 3–year set of observations in the very large ETP. Further, the commenter noted that the ODP is silent on how the Secretary would treat a situation where the abundance data is not definitive in either direction, and that the proposed ODP does not specify how the uncertainty in the data will be taken into account if the Secretary must answer "yes" or "no." The commenter indicated that the ODP must take this circumstance into consideration, and that in this case, the Secretary should defer to the answers to the Direct and Indirect Effects Questions in comparison with PBR for each depleted stock.

Response: NMFS agrees that some level of uncertainty is inherent in estimating abundance of marine mammals stocks, however, these levels of uncertainty will be appropriately assessed, accounted for, and presented to the Secretary for consideration. NMFS data include a 12–year time series of abundance estimates covering a 23–year time span: 1979–83, 1986–1990, and 1998–2000, for the best estimates of dolphin growth rates. With regard to a possible less than definitive answer to this question, the Secretary will consider whether each dolphin stock's growth rate is sufficient so as not to risk recovery or appreciably delay recovery to its OSP level with an appropriate level of probability, to be determined by the Secretary.

Comment 41: One commenter indicated that the potential for the courts to overturn the Secretary's finding is dramatically magnified in the "secretive" process associated with the assessment model being developed to "filter" the science even before it is reviewed under the proposed ODP.

Response: NMFS disagrees. The ODP has been specifically developed with an eye to providing an appropriate level of guidance to the Secretary in making a final finding that is informed, transparent, and defensible. The assessment model is being developed as a part of the IDCPA Research Program and is undergoing rigorous independent peer review. The assessment model and all other aspects of NMFS' IDCPA Research Program will be fully described in the IDCPA Science Report.

Comment 42: One commenter suggested adding the statement, "and what are the reliability of the abundance estimates given the probability of changes in stock distribution resulting from environmental and other factors without concomitant adjustments in the NMFS population cruise patterns during the three most recent years of research" to the end of the Abundance Question [now the Growth Rate Question].

Response: NMFS disagrees. See the response to comment 18 for NMFS views on the likely effects on abundance estimates of dolphin stock distribution.

Comment 43: One commenter suggested that NMFS delete the two sentences following the Abundance Question [now the Growth Rate Question] containing references to the population model, the possible use of TVOD, and the pending analyses of abundance data.

Response: NMFS disagrees and sees no reason to delete this text.

Comment 44: One commenter indicated that the proposed ODP ignores NMFS' 1999 Report to Congress. Another commenter expressed concern that the proposed ODP might cause the Secretary to arrive at an answer inconsistent with the findings of the 1999 Report to Congress.

Response: The ODP is designed to take into consideration all of the research findings in the 1999 IDCPA Science Report as well as the remaining results obtained under the IDCPA and the IDCP, along with other relevant information in the final finding.

Comment 45: Two commenters noted that the proposed ODP contains less specific decision guidelines than the decision analysis framework used in 1999. In a similar statement, another commenter encouraged NMFS to draw upon its previous efforts to the greatest extent possible to develop specific decision criteria to assess whether dolphin stocks are being adversely affected by the fishery and whether any such impacts are significant. The latter commenter went on to indicate that the development and use of explicit decision-making criteria would provide the best way to ensure that the Secretary's finding is well supported, understandable to the public, and likely to withstand judicial scrutiny if challenged under the Administrative Procedure Act.

Response: NMFS believes that the ODP provides the Secretary with a sound basis for weighing many different types of complex information in an appropriate manner so as to result in a final finding that is informed, transparent, and defensible.

Comment 46: Two commenters indicated that the proposed ODP focused on a biased precautionary principle in order to overprotect individual dolphins by any means, without taking into account whether the overall dolphin populations are growing, or whether other living marine species in the ecosystem are being adversely affected.

Response: NMFS believes that the ODP is based on sound conservation and decision-making principles and follows the letter and spirit of the DCPIA and the MMPA, as amended by the IDCPA.

Comment 47: One commenter suggested changing the name of the Abundance Question to the Growth Rate Question as this name better describes the nature of the question.

Response: NMFS agrees and made the change.

Comments on the Appointment of Scientific Expert Panels

Comment 48: One commenter was concerned about the independence of the expert panels and wanted the panel selection criteria to be explained in the ODP.

Response: NMFS agrees that the expert panels should be comprised of independent experts and has developed a process for selecting the panelists in a way that allows for much outside involvement of established scientific organizations. On May 9, 2002, NMFS published a notice in the **Federal Register** to solicit nominations for scientists to serve on the Ecosystem and the Indirect Effects Expert Panels (67 FR 31279). The notice solicits nominations and describes the process that NMFS, the IATTC, the MMC, and an individual from an independent reviewing agency with advice from professional societies will follow to select qualified candidates for each panel and recommend them for appointment by the Secretary. NMFS sees no reason to repeat this description in the ODP.

Comment 49: One commenter recommended removing language associating the appointment of the Scientific Expert Panels with NMFS and instead inserting reference to the U.S. Department of Commerce (DOC), suggesting that the appointments should be made by the DOC directly without NMFS input.

Response: NMFS disagrees with this suggestion as one of NMFS' primary roles is to provide guidance to the Secretary on technical matters under its purview. Given the highly technical fields of expertise of the panelists, NMFS believes it to be appropriate for NMFS and established professional organizations to assist the Secretary in the panelist selection process.

Comments on the Consideration of Available Scientific Information

Comment 50: One commenter indicated that the phrase "and has been published in a reputable scientific journal, to include the IATTC Fishery Bulletin" be added to the third part of the paragraph before the description of how scientific information will be weighed.

Response: NMFS disagrees with this comment. As is often the case, the most up-to-date and peer-reviewed information may not have yet been published in a journal, a process that can take some time. Therefore, NMFS believes that including the first part of the suggested language may unduly diminish the weight of important and up-to-date information from being considered by the Secretary.

Comment 51: One commenter indicated that the description of how scientific information will be weighed in the proposed ODP limits the discretion of the Secretary to consider valuable and valid information in making the final finding. Similarly, another commenter suggested that the proposed ODP would put the Secretary at risk of taking into account irrelevant information and not taking into account other relevant information, specifically indicating that the description of how scientific information will be weighed should be removed from the ODP.

Response: NMFS disagrees. While the Secretary will consider all information submitted, a mechanism for weighing scientific information is essential to the Secretary's ability to make the most informed decision. Rather than limit the information before the Secretary, explicit weighting criteria will enhance the quality and integrity of the final finding. The Secretary will consider the best scientific information available. The relative weight that any particular scientific information will carry in the Secretary's decision process will be based on the degree to which it satisfies the criteria set forth and defined at the end of this notice. Information that does not meet any of the criteria will be considered, but will be given less weight as information that meets some or all of the criteria.

Comment 52: One commenter indicated that the ODP must outline what we know and how the best scientific evidence can be used to make the final finding.

Response: NMFS agrees and believes that the ODP fully outlines that the

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Secretary will consider the best available scientific information in making the final finding. Further, the ODP fully describes how that information will be weighed to provide the Secretary with an informed and appropriate decision-making environment.

Comment 53: One commenter suggested that the Secretary should be able to look at information first-hand and not have it vetted through NMFS first because doing so would put the Secretary at risk of not considering relevant information.

Response: NMFS disagrees. One of NMFS' primary roles is to provide guidance to the Secretary on technical matters under its purview. Given the large amount of highly technical information that will likely be under consideration, it is important that NMFS be able to review and assess this information so that it can be appropriately incorporated into its analyses and provided to the Secretary.

Comment 53: One commenter indicated that the MMPA clearly calls for the Secretary to consider not only information collected by NMFS but "any other relevant information." The commenter went on to note that the information developed by NMFS has been subjected to considerable scrutiny, both by its own scientists and by panels of outside experts, and that the weight accorded information provided by outside sources should reflect the quality of the methods used to collect it and the extent to which it has passed peer review. The commenter further indicated that data should not be discounted entirely because they have yet to pass peer review. However, the commenter noted that it is imperative that, before any information is factored into the Secretary's final determination, NMFS be given the opportunity to review it for purposes of verification.

Response: NMFS agrees for the reasons outlined by the commenter, as well as those stated in response to comments 48 and 51.

Comment 55: One commenter suggested that the ODP require that only information that is determined to be the best available science be considered by the Secretary in making the final finding, as was required by the *Brower* v. *Evans* ruling, and that this standard should be reflected in the ODP.

Response: NMFS agrees that the Secretary should utilize the best available science and will apply the description of how information will be weighed to all scientific information that will be considered by the Secretary.

Comment 56: One commenter indicated that the May 1, 2002, deadline for submitting information to NMFS is reasonable and should enable NMFS to complete its review and verification of outside information in time to consider it in making the final determination.

Response: NMFS agrees for the reasons articulated by the commenter and in the response to comment 51.

Comment 57: One commenter indicated that the deadline of May 1, 2002, could preclude valuable information from being submitted to the Secretary and would significantly limit the Secretary's ability to make an informed decision. The commenter stated that as long as the information is received within reasonable time, it should be considered by the Secretary. Another commenter indicated that the deadline of information to be submitted to the Secretary is an arbitrary and unnecessary restriction.

Response: NMFS disagrees. Setting a deadline for submission of all information will ensure that NMFS has sufficient opportunity to review, assess, and verify the information, for the Secretary's informed consideration. As indicated in the response to comment 50, one of NMFS' primary roles is to provide guidance to the Secretary on technical matters under its purview. Given the large amount of complex and technical information that will likely be submitted for the Secretary's consideration, sufficient time is required for NMFS to adequately review the materials and to properly consider them along with information already in-hand. Additionally, NMFS believes that the May 1, 2002, definition of timely for submission of outside information is reasonable given that the DPCIA allows the Secretary to make the final finding as early as July 1, 2001, but no later than December 31, 2002.

Comment 58: Two commenters indicated that the time between the adoption of the final ODP and the submission of information prior to the May 1, 2002, deadline is unclear.

Response: As indicated in the proposed ODP, the May 1, 2002, deadline for submitting information for the Secretary's consideration is final, even though the proposed ODP itself was still under development upon the announcement of the deadline.

Overview: How to Determine Significance

It is widely known that the tuna fishery in the ETP, using intentional deployment on or encirclement of dolphins in tuna purse seine nets, causes dolphin mortality. The question for the Secretary is whether the fishery is having a "significant adverse impact" on any depleted dolphin stock in the ETP. There is also general agreement that the number of mortalities and other adverse effects that can be sustained by the dolphin stocks before they become significant depends on the state of the ETP ecological structure for dolphins. In essence, if the ETP carrying capacity for dolphins has declined or the ecological structure of the ETP has substantially changed, dolphin stocks could sustain fewer mortalities and other effects than if the carrying capacity has remained constant or increased or if the ecological structure of the ETP has not changed. Moreover, because it is clear that direct mortality (and potentially some level of indirect effects) can be attributed to the fishery, the population growth rates of the dolphin stocks should be sufficient so as not to indicate a risk or an appreciable delay in recovery. The remainder of this document describes how these factors will be assessed by the Secretary in making the final finding regarding whether the tuna purse seine fishery is having a significant adverse impact on any depleted dolphin stock in the ETP.

The Role of Ecosystem Changes in the Decision Process

Because substantial changes in an ecosystem can affect a depleted population or stock's recovery, the Secretary will consider scientific evidence of whether a significant ecosystem change has occurred in the ETP. Particularly, the Secretary will determine whether any change is likely to have increased or decreased (1) the ecological structure or carrying capacity for the three depleted stocks or (2) the rate at which the stocks are able to reach their OSP level. OSP is the level at which the number of animals in a population are sufficient to achieve the maximum productivity of the population or species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.

The Role of Direct Mortality in the Decision Process

To assist the Secretary in reaching a final finding in 2002, NMFS is examining various effects of the tuna purse seine fishery on depleted ETP dolphin stocks, pursuant to the MMPA. The Secretary will consider information on direct mortality in making the final finding. The Role of Indirect Effects in the Decision ProcessWhile direct mortality by the tuna fishery is a known impact on dolphin stocks, there are several other possible means by which the fishery could be impacting them. These possible means are often not observed (sometimes termed "cryptic" or indirect) and may include: (1) delayed mortality from effects of stress or injuries caused by chase and capture; (2) impaired reproduction from effects of stress or injuries resulting from chase and capture; (3) calf mortality owing to cow-calf separation during fishing operations; (4) social structure disruption attributable to chase and capture; (5) facilitated mortality by making the dolphins more vulnerable to predation after the chase; and (6) interference with dolphin feeding. To measure the impact of indirect effects, the MMPA specifically requires the Secretary to conduct stress studies, including: (1) a review of stress-related research; (2) a 3–year necropsy study of dolphins killed in the tuna fishery; (3) a 1–year review of relevant historical demographic and biological data; and (4) an experiment involving the repeated chasing and capturing of dolphins by means of intentional encirclement. Results of studies conducted under the MMPA, as amended by the IDCPA, information obtained under the IDCP, and other available scientific information should provide insights into the nature and the magnitude of fishery-induced impacts related to these specific sources in addition to those caused by direct mortality. Upon reviewing this information, the Secretary will determine whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the ETP.

The Role of Dolphin Growth Rates in the Decision Process

In addition to measuring direct mortality, estimating abundance and growth rates of the depleted dolphin stocks involved in the ETP tuna purse seine fishery is necessary to understand the impacts of the fishery on dolphin stocks. This is because potential subtle effects of chase and encirclement, such as on reproduction or survival, may be difficult to detect and may not be directly observed. For this reason, the MMPA, as amended by the IDCPA in 1997, specifically requires NMFS to conduct annual abundance surveys. Estimates of abundance and projected growth rates for the depleted dolphin stocks, given quantifiable levels of mortality caused by the fishery, will be assessed to determine if the dolphin stocks are growing (i.e. recovering to OSP levels) at an acceptable rate. The impact of the fishery on dolphin abundance and growth rates will be evaluated, while taking into consideration natural mortality and environmental factors that may also be affecting dolphin recovery.

Methods For Determining Significance of Estimated Mortality

To assess the significance of estimated mortality in the fishery, the Secretary will use established standards of marine mammal mortality under the MMPA. These "mortality standards" may include the PBR and the SML systems, as well as other standards as appropriate.

NMFS relies on the PBR system, developed as a tool for implementation of the MMPA, for regulating incidental mortality of marine mammal stocks by U.S. fisheries other than the tuna purse seine fishery in the ETP. The PBR level of a marine mammal stock is the maximum number of animals, in addition to natural mortalities, that may be removed while allowing that stock to reach or maintain OSP. The PBR system was developed in a series of workshops with participation of experts from NMFS and was refined following input from the MMC, outside experts, and the public. PBR serves as a valuable mortality standard to measure significance of mortality in marine mammal-fishery interactions because it is a risk averse method of incorporating uncertainty in management models for marine mammals. The formula for calculating PBR can be found in Wade and Angliss (1997), available at: *http://nmml.afsc.noaa.gov/library/gammsrep/gammsrep.htm*.

In examining estimated mortality, the Secretary may also consider other systems for calculating dolphin mortality standards, such as those utilized under the AIDCP, to manage fishery-induced dolphin mortality levels in the ETP. The AIDCP, a legally binding instrument for dolphin conservation and ecosystem management in the ETP, was negotiated in 1998. The SML system was conceived by nations participating in the IDCP and several non-governmental conservation organizations, in consultation with the IATTC. Nations participating in the AIDCP currently use the SML system for managing dolphin mortality in the ETP. The SML system uses substantially lower limits for dolphin mortality than the PBR approach. Pursuant to the MMPA, as amended by the IDCPA, the SMLs (per-stock per-year dolphin mortality limits) beginning in calendar year 2001 are set at less than or equal to 0.1 percent of the minimum population estimate of each dolphin stock. Additional information on SMLs can be found in Annex III of the AIDCP, available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Tuna_Dolphin/AIDCP.html*

The established standards of PBR and SML are incorporated into the ODP as a mechanism for assessing whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the ETP. Similar to previous work (Gerrodette 1996), NMFS will make calculations of PBR levels and SMLs for the final finding, based on recent dolphin abundance estimates from surveys conducted under the IDCPA research program. Further discussion of how the PBR, SML, or other appropriate mortality standards will be used in the final finding decision process can be found below.

The Organized Decision Process

NMFS has developed the ODP to provide the Secretary with a systematic approach for evaluating multiple types of data in a situation complicated by uncertainty. The decision process described here consists of separate measures of fishery and environmental effects on dolphins that the Secretary will consider in reaching a final decision on whether the fishery is having a significant adverse impact on any depleted dolphin stock in the ETP.

The ODP consists of a series of questions that the Secretary will consider in reaching a final decision. These questions are as follows:

(1) Ecosystem Question
(2) Direct Mortality Question
(3) Indirect Effects Question
(4) Growth Rate Question

The answer to the Ecosystem Question will provide an ecological context (as described above) for the Secretary to consider the remaining three questions. For the Direct Mortality and the Growth Rate Questions, the ODP provides basic thresholds that will result in a "yes" or "no" answer. If the Secretary answers "yes" to the Direct Mortality Question, the Secretary will conclude that the fishery is having a significant adverse impact. If the Secretary answers "no" to the Growth Rate Question, the Secretary will conclude that the fishery is having a significant adverse impact. For the Ecosystem and the Indirect Effects Questions, the Secretary will review the available information as well as the evidence presented by members of two expert panels (see below) in reaching final conclusions.

Details on how the Secretary will consider the four questions are as follows:

(1) *The Ecosystem Question.* During the period of the fishery, has the

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carrying capacity of the ETP for dolphins declined substantially or has the ecological structure of the ETP changed substantially in any way that could impede depleted dolphin stocks from growing at rates expected in a static ecosystem? Or has the carrying capacity increased substantially or has the ecological structure changed in any way that could promote depleted dolphin stocks to grow at rates faster than expected in a static ecosystem?

To determine the answer to these questions, the Secretary will consider scientific information collected and/or evaluated by NMFS, as well as information rendered individually from members of a panel of independent scientific experts in biological oceanography and ecology (the Ecosystem Panel). The panel members' assessments will be based on their review of relevant oceanographic and ecosystem data (physical and biological habitat and distribution, abundance, and ecology of other organisms in the ETP) from the period of the fishery.

(2) *The Direct Mortality Question.* For any depleted stock, does the estimate of the total fishery-attributed dolphin mortality, obtained by adding together estimates of direct mortality and, where appropriate, quantifiable levels of indirect mortality, exceed the mortality standard considered appropriate by the Secretary?

NMFS scientists will calculate, from the three recent abundance estimates (1998, 1999, and 2000), the PBR levels for each depleted dolphin stock in the ETP and provide them, along with measures of uncertainty, to the Secretary. Estimates of direct mortality and indirect mortality (where appropriate) will be compared to the PBR and other mortality standards to be considered by the Secretary. The Secretary will also take into account the assessments from the Ecosystem Panel members regarding possible changes in the carrying capacity and/or the ecosystem structure of the ETP. When evaluating the impact of mortality levels on dolphin stocks, the Secretary may also consider the SML standard as well as other standards as appropriate. The Secretary will consider the information with the understanding that adverse effects from unfavorable changes in the ecosystem may require the use of a mortality standard below PBR.

(3) *The Indirect Effects Question.* For each stock, is the estimated number of dolphins affected by the tuna fishery, considering data on sets per year, mortality attributable to the fishery, indicators of stress in blood, skin and other tissues, cow-calf separation, and other relevant indirect effects information, at a magnitude and degree that would risk recovery or appreciably delay recovery to its OSP level (how and to what degree)?

The answer to this question will be based on information collected and/or evaluated by NMFS, as well as from information rendered individually from members of a panel of independent scientific experts in veterinary science, physiology, and other stress-related fields (Indirect Effects Panel). The panel members' assessments will be based on their review of relevant behavioral, ecological, immunological, pathological, and other information with respect to the dolphin stocks involved. For this question, the Secretary will also consider the evidence presented by the Ecosystem Panel members regarding possible changes in the carrying capacity and/or the ecosystem structure of the ETP and how the evidence relates to indirect adverse effects attributable to the fishery on dolphins stocks as described above.

(4) *The Growth Rate Question.* For each depleted dolphin stock, is the observed population growth rate sufficient to ensure that each stock's recovery to OSP is not risked or appreciably delayed?

To answer this question, the Secretary will consider results from calculations in which NMFS scientists fit a population model to the time series of NMFS research vessel abundance estimates using the time series of estimates of the incidental mortality from the TVOD collected by IATTC and national program observers. If pending analysis indicates that the time series of relative abundance estimates from the TVOD are sufficiently reliable, they will also be used to estimate trends in dolphin abundance. NMFS scientists will estimate growth rates for each dolphin stock and determine measures of uncertainty for each estimate and provide this information to the Secretary. The Secretary will also take into account assessments from the members of the Ecosystem Panel when considering the estimated growth rates.

Appointment of Scientific Expert Panels

As indicated above in explanations of the Ecosystem and the Indirect Effects Questions, the Secretary will appoint two panels of independent scientific experts to provide individual assessments in determining the answers to these two questions. The independent experts will base their conclusions on a review of the results from the IDCPA research program, information obtained under the IDCP, and other relevant information. The use of independent expert judgment in obtaining guidance on complex and highly technical bodies of information, such as those relevant to the Ecosystem and the Indirect Effects Questions, is consistent with science-based, decision-making processes like that described here. NMFS published a notice in the **Federal Register** (67 FR 31279) soliciting nominations for the Ecosystem Expert Panel and the Indirect Effects Expert Panel. Based on these nominations, NMFS selected panelists in close consultation with professional scientific organizations.

Consideration of Available Scientific Information

The Secretary will make the final finding based on information available from studies conducted under the IDCPA research program, information obtained under the IDCP, and other relevant information. While NMFS is conducting much of the research that will form the basis of the final finding, there may be other sources of information that the Secretary will consider pursuant to the MMPA. Since NMFS will need time to properly assess and evaluate information to be considered by the Secretary, the deadline for submission of information was May 1, 2002, as indicated in the proposed ODP. The Secretary will consider and weigh all quantitative information, as accompanied by associated statistical measures of certainty and confidence, as appropriate in making the final finding.

The weight given to the available scientific information will be determined by the degree to which it meets the following elements: (1) relevance, (2) timeliness, (3) passed independent peer-review, and (4) available to NMFS for verification.

Scientific information means the results of properly designed scientific research. *Author(s)* means the originator(s) of the scientific information whose names appear on the written document. *Independent(ly)* means that the action was undertaken by one or more individuals that do not have any fiduciary, supervisory, subordinate, or other geographically close organizational relationship to the author(s). *Peer* means a scientist practicing in the same or very closely related field of study as the scientific information. *Relevance* means the scientific information is pertinent to the use of the information. *Timeliness* means the relevancy of scientific information least degraded by the passage of time. *Passed independent peer review* means the scientific information has been published in a refereed scientific journal in its field or independently read and criticized in

writing by at least two peers; the criticism was disposed of either by acceptance or rebuttal, as appropriate, by the author(s); and the disposition of the criticism by the author(s) was independently determined to be appropriate and adequate. *Verification* means that the data, procedures, methods, equipment, mathematics, statistics, models, computer software, and anything else used to produce the scientific information are to be submitted to NMFS in a timely manner such that the scientific information may be replicated or rejected. For the final finding, "in a timely manner" means as of May 1, 2002.

References

Gerrodette, T. 1996. A comparison of mortality limits for eastern tropical Pacific dolphins under the Declaration of Panama and under Potential Biological Removal (PBR) management. NMFS Administrative Report LJ–96–18.

NMFS 1999. Report to Congress on the initial finding, required under the Marine Mammal Protection Act of 1972 as amended by the International Dolphin Conservation Program Act of 1997, regarding whether the intentional deployment on or encirclement of dolphins with purser seine nets is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean. Southwest Fisheries Science Center, National Marine Fisheries Service, National Oceanic Atmospheric Administration.

Wade, P.R. and R.P. Angliss. 1997. Guidelines for assessing marine mammal stocks: Report of the GAMMS workshop April 3–5, 1996, Seattle, Washington. U.S. Department of Commerce, NOAA Technical Memorandum NMFS–OPR–12.

Dated: August 13, 2002.

Donald R. Knowles,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061402C]

Endangered Species; File No. 1374; Marine Mammals; File Nos. 781–1666, 1035–1688

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Withdrawal of application, return of application, and receipt of application for permit.

SUMMARY: Notice is hereby given that the following applicants have applied in due form for a permit to take marine mammals and/or endangered species for the purposes of scientific research:

Dr. Andrew J. Read, Duke University Marine Laboratory, 135 Duke Marine Lab Road, Beaufort, NC 28516–9721 (File No. 1374);

NMFS Northwest Fisheries Science Center, 2725 Montlake Blvd. E, Seattle, WA 98112–2097 (Dr. Cynthia Tynan, Principal Investigator) (File No. 781–1666); and

Dr. Cynthia Tynan, School of Oceanography, University of Washington, Box 357940, Seattle, WA 98195–7940 (File No. 1035–1688).

DATES: Written or telefaxed comments on the new application must be received on or before September 23, 2002.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–227), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Application Withdrawn

On March 25, 2002 a notice was published in the **Federal Register** (67 FR 13607) that an application had been filed by Dr. Andrew J. Read of Duke University Marine Laboratory. The purpose of this research was to describe relationships between the movements of sea turtles and the fall gillnet flounder fishery as well as habitat use of loggerhead, green and Kemp's ridley sea turtles. Up to 30 loggerhead, 10 green and 10 Kemp's ridley sea turtles would be monitored via satellite telemetry. The applicant has requested that the application be withdrawn and will now work on a similar project already authorized under NMFS Southeast Region scientific research Permit No. 1260.

Application Returned

On April 25, 2002 a notice was published in the **Federal Register** (67 FR 20491) that an application had been filed by NMFS, Northwest Fisheries Science Center, (Dr. Cynthia Tynan, Principal Investigator). The applicant requested permission to conduct photo-identification, prey sampling and line-transect surveys of marine mammals in U.S. waters of the North Pacific. Because the principal investigator on the permit application has changed affiliations and no longer works at NWFSC, the application has been returned.

Application Received

For File No. 1035–1688, the applicant requests permission to conduct shipboard line-transect surveys of marine mammals in U.S. waters of the North Pacific. The applicant proposes to take various species of cetaceans and five species of pinnipeds via harassment during photo-identification from small boats or larger research vessels, line-transect surveys from ships, and collection of prey near cetaceans. Cetacean prey will be collected via dip nets and towed zooplankton nets. The goal of this research is to provide temporal (seasonal) and spatial (mesoscale and fine-scale) variability in euphausiid and forage fish occurrence patterns necessary to identify the important bio-physical linkages between top-predator distributions and the density and availability of their prey. Line-transect data will also provide updated abundance estimates.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the

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comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents are available in the following offices:

All documents: Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

For File Nos. 781–1666, 1035–1688: Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

For File Nos. 781–1666, 1035–1688: Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; and

For File No. 1374: Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Dated: August 19, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–21591 Filed 8–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080902C]

Marine Mammals; File No. 1007–1629

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Leszek Karczmarski, Ph.D., Marine Mammal Research Program, Texas A&M University, 4700 Avenue U, Building 303, Galveston, Texas 77551 has been issued an amendment to scientific research Permit No. 1007–1629–00.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NOAA Fisheries, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Protected Species Coordinator, Pacific Area Office, NOAA Fisheries, 1601 Kapiolani Blvd., Room 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski or Trevor Spradlin, (301)713–2289.

SUPPLEMENTARY INFORMATION: On June 28, 2002, notice was published in the **Federal Register** (67 FR 43586) that an amendment of Permit No. 1007–1629–00, issued August 13, 2001 (66 FR 42523), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 1007–1629–01 now authorizes the take of 5,000 individual Hawaiian spinner dolphins (*Stenella longirostris*) annually by behavioral observation and photo-identification, 600 individuals annually through genetic sampling, and an unlimited number of individuals by close approach incidental to research activities. The purpose of the research is to compare population structure, genetic flow and social behavior between groups of Hawaiian spinner dolphins. The amended permit expands the geographic area of study to include vessel-based research in all the Northwestern and Main Hawaiian Islands.

Dated: August 19, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–21592 Filed 8–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081902B]

Draft Code of Conduct for Responsible Aquaculture in the U. S. Exclusive Economic Zone

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; schedule change; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the availability of a draft Code of Conduct for Responsible Aquaculture in the U. S. Exclusive Economic Zone (Code of Conduct). The purpose of the Code of Conduct is to provide general guidance for siting and operating aquaculture facilities in the Exclusive Economic Zone (EEZ) seaward of coastal state boundaries and authorities. NMFS solicits written comments on the Code of Conduct. NMFS also announces a schedule change for the publication of a final Code of Conduct.

DATES: Submit written comments on the draft Code of Conduct to the appropriate address or fax number by 5 p.m. on September 23, 2002.

ADDRESSES: The draft Code of Conduct is available on the NMFS Web site: *www.nmfs.gov/aquaculture.htm*. The document will also be provided in hard copy upon request (see **FOR FURTHER INFORMATION CONTACT**). Comments on the Code of Conduct may be sent to Colin Nash, NMFS/WASC, P.O. Box 130, Manchester, WA 98353 or by fax to 206–842–8364. Comments may also be hand-delivered during business hours to: NMFS Manchester Research Station, 7305 Beach Drive East, Port Orchard, WA, 98366–8204. Comments will not be accepted via telephone, e-mail, or Internet.

FOR FURTHER INFORMATION CONTACT: Susan Bunsick, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910 or call 301–713–2334 Extension 102. You may also fax your request to 301-713-0596 or send an e-mail to *susan.bunsick@noaa.gov*. Comments on the Code of Conduct will not be accepted at these contact points.

SUPPLEMENTARY INFORMATION:

Background

NMFS has Federal responsibility for the living marine resources of the United States. Under authority of the Magnuson-Stevens Fishery Conservation and Management Act, NMFS has responsibility for federally managed species and for the conservation and enhancement of essential fish habitat in the zone seaward of coastal state boundaries to the 200-nautical mile limit of the EEZ. NMFS has additional responsibilities for threatened and endangered species and for marine mammals under authorities of the Endangered Species Act and the Marine Mammal Protection Act.

The United States was an active participant in the 1993–1995 consultations that led to the adoption by the Food and Agriculture Organization of the United Nations (FAO) of the Code of Conduct for Responsible Fisheries (FAO Code). While the FAO Code is a voluntary and non-binding instrument, the United States has consistently supported its usefulness as an internationally agreed upon statement of principles that should govern the policies of FAO members in all sectors of the fishing industry, including aquaculture, which is addressed in Article 9 of the FAO Code. Although the Code of Conduct for the U.S. EEZ does not have to follow the FAO model, the FAO Code is an important reference instrument. A copy of the aquaculture section (Article 9) of the FAO Code can be obtained from the contact person listed above, and can be found on the Internet at *http://www.fao.org/fi/agreem/codecond/ficonde.asp*.

Stakeholder Input

NMFS held a series of six regional workshops during 2000 to obtain stakeholder input on the development of the draft Code of Conduct. These were held in Seattle (WA), Danvers (MA), and Galveston (TX) in September 2000, and in Honolulu (HI), Miami (FL), and Silver Spring (MD) in November 2000. NMFS announced the meetings in two separate **Federal Register** notices, dated August 24, 2000 (65 FR 51591), and October 30, 2000 (65 FR 64682), and encouraged stakeholder participation through more than 200 contacts in state and Federal agencies, Sea Grant College Program Centers, education and research institutions, non-governmental organizations, and commercial enterprises. NMFS specifically asked for input on the scope, content, specificity and use of a Code of Conduct that can be used to help guide aquaculture development in the EEZ. Areas for discussion included, but were not limited to, species choices, siting, transboundary considerations, design and construction of facilities, disease prevention and control, feeds and feeding protocols, effluents and pollution, interactions with wild species and protected resources, general operations, stock enhancement, use conflict resolution, and on-shore impacts. The workshops were open to all interested persons, and a total of 181 persons attended. In addition, NMFS received written comments from an additional 23 contributors.

The Code of Conduct

The Code of Conduct provides guidance to potential users of the U.S. EEZ for aquaculture. It provides general guidance to the aquaculture industry for siting and operating aquaculture facilities in this zone, and provides NMFS with a framework that can be used to ensure a more consistent review of aquaculture projects that require agency actions. NMFS may also use the Code of Conduct as a starting point for the development of regulatory standards in the future.

The Code of Conduct was developed with input secured from stakeholders and in consultation with other Federal agencies with authorities in Federal waters. Public comments received regarding this document will be addressed in the notice of availability of the final Code of Conduct, which will be published in the **Federal Register** within 60 days of the closing of the public comment period. The two previous **Federal Register** notices, dated August 24, 2000 (65 FR 51591), and October 30, 2000 (65 FR 64682), provided a tentative time frame for the production of a Code of Conduct. The time frame has been revised as provided here.

Time Frame

August 2002: Release draft Code of Conduct for public comment via posting of the document on the NMFS Web site (*www.nmfs.gov/aquaculture.htm*). The document will also be provided in hard copy upon request (see **FOR FURTHER INFORMATION CONTACT**).

September 2002: Public comment period on draft Code of Conduct ends.

November 2002: Release final Code of Conduct via a Federal Register notice of availability and posting on the NMFS Web site (*www.nmfs.gov/aquaculture.htm*). The document will also be provided in hard copy upon request (see **FOR FURTHER INFORMATION CONTACT**).

Dated: August 20, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–21588 Filed 8–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Secretarial Authorization for a Member of the Department of Defense To Serve on the Board of Directors, National Commission on Certification of Physician Assistants (NCCPA)

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 10 U.S.C. 1033(b), the General Counsel of the Department of Defense has designated the National Commission on Certification of Physician Assistants, and has concurred with the Secretary of the Army's authorization of LTC William L. Tozier to serve, without compensation, on the Board of Directors for the National Commission on Certification of Physician Assistants.

Authorization to serve on the Board of Directors has been made for the purpose of providing oversight and advice to, and coordination with the National Commission on Certification of Physician Assistants. Participation of the above official in the activities of the Commission will not extend to participation in day-to-day operations.

FOR FURTHER INFORMATION CONTACT: Mr. Matt Reres, Deputy General Counsel (Fiscal & Ethics), Department of the Army. 703–697–5105.

SUPPLEMENTARY INFORMATION: None.

John A. Hall,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 02–21480 Filed 8–22–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Western Hemisphere Institute for Security Cooperation Board of Visitors Curriculum Subcommittee Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the Curriculum Subcommittee meeting of the Western Hemisphere Institute for Security Cooperation (WHINSEC) Board of Visitors (BoV). Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463). The WHINSEC board was chartered on February 1, 2002 in compliance with the requirements set forth in 10 U.S.C. 2166. This Subcommittee was created on June 4, 2002 during the full BoV inaugural session.

DATES: September 10–12, 2002.

Time: 9 a.m. to 11:45 a.m. and 1 p.m. to 4:30 p.m. on September 10; 9 a.m. to 12 p.m. and 1 p.m. to 5 p.m. on September 11; and 9 a.m. to 11 p.m. on September 12, 2002.

Location: Pratt Hall, Building 35, 7011 Morrison Ave., Fort Benning, GA 31905

Proposed Agenda: The WHINSEC BoV Curriculum Subcommittee will review the WHINSEC curriculum (courses and classes) for compliance with the authorizing legislation.

FOR FURTHER INFORMATION CONTACT: Ken LaPlante, Core Processes, Inc., Army G–

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3 (Room 2D337), 400 Army Pentagon, Washington, DC 20310, telephone (703) 692–7419 or LTC Andres Toro at (703) 692–7421.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. There will be time, specified, for public comments by individuals and organizations at the end of the meeting on September 12. Public comment and presentations will be limited to two minutes each and must be provided in writing and received before Friday, September 6, 2002. Mail written presentations and requests to register to attend the public sessions to: LTC Andres Toro, DAMO–SSR (Rm. 2D337), 400 Army Pentagon, Washington, DC 20301–0400. Public seating is limited, and is available on a first come, first served basis.

John A. Hall,

Alternate Federal Register Liaison Officer.

[FR Doc. 02–21478 Filed 8–22–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of a Draft Environmental Impact Statement to Consider Issuance of a Department of the Army Permit Pursuant to Section 404 of the Clean Water Act for Aluminum Company of America (Alcoa) Inc.'s Proposal To Construct and Operate Three Oaks Mine in Lee and Bastrop Counties, TX

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with the requirements of the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE) Fort Worth District has prepared a Draft Environmental Impact Statement (DEIS). This DEIS evaluates potential impacts to the natural, physical and human environment as a result of the proposed mining activities associated with Aluminum Company of America (Alcoa) Inc.'s proposed Three Oaks Mine. The USACE regulates this proposed project pursuant to Section 404 of the Clean Water Act. The proposed activity would involve the discharge of dredged and fill material into waters of the United States associated with the proposed construction and operation of a surface lignite mine.

DATES: Submit comments by October 22, 2002. A public hearing regarding this DEIS will be held on October 2, 2002 (*see* **SUPPLEMENTARY INFORMATION**).

ADDRESSES: Send written comments and suggestions concerning this proposal to Ms. Jennifer Walker, Regulatory Project Manager, Regulatory Branch, CESWF–PER–R, U.S. Army Corps of Engineers, Fort Worth District, P.O. Box 17300, Fort Worth, TX 76102–0300 or via e-mail: *3oakseis@swf02.usace.army.mil*. Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Walker, Regulatory Project Manager at (817) 886–1733 or via e-mail: *3oakseis@swf02.usace.army.mil*.

SUPPLEMENTARY INFORMATION: Discharges of fill material into waters of the United States are regulated under Section 404 of the Clean Water Act, with the permitting responsibility administered by the USACE. The proposed project must also address environmental impacts relative to the Clean Air Act, Clean Water Act, Endangered Species Act and the Fish and Wildlife Coordination Act (FWCA). In accordance with the NEPA, the DEIS evaluates practicable alternatives for the USACE's decision making process. As required by NEPA, the USACE also analyzes the "no action" alternative as a baseline for gauging potential impacts.

As part of the public involvement process, notice is hereby given by the USACE Fort Worth District of a public hearing to be held at the Elgin High School, in Elgin, Bastrop County, TX, from 6:30 to 10 p.m., on October 2, 2002. The public hearing will allow participants the opportunity to comment on the DEIS prepared for the proposed Three Oaks Mine. Written comments should be sent to Ms. Jennifer Walker (*see* **ADDRESSES**). The comments are due 60 days from the date of publication of this notice. Copies of the DEIS may be obtained by contacting USACE Fort Worth District Regulatory Branch at (817) 886–1731 or printed from the Fort Worth District USACE Internet home page at *http://www.swf.usace.army.mil*.

Copies of the DEIS are also available for inspection at the locations identified below:

(1) Bastrop City Hall, 902 Main Street, Bastrop, TX 78602.

(2) Lexington City Hall, P.O. Box 56, Lexington, TX 78947.

(3) Austin City Hall, 124 West 8th Street, P.O. Box 1088, Austin, TX 78767.

(4) Rockdale City Hall, P.O. Box 586, Rockdale, TX 76567.

(5) Elgin City Hall, P.O. Box 591, Elgin, TX 78621.

(6) Giddings City Hall, 118 E. Richmond Street, Giddings, TX 78942.

(7) Lee County Courthouse, P.O. Box 390, Giddings, TX, 78942.

(8) Milam County Courthouse, P.O. Box 1008, Cameron, TX 76520.

(9) Bastrop County Courthouse, 804 Pecan Street, Bastrop, TX 78602.

(10) Travis County Courthouse, 1000 Guadalupe Street, P.O. Box 1748, Austin, TX 78767.

(11) City of Austin Library—Milwood Branch, 12500 Amherst Drive, Austin, TX 78727.

(12) City of Austin Library—John Henry Faulk Branch, 800 Guadalupe, Austin, TX 78701.

(13) City of Austin Library—Will Hampton at Oak Hill Branch, 5125 Convict Hill Road, Austin, TX 78749.

(14) City of Bastrop Public Library, 1100 Church Street, Bastrop, TX 78602.

(15) City of Elgin Public Library, 404 North Main Street, Elgin, TX 78621.

(16) City of Giddings Public Library, 177 South Madison Street, Giddings, TX 78942.

(17) City of Rockdale Public Library, 201 Ackerman Street, Rockdale, TX 76567.

After the public comment period ends, USACE will consider all comments received, revise the DEIS as appropriate, and issue a final Environmental Impact Statement.

Wayne A. Lea,

Chief, Regulatory Branch.

[FR Doc. 02–21307 Filed 8–22–02; 8:45 am]

BILLING CODE 3710–20–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of a Draft Supplemental Environmental Impact Statement (SEIS), for #200000380(IP–DEB), Phipps Ocean Park Beach Restoration Project, Town of Palm Beach, Palm Beach County, FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with the requirements of National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE or Corps) Jacksonville District, announces the availability of a Regulatory Program SEIS for the Phipps Ocean Park Beach Restoration Project. The Town of Palm Beach, Florida is seeking Corps regulatory authorization for the proposed project pursuant to section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). In accordance with 40 CFR 1506.5 and Appendix B, 33 CFR part 325, the applicant has prepared the Draft SEIS on the requested permit action under the direct supervision of the Corps pursuant to a "third party contract."

The general environmental impacts of beach restoration and erosion control activities on the Southeast Atlantic Coast of Florida were previously evaluated in the "*Coast of Florida, Erosion and Storm Effects Study—Region III, with Final Environmental Impact Statement, U.S. Army Corps of Engineers, Jacksonville District*", October 1996. The applicant's proposed project is located within a segment of the Region III area evaluated in the Coast of Florida FEIS and the Phipps Ocean Park Draft SEIS is a supplement to the Coast of Florida FEIS. The applicant's proposed is consistent with the Town's "*Comprehensive Coastal Management Plan Update—Palm Beach Island, Florida*" (June 1998).

As required by NEPA, the Draft SEIS describes the applicant's preferred alternative and other alternatives evaluated to provide shore protection for Phipps Ocean Park within the Town of Palm Beach, Florida. The applicant's preferred alternative is intended to: (1) Mitigate the long-term erosion impacts of Lake Worth Inlet and armored coastline north of the Project area; (2) provide and maintain storm protection to upland improvements; (3) restore and maintain the beach for public recreational use; and (4) restore and maintain the beach for marine turtle nesting habitat.

The applicant's preferred alternative includes placement of approximately 1.5 million cubic yards of fill over approximately 1.9 miles of beach, between DEP Monuments R–116 and R–126 and installation of 3.1 acres of hardbottom reef to mitigate for unavoidable impacts to nearshore hardbottom. Sand compatible with the existing beach has been identified and will be obtained from borrow areas located approximately 3,500 feet offshore and between 1.5 and 2.6 miles south of the fill area. Geotechnical analysis of the borrow area indicates that the material is suitable for the restoration of Phipps Ocean Park beach. The proposed borrow areas have been designed with buffer zones to avoid impact to hardbottom communities in the vicinity of the borrow areas. Mitigation of hardbottom resources within the fill area is required and has been incorporated into the plan.

The Draft SEIS also identifies and evaluates the potential direct, indirect, and cumulative environmental consequences of the applicant's preferred alternative, including potential impacts on Essential Fish Habitat, hardbottom resources and other specific issues identified in the scoping process. Cooperating agencies for the proposed project are the Florida Department of Environmental Protection, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the U.S. Environmental Protection Agency.

DATES: The public comment period on the Draft SEIS shall commence upon publication of the Notice of Availability in the **Federal Register.** Written comments must be received at the address listed below no later than 5 p.m. EST, 45 calendars days from the date of publication. A public meeting regarding the Draft SEIS will be held on September 12, 2002 (*See* **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Copies of the Draft SEIS document may be obtained by contacting Lois Edwards, SEIS Public Involvement Coordinator/Third Party Contractor, Coastal Technology Corp., 3625 20th Street, Vero Beach Florida, 32960, telephone (888) 562–8580; facsimile (772) 562–8432 or by e-mail to *ledwards@coastaltechcorp.com*. This document may also be found on the Corps' Web site by accessing the following address: *www.saj.usace.army.mil/permit/hot_topics/PhippsEIS/phippsindex.htm*. Written comments and questions concerning this proposal must be submitted to Dale Beter, Phipps SEIS Project Manager, USACE, Regulatory Branch, 400 North Congress Avenue, Suite 130, West Palm Beach, Florida 33401; telephone (561) 683–1814, facsimile (561) 683–4941, or e-mail at *Dale.E.Beter@saj02.usace.army.mil*. Requests to be placed on the mailing lists should be sent to Mrs. Edwards at the Vero Beach address.

FOR FURTHER INFORMATION CONTACT: Dale Beter at the above address or Peter A. Ravella, SEIS Project Manager/Third Party Contractor, Coastal Technology Corp., 2306 Lake Austin Blvd., Austin, Texas 78703; telephone (512) 236–9494; facsimile (800) 321–9673, or e-mail at *pravella@coastaltechcorp.com*.

SUPPLEMENTARY INFORMATION: The Draft SEIS examines potential impacts on Essential Fish Habitat (EFH) and also includes a comprehensive examination of potential cumulative impacts of the project and other projects from Lake Worth Inlet to South Lake Worth Inlet. In accordance with the NEPA, the Draft SEIS evaluates reasonable alternatives for the USACE's decision-making process, including the "no action" alternative as a baseline for gauging potential impacts.

The Florida Department of Environmental Protection (FDEP) has designated all of the Project area from R–116 to R–126 as an area of "critical erosion." This designation is based on (a) the erosion attributable to the influence of Lake Worth Inlet and the adjacent armored shoreline and (b) the existing headland features surrounding the Project area.

Shoreline conditions and structures updrift of the Project area exacerbate erosion and, if action is not taken, will lead to significant future erosion of the Project area and the shoreline further south. Net longshore sand transport in the region is to the south. Construction of the Inlet and Inlet jetties interrupts the longshore flow of sand and sand starves the region south of the Inlet leading to the construction of seawalls, groins, and eventually a rock revetment constructed by the Florida Department of Transportation (FDOT) north of Sloan's Curve in 1987. The revetment has cut-off the sand supply from the dune landward of the revetment. These conditions are expected to continue to contribute to the erosion within the Project area in the future.

The three miles of shoreline immediately north of Sloan's Curve are fronted by numerous armoring structures including rock revetments, seawalls, and groins. The existing groins north of Phipps Ocean Park deter southerly longshore transport to Phipps Ocean Park and the Project area. The Mid-Town Beach Restoration Project (unrelated to the project for which the applicant seeks authorization) is located to the north of this three-mile segment; the groins and armoring have impeded the southerly migration of the Mid-Town sand. In combination with the effects of Lake Worth Inlet, armoring structures have caused a longshore transport and sediment deficit to the Project area, resulting in erosion, loss of the recreational beach, increase in the storm damage risk to upland property, and loss of sea turtle nesting habitat.

Copies of the Draft SEIS are also available for inspection at the locations identified below:

(1) Town of Palm Beach Clerk's Office, Town Hall, 360 South County Road, Palm Beach, FL 33480.

(2) Town of Palm Beach Public Works Department, 951 Old Okeechobee Road, West Palm Beach, FL 33401.

(3) Town of Palm Beach Fire Rescue Station 3, 2185 South Ocean Blvd., Palm Beach, FL 33480.

(4) USACE West Palm Beach Regulatory Office, 400 North Congress

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Avenue, Suite 130, West Palm Beach, FL 33401.

(5) Palm Beach County Government Center, Front Lobby Information Desk, 215 North Olive Avenue, West Palm Beach, FL 33401.

After the public comment period ends, USACE will consider all comments received, revise the Draft SEIS as appropriate, and issue a Final Supplemental Environmental Impact Statement. As part of the public involvement process, notice is hereby given by the USACE-Jacksonville District of a public meeting to be held at Town Hall Council Chambers, 360 S. County Road, Town of Palm Beach, Florida, beginning at 7 p.m. on September 12, 2002. The public meeting will allow participants the opportunity to comment on the Draft SEIS.

John A. Hall,

Alternate Federal Register Liaison Officer.

[FR Doc. 02–21481 Filed 8–22–02; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Boston Harbor Navigation Improvement Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), New England District is conducting a feasibility study and Supplemental Environmental Impact Statement (SEIS) to determine the navigation-related needs of the harbor, port facilities, and harbor users of Boston Harbor. This study will analyze deepening various shipping channels in Boston Harbor, Massachusetts. These include the entrance channel, main ship channel, Presidents Roads anchorage area, and the lower Reserved Channel, all from −40 feet mean lower low water (MLLW) up to −50 feet MLLW, the Chelsea River from −38 feet to −40 feet MLLW, and a portion of the Mystic River channel from −35 to −40 feet MLLW. Without deepening portions of Boston Harbor, the ships and port of Boston will be affected in three ways. (1) Existing shippers and their vessels will continue to experience tidal related inefficiencies with the current channel depths, including negating the full advantage of Massport's deeper 45-foot berths at the Conley Terminal. (2) The port will be unable to accommodate the very large container vessels now beginning to serve the east coast of the United States from southern Asia via the Suez Canal. These vessels will not be able to use Boston efficiently with the current −40-foot channel depth. (3) As larger container and bulk vessels continue to come into service to replace existing vessels, Boston's lack of channel depth will erode its share of tonnage as New England cargo is redirected to the ports of New York-New Jersey and Halifax, Nova Scotia, and transported to New England by other means. Deepening the navigation channels in Boston Harbor would allow Boston to maintain a safe and efficient port.

DATES: September 5, 2002 from 1 to 4 p.m. at the Black Falcon Cruise Ship Terminal in South Boston, MA.

ADDRESSES: If you wish to be placed on the mailing list for this project, contact Mr. Michael Keegan, Project Manager, U.S. Army Corps of Engineers, New England District, Navigation Section, 696 Virginia Road, Concord, MA 01742.

FOR FURTHER INFORMATION CONTACT: If you have questions about the proposed action and the Draft SEIS, contact Mr. Keegan at (978) 318–8087.

SUPPLEMENTARY INFORMATION: The Corps participation in this study is authorized by a resolution of the Senate Subcommittee on Public Works dated September 12, 1969. This study was initiated at the request of the Massachusetts Port Authority (Massport), the study sponsor, using funds provided in the Fiscal Year 2000 Energy and Water Development Appropriations Bill.

Major navigation channel improvements (deepening) were made in 1999 through 2002 in the Reserved Channel, the Mystic River, Inner Confluence and the Chelsea River. A final Environmental Impact Statement (EIS) was prepared for the previous navigation improvement project in June of 1995. The current study would investigate the feasibility of deepening the main shipping channels in the port of Boston to a depth greater than the current authorized depths. This study, which will include the preparation of SEIS to the 1995 Record of Decision, will examine the engineering feasibility, economic justification, social and cultural resource impacts, and environmental acceptability of the proposed channel deepening. The existing −40-foot MLLW main harbor entrance channel from Broad Sound, through President Roads, and up to the Marine Terminal just seaward of the Ted Williams Tunnel will be examined for depths up to −50 feet MLLW, as will the Reserved Channel. Deepening of a small area of the Mystic River Channel upstream of the Moran Terminal, from the current −35-foot depth to −40 feet will also be examined, as will deepening the Chelsea River Channel from the current −38-foot depth to −40 feet.

Alternatives: Dredging alternatives would examine the incremental depths from −40-feet to −50-feet MLLW (−38 feet in Chelsea River, and −35 feet in portions of the Mystic River) to determine the optimum economic plan. In addition, disposal alternatives would be determined based on the suitability of the material for open water disposal. Material suitable for ocean disposal would likely be disposed at the Massachusetts Bay Disposal Site. Material unsuitable for ocean disposal would most likely be disposed within a confined aquatic disposal (CAD) cell within the federal navigation channels above the Ted Williams Tunnel. The draft and final EIS for the previous Boston Harbor navigation improvement project investigated other alternative disposal sites for the disposal of dredged material.

The study will take about three years to complete and Massport and the Corps will share the study cost.

Scoping: Full public participation by interested federal, state, and local agencies as well as other interested organizations and the general public is invited. All interested parties are encouraged to submit their names and addresses (*see* **ADDRESSES**), to be placed on the mailing list for reviewing any fact sheets, newsletters, and related public notices. Massport will host a public meeting on the study on September 5, 2002 (*see* **DATES**). The public is invited to attend and further identify issues that should be addressed in the SEIS.

Dated: August 12, 2002.

Thomas L. Koning,

Colonel, Corps of Engineers, New England District.

[FR Doc. 02–21308 Filed 8–22–02; 8:45 am]

BILLING CODE 3710–24–M

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–02NT41613 entitled Development of Technologies and Capabilities for Developing Coal, Oil, and Gas Energy Resources. The Department of Energy (DOE), National Energy Technology Laboratory (NETL), is conducting this solicitation to competitively seek cost-shared applications for research and development of technologies enabling development of energy resources needed to ensure the availability of affordable energy for the Nation's future.

DATES: Potential applicants are required to submit a technical application, not to exceed twenty-five (25) pages. Based on the technical application, applicants will be selected to enter into negotiations leading to award of a cooperative agreement (financial assistance) for the project. All applications must be submitted through the Industry Interactive Procurement System (IIPS) system in accordance with the instructions in the solicitation. The solicitation will be available on DOE/NETL's Internet address at *http://www.netl.doe.gov/business* and on the "Industry Interactive Procurement System" (IIPS) webpage located at *http://e-center.doe.gov* on or about August 21, 2002. The deadline for submission of technical applications for each of the three evaluation periods will be identified in the solicitation.

FOR FURTHER INFORMATION CONTACT: Larry D. Gillham, MS 921–162, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236–0940, e-mail Address: *gillham@netl.doe.gov*. Telephone Number: (412) 386–5817.

SUPPLEMENTARY INFORMATION: Through this solicitation, NETL seeks applications in the following thirteen (13) separate (*i.e.*, stand alone) Areas of Interest:

Coal & Environmental Systems

(1) Combustion Systems.

(2) Environmental and Water Resources.

(3) Carbon Sequestration.

(4) Power Systems Advanced Research.

(5) Vision 21 Technologies.

(6) Coal Fuels and Hydrogen.

(7) Gasification—*Not Available for Evaluation Period 1.*

Strategic Center for Natural Gas

(8) Fuel Cells.

(9) Gas Exploration, Production, Storage, and Hydrates.

(10) Infrastructure Reliability for Natural Gas.

Petroleum

(11) Oil and Gas Environmental: Upstream.

(12) Petroleum Fuels.

(13) Transportation Fuels and Chemicals * * *.

Applicants must select and target only one (1) Area of Interest per application. DOE anticipates the award of multiple cost-sharing cooperative agreements under each Area of Interest. Approximately $23.85 million of DOE funds is planned for this solicitation which will cover all Areas of Interest and all evaluation periods. It is anticipated that a total of 50–75 awards will be made as a result of this solicitation. In accordance with Section 3002 of the Energy Policy Act (EPAct), a minimum of 20% cost share will be required for each project. This solicitation includes multiple closing dates. Applicants will submit a technical application and after agency evaluation, the applicant will receive an e-mail notification that they have or have not been selected for negotiations leading to award. Those applicants selected for negotiations leading to award will be instructed in the notification e-mail that they must submit cost and other documentation as described in the solicitation. Selected applicants will generally have less than 30 days to submit the required cost and other documentation. Once released, the solicitation will be available for downloading from the IIPS Internet page, *http://e-center.doe.gov*. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The solicitation will only be made available in IIPS. No hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at *http://www.netl.doe.gov/business*. Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on August 16, 2002.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 02–21513 Filed 8–22–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6832–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed August 12, 2002 Through August 15, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020348, Final EIS, AFS, UT, Ray's Valley Road Realignment, Proposal to Reduce or Eliminate Adverse Impacts to Watershed and Aquatic Species and Provide Safer Driving Conditions, Uinta National Forest, Spanish Fork Ranger District, Utah County, UT, Wait Period Ends: September 29, 2002, Contact: Renee Flanagan (801) 342–5100. This document is available on the Internet at: *http://www.fs.fed.us/r4/uinta.*

EIS No. 020349, Draft EIS, FHW, MN, IA, Trunk Highway 60 Reconstruction Project, Improvements from 1.8 miles south of the Minnesota-Iowa Border (120th Street) to Interstate 90 north of the City of Worthington, Funding, COE Section 404 and NPDES Permits, Nobles County, MN and Osceola County, IA, Comment Period Ends: October 14, 2002, Contact: Tamara Cameron (651) 291–6121.

EIS No. 020350, Draft EIS, COE, TX, Three Oaks Mine Project, Construction and Operation of Surface Lignite Mine, Permits Required are Railroad Commission of Texas under Title 16, Part 1 and Section 404, Lee and Bastrop Counties, TX, Comment Period Ends: October 22, 2002, Contact: Ms. Jennifer Walker (817) 886–1733. This document is available on the Internet at: *http://www.swf.usace.army.mil.*

EIS No. 020351, Draft EIS, NOA, AK, OR, WA, CA, Programmatic EIS—Pacific Salmon Fisheries Management Plan, Off the Coasts of Southeast Alaska, Washington, Oregon and California, and the Columbia River

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Basin, Implementation, Magnuson-Stevens Act, AK, WA, OR and CA, Comment Period Ends: October 22, 2002, Contact: D. Robert Lohn (206) 526–6150.

EIS No. 020352, Final EIS, BLM, CA, Northern and Eastern Mojave Planning Area (NEMO), Implementation, California Desert Conservation Area Plan Amendments, Mojave Desert, CA, Wait Period Ends: September 29, 2002, Contact: Edythe Seehafer (760) 252–6021.

EIS No. 020353, Draft Supplement, COE, FL, Coast of Florida Erosion and Storm Effects Study Region III, Construction, Operation and Maintenance, Shore Protection Project, Palm Beach, Broward and Dade Counties, FL, Comment Period Ends: October 14, 2002, Contact: Dale Beter (561) 686–3441.

Amended Notices

EIS No. 020275, Draft EIS, GSA, WI, Badger Army Ammunition Plant, Property Disposal, Implementation, Townships of Sumpter and Merrimac, Sauk County, WI, Comment Period Ends: September 30, 2002, Contact: Mark N. Lundgren (312) 353–0302. Revision of FR Notice Published on 7/5/2002: CEQ Comment Period Ending 08/19/2002 Has Been Extended to 09/30/2002.

Dated: August 20, 2002.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–21562 Filed 8–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6632–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–J65013–MT Rating EC2, Moose Post-Fire Project, Proposal to Decrease Potential Mortality from Bark Beetles to Remaining Live Douglas-fir and Spruce Trees, Recover Merchantable Wood Fiber, Reduce Future Fire Risk and Modify Existing Road Access, Glacier View Ranger District, Flathead National Forest, Flathead County, MT.

Summary: While EPA supports road decommissioning, EPA expressed environmental concerns about potential effects on roadless characteristics from timber harvests in roadless areas, and about potential water quality impacts to a 303(d) listed stream. EPA recommended additional seeding and planting in severely burned areas.

ERP No. D–AFS–L65401–ID Rating EC2, Sixshooter Project, Reduction of Threats from Insect Infestation and Wildfire, Sixmile and West Fork Creek, Boise National Forest, Emmett Ranger District, Gem County, ID.

Summary: EPA expressed environmental concerns with potential adverse environmental impacts to old growth forest habitat and water quality. The final EIS should fully disclose these impacts and any appropriate mitigation measures.

ERP No. D–FHW–H40174–IA Rating LO, Avenue G Viaduct and Connecting Corridor, Access Improvement for Local Emergency Services and Safety Through Expanded Capacity across the Trail Corridor, Funding and NPDES Permit, Pottawattamie County, IA.

Summary: EPA has no objection to the proposed action. However, applicability and compliance with the National Emission Standards for Hazardous Air Pollutants (asbestos) should be clarified in the FEIS.

ERP No. D–NRC–E06021–NC Rating EC1, Generic EIS—McGuire Nuclear Power Station Units 1 and 2, Supplement 8 to NUREG–1437, Located on the Shore of Lake Norman, Mecklenburg County, NC.

Summary: EPA expressed environmental concerns about and requested clarification on anticipated waste quantities and the status of groundwater wells.

ERP No. DR–AFS–K65203–CA Rating LO, Sirretta Peak Trail Project to Explore Locations for the Construction of Trail Routes Open to Off-Highway Vehicles and New Information Relating to the Sierra Nevada Forest Plan Amendment, Cannell Meadow Ranger District, Sequoia National Forest, Tulare County, CA.

Summary: EPA has no objections to the proposed action.

ERP No. D1–DOE–A09824–00 Rating EO2, Hanford Site Solid (Radioactive and Hazardous) Waste Program, Waste Management Practices Enhancement for Low-Level Radioactive Waste, Mixed Low-Level Radioactive Waste and Transuranic Waste, Richland, Benton County, WA.

Summary: EPA has environmental objections to both action alternatives because they are predicted to exceed MCLs of Iodine-129 and contribute to exceedances of MCLs for other radionuclides, thereby worsening contamination in the groundwater and vadose zone. EPA also notes that the draft provides insufficient information to fully describe existing and predicted impacts. EPA recommends that the EIS expand its alternative discussion to include changes in design or waste acceptance criteria to meet environmental standards and that it include additional information about the affected environment and environmental impacts.

Final EISs

ERP No. F–AFS–G65062–NM Agua/Caballos Timber Sale, Harvesting Timber and Managing Existing Vegetation, Implementation, Carson National Forest, El Rito Ranger District, Taos County, NM.

Summary: EPA expressed lack of objections.

ERP No. F–AFS–L65389–OR Shore 'Nuf Timber Sale, Timber Harvesting on the Detroit Ranger District, Willamette National Forest, Linn and Marion Counties, OR.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–APH–A65169–00 Programmatic—EIS Rangeland Grasshopper and Mormon Cricket Suppression Program, Authorization, Funding and Implementation in 17 Western States, AZ, CA, CO, ID, KS, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA and WY.

Summary: EPA expressed lingering concerns with the FEIS with respect to mitigation measures for human exposure, water quality and pesticide drift mitigation. EPA suggested that APHIS consider these concerns as it proceeds to develop a Record of Decision for the Cricket Suppression Program.

ERP No. F–FHW–E40790–00 Corridor 18/I–69 Proposed Improvements from the US 412/US 51 Interchange to the US 51 Fulton Bypass/Purchase Parkway Interchange, Funding, Dyer and Obion Counties, TN and Fulton County, KY.

Summary: EPA expressed no objections to this project, provided that mitigation measures and monitoring programs, as described in the Final EIS, are implemented as applicable.

Dated: August 20, 2002.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–21563 Filed 8–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0228; FRL–7196–9]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (FIFRA SAP)) to consider and review a proposed methodology for projecting domestic percent-crop-treated with pesticides for dietary risk assessment.

DATES: The meeting will be held on October 1, 2002, from 8:30 a.m. to approximately 5 p.m., eastern standard time.

For dates on requests to present oral comments, submission of written comments, or requests for special seating arrangements, see Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held at Sheraton Crystal City Hotel, 1800 Jefferson Davis Hwy., Arlington, VA. The telephone number for the Sheraton Crystal City Hotel is: (703) 486–1111.

Requests to present oral comments, submission of written comments, or requests for special seating arrangements may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your request must identify docket ID number OPP–2002–0228 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Steven Knott, Designated Federal Official (DFO), Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail addresses: knott.steven@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and FQPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**— Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

A meeting agenda, EPA's background paper, questions to FIFRA SAP, and FIFRA SAP composition (i.e., members and consultants) will be available as soon as possible, but no later than early September. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at http://www.epa.gov/scipoly/sap.

2. *In person.* The Agency has established an official record for this meeting under docket ID number OPP–2002–0228. The official record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other material information, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. In addition, the Agency may provide additional background documents as the material becomes available. The public version of the official record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How May I Participate in this Meeting?

You may submit requests to present oral comments, written comments, or requests for special seating arrangements through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0228 in the subject line on the first page of your request.

1. *Oral comments.* Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern standard time, September 24, 2002, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, the speaker should bring to the meeting 30 copies of the oral comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments.* Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted no later than noon, eastern standard time, September 24, 2002, to provide FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons

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wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting.* Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

D. Submission of Requests and Written Comments

1. *By mail.* Submit your request or written comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

b. *In person or by courier.* Deliver your request or written comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

c. *Electronically.* You may submit your request or written comments electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0/9.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket ID number OPP–2002–0228. You may also file a request online at many Federal Depository Libraries.

II. Background

A. Purpose of the FIFRA SAP

The FIFRA SAP is an independent scientific peer review group that provides technical advice for EPA's consideration. Amendments to the FIFRA, enacted November 28, 1975, (7 U.S.C. 136w(d)), include a requirement under section 25(d) that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2), as well as proposed and final forms of rulemaking pursuant to section 25(a), be submitted to a SAP prior to being made public or issued to a registrant. In accordance with FIFRA section 25(d), the SAP is to have an opportunity to comment on the health and environmental impact of such actions. The Panel shall also make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the Panel for staggered terms of 4 years, based on recommendations from the National Institute of Health (NIH) and the National Science Foundation (NSF).

B. Purpose of the Meeting

The FIFRA SAP will meet to consider and review a proposed methodology for projecting domestic percent-crop-treated with pesticides for dietary risk assessment. The percentage of a given crop which is treated (or, more precisely, not treated) is a critical parameter in OPP's recently instituted, probabilistic human health exposure assessments because this factor determines the proportion of a crop which is assumed to have (or not have) residues. These residues, or expected residues, determine the dietary exposure to pesticides, which is a key component of dietary risk assessment.

EPA has historical data on domestic percent-crop-treated for a large number of crop/chemical combinations. This data can provide a basis for projecting future usage of pesticides (e.g., percent-crop-treated) for regulatory decisions based on dietary risk. Given EPA's mandate to assess pesticide food tolerances on a periodic basis, it is important for EPA to be able to project expected percent-crop-treated using these historical data. There are a number of statistical and/or mathematical methods for projecting future values from a historical record. EPA currently has methods for conducting these projections, but believes that EPA's refinements in these methods are warranted. Therefore, EPA has explored and developed methods that EPA believes, could serve the purpose for refining projected domestic percent-crop-treated, and is seeking SAP input on these method developments.

Previously, EPA has analyzed percent-crop-treated data using a distributed lag, whereby 1–year projections of percent-crop-treated were based on weighted historical data, with older data receiving lower weight and more recent data receiving higher weight. The confidence intervals associated with these projections are based on the variability of these historical data. While these methods have been shown to generate reasonable estimates, in cases where usage is trending upwards (or downwards), the uncertainty of the estimates can increase substantially. Therefore, EPA is seeking to develop a more robust method for projecting/estimating percent-crop-treated.

EPA is proposing to use exponential smoothing as the analytical tool for projecting percent-crop-treated to better reflect upward or downward trends in the data. The size of existing data sets (usually 10 or fewer observations) precludes some regression techniques, and exponential smoothing has been shown to be a robust method in settings where small data sets are common. EPA is also proposing a method for estimating prediction intervals that is consistent with exponential smoothing projections. As part of the development of these techniques, EPA has been working with and testing sets of historical data and plans to present comparisons of results in addition to the theoretical discussion.

C. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days. The report will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I. of the **SUPPLEMENTARY INFORMATION**.

D. Request for Nominations to Serve on Food Quality Protection Act Science Review Board (SRB)

The Agency solicits nominations of scientists to serve on the SRB for this meeting. Any interested person or organization may nominate qualified individuals to serve on the SRB. No interested person shall be ineligible to serve on the SRB by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except EPA). Individuals should have expertise in one or more of the following areas: agricultural economics, pesticide use, pesticide exposure, and forecasting. In addition, nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25 (a) of FIFRA. Nominees should be identified by name, occupation, position, address, and telephone number. To be considered, all nominees should include a current resume providing the nominee's background, experience and qualifications.

The criteria for selecting scientists to serve on the SRB are that these persons be recognized experts in their fields; that they be as impartial and objective as possible; that they represent an array of backgrounds and perspectives (within their disciplines); and that they be available to participate fully in the review, which will be conducted over a relatively short time frame. Nominees will be asked to attend one public meeting and to participate in the discussion of key issues and assumptions at this meeting. Finally, they will be asked to review and to help finalize the products and outputs of the FIFRA SAP.

If a SRB nominee is considered to assist in a review by the SAP for a particular session, the SRB nominee is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the SRB nominee is required to submit a Confidential Financial Disclosure Report, which shall fully disclose, among other financial interests, the nominee's employment, stocks and bonds, and where applicable, sources of research support. EPA will evaluate the nominee's financial disclosure form prior to the nominee being appointed to a panel reviewing agency actions. This evaluation will identify conflicts that may arise between the member's financial interests and the agency actions under review. If the SRB nominee's financial disclosure form is approved by the EPA, the nominee will be assigned to a SAP session and be hired as a special government employee.

Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** by September 6, 2002. The Agency will not formally acknowledge or respond to nominations.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 20, 2002.

Sherelle Sterling,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 02–21569 Filed 8–20–02; 4:01 pm]

BILLING CODE 6560–50–S

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Thursday, August 29, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Alternative Dispute Resolution Program Evaluation.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–21694 Filed 8–21–02; 2:51 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following collection of information to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The collection of information, which is contained in FEMA's interim final rule 44 CFR parts 201 and 206 and published in the **Federal Register** February 26, 2002, was approved by OMB February 15, 2002, under OMB's emergency processing procedures. We are requesting a 3-year approval to continue using the collection of information.

Title: State/Local/Tribal Hazard Mitigation Plans-Section 322 of the Disaster Mitigation Act of 2000.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0297.

Abstract: To obtain Federal grant assistance through Federal programs such as the Hazard Mitigation Grant Program (HMGP) and Fire Management Assistance Program, State, local and tribal governments are required to establish a process for developing and implementing a comprehensive state mitigation plan and provide a framework for State and federally sponsored mitigation activity resources.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 556—56 States and 500 Local or Tribal Governments.

Estimated Time per Respondent:

Type of collection/forms	Number of respondents	Hours per response	Annual burden hours
Update State or tribal mitigation plans (standard state mitigation plans)	18	320	5,760
State review of local plans	500	8	4,000
States develop Enhanced State Mitigation Plans	7	100	700
Local or tribal governments develop mitigation plans	[1]500	300	150,000

[1] Local plans.

Estimated Total Annual Burden Hours: 160,460.

Frequency of Response: On Occasion.

Comments

Interested persons are invited to submit written comments on the collection of information to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services

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Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347 or e-mail *InformationCollections@fema.gov*.

Dated: August 12, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–21502 Filed 8–22–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; Amendment No. 12 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1425–DR), dated July 4, 2002, and related determinations.

EFFECTIVE DATE: August 13, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 4, 2002:

Dimmit County for Public Assistance and Individual Assistance, including direct Federal assistance under section 408 of the Stafford Act, 42 USC 5174.

Duval and San Patricio Counties for Public Assistance (already designated for Individual Assistance, including direct Federal assistance under section 408 of the Stafford Act, 42 USC 5174).

Burnet and Coleman Counties for Individual Assistance, including direct Federal assistance under section 408 of the Stafford Act, 42 USC 5174 (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–21501 Filed 8–22–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Assistance to Firefighters—Fire Prevention and Safety Program

AGENCY: U.S. Fire Administration, Federal Emergency Management Agency (FEMA).

ACTION: Notice of availability of funds.

SUMMARY: FEMA gives notice of the availability of funds for FY 2002 under the Assistance to Firefighters Fire Prevention and Safety Program (the Program) as authorized the Federal Fire Prevention and Control Act of 1974. The Program will make available up to $10,000,000 of the total appropriated amount of $360,000,000 for fire prevention activities. FEMA will fund such activities based upon proposals that address the Program's priorities and maximize the benefits to be derived from the funds. FEMA is statutorily mandated to provide these funds to national, State, local, or community organizations that are recognized for their experience and expertise with respect to fire prevention or fire safety programs and activities. In selecting recipients, FEMA will give priority to organizations that focus on prevention of fire (or fire-related) injuries to children.

Authority: Federal Fire Prevention and Control Act of 1974 (Federal Fire Prevention and Control Act) 1701(a), 15 U.S.C. 2229 (2000).

DATES: This notice of funds availability is effective August 23, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Cowan, Director, Grants Program Office, U.S. Fire Administration, Federal Emergency Management Agency, Room 304, 500 C St. SW., Washington DC 20472, 1–866–274–0960, or *brian.cowan@fema.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of this notice is to advise of the availability of funds for carrying out fire prevention activities pursuant to section 1701(a) of the Federal Fire Prevention and Control Act, 15 U.S.C. 2229. Up to ten million dollars ($10,000,000) will be available for this purpose. FEMA reserves the right to use a portion of these funds to supplement previously awarded prevention grants.

B. Eligibility

National, State, local, or community organizations that are recognized for their experience and expertise in fire prevention or safety programs and activities are eligible to apply for funding through the Program.

C. Program Requirements

1. Recipients of grants or parties entering into cooperative agreements through the Program may not receive more than $750,000 and must agree to maintain in the fiscal year for which the assistance will be received their aggregate expenditures for fire prevention activities at or above the average level of such expenditures in the two fiscal years preceding the fiscal year for which the assistance will be received. They must also agree to a match with non-Federal funds an amount of 30 percent of the assistance received or, in the case of fire departments whose personnel serve jurisdictions of 50,000 or fewer residents, an amount of 10 percent of the assistance received. The matching requirement may be met through in-kind contributions.

2. FEMA may, in its discretion, also enter into contracts for fire prevention activities in order to achieve overall program goals. These contracts may not be subject to the limitations and requirements set forth in the previous paragraph.

3. Fire Departments that receive assistance through the Program must provide information to the national fire incident reporting system (NFIRS) for the period covered by the assistance.

4. Grantees must submit a report to the Director describing how their assistance was used and of the benefits derived from the funded activities.

D. Application Process

Through the interim final rule for the Assistance to Firefighters Program published on February 27, 2002 in the **Federal Register**, FEMA invited letters of interest from organizations that wished to be considered for the funding through the Program. Letters were requested to reflect in general terms the content and context of proposed activities. FEMA will send application packets to organizations that submitted letters of interest and to organizations known to be experienced in the fire prevention/safety field. Additionally, other eligible organizations, as specified above in Section B, may request

applications by e-mail usfagrants@fema.gov or by phone 866–274–0960. Completed application packages must be received by FEMA on or before September 23, 2002.

Applicants will be required to submit an application to FEMA that includes the following:

1. Application for Federal Assistance, Standard Form 424;

2. Budget Information—Non-construction Program, FEMA Form 20–20;

3. Direct Deposit Siga-up Form, Standard Form 1199A;

4. Summary Sheet for Assurances and Certification, FEMA Form 20–16, 20–16A, and 20–16C;

5. Disclosure of Lobbying Activities, Standard Form LLL; and

6. Program Narrative: The narrative describing the activities for which the funding is requested should not exceed 10 pages (double-spaced with one-inch margins and 12-point font). The narrative should also address the eligible activities, program priorities, and evaluation criteria included in Sections E and F.

Application packages will be reviewed for completeness and responsiveness to the following program requirements:

(a) General Information such as the history and description of your organization; a statement regarding the financial need of your organization and funding sources; your organization's capability to achieve proposed objectives and past successes at achievement of project goals; your organization's experience as it specifically relates to fire and injury prevention issues; and the qualifications of the project manager and primary team members.

(b) A project overview, which includes, but is not limited to: a problem statement, including the issues to be addressed, project goals and objectives or tasks to achieve the goals; a description of what will be accomplished during the grant performance period and an explanation of how the project will address the stated problem; a project description addressing the following questions as applicable:

(1) Will this establish a new program, expand an existing program into new areas; or augment an existing fire prevention program?

(2) Who is the target audience: FEMA-identified target population (children under the age of 14, seniors over 65 years of age, and firefighters), or another high-risk population?

(3) Will this program enhance the FEMA fire safety campaign to assist Americans in installing smoke alarms (as well as checking detectors and batteries to make sure they work), planning and practicing escape routes, and conducting home fire safety walkthroughs? If so, describe how.

(4) Will this program establish a multi-organization partnership with other groups in the community? If so describe how.

(c) List of Project benchmarks, phases, or milestones.

(d) Describe the method or procedure for implementation of your project.

(e) Include a detailed explanation of your project's budget including a cost-benefit assessment. The explanation should compare the benefits to be realized with the costs of achieving those benefits.

(f) If the program will be continued beyond the grant period, include an explanation of the means with which it will be sustained.

(g) Describe the methodology that will be used to assess and evaluate the effectiveness of the program.

E. Eligible Activities and Program Priorities

Fire prevention and safety programs are the only eligible activities under the Program and, in particular, those that will reach a significant number of individuals.

FEMA will give priority to programs that focus on the prevention of fire-related injuries to children. Although other programs that address fire prevention and safety may also be considered, the following list provides examples of programs that FEMA deems to be a high funding priority:

(1) Projects that focus on distributing smoke detectors and checking to assure detectors are operational, planning and practicing escape routes, or conducting home fire safety walkthroughs;

(2) Fire prevention programs targeting high-risk audiences, including those that:

(a) Enhance national, state, or local efforts to reduce fires and burn injuries affecting children under the age of 14 or adults over 65.

(b) Target geographical areas with a higher incidence of fire related deaths and injuries based on a five-year history of data from NFIRS or other national data centers (either in absolute numbers or per capita).

(c) Include the translation or development of public education materials aimed at high-risk populations. There is a higher emphasis on development of educational materials in languages other than English or Spanish (because development of these types of materials were funded in FY 01), although purchasing and distributing educational materials in any language are eligible.

(d) Develop fire prevention material using universal signs and symbols that do not include any language or are complete regardless of the language.

(3) Projects in urban neighborhoods that target at-risk populations, involve a partnership or consortium made up of local organizations, such as fire departments, civic organizations, high schools or citizen's task forces, and that include conducting door-to-door home safety checks and distributing smoke detectors and batteries to at least 50 percent of the residents of the neighborhood.

(4) Projects that affect the entire community such as educating the public about residential sprinklers, promoting residential sprinklers, and demonstrating working models of residential sprinklers, adopting or strengthening building codes and enforcement, improving engineering, and enacting fire-related ordinances for new construction are encouraged.

(5) FEMA will consider innovative projects that have a high probability of successfully achieving the Program goals. FEMA reserves the right to work with applicants in developing programs proposed in their applications.

F. Evaluation Criteria

Proposals will be reviewed to determine the degree to which they address the following:

(1) Involves a partnership between the fire department and the community in planning and practicing escape routes or conducting home fire safety walkthroughs;

(2) Targets geographical areas with a higher incidence of fire related deaths and injuries based on a five-year history of data from NFIRS or other national data centers (either in numbers or in per capita);

(3) Is designed to correct problems based on regional or local trends based on fire loss data;

(4) Proposes a program that will be sustained beyond the grant performance period and has a greater potential for long-term benefits;

(5) The Project describes a sound planned approach for getting the prevention message to targeted audiences;

(6) The Project presents a high benefit for the cost incurred and has minimal overhead or administrative costs;

(7) Comes from an organization with a successful track record and is capable of implementing the fire safety program that will help achieve program goals;

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(8) Contributes to the national or local effort on fire and burn injury prevention to children under the age of 14 or other at-risk groups; and

(9) Has a high potential for achieving the overall goals and priorities of the Firefighters Assistance Grant Program and the USFA.

FEMA will use the above criteria in making the funding decisions. FEMA considers these criteria to be of equal weight. In general, proposals that adequately address more of the criteria, and meet the program priorities, will be more likely to receive favorable consideration. FEMA intends to use non-federal experts to assist with the preliminary review of proposals. FEMA will use the expert analysis as part of the basis for its decisions. In addition, in making final decisions on funding, FEMA reserves the right to fund a variety of projects consistent with section E above.

Dated: August 19, 2002.

R. David Paulison,

Administrator, United States Fire Administration.

[FR Doc. 02–21504 Filed 8–22–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 20, 2002.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Bridgewater Financial, MHC, Raynham, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Bridgewater Savings Bank, Bridgewater, Massachusetts.

Board of Governors of the Federal Reserve System, August 20, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–21549 Filed 8–22–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 16, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. TransCommunity Bankshares Incorporated, Richmond, Virginia; to acquire 100 percent of the voting shares of Bank of Goochland, National Association, Goochland, Virginia (in organization).

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Wheeler Bancshares, Inc., Alamo, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Wheeler County State Bank, Alamo, Georgia.

Board of Governors of the Federal Reserve System, August 19, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–21550 Filed 8–22–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 02–20398) published on pages 52722 and 52723 of the issue for Tuesday, August 13, 2002.

Under the Federal Reserve Bank of Kansas City heading, the entry for Morrill Bancshares, Inc., Sabetha, Kansas, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Morrill Bancshares, Inc., Sabetha, Kansas; to acquire and merge with Morrill & Janes Bancshares, Inc., Hiawatha, Kansas, Onaga Bancshares Inc., Merriam, Kansas; and thereby acquire shares of Morrill & Janes Bank & Trust Co., Hiawatha, Kansas; The First National Bank of Onaga, Onaga, Oklahoma; Century Capital Financial, Inc., Kilgore, Texas; Century Capital Financial—Delaware, Inc., Wilmington, Delaware; and City National Bank, Kilgore, Texas.

In connection with this application, Applicant also has applied to acquire FBC Financial Corporation, Claremore, Oklahoma, and thereby indirectly acquire 1st Bank Oklahoma, Claremore, Oklahoma, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

In addition, Applicant also has applied to engage *de novo* through First Trust Company of Onaga, Onaga, Oklahoma, in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y.

Comments on this application must be received by September 6, 2002.

Board of Governors of the Federal Reserve System, August 19, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–21551 Filed 8–22–02; 8:45 am]

BILLING CODE 6210–01–U

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 02-20398) published on pages 52722 and 52723 of the issue for Tuesday, August 13, 2002.

Under the Federal Reserve Bank of Kansas City heading, the entry for Morrill Bancshares, Inc., Sabetha, Kansas, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Morrill Bancshares, Inc., Sabetha, Kansas; to acquire and merge with Morrill & Janes Bancshares, Inc., Hiawatha, Kansas, Onaga Bancshares Inc., Merriam, Kansas; and thereby acquire shares of Morrill & Janes Bank & Trust Co., Hiawatha, Kansas; The First National Bank of Onaga, Onaga, Oklahoma; Century Capital Financial, Inc., Kilgore, Texas; Century Capital Financial - Delaware, Inc., Wilmington, Delaware; and City National Bank, Kilgore, Texas.

In connection with this application, Applicant also has applied to acquire FBC Financial Corporation, Claremore, Oklahoma, and thereby indirectly acquire 1st Bank Oklahoma, Claremore, Oklahoma, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

In addition, Applicant also has applied to engage *de novo* through First Trust Company of Onaga, Onaga, Oklahoma, in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y.

Comments on this application must be received by September 6, 2002.

Board of Governors of the Federal Reserve System, August 19, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–21552 Filed 8–22–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2140–FN]

RIN 0938–ZA13

Medicare and Medicaid Programs; Approval of Deeming Authority for Critical Access Hospitals by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces our decision to approve the Joint Commission on Accreditation of Healthcare Organization's (JCAHO's) application as a national accrediting organization for critical access hospitals (CAHs) seeking to participate in the Medicare program. Following our evaluation of the organizational and programmatic capabilities of JCAHO, we have determined that JCAHO standards for CAHs meet or exceed the Medicare conditions of participation. Therefore, CAHs accredited by JCAHO will be granted deemed status under the Medicare program.

EFFECTIVE DATE: This final notice is effective November 21, 2002 through November 21, 2008.

FOR FURTHER INFORMATION CONTACT: Cindy Melanson, (410) 786–0310.

SUPPLEMENTARY INFORMATION:

I. Background

Statutory Provisions and Regulations

Under the Medicare program, eligible beneficiaries may receive covered services in a critical access hospital (CAH), provided that the hospital meets certain requirements. Sections 1820(c)(2)(B) and 1820(e) of the Social Security Act (the Act) establish distinct criteria for facilities seeking CAH designation. Under this authority, the Secretary has set forth in regulations minimum requirements that a CAH must meet to participate in Medicare. The regulations at 42 CFR part 485, subpart F (Conditions of Participation: Critical Access Hospitals (CAHs)) determine the basis and scope of CAH-covered services. Conditions for Medicare payment for critical access services can be found at § 413.70. Applicable regulations concerning provider agreements are at 42 CFR part 489 (Provider Agreements and Supplier Approval) and those pertaining to facility survey and certification are at 42 CFR part 488, subparts A and B.

Verifying Medicare Conditions of Participation

In general, we approve a CAH for participation in the Medicare program, if it is participating as a hospital at the time it applies for CAH designation, and is in compliance with parts 482 (Conditions of Participation for Hospitals), and 485, subpart F (Conditions of Participation: Critical Access Hospitals (CAHs)). Section 403 of the Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999 expanded this criterion to allow a limited number of additional entities to become eligible for CAH designation under certain circumstances. Specifically, a rural health clinic previously downsized from an acute care hospital, or a closed hospital that requests to reopen as a CAH, need only meet the provisions of 42 CFR part 485, subpart F (at the time they apply for CAH designation) to be eligible to participate in Medicare.

For a CAH to enter into a provider agreement, a State survey agency must certify that the CAH is in compliance with the conditions or standards set forth in the statute and part 485 subpart F of our regulations. Then, the CAH is subject to ongoing review by a State survey agency to determine whether it continues meeting Medicare requirements. There is, however, an alternative to State compliance surveys. Certification by a nationally recognized accreditation program can substitute for ongoing State review.

Section 1865(b)(1) of the Act provides that, if a provider is accredited by a national accreditation body under standards that meet or exceed the Medicare conditions of participation, the Secretary can "deem" the provider as having met the Medicare requirements for those conditions. Accreditation is voluntary and not required for participation in Medicare; providers have the option to undergo State surveys or pursue accreditation. The American Osteopathic Association (AOA) is currently the only CMS-approved national accreditation organization for CAHs.

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II. Deeming Application Approval Process

Section 1865(b)(3)(A) of the Act provides a statutory timetable to ensure that our review of deeming applications is conducted in a timely manner. The Act provides us with 210 calendar days to complete our survey activities and application review process. Within 60 days of receiving a completed application, we must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the nature of the request, and provides no less than a 30-day public comment period.

III. Proposed Notice

On March 22, 2002, we published a proposed notice at 67 FR 13344 announcing the JCAHO's request for approval as a deeming organization for CAHs. In the notice, we detailed our evaluation criteria. Under section 1865(b)(2) of the Act and § 488.4, we conducted a review of the JCAHO application in accordance with the criteria specified by our regulation, which includes, but is not limited to the following:

- An onsite administrative review of JCAHO's (1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors; (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation.
- A comparison of JCAHO's CAH accreditation standards to our current Medicare CAH conditions of participation standards.
- A documentation review of JCAHO's survey processes to do the following:
- Determine the composition of the survey team, surveyor qualifications, and the ability of JCAHO to provide continuing surveyor training.
- Compare JCAHO's processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
- Evaluate JCAHO's procedures for monitoring providers or suppliers found to be out of compliance with JCAHO program requirements. The monitoring procedures are used only when the JCAHO identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(b)(2).
- Assess JCAHO's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
- Establish JCAHO's ability to provide us with electronic data in ASCII-comparable code and reports necessary for effective validation and assessment of JCAHO's survey process.
- Determine the adequacy of staff and other resources.
- Review JCAHO's ability to provide adequate funding for performing required surveys.
- Confirm JCAHO's policies with respect to whether surveys are announced or unannounced.
- Obtain JCAHO's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(b)(3)(A) of the Act, the proposed notice also solicited public comments regarding whether JCAHO's requirements met or exceeded the Medicare conditions of participation for CAHs. We received no public comments in response to our proposed notice.

IV. Provisions of the Final Notice

A. Differences Between JCAHO and Medicare's Conditions and Survey Requirements

We compared the standards contained in the JCAHO's "Critical Access Hospital (CAH) Manual" and its survey process in the "Critical Access Hospital Surveyor Handbook" with the Medicare CAH conditions of participation and CMS's "State and Regional Operations Manual." Our review and evaluation of JCAHO's deeming application, which were conducted as described in section III of this notice yielded the following:

- JCAHO provided an updated crosswalk (a table showing the match between their standards and our standards) of recommended revisions or clarifications to its requirements to ensure that the requirements meet or exceed CMS requirements.
- JCAHO adjusted language to consistently refer to CAHs as opposed to hospitals.
- JCAHO modified and adjusted its standards for CAHs to more clearly document the JCAHO standard and intent statement. The reformatted version presents the standards in their entirety and facilitates a comparison to the Medicare COPs.
- JCAHO added language to each chapter of the CAH Manual stating, "Critical Access Hospitals going through a deemed status survey are expected to meet the standards and the full intent of the standards." This added language eliminates CMS's concern about JCAHO's intent statements not carrying the same weight as the Medicare standards.
- JCAHO modified its standard and intent statement to include a list of drugs and biologicals commonly used in life-saving procedures in order to meet the requirements of § 485.618.
- In order to meet the requirements of § 485.639, JCAHO added to its standard and intent statement the language that surgery can only be performed by: (1) A doctor of medicine or osteopathy, including an osteopathic practitioner recognized under section 1101(a)(7) of the Act; (2) a doctor of dental surgery or dental medicine; or (3) a doctor of podiatric medicine.
- JCAHO standards previously indicated resurvey of a CAH every 3 years. JCAHO modified its standards to indicate in the resurvey requirements that a 1-year-follow-up visit after the initial accreditation survey is required. After the 1-year-follow-up, CAHs will be resurveyed every 3 years.
- JCAHO provided a list of currently accredited facilities and schedule of surveys to be performed to meet the requirements of § 488.4(a)(9) and (10).
- JCAHO addressed our regulations at § 485.623 and specifically, § 485.623(d)(1), by recognizing that assessing compliance with the life safety code (LSC) is a JCAHO responsibility. The LSC, published on an ongoing basis by the National Fire Prevention Association, contains building and construction standards designed to promote fire-safe structures. In addition to the JCAHO requirement that the CAH complete a Statement of Conditions (SOC), which allows the CAH to report any known deficiencies in the physical plant, a JCAHO trained surveyor also surveys the CAH using the JCAHO environment-of-care standards. During the JCAHO survey process, a surveyor will conduct a building tour, including above-the-ceiling inspections, and will validate what the organization has reported on its SOC. As a result of the inspection, JCAHO findings may be cited as requirements for improvement and may impact the score and survey outcome. JCAHO requires that all findings on the SOC be remediated in the same manner as those found independently by JCAHO surveyors. The CMS Financial Report to Congress, published in 2002, includes a report on "Medicare's Validation Program for Hospitals Accredited by the JCAHO". This report showed a large discrepancy between the LSC survey findings made by the State survey agencies and JCAHO surveys. JCAHO regularly failed to identify LSC deficiencies. We expect that the current JCAHO LSC survey process will be reviewed when CMS adopts the 2000 edition of the LSC, which was published as a proposed rule on October 26, 2001 (66 FR 54178). The final rule is under development. Insofar as there may be differences between state survey standards and JCAHO standards based on the 2000 LSC, we want to provide both JCAHO and the states with an opportunity to bring their procedures into alignment with the new LSC. If, after reviewing JCAHO's performance under such standards, significant discrepancies continue to occur, we will address the matter at that time.

B. Term of Approval

Based on the review and observations described in section III of this final notice, we have determined that JCAHO's requirements for CAHs meet or exceed our requirements. Therefore, we recognize the JCAHO as a national accreditation organization for CAHs that request participation in the Medicare program, effective November 21, 2002 through November 21, 2008.

V. Collection of Information Requirements

This final notice does not impose any information collection and recordkeeping requirements subject to the Paperwork Reduction Act (PRA). Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA. The requirements associated with granting and withdrawal of deeming authority to national accreditation organizations, codified in 42 CFR part 488, (Survey, Certification, and Enforcement Procedures) are currently approved by OMB under OMB approval number 0938–0690, with an expiration date of September 30, 2002.

VI. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (Pub. L. 98–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This final notice recognizes JCAHO as a national accreditation organization for CAHs that request participation in the Medicare program. There are neither significant costs nor savings for the program and administrative budgets of Medicare. Therefore, this notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866. We have determined, and the Secretary certifies, that this notice will not result in a significant impact on a substantial number of small entities and will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice will not result in an impact of $110 million on the governments mentioned or on the private sector.

In an effort to better assure the health, safety, and services of beneficiaries in CAHs already certified as well as provide relief to State budgets in this time of tight fiscal restraints, we deem CAHs accredited by JCAHO as meeting our Medicare requirements. Thus, we continue our focus on assuring the health and safety of services by providers and suppliers already certified for participation in a cost-effective manner.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget. In accordance with Executive Order 13132, we have determined that this notice will not significantly affect the rights of States, local or tribal governments.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplemental Medical Insurance Program).

Dated: August 16, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–21372 Filed 8–22–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3098–N]

Medicare Program; Meeting of the Executive Committee of the Medicare Coverage Advisory Committee—September 25, 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Executive Committee (the Committee) of the Medicare Coverage Advisory Committee (MCAC). The Committee provides advice and recommendations to us about clinical issues. The Committee will act upon recommendations from the Medical and Surgical Procedures Panel of the MCAC regarding the use of deep brain stimulation for the treatment of Parkinson's disease. The Committee will also discuss approaches to assessing clinical evidence in diagnosis and treatment of rare diseases.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)).

DATES: *The Meeting:* September 25, 2002 from 8 a.m. until 4:30 p.m., E.D.T.

Deadline for Presentations and Comments: September 12, 2002, 5 p.m., E.D.T.

Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to notify the Executive Secretary by September 4, 2002 (see **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES:

The Meeting: The meeting will be held at the Baltimore Convention Center, Room 321–322, One West Pratt Street, Baltimore, MD 21201.

Presentations and Comments: Submit formal presentations and written

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comments to Janet A. Anderson, Executive Secretary; Office of Clinical Standards and Quality; Centers for Medicare & Medicaid Services; 7500 Security Boulevard; Mail Stop C1–09–06; Baltimore, MD 21244.

Website: You may access up-to-date information on this meeting at *http://www.cms.gov/coverage.*

Hotline: You may access up-to-date information on this meeting on the CMS Advisory Committee Information Hotline, 1–877–449–5659 (toll free) or in the Baltimore area (410) 786–9379.

FOR FURTHER INFORMATION CONTACT: Janet A. Anderson, Executive Secretary, 410–786–2700.

SUPPLEMENTARY INFORMATION: On December 14, 1998 and February 7, 2002, we published a notice in the **Federal Register** (63 FR 68780 and 66 FR 9349) to describe the Medicare Coverage Advisory Committee (MCAC), which provides advice and recommendations to us about clinical issues. This notice announces the following September 25, 2002 public meeting of the Executive Committee (the Committee) of the MCAC.

Current Panel Members

Harold C. Sox, M.D.; Daisy Alford-Smith, Ph.D.; Wade Aubry, M.D.; Linda Bergthold, Ph.D.; Ronald M. Davis, M.D.; John H. Ferguson, M.D.; Leslie P. Francis, J.D., Ph.D.; Alan M. Garber, M.D., Ph.D.; Thomas V. Holohan, M.D., M.A.; Michael D. Maves, M.D., M.B.A.; Barbara J. McNeil, M.D., Ph.D.; Robert L. Murray, Ph.D.; Frank J. Papatheofanis, M.D., Ph.D.; Randel E. Richner, M.P.H.

Meeting Topic

The Committee will act on recommendations from the Medical and Surgical Procedures Panel of the MCAC regarding the use of deep brain stimulation for treatment of Parkinson's disease. The Committee will also discuss methods for assessing clinical evidence concerning diagnosis and treatment of diseases that affect a small population of patients.

Procedure and Agenda

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 90 minutes. The Committee may limit the number and duration of oral presentations to the time available. If you wish to make a formal presentation, you must notify the Executive Secretary named in the **FOR FURTHER INFORMATION CONTACT** section of this notice, and submit the following by the *Deadline for Presentations and Comments* date listed in the **DATES** section of this notice: A brief statement of the general nature of the evidence or arguments you wish to present, and the names and addresses of proposed participants. A written copy of your presentation must be provided to the Executive Secretary before offering your public comments. We will request that you declare at the meeting whether or not you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

After the public and CMS presentations, the Committee will deliberate openly on the topic. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow approximately a 30-minute open public session for any attendee to address issues specific to the topic. At the conclusion of the day, the members will vote, and the Committee will make its recommendation.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: August 13, 2002.

Robert A. Streimer,

Acting Director, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services.

[FR Doc. 02–21373 Filed 8–22–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1216–N]

Medicare Program; September 23 and 24, 2002, Meeting of the Practicing Physicians Advisory Council and Request for Nominations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council and invites all organizations representing physicians to submit nominees for membership on the Council. There will be several vacancies on the Council as of February 28, 2003. The meetings are open to the public.

Meeting Registration: Persons wishing to attend this meeting must contact the meeting coordinator Diana Motsiopoulos at *dmotsiopoulos@cms.hhs.gov* or (410) 786–3379 at least 72 hours in advance to register. Persons who are not registered in advance will not be permitted into the CMS Headquarters and thus will not be able to attend the meeting. Persons attending the meeting will be required to show a photographic identification, preferably a valid driver's license, before entering the building.

DATES: The meeting is scheduled for September 23, 2002 from 8:30 a.m. until 5 p.m. e.s.t. and September 24, 2002 from 8:30 a.m. until 1 p.m. e.s.t.

Nominations: Nominations will be considered if receive at the appropriate address, provided below no later than 5 p.m. e.s.t., September 30, 2002.

ADDRESSES: The meeting will be held at CMS Headquarters' Multipurpose Room, 7500 Security Boulevard, Baltimore, MD 21224–1750.

Nominations: Mail or deliver nominations to the following address: Centers for Medicare & Medicaid Services, Center for Medicare Management, Office of Professional Relations, Attention: Paul Rudolf, M.D. J.D., Executive Director, Practicing Physicians Advisory Council, 7500 Security Boulevard, Mail Stop C4–10–07, Baltimore, MD 21244–1850.

Website: You may access the Internet at *http://www.hcfa.gov/medicare/ppacsite.htm* for additional information and updates on committee activities.

Advisory Committees Information Line: (1–877–449–5659 toll free)/(410–786–9379 local).

FOR FURTHER INFORMATION CONTACT: Paul Rudolf, M.D., J.D., Executive Director, Practicing Physicians Advisory Council, 7500 Security Boulevard., Mail Stop C4–10–07, Baltimore, MD 21244–1850, (410) 786–3379. News media representatives should contact the CMS Press Office, (202) 690–6145.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act (the Act) to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 of the members of the Council shall be physicians described in section 1861(r)(1) of the Act. The remaining members may include dentists, podiatrists, optometrists, and chiropractors. Members serve for overlapping 4-year terms; terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before its termination. Section 1868(a) of the Act provides that nominations to the Secretary for Council membership must be made by medical organizations representing physicians.

The Council held its first meeting on May 11, 1992. The current members are: James Bergeron, M.D.; Richard Bronfman, D.P.M.; Ronald Castellanos, M.D.: Rebecca Gaughan, M.D.; Joseph Heyman, M.D.; Stephen A. Imbeau, M.D.; Joe Johnson, D.O.; Christopher Leggett, M.D.; Dale Lervick, O.D.; Angelyn L. Moultrie-Lizana, D.O.; Barbara McAneny, M.D.; Michael T. Rapp, M.D. (Chairman); Amilu Rothhammer, M.D.; Victor Vela, M.D.; and Douglas L. Wood, M.D.

Council members will be updated on the status of recommendations made during the past year. The agenda will provide for discussion and comment on the following topics:

- Physician's Regulatory Issues Team (PRIT) update.
- Update on the Physician Fee Schedule.
- Beneficiary access.
- Funding for provider education.
- Medicaid access provision.
- Evaluation and management guidelines.
- Health Insurance Portability and Accountability Act.
- Local medical review policy-variation.
- Self-administered drug policy.
- Preventative services.

For additional information and clarification on the topics listed, call the contact person in the "For Further Information Contact" section of this notice. Individual physicians or medical organizations that represent physicians wishing to make 5-minute oral presentations on agenda issues should contact the Executive Director by 12 noon, Friday, September 13, 2002, to be scheduled. Testimony is limited to agenda topics. The number of oral presentations may be limited by the time available. A written copy of the presenter's oral remarks should be submitted to the meeting coordinator at *dmotsiopoulos@cms.hhs.gov* no later than 12 noon, September 13, 2002, for distribution to Council members for review before the meeting. Physicians and organizations not scheduled to speak may also submit written comments to the Executive Director and Council members. The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired or other special accommodation should contact Diana Motsiopoulos at *dmotsiopoulos@cms.hhs.gov* or (410) 786–3379 at least 10 days before the meeting.

This notice also serves as an invitation to all organizations representing physicians to submit nominees for membership on the Council. Each nomination must state that the nominee has expressed a willingness to serve as a Council member and must be accompanied by a short resume or description of the nominee's experience. To permit an evaluation of possible sources of conflicts of interest, potential candidates will be asked to provide detailed information concerning financial holdings, consultant positions, research grants, and contracts. Section 1868(b) of the Act provides that the Council meet quarterly, as requested by the Secretary, to discuss proposed changes in regulations and manual issuances that relate to physicians' services. Council members are expected to participate in all meetings. Section 1868(c) of the Act provides for payment of expenses and a per diem allowance for Council members at a rate equal to payment provided members of other advisory committees. In addition to making these payments, the Department of Health and Human Services/Centers for Medicare & Medicaid Services provides management and support services to the Council. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 CFR part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 16, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–21371 Filed 8–22–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), (FR, Vol. 67, No. 125, pp. 43632–43633 dated June 28, 2002) is amended to reflect a change to the Office of Communications and Operations Support.

The specific amendments to part F are described below:

- Section F.10. (Organization) is amended to read as follows:

1. Public Affairs Office (FAC)
2. Center for Beneficiary Choices (FAE)
3. Office of Legislation (FAF)
4. Center for Medicare Management (FAH)
5. Office of Equal Opportunity and Civil Rights (FAJ)
6. Office of Research, Demonstration, and Information (FAK)
7. Office of Clinical Standards and Quality (FAM)
8. Office of the Actuary (FAN)
9. Center for Medicaid and State Operations (FAS)
10. Northeastern Consortium (FAU)
11. Southern Consortium (FAV)
12. Midwestern Consortium (FAW)
13. Western Consortium (FAX)
14. Office of Operations Management (FAY)
15. Office of Internal Customer Support (FBA)
16. Office of Information Services (FBB)
17. Office of Financial Management (FBC)
18. Office of Strategic Operations and Regulatory Affairs (FGA)

- Section F.20. (Functions) is amended by restructuring the Office of Communications and Operations Support and changing their title to the Office of Strategic Operations and Regulatory Affairs. The new functional statement reads as follows:

18. Office of Strategic Operations and Regulatory Affairs (FGA)

- Manages the Agency's decision-making and regulatory process.

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• Serves in a neutral broker coordination role which includes: Scheduling meetings and briefings for the Administrator and coordinating communications between and among central and regional offices to ensure that emerging issues are identified early, all concerned components are directly and fully involved in policy development/decision making, and that all points of view are presented.

• Provides leadership, direction, and advocacy, on behalf of top CMS officials in connection with official policy matters for presentation to the Administrator and Deputy Administrator/Chief Operating Officer to insure that all points of view and program interests of concern to the Administrator and Deputy Administrator/Chief Operating Officer are developed and properly presented for consideration. Reviews policy statements by component Directors and others to anticipate potential problems or inconsistencies with views of the Administrator, Deputy Administrator/Chief Operating Officer, and the Administration. Assists in resolving these matters to the satisfaction of the Agency and top management.

• Manages meeting requests for or on behalf of the Administrator, and Deputy Administrator/Chief Operating Officer. Coordinates the preparation of briefing materials for the Administrator, Deputy Administrator/Chief Operating Officer, and the Department in advance of the Administrator and Deputy Administrator/Chief Operating Officer's participation in meetings, appointments with major groups, etc. Works with CMS components to assure that appropriate briefing materials are presented to Senior Leadership. Senior officials in CMS and the Department, as well as officials of other Federal agencies, state and local governments, and outside interest groups attend these meetings.

• Coordinates the preparation of manuals and other policy instructions to ensure accurate and consistent implementation of the Agency's programs.

• Manages the Agency's system for developing, clearing and tracking regulations, setting regulation priorities and corresponding work agendas; coordinates the review of regulations received for concurrence from departmental and other government agencies, and develops routine and special reports on the Agency's regulatory activities.

• Manages the regulations development process to ensure timely decision making by the Administrator and Deputy Administrator/Chief Operating Officer on CMS regulations.

• Provides leadership and management of the Agency's Executive Correspondence system. Operates the agency-wide correspondence tracking and control system and provides guidance and technical assistance on standards for content of correspondence and memoranda.

• Manages the agency-wide clearance system to ensure appropriate involvement from Agency components and serves as a primary focal point for liaison with the Executive Secretariat in the Office of the Secretary.

• Provides management and administrative support to the Office of the Attorney Advisor and staff.

• Acts as audit liaison with the General Accounting Office (GAO) and the HHS Office of Inspector General (OIG).

• Monitors and coordinates major CMS legislative initiatives such as tracking the status of the Agency's implementation of Balanced Budget Act, Balanced Budget Refinement Act, and the Benefits Improvement and Protection Act provisions.

• Coordinates and prepares the advance planning reports for the Secretary and the Administrator (Secretary's Forecast Report).

• Acts as the liaison with the Office of the Secretary for Reports to the Congress and maintains a tracking system to monitor status. Also serves as the CMS liaison with the Small Business Administration's Office of the National Ombudsman.

• Develops standard processes for all CMS FACA committees and provides operational and logistical support to CMS components for conferences and on all matters relating to Federal Advisory Committees.

• Conducts activities necessary to the receipt, management, response, and reporting requirements of the Department under the Freedom of Information Act (FOIA) regarding all requests received by CMS.

• Maintains a log of all FOIA requests received by the central office, refers requests to the appropriate components within headquarters, the regions or among carriers and intermediaries for the collection of the documents requested. Makes recommendations and prepares replies to requesters, including denials of information as permitted under FOIA, and drafts briefing materials and responses in connection with appeals of denial decisions.

• Directs the maintaining and amending of CMS-wide records for confidentiality and disclosure to the Privacy Act to include: planning, organizing, initiating and controlling privacy matching assignments.

Dated: August 12, 2002.

Ruben J. King-Shaw, Jr.,

Deputy Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 02–21370 Filed 8–22–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: September 12–13, 2002.

Open: September 12, 2002, 8:30 AM to 1:30 PM.

Agenda: The agenda will include the Director's Report, NCMHD, NCMHD Staff reports including the NCMHD Organization/Structure/Resources, NIH Strategic Research Plan, NCMHD Programs, Peer Review Process, Grants Management, Ethics, and other business of the Council.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: September 12, 2002, 1:30 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Jean L. Flagg-Newton, PhD, Deputy Director, National Center on Minority Health and Health Disparities, 6707 Democracy Boulevard, Democracy 2, Suite 800, Bethesda, MD 20892–5465. (301) 402–2518. *flaggnej@od.nih.gov.*

Dated: August 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21496 Filed 8–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: September 9–10, 2002.

Time: September 9, 2002, 7 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Time: September 10, 2002, 8:30 AM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: Jerry Roberts, PhD, Scientific Review Administrator, Office of Scientific Review, National Institutes of Health, Building 38A, Bethesda, MD 20892. 301–402–0838.

Name of Committee: Center for Inherited Disease Research Access Committee, Subcommittee B.

Date: September 10, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: Camilla E. Day, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892. (301) 435–1037. *dayc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21497 Filed 8–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, The Mechanical Prosthetic Hands in Children of the Developing Countries.

Date: September 24, 2002.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6100 Executive Blvd. 5th Floor, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892. (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: August 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21498 Filed 8–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Program Project Applications.

Date: October 9–11, 2002.

Time: 7 p.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Hotel, 808 20th Street, South, Birmingham, AL 35205.

Contact Person: Janice B. Allen, PhD, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Science, PO Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709. 919/541–7556.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Transition To Independent Positions (K22s)—RFA ES–02–006.

Date: October 18, 2002.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, South Campus, Bldg 101, Conference Room–A, Research Triangle Park, NC 27709.

Contact Person: Janice B. Allen, PhD, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Science, PO Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709. 919/541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the

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Environmental Health Sciences, National Institutes of Health, HHS)

Dated: August 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21499 Filed 8–22–02; 8:45 am]

BILLING CODE 4140–10–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

The President's New Freedom Commission on Mental Health; Notice of Meeting

Pursuant to Executive Order 13263, notice is hereby given of a meeting of the President's New Freedom Commission on Mental Health in September 2002.

The meeting will be open and will consider how to accomplish the Commission's mandate to conduct a comprehensive study of the United States mental health service delivery system and to make recommendations on improving the delivery of public and private mental health services for adults and children. The Commission meeting will focus on issues relating to children and families including access to and coordination of mental health services, family engagement efforts, school-based services, the juvenile court system and trauma-related issues.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Additional information and a roster of Commission members may be obtained either by accessing the Commission Web site, *http://www.mentalhealthcommission.gov*, or by communicating with the contact whose name and telephone number is listed below.

Committee Name: The President's New Freedom Commission on Mental Health.

Meeting Date/Time: Open: September 11, 2002, 8:30 a.m. to 3:30 p.m., *Open:* September 12, 2002, 8:30 a.m. to 2:30 p.m.

Place: Embassy Suites Hotel Chicago Downtown, 600 North State Street, Chicago, Illinois 60610.

Contact: Claire Heffernan, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 13C–26, Rockville, MD 20857, Telephone: (301) 443–1545; Fax: (301) 480–1554 and e-mail: *Cheffern@samhsa.gov.* Web site: *http://www.mentalhealthcommission.gov.*

Dated: August 19, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–21510 Filed 8–22–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–36]

Notice of Submission of Proposed Information Collection to OMB; the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) Regulations

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 23, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0514) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) Regulations.

OMB Approval Number: 2502–0514.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: Fannie Mae and Freddie Mac referred to as Government Sponsored Enterprises or GSEs provide reports to comply with established performance-based housing goals.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	2	43.5		64.75		5,632

Total Estimated Burden Hours: 5,632.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 16, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–21488 Filed 8–22–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR –4734–N–37]

Notice of Submission of Proposed Information Collection to OMB; Single Family Mortgage Insurance on Hawaiian Homelands

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 23, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0358) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Single Family Mortgage Insurance on Hawaiian Homelands.

OMB Approval Number: 2502–0358.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: This information collection is needed to collect information pursuant to determining eligibility for the Hawaiian Homelands program.

Respondents: Individuals ... household, Business or other for-profit

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	112	16		0.14		253

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Total Estimated Burden Hours: 253.
Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S. C. 35, as amended.

Dated: August 16, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–21489 Filed 8–22–02; 8:45 am]
BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–38]

Notice of Submission of Proposed Information Collection to OMB; Schedule of Subscribers and Ginnie Mae Guaranty Agreement

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 23, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2503–0009) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Schedule of Subscribers and Ginnie Mae Guaranty Agreement.

OMB Approval Number: 2503–0009.

Form Numbers: HUD–11705.

Description of the Need for the Information and its Proposed Use: This information establishes the agreement and contract between the issuer of securities and Ginnie Mae with respect to the pool or loan package and the related pooled mortgages and securities. It identifies the subscribers/purchasers of the mortgage-backed securities and provides information necessary to prepare the securities.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion.

	Number. of respondents	Total annual responses	×	Hours per response	=	Burden hours
Reporting burden	297	31,482		0.17		5,352

Total Estimated Burden Hours: 5,352.
Status: Extension of a currently approved information collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 16, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–21490 Filed 8–22–02; 8:45 am]
BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–39]

Notice of Submission of Proposed Information Collection to OMB; Application for Commitment To Guarantee Mortgage-Backed Securities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 23, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2503–0001) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as decribed below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable, (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Application for Commitment to Guarantee Mortgage-Backed Securities.

OMB Approval Number: 2503–0001.

Form Numbers: HUD–11704.

Description of the Need for the Information and its Proposed Use: The HUD Form 11704 is used by Ginnie Mae Mortgage-Backed Securities (MBS) issuers to apply for commitment authority to guarantee mortgage-backed securities.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion.

	Number of respondents	Total annual responses	×	Hours per response	=	Burden hours
Reporting burden	297	1,188		0.25		297

Total Estimated Burden Hours: 297.
Status: Extension of a currently approved information collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 16, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–21491 Filed 8–22–02; 8:45 am]
BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–34]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: August 23, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition of the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 15, 2002.

Mark R. Johnston,

Deputy Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–21231 Filed 8–22–02; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Environmental Impact Statement for the Rocky Flats National Wildlife Refuge, Golden, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Conservation Plan (CCP) and Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) and its implementing regulations.

A CCP will be prepared for the future Rocky Flats National Wildlife Refuge (NWR) located in Jefferson County, Colorado. The purpose of the CCP is to describe the future conditions of the Rocky Flats NWR and provide long-term guidance and management direction to achieve the refuge's purpose and restore its ecological integrity.

In the EIS, the Service will describe and evaluate a range of reasonable alternatives and the anticipated impacts of each. This information will be used in the draft CCP for the Rocky Flats NWR. The Service is furnishing this Notice in compliance with Service CCP policy to advise other agencies and the public of its intentions and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: Public scoping meetings will be held in surrounding communities in September 2002. Written scoping comments must be received by October 31, 2002.

ADDRESSES: Comments and inquiries should be directed to Rocky Flats NWR Comprehensive Conservation Plan, Attn: Laurie Shannon, Planning Team Leader, Rocky Mountain Arsenal NWR, Building 111, Commerce City, Colorado 80022. Comments also may be mailed electronically to *rockyflats@fws.gov.* The Draft and Final CCP, Draft and Final EIS, Record of Decision, and final rule will be available for viewing and downloading at *http://rockyflats.fws.gov/.*

FOR FURTHER INFORMATION CONTACT: Laurie Shannon, Planning Team Leader (see address above) at (303) 289–0980, or Fax (303) 289–0579.

SUPPLEMENTARY INFORMATION: The Service has initiated Comprehensive Conservation Planning for the future Rocky Flats NWR in Jefferson County, Colorado. Each national wildlife refuge

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has specific purposes for which it was established and for which legislation was enacted. Those purposes are used to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission and to guide those public uses proposed for the Refuge. The planning process is a way for the Service and the public to evaluate management goals and objectives for the best possible conservation of this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with each Refuge's establishing purposes and the mission of the National Wildlife Refuge System. The Rocky Flats National Wildlife Refuge Act of 2001 mandates that the refuge will be managed for the purposes of: (1) Restoring and preserving native ecosystems; (2) providing habitat for, and population management of, native plants and migratory and resident wildlife; (3) conserving threatened and endangered and candidate species under the Endangered Species Act of 1973; and 4) providing opportunities for compatible scientific research.

The Federal Government acquired 2,519 acres of the 6,300-acre Rocky Flats site in 1951 for use as a nuclear weapons production facility. The remaining acreage was acquired in 1974–1976. In 1992, the mission of the Rocky Flats site changed to site cleanup and closure in a manner that is safe, environmentally and socially responsible, physically secure, and cost-effective. The majority of the site has generally remained undisturbed since its acquisition, and provides habitat for many wildlife species, including a resident, federal-listed threatened species. Within the site is a rare xeric tallgrass prairie plant community. Establishing the site as a unit of the National Wildlife Refuge System will promote the preservation and enhancement of its natural resources for present and future generations.

By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved CCP. A CCP describes the desired future conditions of the refuge and provides long-range guidance and management direction to accomplish the purposes of the refuge, contribute to the mission of the National Wildlife Refuge System, and meet other relevant mandates. The planning process will consider many elements including habitat and wildlife management, wildlife-dependent recreation opportunities, environmental education, and other wildlife-dependent uses. Public input into this process is essential. The Service is requesting input for issues, concerns, ideas, and suggestions for the future management of Rocky Flats NWR. Anyone interested in providing input is invited to respond to the following three questions:

(1) What makes the Rocky Flats NWR special or unique to you?

(2) What problems or issues do you want to see addressed in the CCP?

(3) What are your recommendations for future management of Rocky Flats NWR?

The above questions were designed to stimulate thinking about Rocky Flats and its future management. The Service invites any relevant comments or ideas and does not require that participants provide any specific information. Comments received by the planning team will be used as part of the planning process.

An opportunity will be given to the public to provide input at public meeting to scope issues and concerns. These public scoping meetings will be held in nearby communities in September 2002. The meetings will take place in facilities meeting accessibility requirements outlined in the Americans with Disabilities Act. Citizens with disabilities that may require accommodation to participate in or to understand the meeting, should contact Laurie Shannon, Refuge Planner, U.S. Fish & Wildlife Service at (303) 289–0980 at least one week in advance so arrangements for accommodations can be made. Comments also may be submitted anytime during the planning process by writing to the above-addresses.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), and other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations. All comments received from individuals on Service EISs become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, NEPA (40 CFR 1506.6(f)), and other Departmental and Service policy and procedures. When requested, the Service generally will provide comment letters with the names and addresses of the individuals who wrote the comments. However, the telephone number of the commenting individual will not be provided in response to such requests to the extent permissible by law. Additionally, public comment letters are not required to contain the commenter's name, address, or any other identifying information.

Dated: July 31, 2002.

John A. Blankenship,

Acting Regional Director, Region 6, Denver, Colorado.

[FR Doc. 02–21505 Filed 8–22–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey.

ACTION: Notice of proposed Cooperative Research & Development Agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with the American Geological Institute to develop and distribute USGS GIS database information in a variety of educational mediums.

INQUIRIES: If any other parties are interested in similar activites with the USGS, please contact Beth Duff, Business Development Office, 12201 Sunrise Valley Drive, MS 500, Reston, Virginia, 20192, phone: (703) 648–4621.

SUPPLEMENTARY INFORMATION: This notice is submitted to meet the USGS policy requirements stipulated in Survey Manual Chapter 500.20.

Dated: August 8, 2002.

Robert A. Lidwin,

Acting Associate Director for Geography.

[FR Doc. 02–21516 Filed 8–22–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey.

ACTION: Notice of proposed Cooperative Research & Development Agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with Pixxures, Inc. to develop spatial data Internet deployment technologies which allow Internet publication of aerial imagery.

INQUIRIES: If any other parties are interested in similar activities with the USGS, please contact Beth Duff, Business Development Office, 12201 Sunrise Valley Drive, MS 500, Reston, Virginia 20192, phone: (703) 648–4621.

SUPPLEMENTARY INFORMATION: This notice is submitted to meet the USGS policy requirements stipulated in Survey Manual Chapter 500.20.

Dated: August 8, 2002.

Robert A. Lidwin,

Acting Associate Director for Geography.

[FR Doc. 02–21515 Filed 8–22–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Geological Survey

National Cooperative Geologic Mapping Program (NCGMP) Advisory Committee

AGENCY: Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 108–148, the NCGMP Advisory Committee will meet in Room 7000 A of the Main Interior Building, 1849 C Street, NW., Washington, DC. The Advisory Committee, composed of scientists from Federal Agencies, State Agencies, academic institutions, and private companies, will advise the Director of the U.S. Geological Survey on planning and implementation of the geologic mapping program. Topics to be reviewed and discussed by the Advisory Committee include the:

- Progress of the NCGMP towards fulfilling the purposes of the National Geologic Mapping Act of 1992.
- Updates on the Federal, State, and educational components of the NCGMP
- Strategic Goals

DATES: September 17–18, commencing at 9 a.m. on September 17th and adjourning by 5 p.m. on September 18th.

FOR FURTHER INFORMATION CONTACT: Peter T. Lyttle, U.S. Geological Survey, 908 National Center, Reston, Virginia 20192, (703) 648–6943.

SUPPLEMENTARY INFORMATION: Meetings of the National Cooperative Geologic Mapping Program Advisory Committee are open to the Public.

P. Patrick Leahy,

Associate Director for Geology, U.S. Geological Survey.

[FR Doc. 02–21514 Filed 8–22–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–01–1610–DQ]

Notice of Availability of the Northern and Eastern Mojave Desert Proposed Plan, an Amendment to the California Desert Conservation Area Plan, and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Department of the Interior, California Desert District, Riverside, California.

ACTION: Notice of Availability of the Proposed Plan and associated Final Environmental Impact Statement (FEIS) for the Northern and Eastern Mojave Desert planning area (NEMO), an amendment to the Bureau of Land Management California Desert Conservation Area Plan.

SUMMARY: NEMO amends the California Desert Conservation Area (CDCA) Plan for a 3.3 million acre area in the northeastern portion of the CDCA, and provides for conservation and recovery of T & E species, reduces the need for further species listings and streamlines the processing of land-use permits. NEMO includes goals, objectives, management prescriptions and monitoring in accordance with the Federal Lands Policy and Management Act of 1976 (FLPMA) for comprehensive, strategic, management of the desert landscapes, including a programmatic biological opinion for the desert tortoise, strategies for the Amargosa watershed which include multiple listed species and sensitive bat habitat. The FEIS evaluates the Proposed Plan Amendments and alternatives, includes public comments on the Draft EIS and provides responses to those comments.

DATES: Written protests on the Final EIS will be accepted if received within 30 calendar days from the date that a Notice of Availability is published in the **Federal Register** by the Environmental Protection Agency. Instructions for filing protests are contained in the NEMO document Cover Sheet, just inside the front cover, and are included below the Supplemental Information.

ADDRESSES: Copies of the NEMO Proposed Plan/FEIS are being mailed to those who received the Draft EIS or provided comments on the Draft EIS. The document is available for review online at *http://www.ca.blm.gov/cdd/nemo.html*. Reading copies are also available at most local libraries and the following BLM offices:

BLM, 6221 Box Springs Blvd., Riverside, CA 92507; (909) 697–5200
BLM, 2601 Barstow Road, Barstow, CA 92311; (760) 252–6000
BLM, 101 West Spikes Road, Needles, CA 92363; (760) 326–7000
BLM, 300 South Richmond Road, Ridgecrest, CA 93555; (760) 384–5400
BLM, 690 Garnet, North Palm Springs, CA 92258; (760) 251–4800
BLM, 1661 South 4th Street, El Centro, CA 92243; (760) 337–4400

FOR FURTHER INFORMATION CONTACT: Edythe Seehafer, Barstow Field Office, 2601 Barstow Road, Barstow, California 92311; Telephone (760) 252–6021.

BACKGROUND INFORMATION: Development of the plan began in 1994, with scoping meetings held in conjunction with the National Park Service (NPS). NPS is conducting concurrent planning efforts on adjacent lands. The NEMO Planning Area covers 3.3 million acres of land in the southeastern California Desert of which 2.7 million acres are public lands. This document describes and analyzes a number of alternatives for managing species and habitats on public lands administered by the BLM. Issues identified during public scoping included (1) recovery of threatened and endangered species, including the desert tortoise, the Amargosa vole, the Amargosa niterwort, the Ash Meadows Gumplant and spring-loving Centaury; (2) maintenance of public access through the NEMO planning area which includes sensitive areas, is surrounded by two national park units and two large military bases, and includes all or parts of twenty-four wilderness and eight wilderness study areas; (3) addressing impacts to other land uses; and (4) protection of County tax base.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency published the Notice of Availability of the NEMO DEIS in the **Federal Register** on April 13, 2001. The public review period on the DEIS began April 13, 2001 and ended November 1, 2001.

Following are the instructions from the *Code of Federal Regulations 1610.5–2* for filing protests. (a) Any person who participates in the planning process and has an interest which is or may be adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment. A protest may raise only those issues which were submitted for the record during the planning process.

(1) The protest shall be in writing and shall be filed with the Director. The protest shall be filed within 30 days of the date the Environmental Protection Agency published the notice of receipt of the final environmental impact statement containing the plan or amendment in the **Federal Register**. For

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an amendment not requiring the preparation of an environmental impact statement, the protest shall be filed within 30 days of the publication of the notice of its effective date.

(2) The protest shall contain:

(i) The name, mailing address, telephone number and interest of the person filing the protest;

(ii) A statement of the issue or issues being protested;

(iii) A statement of the part or parts of the plan or amendment being protested;

(iv) A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and

(v) A concise statement explaining why the State Director's decision is believed to be wrong.

(3) The Director shall promptly render a decision on the protest. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the protesting party by certified mail, return receipt requested.

(b) The decision of the Director shall be the final decision for the Department of the Interior.

Mailing address for filing a protest:

Regular mail: U.S. Department of the Interior, Director, Bureau of Land Management, Protest Coordinator (WO–210), 1849 "C" Street, NW., Washington, DC 20240

Overnight mail: U.S. Department of the Interior, Director, Bureau of Land Mgt, Protest Coordinator (WO–210), 1620 "L" Street, NW., Rm 1075, Washington, DC 20036

Bruce Shaffer,

Acting District Manager.

[FR Doc. 02–21248 Filed 8–22–02; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–014–01–1610–PG; GP 2–0355]

Klamath Provincial Advisory Committee, Meeting Notice

AGENCY: Bureau of Land Management, Klamath Falls Resource Area.

ACTION: Meeting notice for the Klamath Provincial Advisory Committee.

SUMMARY: The Klamath Provincial Advisory Committee will meet at the North State Blood Center, 1876 Park Marina Drive, Redding, CA 96001 on Thursday, September 12, 2002 from 9:30 a.m. to 4 p.m. Suggested topics include:

- Effectiveness Monitoring,
- Restoration efforts in the basin, and
- PAC membership.

Information to be distributed to the committee members is requested ten (10) days prior to the start of the meeting.

The entire meeting is open to the public. Opportunities for public comment are scheduled for 11:30 a.m. to 12 noon and 3 to 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the Klamath Provincial Advisory Committee may be obtained from Teresa Raml, Field Manager, Klamath Falls Resource Area, 2795 Anderson Ave., Building 25, Klamath Falls, OR 97603, Phone Number 541–883–6916, FAX 541–884–2097, or e-mail *traml@or.blm.gov.*

Dated: August 12, 2002.

Donald K. Hoffheins,

Acting Field Manager, Klamath Falls Resource Area.

[FR Doc. 02–21517 Filed 8–22–02; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT–FES–02–24]

Angostura Unit, Pick-Sloan Missouri River Basin Project, South Dakota

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability for final environmental impact statement (FEIS).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Reclamation, has completed an FEIS on the proposed renewal of a long-term water service contract for irrigation water from the Angostura Unit, Cheyenne River Basin, South Dakota. The FEIS describes four alternatives, including no action, and evaluates the environmental consequences of each of these alternatives. Reclamation's preferred alternative is the Improved Efficiencies alternative.

DATES: The DEIS was issued on January 18, 2001. Responses to comments received from agencies, interested organizations, and individuals on the DEIS are addressed in the FEIS. No decision will be made on the proposed action until 30 days following the release of the FEIS. Following the 30-day waiting period, Reclamation will complete and sign a Record of Decision (ROD). The ROD will describe the action to be implemented and will discuss factors contributing to that decision.

ADDRESSES: Printed copies of a Summary of the FEIS or the entire FEIS (with appendices) may be obtained from Kenneth Parr, Dakotas Area Office, Rapid City Field Office, 515 9th Street, Room 101, Rapid City, SD 57701 or by telephone at (605) 394–9757 x3004 or by e-mail at *kparr@gp.usbr.gov.* Copies are also available for public inspection and review on the Internet at "*http://www.gp.usbr.gov*" in the "Current Activities" section under "Environmental Activities", and at the locations listed in the Supplementary Information section at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Kenneth Parr, Dakotas Area Office, Rapid City Field Office, 515 9th Street, Room 101, Rapid City, SD 57701 or by telephone at (605) 394–9757 x3004 or e-mail *kparr@gp.usbr.gov.*

SUPPLEMENTARY INFORMATION: The FEIS considers the effects of renewing a long-term water service contract with the Angostura Irrigation District. The authority for contract renewal is found in the Act of July 2, 1956, 70 Stat. 483, and the Act of June 21, 1963, 77 Stat. 68, which requires the Secretary of the Department of the Interior to renew long-term water service contracts upon request.

The Angostura Unit has been providing supplemental irrigation water to the irrigation district since 1953. The original long-term water service contract had a term of 40 years and expired in 1996. In order to continue the rights and obligations of the original contracts during the contract renewal process, the Angostura Irrigation District has been operating under a temporary contract.

The FEIS describes four alternatives, including no action, reestablishment of natural flows below the dam, improved efficiencies, and reservoir recreation and fisheries alternatives, and evaluates the environmental consequences of each of the alternatives. The FEIS considered the following issues: surface water quantity, surface water quality, groundwater, sediment, stream corridor, wetlands, fisheries, wildlife, threatened and endangered species, social and economic conditions, Indian trust assets, environmental justice, cultural resources, paleontological resources, and cumulative impacts.

The Improved Efficiencies Alternative is Reclamation's preferred alternative and is designed to continue delivery of irrigation water to the irrigation district while improving the efficiency of the water delivery system and on-farm efficiencies. A public process will be undertaken to establish uses for the water saved through facility and on-farm efficiencies, and could include recreation, fisheries, downstream flows, irrigation or other uses. There are no significant environmental, socioeconomic, or agricultural impacts associated with the Improved Efficiencies Alternative when compared to the No Action Alternative. The long-term water service contract with the Angostura Irrigation District will have a term of 25 years beginning on January 1, 2003.

Locations for Inspection and Review of the FEIS

- Bureau of Reclamation, Dakotas Area Office, Rapid City Field Office, 515 9th Street, Room 101, Rapid City, SD 57701—telephone (605) 394–9757 x3004.
- Bureau of Reclamation, Dakotas Area Office, 304 East Broadway, Bismarck, ND 58502—telephone (701) 250–4242.
- Bureau of Reclamation, Great Plains Regional Office, 316 North 26th Street, Billings, MT 59101—telephone (406) 247–7720.
- Bureau of Reclamation, Reclamation Service Center Library, Building 67, Room 167, Denver Federal Center, Sixth and Kipling, Denver, CO 80225—telephone (303) 445–2072.
- Bureau of Reclamation, Program Analysis Office, Room 7456, 1849 C Street NW, Washington, DC 20240—telephone (202) 208–4662.
- Angostura Irrigation District, Main Street, Oral, SD 57766.

Libraries

- South Dakota State Library, Mercedes MacKay Building, 800 Governors Drive, Pierre, SD 57501–2294.
- Rapid City Public Library, 610 Quincy Street, Rapid City, SD 57701–3655.
- Hot Springs Library, 1543 Baltimore Avenue, Hot Springs, SD 57747.
- Custer County Library, 447 Crook #4, Custer, SD 57730.
- Oglala Lakota College, 3 Mile Creek, Piya Wiconi Road, Kyle, SD 57752.
- Cheyenne River Community College, Main Street, Box 212, Eagle Butte, SD 57625.
- Lower Brule Tribal Library, Lower Brule Sioux Tribe, Lower Brule, SD 57548.
- Pine Ridge Library, Main St., Box 439, Pine Ridge, SD 57770.

Dated: July 23, 2002.

Maryanne C. Bach,

Regional Director.

[FR Doc. 02–21511 Filed 8–22–02; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–478]

Certain Ground Fault Circuit Interrupters and Products Containing Same; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 23, 2002, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Leviton Manufacturing Co., Inc. of Little Neck, New York. A letter supplementing the complaint was filed on August 14, 2002. The complaint as supplemented alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ground fault circuit interrupters ("GFCIs") and products containing same by reason of infringement of claims 1–4 of U.S. Letters Patent 4,595,894.

The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent general exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

FOR FURTHER INFORMATION CONTACT: David H. Hollander, Jr., Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2746.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in §210.10 of the Commission's rules of practice and procedure, 19 CFR 210.10 (2002).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on August 19, 2002, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain ground fault circuit interrupters or products containing same by reason of infringement of claim 1, 2, 3, or 4 of U.S. Letters Patent 4,595,894, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Leviton Manufacturing Co., Inc., 59–25 Little Neck Parkway, Little Neck, NY 11362.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Yueqing Huameili Electronic Co., Ltd., d/b/a HML, Yueqing Huameili Electronic Co., Ltd., No. 2, Tongxing Road, Songhu Industrial Zone, Yueqing, China P.C. 325600.

Jiamei Electrical Engineering Co., Ltd., Xuezhai Liushi Town, Yueqing Zhejiang, China 325604.

Sammax International Ltd., Room 2411–12, Shui On Centre, 6–8 Harbour Road, Hong Kong, Hong Kong.

Van-Sheen Electric Appliance Co., Ltd., d/b/a Yatai Switch Factory, 43 Gongyuan Road, Baixiang, Yueqing Zhejiang, China.

(c) David H. Hollander, Jr., *Esq.*, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with §210.13 of the

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Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

By order of the Commission.
Issued: August 20, 2002.

Marilyn R. Abbott,
Secretary to the Commission.
[FR Doc. 02–21584 Filed 8–22–02; 8:45 am]
BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committees on Rules of Bankruptcy and Criminal Procedure, and the Rules of Evidence

AGENCY: Judicial Conference of the United States, Advisory Committees on Rules of Bankruptcy and Criminal Procedure, and the Rules of Evidence.

ACTION: Notice of proposed amendments and open hearings.

SUMMARY: The Advisory Committees on Rules of Bankruptcy and Criminal Procedure, and the Rules of Evidence have proposed amendments to the following rules:

Bankruptcy Rule: 9014.

Criminal Rules: 41; Rules Governing § 2254 Cases and § 2255. Proceedings and accompanying forms.

Rules Governing § 2254 Cases: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11.

Rules Governing § 2255 Proceedings: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.

Evidence Rule: 804.

The Judicial Conference Committee on Rules of Practice and Procedure submits these rules for public comment. All comments and suggestions with respect to them must be placed in the hands of the Secretary as soon as convenient and, in any event, not later than February 15, 2003. All written comments on the proposed rule amendments can be sent by one of the following three ways: By overnight mail to Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, Washington, DC 20002; by electronic mail via the Internet at *http://www.uscourts.gov/rules*; or by facsimile to Peter G. McCabe at (202) 502–1755. In accordance with established procedures all comments submitted on the proposed amendments are available to public inspection.

Public hearings are scheduled to be held on the amendments to:

- Bankruptcy Rules in Washington, DC, on January 24, 2003;
- Criminal Rules and Rules Governing § 2254 Cases and § 2255 Proceedings in Atlanta, Georgia, on January 31, 2003; and
- Evidence Rules in Washington, DC, on January 27, 2003.

Those wishing to testify should contact the Secretary at the address above in writing at least 30 days before the hearing.

The text of the proposed rule amendments and the accompanying Committee Notes can be found at the United States Federal Courts' Home Page at *http://www.uscourts.gov/rules* on the Internet.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: August 19, 2002.

John K. Rabiej,
Chief, Rules Committee Support Office.
[FR Doc. 02–21533 Filed 8–22–02; 8:45 am]
BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Columbia Broadcasting System, Inc., and Viacom International, Inc., Case No. 72–820–RJK (C.D. Cal.)

Notice is hereby given that Viacom International, Inc. ("Viacom"), has moved to terminate the Final Judgment entered against it by the United States District Court for the Central District of California on January 17, 1973. In a stipulation also filed with the Court, the United States has tentatively agreed not to oppose the motion, but as a matter of policy will not finally consent to the termination of any judgment without providing public notice and an opportunity for public comments to be received and considered.

On April 14, 1972, the United States filed separate actions against CBS, NBC and ABC, the companies that operated the three then-existing national television networks (the "Network Cases"). The Network Cases charged the three networks with restraint of trade, monopolization and attempted monopolization of the market for prime time entertainment programming in violation of Sections 1 and 2 of the Sherman Act.

The syndication operations of CBS had been spun off from CBS to Viacom in 1971 in order to comply with a 1970 FCC rule. Viacom was named as an additional defendant in the action against CBS to insure that any relief obtained against CBS would be effective. The Final Judgment prohibited any Viacom director or officer from also being a director or officer of a broadcast television network, and from owning or controlling more than one percent of the stock of any such network.

Between 1977 and 1980, each of the three networks entered into settlements with the United States (the "Network Decrees"). Among other things, the Network Decrees: (1) Prohibited the three networks from acquiring certain financial interests or proprietary rights in television programs produced by others; (2) limited the amount of programming that each network could produce for its own use; and (3) prohibited the networks from engaging in the domestic syndication of television programs. Following significant changes in the marketplace and the erosion of broadcast television's share of the overall television market, the Network Decrees were modified by the Court in 1993 and have ceased to be operable.

Viacom has filed with the Court a memorandum setting forth the reasons it believes that termination of the Final Judgment would serve the public interest. Copies of Viacom's motion and supporting memorandum, the stipulation containing the United States' tentative consent, and all further papers filed with the Court in connection with the motion will be available for inspection at the Antitrust Documents Group of the Antitrust Division, 325 7th Street, NW., Room 215 North, Liberty Place Building, Washington, DC 20530, and at the Office of the Clerk of the United States District Court for the Central District of California. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by the Department of Justice regulations.

Interested persons may submit comments to the United States regarding the proposed termination of the Final Judgment. Such comments must be received by the Antitrust Division within sixty (60) days and will be filed with the Court. Comments should be addressed to J. Robert Kramer, II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 300, Washington, DC 20530.

Constance K. Robinson,
Director of Operations.
[FR Doc. 02–21492 Filed 8–22–02; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2227–02]

Immigration and Naturalization Service: Meeting of the Data Management Improvement Act of 2000 Task Force

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee meeting: Immigration and Naturalization Service, (INS) Data Management Improvement Act of 2000 (DMIA) Task Force.

Date and Time: Thursday, September 19, 2002, from 9 a.m. to 5 p.m.

Place: Immigration and Naturalization Service Headquarters, 425 I Street, NW., Washington DC 20536, Shaughnessy Conference Room, Sixth Floor.

Status: Closed meeting. The Data Management Improvement Act Task Force will meet on Thursday, September 19, 2002, from 9 a.m. to 5 p.m. Since the potential release of information that will be discussed at this meeting could seriously compromise the security and integrity of existing data collection systems as well as the proposed new entry/exit system and integration, the Immigration and Naturalization Service has determined that the meeting will be closed to the public (Section 10(d) of the Federal Advisory Committee Act (FACA)). The information discussed at this meeting is protected from disclosure under the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B). In accordance with the provisions of the Federal Advisory Committee Act, minutes of the meeting will be kept for agency and congressional review.

Purpose: The DMIA Task Force currently is focusing on the development of recommendations directly related to design and development of an integrated, automated entry and exit system. The Task Force will be discussing in detail, issues related to United States national security, border security and existing and proposed information technology systems. The discussion will include recommendations on data collection and use and concept of operations documents on entry/exit system development.

Public comment: The meeting is closed to the public, however the Task Force will accept written comments from the public for discussion. Only written comments received on or before September 13, 2002, will be considered for discussion at the meeting. Written comments may be faxed or e-mailed to the contact person listed below.

Contact person: Michael Defensor or Deborah Hemmes, Immigration and Naturalization Service, 425 I Street, NW., Room 7257, Washington, DC 20536; telephone (202) 305–9863; fax: (202) 305–9871; e-mail: *michael.defensor@usdoj.gov* or *deborah.hemmes@usdoj.gov.*

Dated: August 2, 2002.

James W. Ziglar,
Commissioner, Immigration and Naturalization Service.
[FR Doc. 02–21484 Filed 8–22–02; 8:45 am]
BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

August 20, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by September 6, 2002. A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or e-mail *Howze-Marlene@dol.gov.*

Comments and questions about the ICR listed below should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics, Office of Management and Budget, Room 10235, Washington, DC 20503, and within five (5) days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics (BLS).

Title: CPS Volunteer Supplement.

OMB Number: 1220–0NEW.

Affected Public: Individuals or households.

Frequency: On Occasion.

Number of Respondents: 58,000.

Number of Annual Responses: 116,000.

Total Burden Hours: 5,800.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Volunteer Supplement will provide information on the total number of individuals in the United States involved in unpaid volunteer activities, factors that motivate volunteerism, measures of the frequency or intensity with which individuals volunteer, types of organizations that facilitate volunteerism, and activities in which volunteers participate. In his January 2002 State of the Union address to the nation, President Bush called for all Americans to devote 4,000 hours of volunteer service during their lifetimes. The BLS is undertaking this project at the request of the USA Freedom Corps that seeks to promote a culture of responsibility, service, and citizenship. The Volunteer Supplement will provide the ability to accurately and reliably

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measure the current level of volunteer activities in the U.S.

Ira L. Mills,

DOL Clearance Officer.

[FR Doc. 02–21629 Filed 8–22–02; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
NY020013 (Mar. 1, 2002)

Volume II

District of Columbia
DC020001 (Mar. 1, 2002)
DC020003 (Mar. 1, 2002)

Volume III

Georgia
GA020003 (Mar. 1, 2002)
GA020006 (Mar. 1, 2002)
GA020022 (Mar. 1, 2002)
GA020032 (Mar. 1, 2002)
GA020040 (Mar. 1, 2002)
GA020041 (Mar. 1, 2002)
GA020050 (Mar. 1, 2002)
GA020053 (Mar. 1, 2002)
GA020055 (Mar. 1, 2002)
GA020073 (Mar. 1, 2002)
GA020084 (Mar. 1, 2002)
GA020085 (Mar. 1, 2002)
GA020086 (Mar. 1, 2002)
GA020087 (Mar. 1, 2002)
GA020088 (Mar. 1, 2002)

Volume IV

Michigan
MI020026 (Mar. 1, 2002)
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MI020040 (Mar. 1, 2002)
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MI020046 (Mar. 1, 2002)
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MI020050 (Mar. 1, 2002)

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Idaho
ID020001 (Mar. 1, 2002)
ID020002 (Mar. 1, 2002)
ID020003 (Mar. 1, 2002)

Oregon
OR020001 (Mar. 1, 2002)
OR020017 (Mar. 1, 2002)

Volume VII

California
CA020001 (Mar. 1, 2002)
CA020002 (Mar. 1, 2002)
CA020004 (Mar. 1, 2002)
CA020009 (Mar. 1, 2002)
CA020013 (Mar. 1, 2002)
CA020019 (Mar. 1, 2002)
CA020023 (Mar. 1, 2002)
CA020025 (Mar. 1, 2002)
CA020028 (Mar. 1, 2002)
CA020029 (Mar. 1, 2002)
CA020030 (Mar. 1, 2002)
CA020031 (Mar. 1, 2002)
CA020032 (Mar. 1, 2002)
CA020033 (Mar. 1, 2002)
CA020035 (Mar. 1, 2002)
CA020036 (Mar. 1, 2002)
CA020037 (Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service *http://davisbacon.fedworld.gov* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 15th day of August, 2002.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–21261 Filed 8–22–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Buck Mountain Coal Company

[Docket No. M–2002–062–C]

Buck Mountain Coal Company, PO Box 6, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1002–1 (Location of other electric equipment; requirements for permissibility) to its Buck Mountain Slope Mine (I.D. No. 36–01962) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of non-permissible electric equipment within 150 feet of the pillar line. The petitioner states that the non-permissible equipment would include drags and battery locomotives due in part to the method of mining used in pitching anthracite mines and the alternative evaluation of the mine air quality for methane on an hourly basis during operation. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Buck Mountain Coal Company

[Docket No. M–2002–063–C]

Buck Mountain Coal Company, PO Box 6, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1100–2(a) (Quantity and location of firefighting equipment) to its Buck Mountain Slope Mine (I.D. No. 36–01962) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit use of only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage equipped with three (3) ten quart pails is not practical. The petitioner proposes to use two (2) fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face for equivalent fire protection for the Buck Mountain Slope Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Buck Mountain Coal Company

[Docket No. M–2002–064–C]

Buck Mountain Coal Company, PO Box 6, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1200 (d) & (i) (Mine map) to its Buck Mountain Slope Mine (I.D. No. 36–01962) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope; and to limit the required mapping of the mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the map illegible. The petitioner further asserts that use of cross-sections in lieu of contour lines has been practiced since the late 1800's thereby providing critical information relative to the spacing between veins and proximity to other mine workings which fluctuate considerably. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Buck Mountain Coal Company

[Docket No. M–2002–065–C]

Buck Mountain Coal Company, PO Box 6, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1202 and 75.1202–1(a) (Temporary notations, revisions, and supplements) to its Buck Mountain Slope Mine (I.D. No. 36–01962) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months as required, and to update maps daily by hand notations. The petitioner also proposes to conduct surveys prior to commencing retreat mining and whenever either a drilling program under 30 CFR 75.388 or plan for mining into inaccessible areas under 30 CFR 75.389 is required. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Energy West Mining Company

[Docket No. M–2002–066–C]

Energy West Mining Company, PO 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.500(d) (Permissible electric equipment) to its Deer Creek Mine (I.D. No. 42–00121) located in Emery County, Utah. The petitioner proposes to use the following non-permissible equipment inby the last open crosscut: low-voltage or battery powered electronic testing and diagnostic equipment such as lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, recording amp meters, thermal image devices, infrared temperature devices and recorders, pressure and flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, and electronic tachometers; low-voltage or battery powered equipment such as electric and/or battery operated drills and grinders; and other testing and diagnostic equipment if approved by the District Office. The petitioner states that equipment used in or inby the last open crosscut shall be examined by a qualified person on a weekly basis, and new equipment would be examined prior to use. The petitioner has listed in this petition specific procedures that would be followed when using this

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equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Border Mining, Inc.

[Docket No. M–2002–067–C]

Border Mining, Inc., 7617 Upper Johns Creek Road, Phelps, Kentucky 41553 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its No. 2 Mine (I.D. No. 15–17110) located in Knott County, Kentucky. The petitioner proposes to use permanently installed, spring-loaded locking devices to prevent battery plugs from unintentionally loosening from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners, and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. R & T Coal Company, Inc.

[Docket No. M–2002–068–C]

R & T Coal Company, Inc., 405 KY HWY 1092, Sitka, Kentucky 41255 has filed a petition to modify the application of 30 CFR 75.800 (High-voltage circuits; circuits breakers) to its Mine No. 1 (I.D. No. 15–18523) located in Morgan County, Kentucky. The petitioner proposes to use a Jennings RP–170–2300 high-voltage contactor in lieu of circuit breakers in its substation. The petitioner states that the Jennings RP–170–2300 is equivalent electrically and mechanically to high-voltage circuit breakers; that the substation has 12470 volts feed with 30 amp high-voltage fuses on the pole limiting the 4160 side to no more than 90 amps; that available vault current from Licking Valley Rural Electric is 924 amps line to ground and 1200 amps phase to phase; and that the Jennings contactor is more than capable of carrying the load. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

8. Oxbow Mining, LLC

[Docket No. M–2002–069–C]

Oxbow Mining, LLC, PO Box 535, 3737 Highway 133, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.350 (Air course and belt haulage entries) to its Elk Creek Mine (I.D. No. 05–04674) located in Gunnison County, Colorado. The petitioner requests a modification of the existing safety standard to permit air coursed through the conveyor belt haulage entries to be used to ventilate working places. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

9. Energy West Mining Company

[Docket No. M–2002–070–C]

Energy West Mining Company, PO Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.1002–1(a) (Location of other electric equipment; requirements for permissibility) to its Deer Creek Mine (I.D. No. 42–00121) located in Emery County, Utah. The petitioner requests a modification of the existing standard to permit the following non-permissible equipment to be used within 150 feet from pillar workings (longwall gob): lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, recording amp meters, thermal image devices, infrared temperature devices and recorders, pressure and flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, and electronic tachometers, low-voltage or battery powered equipment such as electric and/or battery operated drills and grinders, and may use other testing and diagnostic equipment if approved by the District Office. The petitioner states that equipment used in or inby the last open crosscut shall be examined by a qualified person on a weekly basis, and that new equipment would be examined prior to use. The petitioner has listed in this petition for modification specific procedures that would be followed when using this equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "*comments@msha.gov*," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before September 23, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 19th day of August 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–21566 Filed 8–22–02; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–101]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NASA Advisory Council (NAC).

DATES: Tuesday, September 10, 2002, 8 a.m. to 5 p.m; and Wednesday, September 11, 2002, 8 a.m. to 12:30 p.m.

ADDRESSES: Jet Propulsion Laboratory (JPL), NASA, Building 180, Room 101, 4800 Oak Grove Drive, Pasadena, CA 91109.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, Code IC, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–0732.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Response to the Research Maximization and Prioritization Task Force Report
—NASA's Integrated Research Priorities
—Overview of JPL Activities
—Overview of Mars Program
—Innovation Catalyst
—Market-Driven Commercial Research
—Students Imagine Mars Project
—Committee Reports
—Discussion of Findings and Recommendations

Due to increased security measures at the NASA Jet Propulsion Laboratory (JPL), interested members of the public including the news media must contact Helen Paley (818) 354–6427 or Cecil Brower (818) 354–6974 no later than Friday, September 6, 2002, by 12 Noon PDT to make arrangements for badging, parking and escorting while at JPL. Access to JPL will be limited to those who show proper photo identification and who have made prior arrangements to attend as stipulated herein.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: August 19, 2002.

Sylvia K. Kraemer,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–21579 Filed 8–22–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before October 7, 2002. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Larry Baume, Acting Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1505. e-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Defense, Defense Commissary Agency, (N1–506–02–3, 140 items, 139 temporary items). Records relating to personnel management and legal affairs. Included are records relating to such subjects as career development and internship programs, reemployment matters, overseas tour extensions, training courses, special pay rates, performance management system guidelines, incentive awards, relocation services guidelines and applications, reduction and realignment programs, early retirement and separations, personnel strength reporting, litigation cases, legal representation, contractual disputes, and fraud investigations. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of files relating to the preparation and processing of legislation. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

2. Department of Justice, Civil Rights Division (N1–60–02–1, 4 items, 3 temporary items). Single section case files relating to enforcement of Title I of the Americans with Disabilities Act of 1990. Also included are electronic copies of documents created using word processing and electronic mail. Recordkeeping copies of multi-section case files are proposed for permanent retention.

3. Department of Justice, Drug Enforcement Administration (N1–170–02–1, 4 items, 4 temporary items). Records relating to procurement transactions, including market survey files, rejected requisition files, and logs containing control numbers assigned to procurement-related transactions. Also included are electronic copies of records created using electronic mail and word processing.

4. Department of Justice, Drug Enforcement Administration (N1–170–02–2, 2 items, 2 temporary items). Records relating to advance procurement planning, including

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electronic copies of records created using electronic mail and word processing.

5. Department of Justice, United States Marshals Service (N1–527–02–2, 3 items, 2 temporary items). Electronic copies of documents created using electronic mail and word processing that are accumulated in connection with the preparation of orientation and briefing books for senior management. Recordkeeping copies of orientation and briefing books are proposed for permanent retention.

6. Department of Justice, United States Marshals Service (N1–527–02–3, 4 items, 3 temporary items). Working papers, charts, and preliminary report information relating to tactical and strategic planning. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of published studies, strategic plans, annual operating plans, and assessment reports are proposed for permanent retention.

7. Department of Justice, Bureau of Prisons (N1–129–02–3, 8 items, 8 temporary items). Records of the Industrial, Education and Vocational Training Financial Management Branch consisting of program statement files, operations memoranda files, special projects files, general correspondence files, institution files, program review audits, and audit reports. Also included are electronic copies of documents created using electronic mail and word processing.

8. Department of State, Bureau of Intelligence and Research (N1–59–02–4, 37 items, 21 temporary items). Chronological files, document search files, and reference files accumulated by the Office of Intelligence Resources Coordination. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such records as subject files, visa case files, interagency committee and working group files, country files, counterintelligence files, and foreign disclosure files.

9. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms (N1–436–02–2, 3 items, 3 temporary items). Employee service agreements maintained by the Travel and Relocation Branch that are used to determine employee eligibility for travel and transportation expenses when transferred or assigned to a new post. Also included are electronic copies of documents created using electronic mail and word processing.

10. Federal Emergency Management Agency, Office of Policy and Regional Operations (N1–311–01–4, 4 items, 3 temporary items). Records accumulated in connection with the National Performance Review. Included are program office reports, internal agency correspondence, and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of final agency reports submitted to the White House are proposed for permanent retention.

11. Farm Credit Administration, Agency-wide (N1–103–01–1, 12 items, 9 temporary items). Web site pages containing copies of records duplicated in other agency files, audiovisual records that do not document mission-related activities, and retirement case files. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are audiovisual records that document the agency's mission and copies of web site pages that are not duplicated in other records. The schedule specifies that initial transfers of permanent web pages to NARA will consist of paper copies but also allows for future transfers in an electronic format. Likewise, audiovisual records currently maintained in paper will initially be transferred to NARA in that medium but may be transferred in an electronic format in the future.

12. National Archives and Records Administration, Government-wide (N1–GRS–02–1, 20 items, 20 temporary items). Employment applications and examination and certification records included in General Records Schedule (GRS) 1, Civilian Personnel Records. Included are such records as correspondence or notices received from eligibles, cancelled and ineligible applications for positions filled from a register or inventory, and eligible applications for positions that either are not referred to the hiring official or are returned to the examining office by the hiring official. This schedule also revises series descriptions or disposition instructions for records already included in GRS 1, including examination announcement case files, registers of eligibles, and certificate files.

13. Office of Navajo and Hopi Indian Relocation, Administrative Services Division (N1–220–02–15, 19 items, 12 temporary items). Electronic data of the Accounting Information System, including general ledger data, daily accounting data, electronic fund transfer vendor information, and query reports. Also included are daily, weekly, monthly, six-week, and yearly backups. Proposed for permanent retention from the Accounting Information System are client and vendor databases and related system documentation.

14. Office of Personnel Management, Agency-wide (N9–478–02–1, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to administrative management. Included are electronic copies of records pertaining to internal agency housekeeping operations such as management improvement programs, records disposition, and forms control. Recordkeeping copies of these files are included in the Administrative Management Section of the OPM Administrative Manual Supplement. This schedule does not include descriptions of records at the file series level, but, instead, provides citations to the agency's Administrative Manual Supplement. To facilitate review of this schedule, NARA will provide the Administrative Management Section of the manual to requestors.

15. Office of Personnel Management, Agency-wide (N9–478–02–3, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to appeals actions. Included are electronic copies of records pertaining to such subjects as Administrative Law Judge qualifications and appellate cases. Recordkeeping copies of these files are included in the Appeals Section of the OPM Administrative Manual Supplement. This schedule does not include descriptions of records at the file series level, but, instead, provides citations to the agency's Administrative Manual Supplement. To facilitate review of this schedule, NARA will provide the Appeals Section of the manual to requestors.

16. Office of Personnel Management, Agency-wide (N9–478–02–4, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to budget and finance. Included are electronic copies of records pertaining to such subjects as internal payroll, work reporting, cost analysis, and the budget program. Recordkeeping copies of these files are included in Budget and Finance Section of the OPM Administrative Manual Supplement. This schedule does not include descriptions of records at the file series level, but, instead, provides citations to the agency's Administrative Manual Supplement. To facilitate review of this schedule, NARA will provide the Budget and Finance Section of the manual to requestors.

17. Office of Personnel Management, Agency-wide (N9–478–02–5, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to government-wide classification and compensation for positions in the Federal Government. Included are electronic copies of records pertaining to such subjects as occupational series definitions and pay and leave regulations. Recordkeeping copies of these files are included in the Classification and Compensation Section of the OPM Administrative Manual Supplement. This schedule does not include descriptions of records at the file series level, but, instead, provides citations to the agency's Administrative Manual Supplement. To facilitate review of this schedule, NARA will provide the Classification and Compensation Section of the manual to requestors.

18. Office of Personnel Management, Agency-wide (N9–478–02–6, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to the organization and activities of boards and committees over which the agency has administrative jurisdiction. Included are electronic copies of records associated with such files as general correspondence, publications, news releases, and speeches. Recordkeeping copies of these files are included in the Committee Management Section of the OPM Administrative Manual Supplement. This schedule does not include descriptions of records at the file series level, but, instead, provides citations to the agency's Administrative Manual Supplement. To facilitate review of this schedule, NARA will provide the Committee Management Section of the manual to requestors.

19. Office of Personnel Management, Agency-wide (N9–478–02–8, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to Government-wide employment processes. Included are electronic copies of records pertaining to such subjects as certification of eligibles, selections, appointments, placements, and transfers. Recordkeeping copies of these files are included in the Employment Section of the OPM Administrative Manual Supplement. This schedule does not include descriptions of records at the file series level, but, instead, provides citations to the agency's Administrative Manual Supplement. To facilitate review of this schedule, NARA will provide the Employment Section of the manual to requestors.

20. Office of Personnel Management, Agency-wide (N9–478–02–9, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to Government-wide labor-management programs. Included are electronic copies of records pertaining to such subjects as unfair labor practices, contract agreements, and arbitration decisions. Recordkeeping copies of these files are included in the Employee Relations and Services Section of the OPM Administrative Manual Supplement. This schedule does not include descriptions of records at the file series level, but, instead, provides citations to the agency's Administrative Manual Supplement. To facilitate review of this schedule, NARA will provide the Employee Relations and Services Section of the manual to requestors.

21. Office of Personnel Management, Agency-wide (N9–478–02–10, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to the Government-wide personnel management evaluation program. Included are electronic copies of records pertaining to such subjects as evaluations and special studies, the Fair Labor Standards Act, and position classification advisory opinions. Recordkeeping copies of these files are included in the Evaluations Section of the OPM Administrative Manual Supplement. This schedule does not include descriptions of records at the file series level, but, instead, provides citations to the agency's Administrative Manual Supplement. To facilitate review of this schedule, NARA will provide the Evaluations Section of the manual to requestors.

22. Office of Personnel Management, Agency-wide (N9–478–02–11, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to the Government-wide examination and recruitment program. Included are electronic copies of records pertaining to such subjects as test materials, examination announcements, and applicant data sheets. Recordkeeping copies of these files are included in the Examining and Recruiting Section of the OPM Administrative Manual Supplement. This schedule does not include descriptions of records at the file series level, but, instead, provides citations to the agency's Administrative Manual Supplement. To facilitate review of this schedule, NARA will provide the Examining and Recruiting Section of the manual to requestors.

23. Office of Personnel Management, Agency-wide (N9–478–02–13, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to information services. Included are electronic copies of records pertaining to such subjects as public relations, publications and other information releases, and press services. Recordkeeping copies of these files are included in the Information Services Section of the OPM Administrative Manual Supplement. This schedule does not include descriptions of records at the file series level, but, instead, provides citations to the agency's Administrative Manual Supplement. To facilitate review of this schedule, NARA will provide the Information Services Section of the manual to requestors.

24. Office of Personnel Management, Agency-wide (N9–478–02–15, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to Government-wide security investigation programs. Included are electronic copies of records relating to investigative and appraisal files as well as to related control and adjudication files. Recordkeeping copies of these files are included in the Investigations Section of the OPM Administrative Manual Supplement. This schedule does not include descriptions of records at the file series level, but, instead, provides citations to the agency's Administrative Manual Supplement. To facilitate review of this schedule, NARA will provide the Investigations Section of the manual to requestors.

25. Office of Personnel Management, Agency-wide (N9–478–02–17, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to internal and Government-wide medical programs and services. Included are electronic copies of records pertaining to such subjects as individual employee health care, health units, and reviews of confidential information. Recordkeeping copies of these files are included in Medical Section of the OPM Administrative Manual Supplement. This schedule does not include descriptions of records at the file series level, but, instead, provides citations to the agency's Administrative Manual Supplement. To facilitate review of this schedule, NARA will provide the Medical Section of the manual to requestors.

26. Office of Personnel Management, Agency-wide (N9–478–02–19, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to administration of the civil service retirement system. Included are electronic copies of records pertaining to such subjects as annuities,

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retirements, disability retirements, and death claims. Recordkeeping copies of these files are included in Retirement Section of the OPM Administrative Manual Supplement. This schedule does not include descriptions of records at the file series level, but, instead, provides citations to the agency's Administrative Manual Supplement. To facilitate review of this schedule, NARA will provide the Retirement Section of the manual to requestors.

27. Office of Personnel Management, Agency-wide (N9–478–02–20, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to legal matters. Included are electronic copies of records pertaining to such subjects as political activity, the Hatch Act, and the Voting Rights Program. Recordkeeping copies of these files are included in Legal Section of the OPM Administrative Manual Supplement. This schedule does not include descriptions of records at the file series level, but, instead, provides citations to the agency's Administrative Manual Supplement. To facilitate review of this schedule, NARA will provide the Legal Section of the manual to requestors.

Dated: August 15, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 02–21485 Filed 8–22–02; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72–15 and 50–219]

AmerGen Energy Company, LLC, Oyster Creek Generating Station; Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated June 21, 2002, Ms. Edith Gbur of the Jersey Shore Nuclear Watch, et al. (petitioners), have requested that the Nuclear Regulatory Commission (NRC) take action with regard to AmerGen Energy Company's Oyster Creek Generating Station Independent Spent Fuel Storage Installation.

The petitioners requested the following NRC actions:

(1) Suspend Certificate of Compliance (CoC) No. 1004 for the NUHOMS dry spent fuel storage system.

(2) Halt transfer of spent fuel from wet pool storage to dry storage modules.

(3) Conduct a site-specific public hearing before independent judges on the dry cask licensing proceeding for Oyster Creek Generating Station (Oyster Creek) and other nuclear issues identified in the petition.

(4) Make a determination of the NUHOMS' capability to withstand terrorist attacks similar to those on September 11, 2001.

(5) Develop criteria and regulations to empirically verify dry storage system capability and to apply those requirements to Oyster Creek.

(6) Halt loading until a thorough inspection of the total system has been completed to verify that the NUHOMS modules were fabricated properly and will last the design life.

As the basis for the request, the petitioners presented a number of safety concerns related to:

(1) Location of the Oyster Creek independent spent fuel storage installation relative to local roads and communities;

(2) Ability of the NUHOMS dry spent fuel storage system to survive a sabotage attack;

(3) Adequacy of Oyster Creek security measures for fuel handling activities;

(4) Adequacy of the Oyster Creek emergency evacuation plan; and

(5) Quality of the NUHOMS systems planned for use at Oyster Creek.

The request is being addressed pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Material Safety and Safeguards. As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time. The petitioner participated in a telephone call with the Office of Nuclear Material Safety and Safeguards' Petition Review Board on July 18, 2002, to discuss the petition. The results of that discussion were considered in the Board's determination regarding the petitioner's request for immediate action and in establishing the schedule for review of the petition. By letter dated August 12, 2002, the Director denied the petitioner's request for immediate suspension of Certificate of Compliance No. 1004 for the NUHOMS dry spent fuel storage system and to halt transfer of spent fuel from wet pool storage to dry storage modules at the Oyster Creek Generating Station. A copy of the petition is available for inspection in the Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 12th day of August, 2002.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–21524 Filed 8–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413, 50–414, 50–369, and 50–370]

Duke Energy Corporation, et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–35, NPF–52, NPF–9, and NPF–17 issued to Duke Energy Corporation, et al., (the licensee) for operation of the Catawba Nuclear Station, Units 1 and 2, and McGuire Nuclear Station, Units 1 and 2, located in York County, South Carolina and Mecklenburg County, North Carolina.

The proposed amendments would revise Technical Specification (TS) 5.6.5 regarding the Core Operating Limits Report (COLR). TS 5.6.5.a lists the parameters for which the limiting values have been relocated by previous TS amendments from the TS to the COLR. Specifically, for both Catawba and McGuire Nuclear Stations, the amendments would revise the TS 5.6.5.a by (1) adding "60 ppm" to Item 5.6.5.a.1 regarding the moderator temperature coefficient (MTC) surveillance limit for Specification 3.1.3, and (2) by adding Item 5.6.5.a.12, "31 EFPD [effective full-power day] surveillance penalty factors for Specifications 3.2.1 and 3.2.2." In addition, for Catawba Nuclear Station, the amendments would add Item 5.6.5.a.13, "Reactor makeup water pumps combined flow rates limit for Specifications 3.3.9 and 3.9.2." The limiting values for these parameters were previously relocated from the TS to the COLR without the parameter identifier being retained in the TS. Inclusion of the parameter identifier in the TS will improve consistency between the TS and the COLR. The amendments would also change Bases

3.2.1 and 3.2.3 to remove the specific date of the referenced topical report.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Would implementation of the changes proposed in these amendments involve a significant increase in the probability or consequences of an accident previously evaluated?

No. These amendments make clarifications and additions to the list of referenced TS listed in both McGuire and Catawba Nuclear Stations TS 5.6.5.a. The additions to the list of referenced TS are consistent with the COLR and provide additional clarifications. Therefore, the proposed changes have no impact on any accident probabilities or consequences.

2. Would implementation of the changes proposed in these amendments create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes contained in these amendments only make additions or clarifications that are consistent with the McGuire and Catawba Nuclear Stations COLR and established plant operating practices. Therefore, no new or different kinds of accidents are being created.

3. Would implementation of the changes proposed in these amendments Involve a significant reduction in a margin of safety?

No. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. These barriers are unaffected by the changes proposed in these amendments. The margin of safety is established through the design of the plant structures, systems, and components, the parameters within which the plant is operated, and the establishment of the setpoints for the actuation of equipment relied upon to respond to an event and thereby protect the fission product barriers. The changes proposed in these amendments make additions to a list of referenced TS that are currently approved for use at McGuire and Catawba Nuclear Stations. These changes have no affect on the applicable McGuire and Catawba Nuclear Stations licensing bases, and following implementation of the proposed changes, all applicable acceptance criteria will continue to be met. Consequently, no margin of safety will be significantly impacted by these amendments.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 23, 2002, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief."

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of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to Ms. Lisa F. Vaughn , Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated October 7, 2001, as supplemented by letter dated August 7, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 20th day of August 2002.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management.

[FR Doc. 02–21522 Filed 8–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Company; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Virginia Electric and Power Company (the licensee) to withdraw its June 22, 2000, application, as supplemented January 19, 2001, and July 26, 2001, for proposed amendments to Facility Operating License Nos. NPF–4 and NPF–7 for the North Anna Power Station, Unit Nos. 1 and 2, located in Louisa County, Virginia.

The proposed amendments would have revised the Technical Specifications to permit the elimination of the assumed increase in the rod control cluster assembly drop time resulting from a concurrent trip and seismic event.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on August 9, 2000 (65 FR 48761). However, by letter dated July 17, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendments dated June 22, 2000, supplemental letters dated January 19, 2001, and July 26, 2001, and the licensee's letter dated July 17, 2002, which withdrew the application for license amendments. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 19th day of August 2002.

For the Nuclear Regulatory Commission.

Stephen R. Monarque,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–21523 Filed 8–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on September 12–14, 2002, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 26, 2001 (66 FR 59034).

Thursday, September 12, 2002

8:30 a.m.—8:35 a.m.: Opening Statement by the Acting ACRS Chairman (Closed)—The ACRS Chairman will make opening remarks regarding the Naval Reactors Virginia Class Nuclear Propulsion Plant Submarine Design. [This session will be held in the NRC auditorium]

8:35 a.m.–11:45 a.m.: DOE/DOD Naval Reactors Virginia Class Nuclear Propulsion Plant Submarine Design (Closed)—The Committee will hear presentations by and hold discussions with representatives of the Department of Energy (DOE)/Department of Defense (DOD) Naval Reactors Organization and the NRC staff regarding the Virginia Class Nuclear Propulsion Plant Submarine Design. [This session will be held in the NRC auditorium]

[Note: The above two sessions will be closed to discuss classified information applicable to this matter.]

1 p.m.–1:05 p.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

1:05 p.m.–2:30 p.m.: Human Reliability Analysis Research Plan (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the Human Reliability Analysis Research Plan and related matters.

2:45 p.m.–4:15 p.m.: Proposed Resolution of Generic Safety Issue-185, "Control of Recriticality Following Small-Break LOCAs in PWRs" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed recommendations by the Office of Nuclear Regulatory Research for resolving Generic Safety Issue-185.

4:30 p.m.—5:00 p.m.: Subcommittee Report Regarding D. C. Cook Switchyard Fire (Open)—Report by the Chairman of the ACRS Subcommittee on Plant Operations regarding the switchyard fire event that occurred at the D. C. Cook Nuclear Power Plant on June 12, 2002.

5 p.m.–5:30 p.m.: Subcommittee Report Regarding the Reactor Oversight Process (Open)—Report by the Chairman of the ACRS Subcommittee on Plant Operations regarding matters discussed at the September 9, 2002 Subcommittee meeting.

5:30 p.m.–7:00 p.m.: Proposed ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. [Discussion of the report on Virginia Class Nuclear Propulsion Plant Submarine Design, which will be closed to the public, will be held in Room T–8E8.]

Friday, September 13, 2002

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.—10:45 a.m.: Proposed 10 CFR 50.69, Draft Regulatory Guide DG–1121, and NEI Document NEI 00–04 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Nuclear Energy Institute (NEI) regarding proposed 10 CFR 50.69, "Risk-Informed Categorization and Treatment of Structures, Systems, and Components for Nuclear Power Reactors," draft Regulatory Guide DG–1121, "Guidelines for Categorizing Structures, Systems, and Components in Nuclear Power Plants According to Their Safety Significance," and NEI 00–04, "10 CFR 50.69 SSC Categorization Guidelines."

11 a.m.–12:30 p.m.: Draft Regulatory Guide DG–1120 and Standard Review Plan Section Associated with NRC Code Reviews (Open)–The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding draft Regulatory Guide DG–1120, "Transient and Accident Analysis Methods," and draft final Standard Review Plan Section 15.0.2, "Review of Transient and Accident Analysis Methods."

1:30 p.m.–2 p.m.: Subcommittee Report on Fire Protection (Open)—Report by the Chairman of the ACRS Subcommittee on Fire Protection regarding matters discussed during the September 11, 2002 Subcommittee meeting.

2 p.m.–3 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

3 p.m.–3:15 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

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3:30 p.m.–7 p.m.: Proposed ACRS Reports(Open/Closed)—The Committee will discuss proposed ACRS reports. [Discussion of the report on Virginia Class Nuclear Propulsion Plant Submarine Design, which will be closed to the public, will be held in Room T–8E8.]

Saturday, September 14, 2002

8:30 a.m.–12 Noon: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

1 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 3, 2001 (66 FR 50462). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Associate Director for Technical Support named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Associate Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Associate Director if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close a portion of this meeting noted above to discuss classified information per 5 U.S.C. 552b (c)(1).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur, Associate Director for Technical Support (301–415–0138), between 7:30 a.m. and 4:15 p.m., EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EDT, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: August 19, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–21521 Filed 8–22–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: Forms RI 38–117, RI 38–118, AND RI 37–22

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995 and 5 CFR 1320), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 38–117, Rollover Election, is used to collect information from each payee affected by a change in the tax code (Public Law 102–318) so that OPM can make payment in accordance with the wishes of the payee. RI 38–118, Rollover Information, explains the election. RI 37–22, Special Tax Notice Regarding Rollovers, provides more detailed information.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of the appropriate technological collection techniques or other forms of information technology.

Approximately 1,000 RI 38–117 forms will be completed annually. We estimate it takes approximately 30 minutes to complete the form. The annual burden is 500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please include your mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415–3450.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Desktop Publishing & Printing Team, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–21410 Filed 8–22–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions, granting authority to make appointments under Schedule C in the excepted service as required by 5 CFR 6.1 and 213.103.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual

authorities established under Schedule C between July 1, 2002 and July 31, 2002. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule C

Broadcasting Board of Governors

Chief of Staff to the Director, Office of Cuba Broadcasting. Effective July 31, 2002.

Department of Agriculture

Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective July 2, 2002.

Special Assistant to the Deputy Assistant Secretary for Administration. Effective July 17, 2002.

Department of the Army (DOD)

Personal and Confidential Assistant to the Assistant Secretary of the Army (Installations and Environment). Effective July 4, 2002.

Department of Commerce

Public Affairs Specialist to the Director of Public Affairs. Effective July 8, 2002.

Special Assistant to the Assistant Secretary for Economic Development. Effective July 17, 2002.

Confidential Assistant to the Assistant Secretary for Export Enforcement. Effective July 24, 2002.

Department of Defense

Public Affairs Specialist to the Deputy Assistant Secretary of Defense for Public Affairs. Effective July 10, 2002.

Special Assistant to the Assistant Secretary of Defense for Legislative Affairs. Effective July 12, 2002.

Department of Education

Special Assistant to the Chief of Staff, Office of the Deputy Secretary. Effective July 2, 2002.

Special Assistant to the Chief of Staff, Office of the Under Secretary. Effective July 2, 2002.

Special Assistant to the Chief Financial Officer. Effective July 2, 2002.

Special Assistant to the Chief of Staff. Effective July 2, 2002.

Confidential Assistant to the Chief Financial Officer. Effective July 8, 2002.

Special Assistant to the Deputy Assistant Secretary for Management. Effective July 9, 2002.

Confidential Assistant to the Chief of Staff. Effective July 11, 2002.

Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective July 11, 2002.

Special Assistant to the Chief of Staff, Office the Under Secretary. Effective July 15, 2002.

Special Assistant to the Chief Financial Officer. Effective July 16, 2002.

Special Assistant to the Director, Office of Educational Technology. Effective July 16, 2002.

Confidential Assistant to the Chief of Staff. Effective July 22, 2002.

Special Assistant to the Director, Office of Public Affairs. Effective July 24, 2002.

Confidential Assistant to the Assistant Secretary for Vocational and Adult Education. Effective July 29, 2002.

Department of Energy

Executive Assistant to the Assistant Secretary for Fossil Energy. Effective July 24, 2002.

Confidential Advisor to the Director, Office of Science. Effective July 24, 2002.

Department of Health and Human Services

Director of Communications to the Assistant Secretary of Health. Effective July 10, 2002.

Confidential Assistant to the Deputy Administrator and Chief Operating Officer. Effective July 23, 2002.

Confidential Assistant to the Assistant Secretary for Public Affairs. Effective July 24, 2002.

Department of Housing and Urban Development

Staff Assistant to the Assistant Secretary for Housing. Effective July 2, 2002.

Special Assistant to the Assistant Secretary for Public and Indian Housing. Effective July 8, 2002.

Deputy Assistant Secretary for Special Initiatives to the Assistant Secretary, Community Planning and Development. Effective July 9, 2002.

Special Assistant to the Assistant Secretary for Administration. Effective July 9, 2002.

Director, Office of Small and Business Utilization to the Deputy Secretary. Effective July 10, 2002.

Staff Assistant to the Senior Advisor, Office of the Deputy Secretary. Effective July 11, 2002.

Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective July 24, 2002.

Staff Assistant to the President, Government National Mortgage Association. Effective July 25, 2002.

Department of the Interior

Director of Scheduling and Advance to the Chief of Staff. Effective July 8, 2002.

Counselor to the Assistant Secretary-Indian Affairs. Effective July 25, 2002.

Special Assistant to the Deputy Assistant Secretary, Policy and International Affairs. Effective July 26, 2002.

Assistant Director, Legislative and Congressional Affairs to the Director, National Park Service. Effective July 26, 2002.

Department of Justice

Senior Advisor to the Assistant Attorney General, Tax Division. Effective July 8, 2002.

Confidential Assistant to the Assistant Attorney General, Tax Division. Effective July 11, 2002.

Assistant to the Attorney General for Scheduling and Advance to the Director of Scheduling and Advance. Effective July 12, 2002.

Department of Labor

Staff Assistant to the Assistant Secretary for Disability Employment Policy. Effective July 3, 2002.

Staff Assistant to the Assistant Secretary for Public Affairs. Effective July 3, 2002.

Special Assistant to the Assistant Secretary for Public Affairs. Effective July 10, 2002.

Counsel to the Deputy Secretary of Labor. Effective July 15, 2002.

Chief of Staff to the Assistant Secretary for Policy. Effective July 16, 2002.

Special Assistant to the Administrator, Wage and Hour Division. Effective July 16, 2002.

Staff Assistant to the Secretary of Labor. Effective July 26, 2002.

Department of State

Member to the Director, Policy Planning Staff. Effective July 3, 2002.

Special Assistant to the Assistant Secretary for Economic and Business Affairs. Effective July 8, 2002.

(Press Officer) Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective July 23, 2002.

Department of Transportation

Counselor to the Deputy Secretary of Transportation. Effective July 9, 2002.

Counselor to the Associate Deputy Secretary. Effective July 30, 2002.

Environmental Protection Agency

Chief of Staff to the Assistant Administrator, Office of Air and Radiation. Effective July 3, 2002.

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Special Assistant (Advance Person) to the Administrator. Effective July 25, 2002.

Export-Import Bank of the United States

Special Assistant to the Vice President for Public Affairs. Effective July 11, 2002.

Federal Emergency Management Agency

Special Assistant (Coordination/Advance) to the Director. Effective July 3, 2002.

Director, Congressional and Legislative Affairs Division to the Assistant Director, External Affairs. Effective July 9, 2002.

Special Assistant to the Deputy Director, Federal Emergency Management Agency. Effective July 9, 2002.

Staff Assistant to the General Counsel. Effective July 11, 2002.

Special Assistant to the Deputy Director, Federal Emergency Management Agency. Effective July 17, 2002.

General Services Administration

Confidential Assistant to the Chief of Staff. Effective July 9, 2002.

Senior Advisor to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective July 22, 2002.

Deputy Associate Administrator for Enterprise Development to the Associate Administrator for Enterprise Development. Effective July 23, 2002.

Director of Administration to the Chief of Staff. Effective July 29, 2002.

National Endowment for the Arts

Special Assistant to the Director, Office of Congressional and White House Liaison. Effective July 23, 2002.

National Endowment for the Humanities

General Counsel to the Chairman. Effective July 9, 2002.

Office of Personnel Management

Project Director, Public and Constituent Services to the Director, Office of Communications. Effective July 31, 2002.

Office of Science and Technology Policy

Assistant Associate Director for Telecommunications and Information Technology to the Associate Director for Technology. Effective July 26, 2002.

Small Business Administration

Director of Advisor Councils to the Associate Administrator for Communications and Public Liaison. Effective July 17, 2002.

Senior Advisor to the Deputy Administrator. Effective July 23, 2002.

Special Assistant to the Administrator, Small Business Administration. Effective July 29, 2002.

United States Tax Court

Trial Clerk to the Judge. Effective July 17, 2002.

Trial Clerk to the Judge. Effective July 17, 2002.

United States Trade and Development Agency

Congressional Liaison Officer to the Chief of Staff. Effective July 3, 2002.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–21409 Filed 8–22–02; 8:45 am]

BILLING CODE 6325–38–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) was to minimize the burden related to the collection of information on respondents; including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Pension Plan Reports: OMB 3220–0089.

Under Section 2(b) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) pays supplemental annuities to qualified RRB employee annuitants. A supplemental annuity, which is computed according to Section 3(e) of the RRA, can be paid at age 60 if the employee has at least 30 years of creditable railroad service or at age 65 if the employee has 25–29 years of railroad service. In addition to 25 years of service, a "current connection" with the railroad industry is required. Eligibility is further limited to employees who had at least one month of rail service before October 1981 and were awarded regular annuities after June 1966. Further, if an employee's 65th birthday was prior to September 2, 1981, he or she must not have worked in rail service after certain closing dates (generally the last day of the month following the month in which age 65 is attained).

Under Section 2(h)(2) of the RRA, the amount of the supplemental annuity is reduced if the employees receive monthly pension payments, or lump-sum pension payments, from heir former railroad employer, which are based in whole or in part on contributions from that railroad employer. The employees' own contributions to their pension accounts do not cause a reduction. An employer private pension is described in 20 CFR 216.40–216.42.

The RRB requires the following information from railroad employers to calculate supplemental pension plans cause reductions to the RRB supplemental annuity; (b) the amount of the employer private pension being paid to the employee; (c) whether or not the employer make contributions to the pension; (d) whether or not the employee was cashed out before attaining retirement age under the employer pension plan or received the pension in a lump-sum payment in lieu of monthly pension payments; (e) whether the employer pension plan continues when the employer status under the RRA changes. The requirement that railroad employers furnish pension information to the RRB is contained in 20 CFR 209.2.

The RRb currently utilizes Form(s) G–88p (Employer's Supplemental Pension Report), G–88r (Request for Information About New or Revised Pension Plan), and G–88.1 (Request for Additional Information about Employer Pension Plan in Case of Change of Employer Status or Termination of Pension Plan), to obtain the necessary information from railroad employers. One response is requested of each respondent. Completion mandatory.

The RRB proposed significant burden impacting changes to Form G–88p. New items requesting information regarding lump-sum payments paid in lieu of a monthly pension have been added as well as items instructing employers to retain a copy of the form for later transmittal are being proposed. The RRB also is proposing to delete several items

of information from Form G–88p including items no longer needed due to the Railroad Retirement and Survivor's Improvement Act (RRSIA).

The RRB also proposes to delete information no longer needed due to RRSIA from Forms G–88r and G–88r.1. Non burden impacting editorial and formatting changes are also proposed to all of the forms.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form #(s)	Annual responses	Time (min)	Burden (hrs.)
G–88p	1,500	8	200
G–88r	10	10	2
G–88r.1	5	7	1
Total	1,515	.....	203

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363, Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–21493 Filed 8–22–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46381; File No. S7–24–89]

Joint Industry Plan; Order Granting Partial Temporary Approval of Amendment No. 13 of the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, Submitted by the National Association of Securities Dealers, Inc., the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the Pacific Exchange, the American Stock Exchange LLC, and the Philadelphia Stock Exchange, Inc.

August 19, 2002.

I. Introduction and Description

On May 31, 2002, the Cincinnati Stock Exchange, Inc. ("CSE") on behalf of itself and the National Association of Securities Dealers, Inc. ("NASD"), the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("PHLX") (hereinafter referred to collectively as "Participants"),[1] as members of the operating committee ("Operating Committee" or "Committee")[2] of the Plan submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend the Plan, pursuant to Rule 11Aa3–1[3] and Rule 11Aa3–2[4] under the Securities Exchange Act of 1934 ("Act" or "Exchange Act"). The proposal represents the 13th amendment ("13th Amendment") made to the Plan. Notice of the proposed 13th Amendment was published in the **Federal Register** on July 5, 2002.[5]

The Nasdaq UTP Plan governs the collection, processing, and dissemination on a consolidated basis of quotation and last sale information for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Nasdaq securities.

As discussed in the 13th Amendment Notice, proposed amendments to the Plan have been segregated into four categories: (1) Category 1, "Effective Upon Nasdaq's Exchange Registration;" (2) Category 2, "Effective Upon Launch of the Internal SIP;" (3) Category 3, "Effective Upon End of Parallel Period—Elimination of the Legacy SIP;" and (4) Category 4, "Timing Not An Issue." Through the 13th Amendment Notice, the Commission granted temporary summary effectiveness to amendments detailed in Category 2 so as to allow the target launch date for the new Internal Securities Information Processor ("SIP") data feeds to be met.[6] The Commission received no comments on the proposed 13th Amendment.

This partial temporary approval order approves the 13th Amendment's extension of the Plan through August 19, 2003. This order does not approve the amendments detailed in Categories 1, 2, 3, and 4 in the 13th Amendment Notice,[7] which will be addressed in a separate action.

II. Discussion

The Commission finds that extending the Plan for one year is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, section 12(f)[8] and section 11A(a)(1)[9] of the Act and Rules 11Aa3–1 and 11Aa3–2 thereunder.[10] Section 11A of the Act directs the Commission to facilitate the development of a national market system for securities, "having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets," and cites as an objective of that system the "fair competition * * * between exchange markets and markets other than exchange markets."[11] When the Commission first approved of the Plan on a pilot basis, it found that the Plan "should enhance market efficiency and fair competition, avoid investor confusion, and facilitate surveillance of concurrent exchange and OTC trading."[12] The Plan has been in existence since 1990 and Participants have been trading Nasdaq securities under the Plan since 1993.

[1] The CSE was elected chair of the Operating Committee for the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis ("Nasdaq UTP Plan" or "Plan") by the Participants.

[2] Among other things, the 13th Amendment proposes to add the Nasdaq Stock Market, Inc. ("Nasdaq") as a Participant. The Committee is made up of all the Participants.

[3] 17 CFR 240.11Aa3–1.

[4] 17 CFR 240.11Aa3–2.

[5] Securities Exchange Act Release No. 46139 (June 28, 2001 (sic)), 67 FR 44888 ("13th Amendment Notice").

[6] In November of 2001, Nasdaq began implementing the "Internal SIP" project. The Internal SIP is a separate technology infrastructure within Nasdaq that will perform the functions of the SIP for Nasdaq-listed securities. When the Internal SIP is in place, Nasdaq will be able to separate its functions as a stock market from its functions as a SIP for the Plan.

[7] Pursuant to Rule 11Aa3–2(c)(4), 17 CFR 240.11Aa3–2(c)(4), the temporary summary effectiveness granted to the Category 2 amendments by the 13th Amendment Notice may not exceed 120 days in length. This partial temporary approval order has no impact upon such temporary summary effectiveness of the Category 2 amendments.

[8] 15 U.S.C. 78l(f). The Commission finds that extending the Plan is consistent with fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of the Act. The Commission has taken into account the public trading activity in securities traded pursuant to the Plan, the character of the trading, the impact of the trading of such securities on existing markets, and the desirability of removing impediments to, and the progress that has been made toward the development of a national market system.

[9] 15 U.S.C. 78k–1(a)(1).

[10] 17 CFR 240.11Aa3–1 and 17 CFR 240.11Aa3–2.

[11] 15 U.S.C. 78k–1(a).

[12] Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990).

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The Commission finds that extending the pilot period of the Plan furthers the goals described above by preventing the lapsing of the sole effective transaction reporting plan for Nasdaq securities traded by other exchanges pursuant to unlisted trading privileges. The Commission believes that the Plan is currently a critical component of the national market system and that the Plan's expiration would have a serious, detrimental impact on the further development of the national market system.

III. Conclusion

It is therefore ordered, pursuant to sections 12(f) and 11A of the Act [13] and paragraph (c)(2) of Rule 11Aa3–2 [14] thereunder, that the pilot expiration date for the Plan be, and hereby is, extended through August 19, 2003..

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21520 Filed 8–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46378; File No. SR–OCC–2002–18]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Matched Trade Reporting

August 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 30, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC's by-laws and rules relating to exchanges' reports of matched trades to OCC and to OCC providing positions and exercise information to clearing members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change would modify OCC's by-laws and rules to accommodate the transition to near real-time reporting of matching trade information by the options exchanges.[3] In addition, OCC's rules would be modified to reflect that OCC may make available to clearing members updated position and exercise information; however, such information would be provisional until final processing.

Each option exchange currently compares the trade information submitted by purchasing and selling members with respect to each transaction effected on that exchange. A compared transaction reflects that the parties to the trade have agreed on the terms of the trade. After the completion of its comparison processing, an exchange transmits to OCC a cumulative report of all matched trades effected or reconciled on that exchange on that particular trading day.[4] A compared or "matched" trade reported to OCC also contains additional information required by OCC, including, for example, the identity of the purchasing and selling clearing members, the accounts in which each side of the transaction was effected, the exercise prices, the expiration date, and the number of options contracts.[5] Each night, OCC processes the cumulative report of matched trades submitted by each option exchange, as well as exercise notices submitted by clearing members and accepted by OCC, and updates the clearing members' positions for the next trading day.

In connection with systems modification, OCC is proposing to amend its by-laws and rules so that it would accept and process matched trades reported by the exchanges on a near real-time basis. After receipt of a matched trade, OCC would process the matching trade information and make available updated position information for clearing member review throughout the trading day. However, a matched trade reported by a particular exchange might not always be complete or accurate for a variety of reasons. A clearing member may need to modify or append additional information after the matched trade has been sent to OCC. For example, a clearing member may need to reflect that a transaction was either to open or close a position. In such cases, the reporting exchange would instruct OCC to disregard a previously reported matched trade and would report new matching trade information to replace the original transaction. No replacement matching trade information would be reported by an exchange if the previously reported matched trade was to be disregarded altogether. Because an exchange may instruct OCC to disregard a previously submitted matched trade, OCC proposes to amend Article VI, Section 7 of its by-laws to reflect that, in accordance with such an instruction, the matched trade would be deemed null and void and given no effect under the by-laws and rules. In addition, Section 7 would be amended to reflect that OCC would not be liable to any writer, holder, buyer, or seller in acting on an exchange's instruction to disregard a previously submitted trade. Article VII, Section 7 and Rules 401 and 402 also would be amended to eliminate references to the receipt of a report of matched trades. Instead, these provisions would reference the reporting of matching trade information by an exchange. Other by-law and rule provisions that describe the receipt of a report of matched trades would be similarly revised.[6]

Rule 501, which governs position reporting by OCC to its clearing members, would be amended to reflect that position information updated during a business day would only be provisional and informational in nature and that only clearing members' daily position reports could be relied upon as definitely reflecting their final positions. Daily position reports are made available to clearing members the business day after the trade date.

Rule 801, which relates to exercises of options, also would be amended to reflect that exercise information provided throughout a business day would be provisional and informational only. Exercises accepted by OCC would be definitely reflected in delivery advices and exercise and assignment reports. Such advices or reports are made available the following business day.

OCC requests that the Commission approve this rule change by October 31, 2002, so that the changes are effective when OCC implements the supporting system changes. These system changes are scheduled for implementation in early November 2002.

OCC believes that the proposed rule change is consistent with section 17A of the Act because it facilitates the prompt and accurate clearance and settlement of cleared contracts.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C)Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2002–18 and should be submitted by September 13, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21518 Filed 8–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46377; File No. SR–OCC–2002–15]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Dating Assignments

August 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 3, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC Rule 803 to provide that assignments of exercise notices will be dated and effective on the same date that the applicable exercise notice was accepted by OCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to modify Rule 803 to provide that assignments will be dated and effective on the same date that the related exercise notice was accepted by OCC. Rule 803(b) currently provides that assignments are dated and effective as of the business day following the exercise date. This reflects the mechanics of OCC's processing. OCC assigns exercises on an overnight basis, but assigned clearing members do not receive notice of assignment until the morning of the day after exercise. OCC's practice has been to date assignments as of the day the assigned clearing members receive the notice of assignment. However, the trade (*i.e.*, the purchase or sale of stock) resulting from the exercise is treated as having occurred on the exercise date not the assignment date. Thus, settlement takes place on the third business day following the exercise date.[3]

This has the potential to cause confusion for call writers. OCC has learned that some, if not all, clearing members use the same assignment date

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[13] 15 U.S.C. 78l(f) and 15 U.S.C. 78k–1.

[14] 17 CFR 240.11Aa3–2(c)(2).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements

[3] While the language of this filing reflects OCC's current business of clearing and settling exchange traded options, the filing and the change to OCC's by-laws and rules extend to matching trade information from national securities exchanges, national securities associations, futures merchants, security futures markets, and international markets for which OCC clears and settles transactions.

[4] While OCC receives periodic matched trade transmissions for each option exchange during a business day, it currently uses the cumulative matched trade transmission made by each exchange for position processing and does not use intraday transmissions for position processing. OCC anticipates that the option exchanges will gradually transition to reporting of matched trades on a near real-time basis. Until all exchanges have transitioned to near real-time matched trade reporting during the business day, OCC's systems will accept and process a cumulative batch transmission, intermittent batch transmissions, and near real-time matched trade reporting.

[5] *See* Article VI, Section 7 of OCC's by-laws and OCC Rule 401 for a description of the information required by OCC.

[6] In addition, the term settlement time, as defined in Section 1.S. of Articles XV, XX, and XXIII is being modified to reflect OCC's receipt of matching trade information as opposed to a matched trade report.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] OCC Rule 902.

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as OCC. As a result, when a holder exercises a call on the day before an ex-dividend date in order to capture the dividend, the writer who is assigned the exercise may see an assignment date the same as the ex-dividend date. The writer's broker may then have to explain that the writer is required to give up the dividend to the exercising holder because the exercise occurred before the ex-dividend date even though the assignment did not. While the language of this filing reflects OCC's current business of clearing and settling exchange traded options, the filing and the change to OCC's by-laws and rules extend to matching trade information from national securities exchanges, national securities associations, futures merchants, security futures markets, and international markets for which OCC clears and settles transactions. [4] Dating assignments on the same date as the related exercise will lessen the potential for this kind of confusion.

Other, nonsubstantive changes are proposed for Rule 803 for the purposes of updating obsolete language. In addition, a conforming change is made to Rule 402, which pertains to supplemental reports of matched trades.

OCC believes that the proposed rule change is consistent with section 17A of the Act because it eliminates a potential source for investor confusion.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2002–15 and should be submitted by September 13, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21519 Filed 8–22–02; 8:45 am]

BILLING CODE 8010–01–P

[4] OCC Rules 912 and 913(e).

[5] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer at the following addresses:

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503.

(SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1300 Annex Bldg., 6401 Security Blvd., Baltimore, MD 21235.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Application for Disability Insurance Benefits—0960–0060—20 CFR Subpart P—404.1501–1512 and Subpart D—404.315–404.322.* The information collected on form SSA–16 helps to determine eligibility for social security disability benefits. The respondents are applicants for Social Security disability benefits.

Type of Request: Revision of an OMB-Approved Information Collection.

Number of Respondents: 1,513,677.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 504,559 hours.

2. *Worker's Compensation/Public Disability Benefit Questionnaire—0960–0247—20 CFR Subpart R—404.1720 and 404.1725, Subpart F—410.686b, Subpart O—416.1520.* Section 224 of the Act provides for the reduction of disability insurance benefit (DIB) when the combination of DIB benefits and any worker's compensation (WC) and/or certain Federal, State or Local public disability benefits (PDB) exceeds 80% of the worker's predisability earnings. SSA–546 collects the information to determine whether or not the worker's receipt of WC/PDB payments will cause a reduction of DIB. The respondents are applicants for title II DIB.

Type of Request: Extension of an OMB-Approved Information Collection.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 25,000 hours.

3. *Medical Report on Adult with Allegation of Human Immune Deficiency Virus Infection and Medical Report on Child with Allegation of Human Immune Deficiency Virus Infection—0960–0500—20 CFR Subpart I—416.933.* The information collected on forms SSA–4814–F5 and SSA–4815–F6 assist the field offices/disability determination services to make findings of presumptive disability that confirms the claimants' disease manifestations meet the severity of listing-level criteria for Human Immunodeficency Virus (HIV) infection. The respondents are medical sources of claimants for title XVI disability payments based on HIV infection.

Type of Request: Extension of an OMB-Approved Information Collection.

Number of Respondents: 59,100.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 9,850.

II. The information collection listed below has been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–0454, or by writing to the address listed above.

1. *Petition To Obtain Approval Of A Fee For Representing A Claimant Before the Social Security Administration—0960–0104—20 CFR Subpart R—404.1720, 404.1725, Subpart F—410.686b, Subpart O—416.1520 and 416.1525.* A representative of a claimant for Social Security benefits must file either a fee petition or a fee agreement with SSA in order to charge a fee for representing a claimant in proceedings before SSA. The representative uses Form SSA–1560 to petition SSA for authorization to charge and collect a fee. A claimant may also use the form to agree or disagree with the requested fee amount or other information the representative provides on the form. SSA uses the information to determine a reasonable fee that a representative may charge and collect for his or her services. The respondents are claimants, their attorneys and other persons representing them.

Type of Request: Extension of an OMB-Approved Information Collection

Number of Respondents: 34,624.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Average Burden: 17,312 hours.

2. *Coverage of Employees of State and Local Governments—0960–0425—20 CFR Subpart M.* In order for State and local employees working in positions covered by Social Security to get credit for their covered wages, States and Interstate Instrumentalities are required to provide wage and deposit contribution information (for Pre-1987 periods) to SSA. The information collected is needed to post wages to individuals' Social Security earnings records and to perform audit and Trust Fund accounting functions. The respondents are State and Local Governments, or Interstate Instrumentalities, that are required to provide SSA with wage and deposit contribution information for Pre-1987 periods.

Type of Request: Extension of an OMB-Approved Information Collection.

Number of Respondents: 55.

Frequency of Response: varies.

Average Burden Per Response: varies (.5–5 hours).

Estimated Annual Burden: 434 hours.

3. *Application for Mother's or Father's Insurance Benefits—0960–0003—20 CFR Subpart D—404.339–.342, Subpart G—404.601–.603.* SSA uses the information collected on the Form SSA–5–F6 or during a personal interview with a claimant to entitle an individual to mother's or father's insurance benefits. The respondents are applicants for mother's or father's insurance Benefits.

Type of Request: Extension of an OMB-Approved Information Collection

Number of Respondents: 50,000.

Frequency of Response: 1 .

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 12,500 hours.

4. *Marriage Certification—0960–0009—20 CFR Subpart H—404.725.* Form SSA–3–F6 is used by SSA to determine if the claimant filing for spouse's benefits has the necessary relationship to the worker for eligibility to benefits as required by section 216(h)(1) of the Social Security Act. The respondents are applicants for spouse's benefits.

Type of Request: Extension of an OMB-Approved Information Collection

Number of Respondents: 180,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 15,000 hours.

5. *Claimant's Work Background—0960–0300—20 CFR P—404.1565, Subpart I—416.965.* SSA uses the information collected on form HA–4633 to provide claimant's their statutory right to a hearing and decision under the Social Security Act. A completed form provides an updated summary of a claimant's past relevant work and helps the Administrative Law Judge to decide whether or not the claimant is disabled. The respondents are claimants requesting hearings on entitlement to benefits based on disability under titles II and/or XVI of the Act.

Type of Request: Extension of an OMB-Approved Information Collection

Number of Respondents: 120,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 60,000 hours.

6. *Letter to Landlord Requesting Rental Information—0960–0454—20 CFR Subpart K—416.1130.* Form SSA–L5061 is used by SSA to provide a nationally uniform vehicle for collecting information from landlords in making a rental subsidy determination in the Supplemental Security Income (SSI) Program. The information is used in deciding whether income limits are met for SSI eligibility. The respondents are landlords who provide subsidized rental arrangements to SSI applicants and recipients.

Type of Request: Extension of an OMB-Approved Information Collection

Number of Respondents: 49,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Average Burden: 8,167.

7. *Pay.Gov Pilot—Phase-2 Testing—0960-New; 20 CFR 401.45(b)*

Background

The Government Paperwork Elimination Act of 1998 directed federal agencies to develop electronic service delivery instruments as an alternative to traditional paper-based methods. SSA plans to expand its Internet services to enable citizens to complete the application process as well as to process their requests for post-entitlement transactions online. A major requirement for filing applications and for processing transactional requests is SSA's ability to adequately authenticate the citizen. SSA cannot disclose information unless it is under the provisions of the Freedom of Information Act and the Privacy Act of 1974. Because these transactions will be taking place online, SSA must authenticate citizens by asking for information that would positively

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identify the requester of the information as the proper party. This information will be validated against identifying information residing in databases outside of SSA. Resultantly, SSA is planning to conduct a series of tests of the Treasury Department's "Pay.Gov" authentication engine as a possible tool for out-of-band authentication.

The Collection Pay.Gov—Phase-2

SSA plans to conduct a limited pilot using its online Direct Deposit application to test the Treasury Department's Pay.Gov authentication engine as a possible tool for the Agency to validate beneficiaries online that do not have a current Pin/Password. The respondents to this test will be SSA Title II recipients who need to be authenticated before access can be granted to SSA's Direct Deposit online service.

Type of Request: New Information Collection

Number of Respondents: 161.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 13 hours.

8. *Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—Adult, Form SSA–3988–TEST; Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—Child, Form SSA–3989–TEST—0960–0643; 20 CFR Subpart B—416.204.*

Background

The Social Security Act mandates periodic redeterminations of the non-medical factors that relate to the SSI recipients' continuing eligibility for SSI payments. Recent SSA studies have indicated that as many as ⅔ of all scheduled redeterminations completed, with the assistance of a SSA employee, did not result in any change in circumstances that affected payment. Therefore, SSA is planning to expand the respondents and revise the test methodology of the currently approved test forms. The expansion of the test is needed to further validate whether the test redetermination process actually results in significant operational savings and a decrease in recipient inconvenience, while still timely obtaining the accurate data needed to determine continuing eligibility through the process.

The Collection

A test of forms SSA–3988–TEST and SSA–3989–TEST will be used to determine whether SSI recipients have met and continue to meet all statutory and regulatory non-medical requirements for SSI eligibility, and whether they have been and are still receiving the correct payment amount. The SSA–3988–TEST and SSA–3989–TEST are designed as self-help forms that will be mailed to recipients or to their representative payees for completion and return to SSA. The objectives of the expanded test are to determine the public's ability to understand and accurately complete the test forms. The respondents are recipients of SSI benefits or their representatives.

Type of Request: Revision of Currently Approval OMB Collection.

	Respondents	Frequency of response	Average burden per response (in minutes)	Estimated annual burden
SSA–3988–TEST	46,500	1	20	15,500
SSA–3989–TEST	8,500	1	20	2,833
Total				18,333

Dated: August 19, 2002.

Nicholas E. Tagliareni,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 02–21483 Filed 8–22–02; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with P.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection package(s) that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no charge) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection should be submitted to the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the address or fax number listed below: (SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer 1300 Annex Bldg., 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

The Internet Social Security Benefits Application (ISBA)—0960—0618. One of the requirements for obtaining Social Security benefits is the filing of an application so that a determination may be made on the applicant's eligibility for monthly benefits. ISBA, which is available at the Social Security Administration's (SSA) Internet site, is one method that an individual can choose to file an applicant for benefits. Individuals can use ISBA to apply for retirement insurance benefits (RIB), disability insurance benefits (DIB) and spouse's insurance benefits based on age. SSA gathers only information relevant to the individual applicant's circumstances and will use the information collected by ISBA to entitle individuals to RIB, DIB and/or spouses benefits. Below is an estimate of the public reporting burden:

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 169,000.

Frequency of Response: 1.

Average Burden Per Response: 21.4 minutes.

Estimated Annual Burden: 60,277 hours.

Dated: August 19, 2002.

Nicholas E. Tagliareni,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 02–21482 Filed 8–22–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

Bureau of Nonproliferation

[Public Notice 4107]

Determination Under the Arms Export Control Act

AGENCY: Department of State.

ACTION: Notice.

Pursuant to section 654(c) of the Foreign Assistance Act of 1961, as amended, notice is hereby given that the Secretary of State has made a determination pursuant to section 73 of the Arms Export Control Act and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: August 20, 2002.

Susan F. Burk,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 02–21672 Filed 8–22–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4104]

Culturally Significant Objects Imported for Exhibition; Determinations: "Degas and the Dance"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, I hereby determine that the objects to be included in the exhibition, "Degas and the Dance," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Detroit Institute of Arts, Detroit, Michigan, from on or about October 20, 2002, to on or about January 12, 2003, the Philadelphia Museum of Art, Philadelphia, Pennsylvania, from on or about February 12, 2003, to on or about May 11, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: August 19, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–21544 Filed 8–22–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4105]

Culturally Significant Object Imported for Exhibition; Determinations: "Pierre Bonnard: Early and Late"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Pierre Bonnard: Early and Late," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Phillips Collection, Washington, DC from on or about September 22, 2002 to on or about January 19, 2003, and then at the Denver Art Museum from on or about March 1, 2003 until on or about May 25, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Orde F. Kittrie, Attorney-Advisor, Office of the Legal Adviser, Department of State, (telephone: 202/401–4779). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 15, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–21543 Filed 8–22–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

Bureau of Nonproliferation

[Public Notice 4106]

Imposition of Missile Proliferation Sanctions Against a North Korean Entity

AGENCY: Bureau of Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: A determination has been made that a North Korean entity has engaged in activities that require the imposition of measures pursuant to the Arms Export Control Act, as amended, and the Export Administration Act of 1979, as amended (as carried out under Executive Order 13222 of August 17, 2001).

EFFECTIVE DATE: August 16, 2002.

FOR FURTHER INFORMATION CONTACT: Pamela K. Roe, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Nonproliferation, Department of State (202–647–4931).

SUPPLEMENTARY INFORMATION: Pursuant to section 73(a)(1) of the Arms Export Control Act (22 U.S.C. 2797b(a)(1)); section 11B(b)(1) of the Export Administration Act of 1979 (50 U.S.C. app. 2401b(b)(1)), as carried out under Executive Order 13222 of August 17, 2001 (hereinafter cited as the "Export Administration Act of 1979"); and Executive Order 12851 of June 11, 1993; the U.S. Government determined on August 16, 2002 that the following foreign person has engaged in missile technology proliferation activities that require the imposition of the sanctions described in section 73(a)(2)(A) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(A) and section 11B(b)(1)(B)(i) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B)(i) on this person: Changgwang Sinyong Corporation (North Korea) and its sub-units and successors.

Accordingly, the following sanctions are being imposed on this person:

(A) New individual licenses for exports to the person described above of MTCR Annex-controlled equipment or technology controlled pursuant to the Export Administration Act of 1979 will be denied for two years;

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(B) New licenses for export to the person described above of MTCR Annex-controlled equipment or technology controlled pursuant to the Arms Export Control Act will be denied for two years; and

(C) No new United States Government contracts relating to MTCR Annex-controlled equipment or technology involving the person described above will be entered into for two years.

With respect to items controlled pursuant to the Export Administration Act of 1979, the export sanctions only apply to exports made pursuant to individual export licenses.

Additionally, because North Korea is a country with a non-market economy that is not a former member of the Warsaw pact (as referenced in the definition of "person" in section 74(8)(B) of the Arms Export Control Act), the following sanctions shall be applied to all activities of the North Korean government relating to the development or production of missile equipment or technology and all activities of the North Korean government affecting the development or production of electronics, space systems or equipment, and military aircraft:

(A) New individual licenses for export to the government activities described above of MTCR Annex-controlled equipment or technology controlled pursuant to the Arms Export Control Act will be denied for two years; and

(B) No new U.S. Government contracts relating to MTCR Annex-controlled equipment or technology involving the government activities described above will be entered into for two years.

These measures shall be implemented by the responsible departments and agencies of the United States Government as provided in Executive Order 12851 of June 11, 1993.

Dated: August 20, 2002.

Susan F. Burk,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 02–21671 Filed 8–22–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 16, 2002

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's procedural regulations (*See* 14 CFR 301.201 *et seq.*). The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2002–13159.

Date Filed: August 16, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 6, 2002.

Description: Application of Valley Air Express, Inc., pursuant to 49 U.S.C. Section 41738 and Subpart B, requesting authority to operate scheduled passenger service as a commuter air carrier.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 02–21571 Filed 8–22–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 43–L39, L–39 Albatross Military Jet Recommended Inspection Program and Overhaul Times

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed Advisory Circular; extension of comment period.

SUMMARY: This notice announces the extension of the comment period on proposed Advisory Circular (AC) 43–L39, L–39 Albatross Military Jet Recommended Inspection Program and Overhaul Times. The proposed AC provides a recommended inspection program and overhaul times for L–39 Albatross aircraft issued experimental airworthiness certificates for the purpose of exhibition. This AC provides a means, but not the only means, of addressing the inspections and overhaul times for the purpose of complying with continued airworthiness requirements specified in an aircraft's operating limitations. This notice is necessary to give all interested persons the opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before November 21, 2002.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Continuous Airworthiness Maintenance Division (Attention: AFS–305), 800 Independence Avenue SW., Washington, DC 20591, or electronically to *William.O'Brien@faa.gov*.

FOR FURTHER INFORMATION CONTACT: Bill O'Brien, AFS–305, at the address above, by e-mail at *William.O'Brien@faa.gov*, or telephonically at (202) 267–3796.

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed AC is available on the FAA Web site at *http://www.faa.gov/avr/afs/acs/ac-idx.htm*, under AC No. 43–L39. Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Please identify AC 43–L39, L–39 Albatross Military Jet Recommended Inspection Program and Overhaul Times, and submit comments, either hard copy or electronic, to the appropriate address listed above. Comments may be inspected at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

Background

The L–39 Albatross aircraft is an all metal, two place, tandem, military jet training aircraft. Almost 3000 L–39 aircraft have been manufactured in the Czech Republic by Aero Vodochody and the aircraft currently constitutes the most numerous former military jet trainer imported into the United States civilian aircraft market. There are currently over 110 registered L–39 aircraft operating in the United States. Additionally, almost 200 L–39 aircraft are undergoing repairs and alterations in the United States in preparation for the issuance of airworthiness certificates.

L–39 aircraft registered in the United States have been issued experimental certificates for the purpose of exhibition. In conjunction with the issuance of experimental certificates for the purpose of exhibition, the Administrator issues operating limitations under Title 14, Code of Federal Regulations (14 CFR) 91.319. These operating limitations have required the aircraft to be inspected in accordance with a specified program. Applicants for experimental exhibition airworthiness certificates, however, have experienced difficulty in developing or obtaining acceptable inspection programs for L–39 aircraft. This has resulted in a lack of standardization in the inspection programs used to support these aircraft and has significantly increased the time required for these aircraft to obtain airworthiness certification. The FAA therefore has developed the recommended aircraft inspection program specified in this proposed AC. Making this program available to applicants should encourage standardization in the scope and detail of inspection programs referenced in operating limitations and facilitate the issuance of airworthiness certificates to operate L–39 aircraft for the purpose of exhibition.

The FAA recognizes that the manufacturer's inspection program did not originally contemplate civilian operation of the aircraft for the purpose of exhibition and therefore is specifically requesting comments on the scope of the program for civilian application and that portion of the program pertaining to ejection seat inspection. The FAA is particularly interested in comments on how the manufacturer's engine overhaul times can be extended and comments that include more detailed procedures for performing L–39 ejection seat and canopy inspections.

Use of the recommended inspection program and compliance with recommended overhaul times should provide a uniform level of safety for operators of these aircraft while simultaneously streamlining the process for airworthiness certification.

Issued in Washington, DC, on August 19, 2002.

Louis C. Cusimano,

Deputy Director, Flight Standards Service.

[FR Doc. 02–21578 Filed 8–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application 02–06–C–00–MOT to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Minot International Airport, Minot, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minot International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 23, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Bismarck Airports District Office, 2301 University Drive Building 23B, Bismarck, North Dakota 58504.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Michael Ryan, Airport Director, City of Minot, North Dakota at the following address: Minot International Airport, 25 Airport Road, Suite 10, Minot, North Dakota 58701–1457.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the City of Minot, North Dakota under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Steven J. Obenauer, Manager, Bismarck Airports District Office, 2301 University Drive, Building 23B, Bismarck, North Dakota 58504, (701) 323–7380. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minot International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 23, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Minot was substantially complete within the requirements of section 185.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 26, 2002.

The following is a brief overview of the application.

Proposed charge effective date: March 26, 2003.

Proposed charge expiration date: June 13, 2011.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $2,432,182.

Brief description of proposed projects: (1) Runway 13–31 reconstruction, Runway 13–31 and Taxiway C translation and extension, association taxiway reconstruction, (2) land avigation easements, (3) friction measuring equipment, (4) install airport perimeter fencing and associated outflow attenuation structures, (5) preparation of PFC amendment ($3.00 to $4.50), (6) preparation of PFC application, (7) snow removal, (8) construct 48-inch storm sewer. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: air taxi/commercial operator (ATCO) filing FAA Form 1800–31. Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Minot, North Dakota—Airport Director's office at the Minot International Airport.

Issued in Des Plaines, Illinois on August 9, 2002.

Mark McClardy,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 02–21577 Filed 8–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted by Mr. William H. Muzzy III, dated January 23, 2001, to NHTSA under 49 U.S.C. 30162, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety in model year 1990 through 1995 Toyota 4Runner vehicles. After a review of the petition and other information, NHTSA has concluded that further expenditure of

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the agency's investigative resources on the issues raised by the petition does not appear to be warranted. The agency accordingly has denied the petition. The petition is hereinafter identified as DP02–002.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan White, Chief, Defect and Recall Information Analysis Division, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–5226.

SUPPLEMENTARY INFORMATION: By letter dated January 23, 2001, Mr. William H. Muzzy III, submitted a petition requesting that the agency investigate the rear seat belt routing in model year (MY) 1990 through 1995 Toyota 4Runner vehicles (subject vehicles). The petitioner alleges that when the second row (rear) seat is folded down and then placed in its upright position, the outboard seat belt webbings can become caught behind the folding seat back latches. When this occurs, the seat belt routing is no longer proper, and occupant(s) using the seat belts in this condition would not be properly restrained. The petitioner alleges this seat belt misrouting condition has resulted in a serious injury and a fatality for the rear seat occupants of a subject vehicle that was in an accident. Finally, the petitioner alleges that the warning labels near the rear seat and the warning in the owner's manual for misrouting of rear seat belts are inadequate.

In response to ODI's information request letter, Toyota Motor North America, Inc. (Toyota), indicated that it has received one complaint of a damaged rear outboard seat belt because of possible contact with the rear seat back striker. Also, there has been one lawsuit filed against Toyota involving the aforementioned accident. ODI has not received any other reports of similar seat belt misrouting on the subject vehicles.

Considering the fact that over 367,000 subject vehicles were produced and the average vehicle age is about 10 years, the probability for the aforementioned rear seat outboard seat belt misrouting condition to occur, go unnoticed, and subsequently result in an injury and/or a fatality is extremely low. Further, warning notices to prevent seat belt misrouting are near the rear seat and in the owner's manual.

In view of the foregoing, it is unlikely that NHTSA would issue an order for the notification and remedy of the alleged defect as defined by the petitioner at the conclusion of the investigation requested in the petition. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: August 16, 2002.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 02–21574 Filed 8–22–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the Customs Service

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date, time, and location for the quarterly meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service (COAC), and the provisional meeting agenda.

DATES: The next meeting of the COAC will be held on Friday, September 20, 2002, starting at 9 a.m., in Seattle, Washington. The meeting will be held at Microsoft Conference Center—Building 33, (Conference Center), 16070 NE 36th Way, Redmond, WA 98052, for approximately four hours.

FOR FURTHER INFORMATION CONTACT: Gordana S. Earp, Director, Tariff and Trade Affairs (Enforcement), Office of the Under Secretary (Enforcement), Telephone: (202) 622–0336.

At the meeting, the Advisory Committee is expected to pursue the following draft agenda. The agenda may be modified prior to the meeting.

Agenda

I. Security
- A. Update on Customs Reorganization; Cargo Security Fees;
- B. Update on Supply Chain Security and Customs—Trade Partnership Against Terrorism ("C–TPAT");

II. Other Issues
- A. Report of the Customs Office of Rulings and Regulations;
- B. Customs Business Regulations;
- C. Focused Assessment and Importer Self-Assessment Programs;

III. Administrative Issues
- A. 2002 Annual Report
- B. Update on COAC Re-chartering

SUPPLEMENTARY INFORMATION: The COAC was created by Congress in Public Law 100–203, Title IX, Section 9503(c), December 22, 1987, 100 Stat. 1330–381 (19 U.S.C. 2071 note). The Committee advises the Secretary of the Treasury and reports to Congress any recommendations on matters involving the commercial operations of the United States Customs Service. By statute, the Secretary of the Treasury appoints the members of this Committee, and the Assistant Secretary of the Treasury for Enforcement presides over the meetings.

The September 20, 2002 meeting of the Committee is open to the public; however, participation in the Committee's deliberations is limited to Committee members, Customs and Treasury Department staff, and persons invited to address the meeting for special presentations. A person other than an Advisory Committee member who wishes to attend the meeting should contact Theresa Manning at (202) 622–0220 or Helen Belt at (202) 622–0230.

Dated: August 15, 2002.

Gordana Earp,

Acting Deputy Assistant Secretary, Regulatory, Tariff, and Trade (Enforcement).

[FR Doc. 02–21486 Filed 8–22–02; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0016]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the insured's eligibility for disability insurance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 22, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0016" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Claim for Disability Insurance Benefits, Government Life Insurance, VA Form 29–357.

OMB Control Number: 2900–0016.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–357 is used by the policyholder to claim disability insurance on National Service Life Insurance and the United States Government Life Insurance policies. The information collected is used to determine the insured person's eligibility for disability insurance benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 14,175 hours.

Estimated Average Burden Per Respondent: 1 hour and 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,100.

Dated: August 12, 2002.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 02–21526 Filed 8–22–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0004]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine spouse's and/or children's eligibility for survivors benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 22, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0004" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child (Including Death Compensation if Applicable), VA Form 21–534.

OMB Control Number: 2900–0004.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–534 is used to gather the necessary information to determine the spouse's and/or children's eligibility, dependency and income, as applicable, for death benefit sought.

Affected Public: Individuals or households.

Estimated Annual Burden: 79,125 hours.

Estimated Average Burden Per Respondent: 1 hour and 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 63,300.

Dated: August 12, 2002.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 02–21527 Filed 8–22–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0104]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the

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information needed to support a claim for disability benefits based on accidental injury.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 22, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0104" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Report of Accidental Injury in Support of Claim for Compensation or Pension, VA Form 21–4176.

OMB Control Number: 2900–0104.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used in support of claims for disability benefits based on disability, which is the result of an accident. The information given by the veteran is used as a source to gather specific data regarding the accident and to afford the veteran an opportunity to provide information from his or her own knowledge regarding the accident.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,200.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,400.

Dated: August 14, 2002.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 02–21528 Filed 8–22–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0399]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to confirm the continued entitlement of a beneficiary under the Restored Entitlement Program for Survivors (REPS).

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 22, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0399" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Student Beneficiary Report—REPS (Restored Entitlement Program For Survivors), VA Form 21–8938.

OMB Control Number: 2900–0399.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8938 is used to verify that an individual who is receiving REPS (Restored Entitlement Program for Survivors) benefits based on schoolchild status is in fact enrolled full-time in an approved school and is otherwise eligible for continued benefits. The form is released each March and sent to all student beneficiaries.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,767.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 5,300.

Dated: August 14, 2002.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 02–21529 Filed 8–22–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0006]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 23, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0006."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0006" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for Accrued Amounts of Veteran's Benefits Payable to Surviving Spouse, Child or Dependent Parents, VA Form 21–614.

OMB Control Number: 2900–0006.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 21–614 is used by dependents of deceased veterans for the sole purpose of making a claim for accrued benefits available at the time of the veteran's death.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 6, 2002, at page 39099.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,200 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,400.

Dated: August 12, 2002.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 02–21525 Filed 8–22–02; 8:45 am]

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Corrections

Federal Register
Vol. 67, No. 164
Friday, August 23, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 30–2002]

Foreign-Trade Zone 61—San Juan, PR; Expansion of Facilities and Manufacturing Authority—Subzone 61F; IPR Pharmaceuticals, Inc. Plant (Pharmaceuticals), Gusyama, PR

Correction

In notice document 02–20236 beginning on page 51820 in the issue of Friday, August 9, 2002, make the following correction:

On page 51821, in the second column, in the fourth line, "September 9, 2002" should read "October 8, 2002".

[FR Doc. C2–20236 Filed 8–22–02; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

Correction

In rule document 02–19576 beginning on page 50362 in the issue of Friday, August 2, 2002, make the following corrections:

§ 65.4 [Corrected]

1. On page 50363, in § 65.4, in the table, in the second column, in the second entry, "Town of Cave Creek, (02–09–241XO" should read, "Town of Cave Creek, (02–09–241X)".

2. On page 50364, in the same section, in the table, in the second column, in the fourth entry, "City of Scottsdale,)01–09–1199P)" should read, "City of Scottsdale, (01–09–1199P)".

3. On page 50365, in the same section, in the table, in the second column, in the fourth entry, "City of Escondido, (01–09–8498X)"should read, "City of Escondido, (02–09–498X)".

4. On page 50366, in the same section, in the table, in the second column, in the fourth entry, "City of Fort Collins, (01–08–045P)" should read, "City of Fort Collins, (01–08–349P)".

[FR Doc. C2–19576 Filed 8–22–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Adminstration

14 CFR Part 71

[Airspace Docket No. 02–ACE–9]

Amendment to Class E Airspace; Gordon, NE

Correction

In rule document 02–21138 beginning on page 53877 in the issue of August 20, 2002, make the following correction:

On page 53878, in the first column, in the sixth line from the bottom, "Comments" should read "Commenters".

[FR Doc. C2–21138 Filed 8–22–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
August 23, 2002

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20
Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI30

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final early-season frameworks from which the States, Puerto Rico, and the Virgin Islands may select season dates, limits, and other options for the 2002–03 migratory bird hunting seasons. Early seasons are those that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. The effect of this final rule is to facilitate the selection of hunting seasons by the States and Territories to further the annual establishment of the early-season migratory bird hunting regulations.

DATES: This rule takes effect on August 23, 2002.

ADDRESSES: States and Territories should send their season selections to: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240. You may inspect the comments we received on this rulemaking action during normal business hours in room 634, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Acting Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2002

On March 19, 2002, we published in the **Federal Register** (67 FR 12501) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2002–03 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 11, 2002, we published in the **Federal Register** (67 FR 40128) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 2002–03 duck hunting season. The June 11 supplement also provided detailed information on the 2002–03 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

On June 19 and 20, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2002–03 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2002–03 regular waterfowl seasons. On July 17, we published in the **Federal Register** (67 FR 47224) a third document specifically dealing with the proposed frameworks for early-season regulations and the final regulatory alternatives for the 2002–03 duck hunting season. This document is the fourth in a series of proposed, supplemental, and final rulemaking documents. It establishes final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2002–03 season. These selections will be published in the **Federal Register** as amendments to §§ 20.101 through 20.107, and § 20.109 of title 50 CFR part 20.

Review of Public Comments

The preliminary proposed rulemaking, which appeared in the March 19 **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The public comment period for early-season issues ended on July 30, 2002. We have considered all pertinent comments received. Comments are summarized below and numbered in the order used in the March 19 **Federal Register**. We have included only the numbered items pertaining to early-seasons issues for which we received written comments. Consequently, the issues do not follow in direct numerical or alphabetical order. We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the Councils' annual review of the frameworks, we assume support for continuation of last year's frameworks for items for which we received no recommendation. Council recommendations for changes in the frameworks are summarized below.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, including specification of framework dates, season length, and bag limits, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

D. Special Seasons/Species Management

i. September Teal Seasons

Council Recommendations: The Central Flyway Council recommended that the geographic boundaries for the September teal season in Colorado be amended to include Lake and Chaffee Counties and all lands east of I–25.

Service Response: We concur with the Central Flyway Council's recommendation. The change is included in the framework proposed.

ii. September Teal/Wood Duck Seasons

Written Comments: The Florida Fish and Wildlife Conservation Commission requested that the daily bag limit for Florida's special September wood duck/teal season remain at four wood ducks and teal in the aggregate.

Service Response: Last year, the Service granted operational status to September teal/wood duck seasons in the States of Florida, Kentucky, and Tennessee. The September teal/wood duck season in all three States is a 5-day season, with a daily bag limit of four birds, no more than two of which can be wood ducks. We do not support Florida's request for a four wood duck daily bag limit due to concerns for low hen wood duck survival rates noted during the recently completed Monitoring Initiative.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended that Georgia and Lake Seminole in Florida be offered an early Canada goose hunting season not to exceed 30 days between September 1–30, with a bag limit not to exceed 5 geese daily (10 in possession). They further recommended that Connecticut's Special September Canada goose season framework be extended from September 25 to September 30.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that Minnesota be allowed to continue their experimental special September Canada goose season (1-week extension) in 2002 while the 3-year evaluation is being completed.

Service Response: We concur with the Atlantic Flyway Council's recommended changes. The addition of Georgia and Lake Seminole in Florida will have no impact to migrant Canada geese and would allow the harvest of resident Canada geese during their September teal season. Regarding Connecticut's special September Canada goose season, leg-band recoveries and neck-collar observations suggest few migrants are available. Additionally, this season would be experimental.

We also concur with the extension of Minnesota's experimental special season to allow completion of the evaluation.

B. Regular Seasons

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16, 2002.

Service Response: We concur with the earlier regular Canada goose season opening dates in Michigan and Wisconsin.

9. Sandhill Cranes

Council Recommendations: The Central Flyway Council recommended accepting the 2002 Rocky Mountain sandhill crane population harvest allocation of 833 birds as proposed by the Pacific Flyway. However, during the next revision of the Cooperative Population Management Plan, the Council desires a better definition of what factors will be used to determine when a survey should be considered unreliable.

The Pacific Flyway Council recommended establishing an experimental season for Rocky Mountain Population sandhill cranes for 2002–03, in Uintah County, Utah. The framework for the 30-day season would be September 1, 2002 to January 31, 2003, with a bag limit not to exceed 3 daily and 9 per season. Participants must have a valid permit, issued by the appropriate State, in their possession while hunting. Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils.

Service Response: The Service concurs with the recommended changes.

14. Woodcock

Council Recommendations: The Atlantic Flyway Council recommended that the hunting regulations framework dates for American woodcock in the Eastern Region be changed back to the pre-1997 dates of October 1 to January 31.

Service Response: In 1997, the framework opening date for American woodcock in the Eastern Region was changed from October 1 to October 6. This change, coupled with a reduction in the season length from 45 days to 30 days, was made in an effort to reduce overall harvest. An analysis of daily wing-receipt data suggests that changing the framework opening date back to October 1 likely will not result in a meaningful increase in harvest, given that the season length is only 30 days. Therefore, we concur with the Council's recommendation.

17. White-Winged and White-Tipped Doves

Council Recommendations: The Central Flyway Council recommended that the hunting area for white-winged doves be expanded from its current area in New Mexico and Texas to include the remainder of the Central Flyway States in the Central Management Unit. The white-winged dove season should run concurrently with the mourning dove season with an aggregate bag.

Service Response: We concur with the Council's recommendation to allow all Central-Flyway states in the Central Management Unit to select a white-winged dove season that runs concurrently with the mourning dove season with an aggregate bag limit. However, we believe that this change should apply to all States in the Central Management Unit, rather than just those in the Central-Flyway portion of the unit.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *." Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and concluded that the regulations are not likely to adversely affect any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed and the final frameworks reflect any such modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection at the address indicated under the caption **ADDRESSES**.

Executive Order 12866

This rule was reviewed by the Office of Management and Budget'(OMB). The migratory bird hunting regulations are economically and are annually reviewed by OMB under E.O. 12866. As such, a cost/benefit analysis was prepared in 1998 and is further discussed under the heading Regulatory Flexibility Act. Copies of the cost/benefit analysis are available upon request from the address indicated under the caption **ADDRESSES**.

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities.

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The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small businesses in 1998. Copies of the Analysis are available upon request from the address indicated under the caption **ADDRESSES**.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1) .

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 7/31/2003). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not "significantly or uniquely" affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges, and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), we prescribe final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials will select hunting season dates and other options. Upon receipt of season and option selections from these officials, we will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 2002–03 season.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2002–03 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j, Pub. L. 106–108.

Dated: August 9, 2002.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 2002–03 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following frameworks, which prescribe season lengths, bag limits, shooting hours, and outside dates, within which States may select for certain migratory game birds between September 1, 2002, and March 10, 2003.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway—Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, and Virginia. All seasons are experimental.

Mississippi Flyway—Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

Central Flyway—Colorado (part), Kansas, Nebraska (part), New Mexico (part), Oklahoma, and Texas. The season in Nebraska is experimental.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days. The daily bag limit is 4 teal.

Shooting Hours:

Atlantic Flyway—One-half hour before sunrise to sunset except in Maryland, where the hours are from sunrise to sunset.

Mississippi and Central Flyways—One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida, Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 21). The daily bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Days

Outside Dates: States may select two consecutive days (hunting days in Atlantic Flyway States with compensatory days) per duck-hunting zone, designated as "Youth Waterfowl Hunting Days," in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult could not duck hunt but may participate in other seasons that are open on the special youth day.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 20.

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Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Eastern Unit of Maryland and Delaware. Seasons not to exceed 20 days during September 1–20 may be selected for the Northeast Hunt Unit of North Carolina. Seasons not to exceed 30 days during September 1–30 may be selected by New Jersey. Except for experimental seasons described below, seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Experimental Seasons

Experimental Canada goose seasons of up to 25 days during September 1–25 may be selected for the Montezuma Region of New York and the Lake Champlain Region of New York and Vermont. Experimental seasons of up to 30 days during September 1–30 may be selected by Connecticut, Florida, Georgia, New York (Long Island Zone), North Carolina (except in the Northeast Hunt Unit), Rhode Island, and South Carolina. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Experimental Seasons

An experimental Canada goose season of up to 7 consecutive days during September 16–22 may be selected by Minnesota, except in the Northwest Goose Zone. The daily bag limit may not exceed 5 Canada geese.

An experimental Canada goose season of up to 10 consecutive days during September 1–10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 2 Canada geese.

Central Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Experimental Seasons

An experimental Canada goose season of up to 12 consecutive days during September 16–27 may be selected by South Dakota. The daily bag limit may not exceed 5 Canada geese.

An experimental Canada goose season of up to 9 consecutive days during September 22–30 may be selected by Oklahoma. The daily bag limit may not exceed 5 Canada geese.

An experimental Canada goose season of up to 5 consecutive days during September 16–20 may be selected by North Dakota. The daily bag limit may not exceed 5 Canada geese.

Pacific Flyway

General Seasons

California may select a 9-day season in Humboldt County during the period September 1–15. The daily bag limit is 2.

Colorado may select a 9–day season during the period of September 1–15 in Grand County, excluding Shadow Mountain Reservoir, and that portion of Summit County north of U.S. Interstate 70. The daily bag limit is 3.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW goose management zone in Oregon, a 15-day season may be selected during the period September 1–20. Daily bag limits may not exceed 5 Canada geese.

Idaho may select a 7-day season in the special East Canada Goose Zone, as described in State regulations, during the period September 1–15. All participants must have a valid State permit, and the total number of permits issued is not to exceed 110 for this zone. The daily bag limit is 2.

Idaho may select a 7-day Canada Goose Season during the period September 1–15 in Nez Perce County, with a bag limit of 4.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 5 Canada geese.

Wyoming may select an 8-day season on Canada geese between September 1–15. This season is subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.
2. All participants must have a valid State permit for the special season.
3. A daily bag limit of 3, with season and possession limits of 6, will apply to the special season.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 16 in Wisconsin and Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 37 consecutive days may be selected in designated portions of North Dakota (Area 2) and Texas (Area 2). Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes, except 2 sandhill cranes in designated portions of North Dakota (Area 2) and Texas (Area 2).

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit and/or, in those States where a Federal sandhill crane permit is not issued, a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting in their possession while hunting.

Special Seasons in the Central and Pacific Flyways:

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils with the following exceptions:

1. In Utah, the requirement for monitoring the racial composition of the harvest in the experimental season is waived, and 100 percent of the harvest will be assigned to the RMP quota;
2. In Arizona, the annual requirement for monitoring the racial composition of the harvest is changed to once every 3 years;
3. In Idaho, seasons are experimental, and the requirement for monitoring the racial composition of the harvest is waived; 100 percent of the harvest will be assigned to the RMP quota; and
4. In New Mexico, the season in the Estancia Valley is experimental, with a requirement to monitor the level and racial composition of the harvest; greater sandhill cranes in the harvest will be assigned to the RMP quota.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and January 20 in the Atlantic Flyway, and between September 1 and the Sunday nearest January 20 (January 19) in the Mississippi and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks, and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Zoning: Seasons may be selected by zones established for duck hunting.

Rails

Outside Dates: States included herein may select seasons between September 1 and January 20 on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits:

Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

Zoning: Seasons may be selected by zones established for duck hunting.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 1 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 21) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 30 days in the Eastern Region and 45 days in the Central Region. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 24 days.

Band-tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with a daily bag limit of 2 band-tailed pigeons.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 3.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, and Louisiana, may commence no earlier than September 20.

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Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods.

Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Daily bag limits are aggregate bag limits with mourning, white-winged, and white-tipped doves (see white-winged dove frameworks for specific daily bag limit restrictions).

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

Hunting Seasons and Daily Bag Limits:

Idaho, Oregon, Utah, and Washington—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves.

Nevada—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves, except in Clark and Nye Counties where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

Arizona and California—Not more than 60 days, which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is 10 mourning doves. In California, the daily bag limit is 10 mourning doves, except in Imperial, Riverside, and San Bernardino Counties where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-Winged and White-Tipped Doves

Hunting Seasons and Daily Bag Limits:

Except as shown below, seasons must be concurrent with mourning dove seasons.

Eastern Management Unit:

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the remainder of the Eastern Management Unit, the season is closed.

Central Management Unit:

In Texas, the daily bag limit may not exceed 12 mourning, white-winged, and white-tipped doves (15 under the alternative) in the aggregate, of which no more than 2 may be white-tipped doves. In addition, Texas also may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

In the remainder of the Central Management Unit, the daily bag limit may not exceed 12 (15 under the alternative) mourning and white-winged doves in the aggregate.

Western Management Unit:

Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In the remainder of the Western Management Unit, the season is closed.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of five zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone, they are 8 and 24, respectively. The basic limits may include no more than 1 canvasback daily and 3 in possession and may not include sea ducks.

In addition to the basic duck limits, Alaska may select sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers.

Light Geese—A basic daily bag limit of 3 and a possession limit of 6.

Dark Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

1. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16. A special, permit-only Canada goose season may be offered on Middleton Island. No more than 10 permits can be issued. A mandatory goose identification class is required. Hunters must check-in and check-out. Bag limit of 1 daily and 1 in possession. Season to close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

2. In Unit 10 (except Unimak Island), the taking of Canada geese is prohibited.

3. In Unit 9(D) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession.

Brant—A daily bag limit of 2.

Common snipe—A daily bag limit of 8.

Sandhill cranes—Bag and possession limits of 2 and 4, respectively, in the Southeast, Gulf Coast, Kodiak, and Aleutian Zones, and Unit 17 in the Northern Zone. In the remainder of the Northern Zone (outside Unit 17), bag and possession limits of 3 and 6, respectively.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

1. All seasons are by registration permit only.

2. All season framework dates are September 1–October 31.

3. In Game Management Unit (GMU) 17, an experimental season may be selected. No more than 200 permits may be issued for this during the experimental season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season. An evaluation of the season must be completed, adhering to the guidelines for experimental seasons as described in the Pacific Flyway Management Plan for the Western Population of (tundra) Swans.

4. In Game Management Unit (GMU) 18, no more than 500 permits may be issued during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

5. In GMU 22, no more than 300 permits may be issued during the operational season. Each permittee may be authorized to take up to 3 tundra swan per permit. No more than 1 permit may be issued per hunter per season.

6. In GMU 23, no more than 300 permits may be issued during the operational season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida, mourning, and white-winged doves in the aggregate. Not to exceed 5 scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe:

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Mourning and White-winged Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Conecuh, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Georgia

Northern Zone—That portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County; thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the

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southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County, to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans County to U.S. Highway 301; thence northeast along U.S. Highway 301 to the South Carolina line.

South Zone—Remainder of the State.

Louisiana

North Zone—That portion of the State north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

South Zone—The remainder of the State.

Nevada

White-winged Dove Open Areas—Clark and Nye Counties.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to Uvalde; south on U.S. 83 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions—Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone—That portion of the State lying between the North and South Zones.

Band-tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—Remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special September Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

South Zone—Remainder of the State.

Maryland

Eastern Unit—Anne Arundel, Calvert, Caroline, Cecil, Charles, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties, and those portions of Baltimore, Howard, and Prince George's Counties east of I–95.

Western Unit—Allegany, Carroll, Frederick, Garrett, Montgomery, and Washington Counties, and those portions of Baltimore, Howard, and Prince George's Counties west of I–95.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border, except for the Montezuma Zone.

Montezuma Zone—Those portions of Cayuga, Seneca, Ontario, Wayne, and Oswego Counties north of U.S. Route 20, east of NYS Route 14, south of NYS Route 104, and west of NYS Route 34.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

North Carolina

Northeast Hunt Unit—Counties of Bertie, Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to US 2; east along US 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Illinois

Northeast Canada Goose Zone—Cook, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

North Zone: That portion of the State outside the Northeast Canada Goose Zone and north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana border.

South Zone: The remainder of Illinois.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Minnesota

Twin Cities Metropolitan Canada Goose Zone—

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; thence west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; thence north along the east boundary of Dahlgren Township to U.S. Highway 212; thence west along U.S. Highway 212 to State Trunk Highway (STH) 284; thence north on STH 284 to County State Aid Highway (CSAH) 10; thence north and west on CSAH 10 to CSAH 30; thence north and west on CSAH 30 to STH 25; thence east and north on STH 25 to CSAH 10; thence north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities of Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; thence east on CSAH 2 to U.S. Highway 61; thence south on U.S. Highway 61 to State Trunk Highway (STH) 97; thence east on STH 97 to the intersection of STH 97 and STH 95; thence due east to the east boundary of the State.

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Goose Zone—That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U.S. Highway 63; thence along U.S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Five Goose Zone—That portion of the State not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Southeast Goose Zone.

West Zone—That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

Tennessee

Middle Tennessee Zone—Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

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East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, DeKalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White Counties.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B—The remainder of the State.

Central Flyway

Kansas

September Canada Goose Kansas City/Topeka Unit—That part of Kansas bounded by a line from the Kansas-Missouri State line west on K–68 to its junction with K–33, then north on K–33 to its junction with U.S.–56, then west on U.S.–56 to its junction with K–31, then west-northwest on K–31 to its junction with K–99, then north on K–99 to its junction with U.S.–24, then east on U.S.–24 to its junction with K–63, then north on K–63 to its junction with K–16, then east on K–16 to its junction with K–116, then east on K–116 to its junction with U.S.–59, then northeast on U.S.–59 to its junction with the Kansas-Missouri line, then south on the Kansas-Missouri line to its junction with K–68.

September Canada Goose Wichita Unit—That part of Kansas bounded by a line from I–135 west on U.S. 50 to its junction with Burmac Road, then south on Burmac Road to its junction with 279 Street West (Sedgwick/Harvey County line), then south on 279 Street West to its junction with K–96, then east on K–96 to its junction with K–296, then south on K–296 to its junction with 247 Street West, then south on 247 Street West to its junction with U.S.–54, then west on U.S.–54 to its junction with 263 Street West, then south on 263 Street West to its junction with K–49, then south on K–49 to its junction with 90 Avenue North, then east on 90 Avenue North to its junction with KS–55, then east on KS–55 to its junction with KS–15, then east on KS–15 to its junction with U.S.–77, then north on U.S.–77 to its junction with Ohio Street, then north on Ohio to its junction with KS–254, then east on KS–254 to its junction with KS–196, then northwest on KS–196 to its junction with I–135, then north on I–135 to its junction with U.S.–50.

South Dakota

September Canada Goose North Unit—Clark, Codington, Day, Deuel, Grant, Hamlin, Marshall, and Roberts County.

September Canada Goose South Unit—Beadle, Brookings, Hanson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, and Turner Counties,

Pacific Flyway

Idaho

East Zone—Bonneville, Caribou, Fremont, and Teton Counties.

Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, and Wasco Counties.

Washington

Area 1—Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone)—Clark County, except portions south of the Washougal River; Cowlitz, and Wahkiakum counties.

Area 2B (SW Quota Zone)—Pacific and Grays Harbor counties.

Area 3—All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4—Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5—All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Eden Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Teton Area—Those portions of Teton County described in State regulations.

Bridger Valley Area—The area described as the Bridger Valley Hunt Unit in State regulations.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Mississippi Flyway

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Central Flyway

Colorado

Special Teal Season Area: Lake and Chaffee Counties and that portion of the State east of Interstate Highway 25.

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That portion of the State east of the High Plains Zone and west of a line extending south from the Nebraska border along KS 28 to U.S. 36, east along U.S. 36 to KS 199, south along KS 199 to Republic County Road 563, south along Republic County Road 563 to KS 148, east along KS 148 to Republic County Road 138, south along Republic County Road 138 to Cloud County Road 765, south along Cloud County Road 765 to KS 9, west along KS 9 to U.S. 24, west along U.S. 24 to U.S. 281, north along U.S. 281 to U.S. 36, west along U.S. 36 to U.S. 183, south along U.S. 183 to U.S. 24, west along U.S. 24 to KS 18, southeast along KS 18 to U.S. 183, south along U.S. 183 to KS 4, east along KS 4 to I–135, south along I–135 to KS 61, southwest along KS 61 to KS 96, northwest on KS 96 to U.S. 56, west along U.S. 56 to U.S. 281, south along U.S. 281 to U.S. 54, then west along U.S. 54 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Nebraska

Special Teal Season Area: That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway L62A; east to U.S. 385; south to U.S. 26; east to NE 92; east along NE 92 to NE 61; south along NE 61 to U.S. 30; east along U.S. 30 to the Iowa border.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada state line; north along the California-Nevada state line to the junction of the California-Nevada-Oregon state lines west along the California-Oregon state line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Sandhill Cranes

Central Flyway

Colorado—The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas—That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

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New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Estancia Valley Area—Those portions of Santa Fe, Torrance and Bernalillo Counties within an area bounded on the west by New Mexico Highway 55 beginning at Mountainair north to NM 337, north to NM 14, north to I–25; on the north by I–25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to NM 55 in Mountainair.

Southwest Zone—Sierra, Luna, Dona Ana Counties, and those portions of Grant and Hidalgo Counties south of I–10.

Oklahoma—That portion of the State west of I–35.

Texas

Area 1—That portion of the State west of a line beginning at the International Bridge at Laredo, north along I–35 to the Oklahoma border.

Area 2—That portion of the State east and south of a line from the International Bridge at Laredo northerly along I–35 to U.S. 290; southeasterly along U.S. 290 to I–45; south and east on I–45 to State Highway 87, south and east on TX 87 to the channel in the Gulf of Mexico between Galveston and Point Bolivar; EXCEPT: That portion of the State lying within the area bounded by the Corpus Christi Bay Causeway on U.S. 181 at Portland; north and west on U.S. 181 to U.S. 77 at Sinton; north and east along U.S. 77 to U.S. 87 at Victoria; east and south along U.S. 87 to Texas Highway 35; north and east on TX 35 to the west end of the Lavaca Bay Bridge; then south and east along the west shoreline of Lavaca Bay and Matagorda Island to the Gulf of Mexico; then south and west along the shoreline of the Gulf of Mexico to the Corpus Christi Bay Causeway.

North Dakota

Area 1—That portion of the State west of U.S. 281.

Area 2—That portion of the State east of U.S. 281.

South Dakota—That portion of the State west of U.S. 281.

Montana—The Central Flyway portion of the State except that area south of I–90 and west of the Bighorn River.

Wyoming

Regular-Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Big Horn County Unit—Portions of Park and Big Horn Counties.

Pacific Flyway

Arizona

Special-Season Area—Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area—See State regulations.

Utah

Special-Season Area—Rich, Cache, and Unitah Counties and that portion of Box Elder County beginning on the Utah-Idaho State line at the Box Elder-Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15 to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder-Weber County line; east on the Box Elder-Weber County line to the Box Elder-Cache County line; north on the Box Elder-Cache County line to the Utah-Idaho State line.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Eden-Farson Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10 (Unimak Island only).

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10 (except Unimak Island).

Kodiak Zone—State Game Management Unit 8.

All Migratory Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Game Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

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Friday,
August 23, 2002

Part III

Department of Housing and Urban Development

Notice of Regulatory Waiver Requests Granted for the First Quarter of Calendar Year 2002; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4767–N–01]

Notice of Regulatory Waiver Requests Granted for the First Quarter of Calendar Year 2002

AGENCY: Office of the Secretary, HUD.

ACTION: Public Notice of the Granting of Regulatory Waivers from January 1, 2002, through March 31, 2002.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice must cover the quarterly period since the most recent **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the quarter beginning on January 1, 2002, and ending on March 31, 2002.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3055 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

For information concerning a particular waiver action for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the HUD Reform Act, the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by HUD. Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (2 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver-grant action may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives issued by HUD on April 22, 1991 (56 FR 16337). This notice covers HUD's waiver-grant activity from January 1, 2002, through March 31, 2002. This notice also includes a waiver from an earlier reporting period that was inadvertently omitted from the appropriate earlier report. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Housing, the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the section of title 24 being waived. For example, a waiver-grant action involving the waiver of a provision in 24 CFR part 58 would come before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the granting of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in title 24 of the Code of Federal Regulations and that is being waived as part of the waiver-grant action. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver-grant action.

Should HUD receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occurred during April 1, 2002, through June 30, 2002.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: August 16, 2002.

Alphonso Jackson,

Deputy Secretary.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development January 1, 2002 Through March 31, 2002

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Healthy Homes and Lead Hazard Control.

III. Regulatory waivers granted by the Office of Housing.

IV. Regulatory waivers granted by the Office of Multifamily Housing Assistance Restructuring.

V. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following waiver actions, please see the name of the contact person immediately following the description of the waiver granted.

• Regulation: 24 CFR 91.520(a).

Project/Activity: The City of Edmond, Oklahoma, requested a waiver of the submission deadline for the city's 2000 program year Consolidated Annual Performance and Evaluation Report (CAPER).

Nature of Requirement: Section 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: January 17, 2002.

Reasons Waived: The staff person responsible for CAPER preparation was unable to prepare the report due to a family emergency. The city does not have staff that can prepare the report during the absence of the key person. While HUD is desirous of a timely report, the Department is also interested in ensuring that the performance report is complete and accurate. The city received an extension to March 29, 2002, to submit its 2000 CAPER to HUD.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulation:* 24 CFR 582.105(e).

Project/Activity: Milwaukee County, Wisconsin, requested a waiver of 8 percent administrative cap for its 1996 Shelter Plus Care grant.

Nature of Requirement: Section 582.105(e) allows grantees to expend 8 percent of its Shelter Plus Care grant funds for administrative fees.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: February 15, 2002.

Reasons Waived: Milwaukee County requested the waiver to extend the term of its Shelter Plus Care grant by five years. This requires additional funds to administer the grant. Milwaukee County is requesting an additional 1.6 percent per year for the extension. This will allow Milwaukee County to serve more than the 24 households originally targeted in its application. This added workload along with the added term of the grant supports a waiver of the current 8 percent limitation on administrative fees.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulation:* 24 CFR 570.511.

Project/Activity: The City of Columbus, Ohio, requested a waiver of the regulations at 24 CFR 570.511(a)(4) and 570.511(b) in order to utilize Community Development Block Grant (CDBG) funds with the Federal Housing Administration's Section 203(k) program while complying with rules and regulations applicable to lead-based paint hazard control.

Nature of Requirement: Section 570.511(a)(4) provides that a recipient may withdraw funds from its letter of credit for immediate deposit into an escrow account for use in funding loans and grants for the rehabilitation of privately owned residential properties. The amount of funds deposited into an escrow account shall be limited to the amount expected to be disbursed within 10 working days after the deposit. If the escrow account, for whatever reason, at any time contains funds exceeding 10 days cash needs, the grantee immediately shall transfer the excess funds to its program account.

Section 570.511(b) provides that interest earned on escrow accounts established in accordance with this section shall be remitted to HUD at least quarterly, but not more frequently than monthly, less any service charges for the account. Section 570.511(a)(2) provides that the contract between the property owner and the contractor shall specifically provide that payment to the contractor shall be made through an escrow account maintained by the recipient, a subrecipient as defined at 24 CFR 570.500 (c), by a public agency designated under § 570.501(a), or by an agent under a procurement contract governed by 24 CFR 85.36. Section 570.511(a)(3) requires that all funds drawn under this section shall be deposited into one interest earning account.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: March 5, 2002.

Reasons Waived: Four waivers were granted in order for the city to use CDBG funds with Section 203(k) program funds. There is good cause for these waivers since the city's proposal combines the resources of two HUD programs into one that will promote homeownership and address lead-based paint hazards in homes purchased by low- and moderate-income households. Section 570.511(a)(4) is waived to allow CDBG funds to be placed in an escrow account for 90 days. Section 570.511(B) will allow the interest earned on CDBG funds in the escrow account to be treated the same as the interest earned on the Section 203(k) program funds and be applied to the mortgagor's principal balance. Section 570.511(a)(3) will allow the city to establish several individual escrow accounts rather than one escrow account. Section 570.511(a)(2) will allow CDBG funds to be awarded to the Section 203(k) lenders since they do not meet the definition of a public agency.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

II. Regulatory Waivers Granted by the Office of Healthy Homes and Lead Hazard Control

For further information about the following waiver actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 35.100–1355.

Project/Activity: Compliance with the Lead Safe Housing Rule in Ohio (granted to the Ohio State Department of Development).

Nature of Requirement: The regulation requires compliance with the Lead Safe Housing Rule by May 31, 2002.

Granted By: Alphonso Jackson, Deputy Secretary.

Date Granted: February 12, 2002.

Reason Waived: The waiver allows the necessary time to train additional workers who will be working on rehabilitation that may disturb lead-based paint (thereby creating lead hazards).

Contact: David E. Jacobs, Director, Office of Healthy Housing and Lead Hazard Control, Department of Housing and Urban Development, Room P3206, L'Enfant Plaza, Washington, DC 20410; telephone: (202) 755–4973.

III. Regulatory Waivers Granted by the Office of Housing

For further information about the following waiver actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: Hearts United III, Chicago, IL; Project Number: 071–32137.

Nature of Requirement: Section 200.54(a) permits a pro-rata disbursement of the mortgagor's front money escrow funds and FHA insured mortgage proceeds for the subject property.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 28, 2002.

Reason Waived: Since the front money escrow is so large, the insured proceeds would not be disbursed for 6 to 8 months after initial endorsement, resulting in payment of extension fees to the investors who purchased the Government National Mortgage Association (GNMA) mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) will permit the Chicago Multifamily Hub to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.

Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: Curtis Park Hope VI (Phase II), Denver, CO; Project No. 101–35544.

Nature of Requirement: Section 200.54(a) permits a pro-rata disbursement of the mortgagor's front money escrow funds and FHA insured mortgage proceeds for the subject project.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 29, 2002.

Reason Waived: Since the front money escrow is so large, the insured proceeds would not be disbursed for several months, resulting in the payment of extension fees to the investors who purchased the GNMA mortgage-backed securities. Providing a waiver of 24 CFR 200.54 (a) will permit the Denver Hub to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.

Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 202.3(c)(2)(iii).

Project/Activity: Credit Watch/Termination Threshold—Washington, DC.

Nature of Requirement: Section 202.23(c)(2)(iii) establishes the threshold for placing a HUD-approved lender on credit watch status when its default and claim rate exceeds the field office defaults and claim rate.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 20, 2002.

Reason Waived: Waiving the regulation permits the Department to focus on those lenders who originated the worst performing loans. The waiver will adjust the credit watch threshold from 150% to 200.9% of the HUD field office default and claim rate to 200% and 300.9% of that rate. This waiver is limited to credit watch reviews conducted in the first quarter of calendar year 2002.

Contact: Joy L. Hadley, Director, Quality Assurance Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–7000; telephone: (202) 708–2830.

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• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Northwest Housing Initiatives, Jacksonville, FL; Project Number: 063–HD013/FL29–Q981–010.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: January 4, 2002.
Reason Waived: Additional funds were needed to cover site lighting and increased construction costs. The project is economically designed and comparable to other projects developed in the area.
Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 3821.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Mt. Zion Apartments Phase II, St. Louis, MO; Project Number: 085–EE050/MO36–S001–003.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: January 4, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding from other sources. The project is economically designed and comparable to other similar projects developed in the area.
Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 3821.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Pilgrim Heights, Omaha, NE; Project Number: 103–EE023/NE26–S001–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: January 4, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding from other sources. The project is comparable to other similar projects developed in the area and is economically designed.
Contact: Faye Norman, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2482.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Lake Winds Apartments, St. Petersburg, FL; Project Number: 067–HD081/FL29–Q001–006.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: January 28, 2002.
Reason Waived: The project is economically designed, comparable to other similar projects developed in the area, and the owner has obtained additional funding from other sources for the purchase of the land.
Contact: Alicia Anderson, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 5787.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Holston Hills Apartments, Rogersville, TN; Project Number: 087–EE041/TN37–S001–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: February 26, 2002.
Reason Waived: Delays by the original sponsor, the requirement to use Davis-Bacon wage rates, and the limited availability of contractors to build the project have attributed to higher construction costs.
Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 3821.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Pejepscot Terrace, Brunswick, ME; Project Number: 043–EE068/OH16–S991–004.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: February 26, 2002.
Reason Waived: The sponsor/owner secured additional funding. The project is comparable to other similar projects developed in the area, and is economically designed.
Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2696.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Inverness Homes, Inverness, MS; Project Number: 065–HD021/MS26–Q991–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: February 26, 2002.
Reason Waived: Additional funds are needed to cover the cost of extensive cut and fill preparation due to poor soil conditions and to comply with the accessibility requirements for projects for persons with physical disabilities.
Contact: Brenda Butler, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 6788.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Holiday Drive Place, Kansas City, MO; Project Number: 084–HD034/MO16–Q001–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: February 26, 2002.
Reason Waived: Increased construction activities in the area have resulted in contractors paying premium prices for materials and labor subsequently increasing the cost of the project. The sponsor has exhausted all efforts to find additional funds from outside sources.
Contact: Alicia Anderson, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 5787.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Good Samaritan Hospital of Maryland, Baltimore, MD; Project Number: 052–EE037/MD06–S001–003.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: February 28, 2002.
Reason Waived: The project is economically designed, comparable to other projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.
Contact: Evelyn Berry, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2483.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Woodbourne Woods, Baltimore, MD; Project Number: 052–EE037/MD06–S001–003.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: February 28, 2002.
Reason Waived: The project is economically designed, comparable to other similar projects in the area, and the sponsor has exhausted all efforts to obtain additional funding.

Contact: Evelyn Berry, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2483.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Floyd-Kress Homes, Frederick, MD; Project Number: 052–HD043/MD06–Q001–003.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: February 28, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding from other sources. The project is comparable to other similar projects developed in the area and is economically designed.
Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 3821.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Greater St. Stephen Manor, New Orleans, LA; Project Number: 061–EE093/GA06–S001–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 4, 2002.
Reason Waived: The project is comparable to other similar projects developed in the area and is economically designed. The sponsor has exhausted all efforts to obtain additional funding.
Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 3821.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Greenview Apartments, Cheyenne, WY; Project Number: 109–HD011/WY99–Q991–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 5, 2002.
Reason Waived: Higher construction costs have substantially increased the cost of the project. The project is economically designed and the sponsor has exhausted all efforts to obtain additional funds from other sources.
Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 3821.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Great Falls Elder Housing, Great Falls, MT; Project Number: 012–EE266/NY36–S991–006.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 5, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding from other sources. The project is economically designed and comparable to other similar projects developed in the area.
Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 3821.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: PARC Place, Peoria, IL; Project Number: 072–HD112/IL06–Q001–003.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 8, 2002.
Reason Waived: The project is economically designed, comparable to other similar projects developed in the area, and the sponsor/owner has exhausted all efforts to secure additional funds from other sources.
Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2696.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Our Savior's Manor, Westland, MI; Project Number: 044–EE071/MI28–S000–004.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 8, 2002.
Reason Waived: In a previous memorandum, amendment funds in the amount of $897,200 were requested but included the minimum capital investment of $10,000 as a part of the additional funds being provided by the sponsor to the project. HUD approved only $887,200 resulting in a $10,000 shortfall. Based on the fact that the $10,000 was included in error as a part of the sponsor's contribution of additional funds, the waiver was granted for the additional $10,000.
Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2696.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Northport Apartments, North Sioux City, SD; Project Number: 091–EE004/SD99–S001–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 21, 2002.
Reason Waived: The project is economically designed, comparable to other similar projects developed in the area, and the sponsor/owner secured a $200,000 grant from the Federal Home Loan Bank.
Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2696.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.
Project/Activity: Developmental Pathways, Incorporated, Aurora, CO; Project Number: 101–HD025/CO99–Q991–002.
Nature of Requirement: Section CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: January 30, 2002.
Reason Waived: The project is economically designed and comparable to other projects developed in the area. The sponsor has exhausted all efforts to obtain funding from other sources other than the $150,000 it is receiving from the Colorado Division of Housing. Also, additional time is necessary to issue the firm commitment and arrange for the initial closing.
Contact: Gail Williamson, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2473.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.
Project/Activity: ARC MU 11, Tinton Falls, NJ; Project Number: 031–HD079/NJ39–Q971–002.
Nature of Requirement: Section CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: January 30, 2002.
Reason Waived: A significant portion of the delay in processing the Firm

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Commitment was due to the loss of staff and other priorities and it took 8 months to find another contractor after the first one withdrew from the project. Amendment funds were needed because the new contractor's costs were higher due to an increase in the Davis-Bacon wage rates. The project is economically and modestly designed, comparable to similar projects developed in the area, and the owner has no additional funds to cover the shortfall of funds required to close the project.

Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2696.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Pontiac Volunteers of America Elderly Housing, Inc., Pontiac, MI; Project Number: 044–EE067/MI28–S991–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 14, 2002.

Reason Waived: The project is economically designed and comparable to other similar projects developed in the jurisdiction but additional costs were incurred due to the dramatic rise in construction costs in Southeast Michigan. The sponsor has exhausted all efforts to obtain additional funding from other sources. Additionally, the project was delayed due to the need for the owner to locate another site.

Contact: Evelyn Berry, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2483.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Belfast Volunteers of America (VOA) Elderly Housing, Belfast, ME, Project Number: 024–EE042/ME36–S981–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 19, 2002.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the jurisdiction, and the sponsor has exhausted all efforts to obtain additional funding from other sources. Also, the owner incurred delays in an effort to locate additional funds to cover construction costs and the construction start will be delayed until spring due to harsh winter conditions.

Contact: Brenda Butler, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 6788.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: The Salvation Army Lake View Terrace Silverlake Residence, Los Angeles, CA; Project Number: 122–EE159/CA16–S991–010.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 23, 2002.

Reason Waived: The project is economically designed and comparable to other similar projects developed in the jurisdiction. The sponsor has exhausted all efforts to obtain additional funding from other sources, and the requested increase is due, in part, to rising construction costs and extraordinary high fees imposed by the city. Also, the project incurred significant delays associated with the lengthy application process required for an amendment to the general plan for the project, zoning change and building line adjustment and variance.

Contact: Evelyn Berry, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2483.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Palms Manor, Los Angeles, CA; Project Number: 122–HD113/CA16–Q981–005P.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 1, 2002.

Reason Waived: The sponsor needed to acquire additional funds to purchase the site and for the architect to correct an error to the architectural drawings.

Contact: Brenda Butler, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 6788.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Pathways, Greenwich, CT; Project Number: 017–HD022–/CT26–Q981–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 27, 2002.

Reason Waived: Project is being challenged by an adjacent neighborhood group and is currently tied up in court.

Contact: Monique S. Love, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2475.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Presbyterian Home at Stafford, Stafford Township, NJ; Project Number: 035–EE037–/NJ39–S991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 28, 2002.

Reason Waived: The sponsor experienced delays due to difficulty in finding an architect and slow responses from contractors who were submitting bids for the project.

Contact: Alicia Anderson, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 5787.

• *Regulation:* 24 CFR 891.165.

Project/Activity: TWB Residential Opportunities II, Suffolk County, NY; Project Number: 012–HD093–/NY36–Q991–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 28, 2002.

Reason Waived: The owner is experiencing difficulty in obtaining a building permit for one of the sites.

Contact: Faye Norman, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2482.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Project Live XI, East Orange, NJ, Project Number: 031–HD098–/NJ39–Q991–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund

reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 28, 2002.

Reason Waived: The sponsor experienced delays due to the additional requirements in securing secondary financing and selecting a suitable general contractor.

Contact: Alicia Anderson, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 5787.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Evergreen Village Senior Apartments, Everett, WA; Project Number: 127–EE024/WA19–S991–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 28, 2002.

Reason Waived: The project has been delayed due to a change in the county's planned residential development regulations that required the owner to address additional planning issues.

Contact: Alicia Anderson, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 5787.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Visalia Senior Housing, Visalia, CA; Project Number: 121–EE127/CA39–S991–006.

Nature Of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 8, 2002.

Reason Waived: A major project redesign was needed to reduce project costs.

Contact: Sennai Cham, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2610.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Greater Community Housing, Louisville, KY; Project Number: 083–HD056/KY36–Q991–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 8, 2002.

Reason Waived: The sponsor had difficulty obtaining an acceptable appraisal and experienced difficulty locating a contractor who would work in the area.

Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2696.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Ada S. McKinley IV, Chicago, IL; Project Number: 071–HD110/IL06–Q981–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 8, 2002.

Reason Waived: A new site had to be located since the proximity of the two sites did not meet the requirements of the State.

Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2696.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Kiva Apartments, Tucson, AZ; Project Number: 123–HD026/AZ20–Q991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 11, 2002.

Reason Waived: The project experienced delays in securing approval of the drawings for repairs to meet Americans with Disabilities Act guidelines, securing an appropriate asbestos abatement plan, and the loss of the sponsor's first project manager.

Contact: Sennai Cham, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2610.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Advance Supportive Housing Project, Bergen County, NJ; Project Number: 031–HD101/NJ39–Q991–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 11, 2002.

Reason Waived: The project incurred delays due to the need to substitute a new unit for one of the original scattered sites and secure a qualified contractor.

Contact: Brenda Butler, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 6788.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Haiku Group Home, Kaneohe, HI; Project Number: 140–HD020/HI10–Q991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 21, 2002.

Reason Waived: The contractor selected for the project filed bankruptcy and the owners had to search for a new contractor.

Contact: Sennai Cham, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2610.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Paul Elder Housing Development, St. Paul, MN; Project Number: 092–EE060/MN46–S991–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 21, 2002.

Reason Waived: Due to poor soil conditions at the site, delays occurred while a cost effective foundation system for the building was developed.

Contact: Sennai Cham, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2610.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hayworth Housing, Los Angeles, CA; Project Number: 122–HD118–WPD–NP/CA16–Q991–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 23, 2002.

Reason Waived: Additional time was needed for the sponsor to address a full seismic retrofit for the project and to finalize secondary funding sources.

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Contact: Monique S. Love, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2475.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Obed Avenue, North Providence, RI; Project Number: 016–HD025/RI43–Q991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 26, 2002.

Reason Waived: Additional time was needed to resolve zoning issues.

Contact: Frank Tolliver, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 3821.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Boniface Gardens Inc., Pembroke Pines, Broward County, FL; Project Number: 066–EE074–/FL29–S991–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 2, 2002.

Reason Waived: There was an unexpected delay in getting a plat recorded.

Contact: Sennai Cham, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2610.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Bridgeway Apartments, Phase II, Picayune, MS; Project Number: 065-HD025/MS26-Q001–002.

Nature of Requirement: Single-Purpose Owner. Section 891.205 requires that Section 202 project owners be single-purpose corporations.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 26, 2002.

Reason Waived: The project will be built adjacent to the sponsor's existing project and one owner-entity would promote greater service provision.

Contact: Rita Ross, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 2696.

• *Regulation:* 24 CFR 891.310(b)(1) and (b)(3).

Project/Activity: Bridgeway Apartments Phase II, Picayune, MS, Project Number: 065-HD025/MS26-Q001–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.310(b)(1) and (b)(3) requires that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 14, 2002.

Reason Waived: The project consists of two developments on non-contiguous sites; a new construction group home to serve eight persons with developmental disabilities and an independent living apartment project containing five units for persons with developmental disabilities. The group home will be fully accessible. As a result, more than 50 percent of the project's units would meet all accessibility requirements even though the majority of potential occupants do not require handicapped accessibility.

Contact: Alicia Anderson, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000, extension 5787.

• *Regulation:* 24 CFR 891.410(c).

Project Activity: Sunset Fields Apartments, Fennimore, WI; Project Number: 075–EE058–NP–WAH/L8.

Nature of Requirement: HUD regulations at 24 CFR 891.410(c) limit occupancy to very low-income elderly persons, i.e., households of one or more persons at least one of whom must be 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 26, 2002.

Reason Waived: The Milwaukee Multifamily Program Center requested waiver of this regulation due to the project's severe vacancy problems. If occupancy is not increased, revenue will be insufficient to meet the operating expenses of the project. The management agent has aggressively pursued advertising strategies to market units; however, in spite of his efforts vacancies still exist. This waiver will allow elderly and near elderly families who are at or over age 55 and low-income to apply for admission, thereby attempting to improve occupancy rates. This waiver is effective for one year from the date of approval.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000; telephone: (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c) and 24 CFR 5.110.

Project Activity: Birmingham Building Trades Towers (BBTT), Birmingham, AL; Project Number: 062–SH006.

Nature of Requirement: Section 891.410(c) limits occupancy to very low-income elderly persons, i.e., households of one or more persons at least one of whom must be 62 years of age at the time of initial occupancy.

Section 5.110 relates to admission of families to projects for elderly or handicapped families that received reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 4, 2002.

Reason Waived: The Jacksonville Multifamily Hub requested an age waiver for the subject project because the current occupancy level will not support the project. Vacant units will be marketed to people between the ages of 55 and 62 with or without disabilities. Providing for a waiver of the elderly and handicapped requirements will allow the owner additional flexibility to rent up units. This waiver is in effect for one year from the date of approval.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000; telephone: (202) 708–3730.

IV. Regulatory Waivers Granted by the Office of Multifamily Housing Assistance Restructuring (OMHAR)

For further information about the following waiver actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project name	State
10335072	Cheyenne Villa	NE
02335298	City Wide Apartments	MA
01635043	Cross Street Apartments	RI
05435436	Dillon Manor	SC
06135287	Edgewood Housing I	GA
04832006	Gardenview	MI
01257111	Grant Development Associates.	NY
05435451	Kalmia Apartments	SC
01635051	Medina Village Apartments.	RI
04335223	Nichols Townhomes	OH
04635578	Northland Village Apartments.	OH
07235066	Orlando Northbrook Estates.	IL
04335224	Plumly Townhomes	OH
08335289	Walnut Court Apartments.	KY
01257106	Williamsburg Apartments	NY
04335203	Williamsburg Square	OH
01235200	675 Empire Boulevard	NY
04535094	Clarksburg Towers	WV
01635053	Curtis Arms Apartments	RI
01257083	Howard Avenue Rehabilitation.	NY
05935199	Middle Creek Apartments.	LA
06435034	Shady Oaks Homes	LA
09335083	The Elmwoods	MT

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Barbara Chiapella, Acting Director, Office of Multifamily Housing Assistance Restructuring.

Date Granted: January 7, 2002.

Reasons Waived: The projects identified above were not assigned to the participating administrative entities (PAEs) in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Alberta Zinno, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone: (202) 708–0001.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project name	State
05335320	Academy Village Apartments.	NC
03135195	Aspen Stratford C	NJ
09335086	Cedar View Apartments	MT
04844005	Cranbrook Village Cooperative.	MI
04335242	Delaware Village	OH
11535199	Falfurrias Village Apartments.	TX
17135141	Hifumi En Apartments	WA
10235120	Horizon Plaza	KS
01257083	Howard Avenue Rehabilitation.	NY
00035193	Hunter Pines East Apartments.	DC
05935193	Monterey Hills Apartments.	LA
08335316	Mountainview Estates	KY
08335333	Pegasus 80	KY
11535213	Queens Village Apartments.	TX
10135269	Ridgeview Apartments	CO
10135263	Sleeping Ute Apartments	CO
11835098	Southwind Acres	OK
04535010	Tri-City Housing Cooperation.	WV
04335245	Urbana Village North (Gwynne Village).	OH
12335106	Westward Ho Apartments.	AZ
11535187	Woodland Creek Apartments.	TX

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Barbara Chiapella, Acting Director, Office of Multifamily Housing Assistance Restructuring.

Date Granted: February 15, 2002.

Reasons Waived: The projects identified above were not assigned to the PAEs in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Alberta Zinno, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone: (202) 708–0001.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project name	State
05335320	Academy Village Apartments.	NC
01257128	Andrews Plaza	NY
03135194	Aspen Stratford B	NJ
04335257	Calumet/Horizon	OH
06157001	Capitol Avenue School	GA
04844005	Cranbrook Village Cooperative.	MI
12135677	Eureka Central Residence.	CA
01257101	Grand Concourse Phase I.	NY
11535221	Los Ebanos Apartments	TX
08335316	Mountainview Estates	KY
05135329	North Fork Manor Apartments.	VA
14311047	Pioneer Park Plaza Apartments.	CA
05235308	Upton Courts	MD
04235294	Westland Gardens	OH
12735313	Willapa Landing Apartments.	WA

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 6, 2002.

Reasons Waived: The projects identified above were not assigned to the PAEs in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Alberta Zinno, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone: (202) 708–0001.

V. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following public housing drug elimination program (PHDEP) waiver actions, please see the name of the contact person immediately following the description of the waiver granted.

• *Regulation:* 24 CFR 761.30(b)(2).

Project/Activity: Indianapolis Housing Authority (IHA), Indianapolis, IN; IN36DEP0170197.

Nature of Requirement: Section 761.30(b)(2) provides that terms of the grant agreement may not exceed 12 months for the Assisted Housing program, and 24 months for PHDEP. In accordance with this section, HUD may grant an extension of the grant term in response to a written request for an extension stating the need for the extension and indicating the additional time required.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: February 13, 2002.

Reason Waived: The IHA experienced extenuating circumstances relating to the PHDEP grant's eligible activities, which HUD was attempting to resolve. This required an extended period of time to complete an assessment of grant activities and costs, submit vouchers for payment and process the necessary documents for close-out of the grant. The field office made a determination that the costs were allowable expenses and eligible for payment.

Contact: Sonia L. Burgos, Director, Community Safety and Conservation Division, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–1197, extension 4237.

• *Regulation:* 24 CFR 761.30(b)(2).

Project/Activity: Hampton Redevelopment Housing Authority, Hampton, VA; VA36DEP017099.

Nature of Requirement: Section 761.30(b)(2) provides that terms of the grant agreement may not exceed 12 months for the assisted housing program, and 24 months for the public housing program. In accordance with this section, HUD may grant an extension of the grant term in response to a written request stating the need for the extension and indicating the additional time required.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: February 25, 2002.

Reason Waived: The waiver was granted to allow the housing authority to proceed with implementation of its planned PHDEP grant activities, enough time to draw down the remaining grant funds from the Line of Credit Control System (LOCCS), and time to close out the grant.

Contact: Sonia L. Burgos, Director, Community Safety and Conservation Division, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–1197, extension 4237.

• *Regulation:* 24 CFR 761.30(b)(2).

Project/Activity: Wilmington Housing Authority, Wilmington, DE; DE26DEP0010197.

Nature of Requirement: Section 761.30(b)(2) provides that terms of the grant agreement may not exceed 12 months for the assisted housing program, and 24 months for the public housing program. In accordance with this section, HUD may grant an extension of the grant term in response to a written request stating the need for the

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extension and indicating the additional time required.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 5, 2002.

Reason Waived: The waiver was granted to allow the housing authority to use the balance of the PHDEP grant for reimbursement for services rendered and to cover grant related administrative expenses.

Contact: Sonia L. Burgos, Director, Community Safety and Conservation Division, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–1197, extension 4237.

• *Regulation:* 24 CFR 761.30(b)(2).

Project/Activity: Chester County Housing Authority, Chester County, PA; PA01DEP0460198.

Nature of Requirement: Section 761.30(b)(2) provides that terms of the grant agreement may not exceed 12 months for the assisted housing program, and 24 months for the public housing program. In accordance with this section, HUD may grant an extension of the grant term in response to a written request stating the need for the extension and indicating the additional time required.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 11, 2002.

Reason Waived: The Chester County Housing Authority felt that they should not move forward with these programs under the PHDEP until a determination could be made of the authority's financial situation. The Chester County Housing Authority ceased any planning for programmatic activities such as after school care, adult skills training and the purchase of equipment requiring the full procurement process.

Contact: Sonia L. Burgos, Director, Community Safety and Conservation Division, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–1197, extension 4237.

• *Regulation:* 24 CFR 761.30(b)(2).

Project/Activity: Chester County Housing Authority, Chester County, PA; PA01DEP0460197.

Nature of Requirement: Section 761.30(b)(2) provides that terms of the grant agreement may not exceed 12 months for the assisted housing program, and 24 months for the public housing program. In accordance with this section, HUD may grant an extension of the grant term in response to a written request stating the need for the extension and indicating the additional time required.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 11, 2002.

Reason Waived: The Chester County Housing Authority felt that they should not move forward with their programs under the PHDEP grant until a determination was made of the authority's financial situation. The Chester County Housing Authority ceased any planning for programmatic activities. An operational assessment was completed and the housing authority was granted the waiver to proceed with the planning and implementation of its grant activities.

Contact: Sonia L. Burgos, Director, Community Safety and Conservation Division, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–1197, extension 4237.

• *Regulation:* 24 CFR 761.30(b)(2).

Project/Activity: Charleston Housing Authority, Charleston, WV; WV15DEP0010197.

Nature of Requirement: Section 761.30(b)(2) provides that terms of the grant agreement may not exceed 12 months for the assisted housing program, and 24 months for the public housing program. In accordance with this section, HUD may grant an extension of the grant term in response to a written request stating the need for the extension and indicating the additional time required.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 14, 2002.

Reason Waived: The Charleston Housing Authority requested a time extension in order to draw down the remaining grant funds to pay vendors that have provided services for the PHDEP activities, and sufficient time to close out the grant.

Contact: Sonia L. Burgos, Director, Community Safety and Conservation Division, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–1197, extension 4237.

• *Regulation:* 24 CFR 982.306(d).

Project/Activity: Lincoln County Public Housing Agency, Bowling Green, MO; Housing Choice Voucher Program.

Nature of Requirement: Section 982.306(d) limits the circumstances under which a public housing agency may approve the leasing of a unit if the owner of the unit is a close relative of the family.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: February 21, 2002.

Reason Waived: Approval of the waiver permitted a large family to lease a unit from a relative because of the unavailability of suitable vacant rental housing in the public housing agency's jurisdiction.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• Regulation: 24 CFR 982.503(c)(2)(ii).

Project/Activity: City of Tucson Community Services Department, Tucson, AZ; Housing Choice Voucher Program.

Nature of Requirement: Section 982.503(a)(2)(ii) provides that the HUD field office may approve an exception payment standard between 110% and 120% of the published fair market rent if required as a reasonable accommodation for a family that includes a person with disabilities.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: January 8, 2002.

Reason Waived: Approval of the waiver to allow the field office to approve an exception payment standard in excess of 120% made it possible for a family that includes a person with disabilities to lease suitable housing under the program.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 982.503(c)(2)(ii).

Project/Activity: Housing Authority of the County of Los Angeles, Monterey Park, CA; Housing Choice Voucher Program.

Nature of Requirement: Section 982.503(c)(2)(ii) provides that the HUD field office may approve an exception payment standard between 110% and 120% of the published fair market rent if required as a reasonable accommodation for a family that includes a person with disabilities.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: January 15, 2002.

Reason Waived: Approval of the waiver to allow the field office to approve an exception payment standard in excess of 120% made it possible for a family that includes a person with disabilities to remain in their current unit. It would have been a hardship on this family to seek alternative housing due to current health issues.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 983.51.

Project/Activity: The Virgin Islands Housing Authority (VIHA), St. Thomas, VI; Project-based Assistance (PBA) program. VIHA requested a waiver to permit it to attach PBA to all 80 units at Croixville Apartments. Croixville Apartments was selected to undergo rehabilitation under the Moderate Rehabilitation (Mod Rehab) Program over twelve years ago. Prior to the execution of a housing assistance payments contract under the Mod Rehab Program, the project suffered substantial damage as a result of Hurricane Hugo. The units have stood vacant and unsuitable for occupancy since that time. The VIHA has acquired the property and has selected Michaels Development Company, Inc. to accomplish the rehabilitation of the Croixville Apartments.

Nature of Requirement: Section 983.51 requires HUD review and approval of a written selection policy and advertisement for the competitive selection of units to receive project-based assistance.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 6, 2002.

Reason Waived: Approval of the waiver will permit VIHA to renovate Croixville Apartments and maintain its original intended use as an affordable housing development for low-income families.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a) and (b).

Project/Activity: Housing Authority of the County of Chester (HACC), West Chester, PA; PBA program. HACC requested a waiver to permit it to attach PBA to all 33 units of a PHA-owned, mixed financed senior citizen facility, Honey Brook. The development plan for this facility was already submitted to a tax credit competition by the Pennsylvania Housing Finance Authority unit.

Nature of Requirement: Section 983.51(a) and (b) requires HUD review and approval of a written selection policy and advertisement for the competitive selection of units to receive project-based assistance.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: February 5, 2002.

Reason Waived: Approval of the waivers will provide affordable rental housing units for very low-income senior citizens.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a) and (b).

Project/Activity: Lowell Housing Authority (LHA), Lowell, MA; PBA program. LHA requested a waiver to permit it to select owner proposals from the Residents First Development Corporation (RFDC) and Winn Development (owner of Princeton Village) to provide PBA to 45 duplex units in a 180-unit development of proposed new construction and 37 units in a 151-unit project (Princeton ViHage). Both developments are located in state-designated revitalization areas. RFDC is a non-profit affiliate of the LHA and Princeton Village was competitively selected for Low Income Tax Credits.

Nature of Requirement: Section 983.51 (a) and (b) requires HUD review and approval of a written selection policy and advertisement for the competitive selection of units to receive project-based assistance.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 5, 2002.

Reason Waived: Approval of the waivers will permit LHA to support the City of Lowell's revitalization efforts. The City of Lowell and LHA want to ensure that low-income people maintain access to housing in the revitalization areas as the areas are redeveloped to attract residents from higher income ranges.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a) and (b).

Project/Activity: Housing Authority of the City of Aiken (HACA), Aiken, SC; PBA program. HACA requested a waiver to permit it to select owner proposals from the New Labor Housing and Economic Development Corporation (a non-profit affiliate of HACA) to provide PBA to 27 proposed single-family units that are part of a 44-unit project, Busch Crossing. The New Labor Housing and Economic Development Corporation was competitively awarded low-income housing tax credits by the South Carolina State Housing Finance and Development Authority. Busch Crossing will replace 60 condemned public housing units that were demolished.

Nature of Requirement: Section 983.51(a) and (b) requires HUD review and approval of a written selection policy and advertisement for the competitive selection of units to receive project-based assistance.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 5, 2002.

Reason Waived: Approval of the waivers will provide for new development of affordable rental housing units for very low-income families.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a) and (b).

Project/Activity: The Tampa Housing Authority (THA), Tampa, FL; PBA program. THA requested a waiver to permit it to provide PBA to all of the units of a HUD-owned 63-unit assisted living facility Palm Terrace. The THA intends to purchase the facility through the Atlanta Multifamily Disposition Office.

Nature of Requirement: Section 983.51(a) and (b) requires HUD review and approval of a written selection policy and advertisement for the competitive selection of units to receive project-based assistance.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 7, 2002.

Reason Waived: Approval of the waivers meets the Department's goal of housing elders in assisted living facilities with vouchers; and the units would be affordable to voucher program participants in need of this type of facility since the THA will own and manage the units.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a) and (b).

Project/Activity: Housing Authority of the County of Chester (HACC), West Chester, PA; PBA program. HACC and its partner, The Community Builders, Inc., who will be the general partner of the owner of the project, Downtown Revival Limited Partnership requested a waiver to permit it to attach PBA to ten out of 22 general occupancy units in six contiguous revitalized commercial buildings in downtown Coatesville, Pennsylvania. The project, Apartments-Over-Commercial Phase, is part of a HOPE VI revitalization plan to replace 192 demolished Oak Street and Woodland Parkway public housing units. This project has already been competitively awarded HOPE VI grant funds by the Department in 1997 as well as low-income tax credits by the Pennsylvania Housing Finance Agency.

Nature of Requirement: Section 983.51(a) and (b) requires HUD review and approval of a written selection policy and advertisement for the competitive selection of units to receive project-based assistance.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 12, 2002.

Reason Waived: Approval of the waivers will provide affordable rental housing units for low-income families.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a) and (b).

Project/Activity: San Francisco Housing Authority (SFHA), San Francisco, CA; PBA program. SFHA requested a waiver to permit it to attach PBA assistance to 119 units out of 341 replacement units in a HOPE VI development, the North Beach Redevelopment Project. The project will be owned and managed by North Beach Development Associates, LLC (NBDA). The SFHA will continue to own the property upon which the project will be developed. NBDA was competitively awarded HOPE VI funds by the Department to demolish and revitalize the North Beach Place public housing project.

Nature of Requirement: Section 983.51(a) and (b) requires HUD review and approval of a written selection policy and advertisement for the competitive selection of units to receive project-based assistance.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: March 13, 2002.

Reason Waived: Approval of the waivers will provide affordable rental housing units for low-income families.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 1000.214.

Project/Activity: The Native Village of Pilot Station, AK, requested a waiver of the deadline for submission of the Indian Housing Plan.

Nature of Requirement: Section 1000.214 provides that recipients must initially send

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the Indian Housing Plan (IHP) to the Area Office of Native American Programs (ONAP) no later than July 1 of each year. Grant funds cannot be provided until the plan is submitted and determined to be in compliance with section 102 of the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996.

Granted By: Michael Liu, Assistant Secretary, Office of Public and Indian Housing.

Date Granted: March 15, 2002.

Reason Waived: The Native Village of Pilot Station initially designated the Calista Corporation to be its tribally designated housing entity (TDHE) for Fiscal Year (FY) 2001 Indian Housing Block Grant (IHBG) funding. The Calista Corporation submitted an IHP for FY 2001 funds, including the Native Village of Pilot Station. After reviewing the IHP of Calista Corporation, ONAP made the determination that Calista Corporation, as a tribe, cannot be a TDHE for the Native Village of Pilot Station or any other tribes as defined by NAHASDA. On August 24, 2001, the Calista Corporation revised their IHP and the Native Village of Pilot Station was not included. Since the Native Village of Pilot Station can be a recipient of IHBG funds, they requested to submit their own IHP after the regulatory due date for FY 2001 funds.

Contact: Deborah Lalancette, Director, Grants Management, Denver Program ONAP, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202; telephone: (303) 675–1600, extension 3325.

- *Regulation:* 24 CFR 1000.312.

Project/Activity: The Housing Authority of the Creek Nation of Oklahoma requested a waiver to allow units to be counted as formula assisted stock.

Nature of Requirement: Section 1000.312 requires that only units owned or operated pursuant to an Annual Contributions Contract (ACC) be included in the Formula Current Assisted Stock (FCAS).

Granted By: Michael Liu, Assistant Secretary, Office of Public and Indian Housing.

Date Granted: January 24, 2002.

Reason Waived: The housing authority determined that structural deficiencies found in foundations were extreme and posed a serious threat to the health and safety of the residents. In addition, the Tribe has agreements with lessees and homebuyers for these units that would continue to apply once the units are demolished and replaced. These agreements are predicated upon subsidy from the Department. Continuation of subsidy is necessary for the Tribe to uphold these agreements.

Contact: Deborah Lalancette, Director, Grants Management, Denver Program ONAP, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202; telephone: (303) 675–1600, extension 3325.

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Rules and Regulations

Federal Register
Vol. 67, No. 165
Monday, August 26, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30321; Amdt. No. 3015]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 26, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 26, 2002.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The Flight Inspection Area Office which originated the SIAP; or,
4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial

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number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on July 19, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended as follows:

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective August 8, 2002*

Manchester, NH, Manchester, RNAV (GPS) RWY 6, Orig
Manchester, NH, Manchester, RNAV (GPS) RWY 24, Orig
Manchester, NH, Manchester, GPS RWY 6, Orig–A, CANCELLED

** * * Effective October 3, 2002*

Wauchula, FL, Wauchula Muni, NDB RWY 36, Orig
Winter Haven, FL, Winter Haven's Gilbert, RNAV (GPS) RWY 4, Orig
Winter Haven, FL, Winter Haven's Gilbert, GPS RWY 4, Orig, CANCELLED
Winter Haven, FL, Winter Haven's Gilbert, VOR/DME–A, Amdt 6A
Kahului, HI, Kahului, RNAV (GPS) RWY 23, Orig
Portsmouth, NH, Pease Intl Tradeport, RNAV (GPS) RWY 16, Orig
Portsmouth, NH, Pease Intl Tradeport, GPS RWY 16, AMDT 1A, CANCELLED
Robbinsville, NJ, Trenton-Robbinsville, RNAV (GPS) RWY 29, Orig
Robbinsville, NJ, Trenton-Robbinsville, GPS RWY 29, Orig, CANCELLED
Asheboro, NC, Asheboro Muni, VOR–A, Amdt 3
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Salisbury, NC, Rowan County, RNAV (GPS) RWY 2, Orig
Norfolk, VA, Norfolk Intl, RNAV (GPS) RWY 14, Orig
Norfolk, VA, Norfolk Intl, RNAV (GPS) RWY 32, Orig
Norfolk, VA, Norfolk Intl, GPS Rwy 14, Orig–C, CANCELLED
Norfolk, VA, Norfolk Intl, GPS Rwy 32, Amdt 1C, CANCELLED
Friday Harbor, WA, Friday Harbor, RNAV (GPS) RWY 34, Orig
Friday Harbor, WA, Friday Harbor, GPS RWY 34, Amdt 1, CANCELLED

The FAA published the following procedure in Docket No. 30313; Amdt. No. 3009 to Part 97 of the Federal Aviation Regulations (Vol. 67, FR No. 114, Page 40595; dated, June 13, 2002 under section 97.23 effective August 8, 2002 which is hereby rescinded:

Norfolk, VA, Chesapeake Regional, VOR/DME RWY 23, Orig–A

The FAA published an Amendment in Docket No. 30319, Amdt No. 3013 to Part 97 of the Federal Aviation Regulations (Vol. 67, FR No. 137, Page 46849; dated 17 Jul 2002) under section 97.27 effective 8 August 2002, which is hereby amended to change the effective date to 3 October 2002:

Gainesville, FL, Gainesville Regional, LOC/DME BC RWY 10, Orig, CANCELLED.
Smithville, TN, Smithville Muni, NDB RWY 24, Amdt 2, CANCELLED.

The FAA published an Amendment in Docket No. 30319, Amdt No. 3013 to Part 97 of the Federal Aviation Regulations (Vol. 67, FR No. 137, Page 46850; dated 17 Jul 2002) under section 97.27 effective 3 Oct 2002, which is hereby amended as follows:

Flora, IL, Flora Muni, NDB RWY 21, Amdt 5

[FR Doc. 02–21580 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30323; Amdt. No. 3017]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 26, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 26, 2002.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The Flight Inspection Area Office which originated the SIAM; or,
4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore,—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference; and Navigation (Air).

Issued in Washington, DC, on August 2, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILSDME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective October 3, 2002*

Brawley, CA, Brawley Muni, VOR/DME–A, Amdt 1
Brawley, CA, Brawley Muni, VOR/DME–B, Amdt 2
Brawley, CA, Brawley Muni, RNAV (GPS) RWY 26, Orig
Mammoth Lakes, CA, Mammoth Yosemite, RNAV, (GPS) RWY 27, Orig
Mammoth Lakes, CA, Mammoth Yosemite, GPS RWY 27, Orig–A, CANCELLED
Oakland, CA, Metropolitan Oakland Intl, VOR/DME RWY 29, Amdt 1
San Francisco, CA, San Francisco Intl, RNAV (GPS) RWY 10L, Amdt 1
San Luis Obispo, CA, San Luis Obispo County Regional, ILS RWY 11, Amdt 1
Honolulu, HI, Honolulu Intl, VOR OR TACAN RWY 4R, Orig–B
Honolulu, HI, Honolulu Intl, NDB RWY 8L, Amdt 19B
Kahului, HI, Kahului, RNAV (GPS) RWY 20, Orig
Fort Meade (Odenton), MD, Tipton, NDB RWY 10, Orig
Frederick, MD, Frederick Muni, RNAV (GPS) RWY 23, Orig
Frederick, MD, Frederick Muni, GPS Rwy 5, Amdt 1A
Aurora, NE, Aurora Municipal, RNAV (GPS) RWY 16, Orig
Aurora, NE, Aurora Municipal, NDB Rwy 16, Amdt 3A
Aurora, NE, Aurora Municipal, VOR–A, Amdt 6A
Mesquite, NV, Mesquite, VOR/DME OR GPS–A, Orig, CANCELLED
Readington, NJ, Solberg-Hunterdon, VOR–A, Amdt 8
Readington, NJ, Solberg-Hunterdon, VOR RWY 4, Amdt 1
Readington, NJ, Solberg-Hunterdon, RNAV (GPS) RWY 4, Orig
Readington, NJ, Solberg-Hunterdon, (GPS) RWY 4, Orig, CANCELLED
Newburgh, NY, Stewart Intl, ILS RWY 9, Amdt 9
Weedsport, NY, Weedsport/Whitfords, RNAV (GPS) RWY 10, Orig
Weedsport, NY, Weedsport/Whitfords, RNAV (GPS) RWY 28, Orig
Mangum, OK, Scott Field, RNAV (GPS) RWY 17, Orig
Mangum, OK, Scott Field, RNAV (GPS) RWY 35, Orig
Junction, TX, Kimble County, RNAV (GPS) Rwy 17, Orig
Junction, TX, Kimble County, VOR–A Amdt 12
Junction, TX, Kimble County, VOR–DME RNAV OR GPS Rwy 17, Amdt 2, CANCELLED
Muleshoe, TX, Muleshoe Muni, RNAV (GPS)–B, Orig
Muleshoe, TX, Muleshoe Muni, VOR–DME–A, Amdt 1

The FAA published the following procedure in Docket No. 30313; Amdt. No. 3009 to Part 97 of the Federal Aviation Regulations (Vol. 67, FR No. 114, Page 40595; dated, June 13, 2002) under section 97.33 effective August 8, 2002 which is hereby rescinded:

Mammoth Lakes, CA, Mammoth Yosemite, RNAV (GPS) RWY 27, Orig
Mammoth Lakes, CA, Mammoth Yosemite, GPS RWY 27, Orig–A, CANCELLED

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The FAA published the following procedure in transmittal letter 02–17 dated July 19, 2002 effective August 8, 2002 which is hereby rescinded:

Manchester, NH, Manchester, RNAV (GPS) RWY 6, Orig
Manchester, NH, Manchester, RNAV (GPS) RWY 24, Orig
Manchester, NH, Manchester, GPS RWY 6, Orig–A, CANCELLED

[FR Doc. 02–21582 Filed 8–23–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30324; Amdt. No. 3018]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 26, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 26, 2002.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: PO Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on August 2, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Aproach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, DOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
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07/25/02	PA	State College	University Park	2/7519	Rwy 6, Amdt 8B.
07/25/02	PA	Bellefonte	Bellefonte	2/7521	VOR or GPS–A, Amdt 1.
07/26/02	VI	Christiansted, St. Croix	Henry E. Rohlsen	2/7594	NDB Rwy 9, Amdt 13.
07/26/02	VI	Christiansted, St. Croix	Henry E. Rohlsen	2/7595	VOR Rwy 27, Amdt 19.
07/26/02	VI	Christiansted, St. Croix	Henry E. Rohlsen	2/7596	ILS Rwy 9, Amdt 6.
07/26/02	VI	Christiansted, St. Croix	Henry E. Rohlsen	2/7597	RNAV (GPS) Rwy 9, Orig VOR/DME or GPS Rwy. 32, Amdt 12.
07/29/02	TN	Smyrna	Smyrna	2/7655	ILS Rwy 32, Admt 5A.
07/29/02	TN	Smyrna	Smyrna	2/7757	NDB Rwy 32, Amdt 8B VOR/DME or GPS Rwy.
07/29/02	TN	Smyrna	Smyrna	2/7659	14, Amdt 6 RNAV (GPS) Z Rwy 22R.
07/29/02	TN	Smyrna	Smyrna	2/7662	ORIG.
07/29/02	IL	Chicago	Chicago-O'Hare Intl	2/7668	ILS Rwy 7R, Amdt 1.
07/31/02	AZ	Phoenix	Phoenix Sky Harbor	2/7764	

[FR Doc. 02–21583 Filed 8–23–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30322; Amdt. No. 3016]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: This rule is effective August 26, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 26, 2002.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: PO Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

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The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMS for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on July 19, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
6/27/02	TX	Anahuac	Chambers County	2/6133	NDB Rwy 12, Amdt 1.
6/27/02	TX	Anahuac	Chambers County	2/6188	RNAV (GPS) Rwy 12, Orig-A.
07/01/02	IA	Dubuque	Dubuque Regional	2/6402	VOR or GPS Rwy 36, Amdt 5E.
07/02/02	MO	Ozark	Air Park South	2/6443	VOR or GPS Rwy 17, AMDT 4A.
07/03/02	UT	Salt Lake City	Salt Lake City Intl	2/6477	ILS Rwy 16L (Cat I, II, III), Amdt 1A.
07/03/02	IL	Chicago	Chicago-O'Hare Intl	2/6497	RNAV (GPS) Rwy 32R, Orig.
07/03/02	IL	Chicago	Chicago-O'Hare Intl	2/6500	RNAV (GPS) Rwy 4R, Orig.
07/08/02	AZ	Phoenix	Phoenix Sky Harbor Intl	2/6653	ILS Rwy 25L, Amdt 1.
07/08/02	IL	Freeport	Albertus	2/6659	VOR or GPS Rwy 24, Amdt 6B.
07/08/02	IL	Freeport	Albertus	2/6660	LOC Rwy 24, Orig-B.
07/08/02	IL	Freeport	Albertus	2/6661	NDB Rwy 6, Orig-B.
07/08/02	IL	Freeport	Albertus	2/6662	VOR/DME RNAV or GPS Rwy 6, Amdt 5B.
07/08/02	TN	Lexington	Franklin Wilkins	2/6663	VOR or GPS Rwy 33, Amdt 10.
07/08/02	NC	Asheville	Asheville Regional	2/6665	ILS Rwy 34, Amdt 23E.
07/10/02	AK	Tanana	Ralph M. Calhoun Memorial	2/6715	NDB–B, Amdt 3A.
07/10/02	AK	Tanana	Ralph M. Calhoun Memorial	2/6728	VOR–A, Amdt 7.
07/11/02	WA	Richland	Richland	2/6773	NDB or GPS Rwy 19, Amdt 5A.
07/11/02	OK	Ada	Ada Muni	2/6781	VOR/DME–A, Orig-B.
07/11/02	AK	Tanana	Ralph M. Calhoun Memorial	2/6788	VOR/DME Rwy 6, Amdt 1.
07/12/02	NY	Durhamville	Kamp	2/6819	VOR or GPS Rwy 28, Amdt 1A.
07/12/02	OK	Cushing	Cushing Muni	2/6851	NDB or GPS Rwy 35, Amdt 3C.

FDC date	State	City	Airport	FDC No.	Subject
07/12/02	CA	Blythe	Blythe	2/7030	VOR/DME or GPS Rwy 26, Amdt 5A. This replaces 2/6374 in TL02–16.
07/12/02	CA	Blythe	Blythe	2/7044	VOR or GPS–A, Amdt 6A. This replaces 2/6375 in TL02–16.

[FR Doc. 02–21581 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

[T.D. 02–49]

RIN 1515–AC56

Administrative Rulings

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: This document makes two corrections to the document published in the **Federal Register** on August 16, 2002, as T.D. 02–49 which set forth final amendments to those provisions of the Customs Regulations that concern the issuance of administrative rulings and related written determinations and decisions on prospective and current transactions arising under the Customs and related laws.

EFFECTIVE DATE: These corrections are effective August 16, 2002.

FOR FURTHER INFORMATION CONTACT: John Elkins, Textiles Branch, Office of Regulations and Rulings (202–572–8790).

SUPPLEMENTARY INFORMATION:

Background

On August 16, 2002, Customs published in the **Federal Register** (67 FR 53483) T.D. 02–49 to set forth final amendments to those provisions of the Customs Regulations that concern the issuance of administrative rulings and related written determinations and decisions on prospective and current transactions arising under the Customs and related laws. The regulatory changes involve primarily the addition of a new § 177.12 to set forth procedures regarding the modification or revocation of rulings on prospective transactions, internal advice decisions, protest review decisions, and treatment previously accorded by Customs to substantially identical transactions. The amendments are in response to statutory changes made to the administrative ruling process by section 623 of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act and take effect on September 16, 2002.

This document makes two corrections to cross-reference citations within paragraphs (c) and (d) of § 177.12.

Corrections of Publication

The document published in the **Federal Register** as T.D. 02–49 on August 16, 2002 (67 FR 53483) is corrected as set forth below.

§ 177.12 [Corrected]

1. On page 53498, in the first column, in § 177.12, the first sentence of paragraph (c)(2)(ii) is corrected by removing the reference "§ 177.19" and adding, in its place, the reference "§ 177.9".

2. On page 53498, in the second column, in § 177.12, paragraph (d)(1)(viii) is corrected by removing the reference "§ 177.22 of this part" and adding, in its place, the reference "§ 177.10(c)".

Dated: August 20, 2002.

Harold Singer,

Chief, Regulations Branch.

[FR Doc. 02–21636 Filed 8–23–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 112, 116, 121, 123, 125, 154, 156, 178, and 243

RIN 1076–AE20

Trust Management Reform: Repeal of Outdated Rules

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; removal of rules.

SUMMARY: The Department of the Interior, Bureau of Indian Affairs (BIA) is removing nine outdated parts of Title 25 CFR. This action is meant to further fulfill the Secretary's responsibility to federally-recognized tribes and individual Indians by ensuring that regulations, policies, and procedures are up-to-date. The parts being removed include regulations relating to distribution of tribal funds among tribal members, establishment of private trusts for the Five Civilized Tribes, distribution of Osage Judgment Funds, assignment of future income from the Alaska Native Fund, payment of Sioux benefits, preparation of a competency roll of Osage Indians, reallotment of lands to Indian children, resale of lands within the Badlands Air Force Range, and registration of reindeer ownership in Alaska. In the interests of economy of administration, and because all of the regulations proposed to be removed are outdated, they are included in one rulemaking vehicle.

EFFECTIVE DATE: October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Linda L. Richardson, Trust Policies and Procedures Subproject, Bureau of Indian Affairs, 1849 C Street, NW., MS–4070–MIB, Washington, DC 20240, telephone 202–208–6411.

SUPPLEMENTARY INFORMATION:

I. Background
II. Response to Comments
III. Procedural Requirements
A. Review Under Executive Order 12866 (Regulatory Planning and Review)
B. Review Under Executive Order 12988 (Civil Justice Reform)
C. Review Under Executive Order 12291 and the Regulatory Flexibility Act
D. Review Under Small Business Regulatory Enforcement Fairness Act of 1996
E. Review Under the Paperwork Reduction Act
F. Review Under Executive Order 13132 (Federalism)
G. Review Under the National Environmental Policy Act of 1969
H. Review Under the Unfunded Mandates Reform Act of 1995
I. Review Under Executive Order 12630 (Takings Implication Assessment)
J. Review Under Executive Order 13175 (Tribal Consultation)

I. Background

Proper management of Indian trust assets has been hampered by a lack of comprehensive, consistent, up-to-date regulations, policies, and procedures covering the entire trust cycle. The BIA began revising its trust management regulations by issuing proposed revisions to regulations governing probate, trust funds, leasing, and grazing. Updated regulations affecting

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these functions became effective on March 23, 2001.

In April 2001, BIA submitted a report to senior Departmental officials that provided a comprehensive review of regulations, manuals and handbooks that guide trust operations. The report included recommended actions to bring all policies and procedures current and outlined a multi-year schedule to accomplish this goal. The review identified a number of regulations still on the books that are no longer operative, either because all actions required by law have been fully implemented or because the regulation no longer comports with Federal Indian policy. On February 21, 2002 (67 FR 7985), BIA published a proposed rule with a request for comments to remove 25 CFR parts 112, 116, 121, 123, 125, 154, 156, 178, and 243.

II. Response to Comments

The BIA received comments from three Indian tribes, none of whom objected to the proposed removal of the nine parts; therefore, no changes have been made.

III. Procedural Requirements

A. Review Under Executive Order 12866 (Regulatory Planning and Review)

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the BIA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The rule would remove a number of outdated regulations. As such, it does not impose a compliance burden on the economy generally or on any person or entity. Accordingly, this rule is not a "significant regulatory action" from an economic standpoint, and it does not otherwise create any inconsistencies or budgetary impacts to any other agency or Federal program.

B. Review Under Executive Order 12988 (Civil Justice Reform)

With respect to the review of existing regulations and the promulgation of new regulations, subsection 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction.

With regard to the review of proposed regulations, subsection 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

Subsection 3(c) of Executive Order 12988 requires agencies to review proposed regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The BIA has determined that the removal of outdated parts meets the relevant standards of Executive Order 12988.

C. Review Under Executive Order 12291 and the Regulatory Flexibility Act

Because this rule would remove outdated regulations, the BIA has determined that this rule is not a significant rule under Executive Order 12866. This rule was also reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities.

This rule updates the Department's policies and procedures that apply to certain Indian trust resources by eliminating unneeded regulatory requirements. Accordingly, the BIA has determined that this rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in an annual effect on the economy of $100,000,000 or more. The effect of this rulemaking will be to streamline and modernize policies, procedures and management operations of the BIA by eliminating unnecessary regulations. No increases in costs for administration will be realized, and no prices would be affected through these revisions as, in practice, the regulations being removed are already inoperative.

This rulemaking will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation, nor on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. These administrative revisions to BIA policy and procedure will not have an impact on any small business businesses or enterprises.

E. Review Under the Paperwork Reduction Act

This rule is exempt from the requirements of the Paperwork Reduction Act, since it repeals existing regulations. An OMB form 83–1 is not required.

F. Review Under Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. There is no Federalism impact on the trust relationship or balance of power between the United States government and the various tribal governments affected by this rulemaking. Therefore, in accordance with Executive Order 13132, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

G. Review Under the National Environmental Policy Act of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this proposed rule.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the Act, the BIA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

I. Review Under Executive Order 12630 (Takings Implication Assessment)

In accordance with Executive Order 12630, this rule does not have significant takings implications. This rule does not involve the "taking" of private property interests.

J. Review under Executive Order 13175 (Tribal Consultation)

The BIA determined that, because the removal of current regulations has tribal implications, it was an appropriate topic for consultation with tribal governments. This consultation is in keeping with Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." In April 2001, BIA sent all tribal leaders a report that documents the results of a BIA review of existing regulations, policies, and procedures that affect delivery of trust services to tribal governments and individual Indians. Included in the report was a multi-year schedule for bringing all trust regulations, policies and procedures up-to-date. In May 2001, the BIA sent all tribal leaders a letter describing and identifying ten parts of Title 25 CFR that we were considering for removal. Regional directors followed up to determine if there were tribal concerns with any aspects of the proposal.

Following publication of the proposed rule, BIA again notified tribal governments of the substance of this rulemaking through a direct mailing. This enabled tribal officials and the affected tribal constituency throughout Indian Country to have meaningful and timely input in the development of the final rule.

List of Subjects

25 CFR Part 112

Indians—business and finance.

25 CFR Part 116

Estates, Indians—business and finance, Trusts and trustees.

25 CFR Part 121

Indians—claims, Indians—judgment funds.

25 CFR Part 123

Alaska, Indian—claims.

25 CFR Part 125

Indians—claims, Reporting and recordkeeping requirements.

25 CFR Part 154

Indians—lands.

25 CFR Part 156

Indians—lands.

25 CFR Part 178

Indians—lands.

25 CFR Part 243

Alaska, Indians—business and finance, Reindeer.

Accordingly, under the authority in 25 U.S.C. 9, 25 CFR chapter 1 is amended by removing parts 112, 116, 121, 123, 125, 154, 156, 178, and 243.

Dated: August 12, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–21692 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9003]

RIN 1545–AW64

Relief From Joint and Several Liability; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations that were published in the **Federal Register** on Thursday, July 18, 2002 (67 FR 47278), relating to relief from joint and several liability.

DATES: This correction is effective July 18, 2002.

FOR FURTHER INFORMATION CONTACT: Charles A. Hall (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction is under section 6015 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contains an error that my prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9003), that were the subject of FR Doc. 02–17866, is corrected as follows:

On page 47294, column 3, § 1.6015–5(b)(3), line 10, the language "CDP hearing procedures under sections" is corrected to read "CDP hearing procedures under section".

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Income Tax & Accounting).

[FR Doc. 02–21693 Filed 8–23–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 02–016]

RIN 2115–AA97

Safety Zone; San Diego Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two (2) temporary safety zones: A stationary safety zone and a moving safety zone, both on the navigable waters of North San Diego Bay in support of the Parade of Ships-Festival of Sail. These temporary safety zones are necessary to provide for the safety of the crews, spectators, participants of the event, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within these safety zones unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 12:30 [PDT] to 4:30 [PDT] on September 12, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San

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Diego 02–016] and are available for inspection or copying at U.S. Coast Guard, Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, CA 92101–1064, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Final approval and permitting of this event were not issued in time to engage in full notice and comment rulemaking. Moreover, through various meetings and correspondence, the Coast Guard has attempted to involve other agencies within the port in the planning process of the Parade of Ships-Festival of Sail. The public will also be reminded about this event through Broadcast Notice to Mariners (BNM) announcements and Local Notice to Mariner (LNM) publications. Furthermore, the event will have minimal impact on the public since it is of a short duration, four (4) hours, and will take place during non-commute hours from 12:30 p.m. until 4:30 pm.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. In addition to the reasons stated above, it would be contrary to the public interest not to publish this rule because the event has been permitted and participants and the public require protection.

Background and Purpose

The American Sail Training Association, in coordination with local sponsors like "San Diego Maritime Museum", is sponsoring the 2002 Tall Ships Challenge race series transiting the Pacific Ocean along the west coast of North America. Between the races, the participating vessels will visit several ports including San Diego Bay. These temporary safety zones are established in support of the Parade of Ships-Festival of Sail, a marine event that includes participating vessels transiting through San Diego Bay and, upon completion of the parade, mooring in San Diego Bay, giving spectators an opportunity to tour the participating vessels. These temporary safety zones are necessary to provide for the safety of the crews, spectators, and participants of the Parade of Ships-Festival of Sail and are also necessary to protect other vessels and users of waterway.

Discussion of Rule

The limits of the proposed stationary safety zone in North San Diego Bay are as follows: From a point on land at 32°42′26″ N, 117°10′25″ W, thence west to 32°42′26″ N, 117°11′07″ W, thence southwest to 32°42′59″ N, 117°11′20″ W, thence southeast to 32°42′35″ N, 117°10′38″ W, thence southeast to 32°42′13″ N, 117°10′06″ W, thence northeast to point on land 32°42′19″ N, 117°10′02″ W, thence along shoreline to the point of origin. All coordinates are North American Datum 1983.

The limits of the proposed moving safety zone in North San Diego Bay are as follows: 1000 yards forward, 200 yards on either side, and 500 yards behind the parade of ships transiting through San Diego Bay.

The Coast Guard proposes to establish two (2) safety zones that will be enforced from 12:30 p.m. to 4:30 p.m. on September 12, 2002. These safety zones are necessary to provide for the safety of the crews, spectators, and participants of the Parade of Ships-Festival of Sail and to protect other vessels and users of waterway. Participating escort vessels will fly an 8 foot white banner with a fluorescent green flag bearing the word "official", indicating their official association with the Parade of Ships-Festival of Sail. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within these safety zones unless authorized by the Captain of the Port, or his designated representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of its limited duration of four and one-half (4.5) hours and the limited geographic scope of the safety zones.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. These safety zones would not have a significant economic impact on a substantial number of small entities because these zones are limited in scope and duration (in effect for only four (4) hours on August 28, 2002). In addition, the Coast Guard will publish local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via VHF–FM marine channel 16 before the safety zone is enforced.

Assistance for Small Entities

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are proposing to establish a safety zone. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add new § 165.T11–045 to read as follows:

§ 165.T11–045 Safety Zone; San Diego Bay, CA.

(a) *Location.* The following areas are safety zones:

(1) *Stationary safety zone.* From a point on land at 32°42′26″ N, 117°10′25″ W, thence west to 32°42′26″ N, 117°11′07″ W, thence southwest to 32°42′59″ N, 117°11′20″ W, thence southeast to 32°42′35″ N, 117°10′38″ W, thence southeast to 32°42′13″ N, 117°10′06″ W, thence northeast to point on land 32°42′19″ N, 117°10′02″ W, thence along shoreline to the point of origin. All coordinates are North American Datum 1983.

(2) *Moving safety zone.* A moving safety zone within one-thousand (1000) yards forward, two-hundred (200) yards on either side, and five-hundred (500) yards behind all vessels participating in the Parade of Ships-Festival of Sail as they transit through San Diego Bay. Escort vessels participating in this event will be distinguished by their 8 foot white banners and fluorescent green flags bearing the word "official".

(b) *Effective period.* This section is effective from 12:30 p.m. until 4:30 p.m. on September 12, 2002.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through or anchoring within these safety zones is prohibited unless authorized by the Coast Guard Captain of the Port, San Diego, or his designated representative.

Dated: July 29, 2002.

S.P. Metruck,

Commander, Coast Guard, Captain of the Port, San Diego.

[FR Doc. 02–21645 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 8

RIN 2900–AK43

National Service Life Insurance

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs regulations regarding National Service Life Insurance (NSLI) by revising the texts of five sections of regulations into plain English. This amendment supports an Executive Memorandum that mandates plain language in written government communications.

DATES: Effective Date: August 26, 2002.

FOR FURTHER INFORMATION CONTACT: Gregory Hosmer, Senior Insurance Specialist, Department of Veterans Affairs Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, Pennsylvania 19101, (215) 842–2000 ext. 4280.

SUPPLEMENTARY INFORMATION: The Insurance Service of the Veterans Benefits Administration (VBA) is rewriting regulatory provisions found in part 8 of title 38 of the Code of Federal Regulations in order to promote better communication with our readers.

Sections 8.0, 8.18, 8.25, and 8.33(a) provide explanations of the following subjects: The definition of and criteria for good health, total disability with regard to speech, the definition of disease or injury traceable to the extra hazards of the military or naval service, and a definition of a guardian for purposes of National Service Life Insurance. This final rule rewrites and consolidates these sections into one section, § 8.0. Language in existing § 8.0 that underwriting standards "will be developed and published" is dropped because we have established such standards. Section 8.1 provides information regarding the effective date for insurance issued under section 1922(a) of title 38 U.S.C. (Service-Disabled Veterans Insurance). Existing § 8.33(b) stipulates the actions that a guardian may undertake on behalf of either the insured or the beneficiary of an NSLI policy. The texts of §§ 8.1 and

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8.33(b) have been revised for clarity and to promote better understanding.

This final rule consists of non-substantive changes and therefore it is not subject to the notice, comment and effective-date provisions of 5 U.S.C. 553.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private section of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This final rule will not affect any entity since it does not contain any substantive provisions. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program number for this regulation is 64.103.

List of Subjects in Part 8

Disability benefits, Life insurance, Loan programs—veterans, Military personnel, Veterans.

Approved: August 16, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 8 is amended as follows:

PART 8—NATIONAL SERVICE LIFE INSURANCE

1. The authority citation for part 8 continues to read as follows:

Authority: 38 U.S.C. 501, 1901–1929, 1981–1988, unless otherwise noted.

2. Section 8.0 is revised to read as follows:

§ 8.0 Definitions of terms used in connection with title 38 CFR, part 8, National Service Life Insurance.

(a) *What does the term "good health" mean?* The term *good health* means that the applicant is, from clinical or other evidence, free from any condition that would tend to:

(1) Weaken normal physical or mental functions; or

(2) Shorten life.

Note to Paragraph (a): Conditions that would affect "good health" are diseases or injuries or residuals of diseases or injuries. A "residual" is a disability that remains following the original disease or injury.

(b) *What does the term "good health criteria" mean?* The term *good health criteria* means the underwriting standards that determine whether a person is in good health. "Good health criteria" are based whenever possible, as far as practicable, on general insurance usage. "Underwriting" is the process that sets the terms, conditions, and prices for an insurance policy, by rating an applicant's mortality risk.

(c) *What does the term "organic loss of speech" mean?* The term *organic loss of speech* means the loss of the ability to express oneself, both by voice and whisper, through the normal organs of speech if the loss is caused by physical changes in such organs. The fact that some speech can be produced through the use of artificial appliance or other organs of the body will not impact this definition.

(d) *What does the term "disease or injury traceable to the extra hazards of the military service" mean?* The term *disease or injury traceable to the extra hazards of the military service* means a disease or injury that was either caused by or can be traced back to the performance of duty in the active military, naval, or air service.

(e) *What does the term "guardian" mean?* The term *guardian* means any representative certified by the appropriate Veterans Service Center Manager, under § 13.55 of this chapter, to receive benefits in a fiduciary capacity on behalf of the insured or the beneficiary, or to take the actions listed in § 8.32.

3. Section 8.1 is revised to read as follows:

§ 8.1 Effective date for an insurance policy issued under section 1922(a) of title 38 U.S.C. (Service-Disabled Veterans' Insurance).

(a) *What is the effective date of the policy?* The effective date is the date policy coverage begins. Benefits due under the policy are payable any time after the effective date.

(b) *How is the effective date established?* The effective date is the date you deliver both of the following to VA:

(1) A valid application.

(2) A premium payment.

Note 1 to Paragraph (b): If your valid application and premium are mailed to VA, the postmark date will be the date of delivery.

Note 2 to Paragraph (b): If a postmark date is not available, the date of delivery will be the date your valid application and premium are received by VA.

(c) *Can you have a different effective date?* Yes, if you would like an effective date other than the date of delivery as described in paragraph (b) of this section, you may choose one of the following three options as an effective date:

(1) The first day of the month in which you deliver your valid application and premium payment to VA. For example, if VA receives your application and premium payment on August 15, you may request an effective date of August 1.

(2) The first day of the month following the month in which you deliver your valid application and premium payment. For example, if VA receives your application and premium payment on August 15, you may request an effective date of September 1.

(3) The first day of any month up to six months prior to the month in which you deliver your valid application and premium payment. For example, if VA receives your application and premium payment on August 15, you may request an effective date of February 1 or the first day of any month following up to August 1. However, you must pay the following:

(i) The insurance reserve amount for the time period for each month starting with the requested effective date up to the first day of the month prior to the month in which you delivered your application to VA; and

(ii) The premium for the month in which you delivered your application to VA.

Note to Paragraph (c): For example, if your postmark date is August 15 and you request an effective date of February 1, you must pay the insurance reserve amount for February 1 through July 31, and also pay the August premium.

4. Section 8.18 is revised to read as follows:

§ 8.18 Total disability—speech.

The organic loss of speech shall be deemed to be total disability under National Service Life Insurance.

§ 8.25 [Removed]

5. Section 8.25 and the undesignated center heading immediately preceding the section are removed.

§§ 8.26 through 8.33 [Redesignated as §§ 8.25 through 8.32]

6. Sections 8.26 through 8.33 are redesignated as §§ 8.25 through 8.32, respectively.

7. Newly redesignated § 8.32 is revised to read as follows:

§ 8.32 Authority of the Guardian.

What actions does a guardian have the authority to take for insurance purposes? The guardian of an insured or beneficiary has the authority to take the following actions:

(a) Apply for insurance or for conversion of a policy or change of plan;

(b) Reinstate a policy;

(c) Withdraw dividends held on deposit or credit;

(d) Select or change a dividend option;

(e) Obtain a policy loan;

(f) Cash surrender a policy;

(g) Authorize a deduction from benefits or allotment from military retired pay to pay premiums;

(h) Apply for and receive payment of proceeds on a matured policy;

(i) Select or change the premium payment option;

(j) Apply for waiver of premiums and total disability income benefits;

(k) Select or change settlement options for beneficiaries; and

(l) Assign a beneficiary's interest as provided under section 1918 of title 38 U.S.C.

(Authority: 38 U.S.C. 1906)

§ 8.37 [Redesignated as § 8.33]

8. Section 8.37 is redesignated as new § 8.33.

[FR Doc. 02–21531 Filed 8–23–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 265–0363a; FRL–7266–5]

Revisions to the California State Implementation Plan, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Santa Barbara County Air Pollution Control District (SBCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern negative declarations for volatile organic compound (VOC) source categories for the SBCAPCD. We are approving these negative declarations under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on October 25, 2002, without further notice, unless EPA receives adverse comments by September 25, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.
Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117–3027.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4126. E-mail: *Rose.julie@EPA.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Negative Declarations Did the State Submit?

Table 1 lists the negative declarations we are approving with the dates that they were adopted by the Santa Barbara County Air Pollution Control District (SBCAPCD) and submitted by the California Air Resources Board.

TABLE 1.—SUBMITTED NEGATIVE DECLARATIONS

Local agency	Title	Adopted	Submitted
SBCAPCD	Synthetic Organic Chemical Manufacturing Industry (SOCMI) Batch Processing, Reactors, and Distillation.	02–21–02	04–09–02
	Wood Furniture Manufacturing Operations	02–21–02	04–09–02

On June 25, 2002, this submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. What Is the Purpose of the Submitted Negative Declarations?

The negative declarations were submitted to meet the requirements of CAA section 182(a)(2)(A). Nonattainment areas are required to adopt volatile organic compound (VOC) regulations for the published Control Technique Guideline (CTG) categories. If a nonattainment area does not have stationary sources for which EPA has published a CTG, then the area is required to submit a negative declaration. The negative declarations were submitted because there are no applicable sources within the SBCAPCD jurisdiction.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Negative Declarations?

The negative declarations are submitted as SIP revisions and must be consistent with Clean Air Act requirements for Reasonable Available Control Technology (RACT) (see section 182(a)(2)(A)) and SIP relaxations (see sections 110(l) and 193.) To do so, the

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submittal should provide reasonable assurance that no sources subject to the CTG requirements currently exist or are planned for the SBCAPCD.

B. Do the Negative Declarations Meet the Evaluation Criteria?

We believe these negative declarations are consistent with the relevant policy and guidance regarding RACT and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted negative declarations as additional information to the SIP because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of these negative declarations. If we receive adverse comments by September 25, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 25, 2002.

III. Background Information

Why Were These Negative Declarations Submitted?

These negative declarations were submitted to fulfill the requirements of CAA section 182(a)(2)(A). Section 182 requires that ozone nonattainment areas adopt VOC regulations found in the Control Technique Guideline Series for all major sources in their geographic area. Santa Barbara County is a nonattainment area for ozone and thus is required to adopt regulations for all major sources of VOCs. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency negative declarations.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP–Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state action responding to a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 25, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 6, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.222 is amended by adding paragraph (a)(3)(ii) to read as follows:

§ 52.222 Negative declarations.

(a) * * *

(3) * * *

(ii) Synthetic Organic Chemical Manufacturing Industry (SOCMI) Batch Processing, SOCMI Reactors, and SOCMI Distillation; and Wood Furniture Manufacturing Operations were submitted on April 9, 2002 and adopted on February 21, 2002.

* * * * *

[FR Doc. 02–21556 Filed 8–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 100–0056a; FRL–7266–3]

Revisions to the Arizona State Implementation Plan, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maricopa County Environmental Services Department (MCESD) portion of the Arizona State Implementation Plan (SIP). These revisions concern negative declarations for volatile organic compound (VOC) source categories regulated by the MCESD. We are approving these negative declarations under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on October 25, 2002 without further notice, unless EPA receives adverse comments by September 25, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012.

Maricopa County Environmental Services Department, 1001 North Central, No. 595, Phoenix, Arizona 85004.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4126. e-mail: *Rose.julie@EPA.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Negative Declarations Did the State Submit?

Table 1 lists the negative declarations we are approving with the dates that they were adopted by the Maricopa County Environmental Services Department (MCESD) and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—SUBMITTED NEGATIVE DECLARATIONS

Local agency	Title	Adopted	Submitted
MCESD	Refinery Sources	04–26–00	12–14–00
	Automobile and Light Duty Trucks.		
	Magnet Wire.		
	Flatwood Paneling.		
	Synthesized Pharmaceutical Products.		
	Rubber Tire Manufacturing.		
	Polymer Manufacturing.		
	SOCMI.		
	Batch Processes.		
	Industrial Wastewater.		
	Ship Building Repair.		
	SOCMI Reactor/Distillation.		

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On September 3, 2000, this submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. What Is the Purpose of the Submitted Negative Declarations?

The negative declarations were submitted to meet the requirements of CAA section 182(a)(2)(A). Nonattainment areas are required to adopt volatile organic compound (VOC) regulations for the published Control Technique Guideline (CTG) categories. If a nonattainment area does not have stationary sources for which EPA has published a CTG, then the area is required to submit a negative declaration. The negative declarations were submitted because there are no applicable sources within the MCESD jurisdiction.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Negative Declarations?

The negative declarations are submitted as SIP revisions and must be consistent with Clean Air Act requirements for Reasonable Available Control Technology (RACT) (see section 182(a)(2)(A)) and SIP relaxations (see sections 110(1) and 193.) To do so, the submittal should provide reasonable assurance that no sources subject to the CTG requirements currently exist or are planned for the MCESD.

B. Do the Negative Declarations Meet the Evaluation Criteria?

We believe these negative declarations are consistent with the relevant policy and guidance regarding RACT and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted negative declarations as additional information to the SIP because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of these negative declarations. If we receive adverse comments by September 25, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 25, 2002.

III. Background Information

Why Were These Negative Declarations Submitted?

These negative declarations were submitted to fulfill the requirements of CAA section 182(a)(2)(A). Section 182 requires that ozone nonattainment areas adopt VOC regulations found in the Control Techniques Guideline Series for all major sources in their geographic area. Maricopa County is a nonattainment area for ozone and thus is required to adopt regulations for all major sources of VOCs. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency negative declarations.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101- 549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state action responding to a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 25, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 6, 2002.

Keith A. Takata,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Subpart D is amended by adding § 52.122 to read as follows:

§ 52.122 Negative declarations.

(a) The following air pollution control districts submitted negative declarations for volatile organic compound source categories to satisfy the requirements of section 182 of the Clean Air Act, as amended. The following negative declarations are approved as additional information to the State Implementation Plan.

(1) Maricopa County Environmental Services Department.

(i) Refinery Sources (Refinery Process Turnarounds), Automobile and Light Duty Trucks, Magnet Wire, Flatwood Paneling, Pharmaceuticals and Cosmetic Manufacturing Operations, Rubber Tire Manufacturing, Polymer Manufacturing, Industrial Wastewater, Ship Building and Repair, Synthetic Organic Chemical Manufacturing Industry (SOCMI) Batch Processing, SOCMI Reactors, and SOCMI Distillation were adopted on April 26, 2000 and submitted on December 14, 2000.

(b) [Reserved]

[FR Doc. 02–21558 Filed 8–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–7265–4]

RIN 2060–AJ71

Control of Air Pollution From New Motor Vehicles; Second Amendment to the Tier 2/Gasoline Sulfur Regulations; Partial Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: Due to receipt of adverse comments, EPA is withdrawing certain amendments that were included in the direct final rule published on June 12, 2002 (67 FR 40169), related to the Tier 2/Gasoline Sulfur program. The only provisions being withdrawn are the changes to the section concerning the generation of credits beginning in 2004. Because these provisions are being withdrawn, the existing provisions regarding this matter remain in effect. We will address the adverse comments in a subsequent final action based on the parallel proposal published on June 12, 2002 (67 FR 40256).

DATES: The following provisions of the direct final rule published at 67 FR 40169 (June 12, 2002) are withdrawn as of August 26, 2002:

1. The revision to 40 CFR 80.310(a),
2. The amendment of 40 CFR 80.310(b), and
3. The addition of 40 CFR 80.310(d).

ADDRESSES: All comments and materials relevant to today's action are contained in Public Docket No. A–97–10 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. Dockets may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 566–1742 and by facsimile at (202) 566–1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Mary Manners, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor, MI 48105; telephone (734) 214–4873, fax (734) 214–4051, e-mail: *manners.mary@epa.gov*.

SUPPLEMENTARY INFORMATION: We stated in the direct final rule published at 67 FR 40169 (June 12, 2002) that if we received adverse comment on one or more distinct amendments, paragraphs, or sections of the rulemaking by July 12, 2002, we would publish a timely withdrawal in the **Federal Register** indicating which provisions would become effective on September 10, 2002, and which provisions would be withdrawn due to adverse comment. We received adverse comments on the amendments to 40 CFR 80.310.

The direct final rule eliminated the anti-backsliding provision under the Geographic Phase-in Area (GPA) program for GPA gasoline. Specifically, we replaced the variable average standard for GPA gasoline [1] with a flat average standard of 150 ppm sulfur for 2004 through 2006. In addition, to

[1] The anti-backsliding requirement defined the average standard for GPA gasoline as the least of (1) 150 ppm, (2), the refinery's or importer's 1997/1998 average gasoline sulfur level, calculated in accordance with § 80.295, plus 30 ppm, or (3) the lowest average sulfur content for any year in which the refinery generated allotments or credits under § 80.275(a) or § 80.305 plus 30 ppm, not to exceed 150 ppm.

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prevent the generation of windfall credits by refineries that have existing gasoline sulfur baselines below 150 ppm sulfur (but now will have an average GPA standard of 150 ppm), we also amended § 80.310, "How are credits generated beginning in 2004?". As stated in the preamble to the direct final rule, we believed that the amendment to § 80.310 would allow for the generation of credits during the 2004 through 2006 period comparable to the number of credits that could have been generated under the Tier 2 rule (65 FR 6698, February 10, 2000), even though the standard for all GPA gasoline will be 150 ppm sulfur.

As a result of the adverse comments received, we are withdrawing all amendments to § 80.310. We intend to consider the issues raised by the comments in a final action based on the concurrent notice of proposed rulemaking (67 FR 40256). With the exception of the amendments to § 80.310, all other amendments will become effective on September 10, 2002 as provided in the June 12, 2002 direct final rule.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: August 16, 2002.

Robert Brenner,

Assistant Administrator for Office of Air and Radiation.

[FR Doc. 02–21662 Filed 8–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7268–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deletion for the Facility Area portion of the A.O. Polymer Site from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency, Region II announces the deletion of the Facility Area portion of the A.O. Polymer Site (Site) located in Sussex County, New Jersey, from the National Priorities List (NPL). The NPL constitutes appendix B to 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA and the State of New Jersey, through the Department of Environmental Protection, have determined that all appropriate response actions under CERCLA, as amended, have been implemented at the Facility Area portion of the Site and that no further response action by responsible parties is appropriate. This partial deletion pertains only to the Facility Area portion of the Site and does not include the other portions of the Site, which will remain on the NPL.

EFFECTIVE DATE: August 26, 2002.

FOR FURTHER INFORMATION CONTACT: Jeff Catanzarita, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290, Broadway, 19th Floor, New York, NY 10007–1866, (212) 637–4409.

SUPPLEMENTARY INFORMATION: The Facility Area portion of the A.O. Polymer Site is located at 44 Station Road in the Township of Sparta, Sussex County, New Jersey. The Site has two portions: The Facility Area and the Disposal Area. The Disposal Area is located in the northeast corner of the Site and is separated from the Facility Area by a dirt road. The Disposal Area and groundwater contamination by the Site are undergoing cleanup and will remain on the NPL.

A Notice of Intent to Delete for the Facility Area portion was published in the **Federal Register** on June 20, 2002 (67 FR 41914). The closing date for comments on the Notice of Intent to Delete was July 20, 2002. EPA received no comments regarding this deletion. The Deletion Docket may be reviewed at the EPA Region II office in New York, New York, the Sparta Township Library, Sparta, New Jersey, and the New Jersey Department of Environmental Protection office in Trenton, New Jersey.

The NPL is a list maintained by EPA of sites that EPA has determined present a significant risk to human health, welfare, or the environment. Pursuant to 40 CFR 300.425(e) of the NCP, any site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action. Deletion of a portion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 12, 2002.

Jane M. Kenny,

Regional Administrator, Region II.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O.12777, 56 FR 54757, 3 CFR 1991 Comp., p.351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

2. Table 1 of appendix B to part 300 is amended under the State of New Jersey (NJ) by revising the entry for "A.O. Polymer".

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes(a)
NJ	A.O. Polymer	Sparta/Sussex	P

(a) * * *
P = Sites with partial deletion(s).

[FR Doc. 02–21439 Filed 8–23–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Docket OST–1998–6189]

RIN: 9991–AA28

Organization and Delegation of Powers and Duties; Delegation to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation is delegating to the Commandant, United States Coast Guard, his authority to accept volunteer services and to provide benefits to the dependents of military members who are separated for dependent abuse.

EFFECTIVE DATE: August 26, 2002.

ADDRESSES: Material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket OST–2002–6189 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact LT Rick Evans, telephone 202–267–2335, U.S. Coast Guard, 2100 Second Street SW., Washington DC 20593–0001. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION: The Secretary of Transportation, as Secretary of the Department in which the Coast Guard is operating, is vested with the authority to accept voluntary services under 10 U.S.C. 1588. Section 1588 authorizes the Secretary to accept, from any person, certain voluntary services in support of Coast Guard activities. This is an exception to the general prohibition against accepting such services in 31 U.S.C. 1342. The Secretary's authority to accept voluntary services for museums and family support programs operated by the Coast Guard under section 1588 was delegated to the Commandant in 49 CFR 1.46(rr). Subsequent to the delegation of this authority to the Commandant, however, Congress significantly expanded the areas in which voluntary services could be accepted, to include natural resources programs and a variety of personnel support and recreation programs. The present change makes it clear that all of the Secretary's authorities and functions under section 1588 are delegated to the Commandant.

This rule also delegates to the Commandant the Secretary's authority under 10 U.S.C. 1059, which authorizes the Secretary to establish a program to pay monthly transitional compensation to dependents of Coast Guard members who were separated for dependent abuse offenses.

These delegations provide the Commandant of the Coast Guard with the ability to exercise all of the Secretary's authority under 10 U.S.C. 1588 and 1059. This rule does not substantially change the organization or authorities of the Department of Transportation or the Coast Guard.

The Department publishes this rule as a final rule, effective on the date of publication. Because these amendments relate to departmental management, organization, procedure, and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, because this rule does not substantially change the authorities or functions of the Department or the Coast Guard, the Department finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

Regulatory Process Matters

Regulatory Assessment

This rulemaking is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that Order. This rule is also not significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Small Business Impact

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The Act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. The Department certifies that this rule is not expected to have a significant economic impact on a substantial number of small entities. Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism Assessment

This proposed rule has been reviewed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it is determined that this action does not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule will not limit the policymaking discretion of the State nor preempt any State law or regulation.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

For the reasons discussed in the preamble, the Office of the Secretary amends 49 CFR Part 1 as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. No. 101–552, 104 Stat. 2736; Pub. L. No. 106–159, 113 Stat. 1748.

2. In section 1.46, revise paragraph (rr) and add new paragraph (vvv) to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(rr) Carry out the functions and exercise the authority vested in the Secretary by 10 U.S.C. 1588 to accept voluntary services.

* * * * *

(vvv) Carry out the functions and exercise the authority vested in the Secretary by 10 U.S.C. 1059 to establish a program to pay monthly transitional compensation to dependents of Coast Guard members who were separated for dependent abuse offenses.

* * * * *

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Issued on: July 6, 2002.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 02–21029 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 7

[Docket No OST–96–1430; Amdt. 2]

RIN 2105–AD15

Public Availability of Information

49 CFR Part 10

[Docket No OST–96–1437; Amdt. 2]

RIN 2105–AC57

Maintenance of and Access to Records Pertaining to Individuals

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final rule.

SUMMARY: This amendment includes the Transportation Security Administration as an agency subject to DOT's regulations implementing the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a.

DATES: This rule is effective August 26, 2002.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–10, Department of Transportation, Washington, DC 20590, telephone (202) 366–9156, FAX (202) 366–9170; e-mail *bob.ross@ost.dot.gov*.

SUPPLEMENTARY INFORMATION: In response to the attacks on the United States on 9.11, the Congress established a new agency within DOT, the Transportation Security Administration (TSA), headed by the Under Secretary of Transportation for Security. The statute that did this—The Aviation and Transportation Security Act, Public Law 107–71—took effect November 19, 2001, and TSA has been part of DOT, and subject to DOT's regulations implementing the Freedom of Information and Privacy Acts since then. This amendment makes the needed technical changes to those regulations.

Notice and a prior opportunity for comment are not necessary for this rule, since it is a rule of agency organization, procedure, or practice. There is good cause to make the rule effective immediately, as it will update the Department's FOIA and Privacy Act regulations so that they clearly reflect the addition of the TSA to the Department and will not affect the substantive rights of any outside party.

Analysis of regulatory impacts. This amendment is not a "significant regulatory action" within the meaning of Executive Order 12866. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this amendment will not have a significant economic impact on a substantial number of small entities.

This amendment does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, the amendment does not contain any collection of information requirements, requiring review under the Paperwork Reduction Act, as amended.

List of Subjects

49 CFR Part 7

Freedom of information.

49 CFR Part 10

Privacy.

In accordance with the above, DOT amends 49 CFR Parts 7 and 10 as follows:

PART 7—[AMENDED]

1. The authority citation for 49 CFR part 7 continues to read as follows:

Authority: 5 U.S.C. 552; 31 U.S.C. 9701; 49 U.S.C. 322; EO 12,600, 3 CFR, 1987 Comp., p. 3.

2. In § 7.2, the introductory text is revised, the definition of "Administrator" is revised, the introductory text of the definition of "Department" is revised, and a paragraph (11) is added at the end of the definition of "Department" to read as follows:

§ 7.2 Definitions.

Unless the context requires otherwise, the following definitions apply in this part:

* * * * *

Administrator means the head of each component of DOT and includes the Under Secretary for Security, the Commandant of the Coast Guard, the Inspector General, and the Director of the Bureau of Transportation Statistics.

* * * * *

Department means the Department of Transportation, including the Office of the Secretary, the Office of Inspector General, and the following DOT components, all of which may be referred to as DOT components. Means of contacting each of these DOT components appear in § 7.15. This definition specifically excludes the Surface Transportation Board, which has its own FOIA regulations (49 CFR Part 1001):

* * * * *

(11) Transportation Security Administration.

* * * * *

3. In § 7.15, existing paragraphs (f), (g), and (h) are redesignated (g), (h), and (i), respectively, and a new paragraph (f) is inserted after existing paragraph (e), to read as follows:

§ 7.15 Contacts for records requested under the FOIA.

* * * * *

(f) Transportation Security Administration, 301 Seventh Street, SW. (General Services Administration Regional Office Building), Room 3624, Washington, DC (Mailing address: 400 Seventh Street, SW, Washington, DC 20590).

* * * * *

PART 10—[AMENDED]

4. The authority citation for 49 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 552a; 49 U.S.C. 322.

5. In § 10.5, the definition of "Administrator" is revised and a new paragraph (k) is added at the end of the definition of "Department" to read as follows:

§ 10.5 Definitions.

* * * * *

Administrator means the head of an operating administration and includes the Under Secretary for Security and the Commandant of the Coast Guard.

Department * * *

(k) Transportation Security Administration.

* * * * *

Kirk K. Van Tine,

General Counsel.

[FR Doc. 02–20912 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011109274–1301–02; I.D. 082002C]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Massachusetts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure; commercial quota harvested for Massachusetts.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the Commonwealth of Massachusetts has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Massachusetts for the remainder of calendar year 2002, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the Commonwealth of Massachusetts that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Massachusetts.

DATES: Effective 0001 hours, August 28, 2002, through 2400 hours, December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, (978) 281-9279.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2002 calendar year was set equal to 14,578,288 lb (6,612,600 kg)(66 FR 66348, December 26, 2001). The percent allocated to vessels landing summer flounder in Massachusetts is 6.82046 percent, resulting in an initial commercial quota of 994,306 lb (451,010 kg). The 2002 allocation was adjusted downward due to an overage of the 2001 quota of 55,541 lb (25,193 kg), as of October 31, 2001. The resulting adjusted 2002 commercial quota for the Commonwealth of Massachusetts is 938,765 lb (425,817 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the Commonwealth of Massachusetts has attained its quota for 2002.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, August 28, 2002, further landings of summer flounder in Massachusetts by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2002 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, August 28, 2002, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Massachusetts for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 20, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–21653 Filed 8–21–02; 3:56 pm]

BILLING CODE 3510–22–S

VOL 67 ISS 165 AG 26 2002 UMI

Proposed Rules

Federal Register
Vol. 67, No. 165
Monday, August 26, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 02–0725180–2180–01]

RIN 0691–AA43

International Services Surveys: BE–22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Economic Analysis (BEA) publishes this propose rule to revise the reporting requirements for the BE–22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons.

The BE–22 survey is conducted by BEA under the International Investment and Trade in Services Survey Act. The data are needed to compile the U.S. international transactions, national income and product, and input-output accounts; support U.S. trade policy initiatives; assess U.S. competitiveness in international trade in services; and improve the ability of U.S. businesses to identify and evaluate market opportunities. This document solicits comments on changes to the BE–22 survey and proposes changes to the regulation governing the BE–22. The survey incorporates new reporting categories for trade-related services, auxiliary insurance services, and waste treatment and depollution services; adds coverage of transcription services; and amends several other services categories. These changes mirror changes introduced in the 2001 BE–20 benchmark survey. Additionally, a new reporting category is proposed for medical services, receipts only. The proposed rule revises the list of items set forth in the "covered services" section of the existing rule, to reflect the addition of the new category in the survey. These changes to the survey and regulations will close some statistical gaps in the coverage of cross-border services transactions and bring the survey into better alignment with international standards for compilation of statistics on trade in services.

DATES: Comments on these proposed rules will receive consideration if submitted in writing on or before October 25, 2002.

ADDRESSES: Direct all written comments to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington DC 20230. Because of slow mail, and to assure that comments are received in a timely manner, please consider using one of the following delivery methods: (1) Fax to (202) 606–5318, (2) deliver by courier to U.S. Department of Commerce, Bureau of Economic Analysis (BE–50), Shipping and Receiving Section, room M–100, 1441 L Street, NW., Washington, DC 20005, or e-mail to *David.Belli@bea.gov*. Comments received will be available for public inspection in room 7005, 1441 L Street, NW., between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: This proposed rule amends 15 CFR part 801 by revising § 801.9(b)(6)(ii) to set forth revised reporting requirements for the BE–22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons. The survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended). Section 3103(a) of the Act provides that "The President shall, to the extent he deems necessary and feasible— * * * (1) conduct a regular data collection program to secure current information * * * related to international investment and trade in services * * *" In Section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated the authority under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The BE–22 is an annual survey of selected services transactions with unaffiliated foreign persons. The data are needed to compile the U.S. international transactions, national income and product, and input-output accounts; support U.S. trade policy initiatives; assess U.S. competitiveness in international trade in services; and improve the ability of U.S. businesses to identify and evaluate market opportunities.

This document solicits comments on changes to the BE–22 survey and proposes changes to the regulation governing the BE–22. The survey incorporates new reporting categories for trade-related services, auxiliary insurance services, and waste treatment and depollution services; adds coverage of transcription services; and amends several other services categories. These changes mirror changes introduced in the 2001 BE–20 benchmark survey. Additionally, a new reporting category is proposed for medical services, receipts only. The proposed rule revises the list of items set forth in the "covered services" section of the existing rule, to reflect this new category in the survey. These changes to the survey and regulations will close statistical gaps in the coverage of cross-border services transactions and bring the survey into better alignment with international standards for compilation of statistics on trade in services.

Executive Order 12866

This proposed rule is not significant for purposes of E.O. 12866.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Paperwork Reduction Act

This proposed rule contains a new collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The new requirement will be submitted to OMB for approval as a revision to a collection currently approved under OMB control number 0608–0060. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

The survey, as proposed, is expected to result in the filing of reports from approximately 1,600 respondents. The respondent reporting burden for this collection of information is estimated to vary from less than four hours to 500 hours, with an overall average burden of 11.5 hours. This includes time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total respondent burden of the survey is estimated at about 18,400 hours (1,600 times 11.5 hours average burden).

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0058, Washington, DC 20503 (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. While the survey does not collect data on total sales or other measures of the overall size of businesses that respond to the survey, historically the respondent universe has been comprised mainly of major U.S. corporations. With the exemption level for the survey being $1 million in covered receipts or payments, few small businesses can be expected to be subject to reporting. Of those smaller businesses that must report, most will tend to have specialized operations and activities and thus will be likely to report only one type of service transaction, often limited to transactions with a single partner country; therefore, the burden on them can be expected to be small.

List of Subjects in 15 CFR Part 801

Economic statistics, International transactions, Foreign trade, Penalties, Reporting and Recordkeeping Requirements.

Dated: July 17, 2002.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 15 U.S.C. 4908, 22 U.S.C. 3101–3108, and E.O. 11961 (3 CFR, 1977 Comp., p. 860 as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 801.9(b)(6)(ii) is revised to read as follows:

§ 801.9 Reports required.

* * * * *

(b) * * *

(6) * * *

(ii) *Covered services.* With the exceptions given in this paragraph, the services covered by this survey are the same as those covered by the BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons—2001, as listed in § 801.10(c) of this part. The exceptions are the addition of coverage of medical services, receipts only, and the elimination of coverage of four small types of services—agricultural services; management of health care facilities; mailing, reproduction, and commercial art; and temporary help supply services.

* * * * *

[FR Doc. 02–21691 Filed 8–23–02; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM02–12–000]

Standardization of Small Generator Interconnection Agreements and Procedures; Advance Notice of Proposed Rulemaking

Issued: August 16, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) seeks comments on standard small generator interconnection agreements and procedures that would be applicable to all public utilities that own, operate, or control transmission facilities under the Federal Power Act. The small generator agreements and procedures also would apply to any non-public utility that seeks voluntary compliance with jurisdictional transmission tariff reciprocity conditions. The Commission expects that this rulemaking will enhance competition in the energy market and increase the number of new generation resources that will participate in the market, thereby furthering customer choice of technologies and fuels, allowing more customer options in response to high generator prices, and facilitating the development of non-polluting alternatives such as photovoltaics and small wind resources.

DATES: Written comments must be received by the Commission by November 4, 2002.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael G. Henry (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8532.

G. Patrick Rooney (Technical Information), Office of Market, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6205.

Bruce A. Poole (Technical Information), Office of Market, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE.,

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Washington, DC 20426, (202) 502–8468.
James S. Ballard (Technical Information), Office of Market, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8729.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

1. The Federal Energy Regulatory Commission (Commission) proposes to adopt standard small generator interconnection agreements and procedures that would be applicable to all public utilities that own, operate, or control transmission facilities under the Federal Power Act, as discussed more fully below. The Commission requests comments on these contractual provisions and procedures. After considering these comments, the Commission will issue a notice of proposed rulemaking (NOPR).

2. The rulemaking is in the public interest because small generators will enhance competition in the energy market. The Commission expects that, as a result of this rulemaking, an increasing number of new generation resources will participate in the market, thereby furthering customer choice of technologies and fuels, allowing more customer options in response to high generator prices, and facilitating development of non-polluting alternatives such as photovoltaics and small wind resources.

I. Background

3. The Commission issued an Advance Notice of Proposed Rulemaking (ANOPR) on October 25, 2001 in Docket No. RM02–1–000[1] to develop standardized generator interconnection agreements and procedures for all sizes of generators. We also initiated a collaborative process in which interested members of the electric industry, government, and the public (collectively, stakeholders) had an opportunity to provide input into the drafting of an interconnection procedures (IP) document and a standard interconnection agreement (IA). Public meetings of these stakeholders culminated in the development of a consensus IA and IP, which were filed with the Commission on January 11, 2002.

4. On April 24, 2002, the Commission issued its Notice of Proposed Rulemaking (Interconnection NOPR),[2] which included a standard IA and IP, proposed to be incorporated into existing and future open access transmission tariffs. The proposed IA and IP generally track the consensus documents filed with the Commission, but also resolved several important issues that remained in dispute after the stakeholder process.

5. Section 14 of the IP contains expedited procedures for small generators (defined as generators of 20 megawatts (MW) or less). The Commission noted in the NOPR that it has jurisdiction over generator interconnections when a generator interconnects to a transmission provider's transmission system or makes wholesale sales in interstate commerce at either the transmission or distribution voltage level.[3]

6. The Commission's authority for these proposed rules is under sections 205 and 206 of the Federal Power Act.[4] Thus, the recent *Atlantic City Electric* appellate decision[5] is inapposite. In *Atlantic City Electric*, the court reasoned that the authority exercised by the Commission in Section 203 to require Commission approval prior to a utility's withdrawal from an ISO could not be reconciled with the voluntary nature of utilities' coordination and interconnection arrangements in section 202. The court also noted that the petitioners did not dispute Commission authority to take similar action under section 205. Because in this proceeding the Commission relies on sections 205 and 206 for the authority to require interconnection agreements and procedures, *Atlantic City Electric* has no bearing on the authority exercised here.

II. Discussion

7. In their comments on the interconnection NOPR, supporters of small generators[6] requested that the Commission adopt separate rules and procedures for interconnecting small generators. They argue that applying an IP and IA designed for larger generators to generators of 20 MW or less (*i.e.*, small generators) will hinder small generator development. Supporters seek streamlined procedures and requirements that allow small generators to avoid unnecessary delay caused by interconnection studies and queues established for larger generators and their greater impact on the grid. The Small Generator Commenters, in their comments on the Interconnection NOPR, recommend detailed, simplified procedures and agreements that allow for quick, inexpensive, and simple interconnection for small generators up to and including 2 MW and a different procedure and agreement for units over 2 MW up to and including 20 MW.[7]

8. Consistent with these requests, the Commission is persuaded that we should develop separate small generator standardized IAs and IPs (SGIAs and SGIPs) to provide the right incentives for both transmission providers and small generators. Accordingly, the Commission proposes to adopt SGIAs and SGIPs that would be applicable to all public utilities that own, operate, or control transmission facilities under the Federal Power Act. To that end, we now sever the interconnection of generators up to and including 20 MW from the proposed rulemaking in Docket No. RM02–1–000 and treat them separately here.[8]

9. The Commission is considering basing the SGIAs and SGIPs on those filed by the Small Generator Commenters. The Commission notes that while these SGIAs and SGIPs are not identical to the ERCOT and PJM models, certain of their features make them appropriate models for development of a separate rule.[9] First, these proposals are based on existing agreements and procedures accepted by several states and benefit from the work undertaken in those fora to craft procedures and agreements acceptable to all parties. Second, the documents offer a reasonable balancing of burdens. In particular, if certain conditions are met that show "no impact"[10] on the transmission grid, the burden is placed on the transmission provider to justify any refusal to permit the interconnection or require specific system upgrades. Should the small generator not meet the "no impact" threshold test, simple studies can be completed by the transmission provider to determine required system upgrades. Third, these conditions have proven helpful in the Electric Reliability Council of Texas (ERCOT) and PJM. A similar threshold used in PJM's Small Resource Interconnection tariff provisions for generators up to and including 10MW is working well.[11] Given the features of these SGIAs and SGIPs and their track record, we conclude that they should be used in an advance NOPR process for small generator interconnections.

10. The Commission, therefore, offers these SGIAs and SGIPs as models, and concludes that the procedures and terms of these proposals balance interconnection procedures with reliability and grid impact. But we are open to any proposals that may better meet the goals of this rulemaking. We find these SGIAs and SGIPS a valuable and efficient starting point from which to initiate further discussion and build consensus between the parties. Accordingly, these SGIPs and SGIAs, which already represent the efforts of industry participants, will provide a solid foundation as a proposal that will be developed into a subsequent NOPR. The proposals are attached to this ANOPR as Attachment A (for units up to and including 2 MW) and Attachment B (for units over 2 MW up to and including 20 MW).

11. The Commission strongly encourages interested persons to pursue consensus on these SGIPs and SGIAs. To this end the Commission proposes to convene one or more conferences to enable the parties to discuss and reach agreement on the proposed SGIAs and SGIPs. The initial meeting will be open to all interested parties. The meeting will take place September 9 and 10, 2002, at 10 a.m., at the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC. The expectations for this meeting will be for the participants to form working groups for the purpose of developing consensus SGIAs and SGIPs for small generators up to and including 2MW and also for small generators over 2 MW up to and including 20 MW.[12] In addition, the Commission has established a dedicated web page to facilitate the consensus-building and collaborative process at *smallgen.intranets.com*. The Commission will issue a NOPR before the end of the year, with the expectation that a final rule will be issued in March 2003.

12. Commenters advocating standard small generator agreements and procedures other than the models in Attachments A and B must specify in detail how their proposals differ from the foregoing and are superior to the proposals herein. Any approaches suggested by commenters must serve the public interest by promoting competition and economic efficiency. We are particularly interested in efforts to incorporate into our proposed SGIAs and SGIPs the draft distributed generation interconnection procedures and agreement recently released by the National Association of Regulatory Utility Commissioners.

13. By November 4, 2002, the comment deadline, participants will file their SGIP and SGIA documents reflecting as much consensus as possible as well as specific language proposals and pros and cons for any unresolved issues. Parties disagreeing with particular provisions must offer alternative provisions and a full explanation of and justification for the change. Any consensus reached among all interested persons will be considered by the Commission as it prepares the subsequent NOPR, to the extent consistent with the Commission's statutory responsibilities.

III. Comment Procedures

14. The Commission invites interested persons to submit comments, data, views and other information concerning matters set out in this notice.

15. To facilitate the Commission's review of the comments, commenters are requested to provide an executive summary of their positions. Commenters are requested to identify each specific issue posed by the ANOPR that their discussion addresses and to use appropriate headings that clearly identify the relevant SGIA and SGIP sections. Additional issues the commenters wish to raise should be identified separately. The commenters should double-space their comments.

16. Comments may be filed on paper or electronically via the Internet and must be received by the Commission by November 4, 2002. Comments should include an executive summary. Those filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of initial and reply comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. RM02–12–000.

17. Documents filed electronically via the Internet can be prepared in a variety of formats, including WordPerfect, MS Word, Portable Document Format, Real Text Format, or ASCII format, as listed on the Commission's web site at *http://ferc.gov*, under the e-Filing link. The e-Filing link provides instructions for how to Login and complete an electronic filing. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt of comments. User assistance for electronic filing is available at 202–208–0258 or by E-Mail to *efiling@ferc.gov*. Comments should not be submitted to the E-Mail address.

18. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through either FERC's Homepage using the Federal Energy Regulatory Records Information System (FERRIS) link or the dedicated Small Generator web page.

IV. Document Availability

19. The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room

[1] Standardizing Generator Interconnection Agreements Procedures, Advance Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 35,540 (2001).

[2] Standardization of Generator Interconnection Agreements and Procedures, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,560 (2002).

[3] Standardization of Generator Interconnection Agreements Procedures, FERC Stats. & Regs. ¶ 32,560 at 34,178 (2002).

[4] *New York* v. *FERC*, 122 S.Ct. 1212 (2002).

[5] *Atlantic City Electric Co.* v. *FERC*, No. 97–1097 (D.C. Cir. July 12, 2002).

[6] The Solar Energy Industries Association, the U.S. Fuel Cell Council, the American Solar Energy Society, the U.S. Combined Heat and Power Association, the International District Energy Association, and the American Wind Energy Association (collectively, the Small Generator Commenters).

[7] According to Small Generator Commenters, interconnection approval would be based on meeting national codes, standards and models for interconnected operations already used in Texas and the Pennsylvania-New Jersey-Maryland Interconnection (PJM) and which contain all the necessary reliability protections in simple, understandable, and effective terms. For generators meeting these criteria, very limited or no review would be required by the transmission provider.

[8] Comments involving small generator issues that have a bearing on the final rule to be issued in Docket No. RM02–1–000 will still be considered in that proceeding.

[9] The SGIP and SGIA for generators up to and including 2 MW is based on the documents adopted and approved by the Texas Public Utility Commission. The other SGIP and SGIA is based on the PJM model, which has been applied in the PJM member states, which include Delaware, Maryland, New Jersey, and Pennsylvania.

[10] A presumption of "no impact" will normally be made if the following conditions are met: (1) The project's export of electricity (net of on-site load) would not exceed, cumulatively with all prior small resources on the system, (a) 15% of the peak load on a radial system feeder or (b) 25% of the minimum load on a network link, and (2) the project's capability does not exceed 25% of the maximum short circuit potential.

[11] Since this program was initiated in 1999, PJM has interconnected some 19 small generators. PJM engineers state that the program seems to work well and 99% of the time they can work the small generator out of queue order and expedite interconnection with no problems. Transmission providers have not filed major complaints and an informal survey of regulators (Maryland Public Service Commission, Pennsylvania Public Utility Commission, Delaware Public Service Commission, and New Jersey Board of Public Utilities) revealed only support for this process.

[12] We note that the procedures in Attachments A and B differ in the manner in which they are incorporated into the transmission provider's open access transmission tariff (OATT). The procedures in Attachment A would be appended to the interconnection procedures proposed in the rulemaking in Docket No. RM02–1–000, and the procedures in Attachment B would be added directly to the text of a transmission provider's OATT. We encourage parties to reach consensus on which method is preferred.

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during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426. This document will be published in the **Federal Register**.

20. From FERC's Home Page on the Internet, this information is available in FERRIS. The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

21. User assistance is available for FERRIS and the FERC's website during normal business hours from our Help line at (202) 208–2222 or the Public Reference Room at (202) 208–1371 Press 0, TTY (202) 208–1659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*.

By direction of the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

Attachment A—Expedited Interconnection Procedures—Small Generators (Up to and Including 2 MW) (To be Included With Section 14.2.3 of the Interconnection Procedures Under Consideration in FERC Docket RM02–1–000)

1. Application and Definitions

a. This expedited interconnection procedure is available for small generators up to and including 2 MW in size that will participate in a FERC regulated market, sell power for resale in interstate commerce or are interconnected to a FERC regulated transmission line. These procedures apply only to generators that meet certain national standards addressing technical requirements for continuous interconnected operation of small generators. In addition the generator must meet certain criteria regarding the relationship between the size of the generator and the size of the circuit to which they will interconnect. Small generators meeting these standards are entitled to a presumption of approval of the interconnection without additional testing, fees, or other requirements imposed by the interconnecting Transmission Provider or any Affected System utility.

Although generators meeting all the standards herein are entitled to a presumption of approval, the presumption is rebuttable. Should the Transmission Provider or Affected System petition the FERC to require additional testing because of special circumstances and received Commission approval, the generator would then have to undergo additional testing and interconnection study at the generator's expense.

b. Definitions: Unless otherwise defined herein, terms shall have the meanings specified in Article 1 of the Standard Generator Interconnection Procedures issued in FERC Docket No. RM02–1–000.

2. National Codes and Standards

Small generators must comply with all national codes and standards applicable to the ongoing interconnected operation of a small generator with the electricity grid.

3. Technical Requirements

Under the national codes and standards applicable to small interconnected generators, a generator may not energize or re-energize a circuit unless grid voltage is present and within normal operating bounds. A small generator must immediately and automatically disconnect from the grid and cease interconnected operations any time the grid is de-energized or outside of normal operating bounds. The codes and standards also dictate acceptable operating conditions for the small generators including, but not limited to, voltage, frequency and harmonics.

4. Threshold for Determination of the Presumption of No Grid Impact

For interconnections on radial circuits the small generator (in aggregate with other generation on the circuit) may not exceed 15 percent of the total measured peak load or design capacity of the circuit (as most recently measured at the substation). For interconnections on networked circuits, the small generator (in aggregate with other generation on the circuit) may not exceed 25 percent of the minimum measured load on the circuit. A small generator may not contribute more than 25 percent of the maximum short circuit current at the point of interconnection.

5. Analysis of Interconnection—Limited Interconnection Studies—Costs

If a small generator meets all of the criteria in Sections 1–4, the impact and facilities studies are waived. A limited feasibility study may be conducted to determine compliance with the load and short circuit contributions in Section 4. This study must be completed in 15 days after acceptance of a valid interconnection request. Costs to the generator are waived if short circuit calculations have recently been performed in the area of the interconnection or if the short circuit and load thresholds are sufficiently greater than the generator capacity that no calculations are needed.

6. Disputes

If a dispute arises during the application of these procedures, either the generator or Transmission Provider may seek immediate resolution through FERC's alternative dispute resolution process. At the generator's option, dispute resolution will be binding. Alternative dispute resolution may include any dispute resolution services made available by the FERC including those that occur by telephone.

Should a Transmission Provider desire a waiver from these procedures that would otherwise apply to the small generator interconnection, the Transmission Provider must seek such wavier from FERC within 15 days of the receipt of a valid small generator interconnection request. The Transmission Provider shall have the burden to show, in a clear and convincing manner, why the application of these rules would result in an unsafe or unreliable interconnection or that the interconnection would interfere with the quality of electric service to other customers.

7. Capacity and Energy; Metering

Small generators are entitled to participate in any available energy and capacity markets and receive the appropriate compensation due to participants in those markets. Metering shall be installed as needed to participate in the various markets.

Standard Agreement for Interconnection and Parallel Operation of Small Generation Systems (Pre-Certified Systems up to and Including 2 MW)

This Interconnection Agreement ("Agreement") is made and entered into this ____day of _____, 19__, by _____, ("Transmission Provider"), and_____("Generator"), a [specify whether corporation, and if so name state, municipal corporation, cooperative corporation, or other], each hereinafter sometimes referred to individually as "Party" or both referred to collectively as the "Parties". In consideration of the mutual covenants set forth herein, the Parties agree as follows:

1. *Definitions*

Unless otherwise defined herein, terms in this Agreement shall have the meanings specified in Article 1 of the STANDARD GENERATOR INTERCONNECTION AND OPERATING AGREEMENT (IA) issued in FERC Docket No. RM02–1–000.

2. *Scope of Agreement*—This Agreement is applicable to conditions under which the Transmission Provider and the Generator agree that one or more generating facility or facilities up to and including two (2) MW to be interconnected to the Transmission Provider's system, as described in Exhibit A.

3. *Establishment of Point(s) of Interconnection*—Transmission Provider and Generator agree to interconnect the Facility at the locations specified in this Agreement and in accordance with Federal Energy Regulatory Commission Rules relating to Interconnection of Small Generation systems.

4. *Responsibilities of Transmission Provider and Generator*—Each Party will, at its own cost and expense, operate, maintain, repair, and inspect, and shall be fully responsible for, Facility or Facilities which it now or hereafter may own unless otherwise specified on Exhibit A. Generator shall conduct operations of its facility(s) in compliance with all aspects of the Rules, and Transmission Provider shall conduct operations on its utility system in compliance with all aspects of the Rules, or as further described and mutually agreed to in the applicable Facility Schedule. Maintenance of Generator and associated interconnection equipment shall be performed in accordance with the applicable manufacturer's recommended maintenance schedule. The Parties agree to cause their Facilities or systems to be constructed in accordance with applicable specifications equal to or greater than those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE and Underwriter's Laboratory in effect at the time of construction. Each Party covenants and agrees to design, install, maintain, and operate, or cause the design, installation, maintenance, and operation of its transmission and distribution system and related Facilities and Units so as to reasonably minimize the likelihood of a disturbance, originating in the system of one Party, affecting or impairing the system of the other Party, or other systems with which a Party is interconnected.

Transmission Provider will notify Generator if there is evidence that the operation of Generator's equipment causes disruption or deterioration of service to other customers served from the same grid or if the generator operation causes damage to Transmission Provider's or Affected Systems. Generator will notify Transmission Provider of any emergency or hazardous condition or occurrence with the Generator's Unit(s) which could affect safe operation of the system.

5. *Limitation of Liability and Indemnification*

The Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's performance of obligations under this Agreement on behalf of the indemnifying Party, except in cases of negligence or intentional wrongdoing by the indemnifying Party.

6. *Right of Access, Equipment Installation, Removal & Inspection*—Upon reasonable notice, the Transmission Provider may send a qualified person to the premises of the Generator at or immediately before the time the Facility first produces energy to inspect the interconnection, and observe the Facility's commissioning (including any testing), startup, and operation for a period of up to no more than three days after initial startup of the unit.

Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, Transmission Provider shall have access to Generator's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers.

7. *Disconnection of Unit*—Generator retains the option to disconnect from Transmission Provider's utility system. Generator will notify the Transmission Provider of its intent to disconnect by giving the Transmission Provider at least thirty days' prior written notice. Such disconnection shall not be a termination of the agreement unless Generator exercises rights under Section 7.

Generator shall disconnect Facility from Transmission Provider's system upon the effective date of any termination under Section 7.

Subject to Commission Rule, for routine maintenance and repairs on Transmission Provider's utility system, Transmission Provider shall provide Generator with seven business days' notice of service interruption. Transmission Provider shall have the right to suspend service in cases where continuance of service to Generator will endanger persons or property. During the forced outage of the Transmission Provider's utility system serving Generator, Transmission Provider shall have the right to suspend service to effect immediate repairs on Transmission Provider's utility system, but the Transmission Provider shall use its best efforts to provide the Generator with reasonable prior notice.

8. *Effective Term and Termination Rights*—This Agreement becomes effective when executed by both parties and shall continue in effect until terminated. The agreement may be terminated for the following reasons:

(a) Generator may terminate this Agreement at any time, by giving the Transmission Provider sixty days' written notice;

(b) Transmission Provider may terminate upon failure by the Generator to generate energy from the Facility in parallel with the Transmission Provider's system within twelve months after completion of the interconnection;

(c) Either party may terminate by giving the other party at least sixty days prior written notice that the other Party is in default of any of the material terms and conditions of the Agreement, so long as the notice specifies the basis for termination and there is reasonable opportunity to cure the default; or

(d) Transmission Provider may terminate by giving Generator at least sixty days notice in the event that there is a material change in an applicable rule or statute.

9. *Governing Law and Regulatory Authority*—The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the State where the Point of Interconnection is located, without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

10. *Amendment*—This Agreement may be amended only upon mutual agreement of the Parties, which amendment will not be effective until reduced to writing and executed by the Parties.

11. *Entirety of Agreement and Prior Agreements Superseded*—This Agreement, including all attached Exhibits and Facility Schedules, which are expressly made a part hereof for all purposes, constitutes the entire agreement and understanding between the Parties with regard to the interconnection of the facilities of the Parties at the Points of Interconnection expressly provided for in this Agreement. The Parties are not bound by or liable for any statement, representation, promise, inducement, understanding, or undertaking of any kind or nature (whether written or oral) with regard to the subject matter hereof not set forth or provided for herein. This Agreement replaces all prior agreements and undertakings, oral or written, between the Parties with regard to the subject matter hereof, including without limitation [specify any prior agreements being superseded], and all such agreements and undertakings are agreed by the Parties to no longer be of any force or effect. It is expressly acknowledged that the Parties may have other agreements covering other services not expressly provided for herein, which agreements are unaffected by this Agreement.

12. *Notices*—Notices given under this Agreement are deemed to have been duly delivered if hand delivered or sent by United States certified mail, return receipt requested, postage prepaid, to:

(a) If to Transmission Provider:

_____

_____

_____

_____

(b) If to Generator:

_____

_____

_____

_____

The above-listed names, titles, and addresses of either Party may be changed by written notification to the other, notwithstanding Section 10.

13. *Invoicing and Payment*—Invoicing and payment terms for services associated with this agreement shall be consistent with applicable Rules of the Commission.

14. *No Third-Party Beneficiaries*—This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

15. *No Waiver*—The failure of a Party to this Agreement to insist, on any occasion,

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upon strict performance of any provision of this Agreement will not be considered to waive the obligations, rights, or duties imposed upon the Parties.

16. *Headings*—The descriptive headings of the various articles and sections of this Agreement have been inserted for convenience of reference only and are to be afforded no significance in the interpretation or construction of this Agreement.

17. *Multiple Counterparts*—This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

In witness whereof, the Parties have caused this Agreement to be signed by their respective duly authorized representatives.

[Transmission Provider NAME]
BY: _____
TITLE: _____
DATE: _____
BY: _____
[Transmission owner NAME (if different from Transmission Provider)]
BY: _____
TITLE: _____
DATE: _____
[Generator NAME]
BY: _____
TITLE: _____
DATE: _____

Exhibit A to the Agreement

FACILITY SCHEDULE NO._____

[The following information is to be specified for each Point of Interconnection, if applicable.]

1. Name:
2. Facility location:
3. Delivery voltage:
4. Metering (voltage, location, losses adjustment due to metering location, and other):
5. Normal Operation of Interconnection:
6. One line diagram attached (check one):_____ Yes /_____ No
7. Facilities to be furnished by Transmission Provider (usually none):
8. Facilities to be furnished by Generator (usually contained with pre-certified generator):
9. Cost Responsibility (if any):
10. Control area interchange_____
11. Supplemental terms and conditions attached (check one):_____ Yes /_____ No

Exhibit B to the Agreement—Small Generator Interconnection Application (For Use With Generators up to and Including 2 MW)

An applicant (Generator Owner) makes application to_____(Transmission Provider) to install and operate a generating facility up to and including 2 MW interconnected with the _____ utility system. This application, unless otherwise established at the scoping meeting between Generator Owner and Transmission Provider, will be considered as application for a feasibility study for generators under Federal Energy Regulatory Commission rules for expedited treatment of generators up to and including 2 MW in capacity.

Section 1, Applicant Information

Name: _____
Mailing Address: _____
City: _____
State: _____
Zip Code: _____
Facility Location (if different from above): _____
Telephone (Daytime):
Area Code _____
Number _____
(Evening) Area Code _____
Number _____
Account No. (if applicable): _____
Pole Number: _____
Energy Service Provider Name: _____

Section 2, Generator Qualifications

(Informational only) Is the generator a Qualifying Facility as defined under Subpart B, Section 201 of the Federal Energy Regulatory Commission's regulations per the Public Utility Regulatory Policies Act of 1978?
_____ Yes
_____ No

Is Generator powered from a Renewable Qualifying Energy Source:
_____ Yes
_____ No

Type Qualifying Energy Source (if applicable):
_____ Solar
_____ Wind
_____ Hydro
_____ Other

Other generator energy source:
_____ Diesel, Natural Gas
_____ Diesel, Fuel Oil

Other: _____
(State type)

Will excess power be exported?
_____ Yes
_____ No

Site Load: _____ kW (Typical)
Maximum Export: _____ kW.

Section 3, Generator Technical Information

Type of Generator:
_____ Synchronous
_____ Induction
_____ DC Generator or Solar with Inverter

Generator (or solar collector) Manufacturer, Model Name & Number: _____

(A copy of Generator Nameplate and Manufacturer's Specification Sheet may be substituted)

Output Power Rating in kW:
_____
_____ Single phase
_____ Three phase

Inverter Manufacturer, Model Name & Number (if used): _____

Adjustable Setpoints _____

(A copy of Inverter Manufacturer's Specification Sheet may be substituted)

Generator Characteristic Data (For Rotating Machines)

(Not needed if Generator Nameplate and Manufacture's Specification Sheet is provided)

Direct Axis Synchronous Reactance, X_d: _____ P.U.

Direct Axis Transient Reactance, X'_d: _____ P.U.

Direct Axis Subtransient Reactance, X''_d: _____ P.U.

Negative Sequence Reactance: _____ P.U.

Zero Sequence Reactance: _____ P.U.

KVA Base: _____

Section 4, Interconnecting Equipment Technical Data

Will an interposing transformer be used between the generator and the point of interconnection?
_____ Yes
_____ No

Transformer Data (if Applicable, for Customer Owned Transformer)

(A copy of transformer Nameplate and Manufacturer's Test Report may be substituted)

Size: _____ KVA.

Transformer Primary:
_____ Volts
_____ Delta
_____ Wye _____ Wye Grounded

Transformer Secondary:
_____ Volts
_____ Delta
_____ Wye
_____ Wye Grounded

Transformer Impedance: _____ % on _____ KVA Base

Transformer Fuse Data (if Applicable, for Customer Owned Fuse)

(Attach copy of fuse manufacturer's Minimum Melt & Total Clearing Time-Current Curves)

Manufacturer:
_____ Type:
_____ Size:
_____ Speed:
_____

Interconnecting Circuit Breaker (if Applicable)

(A copy of breaker's Nameplate and Specification Sheet may be substituted)

Manufacturer:
_____ Type:
_____ Load Rating: (Amps)
_____ Interrupting Rating: (Amps)
_____ Trip Speed: (Cycles) _____

Circuit Breaker Protective Relays (if Applicable)

(Enclose copy of any proposed Time-Overcurrent Coordination Curves)

Manufacturer: _____ Type: _____ Style/ Catalog No.: _____ Proposed Setting: _____

Manufacturer: _____ Type: _____ Style/ Catalog No.: _____ Proposed Setting: _____

Manufacturer: _____ Type: _____ Style/ Catalog No.: _____ Proposed Setting: _____

Manufacturer: _____ Type: _____ Style/ Catalog No.: _____ Proposed Setting: _____

Current Transformer Data (if Applicable)

(Enclose copy of Manufacturer's Excitation & Ratio Correction Curves)

Manufacturer: _____ Type: _____ Accuracy Class: _____ Proposed Ratio Connection: _____ /5

Manufacturer: _____ Type: _____ Accuracy Class: _____ Proposed Ratio Connection: _____ /5

Section 5, General Technical Information

Enclose copy of site One-Line Diagram showing configuration and interconnection of all equipment, current and potential circuits and protection and control schemes. Is One-Line Diagram Enclosed?: _____ Yes

Enclose copy of any site documentation that describes and details the operation of the protection and control schemes. Is Any Available Documentation Enclosed?: _____ Yes

Enclose copies of schematic drawings for all protection and control circuits, relay current circuits, relay potential circuits, and alarm/monitoring circuits (if applicable). Are Schematic Drawings Enclosed? _____Yes

Section 6, Installation Details

Installing Electrician: _____
Firm: _____
License No.: _____
Mailing Address: _____
City: _____
State: _____
Zip Code: _____
Telephone: Area Code:_____Number: _____
Installation Date: _____
Interconnection Date: _____

Supply certification that the generating system has been installed and inspected in compliance with the local Building/ Electrical code of the municipality of _____

Signed (Inspector): _____
Date: _____

(In lieu of signature of Inspector, a copy of the final inspection certificate may be attached)

Section 7, Generator/Equipment Certification

Generating systems must be compliant with *IEEE, NEC, ANSI, and UL standards.* By signing below, the Applicant certifies that the installed generating equipment meets the appropriate preceding requirement(s) and can supply documentation that confirms compliance.

Signed (Applicant): _____
Date: _____

Section 8, Applicant Signature

I hereby certify that, to the best of my knowledge, all the information provided in the Interconnection Application is true and correct. I also agree to install a Warning Label provided by (utility) on or near my service meter location.

Signature of Applicant: _____
Date: _____
Send the completed application to: _____
(Utility Address)
This section for use by _____(utility) Only

Section 9, Approval or Non-Approval

(Utility):
_____Has Approved
_____Has Not Approved this Interconnection Application.

Name: _____
Date: _____
Signature: _____
Reason for Not Approving: _____

Approval to connect to the Company system indicates only that the minimum requirements for a safe proper interconnection have been satisfied. Such approval does not imply that the Generator Owner's facility meets all federal, state and local standards or regulations.

Section 10, Internal Notifications

Send Applicant Warning Label for installing on/ near service meter:
_____Yes

Notify Billing Dept. of Interconnected Generation:
_____Yes

Notify District Engineering of Interconnected Generation:
_____Yes

Notify System Protection of Interconnected Generation:
_____Yes

Attachment B.—Small Resource Interconnection Procedures; Draft Open Access Transmission Tariff Provisions

Original Sheet No._____

[TRANSMISSION OWNER]

FERC Open Access Transmission Tariff

Small Resource Interconnection Procedures

Requests for the interconnection of new generation resources over 2 MW up to and including 20 MegaWatts (MW)("small resource") shall be processed, pursuant to this Section _____ of the Tariff, through expedited procedures. These provisions describe procedures for such "small resource" additions.

Such small resources may participate in [TRANSMISSION OWNER's] energy and capacity markets and may, therefore, be used by load serving entities to meet capacity obligations imposed under all applicable Agreements. These procedures apply to generation resources which, when connected to the system, are expected to remain connected to the system for the normal life span of such a generation resource. These procedures do not apply to small resources that are specifically being connected to the system temporarily, with the expectation that they will later be removed.

Section 1.01—Application and Information Availability

The Interconnection Customer desiring the interconnection of a new capacity resource over 2 MW up to and including 20 MW must submit a completed Feasibility Study Request. No deposit or other advance payment is required from small resources, but all information required by the Feasibility Study Request related to the generating project site, point of interconnection, and generating unit size and configuration must be provided. To assist Interconnection Customers in avoiding Feasibility Study Requests where there is no likely feasibility, [TRANSMISSION OWNER] will designate an employee or office from which basic information concerning system capacities and usage can be obtained through informal requests. [TRANSMISSION OWNER] will further post on its web-site a list of prior system studies, interconnection studies, and other relevant materials useful to an understanding of the feasibility of an interconnection at particular points in its system. Interconnection Customers may request access to or copies of studies or analyses that may be useful to assess in advance the feasibility of an interconnection at particular points of [TRANSMISSION OWNER's] system to the extent necessary to supplement information available from the designated employee or office. [TRANSMISSION OWNER] shall comply with reasonable requests for access to or copies of such studies. Interconnection Customer shall comply with reasonable restrictions on its use of such studies, including preserving their confidentiality and limiting their use to the purpose for which they were requested.

Section 1.02—Site Control

Documentation of site control must be submitted for small resource additions with the completed Feasibility Study Request. Site control may be demonstrated through an exclusive option to purchase the property on which the generation project is to be developed, a property deed, or a range of tax or corporate documents that identify property ownership. Site control must either be in the name of the party submitting the generation interconnection request or documentation must be provided establishing a sufficient business relationship between the project developer and the party having site control.

Section 1.03—Scoping Meeting

Once it has been established that the requirements related to the submission of the Feasibility Study Request have been met, an initial Scoping Meeting will be held within ten days of the receipt of the completed Feasibility Study Request. [TRANSMISSION OWNER] will be represented at such Scoping Meeting by system engineers of sufficient rank and experience to provide a judgment within three working days after the scoping meeting of whether a Feasibility Study is required or not. This judgement will be based on the size of the proposed resource in MW, the intended mode of operation of the proposed small resource (in parallel with the system or not), and the load and short-circuit conditions on the line to which interconnection is proposed. If it is obvious that the project is feasible as proposed, no feasibility study will be conducted. In that event, the small resource generation interconnection request will be entered into the then current generation interconnection queue for connection priority only. The analysis process will not be subject to any queue required of Interconnection Customer applicants larger than 20 MW.

Section 1.04—Feasibility Study

Where required, Feasibility Study analyses for small resources can generally be expedited by examining a limited contingency set that focuses on the impact of the small capacity addition on contingency limits in the vicinity of the capacity resource.

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Generally, small capacity additions will have very limited and isolated impacts on system facilities. If criteria violations are observed, further AC testing is required. Short circuit calculations are performed for small resource additions to ensure that circuit breaker capabilities are not exceeded. Barring unusual circumstances, a Feasibility Study must be completed within fifteen working days of the Scoping Meeting.

Section 1.05—Feasibility Study Cost and Report

It is presumed that a Feasibility Study can be completed utilizing prior existing interconnection and system studies, design documents, and standard utility operating assumptions, listed on the web-site per Section 1.01 above, and at no cost to the Interconnection Customer. In the event that a Feasibility Study requires analysis or system study that is not available, [TRANSMISSION OWNER] must so indicate, must perform the study, and must pay half of the costs of such study, with Interconnection Customer paying the other half of such costs. In the event an existing study or analysis critical to a Feasibility Study was nonetheless omitted from the list on the web-site of [TRANSMISSION OWNER], the Interconnection Customer shall not be required to pay any portion of the Feasibility Study. Once the Feasibility Study is completed, a Feasibility Study report will be prepared and transmitted to the Interconnection Customer along with an Impact Study Agreement within five additional working days. If no Criteria Violations are identified by the Feasibility Study no Impact Study will be required. Any study costs that Interconnection Customers are expected to pay will be invoiced to the Interconnection Customer after the study is completed and delivered, and will include itemization of professional time (at specified reasonable hourly rates) and materials required. Disputes over study costs will be submitted to binding arbitration. Interconnection Customers must pay Study Costs within 30 days of receipt of the invoice or resolution of any dispute.

Section 1.06—Impact Study

If Criteria Violations are identified in the Feasibility Study, an Impact Study will be required. In order to remain in the interconnection queue, the Interconnection Customer must return an executed Impact Study Agreement within 30 days, along with documents demonstrating that an initial air permit application has been filed, if required. The requirement for a deposit associated with the Impact Study Agreement is waived; however, the Interconnection Customer is responsible for all costs associated with the performance of the Impact Study related to the request. Any Impact Study required should be completed within fifteen working days of the receipt of the Impact Study Agreement. In cases where no network impacts are identified and there are no other projects in the vicinity of the small resource addition, the Impact Study shall not be required and the project will proceed directly to the Facilities Study.

Section 1.07—Criteria for Impact Study

As with the Feasibility Study, expedited analysis procedures will be utilized, where appropriate, in the course of the Impact Study. Load deliverability will only be evaluated for sub-areas where margins are known to be limited. In most cases, the addition of small capacity resources will improve local deliverability margins. However, if sub-area margins are known to be limited, the impact of the new resource will be evaluated based on its impact on the contingencies limiting emergency imports to the sub-area. In most cases, small capacity additions will have no impact on generator deliverability in an area. As a general rule, if the proposed small resource interconnection, considered cumulatively with all prior small resource interconnections, will not lead to exported power in excess of 15% of the peak day load on a radial feeder line or in excess of 25% of the minimum expected load on a network line, net of minimum on-site load supplied by the small resource, and if the small resource will not exceed 25% of the maximum short circuit potential at the point of interconnection, then there is a presumption of no impact. In that instance, [TRANSMISSION OWNER] must bear the burden and cost of demonstrating any impact requiring mitigation by additional network facilities. If violations are observed, more detailed testing using AC tools is required to determine levels of impact at the cost of the Interconnection Customer. Stability analysis is generally not performed for small capacity additions. New capacity resources over 2 MW up to and including 20 MW will only be evaluated if they are connected at a location where stability margins associated with existing resources are small. Short circuit calculations are performed during the Impact Study for small resource additions, taking into consideration all elements of the regional plan, to ensure that circuit breaker capabilities are not exceeded.

Section 1.08—Facilities Study Agreement

Once the Impact Study is completed, or if the Impact Study is not necessary, an Impact Study report or notice of the fact that no report is unnecessary will be prepared and transmitted to the Interconnection Customer along with a Facilities Study Agreement within five working days. In order to remain in the interconnection queue, the Interconnection Customer must return the executed Facilities Study Agreement within 30 days. If no transmission system facilities are required, the Facilities Study will not be required and the project will proceed directly to the execution of an Small Resource Interconnection Agreement. If a Facilities Study is required, the cost will be borne by the Interconnection Customer.

Section 1.09—Facilities Study Preparation

Transmission facilities design for any required Attachment Facilities and/or Network Upgrades will be performed through the execution of a Facilities Study Agreement between the Interconnection Customer and [TRANSMISSION OWNER]. The [TRANSMISSION OWNER] may contract with consultants, including the transmission owners, or contractors acting on their behalf, to perform the bulk of the activities required under the Facilities Study Agreement. In some cases, the Interconnection Customer and the [TRANSMISSION OWNER] may reach agreement allowing the Interconnection Customer to separately arrange for the design of some of the required transmission facilities. In such cases, facilities design will be reviewed, under the Facilities Study Agreement, by the transmission owner. Facilities design for small capacity additions will be expedited to the extent possible. In most cases, few or no network upgrades will be required for small capacity additions. Attachment facilities for some small capacity additions may, in part, be elements of a "turn key" installation. In such instances, the design of "turn key" attachments will be reviewed by the transmission owners or their contractors. In cases where system or network upgrades are required for small resource additions, the Facilities Study must be completed within ninety days of the receipt of the Facilities Study Agreement. In cases where no system or network upgrades are necessary, the Facilities Study must be completed in fifteen working days.

Section 1.10—Costs of Facilities

Where additional facilities are required to permit the interconnection of a small resource, and offer no benefit to the system capacity, the small resource interconnection applicant will bear the entire cost of such facilities.

Section 1.11—Small Resource Interconnection Agreement

A Small Resource Interconnection Agreement must be executed and filed with the FERC prior to undertaking the actual interconnection. The Small Resource Interconnection Agreement identifies the Interconnection Customer's obligations to pay for transmission facilities required to facilitate the interconnection and the Capacity Interconnection Rights which are awarded to the capacity resource. If a new capacity resource over 2 MW up to and including 20 MW can be quickly connected to the system, and put in service immediately, a modified Small Resource Interconnection Agreement will be executed. If such a connection is expedited through the Impact Study phase ahead of larger projects already in the interconnection queue, an Small Resource Interconnection Agreement will be executed granting interim Capacity Interconnection Rights. These interim rights will allow the connection to be implemented and the resource to participate in the capacity market until studies have been completed for earlier queued resources and all related obligations have been defined. At such time, the interim rights awarded the smaller capacity addition will become dependent on the construction of any required transmission facilities and the satisfaction of any financial obligations for those facilities. If, once those obligations are defined, the smaller capacity addition desires to retain the interim Capacity Interconnection Rights, a new Small Resource Interconnection Agreement will be executed.

Small Resource Interconnection Agreement Between [TRANSMISSION OWNER] and

[Small Generator]

Interconnection Service Agreement Between [Transmission Owner] and

[Interconnection Customer]

1.0 This Small Resource Interconnection Agreement ("SRIA"), dated as of [DATE], including the Specifications attached hereto and incorporated herein, is entered into by and between. _____ L.C. ("Transmission Owner") and [_____] ("Interconnection Customer"), who proposes to interconnect a generating unit over 2 MW up to and including 20 Megawatts to Transmission Owner's system.

2.0 Attached are Specifications for each generating unit that Interconnection Customer proposes to interconnect to Transmission Owner's Transmission System. Interconnection Customer represents and warrants that, upon completion of the construction of its facilities, it will own or control the generating facilities identified in section 1.0 of the Specifications attached hereto and made a part hereof. In the event that Interconnection Customer will not own the generating facilities, Interconnection Customer represents and warrants that it is authorized by the owners of such generating facilities to enter into this SRIA and to represent such control.

3.0 Interconnection Customer has requested an Small Resource Interconnection Agreement under the Transmission Owner's Open Access Transmission Tariff ("Tariff"), and Transmission Owner has determined that Interconnection Customer is eligible under the Tariff to obtain this SRIA.

4.0 In accord with Section _____ of the Tariff, Interconnection Customer, on or before the effective date of this SRIA, shall provide Transmission Owner with a letter of credit from an agreed provider or other form of security reasonably acceptable to Transmission Owner in the amount of $[_____] naming Transmission Owner [and Regional Transmission Organization, if applicable] ("the RTO") as beneficiaries. Should Interconnection Customer fail to provide security in the amount or form required in the first sentence of this section within thirty days of the date of this agreement, this SRIA shall be terminated. Interconnection Customer acknowledges that it will be responsible for the actual costs of the facilities described in the Specifications, whether greater or lesser than the amount of the payment security provided under this section.

5.0 This SRIA shall be effective on [DATE], and shall terminate on such date as mutually agreed upon by the parties, unless earlier terminated in accordance with the Tariff.

6.0 In addition to the milestones stated in Section _____ of the Tariff, during the term of this SRIA, Interconnection Customer shall ensure that its generation project meets each of the following development milestones:

a.

b.

c.

d.

Interconnection Customer shall demonstrate the occurrence of each of the foregoing milestones to Transmission Owner's reasonable satisfaction. Transmission Owner may reasonably extend any such milestone dates, in the event of delays that Interconnection Customer (I) did not cause and (ii) could not have remedied through the exercise of due diligence.

7.0 Transmission Owner agrees to provide for the interconnection to the Transmission System in the Transmission Owner Control Area of Interconnection Customer's generation facilities identified in the Specifications in accordance with Part___of the Tariff, and this SRIA, as they may be amended from time to time. Subject to Transmission Owner obtaining regulatory approval of appropriate provisions of the Tariff, interconnection of Interconnection Customer's generation facilities to the Transmission System under this SRIA may be subject to subsequent execution by the Interconnection Customer of an agreement or agreements with affected RTO(s) or Transmission Owner to establish terms governing matters, such as (but not limited to) construction of facilities, maintenance standards, parallel operation of generating facilities, insurance requirements, indemnification and liabilities, that, in accordance with state laws and good utility practice [as such term is defined in the [Operating Agreement or Tariff]], are ordinarily included in agreements between parties that are physically interconnecting their electric facilities.

8.0 Interconnection Customer agrees to abide by all rules and procedures pertaining to generation in the Transmission Owner Control Area, including but not limited to the rules and procedures concerning the dispatch of generation set forth in the Operating Agreement and the Tariff.

9.0 In analyzing and preparing the Facilities Study, and in designing and constructing the Attachment Facilities, Local Upgrades and/or Transmission Upgrades described in the Specifications attached to this SRIA, Transmission Owner, the RTO(s), and any other subcontractors employed by Transmission Owner have had to, and shall have to, rely on information provided by Interconnection Customer and possibly by third parties and may not have control over the accuracy of such information. Accordingly, neither Transmission Owner, the RTO(s), nor any other subcontractors employed by Transmission Owner makes any warranties, express or implied, whether arising by operation of law, course of performance or dealing, custom, usage in the trade or profession, or otherwise, including without limitation implied warranties of merchantability and fitness for a particular purpose, with regard to the accuracy, content, or conclusions of the Facilities Study or of the attachment facilities, the local upgrades and/or the transmission upgrades; provided, however, that Transmission Owner warrants that the transmission facilities described in the Specifications will be designed, constructed and operated in accordance with good utility practice. Interconnection Customer acknowledges that it has not relied on any representations or warranties not specifically set forth herein and that no such representations or warranties have formed the basis of its bargain hereunder.

10.0 a. Interconnection Customer shall be responsible for and shall pay upon demand all actual and reasonable costs associated with the interconnection of the generation facilities as specified in the Tariff. These costs may include, but are not limited to, an Attachment Facilities Charge, a Local Upgrades Charge, a Network Upgrades Charge and an Other Supporting Facilities Charge, as documented to be necessary and appropriate by a Facilities Study conducted in accordance with the Tariff. A description of the facilities required and an estimate of the cost of these facilities are included in Section 3.0 the Specifications to this SRIA.

b. The RTO shall provide Transmission Owner a monthly statement of the RTO's prior month's expenditures for the design, engineering and construction of, and/or for other charges related to, the facilities contemplated by this SRIA. Transmission Owner shall bill Interconnection Customer, on behalf of the RTO, for the RTO's expenditures each month. Interconnection Customer shall pay each bill within 15 days after receipt thereof. Upon receipt of each of Interconnection Customer's payments of such bills, Transmission Owner shall reimburse the RTO.

c. Within 45 days after the RTO completes construction and installation of the transmission facilities described in the Specifications, Transmission Owner shall provide Interconnection Customer with an accounting of, and the appropriate party shall make any payment to the other that is necessary to resolve, any difference between (1) Interconnection Customer's responsibility under this SRIA and the Tariff for the actual cost of such facilities, and (2) Interconnection Customer's previous aggregate payments to Transmission Owner and the RTO for such facilities. Notwithstanding the foregoing, however, Transmission Owner shall not be obligated to make any payment that the preceding sentence requires it to make unless and until the RTO has returned to it the portion of Interconnection Customer's previous payments that Transmission Owner owes under that sentence.

11.0 No third party beneficiary rights are created under this SRIA; provided, however, that payment obligations imposed on Interconnection Customer hereunder are agreed and acknowledged to be for the benefit of the RTO actually performing the services associated with the interconnection of the generating facilities and any associated upgrades of other facilities. Interconnection Customer expressly agrees that the company(ies) responsible for such upgrades shall be entitled to take such legal recourse as that entity deems appropriate against Interconnection Customer for the payment of any charges for the upgrades authorized under this SRIA or the Tariff for which Interconnection Customer fails, in whole or in part, to pay as provided in this SRIA, the Tariff and/or the Operating Agreement.

12.0 No waiver by either party of one or more defaults by the other in performance of

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any of the provisions of this SRIA shall operate or be construed as a waiver of any other or further default or defaults, whether of a like or different character.

13.0 This SRIA or any part thereof, may not be amended, modified, assigned, or waived other than by a writing signed by all parties hereto.

14.0 This SRIA shall be binding upon the parties hereto, their heirs, executors, administrators, successors, and assigns.

1.15 This SRIA shall not be construed as an application for service under any part of the Tariff.

16.0 In the event of a dispute arising between the parties under this SRIA, the dispute shall be submitted for informal resolution assistance to the RTO or ISO, if applicable, and other wise to the Federal Energy Regulatory Commission under the Alternative Dispute Resolution procedures conducted by the staff. If the dispute cannot be settled by such informal means, it shall be submitted for binding arbitration under the rules of the American Arbitration Association.

17.0 Any notice or request made to or by either party regarding this SRIA shall be made to the representative of the other party as indicated below.

Transmission Owner

TRANSMISSION OWNER

[CONTACT NAME/ADDRESS]

Interconnection Customer

SMALL GENERATOR

[CONTACT NAME/ADDRESS]

18.0 All portions of the Tariff and the Operating Agreement pertinent to the subject of this SRIA are incorporated herein and made a part hereof.

19.0 This SRIA is entered into pursuant to Part___of the Tariff.

20.0 Neither party shall be liable for consequential, incidental, special, punitive, exemplary or indirect damages, lost profits or other business interruption damages, by statute, in tort or contract, under any indemnity provision or otherwise with respect to any claim, controversy or dispute arising under this SRIA.

In witness whereof, Transmission Owner and Interconnection Customer have caused this SRIA to be executed by their respective authorized officials.

Transmission Owner

By:_____Name

Title _____

Date _____

Interconnection Customer

By:_____Name

Title _____

Date _____

Specifications for Interconnection Service Agreement Between TRANSMISSION OWNER and_____

1.0 Description of generating units to be interconnected with the Transmission System in the TRANSMISSION OWNER Control Area:

a. Name of generating units.

b. Location of generating unit site.

c. Size in megawatts of generating units.

d. Description of the equipment configuration.

2.0 Capacity Interconnection Rights:

Pursuant to Section___of___of the Operating Agreement, Interconnection Customer shall have Capacity Interconnection Rights at the location specified in Section 1.0a above in the amount___of megawatts.

3.0 Facilities to be constructed by the RTO:_____

4.0 Interconnection Customer shall be subject to the charges detailed below:_____

4.1 Attachment Facilities Charge:_____

4.2 Local Upgrades Charge:_____

4.3 Network Upgrades Charge:_____

4.4 Guaranty amount required:_____

4.5 Guaranty Reduction Schedule:_____

[FR Doc. 02–21613 Filed 8–23–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 265–0363b; FRL–7266–6]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) for the Santa Barbara County Air Pollution Control District (SBCAPCD). The revisions consist of negative declarations for four volatile organic compound source categories. The intended effect of this action is to bring the SBCAPCD portion of the California SIP up to date in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is proposing the approval of these negative declarations for the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas. EPA is approving these revisions in accordance with the requirements of the CAA.

DATES: Any comments on this proposal must arrive by September 25, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117–3027.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 947–4126. E-mail: *Rose.julie@EPA.gov.*

SUPPLEMENTARY INFORMATION: The negative declarations being approved for the Santa Barbara County Air Pollution Control District (SBCAPCD) portion of the California SIP are listed in the following Table:

SUBMITTED NEGATIVE DECLARATIONS

Local agency	Title	Adopted	Submitted
SBCAPCD	Synthetic Organic Chemical Manufacturing Industry (SOCMI) Batch Processing, Reactors, and Distillation.	02–21–02	04–09–02
	Wood Furniture Manufacturing Operations	02–21–02	04–09–02

In the final rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments.

A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 6, 2002.

Wayne Nastri,

Regional Administrator, , Region IX.

[FR Doc. 02–21557 Filed 8–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 100–0056b; FRL–7266–4]

Approval and Promulgation of State Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Arizona State Implementation Plan (SIP) for the Maricopa County Environmental Services Department (MCESD). The revisions consist of negative declarations for twelve volatile organic compound source categories for the MCESD. The intended effect of this action is to bring the MCESD portion of the Arizona SIP up to date in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is proposing the approval of these negative declarations for the MCESD portion of the Arizona SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas. EPA is approving these revisions in accordance with the requirements of the CAA.

DATES: Comments must arrive by September 25, 2002.

ADDRESSES: Mail comments to: Andy Steckel, Chief, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations: Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012. Maricopa County Environmental Services Department, 1001 North Central, No. 595, Phoenix, Arizona 85004.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 947–4126. e-mail: *Rose.julie@EPA.gov.*

SUPPLEMENTARY INFORMATION: The negative declarations being approved for the Maricopa County Environmental Services Department (MCESD) portion of the Arizona SIP are listed in the following Table:

SUBMITTED NEGATIVE DECLARATIONS

Local agency	Title	Adopted	Submitted
MCESD	Refinery Sources	04–26–00	12–14–00
	Automobile and Light Duty Trucks		
	Magnet Wire		
	Flatwood Paneling		
	Synthesized Pharmaceutical Products		
	Rubber Tire Manufacturing		
	Polymer Manufacturing		
	SOCMI		
	Batch Processes		
	Industrial Wastewater		
	Ship Building Repair		
	SOCMI Reactor/Distillation		

In the final rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments.

A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 6, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–21559 Filed 8–23–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Ch. I

[USCG–1998–3473]

RIN 2115–AF61

Emergency Response Plans for Passenger Vessels

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard is withdrawing and terminating its advance notice of proposed rulemaking concerning emergency response plans (ERPs) for U.S.-flag inspected passenger

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vessels operating in domestic service. It is doing this to concentrate its resources on homeland security. It expects that there will be no public disagreement with its position since there was no significant public support for this rulemaking during the comment period.

DATES: The advance notice of proposed rulemaking is withdrawn and terminated on August 26, 2002.

FOR FURTHER INFORMATION CONTACT: CDR Linda Fagan, Office of Compliance (G–MOC), U.S. Coast Guard Headquarters, telephone 202–267–2978.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 1998, we published an advance notice of proposed rulemaking entitled "Emergency Response Plans for Passenger Vessels" in the **Federal Register** (63 FR 9916). The rulemaking concerned the development of plans for passenger vessels to respond to emergencies, such as collisions, allisions, groundings, and fires.

Withdrawal and Termination

After the terrorist attacks on the United States in September, 2001, the Coast Guard has re-evaluated all of its active rulemakings to concentrate its resources on homeland security.

The Coast Guard would like to graciously acknowledge and extend a thank you with regards to the comments received from the public during the ANPRM phase of the rulemaking. All comments are available for public review at the Web site of the Document Management System (DMS) *http://dms.dot.gov/* by referring to the docket number [USCG–1998–3473]. There were a total of fifteen comments received, two of which obliquely supported the rulemaking. The supporting comments claimed that existing regulations and guidance from the Coast Guard adequately address ERPs. They go on to say that any rules or regulations must be extremely flexible and contain as few mandates as possible so all ERPs are specific to routes and vessels and allow for the development and implementation of safe and cost-effective plans. The Coast Guard's response to these recommendations is that there will almost certainly be a significant amount of new security mandates contained in the rules just now being proposed. These mandates would govern certain elements of emergency-response planning so as to entail new equipment or measures that would result in enhanced vessel security. Therefore, the withdrawal and termination of this rulemaking is justified—all the more, given the two supporting comments. These, summarized below, clearly indicate how marginal the support is for this rulemaking.

First Supporting Comment: "[E]xisting regulations and guidance from the Coast Guard adequately address emergency response plans." If there is a rulemaking, it "should be flexible based on the type and size of vessel, passenger capacity, shore-based management structure, availability of resources and facilities * * * for search and rescue, routes, traffic[,] and operating conditions. * * * [A]ny rules or regulations must be extremely flexible and contain as few mandates as possible so all emergency response plans are route and vessel specific and allow for the development and implementation of safe and cost effective plans." Mandated full-scale emergency exercises for moored vessels would obstruct operations, causing significant loss of revenues. Classroom training and simulated drills provide excellent tools at minimal costs.

Second Supporting Comment: "The proposed requirements, particularly for vessels not subject to OPA 90 or the ISM Code, do make sense. Compliance should be mandatory for all vessels certified to carry 100 or fewer passengers, dependent on geographical operational area, and even for moored, "'nostalgic'" casino-boats. One big problem is lack of training for non-maritime "crew": wait staff (waitresses and waiters, bartenders, and the like), cooks, and others in the steward's department. These "crew" members have the most contact with the public and will be depended on in an emergency, yet they have the least knowledge and training.

The thirteen negative comments received from the public are likely to be similar in nature and tone to what can be reasonably projected for the new security regulations, but the ratio of positive comments to negative should be higher given the National impetus to focus on security. The negative comments generally stated that the target population, high-consequence—low-probability vessels, does not need added regulation and that the very term "low probability" argues against further regulatory action. The comments mentioned that if there is no problem, or is no projection of a future problem, then no regulatory action is required. The likely rulemakings on the security of vessels should address practices respecting high-consequence—low-probability vessels, the precise population that ERP proposed to address.

Dated: August 18, 2002.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–21688 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

[Docket No. MARAD–2002–12842]

General Approval of Time Charters

AGENCY: Maritime Administration (MARAD), DOT.

ACTION: Policy review with request for comments; extension of comment period.

SUMMARY: On August 2, 2002, MARAD (we, us, or our) published a Policy Review with Request for Comments soliciting public comment on whether the policy of granting general approval of time charters should be changed (67 FR 50406). We are extending the public comment period from Setpember 3, 2002, to October 3, 2002.

DATES: Interested parties are requested to submit comments on or before October 3, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12842. Written comments may be submitted by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Edmund T. Sommer, Jr., Chief, Division of General and International Law, Office of the Chief Counsel, Maritime Administration, Department of Transportation, Room 7228, 400 7th Street SW, Washington, DC 20590, telephone (202) 366–5181.

Dated: August 20, 2002.

By Order of the Maritime Administrator.

Christine S. Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 02–21632 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67; DA 02–1826]

Request for Comment on Clarification of Procedures for Emergency Calls at Telecommunications Relay Services (TRS) Centers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; request for comments.

SUMMARY: This document seeks public comment on the proposed clarification of the Commission's rules in part 64 regarding procedures for routing emergency calls by telecommunications relay services (TRS) centers. In March 2000, the Commission discussed routing emergency TRS calls to the most appropriate Public Safety Answering Point (PSAP). However, the minimum mandatory standards provide for the routing of emergency TRS calls to the nearest PSAP. The Commission seeks comments regarding a proposal that TRS providers use a system for emergency calls that would automatically and immediately transfer a caller to the most appropriate PSAP.

DATES: Interested parties may file comments in this proceeding no later than August 29, 2002. Reply comments may be filed no later than September 13, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erica Myers, Federal Communications Commission, Consumer & Governmental Affairs Bureau, Disability Rights Office (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail *emyers@fcc.gov*.

SUPPLEMENTARY INFORMATION: When filing comments, please reference CC Docket 98–67. Interested parties may file comments in this proceeding no later than August 29, 2002. Reply comments may be filed no later than September 13, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *<http://www.fcc.gov/e-file/ecfs.html>*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW–A325 Washington, DC 20554. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Erica Myers, Federal Communications Commission, 445 12th Street, SW, Room 5–C212, Washington DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98–67, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200 and 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b). Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or e-mail at *bmillin@fcc.gov*. This *document* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro*.

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 02–21301 Filed 8–23–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI61

Endangered and Threatened Wildlife and Plants; Listing the Sonoma County Distinct Population Segment of the California Tiger Salamander as Endangered

AGENCY: Fish and Wildlife Service, Interior.

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ACTION: Proposed rule; extension of comment period and notice of public hearing.

SUMMARY: We, the Fish and Wildlife Service (Service), provide notice that we are holding a public hearing for the proposed rule to list the Sonoma County Distinct Population Segment of the California tiger salamander (*Ambystoma californiense*) as endangered under the authority of the Endangered Species Act of 1973, as amended. We are also giving notice that the comment period for the proposed rule for this species is being extended to hold the public hearing and to allow all interested parties to submit written comments on the proposal. Comments previously submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

DATES: We will hold a public hearing from 1 to 3 p.m. and from 6 to 8 p.m. in Santa Rosa, CA, on October 1, 2002. The comment period, which originally closed on September 20, 2002, will now close on October 21, 2002, at 5 p.m.

ADDRESSES: The public hearing will be held at the Courtyard by Marriott, 175 Railroad Street, Santa Rosa, CA. Comments and materials concerning this proposal should be sent to Wayne S. White, Field Supervisor, ATTN: CTS, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way Room W–2605, Sacramento, CA 95825. Written comments may also be sent by facsimile to 916/414–6713 or through the internet to *fw1sccaliforniatiger@r1.fws.gov*. You may also hand-deliver written comments to our Sacramento Fish and Wildlife Office, at the above address. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours, at the above address. You may obtain copies of the proposed rule from the above address, by calling 916/414–6600, or from our Web site at *http://sacramento.fws.gov*.

FOR FURTHER INFORMATION CONTACT: David Wooten, Amy LaVoie, or Chris Nagano, Sacramento Fish and Wildlife Office, 2800 Cottage Way Room W–2605, Sacramento, CA 95825 (telephone 916/414–6600, facsimile 916/414–6713 or visit our Web site at *http://sacramento.fws.gov/*). Information regarding this proposal is available in alternative formats upon request.

SUPPLEMENTARY INFORMATION:

Background

This Distinct Population Segment of the California tiger salamander is restricted to a portion of the Santa Rosa Plain in Sonoma County, CA, extending from approximately Santa Rosa south to the Cotati area. The factors imperiling this animal in Sonoma County include habitat destruction, degradation, and fragmentation, collection, invasive exotic species, and inadequate regulatory mechanisms. This Distinct Population Segment also is vulnerable to chance environmental or demographic events, to which small populations are particularly vulnerable.

Pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), we published an emergency rule to list the Sonoma County Distinct Population Segment of the California tiger salamander as endangered on July 22, 2002 (67 FR 47726). The emergency rule provides immediate Federal protection to this Distinct Population Segment for a period of 240 days. This immediate Federal protection expires on March 19, 2003. We also published a proposed rule on July 22, 2002, to list the Sonoma County Distinct Population Segment of the California tiger salamander as endangered under our normal listing procedures (67 FR 47758).

For further information regarding background biological information, previous Federal actions, factors affecting the subspecies, and conservation measures available to the Sonoma County Distinct Population Segment of the California tiger salamander, please refer to our emergency and proposed rules published in the **Federal Register** on July 22, 2002.

The original comment period was due to close on September 20, 2002. In order to accommodate the hearing, we are extending the comment period. Written comments may now be submitted until October 21, 2002, at 5 p.m.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to us. Legal notices announcing the date, time, and location of the public hearing will be published in newspapers concurrently with this **Federal Register** notice.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Patti Carroll at 503/231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date.

Public Comments Solicited

We solicit additional information and comments that may assist us in making a final decision on the proposed rule to list the Sonoma County Distinct Population Segment of the California tiger salamander as endangered. We intend that any final listing action resulting from our proposal will be as accurate and effective as possible. Therefore, we request comments and additional information from the general public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Sonoma County Distinct Population Segment of the California tiger salamander;

(2) The location of any additional breeding sites of this Distinct Population Segment, and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, biology, ecology, or population size of this Distinct Population Segment, and

(4) Current or planned activities or land use practices in the subject area and their possible impacts on this species in Sonoma County.

Previously submitted written comments on this proposal need not be resubmitted. If you submit comments by e-mail, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: CTS" and your name and return address in your e-mail message. If you do not receive a confirmation from our system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at telephone number 916/414–6600. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary author of this notice is Chris Nagano, Sacramento Fish and Wildlife Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)

Dated: August 13, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–21628 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH94

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Blackburn's Sphinx Moth

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period, and public hearing announcement.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice of a public hearing on the proposed critical habitat designation for Blackburn's sphinx moth. In addition, the comment period which originally closed on August 12, 2002, has been extended. The new comment period and hearing will allow all interested parties to submit oral or written comments on the proposal. We are seeking comments or suggestions from the public, other concerned agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

DATES: The comment period for this proposal now closes on December 30, 2002. Any comments received by the closing date will be considered in the final decision on this proposal. The public hearing will be held from 5:30 p.m. to 8:30 p.m. on Thursday, September 12, 2002, on the island of Maui, Hawaii. Prior to the public hearing, the Service will be available from 3:30 to 4:30 p.m. to provide information and to answer questions. The Service will also be available for questions after the hearing.

ADDRESSES: The public hearing will be held at the Maui Arts and Cultural Center Meeting Room, One Cameron Way, Kahului, Maui, Hawaii. Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3–122, P.O. Box 50088, Honolulu, HI 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, at the above address, (telephone 808/541–3441, facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION: The public hearing for the proposed rule to designate critical habitat for Blackburn's sphinx moth announced in this **Federal Register** notice and the public hearing for the proposed designation of critical habitat for 61 plants from the islands of Maui and Kahoolawe announced in a separate **Federal Register** notice are scheduled for the same date, time, and location on Maui as a matter of convenience to the public. We will accept comments at this public hearing on the proposed designation of critical habitat for Blackburn's sphinx moth, as well as the proposed designation of critical habitat for 61 plants from the islands of Maui and Kahoolawe.

Background

On June 13, 2002, we published a proposed critical habitat rule for the Blackburn's sphinx moth listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et. seq.*), known historically from the islands of Hawaii, Kauai, Maui, Molokai, and Oahu, and known currently from the islands of Hawaii, Kahoolawe, and Maui (67 FR 40633). The original comment period closed on August 12, 2002. The comment period now closes on December 30, 2002. Written comments should be submitted to us (*see* **ADDRESSES** section).

A final listing rule, listing the Blackburn's sphinx moth as endangered, was published in the **Federal Register** on February 1, 2000 (65 FR 4770). In that final rule, we determined that critical habitat designation for the moth would be prudent, and we also indicated that we were not able to develop a proposed critical habitat designation for the species at that time due to budgetary and workload constraints.

On June 2, 2000, we were ordered by the U.S. District Court for the District of Hawaii (in *Center for Biological Diversity* v. *Babbitt and Clark*, Civ. No. 99–00603 (D. Haw.)) to publish the final critical habitat designation for Blackburn's sphinx moth by February 1, 2002. This was extended on October 2, 2001 to August 10, 2002. The plaintiffs and the Service have agreed on an extension. On August 21, 2002, the parties to the litigation anticipate filing a joint stipulation that, if approved would extend the final critical habitat deadline for this species to May 30, 2003. It would also extend another deadline and require other actions. This notice is being issued in anticipation of the court's approval. Should the court disapprove the stipulation, we may have to issue a further notice modifying the schedule and process for completing the final critical habitat determinations for these species. This proposed rule is in response to these requirements. Within eight separate units, a total of approximately 40,240 hectares (99,433 acres) on the Hawaiian Islands of Maui, Hawaii, Molokai, and Kahoolawe are proposed for designation as critical habitat for Blackburn's sphinx moth. For locations of these proposed units, please consult the proposed rule (67 FR 40633).

Section 4(b)(5)(E) of the Act requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to requests from various parties, we will hold a public hearing on the date and at the address described in the **DATES** and **ADDRESSES** sections above. An additional **Federal Register** notice will be published when a public hearing can be scheduled for the Island of Hawaii.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to us. Legal notices announcing the date, time, and location of the public hearing will be published in newspapers concurrently with the **Federal Register** notice.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Patti Carroll at 503/231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date.

Information regarding this proposal is available in alternative formats upon request.

Comments from the public regarding this proposed rule are sought, especially regarding:

(1) The reasons why any particular area should or should not be designated as critical habitat for the Blackburn's

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sphinx moth, as critical habitat is defined by section 3 of the Act;

(2) Specific information on the amount, distribution, and quality of habitat for the species, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas, and their possible impacts on proposed critical habitat;

(4) Any economic or other impacts resulting from the proposed designation of critical habitat, including any impacts on small entities, energy development, low-income households, and local governments;

(5) Economic and other potential values associated with designating critical habitat for the Blackburn's sphinx moth such as those derived from nonconsumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection, increased soil retention, "existence values"); and

(6) Information for use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

Extension of the comment period will enable us to respond to the request for a public hearing on the proposed action. The comment period on this proposal now closes on December 30, 2002. Written comments should be submitted to the Service office listed in the **ADDRESSES** section.

Author

The primary author of this notice is Mike Richardson (*see* **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 16, 2002.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–21702 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH70

Endangered and Threatened Wildlife and Plants; Designations of Critical Habitat for Plant Species From the Islands of Maui and Kahoolawe, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, and public hearing announcement.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice of a public hearing on the proposed critical habitat designations for 61 plants from the islands of Maui and Kahoolawe, Hawaii. In addition, the comment period which originally closed on June 3, 2002, will be reopened. The new comment period and hearing will allow all interested parties to submit oral or written comments on the proposal. We are seeking comments or suggestions from the public, other concerned agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

DATES: The comment period for this proposal now closes on September 30, 2002. Any comments received by the closing date will be considered in the final decision on this proposal. The public hearing will be held from 5:30 p.m. to 8:30 p.m. on Thursday September 12, 2002, on the island of Maui, Hawaii. Prior to the public hearing, the Service will be available from 3:30 to 4:30 p.m. to provide information and to answer questions. The Service will also be available for questions after the hearing.

ADDRESSES: The public hearing will be held at the Maui Arts and Cultural Center Meeting Room, One Cameron Way, Kahului, Maui, Hawaii. Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3–122, PO Box 50088, Honolulu, HI 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, at the above address, (telephone 808/541–3441, facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION: The public hearing for the proposed critical habitat designations for 61 plants from the islands of Maui and Kahoolawe announced in this **Federal Register** notice and the public hearing for the proposal to designate critical habitat for Blackburn's sphinx moth announced in a separate **Federal Register** notice are scheduled for the same date, time, and location on Maui as a matter of convenience to the public. We will accept comments at this public hearing on the proposed critical habitat designations for 61 plants from the islands of Maui and Kahoolawe, as well as the proposal to designate critical habitat for Blackburn's sphinx moth.

Background

On April 3, 2002, we published a revised proposed critical habitat rule for 61 of the 70 plant species listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), known historically from the islands of Maui and Kahoolawe (67 FR 15856). The original comment period closed on June 3, 2002. The comment period now closes on September 30, 2002. Written comments should be submitted to us (see **ADDRESSES** section).

A total of 70 species historically found on Maui and Kahoolawe were listed as endangered or threatened species under the Act between 1991 and 1999. Some of these species may also occur on other Hawaiian islands. Previously, we proposed that designation of critical habitat was prudent for 57 (*Adenophorus periens, Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Colubrina oppositifolia, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Delissea undulata, Diellia erecta, Diplazium molokaiense, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Schiedea nuttallii, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*) of the 70 species reported from the islands of Maui and Kahoolawe. No change is made to the 57 proposed prudency determinations in the April 3, 2002, revised proposed

critical habitat rule for plants from Maui and Kahoolawe. We previously proposed that designation of critical habitat was not prudent for *Acaena exigua* because it had not been seen recently in the wild, and no viable genetic material of this species is known to exist (65 FR 79192). No change is made to this proposed prudency determination in the April 3, 2002, revised proposed critical habitat rule (67 FR 15856). In the April 3, 2002, revised proposed critical habitat rule, we proposed that designation of critical habitat is prudent for six other species (*Clermontia peleana, Gouania vitifolia, Nototrichium humile, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium*) for which prudency determinations have not been made previously. We determined that designation of critical habitat was prudent for *Clermontia samuelii, Cyanea copelandii* ssp. *halekalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis,* and *Kanaloa kahoolawensis* at the time of their listing in 1999.

We also propose designation of critical habitat for 61 (*Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Delissea undulata, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Schiedea nuttallii, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*) plant species. Critical habitat is not proposed for 9 (*Aceana exigua, Adenophorus periens, Clermontia peleana, Delissea undulata, Phyllostegia parviflora, Schiedea hookeri, Schiedea nuttallii, Solanum incompletum,* and *Tetramolopium arenarium*) of the 70 species which no longer occur on the islands of Maui and Kahoolawe, and for which we are unable to identify any habitat that is essential to their conservation on the islands of Maui or Kahoolawe. Thirteen critical habitat units, totaling approximately 51,208 hectares (126,531 acres), are proposed for designation on the islands of Maui and Kahoolawe. For locations of these proposed units, please consult the proposed rule (67 FR 15856) (April 3, 2002).

Section 4(b)(5)(E) of the Act, requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to a request from a government agency of the State of Hawaii, we will hold a public hearing on the date and at the address described in the **DATES** and **ADDRESSES** sections above.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to us. Legal notices announcing the date, time, and location of the public hearing will be published in newspapers concurrently with the **Federal Register** notice.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Patti Carroll at 503/231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date.

Information regarding this proposal is available in alternative formats upon request.

Comments from the public regarding this proposed rule are sought, especially regarding:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1);

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act;

(3) Specific information on the amount, distribution, and quality of habitat for the 61 species, and what habitat is essential to the conservation of the species and why;

(4) Land use practices and current or planned activities in the subject areas, and their possible impacts on proposed critical habitat;

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities, energy development, low income households, and local governments;

(6) Economic and other potential values associated with designating critical habitat for the above plant species such as those derived from non-consumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection, increased soil retention, "existence values", and reductions in administrative costs); and

(7) Information for use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

Reopening of the comment period will enable us to respond to the request for a public hearing on the proposed action. The comment period on this proposal now closes on September 30, 2002. Written comments should be submitted to the Service office listed in the **ADDRESSES** section.

Author

The primary author of this notice is Michelle Mansker (*see* **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 14, 2002.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–21703 Filed 8–23–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG71, 1018–AH70, 1018–AH08, 1018–AH09, 1018–AH02, and 1018–AI24

Endangered and Threatened Wildlife and Plants; Designations and Non-designations of Critical Habitat for Plant Species From the Islands of Kauai, Niihau, Maui, Kahoolawe, Molokai, Northwestern Hawaiian Islands, HI, and Oahu, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rules; reopening of comment periods, extension of comment period, availability of draft economic analyses.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice of the reopening of the comment periods for the proposed designations and non-designations of critical habitat for plant species on the islands of Kauai, Niihau, Molokai, Maui, Kahoolawe, Northwestern Hawaiian Islands, Hawaii, and Oahu. The new comment periods will allow all interested parties to submit written comments on these proposals simultaneously. We are seeking comments or suggestions from the public, other concerned agencies, the scientific community, industry, or any other interested parties concerning the proposed critical habitat designations. Comments already submitted on the proposed critical habitat designations and associated draft economic analyses need not be resubmitted as they will be fully considered in the final determinations.

DATES: The comment periods for the proposed designations and non-designations of critical habitat for plant species on the islands of Kauai, Niihau, Molokai, Maui, Kahoolawe, Northwestern Hawaiian Islands, Hawaii, and Oahu now close on September 30, 2002. Any comments received by the closing date will be considered in the final decisions on these proposals.

ADDRESSES: Comments and materials concerning these proposals should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3–122, P.O. Box 50088, Honolulu, HI 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, at the above address, phone 808/541–3441, facsimile 808/541–3470.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 2002, April 3, 2002, April 5, 2002, and May 14, 2002, the Service published revised proposed critical habitat designations and non-designations for plant species listed under the Endangered Species Act of 1973, as amended (Act), known historically from the islands of Kauai and Niihau, Maui and Kahoolawe, Molokai, and the Northwestern Hawaiian Islands respectively (67 FR 3940, 67 FR 15856, 67 FR 16492, and 67 FR 34522). The original comment periods closed on March 29, 2002, June 3, 2002, June 4, 2002, and July 15, 2002, respectively. The comment periods for the proposed critical habitat designations and non-designations for plant species known historically from Kauai and Niihau, Maui and Kahoolawe, Molokai, and the Northwestern Hawaiian Islands now close on September 30, 2002.

On July 15, 2002 (67 FR 46450), the Service reopened the comment period and announced the public hearing on the proposed critical habitat designation and non-designation for plant species known historically from Lanai. The public hearing was held on August 1, 2002, at the Lanai Public Library Meeting Room, Fraser Avenue, Lanai City, Lanai. The comment period for the proposed critical habitat designation and non-designation for plant species known historically from Lanai closes on August 30, 2002.

The Service published proposed critical habitat designations and non-designations for plant species listed under the Act, known historically from the islands of Hawaii and Oahu on May 28, 2002 (67 FR 36968 and 67 FR 37108). The original comment periods closed on July 29, 2002. The comment periods on these two proposals now close on September 30, 2002.

The proposed rules propose designation of critical habitat for 83 plant species from Kauai and Niihau; 61 plant species from Maui and Kahoolawe; 46 plant species from Molokai; 5 plant species from the Northwestern Hawaiian Islands; 47 plant species from the island of Hawaii; and, 99 species from Oahu. Some of these species are historically known from more than one island. Critical habitat was not proposed for seven species of loulu palm (*Pritchardia affinis, P. aylmer-robinsonii, P. kaalae, P. napaliensis, P. munroi, P. schattaueri,* and *P. viscosa*) because the designation of critical habitat would likely increase the threats from vandalism or collection of these species on the islands on which they occur. Critical habitat was not proposed for six species (*Acaena exigua, Cenchrus agrimonioides* var. *laysanensis, Cyanea copelandii* ssp. *copelandii, Cyrtandra crenata, Melicope quadrangularis,* and *Ochrosia kilaueaensis*) which had not been seen recently in the wild and for which no viable genetic material of these species was known to exist.

Comments from the public regarding these proposed rules are sought, especially regarding:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1);

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act (16 U.S.C. 1532 (5));

(3) Specific information on the amount, distribution, and quality of habitat for the species, and what habitat is essential to the conservation of the species and why;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities, energy development, low income households, and local governments;

(6) Economic and other potential values associated with designating critical habitat for the above plant species such as those derived from non-consumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection, increased soil retention, "existence values", and reductions in administrative costs);

(7) The appropriate methodology for determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat under section 4(b)(2) of the Act;

(8) The effects of critical habitat designation on Department of Defense lands, and how it would affect military activities; whether there will be a significant impact on military readiness or national security if we designate critical habitat on Department of Defense lands; and whether these lands should be excluded from the designation under section 4(b)(2) of the Act;

(9) Whether Department of Defense lands should be excluded from critical habitat based on an approved Integrated Natural Resource Management Plan (INRMP);

(10) Whether areas which are managed for the conservation of the species should not be included in critical habitat because such areas do not meet the definition of critical habitat contained in section 3(5)(A)(i) of the Act;

(11) Whether areas covered by an approved conservation plan (*e.g.*, Habitat Conservation Plans, Conservation Agreements, Safe Harbor Agreements) should be excluded from critical habitat and if so, by what mechanism; and

(12) Whether areas should be excluded under section 4(b)(2) of the Act because critical habitat designation will impact other types of existing or future conservation partnerships that are beneficial to the species.

In addition, we are seeking comments or suggestions on the associated draft economic analyses of the proposed critical habitat designations and non-designations for plant species from Kauai, Niihau, and Molokai. The draft economic analyses can be obtained from the Pacific Islands Office (see **ADDRESSES** section). We will solicit public review and comment on the associated draft economic analyses of the proposed critical habitat designations and non-designations for plant species from Maui and Kahoolawe, Northwestern Hawaiian Islands, Oahu, and the island of Hawaii in subsequent **Federal Register** notices.

Reopening of the comment periods simultaneously will provide the public an opportunity to evaluate and comment on all of the areas proposed as critical habitat for each species, particularly the species located on more than one island. The comment periods for the proposed critical habitat designations for plant species known historically from Kauai and Niihau, Maui and Kahoolawe, Molokai, Northwestern Hawaiian Islands, island of Hawaii, and Oahu now close on September 30, 2002. The comment period for the proposed critical habitat designation for plant species known historically from Lanai closes on August 30, 2002 (67 FR 46450). Written comments should be submitted to the Service office listed in the **ADDRESSES** section.

Author

The primary author of this notice is Christa Russell (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 15, 2002.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–21627 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 600 and 679

[Docket No. 020801186–2186–01; I.D. 053102D]

RIN 0648–AQ09

Pacific Halibut Fisheries; Subsistence Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to authorize a subsistence fishery for Pacific halibut in waters off Alaska. These regulations are necessary to allow qualified persons to practice the long-term customary and traditional harvest of Pacific halibut for food in a non-commercial manner. This action is intended to meet the conservation and management requirements of the Northern Pacific Halibut Act of 1982 (Halibut Act) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received at the following address not later than September 25, 2002.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel-Durall. Hand or courier deliveries of comments may be sent to NMFS, Alaska Region, 709 West 9th Street, Room 453, Juneau, AK 99801. Send comments on collection-of-information requirements to the same address and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attn: NOAA Desk Officer). Comments also may be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the environmental assessment/regulatory impact review (EA/RIR) prepared for this action are available from NMFS at the above address or by calling the Sustainable Fisheries Division, Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7172 or jay.ginter@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background and Need for Action

Management of the Pacific halibut (hereafter halibut) fishery in and off Alaska is based on an international agreement between Canada and the United States. This agreement, titled the "Convention between United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea" (Convention), was signed at Ottawa, Canada, on March 2, 1953, and amended by the "Protocol Amending the Convention," signed at Washington, D.C., March 29, 1979. This Convention, administered by the International Pacific Halibut Commission (IPHC), is given effect in the United States by the Halibut Act. Generally, fishery management regulations governing the halibut fisheries are developed by the IPHC and recommended to the U.S. Secretary of State. When approved, these regulations are published by NMFS in the **Federal Register** as annual management measures. For 2002, the annual management measures were published March 20, 2002 (67 FR 12885).

The Halibut Act also provides for the North Pacific Fishery Management Council (Council) to develop halibut fishery regulations, including limited access regulations, in its geographic area of concern that would apply to nationals or vessels of the U.S. (Halibut Act, section 773(c)). Such an action by the Council is limited only to those regulations that are in addition to and not in conflict with IPHC regulations, and they must be approved and implemented by the U.S. Secretary of Commerce (Secretary). Any allocation of halibut fishing privileges must be fair and equitable and consistent with other applicable Federal law. This is the authority under which the Council acted in October 2000, to adopt a subsistence halibut policy.

The Council does not have a "fishery management plan" (FMP) for the halibut fishery. Hence, halibut fishery management regulations developed by the Council do not follow the FMP or FMP amendment procedures set out in the Magnuson-Stevens Act. Instead, a regulatory amendment process is followed. This process requires submission of the Council recommendation to the Secretary as a

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proposed rule for publication in the **Federal Register** along with supporting analyses as required by other applicable law.

Subsistence fishing and hunting are well known in Alaska as customary and traditional practices of Alaska Natives and non-Natives, especially in rural areas with limited alternative food resources. As a means of survival long before the present time, subsistence harvesting is inextricably woven into the cultural fabric of Alaska Natives and the rural lifestyle. Current regulations that govern fishing for halibut in Convention waters off Alaska, however, do not recognize subsistence harvesting of halibut. The purpose of this action is to provide regulations that would authorize a subsistence fishery for halibut in Convention waters off Alaska. These regulations are designed to allow persons who have customarily and traditionally used halibut for food in the past to continue that practice. Formal recognition of the halibut subsistence fishery also is expected to improve information for stock assessment purposes through the collection of better data than are now available to estimate the subsistence harvest of halibut.

Beginning in 1996, the Council began to receive requests from various Alaska Native tribal organizations to recognize in regulations the established customary and traditional practices associated with the subsistence take of halibut. These organizations included the Central Council of Tlingit and Haida Indian Tribes of Alaska, the Coastal Villages Fishing Cooperative, and the Aleutian Pribilof Islands Association. These organizations requested formal subsistence regulations to resolve enforcement problems related to fishing practices for subsistence purposes.

In December 1996, the Council formed the Halibut Subsistence Committee (Committee), made up of seven members representing various Alaska Native tribes and chaired by a Council member. The Committee was tasked with developing recommendations for recognizing subsistence halibut fishing. The Committee met in January 1997 and provided its recommendations to the Council in February 1997. Based on those recommendations, the Council initiated development of an EA/RIR for a subsistence halibut fishery.

In April 1997, the Council approved a draft EA/RIR and in June 1997 took final action on one aspect of the subsistence halibut program. The provision recommended by the Council allowed persons participating in the Community Development Quota (CDQ) Program in IPHC Regulatory Area (Area) 4E to retain undersized halibut (less than 32 inches or 81.2 cm) for subsistence purposes. This recommendation was approved by the Secretary and implemented in 1998. The Council deferred action on all other aspects of the subsistence halibut program until the Alaska State Legislature considered changes to the Alaska State Constitution to make it consistent with U.S. Federal law relating to management of fish and game on Federal public lands in Alaska.

NMFS requested that the Council reschedule final action on a subsistence halibut management program after the Alaska State Legislature decided not to act by October 1999, as requested by Alaska's Congressional Delegation. In February 2000, the Council revised alternatives in the draft EA/RIR and scheduled initial review of the action in April 2000 and final action in June 2000.

The Council changed some of the alternatives at its April 2000 meeting. The Council decided to submit the revised alternatives to the Committee for review and delayed final action until October 2000. The Committee reviewed the revised alternatives in September 2000 and informed the Council that it believed that the alternatives considered in the EA/RIR were adequate. In October 2000, the Council took final action on its preferred alternative for the subsistence halibut program. Further information on alternatives considered and rejected can be found in the EA/RIR for this action (see **ADDRESSES**).

Specific Elements of the Halibut Subsistence Fishery

Definition Of Subsistence

As stated earlier, the main purpose of this action is to authorize a subsistence fishery for halibut in Convention waters off Alaska. Generally, subsistence means the act of maintaining life. Therefore, subsistence could refer to the collection or use of edible and non-edible items for basic food, shelter, or clothing. In the context of this action, however, subsistence refers to the act of collecting wild foods, i.e., halibut, for sustenance and cultural tradition by rural residents of Alaska or by members of Alaska Native tribes (defined in Definition Of Eligibility, below). Therefore, as used throughout this action, "subsistence halibut" is proposed to mean "halibut caught by a rural resident of Alaska or by a member of an Alaska Native tribe for direct personal or family consumption as food, sharing for personal or family consumption as food, or customary trade" (see proposed definitions at § 300.61).

More specifically, the Council determined that subsistence halibut regulations were needed to authorize the long-term customary and traditional practices of fishing for halibut for food in a non-commercial manner for non-economic consumption by families. The Council then defined "subsistence" as "non-commercial, long-term, customary and traditional use of halibut." This definition is broad enough to capture the concepts of sustenance and cultural tradition while it limits behavior through the use of the term "non-commercial." Non-commercial fishing means that halibut caught in the subsistence fishery cannot be sold or otherwise marketed for commercial purposes. However, the Council recommended including a provision that authorizes the customary trade of subsistence halibut for non-commercial monetary (maximum annual limit of $400 per person) and non-monetary exchange. The specific details of customary trade of subsistence halibut are discussed below.

Definition Of Eligibility

The Council reviewed several options for eligibility. The Council considered various concerns, including the cultural, traditional, and material needs of Alaska Natives and non-Natives. Developing eligibility criteria for a subsistence halibut fishery was a difficult determination for the Council, and the Council reviewed several different methods to determine eligibility before recommending its preferred alternative. Among these methods were criteria established by the Federal Subsistence Board (FSB), the Alaska Board of Fisheries (ABF), and the Alaska National Interest Lands Conservation Act (ANILCA).

Eventually, the Council crafted its own criteria for eligibility to fit the specific needs of the halibut subsistence program using the State of Alaska criteria for determining rural areas in which a subsistence lifestyle may be practiced (see Alaska Statute 16.05.258(c)) and FSB criteria derived from ANILCA. Persons eligible to conduct subsistence halibut fishing under the Council's recommended criteria are: (1) residents of rural places with customary and traditional uses of halibut and (2) all identified members of federally recognized Alaska Native tribes with a finding of customary and traditional uses of halibut. Tables provided in § 300.65(f) of the proposed rule list rural places with customary and traditional uses of halibut and list federally recognized Alaska Native tribes with a finding of customary and traditional uses of halibut. A person must be a resident of a rural place listed in the table at 50 CFR 300.65(f)(1) or an identified member of a federally recognized Alaska Native tribe in the table at 50 CFR 300.65(f)(2) to be eligible to harvest subsistence halibut. The Council developed these lists based on findings of customary and traditional uses of halibut by the ABF or the FSB. Residents or identified members who believe that their rural place or federally recognized Alaska Native tribe was inadvertently left out of the tables or who are seeking eligibility for the first time, are encouraged to petition the appropriate body for a customary and traditional uses designation before petitioning the Council for inclusion in the tables.

Authorized Areas For Subsistence Halibut Harvest

The Council also provided recommendations about where eligible persons would be able to harvest subsistence halibut. Generally, eligible persons could harvest subsistence halibut in all Convention waters in and off Alaska except for areas designated as non-subsistence areas. Four non-subsistence areas would be defined in regulations at 50 CFR 300.65(g)(3). These are: (1) the Ketchikan non-subsistence area, (2) the Juneau non-subsistence area, (3) the Valdez non-subsistence area, and (4) the Anchorage/Matsu/Kenai non-subsistence area.

However, an exception to that general rule would apply to an eligible person who is an Alaska Native tribal member, who resides in an urban area, and whose tribal headquarters is located in a rural area with a customary and traditional uses designation. Such a person could only harvest subsistence halibut in the IPHC regulatory area where his or her tribal headquarters is located. The appropriate IPHC regulatory area for each tribal headquarters is given in the table at 50 CFR 300.65(f)(2).

Legal Gear For Harvesting Subsistence Halibut

The Council recommended that legal gear for harvesting subsistence halibut be limited to set and hand-held gear of not more than 30 hooks, including longline, handline, rod and reel, spear, jig and hand-troll gear.

The Council's use of the term set gear refers to "setline gear," which is defined at 50 CFR 300.61. "Setline gear" means one or more stationary, buoyed, and anchored lines with hooks attached. "Longline gear," "Handline gear," "Jig gear," and "Hand troll gear" are defined at 50 CFR 679.2. "Longline gear" means hook-and-line, jig, troll, and handline or the taking of fish by means of such a device. "Handline gear" means a hand-held line, with one or more hooks attached, that may only be operated manually. "Jig gear" means a single, non-buoyed, non-anchored line with hooks attached, or the taking of fish by means of such a device. Hand troll gear means one or more lines, with lures or hooks attached, drawn through the water behind a moving vessel, and retrieved by hand or hand-cranked reels or gurdies and not by any electrically, hydraulically, or mechanically powered device or attachment.

"Rod and reel" and "spear" are defined at 50 CFR 600.10. "Rod and reel" means a hand-held (including rod holder) fishing rod with a manually or electrically operated reel attached. "Spear" means a sharp, pointed, or barbed instrument on a shaft. Spears can be operated manually or shot from a gun or sling.

Current regulations at 50 CFR 600.725(v) allow only hook and line gear for harvesting Pacific halibut. This action proposes to revise 50 CFR 600.725(v) to allow the use of setline gear, longline gear, rod and reels, and spears to harvest subsistence halibut.

The Council recommended the use of setline gear, longline gear, rod and reels, and spears based on public testimony and recommendations from its Halibut Subsistence Working Group that such gears have been and are used to harvest subsistence halibut. The Council recommended a limit "of not more than 30 hooks," after deliberations on sufficient gear to accommodate persons who subsistence fish as a proxy for others who depend on subsistence resources. The EA/RIR analyzed four possible limits: 2 hooks, 10 hooks, 30 hooks, and 60 hooks. The Council recommended a 30–hook limit because it determined that a 2–hook limit and a 10–hook limit would not provide proxy fishermen with sufficient gear to harvest subsistence halibut for an extended group or family, and 60 hooks would be too much gear for subsistence purposes and could lead to waste. The hook limit was considered together with daily bag limits, which the Council recommended should be 20 halibut per day (see Daily Bag Limit below). Allowing more than 30 hooks increases the chance that more halibut could be caught than allowed under the daily bag limit. For example, under a 30–hook limit, the ratio of halibut to hooks would have to exceed 67 percent to exceed the daily bag limit; however, under a 60–hook limit, the ratio of halibut to hooks would only have to be 33 percent.

Setline gear that is buoyed and used for subsistence fishing would be required to be marked with the name and address of the subsistence fisher(s) using the gear. This requirement is consistent with other state and Federal subsistence regulations and is designed to facilitate enforcement of hook limits and return lost gear to the person(s) whose name and address are marked on the buoy.

Customary Trade Of Subsistence Halibut

The Council recommended to allow limited customary trade of subsistence halibut. Customary trade means the non-commercial exchange of subsistence halibut for money or anything other than items of significant value. Customary trade for money would be limited to $400 annually. The Council was silent on whether the $400 annual limit should apply to each person who harvests subsistence halibut or some other unit, e.g., household. However, the relatively nominal level of this monetary limit indicates that the possibility that someone would choose to fish for subsistence halibut for profit is extremely remote, Therefore, this proposed rule would apply the $400 annual limit to each person who harvests subsistence halibut, which is the least restrictive interpretation of the Council's recommendation. The secondary sale of subsistence halibut by anyone other than the person who caught it would be prohibited.

During its deliberations on this issue, the Council suggested that subsistence halibut should be prohibited from the premises of commercial fish buying operations. Although the Council was very clear in its intent that customary trade of subsistence halibut should be allowed, the Council was also mindful of how easily subsistence halibut could be moved into the commercial sector. The Council intended to prevent the movement of subsistence halibut into the commercial sector by recommending that subsistence halibut be prohibited from the premises of commercial fish buying operations. The Council also recognized, however, that two existing practices should be allowed as exceptions to the general rule of no subsistence halibut on the premises of commercial fish buying operations. First, the existing practice of landing small halibut less than 32 inches (in) (81.2 centimeters (cm)) in length caught with CDQ halibut in Area 4E will be allowed to continue and expanded to Area 4D. In these areas, a person may retain halibut less than 32 in (81.2 cm) as subsistence halibut with commercial CDQ halibut provided that the total annual halibut catch of that person is landed at a port within Area 4E or Area

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4D. This provision was implemented in 2002 by the IPHC in section 7 of its regulations published as the annual management measures for the Pacific halibut fishery on March 20, 2002 (67 FR 12885).

Second, a commercial fish buyer who is eligible to harvest subsistence halibut would be allowed to participate in the customary trade of subsistence halibut. NMFS recognizes that implementation of this prohibition may affect current practices, such as use of commercial premises to process subsistence products. Therefore, NMFS especially requests comments on how best to give effect to the Council's intent to prevent movement of subsistence halibut into the commercial sector without preventing current practices or the ability of eligible persons to freely participate in the subsistence halibut program.

Daily Bag Limit

The daily harvest limit for subsistence halibut outside of Areas 4C, 4D, and 4E, is up to 20 halibut per eligible subsistence fisherman. Although harvesting for subsistence purposes generally is self-limiting (i.e., limited by the amount that could be consumed or shared as food), the Council determined that a daily harvest limit should be established for equity among subsistence users and among all halibut user groups (i.e., commercial, recreational, and subsistence). No limit would be established, however, for Areas 4C, 4D, and 4E for two safety reasons. First, the annual time period available for subsistence halibut fishing in Areas 4C, 4D, and 4E is reduced because of sea ice coverage. Second, once the sea ice has melted, the potential to fish for subsistence halibut is further reduced because of frequent rough seas and inclement weather.

Registration

A system of registering eligible subsistence fishermen is proposed primarily to focus the collection of subsistence harvest information on those persons who are actually participating in the subsistence fishery. The exact number of persons who would be eligible to conduct fishing for subsistence halibut under this action is unknown but is estimated in the EA/RIR to be roughly 89,000. Previous subsistence harvest surveys suggest, however, that only about 10 percent of the eligible population actually would fish for subsistence halibut. A survey of a representative number of the entire population of eligible subsistence fishermen would therefore result in "no harvest" for 9 out of 10 persons sampled. Hence, a more efficient and more accurate estimate of the total annual subsistence halibut harvest would result from surveying most (at least 80 percent) of those eligible persons who actually harvest subsistence halibut. By registering to conduct fishing for subsistence halibut, subsistence fishermen would provide NMFS with the basic information necessary to conduct a harvest survey.

NMFS considered alternative methods for estimating total annual subsistence halibut harvests in light of existing commercial, sport, and subsistence harvest assessment programs conducted by the State of Alaska and Federal governments. Also taken into account were the need for precision in estimating the subsistence harvest, predicted to be roughly 1 percent or less of the total fishing mortality of halibut, and the relative cost of collecting subsistence harvest information from a widely dispersed population. Finally, in selecting a registration and survey system for assessing subsistence harvests, NMFS considered the relative likelihood of cooperation by subsistence halibut fishermen in providing accurate information about their harvests under a variety of mandatory log book or other reporting schemes before selecting the proposed registration and survey approach.

A secondary purpose of the registration system is to distinguish between those persons who would be eligible to fish for subsistence halibut and those who would not be eligible. As explained above, a person could be eligible by being either a resident of a rural community or place listed in § 300.65(f)(1) of the proposed rule or a member of a federally recognized Alaska Native tribe listed in § 300.65(f)(2) of the proposed rule. All other persons, regardless of Native tribal affiliation, would not be eligible.

The registration system would be managed by the Restricted Access Management (RAM) Program Office of the Alaska Region, NMFS. The RAM Program manager would confirm the eligibility of registration applicants based on the information provided on an application form. If eligible, an applicant would receive from RAM a subsistence halibut registration certificate (SHARC). Depending on the basis of a person's eligibility, the SHARC he or she receives would expire either in 2 years, for a rural resident registration, or in 4 years, for an Alaska Native tribal registration. Maintaining a valid registration for more than one year would reduce the burden on eligible persons compared to applying for an annual SHARC.

NMFS recognizes that the risk of not having an annual SHARC application is that a non-Native rural resident could move to an urban area of Alaska or out of the State and yet retain an ability to fish for subsistence halibut until his or her SHARC expired. A member of an Alaska Native tribe, however, would retain subsistence halibut fishing eligibility regardless of his or her residency in a rural place. Nevertheless, for the information collection purposes of the registration system, NMFS would remove such an eligible person from the registration list if he or she ceased being actually engaged in subsistence halibut fishing by evidence of no registration renewal. Hence, the expiration or renewal period for a SHARC issued to a member of an Alaska Native tribe could be longer than that issued to a rural resident.

Complying with this proposed registration system by obtaining a SHARC before conducting subsistence fishing for halibut would be mandatory. The objective of NMFS in making this a mandatory requirement, however, is not to prevent otherwise-eligible persons from harvesting subsistence halibut. Instead, the purpose is, as explained above, to collect information on participation and harvests in the subsistence halibut fishery and to distinguish between eligible and non-eligible persons during the fishing season.

The information collected on an application for a SHARC would be minimized to include basic identity and address information. Applications for a rural resident registration would differ from that for an Alaska Native tribal registration, however, in that the former would require the applicant to certify that he or she is a "rural resident," as that term is defined in the proposed rule text. The latter would require the applicant to certify that he or she is a member of an "Alaska Native tribe," as that term is defined in the proposed rule text (see § 300.61). The Alaska Region, NMFS, would seek to arrange cooperative agreements with state and local governments, Alaska Native tribal governments, or other entities to assist eligible subsistence halibut fishermen with registration procedures.

Further, NMFS would be conducting the harvest assessment survey, for which the registration system is designed, primarily through cooperative agreement with the State of Alaska Department of Fish and Game, Alaska Native tribes, or other experienced research institution. The proposed survey instrument would be designed to minimize the reporting burden on subsistence halibut fishermen while retrieving essential information. The survey would collect information on the number and amount (in pounds) of halibut harvested as subsistence halibut, where the subsistence halibut was harvested (the IPHC regulatory area), the type of fishing gear used, and the catch of lingcod or rockfish while fishing for subsistence halibut; and would distinguish halibut harvested for subsistence from halibut harvested while sport fishing. Participation in this survey would be voluntary. A mandatory reporting system was considered and rejected by NMFS because it would lead to penalties for not reporting or misreporting harvest information, which ultimately would undermine the monitoring system. A voluntary system, however, can be designed to estimate the harvests of persons who choose not to participate in the survey as is done by the State of Alaska in its state-wide harvest survey of recreational fishing harvests.

NMFS is particularly interested in public comment on the proposed registration system and harvest assessment survey, especially because implementation of the subsistence halibut management program was not fully addressed by the Council at the time it adopted its recommended subsistence halibut policy.

Restructuring of Regulations

Most of the Council-developed regulations implemented under the Halibut Act authority discussed above are codified at 50 CFR 300 Subpart E. For example, the catch sharing plans for IPHC regulatory Areas 2A and 4, and other management programs off Alaska are described at § 300.63. Fishing by U.S. treaty Indian tribes in IPHC regulatory Area 2A is described at § 330.64 and prohibitions are given at § 300.65. Regulations implementing the Individual Fishing Quota and CDQ programs in and off Alaska, however, are codified at 50 CFR part 679.

NMFS proposes to better distinguish the provisions affecting IPHC regulatory Area 2A from those affecting the other IPHC areas in and off Alaska by codifying them in separate sections. This action would leave all the provisions affecting IPHC regulatory Area 2A where they are now in §§ 300.63 and 300.64. The introductory paragraph in § 300.63 would be revised, however, to clarify this structural change. To complete this proposed change, the "Alaska" provisions currently in § 300.63 would be moved to a revised § 300.65 and a new prohibitions section would be added at § 300.66. Specifically, the proposed changes to the structure of § 300.63 are as follows:

Current section and paragraph	Proposed new location	Would there be a change in the text?
Section 300.63(a) Catch Sharing Plan for Area 2A.	Section 300.63(b).	No, but a new introductory paragraph (a) would be added.
Section 300.63(b) Catch Sharing Plan for Area 4.	Section 300.65(b).	No, but a new introductory paragraph (a) would be added.
Section 300.63(c) "Short" halibut retention provision in Area 4E.	Section 300.65(c).	Yes, to reflect an allowance for "short" halibut to be retained as subsistence fish with CDQ halibut in areas 4D and 4E.
Section 300.63(d) The LAMP for Sitka Sound.	Section 300.65(d).	No.
Section 300.63(e) Sitka Pinnacles Marine Reserve.	Section 300.65(e).	No, but the heading would be simplified.

To avoid confusion in the amendatory language of each instruction, the full text of each paragraph that would be moved along with proposed revisions is repeated in this proposed rule. No substantive changes are proposed, however, in paragraphs (a), (b), (d), or (e) in existing § 300.63. The proposed change for these paragraphs is primarily a structural relocation of them within the CFR. The only substantive change related to the proposed subsistence halibut action would occur in existing § 300.63(c). The remaining proposed subsistence halibut rules would begin at new § 300.65(f) and § 300.66.

Classification

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average 10 minutes per response for each registration, 30 minutes per response for each survey, and 15 minutes to mark each gear buoy, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS, Alaska Region and to the Office of Information and Regulatory Affairs (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows: The proposed rule would provide regulations that would

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authorize a subsistence fishery for halibut in waters off Alaska that are managed under an international agreement between Canada and the United States--2Convention between United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea." These regulations are designed to allow persons who have customarily and traditionally used halibut for food in the past to continue that practice. Formal recognition of the halibut subsistence fishery also is expected to improve information for stock assessment purposes through the collection of better data than are now available to estimate the subsistence harvest of halibut.

This proposed rule would not have a significant economic impact on a substantial number of small entities because it would only regulate individuals. It does not regulate or directly impact small entities as defined in the Regulatory Flexibility Act. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects

50 CFR Part 300

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 600

Fisheries, Fishing.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 14, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 300, 600, and 679 are proposed to be amended as follows:

PART 300— INTERNATIONAL FISHERIES REGULATIONS, SUBPART E— PACIFIC HALIBUT FISHERIES

1. The authority citation for 50 CFR part 300, subpart E continues to read as follows:

Authority: 16 U.S.C. 773–773k.

2. In § 300.61, new definitions for "Alaska Native tribe," "Commission," "Commission regulatory area," "Customary trade," "Rural," "Rural resident," "Subsistence," and "Subsistence halibut" would be added in alphabetical order and existing definitions for "Commercial fishing," "IFQ halibut," and "Sport fishing" would be revised to read as follows:

§ 300.61 Definitions.

* * * * *

Alaska Native tribe means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a federally recognized Alaska Native tribe that has customary and traditional use of halibut and that is listed in § 300.65(f)(2) of this part.

Commercial fishing means fishing, the resulting catch of which either is, or is intended to be, sold or bartered but does not include subsistence fishing.

Commission means the International Pacific Halibut Commission.

Commission regulatory area means an area defined by the Commission for purposes of the Convention identified in 50 CFR 300.60 and prescribed in the annual management measures published pursuant to 50 CFR 300.62.

* * * * *

Customary trade means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, the non-commercial exchange of subsistence halibut for money or anything other than items of significant value.

* * * * *

IFQ halibut means any halibut that is harvested with setline or other hook and line gear while commercial fishing in any IFQ regulatory area defined at § 679.2 of this title.

Rural means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a community or area of Alaska in which the non-commercial, customary and traditional use of fish and game for personal or family consumption is a principal characteristic of the economy or area and in which there is a long-term, customary and traditional use of halibut, and that is listed in § 300.65(f)(1) of this part.

* * * * *

Rural resident means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a person domiciled in a rural community listed in the table in section 300.65(f)(1) of this part and who has maintained a domicile in a rural community listed in the table in § 300.65(f)(1) of this part for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another state, territory, or country.

Sport fishing means:

(a) in regulatory Area 2A, all fishing other than commercial fishing and treaty Indian ceremonial and subsistence fishing; and

(b) in regulatory Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, all fishing other than commercial fishing and subsistence fishing.

* * * * *

Subsistence means, with respect to Commission regulatory areas in and off Alaska, the non-commercial, long-term, customary and traditional use of halibut.

Subsistence halibut means halibut caught by a rural resident or a member of an Alaska Native tribe for direct personal or family consumption as food, sharing for personal or family consumption as food, or customary trade.

* * * * *

3. Section 300.63 is revised to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

(a) A catch sharing plan (CSP) may be developed by the Pacific Fishery Management Council and approved by NMFS for portions of the fishery. Any approved CSP may be obtained from the Administrator, Northwest Region, NMFS.

(b) The catch sharing plan for Area 2A provides a framework that shall be applied to the annual Area 2A total allowable catch (TAC) adopted by the Commission, and shall be implemented through domestic and Commission regulations, which will be published in the **Federal Register** each year before March 15. The Area 2A CSP allocates halibut among the treaty Indian fishery, segments of the non-Indian commercial fishery, and segments of the recreational fishery.

(1) Before January 1 each year, NMFS will publish a proposal to govern the recreational fishery under the CSP for the following year and will seek public comment. The comment period will extend until after the Commission's annual meeting, so the public will have the opportunity to consider the final Area 2A total allowable catch (TAC) before submitting comments. After the Commission's annual meeting and review of public comments, NMFS will publish in the **Federal Register** the final rule governing sport fishing in Area 2A. Annual management measures may be adjusted inseason by NMFS.

(2) A portion of the commercial TAC is allocated as incidental catch in the salmon troll fishery in Area 2A. Each year the landing restrictions necessary to keep the fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the **Federal Register** along with the annual salmon management measures.

(3) The commercial longline fishery in Area 2A is governed by the annual management measures published pursuant to §§ 300.62 and 300.63.

(4) The treaty Indian fishery is governed by § 300.64 and tribal regulations. The annual quota for the fishery will be announced with the Commission regulations under § 300.62.

4. Section 300.65 is redesignated as § 300.66 and a new § 300.65 is added to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in Commission regulatory areas in and off Alaska.

(a) A catch sharing plan (CSP) may be developed by the North Pacific Fishery Management Council and approved by NMFS for portions of the fishery. Any approved CSP may be obtained from the Administrator, Alaska Region, NMFS.

(b) The catch sharing plan for Commission regulatory Area 4 allocates the annual TAC among Area 4 subareas, and will be implemented by the Commission in annual management measures published pursuant to 50 CFR 300.62.

(c) A person authorized to conduct subsistence fishing under paragraph (f) of this section may retain subsistence halibut that are taken with setline gear in Commission regulatory Areas 4D or 4E and that are smaller than the size limit specified in the annual management measures published pursuant to 50 CFR 300.62, provided that:

(1) The total annual halibut harvest of that person is landed in regulatory Areas 4D or 4E; and

(2) No person may sell such halibut outside of the limits prescribed for customary and traditional exchange of subsistence halibut prescribed at 50 CFR 300.66.

(d) The Local Area Management Plan (LAMP) for Sitka Sound provides guidelines for participation in the halibut fishery in Sitka Sound.

(1) For purposes of this section, Sitka Sound means (see Figure 1):

(i) With respect to paragraph (d)(2) of this section, that part of the Commission regulatory Area 2C that is enclosed on the north and east:

(A) By a line from Kruzof Island at 57°20'30" N. lat., 135°45'10" W. long. to Chichagof Island at 57°22'03" N. lat., 135°43'00" W. long., and

(B) By a line from Chichagof Island at 57°22'35" N. lat., 135°41'18" W. long. to Baranof Island at 57°22'17" N. lat., 135°40'57" W. long.; and

(C) That is enclosed on the south and west by a line from Cape Edgecumbe at 57°59'54" N. lat., 135°51'27" W. long. to Vasilief Rock at 56°48'56" N. lat., 135°32'30" W. long., and

(D) To the green day marker in Dorothy Narrows at 56°49'17" N. lat., 135°22'45" W. long. to Baranof Island at 56°49'17" N. lat., 135°22'36" W. long.

(ii) With respect to paragraphs (d)(3) and (4) of this section, that part of the Commission regulatory Area 2C that is enclosed on the north and east:

(A) By a line from Kruzof Island at 57°20'30" N. lat., 135°45'10" W. long. to Chichagof Island at 57°22'03" N. lat., 135°43'00" W. long., and

(B) A line from Chichagof Island at 57°22'35" N. lat., 135°41'18" W. long. to Baranof Island at 57°22'17" N. lat., 135°40'57" W. lat.; and

(C) That is enclosed on the south and west by a line from Sitka Point at 56°59'23" N. lat., 135°49'34" W. long., to Hanus Point at 56°51'55" N. lat., 135°30'30" W. long.,

(D) To the green day marker in Dorothy Narrows at 56°49'17" N. lat., 135°22'45" W. long. to Baranof Island at 56°49'17" N. lat., 135°22'36" W. long.

(2) A person using a vessel greater than 35 ft (10.7 m) LOA, as defined at 50 CFR 300.61, is prohibited from fishing for IFQ halibut with setline gear, as defined at 50 CFR 300.61, within Sitka Sound as defined in paragraph (d)(1)(i) of this section.

(3) A person using a vessel less than or equal to 35 ft (10.7 m) LOA, as defined at 50 CFR 300.61:

(i) Is prohibited from fishing for IFQ halibut with setline gear within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31; and

(ii) Is prohibited, during the remainder of the designated IFQ season, from retaining more than 2,000 lb. (0.91 mt) of IFQ halibut within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, per IFQ fishing trip, as defined in 50 CFR 300.61.

(4) No charter vessel, as defined at 50 CFR 300.61, shall engage in sport fishing, as defined at 50 CFR 300.61(b), for halibut within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(i) No charter vessel shall retain halibut caught while engaged in sport fishing, as defined at 50 CFR 300.61(b), for other species, within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(ii) Notwithstanding paragraphs (d)(4) and (d)(4)(i) of this section, halibut harvested outside Sitka Sound, as defined in (d)(1)(ii) of this section, may be retained onboard a charter vessel engaged in sport fishing, as defined in 50 CFR 300.61(b), for other species within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(e) Sitka Pinnacles Marine Reserve.

(1) For purposes of this paragraph (e), the Sitka Pinnacles Marine Reserve means an area totaling 2.5 square nm off Cape Edgecumbe, defined by straight lines connecting the following points in a counterclockwise manner:

56°55.5' N lat., 135°54.0' W long;
56°57.0' N lat., 135°54.0' W long;
56°57.0' N lat., 135°57.0' W long;
56°55.5' N lat., 135°57.0' W long.

(2) No person shall engage in commercial, sport or subsistence fishing, as defined at § 300.61 of this part, for halibut within the Sitka Pinnacles Marine Reserve.

(3) No person shall anchor a vessel within the Sitka Pinnacles Marine Reserve if halibut is on board.

(f) Subsistence fishing in and off Alaska. No person shall engage in subsistence fishing for halibut unless that person meets the requirements in paragraphs (f)(1) or (f)(2) of this section.

(1) A person is eligible to harvest subsistence halibut if he or she is a rural resident of a community with customary and traditional uses of halibut listed in the following table:

HALIBUT REGULATORY AREA 2C

Rural Community	Organized Entity
Angoon	Municipality
Coffman Cove	Municipality
Craig	Municipality
Edna Bay	Census Designated Place
Elfin Cove	Census Designated Place
Gustavus	Census Designated Place
Haines	Municipality
Hollis	Census Designated Place
Hoonah	Municipality
Hydaburg	Municipality
Hyder	Census Designated Place
Kake	Municipality
Kasaan	Municipality
Klawock	Municipality
Klukwan	Census Designated Place
Metlakatla	Census Designated Place
Meyers Chuck	Census Designated Place
Pelican	Municipality
Petersburg	Municipality
Point Baker	Census Designated Place
Port Alexander	Municipality
Port Protection	Census Designated Place
Saxman	Municipality
Sitka	Municipality
Skagway	Municipality
Tenakee Springs	Municipality
Thorne Bay	Municipality
Whale Pass	Census Designated Place

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HALIBUT REGULATORY AREA 2C—Continued

Rural Community	Organized Entity
Wrangell	Municipality

HALIBUT REGULATORY AREA 3A

Rural Community	Organized Entity
Akhiok	Municipality
Chenega Bay	Census Designated Place
Cordova	Municipality
Karluk	Census Designated Place
Kodiak City	Municipality
Larsen Bay	Municipality
Nanwalek	Census Designated Place
Old Harbor	Municipality
Ouzinkie	Municipality
Port Graham	Census Designated Place
Port Lions	Municipality
Seldovia	Municipality
Tatitlek	Census Designated Place
Yakutat	Municipality

HALIBUT REGULATORY AREA 3B

Rural Community	Organized Entity
Chignik Bay	Municipality
Chignik Lagoon	Census Designated Place
Chignik Lake	Census Designated Place
Cold Bay	Municipality
False Pass	Municipality
Ivanof Bay	Census Designated Place
King Cove	Municipality
Nelson Lagoon	Census Designated Place
Perryville	Census Designated Place
Sand Point	Municipality

HALIBUT REGULATORY AREA 4A

Rural Community	Organized Entity
Akutan	Municipality
Nikolski	Census Designated Place
Unalaska	Municipality

HALIBUT REGULATORY AREA 4B

Rural Community	Organized Entity
Adak	Census Designated Place
Atka	Municipality

HALIBUT REGULATORY AREA 4C

Rural Community	Organized Entity
St. George	Municipality
St. Paul	Municipality

HALIBUT REGULATORY AREA 4D

Rural Community	Organized Entity
Gambell	Municipality
Savoonga	Municipality
Diomede (Inalik)	Municipality

HALIBUT REGULATORY AREA 4E

Rural Community	Organized Entity
Alakanuk	Municipality
Aleknegik	Municipality
Bethel	Municipality
Brevig Mission	Municipality
Chefornak	Municipality
Chevak	Municipality
Clark's Point	Municipality
Council	Census Designated Place
Dillingham	Municipality
Eek	Municipality
Egegik	Municipality
Elim	Municipality
Emmonak	Municipality
Golovin	Municipality
Goodnews Bay	Municipality
Hooper Bay	Municipality
King Salmon	Census Designated Place
Kipnuk	Census Designated Place
Kongiganak	Census Designated Place
Kotlik	Municipality
Koyuk	Municipality
Kwigillingok	Census Designated Place
Levelock	Census Designated Place
Manokotak	Municipality
Mekoryak	Municipality
Naknek	Census Designated Place
Napakiak	Municipality
Napaskiak	Municipality
Newtok	Census Designated Place
Nightmute	Municipality
Nome	Municipality
Oscarville	Census Designated Place
Pilot Point	Municipality
Platinum	Municipality
Port Heiden	Municipality
Quinhagak	Municipality
Scammon Bay	Municipality
Shaktoolik	Municipality
Sheldon Point (Nunam Iqua).	Municipality
Shishmaref	Municipality
Solomon	Census Designated Place
South Naknek	Census Designated Place
St. Michael	Municipality
Stebbins	Municipality
Teller	Municipality
Togiak	Municipality
Toksook Bay	Municipality
Tuntutuliak	Census Designated Place
Tununak	Census Designated Place
Twin Hills	Census Designated Place
Ugashik	Census Designated Place
Unalakleet	Municipality
Wales	Municipality
White Mountain	Municipality

HALIBUT REGULATORY AREA 4E—Continued

Rural Community	Organized Entity
Stebbins	Municipality
Teller	Municipality
Togiak	Municipality
Toksook Bay	Municipality
Tuntutuliak	Census Designated Place
Tununak	Census Designated Place
Twin Hills	Census Designated Place
Ugashik	Census Designated Place
Unalakleet	Municipality
Wales	Municipality
White Mountain	Municipality

(2) A person is eligible to harvest subsistence halibut if he or she is a member of an Alaska Native tribe with customary and traditional uses of halibut listed in the following table:

HALIBUT REGULATORY AREA 2C

Place with Tribal Headquarters	Organized Tribal Entity
Angoon	Angoon Community Association
Craig	Craig Community Association
Haines	Chilkoot Indian Association
Hoonah	Hoonah Indian Association
Hydaburg	Hydaburg Cooperative Association
Juneau	Aukquan Traditional Council Central Council Tlingit and Haida Indian Tribes Douglas Indian Association
Kake	Organized Village of Kake
Kasaan	Organized Village of Kasaan
Ketchikan	Ketchikan Indian Corporation
Klawock	Klawock Cooperative Association
Klukwan	Chilkat Indian Village
Metlakatla	Metlakatla Indian Community, Annette Island Reserve
Petersburg	Petersburg Indian Association
Saxman	Organized Village of Saxman
Sitka	Sitka Tribe of Alaska
Skagway	Skagway Village
Wrangell	Wrangell Cooperative Association

HALIBUT REGULATORY AREA 3A

Place with Tribal Headquarters	Organized Tribal Entity
Akhiok	Native Village of Akhiok
Chenega Bay	Native Village of Chanega
Cordova	Native Village of Eyak
Karluk	Native Village of Karluk
Kenai-Soldotna	Kenaitze Indian Tribe Village of Salamatoff
Kodiak City	Lesnoi Village (Woody Island) Native Village of Afognak Shoonaq' Tribe of Kodiak
Larsen Bay	Native Village of Larsen Bay
Nanwalek	Native Village of Nanwalek
Ninilchik	Ninilchik Village
Old Harbor	Village of Old Harbor
Ouzinkie	Native Village of Ouzinkie
Port Graham	Native Village of Port Graham
Port Lions	Native Village of Port Lions
Seldovia	Seldovia Village Tribe
Tatitlek	Native Village of Tatitlek
Yakutat	Yakutat Tlingit Tribe

HALIBUT REGULATORY AREA 3B

Place with Tribal Headquarters	Organized Tribal Entity
Chignik Bay	Native Village of Chignik
Chignik Lagoon	Native Village of Chignik Lagoon
Chignik Lake	Chignik Lake Village
False Pass	Native Village of False Pass
Ivanof Bay	Ivanoff Bay Village
King Cove	Agdaagux Tribe of King Cove Native Village of Belkofski
Nelson Lagoon	Native Village of Nelson Lagoon
Perryville	Native Village of Perryville
Sand Point	Pauloff Harbor Village Native Village of Unga Qagan Toyagungin Tribe of Sand Point Village

HALIBUT REGULATORY AREA 4A

Place with Tribal Headquarters	Organized Tribal Entity
Akutan	Native Village of Akutan
Nikolski	Native Village of Nikolski
Unalaska	Qawalingin Tribe of Unalaska

HALIBUT REGULATORY AREA 4B

Place with Tribal Headquarters	Organized Tribal Entity
Atka	Native Village of Atka

HALIBUT REGULATORY AREA 4C

Place with Tribal Headquarters	Organized Tribal Entity
St. George St. Paul	Pribilof Islands Aleut Communities of St. Paul Island and St. George Island

HALIBUT REGULATORY AREA 4D

Place with Tribal Headquarters	Organized Tribal Entity
Gambell	Native Village of Gambell
Savoonga	Native Village of Savoonga
Diomede (Inalik)	Native Village of Diomede (Inalik)

HALIBUT REGULATORY AREA 4E

Place with Tribal Headquarters	Organized Tribal Entity
Alakanuk	Village of Alakanuk
Aleknagik	Native Village of Aleknagik
Bethel	Orutsararmuit Native Village
Brevig Mission	Native Village of Brevig Mission
Chefornak	Village of Chefornak
Chevak	Chevak Native Village
Clark's Point	Village of Clark's Point
Council	Native Village of Council
Dillingham	Native Village of Dillingham Native Village of Ekuk Native Village of Kanakanak
Eek	Native Village of Eek
Egegik	Egegik Village Village of Kanatak
Elim	Native Village of Elim
Emmonak	Chuloonawick Native Village Emmonak Village
Golovin	Chinik Eskimo Community
Goodnews Bay	Native Village of Goodnews Bay
Hooper Bay	Native Village of Hooper Bay Native Village of Paimiut
King Salmon	King Salmon Tribal Council
Kipnuk	Native Village of Kipnuk
Kongiganak	Native Village of Kongiganak
Kotlik	Native Village of Hamilton Village of Bill Moore's Slough Village of Kotlik
Koyuk	Native Village of Koyuk
Kwigillingok	Native Village of Kwigillingok
Levelock	Levelock Village
Manokotak	Manokotak Village
Mekoryak	Native Village of Mekoryak
Naknek	Naknek Native Village
Napakiak	Native Village of Napakiak
Napaskiak	Native Village of Napaskiak
Newtok	Newtok Village
Nightmute	Native Village of Nightmute Umkumiute Native Village
Nome	King Island Native Community Nome Eskimo Community
Oscarville	Oscarville Traditional Village
Pilot Point	Native Village of Pilot Point
Platinum	Platinum Traditional Village
Port Heiden	Native Village of Port Heiden
Quinhagak	Native Village of Kwinhagak
Scammon Bay	Native Village of Scammon Bay
Shaktoolik	Native Village of Shaktoolik
Sheldon Point (Nuna-Iqua).	Native Village of Sheldon's Point
Shishmaref	Native Village of Shishmaref
Solomon	Village of Solomon
South Naknek	South Naknek Village
St. Michael	Native Village of Saint Michael
Stebbins	Stebbins Community Association
Teller	Native Village of Mary's Igloo Native Village of Teller
Togiak	Traditional Village of Togiak
Toksook Bay	Native Village of Toksook Bay
Tuntutuliak	Native Village of Tuntutuliak
Tununak	Native Village of Tununak
Twin Hills	Twin Hills Village
Ugashik	Ugashik Village
Unalakleet	Native Village of Unalakleet
Wales	Native Village of Wales
White Mountain	Native Village of White Mountain

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(g) Limitations on subsistence fishing. Subsistence fishing for halibut may be conducted only by persons who qualify for such fishing pursuant to paragraph (f) of this section and who hold a valid subsistence halibut registration certificate in that person's name issued by NMFS pursuant to paragraph (h) of this section, provided that such fishing is consistent with the following limitations.

(1) Subsistence fishing is limited to setline gear and hand-held gear:

(i) Of not more than 30 hooks, including longline, handline, rod and reel, spear, jigging, and hand-troll gear.

(ii) All setline gear marker buoys carried on board or used by any vessel regulated under this part shall be marked with the following: First initial, last name, and address (street, city, and state).

(iii) Markings on setline marker buoys shall be in characters at least 4 in (10.16 cm) in height and 0.5 in (1.27 cm) in width in a contrasting color visible above the water line and shall be maintained so the markings are clearly visible.

(2) The daily retention of subsistence halibut in rural areas is limited to no more than 20 fish per person eligible to conduct subsistence fishing for halibut under paragraph (g) of this section, except that no daily retention limit applies in Areas 4C, 4D, and 4E.

(3) Subsistence fishing may be conducted in any Commission regulatory area that is in and off Alaska except for the following four non-rural areas defined as follows:

(i) *Ketchikan non-subsistence marine waters area in Commission regulatory Area 2C (see Figure 2)* is defined as those waters between a line from Caamano Point at 55°29.90' N. lat., 131°58.25' W. long. to Point Higgins at 55°27.42' N. lat., 131°50.00' W. long. and a point at 55°11.78' N. lat., 131°05.13' W. long., located on Point Sykes to a point at 55°12.22' N. lat., 131°05.70' W. long., located one-half mile northwest of Point Sykes to Point Alava at 55°11.54' N. lat., 131°11.00' W. long. and within one mile of the mainland and the Gravina and Revillagigedo Island shorelines, including within one mile of the Cleveland Peninsula shoreline and east of the longitude of Niblack Point at 132°07.23' W. long., and north of the latitude of the southernmost tip of Mary Island at 55°02.66' N. lat.;

(ii) *Juneau non-subsistence marine waters area in Commission regulatory Area 2C (see Figure 3)* is defined as those waters of Stephens Passage and contiguous waters north of the latitude of Midway Island Light (57°50.21' N. lat.), including the waters of Taku Inlet, Port Snettisham, Saginaw Channel, and Favorite Channel, and those waters of Lynn Canal and contiguous waters south of the latitude of the northernmost entrance of Berners Bay (58°43.07' N. lat.), including the waters of Berners Bay and Echo Cove, and those waters of Chatham Strait and contiguous waters north of the latitude of Point Marsden (58°03.42' N. lat.), and east of a line from Point Couverden at 58°11.38' N. lat., 135°03.40' W. long., to Point Augusta at 58°02.38' N. lat., 134°57.11' W. long.;

(iii) *Anchorage/Matsu/Kenai non-subsistence marine waters area in Commission regulatory Area 3A (see Figure 4)* is defined as all waters of Alaska enclosed by a line extending east from Cape Douglas (58°51.10' N. lat.), and a line extending south from Cape Fairfield (148°50.25' W. long.), except those waters north of Point Bede which are west of a line from the easternmost point of Jakolof Bay (151°32.00' W. long.) north to the westernmost point of Hesketh Island (59°30.04' N. lat., 151°31.09' W. long.), including Jakolof Bay and south of a line west from Hesketh Island (59°30.04' N. lat. extending to the boundary of the territorial sea); the waters south of Point Bede which are west of the easternmost point of Rocky Bay (from the mainland along 151°18.41' W. long. to the intersection with the territorial sea); and includes those waters within mean lower low tide from a point 1 mile south of the southern edge of the Chuitna River (61°05.00' N. lat., 151° 01.00' W. long.) south to the easternmost tip of Granite Point (61°01.00' N. lat., 151°23.00' W. long.); and

(iv) *Valdez non-subsistence marine waters area Commission regulatory Area 3A (see Figure 5)* is defined as the waters of Port Valdez and Valdez Arm located north of 61°02.24' N. lat., and east of 146°43.80' W. long.

(4) Commission regulatory areas in and off Alaska that are not specifically identified as non-rural in paragraph (g)(3) of this section are rural for purposes of subsistence fishing for halibut. Subsistence fishing may be conducted in any rural area by any person with a valid subsistence halibut registration certificate in his or her name issued by NMFS under paragraph (h) of this section, except that:

(i) A person who is not a rural resident but who is a member of an Alaska Native tribe that is located in a rural area and that is listed in the table in paragraph (f)(2) of this section, is limited to conducting subsistence fishing for halibut only in his or her area of tribal membership.

(ii) A person who is a resident outside of the State of Alaska but who is a member of an Alaska Native tribe that is located in a rural area and that is listed in the table in paragraph (f)(2) of this section, is limited to conducting subsistence fishing for halibut only in his or her area of tribal membership.

(iii) For purposes of this paragraph, "area of tribal membership" means rural areas of the Commission regulatory area in which the Alaska Native tribal headquarters is located.

(h) *Subsistence registration.* A person must register as a subsistence halibut fisherman and possess a valid subsistence halibut registration certificate in his or her name issued by NMFS before he or she begins subsistence fishing for halibut in any Commission regulatory area in and off Alaska.

(1) A subsistence halibut registration certificate will be issued to any person who is qualified to conduct subsistence fishing for halibut according to paragraph (f) of this section. The Alaska Region, NMFS, may enter into cooperative agreements with Alaska Native tribal governments or their representative organizations for purposes of identifying persons qualified to conduct subsistence fishing for halibut according to paragraph (f) of this section.

(2) A person may register as a subsistence halibut fisherman with a cooperating Alaska Native tribal government or other entity designated by NMFS, or directly with the Alaska Region, NMFS, by submitting the following information to the:

Restricted Access Management (RAM) Program
NMFS, Alaska Region
P.O. Box 21668
Juneau, AK 99802–1668

(i) For a Rural Resident Registration, the person must submit his or her full name, date of birth, mailing address (number and street, city and state, zip code), community of residence (the rural community or residence from 50 CFR 300.65(f)(1) that qualifies the fisher as eligible to fish for subsistence halibut), daytime telephone number, certification that he or she is a "rural resident" as that term is defined at § 300.61 of this part, and signature and date of signature.

(ii) For an Alaska Native Tribal Registration, the person must submit his or her full name, date of birth, mailing address (number and street, city and state, zip code), Alaska Native tribe (the name of the Alaska Native Tribe from 50 CFR 300.65(f)(2) that qualifies the fisher as eligible to fish for subsistence halibut), daytime telephone number, certification that he or she is a member of an "Alaska Native tribe" as that term is defined at § 300.61 of this part, and signature and date of signature.

(3) The Administrator, Alaska Region, NMFS, or an authorized representative, may conduct periodic surveys of persons who hold valid subsistence halibut registration certificates to estimate the annual harvest of subsistence halibut and related catch and effort information. For purposes of this paragraph, an authorized representative of NMFS may include employees of, or contract workers for, the State of Alaska or a Federal agency or an Alaska Native tribal government representative as may be prescribed by cooperative agreement with NMFS. Responding to a subsistence halibut harvest survey will be voluntary, and may include providing information on:

(i) The subsistence fisher's identity including his or her full name, date of birth, mailing address (number and street, city and state, zip code), community of residence, daytime phone number, and tribal identity (if appropriate);

(ii) The subsistence halibut harvest including whether the participant fished for subsistence halibut during the year, and if so, the number and weight (in pounds) of halibut harvested, the type of gear and number of hooks usually used, the Commission regulatory area from which the halibut were harvested, and the number of ling cod and rockfish caught while subsistence fishing for halibut; and

(iii) Any sport halibut harvest including whether the participant sport fished for halibut during the year and the number and weight (in pounds) of halibut harvested while sport fishing.

5. Newly redesignated § 300.66 is revised to read as follows:

§ 300.66 Prohibitions.

In addition to the general prohibitions specified in 50 CFR 300.4, it is unlawful for any person to do any of the following:

(a) Fish for halibut except in accordance with the annual management measures published pursuant to 50 CFR 300.62.

(b) Fish for halibut except in accordance with the catch sharing plans and domestic management measures implemented under 50 CFR 300.63 and 50 CFR 300.65.

(c) Fish for halibut in Sitka Sound in violation of the Sitka Sound LAMP implemented under 50 CFR 300.65(d).

(d) Fish for halibut or anchor a vessel with halibut on board within the Sitka Pinnacles Marine Reserve defined at 50 CFR 300.65(e).

(e) Fish for subsistence halibut in and off Alaska unless the person is qualified to do so under 50 CFR 300.65(f), and possess a valid subsistence halibut registration certificate pursuant to 50 CFR 300.65(h).

(f) Fish for subsistence halibut in and off Alaska with gear other than that described at 50 CFR 300.65(g)(1) and retain more halibut than specified at 50 CFR 300.65(g)(2).

(g) Fish for subsistence halibut in and off Alaska in a non-rural area specified at 50 CFR 300.65(g)(3).

(h) Retain on board the harvesting vessel halibut harvested from subsistence fishing with halibut harvested from commercial fishing or from sport fishing, as defined at 50 CFR 300.61(b), except that persons who land their total annual harvest of halibut in Commission regulatory Area 4D or 4E may retain, with harvests of CDQ halibut, halibut harvested in Commission regulatory Areas 4D or 4E that are smaller than the size limit specified in the annual management measures published pursuant to 50 CFR 300.62.

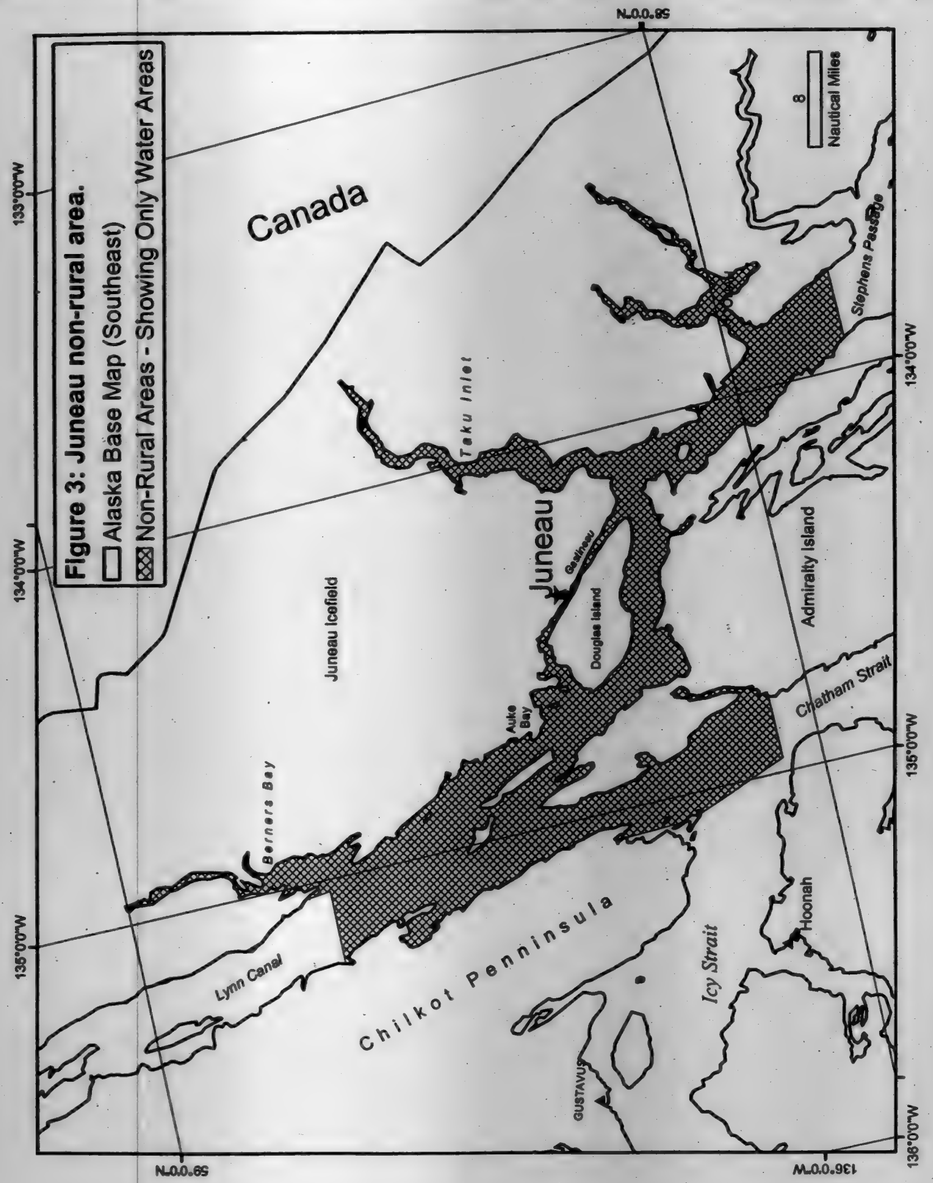
(i) Retain subsistence halibut that were harvested using a charter vessel.

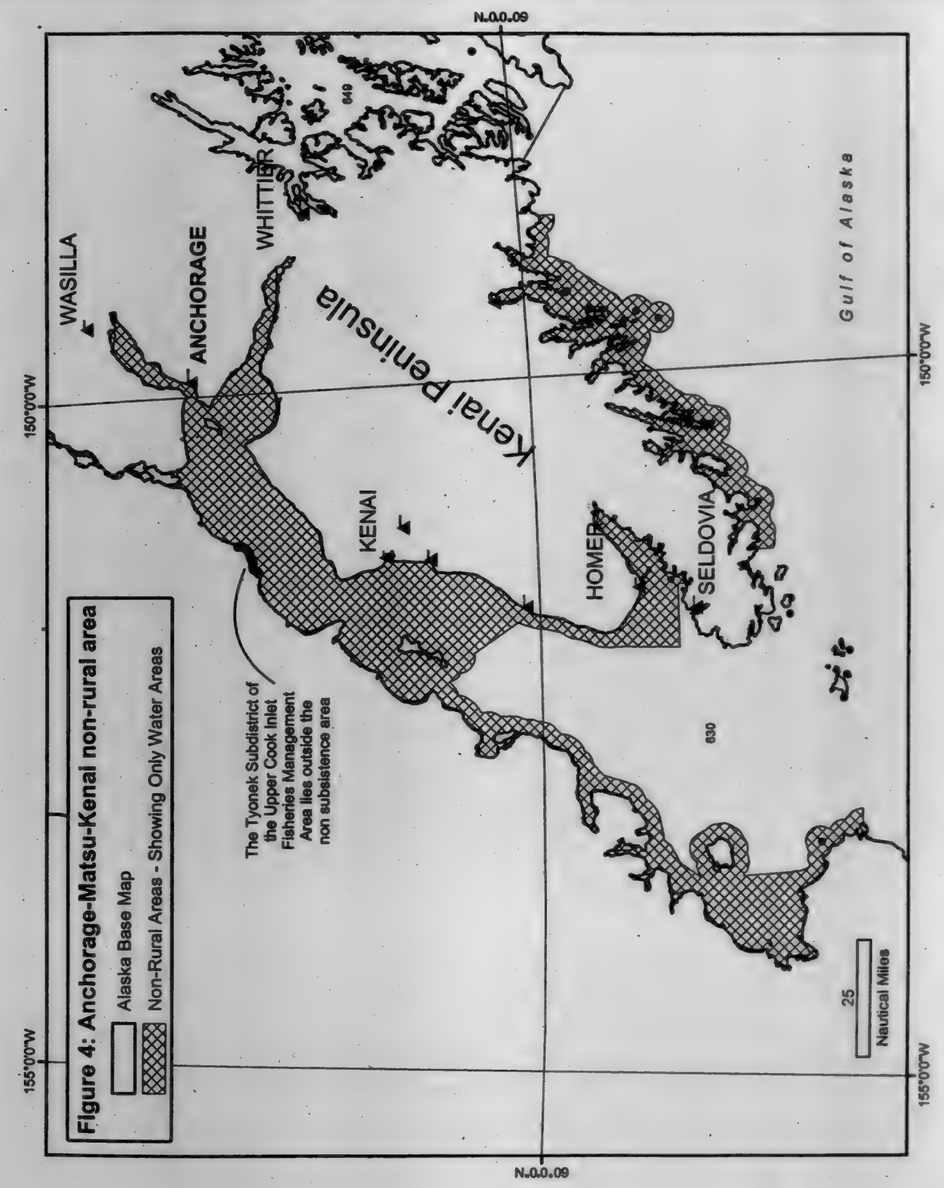
(j) Retain or possess subsistence halibut for commercial purposes, cause subsistence halibut to be sold, bartered or otherwise enter commerce or solicit exchange of subsistence halibut for commercial purposes, except that a person qualified to conduct subsistence fishing for halibut under 50 CFR 300.65(f), and who holds a subsistence halibut registration certificate in the person's name under 50 CFR 300.65(h), may engage in the customary trade of subsistence halibut through monetary exchange of no more than $400 per year.

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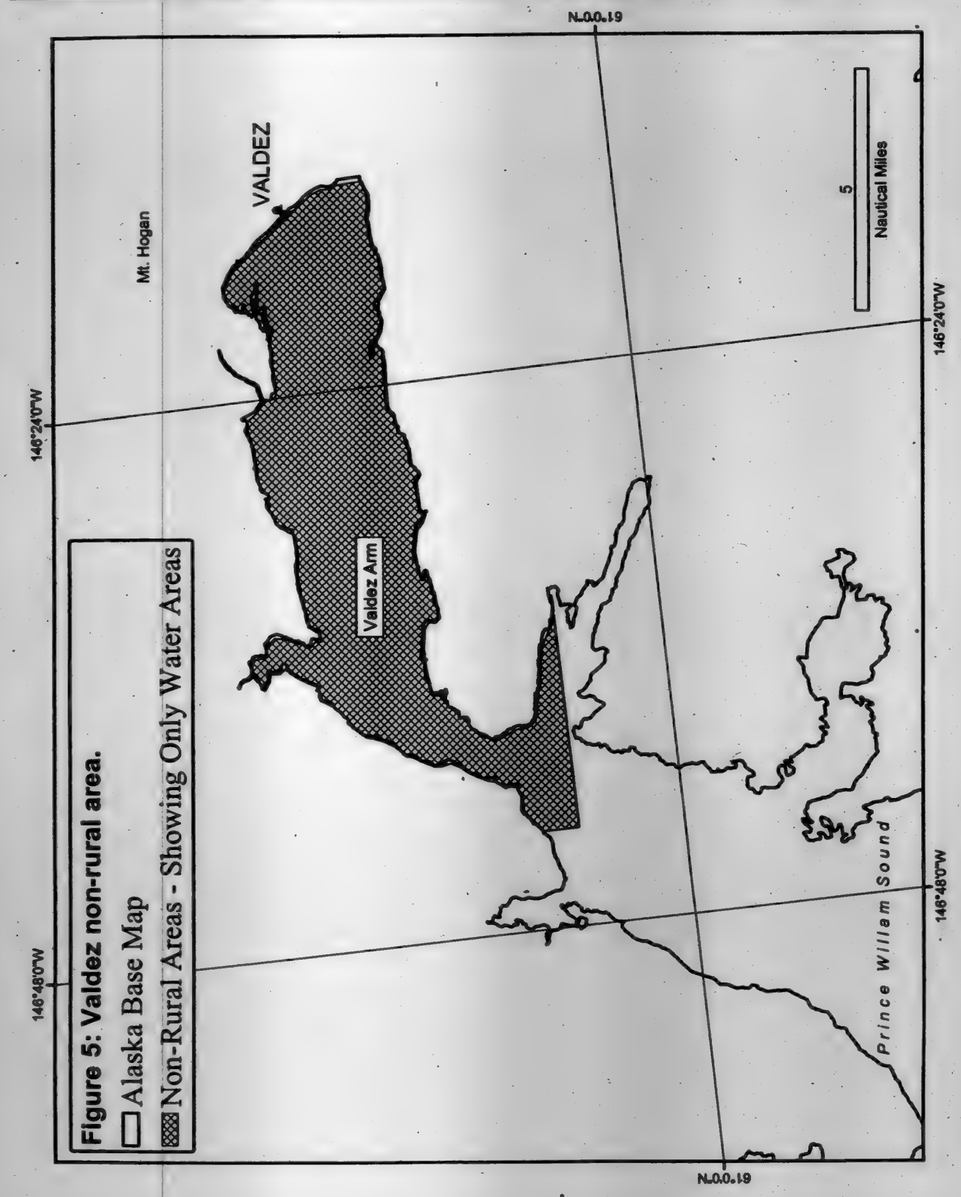
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PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C 561 and 16 U.S.C. 1801 *et seq.*

2. In § 600.725, table VII in paragraph (v) is revised to read as follows:

VII NORTH PACIFIC MANAGEMENT COUNCIL

Fishery	Authorized gear types
. . .	. . .
7. Pacific Halibut Fishery (Non-FMP)	
A. Commercial (IFQ and CDQ).	A. Hook and line
B. Recreational	B. Single line with no more than 2 hooks attached or spear
C. Subsistence	C. Setline gear and hand held gear of not more than 30 hooks, including longline, handline, rod and reel, spear, jigging and hand-troll gear.
. . . . .	. . . . .

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209 Pub. L. 106–554.

2. In § 679.2, the definitions for "Commercial fishing," and "IFQ halibut" are revised as follows:

§ 679.2 Definitions.

* * * * *

Commercial fishing means:

(1) For purposes of the High Seas Salmon Fishery, fishing for fish for sale or barter; and

(2) For purposes of the Pacific halibut fishery, fishing, the resulting catch of which either is, or is intended to be, sold or bartered but does not include subsistence fishing for halibut, as defined at 50 CFR 300.61.

* * * * *

IFQ halibut means any halibut that is harvested with setline or other hook and line gear while commercial fishing in any IFQ regulatory area defined in this section.

* * * * *

[FR Doc. 02–21456 Filed 8–23–02; 8:45 am]

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Notices

Federal Register
Vol. 67, No. 165
Monday, August 26, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

[TM–02–07]

Notice of Organic Certification Cost Share Program

AGENCY: Agricultural Marketing Services, USDA.

ACTION: Notice.

SUMMARY: This Notice invites eligible States to submit a Standard Form 424, Application for Federal Assistance, and to enter into a Cooperative Agreement with the Agricultural Marketing Service for the Allocation of Organic Certification Cost-Share Funds. The Agricultural Marketing Service (AMS) has allocated $1.0 million for this organic certification cost-share program in Fiscal Year 2002. Funds will be available under this program to 15 designated States to assist organic crop and livestock producers certified to the National Organic Program. Eligible States interested in obtaining cost-share funds for their organic producers will have to submit an Application for Federal Assistance, and will have to enter into a cooperative agreement with AMS for the allocation of such funds.

DATES: Completed applications for federal assistance along with signed cooperative agreements must be received by October 10, 2002 in order to participate in this program.

ADDRESSES: Applications for federal assistance and cooperative agreements shall be requested from and submitted to: Robert Pooler, Marketing Specialist, National Organic Program, USDA/AMS/TMP/NOP, Room 4008-South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0264; Telephone: (202) 720–3252; Fax: (202) 205–7808; E-mail: *bob.pooler@usda.gov*. Additional information may be found through the National Organic Program's homepage at *http://www.ams.usda.gov/nop*.

FOR FURTHER INFORMATION CONTACT: Robert Pooler, Marketing Specialist, National Organic Program, USDA/AMS/TM/NOP, Room 4008-South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0264; Telephone: (202) 720–3252; Fax: (202) 205–7808; E-mail: *bob.pooler@usda.gov*.

SUPPLEMENTARY INFORMATION: This Organic Certification Cost-Share Program is part of the Agricultural Management Assistance Program authorized under Section 1524 of the Federal Crop Insurance Act (FCIA), as amended, (7 U.S.C. 1501–1524). Under the applicable FCIA provisions, the Department is authorized to provide cost share assistance to producers in the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. These 15 States have historically low participation rates in Federal crop insurance programs. This organic certification cost share program provides financial assistance to organic producers certified to the National Organic Program authorized under the Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et seq.*).

To participate in the program, eligible States must complete a Standard Form 424, Application for Federal Assistance, and enter into a written cooperative agreement with AMS. The program will provide cost-share assistance, through participating States, to organic crop and livestock producers who have been certified by a USDA accredited certifying agent from November 1, 2002 until September 30, 2003. The Department has determined that payments will be limited to 75 percent of an individual producer's certification costs up to a maximum of $500.00.

Authority: 7 U.S.C. 1501–1524

Dated: August 19, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–21610 Filed 8–23–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–02–05]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) is announcing a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: The meeting dates are: September 17, 2002, 8 a.m. to 6 p.m.; September 18, 2002, 8 a.m. to 6 p.m.; and September 19, 2002, 8 a.m. to 6:30 p.m. Requests from individuals and organizations wishing to make an oral presentation at the meeting are due by the close of business on September 1, 2002.

ADDRESSES: The meeting will take place at the Radisson Barceló Hotel, Board Room, 2121 P Street, NW., Washington, DC. Requests to make an oral presentation at the meeting may be sent to Ms. Katherine Benham at USDA–AMS–TMD–NOP, 1400 Independence Avenue, SW., Room 4008-So., Ag Stop 0268, Washington, DC 20250–0200. Requests to make an oral presentation at the meeting may also be sent electronically to Ms. Katherine Benham at *katherine.benham@usda.gov*, via telephone at (202) 205–7806, or via facsimile at (202) 205–7808.

The September NOSB meeting agenda is available at *http://www.ams.usda.gov/nop* or from Ms. Katherine Benham at (202) 205–7806, preceding addresses or via telephone (202) 205–7806.

FOR FURTHER INFORMATION CONTACT: Richard Mathews, Program Manager, National Organic Program, (202) 720–3252.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. Section 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to make recommendations about whether a substance should be allowed or prohibited in organic production or handling, to assist in the development of standards for substances to be used in organic production and to advise the Secretary on other aspects of the implementation of OFPA. The NOSB met for the first time in Washington, DC, in March 1992, and currently has six committees working on various aspects of the organic program. The committees are: Accreditation, Crops, Livestock, Materials, International, and Processing.

In August of 1994, the NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture. Since that time, the NOSB has submitted 42 addenda to its recommendations and reviewed more than 220 substances for inclusion on the National List of Allowed and Prohibited Substances. The last meeting of the NOSB was held on May 6–8, 2002, in Austin, Texas.

The Department of Agriculture (USDA) published its final National Organic Program regulation in the **Federal Register** on December 21, 2000 (65 FR 80548). The rule became effective April 21, 2001.

The principal purposes of the meeting are to provide an opportunity for the NOSB to: receive an update from the USDA/NOP, receive a recommendation from the Livestock Committee, and review materials to determine if they should be recommended for inclusion on the National List of Allowed and Prohibited Substances.

The Livestock Committee will present for NOSB consideration its recommendations on "dairy animal replacement." The Materials Committee will present 32 materials for consideration for possible inclusion on the National List of Allowed and Prohibited Substances.

Materials to be reviewed at the meeting by the NOSB are as follows:

Crop Production: Potassium Sulfate, Ozone Gas (two petitions), Potassium Silicate, Tetrahydrofurfuryl Alcohol, Phermones (amend annotation), Sodium (Chilean) Nitrate (Remove and Amend Annotation), 1,4 Dimethylnaphthalene.

Livestock Production: Propylene Glycol, Magnesium Hydroxide/Magnesium Oxide, Epinephrine aka Adrenaline, Kaolin Pectin, Bismuth Subsalicylate, Flunixin (Banamine), Xylazine/Tolazoline, Butorphanol, Potassium Sorbate, Cell Wall Carbohydrates, Yeast Derivatives, Proteinated Chelates, Atropine, Heparine, Furosemide, Calcium Propionate, Mineral Oil, Activated Charcoal.

Processing: Calcium Stearate, Tetrasodium Pyrophosphate, Hydroxypropyl Methylcellulose, Glucono Delta Lactone, Activated Charcoal, and Glycerol Monoleate.

For further information, see *http://www.ams.usda.gov/nop*. Copies of the NOSB meeting agenda can be requested from Ms. Katherine Benham by telephone at (202) 205–7806; or obtained by accessing the NOP website at *http://www.ams.usda.gov/nop*.

The meeting is open to the public. The NOSB has scheduled time for public input on Tuesday, September 17, 2002, from 8:30 a.m. until 11:30 a.m.; and Thursday, September 19, 2002, from 5 p.m. until 6 p.m., at the Radisson Barceló Hotel, 2121 P Street, NW., Washington, DC. Individuals and organizations wishing to make an oral presentation at the meeting may make their requests via letter, telephone, E-mail or facsimile to Ms. Katherine Benham as set forth in the addresses section of this notice. While persons wishing to make a presentation, may also sign up at the door, advance registration will ensure that a person has the opportunity to speak during the allotted time period and will help the NOSB to better manage the meeting and to accomplish its agenda. Individuals or organizations will be given approximately 5 minutes to present their views. All persons making an oral presentation are requested to provide their comments in writing. Written submissions may contain information other than that presented at the oral presentation.

Written comments must be submitted to Ms. Benham, prior to or after the meeting, at USDA–AMS–TMD–NOP, 1400 Independence Avenue, SW., Room 4008-So., Ag Stop 0268, Washington, DC 20250–0200. Written comments may also be submitted at the meeting. Persons submitting written comments at the meeting are asked to provide 30 copies.

Interested persons may visit the NOSB portion of the NOP Web site *http://www.ams.usda.gov/nop* to view available documents prior to the meeting. Approximately 6 weeks following the meeting interested persons will be able to visit the NOSB portion of the NOP website to view documents from this meeting.

Dated: August 19, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–21611 Filed 8–23–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Steel Import License.

Agency Form Number: N/A.

OMB Number: None.

Type of Request: Regular Submission.

Burden: 166,667 hours.

Number of Respondents: 400.

Avg. Hours Per Response: 10 minutes.

Needs and Uses: On March 5, 2002, the President announced temporary safeguards for the steel industry. As part of those safeguards, the President mandated that the Commerce Department and the Secretary of the Treasury institute an import licensing system to facilitate the monitoring of certain steel imports. The Import License information is necessary for the U.S. Government to assess import trends of covered products, especially covered products imported from countries excluded from the President's safeguard provisions. In order to monitor steel imports and to effectively implement the safeguards cited in the President's announcement, the Department of Commerce must collect and provide timely aggregated summaries about imports of certain steel products, especially from the countries excluded from the remedy. The Steel Import License proposed by the Import Administration of the Department of Commerce will be the tool used to collect the necessary information. The U.S. Trade Representative (USTR) will use the information to track increases in imports from excluded countries. If a surge is noted, USTR will initiate consultations with the country increasing its steel exports to the U.S. and discuss ways the country could reduce this steel trade to historical levels.

Affected Public: Businesses or other for-profits.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and

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Constitution, NW., Washington, DC 20230 or via internet at *MClayton@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: August 20, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer

[FR Doc. 02–21602 Filed 8–23–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Online Performance Data Base

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites other Federal agencies and the general public to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 25, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 or via internet at *Mclayton@doc.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Juanita E. Berry, Department of Commerce, Minority Business Development Agency (MBDA), Room 5079, 14th and Constitution Avenue, NW., Washington, DC 20230, or call (202) 482–3262.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Performance Database identifies minority business clients receiving Agency-sponsored business development services in the form of management and technical assistance, the kind of assistance each receives, and the impact of that assistance on the growth and profitability of the client firms. MBDA requires this information to monitor, evaluate, and plan Agency programs which effectively enhance the development of the minority business sector.

II. Method of Collection

Electronic transfer of performance data.

III. Data

OMB Number: 0640–0002.

Agency Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Affected Public: State or local governments, individuals, and profit and non-profit institutions.

Estimated Number of Responses: 240 (approximately 50 respondents with numerous responses).

Estimated Time Per Response: 3–15 minutes per function, as needed (5 functions).

Estimated Total Annual Burden Hours: 4,818.

Estimated Total Annual Cost: $0 (software package is provided by MBDA).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of pubic record.

Dated: August 20, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Electronic Government Division, Office of the Chief Information Officer.

[FR Doc. 02–21601 Filed 8–23–02; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 001214352–2097–02]

Announcing Approval of Federal Information Processing Standard (FIPS) 180–2, Secure Hash Standard; a Revision of FIPS 180–1

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The Secretary of Commerce has approved FIPS 180–2, Secure Hash Standard, and has determined that the standard is compulsory and binding on Federal agencies for the protection of sensitive, unclassified information.

FIPS 180–2, Secure Hash Standard, replaces FIPS 180–1, which was issued in 1992 and which specified an algorithm (SHA–1) for producing a 160-bit output called a message digest. The message digest is a condensed representation of electronic data and is used in cryptographic processes such as digital signatures and message authentication. FIPS 180–2 includes three additional algorithms, which produce 256-bit, 384-bit, and 512-bit message digests. These expanded capabilities are compatible with and support the strengthened security requirements of FIPS 197, Advanced Encryption Standard.

EFFECTIVE DATE: This standard is effective February 1, 2003.

Specifications: FIPS 180–2 is available on the NIST web page at: *http://csrc.nist.gov/encryption/tkhash.html*.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Barker, (301) 975–2911, National Institute of Standards and Technology, 100 Bureau Drive, STOP 8930, Gaithersburg, Maryland 20899–8930. Email: *elaine.barker@nist.gov*.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** (66 FR 29287) on May 30, 2001, announcing the proposed FIPS 180–2, Secure Hash Standard, for public review and comment. The **Federal Register** notice solicited comments from the public, academic and research communities, manufacturers, voluntary standards organizations, and Federal, state, and local government organizations. In addition to being published in the **Federal Register**, the notice was posted on the NIST web pages; information was provided about the submission of electronic comments. Comments and responses were received from three private sector organizations

or individuals, and from one federal government organization.

The comments raised technical issues related to the standard, asked for clarification of technical issues, and recommended editorial changes. None of the comments opposed the adoption of the revised Federal Information Processing Standard. All of the editorial and related comments were carefully reviewed, and changes were made to the standard where appropriate. NIST recommended that the Secretary approve FIPS 180–2. Following is an analysis of the comments received.

Comment: NIST should provide a security evaluation of the algorithms added to FIPS 180–2, and give the rationale for the various design choices. Such an analysis would increase confidence in the algorithms and facilitate external evaluation.

Response: The standard provides four secure hash algorithms, which differ in the number of bits of security provided for the data being processed. Secure hash algorithms are designed for use in conjunction with another algorithm, which may have requirements that the hash algorithm have a certain number of bits of security. For example, a digital signature algorithm that provides 128 bits of security may require that the secure hash algorithm also provide 128 bits of security.

NIST believes that these algorithms are secure because it is computationally infeasible to find a message that corresponds to a given message digest, or to find two different messages that produce the same message digest. It is highly probable that a change to a message will result in a different message digest.

FIPS 180–2 includes the technical specifications for the four algorithms that have been selected to provide 160, 256, 384 and 512 bits of security. NIST anticipates and invites external examination and scrutiny concerning the security of the algorithms.

Comment: NIST should include a note in the standard indicating whether SHA–256 could be truncated to 160 bits for use as an alternative to SHA–1 (also 160 bits).

Response: The use of hash functions will be addressed in application standards (*e.g.*, in the upcoming revision of Federal Information Processing Standard 186–2, the Digital Signature Standard).

Comment: NIST should mention in the standard that SHA–256 constants are easily extracted from the SHA–512 constants.

Response: NIST believes that the decisions concerning the use of constants and how to extract them should be made by those organizations that develop implementations of the standard.

Comment: One comment suggested that there may be weaknesses in the algorithms, and proposed a method to change the standard to address the perceived weaknesses.

Response: It would be more appropriate for the perceived weaknesses to be addressed in application standards such as the Federal Information Processing Standard for the Keyed-Hash Message Authentication Code (HMAC), which has been approved as FIPS 198, as opposed to addressing this in FIPS 180–2 itself. Furthermore, NIST expects to issue guidance on the implementation of secure hash functions.

Authority: Under section 5131 of the Information Technology Management Reform Act of 1996 and the Computer Security Act of 1987, the Secretary of Commerce is authorized to approve standards and guidelines for the cost effective security and privacy of sensitive information processed by federal computer systems.

Executive Order 12866: This notice has been determined not to be significant for purposes of E.O. 12866.

Dated: August 19, 2002.

Karen Brown,

Deputy Director, NIST.

[FR Doc. 02–21599 Filed 8–23–02; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket Number: 020729185–2185–01]

Announcement of Graduate Research Fellowships in the National Estuarine Research Reserve System for Fiscal Year 2003

AGENCY: Estuarine Reserves Division (ERD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The Estuarine Reserves Division of OCRM is soliciting applications for graduate fellowship funding within the National Estuarine Research Reserve System. This notice sets forth funding priorities, selection criteria, and application procedures.

The National Estuarine Research Reserve System of NOAA announces the availability of graduate research fellowships. The Estuarine Reserves Division anticipates that 27 Graduate Research Fellowships will be competitively awarded to qualified graduate students whose research occurs within the boundaries of at least one reserve. Minority students are encouraged to apply. The amount of the fellowship is $17,500; at least 30% of total project cost match is required by the applicant. Applicants may apply for between one and three years of funding. Fellowships will start June 1, 2003. A later start date may be requested with justification and will be reviewed by ERD for approval.

DATES: Applications must be postmarked no later than November 1, 2002. Notification regarding the awarding of fellowships will be issued on or about March 1, 2003.

ADDRESSES: Erica Seiden, program coordinator, NOAA/Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, SSMC4, 11616 Floor, Silver Spring, MD 20910, Attn: NERRS GRF. Phone: 301–713–3155 ext. 172 Fax: 301–713–4363, internet: *erica.seiden@noaa.gov*. Web page: *http://www.ocrm.nos.noaa.gov/nerr/fellow.html*. See Appendix I for National Estuarine Research Reserve addresses.

FOR FURTHER INFORMATION CONTACT: For further information on specific research opportunities at National Estuarine Research Reserves, contact the site staff listed in Appendix I or the program specialist listed in the Addresses section above. For application information, contact Erica Seiden of ERD (see contact information above).

SUPPLEMENTARY INFORMATION:

I. Authority and Background

Section 315 of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1461, establishes the National Estuarine Research Reserve System (NERRS). 16 U.S.C. 1461 (e)(1)(B) authorizes the Secretary of Commerce to make grants to any coastal state or public or private person for purposes of supporting research and monitoring within a National Estuarine Research Reserve that are consistent with the research guidelines developed under subsection (c). This program is listed in the Catalog of Federal Domestic Assistance (CFDA) under "Coastal Zone Management Estuarine Research Reserves," Number 11.420.

II. Information on the National Estuarine Research Reserve System

The National Estuarine Research Reserve System consists of estuarine areas of the United States and its territories which are designated and

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managed for research and educational purposes. Each reserve within the system is chosen to reflect regional differences and to include a variety of ecosystem types in accordance with the classification scheme of the national program as presented in 15 CFR part 921.

Each reserve supports a wide range of beneficial uses of ecological, economic, recreational, and aesthetic values which are dependent upon the maintenance of a healthy ecosystem. The sites provide habitats for a wide range of ecologically and commercially important species of fish, shellfish, birds, and other aquatic and terrestrial wildlife. Each reserve has been designed to ensure its effectiveness as a conservation unit and as a site for long-term research and monitoring. As part of a national system, the reserves collectively provide an excellent opportunity to address research questions and estuarine management issues of national significance. For detailed descriptions of the sites, refer to the NERR Web site at *http://www.ocrm.nos.noaa.gov/nerr/fellow.html* or contact the site staff.

III. Eligibility and Availability of Funds

Funds are expected to be available on a competitive basis to qualified graduate students for research within a reserve(s) leading to a graduate degree. Applicants must be admitted to or enrolled in a full-time Master's or Doctoral program at a U.S. accredited university in order to be eligible to apply. Institutions eligible to receive awards include institutions of higher education, other non-profits, commercial organizations, international organizations, state, local and Indian tribal governments. Applicants should have completed a majority of their graduate course work at the beginning of their fellowship and have an approved thesis research program. Minority students are encouraged to apply.

Applicants may request funding for up to three years; funding for years two and three will be made available based on availability of funds and satisfactory progress of research as determined by the host reserve and the applicant's faculty advisor, in consultation with NOAA's Estuarine Reserves Division.

All reserve staff are ineligible to submit an application for a fellowship under this announcement. Requested federal funds must be matched by at least 30 percent of the TOTAL cost, not the federal share, of the project (*i.e.* $7,500 match for $17,500 in federal funds for a total project cost of $25,000). Requested overhead costs under fellowship awards are limited to 10% of the federal amount. Waived overhead costs may be used as match. Students receiving fellowship funding under this announcement will begin June 1, 2003.

No more than two fellowships at any one site will be funded at any one time. Based upon fellowships awarded in the 2002 funding cycle, we anticipate 27 openings for fellowships in 2003. Fellowships are expected to be available at the following sites:

NERR Site	Openings
Apalachicola, FL	1
Chesapeake Bay, MD	2
Chesapeake Bay, VA	2
Delaware	2
Elkhorn Slough, CA	1
Grand Bay, MS	2
Great Bay, NH	1
Jacques Cousteau, NJ	2
Jobos Bay, PR	1
Kachemak Bay, AK	2
Narragansett Bay, RI	1
North Carolina	1
North Inlet-Winyah Bay, SC	2
Padilla Bay, WA	1
Rookery Bay, FL	1
Sapelo Island, GA	1
Waquoit Bay, MA	2
Weeks Bay, AL	1
Wells, ME	1

IV. Purpose and Priorities

NERR research funds are provided to support management-related research projects that will enhance scientific understanding of the reserve ecosystem, provide information needed by reserve management and coastal management decision-makers, and improve public awareness and understanding of estuarine ecosystems and estuarine management issues (15 CFR 921.50).

The NERR Graduate Research Fellowship program is designed to fund high quality research focused on enhancing coastal zone management while providing students with an opportunity to contribute to the research and/or monitoring program at a particular reserve.

Research projects proposed in response to this announcement must: (1) Address coastal management issues identified as having local, regional, and/or national significance, described in the "Scientific Areas of Support" below; and (2) be conducted within one or more designated reserve site(s).

Funding, $17,500 per year, is intended to provide any combination of research support, salary, tuition, supplies, or other costs as needed, including overhead. All current and prospective fellows will be eligible to receive $17,500 in federal funds. Fellows will be expected to participate in the reserve's research and/or monitoring program for up to a maximum of 15 hours per week. The work plan should be devised cooperatively with the reserve's research coordinator. Fellows conducting multi-site projects may fulfill this requirement at one or a combination of sites but for no more than a total of 15 hours per week. This program may occur throughout the academic year or may be concentrated during a specific season.

Scientific Areas of Support

The National Estuarine Research Reserve System has identified the following as areas of nationally significant research interest. Proposed research projects submitted in response to this announcement must address one of the following estuarine ecosystem topics (see #1 above):

- Eutrophication, effects of non-point source pollution and/or nutrient dynamics;
- Habitat conservation and/or restoration;
- Biodiversity and/or the effects of invasive species;
- Mechanisms for sustaining resources within estuarine ecosystems; or
- Economic, sociological, and/or anthropological research applicable to estuarine ecosystem management.

Note: Each reserve has local issues of concern that fall within one of the topics above. It is strongly suggested that applicants contact the host reserve (see Appendix I) for general information about the reserve and its research needs and priorities as they relate to this announcement. Applicants should determine whether their proposed projects are relevant to the reserve's site specific research needs.

V. Guidelines for Application Preparation, Review, and Reporting Requirements

Fellowship applicants must follow the guidelines presented in this announcement. Applications not adhering to these guidelines may be returned to the applicant without further review. Minority students are encouraged to apply.

Applicants must submit an original and two (2) copies of all application materials, except letters of reference which must come directly from their source. All materials must be postmarked no later than November 1, 2002. Applications postmarked November 2, 2002 or later will be returned without review. Receipt of all applications will be acknowledged and a copy sent to the appropriate reserve staff for review.

Applicants who are selected for funding will be required to: (1) Work with the research coordinator or manager at the host reserve to develop a plan to participate in the reserve's research and/or monitoring program for up to 15 hours per week; (2) submit semi-annual progress reports to ERD and the host reserve before the end of each funding cycle on the research accomplishments to date; and (3) acknowledge NERRS support in all relevant scientific presentations and publications. In addition, fellows are strongly encouraged to publish their results in peer-reviewed literature and make presentations at local, national and international scientific meetings.

A. Application Preparation

Applicants are required to submit:

1. Academic resume or a curriculum vitae that includes all graduate and undergraduate institutions (department or area of study, degree, and year of graduation), all publications (including undergraduate and graduate thesis), awards or fellowships; and work/research experience.

2. Cover letter indicating current academic status, research interests, career goals, and how the proposed research fits into their degree program. It is strongly suggested that the results of discussions with the host reserve regarding their contributions to the reserve's research and/or monitoring program be included in the letter.

3. Unofficial copy of all undergraduate and graduate transcripts.

4. Signed letter of support from the applicant's graduate advisor indicating the advisor's contribution (financial and otherwise) to the applicant's graduate studies, and an assurance that the student is in good academic standing.

5. Two signed letters of recommendation from other than the applicant's graduate advisor sent directly from their source. Electronically transmitted letters of support are not acceptable.

6. Research proposal must be double-spaced in a font no smaller than 12-point courier and must include the following:

a. Title page which must include:

- Name, address, telephone and fax number, e-mail address, date, and signature of applicant;
- Project title;
- Amount of funding requested;
- Name of graduate institution;
- Name of institution providing matching funds and amount of matching funds;
- Name, address, telephone number and fax number, e-mail address, date, and signature of graduate advisor;
- Reserve(s) where research is to be conducted;
- Number of years of requested support.

b. Abstract. The abstract must state the research objectives, scientific methods to be used, and the significance of the project to a particular reserve and the reserve program. The abstract must be limited to one double-spaced page.

c. Project Description. The project description must be limited to 6 double-spaced pages excluding figures. The main body of the proposal must include a detailed statement of the work to be undertaken and the following components:

(1) Introduction. This section should introduce the research setting and environment. It should include a brief review of pertinent literature and describe the research problem in relation to relevant coastal management issues and the reserve research priorities. This section should identify the primary hypotheses, as well as any additional or component hypotheses which will be addressed by the research project.

(2) Methods. This section should state the method(s) to be used to accomplish the specific research objectives, including a systematic discussion of what, when, where, and how the data are to be collected, analyzed, and reported. Field and laboratory methods should be scientifically valid and reliable and should be accompanied by a statistically sound sampling scheme. Methods chosen should be justified and compared with other methods employed for similar work.

Techniques should allow the testing of the hypotheses, but should also provide baseline data related to ecological and management questions concerning the reserve environment. Methods should be described concisely and techniques should be reliable enough to allow comparison with those made at different sites and times by different investigators.

Analytical methods and statistical tests applied to the data should be documented, thus providing a rationale for choosing one set of methods over alternatives. Quality control measures also should be documented (*e.g.*, statistical confidence levels, standards of reference, performance requirements, internal evaluation criteria). The proposal should indicate by way of discussion how data are to be synthesized, interpreted and integrated into final work products.

Social science applicants should describe the sampling and or data collection methods including surveys, evaluation research, interviews (focus group and/or personal), participant observation, questionnaires, etc. Applicants should also describe the research design (experimental and quasi-experimental) and methods for data analysis.

A map clearly showing the study location and any other features of interest must be included; a U.S. Geological Survey topographic map, or an equivalent, is suggested for this purpose. Consultation with reserve personnel to identify existing maps is strongly recommended.

(3) Project Significance. This section should provide a clear discussion of how the proposed research addresses state and national estuarine and coastal resource management issues and how the proposed research effort will enhance or contribute to improving the state of knowledge of estuaries. This section must also discuss the relation of the proposed research to the research priorities stated in Section IV. Applicability of research findings to other reserve and coastal areas should also be mentioned. In addition, if the proposed research is part of a larger research project, the relationship between the two should be described.

d. Milestone schedule. This schedule should show, in table form, anticipated dates for completing field work, data collection, data analysis, reporting and other related activities. Use "Month 1, Month 2, etc." rather than "June, July, etc.," in preparing these charts.

e. Personnel and Project Management. The proposal must include a description of how the project will be managed, including the names and expertise of faculty advisors and other team members. Evidence of ability to successfully complete the proposed research should be supported by reference to similar efforts previously performed.

f. Literature Cited. This section should provide complete references for literature, research, and other appropriate published and unpublished documents cited in the text of the proposal.

7. Proposed budget. The amount of federal funds requested must be matched by the applicant by at least 30% of the total project cost (*i.e.*, $7,500 match for $17,500 in federal funds for a total project cost of $25,000). Cash or in-kind contributions directly benefitting the research project may be used to satisfy the matching requirements. Overhead or indirect costs for these awards are limited to 10% of the federal share. Waived overhead costs may also be used as match. Funds from other federal agencies and reserve staff salaries supported by federal funds may not be used as match. Requirements for the

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non-federal share are contained in 15 CFR Part 14, Uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, other nonprofit and commercial organizations. ERD strongly suggests that the applicant work with their institution's sponsored programs office to develop their budget.

The applicant may request funds under any of the following categories as long as the costs are reasonable and necessary to perform research: personnel, fringe benefits, travel, equipment, supplies, contractual, construction, other, and indirect. The budget should contain itemized costs with appropriate narratives justifying proposed expenditures. Applicants must supply a table showing budget categories listing the federal and match portion side by side for each year of requested funding. Please see below for further details.

—Personnel. Salaries requested must be consistent with the institution's regular practices. The submitting organization may request that salary data remain confidential.

—Fringe Benefits. Fringe benefits (*i.e.*, social security, insurance, retirement) may be treated as direct costs as long as this is consistent with the institution's regular practices.

—Travel. The type, extent, and estimated cost of travel should be explained and justified in relation to the proposed research; the justification should also identify the person traveling. Travel expenses are limited to round trip travel to field research locations and professional meetings to present the research results and should not exceed 40 percent of total award.

—Equipment. Fellowship funds may be approved for the purchase of equipment only if the following conditions are met: (a) A lease versus purchase analysis has been conducted by the applicant or the applicant's institution for equipment that costs greater than $5000 and the analyses indicate that purchase is the most economical method of procurement; (b) the equipment does not exist at the recipient's institution or the reserve site; and, the equipment is essential for the successful completion of the project.

The justification must address each of these criteria. It must also describe the purpose of the equipment and provide a justification for its use. Additionally, it must include a list of equipment to be purchased, leased, or rented by model number and manufacturer, where known. At the termination of the fellowship, disposition of equipment will be determined by the NOAA Property Administrator.

—Supplies. The budget should indicate in general terms the types of expendable materials and supplies required and their estimated costs.

8. Requests for reserve support services. On-site reserve personnel sometimes can provide limited logistical support for research projects in the form of manpower, equipment, supplies, etc. Any request for reserve support services, including any services provided as match, should be approved by the reserve manager or research coordinator prior to application submission and be included as part of the application package in the form of written correspondence. Reserve resources which are supported by federal funds are not eligible to be used as match.

9. Coordination with other research in progress or proposed. ERD encourages collaboration and cost-sharing with other investigators to enhance scientific capabilities and avoid unnecessary duplication of effort. Applications should include a description of how the research will be coordinated with other research projects that are in progress or proposed, if applicable.

10. Permits. The applicant must apply for any applicable local, state or federal permits. A copy of any permit applications and supporting documentation should be attached to the application as appendices. ERD must receive notification of the approval of the permit application before funding can be approved.

B. Application Review and Evaluation

All applications will be evaluated for scientific merit by no less than three reviewers from the scientific community. The research coordinator and/or reserve manager will oversee the review process at the reserve. Criteria for evaluation are: (1) The quality of proposed research and its applicability to the NERRS Scientific Areas of Support listed in Section IV of this announcement (70%); (2) the research's applicability to specific reserve research and resource management goals as they relate to the Scientific Areas of Support in Section IV of this announcement (20%); and (3) academic excellence based on the applicant's transcripts and two letters of reference (10%). No more than two fellowships will be awarded at any one time for any one reserve. Final selections will be made by the Chief of the Estuarine Reserves Division based on the scores submitted by the reviewers during the evaluation process. The applicant(s) with the highest scores will receive fellowships commensurate with the number of openings at the host reserve. Funding recommendations should be announced by February 2003. Unsuccessful applications will be retained at ERD.

C. Reporting Requirements

Semi-annual performance reports shall be submitted 30 days after the completion of every six month period after the project start date and a final performance report shall be submitted 90 days after the project period ending date. Applicants selected for funding will be provided with the guidelines for these reports upon receiving the award.

VI. Fellowship Awards

Awards are normally made to the fellow's graduate institution through the use of a grant. Awards can be made to institutions of higher education, other nonprofits, commercial organizations, international organizations, state, local and Indian tribal governments. Applicants whose projects are recommended for funding will be required to complete all necessary federal financial assistance forms (SF–424, SF–424A, SF–424B, and CD–511), which will be provided by ERD with the letter of fellowship notification. The Estuarine Reserves Division recommends that all applicants work with their graduate institution during the development of their budget to ensure concurrence on budgetary issues (*e.g.* the use of salary and fringe benefits as match).

The Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, reserves the right to immediately halt activity under the award if it becomes obvious that award activities are not fulfilling the mission of the National Estuarine Research Reserve System. Non-compliance with a federally approved project may result in immediate halting of the award. For applicants awarded more than one year of funding, ERD will review and approve each stage of work annually before the next begins to assure that studies will produce viable information on which to form valid coastal management decisions.

VII. Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **FEDERAL REGISTER** notice of October 1, 2001 (66 FR 49917), are applicable to this solicitation. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget, in light of a court opinion which found that the Executive Order was not legally authorized. *See Building and Construction Trades Department* v. *Allbaugh*, 172 F. Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

VIII. Classification

This notice has been determined to be "not significant" for purposes of E.O. 12866. This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Administrative Order 216–6. This notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Because notice and comment are not required under 5 U.S.C. 553(a)(2), or any other law, for notices relating to public property, loans, grants, benefits or contracts, a Regulatory Flexibility Analysis, 5 U.S.C. 601 *et seq.*, is not required and has not been prepared for this notice.

This notice involves a collection of information subject to the requirements of the Paperwork Reduction Act. The requirements have been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

(Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management National Estuarine Research Reserves)

Dated: August 20, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

Appendix I. NERRS On-Site Staff

Alabama

Mr. L.G. Adams, Manager and Dr. Scott Phipps, Research Coordinator, Weeks Bay National Estuarine Research Reserve, 11300 U.S. Highway 98, Fairhope, AL 36532, (251) 928–9792, *lg.adams@noaa.gov, scott.phipps@noaa.gov*

Alaska

Mr. Glenn Seaman, Manager and Dr. Carl Schoch, Research Coordinator, Kachemak Bay National Estuarine Research Reserve, Department of Fish and Game, 2181 Kachemak Drive, Homer, AK 99603, (907) 235–6377, *glenn_seaman@fishgame.state.ak.us, carl_schoch@fishgame.state.ak.us*

California

Ms. Becky Christensen, Manager and Dr. Kerstin Wasson, Research Coordinator, Elkhorn Slough National Estuarine Research Reserve, 1700 Elkhorn Road, Watsonville, CA 95076, (831) 728–2822, *research@elkhornslough.org*

Mr. Mike Wells, Manager and Dr. Jeffrey Crooks, Research Coordinator, Tijuana River National Estuarine Research Reserve, 301 Caspian Way, Imperial Beach, CA 92032, (619) 575–3613, *mwells@parks.ca.gov, jacrooks@yahoo.com*

Dr. Todd Hopkins, San Francisco Bay National Estuarine Research Reserve, Romberg Tiburon Center, 3152 Paradise Drive, Tiburon, CA 94920, (415) 338–6063, *thopkins@sfsu.edu*

Delaware

Mr. Mark Del Vecchio, Manager, Ms. Katie Dulin, Acting Manager, and Dr. Bob Scarborough, Research Coordinator, Delaware National Estuarine Research Reserve, Department of Natural Resources and Environmental Control, 818 Kitts Hummock Road, Dover, DE 19901, (302) 739–3436, *mdelvecchio@state.de.us, kdulin@state.de.us, bscarboroug@state.de.us*

Florida

Mr. Woodard Miley II, Manager and Mr. Lee Edmiston, Research Coordinator, Apalachicola River National Estuarine Research Reserve, Florida Department of Environmental Protection, 350 Carroll Street, Eastpoint, FL 32320, (850) 670–4783, *woodard.miley@dep.state.fl.us, lee.edmiston@dep.state.fl.us*

Mr. Kenneth Berk, Manager and Dr. Rick Gleeson, Research Coordinator, Guana Tolomato Matanzas National Estuarine Research Reserve, Florida Department of Environmental Protection, 9741 Ocean Shore Boulevard, Marineland, FL 32080, (904) 461–4054, *kenberk@bellsouth.net, rglee@whitney.ufl.edu*

Mr. Gary Lytton, Manager and Dr. Michael Shirley, Research Coordinator, Rookery Bay National Estuarine Research Reserve, Department of Environmental Protection, 300 Tower Road, Naples, FL 34113–8059, (239) 417–6310, *gary.lytton@dep.state.fl.us, michael.shirley@dep.state.fl.us*

Georgia

Mr. Buddy Sullivan, Manager and Mr. Dorset Hurley, Research Coordinator, Sapelo Island National Estuarine Research Reserve, PO Box 15, Sapelo Island, GA 31327, (912) 485–2251, *buddy.sullivan@noaa.gov, dhurley@darientel.net*

Maine

Mr. Paul Dest, Manager and Dr. Michele Dionne, Research Coordinator, Wells National Estuarine Research Reserve 342 Laudholm Farm Road, Wells, ME 04090, (207) 646–1555, *dest@wellsnerrcec.lib.me.us, michele.dionne@maine.edu*

Maryland

Ms. Carol Towle, Manager and Ms. Julie Bortz, Research Coordinator, Chesapeake Bay National Estuarine Research Reserve, MD, Department of Natural Resources, Tawes State Office Building, E–2, 580 Taylor Avenue, Annapolis, MD 21401, (410) 260–8713, *ctowle@dnr.state.md.us, jbortz@dnr.state.md.us*

Massachusetts

Ms. Christine Gault, Manager and Dr. Chris Weidman, Research Coordinator, Waquoit Bay National Estuarine Research Reserve, Department of Environmental Management, PO Box 3092, Waquoit, MA 02536, (508) 457–0495, *christine.gault@state.ma.us, chris.weidman@state.ma.us*

Mississippi

Mr. Jan Boyd, Acting Manager and Dr. Mark Woodrey, Grand Bay National Estuarine Research Reserve, Department of Marine Resources 6005 Bayou Heron Road, Moss Point, MS 39562, (228) 475–7047, *jan.boyd@dmr.state.ms.us, mark.woodrey@dmr.state.ms.us*

New Hampshire

Mr. Peter Wellenberger, Manager and Mr. Brian Smith, Research Coordinator, Great Bay National Estuarine Research Reserve, New Hampshire Department of Fish and Game 225 Main Street, Durham, NH 03824, (603) 868–1095, *pwellenberger@starband.net, bmsmith@starband.net*

New Jersey

Mr. Michael De Luca, Manager and Dr. Michael Kennish, Research Coordinator, Mullica River National Estuarine Research Reserve, Institute of Marine and Coastal Sciences, Rutgers University, 71 Dudley Road, New Brunswick, NJ 08903, (732) 932–6555, *deluca@imcs.rutgers.edu, kennish@imcs.rutgers.edu*

New York

Ms. Elizabeth Blair, Manager and Mr. Chuck Nieder, Research Coordinator, Hudson River National Estuarine Research Reserve, New York State Department of Environmental Conservation, c/o Bard College Field Station, Annandale-on-Hudson, NY 12504, (845) 758–7010, *bablair@gw.dec.state.ny.us, wcnieder@gw.dec.state.ny.us*

North Carolina

Dr. John Taggart, Manager and Dr. Steve Ross, Research Coordinator, North Carolina National Estuarine Research Reserve, 5001

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Masonboro Loop Road, 1 Marvin Moss Lane, Wilmington, NC 28409, (910) 395–3905, *taggartj@uncwil.edu, rosss@uncwil.edu*

Ohio

Mr. Eugene Wright, Manager and Dr. David Klarer, Research Coordinator, Old Woman Creek National Estuarine Research Reserve, 2514 Cleveland Road, East, Huron, OH 44839, (419) 433–4601, *gene.wright@noaa.gov, david.klarer@noaa.gov*

Oregon

Mr. Michael Graybill, Manager and Dr. Steve Rumrill, Research Coordinator, South Slough National Estuarine Research Reserve, PO Box 5417, Charleston, OR 97420, (541) 888–5558, *ssnerr@harborside.com*

Puerto Rico

Ms. Carmen Gonzalez, Manager and Dr. Pedro Robles, Research Coordinator, Jobos Bay National Estuarine Research Reserve, Department of Natural and Environmental Resources, Call Box B, Aguirre, PR 00704, (787) 853–4617, *carmen.gonzalez@noaa.gov, pedro.robles@coqui.net*

Rhode Island

Mr. Roger Greene, Manager and Dr. Kenny Raposa, Research Coordinator, Narragansett Bay National Estuarine Research Reserve, Department of Environmental Management, Box 151, Prudence Island, RI 02872, (401) 683–6780, *roger.greene@noaa.gov, kenny@gsosun1.gso.uri.edu*

South Carolina

Mr. Michael D. McKenzie, Manager and Dr. Elizabeth Wenner, Research Coordinator, Ashepoo-Combahee-Edisto (ACE) Basin, South Carolina Department of Natural Resources, PO Box 12559, Charleston, SC 29412, (843) 762–5062, *mckenziem@mrd.dnr.state.sc.us, wennere@mrd.dnr.state.sc.us*

Ms. Wendy Allen, Manager, North Inlet-Winyah Bay National Estuarine Research Reserve, Baruch Marine Field Laboratory, PO Box 1630, Georgetown, SC 29442, (803) 546–3623, *wendy@belle.baruch.sc.edu*

Virginia

Dr. William Reay, Manager and Dr. Ken Moore, Research Coordinator, Chesapeake Bay National Estuarine Research Reserve, VA, Virginia Institute of Marine Science, College of William and Mary, PO Box 1347, Gloucester Point, VA 23062, (804) 684–7135, *wreay@vims.edu, moore@vims.edu*

Washington

Mr. Terry Stevens, Manager and Dr. Douglas Bulthuis, Research Coordinator, Padilla Bay National Estuarine Research Reserve, 10441 Bay View-Edison Road, Mt. Vernon, WA 98273–9668, (360) 428–1558, *tstevens@padillabay.gov, bulthuis@padillabay.gov*

[FR Doc. 02–21622 Filed 8–23–02; 8:45 am]
BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081202A]

New Information Indicates Fine-scaled Stock Structure for Harbor Seals in Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information; request for comments.

SUMMARY: Recent studies indicate that stock structure of harbor seals in Alaska is more finely scaled than Stock Assessment Reports (SARs), compiled pursuant to the Marine Mammal Protection Act (MMPA), currently indicate. Under Section 119 of the MMPA, NMFS has entered into a co-management agreement to conserve Alaska harbor seals jointly with the Alaska Native Harbor Seal Commission (ANHSC). NMFS and the ANHSC have outlined a process for proceeding with further evaluating and revising harbor seal stock structure. This notice invites the public to provide additional information and viewpoints that should be considered throughout the stock structure evaluation process.

DATES: Comments must be received before close of business on September 25, 2002.

ADDRESSES: Comments should be forwarded to P. Michael Payne, Assistant Regional Administrator for Protected Resources, Alaska Regional Office, NMFS, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, Alaska Regional Office, NMFS, Juneau, Alaska, (907) 586–7824; or Thomas Eagle, Office of Protected Resources, NMFS, Silver Spring, MD, (301) 713–2322, ext. 105.

SUPPLEMENTARY INFORMATION:

Electronic Access

This notice and a map of the areas in Alaska where seal groupings appear discrete may be found at, *www.fakr.noaa.gov/protectedresources.*

Background

Section 3 of the MMPA defines a population stock (referred to as "stock" in this notice) as "...a group of marine mammals of the same species or smaller taxon in a common spatial arrangement that interbreed when mature." Section 117 of the MMPA requires that NMFS publish stock assessments for each marine mammal stock under its jurisdiction. These stock assessment reports (SARs) provide a summary of information on each stock's geographic range, abundance, and annual productivity. Additionally, SARs provide information about human-caused sources of mortality or serious injury for each marine mammal stock. An accurate characterization of stocks is necessary to meet the goals of the MMPA.

While the MMPA does not provide further guidance for identifying marine mammal stocks other than the definition above, NMFS describes its recommended approach to stock identification in its guidelines for preparing stock assessment reports. This approach is based on language in the purposes and policies sections of the MMPA that asserts that population stocks of marine mammals should not be permitted to diminish beyond the point at which they cease to be a functioning element of the ecosystem of which they are a part. The guidelines further note that a stock is a management unit that identifies a demographically isolated biological population. At the same time, the guidelines acknowledge the difficulties in obtaining comprehensive stock structure information due to resource constraints.

The guidelines state that careful consideration needs to be given to how stocks are defined, particularly where mortality may be greater than sustainable levels (above the calculated Potential Biological Removal level). An inappropriately defined stock could lead to localized depletions or extirpations.

Long-term movements and dispersal of marine mammals impact the genetic makeup of these animals. For instance, a small amount of breeding among individuals can be enough to prevent strong genetic differences from developing among adjacent groups of animals. When genetic differences are found among groups of seals, this indicates that gene flow, and movement or dispersal, among the groups is extremely low. Therefore, results of studies that show significant genetic differences provide a minimum estimate of the degree of population or stock structure. In other words, if a genetic analysis reveals some number of distinct, genetically differentiated units, a minimum of that number of demographically independent units is virtually certain.

Under Section 119 of the MMPA, NMFS signed a co-management agreement (Agreement) with the ANHSC, a representative body for native subsistence users of harbor seals in Alaska, in April 1999. The goals of this Agreement include promoting the sustained health of harbor seals (*Phoca vitulina*) in Alaska and the culture and way of life of Native Alaskans who rely on the harvest of harbor seals for subsistence purposes. In the Agreement, NMFS and the ANHSC agreed to identify and resolve, as early as possible, and through a consultative process, any conservation issues that may arise associated with harbor seals. Over the past two years, the Alaska Scientific Review Group (SRG), a regional scientific advisory group formed pursuant to the MMPA; the Marine Mammal Commission, a national scientific advisory group formed pursuant to the MMPA; and the Alaska Harbor Seal Co-management Committee, a group of NMFS and ANHSC advisors formed pursuant to the Co-management Agreement, have all raised the need to redefine harbor seal stock structure in Alaska.

Consistent with the provisions of the Agreement, the Co-management Committee met in June 2001, to determine how to proceed with reviewing and using the newly available results of the genetics studies in a management context. The Co-management Committee agreed upon the following 3-phase process: (1) to inform all constituents about the results and availability of the genetics data; (2) to solicit additional input and discuss relevant information such as harbor seal abundance, distribution, and movement, as well as traditional and local knowledge; and (3) to make recommendations to NMFS regarding the use of all appropriate information in revising harbor seal stock structure in Alaska.

The steps identified for this process included peer-review and publication of the genetics analysis by NMFS scientists; publication of a **Federal Register** notice to notify interested parties about the genetics results and to solicit additional information and viewpoints related to the stock structure for harbor seals; and discussion of all pertinent information in the co-management process to evaluate and revise harbor seal stock structure. The genetics analyses have been peer-reviewed at several scientific meetings and the results are in the process of being published in technical journals (for more information about these analyses, consult the contacts listed under For Further Information Contact). Since June 2001, the results of these studies, and the process for incorporating these results into the marine mammal stock assessment reports, have also been discussed at several SRG meetings and at a meeting convened by the Co-management Committee to review the harbor seal research plan. The ANHSC also discussed this issue at its meeting in Dillingham, Alaska April 29 through May 1, 2002. NMFS is now publishing this **Federal Register** notice to solicit comments from interested constituents on additional information and viewpoints regarding population stock structure of harbor seals in Alaska. Following receipt of these comments, NMFS and the ANHSC will incorporate all available information, scientific and non-scientific, into its discussions and recommendations for a proposed revision to the currently recognized harbor seal population stock structure.

Recent Scientific Studies Relevant to Stock Structure

Following is a summary of recent genetic analyses, telemetry and seal movement data, and population trend studies related to Alaska harbor seal stock structure.

Genetics Studies: Recent genetic analyses indicate a much finer level of genetic differentiation among Alaska harbor seals than the current Stock Assessment Reports indicate, (three harbor seal stocks throughout the state). These analyses identify twelve genetically and demographically independent groups of seals indicating that a minimum amount of movement by seals occurs between or among the following areas: the Pribilof Islands; Bristol Bay; Tugidak Island; the northeast side of Kodiak Island; the southwest corner of Cook Inlet; the south side of the Kenai Peninsula; Prince William Sound; Glacier Bay; the inside waters (shielded from the Gulf of Alaska by large islands) of northern Southeast Alaska; the outside waters (open to the Gulf of Alaska) of northern Southeast Alaska; the inside waters of southern Southeast Alaska; and the outside waters of southern Southeast Alaska (for a map of these areas see Electronic Access).

Due to data collection limitations, some areas of the harbor seal's range cannot be included in any of the genetic groupings. Therefore, these genetic data do not represent all animals or areas in Alaska inhabited by harbor seals. However, other scientific data can be used to define distinct groups of animals in areas where genetic information is lacking. Available telemetry and seal movements data, as well as population trend data, for instance, may be used to supplement genetic analyses and infer differences among groups of harbor seals in different locations.

Results of Movement and Telemetry Studies: Satellite tagging provides useful information on the behavior and ranges of individual seals as well as insight into how stocks may be structured. Telemetry studies are important because they track movements that suggest the locations where harbor seals forage and provide information on geographic dispersal. The results of most telemetry studies on harbor seals in Alaska indicate that the animals move short distances (less than 50 kilometers). In fact, most studies indicate that the majority of adult harbor seals remain close to the location where they were tagged. For this reason, harbor seals in Alaska are generally characterized as non-migratory. The movements of adult seals support the conclusion that harbor seals exist in discrete groups among various locations.

The telemetry studies also provide information regarding geographic and habitat features that animals do not cross that may represent long-term barriers to gene flow among groups of seals. For instance, extensive tagging data from the Kodiak Archipelago indicate minimal movement of harbor seals across Shelikof Strait to the Alaska Peninsula, suggesting that this deep-water trench may be an effective barrier to harbor seal dispersal.

Other studies of harbor seal movement patterns suggest that at least two additional areas in Alaska may contain harbor seals that are discrete from seals in adjacent areas. These two areas include the Aleutian Islands west of Unimak Pass and the northeastern Gulf of Alaska coast between Cape Suckling and Icy Strait (see Electronic Access). Harbor seals in the Aleutian Islands may also be considered discrete from seals to the east (on the north side of the Alaska Peninsula) based primarily on distance between haulout sites and potential oceanographic barriers between this region and the remainder of Alaska.

The Cape Suckling to Icy Strait region of the eastern Gulf of Alaska consists of an extensive expanse of open-ocean coastline with few haulout sites. The sites that exist in this area are clustered in relatively isolated bays and inlets along the coastline that are separated from each other by long distances of relatively straight, open coastline. Inferences from the telemetry data suggest that seals in this region are geographically isolated from other adjacent groups of seals.

Results from Population Trend Analyses: The results of counts at population trend-sites throughout the Gulf of Alaska provide additional

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evidence that harbor seals have a finer scale stock structure than the current SAR indicates. These counts indicate stable or increasing harbor seal numbers in Southeast Alaska, except for Glacier Bay which shows a declining trend; several distinct trends in the central Gulf of Alaska; and possibly a declining trend in the Bering Sea.

Southeast Alaska: Trend-sites for the Southeast Alaska stock were established in Ketchikan (1983), in Sitka (1984), and in Glacier Bay (1992). Current trend data for the Ketchikan trend-sites show an increasing trend among harbor seals of 7.4 percent per year (1983-1998). The Sitka area exhibits a relatively stable trend of 1.1 percent per year (1984–1999). Glacier Bay experienced a decreasing trend of –7.5 percent per year between 1992–98. These trend data indicate that Southeast Alaska is likely occupied by more than one discrete harbor seal group.

Gulf of Alaska: The Kodiak Archipelago and Prince William Sound represent the principal trend-site areas for the current Gulf of Alaska stock of harbor seals. Tugidak Island, in the Kodiak Archipelago, is the main long-term trend index site. The Tugidak Island trend-site has demonstrated an historical decline of approximately 90 percent from the mid-1970s to the 1990s. However, counts at the Tugidak Island site have indicated a 6.7 percent per year increase from 1994–1999 during the pupping period, and 4.9 percent increase per year during the molting period. Recent trend data from the greater Kodiak area (1993-1999) suggest an increasing trend of 5.6 percent per year. Overall, however, seal abundance in this area remains substantially below abundance levels in the 1970s. In Prince William Sound, counts from surveys conducted during the harbor seal molt period have declined by 58 percent since the first trend count surveys were conducted in the early 1980s. Thus, the population trend data support genetic evidence that the Gulf of Alaska is likely to contain more than one stock of harbor seals.

Bering Sea: A trend route was recently established in the eastern Bering Sea area along the north side of the Alaska Peninsula in Bristol Bay. The Bristol Bay trend route (1998-2001) indicates a declining trend of -1.3 percent per year. Total counts of harbor seals in the Bering Sea were also obtained in the 1970s and are considerably higher than the more recent counts on the Bristol Bay trend-site route. Recent population trends (1990-2000) for the land-based trend-site at Nanvak Bay indicate an increasing rate of 9.2 percent per year during the pupping period and 2.1 percent per year during the molting period. Counts in the Bering Sea are complicated by the sympatric ranges of harbor seals and spotted seals (P. largha); the two species are indistinguishable from aerial surveys.

Request for Comments

The purposes of this notice are: (1) to inform interested constituents that several lines of evidence indicate that harbor seals have a finer-scale stock structure in Alaska than current Stock Assessment Reports indicate; (2) to advise the public that NMFS and ANHSC are evaluating harbor seal stock structure through a co-management process; and (3) to solicit additional information and viewpoints that the public would like NMFS and ANHSC to consider throughout the evaluation of harbor seal stock structure.

Dated: August 19, 2002.

David Cottingham,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–21654 Filed 8–23–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082102B]

North Pacific Fishery Management Council; Notice of Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Pacific Northwest Crab Industry Advisory Committee (PNCIAC) to meet.

DATES: September 13, 2002.

ADDRESSES: NMFS/Alaska Fisheries Science Center, 7600 Sand Point Way NE, Building 9, Room A & B Seattle, WA 99115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff: 907–271–2809.

SUPPLEMENTARY INFORMATION: On Friday, September 13, 2002, the Committee will meet between 9 a.m.–3 p.m. in Seattle at the Alaska Fisheries Science Center. The Committee will review a report on newshell and skip-molt components of the Bering Sea opilio fishery, review status of stocks and guideline harvest levels, and receive a presentation on catchability of crabs in the surveys. The Committee may develop recommendations on these and other issues relating to crab fishery management.

Although non-emergency issues not contained in this agenda may come before the Committee for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 21, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–21656 Filed 8–23–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082102A]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of its SOPPS (Statement of Organization Practices and Procedures) Committee, Information and Education Committee, Protected Resources Committee, NEPA (National Environmental Policy Act) Committee, Advisory Panel Selection Committee, Shrimp Committee, Spiny Lobster Committee, Snapper Grouper Committee, Highly Migratory Species Committee, Dolphin Wahoo Committee. A public hearing on the revised Atlantic Dolphin Wahoo Fishery Management Plan (FMP) will be held and a public comment period will be held to address

lobster issues. There will also be a full Council Session.

DATES: The meetings will be held in September 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407. Telephone: (1–800) 334–6660 or (843) 571–1000.

Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: 843–571–4366; fax: 843–769–4520; email: kim.iverson@safmc.net.

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. *SOPPs Committee Meeting: September 16, 2002, 10–11: a.m.*

The SOPPs Committee will meet to review the status of the Council's Statement of Organizational Practices and Procedures and develop recommended revisions.

2. *Information and Education Committee Meeting: September 16, 2002, 11–12 Noon*

The Information and Education Committee will meet to review current materials, projects and activities. The Committee will also review and make revisions to a draft strategic plan and discuss upcoming meetings.

3. *Protected Resources Committee Meeting: September 16, 2002, 1:30–3 p.m.*

The Protected Resources Committee will meet to develop recommendations for a Protected Resources Advisory Panel, discuss the Committee's direction and scope of its work.

4. *NEPA Committee Meeting: September 16, 2002, 3–4:30 p.m.*

The NEPA Committee will meet to review and discuss Committee objectives, direction and scope of its work and receive a presentation regarding the Pacific Groundfish PEIS (Programatic Environmental Impact Statement).

5. *Advisory Panel Selection Committee Meeting (CLOSED): September 16, 2002, 4:30–6 p.m.*

The Advisory Panel Selection Committee will meet in to review current applications for advisory panel positions and develop recommendations.

6. *Shrimp Committee Meeting: September 17, 2002, 8:30–10:30 a.m.*

The Shrimp Committee will meet to review the draft options paper for Shrimp Amendment 6 and provide direction to staff regarding revisions. The Committee will also discuss the status of the new TED (Turtle Excluder Device) rule.

7. *Spiny Lobster Committee Meeting: September 17, 2002, 10:30–12 Noon*

The Spiny Lobster Committee will meet to review and develop recommendations on Florida's request for regulatory action. The Committee will also review and approve a Regulatory Amendment from the Gulf of Mexico Fishery Management Council if it is available at the meeting.

8. *Snapper Grouper Committee Meeting: September 17, 2002, 1:30–3:30 p.m., and continued on September 18 from 8:30 a.m.–5 p.m.*

The Snapper Grouper Committee will hear a status report on stock assessments for vermilion snapper and black sea bass and an additional report from NOAA Fisheries (National Marine Fisheries Service) Southeast Regional Office regarding capacity work in the snapper grouper fishery. The Committee will review a draft of Amendment 13 to the Snapper Grouper Fishery Management Plan (FMP) and provide additional direction to staff. The Committee will also review a draft of Amendment 14 to the Snapper Grouper FMP and provide direction to staff.

9. *Highly Migratory Species Committee Meeting: September 17, 2002, 3:30–5:30 p.m.*

The Highly Migratory Species Committee will meet to review the status of the listing of white marlin under the Endangered Species Act (ESA), discuss bluefin tuna allocations and issues related to the fall meeting of ICCAT (International Commission for the Conservation of Atlantic Tuna).

10. *Dolphin Wahoo Committee Meeting: September 19, 2002, 8:30–12: Noon*

Note: A public hearing regarding the revised Atlantic Dolphin Wahoo FMP will be held September 19th beginning at 8:30 a.m. Immediately following the public hearing, the Dolphin Wahoo Committee will receive a briefing on the status of the ACCSP (Atlantic Coastal Cooperative Statistics Program) including the bycatch monitoring component. The Committee will then review and develop recommendations on the revised Atlantic Dolphin Wahoo FMP.

11. *Council Session: September 19, 2002, 1:30–6 p.m.*

From 1:30–1:45 p.m., the Council will have a Call to Order, introductions and roll call, adoption of the agenda, and approval of the June 2002 meeting minutes.

From 1:45–2 p.m., the Council will conduct elections for Chairman and Vice Chairman positions and make presentations.

From 2–2:45 p.m., the Council will hear a report from the Spiny Lobster Committee and address Committee recommendations regarding Florida's regulation request.

Beginning at 2 p.m., a public comment period will be held on the State of Florida's request for regulation changes involving the use of short lobsters. Immediately following the comment period, the Council will discuss the issue and make recommendations to staff.

From 2:45–3:30 p.m., the Council will hear a report from the Dolphin Wahoo Committee and take action on the Atlantic Dolphin Wahoo FMP.

From 3:30–3:45 p.m., the Council will hear a report from the Habitat and Environmental Protection Committee.

From 3:45–4:p.m., the Council will hear a report from the Shrimp Committee and approve options for Amendment 6 to the Shrimp FMP.

From 4–4:30 p.m., the Council will hear a report from the Snapper Grouper Committee.

From 4:30–5 p.m., the Council will hear a report from the Advisory Panel Selection Committee and appoint new advisory panel members.

From 5–6 p.m., the Council will receive a legal briefing on litigation affecting the Council (CLOSED SESSION).

12. *Council Session: September 20, 2002, 8:30 a.m.–12:00 Noon*

From 8:30–8:45 a.m., the Council will hear a report from the SOPPs Committee and approve revised SOPPs for submission to the Secretary of Commerce.

From 8:45–9 a.m., the Council will receive a report from the Information and Education Committee.

From 9–9:15 a.m., the Council will hear a report from the Protected Resources Committee.

From 9–9:30 a.m., the Council will hear a report from the NEPA Committee.

From 9:30–10 a.m., the Council will receive a report from the Highly Migratory Species Committee.

From 10–10:30 a.m., the Council will hear NMFS status reports on the Golden/Red Crab FMP management unit emergency request, Shrimp Amendment 5, the Sargassum FMP and the SAW/SARC (Stock Assessment Workshop/Stock Assessment Review Committee). NOAA Fisheries will also give status reports on landings for Atlantic king mackerel, Gulf king mackerel (eastern

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zone), Atlantic Spanish mackerel, snowy grouper & golden tilefish, wreckfish, greater amberjack and south Atlantic octocorals.

From 10:30–12 Noon, the Council will hear agency and liaison reports, discuss other business and upcoming meetings. Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by September 6, 2002.

Dated: August 21, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–21655 Filed 8–23–02; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:30 a.m., Wednesday, September 25, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–21827 Filed 8–22–02; 4:00 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: On August 6, 2002, the Department of Education published a 60-day public comment period notices for the information collections, "Annual Progress Reporting Form for the American Indian Vocational Rehabilitation Services (AIVRS) Program." In the Abstract, it states that copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2064. This link number should be 2121. The Leader, Regulatory Information Management, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*.

Dated: August 20, 2002.

John D. Tressler,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

[FR Doc. 02–21624 Filed 8–23–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On August 7, 2002, the Department of Education published incorrect information regarding the public comment notice for the information collection, "Consolidated State Application". The information within the notice for the Consolidated State Application has been corrected. The public comment period continues through September 6, 2002.

Type of Review: Extension.
Title: Consolidated State Application.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 52.
Burden Hours: 18,160.
Abstract: This information collection package describes the criteria and procedures that govern the consolidated State application under which State educational agencies will apply to obtain funds for implementing Elementary and Secondary Education Act (ESEA) programs. The option of submitting a consolidated application for obtaining federal formula program grant funds is provided for in the reauthorized ESEA (No Child Left Behind-NCLB) Section 9302. This information collection package will guide the States in identifying the information and data required in the application.

In addition to this comment period for the Consolidated State Application, the Department has published the Notice of Proposed Rulemaking (NPRM) for the Title 1—Improving the Academic Achievement of the Disadvantaged for public comment. The comment period for the information collection requirements pertaining to this collection has been offered through the NPRM.

The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*.

Dated: August 21, 2002.

John D. Tressler,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

[FR Doc. 02–21689 Filed 8–23–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, September 19, 2002; 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.
Informal Discussion
6 p.m.
Call to Order; Introductions; Approve August Minutes; Review Agenda; Election of 2003 Officers
6:10 p.m.
DDFO's Comments
- Budget Update
- ES & H Issues
- EM Project Updates
- CAB Recommendation Status
- Other

6:30 p.m.
Ex-officio Comments
6:40 p.m.
Public Comments and Questions
6:50 p.m.
Review of Action Items
7:05 p.m.
Break
7:15 p.m.
Presentation
- Update Actions Underway as Part of Accelerated Cleanup
- C–400 Source Removal
- North-South Diversion Ditch
- Scrap Metal Removal

8 p.m.
Public Comments and Questions
8:10 p.m.
Task Force and Subcommittee Reports
- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership

8:40 p.m.
Administrative Issues
- Self Evaluation Survey Discussion
- Preparation/Discussion—October Chair's Meeting
- Review of Workplan & Agenda Priority Setting
- Review of Next Agenda
- Federal Coordinator Comments
- Final Comments

9 p.m.
Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat J. Halsey at the address or by telephone at 1–800–382–6938, #5. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to Pat J. Halsey, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling her at 1–800–382–6938, #5.

Issued at Washington, DC on August 21, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–21637 Filed 8–23–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning proposed revisions to the Form EIA–846A/C, "Manufacturing Energy Consumption Survey."

DATES: Comments must be filed by October 25, 2002. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Robert K. Adler. To ensure receipt of the comments by the due date, submission by FAX (202–586–0018) or e-mail (*robert.adler@eia.doe.gov*) is recommended. The mailing address is Energy Consumption Division, EI–63, Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0660. Alternatively, Mr. Adler may be contacted by telephone at 202–586–1134.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Robert K. Adler at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

The Manufacturing Energy Consumption Survey (MECS) is a mail survey designed to collect energy consumption and expenditures data from establishments in the manufacturing sector; *i.e.*, North American Industry Classification System (NAICS) codes 31–33. There are three MECS data collection forms and their use depends on an establishment's primary business activity classification under NAICS. Form EIA–846A collects information for all the manufacturing industries contained within NAICS 31–33 except for NAICS 321, 322, 324, 325, and 331111. Form EIA–846B is for establishments operating primarily in the petroleum refining industry (NAICS 324110). Form EIA–846C is for

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establishments in NAICS 321, 322, 324 (except 324110), 325 and 331111.

The 2002 MECS will collect information during 2003 for business activities in calendar year 2002. For the 2002 MECS, EIA proposes to collect the following data from each MECS establishment: (1) For each energy source consumed—consumption (total, fuel and nonfuel uses) and the expenditures for each energy source, energy storage (as applicable), and energy produced onsite; (2) energy end uses; (3) general energy-saving technologies; (4) energy management activities; (5) square footage and number of buildings in the establishment; (6) fuel-switching capabilities; and (7) use of equipment and behaviors associated with the adaption to the digital economy.

The MECS has been conducted five times previously, covering the years 1985, 1988, 1991, 1994, and 1998. In all five survey years, the MECS has collected baseline data on manufacturers' energy consumption and expenditures. The MECS collected data on fuel-switching capabilities in all years except 1998. In the 1991,1994, and 1998 surveys, the MECS also collected data on end-uses, energy management technologies, building square footage, and energy-saving technologies.

The MECS information is the basis for data and analytic products that can be found in *http://www.eia.doe.gov/emeu/mecs*. Also on this website are past publications, articles, and a special analytic series, "Industry Analysis Briefs." The 2002 MECS will also be used to benchmark EIA's industry forecasting model and update changes in the energy intensity and greenhouse gases data series.

The proposed 2002 MECS uses experience gained from the administration and processing of the five previous surveys and past consultations with respondents, trade association representatives, and data users. EIA has completed a web-based survey of users to obtain their advice and needs for data. The results of that survey can be found at *http://tonto.eia.doe.gov/mecs/mecs2002/user_needs/results.html*.

II. Current Actions

EIA proposes making several changes from the 1998 MECS for use in the 2002 MECS. The MECS will reinstate the fuel-switching capability data collection questions that last appeared in the 1994 survey. Volatility in energy prices during periods since the 1998 survey coupled with a need to reestablish baseline data have led to its reinstatement. To compensate for the added respondent burden and cost to the government of collecting fuel-switching data, EIA intends to delete the questions on industry-specific technologies. Those questions have proven difficult to keep up-to-date and by themselves cannot give information on the extent to which such technologies influence energy consumption at the manufacturing establishment. The number of additional data items required to do that would be prohibitive. EIA will reexamine the collection of the industry-specific technologies in the future.

EIA is also exploring ways in which the MECS can collect data which would cover energy issues in the area of the digital economy. "Check-off" type questions would be added that would ask about the use of manufacturing controls and real-time electricity price response. Additionally, the number of MECS sample cases would be increased to enable a more detailed breakout of NAICS 334, "Computer and Electronic Product Manufacturing." The additional questions and sample depend on upcoming funding levels.

EIA would like to address certain data quality and reconciliation issues. A question under consideration for addition would ask MECS respondents to identify by name their suppliers of residual fuel oil and possibly other types of energy source suppliers, most likely natural gas. This reporting would be used to identify frame differences with other EIA reporting systems. The same level of strict confidentiality would be maintained for these data items that is in place for the rest of the MECS.

A second small set of proposed new questions would involve the issue of onsite electricity generation. In order to understand the changing financial and operational relationship between manufacturing establishments and associated power generating equipment brought about by electricity restructuring, EIA wants to quantify more exactly the extent to which those generation facilities are being sold to other entities, in whole or in part, and how that change of ownership would affect MECS reporting. Further, there may be a related question about the types of ownership arrangements that could occur.

A third area of interest is the reporting by petroleum refineries. EIA is reexamining the issue of co-located petrochemical plants and whether the current MECS is addressing energy flows properly in order for an energy accounting to be complete and nonduplicative. This reexamination may necessitate some changes in the special refinery form EIA–846B . In all the proposed data quality additions, the expected respondent burden increases would be minimal.

The 1998 MECS made the transition from the Standard Industrial Classification (SIC) system to NAICS. To aid in that transition, the major energy consumption tables were presented in terms of both industry classification systems. EIA was able to do that for the 1998 MECS because each manufacturing establishment in the MECS sample carried both a NAICS code and an SIC code. For the 2002 MECS, only the NAICS classifications will be maintained and thus data presentations will be in terms of NAICS only.

Besides the changes already discussed, the content of the 2002 MECS will be largely unchanged from the 1998 survey. The questionnaire will again be primarily in a question-answer format as opposed to the matrix style presentation. The MECS information products will continue to present Census Region level data as well as national data.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average eight hours per response for Form EIA–846A, seven hours per response for Form EIA–846B, and nine hours per response for Form EIA–846C. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information to be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, August 20, 2002.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02–21638 Filed 8–23–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–104–000, *et al.*]

Mountain View Power Partners, LLC, et al.; Electric Rate and Corporate Regulation Filings

August 16, 2002

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Mountain View Power Partners, LLC; Mountain View Power Partners II, LLC; PG&E Energy Trading-Power, L.P.

[Docket No. EC02–104–000]

Take notice that on August 12, 2002, Mountain View Power Partners, LLC (Mountain View), Mountain View Power Partners II, LLC (Mountain View II), and PG&E Energy Trading-Power, L.P. (PGET) tendered for filing, pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b (1994), and part 33 of the Commission's regulations, 18 CFR part 33, an application for authorization of a proposed intra-corporate reorganization whereby (1) Mountain View II will be merged with and into Mountain View and (2) PGET will transfer its interest in a long-term power sales agreement with the California Department of Water Resources to Mountain View.

Comment Date: September 3, 2002.

2. ST–CMS Electric Company Private Limited

[Docket No. EG02–179–000]

Take notice that on August 12, 2002, ST–CMS Electric Company Private Limited, Fairlane Plaza South, Suite 1000, 330 Town Center Drive, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a private limited company formed under the laws of India. ST-CMS is an indirect partially owned subsidiary of CMS Generation Co. CMS Generation is a wholly-owned direct subsidiary of CMS Enterprises Company. CMS Enterprises Company is a wholly-owned direct subsidiary of CMS Energy Corporation (CMS Energy). ST–CMS is jointly owned by ABB Power Investment (India) B.V., a subsidiary of ABB Energy Ventures B.V. ST–CMS Electric Company Private Limited owns a 250 MW lignite fuel fired electric power generation facility at Neyveli in the state of Tamil Nadu, India.

Comment Date: September 6, 2002.

3. CMS (India) Operations and Maintenance Company Private Limited

[Docket No. EG02–180–000]

Take notice that on August 12, 2002, CMS (India) Operations and Maintenance Company Private Limited, Fairlane Plaza South, Suite 1000, 330 Town Center Drive, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

CMS (India) Operations and Maintenance Company Private Limited is a private limited company formed under the laws of India. It is an indirectly wholly-owned subsidiary of CMS Generation Co. CMS Generation is a wholly-owned direct subsidiary of CMS Enterprises Company. CMS Enterprises Company is a wholly-owned direct subsidiary of CMS Energy Corporation. CMS (India) Operations and Maintenance Company Private Limited will operate, under an operations and maintenance agreement with the owner, a 250 MW lignite fuel fired electric power generation facility at Neyveli in the state of Tamil Nadu, India.

Comment Date: September 6, 2002.

4. Conectiv Delmarva Generation, Inc.

[Docket No. ER00–3168–003]

Take notice that on August 9, 2002, Conectiv, on behalf of Delmarva Power & Light Company and Conectiv Delmarva Generation, Inc. filed a notice of withdrawal of its October 31, 2001 filing in the above-captioned proceeding.

Copies of the filing were served upon the official service list.

Comment Date: August 30, 2002.

5. Reliant Energy Etiwanda, Inc.

[Docket No. ER02–2450–000]

Take notice that on August 14, 2002 Reliant Energy Etiwanda, Inc. (Reliant Etiwanda) tendered for filing a Notice of Succession in Ownership or Operation. Reliant Etiwanda requests the change be effective as of March 8, 2002.

Comment Date: September 4, 2002.

6. Reliant Energy Ellwood, Inc.

[Docket No. ER02–2451–000]

Take notice that on August 14, 2002 Reliant Energy Ellwood, Inc. (Reliant Ellwood) tendered for filing a Notice of Succession in Ownership or Operation. Reliant Ellwood requests the change be effective as of March 8, 2002.

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Comment Date: September 4, 2002.

7. Reliant Energy Mandalay, Inc.

[Docket No. ER02–2452–000]

Take notice that on August 14, 2002 Reliant Energy Mandalay, Inc. (Reliant Mandalay) tendered for filing a Notice of Succession in Ownership or Operation. Reliant Mandalay requests the change be effective as of March 8, 2002.

Comment Date: September 4, 2002.

8. Entergy Services, Inc.

[Docket No. ER02–2454–000]

Take notice that on August 13, 2002, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., tendered for filing six copies of a Notice of Termination for Short-Term and Non-Firm Point-To-Point Transmission Service Agreements between Entergy Services and Public Service Electric and Gas Company.

Comment Date: September 3, 2002.

9. Citizens Communications Company

[Docket No. ER02–2456–000]

Take notice that on August 12, 2002, Citizens Communications Company (Citizens) filed a Service Agreement with NRG Power Marketing Inc. for Non-Firm Point-to-Point Transmission Service, designated as Service Agreement No. 12 under Citizens' Vermont Electric Division's Open Access Transmission Tariff, Electric Tariff Original Vol. 2. Citizens also filed Third Revised Sheet No. 182 (Attachment E, Index of Point to Point Transmission Service Customers) to Citizens' Vermont Electric Division's Open Access Transmission Tariff, Electric Tariff Original Vol. 2, replacing Second Revised Sheet No. 182.

Citizens requests waiver of the Commission's prior notice requirements, and an effective date of July 22, 2002 for the service agreement and revised tariff sheet.

Copies of this filing were served on the wholesale customers, state commission, and other entities listed on the certificate of service attached to the filing. In addition, a copy of the rate schedule is available for inspection at the offices of Citizens' Vermont Electric Division during regular business hours.

Comment Date: September 3, 2002.

10. Commonwealth Edison Company

[Docket No. ER02–2457–000]

Take notice that on August 9, 2002, Commonwealth Edison Company (ComEd) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of Service Agreement No. 553 and a Revised Sheet No. 1 to Service Agreement No. 553 under ComEd's Second Revised Tariff No. 5, with the designation information required by Commission Order No. 614 (FERC Stats. & Regs. ¶ 31,096), indicating that the service agreement is to be canceled effective July 8, 2002.

Comment Date: August 30, 2002.

11. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2458–000]

Take notice that on August 12, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing proposed revisions to Schedules 7, 8 and 9 of the Midwest ISO's Open Access Transmission Tariff (OATT) in order to include Wolverine Power Supply Cooperative, Inc. in the Midwest ISO as a pricing zone.

The Midwest ISO has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

The Midwest ISO has requested that the proposed revisions to the Midwest ISO OATT be made effective on the latter of October 1, 2002 or the date upon which all conditions to Wolverine's membership application have been satisfied.

Comment Date: September 3, 2002.

12. Northeast Power Coordinating Council

[Docket No. ER02–2459–000]

Take notice that on August 12, 2002, the Northeast Power Coordinating Council (NPCC), on behalf of the member Systems of the New York Independent System Operator, Inc. (NYISO) and joined by Midwest Independent Transmission System Operator, Inc. (Midwest ISO), Michigan Electric Transmission Company, LLC (Michigan Transco LLC), International Transmission Company (International Transmission), American Electric Power Company, Inc. (AEP), FirstEnergy Corp (FE), PJM Interconnection, L.L.C. (PJM), and with the support of the Independent Electricity Market Operator in Ontario (IMO) (collectively the LEER Participants) filed a revision to the Lake Erie Emergency Redispatch Agreement (LEER). NPCC coordinates Lake Erie Emergency Redispatch activities and posts all LEER-related information on the NPCC web site. The revisions embodied in this filing refine those sections of the LEER Agreement needed to reflect changes in the industry since the last LEER filing in July 2000.

NPCC states that copies of the filing were mailed to the commissions in the states of Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Dakota, Ohio Pennsylvania, South Dakota, Virginia, West Virginia and Wisconsin.

The LEER Participants request that the revised LEER Agreement described in this filing be made effective October 10, 2002.

Comment Date: September 3, 2002.

13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2460–000]

Take notice that on August 13, 2002, pursuant to section 205 of the Federal Power Act and section 35.12 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.12, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing an Interconnection and Operating Agreement among Valley Queen Cheese Factory, Inc., the Midwest ISO and Otter Tail Power Company.

A copy of this filing was sent to Valley Queen Cheese Factory, Inc. and Otter Tail Power Company.

Comment Date: September 3, 2002.

14. PECO Energy Company

[Docket No. ER02–2461–000]

Take notice that on August 13, 2002 PECO Energy Company (PECO) submitted for filing, on behalf of itself and PPL Electric Utilities Corporation (PPL) PECO's First Revised FERC Rate Schedule No. 26; and PPL's First Revised FERC Rate Schedule No. 40, which incorporate a modification to Article V and were revised consistent with Order 614.

Comment Date: September 3, 2002.

15. Niagara Mohawk Power Corporation

[Docket No. ER02–2462–000]

Take notice that on August 13, 2002, Niagara Mohawk Power Corporation (NIMO) filed two executed interconnection agreements with WPS Empire State, Inc. (Empire State), the successor in interest to an entity known as CH Resources, Inc. (CH Resources). On May 31, 2002, CH Resources' stock was acquired by WPS Power Development, Inc., which entity changed CH Resources name to WPS Empire State, Inc. upon its acquisition of CH Resources. The interconnection agreements set forth the terms and conditions governing the interconnection between the Niagara generating facility (Niagara Facility) and the Syracuse generating facility (Syracuse Facility), respectively, and NIMO's transmission system. This is a compliance filing to submit the two executed interconnection agreements, known as Service Agreement Nos. 315 and 316, in an Order No. 614 format. By letter order, dated May 3, 2002 in this docket, these service agreements had previously been accepted for filing by the Commission. The filing includes a Notice of Succession In Ownership to reflect the above-referenced stock acquisition and name change.

Copies of the filing were served upon Empire State and the New York Public Service Commission.

Comment Date: September 3, 2002.

16. Dr. Mary S. Metz

[Docket No. ID–2431–002]

Take notice that on July 31, 2002, Mary S. Metz filed with the Federal Energy Regulatory Commission (Commission) an application for authority to hold interlocking positions under Section 305(b) of the Federal Power Act, 16 U.S.C. § 825(b).

Comment Date: September 6, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21612 Filed 8–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–105–000, *et al.*]

Vermont Electric Power Company, *et al.*; Electric Rate and Corporate Regulation Filings

August 20, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Vermont Electric Power Company, Inc. and Entergy Nuclear Vermont Yankee, LLC

[Docket No. EC02–105–000]

Take notice that on August 16, 2002, Vermont Electric Power Company, Inc. (VELCO) and Entergy Nuclear Vermont Yankee, LLC (Entergy Nuclear VY) jointly filed with the Federal Energy Regulatory Commission an application for authorization under section 203 of the Federal Power Act for a transfer from VELCO to Entergy Nuclear VY of minor transmission facilities located within the switchyard of Entergy Nuclear VY's generating facility.

Comment Date: September 10, 2002.

2. Western Area Power Administration

[Docket No. EF02–5091–000]

Take notice that on August 15, 2002, the Western Area Power Administration tendered for filing with the Federal Energy Regulatory Commission (Commission) the FY 2003 base charge and rates for the Boulder Canyon Project (BCP).

Comment Date: September 10, 2002.

3. Acadia Bay Energy Company, LLC

[Docket No. EG02–181–000]

Take notice that on August 13, 2002, Acadia Bay Energy Company, LLC (Acadia Bay), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Acadia Bay, a Delaware limited liability company whose sole member is Allegheny Energy Supply Company, LLC, is constructing 540 MW of combined-cycle generation in St. Joseph County, Indiana.

Comment Date: September 10, 2002.

4. Quonset Point Cogen, L.P.

[Docket No. EG02–182–000]

Take notice that on August 15, 2002, Quonset Point Cogen L.P., with its principal office at c/o PSEG Energy Technologies Inc., filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Quonset Point Cogen, L.P. is a company organized under the laws of New Jersey. Quonset Point Cogen, L.P. will be engaged directly or indirectly, through a Section 2(a)(11)(B) affiliate, and exclusively in owning and operating a gas turbine generator set (GTG) and a heat recovery steam generator (HRSG) located at a Rhode Island facility.

Comment Date: September 10, 2002.

5. Complete Energy Services, Inc.

[Docket No. ER99–3033–002]

Take notice that on August 2, 2002, Complete Energy Services, Inc. (Complete) tendered for filing with the Federal Energy Regulatory Commission (Commission) an updated market power analysis.

Comment Date: September 10, 2002.

6. Nevada Power Company

[Docket No. ER01–3149–003]

Take notice that on August 16, 2002, Nevada Power Company tendered for filing its compliance filing making the changes to the Interconnection and Operation Agreement (Agreement) between Nevada Power Company and Mirant Las Vegas, LLC required by the Federal Energy Regulatory Commission's June 26, 2002 order in this docket. In addition, Nevada Power has made other mutually agreeable changes to the Agreement.

Comment Date: September 6, 2002.

7. Minnesota Power

[Docket No. ER02–2238–001]

Take notice that on August 15, 2002, Minnesota Power tendered for filing a Schedule 4A—Generator Imbalance Service based upon Minnesota Power's Open Access Transmission Tariff Schedule 4—Energy Imbalance and the Midwest Independent System Operator's proposed but currently suspended Schedule 4—Energy

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Imbalance and Inadvertent Interchange Service. An effective date of November 1, 2002 was requested for Schedule 4A.

Comment Date: September 5, 2002.

8. UGI Development Company

[Docket No. ER02–2447–000]

Take notice that on August 14, 2002, UGI Development Company (UGID) tendered for filing a revised Wholesale Market-Based Rate Schedule. UGID requests an effective date of September 1, 2002.

Comment Date: September 4, 2002.

9. Xcel Energy Services, Inc.

[Docket No. ER02–2448–000]

Take notice that on August 14, 2002, Xcel Energy Services, Inc. (XES), on behalf of Public Service Company of Colorado (Public Service), submitted for filing a Power Purchase Agreement with Grand Valley Rural Power Lines, Inc. (Grand Valley).

XES requests that this agreement become effective on September 1, 2002.

Comment Date: September 4, 2002.

10. Reliant Energy Ormond Beach, Inc.

[Docket No. ER02–2449–000]

Take notice that on August 14, 2002 Reliant Energy Ormond Beach, Inc. (Reliant Ormond Beach) tendered for filing a Notice of Succession in Ownership or Operation. Reliant Ormond Beach requests the change be effective as of March 8, 2002.

Comment Date: September 4, 2002.

11. Reliant Energy Coolwater, Inc.

[Docket No. ER02–2453–000]

Take notice that on August 14, 2002 Reliant Energy Coolwater, Inc. (Reliant Coolwater) tendered for filing a Notice of Succession in Ownership or Operation. Reliant Coolwater requests the change be effective as of March 8, 2002.

Comment Date: September 4, 2002.

12. ISO New England Inc.

[Docket No. ER02–2463–000]

Take notice that on August 16, 2002, pursuant to Section 205 of the Federal Power Act, ISO New England Inc. filed with the Federal Energy Regulatory Commission a Reliability Agreement dated August 1, 2002 between ISO-NE and Devon Power LLC.

Copies of said filing have been served upon all parties to this proceeding, and upon NEPOOL Participants, and upon all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as upon the utility regulatory agencies of the six New England States.

Comment Date: September 6, 2002.

13. Niagara Mohawk Power Corporation

[Docket No. ER02–2465–000]

Take notice that on August 15, 2002, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an unexecuted agreement for service under its own Open Access Transmission Tariff for transmission service furnished to SUNY-Buffalo on November 17, 1999.

Comment Date: September 5, 2002.

14. PJM Interconnection, L.L.C.

[Docket No. ER02–2466–000]

Take notice that on August 16, 2002, PJM Interconnection, L.L.C. (PJM) tendered for filing a signature page to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA) for Sempra Energy Trading Corp. (Sempra). PJM also filed Second Revised Sheet No. 62 of the RAA including Sempra in the list of parties to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including Sempra Energy Trading Corp., and each of the state electric utility regulatory commissions within the PJM Control Area.

Comment Date: September 6, 2002.

15. Duquesne Light Company

[Docket No. ER02–2467–000]

Take notice that on August 16, 2002, Duquesne Light Company (DLC) filed Service Agreement No. 183, dated August 16, 2002 with Powerex Corp. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Powerex Corp. as a customer under the Tariff.

DLC requests an effective date of August 16, 2002 for the Service Agreement.

Comment Date: September 6, 2002.

16. Duquesne Light Company

[Docket No. ER02–2468–000]

Take notice that on August 16, 2002, Duquesne Light Company (DLC) filed Service Agreement No. 184, dated August 16, 2002 with Powerex Corp. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Powerex Corp. as a customer under the Tariff.

DLC requests an effective date of August 16, 2002 for the Service Agreement.

Comment Date: September 6, 2002.

17. The New Power Company

[Docket No. ER02–2469–000]

Take notice that on August 16, 2002, The New Power Company submitted for filing a Notice of Succession of a Service Agreement for Network Transmission Service and Operating Agreement entered into by and between Cinergy Services, Inc. and The New Power Company, which The New Power Company is requesting authorization to assign to Dominion Retail.

The New Power Company has requested an effective date of August 17, 2002. Copies of the filing have been served on Cinergy Services, Inc., Dominion Retail, Inc. and the Ohio Public Utilities Commission.

Comment Date: September 6, 2002.

18. PJM Interconnection, L.L.C.

[Docket No. ER02–2470–000]

Take notice that on August 16, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interconnection service agreement between PJM and National Institutes of Health. PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective date agreed to by the parties.

Copies of this filing were served upon each of the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: September 6, 2002.

19. PJM Interconnection, L.L.C.

[Docket No. ER02–2471–000]

Take notice that on August 16, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing two executed interconnection service agreements between PJM and PPL West Earl, L.L.C.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties. Copies of this filing were served upon each of the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: September 6, 2002.

20. PJM Interconnection, L.L.C.

[Docket No. ER02–2472–000]

Take notice that on August 16, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing two executed interconnection service agreements between PJM and Tosco Corporation and Tosco Refining Company. PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties.

Copies of this filing were served upon each of the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: September 6, 2002.

21. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. OA02–8–000]

Take notice that on August 14, 2002, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Revised Standards of Conduct. Allegheny Power requests a waiver of notice requirements to make the Revised Standards of Conduct effective as of April 1, 2002.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment Date: September 9, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21668 Filed 8–23–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7286–8]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby at (202) 566–1672, or email at *Auby.susan@epa.gov.* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1285.05; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks Reporting and Recordkeeping Requirements in 40 CFR 86.1105–86.1111; was approved 07/01/2002; OMB No. 2060–0132; expires 07/31/2005.

EPA ICR No. 2025.01; Reporting and Recordkeeping Requirements for the Friction Materials Manufacturing NESHAP in 40 CFR 63.9535, 63.9540, 63.9545, 63.9550, 63.10 and 63.6; was approved 07/02/2002; OMB No. 2060–0481; expires 07/31/2005.

EPA ICR No. 2066.01; National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands in 40 CFR part 63, subpart PPPPP; was approved 07/02/2002; OMB No. 2060–0483; expires 07/31/2005.

EPA ICR No. 2048.01; U.S. EPA Beach Act Grant Program; was approved 07/08/2002; OMB No. 2040–0244; expires 07/31/2005 EPA ICR No. 0783.42; Motor Vehicle Emission and Fuel Economy Compliance; Light Duty Vehicles, Light Duty Trucks and Motorcycle (Consolidated/Renewal) in 40 CFR parts 85, 86, and 600; was approved 07/16/2002; OMB No. 2060–0104; expires 07/31/2005.

EPA ICR No. 0160.07; Pesticide Registration Application, Notification and Report for Pesticide-Producing Establishments in 40 CFR part 167; was approved 07/23/2002; OMB No. 2070–0078; expires 07/31/2005.

EPA ICR No. 0318.09; Clean Watersheds Needs Survey (CWNS); was approved 07/24/2002; OMB No. 2040–0050; expires 07/31/2005.

EPA ICR No. 1755.06; Regulatory Reinvention Pilot Projects Under Project XL1; was approved 08/01/2002; OMB No. 2010–0026; expires 08/31/2005.

EPA ICR No. 1854.03; Synthetic Organic Chemical Industry (SOCMI): Consolidation of Information Collection Request (Revision) in 40 CFR parts 65, subparts A—G, part 60, subparts A, BB, Ka, Kb, VV, DDD, III, NNN, and RRR, part 61, subparts BB, Y, V, part 63, subparts F, G, H, and I; was approved 08/07/2002; OMB # 2060–0443; expires 08/31/2005.

EPA ICR No. 1292.06; Aftermarket Catalytic Converter Policy; was approved 08/08/2002; OMB No. 2060–0135; expires 08/31/2005.

Short Term Extensions

EPA ICR No. 1867.01 Reporting Requirements under EPA's Voluntary Aluminum Industrial Partnership; OMB No. 2060–0411; on 07/02/2002 OMB extended the expiration date through 10/31/2002.

EPA ICR No. 1426.05; EPA Worker Protection Standard for Hazardous Waste Operations and Emergency Response in 40 CFR part 311; OMB No. 2050–0105; on 07/31/2002 OMB extended the expiration date through 10/31/2002.

Comment Filed

EPA ICR No.1992.01; Implementation of Incentives Designed for EPA's National Environmental Performance Track; on 07/31/2002 OMB filed comment.

EPA ICR No. 1189.10; Identification, Listing and Rulemaking Petitions Cathode Ray Tubes Proposed Rule in 40 CFR 261.4; OMB No. 2050–0053; on 07/02/2002 OMB filed comment.

EPA ICR No. 1597.05; Reporting and Recordkeeping Requirements for Universal Waste Handlers and Destination Facilities (Mercury Proposed Rule); in 40 CFR part 273; OMB No. 2050–0145; on 07/02/2002 OMB filed comment.

EPA ICR No. 2042.01; NESHAP for Semiconductor Manufacturing; in 40 CFR part 63, subpart BBBBB; on 07/17/2002; OMB filed comment.

EPA ICR No. 1995.01; Recordkeeping and Reporting Requirements for the Coke Oven NESHAP; Pushing, Quenching, and Battery Stacks; in 40

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CFR part 63, subpart CCCCC; on 07/08/2002 OMB filed comment.

EPA ICR No. 1813.03; Regional Haze Rule—Proposed Revisions to Incorporate Sulfur Dioxide Milestones and Backstop Emissions Trading Program for Nine Western States and Eligible Indian Tribes in 40 CFR 51.309; OMB No. 2060–0421; on 07/02/2002 OMB comment filed and continue.

OMB Withdrawals

EPA ICR No. 1993.01; Evaluations of Innovative Pilot Project Innovations; on 07/19/2002 this ICR was withdrawn from OMB review.

Dated: August 16, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–21657 Filed 8–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7268–4]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement in *Sierra Club* v. *U.S. Environmental Protection Agency*, No. 02–1135 (D.C. Circuit). This case concerns the final rule entitled "National Emission Standard for Hazardous Air Pollutants for Source Categories: General Provisions; and Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act section 112(g) and 112(j)," published at 67 FR 16582 on April 5, 2002. The proposed settlement agreement was lodged with the United States Court of Appeals for the District of Columbia Circuit on August 15, 2002.

DATES: Written comments on the proposed settlement agreement must be received by September 25, 2002.

ADDRESSES: Written comments should be sent to Timothy D. Backstrom, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A copy of the proposed settlement agreement is available from Phyllis J. Cochran, (202) 564–7606. A copy of the proposed settlement agreement was also lodged in the case with the Clerk of the United States Court of Appeals for the District of Columbia Circuit on August 15, 2002.

SUPPLEMENTARY INFORMATION: EPA promulgated a final rule amending the MACT General Provisions, 40 CFR part 63, subpart A, and the requirements for case-by-case determinations under Clean Air Act section 112(j), 40 CFR 63.50–63.56, on April 5, 2002. 67 FR 16582. The Sierra Club filed a petition seeking judicial review of this final rule on April 25, 2002. *Sierra Club* v. *U.S. Environmental Protection Agency*, No. 02–1135 (D.C. Circuit). On June 4, 2002, Sierra Club also filed a petition seeking administrative reconsideration of certain provisions in the final rule, pursuant to Clean Air Act section 307(d)(7)(B).

Sierra Club and EPA have now reached initial agreement on a settlement of the case which could lead to the voluntary dismissal of the petition for review. The settlement requires the EPA Administrator to sign a proposed rule incorporating certain amendments no later than two months after the date the settlement was signed by counsel for the parties and lodged with the court. The settlement also requires the EPA Administrator to take final action concerning the proposed rule within seven months from the date of signature and lodging.

Under the settlement, EPA will propose to reduce the time period between submission of part 1 applications under Clean Air Act section 112(j), and submission of the more detailed part 2 application, from 24 months to 12 months. EPA originally proposed a time period of 6 months between the two parts. In view of the current schedule for promulgation of remaining MACT standards, EPA anticipates that the one year period will permit proposed MACT standards to be issued prior to the part 2 applications, thereby reducing the burden associated with preparation of the part 2 applications. EPA also anticipates that the one year period should be sufficient to prevent any need for actual issuance of case-by-case determinations under section 112(j) for all or virtually all affected source categories.

The settlement also requires that EPA propose certain amendments to the section in the MACT General Provisions which governs preparation of Startup, Shutdown, and Malfunction (SSM) plans, 40 CFR 63.6(e). EPA considers these changes to be modest in nature and consistent with the policies concerning these SSM plans described in the preamble of the original proposal.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement agreement. Although the comment opportunity required by section 113(g) is only mandatory with respect to persons who are not named as parties or interveners in the case in question, EPA does not believe it would be appropriate in this instance to exclude comment by those parties who have requested and been granted intervention in the *Sierra Club* case, or by those parties who have submitted petitions concerning the same rulemaking in consolidated cases. Unlike a consent degree or court-ordered settlement, no action by the Court is required to execute the settlement agreement in this case. Therefore, EPA will exercise its discretion to accept comment on the settlement agreement from all interested persons.

EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

Dated: August 16, 2002.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office.

[FR Doc. 02–21674 Filed 8–23–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7268–3]

Final Notification of Alternative Tier 2 Requirements for PuriNO$_X$ Diesel Fuel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that the EPA has notified the Lubrizol Corporation (Lubrizol), manufacturer of a motor-vehicle diesel fuel known as PuriNO$_X$, of Alternative Tier 2 health-effects testing requirements for PuriNO$_X$ Generation 2 Winter Diesel Fuel Emulsion (Winter PuriNO$_X$) under the fuel and fuel additive registration testing requirements. EPA has also concluded that testing performed by Lubrizol on Winter PuriNO$_X$ and a warm-climate PuriNO$_X$ will be sufficient to cover intermediate versions of PuriNO$_X$.

DATES: The Alternative Tier 2 testing requirements for Winter PuriNO$_X$ are effective upon receipt by Lubrizol of the notification letter discussed in this notice.

ADDRESSES: A copy of the notification to Lubrizol has been placed in Public Docket No. A–2002–07, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, SW., Washington, DC 20460–0001. Relevant materials have been placed in this docket. It may be inspected from 8:00 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Environmental Engineer, U.S. Environmental Protection Agency, Office of Transportation and Air Quality, Mail Code 6406J, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0001, (202) 564–9303, fax (202) 565–2085, *caldwell.jim@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entity.* The entity regulated by this action is Lubrizol.

I. Introduction

Pursuant to sections 211(b)(2) and 211(e) of the Clean Air Act (CAA) EPA promulgated regulations requiring manufacturers of designated fuels and fuel additives (F/FA) to conduct tests to determine the potential health effects of the F/FA emissions. The final rule, promulgated May 27, 1994, established new health-effects testing requirements for the registration of designated F/FAs (59 FR 33042).

The registration requirements are organized within a three-tier structure. Tier 1 requires F/FA manufacturers to supply to EPA (1) the identity and concentration of certain emission products, and (2) any available information regarding the health and welfare effects of the whole and speciated emissions. 40 CFR 79.52. Tier 2 requires that combustion emissions of each F/FA subject to the testing requirements be tested for subchronic systemic and organic toxicity, as well as the assessment of specific health-effect endpoints. 40 CFR 79.53. Tier 3 testing may be required, at EPA's discretion, when remaining uncertainties as to the significance of observed health or welfare effects, or emissions exposures, interfere with EPA's ability to reasonably assess the potential risks posed by the emissions from a F/FA. 40 CFR 79.54. EPA's regulations permit submission of adequate existing test data in lieu of conducting new, duplicative tests. 40 CFR 79.53(b).

At its discretion, EPA may modify the standard Tier 2 health-effects testing requirements for a F/FA (or group thereof) by substituting, adding, or deleting testing requirements, or changing the underlying vehicle/engine specifications. 40 CFR 79.58(c). EPA will not, however, delete a testing requirement for a specific end point in the absence of existing adequate information, or an alternative testing requirement for that endpoint. 40 CFR 79.58(c).

II. Proposed Alternative Tier 2 Requirements for PuriNO$_X$

On May 3, 2002 EPA notified Lubrizol of proposed Alternative Tier 2 testing requirements under 40 CFR 79.58(c) for Lubrizol's Winter PuriNO$_X$ formulation. The proposed Alternative Tier 2 testing requirements were identical to the standard Tier 2 requirements with the exception that the test fuel would be the Winter PuriNO$_X$ formulation, consisting of 74% diesel fuel, 16.8% water, 5.7% methanol, and 3.5% PuriNO$_X$ Generation 2 Additive Package. Under the standard Tier 2 requirements the water and methanol would have been tested separately in diesel fuel. EPA believed that, since such separate formulations would never occur in the production of Winter PuriNO$_X$, testing of the proposed test fuel, which corresponds with its commercial composition, would produce more meaningful health-effects testing results.

Lubrizol has already conducted standard Tier 2 testing on a warm-climate PuriNO$_X$ formulation, consisting of 77% diesel fuel, 20% water, and 3% PuriNO$_X$ 1121A Additive Package. EPA also proposed that this testing, in conjunction with the Alternative Tier 2 testing for Winter PuriNO$_X$, would be sufficient to meet the Tier 2 requirements for intermediate PuriNO$_X$ combinations of diesel fuel, water, methanol, and additive package.[1] An associated **Federal Register** notice (67 FR 35808, May 21, 2002) initiated a 30-day public comment period. Only one comment was received, and it did not address either proposal. The EPA has concluded that both proposals will be finalized without change, and has notified Lubrizol by letter. A copy of the letter has been placed in the docket referenced above.

[1] Thus, if the Winter PuriNO$_X$ Alternative Tier 2 testing is successfully completed, the Tier 2 health effects testing requirements would be met for PuriNO$_X$ formulations consisting of 100%–74% diesel fuel, 0%–20% water, 0%–5.7% methanol, 0%–3.5% PuriNO$_X$ Generation 2 Additive, or 0%–3% PuriNO$_X$ 1121A.

III. Environmental Impact

This action will result in no immediate environmental impact, but may provide a basis for further regulatory action, should the collected data indicate that there may be a risk to public health or welfare.

IV. Economic Impact

This action will reduce the testing expense for Lubrizol by reducing the number of test fuels. Since this applies only to Lubrizol, which is not a small entity, there is no economic impact on small entities.

List of Subjects in 40 CFR Part 79

Environmental protection, Air pollution control, Diesel fuel, and Motor vehicle pollution.

Dated: August 19, 2002.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 02–21675 Filed 8–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7267–7]

National Drinking Water Advisory Council; Request for Nominations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

The U.S. Environmental Protection Agency (EPA) invites all interested persons to nominate qualified individuals to serve a three-year term as members of the National Drinking Water Advisory Council (Council). This Council was established by the Safe Drinking Water Act (SDWA) to provide practical and independent advice, consultation and recommendations to the Agency on the activities, functions and policies related to the implementation of the SDWA. The Council consists of fifteen members, including a Chairperson, appointed by the Deputy Administrator. Five members represent the general public; five members represent appropriate State and local agencies concerned with water hygiene and public water supply; and five members represent private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. The SDWA requires that at least two members of the Council represent small, rural water systems. On December 15 of

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each year, five members complete their appointment. Therefore, this notice solicits names to fill the five vacancies, with appointed terms ending on December 15, 2005.

Any interested person or organization may nominate qualified individuals for membership. Nominees should be identified by name, occupation, position, address and telephone number. To be considered, all nominations must include a current resume providing the nominee's background, experience and qualifications.

Persons selected for membership will receive compensation for travel and a nominal daily compensation while attending meetings. The Council holds two face-to-face meetings each year, generally in the Spring and Fall. Additionally, members may be asked to serve on one of the Council's workgroups that are formed each year to assist the EPA in addressing specific programmatic issues. These workgroup meetings are held approximately four times a year, typically with two meetings by conference call.

Please submit nominations to Brenda P. Johnson, Designated Federal Officer, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4601), 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0001, no later than October 15, 2002. For additional information send an e-mail to *Johnson.BrendaP@epa.gov* or call 202/564–3791.

Dated: August 16, 2002.

William R. Diamond,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 02–21665 Filed 8–23–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7267–4]

Supplemental Guidelines for the Award of Section 319 Nonpoint Source Grants to States and Territories in FY 2003

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has developed guidelines that describe the process and criteria to be used to award Clean Water Act (CWA) Section 319 nonpoint source grants to States and Territories (hereinafter referred to collectively as "States") in FY 2003. The process and criteria for FY 2003 are similar to those established for FY 2002, but are modified as described below. The guidelines continue to emphasize a concentrated focus on the implementation of projects that are designed to improve waters that have been listed as impaired under Section 303(d) of the CWA. After the President signs EPA's FY 2003 appropriations bill later this year, EPA will immediately provide to States their allocations based upon the appropriation level and the long-standing Section 319 allocation formula. EPA also intends to publish separate guidance addressing Tribal FY 2003 allocations later this year.

DATES: The guidelines are effective August 26, 2002.

ADDRESSES: Persons requesting additional information should contact Romell Nandi at (202) 566–1203; *nandi.romell@epa.gov;* or U.S. Environmental Protection Agency (4503T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The complete text of today's guidelines is also available at EPA's Nonpoint Source Web site: *http://www.epa.gov/owow/nps/cwact.html*

SUPPLEMENTARY INFORMATION:

I. Introduction

In FY 1999 and 2000, EPA stated that $100 million additional grant dollars appropriated by Congress under Section 319 of the CWA (referred to as "incremental funds") were to be focused on implementing watershed restoration action strategies ("WRASs") in high-priority watersheds identified by States as being "in need of restoration." In FY 2001, EPA recognized the need to increasingly focus Section 319 grant dollars on implementing approved total maximum daily loads ("TMDLs") for waters that are impaired in whole or in part by nonpoint sources (hereinafter "NPS TMDLs"), under EPA's existing effective TMDL regulations and guidance. Based on this need, EPA stated that incremental funds may be used in FY 2001, in addition to the activities authorized in FY 1999 and 2000, to fund the development and implementation of approved NPS TMDLs for Section 303(d)-listed waterbodies, as well as to develop and implement WRASs.

On September 13, 2001, EPA published Supplemental Guidelines for the Award of Section 319 Nonpoint Source Grants to States and Territories in FY 2002 and Subsequent Years (66 FR 47653–47657). These guidelines modified the approach of FY 1999–2001 by focusing the incremental funds entirely on NPS TMDLs rather than on WRASs. Specifically, EPA required that States use the incremental funds only within 303(d)-listed waters to develop NPS TMDLs; develop watershed-based plans that describe the actions that are necessary to implement NPS TMDLs; and to implement NPS TMDLs for which watershed plans have been completed.

Since the publication of the FY 2002 NPS guidance on September 13, 2001, EPA has held numerous public meetings around the country with States and other interested parties regarding the most appropriate means to restore waters that are listed by States as impaired under Section 303(d) of the CWA. A significant amount of discussion at these meetings and in other fora has focused upon the FY 2002 NPS guidance and generated further thinking as to the most effective means to promote expeditious implementation of nonpoint source controls needed to achieve water quality standards. Based upon these discussions and upon further reflection by EPA, EPA has decided that, for FY 2003 and subsequent years, we will somewhat modify the approach taken in the FY 2002 guidelines. The modified approach is discussed below.

Several earlier guidance documents govern the Section 319 grants process, and they remain in effect for FY 2003 and subsequent years except to the extent that they are specifically modified in this memorandum. These are summarized in Appendix A to this memorandum and may all be accessed at *http://www.epa.gov/owow/nps.*

II. Continued Focus on Restoring Waters Impaired by NPS Pollution

The priority objective for the use of Section 319 grant funds is to implement the national policy, set forth in Section 101(a) of the CWA, that nonpoint source programs be implemented expeditiously to achieve the goals of the CWA, including the restoration and maintenance of the chemical, physical, and biological integrity of the Nation's waters. To achieve this objective, the guidance places top priority on implementing on-the-ground measures and practices that will reduce pollutant loads and contribute to the restoration of impaired waters. The process described below achieves this objective by directing the use of incremental Section 319 funds ($100 million) to the development and implementation of watershed-based plans that are designed to restore waters that have been listed by States as impaired under Section 303(d) of the Clean Water Act.

This guidance also facilitates smooth and effective integration of Section 319

program objectives with those set forth in the new Farm Bill (Farm Security and Rural Investment Act of 2002). The new Farm Bill provides more conservation funding for agricultural producers than any previous Farm Bill. As discussed below, this FY 2003 guidance strongly promotes States' use of 20 percent of both the base funds and incremental funds to develop watershed-based plans that holistically identify watershed-based problems and their solutions. By working closely with the United States Department of Agriculture (USDA) State conservationists, local conservation districts, and agricultural producers to identify those areas and practices in greatest need of assistance to address water quality concerns, State nonpoint source agencies can help promote integrated approaches by all agencies and funding sources to address these needs. We strongly encourage State 319 agencies to coordinate with these critical partners to assess water quality needs, develop watershed-based plans, and to implement appropriate practices using Section 319, Environmental Quality Incentives Program, and other funding sources.

Beginning in FY 2003, EPA will award Section 319 funds only in accordance with the following principles:

1. As in the past, States may use the "base funds" for the full range of activities addressed in their approved NPS management programs. EPA notes in particular that States have the opportunity to focus much of these funds upon activities that protect threatened waters. In any event, States have great flexibility as to how to focus these funds.

2. As in the past, States may use up to 20% of the "base" funds to develop NPS TMDLs and watershed-based plans to implement NPS TMDLs; develop watershed-based plans in the absence of or prior to completion of TMDLs; develop watershed-based plans that focus on the protection of threatened waters or other unimpaired waters; and conduct other NPS monitoring and program assessment/development activities. EPA expects States to prioritize their Section 319-supported NPS TMDL development activities in accordance with their TMDL schedules that they have developed pursuant to their Section 303(d) lists.

3. States may use up to 20% of the "incremental" $100 million funds to develop NPS TMDLs as well as to develop watershed-based plans that describe the actions that are necessary to implement NPS activities in watersheds of Section 303(d)-listed waters. Where a NPS TMDL for the affected waters has already been developed and approved or is being developed, the watershed-based plan must be designed to achieve the load reductions called for in the NPS TMDL. However, where a NPS TMDL has not yet been developed and approved or is not yet being developed for the waters, the State may use these funds to develop a watershed-based plan in the absence of the TMDL. In such cases, the plan must be designed to reduce NPS pollutant loadings that are contributing to non-attainment of water quality standards. However, once the TMDL is completed and approved, the plan must be modified as appropriate to be consistent with the load allocation portion contained within the TMDL. For example, if the TMDL assigns a load allocation to nonpoint sources that requires greater than previously estimated load reductions, the watershed-based plan must be modified to reflect the increased nonpoint source load reduction needed to implement the TMDL.

EPA encourages States to develop NPS TMDLs or, where applicable, sets of NPS TMDLs on a watershed basis. We encourage States to implement watershed-based plans holistically, as this approach usually provides the most technically sound and economically efficient means of addressing water quality problems. Consistent with this approach, EPA encourages States to include in their watershed-based plans approaches that will address all of the sources and causes of impairments and threats to the watersheds in question. Thus, the watershed-based plans should address not only the sources of water quality impairment, but also any pollutants and sources of pollution that need to be addressed to assure the long-term health of the watershed. Finally, since watersheds with completed TMDLs have the best documentation of the load reductions needed to achieve water quality standards, EPA recommends that States assign the highest priority to implementing watershed-based plans for waters that have completed TMDLs.

We recognize that some States have not yet developed sufficiently detailed watershed-based plans to help the States and their partners determine which management measures or practices should be implemented in particular places in the watershed to assure the achievement of desired load reduction (whether identified in a NPS TMDL or prior to its development) and to ensure that all significant water quality problems in the watershed are successfully addressed. In such cases, a State may need to use more than 20% of its incremental funds to develop sound watershed-based plans that can then be implemented successfully. Where this is the case, the State and the Region should discuss the State's need to devote greater resources to completing watershed-based plans, recognizing at the same time the urgent need to focus most Section 319 funds on actual implementation efforts to achieve water quality improvements. Based on these discussions, the Region may authorize the State to use more than 20% of the incremental funds to develop these watershed-based plans in appropriate circumstances.

To ensure that Section 319 projects funded with incremental dollars make progress towards restoring waters impaired by nonpoint source pollution, watershed-based plans that are developed or implemented with Section 319 funds to address 303(d)-listed waters must include at least the elements listed below. Where the watershed-based plan is designed to implement a TMDL, these elements will help provide reasonable assurance that the nonpoint source load allocations identified in the NPS TMDL or anticipated in National Pollutant Discharge Elimination System (NPDES) permits for the watershed will be achieved, as discussed in the Assistant Administrator's August 8, 1997 memorandum, "New Policies for Establishing and Implementing Total Maximum Daily Loads (TMDLs)." However, even if a NPS TMDL has not yet been completed, EPA believes that these nine elements are critical to assure that public funds to address impaired waters are used effectively. (See also Appendix C of the May 1996 Nonpoint Source Guidance for more discussion of a "well-designed watershed implementation plan," which specifically discusses most of the elements listed below.)

a. An identification of the causes and sources or groups of similar sources that will need to be controlled to achieve the load reductions estimated in this watershed-based plan (and to achieve any other watershed goals identified in the watershed-based plan), as discussed in item (b) immediately below. Sources that need to be controlled should be identified at the significant subcategory level with estimates of the extent to which they are present in the watershed (e.g., X numbers of dairy cattle feedlots needing upgrading, including a rough estimate of the number of cattle per facility; Y acres of row crops needing improved nutrient management or sediment control; or Z linear miles of eroded streambank needing remediation).

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b. An estimate of the load reductions expected for the management measures described under paragraph (c) below (recognizing the natural variability and the difficulty in precisely predicting the performance of management measures over time). Estimates should be provided at the same level as in item (a) above (e.g., the total load reduction expected for dairy cattle feedlots; row crops; or eroded streambanks).

c. A description of the NPS management measures that will need to be implemented to achieve the load reductions estimated under paragraph (b) above (as well as to achieve other watershed goals identified in this watershed-based plan), and an identification (using a map or a description) of the critical areas in which those measures will be needed to implement this plan.

d. An estimate of the amounts of technical and financial assistance needed, associated costs, and/or the sources and authorities that will be relied upon, to implement this plan. As sources of funding, States should consider the use of their Section 319 programs, State Revolving Funds, USDA's Environmental Quality Incentives Program and Conservation Reserve Program, and other relevant Federal, State, local and private funds that may be available to assist in implementing this plan.

e. An information/education component that will be used to enhance public understanding of the project and encourage their early and continued participation in selecting, designing, and implementing the NPS management measures that will be implemented.

f. A schedule for implementing the NPS management measures identified in this plan that is reasonably expeditious.

g. A description of interim, measurable milestones for determining whether NPS management measures or other control actions are being implemented.

h. A set of criteria that can be used to determine whether loading reductions are being achieved over time and substantial progress is being made towards attaining water quality standards and, if not, the criteria for determining whether this watershed-based plan needs to be revised or, if a NPS TMDL has been established, whether the NPS TMDL needs to be revised.

i. A monitoring component to evaluate the effectiveness of the implementation efforts over time, measured against the criteria established under item (h) immediately above.

In commenting on a draft of these guidelines, several States noted the difficulty of developing this information with precision and suggested that States should be authorized to begin implementing projects without having first developed some or all of this information. EPA believes, as this guidance reflects, that there must be a balanced approach to address this concern. On one hand, it is absolutely critical that States make, at the subcategory level, a reasonable effort to identify the significant sources; identify the management measures that will most effectively address those sources; and broadly estimate the expected load reductions that will result. Without such information to provide focus and direction to the project's implementation, it is much less likely that the project can efficiently and effectively address the nonpoint sources of water quality impairments. On the other hand, EPA recognizes that even with reasonable steps to obtain and analyze relevant data, the available information at the planning stage (within reasonable time and cost constraints) may be limited; preliminary information and estimates may need to be modified over time, accompanied by mid-course corrections in the watershed plan; and it often will require a number of years of effective implementation for a project to achieve its goals. EPA fully intends that the watershed planning process described above should be implemented in a dynamic and iterative manner to assure that projects whose plans address each of the nine elements above may proceed even though some of the information in the watershed plan is imperfect and may need to be modified over time as information improves.

4. States must use any incremental funds that remain after Step 3 above to implement watershed-based plans that have been completed. Regions should assure that the plans have been completed and address all of the nine elements prior to awarding the grant. To assure that the implementation of these watershed-based plans actually results in the restoration of watersheds, as well as to maximize efficiencies in the implementation of all watershed-based plans, we recommend that States use these incremental Section 319 funds on a watershed basis to develop and implement the watershed-based plans for all the waters impaired by nonpoint source pollution in a watershed. In addition, as in the plan development stage, we recommend that States' implementation activities also address other significant sources and pollutants in the watershed, including both those that are causing water quality impairments and others that are not currently causing water quality impairments but that nonetheless should be controlled to assure a successful long-term solution to the watershed's existing and threatened water quality problems.

The watershed-based plan must address a large enough geographic area so that its implementation will solve the water quality problems for the watershed. While there is no rigorous definition or delineation for this concept, the general intent is to avoid single segments or other narrowly defined areas that do not provide an opportunity for addressing a watershed's stressors in a rational and economic manner. However, once a watershed plan meeting the nine items listed above has been established, a State may choose to implement it in portions (e.g., based on particular segments, other geographic subdivisions, or NPS categories in the watershed), consistent with the schedule established pursuant to item (f) above.

We recognize that States already have in place or have been developing watershed plans and strategies of varying levels of scale, scope, and specificity that may contribute significantly to the process of developing and implementing watershed-based plans. We encourage States to use these plans and strategies, where appropriate, as building blocks for developing and implementing the watershed-based plans. (Where these plans and strategies have been developed at a basin-wide or other large geographic scale, they will generally need to be refined at a smaller watershed scale to provide the information needs for the nine items identified above as required for watershed-based plans.) In particular, we recommend that States use their continuing planning processes, water quality management plans (WQMPs), WRASs, comprehensive conservation and management plans (CCMPs), coastal nonpoint pollution control programs under Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990, and other similar holistic watershed documents, to help guide their watershed-based approaches to watershed-based plan development and implementation.

We further recommend that States give their highest funding priority to projects that are supported by additional funding from other Federal, State, and local agencies, Clean Water State Revolving Funds (SRF), or private sector funding. Additionally, States should consult their SRF Program's Integrated Planning and Priority Setting System, if

such system is in use, to address the highest priority water quality improvement projects (see *http://www.epa.gov/owm/finan.html*). Given the significant expense of many watershed projects, such an approach will help expedite successful implementation of needed practices and thus speed the restoration of water quality. It will also help assure that watersheds are addressed in a holistic manner that accounts for the broad variety of stressors in the watersheds.

III. Protection of Threatened Waters

While States need to place very high priority on the need to restore waters impaired by nonpoint source pollution, as described above, EPA wishes to recognize and emphasize the continued need to protect waters that currently are not impaired by nonpoint source pollution to assure that they remain unimpaired. This particularly includes waters in which the good quality is threatened by such factors as changing land uses. EPA recommends that States place a high priority for the use of their base Section 319 funding on such protective activity. This includes both on-the-ground projects and broader educational and regulatory programs established by the State to promote broad awareness and implementation of activities that can help protect these waters from degradation by new and expanded land use activities which cause nonpoint source pollution.

EPA recognizes that in a few States, there is a uniquely high-priority need to focus significant funds on prevention activities in addition to the need for remediating impaired waters. While all States have significant pollution prevention and water quality protection needs, there are certain States with extensive aquatic resources that are especially valuable and at serious risk of irreparable harm, including especially good-quality aquatic habitat for salmon migration, spawning, and rearing. Therefore, EPA Regions may authorize States to use a portion of incremental funds to the extent necessary to address these unique situations. Such variation from the norm is intended to occur in only a handful of States at most, and may be provided only upon a finding by the Region that:

- The State has extensive unique aquatic resources that are especially valuable and at serious risk of irreparable harm and that therefore require a special focus on protection activities. These resources and threats to them should be documented in the State's 305(b) report.
- The State has established a schedule for TMDL development consistent with an even pace and completion of needed TMDLs within 8 to 13 years of listing.
- The State is completing TMDLs in reasonable accord with the established development schedules.
- The State has committed, upon completion and approval of any TMDL, to incorporate the TMDL's load allocations into any watershed plan that has been developed for the waterbody addressed by the TMDL, as discussed above in this guidance in the third principle in the section "Continued Focus On Restoring Waters Impaired By NPS Pollution."
- The State is or commits to including loading reduction estimates in all Section 319 projects as required by EPA's September 27, 2001, memorandum from Robert H. Wayland III entitled, "Modification to Nonpoint Source Reporting Requirements for Section 319 Grants," *http://www.epa.gov/owow/nps/Section319/grts.html*, and as discussed further below in the section "Reporting NPS Results."

IV. Operation and Maintenance

Each Section 319 grant must contain a condition requiring that the State assure that its project sub-awards (e.g., sub-contracts and sub-grants) include a provision that any management practices implemented for the project be properly operated and maintained for an appropriate period of years. Following the approach used in many State and Federal funding programs, EPA recommends that State provisions generally ensure that practices are operated and maintained for a period of at least five to ten years.

For assistance in developing appropriate grant condition language, Regions should work with their Office of Regional Counsel. States may wish to consult with colleagues implementing similar programs, such as U.S. Department of Agriculture's conservation programs, for information on how to develop appropriate contract language and operation and maintenance periods that are tailored to the types of practices expected to be funded in a particular project.

V. Reporting NPS Results

Section 319(h)(8) of the CWA requires EPA to determine, prior to awarding a Section 319 grant, that the State has made "satisfactory progress" in meeting the schedule set forth in its NPS management program. When making this determination, the Region should include in the decision memo for the grant a concise summary of the basis for the determination. In addition, Section 319(h)(11) requires that States report annually to EPA concerning their progress in meeting their schedules of milestones contained in their nonpoint source management programs and, to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality. These annual reports in turn can assist the Region in making the satisfactory progress determination required by Section 319(h)(8).

To provide a mechanism for the State to meet the reporting requirement in Section 319(h)(11), as well as assist in the dissemination of information on States' progress in implementing their NPS programs, EPA is now upgrading the nonpoint source grants computer-based data system, the Grants Reporting and Tracking System (GRTS), which will include new and modified data elements to be reported by States. The most significant new mandated fields include the following: (1) Identify the location of the stream (or other waterbody) reach or reaches that are intended to be affected by each Section 319-funded project; (2) describe the project; (3) state whether the project consists of one or more of (a) the development of a NPS TMDL, (b) the development of a NPS TMDL implementation plan to achieve specific load-reduction goals, (c) the actual implementation of such a plan or (d) none of the above; and (4) annually provide (for nitrogen, phosphorus, and/or sediments) an estimate of load reductions achieved by the project and (for streambank and wetlands protection or restoration projects) the linear feet of streambank, or acres of wetlands, protected or restored. EPA intends to use these data as a means of tracking and reporting to Congress and the public the progress being made by States to successfully implement their NPS TMDLs and other projects to improve water quality.

To ensure that States meet the reporting requirement in section 319(h)(11) by entering information into GRTS, Regions must require States to enter all mandated data elements into GRTS as part of their negotiation of the evaluation process and reports under 40 CFR 35.115, and include it as a condition in grant awards of Section 319 funds. Information that is available at the time of grant award (e.g., project location and description) should generally be entered into GRTS within 3 months of the receipt of the grant or by a specific date agreed to by the Region and State. Other information should be entered at the appropriate time after project implementation has

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begun (e.g., estimated load reductions would be reported annually once project implementation has progressed to the point that practices have been installed or implemented).

The upgraded GRTS system, including text fields, will enable States to satisfy all of their annual reporting requirements through GRTS. However, many States are using their annual reports as a means to not only meet statutory reporting requirements but also to educate State legislatures, other agencies, and the public, of the progress that they are making through implementation of their nonpoint source programs. Therefore, States may find it most beneficial to publish a separate annual report, but to do so in a cost- and time-saving manner that borrows heavily from the project summaries and data reported in GRTS.

VI. Waiver Process

Circumstances may arise which a State believes require it to develop and submit a work plan in a particular year that fails to meet one or more requirements in these guidelines. If such a circumstance arises, and the State believes that the circumstance justifies a waiver from one or more requirements in these guidelines, the State may submit a request for a waiver to EPA's Regional Water Division Director. The request should identify the requirement from which a waiver is requested; the circumstances requiring the waiver; a description of the activities and projects that the State will be implementing in lieu of those required by these guidelines; and a commitment to adhere to the guidelines to the greatest extent possible. The Regional Division Director may approve the waiver for the year requested with the concurrence of the Director of the Assessment and Watershed Protection Division.

Please note that this waiver process applies only to the requirements established in these and previous Section 319 guidelines; it does not apply to any statutory or regulatory requirements reiterated in these guidelines. In addition, this process is not required for any Regional authorization of the use of more than 20% of incremental funds to develop watershed-based plans in appropriate circumstances as discussed earlier in this memorandum.

VII. Conclusion

Significant challenges remain in our efforts to abate NPS pollution, protect threatened waters, and restore impaired aquatic resources. EPA will work with States to make the most effective use of Federal resources to meet these challenges.

Appendix A—Significant Nonpoint Source Grants Guidance Documents

EPA has published several guidance documents that apply to the Section 319 grants guidance process. These documents are listed and briefly summarized below. Each of them may be reviewed online from the following address at EPA's nonpoint source Web site: *http://www.epa.gov/owow/nps/cwact.html*.

(1) Nonpoint Source Program and Grants Guidance for Fiscal Years 1997 and Future Years (May 1996). This 33-page document is the chief national nonpoint source program document. It describes criteria and processes for States and Territories to upgrade their nonpoint source management programs; summarizes statutory and regulatory provisions that apply to the award of nonpoint source grants; and provides guidance designed to assist States and Territories in implementing effective programs and projects.

(2) Process and Criteria for Funding State and Territorial Nonpoint Source Management Programs in FY 1999 (August 18, 1998). This 6-page document established guidelines for the use of incremental dollars ($100 million) that were anticipated to be appropriated later that year. The guidance (1) authorized States and Territories to use up to 20 percent of their Section 319 funds to upgrade and refine their nonpoint source programs and assessments; (2) directed that the incremental dollars be focused upon implementation of watershed restoration action strategies in high-priority watersheds identified by the States and Territories as not meeting clean water and other natural resource goals; and (3) established a schedule for the award of the incremental funds.

(3) Funding the Development and Implementation of Watershed Restoration Action Strategies under Section 319 of the Clean Water Act (December 4, 1998). This 4-page document reiterated the priority placed on using the incremental $100 million to address the States' and Territories' high-priority watersheds that do not meet clean water and other natural resource goals, focused particularly in sub-watersheds where NPS control activities are likely to have the greatest positive impact. It identified 303(d) sub-watersheds as high-priorities for such work.

(4) Supplemental Guidance for the Award of Section 319 Nonpoint Source Grants in FY 2000 (December 21, 1999). This 10-page document (1) asked the Regions to assure that Section 319 grants that include programs or projects that assist animal feeding operations (AFO) include a provision to assure that any AFO which receives financial assistance under the grant has and will implement a comprehensive nutrient management plan; (2) recommended steps intended to achieve a suggestion by the congressional appropriations committees that 5 percent of the Section 319 funds be allocated to clean lakes; and (3) announced and discussed EPA's intention to work with the States to consider changes to the Section 319 reporting/tracking system to support program needs, including promoting better integration with Section 305(b) data and Section 303(d) lists.

(5) Supplemental Guidance for the Award of Section 319 Nonpoint Source Grants in FY 2001 (65 FR 70899–70905, Nov. 28, 2000). This document (1) discussed how States and Territories may use funding increases appropriated in FY 2001; (2) broadened the use of the "incremental" ($100 million) to authorize their use to develop and implement the nonpoint source components of TMDLs in watersheds throughout the State; and (3) directed that each State or Territory with conditional approval under Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 ("CZARA") devote at least $100,000 of its FY 2001 Section 319 grant dollars to specific actions that are designed to meet all outstanding conditions for NOAA and EPA approval.

(6) Supplemental Guidelines for the Award of Section 319 Nonpoint Source Grants to States and Territories in FY 2002 and Subsequent Years (66 FR 47653–47657, Sept. 13, 2001). This document (1) increased the focus of the "incremental" ($100 million) funding on developing TMDLs and watershed-based plans and implementing the watershed-based plans for 303(d)-listed waters throughout the State; (2) provided for a transition towards the new focus in FY 2002; (3) discussed the need for long-term operation and maintenance of practices funded with Section 319 funds; and (4) discussed pending changes in the GRTS reporting system.

Dated: August 19, 2002.

Robert H. Wayland, III,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 02–21652 Filed 8–23–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7268–1]

FY03 Wetland Program Development Grants Guidelines

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Wetland Program Development Grants (WPDGs) provide eligible applicants an opportunity to conduct projects that promote the coordination and acceleration of research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution. While WPDGs can continue to be used by recipients to build and refine any element of a comprehensive wetland program, priority will be given to funding projects that address the three areas identified by EPA for FY03: Developing a comprehensive monitoring and assessment program; improving the effectiveness of compensatory mitigation; and refining the protection of vulnerable wetlands and aquatic resources. States, Tribes, local governments (S/T/LGs), interstate associations, intertribal consortia, and national non-profit, non-governmental organizations are eligible to apply. This document describes the grant selection and award process for eligible applicants interested in applying for FY03 WPDGs.

FOR FURTHER INFORMATION CONTACT: Connie Cahanap, Office of Wetlands, Oceans, and Watersheds, Wetlands Division (MC 4502T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Telephone: (202) 566–1382, Fax: (202) 566–1349.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans, and Watersheds.

I. Introduction

The goals of the Environmental Protection Agency's (EPA) wetland program include increasing the quantity and quality of wetlands in the U.S. by conserving and regaining wetland acreage and improving wetland health. In pursuing these goals, EPA seeks to build the capacity of all levels of government to develop and implement effective, comprehensive programs for wetland protection and management. The six program areas central to achieving these goals are: regulation, monitoring and assessment, restoration, wetland water quality standards, public-private partnerships, and coordination among agencies with wetland or wetland-related programs.

The Wetland Program Development Grants, initiated in FY90, provide States, Tribes, local governments (S/T/LGs), interstate associations, intertribal consortia, and national non-profit non-governmental organizations (hereafter referred to as award applicants or award recipients) an opportunity to carry out projects to develop and refine comprehensive wetland programs. Interest in the grant program has continued to grow over the years. Since 1995, Congress has appropriated $15 million annually to support the grant program. The type of projects that award recipients can undertake to develop and refine their comprehensive wetland programs are diverse. In the past, award recipients have pursued a wide range of activities, such as developing management tools for wetland resources, advancing scientific and technical tools for protecting wetland health, improving availability of data and information about wetlands, and training wetland managers and the public about wetland and watershed values. Appendix B lists other examples of potentially eligible projects.

The statutory authority for WPDGs is section 104(b)(3) of the Clean Water Act (CWA). Section 104(b)(3) of the CWA restricts the use of these grants to developing and refining wetland management programs by conducting or promoting the coordination and acceleration of research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution. These grants may not be used for the operational support of wetland programs. All projects funded through this program must contribute to the overall development and improvement of S/T/LG wetland programs. Award applicants must demonstrate that their proposed project integrates with S/T/LG wetland programs.

The general award and administration process for WPDGs are governed by regulations at 40 CFR part 30 ("Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"), 40 CFR part 31 ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments") and 40 CFR part 35, subpart A ("Environmental Program Grants for State, Interstate, and Local Government Agencies") and subpart B ("Environmental Program Grants for Tribes"). This grant guideline document outlines the administrative and programmatic procedures specific to the Wetland Program Development Grants.

II. Program Priorities

EPA has initiated an assessment of the wetland program elements that will move S/T/LGs toward developing comprehensive wetland programs. For FY03, the wetland program has identified three areas as program priorities for improving S/T/LG's ability to protect and restore their wetlands: (1) Developing a comprehensive wetland monitoring and assessment program; (2) improving the effectiveness of compensatory mitigation; and (3) refining the protection of vulnerable wetlands and aquatic resources. Applicants are encouraged to develop WPDG applications that address these priorities.

A. Developing a Comprehensive Monitoring and Assessment Program

This solicitation seeks proposals that support the development of a comprehensive S/T/LG wetland monitoring and assessment program. State and Tribal adoption of an ambient wetland monitoring and assessment program is the primary goal of this solicitation (*i.e.*, projects that build S/T/LG capacity to determine the causes, effects, and extent of pollution to wetland resources and develop pollution prevention, reduction, and elimination strategies). More information related to wetland monitoring and assessment can be found on the Internet at: *http://www.epa.gov/owow/wetlands/factsheets/monitor.pdf* and *http://www.epa.gov/owow/wetlands/factsheets/devgrants.pdf*.

Project proposals may address development, testing, and demonstration of methods and programs to monitor and assess wetlands. Projects may evaluate:

1. The use of biological assessment methods to improve the evaluation and ranking of potential wetland sites for restoration or acquisition;

2. The ecological consequences of a given regulatory action or group of actions;

3. The specifications and implementation of compensatory wetland mitigation;

4. The ecological performance of wetland restoration; and/or

5. The cumulative effect of wetland loss and restoration in terms of change in the ambient ecological condition of the overall aquatic resource.

Proposals should address how work to accomplish the particular objective(s) assists S/T/LGs to implement comprehensive wetland monitoring and assessment programs.

Proposals also should describe how methods under development will improve decision-making across various surface water management programs. Provisional reporting of ambient wetland condition, in Clean Water Act Section 305(b) reports, is a logical first step toward meeting that particular objective. When preparing proposals, care should be given to ensure that any data collected under the grant is of such qualitythat it can be relied on for other purposes (as appropriate). Accordingly, applicants may host technical training workshops, establish regional or State interagency wetland monitoring and assessment workgroups, develop volunteer monitoring programs, and improve wetland inventories (*e.g.*, use of hydrogeomorphic (HGM) wetland classification system). Examples of case studies illustrating wetland monitoring and assessment methods can be found on the Internet at: *http://www.epa.gov/*

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owow/wetlands/bawwg/case.html and http://www.epa.gov/region1/eco/wetland/index.html. Many of the case studies listed on those Web sites were funded by WPDGs.

Monitoring data collected from wetland monitoring projects must be incorporated into 305(b) reports. Additionally, recipients must download data collected through monitoring projects into STORET (short for STOrage and RETrieval).STORET provides an accessible, nationwide central repository of water information of known quality. See *www.epa.gov/storet* for further information about uploading data into STORET.

B. Improving the Effectiveness of Compensatory Mitigation

Priority will also be given to projects that improve S/T/LG capacity to ensure ecologically effective compensatory mitigation for unavoidable impacts. For example, WPDGs can be used to develop and verify assessment methods and/or tracking (reporting) systems that document:

1. The technical adequacy of compensatory mitigation project plans (e.g., plan review standards);
2. the ecological suitability of proposed compensatory mitigation project sites (e.g., develop site review standards in context with restoration opportunity mapped at the watershed scale);
3. the compliance of mitigation projects at various stages of implementation; and
4. the assessment of mitigation opportunities to address cumulative impacts to wetlands.

WPDG can also be used to develop mitigation performance standards. Grant funds can only be used forresearch, investigations, experiments, training, demonstrations, surveys, and studies to support (or to improve or develop) mitigation programs; they cannot be used for specific mitigation activities (*e.g.*, implementation of individual mitigation projects, mitigation banks, or in-lieu-fee mitigation programs). Background information describing concepts and methods for improving the effectiveness of compensatory mitigation can be found in a recent National Academy of Science publication, entitled "Compensating for Wetland Losses Under the Clean Water Act." The document can be found on the Internet at: *http://www.nap.edu/books/0309074320/html/.*

C. Refining the Protection of Vulnerable Wetlands and Aquatic Resources

While all wetlands provide important ecological functions on a watershed scale, some are better protected than others. For example, isolated wetlands and waters may be particularly at risk as may wetlands subject to damage from activities other than the discharge of dredged or fill material. S/T/LG wishing to develop comprehensive wetland protection programs to protect such vulnerable waters from a variety of potential impacts are encouraged to do so. Efforts can include, but are not limited to, information dissemination, data exchange, studying S/T/LG regulatory improvement opportunities, and surveying opportunities for land acquisition, conservation easements, and tax incentive provisions. This grant program, however, cannot fund activities to implement a wetlands program, or fund the purchase of land or conservation easements (see Appendix A for Grant Restrictions).

D. Other Program Areas

While WPDGs may be used by award recipients to develop and refine all elements of a comprehensive wetland program (see examples in Appendix B), in this and upcoming years, funding priority will be given to projects that address the three priority areas discussed above.

III. Funding Eligibility

States, Tribes, local government agencies, interstate agencies, and intertribal consortia, and national, nonprofit, non-governmental organizations are eligible. Typical wetland or wetland related agencies include, but are not limited to wetland regulatory agencies, water quality agencies (Section 401 water quality certification), planning offices, wild and scenic rivers agencies, departments of transportation, fish and wildlife or natural resources agencies, agriculture departments, forestry agencies, coastal zone management agencies, park and recreation agencies, non-point source or storm water agencies, city or county and other S/T/LG governmental agencies that conduct wetland-related activities.

In order to be eligible for WPDG funds, Tribes must be Federally recognized, although "Treatment as a State" status is not a requirement. Intertribal consortia that meet the requirements of 40 CFR part 35.504 are eligible for direct funding.

Interstate agency and intertribal consortia projects must be broad in scope and encompass more than one State, Tribe, or local government.

In order to provide greater assistance to S/T/LGs, non-profit, non-governmental organizations which undertake activities that advance wetland programs on a national basis are eligible. Activities must help S/T/LGs develop and refine wetland programs. For example, projects and tasks can involve advancing science or collecting and making available through publications and other appropriate means, such as training on how information about how various wetland programs across the nation protect, manage and restore their wetland resources and about initiatives to improve S/T/LG wetland programs. Local/regional chapters/affiliations of a nonprofit organization are not eligible for WPDGs and applications will only be accepted from the national headquarters level of a nonprofit, non-governmental organization.

Grant funds are awarded through a competitive process. The majority of WPDG funds are allocated to EPA Regional Offices, based on the number of States and Territories within the Region, to fund S/T/LG, interstate agencies, and intertribal consortia. Headquarters reserves a portion of the funds for national non-profit, non-governmental organizations, interstate agencies, and intertribal consortia. (see Section V for Application Procedures). Funding decisions are made by EPA Regional and Headquarters Offices and are based on the quality of the proposals received and adherence to the selection criteria (see Section IV). EPA typically receives requests for funding far in excess of available funds, therefore EPA cannot provide grant funds to all applicants.

IV. Selection Criteria

For FY03, priority in the selection process will be given to projects which support the development of a S/T/LG's monitoring and assessment program, improvement of the effectiveness of compensatory mitigation, or protection of vulnerable wetlands and aquatic resources. In addition, all proposals, regardless of topic area, will be evaluated using the following general categories of criteria:

- Clarity of Work Plan—clearly written and detailed proposals;
- Potential Environmental Results—a high probability for positive environmental results in the short- and long-term;
- Transferability of Results and/or Methods to other S/T/LG;
- Success of Previous Projects—for applicants who have received prior EPA funding;
- Involvement/Commitment of the applicant—significant financial and personnel contribution and involvement of partners;
- Incorporation of project into broad agency goals (Core Elements of a Comprehensive Wetland Program is available on EPA's web page at *http://www.epa.gov/owow/wetlands/initiative/#financial* or by mail upon request by calling the Wetlands Helpline at (800) 832–7828).

V. Application Procedures

WPDG applications from States, Tribes, and local governments are handled through EPA Regional Offices, while applications from national non-profit, non-governmental organizations are handled through EPA Headquarters (Appendix C). Applications from interstate agencies and intertribal consortia can be submitted to either a Regional Office or Headquarters, however, the same proposals cannot be submitted to more than one office. Headquarters and Regional Office staff will review the applications received in their respective offices and select the most competitive projects for funding. Both the quality and quantity of the applications will play a significant role in the selection of grants for funding.

A. Application Package

Interested applicants must submit an application, which includes a work plan and completed EPA grant forms. As provided in 40 CFR 35.107 and 35.507, for States, Tribes, local governments, interstate agencies, and non-profit organizations, an approvable plan must specify (1) the work plan components to be funded under the grant; (2) the estimated work years and the estimated funding amounts for each work plan component; (3) the work plan commitments for each work plan component and a time frame for their accomplishment; (4) a performance and reporting schedule in accordance with 40 CFR 35.115 or 35.515; and (5) the roles and responsibilities of the recipient and EPA in carrying out the work plan commitments. For national nonprofit organizations, work plans must include: (1) A summary of key objectives and final products, preferably in 50 words or less; (2) a detailed description of project tasks and an explanation of how the project will contribute to developing or improving a S/T/LG's wetland program; (3) a timeline; (4) a budget and estimated funding amounts for each work plan component; (5) deliverables; (6) a performance evaluation process and reporting schedule; (7) roles and responsibilities of the recipient and EPA in carrying out the work plan commitments; and (8) contact information for the Program Manager, Grant Project Lead Manager, and Account Manager. Headquarters and some Regional Offices may ask S/T/LGs to submit pre-application proposals of grant projects for competitive review (see Section V Part B for deadlines). For specific regional guidance, contact your Regional or Headquarters EPA Grant Coordinator (Appendix C). Grant application forms are available at *http://www.epa.gov/ogd/hqgrant/* and by mail upon request by calling the Grants Administration Division at (202) 564–5305.

B. Deadlines

Full application proposals must be submitted to the appropriate EPA office and postmarked by the appropriate Regional and Headquarters deadlines:

Region 1
States: January 31, 2003
Tribes: June 30, 2003
Region 2
January 31, 2003
Region 3
Pre-proposal: October 9, 2002
Final proposal: January 15, 2003
Region 4
December 2, 2002
Region 5
December 20, 2002
Region 6
November 1, 2002
Region 7
December 2, 2002
Region 8
December 3, 2002
Region 9
Pre-proposal: October 11, 2002
Final proposal: February 14, 2003
Region 10
Pre-proposal: November 4, 2002
Final proposal: February 21, 2003
Headquarters
Pre-proposal: December 9, 2002
Final proposal: March 22, 2003

Please contact the appropriate Grants Coordinator (Appendix C) for further information and/or to confirm deadlines.

Applicants may request limited assistance in revising work plans, proposed funding levels to better reflect the funding available, and preliminary proposals to develop a project that better reflects program priorities.

C. Match Requirements

S/T/LG, interstate agencies, and intertribal consortia must provide a minimum of 25% of each award's total project costs in accordance with 40 CFR 31.24, 35.385, and 35.615. We encourage States, Tribes and local governments to provide a larger share of the project's cost whenever possible (*i.e.*, in excess of the required 25% of total project costs). Non-profit, non-governmental organizations must also provide a minimum of 25% of each award's total project costs.

The match requirement can be met with contributions from entities other than the award recipient. Other Federal money cannot be used as the match for this grant program unless authorized by the statute governing the award of the other Federal funds. However, Indian tribes can use funds provided under the Indian Self-Determination and Education Act (25 U.S.C. 450 *et seq.*) to provide the required matching funds to the extent authorized by that Act and implementing regulations.

Matching funds are considered grant funds. They may be used for the reasonable and necessary expenses of carrying out the work plan. Any restrictions on the use of grant funds (*i.e.*, prohibition of land acquisition with grant funds) also apply to the use of matching funds.

D. Quality Assurance/Quality Control (QA/QC)

QA/QC and peer review are sometimes applicable to these grants (see 40 CFR 30.54 and 40 CFR 31.45). QA/QC requirements apply to the collection of environmental data. Environmental data are any measurements or information that describe environmental processes, location, or conditions; ecological or health effects and consequences; or the performance of environmental technology. Environmental data include information collected directly from measurements, produced from models, and compiled from other sources such as data bases or literature. Applicants should allow sufficient time and resources for this process. EPA can assist applicants determine whether QA/QC is required for the proposed project. If QA/QC is required for the project, the applicant is encouraged to work with the appropriate EPA quality staff to determine the appropriate QA/QC practices for the project. If the applicant has an EPA-approved quality assurance project plan and it covers the project in the application, then they need only reference the plan in their application. Contact the appropriate Regional or Headquaters Grant Coordinator (Appendix C) for referral to an EPA quality staff.

VI. Additional Program Information

A. Performance Partnership Grants

A Performance Partnership Grant (PPG) is a multi-program grant made to a State, Tribe, interstate agency, or intertribal consortium from funds appropriated for many of EPA's environmental program grants. Local governments are not eligible for PPGs. PPGs are voluntary and provide

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recipients the option to combine funds from two or more environmental program grants into one or more PPGs. PPGs can provide administrative and/or programmatic flexibility.

Funds for a WPDG may be included in a PPG; however, the WPDG program remains a competitive grant program. Therefore, State proposals must first be selected under the competitive grant process and, in accordance with 40 CFR 35.138, the work plan commitments that would have been included in the WPDG work plan must be included in the PPG work plan. Similarly, Tribal proposals must first be selected under the competitive grant process, and in accordance with 40 CFR 35.535. If the applicant proposes a PPG work plan that differs significantly from the proposed WPDG work plan approved for funding, the Regional Administrator must first consult with the National Program Manager for WPDGs before agreeing to the PPG work plan.

For further information, see the final rules on Environmental Program Grants for State, Interstate, and Local Government Agencies at 40 CFR part 35, subpart A and Tribes at 40 CFR part 35, subpart. The rules are also available on EPA's Web site at: *http://www.epa.gov/fedrgstr/EPA–TOX/2001/Day-09/t218.htm* (State) and at *http://www.epa.gov/fedrgstr/EPA–GENERAL/2001January/Day-16/g219.htm* (Tribal).

B. Local and Tribal Funding Targets

Each Regional Office will support the local government initiative and Tribal efforts by targeting at least 15% of their Regional allocation to local government and Tribal applications.

C. Reporting

WPDGs are currently covered under the following EPA grant regulations: 40 CFR part 30 (non-profit organizations); 40 CFR part 31 (States, Tribes, interstate agencies, intertribal consortia and local governments) and 40 CFR part 35, subpart A (States, interstate agencies and local governments) and subpart B (Tribes and intertribal consortia). These regulations specify basic grant reporting requirements, including performance and financial reports (see 40 CFR 30.51, 30.52, 31.40, 31.41, 35.115, and 35.515). In negotiating these grants, EPA will work closely with recipients to incorporate appropriate performance reporting requirements into each grant agreement consistent with 40 CFR 30.51, 31.40, 35.115, and 35.515. These regulations provide some flexibility in determining the appropriate content and frequency of performance reports. At a minimum, however, the reporting schedule must require the recipient to report at least annually.

D. Public Participation

EPA regulations require public participation in various Clean Water Act programs including grants (40 CFR Part 25). Each applicant for EPA financial assistance shall include tasks for public participation in their project's work plan submitted in the grant application (40 CFR 25.11). The project work plan should reflect how public participation will be provided for, assisted, and accomplished.

E. Annual Wetlands Meeting/Training

EPA encourages S/T/LGs to include travel plans for wetland personnel to attend at least one national wetland meeting in support of the project or for training each year (e.g., National EPA, State, Tribal, Local Wetland Meeting, wetland monitoring workshops). Applicants should account for travel plans and costs in the work plans and the project budget. EPA's Wetlands Division does not anticipate providing travel for State, Tribal or local government staff to attend meetings other than through this grant program.

Appendix A—Grant Restrictions

Based on experience gained from previous years and policy and regulation, we offer the following comments/restrictions on funding eligibility.

- Universities that are agencies of State government are eligible to receive grant funds from the Regional Offices. Universities must provide documentation acceptable to the EPA Regional Office to demonstrate that they function as a State agency. Universities (that are not chartered as a part of State government) are not eligible for direct funding from the Regional Offices. Also, any award recipients may award such entities contracts in accordance with 40 CFR 31.36, and subgrants in accordance with 40 CFR 31.37. The State, Tribe, local agency, or national non-profit organization should not simply pass through funding to an organization that is not eligible to receive funding directly. Land grant schools do not automatically qualify for direct funding as an agency of state because of their status as a land grant school.
- This grant program cannot fund land acquisition or purchase of easements. However, this program may support research, investigations, experiments, training, demonstrations, surveys, and study efforts directed at identifying areas for acquisition, which would help address water pollution problems.
- This grant program cannot fund payment of taxes for landowners who have a wetland on their property.
- While contractual efforts can be a part of these grants, each recipient must be significantly involved in the administration of the grant. EPA recommends that recipients use no more than 50% of the grant funds to contract with non-governmental entities. However, if the applicant wants to exceed this limit, the applicant may submit a written justification for greater involvement by non-governmental contractors. EPA will evaluate the need for greater contractual participation and may approve the request if they agree that there is adequate justification to exceed the 50% limit. For the purposes of this requirement, EPA will not consider work performed under a contract with other S/T/LG agencies, interstate associations, and intertribal consortia. If the contractual work is being done by another S/T/LG agency, interstate agencies, or intertribal consortia, these should be clearly indicated in the grant application.
- Inventory or mapping for the sole purpose of locating wetlands is not eligible for funding under this grant program. A description of how mapping or inventory projects will directly develop or improve the eligible applicant's wetland protection programs must be included in the grant application for these types of projects to be considered for funding under this grant program.
- Each grant project must be completed with the initial award of funds. Recipients should not anticipate additional funding beyond the initial award of funds for a specific project. Eligible applicants should request the entire amount of money needed to complete the project in the original application. Each grant should produce a final, discrete product. Funding and project periods can be for more than one year.
- Grant funds cannot be used to fund an honorarium under this program.
- Any field work or research-type activities are limited to activities that have a direct, demonstrated link to program development or refinement included in the application.
- Purchase/lease of vehicles (including boats, motor homes) and office furniture is not eligible for funding under this program.
- Grant funds cannot be used to pay for travel by Federal agency staff unless travel costs are related to the grant project.

Appendix B—Example WPDG Project Topics

EPA has developed a database of all projects supported through the Wetland Program Development Grants funding. This searchable database is available on EPA's web page at: *http://yosemite.epa.gov/water/grant.nsf.*

Projects must be in support of conducting or promoting the coordination and acceleration of research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution. The following is a list of examples of projects that may be funded through Wetland Program Development Grants:

- Comprehensive planning of wetland resources;
- Research, investigations, experiments, training, demonstrations, surveys, and studies in support of integration of wetland management into broad watershed protection approaches;
- Development of S/T/LG Wetland Conservation Plans (WCP);
- Development of a framework for assuming the CWA Section 404 program;
- Development of a framework for implementing a Programmatic General Permits program;
- Development of widely applicable model wetland training programs for S/T/LGs;
- Development of wetland water quality standards, or refining criteria to appropriately reflect water quality conditions in wetlands;
- Research, investigations, experiments, training, demonstrations, surveys, and studies in support of wetland and riparian restoration programs;
- Development, demonstration, and refinement of wetland bioassessment methods and programs to evaluate wetland health and performance of protection and restoration activities;
- Development of and/or participation in training that builds watershed and wetland partnership and technical skills (e.g., the Watershed Academy); and
- Development of outreach programs that improve public understanding of S/T/LG wetland protection and regulatory efforts and facilitate public-private partnerships and wetland restoration efforts.

This is not an exhaustive list, and eligible applicants may submit any eligible proposal for wetland program development that addresses EPA's goals and criteria outlined in this document.

Appendix C—Regional Grant Coordinators

Region 1: Jeanne Cosgrove, *cosgrove.jeanne@epa.gov*—617–918–1669
Region 2: Kathleen Drake, *drake.kathleen@epa.gov*—212/637–3817
Region 3: Alva Brunner, *brunner.alva@epa.gov*—215/814–2715
Region 4: Sharon Ward, *ward.sharon@epa.gov*—404/562–9269
Region 5: Cathy Garra, *garra.catherine@epa.gov*—312/886–0241
Region 6: Sondra McDonald, *mcdonald.sondra@epa.gov*—214/665–7187
Region 7: Raju Kakarlapudi, *kakarlapudi.raju@epa.gov*—913/551–7320
Region 8: Ed Stearns, *stearns.edward@epa.gov*—303/312–6946
Region 9: Cheryl McGovern, *mcgovern.cheryl@epa.gov*—415/744–2013
Region 10: David Kulman, *kulman.david@epa.gov*—206/553–6219
Headquarters:
Connie Cahanap, *cahanap.concepcion@epa.gov*—202/566–1382
Donna An, *an.donna@epa.gov*—202/566–1384

[FR Doc. 02–21670 Filed 8–23–02; 8:45 am]
BILLING CODE 6560–50–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology

ACTION: Emergency Notice of Public Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

DATES AND PLACE: August 29, 2002, at 3 p.m. This meeting will take place via a telephone conference call. In light of the short notice of this meeting, OSTP will undertake to make this meeting available to the public through the following call-in number: 1–800–403–2017, access code: 186046. Any interested member of the public may call this number and listen to the meeting. To ensure the agency secures an appropriate number of lines, however, such persons are asked to register with OSTP by calling Cynthia Chase at 202–456–6010 by 4 p.m. on Wednesday, August 28, 2002.

TYPE OF MEETING: Open.

PROPOSED SCHEDULE AND AGENDA: The President's Council of Advisors on Science and Technology (PCAST) is tentatively scheduled to meet in open session on Thursday, August 29, 2002, at approximately 3 p.m., to discuss (and, pending the discussion, approve) a draft letter to the President on federal investments in research and development. This session will end at approximately 3:30 p.m.

PUBLIC COMMENTS: Written public comments are welcome at any time prior to the meeting. Please fax your comments to (202) 456–6021. In light of the compressed notice period for this meeting, public comments are also welcome for additional three business days after the meeting (*i.e.*, up to close of business Wednesday, September 4, 2002). Please fax such comments to the same fax number noted above. The transcript of the meeting will be posted on the PCAST web site as soon as possible following the meeting.

REASON FOR EMERGENCY NOTICE: Pursuant to 41 CFR part 102–3.150(b), less than 15 days notice is being given for this meeting because of the exigencies involved in providing timely and relevant advice to the President on the matters to be discussed. In light of these exceptional circumstances, regular notice and meeting procedures would prevent PCAST from rendering advice pertinent to these current events in a timely fashion.

FOR FURTHER INFORMATION CONTACT: Information on this meeting will be published on the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.* The draft report to be discussed during the call will be posted on this Web site at the earliest possible opportunity. Any updates on the scheduling of the conference call will also be posted. For additional information, please call Cynthia Chase at (202) 456–6010.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology was established by Executive Order 13226, on September 30, 2001. The purpose of PCAST is to advise the President on matters of science and technology policy, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Council members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by Dr. John H. Marburger III, the Director of the Office of Science and Technology Policy, and by E. Floyd Kvamme, a Partner at Kleiner Perkins Caufield & Byers.

Barbara Ann Ferguson,
Assistant Director for Budget and Administration, Office of Science and Technology Policy.

[FR Doc. 02–21807 Filed 8–23–02; 8:45 am]
BILLING CODE 3170–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee (SAAC) of the Export-Import Bank of the United States (Export-Import Bank)

Summary: The Sub-Saharan Africa Advisory Committee was established by Pub. L. 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

Time and Place: Friday, September 13, 2002, at 9:30 a.m. to 12:30 p.m. The meeting will be held at the Export-

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Import Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: This meeting will focus on improving deal flow for transactions in Sub-Saharan Africa. SAAC members and the Bank staff will discuss business development plans, the Bank's pipeline of prospective transactions, and the industry-specific experience of particular SAAC members.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to September 6, 2002, Teri Stumpf, Room 1215, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

Further Information: For further information, contact Teri Stumpf, Room 1215, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3502.

Peter B. Saba,

General Counsel.

[FR Doc. 02–21605 Filed 8–23–02; 8:45 am]

BILLING CODE 6690–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations of Candidates To Serve on the Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention, Department of Health and Human Services

The Centers for Disease Control and Prevention (CDC) is soliciting nominations for possible membership on the Advisory Committee on Immunization Practices (ACIP). This committee provides advice and guidance to the Secretary of the Department of Health and Human Services, and the Director of the Centers for Disease Control and Prevention, regarding the most appropriate application of antigens and related agents for effective communicable disease control in the civilian population. The Committee reviews and reports regularly on immunization practices and recommends improvements in the national immunization efforts.

The Committee also establishes, reviews, and as appropriate, revises the list of vaccines for administration to children eligible to receive vaccines through the Vaccines for Children Program.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the Committee's objectives. Nominees will be selected based upon expertise in the field of immunization practices; multi-disciplinary expertise in public health; expertise in the use of vaccines and immunologic agents in both clinical and preventive medicine; knowledge of vaccine development, evaluation, and vaccine delivery; or knowledge about consumer perspectives and/or social and community aspects of immunization programs. Federal employees will not be considered for membership. Members may be invited to serve up to four-year terms.

Consideration is given to representation from diverse geographic areas, both genders, ethnic and minority groups, and the disabled. Nominees must be U.S. citizens.

The following information must be submitted for each candidate: Name, affiliation, address, telephone number, and a current curriculum vitae. e-mail addresses are requested if available.

Nominations should be sent, in writing, and postmarked by September 15, 2002 to: Gloria Kovach, Program Analyst, National Immunization Program, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, M/S E–61, Atlanta, Georgia 30333. Telephone and facsimile submissions cannot be accepted.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 20, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–21630 Filed 8–23–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission; Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, September 26, 2002.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7 p.m. at the Maderia Club located at 46 Maderia Avenue in Central Fall, RI for the following reasons:

1. Approval of Minutes.
2. Chairman's Report.
3. Executive Director's Report.
4. Approval Financial Budget.
5. Public Input.

It is anticipated that about twenty-five people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the Commission at the aforementioned address.

Michael Creasey,

Executive Director BRVNHCC.

[FR Doc. 02–21681 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Merritt Island National Wildlife Refuge

ACTION: Notice of Intent to prepare a Comprehensive Conservation Plan for Merritt Island National Wildlife Refuge, located in Brevard and Volusia Counties, FL.

SUMMARY: This notice advises the pubic that the Fish and Wildlife Service intends to gather information necessary to prepare a comprehensive conservation plan and associated environmental documents pursuant to the National Environmental Policy Act and implementing regulations to: (1) Advise other agencies and the public of our intentions; and (2) obtain suggestions and information on the scope of issues to include in the environmental documents.

DATES: An open house to begin the public scoping process is scheduled for Saturday, September 21, 2002, from 10 a.m. to 2 p.m., at the Merritt Island National Wildlife Refuge Visitor Center. The Visitor Center is located 5 miles east of Titusville, Florida, on State Route 402. Special mailings, newspaper articles, and announcements will inform the public of times and locations of additional meetings to seek public input. The Service intends to hold at least three meetings during October and November 2002.

ADDRESSES: Comment, requests for additional information, and/or requests to be placed on the mailing list should be sent to: Natural Resource Planner, Merritt Island National Wildlife Refuge Complex, P.O. Box 6504, Titusville, Florida 32782–6504; telephone 321/861–2368; fax 321/861–1276. Information concerning this refuge and a mailing list request form may be found at the following Web site: *http://merrittisland.fws.gov.*

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address. You may also comment via the Internet at the above website. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact the refuge directly at the above phone number or address. Finally, you may hand-deliver comments to the refuge's Visitor Center at the above address. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law.

SUPPLEMENTARY INFORMATION: It is the policy of the Fish and Wildlife Service to have all lands within the National Wildlife Refuge System managed in accordance with an approved comprehensive conservation plan. The plan guides management decisions and identifies the goals, objectives, and strategies for achieving refuge purposes. Public input into this planning process is encouraged. The plan will provide other agencies and the public with a clear understanding of the management strategies to be implemented.

The Service has initiated the planning process for Merritt Island National Wildlife Refuge for the conservation and enhancement of its natural resources. Covering approximately 140,000 acres and including designations such as Essential Fish Habitat, Outstanding Florida Waters, Great Florida birding Trail Eastern Gateway, Candidate Marine Protected Area, and Brevard County Historic Landmark, the refuge spans Brevard and Volusia Counties and is generally located between the Atlantic Ocean and the Indian River Lagoon, near the city of Titusville, Florida.

The Service is especially interested in receiving public input during this planning process. What do you value most about the refuge? What problems or issues do you see affecting management or public use of the refuge? What improvements do you recommend for the refuge? What changes, if any, would you like to see in the management of the refuge? The Service has provided these questions for optional use and has no requirement that information be provided.

The Fish and Wildlife Service is the principal federal agency responsible for conserving, protecting, and enhancing fish, wildlife, and plants and their habitats for the continuing benefit of the American people.

Dated: July 29, 2002.

Sam D. Hamilton,

Regional Director.

[FR Doc. 02–21631 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Associated NEPA Document for the Stone Lakes National Wildlife Refuge and Notice of Public Open Houses

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of Intent to Prepare a Comprehensive Conservation Plan and Associated National Environmental Policy Act Document for the Stone Lakes National Wildlife Refuge, Sacramento County, California and Notice of Public Open Houses.

SUMMARY: The Fish and Wildlife Service (Service) is preparing a Comprehensive Conservation Plan (CCP) and National Environmental Policy Act (NEPA) document for Stone Lakes National Wildlife Refuge (refuge). This notice advises the public that the Service intends to gather information necessary to prepare a CCP and environmental documents pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended, and NEPA. The public is invited to participate in the planning process. The Service is furnishing this notice in compliance with the Service CCP policy to: advise other agencies and the public of our intentions; obtain suggestions and information on the scope of issues to include in the environmental documents; and announce a series of public scoping meetings to occur in September and October 2002. See **SUPPLEMENTARY INFORMATION** for meeting information.

DATES: To ensure that the Service has adequate time to evaluate and incorporate suggestions and other input into the planning process, comments should be received within 30 days from the date of this notice.

ADDRESSES: Send written comments or requests to be added to the mailing list to: Planning Team Leader—Stone Lakes NWR, California/Nevada Refuge Planning Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, W–1916, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Address comments and requests for additional information to: Mr. Miki Fujitsubo, Planning Team Leader, (916) 414–6507:

SUPPLEMENTARY INFORMATION: The Stone Lakes National Wildlife Refuge is in southern Sacramento County, California, adjacent to the community of Elk Grove. The refuge is situated within the Morrison Creek, Cosumnes River, and Mokelumne River watersheds, and the Sacramento-San Joaquin River Delta (Delta).

The beginnings of the refuge started in the early 1970s with the recognition of the importance of the Stone Lakes Basin floodplain by the State of California and the County of Sacramento. There was strong support for a refuge because the unique lakes and waterways of the basin are entirely within the 100-year floodplain. The basin also occupies a strategic location for buffering urban encroachment into the Delta.

The refuge boundary was established in 1992 and with its first land acquisition in 1994 was officially designated the 505th unit in the National Wildlife Refuge System. The approved refuge boundary is 18,000 acres with the refuge currently owning or managing more than 4,000 acres.

The National Wildlife Refuge System Administration Act of 1966, as amended, mandates that all lands within the National Wildlife Refuge

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System are to be managed in accordance with an approved CCP. The CCP will guide management decisions and identify refuge goals, long-range objectives and management strategies for achieving refuge purposes. The planning process will consider many elements, including habitat and wildlife management, habitat protection, cultural resources, and environmental effects. Public input into this planning process is very important and encouraged. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the refuges and how the Service will implement management strategies.

The Service is soliciting information from the public via written comments. The Service will send out special mailings, newspaper articles, and announcements to people who are interested in the refuge. These mailings will provide information on how to participate in public involvement for the CCP. Comments received will be used to develop goals, key issues, and habitat management strategies. Additional opportunities for public participation will occur throughout the process. Data collection has been initiated to create computerized mapping, including vegetation, topography, habitat types and existing land uses.

Public open houses have been scheduled for the following dates and locations. All meeting times are from 7 p.m. to 9 p.m.

1. Monday, September 16, 2002, at the Elk Grove Community Services District Board Room, 8820 Elk Grove Blvd., Elk Grove, CA 95624.

2. Thursday, September 26, 2002, at the Clunie Community Center (Auditorium)—McKinnley Park, 601 Alhambra Blvd., Sacramento, CA 95816.

3. Wednesday, October 2, 2002, at the Jean Harvie Community Center, 14273 River Road, Walnut Grove, CA 95690.

4. Thursday, October 10, 2002, at the Veterans' Memorial Center—(Club Room), 203 East 14th Street—(corner of 14th & B Street), Davis, CA 95616.

The outcome of this planning process will be a CCP to guide the refuge management for the next 15 years. We have estimated that a draft CCP and NEPA document will be made available for public review in early 2004.

Dated: August 19, 2002.

Ken McDermond,

Acting California/Nevada Operations Manager, U.S. Fish and Wildlife Service, Sacramento, California.

[FR Doc. 02–21604 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Incidental Take Permit and Habitat Conservation Plan for AT&T Corporation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: AT&T Corporation (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Service proposes to issue a 10-year permit that would authorize take (e.g., harm and harassment) of the endangered Point Arena mountain beaver (*Aplodontia rufa nigra*) incidental to otherwise lawful activities. Such take would occur as the result of construction to connect an existing fiber optic conduit to the AT&T Point Arena Cable Station located near Manchester, Mendocino County, California.

We request comments from the public on the permit application which includes a Habitat Conservation Plan (HCP) for the Point Arena mountain beaver. We also request comments on our preliminary determination that the HCP qualifies as a "low-effect" habitat conservation plan, eligible for a categorical exclusion from additional documentation under the National Environmental Policy Act.

DATES: Written comments should be received on or before September 25, 2002.

ADDRESSES: Send written comments to Mr. Bruce G. Halstead, Project Leader, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, California, 95521. Comments may also be sent by facsimile to (707) 822–8411.

FOR FURTHER INFORMATION CONTACT: Mr. John Hunter, Fish and Wildlife Biologist, at the above address or call (707) 822–7201.

SUPPLEMENTARY INFORMATION:

Document Availability

The permit application, HCP, and the Service's low-effect HCP screening form are available for public review. The HCP describes the proposed project and the measures that the Applicant would undertake to minimize and mitigate take of Point Arena mountain beavers. The screening form describes the basis for the Service's preliminary determination that the HCP qualifies as a low effect plan eligible for a categorical exclusion under the National Environmental Policy Act.

Please contact the above office if you would like copies of the application, HCP and screening form. Documents will also be available for review, by appointment, during normal business hours at the above address. All comments we receive, including names and addresses, will become part of the administrative record and may be released to the public.

Background

Section 9 of the Act and Federal regulations prohibit the "take" of fish and wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act to include kill, harm, or harass. The Service may, under limited circumstances, issue permits to authorize incidental take; *i.e.*, take that is incidental to, and not the purpose of, otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 50 CFR 17.22, respectively.

The Applicant has applied to the Service for a section 10(a)(1)(B) incidental take permit for the point Arena mountain beaver, on the AT&T Point Arena Cable Station, in Mendocino County, California. The term of the permit would be 10 years. The AT&T Cable Station consists of 11.2 acres of privately-owned land located approximately 1 mile northwest of the town of Manchester. Prior to the listing of the Point Arena mountain beaver, three 5-inch-diameter steel bore pipes were installed below the surface of the ground from a point offshore of the cable station in the Pacific Ocean to a point about 88 feet from the north side of the cable station building. An occupied Point Arena mountain beaver burrow system is located 30 feet north from the end of the bore pipes. The Applicant proposes to install an access vault at this location, trench and bury cable conduit for 77 feet, and then install a manhole at the end of the cable conduit. The Applicant may then utilize this system by placing fiber optic cables in these pipes and conduits. The Service considers this project to entail take of Point Arena mountain beaver since noise and vibration disturbance and habitat loss will occur near occupied burrows.

The AT&T Cable Station is composed of structures, a parking lot, access roads, occupied Point Arena mountain beaver habitat and unoccupied potential habitat. The occupied, and some of the unoccupied, habitat consists of stabilized dunes dominated by bush lupine (*Lupinus arboreus*) and other coastal scrub and coastal strand species such as coyote brush (*Baccharis pilularis*), coast goldenrod (*Solidago spathulata*), ice-plant (*Carpobrotus* sp.), and other mixed grasses and forbs. Much of the currently unoccupied habitat consists of non-native, invasive conifers including Monterey pine (*Pinus radiata*) and Monterey cypress (*Cypress macrocarpa*). Habitat in the surrounding areas are similar, although there are large areas of unsuitable agricultural pasture lands.

The proposed project will permanently remove approximately 15 square feet of suitable but currently unoccupied habitat, and cause about 7 days of non-breeding season disturbance of all mountain beavers on about 0.25 acre of occupied habitat. There may also be 1 day of breeding season disturbance on the same 0.25 acre while fiber optic cables are pulled through the pipes and conduits. Mitigation for the HCP involves rehabilitation and maintenance of 1 acre of unoccupied and currently unsuitable habitat presently covered by non-native conifers. This rehabilitation work will cause disturbance for an additional 3 to 5 days during the non-breeding season and will affect all Point Arena mountain beaver associated with approximately 3 acres of occupied habitat.

As described in the HCP, the Applicant proposes the following measures to minimize and mitigate the anticipated project impacts: (A) All construction (except cable pulling) and habitat rehabilitation work will occur outside of the Point Arena mountain beaver breeding season (December 15 to June 30) and during daylight hours; (B) an 8-foot-high, 3/4-inch-wide plywood sound barrier will be placed between the construction and the occupied habitat; (C) vibratory compactors will only be used at the proposed manhole location; (D) areas altered by trenching will be restored as much as possible to a prework condition; (E) all activities including entry of personnel into the occupied habitats will be closely supervised by a biological monitor; and (F) material from cut conifers will be disposed off site.

Monitoring of the mountain beaver population at the entire Cable Station site will consist of two surveys per year, every other year, for 10 years. The methods for this monitoring will closely follow a methodology and a layout which have been in place on this site since 1992, and will thereby contribute to the only long-term monitoring program for this subspecies. In addition, counts of burrow openings in areas rehabilitated by non-native conifer removal will also occur on the same schedule in order to assess the effectiveness of the mitigation.

The Service's Proposed Action consists of the issuance of an incidental take permit and implementation of the HCP, which includes measures to minimize and mitigate impacts of the project on Point Arena mountain beaver. One alternative to the taking of listed species under the Proposed Action is considered in the HCP. Under the No Action Alternative, no permit would be issued. However, this alternative would result in an economic burden to the Applicant and no Point Arena mountain beaver habitat rehabilitation would occur.

The Service has made a preliminary determination that the HCP qualifies as a "low effect" plan as defined by its Habitat Conservation Planning Handbook (November 1996). The Service determination that a habitat conservation plan qualifies as a low-effect plan is based on the following criteria: (1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in the Screening Form for Low-Effect HCP Determinations, the Applicant's HCP for the Point Area Cable Station qualifies as a "low-effect" plan for the following reasons:

1. Approval of the HCP would result in minor or negligible effects to the Point Arena mountain beaver. The Service does not anticipate significant direct or cumulative effects to the Point Arena mountain beaver resulting from the proposed construction. No other federally listed, proposed, or candidate species are known or expected to occur within or immediately adjacent to the proposed construction.

2. Approval of the HCP would not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any cumulative or growth inducing impacts and, therefore, will not result in significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local, or tribal law or requirement imposed for the protection of the environment.

5. Approval of the HCP would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service therefore has made a preliminary determination that approval of the HCP qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1). Based on this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

The Service provides this notice pursuant to section 10(c) of the Act. We will evaluate the permit application, the HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, the Service will issue a permit for the incidental take of the Point Arena mountain beaver from the proposed construction project. We will make the final permit decision no sooner than 30 days from the date of this notice.

Dated: August 19, 2002.

Ken McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–21603 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Impact Report/Environmental Impact Statement and Habitat Conservation Plan for the Natomas Basin, Sacramento County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The City of Sacramento, Sutter County, and the Natomas Basin Conservancy (the "applicants") have applied to the Fish and Wildlife Service (Service) for 50-year incidental take permits for 22 covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The applications address the potential for "take" of covered species associated with various activities within the Natomas Basin, a 53,537-acre area in the

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Sacramento region. These activities (the "covered activities") include 15,517 acres of planned land development, and development and management of mitigation lands. A conservation program to minimize and mitigate for the covered activities would be implemented as described in the Natomas Basin Habitat Conservation Plan (Plan), which would be jointly implemented by the applicants.

The permit applications, available for public review, include the Plan which describes the proposed program and mitigation, and an accompanying Implementing Agreement (legal contract).

The Service also announces the availability of a Draft Environmental Impact Report/Environmental Impact Statement (Draft EIR/EIS) that addresses the environmental effects associated with issuing the permits and implementing the Plan. The analysis provided in the Draft EIR/EIS is intended to accomplish the following: inform the public of the proposed action and alternatives; address public comments received during the scoping period; disclose the direct, indirect, and cumulative environmental effects of the proposed action and each of the alternatives; and indicate any irreversible commitment of resources that would result from implementation of the proposed action.

DATES: Written comments should be received on or before October 22, 2002.

Public meetings are scheduled as follows:

1. September 23, 2002, First Session: 4 p.m. to 6 p.m.; Second Session: 7 p.m. to 9 p.m., Sacramento, California;

2. September 25, 2002, First Session: 4 p.m. to 6 p.m.; Second Session: 7 p.m. to 9 p.m., Yuba City, California.

ADDRESSES: Comments should be addressed to the Field Supervisor, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825. Written comments may be sent by facsimile to (916) 414–6711.

The public meetings will be held at the following locations:

1. Sacramento—1231 I Street, First Floor;

2. Yuba City—Whitaker Hall, 44 Second Street.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Campbell, Chief, Conservation Planning Division, at the Sacramento Fish and Wildlife Office (*see* **ADDRESSES**); telephone: (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the applications, Draft EIR/EIS, Plan, and Implementing Agreement should immediately contact the Service by telephone at (916) 414–6600 or by letter to the Sacramento Fish and Wildlife Office (*see* **ADDRESSES**). Copies of the Draft EIR/EIS, Plan, and Implementing Agreement also are available for public inspection, during regular business hours, at the Sacramento Fish and Wildlife Office; the City of Sacramento Planning and Building Department, 1231 I Street, Room 300, Sacramento, California; State Library, 914 Capitol Mall, Sacramento, California; Central Library, 828 I Street, Sacramento, California; South Natomas Library, 2901 Truxel Road, Sacramento, California; and Sutter County Library, 750 Forbes Avenue, Yuba City, California.

Comments

Written comments will be received at the public meetings. Written comments also may be received after the public meetings, until the close of the comment period [*see* **DATES**]. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

Background Information

Section 9 of the Act and Federal regulation prohibit the "take" of animal species listed as endangered or threatened. Take is defined under the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under limited circumstances, the Service may issue permits to authorize "incidental take" of listed animal species. "Incidental take" is defined by the Act as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

The applicants are seeking permits for take of the following federally listed species: the threatened giant garter snake (*Thamnophis gigas*), threatened valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), threatened vernal pool fairy shrimp (*Branchinecta lynchi*), endangered vernal pool tadpole shrimp (*Lepidurus packardi*), threatened Colusa grass (*Neostapfia colusana*), endangered Sacramento Orcutt grass (*Orcuttia viscida*), and threatened slender Orcutt grass (*Orcuttia tenuis*). The proposed permits would also authorize future incidental take of the currently unlisted Swainson's hawk (*Buteo swainsoni*), Aleutian Canada goose (*Branta canadensis leucopareia*), bank swallow (*Riparia riparia*), tricolored blackbird (*Agelaius tricolor*), northwestern pond turtle (*Clemmys marmorata marmorata*), white-faced ibis (*Plegadis chihi*), loggerhead shrike (*Lanius ludovicianus*), burrowing owl (*Athene cunicularia*), California tiger salamander (*Ambystoma californiense*), western spadefoot toad (*Scaphiopus hammondii*), midvalley fairy shrimp (*Branchinecta mesovallensis*), Boggs Lake hedge-hyssop (*Gratiaola heterosepala*), legenere (*Legenere limosa*), delta tule pea (*Lathyrus jepsonii* ssp. *jepsonii*) and Sanford's arrowhead (*Sagittaria sanfordii*), should any of these species become listed under the Act during the life of the permit. Collectively, the 22 listed and unlisted species are referred to as the "covered species" in the Plan.

The applicants propose to minimize and mitigate the effects to covered species associated with the covered activities by participating in the Plan. The purpose of this basin-wide conservation program is to promote biological conservation in conjunction with economic and urban development within the Natomas Basin. Through the payment of development fees, one-half acre of mitigation land would be established for every acre of land developed within the various permit areas (a total of 7,759) acres of mitigation land to be acquired based on 15,517 acres of urban development). The mitigation land would be acquired and managed by the Natomas Basin Conservancy. In addition to the requirement to pay mitigation fees, the Plan also includes take avoidance and minimization measures.

The Draft EIR/EIS considers four alternatives in addition to the Proposed Action and the No Action Alternative. Under the No Action Alternative, no section 10(a)(1)(B) permits would be issued for take of listed species associated with the covered activities; the applicants would address the potential for take of listed species on a case-by-case basis. The Increased Mitigation Ratio Alternative would double the extent of required mitigation land relative to the Plan. The Habitat-Based Mitigation Alternative would prescribe mitigation based on the value of habitat to be disturbed, rather than on a general ratio applied to all lands to be disturbed. The Reserve Zone Alternative would prioritize specific areas within the Natomas Basin for acquisition, in contrast to the general acquisition strategy described in the Plan. The Reduced Potential for Incidental Take Alternative would result in reduced urban development covered by the permits, and would therefore reduce the potential for incidental take associated with urban development.

In August 2001, (66 FR 43267), two water agencies, Reclamation District No. 1000 (RD 1000), and Natomas Central Mutual Water Company (Natomas Mutual), decided to join the City of Sacramento and Sutter County as applicants for permits and participated in drafting the Plan. At this time, RD 1000 and Natomas Mutual have chosen not to submit an application for an incidental take permit. They may decide to apply at a later time and commit to the terms of the Plan, and through issuance of a permit by the Service, join as full permittees at a future date. It should be noted that because of RD 1000 and Natomas Mutual's previous participation as potential applicants, and the possibility that they may decide to apply for a permit at some future date, the description of and analysis of the two water agencies as permittees has remained in both the Plan and the EIR/EIS. Should the water agencies apply for a permit in the future, then additional notification and documentation may be needed pursuant to the National Environmental Policy Act.

The Service invites the public to comment on the Plan and Draft EIR/EIS during a 60-day public comment period. This notice is provided pursuant to section 10(a) of the Endangered Species Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to prepare a Final EIR/EIS. A decision on the permit applications will be made no sooner than 30 days after the publication of the Final EIR/EIS.

Dated: August 19, 2002.

Steve Thompson,

Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–21680 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Pinedale Anticline Working Group and Task Groups; Notice

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Pinedale Anticline Working Group and Task Groups—notice of establishment.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior has established the Pinedale Anticline Working Group and Task Groups. The purpose of the Committee and Subcommittees will be to advise the Bureau of Land Management, Pinedale Field Office Manager, regarding recommendations on matters pertinent to the Bureau of Land Management's responsibilities related to the Pinedale Anticline Environmental Impact Statement (EIS) and Record of Decision (ROD).

Members of the Working Group and Task Groups will be comprised of a representative from the State of Wyoming, a representative from the Town of Pinedale (Wyoming), a representative from the oil/gas operators, a representative from the Sublette County (Wyoming) Government, a representative from environmental groups, a representative from the affected landowners, a representative of the local livestock operators, and two members from the public-at-large.

FOR FURTHER INFORMATION CONTACT: Ms. Priscilla E. Mecham, Pinedale Field Office Manager, Bureau of Land Management, 432 East Mill Street, P.O. Box 768, Pinedale, Wyoming 82941, Phone: (307) 367–5300. The certification of establishment is published below.

Certification

I hereby certify that the establishment of the Pinedale Anticline Working Group and Task Groups is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

Dated: August 15, 2002.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 02–21683 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1820–AE]

Notice of Public Meeting: Northwest California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Wednesday and Thursday, Oct. 23 and 24, 2002, at the Weaverville Victorian Inn, 1709 Main St., Weaverville, California. On Oct. 23, the meeting begins at 10 a.m. Council members will participate in a field tour to BLM-managed areas in Trinity County. On Oct. 24, the meeting begins at 8 a.m. in the Victorian Inn Conference Room. Time for public comments has been set for 1 p.m.

FOR FURTHER INFORMATION CONTACT: Lynda J. Roush, Field Manager, BLM Arcata Field Office, 1895 Heindon Rd., Arcata, CA 95521, or telephone (707) 825–2300; or BLM Public Affairs Officer Joseph J. Fontana, telephone (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northwest California. At this meeting, agenda topics include a proposal for development of a Weaverville Community Forest, an overview of fire and fuels projects, and review of a grant proposal for the Chappie-Shasta Off Highway Vehicle Area near Redding, California. Members will also hear reports from managers of the BLM's Arcata, Redding and Ukiah field offices.

All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: August 19, 2002.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 02–21606 Filed 8–23–02; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–421–1]

Pedestal Actuators from China

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of an investigation under section 421(b) of the Trade Act of 1974 (19 U.S.C. 2451(b)) (the Act).

SUMMARY: Following receipt of a petition properly filed on August 19, 2002, on behalf of Motion Systems Corp., Eatontown, NJ, the Commission instituted investigation No. TA–421–1 under section 421(b) of the Act to determine whether pedestal actuators [1] from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and E (19 CFR part 206).

EFFECTIVE DATE: August 19, 2002.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Participation in the Investigation and Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Confidential Business Information (CBI) Under an Administrative Protective Order (APO) and CBI Service List

Pursuant to § 206.47 of the Commission's rules, the Secretary will make CBI gathered in this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive CBI under the APO.

Hearing

The Commission has scheduled a hearing in connection with this investigation beginning at 9:30 a.m. on October 1, 2002, at the U.S. International Trade Commission Building. Subjects related to both market disruption or threat thereof and remedy may be addressed at the hearing. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 23, 2002. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 26, 2002 at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by §§ 201.6(b)(2) and 201.13(f) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is September 25, 2002. Parties may also file posthearing briefs. The deadline for filing posthearing briefs is October 4, 2002. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of market disruption or threat thereof and/or remedy on or before October 4, 2002. Parties may submit final comments on remedy on October 21, 2002. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain CBI must also conform with the requirements of § 201.6 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with § 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Remedy

Parties are reminded that no separate hearing on the issue of remedy will be held. Those parties wishing to present arguments on the issue of remedy may do so orally at the hearing or in their prehearing brief, posthearing brief, or final comments on remedy.

Authority: This investigation is being conducted under the authority of section 421 of the Trade Act of 1974; this notice is published pursuant to § 206.3 of the Commission's rules.

Issued: August 21, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–21690 Filed 8–23–02; 8:45 am]

BILLING CODE 7020–02–P

[1] Pedestal actuators consist of electromechanical linear actuators, imported with or without motors, or as part of scooter subassemblies, all the foregoing used for lifting and lowering, or for pushing or pulling. The products under investigation include any subassembly of pedestal actuator parts and components. Pedestal actuators are powered by fractional horsepower DC or AC motors, which drive a ball bearing screw or acme screw through a gear reducer to convert rotary to linear motion. The products are designed for flat or base mounting, have telescoping members, with bearings or bearing surfaces, and rigidly support the load and provide anti-rotation. The imported products are provided for in subheadings 8483.40.50, 8501.31.40, and 8501.40.40 of the Harmonized Tariff Schedule of the United States (HTS). Although the HTS categories are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office; National Industrial Security Program Policy Advisory Committee: Notice of Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2) and implementing regulation 41 CFR 101.6, announcement is made for the following committee meeting:

Name of Committee: National Industrial Security Program Policy Advisory Committee (NISPPAC).

Date of Meeting: September 25, 2002.

Time of Meeting: 10 a.m. to 12 noon.

Place of Meeting: National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Room 105, Washington, DC 20408.

Purpose: To discuss National Industrial Security Program policy matters. This meeting will be open to the public. However, due to space limitations and access procedures, the names and telephone numbers of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than September 16, 2002. Written statements from the public will be accepted in lieu of an opportunity for comment.

FOR FURTHER INFORMATION CONTACT: J. William Leonard, Director, National Archives Building, 700 Pennsylvania Avenue, NW, Room 100, Washington, DC 20408, telephone (202) 219–5250.

Dated: August 20, 2002.

Nancy Allard,

Acting Committee Management Officer.

[FR Doc. 02–21600 Filed 8–23–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting #52

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities will be held on Monday, September 9, 2002 from 10:30 a.m. to approximately 12:30 p.m. The meeting will be held in the Carriage House of the Stephen Decatur House Museum, 748 Jackson Place, NW., Washington, DC 20006.

The Committee meeting will begin at 10:30 a.m. for coffee followed at 10:45 a.m. with a welcome and introductions by Adair Margo, Committee Chairman. Executive Director Henry Moran and Committee members Adair Margo, Mercedes Paz-Slimp, and Cindy Sites will present reports. There will be a presentation and discussion on "Preservation in America" as well as a presentation by Legal Counsel. The meeting will conclude with a presentation and discussion on future projects, activities, and meetings.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the Institute of Museum and Library Services on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c) (4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend must contact Georgianna Paul of the President's Committee in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW, Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Paul.

If you need special accommodations due to a disability, please contact Ms. Paul through the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Dated: August 19, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–21640 Filed 8–23–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Federal Advisory Committee on International Exhibitions

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions (FACIE) will be held on September 17, 2002 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, (Room 716) Washington, DC 20506. A portion of this meeting, from 2:30 p.m. to 3:30 p.m., will be open to the public for policy discussion. The remaining portion of this meeting, from 10 a.m. to 2:20 p.m., will be closed.

The closed portion of this meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: August 20, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–21639 Filed 8–23–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL INDIAN GAMING COMMISSION

Notice of Approval of Class III Tribal Gaming Ordinances

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of class III gaming ordinances approved by the Chairman of the National Indian Gaming Commission.

EFFECTIVE DATE: This notice is effective upon date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Frances Fragua, Office of General Counsel at the National Indian Gaming Commission, 202/632–7003, or by facsimile at 202/632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (Commission). Section 2710 of the IGRA authorizes the Commission to approved class II and

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class III tribal gaming ordinances. Section 2710(d)(2)(B) of the IGRA as implemented by 25 CFR 522.8 (58 FR 5811 (January 22, 1993)) requires the Commission to publish, in the **Federal Register**, approved class III gaming ordinances.

The IGRA requires all tribal gaming ordinances to contain the same requirements concerning ownership of the gaming activity, use of net revenues, annual audits, health and safety, background investigation and licensing of key employees. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission. The Commission believes that publishing a notice of approval of each class III gaming ordinance is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Also, the Commission will make copies of approved class III ordinances available to the public upon request. Requests can be made in writing to the Office of General Counsel, National Indian Gaming Commission, (Attention: Legal Staff Assistant) 1441 L Street, NW., Suite 9100, Washington, DC 20005.

The following constitutes a consolidated list of all Tribes for which the Chairman has approved tribal gaming ordinances authorizing class III gaming.

1. Absentee-Shawnee Tribe of Oklahoma.
2. Agua Caliente Band of Cahuilla Indians.
3. Ak Chin Indian Community.
4. Alturas Indian Rancheria.
5. Assiniboine & Sioux Tribes of the Fort Peck Reservation.
6. Augustine Band of Mission Indians.
7. Bad River Band of Lake Superior Tribe of Chippewa .
8. Barona Band of Mission Indians.
9. Bay Mills Indian Community.
10. Bear River Band of the Rohnerville Rancheria.
11. Big Lagoon Rancheria.
12. Big Pine Paiute Tribe of the Owens Valley.
13. Big Valley Rancheria of Pomo Indians.
14. Bishop Paiute Tribe .
15. Blue Lake Rancheria.
16. Boise Forte Band of Chippewas.
17. Buena Vista Rancheria of Me-Wuk Indians.
18. Burns Paiute Tribe.
19. Cabazon Band of Mission Indians.
20. Caddo Indians Tribe of Oklahoma.
21. Cahto Tribe of the Laytonville Rancheria.
22. Cahuilla Band of Mission Indians.
23. Campo Band of Mission Indians.
24. Chemehuevi Indian Tribe.
25. Cheyenne and Arapaho Tribes of Oklahoma.
26. Cheyenne River Sioux Tribe.
27. Chickasaw Nation of Oklahoma.
28. Chicken Ranch Band of Me-Wuk Indians.
29. Chippewa Cree Tribe of the Rocky Boy's Reservation.
30. Chitimacha Tribe of Louisiana.
31. Citizen Band Potawatomi Indians of Oklahoma.
32. Cloverdale Rancheria of Pomo Indians of California.
33. Coast Indian Community of the Resighini Rancheria.
34. Cocopah Indian Tribe.
35. Coeur d'Alene Tribe.
36. Colorado River Indian Tribes.
37. Colusa Band of Wintun Indians.
38. Comanche Indian Tribe.
39. Confederated Salish and Kootenai Tribes of the Flathead Reservation.
40. Confederated Tribes and Bands of the Yakama.
41. Confederated Tribes of the Chehalis Reservation.
42. Confederated Tribes of the Colville Reservation.
43. Confederated Tribes of the Grand Ronde Community.
44. Confederated Tribes of the Siletz Indians of Oregon.
45. Confederated Tribes of the Umatilla Indian Reservation.
46. Confederated Tribes of the Warm Springs Reservation.
47. Coquille Indian Tribe.
48. Coushatta Indian Tribe of Louisiana.
49. Cow Creek Band of Umpqua Indians.
50. Coyote Valley Band of Pomo Indians.
51. Crow Creek Sioux Tribe.
52. Crow Indian Tribe.
53. Delaware Tribe of Indians.
54. Delaware Tribe of Western Oklahoma.
55. Dry Creek Rancheria.
56. Eastern Band of Cherokee Indians.
57. Eastern Shawnee Tribe of Oklahoma.
58. Elem Indian Colony.
59. Elk Valley Rancheria.
60. Ewiiaapaayp Band of Mission Indians.
61. Fallon Paiute-Shoshone Tribes.
62. Flandreau Santee Sioux Tribe.
63. Fond du Lac Reservation Business Committee.
64. Forest County Potawatomi Community.
65. Fort McDermitt Paiute-Shoshone Indian Tribe.
66. Fort McDowell Mohave-Apache Indian Community.
67. Fort Mojave Tribal Council.
68. Gila River Indian Community.
69. Grand Portage Band of Chippewa Indians.
70. Grand Traverse Band of Ottawa/Chippewa Indians.
71. Grindstone Indian Rancheria.
72. Hannahville Indian Community.
73. Ho-Chunk Nation.
74. Hoopa Valley Tribe.
75. Hopland Band of Pomo Indians.
76. Hualapai Tribe.
77. Iowa Tribe of Kansa and Nebraska.
78. Iowa Tribe of Oklahoma.
79. Jackson Rancheria Band of Miwuk Indians.
80. Jamestown S'Klallam Tribe.
81. Jena Band of Choctaw Indians.
82. Jicarilla Apache Tribe.
83. Kaibab Band of Paiute Indians.
84. Kalispel Tribe of Indians.
85. Keweenaw Bay Indian Community.
86. Kickapoo Nation of Kansas.
87. Kickapoo Traditional Tribe of Texas.
88. Kickapoo Tribe of Oklahoma.
89. Kiowa Tribe of Oklahoma.
90. Klamath Tribes.
91. Klawock Cooperative Association.
92. Kootenai Tribe of Idaho.
93. Lac Courte Oreilles Band of Lake Superior Chippewa.
94. Lac du Flambeau Band of Lake Superior Chippewa.
95. Lac Vieux Desert Band of Lake Superior Chippewa.
96. LaJolla Band of Luiseno Indians.
97. Lake Miwok Indian Nation of the Middletown Rancheria.
98. Las Vegas Paiute Tribe.
99. Leech Lake Band of Chippewa Indians.
100. Little River Band of Ottawa Chippewa.
101. Little Traverse Bay Bands of Odawa Indians.
102. Lower Brule Sioux Tribe.
103. Lower Sioux Indian Community.
104. Lummi Nation.
105. Lytton Band of Pomo Indians.
106. Manzanita Band of Mission Indians.
107. Mashantucket Pequot Tribe.
108. Mechoopda Indian Tribe of Chico Rancheria.
109. Menominee Indian Tribe of Wisconsin.
110. Mescalero Apache Tribe.
111. Miami Tribe of Oklahoma.
112. Mille Lacs Band of Chippewa Indians.
113. Mississippi Band of Choctaw Indians.
114. Moapa Band of Pauites.
115. Modoc Tribe of Oklahoma.
116. Mohegan Tribe of Indians of Connecticut.
117. Mooretown Rancheria.
118. Morongo Band of Mission Indians.
119. Muckleshoot Indian Tribe.
120. Muscogee (Creek) Nation.

121. Narragansett Indian Tribe.
122. Nez Perce Tribe.
123. Nisqually Indian Tribe.
124. Nooksack Indian Tribe.
125. Northern Arapaho Tribe of the Wind River Indians.
126. Northern Cheyenne Tribe.
127. Nottawaseppi Huron Band of Potawatomi.
128. Oglala Sioux Tribe.
129. Omaha Tribe of Nebraska.
130. Oneida Nation of New York.
131. Oneida Tribe of Indians of Wisconsin.
132. Ottawa Tribe of Oklahoma.
133. Pala Band of Mission Indians.
134. Pascua Yaqui Tribe of Arizona.
135. Paskenta Band of Nomlaki Indians.
136. Pauma-Yuima Band of Mission Indians.
137. Pawnee Tribe of Oklahoma.
138. Picayune Rancheria of the Chukchansi Indians.
139. Pit River Tribe.
140. Ponca Tribe of Nebraska.
141. Ponca Tribe of Oklahoma.
142. Port Gamble S'Klallam.
143. Prairie Band Potawatomi.
144. Prairie Island Indian Community.
145. Pueblo of Acoma.
146. Pueblo of Isleta.
147. Pueblo of Laguna.
148. Pueblo of Pojoaque.
149. Pueblo of San Felipe.
150. Pueblo of San Juan.
151. Pueblo of Sandia.
152. Pueblo of Santa Ana.
153. Pueblo of Santa Clara.
154. Pueblo of Taos.
155. Pueblo of Tesuque.
156. Puyallup Tribe of Indians.
157. Pyramid Lake Paiute Tribe.
158. Quapaw Tribe of Oklahoma.
159. Quechan Indian Tribe.
160. Quileute Indian Tribe.
161. Quinault Indian Nation.
162. Red Cliff Band of Lake Superior Chippewa.
163. Red Cliff, Sokaogon Chippewa and Lac Courte Oreilles Band.
164. Red Lake Band of Chippewa Indians.
165. Redding Rancheria.
166. Redwood Valley Rancheria.
167. Reno-Sparks Indian Colony.
168. Rincon San Luiseno Band of Mission Indians.
169. Robinson Rancheria of Pomo Indians.
170. Rosebud Sioux Tribe.
171. Round Valley Indian Tribes.
172. Rumsey Indian Rancheria.
173. Sac & Fox Tribe of Mississippi in Iowa.
174. Sac & Fox Nation of Missouri.
175. Saginaw Chippewa Indian Tribe.
176. Salt River Pima-Maricopa Indian Community.
177. San Carlos Apache Tribe.
178. San Manuel Band of Mission Indians.
179. San Pasqual Band of Indians.
180. Santa Rosa Band of Tachi Indians of the Santa Rosa.
181. Santa Ynez Band of Mission Indians.
182. Santa Ysabel Band of Mission Indians.
183. Santo Domingo Tribe.
184. Sauk-Suiattle Indian Tribe.
185. Sault Ste. Marie Tribe of Chippewa Indians.
186. Scotts Valley Band of Pomo Indians.
187. Seminole Tribe.
188. Shakopee Mdewakanton Sioux Community.
189. Sheep Ranch Tribe of We-Wuk Indians.
190. Sherwood Valley Rancheria.
191. Shingle Springs Band.
192. Shoalwater Bay Indian Tribe.
193. Shoshone-Bannock Tribes.
194. Sisseton-Wahpeton Sioux Tribe.
195. Skokomish Indian Tribe.
196. Smith River Rancheria.
197. Snoqualmie Tribe.
198. Soboba Band of Mission Indians.
199. Sokaogon Chippewa Community.
200. Southern Ute Indian Tribe.
201. Spirit Lake Sioux Nation.
202. Spokane Tribe of Indians.
203. Squaxin Island Tribe.
204. St. Croix Chippewa Indians of Wisconsin.
205. St. Regis Mohawk Tribe.
206. Standing Rock Sioux Tribe.
207. Stillaguamish Tribe of Indians.
208. Stockbridge-Munsee Community.
209. Suquamish Tribe.
210. Susanville Indian Rancheria.
211. Swinomish Indian Tribal Community.
212. Sycuan Band of Mission Indians.
213. Table Mountain Rancheria.
214. Temecula Band of Luiseno Mission Indians.
215. Three Affiliated Tribes of the Fort Berthold Reservation.
216. Tohono O'odham Nation.
217. Tonkawa Tribe of Oklahoma.
218. Tonto Apache Tribe.
219. Torres Martinez Desert Cahuilla Indians Tribe.
220. Trinidad Rancheria.
221. Tulalip Tribes of Washington.
222. Tule River Tribe of the Tule River Indian Reservation.
223. Tunica-Biloxi Tribe of Louisiana.
224. Tuolumne Band of MeWuk Indians.
225. Turtle Mountain Band of Chippewa Indians.
226. Twenty Nine Palms Band of Mission Indians.
227. Tyme Maidu Tribe of the Berry Creek Rancheria.
228. U-tu Utu Gwaitu Paiute Tribe of Benton Paiute Reservation.
229. United Auburn Indian Community of Auburn Rancheria.
230. Upper Sioux Community.
231. Upper Skagit Indian Tribe.
232. Ute Mountain Ute Tribe.
233. Washoe Tribe of Nevada and California.
234. White Earth Band of Chippewa Indians.
235. White Mountain Apache Tribe.
236. Winnebago Tribe of Nebraska.
237. Wyandotte Tribe of Oklahoma.
238. Yankton Sioux Tribe.
239. Yavapai Apache Tribe.
240. Yavapai-Prescott Indian Tribe.
241. Yurok Tribe.

Montie R. Deer,

Chairman, National Indian Gaming Commission.

[FR Doc. 02–21623 Filed 8–23–02; 8:45 am]

BILLING CODE 7565–02–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

Rochester Gas and Electric Corp.; R. E. Ginna Nuclear Power Plant; Notice of Receipt of Application for Renewal of Facility Operating License No. DPR–18 for an Additional 20-Year Period

On August 1, 2002, the U.S. Nuclear Regulatory Commission received, by letter dated July 30, 2002, an application from the Rochester Gas and Electric Company, filed pursuant to Section 104b of the Atomic Energy Act of 1954, as amended, and 10 CFR part 54, which would authorize the applicant to operate the R. E. Ginna Nuclear Power Plant for an additional 20-year period. The current operating license for the R. E. Ginna Nuclear Power Plant expires on September 18, 2009. The R. E. Ginna Nuclear Power Plant is a pressurized water reactor designed by Westinghouse Electric Company and is located in Wayne County, New York. The acceptability of the tendered application for docketing and other matters, including an opportunity to request a hearing, will be the subject of a subsequent **Federal Register** notice.

Copies of the application are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the Publicly Available Records (PARS) component of the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible

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from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. In addition, the application is available on the NRC web page at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html*, while the application is under review. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, please contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

The license renewal application for the R. E. Ginna Nuclear Power Plant is also available to local residents at the Rochester Public Library, in Rochester, New York, and at the Ontario Public Library, in Ontario, New York.

Dated at Rockville, Maryland, this 19th day of August, 2002.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–21643 Filed 8–23–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority, Watts Bar Nuclear Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. NPF–90 held by the Tennessee Valley Authority (TVA or the licensee) for operation of the Watts Bar Nuclear Plant (WBN), Unit 1, located in Rhea County, Tennessee. Therefore, as required by Title 10, Code of Federal Regulations (10 CFR), § 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would change WBN's Technical Specifications to allow TVA to irradiate up to 2304 tritium-producing burnable absorber rods (TPBARs) in WBN's reactor core. Irradiating the TPBARs in the reactor core supports the U.S. Department of Energy (DOE) in maintaining the nation's tritium inventory. TVA will insert the TPBARs into positions in the reactor core where conventional burnable poison rods would normally be (poison rods contain boron which reacts with neutrons making them unavailable for interacting with uranium atoms, thereby slowing fission and heat generation). TPBARs are not reactor fuel and do not generate thermal energy for generating electrical energy.

TPBARs use lithium rather than boron. Neutron irradiation in the reactor core converts the lithium in the TPBARs into tritium. After one operating cycle, TVA would remove the fuel assemblies containing TPBARs from the WBN core and put them into the spent fuel pool. TVA would, after several weeks (based on plant schedules rather than decay considerations), remove the irradiated TPBARs from the fuel assemblies and consolidate them into shipping casks for DOE to transport to its tritium extraction facility at its Savannah River Site.

The proposed action is in accordance with the licensee's application of August 20, 2001, as supplemented by letters of October 29, November 14, November 21, December 7, December 19, 2001, and January 14, February 19, February 21, May 21, May 23, and July 30, 2002.

The Need for the Proposed Action

The proposed action would allow WBN to provide irradiation services for DOE to maintain the nation's tritium supply as prescribed by Public Law (Pub. L.) 106–65. Section 3134 of PL 106–65 directs the Secretary of Energy to produce new tritium at TVA's Watts Bar power plant.

Environmental Impacts of the Proposed Action

DOE's Environmental Impact Statement, DOE/EIS–0288, *Final Environmental Impact Statement (EIS) for the Production of Tritium in a Commercial Light Water Reactor*, dated March 1999, assessed the environmental impacts of producing tritium at WBN. TVA was a cooperating Federal agency in preparing this EIS and adopted the EIS in accordance with 40 CFR 1506.3(c) of the Council on Environmental Quality regulations. DOE also prepared a Tritium Production Core (TPC) Topical Report, NDP–98–181, Rev. 1, to address the safety and licensing issues associated with incorporating TPBARs in a reference pressurized-water reactor. The NRC used its Standard Review Plan (NUREG–0800) as the basis for evaluating the impact of the TPBARs on a reference plant. The NRC reviewed the TPC Topical Report and issued a Safety Evaluation Report, NUREG–1672, in May 1999. NUREG–1672 identified 17 plant-specific interface issues that a licensee would have to address in support of a plant specific amendment to operate a tritium production core. TVA's application of August 20, 2001, and supplements, addressed these interface issues. NRC staff is reviewing TVA's amendment request and will issue a safety evaluation documenting its review.

1. Radiological Impact from Tritium Release to the Reactor Coolant System (RCS) Under Normal Plant Operations with 2304 TPBARs in the Core

Tritium levels in the RCSs of large pressurized-water reactors have ranged as high as 4000 curies per year (Ci/yr) without exceeding regulatory limits. TVA estimated, as discussed in its May 23, 2002, letter, that the tritium level in the RCS at WBN would increase from about 1826 Ci/yr to 3170 Ci/yr with 2304 TPBARs in the reactor. This increased tritium level could increase overall occupational exposure, but NRC data summarized in NUREG–0713, "Occupational Radiation Exposure at Commercial Nuclear Power Reactors and Other Facilities," dated 1995, indicate tritium exposure is not an important contributor to overall occupational exposure.

TVA stated that WBN does not expect this increased activity to affect normal RCS feed-and-bleed operation throughout the cycle, as discussed in its May 23, 2002, letter. The NRC staff finds no reason to disagree with TVA's conclusion. Thus, primary coolant discharge volumes should be similar to current volumes.

The staff concludes that the additional dose rate from operating WBN with 2304 TPBARs in the reactor will not have a significant impact on TVA's ability to control worker radiation doses and keep them well within regulatory limits using the controls and practices in WBN's existing Radiation Protection Program.

If increased RCS feed and bleed is required, it may be necessary to temporarily store the increased volume of tritiated liquid onsite, or to dilute the tritiated liquid to ensure that 10 CFR part 20 discharge limits are met. WBN has sufficient storage tanks to accommodate this additional liquid waste.

2. Radiological Impact from Liquid Effluents Under Normal Plant Operations with 2304 TPBARs in the Core

The WBN facility has waste-treatment systems designed to collect and process waste that may contain radioactive material. The tritium in liquid effluents from WBN is diluted to a relatively low concentration before it reaches even the most highly exposed members of the public. TVA's submittal of May 23, 2002, shows that the total additional dose to the maximally-exposed members of the public within 50 miles of WBN from tritium in liquid effluents is estimated to be 0.01 millirem per year (mrem/yr). This total dose, considering the minimal increase from tritium production, is less than 1.0 percent of the NRC 3-mrem/yr guideline for effluent exposure to the public. The staff concludes that the potential radiological impact on plant workers, members of the public, and the environment from operation with the TPC complies with all regulatory dose limits.

3. Radiological Impact from Radioactive Gaseous Emissions Under Normal Plant Operations with 2304 TPBARs in the Core

A portion of the tritium might be released to the atmosphere. The amount would depend on plant conditions and the manner in which TVA operates WBN. Individuals could be exposed to tritium in a variety of pathways if it was released to the atmosphere. These pathways include inhalation and skin absorption, as well as consumption of meat, vegetables and milk. According to TVA, in its submittal of May 23, 2002, the calculated tritium dose to the most highly-exposed members of the public through all pathways would be about 63 percent of the NRC annual exposure guideline for airborne effluents.

4. Radiological Impact from Solid Radioactive Waste Under Normal Plant Operations with 2304 TPBARs in the Core

Irradiation of TPBARs is expected to increase the number of curies and volume of solid radioactive waste, primarily because of disposal (offsite) of the associated base plates and thimble plugs, which become irradiated. The estimated increase in activity inventory is from approximately 1800 Ci/year to approximately 3500 Ci/yr. The estimated increase in volume is from 32,820 cubic feet/year to 32,853 cubic feet/year. The estimated resultant total worker dose resulting from handling the increased solid waste is approximately 1.1 percent of the dose assessment estimate of record. Offsite shipment and disposal would be in accordance with established agreements between TVA and DOE.

5. Radiological Impact to Workers in the Fuel Storage Area Under Normal Plant Operations with 2304 TPBARs in the Core

The proposed amendment is not expected to significantly affect the doses to the workers in the fuel storage area. The TPBARs are designed to have minimal effect on plant operations, including refueling operations. Unirradiated TPBARs will produce no increase in exposure, occupational or public, because they are essentially non-radioactive. Possible increases in tritium airborne activity may increase dose to workers handling and consolidating radioactive TPBARs. However, TVA stated, in its submittal of May 23, 2002, that WBN's station dose assessment of record bounds the expected increase.

6. Non-Radiological Impact with 2304 TPBARs in the Core

The proposal does not affect non-radiological plant effluents. The proposal does not result in any significant changes to land use or water use. It also does not result in any significant changes to the quantity or quality of effluents, and no effects on endangered or threatened species or on their habitat are expected. Therefore, no changes in, or different types of, non-radiological environmental impacts are expected as a result of the amendment.

7. Radiological Impact from Postulated Accidents with 2304 TPBARs in the Core

TVA's submittal of May 23, 2002, discussed the effects of TPBARs on the possible consequences of the following postulated accidents discussed in WBN's Updated Final Safety Analysis Report (UFSAR):

- Fuel-handling accident
- Design basis loss-of-coolant accident (LOCA)
- Main steamline failure outside of containment
- Steam generator tube rupture
- Loss of normal alternating current power to plant auxiliaries
- Waste gas decay tank failure
- Rod ejection accident
- Failure of small lines carrying primary coolant outside containment

Discussions of the postulated accidents with the greatest radiological consequences appear below.

a. Fuel-Handling Accident

This accident is defined as dropping a spent fuel assembly containing irradiated TPBARs resulting in rupture of the cladding on all the fuel rods. TVA's calculations conservatively assumed that 24 TPBARs (the maximum possible number) are in the dropped spent fuel assembly and that they all rupture and transfer their tritium to the spent fuel pool. Releasing this activity to the (1) control room boundary, (2) Exclusion Area Boundary over 2 hours, and (3) Low Population Zone over 30 days results in the doses to the thyroid, skin (beta), whole body (gamma), and Total Effective Dose Equivalent (TEDE), as defined in 10 CFR part 20, that are small percentages of regulatory limits.

b. LOCA

This accident is defined as losing reactor coolant at a rate in excess of the capability of the reactor coolant makeup system. LOCAs could occur from breaks in pipes in the reactor coolant pressure boundary up to and including a break equivalent in size to the double-ended rupture of the largest pipe in the RCS. TVA conservatively assumed that the entire tritium content of the 2304 TPBARs is released into containment during a postulated LOCA. Releasing this activity to the (1) control room boundary, (2) Exclusion Area Boundary over 2 hours, and (3) Low Population Zone over 30 days results in doses to the thyroid, skin (beta), whole body (gamma), and TEDE that are small percentages of regulatory limits.

8. Post-LOCA Hydrogen Generation Inside Containment

TVA's submittal of August 20, 2001, stated that TPBARs could release additional hydrogen to the containment following a large-break LOCA (LBLOCA). WBN has emergency operating procedures in place to start a hydrogen recombiner train when the containment volumetric percentage of hydrogen reaches 3 percent. Previous analysis for a conventional (non-TPBAR) core in the WBN UFSAR indicated that for an LBLOCA, with no recombiners started, the containment hydrogen concentration reached 3.75 percent 4 days following event initiation. With additional hydrogen from the TPBARs, TVA's analysis indicated that the containment hydrogen concentration would only slightly increase 2 days following event initiation. If one recombiner train is started 24 hours after event initiation for the TPBAR core, the peak containment hydrogen concentration is limited to less than 4 percent for up to 6 days. Having up to 24 hours to place a recombiner train in service to maintain the containment hydrogen concentration below 4 percent is adequate in satisfying NRC Regulatory Guide 1.7. Accordingly, reactor operation with the TPBARs will not be a significant contributor to the post-LOCA hydrogen inventory, and will not

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have a significant impact on the total hydrogen concentration within the containment when compared to the values associated with the non-TPBAR core. The maximum containment hydrogen concentration can be maintained at less than the lower flammability limit of 4.0-volume-percent, with one recombiner train started at a 3-percent hydrogen concentration approximately 24 hours after an LBLOCA.

Summary

The Commission has completed its evaluation of the proposed action. The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no significant change in current environmental impacts. However, because there are no significant environmental impacts associated with this action, and because Pub. L. 106–65 directs that DOE produce tritium at WBN or the Sequoyah Nuclear Plant, this is not considered a viable option.

Alternative Use of Resources

DOE evaluated the action, including completing construction of one or both of the Bellefonte Nuclear Plant Units and construction of an accelerator facility at the Savannah River site and concluded that the proposed alternative has the least environmental impact of the options considered. The NRC has no reason to disagree with DOE's decision.

Agencies and Persons Consulted

On August 15, 2002, the staff consulted with the Tennessee State official, Debra Schults of the Tennessee Bureau of Radiological Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 20, 2001, as supplemented by letters dated October 29, November 14, November 21, December 7, December 19, 2001, and January 14, February 19, February 21, May 21, May 23, and July 30, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 20th day of August, 2002.

For the Nuclear Regulatory Commission.

L. Mark Padovan,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–21644 Filed 8–23–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46375; File No. SR–Amex–2002–68]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Revising the Maintenance Listing Criteria for Underlying Securities in Amex Rule 916

August 16, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 12, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amex submitted Amendment No. 1 to the proposed rule change on August 16, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 916 to permit the addition of a new series of individual equity option contracts that otherwise meet the maintenance listing standards except for the requirement that the market price per share of the underlying security be at least $3.00. The text of the proposed rule change is below. Proposed new language is italicized; deletions are in brackets.

* * * * *

Rule 916. Withdrawal of Approval of Underlying Securities.

No Change.

Commentary

.01 No Change.

1. No Change.
2. No Change.
3. No Change.
4. *Subject to Commentary .02 below,* [T]the market price per share of the underlying security closed below $3 on the previous trading day as measured by the highest closing price reported in the primary market (as that term is defined in Rule 900(26)) in which the underlying security traded.
5. No Change.
6. No Change.
7. No Change.

.02 In connection with paragraph 4 of Commentary .01 above, the Exchange shall not open for trading any additional series of option contracts of the class covering an underlying security at any time when the market price per share of such underlying security is less than $3 in the primary market in which it is traded *unless the additional series is traded on at least one other registered national securities exchange and at the time the additional series was listed by such other registered national securities exchange it met the $3 market price requirement.* Subject to Paragraph 4 of Commentary .01 above, the Exchange may open for trading additional series of option contracts of a class covering an underlying security when the market price per share of such underlying security is at or above $3 at the time such additional series are authorized for trading. For purposes of this Commentary .02, the market price of such underlying security is measured by (i) for intra-day series additions, the last reported trade in the primary market in which the underlying security trades at the time the Exchange determines to add these additional series; and (ii) for next-day and expiration series additions, the closing price reported in the primary market in which the underlying security traded on the last trading day before the series are added.

.03 No Change.
.04 No Change.
.05 No Change.
.06 No Change.
.07 No Change.
.08 No Change.
.09 No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Commentary .01 to Amex Rule 916 sets forth the guidelines to be used in determining whether an underlying individual equity security previously approved for options trading meets the requirements for continuance of such approval. The Amex states that these maintenance listing standards are uniform among the options exchanges. Specifically, Guideline 4 of Commentary .01 to Rule 916 ("Guideline 4") states that the Exchange may not list additional series for an option class if the market price per share of the underlying security closed below $3 on the previous trading day as measured by the highest closing price reported in the primary market in which the underlying security is traded.[4] If the underlying security does not meet the guideline price then the Exchange will not open for trading additional series of that class and may take other actions such as prohibiting opening purchase transactions in existing series. Subject to Guideline 4, Commentary .02 to Rule 916 provides that the Exchange may open for trading additional series of options contracts of the class covering an underlying security at any time when the market price per share of such underlying security is at or above $3 at the time such additional series are authorized for trading.[5]

In recent months, the Exchange notes that the addition of additional series of existing options classes have not been uniform due to the operation of the maintenance listing standards. For example, for intra-day series additions, the underlying security may trade at or above $3 for a brief period and then drop below $3 for the foreseeable future. If an exchange and its staff fail to quickly note that a particular underlying security is trading at or above $3, the Exchange may be prohibited from adding the additional series if at the time of authorization the underlying security is trading below $3.[6] Accordingly, the ability to trade an additional series of an approved options class may solely depend on the exchange that is quicker posting (*i.e.* point and click) or bringing up the series. The Exchange states that this is not the intention of the maintenance listing standard and is contrary to the purpose of the Act in promoting the development of a national market system for options. In addition, the mechanics of adding an additional series of approved options classes, especially intra-day, is effectively anti-competitive.

The Exchange proposes to amend Guideline 4 to Commentary .01 and Commentary .02 to Rule 916 to permit the addition of any additional series of options contract of the class covering such underlying security regardless of the market price of the underlying security *if* such options series is traded on at least one other registered national securities exchange.[7] This amendment to Commentary .02 to Rule 916 will provide that, for underlying securities that satisfy all of the maintenance listing requirements other than the $3.00 per share price requirement, the Exchange would be permitted to list additional options series on securities regardless of the market price so long as such series are traded on at least one other registered national securities exchange. The Amex does not believe that the $3 guideline is necessary to accomplish the intended purpose of the maintenance requirement when the options series is trading at another options exchange. In particular, the Amex believes that the listing of a series already trading at another options exchange is not susceptible to manipulation and will not lead to a proliferation of options classes on underlying securities that lack liquidity needed to maintain fair and orderly markets.

The Exchange believes that the maintenance listing standards other than price assure that options will be listed and traded on the securities of companies that are financially sound. Accordingly, the Exchange will continue to apply the other maintenance listing guidelines which assure that: (1) The underlying security consists of a large number of outstanding shares held by non-affiliates of the issuer; (2) the underlying security is actively-traded; (3) there are a large number of holders

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This notice, representing Amendment No. 1, replaces the original filing in its entirety. In Amendment No. 1, the Exchange revised the proposed rule text to add the following language: "and at the time the additional series was listed by such other registered national securities exchange it met the $3 market price requirement"; and requested expedited review and accelerated effectiveness of the proposed rule change, as amended, pursuant to Section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(2). *See* letter from Jeffrey Burns, Assistant General Counsel, Amex, to Florence E. Harmon, Assistant Director, Division of Market Regulation, Commission, dated August 15, 2002 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 45074 (November 16, 2001), 66 FR 59278 (November 27, 2001). The Amex amended Commentaries .01 and .02 to Rule 916 to reduce from $5 to $3 the price above which the underlying security must be traded before the Exchange may add additional series of options.

[5] Commentary .02 to Rule 916 provides that the market price for such underlying security is measured by (i) for intra-day series additions, the last reported trade in the primary market in which the underlying security is traded at the time the Exchange determines to add these additional series; and (ii) for next-day and expiration series additions, the closing price reported in the primary market in which the underlying security is traded on the last trading day before the series are added.

[6] During the past three (3) months, the Amex has been unable to add additional series of approved options classes on the following underlying securities: (1) The Williams Companies, Inc.; (2) Elan Corporation Plc; (3) Atmel Corporation; (4) JDS Uniphase Corporation; and (5) Lucent Technologies Inc.

[7] The Exchange states that this proposal is consistent with a similar change to the Exchange's original listing criteria permitting the listing of an options class without reference to the market price of the underlying security if such options are traded on at least one other national securities exchange and the average daily trading volume for such options over the last three (3) calendar months preceding the date of selection has been 5,000 contracts. *See* Commentary .01 to Rule 915 and Securities Exchange Act Release No. 45505 (March 5, 2002), 67 FR 10941 (March 11, 2002).

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of the underlying security; and (4) the underlying security continues to be listed on a national securities exchange or traded through the facilities of a national securities association.

The Amex believes that the demands of options customers and the marketplace should determine the securities on which options continue to be traded. The Exchange represents that the use of the revised guidelines will continue to ensure that options will be traded on securities of companies that are financially sound and are still subject to adequate minimum standards.

The Amex believes that although the maintenance listing requirements are generally uniform among the options exchanges, the application of such standards in the current market environment have had an anticompetitive effect. Specifically, the Exchange states that on several occasions during the past year, it was unable to list additional options series because the price of the underlying security had fallen below the requirement of $3 after a series was added on another exchange.[8] Because the underlying security will otherwise continue to meet the maintenance listing standards, the other options exchange(s) may continue to trade the additional series while the Amex (as well as other options exchanges) may not add such options series.

Amex believes that its proposal is narrowly drafted to address the circumstances where a series of an approved options class is currently ineligible for addition on the Amex while at the same time, such series is trading on another options exchange. The Amex notes that when an underlying security otherwise meets the maintenance listing standards and at least one other exchange trades the options series, the options already are available to the investing public. The Exchange believes competition for order flow in these additional series of approved options classes will benefit investors and the marketplace for both options and the underlying security. Accordingly, the Amex notes that the current proposal will not introduce any additional options series.

Because the addition of an options series under the proposed alternative maintenance listing standard requires trading of such series on another options exchange, the Amex believes that there would be no investor protection concerns with listing such additional options series on the Amex. In addition, the Exchange believes that listing these options series on the Amex would enhance competition and benefit investors.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–68 and should be submitted by September 16, 2002.

IV. Commissions' Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6(b)(5) of the Act.[11] The Commission believes investors benefit from the competition among options exchanges that results when options are listed on more than one options exchange; and that investors are sufficiently protected, even though Amex will be permitted to list a series of option contracts when the market price of the underlying security is below $3, because all of the other maintenance listing requirements of the Exchange must still be complied with, and the market price of the underlying security was at or above $3 when it was listed on the first options exchange.[12] Therefore, the Commission finds that proposed rule change, as amended, will promote just and equitable principles of trade, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[13]

The Amex has requested that the proposed rule change, as amended, be given accelerated approval pursuant to Section 19(b)(2) of the Act.[14] The Commission believes accelerated approval of the proposal would enhance competition among the options exchanges. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[15] to approve the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–Amex–2002–68), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

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[8] *See supra* note 6.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(5).

[12] The Commission notes that such series must have been properly listed by the original options exchange.

[13] 15 U.S.C. 78f(b)(5). In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(2).

[15] *Id.*

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 240.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46380; File No. SR–MSRB–2002–07]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change Relating to Rule G–14, on Reports of Sales or Purchases

August 19, 2002.

On July 3, 2002, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–2002–07). The proposed rule change relates to MSRB Rule G–14, on Reports of Sales or Purchases.

The Commission published the proposed rule change for comment in the **Federal Register** on July 17, 2002.[3] The Commission received one comment letter relating to the forgoing proposed rule change. The proposed rule change does not change the wording of Rule G–14. This order approves the Board's proposal.

I. Description of the Proposed Rule Change

To add greater transparency in the municipal securities market, the MSRB filed with the Commission the forgoing proposed rule change. The MSRB has a long-standing policy to increase price transparency in the municipal securities market, with the ultimate goal of disseminating comprehensive and contemporaneous pricing data. Since 1995, the MSRB has expanded the scope of the public transparency reports in several steps. Each step has provided industry participants and the public successively more information about the market.[4]

In May, 2001, the MSRB announced its plan to begin reporting trades in "real time" on a schedule coordinated with the industry's timetable for migration to an environment of next-day settlement of securities transactions.[5] To attain real-time reporting, the MSRB intends in the future to file an amendment to Rule G–14 to require dealers to report their trades within 15 minutes of the time they are effected. The planned implementation date for real-time reporting is now set for mid-2004.

Prior to the implementation of real-time transaction reporting, the MSRB intends to continue to increase transparency in the market using the currently available data. As its next step, the MSRB is now proposing to disseminate the Daily Comprehensive Report with a one-week delay. The proposed Report would contain details of all municipal securities transactions that were effected during the trading day one week earlier. Data about each trade on the proposed Report would be the same as that on the current Daily Comprehensive Transaction Report. For each trade, the proposed Report, like the current report, would show the trade date, the CUSIP number of the issue traded, a short issue description, the par value traded, the time of trade reported by the dealer, the price of the transaction, and the dealer-reported yield of the transaction, if any. Each transaction would be categorized as a sale by a dealer to a customer, a purchase from a customer, or an inter-dealer trade.

The current Daily Comprehensive Report began operation on November 1, 2001.[6] The proposed Report, with a one-week delay, would replace the current report that has a two-week delay.

Description of Service

Like the current two-week delayed report, the new Report will be available daily to subscribers. Subscribers to the current two-week delayed report would continue to access the proposed Report via the Internet and download copies from the MSRB's computer using a password-protected FTP account. The MSRB expects that the proposed Report would be available within two weeks of approval by the Commission.

The MSRB will continue the established annual fee for the Service of $2,000. The fee is structured approximately to defray the MSRB's costs for production of daily data sets, operation of telecommunications lines, and subscription maintenance. Subscription fees that have been paid for the two-week delayed report will be applied toward the one-week delayed report.

To enable the MSRB to compile a comprehensive trades database for enforcement purposes, dealers report a small amount of data after trade date, and a few trades may be added, deleted or amended as late as a few weeks after trade date.[7] To ensure that subscribers to the report have access to those trades, the MSRB will make available each day an "updated" report containing all trades effected one month previously. This will enable subscribers to see the effect of changes reported by dealers after the one-week report was disseminated.

II. Summary of Comments

The Commission received one comment letter addressing the proposed rule change.[8] In addition to offering support for the proposed rule change, this letter provided suggestions on how to advance price transparency in the future.

The comment letter, from The Bond Market Association ("TBMA"), expressed strong support of the MSRB's initiative to decrease the time interval for transparency of all reported bonds.[9] The TBMA expressed its belief that decreasing the dissemination of trade data to one-week delay, from two-weeks, may enhance the value of the data to all market participants. Moreover, the more current information would not confuse investors or adversely impact the municipal market.[10] But, with its support of the proposal, the letter urges the MSRB to create a process for evaluating any adverse market impacts that may result from disseminating trade information for "very inactive bonds".[11] This process of evaluation would involve several critical questions relating to the objective and relevancy of "full transparency" in the municipal market.[12] TBMA believes that price dissemination on a next-day basis for all bonds that trade only once per day

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–46180 (July 10, 2002), 67 FR 47012.

[4] The MSRB's report summarizing prices for issues that are frequently traded on the inter-dealer market began operation in 1995; in 1998, dealer-customer prices were added in a second summary report; in January 2000, a report with details of trades in frequently traded issues was added; in October 2000, a monthly comprehensive report, covering all transactions effected during the previous month, began operation; and in November 2001, a daily comprehensive report was begun, with trades effected two weeks earlier.

[5] *See* "Real-Time Reporting of Municipal Securities Transactions," *MSRB Reports*, Vol. 21, No. 2 (July 2001) at 31–36.

[6] *See* Release No. 34–44894 (October 2, 2001), 66 FR 51485 (October 9, 2001).

[7] *See* Release No. 34–43060 (July 20, 2000), 65 FR 46188–46189 (July 27, 2000) at note 7. Approximately one percent of the trades in the database have data submitted between one week and one month after trade date.

[8] Letter from Frank Chin, Salomon Smith Barney, Chair, Municipal Executive Committee, The Bond Market Association, to Mr. Jonathan G. Katz, Secretary, Commission, dated August 8, 2002.

[9] *See id* at page 2.

[10] *See id.*

[11] The TBMA letter makes reference to the recent Commission approval of the MSRB's proposed rule change that decreases the trade threshold for information dissemination to three trades per day from four trades. *See* Release No. 34–45861 (May 1, 2002) 67 FR 30989.

[12] *See* TBMA letter at page 3.

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"would not necessarily provide useful information to investors and other market participants or could adversely affect liquidity and be misleading."[13] Furthermore, the TBMA believes that trading activity that is limited to a single trade may reflect insufficient market interest to justify dissemination.

III. Discussion

The Commission must approve a proposed MSRB rule change if the Commission finds that the proposal is consistent with the requirements set forth under the Act and the rules and regulations thereunder, which govern the MSRB.[14] The language of Section 15B(b)(2)(C) of the Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[15]

After careful review, the Commission finds that the MSRB's proposed rule change relating to Rule G–14, on Reports of Sales or Purchases, meets the requisite statutory standard. The Commission believes that this proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder. In addition, the Commission finds that the proposed rule is consistent with the requirements of Section 15B(b)(2)(C) of the Act, as set forth above.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[16] that the proposed rule change (File No. SR–MSRB–2002–07) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21607 Filed 8–23–02; 8:45 am]

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[13] *See id* at page 2.

[14] Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78o–4(b)(2)(C).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46376; File No. SR–NASD–99–04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Microcap Initiative—Recommendation Rule

August 19, 2002.

I. Introduction

On February 19, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change that would require members to review current financial statements of, and current material business information about, an issuer prior to recommending a transaction to a customer in an over-the-counter ("OTC") equity security.

The proposed rule change was published for comment in the **Federal Register** on March 1, 1999.[3] The Commission received six comment letters on the Original Proposal. On January 11, 2002, the NASD filed Amendment No. 1 to the proposed rule change, which among other things addressed the issues raised by commenters.[4] Amendment No. 1 was published for comment in the **Federal Register** on January 22, 2002.[5] On July 26, 2002, the NASD filed Amendment No. 2 to the proposed rule change.[6]

The Commission received no comments regarding the proposal as amended. This order approves the proposed rule change, as amended.

II. Description of Proposal

To respond to concerns about abuses in the trading and sales of thinly traded, thinly capitalized securities (*i.e.*, microcap securities) quoted in the OTC market, NASD Regulation has proposed to amend NASD rules to include new NASD Rule 2315, entitled "Recommendations to Customers in OTC Equity Securities" ("Recommendation Rule" or "Rule"). In the view of NASD Regulation, the lack of reliable and current financial information about issuers of microcap securities can create the potential for fraud and manipulation.

The proposed rule would be limited to equity securities that are published or quoted in a quotation medium and that either: (1) Are not listed on Nasdaq or a national securities exchange, or (2) are listed on a regional securities exchange and do not qualify for dissemination of transaction reports via the Consolidated Tape ("covered securities").[7] The requirements in the Recommendation Rule is intended to supplement requirements under the federal securities laws and under NASD rules that a broker-dealer that recommends securities to its customers is required to have a reasonable basis for those recommendations.[8] In addition, the proposed rule is not intended to act or operate as a presumption or as a safe harbor for purposes of determining suitability or for any other legal obligation or requirement imposed under NASD rules or the federal securities laws.

A. Review Requirements

Proposed NASD Rule 2315 would require a member and its associated persons to review the current financial statements of an issuer and current material business information about an issuer prior to recommending the purchase or short sale of any OTC equity security to a customer.[9] Under the proposed rule, members must designate a person who is registered as a Series 24 principal, or who is supervised by a Series 24 principal, to conduct the required review. The person designated by the member must have the requisite skills, background and knowledge to conduct the review. Members are also required to document the information reviewed, the date of the review, and the name of the person performing the review of the required information.

B. Information To Be Reviewed

As stated above, members must review the "current financial statements" of the issuer, as well as "current material business information" about the issuer, before recommending the purchase or short sale of an OTC security. NASD Regulation has stated that current material business information includes material information that is available or relates to events that have occurred within the last 12 months prior to the recommendation. Under the Recommendation Rule, because of differences in accounting practices, what constitutes "current financial statements" depends on whether the issuer is or is not a foreign private issuer.

1. Issuers That Are Not Foreign Private Issuers

The current financial statements of issuers that are not foreign private issuers that must be reviewed prior to a recommendation to purchase or sell short a covered security are as follows:

- Publicly available financial statements and other financial reports filed during the 12 months preceding the date of the recommendation with the issuer's principal financial or securities regulatory authority in its home jurisdiction;
- All publicly available financial information filed with the Commission during the 12 months preceding the date of the recommendation contained in registration statements or Regulation A filings;
- A balance sheet as of a date less than 15 months before the date of recommendation; and
- A statement of profit and loss for the 12 months preceding the date of the balance sheet.

However, if the balance sheet is not as of a date less then 6 months before the date of the recommendation, the member must review additional statements of profit and loss for the period from the date of the balance sheet to a date less than 6 months before the date of the recommendation.

2. Issuers That Are Foreign Private Issuers

The current financial statements of issuers who are foreign private issuers that must be reviewed prior to a recommendation for purchase or short sale are as follows:

- Publicly available financial statements and other financial reports filed during the 12 months preceding the date of the recommendation and up to the date of the recommendation with the issuer's principal financial or securities regulatory authority in its home jurisdiction, including the Commission, foreign regulatory authorities, bank and insurance regulators;
- A balance sheet as of a date less than 18 months before the date of the recommendation; and
- A statement of profit and loss for the 12 months preceding the date of the balance sheet.

However, if the balance sheet is not as of a date less than 9 months before the date of the recommendation, the member must review additional statements of profit and loss for the period from the date of the balance sheet to a date less than 9 months before the date of the recommendation, if any such statements have been prepared by the issuer.

In addition, if any issuer has not made current filings required by the issuer's principal financial or securities regulatory authority in its home jurisdiction, including the Commission, foreign regulatory authorities, or bank and insurance regulators, the required review must include an inquiry into the circumstances concerning the failure to make current filings, and a determination, based on all the facts and circumstances, that a recommendation is appropriate under the circumstances. Such a determination must be made in writing and maintained by the member.

C. Exemptions

Under the Recommendation Rule, there are several transactions that are not subject to the Rule. Broker-dealers are not required to comply with the Recommendation Rule when effecting the following transactions:

- Transactions that meet the requirements of Rule 504 of Regulation D of the Securities Act of 1933 ("Securities Act")[10] and transactions by[11] an issuer not involving any public offering pursuant to Section 4(2) of the Securities Act;[12]
- Transactions with or for an account that qualifies as an "institutional account" under NASD Rule 3110(c)(4) or with a customer that is a "qualified institutional buyer" under Rule 144A of the Securities Act[13] or "qualified purchaser" under Section 2(a)(51) of the Investment Company Act of 1940;[14]
- Transactions in an issuer's securities if the issuer has at least $50 million in total assets and $10 million in shareholder's equity are exempt;
- Transactions in securities of a bank as defined in Section 3(a)(6) of the Act[15] and/or insurance company subject to regulation by a state or federal bank or insurance regulatory authority are exempt;
- Transactions involving securities with a worldwide daily trading volume value of at least $100,000 during each month of the six full calendar months immediately before the date of the recommendation, and transactions involving any convertible security based on a security meeting this requirement are exempt; [16] and
- Transactions involving securities that have a bid price, as published in a quotation medium, of at least $50 per share.[17]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41075 (February 19, 1999), 64 FR 10037 ("Original Proposal").

[4] In the Original Proposal, the NASD proposed subparagraph (e) to NASD Rule 6740. That provision would have permitted a member to submit a certification to the NASD stating that the firm complied with the requirements of SEC Rule 15c2–11, 17 CFR 240.15c2–11, including the member's review obligation, if the documents the firm was required to review were contained in the Commission's Electronic Data Gathering and Retrieval System, in lieu of submitting a copy of the documents reviewed. This proposed rule text was deleted as part of Amendment No. 1, although the change was not reflected in the narrative portion of the Amendment.

[5] *See* Securities Exchange Act Release No. 45277 (January 14, 2002), 67 FR 2937.

[6] See Letter from Marc Menchel, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 26, 2002 ("Amendment No. 2). In Amendment No. 2, the NASD amended proposed NASD Rule 2315(a) to clarify that members conducting transactions in securities that are listed on a regional securities exchange, but do not qualify for dissemination of transaction reports via the Consolidated Tape, must comply with the review requirements of the Recommendation Rule if such securities are published or quoted in a quotation medium. The NASD also amended NASD Rule 2315(e)(1)(G)(2) to substitute "NASD" for the reference to "the Association" contained in the Rule.

[7] "Quotation medium" is defined as a system of general circulation to brokers or dealers that regularly disseminates quotations or indications of interest of identified brokers or dealers; or a publication, alternative trading system or other device that is used by brokers or dealers to disseminate quotations or indications of interest to others. The Recommendation Rule is intended to cover equity securities that are published or quoted in a quotation medium and that either: (1) Are not listed on Nasdaq or a national securities exchange, or (2) are listed on a regional securities exchange and do not qualify for dissemination of transaction reports via the Consolidated Tape.

[8] See NASD Rule 2310 (Suitability Rule), which requires a member to have reasonable grounds for believing that a recommendation to a customer is suitable based on facts disclosed, other security holdings and financial situation and needs.

[9] The current financial and business information that a broker-dealer must review prior to recommending the purchase or short sale of a covered security is similar to that required by Rule 15c2–11 under the Act for those broker-dealers initiating or resuming quotations for securities covered by that rule. 17 CFR 240.15c2–11.

[10] 17 CFR 230.504.

[11] Proposed NASD Rule 2315(e)(1)(A) contained a typographical error. In pertinent part, the Rule should read "transactions *by* an issuer not involving any public offering pursuant to Section 4(2) of the Securities Act" instead of "transactions *with* an issuer not involving any public offering pursuant to Section 4(2) of the Securities Act." (Emphasis added.) Telephone conversation between Phil Shaikun, Associate General Counsel, NASD Regulation, and Jennifer Colihan, Special Counsel, Division, Commission, on August 12, 2002.

[12] 15 U.S.C. 77d(2).

[13] 15 U.S.C. 77(a).

[14] 15 U.S.C. 80a–2(a)(51).

[15] 15 U.S.C. 78c(a)(6).

[16] *See* Securities Exchange Act Release No. 41110 (February 25, 1999), 64 11124 (March 8, 1999)("Rule 15c2–11 Reproposing Release"). This exemption is consistent with exemptions contained proposed Rules 15c2–11(h)(6) and (7).

[17] This exemption is consistent with an exemption contained in proposed Rule 15c2–

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In addition, under the proposed rule the NASD may, for good cause shown, exempt any person, security or transaction, or any class or classes of person, securities or transactions, either unconditionally or on specified terms, from any or all of the requirements of the Rule if it determines that such exemption is consistent with the purpose of the rule, the protection of investors and the public interest.[18]

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule is consistent with the provisions of Section 15A(b)(6) of the Act,[19] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

A. Review Requirements

Manipulative and fraudulent schemes often have involved infrequently-traded securities of little-known issuers. Unscrupulous broker-dealers have recommended that customers purchase the securities of unseasoned issuers whose securities do not trade in a listed market, without giving due regard to the fundamentals regarding these issuers. Among the most critical pieces of information that a broker-dealer should have before making a recommendation regarding a security are the financial condition of, and business information about, the issuer, particularly with respect to those issuers whose securities are not listed on a national securities exchange or Nasdaq. Therefore, the Commission finds that the NASD's proposal to require broker-dealers to independently review current financial and business information about these issuers prior to making a recommendation to purchase or sell short covered securities is consistent with the Act, particularly its mandate that the Association's rules be designed to prevent fraudulent and manipulative acts.[20]

While the Commission considers the review requirement to be appropriate, it also believes that the requirement is properly tailored to meet the Rule's objectives without over-burdening members. Under the Recommendation Rule, broker-dealers are required to review publicly available current financial statements and material business information. The Commission believes that the Recommendation Rule establishes appropriate parameters regarding what constitutes "current financial information" and "current material business information" that members and their sales personnel must review before making a recommendation as a means to lessen the opportunity for abusive practices when broker-dealers recommend covered securities to investors.

1. Foreign Private Issuers vs. Non-foreign Private Issuers

Further, as detailed above, these definitions also distinguish between information that must be reviewed for issuers that are foreign private issuers and those that are not. The Commission believes that this is an important distinction because the customary accounting periods for foreign issuers are often different from those for domestic issuers. Foreign issuers maybe permitted to report financial information on a semi-annual basis, rather than on a quarterly basis, as is required for domestic issuers. Therefore, the Commission believes that it is appropriate to establish different time parameters regarding when financial information should be considered "current" for foreign private issuers in order to address this difference in accounting practices.

2. Delinquent Issuers

The Commission notes that the Recommendation Rule contains a provision covering the situation when the issuer has not made current filings as required by the issuer's principal financial or securities regulatory authority in its home jurisdiction, including the Commission, foreign regulatory authorities, and bank and insurance regulators. In the event the issuer is delinquent with its filings, the Recommendation Rule requires that the member make an inquiry into the circumstances concerning the failure to make current filings and make a determination that a recommendation is appropriate under the circumstances.

The Commission believes that the Rule is appropriately limited in that it does not prohibit recommendations in the event the issuer's filings are delinquent, nor does it require that a member confirm that the issuer is not delinquent in its filings with any regulatory authority prior to making a recommendation. Rather, the Rule requires that a member conduct an inquiry in the event that an issuer has been delinquent in its filings with its principal financial or securities regulatory authority in its home jurisdiction and then determine whether the recommendation is appropriate. The Commission believes that this requirement strikes a proper balance in those cases where the issuer has failed to make current filings.

3. Persons Responsible for Review

The Commission believes that it is appropriate to require that the person responsible for conducting the financial information review be registered as a Series 24 principal or be someone who is supervised by a Series 24 principal, as these individuals are under the jurisdiction of the NASD. Registered Series 24 principals are persons who are associated with a member and are permitted to manage or supervise the member's investment banking or securities business for corporate securities, direct participation programs, and investment company products/variable contracts. Therefore, the Commission believes that this requirement will ensure that financial information is reviewed by individuals who have the proper skills, background and knowledge to conduct a thorough analysis of the information prior to the firm or its associated persons making a recommendation.

B. Exemptions From Recommendation Rule'

As indicated above, the Recommendation Rule lists several transactions that are exempt from the Rule and provides the Association with the authority, for good cause, to grant additional exemptions from its provisions. The Commission believes that these provisions are appropriately tailored to serve the purposes of the Rule so that only those transactions that are more likely to raise risks for retail investors are subject to the Rule, and that those transactions that are less likely to be the subject of fraudulent sales practices are not covered by the Rule.

C. Interaction With Other NASD Rules and Federal Securities Laws

Finally, as noted in the Preliminary Note to the Recommendation Rule, the Commission emphasizes that the requirements of the Rule are in addition to other existing broker-dealer obligations under NASD rules and the federal securities laws, including obligations to determine the suitability of particular securities transactions with customers and to have a reasonable basis for any recommendation made to a customer. The Commission reiterates that the Recommendation Rule is not intended to act or operate as a presumption or as a safe harbor for purposes of determining suitability or for any other legal obligation or requirement imposed under NASD rule or the federal securities laws.

D. Operational Date

The Commission notes that the NASD will announce the operational date of the proposed rule change in a Notice to Members to be published no later than 60 days following the date of approval by the Commission. The operational date will be 30 days following the date of publication of the Notice to Members announcing Commission approval.

IV. Amendment No. 2

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 2, the NASD amended NASD Rule 2315(a) to add a category of equity securities that, pursuant to NASD Rule 6530(b)(2), are eligible for quotation on the OTCBB. This change provides that members conducting transactions in securities that are listed on a regional securities exchange, but do not qualify for dissemination of transaction reports via the Consolidated Tape, must comply with the review requirements of the Recommendation Rule if such securities are published or quoted in a quotation medium.

Because securities that are listed on a regional securities exchange but not eligible for the reporting of transactions to the Consolidated Tape are eligible for quotation on the OTCBB, and thus fall within the category of securities contemplated to be covered by the Recommendation Rule, the Commission believes that it is appropriate for these securities to be covered by the Recommendation Rule.

In Amendment No. 2, the NASD also amended NASD Rule 2315(e)(1)(G)(2) to substitute "NASD" for the reference to "the Association" contained in the Rule. The Commission believes that this is a technical, non-substantive change to the proposal.

In sum, the Commission finds that the NASD's proposed changes in Amendment No. 2 further strengthen and clarify the proposed rule change and raise no new regulatory issues. Further, the Commission believes that Amendment No. 2 does not significantly alter the original proposal, which was subject to a full notice and comment period. Therefore, the Commission finds that granting accelerated approval to Amendment No. 2 is appropriate and consistent with Section 19(b)(2) of the Act.[21]

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether the proposed amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendment that are filed with the Commission, and all written communications relating to the amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–04 and should be submitted by [insert date 21 days from date of publication].

VI. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NASD–99–04), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21651 Filed 8–25–02; 8:45 am]

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11(h)(8). *See* Rule 15c2–11 Reproposing Release, *supra* note 16.

[18] As part of this proposed rule change, the NASD has added the Recommendation Rule to NASD Rule 9610, which provides the procedures for requesting exemptive relief from various Association rules.

[19] 15 U.S.C. 78*o*–3(b)(6).

[20] The Recommendation Rule will apply to equity securities that are quoted on the OTCBB, in The Pink Sheets, or in any other system that regularly disseminates indications of interest and quotation information among broker-dealers and those securities either: (1) Are not listed on Nasdaq or a national securities exchange, or (2) are listed on a regional securities exchange and do not qualify for dissemination of transaction reports via the Consolidated Tape. *See* Proposed NASD Rule 2315(a). As part of its application to become a national securities exchange, Nasdaq has filed rules to operate the OTCBB, which is expected to be renamed the Bulletin Board Service ("BBS"). NASD Regulation has advised the Commission that the Recommendation Rule will apply to BBS securities when Nasdaq operates the BBS. The Commission is also aware that Nasdaq intends to develop the OTCBB/BBS into a listed market, which will be called the Bulletin Board Exchange ("BBX"). *See* NASD–2001–82, pending before the Commission. Securities trading on the BBX would be listed securities, and therefore would not be covered under the current wording of the Recommendation Rule. NASD Regulation has advised the Commission that it will amend the Recommendation Rule at the appropriate time to ensure that securities listed on the BBX are covered by the Rule.

[21] 15 U.S.C. 78*s*(b)(2).

[22] 15 U.S.C. 78*s*(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46374; File No. SR–NSCC–2002–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Revising the Fee Schedule

August 16, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 29, 2002, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will adjust the fees NSCC charges for the Initial Application Information ("APP") of its Insurance Processing Service ("IPS").[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B,

[1] 15 U.S.C. 78*s*(b)(1).

[2] The new fee schedule is attached as Exhibit A to NSCC's filing.

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and C below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to adjust the fees that NSCC charges for the APP feature of its IPS. The effective date for the adjustment is (i) July 1, 2002, with respect to changes resulting in a decrease in fees paid by members and (ii) August 1, 2002, with respect to all other changes.

The current transaction fee for APP is:

- For 0 to 249 items per month, $7.50 per item;
- For 250 to 999 items per month, $4.00 per item;
- For 1,000 to 2,499 items per month, $2.00 per item; and
- For more than 2,499 items per month, $1.00 per item.

Pursuant to this rule change, the transaction fee for APP will be as follows:

- For 0 to 499 items per month, $5.00 per item;
- For 500 to 1,249 items per month, $4.00 per item;
- For 1,250 to 2,499 items per month, $2.00 per item; and
- For more than 2,499 items per month, $1.00 per item.

The file fee of $15.00 per file, per day will continue to apply to APP.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among NSCC's participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC has notified participants who use IPS of the fee changes. NSCC will notify the Commission of any written comments received by NSCC.

[3] The Commission has modified the text of the summaries prepared by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b-4(f)(2)[5] thereunder because the proposed rule change is changing a due, fee, or other charge. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the rule proposal that are filed with the Commission, and all written communications relating to the rule proposal between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at NSCC's principal office. All submissions should refer to File No. SR–NSCC–2002–07 and should be submitted by September 16, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21609 Filed 8–23–02; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4106]

Culturally Significant Objects Imported for Exhibition; Determinations: "George Romney, 1734–1802: British Art's Forgotten Genius"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "George Romney 1734–1802: British Art's Forgotten Genius," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Huntington Library, Art Collections, and Botanical Gardens, San Marino, CA, from on or about September 15, 2002, to on or about December 1, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 19, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–21682 Filed 8–23–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–13191]

Review of Great Lakes Pilotage Bridge Hour Standards

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Coast Guard is holding four public meetings at which interested parties will be given the opportunity to speak about issues relevant to Great Lakes Pilotage Bridge Hour Standards. The Coast Guard is conducting a review to determine the appropriate bridge hour standards for pilotage on the Great Lakes.

DATES: The meeting dates are:

1. September 5, 2002, 4 p.m. to 7 p.m., Massena, NY.
2. October 10, 2002, time to be announced in later notice, Duluth, MN.
3. October 21, 2002, 10 a.m. to 1 p.m., Cleveland, OH.
4. October 24, 2002, 10 a.m. to 1 p.m., Washington, DC.

Allow enough time to pass through security at Federal buildings. Written material and requests to make oral presentations should reach the Coast Guard not later than 2 working days before the meeting you plan to attend. These meetings may close early if all business is finished.

ADDRESSES: The meeting locations are:

1. Massena—St. Lawrence Hotel, corner of Main Street and West Orvis Street, Massena, NY 13662.
2. Duluth—location to be announced in later notice.
3. Cleveland—Marine Safety Office, Coast Guard Twin Anchors Club, 1055 E. 9th Street, Cleveland, OH 44114.
4. Washington—U.S. Department of Transportation Headquarters (Nassif) Building, room 6200–6204, 400 Seventh Street SW., Washington, DC 20590.

Send requests to make oral presentations, comments, and written material for distribution to LCDR Mary K. Jager, Commandant (G–MW), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice, and the convening letter for the Coast Guard's review of Great Lakes Pilotage bridge hour standards, including review questions, are available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: LCDR Mary K. Jager, telephone 202–267–0715, fax 202–267–4700.

SUPPLEMENTARY INFORMATION:

The Review

The review is being conducted to study the Coast Guard's management and methodology for the development of Great Lakes pilotage bridge hour standards and to produce a recommendation of the appropriate standards. Bridge hour standards are a critical element in determining the number of U.S. pilots needed to provide service to commercial vessels engaged in foreign trade on the Great Lakes. The current bridge hour standards are published in the appendix, Ratemaking Analyses and Methodology, to 46 CFR part 404.

Procedural

RADM J. T. Riker, USCGR will chair the four public meetings. The four public meetings are open for public participation. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. The speaker's time may be limited. Please bring a written copy of remarks to be entered into the record in the event that you are not able to complete them verbally. If you would like to make an oral presentation at a meeting, please notify LCDR Mary K. Jager no later than 2 working days before that meeting. If you would like a copy of your material distributed at a meeting, please submit 15 copies to LCDR Mary K. Jager no later than 2 working days before that meeting.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at a meeting, contact LCDR Mary K. Jager as soon as possible.

Dated: August 19, 2002.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–21687 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Wiscasset and Edgecomb, ME

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent; correction.

SUMMARY: The FHWA published a notice of intent in the **Federal Register** of July 29, 2002 concerning an environmental impact statement (EIS) to be prepared for a proposed highway project in the Towns of Wiscasset and Edgecomb, Maine. The county information is incorrectly listed; the correct county is Lincoln County, Maine.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Hasselmann, Manager, Right of Way and Environment, Maine Division, Federal Highway Administration, 40 Western Ave. Augusta, Maine 04330, Tel. 207/622–8355, ext. 24; Edward W. Hanscom, P.E., Project Manager, Maine Department of Transportation, State House Station 16, Augusta, Maine 04333–0016, Tel. 207/624–3320.

Correction

In the **Federal Register** of July 29, 2002, in FR Doc. 02–19027 Filed 7–26–02; 8:45 am, on page 49056 under Summary, change "Sagadahoc County, Maine" to read "Lincoln County, Maine."

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: August 19, 2002.

Paul L. Lariviere,

Division Administrator, Federal Highway Administration, Augusta, Maine.

[FR Doc. 02–21615 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13188]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GAUGUIN.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 25, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13188. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th

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St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: GAUGUIN. *Owner:* Michael Mickelwait.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "42' in length, displaces 16,500 lbs."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "The intended use is for day charters, inter-island charters and sailing school cruises in the Hawaiian Island for six passengers or less."

(4) *Date and Place of construction* and (if applicable) rebuilding. *Date of construction:* 1995. *Place of construction:* France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "Having been in this business for 28 years I suspect minimal impact on other operations of this type as they are practically non-existent in Hawaii."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "I also believe that this waiver would have no impact on U.S. shipyards."

Dated: August 20, 2002.

By Order of the Maritime Administrator.

Christine S. Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 02–21633 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13189]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MAKALI'I.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 25, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13189. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: MAKALI'I. Owner: Michael Mickelwait.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "50' in length, 14.5 gross tonnage."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "The intended use is for day charters, inter-island charters and sailing school cruises in the Hawaiian Island for six passengers or less."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1990. *Place of construction:* France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "Having been in this business for 28 years I suspect minimal impact on other operations of this type as they are practically non-existent in Hawaii."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "I also believe that this waiver would have no impact on U.S. shipyards."

Dated: August 20, 2002.

By Order of the Maritime Administrator.

Christine S. Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 02–21634 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13177]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel NIKE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 25, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13177. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: NIKE. *Owner:* Elizabeth M. Solberg.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "Length—44.1 ft, 13.0 tons."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "Charter service; Southern Florida Keys."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1990. *Place of construction:* Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "There should not be any negative impact on other vessel operators since most charters carry more than twelve passengers and operate on half day to full day charters staying close to port.

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "There will be no negative impact on U.S. shipyards. We will use local shipyards for all major maintenance, supplies, etc. to keep this vessel operating under full compliance with all local and federal laws; *i.e.* U.S. Coastguard vessel regulations."

Dated: August 20, 2002.

By Order of the Maritime Administrator.

Christine S. Gurland,

Acting Secretary.

[FR Doc. 02–21635 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13019]

Notice of Receipt of Petition for Decision That Nonconforming 2003 Harley Davidson VRSCA Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2003 Harley Davidson VRSCA motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2003 Harley Davidson VRSCA motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 25, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA

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has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Milwaukee Motorcycle Imports, Inc. of Milwaukee, Wisconsin ("MMI") (Registered Importer 99–192) has petitioned NHTSA to decide whether non-U.S. certified 2003 Harley Davidson VRSCA motorcycles are eligible for importation into the United States. The vehicles which MMI believes are substantially similar are 2003 Harley Davidson VRSCA motorcycles that were manufactured for sale in the United States and certified by their manufacturer, Harley Davidson Motor Company, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2003 Harley Davidson VRSCA motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

MMI submitted information with its petition intended to demonstrate that non-U.S. certified 2003 Harley Davidson VRSCA motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2003 Harley Davidson VRSCA motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 122 *Motorcycle Brake Systems*, and 205 *Glazing Materials*.

The petitioner also states that vehicle identification number (VIN) plates that meet the requirements of 49 CFR part 565 are already affixed to non-U.S. certified 2003 Harley Davidson VRSCA motorcycles and that each vehicle's 17-digit VIN is stamped onto its headstock at the time of manufacture.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S. model headlamp assemblies which incorporate headlamps that are certified to meet the standard; (b) replacement of all stop lamp and directional signal bulbs with bulbs that are certified to meet the standard; (c) replacement of all lenses with lenses that are certified to meet the standard; and (d) replacement of all rear reflectors with red rear reflectors that are certified to meet the standard. The petitioner states that although there are no daytime running lights on the non-U.S. certified version of the vehicle, its headlamp and tail lamp are activated when the ignition is turned on.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information label that displays the recommended tire size, rim size, and cold inflation pressure. The petitioner states that the vehicle is equipped with rims that are certified to meet the standard.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour and a U.S. model odometer that measures distance traveled in miles. The petitioner states that the components installed will include a resetable trip meter with diagnostic capabilities, fuel gauge, low fuel light, oil pressure indicator light, cooling temperature light, engine diagnostic light, and security alarm light.

The petitioner states that when the vehicle has been brought into conformity with all applicable Federal motor vehicle safety standards, a certification label that meets the requirements of 49 CFR part 567 will be affixed to the front of the motorcycle frame.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 21, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–21685 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13018]

Notice of Receipt of Petition for Decision that Nonconforming 2003 Harley Davidson FX, FL, and XL Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2003 Harley Davidson FX, FL, and XL motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2003 Harley Davidson FX, FL, and XL motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 25, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Milwaukee Motorcycle Imports, Inc. of Milwaukee, Wisconsin ("MMI") (Registered Importer 99–192) has petitioned NHTSA to decide whether non-U.S. certified 2003 Harley Davidson FX, FL, and XL motorcycles are eligible for importation into the United States. The vehicles which MMI believes are substantially similar are 2003 Harley Davidson FX, FL, and XL motorcycles that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2003 Harley Davidson FX, FL, and XL motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

MMI submitted information with its petition intended to demonstrate that non-U.S. certified 2003 Harley Davidson FX, FL, and XL motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2003 Harley Davidson FX, FL, and XL motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 122 *Motorcycle Brake Systems*, and 205 *Glazing Materials*.

The petitioner also states that vehicle identification number plates that meet the requirements of 49 CFR part 565 are already affixed to non-U.S. certified 2003 Harley Davidson FX, FL, and XL motorcycles and that each vehicle's 17-digit VIN is stamped onto its headstock at the time of manufacture.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S. model headlamp assemblies which incorporate headlamps that are certified to meet the standard; (b) replacement of all stop lamp and directional signal bulbs with bulbs that are certified to meet the standard; (c) replacement of all lenses with lenses that are certified to meet the standard.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars*: installation of a tire information label that displays the recommended tire size, rim size, and cold inflation pressure.

Standard No. 123 *Motorcycle Controls and Displays*: installation of a U.S. model speedometer calibrated in miles per hour and a U.S. model odometer that measures distance traveled in miles.

The petitioner states that when the vehicle has been brought into conformity with all applicable Federal motor vehicle safety standards, a certification label that meets the requirements of 49 CFR Part 567 will be affixed to the front of the motorcycle frame.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 21, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–21686 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Removal of Designation of Terrorism—Related Blocked Person

AGENCIES: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control is removing the name of Mr. Liban Hussein from the list of those persons whose property and interests in property have been blocked pursuant to Executive Order 13224 of September 23, 2001, pertaining to persons who commit, threaten to commit, or support terrorism. Mr. Hussein was designated pursuant to Executive Order 13224 on November 7, 2001.

DATES: The removal of Mr. Liban Hussein from the list of persons whose property and interests in property have been blocked pursuant to Executive Order 13224 is effective as of July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202–622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat® readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: *fedbbs.access.gpo.gov*. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: *http://www.treas.gov/ofac*, or in fax form through the Office's 24-

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hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On September 23, 2001, President Bush issued Executive Order 13224 (the "Order") imposing economic sanctions on persons who commit, threaten to commit, or support certain acts of terrorism. In an annex to the Order, President Bush identified 12 individuals and 15 entities whose assets are blocked pursuant to the Order (66 FR 49079, September 25, 2001). Additional persons have been blocked pursuant to authorities set forth in the Order since that date and notice of such published in the **Federal Register**. One such additional person, Mr. Liban Hussein, was designated by the Secretary of the Treasury in consultation with the Secretary of State and the Attorney General, acting pursuant to authorities set forth in the Order, on November 7, 2001 (67 FR 12644, March 19, 2002). The Treasury's Office of Foreign Assets Control has determined that Mr. Hussein no longer continues to meet the standards for designation under E.O. 13224 and is appropriate for removal from the list of persons designated under Executive Order 13224.

The removal of Mr. Hussein's name from the list of those persons designated pursuant to Executive Order 13224 is effective as of July 15, 2002. All property and interests in property of Mr. Hussein, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of United States persons, including their overseas branches, are now unblocked.

The following designation is removed from the list of persons designated pursuant to Executive Order 13224:

INDIVIDUAL (1):

HUSSEIN, Liban, 2019 Bank St., Ottawa, Ontario, Canada; 925 Washington St., Dorchester, Massachusetts, U.S.A.

Dated: July 16, 2002.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: August 13, 2002.

Kenneth Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 02–21641 Filed 8–22–02; 10:34 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–8: OTS Nos. H–3881 and 05031]

Atlantic Liberty Savings, F.A., Brooklyn, NY; Approval of Conversion Application

Notice is hereby given that on, August 12, 2002, the Director, Examination Policy, Office of Thrift Supervision ("OTS"), or her designee, acting pursuant to delegated authority, approved the application of Atlantic Liberty Savings, F.A., Brooklyn, New York, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW., Washington, DC 20552, and the OTS Northeast Regional Office, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: August 21, 2002.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 02–21642 Filed 8–23–02; 8:45 am]

BILLING CODE 6720–02–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0098]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine if spouses, surviving spouses, and children of veterans are eligible for Dependents' Educational Assistance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 25, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0098" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Survivors' and Dependents' Educational Assistance (Under Provisions of chapter 35, Title 38, U.S.C.), VA Form 22–5490.

OMB Control Number: 2900–0098.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–5490 serves as an application for Dependents' Educational Assistance (DEA). Spouses, surviving spouses, and children of veterans must submit evidence to establish eligibility and entitlement to DEA under Title 38, U.S.C., 3513. VA uses the information to determine if an individual claimant qualifies for DEA benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 12,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 25,000.

Dated: August 15, 2002.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 02–21647 Filed 8–23–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0002]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine eligibility and benefit rates for veterans' disability pension and compensation based on individual unemployability.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 25, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0002" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Income-Net Worth and Employment Statement (In support of Claim for Total Disability Benefits), VA Form 21–527.

OMB Control Number: 2900–0002.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–527 is used by claimant to submit a supplemental claim for disability pension or disability compensation based on the individual's unemployability. The information requested is necessary to determine veteran's eligibility to these benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 104,440.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 104,440.

Dated: August 15, 2002.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 02–21648 Filed 8–23–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0171]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine an applicant's eligibility for tutorial assistance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 25, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0171" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application and Enrollment Certification for Individualized Tutorial Assistance (38 U.S.C. Chapters 30, 32, or 35 and 10 U.S.C. Chapter 1606), VA Form 22–1990t.

OMB Control Number: 2900–0171.

Type of Review: Extension of a currently approved collection.

Abstract: This form is used by students who are receiving VA educational assistance and who require tutoring to overcome a deficiency in one

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or more courses. The information submitted by the student must be certified by the tutor, and the certifying official of the educational institution that the student is attending.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,200 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,200.

Number of Responses Annually: 2,400.

Dated: August 15, 2002.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 02–21649 Filed 8–23–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0613]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed by State approving agencies to determine if courses offered by a flight school should be approved.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 25, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0613" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Recordkeeping at Flight Schools (38 U.S.C. 21.4263(h)(3).

OMB Control Number: 2900–0613.

Type of Review: Extension of a previously approved collection.

Abstract: The regulation requires flight schools to maintain records on students to support continued approval of their courses. State approving agencies that approve courses for VA training use these records to determine if courses offered by a flight school should be approved. VA representative inspects the records to determine if payments made to VA students at the flight school are correct.

Estimated Annual Burden: 800 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 265.

Estimated Annual Responses: 2,400.

Dated: August 15, 2002.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 02–21650 Filed 8–23–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 25, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–NEW."

SUPPLEMENTARY INFORMATION:

Title: Suspension of Monthly Check, VA Form 29–0759.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: When funds are returned to VA from the Department of the Treasury due to a beneficiary's check not being cashed within one year from the issued date, VA Form 29–0759 is used to inform the beneficiary that his or her monthly insurance checks have been suspended. The form will also be used to obtain the beneficiary's current address or if desired, a banking institution for direct deposit for monthly checks.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 3, 2002, at page 38320.

Affected Public: Individuals or households.

Estimated Annual Burden: 200 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,200.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–NEW" in any correspondence.

Dated: August 15, 2002.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 02–21646 Filed 8–23–02; 8:45 am]

BILLING CODE 8320–01–P

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Corrections

Federal Register
Vol. 67, No. 165
Monday, August 26, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[SW H–FRL–7241–8]

RIN 2050–AE88

Correction to Typographical Errors and Removal of Obsolete Language in Regulations on Reportable Quantities

Correction

In rule document 02–16866 beginning on page 45314, in the issue of Tuesday, July 9, 2002 make the following corrections:

1. On page 45314, in the third column, in the table of contents, in G.1.B., "c. Final RQ" should be moved to the next line before "Category Column".

2. On page 45317, in Table 1., in the first column, in the 10th line, "2, 4, 5,-TP acid" should be moved to the next line.

3. On page 45317, in Table 1., in the second column, in the 12th line, ")" should read ")–".

4. On page 45318, in Table 1., in the first column, in the 11th line from the bottom, "8alpha." should read "8alpha,".

5. On the same page, in the same table, in the same column, in the eighth line from the bottom, "8beta." should read "8beta,".

6. On the same page, in the same table, in the same column, in the fifth line from the bottom, "6beta." should read "6beta,".

7. On the same page, in the same table, in the same column, in the second line from the bottom, "6alpha." should read "6alpha,".

8. On page 45319, in Table 2., in the first column, in the first line, "***" should read "...".

9. On the same page, in the same table, in the second column, in the fourth line, "***" should read "...".

10. On the same page, in the same table, in the second column, in the seventh line, "redical" should read "radical".

11. On the same page, in the same table, in the first column, in the eighth line, "***" should read "...".

12. On the same page, in the same table, in the same column, in the same line, "smelting" should read "smelting.".

13. On the same page, in the same table, in the same column, in the ninth line, "***" should read "...".

14. On the same page, in the same table, in the same column, in the 10th line "***" should read "...".

15. On the same page, in the same table, in the same column, in the 12th line, "***" should read "...".

16. On the same page, in the same table, in the same column, in the 14th line, "***" should read "...".

17. On the same page, in the same table, in the same column, in the 16th line, "***" should read "...".

18. On the same page, in the same table, in the same column, in the 18th line, "***" should read "...".

19. On page 45319, in the same table, in the second column, in the fifth line from the bottom, "***" should read "...".

20. On page 45320, in Table 3., in the first column, in the fourth line, "n-2,3&" should read "n-2,3".

21. On page 45322, in Table 302.4, in the second column titled, "CASRN", in the fourth line, "107—20" should read "107—20—0".

22. On the same page, in the same table, in the same column, in the 10th line, "5417—640—19—7" should read "640—19—7".

23. On the same page, in the same table, in the same column, in the 11th line remove the "7".

24. On page 45323, in Table 302.4, in the first column titled "Hazardous substance", in the 24th line, "†Aroclor 1260" should read "Aroclor 1260".

25. On the same page, in the same table, in the same column, in the 18th line from the bottom, "(1,1-dimethyl-2-58-5-propynol)-" should read "(1,1-dimethyl-2propynol)-".

26. On page 45324, in Table 302.4, in the column titled "CASRN", in the fifth line, "496-72-0" should read "496–72–0".

27. On the same page, in the same table, in the same column, in the sixth line, "823–40-5" should read "823–40–5".

28. On the same page, in the same table, in the same column, in the seventh line, "25376-45–8" should read "25376–45–8".

29. On the same page, in the same table, in the 16th line from the bottom, "207—08-9" should read "207–08–9".

30. On the same page, in the same table, in the column titled "RCRA waste No.", in the 12th line from the bottom, delete the "–".

31. On the same page, in the same table, in the column titled ""CASRN", in the ninth line from the bottom, "191–24-2" should read "191–24–2".

32. On the same page, in the same table, in the column titled, "Statutory code", in the ninth line from the bottom, "–" should read "2".

33. On the same page, in the same table, in the column titled, "RCRA waste No.", in the 10th line from the bottom, delete the "—".

34. On the same page, in the same table, in the column titled, "Hazardous substance", in the eigth line from the bottom, "2H-1" should read "2H–1".

35. On the same page, in the same table, in the column titled, "RCRA waste No.", in the third line from the bottom, delete the "—".

36. On page 45325, in Table 302.4, in the column titled, "CASRN", in the 22nd line from the bottom, "13952-84–6" should read "13952–84–6".

37. On page 45327, in Table 302.4, in the column titled, "CASRN", in the 33rd line from the bottom, "589366–3" should read "5893–66–3".

38. On the same page, in the same table, in the column titled, "Hazarous substance", in the 12th line from the bottom, "6β" should read "6β–".

39. On page 45328, in Table 302.4, in the column titled, "CASRN" in the 20th line "1194–1–65—6" should read "1194–65–6".

40. On page 45332, in Table 302.4, in the column titled, "Hazardous substance", in the sixth line, "Lead‡‡" should read "Lead††".

41. On the same page, in the same table, in the same column, in the 21st line from the bottom remove, "Mercury" and add it to the line below.

42. On the same page, in the same table, in the column titled, "Statutory code", in the 21st line from the bottom, "2,3,4". should be moved to the line below.

43. On the same page, in the same table, in the column titled, "RCRA waste No.", in the 19th line from the bottom, "U151" should be moved to the line below.

44. On the same page, in the same table, in the column titled, "Fianl RQ pounds (Kg), in the 18th line from the bottom, " 1 (0.454)" should be moved to the line below.

45. On page 45333, in Table 302.4, in the column titled, "Hazardous substance", in the 16th line, "Oone" should read "one".

46. On the same page, in the same table, in the column titled, "Hazardous substance", in the seventh line from the bottom, "3.3‡" should read "3,3′".

47. On the same page, in the same table, in the same column, in the same line, "1,1‡" should read "1,1′".

48. On the same page, in the same column, in the same line, "4,4‡" should read "4,4′".

49. On page 45334, in Table 302.4, in the column, titled "Hazardous substance, in the second line, "Nickel‡" should read "Nickel††".

50. On page 45335, in Table 302.4, in the column titled, "Hazardous substance", in the 13th line, "4 methylcarbamate (ester)" should read "methylcarbamate (ester)".

51. On page 45350, in Appendix A to § 302.4, in the column titled, "CASRN", in the fifth line, after "68122" add "

* * * * *".

52. On the same page, in the same table, in the same column, in the third line from the bottom, after "91667", add"

* * * * *".

53. On page 45351, in Appendix A to §302.4, in the column titled, "CASRN", directly beneath "92933" add "93721".

[FR Doc. C2–16866 Filed 8–23–02; 8:45 am]

BILLING CODE 1505–01–D

GENERAL SERVICES ADMINISTRATION

Notice of Availability; Environmental Assessment and Finding of No Significant Impact for the Proposed Master Development Plan for the U.S. Consumer Product Safety Commission, Gaithersburg, MD

Correction

In notice document 02–21072 beginning on page 53945 in the issue of Tuesday, August 20, 2002, make the following corrections:

1. On page 53946, in the first column, under **FOR FURTHER INFORMATION CONTACT:**, in the last line the e-mail address "*ernest.hall@hsa.gov*" should read "*ernest.hall@gsa.gov*".

2. On the same page, in the same column, in the fourth paragraph, in the last line the e-mail address "*ernest.hall@hsa.gov*" should read "*ernest.hall@gsa.gov*".

[FR Doc. C2–21072 Filed 8–23–02; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Monday,
August 26, 2002

Part II

Department of Energy

10 CFR Part 600
Financial Assistance Regulations;
Proposed Rule

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DEPARTMENT OF ENERGY

10 CFR Part 600

RIN 1991–AB57

Financial Assistance Regulations

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and opportunity for public comment.

SUMMARY: The Department of Energy (DOE) proposes adding a new subpart to the DOE Assistance Regulations, making minor amendments to existing subparts to reflect this change, and eliminating a section that contains internal procedures for DOE officials or requirements that are contained in other sections. The new subpart would establish new administrative requirements that are specifically tailored for awards to for-profit organizations and eliminate the need to apply existing uniform administrative requirements for awards with institutions of higher education, hospitals, and other nonprofit organizations to awards with for-profit organizations.

DATES: Written comments must be received by October 25, 2002.

ADDRESSES: Comments (3 copies) should be addressed to: Trudy Wood, U.S. Department of Energy, Office of Procurement and Assistance Management, ME–61, 1000 Independence Avenue, SW, Washington, DC 20585. If possible, a copy should also be e-mailed to *fanotice@pr.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Trudy Wood, Office of Procurement and Assistance Policy, Department of Energy, at (202) 586–5625.

SUPPLEMENTARY INFORMATION:

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I. Background

Office of Management and Budget (OMB) Circular A–110 provides standards for the administration of grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations. OMB Circular A–110 also states that "Federal agencies may apply the provisions of this Circular to commercial organizations * * *." Consistent with this guidance, when DOE implemented the requirements of Circular A–110 in its financial assistance regulations at 10 CFR part 600, subpart B, the Department, as a matter of discretion, also applied the provisions of the Circular to commercial organizations.

DOE has been actively engaged in the Government-wide effort to streamline and simplify the application, administrative, and reporting procedures for Federal financial assistance programs pursuant to Public Law 106–107, Federal Financial Assistance Management Improvement Act of 1999 ("the Act"). As part of its initiative to consult with non-Federal entities, the Department solicited comments and suggestions from the grant community.

In response, DOE received comments from for-profit organizations relating to issues that were unique to DOE and that were not being addressed in the Government-wide effort to implement the Act. In response to these comments, DOE published a notice in the **Federal Register** on May 8, 2001 (66 FR 23197) requesting comments on whether DOE should initiate a rulemaking that established administrative requirements for financial assistance awards tailored specifically to for-profit organizations. The notice also requested comments on the specific changes proposed. DOE received three sets of comments and questions on the proposed initiative. The respondents strongly endorsed the concept of administrative requirements specifically tailored to for-profit organizations.

Today DOE is proposing to add a new subpart D containing provisions similar to subpart B but that have been tailored specifically for awards to for-profits organizations. If subpart D is promulgated as a final rule, for-profit organizations subject to subpart D would be relieved of obligations that would otherwise apply under subpart B. The provisions of subpart B would continue to apply to institutions of higher education, hospitals, and other nonprofit organizations.

II. Comments and Responses

This section presents a summary of the major comments and explains how DOE addressed the comments in drafting this proposed rule. DOE received one comment concerning intellectual property rights under Cooperative Research and Development Agreements (CRADAs). CRADAs are not financial assistance instruments and are not included in this rulemaking. This comment was provided to the Assistant General Counsel for Technology Transfer and Intellectual Property for his consideration. All other comments were considered in developing this proposed rule.

Comment: The **Federal Register** notice stated that the new subpart would allow DOE to apply less restrictive requirements to small awards. DOE should define small to include any award yielding less than $1 million a year to an individual company.

Response: The new subpart does not address less restrictive requirements for small awards, since subpart A, § 600.29, already contains less restrictive requirements for fixed obligation awards, which are small awards that may not exceed $100,000. These requirements apply to both nonprofit and for-profit organizations.

Comment: What is meant by certain minimum standards for financial management systems?

Response: Proposed § 600.311 would provide the minimum standards for financial management systems, which include: (1) Effective control of all funds; (2) accurate, current and complete records that document the source and application of funds; (3) to the extent that advance payments are authorized, procedures that minimize the time elapsing between the transfer of Federal funds to the recipient and the recipient's disbursement of these funds; and (4) a system to support charges for salaries and wages, whether treated as direct or indirect costs.

Comment: The Notice said that DOE would require a recipient that expended $300,000 or more in a year under a Federal award to have an audit. DOE should increase the trigger level for audit to $1 million per year.

Response: We agree that the trigger level should be increased. The proposed § 600.316, paragraph (a), would require that any recipient that expends $500,000 or more in a year under Federal awards have an audit made for that year by an independent auditor. DOE would consider raising the trigger level to $1 million, if comments to the proposed rule provide justification for such an increase.

Comment: Will audit costs be allowable?

Response: Yes. Proposed § 600.316, paragraph (f), states that audit costs (including a reasonable allocation of the costs of the audit of the recipient's financial statement, based on the relative benefit to the Government and the recipient) are allowable costs of DOE awards.

Comment: Will the DOE cost principles remain a requirement?

Response: Yes. Proposed § 600.317 provides for the use of cost principles that are applicable to the type of entity incurring the costs.

Comment: The new subpart should clarify the property standards. Would ISO9000 certification be deemed adequate compliance in property management?

Response: Proposed § 600.323 would contain the requirements for the recipient's property management system. Even if the recipient has an ISO9000 certification, it would have to comply with all the requirements in § 600.323.

Comment: DOE should not eliminate certain Intellectual Property clauses, namely FAR 52.227–1 Authorization and Consent, with its Alternate I, and FAR 52.227–2 Notice of Assistance Regarding Patent and Copyright Infringement. Immunity from a claim of patent infringement actually eliminates a barrier preventing for-profit organizations from participating in the DOE's financial assistance programs.

Response: This proposed rule would eliminate the routine use of these clauses in for-profit and nonprofit research and development (R&D) financial assistance agreements because the work performed by the recipient is undertaken to carry out a public purpose of support or stimulation to an essentially private R&D program rather than to acquire property or services for the direct benefit or use of the Government. DOE is currently the only agency that routinely includes these FAR clauses in its R&D financial assistance agreements. However, if the circumstances warrant, the proposed rule would permit DOE to determine, on a case-by-case basis, that it would be advantageous to the public and the DOE mission to include these clauses.

Comment: Will the revisions to Rights in Data and Patent Rights provisions eliminate DOE's requirement for both background data and patent rights of commercial organizations? What certain circumstances would prevail for DOE to require recipients to license data or patents to third parties?

Response: Proposed § 600.325 would eliminate DOE's routine use of background data and patent provisions, which could, in very rare, limited circumstances, require a recipient to license its background patents or data to third parties on reasonable terms. DOE would include a provision that may require such third party licensing rights only if it is necessary to provide heightened assurance of commercialization to satisfy the needs of the program.

Comment: What is DOE's intent regarding U.S. competitiveness dealing with substantial manufacturing in the U.S.?

Response: This rule does not change DOE's policy regarding U.S. competitiveness, which is primarily effected through application of the patent waiver regulations contained in 10 CFR part 784.

Comment: DOE should clarify the applicability of "procurement procedures" and define "effective competition techniques."

Response: Proposed § 600.331 would contain the requirements for procurements. Recipients would be obliged to use best commercial practices to ensure reasonable cost. The standard is reasonable cost. Proposed subpart D does not use the term "effective competition techniques."

III. Discussion of Rule Provisions

Proposed subpart D establishes separate administrative requirements for grants and cooperative agreements with for-profit organizations. In drafting proposed subpart D, DOE reviewed subpart B and tailored its requirements by eliminating those applicable to nonprofit organizations that are not necessary for financial assistance to for-profit organizations. These requirements were not imposed on for-profit organizations by Federal statutes, government-wide regulations, or executive orders and are not required for proper stewardship of Federal funds or accomplishment of DOE mission involving for-profit organizations. Proposed subpart D is similar to the Department of Defense Grant and Agreements Regulations, 32 CFR part 34, Administrative Requirements for Grants and Agreements with For-Profit Organizations.

1. Proposed § 600.302 of subpart D would tailor the definitions in subpart B for the specific requirements of subpart D. In some cases, the terms are defined differently than they are in other parts of the DOE Financial Assistance Rules.

2. Proposed subpart D would simplify the financial and program management requirements as compared to existing requirements under subpart B. These requirements would differ from the subpart B requirements in that they:

a. Encourage recipients to use existing financial management systems established for doing business in the commercial marketplace to the extent that the systems comply with Generally Accepted Accounting Principles (GAAP) and certain minimum standards that are contained in § 600.311;

b. Establish a preference for the reimbursement method of payment (§ 600.312); and

c. Require recipients that expend $500,000 or more in a year under Federal awards to have an audit for that year by an independent auditor (§ 600.316). The audit generally would be made a part of the regularly scheduled, annual audit of the recipient's financial statements. DOE selected the $500,000 threshold because OMB is considering raising the single audit threshold from $300,000 to $500,000. DOE would consider further increasing this threshold up to $1 million if comments received in response to this proposed rule provided adequate justification for such an increase.

3. Proposed subpart D would clarify and simplify the property requirements. The revised property standards would encourage recipients to use existing property management systems to the extent that the systems meet certain minimum standards contained in §§ 600.321 through 600.325.

4. Proposed subpart D would simplify and clarify the patent and data requirements. Proposed § 600.325 would contain the requirements for intellectual property developed or produced under an award with a for-profit organization. When title to inventions made by recipients under DOE awards would normally vest in the United States, such as arrangements with for-profit organizations other than small business firms, proposed subpart D would maintain the statutorily-based policy that DOE may waive all or any part of the invention rights of the United States. In accordance with the policies and procedures in 10 CFR part 784, virtually all such waiver requests are granted if there is sufficient cost-sharing and agreement on appropriate terms and conditions.

Currently, DOE uses the Federal Acquisition Regulation (FAR) and the Department of Energy Acquisition Regulation (DEAR) patent and data clauses in its financial assistance agreements. These clauses were developed primarily for contracts that provide property or services for the direct benefit or use by the Government. In proposed subpart D, the existing FAR and DEAR patent and data clauses have been tailored specifically for financial assistance awards with for-profit organizations and are contained in Appendix A to subpart D.

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Proposed § 600.325 and the standard patent and data provisions in Appendix A would eliminate the following requirements that may be appropriate for contracts, but are not generally needed in financial assistance awards:

a. DOE's routine use of background data and patent provisions that, for example, grant to DOE the right to require recipients, under certain circumstances, to license background data and patents to third parties to assure commercialization (see DEAR 952.227–13(k) and 952.227–14). DOE would require such third party licensing rights only when it is necessary to provide heightened assurance of commercialization to satisfy the needs of the program.

b. The requirement that the recipient always obtain the Contracting Officer's approval prior to copyrighting computer software developed under the assistance award. DOE would require such prior approval only in special circumstances, for example, when software is a required deliverable under an award. In addition, in order to satisfy DOE programmatic needs, DOE may specify in certain circumstances, such as the human genome project, that copyrighted software developed under DOE sponsorship be treated as "open-source" software. DOE specifically invites public comment on the treatment of copyrighted software as "open-source" software.

c. DOE's routine use of a provision authorizing and consenting to the use of a patented invention in the performance of the award, since the work performed by a recipient is undertaken to carry out a public purpose of support or stimulation to an essentially private research and development program rather than to acquire property or services for the direct benefit or use of the Government. However, if the circumstances warrant, such as awards for research relating to homeland security, DOE may determine, on a case-by-case basis, that it would be advantageous to the public and the DOE mission to include this clause. The public is specifically invited to comment on whether an authorization and consent provision should be included in an assistance award and to provide justification for this recommendation.

5. Proposed subpart D would significantly reduce requirements imposed on recipient procurement activities. The rule eliminates the existing requirements for codes of conduct, written procurement procedures that provide for certain requirements, and procurement records that would otherwise apply under subpart B. Instead, proposed § 600.331 requires:

a. Recipients' procurement procedures use best commercial practices to ensure reasonable cost for procured goods and services. Recipients are also encouraged to buy commercial items, when practicable.

b. Pre-award review of procurements only in exceptional cases where the contracting officer determines that there is a compelling need to perform such a review and a provision in the award states the requirement.

c. Contracts in excess of the simplified acquisition threshold (currently $100,000) contain certain contractual provisions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates the contract terms.

d. All contracts contain the provisions of Appendix B to subpart D, as applicable. This appendix is similar to Appendix A of subpart B in all substantive aspects.

The following table will assist you in locating and comparing the requirements applicable to for-profit organizations in the existing subpart B and the proposed subpart D.

Existing 10 CFR part 600 subpart B applicable to for-profit organizations	Corresponding proposed 10 CFR part 600 subpart D applicable to for-profit organizations
Sec.	Sec.
600.100 Purpose	600.301 Purpose.
600.101 Definitions	600.302 Definitions.
600.102 Effect on other issuances	No corresponding section.
600.103 Deviations	600.303 Deviations.
600.104 Subawards	600.301 Purpose.
Pre-Award Requirements	
600.110 Purpose	No corresponding section.
600.111 Pre-award Policies	No corresponding section.
600.112 Forms for applying for Federal assistance	No corresponding section.
600.113 Debarment and suspension	600.305 Debarment and suspension.
600.114 Special award/conditions	600.304 Special award conditions.
600.115 Metric system of measurement	600.306 Metric system of measurement.
600.116 Conservation and Recovery Act	No corresponding section.
600.117 Certifications and representations	No corresponding section.
Financial and Program Management	**Financial and Program Management**
600.120 Purpose of financial and program management	600.310 Purpose of financial and program management.
600.121 Standards for financial management systems	600.311 Standards for financial management systems.
600.122 Payment	600.312 Payment.
600.123 Cost sharing or matching	600.313 Cost sharing or matching.
600.124 Program income	600.314 Program income.
600.125 Revision of budget and program plans	600.315 Revision of budget and program plans.
600.126 Non-Federal Audits	600.316 Audits.
600.127 Allowable costs	600.317 Allowable costs and 600.318 Fee and profit.
600.128 Period of availability of funds	No corresponding section.
Property Standards	**Property Standards**
600.130 Purpose of property standards	600.320 Purpose of property standards.
600.131 Insurance coverage	No corresponding section.
600.131 Real property	600.321 Real property and equipment.
600.133 Federally-owned and exempt property	600.322 Federally owned property.
600.134 Equipment	600.321 Real property and equipment and 600.323 Property management system.
600.135 Supplies and other expendable property	600.324 Supplies.
600.136 Intangible property	600.325 Intellectual property.
600.137 Property trust relationship	No corresponding section.
Procurement Standards	**Procurement Standards**
600.140 Purpose of procurement standards	600.330 Purpose of procurement standards.
600.141 Recipient responsibilities	600.331 Requirements.
600.142 Codes of conduct	No corresponding section.
600.143 Competition	No corresponding section.
600.144 Procurement Procedures	600.331 Requirements.
600.145 Cost and price analysis	No corresponding section.
600.146 Procurement records	No corresponding section.
600.147 Contract administration	No corresponding section.
600.148 Contract provisions	600.331 Requirements.
600.149 Resources Conservation and Recovery Act (RCRA)	No corresponding section.
Reports and Records	**Reports and Records**
600.150 Purpose of reports and records	600.340 Purpose of reports and records.
600.151 Monitoring and reporting program performance	600.341 Monitoring and reporting program performance and financial performance.
600.152 Financial reporting	600.341 Monitoring and reporting program and financial performance.
600.153 Retention and access requirements for records	600.342 Retention and access requirements for records.
Termination and Enforcement	**Termination and Enforcement**
600.160 Purpose of termination and enforcement	600.350 Purpose of termination and enforcement.
600.161 Termination	600.351 Termination.
600.162 Enforcement	600.352 Enforcement.
After-the-Award Requirements	**After-the-Award Requirements**
600.170 Purpose	600.360 Purpose.
600.171 Closeout procedures	600.361 Closeout procedures.
600.172 Subsequent adjustments and continuing responsibilities	600.362 Subsequent adjustments and continuing responsibilities.
600.173 Collection of amounts due	600.363 Collection of amounts due.
Additional Provisions	**Additional Provisions**
600.180 Purpose	600.380 Purpose.
600.181 Special provisions for Small Business Innovation Research Grants.	600.381 Special provisions for Small Business Innovation Research Grants.
APPENDIX A TO SUBPART B TO PART 600—CONTRACT PROVISIONS.	APPENDIX B TO SUBPART D TO PART 600—CONTRACT PROVISIONS.
No corresponding section	APPENDIX A TO SUBPART D TO PART 600—PATENT AND DATA RIGHTS PROVISIONS.

The proposed rule also would make the following amendments to existing subparts A and B:

1. In § 600.15, we would delete paragraphs (b)(4) and (5) as part of our effort to eliminate unnecessary patent and data requirements in financial assistance awards.

2. Section 600.27 *Patent and data provisions* would be removed because the provisions are obsolete or contain internal procedures that are more appropriately addressed in internal guidance. Patent and data requirements are contained in the appropriate administrative requirements subpart. References to § 600.27 would also be removed in §§ 600.3, 600.4, and 600.136.

3. In subpart B, we would revise the subpart title to delete "and Commercial Organizations". Subpart B would contain requirements applicable only to institutions of higher education, hospitals, and other nonprofit organizations.

4. In § 600.100, we would delete the references to commercial organizations, since administrative requirements for awards with for-profit organizations will be contained in subpart D.

5. In § 600.104, we would delete the reference to commercial organizations and add a new subaward requirement for subrecipients that are for-profit organizations to reflect the new subpart D requirements.

6. In § 600.126, we would revise paragraph (c) to reflect the new audit requirements in subpart D and delete paragraphs (d) and (e).

7. In § 600.127, we would amend paragraph (c) to delete the reference to Small Business Innovation Research (SBIR) recipients, since SBIR recipients are for-profit organizations.

8. In § 600.136 *Intangible property*, we would revise paragraphs (a) and (e) to delete "that are institutions of higher education, hospitals, and other nonprofit organizations", delete paragraph (c) (3), and make paragraph (b) read the same as § ____.36 in OMB Circular A–110, since this section applies only to institutions of higher education, hospitals, and other nonprofit organizations.

9. Sections 600.180 and 600.181 would be removed from subpart B. Recipients of Small Business Innovation Research grants are for-profit organizations and would be covered by subpart D. Sections 600.180 and 600.181 have been revised to conform to subpart D and today are proposed as §§ 600.380 and 600.381.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant

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economic impact on a substantial number of small entities. Because DOE is not required by the Administrative Procedure Act (5 U.S.C. 553) or any other law to propose financial assistance rules for public comment, DOE did not prepare a regulatory flexibility analysis for this rule.

C. Review Under the Paperwork Reduction Act

This regulatory action will not impose any new reporting or record keeping requirements under the Paperwork Reduction Act. Reporting and record keeping requirements in subpart D have been previously cleared under Office of Management and Budget Paperwork Clearance Package Numbers 1910–0400 and 1910–0800 or are those promulgated by OMB Circular A–110, which the Office of Management and Budget proposed in August 1992 (57 FR 39018), asking for public comments, and finalized in November 1993 (58 FR 62992). No new collection of information is imposed by this proposed rule.

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule deals only with agency procedures, and, therefore, is covered under the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's proposed rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and tribal governments, and the private sector. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local or tribal governments or on the private sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. This rulemaking does not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

V. Approval of the Office of the Secretary of Energy

The Office of the Secretary has approved the issuance of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure.

Issued in Washington, DC, on August 9, 2002.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management, Department of Energy.

For the reasons set out in the preamble, Part 600 of Chapter II, Title 10 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for part 600 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq;* 31 U.S.C. 6301–6308; 50 U.S.C. 2401 *et seq.* unless otherwise noted.

2. Section 600.3 is amended by revising the definition of nonprofit organization to read as follows:

§ 600.3 Definitions

* * * * *

Nonprofit organization means any corporation, trust, foundation, or institution which is entitled to exemption under section 501(c)(3) of the Internal Revenue Code, or which is not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual (except that the definition of "nonprofit organization" at 48 CFR 27.301 shall apply for patent matters set forth at §§ 600.136 and 600.325).

* * * * *

§ 600.4 [Amended]

3. Section 600.4 is amended as follows:

a. Paragraph (a)(1), the last sentence is amended by removing "or the patent requirements of § 600.27."

b. Paragraph (c)(2)(i), the last sentence is removed.

c. Paragraph (c)(2)(ii), the last sentence is removed.

§ 600.15 [Amended]

4. Section 600.15 is amended by removing paragraphs (b)(4) and (5).

§ 600.27 [Removed and Reserved]

5. Section 600.27 is removed and reserved.

6. The title of subpart B is revised to read as follows:

Subpart B—Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations

§ 600.100 [Amended]

7. Section 600.100 is amended by removing "and commercial" in the first and second sentences.

§ 600.104 [Amended]

8. Section 600.104 is amended by removing "or commercial" in the first sentence and by adding a sentence at the end of the paragraph to read as follows:

§ 600.104 Subawards.

* * * For-profit subrecipients are subject to the provisions of 10 CFR part 600, subpart D, Administrative Requirements for Grants and Cooperative Agreements with For-Profit Organizations.

9. Section 600.126 is amended by removing paragraphs (d) and (e) and revising paragraph (c) to read as follows:

§ 600.126 Non-Federal audits.

* * * * *

(c) For-profit organizations that are subrecipients are subject to the audit requirements specified in 10 CFR 600.316.

§ 600.127 [Amended]

10. Section 600.127 is amended in paragraph (c) by removing "except for SBIR recipients as provided in § 600.181(d)(3)."

11. Section 600.136 is amended as follows:

a. Paragraph (a), the first sentence is amended by removing "that are institutions of higher education, hospitals, and other nonprofit organizations,".

b. Paragraph (b) is revised.

c. Paragraph (d)(3) is removed.

d. Paragraph (e), the first sentence is amended by removing "For recipients that are institutions of higher education, hospitals, and other nonprofit organizations."

The revisions read as follows:

§ 600.136 Intangible property.

* * * * *

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

* * * * *

§§ 600.180–600.181 [Removed and Reserved]

12. Sections 600.180 and 600.181 are removed.

13. Subpart D is added in part 600 to read as follows:

Subpart D—Uniform Administrative Requirements for Grants and Cooperative Agreements With For-Profit Organizations.

Sec.

General

600.301 Purpose.
600.302 Definitions.
600.303 Deviations.
600.304 Special award conditions.
600.305 Debarment and suspension.
600.306 Metric system of measurement.

Post-Award Requirements

Financial and Program Management

600.310 Purpose of financial and program management.
600.311 Standards for financial management systems.
600.312 Payment.
600.313 Cost sharing or matching.
600.314 Program income.
600.315 Revision of budget and program plans.
600.316 Audits.
600.317 Allowable costs.
600.318 Fee and profit.

Property Standards

600.320 Purpose of property standards.
600.321 Real property and equipment.
600.322 Federally owned property.
600.323 Property management system.
600.324 Supplies.
600.325 Intellectual property.

Procurement Standards

600.330 Purpose of procurement standards.
600.331 Requirements.

Reports and Records

600.340 Purpose of reports and records.
600.341 Monitoring and reporting program and financial performance.
600.342 Retention and access requirements for records.

Termination and Enforcement

600.350 Purpose of termination and enforcement.
600.351 Termination.
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After-the-Award Requirements

600.360 Purpose.
600.361 Closeout procedures.
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600.363 Collection of amounts due.

Additional Provisions

600.380 Purpose.
600.381 Special provisions for Small Business Innovation Research Grants.

Appendix A to Subpart D to Part 600—Patent and Data Rights Provisions

Appendix B to Subpart D to Part 600—Contract Provisions

Subpart D—Administrative Requirements for Grants and Cooperative Agreements With For-Profit Organizations

General

§ 600.301 Purpose.

(a) This subpart prescribes administrative requirements for awards to for-profit organizations.

(b) Applicability to prime awards and subawards is as follows:

(1) *Prime awards.* DOE contracting officers must apply the provisions of this part to awards to for-profit organizations. Contracting officers must not impose requirements that are in addition to, or inconsistent with, the requirements provided in this part, except:

(i) In accordance with the deviation procedures or special award conditions

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in § 600.303 or § 600.304, respectively; or

(ii) As required by Federal statute, Executive order, or Federal regulation implementing a statute or Executive order.

(2) *Subawards.* (i) Any legal entity (including any State, local government, university or other nonprofit organization, as well as any for-profit entity) that receives an award from DOE must apply the provisions of this part to subawards with for-profit organizations.

(ii) For-profit organizations that receive prime awards covered by this part must apply to each subaward the administrative requirements that are applicable to the particular type of subrecipient (*e.g.*, 10 CFR part 600, subpart B, contains requirements for institutions of higher education, hospitals, or other nonprofit organizations and 10 CFR part 600, subpart C, specifies requirements for subrecipients that are States or local governments).

§ 600.302 Definitions.

In addition to the definitions used in subpart A of this part, the following are definitions of terms as used in this part:

Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

Applied research means efforts that seek to determine and exploit the potential of scientific discoveries or improvements in technology, and is directed toward the development of new materials, devices, methods, and processes.

Basic research means efforts directed solely toward increasing knowledge or understanding in science and engineering.

Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout means the process by which DOE determines that all applicable administrative actions and all required work of the award have been completed by the recipient and DOE.

Cost sharing or matching means that portion of project or program costs not borne by the Federal Government.

Demonstration means a project designed to determine the technical feasibility and economic potential of a technology on either a pilot plant or a prototype scale.

Development means efforts to create or advance new technology or demonstrate the viability of applying existing technology to new products and processes.

Disallowed costs means those charges to an award that the DOE contracting officer determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

DOE means the Department of Energy, including the National Nuclear Security Administration (NNSA).

Equipment means tangible, nonexpendable personal property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Excess property means property under the control of any DOE Headquarters or field office that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

Federal funds authorized means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods.

Federally owned property means property in the possession of, or directly acquired by, the Government and subsequently made available to the recipient.

Funding period means the period of time when Federal funding is available for obligation by the recipient.

Incremental Funding means a method of funding a grant or cooperative agreement where the funds initially obligated to the award are less than the total amount of the award, and DOE anticipates making additional obligations of funds when appropriated funds become available.

Obligations means the amount of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

Outlays or expenditures means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied, and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees, and for other amounts becoming owed under programs for which no current services or performance are required.

Personal property means property of any kind except real property. It may be:

(1) Tangible, having physical existence (*i.e.*, equipment and supplies); or

(2) Intangible, having no physical existence, such as patents, copyrights, data, and software.

Prior approval means written or electronic approval by an authorized official evidencing prior consent.

Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in program regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

Project costs means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

Property means real property and personal property (equipment, supplies, and intellectual property), unless otherwise stated.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

Small award means an award not exceeding the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently $100,000).

Small business concern means a small business as defined at section 2 of Public Law 85–536 (16 U.S.C. 632) and the implementing regulations of the Administrator of the Small Business Administration. The criteria and size standards for small business concerns are contained in 13 CFR part 121.

Subaward means financial assistance in the form of money, or property in lieu of money, provided under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but the term does not include procurement of goods and services or any form of assistance which is not included in the definition of "award" in this part.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds or property provided.

Supplies means tangible, expendable personal property that is charged directly to the award and that has a useful life of less than one year or an acquisition cost of less than $5,000 per unit.

Suspension means an action by DOE that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by DOE. Suspension of an award is a separate action from suspension of a recipient under 10 CFR part 1036.

Termination means the cancellation of an award, in whole or in part, under an agreement at any time prior to either:

(1) The date on which all work under an award is completed; or

(2) The date on which Federal sponsorship ends, as provided in the award document or any supplement or amendment thereto.

Third party in-kind contributions means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Unobligated balance means the portion of the funds authorized by DOE that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 600.303 Deviations.

(a) *Individual deviations.* Individual deviations affecting only one award are subject to the procedures stated in 10 CFR 600.4.

(b) *Class deviations.* Class deviations affecting more than one financial assistance transaction are subject to the procedures stated in 10 CFR 600.4.

§ 600.304 Special award conditions.

(a) Contracting officers may impose additional requirements as needed, over and above those provided in this subpart, if an applicant or recipient:

(1) Has a history of poor performance;

(2) Is not financially stable;

(3) Has a management system that does not meet the standards prescribed in this part;

(4) Has not conformed to the terms and conditions of a previous award; or

(5) Is not otherwise responsible.

(b) Before imposing additional requirements, DOE must notify the applicant or recipient in writing as to:

(1) The nature of the additional requirements;

(2) The reason why the additional requirements are being imposed;

(3) The nature of the corrective action needed;

(4) The time allowed for completing the corrective actions; and

(5) The method for requesting reconsideration of the additional requirements imposed.

(c) The contracting officer must remove any special conditions if the circumstances that prompted them have been corrected.

§ 600.305 Debarment and suspension.

Recipients must comply with the nonprocurement debarment and suspension common rule implemented in 10 CFR part 1036. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 600.306 Metric system of measurement.

(a) The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205) and implemented by Executive Order 12770, states that:

(1) The metric system is the preferred measurement system for U.S. trade and commerce.

(2) The metric system of measurement will be used, to the extent economically feasible, in federal agencies' procurements, grants, and other business-related activities.

(3) Metric implementation is not required if such use is likely to cause significant inefficiencies or loss of markets to United States firms.

(b) Recipients are encouraged to use the metric system to the maximum extent practicable in measurement-sensitive activities and in measurement-sensitive outputs resulting from DOE funded programs.

Post-Award Requirements

Financial and Program Management

§ 600.310 Purpose of financial and program management.

Sections 600.311 through 600.318 prescribe standards for financial management systems; methods for making payments; and rules for cost sharing and matching, program income, revisions to budgets and program plans, audits, allowable costs, and fee and profit.

§ 600.311 Standards for financial management systems.

(a) Recipients are encouraged to use existing financial management systems established for doing business in the commercial marketplace to the extent that the systems comply with Generally Accepted Accounting Principles (GAAP) and the minimum standards in this section. At a minimum, a recipient's financial management system must provide:

(1) Effective control of all funds. Control systems must be adequate to ensure that costs charged to Federal funds and those counted as the recipient's cost share or match are consistent with requirements for cost reasonableness, allowability, and allocability in the applicable cost principles (see § 600.317) and in the terms and conditions of the award.

(2) Accurate, current and complete records that document, for each project funded wholly or in part with Federal funds, the source and application of the Federal funds and the recipient's required cost share or match. These records must:

(i) Contain information about receipts, authorizations, assets, expenditures, program income, and interest.

(ii) Be adequate to make comparisons of outlays with amounts budgeted for each award (as required for programmatic and financial reporting under § 600.341). Where appropriate, financial information should be related to performance and unit cost data.

(3) To the extent that advance payments are authorized under § 600.312, procedures that minimize the time elapsing between the transfer of funds to the recipient from the Government and the recipient's disbursement of the funds for program purposes.

(4) A system to support charges to Federal awards for salaries and wages, whether treated as direct or indirect costs. If employees work on multiple activities or cost objectives, a distribution of their salaries and wages must be supported by personnel activity reports which:

(i) Reflect an after the fact distribution of the actual activity of each employee.

(ii) Account for the total activity for which each employee is compensated.

(iii) Are prepared at least monthly, and coincide with one or more pay periods.

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(b) If the Federal Government guarantees or insures the repayment of money borrowed by the recipient, DOE, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(c) DOE may require adequate fidelity bond coverage if the recipient lacks sufficient coverage to protect the Federal Government's interest.

(d) If bonds are required in the situations described in paragraphs (b) and (c) of this section, the bonds must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

§ 600.312 Payment.

(a) *Methods available.* Payment methods for awards with for-profit organizations are:

(1) *Reimbursement.* Under this method, the recipient requests reimbursement for costs incurred during a particular time period. In cases where the recipient submits requests for payment to the contracting officer, the DOE payment office reimburses the recipient by electronic funds transfer after approval of the request by the designated contracting officer.

(2) *Advance payments.* Under this method, DOE makes a payment to a recipient based upon projections of the recipient's cash needs. The payment generally is made upon the recipient's request, although predetermined payment schedules may be used when the timing of the recipient's needs to disburse funds can be predicted in advance with sufficient accuracy to ensure compliance with paragraph (b)(2)(iii) of this section.

(b) *Selecting a method.* (1) The preferred payment method is the reimbursement method, as described in paragraph (a)(1) of this section.

(2) Advance payments, as described in paragraph (a)(2) of this section, may be used in exceptional circumstances, subject to the following conditions:

(i) The contracting officer, in consultation with the program official, determines in writing that advance payments are necessary or will materially contribute to the probability of success of the project contemplated under the award (*e.g.*, as startup funds for a project performed by a newly formed company).

(ii) Cash advances must be limited to the minimum amounts needed to carry out the program.

(iii) Recipients and DOE must maintain procedures to ensure that the timing of cash advances is as close as is administratively feasible to the recipients' disbursements of the funds for program purposes, including direct program or project costs and the proportionate share of any allowable indirect costs.

(iv) Recipients must maintain advance payments of Federal funds in interest-bearing accounts, and remit annually the interest earned to the contracting officer for return to the Department of Treasury's miscellaneous receipts account, unless one of the following applies:

(A) The recipient receives less than $120,000 in Federal awards per year.

(B) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(C) The depository would require an average or minimum balance so high that establishing an interest bearing account would not be feasible, given the expected Federal and non-Federal cash resources.

(c) *Frequency of payments.* For either reimbursements or advance payments, recipients may submit requests for payment monthly, or more often if authorized by the contracting officer.

(d) *Forms for requesting payment.* DOE may authorize recipients to use the SF–270, "Request for Advance or Reimbursement;" the SF–271, "Outlay Report and Request for Reimbursement for Construction Programs;" or prescribe other forms or formats as necessary.

(e) *Timeliness of payments.* Payments normally will be made within 30 calendar days of the receipt of a recipient's request for reimbursement or advance by the office designated to receive the request, unless the billing is improper.

(f) *Precedence of other available funds.* Recipients must disburse funds available from program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on such funds before requesting additional cash payments.

(g) *Withholding of payments.* Unless otherwise required by statute, contracting officers may not withhold payments for proper charges made by recipients during the project period for reasons other than the following:

(1) A recipient failed to comply with project objectives, the terms and conditions of the award, or Federal reporting requirements, in which case the contracting officer may suspend payments in accordance with § 600.352.

(2) The recipient is delinquent on a debt to the United States (see definitions of "debt" and "delinquent debt" in 32 CFR 22.105). In that case, the contracting officer may, upon reasonable notice, withhold payments to the recipient until the debt owed is resolved.

§ 600.313 Cost sharing or matching.

(a) *Acceptable contributions.* All contributions, including cash contributions and third party in-kind contributions, must be accepted as part of the recipient's cost sharing or matching if such contributions meet all of the following criteria:

(1) They are verifiable from the recipient's records.

(2) They are not included as contributions for any other federally-assisted project or program.

(3) They are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) They are allowable under § 600.317.

(5) They are not paid by the Federal Government under another award unless authorized by Federal statute to be used for cost sharing or matching.

(6) They are provided for in the approved budget.

(7) They conform to other provisions of this part, as applicable.

(b) *Valuing and documenting contributions.* (1) *Valuing recipient's property or services of recipient's employees.* Values are established in accordance with the applicable cost principles in § 600.317, which means that amounts chargeable to the project are determined on the basis of costs incurred. For real property or equipment used on the project, the cost principles authorize depreciation or use charges. The full value of the item may be applied when the item will be consumed in the performance of the award or fully depreciated by the end of the award. In cases where the full value of a donated capital asset is to be applied as cost sharing or matching, that full value must be the lesser of the following:

(i) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation; or

(ii) The current fair market value. If there is sufficient justification, the contracting officer may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project. The contracting officer may accept the use of any reasonable basis for determining the fair market value of the property.

(2) *Valuing services of others' employees.* If an employer other than the recipient furnishes the services of an employee, those services are valued at the employee's regular rate of pay plus an amount of fringe benefits and overhead (at an overhead rate appropriate for the location where the services are performed), provided these services are in the same skill for which the employee is normally paid.

(3) *Valuing volunteer services.* Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services must be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates must be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(4) *Valuing property donated by third parties.* (i) Donated supplies may include such items as office supplies or laboratory supplies. Value assessed to donated supplies included in the cost sharing or matching share must be reasonable and must not exceed the fair market value of the property at the time of the donation.

(ii) Normally only depreciation or use charges for equipment and buildings may be applied. However, the fair rental charges for land and the full value of equipment or other capital assets may be allowed, when they will be consumed in the performance of the award or fully depreciated by the end of the award, provided that the contracting officer has approved the charges. When use charges are applied, values must be determined in accordance with the usual accounting policies of the recipient, with the following qualifications:

(A) The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(B) The value of loaned equipment must not exceed its fair rental value.

(5) *Documentation.* The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:

(i) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal services and property must be documented.

§ 600.314 Program income.

(a) DOE must apply the standards in this section to the disposition of program income from projects financed in whole or in part with Federal funds.

(b) Unless program regulations or the terms and conditions of the award provide otherwise, recipients, without any further accounting to DOE, may retain program income earned:

(1) From license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award.

(2) After the end of the project period.

(c) Unless program regulations or the terms and conditions of the award provide otherwise, costs incident to the generation of program income for which there is some obligation to the Government may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(d) Other than any program income excluded pursuant to paragraphs (b) and (c) of this section, program income earned during the project period must be retained by the recipient and used in one or more of the following ways, as specified in program regulations or the terms and conditions of the award:

(1) Added to funds committed to the project by DOE and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(e) If the program regulation or terms and conditions of an award authorize the disposition of program income as described in paragraph (d)(1) or (d)(2) of this section, and stipulate a limit on the amounts that may be used in those ways, program income in excess of the stipulated limits must be used in accordance with paragraph (d)(3) of this section.

(f) In the event that the program regulation or terms and conditions of the award do not specify how program income is to be used, paragraph (d)(3) of this section applies automatically to all projects or programs except research. For awards that support basic or applied research, paragraph (d)(1) of this section applies automatically unless the terms and conditions specify another alternative or the recipient is subject to special award conditions, as indicated in § 600.304.

(g) Proceeds from the sale of property that is acquired, rather than fabricated, under an award are not program income and must be handled in accordance with the requirements of §§ 600.320 through 600.325 of this part.

§ 600.315 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It includes the sum of the Federal and non-Federal shares when there are cost sharing requirements. The budget plan must be related to performance for program evaluation purposes, whenever appropriate.

(b) The recipient must obtain the contracting officer's prior approval if a revision is necessary for either of the following two reasons:

(1) A change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) A need for additional Federal funding.

(c) The recipient must obtain the contracting officer's prior approval if a revision is necessary for any of the following six reasons, unless the requirement for prior approval is specifically waived in the program regulation or terms and conditions of the award:

(1) A change in the approved project director, principal investigator, or other key person specified in the application or award document.

(2) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(3) The inclusion of any additional costs that require prior approval in accordance with the applicable cost principles for Federal funds and the requirements applicable to the recipient's cost share or match, as provided in § 600.313 and § 600.317, respectively.

(4) The inclusion of pre-award costs for periods greater than the 90 calendar days immediately preceding the effective date of the award.

(5) A "no-cost" extension of the project period.

(6) Any subaward, transfer, or contracting out of substantive program performance under an award, unless described in the application and funded in the approved awards.

(d) If specifically required in the program regulation or the terms and conditions of the award, the recipient

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must obtain the contracting officer's prior approval for the following revisions:

(1) The transfer of funds among direct cost categories, functions, and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by DOE.

(2) For awards that provide support for both construction and nonconstruction work, any fund or budget transfers between the two types of work supported.

(e) Within 30 calendar days from the date of receipt of the recipient's request for budget revisions, the contracting officer must review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the contracting officer must inform the recipient in writing of the date when the recipient may expect the decision.

§ 600.316 Audits.

(a) Any recipient that expends $500,000 or more in a year under Federal awards must have an audit made for that year by an independent auditor, in accordance with paragraph (b) of this section. The audit generally should be made a part of the regularly scheduled, annual audit of the recipient's financial statements. However, it may be more economical in some cases to have Federal awards separately audited, and a recipient may elect to do so, unless that option is precluded by award terms and conditions or by Federal laws or regulations applicable to the program(s) under which the awards were made.

(b) The auditor must determine and report on whether:

(1) The recipient has an internal control structure that provides reasonable assurance that it is managing Federal awards in compliance with Federal laws and regulations and the terms and conditions of the awards.

(2) Based on a sampling of Federal award expenditures, the recipient has complied with laws, regulations, and award terms that may have a direct and material effect on Federal awards.

(c) The recipient must make the auditor's report available to the DOE contracting officers whose awards are affected.

(d) Before requesting an audit in addition to the independent audit, the contracting officer must:

(1) Consider whether the independent audit satisfies his or her requirements;

(2) Limit the scope of such additional audit to areas not adequately addressed by the independent audit; and

(3) If DOE is not the Federal agency with the predominant fiscal interest in the recipient, coordinate with the agency that has the predominant fiscal interest.

(e) The recipient and its Federal cognizant agency for audit should develop a coordinated audit approach to minimize duplication of audit work.

(f) Audit costs (including a reasonable allocation of the costs of the audit of the recipient's financial statement, based on the relative benefit to the Government and the recipient) are allowable costs of DOE awards.

§ 600.317 Allowable costs.

(a) DOE determines allowability of costs in accordance with the cost principles applicable to the type of entity incurring the cost as follows:

(1) *For-profit organizations.* Allowability of costs incurred by for-profit organizations and those nonprofit organizations listed in Attachment C to OMB Circular A–122 is determined in accordance with the for-profit cost principles in 48 CFR part 31 in the Federal Acquisition Regulation, except that patent prosecution costs are not allowable unless specifically authorized in the award document.

(2) *Other types of organizations.* Allowability of costs incurred by other types of organizations that may be subrecipients under a prime award to a for-profit organization is determined as follows:

(i) *Institutions of higher education.* Allowability is determined in accordance with OMB Circular A–21, "Cost Principles for Educational Institutions."

(ii) *Other nonprofit organizations.* Allowability is determined in accordance with OMB Circular A–122, "Cost Principles for Nonprofit Organizations."

(iii) *Hospitals.* Allowability is determined in accordance with the provisions of 45 CFR part 74, Appendix E, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals."

(iv) *Governmental organizations.* Allowability for State, local, or federally recognized Indian tribal governments is determined in accordance with OMB Circular A–87, "Cost Principles for State and Local Governments."

(b) *Pre-award costs.* If a recipient incurs pre-award costs without the prior approval of the contracting officer, DOE may pay those costs incurred within the ninety calendar day period immediately preceding the effective date of the award, if such costs are:

(1) Necessary for the effective and economical conduct of the project;

(2) Otherwise allowable in accordance with the applicable cost principles; and

(3) Less than the total value of the award.

§ 600.318 Fee and profit.

(a) Grants and cooperative agreements may not provide for the payment of fee or profit to recipients or subrecipients, except for awards made pursuant to the Small Business Innovation Research or Small Business Technology Transfer Research programs.

(b) A recipient or subrecipient may pay a fee or profit to a contractor providing goods or services under a contract.

Property Standards

§ 600.320 Purpose of property standards.

Sections 600.321 through 600.325 set forth uniform standards for management, use, and disposition of property. DOE encourages recipients to use existing property-management systems to the extent that the systems meet these minimum requirements.

§ 600.321 Real property and equipment.

(a) *Prior approval for acquisition with Federal funds.* Recipients may purchase real property or equipment in whole or in part with Federal funds under an award only with the prior approval of the contracting officer.

(b) *Title.* Unless a statute specifically authorizes and the award specifies that title to property vests unconditionally in the recipient, title to real property or equipment vests in the recipient subject to the conditions that the recipient:

(1) Use the real property or equipment for the authorized purposes of the project until funding for the project ceases, or until the property is no longer needed for the purposes of the project;

(2) Not encumber the property without approval of the contracting officer; and

(3) Use and dispose of the property in accordance with paragraphs (d) and (e) of this section.

(c) *Federal interest in real property or equipment offered as cost-share.* A recipient may offer the full value of real property or equipment that is purchased with recipient's funds or that is donated by a third party to meet a portion of any required cost sharing or matching, subject to the requirements in § 600.313. If a resulting award includes such property as a portion of the recipient's cost share, the Government has a financial interest in the property, (*i.e.*, a share of the property value equal to the

Federal participation in the project). The property is considered as if it had been acquired in part with Federal funds, and is subject to the provisions of paragraphs (b)(1), (b)(2), and (b)(3) of this section and to the provisions of § 600.323.

(d) *Insurance.* Recipients must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with DOE funds as provided to property owned by the recipient.

(e) *Use.* If real property or equipment is acquired in whole or in part with Federal funds under an award and the award does not specify that title vests unconditionally in the recipient, the real property or equipment is subject to the following:

(1) During the time that the real property or equipment is used on the project or program for which it was acquired, the recipient must make it available for use on other projects or programs, if such other use does not interfere with the work on the project or program for which the real property or equipment was originally acquired. Use of the real property or equipment on other projects is subject to the following order of priority:

(i) Activities sponsored by DOE grants, cooperative agreements, or other assistance awards;

(ii) Activities sponsored by other Federal agencies' grants, cooperative agreements, or other assistance awards;

(iii) Activities under Federal procurement contracts or activities not sponsored by any Federal agency. If so used, use charges must be assessed to those activities. For real property or equipment, the use charges must be at rates equivalent to those for which comparable real property or equipment may be leased.

(2) After Federal funding for the project ceases or if the real property or equipment is no longer needed for the purposes of the project, the recipient may use the real property or equipment for other projects, insofar as:

(i) There are Federally sponsored projects for which the real property or equipment may be used. If the only use for the real property or equipment is for projects that have no Federal sponsorship, the recipient must proceed with disposition of the real property or equipment, in accordance with paragraph (f) of this section.

(ii) The recipient obtains written approval from the contracting officer to do so. The contracting officer must ensure that there is a formal change of accountability for the real property or equipment to a currently funded, Federal award.

(iii) The recipient's use of the real property or equipment for other projects is in the same order of priority as described in paragraph (e)(1) of this section.

(f) *Disposition.* (1) If an item of real property or equipment is no longer needed for Federally sponsored projects, the recipient has the following options:

(i) If the property is equipment with a current per unit fair market value of less than $5,000, it may be retained, sold, or otherwise disposed of with no further obligation to DOE.

(ii) If the property that is no longer needed is equipment (rather than real property), the recipient may wish to replace it with an item that is needed currently for the project by trading in or selling to offset the costs of the replacement equipment, subject to the approval of the contracting officer.

(iii) The recipient may elect to retain title, without further obligation to the Federal Government, by compensating the Federal Government for that percentage of the current fair market value of the real property or equipment that is attributable to the Federal participation in the project.

(iv) If the recipient does not elect to retain title to real property or equipment or does not request approval to use equipment as trade-in or offset for replacement equipment, the recipient must request disposition instructions from the responsible agency.

(2) If a recipient requests disposition instructions, the contracting officer must:

(i) For equipment (but not real property), consult with the DOE Project Director to determine whether the condition and nature of the equipment warrant excess screening within DOE. If screening is warranted, the equipment will be made available for reutilization within DOE through the Energy Asset Disposal System (EADS). If no DOE requirement is identified within a 30-day period, EADS automatically reports the availability of the equipment to the General Services Administration, to determine whether a requirement for the equipment exists in other Federal agencies.

(ii) For either real property or equipment, issue instructions to the recipient for disposition of the property no later than 120 calendar days after the recipient's request. The contracting officer's options for disposition are to direct the recipient to:

(A) Transfer title to the real property or equipment to the Federal Government or to an eligible third party provided that, in such cases, the recipient is entitled to compensation for its attributable percentage of the current fair market value of the real property or equipment, plus any reasonable shipping or interim storage costs incurred.

(B) Sell the real property or equipment and pay the Federal Government for that percentage of the current fair market value of the property that is attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sale proceeds). If the recipient is authorized or required to sell the real property or equipment, the recipient must use competitive procedures that result in the highest practicable return.

(3) If the responsible agency fails to issue disposition instructions within 120 calendar days of the recipient's request, the recipient must dispose of the real property or equipment through the option described in paragraph (f)(2)(ii)(B) of this section.

§ 600.322 Federally owned property.

(a) *Annual inventory.* The recipient must submit annually to the contracting officer an inventory listing of all Federally owned property in its custody, *i.e.*, property furnished by the Federal Government, rather than acquired by the recipient with Federal funds under the award.

(b) *Insurance.* The recipient may not insure Federally owned property unless required by the terms and conditions of the award.

(c) *Use on other activities.* (1) Use of federally owned property on other activities is permissible, if authorized by the contracting officer responsible for administering the award to which the property currently is charged.

(2) Use on other activities must be in the following order of priority:

(i) Activities sponsored by DOE grants, cooperative agreements, or other assistance awards;

(ii) Activities sponsored by other Federal agencies' grants, cooperative agreements, or other assistance awards;

(iii) Activities under Federal procurement contracts or activities not sponsored by any Federal agency. If so used, use charges must be assessed to those activities. For real property or equipment, the use charges must be at rates equivalent to those for which comparable real property or equipment may be leased.

(d) *Disposition of property.* Upon completion of the award, the recipient must submit to the contracting officer a final inventory of Federally owned property. DOE may:

(1) Use the property to meet another Federal Government need (*e.g.*, by transferring accountability for the

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property to another Federal award to the same recipient, or by directing the recipient to transfer the property to a Federal agency that needs the property or to another recipient with a currently funded award).

(2) Declare the property to be excess property and either:

(i) Report the property to the General Services Administration through EADS, in accordance with the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(b)(2)), as implemented by General Services Administration regulations at 41 CFR 101–47.202; or

(ii) Dispose of the property by alternative methods, if there is authority under law, such as the Federal Technology Transfer Act, 15 U.S.C. 3710(i).

§ 600.323 Property management system.

The recipient's property management system must include the following:

(a) Property records must be maintained, to include the following information for property that is Federally owned, equipment that is acquired in whole or in part with Federal funds, or property or equipment that is used as cost sharing or matching:

(1) A description of the property.

(2) Manufacturer's serial number, model number, Federal stock number, national stock number, or any other identification number.

(3) Source of the property, including the award number.

(4) Whether title vests in the recipient or the Federal Government.

(5) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(6) Information from which one can calculate the percentage of Federal participation in the cost of the property (not applicable to property furnished by the Federal Government).

(7) The location and condition of the property and the date the information was reported.

(8) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal Government for its share.

(b) Federally owned equipment must be marked to indicate Federal ownership.

(c) A physical inventory must be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records must be investigated to determine the causes of the difference. The recipient must, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(d) A control system must be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of property must be investigated and fully documented. If the property is owned by the Federal Government, the recipient must promptly notify the Federal agency responsible for administering the property.

(e) Adequate maintenance procedures must be implemented to keep the property in good condition.

§ 600.324 Supplies.

(a) Title vests in the recipient upon acquisition of supplies acquired with Federal funds under an award.

(b) Upon termination or completion of the project or program, the recipient may retain any unused supplies. If the inventory of unused supplies exceeds $5,000 in total aggregate value and the items are not needed for any other Federally sponsored project or program, the recipient may retain the items for use on non-Federal sponsored activities or sell them, but must, in either case, compensate the Federal Government for its share.

§ 600.325 Intellectual property.

(a) *Scope.* This section sets forth the policies with regard to disposition of rights to data and to inventions conceived or first actually reduced to practice in the course of, or under, a grant or cooperative agreement with DOE.

(b) *Patent rights—small business concerns and nonprofit organizations.* In accordance with 35 U.S.C. 202, if you are a small business concern or a nonprofit organization and you receive a grant, cooperative agreement, subaward, or contract for research, developmental, or demonstration activities, then, unless there are "exceptional circumstances" as described in 35 U.S.C. 202(e), your award must contain the standard clause in Appendix A to this subpart, entitled "Patents Rights (Small Business Firms and Nonprofit Organizations)" which provides you the right to elect ownership of inventions made under your award.

(c) *Patent rights—other than small business concerns, e.g., large businesses.*

(1) *No patent waiver.* Except as provided by paragraph (d)(2) of this section, if you are a large business and you receive an award or a subaward for research, development, and demonstration activities, then your award must contain the standard clause in Appendix A to this subpart, entitled "Patent Rights (Large Business Firms)—No Waiver" which provides that DOE owns the patent rights to inventions made under your award.

(2) *Patent waiver granted.* Paragraph (c)(1) of this section does not apply if:

(i) DOE grants a class waiver for a particular program under 10 CFR part 784;

(ii) You request and receive an advance patent waiver under 10 CFR part 784; or

(iii) Your subaward is covered by a waiver granted under the prime award.

(3) *Special provision.* Normally, your agreement will not include a background patent and data provision. However, in order to provide heightened assurance of commercialization, a provision providing for a right to require licensing of background inventions under special circumstances may be included.

(d) *Rights in data—general rule.*

(1) Subject to paragraphs (d)(2) and (3) of this section, and except as otherwise provided by paragraphs (e), (f), and (g) of this section or other law, any award under this subpart must contain the standard clause in Appendix A to this subpart, entitled "Rights in Data—General."

(2) Normally, your agreement will not require the delivery of limited rights data or restricted computer software. However, if the contracting officer, in consultation with DOE patent counsel and the DOE program official, determines that delivery of limited rights data or restricted computer software is necessary, the contracting officer, after negotiation with you, may insert in the award the standard clause as modified by Alternates I and/or II set forth in Appendix A to this subpart.

(3) If software is specified for delivery to DOE or if other special circumstances exist, *e.g.*, DOE specifying "open-source" treatment of software, then the contracting officer, after negotiation with the recipient, may include in the award special provisions requiring the recipient to obtain written approval of the contracting officer prior to asserting copyright in the software and/or modifications to the retained Government license.

(e) *Rights in data—programs covered under special protected data statutes.*

(1) If a statute, other than those providing for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer Research (STTR) programs, provides for a period of time, typically up to five years, during which data produced under an award for research, development, and demonstration may be protected from public disclosure, then the contracting officer must insert in the award the standard clause in Appendix A to this subpart entitled "Rights in Data—Programs Covered Under Special Protected Data Statutes" or, as determined in consultation with DOE patent counsel and the DOE program official, a modified version of such clause which may identify data or categories of data that the recipient must make available to the public.

(2) An award under paragraph (e)(1) of this section is subject to the provisions of paragraphs (d)(2) and (3).

(f) *Rights in data—SBIR/STTR programs.*

(1) If you receive an award under the SBIR or STTR program, then the contracting officer must insert in the award the standard clause in the General Terms and Conditions for SBIR Grants, entitled "Rights in Data—SBIR Program."

(2) The data rights provisions for SBIR/STTR grants are contained in the award terms and conditions for SBIR grants located at *http://www.pr.doe.gov* on the Professionals Homepage under Financial Assistance, Regulations and Guidance.

(g) *Authorization and consent.* (1) Except as provided in paragraph (g)(2) of this section, work performed by a recipient under a financial assistance award is not subject to authorization and consent to the use of a patented invention, and the Government assumes no liability for patent infringement by the recipient under 28 U.S.C. 1498.

(2) To avoid the risk that project work is enjoined by reason of patent infringement, in appropriate circumstances, such as a cooperative agreement for research related to homeland security or the clean up of a DOE facility, DOE may provide authorization and consent consistent with the principles set forth in 48 CFR 27.201–1.

(3) The contracting officer, in consultation with patent counsel, may also include clauses in the award addressing patent indemnification of the Government by recipient and notice and assistance regarding patent and copyright infringement.

Procurement Standards

§ 600.330 Purpose of procurement standards.

Section 600.331 sets forth requirements necessary to ensure:

(a) Recipients' procurements that use Federal funds comply with applicable Federal statutes, regulations, and executive orders.

(b) Proper stewardship of Federal funds used in recipients' procurements.

§ 600.331 Requirements.

The following requirements pertain to recipients' procurements funded in whole or in part with Federal funds or with recipients' cost-share or match:

(a) *Reasonable cost.* Recipients' procurement procedures must use best commercial practices to ensure reasonable cost for procured goods and services. Recipients are encouraged to buy commercial items, if practicable.

(b) *Pre-award review of certain procurements.* If the contracting officer determines that there is a compelling need to perform a pre-award review of a specific transaction and the terms of the award identify the specific transaction and provide for such a review, then the recipient must obtain the contracting officer's approval prior to awarding the transaction and must provide the contracting officer the following documents to review:

(1) Request for proposals or invitation to bid, if any;

(2) Cost estimate;

(3) Proposal/bid;

(4) Proposed award document; and

(5) Summary of negotiations or justification for award.

(c) *Contract provisions.* (1) Contracts in excess of the simplified acquisition threshold must contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(2) All contracts in excess of the simplified acquisition threshold must contain suitable provisions for termination for default by the recipient and for termination due to circumstances beyond the control of the contractor.

(3) All negotiated contracts in excess of the simplified acquisition threshold must include a provision permitting access of DOE, the Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the contractor that are directly pertinent to a specific program, for the purpose of making audits, examinations, excerpts, transcriptions, and copies of such documents.

(4) All contracts, including those for amounts less than the simplified acquisition threshold, awarded by recipients and their contractors must contain the procurement provisions of Appendix B to this subpart, as applicable.

(d) *Recipient responsibilities.* The recipient is the responsible authority, without recourse to DOE, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. The recipient should refer matters concerning violations of statutes to such Federal, State or local authority as may have proper jurisdiction.

Reports and Records

§ 600.340 Purpose of reports and records.

Sections 600.341 and 600.342 prescribe requirements for monitoring and reporting financial and program performance and for records retention.

§ 600.341 Monitoring and reporting program and financial performance.

(a) The terms and conditions of the award prescribe the reporting requirements, the frequency, and the due dates for reports. At a minimum, requirements must include:

(1) Periodic progress reports (at least annually, but no more frequently than quarterly) addressing both program status and business status, as follows:

(i) The program portions of the reports must address progress toward achieving program performance goals and milestones, including current issues, problems, or developments.

(ii) The business portions of the reports must provide summarized details on the status of resources (federal funds and non-federal cost sharing or matching), including an accounting of expenditures for the period covered by the report. The report should compare the resource status with any payment and expenditure schedules or plans provided in the original award, explain any major deviations from those schedules, and discuss actions that will be taken to address the deviations.

(2) A final technical report if the award is for research and development.

(b) If the contracting officer previously authorized advance payments, pursuant to § 600.312(a)(2), he/she should consult with the DOE project director and consider whether program progress reported in the periodic progress report, in relation to reported expenditures, is sufficient to justify continued authorization of advance payments.

§ 600.342 Retention and access requirements for records.

(a) This section sets forth requirements for records retention and access to records for awards to recipients and subrecipients.

(b) Financial records, supporting documents, statistical records, and all

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other records pertinent to an award must be retained for a period of three years from the date of submission of the final expenditure report. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(3) If records are transferred to or maintained by DOE, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocation plans, and related records must be retained in accordance with the requirements specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the contracting officer.

(d) The contracting officer may request that recipients transfer certain records to DOE custody if he or she determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a contracting officer may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) DOE, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but must last as long as records are retained.

(f) Unless required by statute, DOE must not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when DOE can demonstrate that such records would be kept confidential and would be exempt from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records belonged to DOE.

(g) Indirect cost proposals, cost allocation plans, and other cost accounting documents (such as documents related to computer usage chargeback rates), along with their supporting records, must be retained for a 3-year period, as follows:

(1) If the recipient or the subrecipient is required to submit an indirect-cost proposal, cost allocation plan, or other computation to the cognizant Federal agency for purposes of negotiating an indirect cost rate or other rates, the 3-year retention period starts on the date of the submission.

(2) If the recipient or the subrecipient is not required to submit the documents or supporting records for negotiating an indirect cost rate or other rates, the 3-year retention period for the documents and records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(h) If the information described in this section is maintained on a computer, recipients must retain the computer data on a reliable medium for the time periods prescribed. Recipients may transfer computer data in machine readable form from one reliable computer medium to another. Recipients' computer data retention and transfer procedures must maintain the integrity, reliability, and security of the original computer data. Recipients must also maintain an audit trail describing the data transfer. For the record retention time periods prescribed in this section, recipients must not destroy, discard, delete, or write over such computer data.

Termination and Enforcement

§ 600.350 Purpose of termination and enforcement.

Sections 600.351 through 600.353 set forth uniform procedures for suspension, termination, enforcement, and disputes.

§ 600.351 Termination.

(a) Awards may be terminated in whole or in part only in accordance with one of the following:

(1) By the contracting officer, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the contracting officer with the consent of the recipient, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the contracting officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. The recipient must provide such notice at least 30 calendar days prior to the effective date of the termination. However, if the contracting officer determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purposes for which the award was made, he or she may terminate the award in its entirety.

(4) For cooperative agreements only, by the contracting officer whenever DOE determines, for any reason, that a termination, in whole or in part, is in the best interest of the Government. Such termination is subject to the conditions specified in § 600.25(e).

(b) If the recipient incurred allowable costs prior to the termination, the responsibilities of the recipient referred to in § 600.361(b), including those related to property, apply to the termination of the award, and provision must be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 600.352 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the contracting officer may, in addition to imposing any of the special conditions outlined in § 600.304, take one or more of the following actions, as appropriate:

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the contracting officer.

(2) Disallow (that is, deny both the use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Apply other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, DOE must provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable, unless the contracting officer expressly authorizes them in the notice of suspension or termination or subsequently authorizes such costs. Other recipient costs during suspension

or after termination, which are necessary and not reasonably avoidable, are allowable if the costs:

(1) Result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable; and

(2) Would be allowable if the award expired normally at the end of the funding period.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under 10 CFR part 1036.

§ 600.353 Disputes and appeals.

Consistent with 10 CFR 600.22 and part 1024, recipients have the right to appeal certain decisions by contracting officers.

After-the-Award Requirements

§ 600.360 Purpose.

Sections 600.361 through 600.363 contain procedures for closeout and for subsequent disallowances and adjustments.

§ 600.361 Closeout procedures.

(a) Recipients must submit, within 90 calendar days after the date of completion of the award, all reports required by the terms and conditions of the award. DOE may approve extensions when requested by the recipient.

(b) The following provisions must apply to the closeout:

(1) Unless DOE authorizes an extension, a recipient must liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion of the award as specified in the terms and conditions of the award or in agency implementing instructions.

(2) DOE must make prompt, final payments to a recipient for allowable reimbursable costs under the award being closed out.

(3) The recipient must promptly refund any unobligated balances of cash that DOE has advanced or paid and that are not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(4) When authorized by the terms and conditions of the award, the contracting officer must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(5) The recipient must account for any real property and equipment acquired with Federal funds or received from the Federal Government in accordance with §§ 600.321 through 600.325.

(6) If a final audit is required and has not been performed prior to the closeout of an award, DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 600.362 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of DOE to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 600.316.

(4) Property management requirements in §§ 600.321 through 600.325.

(5) Records retention requirements in § 600.342.

(b) After closeout of an award, the continuing responsibilities under an award may be modified or ended in whole or in part with the consent of the contracting officer and the recipient, provided property management requirements are considered and provisions made for the continuing responsibilities of the recipient, as appropriate.

§ 600.363 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within 30 days after the demand for payment, DOE may reduce the debt in accordance with the procedures and techniques described in 10 CFR part 1015 and OMB Circular A–129, including:

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute or regulation.

(b) Except as otherwise provided by law, DOE may charge interest and administrative fees on an overdue debt in accordance with 31 CFR Chapter IX, parts 900–904, "Federal Claims Collection Standards."

Additional Provisions

§ 600.380 Purpose.

The purpose of "Additional Provisions" is to provide alternative requirements for recipients otherwise covered by this subpart D, when they are performing under Small Business Innovation Research grants.

§ 600.381 Special provisions for Small Business Innovation Research Grants.

(a) *General.* This section contains provisions applicable to the Small Business Innovation Research (SBIR) Program. This codifies six class deviations pertaining to the SBIR program.

(b) *Provisions Applicable to Phase I SBIR Awards.* Phase I SBIR awards may be made on a fixed obligation basis, subject to the following requirements:

(1) While proposed costs must be analyzed in detail to ensure consistency with applicable cost principles, incurred costs are not subject to review under the standards of cost allowability;

(2) Although detailed budgets are submitted by a recipient and reviewed by DOE for purposes of establishing the amount to be awarded, budget categories are not stipulated in making an award;

(3) Prior approval from the DOE for rebudgeting among categories by the recipient is not required. Prior approval from DOE is required for any variation from the requirement that no more than one-third of Phase I work can be done by subcontractors or consortium partners;

(4) Pre-award expenditure approval is not required;

(5) Payments are to be made in the same manner as other financial assistance (see § 600.312), except that, when determined appropriate by the cognizant program official and contracting officer, a lump sum payment may be made. If a lump sum payment is made, the award must contain a condition that requires the recipient to return to DOE amounts remaining unexpended at the end of the project if those amounts exceed $500;

(6) Recipients will certify in writing to the Contracting Officer at the end of the project that the activity was completed or the level of effort was expended. Should the activity or effort not be carried out, the recipient would be expected to make appropriate reimbursements;

(7) Requirements for periodic reports may be established for each award so long as they are consistent with § 600.341;

(8) Changes in principal investigator or project leader, scope of effort, or institution, require the prior approval of DOE.

(c) *Provision applicable to Phase II SBIR awards.* Phase II SBIR awards may

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be made for a single budget period of 24 months.

(d) *Provisions applicable to Phase I and Phase II SBIR awards.* (1) The prior approval of the cognizant DOE Contracting Officer is required before the final budget period of the project period may be extended without additional funds.

(2) A fee or profit may be paid to SBIR recipients.

Appendix A to Subpart D Part 600

Patent and Data Provisions

1. Patent Rights (Small Business Firms and Nonprofit Organizations)
2. Patent Rights (Large Business Firms)—No Waiver
3. Rights in Data—General
4. Rights in Data—Programs Covered Under Special Protected Data Statutes

Patent Rights (Small Business Firms and Nonprofit Organizations)

(a) Definitions.

Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C., or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

Nonprofit organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

Practical application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

Small business firm means a small business concern as defined at section 2 of Public Law 85–536 (16 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3 through 121.8 and 13 CFR 121.3 through 121.12 respectively, will be used.

Subject invention means any invention of the Recipient conceived or first actually reduced to practice in the performance of work under this award, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d) must also occur during the period of award performance.

(b) Allocation of Principal Rights.

The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this Patent Rights clause and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Applications by Recipient.

(1) The Recipient will disclose each subject invention to DOE within two months after the inventor discloses it in writing to Recipient personnel responsible for the administration of patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the award under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Recipient will promptly notify DOE of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.

(2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying DOE within two years of disclosure to DOE. However, in any case where publication, on sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the U.S., the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Recipient will file its initial patent application on an invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the U.S. after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application, or six months from the date when permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to DOE, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of DOE, be granted.

(d) Conditions When the Government May Obtain Title.

The Recipient will convey to DOE, upon written request, title to any subject invention:

(1) If the Recipient fails to disclose or elect the subject invention within the times specified in paragraph (c) of this Patent Rights clause, or elects not to retain title; provided that DOE may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times;

(2) In those countries in which the Recipient fails to file patent applications within the times specified in paragraph (c) of this Patent Rights clause; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph (c) of this Patent Rights clause, but prior to its receipt of the written request of DOE, the Recipient shall continue to retain title in that country; or

(3) In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to Recipient and Protection of the Recipient Right To File.

(1) The Recipient will retain a non-exclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the subject invention within the times specified in paragraph (c) of this Patent Rights clause. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the award was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and the agency's licensing regulation, if any. This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at discretion of the funding Federal agency to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and the agency's licensing regulations, if any, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) Recipient Action to Protect Government's Interest.

(1) The Recipient agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to:

(i) establish or confirm the rights the Government has throughout the world in those subject inventions for which the Recipient retains title; and

(ii) convey title to DOE when requested under paragraph (d) of this Patent Rights clause, and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Recipient agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under this award in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this Patent Rights clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information requested by paragraph (c)(1) of this Patent Rights clause. The Recipient shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Recipient will notify DOE of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Recipient agrees to include, within the specification of any U.S. patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the award) awarded by (identify DOE). The Government has certain rights in this invention."

(g) Subaward/contract.

(1) The Recipient will include this Patent Rights clause, suitably modified to identify the parties, in all subawards/contracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or nonprofit organization. The subrecipient/contractor will retain all rights provided for the Recipient in this Patent Rights clause, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractors' subject inventions.

(2) The Recipient will include in all other subawards/contracts, regardless of tier, for experimental, developmental or research work, the patent rights clause required by DOE implementing regulations.

(h) Reporting on Utilization of Subject Inventions.

The Recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient and such other data and information as DOE may reasonably specify. The Recipient also agrees to provide additional reports in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this Patent Rights clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without the permission of the Recipient.

(i) Preference for United States Industry.

Notwithstanding any other provision of this Patent Rights clause, the Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the U.S. unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the U.S. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the U.S. or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights.

The Recipient agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with procedures at 37 CFR 401.6 and any supplemental regulations of the agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances and if the Recipient, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

(1) Such action is necessary because the Recipient or assignee has not taken or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensee; or

(4) Such action is necessary because the agreement required by paragraph (i) of this Patent Rights clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the U.S. is in breach of such agreement.

(k) Special Provisions for Awards with Nonprofit Organizations.

If the Recipient is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the U.S. may not be assigned without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Recipient;

(2) The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific or engineering research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give preference to a small business firm if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the Secretary of Commerce may review the Recipient's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures or practices with the Secretary when the Secretary's review discloses that the Recipient could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4)(l).

(l) Communications.

All communications required by this Patent Rights clause should be sent to the DOE Patent Counsel address listed in the Award Document.

(m) Electronic Filing.

Unless otherwise specified in the award, the information identified in paragraphs (f)(2) and (f)(3) may be electronically filed. [End of Clause]

Patent Rights (Large Business Firms)—No Waiver:

(a) Definitions.

DOE patent waiver regulations, as used in this clause, means the Department of Energy patent waiver regulations in effect on the date of award. See 10 CFR part 784.

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Invention, as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

Patent Counsel, as used in this clause, means the Department of Energy Patent Counsel assisting the awarding activity.

Subject invention, as used in this clause, means any invention of the Recipient conceived or first actually reduced to practice in the course of or under this agreement.

(b) Allocations of principal rights.

(1) Assignment to the Government. The Recipient agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Recipient under subparagraph (b)(2) and paragraph (d) of this clause.

(2) Greater rights determinations. The Recipient, or an employee-inventor after consultation with the Recipient, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulations. Each determination of greater rights under this agreement shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

(c) Minimum rights acquired by the Government.

With respect to each subject invention to which the Department of Energy grants the Recipient principal or exclusive rights, the Recipient agrees to grant to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency); to "march-in rights" as set forth in 37 CFR 401.14(a)(j)); to preference for U.S. industry as set forth in 37 CFR 401.14(a)(i); to submit on request periodic reports no more frequently than annually on the utilization or intent of utilization of a subject invention in a manner consistent with 35 U.S.C. 202(c)(5); and agrees to provide for such Government rights in any instrument transferring rights in a subject invention.

(d) Minimum rights to the Recipient.

(1) The Recipient is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Recipient fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a part and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the minimum rights acquired by the Government similar to paragraph (c) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.

(e) Invention identification, disclosures, and reports.

(1) The Recipient shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Recipient personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this agreement. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Recipient shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Recipient shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within 2 months after the inventor discloses it in writing to Recipient personnel responsible for patent matters or, if earlier, within 6 months after the Recipient becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Recipient. The disclosure to DOE shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Recipient shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Recipient contends in writing at the time the invention is disclosed that is was not so made.

(3) The Recipient shall furnish the Contracting Officer a final report, within 3 months after completion of the work listing all subject inventions or containing a statement that there were no such inventions, and listing all subawards/contracts at any tier containing a patent rights clause or containing a statement that there were no such subawards/contracts.

(4) The Recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under subaward/contract in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause.

(5) The Recipient agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of records relating to inventions.

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this agreement, have the right to examine any books (including laboratory notebooks), records, and documents of the Recipient relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this agreement to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Recipient has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause;

(iii) The Recipient and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Recipient invention which the Contracting Officer believes may be a subject invention, the Recipient may be required to disclose the invention to DOE for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Subaward/contract.

(1) The Recipient shall include the clause PATENT RIGHTS (SMALL BUSINESS FIRMS AND NONPROFIT ORGANIZATIONS) (suitably modified to identify the parties) in all subawards/contracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subaward/contract is subject to an Exceptional Circumstances Determination by DOE. In all other subawards/contracts, regardless of tier, for experimental, developmental, demonstration, or research work, the Recipient shall include this clause (suitably modified to identify the parties), or an alternate clause as directed by the contracting officer. The Recipient shall not, as part of the consideration for awarding the subaward/contract, obtain rights in the subrecipient's/contractor's subject inventions.

(2) In the event of a refusal by a prospective subrecipient/contractor to accept such a clause the Recipient:

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subrecipient/contractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subaward/contract without the written authorization of the Contracting Officer.

(3) In the case of subawards/contracts at any tier, DOE, the subrecipient/contractor, and Recipient agree that the mutual obligations of the parties created by this clause constitute a contract between the subrecipient/contractor and DOE with respect to those matters covered by this clause.

(4) The Recipient shall promptly notify the Contracting Officer in writing upon the award of any subaward/contract at any tier containing a patent rights clause by identifying the subrecipient/contractor, the applicable patent rights clause, the work to be performed under the subaward/contract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Recipient shall furnish a copy of such subaward/contract, and, no more frequently than annually, a listing of the subawards/contracts that have been awarded.

(5) The Recipient shall identify all subject inventions of a subrecipient/contractor of which it acquires knowledge in the performance of this agreement and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.

(h) Atomic energy.

(1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this agreement.

(2) Except as otherwise authorized in writing by the Contracting Officer, the Recipient will obtain patent agreements to effectuate the provisions of subparagraph (h)(1) of this clause from all persons who perform any part of the work under this agreement, except nontechnical personnel, such as clerical employees and manual laborers.

(i) Publication. It is recognized that during the course of the work under this agreement, the Recipient or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this agreement. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Recipient, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

(j) Forfeiture of rights in unreported subject inventions.

(1) The Recipient shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Recipient fails to report to Patent Counsel within six months after the time the Recipient:

(i) Files or causes to be filed a United States or foreign patent application thereon; or

(ii) Submits the final report required by subparagraph (e)(3) of this clause, whichever is later.

(2) However, the Recipient shall not forfeit rights in a subject invention if, within the time specified in subparagraph (e)(2) of this clause, the Recipient:

(i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the agreement and delivers the decision to Patent Counsel, with a copy to the Contracting Officer; or

(ii) Contending that the invention is not a subject invention, the Recipient nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the Contracting Officer; or

(iii) Establishes that the failure to disclose did not result from the Recipient's fault or negligence.

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this agreement), the Recipient shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (j) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions. (End of clause)

Rights in Data—General

(a) Definitions.

Computer Data Bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created or compiled. The term does not include computer data bases.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to administration, such as financial, administrative, cost or pricing, or management information.

Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

Limited rights, as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

Limited rights data, as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.

Restricted rights, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

Technical data, as used in this clause, means data (other than computer software) which are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocations of rights.

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this agreement:

(ii) Form, fit, and function data delivered under this agreement;

(iii) Data delivered under this agreement (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this agreement; and

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(iv) All other data delivered under this agreement unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Recipient shall have the right to—

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this agreement, unless provided otherwise in paragraph (d) of this clause;

(ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in subparagraph (c)(1) of this clause.

(c) Copyright.

(1) Data first produced in the performance of this agreement. Unless provided otherwise in paragraph (d) of this clause, the Recipient may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in data first produced in the performance of this agreement. When claim to copyright is made, the Recipient shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including agreement number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For such copyrighted data, including computer software, the Recipient grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) Data not first produced in the performance of this agreement. The Recipient shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this agreement any data not first produced in the performance of this agreement and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Recipient identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in this agreement or as otherwise may be provided in a collateral agreement incorporated in or made part of this agreement.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, publication and use of data.

(1) The Recipient shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this agreement, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this agreement.

(2) The Recipient agrees that to the extent it receives or is given access to data necessary for the performance of this award, which contain restrictive markings, the Recipient shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the contracting officer.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this agreement concerning inspection or acceptance, if any data delivered under this agreement are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this agreement, the Contracting Officer may at any time either return the data to the Recipient or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Recipient affording the Recipient 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Recipient fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Recipient provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Recipient shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Recipient a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Recipient files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Recipient may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Recipient's expense, and the Contracting Officer may agree to do so if the Recipient:

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also:

(i) Permit correction at the Recipient's expense of incorrect notices if the Recipient identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or

(ii) Correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this agreement and qualify as either limited rights data or restricted computer software, if the Recipient desires to continue protection of such data, the Recipient shall withhold such data and not furnish them to the Government under this agreement. As a condition to this withholding, the Recipient shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(h) Subaward/contract.

The Recipient has the responsibility to obtain from its subrecipients/contractors all data and rights therein necessary to fulfill the Recipient's obligations to the Government under this agreement. If a subrecipient/contractor refuses to accept terms affording the Government such rights, the Recipient shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with the subaward/contract award without further authorization.

(i) Additional data requirements.

In addition to the data specified elsewhere in this agreement to be delivered, the Contracting Officer may, at anytime during agreement performance or within a period of 3 years after acceptance of all items to be delivered under this agreement, order any data first produced or specifically used in the performance of this agreement. This clause is applicable to all data ordered under this subparagraph. Nothing contained in this subparagraph shall require the Recipient to deliver any data the withholding of which is authorized by this clause, or data which are specifically identified in this agreement as not subject to this clause. When data are to be delivered under this subparagraph, the Recipient will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(j) The recipient agrees, except as may be otherwise specified in this award for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this award, inspect at the Recipient's facility any data withheld pursuant to paragraph (g) of this clause, for purposes of verifying the Recipient's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Recipient whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

As prescribed in 600.325(d)(1), the following Alternate I and/or II may be inserted in the clause in the award instrument.

Alternate I

(g)(2) Notwithstanding subparagraph (g)(1) of this clause, the agreement may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Recipient may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, in accordance with such Notice:

LIMITED RIGHTS NOTICE

(a) These data are submitted with limited rights under Government agreement No. _____ (and subaward/contract No. _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Recipient, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(1) Use (except for manufacture) by Federal support services contractors within the scope of their contracts;

(2) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(3) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Recipient is a part for information or use (except for manufacture) in connection with the work performed under their awards and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(4) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(5) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(b) This Notice shall be marked on any reproduction of these data, in whole or in part. (End of notice)

Alternate II

(g)(3)(i) Notwithstanding subparagraph (g)(1) of this clause, the agreement may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Recipient may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE

(a) This computer software is submitted with restricted rights under Government Agreement No. _____ (and subaward/contract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the agreement.

(b) This computer software may be—

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Recipients in accordance with subparagraphs (b)(1) through (4) of this clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copied for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the agreement.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part. (End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE

Use, reproduction, or disclosure is subject to restrictions set forth in Agreement No. _____ (and subaward/contract _____, if appropriate) with _____ [name of Recipient and subrecipient/contractor)." (End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Recipient includes the following statement with such copyright notice: "Unpublished—rights reserved under the Copyright Laws of the United States." (End of clause)

Rights in Data—Programs Covered Under Special Data Protected Statutes

(a) Definitions.

Computer Data Bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the computer program to be produced, created or compiled. The term does not include computer data bases.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to administration, such as financial, administrative, cost or pricing or management information.

Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability as well as data identifying

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source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

Limited rights data, as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and confidential or privileged; or is published copyrighted computer software; including modifications of such computer software.

Protected data, as used in this clause, means technical data or commercial or financial data first produced in the performance of the award which, if it had been obtained from and first produced by a non-federal party, would be a trade secret or commercial or financial information that is privileged or confidential under the meaning of Title 5, United States Code Section 552(b)(4), (5 U.S.C. 552(b)(4)), and which data is marked as being protected data by a party to the award.

Protected rights, as used in this clause, mean the rights in protected data set forth in the Protected Rights Notice of paragraph (g) of this clause.

Technical data, as used in this clause, means that data which are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data specifically identified in this agreement as data to be delivered without restriction;

(ii) Form, fit, and function data delivered under this agreement;

(iii) Data delivered under this agreement (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this agreement; and

(iv) All other data delivered under this agreement unless provided otherwise for protected data in accordance with paragraph (g) of this clause or for limited rights data or restricted computer software in accordance with paragraph (h) of this clause.

(2) The Recipient shall have the right to—

(i) Protect rights in protected data delivered under this agreement in the manner and to the extent provided in paragraph (g) of this clause;

(ii) Withhold from delivery those data which are limited rights data or restricted computer software to the extent provided in paragraph (h) of this clause;

(iii) Substantiate use of, add, or correct protected rights or copyrights notices and to take other appropriate action, in accordance with paragraph (e) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in subparagraph (c)(1) of this clause.

(c) Copyright.

(1) Data first produced in the performance of this agreement. Except as otherwise specifically provided in this agreement, the Recipient may establish, without the prior approval of the Contracting Officer, claim to copyright subsisting in any data first produced in the performance of this agreement. If claim to copyright is made, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including agreement number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For such copyrighted data, including computer software, the Recipient grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(2) Data not first produced in the performance of this agreement. The Recipient shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this agreement any data that are not first produced in the performance of this agreement and that contain the copyright notice of 17 U.S.C. 401 or 402, unless the Recipient identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software, the Government shall acquire a copyright license as set forth in subparagraph (h)(3) of this clause if included in this agreement or as otherwise may be provided in a collateral agreement incorporated or made a part of this agreement.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, publication and use of data.

(1) The Recipient shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.

(2) The Recipient agrees that to the extent it receives or is given access to data necessary for the performance of this agreement which contain restrictive markings, the Recipient shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this agreement concerning inspection or acceptance, if any data delivered under this agreement are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this agreement, the Contracting Officer may at any time either return the data to the Recipient or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Recipient affording the Recipient 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Recipient fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Recipient provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Recipient shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Recipient a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Recipient files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without either the limited rights or restricted

rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Recipient may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Recipient's expense, and the Contracting Officer may agree to do so if the Recipient—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also—

(i) permit correction at the Recipient's expense of incorrect notices if the Recipient identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or

(ii) correct any incorrect notices.

(g) Rights to protected data.

(1) The Recipient may, with the concurrence of DOE, claim and mark as protected data, any data first produced in the performance of this award. Any such claimed "protected data" will be clearly marked with the following Protected Rights Notice, and will be treated in accordance with such Notice, subject to the provisions of paragraphs (e) and (f) of this clause.

PROTECTED RIGHTS NOTICE

These protected data were produced under agreement no. _____ with the U.S. Department of Energy and may not be published, disseminated, or disclosed to others outside the Government until (**Note:** The period of protection of such data is fully negotiable, but cannot exceed the applicable statutorily authorized maximum), unless express written authorization is obtained from the recipient. Upon expiration of the period of protection set forth in this Notice, the Government shall have unlimited rights in this data. This Notice shall be marked on any reproduction of this data, in whole or in part. (End of notice)

(2) Any such marked Protected Data may be disclosed under obligations of confidentiality for the following purposes: (a) For evaluation purposes under the restriction that the "Protected Data" be retained in confidence and not be further disclosed; or (b) To subcontractors or other team members performing work under the Government's (insert name of program or other applicable activity) program of which this award is a part, for information or use in connection with the work performed under their activity, and under the restriction that the Protected Data be retained in confidence and not be further disclosed.

(3) The obligations of confidentiality and restrictions on publication and dissemination shall end for any Protected Data: (a) At the end of the protected period; (b) If the data becomes publicly known or available from other sources without a breach of the obligation of confidentiality with respect to the Protected Data; (c) If the same data is independently developed by someone who did not have access to the Protected Data and such data is made available without obligations of confidentiality; or (d) If the Recipient disseminates or authorizes another to disseminate such data without obligations of confidentiality.

(4) However, the Recipient agrees that the following types of data are not considered to be protected and shall be provided to the Government when required by this award without any claim that the data are Protected Data. The parties agree that notwithstanding the following lists of types of data, nothing precludes the Government from seeking delivery of additional data in accordance with this award, or from making publicly available additional non-protected data, nor does the following list constitute any admission by the Government that technical data not on the list is Protected Data. (**Note:** It is expected that this paragraph will specify certain types of mutually agreed upon data that will be available to the public and will not be asserted by the recipient/contractor as limited rights or protected data).

(5) The Government's sole obligation with respect to any protected data shall be as set forth in this paragraph (g).

(h) Protection of limited rights data.

When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this agreement and such data qualify as either limited rights data or restricted computer software, the Recipient, if the Recipient desires to continue protection of such data, shall withhold such data and not furnish them to the Government under this agreement. As a condition to this withholding the Recipient shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

(i) Subaward/contract.

The Recipient has the responsibility to obtain from its subrecipients/contractors all data and rights therein necessary to fulfill the Recipient's obligations to the Government under this agreement. If a subrecipient/contractor refuses to accept terms affording the Government such rights, the Recipient shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subaward/contract award without further authorization.

(j) Additional data requirements.

In addition to the data specified elsewhere in this agreement to be delivered, the Contracting Officer may, at anytime during agreement performance or within a period of 3 years after acceptance of all items to be delivered under this agreement, order any data first produced or specifically used in the performance of this agreement. This clause is applicable to all data ordered under this subparagraph. Nothing contained in this subparagraph shall require the Recipient to deliver any data the withholding of which is authorized by this clause, or data which are specifically identified in this agreement as not subject to this clause. When data are to be delivered under this subparagraph, the Recipient will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(k) The Recipient agrees, except as may be otherwise specified in this agreement for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the Recipient's facility any data withheld pursuant to paragraph (h) of this clause, for purposes of verifying the Recipient's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Recipient whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

As prescribed in 600.325(e)(2), the following Alternate I and/or II may be inserted in the clause in the award instrument.

Alternate I

(h)(2) Notwithstanding subparagraph (h)(1) of this clause, the agreement may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Recipient may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, in accordance with such Notice:

LIMITED RIGHTS NOTICE

(a) These data are submitted with limited rights under Government agreement No. _____ (and subaward/contract No. _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Recipient, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(1) Use (except for manufacture) by Federal support services contractors within the scope of their contracts;

(2) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(3) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Recipient is a part for information or use (except for manufacture) in connection with the work performed under their awards and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(4) This "limited rights data" may be used by the Government or others on its behalf for

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emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(5) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(b) This Notice shall be marked on any reproduction of these data, in whole or in part. (End of notice)

Alternate II

(h)(3)(i) Notwithstanding subparagraph (h)(1) of this clause, the agreement may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Recipient may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (d) and (e) of this clause, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE

(a) This computer software is submitted with restricted rights under Government Agreement No. _____ (and subaward/contract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (c) of this Notice or as otherwise expressly stated in the agreement.

(b) This computer software may be—

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by Federal support service Contractors in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copied for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the agreement.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part. (End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE

Use, reproduction, or disclosure is subject to restrictions set forth in Agreement No. _____ (and subaward/contract _____, if appropriate) with _____ (name of Recipient and subrecipient/contractor)." (End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Recipient includes the following statement with such copyright notice: "Unpublished—rights reserved under the Copyright Laws of the United States." (End of clause)

Appendix B to Subpart D—Contract Provisions

All contracts awarded by a recipient, including those for amounts less than the simplified acquisition threshold, must contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts must contain a provision requiring compliance with E.O. 11246 (3 CFR, 1964–1965 Comp., p. 339), "Equal Employment Opportunity," as amended by E.O. 11375 (3 CFR, 1966–1970 Comp., p. 684), "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR chapter 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subawards in excess of $2000 for construction or repair awarded by recipients and subrecipients must include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient must report all suspected or reported violations to the responsible DOE contracting officer.

3. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $100,000 for construction and other purposes that involve the employment of mechanics or laborers must include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. *Rights to Inventions and Data Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 10 CFR 600.325 and Appendix A—Patent and Data Rights to Subpart D, Part 600.

5. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subawards of amounts in excess of $100,000 must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations must be reported to the responsible DOE contracting officer and the Regional Office of the Environmental Protection Agency (EPA).

6. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

7. *Debarment and Suspension* (E.O.s 12549 and 12689)—Contract awards that exceed the simplified acquisition threshold and certain other contract awards must not be made to parties listed on nonprocurement portion of the General Services Administration's Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs in accordance with E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold must provide the required certification regarding its exclusion status and that of its principals.

8. *Davis-Bacon Act (40 U.S.C. 276a)*—As a general rule, it is unlikely that the Davis-Bacon Act, which among other thing requires payment of prevailing wages on projects for the construction of public works, would apply to financial assistance awards. However, the presence of certain factors (*e.g.*, requirement of particular program statues; title to a construction facility resting in the Government) might necessitate a closer analysis of the award, to determine if the Davis-Bacon Act would apply in the particular factual situation presented.

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Part III

Department of Justice

Immigration and Naturalization Service

8 CFR Part 3
Board of Immigration Appeals; Procedural Reforms To Improve Case Management; Final Rule

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 3

[EOIR No. 131; AG Order No. 2609–2002]

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Board of Immigration Appeals: Procedural Reforms To Improve Case Management

AGENCY: Executive Office for Immigration Review, Immigration and Naturalization Service, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule revises the structure and procedures of the Board of Immigration Appeals (Board), provides for an enhanced case management procedure, and expands the number of cases referred to a single Board member for disposition. These procedures are intended to reduce delays in the review process, enable the Board to keep up with its caseload and reduce the existing backlog of cases, and allow the Board to focus more attention on those cases presenting significant issues for resolution by a three-member panel. After a transition period to implement the new procedures in order to reduce the Board's backlog of pending cases, the size of the Board will be reduced to eleven.

DATES: This final rule is effective September 25, 2002.

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I. Introduction

The Attorney General has delegated to the Board of Immigration Appeals (Board) broad jurisdiction over appeals from decisions of the immigration judges in exclusion, deportation, and removal proceedings, bond appeals, asylum-only cases, and other specific matters, and also the authority to review certain final decisions by district directors and other officials of the Immigration and Naturalization Service (Service).[1] *See* 8 CFR part 3, subpart A. Decisions of the Board are subject to review by the Attorney General as provided in 8 CFR 3.1(h).

The Executive Office for Immigration Review (EOIR) was created by the Attorney General in 1983 to consolidate the adjudicatory process by placing the immigration judges and the Board in a single administrative unit separate and apart from the Service. 52 FR 2931 (Jan. 29, 1987). In 1987, the Attorney General also established the Office of the Chief Administrative Hearing Officer (OCAHO) within EOIR to adjudicate certain civil penalty issues. EOIR is an administrative component under the direction of the Attorney General, not a separate agency of the United States. It is, however, wholly separate from, and independent of, the Service.

A. The Problem Presented

The Attorney General is promulgating this rule to improve the adjudicatory process for the Board because, under the current process, the Board has been unable to adjudicate immigration appeals in removal proceedings effectively and efficiently. In 1992, the Board received 12,823 cases and decided 11,720 cases, including appeals from the immigration judges or the Service, and motions to reopen proceedings. At the end of FY1992, the Board had 18,054 pending cases. By 1997, the number of new cases rose to 29,913, dispositions rose to 23,099, and the pending caseload had grown to 47,295 cases. Most recently, in FY2001, the Board received 27,505 cases and decided 31,789 cases. The pending caseload on September 30, 2001, totaled 57,597 cases.

To meet this demand, the number of Board members was increased from 5 positions to 12 positions in 1995, with further incremental increases in subsequent years to a total of 23 authorized Board member positions (with 19 members and four vacancies at present). It is now apparent that this substantial enlargement—more than quadrupling the size of the Board in less than seven years—has not succeeded in addressing the problem of effective and efficient administrative adjudication, and the Department declines to continue committing more resources to support the existing process. Rather, the Department believes that amendment of the adjudicatory process is a more effective approach to facilitate the ability of the Board to adjudicate the case backlog, as well as to provide meaningful guidance for immigration judges, the Service, attorneys and accredited representatives, and respondents.

Until recently, three-member panels reviewed all cases, even cases that presented no colorable basis for appeal. However, beginning in 1999, the Attorney General instituted a mechanism for streamlining cases. *See* 64 FR 56135 (Oct. 18, 1999). The streamlining process permits a single Board member to summarily affirm the immigration judge's decision without opinion; the Chairman is authorized to designate the type of cases that could be "streamlined."

The streamlining process undertaken by the Board has provided the best opportunity to manage the Board's backlog. Over 58% of all new cases in 2001 were sent to be summarily decided by single Board member review through streamlining. Testimony of Kevin Rooney, Director, EOIR, Hearing before the Committee on the Judiciary, Subcommittee on Immigration and Claims, United States House of Representatives, *Operations of the Executive Office for Immigration Review (EOIR)*, 107th Cong., 2nd Sess. 23 (Feb. 6, 2002) (hereinafter "House Judiciary Subcommittee Hearing"). That initiative, allowing certain categories of appeals to be adjudicated by a single member, was recently assessed favorably by an external auditor. Arthur Andersen & Company, *Board of Immigration Appeals (BIA) Streamlining Pilot Project Assessment Report* (Dec. 13, 2001) (hereinafter "Streamlining Study"). Streamlining was the first disengagement from a "one size fits all" philosophy of using three member panels for all cases. The final rule continues that process.

The Department agrees with the fundamental assessment that the Board's use of the streamlining process has been successful, and, in this rule, expands the single-member process to be the dominant method of adjudication for the large majority of cases before the Board. In particular, this rule removes the restriction that a single Board member is limited to affirming an immigration judge's decision "without opinion" in those cases where an affirmance is appropriate. While such dispositions are proper in a substantial number of cases, as the Board's experience to date with the streamlining process has demonstrated, there are many other cases that may require some explanation of the Board's rationale, for example, as to why the immigration judge's decision was the proper result, or why any asserted errors were harmless or immaterial.

Under the existing streamlining procedures, any case that is not appropriate for summary affirmance without opinion must be referred to a three-member panel for disposition, even if the issues are not novel or complex. That process can be, and has been, cumbersome and time-consuming, and expends an excessive amount of resources. Where single Board members can resolve such appeals through issuance of a brief written opinion, the Board will be able to concentrate greater resources on the more complex cases that are appropriate for review by a three-member panel, and will also be able to focus greater attention on the issuance of precedent decisions that provide guidance to the immigration judges, the Service, attorneys and accredited representatives, and respondents.

Finally, under the Board's existing processes, decisions have all too often been issued long after the Notice of Appeal. Cases have routinely remained pending before the Board for more than two years, and some cases have taken more than five years to resolve. There is reason for concern that many appeals have been filed precisely to take advantage of this delay. Moreover, the quality of precedent decisions has not improved and the number of precedent decisions has remained relatively constant despite substantial changes in the law.

B. History of the Rulemaking

The Department published a proposed rule in the **Federal Register** on February 19, 2002, 67 FR 7309, proposing procedural reforms to improve case management at the Board. A 30-day public comment period ended on March 21, 2002.

In response to the proposed rulemaking, the Department received numerous comments from various nongovernmental organizations (NGOs), members of Congress, private attorneys, and other interested individuals. The Department received a total of 68 separate, timely submissions (with several NGOs submitting separate comments with attachments that were identical, and one set of NGO comments that attached lists of signatures totaling in excess of 900 individuals). Since many of the comments are similar and endorse the submissions of other commenters, the Department addresses the responses by topic rather than by referencing each specific commenter and comment. In addition, five comments were either postmarked and/or received by EOIR after the closing date for the comment period. None of the untimely submissions presented any comment that was not already addressed by an earlier commenter.

In addition, the Department has considered the record of the House Judiciary Subcommittee Hearing, *supra*, because that hearing dealt with the same subject as the rule and because of the perceptive discussion before the Subcommittee. The Department also considered the evaluation of the streamlining project in the Streamlining Study.

C. 30-Day Notice and Comment Period

Several commenters objected to the 30-day comment period for the proposed rule and requested an extension. Some of the NGOs also requested a meeting with the Department.

Notwithstanding the length of the comment period, 68 commenters submitted a variety of comments, many of which were thoughtful and extensive. The Department has reviewed and carefully considered all of the comments submitted and believes that the 30-day comment period has been sufficient. Additionally, the Department has decided against engaging in meetings with particular commenters since the written comments of all commenters as submitted are sufficient. The Department also notes that the Administrative Procedure Act (APA) provides that procedural rules may be issued without notice and opportunity for prior comment and may be effective upon publication. Rules which are arguably "substantive" require at least 30 days prior notice subject to certain exceptions. *See* 5 U.S.C. 553(b)(A), (d). Accordingly, the Department has fully complied with the APA, and no additional opportunity for comment is required or necessary considering the written comments already submitted. Furthermore, the 30-day comment period is in keeping with the Department's objectives, including eliminating unwarranted delay.

[1] In this **SUPPLEMENTARY INFORMATION**, the Department uses the term "removal," and appropriate variations, to encompass all forms of proceedings before the Board. Similarly, the Department refers to all aliens in proceedings as "respondents," whether they would be respondents or applicants. The use of these simplified terms is for the ease of the reader and should not be construed to imply any limitations on the scope of the final rule as it applies to matters within the jurisdiction of the Board.

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II. Summary of the Revised Review System

A. Description of the Department's Goals

At the time this rule was proposed, the Attorney General laid out four important objectives in the disposition of administrative immigration appeals: (1) Eliminating the current backlog of cases pending before the Board; (2) eliminating unwarranted delays in the adjudication of administrative appeals; (3) utilizing the resources of the Board more efficiently; and (4) allowing more resources to be allocated to the resolution of those cases that present difficult or controversial legal questions—cases that are most appropriate for searching appellate review and that may be appropriate for the issuance of precedent decisions. This rule reflects a variety of necessary reforms to achieve these various objectives, in order to strengthen the review process, enhance the function of the Board in resolving issues, provide effective guidance regarding the implementation of the immigration laws, and improve the timeliness of the Board's review.

The Board's decisions focus, for the most part, on the issue of whether a respondent has established eligibility for relief from removal from the United States and whether the Attorney General should affirmatively exercise discretion in the respondent's favor. Although the nature of the Board's caseload appears to be changing somewhat in light of changes in the law, the Board's caseload continues to focus heavily on relief from removal. Most respondents either concede removability before the immigration judge, or do not appeal the immigration judge's determination that the respondent is removable. Therefore, the dominant number of the Board's cases relate to the application of specific portions of the Act relating to relief from removal.

Moreover, the Department agrees with the assessment of former Board member Michael Heilman, based on his review of over 100,000 appeals over some 15 years of service on the Board, that the "overwhelming percentage of immigration judge decisions * * * [are] legally and factually correct." House Judiciary Subcommittee Hearing, *supra*, at 15. The Department disagrees with a view that suggests that "the factual records made in the majority of hearings * * * [are not] fully considered and assessed by either the Immigration Judge or the Board." *See Matter of A–S–*, 21 I&N Dec. 1106, 1122 (BIA 1998) (Rosenberg, dissenting). Accordingly, the final rule continues to focus on the primacy of immigration judges as factfinders and determiners of the cases before them. The role of the Board is to identify clear errors of fact or errors of law in decisions under review, to provide guidance and direction to the immigration judges, and to issue precedential interpretations as an appellate body, not to serve as a second-tier trier of fact.

In this adjudicatory process, the Department employs Board members to decide the merits of cases brought before the Board. That decisional process includes not only the individual case, but also the function of setting precedent to guide the immigration judges, the Service, attorneys and accredited representatives, and respondents. Historically, as the Attorney General's delegate, the Board's precedent decisions have been accorded appropriate deference under the Supreme Court's decisions in *Chevron* v. *NRDC*, 467 U.S. 837 (1984) (deference due agency interpretation of statutes within delegated authority); *INS* v. *Aguirre-Aguirre*, 526 U.S. 415, 425 (1999) (Attorney General, and hence the Board, accorded *Chevron* deference); *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 448–449 (1987) (same), as the primary interpreter of the Immigration and Nationality Act. The Attorney General's ultimate authority to decide the cases presented to the Board through his delegation has not changed over the years, although it has been exercised with varying frequency at different times of the Board's history.

This precedent setting function recognizes that novel issues arise each and every time that the Act, or the regulations, change; complex issues arise because of the interrelationship of multiple provisions of law; and repetitive issues arise before different immigration judges because of the national nature of the immigration process. All of the participants in the immigration adjudication process deserve concise and useful guidance on how these novel, complex, and repetitive issues are best resolved. The rule of law guides Board members' adjudications; the Act and regulations provide the context for that adjudication.

B. Summary of the Provisions of the Rule

The Attorney General has determined that the rights of all respondents are better protected by restructuring the appeals process so that three-member panels may focus their attention on writing quality precedent-setting decisions, correcting clear errors of fact and interpreting the law, and providing guidance regarding the standards for the exercise of discretion, rather than reviewing appeals that involve routine questions of law or fact or that present no substantial basis for reversing the decision under appeal. In this regard, the Board is delegated authority to review questions of fact to determine whether they are clearly erroneous; all other questions, whether of law or discretion, may be reviewed by the Board *de novo*. A key element of this reform is that the Chairman will establish, and be responsible for, a case management screening system to review all incoming appeals and to provide for prompt and appropriate disposition—by a three-member panel in those instances where the merits of the case presented to the Board call for review by a three-member panel under § 3.1(e)(6) of the rule, and by a single Board member in every other case that does not meet those standards.

The final rule establishes the primacy of the streamlining system for the majority of cases. These do not present novel or complex issues. A single Board member may issue a brief order where appropriate to affirm the decision of the immigration judge or dismiss the appeal on procedural grounds. A single Board member may issue a short order that explicates the reasons, for example, why an immigration judge's findings of fact are not clearly erroneous, or why the immigration judge's exercise of discretion was appropriate, or why the record should be remanded to the immigration judge for further proceedings.

Under specific circumstances, the single Board member may refer the record for decision by a three-member panel. These more complex cases deserve closer attention. The Board's *en banc* process remains as currently devised to provide interpretation of the Act through precedent decisions, whether through affirmation of a decision of a three-member panel or through review by the entire Board. Both the three-member panel and the *en banc* Board should be used to develop concise interpretive guidance on the meaning of the Act and regulations. Thus, the Department expects the Board to be able to provide more precedential guidance to the immigration judges, the Service, attorneys and accredited representatives, and respondents.

This process will resolve simple cases efficiently while reserving the Board's limited resources for more complex cases and the development of precedent to guide the immigration judges and the Service. The Department believes that this allocation of resources will better serve the respondents, the Service, the public, and the administration of justice.

The final rule establishes the primacy of the immigration judges as factfinders by utilizing a clearly erroneous standard of review for all determinations of fact. The Board's historic rule, explained below, of not considering new evidence on appeal, is codified in this rule. Factfinding that may be required will be conducted by the immigration judge on remand.

However, the rule retains *de novo* review both for questions of law and for questions of judgment (concerning whether to favorably exercise discretion in light of the facts and the applicable standards governing the exercise of such discretion).

The rule contains a number of the time limits of the proposed rule. However, recognizing the concern of a number of commenters, the Department has decided to retain the current sequential briefing schedule for non-detained cases, but with shorter time limits. Under the final rule, detained cases will be briefed concurrently on a 21-day calendar and non-detained cases will be briefed consecutively on a 21-day calendar. Moreover, the Chairman is directed to undertake improvements in the transcription process to assist in the briefing process.

Finally, the rule retains the reduction to 11 Board members after a transition period. The Department is unpersuaded by the arguments received, particularly in light of the objective evidence, that the reduction to 11 Board members should be changed. The Board should, under this rule, be able to reduce its backlog and keep current, as well as conduct the *en banc* proceedings necessary to provide precedent guidance to the immigration community. Given the scope of these changes to the Board's structure and revisions to current procedures, the Department will continuously review the effectiveness of the rule in achieving the aforementioned Departmental goals.

III. Comments on the Proposed Rule

The comments received on the proposed rule can generally be grouped into broad categories. In this analysis, we divide the comments and further discussion of the rule into specific subparts in order to provide a cohesive overview of the comments, the changes made in light of the comments, and the final rule. Many of the issues overlap and commenters treated the same issues in different ways. Accordingly, while all comments have been carefully reviewed, it may not be apparent from this discussion that a particular version of a comment has been directly addressed. To the extent practical, the Department has attempted to address the comments received as specifically as possible, but the duplication of comments, either by filing the same comment multiple times, or making minor adjustments in different submissions, makes it impossible to address each specific comment in a structured response.

The Department received widely divergent comments that both supported and opposed the proposed rule. The Department appreciates the contributions of all the individuals and groups who submitted comments. The Department has given careful consideration to all of the comments received on the proposed rule, as indicated in the following discussion. The thoughtfulness of the public comments has contributed greatly to improvement in the final rule. As discussed below, the comments also included ideas and specific proposals that were beyond the scope of the proposed rule.

Overall, most of the commenters supported at least some of the Department's objectives, especially the elimination of unwarranted delays and the current backlog of cases pending before the Board. As numerous commenters noted, languishing appeals do not serve the interests of justice. There are divergent views, though, regarding how these objectives should be accomplished. Some commenters generally supported the proposed rule, while many other commenters strongly opposed many or most of the specific provisions of the proposed rule.

A. General Due Process Issues

Some commenters argued in a general way that the proposed rule violates due process or that it is otherwise bad procedure.

Initially, the Department notes that the due process clause of the Constitution does not confer a right to appeal, even in criminal prosecutions. *See Ross* v. *Moffitt*, 417 U.S. 600, 611 (1974) ("[W]hile no one would agree that the State may simply dispense with the trial stage of proceedings without a criminal defendant's consent, it is clear that the State need not provide any appeal at all."); *Griffin* v. *Illinois*, 351 U.S. 12, 18 (1956) (plurality opinion) (noting that "a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all") (citation omitted). Much as the Congress may dispense with the inferior federal courts by the same legislative stroke that created them, the Attorney General could dispense with the appellate review process in immigration proceedings, *i.e.*, the Board of Immigration Appeals.

Some of the commenters argued specifically that the proposed rule violates a respondent's right to due process under the Supreme Court's balancing in *Mathews* v. *Eldridge*, 424 U.S. 319 (1976). The Department agrees that some form of hearing is appropriate and beneficial under the circumstances. *See Wolff* v. *McDonnell*, 418 U.S. 539, 557–58 (1974). However, due process is not "a technical conception with a fixed content unrelated to time, place and circumstances," *Cafeteria and Restaurant Workers* v. *McElroy*, 367 U.S. 886, 895 (1961), but is "flexible and calls for such procedural protections as the particular situation demands." *Morrissey* v. *Brewer*, 408 U.S. 471, 481 (1972).

Assuming that *Mathews* is the appropriate touchstone, the process that is due is determined by balancing the nature of the individual's interest, the fairness and reliability of the procedures, and the nature of the governmental interest. Many of the commenters focused on the nature of the interest of the individual, particularly in asylum and related cases where the respondents assert that the respondent will be persecuted, his or her life or freedom will be threatened, or that he or she will be tortured, if returned to his or her country of origin.

1. The Respondent's Interest in the Individual Proceeding

First, and foremost, the vast majority of issues presented on appeal to the Board involve applications for relief from removal, not removal itself. Accordingly, the process that is due is not a process related to the government's efforts to remove the respondent from the United States. The process that is due is process relating to the respondent's request for amelioration of removal.

Those cases where the respondent has a basis to contest a finding of removability would appear to be more amenable to review by a three-member panel under § 3.1(e)(6). Removability, and whether the Service has established clear and convincing evidence to support the charge, when disputed, may be more likely to involve novel or complex factual or legal issues because of the multitude of governing statutory provisions, such as divisible State criminal laws. Whether a single-member or three-member review is more efficacious is a question best decided by the Board under the standards of this rule.

In most cases, the issues before the Board relate to whether the respondent

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has established eligibility for an application for relief from removal, or whether the Attorney General should exercise discretion in the respondent's favor. In these cases, the Service has established the government's interest in removal of the respondent. The burden of proof in these cases shifts to the respondent to establish eligibility for relief from removal and, in most cases, that the respondent deserves a favorable exercise of the Attorney General's discretion. The process due under the Constitution in determining removability is substantially higher than the process required by the Constitution in determining whether to grant relief from such an order of removal.

2. The Government's Interest in the Immigration Adjudication Process

The interest of the government in effective and efficient adjudication of immigration matters, moreover, is substantially higher than an individual respondent's interest in his or her own proceeding. Congress is granted plenary authority under the Constitution in immigration matters and Congress has delegated broad authority to the Attorney General to administer the immigration laws. The authority is not merely one involving a discrete set of benefits and penalties, but implicates, in conjunction with the Secretary of State, the vast external realm of foreign relations. Not only does the removal process utilize reports and profiles of country conditions provided by the Department of State, the actual removal process implicates the relationships of the United States with other countries. *INS* v. *Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *INS* v. *Abudu*, 485 U.S. 94, 110 (1988). In this context, the Attorney General has substantially more authority to structure the administrative adjudicatory process than most administrative processes. Indeed, the Department questions whether *Mathews* is the appropriate touchstone in light of the unique nature of the Act as the tool for managing the intersection of foreign and domestic interests regarding aliens. Congress has provided almost no parameters for the exercise of the Attorney General's broad authority to manage immigration adjudications, and to the extent it has done so, has limited discretionary procedure available to respondents. *See, e.g., INS* v. *Rios-Pineda*, 471 U.S. 444, 446 (1985) (Attorney General's creation of motion to reopen, and delegation to the Board, by regulation), 8 U.S.C. 1229(c)(6) (motions to reopen in statutory removal proceedings specified by statute in 1996). Accordingly, more deference to the Attorney General is appropriate. *Cf. Weiss* v. *United States*, 510 U.S. 163, 176–79 (1994).

3. Balancing of Interests in the Adjudicatory Process

Some commenters expressed concern that the expansion of the streamlining initiative, with its emphasis on single-member review of cases, will result in violations of the due process rights of respondents-appellants. Some commenters contended that three-member reviews of appeals provide more protection for due process rights than single-member reviews. The primary concern of the comments is a perceived inadequacy in the ability of a single Board member to decide an appeal in a way that protects the due process rights of appellants while maintaining administrative efficiency.

The Department finds that single-member review under the final rule is both fair and reliable as a means of resolving the vast majority of non-controversial cases, while reserving three-member review for the much smaller number of cases in which there is a substantial factual or legal basis for contesting removability or in which an application for relief presents complex issues of law or fact. In this context, the Attorney General is free to tailor the scope and procedures of administrative review of immigration matters as a matter of discretion. *Maka* v. *INS*, 904 F.2d 1351 (9th Cir. 1990); *see also Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 524–25 (1978), *quoting FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 143 (1940) ("administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties' "). *See generally* J. McKenna, L. Hooper & M. Clark, Federal Judicial Center, *Case Management Procedures in the Federal Courts of Appeals* (2000) (comparative compendium of innovations in circuit court case management systems).

Each case varies according to the needs presented by the respondent and the issues.[2] In the typical case that reaches the appeal stage, the respondent makes an initial appearance and is advised of his or her rights, including the right to be represented by counsel or an accredited representative at no cost to the government, the right to inspect all evidence presented, and the right to present evidence and testimony, by the respondent and other witnesses, in the language the respondent understands. Pleadings are usually taken after a continuance, with a further hearing being held to determine whether the alien is deportable or inadmissible, if the respondent contests removability. If the immigration judge finds that the respondent is removable, the immigration judge informs the respondent of possible forms of relief, and further continuances may be granted to allow time for the respondent to prepare applications for relief and acquire additional evidence. A call-up date is established for filing the application and a deadline is set for filing additional evidence. Only then is the respondent expected to present his case for relief from removal. All of these proceedings are on the record and recorded verbatim. A transcript of proceedings has been prepared in all appeals, including any oral decision by the immigration judge. *See, e.g.*, 8 CFR 240.3–240.13 (procedure in removal cases). Accordingly, by the time a case reaches the Board on appeal, many, if not most, respondents have already had several hearings on the record before the immigration judge, been explained their rights, and been given more than one opportunity to ask questions and raise issues.

On appeal, the respondent is required under existing regulations to file a statement indicating the grounds for appeal, and has the right to file a more detailed brief. On this record, single Board members are well-equipped both to determine the legal quality and sufficiency of an immigration judge's decision and to determine if the appeal qualifies under 8 CFR 3.1(e)(6) for referral to a three-member panel. Each appeal will be fully reviewed and decided by the Board member within the law and regulations, precedent decisions, and federal court decisions. The Department is not persuaded that a single Board member review gives any less due process to an respondent's appeal that involves routine legal and factual bases than would a three-member panel considering the same appeal.

B. General Comments Relating to the Role and Independence of the Board

Some commenters argued that the provisions of this rule, either individually or in combination, would adversely affect the fairness or effectiveness of the Board's adjudications by limiting the independence and perceived impartiality of the Board. Some commenters criticized the provision in § 3.1(a)(1) of the proposed rule that the

[2] In recognition of the differences between appeals from the decision of an immigration judge and appeals from decisions by a district director or other Service official, this rule retains the *de novo* standard of review for appeals in the latter case, as discussed below.

Board members act as the "delegates" of the Attorney General in adjudicating appeals, as well as the language in § 3.1(d)(1) of the proposed rule making clear that, in exercising their independent judgment and discretion in cases coming before them, the Board members are subject to the Act and the implementing regulations, and the direction of the Attorney General.

1. The Attorney General's Authority

These arguments misapprehend the nature of the Board and the rule. The Board is an administrative body within the Department, and it is well within the Attorney General's discretion to develop the management and procedural reforms provided in this rule.[3] As one court has noted, the Attorney General could dispense with Board review entirely and delegate his power to the immigration judges, or could give the Board discretion to choose which cases to review. *See Guentchev* v. *INS*, 77 F.3d 1036, 1037 (7th Cir. 1996).

In *Nash* v. *Bowen*, 869 F.2d 675 (2nd Cir. 1989), the court of appeals addressed similar concerns by an administrative law judge (ALJ) challenging efforts by the Social Security Administration (SSA) to improve the ALJ's quality and efficiency. In an effort to reduce a backlog of 100,000 cases, the SSA instituted a series of reforms that included a monthly production quota, an appellate system or peer review program, and a reversal rate policy. The court rejected challenges to each of these reforms, explaining that "those concerns are more appropriately addressed by Congress or by courts through the usual channels of judicial review in Social Security cases. The bottom line in this case is that it was entirely within the Secretary's discretion to adopt reasonable administrative measures in order to improve the decision making process." *Id.* at 681 (citations omitted). Similarly, the Attorney General has promulgated a final rule within his discretion intended to reduce delays in the review process, enable the Board to keep up with its caseload and reduce the existing backlog of cases, and allow the Board to focus more attention on those cases presenting significant issues for resolution by a three-member panel. The Department, in this final rule, does not go so far as did the SSA, nor does it intend to impinge on the intellectual independence of its adjudicators.

[3] The Board was created by the Attorney General in 1940, after a transfer of functions from the Department of Labor. Reorg. Plan V (May 22, 1940); 3 CFR Comp. 1940, Supp. tit.3, 336. The Board is not a statutory body; it was created wholly by the Attorney General from the functions transferred. A.G. Order 3888, 5 FR 2454 (July 1, 1940); *see Matter of L-*, 1 I&N Dec. 1 (BIA; A.G. 1940).

2. Independence of Administrative Adjudicators

Several commenters argued that the independence and impartiality of immigration judges and immigration adjudicators must be affirmed. They asserted that the proposed rule would adversely affect the independence of the Board. Some of these same commenters expressed the view that immigration courts should be independent from the Department.

These comments misapprehend the distinction between "independence" and "fundamental fairness." The Constitution requires fundamental fairness, not that the adjudicator be "independent" of policy direction or management by the Executive. The Department agrees with the principle of independence of adjudicators within the individual adjudications, but notes that freedom to decide cases under the law and regulations should not be confused with managing the caseload and setting standards for review. The case management process that is established and delegated by the Attorney General to the Director of EOIR and the Chairman deals with management of the workload, not professional judgment in adjudicating any individual case. Similarly, establishing standards for review by rule is well within the Attorney General's authority to oversee and manage the Board; again, it is not related to the Board's professional judgment in adjudicating any individual case. The key to understanding here is that the Department employs Board members to make professional adjudicatory judgments in individual cases and to establish precedent subject to further review, but it is within the Attorney General's authority to manage the caseload and to set policy.

The authority of the Attorney General to establish standards for the Board's adjudications, and to review the decisions of the Board, is well established. "[T]he Board acts on the Attorney General's behalf rather than as an independent body. The relationship between the Board and the Attorney General thus is analogous to an employee and his superior rather than to the relationship between an administrative agency and a reviewing court." *Matter of Hernandez-Casillas*, 20 I&N Dec. 262, 289 n.9 (BIA 1990, A.G. 1991).

The final rule does not obstruct the Board's judgment. As the Supreme Court has noted, "The Board is appointed by the Attorney General, serves at his pleasure, and operates under regulations [that provided] that "in considering and determining * * * appeals, the Board * * * shall exercise such discretion and power conferred upon the Attorney General by law as is appropriate and necessary for the disposition of the case. The decision of the Board * * * shall be final except in those cases reviewed by the Attorney General." *United States ex rel. Accardi* v. *Shaughnessy*, 347 U.S. 260, 266 (1954). In that case, the Court initially found sufficient cause for a further hearing on whether the Attorney General had interfered with the authority that he had delegated to the Board, and concluded: "[A]s long as the regulations remain operative, the Attorney General denies himself the right to sidestep the Board or dictate its decision in any manner." *Id.*, at 267. However, after a formal hearing on the petition for habeas corpus and further review by the court of appeals, the Court ultimately concluded that no such violation of the regulation, adversely affecting the respondent, had occurred. *Shaughnessy* v. *United States ex rel. Accardi*, 349 U.S. 280 (1955).

This case is important to understanding the final rule for two distinct reasons. First, the final rule amends the very rule under consideration by the Supreme Court in *Accardi* to structure the Board's procedures and scope of review in all cases. This is precisely the manner by which the law requires such changes to be made: amendment of the Board's regulations. Second, no portion of the final rule relates to any specific case or alien, or decides any such case, or implicates any alien. The actions here taken are those prescribed by the Court in *Accardi*.

3. Attorney General Opinions and Written Orders

Several commenters objected to the new language in § 3.1(d)(3)(i) of the proposed rule that the Board is subject to legal opinions and written orders issued by the Attorney General, in addition to the Attorney General's review of individual Board decisions. The Department notes that the proposed rule, in this respect, is virtually identical to the proposed rule published by former Attorney General Janet Reno, and retains this provision without change. 65 FR 81435, 81437 (Dec. 26, 2000).

The Attorney General is the principal legal advisor to the President and the Executive Branch. In particular, section 103(a) of the Immigration and Nationality Act ("Act"), 8 U.S.C.

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1103(a), provides that the opinion of the Attorney General on legal issues is controlling. In addition, the role of the Department's Office of Legal Counsel in issuing legal opinions, on behalf of the Attorney General, that are binding on the Executive Branch, is well established. *See e.g., Secretary of the Interior* v. *California*, 464 U.S. 312, 320–21 n.6 (1984); *Sea-Land Service, Inc.* v. *Department of Transportation*, 137 F.3d 640, 643 (D.C. Cir. 1998).

This rule makes clear that the Attorney General need not be strictly limited to the issuance of legal opinions and the direct review of individual Board opinions, and that the Attorney General may provide direction to the Board through written orders.[4] It may be appropriate for the Board to take account of the policy goals or priorities established by the Attorney General. Such actions by the Attorney General do not encroach on the decisional independence of Board members in particular cases before them.

4. The Effect of Regulations

Although not specifically raised in the public comments, the Department also notes that the language of § 3.1(d)(1) of the proposed rule states that the Board will resolve the issues before it in a manner that is "consistent with the Act and the regulations." This language clarifies the role of regulations in administrative adjudications under the Act.

The Board has long recognized that it is bound by the provisions of the Act, as well as by regulations adopted by the Attorney General. *See Matter of Ponce de Leon-Ruiz*, 21 I&N Dec. 154, 158 (BIA 1996) ("The Board is bound to uphold agency regulations * * * A regulation promulgated by the Attorney General has the force and effect of law as to this Board and Immigration Judges.

[4] The Board has expressly acknowledged, for example, that the Attorney General's determination of a legal issue in interpreting the Act is binding on the Board and the immigration judges, even if that determination is reflected in the SUPPLEMENTARY INFORMATION to a rule rather than in the text of a rule or in an Attorney General or OLC Opinion. *See Matter of A–A–*, 20 I&N Dec. 492, 502 (BIA 1992): 'In the supplementary information published with the regulation, the Attorney General made clear that "under the prevailing interpretation, the phrase "shall apply to admissions" as used in section 511(b) of the [1990 Act) refers to all applications for relief pursuant to section 212(c) of the Act submitted after November 29, 1990, whether at a port of entry or in subsequent proceedings before a district director or Immigration Judge." 56 FR 50,033–34 (1991) (SUPPLEMENTARY INFORMATION). The Attorney General has thereby determined that the statutory bar to section 212(c) relief shall apply only to those applications submitted after November 29, 1990. We are therefore bound by his determination in this regard."

Regulations in effect have the force and effect of law.") (citations omitted).

The immigration regulations, however, include not only those rules adopted personally by the Attorney General, but also substantive and procedural rules duly promulgated by the Commissioner of the Service, under an express delegation of rulemaking authority from Congress to the Attorney General and, in turn, from the Attorney General to the Commissioner. *See* 8 U.S.C. 1103; 8 CFR 2.1. The Department fully recognizes and reiterates, of course, that the Board and the immigration judges are independent of the Service (although some court opinions contain language that appears to blur this key distinction). For this reason, the Attorney General, and not the Commissioner, has consistently promulgated the regulations that govern the organization, procedures, or powers of the Board and the immigration judges and the conduct of immigration proceedings. *See, e.g.*, 8 CFR parts 3, 236, 240. Thus, for example, standards governing the availability of discretionary relief in immigration proceedings are properly adopted by the Attorney General, either by rule, *e.g.*, 8 CFR 240.58, or by written decision, *e.g., Matter of Jean*, 23 I&N Dec. 373, 383–85 (A.G. 2002). *See generally, Lopez* v. *Davis*, 531 U.S. 230, 238–42 (2001).

The authority delegated to the Commissioner to promulgate substantive or "legislative" rules does properly extend, however, to the interpretation of the general provisions of the Act. A regulation adopted pursuant to delegated statutory authority and pursuant to applicable rulemaking requirements under the Administrative Procedure Act has the "force and effect of law" as a substantive or legislative rule. The existing language in section 3.1(d)(1), which defines the broad general powers of the Board, specifies that the Board's authority in cases before it is "[s]ubject to any specific limitation prescribed by this chapter [constituting 8 CFR parts 1–499]." Necessarily, such limitations would include a regulatory provision that has given a specific legal interpretation to a provision of the Act. The language of this rule makes explicit what was implicit in the current version of § 3.1.

A fundamental premise of the immigration enforcement process must be that the substantive regulations codified in title 8 of the Code of Federal Regulations are binding in all administrative settings, and this specifically includes substantive regulations interpreting and applying the provisions of the Act. Of course, the Service and the Board are bound by the decisions of the federal courts, *see, e.g., Matter of Anselmo*, 20 I&N Dec. 25 (BIA 1989), but even the federal courts owe deference to authoritative agency interpretations of the substantive provisions of the Act, within the limits recognized by the Supreme Court. *Chevron* v. *NRDC, supra* (deference due agency's interpretation of statutes delegated for administration); *INS* v. *Aguirre-Aguirre, supra* (deference due administrative interpretations of the Act); *cf., Fisher* v. *INS*, 79 F.3d 955, 961 (9th Cir. 1996) (*en banc*) (same; different standard). In the absence of such controlling judicial interpretations, the respondents, the immigration judges, the Service, and the public at large should not be left to wonder whether the regulations interpreting and applying the substantive provisions of the Act will be binding in administrative proceedings under the Act. *Cf. Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001).

Such regulations themselves, of course, are susceptible to interpretation and application of their regulatory language by the immigration judges and the Board. However, if a substantive rule clearly defines a statutory term, or reflects a legal interpretation of the statutory provisions, then the position set forth in the rule will govern both the actions of the Service and the adjudication of immigration proceedings before the immigration judges and the Board. The Department recognizes that the Board members, under § 3.1(a)(1) in the current regulations and under § 3.1(d)(1)(ii) as revised, "shall exercise their independent judgment and discretion in considering and determining the cases coming before the Board." But such judgment and discretion must necessarily be exercised subject to the applicable standards. In turn, legislative rules that interpret and apply the provisions of the Act, and that are promulgated under rulemaking authority expressly delegated by the Attorney General have the "force and effect of law" and accordingly are part of the governing law. Accordingly, the Board members properly have decisional independence and discretion in interpreting and applying the law to the facts of particular cases and in exercising judgment in matters of discretionary action, but they are not independent from the governing regulatory standards that are otherwise binding and effective.[5]

[5] In any case where the Board believes that a particular regulation may conflict with the language of the Act, the Board can proceed as it did in *Matter of Ponce de Leon* by certifying the case to the Attorney General for consideration. In that case, the Attorney General ultimately dismissed the certification in light of an intervening amendment to the regulation at issue. 8 CFR 212.3(f)(2). *See Ponce de Leon*, 21 I&N Dec. at 184 (A.G. 1997); 61 FR 59824 (Nov. 25, 1996).

C. Expanded Single-Member Review

Many of the key features of the final rule are codified in the new provisions of 8 CFR 3.1(e), which directs the Chairman to establish a case management system with specific new standards for the efficient and expeditious resolution of all appeals coming before the Board. One of the primary components of the case management system is expanded single-member review. The current streamlining process permits a single Board member to affirm the decision of the immigration judge without opinion. 8 CFR 3.1(a)(7). The final rule retains this current practice intact, but expands upon this authority to permit a single Board member to affirm, modify, or remand the immigration judge's decision with a short explanation. The final rule also provides that the reviewing Board member may refer a case for disposition by a three-member panel only if the Board member determines, after a review of the case on the merits, that it satisfies one of the standards prescribed in § 3.1(e)(6).

1. General Comments on the Adequacy of Single-Member Review

Many of the comments expressed the concern that single-member review of decisions by the immigration judges will mean that procedural failures in the record will be overlooked—that a single Board member's review will somehow be "cursory" or will give a "boilerplate stamp of approval" to the decision on appeal. Some commenters asserted that the single-member decisions that will be issued under this rule will be poorly considered and will not provide a sufficient basis for further review by district and circuit courts.

The Department believes that the Board's experience with the streamlining initiative has proven that fears of procedural failures or substantive errors being overlooked are not well founded. Even single-member review is a multi-stage process involving review by Board staff and by a Board member assigned to the screening panel. Individual Board members are well-equipped to determine both the legal quality and sufficiency of an immigration judge's decision, and to determine if the appeal qualifies for referral to a three-member panel under § 3.1(e)(6). Each appeal will be fully reviewed and decided by the Board member, within the guidelines of current Board practice and legal precedent. Under the standards of § 3.1(e)(4) and (5) of this rule, it is only if the Board member finds that the record is complete and legally adequate, and the Board member agrees that the decision below is legally correct, that the Board member may affirm the decision of the immigration judge, either as a summary affirmance without opinion or in a short opinion.

2. Summary Dismissals

The proposed rule included a provision that the screening panel, in those cases not summarily dismissed, would order the preparation of a transcript and set a briefing schedule. This provision presumed a review by the screening panel at the outset of the process based solely on the immigration judge's order and the Notice of Appeal to determine such fundamental matters as whether the appeal was timely filed, whether the Board had jurisdiction, or whether the Notice of Appeal facially provided sufficient reasons for an appeal to be lodged. Some commenters did not seem to grasp the distinction between these core "adjudicability" issues that could be dismissed without the preparation of the transcript and briefs, and those issues, such as whether a brief was filed, that inevitably must be decided only upon the completed record. Although this lack of understanding appears to the Department to require this further explanation, it does not appear to warrant any change in the rule.

3. Summary Affirmances Under Streamlining

Many commenters expressed concerns about the general idea of authorizing a single Board member to issue a summary affirmance of an immigration judge's decision. A few commenters argued that decisions affirming an immigration judge's decision without further elaboration would not be considered by the public to be as legitimate as a more fully developed written decision. Other commenters suggested that such an affirmance would hinder a respondent's understanding of the rationale behind the decision. Some commenters also suggested that courts of appeals will return many of the single-member and summary affirmance decisions for a fuller written decision, thus negating any advances made in diminishing the Board's backlog and arriving at decisions more quickly.

These concerns fail to consider the Board's experience under the existing streamlining process, which, since 1999, has authorized single Board members to summarily affirm a decision without opinion, in appropriate cases. Similar objections were raised regarding summary affirmance when the Department first proposed the "streamlining" initiative in 1998, *see* 64 FR 56135, 56137 (Oct. 18, 1999), but have not been borne out by the Board's experience since then.

The streamlining initiative allowed for summary decisions by a single Board member in certain limited situations. In FY2001, the Board issued 15,372 decisions under the streamlining initiative, or approximately one-half of all decisions. The Streamlining Study has not noted an appreciable difference in the quality of the decisionmaking based on the experience of the participants. Although a complex study of the results of streamlining, by following a specific set of streamlined cases through judicial review, has been proposed, such a theoretically "objective" evaluation could take years. The Department may or may not undertake such a study, but the demands for fair, effective, and efficient adjudication of present cases do not permit the luxury of waiting for the results of such a study. Streamlining Study, 10–11 and Appendix C. Summary affirmances have not yet resulted in an overwhelming number of remands from Federal district and appeals courts. *See* 64 FR at 56138 (Oct. 18, 1999). Of the 23,224 streamlined decisions between 1999 and 2001, only 0.7% have resulted in judicial remands or reversals. Although this is not the full study envisioned by the Streamlining Report, cited above, it is, together with anecdotal evidence, sufficient evidence for the Department to proceed with an expansion of the single-member review process. The Department has concluded that streamlining has proven to be an effective procedure for managing an ever-increasing caseload and will significantly assist and promote fair and expeditious review of all pending and incoming appeals while maintaining a respondent's rights to a reasoned administrative decision.

Furthermore, the Department has determined that, because a summary affirmance without opinion concludes that any error in the immigration judge's decision was harmless or immaterial, there is no basis for the contention that a respondent will be unable to discern the rationale behind a decision. The immigration judge's order provides the rationale, and thus the legitimacy, for the Board's summary affirmance. The Department, in this rule, agrees with the succinct summary of one court of appeals that, "if the Board's view is that

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the [immigration judge] 'got it right,' the law does not demand that the Board go through the idle motions of dressing the [immigration judge's] findings in its own prose." *Chen* v. *INS*, 87 F.3d 5, 7 (1st Cir. 1996). The Department does not believe that there is any basis for believing that providing a regurgitation of the same facts and legal reasoning, albeit with citation to more legal precedent, will be beneficial to the respondent or the reviewing courts in most cases. Section 3.1(e)(4) of the final rule therefore continues to authorize a single Board member to issue an order with the same effect, an order affirming the immigration judge without opinion.

Moreover, Service appeals are equally subject to summary affirmance. Although the Service appeals few immigration judge decisions terminating proceedings or granting relief from removal, there is no distinction between those appeals and appeals filed by respondents.

4. Other Dispositions by a Single Board Member—Affirmances, Modifications, and Remands

Some commenters took the position that single Board members should not be permitted to affirm, modify, or remand the decision of an immigration judge in a short opinion. They argue that, if there are factual errors, a three-member panel should consider the entire record. This rule retains the existing "summary affirmance without opinion" process intact, but also authorizes single Board members to resolve other cases by issuance of a short order explaining the relevant issues in the case.

At the outset, it should be noted that the Board has been allowed to summarily affirm decisions of the immigration judge "for the reasons stated therein" for many years before the streamlining initiative was begun. The Board was never prohibited from doing so. In reality, some panels of the Board have done so in the past with great success.

However, there may be a number of instances where the reviewing Board member believes that the result of the case under review is essentially correct, but requires some further explanation or discussion in the disposition of the appeal. For example, an immigration judge may not have explained his or her evaluation of the facts or the law in the manner in which the respondent believes was appropriate. However, in those instances where there is no error that affects the outcome of the proceedings, there is also no point in expending substantial time and effort to "correct" such a record. Rather, a single Board member is authorized to issue a short order affirming the immigration judge's decision, but adding an additional explanation or discussion of the case in that Board member's view.[6]

As discussed below, § 3.1(e)(5) also authorizes a single Board member to enter a decision that modifies the immigration judge's decision or remands the case to the immigration judge in any case that does not meet the standards for three-member panel review under § 3.1(e)(6). Such an opinion may properly begin with the opinion of the immigration judge and make specific modifications to that opinion. For example, a single-member opinion may state that the Board member "adopts the opinion of the immigration judge, except to note that" a particular issue is governed by intervening precedent, and to explain that the immigration judge's opinion would still be correct in light of the intervening precedent. Accordingly, such an opinion would conclude that the "immigration judge's opinion is affirmed for the reasons set forth therein and as set forth in this opinion." In this instance, the parties and any reviewing court would be able to look to the combination of the immigration judge's opinion and the single-member decision to understand the conclusions reached in the adjudication.

Similarly, the single-member review may result in a determination that the immigration judge clearly erred over a specific fact, but that the error did not prejudice the appealing party and was harmless. For example, an immigration judge might determine that the respondent had entered on a specific date based on conflicting evidence, but fail to note in the oral decision that a specific official government document indicated a slightly different date, such as a traffic violation in the United States some days prior to the date determined by the immigration judge. In this case, if neither date would satisfy a requirement for a period of continuous physical presence in the United States, the finding of fact might be both clearly erroneous and harmless. However, if the existence of the documented infraction, presented by the respondent, convinced the Board member that the respondent was being candid and warranted a favorable exercise of discretion in voluntary departure, which the immigration judge had also denied as a matter of discretion, the single Board member would have the option of modifying the order to grant voluntary departure.

Finally, a single Board member would be authorized to grant a motion to remand the record for specific factfinding if the respondent provided new evidence that was not previously available under the standards of the regulations. Whether agreed upon by all of the parties or contested, this single member review process permits the more expeditious disposition of cases than a full three-member panel review. In each of these cases, the Department has no reason to believe that such decisions would be any less efficacious than the current decisions of the Board resulting from three-member panel review.

The Department has noted that some language in this section and § 3.1(d)(2)(ii) could cause confusion over the finality of a decision by a single member. Accordingly, the language in these two provisions has been revised for clarity, and the provisions relating to finality of the Board's decisions have been consolidated in § 3.1(d)(6), as discussed in part I below.

However, the provision authorizing a single Board member to affirm, modify, or remand a decision must be understood in light of the standards for three-member panel review. That is, this authority will apply only if the Board member has already determined, based on a review of the appeal on the merits, that the case should not be referred to a three-member panel—for example, because of factual determinations by the immigration judge that appear to be clearly erroneous, because the decision is not in conformity with applicable precedents, or because of the need to review the dispositions of similar issues by various immigration judges or to establish precedential guidance on matters of law or procedure.

[6] Individual panels at the Board have differed on the content of Board decisions in non-precedent cases over time. Some panels have included an introduction, a statement of issues present in the record, a full restatement of the proceedings before the immigration judge, a complete recitation of the established and controverted facts presented in the record, analysis of the applicable law, and the panel's conclusions and order. This is, in effect, *de novo* review of every case, notwithstanding the complexity of the issues presented. For cases in which there are no substantial factual or legal issues, this commitment of resources cannot be justified in light of the Board's current situation.

Other panels, more recently, have developed orders that include an adoption of the immigration judge's decision, only a short statement of the issues presented on appeal, with a statement of relevant facts and controlling precedent, and the order. Typically, these decisions are to be read in conjunction with the immigration judge's decision. The Department believes that this more limited appellate review process, to determine whether the immigration judge has erred, is more appropriate for the majority of cases.

The different approaches can also be understood on the basis of the way in which the decisions are reviewed. In the first example, a full *de novo* review results in a court of appeals review of the Board decision and does not extend to the immigration judge's decision. In the second example, a "clearly erroneous" standards will allow the courts of appeals to review the immigration judge's fact findings in conjunction with the Board's legal findings, thereby obviating the need for lengthy Board decisions that do little more than reiterate facts. The short orders of the Board already effectively utilize this methodology. This process adds nothing to the burden of the court of appeals on review and is a substantially more efficient allocation of resources within the administrative adjudicatory process.

5. Reversals and Terminations of Proceedings

Several commenters raised issues regarding the propriety of a summary decision by a single Board member that reverses the decision of the immigration judge, with some suggesting that a single Board member should not be able to reverse a decision granting relief or terminating proceedings, while others suggested that a single Board member should not be able to reverse a decision denying relief.

In general, if the single Board member believes that the decision of an immigration judge should be reversed because of a clearly erroneous factual determination or an error in law, or one of the other reasons specified in § 3.1(e)(6), the Board member should refer the case to a three-member panel. Under the terms of the proposed rule, it is reasonable to expect that most reversals would likely have been handled by a three-member panel rather than by single Board members. However, in order to avoid uncertainties as to how to proceed, this final rule adds an additional provision under the standards of § 3.1(e)(6) providing for referral of a case to a three-member panel where there is a need to reverse the decision of an immigration judge or the Service.

However, the Department also recognizes that there may be cases where reversals may be required as a nondiscretionary matter. This would be particularly true where there has been an intervening change in the law, such as the publication of a Board precedent decision interpreting a statutory provision relating to eligibility or ineligibility for a form of relief, that mandates the reversal of immigration judge decisions in pending cases that were inconsistent. If the Board determines that relief should be granted in particular circumstances, and an immigration judge had denied relief in a case where the facts are indistinguishable, there is no reason why a single Board member cannot summarily vacate the immigration judge's order denying relief. On the other hand, if the factual record does not compel reversal under the precedent as applied to that case, the single Board member may then refer the case to a three-member panel or remand the record for further proceedings. This is typical of the implementation of precedent.

6. Quality Assurance of Decisions

Other commenters questioned whether the Board would be able to assure that single Board members did not act arbitrarily or institute a mechanical, rather than thoughtful, approach to disposing of cases themselves or forwarding cases to three-member panels. In essence, these comments focus on both the individual thoroughness of review and the integrity of the review process among decisionmakers.

The Department has carefully considered the argument that there are inadequate safeguards to protect the system and its participants from divergent decisions by single Board members, but has concluded that the provisions of this rule as written are adequate. As mentioned previously, concerns regarding the adequacy of summary affirmances were addressed in the streamlining regulations. This rule builds upon the streamlining process by providing for a case management screening process to review all cases coming before the Board initially, thus allowing the members of the screening panel to become familiar with the broad range of issues coming before the Board, and the processes for both single-member and panel dispositions of cases decided by the Board. The existing checks of three-member review of complex issues and other cases under the standards of § 3.1(d)(6), and of *en banc* Board review, remain in effect. Accordingly, the Department believes that a shift to predominantly single-member adjudication in the substantial majority of cases is a legitimate exercise of agency discretion and will not significantly increase judicial remands.

However, the Department recognizes that any tribunal must be concerned with whether its members are adjudicating factually and legally similar claims in a similar fashion, a concern that is particularly apt given the large volume of cases being decided by the Board. *See generally* House Judiciary Subcommittee Hearing, at 10. These general concerns relating to this aspect of the Board's operation are important to the Department, to the immigration judges, to aliens in proceedings, and to the general public. These concerns are relevant whether applied to several different individual members' decisions in single-member cases, or to the results of the various three-member panel reviews that have been used in the past and will continue to be used in the future.

The Board recently has taken further steps to review the disposition of Board decisions in light of the need to resolve issues and provide guidance through the issuance of precedent decisions. Exercising its authority under the existing rules and the revisions made by this rule, the Department expects the Board will be able to determine whether issues are developing appropriately and whether referral of similar cases to a three-member panel, or further adjudication of those issues by issuance of a precedent decision, may be appropriate. *See generally* J. McKenna, L. Hooper & M. Clark, Federal Judicial Center, *Case Management Procedures in the Federal Courts of Appeals* 163 (2000) (case weighting and issue tracking in the Ninth Circuit); *see generally* B. White, *et al.*, *Commission on Structural Alternatives for the Federal Courts of Appeals: Final Report*, at 39–40 (1998).

7. Single Board Member Participation in Reopening and Reconsideration of Own Decision

One commenter suggested that a single Board member who made an initial decision should be recused from adjudication of the motion to reopen or reconsider. The Department disagrees that the single Board member who made the initial decision should be recused from adjudicating these types of motions. The long-standing practice of the Board has been to assign motions to reopen and reconsider to the original Board Members who considered the appeal if they are available. This permits some familiarity with the record and obviates the use of such a motion to merely seek a second panel review of a decision. Moreover, as with the initial notice of appeal, a party filing a motion to reopen or to reconsider can state in the motion any reasons why the motion should be referred to a three-member panel for adjudication, as provided in § 3.1(e)(6).

D. Standards for Referral of Cases to Three-Member Panels

1. In General

Some commenters suggested a modification to the rule to specify additional types of cases that would be referred to a three-member panel. This rule retains the basic provisions of the proposed rule, which provide for an initial review of each case by a single Board member, and allows for referral of cases to a three-member panel based upon the specific criteria of 8 CFR 3.1(e)(6). This review process for

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adjudicating the cases is both fair and efficient in meeting the Department's goals. However, as discussed below, the Department has made certain clarifications to these provisions based on the public comments.

As noted above, an agency must have discretion to innovate and establish new procedures for administrative appeals. *See Vermont Yankee*, 435 U.S. at 525 ("[A]dministrative agencies and administrators will be familiar with the industries which they regulate and will be in a better position than federal courts * * * to design procedural rules adapted to the peculiarities of the industry and the tasks of the agency involved.") (internal quotes omitted); *cf.* D. Meador & J. Bernstein, *Appellate Courts in the United States* 78–91 (1994) (differentiated internal decision tracks in federal courts of appeals, and other innovations).

The criteria used in the final rule are similar to those used by the federal courts of appeals in deciding whether to hold oral argument or to publish an opinion. The Department believes that these criteria strike the proper balance between cases that do not present novel or complicated issues that may be decided by a single Board member, and those issues that are appropriate for review by a three-member panel.

2. Particular Classes of Cases

Some commenters recommended that a full written decision by a three-member panel be required in cases denying asylum, withholding of removal, or Convention Against Torture relief.

The Department does not agree that certain classes of cases, such as those facially raising an asylum issue, should routinely be referred to a three-member panel. While asylum cases can include complex issues of law and fact, an objective review of those cases indicates that many do not. Moreover, cases involving asylum and asylum-related relief appear to make up a substantial portion of cases pending before the Board, although there are currently no statistics captured on forms of relief sought. The Department has not found evidence to support a view that every such case is profoundly complicated.

Of course, in those appeals that do raise novel or complex factual or legal issues in asylum or asylum-related cases, a respondent is permitted, even encouraged, under the provisions of this rule to state in the Notice of Appeal and elaborate in a brief, the reasons why the appeal merits review by a three-member panel under § 3.1(e)(6) of the rule. Such contentions will be reviewed in each case as part of the case management screening process.

3. Clarification of Standards for Panel Review

In the proposed rule, the Department stipulated in § 3.1(e)(6) that a Board member "shall" refer specific classes of cases for three-member panel review. It was not the Department's intent, however, that this language might lead to judicial enforcement of three-member panel review. Rather, the Department believes that it is appropriate for the decision to refer a case for panel review to be made on a case-by-case basis according to the judgment of the reviewing Board member under the standards of this rule. Accordingly, the mandatory "shall" has been changed to "may only" to avoid this possibility. This change does not broaden the authority of a single Board member to decide these cases, but rather provides discretion to refer the cases to a three-member panel if appropriate.

Section § 3.1(e)(6)(ii) of the proposed rule states that three-member panels have authority to review records if there is "[t]he need to establish a precedent to clarify ambiguous laws, regulations, or procedures." The Department did not intend, by this language, to narrow the scope of panel review and decisionmaking to "*Chevron* step II" issues—*i.e.*, "ambiguous" questions of statutory or regulatory construction. *Chevron* v. *NRDC, supra*. On further review, the Department has revised this language to make clear that three-member panels should be able to decide all precedential questions of first impression as to the interpretation of the provisions of the Act and its implementing regulations, regardless of whether the parties or the immigration judge believe that the meaning is "plain" or "ambiguous." Accordingly, the Department has altered this language to permit three-member panels to adjudicate cases where there is a "need to establish precedent construing the meaning of laws, regulations, or procedure" encompassing both the *Chevron* step II interpretive issues as well as the initial *Chevron* step I interpretation of the statute or regulation to determine the scope and implementation of clear and plain statutory language.

The Department has noted that § 3.1(e)(6)(iii) suggests that three-member review is appropriate if the error of law is "plain[]." This might give the impression that the Department is adopting the "plain error" standard of F.R. Crim. P., Rule 52(b), by which an appellate court may review errors of law that are "plain" even if not raised by a party. Under the context of this rule, such an interpretation would tend to limit the authority to refer cases to a three-member panel by suggesting that only "plain error" was referable. This was not the Department's intent and the word "plainly" has been deleted. If the single Board member believes that an error of law warrants three-member review, the single Board member may refer the case.

E. De novo Review and the Clearly Erroneous Standard

Many commenters expressed opposition to the provision in proposed § 3.1(d)(3), which provided that the Board would not engage in *de novo* review but would accept the factual findings of the immigration judges in decisions under review, including findings as to the credibility of testimony, unless the determinations are clearly erroneous. These commenters noted that the Board had asserted its authority to conduct *de novo* review of cases on appeal from the immigration judges in cases dating back to *Matter of B–*, 7 I&N Dec. 1 (BIA 1955; A.G. 1956), and as applied in many decisions since then. Several NGOs attached lists of case examples describing instances where the Board on appeal had rejected the factual determinations or the denial of relief from removal by an immigration judge.

The Department has considered these comments very carefully. The final rule adopts the approach of proposed § 3.1(d)(3) by eliminating the Board's *de novo* appellate review of factual issues before an immigration judge, but with certain modifications. Guidance has been added to the rule to clarify the standard of review in light of comments received indicating confusion over the application of the clearly erroneous standard with respect to factual determinations.

The Department is also concerned that some commenters did not have a clear understanding of the relationship between this change and the standard of review with respect to matters of law and discretionary determinations, and, accordingly, the final rule contains new language to clarify these important issues as well. Where the Board reviews what was previously called a mixed question of law and fact in the proposed rule, and is now referred to as a discretionary decision, the Board will defer to the factual findings of the immigration judge unless clearly erroneous, but the Board members will retain their "independent judgment and discretion," subject to the applicable governing standards, regarding the review of pure questions of law and the application of the standard of law to those facts. (However, when an appeal is taken from a decision of a Service officer, the standard of review will remain *de novo*.)

1. *De novo* and Clearly Erroneous Standards of Review of Factual Determinations by the Immigration Judges

The Department received a number of comments opposed to elimination of *de novo* appellate review of determinations of facts by the immigration judges and the substitution of a "clearly erroneous" standard of review. The commenters generally asserted that eliminating the Board's *de novo* appellate review of factual issues will result in an overall denial of due process. Commenters also expressed their opinions that, because immigration judges occasionally misstate or omit important facts, and country conditions change, substituting "clearly erroneous" review for *de novo* review of facts will compel the Board to perform a brief, cursory review of the record, resulting in decisions that do not accurately reflect the facts.

The Department has determined that the proposed rule eliminating *de novo* review of facts by the Board and replacing it with "clearly erroneous" review should remain intact, with appropriate clarifications. The Department does not accept the suggestions that a clearly erroneous standard of review, as provided in this rule, will lead to decisions by the Board that "rubber stamp" the decisions of the immigration judges without thoughtful review or analysis, or that retaining *de novo* review by the Board is necessary in order to deal with erroneous decisions by immigration judges who are "antagonistic, biased and ignorant," in the words of one commenter.

A finding is "clearly erroneous" when, although there is evidence to support it, the reviewing Board member or panel is left with the definite and firm conviction that a mistake has been committed. A factfinding may not be overturned simply because the Board would have weighed the evidence differently or decided the facts differently had it been the factfinder. *Anderson* v. *City of Bessemer*, 470 U.S. 564, 573 (1985).

The "clearly erroneous" standard reflects the major role of immigration judges under the Act and implementing regulations as determiners of facts. In removal proceedings, it is the immigration judges, not the Board, who have been given authority to "administer oaths, receive evidence, and interrogate, examine, and cross-examine the alien and any witnesses." 8 U.S.C. 1229a(b)(1). Moreover, immigration judges are generally in the best position to make determinations as to the credibility of witnesses. *See Matter of A–S–*, 21 I&N Dec. 1106 (BIA 1998); *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994). Immigration judges conducting the hearings are aware of variations in demeanor and tone of voice that bear so heavily on the listener's understanding of and belief in what is said. *See Wainwright* v. *Witt*, 469 U.S. 412 (1985).

Accordingly, even under its present authority to conduct *de novo* review of the facts, the Board gives "significant weight to the determinations of the immigration judge regarding the credibility of witnesses" as well as to "other findings of an immigration judge that are based upon his or her observance of witnesses." *Matter of Burbano*, 20 I&N Dec. at 874 (citations omitted); *see Matter of A–S–*, 21 I&N Dec. at 1108–1112. The Department believes that this deference is appropriate. Indeed, as we have discussed above, the Board has long engaged in the practice of adopting and affirming the immigration judges' factual determinations and decisions, for the reasons stated in the immigration judges' decisions, and this is "not only common practice, but universally accepted." *Giday* v. *INS*, 113 F.3d 230, 234 (D.C. Cir. 1997); *see, e.g., Chen* v. *INS, supra; Prado-Gonzalez* v. *INS*, 75 F.3d 631, 632 (11th Cir. 1996); *Alaelue* v. *INS*, 45 F.3d 1379, 1382 (9th Cir. 1995).

Thus, for example, it is well established that, because the immigration judge has the advantage of observing the respondent as the respondent testifies, the Board already accords deference to the Immigration Judge's findings concerning credibility and credibility-related issues. *See Matter of A–S–*, 21 I&N Dec. at 1109–1112; *Matter of Burbano*, 20 I&N Dec. at 874; *Matter of Pula*, 19 I&N Dec. 467, 471–72 (BIA 1987); *Matter of Kulle*, 19 I&N Dec. 318, 331–32 (BIA 1985), *aff'd*, 825 F.2d 1188 (7th Cir. 1987), *cert. denied*, 484 U.S. 1042 (1988). Under certain circumstances, the Board may not accord deference to an immigration judge's credibility finding where that finding is not supported by the record. *See, e.g., Matter of B–*, 21 I&N Dec. 66, 70–71 (BIA 1995); *Matter of B–*, 7 I&N Dec. 1, 32 (BIA 1955; A.G. 1956). However, because an immigration judge has the ability to see and hear the respondent, which the Board and the courts of appeals do not, if the immigration judge's reasons for an adverse credibility finding are supported by specific and cogent reasons with respect to inconsistencies and omissions with respect to a respondent's claim, observations of the respondent's demeanor, and reasonable inferences from those indicia, the Board will not disturb an adverse credibility finding. *Matter of A–S–*, *supra*.

In *Matter of A–S–*, the Board concluded that it would defer to the credibility findings of an immigration judge, but only if (1) the record reveals that the discrepancies and omissions described by the immigration judge are actually present; (2) the discrepancies and omissions provide specific and cogent reasons to conclude that the alien provided incredible testimony; and (3) the alien has not supplied a convincing explanation for the discrepancies and omissions. 21 I&N Dec. at 1109–1111. The Department believes that these standards offer some appropriate guidance, but should be applied to the broader factfinding process. That is, under this rule, the Board should start from the premise that it will accept the findings of fact made by the immigration judge, unless the Board identifies specific reasons, including the inverse of those stated in *Matter of A–S–*, for forming a definite and firm conviction that a mistake has been made.

The rationale for changing to a "clearly erroneous" standard of review of fact findings is not limited to the consideration that immigration judges may be better positioned than the Board to decide factual issues, including issues of credibility. *See generally Anderson*, 470 U.S. at 574–75. As the Supreme Court has opined in another setting, the "clearly erroneous" standard rather than a *de novo* standard of review is appropriate for factfindings by trial courts because "[d]uplication of the trial judge's efforts [by an appellate body] would very likely contribute only negligibly to the accuracy of fact determination at a huge cost in diversion of judicial resources." *Id.* "[T]he parties to a case on appeal have already been forced to concentrate their energies and resources on persuading the trial judge that their account of the facts is the correct one" and "requiring them to persuade three more judges at the appellate level is requiring too much." *Id.* at 575. The "clearly erroneous" standard of review recognizes that an evidentiary hearing on the merits should be the "'main event' * * * rather than a 'tryout on the road.'" *Wainwright* v. *Sykes*, 433 U.S. 72, 90 (1977).

Just as the Supreme Court has concluded that on balance the "clearly erroneous" standard is an effective, reasonable, and efficient standard of

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appellate review of factual determinations by federal district courts, *see Anderson*, 470 U.S. at 574–75, and Fed. R. Civ. P. 52(a), the Department has concluded that the "clearly erroneous" standard is an effective, reasonable, and efficient standard for appellate administrative review of factual determinations by immigration judges. The "clearly erroneous" standard is duly protective of the Department's legitimate institutional interests in the effective adjudication of administrative appeals and eliminating the duplication of resources involved in successive *de novo* factual determinations, first by immigration judges and then the Board. At the same time, it allows for the correction of fact findings in the rare case where the Board is left with the definite and firm conviction that a mistake has been committed. *See generally United States* v. *United States Gypsum Co.*, 333 U.S. 364, 395 (1948). Therefore, in the administrative immigration system, the Department has determined that the "clearly erroneous" standard of review—with its deference to the initial factfinder—should be "the rule, not the exception." *See generally Streamlining Study, supra.*

This is not a novel standard in the administrative process; rather, similar standards have been applied within agency review proceedings for many years. *See, e.g.*, 10 CFR 2.786 (Nuclear Regulatory Commission; domestic licensing proceedings; review of decisions of a presiding officer); 17 CFR 201.411 (Securities and Exchange Commission; consideration of initial decisions by hearing officers); 20 CFR 422.114 (Social Security Administration; annual wage reporting process); 29 CFR 1614.405 (EEOC; decisions on appeals); 40 CFR 124.19 (EPA; appeal of certain permits). The Department believes there is ample authority and experience to apply this standard to the agency review process in immigration proceedings.

2. "Correction" of Clearly Erroneous Factual Determinations

The Department's adoption of the "clearly erroneous" standard encompasses the standards now commonly used by the federal courts with respect to appellate court review of findings of fact made by a trial court. *See Dickinson* v. *Zurko*, 527 U.S. 150, 153 (1999). Under this standard, an appellate tribunal merely has authority to reverse erroneous fact findings and no authority to correct them. *See id.* However, it has been pointed out that the word "correct" in proposed § 3.1(e)(6) might appear to give three-member panels authority to go beyond the traditional "clearly erroneous" standard used in such review and to engage in de novo factfinding to "correct" clearly erroneous facts. This was not the Department's intent and § 3.1(e)(6) has been revised.

3. Clearly Erroneous Standard Applied

One of the more complicated contexts in which the clearly erroneous standard will be applied is in the area of asylum. For example, the Board has established standards for immigration judges to make credibility determinations. *Matter of A–S–*, supra. These standards involve several different types of findings: whether inconsistencies exist, whether omissions in an application indicate exaggeration in testimony, or whether a respondent has indicated through his or her demeanor that he or she is being less than truthful.

The "clearly erroneous" standard will apply only to the factual findings by an immigration judge, including determinations as to the credibility of testimony, that form the factual basis for the decision under review. The "clearly erroneous" standard does not apply to determinations of matters of law, nor to the application of legal standards, in the exercise of judgment or discretion. This includes judgments as to whether the facts established by a particular alien amount to "past persecution" or a "well-founded fear of future persecution."

The distinction requires a more refined analytical approach to deciding cases, but focuses on the qualities of adjudication that best suit the different decisionmakers. Immigration judges are better positioned to discern credibility and assess the facts with the witnesses before them; the Board is better positioned to review the decisions from the perspective of legal standards and the exercise of discretion.

For example, under section 208 of the Act, a respondent may establish eligibility for asylum by showing that he has been persecuted on account of a protected ground under section 101(a)(42) of the Act, *e.g.*, religion. *See generally Matter of Chen*, 20 I&N Dec. 16 (BIA 1989). The immigration judge's determination of "what happened" to the individual is a factual determination that will be reviewed under the clearly erroneous standard. The immigration judge's determinations of whether these facts demonstrate harm that rises to the level of "persecution," and whether the harm inflicted was "on account of" a protected ground, are questions that will not be limited by the "clearly erroneous" standard.

Similarly, in cancellation of removal, those facts that a respondent claims make up "exceptional and extremely unusual hardship" to a respondent's putative qualifying relative under section 240A(b)(1)(D) of the Act, and whether the putative qualifying relative is actually a qualifying relative, will be reviewed by the Board only to determine if the immigration judge's determination was clearly erroneous. Whether those facts, as determined by the immigration judge and found not to be clearly erroneous, amount to "exceptional and extremely unusual hardship" under the Act may be reviewed by the Board *de novo*. *See, e.g., Matter of Andaloza-Rovas*, 23 I&N Dec. 319 (BIA 2002) (evaluation of legal standard; *de novo* review leading to reversal of immigration judge's grant of relief); & *id.* at 330–331 n.1 (Osuna, dissenting, suggesting reliance on immigration judge's factfinding leads to a different evaluation); *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56 (BIA 2001) (evaluation of whether hardship to qualifying relatives is "substantially different from, or beyond, that which would normally be expected" from the removal of the respondent).

Third, in both of these two examples, the underlying statutes grant the Attorney General discretion to grant relief. This "discretionary" determination can likewise be considered under this dichotomy. What have historically been referred to as "equities" are facts that the respondent establishes in his or her case, and these factual determinations by an immigration judge may be reviewed by the Board only to determine if they are clearly erroneous. However, the "discretion," or judgment, exercised based on those findings of fact, and the weight accorded to individual factors, may be reviewed by the Board *de novo*.

Thus, properly understood, the "clearly erroneous" standard will only apply to the specific findings of fact by the immigration judges, and will not limit the Board to reviewing discretionary determinations. Accordingly, in reviewing the various decisions of the immigration judges, the Board will still be able to consider and resolve instances where "differing decisions may be reached based on essentially identical facts." *Matter of Burbano*, 20 I&N Dec. at 873. For these reasons, the Department does not agree with the comments suggesting that the "clearly erroneous" standard would "severely reduce" the Board's ability to act as a check against the wide disparities in discretionary decisions by the immigration judges to grant or deny relief in factually similar cases.

4. Harmless Error

Several commenters expressed the view, in essence, that there exists a gap between review of all facts *de novo* and a "clearly erroneous" threshold. They argue that the immigration judges frequently misstate facts that require further review.

The Department agrees that in some cases an immigration judge may misstate facts, but disagrees that in all such cases further adjudication of those facts is necessary. In many instances, such errors, or perceived errors, do not prejudice a respondent, and are, in effect, harmless errors. Section 3.1(e)(4) of the rule provides that summary affirmance is only appropriate if the single Board Member determines that "any errors in the decision under review were harmless or nonmaterial" and all other conditions apply. Thus, an affirmance without opinion signifies that any such error is considered to be harmless. Historically, many cases are appealed to the Board on the basis of perceived factual errors in an immigration judge's decision that are, in fact, harmless or immaterial. For example, an immigration judge's misstatement of a fact in evaluating whether a nonimmigrant respondent seeking cancellation of removal had established a particular element of "exceptional and extremely unusual hardship" under 8 U.S.C. 1229b(b)(1)(D) of the Act is not a harmful, prejudicial, or material error if the immigration judge also concluded that the respondent had not accrued the required 10 years of continuous physical presence under subsection (b)(1)(A). A single-member brief order may elaborate on why such an error is harmless and not prejudicial.

By contrast, where a material finding of fact is clearly erroneous, the Board may review the record before a three-member panel under § 3.1(e)(6)(v). This is precisely the function of a three-member panel.

5. Litigation Concerns

Some commenters were also of the opinion that if the Board reviews fact findings to determine if they are "clearly erroneous," as opposed to deciding the facts *de novo*, courts will give less deference to the agency's decisions and more cases will be remanded to the immigration judges for further factfinding; they allege this to be true particularly in cases where an asylum applicant is alleging changed country conditions. Consequently, the commenters were of the opinion that by implementing a "clearly erroneous" standard of review for facts, the Board's appellate decisionmaking would become less, rather than more, timely and efficient.

The Department disagrees with this evaluation. Under the Act, courts of appeals must apply a highly deferential "substantial evidence" standard in reviewing administrative factfinding in removal orders, including the findings made regarding asylum and changed country conditions. *See INS* v. *Elias-Zacarias*, 502 U.S. 478, 481 (1992) (substantial evidence standard required for asylum determinations); 8 U.S.C. 1252(b)(4)(B) ("administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary"). Where the Act precludes direct review in the courts of appeals, district courts have limited jurisdiction to review removal orders by means of habeas corpus, encompassing only purely legal challenges to removal orders. *INS* v. *St. Cyr*, 533 U.S. 289, 306, 314 n.38 (2001). Habeas review does not permit review of administrative factfinding, except perhaps to determine whether such facts are "unsupported by any evidence." *Id.* at 306 n.27.

Accordingly, the commenters' concerns that courts may choose to accord less deference to administrative factfinding and may reverse the Board more frequently if the Board reviews appeals under a "clearly erroneous" standard are not well founded. Such concerns overlook the courts' inability to alter the standard of review, and their obligation of deference to the Attorney General's factfinding (by whatever means such authority is exercised).

The Department recognizes that increasingly, and particularly in asylum cases, some courts have failed to defer to administrative factfinding. *See, e.g., Abovian* v. *INS*, 257 F.3d 971 (9th Cir. 2001) (Kozinski, O'Scannlain, T.G. Nelson, Kleinfeld, Graber, Tallman, Rawlinson, JJ., dissenting from denial of rehearing *en banc*); *Agbuya* v. *INS*, 219 F.3d 962, 967 (9th Cir. 2000) (Hall, J., dissenting); *Briones* v. *INS*, 175 F.3d 727, 730 (9th Cir. 1999) (*en banc*) (O'Scannlain, J., dissenting); *Borja* v. *INS*, 175 F.3d 732, 738 (9th Cir. 1999) (*en banc*) (O'Scannlain and Kleinfeld, JJ., dissenting); *Mgoian* v. *INS*, 184 F.3d 1029, 1037 (9th Cir. 1999) (Rymer, J., dissenting). The Department disagrees with such an approach, and therefore does not consider it appropriate to alter the nature of the Board's appellate review to conform to it.

6. *De novo* Review by the Attorney General

Some commenters suggested that it was inappropriate for the Attorney General to adopt a "clearly erroneous" standard for the Board, but use a *de novo* standard himself in reviewing the Board's determination, such as in *Matter of Y-L-*, 23 I&N Dec. 270 (A.G. 2002). This suggestion misapprehends the different roles of the Attorney General and the Board. As discussed above, the Attorney General is charged not merely with adjudicating immigration matters, but with establishing policy and managing the immigration process. The Board, on the other hand, is delegated authority by the Attorney General to adjudicate cases before it, not make policy or manage the immigration process. It is appropriate for the Attorney General to exercise broader authority than he delegates to the Board.

7. Review of Service Decisions

The comments on *de novo* review have raised an issue of the scope of review of factual determinations by officers of the Service in decisions under review by the Board. Review of decisions by the district director and other Service officers do not have the benefit of a full record of proceedings or, except in rare cases, a transcript of hearings before an independent adjudicating officer. Rather these decisions are made on applications and interviews, and other information available to the Service.

In light of this difference, the Department has clarified the language of the final rule to retain *de novo* review of Service officer decisions, either by a single Board member or by a three-member panel. Accordingly, § 3.1(d)(3) has been revised to retain the Board's authority to review decisions of the Service *de novo*. The process for initial single Board member review will be retained, but the scope of review is broadened. The same standards for referral to a three-member panel will be applied.

F. New Evidence and Taking Administrative Notice of Facts

Section 3.1(d)(3) of the proposed rule also generally prohibits the introduction and consideration of new evidence in proceedings before the Board, except for taking administrative notice of commonly known facts such as current events, or the contents of official documents such as country condition reports prepared by the Department of State.

Several commenters suggested that the rule would alter the Board's authority to administratively notice facts. Some commenters believed that a broadening of the authority to administratively notice facts was appropriate, while others argued that

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the Board should, in essence, not be able to take administrative notice of facts without providing a hearing. Where it is established that an appeal cannot be properly resolved without further findings of fact, other than those established by administrative notice, the Board will remand the proceeding to the immigration judge.

The rule codifies existing Board precedent holding that new facts will not be considered on appeal. The "clearly erroneous" standard of review, in contrast to the *de novo* standard of review, is also consistent with the longstanding policy of the Board, now codified in § 3.1(d)(3), of not considering evidence filed on appeal. The Board reviews the record of proceedings made before the immigration judge. *Matter of Fedorenko*, 19 I&N Dec. 57, 73–4 & n.10 (BIA 1984); *Matter of Haim*, 19 I&N Dec. 641 (BIA 1988). Under existing practice, new evidence would be considered at the appeal stage through a motion to remand. *See generally* G. Hurwitz, *Motions Practice Before the Board of Immigration Appeals*, 20 *San Diego L. Rev.* 79, 91–2 (1982). *See Matter of Coelho*, 20 I&N Dec. 464, 471–2 (BIA 1992). *See also* 8 CFR 3.2(c) (2001).

Contrary to the assertions of several commenters, this rule does not disturb the Board's authority to take administrative notice of commonly known facts. The Board may, and does, take administrative notice of commonly known facts such as agency documents and current events. *See e.g. Matter of S–M–J–*, 21 I&N Dec. 722, 733 n.2 (BIA 1997), *disapproved on other grounds, Ladha* v. *INS*, 215 F.3d 889 (9th Cir. 2000); *Kaczmarczyk* v. *INS*, 933 F.2d 588, 593 (7th Cir. 1991). The language of the regulation explicitly uses the phrase "commonly known facts" to describe the kinds of facts or matters of which the Board may take administrative notice, giving by way of example "current events" or "the contents of official documents." The Department intends by use of this language to make clear that the Board may take administrative notice not only of current events but also of the contents of official documents such as the country condition reports prepared by the Department of State, including its foreign policy expertise, analysis, and opinion.

The Department does note, however, that there is an intercircuit conflict over the degree to which the Board may take administrative notice of facts without first providing notice and an opportunity to respond.[7] After reviewing the comments, the Department agrees with those courts that have found post-decision motions to reconsider and reopen under 8 CFR 3.2, alleging a specific error of fact (the administratively noticed fact), to be sufficient to preserve a respondent's constitutional due process rights.

In immigration proceedings, the administrative notice of facts—usually relating to country conditions—revolves on issues that form the respondent's burden of proof for relief from removal. The most common facts about country conditions appropriate for administrative notice are those contained in country reports and profiles prepared by experienced foreign service officers in the Department of State who are experts on specific regions and countries. As the courts have recognized, they, the immigration judges, and the Board owe deference to the Department of State on such matters of foreign intelligence as assessments of conditions.[8] Some commenters relied upon the opinions expressed by NGOs in disputing the deference that should be given to Department of States reports and profiles, either directly or through administrative notice of facts and official documents. However, reports by NGOs are simply not as reliable as those of the Department of State because the mission of those organizations is to advocate specific ideas and views, their positions are often based on anecdotal experiences of identified and unidentified persons, and their opinions tend to lack the discernment and expertise of those provided by the Department of State.

The important, complicated, delicate, and manifold problems of assessing conditions in a foreign country warrant deference to those whose expertise the United States tasks with that duty. It is the respondent's responsibility to present facts on the record that refute those assessments. The Department believes that, given this required deference, *post hoc* rebuttal of administratively noticed facts is appropriate and sufficient for due process purposes. Accordingly, the Department has not altered the final rule in response to these comments. Nonetheless, the Board is mindful of the limitations on the use of administrative notice in those circuits that have contrary precedents.

In light of the intercircuit conflict and the deference that is due such Department of State reports and profiles, the Department believes that a compelling case is made for a liberal interpretation of the rule on reconsideration and reopening in cases in which the Board has administratively noticed facts such as a Department of State country report. Accordingly, the Department is of the view that in any case in which the Board takes administrative notice of a specific fact by reference to any documentary evidence, *e.g.*, a Department of State country report or profile published after the immigration judge's decision), not

[7] The First, Seventh, Ninth, and Tenth Circuits have held that it is a violation of due process for the board to take administrative notice of new facts on appeal without affording notice and an opportunity to respond. In the Ninth and Tenth Circuits the board must provide notice and an opportunity to respond before taking administrative notice. *Kowalczyk* v. *INS*, 245 F.3d 1143 (10th Cir. 2001); *de la Llana-Castellon* v. *INS*, 16 F.3d 1093, 1099–1100 (10th Cir. 1994); *Castellon-Villagra* v. *INS*, 972 F.2d 1017 (9th Cir. 1992) (motion to reopen does not provide adequate opportunity to rebut administrative notice of changed country conditions and due process requires BIA to give prior notice and opportunity to rebut). In other circuits a post-decision motion to reopen, or, more properly, a motion to reconsider, disputing the taking of administrative notice is a sufficient remedy. *Gonzalez* v. *INS*, 77 F.3d 1015, 1024 (7th Cir. 1996) (rejecting approach of 9th and 10th circuits and holding that "mechanism of the motion to reopen * * * 'allows asylum petitioners an opportunity to introduce evidence rebutting officially noticed facts,' [and] provides a sufficient opportunity to be heard to satisfy the requirements of due process"). *Accord Gutierrez-Rogue* v. *INS*, 954 F.2d 769, 773 (D.C. Cir. 1992); *Rivera-Cruz* v. *INS*, 948 F.2d 962, 968–69 (5th Cir. 1991), rehearing denied, 954 F.2d 723 (1992). The First Circuit initially adopted the position that a post-decision motion to reopen is sufficient to satisfy due process but may not continue to hold that view. *Compare Gebremichael* v. *INS*, 10 F.3d 28 (1st Cir. 1993) ("We agree with the majority of those circuits which have addressed the question that [a post-decision] motion to reopen * * * can *ordinarily* satisfy the demands of due process.") (emphasis added, citations omitted), *with Fergiste* v. *INS*, 138 F.3d 14, 19 n.4 (1st Cir. 1998) (declining to decide whether reliance on extra-record evidence of changed country conditions violated procedural due process without pre-decision notification, but reinterpreting *Gebremichael* to state that "[o]ur holding in that case was not * * * that a motion to reopen is always necessary and sufficient to protect an alien's rights [but] [r]ather * * * that 'the demands of due process will, as always, ultimately depend on the circumstances'").

[8] *See Sevoian* v. *Ashcroft*, 290 F.3d 166, 176 (3rd Cir. 2002), *quoting Kazlaukas* v. *INS*, 46 F.3d 902, 906 (9th Cir. 1995); *Gonahasa* v. *INS*, 181 F.3d 538, 542 (4th Cir. 1999) (describing these reports as "highly probative evidence in a well-formed fear case"); *Marcu* v. *INS*, 147 F.3d 1078, 1081 (9th Cir. 1998) (reliance on reports "makes sense because this inquiry is directly within the expertise of the Department of State"); *Gailius* v. *INS*, 147 F.3d 34, 46 (1st Cir. 1998) (Department of State opinions "receive considerable weight in the courts because of the * * * Department's expertise"); *Rojas* v. *INS*, 937 F.2d 186, 190 n.1 (5th Cir. 1991) (Department of State a "relatively impeccable source[]" for information on political conditions in foreign countries); *Koliado* v. *INS*, 259 F.3d 482 (6th Cir. 2001) (deference due even though Department of State report reproduced for the Service in support of litigation); *Mitev* v. *INS*, 67 F.3d 1325, 1332 (7th Cir. 1995) ("we give great [deference] to [Department of State] opinions on matters within its area of expertise").

theretofore in the record of proceedings, either party may file as part of a motion to reopen any contradictory documentary evidence (*e.g.*, a contradictory report by a third party such as Amnesty International), which shall be considered, for the purpose of this section, to have been not available and which could not have been discovered and presented at the former hearing. If administrative notice is taken of a fact, then the parties should have the opportunity to challenge that fact. The Department's interpretation is that the "not available" and "could not have been discovered" requirements of section 3.2(c) should not stand in the way of such a review and determination on the merits of the motion. If the motion has merit and additional factfinding is required, the Board may reconsider and vacate its decision, reopen proceedings, and remand the record to the immigration judge.

G. Reduction in Size of the Board

The proposed rule provided that, after the transition period of 180 days has elapsed, the final structural reform of the Board will occur. The number of Board members will be reduced to 11, with the Attorney General designating the membership of the Board. After reviewing the comments, the Department has determined to retain the reduction of the size of the Board to 11, as proposed.

We note at the outset that two individuals who understand the Board well from their previous experience as Board members, and who testified before the House Judiciary Subcommittee, both agreed that the size of the Board should be reduced but differed over the proper reduction—one arguing for a reduction to no more than 9 while the other suggested 16. Testimony of M. Heilman and L. Mathon, House Judiciary Subcommittee Hearing, 10, 13, 18.

The Department has determined that 11 Board members is the appropriate size for the Board based on judgments made about the historic capacity of appellate courts and administrative appellate bodies to adjudicate the law in a cohesive manner, the ability of individuals to reach consensus on legal issues, and the requirements of the existing and projected caseload. The Board is expected to function with two three-member panels and five Board members acting individually in deciding cases. The Department believes that this is a realistic evaluation of the resource needs, capacities and resources of the Board in adjudicating immigration issues. The Attorney General may reevaluate the staffing requirements of the Board in light of changing caseloads and legal requirements following implementation of the final rule.

1. Quality of Board Member Personnel

Several commenters questioned how this reduction would occur. Commenters objected to the reduction stating generally that it raises constitutional issues, but without significant elaboration. These commenters either supported maintaining the current number of Board members or supported an increase in the number of Board members, staff, and resources. Comments concerned the transition period, in which the backlog of cases will be eliminated and the Board size reduced.

A few commenters stated that the reduction could be perceived as part of a design to eliminate Board members with whom the Attorney General disagrees and noted that diverse Board member opinions are important. Several commenters asserted that, during the 180-day transition period, Board members would be "auditioning" to keep their jobs and that it would affect the perceived impartiality of current Board members given that it was announced before the backlog was reduced.

The Department has already addressed, in part III.B above, the general comments asserting that reducing the number of Board members would adversely affect the due process of respondents by affecting the independence and perceived impartiality of the Board.

The Department expects that the reduction in the number of Board member positions will be effectuated by the Attorney General from among the current Board Members, after consultation with the Director of the Executive Office for Immigration Review (EOIR) and the Board Chairman, but that determination remains one that is within the discretion of the Attorney General. As EOIR Director Rooney pointed out in testimony before a subcommittee of the House Judiciary Committee, the Attorney General generally looks to traditional factors that guide the selection of adjudicators, such as experience, judicial temperament, and efficiency, particularly in an experienced adjudicator. Testimony of K. Rooney, House Judiciary Subcommittee Hearing, 37–38. The Department expects that the final determinations will be made on factors including, but not limited to, integrity (including past adherence to professional standards), professional competence, and adjudicatorial temperament. *Cf.*, D. Meador, M. Rosenberg, & P. Carrington, eds., *Appellate Courts: Structures, Functions, Processes and Personnel* (1994), 671–681 (varying views on the qualifications of judges in the judicial setting rather than the administrative adjudication setting); D. Meador & J. Bernstein, *Appellate Courts in the United States* (1994), 94–99.

In the end, however, it is not possible to establish guidelines or specific factors that will be considered, nor should the Attorney General limit his decisionmaking process. The decision as to the relative values and the weights given to those values belongs to the Attorney General. Each Board member is a Department of Justice attorney who is appointed by, and may be removed or reassigned by, the Attorney General. All attorneys in the Department are excepted employees, subject to removal by the Attorney General, and may be transferred from and to assignments as necessary to fulfill the Department's mission. Moreover, and of critical importance, the Department has not indicated that any of the existing Board members will be adversely affected by the reduction in the number of Board members. Until the Attorney General makes these personnel decisions, such comments are, at best, speculative.

A few commenters supported reduction based solely on seniority. While seniority is an experience indicator, the Department does not believe that it should be considered a presumptive factor.

Several commenters have suggested that the Attorney General must appoint individuals to the Board who are expert in immigration law. The Department believes that this argument rests on the faulty premise that immigration law is the only area of the law where Board members must have expertise. Although immigration law is a unique blend of foreign and domestic concerns, it is not so discrete and insular in nature.

In reality, immigration law is part of the larger body, and requires a more global view, of federal law. The Board is no longer, and perhaps never has been, a body whose decisions relate only to the interpretation of the Act and regulations. More frequently now than ever before, the Board decides cases based on the criminal law, and expertise in that area of the law is also required of the Board.[9] Accordingly, it is not

[9] The Board has interpreted, since its inception, what constitutes a "crime involving moral turpitude." *See Matter of G–*, 1 I&N Dec. 8 (BIA, A.G. 1940) (interpreting 1917 Act); 8 U.S.C. 1182(a)(2)(A)(i); 237(a)(2)(A)(i). An increasing

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merely expertise in immigration law that must guide the Attorney General's decisions on immigration law and policy, or to whom to delegate authority to make immigration decisions, but also expertise in the inextricably interrelated criminal law. By the same token, the Board's determinations under the Refugee Act of 1980, 8 U.S.C. 1158, and implementing regulations, 8 CFR part 208, necessarily include both facts and inferences from the expertise of the Department of State on matters of foreign conditions. *INS* v. *Aguirre-Aguirre*, 526 U.S. 415, 425 (1999) (deference due Attorney General's, and hence Board's, role in foreign policy); *INS* v. *Abudu*, 485 U.S. 94, 110 (1988) (foreign policy considerations in immigration proceedings).

2. Resource Requirement Concerns

A number of commenters expressed the view that the current case backlog reflects the need for more resources. In their view, increased attorney and paralegal staffing, as well as filling all existing Board member positions, would be a preferable method of reducing the backlog.

As described above, beginning in 1995, the Department sought to aid the Board in reducing its burgeoning caseload by increasing its size from 5 to 23 Board members with increases in its attorney and support staff.[10] It is now evident that the Board does not face a "personnel-budget" problem but rather a fundamental systemic problem. The continued expansion of the Board has not effectively reduced the existing case backlog. The one element that has begun to help reduce the backlog—streamlining—is being expanded through this rule. By expanding the number of cases that can be resolved either through a summary affirmance without opinion, or by a short written order by a single Board member, this process will substantially free up the staff resources of the Board to focus on backlog reduction and the preparation of careful legal and factual analyses in cases meriting three-member panel review, including cases to be designated as precedent decisions.

3. Advantages of a Smaller Board

The Department believes that the continued expansion of the Board has, indeed, had significant institutional costs including effects on the cohesiveness and collegiality of the Board's decision making process, and the Department's perception of the uniformity of its decisions, and an administrative and supervisory strain on the Board's staff. *Cf.* Commission on Revision of the Federal Court Appellate System, *Structure and Internal Procedures: Recommendations for Change* 16–21 (1975). These costs have been magnified by substantial changes in the immigration laws and have resulted in unnecessary delays in issuing final agency decisions. This continued expansion has shifted the Board's attention away from providing nationwide guidance on those cases presenting difficult and repetitive or controversial legal questions. Testimony of M. Heilman, House Judiciary Subcommittee Hearings 13, 16. The institutional cost of unlimited expansion is not a new phenomenon, but one that has been experienced in the federal court system. *See generally Structural Alternatives*, at 29–57. At the same time, the Board's precedent decisions indicate an inability to reach consensus about even fundamental approaches to the law.

Accordingly, the Department agrees with certain comments that the reduction in the number of Board members should increase the coherence of Board decisions and facilitate the *en banc* process, thereby improving the value of Board precedents.[11] The Department believes that more and clearer precedent will be of greater assistance to the immigration judges, practitioners, and respondents.

Another commenter argued that reducing the number of Board members combined with increasing single-member review will save American taxpayers money. It is not clear to the Department that the cost of operating the Board will substantially be reduced, nor does the Department plan to propose a substantial reduction in budget outlays. However, by further expediting the disposition of cases for aliens currently held in detention, the Department expects to realize savings in the costs of detaining such aliens pending their removal from the United States. In addition, the Department believes that following implementation of the streamlining process and this rule, maintaining the current number of Board members will be unnecessary. With greater efficiency, fewer Board members will be needed to adjudicate the caseload. A reduction to 11 Board members will allow for the most efficient use of resources to adjudicate administrative appeals on a timely basis.

H. Case Processing Issues

Section 3.1(e)(8) of the proposed rule, as well as §§ 3.3 and 3.5, established new time limits for several elements of the appellate process while maintaining several aspects of current Board practice. Some commenters implied that these time limits could create justifiable rights. The Department disagrees. These internal management limitations are intended only to provide direction for the management of the Board, not establish any right or remedy in litigation. *See United States* v. *Caceres*, 440 U.S. 741 (1979).

In response to the public comments, the Department has changed the briefing process, establishing a distinction between detained and non-detained cases. For detained cases, the final rule establishes a simultaneous briefing process, with a time limit of 21 days for the filing of briefs by each party. For non-detained cases, the Department is retaining a sequential, but reduced, briefing schedule, allowing the appealing party 21 days in which to file a brief, and allowing the opposing party 21 days to respond. As in the proposed rule, an immigration judge will have 14 days to review the transcript and approve a decision (or 7 days after returning from an absence from the court).[12] Also as in the proposed rule, an appealing party asserting that a three-member review is warranted must do so in the Notice of Appeal within the period allowed for an appeal. Once the record is completed and ready for adjudication, single Board member decisions must generally be made within 90 days and three-member decisions must be made within 180 days. Provisions for discretionary extensions of time have been expanded. The Department has also retained the provisions of the proposed rule on rehearings *en banc*.

1. Simultaneous Briefing

Several commenters expressed concern that the practice of simultaneous briefing, coupled with a shorter time frame, raises due process concerns because it would be unfairly burdensome to immigration practitioners and pro se litigants. Some commenters believe that, as a consequence of the compressed time frame, pro bono representation would decrease because of the difficulties associated with the new rule. Many commenters asserted that pro se respondents who are unfamiliar with English and the immigration laws will be unable to effectively articulate their position on appeal or to anticipate and rebut arguments presented by the Service. Furthermore, a few commenters argued that detained respondents will not even have the benefit of the 21-day period due to systemic problems in receiving the transcripts and briefing schedules in a timely manner while they are either detained or being moved to other detention facilities. Finally, multiple commenters suggested that the reduced time frame would result in hastily drafted briefs that would be unhelpful to the Board in deciding appeals.

After reviewing the comments received, the Department has decided to change the proposed regulation with respect to the simultaneous briefing process but otherwise maintain the time limits as proposed. The final rule modifies the existing 8 CFR 3.3(c) by creating a distinction between detained and non-detained cases. In detained cases, the Department maintains its position that a 21-day simultaneous briefing schedule is sufficient. Simultaneous briefing is the common practice in detained cases. See, *e.g.*, *Matter of Jean*, 23 I&N Dec. 373, 380 (A.G. 2002) (addressing simultaneous briefing before the Board in detained cases).

In non-detained cases, the Department will retain the proposed 21-day briefing schedule, but agrees with the commenters that this should be a sequential briefing schedule, which is currently the common practice in non-detained cases. Under existing regulations, parties are allowed 30 days each in which to file briefs (for a total of up to 60 days). Under the final rule, for non-detained cases, after a transcript is made available, the Board will establish a 21-day sequential briefing schedule. The ability of either party to seek an extension of the period for filing a brief or reply brief up to 90 days for good cause shown remains from current Board practice. The Department approves of the Board's current practice of granting extensions of only 21 days. Beyond that, the Board retains its discretion to consider briefs and reply briefs that are filed out of time. Furthermore, the parties also retain their ability to file motions to reconsider after the Board has rendered a decision. 8 CFR 3.2(b).

2. Transcript Timing

Other commenters indicated that, because the availability of a transcript is beyond an appellant's control, an appellant might be unfairly surprised by its arrival and unable to prepare a brief within the time frame. Some commenters stated that, in their experience, it has sometimes taken a year or more for the preparation of transcripts after the filing of an appeal with the Board.

The Department agrees that substantial delay in the production of transcripts in many cases has been a serious problem. The earlier a transcript is available, closer in time to the actual hearing and decision of the immigration judge, the more readily the respondent and the Service will be able to utilize that transcript. The longer a transcript is delayed, the more the events memorialized in that transcript may fade from the memories of the respondent, respondent's counsel, and the Service's trial attorney. The Department believes that fairness requires that the transcript be made available to all of the parties at the earliest possible time.

The Department also recognizes that the Board has made substantial improvement in this area. For appeals filed in fiscal year 2001, the average time from the filing of the Notice of Appeal to setting the briefing schedule was 158 days. That statistic would appear to reflect the commenters' concerns. However, for fiscal year 2002 through June 2002, the average time was 97 days. The Department is not satisfied with this delay and believes that a 60-day time-frame is possible and should be implemented. If necessary, the Board and the immigration courts should alter their internal operating procedures to ensure that transcripts can be provided within this time-frame.

In response to this concern by the commenters, the Department has added a requirement in § 3.5(a) that the Chairman and the Chief Immigration Judge take such steps as necessary to ensure that transcripts are produced as soon as practical after the filing of the Notice of Appeal. This will also assist the immigration judges in reviewing any oral decision in the transcript. The Chairman and the Chief Immigration Judge are expected to report on progress in this area regularly.

3. Immigration Judge Time Limits To Review Decisions

Some commenters voiced a concern that the 14-day time limit for an immigration judge to review transcripts and any oral decision was unrealistic in high-volume jurisdictions. The Department disagrees. The Department recognizes that there will be some dislocation as the transcription process is accelerated and the immigration judges have a shorter period of time to review a number of transcripts to meet this deadline. However, once these processes are in place, that pressure will dissipate. The Department is confident that the immigration judges will be able to adjust their schedules to accommodate this implementation process.

4. 30-Day Notice of Appeal Filing Requirement

Some commenters felt that the 30-day period within which an appeal must be filed was too short a period within which a party can be expected to articulate reasons for contending that three-member review is warranted. The Department disagrees. The filing time for a Notice of Appeal has not been changed by the proposed or final rule. The existing 30-day period—a substantial increase in the 10-day limit

number of recent Board decisions have focused on the interrelationship of provisions of the criminal Code, the United States Sentencing Guidelines, and the Act. For example, the term "aggravated felony" defined in section 101(a)(43) of the Act, 8 U.S.C. 1101(a)(43), is referenced in the United States Sentencing Guidelines as the controlling definition for certain sentencing enhancements. U.S.S.G. 2L1.2(b)(2). The definition of "crime of violence" that makes up one of the definitions of an aggravated felony is defined by 18 U.S.C. 16. "Drug trafficking," another aggravated felony, is defined in 18 U.S.C. 924. The Board has, at times struggled with this panoply of legal provisions. *See, e.g., Matter of K–V–D–*, 22 I&N Dec. 1163 (BIA 1999), *overruled, Matter of Yanez*, 23 I&N Dec. 390 (BIA 2002) (whether conviction under state law constitutes drug trafficking under section 101(a)(43)(B) of the Act); *Matter of Vasquez-Muniz*, 22 I&N Dec. 1415 (BIA 2000), *rev'd* 23 I&N Dec. 207 (BIA 2002) (whether an offense defined by state or foreign law may be classified as an aggravated felony as an offense "described in" a federal statute enumerated in section 101(a)(43) of the Act even if it lacks the jurisdictional element of the federal statute); *Matter of Ramos*, 23 I&N Dec. 336 (BIA 2002), *overruling Matter of Puente-Salazar*, 22 I&N Dec. 1006 (BIA 1999), *and Matter of Magallanes-Garcia*, 22 I&N Dec. 1 (BIA 1998) (whether driving while intoxicated under various state criminal laws constitutes crime of violence under 18 U.S.C. 16(b) and an aggravated felony under section 101(a)(43)(F) of the Act). This complex interrelationship of the immigration law and the criminal law has also lead to recent precedent decisions by the Attorney General. *Matter of Y–L–*, 23 I&N Dec. 270 (A.G. 2002), *overruling Matter of S–S–*, 22 I&N Dec. 458 (BIA 1999); *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002), *disapproving Matter of H–N–*, 22 I&N Dec. 1039 (BIA 1999).

[10] The Board currently has 19 members and 4 vacancies, which the Department has declined to fill in light of the fact that the expansion has not achieved the desired results based upon historical staffing levels.

[11] The Department notes that not all of the Board precedent decisions are issued *en banc*. Under 8 CFR 3.1(g), the Board designates particular decisions for publication as precedent decisions, but the Board can and frequently does designate a three-member panel decision as a precedent decision.

[12] The proposed rule provided that the immigration judge would have a set time to "review and approve the transcript." This language may have given the impression that an immigration judge may alter a transcript when this authority clearly does not exist. An immigration judge should, of course, review the transcript of proceedings to ensure that it is complete, but there is no authority to "amend" the transcript. The immigration judge's oral decision, on the other hand, is subject to a small degree of modification and clarification necessitated by the fact that the decision is orally dictated and does not reflect inflection. An immigration judge may not, however, make substantive changes in the decision.

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that formerly applied until recent years—appears to have worked well. As noted above, the parties are already familiar with the issues presented and should, in a short period of time, be able to articulate with some specificity the issues that they wish to raise on appeal. The transcript of hearings is not necessary for this process. The facts should be fresh in the parties' minds and the legal arguments should have been fleshed out before the immigration judge. The Department has found no reason to change this provision of the regulations.

5. Decisional Time Limits

Some commenters also argued that the 90- and 180-day time limits for adjudication were unrealistic and would result in rushed and erroneous decisions. Other commenters, however, supported the new time limits, and a few suggested that a 90-day limit be placed on deciding all detained cases.

The Department is not persuaded that the proposed time frames for deciding a case will hinder the quality of decisions made by either single Board members or three-member panels. The rule provides adequate time for the Board to decide the vast majority of cases before it, and in those rare cases where more time is needed, the rule provides a procedure for extending that time. The Department also believes that 8 CFR 3.1(e)(8) sufficiently directs the Board to assign priority to deciding case appeals involving detained respondents, or bond appeals, which procedure is consistent with existing practice, without the need for separate time limits for those matters.

6. Holding Cases Pending Significant Changes in Law and Precedent

A few commenters noted that proposed § 3.1(e)(8)(iii) permits the Chairman to hold a case or cases pending resolution of issues pending before the United States Supreme Court or the courts of appeals that will substantially affect the outcome of the cases to be held. These comments suggested that the Chairman should also be authorized to hold cases that are directly affected by pending legislation, pending regulatory changes, and pending *en banc* decisions.

The Department agrees with these comments in part, and has expanded 8 CFR 3.1(e)(8)(iii) to cover pending Department regulations and pending *en banc* decisions. Because some issues will arise rapidly and in multiple cases, the Department expects that the Chairman, as a matter of discretion in managing the caseload, will be able to utilize the authority granted under this provision to group cases to determine which record provides the clearest issue for precedent decisions by the Board *en banc*. To facilitate the management of these case and case-group holds with the legislative and regulatory programs of the Department, the Chairman is directed to inform the Director of EOIR and the Attorney General of all such holds.

I. Decisional Issues

1. Management of Decisions

Several commenters expressed the view that the regulation granted too much authority to the Attorney General, the Director of EOIR, and the Chairman of the Board to manage the decision-making of individual Board members. Some of these commenters generally challenged the Attorney General's authority over the Board.

These commenters misunderstand the nature of the Board. The Board is the creation of the Attorney General; it is not a statutory body. As discussed above, the Board's authority derives from a delegation of authority from the Attorney General. *See Guentchev* v. *INS, supra; Matter of Hernandez-Casillas, supra,* at 289 n.9. In this rule, the Department alters the process by which the caseload is managed, but does not dictate or determine the ultimate outcome in any case or group of cases. The Department expects the Board Members to continue to exercise independent judgment regarding the interpretation of the law, subject to applicable legal standards and review by the Attorney General, and in conformity with applicable judicial precedents.

2. Remand Motions

One commenter stated that under proposed § 3.1(e)(2), respondents should also be afforded the right to file a motion to remand on any substantive ground. The Department notes that this suggestion is outside the scope of the rulemaking and does not address that suggestion at this time. However, in the future, the Department may consider a more complete revision of the motions practice before the Board. At this time, the Department has changed § 3.1(e)(2) to more closely reflect the authority currently codified in § 3.1(a)(1) for a single Board member to make various procedural dispositions of cases. There is also no provision that bars a contested motion to remand the record; the Board has considered such motions for years.

3. Rehearing *en banc*

One commenter stated that rehearing *en banc* is almost never done, and suggested that revising the Board's rehearing *en banc* authority is effectively meaningless. The Department believes that *en banc* review is a valuable process in the establishment of precedential guidance for immigration judges, and one of the results of decreasing the size of the Board is to increase its ability to provide such guidance in a meaningful way. However, *en banc* proceedings are very resource intensive and should not be readily undertaken. The Department believes that the Board's electronic *en banc* process has been successful and should be continued. Moreover, the Board can and does designate panel decisions as precedent decisions without the need to convene a full *en banc* proceeding by using the electronic *en banc*, and should continue that practice whenever possible. The proposed rule added a sentence in 8 CFR 3.1(a)(5), taken from Federal Rules of Appellate Procedure Rule 35(a), with respect to rehearing *en banc* in the courts of appeals, providing that *en banc* proceedings are disfavored and shall ordinarily be ordered only for questions of exceptional importance or to secure or maintain the uniformity of the Board's decisions. However, to avoid concerns that this language might unintentionally inhibit the Board's use of the *en banc* process, the final rule uses the term "particular importance" rather than "exceptional" importance. The Department disagrees with the suggestion of some commenters that this provision is effectively meaningless.

4. Separate Opinions

One commenter suggested that the Department eliminate dissenting and concurring opinions for precedent decisions. This rule does not take a position on that suggestion. Dissenting and concurring opinions can serve a valuable purpose, within limits, in precedential decisions. Not all precedent decisions can resolve all aspects of an issue presented and there may be valuable disagreements that warrant further briefing in subsequent cases. The Department does not wish to limit the conversation that must occur to develop lines of precedent so long as the concurring and dissenting opinions are efficiently prepared.

On the other hand, there is substantial reason to question the number of lengthy written dissents in unpublished, non-precedential decisions. Although the percentage of separate opinions may be relatively low, there is a serious question of the merits of committing substantial time and effort to writing separate opinions in a non-precedential case. Accordingly, while the Department recognizes that Board members may wish to file such opinions, the Department also believes that it is appropriate that such opinions not adversely affect the time and resources of the Board.

5. Changes in the Notice of Appeal

Several commenters recognized that the Notice of Appeal forms must be modified to conform with the changes under the new rule. The Department agrees, and has made changes to Form EOIR–26 and Form EOIR–29 to incorporate the final rule.

Form EOIR–26 has generally been revised to include the new basis for summary dismissal and requires the respondent to identify the legal and factual bases for appeal when requesting review by a three-member panel. Form EOIR–29 also provides that a party appealing a decision of a Service officer (therein referred to as an "INS officer" for ease of understanding by the applicants) must file an appeal within 30 days of receiving the decision. The Department expects that these forms will be used upon the effective date of this regulation. We have attempted to make the requirements of the Notice of Appeal as clear as possible, taking into account the concerns expressed in cases such as *Vargas-Garcia* v. *INS,* 287 F.3d 882 (9th Cir. 2002).

6. Barring Oral Argument Before a Single Board Member

One commenter stated that eliminating oral argument in cases assigned to a single Board member for decision is a further erosion of a respondent's due process rights. Section 3.1(e)(7) reflects the current authority of the Board to grant or deny requests for oral argument, but it also makes clear that no oral argument will be available in any case assigned to a single Board Member for disposition. The Department disagrees that this provision is a further erosion of a respondent's due process rights, initially because there is no due process right to an oral argument before the Board. Moreover, oral argument is rarely granted even in cases that are heard by a three-member panel, and the Department believes that it is entirely appropriate to establish a general rule barring oral argument in a case that does not even meet any of the factors meriting review by a three-member panel under § 3.1(e)(6) of this rule.

7. Location of Oral Argument

One commenter noted that the Board has held oral argument in other cities, sometimes without regard to whether the cases being argued were from those localities, thus imposing burdens on the parties and the Board. Accordingly, the commenter suggested limiting the location of oral argument to EOIR's headquarters. The Department agrees that it is generally unwarranted for the Board to hold oral argument other than in its own oral argument room, unless such other location is more convenient to the Board and the parties. Accordingly, the final rule directs the Chairman to hold oral argument at the EOIR's headquarters unless the Deputy Attorney General or his delegate specifically provides otherwise.

8. Summary Dismissal of Frivolous Appeals and Discipline

The final rule in § 3.1(d)(2)(i)(D) gives the Board the authority to summarily dismiss an appeal that the Board finds has been filed for an improper purpose, such as to cause unnecessary delay, or that lacks an arguable basis in fact or law, unless the appeal is supported by a good faith argument for extension, modification, or reversal of existing law. Attorneys who file appeals that are summarily dismissed under § 3.1(d)(2)(i)(D) may be subject to a finding that they have engaged in frivolous behavior as defined in § 3.102(j).

Several commenters expressed the view that giving the Board the authority to dismiss an appeal because it has been deemed frivolous under the standards of paragraph (D) will have a chilling effect on attorneys, so as to reduce the number of attorneys who will file appeals before the Board. These commenters believe that, if disciplinary measures are strictly enforced, attorneys will be deterred from filing an appeal on behalf of indigent respondents. Several commenters stated that the necessity of § 3.1(d)(2)(i)(D) has not been sufficiently explained and that this section is unnecessary since regulations already exist to impose disciplinary measures on attorneys. These commenters maintained that the line between an appeal that has been deemed frivolous and a bona fide legal argument is hard to distinguish. Therefore, they argue, it will be difficult for the Board to appropriately determine what actually constitutes an appeal that should be dismissed under this section.

Several commenters expressed the view that this section will also deter attorneys from presenting arguments on appeal because the Board may deem them as frivolous. A few commenters maintained that the definition of "frivolous" that will be used by the Board in its determination should be consistent with the definition provided in prevailing law, common law, the Federal Rules of Civil Procedure, and the Canons of Professional Responsibility. Another comment contended that the definition of frivolous may change based on the state of immigration law.

The Department has decided to retain the regulation as proposed. The primary concern stated in all of these comments is the effect this ground will have on the types and number of appeals filed. The Attorney General has the authority to instruct the Board to set criteria for which appeals may be dismissed. An appeal that is filed for an improper purpose is chief among those appeals that the Board should not be forced to review. The Department concludes that these appeals should be dismissed in order to give Board members more time to adjudicate meritorious appeals.

The Board previously had the authority to dismiss frivolous appeals. *See* 47 FR 16771, 16772 (April 20, 1982) (giving the Board authority to summarily dismiss a frivolous appeal); 8 CFR 3.1(d)(1–a)(iv) (1982). The Board has also dismissed frivolous appeals. *See, e.g., Matter of Gamboa,* 14 I&N Dec. 244 (BIA 1972). There is no showing that, when these provisions were in effect, attorneys were deterred from filing appeals, or that the Board was actively dismissing appeals that truly had merit.

The prior experience of the Board in dismissing frivolous appeals also serves to address the concern that there is no appropriate definition for what constitutes a frivolous appeal. The Board can rely on earlier precedent decisions to make such a finding. *See e.g., Matter of Gamboa, supra; Matter of L–O–G–,* 21 I&N Dec. 413 (BIA 1996); *Matter of R–P–,* 20 I&N Dec. 230 (BIA 1990); *Matter of Patel,* 19 I&N Dec. 394 (BIA 1986). Along with this case law, the Board can draw from the definition for frivolous behavior in 8 CFR 3.102(j) to determine what constitutes a frivolous appeal. The Department also expects the Board to be guided by other interpretations of what amounts to "frivolous" in implementing the rule, including the decisions of the United States courts under F. R. Civ. P. 11 and the American Bar Association's Standards of Professional Conduct. An attorney is clearly on notice as to the definition of frivolous behavior.

The commenters also stated that this section is unnecessary because regulations already exist to impose disciplinary measures on attorneys. The Department disagrees and will retain the rule as proposed. Section 3.1(d)(2)(iii) provides that filing an appeal that is summarily dismissed as frivolous may constitute grounds for disciplining an

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attorney or representative under 8 CFR 3.102. The purpose of this provision is to invoke the disciplinary process, that is, to give the EOIR Office of the General Counsel an opportunity to consider whether a complaint should be filed under the existing disciplinary process. EOIR's General Counsel may commence the disciplinary process based on a referral by anyone. The process of a referral for review by EOIR's General Counsel, and the possibility of a hearing and determination, may be invoked if the Board member or panel believes such an inquiry is justified. Accordingly, the Department believes that there is no "chilling" effect from the promulgation of this rule.

9. Mandatory Summary Dismissals

Some commenters suggested that it was inappropriate to change the authority to summarily dismiss appeals from discretionary to mandatory, because respondents may not understand the requirements and the Board members should retain discretion.

The Department has considered the views of the commenters, as well as judicial decisions such as *Vargas-Garcia* v. *INS*, 287 F.3d 882 (9th Cir. 2002), which have challenged summary dismissals by the Board. The Department has decided not to make this proposed change at the present time, but to defer consideration of these issues for possible action in the future. In the meantime, the Department notes that the grounds for summary dismissal in § 3.1(d)(2)(i), including the restored ground relating to frivolous appeals, will remain available for the Board to utilize, in all appropriate cases, in the exercise of discretion by the Board member or panel to which an appeal is assigned.

The rules have provided for years that an appeal may be dismissed if the appealing party "fails to specify the reasons for the appeal on [the Notice of Appeal] or other document filed therewith." 8 CFR 3.1(d)(2)(i)(A). *See Toquero* v. *INS*, 956 F.2d 193 (9th Cir. 1992); *Alleyne* v. *INS*, 879 F.2d 1177 (3rd Cir. 1989); *Athehortua-Vanegas* v. *INS*, 876 F.2d 238 (1st Cir. 1989); *Bonne-Annee* v. *INS*, 810 F.2d 1077 (11th Cir. 1987); *Townsend* v. *United States Department of Justice, INS*, 799 F.2d 179 (5th Cir. 1986); *Matter of Lodge*, 19 I&N Dec. 500 (BIA 1987); *Matter of Valencia*, 19 I&N Dec. 354 (BIA 1986). The Department expects the Board to continue to utilize this authority in appropriate cases and reiterates the view that these requirements are fundamentally sound and in conformity with due process.

10. Finality of Decisions and Remands

The final rule also reinserts former 8 CFR 3.1(d)(3) (2000), without change, dealing with finality of decisions and remands, as new § 3.1(d)(6). That provision had been part of the Board's regulations for many years but was inadvertently overwritten when unrelated changes in the regulations were made in 2000. Under the circumstances, the Department has determined that this preexisting provision may be reinserted in the Board's regulations without notice and comment under the Administrative Procedure Act.

In 1999, as part of the streamlining rule, the Department amended 8 CFR 3.1(d) to redesignate its paragraphs for clarity. 64 FR 56135 (Oct. 18, 1999). The streamlining rule redesignated former paragraphs (d)(1–a), (d)(2), and (d)(3) as new paragraphs (d)(2), (d)(3), and (d)(4), respectively. 64 FR at 56141. After the redesignation in 1999, paragraph (d)(2) on finality of decisions and remands was codified as § 3.1(d)(3) (2000).

However, this change was unintentionally disrupted by the subsequent final disciplinary rule in 2000. 65 FR 39513 (June 27, 2000). The preamble and the regulatory text make clear the intent to update the specific regulatory citations of the summary dismissal grounds to reflect the new codification of the disciplinary grounds, and to revise the paragraph dealing with rules of practice and discipline, § 3.1(d)(4) (2000). However, that final disciplinary rule incorrectly instructed the **Federal Register** to codify the revised paragraph dealing with rules of practice as paragraph (d)(3). The result of this error was effectively to overwrite the language of the preexisting paragraph (d)(3) on finality of decisions and remands, and to leave instead two different versions of the rules of practice provision in paragraphs (d)(3) and (d)(4).

Operationally, the Board's practice has not changed despite this error in codification. Given the clearly unintended result of the erroneous 2000 regulatory instructions, the Department is reinserting the overwritten language without change, as a new paragraph (d)(6).

J. Applicability of Procedural Reforms to Pending Cases

Many commenters raised concerns that the proposed rule would impose procedural obligations that would be impossible to meet for pending cases and would otherwise violate due process. The Department notes, however, that changes in procedural rules typically are made applicable to all cases pending as of the date the new procedural rules are promulgated. *See, e.g.*, Order, 383 U.S. 1031 (1966) (transmitting amendments to the Federal Rules of Civil Procedure; including amendments to Fed. R. Civ. P. 12, 13, 19, 23); *Landgraf* v. *USI Film Products*, 511 U.S. 244, 275 n.29 (1994). The Department has determined that the final rule will apply to all pending cases, with one exception. *See Smiley* v. *Citibank (South Dakota)*, N.A., 517 U.S. 735, 739–40 (1996); *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995); *United States* v. *Morton*, 467 U.S. 822, 835–36 n.21 (1984); *United States* v. *Schooner Peggy*, 5 U.S. (1 Cranch) 103, 110 (1801).

Some commenters were of the opinion that all the pending cases, "approximately 40,000," would have to be re-briefed in a short time, affecting the quality of representation. A few commenters argued that re-briefing all the pending cases would have a significant impact on small entities and therefore implicate the Small Business Regulatory Enforcement Fairness Act of 1996 and the Unfunded Mandates Reform Act of 1995.

After careful consideration of the public comments suggesting the need for an opportunity for those individuals with pending appeals at the Board to respond to the new screening criteria, the Department has adopted, in part, an approach suggested by some of the commenters. The final rule contains a notice provision at § 3.3(f) providing that a party who has an appeal pending at the Board on August 26, 2002, may file a supplemental brief or statement on why the appeal meets the criteria for three-member review under § 3.1(e)(6) of the final rule on or before September 25, 2002, or the due date for the party's brief, whichever is later. Following the effective date, the Board will apply the final rule to all appeals, with consideration given to any additional brief or statement filed in accordance with this provision. The filing of any such additional brief or statement, however, is entirely optional in all of the pending cases. The Board, in its discretion, will determine how these briefs will be considered and what procedure will be used in determining whether to apply a single-member or three-member panel review.

The Department disagrees with the notion that these cases cannot be reviewed under the standards specified in the rule for single-member and three-member panel review. Appellants do not have any vested right or entitlement to review by a three-member panel of the Board, or even an expectation that their case is more likely than not to be referred to a three-member panel. At present, all pending cases are subject to review under the existing streamlining process under § 3.1(a)(7) of the existing rules, and this new rule would retain that streamlining process under § 3.1(e)(4). Even in FY 2001, long before the publication of the proposed rule to reform the Board's procedural rules, the Board already was resolving a clear majority of pending appeals by summary affirmance without opinion, issued by a single Board member, after determining that those cases meet the standards of the existing streamlining process. Under the new rule, all cases will be reviewed on the merits to determine if there are any factual or legal errors or other circumstances that meet the criteria for three-member review. The opportunity for those with pending cases to assert that an appeal warrants three-member review is not intended as a substitute for Board screening; rather, it is an additional opportunity to facilitate the screening process. The burden of administering this provision is quite limited. A party is not required to make any filing, but may do so. Regardless of whether a party files an optional brief or statement under § 3.3(f) regarding a pending appeal, every case will still be reviewed under the standards of this rule to determine whether or not the case meets the standards of § 3.1(e)(6).

The Department also disagrees with the notion that the application of the case management system to pending appeals at the Board will have a significant impact on small entities and implicate the Unfunded Mandates Reform Act. In approximately one third of cases filed with the Board, the respondent is not represented. In a small percentage of cases, the Service has appealed. In those cases where the respondent has appealed through counsel or an accredited representative, it behooves the attorney or representative to review the case file to determine whether these standards warrant an additional filing. However, this does not mean, and the Department does not expect, that a large number of cases will warrant such an additional filing. This is not an open invitation to file a brief where a respondent has previously indicated that he or she would file a brief in the Notice of Appeal and has not done so. These cases may be subject to summary dismissal under existing standards or under the final rule. All cases are currently subject to the streamlining review and this rule does not appreciably change that review in any case where summary affirmance would be appropriate. Accordingly, while some individual attorneys or representatives may find a few cases that objectively warrant an additional filing, the Department does not expect the impact to be significant.

Some commenters suggested that *Landgraf* v. *USI Film Products* bars the application of the revised standard of review in § 3.1(d)(3) to pending cases. The Department believes that these rules are generally administrative and procedural in nature and do not implicate the retroactivity concerns expressed in *INS* v. *St. Cyr*, 533 U.S. 289 (2001); *Lindh* v. *Murphy*, 521 U.S. 320, 327–28 (1997); and *Landgraf* v. *USI Film Products*, *supra*.

The commenters' concerns seem to relate particularly to whether the clearly erroneous standard for review of an immigration judge's factual findings under § 3.1(d)(3)(i) would prejudice an individual respondent. Section 3.1(d)(3)(i) of the rule establishes the scope of review for factual determinations of the immigration judge. However, the change in the standard would have no effect on any appeal where the decision is based on a question of law or the exercise of discretion based on established facts, or any appeal where a disputed fact is not material to the decision. The provision does not have any bearing on motions before the Board or appeals from decisions by Service officers. Thus, the Department believes that the number of such cases would be very small.

In order for the application of the clearly erroneous standard to be prejudicial to the respondent in a pending case, the case must turn on an error of fact made by the immigration judge—a factual finding that is erroneous, but not clearly erroneous—and that is also material to the basis for the decision of the immigration judge and the Board.

Even so, the Department recognizes that an application of the clearly erroneous standard to all pending cases would require the Board to review each case, on an individualized basis, to determine if such circumstances may be present. Rather than having the Board take the time to make these additional determinations in such pending appeals, the Department has determined that it would be more efficacious simply to continue the current scope of review standards for pending cases, and to apply the clearly erroneous standard only to the review of immigration judge decisions in those appeals filed on or after the effective date. Accordingly, § 3.3(f) of the final rule provides that § 3.1(d)(3)(i) will not apply with respect to pending cases filed with the Board prior to September 25, 2002.

The Department notes that § 3.1(d)(3)(iv), which prohibits additional factfinding by the Board on appeal, will apply to all cases pending as of the effective date of this rule. There can be no prejudice in the application of this rule to pending cases, because the rule provides for a remand for further factfinding in any case where the Board determines that additional factfinding is required in a particular case.

K. Transition Period and Reduction of the Backlog

A number of commenters suggested that the period of time imposed within the proposed rule for the Board to meet the backlog reduction requirements was far too short. They argued that the sheer numbers of cases to be decided within that six-month period would reduce the amount of time available for each case, with some commenters offering calculations that this would be reduced to approximately 15 minutes.

The Department disagrees with these comments and has not altered the time frame for eliminating the backlog of pending cases. Pure mathematical formulas in this area have the beauty of simplicity, but are deceptive. Calculating an average amount of time for a single Board member to decide one case overlooks the differences in cases themselves and the preparatory work that goes into decisions. For example, the Department expects that a clearly untimely appeal can be dispatched promptly by a Board member under the streamlining process. For each such simple case (and the Board's experience streamlining has shown there are many), more time is afforded for considering the issues to which the Board's time should be devoted.

Moreover, the six-month time frame runs from the effective date of the rule, not the date on which it is published in the **Federal Register**. To say that the Board has not been on notice of this rule also disserves the Board. The Board has been diligently preparing for the implementation of this rule to reduce its backlog of pending cases since the Notice of Proposed Rulemaking was published on February 19, 2002. The Board has increased its disposition rate dramatically. In 2000, the first full year in which the Board utilized streamlining, the Board averaged 1800 dispositions per month. With the expanded use of streamlining, dispositions increased to an average of 2600 per month in 2001. In February, 2002, when the proposed rule was published, the Board decided 3300

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cases. In recent months, utilizing its authority under streamlining, the Board has increased dispositions to an average of over 5200 dispositions per month. With the additional authority granted by this final rule, the Department believes that it is reasonable to expect the Board to bring the caseload backlog down to, or near, a current balance within the six-month transition period. The Department is aware, of course, that specific factors, such as the requirement that the Board improve on providing transcripts to the parties in a timely manner, may adversely impact the disposition rate against the number of cases available for disposition by accelerating the number of records that are available for disposition. The Department is convinced that the transition period is sufficient for the Board to reduce the backlog. Accordingly, the Department is unconvinced that this implementation period should be altered.

L. Administrative Fines Cases

The Department has decided to address the transfer of administrative fines cases to the Office of the Chief Hearing Examiner (OCAHO) in a separate final rule because of a technical legal issue unrelated to the proposed rule and the comments received on the proposed rule. The Department plans to publish this separate final rule in the near future.

M. Miscellaneous and Technical Issues

1. The Board's Pro Bono Project

Several commenters stated that the Department should not take any administrative actions that would disrupt the success of the Board's Pro Bono Project. Although these comments fall outside the scope of the proposed and final rule, the Department wishes to take this opportunity to assure the bench, bar, and public of its commitment to this process. On January 17, 2001, EOIR announced a Pro Bono Project that links volunteer representatives from around the country with detained immigrants who lack legal representation. The Department fully supports this partnership between the government and nonprofit organizations. The Department recognizes the value of representation for respondents in the removal process. Although respondents generally are able to present their points of view ably, often with the assistance of language translators, the availability of attorneys and representatives learned in the technical aspects of immigration law is useful both to guide the respondent and to conserve judicial resources of the immigration judges and the Board.

2. Fundamental Changes in Structure

Other commenters have suggested substantial changes in the underlying structure of the administrative immigration adjudication system. For example, some suggested that respondents should be charged filing and transcript fees more commensurate with the actual costs of the proceedings. Another comment, as well as a proposal by a former Member of the House Judiciary Committee, was that the Department abolish automatic appeals (either generally or of denial of asylum by Service asylum officers) or that only a discretionary appeal to the Board be allowed. The Department believes that these proposals fall outside the scope of the present rule and will not consider such proposals at this time.

3. Technical Amendments

The Department has changed the regulation in § 3.1(a)(4) to permit administrative law judges (ALJs) retired from EOIR to serve as temporary Board members. Under the existing regulations, ALJs from OCAHO may participate in Board decisions as temporary members. Accordingly, the Department has determined that this technical change should be made in the final rule.

Section 3.1(e), dealing with the case management system, begins by instructing the Chairman to establish a case management system to screen all "appeals." The current streamlining process screens, and the proposed rule was designed to provide screening of, all cases filed with the Board, including motions as well as appeals. Accordingly, the term has been changed to reflect the existing practice and the intent behind the proposed rule.

The Department has changed the rule in § 3.1(e)(8) to eliminate the words "denials of review as a matter of discretion" because it has been suggested that these words imply that the Board has authority to deny review as a matter of discretion. This was not the Department's intent. To eliminate this concern, the text has been changed.

The proposed rule in § 3.1(e)(8)(ii) provides the Chairman with the authority, in exigent circumstances, to issue a decision where a panel is unable to meet the time limits. The Department has amended the rule to permit the Chairman the authority to delegate such decisions to a Vice-Chairman.

Regulatory Flexibility Act

The Attorney General, in accordance with 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it affects only Departmental employees, aliens, or their representatives who appear in proceedings before the Board of Immigration Appeals, and carriers who appeal decisions of Immigration and Naturalization Service (INS) officers. Therefore, this rule does not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Paperwork Reduction Act of 1995

The Executive Office of Immigration Review has submitted the following information collection requests to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collections are published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments on the estimated public burden or associated response time, suggestions, or need a copy of one of the proposed information collection instruments with instructions or additional information, please contact the Executive Office for Immigration Review as noted above. Written comments and suggestions from the public and affected agencies concerning the proposed collections of information are encouraged. Your comments should address one or more of the following four points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The first information collection, titled Notice of Appeal from a Decision of an Immigration Judge, is a revision of a currently approved collection. The agency form number is EOIR–26. The information collected will be sponsored by the Executive Office for Immigration Review for parties affected by a decision of an Immigration Judge who may appeal to the Board of Immigration Appeals, provided the Board has jurisdiction pursuant to 8 CFR 3.1(b). An appeal from an Immigration Judge's decision is taken by completing the form and submitting it to the Board. The collection will be distributed primarily to the Federal Government. It is estimated that 23,417 complainants will report one complaint, taking an average of 30 minutes to complete. This will result in 23,417 responses with an estimated total of 11,707 annual burden hours. This is a reduction of 1,791.5 in burden hours due to a decrease in the number of appeals filed with the Board since this form was last approved in 1999.

The second information collection, titled Notice of Appeal to the Board of Immigration Appeals from a Decision of a Service Officer, is a revision of a currently approved collection, occasioned by changes in the regulations. The agency form number is EOIR–29. The information collected will be sponsored by the Executive Office for Immigration Review for a party affected by a decision of a Service Officer who may appeal that decision to the Board of Immigration Appeals, provided the board has jurisdiction pursuant to 8 CFR 3.1(b). An appeal from a Service Officer's decision is taken by completing the form EOIR–29. It is then submitted to the Service office having administrative control over the record of proceedings. The collection will be distributed primarily to individuals and households. It is estimated that 3,156 complainants will report one complaint, taking an average of 30 minutes to complete. This will result in 3,156 responses with an estimated total of 1,578 annual burden hours, which is the same as currently required.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305–0470.

List of Subjects in 8 CFR Part 3

Aliens, Immigration.

Accordingly, for the reasons set forth in the preamble, part 3 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for 8 CFR part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386; 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

2. Amend § 3.1 by:

a. Revising the heading;

b. Revising paragraphs (a)(1) through (a)(6) and paragraph (b) introductory text;

c. Revising paragraphs (d)(1), (d)(2)(i) introductory text, (d)(2)(ii), (d)(2)(iii), and (d)(3);

d. Redesignating paragraphs (d)(2)(i)(D) through (G) as paragraphs (d)(2)(i)(E) through (H), respectively, and adding a new paragraph (d)(2)(i)(D);

e. Revising paragraph (d)(4) and adding paragraphs (d)(5) and (d)(6); and

f. Revising paragraphs (e) and (g), to read as follows:

§ 3.1 Organization, jurisdiction, and powers of the Board of Immigration Appeals.

(a)(1) *Organization.* There shall be in the Department of Justice a Board of Immigration Appeals, subject to the general supervision of the Director, Executive Office for Immigration Review (EOIR). The Board members shall be attorneys appointed by the Attorney General to act as the Attorney General's delegates in the cases that come before them. Within six months of the implementation of the case management screening system as provided in paragraph (e) of this section, or such other time as may be specified by the Attorney General, the Board shall be reduced to eleven members as designated by the Attorney General. A vacancy, or the absence or unavailability of a Board member, shall not impair the right of the remaining members to exercise all the powers of the Board.

(2) *Chairman.* The Attorney General shall designate one of the Board members to serve as Chairman. The Attorney General may designate one or two Vice Chairmen to assist the Chairman in the performance of his duties and to exercise all of the powers and duties of the Chairman in the absence or unavailability of the Chairman.

(i) The Chairman, subject to the supervision of the Director, shall direct, supervise, and establish internal operating procedures and policies of the Board. The Chairman shall have authority to:

(A) Issue operational instructions and policy, including procedural instructions regarding the implementation of new statutory or regulatory authorities;

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(B) Provide for appropriate training of Board members and staff on the conduct of their powers and duties;

(C) Direct the conduct of all employees assigned to the Board to ensure the efficient disposition of all pending cases, including the power, in his discretion, to set priorities or time frames for the resolution of cases; to direct that the adjudication of certain cases be deferred, to regulate the assignment of Board members to cases, and otherwise to manage the docket of matters to be decided by the Board;

(D) Evaluate the performance of the Board by making appropriate reports and inspections, and take corrective action where needed;

(E) Adjudicate cases as a Board member; and

(F) Exercise such other authorities as the Director may provide.

(ii) The Chairman shall have no authority to direct the result of an adjudication assigned to another Board member or to a panel; provided, however, that nothing in this section shall be construed to limit the management authority of the Chairman under paragraph (a)(2)(i) of this section.

(3) *Panels.* The Chairman shall divide the Board into three-member panels and designate a presiding member of each panel if the Chairman or Vice Chairman is not assigned to the panel. The Chairman may from time to time make changes in the composition of such panels and of presiding members. Each three-member panel shall be empowered to decide cases by majority vote, and a majority of the Board members assigned to the panel shall constitute a quorum for such panel. In addition, the Chairman shall assign any number of Board members, as needed, to serve on the screening panel to implement the case management process as provided in paragraph (e) of this section.

(4) *Temporary Board members.* The Director may in his discretion designate immigration judges, retired Board members, retired immigration judges, and administrative law judges employed within, or retired from, EOIR to act as temporary, additional Board members for terms not to exceed six months. A temporary Board member assigned to a case may continue to participate in the case to its normal conclusion, but shall have no role in the actions of the Board *en banc.*

(5) *En banc process.* A majority of the permanent Board members shall constitute a quorum for purposes of convening the Board *en banc.* The Board may on its own motion by a majority vote of the permanent Board members, or by direction of the Chairman, consider any case *en banc,* or reconsider as the Board *en banc* any case that has been considered or decided by a three-member panel. En banc proceedings are not favored, and shall ordinarily be ordered only where necessary to address an issue of particular importance or to secure or maintain consistency of the Board's decisions.

(6) *Board staff.* There shall also be attached to the Board such number of attorneys and other employees as the Deputy Attorney General, upon recommendation of the Director, shall from time to time direct.

* * * * *

(b) *Appellate jurisdiction.* Appeals may be filed with the Board of Immigration Appeals from the following:

(d) *Powers of the Board*—(1) *Generally.* The Board shall function as an appellate body charged with the review of those administrative adjudications under the Act that the Attorney General may by regulation assign to it. The Board shall resolve the questions before it in a manner that is timely, impartial, and consistent with the Act and regulations. In addition, the Board, through precedent decisions, shall provide clear and uniform guidance to the Service, the immigration judges, and the general public on the proper interpretation and administration of the Act and its implementing regulations.

(i) The Board shall be governed by the provisions and limitations prescribed by applicable law, regulations, and procedures, and by decisions of the Attorney General (through review of a decision of the Board, by written order, or by determination and ruling pursuant to section 103 of the Act).

(ii) Subject to these governing standards, Board members shall exercise their independent judgment and discretion in considering and determining the cases coming before the Board, and a panel or Board member to whom a case is assigned may take any action consistent with their authorities under the Act and the regulations as is appropriate and necessary for the disposition of the case.

(2) *Summary dismissal of appeals*—(i) *Standards.* A single Board member or panel may summarily dismiss any appeal or portion of any appeal in any case in which:

* * * * *

(D) The Board is satisfied, from a review of the record, that the appeal is filed for an improper purpose, such as to cause unnecessary delay, or that the appeal lacks an arguable basis in fact or in law unless the Board determines that it is supported by a good faith argument for extension, modification, or reversal of existing law;

* * * * *

(ii) *Action by the Board.* The Board's case management screening plan shall promptly identify cases that are subject to summary dismissal pursuant to this paragraph. An order dismissing any appeal pursuant to this paragraph (d)(2) shall constitute the final decision of the Board.

(iii) *Disciplinary consequences.* The filing by an attorney or representative accredited under § 292.2(d) of this chapter of an appeal that is summarily dismissed under paragraph (d)(2)(i) of this section may constitute frivolous behavior under § 3.102(j). Summary dismissal of an appeal under paragraph (d)(2)(i) of this section does not limit the other grounds and procedures for disciplinary action against attorneys or representatives.

(3) *Scope of review.* (i) The Board will not engage in *de novo* review of findings of fact determined by an immigration judge. Facts determined by the immigration judge, including findings as to the credibility of testimony, shall be reviewed only to determine whether the findings of the immigration judge are clearly erroneous.

(ii) The Board may review questions of law, discretion, and judgment and all other issues in appeals from decisions of immigration judges *de novo.*

(iii) The Board may review all questions arising in appeals from decisions issued by Service officers *de novo.*

(iv) Except for taking administrative notice of commonly known facts such as current events or the contents of official documents, the Board will not engage in factfinding in the course of deciding appeals. A party asserting that the Board cannot properly resolve an appeal without further factfinding must file a motion for remand. If further factfinding is needed in a particular case, the Board may remand the proceeding to the immigration judge or, as appropriate, to the Service.

(4) *Rules of practice.* The Board shall have authority, with the approval of the Director, EOIR, to prescribe procedures governing proceedings before it.

(5) *Discipline of attorneys and representatives.* The Board shall determine whether any organization or individual desiring to represent aliens in immigration proceedings meets the requirements as set forth in § 292.2 of this chapter. It shall also determine whether any organization desiring representation is of a kind described in § 1.1(j) of this chapter, and shall regulate the conduct of attorneys, representatives of organizations, and others who appear in a representative capacity before the Board or the Service or any immigration judge.

(6) *Finality of decision.* The decision of the Board shall be final except in those cases reviewed by the Attorney General in accordance with paragraph (h) of this section. The Board may return a case to the Service or an immigration judge for such further action as may be appropriate, without entering a final decision on the merits of the case.

(e) *Case management system.* The Chairman shall establish a case management system to screen all cases and to manage the Board's caseload. Unless a case meets the standards for assignment to a three-member panel under paragraph (e)(6) of this section, all cases shall be assigned to a single Board member for disposition. The Chairman, under the supervision of the Director, shall be responsible for the success of the case management system. The Chairman shall designate, from time to time, a screening panel comprising a sufficient number of Board members who are authorized, acting alone, to adjudicate appeals as provided in this paragraph.

(1) *Initial screening.* All cases shall be referred to the screening panel for review. Appeals subject to summary dismissal as provided in paragraph (d)(2) of this section should be promptly dismissed.

(2) *Miscellaneous dispositions.* A single Board member may grant an unopposed motion or a motion to withdraw an appeal pending before the Board. In addition, a single Board member may adjudicate a Service motion to remand any appeal from the decision of a Service officer where the Service requests that the matter be remanded to the Service for further consideration of the appellant's arguments or evidence raised on appeal; a case where remand is required because of a defective or missing transcript; and other procedural or ministerial issues as provided by the case management plan.

(3) *Merits review.* In any case that has not been summarily dismissed, the case management system shall arrange for the prompt completion of the record of proceedings and transcript, and the issuance of a briefing schedule. A single Board member assigned under the case management system shall determine the appeal on the merits as provided in paragraph (e)(4) or (e)(5) of this section, unless the Board member determines that the case is appropriate for review and decision by a three-member panel under the standards of paragraph (e)(6) of this section. The Board member may summarily dismiss an appeal after completion of the record of proceeding.

(4) *Affirmance without opinion.* (i) The Board member to whom a case is assigned shall affirm the decision of the Service or the immigration judge, without opinion, if the Board member determines that the result reached in the decision under review was correct; that any errors in the decision under review were harmless or nonmaterial; and that

(A) The issues on appeal are squarely controlled by existing Board or federal court precedent and do not involve the application of precedent to a novel factual situation; or

(B) The factual and legal issues raised on appeal are not so substantial that the case warrants the issuance of a written opinion in the case.

(ii) If the Board member determines that the decision should be affirmed without opinion, the Board shall issue an order that reads as follows: "The Board affirms, without opinion, the result of the decision below. The decision below is, therefore, the final agency determination. *See* 8 CFR 3.1(e)(4)." An order affirming without opinion, issued under authority of this provision, shall not include further explanation or reasoning. Such an order approves the result reached in the decision below; it does not necessarily imply approval of all of the reasoning of that decision, but does signify the Board's conclusion that any errors in the decision of the immigration judge or the Service were harmless or nonmaterial.

(5) *Other decisions on the merits by single Board member.* If the Board member to whom an appeal is assigned determines, upon consideration of the merits, that the decision is not appropriate for affirmance without opinion, the Board member shall issue a brief order affirming, modifying, or remanding the decision under review, unless the Board member designates the case for decision by a three-member panel under paragraph (e)(6) of this section under the standards of the case management plan. A single Board member may reverse the decision under review if such reversal is plainly consistent with and required by intervening Board or judicial precedent, by an intervening Act of Congress, or by an intervening final regulation. A motion to reconsider or to reopen a decision that was rendered by a single Board member may be adjudicated by that Board member unless the case is reassigned to a three-member panel as provided under the standards of the case management plan.

(6) *Panel decisions.* Cases may only be assigned for review by a three-member panel if the case presents one of these circumstances:

(i) The need to settle inconsistencies among the rulings of different immigration judges;

(ii) The need to establish a precedent construing the meaning of laws, regulations, or procedures;

(iii) The need to review a decision by an immigration judge or the Service that is not in conformity with the law or with applicable precedents;

(iv) The need to resolve a case or controversy of major national import;

(v) The need to review a clearly erroneous factual determination by an immigration judge; or

(vi) The need to reverse the decision of an immigration judge or the Service, other than a reversal under § 3.1(e)(5).

(7) *Oral argument.* When an appeal has been taken, a request for oral argument if desired shall be included in the Notice of Appeal. A three-member panel or the Board *en banc* may hear oral argument, as a matter of discretion, at such date and time as is established under the Board's case management plan. Oral argument shall be held at the offices of the Board unless the Deputy Attorney General or his designee authorizes oral argument to be held elsewhere. The Service may be represented before the Board by an officer of the Service designated by the Service. No oral argument will be allowed in a case that is assigned for disposition by a single Board member.

(8) *Timeliness.* As provided under the case management system, the Board shall promptly enter orders of summary dismissal, or other miscellaneous dispositions, in appropriate cases. In other cases, after completion of the record on appeal, including any briefs, motions, or other submissions on appeal, the Board member or panel to which the case is assigned shall issue a decision on the merits as soon as practicable, with a priority for cases or custody appeals involving detained aliens.

(i) Except in exigent circumstances as determined by the Chairman, the Board shall dispose of all appeals assigned to a single Board member within 90 days of completion of the record on appeal, or within 180 days after an appeal is assigned to a three-member panel (including any additional opinion by a member of the panel).

(ii) In exigent circumstances, the Chairman may grant an extension in particular cases of up to 60 days as a matter of discretion. Except as provided in paragraph (e)(8)(iii) or (iv) of this section, in those cases where the panel

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is unable to issue a decision within the established time limits, as extended, the Chairman shall either assign the case to himself or a Vice-Chairman for final decision within 14 days or shall refer the case to the Attorney General for decision. If a dissenting or concurring panel member fails to complete his or her opinion by the end of the extension period, the decision of the majority will be issued without the separate opinion.

(iii) In rare circumstances, when an impending decision by the United States Supreme Court or a United States Court of Appeals, or impending Department regulatory amendments, or an impending *en banc* Board decision may substantially determine the outcome of a case or group of cases pending before the Board, the Chairman may hold the case or cases until such decision is rendered, temporarily suspending the time limits described in this paragraph (e)(8).

(iv) For any case ready for adjudication as of September 25, 2002, and that has not been completed within the established time lines, the Chairman may, as a matter of discretion, grant an extension of up to 120 days.

(v) The Chairman shall notify the Director of EOIR and the Attorney General if a Board member consistently fails to meet the assigned deadlines for the disposition of appeals, or otherwise fails to adhere to the standards of the case management system. The Chairman shall also prepare a report assessing the timeliness of the disposition of cases by each Board member on an annual basis.

(vi) The provisions of this paragraph (e)(8) establishing time limits for the adjudication of appeals reflect an internal management directive in favor of timely dispositions, but do not affect the validity of any decision issued by the Board and do not, and shall not be interpreted to, create any substantive or procedural rights enforceable before any immigration judge or the Board, or in any court of law or equity.

* * * * *

(g) *Decisions of the Board as precedents.* Except as they may be modified or overruled by the Board or the Attorney General, decisions of the Board shall be binding on all officers and employees of the Service or immigration judges in the administration of the Act. By majority vote of the permanent Board members, selected decisions of the Board rendered by a three-member panel or by the Board en banc may be designated to serve as precedents in all proceedings involving the same issue or issues.

* * * * *

3. In § 3.2, paragraph (i) is amended by adding after the first sentence a new sentence, to read as follows:

§ 3.2 Reopening or reconsideration before the Board of Immigration Appeals.

* * * * *

(i) * * * Any motion for reconsideration or reopening of a decision issued by a single Board member will be referred to the screening panel for disposition by a single Board member, unless the screening panel member determines, in the exercise of judgment, that the motion for reconsideration or reopening should be assigned to a three-member panel under the standards of § 3.1(e)(6). * * *

* * * * *

4. In § 3.3, paragraphs (a) and (c) are revised, paragraph (b) is amended by adding a new sentence at the end thereof, and paragraph (f) is added, to read as follows:

§ 3.3 Notice of appeal.

(a) *Filing*—(1) *Appeal from decision of an immigration judge.* A party affected by a decision of an immigration judge which may be appealed to the Board under this chapter shall be given notice of the opportunity for filing an appeal. An appeal from a decision of an immigration judge shall be taken by filing a Notice of Appeal from a Decision of an Immigration Judge (Form EOIR–26) directly with the Board, within the time specified in § 3.38. The appealing parties are only those parties who are covered by the decision of an immigration judge and who are specifically named on the Notice of Appeal. The appeal must reflect proof of service of a copy of the appeal and all attachments on the opposing party. An appeal is not properly filed unless it is received at the Board, along with all required documents, fees or fee waiver requests, and proof of service, within the time specified in the governing sections of this chapter. A Notice of Appeal may not be filed by any party who has waived appeal pursuant to § 3.39.

(2) *Appeal from decision of a Service officer.* A party affected by a decision of a Service officer that may be appealed to the Board under this chapter shall be given notice of the opportunity to file an appeal. An appeal from a decision of a Service officer shall be taken by filing a Notice of Appeal to the Board of Immigration Appeals from a Decision of an INS Officer (Form EOIR–29) directly with the office of the Service having administrative control over the record of proceeding within 30 days of the service of the decision being appealed. An appeal is not properly filed until it is received at the appropriate office of the Service, together with all required documents, and the fee provisions of § 3.8 are satisfied.

(3) *General requirements for all appeals.* The appeal must be accompanied by a check, money order, or fee waiver request in satisfaction of the fee requirements of § 3.8. If the respondent or applicant is represented, a Notice of Entry of Appearance as Attorney or Representative Before the Board (Form EOIR–27) must be filed with the Notice of Appeal. The appeal and all attachments must be in English or accompanied by a certified English translation.

(b) * * * An appellant who asserts that the appeal may warrant review by a three-member panel under the standards of § 3.1(e)(6) may identify in the Notice of Appeal the specific factual or legal basis for that contention.

* * * * *

(c) *Briefs*—(1) *Appeal from decision of an immigration judge.* Briefs in support of or in opposition to an appeal from a decision of an immigration judge shall be filed directly with the Board. In those cases that are transcribed, the briefing schedule shall be set by the Board after the transcript is available. In cases involving aliens in custody, the parties shall be provided 21 days in which to file simultaneous briefs unless a shorter period is specified by the Board, and reply briefs shall be permitted only by leave of the Board. In cases involving aliens who are not in custody, the appellant shall be provided 21 days in which to file a brief, unless a shorter period is specified by the Board. The appellee shall have the same period of time in which to file a reply brief that was initially granted to the appellant to file his or her brief. The time to file a reply brief commences from the date upon which the appellant's brief was due, as originally set or extended by the Board. The Board, upon written motion, may extend the period for filing a brief or a reply brief for up to 90 days for good cause shown. In its discretion, the Board may consider a brief that has been filed out of time. All briefs, filings, and motions filed in conjunction with an appeal shall include proof of service on the opposing party.

(2) *Appeal from decision of a Service officer.* Briefs in support of or in opposition to an appeal from a decision of a Service officer shall be filed directly with the office of the Service having administrative control over the file. The alien and the Service shall be provided 21 days in which to file a brief, unless a shorter period is specified by the Service officer from whose decision the appeal is taken, and reply briefs shall be permitted only by leave of the Board. Upon written request of the alien, the Service officer from whose decision the appeal is taken or the Board may extend the period for filing a brief for good cause shown. The Board may authorize the filing of briefs directly with the Board. In its discretion, the Board may consider a brief that has been filed out of time. All briefs and other documents filed in conjunction with an appeal, unless filed by an alien directly with a Service office, shall include proof of service on the opposing party.

* * * * *

(f) *Application on effective date.* All cases and motions pending on September 25, 2002, shall be adjudicated according to the rules in effect on or after that date, except that § 3.1(d)(3)(i) shall not apply to appeals filed before September 25, 2002. A party to an appeal or motion pending on August 26, 2002, may, until September 25, 2002, or the expiration of any briefing schedule set by the Board, whichever is later, submit a brief or statement limited to explaining why the appeal or motion does or does not meet the criteria for three-member review under § 3.1(e)(6).

* * * * *

5. In § 3.5, paragraph (a) is revised to read as follows:

§ 3.5 Forwarding of record on appeal.

(a) *Appeal from decision of an immigration judge.* If an appeal is taken from a decision of an immigration judge, the record of proceeding shall be forwarded to the Board upon the request or the order of the Board. Where transcription of an oral decision is required, the immigration judge shall review the transcript and approve the decision within 14 days of receipt, or within 7 days after the immigration judge returns to his or her duty station if the immigration judge was on leave or detailed to another location. The Chairman and the Chief Immigration Judge shall determine the most effective and expeditious way to transcribe proceedings before the immigration judges, and take such steps as necessary to reduce the time required to produce transcripts of those proceedings and improve their quality.

* * * * *

Dated: August 19, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–21545 Filed 8–23–02; 8:45 am]

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Federal Register

Monday,
August 26, 2002

Part IV

Department of Agriculture

7 CFR Part 1206
Mango Promotion, Research, and Information Order; Subpart B—Referendum Procedures; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1206

[FV–02–707–PR1]

RIN 0581–AC05

Proposed Mango Promotion, Research, and Information Order

AGENCY: Agricultural Marketing Service, Agriculture.

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Department of Agriculture (Department or USDA) is seeking comments on an industry-funded promotion, research, and information program for fresh mangos. A proposed program—the Mango Promotion, Research, and Information Order (Order)—was submitted to the Department by the Fresh Produce Association of the Americas (Association). Under the proposed Order, first handlers and importers of 500,000 or more pounds of mangos would pay an assessment of ½ cent per pound on domestic and imported mangos to the National Mango Promotion Board (Board). The Board would be appointed by the Department to conduct a program of research and promotion, industry information, and consumer information needed to increase consumption of fresh mangos in the United States. The Order would be implemented if it is approved by a majority of the eligible first handlers and importers voting in a referendum. A separate proposed rule on referendum procedures is being published in this issue of the **Federal Register**.

DATES: Comments must be received by October 25, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposed rule to: Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, 1400 Independence Avenue, S.W., Room 2535-S, Washington, DC 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: *malinda.farmer@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this proposed rule may be found at: http://www.ams.usda.gov/rpdocketlist.htm.

Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kathie Birdsell, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535–S, Washington, DC 20250–0244, telephone 888–720–9917 (toll free), fax 202–205–2800, e-mail *kathie.birdsell@usda.gov*.

SUPPLEMENTARY INFORMATION: This proposed Order is issued under the Commodity Promotion, Research, and Information Act of 1996 (Act) (7 U.S.C. 7411–7425; Public Law 104–127; 110 Stat. 1029), or any amendments thereto.

Question and Answer Overview

Why Is USDA Proposing a Program for Mangos?

The Department received a proposal from the Association for this program. The Department is issuing this rule to obtain comments on the proposal and the potential impact of the program on the mango industry before developing a final proposed program and conducting a referendum on it.

What Is the Purpose of the Mango Program?

The purpose of the program is to increase consumption of mangos in the United States.

Who Will Be Covered by the Program?

Domestic first handlers and importers of 500,000 or more pounds of mangos annually will pay assessments under the program. Domestic mangos that are exported will not be assessed under the Order.

Who Will Sit on the Board?

Under the proposal, there will be a 20-member Board consisting of eight U.S. importers, one U.S. first handler, two U.S. producers, seven foreign producers, and two non-voting U.S. wholesalers and/or retailers of mangos. The chairperson shall reside in the United States.

How Will Members of the Board Be Selected?

The U.S. importers, first handlers, and producers would be nominated by U.S. importers, first handlers, and producers, respectively. Foreign producers would be nominated by foreign producer associations. The U.S. wholesalers and/or retailers would be nominated by the Board. Two names must be submitted for each position. From the names submitted, the Department will appoint the members.

How Can I Express My Views on the Proposals?

You have 60 days to submit written comments to USDA on the proposals and also to OMB on the paperwork burden associated with the proposed Order. You may submit your comments by mail, fax, or e-mail as indicated above. OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. In addition, if you are a first handler or importer of mangos, you will have the opportunity to vote either "yes" or "no" in a referendum to determine if the program will be implemented.

If the Mango Program Is Implemented and There Are Concerns About How It Is Operating, Can the Program Be Terminated?

Yes. After the program is implemented, the Department will conduct a referendum to determine whether the mango industry continues to support the program: (1) Every 5 years after the program is in effect, (2) at the request of the Board established under the proposed Order, or (3) when requested by 10 percent or more of first handlers and importers covered by the proposed Order. In addition, the Department may conduct a referendum at any time. If a majority of the first handlers and importers voting in the referendum do not favor continuation, the program will be terminated.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act, a person subject to the Order may file a petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and requesting a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall be the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of USDA's final ruling.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Act authorizes generic programs of promotion, research, and information for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, government-supervised, generic commodity promotion programs.

The Association submitted a proposal on June 29, 2001, for this program to: develop and finance an effective and coordinated program of research, promotion, industry information, and consumer information regarding mangos; strengthen the position of the mango industry in U.S. markets; and maintain, develop, and expand domestic markets for mangos. The Association submitted changes to their proposal on November 1, 2001.

First handlers and importers of mangos must approve the program in a referendum in advance of its implementation. These persons would also serve on the proposed 20-member Board. The Board would be composed of eight U.S. importers, one U.S. first handler, two U.S. producers, seven foreign producers, and two non-voting wholesalers and/or retailers. If domestic production increases, additional U.S. first handlers would be added to the Board. The Board would administer the program under the Department's supervision. In addition, any person subject to the program may file with the Department a petition stating that the Order or any provision of the Order is not in accordance with law and requesting a modification of the Order or an exemption from the Order. Administrative proceedings were discussed earlier in this proposed rule.

In this program, first handlers would be required to pay assessments, file reports, and submit assessments to the Board. Importers would be required to remit to the Board assessments not collected by the U.S. Customs Service (Customs) and to file reports with the Board. First handlers and importers of less than 500,000 pounds of mangos annually and exports of U.S. mangos would be exempt from assessment. While the proposed Order would impose certain recordkeeping requirements on first handlers and importers, information required under the proposed Order could be compiled from records currently maintained and would involve clerical or accounting skills. The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. An estimated 89 respondents would provide information to the Board. They would be: 5 first handlers covered by the program, 3 exempt first handlers, 55 importers covered by the program, 3 exempt importers, 4 domestic producer nominees, 1 foreign producer organization, 14 foreign producer nominees, and 4 wholesaler and/or retailer nominees. The estimated total cost of providing information to the Board by all respondents would be $783.34. The cost for all first handlers covered by the program would be $336.66 or $67.33 per first handler covered by the program; $7.50 for all exempt handlers or $2.50 per exempt handler; $393.34 for all importers covered by the program or $7.15 per importer covered by the program; $7.50 for all exempt importers or $2.50 per exempt importer; $6.67 for all domestic producers or $1.67 per nominee; $1.67 for the foreign producer organization; $23.33 for all foreign producer nominees or $1.67 per nominee; and $6.67 for all wholesaler and/or retailer nominees or $1.67 for each nominee. These totals have been estimated by multiplying total burden hours requested by $10.00 per hour, a sum deemed to be reasonable should the respondents be compensated for their time.

The Department would oversee the operation of the program. Every five years, the Department would conduct a referendum to determine whether the mango industry supports continuation of the program. In addition, the Secretary may conduct a referendum at any time, at the request of 10 percent or more of the first handlers and importers required to pay assessments, or at the request of the Board.

There are approximately 5 first handlers and 55 importers of mangos that would be covered by the program. First handlers and importers of less than 500,000 pounds of mangos annually and exports of U.S. mangos would be exempt from assessments. The program would also affect domestic and foreign mango producers, an association of foreign mango producers, and wholesalers and retailers. These entities would serve on the Board or participate in the nomination process.

The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts of $750,000 or less annually and small agricultural service firms as those having annual receipts of $5 million or less. First handlers, importers, wholesalers, and retailers would be considered agricultural service firms. Using these criteria, most producers, first handlers, and importers would be considered small businesses while wholesalers and retailers would not. The producer association would consist of producers and would reflect the size of these entities.

U.S. production of mangos is located in California, Florida, and Hawaii, according to the most recent U.S. Census of Agriculture (Census) which was in 1997. The Census does not include California production because California has so few producers that publishing production data would reveal confidential information. In 1997, production in Florida totaled 6.1 million pounds, and Hawaii's production was 0.1 million pounds. For Florida and Hawaii combined, production fell from 16.6 million pounds in 1992 to 6.2 million pounds in 1997. Census data are published every five years. USDA does not report the value of U.S. production. Although domestic production accounts for only eight percent of U.S. consumption of

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mangos, we anticipate that any increase in demand for mangos resulting from this program may lead to a corresponding increase in domestic production.

Seven countries account for 99 percent of the mangos imported into the United States. These countries and their share of the imports (from September 1, 2000, through June 30, 2001) are: Mexico (57 percent); Brazil (11 percent); Ecuador (10 percent); Peru (10 percent); Guatemala (7 percent); Haiti (3 percent); and Costa Rica (1 percent). For the period from September 1, 2000, through June 30, 2001, the United States imported a total of 170,445 tons of mangos, valued at $106 million. In the previous full season (September 1, 1999, through August 31, 2000), 253,591 tons, valued at $141 million, were imported into the United States. A preliminary estimate of per capita consumption of mangos by USDA's Economic Research Service (ERS) was 1.8 pounds in 2000. Per capita consumption has been trending upwards for several decades. Per capita consumption was 0.21 pounds in 1979 and 0.51 pounds in 1989.

The proposed Order would authorize assessments on first handlers and on importers (collected by Customs) of mangos at a rate of ½ cent per pound. This would generate about $2.5 million to administer the program: about 8 percent from domestic production and 92 percent from imports. First handlers and importers of less than 500,000 pounds of mangos per year will be exempt. U.S. produced mangos that are exported are also exempt.

The cost of the assessment and reporting requirements for first handlers and importers is likely to be offset by the benefit of increased demand for mangos in the United States. The Association's goal for the program is to increase consumption of mangos in the United States by 30 percent after one year. In addition, U.S. consumers would benefit from additional information regarding mangos. Another benefit to first handlers and importers of mangos would be that they could serve on the Board and direct the Board's programs.

Associations and related industry media would receive news releases and other information regarding the implementation and referendum process. Furthermore, all the information would be available electronically.

The Board would develop guidelines for compliance with the program. The Board would recommend changes in the assessment rate, programs, plans, projects, budgets, and any rules and regulations that might be necessary for the administration of the program. The administrative expenses of the Board are limited by the Act to no more than 15 percent of its assessment income.

There are no federal or state programs that duplicate, overlap, or conflict with this rule. With regard to alternatives to this proposed rule, the Act itself provides for authority to tailor a program according to the individual needs of an industry. Provision is made for permissive terms in an order in section 516 of the Act, and other sections provide for alternatives. For example, section 514 of the Act provides for orders applicable to: (1) Producers; (2) first handlers and other persons in the marketing chain as appropriate; and (3) importers (if imports are subject to assessment).

Section 515 of the Act provides for the establishment of a board to administer a program established under the Act. This section states that the board will consist of members considered by the Department, in consultation with the agricultural commodity industry involved, to be appropriate. The Act authorizes the following types of board members: producers, first handlers, others in the marketing chain as appropriate, importers (if importers are subject to assessment), and members of the general public. The Association's proposal specified that the Board would consist of eight U.S. importers, one U.S. first handler, seven foreign producers, one public member, and two non-voting U.S. wholesalers and/or retailers of mangos. In reviewing the Association's proposal, the Department determined that an alternative composition of the Board would be more appropriate. Therefore, this proposed rule provides for the Board to consist of eight U.S. importers, one U.S. first handler, two U.S. producers, seven foreign producers, and two non-voting U.S. wholesalers and/or retailers.

Section 516 authorizes an order to provide for exemption of *de minimis* quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports.

In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under the order. An order also may provide for its approval in a referendum to be based upon (1) approval by a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity.

This proposal includes provisions for domestic market expansion and improvement, reserve funds, and an initial referendum to be conducted prior to the Order going into effect. Approval would be based upon a majority of the first handlers and importers of mangos represented by those voting in the referendum.

While we have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities, in order to have as much data as possible for a more comprehensive analysis of the effects of this rule on small entities, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule and information on the expected benefits or costs.

Paperwork Reduction Act

In accordance with OMB regulation (5 CFR part 1320) which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that may be imposed by this Order have been submitted to OMB for approval. Those requirements will not become effective prior to OMB review.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number for background form (number 1 below): 0505–0001

Expiration date of approval: August 31, 2002.

OMB Number for other information collections: 0581–NEW.

Expiration Date of Approval: 3 years from approval date.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the Act.

In addition, there will be the additional burden on first handlers and importers voting in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a proposed rule on referendum procedures which is published separately in this issue of the **Federal Register**.

Under the proposed program, first handlers would be required to pay assessments and file reports with and submit assessments to the Board. While the proposed Order would impose certain recordkeeping requirements on first handlers, information required under the proposed Order could be compiled from records currently maintained. Such records shall be retained for at least two years beyond the marketing year of their applicability.

An estimated 89 respondents would provide information to the Board. They would be: 5 first handlers covered by the program, 3 exempt first handlers, 55 importers covered by the program, 3 exempt importers, 4 domestic producer nominees, 1 foreign producer organization, 14 foreign producer nominees, and 4 wholesaler and/or retailer nominees. The estimated total cost of providing information to the Board by all respondents would be $783.34. The estimated cost for all first handlers covered by the program would be $336.66 or $67.33 per first handler covered by the program; $7.50 for all exempt first handlers or $2.50 per exempt first handler; $393.34 for all importers covered by the program or $7.15 per importer covered by the program; $7.50 for all exempt importers or $2.50 for each exempt importer; $6.67 for all domestic producer nominees or $1.67 per nominee; $1.67 for the foreign producer organization; $23.33 for all foreign producer nominees or $1.67 per nominee; and $6.67 for all wholesaler and/or retailer nominees or $1.67 for each nominee. These totals have been estimated by multiplying total burden hours requested by $10.00 per hour, a sum deemed to be reasonable should the respondents be compensated for their time.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other mango programs administered by USDA.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information monthly during the production season would coincide with normal industry business practices. Reporting other than monthly would impose an additional and unnecessary recordkeeping burden on first handlers and importers. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual first handlers who are subject to the provisions of the Act. The requirement to keep records for two years is consistent with normal industry practices.

Therefore, there is no practical method for collecting the required information without the use of these forms.

Information collection requirements that are included in this proposal include:

(1) A Background Information Form.

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hours per response for each Board nominee.

Respondents: First handlers, importers, domestic producers, foreign producers, and wholesalers and/or retailers.

Estimated number of Respondents: 40 for initial nominations, 13 in subsequent years.

Estimated number of Responses per Respondent: 1 every 3 years. (0.3)

Estimated Total Annual Burden on Respondents: 20 hours for the initial nominations and 6.7 hours annually thereafter.

(2) Voting in the Nomination Process.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: First handlers, importers, domestic producers, and a foreign producer organization.

Estimated number of Respondents: 65.

Estimated Number of Responses per Respondent: 1 every 3 years. (0.3)

Estimated Total Annual Burden on Respondents: 11 hours.

(3) An Exemption Application for First Handlers and Importers Who Will Be Exempt from Assessments.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each exempt first handler and importer.

Respondents: Exempt First handlers and importers.

Estimated Number of Respondents: 6.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1.5 hours.

(4) Monthly Report by Each First Handler of Mangos.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per each first handler reporting on mangos handled.

Respondents: First handlers.

Estimated number of Respondents: 5.

Estimated number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 30 hours.

(5) A Requirement To Maintain Records Sufficient To Verify Reports Submitted Under the Order.

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Respondents: First handlers and importers.

Estimated Number of Respondents: 60.

Estimated Total Annual Burden of Respondents: 30 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and the USDA's oversight of the program, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–NEW. In addition, the docket number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the time frames listed above. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be

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summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Background

The Act authorizes the Department, under a generic authority, to establish agricultural commodity research and promotion orders. The Act provides for a number of optional provisions that allow the tailoring of orders for different commodities. Section 516 of the Act provides permissive terms for orders, and other sections provide for alternatives. For example, section 514 of the Act provides for orders applicable to: (1) Producers; (2) first handlers and others in the marketing chain as appropriate; and (3) importers (if importers are subject to assessment). Section 516 authorizes an order to provide for exemption of *de minimis* quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports. In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under an order. An order also may provide for its approval in a referendum based upon different voting patterns. Section 515 provides for establishment of a board from among producers, first handlers and others in the marketing chain as appropriate, and importers, if imports are subject to assessment.

This proposed Order includes provisions for domestic market expansion and improvement, reserve funds, and an initial referendum to be conducted prior to the program going into effect. Approval would be based upon a majority of the first handlers and importers voting in the referendum.

The Association has requested the establishment of a Mango Promotion, Research, and Information Order (Order) pursuant to the Act. The Act authorizes the establishment and operation of generic promotion programs which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. This proposal would provide for the development and financing of an effective and coordinated program of research, promotion, and information for mangos. The purpose of the program would be to increase consumption of mangos in the United States.

The program would not become effective until approved in a referendum conducted by USDA. Section 518 of the Act provides for USDA to: (1) Conduct an initial referendum, preceding a proposed Order's effective date, among persons who would pay assessments under the program; or (2) implement a proposed Order, pending the conduct of a referendum, among persons subject to assessments, within three years after assessments first begin.

In accordance with section 518(e) of the Act, the results of the referendum must be determined one of three ways (1) by a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity.

The Association has recommended that the Department conduct a referendum in which approval of the proposed Order would be based on a majority of the eligible first handlers and importers voting in the referendum. The Association has also recommended that a referendum be conducted prior to the proposed Order going into effect.

In accordance with the Act, USDA would oversee the program's operations. In addition, the Act requires the Department to conduct subsequent referenda: (1) Not later than 7 years after assessments first begin under the proposed Order; or (2) at the request of the Board established under the proposed Order; or (3) at the request of 10 percent or more of the number of persons eligible to vote. The Association has requested that a referendum be conducted every five years to determine if first handlers and importers want the program to continue.

In addition to these criteria, the Act provides that the Department may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the proposed Order or a provision of the proposed Order is favored by persons eligible to vote.

A national research and promotion program for mangos would help the industry to increase consumption of mangos in the United States.

Worldwide, mangos rank first in terms of overall fruit consumption per capita. In the United States, mango consumption currently ranked sixteenth at 1.8 pounds per capita in 2000, according to ERS. In contrast, bananas ranked number one in the United States with a per capita consumption of 29.2 pounds. According to the Association, the low level of mango consumption is due, in part, to lack of product awareness. U.S. consumers are largely unfamiliar with the varieties of mangos, their nutritional benefits, and how to handle them.

Except for a pilot project conducted by the Association with voluntary contributions in 1999, mango promotion has been virtually non-existent in the United States. There are no large industry members capable of promoting the commodity independently. The mango industry is fragmented. Distribution is conducted by a large number of small importers receiving product from multiple countries of origin. This makes coordinated research and promotion efforts extremely difficult in the absence of a national program.

Average annual U.S. mango prices have been declining since 1990. Increased supply accompanied by current demand levels will most likely yield lower wholesale prices in the future.

A national program would generate funds through mandatory assessments on domestic and imported mangos to be used to conduct research and market development strategies such as sales promotion, publicity, public relations, and advertising. Such a program would also provide centralized communications and facilitate better distribution management for industry members. Section 516(f) of the Act allows an order to authorize the levying of assessments on imports of the commodity covered by the program or on products containing that commodity, at a rate comparable to the rate determined for the domestic agricultural commodity covered by the proposed Order. The Association has proposed to assess imports.

The assessment levied on domestically-produced and imported mangos would be used to pay for promotion, research, and consumer and industry information as well as administration, maintenance, and functioning of the Board. Expenses incurred by the Department in implementing and administering the proposed Order, including referenda costs, also would be paid from

assessments. Sections 516(e)(1) and (2) of the Act state that an order may provide for credits of assessments for generic and branded activities. The Association has elected not to propose credits for generic or branded activities. Therefore, the terms "generic activities" and "branded activities" are not defined in the proposed Order, and credits for assessments would not be allowed.

The Association's initial proposal, dated June 29, 2001, provided for the assessments to be paid by producers and included no exemptions. Subsequently, the Association sent a letter to the Department to revise its proposal by changing the U.S. producer assessment to a U.S. first handler assessment and to exempt handlers and importers of less than 500,000 pounds of mangos annually and exports of U.S. mangos. These modifications reflected a change in industry preferences for program coverage.

First handlers would be required to pay assessments to the Board and maintain records on all mangos handled, including mangos produced by a first handler.

Assessments on imported mangos would be collected by Customs at the time of entry into the United States and remitted to the Board.

All information obtained from persons subject to this proposed Order as a result of recordkeeping and reporting requirements would be kept confidential by all officers, employees, and agents of USDA and of the Board. However, this information may be disclosed only if the Department considers the information relevant, and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Department or to which the Department or any officer of USDA is a party. Other exceptions for disclosure of confidential information would include the issuance of general statements based on reports or on information relating to a number of persons subject to an order if the statements do not identify the information furnished by any person or the publication, by direction of the Department of the name of any person violating an order and a statement of the particular provisions of an order violated by the person.

The proposed Order provides for USDA to conduct an initial referendum preceding the proposed Order's effective date. Therefore, approval of the proposed Order will be determined by a majority of the eligible first handlers and importers voting in the referendum. The proposed Order also provides for subsequent referenda to be conducted (1) every 5 years after the program is in effect; (2) at the request of the Board established under the proposed Order; or (3) when requested by 10 percent or more of first handlers and importers of mangos covered by the proposed Order. In addition, the Department may conduct a referendum at any time.

The Act requires that an order provide for the establishment of a board to administer the program under USDA supervision. The Department modified the Association's proposal by adding two domestic producers and eliminating the public member position to help ensure that the program will benefit the domestic mango industry. Therefore, this rule provides for a 20-member Board consisting of eight U.S. importers, one U.S. first handler, two U.S. producers, seven foreign producers, and two non-voting wholesalers and/or retailers. In addition, the Department included a separate definition for foreign producers.

To ensure fair and equitable representation of the mango industry on the Board, the Act requires membership on the Board to reflect the geographical distribution of the production of mangos and the quantity or value of imports. We anticipate that this program will assist domestic producers by increasing the demand for mangos. It is possible that domestic production will expand accordingly, in which case reapportioning of the Board would be required under the Order.

Upon implementation of the proposed Order and pursuant to the Act, at least once every five years, the Board will review the geographical distribution of production of mangos in the United States, the geographical distribution of the importation of mangos into the United States, the quantity of mangos produced in the United States, and the quantity of mangos imported into the United States. The review will be based on Board assessment records and statistics from the Department. If warranted, the Board will recommend to the Department that membership on the Board be altered to reflect any changes in geographical distribution of domestic mango production and importation and the quantity of domestic production and imports. In order to help ensure equitable representation of importers and first handlers on the Board, additional first handlers may be added to the Board if the quantity of domestic production increases to a level where first handlers would be entitled to an additional member on the Board. Currently, each importer member represents about 42.6 million pounds of imported mangos, and the first handler member represents about 6.2 million pounds of domestic mango production.

Board members will serve terms of three years and be able to serve a maximum of two consecutive terms. When the Board is first established, the U.S. first handler, three U.S. importers, one U.S. producer, and two foreign producers will be assigned initial terms of four years; three U.S. importers, one U.S. producer, and three foreign producers will be assigned initial terms of three years; and two U.S. importers, two foreign producers, and the two wholesalers and/or retailers will be assigned initial terms of two years. Thereafter, each of these positions will carry a three-year term. Members serving initial terms of two or four years will be eligible to serve a second term of three years. Each term of office will end on December 31, with new terms of office beginning on January 1.

The proposed Order submitted by the Association is summarized as follows:

Sections 1206.1 through 1206.24 of the proposed Order define certain terms, such as mango, first handler, and importer, which are used in the proposed Order.

Sections 1206.30 through 1206.37 include provisions relating to the Board. These provisions cover establishment and membership, nominations and appointments, term of office, vacancies, procedures, compensation and reimbursement, powers, duties and prohibited activities of the Board, which is the governing body authorized to administer the proposed Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about mangos, subject to oversight of the Department.

Sections 1206.40 through 1206.43 cover budget review and approval; financial statements; authorize the collection of assessments; specify how assessments would be used; specify who pays the assessment and how; exemptions; and authorize the imposition of a late-payment charge on past-due assessments.

The Association recommends a proposed assessment rate of ½ cent per pound for domestic mangos and imported mangos. The assessment rate will be reviewed and may be modified with the approval of the Department, after the first referendum is conducted as stated in § 1206.71(b). Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures as set forth in 7 CFR 3.1 through 3.36 for all research and promotion programs administered by USDA (60 FR 12533, March 7, 1995).

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Sections 1206.50 through 1206.52 address programs, plans, and projects; require the Board to periodically conduct an independent review of its overall program; and address patents, copyrights, trademarks, information, publications, and product formulations developed through the use of assessment funds.

Sections 1206.60 through 1206.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information from such books, records, or reports.

Sections 1206.70 through 1206.78 describe the rights of the Secretary of Agriculture (Secretary); address referenda; authorize the Secretary to suspend or terminate the Order when deemed appropriate; prescribe proceedings after suspension or termination; and address personal liability, separability, amendments, and the OMB control number.

In addition to adding a definition of foreign producer and changing the composition of the Board, the Department made minor changes to the Association's proposal which do not materially affect the program.

The proposal set forth below has not received the approval of the Department.

All written comments received in response to this rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1206

Administrative practice and procedure, Advertising, Consumer information, Mangos, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended as follows:

1. Part 1206 is proposed to be added as follows:

PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION

Subpart A—Mango Promotion, Research, and Information Order

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National Mango Promotion Board

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1206.60 Reports.
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1206.70 Right of the Secretary.
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Authority: 7 U.S.C. 7411–7425.

Subpart A—Mango Promotion, Research, and Information Order

Definitions

§ 1206.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425; Public Law 104–127; 110 Stat. 1029), or any amendments thereto.

§ 1206.2 Board.

Board or National Mango Promotion Board means the administrative body established pursuant to § 1206.30, or such other name as recommended by the Board and approved by the Department.

§ 1206.3 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1206.4 Customs.

Customs means the U.S. Customs Service of the U.S. Department of the Treasury.

§ 1206.5 Department.

Department means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1206.6 First handler.

First handler any person, (excluding a common or contract carrier), receiving 500,000 pounds or more of mangos from producers and who as owner, agent, or otherwise ships or causes mangos to be shipped as specified in the Order. This definition includes those engaged in the business of buying, selling and/or offering for sale; receiving; packing; grading; marketing; or distributing mangos in commercial quantities. This includes only retailers who purchase, acquire, or handle mangos on behalf of any producer. The term first handler includes a producer who handles or markets mangos of the producer's own production.

§ 1206.7 Fiscal period.

Fiscal period means a calendar year from January 1 through December 31, or such other period as recommended by the Board and approved by the Department.

§ 1206.8 Foreign producer.

Foreign producer means any person who is engaged in the production and sale of mangos outside of the United States and who owns, or shares the ownership and risk of loss of, the crop for sale in the U.S. market.

§ 1206.9 Importer.

Importer means any person who imports 500,000 or more pounds of mangos into the United States as a principal or as an agent, broker, or consignee of any person who produces or handles mangos outside of the United States for sale in the United States, and who is listed as the importer of record for such mangos.

§ 1206.10 Information.

Information means information and programs that are designed to develop

new markets, marketing strategies, increase market efficiency, and activities that are designed to enhance the image of mangos in the United States. These include:

(a) Consumer information, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of mangos; and

(b) Industry information, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the mango industry, and activities to enhance the image of the mango industry.

§ 1206.11 Mangos.

Mangos means all fresh fruit of *Mangifera indica L.* of the family *Anacardiaceae.*

§ 1206.12 Market or marketing.

Marketing means the sale or other disposition of mangos in the U.S. domestic market. To market means to sell or otherwise dispose of mangos in the United States.

§ 1206.13 Order.

Order means an order issued by the Department under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1206.14 Part and subpart.

Part means the Mango Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a subpart of such part.

§ 1206.15 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1206.16 Producer.

Producer means any person who is engaged in the production and sale of mangos in the United States and who owns, or shares the ownership and risk of loss of, the crop or a person who is engaged in the business of producing, or causing mangos to be produced, mangos beyond the person's own family use and having value at first point of sale.

§ 1206.17 Promotion.

Promotion means any action taken to present a favorable image of mangos to the general public and the food industry for the purpose of improving the competitive position of mangos and stimulating the sale of mangos in the United States. This includes paid advertising and public relations.

§ 1206.18 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of mangos, including research relating to nutritional value, cost of production, new product development, varietal development, nutritional value and benefits, and marketing of mangos.

§ 1206.19 Retailer.

Retailer means a person engaged in the business of selling mangos only to consumers.

§ 1206.20 Secretary.

Secretary means the Secretary of Agriculture of the United States.

§ 1206.21 Suspend.

Suspend means to issue a rule under section 553 of title 5, U.S.C., to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1206.22 Terminate.

Terminate means to issue a rule under section 553 of title 5, U.S.C., to cancel permanently the operation of an order or part thereof beginning on a date certain specified in the rule.

§ 1206.23 United States.

United States or U.S. means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1206.24 Wholesaler.

Wholesaler means any person engaged in the purchase, assembly, transportation, storage, and distribution of mangos for sale to other wholesalers, retailers, and foodservice firms.

National Mango Promotion Board

§ 1206.30 Establishment and membership.

(a) *Establishment of the National Mango Promotion Board.* There is hereby established a National Mango Promotion Board composed of eight importers, one first handler, two domestic producers, seven foreign producers, and two non-voting wholesalers and/or retailers of mangos in the United States. The chairperson shall reside in the United States and the Board office shall also be located in the United States.

(b) *Importer districts.* The importer seats shall be allocated based on the volume of mangos imported into the Customs Districts identified by their name and Code Number as defined in the Harmonized Tariff Schedule of the United States. The initial allocation will be two seats for District I, three seats for District II, two seats for District III, and one seat for District IV.

(1) *District I* includes the Customs Districts of Portland, ME (01), St. Albans, VT (02), Boston, MA (04), Providence, RI (05), Ogdensburg, NY (07), Buffalo, NY (09), New York City, NY (10), Philadelphia, PA (11), Baltimore, MD (13), Norfolk, VA (14), Charlotte, NC (15), Charleston, SC (16), Savannah, GA (17), Tampa, FL (18), San Juan, PR (49), Virgin Islands of the United States (51), Miami, FL (52) and Washington, DC (54).

(2) *District II* includes the Customs Districts of Mobile, AL (19), New Orleans, LA (20), Port Arthur, TX (21), Laredo, TX (23), Minneapolis, MN (35), Duluth, MN (36), Milwaukee, WI (37), Detroit, MI (38), Chicago, IL (39), Cleveland, OH (41), St. Louis, MO (45), Houston, TX (53), and Dallas-Fort Worth, TX (55).

(3) *District III* includes the Customs Districts of El Paso, TX (24), Nogales, AZ (26), Great Falls, MT (33), and Pembina, ND (34).

(4) *District IV* includes the Customs Districts of San Diego, CA (25), Los Angeles, CA (27), San Francisco, CA (28), Columbia-Snake, OR (29), Seattle, WA (30), Anchorage, AK (31), and Honolulu, HI (32).

(c) *Adjustment of membership.* At least once every five years, the Board will review the geographical distribution of production of mangos in the United States, the geographical distribution of the importation of mangos into the United States, the quantity of mangos produced in the United States, and the quantity of mangos imported into the United States. The review will be based on Board assessment records and statistics from the Department. If warranted, the Board will recommend to the Department that membership on the Board be altered to reflect any changes in geographical distribution of domestic mango production and importation and the quantity of domestic production and imports. To ensure equitable representation, additional first handlers may be added to the Board to reflect increases in domestic production.

§ 1206.31 Nominations and appointments.

(a) Voting for first handler, importer, and domestic producer members will be made by mail ballot.

(b) There shall be two nominees for each position on the Board.

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(c) Nominations for the initial Board will be handled by the Department. Subsequent nominations will be handled by the Board's staff.

(d) Nominees to fill the first handler member position on the Board shall be solicited from all known first handlers. The nominees shall be placed on a ballot which will be sent to all first handlers for a vote. The nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the first handlers' first and second choice nominees.

(e) Nominees to fill the importer positions on the Board shall be solicited from all known importers of mangos. The members from each district shall select the nominees for two positions on the Board. Two nominees shall be submitted for each position. The nominees shall be placed on a ballot which will be sent to importers in the districts for a vote. For each position, the nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the importers' first and second choice nominees.

(f) Nominees to fill the domestic producer member positions on the Board shall be solicited from all known domestic producers. The nominees shall be placed on a ballot which will be sent to all domestic producers for a vote. The nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the producers' first and second choice nominees.

(g) Nominees to fill the foreign producer member positions on the Board shall be solicited from an organization of foreign mango producers. The organization shall submit two nominees for each position, and the nominees shall be representative of the major countries exporting mangos to the United States.

(h) The Board will nominate the wholesaler and/or retailer members.

(i) From the nominations, the Department shall select the members of the Board.

§ 1206.32 Term of office.

Board members will serve terms of three years and be able to serve a maximum of two consecutive three-year terms. When the Board is first established, the first handler, three importers, one domestic producer, and two foreign producers will be assigned initial terms of four years; three importers, one domestic producer, and three foreign producers will be assigned initial terms of three years; and two importers, two foreign producers, and the two wholesalers and/or retailers will be assigned initial terms of two years. Thereafter, each of these positions will carry a full three-year term. Members serving initial terms of two or four years will be eligible to serve a second term of three years. Each term of office will end on December 31, with new terms of office beginning on January 1.

§ 1206.33 Vacancies.

(a) In the event that any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Department that the member be removed from office. If the Department finds the recommendation of the Board shows adequate cause, the Department shall remove such member from office.

(c) Should any member position become vacant, successors for the unexpired term of the member shall be appointed in the manner specified in § 1206.31, except that nomination and replacement shall not be required if the unexpired term is less than six months.

§ 1206.34 Procedure.

(a) At a Board meeting, it will be considered a quorum when at least ten voting members are present.

(b) At the start of each fiscal period, the Board will select a chairperson and vice chairperson who will conduct meetings throughout that period.

(c) All Board members will be notified at least 30 days in advance of all Board and committee meetings unless an emergency meeting is declared.

(d) Each voting member of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the Board members present.

(e) It will be considered a quorum at a committee meeting when at least one more than half of those assigned to the committee are present. Committees may consist of individuals other than Board members, and such individuals may vote in committee meetings. Committee members shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board.

(f) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action if supported by one vote more than 50 percent of the members by mail, telephone, electronic mail, facsimile, or any other means of communication. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board. All telephone votes shall be confirmed promptly in writing. All votes shall be recorded in Board minutes.

(g) There shall be no voting by proxy.

(h) The chairperson shall be a voting member and shall reside in the U.S.

(i) The organization of the Board and the procedures for conducting meetings of the Board shall be in accordance with its bylaws, which shall be established by the Board and approved by the Department.

§ 1206.35 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred by them in the performance of their duties as Board members.

§ 1206.36 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Department for approval such bylaws as may be necessary for the functioning of the Board, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the Board a chairperson, other officers, committees, and subcommittees, as the Board determines to be appropriate;

(d) To employ persons, other than the members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop programs, plans, and projects, and enter into contracts or agreements, which must be approved by the Department before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with

funds collected pursuant to this subpart. Each contract or agreement shall provide that: any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and, make such other reports available as the Board or the Department considers relevant. Furthermore, any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Department or the Board may require;

(3) The Department may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

(f) To prepare and submit for approval of the Department fiscal year budgets in accordance with § 1206.40;

(g) To maintain such records and books and prepare and submit such reports and records from time to time to the Department as the Department may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(h) To cause its books to be audited by a competent auditor at the end of each fiscal year and at such other times as the Department may request, and to submit a report of the audit directly to the Department;

(i) To give the Department the same notice of Board and committee meetings as is given to members in order that the Department's representative(s) may attend such meetings.

(j) To act as intermediary between the Department and any first handler or importer;

(k) To furnish to the Department any information or records that the Department may request;

(l) To receive, investigate, and report to the Department complaints of violations of the Order;

(m) To recommend to the Department such amendments to the Order as the Board considers appropriate; and

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the mango industry's position in the U.S. domestic market; maintain and expand existing markets and uses for mangos; and to carry out programs, plans, and projects designed to provide maximum benefits to the mango industry.

§ 1206.37 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest; and

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments, other than recommending to the Department amendments to the Order.

Expenses and Assessments

§ 1206.40 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to the Department a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data or at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Department, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Board's approved budget and which are consistent with governing bylaws need not have prior approval by the Department.

(d) The Board is authorized to incur such expenses, including provision for a reasonable reserve, as the Department finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Department, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Voluntary contributions shall be free from any encumbrance by the donor, and the Board shall retain complete control of their use.

(g) The Board shall reimburse the Department for all expenses incurred by the Department in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(h) The Board may not expend for administration, maintenance, and functioning of the Board in any fiscal year an amount that exceeds 15 percent of the assessments and other income received by the Board for that fiscal year. Reimbursements to the Department required under paragraph (g) of this section are excluded from this limitation on spending.

(i) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided* that the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Department, such reserve funds may be used to defray any expenses authorized under this part.

§ 1206.41 Financial statements.

(a) As requested by the Department, the Board shall prepare and submit financial statements to the Department on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the

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report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Department within 30 days after the end of the time period to which it applies.

(c) The Board shall submit annually to the Department an annual financial statement within 90 days after the end of the fiscal year to which it applies.

§ 1206.42 Assessments.

(a) The funds to cover the Board's expenses shall be paid from assessments on first handlers and importers, donations from any person not subject to assessments under this Order, and other funds available to the Board and subject to the limitations contained therein.

(b) The assessment rate shall be ½ cent per pound on all mangos. The assessment rate will be reviewed and may be modified by the Board with the approval of the Department, after the first referendum is conducted as stated in § 1206.71(b).

(c) *Domestic mangos.* First handlers of domestic mangos are required to pay assessments on all mangos handled for the U.S. market. This includes mangos of the first handler's own production.

(d) *Imported mangos.* Each importer of mangos shall pay an assessment to the Board through Customs on mangos imported for marketing in the United States.

(1) The assessment rate for imported mangos shall be the same or equivalent to the rate for mangos produced in the United States.

(2) The import assessment shall be uniformly applied to imported mangos that are identified by the numbers 0804.50.4040 and 0804.50.6040 in the Harmonized Tariff Schedule of the United States or any other numbers used to identify mangos.

(3) The assessments due on imported mangos shall be paid when they enter or are withdrawn for consumption in the United States.

(e) Each person responsible for remitting assessments under paragraph (c) of this section shall remit the amounts due to the Board's office on a monthly basis no later than the fifteenth day of the month following the month in which the mangos were marketed, in such manner as prescribed by the Board.

(f) A late payment charge shall be imposed on any person failing to remit to the Board the total amount for which the person is liable by the payment due date established under this section. The amount of the late payment charge shall be prescribed by the Department.

(g) An additional charge shall be imposed on any person subject to a late payment charge in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed by the Department.

(h) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(i) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Department.

§ 1206.43 Exemptions.

(a) Any first handler or importer of less than 500,000 pounds of mangos annually may claim an exemption from the assessments required under § 1206.42.

(b) A first handler or importer desiring an exemption shall apply to the Board, on a form provided by the Board, for a certificate of exemption. A first handler shall certify that the first handler will handle less than 500,000 pounds of domestic mangos for the fiscal year for which the exemption is claimed. An importer shall certify that the importer will import less than 500,000 pounds of mangos during the fiscal year for which the exemption is claimed.

(c) Upon receipt of an application, the Board shall determine whether an exemption may be granted. The Board then will issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. It is the responsibility of these persons to retain a copy of the certificate of exemption.

(d) Importers who receive a certificate of exemption shall be eligible for reimbursement of assessments collected by Customs. These importers shall apply to the Board for reimbursement of any assessments paid. No interest will be paid on the assessments collected by Customs. Requests for reimbursement shall be submitted to the Board within 90 days of the last day of the fiscal year the mangos were actually imported.

(e) Any person who desires an exemption from assessments for a subsequent fiscal year shall reapply to the Board, on a form provided by the Board, for a certificate of exemption.

(f) The Board may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt mangos and, in the case of importers, proof of payment of assessments.

Promotion, Research, and Information

§ 1206.50 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Department for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to mangos; and

(2) The establishment and conduct of research with respect to: the use, nutritional value and benefits, sale, distribution, and marketing of mangos in the United States; the creation of new products thereof, to the end that the marketing and use of mangos in the United States may be encouraged, expanded, improved, or made more acceptable; and to advance the image, desirability, or quality of mangos in the United States.

(b) No program, plan, or project shall be implemented prior to its approval by the Department. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the Board shall terminate such program, plan, or project.

(d) No program, plan, or project including advertising shall be false or misleading or disparaging to another agricultural commodity. Mangos of all origins shall be treated equally.

§ 1206.51 Independent evaluation.

The Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and other programs conducted by the Board pursuant to the Act. The Board shall submit to the Department, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph..

§ 1206.52 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government, as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Department. Upon termination of this subpart, § 1206.73 shall apply to determine disposition of all such property.

Reports, Books, and Records

§ 1206.60 Reports.

(a) Each first handler will be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Department, which may include but not be limited to the following:

(1) Number of pounds of domestic mangos handled;

(2) Number of pounds of domestic mangos on which an assessment was paid;

(3) Name and address of the producers from whom the first handler has received mangos;

(4) Date that assessment payments were made on each pound of domestic mangos handled;

(5) Number of pounds of domestic mangos exported;

(6) The first handler's tax identification number;

(b) Each importer may be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Department, which may include but not be limited to the following:

(1) Number of pounds of mangos imported;

(2) Number of pounds of mangos on which an assessment was paid;

(3) Name, address, and tax identification number of the importer; and

(4) Date that assessment payments were made on each pound imported.

§ 1206.61 Books and records.

Each first handler and importer shall maintain and make available for inspection by the Department such books and records as are necessary to carry out the provisions of this part, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1206.62 Confidential treatment.

All information obtained from books, records, or reports under the Act and this part shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members, first handlers, or importers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Miscellaneous

§ 1206.70 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1206.71 Referenda.

(a) *Initial referendum.* The Order shall not become effective unless:

(1) The Department determines that the Order is consistent with and will effectuate the purposes of the Act; and

(2) The Order is approved by a majority of the first handlers and importers voting, who, during a representative period determined by the Department, have been engaged in the handling or importation of mangos.

(b) *Subsequent referenda.* Every five years, the Department shall hold a referendum to determine whether first handlers and importers of mangos favor the continuation of the Order. The Order shall continue if it is favored by a majority of the first handlers and importers voting who, during a representative period determined by the Department, have been engaged in the handling or importation of mangos. The Department will also conduct a referendum if 10 percent or more of all non-exempt, first handlers and importers of mangos request the Department to hold a referendum. In addition, the Department may hold a referendum at any time.

§ 1206.72 Suspension and termination.

(a) The Department shall suspend or terminate this part or subpart or a provision thereof if the Department finds that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Department determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Department shall suspend or terminate this subpart at the end of the marketing year whenever the Department determines that its suspension or termination is approved or favored by a majority of the first handlers and importers voting who, during a representative period determined by the Department, have been engaged in the handling or importation of mangos.

(c) If, as a result of a referendum the Department determines that this subpart is not approved, the Department shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1206.73 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Department to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Department, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Department;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

(3) From time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the

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trustees, to such person or persons as the Department may direct; and

(4) Upon request of the Department, execute such assignments or other instruments necessary and appropriate to vest in such persons title and right to all funds, property and claims vested in the Board or the trustees pursuant to the Order.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Department to be disposed of, to the extent practical, to one or more mango industry organizations in the interest of continuing mango promotion, research, and information programs.

§ 1206.74 Effect of termination or amendment.

Unless otherwise expressly provided by the Department, the termination or amendment of this part or any subpart therof shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this part; or

(b) Release or extinguish any violation of this part; or

(c) Affect or impair any rights or remedies of the United States, or of the Department, or of any other persons with respect to any such violation.

§ 1206.75 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1206.76 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1206.77 Amendments.

Amendments to this subpart may be proposed from time to time by the Board or by any interested person affected by the provisions of the Act, including the Department.

§ 1206.78 OMB control number.

The control numbers assigned to the information collection requirements of this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, are OMB control number 0505–0001 and OMB control number 0581–[NEW, to be assigned by OMB].

Dated: August 19, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–21535 Filed 8–23–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1206

[FV–02–706–PR]

Mango Promotion, Research, and Information Order; Subpart B—Referendum Procedures

AGENCY: Agricultural Marketing Service, Agriculture.

ACTION: Proposed rule with request for comments.

SUMMARY: The purpose of this rule is to establish procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed Mango Promotion, Research, and Information Order (Order) is favored by first handlers and importers of mangos. The Order will be implemented if it is approved by a majority of the eligible first handlers and importers voting in the referendum. These procedures would also be used for any subsequent referendum under the Order, if it is approved in the initial referendum. The proposed Order is being published separately in this issue of the **Federal Register**. This proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996.

DATES: Comments must be received by October 25, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Research and Promotion Branch (RP), Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: *malinda.farmer@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at: *www.ams.usda.gov/fv/rpdocketlist.htm*.

Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kathie M. Birdsell, RP, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535–8, Washington, DC 20250–0244; telephone 202–720–4835, fax 202–205–2800, or *kathie.birdsell@usda.gov*.

SUPPLEMENTARY INFORMATION: A referendum will be conducted among eligible first handlers and importers of mangos to determine whether they favor issuance of the proposed Mango Promotion, Research, and Information Order (Order) [7 CFR part 1206]. The program will be implemented if it is approved by a majority of the first handlers and importers voting in the referendum. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) [Pub. L. 104–127, 7 U.S.C. 7411–7425]. It would cover domestic and imported mangos of the *Mangifera indica L.* variety from the family of *Anacardiaceae*. A proposed Order is being published separately in this issue of the **Federal Register**.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 12988

This proposed rule has been reviewed under E.O.12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing

promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to an order may file a petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and requesting a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall be the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of USDA's final ruling.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The Act, which authorizes the Department to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of Section 518 of the Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those voting; (2) by a majority of the volume of the agricultural commodity voted in the referendum; or (3) by a majority of those persons voting who also represent a majority of the volume of the agricultural commodity voted in the referendum. In addition, Section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under an order. The Fresh Produce Association of the Americas (Association) has recommended that the Department conduct a referendum in which approval of an order would be based on a majority of the first handlers and importers voting. The Association also has recommended that a referendum be conducted prior to the proposed Order going into effect.

This proposed rule would establish the procedures under which first handlers and importers of mangos may vote on whether they want a mango promotion, research, and information program to be implemented. This proposal would add a new subpart which establishes procedures to conduct an initial and future referenda. The proposed subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

There are approximately 5 first handlers and 55 importers of mangos who would be subject to the program and eligible to vote in the first referendum. The Small Business Administration [13 CFR 121.201] defines small agricultural service firms as those having annual receipts of $5 million or less. First handlers and importers would be considered agricultural service firms. Using these criteria, most first handlers and importers to be covered by the proposed program would be considered small businesses.

U.S. production of mangos is located in California, Florida, and Hawaii, according to the most recent U.S. Census of Agriculture (Census) which was in 1997. The Census does not include California production because California has so few producers that publishing production data would reveal confidential information. In 1997, production in Florida totaled 6.1 million pounds, and Hawaii's production was 0.1 million pounds. For Florida and Hawaii combined, production fell from 16.6 million pounds in 1992 to 6.2 million pounds in 1997. Census data are published every five years. USDA does not report the value of U.S. production.

Seven countries account for 99 percent of the mangos imported into the United Sates. These countries and their share of the imports (from September 1, 2000, through June 30, 2001) are: Mexico (57 percent); Brazil (11 percent); Ecuador (10 percent); Peru (10 percent); Guatemala (7 percent); Haiti (3 percent); and Costa Rica (1 percent). For the period from September 1, 2000, through June 30, 2001, the United States imported a total of 170,445 tons of mangos, valued at $106 million. In the previous full season (September 1, 1999, through August 31, 2000), 253,591 tons, valued at $141 million, were imported into the United States.

A preliminary estimate of per capita consumption of mangos by USDA's Economic Research Service (ERS) was 1.80 pounds in 2000. Per capita consumption has been trending upwards for several decades. In 1979 per capita consumption was 0.21 pounds, and in 1989 was 0.51 pounds.

This proposed rule provides the procedures under which first handlers and importers of mangos may vote on whether they want the Order to be implemented. In accordance with the provisions of the Act, subsequent referenda may be conducted, and it is anticipated that the proposed procedures would apply. There are approximately 5 first handlers and 55 importers who will be eligible to vote in the first referendum. First handlers and importers of less than 500,000 pounds of mangos annually will be exempt from assessments and not eligible to vote in the referendum.

USDA will keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if first handlers and importers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

The information collection requirements contained in this proposed rule are designed to minimize the burden on first handlers and importers. This rule provides for a ballot to be used by eligible first handlers and importers to vote in the referendum. The estimated annual cost of providing the information by an estimated 5 first handlers and for an estimated 55 importers would be $5.00 for all first handlers or $1.00 per first handler and $55.00 for all importers or $1.00 per importer.

USDA considered requiring eligible voters to vote in person at various USDA offices across the country. USDA also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot would also be more cost-effective and reliable. USDA will provide easy access to information for potential voters through a toll-free telephone line.

There are no federal rules that duplicate, overlap, or conflict with this rule.

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We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities.

Paperwork Reduction Act

In accordance with the OMB regulation [5 CFR 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–NEW.

Expiration Date of Approval: To be assigned by OMB.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act. The burden associated with the ballot is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response for each first handler and importer.

Respondents: First handlers and importers.

Estimated Number of Respondents: 60.

Estimated Number of Responses per Respondent: 1 every 5 years (0.2).

Estimated Total Annual Burden on Respondents: 6.0 hours.

The estimated annual cost of providing the information by an estimated 5 first handlers would be $5.00 or $1.00 per first handler and for an estimated 55 importers would be $55.00 or $1.00 per importer.

The ballot will be added to the other information collections approved for use under OMB Number 0581–NEW.

Comments are invited on: (a) Whether the proposed collection of information is necessary and whether it will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–NEW, the docket number, and the date and page number of this issue of the **Federal Register**. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the time frames specified above. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Background

The Act, which became effective on April 4, 1996, authorizes the Department to establish a national research and promotion program covering domestic and imported mangos. The Association submitted an entire proposed Order on June 29, 2001, and revisions to the proposal on November 1, 2001. The proposal is being published for public comment in this issue of the **Federal Register**.

The proposed Order would provide for the development and financing of an effective and coordinated program of promotion, research, and consumer and industry information for mangos in the United States. The program would be funded by an assessment levied on first handlers and importers (to be collected by the U.S. Customs Service at time of entry into the United States) at an initial rate of ½ cent per pound. First handlers and importers of less than 500,000 pounds of mangos annually would be exempt from paying assessments. In addition, exports of U.S. mangos would be exempt from assessments.

The assessments would be used to pay for promotion, research, and consumer and industry information; administration, maintenance, and functioning of the National Mango Promotion Board; and expenses incurred by the Department in implementing and administering the Order, including referendum costs.

Section 1206 of the Act requires that a referendum be conducted among eligible first handlers and importers of mangos to determine whether they favor implementation of the Order.

That section also requires the Order to be approved by a majority of the first handlers and importers voting.

This proposed rule establishes the procedures under which first handlers and importers of mangos may vote on whether they want the mango promotion, research, and information program to be implemented. There are approximately 60 eligible voters.

This proposed rule would add a new subpart which would establish procedures to be used in this and future referenda. This subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

All written comments received in response to this rule by the date specified will be considered prior to finalizing this action. We encourage the industry to pay particular attention to the definitions to be sure that they are appropriate for the mango industry.

List of Subjects in 7 CFR Part 1206

Administrative practice and procedure, Advertising, Consumer information, Mangos, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended as follows:

1. 7 CFR part 1206, proposed to be added elsewhere in this issue of the **Federal Register**, is proposed to be amended by adding subpart B to read as follows:

PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION

* * * * *

Subpart B—Referendum Procedures

Sec.

1206.100 General.
1206.101 Definitions.
1206.102 Voting.
1206.103 Instructions.
1206.104 Subagents.
1206.105 Ballots.
1206.106 Referendum report.
1206.107 Confidential information.
1206.108 OMB control number.

Authority: 7 U.S.C. 7411–7425.

Subpart B—Referendum Procedures.

§ 1206.100 General.

Referenda to determine whether eligible first handlers and importers of mangos favor the issuance, amendment, suspension, or termination of the Mango Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1206.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Department* means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(c) *Eligible first handler* means any person (excluding a common or contract carrier) who handled 500,000 or more pounds of domestic mangos during the representative period, who receives mangos from producers, and who as owner, agent, or otherwise, ships or causes mangos to be shipped. This definition includes those engaged in the business of buying, selling and/or offering for sale; receiving; packing; grading; marketing; or distributing mangos in commercial quantities. This includes only retailers who purchase, acquire, or handle mangos on behalf of any producer. The term first handler includes a producer who handles or markets mangos of the producer's own production.

(d) *Eligible importer* means any person who imports 500,000 or more pounds of mangos into the United States as a principal or as an agent, broker, or consignee of any person who produces or handles mangos outside of the United States for sale in the United States, and who is listed as the importer of record for such mangos that are identified in the Harmonized Tariff Schedule of the United States by the numbers 0804.50.4040 and 0804.50.6040, during the representative period. Importation occurs when mangos originating outside of the United States are released from custody by the U.S. Customs Service and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-produced mangos immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of mangos from the U.S. Customs Service when such mangos are entered or withdrawn for consumption in the United States.

(e) *Mangos* means all fresh fruit of *Mangifera indica L.* of the family *Anacardiaceae.*

(f) *Order* means the Mango Promotion, Research, and Information Order.

(g) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a mango farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called "joint ventures" wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(h) *Referendum agent* or *agent* means the individual or individuals designated by the Department to conduct the referendum.

(i) *Representative period* means the period designated by the Department.

(j) *United States or U.S.* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1206.102 Voting.

(a) Each eligible first handler and eligible importer of mangos shall be entitled to cast only one ballot in the referendum.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate first handler or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail, as instructed by the Department.

§ 1206.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible first handlers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1206.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1206.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1206.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1206.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the

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Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1206.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is OMB control number 0581–[NEW, to be assigned by OMB].

Dated: August 19, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–21537 Filed 8–23–02; 8:45 am]

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Federal Register

Monday,
August 26, 2002

Part V

Department of Agriculture

Commodity Credit Corporation

7 CFR Parts 1435 and 1436

2002 Farm Security and Rural Investment Act of 2002 Sugar Programs and Farm Facility Storage Loan Program; Final Rule

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1435 and 1436

RIN 0560–AG73

2002 Farm Security and Rural Investment Act of 2002 Sugar Programs and Farm Facility Storage Loan Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule implements the provisions of Title I of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) relating to the various activities affecting sugar beet and sugar cane producers and processors and the marketing of sugar. Generally, these regulations are applicable through Fiscal Year (FY) 2007. Major provisions of the 2002 Act terminate marketing assessments; make in-process sugar eligible for loans; authorize the establishment of a payment-in-kind program; cap the minimum payment requirement for sugar beet growers; eliminate a loan forfeiture penalty; provide for storage facility loans; and establish flexible marketing allotments.

EFFECTIVE DATE: August 22, 2002.

FOR FURTHER INFORMATION CONTACT: Dan Colacicco, Economic and Policy Analysis Staff, Farm Service Agency (FSA), United States Department of Agriculture (USDA), Stop 0540, 1400 Independence Ave, SW, Washington, DC 20250–0540. Phone: (202) 720–6733. E-mail: dcolacicco@wdc.fsa.usda.gov. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the 2002 Act requires that the regulations needed to implement Title I of the 2002 Act which includes the Sugar Program are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Executive Order 12866

This final rule has been determined to be economically significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment was completed and is summarized after the background section explaining the rule.

Federal Assistance Programs

The title and number of the Federal assistance program found in the Catalog of Federal Domestic Assistance to which this final rule applies is Commodity Loans and Loan Deficiency Payments, 10.051.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this final rule have been considered under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. FSA has completed a final environmental assessment and concluded that the proposed action will have no significant impacts upon the human environment as documented through the completion of a Finding of No Significant Impact (FONSI). A copy of the final environmental assessment and FONSI are available for review at *http://www.fsa.usda.gov/dafp/cepd/environmental/default.htm.*

Executive Order 12778

The final rule has been reviewed under Executive Order 12778. This rule preempts State laws that are inconsistent with it, however, this rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking about this rule. Also, this rule contains no mandates as defined in sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement Title I of the 2002 Act must be issued within 90 days of enactment and that such regulations shall be issued without regard to the notice and comment provisions of 5 U.S.C. 553. Section 1601(c) also requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (SBREFA), which allows an agency to forgo SBREFA's usual 60-day Congressional review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. These regulations affect the planting and marketing decisions of a large number of agricultural producers. Accordingly, this rule is effective upon the date of filing for public inspection by the Office of the Federal Register.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be done without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Background

Sugar Program

This rule completely replaces the existing Sugar Program regulations at 7 CFR part 1435. Implementation of the 2002 Act requires substantial modification or elimination of existing subparts and the addition of 2 new subparts.

Subpart A, General Provisions, is updated to reflect the new crop years (2002 through 2007), elimination of marketing assessments, and the addition of a sugar marketing allotment program and a processor Payment-In-Kind (PIK) program. Definitions are expanded to reflect new provisions such as sugar marketing allotments.

Subpart B, Sugar Loan Program, is expanded to include loans for in-process sugar, which are set at 80 percent of the raw cane sugar or beet sugar loan rate, as applicable. To be eligible for loans, sugar now must be stored in CCC-approved warehouses to ensure the quality of CCC's loan collateral or assets. CCC will use temporary approvals as required to ensure this requirement does not interrupt loan making. Loan settlement will be based on a schedule of premiums and discounts available in county offices. The previous 30-day notification of intent to forfeit sugar loan collateral is eliminated.

Loan maintenance provisions in the rule now require that sugar beet grower minimum payments not exceed the amount specified in the grower/processor contract. The 2002 Act eliminates the requirement that CCC add 1 percentage point to the interest rate as calculated by the procedure in place in 1996 but does not establish a sugar loan interest rate. CCC has decided to use the rates required for other commodity loans. The 2002 Act also eliminated the forfeiture penalty.

The loan settlement and foreclosure sections in the rule now address in-process sugars. Forfeiture of such sugars, pledged as collateral, will be accepted as payment in full of principal and interest if the processor converts them into raw cane sugar or refined beet sugar of acceptable grade and quality for sugar eligible for loans within 1 month after loan maturity. If forfeited in-process sugars are not converted into raw cane sugar or refined beet sugar of suitable quality and transferred to CCC within 1 month, CCC may charge liquidated damages. If the processor does not forfeit the collateral, but instead further processes the in-process sugar into raw cane sugar or refined beet sugar and repays the loan, the processor may obtain a loan at the higher rate for the raw cane sugar or refined beet sugar.

Loan collateral forfeited on September 30, the last day of the crop year, will become property of CCC on October 1 of the next crop year. Therefore, forfeitures made on the last day of the crop year will be considered as marketings made during the following crop year and count against the following year's marketing allotments, unless allotments are suspended.

Subpart C, Information Reporting and Recordkeeping Requirements, is expanded to include reporting of sugarcane production and imports. Sugarcane producers located in Louisiana must report sugarcane yields and planted acres. Importers of sugars, syrups, or molasses to be used for domestic human consumption or to be used for the extraction of sugar for domestic human consumption shall report the quantities of products imported and the sugar content or equivalent of the products. The requirement does not apply to sugars, syrups, or molasses within tariff-rate quota quantities subject to the lower rate of duties.

Subpart D, Flexible Sugar Marketing Allotments, is added to part 1435 to clarify administration of the sugar marketing allotment program established by the 2002 Act. The 2002 Act restores and modifies the sugar marketing allotment program that was suspended by the Agricultural Market Transition Act (7 U.S.C. 7201 note). The new flexible sugar marketing allotments are always established before the crop year. Allotments and the processor allocations will be suspended if sugar imports for human consumption exceed 1,532,000 short tons, raw value, and CCC reduces the overall allotment quantity in response to the imports. The suspension is lifted if imports are reduced to a level at or below 1,532,000 tons. Thus, processors will always have an allocation, but at times the allocations may be suspended due to imports exceeding the trigger level and the overall allotment quantity being reduced.

Estimates of beginning stocks, production, imports, exports, and consumption used to administer the sugar marketing allotment program will come from the World Agricultural Supply and Demand Estimates published monthly by USDA's World Board. CCC will set the reasonable ending stocks estimate at a level expected to preclude sugar loan collateral forfeitures.

Several types of sugar marketings will not be counted against a processor's allocation. Sugar marketings for export and nonhuman consumption (*e.g.*, feed and ethanol uses) will not be counted against a processor's allocation. The 2002 Act also specifically excludes from the definition of prohibited sugar marketing activity a sale of sugar from a processor who has more sugar than allocation to a processor who has more allocation than sugar. CCC excluded sugar sales for nonhuman consumption from allotments because the law excludes sugar imports for nonhuman consumption from the import trigger level and excluding nonhuman uses should not encourage forfeitures since these uses do not generate revenue consistent with the loan forfeiture level.

The 2002 Act instructs CCC to periodically determine whether a processor has more allocation than sugar supply and then reassign the deficit according to a very specific hierarchy. Thus, CCC can limit these sales by reducing the allocation of the processor buying over-allocation sugar. CCC will permit these transactions until May 1 of each crop year, which is expected to leave enough time in the crop year to permit CCC to reassign the unused allocation. CCC must be notified of sales from a processor with more sugar than allocation to a processor with more allocation than sugar within 5 days of the sale. These sales are not permitted between cane processors in different States because the 2002 Act specifically requires that only cane sugar produced in a State may be used to fulfill the State's cane sugar allotment.

The 2002 Act provides limited CCC discretion in establishing sugar beet processor allocations and has no provision for collecting industry comments through the hearing process. If a processor had an aggregate quality loss exceeding 20 percent, the loss threshold under CCC's Quality Loss Program, on stored sugar beets during the 1998 through 2000 crop years, CCC will apply the beet sugar production history by 1.25 percent as the 2002 Act mandates.

The 2002 Act provides wide discretion to CCC in establishing sugarcane State allotments and sugarcane processor allocations of those allotments. CCC will conduct a hearing in August of each year, if requested by interested sugarcane growers or processors by July 15, beginning with the 2003 crop. CCC will put the most weight, 50 percent, on the "ability to market the current crop" factor and weights of 25 percent each on the "past marketings" and "past processings" factors. The 2002 Act defines past marketings and past processings in terms of past sugar production history. CCC's experience with sugar marketing allotments in the mid-1990's resulted in CCC changing from equal weights to a 50/25/25 weighting system. CCC determined that the equal weighting system put a disproportionate share of the negative impacts of marketing allotments on a relatively few efficient processors.

Allotments will be suspended if (1) sugar imports for human consumption exceed 1,532,000 short tons, raw value, and (2) CCC reduces the overall allotment quantity in response to the imports.

CCC will require processors receiving allocations to provide assurances that they will divide their allocation fairly and equitably among producers they serve in a manner that adequately reflects the producers' production history.

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The rule permits producers who delivered to a factory that later closed to apply to CCC to move the allocation commensurate with their sugar beet or sugarcane production to a factory willing to take their production. All allocation transfers stemming from the transfer of title of processing companies or their assets will be subject to the above conditions.

Subpart E, Processor Sugar Payment-In-Kind (PIK) Program, covers the requirements for sugar beet and sugarcane processors to participate in a PIK program and provisions for the implementation of a PIK program. Participating processors must act in conjunction with producers, that is, the acreage to be reduced must have been under contract with the processor during the applicable crop year and the land left fallow during the crop year the PIK program is implemented. CCC may permit processors to bid, in lieu of acreage, desugarizing capacity or other measures of sugar production as CCC may approve. Distribution of sugar from CCC inventory will occur as CCC determines appropriate. CCC will stop storage payments on sugar when title to the sugar is transferred to a participating processor or assignee.

Storage Facility Loans

Section 1402 of the 2002 Act provides that CCC shall amend its existing storage facility loan program to include loans for processors of sugar. Accordingly, the regulations of 7 CFR part 1436 are amended to include sugar processors as eligible borrowers. This rule also amends 7 CFR 1436.3 to change the definition of facility loan commodities to include dry peas, lentils, small chickpeas, and peanuts to provide a consistent CCC policy to make loans available for producers of all crops eligible for marketing assistance loans.

Cost/Benefit Assessment

An assessment of the sugar program's costs and benefits concluded that the 2002 Act changes, principally the establishment of sugar marketing allotments and the elimination of the loan forfeiture penalty, will increase farm income, increase consumer/user sugar expenditures, and slightly decrease federal expenditures. The elimination of the sugar loan forfeiture penalty increases the likelihood and cost of forfeitures because it increases the price, by about a cent per pound, a processor must achieve in the market to be deterred from forfeiting sugar loan collateral to CCC.

The cost/benefit analysis (CBA) assumes the current oversupply conditions will exist throughout the next decade and be acerbated by Mexican imports. The forecast of the economic impacts is very sensitive to the imposition of sugar marketing allotments. Sugar marketing allotments shift the burden of surplus sugar storage from CCC to the sugar beet and sugarcane processors and increases sugar prices. Marketing allotments are dependent on the level of Mexican sugar imports, and to a lesser degree, sugar (or products for the extraction of sugar) imports from other nations not under the sugar tariff rate quota (TRQ). Sugar marketing allotments are likely to be suspended if these imports exceed 276,000 short tons, raw value, because this is the difference between the required World Trade Organization minimum TRQ and the import level in the allotment suspension trigger. The cost/benefit assessment assumed that sugar marketing allotments would be suspended in five of the next 10 years.

The CBA concluded that the 2002 Act sugar program changes will result in a slight decrease in domestic sugar production. The sugar program changes are expected to decrease the annual average available stocks-to-use ratio by 26 percent, increase sugar prices about 9 percent, increase sugar loan collateral forfeitures by 15 percent, decrease average CCC sugar inventory by 67 percent, and slightly reduce, by $13 million per year, CCC expenditures on the sugar program.

The Cost/Benefit Assessment of the sugar program and is available from Thomas Bickerton, Economic and Policy Analysis Staff, United States Department of Agriculture (USDA), Stop 0516, 1400 Independence Ave, SW., Washington, DC 20250–0540. Phone: (202) 720–6733. E-mail: *Thomas.Bickerton2@usda.gov*.

List of Subjects

7 CFR Part 1435

Loan programs/agriculture, Price support programs, Reporting and record keeping requirements, and Sugar.

7 CFR Part 1436

Grains, Loan programs/agriculture, Oilseeds, Reporting and record keeping requirements, and Sugar.

For the reasons set out in the preamble, 7 CFR parts 1435 and 1436 are amended as set forth below.

PART 1435—SUGAR PROGRAM

1. 7 CFR part 1435 is revised to read as follows:

PART 1435—SUGAR PROGRAM

Subpart A—General Provisions

Sec.
1435.1 Applicability.
1435.2 Definitions.
1435.3 Maintenance and inspection of records.
1435.4 Administration.
1435.5 Other regulations.

Subpart B—Loan Program

1435.100 Applicability.
1435.101 Loan rates.
1435.102 Eligibility requirements.
1435.103 Availability, disbursement, and maturity of loans.
1435.104 Loan maintenance.
1435.105 Loan settlement and foreclosure.
1435.106 Miscellaneous provisions.

Subpart C—Information Reporting and Recordkeeping Requirements

1435.200 Information reporting.
1435.201 Civil penalties.

Subpart D—Flexible Marketing Allotments For Sugar

1435.300 Applicability.
1435.301 Annual estimates and quarterly re-estimates.
1435.302 Establishment and suspension of allotments.
1435.303 Overall allotment quantity.
1435.304 Adjustment of overall allotment quantity.
1435.305 Beet sugar and cane sugar allotments.
1435.306 State cane sugar allotment.
1435.307 Allocation of marketing allotments to processors.
1435.308 Transfer of allocations, new entrants.
1435.309 Reassignment of deficits.
1435.310 Sharing processors' allocations with producers.
1435.311 Proportionate shares for sugarcane producers.
1435.312 Establishment of acreage bases under proportionate shares.
1435.313 Permanent transfer of acreage base histories under proportionate shares.
1435.314 Temporary transfer of proportionate share due to disasters.
1435.315 Adjustments to proportionate shares.
1435.316 Acreage reports for purposes of proportionate shares.
1435.317 Revision of allocations and proportion shares.
1435.318 Penalties and assessments.
1435.319 Appeals and arbitration.

Subpart E—Processor Sugar Payment-In-Kind (PIK) Program

1435.400 General statement.
1435.401 Bid submission procedures.
1435.402 Bid selection procedures.
1435.403 In-kind payments.
1435.404 Timing of distribution of CCC-owned sugar.
1435.405 Miscellaneous provisions.

Authority: 7 U.S.C. 1359aa–1359jj and 7272 *et seq.*; 15 U.S.C. 714b and 714c.

Subpart A—General Provisions

§ 1435.1 Applicability.

These regulations set forth the terms and conditions for the 2002–2007 crop years under which the Commodity Credit Corporation (CCC) will:

(a) Make loans and enter agreements with eligible processors,

(b) Collect data from sugarcane processors, sugar beet processors, cane refiners, and importers of sugar, syrup, and molasses,

(c) Administer sugar marketing allotments, and

(d) Administer an inventory disposition program to exchange CCC inventory for processor reductions in production.

§ 1435.2 Definitions.

The definitions set forth in this section are applicable for all purposes of program administration. Terms defined in part 718 of this title are also applicable.

Ability to market means the estimated quantity of sugar, raw value, as CCC determines, that will be produced in the cane State or by the sugarcane processor, as appropriate, during the applicable crop year.

Allocation means the division of the beet sugar allotment among the sugar beet processors in the United States and the division of each State's cane sugar allotment among the State's sugarcane processors.

Beet sugar means sugar that is processed directly or indirectly from sugar beets or sugar beet molasses.

Beet sugar allotment means that portion of the overall allotment quantity allocated to sugar beet processors.

Cane sugar means sugar derived directly or indirectly from sugarcane produced in the United States, including sugar produced from sugarcane molasses.

Cane sugar allotment means that portion of the overall allotment quantity allocated to sugarcane processors.

Cane sugar refiner means a person who processes raw sugar into refined crystalline sugar or liquid sugar.

Carry-in stocks means inventories of sugar owned by sugar beet processors, sugarcane processors, cane sugar refiners, and CCC and physically located in the United States at the beginning of the fiscal year.

Crop year means the period from October 1 through September 30, inclusive, and is identified by the year in which the crop year begins. For example, the 2002 crop year begins on October 1, 2002. The 2002 crop of sugar beets or sugar cane means domestically grown sugar beets or sugar cane processed during the 2002 crop year. The 2002 crop of sugar means sugar processed from domestically-grown sugar beets or sugarcane during the 2002 crop year. Sugar from de-sugaring molasses is considered to be from the crop year the de-sugaring occurred.

Deputy Administrator means the Deputy Administrator, Farm Programs, FSA, or designee.

Deficit means the quantity of sugar covered by an allocation of an allotment that CCC estimates a sugar beet processor or sugarcane processor will be unable to market during the crop year in which marketing allotments are in effect.

Edible molasses means molasses that is not to be further refined or improved in quality and that is to be distributed for human consumption, either directly or in molasses-containing products.

Edible syrups means syrups that are not to be further refined or improved in quality and that are to be distributed for human consumption, either directly or in syrup-containing products.

Executive Vice President, CCC, means the Executive Vice President, CCC, or designee.

Farm means that entity as defined in § 718 of this title, except that when a State is subject to proportionate shares, producers will not be allowed to have farms reconstituted across State lines even if the farm land is adjoining.

Fiscal year means that year beginning October 1 and ending the following September 30.

FSA means Farm Service Agency.

Imports means sugar originating in foreign countries or areas and entered, or to be entered, into the United States customs territory.

In-process sugar means the intermediate sugar containing products, as CCC determines, produced in the processing of domestic sugar beets and sugarcane. It does not include raw sugar, liquid sugar, invert sugar, invert syrup, or other finished products that are otherwise eligible for a loan.

Market or *marketing* means the transfer of title associated with the sale or other disposition of sugar in United States commerce, including the forfeiture of sugar loan collateral under Subpart B, and for any integrated processor and refiner, the movement of raw cane sugar into the refining process. Marketings do not include sales for nondomestic or nonhuman consumption, or sales of sugar to enable another processor to fulfill an allocation established for such processor.

Nonrecourse loan means a loan for which eligible sugar offered as loan collateral may be forfeited to CCC, at loan maturity, in satisfaction of loan indebtedness.

Overall allotment quantity means, on a national basis, the total quantity of sugar, raw value, processed from domestically produced sugarcane or domestically produced sugar from sugar beets, and the raw value equivalent of sugar in sugar products, that is permitted to be marketed by processors, during a crop year or other period in which marketing allotments are in effect.

Past marketings means, for purposes of determining State cane sugar allotments and sugarcane processor allocations for States other than Louisiana, the average of the 2 highest years of sugar production during the 1996 through 2000 crop years; for Louisiana sugarcane processor allocations, the average of the 2 highest years of sugar production during the 1997 through 2001 crop years.

Past processing means, for determining Hawaii and Puerto Rico's allotments, the 3-year average of the 1998 through 2000 crop years; and for determining the remaining cane State allotments, the 3 crop years with the greatest production (in the States collectively) during the 1991 through 2000 crop years. Past processing, for determining the sugarcane processor allocation for States other than Louisiana, means the average of the 3 highest years of production during the 1996 through 2000 crop years; and, for determining sugarcane processor allocations in Louisiana, the average of the 2 highest years of sugar production during the 1997 through 2001 crop years.

Per-acre yield goal means a State's yield level that is established at not less than the State's two highest average per-acre yield years from among the 1999 through 2001 crop years as CCC determines to ensure an adequate net return per pound to State producers.

Proportionate share means the total acreage from which a producer may harvest sugarcane for sugar or seed during any crop year or other period in which marketing allotments are in effect.

Raw sugar means any sugar that is to be further refined or improved in quality other than in-process sugar.

Raw value of any quantity of sugar means its equivalent in terms of raw sugar testing 96 sugar degrees, as determined by a polarimetric test performed under procedures recognized by the International Commission for Uniform Methods of Sugar Analysis (ICUMSA). Direct-consumption sugar derived from sugar beets and testing 92 or more sugar degrees by the

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polariscope shall be translated into terms of raw value by multiplying the actual number of pounds of such sugar by 1.07. Sugar derived from sugarcane and testing 92 sugar degrees or more by the polariscope shall be translated into terms of raw value in the following manner: raw value = {[(actual degree of polarization − 92) × 0.0175] + 0.93} × actual weight. For sugar testing less than 92 sugar degrees by the polariscope, derive raw value by dividing the number of pounds of the "total sugar content" (*i.e.*, the sum of the sucrose and invert sugars) thereof by 0.972.

Reasonable carryover stocks means desirable inventories of sugar owned by sugar beet processors, sugarcane processors, cane sugar refiners, and CCC and on hand in the United States at the end of the fiscal year, as CCC determines.

State means any of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

Sugar means any grade or type of saccharine product derived, directly or indirectly, from sugarcane or sugar beets and consisting of, or containing, sucrose or invert sugar, including raw sugar, refined crystalline sugar, liquid sugar, edible molasses, and edible cane syrup. For allotments, *sugar* means any grade or type of saccharine product processed, directly or indirectly, from sugarcane or sugar beets (including sugar produced from sugar beet or sugarcane molasses), produced for human consumption, and consisting of, or containing, sucrose or invert sugar, including raw sugar, refined crystalline sugar, edible molasses, edible cane syrup, and liquid sugar.

Sugar beet processor means a person who commercially produces sugar, directly or indirectly, from sugar beets (including sugar produced from sugar beet molasses), has a viable processing facility, and a supply of sugar beets for the applicable allotment year.

Sugar products means products for human consumption, other than sugar, that contain 50 percent or more of sucrose, on a dry weight basis, and that are marketed by a sugar beet processor or sugarcane processor. In determining sugar subject to marketing allocations, only the sugar content of such products will be counted against the allocation.

Sugarcane processor means a person who commercially produces sugar, directly or indirectly, from sugarcane, has a viable processing facility, and a supply of sugarcane for the applicable allotment year.

Ton means a short ton or 2,000 pounds.

United States means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

U.S. market value means, for sugarcane, the daily New York Board of Trade No. 14 contract price for raw sugar, or other price, as determined by CCC; for sugar beets, the Midwest refined beet sugar price published in Milling and Baking News, or other price, as determined by CCC.

USDA means the United States Department of Agriculture.

§ 1435.3 Maintenance and inspection of records.

(a) CCC, as well as any other U.S. Government agency, has the right of access to the premises of any sugar beet processor, sugarcane processor, cane sugar refiner, importer of sugars, syrups, and molasses, or of any other person having custody of records that the examining agency deems necessary to verify compliance with this part's requirements. The examining agency has the right to inspect, examine, and make copies of such books, records, accounts, and other written or electronic data as the examining agency deems relevant.

(b) Each sugar beet processor, sugarcane processor, importer of sugars, syrups and molasses, and cane sugar refiner or any person having custody of the records shall retain such books, records, accounts, and other written or electronic data for not less than 3 years from the date:

(1) A loan is disbursed under subpart B;

(2) Market data are reported to CCC under subpart C of this part; and

(3) Marketings are conducted under marketing allotments under subpart D of this part.

§ 1435.4 Administration.

(a) This program shall be administered under the general supervision of the Executive Vice President, CCC, and may be carried out in the field by FSA State and county committees.

(b) State and county committees, and representatives and employees thereof, may not modify or waive any of the provisions of part 1435.

(c) The State committee shall take any action required by this part that the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct, a county committee action not under this part; or

(2) Require a county committee to withhold taking any action not under this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, from determining any question arising under the program or from reversing or modifying any State or county committee determination.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such requirements do not adversely affect program operation.

(f) A CCC representative may execute loans and related documents only under the terms and conditions CCC determines and announces. Any such document not executed under such terms and conditions, including any purported execution before the CCC-authorized date, shall be null and void.

§ 1435.5 Other regulations

The following are applicable to this part:

(a) Part 707—Payments due persons who have died, disappeared, or have been declared incompetent.

(b) Part 718—Provisions applicable to multiple programs.

(c) Part 780—Appeal regulations.

(d) Part 1403—Debt settlement policies and procedures.

(e) Part 1405—Loans, purchases, and other operations.

Subpart B—Loan Program

§ 1435.100 Applicability.

(a) The regulations of this subpart set forth the terms and conditions under which CCC will make nonrecourse loans available to eligible processors. Additional terms and conditions are set forth in the loan application and note and security agreement that a processor must execute to receive a loan.

(b) Loan rates used in administering the loan program are available in FSA State and county offices.

(c) Loans shall not be available for sugar produced from imported sugar beets, sugarcane, molasses, syrups and in-process sugar.

§ 1435.101 Loan rates.

(a) The national average loan rate for raw cane sugar produced from domestically-grown sugarcane is 18 cents per pound.

(b) The national average loan rate for refined beet sugar from domestically-grown sugar beets is 22.90 cents per pound.

(c) Loan rates for eligible sugar are adjusted to reflect the processing location of the sugar offered as loan collateral.

(d) Loan rates for eligible in-process sugar shall equal 80 percent of the loan rate applicable to raw cane sugar or beet sugar on the basis of the expected production of raw sugar or beet sugar from the in-process sugar or syrups.

§ 1435.102 Eligibility requirements.

(a) An eligible producer is the owner of a portion or all of the domestically-grown sugar beets or sugarcane, including share rent landowners, at both the time of harvest and the time of delivery to the processor, except those producers determined to be ineligible as a result of the regulations governing highly erodible land and wetland conservation found at 7 CFR part 12, regulations governing crop insurance at 7 CFR part 400, or regulations governing controlled substance violations at 7 CFR part 718.

(b) In addition to all other provisions of this part, a sugar beet or sugarcane processor is eligible for loans only if the processor has agreed to all the terms and conditions in the loan application, and has executed a note and security agreement, and storage agreement with CCC. No loan proceeds will be distributed by CCC before CCC's approval of the note and security agreement and the CCC storage agreement.

(c) Sugar pledged as collateral during the crop year:

(1) May not exceed the quantity derived from processing domestically-grown sugar beets or sugarcane from eligible producers during the applicable crop year;

(2) Must be processed and owned by the eligible processor and stored in a CCC-approved warehouse;

(3) May not have been processed from imported sugarcane, sugar beets, or molasses;

(4) Must have been processed in the United States; and

(5) Must have processor certification in the loan application that the sugar or in-process sugar syrups are eligible and available to be pledged as collateral.

(d) Sugar and in-process sugar must meet the following minimum quality requirements to be eligible to be pledged as loan collateral:

(1) Refined beet sugar to be pledged as loan collateral must be:

(i) Dry and free flowing;

(ii) Free of excessive sediment; and

(iii) Free of any objectionable color, flavor, odor, or other characteristic that would impair its merchantability or that would impair or prevent its use for normal commercial purposes.

(2) Raw cane sugar to be pledged as loan collateral must be:

(i) Of reasonable grain size; and

(ii) Free of objectionable color, flavor, odor, moisture or other characteristic that would impair its merchantability or that would impair or prevent its use for normal refining and commercial purposes.

(3) Edible sugarcane syrup or edible molasses must be free from any objectionable color, flavor, odor, or other characteristic that would impair the merchantability of such syrup or molasses or would impair or prevent the use of such syrup or molasses for normal commercial purposes.

(4) In-process sugar must be of at least the minimum quality expected to commercially yield raw cane sugar or refined beet sugar, as determined by CCC.

(e) The loan collateral must be stored in a CCC-approved warehouse as described in 7 CFR part 1423.

§ 1435.103 Availability, disbursement, and maturity of loans.

(a) Before obtaining a loan, a processor must:

(1) File a loan application, as CCC prescribes, no earlier than October 1 and no later than September 30 of the applicable crop year, with the State committee of the State where such processor is headquartered, or with a county committee designated by the State committee.

(2) Execute a note and security agreement, and storage agreement with CCC;

(3) Provide quantity and quality information as prescribed by CCC of the commodity to be pledged as collateral;

(4) Pay CCC a loan service fee, as determined by CCC, for the disbursement of each loan.

(5) If there are any liens or encumbrances on sugar or in-process sugar pledged as loan collateral, obtain waivers that fully protect CCC's interest even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the sugar after loan approval; and

(6) Agree to reimburse CCC for any costs incurred as a result of the failure of the processor to obtain the waivers specified in subparagraph (5).

(b) No loan proceeds may be disbursed until the sugar and in-process sugar have actually been produced and are otherwise established as being eligible to be pledged as loan collateral.

(c)(1) A processor may, within the loan availability period, repledge as collateral sugar that previously served as loan collateral for a repaid loan. In making application for such a loan, the processor shall:

(i) Specify that the loan collateral should be treated as a quantity of eligible sugar that previously served as loan collateral for a repaid loan; and

(ii) Designate the loan to which the reoffered loan collateral was originally pledged.

(2) The subsequent loan shall have the same maturity date as the original loan.

(3) Loan collateral repledged that was previously redeemed from CCC is not included in determining the total quantity of sugar on which loans have been obtained for purposes of § 1435.102.

(d) Raw cane sugar loan disbursements shall be made without regard to the actual polarity or quality factors of the sugar pledged as loan collateral but shall be made on the assumption that the polarity of such sugar is 96 degrees by the polariscope.

(e)(1) Loans will mature at the earlier of:

(i) the end of the 9-month period beginning on the 1st day of the first month after the month in which the loan is made; or

(ii) September 30 following disbursement of the loan.

(2) CCC may accelerate loan maturity dates under § 1435.105(h).

(f) Processors receiving loans in July, August, or September may repledge the sugar as collateral for a supplemental loan. Such supplemental loan shall:

(1) Be requested by the processor during the following October;

(2) Be made at the loan rate in effect at the time the supplemental loan is made; and

(3) Mature in 9 months minus the number of whole months that the initial loan was in effect.

§ 1435.104 Loan maintenance.

(a) All processors receiving loans shall:

(1) Abide by the terms and conditions of the loan application, note and security agreement and storage agreement;

(2) Pay interest on the principal at a rate determined in part 1405 of this chapter.

(b) The security interests CCC obtains as a result of the execution of security agreements by sugarcane and sugar beet processors shall be superior to all statutory and common law liens on raw cane sugar, refined beet sugar, and in-process sugar for the producers of sugarcane and sugar beets and all prior recorded and unrecorded liens on the crops of sugarcane and sugar beets from which the sugar was derived.

(c) A processor receiving a loan under this part shall pay all eligible producers who have delivered or will deliver sugar beets or sugarcane to such processors for processing not less than the minimum payment levels CCC specifies for the applicable crop year.

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(1) In the case of sugar beets, the minimum payment shall not exceed the rate of payment provided for under the applicable contract between a sugar beet producer and a sugar beet processor.

(2) CCC will not reject a loan application from a beet sugar processor from eligibility to obtain a loan under this section solely because of the failure of the processor to provide the appropriate minimum payment established under this subsection if the failure:

(i) Occurred during a crop year before the date of enactment of the Farm Security and Rural Investment Act of 2002; and

(ii) Was related, at least in part, to the effects of a natural disaster, including freeze damage.

(3) In the case of sugarcane, CCC will annually determine and announce the annual grower minimum payment.

(4) Processors are ineligible for loans for the crop year following their failure to meet the required minimum grower payment.

(d)(1) A processor shall maintain eligible sugar or in-process sugar of sufficient quality and quantity as collateral to satisfy the processor's loan indebtedness to CCC. CCC shall not assume any loss in quantity or quality of the loan collateral.

(2) The processor is responsible for storage costs through the loan maturity date or title transfer to CCC, whichever occurs later.

(3) Sugar and in-process sugar pledged as loan collateral need not be stored identity preserved.

(4) When the proceeds of the sale of loan collateral are needed to repay all or part of a sugar loan, the processor may request and obtain prior written approval from the loan making office by executing a loan collateral release request, as prescribed by CCC, to remove a specified quantity of the loan collateral from storage for the purpose of delivering it to a buyer before loan repayment. Any such approval shall be subject to the terms and conditions set forth in the applicable form. The loan making office shall not approve such a request unless the buyer of the sugar agrees to pay CCC an amount necessary to satisfy the processor's loan indebtedness regarding collateral being sold. Any such approval shall not:

(i) Constitute a release of CCC's security interest in the loan collateral; or

(ii) Relieve the processor of liability for the full amount of the loan indebtedness, including interest.

§ 1435.105 Loan settlement and foreclosure.

(a) A processor may, any time before loan maturity, redeem all or any part of the loan collateral by paying CCC the applicable principal and interest.

(b) Forfeiture of sugar loan collateral will be accepted as payment in full of the principal and interest due under a nonrecourse loan, applicable to the quality and quantity of sugar delivered, subject to applicable premiums and discounts.

(c)(1) Forfeiture of in-process sugar serving as loan collateral will be accepted as payment in full of principal and interest if the processor converts the in-process sugar into raw cane sugar or refined beet sugar of acceptable grade and quality for sugar eligible for loans within 1 month of loan maturity.

(2) The in-process sugar must be fully processed into raw cane sugar or refined beet sugar, the processor shall transfer the sugar to CCC.

(3) On transfer of the sugar, CCC shall make a payment to the processor in an amount equal to the amount obtained by multiplying the difference between the loan rate for raw cane sugar or refined beet sugar, as appropriate, and the in-process loan rate the processor received by the quantity of sugar transferred to CCC. The loan agreement shall specify the quantity of sugar that can be forfeited to CCC.

(d) If the processor does not forfeit the collateral, but instead further processes the in-process sugar into raw cane sugar or refined beet sugar and repays the loan on the in-process sugar;

(1) the processor may obtain a loan for the raw cane sugar or refined beet sugar, as appropriate, and

(2) the term of a loan made under this subsection for a quantity of in-process sugar, when combined with the term of a loan made for the raw cane sugar or refined beet sugar derived from the in-process sugar, may not exceed 9 months.

(e) CCC shall not accept delivery of sugar in settlement of a nonrecourse loan in excess of the quantity of sugar that is shown on the note and security agreement minus any quantity that was redeemed or released for removal under this section.

(f) If the processor does not redeem any of the nonrecourse loan collateral, title to the unredeemed nonrecourse loan collateral as described in the note and security agreement will, without further CCC or processor action transfer to CCC in-store at the CCC-approved warehouse at 12 a.m. the day following the maturity date of the loan. Title, all rights, and interest to such sugar shall immediately vest in CCC.

(g) The value of the settlement of loans shall be made by CCC according to the CCC schedule of premiums and discounts.

(h) CCC may, at any time, accelerate the date for loan repayment including interest. CCC will give the processor notice of such acceleration at least 15 days in advance of the accelerated loan maturity date.

(i) If a processor's nonrecourse loan indebtedness is not satisfied under the provisions of this section or if forfeited in-process sugar is not converted to raw or refined sugar within the prescribed time:

(1) Interest on the processor's indebtedness shall accrue as specified in part 1403 of this title and shall accrue until the debt is paid;

(2) CCC may, upon notice, with or without removing the collateral from storage, sell such collateral at either a public or private sale;

(3) The processor shall be liable for the deficiency if the net proceeds are less than the amount of principal, interest, and any other charges CCC incurs; and

(4) If the processor forfeits the in-process sugar loan collateral but does not transfer raw or refined sugar of suitable quality to CCC within 1 month, CCC will charge liquidated damages, as provided in the loan agreement.

§ 1435.106 Miscellaneous provisions.

(a) The regulations governing setoffs and withholding set forth at parts 3 and 1403 of this title are applicable to the program set forth in this subpart.

(b) A producer or processor may obtain reconsideration and review of determinations made under this subpart under the regulations at parts 11 and 780 of this title.

(c) Any false certification, including those made for the purpose of enabling a processor to obtain a loan to which it is not entitled, will subject the person making such certification to liability under applicable Federal civil and criminal statutes.

Subpart C—Information Reporting and Recordkeeping Requirements

§ 1435.200 Information reporting.

(a) Every sugar beet processor, sugarcane processor, cane sugar refiner, and importer of sugar, syrup, and molasses shall report, on a monthly basis on CCC required forms, its imports and receipts, processing inputs, production, distribution, stocks, and other information necessary to administer sugar programs.

(b) Any processor must, upon CCC's request, provide such information as CCC deems appropriate for determining regional loan rates.

(c) Any processor must, upon CCC's request, provide such information as CCC deems appropriate for determining whether processors of sugarcane or sugar beets will be able to market their respective sugar allocations.

(d) Each sugarcane producer located in Louisiana shall report, in the manner CCC prescribes, sugarcane yields and sugarcane planted acres.

(e) Importers of sugars, syrups, or molasses to be used for domestic human consumption or to be used for the extraction of sugar for domestic human consumption shall report, in the manner CCC prescribes, the quantities of the products imported and the sugar content or equivalent of the products. This requirement shall not apply to sugars, syrups, or molasses within the quantities of tariff-rate quotas subject to the lower rate of duties.

(f) Based on the information received under this subsection, the Secretary shall publish on a monthly basis composite data on sugar production, imports, distribution, and stock levels.

(g) The sugar information reporting and recordkeeping requirements of this subpart are administered under the general supervision of the Executive Vice President, CCC.

§ 1435.201 Civil penalties.

(a) Any processor, refiner, or importer of sugar, syrup, and molasses who willfully fails or refuses to furnish the information, or who willfully furnishes false data required under § 1435.200, is subject to a civil penalty of no more than $10,000 for each such violation.

(b) The Controller, CCC, shall assess civil penalties and interest.

(c) Affected processors, refiners, and importers of sugar, syrup, and molasses may request reconsideration of civil penalties by filing a request, within 30 days of receipt of certified written notification from the Controller, CCC, of such assessment of civil penalties, with the Executive Vice President, CCC, Stop 0501, 1400 Independence Ave. SW., Washington, DC 20250–0501.

(d) After reconsideration, affected processors, refiners, or importers of sugar, syrup, and molasses may appeal civil penalties by filing a notice of appeal, within 30 calendar days of receipt of certified written notification from the Executive Vice President, CCC, of an affirmation of the assessment of civil penalties, with the National Appeals Division under part 780 of this title.

Subpart D—Flexible Marketing Allotments For Sugar

§ 1435.300 Applicability.

(a) This subpart applies to the establishment and allocation of marketing allotments for:

(1) Processor marketings of sugar domestically processed from sugar beets,

(2) Processor marketings of sugar processed from domestically produced sugarcane,

(3) Distribution of a processor's allocation to producers in proportionate share States, and

(4) Harvesting sugarcane by producers subject to proportionate shares.

(b) This subpart does not apply to:

(1) Marketing sugar for nondomestic or nonhuman consumption,

(2) Marketing imported raw or refined sugar,

(3) Exportation of sugar from the United States customs territory.

(c) This subpart applies throughout the United States and Puerto Rico.

§ 1435.301 Annual estimates and quarterly re-estimates.

(a) Not later than August 1 before the beginning of the crop year, CCC will estimate, and make re-estimates as necessary but not later than the beginning of each quarter of such crop year, the:

(1) Quantity of sugar that will be consumed in the United States (other than sugar imported for the production of polyhydric alcohol or to be refined and re-exported in refined form or in sugar-containing products);

(2) Quantity of sugar that will provide for reasonable carryover stocks;

(3) Quantity of sugar that will be available for consumption from carry-in stocks;

(4) Quantity of sugar that will be available for consumption from domestic processing of sugarcane and sugar beets; and

(5) Quantity of sugars, syrups, and molasses that will be imported for human consumption or for the extraction of sugar for human consumption in the United States and Puerto Rico (other than sugar imported for the production of polyhydric alcohol or to be refined and re-exported in refined form or in sugar-containing products), whether such articles are included in a tariff-rate quota or not.

(b) Calculation of all allotments, allocations, estimates, and re-estimates in this subpart will use available USDA statistics and estimates of production, consumption, and stocks, taking into account, where appropriate, data supplied in reports submitted pursuant to the reporting requirements set forth in § 1435.200.

§ 1435.302 Establishment and suspension of allotments.

(a) By the beginning of the crop year, CCC will establish the overall allotment quantity, beet sugar and cane sugar allotments, State cane sugar allotments, and allocations for processors marketing sugar domestically processed from sugar beets and domestically produced sugarcane at a level estimated to result in no sugar loan collateral forfeitures to CCC.

(b) Marketing allotments will be suspended whenever CCC determines that imports of sugars, syrups, and molasses for domestic human consumption or to be used for the extraction of sugar for domestic human consumption, whether under a tariff-rate quota or not, will exceed 1,532,000 short tons, raw value, excluding any imports attributable to a reassignment of allotments, and that the imports would lead to a reduction in the overall allotment quantity. The suspension of marketing allotments will be lifted if CCC subsequently determines that imports are estimated to be no higher than 1,532,000 short tons, raw value.

(c) Each determination under this section to establish or suspend marketing allotments will be published in the **Federal Register** and accompanied by a statement of the reasons for the determination.

§ 1435.303 Overall allotment quantity.

The overall allotment quantity for the crop year will be calculated by deducting from the sum of estimated sugar consumption and reasonable carryover stocks:

(a) 1,532,000 short tons, raw value; and

(b) Carry-in stocks.

§ 1435.304 Adjustment of the overall allotment quantity.

(a) The overall allotment quantity will be adjusted, as CCC determines appropriate,

(1) To avoid forfeiture of sugar loan collateral to CCC, and

(2) To reflect changes in estimated consumption, stocks, production, or imports based on re-estimates under § 1435.301.

(b) Each determination to adjust the overall allotment quantity will be published in the **Federal Register** and accompanied by a statement of the reasons for the determination.

(c) The beet sugar allotment, cane sugar allotment, State cane sugar allotments, proportionate shares, and allocations to each sugar beet processor and sugarcane processor will be increased or decreased, as appropriate, to reflect an overall allotment quantity adjustment.

(d) If the overall allotment quantity is reduced under paragraph (a) of this section and the quantity of sugar and

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sugar products any individual processor marketed by the time of the reduction exceeds the processor's reduced allocation, the quantity of excess sugar or sugar products marketed will be deducted from the processor's allocation under an allotment next established.

§ 1435.305 Beet and cane sugar allotments.

(a) The allotment for beet sugar will be 54.35 percent of the overall allotment quantity.

(b) The allotment for cane sugar will be 45.65 percent of the overall allotment quantity.

(c) A sugar beet processor allocated a share of the beet sugar allotment may use only beet sugar to fill such allocation. A sugarcane processor allocated a share of the cane sugar allotment may use only cane sugar to fill such allocation.

§ 1435.306 State cane sugar allotments.

(a) Hawaii and Puerto Rico will be allotted a total of 325,000 short tons, raw value, of the cane sugar allotment.

(b) A new entrant cane State will receive an allotment to accommodate a new processor's allocation under 1435.308(f).

(c) Subject to paragraphs (a) and (b) of this section, the remaining cane States will be allotted, in aggregate, the remaining cane sugar allotment.

(d) The individual cane State allotments, other than a new entrant cane State, will be based on:

(1) Past marketings of cane sugar,

(2) Past processing of cane sugar, and

(3) The ability to market the sugar covered under the allotment assigned to the State.

(e) Past marketings and past processings will each be weighted by 0.25 and the ability to market will be weighted by 0.50 in determining the States' respective cane sugar allotments. The weights may be adjusted, as CCC deems appropriate, for the crop year.

(f) Except when deficits are reassigned as provided in § 1435.309, a processor may fill an allocation of a cane sugar allotment only with sugar processed from sugarcane grown in the State for which the allotment was established.

§ 1435.307 Allocation of marketing allotments to processors.

(a) Each sugar beet processor's allocation of the beet allotment will be calculated as the beet processor's share times the beet sector allotment:

(1) A beet processor's share is calculated as the beet processor's adjusted weighted average sugar production divided by the sum of all beet processors' adjusted weighted average sugar production.

(2) A beet processor's weighted average sugar production equals 0.25 times its 1998-crop sugar production plus 0.35 times its 1999-crop sugar production plus 0.40 times its 2000-crop sugar production, with the 2000 sugar PIK payments added to its 2000-crop sugar production.

(3) A beet processor's weighted average sugar production shall be adjusted by the following, as CCC determines:

(i) Increased 1.25 percent of the sum of all beet processors' weighted average sugar production for opening a sugar factory during the 1996 through 2000 crop years;

(ii) Decreased 1.25 percent of the sum of all beet processors' weighted average sugar production for closing a sugar factory during the 1998 through 2000 crops years;

(iii) Increased 0.25 percent of the sum of all beet processors' weighted average sugar production for opening a molasses desugarization facility during the 1998 through 2000 crop years; and

(iv) Increased 1.25 percent of the sum of all beet processors' weighted average sugar production for suffering a substantial quality loss on stored beets, as CCC determines, during the 1998 through 2000 crop years.

(b) Each sugarcane processors' allocation from a State cane sugar allotment will be calculated as the cane processor's share times the State cane sector allotment.

(1) Each cane processor's share, other than a new entrant, will be calculated as the processor's production base divided by the sum of the State's processor production bases.

(2) A processor's production base, other than a new entrants, is the sum of 0.50 times its ability to market plus 0.25 times its past processings plus 0.25 times its past marketings. These weights may be adjusted as CCC deems appropriate for the crop year.

(3) CCC will calculate an allocation for the Talisman processing facility, based on paragraph (b)(2) of this section and distribute the allocation among Florida processors according to the agreements between cane processors and the Secretary of the Interior dated March 25, and March 26, 1999.

(c) An informal hearing will be held in August of each year, if requested by affected sugarcane processors and growers by July 15th, to afford all interested persons the opportunity to comment on the next crop year's marketing allotments and allocations. After consideration of comments obtained at the hearing, a final determination on cane State allotments and processor allocations will be announced.

(d) During any crop year in which marketing allotments are in effect and allocated to processors, the quantity of sugar and sugar products that a processor markets shall not exceed the quantity of the processor's allocation.

(e) Paragraph (d) of this section shall not apply to:

(1) Any sugar marketings to facilitate the export of sugar or sugar-containing products,

(2) Any sugar marketings for nonhuman consumption, and

(3) Any processor marketings of sugar to another processor made to enable the purchasing processor to fulfill its allocation if such sales:

(i) Are made before May 1, and

(ii) Reported to CCC within 5 days of the date of sale.

(f) CCC may charge liquidated damages as specified in a surplus allocation survey and agreement on such sales made after May 1 if the purchasing processor had surplus allocation after May 1 because the purchasing processor provided incomplete or erroneous information to CCC.

§ 1435.308 Transfer of allocation, new entrants

(a) If a sugar beet or sugarcane processing facility is closed and the growers that delivered their crops to the closed facility elect to deliver their crops to another processor, the growers may petition the Executive Vice President, CCC, to transfer the share of allocation commensurate with the growers' production history from the processor that closed the facility to their new processor. CCC may grant the request to transfer the allocation upon:

(1) Written approval of the processing company that will accept the additional deliveries, and

(2) Evidence satisfactory to CCC that the new processor has the capacity to accommodate the production of petitioning growers.

(3) Subject to paragraph (a) of this section, CCC will eliminate the allocation of the processor who has been dissolved or liquidated in a bankruptcy proceeding and the allocation will be distributed to all other processors on a pro-rata basis.

(4) If the purchasing processor is not a new entrant, then the purchased plants must operate for the initial season and the following crop year for the purchasing processor to permanently obtain the allocation. CCC shall reassign the allocation on a pro rata basis if the purchased plants do not operate for the required 2 crop years.

(5) If the purchasing processor is a new entrant, then CCC shall immediately transfer allocation commensurate with the purchased factories' production history with no requirement on operating the facility for 2 crop years.

(b) Allocations, equal to the number of acres of proportionate shares being transferred times the State's per-acre yield goal, will be transferred between mills in proportionate share States, if the transfers are based on:

(1) Written consent of the crop-share owners, or their representative representatives,

(2) Written consent of the processing company holding the allocation for the subject proportionate shares,

(3) Written consent of the processing company that will accept the additional sugarcane deliveries, and

(4) Evidence, satisfactory to CCC, that the additional sugarcane deliveries will not exceed the processing capacity of the receiving company.

(c) New entrants, not acquiring existing facilities, may apply to the Executive Vice President, CCC, for an allocation.

(1) Applicants must demonstrate their ability to process, produce, and market sugar for the applicable crop year.

(2) CCC will consider adverse effects of the allocation upon existing processors and producers.

(3) New entrant cane processors are limited to 50,000 short tons, raw value, the first crop year.

(4) New entrant cane processors will be provided, as determined by CCC,

(i) A share of their State's cane allotment if the processor is located in Hawaii, Puerto Rico, Florida, Louisiana, or Texas, or

(ii) A share of the overall cane allotment if the processor is located in any state not listed in paragraph (f)(4)(i) of this section.

(5) If a new entrant acquires and reopens a factory that previously produced beet sugar from sugar beets and sugar beet molasses, but the factory last operated during the 1997 crop year, CCC will:

(i) Assign an allocation to the new entrant not less than the greater of 1.67 percent of the adjusted weighted average quantities of beet sugar produced by all processors during the 1998 through 2000 crop years, as determined under § 1435.307, or 1,500,000 hundredweight.

(ii) Reduce all other beet processor allocations on a pro rata basis.

§ 1435.309 Reassignment of deficits.

(a) CCC will determine, by May 1, whether sugar beet or sugarcane processors will be able to market their respective allocations.

(b) Sugarbeet and sugarcane processors will report to CCC, by April 15, current inventories, estimated production, expected marketings, and any other pertinent factors CCC deems appropriate to determine a processor's ability to market its allocation.

(c) If CCC determines a sugarcane processor will be unable to market its full allocation for the crop year in which an allotment is in effect, the deficit will:

(1) First, be reassigned proportionately to allocations of other sugarcane processors within that State, depending on the capacity of each other processor to fill the portion of the deficit to be reassigned to it, and accounting for interests of associated producers;

(2) If the deficit cannot be eliminated after reassignment within the same State, be reassigned to the other cane States based on the ability of processors in such States to market the deficit to be reassigned to such States, with the reassigned quantity to each State being allocated among its processors in proportion to initial processor allocations;

(3) If the deficit cannot be eliminated by paragraphs (c)(1) and (c)(2) of this section, be reassigned to CCC. CCC shall sell such quantity from inventory unless CCC determines such sales would have a significant effect on the sugar price.

(4) If any portion of the deficit remains after paragraphs (c)(1), (c)(2), and (c)(3) of this section have been implemented, be reassigned to imports.

(d) If CCC determines that a sugar beet processor is unable to market its full allocation for the crop year in which an allotment is in effect, the deficit will:

(1) First, be reassigned proportionately to allocations of other sugar beet processors, depending on the capacity of other processors to fill the portion of the deficit to be reassigned to them, accounting for the interests of associated producers.

(2) If the deficit cannot be eliminated by paragraph (d)(1) of this section, be reassigned to CCC. CCC shall sell such quantity from inventory unless CCC determines such sales would have a significant effect on the sugar price.

(3) If any portion of the deficit remains after paragraphs (d)(1) and (d)(2) of this section have been implemented, be reassigned to imports.

(e) The crop year allocation of each sugar beet or sugarcane processor who receives a reassignment will be increased accordingly for that year.

§ 1435.310 Sharing processors' allocations with producers.

(a) Every sugar beet and sugarcane processor must provide CCC a certification that:

(1) The processor intends to share its allocation among its producers fairly and equitably, and in a manner adequately reflecting each producer's production history, and

(2) The processor has, in the previous allotment year, shared its allocation among producers fairly and equitably, reflecting each producer's production history. If a processor is unable to provide such certification, CCC may reduce or eliminate its marketing allocation.

(b) Any producer or processor may request arbitration of a dispute regarding the sharing of the processor's allocation among the producers. Arbitration will be available on behalf of CCC at the State FSA office for the State in which the processor is located. Subsequent review of the arbitration decision is available at the discretion of the Executive Vice President, CCC. Any arbitration is subject to appeal to the Office of the Administrative Law Judge, USDA.

§ 1435.311 Proportionate shares for sugarcane producers.

(a) Proportionate shares and the provisions of this section and §§ 1435.312 through 1435.316 apply only to Louisiana sugarcane farms.

(b) CCC will determine whether Louisiana sugar production, in the absence of proportionate shares, will exceed the quantity needed to enable processors to fill the State cane sugar allotment and provide a normal carryover inventory. If the determination is made that the quantity of sugar produced in Louisiana, plus a normal carryover inventory, will exceed the State's allotment, CCC will establish for each sugarcane producing farm a proportionate share that limits the sugarcane acreage that may be harvested on the farm for sugar or seed.

(c) For purposes of determining proportionate shares CCC will:

(1) Establish the State's per-acre yield goal at a level not less than the average per-acre yield in the State for the 2 highest years from among the 1999 through 2001 crop years;

(2) Adjust the per-acre yield goal by the State average recovery rate;

(3) Convert the State cane sugar allotment into a State acreage allotment by dividing the State allotment by the adjusted per-acre yield goal;

(4) Establish a uniform reduction percentage for the crop by dividing the State acreage allotment by the sum of all

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adjusted acreage bases in the State as determined under § 1435.312; and

(5) Apply the uniform reduction percentage to the acreage base established for each sugarcane producing farm in the State to determine the farm's proportionate share of sugarcane acreage that may be harvested for sugar or seed.

§ 1435.312 Establishment of acreage bases under proportionate shares.

(a) CCC will establish a sugarcane crop acreage base for each farm subject to proportionate shares as the simple average of the acreage planted and considered planted for harvest for sugar or seed on the farm in the 2 highest of the 1999 through 2001 crop years. Acreage considered planted shall be determined under § 1435.315.

(b) In establishing crop acreage bases, CCC will:

(1) Not consider acreage prevented from planting, and

(2) Consider acreage planted to sugarcane that fails.

(c) In establishing crop acreage bases, CCC will allow producers who have not previously reported their sugarcane acreage to do so by a date CCC determines and announces. Late-filed acreage reports will be accepted as the Deputy Administrator determines appropriate.

(d) The farm's crop acreage base shall be used to determine the farm's proportionate share.

(e) The regulations at part 718 of this title shall apply to this subpart, except reconstitution of farms with a sugar crop acreage base shall not be allowed across State lines.

§ 1435.313 Permanent transfer of acreage base histories under proportionate shares.

(a) A sugarcane producer on a farm may transfer all or a portion of the producer's acreage base history of land owned, operated, or controlled to any other farm in the State that the producer owns, operates, or controls under the Deputy Administrator-issued instructions. The transfer will reduce permanently the transferring farm's sugarcane acreage base history and increase the receiving farm's crop acreage base.

(b) All farm owners must agree in writing to the transfer.

(c) Producers may transfer sugarcane acreage base histories under this section by the date the State FSA committee establishes annually.

§ 1435.314 Temporary transfer of proportionate share due to disasters.

(a) If, for reasons beyond the control of a producer on a farm, such producer is unable to harvest sugarcane acreage relative to all or a portion of the proportionate share established for the farm, the Secretary may preserve, on producer application and written consent of all owners of the farm, for a period of not more than 5 consecutive years, the acreage base history of the farm to the extent of the proportionate share involved.

(b) Such proportionate share may be transferred, with the written consent of all owners of the farm, for 1 crop year to other farm owners or operators subject to the following conditions:

(1) The acreage base history of the transferring farm will be preserved for a period from 1 to 5 years; and

(2) Acreage base history will not be increased on the receiving farm.

(c) Producers who transfer a proportionate share under this section will be required to:

(1) Initiate the transfer in the county FSA office where the proportionate shares are established; and

(2) Obtain approval from the transferring county FSA committee.

(d) All transfers made under this section must be completed by the date the State FSA committee establishes.

§ 1435.315 Adjustments to proportionate shares.

Whenever CCC determines that, because of a natural disaster or other condition beyond the control of producers adversely affecting a sugarcane crop, the amount of sugarcane produced by producers subject to proportionate shares will not be sufficient to enable state processors to produce sufficient sugar to meet the State's cane sugar allotment and provide a normal carryover of sugar, CCC may uniformly allow producers to harvest sugarcane in excess of their proportionate shares, or suspend proportionate shares entirely.

§ 1435.316 Acreage reports for purposes of proportionate shares.

(a) A report of planted and failed acreage shall be required on farms that produce sugarcane for sugar or seed. Such report shall also specify the total acreage intended for harvest for sugar and seed.

(b) The reports required under paragraph (a) of this section shall be on forms prescribed by CCC and shall be filed annually with the county FSA committee by the applicable final reporting date CCC establishes. The farm operator or farm owner shall file such reports.

(c) Acreage reports will be used to determine compliance with proportionate shares and acreage bases for future proportionate shares.

(d) An acreage report may be accepted after the established date for reporting if physical evidence is still available for inspection that may be used to make a determination relative to:

(1) Existence of the crop;

(2) Use made of the crop;

(3) Lack of crop; or

(4) Disaster condition affecting the crop.

(e) The farm operator shall pay the cost of a farm visit by an authorized FSA employee unless the county FSA committee has determined that failure to report in a timely manner was beyond the producer's control.

(f) The farm operator may revise an acreage report. Revised reports shall be filed in accordance with CCC instructions and shall be accepted at any time if:

(1) Evidence exists for inspection and determination of:

(i) Existence of the crop;

(ii) Use made of the crop;

(iii) Lack of crop; or

(iv) Disaster condition affecting the crops.

(2) The farm has not already been inspected and the acreage already determined or harvesting of sugarcane already begun.

(g) Provisions of part 718 of this chapter will apply for field inspections, tolerance, and variance. Assessments for false acreage reporting will be applied under § 1435.318.

§ 1435.317 Revisions of allocations and proportionate shares.

The Executive Vice President, CCC, may modify any processor's allocation or any producer's proportionate share on the same basis as the initial allocation or proportionate share was required to be established.

§ 1435.318 Penalties and assessments.

(a) Under § 359b(c)(3) of the Agricultural Adjustment Act of 1938, as amended, any sugar beet or sugarcane processor who knowingly markets sugar or sugar products in excess of the processor's allocation in violation of § 1435.307 shall be liable to CCC for a civil penalty in an amount equal to 3 times the U.S. market value, at the time the violation was committed, of that quantity of sugar involved in the violation.

(b) Under § 359f(c)(5) of the Agricultural Adjustment Act of 1938, as amended, any producer of sugarcane whose farm has a proportionate share, and who knowingly harvests or allows to be harvested an acreage of sugarcane for sugar or seed in excess of the farm's proportionate share shall pay to CCC a civil penalty in an amount equal to 1.5 times the U.S. market value of the quantity of sugar that is marketed by the processor of such sugarcane in excess of the allocation of such processor, for the year in which the violation was committed. However, civil penalties will not be assessed when the producer harvests acreage for sugar or seed in excess of the farm's proportionate share, if the excess sugarcane harvested is:

(1) Processed by a sugarcane processor that does not exceed its marketing allocation; or

(2) Diverted to a use other than sugar or seed if:

(i) The sugarcane producer requests and pays for a CCC field inspection, and

(ii) CCC verifies the disposition of the excess harvest is not for sugar or seed.

(c) Any penalty assessed under paragraph (b) of this section shall be prorated among the producers of all sugarcane acquired by the processor from excess acres.

(d) Any person filing a false acreage report that exceeds tolerance will be subject to an assessment not to exceed $10,000. Whenever the failure of a producer to comply fully with the terms and conditions applicable to proportionate shares would result in an assessment, the Deputy Administrator may authorize the waiver or reduction of the assessment in such amounts as determined to be equitable about the seriousness of the failure, the producer's good-faith effort to comply fully with such terms and conditions, and the producer's substantial performance.

(e) Any person who knowingly violates any provision of this subpart other than paragraph (d) of this section is subject to the assessment of a civil penalty by CCC of not more than $5,000 for each violation.

§ 1435.319 Appeals and arbitration.

(a) A person adversely affected by any determination made under this subpart may request reconsideration of such determination by filing a written request with the Executive Vice President, CCC, detailing the basis of the request within 10 days of such determination. Such a request must be submitted at: Executive Vice President, CCC, Stop 0501, 1400 Independence Ave., SW, Washington, DC 20250–0501.

(b) For issues arising under §§ 359d, 359f(b) and (c), and 359(i) of the Agricultural Adjustment Act of 1938, as amended, after completion of the process provided in paragraph (a) of this section, a person adversely affected by a reconsidered determination may appeal such determination by filing a written notice of appeal within 20 days of the issuance of the reconsidered determination with the Hearing Clerk, USDA. The notice of appeal must be submitted at: Hearing Clerk, USDA, Room 1081, South Building, 1400 Independence Ave., SW., Washington, DC, 20250–9200. Any hearing conducted under this paragraph shall be by the Judicial Officer.

(c) For issues arising under §§ 359a–359c, 359e, and 359g of the Agricultural Adjustment Act of 1938, as amended, after completion of the process provided in paragraph (a) of this section, a person adversely affected by the reconsidered determination may appeal such determination by filing a written notice of appeal with the Director, National Appeals Division, USDA, as provided in part 11 of this title.

For issues arising under § 359f(a) of the Agricultural Adjustment Act of 1938, as amended, such disputes shall be resolved through arbitration under the direction of the Executive Vice President, CCC. A request for arbitration must be filed in writing at the address specified in paragraph (a) of this section.

Subpart E—Processor Sugar Payment-In-Kind (PIK) Program

§ 1435.400 General statement.

This subpart shall be applicable to sugar beet and sugarcane processors throughout the United States who, acting in conjunction with the producers of the sugarcane or sugar beets processed by the processors, reduce sugar production in return for a payment of sugar from CCC when CCC determines that such action will reduce forfeitures of sugar pledged as collateral for a CCC loan.

§ 1435.401 Bid submission procedures.

(a) After announcement by CCC that a program authorized by this subpart is in effect, processors who desire to participate in the program must submit a bid to CCC, on a form prescribed by CCC, that specifies:

(1) For a program involving acreage diversion, the amount of acreage to be reduced by producers who have contracts for delivery of sugar beets or sugar cane to the processor and contains the information CCC determines necessary to conduct the program and includes but is not limited to:

(i) The number of acres that the processor, acting in conjunction with the producers, will divert;

(ii) The previous consecutive 3-year simple average sugar beet or sugarcane yield on that acreage while under contract (years with no production contracted with a producer will not be considered (for first-time producers, however, the previous consecutive 3-year simple average sugar beet or sugarcane yield for all the producers under contract who delivered to the applicable factory will be used);

(iii) The previous 3-year simple average sugar content of the producer's beets or sugarcane (for first-time producers, the previous 3-year simple average sugar content for all beets or cane delivered to that factory will be used);

(iv) The processor's previous 3-year simple average recovery rate (for processors that have not been fully operational during the last 3 years, the simple average for those years that they were fully operational);

(v) The value of CCC sugar to be received as payment; and

(vi) Other information CCC deems necessary for program administration; or

(2) The sugar production capacity to be removed from production by the processor.

(b) The following acreage is ineligible for enrollment in the PIK program:

(1) If planted, acreage not currently under contract for delivery of sugar beets to a sugar beet processor or sugarcane to a sugarcane processor for sugar production.

(2) If planted, acreage that is not harvestable,

(3) Acreage devoted to roads or other non-producing areas, or

(4) If planted, acreage on which a crop insurance indemnity or replant payment was received for the current crop or for which a claim has been, or will be, filed to receive a crop insurance indemnity or replant payment for the current crop, except for replant payments for acreage actually replanted before the end of the normal planting period.

(c) If planted, the diverted acres cannot be grazed until after the sugar beets or sugarcane are destroyed by disking, plowing, or other means of mechanical destruction. In addition, the sugar beets or sugarcane on the diverted acres may not be used for any commercial purpose.

(d) The acreage offered must meet the following requirements:

(1) If less than or equal to 15 acres, then the acreage bid must consist of one of the following:

(i) One contiguous area of land,

(ii) One or more entire permanent fields, or

(iii) One or more entire permanent fields and one contiguous area of land to complete the balance;

(2) If more than 15 acres, then the acreage bid must consist of one of the following:

(i) One or more areas of land of at least 15 contiguous acres each with one remaining area of land of less than 15

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contiguous acres to complete the balance,

(ii) One or more entire permanent fields, or

(iii) One or more entire permanent fields and one area of contiguous land to complete the balance.

(3) Contiguous areas of land must have a minimum width of 3 chains (198 feet).

(e) For a program involving desugaring capacity, or other measures of sugar production, not involving acreage diversion, the bid must contain the information CCC determine necessary to conduct the program.

§ 1435.402 Bid selection procedures.

(a) For bids in which the processor offers to remove acreage of sugar beets or sugarcane from production, CCC will rank bids on the basis of the bid amount as a percentage of the expected sugar produced from the retired acreage. Bids with the lowest of such percentages will be selected first. In the case of identical bids, selection may be based on random selection or pro rata shares, as CCC deems appropriate.

(b) CCC will reject bids for which the bid amounts exceed the expected sugar produced from the retired acreage.

(c) For bids in which the processor offers to remove sugar production capacity from production, CCC will rank the bids on the basis of the capacity to be removed from production.

(d) All acceptable bids specified in paragraphs (a) and (c) of this section will be further reviewed by CCC and ranked in order of the greatest reduction in sugar program that can be achieved at the lowest cost to CCC.

§ 1435.403 In-kind payments.

(a) CCC will, through such methods as CCC deems appropriate, make payments in the form of sugar held in CCC inventory.

(b) To the maximum extent practicable, CCC will use its inventory in making an in-kind payment based on the following priority:

(1) CCC-owned sugar held in storage by the processor;

(2) CCC-owned sugar held in storage by any other processor in the same region as the producer;

(3) CCC-owned sugar held in storage by any other processor that is not in the same region as the producer; and

(4) CCC-owned sugar held in storage anywhere in the United States, if CCC determines that such sugar is eligible to be used for in-kind payments.

(c) The value of CCC-owned inventory is dependent upon the storage location of the sugar and the type of sugar (raw or refined). CCC will announce the value of its inventory before bid solicitation. Accordingly, the quantity of sugar CCC will provide in terms of an in-kind payment to a processor will be determined by dividing:

(1) The total of the processor's bid amount that CCC accepts, by

(2) The value of CCC's inventory at the storage location at which title will transfer from CCC to the processor.

§ 1435.404 Timing of distribution of CCC-owned sugar.

Distribution of sugar from CCC inventory will occur in such manner as CCC determines appropriate.

§ 1435.405 Miscellaneous provisions.

(a) CCC may permit processors to bid, in lieu of acreage, desugarizing capacity or other measures of sugar production as CCC determines.

(b) The contract shall provide for the payment of liquidated damages if a processor fails to comply with the obligations specified in the CCC production diversion contract.

(c) CCC will transfer title of the sugar to the processor by notifying the processor or assignee that the sugar is available. CCC will stop storage payments on this sugar on the date of transfer.

PART 1436—FARM STORAGE FACILITY LOAN PROGRAM

2. The authority citation for part 1436 is revised to read as follows:

Authority: 7 U.S.C. 7971;15 U.S.C. 714 *et seq.*

3. Section 1436.3 is amended by revising the definitions of "facility loan commodity" and "storage need requirement" to read as follows:

§ 1436.3 Definitions.

* * * * *

Facility loan commodity means wheat, rice, raw or refined sugar, soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, other oilseeds as determined and announced by CCC, dry peas, lentils, small chickpeas, harvested as whole grain and including peanuts, except that corn, grain sorghum, oats, wheat, or barley shall be included whether harvested as whole grain or other than whole grain.

* * * * *

Storage need requirement means:

(1) The average of the most recent 3 years available, the applicant's share of the acres farmed for each facility loan commodity requiring storage at the proposed facility multiplied by a yield determined reasonable by the county committee, multiplied by two, less existing storage capacity. If acreage data is not available, including prevented planted acres, or the data is not applicable to the storage need, a reasonable acreage projection may be made for newly acquired farms, changes in cropping operations, or for facility loan commodity crops being grown for the first time.

(2) For sugar-related loans, a projection from the processor of the processing volume, available storage capacity, volume not to be marketed due to marketing allotments, and other factors affecting the processor's storage need, as appropriate. CCC shall determine if the storage need is reasonable using data such as past processing volume and marketing allotments.

* * * * *

4. Section 1436.4 is amended by removing the term "Producers" where it appears in paragraph (b) and adding in its place "Borrowers", and by adding a new paragraph (c) to read as follows:

§ 1436.4 Availability of loans.

* * * * *

(c) For sugar-related loans, a loan application shall be submitted to the county FSA office that maintains the applicant's records. If no such records exist, loan applications shall be submitted to the county office serving the headquarters' location of the sugar processor.

5. Section 1436.5 is amended by revising the introductory text of paragraph (a) and adding a paragraph (b) to read as follows:

§ 1436.5 Eligible borrowers.

(a) "Borrower" means a person who, as landowner, landlord, operator, producer, tenant, leaseholder, sharecropper, or processor of domestically produced sugarcane or sugar beets:

* * * * *

(b) For sugar related facility loans:

(1) Paragraphs (a)(4), (6), and (7) of this section do not apply.

(2) Sugar processors must be approved by CCC to store sugar owned by CCC or pledged as security to CCC for non-recourse loans.

6. Section 1436.6 is amended by adding a new paragraph (f) to read as follows:

§ 1436.6 Eligible storage or handling equipment.

* * * * *

(f)(1) Paragraphs (a) and (b) of this section shall not apply to sugar-related loans made under this part.

(2) For sugar-related loans, the loan amount may include costs associated with the purchase, installation, building, improving, remodeling or renovating an eligible storage or handling facility. Eligible facilities include the following:

(i) New conventional-type bins or silos designed for and used to store raw or refined sugar, having a useful life of at least 15 years;

(ii) New flat-type storage structures including a permanent concrete floor, designed for and used to store raw or refined sugar, having a useful life of at least 15 years;

(iii) New storage structures designed for and used to store in-process sugar, having a useful life of at least 15 years.

(iv) Permanently affixed sugar handling equipment determined by the CCC to be needed and essential to the proper functioning of the sugar storage system;

(v) Safety equipment CCC requires such as lighting, and inside and outside ladders;

(vi) Equipment to improve, maintain, or monitor the quality of stored sugar, such as moisture testers, and heat detectors;

(vii) Electrical equipment, including labor and materials for installation, such as lighting, motors, and wiring integral to the proper operation of the sugar storage and handling equipment; and

(viii) Concrete foundations, aprons, pits, and pads (including site preparation, labor and materials) essential to the proper operation of the sugar storage and handling equipment.

(3) For sugar-related loans, storage and handling equipment that is not eligible for loans, includes:

(i) Portable handling equipment and portable augers;

(ii) Structures of a temporary natures that require the weight or bulk of the stored commodity to maintain its shape (such as fences or bags);

(iii) Used or pre-owned structures or handling equipment;

(iv) Structures that are not suitable for storing raw or refined sugar;

(v) Weigh scales.

(4) For sugar-related loans, loans may be approved for financing additions to or modifications of an existing storage facility with an expected useful life of at least 15 years if CCC determines there is a need for the capacity of the structure.

7. Section 1436.7 is revised to read as follows:

§ 1436.7 Loan term.

The maximum term of the loan shall be 7 years from the date a promissory note and security agreement are executed, except in the case of a sugar-related loan in which case CCC, at its discretion, may authorize a loan of 15 years. The minimum term of a sugar-related loan is 7 years. No extensions of the loan term will be granted. The loan balance and all related costs are due 7 years from the date of the execution of the promissory note and security agreement, except in the cast of a sugar-related loan, in which case such balance and costs are due 15 years from the date of the promissory note and security agreement are executed.

8. Amend § 1436.8 by adding paragraphs (h) and (i) to read as follows:

§ 1436.8 Security for loan.

* * * * *

(h) For sugar-related facility loans, in addition to the above requirements, additional security, including real estate, chattels, crops in storage, and other assets owned by the applicant, is required if necessary to adequately secure the loan. A sugar-related loan will be considered to be adequately secured when the CCC determined value of security for the loan is at least equal to 125 percent of the loan amount.

(i) For sugar-related facility loans, paragraph (g) is not applicable. The borrower shall pay all loan making fees and closing costs. This includes, but is not limited to, attorney fees for loan closings, environmental assessments and studies, chattel and real estate appraisals, title opinions, title insurance, title searches, filing and recording all real estate liens, fixture filings, subordinations, credit reports, collateral lien searches, and filing and recording financing statements for the collateral.

9. Amend § 1436.9 by revising paragraph (h) and adding paragraphs (j) and (k) to read as follows:

§ 1436.9 Loan amount and loan application approvals.

* * * * *

(h) Farm storage facility loan approvals will expire in 4 months after the date of approval unless extended in writing for an additional 4 months by the FSA State Committee. Sugar storage facility loan approvals will expire in 8 months after the date of approval unless extended in writing for an additional 4 months by the FSA State Committee.

(j) For sugar-related facility loans, paragraphs (c) and (d) and (g) do not apply.

(k) For sugar-related facility loans, the Agency approval officials may only approve loans, subject to available funds.

10. Amend § 1436.12 by adding paragraph (d) to read as follows:

§ 1436.12 Interest and fees.

* * * * *

(d) For sugar-related facility loans, paragraph (c) does not apply.

11. Amend § 1436.15 by adding a paragraph (f) to read as follows:

§ 1436.15 Maintenance, liability, insurance and inspections.

* * * * *

(f) For sugar-related loans, in addition to the requirements of paragraph (d) of this section, sugar processors shall also insure the contents of storage structures used as collateral for a sugar-related facility loan against all perils.

13. Section 1436.19 is added to read as follows:

§ 1436.37 Equal Opportunity and Non-discrimination requirements.

(a) No recipient of a Storage Facility loan shall directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of race, religion, color, national origin, gender, or other prohibited basis. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters.

(b) With respect to any aspect of a credit transaction, CCC will not discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status, or age, provided the applicant can execute a legal contract. Nor will CCC discriminate on the basis of whether all or a part of the applicant's income derives from any public assistance program, or whether the applicant in good faith, exercises any rights under the Consumer Protection Act.

Signed in Washington, DC, on August 7, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–21363 Filed 8–22–02; 10:34 am]

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LIST OF PUBLIC LAWS

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H.R. 3009/P.L. 107–210
Trade Act of 2002 (Aug. 6, 2002; 116 Stat. 933)
Last List August 9, 2002

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-048-00001-1)	9.00	Jan. 1, 2002
3 (1997 Compilation and Parts 100 and 101)	(869-048-00002-0)	59.00	[1] Jan. 1, 2002
4	(869-048-00003-8)	9.00	[4] Jan. 1, 2002
5 Parts:			
1-699	(869-048-00004-6)	57.00	Jan. 1, 2002
700-1199	(869-048-00005-4)	47.00	Jan. 1, 2002
1200-End, 6 (6 Reserved)	(869-048-00006-2)	58.00	Jan. 1, 2002
7 Parts:			
1-26	(869-048-00001-1)	41.00	Jan. 1, 2002
27-52	(869-048-00008-9)	47.00	Jan. 1, 2002
53-209	(869-048-00009-7)	36.00	Jan. 1, 2002
210-299	(869-048-00010-1)	59.00	Jan. 1, 2002
300-399	(869-048-00011-9)	42.00	Jan. 1, 2002
400-699	(869-048-00012-7)	57.00	Jan. 1, 2002
700-899	(869-048-00013-5)	54.00	Jan. 1, 2002
900-999	(869-048-00014-3)	58.00	Jan. 1, 2002
1000-1199	(869-048-00015-1)	25.00	Jan. 1, 2002
1200-1599	(869-048-00016-0)	58.00	Jan. 1, 2002
1600-1899	(869-048-00017-8)	61.00	Jan. 1, 2002
1900-1939	(869-048-00018-6)	29.00	Jan. 1, 2002
1940-1949	(869-048-00019-4)	53.00	Jan. 1, 2002
1950-1999	(869-048-00020-8)	47.00	Jan. 1, 2002
2000-End	(869-048-00021-6)	46.00	Jan. 1, 2002
8	(869-048-00022-4)	58.00	Jan. 1, 2002
9 Parts:			
1-199	(869-048-00023-2)	58.00	Jan. 1, 2002
200-End	(869-048-00024-1)	56.00	Jan. 1, 2002
10 Parts:			
1-50	(869-048-00025-4)	58.00	Jan. 1, 2002
51-199	(869-048-00026-7)	56.00	Jan. 1, 2002
200-499	(869-048-00027-5)	44.00	Jan. 1, 2002
500-End	(869-048-00028-3)	58.00	Jan. 1, 2002
11	(869-048-00029-1)	34.00	Jan. 1, 2002
12 Parts:			
1-199	(869-048-00030-5)	30.00	Jan. 1, 2002
200-219	(869-048-00031-3)	36.00	Jan. 1, 2002
220-299	(869-048-00032-1)	58.00	Jan. 1, 2002
300-499	(869-048-00033-0)	45.00	Jan. 1, 2002
500-599	(869-048-00034-8)	42.00	Jan. 1, 2002
600-End	(869-048-00035-6)	61.00	Jan. 1, 2002
13	(869-048-00036-4)	47.00	Jan. 1, 2002
14 Parts:			
1-59	(869-048-00037-2)	60.00	Jan. 1, 2002
60-139	(869-048-00038-1)	58.00	Jan. 1, 2002
140-199	(869-048-00039-9)	29.00	Jan. 1, 2002
200-1199	(869-048-00040-2)	47.00	Jan. 1, 2002
1200-End	(869-048-00041-1)	41.00	Jan. 1, 2002
15 Parts:			
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300-799	(869-048-00043-7)	58.00	Jan. 1, 2002
800-End	(869-048-00044-5)	40.00	Jan. 1, 2002
16 Parts:			
0-999	(869-048-00045-3)	47.00	Jan. 1, 2002
1000-End	(869-048-00046-1)	57.00	Jan. 1, 2002
17 Parts:			
1-199	(869-048-00048-8)	47.00	Apr. 1, 2002
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240-End	(869-048-00050-0)	59.00	Apr. 1, 2002
18 Parts:			
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400-End	(869-048-00052-6)	24.00	Apr. 1, 2002
19 Parts:			
1-140	(869-048-00053-4)	57.00	Apr. 1, 2002
141-199	(869-048-00054-2)	56.00	Apr. 1, 2002
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20 Parts:			
1-399	(869-048-00056-9)	47.00	Apr. 1, 2002
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500-End	(869-048-00058-5)	60.00	Apr. 1, 2002
21 Parts:			
1-99	(869-048-00059-3)	39.00	Apr. 1, 2002
100-169	(869-048-00060-7)	46.00	Apr. 1, 2002
170-199	(869-048-00061-5)	47.00	Apr. 1, 2002
200-299	(869-048-00062-3)	16.00	Apr. 1, 2002
300-499	(869-048-00063-1)	29.00	Apr. 1, 2002
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600-799	(869-048-00065-8)	16.00	Apr. 1, 2002
800-1299	(869-048-00066-6)	56.00	Apr. 1, 2002
1300-End	(869-048-00067-4)	22.00	Apr. 1, 2002
22 Parts:			
1-299	(869-048-00068-2)	59.00	Apr. 1, 2002
300-End	(869-048-00069-1)	43.00	Apr. 1, 2002
23	(869-048-00070-4)	40.00	Apr. 1, 2002
24 Parts:			
0-199	(869-048-00071-2)	57.00	Apr. 1, 2002
200-499	(869-048-00072-1)	47.00	Apr. 1, 2002
500-699	(869-048-00073-9)	29.00	Apr. 1, 2002
700-1699	(869-048-00074-7)	58.00	Apr. 1, 2002
1700-End	(869-048-00075-5)	29.00	Apr. 1, 2002
25	(869-048-00076-3)	68.00	Apr. 1, 2002
26 Parts:			
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§§ 1.61-1.169	(869-048-00078-0)	58.00	Apr. 1, 2002
§§ 1.170-1.300	(869-048-00079-8)	55.00	Apr. 1, 2002
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§§ 1.1001-1.1400	(869-048-00087-9)	58.00	Apr. 1, 2002
§§ 1.1401-End	(869-048-00088-7)	61.00	Apr. 1, 2002
2-29	(869-048-00089-5)	57.00	Apr. 1, 2002
30-39	(869-048-00090-9)	39.00	Apr. 1, 2002
40-49	(869-048-00091-7)	26.00	Apr. 1, 2002
50-299	(869-048-00092-5)	38.00	Apr. 1, 2002
300-499	(869-048-00093-3)	57.00	Apr. 1, 2002
*500-599	(869-048-00094-1)	12.00	[5] Apr. 1, 2002
600-End	(869-048-00095-0)	16.00	Apr. 1, 2002
27 Parts:			
1-199	(869-048-00096-8)	61.00	Apr. 1, 2002

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200-End	(869-048-00097-6)	13.00	Apr. 1, 2002
28 Parts:			
0-42	(869-044-00098-9)	55.00	July 1, 2001
43-end	(869-044-00099-7)	50.00	July 1, 2001
29 Parts:			
0-99	(869-044-00100-4)	45.00	July 1, 2001
100-499	(869-044-00101-2)	14.00	[6]July 1, 2001
500-899	(869-044-00102-1)	47.00	[6]July 1, 2001
*900-1899	(869-048-00103-4)	35.00	July 1, 2002
1900-1910 (§§ 1900 to 1910.999)	(869-044-00104-7)	55.00	July 1, 2001
1910 (§§ 1910.1000 to end)	(869-044-00105-5)	42.00	July 1, 2001
1911-1925	(869-044-00106-3)	20.00	[6]July 1, 2001
1926	(869-044-00107-1)	45.00	July 1, 2001
1927-End	(869-044-00108-0)	55.00	July 1, 2001
30 Parts:			
1-199	(869-044-00109-8)	52.00	July 1, 2001
200-699	(869-044-00110-1)	45.00	July 1, 2001
700-End	(869-044-00111-7)	53.00	July 1, 2001
31 Parts:			
0-199	(869-044-00112-8)	32.00	July 1, 2001
200-End	(869-044-00113-6)	56.00	July 1, 2001
32 Parts:			
1-39, Vol. I		15.00	[2]July 1, 1984
1-39, Vol. II		19.00	[2]July 1, 1984
1-39, Vol. III		18.00	[2]July 1, 1984
1-190	(869-044-00114-4)	51.00	[6]July 1, 2001
191-399	(869-044-00115-2)	57.00	July 1, 2001
400-629	(869-044-00116-8)	35.00	[6]July 1, 2001
630-699	(869-044-00117-9)	34.00	July 1, 2001
700-799	(869-044-00118-7)	42.00	July 1, 2001
800-End	(869-044-00119-5)	44.00	July 1, 2001
33 Parts:			
1-124	(869-044-00120-9)	45.00	July 1, 2001
125-199	(869-044-00121-7)	55.00	July 1, 2001
200-End	(869-044-00122-5)	45.00	July 1, 2001
34 Parts:			
1-299	(869-044-00123-3)	43.00	July 1, 2001
300-399	(869-044-00124-1)	40.00	July 1, 2001
400-End	(869-044-00125-0)	56.00	July 1, 2001
35	(869-044-00126-8)	10.00	[6]July 1, 2001
36 Parts			
*1-199	(869-048-00127-1)	36.00	July 1, 2002
200-299	(869-044-00128-4)	33.00	July 1, 2001
300-End	(869-044-00129-2)	55.00	July 1, 2001
37	(869-044-00130-6)	45.00	July 1, 2001
38 Parts:			
0-17	(869-044-00131-4)	53.00	July 1, 2001
18-End	(869-044-00132-2)	55.00	July 1, 2001
39	(869-044-00133-1)	37.00	July 1, 2001
40 Parts:			
1-49	(869-044-00134-9)	54.00	July 1, 2001
50-51	(869-044-00135-7)	38.00	July 1, 2001
52 (52.01-52.1018)	(869-044-00136-5)	50.00	July 1, 2001
52 (52.1019-End)	(869-044-00137-3)	55.00	July 1, 2001
53-59	(869-044-00138-1)	28.00	July 1, 2001
60 (60.1-End)	(869-044-00139-0)	53.00	July 1, 2001
60 (Apps)	(869-044-00140-3)	51.00	July 1, 2001
61-62	(869-044-00141-1)	35.00	July 1, 2001
63 (63.1-63.599)	(869-044-00142-0)	53.00	July 1, 2001
63 (63.600-63.1199)	(869-044-00143-8)	44.00	July 1, 2001
63 (63.1200-End)	(869-044-00144-6)	56.00	July 1, 2001
64-71	(869-044-00145-4)	26.00	July 1, 2001
72-80	(869-044-00146-2)	55.00	July 1, 2001
81-85	(869-044-00147-1)	45.00	July 1, 2001
86 (86.1-86.599-99)	(869-044-00148-9)	52.00	July 1, 2001
86 (86.600-1-End)	(869-044-00149-7)	45.00	July 1, 2001
87-99	(869-044-00150-1)	54.00	July 1, 2001
100-135	(869-044-00151-9)	38.00	July 1, 2001
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150-189	(869-044-00153-5)	52.00	July 1, 2001
190-259	(869-044-00154-3)	34.00	July 1, 2001
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300-399	(869-044-00157-8)	41.00	July 1, 2001
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425-699	(869-044-00159-4)	55.00	July 1, 2001
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790-End	(869-044-00161-6)	44.00	July 1, 2001
41 Chapters:			
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1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
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19-100		13.00	[3]July 1, 1984
1-100	(869-044-00162-4)	22.00	July 1, 2001
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102-200	(869-044-00164-1)	33.00	July 1, 2001
201-End	(869-044-00165-9)	24.00	July 1, 2001
42 Parts:			
1-399	(869-044-00166-7)	51.00	Oct. 1, 2001
400-429	(869-044-00167-5)	59.00	Oct. 1, 2001
430-End	(869-044-00168-3)	58.00	Oct. 1, 2001
43 Parts:			
1-999	(869-044-00169-1)	45.00	Oct. 1, 2001
1000-end	(869-044-00170-5)	56.00	Oct. 1, 2001
44	(869-044-00171-3)	45.00	Oct. 1, 2001
45 Parts:			
1-199	(869-044-00172-1)	53.00	Oct. 1, 2001
200-499	(869-044-00173-0)	31.00	Oct. 1, 2001
500-1199	(869-044-00174-8)	45.00	Oct. 1, 2001
1200-End	(869-044-00175-6)	55.00	Oct. 1, 2001
46 Parts:			
1-40	(869-044-00176-4)	43.00	Oct. 1, 2001
41-69	(869-044-00177-2)	35.00	Oct. 1, 2001
70-89	(869-044-00178-1)	13.00	Oct. 1, 2001
90-139	(869-044-00179-9)	41.00	Oct. 1, 2001
140-155	(869-044-00180-2)	24.00	Oct. 1, 2001
156-165	(869-044-00181-1)	31.00	Oct. 1, 2001
166-199	(869-044-00182-9)	42.00	Oct. 1, 2001
200-499	(869-044-00183-7)	36.00	Oct. 1, 2001
500-End	(869-044-00184-5)	23.00	Oct. 1, 2001
47 Parts:			
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40-69	(869-044-00187-0)	36.00	Oct. 1, 2001
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80-End	(869-044-00189-6)	55.00	Oct. 1, 2001
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1 (Parts 1-51)	(869-044-00190-0)	60.00	Oct. 1, 2001
1 (Parts 52-99)	(869-044-00191-8)	45.00	Oct. 1, 2001
2 (Parts 201-299)	(869-044-00192-6)	53.00	Oct. 1, 2001
3-6	(869-044-00193-4)	31.00	Oct. 1, 2001
7-14	(869-044-00194-2)	51.00	Oct. 1, 2001
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29-End	(869-044-00196-9)	38.00	Oct. 1, 2001
49 Parts:			
1-99	(869-044-00197-7)	55.00	Oct. 1, 2001
100-185	(869-044-00198-5)	60.00	Oct. 1, 2001
186-199	(869-044-00199-3)	18.00	Oct. 1, 2001
200-399	(869-044-00200-1)	60.00	Oct. 1, 2001
400-999	(869-044-00201-9)	58.00	Oct. 1, 2001
1000-1199	(869-044-00202-7)	26.00	Oct. 1, 2001

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1200-End	(869-044-00203-5)	21.00	Oct. 1, 2001
50 Parts:			
1-199	(869-044-00204-3)	63.00	Oct. 1, 2001
200-599	(869-044-00205-1)	36.00	Oct. 1, 2001
600-End	(869-044-00206-0)	55.00	Oct. 1, 2001
CFR Index and Findings Aids	(869-044-00047-0)	59.00	Jan. 1, 2002
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 2220–02]

RIN 1115–AG75

Reduced Course Load for Certain F and M Nonimmigrant Students in Border Communities

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations governing F and M nonimmigrants. This rule will clarify that Mexican or Canadian nationals who reside outside the United States and regularly commute across a land border to study may do so on a part-time basis within the F or M nonimmigrant category. These changes are being made to facilitate and legitimize certain part-time study along border communities while ensuring that all applicable requirements and safeguards are met.

DATES: *Effective date:* This interim rule is effective August 27, 2002.

Comment date: Written comments must be submitted on or before October 28, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2220–02 on your correspondence. Comments may also be submitted electronically to the Service at *insregs@usdoj.gov*. When submitting comments electronically, you must include INS No. 2220–02 in the subject heading so that the comments can be electronically routed to the appropriate office for review. Comments may be inspected at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Maura Deadrick, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3040, Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION:

Who Are F and M Nonimmigrants?

The Immigration and Nationality Act (Act) provides for the admission of various classifications of nonimmigrant aliens who are foreign nationals having a residence in a foreign country which they have no intention of abandoning, and who are seeking temporary admission to the United States. The purpose of the nonimmigrant alien's intended stay in the United States determines his or her proper nonimmigrant classification.

F–1 nonimmigrant aliens, as defined in section 101(a)(15)(F) of the Act, are foreign students who have been admitted to the United States to pursue a full course of study in a college, university, seminary, conservatory, academic high school, private elementary school, other academic institution, or language training program in the United States that has been approved by the Service to enroll foreign students. For the purposes of this rule, the term "school" refers to all of these types of Service-approved institutions.

An F–2 nonimmigrant alien is a foreign national who has been admitted to the United States as the spouse or qualifying child (under the age of 21) of an F–1 nonimmigrant alien.

M–1 nonimmigrant aliens, as defined in section 101(a)(15)(M) of the Act, are foreign nationals who have been admitted to the United States to pursue a full course of study at a Service-approved vocational school or other recognized nonacademic institution (other than in language training programs) in the United States. The term "school" for the purposes of this interim rule also encompasses all institutions approved for attendance by M–1 students. An M–2 nonimmigrant alien is a foreign national who is the spouse or qualifying child (under the age of 21) of an M–1 nonimmigrant alien.

Why Is the Service Promulgating This Rule?

Recognizing the unique nature of border communities and the need to serve the educational interests of students living on both sides of the U.S./Canada and U.S./Mexico borders, this rule expands the circumstances under which a border commuter student who is a national of Canada or Mexico may be admitted as an F–1 or M–1 nonimmigrant alien to engage in a full course of study, albeit with a reduced course load.

Historically, the Service has not officially sanctioned such part-time study for border commuter students. First, the statutory definition of the B nonimmigrant visitor classification, in section 101(a)(15)(B) of the Act, precludes admission of an individual coming to the United States to study. Moreover, the Service has always interpreted the statutory definitions of the F and M classifications, relating to students pursuing a full course of study, to require enrollment on a full-time basis as defined in the regulations, which did not cover part-time border commuter students.

However, this regulatory scheme has aligned poorly with the realities of the border communities, effectively creating a "Catch-22" situation for bona fide part-time border commuter students. This has resulted in uneven application of this policy on the border. In fact, it has become commonplace for aliens residing in Canada or Mexico to enroll part-time in border institutions and enter the United States as visitors on a daily basis to pursue part-time study.

The response to the terrorist attacks of September 11, 2001, has resulted in increased scrutiny at ports-of-entry and in renewed focus on the integrity of our immigration system. There has been particular attention to the proper use of the B visitor classification. When the principal purpose for entering the United States is to attend school, the immigration laws intend that aliens be classified as nonimmigrant students, not as B visitors for business or pleasure.

Therefore, the purpose of this rule is to recognize the special relationship between the United States and its neighbors and to legitimize such study by border commuter students, while placing it within a regulated, controlled

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process. As nonimmigrant students, they will be authorized to attend only schools approved by the Service to accept foreign students. A border commuter student is subject to all requirements applicable to the F or M nonimmigrant classification and will be processed through the existing framework for these classifications. This includes, among other things, obtaining the appropriate Form I–20, Certificate of Eligibility for Nonimmigrant Student Status, and obtaining the appropriate visa, unless exempt. The schools will be required to comply with the same reporting and recordkeeping requirements for these part-time border commuter students as for full-time F–1 or M–1 students.

This rule will prevent the significant disruption of part-time study that has become an accepted fact of life along the border and a settled expectation. For example, it is reported that the El Paso Community College has an enrollment of some 2,400 part-time border commuter students, who generate approximately $700,000 in tuition. The loss of these students would cause the school, and other similarly-situated schools, to lose state funding based on enrollment levels, thus affecting all of the remaining students. In Detroit, it is reported that Wayne State University stands to lose approximately 500 students and $1 million in fees and tuition. Media reports show that enrollment in the University of Texas at Brownsville's English language program dropped 50% over the summer, costing the institution $150,000. In Washington State, media reports state that Bellingham Technical College stands to lose $100,000 in tuition this year. Niagara University in Lewiston, New York, reportedly stands to lose $250,000 in tuition revenue, and D'Youville College in Buffalo could lose up to $900,000 in the next year. These are only a few examples of the extent to which the practice of part-time study by commuter students is woven into life on the border.

How Does the Service Define a "Full Course of Study" for Border Commuter Students?

As noted, the statutory definitions of the F–1 and M–1 classifications relate to foreign students coming to the United States temporarily and solely for the purpose of pursuing a full course of study at an approved school. The Service's current regulations at 8 CFR 214.2(f)(6) and (m)(9) set forth specific requirements for defining a "full course of study" in various contexts.

However, the regulations at 8 CFR 214.2(f)(6)(iii) also permit a school to authorize a student to engage in a reduced course load under certain circumstances while still maintaining status as a student enrolled in a "full course of study". The school's designated school official (DSO) may approve a reduced course load due to initial difficulties with the English language or reading requirements, unfamiliarity with American teaching methods, or improper course level placement, or because of illness or medical reasons.

Moreover, there is another context in which the Service has authorized DSOs to approve a reduced course load in special circumstances for students who still wish to pursue a full course of study. In 1998, several Asian countries experienced a severe devaluation of their currencies, which caused a hardship upon nonimmigrant students in the United States dependent on currency from those countries for support. In response, the Service amended its regulations, 8 CFR 214.2(f)(6)(i)(F), allowing the Commissioner to publish a **Federal Register** notice authorizing affected F–1 aliens to accept employment in excess of the ordinary 20-hour per week maximum, in cases of severe economic hardship, and to drop below the usual course load in order to pursue the additional employment.

This rule adds an additional provision permitting certain border commuter students to enroll in an approved school with a lesser course load than is otherwise required for F and M students, on account of their unique educational circumstances. Specifically, for a nonimmigrant alien who meets all other requirements applicable to the F or M classification and who is commuting to a school in the United States within 75 miles of the border, the school's DSO may approve the student's attendance with a course load below that otherwise required under the general rules. However, the student must still be enrolled in a "full course of study" at the school, that is, a course of study that leads to the attainment of a specific educational, professional, or vocational objective, as prescribed in the introductory language in § 214.2(f)(6)(i) and (m)(9)(i), although at a reduced course load for each semester or term.

Why Is This Change Only Applicable to Border Commuters?

This reflects the special and unique relationship the United States shares with its bordering neighbors and is consistent with the numerous statutory and regulatory provisions that accommodate the special demands in regulating the flow of Canadian and Mexican nationals across our borders. For example, under section 101(a)(6) of the Act, provision is made for border crossing cards to be issued to aliens resident in foreign contiguous territory in order to facilitate the lawful crossing of our borders.

Although there is no border crossing card currently issued to Canadian nationals, the Service, together with the Department of State, has implemented procedures to issue border crossing cards to Mexican nationals consistent with the Act as amended by section 104 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, Div. C (Sept. 30, 1996) and section 601 of the Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107–173 (May 14, 2002). Mexican nationals presenting a valid, unexpired Border Crossing Card may be admitted to the United States without other documentation for a period not to exceed 72 hours to visit within 25 miles of the border, or in the case of visits to certain areas in the State of Arizona, within 75 miles of the border. See 8 CFR 235.1(f)(1)(iii) and (f)(1)(v).

Another example, section 212(d)(4)(B) of the Act authorizes the Attorney General and the Secretary of State, on the basis of reciprocity, to waive the passport and visa requirements of nationals of foreign contiguous territory and adjacent islands.

The special relationship between the United States and its border neighbors is also reflected in the special procedures contained in the North American Free Trade Agreement (NAFTA) and codified under section 214(e) of the Act.

Administratively, the Service has regulated the special circumstances of frequent border crossers and made allowance for the peculiarities of daily life in border communities. In addition to regulatory provisions controlling the unique documentary requirements for admission of Canadian and Mexican nationals found at 8 CFR 212.1 and 212.6, the Service has established automated inspection services to provide access to the United States for a group of identified, low-risk border crossers. See 8 CFR 235.7. Other examples address circumstances surrounding temporary workers to the United States such as the regulatory provision found at 8 CFR 214.2(*l*)(12)(ii). This provision, commonly known as the "commuter L–1," recognizes the exception to statutory limits on the period of stay for intracompany transferees who reside outside the United States and regularly commute to engage in part-time employment in this country. Another special provision in the regulations for L nonimmigrants (intracompany transferees), 8 CFR 214.2(*l*)(17), allows Canadian citizens to file the employer's petition for L classification at the time of applying for admission at the port-of-entry, rather than having to obtain approval of the petition in advance from a Service Center. Also, for nearly 20 years, the Service and the Department of Labor have authorized exceptions for Canadian musicians entering under the H–2B temporary worker program. These musicians, if entering the United States to perform within 50 miles of the U.S. Canada border, are pre-certified by the Secretary of Labor.

This rule is necessary to take account of the unique educational situation of bona fide commuter students seeking to attend United States schools along the U.S./Canada and U.S./Mexico borders. The Service understands that certain border states have undertaken measures to facilitate attendance by Mexican and Canadian nationals.

The Service will restrict application of this provision to schools located within 75 miles of the U.S. border. The Service believes this 75-mile zone is consistent with the general commuter travel provisions and will accommodate the needs of students and institutions. Since 1953, Mexico and the United States have agreed to make special accommodations for Mexican nationals who cross the border into the immediate border area to promote the economic stability of the region, and the United States and Canada have a longstanding accommodation for citizens to cross the common border without requiring passports or visas. The Service therefore believes this 75-mile zone, which is the maximum distance currently allowed for Mexican nationals entering the immediate border area, pursuant to 8 CFR 235.1(f)(1)(v), is consistent with the many border accommodations established over time and will meet the needs of students and institutions. The Service does not believe a larger zone is warranted to address the problem.

Canadian or Mexican nationals enrolling at a school outside this 75-mile zone, or who maintain a residence in the United States in connection with their attendance at any approved school, will remain subject to the established rules for F or M nonimmigrants student status.

What Changes Does This Rule Make?

This rule adds new provisions in the Service's regulations at 8 CFR 214.2(f)(18) and (m)(19) to include special provisions defining a full course of study for border commuter students. To be eligible to be authorized by a school's DSO based on the border commuter student provision, the alien must be:

- A national of Canada or Mexico who maintains an actual residence and place of abode in the alien's country of nationality;
- Attending a school located within 75 miles of the border;
- Registered as a border commuter student; and
- Matriculating in a full course of study, albeit on a part-time basis.

This interim rule also adds a new provision, 8 CFR 214.2(f)(18)(iii), to place in effect the reasonable limitation that border commuter students attending an approved school on a part-time basis as F–1 students will be admitted for a fixed admission period for each semester, quarter, or term. Under current regulations, only M–1 students are admitted for a fixed period of admission, while full-time F–1 student are admitted for "duration of status", as provided in 8 CFR 214.2(f)(5) and (f)(7), while the student pursues a full course of study or authorized practical training. By setting a fixed period of admission for F–1 border commuter students that reflects the current semester or quarter of the school's academic calendar, the Service will be able to maintain greater control and oversight to ensure that the student does in fact remain a border commuter student. The school's DSO will be required to specify on the Form I–20 the term-by-term completion date, and a new Form I–20 will be required for each new quarter or semester that the commuter student attends at the school. Conforming amendments to paragraphs (f)(1)(i), (f)(5)(i), and (f)(7)(i) of § 214.2 further clarify that border commuter students will be admitted for a fixed period rather than for duration of status.

This rule also clarifies in § 214.2(m)(19)(iii) that the provision in § 214.2(m)(5), allowing an additional 30-day period in which to depart the United States following the completion of an M–1 student's course of study (in order to make final arrangements before departure), does not apply to border commuter students.

The Service notes that, in a separate rulemaking, 67 FR 34862 (May 16, 2002) (proposed rule), the Service is implementing section 641 of IIRIRA to establish an information collection system for nonimmigrant alien students. This system, the Student and Exchange Visitor Information System (SEVIS), will require the DSO to report when a reduced course load has been authorized for a particular student. SEVIS will enable the Service to provide more efficient oversight of this special authority for border commuter students to enroll at an approved school with a reduced course load.

Will Border Commuter Students Be Authorized for On-Campus Employment or Practical Training?

Under this rule, Canadian or Mexican nationals approved as F–1 border commuter students for a part-time course load may only be authorized to accept employment in a curricular practical training program or a post-completion optional practical training program, using existing authorization procedures. The regulatory provisions governing curricular and post-completion optional practical training are contained at 8 CFR 214.2(f)(10)(i) and(f)(10)(ii)(A)(*3*), respectively. In the case of an M–1 border commuter student, employment will only be authorized as provided for practical training as provided in existing 8 CFR 214.2(m)(14). Border commuter students admitted to pursue a course of study on a part-time basis under this rule will not be approved for any other employment in the United States (whether on-campus or off-campus) in connection with their F or M student status.

The Service believes this position is appropriate for several reasons. First, student employment (unrelated to training) often serves to help students meet living expenses while they are away from their home country and living in the United States, and that rationale does not apply to border commuter students. Also, although on-campus employment pursuant to a fellowship or scholarship would normally be available to an F–1 student, a part-time border commuter student is, by definition, not in the same situation as other F–1 students. The purpose of the F–1 and M–1 classification is completion of an educational objective, and the categories of work authorization allowed by this rule are closely related to that objective. For this reason, this rule retains the eligibility for non-resident border commuter students to engage in curricular practical training programs and post-completion optional practical training programs, but not in other types of employment in connection with their student status.

Finally, because a border commuter student admitted under this rule is maintaining his or her actual place of abode in Canada or Mexico and, by definition, would not be residing in the United States, the Service does not believe that employment in the United States is economically necessary. The

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alien would be able, of course, to find employment in his or her own country where the student continues to reside.

A border commuter student who wishes to engage in employment in the United States that is not authorized by this rule must obtain the appropriate visa, or enroll as a full-time F–1 or M–1 student, in which case the student will not be governed by the limitations of this rule.

Does This Rule Affect Canadian or Mexican Nationals Who Are Authorized To Enter and Work in the U.S. Under the Provisions of NAFTA?

This rule simply provides a means for certain Canadian and Mexican nationals who commute into the U.S. to attend school on a part-time basis to be able to obtain proper status as an F–1 or M–1 nonimmigrant.

The United States Government's obligations under NAFTA do not address students and this rule in no way affects the rights of Canadian or Mexican nationals to temporary entry and employment in the U.S. under NAFTA. Canadian or Mexican nationals are admitted as TN nonimmigrants, or in some cases in a different work-related nonimmigrant classification under NAFTA depending on their circumstances. If a Canadian or Mexican national has been already admitted to the United States in a work-related nonimmigrant classification pursuant to NAFTA, it is permissible for them to attend school incidental to their NAFTA-based classification, and that is not affected by this interim rule.

Does This Rule Affect Canadian or Mexican Nationals Attending School on a Full-Time Basis?

No. Canadian or Mexican nationals attending school in the United States on a full-time basis continue to be governed by the rules that apply to their respective classifications. A Canadian or Mexican national admitted to attend school in the United States on a full-time basis as an F–1 or M–1 student may seek authorization from a DSO for a reduced course load, but must comply with the aspects of this rule requiring residence in Canada or Mexico, or otherwise qualify for reduced course load under 8 CFR 214.2(f)(6)(iii).

Will Canadian or Mexican Nationals Be Eligible for Nonimmigrant Student Status To Attend Public Elementary or Secondary Schools or Publicly-Funded Adult Education Programs?

Section 214(m) of the Act prohibits an F–1 student from attending a public high school for more than 12 months in the aggregate. Because of the statutory limitation, an F–1 student at a public high school can only be admitted for an aggregate of 12 months of study. Section 214(m) also requires that the alien, prior to being issued the F–1 visa, demonstrate that he or she has reimbursed the local school district for the full, unsubsidized per capita cost of providing the high school education for the period of the alien's attendance.

Also, under section 214(m) of the Act, as amended by sections 625 and 107(e)(2) of IIRIRA, a nonimmigrant may not be accorded status as an F–1 student to pursue a course of study at a public elementary school or a publicly funded adult education program.

Does This Rule Affect Any Other Processes and Procedures Applicable to the F and M Classifications?

No. Except for the change this rule makes regarding enrollment in a full course of study for border commuter students, all other requirements, processes, and procedures remain in effect. For example, a border commuter student may transfer between qualifying institutions within the 75-mile limit under the same rules as any other F–1 student. Such a student would also be able to transfer to a school outside the 75-mile limit, under the established procedures, but the student would not be eligible, at the new school, for the special part-time provision created by this rule. Similarly, a Canadian or Mexican national who is currently a full-time student may transfer to a qualifying school as a border commuter student provided that he or she meets the requirements of this rule.

Good Cause Exception

The Service's implementation of this rule as an interim rule is based on the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The reason and necessity for the immediate promulgation of this rule are as follows:

Adherence to the notice and comment period normally required under 5 U.S.C. 553(b) by promulgation of a proposed rule prior to an interim rule would cause a disruption in studies. As noted in the supplementary information to this rule, the emphasis on the proper classification for the activity affected by this rule has led to increased enforcement and has had the effect of ceasing studies by affected students. In order to allow those students to recommence studies in a proper and regulated format in time for the upcoming fall academic term, an interim rule is necessary.

Furthermore, this rule enhances security and reduces risk because it places the activity it governs in a regulated context. As noted in this rule, the activity sanctioned by this rule has taken place on the border for some time, but has taken place in a classification, such as the B nonimmigrant classification, that is not appropriate. Thus, to avoid disruption it is necessary that this rule be designated an interim rule.

Therefore, the Service finds that it would be impractical and contrary to the public interest to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553(b).

This rule is also made effective upon publication in the **Federal Register.** This action is necessary in order to avoid the disruption in the enrollment of border community students in the upcoming academic term, as discussed above. It will also facilitate the use of this provision by the affected communities as soon as possible after publication. Because this rule removes a restriction and imposes no new burdens or requirements on the public, the Service is not required to delay the effective date of this rule for 30 days under 5 U.S.C. 553(d), and concludes that it would be contrary to the public interest to do so.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule allows border community students to enroll part-time in United States schools who accept them for admission. Although some of these border-area schools may be considered as small entities as that term is defined in 5 U.S.C. 601(6), the effect of this rule would be to benefit those schools by allowing them to continue to enroll certain part-time students who commute into the United States to attend school.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Reporting and recordkeeping requirements, Students.

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1101 note, 1103, 1182, 1184, 1187, 1221, 1281, 1282; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; Section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 8 CFR part 2.

2. Section 214.2 is amended by:

a. Removing the term "for duration of status" in paragraph (f)(1)(i) introductory text;

b. Adding a new sentence at the beginning of paragraph (f)(5)(i);

c. Removing the first sentence and revising the current second sentence in paragraph (f)(7)(i);

d. Adding and reserving a new paragraph (f)(17);

e. Adding a new paragraph (f)(18);

f. Adding and reserving new paragraph (m)(18); and by

g. Adding a new paragraph (m)(19).

The revision and additions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(f) * * *

* * * * *

(5) * * *

(i) * * * Except for border commuter students who are covered by the provisions of paragraph (f)(18) of this section, an F–1 student is admitted for duration of status. * * *

* * * * *

(7) * * *

(i) * * * An F–1 student who is admitted for duration of status is not required to apply for extension of stay as long as the student is maintaining status and making normal progress toward completion of his or her educational objective. * * *

* * * * *

(17) Reserved.

(18) *Special rules for certain border commuter students.*

(i) *Applicability.* For purposes of the special rules in this paragraph (f)(18), the term "border commuter student" means a national of Canada or Mexico who is admitted to the United States as an F–1 nonimmigrant student to enroll in a full course of study, albeit on a part-time basis, in an approved school located within 75 miles of a United States land border. A border commuter student must maintain actual residence and place of abode in the student's country of nationality, and seek admission to the United States at a land border port-of-entry. These special rules do not apply to a national of Canada or Mexico who is:

(A) Residing in the United States while attending an approved school as an F–1 student, or

(B) Enrolled in a full course of study as defined in paragraph (f)(6) of this section.

(ii) *Full course of study.* The border commuter student must be enrolled in a full course of study at the school that leads to the attainment of a specific educational or professional objective, albeit on a part-time basis. A designated school official at the school may authorize an eligible border commuter student to enroll in a course load below that otherwise required for a full course of study under paragraph (f)(6) of this section, provided that the reduced course load is consistent with the border commuter student's approved course of study.

(iii) *Period of admission.* An F–1 nonimmigrant student who is admitted as a border commuter student under this paragraph (f)(18) will be admitted until a date certain. The DSO is required to specify a completion date on the Form I–20 that reflects the actual semester or term dates for the commuter student's current term of study. A new Form I–20 will be required for each new semester or term that the border commuter student attends at the school. The provisions of paragraphs (f)(5) and (f)(7) of this section, relating to duration of status and extension of stay, are not applicable to a border commuter student.

(iv) *Employment.* A border commuter student may not be authorized to accept any employment in connection with his or her F–1 student status, except for curricular practical training as provided in paragraph (f)(10)(i) of this section or post-completion optional practical training as provided in paragraph (f)(10)(ii)(A)(*3*) of this section.

* * * * *

(m) * * *

(18) Reserved.

(19) *Special rules for certain border commuter students.*

(i) *Applicability.* For purposes of the special rules in this paragraph (m)(19), the term "border commuter student" means a national of Canada or Mexico who is admitted to the United States as an M–1 student to enroll in a full course of study, albeit on a part-time basis, in an approved school located within 75 miles of a United States land border. The border commuter student must maintain actual residence and place of

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abode in the student's country of nationality, and seek admission to the United States at a land border port-of-entry. These special rules do not apply to a national of Canada or Mexico who is:

(A) Residing in the United States while attending an approved school as an M–1 student, or

(B) Enrolled in a full course of study as defined in paragraph (m)(9) of this section.

(ii) *Full course of study.* The border commuter student must be enrolled in a full course of study at the school that leads to the attainment of a specific educational or vocational objective, albeit on a part-time basis. A designated school official at the school may authorize an eligible border commuter student to enroll in a course load below that otherwise required for a full course of study under paragraph (m)(9) of this section, provided that the reduced course load is consistent with the border commuter student's approved course of study.

(iii) *Period of stay.* An M–1 border commuter student is not entitled to an additional 30-day period of stay otherwise available under paragraph (m)(5) of this section.

(iv) *Employment.* A border commuter student may not be authorized to accept any employment in connection with his or her M–1 student status, except for practical training as provided in paragraph (m)(14) of this section.

* * * * *

Dated: August 22, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–21823 Filed 8–26–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, and 135

[Docket Nos. 26930 & 27459]

RIN 2120–AE70 & 2120–AF09

Aircraft Ground Deicing and Anti-Icing Program & Training and Checking in Ground Icing Conditions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, confirmation of effective date, and disposition of comments.

SUMMARY: On September 29, 1992, and December 30, 1993, the FAA published interim final rules requiring deicing operations in ground icing conditions. The interim final rules require part 121 certificate holders to develop and comply with an FAA approved ground deicing/anti-icing program; part 125 certificate holders to provide pilot testing on conducting operations in ground icing conditions; part 135 certificate holders to provide pilot training on conducting operations in ground icing conditions; and part 125 and 135 certificate holders to check airplanes for contamination (*i.e.*, frost, ice, or snow) prior to takeoff when ground icing conditions exist. These rules were necessary to provide an added level of safety to flight operations during adverse weather conditions. The FAA invited comments on the interim final rules. This document responds to public comments and confirms the interim final rules as final rules. This action is part of our effort to address recommendations of the Government Accounting Office and the Management Advisory Council by reducing the number of aged items in the Regulatory Agenda.

EFFECTIVE DATE: This action makes final the interim final rules and confirms the original effective dates. The interim final rule on Aircraft Ground Deicing and Anti-Icing Program published at 57 FR 44924 is effective November 1, 1992. The interim final rule on Training and Checking in Ground Icing Conditions published at 58 FR 69620 is effective January 31, 1994.

ADDRESSES: The complete docket for the interim final rules on deicing may be examined at the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Room 915–G, Docket Nos. 26930 & 27459, 800 Independence Ave., SW., Washington, DC 20591, weekdays (except federal holidays) between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Daniel Meier, Air Carrier Operations Branch, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202–267–3749.

SUPPLEMENTARY INFORMATION:

Background

On July 23, 1992, the FAA published a Notice of Proposed Rulemaking (57 FR 32846) that would establish requirements for part 121 certificate holders to develop and comply with an FAA approved ground deicing/anti-icing program. The proposed rule was developed in response to a number of airplane accidents caused in part by icing and to recommendations from an international conference on aircraft deicing/anti-icing. Because of the urgency of the rulemaking, the FAA allowed for only a 15-day comment period.

On September 21, 1993, the FAA published proposed requirements for ground deicing procedures for parts 125 and 135 certificate holders (58 FR 49164). Under the proposal when ground icing conditions exist, parts 125 and 135 certificate holders would be required to check their airplanes for contamination prior to beginning takeoff. In addition, under the proposed changes to part 125, certificate holders would be required to provide pilot testing on ground deicing/anti-icing procedures, and under proposed changes to part 135, certificate holders would be required to provide pilot training on ground deicing/anti-icing procedures. The FAA proposed the requirements in response to part 135 accidents that were caused by pilots beginning takeoff with contamination adhering to critical airplane surfaces.

On September 29, 1992, the FAA published the part 121 interim rule (57 FR 44924) and on December 30, 1993, the FAA published the part 135 interim rule (58 FR 69620). The FAA requested comments on the interim final rules because the comment periods on the NPRMs were unusually short, and because the FAA anticipated that the first winter of implementation of the rules might provide additional information supporting either the continuation or modification of the rules. This action is in response to those comments and confirms the interim final rules as final rules.

Discussion of Comments

General

The FAA received 22 comments on the part 121 interim rule. Generally, most commenters favor the FAA's action. Several commenters address specific requirements in the part 121 interim rule and some recommend changes in the rule language.

The most significant issues addressed by commenters on the part 121 interim rule involve holdover times, pretakeoff checks, hard-wing aircraft, and the role of aircraft dispatchers. Additional issues addressed by commenters involve applicability, training, research, type of fluid, alternate procedures, need for an approved program, and air traffic control.

The FAA received only one comment on the part 135 interim rule. This commenter made specific recommendations to delete paragraphs from parts 125 and 135 that the

commenter claims are inconsistent with the "Clean Aircraft concept."

Icing Conditions

The only comment on the part 135 interim rule states that paragraph (a)(1) of both §§ 125.221 and 135.227, which permits takeoffs when there is frost adhering to the wings, or stabilizing or controlling surfaces, if the frost has been polished to make it smooth, is inconsistent with the Clean Aircraft concept. The commenter states that if this paragraph is included in the final rule it will allow the same type large turbine aircraft to be operated with less safety under parts 125 or 135 than under part 121.

FAA Response: While the FAA has no record of an unsafe operational history with aircraft operated under the current icing regulations of 14 CFR parts 125 and 135, we believe there may be validity to this comment and we may address the clean aircraft concept in a future agency action.

Holdover Times

The part 121 interim rule requires that a certificate holder's ground deicing/anti-icing program must include the certificate holder's holdover timetables and the procedures for the use of these tables by the certificate holder's personnel. The rule requires that takeoff after exceeding any determined holdover time is permitted only after (1) A pretakeoff contamination check determines that the wings, control surfaces, and other critical surfaces, as defined in the certificate holder's program, are free of frost, ice, or snow; or (2) it is otherwise determined by an approved alternative procedure that the wings, control surfaces, and other critical surfaces, as defined in the certificate holder's program, are free of frost, ice, or snow; or (3) the critical surfaces are redeiced and a new holdover time is determined.

Four commenters (Swissair, ALPA, Association of European Airlines (AEA), and an airline pilot) express concern with the reliability and use of holdover times. Swissair states it has always considered the holdover times as guideline and does not support the use of holdover time guidelines as the only criteria for a go/no-go decision. ALPA expresses a similar opinion. Three commenters (Canadair, ALPA, and an airline pilot) are concerned that with the wide range of holdover times pilots may mistakenly believe that a takeoff is safe, regardless of other factors, so long as it is made within the longer time limit. Swissair states that the range of holdover times cannot be considered "as a minimum/maximum value but rather more correctly as two maximums, depending on actual weather conditions." Canadair states that it is not clear whether a "certificate holder's program is expected to quote a single holdover time for a specific situation or a range * * *" and that if a range is intended, the FAA needs to clarify the significance of the minimum time.

FAA Response: The FAA agrees with the commenters that a holdover time should not be used as the sole criteria for a go/no-go decision before the expiration of the holdover time. The FAA stated this in the preamble to the interim final rule and in paragraph 8c of Advisory Circular 120–60, Ground Deicing and Anti-Icing Program. In the part 121 interim rule the FAA cautioned that the holdover timetables are for use in departure planning only and shall be used in conjunction with pretakeoff check procedures. These tables provide only approximate time ranges. Each pilot-in-command (PIC) determines the appropriate holdover time for the type of fluid and the actual weather conditions. The fact that a determined holdover time has not yet expired would not alone justify a decision to take off if other conditions, such as the rate or type of precipitation, had worsened, or if the PIC has other information, such as expected delays, to warrant redeicing or re-inspecting the aircraft. Conversely, the final rule does not prohibit takeoff after a holdover time has expired, if certain additional actions are taken, *e.g.*, a pretakeoff contamination check or an alternative check that indicates the aircraft is free of contamination.

The FAA agrees that the stated range in holdover times should not be used as a minimum and maximum value. The advisory circular specifically states that generally the maximum time within the holdover time range applies in light precipitation conditions and the minimum time applies to moderate to heavy precipitation conditions. In each case the holdover time is determined from within the stated range depending on the actual weather conditions. The FAA, therefore, has determined that the advisory circular provides sufficient guidance to pilots concerning holdover time; therefore, no further changes are required.

Aircraft Checks

If the determined holdover time has been exceeded, the part 121 interim final rule requires, as one alternative, a pretakeoff contamination check (§ 121.629(c)(3)(i)). A pretakeoff contamination check, as defined in § 121.629(c)(4), is a check to make sure the wings, control surfaces, and other critical surfaces, as determined in the certificate holders' program, are free of frost, ice, and snow. It must be accomplished from outside the aircraft unless the approved program specifies otherwise, and it must be completed within five minutes before takeoff.

A pretakeoff check is defined in § 121.629(c)(4) as a check of the aircraft's wings or representative aircraft surfaces for frost, ice, or snow within the holdover time. As stated in the preamble to the part 121 interim rule and to be consistent with the intended use of holdover timetables, certificate holders must accomplish a pretakeoff check whenever holdover timetables are used. Language has been added to § 121.629(c)(3) to make it clear that a pretakeoff check is integral to the use of holdover timetables.

The part 121 interim rule under § 121.629(d) also allows a certificate holder to continue to operate without a deicing program if the aircraft is checked to ensure that the wings, control surfaces, and other critical surfaces are free of frost, ice, and snow anytime conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft. The check must be completed within five minutes before takeoff and accomplished from outside the aircraft. This check is referred to as the "paragraph (d) outside-the-aircraft check." As stated in the preamble to the part 121 interim rule, accomplishing this check may not be a viable option at certain airports, at certain peak departure times, and during certain weather conditions.

Twelve commenters (ALPA, NTSB, ATA, Fokker, Canadair, de Havilland, an airline pilot, AEA, Federal Express, Swissair, Association of Flight Attendants, and Aviatrends) address the issue of aircraft checks. The three sub-issues these commenters address are: (1) The adequacy of any check made from within the aircraft; (2) how the five minutes is measured; and (3) other aircraft check issues.

(1) *Checks made from within the airplane.* The NTSB, ALPA, de Havilland, Association Flight Attendants, Aviatrends, and an airline pilot all voice concern for the reliability of any check made from within the airplane. The NTSB expressed particular concern for visual observations involving swept-wing airplanes without leading edge devices. Aviatrends cited specific examples in which reports filed under NASA's Aviation Safety Reporting System indicated problems with checks from inside the aircraft. In one case where both Type I and Type II fluid had been

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applied, the first officer reported that it was impossible to see through Type II fluid on the cabin windows. A second report concluded that "the value of inspecting the wing for ice from inside the cabin, especially at night, is questionable" and the "Type II deicing fluid is the consistency of warm honey and when it covers the cabin windows very little can be seen through them." ALPA expressed similar concerns and concluded that "the inspection from inside the aircraft is therefore turned into a presumption."

FAA Response: Pretakeoff contamination checks, defined under § 121.629(c)(4) and required under § 121.629(c)(3)(i), must be accomplished from outside the aircraft unless the certificate holder's approved program specifies otherwise. Checks performed from inside the aircraft are not permitted unless the certificate holder has clearly defined and demonstrated procedures to allow the flight crew to assess the condition of the aircraft from inside the aircraft under various conditions (*e.g.*, lighting, weather, visibility, *etc.*). The certificate holder's program should emphasize that if any doubt exists as to the condition of the aircraft after conducting this check, takeoff must not be attempted. In addition, as stated in the preamble to the part 121 interim rule, the ultimate authority and responsibility for the operation of the aircraft remain with the PIC. Therefore, whenever the PIC is not fully satisfied with the reliability of a check conducted from inside the aircraft, the PIC is expected to get the aircraft redeiced or request that an additional check be conducted from outside the aircraft.

(2) *How the 5 minutes is measured.* Several commenters (Swissair, ATA, Fokker, and AEA) question the intent of the rule language that requires that the pretakeoff contamination check must "be conducted" and the paragraph (d) check must "occur" within five minutes prior to beginning takeoff. These commenters point out that if this check can take five to fifteen minutes to accomplish, as the FAA stated in the preamble to the part 121 interim rule, the rule would be impractical unless it is interpreted to mean that the takeoff must occur within five minutes of completion of the check. While seeking clarification of the five-minute time requirement, AEA states that a measurement of five minutes after completing the checks would be problematic and could be dangerous unless there is a differentiation based on the type of fluid used.

FAA Response: The FAA's intent was that the pretakeoff contamination check and the paragraph (d) outside-the-aircraft check must be completed within five minutes prior to beginning takeoff. The FAA believes that a pretakeoff contamination check or a paragraph (d) outside-the-aircraft check completed within no more than five minutes prior to beginning takeoff is sufficiently close to takeoff, in most weather conditions, to ensure absence of contamination. Five minutes is a maximum time. The FAA expects PICs to use good judgment when weather conditions might dictate a shorter time.

(3) *Other pretakeoff check issues.* Canadair states that there is still a possibility of confusion between the two similarly worded terms "pretakeoff check" and "pretakeoff contamination check" and recommends that the latter be renamed "external contamination check." AEA states its concern that since holdover times are only guidelines, they should not be used as "criteria to establish whether a more thorough check (pretakeoff contamination check) is required."

FAA Response: The FAA believes that the aviation industry has become familiar with the distinction between the two checks. As stated under item (1) above, a holdover time is never the sole criteria in determining whether a takeoff should be attempted or whether another check is warranted. The PIC's evaluation of all the relevant factors and his or her exercise of good judgment are expected.

Hard Wing Aircraft

The part 121 interim rule does not contain any specific additional requirements for hard wing aircraft (*i.e.* aircraft without wing leading edge devices). The NPRM preamble stated that the FAA has issued Airworthiness Directives (AD) requiring a tactile check of specific hard wing aircraft in ground icing conditions. The FAA stated in the preamble to the part 121 interim rule that it would continue to deal with aircraft specific requirements by using ADs.

Five commenters (NTSB, Fokker, de Havilland, the Air Transport Association, and Embraer) comment on the issue of ground deicing as it affects aircraft commonly referred to as hard wing aircraft. The NTSB believes that special operational procedures are justified for hard wing aircraft. Conversely, the other four commenters state that the FAA does not have any valid basis for imposing additional requirements (*e.g.* a tactile check) on hard wing aircraft with aft-mounted engines. Of these commenters, only Fokker offers specific evidence to support its position. Primarily, Fokker disputes the NASA report that served as a partial basis for the FAA's conclusions concerning hard wing aircraft. Fokker maintains that the NASA report is inaccurate and that data produced in subsequent tests conducted by NASA and earlier tests conducted in Sweden do not support the need for applying any additional procedures to hard wing aircraft.

FAA Response: The part 121 interim rule imposed no special requirements for hard wing aircraft; however, the FAA has issued AD 92–03–01 and AD 92–03–02, which require special procedures for certain model DC–9 and MD–80 airplanes. These special procedures are based on the fact that these airplanes have a wing design that is particularly susceptible to loss of lift due to wing icing. Minute amounts of ice or other contaminates on the leading edge of these hard wings can cause an increase in stall speed of up to 30 knots. This increased stall speed may be well above the stall warning activation speed. Because of this phenomena, special guidance applicable to hard wing aircraft have been included in Advisory Circular (AC) 120–60.

Roles of Dispatcher and Pilot-in-Command (PIC)

The part 121 interim rule addresses the duties and responsibilities of the PIC and the aircraft dispatcher in determining whether a takeoff can be safely accomplished (§ 121.629(b) and (c)).

Three commenters address the proper roles of PICs and aircraft dispatchers. Swissair agrees with the FAA that the ultimate responsibility for determining if the aircraft is airworthy is with the PIC once the aircraft is released from ground personnel. Two commenters, both aircraft dispatchers, believe that § 121.629, as amended in the part 121 interim rule, does not give proper recognition to what they believe are joint responsibilities of aircraft dispatcher and pilot-in-command as reflected in §§ 1221.395, 121.533, 121.593, 121.599(a), 121.601(a), 121.605, and 121.627(a). Both commenters state that the cited sections indicate a joint responsibility between the aircraft dispatcher and the PIC for the safety of a flight and that the dispatcher's responsibility does not end with the release of the aircraft by the dispatcher. Rather, the dispatcher continues to be involved in the operational control of the aircraft throughout the flight. One of these commenters recommends that § 121.629 should be revised to specifically state that the aircraft dispatcher is involved with the PIC in the operational control of the aircraft and that this control includes dispatcher concurrence in computing or revising a holdover time and dispatcher initiation of an exterior tactile contamination check.

FAA Response: The FAA agrees that operational control of the aircraft is a joint responsibility between the PIC and the aircraft dispatcher. As stated in the preamble to the part 121 interim rule, a certificate holder's program may include holdover time coordination with the aircraft dispatcher; however, the real-time information required to determine or update the proper holdover time may be available only to the PIC. In this situation the PIC safety responsibility may require him or her to determine a holdover time without coordinating with the dispatcher. The FAA believes that the part 121 interim rule language does not diminish, and is consistent with, the traditional role of the aircraft dispatcher as stated in the sections cited above and therefore no change is made in the part 121 interim rule language.

Applicability

The part 121 interim rule applied to part 121 certificate holders only; however, the preamble for the interim final rule stated that the FAA would continue to study part 125 and 135 operations to determine if future rulemaking is required. Three comments address applicability. The NTSB reiterates its concern that the interim rule does not address part 125 and part 135 certificate holders. Empire Airlines states that, based on its experience as an operator under both parts 121 and 135, it believes a part 121-type program should not be imposed on part 135 operators. Canadair states that part 91 aircraft should also be included in any further study.

FAA Response: The FAA issued an interim final rule tailored to part 125 and 135 operators on December 30, 1993 (58 FR 69620). Presently, the FAA plans no part 91 rulemaking; however, guidance for part 91 operators on ground deicing/anti-icing practices and procedures is available in AC 120–58, Pilot Guide for Large Aircraft Ground Deicing, and AC 135–17, Pilot Guide for Small Aircraft Ground Deicing.

Training

The part 121 interim rule requires initial and recurrent ground training and testing for flight crewmembers and qualification for all other affected personnel. The training, testing, and qualifications must cover the use of holdover times, aircraft deicing/anti-icing procedures, contamination, types and characteristics of deicing/anti-icing fluids, cold weather preflight inspection procedures, and techniques for recognizing contamination.

Four commenters (NTSB, Fokker, Trans World Express and Finnair) address the issue of training. The NTSB states that the required recurrent training for flight crewmembers and involved ground personnel is "equally applicable to the FAA personnel involved in overseeing the airline programs." Fokker believes that flight crew training is most important in preventing ground icing accidents and recommends that the "FAA should emphasize training in the use of rotation techniques suited to conditions where ground icing can be anticipated." Trans World Express states that vendors (*e.g.* contract personnel who may work for several certificate holders) are required to receive the generic training over and over when the vendors really need it only once and recommends that the certificate holder be permitted to accept another certificate holder's qualification program for vendors as it pertains to deicing/anti-icing fluid application and dispersal. Finnair states that training is the most important short-term safety measure and should emphasize the overall picture of the conditions affecting the aircraft and not concentrate on any one item such as holdover timetables.

FAA Response: The FAA agrees with the NTSB regarding the need for FAA inspector ground deicing/anti-icing training. This training was provided to all Principal Aviation Safety Inspectors (Operations and Maintenance) before the part 121 interim rule was published.

The FAA agrees with Finnair and Fokker regarding their comments on training except to the extent that Fokker believes that pilots should be trained to use a different aircraft rotation technique during takeoff that, in its view, is more suited to conditions where ground icing can be anticipated. Training pilots in the proposed techniques, however, undermines the "clean aircraft" concept since the premise for using such techniques is that the PIC may be unsure of whether the aircraft is free of contamination. If contamination is adhering to critical surfaces of the aircraft, the takeoff would not comply with § 121.629(a), and the techniques recommended by Fokker are not a safe alternative to that compliance.

Conceptually, the FAA agrees with Trans World Express that redundant training is neither necessary nor useful for the trainee. On the other hand, the FAA cannot permit a certificate holder to use another certificate holder's or a vendor's deicing/anti-icing procedures unless those procedures have been approved by the principal inspectors of the certificate holder that wishes to use them.

Research

In the part 121 interim rule preamble, the FAA stated that further research is needed on issues such as the effects of airplane design on wing contamination and how this would affect pilot flying techniques. The preamble states that additional study is needed to assess the value of aircraft type specific pilot training for use in ground icing conditions. The NTSB and the Federal Express Corporation state support for further research of the type the FAA indicated in the part 121 interim rule preamble. Federal Express states support for further research on the use of holdover times and on the effects of airplane design and their interaction with contaminants, particularly for hard wing aircraft. The NTSB states that the highest research priority should be given to determining the possible contaminating effects of Type II fluids on runway friction. The NTSB also strongly supports continuing initiatives for the development of technical solutions to wing contaminant detection.

FAA Response: Within the past few years research has been initiated on several different areas related to the ground deicing problem. The FAA has published a report which describes ongoing research, entitled "Aircraft Ice Detectors and Related Technologies for Onground and Inflight Application." It is available to the public through the National Technical Information Service, Springfield, VA 22161. The FAA is continuing to analyze holdover times in an effort to make them a more precise tool for determining an aircraft's contamination status. The FAA and the United States Air Force are cooperating with NASA Ames Research Center in the development of a new more environmentally friendly deicing/anti-icing fluid. Many different corporations and individual entrepreneurs are developing detection systems that might be used to detect contamination on an aircraft's critical surfaces. The FAA's Technical Center has completed initial studies that indicate Type II fluids do not have a significant effect on runway friction.

Types of Fluids

The part 121 interim rule does not require using any specific deicing/anti-icing fluid. The ground deicing AC 120–60 gives guidance in the use of deicing/anti-icing fluids, stating the advantages and disadvantages of Type I and Type II fluids. Two commenters (Fokker and

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Technoshield) address the question of Type II fluids. Fokker states that the FAA Advisory Circular incorrectly suggests that there may be disadvantages to Type II fluids with respect to decreasing the runway coefficient of friction. Technoshield suggests that the entire rulemaking will have the effect of precluding the use of Type I fluids.

FAA Response: As stated in the preamble to the part 121 interim rule, each type fluid has its benefits and intended usage. Each certificate holder, not the FAA, determines the type(s) of fluid to be used in its operations. Recent studies by the FAA indicate that no degradation of runway frictions greater than that occurring with water covered runway surfaces occurs with the use of Type II fluids.

The FAA does not believe that the rule affects the choice of fluid. Weather conditions and certificate holder practice will continue to determine the choice of fluid.

Alternative Procedures

Canadair suggests that it would be useful if the FAA issues advisory material on how to design, develop, and verify an alternative procedure for determination that critical surfaces are free of frost, ice, or snow, as is authorized under § 121.629(c)(3)(ii).

FAA Response: As was stated in the preamble to the part 121 NPRM, the "otherwise determined by an alternative procedure" language was included to cover changes in ambient conditions or industry development of approved new technologies. The FAA believes that certificate holders should take the initiative to develop such alternative procedures and submit them to the FAA for approval.

Need for Approved Program

ALPA states its belief that each carrier operating under part 121 should have an approved program and that, for the reasons stated in its earlier comments on the ground deicing NPRM, § 121.629(d) should be deleted.

FAA Response: The FAA believes that the only certificate holders under part 121 who do not have an approved ground deicing/anti-icing program are those who conclude it would be more cost effective to operate without such a program. These certificate holders might have to delay or cancel flights in icing conditions because the outside-the-aircraft check required under § 121.629(d) is not a viable option during certain weather conditions and at certain airports. If a certificate holder is able to conduct an outside-the-aircraft check and that check ensures that the aircraft is free of contamination, the FAA believes the check is an adequate substitute for an approved program.

Air Traffic Control

The NTSB referenced several of its previous recommendations that are not directly related to this rulemaking action but that are related to achieving more efficient planning for ground operations. The recommendations, if implemented, would reduce the probability that airplanes will exceed their deicing holdover times.

FAA Response: The FAA has undertaken a number of related actions, including, as part of certain airports' ground deicing plans, gate hold procedures (NTSB Recommendation A–93–19) and procedures that limit the time an aircraft spends on the ground after deicing (NTSB Recommendation A–93–20). These procedures have contributed to both improved safety during ground icing conditions and enhanced the overall departure and arrival rates during these conditions.

Environmental Analysis

These rules are federal actions that are subject to the National Environmental Police Act (NEPA). Under applicable guidelines of the President's Council on Environmental Quality and agency procedures implementing NEPA, the FAA normally prepares an environmental assessment (EA) to determine the need for an environmental impact statement (EIS) or whether a finding of no significant impact (FONSI) would be appropriate. (40 CFR 1501.3; FAA Order 1050.1D appendix 7. par. 3(a)). In the NPRMs the FAA invited comments on any environmental issues associated with the proposed rule, and specifically requested comments on the following: (1) Whether the proposed rule will increase the use of deicing fluids, (2) whether the proposed part 121 rule will encourage the use of Type II deicing fluid, (3) the impact, if any, of using these deicing fluids on taxiways "just prior to takeoff," and (4) containment methods currently used that can be adapted to other locations on an airport. Only a few commenters to the part 121 NPRM addressed these environmental issues and most of these commenters focused more on the effect of Federal, state, and local environmental requirements and the lack of local facilities, than on the questions of the potential environmental impact of deicing fluids. A summary of the comments received, the FAA's response, and the findings of the FAA's Environmental Assessment appear in the preamble to the part 121 interim rule.

The Environmental Assessment (EA) which supported a Finding of No Significant Impact (FONSI) is included in the docket for this rulemaking. Except for the NTSB suggestion that the FAA conduct further research on runway contaminants, no further comments on environmental issues associated with this rulemaking were received following publication of the part 121 and part 135 interim rules. Nonetheless, as part of its long term efforts, the FAA will continue to work with certificate holders and with airport operators to monitor the actual and potential environmental effects of this rule and will take appropriate steps as necessary.

Conclusion

After consideration of the comments submitted in response to the interim final rules, the FAA has determined that no further rulemaking action is necessary. The interim final rule amending part 121 of title 14 of the Code of Federal Regulations, Amendment No. 121–231, entitled Aircraft Ground Deicing and Anti-Icing Program, published at 57 FR 44924 on September 29, 1992, is adopted as a final rule. The interim final rule amending parts 125 and 135 of title 14 of the Code of Federal Regulations, Amendment Nos. 125–18 and 135–46, entitled Training and Checking in Ground Icing Conditions, published at 58 FR 69620 on December 30, 1993, is adopted as a final rule.

Issued in Washington, DC, on August 19, 2002.

Monte R. Belger,

Acting Administrator.

[FR Doc. 02–21575 Filed 8–26–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 50

[Docket Number 020509117–2195–02]

RIN 0607–AA36

Bureau of the Census Certification Process

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of the Census (Census Bureau) is issuing this final rule to establish the process for requesting certification of Census Bureau documents (*i.e.*, tables, maps, reports, etc.) and the pricing structure for that service. A certification confirms that a product is a true and accurate copy of a Census Bureau document. The Census Bureau is issuing this final rule to create a centralized system for certifying Census Bureau documents and to accurately reflect the true costs associated with certification.

EFFECTIVE DATE: This rule is effective on September 26, 2002.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on this rule should be directed to Les Solomon, Chief, Customer Services Center, Marketing Services Office, U.S. Census Bureau, Room 1585, Federal Building 3, Washington, DC 20233, (301) 763–5377 or by fax (301) 457–4714.

SUPPLEMENTARY INFORMATION:

Background

The Census Bureau has developed standard procedures and pricing policies regarding the certification process.

Over the years, the volume of requests for certified Census Bureau documents has steadily increased. Title 13, Section 8, allows the Census Bureau to provide certain statistical materials upon payment of costs for this service. With the release of Census 2000 data, the volume of requests for certified documents is expected to continue increasing. The price structure includes a preset service fee plus the cost of the resources used in fulfilling the requests, according to the kind of certification requested and its level of difficulty (easy, moderate, or difficult). The two types of certification available are (1) "Impression," that is, impressing the Census Bureau seal on a document and (2) "Attestation," a signed statement by Census Bureau officials, attesting to the authenticity, accompanying a document onto which the Census Bureau seal has been impressed.

A certification may be needed for many reasons. For example, parties in a legal proceeding may wish to obtain a copy of a Census Bureau table or map that they wish to introduce into evidence.

In order to create consistent certification rules, the Census Bureau is making the following amendment to Title 15, Code of Federal Regulations (CFR), part 50:

- Add new Section 50.50 containing the Census Bureau's certification process.
- Establish a consistent pricing structure.
- Require requests for certifications to contain information on Form BC–1868(EF), Request for Official Certification. (See the Census Bureau's Web site, <*http://www.census.gov/mso/www/certification/*>.)

On June 4, 2002, the Census Bureau published in the **Federal Register** a notice of proposed rulemaking and request for comments on this program (67 FR 38445). The Census Bureau received no comments on the proposed rule.

Administrative Procedure and Regulatory Flexibility Act

A notice of final rulemaking is not required by Title 5, United States Code (U.S.C.), section 553, or any other law, because this rule is procedural in nature and involves a matter relating to public property, loans, grants, benefits, or contracts. Accordingly, it is exempt from the notice and comment provisions of the Administrative Procedure Act under 5 U.S.C. 553(a)(2) and 5 U.S.C.(b)(A). Therefore, the analytical requirements of the Regulatory Flexibility Act are not applicable (5 U.S.C. 601, *et seq.*). As a result, a Regulatory Flexibility Analysis is not required and none has been prepared.

Executive Orders

This rule has been determined not to be significant for purposes of Executive Order 12866. This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), Title 44, U.S.C., Chapter 35, unless that collection of information displays a current Office of Management and Budget control number. This notice does not represent a collection of information and is not subject to the PRA's requirements. The form referenced in the rule, Form BC–1868(EF), collects only information necessary to process a certification request. As such, it is not subject to the PRA's requirements (5 CFR 1320.3(h)(1)).

List of Subjects in 15 CFR Part 50

Census data, Population census, Seals and insignia, Statistics.

PART 50—SPECIAL SERVICES AND STUDIES BY THE BUREAU OF THE CENSUS

1. The authority citation for 15 CFR Part 50 continues to read as follows:

Authority: Sec. 3, 49 Stat. 293, as amended; 15 U.S.C. 192a. Interprets or applies Sec. 1, 40 Stat. 1256, as amended; Sec. 1, 49 Stat. 292; Sec. 8, 60 Stat. 1013, as amended; 15 U.S.C. 192, 189a; and 13 U.S.C. 8.

2. Add § 50.50 to read as follows:

§ 50.50 Request for certification.

(a) Upon request, the Census Bureau certifies certain statistical materials (such as the population and housing unit counts of government entities, published tabulations, maps, and other documents). The Census Bureau charges customers a preset fee for this service according to the kind of certification requested (either an impressed document or an attestation) and the level of difficulty involved in compiling it (easy, moderate, or difficult, determined according to the resources expended) as well as the set cost of the data product (*e.g.*, report or map) to be certified. Certification prices are shown in the following table:

PRICE BY TYPE OF CERTIFICATION

Product	Estimated price	Estimated time to complete (in hours)
Impress-easy	$70.00	1.5
Impress-medium	110.00	3
Impress-difficult	150.00	4.5
Attestation-easy	160.00	3
Attestation-medium	200.00	4.5
Attestation-difficult	240.00	6

(b) There are two forms of certification available: Impressed Documents and Attestation.

(1) *Impressed Documents.* An impressed document is one that is certified by impressing the Census Bureau seal on the document itself. The Census Bureau act, Title 13, United States Code, Section 3, provides that the seal of the Census Bureau shall be affixed to all documents authenticated by the Census Bureau and that judicial notice shall be taken of the seal. This process attests that the document on which the seal is impressed is a true and accurate copy of a Census Bureau record.

(2) *Attestation.* Attestation is a more formal process of certification. It consists of a signed statement by a Census Bureau official that the document is authentic and produced or published by the agency, followed by a

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signed statement of another Census Bureau official witnessing the authority of the first.

(c) Requests for certification should be submitted on Form BC–1868(EF), Request for Official Certification, to the Census Bureau by fax, (301) 457–4714 or by e-mail, *webmaster@census.gov*. Form BC–1868(EF) is available on the Census Bureau's Web site at: *http://www.census.gov/mso/www/certification/*. A letter request—without Form BC–1868(EF)—will be accepted only if it contains the information necessary to complete a Form BC–1868(EF). No certification request will be processed without payment of the required fee.

Dated: August 21, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–21709 Filed 8–26–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 736, 758, 764, 766 and 772

[Docket No. 020628162–2162–01]

RIN 0694–AC58

Revision to the Export Administration Regulations: Denied Persons List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule removes references in the Export Administration Regulations (EAR) to the "Denied Persons List" maintained by the Bureau of Industry and Security because the list is described, but not published, in the Code of Federal Regulations, and is not intended to be legally controlling. This rule also makes a format change in the template of the standard denial order published in the EAR.

EFFECTIVE DATE: This rule is effective August 26, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas W. Andrukonis, Director, Office of Enforcement Analysis, Bureau of Industry and Security, Telephone: (202) 482–4255.

SUPPLEMENTARY INFORMATION:

Background

As described in section 764.3 of the Export Administration Regulations (15 CFR 764.3), the Bureau of Industry and Security (BIS) has the authority to issue an order that restricts the ability of persons named in it to engage in export or reexport transactions of items subject to the Export Administration Regulations (EAR) and restricts their access to items subject to the regulations. These orders may also prohibit all persons from taking certain actions specified in the order because those actions could circumvent the restrictions imposed on the denied person by the order. BIS publishes notices of such orders in the **Federal Register** to provide notice to all persons of the provisions of the order. BIS maintains unofficial compilations of such denial orders, for the convenience of the public, in a "Denied Persons List" included in the unofficial version of the EAR and on a Web site. Because these compilations are not included in the Code of Federal Regulations, this rule removes references to the "Denied Persons List" from the EAR in parts 732, 736, 758, 764, 766 and 772. References to the "Denied Persons List" in part 752 of the EAR will be removed in a separate rule.

This rule also replaces the word "immediately" with "[date]" in the last sentence of the pro forma standard denial order, because a standard order need not be effective as of the date of signing. This rule does not change the scope of any order denying export privileges, nor does it change the rights or duties of any person with respect to the Export Administration Regulations.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule does not involve a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to 5 U.S.C. 553(b)(A), the provisions of the Administrative Procedure Act requiring a notice of proposed rulemaking and the opportunity for public comment are waived, because this regulation involves a rule of agency procedure. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Additionally, pursuant to 5 U.S.C. 553(d)(2), the 30 day delay in effectiveness is waived for the same reason. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to William Arvin, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

List of Subjects

15 CFR Parts 732 and 758

Administrative practice and procedure, Advisory committees, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Parts 736 and 772

Exports, Foreign trade.

15 CFR Part 764

Administrative practice and procedure, Exports, Foreign trade, Law enforcement, Penalties.

15 CFR Part 766

Administrative practice and procedure, Confidential business information, Exports, Foreign trade.

Accordingly, parts 732, 736, 758, 764, 766 and 772 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 732—[AMENDED]

1. The authority citation for 15 CFR part 732 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

2. Section 732.3 is amended by revising paragraph (g)(1) to read as follows:

§ 732.3 Steps regarding the ten general prohibitions.

* * * * *

(g) * * *

(1) Determine whether your transferee, ultimate end-user, any intermediate consignee, or any other party to a transaction is a person denied export privileges (see part 764 of the EAR). It is a violation of the EAR to engage in any activity that violates the terms or conditions of a denial order. General Prohibition Four (Denial Orders) applies to all items subject to the EAR, *i.e.*, both items on the CCL and within EAR99.

* * * * *

PART 736—[AMENDED]

3. The authority citation for 15 CFR part 736 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of November 9, 2001, 66 FR 56965, 3 CFR, 2001 Comp., p. 917; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

4. Section 736.2 is amended by revising paragraph (b)(4)(i) to read as follows:

§ 736.2 General Prohibitions and Determination of Applicability.

* * * * *

(b) * * *

(4) * * *

(i) You may not take any action that is prohibited by a denial order issued under part 766 of the EAR, Administrative Enforcement Proceedings. These orders prohibit many actions in addition to direct exports by the person denied export privileges, including some transfers within a single country, either in the United States or abroad, by other persons. You are responsible for ensuring that any of your transactions in which a person who is denied export privileges is involved do not violate the terms of the order. Orders denying export privileges are published in the **Federal Register** when they are issued and are the legally controlling documents in accordance with their terms. BIS also maintains compilations of persons denied export privileges on a Web site and as a supplement to the unofficial edition of the EAR available by subscription from the Government Printing Office. BIS may, on an exceptional basis, authorize activity otherwise prohibited by a denial order. See § 764.3(a)(2) of the EAR.

* * * * *

PART 758—[AMENDED]

5. The authority citation for 15 CFR part 758 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50, U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

6. Section 758.2 is amended by revising paragraph (c)(2) to read as follows:

§ 758.2 Automated Export System (AES).

* * * * *

(c) * * *

(2) Applicants are denied persons; or

* * * * *

PART 764—[AMENDED]

7. The authority citation for 15 CFR part 764 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

8. Supplement No. 1 to Part 764 is amended by revising paragraph (a) (the undesignated paragraphs following paragraph (a) are unchanged), revising the heading and introductory text of paragraph (b), and revising the last sentence of the Supplement to read as follows:

SUPPLEMENT NO. 1 TO PART 764–STANDARD TERMS OF ORDERS DENYING EXPORT PRIVILEGES

(a) *General.* (1) Orders denying export privileges may be "standard" or "non-standard." This Supplement specifies terms of the standard order denying export privilege with respect to denial orders issued after March 25, 1996. Denial orders issued prior to March 25, 1996 are to be construed, insofar as possible, as having the same scope and effect as the standard denial order. All denial orders are published in the **Federal Register**. The failure by any person to comply with any denial order is a violation of the Export Administration Regulations (EAR) (*see* § 764.2(k) of this part). BIS provides lists of denied persons on a Web site and as a supplement to the unofficial edition of the EAR available by subscription from the Government Printing Office.

(2) Each denial order shall include:

(i) The name and address of any denied persons and any related persons subject to the denial order;

(ii) The basis for the denial order, such as final decision following charges of violation, settlement agreement, section 11(h) of the EAA, or temporary denial order request;

(iii) The period of denial, the effective date of the order, whether and for how long any portion of the denial of export privileges is suspended, and any conditions of probation; and

(iv) Whether any or all outstanding licenses issued under the EAR to the person(s) named in the denial order or in which such person(s) has an interest, are suspended or revoked.

* * * * *

(b) Standard denial order terms. The following are the standard terms for imposing periods of export denial. Some orders also contain other terms, such as those that impose civil penalties, or that suspend all or part of the penalties or period of denial.

* * * * *

This order, which constitutes the final agency action in this matter, is effective [DATE].

9. Supplement No. 2 to Part 764 is removed.

PART 766—[AMENDED]

10. The authority citation for 15 CFR part 766 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

11. Section 766.25 is amended by revising paragraph (f) to read as follows:

§ 766.25 Administrative action denying export privileges.

* * * * *

(f) *Publication.* The orders denying export privileges under this section are published in the **Federal Register** when issued, and, for the convenience of the public, information about those orders may be included in compilations maintained by BIS on a Web site and as a supplement to the unofficial edition of the EAR available by subscription from the Government Printing Office.

* * * * *

PART 772—[AMENDED]

12. The authority citation for 15 CFR part 772 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

13. Section 772.1 is amended by removing the definition of "Denied Persons List."

Dated: August 15, 2002.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 02–21596 Filed 8–26–02; 8:45 am]

BILLING CODE 3510–33–P

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Clindamycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADAs) filed by Pharmacia and Upjohn Co. for clindamycin hydrochloride oral dosage forms. The supplement to the NADA for an oral liquid provides for an expanded dose range for the use of clindamycin hydrochloride in both dogs and cats for the treatment of certain bacterial infections. The supplement to the NADA for oral capsules provides for an expanded dose range in dogs and for use of a 300-milligram (mg) strength capsule.

DATES: This rule is effective August 27, 2002.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: mberson@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Pharmacia and Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, filed supplements to NADA 135–940 that provides for use of ANTIROBE (clindamycin hydrochloride) Aquadrops Liquid and to NADA 120–161 for ANTIROBE (clindamycin hydrochloride) Capsules. Supplemental NADA 135–940 provides for an expanded dose range for the use of clindamycin hydrochloride in both dogs and cats for the treatment of certain infections associated with bacteria susceptible to clindamycin hydrochloride. Supplemental NADA 120–161 provides for the same expanded dose range in dogs and for use of a 300-mg strength capsule. The supplemental applications are approved as of May 13, 2002, and the regulations are amended in §§ 520.446 and 520.447 (21 CFR 520.446 and 520.447) to reflect these approvals. The basis of these approvals is discussed in the freedom of information summaries. Sections 520.446 and 520.447 are also being revised to reflect a current format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), summaries of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(d)(1) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither environmental assessments nor environmental impact statements are required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subject in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.446 is revised to read as follows:

§ 520.446 Clindamycin capsules and tablets.

(a) *Specifications*—(1) Each capsule contains the equivalent of 25, 75, 150, or 300 milligrams (mg) clindamycin as the hydrochloride salt.

(2) Each capsule contains the equivalent of 25, 75, or 150 mg clindamycin as the hydrochloride salt.

(3) Each tablet contains the equivalent of 25, 75, or 150 mg clindamycin as the hydrochloride salt.

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter as follows:

(1) No. 000009 for use of capsules described in paragraph (a)(1) of this section as in paragraphs (d)(1)(i) and (d)(2)(i) of this section.

(2) No. 059130 for use of capsules described in paragraph (a)(2) of this section as in paragraphs (d)(1)(ii) and (d)(2)(ii) of this section.

(3) No. 059079 for use of tablets described in paragraph (a)(3) of this section as in paragraphs (d)(1)(ii) and (d)(2)(ii) of this section.

(c) *Special considerations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(d) *Conditions of use in dogs*—(1) *Amount*—(i) Wounds, abscesses, and dental infections: 2.5 to 15 mg per pound (/lb) of body weight every 12 hours for a maximum of 28 days. Osteomyelitis: 5.0 to 15 mg/lb of body weight every 12 hours for a minimum of 28 days.

(ii) Wounds, abscesses, and dental infections: 2.5 mg/lb of body weight every 12 hours for a maximum of 28 days. Osteomyelitis: 5.0 mg/lb of body weight every 12 hours for a minimum of 28 days.

(2) *Indications for use*—(i) For the treatment of skin infections (wounds and abscesses) due to susceptible strains of coagulase-positive staphylococci (*Staphylococcus aureus* or *S. intermedius*), deep wounds and abscesses due to susceptible strains of *Bacteroides fragilis, Prevotella melaninogenicus, Fusobacterium necrophorum*, and *Clostridium perfringens*, dental infections due to susceptible strains of *S. aureus, B. fragilis, P. melaninogenicus, F. necrophorum*, and *C. perfringens*, and osteomyelitis due to susceptible strains of *S. aureus, B. fragilis, P. melaninogenicus, F. necrophorum*, and *C. perfringens*.

(ii) For the treatment of soft tissue infections (wounds and abscesses), dental infections, and osteomyelitis caused by susceptible strains of *S. aureus*, soft tissue infections (deep wounds and abscesses), dental infections, and osteomyelitis caused by or associated with susceptible strains of *B. fragilis, P. melaninogenicus, F. necrophorum*, and *C. perfringens*.

3. Section 520.447 is revised to read as follows:

§ 520.447 Clindamycin liquid.

(a) *Specifications.* Each milliliter of solution contains the equivalent of 25 milligrams (mg) clindamycin as the hydrochloride salt.

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter as follows:

(1) No. 000009 for use as in paragraphs (d)(1)(i)(A), (d)(1)(ii)(A), (d)(2)(i)(A), and (d)(2)(ii)(A) of this section.

(2) No. 059130 for use as in paragraphs (d)(1)(i)(B), (d)(1)(ii)(B), (d)(2)(i)(B), and (d)(2)(ii)(B) of this section.

(c) *Special considerations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(d) *Conditions of use*—(1) *Dogs*—(i) *Amount*—(A) Wounds, abscesses, and dental infections: 2.5 to 15 mg per pound (/lb) of body weight every 12 hours for a maximum of 28 days. Osteomyelitis: 5.0 to 15 mg/lb of body weight every 12 hours for a minimum of 28 days.

(B) Wounds, abscesses, and dental infections: 2.5 mg per pound (/lb) of body weight every 12 hours for a maximum of 28 days. Osteomyelitis: 5.0 mg/lb of body weight every 12 hours for a minimum of 28 days.

(ii) *Indications for use*—(A) For the treatment of skin infections (wounds and abscesses) due to susceptible strains of coagulase-positive staphylococci (*Staphylococcus aureus* or *S. intermedius*), deep wounds and abscesses due to susceptible strains of *Bacteroides fragilis, Prevotella melaninogenicus, Fusobacterium necrophorum*, and *Clostridium perfringens*, dental infections due to susceptible strains of *S. aureus, B. fragilis, P. melaninogenicus, F. necrophorum*, and *C. perfringens*, and osteomyelitis due to susceptible strains of *S. aureus, B. fragilis, P. melaninogenicus, F. necrophorum*, and *C. perfringens*.

(B) For the treatment of soft tissue infections (wounds and abscesses), dental infections, and osteomyelitis caused by susceptible strains of *S. aureus* and for soft tissue infections (deep wounds and abscesses), dental infections, and osteomyelitis caused by or associated with susceptible strains of *B. fragilis, P. melaninogenicus, F. necrophorum*, and *C. perfringens*.

(2) Cats—(i) *Amount*—(A) 5.0 to 15.0 mg/lb of body weight every 24 hours for a maximum of 14 days.

(B) 5.0 to 10.0 mg/lb of body weight every 24 hours for a maximum of 14 days.

(ii) *Indications for use*—(A) For the treatment of skin infections (wounds and abscesses) due to susceptible strains of *S. aureus, S. intermedius, Streptococcus* spp., deep wounds and abscesses due to susceptible strains of *Clostridium perfringens* and *Bacteroides fragilis*, and dental infections due to susceptible strains of *S. aureus, S. intermedius, Streptococcus* spp., *C. perfringens*, and *B. fragilis*.

(B) Aerobic bacteria: Treatment of soft tissue infections (wounds and abscesses) and dental infections caused by or associated with susceptible strains of *S. aureus, S. intermedius*, and *Streptococcus* spp. Anaerobic bacteria: Treatment of soft tissue infections (deep wounds and abscesses) and dental infections caused by or associated with susceptible strains of *C. perfringens* and *B. fragilis*.

Dated: July 17, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–21733 Filed 8–26–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 3

RIN 0790–AG92

Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule codifies the conditions for appropriate use and defines a nontraditional Defense contractor consistent with section 803 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. Representatives of the military departments, Defense agencies and other DoD activities, have agreed on a final rule that amends the interim rule as a result of comments received. Audit policy is still being discussed and will be addressed by a separate rule, as appropriate.

EFFECTIVE DATE: This final rule is effective August 27, 2002.

FOR FURTHER INFORMATION CONTACT: Teresa Brooks, (703) 695–8567.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, as amended, authorizes the Secretary of a Military Department, the Director of Defense Advanced Research Projects Agency and any other official designated by the Secretary of Defense, to enter into transactions other than contracts, grants or cooperative agreements in certain situations for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense. Such transactions are commonly referred to as "other transaction" agreements for prototype projects. To the extent that a particular statute or regulation is limited in its applicability to the use of a procurement contract, it would generally not apply to "other transactions" for prototype projects.

Part 3 to 32 CFR was established to codify policy pertaining to prototype "other transactions" that have a significant impact on the public and are subject to rulemaking. Additional guidance on prototype "other transactions" directed at Government officials can be found on the Defense Procurement web site at: *http://www.osd.dp.mil.*

A proposed rule was published in the **Federal Register** for public comment on November 21, 2001 (66 FR 58422–58425). A notice of public meeting was published in the **Federal Register** on March 4, 2002 (67 FR 9632) and held on March 27, 2002. The proposed rule addressed conditions on use of "other transactions" for prototype projects, the nontraditional Defense contractor definition and audit policy. Comments on the proposed rule were received from five respondents and approximately 50 representatives of Government and industry attended the public meeting. The majority of the written comments and discussion at the public meeting focused on the audit policy and will be addressed in a later rule. Only one respondent commented on the conditions of law and none commented on the definition of a nontraditional Defense contractor. The following summarizes the comments regarding the conditions of law and the disposition.

A. Consistency of Terms

One respondent identified the use of undefined terms that are confusing (e.g., "subordinate element of the party or entities," "awardee") and recommended expanding upon defined terms such a business unit and segment. The respondent recommended defined terms be consistently used through out the rule or definitions be added for undefined terms.

Response: The DoD agrees. The final rule includes additional definitions and made changes to ensure consistent use throughout the rule.

B. Applicability of Limitations

One respondent(s) questioned whether the statement "As a matter of policy, these same restrictions apply any time cost sharing may be recognized when using OTA" was intended to apply to all OTAs, not just OTAs for prototype projects. The respondent recommended it be deleted from this rule and be included in a new rule that applies to all OTA.

Response: The DoD agrees the statement was confusing. The final rule establishes "Limitations on Cost-Sharing" as a separate section and clarifies that as a matter of policy, the cost-sharing limitations will also be applied to other OT agreements for prototype projects that provide for non-Federal cost-share.

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Regulatory Evaluation

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that this rule is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

Unfunded Mandates Reform Act (Sec. 202, Public Law 104–4)

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this part is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule does not require additional record keeping or other significant expense by project participants.

Public Law 96–511, "Paperwork Reduction Act of 1995" (44 U.S.C. 3501 et seq.)

It has been certified that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

Federalism (Executive Order 13132)

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132.

List of Subjects in 32 CFR part 3

Government procurement, Transactions for prototype projects.

Accordingly, part 3 of 32 CFR is amended as follows:

PART 3—TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

1. The authority citation for part 3 is revised to read as follows;

Authority: Sec. 845, Pub. L. 103–160, 107 Stat. 1547, as amended.

2. Section 3.1 is revised to read as follows:

§ 3.1 Purpose.

This part consolidates rules that implement section 845 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, 107 Stat. 1547, as amended, and have a significant impact on the public. Section 845 authorizes the Secretary of a Military Department, the Director of Defense Advanced Research Projects Agency, and any other official designated by the Secretary of Defense, to enter into transactions other than contracts, grants, or cooperative agreements in certain situations for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense.

§§ 3.2, 3.3, and 3.4 [Redesignated as §§ 3.3, 3.4, and 3.7]

3. Section 3.2, 3.3, and 3.4 are redesignated as §§ 3.3, 3.4, and 3.7, respectively.

4. New § 3.2 is added to read as follows:

§ 3.2 Background.

"Other transactions" is the term commonly used to refer to the 10 U.S.C. 2371 authority to enter into transactions other than contracts, grants or cooperative agreements. "Other transactions" are generally not subject to the Federal laws and regulations limited in applicability to contracts, grants or cooperative agreements. As such, they are not required to comply with the Federal Acquisition Regulation (FAR) and its supplements (48 CFR).

5. Newly redesignated § 3.4 is amended to add new definitions in alphabetical order to read as follows:

§ 3.4 Definitions.

Agreements Officer. An individual with the authority to enter into, administer, or terminate OTs for prototype projects and make related determinations and findings.

Awardee. Any business unit that is the direct recipient of an OT prototype agreement.

Business unit. Any segment of an organization, or an entire business organization which is not divided into segments.

* * * * *

Nontraditional Defense contractor. A business unit that has not, for a period of at least one year prior to the date of the OT agreement, entered into or performed on:

(1) Any contract that is subject to full coverage under the cost accounting standards prescribed pursuant to section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 422) and the regulations implementing such section; or

(2) Any other contract in excess of $500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a Federal agency, that is subject to the Federal Acquisition Regulation.

Segment. One of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service.

Senior Procurement Executive. The following individuals:

(1) Department of the Army—Assistant Secretary of the Army (Acquisition, Logistics and Technology);

(2) Department of the Navy—Assistant Secretary of the Navy (Research, Development and Acquisition);

(3) Department of the Air Force—Assistant Secretary of the Air Force (Acquisition);

(4) The Directors of Defense Agencies who have been delegated authority to act as Senior Procurement Executive for their respective agencies.

Subawardee. Any business unit of a party, entity or subordinate element performing effort under the OT prototype agreement, other than the awardee.

6. New § 3.5 is added to read as follows:

§ 3.5 Appropriate use.

In accordance with statute, this authority may be used only when:

(a) At least one nontraditional Defense contractor is participating to a significant extent in the prototype project; or

(b) No nontraditional Defense contractor is participating to a significant extent in the prototype project, but at least one of the following circumstances exists:

(1) At least one third of the total cost of the prototype project is to be paid out of funds provided by non-Federal parties to the transaction.

(2) The Senior Procurement Executive for the agency determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a procurement contract.

7. New § 3.6 is added to read as follows:

§ 3.6 Limitations on cost-sharing.

(a) When a nontraditional Defense contractor is not participating to a significant extent in the prototype project and cost-sharing is the reason for using OT authority, then the non-Federal amounts counted as provided, or to be provided, by the business units of an awardee or subawardee participating in the performance of the OT agreement may not include costs that were incurred before the date on which the OT agreement becomes effective. Costs that were incurred for a prototype project by the business units of an awardee or subawardee after the beginning of negotiations, but prior to the date the OT agreement becomes effective, may be counted as non-Federal amounts if and to the extent that the Agreements Officer determines in writing that:

(1) The awardee or subawardee incurred the costs in anticipation of entering into the OT agreement; and

(2) It was appropriate for the awardee or subawardee to incur the costs before the OT agreement became effective in order to ensure the successful implementation of the OT agreement.

(b) As a matter of policy, these limitations on cost-sharing apply any time cost-sharing may be recognized when using OT authority for prototype projects.

8. Newly redesignated § 3.7 is amended by revising the section heading to read as follows:

§ 3.7 Comptroller General access.

* * * * *

Dated: August 14, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–21267 Filed 8–26–02; 8:45 am]

BILLING CODE 5001–08–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 111–0050a; FRL–7281–7]

Revision to the Arizona State Implementation Plan, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Maricopa County Environmental Services Department (MCESD) portion of the Arizona State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving a local rule that regulates excess emissions from malfunctions, startups, and shutdowns.

DATES: This rule is effective on October 28, 2002, without further notice, unless EPA receives adverse comments by September 26, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Gerardo Rios, Permits Office Chief (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted SIP revision at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington D.C. 20460.

Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, AZ 85007.

Maricopa County Environmental Services Department, Air Quality Division, 1001 North central Avenue, Suite 201, Phoenix, AZ 85004.

A courtesy copy of the rule may be available via the Internet at *http://www.maricopa.gov/envsvc/air/ruledesc.asp*. However, this version of the rule may be different than the version submitted to EPA for approval. Readers are cautioned to verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval. The official submittal is only available at the agency addresses listed above.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the Arizona Department of Environmental Quality.

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Revised	Submitted
MCESD	140	Excess Emissions	09/05/01	02/22/02

On April 12, 2002 this rule submittal was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

There is no previous version of Rule 140 in the SIP.

C. What Is the Purpose of the Submitted Rule?

The purpose of Rule 140 is to provide an owner and/or operator of a source who has been charged with a violation for excess emissions with an affirmative defense to a civil or administrative enforcement penalty. To qualify for the limited affirmative defense to a penalty action, the source must demonstrate compliance with listed criteria and reporting requirements set forth in Rule 140. Moreover, the affirmative defense does not apply to a SIP provision required by federally promulgated performance standards or emission limits, such as new source performance standards (NSPS) and national emission standards for hazardous air pollutants (NESHAPS). The defense also does not apply to violations in areas where a single source has the potential to cause an exceedence of the National Ambient Air Quality Standards (NAAQS) or

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Prevention of Significant Deterioration (PSD) increments. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

This rule contains administrative provisions and standards that apply to emission controls found in other local agency requirements. In combination with those other requirements, this rule must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). EPA policy that we used to define specific enforceability requirements includes:

- *State Implementation Plans: Policy Regarding Excess Emissions during Malfunctions, Startup, and Shutdown,* EPA Memorandum from Steven Herman and Robert Perciasepe to Regional Administrators, Regions I–X (September 20, 1999).
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D,* November 24, 1987 **Federal Register** Notice, (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

B. Does the Rule Meet the Evaluation Criteria?

Rule 140 excludes injunctive relief, federally promulgated emission standards or limitations, and violations in areas with single sources have the potential to exceed the NAAQS from the rule's affirmative defense to enforcement penalties. Rule 140 excludes any violation of standards and limitations included in a permit to meet requirements for pollutant significance levels in adjacent nonattainment areas where primary or secondary ambient air quality standards are being violated. These exclusions assure that Rule 140 will not interfere with the NAAQS and PSD increments, as required by sections 110(a) and (l) of the CAA.

We believe Rule 140 is consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and EPA's policy regarding excess emissions. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by September 26, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 28, 2002. This will incorporate this rule into the federally enforceable SIP.

III. Background Information

A. Why Was This Rule Submitted?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. This rule was developed as part of the local agency's program to control these pollutants.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 28, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. Section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 25, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(106) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(106) Amended rule for the following agency was submitted on February 22, 2002, by the governor's designee.

(i) Incorporation by reference.

(A) Maricopa County Environmental Services Department.

(*1*) Rule 140, revised on September 5, 2001.

* * * * *

[FR Doc. 02–21663 Filed 8–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 160–1160a; FRL–7267–6]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the state of Missouri. This revision to the state's construction permits rule exempts incinerators used for the on-site noncommercial incineration of dead animals from the construction permit requirements. We are approving this revision to ensure consistency between the state and Federally-approved rules, and to ensure Federal enforceability of the state's revised rule.

DATES: This direct final rule will be effective October 28, 2002, unless EPA receives adverse comments by September 26, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a SIP?
What Is the Federal Approval Process for a SIP?
What Does Federal Approval of a State Regulation Mean to Me?
What Is Being Addressed in This Document?
Have the Requirements for Approval of a SIP Revision Been Met?
What Action Is EPA Taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

On May 30, 2002, we received a request from the Missouri Department of Natural Resources (MDNR) to amend the Missouri SIP. This request pertained to rule 10 C.S.R. 10–6.060, Construction Permits Required. This rule defines sources which are required to obtain permits to construct and establishes requirements to be met prior to

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construction or modification of any of these sources.

Prior to this revision, this rule applied to all incinerators. However, on May 28, 2000, the MDNR was notified by the state Attorney General's office that the authority to regulate these types of incinerators was limited by state statute to the University of Missouri Extension Service.

On the recommendation of the Attorney General's office, the MDNR has revised this rule to add an exemption for this type of incinerator. Specifically, subparagraph (O) was added to subsection (1)(D)(1)—Exempt Emission Units. This exemption reads: "Noncommercial incineration of dead animals, the on-site incineration of resident animals for which no consideration is received or commercial profit is realized, as authorized in section 269.020.6, RSMo 2000."

The MDNR has submitted emission inventory information which confirms that emissions from these sources is minimal (for example, particulate emissions are approximately one ton per year, or less), and that this exemption is not likely to have an adverse impact on ambient air quality. These sources will continue to be constructed and operated in accordance with the requirements of the University of Missouri Extension Service. Thus, we are taking action to approve this revision to the Missouri SIP.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Final action: EPA is approving as an amendment to the Missouri SIP revisions to rule 10 C.S.R. 10–6.060, Construction Permits Required, pursuant to section 110 of the CAA.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 28, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 14, 2002.

James B. Gulliford,

Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. In § 52.1320(c) the table is amended under Chapter 6 by revising the entry for "10–6.060" to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
. . . . .				
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
. . . . .				
10–6.060	Construction Permits Required.	5/30/02	8/27/02 and FR cite.	Section 9, pertaining to hazardous air pollutants, is not part of the SIP.
. . . . .				

* * * * *

[FR Doc. 02–21667 Filed 8–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 158–1158a; FRL–7267–3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the state of Missouri. This revision pertains to the state's compliance monitoring usage rule. This revision corrects a reference in the rule so that Federal monitoring methods are now acceptable as a means to demonstrate compliance. This revision will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's revised rule.

DATES: This direct final rule will be effective October 28, 2002, unless EPA receives adverse comments by September 26, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is an SIP?
What Is the Federal Approval Process for an SIP?
What Does Federal Approval of a State Regulation Mean to Me?
What Is being Addressed in This Document?
Have the Requirements for Approval of an SIP Revision Been Met?
What Action Is EPA Taking?

What Is an SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for an SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have

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approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

On April 26, 2002, we received a request from the Missouri Department of Natural Resources to amend the Missouri SIP. This request pertained to rule 10 CSR 10–6.280, Compliance Monitoring Usage. The purpose of this rule is to establish acceptable alternate compliance certification methods for sources submitting compliance certifications and to establish credible evidence of compliance.

Prior to this revision, the state rule made reference to rule 10 CSR 10–6.290, Enhanced Monitoring, which was to be adopted in the future. This rule was never developed. The state decided instead to reference the monitoring methods in 40 CFR part 64 as one of the methods available to sources needing to submit a compliance certification and to establish credible evidence of compliance. Therefore, the state rule has been revised in two places to delete the reference to 10 CSR 10–6.290, and to add the reference to 40 CFR part 64.

Specifically, paragraph 1 of subsections (A) and (B), section (3) General Provisions, was revised to read as follows, "Monitoring methods outlined in 40 CFR part 64."

Since this revision corrects the reference to a non-existing rule and now references the federal monitoring methods, we are taking action to approve this revision to the Missouri SIP.

Have the Requirements for Approval of an SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Final action: EPA is approving as an amendment to the Missouri SIP, revisions to rule 10 CSR 10–6.280, Compliance Monitoring Usage, pursuant to section 110 of the CAA.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove an SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an SIP submission, to use VCS in place of an SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 28, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 12, 2002.

William A. Spratlin,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. In § 52.1320(c) the table under Chapter 6 is amended by revising the entry for "10–6.280" to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
	Missouri Department of Natural Resources			
	Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri			
10–6.280	Compliance Monitoring Usage	3/30/02	8/27/02 and FR cite	

* * * * *

[FR Doc. 02–21659 Filed 8–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 268–0360; FRL–7263–8]

Determination of Attainment of the 1-Hour Ozone Standard for the Santa Barbara County Area, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this rulemaking, EPA is finalizing its determination that the Santa Barbara County area has attained the 1-hour ozone air quality standard by the deadline required by the Clean Air Act (CAA). EPA is also finalizing its approval of the 1-hour ozone contingency measures as revisions to the Santa Barbara portion of the California State Implementation Plan (SIP).

EFFECTIVE DATE: This rule is effective on September 26, 2002.

ADDRESSES: You can inspect copies of the docket for this action at EPA's Region 9 office during normal business hours. You can inspect copies of the submitted SIP revision at the following locations:

U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

California Air Resources Board, 1001 I Street, Sacramento, CA 95814

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117

FOR FURTHER INFORMATION CONTACT: Dave Jesson, EPA Region 9, (415) 972–3957, or *Jesson.David@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to EPA.

I. Proposed Action

On July 1, 2002 (67 FR 44128), we proposed to find that the Santa Barbara County nonattainment area ("Santa Barbara area") had attained the 1-hour ozone national ambient air quality standard (NAAQS) by the applicable deadline of November 15, 1999. We also proposed to approve under CAA section 110(k)(3) the contingency measures in Santa Barbara's 2001 Clean Air Plan, as shown below in "Table 1—Contingency Measures."

TABLE 1.—CONTINGENCY MEASURES

[Source: 2001 Clean Air Plan, Table 4–3]

Rule No.	CAP control measure ID	Description	Adoption schedule	Emission reductions in tons per day (with full implementation)	
				VOC	NO_x
323	R–SC–1	Architectural Coatings (Revision)	2001–2003	0.0998	0
333	N–IC–1 N–IC–3	Stationary IC Engines	2002–2003	0.0008	0.0128
360	N–XC–2	Large Water Heaters & Small Boilers, Steam Generators, Process Heaters (75,000 Btu/hr to <2 MMBtu/hr).	2001–2003	0	[1]0.133
321	R–SL–1	Solvent Degreasers (Revision)	2004–2006	0.0562	0
362	R–SL–2	Solvent Cleaning Operations	2004–2006	1.0103	0
363	N–IC–2	Gas Turbines	2004–2006	0	0
358	R–SL–4	Electronic Industry—Semiconductor Manufacturing	2007–2009	[2]0.0026	0

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TABLE 1.—CONTINGENCY MEASURES—Continued

[Source: 2001 Clean Air Plan, Table 4–3]

Rule No.	CAP control measure ID	Description	Adoption schedule	Emission reductions in tons per day (with full implementation)	
				VOC	NO_x
361	N–XC–4	Small Industrial and Commercial Boilers, Steam Generators, and Process Heaters (2 MMBtu/hr to <5 MMBtu/hr).	2007–2009	0	[3]0.0028

[1] This is with 15% implementation, the highest implementation figure available from the Santa Barbara County Air Pollution Control District's analysis.
[2] The data shown is for source classification code (SCC) number 3–13–065–06 only. The emission data for the SCC numbers and the category of emission source (CES) numbers subject to Rule 358 are included in the Rule 321 or Rule 361 emission reduction summaries.
[3] The emission reductions shown are based on Rule 361 being a point-of-sale type rule.

The proposed action contains more information on the attainment finding, the Santa Barbara contingency measures, and our evaluation.

II. Public Comments

We received no public comments on the proposed action.

III. EPA Action

Under CAA section 181(b)(2)(A), we are finalizing our finding that Santa Barbara has attained the 1-hour ozone NAAQS by the applicable deadline. We are also approving the contingency measures identified in Table 1, under CAA section 110(k)(3).

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and finds that an area has attained a previously-established national ambient air quality standard based on an objective review of measured air quality data. As such, the action imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard and finds that an area has attained applicable air quality standards, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 28, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 8, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(298) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(298) New and amended contingency measures for the following APCDs were submitted on May 29, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Santa Barbara County Air Pollution Control District.

(*1*) 2001 Clean Air Plan Contingency Control Measures R–SC–1 (Architectural Coatings); N–IC–1 and N–IC–3 (Control of Emissions from Reciprocating Internal Combustion Engines); N–XC–2 (Large Water Heaters and Small Boilers, Steam Generators, and Process Heaters); R–SL–2 (Solvent Degreasers) [incorrectly identified as CAP Control Measure R–SL–1 in Table 4–3, "Proposed APCD Control Measures"]; R–SL–2 (Solvent Cleaning Operations); N–IC–2 (Gas Turbines); R–SL–4 (Electronic Industry—Semiconductor Manufacturing); N–XC–4 (Small Industrial and Commercial Boilers, Steam Generators, and Process Heaters), adopted on November 15, 2001.

* * * * *

[FR Doc. 02–21285 Filed 8–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 157–1157a; FRL–7266–9]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the state of Missouri. This revision pertains to excess emissions emitted during start-up, shutdown, and malfunction conditions and the affirmative defenses available to sources. This revision updates the existing state rule to be consistent with EPA guidance. This revision will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's revised rule.

DATES: This direct final rule will be effective October 28, 2002, unless EPA receives adverse comments by September 26, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a SIP?
What Is The Federal Approval Process for a SIP?
What Does Federal Approval of a State Regulation Mean to Me?
What Is Being Addressed In This Document?
Have the Requirements for Approval of a SIP Revision Been Met?
What Action Is EPA Taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

On September 20, 1999, we issued updated policy regarding excess emissions during malfunctions, startup,

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and shutdowns.[1] This policy specifies criteria for SIPs which address periods of excess emissions due to malfunctions, startup, or shutdown.

The state of Missouri has subsequently revised its existing SIP approved rule, 10 CSR 10–6.050 Start-Up, Shutdown and Malfunction Conditions, to incorporate certain provisions of the policy which had not previously been included in the rule. In a submittal letter dated April 16, 2002, the state requested that we approve this revision as an amendment to the Missouri SIP.

The state's rule, applicable to all installations in Missouri, provides the owner or operator of an installation the opportunity to submit data regarding conditions which result in excess emissions. These submittals will be used by the MDNR director to determine whether the excess emissions were due to a start-up, shutdown or malfunction condition. These determinations will be used in deciding whether or not enforcement action is appropriate.

In revising its rule, the state incorporated, in subsection (3)(C), additional factors to be considered by the director, and added additional information requirements in subsection (3)(A) and paragraph (3)(C)2. Language was added in subsections (3)(A) and (3)(B) to set a threshold of one hour for excess emissions which require a written report. The requirement to report excess emissions on the annual Emissions Inventory Questionnaire was clarified in subsection (4)(B). Other revisions were made to make the rule consistent with Title V requirements. The definitions section was removed since all relevant definitions are contained in the state's definition rule, 10 CSR 10–6.020. Finally, the format of the rule was revised to be consistent with the state's new standard rule format. The state's revisions were effective February 28, 2002.

In summary, the revised rule is consistent with EPA's aforementioned policy. Thus, we are taking action to approve this revision in the Missouri SIP.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Final action: EPA is approving as an amendment to the Missouri SIP revisions to rule 10 CSR 10–6.050, "Start-Up, Shutdown and Malfunction Conditions" pursuant to section 110 of the CAA.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 28, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

[1] Memorandum from Steven Herman and Robert Perciassepe to Regional Administrators, Regions I–X; *State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 14, 2002.

James B. Gulliford,

Regional Administrator, Region 7.

Chapter I title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. In § 52.1320(c) the table is amended under Chapter 6 by revising the entry for "10–6.050" to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
	Missouri Department of Natural Resources			
	Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri			
10–6.050	Start-Up, Shutdown and Malfunction Conditions	2/28/02	8/27/02 and FR *cite*	

* * * * *

[FR Doc. 02–21661 Filed 8–26–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 177, and 178

[Docket No. RSPA–98–3971 (HM–226)]

RIN 2137–AD13

Hazardous Materials: Revision to Standards for Infectious Substances; Correction

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Correction to final rule effective date.

SUMMARY: This document corrects the effective dates for a final rule revising transportation requirements for infectious substances, published in the **Federal Register** on August 14, 2002 (67 FR 53118). The effective date for the final rule and the incorporation by reference approval date are corrected to February 14, 2003.

DATES: The effective date of the final rule amending 49 CFR Parts 171, 172, 173, 177, and 178, published at 67 FR 53118 on August 14, 2002, is corrected to February 14, 2003.

The incorporation by reference of publications listed in this final rule has been approved by the Director of the Federal Register as of February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Susan Gorsky (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 2002, the Research and Special Programs Administration issued a final rule to revise the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) as they apply to the transportation of infectious substances. The published effective date was October 1, 2002.

Need for Correction

The October 1, 2002 effective date does not provide sufficient time for all segments of the industry to come into compliance with the new requirements.

Correction

In rule document 02–20118, on page 53118 in the issue of Wednesday, August 14, 2002, make the following correction:

On page 53118 in the first column, in the **DATES** section, the effective dates of the final rule and the IBR approval are corrected to read as set forth above in the **DATES** section of this document.

Issued in Washington, DC on August 16, 2002 under authority delegated in 49 CFR Part 106.

Ellen G. Engleman,

Administrator, Research and Special Programs Administration.

[FR Doc. 02–21473 Filed 8–26–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH56

Endangered and Threatened Wildlife and Plants; Removal of *Potentilla robbinsiana* (Robbins' cinquefoil) From the Federal List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have determined that *Potentilla robbinsiana*, commonly called Robbins' cinquefoil, is no longer an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. This determination is based on available data indicating that this species has recovered. The main population of the species currently has more than 14,000 plants, and the 2 transplant populations have reached or surpassed minimum viable population size. This action removes *Potentilla rabbinsiana* from the List of Endangered and Threatened Plants and removes the designation of critical habitat.

This rule includes a proposed 5-year post-delisting monitoring plan as required for species that are delisted due to recovery. The plan will include monitoring of population trends of both natural and transplant populations.

DATES: This rule is effective September 26, 2002.

ADDRESSES: The administrative file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Northeast Regional Office, 300 Westgate Center Drive, Hadley, Massachusetts 01035 (telephone (413) 253–8628).

FOR FURTHER INFORMATION CONTACT: Diane Lynch at (413) 253–8628 or the above address.

SUPPLEMENTARY INFORMATION:

Background

Although its discovery was not formalized until 1840 (Torrey and Gray, 1840), the first recorded collection of *Potentilla robbinsiana* (Robbins' or dwarf cinquefoil) by Thomas Nuttall in 1824 generated a strong interest among botanists and others in this diminutive member of the rose family (*Rosaceae*). Initially, there was confusion as to its taxonomic status, and it was designated as a variety of various European cinquefoils, but it was eventually recognized as a distinct species (Rydberg, 1896).

Potentilla robbinsiana is a lopg-lived perennial herb. Its hairy three-part compound leaves are deeply toothed, and mature plants form a dense 2–4 centimeter (cm) (1–1.5 inch (in)) rosette. Individual plants develop a deep central taproot, which helps to anchor them and resists frost heaving. *Potentilla robbinsiana* is one of the first plants to bloom in the alpine zone where it is found, flowering soon after the snows recede, from late May to mid-June. Adult plants produce from 1 to 30, 5-petalled yellow flowers on individual stems. The achenes (fruits) mature by late July, and disperse on dry windy days. These seeds seldom disperse more than 20 cm (8 in) from the parent plant, which limits natural reestablishment (Kimball and Paul, 1986). The seeds remain dormant for at least one winter, and germination begins the following year during June and July. Although seed viability is generally high, seedling survival is low (Iszard-Crowley and Kimball, 1998).

Various experiments have shown that *Potentilla robbinsiana* produces seed asexually so that seedlings are genetically identical (Lee and Greene, 1986). This species has the chromosome number 49 that allows it to maintain itself through asexual reproduction, which partially explains the low genetic variability found within the sampled population (David O'Malley, personal communication, 2000).

Potentilla robbinsiana is endemic to the White Mountains of New Hampshire and is restricted to two small, distinct areas on lands administered by the White Mountain National Forest. Herbaria collections suggest that historically there may have been a number of small populations in close proximity to these two areas. Currently there are only two natural populations. Reports of occurrences outside of New Hampshire have been discounted (Cogbill, 1993), and records indicate that *Potentilla robbinsiana* has always had a very narrow geographic distribution.

The largest natural population of *Potentilla robbinsiana* occurs on Monroe Flats located just above treeline on a col (saddle) between Mt. Monroe and Mt. Washington in the Presidential Range. Within this small area (less than 1 hectare (ha) (2.5 acres (ac))), the population is well established with more than 14,000 plants at present. Considering its local abundance and density at this one location, we assume that some of the unique features of Monroe Flats are important habitat requirements for *Potentilla robbinsiana*. Monroe Flats (elev. 1,550 meters (m) (5,085 feet (ft.)) consists of an exposed low dome that is covered with alternating bands of relatively barren small-stoned terraces and thickly vegetated mats. Blowing winds keep the Monroe Flats mostly free of snow and ice throughout the winter, leaving the vegetation exposed to the abrasive action of blowing snow and ice, and desiccating winds. The moist, barren soils are also susceptible to frost disturbance from freeze-thaw cycles for much of the year. In this extreme environment of moderate solifluction (soil movement downslope) and exposed topography, *Potentilla robbinsiana* occupies a narrow niche: It is likely a poor competitor with other species, but is able to thrive in a harsh environment where few other species can survive (Cogbill, 1987).

The second extant natural population occurs on Franconia Ridge, 30 kilometers (km) (18.6 miles (mi)) to the west of the Monroe Flats population. Although still within the alpine zone, the habitat here is markedly different. A limited number of plants grow at a site on the south end of the Franconia Ridge in crevices along the side of a vertical cliff just below the ridgeline. Although records indicate that the Franconia population was never very large, it is likely that these few plants are the remnants of a larger population from more suitable habitat that previously existed along the top of the ridge. The habitat has long since eroded and the plants have disappeared due to hiking activity along a ridgeline trail.

Potentilla robbinsiana was listed as endangered on September 17, 1980, and critical habitat encompassing the Monroe Flats population was designated at that time. Overzealous specimen collecting and unregulated hiker disturbance were the reasons for listing. At the time, the extent of the Monroe Flats population was shrinking (Graber and Brewer, 1985), and the Franconia Ridge population was thought to be extirpated.

We approved a recovery plan for *Potentilla robbinsiana* in 1983 and revised it in 1991 (U.S. Fish and Wildlife Service 1991). We began recovery activities in 1979, focusing on the only known population at Monroe Flats. Important features of the recovery efforts for this species included: construction of a scree wall; signs to alert the public to stay on the trail; Educational posters at the Lake-of-the-Clouds hut; monitoring the use of the Crawford Path; and trail relocation to avoid disturbance. We subsequently rediscovered the natural Franconia

Ridge population in June of 1984, which was represented by a single known plant.

Prior to listing, there had been a number of attempts to establish transplant populations at approximately 20 locations throughout the White Mountains (Graber, 1980). Although some of these efforts showed signs of initial success, all but one eventually failed due to unsuitable habitat or because patches of suitable habitat were too small to support viable populations. The Appalachian Mountain Club's Research Department reviewed these efforts, and, using the lessons learned, narrowed recovery efforts to four potential sites as outlined in the updated 1991 recovery plan: Two used in the previous transplant efforts (Camel Patch and the Viewing Garden) and two new ones (Boott's Spur and an additional Franconia Ridge population).

Of the transplant populations created prior to this species' listing, one continues to persist. Camel Patch received an unknown number of transplants by Raymond E. Gerber from the 1980s to 1991 (records unavailable). The Appalachian Mountain Club inventoried this site starting in 1984 when they located 84 plants. Only one of the transplant zones in this habitat showed viable natural reproduction occurring. This population was monitored annually from 1984 to 1992 and again in 1995, with annual monitoring beginning again in 1998. Supplementation of this population began in 1999 with 6 transplants, which boosted this population to 23 adults, 60 juveniles, and 6 new transplant adults. Since 1999, an additional 31 transplants were done, bringing the population to 40 adults and 57 juveniles. The Viewing Garden had received 19 known adult transplants from about 1980 through 1997. Though the adults survived for some time, viable natural reproduction was problematic and these individuals died out over time.

Transplant efforts to new locations began in 1986 with the introduction of 160 plants over three years at the Boott's Spur site. The site showed some initial promise, but by 1991 mortality was 100%. Although the Boott's Spur location was recognized as suboptimal habitat and had failed in a previous transplant effort, another 27 plants were transplanted in 1995, but none survived after the first year. The new Franconia population was established in 1988 with 61 plants transplanted over 2 years and an additional 108 plants through 1996, the date of the last transplant efforts. Like the natural populations, this transplant population has fluctuated over the years, but now appears well established with over 337 plants counted in 2001 and good natural recruitment occurring.

Summary of Federal Actions

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report, within 1 year after passage of the Act, on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director of the Service published a notice in the **Federal Register** (40 FR 27823) of his acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. Comments on this proposal were summarized in the April 26, 1978, **Federal Register** publication of a final rule, which also determined 13 plants to be either endangered or threatened species (43 FR 17909). *Potentilla robbinsiana* was included in the Smithsonian's report, the July 1, 1975, notice of review, and the June 16, 1976, proposal.

The amendment of the Act in 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, we published a notice withdrawing the June 16, 1976, proposal to list *Potentilla robbinsiana* (44 FR 70796).

Based on sufficient new information, we again proposed *Potentilla robbinsiana* for listing on March 24, 1980, and proposed its critical habitat for the first time (45 FR 19004). A public meeting was held on this proposal on April 28, 1980, in Concord, New Hampshire. On September 17, 1980, we published a final rule in the **Federal Register** (45 FR 61944) listing *Potentilla robbinsiana* as endangered and designating critical habitat.

On June 8, 2001, we proposed to remove *Potentilla robbinsiana* from the List of Endangered and Threatened Plants because the available data indicate that this species has recently met the goals for delisting. In our **Federal Register** notice (66 FR 30860), we requested that all interested parties provide information and comments on the status of this species.

Summary of Current Status

As mentioned in the "Background" section, *Potentilla robbinsiana* is endemic to alpine areas of the White Mountain National Forest. The species is limited in its distribution as it occupies a unique habitat within the alpine zone that is very restricted geographically. There are currently four populations of the species; three are considered viable (over 50 plants), Monroe Flats, Camel Patch transplant site, and the Franconia Ridge transplant site. One site, the natural Franconia Ridge site has a very limited range of habitat. This population continues to sustain itself. However, we believe it will never reach the 50 plants needed to be considered viable due to limited suitable habitat.

Table 1 shows the Monroe Flats census counts of the species. Although counts were undertaken in 1973, 1983, and 1992, the methodology used to count the plants differed. The most reliable comparison between the three prior censuses and the most recent census (1999) is the number of plants found that were greater than 14 millimeters (mm) (0.5 in.) in stem diameter. Comparing the number of plants greater than 14 mm in diameter for censuses in 1983, 1992, and 1999 clearly demonstrates that the Monroe Flats population has dramatically increased.

TABLE 1.—MONROE FLATS CENSUS COUNTS FOR *Potentilla robbinsiana*

Year	Number of plants with stems greater than 14 mm (0.55 in) in diameter	Increase from previous count (percent)
1973	1,801	
1983	1,547	–14
1992	3,368	118
1999	4,575	36

Both the Camel Patch and Franconia Ridge transplant populations have persisted for more than 10 years. Both have juvenile recruitment and successful second generation seedling establishment. Transplant and/or monitoring efforts for these populations continue on a near annual basis (Kimball, 1998). The high level of soil movement throughout Camel Patch makes much of the site unsuitable for transplant efforts, nevertheless a population located along the edge of the encircling vegetation is well established. The Franconia Ridge population has increased dramatically in recent years and is now well established.

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An 11-year demographic study, funded by the Service, the U.S. Forest Service, and Appalachian Mountain Club, was conducted along four permanent transects within the Monroe Flats population. The purpose of this study, in part, was to determine a minimum viable population for the transplant populations centered on the survival of each life stage of the plant at the Monroe Flats population. The study recommended a minimum viable population of 50 plants (Iszard-Crowley and Kimball, 1998). Both the Camel Patch location with a current population of 97 plants (Table 2) and the Franconia transplant location with a current population of 337 plants (Table 3) meet this criterion.

TABLE 2.—RESULTS OF THE 1999–2001 CENSUSES OF THE CAMEL PATCH TRANSPLANT POPULATION

Year	Seedling	Juvenile < 14mm	Juvenile ≥ 14mm	Adults	Total # plants ≥ 14mm	Total
1999	0	43	23	21	44	87
2000	0	42	30	29	59	101
2001	0	27	30	40	70	97

TABLE 3.—RESULTS OF THE 1999–2001 CENSUSES OF THE FRANCONIA TRANSPLANT POPULATION

Year	Seedling	Juvenile < 14mm	Juvenile ≥ 14mm	Adults	Total # plants ≥ 14mm	Total
1999	1	284[a]		46	N/A[a]	331
2000	0	172	58	77	135	307
2001	0	179	83	75	158	337

[a] Size class data unavailable.

Potentilla robbinsiana Recovery

In accordance with section 4(f)(1) of the Act, the Service is responsible for the development and implementation of recovery plans for all listed species, to the maximum extent practicable. The first Robbins' Cinquefoil Recovery Plan was completed in 1983, and featured two main objectives: (1) To protect the existing Monroe Flats colony, encouraging its expansion to previously occupied habitat; and (2) to establish self-maintaining populations in at least four additional potential habitats not occupied at the time.

To accomplish the first objective, a scree wall surrounding the Monroe Flats population was constructed and posted with "closed to entry" signs, and two hiking trails that had previously traveled through the Monroe Flats population were relocated away from the population. Plants have since been successfully transplanted back into the habitat where the trails had resulted in the localized demise of the plants, primarily at the highest elevation in the Monroe Flats population. The ability of seed to move downhill from this recolonized site should benefit the Monroe Flats population. In addition, personnel from the White Mountain National Forest and Appalachian Mountain Club continue to provide stewardship, enforcement, and educational resources on site.

Several tasks were necessary to meet the second objective of establishing four additional self-maintaining transplant populations: (1) Protocols were developed to monitor the Monroe Flats population to better understand its demographic trends and natural rates of recruitment and mortality, and to collect data to model minimum viable population size; (2) the natural Franconia Ridge population (rediscovered in 1984) was annually monitored; (3) micro-habitat components were identified and used to locate unoccupied, potentially suitable habitat; and (4) effective propagation and transplant techniques were developed. Transplant techniques varied over the years. However, the most successful efforts used 2-year-old plants germinated from seed, and transplanted with the soil media intact in mid-June to early July. Each year a portion of the seed collected for use in transplants is placed in cold storage at the New England Wildflower Society to establish a seed bank for this species.

As mentioned in the "Background" section, two of the transplant sites failed, Boott's Spur and the Viewing Garden. The other two transplant sites, Franconia and Camel Patch, are both considered viable populations with 331 plants and 87 plants respectively, in 1999. As of 2001, these populations increased to 337 plants and 97 plants respectively.

The Robbins' Cinquefoil Recovery Plan: First Update, published in 1991, retained recovery criteria for the protection of existing natural populations and establishing additional transplant populations, but also contained minor changes to incorporate the rediscovered natural Franconia population, and acknowledged that suitable additional unoccupied habitat may be a limiting factor. In addition to the protection of the natural populations, this plan determined that a historically occupied zone within the Monroe Flats should be recolonized. Transplant efforts began in 1996 to meet this objective, and successful juvenile recruitment has since been observed.

To delist *Potentilla robbinsiana*, long-term demographic evidence must show that the Monroe Flats population is stable or increasing in size. As mentioned in the "Summary of Current Status" section, comparing the number of plants greater than 14 mm in stem diameter for censuses in 1983, 1992, and 1999 clearly demonstrates that the Monroe Flats population has dramatically increased.

While the 1991 recovery plan calls for the establishment of four transplant populations, it also recognizes that suitable habitat may be a limiting factor, and requires only two of the four transplant populations to be viable. Introduction of plants to the Boott's Spur location has subsequently been dropped due to the unsuccessful transplant efforts resulting in 100% mortality. The Viewing Garden location also showed 100% mortality in 1998. There are no plans to reestablish a population at this location because the suitable habitat is very limited and cannot support more than a few individual plants that are unlikely to persist under natural population fluctuations. Biologists familiar with this species are confident that little if any suitable habitat in the White Mountains remains to be discovered (K. Kimball, Appalachian Mountain Club, pers. comm. 2000). Therefore, given that the discovery of additional suitable habitat for the establishment of new transplant attempts is unlikely, recent efforts have focused on ensuring viable populations at the two remaining transplant locations, Camel Patch and Franconia Ridge. As stated in the "Summary of Current Status" section, research on the species has determined that a minimum viable population consists of 50 plants (Iszard-Crowley and Kimball, 1998). Both the Franconia transplant location with a current population of 337 plants and the Camel Patch location with a current population of 97 plants meet this criterion.

Summary of Issues and Recommendations

In the June 8, 2001, proposed rule (66 FR 30860) we requested that all interested parties provide information and comments on the status of *Potentilla robbinsiana* and the proposal to delist this species. The public comment period ended August 7, 2001. Announcements of the proposed rule were sent to Federal and State agencies, elected officials, interested private organizations and citizens, and local area newspapers.

We received a total of two written comments, one from an individual and one from an organization. The organization (Appalachian Mountain Club) supports the delisting proposal, while the individual did not support it. Comments are discussed below. In addition, we considered and incorporated, as appropriate, into the final rule all biological and commercial information obtained through the public comment period.

Issue 1: Both commenters mention that the more appropriate common name for the species is dwarf cinquefoil.

Our response: We agree that the current common name is dwarf cinquefoil. Throughout this document we refer to the species by using the Latin name *Potentilla robbinsiana*. The exception being, when referencing the recovery plans, where the formal title of the plans refers to the species as Robbins' cinquefoil. We continue to use the common name of Robbins' cinquefoil for this species since that was the common name under which this species was associated at the time of listing.

Issue 2: One commenter recommends that all future population counts should be for total population, not transect counts as suggested in the proposed rule.

Our response: We agree that a total population census using a grid sampling methodology would provide more consistent comparisons over time. For the 5-year post-delisting monitoring, a total population census will be used. However, as explained in the "Summary of Current Status" section, the most reliable comparison between the 3 prior censuses and the most recent census (1999) is the number of plants found that were greater than 14 mm (0.5 in.) in stem diameter.

Issue 3: One commenter was concerned that the proposed rule does not technically satisfy some of the downlisting and delisting criteria contained in the updated recovery plan.

Our response: As mentioned in the proposed rule, the downlisting and delisting objectives in the 1991 recovery plan update were based on the best information available at that time. The recovery plan states "that approved recovery plans are subject to modification as dictated by new findings, changes in species status, and the completion of recovery tasks." Each recovery objective from the 1991 plan is addressed in the "*Potentilla robbinsiana Recovery*" section of this rule. This section lays out the recovery actions that have led to the decision to delist the species, even though not every objective was met. In addition, we have determined that none of the five listing factors identified in the Act remain a threat to *Potentilla robbinsiana*. The objectives identified during the recovery planning process provide a guide for measuring the success of recovery, but are not intended to be absolute prerequisites, and should not preclude a reclassification or delisting action if such action is otherwise warranted.

Issue 4: One commenter was concerned that the Service did not seek the review and concurrence from the ad hoc recovery group for *Potentilla robbinsiana*.

Our response: The ad hoc recovery group first met shortly after the listing of the species in 1980. At that time and up until the present, this group was never a formalized recovery team with members appointed by the Regional Director. This group was consulted at one time, but the Service never asked for a consensus on any matters. This group has not met in over a decade. The Service did seek scientific review and comment from all interested stakeholders during our public comment period associated with the proposed rule.

Issue 5: One commenter was concerned that the Service did not complete tasks 5.3 and 7 in the original recovery plan of 1983, and task 5.1 of the updated plan, prior to publishing the proposed rule.

Our response: We disagree. Task 5.3 of the original plan, "Develop news releases, articles and maintain contact with interested groups," was not included in the updated plan of 1991. Task 7 of the original plan and task 5.1 of the updated plan are essentially the same: "submit an annual report on all conservation activities and research findings." The Appalachian Mountain Club has submitted annual *Potentialla robbinsiana* progress reports consistently since 1984 to both the Service and the White Mountain National Forest. Additional reports including several updates on germination and transplanting of the species and a demographic analysis of *Potentialla robbinsiana* were also supplied to the Service and the White Mountain National Forest.

Issue 6: One commenter asked if the proposed rule received approval of the recovery team or was peer-reviewed by conservation biologists.

Our response: There is no recovery team for this species. Instead, the Service submitted the proposed rule to three organizations: the White Mountain National Forest, the Appalachian Mountain Club, and the New England Wild Flower Society, for scientific review. Scientists associated with these organizations, who are knowledgeable about *Potentilla robbinsiana's* status and biology, reviewed the proposed rule. Only the Research Department of the Appalachian Mountain Club chose to provide a written endorsement of the proposed rule. The State of New Hampshire's Natural Heritage Program also received a copy of the proposed rule, and has been an active participant in the recovery planning and efforts for this species.

Issue 7: One commenter was concerned that the proposed rule did not provide indication of active protection efforts from off-trail hikers at the Camel Patch population or from rock climbers at the natural Franconia Ridge population.

Our response: Surveys have yielded no evidence of trespass or disturbance to these populations. We, together with the Appalachian Mountain Club, monitor the transplant populations and the Franconia Ridge natural population on a near annual basis. It is recommended by the Appalachian Mountain Club, and the Service concurs, that the best long-term management for these populations is to

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manage them, but not to draw attention to them. Unlike the Monroe Flats population, these three populations are generally unknown and less accessible. Attempts to manage trespass using scree walls, signage, or other means, may call more attention to these discrete populations than the current low-key strategy.

Issue 8: One commenter noted that transplanted subpopulations at the Monroe Flats population are not necessarily viable.

Our response: We consider the Monroe Flats population to be one population and do not identify subpopulations. Task 4.5 of the updated recovery plan directs efforts to recolonize extirpated historical sites in the essential Monroe Flats habitat. Rather than ensuring additional viable subpopulations within Monroe Flats, the purpose of this task was to expand the population to its historical spatial extent where possible. Transplant efforts on Monroe Flats have focused in areas where plants had been extirpated due to trampling. Substrate directly along the now discontinued section of the Crawford Path has been heavily impacted and is no longer suitable habitat. However, impacts on either side of the discontinued trail have been less significant, and have been the focus of transplant efforts, including the high-point on Monroe Flats known as the "Dome." This location may play an important role as seed source for downslope areas since seeds rarely migrate far from the parent plant. The past impact from substrate compression makes the habitat suitability and future status of this part of the transplant area uncertain. However, recent transplant survival has been strong, and there is seedling and juvenile recruitment in these areas, which meets the stated recovery task. Regardless of the potential for long-term reestablishment within the extirpated areas, these plants represent less than one percent of the Monroe Flats population and do not affect the viability of the Monroe Flats population.

Issue 9: One commenter was concerned with the statement that there is no suitable unoccupied habitat left for the species, and considers this as self-fulfilling and thus tautological.

Our response: As stated in the proposed rule under the "Background" section, prior to listing there had been a number of attempts to establish transplant populations at approximately 20 locations throughout the White Mountains. In 1986, with the experience gained from previous efforts, the four most appropriate transplant sites were determined, and efforts began. Of these four locations, two persist today. Given this species' unique habitat needs, the small geographic extent of such habitat, and the fact that transplanting efforts occurred at over 20 sites, we feel that locating additional suitable habitat for new transplant attempts is unlikely.

Issue 10: One commenter questioned why, if the Camel Patch population is deemed viable, we continue to supplement it.

Our Response: Seeds are collected annually from the Monroe Flats population and shipped to the New England Wild Flower Society for future germination and propagation. In the past, plants reared from these seeds were transplanted at the Camel Patch and Franconia transplant populations to help establish viable populations. They were also transplanted at the Monroe Flats population, and continue to be in an effort to reestablish adult plants at a topographic high spot so that they can act as an additional seed source for the main population at this site. Currently, the only plants that are transplanted at the Camel Patch population are extra plants intended for the Monroe Flats annual transplant effort. These plants are strategically placed to allow seed to flow downhill of the habitat in an effort to physically expand this population.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act, set forth the procedures for listing, reclassifying, and delisting species on the Federal lists. A species may be listed if one or more of the five factors described in section 4(a)(1) of the Act threatens the continued existence of the species. A species may be delisted according to 50 CFR 424.11(d), if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened (1) because of extinction, (2) because of recovery, or (3) because the original data for classification of the species were in error.

After a thorough review of all available information, we determined that substantial *Potentilla robbinsiana* recovery has taken place since listing in 1980. We have also determined that none of the five factors identified in section 4(a)(1) of the Act, and discussed below, are currently affecting the species in such a way that the species is endangered (in danger of extinction throughout all or a significant portion of its range) nor threatened (likely to become endangered in the foreseeable future throughout all or a significant portion of its range). These factors and their application to *Potentilla robbinsiana* are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Potentilla robbinsiana utilizes a substrate described as shallow loamy sand topped with a stony, pavement-like surface. This stony surface layer protects the soil from being either blown or washed away. The 1980 final listing rule determined that the plant and its habitat were damaged by trampling from hikers. Hiking through the habitat is unimpeded due to the lack of most vegetation. Because the plants are small, it is easy for hiker boots to crush adult, juvenile, and seedling plants.

Since listing, the threat from trampling has been reduced by rerouting trails and protecting habitat. The section of the Appalachian Trail that bisected the Monroe Flats population is referred to locally as the Crawford Path, named after Abel Crawford who constructed the path in 1819. In 1915, the Appalachian Mountain club constructed Lake of the Clouds Hut, 270 m (295 yards (yd)) to the north of the trail. The Crawford Path was relocated at this time to bring the trail by the Hut, and although the trail was no longer directly bisecting *Potentilla robbinsiana* habitat, it still went through the northwest corner of the critical habitat. In 1983, the Crawford Path and Dry River Trails were rerouted a second time in response to the Federal listing, to move the trails outside of the plant's critical habitat. A low scree wall was constructed in conjunction with the trail relocation, around the critical habitat, and has been particularly effective in places where the trail abuts critical habitat. Signs posted around the Monroe Flats population notify hikers that there is a federally listed species present and no admittance is allowed without a permit. These signs are replaced as needed. Hiker traffic and trespassers into the critical habitat were recorded by pressure plates during 1985 to assess the effectiveness of hiker management. The plates were operated from June through October 1985 and checked several times weekly. Of 4,286 hikers counted over 115 days the counters were functional, the trespass rate was 2 percent (Kimball and Paul, 1986). The target compliance level established by the 1983 recovery plan was 95 percent of the hikers not trespassing into the critical habitat, an objective that has been maintained or exceeded since 1981. Outreach has also been a strong recovery component for ensuring hiker compliance of no trespassing into the *Potentilla robbinsiana* habitat. A naturalist is stationed at the Lake of the Clouds Hut throughout the summer. The Hut naturalist is available during the day to answer questions and give interpretive talks regarding *Potentilla robbinsiana*. The naturalist and other Hut staff are also instrumental in monitoring the Monroe Flats population for human disturbance.

In 1973, prior to listing, the Monroe Flats population contained approximately 1,801 individual plants larger than 14 mm (0.55 in). As of 1999, this population included approximately 4,575 individuals of similar size. This represents a greater than 250% increase in this population. Counting plants of all sizes (seedlings to adults) in 1999, the established population size was 14,195 individuals.

The second natural population is near the Appalachian Trail on Franconia Ridge. The locations of this population and the two transplant populations have been purposefully kept undisclosed and are presently out of the way of the average hiking public. Attempts to manage trespass using scree walls, signage, or otherwise, may call more attention to this population than the current low-key strategy.

Records indicate that the extant natural Franconia Ridge population was never very large. Nevertheless, it is considered to be a reproducing population, with 11 individual plants consisting of 3 adults and 8 juveniles as of 2001, and is being monitored regularly by the Appalachian Mountain Club.

The protection efforts in effect for the Monroe Flats population, the existence of two viable transplant populations, and the strategy to manage these two populations and the natural Franconia Ridge population, demonstrate that there is no longer a threat to the habitat of *Potentilla robbinsiana*.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The 1980 final listing identified that the collecting of specimens for herbaria probably contributed to the loss of *Potentilla robbinsiana* and possibly the cause for the extirpation of one of the Franconia sites (Steele, 1964). It was noted that over 40 herbarium sheets containing nearly 100 plants (6 percent of the known mature population at the time of listing) were counted in various New England herbaria (Graber, 1980). Cogbill's more recent paper (1993) documents the collection of over 850 plants in herbaria collections worldwide, which represents one of the most extensive collections known for a single species. In the late 1800s some collectors were selling alpine plants, specifically including *Potentilla robbinsiana*, to other collectors for 10 cents per sheet (Cogbill, 1993). However, commercial trade in the species has not occurred since the early 1900s and is not expected to occur in the future; import or export of this species also is not anticipated. Collection of material for herbaria has declined significantly due to scientists becoming more aware of the impacts of collecting on rare species. Monitoring of these sites does not indicate a problem with overcollection. Therefore, taking of *Potentilla robbinsiana* for these purposes is not considered to be a threat.

C. Disease and Predation

This species is not known to be threatened by disease or predation.

D. The Inadequacy of Existing Regulatory Mechanisms

Potentilla robbinsiana is currently afforded limited protection by the Endangered Species Act. Section 9 of the Act prohibits the removal and possession of endangered plants from lands under Federal jurisdiction and the malicious damage and destruction of endangered plants in such areas, and the damage or destruction of endangered plants from any other area in knowing violation of any State law or regulation, or in the course of a violation of State criminal trespass law. Section 7 of the Act requires Federal agencies to ensure that their actions do not jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat.

Section 7(a)(1) of the Act requires Federal agencies to carry out programs for the conservation of threatened and endangered species. The entire range of *Potentilla robbinsiana* occurs on Forest Service lands. Forest Service regulations prohibit removing, destroying, or damaging any plant that is classified as a threatened, endangered, rare or unique species (36 CFR 261.9). Currently the species is classified as a G1 species (critically imperiled because of extreme rarity) by the State of New Hampshire's Natural Heritage Program, and appears on the Forest Service's Region 9 (Northeast) list of "species of concern." These rankings will not change once the species is delisted, thus the Forest Service regulations will remain in effect. On December 2, 1994, we and the Forest Service's White Mountain National Forest signed a Memorandum of Understanding (MOU) for the conservation of *Potentilla robbinsiana*. The MOU states that the Forest Service agrees to carry out specific management measures, with our assistance, both through the recovery period, and if and when *Potentilla robbinsiana* is removed from the list of endangered and threatened plants.

Potentilla robbinsiana does appear on the New Hampshire State list of endangered and threatened species, although State legislation currently offers it no protection. However, since this species is endemic to Federal lands administered by the White Mountain National Forest, which has committed to continuing its ongoing program to provide for the long-term conservation of this species, we have determined that there is adequate existing protection in place for this species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Recovery efforts have been directed toward protection and environmental education. A number of approaches have been used to educate the hiking community, the scientific community, and the public about *Potentilla robbinsiana*. Providing information to the public regarding the species' biology and management satisfies their curiosity and increases their willingness to participate in protection of this species. These efforts include a permanent display and presentations about *Potentilla robbinsiana* by the seasonal Appalachian Mountain Club naturalist at Lake of the Clouds Hut.

The 1980 final listing rule mentioned that *Potentilla robbinsiana* is vulnerable to the harsh climate in which it lives. The weather regime experienced by the species is highly variable from year to year. During demographic studies over the past 16 years, it has been observed that late frosts in June have the potential to damage flowers and greatly reduce the seed crop for that year. By virtue of a deep taproot, the species appears to be adapted to a moderate level of frost-heaving, a stress that may limit competing species. At the same time, it cannot tolerate frost-induced movement of more than 18 mm/yr (.71 in/yr), or frost action sufficient to produce stone stripes or other patterned ground (Cogbill, 1987). Overall, however, this species is now thriving in a very localized part of the alpine zone of the White Mountains, and adapts to the harsh climate conditions, where few other species survive.

In summary, we have carefully reviewed all available scientific and commercial data and conclude that the threats that caused the population of *Potentilla robbinsiana* to decline no longer pose a risk to the continued survival of the species. This determination is based on the best

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available data indicating that *Potentilla robbinsiana* has recovered, primarily as a result of the following: (1) The two natural existing populations are protected from human disturbance, and the Monroe Flats population is considered viable and increasing; (2) the two transplant populations are considered viable; and (3) the Forest Service's commitment to continue ongoing programs to provide for the long-term conservation of this species regardless of its standing under the Endangered Species Act. This recovery indicates that the species is no longer endangered or likely to become endangered in the foreseeable future throughout all or a significant portion of its range. Therefore, the species no longer meets the Act's definitions of endangered or threatened. Under these circumstances, removal from the List of Endangered and Threatened Plants is appropriate.

Effects of This Rule

This final rule will remove the protections afforded to *Potentilla robbinsiana* under the Act. Furthermore, the critical habitat for this plant, one location in the White Mountain National Forest, New Hampshire (50 CFR 17.96(a)), will be removed. The prohibitions and conservation measures provided by the Act will no longer apply to this species. Therefore, taking, interstate commerce, import, and export of *Potentilla robbinsiana* will no longer be prohibited under the Act. In addition, Federal agencies will no longer be required to consult with us under section 7 of the Act to insure that any action they authorize, fund, or carry out, is not likely to jeopardize the continued existence of *Potentilla robbinsiana* or destroy or adversely modify designated critical habitat.

The take and use of *Potentilla robbinsiana* must comply with appropriate Forest Service regulations, since the entire population lies within the White Mountain National Forest in New Hampshire.

Future Conservation Measures

Section 4(g)(1) of the Act requires that the Secretary of the Interior, through the Service, implement a monitoring program in cooperation with the States for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If at any time during the 5-year monitoring program, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

Monitoring

Our Northeast Region will coordinate with the Forest Service, the Appalachian Mountain Club, and State resource agencies to implement an effective 5-year monitoring program to track the population status of *Potentilla robbinsiana*. We will annually evaluate the effectiveness of ongoing conservation programs, including education, monitoring, and enforcement efforts, in order to detect and assess any new threats to the populations. To detect any changes in the status of *Potentilla robbinsiana*, we will use, to the fullest extent possible, information routinely collected by the Appalachian Mountain Club's Research Department and the Forest Service. During the fifth year of the 5-year monitoring period, a total population census of the Monroe Flats population will be conducted using a grid to further evaluate the stability and health of this population.

We believe that the two transplanted sites have reached viable population status. However, during the required 5-year monitoring period, transplanting at the Camel Patch site will continue when excess plants are available from the New England Wild Flower Society. The transplants will be used to fill sparse areas and expand the population.

If we determine at the end of the mandatory 5-year monitoring period, which shall include data from the fifth year population census of Monroe Flats, that recovery is complete, and factors that led to the listing of *Potentilla robbinsiana*, or any new factors, remain sufficiently reduced or eliminated, monitoring may be reduced or terminated. If data show that the species is declining or if one or more factors that have the potential to cause a decline are identified, we will continue monitoring beyond the 5-year period and may modify the monitoring program based on an evaluation of the results of the initial 5-year monitoring program, or reinitiate listing if necessary.

Executive Order 12866

This rule was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Paperwork Reduction Act

The OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act, require Federal agencies to obtain approval from OMB before collecting information from the public. The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical questions proposed to, or identical reporting, record keeping, or disclosure requirements imposed on, 10 or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that "ten or more persons" refers to the persons to whom a collection of information is addressed by the agency within any 12-month period. For purposes of this definition, employees of the Federal Government are not included.

This rule does not include any collection of information that requires approval by OMB under the Paperwork Reduction Act. *Potentilla robbinsiana* occurs entirely on lands administered by the Forest Service and only in one State, New Hampshire. The information needed to monitor the status of *Potentilla robbinsiana* following delisting will be collected primarily by a limited number of personnel from the Forest Service and the Appalachian Mountain Club. We do not anticipate a need to request data or other information from 10 or more persons during any 12-month period to satisfy monitoring information needs. If it becomes necessary to collect information from 10 or more non-Federal individuals, groups, or organizations per year, we will first obtain information collection approval from OMB.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from our Northeast Regional Office (see **ADDRESSES** section).

Author

The primary author of this rule is Diane Lynch, Endangered Species Biologist (see **ADDRESSES** section). Doug Weihrauch, staff scientist for the Appalachian Mountain Club Research Department, provided assistance with the summary of the biological record for this species.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulations Promulgation

For the reasons set out in the preamble, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.12 [Amended]

2. Section 17.12(h) is amended by removing the entry for "*Potentilla robbinsiana*, Robbins' cinquefoil" under "FLOWERING PLANTS" from the List of Endangered and Threatened Plants.

§ 17.96 [Amended]

3. Section 17.96(a) is amended by removing the critical habitat entry for "*Potentilla robbinsiana*, Robbins' cinquefoil," which is under Family Rosaceae.

Dated: June 26, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–21704 Filed 8–26–02; 8:45 am]

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Proposed Rules

Federal Register
Vol. 67, No. 166
Tuesday, August 27, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 330

[Docket No. 02–011–2]

Redelivery of Cargo for Inspection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our proposed rule amending the regulations pertaining to cargo entering the United States. The proposed rule would provide that inspectors from the Animal and Plant Health Inspection Service (APHIS) may require that cargo that has entered the United States and been moved from the port of first arrival prior to inspection by an APHIS inspector be returned to the port of first arrival or, if convenient, another location, as specified by APHIS, for inspection when necessary. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before September 16, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–011–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–011–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–011–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela Byrne, Senior Staff Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1231; (301) 734–5242.

SUPPLEMENTARY INFORMATION:

Background

On June 20, 2002, we published in the **Federal Register** (67 FR 41868–41869, Docket No. 02–011–1) a proposal to amend the regulations pertaining to inspection of cargo entering the United States. The proposed rule would provide that inspectors from the Animal and Plant Health Inspection Service (APHIS) may require that cargo that has been moved from the port of first arrival prior to inspection by APHIS be returned to the port of first arrival or, if convenient, another location, as specified by APHIS, for inspection when necessary.

Comments on the proposed rule were required to be received on or before August 19, 2002. We are reopening and extending the comment period on Docket No. 02–011–1 for an additional 30 days ending September 16, 2002. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 450, 2260, 7711, 7712, 7714, 7718, 7731, 7734, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 20th day of August, 2002.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–21738 Filed 8–26–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–18]

Proposed Amendment of Class D Airspace; Titusville, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Class D airspace at Titusville, FL. Daytona Beach Approach Control is the controlling air traffic control facility for Instrument Flight Rules (IFR) operations at Spacecoast Regional Airport, FL. Due to the high volume of Visual Flight Rules (VFR) traffic overflying the Spacecoast Regional Airport at low altitudes, Daytona Beach Approach Control has requested the Titusville, FL Class D airspace be lowered from 2,500 feet MSL to 1,900 feet MSL.

DATES: Comments must be received on or before September 26, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–18, Manager, Airspace Branch; ASO–520, PO Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–ASO–18." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taken action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All commenters submitted will be available to examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, PO Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing lists for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D airspace at Titusville, VL. Class D airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Titusville, FL [REVISED]

Spacecoast Regional Airport, FL
(Lat. 28°30'53" N, long, 80°47'57" W)

That airspace extending upward from the surface to and including 1,900 feet MSL within a 4-mile radius of Space Coast Regional Airport; excluding the portion within Restricted Area R–2934 when it is effective. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on August 16, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–21786 Filed 8–26–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AWP–15]

Proposed Modification of Class E Airspace; Needles Airport, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify the Class E airspace area at Needles Airport, CA. The establishment of an Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 29 at Needles Airport, CA has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the RNAV (GPS) RWY 29 SIAP to Needles Airport, CA. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Needles Airport, Needles, CA.

EFFECTIVE DATE: Comments must be received on or before October 11, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 01–AWP–15, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region,

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Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–AWP–15." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by modifying the Class E airspace area at Needles Airport, CA. The establishment of a RNAV (GPS) RWY 29 SIAP at Needles Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the RNAV (GPS) RWY 29 SIAP to Needles Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the RNAV (GPS) RWY 29 SIAP to Needles Airport, Needles, CA. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AWP CA E5 Needles Airport, CA [REVISED]

Needles Airport, CA
(Lat. 34°45′58″ N., long. 114°37′24″ W.)
Needles VORTAC
(Lat. 34°45′58″ N., long. 114°28′27″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6–mile radius of the Needles Airport; and that airspace extending upward from 1,200 feet above the surface within 7.8 miles south and 11.3 miles north of the Needles VORTAC 092° and 272° radials, extending from 9.6 miles west to 20.9 miles east of the Needles VORTAC.

* * * * *

Issued in Los Angeles, California, on June 3, 2002.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 02–21137 Filed 8–26–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 413, 415, and 417

[Docket No. FAA–2002–7953; Notice No. 02–12]

RIN 2120–AG37

Licensing and Safety Requirements for Launch

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; additional information.

SUMMARY: The FAA is adding information to the supplemental notice of proposed rulemaking (SNPRM) published on July 30, 2002. The information relates to the public meeting procedures described in the SNPRM. This document provides a telephone number for interested parties who wish to participate in the public meeting via telephone.

DATES: The FAA will host a public meeting on September 6, 2002, from 8:30 a.m. to 4 p.m.

ADDRESSES: The public meeting will take place at 800 Independence Avenue, SW., Washington, DC. Anyone wishing to participate in the public meeting via telephone should call (202) 493–2248, with no pass code required.

FOR FURTHER INFORMATION CONTACT: Brenda Parker, (202) 385–4713.

SUPPLEMENTARY INFORMATION: On July 30, 2002, the FAA published a supplemental notice of proposed rulemaking (SNPRM) to amend an earlier proposal to amend the commercial space transportation regulations governing licensing and safety requirements for launch (67 FR 49456). In that SNPRM, we described procedures for a public meeting we will hold at the FAA headquarters building. See the **DATES** and **ADDRESSES** sections of this notice for the time and location of the meeting. We are not changing the date and location of the public meeting.

In this document, we are adding a telephone number that interested parties may call to participate in the meeting via telephone. It is not necessary for a person who wishes to participate in the meeting to be physically present at the FAA headquarters in Washington, DC. A person may call (202) 493–2248 to listen to the proceedings or to participate by asking a question or making a statement. No pass code or other number is required. Interested parties should note that this is not a toll-free number.

Issued in Washington, DC, on August 21, 2002.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 02–21779 Filed 8–22–02; 3:57 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–028–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions to a previously proposed amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions concern employment and financial interests of state employees and members of advisory boards and commissions. It also concerns corrections of cross-references and typographical errors. Oklahoma intends to revise its program to be consistent with the corresponding Federal regulations.

DATES: We will accept written comments until 4 p.m., c.d.t., September 11, 2002.

ADDRESSES: You should mail or hand deliver written comments to Michael C. Wolfrom, Director, Tulsa Field Office at the address listed below.

You may review copies of the Oklahoma program, the amendment and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet: *mwolfrom@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

Section 503(a) of the Act permits a state to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a state law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Oklahoma program on January 19, 1981. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 19, 1981, **Federal Register** (46 FR 4902). You can find later actions concerning the Oklahoma program at 30 CFR 936.15 and 936.16.

II. Discussion of the Proposed Amendment

By letter dated November 1, 2001 (Administrative Record No. OK–993), Oklahoma sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Oklahoma sent the amendment at its own initiative. We announced receipt of the proposed amendment in the December 11, 2001, **Federal Register** (66 FR 63968) and invited public comment on its adequacy. The public comment period ended January 10, 2002.

During our review of the amendment, we identified concerns relating to employment and financial interests of state employees and members of advisory boards and commissions, incorrect cross-references, and typographical errors. We notified Oklahoma of the concerns by letter dated March 25, 2002 (Administrative Record No. OK–993.04). On July 3, 2002, Oklahoma sent us a revised amendment (Administrative Record No. OK–993.05).

Oklahoma submitted revisions for the following provisions of the amendment.

A. Section 460.20–5–4. Responsibility

1. In paragraph (a)(8), Oklahoma proposes to add a provision to require the Financial Officer of the State Department of Mines to inform members of advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests about who they can contact for advice and counseling related to filing the statement of employment and financial interests.

2. Oklahoma proposes to revise paragraph (b)(2) to read as follows:

(2) Promptly review the statements to determine if employment and financial interests which constitute a direct or indirect financial interest in underground or surface coal mining operations have been identified correctly;

3. Oklahoma proposes to retain existing paragraph (c) that requires members of advisory boards and commissions who perform functions or duties under the Act to recuse themselves from proceedings that may affect their direct or indirect financial interest. Previously, Oklahoma proposed to delete this paragraph.

B. Section 460.20–5–6. Penalties

Oklahoma proposes to revise paragraph (a) pertaining to criminal penalties and paragraph (b) pertaining to regulatory penalties so that these penalties also apply to advisory board members and commissioners.

C. Section 460.20–5–7. Who Shall File

Oklahoma proposes to revise the fourth sentence in paragraph (b) to read as follows:

In those cases, the Director shall list the title of boards, offices, bureaus, or divisions

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within the Department of Mines which do not perform any functions or duties under the Act and list the positions not performing functions or duties under the Act for only those boards, offices, bureaus, or divisions that do have some employees performing functions or duties under the Act.

D. Section 460.20–5–10. What To Report

1. Oklahoma proposes to revise paragraph (c)(3) to read as follows:

(3) The exceptions shown in the certification portion of the form must provide enough information for the Director of the Department, for employees, or the Governor's Office, Director of Appointments, for advisory board or Commission members, to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

2. Oklahoma proposes to revise paragraph (c)(4) to read as follows:

(4) Employees, advisory board members, and commissioners are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement of certification. * * *

E. Section 460.20–15–6. Review of Permit Applications

Oklahoma proposes to revise paragraph (b)(5)(C) to read as follows:

(C) Was not identified in the permit application.

F. Correction of Cross-References and Typographical Errors

Oklahoma proposes to correct incorrect cross-references and typographical errors in Section 460:20–3–5. Definitions, Section 462:20–5–10. What to report, and Section 460:20–45–46. Revegetation: standards for success.

III. Public Comment Procedures

We are reopening the comment period on the proposed Oklahoma program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Oklahoma program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 15-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (*see* **ADDRESSES**).

Electronic Comments: Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. OK–028–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581–6430.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Tulsa Field Office (*see* **ADDRESSES**). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary under SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of this section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 26, 2002.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 02–21743 Filed 8–26–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCG–2002–12702]

RIN 2115–AG45

Traffic Separation Schemes: In the Strait of Juan de Fuca and Its Approaches; In Puget Sound and Its Approaches; and in Haro Strait, Boundary Pass, and the Strait of Georgia

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the existing traffic separation schemes (TSSs) in the Strait of Juan de Fuca and its approaches, in Puget Sound and its approaches, and in Haro Strait, Boundary Pass, and the Strait of Georgia. The proposed amendments have been approved by the International Maritime Organization and have been validated by a recent Port Access Route Study. Implementing these amendments would provide better routing order and predictability, increase maritime safety, and reduce the potential for collisions, groundings, and hazardous cargo spills. This rulemaking would incorporate these TSSs, as amended, into the Code of Federal Regulations.

DATES: Comments and related material must reach the Docket Management Facility on or before October 28, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG 2002–12702), U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Lieutenant Commander Jane C. Wong, Thirteenth Coast Guard District, Seattle, WA, telephone 206–220–7224, e-mail *Jwong@PACNORWEST.uscg.mil;* or George Detweiler, Coast Guard, Office of Vessel Traffic Management (G–MWV), at 202–267–0574, e-mail *Gdetweiler@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2002–12702), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Under the Ports and Waterways Safety Act (33 U.S.C. 1221–1232) (PWSA), the

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Coast Guard establishes traffic separation schemes (TSSs), where necessary, to provide safe access routes for vessels proceeding to or from U.S. ports. Before implementing new TSSs or modifying existing ones, we conduct a Port Access Route Study (PARS). Through the PARS process, we consulted with affected parties to reconcile the need for safe access routes with the need to accommodate other reasonable uses of the waterway, such as oil and gas exploration, deepwater port construction, establishment of marine sanctuaries, and recreational and commercial fishing. If a PARS recommends a new or modified TSS, we must initiate a rulemaking to implement the TSS. Once a TSS is established, the right of navigation is considered paramount within the TSS.

Approximately 11,000 vessels of greater than 300 gross tons (GT) moved through the Strait of Juan de Fuca in 1999. It is anticipated that this number will increase to approximately 17,000 by the year 2025. In the PARS, it was estimated that approximately 15.1 billion gallons of crude oil, refined products, and bunker fuel oil would be moved through the Strait in 2000. By 2025, the volume is expected to increase to approximately 19.2 billion gallons. About 7.6 billion gallons of this total volume will be crude oil imported to refineries in the Puget Sound area. Additional crude oil is exported from Canada's Port of Vancouver and 2.8 billion gallons of refined products will be exported from Puget Sound.

Other indicators of increasing maritime activity in the area include the following:

1. Expansion of the Port of Vancouver's Delta Port, just north of the international border on the Strait of Georgia in British Columbia. Some experts in the field predict that this facility will become one of the foremost container terminals on the west coast.

2. The proposed gateway terminal near Cherry Point on the Strait of Georgia in Washington State. When constructed, it will create an opportunity for increased vessel transits in the Strait of Georgia.

3. Potential Pacific-Rim trade expansion resulting from China receiving most favored nation trading status. Pacific Northwest ports are closer to the Orient via great-circle routing than are other U.S mainland ports.

The 1999 Marine Cargo Forecast by the Washington Public Ports Association's projected that the total waterborne tonnage through Puget Sound ports will increase by 42 per cent to nearly 121.6 million tons in 2020, compared with 85.6 million tons in 1997. The report further projected that the total container traffic through the Puget Sound ports of Seattle and Tacoma is expected to grow by 131 per cent, from 2.6 million TEUs (twenty-foot equivalent units) in 1997 to 6 million TEUs in 2020.

Other vessel traffic indicators pertaining to the study area suggest that the greater Puget Sound area constitutes the third largest naval port complex in the United States and supports one of the nation's highest per capita recreational boat ownership populations.

Existing TSSs. There are internationally approved TSSs in the Strait of Juan de Fuca and its approaches and in Puget Sound and its approaches. The TSSs in the Strait of Juan de Fuca and its approaches were adopted by the International Maritime Organization (IMO) on April 3, 1981, and implemented on January 1, 1982. The TSSs in Puget Sound and its approaches were adopted by IMO in December 1992 and implemented on June 10, 1993. These TSSs are reflected on NOAA chart 18400 and in "Ships Routeing," Seventh Edition 1999, International Maritime Organization.

Port Access Route Study (PARS). We published a notice of study in the **Federal Register** on January 20, 1999 (64 FR 3145). The study was to review and evaluate the need for modifications to current vessel routing and traffic management measures for the Strait of Juan de Fuca, Haro Strait, Boundary Pass, the Strait of Georgia, Rosario Strait, and adjacent waters. The study area also included both U.S. and Canadian TSSs and the Area to be Avoided (ATBA) "Off the Washington Coast". United States and Canadian Coast Guards manage portions of the study area jointly. Joint waterway management is accomplished primarily through the Cooperative Vessel Traffic System (CVTS). Under the CVTS Agreement, vessel traffic transiting the study area is managed by vessel traffic centers located at Tofino and Victoria, British Columbia, Canada, and Seattle, Washington, irrespective of the boundary between the two countries.

The PARS was developed based on several related vessel traffic studies, Waterways Analysis and Management System (WAMS) reports, and extensive consultations between the governments of the United States and Canada. In addition, the officials of both governments embarked on a vigorous outreach program to present recommended changes in the study area and request commentary from a wide group of waterway users and other potentially affected and interested groups. These included members of the public, such as representatives of the shipping industry, master mariners, ports, pilots, environmental interests, and U.S. Federal, State, local, and tribal governments. The concerns raised were taken into account, including the costs and benefits to industry and the environment. The recommended changes also took into account the burden on, and the practical navigation aspects for, the shipping industry. We published the study results in the **Federal Register** on January 22, 2001 (66 FR 6514).

The PARS concluded that the current TSSs should be modified by—

1. Reconfiguring and extending seaward the TSS at the entrance to the Strait of Juan de Fuca;

2. Modifying the location, orientation, and dimensions of the Strait of Juan de Fuca TSS;

3. Relocating the Pilot Area and reconfiguring the traffic lanes and precautionary area off Port Angeles, Washington, to improve traffic flow and reduce risks;

4. Moving the vessel traffic lanes southeast of Victoria, British Columbia, farther off shore;

5. Establishing precautionary areas off of Discovery Island and around the Victoria Pilot Station;

6. Creating a new two-way route in Haro Strait and Boundary Pass and establishing a precautionary area off of Turn Point;

7. Expanding precautionary area "RB" at the south end of Rosario Strait;

8. Revising and aligning the existing TSS in Georgia Strait with the existing TSS north of Rosario Strait and linking them with a new precautionary area off of East Point; and

9. Creating a new precautionary area in Georgia Strait west of Delta Port and the Tsawwassen Ferry terminal.

Discussion of Proposed Rule

This rulemaking would amend the existing TSSs in the Strait of Juan de Fuca and its approaches; in Puget Sound and its approaches; and in Haro Strait, Boundary Pass, and the Strait of Georgia. The existing TSSs are delineated in "Ships Routeing," Seventh Edition 1999, International Maritime Organization, but not yet codified in the Code of Federal Regulations (CFR). The amendments are based on the recommendations of the PARS study published in the **Federal Register** on January 22, 2001 (66 FR 6514). We propose the following changes to the existing TSSs:

1. *Reconfiguring and extending seaward the TSS at the entrance to the Strait of Juan de Fuca.* All traffic entering the Strait of Juan de Fuca is presently funneled into the Strait through one of two short traffic lanes. The inbound traffic lane originating from the southwest may bring traffic within 1 mile of Duntze Rock. This convergence near Buoy Juliet is close to the rocky shoreline of Cape Flattery, lies within the Olympic Coast National Marine Sanctuary, and funnels inbound southern traffic along the northern and western borders of an existing Area To Be Avoided (ATBA).

It is customary for a large percentage of the slower moving traffic, often tugs and barges and small fishing vessels, to transit inbound and outbound south of the designated traffic lanes when on coastwise voyages to and from the south. This practice eliminates the need for slower moving southbound traffic to cross the traffic lanes and the numerous overtaking situations arising from disparate transit speeds. However, under the present configuration, this traffic is forced to transit extremely close to Duntze Rock and may end up infringing on either the ATBA or the inbound traffic lane.

Traditional commercial and sports fishing areas are in and adjacent to the traffic lanes at the entrance to the Strait. Occasionally, fishing vessels in the area create a conflict for vessels following the TSS, particularly during periods of reduced visibility.

This rulemaking would extend the TSS at the entrance of the Strait of Juan de Fuca approximately 10 miles farther offshore and would center the separation zone on the international border at the entrance. Both of these actions would create a "buffer zone" between the southernmost TSS lane and Duntze Rock and the nearby ATBA. This relocation provides significant sea room for resolving conflicting routes as vessels converge toward the entrance of the Strait, thereby improving order and predictability for all entry and exit lanes. These changes, along with changes being proposed for the ATBA boundary, would allow sufficient room for slower moving vessels to transit without conflicting with inbound traffic steering for the southern approach to the TSS. It would also provide a greater margin of safety around the hazards of Duntze Rock and Tatoosh Island. Finally, it would create the space necessary to accommodate the recommended routes proposed to IMO.

In developing these proposed changes to the TSS, we considered the location of the traditional fishing grounds off the entrance to the Strait of Juan de Fuca. Although it was not possible to completely segregate the TSS from the fishing grounds, the recommended changes would minimize potential conflicts and improve the existing configuration. These recommendations would provide routing order and predictability farther offshore, thereby reducing conflicts between vessels following the TSS and vessels fishing at the entrance to the Strait.

2. *Modifying the location, orientation, and dimensions of the existing TSS in the Strait of Juan de Fuca.* In its current configuration, over two-thirds of the TSS is located on the United States side of the International Boundary. The separation zone flares to a maximum width of approximately four nautical miles, of which three nautical miles are in U.S. waters. This alignment of the TSS reduces the amount of navigable water available to vessels transiting, outbound or inbound, south of the TSS and places inbound traffic following the lanes closer to land than vessels transiting in the outbound lanes.

In the western segment of the TSS, the proposed rule would shift the TSS a half-mile to the north and reduce the width of the entire separation zone to a maximum of 3 nautical miles. The minimum width of the separation zone and the width of the traffic lanes would remain one nautical mile. Doing so would reduce the potential for powered groundings on the U.S. shoreline by creating a larger buffer between the TSS and shore. It also would create additional space for the existing in-shore traffic that transits south of the TSS and would accommodate the recommended routes proposed to IMO.

We have considered the impact of the proposed changes on the existing Canadian Practice Firing Range (Exercise Area WH). Exercises will continue to be conducted in a manner not to conflict with commercial traffic following the TSS.

3. *Relocating the Pilot Area and reconfiguring the traffic lanes and precautionary area off Port Angeles to improve traffic flow and reduce risks.* Five TSSs converge at the precautionary areas ("PA" and "ND") located to the north and east of Port Angeles. Ferries, recreational vessels, piloted deep draft vessels, non-piloted deep draft vessels, tugs and tows, naval vessels, and large and small commercial fishing vessels all interact and compete for space at this convergence point in the traffic scheme. The present traffic configuration was designed primarily to deliver inbound vessels to the pilot stations located at Port Angeles and Victoria. The impact on vessel safety or other waterway users may have been overshadowed. For example, the present configuration does not separate the Port Angeles pilots boarding area from either the through traffic following the TSS or the traffic choosing to follow the informal inshore traffic lanes. The current TSS routing leading to the Port Angeles pilot station has been identified through casualty histories as a substantial cause for concern. Vessels bound for the Port Angeles pilots station are required by the TSS to steer almost directly on Ediz Hook. To pick up a pilot, a vessel must first execute a 60-degree turn, then slow to varying speeds, which creates different impacts on steerage. At this point, a vessel may be particularly vulnerable to currents and seas. If an engineering failure occurred during this operation, the vessel would be at risk of a drift or powered grounding on Ediz Hook. By changing the traffic lane leading to the pilot station and by relocating the station itself, the need for an incoming deep draft vessel to steer directly toward shoal water as it approaches the pilot station would be eliminated. The addition of a new east/west TSS leading east from precautionary area "PA" establishes a predictable route for those vessels that do not require pilotage thus reducing the risk of collision with vessels that are maneuvering to pick up a pilot.

4. *Moving the vessel traffic lanes southeast of Victoria, British Columbia, farther off shore.* On the Canadian side of the international boundary, outbound tugs and barges exit the TSS at Discovery Island and head directly for the inshore routes south of Race Rocks, cutting across the inbound and outbound TSS lanes south of Victoria. Outbound fishing vessels exiting Baynes Channel or passing east of Discovery Island attempt to stay north of the TSS but often infringe upon the lanes near Trial Island, Discovery Island, and the pilot station. This behavior creates unnecessary and potentially dangerous interactions between deep draft vessels following the TSS and smaller vessels that choose to skirt the TSS or cut diagonally across the TSS.

The proposed change would create an inshore buffer by decreasing the width of the TSS leading from the Victoria Pilot Station to the turn south of Discovery Island while maintaining the same southern boundary on the inbound lane. This buffer zone would allow fishing vessels and other small, slow moving vessels to transit directly between Discovery Island and Race Rocks, then inshore north of the TSS, while avoiding the deep-draft TSS.

5. *Establishing precautionary areas off Discovery Island and around the Victoria Pilot Station.* The Victoria Pilot Station is at the convergence of two TSSs where there is significant traffic congestion as vessels transit to and from

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the ports of Victoria and Esquimault. Likewise, two TSSs converge off Discovery Island where vessels often enter or depart the traffic scheme. Both of these are areas where vessels should proceed with particular caution. The proposed rule addresses this by proposing to establish precautionary areas "V" and "HS."

6. *Creating a new two-way route in Haro Strait and Boundary Pass and establishing a precautionary area off Turn Point.* There are currently no formal traffic lanes in Haro Strait and Boundary Pass. In recent years, the level of recreational boating has significantly increased. There has also been an explosive growth in the number of small commercial vessels providing whale-watching tours off the western shore of San Juan Island. With this growth have come increased conflicts with deep draft vessels.

Turn Point is one of the more navigationally challenging areas of Haro Strait and Boundary Pass. Transiting vessels must negotiate a blind right-angle turn at varying distances from shore depending on their direction of travel and the presence of strong currents. In addition, numerous secondary channels and passages route traffic into Haro Strait in the vicinity of Turn Point.

This proposed rule would establish a two-way route in Haro Strait and Boundary Pass that connects into two existing TSSs to the south. This would increase order and predictability for vessel traffic in these waters. By establishing a formal traffic route, the provisions of Rule 10 of the COLREGS would apply. This would reduce dangerous interactions between the deep draft vessels following the TSS and smaller vessels that choose not to follow the TSS. The edge of the traffic lane would be moved to the east from Kellet Bluff to Turn Point and a flair or pull out would be created south of Turn Point to provide maneuvering room for a vessel to safely negotiate the strong ebb currents. A precautionary area around Turn Point is being proposed for this navigationally challenging area where vessels must negotiate a sight-obscured, right-angle turn in the presence of strong currents and numerous small craft.

7. *Expanding precautionary area "RB" at the south end of Rosario Strait.* Deep draft vessels often cannot precisely follow the existing TSS when approaching Rosario Strait from the south. Strong currents make it impossible for vessels to avoid the separation zone as they negotiate the slight turns in the TSS just south of precautionary area "RB". The small turns in the TSS approaching precautionary area "RB" could not be eliminated without placing the TSS uncomfortably close to other shoal water.

This proposed rule would replace a small portion of the existing traffic lane with an expansion of precautionary area "RB". The safety of deep draft transits would be enhanced by eliminating a routing measure that large ships cannot comply with and replacing it with a precautionary area where ships must navigate with particular caution.

8. *Revising and aligning the existing TSS in Georgia Strait with the exiting TSS north of Rosario Strait and linking them with a new precautionary area off East Point.* There is presently no routing measure connecting the TSS that terminates off Patos Island with the TSS that terminates off Saturna Island. Furthermore, these two TSSs are not aligned. Traffic exiting the Strait of Georgia bound for Rosario Strait follows the TSS to its termination before angling back to the north to enter the TSS at Patos Island. Routing vessels in this manner crowds them and creates a possible conflict with traffic southbound for Boundary Pass. Finally there is no precautionary area in the vicinity of East Point, where traffic merges from several directions.

This proposed rule would create a seamless and logical traffic scheme for this area. Existing TSSs are aligned and connected to the new two-way route in Boundary Pass through the creation of a new precautionary area. By providing a contiguous TSS that connects the new Boundary Pass traffic lane with the existing or modified TSS in the Strait of Georgia and by establishing a contiguous TSS connecting the old Patos Island TSS and the Georgia Strait TSS, traffic bound for Rosario Strait could follow the TSS without impeding traffic southbound for Boundary Pass. The new precautionary area would highlight the need for potential crossing traffic in this area to exercise caution and would provide oil tankers departing Cherry Point bound for Haro Strait with a predictable and safe location to enter the traffic scheme.

9. *Creating a new precautionary area in Georgia Strait west of Delta Port and the Tsawwassen Ferry Terminal.* The recently completed container facility at Delta Port has significantly increased the volume of traffic entering and departing the TSS in the Strait of Georgia. There has also been a significant increase in traffic to and from the Tsawwassen Ferry Terminal. A new precautionary area southwest of Delta Port would accommodate vessels departing Delta Port and the Tsawwassen Ferry Terminal as they get up to maneuvering speed before and while entering the TSS.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Costs

This proposed rule would result in a slight increase in transit time because the proposed rule would extend the TSS at the entrance of the Strait of Juan de Fuca approximately 10 miles farther offshore. The additional 10-mile transit coming to or from the Strait of Juan de Fuca through the southwestern approach could result in a minimal increase in cost to the industry.

There would be no anticipated costs for vessels traveling to, from, and within the Strait of Juan de Fuca and adjacent waterways to the north. Also, there would be no anticipated costs because of modifications, reconfigurations, and extensions of the TSSs in Puget Sound and its approaches, in Haro Strait, in Boundary Pass, and in the Strait of Georgia.

Benefits

There would be no quantifiable benefits associated with codifying in the CFR the existing TSSs in the Strait of Juan de Fuca and its approaches, in Puget Sound and its approaches, and in Haro Strait, Boundary Pass, and the Strait of Georgia. There would be qualitative benefits as follows:

1. By routing traffic farther offshore, the TSS would reduce the risk of drift groundings and resulting pollution, property damage, and injuries.
2. The new exit lane north of Buoy J would reduce the risk of collision by reducing congestion and provide greater order and predictability for vessels transiting the area.
3. Shifting lanes in the Strait would reduce the risk of powered groundings.
4. Reconfiguring the traffic lanes and precautionary area off Port Angeles would reduce the risk of powered groundings on Ediz Hook and the risk of collision at the Pilot Boarding Station.
5. Accommodating recreational-vessel routes would facilitate the separation of fast/slow and big/small traffic.
6. Creating a new two-way route in Haro Strait and Boundary Pass with a precautionary area off Turn Point would increase order and predictability. Interaction between deep draft and tug traffic with smaller vessels would be reduced, thus providing more maneuvering room for vessels.
7. Extending the precautionary area "RB" would reduce the risk of collision by eliminating a routing measure with which large ships cannot comply and would replace it with a precautionary area.
8. Providing a contiguous TSS connecting Boundary Pass traffic with the TSS in the Strait of Georgia would reduce the risk of collision due to the decreased conflict between traffic bound for Rosario Strait or Boundary Pass and would provide greater order for vessels merging from several directions from the vicinity of East Point.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

We do not anticipate that this rulemaking would have a significant economic impact on a substantial number of small entities. Most vessels using the TSSs are commercial vessels of more than 300 gross tons. The largest concentration of possible small entities using the TSSs consists of oceangoing tug/barge operators and small to medium fishing vessels. Since recent studies indicate that most tug and barge combinations transit the coast approximately 15 to 25 miles offshore, the economic impact of this proposed rule on these vessels should be minimal. This rulemaking has been conducted with the goal of minimizing any impact on fisheries.

Some vessel owners and operators, whether or not they are small entities, may incur a minimal cost due to the proposed 10-mile increase in transit distance. This proposed rule would adjust existing TSSs, which would provide an increased level of safety for mariners using the TSS. In turn, this would decrease the adverse economic effects on the region caused by casualties and pollution.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult George Detweiler, Coast Guard, Marine Transportation Specialist, at 202–267–0574.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

The Ports and Waterways Safety Act (PWSA) authorizes the Secretary of Transportation to issue regulations to designate TSSs to protect the marine environment. In enacting the PWSA in 1972, Congress found that advance planning and consultation with the affected States and other stakeholders was necessary in the development and implementation of a TSS. Throughout the history of the development of the TSSs in the Strait of Juan de Fuca and its approaches, in Puget Sound and its approaches, and in Haro Strait, Boundary Pass, and the Strait of Georgia, we have consulted with the affected State and Federal pilots' associations, vessel operators, users, United States and Canadian Vessel Traffic Services, Canadian Coast Guard and Transport Canada representatives, environmental advocacy groups, Native American tribal groups, and all affected stakeholders.

Presently, there are no Washington State laws or regulations concerning the same subjects as are contained in this proposed rule. We understand that the State does not contemplate issuing any such rules. However, it should be noted that, by virtue of the PWSA authority, the TSSs proposed in this rule would preempt any State rule on the same subject.

In order to apply to foreign-flag vessels on the high seas, TSSs must be submitted to, approved by, and implemented by the International Maritime Organization (IMO). The individual States of the United States are not represented at IMO; that is the role of the Federal government. The Coast Guard is the principal United States agency responsible for advancing the interests of the United States at IMO. We recognize the interest of all local stakeholders as we work at IMO to advance the goals of these TSSs. We will continue to work closely with the stakeholders in developing the final rule to ensure that the waters affected by this proposed rule are made safer and more environmentally secure.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

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Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

Several Native American tribes traditionally fish in the Strait of Juan de Fuca. The existing TSS in the Strait provides a broad separation zone, which allows ample room for the tribes' traditional gill-net fishery between the inbound and outbound vessel traffic lanes. The tribes also fish in the waters south of the inbound lane, between that lane and the northern shore of the Olympic Peninsula.

When the PARS study was completed, it recommended that the broad separation zone be narrowed and aligned with the international border, a proposal that would straighten the routes for vessels transiting the TSS and move them farther north of Olympic Peninsula. Local tribal representatives objected to this recommendation because they believed it would significantly decrease the area available to fish, by leaving insufficient room to deploy their nets without interfering with, or being interfered by, deep-draft vessels transiting the Strait. To address their concerns, we met with these tribal nations in March and August of 2000 and February of 2001. The meetings were intended to gather their recommendations on how to improve the TSS, yet minimize the impact on their drift-net fishery. Following these meetings, the tribal nations submitted recommendations to widen the separation zone. Based on these submittals and the discussion at the meetings, we reassessed the PARS recommendation and widened the proposed zone enough to support their drift-net fishery.

We do not foresee that this proposed rule would compel the tribes to significantly alter their current fishery. Furthermore, it would provide some benefits by increasing the area available for fishing south of the inbound traffic lane. We do not anticipate any additional economic cost to the tribes as a result of the proposed alteration to the separation zone. This alteration reflects a consideration of the needs of the tribal nations' drift-net fishery, balanced with the need to provide for safer transit routes farther from the Olympic Peninsula.

We have reviewed this proposed rule under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Rulemakings that are determined to have "tribal implications" under that Order (*i.e.*, have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes) require the preparation of a tribal summary impact statement. This proposed rule would not have implications of the kind envisioned under the Order, because it would not impose substantial direct compliance costs on tribal governments, preempt tribal law, or substantially affect lands or rights held exclusively by, or on behalf of, those governments.

Whether or not the Executive Order applies in this case, it is the policy of the Coast Guard to seek out and consult with Native Americans on all of its rulemakings that may affect them. We have published a separate notice in the **Federal Register** (66 FR 36361, July 11, 2001) to help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes on how to best carry out the Order. With regard to this proposed rule, we invite your comments on how it might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Environmental Justice

We have analyzed this proposed rule under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. We have determined that this proposed rule would not result in disproportionately high and adverse human health or environmental effects on minority populations and low-income populations, including Native American tribal nations.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(i), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This rulemaking concerns navigational aids, which include TSSs. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR part 167

Harbors, Marine safety, Navigation (water), and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 167 as follows:

PART 167—OFFSHORE TRAFFIC SEPARATION SCHEMES

1. The authority citation for part 167 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46.

2. Add §§ 167.1300 through 167.1303 to read as follows:

§ 167.1300 In the approaches to the Strait of Juan de Fuca: General.

The traffic separation scheme for the approaches to the Strait of Juan de Fuca consists of three parts: the western approach, the southwestern approach, and precautionary area "JF". These parts are described in §§ 167.1301 through 167.1303. The geographic coordinates in §§ 167.1301 through 167.1303 are defined using North American Datum (NAD 83).

§ 167.1301 In the approaches to the Strait of Juan de Fuca: Western approach.

In the western approach to the Strait of Juan de Fuca, the following are established:

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°30.10′N	125°09.00′W
48°30.10′N	125°04.67′W
48°29.11′N	125°04.67′W
48°29.11′N	125°09.00′W

(b) A traffic lane for westbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°31.09′N	125°04.67′W
48°31.93′N	125°09.00′W

(c) A traffic lane for eastbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°27.31′N	125°09.00′W
48°28.13′N	125°04.67′W

§ 167.1302 In the approaches to the Strait of Juan de Fuca: Southwestern approach.

In the southwestern approach to the Strait of Juan de Fuca, the following are established:

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°23.99′N	125°06.54′W
48°27.63′N	125°03.38′W
48°27.14′N	125°02.08′W
48°23.50′N	125°05.26′W

(b) A traffic lane for north-eastbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°22.55′N	125°02.80′W
48°26.64′N	125°00.81′W

(c) A traffic lane for south-westbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°28.13′N	125°04.67′W
48°24.94′N	125°09.00′W

§ 167.1303 In the approaches to the Strait of Juan de Fuca: Precautionary area "JF".

In the approaches to the Strait of Juan de Fuca, precautionary area "JF" is established and is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°31.09′N	125°04.67′W
48°30.10′N	125°04.67′W
48°29.11′N	125°04.67′W
48°28.13′N	125°04.67′W
48°27.63′N	125°03.38′W
48°27.14′N	125°02.08′W
48°26.64′N	125°00.81′W
48°28.13′N	125°57.90′W
48°29.11′N	125°00.00′W

(b) A traffic lane for westbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°31.09′N	125°04.67′W
48°31.93′N	125°09.00′W

(c) A traffic lane for eastbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°27.31′N	125°09.00′W
48°28.13′N	125°04.67′W

§ 167.1302 In the approaches to the Strait of Juan de Fuca: Southwestern approach.

In the southwestern approach to the Strait of Juan de Fuca, the following are established:

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°23.99′N	125°06.54′W
48°27.63′N	125°03.38′W
48°27.14′N	125°02.08′W
48°23.50′N	125°05.26′W

(b) A traffic lane for north-eastbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°22.55′N	125°02.80′W
48°26.64′N	125°00.81′W

(c) A traffic lane for south-westbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°28.13′N	125°04.67′W
48°24.94′N	125°09.00′W

§ 167.1303 In the approaches to the Strait of Juan de Fuca: Precautionary area "JF".

In the approaches to the Strait of Juan de Fuca, precautionary area "JF" is established and is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°31.09′N	125°04.67′W
48°30.10′N	125°04.67′W
48°29.11′N	125°04.67′W
48°28.13′N	125°04.67′W
48°27.63′N	125°03.38′W
48°27.14′N	125°02.08′W
48°26.64′N	125°00.81′W
48°28.13′N	125°57.90′W
48°29.11′N	125°00.00′W
48°30.10′N	125°00.00′W
48°31.09′N	125°00.00′W
48°31.09′N	125°04.67′W

3. Add §§ 167.1310 through 167.1315 to read as follows:

§ 167.1310 In the Strait of Juan de Fuca: General.

The traffic separation scheme in the Strait of Juan de Fuca consists of five parts: The western lanes, southern lanes, northern lanes, eastern lanes, and precautionary area "PA". These parts are described in §§ 167.1311 through 167.1315. The geographic coordinates in §§ 167.1311 through 167.1315 are defined using North American Datum (NAD 83).

§ 167.1311 In the Strait of Juan de Fuca: Western lanes.

In the western lanes of the Strait of Juan de Fuca, the following are established:

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°29.11′N	125°00.00′W
48°29.11′N	124°43.78′W
48°13.89′N	123°54.84′W
48°13.89′N	123°31.98′W
48°14.49′N	123°31.98′W
48°17.02′N	123°56.46′W
48°30.10′N	124°43.50′W
48°30.10′N	125°00.00′W

(b)(1) A traffic lane for north-westbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°16.45′N	123°30.42′W
48°15.97′N	123°33.54′W
48°18.00′N	123°56.07′W
48°32.00′N	124°46.57′W
48°31.09′N	124°47.13′W
48°31.09′N	125°00.00′W

(2) An exit from this lane between points 48°32.00′N, 124° 46.57′W and 48°31.09′N, 124°47.13′W. Vessel traffic may exit this lane at this location or may remain in the lane between points 48°31.09′N, 124°47.13′W and 48°31.09′N, 125°00.00′W en route to precautionary area "JF", as described in § 167.1315.

(c) A traffic lane for south-eastbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°28.13′N	124°57.90′W
48°28.13′N	124°44.07′W
48°12.90′N	123°55.24′W
48°12.94′N	123°32.89′W

§ 167.1312 In the Strait of Juan de Fuca: Southern lanes.

In the southern lanes of the Strait of Juan de Fuca, the following are established:

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°10.82′N	123°25.44′W
48°12.38′N	123°28.68′W
48°12.90′N	123°28.68′W
48°12.84′N	123°27.46′W
48°10.99′N	123°24.84′W

(b) A traffic lane for northbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°11.24′N	123°23.82′W
48°12.72′N	123°25.34′W

(c) A traffic lane for southbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°12.94′N	123°32.89′W
48°09.42′N	123°24.24′W

§ 167.1313 In the Strait of Juan de Fuca: Northern lanes.

In the northern lanes of the Strait of Juan de Fuca, the following are established:

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°21.15′N	123°24.83′W
48°16.16′N	123°28.50′W
48°15.77′N	123°27.18′W
48°20.93′N	123°24.26′W

(b) A traffic lane for southbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°21.83′N	123°25.56′W
48°16.45′N	123°30.42′W

(c) A traffic lane for northbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°20.93′N	123°23.22′W

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Latitude	Longitude
48°15.13′N	123°25.62′W

§ 167.1314 In the Strait of Juan de Fuca: Eastern lanes.

In the eastern lanes of the Strait of Juan de Fuca, the following are established:

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
48°13.22′N	123°15.91′W
48°14.03′N	123°25.98′W
48°13.54′N	123°25.86′W
48°12.89′N	123°16.69′W

(b) A traffic lane for westbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
48°14.27′N	123°13.41′W
48°14.05′N	123°16.08′W
48°15.13′N	123°25.62′W

(c) A traffic lane for eastbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
48°12.72′N	123°25.34′W
48°12.34′N	123°18.01′W

§ 167.1315 In the Strait of Juan de Fuca: Precautionary area "PA".

In the Strait of Juan de Fuca, precautionary area "PA" is established and is bounded by a line connecting the following geographical positions:

Latitude	Longitude
48°12.94′N	123°32.89′W
48°13.89′N	123°31.98′W
48°14.49′N	123°31.98′W
48°16.45′N	123°30.42′W
48°16.16′N	123°28.50′W
48°15.77′N	123°27.18′W
48°15.13′N	123°25.62′W
48°14.03′N	123°25.98′W
48°13.54′N	123°25.86′W
48°12.72′N	123°25.34′W
48°12.84′N	123°27.46′W
48°12.90′N	123°28.68′W
48°12.94′N	123°32.89′W

4. Add §§ 167.1320 through 167.1323 to read as follows:

§ 167.1320 In Puget Sound and its approaches: General.

The traffic separation scheme in Puget Sound and its approaches consists of three parts: Rosario Strait, approaches to Puget Sound other than Rosario Strait, and Puget Sound. These parts are described in §§ 167.1321 through 167.1323. The geographic coordinates in §§ 167.1321 through 167.1323 are defined using North American Datum (NAD 83).

§ 167.1321 In Puget Sound and its approaches: Rosario Strait.

In Rosario Strait, the following are established:

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
48°48.98′N	122°55.20′W
48°46.76′N	122°50.43′W
48°45.56′N	122°48.36′W
48°45.97′N	122°48.12′W
48°46.39′N	122°50.76′W
48°48.73′N	122°55.68′W

(b) A traffic lane for northbound traffic located between the separation zone described in paragraph (a) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°49.49′N	122°54.24′W
48°47.14′N	122°50.10′W
48°46.35′N	122°47.50′W

(c) A traffic lane for southbound traffic located between the separation zone described in paragraph (a) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°44.95′N	122°48.28′W
48°46.76′N	122°53.10′W
48°47.93′N	122°57.12′W

(d) Precautionary area "CA" contained within a circle of radius 1.24 miles centered at geographical position 48°45.30′N, 122°46.50′W.

(e) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
48°44.27′N	122°45.53′W
48°41.72′N	122°43.50′W
48°41.60′N	122°43.82′W
48°44.17′N	122°45.87′W

(f) A traffic lane for northbound traffic located between the separation zone described in paragraph (e) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°44.62′N	122°44.96′W
48°41.80′N	122°42.70′W

(g) A traffic lane for southbound traffic located between the separation zone described in paragraph (e) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°44.08′N	122°46.65′W
48°41.25′N	122°44.37′W

(h) Precautionary area "C" contained within a circle of radius 1.24 miles centered at geographical position 48°40.55′N, 122°42.80′W.

(i) A two-way route between the following geographical positions:

Latitude	Longitude
48°39.33′N	122°42.73′W
48°36.08′N	122°45.00′W
48°26.82′N	122°43.53′W
48°27.62′N	122°45.53′W
48°29.48′N	122°44.77′W
48°36.13′N	122°45.80′W
48°38.38′N	122°44.20′W
48°39.63′N	122°44.03′W

(j) Precautionary area "RB" bounded as follows:

(1) To the north by the arc of a circle of radius 1.24 miles centered on geographical position 48°26.38′N, 122°45.27′W and connecting the following geographical positions:

Latitude	Longitude
48°25.97′N	122°47.03′W
48°25.55′N	122°43.93′W

(2) To the south by a line connecting the following geographical positions:

Latitude	Longitude
48°25.97′N	122°47.03′W
48°24.62′N	122°48.68′W
48°23.75′N	122°47.47′W
48°25.20′N	122°45.73′W
48°25.17′N	122°45.62′W
48°24.15′N	122°45.27′W
48°24.08′N	122°43.38′W
48°25.55′N	122°43.93′W

§ 167.1322 In Puget Sound and its approaches: Approaches to Puget Sound other than Rosario Strait.

(a) The traffic separation scheme in the approaches to Puget Sound other than Rosario Strait consists of a northeast/southwest approach, a northwest/southeast approach, a north/south approach, and an east/west approach and connecting precautionary areas.

(b) In the northeast/southwest approach consisting of two separation zones, two precautionary areas ("RA" and "ND"), and four traffic lanes, the following are established:

(1) A separation zone that connects with precautionary area "RA", as described in paragraph (b)(2) of this section, and is bounded by a line connecting the following geographical positions:

Latitude	Longitude
48°24.13′N	122°47.97′W
48°20.32′N	122°57.02′W
48°20.53′N	122°57.22′W
48°24.32′N	122°48.22′W

(2) Precautionary area "RA", which is contained within a circle of radius 1.24 miles centered at 48°19.77′N, 122°58.57′W.

(3) A separation zone that connects with precautionary area "RA", as described in paragraph (b)(2) of this section, and is bounded by a line connecting the following geographical positions:

Latitude	Longitude
48°16.25′N	123°06.58′W
48°16.57′N	123°06.58′W
48°19.20′N	123°00.35′W
48°19.00′N	123°00.17′W

(4) A traffic lane for northbound traffic that connects with precautionary area "RA", as described in paragraph (b)(2) of this section, and is located between the separation zone described in paragraph (b)(1) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°23.75′N	122°47.47′W
48°19.80′N	122°56.83′W

(5) A traffic lane for northbound traffic that connects with precautionary area "RA", as described in paragraph (b)(2) of this section, and is located between the separation zone described in paragraph (b)(3) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°15.70′N	123°06.58′W
48°18.67′N	122°59.57′W

(6) A traffic lane for southbound traffic that connects with precautionary area "RA", as described in paragraph (b)(2) of this section, and is located between the separation zone described in paragraph (b)(1) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°24.62′N	122°48.68′W
48°20.85′N	122°57.80′W

(7) A traffic lane for southbound traffic that connects with precautionary area "RA", as described in paragraphs (b)(2) of this section, and is located between the separation zone described in paragraph (b)(3) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°19.70′N	123°00.53′W
48°17.15′N	123°06.57′W

(8) Precautionary area "ND", which is bounded by a line connecting the following geographical positions:

Latitude	Longitude
48°11.00′N	123°06.58′W
48°17.15′N	123°06.57′W
48°14.27′N	123°13.41′W
48°12.34′N	123°18.01′W
48°12.72′N	123°25.34′W
48°11.24′N	123°23.82′W
48°10.82′N	123°25.44′W
48°09.42′N	123°24.24′W
48°08.39′N	123°24.24′W
48°11.00′N	123°06.58′W

(c) In the northwest/southeast approach consisting of two separation zones, two precautionary areas ("RA" and "SA"), and four traffic lanes, the following are established:

(1) A separation zone that connects with precautionary area "RA", as described in paragraph (b)(2) of this section, and is bounded by a line connecting the following geographical positions:

Latitude	Longitude
48°27.79′N	123°07.80′W
48°25.43′N	123°03.88′W
48°22.88′N	123°00.82′W
48°20.93′N	122°59.30′W
48°20.82′N	122°59.62′W
48°22.72′N	123°01.12′W
48°25.32′N	123°04.30′W
48°27.58′N	123°08.10′W

(2) A separation zone that connects with precautionary area "RA", as described in paragraph (b)(2) of this section, and is bounded by a line connecting the following geographical positions:

Latitude	Longitude
48°18.83′N	122°57.48′W
48°13.15′N	122°51.33′W
48°13.00′N	122°51.62′W
48°18.70′N	122°57.77′W

(3) A traffic lane for northbound traffic that connects with precautionary "RA", as described in paragraph (b)(2) of this section, and is located between the separation zone described in paragraph (c)(1) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°28.15′N	123°07.31′W
48°25.60′N	123°03.13′W
48°23.20′N	123°00.20′W
48°21.00′N	122°58.50′W

(4) A traffic lane for northbound traffic that connects with precautionary area "RA", as described in paragraphs (b)(2) of this section, and is located between the separation zone described in paragraph (c)(2) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°19.20′N	122°57.03′W
48°13.35′N	122°50.63′W

(5) A traffic lane for southbound traffic that connects with precautionary "RA", as described in paragraph (b)(2) of this section, and is located between the separation zone described in paragraph (c)(1) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°27.43′N	123°08.94′W
48°25.17′N	123°04.98′W
48°22.48′N	123°01.73′W
48°20.47′N	123°00.20′W

(6) A traffic lane for southbound traffic connecting with precautionary area "RA", as described in paragraphs (b)(2) of this section, and is located between the separation zone described in paragraph (c)(2) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°18.52′N	122°58.50′W
48°12.63′N	122°52.15′W

(7) Precautionary area "SA", which is contained within a circle of radius 2 miles centered at geographical position 48°11.45′N, 122°49.78′W.

(d) In the north/south approach between precautionary areas "RB" and "SA", as described in paragraphs (b)(2) and (c)(7) of this section, respectively, the following are established:

(1) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
48°24.15′N	122°44.08′W
48°13.33′N	122°48.78′W
48°13.38′N	122°49.15′W
48°24.17′N	122°44.48′W

(2) A traffic lane for northbound traffic located between the separation zone described in paragraph (d)(1) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°24.08′N	122°43.38′W
48°13.10′N	122°48.12′W

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(3) A traffic lane for southbound traffic located between the separation zone described in paragraph (d)(1) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°24.15′N	122°45.27′W
48°13.43′N	122°49.90′W

(e) In the east/west approach between precautionary areas "ND" and "SA", as described in paragraphs (b)(8) and (c)(7) of this section, respectively, the following are established:

(1) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
48°11.50′N	122°52.73′W
48°11.73′N	122°52.70′W
48°12.48′N	123°06.58′W
48°12.23′N	123°06.58′W

(2) A traffic lane for northbound traffic between the separation zone described in paragraph (e)(1) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°12.22′N	122°52.52′W
48°12.98′N	123°06.58′W

(3) A traffic lane for southbound traffic between the separation zone described in paragraph (e)(1) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°11.73′N	123°06.58′W
48°10.98′N	122°52.65′W

§ 167.1323 In Puget Sound and its approaches: Puget Sound.

The traffic separation scheme in Puget Sound consists of six separation zones and two traffic lanes connected by six precautionary areas. The following are established:

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
48°11.08′N	122°46.88′W
48°06.85′N	122°39.52′W
48°02.48′N	122°38.17′W
48°02.43′N	122°38.52′W
48°06.72′N	122°39.83′W
48°10.82′N	122°46.98′W

(b) Precautionary area "SC", which is contained within a circle of radius 0.62 miles centered at 48°01.85′N, 122°38.15′W.

Latitude	Longitude
48°01.40′N	122°37.57′W
47°57.95′N	122°34.67′W
47°55.85′N	122°30.22′W
47°55.67′N	122°30.40′W
47°57.78′N	122°34.92′W
48°01.28′N	122°37.87′W

(c) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
48°01.40′N	122°37.57′W
47°57.95′N	122°34.67′W
47°55.85′N	122°30.22′W
47°55.67′N	122°30.40′W
47°57.78′N	122°34.92′W
48°01.28′N	122°37.87′W

(d) Precautionary area "SE", which is contained within a circle of radius 0.62 miles centered at 47°55.40′N, 122°29.55′W.

(e) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
47°54.85′N	122°29.18′W
47°46.52′N	122°26.30′W
47°46.47′N	122°26.62′W
47°54.80′N	122°29.53′W

(f) Precautionary area "SF", which is contained within a circle of radius 0.62 miles centered at 47°45.90′N, 122°26.25′W.

(g) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
47°45.20′N	122°26.25′W
47°40.27′N	122°27.55′W
47°40.30′N	122°27.88′W
47°45.33′N	122°26.60′W

(h) Precautionary area "SG", the which is contained within a circle of radius 0.62 miles centered at 47°39.68′N, 122°27.87′W.

(i) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
47°39.12′N	122°27.62′W
47°35.18′N	122°27.08′W
47°35.17′N	122°27.35′W
47°39.08′N	122°27.97′W

(j) Precautionary area "T", which is contained within a circle of radius 0.62 miles centered at 47°34.55′N, 122°27.07′W.

(k) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
47°34.02′N	122°26.70′W
47°26.92′N	122°24.10′W
47°23.07′N	122°20.98′W
47°19.78′N	122°26.58′W
47°19.98′N	122°26.83′W
47°23.15′N	122°21.45′W
47°26.85′N	122°24.45′W
47°33.95′N	122°27.03′W

(l) Precautionary area "TC", which is contained within a circle of radius 0.62 miles centered at 47°19.48′N, 122°27.38′W.

(m) A traffic lane for northbound traffic that connects with precautionary areas "SC", "SE", "SF", "SG", "T", and "TC", as described in paragraphs (b), (d), (f), (h), (j), and (k) of this section, respectively, and is located between the separation zones described in paragraphs (a), (c), (e), (g), (i), and (k) of this section, respectively, and a line connecting the following geographical positions:

Latitude	Longitude
48°11.72′N	122°46.83′W
48°07.13′N	122°38.83′W
48°02.10′N	122°37.32′W
47°58.23′N	122°34.07′W
47°55.83′N	122°28.80′W
47°45.92′N	122°25.33′W
47°39.68′N	122°26.95′W
47°34.65′N	122°26.18′W
47°27.13′N	122°23.40′W
47°23.33′N	122°20.37′W
47°22.67′N	122°20.53′W
47°19.07′N	122°26.75′W

(n) A traffic lane for southbound traffic that connects with precautionary areas "SC", "SE", "SF", "SG", "T", and "TC", as described in paragraphs (b), (d), (f), (h), (j), and (k) of this section, respectively, and is located between the separation zones described in paragraphs (a), (c), (e), (g), (i), and (k) of this section, respectively, and a line connecting the following geographical positions:

Latitude	Longitude
48°10.15′N	122°47.58′W
48°09.35′N	122°45.55′W
48°06.45′N	122°40.52′W
48°01.65′N	122°30.03′W
47°57.47′N	122°35.45′W
47°55.07′N	122°30.35′W
47°45.90′N	122°27.18′W
47°39.70′N	122°28.78′W
47°34.47′N	122°27.98′W
47°26.63′N	122°25.12′W
47°23.25′N	122°22.42′W
47°20.00′N	122°27.90′W

5. Add §§ 167.1330 through 167.1332 to read as follows:

§ 167.1330 In Haro Strait, Boundary Pass, and the Strait of Georgia: General.

The traffic separation scheme in Haro Strait, Boundary Pass, and the Strait of Georgia consists of a series of traffic separation schemes, two-way routes, and five precautionary areas. These parts are described in §§ 167.1331 and 167.1332. The geographic coordinates in §§ 167.1331 through 167.1332 are defined using North American Datum (NAD 83).

§ 167.1331 In Haro Strait and Boundary Pass.

In Haro Strait and Boundary Pass, the following are established:

(a) Precautionary area "V", which is bounded by a line connecting the following geographical positions:

Latitude	Longitude
48°21.83′N	123°25.56′W
48°21.13′N	123°24.84′W
48°20.95′N	123°24.24′W
48°20.93′N	123°23.22′W
48°21.67′N	123°21.12′W
48°22.12′N	123°21.12′W
48°22.37′N	123°21.12′W
48°22.85′N	123°21.24′W
48°23.71′N	123°23.88′W
48°21.83′N	123°25.56′W

(b) A separation zone that connects with precautionary area "V", as described in paragraph (a) of this section and is bounded by a line connecting the following geographical positions:

Latitude	Longitude
48°22.37′N	123°21.12′W
48°22.39′N	123°18.36′W
48°23.90′N	123°12.78′W
48°23.63′N	123°12.78′W
48°22.15′N	123°18.30′W
48°22.12′N	123°21.12′W

(c) A traffic lane for eastbound traffic located between the separation zone described in paragraph (b) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°21.67′N	123°21.12′W
48°21.73′N	123°18.36′W
48°23.84′N	123°10.08′W

(d) A traffic lane for westbound traffic located between the separation zone described in paragraph (b) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°22.85′N	123°21.24′W
48°22.87′N	123°18.42′W
48°24.26′N	123°13.02′W
48°24.78′N	123°12.42′W

(e) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
48°24.72′N	123°11.40′W
48°28.81′N	123°11.46′W
48°28.37′N	123°10.68′W
48°27.17′N	123°10.26′W
48°24.95′N	123°10.68′W

(f) A traffic lane for northbound traffic located between the separation zone described in paragraph (e) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°23.84′N	123°10.08′W
48°27.43′N	123°08.94′W

(g) A traffic lane for southbound traffic located between the separation zone described in paragraph (e) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°28.79′N	123°12.77′W
48°24.78′N	123°12.42′W

(h) Precautionary area "HS", which is bounded by a line connecting the following geographical positions:

Latitude	Longitude
48°28.79′N	123°12.77′W
48°31.73′N	123°13.02′W
48°31.03′N	123°11.22′W
48°29.45′N	123°09.42′W
48°28.15′N	123°07.31′W
48°27.79′N	123°07.80′W
48°27.58′N	123°08.10′W
48°27.43′N	123°08.94′W
48°28.37′N	123°10.68′W
48°28.81′N	123°11.46′W
48°28.79′N	123°12.77′W

(i) A two-way route between the following geographical positions:

Latitude	Longitude
48°31.03′N	123°11.22′W
48°35.18′N	123°12.78′W
48°38.37′N	123°12.36′W
48°39.20′N	123°13.09′W
48°39.41′N	123°16.06′W
48°31.73′N	123°13.02′W

(j) Precautionary area "TP", bounded as follows:

(1) To the north by the arc of a circle of radius 2.1 miles centered at geographical position 48°41.3′N, 123°14.2′W (Turn Point Light) and connecting the following positions:

Latitude	Longitude
48°43.04′N	123°16.06′W
48°43.15′N	123°12.75′W
48°42.23′N	123°11.35′W
48°40.93′N	123°11.01′W

(2) To the south by the arc of a circle of radius 2.1 miles centered at geographical position 48° 41.3′N, 123°14.2′W (Turn Point Light) and connecting the following points:

Latitude	Longitude
48°39.76′N	123°11.84′W
48°39.20′N	123°13.09′W
48°39.41′N	123°16.06′W

(3) To the west by a direct line connecting the following points:

Latitude	Longitude
48°39.41′N	123°16.06′W
48°43.04′N	123°16.06′W

(k) A two-way route between the following geographical positions:

Latitude	Longitude
48°43.15′N	123°12.75′W
48°46.43′N	123°03.12′W
48°48.19′N	123°00.84′W
48°47.78′N	122°59.12′W
48°45.51′N	123°01.82′W
48°42.23′N	123°11.35′W

§ 167.1332 In the Strait of Georgia.

In the Strait of Georgia, the following are established:

(a) Precautionary area "GS", which is bounded by a line connecting the following geographical positions:

Latitude	Longitude
48°52.30′N	123°07.44′W
48°54.81′N	123°03.66′W
48°49.49′N	122°54.24′W
48°47.93′N	122°57.12′W
48°47.78′N	122°59.12′W
48°48.19′N	123°00.84′W
48°52.30′N	123°07.44′W

(b) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
48°53.89′N	123°05.04′W
48°56.82′N	123°10.08′W
48°56.30′N	123°10.80′W
48°53.39′N	123°05.70′W

(c) A traffic lane for north-westbound traffic located between the separation zone described in paragraph (b) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°54.81′N	123°03.66′W
48°57.68′N	123°08.76′W

(d) A traffic lane for south-eastbound traffic between the separation zone described in paragraph (b) of this section and a line connecting the following geographical positions:

Latitude	Longitude
48°55.34′N	123°12.30′W
48°52.30′N	123°07.44′W

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(e) Precautionary area "PR", which is bounded by a line connecting the following geographical positions:

Latitude	Longitude
48°55.34′N	123°12.30′W
48°57.68′N	123°08.76′W
49°00.37′N	123°13.32′W
48°58.18′N	123°16.74′W

(f) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
48°59.53′N	123°14.66′W
49°03.80′N	123°21.24′W
49°03.14′N	123°22.26′W
48°58.90′N	123°15.63′W

(g) A traffic lane for north-westbound traffic located between the separation zone described in paragraph (f) of this section and a line connecting the following geographical positions:

Latitude	Longitude
49°00.37′N	123°13.32′W
49°04.52′N	123°20.04′W

(h) A traffic lane for south-eastbound traffic between the separation zone described in paragraph (f) of this section and a line connecting the following geographical positions:

Latitude	Longitude
49°02.51′N	123°23.76′W
48°58.18′N	123°16.74′W

Dated: July 5, 2002

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–21785 Filed 8–26–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 112–0052b; FRL–7261–8]

Revision to the Arizona State Implementation Plan, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Maricopa County Environmental Services Department (MCESD) portion of the Arizona State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing to approve a local rule that regulates excess emissions from malfunctions, startups, and shutdowns.

DATE: Any comments on this proposal must arrive by September 26, 2002.

ADDRESSES: Mail comments to Gerardo Rios, Permits Office Chief (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted SIP revision at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, AZ 85007.

Maricopa County Environmental Services Department, Air Quality Division, 1001 North Central Avenue, Suite 201, Phoenix, AZ 85004.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local MCESD Rule 140. In the Rules section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 25, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–21664 Filed 8–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 160–1160; FRL–7267–5]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri. This revision pertains to a change in the state's construction permits rule. Approval of this revision will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's air program rule revision.

In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by September 26, 2002.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: August 14, 2002.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 02–21666 Filed 8–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 158–1158; FRL–7267–2]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri. This revision pertains to a change in the state's Compliance Monitoring Usage rule. In the final rules section of this **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by September 26, 2002.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: August 12, 2002.

William A. Spratlin,

Acting Regional Administrator, Region 7.

[FR Doc. 02–21658 Filed 8–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 157–1157; FRL–7267–1]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri. This revision pertains to excess emissions emitted during start-up, shutdown, and malfunction conditions and the affirmative defenses available to sources. In the final rules section of this **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by September 26, 2002.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: August 14, 2002.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 02–21660 Filed 8–26–02; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 674

Antarctic Meteorites

AGENCY: National Science Foundation (NSF).

ACTION: Proposed rule.

SUMMARY: NSF proposes issuing regulations authorizing the collection of meteorites in Antarctica for scientific research purposes only. In addition, the regulations provide requirements for appropriate collection, handling, and curation of Antarctic meteorites to preserve their scientific value. These regulations implement Article 7 of the Protocol on Environmental Protection to the Antarctic Treaty and are issued pursuant to Section 6 of the Antarctic Conservation Act, as amended by the Antarctic Science, Tourism and Conservation Act of 1996.

DATES: Comments must be received by October 28, 2002.

ADDRESSES: Comments should be sent to Anita Eisenstadt, Assistant General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Anita Eisenstadt, Office of the General Counsel, at 703–292–8060.

SUPPLEMENTARY INFORMATION:

Background

Antarctic meteorites are a valuable non-renewable scientific resource that provide unique and important information about the origin and evolution of the solar system. A large number of meteorites representing many different meteorite classes have been collected in Antarctica since the late 1970's. These collections are possible because meteorites are easy to see on the light colored background of snow and ice and because dynamic processes of Antarctic ice fields result in accumulation of meteorites in certain zones on the ice sheet. The meteorites are generally well preserved because of the cold and dry conditions, and represent falls over the last several million years. Because of these conditions, the meteorites collected from Antarctic ice fields represent the

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most unbiased sampling possible, in terms of class or type of meteorite.

The National Science Foundation (NSF) is the single-point manager of the United States Antarctic Program and supports a wide range of scientific research in the Antarctic. Over the past twenty-five years, a partnership between NSF, the National Aeronautics and Space Administration (NASA), and the Smithsonian Institution has facilitated the collection of Antarctic meteorites and their curation in support of scientific research. NSF supports the collection of meteorites through the Antarctic Search for Meteorites (ANSMET) Program. The meteorites are characterized by joint efforts of NASA and the Smithsonian Institution and they are curated in facilities at the Johnson Space Center (NASA) and at National Museum of Natural History (Smithsonian Institution). NASA publishes characterizations of the samples on the web and in newsletters (Antarctic Meteorite Newsletter), and samples are made available in a timely manner to scientific researchers.

The United States is a Party to the Protocol on Environmental Protection to the Antarctic Treaty, done at Madrid on October 4, 1991. Article 7 of the Protocol provides that "any activity relating to mineral resources, other than scientific research, shall be prohibited." The Antarctic Conservation Act (ACA), (16 U.S.C. 2401 *et seq.*) as amended by the Antarctic Science, Tourism and Conservation Act of 1996 (ASTCA) (Public Law 104–227), implements the Protocol on Environmental Protection. Section 6 of the ACA, as amended by the ASTCA, directs the Director of the National Science Foundation to issue such regulations as are necessary and appropriate to implement the Protocol and the ACA. These regulations implement U.S. obligations under Article 7 of the Protocol by ensuring that meteorites in Antarctica are only collected for scientific research purposes.

In order to maximize their potential scientific value, meteorites must be collected and curated in a fashion that maximizes the information available about the meteorites and minimizes contamination as well as physical and chemical degradation. Proper curation includes making the meteorites available to bona fide scientific researchers on an impartial and timely basis.

Summary of Provisions

NSF is adding a new part 674 to its regulations to regulate the collection and curation of meteorites in Antarctica. Under the regulations, U.S. persons may collect meteorites in Antarctica only for scientific research purposes. U.S. expedition organizers who plan to collect meteorites in Antarctica are required to ensure that any meteorites collected in Antarctica after the effective date of the regulations are properly collected and handled and that appropriate arrangements have been made for the curation of any specimens collected.

The expedition organizer must submit a plan to the National Science Foundation which provides details on the procedures that will be put in place and followed to protect the scientific value of meteorite collections. The plan will need to address collection, handling, and curation procedures for any specimens collected. The plan must be submitted to the Foundation 90 days prior to the planned departure date of the expedition. NSF will solicit comments on the plan and provide an assessment of the adequacy of the plan within 45 days of receipt of the plan.

Determinations

NSF has determined, under the criteria set forth in Executive Order 12866, that this rule is not a significant regulatory action requiring review by the Office of Information and Regulatory Affairs. The proposed rule is not a major rule under the Congressional Review Act. The Unfunded Mandate Reform Act of 1995 (Public Law 104–4), in sections 202 and 205, requires that agencies prepare analytic statements before proposing any rule that may result in annual expenditures of $100 million by State, local, Indian Tribal governments, or the private sector. Since this rule will not result in expenditures of this magnitude, it is hereby certified that such statements are not necessary. As required by the Regulatory Flexibility Act, it is hereby certified this rule will not have significant impact on a substantial number of small businesses.

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations, 5 CFR part 1320, do not apply to the proposed rule because there are less than ten U.S. entities which annually organize expeditions to Antarctica for the purpose of collecting meteorites. Finally, NSF has reviewed this rule in light of section 2 of Executive Order 12778 and I certify for the National Science Foundation that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

List of Subjects in 45 CFR Part 674

Antarctica, Meteorites, Research.

Dated: August 16, 2002.

Lawrence Rudolph,

General Counsel, National Science Foundation.

For the reasons set forth in the preamble, the National Science Foundation proposes to add 45 CFR part 674 to read as follows:

PART 674—ANTARCTIC METEORITES

Sec.

674.1 Purpose of regulations.
674.2 Scope and applicability.
674.3 Definitions.
674.4 Restrictions on collection of meteorites in Antarctica.
674.5 Requirements for collection, handling, documentation and curation of Antarctic meteorites.
674.6 Submission of information to NSF.
674.7 Exception for serendipitous finds.

Authority: 16 U.S.C. 2401 *et seq.*

§ 674.1 Purpose of regulations.

The purpose of the regulations in this part is to implement the Antarctic Conservation Act of 1978, as amended by the Antarctic Science, Tourism and Conservation Act of 1996 (16 U.S.C. 2401 *et seq.*), and Article 7 of the Protocol on Environmental Protection to the Antarctic Treaty done at Madrid on October 4, 1991. Specifically, this part is designed to ensure meteorites in Antarctica will be collected for scientific research purposes only and that U.S. expedition organizers to Antarctica who plan to collect meteorites in Antarctica will ensure that any specimens collected will be properly collected, handled, documented and curated to preserve their scientific value.

§ 674.2 Scope and applicability.

This part applies to any person who collects meteorites in Antarctica. The requirements of § 674.5 apply to any person organizing an expedition to or within Antarctica for which the United States is required to give advance notice under Paragraph (5) of Article VII of the Antarctic Treaty where one of the purposes of the expedition is to collect meteorites in Antarctica. The requirements in this Part only apply to the collection of meteorites in Antarctica after [the effective date of the final regulation].

§ 674.3 Definitions.

In this part:

Antarctica means the area south of 60 degrees south latitude.

Expedition means an activity undertaken by one or more persons organized within or proceeding from the United States to or within Antarctica for which advance notification is required under Paragraph 5 of Article VII of the Antarctic Treaty.

Incremental cost is the extra cost involved in sharing the samples with other researchers. It does not include the initial cost of collecting the meteorites in Antarctica or the cost of maintaining the samples in a curatorial facility.

Person has the meaning given that term in section 1 of title 1, United States Code, and includes any person subject to the jurisdiction of the United States.

§ 674.4 Restrictions on collection of meteorites in Antarctica.

No person may collect meteorites in Antarctica for other than scientific research purposes.

§ 674.5 Requirements for collection, handling, documentation, and curation of Antarctic meteorites.

(a) Any person organizing an expedition to or within Antarctica, where one of the purposes of the expedition is to collect meteorites in Antarctica, shall ensure that the meteorites will be properly collected, documented, handled, and curated to preserve their scientific value. Curation includes making specimens available to bona fide scientific researchers on a timely basis, in accordance with specified procedures.

(b) Expedition organizers described in paragraph (a) of this section shall develop and implement written procedures for the collection, documentation, and curation of specimens which include the following components:

(1) *Handling requirements.* Handling procedures shall ensure that the specimens are properly labeled and handled to minimize the potential for contamination from the point of collection to the point of curation. At a minimum, handling procedures shall include:

(i) Handling the samples with Teflon or polyethylene coated implements (or equivalent);

(ii) Double bagging of samples in Teflon or polyethylene (or equivalent) bags;

(iii) Securely attaching a sample identifier to the bag;

(iv) Keeping the samples frozen at or below −15C until opened and thawed in a clean laboratory setting at the curation facility; and

(v) Thawing in a clean, dry nitrogen environment.

(2) *Sample documentation.* Documentation for each specimen, that includes, at a minimum:

(i) A unique identifier for the sample;

(ii) The date of find;

(iii) The date of collection (if different from date of find);

(iv) The latitude and longitude to within 500 meters of the location of the find and the name of the nearest named geographical feature;

(v) The name, organizational affiliation, and address of the finder or the expedition organizer;

(vi) A physical description of specimen and of the location of the find; and

(vii) Any observations of the collection activity, such as potential contamination of the specimen.

(3) *Curation.* Make prior arrangements to ensure that any specimens collected in Antarctica will be maintained in a curatorial facility that will:

(i) Preserve the specimens in a manner that precludes chemical or physical degradation;

(ii) Produce an authoritative classification of the meteorite that contains enough information to group an individual meteorite into an established chemical and petrological type;

(iii) Develop and maintain curatorial records associated with the meteorites including collection information, authoritative classification, total known mass, information about handling and sample preparation activities that have been performed on the meteorite, and sub-sample information;

(iv) Submit an appropriate summary of information about the meteorites to the Antarctic Master Directory via the National Antarctic Data Coordination Center as soon as possible, but no later than two years after receipt of samples at the curatorial facility;

(v) Submit information on classification of the meteorite to an internationally recognized meteorite research catalog, such as the "Catalogue of Meteorites" published by the Natural History Museum of London or the "Meteoritical Bulletin" published by the Meteoritical Society;

(vi) Specify procedures by which requests for samples by bonafide scientific researchers will be handled;

(vii) Make samples available to bonafide scientific researchers at no more than incremental cost and within a reasonablo period of time; and

(viii) In the event that the initial curatorial facility is no longer in a position to provide curation services for the specimens, or believes that the meteorites no longer merit curation, it shall consult with the National Science Foundation's Office of Polar Programs to identify another appropriate curatorial facility, or to determine another appropriate arrangement.

§ 674.6 Submission of information to NSF.

A copy of the written procedures developed by expedition organizers pursuant to § 674.5(b) shall be furnished to the National Science Foundation's Office of Polar Programs at a minimum of 90 days prior to the planned departure date of the expedition for Antarctica. NSF shall publish a notice of availability of the plan in the **Federal Register** that provides for a 15 day comment period. NSF shall evaluate the procedures in the plan to determine if they are sufficient to ensure that the meteorites will be properly collected, handled, documented, and curated. NSF shall provide comments on the adequacy of the plan within 45 days of receipt. If NSF advises the expedition organizer that the procedures satisfy the requirements of § 674.5 and the procedures are implemented, the expedition organizer will have satisfied the requirements of this Part.

§ 674.7 Exception for serendipitous finds.

A person who makes a serendipitous discovery of a meteorite in Antarctica which could not have been reasonably anticipated, may collect the meteorite for scientific research purposes, provided that the meteorite is collected in the manner most likely to prevent contamination under the circumstances, and provided that the meteorite is otherwise handled, documented and curated in accordance with the requirements of § 674.5.

[FR Doc. 02–21621 Filed 8–26–02; 8:45 am]

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Notices

Federal Register
Vol. 67, No. 166
Tuesday, August 27, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Bureau for Democracy, Conflict and Humanitarian Assistance, Office of Food for Peace; Announcement of Draft Pub. L. 480 Title II Guidelines for FY 2004 Cooperating Sponsor Results Report and Resource Request (CSR4); Notice

Pursuant to the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480, as amended), notice is hereby given that the Pub. L. 480 Title II Guidelines for FY 2004 Cooperating Sponsor Results Report and Resource Request (CSR4) are being made available to interested parties for the required thirty (30) day comment period.

Individuals who wish to receive a copy of these draft guidelines should contact: Office of Food for Peace, Agency for International Development, RRB 7.06–153, 1300 Pennsylvania Avenue, Washington, DC 20523–7600. Individuals who have questions or comments on the draft guidelines should contact Angelique M. Crumbly at the above address or at (202) 712–4279.

The thirty-day comment period will begin on the date that this announcement is published in the **Federal Register**.

Dated: August 15, 2002.

Lauren Landis,

Director, Office of Food for Peace, Bureau for Democracy, Conflict and Humanitarian Assistance.

[FR Doc. 02–21771 Filed 8–26–02; 8:45 am]
BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

White River National Forest, Colorado, Travel Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to 40 Code of Federal Regulations (CFR) 1501.7, the Forest Supervisor of the White River National Forest gives notice of the intent to prepare an environmental impact statement (EIS) in conjunction with the Travel Management Plan (Travel Plan) for the White River National Forest.

This notice describes the specific elements to be included in the Travel Plan, decisions to be made, estimated dates for filing the EIS, information concerning public participation, and the names and address of the agency officials who can provide information.

DATES: Comments concerning the scope of the analysis must be received by October 31, 2002. The draft environmental impact statement (DEIS) is expected in the winter of 2004, and the final environmental impact statement (FEIS) is expected winter/spring of 2005.

ADDRESSES: Send written comments to Dottie Bell, White River National Forest, PO Box 948, Glenwood Springs, Colorado 81602.

FOR FURTHER INFORMATION CONTACT: Vincent Picard, Public Affairs Specialist, White River National Forest, PO Box 948, Glenwood Springs, Colorado 81602, (970) 945–2521.

FOR TECHNICAL INFORMATION CONTACT: Wendy Haskins, Transportation Planner, White River National Forest, PO Box 948, Glenwood Springs, Colorado 81602, (970) 945–2521, or Dan Hormaechea, Planning and Information Systems Director, White River National Forest, PO Box 948, Glenwood Springs, Colorado 81602, (970) 945–2521.

Responsible Official: Martha Ketelle, Forest Supervisor, White River National Forest, PO Box 948, Glenwood Springs, Colorado 81602.

SUPPLEMENTARY INFORMATION: Pursuant to 40 Code of Federal Regulations (CFR) 1501.7, the Forest Supervisor for the White River National Forest gives notice of the agency's intent to prepare an EIS in conjunction with the Travel Management Plan required under 36 CFR 212.5(b). The White River National Forest invites those interested parties and affected people to participate in the analysis and contribute to the final decision for this proposed action.

The Forest Service is seeking information, comments and assistance from individuals, organizations, tribal governments, and federal, state and local agencies that are interested in or may be affected by the proposed action. The public is invited to help identify issues and define the range of alternatives to be considered in the EIS. The range of alternatives will be based on the identification of significant public issues, management concerns, resource management opportunities, and plan decisions specific to Travel Management within the scope of the White River National Forest Land and Resource Management Plan 2002 Revision (Forest Plan). Written comments identifying issues for analysis and range of alternatives are encouraged.

Background

Travel can be described as the movement of people, goods and services. Travel management on the White River National Forest considers the planning of and providing for the appropriate movement of people and products through the Forest. An efficient transportation network is essential for forest resource management, outdoor recreation use and access. Forest management considers vegetation, water, soil, aquatic ecosystems, wildlife, range, recreation, minerals, and fire management. Access is necessary to manage these resources and activities, as well as provide egress and ingress to private in-holdings. This transportation network and the manner in which it is used needs to be efficient, effective in providing access, properly maintained, and ecologically sound to minimize adverse affects on resources.

The White River National Forest's current travel system receives most of its use from recreation users. Recreation on the Forest has substantially increased since the last major transportation planning effort in 1984. Since that time, there have been technological changes that effect access and recreation use. Mountain bikes have become very popular, and they are able to go on a variety of terrains. Likewise, all terrain vehicle and snowmobile advances allow these machines to access areas that were once inaccessible.

There are two main types of recreation travel, destination travel and recreation occurring on the travelway.

Destination travel can be defined as using the travelway to get to a particular site for recreational purposes. Examples are fishing, picnicking, boating, hunting, skiing, site seeing, gathering forest products, visiting historic sites and camping. Recreation occurring on the travelway can include driving for pleasure, 4-wheel driving, jeeping, all terrain vehicle driving, motorcycling, horseback riding, hiking, snowmobiling, cross-country skiing, snowshoeing and mountain biking. Some types of recreation entail both types of travel; all of these uses require some type of transportation access. With the amount and variety of uses, recreational activities can cause user conflict. The transportation network and uses on the network needs to be able to accommodate the varied recreational activities our publics enjoy. At the same time, this network has to be an efficient, manageable system for the Forest Service. Developing a Travel Plan to accommodate and balance the transportation needs of the public and to provide adequate access for forest and resource management is the goal of this document.

Purpose and Need for Action

In order to align the travel strategy on the Forest with the White River Forest Plan and to comply with 36 CFR 212.5(b), the Forest Supervisor expressed the need for a forest-wide Travel Management Plan. This effort is the extension of an earlier effort to provide a Travel Management Plan along with the White River Forest Plan. Due to public input and the complexity of the subject matter, the decision was made to separate the two plans and develop the Travel Management Plan after the completion of the Forest Plan. This Travel Management Plan and the incorporated EIS intend to meet that commitment.

Since the last Travel Plan (1984), land management concepts, practices and priorities have modified. Technology and science have advanced, and they are reflected in Forest Service land management. These changes also need to be reflected in an efficient travel system that serves land management in an ecologically sound manner.

Recreational use on the Forest has increased over the past eighteen years and new modes of travel have come into play (*i.e.*, mountain bikes and all-terrain vehicles). Advances in vehicular and mechanical travel have allowed machines to travel further and over rougher terrain than before. The Forest needs to address how and where to allow various forms of recreation and how to accommodate the varied, and sometimes conflicting, recreation uses.

This document seeks to update the travel management uses and to identify an efficient road and trail system for the White River National Forest. The purpose is to have a clear and concise plan for a transportation network that addresses the needs for forest management, public access and recreation use.

Nature of Decision To Be Made

The Travel Management Plan is an assessment of how and where travel should occur on the Forest. The development of this document shall be an accumulation of ideas, concepts, and analysis from forest specialists, district personnel, other agency personnel, and interested publics.

The six decisions to be made in the Travel Management Plan are:

1. Designation of summer (snow-free) travel area strategies.

• Area strategy describes whether an area is open, restricted, or closed to a specific use and where that use is allowed to occur.

2. Designations for road and trail uses during summer (snow-free) periods.

• These define specific use for each road and trail including seasonal restrictions. The standard use categories are passenger car, four-wheel drive vehicles, all-terrian vehicle, motorcycle, mountain bike, horse and pack animal, and foot.

3. Designation of winter travel area strategies.

• An area strategy describes whether an area is open, restricted, or closed to a specific use.

4. Designation of winter routes.

• Defines routes through restricted areas for over-snow use.

5. Designation or elimination of unclassified travelways.

• Currently there are over 500 miles of inventoried or known roads and trails that are not officially designated as part of the Forest travel system. These may have been constructed for specific short-time purpose and were never properly closed, or they may also be the result of traffic going off-road or trail repeatly forming an illegal road or trail. Legally, the Forest Service cannot recognize nor maintain them. Therefore, it is proposed to either designate these travelways or eliminate them. This will be a one-time look at these travelways for designation or elimination; one which follows the NEPA process and examines the environmental impacts. After this process, any new unclassified travelways will automatically be designated for elimination. Any new road or trail proposed would have to undergo analysis in accordance with the National Environmental Policy Act (NEPA).

6. Identification of specific roads for decommissioning.

• One of the objective strategies in the Forest Plan is to decommission 22 miles of unneeded road per year. The Travel Plan will identify specific system roads that meet the criteria for decommissioning.

Range of Alternatives

The proposed action is to create a Travel Management Plan for the White River National Forest. All alternatives will be in compliance with and tier to the decisions made in the Forest Plan. It is not the intent of this proposal to amend the Forest Plan.

The range of alternatives considered will address different options to resolve concerns raised as significant issues and to fulfill the purpose and need. A reasonable range of alternatives will be evaluated. Rationale will be given for any alternative eliminated from detailed consideration. Alternatives will represent differing concepts based on quality and quantity of travel.

A "no-action alternative" is required by law. The no-action alternative under this analysis will assume travel management conditions as described under the Forest Plan. Additional alternatives will provide a range of ways to address and respond to public issues, management concerns and resource opportunities identified during the scoping process.

The following thematic descriptions represent three alternatives to be considered in the EIS.

• *Maximum:* This alternative emphasizes the social and recreational needs associated with an expanded the transportation system. It allows more opportunity for separation of recreational uses and more opportunity for winter travel. It adds relatively more unclassified roads and trails into the system and has less miles of roads to be decommissioned. It would contain the most miles of roads and trails available for travel. With more miles of trail and road, there would be relatively more impacts to resources; therefore, mitigation and protection measures would take longer to implement under this alternative.

• *Minimum:* This alternative places less of an emphasis on meeting social and recreational needs. It follows the hierarchical or shared recreational use system, with few routes designated for a single use, and provides less opportunity for winter travel. Fewer unclassified roads and trails are added to the system with more miles of road

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selected for decommissioning. This alternative would have the least amount of roads and trails available for travel. Under this alternative, there are relatively less impacts to resources; therefore, mitigation and protection measures take a shorter amount of time to implement.

• *Blended:* In this alternative, social, recreation and resource needs associated with the transportation system are considered equitably. This alternative seeks to create a balanced emphasis containing both separation of uses and shared use systems, along with a moderate amount of area available for winter travel. In this alternative, some unclassified roads and trails are be added to the system. Some system roads are selected for decommissioning.

• *No Action:* This alternative reflects the current condition under the Forest Plan. It contains the roads and trails currently in the travel system. The uses generally follow the heirarchical system. No unclassified roads or trails are added to the system, and no classified roads are designated for decommissioning under this alternative.

The public is encouraged to comment on these alternative concepts as well as present others for consideration.

Scoping Process/Comment Requested

The first formal opportunity to comment on the White River Travel Management Plan is during the scoping process (40 CFR 1501.7), which begins with the issuance of this notice of intent. All comments, including the names, addresses and when provided, are placed in the record and are available for public inspection. Comments must be in writing. Mail comments to: Dottie Bell, White River National Forest, PO Box 948, Glenwood Springs, Colorado 81602.

The Forest Service requests comments on the nature and scope of the environmental, social and economic issues, and possible alternatives related to the development of this Travel Management Plan and EIS.

A series of public opportunities are scheduled to explain the Travel Management Planning and provide an opportunity for public input. Five (5) scoping meetings are planned.

September 10—Garfield County Fairgrounds (one of the rooms under the grandstand), 6–9 p.m.
September 12—Blanco Ranger District Office, 3–7 p.m.
September 16—Eagle County Office in Basalt (Mt. Sopris Room), 6:30–9 p.m.
September 17—Summit County Middle School auditorium, 6–9 p.m.
September 18—Avon Public Library (Beaver Creek Room), 6–9 p.m.

Written comments will be accepted at these meetings. The Forest Service will work with tribal governments to address issues that would significantly or uniquely affect them.

Response To Comments/Forest Plan EIS Process

During the Proposed Forest Plan and DEIS comment period, many comments were received regarding travel management. Many of these were addressed in the White River Forest Plan Environmental Impact Statement in Appendix A, Response to Comments. The remaining comments, which tended to be site-specific (*i.e.*, addressed a specific road or trail), were sorted and distributed to the responsible ranger district. The ranger district and the ID team will use these for reference. The comments received from the Proposed Forest Plan and DEIS on travel management will be incorporated into internal deliberative processes. The comments that do not comply with the Forest Plan cannot be considered. Because the Travel Management Plan/EIS is a stand-alone document, only public comment letters on the Travel Management Plan DEIS will be formally addressed in an appendix in the FEIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A DEIS will be prepared for comment. The comment period on the DEIS will be 60 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of DEISs must structure their participation in the environmental review of the proposal so it is meaningful and alerts an agency to the reviewer's position and contentions *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 60-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: August 20, 2002.

Stephen C. Sherwood,

Deputy Forest Supervisor.

[FR Doc. 02–21706 Filed 8–26–02; 8:45 am]

BILLING CODE 3410–BW–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Other Project Proposals/Possible Action, (5) Sunflower Coordinated Resource Presentation/Possible Action, (6) Valentine Ridge Project Proposal/Possible Action, (7) General discussion, (8) National RAC Member Talk, (9) Evaluation Criteria Form/Possible Action, (10) House Committee Report, (11) Draft Addition to Standard Long Form/Possible Action.

DATES: The meeting will be held on September 12, 2002, from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, PO Box 164, Elk Creek, CA 95939. (530) 968–5329; EMAIL *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by September 9, 2002 will have the opportunity to address the committee at those sessions.

Dated: August 21, 2002.

James F. Giachino,

Designated Federal Official.

[FR Doc. 02–21732 Filed 8–26–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Rehabilitation of Floodwater Retarding Structure No. 3C of the East Fork Above Lavon Watershed of the Trinity River Watershed, Collin County, TX

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Floodwater Retarding Structure No. 3C of the East Fork Above Lavon Watershed of the Trinity River Watershed.

FOR FURTHER INFORMATION CONTACT: Tomas M. Dominquez, Acting State Conservationist, Natural Resources Conservation Service, 101 South Main, Temple, Texas 76501–7682, Telephone (254) 742–9800.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Tomas M. Dominquez, Acting State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project will rehabilitate Floodwater Retarding Structure No. 3C to maintain the present level of flood control benefits and comply with the current performance and safety standards.

Rehabilitation of the site will require the disturbance of 3.59 acres. A new 30 inch principal spillway and an additional auxiliary spillway 180 feet wide will be installed. The disturbed areas will be planted to plants that have wildlife values. The proposed work will not affect any prime farmland, endangered or threatened species, wetlands, or cultural resources.

Federal assistance will be provided under authority of the Small Watershed Rehabilitation Amendments of 2000 (Section 313, Pub. L. 106–472). Total project costs is estimated to be $1,215,700, of which $790,205 will be paid from the Small Watershed Rehabilitation funds and $425,495 from local funds.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Tomas M. Dominquez, Acting State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: August 13, 2002.

Tomas M. Dominquez,

Acting State Conservationist.

[FR Doc. 02–21715 Filed 8–26–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Twin Parks Watershed, Iowa County, Wisconsin

AGENCY: Natural Resources Conservation Service (NRCS) in Wisconsin Department of Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Twin Parks Watershed, Iowa County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Thomas Krapf, Water Resources Staff Leader, Natural Resources Conservation Service, 6515 Watts Road, Suite 200, Madison, Wisconsin, 53719. Telephone (608) 276–8732.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Patricia S. Leavenworth, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is flood prevention. The planned works of improvement include: the repair of a pipe separation in Twin Parks Structure Number 10, the raising of the dam an average of one foot to meet current freeboard guidelines, and the enactment of a county floodplain zoning ordinance which restricts future development within the hydraulic shadow of Structure Number 10.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Thomas Krapf.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: July 24, 2002.

Patricia S. Leavenworth,

State Conservationist.

[FR Doc. 02–21714 Filed 8–26–02; 8:45 am]

BILLING CODE 3410–16–P

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ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

[Docket No. 02–2]

Information Quality Guidelines

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of availability of draft information quality guidelines and request for comments.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has placed draft information quality guidelines on its web site for public review and comment. The purpose of the draft information quality guidelines is to ensure the quality, objectivity, utility, and integrity of certain information disseminated by the Access Board to the public. The draft guidelines also provide an administrative mechanism for requests for correction of information publicly disseminated by the Access Board. Comments will be accepted on the draft guidelines and the Access Board will consider those comments prior to issuing final guidelines.

DATES: Comments on the draft guidelines must be received by September 10, 2002.

ADDRESSES: Comments should be sent to the Office of General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW, suite 1000, Washington, DC 20004–1111. E-mail comments should be sent to *stewart@access-board.gov*. Comments sent by e-mail will be considered only if they contain the full name and address of the sender in the text. Comments will be available for inspection at the above address from 9 a.m. to 5 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT: Elizabeth Stewart, Deputy General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW, suite 1000, Washington DC 20004–1111. Telephone number (202) 272–0042 (voice); (202) 272–0082 (TTY). Electronic mail address: *stewart@access-board.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Pub. L. 106–554), the Office of Management and Budget (OMB) issued implementing guidelines entitled "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies."[1] OMB's implementing guidelines directed each agency to post final information quality guidelines on their web site no later than October 1, 2002. The Access Board has made its draft information quality guidelines available on its web site for public comment and review at *http://www.access-board.gov/infoquality.htm*.

The purpose of these information quality guidelines is to ensure and maximize the quality, objectivity, utility, and integrity of information disseminated by the Access Board. The guidelines also establish administrative mechanisms allowing affected persons to seek and obtain correction of information that does not comply with these guidelines. Pursuant to the implementing guidelines issued by OMB, the Access Board must report annually to the Director of OMB, beginning January 1, 2004, on the number and nature of complaints regarding the Access Board's compliance with the information quality guidelines and how such complaints were resolved.

The Access Board will consider all comments received in response to this notice and will issue final information quality guidelines before October 1, 2002.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 02–21739 Filed 8–26–02; 8:45 am]

BILLING CODE 8150–01–P

[1] Published by OMB on September 28, 2001 (66 FR 49718), updated January 3, 2002 (67 FR 369), and corrected February 22, 2002 (67 FR 8452).

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocation in part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke five antidumping duty orders in part.

EFFECTIVE DATE: August 27, 2002.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2001), for administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on Silicon Metal from Brazil, Fresh Atlantic Salmon from Chile, Certain Pasta from Italy, Certain Pasta from Turkey and Persulfates from the People's Republic of China.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than July 31, 2003.

	Period to be reviewed
Antidumping Duty Proceedings	
Brazil: Silicon Metal, A–351–806	7/1/01–6/30/02
Companhia Brasileira Carbureto De Calcio	
Rima Industrial S/A	
Chile: Fresh Atlantic Salmon, A–337–803	7/1/01–6/30/02
Acuicultura de Aquas Australes	
Agromar Ltda.	
Aguas Claras S.A.	
Antarfish S.A.	
Aqua Chile S.A.	
Aquasur Fisheries Ltda.	
Asesoria Acuicola S.A.	
Australis S.A.	
Best Salmon	
Cenculmavique	
Centro de Cultivo de Moluscos	
Cerro Farrellon Ltda.	
Chile Cultivos S.A.	
Chisal S.A.	
Comercializadora Smoltech Ltda.	
Complejo Piscicola Coyhaique	
Cultivadora de Salmones Linao Ltda.	
Cultivos Marinos Chiloe Ltda.	
Cultivos San Juan	
Cultivos Yardan S.A.	
Empresa Nichiro Chile Ltda.	
Fiordo Blanco S.A.	
Fisher Farms	
Fitz Roy S.A.	
Fjord Sea Food Chile	
Friosur S.A.	
Ganadera Del Mar	
Gentec S.A.	
Granja Maria Toma Galeones S.A.	
Hiuto Salmones S.A.	
Huitosal Mares Australes Salmo Pac.	
Instituto Tecnologico Del Salmon S.A.	
Inversiones Pacific Star Ltda.	
Invertec Pesquera Mar de Chiloe Ltda.	
Los Fiordos Ltda.	
Manao Bay Fishery S.A.	
Mardim Ltda.	
Marine Harvest Chile S.A.	
Ocean Horizons Chile S.A.	
Pacific Mariculture	
Patagonia Fish Farming S.A.	
Patagonia Salmon Farming S.A.	
Pesca Chile S.A.	
Pesquera Antares S.A.	
Pesquera Chiloe S.A.	
Pesquera Eicosal Ltda.	
Pesquera Friosur S.A.	
Pesquera Los Fiordos Ltda.	
Pesquera Mares de Chile S.A.	
Pesquera Pacific Star	
Pesquera Quellon Ltda.	
Pesquera Y Comercial Rio Peulla S.A.	
Piscicola Entre Rios S.A.	
Piscicultura Iculpe	
Piscicultura La Cascada	
Piscultura Santa Margarita	
Productos Del Mar Ventisqueros S.A.	
Prosmolt S.A.	
Quetro S.A.	
River Salmon S.A.	
Robinson Crusoe Y Cia. Ltda.	
Salmoamerica	
Salmones Andes S.A.	
Salmones Antarctica S.A.	
Salmones Aucar Ltda.	
Salmones Caicaen S.A.	
Salmones Calbuco S.A.	
Salmones Chiloe S.A.	

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	Period to be reviewed
Salmones Friosur S.A.	
Salmones Huillinco S.A.	
Salmones Ice Val Ltda.	
Salmones Lianquihue	
Salmones Mainstream S.A.	
Salmones Multiexport Ltda.	
Salmones Pacific Star Ltda.	
Salmones Pacifico Sur S.A.	
Salmones Quellon	
Salmones Ranco Sur Ltda.	
Salmones Tecmar S.A.	
Salmones Tierra Del Fuego Ltda.	
Salmones Unimarc S.A.	
Salmosan	
Seafine Salmon S.A.	
Skyring Salmon S.A.	
Soc. Agricola Chillehue Ltda.	
Soc. Alimentos Maritimos Avalon Ltda.	
Soc. Aquacultivos Ltda.	
Truchas Aguas Blancas Ltda.	
Trusal S.A.	
Ventisqueros S.A.	
France: Stainless Steel Sheet and Strip in Coils, A–427–814—Ugine S.A.	7/1/01–6/30/02
Germany: Stainless Steel Sheet and Strip in Coils, A–427–825	7/1/01–6/30/02
Krupp Thyssen Nirosta GmbH	
Thyssen Krupp VDM GmbH	
Germany: Industrial Nitrocellulose, A–428–803—Wolff Walsrode AG	7/1/01–6/30/02
Iran: In-Shell Pistachios, A–507–502	7/1/01–6/30/02
Nima Trading Company	
Rafsanjan Pistachios Producers Cooperative	
Italy: Certain Pasta, A–475–818	7/1/01–6/30/02
F. Divella S.P.A.	
Industria Alimentare Colavita, S.p.A.	
Industrie Alimentari Molisane S.r.l.	
Labor S.r.l.	
Molino e Pastificio Tomasello S.r.l.	
Pastificio Antonio Pallante S.r.l.	
Pastificio Guido Ferrara	
Pastificio Garofalo S.p.A.	
IAPC Italia S.r.l.	
Pastificio F.LLI Pagani S.p.A.	
Pastificio Zaffiri S.r.l.	
P.A.M., S.r.l.—Prodotti Alimentari Meridionali.	
Rummo S.p.A. Pastificio e Molino	
Italy: Stainless Steel Sheet and Strip in Coils, A–475–824—Thyssen Krupp Acciai Speciali S.p.A.	7/1/01–6/30/02
Mexico: Stainless Steel Sheet and Strip in Coils, A–201–822—Thyssen Krupp Mexinox S.A. de C.V.	7/1/01–6/30/02
Republic of Korea: Stainless Steel Sheet and Strip in Coils, A–580–834	7/1/01–6/30/02
Dai Yang Metal Co., Ltd	
Pohang Iron & Steel Co., Ltd.	
Taiwan: Stainless Steel Sheet and Strip in Coils, A–583–831	7/1/01–6/30/02
Chia Far Industrial Factory Co., Ltd.	
Ta Chen Stainless Pipe Co., Ltd.	
Tung Mung Development Co., Ltd.	
Yieh United Steel Corporation	
Thailand: Canned Pineapple, A–549–813	7/1/01–6/30/02
Dole (Thailand)/Dole Package Foods Co./Dole Food Co.	
Kuiburi Fruit Canning Company Limited	
Malee Sampran Factory Public Company, Ltd.	
The Prachuab Fruit Canning Company	
Siam Fruit Canning (1988) Co., Ltd.	
Siam Food Products Public Company Ltd.	
Thai Pineapple Canning Industry Corporation	
The Thai Pineapple Public Co., Ltd.	
Vita Food Factory (1989) Co., Ltd.	
Thailand: Carbon Steel Butt-Weld Pipe Fittings, A–549–807—Thai Benkan Corporation, Ltd.	7/1/01–6/30/02
Thailand: Furfuryl Alcohol, A–549–812—Indorama Chemicals Thailand Ltd.	7/1/01–6/30/02
The People's Republic of China: Bulk Aspirin [1], A–570–853	7/1/01–6/30/02
Shandong Xinhua Pharmaceutical Co., Ltd.	
Jilin Henghe Pharmaceutical Co., Ltd.	
The People's Republic of China: Persulfates [2], A–570–847—Shanghai Ai Jian Import & Export Corp./Shanghai Ai Jian Reagent Works	7/1/01–6/30/02
The People's Republic of China:Sebacic Acid [3], A–570–825	7/1/01–6/30/02
Tianjin Chemicals Import & Export Co.	
Guangdong Chemicals Import and Export Co.	
Turkey: Certain Pasta, A–489–805—Filiz Gida Sanayi ve Ticaret A.S.	7/1/01–6/30/02
The United Kingdom: Industrial Nitrocellulose, A–412–803—Imperial Chemical Industries PLC and its affiliates	7/1/01–6/30/02
Countervailing Duty Proceedings	
Italy: Certain Pasta, C–475–819	1/1/01–12/31/01
Delverde, SpA	
F. Divella S.p.A.	
F.lli De Cecco di Filippo Fara S. Martino S.p.A.	
Labor S.r.l.	
Suspension Agreements	
None.	

[1] If one of the above named companies does not qualify for a separate rate, all other exporters of bulk aspirin from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of persulfates from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of sebacic acid from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping order under § 351.211 or a determination under § 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: August 19, 2002.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Adminstration.

[FR Doc. 02–21803 Filed 8–26–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Notice of Postponement of Preliminary Antidumping Duty Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of preliminary determination of antidumping duty investigation.

EFFECTIVE DATE: August 27, 2002.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or Lisa Shishido, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3208, (202) 482–1382, respectively.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary determination of the investigation of certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam").

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2002).

Postponement of Determination Results

The Department has determined that this case is extraordinarily complicated and additional time beyond the current December 5, 2002, deadline is necessary to make the preliminary determination. Completion of the preliminary results within the 190 day period is impracticable for the following reason: (1) This is the first antidumping duty investigation on imports from Vietnam; (2) The Department needs to determine whether Vietnam is to be treated as a market or a non-market economy for purposes of this antidumping duty investigation. The Department is postponing the preliminary determination until 190 days after initiation in accordance with section 733(c)(1)(B) of the Act.

Therefore, the preliminary determination is now due on January 24, 2003. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination.

Dated: August 20, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–21768 Filed 8–26–02; 8:45 am]

BILLING CODE 3510–DS–P

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COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Products Produced or Manufactured in the Philippines

August 21, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 27, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward, swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63031, published on December 4, 2001.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 21, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on August 27, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
237	852,357 dozen.
333/334	436,405 dozen of which not more than 63,330 dozen shall be in Category 333.
335	232,422 dozen.
336	1,204,930 dozen.
340/640	1,450,907 dozen.
341/641	1,269,797 dozen.
342/642	1,001,493 dozen.
345	286,118 dozen.
351/651	1,000,461 dozen.
352/652	4,231,567 dozen.
359–C/659–C [2]	798,442 kilograms.
361	2,917,401 numbers.
369–S [3]	1,383 kilograms.
433	4,005 dozen.
445/446	36,284 dozen.
447	10,087 dozen.
611	854,442 square meters.
633	78,873 dozen.
634	815,760 dozen.
635	499,051 dozen.
636	2,385,465 dozen.
638/639	3,038,618 dozen.
643	737,342 numbers.
645/646	1,110,747 dozen.
647/648	1,722,426 dozen.
Group II	
200–220, 224–227, 300–326, 332, 359pt. [4], 360, 362, 363, 369pt. [5], 400–414, 434–438, 442, 444, 448, 459pt. [6], 469pt. [7], 603, 604, 613–620, 624–629, 644, 659–O [8], 666pt. [9], 845, 846 and 852, as a group.	234,534,827 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[5] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[6] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[7] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[8] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[9] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Philip J. Martello,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–21705 Filed 8–26–02; 8:45 am]

BILLING CODE 3510–DR–S

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Sound Levels for Toy Caps

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the June 13, 2002 **Federal Register** (67 FR 40689), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), to announce the agency's intention to seek an extension of approval for a period of three years from the date of approval by the Office of Management and Budget of information collection requirements in a regulation exempting certain toy caps from a banning rule. One comment was received on the **Federal Register** notice of June 13, 2002. However, the comment related to the decibel level requirements of the rule and not the reporting requirement subject to the Paperwork Reduction Act. Therefore, the Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information.

A regulation codified at 16 CFR 1500.18(a)(5) bans toy caps producing peak sound levels at or above 138 decibels (dB). Another regulation codified at 16 CFR 1500.86(a)(6) exempts toy caps producing sound levels between 138 and 158 dB from the banning rule if they bear a specified warning label and if firms intending to distribute such caps: (1) Notify the Commission of their intent to distribute such caps; (2) participate in a program to develop toy caps producing sound levels below 138 dB; and (3) report quarterly to the Commission concerning the status of their programs to develop caps with reduced sound levels.

The Commission requests extension of approval of the information collection requirements in the rule codified at 16 CFR 1500.86(a)(6) to obtain current and periodically-updated information from all manufacturers concerning the status of programs to reduce sound levels of toy caps. The Commission will use this information to monitor industry efforts to reduce the sound levels of toy caps, and to ascertain which firms are currently manufacturing or importing toy caps with peak sound levels between 138 and 158 db.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Information Collection Requirements for Sound Levels for Toy Caps; 16 CFR 1500.86(a)(6)(ii) and (iii).

Type of request: Extension of approval.

Frequency of collection: One-time notification before beginning distribution; status report four times each year.

General description of respondents: Manufacturers and importers of toy caps.

Estimated number of respondents: 10.

Estimated average number of hours per respondent: 4 per year.

Estimated number of hours for all respondents: 40 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by September 26, 2002, to (1) Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov*. Copies of this request for extension of approval of information collection requirements are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2226.

Dated: August 21, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–21696 Filed 8–26–02; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 26, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Karen_F._Lee@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 21, 2002.

John D. Tressler,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Fast Response Survey System (FRSS) 83: Survey on Internet Access in U.S. Public Schools, Fall 2002.

Frequency: One time.

Affected Public: Public Schools.

Reporting and Recordkeeping Hour Burden: Responses: 1,200. Burden Hours: 396.

Abstract: This proposed survey will be the eighth in an annual series of surveys tracking access to the Internet and other advanced telecommunications in public schools and classrooms. The

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National Center for Education Statistics has conducted a similar survey since 1994 using the Fast Response Survey System in order to monitor changes in this rapidly changing area. For example, school access to the Internet has increased from 35 percent in 1994 to 99 percent in 2001. Other topics to be covered include types of connections used by the school for connecting to the Internet, what staff provide software and hardware support in the school, and technologies and procedures used to prevent student access to inappropriate material on the Internet. The survey will go to a nationally representative stratified sample of 1,200 schools.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2131. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–21713 Filed 8–26–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Number DE–PS07–02ID14407]

Emerging Technology Deployment for the Chemical and Petroleum Industry Solicitation

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of financial assistance solicitation.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is soliciting proposals for the installation and field-testing of technologies to reduce energy consumption, enhance economic competitiveness, and reduce environmental impacts, specifically in the Petroleum Refining and Chemicals industrial sectors. The objective of the solicitation is to find ways to mitigate the risk to industries of accepting and using emerging technologies developed by the industry initiatives. It is not the intent of DOE–ID to solicit research and development projects.

DATES: The issuance date of Solicitation Number DE–PS07–02ID14407 will be on August 20, 2002. The deadline for receipt of applications will be approximately on November 22, 2002.

ADDRESSES: The solicitation in its full text will be available on the Internet at the following URL address: *http://e-center.doe.gov*. The Industry Interactive Procurement System (IIPS) provides the medium for disseminating solicitations, receiving financial assistance applications and evaluating the applications in a paperless environment. Completed applications are required to be submitted via IIPS. An IIPS "User Guide for Contractors" can be obtained on the IIPS Homepage and then clicking on the "Help" button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Layne Isom, Contract Specialist, (208) 526–5633 *isomla@id.doe.gov*.

SUPPLEMENTARY INFORMATION: This solicitation is commissioned on behalf of the DOE's Office of Industrial Technologies (OIT) Best Practices Program, which develops and provides energy-saving products, services, and technologies to industry. Additional information about the Best Practices Program can be found on the Web site *http://www.oit.doe.gov/bestpractices*.

DOE anticipates making 3 to 10 cooperative agreement awards with total estimated DOE funding ranging from $3 to 10 million dollars, depending on final funding levels and the quality of proposals received. No individual awards will exceed $1 million dollars or a timeframe of three years. The cooperative agreements will be awarded in accordance with DOE Financial Assistance Regulations of Title 10 of the Code of Federal Regulations, Chapter II, Subchapter H, Part 600. Award of a cooperative agreement under this solicitation does not commit the Government to fund any follow-on activities. Successful applicants will be required to submit quarterly, annual, and final reports to DOE and attend annual program review meetings. Applicants who are selected will cost-share a minimum of 50% of the project total cost. The statutory authority for the program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086, Conservation Research and Development.

Issued in Idaho Falls on August 20, 2002.

R. J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 02–21741 Filed 8–26–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, September 12, 2002, 6 p.m.–9:30 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, PO Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov*.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- An *Overview of the Lifecycle Baseline* will be provided by a representative from the Department of Energy, Oak Ridge Operations Office
- Question and Answer Period
- Comments from the Deputy Designated Federal Officer and Ex-officios
- Public Comment Period
- Motions and Recommendations for Consideration for Board Approval
- Reports from the Environmental Restoration, Stewardship, and Waste Management Committees concerning the Annual Work Plans
- Additions to the Agenda
- Public Comment Period

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the specified time period.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on August 21, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–21740 Filed 8–26–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC02–11–001, FERC Form 11]

Commission Information Collection Activities; Comment Request; Submitted for OMB Review

August 20, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and reinstatement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of April 15, 2002 (67 FR 18183) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by September 22, 2002.

ADDRESSES: Address comments to the Office of Management and Budget, Office of Information ad Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, NW., Washington, DC 20503. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Chief Information Officer, CI–1, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those filing electronically do not need to make a paper filing.

For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426 and should refer to [Docket No. IC02–11–001].

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's website at *www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–208–0258 or by e-mail to *efiling@ferc.fed.us*. Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. User assistance for FERRIS is available at 202–502–8222, or by e-mail to *contentmaster@ferc.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)502–8415, by fax at (202)208–2425, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains:

1. *Collection of Information*: FERC Form 11 "Natural Gas Monthly Quarterly Statement of Monthly Data".

2. *Sponsor*: Federal Energy Regulatory Commission.

3. *Control No.*: OMB No. 1902–0032.

On May 19, 1999, the Office of Management and Budget (OMB) approved the reporting requirements in FERC Form 11 for a term of three years, the maximum period permissible under the Paperwork Reduction Act before an information collection must be resubmitted for approval. As noted above, this notice seeks public comments in order to recertify the FERC Form 11 reporting requirements. The initial comment period in the **Federal Register** noted above, extended past the expiration date for the FERC Form 11. Because of this lapse, the Commission seeks to have Form 11 reinstated and approved for an additional three years. There are no changes to the existing collection and increases in the reporting burden are for adjustments only. This is a mandatory information collection requirement and the Commission does not consider the information to be confidential.

4. *Necessity of the Collection of Information*: Submission of the information is necessary for the Commission to carry out its responsibilities in implementing the statutory provisions of sections 10(a) and 16 of the Natural Gas Act (NGA) 15 U.S.C. 717–717w and the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301–3432). The NGA and the NGPA authorize the Commission to prescribe rules and regulations requiring natural gas pipeline companies whose gas was transported or stored for a fee and exceeded 50 million dekatherms in each of the three previous calendar years to submit FERC Form 11.

The information collected on the Form 11 allows the Commission to follow developing trends on a pipeline's system. In particular, gas revenues and quantities of gas by rate schedule, transition costs from upstream pipelines and reservation charges are reported to the Commission for review. This information is used to assess the reasonableness of the various revenues and costs of service items claimed in rate filings. The information also provides the Commission with a view of the status of pipeline activities, allows revenue comparisons between pipelines, and provides financial status of regulated pipelines. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 260.3 and sections 385.2011.

5. *Respondent Description*: The respondent universe currently comprises on average 58 companies subject to the Commission's jurisdiction. Note: In the initial notice, the Commission indicated 55 respondents but further evaluation has

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determined the number of respondents has increased to 58.

6. *Estimated Burden*: 696 total hours, 58 respondents, 4 responses annually, 3hours per response (average).

7. *Estimated Cost Burden to Respondents*: Estimated cost burden to respondents: 696 hours / 2,080 hours per year x $117,041 per year = $39,164. The cost per respondent is equal to $ 675.

Statutory Authority: Sections 10(a) and 16 of the Natural Gas Act (NGA) 15 U.S.C. 717–717w and the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301–3432).

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21719 Filed 8–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC02–510–001, FERC–510]

Commission Information Collection Activities; Comment Request; Submitted for OMB Review

August 20, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of the current expiration date. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of May 31, 2002 (67 FR 38086) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by September 22, 2002.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer, 725 17th Street, NW., Washington, DC 20503. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Chief Information Officer, CI–1, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC02–510–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's website at *www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–208–0258 or by e-mail to *efiling@ferc.fed.us*. Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. User assistance for FERRIS is available at 202–502–8222, or by e-mail to *contentmaster@ferc.fed.us*.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)502–8415, by fax at (202)208–2425, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collected submitted for OMB review contains:

1. *Collection of Information*: FERC–510 Application for Surrender of a Hydropower License".

2. *Sponsor*: Federal Energy Regulatory Commission.

3. *Control No.*: 1902–0068.

The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is an adjustment only to the reporting burden. These are mandatory information collection requirements and the Commission does not consider the information to be confidential.

4. *Necessity of the Collection of Information*: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of part 1, sections 4(e), 6 and 13 of te Federal Power Act, 16 U.S.C. 797(e), 799 and 806. Section 4(e) gives the Commission the authority to issue licenses for the purpose of constructing, operating and maintaining dams, water conduits, reservoirs, powerhouses, transmission lines or other project works necessary or convenient for developing and improving navigation, transmission and utilization of power over which Congress has jurisdiction. Section 6 gives the Commission the authority to prescribe the conditions of the licenses including the revocation and/or surrender of the license. Section 13 defines the Commission's authority to delegate time periods for when a license must be terminated if project construction has not begun. Surrender of a license may be desired by a licensee when a licensed project is retired or not constructed. The information is collected by FERC in the form of a written application for surrender of a hydropower license, which is then used by Commission staff to determine the broad impact of such a surrender. FERC carefully reviews the prepared application, solicits public and agency comments through the issuance of a public notice, and prepares the Surrender of License Order. The order is the result of an analysis of the information produced, *i.e.*, economic, environmental, etc. which is then examined to determine if the application is warranted. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR sections 6.1 through 6.4.

5. *Respondent Description*: The respondent universe currently comprises 8 companies (on average) subject to the Commission's jurisdiction.

6. *Estimated Burden*: 80 total hours, 8 respondents, 1 response per respondent, 10 hours per response (average).

7. *Estimated Cost Burden to respondents*: 80 hours / 2080 hours per years x $117,041 per year = $4,502. The cost per respondent is equal to $563.00.

Statutory Authority : Sections 4(e), 6 and 13 of te Federal Power Act, 16 U.S.C. 797(e), 799 and 806.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21720 Filed 8–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–103–000]

GWF Energy LLC and PSEG Energy Technologies, Inc.; Notice of Filing

August 19, 2002.

Take notice that on August 9, 2002, GWF Energy LLC and PSEG Energy Technologies Inc. tendered for filing an application under section 203 of the Federal Power Act for approval of an intra-corporate reorganization.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 208–1659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iif) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: August 28, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–21717 Filed 8–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–31–000]

Iroquois Gas Transmission System; Notice of Site Visit

August 20, 2002.

On August 28, 2002, the staff of the Office of Energy Projects (OEP) will conduct a visit of the Proposed Site and the Vail Road Alternative Site for the Brookfield Compressor Station proposed for construction by Iroquois Gas Transmission System (Iroquois). Both compressor station sites are located in the Town of Brookfield, Fairfield County, Connecticut. Representatives of Iroquois will accompany the OEP staff. All interested parties may meet at 1 p.m. at the proposed compressor station site located at 60 High Meadow Road in Brookfield. Attendees must provide their own transportation.

Anyone interested in additional information on the site visit may contact the Commission's Office of External Affairs at 1–866–208–FERC.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21716 Filed 8–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–121–000]

Occidental Chemical Corporation, Complainant, v. PJM Interconnection, L.L.C. and Delmarva Power & Light Company, Respondents; Notice of Complaint

August 20, 2002.

Take notice that on August 16, 2002, Occidental Chemical Corporation (Occidental), filed a Complaint Requesting Fast Track Processing against PJM Interconnection, L.L.C. (PJM), and Delmarva Power & Light Company (Delmarva).

Copies of the filing were served upon PJM, Delmarva, and the Delaware Public Service Commission. Occidental is not aware of any other parties that may be expected to be affected by the complaint.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before September 3, 2002. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 208–1659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21718 Filed 8–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protest

August 20, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application*: Original License (1.5 MW).

b. *Project No.*: P–11485–001.

c. *Date Filed*: September 04, 2001.

d. *Applicant*: Midwest Hydro, Inc.

e. *Name of Project*: Delhi Milldam Hydroelectric Project.

f. *Location*: Located on the South Fork Maquoketa River near Delhi, in Delaware County, Iowa. There are no Federal lands located within the project boundary.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact*: Mr. Loyal Gake, P.E., Midwest Hydro, Inc., 116 State Street, P.O.Box 167, Neshkoro, WI 54960, (920) 293–4628.

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i. *FERC Contact*: John Ramer, (202) 502–8969 or E-Mail *John.Ramer@ferc.gov*.

j. *Deadline for filing motions to intervene and protest*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385–2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Pursuant to Order No. 619, [1] the Federal Energy Regulatory Commission (FERC) now accepts certain "qualified documents" via the Internet in lieu of paper filing. "Qualified documents" may be submitted electronically only by accessing the E-Filing link at *www.ferc.gov*. The Commission does not accept comments or other documents related to proceedings before the Commission via e-mail. Comments received via e-mail are not placed in the public record.

"Qualified documents" that may by submitted electronically in lieu pf paper and the procedures for e-filing "qualified documents" are described in FERC's *User Guide for Electronic Filing of Qualified Documents*, which can be accessed via FERC's website *www.ferc.gov/e-filing*. For assistance with filing qualified documents electronically, you can contract FERC's public reference room during normal business hours, 8:30 am to 5:00 pm Eastern time, by phone at (202) 502–8371 or by e-mail at *publicreferenceroom@ferc.fed.us*.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *The proposed Delhi Milldam Hydroelectric Project would consist of the following existing facilities:* (1) An existing 702-foot-long and about 59-foot-high dam, with an 86-foot-long ogee type spillway and 25-foot-wide by 17-foot-high vertical sluice gates; (2) an existing 880-acre reservoir having a negligible storage capacity at elevation 892 feet mean sea level (msl); (3) a 61-foot-long by approximately 51-foot-wide powerhouse containing two open-flume Francis turbines each with a maximum hydraulic capacity of 276 cubic feet per second (cfs) and two generators each rated at 750 kilowatts (kW) for a total installed capacity of 1500 kW; and (4) appurtenant facilities, such as, governors and electric switchgear. No transmission line exists, although a commercial sub-station is located within 100 feet of the powerhouse. The dam and existing project facilities are owned by Lake Delhi Recreation Association, Inc.

The Delhi Milldam Project will include refurbishing each of the existing inoperable turbine/generator sets. New governors, electric switchgear, and controls will be installed, including a programmable control system which will automatically operate the project with capability of remote surveillance and operation. No civil work is proposed. The project's generating capacity will be 1500 kW and will generate an average of about 2.96 million kilowatthours annually.

m. A copy of the application is available for inspection and reproduction during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202)502–8371. In addition, the application may be viewed and/or printed via the internet through FERC's Home Page (*http://www.ferc.gov*). From FERC's Home Page on the internet, the application and other filings and issuances regarding this application are available in the Federal Energy Regulatory Records Information System (FERRIS). To access this information in FERRIS, for the Delhi Milldam Hydroelectric Project license application, enter the application's docket number (*i.e.*, P–11485) and sub-docket number (*i.e.*, 001) where specified. User assistance is available for FERRIS and FERC's website, during normal business hours, from our Help line at (202) 502–8222 or the Public Reference Room at (202) 502–8371. A copy of the application is also available for inspection and reproduction from the applicant at the address in item h. above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Procedural schedule and final amendments*: The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Milestone Activity and Date

Notice Of Application Accepted For Filing and Soliciting Motions To Intervene And Protests, August 2002
Acceptance Letter w/ Additional Information Request, August 2002
Issue Scoping Document, August 2002
Notice Application Ready For EA (REA) and Soliciting Comments and Recommendations, February 2003
Notice Of Availability Of EA, April 2003
Order Issuing The Commission's Decision On The Application, May 2003

Final amendments to the application must be filed with the Commission no later than 45 days from the issuance date of the notice that the application is REA and soliciting comments and recommendations. As noted in item k. above, the application is *not* ready for environmental analysis now, and we are *not* issuing a REA notice now.

p. With this notice, we are initiating consultation with the *Iowa State Historic Preservation Officer (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *This notice also consists of the following standard paragraphs:*

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—All filings must (1) bear in all capital letters the title "Protest" or "Motion to Intervene;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

[1] III FERC Stats. & Regs., Regulations Preambles ¶ 31,107.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21722 Filed 8–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Participation at MISO-SPP Tariff Convergence Technical Conference

August 20, 2002.

The Federal Energy Regulatory Commission hereby gives notice that on August 27–28, 2002, members of its staff will attend the MISO-SPP tariff convergence technical conference, concerning the development of a common open access transmission tariff for the Midwest Independent Transmission System Operator, Inc. (MISO) and Southwest Power Pool, Inc. (SPP). The staff's attendance is part of the Commission's ongoing outreach efforts. The meeting is sponsored by MISO and SPP, and will be held on August 27–28, 2002, beginning at 9 a.m. on August 27, 2002 at the Renaissance St. Louis Airport, 9801 Natural Bridge Road, St. Louis, MO 63134. This technical conference is open to all interested stakeholders. This technical conference may discuss matters at issue in Docket No. RM01–12–000, Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, and in Docket No. ER02–1420–000, Midwest Independent Transmission System Operator, Inc.

For more information, contact Mark Volpe, Director of Regulatory Affairs, Midwest Independent Transmission System Operator at (317) 249–5423 or Michael McLaughlin, Director, Division of Tariffs and Rates-Central, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (202) 502–8436 or *michael.mclaughlin@ferc.gov*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21721 Filed 8–26–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7288–2]

Contractor and Subcontractor Access to Confidential Business Information Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has authorized prime contractors and subcontractors access to information that has been, or will be, submitted to EPA under sections 112 and 114 of the Clean Air Act (CAA). Some of the information may be claimed to be confidential business information (CBI) by the submitter.

EFFECTIVE DATES: Access to confidential data submitted to EPA will occur no sooner than September 6, 2002.

FOR FURTHER INFORMATION CONTACT: Roberto Morales, Document Control Officer, Office of Air Quality Planning and Standards (C404–02), EPA, Research Triangle Park, North Carolina 27711, (919) 541–0880.

SUPPLEMENTARY INFORMATION: The EPA is issuing the notice to inform all submitters of information under sections 112 and 114 of the CAA that EPA may provide to the contractors and subcontractors listed below access to those materials on a need-to-know basis:

1. Prime Contractor

Environmental Consulting and Research, Inc. (EC/R), 2327 Englert Drive, Suite 100, Durham, NC 27713. Contract 68D01055.

2. Prime Contractor

Environmental Consulting and Research, Inc. (EC/R), 2327 Englert Drive, Suite 100, Durham, NC 27713. Contract 68D01071.

Subcontractors: ICF, Inc., Cadmus, Menzie-Cura, TRJ (Ted Johnson), SBG (Susan B. Goldhabaer).

3. Prime Contractor

Environmental Consulting and Research, Inc. (EC/R), 2327 Englert Drive, Suite 100, Durham, NC 27713. Contract 68D01076.

Subcontractors: ICF, Inc., Eastern Research Group (ERG), Pacific Environmental Services (PES), MCNC, TRJ (Ted Johnson), SBG (Susan B. Goldhabaer), Jim Capel.

4. Prime Contractor

Eastern Research Group, Inc. (ERG), 110 Hartwell Avenue, Lexington, MA 02173. Contract 68D01078.

Subcontractors: Research Triangle Institute (RTI), EC/R, Inc., Alpha-Gamma Technologies, SKT Consulting Services, Inc..

5. Prime Contractor

Eastern Research Group, Inc. (ERG), 110 Hartwell Avenue, Lexington, MA 02173. Contract 69D01081.

6. Prime Contractor

ICF, Inc., 9300 Lee Highway, Fairfax, VA 22031. Contract 68D01052.

Subcontractors: EC/R, Inc., Alpha-Gamma Technologies, Inc., HeiTech Services, Inc., Dr. Deborah Amaral, Jim Capel, Douglas Crawford Brown, TRJ (Ted Johnson), Dr. Bradford Lyon, Dr. Thomas McKone.

7. Prime Contractor

Research Triangle Institute, 3040 Cornwallis Road, Research Triangle Park, NC 27709. Contract 68D01079.

Subcontractors: Caldwell Environmental, North State Engineering, Inc., Razor Environmental.

8. Prime Contractor

Pacific Environmental Services (PES), 5001 South Miami Boulevard, Research Triangle Park, NC 27709. Contract 68D01077.

Subcontractors: Alpha Gamma Technologies, SKT Consulting Services, Inc., Bennet King Environmental Consultant, Inc..

9. Prime Contractor

Research Triangle Institute (RTI), 3040 Cornwallis Road, Research Triangle Park, NC 27709. Contract 68D01073.

Subcontractor: The Kervic Company.

The contractors and subcontractors will provide technical support to the Office of Air Quality Planning and Standards in source assessment or with a source category survey and proceed through development of standards or control techniques guidelines, risk assessments, and national air toxics assessments.

In accordance with 40 CFR 2.301(h), EPA has determined that the above listed contractors and subcontractors require access to CBI submitted to EPA under sections 112 and 114 of the CAA in order to perform work satisfactorily under the above noted contracts. The contractors' and subcontractors' personnel will be given access to information submitted under sections 112 and 114 of the CAA. The contractors' personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to CBI. All contractor and

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subcontractor access to CAA CBI will take place at the contractors' or subcontractors' facilities. The contractors and subcontractors will have appropriate procedures and facilities in place to safeguard the CAA CBI to which the contractors and subcontractors have access.

Clearance for access to CAA CBI is scheduled to expire on September 30, 2006 under contracts 68D01055, 68D01071, 68D01076, 68D01078, 68D01081, 68D01052, 68D01079, 68D01077, and 68D1073.

Dated: August 14, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–21751 Filed 8–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7268–5]

Effluent Guidelines Program Plan for 2002/2003

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Effluent Guidelines Program Plan.

SUMMARY: Today's document announces EPA's Effluent Guidelines Program Plan for 2002/2003, which describes the Agency's ongoing effluent guidelines development efforts. Under the Clean Water Act (CWA), EPA establishes national regulations, termed "effluent guidelines," to reduce pollutant discharges from industrial facilities to surface waters and publicly owned treatment works (POTWs). The Agency published a proposed plan on June 18, 2002 (67 FR 41417), and public comments on the proposed plan are discussed in today's notice. In addition, to prepare for the Effluent Guidelines Program Plan to be published in 2004 (for years 2004/2005), the Agency invites the public to identify existing effluent guidelines that EPA should consider revising and to identify any industrial categories for which effluent guidelines should be promulgated.

EFFECTIVE DATE: September 26, 2002.

ADDRESSES: The public record for this notice has been established under docket number W–01–12. It is available for review in the EPA Water Docket, which is located in room B135 EPA West, 1301 Constitution Avenue, N.W. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. To schedule an appointment to see Docket materials, please call (202) 566–2426. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying. Recommendations on possible effluent guideline revisions or new categories can be made to Patricia Harrigan by e-mail at *harrigan.patricia@epa.gov*, or Jan Matuszko by e-mail at *matuszko.jan@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Patricia Harrigan at (202) 566–1666 or *harrigan.patricia@epa.gov*, or Jan Matuszko at (202) 566–1035 or *matuszko.jan@epa.gov*.

SUPPLEMENTARY INFORMATION: *Outline of this Notice*

I. Regulated Entities
II. Legal Authority
III. Effluent Guidelines Program Background
IV. Effluent Guidelines Program Plan for 2002/2003
V. Future of the Effluent Guidelines Program
A. A Strategy for National Clean Water Industrial Regulations
B. Solicitation of Stakeholder Recommendations
VI. Public Comments

I. Regulated Entities

Today's Effluent Guidelines Program Plan for 2002/2003 does not contain regulatory requirements. It identifies industrial categories for which EPA expects to develop or revise effluent limitations guidelines and standards ("effluent guidelines"), and sets forth the schedules for those rulemakings. Entities that could be affected by regulations developed under the schedules set forth in this Plan are shown in Table 1 below. One commenter stated that the Aquatic Animal Production effluent guideline may also affect federal- and state-run fish hatchery facilities. EPA agrees with the comment and the table has been updated to reflect this potential impact.

TABLE 1.—ENTITIES POTENTIALLY AFFECTED BY FORTHCOMING EFFLUENT GUIDELINES REGULATIONS

Category of entity	Examples of potentially affected entities
Industrial, Commercial, or Agricultural.	Metal Products and Machinery (including electroplating, metal finishing); builders and developers engaged in construction, development, and redevelopment; Feedlots (swine, poultry, dairy and beef cattle); Aquatic Animal Production (fish hatcheries and farms); and Meat Products (slaughtering, rendering, packing, processing of red meat and poultry); and Pulp and Paper (dissolving mills).
Federal Government	Metal Products and Machinery (including electroplating, metal finishing); builders and developers engaged in construction, development, and redevelopment; Aquatic Animal Production.
State and Tribal Government	Metal Products and Machinery (including electroplating, metal finishing); builders and developers engaged in construction, development, and redevelopment; Aquatic Animal Production.
Local Government	Metal Products and Machinery (including electroplating, metal finishing); builders and developers engaged in construction, development, and redevelopment.

II. Legal Authority

Today's document is published under the authority of section 304(m) of the CWA, 33 U.S.C. 1314(m).

III. Effluent Guidelines Program Background

The CWA directs EPA to promulgate effluent limitations guidelines and standards for categories or subcategories of industrial point sources that, for most pollutants, reflect the level of pollutant control attained by the best available technologies economically achievable. *See* CWA sections 301(b)(2), 304(b), 306, 307(b), and 307(c). For point sources that introduce pollutants directly into the Nation's waters (*i.e.*, direct dischargers), the limitations promulgated by EPA are implemented through National Pollutant Discharge Elimination System (NPDES) permits. *See* CWA sections 301(a), 301(b), and 402. For sources that discharge to POTWs (*i.e.*, indirect dischargers), EPA promulgates pretreatment standards that apply directly to those sources and are enforced by POTWs, which are backed by State and Federal authorities. See CWA sections 307(b) and (c).

Section 304(m) requires EPA to publish a Plan every two years that consists of three elements. First, under section 304(m)(1)(A), EPA is required to establish a schedule for the annual review and revision of existing effluent guidelines in accordance with section 304(b). Section 304(b) applies to effluent limitations guidelines for direct dischargers and requires EPA to revise such regulations as appropriate. Second, under section 304(m)(1)(B), EPA must identify categories of sources discharging toxic or nonconventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or new source performance standards (NSPS) under section 306. Finally, under section 304(m)(1)(C), EPA must establish a schedule for the promulgation of effluent limitations guidelines under section 304(b)(2) and NSPS for the categories identified under subparagraph (B) not later than three years after being identified in the section 304(m) plan. Section 304(m) does not apply to pretreatment standards for indirect dischargers, which EPA promulgates pursuant to sections 307(b) and 307(c) of the CWA.

On October 30, 1989, Natural Resources Defense Council, Inc., and Public Citizen, Inc., filed an action against EPA in which they alleged, among other things, that EPA had failed to comply with CWA section 304(m). The Plaintiffs and EPA agreed to a settlement of that action in a Consent Decree entered on January 31, 1992. The Consent Decree, as modified, established a schedule by which EPA will propose and take final action for eleven point source categories identified by name in the Decree, *see* Consent Decree, and for eight other point source categories identified only as new or revised rules, numbered 5 through 12. *See* Consent Decree pars. 2(a), 4(a), and 5(a). The Decree also established deadlines for EPA to complete studies of eight identified and three unidentified point source categories. *See* Consent Decree, par. 3(a).

The last date for EPA action under the Decree, as modified, is June 2004. The Decree provides that the foregoing requirements shall be set forth in EPA's section 304(m) plans. *See* Consent Decree, pars. 3(a), 4(a), 5(a). The Consent Decree provides that section 304(m) plans issued under the Decree that are consistent with its terms shall satisfy EPA's obligations under section 304(m) with respect to the publication of such plans. *See* Consent Decree, par. 7(b).

IV. Effluent Guidelines Program Plan for 2002/2003

Today's Plan describes EPA's current effluent guidelines rulemaking activities. Table 2 identifies the new or revised effluent guidelines currently under development, and the schedules for proposal and final action.

TABLE 2.—EFFLUENT GUIDELINES CURRENTLY UNDER DEVELOPMENT

Category	Federal register citation (date) or deadline for proposal	Final action date
Metal Products and Machinery	66 FR 424 (Jan. 3, 2001)	12/31/02
Concentrated Animal Feeding Operations (poultry, swine, beef, and dairy subcategories).	66 FR 2959 (Jan. 12, 2001)	12/15/02
Meat and Poultry Products	67 FR 8582 (Feb. 25, 2002)	12/03
Construction and Development	67 FR 42644 (Jun. 24, 2002)	03/04
Aquatic Animal Production	08/14/02	06/04
Pulp, paper, and paperboard (dissolving kraft (Subpart A) and dissolving sulfite (Subpart D)).	58 FR 44078 (Dec. 17, 1993)	09/04

In previous Effluent Guideline Program Plans, EPA indicated its intention to take final action on its 1993 proposal to revise effluent guidelines for eight subcategories of the pulp, paper, and paperboard industry (Subparts C and F through L), referred to as Phase II. At this time, however, EPA is not planning to revise effluent guidelines for these subcategories for a variety of reasons. It appears that more stringent conventional pollutant limitations for these subcategories would not pass the Best Conventional Pollutant Control Technology "cost-reasonableness" test, which is explained at 51 *FR* 24974 (July 1986) for at least five and possibly up to seven of the eight subcategories, depending on which option is selected. In addition, EPA does not see the need at this time to promulgate national categorical best management practices for these subcategories. EPA expects that permitting authorities will continue to impose best management practices on a case-by-case basis, as appropriate, under 40 CFR 122.44(k).

As with all currently regulated industries, EPA will make the decision to move forward with data collection and analysis for all of these subparts (including possible guidelines revisions) following a broader priority-setting process the Agency is developing for its future effluent guidelines planning evaluations. EPA received only one comment on this issue, and the commenter supported the Agency's proposed decision not to revise effluent guidelines for these subcategories at this time.

V. Future of the Effluent Guidelines Program

The 1992 Consent Decree will terminate in June, 2004 when EPA takes final action on the last effluent guideline covered in the Decree.

A. A Strategy for National Clean Water Industrial Regulations

The termination of the Consent Decree offers EPA, interested stakeholders, and the public the chance to evaluate the existing program and to consider how national industrial regulations can best meet the needs of the broader National Clean Water Program in the years ahead. EPA is drafting a strategy setting forth a planning process by which EPA will conduct the review of national effluent guidelines and establish priorities to address the water quality challenges of the 21st century.

Integral to any planning process is the need to efficiently allocate scarce resources among competing priorities. This is particularly the case for EPA, which has the responsibility to assure that both public and private funds for regulatory compliance are spent to address the highest risks to human health and the environment. EPA also believes that its process for setting priorities must be transparent. In keeping with these goals, the draft strategy will describe how EPA will work with other interested parties to assess the risks posed by industrial discharges and to identify the best approach to address these risks (*i.e.*, through effluent guidelines or other mechanisms). All of the commenters on the proposed Effluent Guidelines Program Plan that addressed this matter supported EPA's goal to develop a strategy for planning for the future of the effluent guidelines program, and encouraged EPA to engage a broad range of stakeholders in the planning process.

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EPA expects that development and implementation of this strategy will require a significant Agency investment in research, planning, and outreach. EPA's goal is to publish this draft strategy later this year, and the Agency will seek to engage a broad range of interested parties in a discussion on the draft strategy. EPA intends to use the process described in the strategy to identify additional effluent guidelines to address in the future.

B. Solicitation of Stakeholder Recommendations

Several commenters on the proposed plan suggested specific existing guidelines that the Agency consider as candidates for revision, and suggested that the Agency consider specific industrial categories which may not have effluent guidelines as candidates for guideline development. Several commenters proposed criteria that EPA could use in deciding whether to revise an existing effluent guideline or to develop a new guideline, including consideration of specific pollutants of concern. A few commenters also suggested that the Agency consider alternate approaches to guideline development, such as assisting in the development of local limits to control pollutant discharges, and shifting its approach to address violations of water quality standards. EPA will consider these suggestions as input to the first step in the planning process for the Effluent Guidelines Program Plan for 2003/2004.

As recommended by the Effluent Guidelines Task Force, the Agency believes that an important first step in the planning process is to consult with NPDES-authorized states, pretreatment control authorities, and professional associations to obtain their recommendations pertaining to revising existing effluent guidelines and targeting industries for new guidelines. These stakeholders can help to identify water quality concerns related to industrial categories as well as changes in industries which affect the administration and effectiveness of existing regulations. EPA recognizes that there are other stakeholders who may have concerns or data indicating the need for new or revised regulations. Therefore, to prepare for the Effluent Guidelines Program Plan to be published in 2004 (for years 2004/2005), the Agency invites the public to identify and provide supporting data and/or rationales on existing effluent guidelines that EPA should consider revising, or on any industrial categories for which the Agency should consider developing new effluent guidelines.

VI. Public Comments

EPA accepted public comments on the Proposed Effluent Guidelines Program Plan for 2002/2003 through July 18, 2002. The Agency received nine comments from a variety of commenters including industry, metropolitan sewerage agencies, a trade association, environmental groups, and a federal agency. Many of the comments received have been discussed in the text of today's notice. The administrative record for today's notice includes a complete set of all of the comments submitted, as well as the Agency's responses.

Dated: August 21, 2002.

G. Tracy Mehan, III,

Assistant Administrator for Water.

[FR Doc. 02–21750 Filed 8–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0053; FRL–7196–4]

Approval of Test Marketing Exemption for a Certain New Chemical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–02–7. The test marketing conditions are described in the TME application and in this notice.

DATES: Approval of this TME is effective August 21, 2002.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Adella Watson, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–9364; e-mail address: watson.adella@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME to EPA. This action may, however, be of interest to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPT–2002–0053. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the EPA Docket Center, Rm., B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

III. What is the Agency's Authority for Taking this Action?

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and

permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

IV. What Action is the Agency Taking?

EPA approves the above-referenced TME. EPA has determined that test marketing the new chemical substance, under the conditions set out in the TME application and in this notice, will not present any unreasonable risk of injury to health or the environment.

V. What Restrictions Apply to this TME?

The test market time period, production volume, number of customers, and use must not exceed specifications in the application and this notice. All other conditions and restrictions described in the application and in this notice must also be met.

TME–02–7

Date of Receipt: June 20, 2002.

Notice of Receipt: July 9, 2002 (67 FR 45504), (FRL–7187–9).

Applicant: ITW Devcon.

Chemical: (G) Isocyanate - terminated polyurethane prepolymer.

Use: (G) Oil resistant industrial coating.

Production Volume: CBI.

Number of Customers: CBI.

Test Marketing Period: 365 days, commencing on first day of commerical manufacture.

The following additional restrictions apply to this TME. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

VI. What was EPA's Risk Assessment for this TME?

EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

VII. Can EPA Change Its Decision on this TME in the Future?

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: August 21, 2002.

Rebecca S. Cool,

Acting Chief, New Chemicals Prenotice Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 02–21755 Filed 8–26–02; 8:45 am]

BILLING CODE 6560–50–S

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Renewable Energy Exports Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

SUMMARY: The Renewable Energy Exports Advisory Committee was established by the Board of Directors at Ex-Im Bank to assist the Bank in meeting its objective of supporting U.S. exporters in renewable energy industries. In addition, the goal is to seek advice from the private sector about best practices when addressing renewable energy exports.

TIME AND PLACE: Monday, September 30, 2002, at 9 a.m. to 2 p.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW, Washington, DC 20571.

AGENDA: Agenda items include presentations from panels composed of experts from Congress, the U.S. Government, Renewable Energy Industry, and interested parties.

PUBLIC PARTICIPATION: The meeting will be open to public participation. Members of the public may also file written statement(s) on how Ex-Im Bank can increase its support for renewable energy exports no later than September 20. Please send comments to the attention of Nichole Westin. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to September 20, 2002, Nichole Westin, Room 1257, 811 Vermont Avenue, NW, Washington, DC 20571, Voice: (202) 565–3542, Fax: (202) 565–3548 or TDD (202) 565–3377.

FURTHER INFORMATION: For further information, contact Nichole Westin, Room 1257, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3542.

Peter Saba,

General Counsel.

[FR Doc. 02–21701 Filed 8–26–02; 8:45 am]

BILLING CODE 6690–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

Date and Time: The special meeting of the Board was held at the offices of the Farm Credit Administration in McLean, Virginia, on August 20, 2002, from 2:30 p.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Acting Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board was closed to the public. The matter considered at the meeting was:

***Closed Session**

New Business

- Letter from Treasury Department.

Dated: August 23, 2002.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 02–21951 Filed 8–23–02; 3:47 pm]

BILLING CODE 6705–01–P

* Session closed—exempt pursuant to 5 U.S.C. 552b(c)(9)(A).

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FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

PREVIOUSLY ANNOUNCED DATE & TIME: Wednesday, August 28, and Thursday, August 29, 2002, 10 a.m. Public hearing on Electioneering Communications: Notice of Proposed Rulemaking. The starting time has been changed to 9:30 a.m.

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, August 29, 2002, open meeting scheduled for 10 a.m. The starting time has been changed to 2 p.m.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–21899 Filed 8–23–02; 2:59 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 02-20680) published on page 53354 of the issue for Thursday, August 15, 2002.

Under the Federal Reserve Bank of San Francisco heading, the entry for New Corporation, Oakland, California, is revised to read as follows:

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. New Met Financial Corporation, Oakland, California; to become a bank holding company by acquiring 100 percent of the voting shares of Met Financial Corporation, Oakland, California, and thereby indirectly acquire Metropolitan Bank, Oakland, California.

Comments on this application must be received by September 9, 2002.

Board of Governors of the Federal Reserve System, August 21, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–21724 Filed 8–26–00; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 20, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Provident Financial Services, Inc., Jersey City, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of The Provident Bank, Jersey City, New Jersey.

B. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Eagle Community Bancshares, Inc., Brooklyn Park, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Eagle Community Bank, Maple Grove, Minnesota.

Board of Governors of the Federal Reserve System, August 21, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–21725 Filed 8–26–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Tuesday, September 3, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 23, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–21974 Filed 8–23–02; 1:58 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting by Teleconference of the Secretary's Advisory Committee on Regulatory Reform

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services.

ACTION: Notice of teleconference.

SUMMARY: This notice announces a teleconference meeting open to the public to be held by the Department of Health and Human Services (HHS). Secretary's Advisory Committee on Regulatory Reform. As governed by the Federal Advisory Committee Act in accordance with section 10(a)(2), the Secretary's Advisory Committee on Regulatory Reform will advise and make recommendations for changes that would be beneficial in four broad areas: health care delivery, health systems operations, biomedical and health research, and the development of pharmaceuticals and other products. The Committee will review and advise on changes identified through regional public hearings, written comments from the public, and consultation with HHS staff.

All meetings and hearings of the Committee are open to the general public. The teleconference agenda will allow some time for public comment. Additional information on the agenda and meeting materials will be posted on the Committee's Web site prior to the telemeeting (*http://www.regreform.hhs.gov*).

DATES: The teleconference will be held on Monday, September 9, 2002, from 12:00 pm to 3:00 pm Eastern Daylight Time.

Telephone Number: Members of the public who wish to attend via telephone should dial (877) 381–6315 and provide conference ID 5382888. TTY for the hearing impaired can be accessed by dialing 711. Attendance on the call may be limited by the number of telephone lines available. To ensure that we can accommodate members of the public, individuals are encouraged, but not required, to notify HHS staff in advance of the meeting if they are planning to attend via telephone by sending an e-mail to *vineeta.jain@hhs.gov* or fax to (202) 401–5159 with the following information: Name, organization, phone number, fax number, and e-mail address. Individuals who wish to provide public comment during the teleconference will be provided instructions when they call.

ADDRESSES: Members of the public are also invited to the following location to attend the teleconference: Room 800, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. To comply with security requirements, individuals who do not possess a valid Federal identification must present a picture identification, *e.g.*, driver's license or passport upon entry to the Humphrey Building.

FOR FURTHER INFORMATION CONTACT: Margaret P. Sparr, Executive Coordinator, Secretary's Advisory Committee on Regulatory Reform, Office of the Assistant Secretary for Planning and Evaluation, 200 Independence Avenue, SW., Room 344G, Washington, DC 20201, (202) 401–5182.

SUPPLEMENTARY INFORMATION: Anyone planning to attend the teleconference by coming to the Hubert H. Humphrey Building and who requires special disability-related arrangements such as sign-language intepretation should provide notice of their need by Tuesday, September 3, 2002. Please make any request to Ms. Vineeta Jain—phone: (202) 401–5182; fax: (202) 401–5159; e-mail: *vineeta.jain@hhs.gov.*

On June 8, 2001, HHS Secretary Thompson announced a Department-wide initiative to reduce regulatory burdens in health care, to improve patient care, and to respond to the concerns of health care providers and industry, State and local Governments, and individual Americans who are affected by HHS rules. Common sense approaches and careful balancing of needs can help improve patient care. As part of this initiative, the Department established the Secretary's Advisory Committee on Regulatory Reform to provide findings and recommendations regarding potential regulatory changes. These changes would enable HHS programs to reduce burdens and costs associated with departmental regulations and paperwork, while at the same time maintaining or enhancing the effectiveness, efficiency, impact, and access of HHS programs.

Dated: August 21, 2002.

Margaret P. Sparr,

Executive Coordinator, Secretary's Advisory Committee on Regulatory Reform.

[FR Doc. 02–21726 Filed 8–26–02; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to review contract proposals and provide recommendations to the Acting Director, AHRQ, with respect to the technical merit of proposals submitted in response to a Request for Proposals (RFP) regarding "Developing Tools to Enhance Quality and Patient Safety Through Medical Informatics", issued on June 27, 2002. The contract will constitute AHRQ's participation in the Small Business Innovation Research program.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2 and procurement regulations, 41 CFR 101–6.1023 and 48 CFR 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free exchange of candid views, and under the procurement rules that prevent undue interference with Committee and Department operations.

Name of TRC: The Agency for Healthcare Research and Quality—"Developing Tools to Enhance Quality and Patient Safety Through Medical Informatics".

Date: August 30, 2002.

Place: Agency for Healthcare Research and Quality, 6010 Executive Blvd, 4th Floor Conference Center, Rockville, Maryland 20852.

Contract Person: Anyone wishing to obtain information regarding this meeting should contact Eduardo Ortiz, Center for Primary Care Research, Agency for Healthcare Research and Quality, 6010 Executive Blvd, Suite 201, Rockville, Maryland, 20852, 301–594–6236. This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: August 16, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–21742 Filed 8–26–02; 8:45 am]

BILLING CODE 4160–40–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02032]

Cooperative Agreement to the Medical Research Council of South Africa (MRC) for Tuberculosis Control Activities; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a sole source cooperative agreement for the Medical Research Council of South Africa (MRC).

The purpose of this program is to help support and ensure implementation of tuberculosis (TB) control activities that are designed to develop, establish, and coordinate systems and procedures to address the obstacles to achieving control of TB and multi-drug tuberculosis (MDR–TB) in South Africa.

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These collaborative activities can profoundly change the focus and activities of the South African National TB Control Program and improve TB treatment and control programs and related prevention efforts in South Africa.

B. Eligible Applicants

Assistance will be provided only to the Medical Research Council (MRC) of South Africa. No other applications will be solicited. MRC will support and ensure implementation of tuberculosis (TB) control activities that are designed to develop, establish, and coordinate systems and procedures to address the obstacles to achieving control of tuberculosis and multi-drug tuberculosis (MDR–TB) in South Africa.

MRC is the most appropriate and qualified agency to conduct the activities under this cooperative agreement because:

1. The MRC is uniquely positioned, in terms of legal authority, ability, track record, and credibility in South Africa to develop and support TB control activities in both public and non-governmental organization sites throughout the country.

2. The MRC has already established mechanisms to develop and implement TB treatment services in South Africa, enabling it to immediately become engaged in the activities listed in this announcement.

3. The purpose of the announcement is to build upon the existing framework of TB control activities that the MRC has developed or initiated.

4. The MRC has been mandated by the South African government to coordinate and implement TB treatment and control activities including MDR–TB within the country.

5. MRC has a unique and unparalleled involvement with the Ministry of Health's National Tuberculosis Control Program (NTP) and the South African National Tuberculosis Association (SANTA) based on a history of collaboration.

6. MRC coordinates the research and development activities for the Global Alliance for TB Drug Development in the search for a better, more effective and affordable cure for TB that is shorter, equally effective against susceptible and drug-resistant TB, accessible to the populations that need it most, and be on the market in less than 10 years.

C. Funds

Approximately $307,000 is being awarded in FY 2002. The award will be made by July 1, 2002, for a 12-month budget period within a project period of up to five years.

D. Where To Obtain Additional Information

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Angelia D. Hill, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, MS E–09, Atlanta, GA 30341–4146, Telephone: (770) 488–2785, FAX: (770) 488–2688, E-mail: *aph8@cdc.gov*.

Michael Qualls, Deputy Associate Director, International Activities, Division of Tuberculosis Elimination, National Center for HIV, STD, and TB Prevention Centers for Disease Control and Prevention (CDC), 1600 Clifton Road Mailstop E–10, Atlanta, GA 30333, Telephone 404–639–8488, Email address: *muq1@cdc.gov*.

Dated: August 20, 2002.

Sandra R. Manning, CGFM,

Director, Procurement and Grants Office, Centers for Disease Control & Prevention.

[FR Doc. 02–21731 Filed 8–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

Announcement of Office of Management and Budget (OMB) Control Numbers for Agency Information Collections Approved Under the Paperwork Reduction Act of 1995

AGENCY: Centers for Medicare and Medicaid Services, HHS.

This notice announces and displays OMB control numbers for Centers for Medicare and Medicaid Services (CMS) information collections that have been approved by OMB.

Under OMB's regulations implementing the Paperwork Reduction Act (PRA), 44 U.S.C. 3501, each agency that proposes to collect information must submit its proposal for OMB review and approval in accordance with 5 CFR part 1320. Once OMB has approved an agency's proposed collection of information and issues a control number, the agency must display the control number.

OMB regulations provide for alternative methods of displaying OMB control numbers. In the case of collections of information published in regulations, display is to be "provided in a manner that is reasonably calculated to inform the public." To meet this requirement an agency may display such information in the **Federal Register** by publishing such information in the preamble or the regulatory text, or in a technical amendment to the regulation, or in a separate notice announcing OMB approval of the collection of information.

To comply with this requirement, CMS has chosen to publish this notice announcing OMB approval of the collections of information published in regulations. As stated above, this notice announces and displays the assigned OMB control numbers for CMS's information collections that have been approved by OMB.

42 CFR	OMB Control Nos.
405.262	0938–0267
405.371	0938–0600
405.376	0938–0270
405.378	0938–0600
405.410	0938–0730
405.430, .435, .440, .445, .455.	0938–0730
405.711	0938–0045
405.807	0938–0033
405.821	0938–0034
405.2100–.2171	0938–0386
405.2110, 405.2112	0938–0657 & 0658
405.2133	0938–0046
405.2135–.2171	0938–0360
405.2470	0938–0155
406.7	0938–0251
406.13	0938–0080
406.15	0938–0501
406.28	0938–0025 & 0787
407.10, 407.11	0938–0245
407.18	0938–0679
407.27	0938–0025 & 0787
407.40	0938–0035
408.6	0938–0041
409.40–.50	0938–0357
410.1	0938–0679
410.2	0938–0770
410.32	0938–0685
410.33	0938–0721
410.36	0938–0357
410.38	0938–0534
410.40	0938–0042
410.61	0938–0730
410.71	0938–0685
410.141–.145	0938–0818
410.170	0938–0357
411.1	0938–0846
411.4–.15	0938–0357
411.20–411.206	0938–0565
411.25	0938–0214
411.350–.357	0938–0846
411.370–411.389	0938–0714
411.404–.406	0938–0465, 0781 & 0692
411.408	0938–0566
412	0938–0842

42 CFR	OMB Control Nos.
412.20–.32	0938–0358
412.40–.52	0938–0359
412.42	0938–0692
412.44, 412.46	0938–0445
412.92	0938–0477
412.105	0938–0456
412.106	0938–0691
412.116	0938–0269
412.256	0938–0573
413	0938–0842
413.17	0938–0202 & 0685
413.20	0938–0202, 0236 & 0600
413.20, 413.24	0938–0022, 0037, 0050, 0102, 0107, 0236, 0301, 0463, 0511 & 0758
413.64	0938–0269
413.106	0938–0022
413.170	0938–0298
413.337	0938–0739 & 0872
413.343	0938–0739
414.40	0938–0008
414.63	0938–0818
414.330	0938–0372
415.50, .55, .60, .70	0938–0301
415.110	0938–0730
415.150, .152, .160, .162	0938–0301
416.1–.150	0938–0266
416.44	0938–0242
417.126	0938–0469 & 0732
417.143	0938–0470
417.162	0938–0469
417.408	0938–0470
417.436	0938–0610
417.440	0938–0692
417.470	0938–0732
417.478	0938–0469
417.479, 417.500	0938–0700
417.801	0938–0610
417.800–.840	0938–0768
418.1–418.405	0938–0313 & 0379
418.22, 418.24, 418.28, 418.56, 418.58, 418.70, 418.83, 418.96, 418.100.	0938–0302
418.100	0938–0242
419	0938–0857 & 0860
419.43	0938–0802
420.200–.206	0938–0086
421.100	0938–0357
421.310, 421.312	0938–0723
422.1–.10, 422.50–.80, 422.100–.132, 422.300–.312, 422.400–.404, 422.560–.622.	0938–0763
422.1–422.700	0938–0753
422.64, 422.111, 422.560–422.622.	0938–0778
422.152	0938–0701 & 0840
422.208, 422.210	0938–0700
422.300–422.312	0938–0742
422.370–422.378	0938–0722
422.568	0938–0829
422.620	0938–0692
424.5	0938–0534 & 0279
424.20	0938–0454
424.22	0938–0357, 0489 & 0846
424.24	0938–0730
424.32	0938–0008 & 0739
424.44	0938–0008
424.57	0938–0717, 0749, & 0685
424.73, 424.80	0938–0685
424.103	0938–0023
424.123	0938–0484
424.124	0938–0042
426.102–426.104	0938–0526
430.10	0938–0673
430.10–.20	0938–0193
430.12	0938–0610
430.20	0938–0610
430.30	0938–0101
431.1–431.865	0938–0062
431.17	0938–0467
431.107	0938–0610
431.306	0938–0467
431.630	0938–0445
431.636	0938–0841
431.800	0938–0300
431.800–431.820	0938–0144
431.800–431.865	0938–0146, 0147, & 0246
433.68, 433.74	0938–0618
433.138	0938–0502
434.28	0938–0610
434.44, 434.67, 434.70	0938–0700
435.1–435.1011	0938–0062
435.910, 435.920, 435.940–.960.	0938–0467
438.364	0938–0786
440.1–.270	0938–0062
440.30	0938–0685
440.167	0938–0193
440.180	0938–0272, & 0449
441.16	0938–0713
441.60	0938–0354
441.152	0938–0754
441.300–441.305	0938–0272
441.300–441.310	0938–0449
442.1–.119	0938–0062
447.31	0938–0287
447.53	0938–0429
447.254	0938–0784
447.272	0938–0618 & 0855
447.280	0938–0624
447.321	0938–0855
447.500–.542	0938–0676
447.550	0938–0676
455.100–.106	0938–0086
456.654	0938–0445
456.700, 456.705, 456.709, 456.711, 456.712.	0938–0659
457.50, .60, .70, .340, .350, .431, .440, .525, .560, .570, .740, .750, .810, .940, .945, .965, .985, .1005, .1015, .1180.	0938–0841
460.12, .22, .30, .32, .52, .60, .68, .70, .72, .74, .80, .82, .98, .100, .102, .104, .106, .110, .112, .116, .118, .120, .122, .124, .132, .152, .154, .156, .160, .164, .168, .172, .190, .196, .200, .202, .204, .206, .208, .210.	0938–0790
466.71, 466.73, 466.74, 466.78.	0938–0445
466.78.	0938–0692
473.18, 473.34, 473.36, 473.42.	0938–0443
476.104, 476.105, 476.116, 476.134.	0938–0426
482.1–.66	0938–0380
482.2–.57	0938–0382
482.12, 482.22	0938–0328
482.27	0938–0328
482.41	0938–0242
482.30, 482.41, 482.43, 482.53, 482.56, 482.57.	0938–0328
482.45	0938–0810
482.60–.62	0938–0378 & 0328
482.66	0938–0328 & 0624
483.10	0938–0610
483.20	0938–0739 & 0872
483.270	0938–0242
483.350–.376	0938–0633
483.400–.480	0938–0062
483.470	0938–0242
484.1–.52	0938–0365
484.10	0938–0610 & 0781
484.10–.52	0938–0355
484.11	0938–0761
484.12	0938–0685
484.18	0938–0357
484.20	0938–0761
484.55	0938–0760
484.220	0938–0760
485.56, 485.58, 485.60, 485.64, 485.66.	0938–0267
485.701–.729	0938–0065 & 0273
486.100–.110	0938–0027
486.104, 486.106, 486.110	0938–0338
486.301–.325	0938–0512 & 0688
488.4–488.9	0938–0690
488.18	0938–0391 & 0667
488.26	0938–0391
488.28	0938–0391
488.60	0938–0360
488.201	0938–0690
489	0938–0832
489.2	0938–0214
489.20	0938–0214, 0667 & 0692
489.21	0938–0357
489.24	0938–0667
489.27	0938–0692
489.32, 489.34	0938–0692

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42 CFR	OMB Control Nos.
489.66, 489.67	0938–0713
489.102	0938–0610
491.1–.11	0938–0074
491.3, 491.8	0938–0792
491.9	0938–0334
491.11	0938–0792
493.1–.2001	0938–0151, 0544, 0581, 0599, 0612, 0650 & 0653
493.551–.557	0938–0686
493.1269–.1285	0938–0170
493.1840	0938–0655
498.40–.95	0938–0486 & 0567
1003.100, 1003.101, 1003.103.	0938–0700
1004.40, 1004.50, 1004.60, 1004.70.	0938–0444

45 CFR	OMB Control Nos
5b	0938–0734
146	0938–0702
146.121	0938–0819
146.141	0938–0827
148	0938–0703 & 0797
162	0938–0866

Dated: August 20, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer. Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–21711 Filed 8–26–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0007]

Agency Information Collection Activities; Announcement of OMB Approval; CGMP Regulations for Finished Pharmaceuticals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "CGMP Regulations for Finished Pharmaceuticals" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 16, 2002 (67 FR 34939), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0139. This approval expires on August 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: August 21, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–21735 Filed 8–26–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants; Request for Applications (Catalog of Federal Domestic Assistance No. 93.103)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing changes to its Office of Orphan Products Development (OPD) grant program for fiscal year (FY) 2003. This announcement supercedes the previous announcement of this program, which was published in the **Federal Register** on August 27, 2001.

DATES: The application receipt dates are October 16, 2002, and April 2, 2003.

ADDRESSES: Application requests and completed applications should be submitted to Maura Stephanos, Grants Management Specialist, Grants Management Staff, Division of Contracts and Procurement Management (HFA–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7183, FAX 301–827–7101, e-mail: mstepha1@oc.fda.gov. Applications that are hand-carried or commercially delivered should be addressed to 5630 Fishers Lane, rm. 2129, Rockville, MD 20857. Applications may also be obtained from the OPD on the Internet at http://www.fda.gov/orphan or at http://grants.nih.gov/grants/funding/phs398/phs398.html. Note: Do not send applications to the Center for Scientific Research (CSR), National Institutes of Health (NIH).

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management issues of this notice: Maura Stephanos (see **ADDRESSES**).

Regarding the programmatic issues of this notice: Debra Y. Lewis, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, rm. 15A–08, Rockville, MD 20857, 301–827–3666, FAX 301–827–0017, e-mail: dlewis@oc.fda.gov.

SUPPLEMENTARY INFORMATION: All studies of new drug and biological products must be conducted under the FDA's investigational new drug (IND) procedures and studies of medical devices must be conducted under the investigational device exemption (IDE) procedures. Studies of approved products to evaluate new orphan indications are acceptable; however, these must also be conducted under an IND or IDE to support a change in labeling. The study protocol proposed in the grant application must be under an active IND or IDE (not on clinical hold) to qualify the application for scientific and technical review. (See Program Review Criteria for important information about the IND/IDE status of products to be studied under these grants.)

Except for medical foods that do not need premarket approval, FDA will only consider awarding grants to support premarket clinical studies to find out whether the products are safe and effective for approval under section 301 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 331 *et seq.*) or under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262).

FDA will support the clinical studies covered by this notice under the authority of section 301 of the PHS Act. FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103. The Public Health Service (PHS) strongly encourages all grant recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

PHS's policy is that applicants for PHS clinical research grants should include minorities and women in study populations so research findings can be of benefit to all people at risk of the disease, disorder, or condition under study. Special emphasis should be placed on the need for inclusion of minorities and women in studies of diseases, disorders, and conditions that disproportionately affect them. This policy applies to research subjects of all ages. If women or minorities are excluded or poorly represented in clinical research, the applicant should provide a clear and compelling rationale that shows inclusion is inappropriate.

FDA is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national effort designed to reduce morbidity and mortality and to improve quality of life. Applicants may obtain a paper copy of the "Healthy People 2010" objectives, vols. I and II, for $70 ($87.50 foreign) S/N 017–000–00550–9, by writing to the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Telephone orders can be placed to 202–512–2250. The document is also available in CD–ROM format, S/N 017–001–00549–5 for $19 ($23.50 foreign) as well as on the Internet at http://health.gov/healthypeople/. Internet viewers should proceed to "Publications."

I. Program Research Goals

OPD was created to identify and promote the development of orphan products. Orphan products are drugs, biologics, medical devices, and foods for medical purposes that are indicated for a rare disease or condition (that is, one with a prevalence, not incidence, of fewer than 200,000 people in the United States). Diagnostic tests and vaccines will qualify only if the U.S. population of intended use is fewer than 200,000 people a year.

The goal of FDA's OPD grant program is the clinical development of products for use in rare diseases or conditions where no current therapy exists or where the product will improve the existing therapy. FDA provides grants for clinical studies that will either result in or substantially contribute to market approval of these products. Applicants should keep this goal in mind and must include an explanation in the application's "Background and Significance" section of how their proposed study will either help gain product approval or provide essential data needed for product development. All funded studies are subject to the requirements of the act and regulations issued under it.

II. Award Amounts

FDA is announcing the expected availability of FY 2003 funds for awarding grants to support clinical studies on the safety and effectiveness of products (drugs, biologics, and devices) for rare diseases or conditions (that is, with a prevalence, not incidence, of fewer than 200,000 people in the United States).

Of the estimated FY 2003 funding ($13.3 million), approximately $9.3 million will fund noncompeting continuation awards, and approximately $4 million will fund 12 to 15 new awards. In the first part of the funding cycle, approximately $1 million will be awarded to successful applications received by the October 16, 2002, due date (with the award starting after March 1, 2003). All applications recommended for approval that are not funded in the first part of the cycle will remain in competition for the second part of the funding cycle with applications received by the April 2, 2003, due date. The expected start date for these awards will be September 30, 2003. Applications submitted for the first due date may be withdrawn and resubmitted for the second due date.

Any phase (1, 2, or 3) clinical trial is eligible for up to $150,000 in direct costs a year, plus applicable indirect costs, for up to 3 years. Phase 2 and 3 clinical trials are also eligible for up to $300,000 in direct costs a year, plus applicable indirect costs, for up to 3 years. Study proposals for the smaller grants ($150,000) may be for phase 1, 2, or 3 clinical trials. Study proposals for the larger grants ($300,000) must be continuing in phase 2 or phase 3 of investigation. Phase 2 trials include controlled clinical studies conducted to evaluate the effectiveness of the product for a particular indication in patients with the disease or condition and to determine the common or short-term side effects and risks associated with it. Phase 3 trials gather more information about effectiveness and safety that is necessary to evaluate the overall risk-benefit ratio of the product and to provide an acceptable basis for product labeling. Budgets for all years of requested support may not exceed the $150,000 or $300,000 direct cost limit, whichever is applicable.

III. Human Subject Protection and Informed Consent

A. Protection of Human Research Subjects

All institutions engaged in human subject research supported by the Department of Health and Human Services (DHHS) must file an "assurance" of protection for human subjects with the Office for Human Research Protection (OHRP) (45 CFR part 46). Applicants are advised to visit the OHRP Internet site at http://ohrp.osophs.dhhs.gov/ for guidance on human subjects issues. The requirement to file an assurance includes both "awardee" and collaborating "performance site" institutions. Awardee institutions are automatically considered to be engaged in human subject research whenever they receive a direct DHHS award to support such research, even where all activities involving human subjects are carried out by a subcontractor or collaborator. In such cases, the awardee institution bears the ultimate responsibility for protecting human subjects under the award. The awardee institution is also responsible for ensuring that all collaborating performance site institutions engaged in the research hold an approved assurance prior to their initiation of the research. No awardee or performance site institution may spend funds on human subject research or enroll subjects without the approved and applicable assurance(s) on file with OHRP.

Applicants must also provide certification of Institutional Review Board (IRB) review and approval for every site taking part in the study. This documentation need not be on file with the FDA Grants Management Office prior to the award, but must be on file before research can begin at a site.

Applicants should review the section on human subjects in the application instructions entitled "I. Preparing Your Application, Section C. Specific Instructions, Item 4, Human Subjects" for further information.

B. Key Personnel Human Subject Protection Education

The awardee institution should ensure that all key personnel receive appropriate training in their human subject protection responsibilities. Key personnel include all principal investigators, co-investigators, and performance site investigators responsible for the design and conduct of the study. Within 30 days of award, the principal investigator should provide a letter which includes the names of the key personnel, the title of

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the human subjects protection education program completed by each named personnel, and a one-sentence description of the program. This letter should be signed by the principal investigator and co-signed by an institution official and sent to the Grants Management Office. Neither DHHS, FDA, or OPD prescribe or endorse any specific education programs. Many institutions have already developed educational programs on the protection of research subjects and have made participation in such programs a requirement for their investigators. Other sources of appropriate instruction might include the online tutorials offered by the Office of Human Subjects Research, NIH at http://ohsr.od.nih.gov/ and by OHRP at http://ohrp.osophs.dhhs.gov/educmat.htm. Also, the University of Rochester has made available its training program for individual investigators. Their manual can be obtained through Centerwatch, Inc., at http://www.centerwatch.com.

C. Informed Consent

Consent forms, assent forms, and any other information given to a subject, should be sent with the grant application (even if such a form is in a draft version). Information given to the subject or his or her representative must be in language the subject or representative can understand. No informed consent, whether verbal or written, may include any language through which the subject or representative waives any of the subject's legal rights, or by which the subject or representative releases or appears to release the investigator, the sponsor, or the institution or its agent from liability. If a study involves both adults and children, separate consent forms should be provided for the adults and the parents or guardians of the children. The applicant is referred to DHHS regulations at 45 CFR 46.116 and 21 CFR 50.25 for details regarding the (required) elements of informed consent.

IV. Reporting Requirements

The original and two copies of the annual Financial Status Report (FSR) (SF–269) must be sent to FDA's grants management officer within 90 days of the budget period end date of the grant. Failure to file the FSR in a timely fashion will be grounds for suspension or termination of the grant. For continuing grants, an annual program progress report is also required. The noncompeting continuation application (PHS 2590) will be considered the annual program progress report. Also, all new and continuing grants must comply with all regulatory requirements necessary to keep active status of their IND/IDE. Failure to meet regulatory requirements will be grounds for suspension or termination of the grant.

The program project officer will monitor grantees quarterly and will prepare written reports. The monitoring may be in the form of telephone conversations or e-mail between the project officer/grants management specialist and the principal investigator. Periodic site visits with officials of the grantee organization may also occur. The results of these reports will be recorded in the official grant file and may be available to the grantee on request consistent with FDA disclosure regulations. Also, the grantee organization must comply with all special terms and conditions, which state that future funding of the study will depend on recommendations from the OPD project officer. The scope of the recommendations will confirm that: (1) There has been acceptable progress toward enrollment, based on specific circumstances of the study; (2) there is an adequate supply of the product/device; and (3) there is continued compliance with all FDA regulatory requirements for the trial.

The grantee must file a final program progress report, FSR and invention statement within 90 days after the end date of the project period as noted on the notice of grant award.

V. Mechanism of Support

A. Award Instrument

Support will be in the form of a grant. All awards will be subject to all policies and requirements that govern the research grant programs of the PHS, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 do not apply to this program. The NIH modular grant program does not apply to this FDA grant program. All grant awards are subject to applicable requirements for clinical investigations imposed by sections 505, 512, and 515 of the act (21 U.S.C. 355, 360b, and 360e), section 351 of the PHS Act (42 U.S.C. 262), and regulations issued under any of these sections.

B. Eligibility

The grants are available to any foreign or domestic, public or private nonprofit entity (including state and local units of government) and any foreign or domestic, for-profit entity. For-profit entities must commit to excluding fees or profit in their request for support to receive grant awards. Organizations described in section 501(c)4 of the Internal Revenue Code of 1968 that lobby are not eligible to receive grant awards.

C. Length of Support

The length of support will depend on the nature of the study. For those studies with an expected duration of more than 1 year, a second or third year of noncompetitive continuation of support will depend on: (1) Performance during the preceding year, (2) Federal funds availability, and (3) compliance with regulatory requirements of the IND/IDE.

D. Funding Plan

The number of studies funded will depend on the quality of the applications received and the availability of Federal funds to support the projects. Resources for this program are limited. Therefore, if two applications propose duplicative or similar studies, FDA may support only the study with the better score. Funds may be requested in the budget to travel to FDA for meetings with OPD or reviewing division staff about the progress of product development.

Before an award will be made, the OPD will confirm the active status of the protocol under the IND/IDE. If the protocol is under FDA clinical hold for any reason, no award will be made. Also, if the IND/IDE for the proposed study is not active and in regulatory compliance, no award will be made. Documentation of IRB approvals for all performance sites must be on file with the FDA Grants Management Office before research can begin at that site. This grant program does not require the applicant to match or share in the project costs if an award is made.

VI. Review Procedures and Criteria

A. Review Procedures

FDA's grants management and program staff will review all applications sent in response to this notice. To be responsive, an application must: (1) Be received by the specified due date; (2) be submitted in accordance with sections V.B "Eligibility," VII "Submission Requirements," and VIII.A "Submission Instructions" of this notice; (3) not exceed the recommended funding amount stated in section II "Award Amounts" of this document; (4) be in compliance with the following section VI.B " Program Review Criteria;" and (5) bear the original signatures of both the principal investigator and the Institution's/Organization's Authorized Official. Applications found to be nonresponsive will be returned to the applicant without further consideration (unreviewed). Applicants are strongly encouraged to contact FDA to resolve any questions about criteria before submitting their application. Please direct all questions of a technical or scientific nature to the OPD program staff and all questions of an administrative or financial nature to the grants management staff (see **ADDRESSES**).

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Consultation with the proper FDA review division may also occur during this phase of the review to determine whether the proposed study will provide acceptable data that could contribute to product approval. Responsive applications will be subject to a second review by a National Advisory Council for concurrence with the recommendations made by the first-level reviewers, and funding decisions will be made by the Commissioner of Food and Drugs.

B. Program Review Criteria

Program review criteria include the following:

1. The application must propose a clinical trial intended to provide safety and/or efficacy data of one therapy for one orphan indication.

2. There must be an explanation in the "Background and Significance" section of how the proposed study will either contribute to product approval or provide essential data needed for product development.

3. The prevalence, not incidence, of the population to be served by the product must be fewer than 200,000 individuals in the United States. The applicant should include, in the "Background and Significance" section, a detailed explanation supplemented by authoritative references in support of the prevalence figure. Diagnostic tests and vaccines will qualify only if the population of intended use is fewer than 200,000 individuals in the United States per year.

4. The study protocol proposed in the grant application must be under an active IND or IDE (not on clinical hold) to qualify the application for scientific and technical review. Additional IND/IDE information is described below:

- The proposed clinical protocol should be submitted to the FDA IND/IDE reviewing division a minimum of 30 days before the grant application deadline.
- The number assigned to the IND/IDE that includes the proposed study should appear on the face page of the application with the title of the project. The date the subject protocol was submitted to FDA for the IND/IDE review should also be provided.
- Protocols that would otherwise be eligible for an exemption from the IND regulations must be conducted under an active IND to be eligible for funding under this FDA grant program.
- If the sponsor of the IND/IDE is other than the principal investigator listed on the application, a letter from the sponsor permitting access to the IND/IDE must be submitted. Both the name of the principal investigator identified in the application and the study protocol must have been submitted to the IND/IDE.
- Studies of already approved products, evaluating new orphan indications, are also subject to these IND/IDE requirements.
- Only medical foods that do not need premarket approval are exempt from these IND/IDE requirements.

5. The requested budget must be within the limits (either $150,000 in direct costs for each year for up to 3 years for any phase study, or $300,000 in direct costs for each year for up to 3 years for phase 2 or 3 studies) as stated in this notice. Any application received that requests support over the maximum amount allowable for that particular study will be considered nonresponsive.

6. Proposed consent forms, assent forms, and any other information given to a subject, should be included in the grant application (even if they are in a draft version).

7. Evidence that the product to be studied is available to the applicant in the form and quantity needed for the clinical trial must be included in the application. A current letter from the supplier as an appendix will be acceptable.

8. Applicants must follow guidelines named in the PHS 398 (Rev. 5/01) grant application instructions.

C. Scientific/Technical Review Criteria

The ad hoc expert panel will review the application based on the following scientific and technical merit criteria:

1. The soundness of the rationale for the proposed study.

2. The quality and appropriateness of the study design including the rationale for the statistical procedures.

3. The statistical justification for the number of patients chosen for the study, based on the proposed outcome measures and the appropriateness of the statistical procedures for analysis of the results.

4. The adequacy of the evidence that the proposed number of eligible subjects can be recruited in the requested timeframe.

5. The qualifications of the investigator and support staff, and the resources available to them.

6. The adequacy of the justification for the request for financial support.

7. The adequacy of plans for complying with regulations for protection of human subjects.

8. The ability of the applicant to complete the proposed study within its budget and within time limits stated in this RFA.

A score will be assigned based on the above scientific/technical review criteria. The review panel may advise the program staff about the appropriateness of the proposal to the goals of the OPD grant program described in the section I "Program Research Goals" of this document.

VII. Submission Requirements

The original and two copies of the completed Grant Application Form PHS 398 (Rev. 5/01) or the original and two copies of PHS 5161–1 (Rev. 7/00) for State and local governments, with three copies of the appendices should be submitted to Maura Stephanos (see **ADDRESSES**). State and local governments may use the PHS 398 (Rev. 5/01) application form in lieu of the PHS 5161–1. The application receipt dates are October 16, 2002, and April 2, 2003. The only material will be accepted after the receipt date is evidence of final IRB approval. The mailing package and item 2 of the application face page should be labeled, "Response to RFA–FDA–OPD–2003." If an application for the same study was submitted in response to a previous RFA but has not yet been funded, an application in response to this notice will be considered a request to withdraw the previous application. Resubmissions are treated as new applications; therefore, the applicant may wish to address the issues presented in the summary statement from the previous review, and include a copy of the summary statement itself as part of the application.

VIII. Method of Application

A. Submission Instructions

Applications will be accepted during normal working hours, from 8 a.m. to 4:30 p.m., Monday through Friday, by the established receipt dates. Applications will be considered received on time if sent or mailed by the receipt dates as shown by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier. Private metered postmarks shall

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not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. (Applicants should note the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.) Please do not send applications to the CSR at NIH. Any application sent to NIH that is then forwarded to FDA and received after the applicable due date will be judged nonresponsive and returned to the applicant. Applications must be submitted via mail or hand delivered as stated above. FDA is unable to receive applications electronically.

B. Format for Application

Submission of the application must be on Grant Application Form PHS 398 (Rev. 5/01). Applications from State and local governments may be sent on Form PHS 5161–1 (Rev. 7/00) or Form PHS 398 (Rev. 5/01). All "General Instructions" and "Specific Instructions" in the application kit should be followed except for the receipt dates and the mailing label address. The face page of the application should reflect the request for applications number RFA–FDA–OPD–2003. The title of the proposed study should include the name of the product and the disease/disorder to be studied and the IND/IDE number. The format for all following pages of the application should be single-spaced and single-sided. FDA does not adhere to the page limits or the type size and line spacing requirements imposed by NIH on its applications.

Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget and Social Security numbers if otherwise required for individuals. The copies may include summary salary information.

Data and information included in the application will generally not be publicly available prior to the funding of the application. Data and information included in the application, if identified by the applicant as trade secret or confidential commercial information, will be given confidential treatment to the extent permitted by the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (including inter alia 21 CFR 20.61) even after funding has been granted. Information collection requirements requested on Form PHS 398 (Rev. 5/01) have been sent by the PHS to the Office of Management and Budget (OMB) and have been approved and assigned OMB control number 0925–0001. The requirements requested on Form PHS 5161–1 (Rev. 7/00) were approved and assigned OMB control number 0348–0043.

Applicants should provide a summary of any meetings or discussions about the clinical study that have occurred with FDA reviewing division staff as an appendix to the application.

Dated: August 21, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–21736 Filed 8–26–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 12, 2002, from 8 a.m. to 5:30 p.m.

Location: Hilton Silver Spring Hotel, Maryland Ballroom, 8727 Colesville Rd., Silver Spring, MD 20910.

Contact Person: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3514, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 19516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 12, 2002, the following committee updates are tentatively scheduled: (1) Consideration of the Clinical Laboratory Improvement Act (CLIA) waivers for rapid human immunodeficiency virus (HIV) tests; (2) implementation of HIV, type 1/hepatitis C virus nucleic acid testing algorithm; (3) summary of Public Health Service Advisory Committee on Blood Safety and Availability meeting held on September 5, 2002; (4) summary of the workshop on pathogen inactivation held on August 7 and 8, 2002; and (5) blood establishment registration—electronic submissions. In the morning, the committee will hear discussion and provide recommendations on the topic of self-administration of the uniform donor history questionnaire: first time donors. In the afternoon, the committee will hear an informational presentation on testing for Chagas disease, and a presentation on window period for HIV cases and current estimates of residual risk.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 30, 2002. Oral presentations from the public will be scheduled between approximately 11 a.m. and 11:30 a.m., and 3:45 p.m. and 4:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before August 30, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Linda A. Smallwood or Pearline K. Muckelvene at 301–827–1281 at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 20, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–21734 Filed 8–26–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA).

The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 24, 2002, from 8:30 a.m. to 1:30 p.m.

Location: Holiday Inn, Kennedy Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, e-mail: SomersK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 24, 2002, the committee will discuss new drug application (NDA) 21–399, IRESSAr (gefitinib), AstraZeneca Pharmaceuticals LP, indicated for the treatment of patients with locally advanced or metastatic non-small cell lung cancer who have previously received platinum-based chemotherapy.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 16, 2002. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:45 a.m. on September 24, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 16, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Karen Templeton-Somers at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 20, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–21737 Filed 8–26–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0320]

Draft Guidance for Industry and Clinical Investigators on the Use of Clinical Holds Following Clinical Investigator Misconduct; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry and clinical investigators entitled "The Use of Clinical Holds Following Clinical Investigator Misconduct." This draft guidance provides information on FDA's use of its authority to impose a clinical hold on a study if FDA finds that a clinical investigator conducting the study has committed serious violations of our regulations pertaining to clinical trials involving human drug or biological products or has submitted false information to FDA or to the study's sponsor in any report. The draft guidance is intended to inform interested persons of the circumstances in which we may impose a clinical hold following the discovery of a clinical investigator's misconduct and the steps we might take to protect human subjects from investigator misconduct.

DATES: Submit written or electronic comments on the draft guidance by November 25, 2002. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Rachel Behrman, Center for Drug Evaluation and Research (HFD–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6758; or

Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and clinical investigators entitled "The Use of Clinical Holds Following Clinical Investigator Misconduct." The draft guidance provides information on our authority to impose a clinical hold on a study if we find that a clinical investigator conducting the study has committed serious violations of our regulations pertaining to clinical trials involving human drug or biological products or has submitted false information to us or to the study's sponsor in any report. The draft guidance is intended to inform interested persons of the circumstances in which we may impose a clinical hold following the discovery of a clinical investigator's misconduct and the steps we might take to protect human subjects from investigator misconduct.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the use of clinical holds to protect human subjects following clinical investigator misconduct in a clinical trial of a human drug or biological product. It does not create or confer any rights for or on any person and does not operate to bind us or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes

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and regulations. As with other guidance documents, we do not intend this document to be all-inclusive, and we caution that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

We are distributing this draft document for comment purposes only, and do not intend to implement it at this time. Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written comments regarding this draft guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cber/guidelines.htm.

Dated: July 8, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–21697 Filed 8–26–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Peer Educator Training Sites and Resource and Evaluation Center Cooperative Agreements; Open Competition Announcement

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Extension of Deadline Application Due Date.

SUMMARY: In notice document FR Doc. 02–19908 Filed August 6, 2002, make the correction:

On page 51286 in the seventh column under Application Dates: the deadline date has been extended to be received in the HRSA Grant Application Center by close of business September 9, 2002 (Not Postmarked by).

Dated: August 20, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–21699 Filed 8–26–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel. N01–BC–27012–74: Early Phase Clinical Trial to Evaluate Safety and Immunogenicity of Human Papilomavirus VLP Base Vacines.

Date: August 29, 2002.

Time: 12 PM to 3 PM.

Agenda: To review and evaluate contract proposals.

Place: 6116 Executive Boulevard, 8th Floor, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institute of Health, 6116 Executive Boulevard, Suite 703/7142, Rockville, MD 20852, 301/594–9582, *vollbert@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 19, 2002.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21790 Filed 8–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given on the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the discourse of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel. Role of Tim Family Genes in Asthma and Allergic Diseases.

Date: September 13, 2002.

Time: 1 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cheryl K. Lapham, PhD, Scientific Review Administrator, NIH/NIAID, Scientific Review Program, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *clapham@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21789 Filed 8–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contract Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: September 17–18, 2002.

Open: September 17, 2002, 1 P.M. to 5 P.M.

Agenda: For discussion of program policies and issues.

Place: 45 Center Drive, Natcher Building, Conference Room E½Bethesda, MD 20892.

Closed: September 18, 2002, 9 a.m. to adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 45 Center Drive, Natcher Building, Conference Room E½, Bethesda, MD 20892.

Contact Person: Mary Leveck, PhD, Deputy Director, NINR, NIH, Building 31, Room 5B05, Bethesda, MD 20892, (301) 594–5963.

Information is also available on the Institute's/Center's home page: *www.nih.gov/ninr/a_advisory.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalog of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: August 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21791 Filed 8–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: September 18–19, 2002.

Closed: September 18, 2002, 1 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852.

Open: September 19, 2002, 9 AM to 3:30 PM.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852.

Contact Person: Teresa Levitin, PhD, Director, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Bethesda, MD 20892–9547, (301) 443–2755.

Information is also available on the Institute's/Center's home page: *www.drugabuse.gov/NACDA/NACDAHome.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: August 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21792 Filed 8–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Rotavirus Vaccine Review Panel.

Date: September 16, 2002.

Time: 1:00 PM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Suite 400C, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Stanley C. Oaks, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Research Core Centers P30 (PA–01–011).

Date: September 18, 2002.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Suite 400C, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Ali A. Azadegan, DVM, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD, NIH, EPS–400C, 6120 Executive Blvd., MSC 7180, Bethesda, MD 20892–7180, (301) 496–8683. *azadegan@nih.gov*.

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(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21794 Filed 8–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Infant Nutrition and Fetal Metabolism.

Date: October 21, 2002.

Time: 8:00 AM to 2:15 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: August 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21795 Filed 8–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, MCHG Training Grants.

Date: October 21, 2002.

Time: 2:30 PM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: August 21, 2002.

LeVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21796 Filed 8–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Maternal and Child Health Research Subcommittee.

Date: October 22–23, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: August 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21797 Filed 8–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Medical Rehabilitation Research Subcommittee.

Date: October 28–29, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5E03, Bethesda, MD 20892, 301–435–6908, *ak41o@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: August 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21798 Filed 8–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Disease Advisory Council.

Date: September 26, 2002.

Open: 8:30 a.m. to 12 p.m.

Agenda: The meeting will be open to the public to discuss administrative details relating to Council business and special reports.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Closed: 1 PM to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: Steven J. Hausman, PhD, Deputy Director, NIAMS/NIH, Bldg. 31, Room 4C–32, 31 Center Dr, MSC 2350, Bethesda, MD 20892–2350, (301) 594–2463.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21799 Filed 8–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDA. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Drug Abuse, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDA.

Date: September 12–13, 2002.

Time: 9:30 a.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Intramural Research Program, National Institute on Drug Abuse, Johns Hopkins Bayview Campus, Bldg. C, 2nd Floor Auditorium, 5500 Nathan Shock Drive, Baltimore, MD 21224.

Contact Person: Stephen J. Heishman, PhD, Research Psychologist, Clinical Pharmacology Branch, Intramural Research Program, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5500 Nathan Shock Drive, Baltimore, MD 21224, (410) 550–1547.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: August 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21800 Filed 8–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDA. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Drug Abuse, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Analytical Services Center for Medications Development Program."

Date: September 24, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: August 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21800 Filed 8–26–02; 8:45 am]

BILLING CODE 4140–01–M

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Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: August 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21801 Filed 8–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, New Research Strategies for Evaluation and Assessment of Bone Quality.

Date: September 12, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21802 Filed 8–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Shared Instrumentation S10 Confocal Grants.

Date: September 26–27, 2002.

Time: 8 AM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.

Contact Person: Randolph Addison, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025, *addisonr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: September 26–27, 2002.

Time: 8 AM to 5 AM.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Noni Byrnes, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7806, Bethesda, MD 20892, 301–435–1217, *brnesn@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–21793 Filed 8–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program: Phase Three—(OMB No. 0930–0209, revision)—SAMHSA's Center for Mental Health Services is conducting Phase III of the national evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program. Phase III collects data on child mental health outcomes, family life, and service system development and performance. Data are being collected on 23 service systems (22 funded systems of care and one comparison site), and approximately 5,339 children and families. Data collection for this evaluation will be conducted over a five year period.

The core of service system data are currently collected every 18 months throughout the 5-year evaluation period, with a provider survey conducted in selected years. Service delivery and system variables of interest include the following: maturity of system of care development, adherence to the system of care program model, and client service experience. The length of time that individual families will participate in the study ranges from 18 to 36 months depending on when they enter the evaluation.

Child and family outcomes of interest will be collected at intake and during subsequent follow-up sessions at six-month intervals. The outcome measures include the following: child symptomatology and functioning, family functioning, material resources, and caregiver strain. In addition, a treatment effectiveness study will examine the relative impact of an evidence-based treatment within one system of care.

The average annual respondent burden is estimated below. The estimate reflects the average number of respondents in each respondent category, the average number of responses per respondent per year, the average length time it will take for each response, and the total average annual burden for each category of respondent, and for all categories of respondents combined.

This revision to the currently approved information collection activities involves: (1) Extension of the data collection period for an additional 18 months to cover an additional sixth year of grant funding in the 22 currently funded systems of care (and a six-month no-cost extension for the evaluation), (2) the addition of a family-driven study to assess the extent of family involvement in service planning, (3) the addition of a sustainability study to assess the capacity of funded communities to continue system of care service provision after the termination of grant funding, and (4) the addition of a wraparound fidelity study to assess the implementation of wraparound services delivery in the context of a system of care. Although, the data collection period is being extended for an additional 18 months, the total average annual burden is reduced because the total number of responses for each individual remains the same.

Respondent (currently approved)	Number of respondents		Number of responses/respondent		Average burden/response		Total average annual burden	
	With revisions	Currently approved	With revisions	Currently approved	With revisions	Currently approved	With revisions	Currently approved
Caregiver	5339	5339	1.38561	1.00054	2.06632	2.09489	15,286	11,191
Youth	3203	3203	1.48281	1.06771	0.91511	0.92960	4,347	3,179
Provider	483	483	0.77370	0.49044	1.10432	1.38961	413	329
Total							20,046	14,699

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: August 21, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–21727 Filed 8–26–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Drug and Alcohol Services Information System (DASIS)—(OMB No. 0930–0106)—Revision—The DASIS consists of three related data systems: The Inventory of Substance Abuse Treatment Services (I–SATS); the National Survey of Substance Abuse Treatment Services (N–SSATS), and the Treatment Episode Data Set (TEDS). The I–SATS includes all substance abuse treatment facilities known to SAMHSA. The N–SSATS is an annual survey of all substance abuse treatment facilities listed in the I–SATS. The TEDS is a compilation of client-level admission data and discharge data submitted by States on clients treated in facilities that receive State funds. Together, the three DASIS components provide information on the location, scope and characteristics of all known drug and alcohol treatment facilities in the United States, the number of persons in treatment, and the characteristics of clients receiving services at publicly-funded facilities. This information is needed to assess the nature and extent of these resources, to identify gaps in services, to provide a database for treatment referrals, and to assess demographic and substance-related trends in treatment.

The request for OMB approval will include only modest changes to the 2003 N–SSATS questionnaire, including the addition of several drugs to the pharmacotherapies list and the addition of services such as beds for dependent children of women in treatment to the "other services" list. The remaining sections of the N–SSATS questionnaire will remain unchanged except for minor modifications to wording.

Approval will also be requested for an additional component, the Mini-N–SSATS. The Mini-N–SSATS is a procedure for collecting services data from newly identified facilities between main cycles of the survey and will be used to improve the listing of treatment facilities in the on-line treatment facility Locator. The between-survey telephone calls to newly identified facilities allow facilities to be added to the Locator in a more timely manner. No significant changes are expected in the other DASIS activities.

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Estimated annual burden for the DASIS activities is shown below:

Type of respondent and activity	Number of respondents	Responses per respondent	Hours per response	Total burden hours
States				
TEDS Admission Data	52	4	6	1,248
TEDS Discharge Data	35	4	6	840
I–SATS Update[1]	56	67	0.08	300
State subtotal	56			2,388
Facilities				
N–SSATS Questionnaire	17,000	1	.6	10,200
Pretest of N–SSATS revisions	50	1	1	50
Prescreening of newly-identified facilities	2,000	1	.08	160
Mini-N–SSATS	700	1	.4	280
Facility Subtotal	19,000			10,690
Total	19,056			13,078

[1] States forward to SAMHSA information on newly licensed/approved facilities and on changes in facility name, address, status, etc. This is done electronically by nearly all States.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: August 21, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–21729 Filed 8–26–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–40]

Notice of Submission of Proposed Loss Mitigation Evaluation

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comment Due Date: September 26, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0358) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as descried below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, of applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposed and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Loss Mitigation Evaluation.

OMB Approval Number: 2502–0523.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: Mortgagees servicing HUD insured mortgages are required to document all lost mitigation efforts for delinquent loans.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion, monthly.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	600		905		.25		135,795

Total Estimated Burden Hours: 135,795.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 20, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–21710 Filed 8–26–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Public Comment Period Extension and Four Public Open Houses for the Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge Comprehensive Conservation Plan and Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of public comment period and four public "Open Houses" for the Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge Comprehensive Conservation Plan and Environmental Impact Statement.

SUMMARY: This notice informs the public that the comment period for scoping issues to be evaluated in the Draft Comprehensive Conservation Plan and Draft Environmental Impact Statement for the Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge (Monument) is extended to October 12, 2002, and public open houses are scheduled in Mattawa, Seattle, Richland, and Yakima, Washington. See **SUPPLEMENTARY INFORMATION** for public meeting dates and locations.

DATES: Comments must be received by the new deadline of October 12, 2002, at the address below. See **SUPPLEMENTARY INFORMATION** for Open House dates.

ADDRESSES: Address comments and requests for more information to: Greg Hughes, Project Leader, Hanford Reach National Monument, 3250 Port of Benton Blvd., Richland, Washington 99352, Fax (509) 375–0196. See **SUPPLEMENTARY INFORMATION** for Open House addresses.

FOR FURTHER INFORMATION CONTACT: Greg Hughes, Project Leader, or Dan Haas, Planning Team Leader, at phone: (509) 371–1801, or fax: (509) 375–0196.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service published a notice of intent to prepare a Comprehensive Conservation Plan and associated Environmental Impact Statement for the Monument in the **Federal Register** on June 12, 2002, (Vol. 67, No. 113, pages 40333–40337). Comments were to be received on or before September 12, 2002. Public scoping meetings were to be held at locations and times to be specified in subsequent notices and news releases.

The Service is extending the comment period to provide additional opportunities for the public to provide comments at open houses. The new deadline for public comment is now extended to October 12, 2002. Comments already received are on record and need not be resubmitted. All comments received become part of the official public record.

Public open houses have been scheduled at the following dates, times, and locations.

1. August 28, 2002, from 6 p.m. to 9 p.m., at Wahluke High School, 502 N. Boundary, Mattawa, WA.

2. September 5, 2002, from 6 p.m. to 9 p.m., at the Radisson Hotel Seattle Airport, 17001 Pacific Highway South, Seattle, WA.

3. September 9, 2002, from 4 p.m. to 9 p.m., Consolidated Information Center, Washington State University Tri-Cities Campus, 2770 University Dr., Richland, WA.

4. September 17, 2002, 6 p.m. to 9 p.m., at the Yakima Convention Center, 10 N. 8th Street, Yakima, WA.

Dated: July 30, 2002.

Rowan W. Gould,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 02–21728 Filed 8–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1820–AE]

Notice of Public Meeting: Northeast California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U. S. Department of the Interior, Bureau of Land Management (BLM) Northeast California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Thursday and Friday, Oct. 17 and 18, 2002, in the Conference Center at John Asquaga's Nugget in Sparks, Nevada. On Oct. 17, the meeting begins at 1 p.m. Time for public comments has been set aside at 3 p.m. On Oct. 18, the council will convene at 7:30 a.m. in joint session with the BLM Sierra Front/Northwestern Great Basin Resource Advisory Council.

FOR FURTHER INFORMATION CONTACT: Tim Burke, Field Manager, BLM Alturas Field Office, 708 West 12th St., Alturas, CA; or BLM Public Affairs Officer Joseph J. Fontana, telephone (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northeast California and Northwest Nevada. At this meeting, agenda topics include an update on conservation planning for sage grouse, western juniper management, and a status report on land use planning for northeast California and northwest Nevada lands. The council will also hear status reports from the managers of the BLM's Alturas, Eagle Lake and Surprise field offices. In the Oct. 18 joint session, the council members will hear a report from their National Conservation Area subcommittee, which has been assisting BLM with development of a draft management plan for the Black Rock Desert-High Rock Canyon-Emigrant Trails National Conservation Area. The council members will also hear a briefing on NCA management from the Black Rock-High Rock NCA staff.

All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: August 20, 2002.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 02–21712 Filed 8–26–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ–4377] ES–51654, Group No. 153, Wisconsin

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Wisconsin.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey, in two (2) sheets, of the lands described below in the BLM Eastern States Office, Springfield, Virginia, forty five (45) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs and the Lac Courte Oreilles Tribal Governing Board because of extensive obliteration of original corner evidence within the reservation boundaries. The plat of survey represent the dependent resurvey of a portion of the south, east, west and north boundaries, a portion of the subdivisional lines, the subdivision of certain sections, the reestablishment of a portion of the record meander line, a survey of a portion of the present shoreline of Devils Lake, the apportionment of the shoreline to original lots 2 and 3 in section 23 and original lots 3, 4, 5 and 6 in section 26, and the corrective resurvey of a portion of the south and north boundaries, certain subdivisional lines and the subdivision of section 7, Township 39 North, Range 8 West, Fourth Principal Meridian, in the state of Wisconsin, and were accepted August 7, 2002.

We will place a copy of the plat previously described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: August 20, 2002.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 02–21730 Filed 8–26–02; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Nominations for Vacancies

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multi employer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multi employer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). No more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the Council expire on November 14, 2002. The groups or fields they represented are as follows:

- Employee organizations (this person must represent an organization whose members participate in a multi-employer plan);
- Corporate trust (a person representing financial institutions which serve as trustees or custodians for employee benefit plans);
- Investment management (an investment manager for a private-sector pension plan or a representative of an investment management firm);
- Employer (a single employer or a representative of an organization representing employer groups and interests); and
- General public (this member must represent persons actually receiving benefits from a private sector plan).

The Department of Labor is committed to equal opportunity in the workplace and seeks a broad-based and diverse ERISA Advisory Council membership.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent a specific group or field listed in the preceding paragraph, may submit recommendations to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Suite N–5677, Washington, DC 20210.

Recommendations must be delivered or mailed on or before October 1, 2002. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization.

Signed at Washington, DC, this 21st day of August, 2002.

Ann L. Combs,

Assistant Secretary of Labor, Pension and Welfare Benefits Administration.

[FR Doc. 02–21760 Filed 8–26–02; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0209 2002]

Proposed Information Collection Request Submitted for Public Comment and Recommendations; OSHA Data Initiative (1218–0209)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized,

collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection request for the OSHA Data Initiative. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before October 28, 2002.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 1218–0209 2002, U.S. Department of Labor, Room N–2625, 200 Constitution Ave., NW., Washington, DC 20210, telephone (202) 693–2350. Written comments limited to 10 pages or less in length may be transmitted by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION: Dave Schmidt, Directorate of Information Technology, Office of Statistics, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3644, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–1886. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Dave Schmidt at (202) 693–1886 or Todd Owen at (202) 693–2444. For electronic copies of the OSHA Data Initiative information collection request, contact OSHA's Web page on the Internet at *http://www.osha-slc.gov/OCIS/Info_coll.html.*

SUPPLEMENTARY INFORMATION:

I. Background

To meet many of OSHA's program needs, OSHA is proposing to continue its data initiative to collect occupational injury and illness data and information on the number of workers employed and the number of hours worked from establishments in portions of the private sector and from some state and local government agencies. OSHA will collect calendar year 2002 data from up to 109,000 employers already required to create and maintain records pursuant to 29 CFR part 1904. These data will allow OSHA to calculate occupational injury and illness rates and to focus its efforts on individual workplaces with ongoing serious safety and health problems. Successful implementation of the data collection initiative is critical to OSHA's outreach and enforcement efforts and the data requirements tied to the Government Performance and Results Act (GPRA).

II. Current Actions

This notice requests public comment on an extension of the current OMB approval of the paperwork requirements for the OSHA Data Initiative system.

Type of Review: Extension of currently approved collection.

Agency: Occupational Safety and Health Administration.

Title: OSHA Data Initiative.

OMB Number: 1218–0209.

Agency Number: ICR 1218–0209–2002.

Affected Public: Business or other for-profit, Farms, and State, Local or Tribal Government.

Cite/Reference/Form/etc: OSHA Form 196A and OSHA Form 196B.

Total Respondents: 109,000.

Frequency: Annually.

Average Time per Response: 10 minutes.

Estimated Total Burden Hours: 17,440 hours.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 16, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 02–21758 Filed 8–26–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0202(2002)]

Standard on Hazardous Waste Operations and Emergency Response (HAZWOPER); Extension of the Office of Management and Budget's Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA requests comment concerning its proposed extension of the information-collection requirements specified by its Standard on Hazardous Waste Operations and Emergency Response (HAZWOPER) (29 CFR 1910.120). Section 126(e) of the "Superfund Amendments and Reauthorization Act of 1986" (SARA)(Pub. L. 99–499) which became law on October 17, 1986, required the Secretary of Labor, pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (the Act), to promulgate standards for the safety and health protection of employees engaged in hazardous waste operations and emergency response. Section 126(a) of SARA also specified that those standards were to become effective a year after publication. Section 126(b) lists 11 worker protections provisions that the Secretary of Labor had to include in OSHA's final standard. Those provisions require OSHA to address the preparation of various written programs, plans and records; the training of employees; the monitoring of airborne hazards; the conduct of medical surveillance; and the distribution of information to employees. The provisions also require the collection of information from employers engaged in hazardous waste operations and their emergency response to such operations. The final standard covers the provisions mandated in SARA.

DATES: Submit written comments on or before October 28, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0202(2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20201; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, OSHA, U.S.

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Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the collections of information collection specified by the Standard on Hazardous Waste Operations and Emergency Response (HAZWOPER) is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney at (202) 693–2222, or Todd Owen at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha.gov* and select *"Information Collection Requests."*

SUPPLEMENTARY INFORMATION

1. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

The Standard specifies a number of collection of information (paperwork) requirements. Employers can use the information collected under the HAZWOPER rule to develop the various programs the standard requires and to ensure that their employees are trained properly about the safety and health hazards associated with hazardous waste operations and emergency response to hazardous waste releases. OSHA will use the records developed in response to this standard to determine compliance with the safety and health provisions. The employer's failure to collect and distribute the information required in this standard will affect significantly OSHA's effort to control and reduce injuries and fatalities. Such failure would also be contrary to the direction Congress provided in the Superfund Amendments and Reauthorization Act of 1986 (SARA).

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection-of-information requirements specified by the Standard on Hazardous Waste Operations and Emergency Response (HAZWOPER) (29 CFR 1910.120). The Agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of a currently-approval information-collection requirement.

Title: Hazardous Waste Operations and Emergency Response (29 CFR 1910.120).

OMB Number: 1218–0202.

Affected Public: Business or other for-profit; not-for profit institutions, Federal government; State, local, or tribal governments.

Number of Respondents: 37,762.

Frequency of Recordkeeping: Varies (on occasion; annually).

Average Time per Response: Varies from five minutes (.08 hours) to 64 hours.

Total Annual Hours Requested: 1,404,369.

Total Annual Costs (O&M): $4,668,300.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Dated: Signed at Washington, DC on August 21, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–21759 Filed 8–26–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Orphan Plans; Advisory Council on Employee Welfare and Pension Benefits Plans Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Wednesday, September 18, 2002, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study orphan plans, which are plans abandoned by all plan fiduciaries designated to manage and operate the plans and their assets. Without a plan sponsor or fiduciary, participants and beneficiaries cannot receive pension distributions or make inquiries about their benefits.

The session will take place in Room N–5437 A–C, U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9:30 a.m. to approximately 4 p.m., is for working group members to hear testimony on the issue and discuss what they want to include in their report they are preparing for the Secretary of Labor.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before September 12, 2002, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Sharon Morrissey by September 12, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 12.

Signed at Washington, DC, this 21st day of August 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–21761 Filed 8–26–02; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

119th Full Meeting of the Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 119th open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held Thursday, September 19, 2002, in Conference Room N–5437 A–C, U.S. Department of Labor Building, 200 Constitution Avenue, NW, Washington, DC 20210.

The purpose of the meeting, which will begin at 4 p.m. and end at approximately 5 p.m., is for members to be updated on activities of the Pension and Welfare Benefits Administration and for chairs of this year's working groups to provide progress reports on their individual study topics.

Members of the public are encouraged to file a written statement pertaining to any topics the Council may be studying during 2002 by submitting 20 copies on before September 12, 2002 to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Sharon Morrissey by September 12 at the address indicated.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 12, 2002.

Signed at Washington, DC, this 21st day of August 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–21762 Filed 8–26–02; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Electronic Reporting; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 142, a public meeting will be held Friday, September 20, 2002, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study electronic reporting. The purpose of the working group is to identify and prioritize opportunities for DOL to leverage the use of information and services to its key stakeholders, including plan participants and beneficiaries, plan sponsors, auditors, investment advisors and the general public.

The session will take place in Room N–5437 A–C, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9 a.m. to approximately 3 p.m., with a one-hour lunch break at noon, is for working group members to hear from select witnesses on the issue.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before September 12, 2002, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Consitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the reocrd. Individuals with disabilities who need special accommodations should contact Sharon Morrissey by September 12, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 12.

Signed at Washington, DC, this 21st day of August 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–21763 Filed 8–26–02; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Education and Training of Plan Fiduciaries; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study the issue of educating and training plan fiduciaries will hold an open public meeting on Thursday, September 19, 2002, in Room N–5437, A–C, U.S. Department of Labor Building, 200 Constitution Avenue, NW, Washington, DC 20210. The purpose of the Working Group is to study means by which the Labor Department could effectively promote and improve the education and training of employee benefit plan fiduciaries.

The purpose of the open meeting, which will run from 9 a.m. to approximately 4 p.m. with a one-hour lunch break at noon, is for Working Group members to hear testimony from invited witnesses.

Members of the public are encouraged to file a written statement pertaining to the topic by sending 20 copies on or before September 12, 2002, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677,200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Sharon Morrissey by September 12, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record

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without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 12.

Signed at Washington, DC this 27th day of August, 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–21764 Filed 8–26–02; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Fellowships Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Fellowships Advisory Panel, Literature Section (Poetry and Translation Fellowships) will be held on September 23–26, 2002 in Room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. A portion of this meeting, from 11 a.m. to 12:30 p.m., will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on September 23, from 9 a.m. to 6:30 p.m. on September 24–25, and from 9 a.m. to 11 a.m. and 12:30 p.m. to 5 p.m. on September 26, will be closed.

The closed portions of this meeting are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY-TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: August 21, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, , Panel Operations, National Endowment for the Arts.

[FR Doc. 02–21745 Filed 8–26–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Leadership Initiatives Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel, AccessAbility Section, will be held by teleconference from 2 p.m.–3:30 p.m. on Monday, September 9, 2002 in Room 528 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: August 21, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–21744 Filed 8–26–02; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Proposed rule, 10 CFR parts 72 and 73, "Event Notification Requirements."

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* The information must be submitted following the occurrence of certain specified events. These events are infrequent and occur at unpredictable times. Following telephonic reports of some of these events, a followup written report must be submitted within 60 days of the initial telephonic report.

5. *Who is required or asked to report:* All specific licensees or general licensees who possess special nuclear material at fixed sites and in transit and plants in which special nuclear material is used.

6. *An estimate of the number of responses:* 212; 29 responses for part 72 and 183 responses for part 73.

7. *The estimated number of annual respondents:* 21 part 72 NRC licensees and 204 part 73 NRC licensees.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 3,300; part 72—707 reporting hours for NRC licensees; part 73—2,592 reporting hours for NRC licensees, or an average of 24 hours per response for part 72 and 13 hours per response for part 73.

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* Part 72 establishes licensing requirements for the independent storage of spent nuclear fuel and high-level radioactive waste. It prescribes requirements both for specific licenses for independent spent fuel storage installations and for general licenses for storage of spent fuel at power reactor sites. Section 72.75 establishes reporting requirements for specific events and conditions, including both emergency notifications and non-emergency notifications, occurring at spent fuel storage installations. Some of the requirements are for information which must be submitted by telephone to NRC's Operations Center. Other requirements are for written followup reports. Section 72.216 specifies the applicability of the reporting requirements in 10 CFR 72.75. Part 73 establishes requirements for the physical protection of special nuclear material at fixed sites and in transit and of plants where special nuclear material is used. Section 73.71 establishes reporting requirements for safeguards events, including both initial telephone notification to the NRC Operations Center and written followup reports. Appendix G to part 73 defines the reportable safeguards.

Submit, by September 26, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. The proposed rule indicated in "The title of the information collection" is or has been published in the **Federal Register** within several days of the publication date of this **Federal Register** Notice. The OMB clearance package and rule are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this notice and are also available at the rule forum site, *http://ruleforum.llnl.gov*.

Comments and questions should be directed to the OMB reviewer by September 26, 2002: Bryon Allen, Office of Information and Regulatory Affairs (3150–0002 and –0132), NEOB–10202, Office of Management and Budget, Washington DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 20th day of August 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Offic

[FR Doc. 02–21748 Filed 8–26–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–27; License No. SNM–42]

BWX Technologies, Inc., Lynchburg, VA; Order Modifying License (Effective Immediately)

I

(BWXT) is the holder of Special Nuclear Material License SNM–42 issued by the U.S. Nuclear Regulatory (NRC or Commission) pursuant to 10 CFR part 70. BWXT is authorized by their license to receive, possess, and transfer byproduct, source material, and special nuclear material in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR part 70. The BWXT license, originally issued on August 22, 1956, was renewed on October 1, 1995, and is due to expire on September 30, 2005.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by BWXT as prudent, interim measures to address the current threat environment. Therefore, the Commission is imposing interim requirements, set forth in Attachment 1 [1] of this Order, which supplement existing regulatory requirements, to provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect pending notification from the Commission that a significant change in the threat environment occurs, or if the Commission determines that other changes are needed.

The Commission recognizes that some of the requirements set forth in Attachment 1 [2] to this Order may already have been initiated by BWXT in response to previously issued advisories, or on its own. It is also recognized that some measures may need to be tailored to specifically accommodate the specific circumstances and characteristics existing at BWXT's facility to achieve the intended objectives and avoid any unforeseen effect on safe operation.

Although BWXT's response to the Safeguards and Threat Advisories has been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission believes that the response must be supplemented because of the current threat environment. As a result, it is appropriate to require certain security measures so that they are maintained within the established regulatory framework. In order to provide assurance that BWXT is implementing prudent measures to achieve an adequate level of protection to address the current threat environment, Special Nuclear Materials License SNM–42 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202 and 70.81, I find that, in the circumstances described above, the public health, safety and interest and the common defense and security require that this Order be immediately effective.

III

Accordingly, pursuant to sections 63, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10

[1] Attachment 1 contains classified information and will not be released to the public.

[2] To the extent that specific measures identified in Attachment 1 to this Order require actions pertaining to BWXT's possession and use of chemicals, such actions are being directed on the basis of the potential impact of such chemicals on radioactive materials and activities subject to NRC regulation.

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CFR 2.202 and 10 CFR part 70, *it is hereby ordered, effective immediately, that special nuclear materials license SNM–42 is modified as follows:*

A. BWXT shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order. BWXT shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation, unless otherwise specified in Attachment 1 to this order, no later than February 28, 2003.

B.1. BWXT shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause BWXT to be in violation of the provisions of any Commission regulation or its license. The notification shall provide BWXT's justification for seeking relief from or variation of any specific requirement.

2. If BWXT considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact safe operation of its facility, BWXT must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question, or a schedule for modifying the facilities to address the adverse safety condition. If neither approach is appropriate, BWXT must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C.1. BWXT shall, within twenty (20) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. BWXT shall report to the Commission when it has achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding any provision of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained pending notification from the Commission that a significant change in the threat environment occurs, or if the Commission determines that other changes are needed.

BWXT's responses to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 70.5. In addition, BWXT's submittals that contain classified information shall be properly marked and handled in accordance with 10 CFR 95.39.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, modify, relax or rescind any of the above conditions upon demonstration by BWXT of good cause.

IV

In accordance with 10 CFR 2.202 and 70.81, BWXT must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which BWXT or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, at the same address, to the Regional Administrator, NRC Region II, Sam Nunn Atlanta Federal Center, Suite 23 T85, 61 Forsyth Street, SW, Atlanta, GA 30303–3415, and to BWXT if the answer or hearing request is by a person other than BWXT. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also by e-mail to *OGCMailCenter@nrc.gov*. If a person other than BWXT requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).[3]

If a hearing is requested by BWXT or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), BWXT may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 21st day of August, 2002.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–21747 Filed 8–26–02; 8:45 am]

BILLING CODE 7590–01–P

[3] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things: (i) The nature of the petitioner's right under the Act to be made a party to the proceeding. (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding. (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest. (2) The admissibility of a contention, refuse to admit a contention if: (i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of the section; or (ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–352 and 50–353]

Exelon Generation Company, LLC; Notice of Consideration of Issuance of Amendments to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating Licenses Nos. NPR–39 and NPF–85 issued to Exelon Generation Company, LLC (the licensee) for operation of the Limerick Generating Station (LGS), Units 1 and 2, located in Montgomery County, Pennsylvania.

The proposed amendment would modify technical specification (TS) requirements for a missed surveillance through revision of Specifications 4.0.1 and 4.0.3. The delay period would be extended from the current limit of "* * * up to 24 hours to permit the completion of the surveillance when the allowable outage time limits of the ACTION requirements are less than 24 hours" to "* * * up to 24 hours or up to the limit of the specified Surveillance time interval, whichever is greater." In addition, the following requirement would be added to Surveillance Requirement 4.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed." The proposed revision would also add a TS Bases Control Program to the LGS TS.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process (CLIIP). The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the model NSHC determination for amendments concerning missed surveillances in its application dated May 14, 2002.

Additionally, two administrative changes are proposed. The first deletes the position of "Sr. Manager—Operations" and replaces it using an overall statement referencing the American National Standards Institute (ANSI)/American Nuclear Society (ANS) standard 3.1–1978 for "Operations Manager". The second administrative change revises the LGS TS requirement for Plant Operations Review Committee (PORC) member composition replacing "Experience Assessment" with "Regulatory Assurance" to reflect the licensee's organizational changes. The licensee provided its analysis of the issue of NSHC for these proposed changes in its application.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves NSHC. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

[Missed Surveillance]

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

[Administrative Changes]

The proposed TS and licensing basis changes are administrative changes to eliminate obsolete position and work group titles and incorporate the equivalent titles in use by EGC at other fleet nuclear facilities.

These changes do not involve any physical change to structures, systems, or components (SSCs) and does not alter the method of operation or control of SSCs. The current assumptions in the safety analysis regarding accident initiators and mitigation of accidents are unaffected by these administrative changes. No additional failure modes or mechanisms are being introduced and the likelihood of previously analyzed failures remains unchanged.

The integrity of fission product barriers, plant configuration, and operating procedures will not be affected by these changes. Therefore, the consequences of previously analyzed accidents will not increase because of these changes.

Based on the above discussion, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

[Missed Surveillance]

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

[Administrative Changes]

The proposed TS and licensing basis changes are administrative changes to eliminate obsolete position and work group titles and incorporate the equivalent titles in use by EGC at other fleet nuclear facilities.

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The current accident analysis will remain valid following these administrative changes to TS. The changes will not alter the administrative functions that are currently in use. The qualification requirements for the individuals performing the affected TS administrative functions will remain unchanged.

The proposed TS changes do not affect plant design, hardware, system operation, or procedures; therefore, based on the above discussion, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

[Missed Surveillance]

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

[Administrative Changes]

The proposed TS and licensing basis changes are administrative changes to revise current position titles to reflect equivalent position titles in use by EGC at other fleet nuclear facilities.

The revision of the collective experience of the PORC membership to include Regulatory Assurance experience is equivalent to the current requirement for Experience Assessment experience. The functions of the Regulatory Assurance group remain essentially unchanged due to merger initiatives. The Regulatory Assurance group is the site process owner for the corrective action process (CAP), the self assessment process, the PORC process, the commitment tracking process, the operating experience process, support of NRC inspections and issue closure. Therefore, there is no reduction in PORC member qualification requirements due to this change.

The requirement for the "Operations Manager" to hold a senior reactor operator license is equivalent to the requirement for the Sr. Manager—Operations or an Operations Manager to hold a senior reactor operator license.

Based on the above discussion, the proposed TS changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's incorporation by reference of the analysis for missed surveillances which is part of the CLIIP, and the licensee's analysis of the administrative changes. Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves NSHC. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 26, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of NSHC. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves NSHC, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. Edward Cullen, Vice President, General Counsel and Secretary, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 14, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 21st day of August 2002.

For the Nuclear Regulatory Commission.

John P. Boska,

Acting Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–21749 Filed 8–26–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143; License No. SNM–124]

Nuclear Fuel Services, Inc., Erwin, TN; Order Modifying License (Effective Immediately)

I

Nuclear Fuel Services, Inc. (NFS), is the holder of Special Nuclear Material License SNM–124 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 70. NFS is authorized by their license to receive, possess, and transfer byproduct, source, and special nuclear material in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR part 70. The NFS license, originally issued on September 18, 1957, was renewed on July 2, 1999, and is due to expire on July 31, 2009.

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief."

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II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has commenced a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by NFS as prudent, interim measures to address the current threat environment. Therefore, the Commission is imposing interim requirements, set forth in Attachment 1 [1] of this Order, which supplement existing regulatory requirements, to provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect pending notification from the Commission that a significant change in the threat environment occurs, or if the Commission determines that other changes are needed.

The Commission recognizes that some of the requirements set forth in Attachment 1 [2] to this Order may already have been initiated by NFS in response to previously issued advisories, or on its own. It is also recognized that some measures may need to be tailored to specifically accommodate the specific circumstances and characteristics existing at NFS's facility to achieve the intended objectives and avoid any unforeseen effect on safe operation.

Although NFS's response to the Safeguards and Threat Advisories has been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission believes that the response must be supplemented because of the current threat environment. As a result, it is appropriate to require certain security measures so that they are maintained within the established regulatory framework. In order to provide assurance that NFS is implementing prudent measures to achieve an adequate level of protection to address the current threat environment, Special Nuclear Materials License SNM–124 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202 and 70.81, I find that, in the circumstances described above, the public health, safety and interest and the common defense and security require that this Order be immediately effective.

III

Accordingly, pursuant to Sections 63, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 70, *it is hereby ordered, effective immediately, that special nuclear materials license SNM–124 is modified as follows:*

A. NFS shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order. NFS shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation, unless otherwise specified in Attachment 1 to this order, no later than February 28, 2003.

B. 1. NFS shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause NFS to be in violation of the provisions of any Commission regulation or its license. The notification shall provide NFS's justification for seeking relief from or variation of any specific requirement.

2. If NFS considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact safe operation of its facility, NFS must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question, or a schedule for modifying the facilities to address the adverse safety condition. If neither approach is appropriate, NFS must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C. 1. NFS shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 1.

2. NFS shall report to the Commission when it has achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding any provision of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained pending notification from the Commission that a significant change in the threat environment occurs, or until the Commission determines that other changes are needed.

NFS's responses to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 70.5 SNM–124. In addition, NFS's submittals that contain classified information shall be properly marked and handled in accordance with 10 CFR 95.39

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, modify, relax or rescind any of the above conditions upon demonstration by NFS of good cause.

IV

In accordance with 10 CFR 2.202 and 70.81, NFS must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which NFS or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, at the same address, to the Regional Administrator, NRC Region II, Sam Nunn Atlanta Federal Center, Suite 23 T85, 61 Forsyth Street, SW., Atlanta, GA 30303–3415, and to NFS if the answer or hearing request is by a person other than NFS. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also by e-mail to *OGCMailCenter@nrc.gov*. If a person other than NFS requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).[3]

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), NFS may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 21st day of August 2002.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–21746 Filed 8–26–02; 8:45 am]

BILLING CODE 7590–01–P

[1] Attachment 1 contains classified information and will not be released to the public.

[2] To the extent that specific measures identified in Attachment 1 to this Order require actions pertaining to NFS's possession and use of chemicals, such actions are being directed on the basis of the potential impact of such chemicals on radioactive materials and activities subject to NRC regulation.

[3] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things: (i) The nature of the petitioner's right under the Act to be made a party to the proceeding. (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding. (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest. (2) The admissibility of a contention, refuse to admit a contention if: (i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of the section; or (ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of August 26, September 2, 9, 16, 23, 30, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 26, 2002

There are no meetings scheduled for the Week of August 26, 2002.

Week of September 2, 2002—Tentative

There are no meetings scheduled for the Week of September 2, 2002.

Week of September 9, 2002—Tentative

There are no meetings scheduled for the Week of September 9, 2002.

Week of September 16, 2002—Tentative

There are no meetings scheduled for the Week of September 16, 2002.

Week of September 23, 2002—Tentative

There are no meetings scheduled for the Week of September 23, 2002.

Week of September 30, 2002—Tentative

Tuesday, October 1, 2002

9:25 a.m.—Affirmation Session (Public Meeting) (If needed)

9:30 a.m.—Briefing on Decommissioning Activities and Status (Public Meeting) (Contact: John Buckley, 301–415–6607)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, October 2, 2002

10 a.m.—Briefing on Strategic Workforce Planning and Human Capital Initiatives (Closed—Ex. 2)

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: R. Michelle Schroll (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: August 22, 2002.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 02–21886 Filed 8–23–02; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Budget Analysis Branch; Sequestration Update Report

AGENCY: Office of Management and Budget—Budget Analysis Branch.

ACTION: Notice of transmittal of the Sequestration Update Report to the President and Congress for Fiscal Year 2003.

SUMMARY: Pursuant to section 254(b) of the Balanced Budget and Emergency Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Sequestration Update Report for Fiscal Year 2003 to the President, the Speaker of the House of Representatives, and the President of the Senate.

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FOR FURTHER INFORMATION CONTACT: Sarah Lee, Budget Analysis Branch—202/395–3674.

Dated: August 21, 2002.

Stephen A. Weigler,

Deputy Assistant Director for Administration.

[FR Doc. 02–21695 Filed 8–26–02; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27562]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 21, 2002.

Notice is hereby given that the following filing has been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application/declaration for a complete statements of the proposed transaction summarized below. The application/declaration is available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application/declaration should submit their views in writing by September 16, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant/declarant at the address specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 16, 2002, the application/declaration, as filed or as amended, may be granted and/or permitted to become effective.

Entergy Corporation (70–9749)

Entergy Corporation ("Entergy"), a registered public utility holding company, 639 Loyola Avenue, New Orleans, LA 70113, has filed a post-effective amendment under sections 6(a) and 7 of the Act and rule 54 under the Act to its previously filed application-declaration ("Application").

By order dated April 3, 2001 (HCAR No. 27371) the Commission authorized, among other things, Entergy to issue and sell through June 30, 2004 ("Authorization Period") short-term debt in the form of notes to banks ("Notes") or commercial paper ("Paper," and collectively with "Notes," "Short-Term Debt") that will not exceed an outstanding aggregate principal amount of $1.5 billion.

In this post-effective amendment, Entergy requests authority to issue and sell from time to time through the Authorization Period additional Short-Term Debt in an aggregate principal amount at any time outstanding not to exceed $2 billion. Terms and conditions of Short-Term Debt previously authorized continue to apply to additional Short-Term Debt issued under this authority.

Entergy will use the proceeds from the financings for general corporate purposes, including (i) financing, in part, investments by and capital expenditures of Entergy and its subsidiaries, (ii) the repayment, redemption, refunding or purchase by Entergy of any of its securities under rule 42, and (iii) financing working capital requirements of Entergy and its subsidiaries.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21777 Filed 8–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25714; 812–11794]

National Equity Trust and Prudential Investment Management Services LLC; Notice of Application

August 21, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: The requested order would supersede a prior order [1] and permit a terminating series of a unit investment trust to sell portfolio securities to a new series of the unit investment trust.

APPLICANTS: National Equity Trust (the "Trust"), Prudential Investment Management Services LLC (the "Sponsor"), and certain current or future unit investment trusts sponsored by the Sponsor (together with the Trust, the "Trusts," and their series, the "Series").

FILING DATES: The application was filed on October 6, 1999, and amended on August 19, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 16, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, c/o Richard Hoffman, Prudential Investment Management Services LLC, 100 Mulberry Street, Newark, NJ 07102.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 942–0527 or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust is a unit investment trust registered under the Act and sponsored by the Sponsor. Each Series will be created under the laws of one of the United States pursuant to a trust agreement, which will contain information specific to that Series, and which will incorporate by reference a master trust indenture between the Sponsor and a financial institution that is a bank within the meaning of section 2(a)(5) of the Act and that satisfies the criteria in section 26(a) of the Act (the "Trustee"). Applicants also request relief for any future Series sponsored by the Sponsor.[2]

[1] *National Equity Trust, et al.*, Investment Company Act Release Nos. 21135 (June 14, 1995) (notice) and 21197 (July 11, 1995) (order).

[2] All entities that currently intend to rely on the order are named as applicants. Any existing or future Series that relies on the order will comply with the terms and conditions of the application.

2. Each Series will hold a portfolio of equity securities of domestic and/or foreign companies. The Series generally are designed to seek either capital appreciation and/or dividend income.

3. Applicants state that many, if not all, securities in each Series' portfolio will be either (a) securities listed by the Sponsor on a "top picks" list disseminated to customers and the general public as securities recommended for purchase ("Top Picks Securities") and have (i) a minimum market capitalization of U.S. $1 billion and (ii) had an average daily trading volume in the preceding 60 trading days of at least 50,000 shares equal in value to at least U.S. $250,000 on an Exchange, as defined below, or (b) other securities that are actively traded (*i.e.*, have had an average daily trading volume in the preceding six months of at least 500 shares and equal in value to at least U.S. $25,000) on an Exchange which is: (i) A national securities exchange which meets the qualifications of section 6 of the Securities Exchange Act of 1934, (ii) a foreign securities exchange which meets the qualifications set forth in the proposed amendments to rule 12d3–1(d)(6) under the Act [3] and that releases daily closing prices, or (iii) the Nasdaq-National Market System (the securities meeting these requirements are referred to in this notice as "Securities").

4. Each Series will terminate on a date after a specified period, generally one or two years. The Sponsor intends that, as each Series terminates, a new Series ("New Series") having the same or a similar investment objective or investment strategy, will be offered for the next period.

5. Each Series has a date or dates (the "Rollover Date") on which unitholders in that Series (the "Rollover Series") may at their option redeem their units in the Rollover Series and receive in return units of the New Series, which will be created on or about the Rollover Date. Applicants anticipate that there will be some overlap in the Securities selected for the portfolios of each Rollover Series and the related New Series.

6. Applicants request an order to permit a Rollover Series to sell to a New Series, and a New Series to purchase from a Rollover Series, Securities at the closing sales prices of the Securities on an Exchange on the dates the Securities are sold (each a "Sale Date"). Absent the requested relief, Securities common to both Series must be purchased or sold in the securities markets rather than purchased or sold between the Series. This would result in both Series, and thus the unitholders, incurring brokerage commissions on Securities.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include, in pertinent part, any person directly or indirectly controlling, controlled by or under common control with, such other person. Each Series will be sponsored by the Sponsor. Because the Sponsor may be deemed to control a Series, each Series may be deemed to be under common control and an affiliated person of all the other Series.

2. Rule 17a–7 under the Act permits registered investment companies that might be deemed affiliated persons solely by reason of having common investment advisers, directors, and/or officers, to purchase securities from, or sell securities to, one another at an independently determined price, provided certain conditions are met. Applicants represent that they will comply with all of the provisions of rule 17a–7, other than paragraphs (e) and (f).

3. Paragraph (e) of rule 17a–7 requires an investment company's board of directors to adopt and monitor certain procedures to assure compliance with the rule. Paragraph (f) of the rule requires that a majority of the investment company's board of directors not be interested persons, as defined in section 2(a)(19) of the Act ("disinterested directors"), of the company and that the disinterested directors have independent legal counsel. Because a unit investment trust does not have a board of directors, the Trust would be unable to comply with these requirements.

4. Section 17(b) of the Act provides that the Commission will exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment companies involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act provides that the Commission may exempt classes of transactions if the exemption is necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request relief under sections 6(c) and 17(b) to permit a Rollover Series to sell Securities to a New Series and to permit the New Series to purchase the Securities.

5. Applicants state that the terms of the proposed transactions meet the standards of sections 6(c) and 17(b). Applicants represent that purchases and sales of Securities between Series will be consistent with the policy of each Series. Applicants state that to minimize the possibilities of overreaching, applicants agree that the Sponsor will certify to the Trustee, within five days of each sale from a Rollover Series to a New Series, (a) that the transaction is consistent with the policy of both the Rollover Series and the New Series, as recited in their respective registration statements and reports filed under the Act, (b) the date of the transaction, and (c) the closing sales price on the Exchange for Securities on the Sale Date. The Trustee will then countersign the certificate, unless, in the unlikely event that the Trustee disagrees with the closing sales price listed on the certificate, the Trustee immediately informs the Sponsor orally of the disagreement and returns the certificate within five days to the Sponsor with corrections duly noted. Upon the Sponsor's receipt of a corrected certificate, if the Sponsor can verify the corrected price by reference to an independently published list of closing sales prices for the date of the transactions, the Sponsor will ensure that the price of units of the New Series, and distributions to holders of the Rollover Series with regard to redemption of their units or termination of the Rollover Series, accurately reflect the corrected price. To the extent that the Sponsor disagrees with the Trustee's corrected price, the Sponsor and the Trustee will jointly determine the correct sales price by reference to a mutually agreeable, independently published list of closing sales prices for the date of the transaction.

[3] *See* Investment Company Act Release No. 17096 (Aug. 3, 1989) (proposing amendments to rule 12d3–1). The proposed amended rule defined a "Qualified Foreign Exchange" to mean a stock exchange in a country other than the United States where: (a) Trading generally occurred at least four days a week; (b) there were limited restrictions on the ability of registered investment companies to trade their holdings on the exchange; (c) the exchange had a trading volume in stocks for the previous year of at least U.S. $ 7.5 billion; and (d) the exchange had a turnover ratio for the preceding year of at least 20% of its market capitalization. The version of the amended rule that was adopted did not include the part of the proposed amendment defining the term "Qualified Foreign Exchange."

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Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each sale of Securities by a Rollover Series to a New Series will be effected at the closing price of the Securities sold on the applicable Exchange on the Sale Date, without any brokerage charges or other remuneration except customary transfer fees, if any.

2. The nature and conditions of such transactions will be fully disclosed to investors in the appropriate prospectus of each Rollover Series and New Series.

3. The Trustee of each Rollover Series and New Series will (a) review the procedures discussed in the application relating to the sale of Securities from a Rollover Series and the purchase of Securities for deposit in a New Series and (b) make such changes to the procedures as the Trustee deems necessary that are reasonably designed to comply with paragraphs (a) through (d) of rule 17a–7.

4. A written copy of these procedures and a written record of each transaction pursuant to the order will be maintained as provided in rule 17a–7(g).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21778 Filed 8–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [67 FR 54506, August 22, 2002].

STATUS: Open meetings/closed meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, August 27, 2002 at 10 a.m., Wednesday, August 28, 2002 at 10 a.m., and Thursday, August 29, 2002, at 10 a.m.

CHANGE IN THE MEETING: Additional meeting/time change/delete items.

An additional Open Meeting will be held on Wednesday, August 28, 2002, at 10 a.m., in Room 1C30, the William O. Douglas Room. The Closed Meeting previously announced to be held on Wednesday, August 28, 2002 at 10 a.m., has been rescheduled to immediately follow the open meeting on Wednesday, August 28, 2002.

The following additional item will be considered at an Open Meeting scheduled for Tuesday, August 27, 2002, at 10 a.m.:

The Commission will consider whether to adopt rules that would require a registered investment company's principal executive and financial officers to certify Form N–SAR, implementing Section 302 of the Sarbanes-Oxley Act of 2002. In addition, the Commission will consider whether to propose amendments to its rules and forms that would (1) Designate the shareholder reports of management investment companies as reports filed under the Securities Exchange Act of 1934, and (2) require each registered management investment company's principal executive officer and principal financial officer to certify the information contained in its shareholder reports in the manner required by Section 302 of the Sarbanes-Oxley Act of 2002.

The following item previously scheduled for the open meeting on Tuesday, August 27, 2002, at 10 a.m., is now scheduled for the open meeting on Wednesday, August 28, 2002, at 10 a.m.:

The Commission will consider whether the National Association of Securities Dealers, Inc. ("NASD") and the Nasdaq Stock Market, Inc. ("Nasdaq") have satisfied the conditions that must be implemented prior to or at the same time as Nasdaq's implementation of a new order display and collection facility ("SuperMontage"). The conditions, which were imposed by the Commission in a prior order granting conditional approval of the SuperMontage, include an alternative display facility established by the NASD for the display of market maker and ECN quotes.

The following items will not be considered at the closed meeting scheduled for Wednesday, August 28, 2002, immediately following the 10 a.m. open meeting:

Formal orders of investigation;

Litigation matter;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

The following items have been added to the closed meeting scheduled for Thursday, August 29, 2002:

Formal orders of investigation;

Litigation matter;

Regulatory matter bearing enforcement implications;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Commissioner Goldschmid, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

For further information please contact the Office of the Secretary at (202) 942–7070.

Dated: August 22, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21961 Filed 8–23–02; 1:33 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46384; File No. SR–Amex–2002–64]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 by the American Stock Exchange LLC to Suspend Transaction Charges for Certain Exchange Traded Funds

August 20, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 26, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Amex amended the proposed rule change on August 14, 2002.[3] On August 15, 2002, the Amex again amended the proposed rule change.[4] The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[5] and Rule 19b–4(f)(6) thereunder,[6] which renders the proposal effective upon filing with the Commission.[7] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* August 12, 2002 letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original filing.

[4] *See* August 14, 2002 letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy Sanow, Assistant Director, Division, Commission, and attachments ("Amendment No. 2"). In Amendment No. 2, the Amex added the text of the Regulatory Fee to the Equity Fee Schedule. The text was inadvertently omitted from Amendment No. 1. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on August 15, 2002, the date the Amex filed Amendment No. 2.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

[7] Rule 19b–4(f)(6) under the Act requires the Amex to provide the Commission with five business days notice of its intention to file a non-controversial proposed rule change. The Amex did not provide such notice, but the Commission has decided to waive the notice requirement. The Amex asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to suspend Exchange transaction charges for the Lehman 1–3 year Treasury Bond Fund; iShares Lehman 7–10 year Treasury Bond Fund; Lehman 20+ year Treasury Bond Fund; and iShares GS $ InvesTop Corporate Bond Fund for (1) customer orders, and (2) until August 31, 2002, specialist, Registered Trader and broker-dealer orders. The text of the proposed rule change is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is suspending transaction charges for transactions in the iShares Lehman 1–3 year Treasury Bond Fund (Symbol: SHY); iShares Lehman 7–10 year Treasury Bond Fund (Symbol: IEF); iShares Lehman 20+ year Treasury Bond Fund (Symbol: TLT); and iShares GS $ InvesTop™ Corporate Bond Fund (Symbol: LQD) (Funds) for (1) customer orders indefinitely, and (2) until August 31, 2002, specialist, Registered Trader, and broker-dealer orders.

Off-Floor orders (*i.e.*, customer and broker-dealer) in these securities currently are charged $.006 per share ($.60 per 100 shares), capped at $100 per trade (16,667 shares). Orders entered electronically into the Amex Order File (System Orders) from off the Floor for up to 5,099 shares are currently not assessed a transaction charge, but System Orders over 5,099 shares currently are subject to a $.006 per share transaction charge, capped at $100 per trade. Exchange transaction charges applicable to customer orders are now suspended. The suspension for customer orders is for an indefinite time period, and the Exchange will file a proposed rule change if it determines to end the suspension and impose transaction charges for customer orders in these securities.

Specialists in these securities are charged $0.0063 ($.63 per 100 shares), capped at $300 per trade (47,619 shares). Registered Traders in these securities are charged $.0073 ($.73 per 100 shares), capped at $350 per trade (47,945 shares). Transaction charges for specialist, Registered Trader, and broker-dealer orders are suspended until August 31, 2002.

The Exchange believes a suspension of fees for these securities is appropriate to enhance the competitiveness of executions in these securities on the Amex. The Exchange will reassess the fee suspension as appropriate, and will file a proposed rule change for any modification to the fee suspension with the Commission.

The Exchange is amending the Equities Fee Schedule to indicate that transaction charges have been suspended for the Funds. In addition, the Amex is amending the Equities Fee Schedule to refer to the suspension of transaction charges for specified Exchange Traded Funds and HOLDRs, as previously filed with the Commission.[8]

2. *Statutory Basis*

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4)[10] in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

[8] *See* Securities Exchange Act Release Nos. 44698 (August 14, 2001), 66 FR 43926 (August 21, 2001)(for SPDRs®, Nasdaq 100® Index Tracking Stock, DIAMONDS® and iShares S&P 500 Index Fund); and 45773 (April 17, 2002), 67 FR 20558 (April 25, 2002)(for MidCap SPDRs™, Select Sector SPDRs and HOLDRs™).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.[11]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of the proposed rule change,[14] the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will permit the Amex to suspend these fees immediately. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[15]

[11] Although there are inconsistencies in the Amex's original filing, Amendment No. 1, and Amendment No. 2 with regard to the Amex's Statement on Burden on Competition, the Amex confirmed that it believes the proposed rule change will impose no burden on competition. August 19, 2002 telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Joseph Morra, Special Counsel, Division of Market Regulation, Commission.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] *See* footnote 4, *supra*.

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-2002–64 and should be submitted by September 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21772 Filed 8–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46391; File No. SR–DTC–2002–07]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Filing of the "About Deposits" Service Guide

August 21, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 21, 2002, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the implementation of a Service Guide pertaining to deposits.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In January of 2001, DTC submitted a rule filing which constituted a restatement of certain sections of DTC's Participant Operating Procedures ("POP") and Participant Terminal System ("PTS") Manual.[3] Both the POP and the PTS Manual are hardcopy, multi-volume manuals that, among other things, provide participants with procedures and information pertaining to a number of DTC services and describe and document functions and applications of DTC systems.

In that rule filing, DTC explained that both the POP and the PTS Manual would better serve participants and other authorized users if they were restated together utilizing modern electronic media. As a result, DTC is developing Service Guides to replace all POP and PTS Manual documentation, and DTC has filed Service Guides for the following DTC services: Custody, Dividends, Reorganization, Settlement, and Underwriting.

In this filing, a new Service Guide is being added for deposits. The "About Deposits" Service Guide will replace POP Section B (Deposits) as well as POP Section L (Depository Facilities). However, no substantive changes to DTC's procedures are being made at this time.

The Service Guide updates will be implemented upon filing and are available to participants and other authorized users through CD–ROM, which contains current Service Guides, POP, and PTS Manual information, and through the Internet at DTC's web site *http://www.dtc.org/*. The two formats contain the same information and are similar in functionality. DTC updates such information on its web site on a monthly basis and distributes CD–ROM updates on a quarterly basis.[4]

The proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder applicable to DTC because the proposed rule change will contribute to the ease of use of DTC's services. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because the proposed rule change enhances the utilization of DTC's existing services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Rule filing SR–DTC–2001–01 dealt with the original Service Guides which were developed through discussions with a number of participants. This rule filing deals with a new guide which replaces certain portions of POP but makes no substantive changes to current DTC procedures. Therefore, written comments from participants or others have not been solicited or received on this proposed rule change. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i)[6] of the Act and Rule 19b–4(f)(1)[7] promulgated thereunder because the proposal constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self regulatory organization. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Securities Exchange Act Release No. 44719 (August 17, 2001), 66 FR 44856 [SR–DTC–2001–01].

[4] DTC will provide the Commission with above-mentioned CD–ROMs upon issuance each quarter. The Commission has been granted access to those screens on DTC's web site which contain the Service Guides and related information.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4(f)(1).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–2002–07 and should be submitted by September 17, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21775 Filed 8–26–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46385; File No. SR–NSCC–2002–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Imposition of Fines

August 20, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 26, 2002, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on August 19, 2002, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would clarify NSCC's rules with regard to the imposition of fines upon its members and would more specifically identify the actions or inactions of members that would result in fines being imposed upon them.[2] In addition, a technical correction is proposed to be made to NSCC Rule 48, Disciplinary Proceedings, to conform the rule to other changes that were made effective by Release No. 34–36866.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC's Rule 48 allows NSCC to impose fines upon its members for any error, delay, or other conduct that is determined to be detrimental to the operations of NSCC. Historically, NSCC has imposed fines upon members for failures to settle in a timely manner end of day settlement balances, for late settlement acknowledgements, and for late payments of clearing fund deposits.

NSCC's Rule 15 permits NSCC to request that members furnish to NSCC such adequate assurances of their financial responsibility and operational capability as NSCC may at any time deem necessary. Pursuant to this rule and in furtherance of NSCC's responsibility, NSCC periodically requests that its members provide financial and operational information about their business. While many members comply with these requests, some do not. The lack of this information could create risk for NSCC. To address this concern, NSCC proposes to fine members who fail to timely respond to requests for information.

In connection with imposing fines for failure to timely provide requested financial and operational information, NSCC would notify all members that it requires certain information on an ongoing basis and that failure to provide the information would result in a fine being imposed with such fining commencing three months after the Commission approves the proposed rule change. For a period of one year from that date, members that fail to timely provide information would be issued one warning letter prior to the imposition of the fine. At the conclusion of the one-year period, NSCC would discontinue the warning letters prior to fining.

In addition to the above, members have an affirmative duty to notify NSCC on an ongoing basis of certain internal conditions that may cause NSCC to reevaluate the member's continued participation. NSCC is proposing to fine members that fail to meet these notification requirements. Upon learning of an event upon which the member failed to provide timely notification, NSCC would impose a fine. No reminder letter would be sent in this context.

Participants would continue to have the ability to contest fines, as currently provided for within NSCC's rules and procedures. Fines imposed against settling members would be collected through a miscellaneous charge in the member's monthly statement of charges. Fines imposed against settling bank members may be collected through an adjustment to the settling bank's end-of-day settlement balance, through a separate fed wire, or through checks made payable to NSCC. Alternatively, if the settling bank maintains additional memberships with NSCC, the fine may be collected through a settling account under its additional membership.

In conjunction with the above, NSCC proposes making a technical correction to Rule 48 Disciplinary Proceedings. In Release No. 34–36866, the Commission approved an NSCC rule change to accommodate same-day funds

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Exhibit 1 to this notice sets forth NSCC's proposed revisions.

[3] Securities Exchange Act Release No. 36866 (February 27, 1996), 61 FR 7288 [File No. NSCC–96–03] (order modifying NSCC's Rules and Procedures to accommodate same-day funds settlement).

[4] The Commission has modified parts of these statements.

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settlement ("SDFS").[5] This rule change, in part, created Addendum P that set SDFS Failure to Settle fines in the range of $100 to $10,000. At that time, Section 1 of Rule 48 should have been modified to change the maximum fine for any single offense from $5,000 to $10,000, and a reference to settling bank only members should also have been included.

NSCC believes that the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because it ensures that NSCC is able to safeguard securities and funds in NSCC's possession.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change would have any impact on or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR–NSCC–2002–06 and should be submitted by September 17, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

Exhibit 1: Text of Proposed Changes to NSCC's Rules and Procedures

Addendum P

Fine Schedule

(1) SDFS Failure-To-Settle and Late Acknowledgment Fines

Net Debit	First occasion	Second occasion	Third occasion	Fourth occasion
$0—100,000	$100	$200	$500	$1,000
$100,000—900,000	300	600	1,500	3,000
$900,000—1,700,000	600	1,200	3,000	6,000
$1,700,000—2,500,000	900	1,800	4,500	9,000
$2,500,000—up	1,000	2,000	5,000	10,000

Notes: (a) In addition to the fine, interest is charged to the Member, or the Settling Bank Only Member, that failed to settle for the cost of borrowing to complete settlement.

(b) The number of occasions will be determined over a moving three-month period. A Member, or a Settling Bank Only Member, that exceeds four failure-to-settle occasions in a three-month period will be subject to further fees and/or other actions at the Corporation's discretion after consultation between the Member, or the Settling Bank Only Member, and the Corporation.

(c) If the Corporation determines that it had significantly affected a Member's, or a Settling Bank Only Member's, ability to settle (because of a Corporation system delay, for example), the Corporation may determine to waive failure-to-settle fines for that occurrence.

(2) Failure to notify and supply required data as provided for under these Rules & Procedures (other than as provided in items one, three and four of this addendum): Each single offense, $5,000.00 fine.

(3) Late Satisfaction of Clearing Fund Deficiency Call [1]

Amount	First occasion	Second occasion	Third occasion	Fourth occasion (or greater)
Up to $100 M	*	$100	$200	$500
$100 M to $900 M	*	300	600	1,500
$900 M to $1.7 MM	*	600	1,200	3,000
$1.7 MM to $2.5 MM	*	900	1,800	4,500
Greater than $2.5 MM	*	1,000	2,000	5,000

* First occasions result in a warning letter issued to the Member.

[5] *Supra* note 3.

[6] 17 CFR 200.30–3(a)(12).

[1] The number of occasions is determined over a moving three-month period beginning with the first occasion.

(4) Requests For Information [2]

Request for information (Failure to timely provide)	First occasion	Second occasion	Third occasion	Fourth occasion
Financial Statements:				
Audited Financial Statements for Member or Parent	*	$300	$600	$1,500
Monthly and/or Quarterly Regulatory Filings	*	300	600	1,500
Monthly and/or Quarterly Financial Statements	*	300	600	1,500
Proforma Financial Statements	*	300	600	1,500
Any Financial Computations, Consolidating Worksheets or Internal Statements, Upon Special Request	*	300	600	1,500
Risk Questionnaires/Profiles.				
Questionnaires	*	150	300	750
Profiles	*	150	300	750
Risk Management Policies and Procedures	*	150	300	750
Disaster Recovery Procedures	*	150	300	750

*First occasions result in a warning letter issued to the Member. Warning Letters for first occasion violations will be discontinued one year after implementation of this schedule, at which time each violation will be subject to imposition of a fine.

[FR Doc. 02–21774 Filed 8–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46389; File No. SR–NSCC–2002–05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Amend Clearing Fund Requirements and Letters of Credit Collaterization

August 21, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 16, 2002, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on July 25, 2002, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to increase the minimum amount of cash that must be deposited by members, except for Mutual Fund/Insurance Services Members, to satisfy clearing fund requirements and to limit the amount of a deposit that may be collateralized with letters of credit.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under NSCC's current rules, each member, except for Mutual Fund/Insurance Services Members, is required to maintain a minimum contribution to the clearing fund of $10,000. The first $10,000 of a member's contribution must be in cash unless all or a part of the member's contribution is collateralized with letters of credit, in which case the greater of $50,000 or ten percent of the member's contribution up to a maximum of $1,000,000 is required to be in cash. On a peak settlement day, if members only deposit the minimum cash required at any given time, NSCC might only be assured of a limited amount of cash thereby creating the possibility of a liquidity risk at NSCC. Furthermore, because NSCC expects an increase in members' reliance on the Collateral Management System, NSCC also expects an increase in members' requesting the return of excess cash.[3]

To assure NSCC of more cash to meet liquidity needs, NSCC proposes to modify Procedure XV (Clearing Fund Formula and Other Matters) of its Rules and Procedures to require that the first 40% of a member's clearing fund contribution must be in cash unless the member's clearing fund requirement is $10,000 or less in which case the entire contribution must be in cash.[4] NSCC also proposes to amend Rule 4 (Clearing Fund) of its Rules and Procedures to reduce from 70% to 25% the percentage of members' required deposit to the clearing fund that may be collateralized with letters of credit.

Based on NSCC's current calculations, the proposed change in the percentage of cash that must be deposited to the clearing fund will impact approximately 48 member firms. The proposed change reducing the permitted use of letters of credit will affect 21 of the approximately 33 member firms that post such letters. NSCC intends to implement these clearing fund changes no earlier than 30 days after the Commission approves the proposed rule change. Mutual Fund/Insurance Services Members' cash contribution to and letters of credit requirements for the clearing fund will remain unchanged.

[2] Fines to be levied for offenses within a moving twelve-month period beginning with the first occasion.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by the NSCC.

[3] The Collateral Management System ("CMS") provides automated access to information on members' clearing fund, margin, and other deposits at NSCC and at other participating clearing entities. CMS allows participants to more efficiently manage their various clearing fund and margin deposits by providing electronic access to consolidated data regarding the underlying collateral held at multiple clearing agencies and allows participating clearing entities the ability to view common members' clearing fund and margin deposits at other clearing entities. See Securities Exchange Act Release Nos. 36091 (August 10, 1995), 60 FR 42931 (August 17, 1995) [SR–NSCC–95–06] (order approving the establishment of CMS); 40740 (December 3, 1998), 63 FR 67962 (December 9, 1998) [SR–NSCC–98–10] (order approving modification to CMS).

[4] The current version of Procedure XV (Version 1) is being revised by NSCC and the new version (Version 2) will be applicable to members on a rolling basis. The rule change proposes to amend clearing fund procedures in Procedure XV.A.I.(a) in Version 1 and Procedure XV.II.(A) of Version 2.

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NSCC believes that the proposed rule filing is consistent with section 17A of the Act because it will permit NSCC to have adequate liquidity resources to assure the safeguarding of funds securities for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NSCC. All submissions should refer to File No. SR–NSCC–2002–05 and should be submitted by September 17, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21776 Filed 8–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46382; File No. SR–PCX–2002–41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. To Amend the Original Listing Criteria for Underlying Securities in PCX Rule 3.6

August 20, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on July 25, 2002, the Pacific Stock Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 6, 2002, the Exchange filed an amendment to the proposed rule change.[3] As amended, the proposed rule change is effective upon filing with the Commission, pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend PCX Rule 3.6 in order to provide alternative original listing criteria for individual equity options that, but for the requirement that the underlying security be at least $7.50, meet the criteria for listings in PCX Rule 3.6.

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

* * * * *

Rule 3.6. OPTIONS

Rule 3.6. The underlying securities of option contracts traded on the Exchange shall be approved for Exchange transactions by the Board of Governors following the recommendation of the Options Listing Committee. In approving underlying securities, both the Options Listing Committee and the Board shall give due regard to, and the Board shall promulgate guidelines relative to, the following factors:

(a) Underlying securities approved for Exchange transactions shall have, in the absence of exceptional circumstances, the following characteristics:

(1) A minimum of 7,000,000 shares shall be owned by persons other than those required to report their stock holdings under Section 16(a) of the Securities Exchange Act of 1934;

(2) A minimum of 2,000 shareholders;

(3) Trading volume (in all markets which the stock is traded) of at least 2,400,000 shares in the preceding twelve months;

(4) *Either (i) the* [The] market price per share of the underlying security *will* [shall] have been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported[6] in any market in which the underlying security traded on each of the subject days; *or (ii)(a) the underlying security meets the guidelines for continued listing in Rule 3.7; (b) options on such underlying security are traded on at least one other registered national securities exchange; and (c) the average daily trading volume for such options over the last three (3) calendar months preceding the date of selection has been at least 5,000 contracts;* and

(5) The issuer is in compliance with any applicable requirements of the Securities Exchange Act of 1934.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PCX Rule 3.6 sets forth the criteria that an underlying individual equity security must meet before the Exchange may initially list options on that security. Specifically, PCX Rule 3.6(a)(4) provides that the market price per share of the underlying security must have been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection for listing. The Exchange's other initial listings guidelines provide that: (1) The underlying security consists of a large number of outstanding shares held by non-affiliates of the issuer; (2) the underlying security is actively-traded; (3) there are a large number of holders of the underlying security; and (4) the underlying security continues to be listed on a national securities exchange or traded through the facilities of a national securities association.

Although these criteria are generally uniform among the options exchanges, the Commission has recently approved proposed rule changes submitted by the International Securities Exchange LLC ("ISE") and the American Stock Exchange ("Amex") that eliminate a requirement that the market price per share of an underlying security be at least $7.50 when such options are otherwise listed and traded on another options exchange and have an average daily trading volume ("ADTV") over the last three (3) calendar months of at least 5,000 contracts.[7] Therefore, so long as options meet the maintenance requirement on exchanges that already trade them, the ISE and Amex may list new options for trading those options despite the fact that the underlying security no longer meets the initial listing requirements.[8]

Consistent with the rules of the ISE and Amex, the Exchange proposes an alternative original listing requirement applicable to the underlying security's price during the three calendar months preceding an options listing. Specifically, the Exchange proposes to amend its rules to provide that, for underlying securities that satisfy all of the initial listing requirements of Rule 3.6, other than the $7.50 per share price requirement, the Exchange would be permitted to list options on the securities so long as: (1) The underlying security meets the guidelines for continued approval contained in PCX Rule 3.7; (2) options on such underlying security are traded on at least one other registered national securities exchange; and (3) the ADTV for such options over the last three calendar months preceding the date of selection has been at least 5,000 contracts.

The Exchange believes that this proposal is narrowly drafted to address the circumstances where an actively-traded option issue is currently ineligible for listing on the PCX while at the same time, it is trading on another options exchange. The Exchange also believes the proposed alternative original listing criteria's limitation to cover only those options that are actively traded (*i.e.*, options with an ADTV of at least 5,000 contracts over the least three calendar months) should allay any concerns regarding the listing of options that may be inappropriate. Because these options are actively traded in other markets, the Exchange believes that there would be no investor protection concerns with listing such options on the Exchange and that listing these options on the Exchange would enhance competition and benefit investors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement of Section 6(b) of the Act[9] in general and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that the Exchange has rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and paragraph (f)(6) of Rule 19b–4[12] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission notes that under Rule 19b–4(f)(6)(iii), the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative date. The Exchange contends that acceleration of the operative date is consistent with the protection of investors and the public interest because the language of this proposed rule is substantially similar to rule language that was put out for notice and comment when ISE and the Amex submitted their proposed rule changes. For this reason, consistent with Section 19(b)(2) of the Act,[13] the Commission designates the proposal to be effective

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[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mai S. Shriver, Senior Attorney, Regulatory Policy, PCX, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, faxed August 6, 2002 ("Amendment No. 1"). Amendment No. 1 corrects a typographical error in the rule text by replacing the word "recorded" with the word "reported."

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b-4(f)(6).

[6] *See* Amendment No. 1, *supra* note 3.

[7] *See* Securities Exchange Act Release No. 45220 (December 31, 2002), 67 FR 760 (January 7, 2002) (SR–ISE–2001–33); Securities Exchange Act Release No. 45505 (March 5, 2002), 67 FR 10941 (March 11, 2002) (SR–Amex–2002–13).

[8] The Exchange's maintenance requirements are less stringent. In particular, additional series may be added pursuant to PCX Rule 3.7, Commentary .02, if the underlying security is at least $3 in the primary market. The Exchange states that this less stringent maintenance standard is permitted, in part, because the Exchange's other guidelines assure that options would be listed and traded on securities of companies that are financially sound and subject to adequate minimum standards.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(2).

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and operative upon filing with the Commission.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of PCX. All submissions should refer to File No. SR–PCX–2002–41 and should be submitted by September 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H McFarland,

Deputy Secretary.

[FR Doc. 02–21773 Filed 8–26–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

Bureau of Intelligence and Research

[Public Notice 4083]

Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union; Notice of Committee Renewal

I. Renewal of Advisory Committee

The Department of State has renewed the Charter of the Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union. This advisory committee makes recommendations to the Secretary of State on funding for applications submitted for the Research and Training Program on Eastern Europe and the Independent States of the Former Soviet Union (Title VIII). These applications are submitted in response to an annual, open competition among U.S. national organizations with interest and expertise administering research and training programs in the Russian, Eurasian, and Central and East European fields. The program seeks to build and sustain U.S. expertise on these regions through support for advanced graduate training, language training, and postdoctoral research.

The committee includes representatives of the Secretaries of Defense and Education, the Librarian of Congress, and the Presidents of the American Association for the Advancement of Slavic Studies and the Association of American Universities. The Assistant Secretary for Intelligence and Research chairs the advisory committee for the Secretary of State. The committee meets at least annually to recommend grant policies and recipients.

For further information, please call Susan Nelson, INR/RES, U.S. Department of State, (202) 736–4610.

Dated: August 21, 2002.

Kenneth E. Roberts,

Executive Director, Advisory Committee for Study of Eastern Europe and the Independent States of the Former Soviet Union, Department of State.

[FR Doc. 02–21769 Filed 8–26–02; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF STATE

[Public Notice 4084]

FY 2002 Funding under the Research and Training for Eastern Europe and The Independent States of the Former Soviet Union Act of 1983 (Title VIII)

Deputy Secretary of State Richard L. Armitage approved on May 22, 2002, the FY 2002 funding recommendations of the Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union. The Title VIII program, administered by the U.S. Department of State, seeks to build expertise on the countries of Eurasia and Central and East Europe through support to national organizations in the U.S. for advanced research, language and graduate training, and other activities conducted domestically and on-site. The FY 2002 grant recipients are listed below.

1. American Council of Learned Societies

Grant: $480,000 (EE).

Purpose: To support dissertation and post-doctoral research fellowships; institutional language training grants in the U.S. covering the basic languages of Central and East Europe; individual language training fellowships; and the Junior Scholars' Training Seminar with the Woodrow Wilson Center.

Contact: Andrzej Tymowski, Executive Associate, American Council of Learned Societies, 663 Third Avenue, 8C, New York, NY 10017–6795. (212) 697–1505 (ext. 134/135). Fax (212) 949–8058. e-mail: *ANDRZEJ@acls.org.*

2. American Councils for International Education

Grant: $490,000 ($420,000–NIS, $70,000–EE/B).

Purpose: To support on-site individual language training fellowships in advanced Russian, the non-Russian languages of Eurasia, and the Central European languages; the Research Scholars and Junior Faculty fellowships; and the Combined Language Training and Research fellowships, including a Special Research Initiative on Central Asia; Research Scholar and Junior Faculty research fellowships.

Contact: Graham Hettlinger, American Councils for International Education, 1776 Massachusetts Avenue, NW, Suite 700, Washington, DC 20036. (202) 833–7522. Fax (202) 833–7523. e-mail: *Hettlinger@actr.org.*

3. The William Davidson Institute of the University of Michigan Business School

Grant: $210,000 (120,000–NIS; $90,000–EE/B).

Purpose: To support grants for pre- and post-doctoral research projects on economic and business development and public policy to develop free markets in the Balkans, Central Asia, and the Caucasus.

Contact: Deborah Jahn, Administrative Director, The William Davidson Institute, University of Michigan Business School, 724 East University Avenue, Ann Arbor, MI 48109–1234. (734) 615–4562. Fax (734) 763–5850. e-mail: *djahn@umich.edu.*

4. University of Illinois at Urbana-Champaign

Grant: $160,000 ($130,000–NIS; $30,000–EE/B).

Purpose: To support the Summer Research Laboratory, which provides dormitory housing and access to the University's library for advanced research, and the Slavic Reference Service, which locates materials unavailable through regular interlibrary loan.

Contact: Dianne Merridith, Program Administrator, Russian and East European Center, University of Illinois at Urbana-Champaign, 104 International Studies Building, 910 South Fifth Street, Champaign, IL 61820. (217) 333–1244. Fax (217) 333–1582. e-mail: *reec@uiuc.edu.*

5. International Research and Exchanges Board

Grant: $705,000 ($440,000–NIS; $265,000–EE/B).

Purpose: To support Individual Advanced Research Opportunities at the pre- and post-doctoral levels for on-site research; Short-term Travel Grants for senior scholars; a Regional Policy Symposium on Central Asia and Its Neighbors, in conjunction with the Woodrow Wilson Center; dissemination activities; and Policy Forums.

Contact: Joyce Warner, Director, Academic Exchanges and Research Division, International Research and Exchanges Board, 2121 K Street, NW., Suite 700, Washington, DC 20037. (202) 628–8188. Fax (202) 628–8189. e-mail: *jwarner@irex.org.*

6. National Council for Eurasian and East European Research

Grant: $1,175,000 ($900,000–NIS; $275,000–EE/B).

Purpose: To support the post-doctoral National Research Program of research contracts for collaborative projects and fellowship grants for individuals; Policy Research Fellowships in Eurasia and Central and East Europe for junior post-doctoral scholars; Short-term research grants to focus on Central Asia, Caucasus, and the Balkans; and the Ed. A. Hewett Fellowship Program to allow a scholar to work on a research project for up to a year while serving in a USG agency.

Contact: Robert Huber, President, National Council for Eurasian and East European Research, 910 17th Street, NW., Suite 300, Washington, DC 20006. (202) 822–6950. Fax (202) 822–6955. e-mail: *nceeerdc@aol.com.*

7. Social Science Research Council

Grant: $760,000 ($730,000–NIS, $30,000–Baltics).

Purpose: To support pre-doctoral fellowships, including advanced graduate and dissertation; post-doctoral fellowships; a dissertation workshop on understudied regions; and the institutional language programs for advanced Russian, other Eurasian languages, and the Baltic languages.

Contact: Seteney Shami, Program Director, Social Science Research Council, 810 7th Avenue, 31st Floor, New York, NY 10019. (212) 377–2700. Fax (212) 377–2727. e-mail: *shami@ssrc.org.*

8. The Woodrow Wilson Center for International Scholars

Grant: $770,000 ($490,000–NIS; $280,000–EE/B).

Purpose: To support the residential programs for post-doctoral Research Scholars, Short-term Scholars and Interns; the Meetings, Outreach and Publications Programs of the Kennan Institute for Advanced Russian Studies and East European Studies of the European Program, including the Kennan's Workshop on Conflict in the Former Soviet Union, and the East European Program's Junior Scholars' Training Seminar with the American Council of Learned Societies.

Contact: Nancy Popson, Deputy Director, Kennan Institute, (202) 691–4100. Fax (202) 691–4247. e-mail: *popsonna@wwic.si.edu*; or, Martin Sletzinger, Director, East European Studies, The Wilson Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20004–3027. (202) 691–4263. Fax (202) 691–4247. e-mail: *CrisenSa@wwic.si.edu.*

Dated: August 21, 2002.

Kenneth E. Roberts,

Executive Director, Advisory Committee for Study of Eastern Europe and Independent States of the Former Soviet Union, Department of State.

[FR Doc. 02–21770 Filed 8–26–02; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of BNJ Charter Company, L.L.C. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2002–8–19), Dockets OST–02–14145 and OST–02–14147.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding BNJ Charter Company, L.L.C., fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than September 3, 2002.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–02–14145 and OST–02–14147 and addressed to the Department of Transportation Dockets (SVC–124.1, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

Dated: August 20, 2002.

Read C. Van De Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–21804 Filed 8–26–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice 02–1]

Senior Executive Service Performance Review Boards Membership

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Performance Review Board (PRB) appointments.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental PRBs as required by 5 U.S.C. 4314(c)(4).

FOR FURTHER INFORMATION CONTACT: Mari Barr Santangelo, Departmental Director, Office of Human Resource Management, (202) 366–4088.

SUPPLEMENTARY INFORMATION: The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, DC, on August 21, 2002.

Melissa J. Allen,

Assistant Secretary for Administration.

Federal Railroad Administration

Jane H. Bachner, Deputy Associate Administrator for Industry and Intermodal Policy, Federal Railroad Administration

Mark Yachmetz, Associate Administrator for Railroad Development, Federal Railroad Administration

Robert Gould, Associate Administrator for Public Affairs, Federal Railroad Administration

Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary

Jerry Hawkins, Director, Office of Human Resources, Federal Highway Administration

Federal Transit Administration

Janet L. Sahaj, Deputy Associate Administrator, Office of Program

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

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Management, Federal Transit Administration
William P. Sears, Chief Counsel, Federal Transit Administration
Bruce J. Carlton, Associate Administrator for Policy and International Trade, Maritime Administration
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
Glenda Tate, Assistant Administrator for Human Resource Management, Federal Aviation Administration

Office of Inspector General

Thomas J. Bondurant, Assistant Inspector General for Investigations, Department of Justice
Michael Phelps, Deputy Assistant Inspector General for Auditing, Department of Housing and Urban Development
Judith J. Gordon, Assistant Inspector General for Systems Evaluation, Department of Commerce
Nancy Hendricks, Assistant Inspector General for Audit, Federal Emergency Management Agency
Adrienne Rish, Assistant Inspector General for Investigations, Agency for International Development
Joseph R. Willever, Deputy Inspector General, Office of Personnel Management
Elissa Karpf, Assistant Inspector General for Planning, Analysis, & Results, Environmental Protection Agency
Gregory S. Seybold, Assistant Inspector General for Investigations, Department of Agriculture
Carol L. Levy, Assistant Inspector General for Investigations, Defense Contract Investigative Service
Emmett D. Dashiell, Deputy Assistant Inspector General for Investigations, Environmental Protection Agency

United States Coast Guard

RADM K.T. Venuto, Assistant Commandant for Human Resources, United States Coast Guard
RADM J.A. Kinghorn, Assistant Commandant for Systems, United States Coast Guard
RADM (SEL) S. Rochon, Director, Office of Intelligence and Security, United States Coast Guard
RADM H.E. Johnson, Director, Operations Capability, United States Coast Guard
Janet L. Sahaj, Deputy Associate Administrator, Office of Program Management, Federal Transit Administration
Jerry Hawkins, Director, Office of Human Resources, Federal Highway Administration
Jean McKeever, Associate Administrator for Shipbuilding, Maritime Administration
Roberta Gabel, Assistant General Counsel for Environmental, Civil Rights, and General Law, Office of the Secretary
William Outlaw, Associate Administrator for Public Affairs, Federal Highway Administration

National Highway Traffic Safety Administration

Delmas Johnson, Associate Administrator for Administration, National Highway Traffic Safety Administration
William Walsh, Associate Administrator for Plans and Policy, National Highway Traffic Safety Administration
Kenneth Weinstein, Associate Administrator for Safety Assurance, National Highway Traffic Safety Administration
Jacqueline Glassman, Chief Counsel, National Highway Traffic Safety Administration
Michael Vecchetti, Associate Administrator for Administration, Federal Highway Administration
Dorrie Aldrich, Associate Administrator for Administration, Federal Transit Administration

Federal Highway Administration

George Ostensen, Associate Administrator for Safety, Federal Highway Administration
James Rowland, Chief Counsel, Federal Highway Administration
Dwight A. Horne, Director, Office of Program Administration, Federal Highway Administration
Michael J. Vecchietti, Associate Administrator for Administration, Federal Highway Administration
Jane Bachner, Deputy Associate Administrator for Industry and Intermodal Policy, Federal Railroad Administration

Maritime Administration

Robert B. Ostrom, Chief Counsel, Maritime Administration
Margaret D. Blum, Associate Administrator for Port, Intermodal and Environmental Activities, Maritime Administration
James E. Caponiti, Associate Administrator for National Security, Maritime Administration
Jean E. McKeever, Associate Administrator for Shipbuilding, Maritime Administration
Jerry A. Hawkins, Director, Office of Human Resources, Federal Highway Administration

Office of the Secretary, Transportation Administrative Service Center, Bureau of Transportation Statistics

Michael Dannenhauer, Director, Executive Secretariat, Office of the Secretary
Paul Gretch, Director, Office of International Aviation, Office of the Secretary
Randall Bennett, Director, Office of Aviation and International Economics, Office of the Secretary
Roberta D. Gabel, Assistant General Counsel for Environmental, Civil Rights, and General Law, Office of the Secretary
Susan Lapham, Associate Director for Statistical Programs and Services Bureau of Transportation Statistics
Patricia Prosperi, Principal, TASC Information Services, Transportation Administrative Service Center
Edward L. Thomas, Associate Administrator for Research, Demonstration and Innovation, Federal Transit Administration

Research and Special Programs Administration

Christopher W. Strobel, Special Assistant, Office of the Secretary
King W. Gee, Associate Administrator for Infrastructure, Federal Highway Administration
Patricia A. Prosperi, Principal, TASC Information Services, Transportation Administrative Service Center

Federal Motor Carrier Safety Administration

Brian McLaughlin, Associate Administrator for Policy and Program Development, Federal Motor Carrier Safety Administration
Jeffrey Lindley, Director, Office of Travel Management, Federal Highway Administration
Jerry Hawkins, Director, Office of Human Resources, Federal Highway Administration
Thomas Herlihy, Assistant General Counsel for Legislation, Office of the Secretary
Susan Binder, Director, Office of Legislation and Strategic Planning, Federal Highway Administration
William Outlaw, Associate Administrator for Public Affairs, Federal Highway Administration

[FR Doc. 02–21782 Filed 8–26–02; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–52]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions for exemption.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Vanessa Wilkins (202) 267–8029,or Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on August 22, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2002–12729.
Petitioner: Evergreen Helicopters of Alaska, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Evergreen Helicopters to operate certain aircraft under part 135 without a TSC–C112 (Mode S) transponder installed in the aircraft. *Grant/July 25, 2002, Exemption No. 7843*

Docket No.: FAA–2002–12009.
Petitioner: Chautauqua Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit Chautauqua to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command (PIC) while that PIC is performing prescribed duties during at least one flight leg that includes a takeoff and a landing when completing initial or upgrade training as specified in § 121.424. *Grant/July 17, 2002, Exemption No. 7353A*

Docket No.: FAA–2002–12401.
Petitioner: HeliFlite Shares, LLC
Section of 14 CFR Affected: 14 CFR 135.151(a).
Description of Relief Sought/ Disposition: To permit HeliFlite to operate a rotorcraft seating six or more passengers and requiring two pilots, without equipping the rotorcraft with an approved cockpit voice recorder (CVR). *Denial/July 17, 2002, Exemption No. 7839*

Docket No.: FAA–2002–12339.
Petitioner: Flight Alaska, Inc.
Section of 14 CFR Affected: 14 CFR 135.152(a).
Description of Relief Sought/ Disposition: To permit Flight Alaska Inc to operate one Beechcraft King Air 200 airplane, serial No. BB–483, registration No. N250FN, in a 13-seat configuration under part 135 without that airplane being equipped with one or more digital flight data recorders (DFDR). *Denial/July 18, 2002, Exemption No. 7838*

Docket No.: FAA–2002–11933.
Petitioner: Continental Express
Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit Continental to substitute a qualified and authorized check airman for an FAA inspector to observe a qualifying pilot in command (PIC) perform prescribed duties during at least one flight leg that includes a takeoff and a landing when the PIC is completing initial or upgrade training as specified in § 121.424. *Grant/July 23, 2002, Exemption No. 6798B*

Docket No.: FAA–2002–12733.
Petitioner: High Adventure Air Charter, Guides and Outfitters, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit High Adventure to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant/July 24, 2002, Exemption No. 7842*

Docket No.: FAA–2002–12727.
Petitioner: Talon Air Service, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Talon to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant/July 25, 2002, Exemption No. 7846*

Docket No.: FAA–2002–12751.
Petitioner: F.S. Air Service, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit F.S. Air Service to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant/July 25, 2002, Exemption No. 7845*

Docket No.: FAA–2002–12719.
Petitioner: Pathfinder Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Pathfinder to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant/July 25, 2002, Exemption No. 7844*

Docket No.: FAA–2000–8338.
Petitioner: Air Cargo Express.
Section of 14 CFR Affected: 14 CFR 121.345(c)(2) and 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Air Cargo Express to operate certain aircraft under parts 121 and 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant/July 29, 2002, Exemption No. 7403B*

Docket No.: FAA–2002–12718.
Petitioner: ARCH Air Medical Service, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit ARCH to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant/July 31, 2002, Exemption No. 7848*

[FR Doc. 02–21783 Filed 8–26–02; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development (R, E & D) Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R, E & D) Advisory Committee.

AGENCY: Federal Aviation Administration.

ACTION: Notice of meeting.

Name: Research, Engineering & Development Advisory Committee.

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Time and Date: September 30—9 a.m.–5 p.m., October 1—10 a.m.–5 p.m.

Place: Holiday Inn Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209.

Purpose: On September 30 from 9 a.m.–5 p.m. and October 1 from 10 a.m.–12 noon the meeting agenda will include receiving from the Committee guidance for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, security, human factors and environment and energy. A joint session will be held on October 1 from 1 p.m. to 5 p.m. with NASA's Aerospace Technology Advisory Committee. The planned agenda includes a briefing on the 21st Century Aviation Systems and a discussion on issues and activities that impact both groups.

Attendance is open to the interested public but limited to space available. Persons wishing to attend the meeting or obtain information should contact Gloria Dunderman at the Federal Aviation Administration, AAR–200, 800 Independence Avenue, SW., Washington, DC 20591 (202) 267–8937 or *gloria.dunderman@faa.gov*.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on August 20, 2002.

Herman A. Rediess,

Director, Office of Aviation Research.

[FR Doc. 02–21784 Filed 8–26–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Scott County, MN

AGENCY: Federal Highway Administration (HFWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed extension of County State Aid Highway (CSAH) 21 from CSAH 42 on the south to CSAH 18 on the north in Scott County, Minnesota.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or Bradley Larson, Public Works Director/County Highway Engineer, Scott County Public Works Division, Highway Department, 600 Country Trail East, Jordan, Minnesota 55352–9339, Telephone (952) 496–8346.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Scott County Highway Department will prepare an EIS on a proposal to extend CSAH 21 as a four-lane expressway, from CSAH 42 on the south to CSAH 18 on the north, a distance of approximately 2.5 miles.

A scoping process will be used to identify the alternatives and issues to be addressed in the EIS. The EIS will evaluate the social, economic, transportation and environmental impacts of alternatives. The "Scott County CSAH 21 Scoping Document/ Draft Scoping Decision Document" will be published in the Spring 2003. A press release will be published to inform the public of the document's availability. Copies of the scoping document will be distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the EIS.

A thirty-day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public scoping meeting will also be held during the comment period. Public notice will be given for the time and place of the meeting.

A Draft EIS, which will be prepared based on the outcome of the scoping process, will be available for agency and public review and comment. In addition, a public hearing will be held following completion of the Draft EIS. Public Notice will be given for the time and place of the public hearing on the Draft EIS.

Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 19, 2002.

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. 02–21708 Filed 8–26–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor Vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before September 26, 2002.

Address Comments to: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the application (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at *http://dms.dot.gov*.

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 22, 2002.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13057–N	RSPA–02–12819	MINTEQ International Inc., Easton, PA.	49 CFR 172 Subparts D, E & F, 173.24(c) Subparts E&F of Part 173.	To authorize the transportation in commerce of metal tubing containing hazardous materials to be transported with minimal regulation. (modes 1, 2, 3)
13076–N	RSPA–02–12820	Pencor Reservoir Fluid Specialists, Broussard, LA.	49 CFR 173.34(d), 178.35(e).	To authorize the transportation in commerce of non-DOT specification cylinders manufactured under DOT–E 11990 without the rupture disk pressure relief device for use in transporting various classes of hazardous materials. (modes 1, 2, 3, 4)
13077–N	RSPA–02–12821	MacIntyre, Middlebury, VT	49 CFR 174.67(i) & (j)	To authorize rail cars to remain standing with dry brake on during unloading without the physical presence on an unloader. (mode 2)
13078–N	RSPA–02–13000	E.I. duPont de Nemours & Co., Wilmington, DE.	49 CFR 173.31(b)(3)(i), 173.31(b)(4)(i).	To authorize the transportation in commerce of tank cars without head and thermal protection for use in transporting Class 2 material. (mode 2)
13080–N	RSPA–02–12999	Pressed Steel Tank Co., Milwaukee, WI.	49 CFR 173.300a, 173.301(h), 173.304, 173.34(e).	To manufacture, marking, sale and use of non-DOT specification cylinders conforming to the UN-marked cylinder for use in transporting Division 2.3. (modes 1, 2, 3)
13081–N	RSPA–02–12998	Industrial Equipment & Engineering, Inc., Westlake, LA.	49 CFR 172.102, 173.243(c), 173.32(c).	To authorize the transportation in commerce of Class 8 hazardous materials in certain non-DOT specification portable tanks. (mode 1)
13082–N	RSPA–02–12997	M&M Oil, Inc., Johns Island, SC.	49 CFR 178.337–13(d)	To authorize the transportation in commerce of non-DOT specification cargo tank for use in Division 2.1 hazardous materials. (mode 1)
13083–N	RSPA–02–12994	Rockwood Pigments NA, Inc., St. Louis, MO.	49 CFR 172, 101 (SP IB6 or IP2).	To authorize the transportation in commerce of self-heating, solid, organic, n.o.s. in flexible intermediate bulk containers not to exceed 2,500 lbs. (modes 1, 2, 3)
13084–N	RSPA–02–12995	Schering-Plough Veterinary Operations, Inc., Baton Rouge, LA.	49 CFR 173.150(f)	To authorize the transportation in commerce of flammable liquids, n.o.s. in 75-gallon stainless steel tanks between two facilities with minimal regulation. (mode 1)
13085–N	RSPA–02–13041	Hercules Incorporated, Parlin, NJ.	49 CFR 174.67(i) & (j)	To authorize rail cars to remain connected while standing without the physical presence of an unloader. (mode 2)
13087–N	RSPA–02–13045	Superior Oil Company, Inc., Indianapolis, IN.	49 CFR 173.243(d)(1)(i) ..	To authorize the transportation in commerce of Class 8 material in bulk containers (DOT–57 portable tanks and UN31A/Y intermediate bulk containers). (mode 1)
13088–N	RSPA–02–13042	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 173.192, 173.40, 178.604.	To authorize the transportation in commerce of Division 2.3, 6.1 & Class 8 hazardous material in specially designed stainless steel containers overpacked in reusable 30-gallon steel containers. (modes 1, 3, 4)
13091–N	RSPA–02–13039	Entegris, Inc., Chaska, MN.	49 CFR 172.101 Col. 7 IB3.	To authorize the manufacture, mark, sale and use of ammonia solutions, Class 8, in intermediate bulk containers. (mode 1)
13092–N	RSPA–02–13040	Aztec Peroxides, L.L.C., Elyria, OH.	49 CFR 173.225(e)	To authorize the transportation in commerce of certain organic peroxides, Division 5.2 in DOT-Specification cargo tanks. (mode 1)

[FR Doc. 02–21781 Filed 8–26–02; 8:45 am]

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Federal Register

Tuesday,
August 27, 2002

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Nine Bexar County, Texas, Invertebrate Species; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI47

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Nine Bexar County, Texas, Invertebrate Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for nine endangered karst-dwelling invertebrate species pursuant to the Endangered Species Act of 1973, as amended (Act). The proposed critical habitat consists of 25 units (a total of approximately 9,516 acres) in Bexar County, Texas, each encompassing one or more caves or other karst features known to contain one or more of the listed species. "Karst" is a type of terrain that is formed by the slow dissolution of calcium carbonate from limestone bedrock by mildly acidic groundwater. This process creates numerous cave openings, cracks, fissures, fractures, and sinkholes and the bedrock resembles a honeycomb (USFWS 1994). Critical habitat identifies areas that are essential to the conservation of a listed species and that may require special management considerations or protection.

If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the conservation of the species. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation.

DATES: We will accept comments until the close of business on November 25, 2002. Public hearing requests must be received by October 11, 2002.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by the date given above to the Acting Field Supervisor, Austin Ecological Services Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758.

You may also hand-deliver written comments to our U.S. Fish and Wildlife Service's Austin Ecological Services Field Office at the address given above.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours in the U.S. Fish and Wildlife Service's Austin Ecological Services Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Bill Seawell, Acting Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, at the above address (telephone: 512/490–0057; facsimile: 512/490–0974).

SUPPLEMENTARY INFORMATION:

Background

The following nine Bexar County, Texas, invertebrate species were listed as endangered on December 26, 2000 (65 FR 81419): *Rhadine exilis* (ground beetle, no common name); *Rhadine infernalis* (ground beetle, no common name); *Batrisodes venyivi* (Helotes mold beetle); *Texella cokendolpheri* (Cokendolpher cave harvestman); *Cicurina baronia* (Robber Baron Cave meshweaver); *Cicurina madla* (Madla Cave meshweaver); *Cicurina venii* (Braken Bat Cave meshweaver); *Cicurina vespera* (Government Canyon Bat Cave meshweaver); and *Neoleptoneta microps* (Government Canyon Bat Cave spider). All of these species are karst dwelling species of local distribution in north and northwest Bexar County. They spend their entire lives underground.

During the course of climatic changes two million to ten thousand years ago, certain creatures retreated into the more stable cave environments, while their respective surface relatives either emigrated or became extinct (Barr 1968; Mitchell and Reddell 1971; Elliott and Reddell 1989). Cave species (troglobites) survived and colonized the caves and other subterranean voids. Through faulting and canyon downcutting, the karst terrain along the Balcones Fault Zone became increasingly dissected, creating "islands" of karst and barriers to dispersal. These "islands" isolated troglobitic populations from each other, probably resulting in speciation.

Individuals of the listed species are small, ranging in length from 1 millimeter (0.039 inch (in)) to 1 centimeter (0.39 in). They are eyeless or essentially eyeless and most lack pigment. Adaptations to cave life may include adaptations to the low quantities of food in caves, including low metabolism, long legs for efficient movement, and loss of eyes, possibly as an energy-saving trade-off (Howarth 1983). They may be able to survive from months to years existing on little or no food (Howarth 1983). Adult Cicurina spiders have survived in captivity without food for about 4 months (James Cokendolpher, pers. comm., 2002).

While the life span of listed Texas troglobitic invertebrates is unknown, they are believed to live more than a year based, in part, on the amount of time some juveniles have been kept in captivity without maturing (Veni and Associates 1999; James Reddell, Texas Memorial Museum, pers. comm., 2000). James Cokendolpher (pers. comm., 2002) maintained a juvenile troglobitic *Cicurina* spider from May 1999 through April 2002. Reproductive rates of troglobites are typically low (Poulson and White 1969; Howarth 1983). Based on surveys conducted by Culver (1986), Elliott (1994a), and Hopper (2000), population sizes of troglobitic invertebrates are typically low, with most species known from only a few specimens (Culver *et al.* 2000).

The primary habitat requirements of these species include: (1) Subterranean spaces in karst with stable temperatures, high humidities (near saturation) and suitable substrates (for example, spaces between and underneath rocks suitable for foraging and sheltering), and (2) a healthy surface community of native plants and animals that provide nutrient input and, in the case of native plants, act to buffer the karst ecosystem from adverse effects (for example, non-native species invasions, contaminants, and fluctuations in temperature and humidity).

Since sunlight is absent or only present in extremely low levels in caves, most karst ecosystems depend on nutrients derived from the surface either directly (organic material brought in by animals, washed in, or deposited through root masses) or indirectly through feces, eggs and carcasses of trogloxenes (species that regularly inhabit caves for refuge, but return to the surface to feed) and troglophiles (species that may complete their life cycle in the cave, but may also be found on the surface) (Barr 1968; Poulson and White 1969; Howarth 1983; Culver 1986). Primary sources of nutrients include leaf litter, cave crickets, small mammals and other vertebrates that defecate or die in the cave.

The continuing expansion of the San Antonio metropolitan area in karst terrain constitutes the primary threat to the species through destruction and/or deterioration of habitat by construction; filling of caves and karst features and loss of permeable cover; contamination

from septic effluent, sewer leaks, run-off, pesticides, and other sources; exotic species (especially nonnative fire ants); and vandalism.

Subsurface Environment

These karst invertebrates require stable temperatures and constant, high humidity (Barr 1968; Mitchell 1971a) because they have lost the adaptations needed to prevent desiccation in drier habitat (Howarth 1983) and/or the ability to detect or cope with more extreme temperatures (Mitchell 1971). Temperatures in caves are typically the average annual surface temperature with little variation (Howarth 1983; Dunlap 1995). Relative humidity is typically near 100% in caves that support troglobitic invertebrates (Elliott and Reddell 1989).

During temperature extremes, the listed species may retreat into small interstitial spaces (human-inaccessible) connected to the cave, where the physical environment provides the required humidity and temperature levels (Howarth 1983). These species may spend the majority of their time in such retreats, only leaving them to forage in the larger cave passages (Howarth 1987).

The northern portion of Bexar County is located on the Edwards Plateau, a broad, flat expanse of Cretaceous carbonate rock that ranges in elevation from 335.5 meters (m) (1,100 feet (ft)) to 579.5 m (1,900 ft) (Veni 1988; Soil Conservation Service 1962). This portion of the Plateau is dissected by numerous small streams and is drained by Cibolo Creek and Balcones Creek. To the southeast of the Plateau lies the Balcones Fault Zone, a 25-km-wide fault zone that extends from the northeast corner of the County to the western County line. The many streams and karst features of this zone recharge the Edwards Aquifer.

The principal cave-containing rock units of the Edwards Plateau are the upper Glen Rose Formation, Edwards Limestone, Austin Chalk, and Pecan Gap Chalk (Veni 1988). The Edwards Limestone accounts for one-third of the cavernous rock in Bexar County, and contains 60% of the caves, making it the most cavernous unit in the County. The Austin Chalk outcrop is second to the Edwards in total number of caves. In Bexar County, the outcrop of the upper member of the Glen Rose Formation accounts for approximately one-third of the cavernous rock, but only 12.5% of Bexar County caves (Veni 1988). In Bexar County, the Pecan Gap Chalk, while generally not cavernous, has a greater than expected density of caves and passages (Veni 1988).

Veni (1994) delineated six karst areas (hereafter referred to as karst fauna regions) within Bexar County: Stone Oak, UTSA (University of Texas at San Antonio), Helotes, Government Canyon, Culebra Anticline, and Alamo Heights. These karst fauna regions are bounded by geological or geographical features that may represent obstructions to the movement (on a geologic time scale) of troglobites which has resulted in the present-day distribution of endemic (restricted to a given region) karst invertebrates in the Bexar County area.

These areas have been delineated by Veni (1994) into five zones that reflect the likelihood of finding a karst feature that will provide habitat for the endangered invertebrates based on geology, distribution of known caves, distribution of cave fauna, and primary factors that determine the presence, size, shape, and extent of caves with respect to cave development. These five zones are defined as:

Zone 1: Areas known to contain one or more of the nine endangered karst invertebrates;

Zone 2: Areas having a high probability of suitable habitat for the invertebrates;

Zone 3: Areas that probably do not contain the invertebrates;

Zone 4: Areas that require further research but are generally equivalent to zone 3, although they may include sections that could be classified as zone 2 or zone 5; and

Zone 5: Areas that do not contain the invertebrates.

Endangered Karst Invertebrate Distribution

By 2000, about 400 caves were known from Bexar County (SWCA 2000). Of these 400 caves, 57 were known to contain one or more of the nine endangered invertebrates at the time the species were listed. Currently, we are aware of 69 caves in Bexar County that contain one or more of the listed species (Table 1).

Rhadine exilis (Ground beetle—No Common Name)

The ground beetle *Rhadine exilis* (Coleoptera: Carabidae) was first collected in 1959. The species was described by Barr and Lawrence (1960) as *Agonum exile* and later assigned to the genus *Rhadine* Barr (1974). The species is currently known from 44 caves: 3 in the Government Canyon karst fauna region; 5 in the Helotes karst fauna region; 9 in the UTSA karst fauna region; and 27 in the Stone Oak karst fauna region (Table 1).

Rhadine infernalis (Ground Beetle—No Common Name)

Rhadine infernalis (Coleoptera: Carabidae) was first collected in 1959. The species was initially described by Barr and Lawrence (1960) as *Agonum infernale*, but later assigned to the genus *Rhadine* (Barr 1974). Scientists have recognized three subspecies (*Rhadine infernalis ewersi*, *Rhadine infernalis infernalis*, *Rhadine infernalis* ssp.) (Barr 1974; Barr and Lawrence 1960; Reddell 1998).

TABLE 1.—CAVES KNOWN TO CONTAIN ONE OR MORE OF THE NINE LISTED BEXAR COUNTY, TEXAS KARST INVERTEBRATES

Species (# of caves)	Cave name	Karst fauna region
Rhadine exilis (44)	40 mm Cave	Stone Oak.
	B–52 Cave.	
	Backhole.	
	Black Cat Cave.	
	Boneyard Pit.	
	Bunny Hole.	
	Cross the Creek Cave.	
	Dos Viboras Cave.	
	Eagle's Nest Cave.	
	Hairy Tooth Cave.	
	Headquarters Cave.	
	Hilger Hole.	
	Hold-Me-Back Cave.	
	Hornet's Last Laugh Pit.	

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TABLE 1.—CAVES KNOWN TO CONTAIN ONE OR MORE OF THE NINE LISTED BEXAR COUNTY, TEXAS KARST INVERTEBRATES—Continued

Species (# of caves)	Cave name	Karst fauna region
	Isocow Cave.	
	Kick Start Cave.	
	MARS Pit.	
	MARS Shaft.	
	Pain in the Glass Cave.	
	Platypus Pit.	
	Poor Boy Baculum Cave.	
	Ragin' Cajun Cave.	
	Root Canal Cave.	
	Root Toupee Cave.	
	Springtail Crevice.	
	Strange Little Cave.	
	Up the Creek Cave.	
	Christmas Cave	Helotes.
	Helotes Blowhole.	
	Helotes Hilltop Cave.	
	Logan's Cave.	
	Unnamed cave ½ mile N. of Helotes.	
	Government Canyon Bat Cave	Government Canyon.
	San Antonio Ranch Pit.	
	Tight Cave.	
	Hills and Dales Pit	UTSA.
	John Wagner Ranch Cave No. 3.	
	Kamikazi Cricket Cave.	
	La Cantera Cave No. 1.	
	La Cantera Cave No. 2.	
	Mastodon Pit.	
	Robber's Cave.	
	Three Fingers Cave.	
	Young Cave No. 1.	
R. infernalis (6) (subspecies not indicated)	Canyon Ranch Pit	Government Canyon.
	Fat Man's Nightmare Cave.	
	Scenic Overlook Cave.	
	Pig Cave.	
	San Antonio Ranch Pit.	
	Obvious Little Cave	Culebra Anticline.
R. infernalis ewersi (3)	Flying Buzzworm Cave	Stone Oak.
	Headquarters Cave.	
	Low Priority Cave.	
R. infernalis new subspecies (6)	Caracol Creek Coon Cave	Culebra Anticline.
	Game Pasture Cave No. 1.	
	Isopit.	
	King Toad Cave.	
	Stevens Ranch Trash Hole Cave.	
	Wurzbach Bat Cave.	
R. infernalis infernalis (16)	Bone Pile Cave	Government Canyon.
	Government Canyon Bat Cave.	
	Lithic Ridge Cave.	
	Surprise Sink.	
	Christmas Cave	Helotes.
	Helotes Blowhole.	
	Logan's Cave.	
	Madla's Cave.	
	Madla's Drop Cave.	
	Genesis Cave	Stone Oak.
	John Wagner Ranch Cave No. 3	UTSA.
	Kamikazi Cricket Cave.	
	Mattke Cave.	
	Robber's Cave.	
	Scorpion Cave.	
	Three Fingers Cave.	
Batrisodes venyivi (6)	Scenic Overlook Cave	Government Canyon.
	San Antonio Ranch Pit.	
	Christmas Cave	Helotes.
	Unnamed cave ½ mile N of Helotes.	
	Helotes Hilltop Cave.	
	Unnamed cave 5 miles NE of Helotes	UTSA.
Texella cokendolpheri (1)	Robber Baron Cave	Alamo Heights.
C. baronia (1)	Robber Baron Cave	Alamo Heights.
Cicurina madla (8)	Christmas Cave	Helotes.
	Madla's Cave.	

TABLE 1.—CAVES KNOWN TO CONTAIN ONE OR MORE OF THE NINE LISTED BEXAR COUNTY, TEXAS KARST INVERTEBRATES—Continued

Species (# of caves)	Cave name	Karst fauna region
	Madla's Drop Cave.	
	Helotes Blowhole.	
	Headquarters Cave	Stone Oak.
	Hills and Dales Pit	UTSA.
	Robber's Cave.	
	Lost Pothole	Government Canyon.
C. venii (1)	Braken Bat Cave	Culebra Anticline.
C. vespera (2)	Government Canyon Bat Cave	Government Canyon.
	Unnamed cave 5 miles NE of Helotes	UTSA.
Neoleptoneta microps (2)	Government Canyon Bat Cave	Government Canyon.
	Surprise Sink.	

Rhadine infernalis ewersi is known from three caves in the Stone Oak karst fauna region. *Rhadine infernalis infernalis* is known from 16 caves: one in the Stone Oak karst fauna region, four in the Government Canyon karst fauna region, five in the Helotes karst fauna region, and six in the UTSA karst fauna region. The unnamed subspecies is known from six caves in the Culebra Anticline karst fauna region. We are also aware of six additional caves that contain *Rhadine infernalis* (not identified to subspecies): one in the Culebra Anticline karst fauna region and five in the Government Canyon karst fauna region.

Helotes Mold Beetle

The Helotes mold beetle, *Batrisodes venyivi* (Coleoptera: Pselaphidae), was first collected in 1984 and described by Chandler (1992). The species is currently known from six caves: three in the Helotes karst fauna region, two in the Government Canyon karst fauna region, and one in the UTSA karst fauna region (Table 1). The location of one of the caves located in the Helotes karst fauna region referred to as "unnamed cave ½ mile north of Helotes" is unknown. It is an original record from Barr's (1974) description of *Rhadine exilis*. Due to the number of caves in the general area, the location of this cave cannot be positively identified (George Veni, George Veni & Associates, pers. comm. 2002). The location of the cave in the UTSA karst fauna region referred to as a cave "5 miles NE of Helotes" is also unknown, but based on its descriptive name, is assumed to be within the UTSA karst fauna region. It is possible that this cave may not be a separate location, but may be an existing cave listed by the collector under the alternative name "5 miles NE of Helotes".

The common names for the following six arachnid species have been changed as a result of a meeting of the Committee on Common Names of Arachnids of the American Arachnological Society in 2000. Accordingly, the common names of the species currently in the list of Endangered and Threatened Wildlife (50 CFR 17.11) as: Robber Baron Cave harvestman, Robber Baron cave spider, Madla's cave spider, vesper cave spider, Government Canyon cave spider, and one with no common name (Cicurina venii), have been changed to: Cokendolpher cave harvestman, Robber Baron Cave meshweaver, Madla Cave meshweaver, Government Canyon Bat Cave meshweaver, Government Canyon Bat Cave spider, and Braken Bat Cave meshweaver, respectively.

Cokendolpher Cave Harvestman

The Cokendolpher cave harvestman, *Texella cokendolpheri* (Opilionida: Phalangodidae), was collected in 1982 and described by Ubick and Briggs (1992). Currently, this species, along with the Robber Baron Cave meshweaver, is only known from Robber Baron Cave (Table 1).

Robber Baron Cave Meshweaver

The Robber Baron Cave meshweaver, Cicurina baronia (Araneae: Dictynidae), was first collected in Robber Baron Cave in the Alamo Heights karst fauna region February 28, 1969, by R. Bartholomew (Reddell 1993) and described by Gertsch (1992). The Robber Baron Cave meshweaver (a spider) is only known from Robber Baron Cave in the Alamo Heights karst fauna region (Table 1).

Madla Cave Meshweaver

The Madla Cave meshweaver, *Cicurina madla* (Araneae: Dictynidae), was first collected in October 4, 1963, by J. Reddell and D. McKenzie (Reddell 1993) and described by Gertsch (1992). The Madla Cave meshweaver is currently known from eight caves: one in the Stone Oak karst fauna region; one in the Government Canyon karst fauna region; two in the UTSA karst fauna region; and four in the Helotes karst fauna region (Table 1).

The Service is aware of eleven additional caves from which immature, eyeless troglobitic *Cicurina* spiders have been collected (SWCA 2001). Eight of these are in caves that have other listed species and are either included in proposed critical habitat areas or areas proposed for exclusion due to the provision of special management. The remaining three are in caves where authorization for take of *C. madla* was granted to La Cantera under a section 10(a)(1)(B) permit.

Braken Bat Cave Meshweaver

The Braken Bat Cave meshweaver, *Cicurina venii* (Araneae: Dictynidae), was first collected on November 22, 1980, by G. Veni and described by Gertsch (1992). Braken Bat Cave in the Culebra Anticline karst fauna region remains the only location known to contain this species (Table 1).

Government Canyon Bat Cave Meshweaver

The Government Canyon Bat Cave meshweaver, *Cicurina vespera* (Araneae: Dictynidae), was first collected on August 11, 1965, by J. Reddell and J. Fish (Reddell 1993), and described by Gertsch (1992). The species is currently known from Government Canyon Bat Cave in the Government Canyon karst fauna region and an unnamed cave referred to as "5 miles northeast of Helotes" (Table 1). However, the specimen collected from the latter cave has been tentatively identified as a new species (Cokendolpher, in press).

Government Canyon Bat Cave Spider

The Government Canyon Bat Cave spider, *Neoleptoneta microps* (Araneae: Leptonetidae), was first collected on August 11, 1965, by J. Reddell and J. Fish (Reddell 1993). The species was originally described by Gertsch (1974) as *Leptoneta microps* and later

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reassigned to *Neoleptoneta* following Brignoli (1977) and Platnick (1986). The species is known from two caves in the Government Canyon karst fauna region (Table 1).

Animal Community

Cave Crickets

Cave crickets are a critical source of nutrient input for karst ecosystems (Barr 1968; Reddell 1993). Cave crickets in the genus *Ceuthophilus* occur in most caves in Texas (Reddell 1966). Being sensitive to temperature extremes and drying, cave crickets forage on the surface at night and roost in the cave during the day. Cave crickets lay their eggs in the cave, providing food for a variety of other species (Mitchell 1971b). Some cave species also feed on cave cricket feces (Barr 1968; Poulson *et al.* 1995) as well as on adults and nymphs directly (Cokendolpher, in press; Elliott 1994a). Cave crickets are scavengers or detritivores, feeding on dead insects, carrion and some fruits, but not on foliage (Elliott 1994a).

Based on analysis of cave cricket data collected at Lakeline Cave in northwest Travis County, Texas by William Elliott and Peter Sprouse from 1993 to 1999, cave cricket numbers in Lakeline Cave underwent a major decline following the construction of Lakeline Mall. Under a section 10(a)(1)(B) permit, 0.9 ha (2.3 ac) of land was left undeveloped around the cave, and effects of the development were monitored. Protected areas were established around Temples of Thor, Red Crevice Cave, and Testudo Tube. During the monitoring period, the undeveloped area around Lakeline Cave comprised about 3.2 ha (8 ac) of woodland and grassland surrounded by roads and parking lots. The protected areas around Temples of Thor Cave and Testudo Tube Cave are 42.5 and 10.5 ha, respectively (105 and 26 ac), and one surrounded by additional undeveloped land. We analyzed cave cricket numbers from data collected from 1993 to 1999 at Lakeline Cave, Temples of Thor, and Testudo Tube. The analysis indicated that cave cricket numbers in Lakeline Cave declined while numbers at the other two caves remained stable. Cave cricket numbers at Lakeline Cave declined and were significantly correlated with time ($r^2 = 0.3872$) whereas cricket numbers from Temples of Thor and Testudo Tube, which are in larger preserves (105 and 26 acres respectively, although the surrounding undeveloped area made the effective area larger) remained stable ($r^2 = 0.0007$ and 0.0018 respectively). These results are consistent with reports of declines and extinctions of several invertebrates and small mammals (due to lower survivorship, higher emigration, and/or lower immigration) from habitat patches ranging in size from 2 to 7 ha (5–17 ac) (Mader 1984; Tscharntke 1992; Keith *et al.* 1993; Lindenmayer and Possingham 1995; Hill *et al.* 1996).

Elliott (1994a) stated that cave crickets generally forage within 50 m (164 ft) of caves and other karst features, but have been found up to 60 m (197 ft) away. He also stated that cave crickets may use small, unnoticeable passages from the cave to the surface in addition to the main cave entrance.

Cave cricket populations may have a metapopulation (an assemblage of local populations, called subpopulations, that interact via the dispersal of individuals from one subpopulation to others) or a source-sink population structure and, therefore, it may be important to protect multiple karst features that support cave crickets in a karst ecosystem. "Source" populations are those that generate a flow of migrants to other habitat patches. Population "sinks" are patches where losses of individuals are not replaced by reproduction alone, but rely on continued immigration from source populations (Ehrlich and Ehrlich 1996). Metapopulation dynamics require movement among patches, and persistence requires interacting patches that undergo local extinctions and establishment of new subpopulations in areas previously devoid of individuals (Hanski 1999).

Most information on the population structure of cave cricket species is from studies in the eastern United States and in Europe. Allegrucci *et al.* (1997) found that a cave cricket (*Dolichopoda schiavazzii*) endemic to Tuscany, Italy, had a metapopulation structure. They found that populations of cave crickets from two caves 20 km (12 mi) apart but connected by moist woodlands had 54 migrants per generation and probably exchanged individuals.

Cockley *et al.* (1977) studied a cave cricket (*Ceuthophilus gracilipes*) in the eastern United States. This species is limited to humid, dark, and stable habitats and is found both in caves and in the forest under logs and loose bark. They found limited genetic differentiation of the cave crickets in caves over a 1000 km2 (386 mile2) area and suggested that "the forest populations may serve as genetic bridges" between caves.

Caccone and Sbordoni (1987) studied nine species of North American cave crickets from sites in North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, Kentucky, and Alabama. Seven of the species were obligate cave-dwelling species that emerged at night to feed. Through genetic analyses of the cave-dwelling species, they found that species or groups of populations inhabiting areas where the limestone is continuous and highly fissured are genetically less differentiated than are populations occurring in regions where the limestone distribution is more fragmented. This suggests that cave-dwelling species occurring within continuous limestone blocks migrate through the subsurface environment.

Helf *et al.* (1995) suggested that populations of an eastern species of cave cricket (*Hadenoecus subterraneus*) may be at risk because they do not recover quickly after events such as drought, floods, and temperature extremes that preclude or diminish foraging opportunities. These cave cricket populations may have source-sink population dynamics, with some karst features acting as sources and the majority of karst features acting as sinks, but Helf *et al.* (1995) recommend that even sink populations should be protected because their emigrants can "rescue" source populations that experience local decimation. These studies suggest that it is important to protect geologically connected caves and maintain vegetated corridors between caves.

Other Surface Animals

Many central Texas caves with endangered invertebrate species are frequented by mammals and several species of reptiles and amphibians (Reddell 1967). Although there are no studies establishing the role of mammals in central Texas cave ecology, the presence of a large amount of mammal related materials (scat, nesting materials, and dead bodies) indicates they are probably important. An important source of nutrients for the cave species may be the fungus, microbes, and/or other troglophiles and troglobites that grow or feed on feces (Elliott 1994b; Gounot 1994).

For predatory troglobites, invertebrates that accidently occur in the cave, may be an important nutrient source (Hopper 2000). Documented accidental species include snails, earthworms, terrestrial isopods (commonly known as pillbugs or potato bugs), scorpions, spiders, mites, collembola (primitive wingless insects that are commonly known as springtails), thysanura (commonly known as bristletails and silverfish), harvestmen (commonly known as daddy-long-legs), ants, leafhoppers, thrips, beetles, weevils, moths, and flies (Reddell 1965; Reddell 1966; Reddell 1999).

Vegetation Community

The vegetative community provides nutrient input to the karst ecosystem through plant debris washed in and possibly through roots; supports the animal communities that contribute nutrients to the karst ecosystem (such as cave crickets, small mammals, and other vertebrates); buffers the subsurface environment against drastic changes in the temperature and moisture regime; helps filter pollutants (Biological Advisory Team 1990; Veni & Associates 1988); and helps control certain exotics (such as fire ants) (Porter *et al.* 1988) that may compete with or prey upon the listed species and other karst fauna.

Tree roots have been found to provide a major energy source in shallow lava tubes and limestone caves in Hawaii (Howarth 1981, cited in Howarth 1983). Jackson *et al.* (1999) investigated rooting depth in 21 caves on the Edwards Plateau to assess the below ground vegetational community structure and the functional importance of roots. They observed roots penetrating up to 25 m (82 ft) into the interior of twenty of the caves, with roots of six tree species common to the plateau penetrating to below 5 m (16.4 ft). They speculated that the caves may provide water and nutrients for the trees.

Along with providing nutrients to the karst ecosystem, directly and indirectly, a healthy vegetative community may also help control the spread of exotic species. The imported red fire ant (*Solenopsis invicta*) is an aggressive predator, which has had a devastating and long-lasting impact on native ant populations and other arthropod communities (Vinson and Sorenson 1986; Porter and Savignano 1990) and is a threat to the karst invertebrates (Elliott 1994b; USFWS 1994). Fire ants have been observed building nests both within and near cave entrances as well as foraging in caves, especially during the summer. Shallow caves inhabited by listed karst invertebrates makes them especially vulnerable to invasion by fire ants and other exotic species. Fire ants have been observed preying on several cave species (Elliott 1994b). Karst fauna that are most vulnerable to fire ant predation are the slower-moving adults, nymphs, and eggs (James Reddell, pers. comm., 1994). The presence of fire ants in and around karst areas could have a drastic detrimental effect on the karst ecosystem through loss of both surface and subsurface species that are critical links in the food chain.

The invasion of fire ants is known to be aided by "any disturbance that clears a site of heavy vegetation and disrupts the native ant community" (Porter *et al.* 1988). Porter *et al.* (1991) state that control of fire ants in areas greater than 5 ha (12 ac) may be more effective than in smaller areas since multiple queen fire ant colonies reproduce primarily by "budding," where queens and workers branch off from the main colony and form new sister colonies. Maintaining large, undisturbed areas of native vegetation may also help sustain the native ant communities (Porter *et al.* 1988; 1991).

Woodland-Grassland Community

The woodland-grassland mosaic community typical of the Edwards Plateau is a patchy environment composed of many different plant species. To replicate natural processes, patchy environments require larger minimum areas for conservation than do more homogeneous environments (Lovejoy and Oren 1981). To maintain a viable vegetative community, including woodland and grassland species, a buffer area is needed to shield the core habitat from impacts associated with fragmentation, isolation, edge effects, and other factors.

Enough individuals of each plant species must be present for successful reproduction over the long-term. Viable population size is influenced by needs for satisfactory germination (Menges 1995), genetic variation (Bazzaz 1983; Menges 1995; Young 1995) and pollinator effectiveness (Groom 1998; Jennersten 1995; Bigger 1999). Pavlik (1996) stated that long-lived, woody, self-fertilizing plants with high fecundity would be expected to have minimum viable population sizes in the range of 50–250 reproductive individuals. Fifty reproductive individuals is a reasonable minimum figure for one of the dominant species of the community (juniper) based on reproductive profiles for these species (Van Auken *et al.* 1979; Van Auken *et al.* 1980; Van Auken *et al.* 1981). This figure would likely be an underestimate for other woody species present in central Texas woodlands as subdominant and understory species, because they are more sensitive to environmental changes and do not meet several of the life history criteria needed for the lowest minimal viable population size. Although these species may require population sizes at the higher end of Pavlik's (1996) range (that is, nearer 250 individuals) to be viable, we do not have the data to support that contention. Therefore, we have considered a minimum viable population size for species composing a typical oak/juniper woodland found in central Texas, including both dominant, subdominant, and understory species, to be 80 individuals per species (Dr. Kathryn Kennedy, Center for Plant Conservation, pers. comm., 2002). This is a judgement based on the perception that this habitat type as a whole is fairly mature and the species are relatively long-lived and reproductively successful.

Based on analysis of recorded densities for dominant and important woody species by Van Auken *et al.* (1979; 1980; 1981), we extrapolated the area needed to support 80 reproductive individuals for the dominant, subdominant, and other important woody species in the southern Edwards Plateau. We used observed density per unit area, corrected for non-reproductive individuals, then calculated the area needed to support 80 mature reproductive individuals per species. We found about a third of the ecologically important woody species typical of the Edwards Plateau needed core areas of approximately 32 ha (80 ac) to sustain self-reproducing populations of at least 80 mature individuals.

Maintaining viable grasslands is challenging because many grass species use wind to disperse their seeds and these distances may be small. The process of expansion through rhizomes (underground stems) is slow and clonal, which reduces genetic variability. Primary recruitment of new individuals in grasslands is from seedling establishment. Seed dispersal, soil texture, and suitable soil moisture profiles at critical times are important factors for maintaining viability (Coffin *et al.* 1993).

While grassland may be important to maintaining the karst community, we lack adequate information to factor this information into surface habitat patch size requirements. We believe maintaining the 32 ha core areas will provide the native grasslands needed to support the diversity and nutrients needed for a viable karst ecosystem.

The presence of water in the subsurface environment is important for maintaining the humid conditions, stable temperatures, and natural airflow in the cave. Since soil depth is shallow over the limestone plateau, water collects as sheet flow on the surface following rain and enters the subsurface environment through cave openings, fractures, and solutionally-enlarged bedding planes. This direct, rapid transport of water through the karst allows for little or no purification (USFWS 1994), allowing contaminants and sediments to enter directly into the subsurface environment. As a result, karst features and karst dependent invertebrates are vulnerable to the

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adverse effects of pollution from contaminated ground and surface water. Maintaining stable environmental conditions and protecting groundwater quality and quantity, requires managing surface habitat to avoid threats to the surface and subsurface drainage area of known occupied caves. This includes not only the humanly-accessible cave entrances but also sinks, depressions, fractures and fissures which may serve as subsurface conduits into the cave and to the interstitial spaces used by the invertebrates.

Buffer Areas

Plant and animal communities are affected by "edge effects" or changes to the floral and faunal communities where different habitats meet. The length and width of the edge, as well as the contrast between the vegetational communities, all contribute to edge effects (Smith 1990; Harris 1984). Edge effects include: increases in solar radiation, changes in soil moisture due to elevated levels of evapotranspiration, wind buffeting (Ranny *et al.* 1981), changes in nutrient cycling and the hydrological cycle (Saunders *et al.* 1990), and changes in the rate of leaf litter decomposition (Didham 1998). Edge effects alter the plant communities, which in turn impact the associated animal species. The changes caused by edge effects can occur rapidly. For example, vegetation 2 m (6.6 ft) from a newly created edge can be altered within days (Lovejoy *et al.* 1986).

When plant species composition is altered due to edge effects, changes also occur in the surface animal communities (Lovejoy and Oren 1981; Harris 1984; Mader 1984; Thompson 1985; Lovejoy *et al.* 1986; Yahner 1988; Fajer *et al.* 1989; Kindvall 1992; Tscharntke 1992; Keith *et al.* 1993; Hanski 1995; Lindenmayer and Possingham 1995; Bowers *et al.* 1996; Hill *et al.* 1996; Kozlov 1996; Kuussaari *et al.* 1996; Turner 1996; Mankin and Warner 1997; Burke and Nol 1998; Didham 1998; Suarez *et al.* 1998; Crist and Ahern 1999; Kindvall 1999). These changes in plant and animal species composition that result from edge effects may unnaturally change the nutrient cycling processes required to support cave and karst ecosystem dynamics. To minimize edge effects, the core area must have a sufficient buffer area.

There are two types of edges, hard and soft. "Hard" edges, also called inherent edges, are drastic differences in habitat types, such as grassland to road, forest to clearcut, and are generally long-term or permanent changes. Hard edges can be the result of a sudden natural disruption such as a storm event (Smith 1990), or man-made disturbances such as clearcuts or urbanization. "Soft" edges, also called induced edges, are subtle differences in habitat type. Soft edges can also be abrupt such as where a pine forest abuts a pine plantation, but soft edges occur more often as successional changes or gradual transitions in the vegetative or faunal communities (Smith 1990).

Hard edges can act as a barrier to distribution and dispersal patterns of birds and mammals (Yahner 1988; Hansson 1998). Invertebrate species are affected by edges. Mader *et al.* (1990) found that carabid beetles and lycosid spiders avoided crossing unpaved roads that were even smaller than 3 m (9 ft) wide. Saunders *et al.* (1990) suggested that as little as 100 m (328 ft) of agricultural fields may be a complete barrier to dispersal for small organisms such as invertebrates and some species of birds. In general, for animal communities, species need buffers of 50 to 100 m (164–328 ft) or greater to ameliorate edge effects (Lovejoy *et al.* 1986; Wilcove *et al.* 1986; Laurance 1991; Laurance and Yensen 1991; Kapos *et al.* 1993; Andrefi 1995; Reed *et al.* 1996; Burke and Nol 1998; Didham 1998; Suarez *et al.* 1998).

Non-native fire ants are known to be harmful to many species of invertebrates and vertebrates. In coastal southern California, Suarez *et al.* (1998) found that densities of the exotic Argentine ant (*Linepithema humile*), which has a life history similar to the fire ant, are greatest near disturbed areas. Native ant communities tended to be more abundant in native vegetation and less abundant in disturbed areas. Based on the association of the Argentine ant and distance to the nearest edge in urban areas, core areas may only be effective at maintaining natural populations of native ants when there is a buffer area of at least 200 m (656 ft) (Suarez *et al.* 1998).

Both hard and soft edges may allow invasive plant species to gain a foothold where the native vegetation had previously prevented their spread (Saunders *et al.* 1990; Kotanen *et al.* 1998; Suarez *et al.* 1998; Meiners and Steward 1999). A general rule for protecting forested areas from edge effects that are in proximity to clear-cut areas is to use the "three tree height" rule (Harris 1984) for estimating the width of the buffer area needed. We used this general rule to estimate the width of buffer areas needed to protect the habitat core areas. The average height of native mature trees in the Edwards woodland association in Texas ranges from 3 to 9 m (10 to 30 ft) (Van Auken *et al.* 1979). Applying the general rule, and using the average value of 6.6 m for tree height, we estimated a buffer width of at least 20 m (66 ft) is needed around a core habitat area to protect the vegetative community from edge effects.

Patch Configuration

Shape

The more edge a habitat fragment or patch has, the larger the patch or fragment size should be to protect the core area from deleterious edge effects (Ranny *et al.* 1981; Lovejoy *et al.* 1986; Yahner 1988; Laurance 1991; Laurance and Yensen 1991; Kelly and Rotenberry 1993; Holmes *et al.* 1994; Reed *et al.* 1996; Turner 1996; Suarez *et al.* 1998). Designing a habitat area that minimizes edge effects means keeping the edge to area ratio low by increasing the patch size (Holmes *et al.* 1994) and/or using optimal shapes. Circular habitat areas, or ones that are contiguous with other protected habitat areas, are preferable (Diamond 1975; Wilcove *et al.* 1986; Kelly and Rotenberry 1993; Wigley and Roberts 1997; Kindvall 1999). A habitat area with a circular configuration will have less edge than a habitat area of equal size with any other configuration.

Fragmentation

Haskell (2000) examined the effect of habitat fragmentation by unpaved roads through otherwise contiguous forest in the southern Appalachian Mountains and found reduced soil macroinvertebrate species abundance up to 100 m (328 ft) from the road and declines in faunal richness up to 15 m (50 ft) from the road. Haskell (2000) pointed out that "these changes may have additional consequences for the functioning of the forest ecosystem and the biological diversity found within this system. The macroinvertebrate fauna of the leaf litter plays a pivotal role in the ability of the soil to process energy and nutrients." Haskell further points out that these changes may in turn affect the distribution and abundance of other organisms, particularly plants. Changes in abundance in litter dwelling macroinvertebrates may also affect ground-foraging vertebrate fauna (Haskell 2000).

Invertebrate biomass per unit area has been found to be less in small fragmented habitats, which may result in reduced food available for cave crickets. Burke and Nol (1998), working in southern Ontario, Canada, found a greater biomass of leaf litter invertebrates in large (≥20 ha (49 ac)) versus smaller forested areas. Zanette *et al.* (2000) in New South Wales, Australia, reported the biomass of ground dwelling invertebrates was 1.6 times greater in large (>400 ha (988 ac)) versus smaller (~55 ha (136 ac)) forested areas.

The ability of individuals to move between preferred habitat patches is essential for colonization and population viability (Eber and Brandl 1996; Fahrig and Merriam 1994; Hill *et al.* 1996; Kattan *et al.* 1994; Kindvall 1999; Kozlov 1996; Kuussaari *et al.* 1996; Turner 1996). Patch shapes that allow connection with the most number of neighboring patches increase the likelihood that a neighboring patch will be occupied (Fahrig and Merriam 1994; Kindvall 1999; Kuussaari *et al.* 1996; Tiebout and Anderson 1997). If movement among populations is restricted and a population is isolated, the habitat patch size must be large enough to ensure that the population can survive (Fahrig and Merriam 1994).

It is likely that many cave systems are connected throughout the subsurface geologic formation even though this may not be readily apparent from surface observations. The extent to which listed species use interstitial spaces and passages is not fully known. Troglobitic species may retreat into these small interstitial spaces where the physical environment is more stable (Howarth 1983) and may spend the majority of their time in such retreats, only leaving them during temporary forays into the larger cave passages to forage (Howarth 1987).

Summary

The recovery of the endangered karst invertebrates depends on a self-sustaining karst ecosystem; surface and subsurface drainage basins to maintain adequate levels of moisture; and a viable surface animal and plant community for nutrient input and protection of the subsurface from adverse impacts. The area needed to conserve such an ecosystem includes a core area buffered from the impacts associated with fragmentation, isolation, edge effects, and other factors that may threaten ecosystem stability. Depending on the size and shape of these core habitat areas or patches, to remain viable, they may also require connections to other habitat patches.

In summary, around known caves we believe an area approximately 36 ha (90 ac) that includes a core habitat area of 32 ha (80 ac) surrounded by a buffer 20 m (66 ft) wide, comprising about 4 ha (10 ac), is needed to protect and maintain the area flora, fauna, and nutrient base. The amount of area in the buffer will be larger if the core habitat area is irregularly shaped. Where possible, these areas should be continuous to minimize fragmentation.

Previous Federal Action

On January 16, 1992, we received a petition submitted by representatives of the Helotes Creek Association, the Balcones Canyonlands Conservation Coalition, the Texas Speleological Association, the Alamo Group of the Sierra Club, and the Texas Cave Management Association to add the nine invertebrates to the List of Threatened and Endangered Wildlife. On December 1, 1993, we announced in the **Federal Register** (58 FR 63328) a 90-day finding that the petition presented substantial information that listing may be warranted.

On November 15, 1994, we added eight of the nine invertebrates to the Animal Notice of Review as category 2 candidate species in the **Federal Register** (59 FR 58982). We intended to include *Rhadine exilis* in the notice of review, but an oversight occurred and it did not appear in the published notice. Category 2 candidates, a classification since discontinued, were those taxa for which we had data indicating that listing was possibly appropriate, but for which we lacked substantial data on biological vulnerability and threats to support proposed listing rules.

On December 30, 1998, we published a proposed rule to list the nine Bexar County karst invertebrates as endangered (63 FR 71855). Incorporating comments and new information received during the public comment period on the proposed rule, we published a final rule to list the nine Bexar County karst invertebrate species as endangered in the **Federal Register** on December 26, 2000 (65 FR 81419).

In the proposed rule, we indicated that designation of critical habitat was not prudent for the nine invertebrates because the publication of precise species locations and maps and descriptions of critical habitat in the **Federal Register** would make the nine invertebrates more vulnerable to incidents of vandalism through increased recreational visits to their cave habitat and through purposeful destruction of the caves. We also indicated that designation of critical habitat was not prudent because it would not provide any additional benefits beyond that provided through listing the species as endangered.

Based on recent court decisions, (for example, *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)) and the standards applied in those judicial opinions, we reexamined the question of whether critical habitat for the nine invertebrates would be prudent. After reexamining the available evidence for the nine invertebrates, we did not find specific evidence of collection or trade of these or any similarly situated species and found that "by designating critical habitat in a manner that does not identify specific cave locations, the threat of vandalism by recreational visits to the cave or purposeful destruction by unknown parties should not be increased" (65 FR 81419).

In the final rule to list the species as endangered (65 FR 81419), we determined that critical habitat designation was prudent as we did not find specific evidence of increased vandalism. Also, we found that there may also be some educational or informational benefit to designating critical habitat. Therefore, we found that the benefits of designating critical habitat for the nine karst invertebrate species outweighed the benefits of not designating critical habitat.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) stated that we would undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year. As explained in detail in the Listing Priority Guidance, our listing budget was insufficient to allow us to immediately complete all of the listing actions required by the Act during FY 2000. We stated that we would propose designation of critical habitat in the future at such time when our available resources and priorities allowed.

On November 1, 2000, the Center for Biological Diversity (Center) filed a complaint against the Service alleging that the Service exceeded its one-year deadline to publish a final rule listing and designating critical habitat for the nine Bexar County cave invertebrates. Subsequent to the Service publishing the final rule to list these nine species as endangered on December 26, 2000, the Center agreed to dismiss its claim regarding the listing of the species. The Center and the Service reached a settlement on the designation of critical habitat where the Service agreed to submit a proposed critical habitat determination for publication in the **Federal Register** on or by June 30, 2002, and a final determination by January 25, 2003. Sixty-day extensions on the deadlines to submit both the proposed and final critical habitat determinations to the **Federal Register** were approved by the court and the new deadlines are

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August 31, 2002, and March 25, 2003, respectively.

On February 28, 2002, we mailed letters to the Texas Parks and Wildlife Department and the Texas Natural Resource Conservation Commission informing them that we were in the process of designating critical habitat for the nine Bexar County karst invertebrates. We requested any additional available information on the listed species, including: Biology; life history; habitat requirements; distribution, including geologic controls to species distribution; current threats; and management activities, current or in the foreseeable future. The letters contained a current list of Bexar County caves known to contain listed species, a map showing the general distribution of these species within each karst fauna region and a list of the references pertaining to these species and their distribution as we know it. We requested their review and comments on our current information and asked their assistance in providing any additional available information.

We also mailed approximately 300 pre-proposal letters to interested parties and cave biologists on March 20, 2002, informing them that we were in the process of designating critical habitat for the nine listed karst invertebrates. The letters contained a copy of the final rule to list these Bexar County invertebrate species as endangered, a map showing the general distribution of these species, a list of literature about these species and their habitats, and a brief summary with questions and answers on critical habitat. We requested comments on (1) the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of excluding areas will outweigh the benefits of including areas; (2) land use practices and current or planned activities in the subject areas and their possible impacts on possible critical habitat; (3) any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and (4) economic and other benefits associated with designating critical habitat for the Bexar County karst invertebrates.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

"Conservation," as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Destruction or adverse modification is direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical. Consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus.

Critical habitat provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species, and can alert the public and land-managing agencies to the importance of those areas.

To be included in a critical habitat designation, the habitat must be "essential to the conservation of the species." Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (such as areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

Section 4 (b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular areas as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished reports.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Since much of the cave-forming rock is located on private property in areas that have been inadequately surveyed, additional populations for some of these species are likely to exist and may be discovered over time. We recognize that designation of critical habitat for these species likely does not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, this critical habitat designation does not signal that habitat outside the designation is unimportant or may not be required for recovery. Habitat areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. It is possible that federally funded or assisted projects affecting listed species outside their designated critical habitat areas could jeopardize those species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation may not totally coincide with the direction and substance of future recovery plans, habitat conservation plans (HCP), or other species conservation planning and recovery efforts if new information shows changes are needed.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific and commercial information available to determine critical habitat areas that contain the physical and biological features that are essential for the conservation of these nine species. This information included: (1) Peer-reviewed scientific publications; (2) the final listing rule for the nine Bexar County karst invertebrate species (65 FR 81419); (3) unpublished field data collected by Service biologists; (4) unpublished survey reports, notes and communications with other qualified biologists or experts; (5) published descriptions of the regional geology (Veni 1988; Soil Conservation Service 1962; Veni 1994); (6) the Endangered Species Recovery Plan for Endangered Karst Invertebrates in Travis and Williamson Counties, Texas, (USFWS 1994); and (7) digital orthophotographs flown in March 2001 obtained from the Bexar County Appraisal District.

In determining the areas in Bexar County that are essential to the conservation of the listed invertebrates, we considered all karst features currently known to be occupied and the surrounding surface ecosystem on which the species depend. We believe that other occupied karst features likely exist in Bexar County that are essential to species survival, especially for those species known from only a few locations (such as *Cicurina vespera*, *Cicurina venii*, *Batrisoides venyivi*, and *Neoleptoneta microps*). However, we do not currently know where these locations are and therefore cannot include them in this critical habitat designation.

Primary Constituent Elements

We are required to consider those physical and biological features essential to the conservation of these nine karst invertebrates that may require special management considerations and protection. These features are termed primary constituent elements. Primary constituent elements include but are not limited to: space for individual and population growth and for normal behavior; food, water, air, minerals and other nutritional or physiological requirements; cover or shelter; and habitats that are protected from disturbance and represent the historic geographical and ecological distributions of the species.

The primary constituent elements required by the nine karst invertebrates consist of: (1) The physical features of karst-forming rock containing subterranean spaces with stable temperatures, high humidities (near saturation) and suitable substrates (for example, spaces between and underneath rocks suitable for foraging and sheltering), and (2) the biological features of a healthy surface community of native plants (for example, juniper-oak woodland) and animals (for example, cave crickets) surrounding the karst feature that provides nutrient input and buffers the karst ecosystem from adverse effects (from, for example, non-native species invasions, contaminants, and fluctuations in temperature and humidity).

The areas proposed as critical habitat for the nine karst invertebrates are designed to incorporate what is essential for their conservation. Habitat components that are essential for these species meet the primary biological needs of foraging, reproduction and refugia from human induced or other environmental threats. Karst ecosystems surrounded by a vegetative community that supports cave crickets and other trogloxenes and troglophiles; where water quality and quantity in the surface and subsurface drainage basin are protected; and that are protected from unrestricted human-entry and other threats (such as fire ants) are essential for the conservation of viable populations of these endangered karst invertebrates.

Criteria Used To Delineate Critical Habitat

We used several criteria to identify and delineate lands for designation as critical habitat: caves known to contain one or more of the nine endangered karst invertebrates; the footprint of the known occupied cave, including the known and estimated subsurface extent; contiguous karst deposits; and at least 36 ha (90 ac) of vegetation surrounding each known occupied cave or complex of caves essential to the functioning of a healthy ecosystem.

Species location information was obtained from presence/absence survey reports submitted during project consultations with the Service, annual reports on research and recovery activities conducted under a section 10(a)(1)(A) scientific permit, section 5 species status reports, and literature published in peer reviewed journals. Survey reports and scientific permit annual reports also contained cave location information, typically in the form of a cave location indicated on a U.S. Geological Survey topographic maps, and a map of the cave footprint. We submitted a request to the Texas Speleological Survey (TSS) for any available digital location data (UTM coordinates) for Bexar County caves known to contain one or more of the nine endangered species. TSS is a non-profit corporation established in 1961 to collect, organize, and maintain information on Texas caves and karst for scientific, educational, and conservation purposes, and to support safe and responsible cave exploration, and is affiliated with the Texas Memorial Museum, the Texas Speleological Association, and the National Speleological Society. TSS provided all available digital location data, and reviewed and confirmed our location data for caves where no digital information was available. The precision of the locations for which digital location data were available ranged from 1 m to 10 m (3ft to 33 ft) and data documented on topographic maps was estimated to be accurate to within 10 m to 20 m (33 ft to 66 ft). This variability in precision was taken into account when delineating proposed boundaries. The TSS provided digital location information to us based on our agreement that the information would only be accessible to the Austin Ecological Services Field Office staff and would not be released. We further agreed that any requests for such information would be directed to TSS as owners of the data. The location of the known occupied caves within each unit is not specified in order to protect these caves from vandalism.

We referred to Veni's 1994 karst zones maps to ensure that the majority of the lands within each proposed unit overlaid a contiguous deposit of karst-bearing rock either known to contain the listed species (Zone 1) and/or having a high probability of suitable habitat for the listed species (Zone 2) in order to maintain subsurface connectivity for species movement throughout the contiguous karst deposit. Since the 1994 report, a significant amount of additional information has become available, either as a result of the discovery of new caves containing the listed species, or additional biological surveys conducted in previously

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mapped caves and/or as a result of the release of information not available at the time of the 1994 report. As a result, some of these caves for which critical habitat is being proposed are depicted as occurring within Zone 2. These areas of Zone 2 now meet the definition of Zone 1. See the previous "Subsurface Environment" section for definitions of Veni's karst zones.

Where possible, the proposed critical habitat units contain at least 36 ha (90 ac) of self-reproducing native vegetated area surrounding each known occupied cave or complex of caves. This vegetated area includes a core vegetative community, cave cricket foraging area; and buffer areas that protect the core habitat from impacts associated with fragmentation, isolation, and edge effects. This area also includes the local surface and subsurface drainage areas, to the extent known.

We consulted recent digital orthophotographs (March 2001) and parcel maps (generated in early 2002) obtained from the Bexar County Appraisal District to determine the current status of habitat surrounding the known occupied caves and the extent of fragmentation caused by existing development within and adjacent to each habitat area. Several units were enlarged to encompass undisturbed vegetated areas to compensate for internal fragmentation due to existing development. Where possible, boundary lines were drawn along identifiable landmarks including roads, named creeks and rivers, and property boundaries. Several units were described as a circular area encompassed within a square or rectangle bounded by corner points given in Texas State Plane (South Central) in feet, referenced to North American Horizontal Datum 1983 (NAD 83). Coordinates were derived from the 2001 digital orthophotographs. A description of each unit and the current status of the lands in and around the unit are presented below under "Proposed Critical Habitat Unit Descriptions".

Existing human-constructed, above ground, impervious structures and associated landscaping within the boundaries of mapped units do not contain the primary constituent elements and are not considered to be critical habitat. Such features and structures include but are not limited to buildings and paved roads. However, areas below ground under these structures and vegetation are considered to be critical habitat since subterranean spaces containing these species and/or transmitting moisture and nutrients through the karst ecosystem extend, in some cases, underneath these existing human-constructed structures and landscaped areas.

Critical Habitat Proposal

Lands proposed as critical habitat for the nine karst invertebrates occur in 25 separate units with a total area of approximately 3,857 ha (9,516 ac). The lands within the proposed units are under private, city, State, and Federal ownership. Table 2 below lists the known occupied caves, the karst fauna region, the total area, land ownership, and the listed species that occur within each proposed unit.

TABLE 2.—KNOWN OCCUPIED CAVES, THE KARST FAUNA REGION (KFR), TOTAL AREA (HECTARES (HA), ACRES (AC)), LAND OWNERSHIP AND LISTED SPECIES THAT OCCUR WITHIN EACH PROPOSED CRITICAL HABITAT UNIT

Unit and known caves in unit	KFR	Total area of unit	Ownership	Listed species in unit
1a. Bone Pile Cave	Government Canyon	76 ha, 188 ac	State	*N. microps.*
Surprise Sink				*R. infernalis.*
1b. Government Canyon Bat Cave	Government Canyon	47 ha, 116 ac	State	*C. vespera.*
				N. microps.
				R. exilis.
				R. infernalis.
1c. Lost Pothole	Government Canyon	47 ha, 116 ac	State	*C. madla.*
1d. Lithic Ridge Cave	Government Canyon	47 ha, 116 ac	State	*R. infernalis.*
1e. Canyon Ranch Pit*	Government Canyon	341 ha, 842 ac	Private, State	*R. infernalis.*
Fat Man's Nightmare Cave*				*R. exilis.*
Pig Cave				*B. venyivi.*
San Antonio Ranch Pit				
Scenic Overlook Cave*				
Tight Cave				
2. Logan's Cave	Helotes	99 ha, 245 ac	Private	*C. madla.*
Madla's Drop Cave				*R.infernalis.*
				R. exilis.
3. Helotes Blowhole*	Helotes	63 ha, 154 ac	Private	*B. venyivi.*
Helotes Hilltop*				*C. madla.*
				R. infernalis.
				R. exilis.
4. Kamikazi Cricket Cave	UTSA	63 ha, 154 ac	Private	*R. infernalis.*
				R. exilis.
5. Christmas Cave	Helotes	47 ha, 116 ac	Private	*B. venyivi.*
				C. madla.
				R. infernalis.
				R. exilis.
6. John Wagner Ranch Cave No. 3*	UTSA	45 ha, 111 ac	Private	*R. infernalis.*
				R. exilis.
7. Young Cave No. 1	UTSA	50 ha, 123 ac	Private	*R. exilis.*
8. Hills and Dales Pit*	UTSA	174 ha, 428 ac	Private	*C. madla.*
Robber's Cave				*R. infernalis.*
Three Fingers Cave				*R. exilis.*
9. Mastodon Pit	UTSA	71 ha, 175 ac	State, Private	*R. exilis.*
10. Flying Buzzworm Cave	Stone Oak	367 ha, 906 ac	Federal, City, Private	*C. madla.*
Headquarters Cave				*R. infernalis.*
Low Priority Cave				*R. exilis.*

TABLE 2.—KNOWN OCCUPIED CAVES, THE KARST FAUNA REGION (KFR), TOTAL AREA (HECTARES (HA), ACRES (AC)), LAND OWNERSHIP AND LISTED SPECIES THAT OCCUR WITHIN EACH PROPOSED CRITICAL HABITAT UNIT—Continued

Unit and known caves in unit	KFR	Total area of unit	Ownership	Listed species in unit
11. 40 mm Cave	Stone Oak	1,273 ha, 3,143 ac	Federal	*R. exilis.*
B–52 Cave				
Backhole				
Boneyard Pit				
Bunny Hole				
Cross the Creek Cave				
Dos Viboras Cave				
Eagle's Nest Cave				
Hilger Hole				
Hold-Me-Back Cave				
Isocow Cave				
MARS Pit				
MARS Shaft				
Pain in the Glass Cave				
Platypus Pit				
Poor Boy Baculum Cave				
Root Canal Cave				
Root Toupee Cave				
Strange Little Cave				
Up the Creek Cave				
12. Hairy Tooth Cave	Stone Oak	105 ha, 258 ac	Private	*R. exilis.*
Ragin' Cajun Cave				
13. Black Cat Cave	Stone Oak*	51 ha, 125 ac	Private	*R. exilis.*
14. Game Pasture Cave No. 1	Culebra Anticline	173 ha, 426 ac	Private	*R. infernalis.*
King Toad Cave				
Stevens Ranch Trash				
15. Braken Bat Cave	Culebra Anticline	195 ha, 481 ac	Private	*C. venii.*
Isopit				*R. infernalis.*
Obvious Little Cave				
Wurzbach Bat Cave				
16. Caracol Creek Coon Cave	Culebra Anticline	61 ha, 152 ac	Private	*R. infernalis.*
17. Madla's Cave*	Helotes	48 ha, 118 ac	Private	*C. madla.*
				R. infernalis.
18. Mattke Cave	UTSA	40 ha, 100 ac	Private	*R. infernalis.*
Scorpion Cave				
19. Genesis Cave	Stone Oak	59 ha, 146 ac	Private	*R. infernalis.*
20. Robber Baron Cave	Alamo Heights	160 ha, 395 ac	Private	*C. baronia.*
				T. cokendolpheri.
21. Hornet's Last Laugh Pit	Stone Oak	155 ha, 382 ac	Private	*R. exilis.*
Kick Start Cave				
Springtail Crevice				
Totals:				
25 57		3,857 ha, 9,516 ac.		

*Indicates caves and their associated preserve lands that have special management under La Cantera's Section 10 permit and have therefore not been included in the proposed critical habitat designation. These caves and their associated preserve lands were not included in the totals in this table.

The lands within the proposed critical habitat units, with the exception of Units 19 and 20, provide the full range of primary constituent elements needed by the nine karst invertebrates including (1) the physical features of karst-forming rock containing subterranean spaces with stable temperatures, high humidities (near saturation) and suitable substrates (for example, spaces between and underneath rocks suitable for foraging and sheltering), and (2) the biological features of a healthy surface community of native plants (for example, juniper-oak woodland) and animals (for example, cave crickets) surrounding the karst feature that provide nutrient input and buffers the karst ecosystem from adverse effects (from, for example, non-native species invasions, contaminants, and fluctuations in temperature and humidity). Lands within Units 19 and 20 are heavily urbanized and intensive management may be required to provide nutrients and water to the listed species within these units. See "Proposed Critical Habitat Unit Descriptions" below for detailed descriptions of all units.

Twelve caves known to contain one or more of the listed species were not included in the proposed critical habitat designation. The caves referred to as "unnamed cave ½ mile N of Helotes" and "5 miles NE of Helotes" were not specifically included because their precise locations are unknown.

La Cantera Cave No. 1 and La Cantera Cave No. 2 were also not included in this proposed critical habitat designation. La Cantera received a section 10(a)(1)(B) permit for take of the listed species in La Cantera Cave No. 1 and La Cantera Cave No. 2. After evaluating the HCP and associated information, we determined that a sufficient number of caves containing these species remained so that take of the species within these two caves would not preclude recovery of the species. Therefore, La Cantera Cave No. 1 and La Cantera Cave No. 2 were not included in this designation because

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they are not considered essential to the conservation of the species. The decision to issue the permit was also based on La Cantera's proposal to mitigate for take of the species within these caves by purchasing and managing eight caves known to contain one or more of the listed species for which take was being permitted and their associated preserve lands. These mitigation caves are Canyon Ranch Pit, Fat Man's Nightmare Cave, and Scenic Overlook Cave and the surrounding approximately 30 ha (75 ac) (within Unit 1e); Helotes Blowhole and Helotes Hilltop caves and the surrounding approximately 10 ha (25 ac) (within Unit 3); John Wagner Cave No. 3 and the surrounding approximately 1.6 ha (4 ac) (within Unit 6); Hills and Dales Pit and the surrounding approximately 28 ha (70 ac) (within Unit 8); and Madla's Cave and the surrounding approximately 2 ha (5 ac) (within Unit 17). La Cantera recently completed their purchase of these karst preserves through conservation easement and/or fee simple title and has agreed to protect and manage them in perpetuity in accordance with the conservation needs of the species. Since these areas do not require additional special management beyond that provided for through the HCP and do not meet the definition of critical habitat, these caves and their associated preserve lands were also excluded from this proposed critical habitat designation.

Proposed Critical Habitat Unit Descriptions

Units 1a, 1b, 1c, 1d

Units 1a, 1b, 1c, and 1d are located on Government Canyon State Natural Area (GCSNA), an approximately 2,688-ha (6,643-ac) area owned and managed by the Texas Parks and Wildlife Department (TPWD). GCSNA was purchased in 1993 and is not currently accessible to the public. The projected opening is late 2003 or early 2004. Lands within the four proposed units are undeveloped, with several one-lane, unpaved roads which will serve primarily as pedestrian trails once the facility opens. Unauthorized public vehicular traffic will not be allowed (George Kegley, TPWD, pers. comm. 2002). An unpaved road/trail crosses Units 1a, 1b, and 1c. Unit 1a contains two known occupied caves and Units 1b, 1c, and 1d each contain one cave known to contain listed species (Table 2).

These units were delineated to encompass at least 36 ha (90 ac) of vegetation around the known occupied caves, overlying a contiguous deposit of karst-bearing rock. The majority of GCSNA, including the proposed units, are defined by Veni's 1994 karst zone maps as occurring within Zone 2. Since lands within this unit are primarily undeveloped and the property is under one ownership, we were unable to delineate the boundaries of the units using roads or parcel boundaries, and instead delineated the units as squares encompassing approximately 36-ha circular areas containing the endangered species cave habitat.

Unit 1e

The majority of Unit 1e consists of large tracts of privately owned land that is primarily undeveloped with the exception of several small private and/or county roads. A small corner of GCSNA also occurs in this unit. No highways or major roadways occur within the unit. This unit contains six caves known to contain listed species (Table 2). Three of the caves are located on an approximately 162–ha (400–ac) privately-owned, undeveloped, property bordered by GCSNA to the west and south, La Cantera's 30–ha (75–ac) Canyon Ranch preserve to the north, and by the City of San Antonio's Iron Horse Canyon property on the east. The 162–ha (400–ac) property also contains four caves that may contain suitable habitat for one or more of the listed species, but require additional surveys during suitable environmental conditions (Kemble White, SWCA, pers.comm. 2002). Three of these caves are within the 36–ha (90–ac) habitat area of a known occupied cave on the property.

Three of the six known occupied caves within this unit and their associated preserve lands have been excluded from this critical habitat designation. The 30–ha (75–ac) Canyon Ranch Preserve contains Canyon Ranch Pit, Fat Man's Nightmare Cave, and Scenic Overlook Cave and has been acquired by La Cantera under their Section 10(a)(1)(B) permit, which also requires that these caves and the surrounding preserve lands be managed in perpetuity for the conservation of the species. Since these lands do not require special additional management, they have been excluded from critical habitat designation.

The City of San Antonio's Iron Horse Canyon property is approximately 241 ha (595 ac). Two caves containing listed species occur on the property (Kemble White, SWCA, pers. comm. 2002). However, the surveys were conducted in these caves prior to the species' listing and to date, we have not been able to obtain a copy of the survey report with cave names and precise locations.

This unit was delineated to encompass at least 36 ha of vegetation around each of the six known occupied caves overlying contiguous deposits of karst-bearing rock. Unit 1e is defined by Veni's 1994 karst zone maps as occurring within Zone 2. This unit was enlarged to include the City of San Antonio's Iron Horse Canyon property, which contains two known occupied caves. Since we are unsure about the location of these caves, the entire property was included within the critical habitat designation. This unit may be modified depending on additional location information about these two caves obtained during the public comment period for this proposed rule. The unit was also enlarged to include one of the four caves on the 162-ha (400-ac) property, which is believed to contain suitable habitat for one or more of the listed species, and a 36–ha habitat area around the cave. This unit may be modified depending on the results of additional species surveys that may be conducted in this cave during the public comment period for this proposed rule. The unit boundaries were delineated following roads and parcel boundaries.

Unit 2

Unit 2 consists of large, wooded tracts which appear to be undeveloped with the exception of several buildings. The unit contains two or three small private or county roads, but no highways or major roadways. Two caves known to contain listed species occur within Unit 2 (Table 2).

This unit was delineated to encompass at least 36 ha (90 ac) of vegetation around each of the two known occupied caves overlying a contiguous deposit of karst-bearing rock. Unit 2 is defined by Veni's 1994 karst zone maps as occurring within Zone 2. The unit was enlarged to encompass undisturbed, unfragmented woodland to compensate for internal fragmentation due to several small roads, buildings and an area from which the majority of the woodland has been removed. The unit boundaries were delineated primarily along existing roads and parcel boundaries.

Unit 3

Unit 3 consists of relatively large, wooded tracts. The tracts along the northern side of the unit have been developed with homes, but it appears that the remainder of the properties within the unit are undeveloped. The unit contains several small residential roads, but no major roadways or highways. The unit is bordered by Bandera Road, a four-lane divided roadway, and by two-lane residential roads. The unit contains two known occupied caves (Table 2) which, along with their associated preserve lands, have been excluded from this critical habitat designation. Helotes Blowhole and Helotes Hilltop Cave and the approximately 10 ha (25 ac) surrounding the caves has been acquired by La Cantera under their Section 10(a)(1)(B) permit which requires that these caves and the surrounding preserve lands be managed in perpetuity for the conservation of the species. Since these lands do not require additional special management, they have been excluded from critical habitat designation.

This unit was delineated to encompass at least 36 ha (90 ac) of vegetation around the two known occupied caves overlying contiguous deposits of karst-bearing rock. The majority of Unit 3 is defined by Veni's 1994 karst zone maps as occurring within Zone 1. The unit was delineated to encompass the majority of the contiguous Zone 1 karst deposit associated with the two known occupied caves while maximizing the amount of undisturbed, unfragmented woodland surrounding the cave. The unit was enlarged to include additional woodland areas to compensate for internal fragmentation due to several small roads, buildings and an area from which the majority of the woodland has been removed. The unit boundaries were delineated along existing roads.

Unit 4

Unit 4 consists of relatively large wooded tracts subdivided for residential development, of which few appear to be developed. The unit contains several residential roads, but no major roadways or highways. Lands surrounding Unit 4 consist of relatively large subdivided residential tracts that appear to be largely undeveloped. One cave known to contain listed species occurs within Unit 4 (Table 2).

This unit was delineated to encompass at least 36 ha (90 ac) of vegetation around the known occupied cave, overlying a contiguous deposit of karst-bearing rock. The majority of Unit 4 is defined by Veni's 1994 karst zone maps as occurring within Zone 1. The unit was delineated to encompass the majority of the contiguous Zone 1 karst deposit associated with the known occupied cave while maximizing the amount of undisturbed, unfragmented vegetation in the unit. The unit was enlarged to include additional woodland to compensate for internal fragmentation due to several residential roads and residential development that occur within the unit. We were unable to delineate the boundaries of the unit using roads or parcel boundaries due to their configuration and instead delineated the unit as a square encompassing an approximately 36–ha circular area containing the endangered species cave habitat.

Unit 5

Unit 5 consists of a large tract of undeveloped, woodland and several smaller, wooded tracts developed with homes and an associated residential road. The unit is bordered to the north and northwest by large tracts of undeveloped woodland and bordered on the remaining sides by smaller tracts with some residential development. One cave known to contain listed species occurs within Unit 5 (Table 2).

This unit was delineated to encompass at least 36 ha (90 ac) of vegetation around the known occupied cave, overlying a contiguous deposit of karst-bearing rock. The majority of Unit 5 is defined by Veni's 1994 karst zone maps as occurring within Zones 1 and 2. The unit was delineated to encompass the majority of the contiguous Zone 1 and 2 karst deposits associated with the known occupied cave while maximizing the amount of undisturbed, unfragmented woodland surrounding the cave. We were unable to delineate the boundaries of the unit using roads or parcel boundaries due to their configuration and instead delineated the unit as a square encompassing an approximately 36-ha circular area containing the endangered species cave habitat.

Unit 6

Unit 6 consists primarily of relatively large tracts of undeveloped woodland with several smaller tracts developed with homes. The unit is bordered to the east by large, wooded, undeveloped tracts and to the west by a residential development. The unit contains one known occupied cave (Table 2) which along with its associated preserve lands have been excluded from this critical habitat designation. John Wagner Ranch Cave No. 3 and the approximately 1.6 ha (4 ac) surrounding the cave has been acquired by La Cantera under their Section 10(a)(1)(B) permit which requires that the cave and the surrounding preserve lands be managed in perpetuity for the conservation of the species. Since these lands do not require additional special management, they have been excluded from critical habitat designation.

This unit was delineated to encompass at least 36 ha (90 ac) of vegetation around the known occupied cave, overlying a contiguous deposit of karst-bearing rock. The majority of Unit 6 is defined by Veni's 1994 karst zone maps as occurring within Zone 1. The unit was delineated to encompass the majority of the contiguous Zone 1 karst deposit associated with the known occupied cave while maximizing the amount of undisturbed, unfragmented woodland surrounding the cave. We were unable to delineate the boundaries of the unit using roads or parcel boundaries due to their configuration and instead delineated the unit as a square encompassing an approximately 36-ha circular area containing the endangered species cave.

Unit 7

Unit 7 consists of relatively large, wooded tracts, several of which have been developed with homes. The unit contains several residential roads, but no highways or major roadways. One cave known to contain listed species occurs within Unit 7 (Table 2).

This unit was delineated to encompass at least 36 ha (90 ac) of vegetation around the known occupied cave, overlying a contiguous deposit of karst-bearing rock. The majority of Unit 7 is defined by Veni's 1994 karst zone maps as occurring within Zone 1. The unit was delineated to encompass the majority of the contiguous Zone 1 karst deposit associated with the known occupied cave while also maximizing the amount of undisturbed, unfragmented woodland surrounding the cave. We were unable to delineate the boundaries of the unit using roads or parcel boundaries due to their configuration and instead delineated the unit as a square encompassing an approximately 36-ha circular area containing the endangered species cave.

Unit 8

The majority of the lands within Unit 8 consist of large tracts of primarily undeveloped woodland. The southeastern portion of the unit has been subdivided and developed with homes. Part of this area has been developed with residential roads, but currently contains no homes. The unit contains three known occupied caves (Table 2). One of the caves along with its associated preserve lands, have been excluded from this critical habitat designation. Hills and Dales Pit and approximately 28 ha (70 ac) surrounding the cave have been acquired by La Cantera under their Section 10(a)(1)(B) permit which requires that the cave and the

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surrounding preserve lands be managed in perpetuity for the conservation of the species. Since these lands do not require additional special management, they have been excluded from critical habitat designation.

This unit was delineated to encompass at least 36 ha (90 ac) of vegetation around each of the three known occupied caves, overlying contiguous deposits of karst-bearing rock. The majority of Unit 8 is defined by Veni's 1994 karst zone maps as occurring within Zones 1 and 2. The unit was delineated to encompass the majority of the contiguous Zone 1 and 2 karst deposits associated with the known occupied caves while maximizing the amount of undisturbed, unfragmented woodland surrounding the cave. The unit was enlarged to include additional woodland to compensate for internal fragmentation due to several small roads and residential development within the unit. The unit boundaries were primarily delineated along existing roads and parcel boundaries.

Unit 9

Unit 9 consists of a large tract of undeveloped, woodland. The unit is bordered to the north by Loop 1604, a major highway, and to the south by a two-lane roadway. The unit is bordered to the west by the University of Texas at San Antonio campus and to the east by some commercial development. This unit contains one cave known to contain listed species (Table 2).

This unit was delineated to encompass at least 36 ha (90 ac) of vegetation around the known occupied cave, overlying a contiguous deposit of karst-bearing rock. Roughly half of Unit 9 is defined by Veni's 1994 karst zone maps as occurring within Zone 1. The unit was delineated to encompass the majority of the contiguous Zone 1 karst deposit associated with the known occupied cave while maximizing the amount of undisturbed, unfragmented woodland surrounding the cave. The unit boundaries were delineated along existing roads and a named creek.

Unit 10

Unit 10 consists of several large tracts of woodland. Most of Unit 10 is undeveloped. Roughly half of this unit consists of lands owned and operated by the Department of Defense's (DOD) Camp Bullis. The majority of the DOD-owned area within this unit is not extensively developed with structures or major roadways, but does contain areas used for some types of military training maneuvers. The other half of the unit consists of Eisenhower Park, owned by the City of San Antonio, and a privately-owned tract that is currently undeveloped. Three caves known to contain listed species occur within Unit 10 (Table 2).

This unit was delineated to encompass at least 36 ha (90 ac) of vegetation around each of the three known occupied caves, overlying contiguous deposits of karst-bearing rock. The majority of Unit 10 is defined by Veni's 1994 karst zone maps as occurring within Zones 1 and 2. The unit was delineated to encompass the majority of the contiguous Zone 1 and 2 karst deposits associated with the known occupied caves while maximizing the amount of undisturbed, unfragmented vegetation within the unit. The unit was enlarged to include additional woodland to compensate for internal fragmentation due to several roads and buildings, as well as potential impacts due to military training maneuvers. The unit boundaries were delineated along existing roads and parcel boundaries.

Unit 11

Unit 11 consists of the southeastern portion of the DOD's Camp Bullis. The area is not extensively developed with structures or major roadways, but does contain areas used for some types of military training maneuvers and contains large areas where the woodland vegetation was cleared at some point in the past. Less than half of the known occupied caves are located within woodland areas. Lands to the east and south of the unit are undergoing rapid suburban development. This unit contains 20 caves containing listed species (Table 2).

This unit was delineated to encompass at least 36 ha (90 ac) of vegetation around each of the 20 known occupied caves, overlying contiguous deposits of karst-bearing rock. The majority of Unit 11 is defined by Veni's 1994 karst zone maps as occurring within Zone 2. The unit was delineated to encompass the majority of the contiguous Zone 2 karst deposit associated with the known occupied caves while maximizing the amount of undisturbed and unfragmented woodland surrounding the cave. The unit was enlarged to include additional woodland to compensate for internal fragmentation due to several roads and developed areas, and potential impacts associated with military training maneuvers. The unit boundaries were delineated primarily along existing roads and parcel boundaries.

Unit 12

The majority of Unit 12 consists of lands that have been subdivided for residential development. Single-family homes have been constructed on roughly half of the subdivided lots. Several residential roads and one major roadway occur within the unit. The unit is bordered to the east by U.S. Highway 281, to the south by a quarry and to the west by a school and some residential development. Several relatively large tracts of undeveloped land occur within and to the north of the unit. Two caves known to contain listed species occur within Unit 12 (Table 2).

This unit was delineated to encompass at least 36 ha (90 ac) of vegetation around each of the two known occupied caves, overlying contiguous deposits of karst-bearing rock. The majority of Unit 12 is defined by Veni's 1994 karst zone maps as occurring within Zone 2. The unit was delineated to encompass the majority of the contiguous Zone 2 karst deposit associated with the known occupied caves while maximizing the amount of undisturbed and unfragmented woodland surrounding the cave. The unit was enlarged to include additional woodland to compensate for internal fragmentation due to existing residential development within the unit. The unit boundaries were primarily delineated along existing roads and a named creek.

Unit 13

Unit 13 consists primarily of large, currently undeveloped wooded tracts with several smaller tracts developed with homes. Bulverde Road, a major roadway, bisects the western portion of the unit. The unit is bordered by dense residential development on the northwest and significantly less dense residential development on the northeast. The lands to the south, southeast, and southwest consist of large, undeveloped, wooded, tracts. One cave containing listed species occurs within this unit (Table 2).

This unit was delineated to encompass at least 36 ha (90 ac) of vegetation around the known occupied cave, overlying a contiguous deposit of karst-bearing rock. The majority of Unit 13 is defined by Veni's 1994 karst zone maps as occurring within Zones 1 and 2. The unit was delineated to encompass the majority of the contiguous Zone 1 and 2 karst deposits associated with the known occupied caves while maximizing the amount of undisturbed, unfragmented woodland surrounding the cave. The unit was enlarged to include additional woodland to compensate for internal fragmentation due to existing residential development and the presence of a major roadway within the unit. The unit boundaries were primarily delineated along parcel boundaries and existing roads.

Unit 14

Unit 14 consists of several large tracts of undeveloped woodland with no major roadways or highways. Three caves known to contain listed species occur within Unit 14 (Table 2).

This unit was delineated to encompass at least 36 ha (90 ac) of vegetation around each of the three known occupied caves, overlying contiguous deposits of karst-bearing rock. Unit 14 is defined by Veni's 1994 karst zone maps as occurring within Zones 1 and 2. The unit was delineated to encompass the majority of the contiguous Zone 1 and 2 karst deposits associated with the known occupied caves while maximizing the amount of undisturbed, unfragmented woodland surrounding the cave. We were unable to delineate the boundaries of the unit using roads or parcel boundaries due to their configuration and instead delineated the unit as a rectangle encompassing an approximately 36-ha area around each of the three known occupied caves.

Unit 15

The majority of the lands within Unit 15 are within a subdivision. Tracts in the subdivision are relatively large and still contain wooded vegetation. Two large, wooded, undeveloped tracts are located east of the subdivision. The unit contains several residential roads, but no major roadways or highways. Unit 15 contains four caves known to contain listed species (Table 2).

This unit was delineated to encompass at least 36 ha (90 ac) of vegetation around each of the four known occupied caves, overlying contiguous deposits of karst-bearing rock. The majority of Unit 15 is defined by Veni's 1994 karst zone maps as occurring within Zone 1. The unit was delineated to encompass the majority of the contiguous Zone 1 karst deposit associated with the known occupied caves while maximizing the amount of undisturbed, unfragmented woodland surrounding the cave. The unit was enlarged to include additional woodland to compensate for internal fragmentation due to existing residential development within the unit. The unit boundaries were delineated along parcel boundaries and existing roads.

Unit 16

Unit 16 contains several large, primarily undeveloped tracts of woodland. However, Loop 1604, a major highway, bisects the eastern half of the unit. One cave known to contain endangered species occurs within Unit 16 (Table 2).

This unit was delineated to encompass at least 36 ha (90 ac) of vegetation around the known occupied cave, overlying a contiguous deposit of karst-bearing rock. Unit 16 is defined by Veni's 1994 karst zone maps as occurring almost entirely within Zone 1. The unit was delineated to encompass the majority of the contiguous Zone 1 karst deposit associated with the known occupied cave while maximizing the amount of undisturbed, unfragmented woodland surrounding the cave. The unit was enlarged to include additional woodland to compensate for internal fragmentation due to Loop 1604. We were unable to delineate the boundaries of the unit using roads or parcel boundaries due to their configuration and instead delineated the unit as a rectangle encompassing an approximately 36-ha area around the known occupied cave.

Unit 17

Unit 17 consists of relatively large tracts of undeveloped woodland with only a few small private or county roads. Lands adjacent to the unit are also undeveloped and wooded. The unit contains one known occupied cave (Table 2) which, along with its associated preserve lands, has been excluded from this critical habitat designation. Madla's Cave and approximately 2 ha (5 ac) surrounding the cave have been acquired by La Cantera under their Section 10(a)(1)(B) permit which requires that the cave and the surrounding preserve lands be managed in perpetuity for the conservation of the listed species. Since these lands do not require additional special management, they have been excluded from critical habitat designation.

This unit was delineated to encompass at least 36 ha (90 ac) of vegetation around the known occupied cave, overlying a contiguous deposit of karst-bearing rock. Roughly half of Unit 17 is defined by Veni's 1994 karst zone maps as occurring within Zone 1. The unit was delineated to encompass the majority of the contiguous Zone 1 karst deposit associated with the known occupied caves while maximizing the amount of undisturbed, unfragmented woodland surrounding the cave. The unit boundaries were delineated along parcel boundaries.

Unit 18

The northern portion of Unit 18 consists of relatively large, wooded, tracts subdivided for residential development, the majority of which appear to be undeveloped. The southern portion of the unit is lined with developed residential lots. Unit 18 is bisected by one residential road. Adjacent lands to the west consist of relatively large residential tracts that appear to be currently undeveloped. The remaining sides are bordered by developed residential and commercial properties. Two caves known to contain listed species occur within Unit 18 (Table 2).

This unit was delineated to encompass at least 36 ha (90 ac) of vegetation around the two known occupied caves, overlying contiguous deposits of karst-bearing rock. About half of Unit 18 is defined by Veni's 1994 karst zone maps as occurring within Zone 1. The unit was delineated to encompass the majority of the contiguous Zone 1 karst deposit associated with the known occupied caves while maximizing the amount of undisturbed, unfragmented woodland in the unit. The unit was enlarged to include additional woodland to compensate for internal fragmentation due to existing residential development within the unit. The unit boundaries were delineated along parcel boundaries and existing roads.

Unit 19

The majority of the land within Unit 19 has been developed for residential and/or commercial uses. Unit 19 is bordered to the east by Stone Oak Road, a major roadway, and to the south by Loop 1604, also a major roadway. However, several undeveloped areas exist on lands adjacent to the unit to the northwest. Genesis Cave, the only known occupied cave within this unit (Table 1), is the deepest explored cave in Bexar County, extending below the water table, and has been mapped down to 78 m (256 ft) (Veni 1988).

The majority of Unit 19 is defined by Veni's 1994 karst zone maps as occurring within Zone 1. The unit was delineated to encompass the majority of the contiguous Zone 1 karst deposit associated with the known occupied cave. The unit boundaries were delineated along parcel boundaries and existing roads.

Surface vegetation within Unit 19 has been significantly reduced and degraded as a result of urban development, and intensive management may be needed to

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provide nutrients and water to the listed species in this cave. Lands within this unit do not contain the primary constituent element of a healthy surface community of native vegetation. Therefore, this unit is being designated as critical habitat based on the presence of an intact subsurface environment.

Unit 20

Numerous residential roads and one major roadway, Nacogdoches Road, occur within and/or cross Unit 20. This unit contains one known occupied cave, Robber Baron Cave (Table 2). This cave is by far the longest cave in Bexar County consisting of approximately 1.51 km (0.94 mi) of passages known within a square area approximately 100 m (328 ft) on each side (Veni 1988). Prior to the extensive development that has occurred in the area, the cave's footprint was estimated to extend at least 100 m (328 ft) farther east to a water well, 600 m (1,969 ft) southwest to a now-sealed, extensive maze cave and about 1.2 km (0.75 mi) to the southwest to another well (Veni 1988). The estimated footprint of the cave now extends underneath numerous residential and commercial developments. Intensive management may be needed to provide nutrients and water to the two listed species found in this cave which are only known from Robber Baron Cave, making it essential to the conservation of these species. The Texas Cave Management Association (TCMA) now owns and manages the cave and about 0.2 ha (0.5 ac) surrounding the opening. TCMA, in cooperation with the Service's Partners for Fish and Wildlife Program, is currently working to replace the existing cave gate, which consists of a concrete bunker created to deter access, with a new gate that will facilitate exchange of air and nutrients into the cave as well as restrict access. TCMA also plans to restore the grounds immediately surrounding Robber Baron Cave to a more natural state and repair the perimeter fence to regulate access.

The majority of Unit 20 is defined by Veni's 1994 karst zone maps as occurring within Zone 1. The unit was delineated to encompass the estimated extent of the cave's subsurface drainage according to Veni (1997) and a majority of the contiguous Zone 1 karst deposit associated with Robber Baron Cave. The unit boundaries were delineated along parcel boundaries and existing roads.

Surface vegetation within Unit 20 has been significantly reduced and degraded as a result of urban development. Lands within this unit do not contain the primary constituent element of a healthy surface community of native vegetation. Therefore, this unit is being designated as critical habitat based on the presence of an intact subsurface environment.

Unit 21

Unit 21 consists of several large tracts of undeveloped land and several smaller tracts developed with homes and several residential roads. Mud Creek runs through the unit. Three caves known to contain listed species occur with Unit 21 (Table 2).

This unit was delineated to encompass at least 36 ha (90 ac) of vegetation around the three known occupied caves, overlying contiguous deposits of karst-bearing rock. Unit 21 is defined by Veni's 1994 karst zone maps as occurring within Zone 2. The unit was delineated to encompass the majority of the contiguous karst deposit associated with the known occupied caves while maximizing the amount of undisturbed, unfragmented woodland surrounding the cave. The unit was enlarged to include additional woodland to compensate for internal fragmentation due to existing residential development within the unit. We were unable to delineate the boundaries of the unit using roads or parcel boundaries due to their configuration and instead delineated the unit as a rectangle encompassing an approximately 36-ha area around each of the three known occupied caves.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification occurs when a Federal action directly or indirectly alters critical habitat to the extent that it appreciably diminishes the value of the critical habitat for both the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Activities on Federal lands that may affect the listed karst invertebrates or their proposed critical habitat will require section 7 consultation with the Service. Actions on private or State lands receiving funding or requiring a permit from a Federal agency also will be subject to the section 7 consultation process if the action may affect proposed critical habitat. Federal actions not affecting the species or its proposed critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted will not require section 7 consultation. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer on any action likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations are advisory. We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat was designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are unlikely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion, resulting from a section 7 consultation, concluding that a Federal action is likely to result in the destruction or adverse modification of critical habitat, we would also provide reasonable and prudent alternatives to the action, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Service's Director believes would avoid destruction or adverse modification of critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat.

Activities on Federal lands that may adversely affect any of the nine karst invertebrates or their critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (ACOE) under section 404 of the Clean Water Act or a Construction General permit from the U.S. Environmental Protection Agency, or some other Federal action, including funding (for example, from the Federal Highway Administration, Federal Aviation Administration, Federal Emergency Management Agency (FEMA), Natural Resources Conservation Service (NRCS), or Housing and Urban Development (HUD)) will also continue to be subject to the section 7 consultation process. Federal actions not adversely affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for the survival and recovery of any of the nine karst invertebrates is appreciably reduced. Activities that may directly or indirectly adversely affect critical habitat for these karst invertebrates include, but are not limited to:

(1) Removing, thinning, or destroying perennial surface vegetation, with the exception of landscaping associated with existing human-constructed, above ground, impervious structures, occurring in any critical habitat unit, whether by burning, mechanical, chemical, or other means (for example, wood cutting, grading, overgrazing, construction, road building, mining, herbicide application);

(2) Alteration of the surface topography or subsurface geology within any critical habitat unit that results in significant disruption of ecosystem processes that sustain the cave environment. This may include, but is not limited to, such activities as filling cave entrances or otherwise reducing airflow, which limits oxygen availability; modifying cave entrances, or creating new entrances that increases airflow and results in drying; altering natural drainage patterns (surface or subsurface) that alters the amount of water entering the cave or karst feature; removal or disturbance of native surface vegetation; soil disturbance that results in increased sedimentation in the karst environment; increasing impervious cover within any critical habitat unit; and altering the entrance or opening of the cave or karst feature in a way that would disrupt movements of raccoons, opossums, cave crickets, or other animals that provide nutrient input; or otherwise negatively altering the movement of nutrients into the cave or karst feature;

(3) Discharge or dumping of chemicals, silt, pollutants, household or industrial waste, or other harmful material into or near critical habitat units that may affect surface plant and animal communities that support karst ecosystems;

(4) Pesticide or fertilizer application in or near critical habitat units that drain into these karst features or that affect surface plant and animal communities that support karst ecosystems. Careful use of pesticides in the vicinity of karst features may be necessary in some instances to control nonnative fire ants. Guidelines for controlling fire ants in the vicinity of karst features are available from us (see **ADDRESSES** section);

(5) Activities within caves that lead to soil compaction, changes in atmospheric conditions, abandonment of the cave by bats or other fauna; and

(6) Activities that attract or increase access for fire ants, cockroaches, or other invasive predators, competitors or potential vectors for diseases or parasites into caves or karst features within the critical habitat units (for example, dumping of garbage in or around caves or karst features).

Not all of the identified activities will necessarily result in the adverse modification of critical habitat, however, they indicate the potential types of activities that will require section 7 consultation in the future and, therefore, that may be affected by the proposed designation of critical habitat. To properly portray the effects of critical habitat designation, we must compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. All of the areas proposed as critical habitat units are known to contain one or more caves occupied by one or more of the listed karst invertebrates. Therefore, all of the actions described above as potentially adversely affecting critical habitat are also likely to adversely affect the listed species. Federal agencies are already required to consult with us on activities in areas where the species may be affected to ensure that their actions do not jeopardize the continued existence of the species. Therefore, we do not expect that the proposed designation of critical habitat will result in a significant regulatory burden above that already in place due to the presence of the listed species.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, please contact the Acting Field Supervisor, Austin Ecological Services Field Office (see the **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations on listed wildlife and plants, and inquiries about prohibitions and permits, should be directed to the U.S. Fish and Wildlife Service, Endangered Species Act Section 10 Program (see **ADDRESSES** section).

Exclusions Under Section 3(5)(A) Definition

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Special management and protection are not required if adequate management and protection are already in place. Adequate special management or protection is provided by a legally operative plan/agreement that addresses the maintenance and improvement of the primary constituent elements

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important to the species and manages for the long-term conservation of the species. If any areas containing the primary constituent elements are currently being managed to address the conservation needs of any of the nine karst invertebrate species and do not require additional management or protection, we may exclude such areas from the proposed rule because they would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act.

We will use the following three guidelines to determine if a plan provides adequate management or protection—(1) A current plan specifying the management actions must be complete and provide sufficient conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective.

In determining if management strategies are likely to be implemented, we will consider whether: (1) A management plan or agreement exists that specifies the management actions being implemented or to be implemented; (2) there is a timely schedule for implementation; (3) there is a high probability that the funding source(s) or other resources necessary to implement the actions will be available; and (4) the party(ies) have the authority and long-term commitment to the agreement or plan to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands.

In determining whether an action is likely to be effective, we will consider whether: (1) The plan specifically addresses the management needs, including reduction of threats to the species; (2) such actions have been successful in the past; (3) there are provisions for monitoring and assessment of the effectiveness of the management actions; and (4) adaptive management principles have been incorporated into the plan.

Adequate reduction of the threat from non-native invasive species (for example, non-native fire ants), that are already present, adjacent to, and/or within some caves may, to some extent, require different management activities. Although difficult for managers to control at this time, control of non-native fire ant populations is one requirement in determining whether an area is being adequately managed such that it does not meet the definition of critical habitat.

In selecting areas to be designated as critical habitat, we attempted to exclude areas that have a plan that addresses the conservation needs of any of the nine karst invertebrate species and that meets the guidelines described above. We determined that the five karst preserves established by La Cantera as required by their section 10(a)(1)(B) permit should be excluded based on the guidelines given above. These karst preserves include Canyon Ranch preserve (including Canyon Ranch Pit, Fat Man's Nightmare Cave, and Scenic Overlook Cave and the surrounding approximately 30 ha (75 ac) (within Unit 1e); Helotes Blowhole and Helotes Hilltop caves and the surrounding approximately 10 ha (25 ac) (within Unit 3); John Wagner Cave No. 3 and the surrounding approximately 1.6 ha (4 ac) (within Unit 6); Hills and Dales Pit and the surrounding approximately 28 ha (70 ac) (within Unit 8); and Madla's Cave and the surrounding approximately 2 ha (5 ac) (within Unit 17). As required under their permit, La Cantera purchased these lands through conservation easement and/or fee simple title and will ensure that they will be protected in perpetuity and managed in accordance with the conservation needs of the species.

We did not exclude areas that do not have a plan that provides adequate management or protection as described under the guidelines above. Camp Bullis submitted a draft management plan to the Service for the 23 caves on DOD property that are known to contain listed species. These 23 caves are included within 2 proposed critical habitat units (Units 10 and 11). The Service is currently working with Camp Bullis to determine management needed to adequately protect the species and its habitat. Therefore, caves on Camp Bullis were not excluded from the proposed critical habitat designation. It is our understanding that the proposed management plan is currently being revised.

If a management plan for Camp Bullis or other areas proposed as critical habitat (for example, Government Canyon State Natural Area), that addresses the above requirements, can be completed and approved by us prior to the end of the public comment period for this proposed rule, these areas will not be included in the final critical habitat designation.

We are unaware of any other lands within the proposed critical habitat units that have a written plan for the conservation of these species that could have been evaluated for exclusion under section 3(5)(A) of the Act.

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available, and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat designation if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We will conduct an economic analysis for this proposal prior to making a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will provide at least a 30-day public comment period on the draft economic analysis which may fall during or after the 90-day comment period for this proposed rule.

Public Comments Solicited

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We are particularly interested in comments concerning:

(1) The reasons why any area should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the distribution of each of the nine karst invertebrates, and what areas are essential to the conservation of these species and why;

(3) Whether lands within proposed critical habitat units are currently being managed to address the conservation needs of these listed species

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(6) Economic and other values associated with designating critical habitat for the nine karst invertebrates, such as those derived from non-consumptive uses (such as, hiking, sight-seeing, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs).

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Austin Ecological Services Field Office, Austin, Texas (see **ADDRESSES** section).

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent individuals regarding this proposed rule. The purpose of such review is to ensure critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to peer reviewers immediately following publication in the **Federal Register**. We will invite peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and data received during the 90-day comment period on this proposed rule during preparation of final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document? (5) Is the background information useful and is the amount appropriate? (6) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail comments to *exsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

Executive Order 12866

In accordance with Executive Order (E.O.) 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comment.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded from critical habitat designation pursuant to section 4 of the Act, we do not believe this rule will have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State, local or tribal communities. Therefore, we do not believe a cost benefit and economic analysis pursuant to E.O. 12866 is required.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency. Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of the species.

Accordingly; we do not expect the designation of areas as critical habitat that are within the geographical range occupied by the species to have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. We will evaluate any impact through our economic analysis (under section 4 of the Act: see the "Exclusions Under Section 4(b)(2)" section of this rule). Non-Federal persons who do not have a Federal sponsorship of their actions are not restricted by the designation of critical habitat.

(b) We do not believe this rule would create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of the nine karst invertebrates since their listing on December 26, 2000. We will evaluate any additional impact through our economic analysis. Because of the potential for impacts on other Federal agencies activities, we will continue to review this proposed action for any inconsistencies with other Federal agencies actions.

(c) We do not believe this rule, if made final, would materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of a listed species, and, as discussed above, we will evaluate any additional impacts through an economic analysis.

(d) OMB has determined that this rule raises novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that

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describes the effects of the rule on small entities (such as, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today's rule, we are certifying that the rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Association, small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (for example, housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities may be affected to the extent that there is a Federal nexus associated with the non-Federal activity. An example of this nexus would be if a non-Federal activity required a Federal permit. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect any of the nine karst invertebrates. If this critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants where consultation would already be required due to the presence of the listed species, because the duty to avoid adverse modification of critical habitat would not likely trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to conduct a reinitiation of a past section 7 consultation to conduct an adverse modification analysis. Since the species were listed on December 26, 2000, the only formal section 7 consultation has been an intra-Service consultation on the La Cantera HCP. However, we did not include the caves that La Cantera received take coverage for under their section 10 permit in the proposed critical habitat designation, so reinitiation of the intra-Service section 7 consultation as a result of this proposed designation is not necessary.

In areas where the species is not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act. Since the species were listed on December 26, 2000, the only formal section 7 consultation has been an intra-Service consultation on the La Cantera HCP. For the purposes of this review and certification under the RFA, we are assuming that any future consultations in the area proposed as critical habitat will be due to the listing of the species and the critical habitat designation.

One of the proposed critical habitat units (Unit 11) and a portion of another (Unit 10) are located on Federal lands. Units 1a, 1b, 1c and 1d are located on GCSNA which is owned and managed by TPWD and Unit 9 is owned by the University of Texas at San Antonio (Table 2). On State lands, activities with no Federal involvement would not be affected by the critical habitat designation.

Sixteen of the twenty-five units in the proposed designation consist entirely of privately-owned lands and four include some private lands within the unit (Table 2). On private lands, activities that lack Federal involvement would not be affected by the critical habitat designation.

In Texas, previous consultations under section 7 of the Act between us and other Federal agencies most frequently involve the U.S. Department of Transportation (DOT), the ACOE, and the Environmental Protection Agency (EPA).

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude in a biological opinion that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects-including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations-can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation.

In summary, we have considered whether this proposed rule would result in a significant economic impact on a substantial number of small entities and find that it would not. The entire designation involves approximately 3,857 ha (9,516 ac) within 25 units, of which approximately 1,620 ha (4,000 ac) is under federal ownership and approximately 284 ha (700 ac) is under State ownership. The majority of the remaining acreage is under private ownership, but includes City of San Antonio park lands, and City, County and State right of ways, roads, and municipal lands. However, probable future land uses in these areas are expected to have a Federal nexus or require section 7 consultation (for example, road and utility development projects, water crossings, etc.). These projects may require Federal permits. In these areas, Federal involvement—and thus section 7 consultations, the only trigger for economic impact under this rule—would be limited to a subset of the area proposed. The most likely Federal involvement would be associated with activities involving the DOD, Federal Highways Administration (FHA), DOT, the EPA, ACOE, or the FEMA. This rule may result in project modifications when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact since we expect that most proposed projects, with or without modification, can be implemented in such a way as to avoid adversely modifying critical habitat, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. We are certifying that the proposed designation of critical habitat for the nine endangered Bexar County invertebrate species will not have a significant economic impact on a substantial number of small entities and that this proposed rule does not meet the criteria under SBREFA as a major rule: Therefore an initial regulatory flexibility analysis is not required.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use since the majority of the lands being proposed as critical habitat occur on privately owned lands that are primarily developed for agricultural and residential uses, and not energy production or distribution. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 August 25, 2000 *et seq.*):

a. This rule, as proposed, will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

b. This rule, as proposed, will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of the proposed listing and designation of critical habitat for these nine karst invertebrates. The takings implications assessment concludes that this proposed rule does not pose significant takings implications. A copy of this assessment is available by contacting the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (see **ADDRESSES** section).

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by the nine endangered karst invertebrates would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this designation does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with E.O. 12988, the Department of the Interior's Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We propose to designate critical habitat in accordance with the provisions of the Act, and will plan public hearings on the proposed designation during the comment period, if requested. We plan to hold at least one public hearing and the date for this hearing will be published in separate notice. We also plan to hold an informational meeting in Bexar County on September 10, 2002. This meeting will take place from 6 pm to 7:30 pm at the Great Northwest Library, 9050 Wellwood, San Antonio, Texas. We will send letters inviting all interested individuals to attend and will advertise the meeting in the area newspaper. The

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rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the nine endangered karst invertebrates.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. Information collections associated with Endangered Species permits are covered by an existing OMB approval, which is assigned control number 1018–0094 and which expires on July 31, 2004. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB Control Number.

National Environmental Policy Act

We have determined that an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a Government-to-Government basis. The proposed designation of critical habitat for the nine karst invertebrates does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this proposed rule is available, upon request, from the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (see **ADDRESSES** section).

Author

This rule was prepared by the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11(h) revise the entries for Beetle, Helotes mold; Beetle [no common name] (*Rhadine exilis*); and Beetle [no common name] (*Rhadine infernalis*) under "INSECTS"; remove the entries for Harvestman, Robber Baron Cave; Spider, Government Canyon Cave; Spider, Madla's Cave; Spider [no common name] (Cicurina venii); Spider, Robber Baron Cave; and Spider, vesper cave; and add entrees for Harvestman, Cokendolpher cave; Meshweaver, Braken Bat Cave; Meshweaver, Government Canyon Bat Cave; Meshweaver, Madla Cave; Meshweaver, Robber Baron Cave; and Spider, Government Canyon Bat Cave under "ARACHNIDS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate[1]	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
INSECTS							
Beetle, Helotes mold	*Batrisodes venyivi*	U.S.A. (TX)	NA	E	706	19.95(i)	NA
Beetle, [no common name]	*Rhadine exilis*	U.S.A. (TX)	NA	E	706	19.95(i)	NA
Beetle, [no common name]	*Rhadine infernalis*	U.S.A. (TX)	NA	E	706	19.95(i)	NA
ARACHNIDS							
Harvestman, Cokendolpher Cave	*Texella cokendolpher*	U.S.A. (TX)	NA	E	706	19.95(g)	NA
Meshweaver, Braken Bat Cave	*Cicurina venii*	U.S.A. (TX)	NA	E	706	19.95(g)	NA
Meshweaver, Government Canyon Bat Cave.	*Cicurina vespera*	U.S.A. (TX)	NA	E	706	19.95(g)	NA
Meshweaver, Madla Cave	*Cicurina madla*	U.S.A. (TX)	NA	E	706	19.95(g)	NA
Meshweaver, Robber Baron Cave	*Cicurina baronia*	U.S.A. (TX)	NA	E	706	19.95(g)	NA
Spider, Government Canyon Bat Cave.	*Neoleptoneta microps*	U.S.A. (TX)	NA	E	706	19.95(g)	NA

[1] Vertebrate population where endangered or threatened.

3. Amend § 17.95 by adding, in the same alphabetical order as these species occur in § 17.11(h):

a. In paragraph (g), critical habitat for the Cokendolpher cave harvestman (*Texella cokendolpheri*);

b. In paragraph (g), critical habitat for the Robber Baron Cave meshweaver (*Cicurina baronia*);

c. In paragraph (g), critical habitat for the Madla Cave meshweaver (*Cicurina madla*);

d. In paragraph (g), critical habitat for the Braken Bat Cave meshweaver (*Cicurina venii*);

e. In paragraph (g), critical habitat for the Government Canyon Bat Cave meshweaver (*Cicurina vespera*);

f. In paragraph (g), critical habitat for the Government Canyon Bat Cave spider (*Neoleptoneta microps*);

g. In paragraph (i), critical habitat for the ground beetle (no common name), (*Rhadine exilis*);

h. In paragraph (i), critical habitat for the ground beetle (no common name), (*Rhadine infernalis*); and

i. In paragraph (i), critical habitat for the Helotes mold beetle (*Batrisodes venyivi*).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(g) Arachnids. * * *

Braken Bat Cave Meshweaver (*Cicurina venii*)

(1) Critical habitat for the Braken Bat Cave meshweaver in Bexar County, Texas, occurs in Unit 15 which is described in the text and depicted on Maps 1 and 7 under the ground beetle (*Rhadine infernalis*). The primary constituent elements and the exclusion of existing structures and associated landscaping as described in paragraphs (2) and (3) under the ground beetle *Rhadine exilis* are identical for this species.

Cokendolpher Cave Harvestman (*Texella cokendolpheri*)

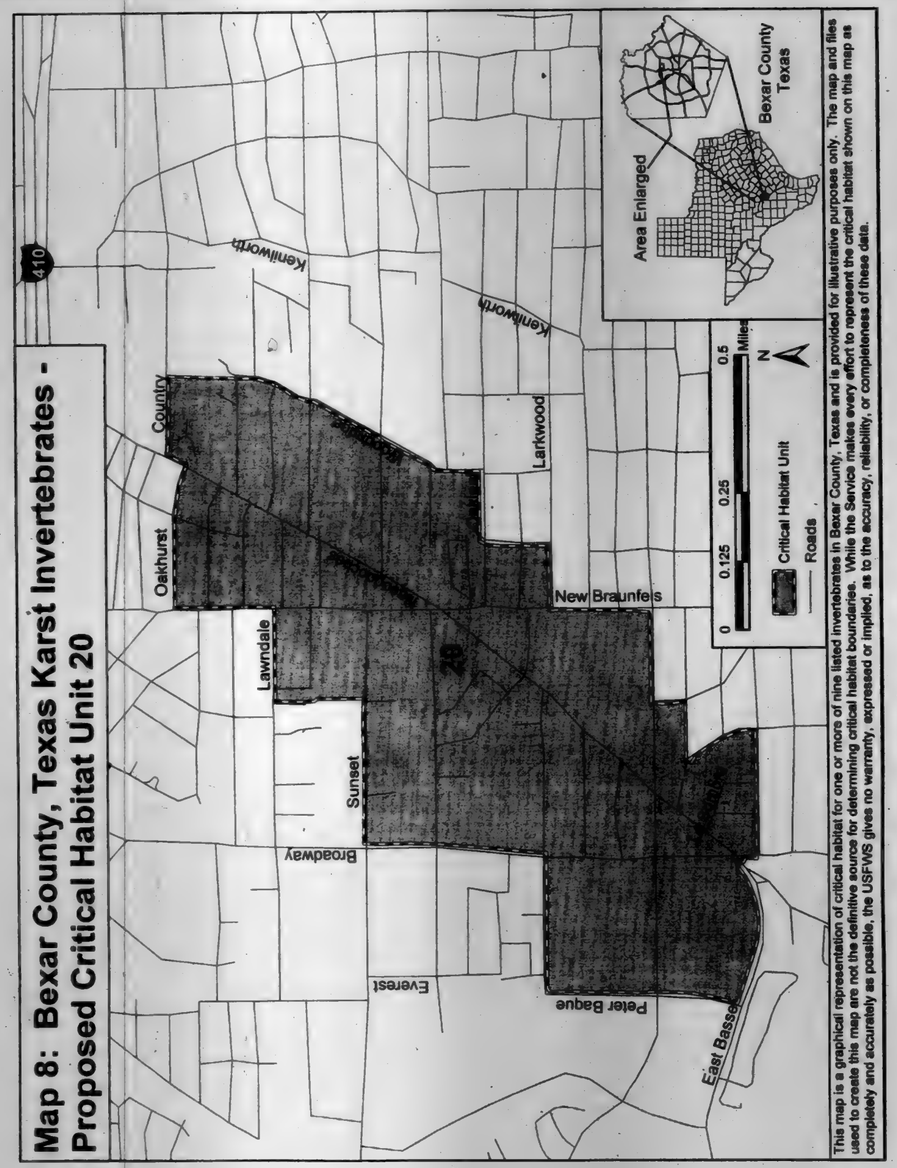
(1) Critical habitat for the Cokendolpher cave harvestman occurs in Unit 20 as described below and depicted on Map 1 found under the ground beetle (*Rhadine exilis*) and Map 8 below. The primary constituent elements and exclusion of existing structures and associated landscaping as described in paragraphs (2) and (3) under the ground beetle *Rhadine exilis* are identical for this species.

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(2) Surface vegetation within Unit 20 has been significantly reduced and degraded as a result of urban development. Lands within this unit do not contain the primary constituent element of a healthy surface community of native vegetation. Therefore, this unit is being designated as critical habitat based solely on the presence of an intact subsurface environment.

(3) Unit 20—(160 ha (395 ac)): From a point at the intersection of Basse Road and Peter Baque Road (2136763, 13728730), north along the east side of Peter Baque Road, then east along the south side of Lorenz Road, then north along the east side of Broadway, and continuing east along the south side of East Sunset Road to a point at 2139684, 13732380. From this point, north to Court Circle and continuing north along the east side of Court Circle, then east along the south side of Lawndale Avenue to New Braunfels and continuing north along the east side of New Braunfels to Oakhurst. From this point, east along the south side of Oakhurst to Nacogdoches, then north along the east side of Nacogdoches to Country and continuing east along the south side of Country to a point at 2142805, 13734290. From this point, south to a point at Woodridge Drive (2142796, 13733617), then continuing south along the west side of Woodridge Drive to Oakleaf Drive, then west along the north side of Oakleaf Drive to Woodbine, then continuing south along the west side of Woodbine to Larkwood Drive and continuing west along the north side of Larkwood to New Braunfels. From this point, south along the west side of New Braunfels to Robinhood Place and west along the north side of Robinhood Place to La Sombra, then continuing south on the west side of La Sombra to Claywell Drive. From this point, west along the north side of Claywell Drive to Nacogdoches and north along the east side of Nacogdoches to Basse Road, then continuing west along the north side of Basse Road to the point of origin.

Government Canyon Bat Cave Meshweaver (*Cicurina vespera*)

(1) Critical habitat for the Government Canyon Bat Cave meshweaver in Bexar County, Texas, occurs in unit 1b which is described in the text and depicted on Maps 1 and 2 under the ground beetle (*Rhadine exilis*). The primary constituent elements and the exclusion of existing structures and associated landscaping as described in paragraphs (2) and (3) under the ground beetle *Rhadine exilis* are identical for this species.

Government Canyon Bat Cave Spider (*Neoleptoneta microps*)

(1) Critical habitat for the Government Canyon Bat Cave Spider (*Neoleptoneta microps*) in Bexar County, Texas, occurs in units 1a and 1b which are described in the text and depicted on Maps 1 and 2 under the ground beetle (*Rhadine infernalis*). The primary constituent elements and the exclusion of existing structures and associated landscaping as described in paragraphs (2) and (3) under the ground beetle *Rhadine exilis* are identical for this species.

Madla Cave Meshweaver (*Cicurina madla*)

(1) Critical habitat for the Madla Cave meshweaver in Bexar County, Texas, occurs in units 2, 3, 5, 8, and 10 which are described under the ground beetle (*Rhadine exilis*) and Unit 17 which is described under the ground beetle (*Rhadine infernalis*). In addition, critical habitat for the Madla Cave meshweaver occurs in Unit 1c as described below. These units are depicted on Maps 1, 2, 3, 4, and 5 found under the ground beetle (*Rhadine exilis*). The primary constituent elements, the exclusion of existing structures and associated landscaping, and the exclusion of lands that do not meet the definition of critical habitat as described in paragraphs (2) and (3) under the ground beetle *Rhadine exilis* and paragraph (2) under the ground beetle *Rhadine infernalis* are identical for this species.

(2) Unit 1c (47 ha (116 ac)): Unit consists of four boundary points with the following coordinates in Texas State Plane (South Central) in feet, referenced to North American Horizontal Datum 1983 (NAD 83): 2049690.24023, 13758634.2779; 2047438.24023, 13758634.2779; 2049690.24023, 13756382.2779; 2047438.24023, 13756382.2779.

Robber Baron Cave Meshweaver (*Cicurina baronia*)

(1) Critical habitat for the Robber Baron Cave meshweaver in Bexar County, Texas, occurs in Unit 20 which is described in the text and depicted in Map 8 found under the Cokendolpher cave harvestman as well as Map 1 found under the ground beetle (*Rhadine exilis*). The criteria upon which Unit 20 was designated as described in paragraph (2) under Cokendolpher cave harvestman is identical for this species. The primary constituent elements and the exclusion of existing structures and associated landscaping as described in paragraphs (2) and (3) under the ground beetle (*Rhadine exilis*) are identical for this species.

* * * * *

(i) Insects. * * *

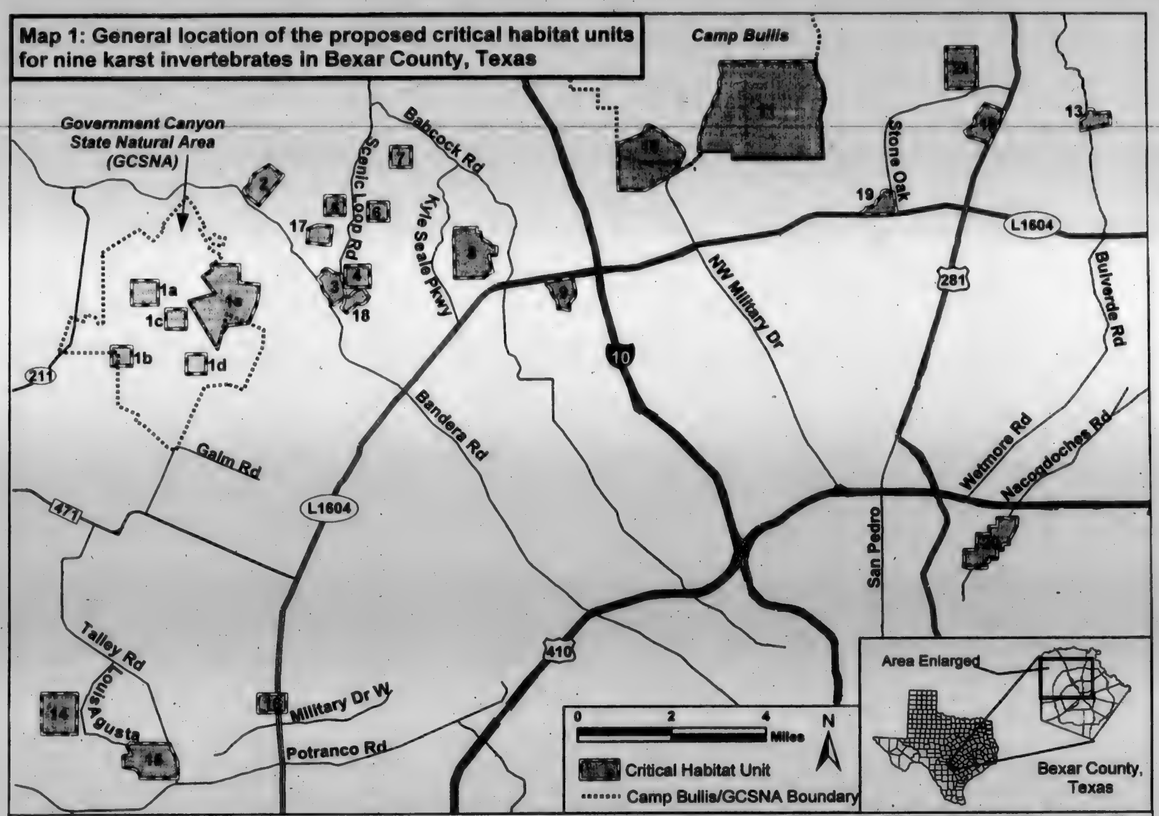
Ground Beetle (No Common Name), (*Rhadine exilis*)

(1) Critical habitat for the ground beetle (*Rhadine exilis*) in Bexar County, Texas, occurs in units 1b, 1e, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11; 12, 13, and 21 as described below and as depicted on Maps 1, 2, 3, 4, 5, and 6 below. All coordinates are given in Texas State Plane (South Central) in feet, referenced to North American Horizontal Datum 1983 (NAD 83). Coordinates were derived from recent digital orthophotographs.

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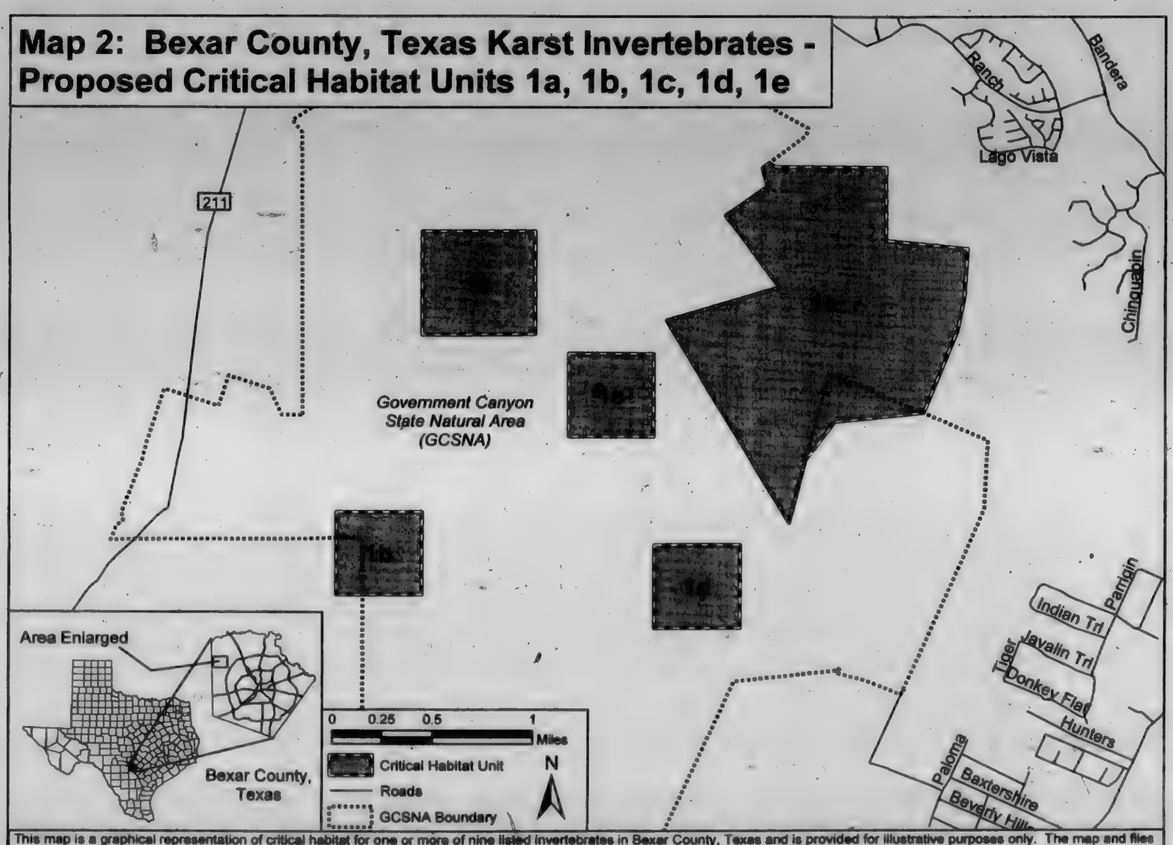
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Map 1: General location of the proposed critical habitat units for nine karst invertebrates in Bexar County, Texas



This map is a graphical representation of critical habitat for nine karst inverebrates and is provided for illustrative purposes only. The map and files used to create this map are not the definitive source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible, the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.

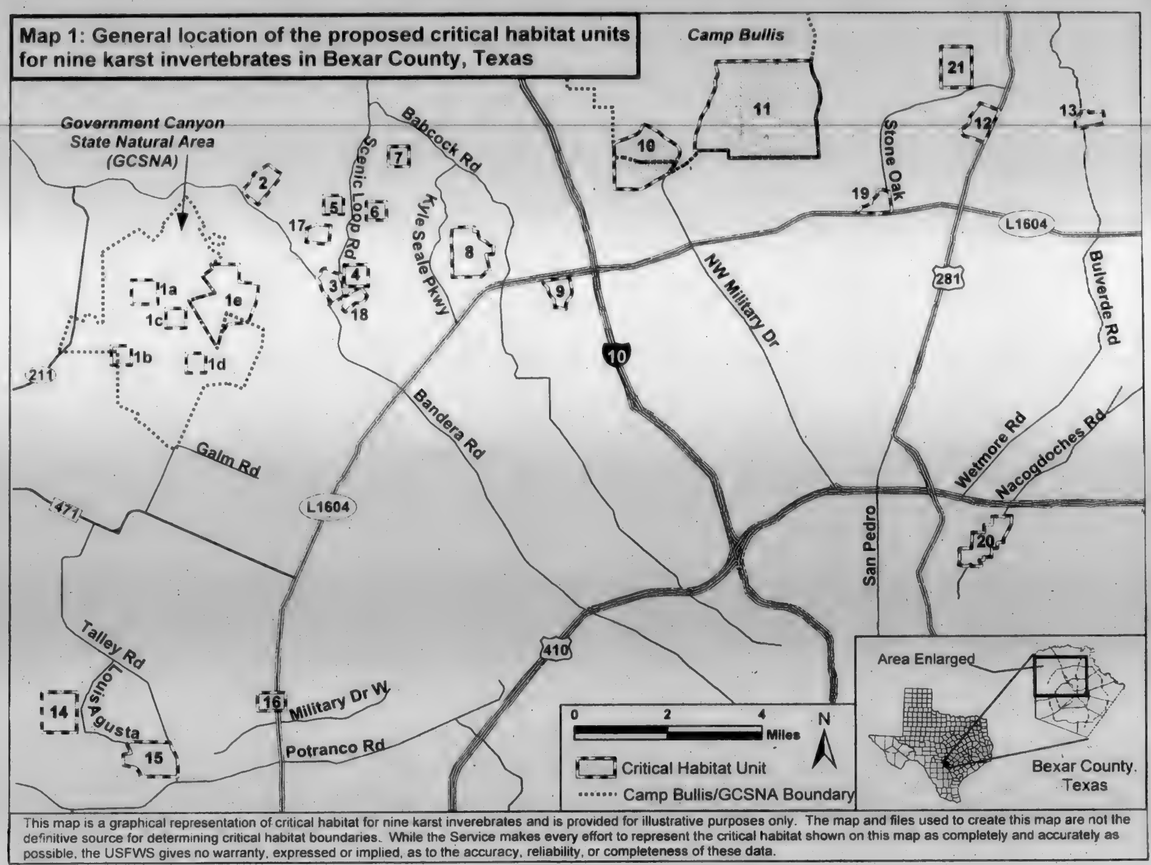
Map 2: Bexar County, Texas Karst Invertebrates - Proposed Critical Habitat Units 1a, 1b, 1c, 1d, 1e



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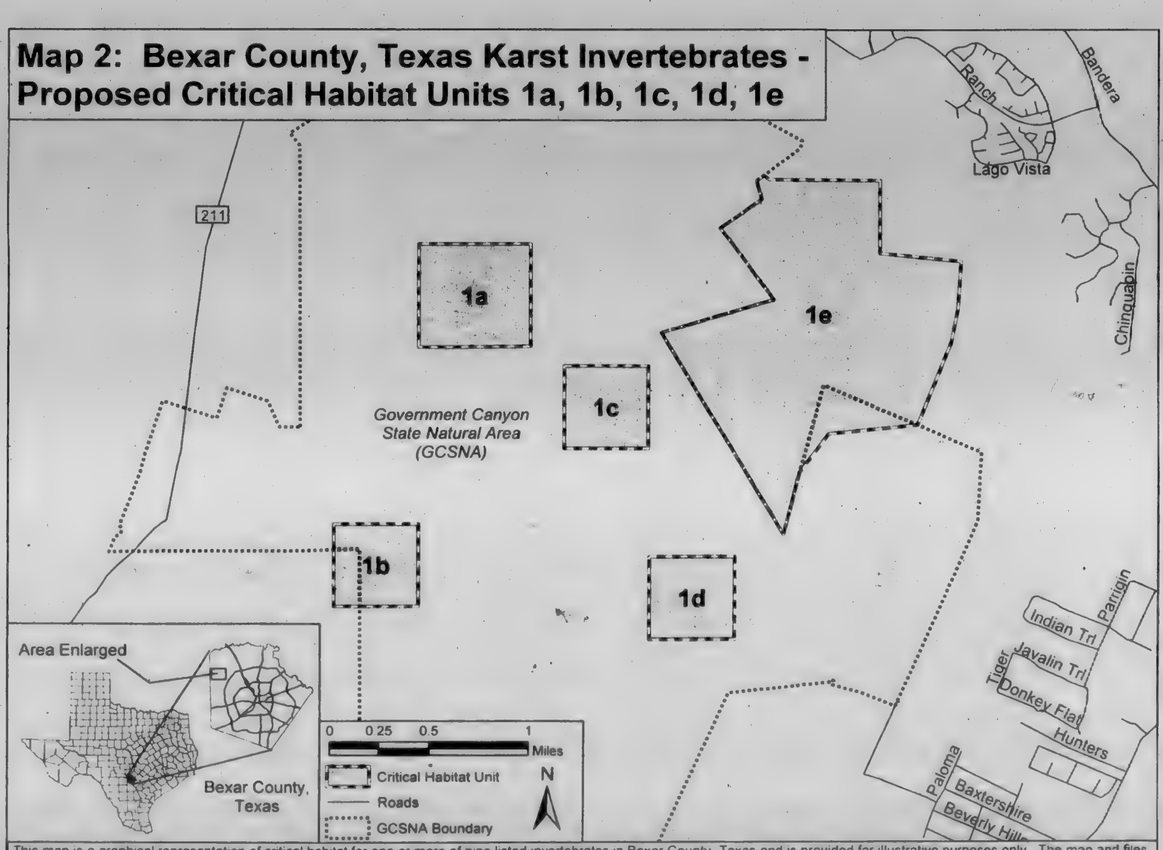
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Map 2: Bexar County, Texas Karst Invertebrates - Proposed Critical Habitat Units 1a, 1b, 1c, 1d, 1e

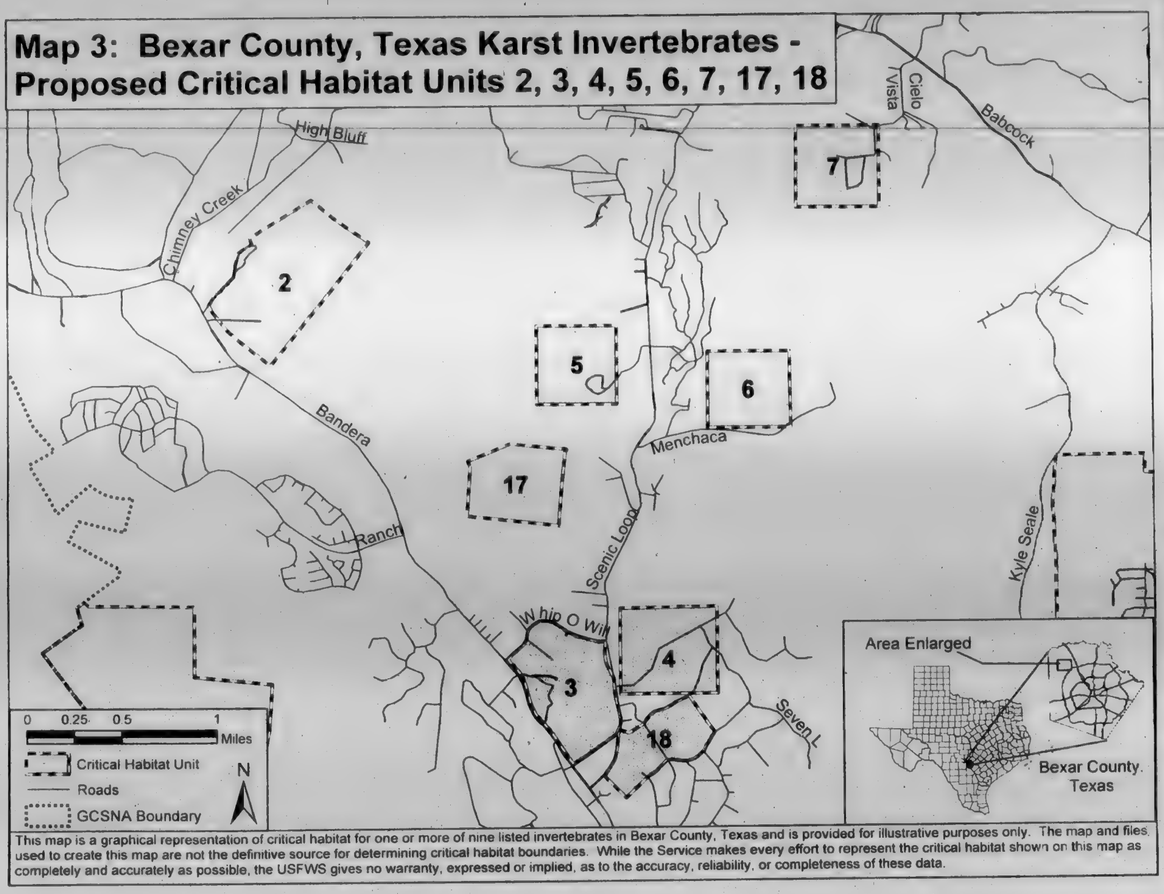


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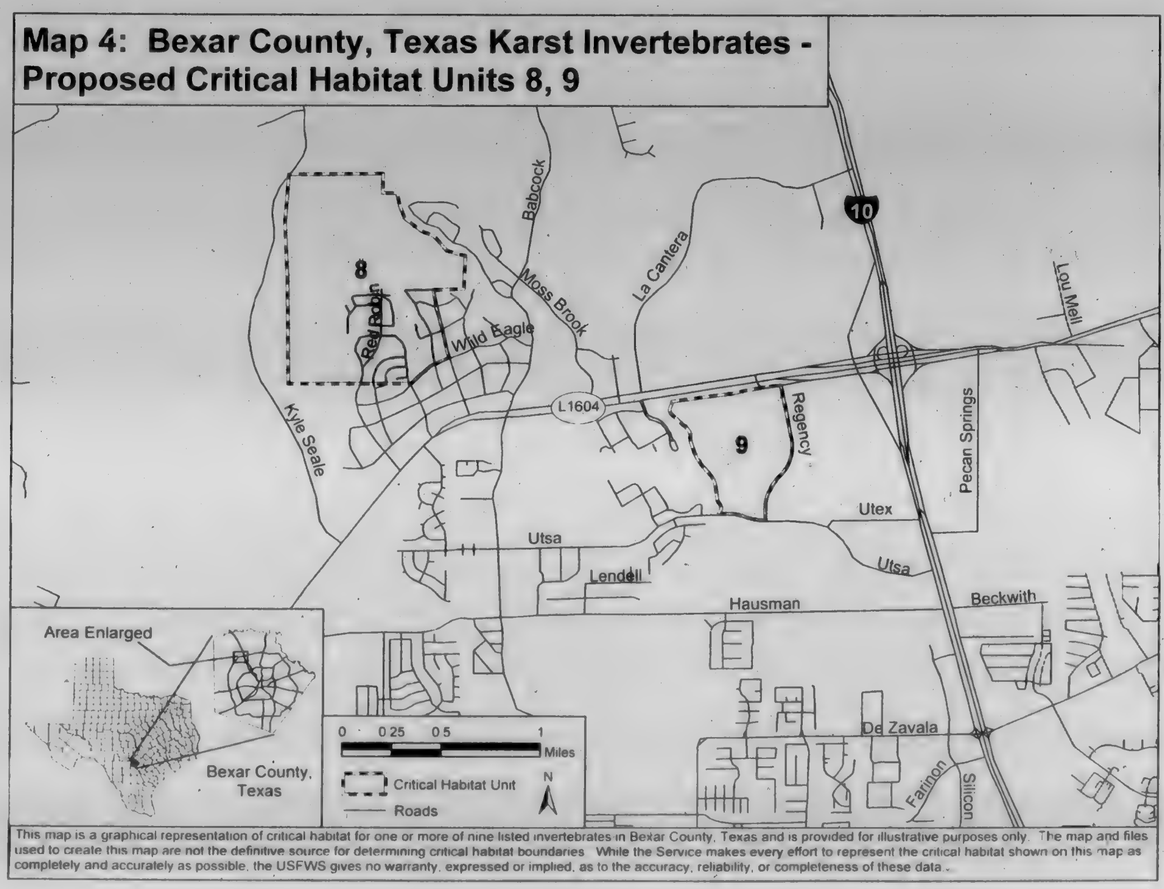
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Map 3: Bexar County, Texas Karst Invertebrates - Proposed Critical Habitat Units 2, 3, 4, 5, 6, 7, 17, 18



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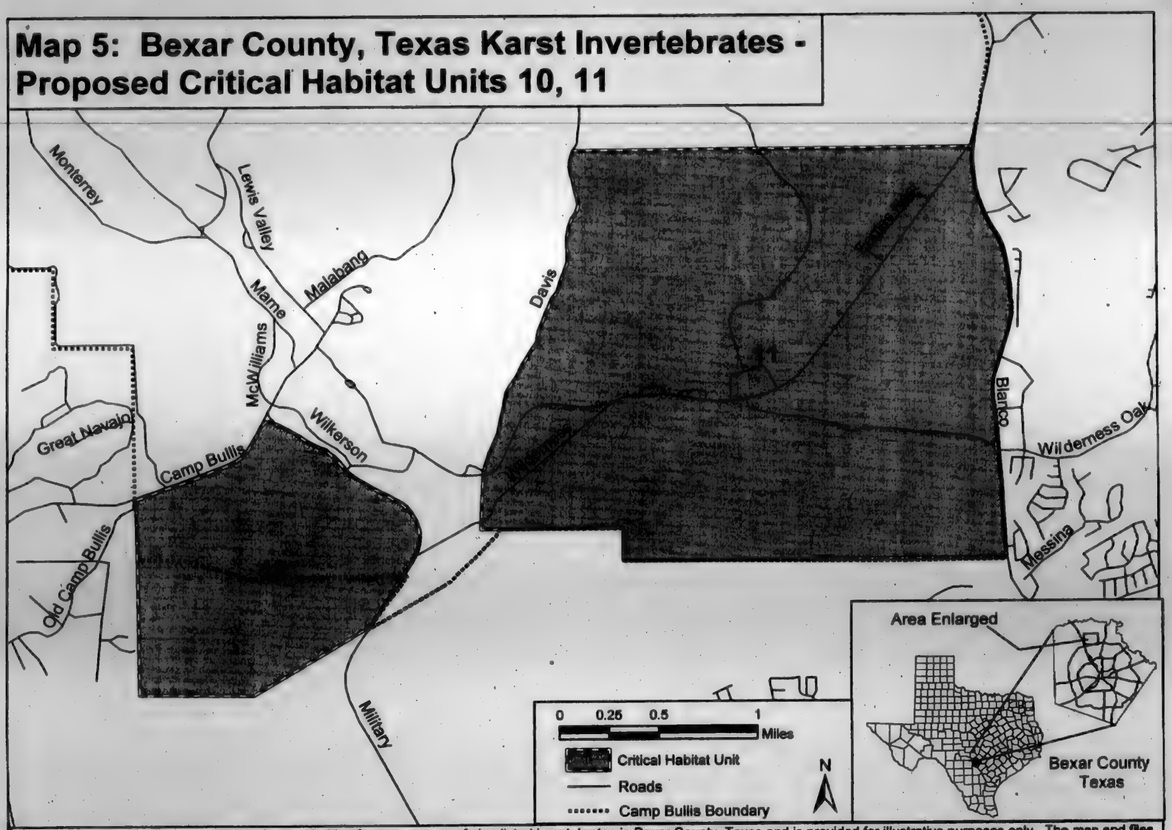
Map 4: Bexar County, Texas Karst Invertebrates - Proposed Critical Habitat Units 8, 9



This map is a graphical representation of critical habitat for one or more of nine listed invertebrates in Bexar County, Texas and is provided for illustrative purposes only. The map and files used to create this map are not the definitive source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible, the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.

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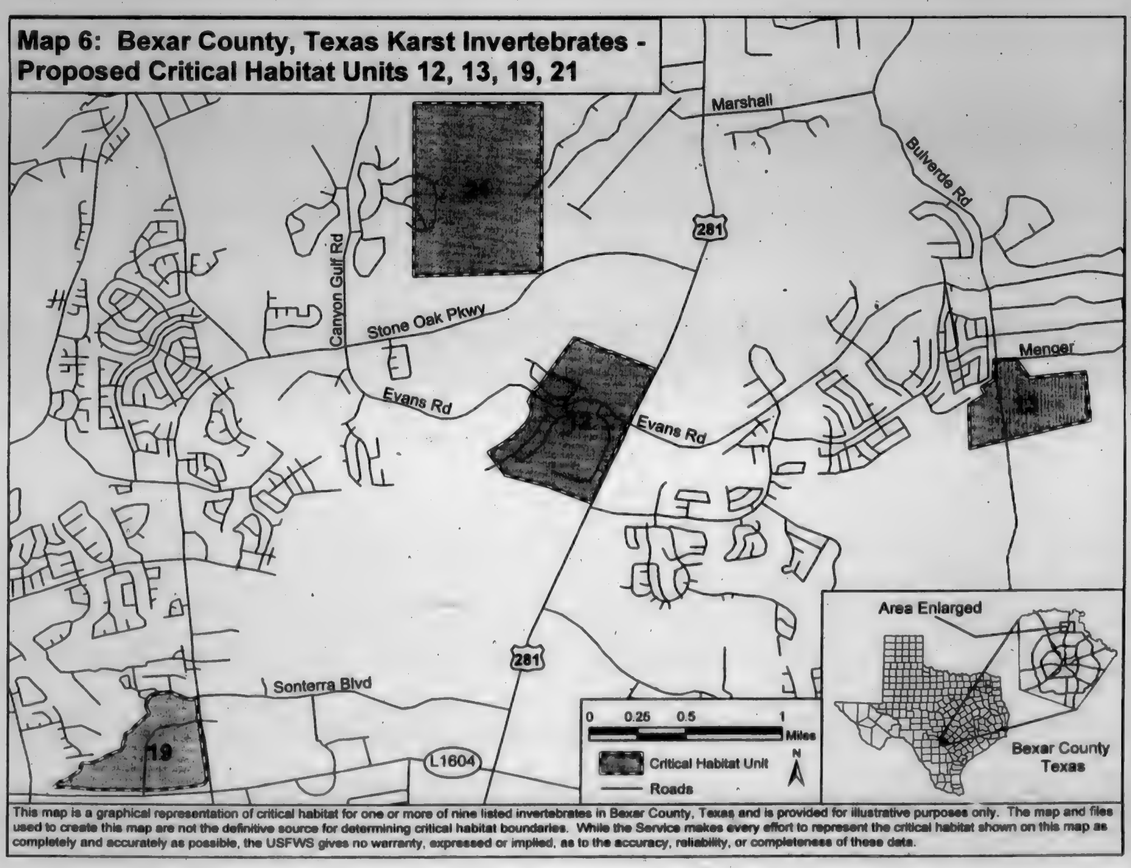
Map 5: Bexar County, Texas Karst Invertebrates - Proposed Critical Habitat Units 10, 11



This map is a graphical representation of critical habitat for one or more of nine listed invertebrates in Bexar County, Texas and is provided for illustrative purposes only. The map and files used to create this map are not the definitive source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible, the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.

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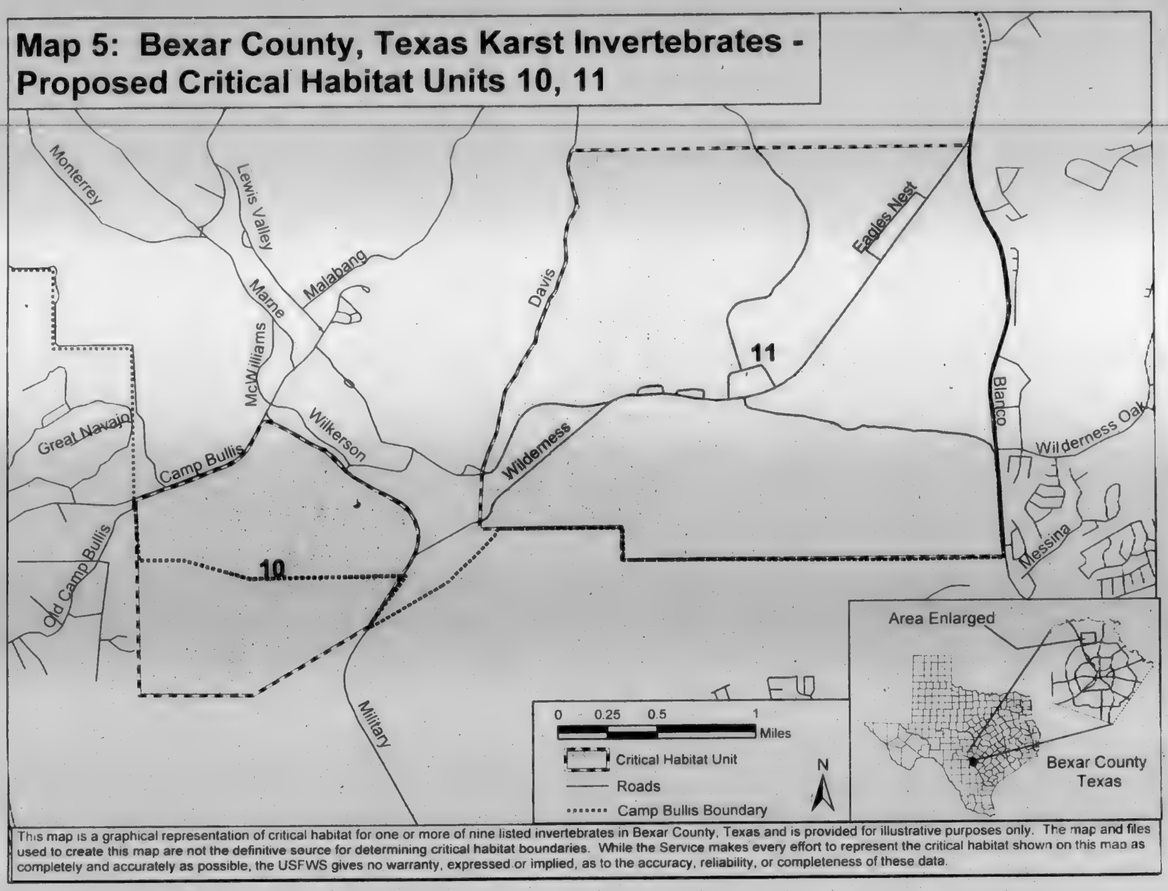
Map 6: Bexar County, Texas Karst Invertebrates - Proposed Critical Habitat Units 12, 13, 19, 21



This map is a graphical representation of critical habitat for one or more of nine listed invertebrates in Bexar County, Texas and is provided for illustrative purposes only. The map and files used to create this map are not the definitive source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible, the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.

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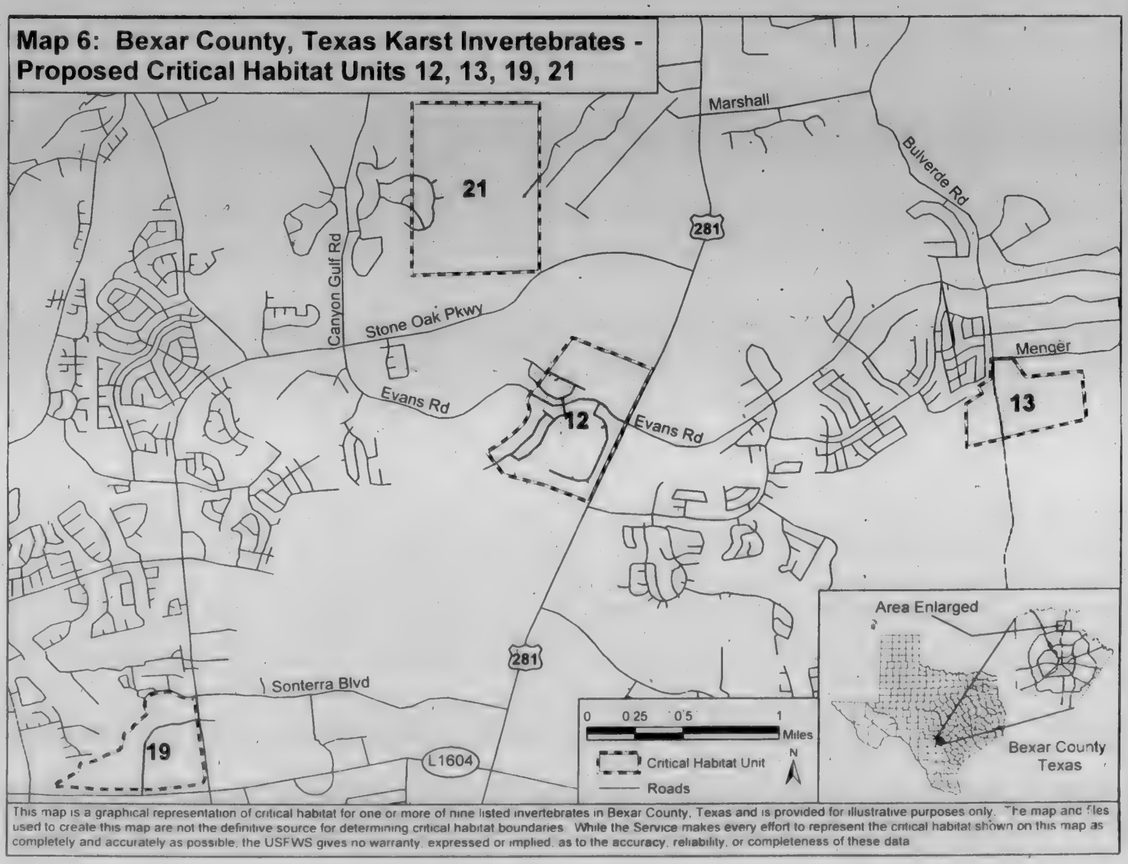
Map 5: Bexar County, Texas Karst Invertebrates - Proposed Critical Habitat Units 10, 11



This map is a graphical representation of critical habitat for one or more of nine listed invertebrates in Bexar County, Texas and is provided for illustrative purposes only. The map and files used to create this map are not the definitive source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible, the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.

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Map 6: Bexar County, Texas Karst Invertebrates - Proposed Critical Habitat Units 12, 13, 19, 21



This map is a graphical representation of critical habitat for one or more of nine listed invertebrates in Bexar County, Texas and is provided for illustrative purposes only. The map and files used to create this map are not the definitive source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible, the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.

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(2) Within these areas the primary constituent elements include: (a) the physical features of karst-forming rock containing subterranean spaces with stable temperatures, high humidities (near saturation) and suitable substrates (for example, spaces between and underneath rocks suitable for foraging and sheltering), and (b) the biological features of a healthy surface community of native plants (for example, juniper-oak woodland) and animals (for example, cave crickets) surrounding the karst feature that provides nutrient input and buffers the karst ecosystem from adverse effects (from, for example, non-native species invasions, contaminants, and fluctuations in temperature and humidity).

(3) Existing human-constructed, above ground, impervious structures and associated landscaping within the boundaries of mapped units do not contain the primary constituent elements and are not considered to be critical habitat. Such features and structures include but are not limited to buildings, paved roads, and lawns. However, areas below ground under these structures and associated landscaping are considered to be critical habitat since subterranean spaces containing these species and/or transmitting moisture and nutrients through the karst ecosystem extend, in some cases, underneath these existing human-constructed structures.

(4) Seven caves and their associated preserve lands established under the La Cantera section 10(a)(1)(B) permit were excluded from the proposed critical habitat designation. These include Canyon Ranch Pit, Fat Man's Nightmare Cave, and Scenic Overlook Cave and the surrounding approximately 30 ha (75 ac) (within Unit 1e); Helotes Blowhole and Helotes Hilltop caves and the surrounding approximately 10 ha (25 ac) (within Unit 3); John Wagner Cave No. 3 and the surrounding approximately 4 acres (within Unit 6); Hills and Dales Pit and the surrounding approximately 28 ha (70 ac) (within Unit 8). As required under their permit, La Cantera purchased these karst preserves through conservation easement and/or fee simple title and will ensure that they will be preserved in perpetuity and managed in accordance with the conservation needs of the species.

(5) Unit 1b—(47 ha (116 ac)): Unit consists of four boundary points with the following coordinates in Texas State Plane (South Central) in feet, referenced to North American Horizontal Datum 1983 (NAD 83): 2043579.74934, 13754314.707; 2041327.74934, 13754314.707; 2043579.74934, 13752062.707; 2041327.74934, 13752062.707.

(6) Unit 1e—(341 ha (842 ac)): From a point at 2050035, 13759440 at the western corner of property number 902601605 east along the northern side of this property to a point at 2053120, 13760090 the continuing northwest along the west side of property numbers 902601605, 323075421, and 323075422 to at point at 2051713, 13762282. From this point, northeast along the north side of property numbers 323075422 and 902601659 at a point at 2052904, 13763744 then east to a point at 2057992, 13761497. From this point, along the east side of property number 323075422 it its intersection with property number 902601607 at point 2055759, 13761684 and continuing along the north and east sides of this property to its intersection with property number 328074996 a point at 2056900, 13756956. From this point, west across property number 328074996 to a point at 2054491, 13756784, then southwest to a point at 2053656, 13755987 then continuing south along the east side of property number 902601605 to a point at 2053217, 13753954. From this point, along the west side of property number 902601605 and continuing to the point of origin.

(7) Unit 2—(99 ha (245 ac)): From a point northeast of Bandera Road at 2056212, 13772285 and along the northwest boundary of parcel numbers 102700035,102700038 and 304031966 to a point at 2059148.29808, 13775208.8182. From this point, southeast to a point at 2060764.66944, 13773969.8333 then along the eastern boundaries of parcel numbers 314033835, 327077286, 327077287, 102800425, and 102700316 to a point at 2057993.6191, 13770481.7691. From this point, northwest to the point of origin.

(8) Unit 3—(63 ha (154 ac)): From the southeastern corner of the intersection of Bandera Road and Whip-O-Will Way (2064533, 13762115) along the south side of Whip-O-Will Way to its intersection with Scenic Loop Road (2067284, 13762583), then continuing south along the west, northwest side of Scenic Loop Road to its intersection with Bandera Road (2066368, 13759105). From this point, north along the east side of Bandera Road to the point of origin.

(9) Unit 4—(63 ha (154 ac): Unit consists of four boundary points with the following coordinates in Texas State Plane (South Central) in feet, referenced to North American Horizontal Datum 1983 (NAD 83): 2070429.51759, 13763548.8939; 2067696.85493, 13763518.531; 2070444.69905, 13761074.316; 2067706.57475, 13761075.054.

(10) Unit 5—(47 ha (116 ac): Unit consists of four boundary points with the following coordinates in Texas State Plane (South Central) in feet, referenced to North American Horizontal Datum 1983 (NAD 83): 2067655.77864, 13771578.6572; 2065403.77864, 13771578.6572; 2067655.77864, 13769326.6572; 2065403.77864, 13769326.6572.

(11) Unit 6—(45 ha (111 ac): Unit consists of four boundary points with the following coordinates in Texas State Plane (South Central) in feet, referenced to North American Horizontal Datum 1983 (NAD 83): 2072498.41982, 13770816.0997; 2070213.53298, 13770816.0997; 2072523.11604, 13768630.4844; 2070213.53298, 13768630.4844.

(12) Unit 7—(50 ha (123 ac): Unit consists of four boundary points with the following coordinates in Texas State Plane (South Central) in feet, referenced to North American Horizontal Datum 1983 (NAD 83): 2075042.48817, 13777212.4498; 2072740.24441, 13777212.4498; 2075042.48817, 13774888.2263; 2072720.54786, 13774894.8227.

(13) Unit 8—(174 ha (428 ac): From a point 2079943.53971, 13767755.6785 along the east side of Kyle Seale Parkway to a point at 2082440.28711, 13767779.6857, south to a point at 2082429.79996, 13767253.8126 then east to a point at 2082818.17238, 13767241.1953. From this point, along the northern side of parcel number 309072242 southeast to a point at 2084641.50301, 13765539.4201, south to a point at 2084605.03639, 13764652.0659 then west to a point at 2083790.61538, 13764615.5992. From this point south along the west side of White Fawn Drive and continuing southwest along the north side of Wild Eagle Road to its intersection with Cotton Tail. From this point, west to a point at 2079949.46553, 13762062.9364 then continuing north to the point of origin.

(14) Unit 9—(71 ha (175 ac): From at point at 2090191, 13761607, roughly the intersection of an unnamed tributary of Leon Creek and the south side of the Loop 1604 access road, to the intersection of the access road and Regency Boulevard (2093082, 13762048). From this point, south along the west side of Regency Boulevard to its intersection with UTSA Boulevard (2092690, 13758365), then west along the north side of UTSA Boulevard to a point at 2091449, 13758365, roughly the intersection of UTSA Boulevard and the unnamed tributary of Leon Creek. From this point, north along the unnamed tributary to the point of origin.

(15) Unit 10—(367 ha (906 ac)): From a point at 2098282, 13772161 at the southwest corner of parcel number 900200036 north along the western boundary of this parcel and parcel number 308042407 to its intersection with Camp Bullis Road then continuing east along the south side of Camp Bullis Road/Military Road to a point at 2105279, 13775376. From this point, in a straight line southwest to a point at 2100600, 13772093 and continuing west along a straight line to the point of origin.

(16) Unit 11—(1,273 ha (3,143 ac)): From a point at 2109871, 13786962 east to its intersection with Blanco Road (2120517, 13787010), then south along the west side of Blanco Road to a point at 2121336, 13775793. From this point west to the southeast corner of parcel number 308042407, then west along this parcel boundary to a point at 2107371, 13776670, then north to Davis (2107420, 13778177). From this point, north, northeast along Davis to the point of origin.

(17) Unit 12—(105 ha (258 ac)): From a point at 2140092, 13777425 at the west side of U.S. 281 northwest in a straight line to a point at 2139015, 13777798 and continuing northwest in a straight line to a point at 2137707, 13778176 at the southwest corner of parcel number 311074749. From this point, continuing along the southwest boundary of this parcel across Cactus Bluff and along the southwest boundary of parcel number 311074761 to a point at 2137298, 13778787 at the west side of Mud Creek and continuing northeast along the west side of Mud Creek to a point at 2138316, 13780237. From this point, crossing parcel number 308040085 and Evans Road to a point at 2138477, 13780521. From this point, northeast along a straight line to a point at 2139612, 13782045, then southeast to a point at 2141858, 13781138 on the west side of U.S. 281 then continuing southwest along straight line to the point of origin.

(18) Unit 13—(51 ha (125 ac)): From a point at 2151154.85239, 13781383.2606 on the west side of the right-of-way of Bulverde Road, east along the south side of Ridgeway Drive to a point at 2151768.28065, 13781397.6942 then southeast to a point at 2152129.1208, 13780885.3011. From this point, east along the north side of parcel number 327077436 to a point at 2153655.9118, 13781029.8389, south at a point at 2153780.292, 13779672.9217 then south west to a point at 2150481.68089, 13778900.3523. From this point, north to a point at 2150462.0393, 13780127.5368, northeast to a point at 2150916.69789, 13780416.209, northwest to a point at 2150815.66265, 13780618.2794 then northeast to a point at 2151140.41879, 13780827.5667 and continuing north to the point of origin.

(19) Unit 21—(155 ha (382 ac)): Unit consists of four boundary points with the following coordinates in Texas State Plane (South Central) in feet, referenced to North American Horizontal Datum 1983 (NAD 83): 2138699.75321, 13788566.4781; 2135213.28358, 13788585.4663; 2138699.75321, 13783861.5804; 2135213.28358, 13783753.9781.

Ground Beetle (No Common Name), (*Rhadine infernalis*)

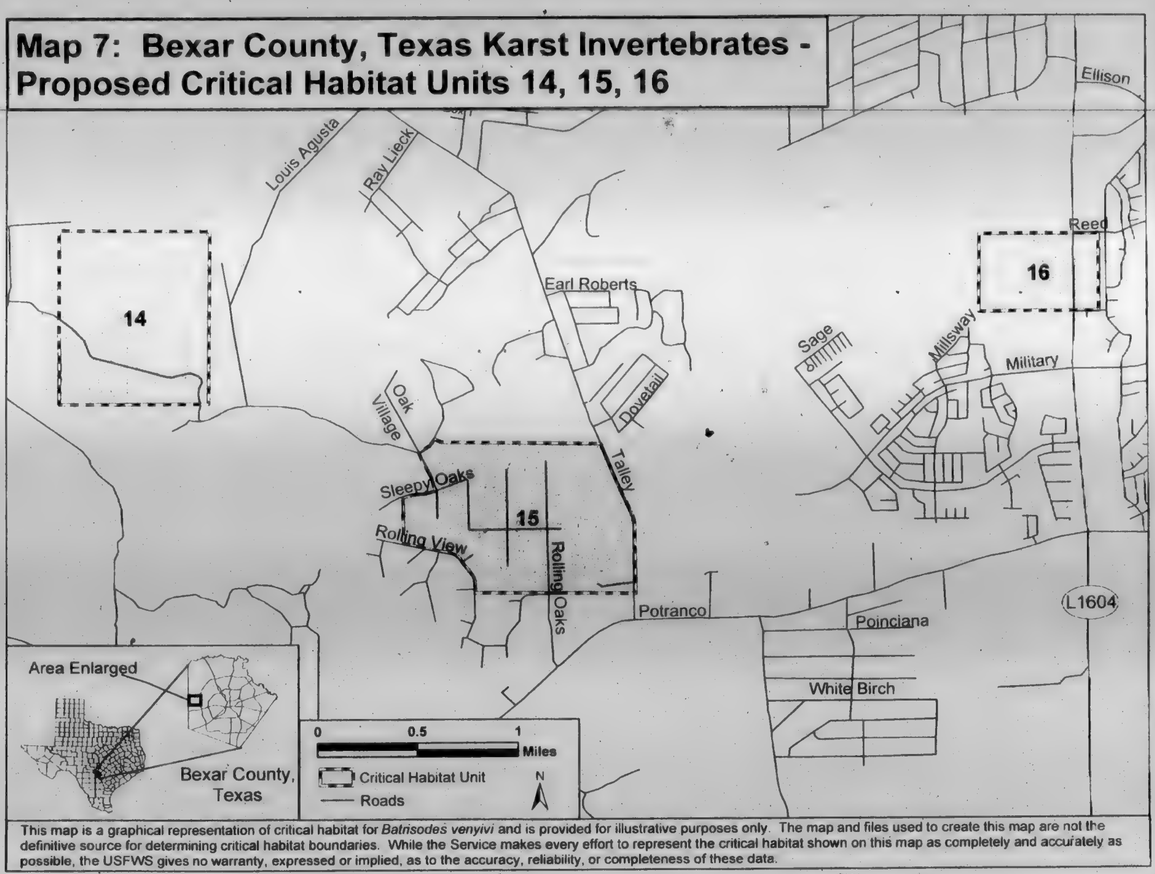
(1) Critical habitat for the ground beetle (*Rhadine infernalis*) in Bexar County, Texas, occurs in units 1b, 1e, 2, 3, 4, 5, 6, 8, and 10 which are described under the ground beetle (*Rhadine exilis*). In addition, critical habitat for the ground beetle (*Rhadine infernalis*) occurs in units 1a, 1d, 14, 15, 16, 17, 18, and 19, as described below. These units are depicted on Maps 1, 2, 3, 4, 5, and 6 found under the ground beetle (*Rhadine exilis*) and on Map 7 below. The primary constituent elements, the exclusion of existing structures and associated landscaping, and the exclusion of lands that do not meet the definition of critical habitat as described in paragraphs (2), (3), and (4) under the ground beetle *Rhadine exilis* are identical for this species.

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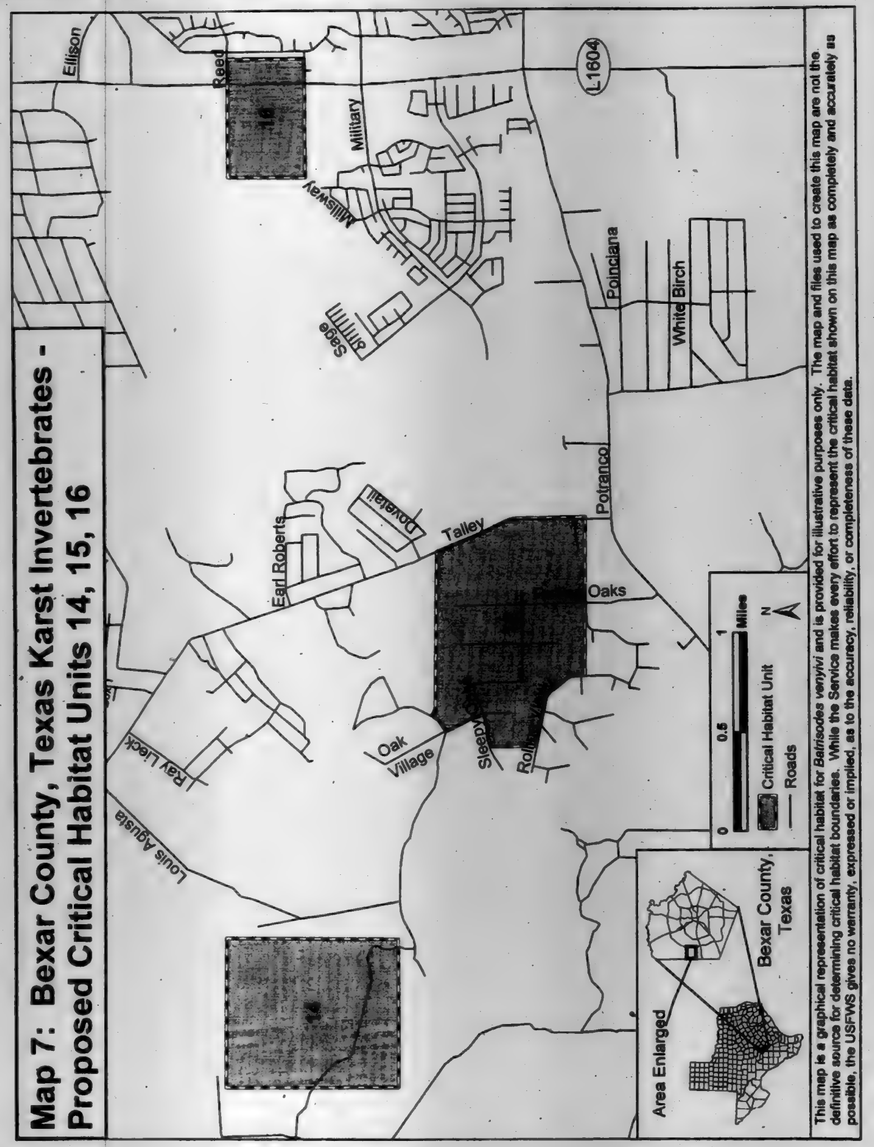
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Map 7: Bexar County, Texas Karst Invertebrates - Proposed Critical Habitat Units 14, 15, 16



This map is a graphical representation of critical habitat for *Batrisodes venyivi* and is provided for illustrative purposes only. The map and files used to create this map are not the definitive source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible, the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.

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(2) Within Unit 17, one cave and its surrounding preserve area (Madla's Cave and the surrounding approximately 2 ha (5 ac)) was excluded from the proposed critical habitat designation. As required by their section 10(a)(1)(B) permit, La Cantera purchased this karst preserve and will ensure that it will be preserved in perpetuity and managed in accordance with the conservation needs of the species.

(3) Surface vegetation within Unit 19 has been significantly reduced and degraded as a result of urban development. Lands within this unit do not contain the primary constituent element of a healthy surface community of native vegetation. Therefore, this unit is being designated as critical habitat based solely on the presence of an intact subsurface environment.

(4) Unit 1a—(76 ha (188 ac)): Unit consists of four boundary points with the following coordinates in Texas State Plane (South Central) in feet, referenced to North American Horizontal Datum 1983 (NAD 83): 2046534.1202, 13761922.7115; 2043576.6972, 13761922.7116; 2046534.1202, 13759160.7825; 2043576.6972, 13759144.7312.

(5) Unit 1d—(47 ha (116 ac)): Unit consists of four boundary points with the following coordinates in Texas State Plane (South Central) in feet, referenced to North American Horizontal Datum 1983 (NAD 83): 2051979.54342, 13753424.1693; 2049727.54342, 13753424.1693; 2051979.54342, 13751172.1693; 2049727.54342, 13751172.1693.

(6) Unit 14—(173 ha (426 ac)): Unit consists of four boundary points with the following coordinates in Texas State Plane (South Central) in feet, referenced to North American Horizontal Datum 1983 (NAD 83): 2037495.68795, 13714343.6913; 2033513.40946, 13714379.0476; 2037458.92845, 13709675.2356; 2033521.81129, 13709675.2356.

(7) Unit 15—(195 ha (481 ac)): From a point at 2044508, 13704550 and continuing along the east side of Rolling View to a point at 2042620, 13705900. From this point, north along a straight line to a point at 2042634, 13706518 at the south end of Honey Oaks and continuing along the east side of Honey Oaks to Sleepy Oaks then along the south side of Sleepy Oaks to its intersection with Oak Village. From this point, continuing north along the east side of Oak Village to Pheasant Drive, then northeast along a straight line to a point at 2043413, 13708727 and continuing along the same line to a point at 2047835, 13708557 on the west side of Talley Road, and continuing south along the west side of Talley Road to a point at 2048750, 13704509 and continuing west along a straight line to the point of origin.

(8) Unit 16—(61 ha (152 ac)): Unit consists of four boundary points with the following coordinates in Texas State Plane (South Central) in feet, referenced to North American Horizontal Datum 1983 (NAD 83): 2061031.60542, 13714210.5326; 2057866.88036, 13714211.0248; 2061031.60542, 13712132.5655; 2057845.30553, 13712123.6599.

(9) Unit 17—(48 ha (118 ac)): From a point 2063406, 13766153 and continuing along the western boundary of parcel numbers 102800326 and 307020398 and along the west and north boundaries of parcel number 102800384 to a point at the northeast corner of parcel number 102800384 (2064828, 13768192). From this point, continuing along the northern boundary of parcel numbers 327075063 and 327075065 to the northeast corner of parcel number 327075065 (2066218, 13768044), then south along the east boundary of parcel numbers 327075065, 102800456, and 102800326 to a point at 2065992, 13765864, then continuing west across parcel number 102800326 to the point of origin.

(10) Unit 18—(40 ha (100 ac)): From the intersection of Old Scenic Loop Road and Scenic Loop Road (2067675, 13760046), northeast along the northern boundary of parcel number 507100487 to the intersection on Monarch Drive and Cash Mountain (2068346, 13760229), then along the southern side of Cash Mountain to the point at 2069624, 13761023. From this point, southeast along a straight line to the intersection with Rafter South Trail at a point at 2070338, 13759988, then along the north side of Rafter South Trail to its intersection with Bar X Trail. From this point, southwest along a straight line to a point at 2067849, 13758117, then northwest to Old Scenic Loop Road (2067231, 13758743) and continuing north along the southeast side of the road to the point of origin.

(11) Unit 19—(59 ha (146 ac)): From a point at 2125364, 13769352 where the Loop 1604 access road intersects Panther Springs Creek, north along Panther Springs Creek to a point at 2127295, 13770776, then continuing northeast along a straight line to a point at 2127967, 13771448 at the southern end of Sonterra Boulevard. From this point, north and east along the east side of Sonterra Boulevard to its intersection with Stone Oak Parkway (2129268, 13771861), then continuing south along the west side of Stone Oak Parkway to its intersection with the Loop 1604 access road and continuing west along a straight line to the point of origin.

Helotes mold beetle (*Batrisodes venyivi*)

(1) Critical habitat for the Helotes mold beetle in Bexar County, Texas, occurs in units 1e, 3, and 5 which are described in the text and depicted on Maps 1, 2, and 3 found under the ground beetle (*Rhadine exilis*). The primary constituent elements, the exclusion of existing structures and associated landscaping, and the exclusion of lands that do not meet the definition of critical habitat as described in paragraphs (2), (3), and (4) under the ground beetle *Rhadine exilis* are identical for this species.

* * * * *

Dated: August 3, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–21477 Filed 8–26–02; 8:45 am]

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H.R. 3009/P.L. 107–210

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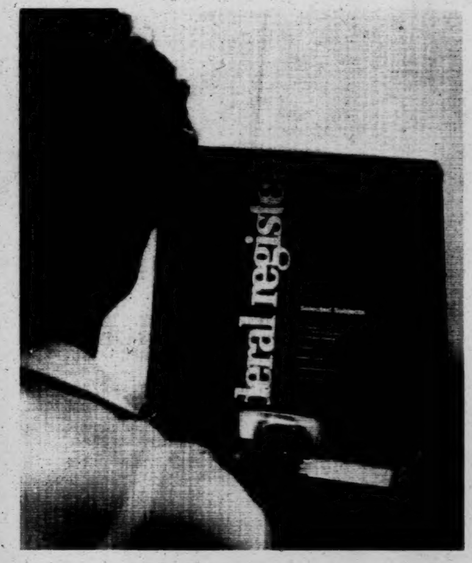
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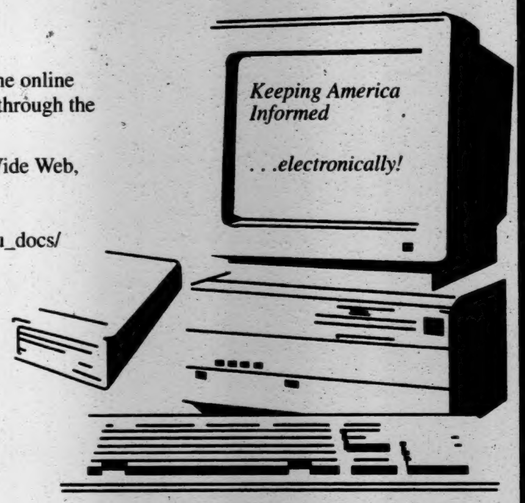
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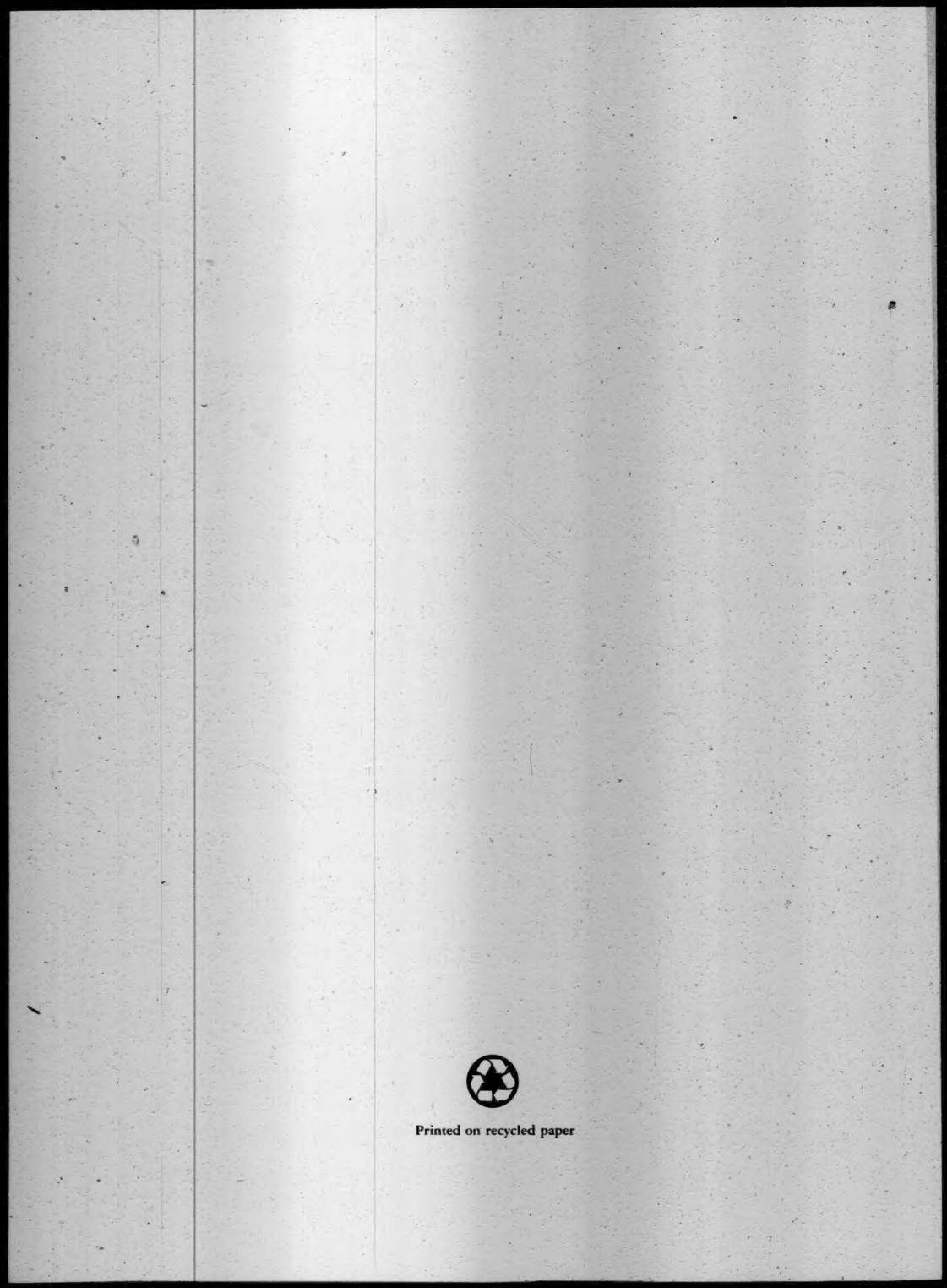


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